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# Transcript of Hearing - Day 1

**Date:** April 7, 2026

**Case:** Holton Arms Inc., In Re:

**Planet Depos**

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**Michigan #8598 | Nevada #089F | New Mexico #566**

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<p style="text-align: right;">1</p> <p>1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS</p> <p>2 FOR MONTGOMERY COUNTY, MARYLAND</p> <p>3 -----</p> <p>4 IN RE: : Case No.:</p> <p>4 HOLTON-ARMS INC., : CBA-1974-E</p> <p>5 -----</p> <p>6 HEARING</p> <p>7 Before Hearing Examiner Lynn Robeson Hannah</p> <p>8 Rockville, Maryland</p> <p>9 Tuesday, April 7, 2026</p> <p>10 9:39 a.m. EST</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Job No.: 609713</p> <p>24 Pages: 1-263</p> <p>25 Recorded by: Lee Utterback-Pair</p> <p style="text-align: right;">2</p>	<p style="text-align: right;">3</p> <p style="text-align: center;">C O N T E N T S</p> <p>2 EXAMINATION OF WITNESSES: PAGE</p> <p>3 Patrick La Vay 45</p> <p>4 Joshua Sloan 122</p> <p>5 Mark Ordan 182</p> <p>6 Joshua Sloan 217</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>2 ON BEHALF OF APPLICANT:</p> <p>3 S00 LEE-CHO, ESQUIRE</p> <p>4 WILLIAM J. ROGERS, ESQUIRE</p> <p>5 BREGMAN, BERBERT, SCHWARTZ &amp; GILDAY, LLC</p> <p>6 7315 Wisconsin Avenue, Suite 800 West</p> <p>7 Bethesda, Maryland 20814</p> <p>8 (301) 656-2707</p> <p>9</p> <p>10 ON BEHALF OF RESPONDENTS:</p> <p>11 WILLIAM J. CHEN, JR., ESQUIRE</p> <p>12 LAW OFFICE OF WILLIAM J. CHEN, JR., LLC</p> <p>13 200A Monroe Street, Suite 300</p> <p>14 Rockville, Maryland 20850</p> <p>15 (301) 279-9500</p> <p>16</p> <p>17 ALSO PRESENT: Joe Bozzonetti, Technician</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">2</p>	<p style="text-align: right;">4</p> <p style="text-align: center;">E X H I B I T S</p> <p>2 (Referenced and Retained by the Court)</p> <p>3 No. 1 (Application)</p> <p>4 No. 30 (Revised Statement of Justification)</p> <p>5 No. 38G (Expert Witness Resumes)</p> <p>6 No. 41G (Exhibits AA through LL)</p> <p>7 No. 42 (Notice of Hearing Issued 9-30-25)</p> <p>8 No. 50A (Markup of Existing Conditions)</p> <p>9 No. 78 (Statement of Operations)</p> <p>10 No. 78A (Statement of Operations Exhibit A)</p> <p>11 No. 79 (Land Use Report)</p> <p>12 No. 85A (Exhibit Conditions SP-0.01)</p> <p>13 No. 86A (Forest Conservation Plan Amendment 1)</p> <p>14 No. 86B (Forest Conservation Plan Amendment 2)</p> <p>15 No. 86C (Forest Conservation Plan Amendment 3)</p> <p>16 No. 88A (Resume of Joshua Sloan)</p> <p>17 No. 97A (Supplement Pre-Hearing Exhibits)</p> <p>18 No. 98A(ii) 1 (Existing Conditions SP-0.01)</p> <p>19 No. 98A(ii) 2 (Existing Conditions SP-1.01)</p> <p>20 No. 98A(ii) 3 (Existing Conditions SP-1.02)</p> <p>21 No. 98A(ii) 4 (Existing Conditions SP-1.03)</p> <p>22 No. 98A(ii) 5 (Existing Conditions SP-1.04)</p> <p>23 No. 98A(ii) 6 (Existing Conditions SP-1.05)</p> <p>24 No. 103A (Site Photos with Key Map)</p> <p>25</p> <p style="text-align: right;">4</p>

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<p>5</p> <p>1 PROCEEDINGS</p> <p>2 HEARING EXAMINER: I'm calling the case</p> <p>3 of CBA-1174-E and S-2503-B, modifications of two</p> <p>4 special exceptions for the Holton-Arms School, a</p> <p>5 major modification of two special exceptions for</p> <p>6 the Holton-Arms School which is located at 7303</p> <p>7 River Road, Bethesda, Maryland.</p> <p>8 All right. Will the parties identify</p> <p>9 themselves, or at least the parties at the counsel</p> <p>10 table identify themselves for the record?</p> <p>11 MS. LEE-CHO: Thank you. For the</p> <p>12 record Soo Lee-Cho with the law firm of Bregman</p> <p>13 Berbert Schwartz &amp; Gilday with the address at 7315</p> <p>14 Wisconsin Avenue in Bethesda on behalf of</p> <p>15 Holton-Arms, Inc. Thank you.</p> <p>16 HEARING EXAMINER: And?</p> <p>17 MS. LEE-CHO: Oh, I can have -- go</p> <p>18 ahead.</p> <p>19 MR. ROGERS: And Will Rogers also at</p> <p>20 Bregman Berbert Schwartz &amp; Gilday, address 7315</p> <p>21 Wisconsin Avenue, Bethesda, Maryland, also</p> <p>22 representing the applicant, Holton-Arms School.</p> <p>23 HEARING EXAMINER: Okay.</p> <p>24 MR. CHEN: Good morning, Madam</p> <p>25 Examiner. My name is Bill Chen and I represent</p>	<p>7</p> <p>1 thing with the hybrid hearings that is very</p> <p>2 important, and that is that you do not cross-talk</p> <p>3 which means you don't interrupt each other.</p> <p>4 You may have to interrupt if you have</p> <p>5 an objection to the testimony, but do not because</p> <p>6 the court reporter can't pick it up. It gets --</p> <p>7 the transcript -- this goes on a transcript to the</p> <p>8 Board of Appeals. All the evidence and testimony</p> <p>9 that you want to bring has to come into the record</p> <p>10 here.</p> <p>11 The Board of Appeals hears only oral</p> <p>12 arguments. When you do have the opportunity to</p> <p>13 cross-examine please limit that to questions.</p> <p>14 Everyone will have the opportunity to testify, so</p> <p>15 it makes the proceeding go faster. We'll handle</p> <p>16 the applicant's case first, then we'll go to the</p> <p>17 opposition case, and then the applicant will have</p> <p>18 a chance to rebut the opposition case.</p> <p>19 Okay. With that are there any</p> <p>20 preliminary matters? And I know we're not going</p> <p>21 to get out of that question without a no -- or</p> <p>22 without a yes. Go ahead. Any preliminary</p> <p>23 matters?</p> <p>24 MS. LEE-CHO: We are still pending a</p> <p>25 decision on the motion to amend that was filed by</p>
<p>6</p> <p>1 Vivian Reifberg and the Bradley Boulevard Citizens</p> <p>2 Association. The association with --</p> <p>3 HEARING EXAMINER: We're going to go</p> <p>4 off the record, please.</p> <p>5 THE REPORTER: We're going off.</p> <p>6 (Whereupon, there was a brief pause in</p> <p>7 the proceedings.)</p> <p>8 HEARING EXAMINER: We're back on the</p> <p>9 record. Okay. I know that --</p> <p>10 MS. LEE-CHO: Should we restate -- I</p> <p>11 don't know if he --</p> <p>12 HEARING EXAMINER: No, he caught -- you</p> <p>13 caught the identification of the parties, correct?</p> <p>14 THE REPORTER: I did.</p> <p>15 HEARING EXAMINER: Okay.</p> <p>16 THE REPORTER: Yes.</p> <p>17 HEARING EXAMINER: Now, I do understand</p> <p>18 that there are -- I think there's about 24 more</p> <p>19 parties, but rather than having you identify</p> <p>20 yourselves I'm going to -- we're going to leave it</p> <p>21 with the two counsel, and when you come to testify</p> <p>22 you can identify yourself as a party.</p> <p>23 This hearing is informal but it does</p> <p>24 have certain formalities. Testimony is under oath</p> <p>25 and subject to cross-examination. There's one</p>	<p>8</p> <p>1 the applicants. That has not been ruled on.</p> <p>2 HEARING EXAMINER: Well, I think the</p> <p>3 Board of Appeals, as I read their resolution they</p> <p>4 basically said to grant it unless I'm misreading</p> <p>5 what they said. Did everyone get a copy of their</p> <p>6 formal resolution?</p> <p>7 MS. LEE-CHO: Yes, I -- well, the</p> <p>8 applicant did and I believe it was mailed out to a</p> <p>9 mailing list that included all of the parties of</p> <p>10 record.</p> <p>11 MR. CHEN: If I may, Madam Examiner, we</p> <p>12 received an E-mail from you yesterday afternoon</p> <p>13 and there are a number of preliminary matters. I</p> <p>14 had the impression that you wanted to deal with</p> <p>15 that, your E-mail first, but we'll do whatever you</p> <p>16 want to do.</p> <p>17 HEARING EXAMINER: Wait. With what</p> <p>18 first?</p> <p>19 MR. CHEN: You sent an E-mail out --</p> <p>20 HEARING EXAMINER: I did.</p> <p>21 MR. CHEN: -- and it says in it that it</p> <p>22 would be handled as a preliminary matter.</p> <p>23 HEARING EXAMINER: Right. Well, we can</p> <p>24 do that one first which is --</p> <p>25 MR. CHEN: I'll do whatever.</p>

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<p>1 HEARING EXAMINER: I know. 2 MR. CHEN: I'm not trying to cause a 3 problem. 4 HEARING EXAMINER: You're making sure I 5 get all the preliminary matters, and I had one 6 more preliminary matter. Do we have an affidavit 7 of posting in the file? 8 MS. LEE-CHO: We can. I don't have it 9 signed at this moment, but we can take care of it. 10 HEARING EXAMINER: Because I saw a 11 picture in the file of a blank sign. Now, that 12 was not OZAH. 13 MS. LEE-CHO: It has been updated. All 14 the signs have been updated. 15 HEARING EXAMINER: Yeah, but when? 16 MS. LEE-CHO: A few weeks ago when I 17 was -- 18 UNIDENTIFIED FEMALE SPEAKER: Pardon 19 me. I could not hear that. 20 MS. LEE-CHO: At least two weeks ago 21 because the weather, with the snow I think the ink 22 was removed. 23 MR. CHEN: Respectfully I have contrary 24 information and the rules do provide for 25 requirement for an affidavit of posting. You have</p>	<p>1 because of the loss of the Wednesday date we do 2 anticipate having the case in chief run into 3 Friday, so probably half of the day. 4 HEARING EXAMINER: So today -- 5 MS. LEE-CHO: Thursday. 6 HEARING EXAMINER: -- Thursday and 7 Friday -- 8 MS. LEE-CHO: Half of Friday. 9 HEARING EXAMINER: -- will be your case 10 in chief? 11 MS. LEE-CHO: Correct, and -- but if 12 there is extensive cross-examination that's partly 13 what I wanted to also discuss. As you mentioned, 14 there are 24 parties of record. Just for planning 15 purposes I think it would behoove all of us to 16 understand how many parties are intending to 17 cross-examine or if all of the parties are 18 intending to cross-examine. 19 HEARING EXAMINER: Well, in the past -- 20 that's a good question because we can't allow 21 unauthorized practice of law, so we can have 22 people ask questions but that's kind of the 23 borderline. What we have done before is that if 24 individual parties have questions they funnel them 25 through Mr. Chen. I know you're not looking</p>
10	12
<p>1 two special exceptions before you as you've noted. 2 Accordingly there has to be an -- my 3 understanding under the zoning ordinance, there's 4 got to be an affidavit of posting relative to the 5 proceedings before you which would include then 6 CBA-1174-E and S-2503-B and, you know, they don't 7 have to be submitted right at -- 8 MS. LEE-CHO: Yeah, all the signs -- 9 MR. CHEN: -- this moment, but they're 10 due -- 11 MS. LEE-CHO: I'm sorry. All the signs 12 were updated with both case numbers so we can 13 provide -- 14 HEARING EXAMINER: When? 15 MS. LEE-CHO: -- an affidavit. 16 HEARING EXAMINER: Well, if that 17 involves testimony we'll get to it when we -- 18 MS. LEE-CHO: March 13th. 19 HEARING EXAMINER: We'll get to it when 20 we get into testimony, so I'm not going to treat 21 that as a preliminary matter, so let's go to 22 dates. I'm guessing that we still need a fourth 23 day of hearings, or what would you like to do? 24 MS. LEE-CHO: As a result of the 25 shuffling of the testimony that had to occur</p>	<p>1 happy. You're smiling but I think it's not good. 2 MR. CHEN: It's -- excuse me, Madam 3 Examiner. Yes, you are correct, that has happened 4 in my involvement in the past. I do believe, 5 however, that the rules do allow some 6 cross-examination by unrepresented parties. 7 And it is my understanding in this 8 particular case that there is at least one 9 complainant or opponent who wishes to 10 cross-examine and, Madam Examiner, as I have done 11 in the past to expedite the process I'm amenable 12 to asking questions at that point in time when 13 individuals would have and they feed them to me 14 and I'll be glad to ask them. 15 HEARING EXAMINER: I appreciate that. 16 I know you're not getting paid for that -- 17 MR. CHEN: That's -- 18 HEARING EXAMINER: -- necessarily, but 19 I appreciate that. 20 MR. CHEN: So -- 21 HEARING EXAMINER: So what you're 22 saying is -- what Ms. Lee-Cho is saying is we need 23 -- how long do you think you need for your case in 24 chief? 25 MR. CHEN: I will tell you that I think</p>

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<p style="text-align: right;">13</p> <p>1 that beyond what you've already got we're going to 2 need at least four more days beyond what you've 3 already projected. 4 HEARING EXAMINER: So we have three 5 days including today for your case in chief, then 6 you need -- 7 MR. CHEN: I'm trying to project down 8 the road to include -- 9 HEARING EXAMINER: You mean four days 10 not just for your case in chief, but four days -- 11 MR. CHEN: Yeah. 12 HEARING EXAMINER: -- for -- 13 MR. CHEN: I'm thinking you're going to 14 need four full days beyond to wrap it up for me, 15 an opposition case, presentation, rebuttal. The 16 rules also do provide for surrebuttal in the rules 17 and there -- 18 HEARING EXAMINER: You read the rules? 19 Why did you read the rules? 20 MR. CHEN: I actually don't have to 21 read them, but -- 22 HEARING EXAMINER: I know. 23 MR. CHEN: So I'm just trying to look 24 at the dates that you sent out, and I do think in 25 trying to project that you're looking at at least</p>	<p style="text-align: right;">15</p> <p>1 maintain a record, but I would like you to come 2 back with four dates that you can all agree upon. 3 If we need to go into May -- yeah, I know, so 4 let's try to get this done. 5 MR. CHEN: Are we solid with the dates 6 that you've got so that you cannot be preempted on 7 any of these dates because assuming everybody gets 8 together we can rely on using these dates? 9 HEARING EXAMINER: Yes, I can have Jony 10 -- or a staff member double check and I'll have 11 them do that, Ms. Johnson and Jony Guisao-Ospina, 12 I'll have them double check, but yes, that's -- he 13 double checked yesterday. 14 MR. CHEN: I had to ask because I 15 already have gotten some feedback from -- 16 concerning my client Ms. Reifberg and just this 17 morning some other folk and that there's going to 18 be concerns about people who have got things 19 scheduled already on their calendars. 20 And candidly I'll tell you, Madam 21 Examiner, that my client, Ms. Reifberg, will miss 22 hearings. She had -- may have some things 23 scheduled. She won't be in the country and she's 24 got business issues that she has determined that 25 she will -- she wants to provide her testimony at</p>
<p style="text-align: right;">14</p> <p>1 four additional days. 2 HEARING EXAMINER: Well, then I think 3 what I would like you to do, we can get into the 4 case in chief now, but during -- I will be taking 5 breaks obviously. I would like the parties to 6 discuss -- I have to -- I don't even have to have 7 an answer today because I know I'm going to 8 continue it to the 9th -- 9 MR. CHEN: Thursday. 10 HEARING EXAMINER: -- so I don't need 11 an answer today. What I would like you to do is 12 coordinate amongst each other what -- I also was 13 informed by the executive director of the Board of 14 Appeals that next Wednesday they have nothing on 15 their agenda due to a -- it's neither here nor 16 there, so that's an additional date if you wish 17 it. 18 MR. CHEN: That would add the 15th then 19 to your E-mail? 20 HEARING EXAMINER: Yeah. So what I'm 21 going to do, we don't have to work this out today 22 because I'm going to continue the case to the 9th 23 and then I would like the parties to coordinate 24 and it may be best to -- you know, don't copy me 25 on E-mails because it's very difficult for us to</p>	<p style="text-align: right;">16</p> <p>1 the appropriate time, but she also will waive any 2 necessity to be present because she -- her concern 3 -- 4 HEARING EXAMINER: She can appear 5 remotely. 6 MR. CHEN: She -- 7 HEARING EXAMINER: We've had people 8 from Nigeria and South Africa testify. 9 MR. CHEN: I don't think you -- 10 THE TECHNICIAN: Just because you're 11 not here -- 12 HEARING EXAMINER: Don't -- you can't 13 talk. Please no comments. I apologize. That was 14 the Zoom operator. I appreciate your help, but 15 you can't talk in this proceeding. 16 MR. CHEN: We will try to do things and 17 I've heard some of the other folk are probably 18 going to have to miss hearings, but they will want 19 to testify and we'll try to coordinate and -- 20 HEARING EXAMINER: Well, the other -- 21 and I do apologize. I'm apologizing a lot this 22 morning, but we do have an option of remote 23 testimony. I know that you don't prefer it, but 24 we do have that option. 25 The other option is if we can arrange</p>

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<p>17</p> <p>1 -- I know it's not as nice, but we can arrange to 2 have people who have conflicts to testify out of 3 order. Now, they don't have the benefit obviously 4 of proceeding in order, so we will do our best to 5 accommodate everyone who wishes to testify in 6 person. 7 MS. LEE-CHO: And I'm pleased to hear 8 that there is flexibility and a willingness to 9 waive their presence because the head of school 10 and representatives of the school also have very 11 cumbersome schedules and we will not be able to 12 have everyone present in person as well, so 13 between the two of us I guess -- 14 HEARING EXAMINER: Well, it sounds to 15 me from what Mr. Chen said that we wouldn't have 16 made it through in the four days. 17 MR. CHEN: Yep. 18 HEARING EXAMINER: So this is -- you 19 know, we will try to accommodate this -- you know, 20 this hearing with this many people as 21 expeditiously as possible, and keep in mind that 22 they can monitor the hearing online -- 23 MS. LEE-CHO: Certainly. 24 HEARING EXAMINER: -- which is why we 25 instituted the hybrid hearings.</p>	<p>19</p> <p>1 MR. CHEN: -- the E-mail and -- yes. 2 HEARING EXAMINER: You read my mind 3 correctly. Okay. Ms. Lee-Cho, the motion to 4 amend. It was my understanding from the board's 5 resolution -- I mean, they basically said -- I 6 thought they said that it was modified. 7 MS. LEE-CHO: That's correct. My -- 8 the motion to amend on that regard -- in that 9 regard is a bit of a belt and suspenders. To the 10 extent that there are documents filed in the 11 record that did not reference both cases we are 12 just trying to cover all bases, that there's a 13 recognition by the hearing examiner that the case 14 number S-2503-B is a part of this matter. 15 In addition, the Granger House was also 16 included in one of the revised statements since 17 the original application was submitted, and just 18 to be -- just to keep everything clear, we are not 19 going to be requesting the Granger House or 20 anything related to that so we included that in 21 the motion to amend -- 22 HEARING EXAMINER: Okay. 23 MS. LEE-CHO: -- the use of -- 24 HEARING EXAMINER: Mr. Chen, I see you 25 take issue with this?</p>
<p>18</p> <p>1 MR. CHEN: And to your point about 2 taking witnesses out of turn, that's not unusual 3 with your proceedings, and given the number of 4 witnesses that we're talking about that may be 5 something that'll work. 6 HEARING EXAMINER: Okay. Well, then 7 let me do this. I will have our staff double -- 8 extra double, triple check the dates and we will 9 get them to you by the end of the day. 10 MR. CHEN: Great. 11 HEARING EXAMINER: And then you can get 12 back to us. We have until Friday, but you can get 13 back to us as to the additional dates you wish. 14 All right? 15 MS. LEE-CHO: Understood. 16 HEARING EXAMINER: Okay. Now, any 17 other -- oh, the motion to amend. 18 MS. LEE-CHO: There's one aspect of the 19 motion to amend just as an -- 20 HEARING EXAMINER: Wait. I'm sorry. 21 Is that -- let me -- I'm sorry to interrupt. Mr. 22 Chen, is that your preliminary one? 23 MR. CHEN: Yes, I thought that you 24 wanted to deal with that first -- 25 HEARING EXAMINER: I do.</p>	<p>20</p> <p>1 MR. CHEN: Yes and no. I'll abide by 2 the representation on behalf of my client as to 3 the Granger House. That doesn't alter the fact, 4 however, that there is technically a motion to 5 amend pending before OZAH right now. 6 What the Board of Appeals did was I 7 believe proper mainly under the zoning ordinance, 8 meaning by that if the applicant wanted to amend 9 their special exception for the summer camp, and 10 there's reasons why they might not want to or want 11 to, if they wanted to do that to amend the S-2503 12 they had to get a referral from the Board of 13 Appeals. 14 You could not on your own volition 15 raise it. The Board of Appeals, therefore, in my 16 opinion at least technically did the proper course 17 of action in referring the matter to you which 18 then in my opinion would moot, at least moot the 19 issue to amend that is before you that was filed 20 to do the same thing. That was my understanding, 21 that it's kind of a done deal. 22 MS. LEE-CHO: And if that's -- that is 23 the -- or if that's the position of the hearing 24 examiner then that's acceptable to the applicant. 25 We included it just to cover all bases.</p>

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<p style="text-align: right;">21</p> <p>1 HEARING EXAMINER: Okay. Any other -- 2 I hesitate to ask. 3 MR. CHEN: That is not, however, end of 4 story on -- 5 HEARING EXAMINER: Okay. 6 MR. CHEN: -- S-2503-B. I have to note 7 a couple of points for the record. That 8 application to modify has not been properly 9 noticed. It was referred to you -- 10 HEARING EXAMINER: 2503-B? 11 MR. CHEN: Correct. It was referred to 12 you for leave by the resolution of March 27, 2026, 13 and under the zoning ordinance it has to be 14 noticed and it has not been noticed and, in fact, 15 it's even an issue whether it's even been properly 16 posted, but leaving the posting aside for the 17 moment -- 18 HEARING EXAMINER: Are you saying that 19 the hearing -- it hasn't been -- a hearing notice 20 hasn't been set? 21 MR. CHEN: Well, under the court rules 22 -- excuse me, the zoning ordinance rule it has -- 23 the hearing has to be published as well as the 24 filing of the application. The -- you get into 25 this under the court rules, and I apologize, under</p>	<p style="text-align: right;">23</p> <p>1 county APA that you, the hearing examiner -- not 2 you, I mean the hearing examiner controls these 3 proceedings including setting hearings and that 4 all the authority that the Board of Appeals has is 5 to refer, and once they refer it's in your 6 bailiwick. 7 One of the members of the Board of 8 Appeals stated that in this proceeding you, the 9 hearing examiner, is acting as an arm. I believe 10 that was the word, an arm of the Board of Appeals. 11 I got unfortunately into a unhappy discussion with 12 that member of the Board of Appeals because I 13 think that is absolutely not the law, and Madam 14 Examiner, this is not an issue that pertains only 15 to this case. There will be other circumstances 16 down the road where lawyers for parties will ask 17 the board to instruct OZAH how to conduct hearings 18 and this resolution will be an authority for that 19 proposition. 20 So my suggestion to the hearing 21 examiner is while I recognize that we're going to 22 go forward certainly for the integrity of your 23 office regardless of how you go this -- what I'm 24 about to say is not dependent on how you rule or 25 recommend, but I strongly suggest that there be a</p>
<p style="text-align: right;">22</p> <p>1 the zoning ordinance as to the requirements for 2 publishing the application that has been filed. 3 HEARING EXAMINER: Is that in 7675? 4 MR. CHEN: Give me a moment. You get 5 59-A-4.43. 6 HEARING EXAMINER: Oh, this is the old 7 ordinance. I apologize. 8 MR. CHEN: Yes. 9 HEARING EXAMINER: Okay. 10 MR. CHEN: And so it's 59-A-4.43. You 11 get into A. You then jump also to I believe 12 A-4.46, and you also then get into A-4.47. I'm 13 noting this for the record. The Board of -- and 14 there's a second part of this. The Board of 15 Appeals, if you'll recall when you read their 16 referral to you, instructs you -- 17 HEARING EXAMINER: I saw that. 18 MR. CHEN: -- at the request of Ms. 19 Lee-Cho. She -- it's in their resolution. It 20 says that she requests it. That instruction is 21 absolutely without any legal authority whatsoever. 22 And I get into that because it involves 23 not only the board's rules which have been adopted 24 by the county council pursuant to a formal 25 resolution, it also is included in the APA, the</p>	<p style="text-align: right;">24</p> <p>1 footnote in your opinion recognizing, and I 2 emphasize regardless of how you go this goes to 3 the integrity of your office which is -- 4 HEARING EXAMINER: Well, I did wonder 5 why, Ms. Lee-Cho, you even went to the Board of 6 Appeals to get a correction. 7 MS. LEE-CHO: There was a very good 8 reason, because this case and that case number S 9 -- 10 HEARING EXAMINER: But you could have 11 raised that here. 12 MS. LEE-CHO: My concern was that that 13 technicality was going to be used by Mr. Chen no 14 matter what, and that -- the fact that the number 15 was not included in that transmittal memo in and 16 of itself would have been the basis. 17 HEARING EXAMINER: Well, it wasn't a 18 technicality. It was a substantive problem. 19 MR. CHEN: Yes. 20 HEARING EXAMINER: I recall from day 21 one of the hearings that I didn't even know -- 22 nobody knew which special exceptions were being 23 modified -- 24 MS. LEE-CHO: Well -- 25 HEARING EXAMINER: -- but we're not</p>

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<p style="text-align: right;">25</p> <p>1 going to go into that. The fact is I am going to 2 grant your motion regardless of the Board of 3 Appeals instruction because they can't instruct me 4 or OZAH to take certain actions. 5 I question their whole jurisdiction to 6 even hear that correction request because what I 7 think you should have done is file the 8 modification -- the modification over at the board 9 and they have them refer it. 10 MS. LEE-CHO: Well, it was filed. 11 MR. CHEN: No. 12 MS. LEE-CHO: That -- and your office 13 issued -- 14 HEARING EXAMINER: Well, why did you go 15 back to them? 16 MS. LEE-CHO: Because they -- it was an 17 oversight. It was filed. The application always 18 included that summer camp modification. That was 19 the point. The substance of the application was 20 always part of it. 21 The board would not have acted to 22 correct if it wasn't substantively already part of 23 the application. This number issue is form over 24 substance. That's the only reason why they acted. 25 It wasn't to direct the hearing examiner to</p>	<p style="text-align: right;">27</p> <p>1 those have been referred. 2 MR. CHEN: May I interject for a 3 moment? 4 MS. LEE-CHO: I'm not -- 5 HEARING EXAMINER: I don't want to get 6 -- I don't want to get bogged down in this, but 7 I'll let you -- 8 MR. CHEN: I don't want to interrupt 9 counsel. Go ahead. 10 HEARING EXAMINER: Go ahead. 11 MS. LEE-CHO: It was included because 12 your predecessor interpreted that transmittal from 13 the board including the main case number as being 14 the parent case for the Holton-Arms property, so 15 -- 16 HEARING EXAMINER: Well, I have great 17 respect for her but I never heard of that theory. 18 Go ahead. 19 MS. LEE-CHO: We submitted in the 20 motion to the Board of Appeals, we submitted that 21 notice plus E-mail correspondence with your 22 predecessor, and all of that taken together was 23 the context for why the board decided that it is a 24 corrective action and that is the basis for going 25 to the board, because it wasn't a substantive new</p>
<p style="text-align: right;">26</p> <p>1 decide. 2 HEARING EXAMINER: Well, they do direct 3 the hearing examiner. I noticed it when I read 4 their resolution, but I'm ignoring that, so the 5 bottom line is -- the bottom line is whether this 6 notification or this motion to amend is still 7 pending. 8 MS. LEE-CHO: Well, for the record 9 because of the statements here I do feel I have to 10 get this in the record just in case this issue 11 does arise in the future again in a different 12 forum, but the hearing examiner's office did issue 13 a notice that included that case number and other 14 case numbers. Now, Mr. Chen argues that -- 15 HEARING EXAMINER: What notice, the 16 hearing notice? 17 MS. LEE-CHO: Yes, the hearing notice. 18 HEARING EXAMINER: Okay. I'm just -- 19 there's like hundreds of exhibits, so if I fail to 20 remember -- 21 MS. LEE-CHO: But that was the point. 22 That is the point of this because that notice was 23 issued prior to your entering into this case. It 24 was done by your predecessor, Ms. Katie Byrne. 25 HEARING EXAMINER: Even though none of</p>	<p style="text-align: right;">28</p> <p>1 modification application. It had already been 2 part of the original submission. 3 MR. CHEN: If counsel is finished I'd 4 like to be heard. 5 HEARING EXAMINER: Go ahead. 6 MR. CHEN: I have in my hand the 7 application. It's exhibit I think 1. It only 8 deals with the educational institution special 9 exception. Up in the top it goes 1174-E. On the 10 proposed use it says education institution 11 private, over 40 students. 12 Under the zoning ordinance subsection 13 providing for the proposed use they have inserted 14 59-G-2.19. There is nothing in the application 15 that talks about the summer camp special 16 exception, so counsel's statement that it was in 17 the application, and here is the document, Madam 18 Examiner -- 19 HEARING EXAMINER: Can you put that 20 document up, please, so everybody can see it? 21 MS. LEE-CHO: If I might respond? 22 HEARING EXAMINER: No, uh -- I've been 23 training my dog. I didn't mean to go uh. I 24 apologize. So where is 2503-B? 25 MS. LEE-CHO: 2503-A is listed on the</p>

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<p style="text-align: right;">29</p> <p>1 bottom right above the signatures with all the 2 other case numbers. 3 HEARING EXAMINER: Well, that's only 4 previous special exceptions. 5 MR. CHEN: Right. 6 MS. LEE-CHO: Correct. So this is the 7 application that was submitted along with a 8 statement of application that was attached to this 9 one-page form. The Board of Appeals considered 10 all of it. It wasn't just this one form, but the 11 statement of application that was submitted by the 12 school which included the summer camp modification 13 request. 14 Unfortunately, the transmittal memo 15 just covered the one case number and attached, but 16 it attached the statement of application. That 17 was the basis of the Board of Appeals ruling, that 18 it deserved a corrective measure because it was 19 always part of what was submitted by the school 20 for review and modification. 21 MR. CHEN: May I finish where I was 22 going with this? 23 HEARING EXAMINER: One more and then -- 24 MR. CHEN: I mean, I've had about two 25 minutes on this. This application does not say --</p>	<p style="text-align: right;">31</p> <p>1 MR. CHEN: -- but if you go to the 2 exhibits, and I'm talking off the top of my head. 3 I may be wrong on the number, but the formal 4 notice issued by this office only talks of 1174-E 5 and, in fact, at a break or on Thursday I can 6 bring in the documents that reflect that, number 7 one, your notice that you signed did go out and it 8 is an exhibit, and the notice that Ms. Lee keeps 9 referring to I haven't been able to find anywhere 10 in the exhibits so, you know -- 11 MS. LEE-CHO: Madam Examiner? 12 MR. CHEN: -- Ms. Lee-Cho is great on 13 saying well, this is what -- 14 HEARING EXAMINER: So let me talk 15 because what's your bottom line? 16 MR. CHEN: The bottom line is that 17 we're going to go forward, that I think the Board 18 of Appeals directive to you is without law and 19 should be recognized and you're controlling these 20 proceedings and, you know, I'm prepared to go 21 forward on behalf of my clients. 22 But I don't think that this one 23 particular special exception, S-2503-B, I don't 24 think it has been properly noticed as required 25 under the zoning ordinance or the zoning ordinance</p>
<p style="text-align: right;">30</p> <p>1 it speaks for itself. It is the formal required 2 zoning ordinance document to trigger a 3 modification application. The Board of Appeals 4 correctly only referred 1174-E to OZAH. They did 5 not refer 2503 as a B because the application did 6 not identify it. 7 Now, Ms. Cho is excellent at saying 8 well, this is what they meant to do and this is 9 what they were doing and yadda, yadda, yadda. If 10 you look at the notice, and I gave this to the 11 Board of Appeals and I didn't bring it with me, 12 but I can -- 13 HEARING EXAMINER: Which notice? 14 MR. CHEN: The notice that -- 15 HEARING EXAMINER: The hearing notice? 16 MR. CHEN: The notice that Ms. Lee 17 refers to that your predecessor issued is not an 18 exhibit in the record. Yeah. What happened is 19 the official notice, and I believe it was signed 20 by you, is I want to say Exhibit 73 but that's off 21 the top of my head and I apologize, but the notice 22 that Ms. Lee-Cho refers to is not an exhibit. I 23 don't even know the history of it, how it came 24 about, what it is -- 25 HEARING EXAMINER: Apparently it was --</p>	<p style="text-align: right;">32</p> <p>1 is enough for now. 2 HEARING EXAMINER: One last comment. 3 MS. LEE-CHO: The notice that Mr. Chen 4 is referring to as Exhibit 42 was signed by your 5 predecessor, not you, Ms. Hannan. It was signed 6 by Katie Byrne. It was posted initially. There 7 was subsequent correction of that notice. It 8 didn't get posted. Now, just because it's not -- 9 HEARING EXAMINER: Wait, wait. Posted 10 online? 11 MS. LEE-CHO: Online, but it was mailed 12 out to all the parties. I mean, this notice 13 exists. I didn't create this notice. It was 14 mailed out. 15 MR. CHEN: I'm not intimating that, 16 please. You know I'm not. 17 MS. LEE-CHO: Right. So the fact that 18 it wasn't posted Mr. Chen is taking advantage of a 19 clerical mixup. I have no explanation for why the 20 corrected notice was not posted and the previous 21 notice was on there. There was conversation 22 between your predecessor and the planning staff 23 and the board executive that resulted in all of 24 these case numbers being added. 25 It wasn't even the applicant's request</p>

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<p style="text-align: right;">33</p> <p>1 to add all of these case numbers. Our assumption 2 was that the 1174-E included all the applicable 3 case numbers to the Holton-Arms case. For belts 4 and suspenders based on your predecessor's 5 consideration she made the decision and that was 6 communicated to me by E-mail. 7 HEARING EXAMINER: She made the 8 decision off the record. There's no record of 9 this. 10 MR. CHEN: Yeah. 11 MS. LEE-CHO: To include all of these 12 case numbers. 13 HEARING EXAMINER: There's no record of 14 this. I've -- 15 MS. LEE-CHO: But nonetheless -- 16 HEARING EXAMINER: There's no record. 17 All of this, I can't believe this. I'm hearing 18 this for the first time. You know how I yell at 19 all of you because all these things should have 20 been on the record, so the hearing examiner that 21 has it now can figure out what in the world 22 happened. I don't know this parent theory of 23 conditional uses. The whole process is not clean 24 -- 25 MS. LEE-CHO: Which is --</p>	<p style="text-align: right;">35</p> <p>1 Appeals? 2 MS. LEE-CHO: To you, these motions -- 3 the motion to amend and response -- 4 HEARING EXAMINER: I didn't see a 5 parent theory. 6 MS. LEE-CHO: The -- 7 HEARING EXAMINER: But anyway go -- 8 we're going to -- if Mr. Chen is saying he's 9 prepared to go forward we're going to go forward. 10 MR. CHEN: If we're done with this one 11 I have another preliminary. 12 HEARING EXAMINER: Oh, I knew it. Just 13 as far as the disposition of the motion to amend, 14 you know, I'll grant it at least as to the 15 withdrawal of the Granger House and we'll go -- 16 we'll go from there. 17 MR. CHEN: If I may, Madam Examiner, 18 the applicant has been filing out-of-time 19 submissions with your office including as recent 20 -- 21 HEARING EXAMINER: What do you mean out 22 of time? 23 MR. CHEN: After their prehearing 24 submission, after the filing of their March 3rd 25 deadline for filing application documents.</p>
<p style="text-align: right;">34</p> <p>1 HEARING EXAMINER: -- to say the least. 2 MS. LEE-CHO: Which is why we filed the 3 motion to amend. We went to the board for a 4 correction to try to get the record cleaned up. 5 That was our intent. That was the purpose of 6 going to the board so that -- 7 HEARING EXAMINER: But you never 8 applied -- you could have applied -- you should -- 9 I'm not going to get into this. You should have 10 -- that application is not an application for 11 2503-B. 12 MS. LEE-CHO: That is not -- 13 HEARING EXAMINER: It's for CBA Exhibit 14 1, and I'm not going to argue about it because at 15 this point we've got to move on, but none of this 16 parent theory of referral -- it's irregular. It's 17 irregular and communicated verbally so that nobody 18 knows -- I certainly didn't know this background, 19 and I'm sitting here in front of you after reading 20 every exhibit. 21 MS. LEE-CHO: This goes all the way 22 down in our motions so you -- 23 HEARING EXAMINER: In your motions? 24 MS. LEE-CHO: Yes. 25 HEARING EXAMINER: To the Board of</p>	<p style="text-align: right;">36</p> <p>1 HEARING EXAMINER: Oh, you mean the 2 items that came in? 3 MR. CHEN: There was several. There's 4 been multiple filings. 5 HEARING EXAMINER: There was some 6 drawings and some other things. 7 MR. CHEN: There -- it was just more 8 than that. There's a report. There's updated 9 drawings. 10 MS. LEE-CHO: There's no report. 11 MR. CHEN: There's a noise report that 12 was filed. 13 MS. LEE-CHO: That's not a report. 14 MR. CHEN: Okay. Fine. Then whatever 15 it is -- 16 MS. LEE-CHO: Those are hearing 17 exhibits. 18 MR. CHEN: All I'm going -- 19 HEARING EXAMINER: Do we have to go 20 back to the rules because I thought the rules are 21 supposed to say -- you're supposed to say in the 22 prehearing statement -- 23 MR. CHEN: Right. 24 HEARING EXAMINER: -- if there's a 25 report. Are you saying the noise and vibration</p>

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<p style="text-align: right;">37</p> <p>1 picture is not a report? 2 MS. LEE-CHO: That is not a report. It 3 is an exhibit provided to facilitate our noise 4 expert's testimony which is completely proper. 5 There is nothing -- that is not a report. It 6 can't even be read as a report. It is to help his 7 testimony, facilitate his testimony. 8 MR. CHEN: I'll revisit this. I guess 9 we'll revisit during the course of the hearing. 10 HEARING EXAMINER: Yeah, at this point 11 -- 12 MR. CHEN: All I'm -- I didn't finish 13 my issue here. I just want to stop, that the 14 applicant has the burden of proof and the burden 15 of persuasion and they have to file their 16 application and their reports and the other 17 information that is required. 18 And this constant here's something new, 19 here's something new is contrary I believe to the 20 rules because I've got two experts here, one from 21 South Carolina, one from North Carolina that my 22 client brings in for these hearings. This is the 23 second time that they're here and there's got to 24 be a point in time when an applicant has to stand 25 on their application and the required associated</p>	<p style="text-align: right;">39</p> <p>1 done in the winter months. We had no ability to 2 get that done, so we got it done as quickly as we 3 could when the weather allowed for outdoor 4 activities. 5 HEARING EXAMINER: Well, I sent you an 6 E-mail. 7 MR. CHEN: November -- 8 HEARING EXAMINER: No, no, no, more 9 recently -- 10 MR. CHEN: Oh. 11 HEARING EXAMINER: -- when I got the 12 remand of -- 13 MR. CHEN: March 23. 14 HEARING EXAMINER: Yeah. With 15 additional comments and -- let's not go into it. 16 You know, this is kind of rehashing old business, 17 you know. 18 MS. LEE-CHO: May I? We are prepared 19 to address all of that. We've submitted 20 clarifying documents to assist the hearing 21 examiner. 22 HEARING EXAMINER: Okay. 23 MS. LEE-CHO: Anything that we've 24 submitted since our prehearing submission was in 25 response to the hearing examiner's subsequent</p>
<p style="text-align: right;">38</p> <p>1 documents, and that's my point. 2 HEARING EXAMINER: I understand. 3 MR. CHEN: It's a moving target 4 otherwise. 5 HEARING EXAMINER: I understand. I 6 have been frustrated because there's still 7 information that I asked for that I don't see, but 8 she -- Ms. Lee-Cho is correct, she can file 9 hearing exhibits and we all know the Brandywine 10 case -- 11 MR. CHEN: Right, right. 12 HEARING EXAMINER: -- that they can 13 modify -- 14 MR. CHEN: Right. 15 HEARING EXAMINER: -- at the hearing, 16 so -- well, that was a modification of the plan, 17 not new exhibits, but I think the rules relate to 18 preparation of reports. However, however, I also 19 feel like I have been pulling teeth to get the 20 documents from you. I've sent numerous -- I don't 21 want to get into it. I don't want to get into it, 22 but it has been frustrating. 23 MS. LEE-CHO: May I? 24 HEARING EXAMINER: Uh-huh. 25 MS. LEE-CHO: A noise analysis can't be</p>	<p style="text-align: right;">40</p> <p>1 requests. 2 HEARING EXAMINER: A 25-year-old NRIFSD 3 -- 4 MS. LEE-CHO: Because you asked. 5 HEARING EXAMINER: -- addresses -- 6 yeah, doesn't address current vegetation on the 7 site, but -- 8 MS. LEE-CHO: But you asked the 9 question when was the last NRIFSD. That's why we 10 provided it. That's the only reason. I'm not 11 planning to use it. You asked the question and we 12 answered it. 13 HEARING EXAMINER: Okay. Let's not go 14 into -- we're going to proceed -- I'll grant the 15 motion to amend just because we're all here and 16 they did refer -- finally refer the case, although 17 I do question whether the application is proper 18 but we're going to hear it and that can be 19 something you argue at the end if you wish. So 20 Mr. Chen, anymore preliminary matters? 21 MR. CHEN: No, thank you. 22 HEARING EXAMINER: That's a good 23 answer. 24 (Laughter.) 25 HEARING EXAMINER: Okay. Ms. Lee-Cho,</p>

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<p>41</p> <p>1 I put you on the hotspot. 2 MS. LEE-CHO: Uh-huh. 3 HEARING EXAMINER: And I thank you for 4 responding. Could you -- do you have an opening 5 statement? 6 MS. LEE-CHO: I don't because we are 7 ready to present our case. We have been ready for 8 months so I'd like to just proceed. 9 HEARING EXAMINER: For months? 10 MS. LEE-CHO: Yes. 11 HEARING EXAMINER: Okay. Why don't you 12 call your first witness. 13 MS. LEE-CHO: So before I do I will 14 sort of give you an order of presentation if I 15 might. That's not an opening statement. 16 HEARING EXAMINER: I'm sorry. I 17 couldn't -- 18 MS. LEE-CHO: An order of presentation 19 -- 20 HEARING EXAMINER: Oh. 21 MS. LEE-CHO: -- to let you know how we 22 -- 23 HEARING EXAMINER: Which witnesses? 24 MS. LEE-CHO: Yes. Because Madam 25 Examiner asked a number of questions related to</p>	<p>43</p> <p>1 MR. LA VAY: Oh, that's fine. 2 MS. LEE-CHO: We set it up so that the 3 microphone -- 4 HEARING EXAMINER: That should pick it 5 -- move it a little toward him. 6 THE TECHNICIAN: This one doesn't move, 7 but -- 8 MR. LA VAY: I think it's okay. 9 MS. LEE-CHO: That one. 10 THE TECHNICIAN: That's the court 11 reporter's mic so it'll -- 12 HEARING EXAMINER: Right. Are you -- 13 is anyone picking it up? Mr. La Vay? 14 MR. LA VAY: Test, test? 15 THE REPORTER: Yes, I can hear. Thank 16 you. 17 HEARING EXAMINER: Okay. Mr. La Vay, 18 please raise your right hand. Do you solemnly 19 swear under the penalties of perjury that the 20 statements you are about to make are the truth, 21 the whole truth, and nothing but the truth? 22 MR. LA VAY: I do. 23 HEARING EXAMINER: Okay. Please say 24 your name and business address for the record. 25 MR. LA VAY: My first name is Patrick,</p>
<p>42</p> <p>1 the site -- typically we like to start our 2 hearings with our land use expert, but in this 3 case because it is such a large property we'd like 4 to start with Mr. Pat La Vay of Macris Hendricks 5 Glascock. 6 He will walk the site virtually for you 7 and then we will present Joshua Sloan, the land 8 use expert for the rest of -- for the -- most of 9 the day, and then toward -- at the end because the 10 school's board of trustee's president is here in 11 town today it is a bit out of order from the other 12 school representatives, but I will be calling him 13 to testify at the end of the day. I think that 14 will pretty much take us through today. 15 HEARING EXAMINER: Okay. 16 MR. CHEN: What's that gentleman's 17 name? 18 MS. LEE-CHO: Mark Ordan. 19 HEARING EXAMINER: Can you spell the 20 last name? 21 MS. LEE-CHO: O-R-D-A-N. 22 HEARING EXAMINER: Okay. All right. 23 Mr. La Vay. 24 MS. LEE-CHO: Do you want to set that 25 --</p>	<p>44</p> <p>1 last name is La Vay. It's spelled L-A space 2 capital V-A-Y. Business address is 9220 Wightman 3 Road. That's W-I-G-H-T-M-A-N Road, Suite 120, 4 Montgomery Village, Maryland, zip code 20886. 5 HEARING EXAMINER: And can you state 6 just for the gallery -- I'm going to ask everyone 7 to state their E-mail address unless we already 8 have it because that's our way of communicating 9 notices more quickly than the mail. Can you state 10 your E-mail address? 11 MR. LA VAY: Sure, it is 12 plavay@mhgpa.com. 13 HEARING EXAMINER: All right. Ms. 14 Lee-Cho. 15 MS. LEE-CHO: Mr. La Vay's CV is marked 16 as Exhibit Number 38G. 17 MR. CHEN: What is it being offered as 18 and I'll stipulate? 19 MS. LEE-CHO: We'll get to it. 20 MR. CHEN: I'm trying to save time. 21 HEARING EXAMINER: Well, let me -- I'm 22 sorry. Let me do this. Don't nod your head 23 because I'm trying to save time, too. 24 MS. LEE-CHO: Sure. 25 HEARING EXAMINER: He has qualified as</p>

<p style="text-align: right;">45</p> <p>1 an expert in civil engineering before OZAH before. 2 MS. LEE-CHO: Uh-huh. 3 HEARING EXAMINER: Are you offering him 4 -- 5 MS. LEE-CHO: Yes. 6 HEARING EXAMINER: -- as an expert in 7 civil engineering? 8 MS. LEE-CHO: Yes. 9 MR. CHEN: No objection. 10 HEARING EXAMINER: There we go. 11 MS. LEE-CHO: Thank you. 12 HEARING EXAMINER: I will qualify him 13 as such. 14 MS. LEE-CHO: Appreciate it. 15 HEARING EXAMINER: Go ahead. 16 MS. LEE-CHO: I was going to get there. 17 Thank you. 18 DIRECT EXAMINATION 19 BY MS. LEE-CHO: 20 Q So Mr. La Vay, have you visited the 21 site? 22 A <b>Yes, I have on several occasions.</b> 23 Q And before we have you walk us through 24 the existing conditions site plan I understand you 25 took a site visit and took some photographs; is</p>	<p style="text-align: right;">47</p> <p>1 <b>of the surrounding vegetation. As was noted there</b> 2 <b>was an NRI in the record from many years ago.</b> 3 <b>There has since been several forest</b> 4 <b>conservation plan updates, but -- and then our</b> 5 <b>exhibits that we provided in the initial</b> 6 <b>application were -- showed the tree canopy as well</b> 7 <b>as the conservation easements, but there wasn't a</b> 8 <b>really clear indication I think of what was</b> 9 <b>happening on the ground level specifically beneath</b> 10 <b>the canopy.</b> 11 <b>So the intention of the site visit was</b> 12 <b>to walk around the property to show the extent of</b> 13 <b>that vegetation under the canopy for the hearing</b> 14 <b>examiner's benefit of the buffering that exists.</b> 15 Q And the hearing examiner questions that 16 you're referencing as dated March 23rd, 2026 in an 17 E-mail transmitted to yours truly? 18 A <b>Yes.</b> 19 MS. LEE-CHO: Just for reference that 20 is entered as an exhibit, I believe, that E-mail 21 itself that we'll be making reference to. 22 HEARING EXAMINER: Well, we post it. 23 It's still subject to -- for instance, this 24 exhibit is still subject to -- 25 MS. LEE-CHO: Sure.</p>
<p style="text-align: right;">46</p> <p>1 that correct? 2 A <b>I did. That site visit occurred on</b> 3 <b>Tuesday of last week.</b> 4 Q And -- 5 HEARING EXAMINER: Do you have a date 6 on that? I'm sorry. 7 MR. LA VAY: It was March 31st. 8 HEARING EXAMINER: Okay. Thank you. 9 BY MS. LEE-CHO: 10 Q And you provided -- we provided photos 11 and a site plan key, and that is marked or entered 12 at Exhibit 103A; is that correct? 13 A <b>That is correct.</b> 14 Q And you took all of these photos? 15 A <b>I did personally take those.</b> 16 Q So if you wouldn't mind using the site 17 plan key. 18 A <b>Certainly.</b> 19 Q And when looking at the site plan key 20 there are arrows and numbers. Can you just 21 explain to the hearing examiner what you intended 22 to show with the labeling? 23 A <b>Sure. There was -- just a little bit</b> 24 <b>-- by way of a little bit of background there was</b> 25 <b>some questions by the hearing examiner about some</b></p>	<p style="text-align: right;">48</p> <p>1 HEARING EXAMINER: -- objections. It 2 is posted and at the end I will accept everything 3 as an exhibit unless there's an objection. 4 MS. LEE-CHO: So this first -- may I 5 proceed? 6 HEARING EXAMINER: I'm sorry? 7 MS. LEE-CHO: There's no objection on 8 my part. Is there any objection to the hearing 9 examiner's E-mail that was sent with the 10 questions? 11 MR. CHEN: No. 12 HEARING EXAMINER: Now, do you have an 13 objection to this exhibit? 14 MR. CHEN: I'm trying to -- has it got 15 an exhibit number on it? 16 MS. LEE-CHO: Yes, 103A. 17 MR. CHEN: And what is it? It says 18 vicinity map. Just what is Mr. La Vay's 19 description of -- what is it? 20 MR. LA VAY: This exhibit, this 21 particular exhibit on the screen is a key to site 22 photographs that were taken on the 31st of March. 23 MR. CHEN: And what's its exhibit 24 number? 25 MS. LEE-CHO: 103A.</p>

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1 MR. CHEN: Thank you. And it shows  
2 where the photos were taken?  
3 MR. LA VAY: Yes. So I didn't finish  
4 the original question. Each -- there's a key  
5 number listed P dash -- for instance P-1 with an  
6 arrow that points in the direction.  
7 HEARING EXAMINER: I see.  
8 MR. LA VAY: I personally walked around  
9 the campus in a counter-clockwise fashion  
10 beginning at the main parking lot as you come off  
11 of River Road, and those arrows point to the  
12 direction in which the photo was taken.  
13 BY MS. LEE-CHO:  
14 Q And this is in response to the first  
15 question raised asking that Exhibits 85F and --  
16 85A through F which are the existing conditions  
17 site plans --  
18 A **Uh-huh.**  
19 Q -- do not show existing landscaping  
20 including with vegetation type numbers, location  
21 of fencing, walls submitted, they show only  
22 existing tree canopy; is that --  
23 A **That's correct.**  
24 Q That's correct?  
25 A **The majority of the perimeter of the**

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1 **property is forested condition so, you know, it's**  
2 **different than having this quantified shrubbery,**  
3 **so the intention of the photos was to largely show**  
4 **that area, those forested areas.**  
5 Q And the plan, the key, did it use the  
6 base plan that was submitted --  
7 A **Yeah.**  
8 Q -- the existing conditions --  
9 A **It --**  
10 HEARING EXAMINER: What base -- I'm  
11 sorry. What base plan?  
12 MR. LA VAY: It's essentially the same  
13 view on a different scale as exhibit -- let's see.  
14 It's 01A. Let's look at the exhibits here.  
15 Exhibit 85A with the point there being that it's  
16 the same general view just with the photo keys  
17 added to it, the same orientation, the same  
18 rotation of the view, a different scale is the one  
19 difference.  
20 HEARING EXAMINER: Okay. Thank you.  
21 BY MS. LEE-CHO:  
22 Q So then starting with the photograph  
23 marked P-1 can you describe what the picture is  
24 depicting and move through each picture one by  
25 one?

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1 A **Sure. I guess these are -- yeah, so if**  
2 **we need to refer back to the map we will, but**  
3 **we'll start with P-1. This is standing at the --**  
4 **as you enter the site from River Road, I'm facing**  
5 **River Road. My back is to the existing parking**  
6 **lot where the majority of the parking spaces on**  
7 **the site are today and this is looking back**  
8 **towards River Road.**  
9 **On the left-hand side of the image is**  
10 **the existing forest conservation area and stream**  
11 **buffer that separates the campus from the adjacent**  
12 **neighborhood. Now, P-2, if I move down there I've**  
13 **just spun around 180 degrees and I'm facing the**  
14 **school building. On the left-hand side you can**  
15 **start to see the school.**  
16 **That's the performing arts building,**  
17 **and on the right side again is the forested area**  
18 **that's all on conservation easement that buffers**  
19 **the site from the adjacent residential.**  
20 Q And before you do that can you  
21 approximate based on both the site plan and your  
22 site observations the depth of this forest cover  
23 relative to the nearest homes to the east or  
24 south?  
25 A **It varies. You know, the property line**

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1 **is not straight and it varies quite a bit and**  
2 **there's, you know, probably twice as much forest**  
3 **on the River Road as you get closer to River Road**  
4 **as you move towards the campus, but in all cases**  
5 **it's more than a hundred feet from the nearest**  
6 **home.**  
7 Q And are we looking, is there a stream  
8 feature to the right on the picture, the forest?  
9 A **I'm assuming you're referring to**  
10 **picture number P-2?**  
11 Q 2, yes.  
12 A **Yeah, in the middle of that**  
13 **conservation area there is an existing stream.**  
14 Q Okay. Just looking back on the site  
15 key I notice that there -- the zoning lines, the  
16 R-200, R-90 are sort of following that stream; is  
17 that correct?  
18 A **That's correct. That zoning line is**  
19 **taken from Montgomery County zoning maps.**  
20 Q If you want to move on to P-3.  
21 A **Sure. P-3 is just a picture of an**  
22 **existing bike rack that's on the south side of the**  
23 **performing arts building. This -- there was a**  
24 **question by the hearing examiner about bicycle**  
25 **parking specifically. That information is one of**

<p style="text-align: right;">53</p> <p>1 the red lines that was added recently that was one 2 of the information -- a piece of information that 3 was quantified. 4 The school is also offering -- this 5 bike rack actually is capable of providing the 6 number of spaces needed to meet the minimum, but 7 because of its placement you can't get bicycles in 8 on both sides, so as noted in the site plan and 9 subsequent sheets you'll see there's a second rack 10 offered up to park next to this to meet the 11 requirement. 12 Now, P-4 is an image, my back is -- I'm 13 in the parking lot. My back is to the school, the 14 performing arts center. This is a view that shows 15 the conservation area and the homes that I 16 mentioned were more than a hundred feet away from 17 the -- and to the forest are in the background. 18 P-5, this is the driveway that leads to 19 the track and field, so I'm just looking at the 20 key map. I'm actually facing east looking towards 21 the -- there's a -- I guess I'd call it a 22 roundabout near the track and field and on the 23 right-hand side is the vegetative buffer. It's 24 all in conservation easement, and again you can 25 see the houses in the background there.</p>	<p style="text-align: right;">55</p> <p>1 This photo shows you the vegetation that exists 2 adjacent to the softball field. You can see 3 there's a little bit of a break in the vegetation 4 there. 5 That white home that's seen with the 6 stairs leading down is where the head of school 7 lives. It's a property owned by the application 8 -- the applicant. In photo P-8 I've turned myself 9 to the west again viewing a property owned by the 10 school. However, you can see the existing dense 11 vegetation that exists along the buffer of the 12 P-8. 13 P-9 I've walked to the end of the 14 softball field, so I'm looking back to the south 15 now and looking into the neighborhood that we 16 described as the -- which is where Summer Hill 17 Court is. 18 MR. CHEN: Pardon. Could you scroll 19 the photos? 20 MR. LA VAY: Oh, yeah, I don't have 21 control over the -- 22 THE TECHNICIAN: Which one are you 23 looking for? 24 HEARING EXAMINER: 9. 25 MR. LA VAY: 9 right there, yeah. So</p>
<p style="text-align: right;">54</p> <p>1 Q Can you approximate the depth of this 2 area, of the conservation easement? 3 A Yes, if you'll just give me one second 4 I'll give you that information. I'm actually 5 going to use a note here. At that particular 6 location it is -- to the house or to the property 7 line? 8 Q To the property line. 9 A A hundred feet. 10 HEARING EXAMINER: That's P-5? 11 MR. LA VAY: That was P-5, correct. 12 MS. LEE-CHO: 13 A Now, P-6 I've just turned 180 degrees 14 back looking towards the school. Again you can 15 see the performing arts center in the background 16 and to the left is the existing vegetative buffer. 17 That same hundred foot setback is there. 18 Now, P-7 I have moved up to what we 19 call the softball field and that is referenced in 20 Exhibit 85A as feature M-3. 21 HEARING EXAMINER: Wait. I'm just 22 trying to find the 7. I got -- I see it. I'm 23 sorry. Go ahead. 24 MR. LA VAY: Yep, so I'm standing in 25 what's described as facility M-3 in Exhibit 85.</p>	<p style="text-align: right;">56</p> <p>1 this is looking south from the back end of the 2 softball field back into the neighborhood that's 3 off in the distance, and this just shows you the 4 vegetation that exists there and there's actually 5 some direct vegetation at the field as well, 6 evergreen vegetation. 7 In P-10 I have turned to the west, and 8 again this is just a view of the property line 9 that runs the north side of the facility and again 10 you can see the dense vegetation that exists along 11 the perimeter and the stairs that are visible 12 there are those from the head of school's house. 13 P-11 is a view on the western side of 14 the property looking north towards -- if you were 15 to go through the vegetation you'd cut to Burdette 16 Court. 17 HEARING EXAMINER: I'm sorry. I didn't 18 hear that. Which court? 19 MR. LA VAY: Burdette. 20 HEARING EXAMINER: Burdette. 21 MR. LA VAY: So if you look at the key 22 map you would see that off in the distance. 23 Burdette Court is not immediately adjacent to the 24 property, but that's just a matter of orientation 25 that's beyond the homes.</p>

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<p style="text-align: right;">57</p> <p>1           These -- the homes that are visible, 2 the properties that are visible in these photos 3 are also owned by the Holton-Arms School, yet 4 they're buffered by vegetation. P-12 is myself, 5 you know, again turned around 180 degrees -- or 6 excuse me, 90 degrees looking almost due west at 7 another property owned by the Holton-Arms School. 8           Let's see here. And then P-13 now is 9 -- let me describe this. This is again on the 10 western property line looking north essentially 11 around the corner of the building where I was 12 before. P-14 now is looking back towards where 13 the -- and we'll get to this in a moment, where 14 the turf field is. 15           This is looking south and the property 16 that you see in the background is the Yano 17 property. That is the one not owned by the school 18 on this side of the site, and again you can see 19 the large trees and vegetation. 20           BY MS. LEE-CHO: 21    Q    Can you restate the name of the 22 property owner? 23    A    <b>The last name is Yano.</b> 24    Q    Is there another last name as well? 25    A    <b>Oh, I used the land records. It's the</b></p>	<p style="text-align: right;">59</p> <p>1           HEARING EXAMINER: Hold on. Okay. 2 You've got that there -- 3           MR. LA VAY: So -- 4           HEARING EXAMINER: -- so the people can 5 -- 6           MR. LA VAY: Yeah, so I guess we would 7 start with -- since we haven't completed the 8 photos maybe we'll start with those that we've 9 seen thus far? 10          MS. LEE-CHO: Yes. 11          MR. LA VAY: So P -- so the first one, 12 P-8 -- excuse me, P-7 -- 13          MR. CHEN: P-7. 14          MR. LA VAY: -- would be facing 15 property number 7 and 9. 16          MR. CHEN: 7 or 9? 17          MR. LA VAY: Well, both of them. 18          HEARING EXAMINER: Wait. Say that 19 again. 20          MR. CHEN: Yeah. 21          HEARING EXAMINER: P-8 -- 22          MR. LA VAY: Let me just -- 23          HEARING EXAMINER: -- on -- 24          MR. CHEN: P-7 I think. 25          HEARING EXAMINER: Let me just have him</p>
<p style="text-align: right;">58</p> <p>1 -- 2           MR. CHEN: Is this Harris? 3           MR. LA VAY: Harris, the Harris 4 property. 5           MR. CHEN: P-14? 6           MS. LEE-CHO: Are you on P-14? 7           MR. LA VAY: I was on P-14, yes. 8           MS. LEE-CHO: P-14. Before we move 9 forward with other photographs I'm just kind of 10 taking a step back to the softball field area. 11          MR. LA VAY: Uh-huh. 12          MS. LEE-CHO: I actually found one of 13 the exhibits offered by Mr. Chen to be very 14 useful, and so we want to -- this is in Exhibit 97 15 -- 97A at PDF page number 2. It is a color plat 16 that's titled special purpose plat. 17          I'd like Mr. La Vay to take a look at 18 this, and if you could just for the hearing 19 examiner's benefit when you indicated that certain 20 properties were owned by the school in the core 21 relating pictures I wonder could you just identify 22 which pictures that you took match up to the 23 properties identified in green on this plat that I 24 believe indicates ownership of the school. 25          MR. CHEN: They're numbered, too, so --</p>	<p style="text-align: right;">60</p> <p>1 repeat it because I'm switching between exhibits 2 so -- 3           MR. LA VAY: That's okay. I just want 4 to make sure I get oriented correctly. So -- 5 yeah, so photo number P-7 is viewing property 6 number 7 and 9 on this exhibit. 7           HEARING EXAMINER: Okay. On this 8 exhibit just because we're switching exhibits this 9 exhibit is -- 10          MR. CHEN: 97. 11          HEARING EXAMINER: -- Exhibit 97A, so 12 P-7 on your -- on exhibit -- what we're comparing 13 -- 14          MS. LEE-CHO: The photos -- 15          HEARING EXAMINER: -- comparing -- no, 16 I want to just -- for the record I just want to 17 get both exhibit numbers on here. So it's 103A, 18 we're using the P numbers on 103A and correlating 19 them with properties identified on -- 20          MS. LEE-CHO: 97. 21          HEARING EXAMINER: Now I lost it. 22          MS. LEE-CHO: 97A at PDF page number 2. 23          HEARING EXAMINER: Okay. Is that a 24 fair statement, 103A we're correlating with 97A? 25 Okay.</p>

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<p style="text-align: right;">61</p> <p>1 MR. LA VAY: So again photo P-7 is 2 oriented towards properties 7 and 9 on Exhibit 3 97A. 4 MS. LEE-CHO: And can you just specify 5 the house that's visible in that picture which -- 6 is it 7 or -- 7 MR. LA VAY: That is -- 8 MS. LEE-CHO: -- 9? 9 MR. LA VAY: -- number 7. 10 MS. LEE-CHO: And then going to -- 11 MR. CHEN: Number 7? 12 MR. LA VAY: No, excuse me, that's 13 number 9. I'm sorry. That's number 9. 14 MS. LEE-CHO: Number 9? 15 MR. LA VAY: Yes. 16 HEARING EXAMINER: Okay. 17 MR. LA VAY: The stairs. I had to get 18 -- it's the stairs. 19 HEARING EXAMINER: That's okay. 20 MR. LA VAY: Yeah. 21 HEARING EXAMINER: 97A, P-7 on 103A, 22 right, correlates with property number 7 on 97A? 23 MR. LA VAY: 7 and 9. 24 HEARING EXAMINER: 7 and 9. Okay. Got 25 you.</p>	<p style="text-align: right;">63</p> <p>1 MS. LEE-CHO: P-9. Okay. And you are 2 viewing the softball field? 3 MR. LA VAY: The softball field looking 4 south. 5 HEARING EXAMINER: That is 6 approximately where the number 10 is on 93A? 7 MR. LA VAY: Yeah. 8 HEARING EXAMINER: Okay. 9 MR. LA VAY: But looking south towards 10 the word parcel. 11 BY MS. LEE-CHO: 12 Q All right. Can we move forward to the 13 photo P-10? 14 <b>A Yep, photo P-10, the stairs that you</b> 15 <b>see in photo P-10 are coming from parcel -- or</b> 16 <b>property number 9 on Exhibit 97A, so I'm looking</b> 17 <b>back towards I would say the western boundary of</b> 18 <b>the property, so the vegetation that you see is a</b> 19 <b>buffer from properties 7, 5 and 4 on Exhibit 97A.</b> 20 HEARING EXAMINER: And that's P-10 on 21 103 -- 22 MR. LA VAY: Correct. 23 HEARING EXAMINER: -- A? Okay. 24 MR. LA VAY: And then P-11 on Exhibit 25 103 would be looking towards property number --</p>
<p style="text-align: right;">62</p> <p>1 MR. LA VAY: Predominantly 9. 7 is a 2 little bit to the left. 3 BY MS. LEE-CHO: 4 Q And then going to photo P-8 I see a -- 5 we see a house on the right side of that photo. 6 Can you identify which property on Exhibit 97A 7 that this picture correlates with? 8 <b>A Number 7 on 97A.</b> 9 HEARING EXAMINER: Okay. 10 MR. LA VAY: And then do we want to -- 11 so do we want to go to P-9? 12 BY MS. LEE-CHO: 13 Q Yes. 14 <b>A So P-9 is entirely of the larger -- the</b> 15 <b>largest piece of the subject property which is</b> 16 <b>property number 10 in 97A. This is looking back</b> 17 <b>towards Summer Hill Court.</b> 18 MR. CHEN: What does it correlate to? 19 MS. LEE-CHO: This is the softball 20 field. 21 MR. LA VAY: If you're looking at 97A 22 I'm essentially standing where the number 10 is. 23 MS. LEE-CHO: I'm sorry. Which picture 24 are you -- 25 MR. LA VAY: Number P-9.</p>	<p style="text-align: right;">64</p> <p>1 properties number 5 and 7 on Exhibit 97A looking 2 north, so the numbers 5 and 7 would be on my left 3 if I'm on Exhibit 97A. 4 BY MS. LEE-CHO: 5 Q What is that structure on the right of 6 the P-11 photo? 7 <b>A That's a portion of the school. That</b> 8 <b>is --</b> 9 HEARING EXAMINER: Wait. You're 10 referring now to 103? 11 MS. LEE-CHO: Correct. 12 MR. LA VAY: So the structure that you 13 see -- 14 HEARING EXAMINER: Wait. I'm sorry. 15 Which photograph, P-11? 16 MS. LEE-CHO: P-11. 17 HEARING EXAMINER: Okay. 18 MR. LA VAY: That's the library. 19 BY MS. LEE-CHO: 20 Q The library? 21 <b>A Oh, excuse me, I got confused. That's</b> 22 <b>the gymnasium. That's the corner of the gymnasium</b> 23 <b>building. I'm not quite at the library yet, that</b> 24 <b>photo. So for the record P-11 on the right you</b> 25 <b>see the gymnasium, and P-12 to the left is the</b></p>

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1 library.  
2 Q And to the right?  
3 A To the right would be property number 5  
4 on Exhibit 97A. There's the intervening -- it's  
5 kind of hard to tell from 97A, but there's a  
6 little sliver -- there's a couple of very, very  
7 small pieces of property labeled as 6 and 8.  
8 I believe it looks like number 6 is the  
9 piece that is between 5 and parcel 4 which would  
10 be number 10 on Exhibit 97A so I should say, you  
11 know, 5, 6 and 8 because those are just very, very  
12 tiny pieces in there. They're also owned by the  
13 school.  
14 In P-13 I am looking on the left-hand  
15 -- on the right-hand side is the library. On the  
16 left-hand side would be parcels 4 and 5 on Exhibit  
17 97A.  
18 Q And again so all of the parcel 4, 5, 7  
19 and 9 on Exhibit 97A, those are in green and those  
20 are all owned by the school?  
21 A That's correct. Now, picture 14, P-14  
22 on the right-hand side --  
23 HEARING EXAMINER: On 103A?  
24 MR. LA VAY: 103A. On the right-hand  
25 side immediately adjacent to where I'm standing is

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1 property number 4 on Exhibit 97A, and then where  
2 the house -- the structure that you can see in the  
3 background, that is the Harris property that is  
4 not marked in color or as a number on Exhibit 97A  
5 and is not owned by the school.  
6 HEARING EXAMINER: Did you say it isn't  
7 marked on --  
8 MR. LA VAY: It is not marked with a  
9 number or color on 97A.  
10 HEARING EXAMINER: Okay.  
11 MR. LA VAY: So it's the white property  
12 to the --  
13 HEARING EXAMINER: Right.  
14 MR. LA VAY: -- southwest of number 4.  
15 HEARING EXAMINER: Thank you. Okay.  
16 Thank you.  
17 MR. LA VAY: Okay. Now we're back to a  
18 photo I haven't seen yet. P-15 is a view looking  
19 towards the Mitchell property, and then beyond it  
20 in the background would be parcel number 4 on  
21 Exhibit 97A.  
22 MS. LEE-CHO: I'm sorry. Toward what  
23 property?  
24 MR. CHEN: Mitchell.  
25 MR. LA VAY: The Mitchell property.

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1 BY MS. LEE-CHO:  
2 Q You're saying Mitchell. Which lot are  
3 you --  
4 A I'm sorry. I'm sorry. Harris.  
5 Harris.  
6 Q Okay.  
7 A I'm sorry. I'm thrown off because I  
8 knew it as Yano because that's what's in the land  
9 records and what we've been referring to as  
10 Harris, but excuse me, for the record the Harris  
11 property.  
12 Q I thought I was sort of --  
13 A Yeah, I have the land records buried in  
14 my head, so --  
15 Q Okay. So the next one?  
16 A So P-16 is a view to the right, again  
17 is the Harris property. This is a vegetative  
18 buffer that exists on the -- where the buses park  
19 there just to the left of that is the turf field,  
20 so this is looking west.  
21 HEARING EXAMINER: Okay. Let me go  
22 back to -- I'm sorry. I'm trying to get the 103  
23 up so I understand where you are if you can bear  
24 with me for one moment. Now I have both views up  
25 because I'm not familiar with the terms like

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1 softball field and that type of thing, so I got it  
2 now. Thank you.  
3 MR. LA VAY: Do you have Exhibit 85A  
4 handy? There's a key on that drawing that has it.  
5 HEARING EXAMINER: Well, I've got two  
6 exhibits up now --  
7 MR. LA VAY: Okay.  
8 HEARING EXAMINER: -- so I'll follow  
9 you.  
10 MR. LA VAY: Okay. All right. So we  
11 were on P-16. Since you have that handy I'll say  
12 to my left there would be the -- what's labeled as  
13 M-2 on Exhibit 85A. That's the turf field, and to  
14 the right is the Harris property, and P-17 is  
15 essentially the same view. I've just walked  
16 further to the west so that you can see the turf  
17 field in the view here along with the vegetative  
18 buffer that exists.  
19 P-18 is a view to the west. The home  
20 that you see there, I guess the furthest one to  
21 the left of the two in the view would be property  
22 number 2 in Exhibit 97A, and the one on the right  
23 is a property not owned by the school, and again  
24 you can see the vegetative material that exists  
25 around the property today.

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1 BY MS. LEE-CHO:  
2 Q So Mr. La Vay, thank you for that but  
3 could you -- not to make you do it again, but you  
4 didn't provide any dimensions or depth of the  
5 vegetative buffering. It would be very helpful to  
6 understand --  
7 A Yeah.  
8 Q -- based on your observation the depth  
9 of the vegetative buffer running from the softball  
10 field across the homes that are owned by the  
11 school --  
12 A Uh-huh.  
13 Q -- down to the Harris property adjacent  
14 to the parking area and then also between the  
15 Harris property and the turf field.  
16 A Yeah, so I guess maybe what I'll -- to  
17 try to answer that with the current Exhibit 97A  
18 properties 4, 5, 6, 7, 8 and 9 are all adjacent  
19 properties.  
20 MR. CHEN: Excuse me. Can you put it  
21 back up?  
22 HEARING EXAMINER: 97A.  
23 MR. LA VAY: 97. So referring to  
24 Exhibit 97A properties marked on this exhibit as  
25 4, 5, 6, 7, 8 and 9, the vegetative buffering that

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1 exists along that corridor ranges between I'd say  
2 approximately 50 to 150 feet with the 150-foot  
3 dimension being where the properties 4 and 5 are  
4 and then it tapers down to closer to 50 as you  
5 move down towards property number 9 in this  
6 exhibit. And then you want me to walk around the  
7 rest of the kind of area?  
8 BY MS. LEE-CHO:  
9 Q Yeah, down --  
10 A So as we move down towards -- that  
11 covers really the buffering along 4, 5, 6, 7, 8  
12 and 9. Where the Harris property is there is  
13 approximately 35 feet of -- and a photo to give  
14 you a -- so the Harris property is not marked on  
15 97A, but the Harris property is visible in photos  
16 P-14 and P-15, P-14 on the right side, P-15 on the  
17 left side.  
18 That vegetative area is approximately  
19 35 feet wide, and then as you turn the corner on  
20 the Harris property which is P-16 a similar  
21 dimension, I'd say 35 feet of vegetation and  
22 canopy between the two uses. Do we need to go  
23 back to -- should we go back to the photos now?  
24 Q Well, since your photo stops sort of at  
25 a mid point on the turf field I wonder using your

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1 key which is the existing conditions site plan  
2 which seems to show a tree line and --  
3 HEARING EXAMINER: Wait, I'm sorry.  
4 What exhibit are you on?  
5 MS. LEE-CHO: The key.  
6 MR. LA VAY: The photo key?  
7 HEARING EXAMINER: The 103A?  
8 MS. LEE-CHO: 103A.  
9 BY MS. LEE-CHO:  
10 Q This key is using the existing  
11 conditions base plan and which shows the --  
12 appears to show the tree line; is that correct?  
13 A Yeah, that's a tree line taken from a  
14 kind of GIS and supplemented with our field  
15 visits.  
16 Q So if you wouldn't mind continuing  
17 using the key this time since you didn't have  
18 photos, but I do believe you have a photo of the  
19 turf field looking at the homes along Burdette?  
20 A Correct.  
21 Q Okay.  
22 A That would be -- yeah, that would be P  
23 --  
24 HEARING EXAMINER: Where on 103A is the  
25 turf field?

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1 MR. LA VAY: It's -- do you see the  
2 number P-19 on the far west side?  
3 HEARING EXAMINER: I do.  
4 MR. LA VAY: The arrow is kind of  
5 pointing right to the softball field.  
6 HEARING EXAMINER: I got it.  
7 MR. LA VAY: Yeah.  
8 HEARING EXAMINER: Okay. Thank you.  
9 MR. LA VAY: So we'll start with photo  
10 P-18?  
11 MS. LEE-CHO: Yes.  
12 MR. LA VAY: P-18 is the first of the  
13 photos that in the background are visible the  
14 homes along Burdette, and again the home on the  
15 right side of the image is not owned by the  
16 school. The home on the left side --  
17 MR. CHEN: Excuse me. Could we have  
18 103A up on the --  
19 HEARING EXAMINER: Do you need the key  
20 or the --  
21 MR. CHEN: Yeah, the key.  
22 HEARING EXAMINER: -- first page?  
23 MR. LA VAY: Yeah, yeah.  
24 MR. CHEN: Yes.  
25 HEARING EXAMINER: Okay. On the screen

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1 is 103A.  
2 MR. CHEN: Thank you.  
3 HEARING EXAMINER: PDF page 1.  
4 MR. ROGERS: Yeah, he needs to scroll  
5 because the bottom left corner kind of is what  
6 we're --  
7 MS. LEE-CHO: Could you zoom in on the  
8 turf field?  
9 MR. LA VAY: You can zoom in on the  
10 left side. There you go.  
11 THE TECHNICIAN: Yep.  
12 MR. LA VAY: So you should --  
13 MS. LEE-CHO: No, if you could center  
14 it --  
15 MR. LA VAY: There you go.  
16 MS. LEE-CHO: -- on the turf field.  
17 HEARING EXAMINER: Can you move -- the  
18 other way, the other way. There you go. Thank  
19 you. We are just -- for the record we're just  
20 getting a better view of the area surrounding P-19  
21 and the P-18 and the turf field.  
22 MR. LA VAY: Yeah. So P-18 visible in  
23 the first -- I guess I would describe them as the  
24 first two properties after the school's -- flags  
25 down to Burdette, and then P-19 I've just turned

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1 the camera to the left and you can start to see  
2 the third property on Burdette that abuts the  
3 school as well as the nursery that is to the --  
4 off in the distance there that's on River Road as  
5 well. And again you can see the vegetation, the  
6 substantial vegetation that exists along that  
7 edge, the geodimensional map --  
8 BY MS. LEE-CHO:  
9 Q Yes.  
10 A -- and exists along that edge. Do you  
11 need the dimension on that?  
12 Q Yes.  
13 A And the dimension of that area is  
14 approximately 50 to 70 feet with a 50-foot  
15 dimension being further north on the page. So as  
16 you're looking in photo P-18 the vegetation in the  
17 background is more in the 50-foot dimension and  
18 P-19 more in that 70-foot dimension.  
19 Q And can you give us a sense of the  
20 topography of the turf field relative to the  
21 adjacent homes on Burdette as well as the Harris  
22 property?  
23 A Yeah, so the homes on Burdette are  
24 upwards of 30 feet above the turf field.  
25 HEARING EXAMINER: 30 feet above?

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1 MR. LA VAY: Uh-huh, topographically,  
2 yeah, there's a substantial hill there. You can  
3 see that in the images so that the field is well  
4 below the homes. The Burdette property is not  
5 quite as --  
6 BY MS. LEE-CHO:  
7 Q You mean the Harris property?  
8 A Excuse me, the Harris property is -- I  
9 don't have a elevation on that here in front of  
10 me, but it's -- relative to the turf field?  
11 Q Yes.  
12 A It's not quite as high. It might be --  
13 it's probably 10 feet above the turf field.  
14 Q In one of the photos I noticed  
15 something like a knee wall adjacent between the  
16 turf field and the Harris property.  
17 A Uh-huh.  
18 Q Can you just --  
19 A Yeah.  
20 Q -- help us to understand what that is?  
21 A It's visible in photos 18 and 19 and  
22 it's on the -- that wall system exists on the west  
23 and north sides of the turf field. It's just a  
24 small wall to topographically, you know, shore up  
25 the side of the field. Presumably it was done to,

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1 you know, maintain a -- limit the amount of  
2 disturbance that was needed around the field for  
3 grading.  
4 HEARING EXAMINER: Could you scroll  
5 down, please, to the photograph labeled P-18 on  
6 the 103A? There we go. Can you enlarge that,  
7 please? Thank you. Mr. La Vay, can you -- where  
8 is the retaining wall?  
9 MR. LA VAY: Do you see the brown  
10 feature that is -- if you look at the grass -- the  
11 synthetic grass just along its edge you see on all  
12 sides in this image.  
13 HEARING EXAMINER: Okay.  
14 MR. LA VAY: You can see a brown  
15 vertical wall.  
16 HEARING EXAMINER: Thank you.  
17 MR. LA VAY: It's -- I don't recall off  
18 the top. It's probably two feet high.  
19 BY MS. LEE-CHO:  
20 Q Just a knee wall?  
21 A Yeah, it's a knee wall, yeah, and you  
22 can see there's some -- the black posts you see in  
23 the background are used to have a netting system  
24 for fence balls from going beyond the field when  
25 they play on it.

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1 HEARING EXAMINER: And what is the  
2 house that appears in the background?  
3 MR. LA VAY: The one that has the  
4 lighter brick color?  
5 HEARING EXAMINER: Yes.  
6 MR. LA VAY: That's a home not owned by  
7 the school.  
8 BY MS. LEE-CHO:  
9 Q Using --  
10 **A Oh, on the -- it doesn't have a number**  
11 **on Exhibit 97A, but it is between properties 2 and**  
12 **3 on 97A.**  
13 HEARING EXAMINER: I'm sorry. Between  
14 2 and 3?  
15 MR. ROGERS: That's correct.  
16 HEARING EXAMINER: Thank you. You can  
17 go to a hundred percent.  
18 MS. LEE-CHO: All right.  
19 HEARING EXAMINER: Thank you.  
20 MR. LA VAY: Okay. So are there any  
21 questions on P-19? P-19 is just a view that shows  
22 the additional -- a third home on Burdette, a  
23 third property on Burdette which is the property  
24 to the left of property number 2 on Exhibit 97A.  
25 BY MS. LEE-CHO:

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1 Q And to the far left, the structure to  
2 the far left, is that part of the campus?  
3 **A No, that is a nursery and garden**  
4 **center.**  
5 Q Okay. So taking us back to P-20 --  
6 **A Uh-huh.**  
7 Q -- of 103A.  
8 **A Uh-huh. So P-20 is a view standing in**  
9 **the parking -- or the drive aisle looking north.**  
10 **The Harris property is to the far left beyond the**  
11 **white vehicle there.**  
12 **This is an area where the buses are**  
13 **parked and that's noted on Exhibit 85 as well, and**  
14 **then sort of-- what I tried to capture here was**  
15 **topographically there's quite a slope that leads**  
16 **down to where the loading areas are and we'll get**  
17 **there in a minute, but this is where the bus**  
18 **parking is and then you can see there's quite a**  
19 **grade change, you know, about a story of grade**  
20 **change as you get from where I'm standing down to**  
21 **where the loading operations happen.**  
22 P-21 now I've moved to between the --  
23 let's give you a description. I'm between the  
24 turf field and the lower school building which are  
25 on Exhibit 85A facilities M-2 and A, and I'm

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1 **looking south towards River Road and again this**  
2 **just shows the screen on the edge.**  
3 **The property that's visible in this**  
4 **image, some of the property visible in this image**  
5 **is number 1 on Exhibit 97A and then further into**  
6 **that -- and that area is quite dense in terms of**  
7 **its forested area, but in the background there as**  
8 **well it would be the Rockwell property.**  
9 HEARING EXAMINER: The what property?  
10 MR. LA VAY: Rockwell, the property  
11 owned by Charles Rockwell which is between  
12 property number 1 on Exhibit 97A and the nursery  
13 that I mentioned at the corner of River Road and  
14 Burdette, and that area of vegetation is -- let me  
15 give the dimension. That area of vegetation is  
16 about 200 feet wide in the image I've taken.  
17 Exhibit Number 22 is looking towards property  
18 number 1 on Exhibit 97A.  
19 MR. CHEN: You mean P-22?  
20 MR. LA VAY: P-22, correct.  
21 HEARING EXAMINER: P-22 on Exhibit  
22 103A.  
23 MR. LA VAY: A is looking towards  
24 property number 1 on Exhibit 97A and this is also  
25 -- on the ground you can see there's a drive

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1 aisle. That is what leads back towards the main  
2 entrance from River Road. There's a circuitous  
3 road that runs south on Exhibit 85 of facilities H  
4 and G which are the Brown House and Granger House.  
5 That's just the drive aisle that you  
6 see on the ground is that -- is on the school's  
7 campus and that's what connects you from that  
8 point to the main entrance from River Road. P-23  
9 is at that same location. It's just a photo of an  
10 existing light fixture.  
11 There were some questions about light  
12 fixtures on the campus, and so this is a typical  
13 light fixture that's used to illuminate parking  
14 lots and the drive aisles throughout the campus  
15 and this is a standard fixture they have  
16 throughout the campus, same type. It's  
17 approximately 12 to 15 feet tall and the lighting  
18 is fully oriented downward.  
19 BY MS. LEE-CHO:  
20 Q And did you say how frequently you  
21 observed these lights along the driveway?  
22 **A Where there's drive -- along the**  
23 **driveways they're about every hundred feet. In**  
24 **the parking lots they're spaced a little more**  
25 **sporadically just for illumination purposes, but**

<p style="text-align: right;">81</p> <p>1 <b>where spaced along drive aisles they're about a</b> 2 <b>hundred feet apart.</b> 3 Q And in comparison you took a look at an 4 adjacent residential light in this -- 5 <b>A I did.</b> 6 Q -- P-24? 7 <b>A There was a question about the sort of</b> 8 <b>character of the lights, and P-24 is a photo taken</b> 9 <b>on Summer Hill Court which is east of the</b> 10 <b>property.</b> 11 HEARING EXAMINER: I'm sorry. Which 12 picture is that? 13 MR. LA VAY: P-24. 14 HEARING EXAMINER: Okay. Thank you. 15 MR. LA VAY: So that's taken in the 16 adjacent Summer Hill Court -- on Summer Hill Court 17 in the adjacent neighborhood. It's very similar 18 in terms of its height, although that fixture is 19 not fully pointed downward so the illumination 20 probably spreads further horizontally than the 21 ones in the campus. I think that was the last 22 photo. 23 MS. LEE-CHO: Yeah. 24 HEARING EXAMINER: I think my question 25 on the light had -- lights, sorry, had to do more</p>	<p style="text-align: right;">83</p> <p>1 HEARING EXAMINER: Yeah, he's not 2 qualified as -- to know the lumens and the -- 3 MS. LEE-CHO: No, I'm not asking that 4 question. 5 HEARING EXAMINER: You're asking 6 whether it's -- you're asking about safety. 7 MS. LEE-CHO: If there's -- he observed 8 a sufficient number of these lights in the parking 9 and driveway areas. 10 HEARING EXAMINER: To what? Sufficient 11 to do what? 12 MS. LEE-CHO: To allow for safe usage 13 of the site. 14 HEARING EXAMINER: Well, do you know 15 what the lumens are in the lights? 16 MR. LA VAY: We did not do a 17 photometric calculation. 18 HEARING EXAMINER: Have you ever seen 19 the campus at night? 20 MR. LA VAY: Yes. 21 HEARING EXAMINER: And what -- did you 22 go to every place in the campus at night? 23 MR. LA VAY: No. 24 HEARING EXAMINER: Yeah, I don't think 25 there's a basis for this. I'm not trying to --</p>
<p style="text-align: right;">82</p> <p>1 with safety given you have events in the evening 2 than it did with the compatibility with the 3 neighborhood. 4 MR. LA VAY: Uh-huh. 5 HEARING EXAMINER: But if you're -- you 6 know, that's just a comment that I throw out 7 there. You've got a lot of evening events and 8 that's why I asked the question about the lights, 9 so -- 10 BY MS. LEE-CHO: 11 Q Yeah, the -- but to answer the lighting 12 question, so these are lights along the parking 13 areas and driveways, correct? 14 <b>A Parking areas, driveways and sidewalks</b> 15 <b>as well to illuminate, you know, all the usable</b> 16 <b>areas of the school.</b> 17 Q And in your opinion were there a 18 sufficient number of these lights to -- 19 MR. CHEN: Objection. What's the basis 20 for this witness to testify, a civil engineer? 21 HEARING EXAMINER: Agreed. 22 MS. LEE-CHO: His observations were he 23 noted all of the lights that existed on the site. 24 MR. CHEN: He testified to his 25 observations. That's okay.</p>	<p style="text-align: right;">84</p> <p>1 MS. LEE-CHO: Sure. 2 HEARING EXAMINER: Down the line -- 3 MS. LEE-CHO: That's okay. I'll move 4 on. 5 HEARING EXAMINER: -- but when you get 6 into safety and the sufficiency of lighting, yes, 7 lights are there -- 8 MS. LEE-CHO: Yes. 9 HEARING EXAMINER: -- so -- 10 BY MS. LEE-CHO: 11 Q Did you observe lights in the fields? 12 <b>A No, there are no lights in the fields.</b> 13 Q The tennis courts, are they lit? 14 <b>A No.</b> 15 MS. LEE-CHO: Moving on unless there 16 are any other questions on the photos presented -- 17 HEARING EXAMINER: I don't have any. 18 Well, he's not finished with his testimony -- 19 MS. LEE-CHO: Yeah. 20 HEARING EXAMINER: -- but thank you. 21 MS. LEE-CHO: So we will move on to the 22 existing condition site plan -- 23 HEARING EXAMINER: Okay. 24 MS. LEE-CHO: -- that was prepared by 25 Mr. La Vay's office.</p>

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<p style="text-align: right;">85</p> <p>1 HEARING EXAMINER: And can you just say 2 an exhibit number for the record? 3 MR. ROGERS: 85A. 4 HEARING EXAMINER: I didn't hear that, 5 Mr. Rogers. 6 MS. LEE-CHO: The -- so the -- I'd like 7 you to use the red line sheets which is 98A(ii) 1 8 through 6. 9 MR. CHEN: I'm sorry. 98A, what were 10 -- 11 MS. LEE-CHO: (ii) 1 through 6. 12 MR. LA VAY: I don't believe we have 13 the correct exhibit up. It's (ii), so it's -- 14 MS. LEE-CHO: The two little i's. 15 HEARING EXAMINER: For the record 16 they're speaking to the Zoom manager to bring up 17 the correct exhibit. 18 MR. LA VAY: You can start with 1 in 19 that list. Thank you. 20 MS. LEE-CHO: So -- 21 MR. CHEN: What exhibit is this? 22 MS. LEE-CHO: 98A, 1 -- is that right? 23 MR. LA VAY: 98A, two little i's, 1 24 through 6, and we're starting on number 1. 25 MR. CHEN: There's two little i's and</p>	<p style="text-align: right;">87</p> <p>1 <b>from Ms. Cho.</b> 2 HEARING EXAMINER: My eyes were too old 3 to see them. 4 MS. LEE-CHO: Mine, too. 5 HEARING EXAMINER: Go ahead. 6 BY MS. LEE-CHO: 7 Q If you wouldn't mind just walking us 8 through the red line -- 9 <b>A Sure.</b> 10 Q -- changes. 11 <b>A Yeah, we'll begin on Exhibit 98A(ii) 1; 12 is that right?</b> 13 HEARING EXAMINER: Yeah. 14 MR. LA VAY: We'll start on the right 15 side of the plan. There was a question about 16 orientation and organization, so we added -- the 17 drawing key that exists on sheets -- Exhibits 18 98A(ii) 2 through 5 was added to the cover sheet 19 as well just for clarification, the drawing key 20 that orients you to where each more detailed sheet 21 is located on the campus, so that's clouded in 22 red. 23 And then on the development standards 24 table there was a question from the hearing 25 examiner about breaking out the R-90 versus R-200</p>
<p style="text-align: right;">86</p> <p>1 -- 2 MR. LA VAY: And then there's a 1. We 3 didn't number it. 4 MS. LEE-CHO: It's number 7. 5 MR. CHEN: All right. It's a lot. 6 MS. LEE-CHO: It's a lot. It is a lot. 7 HEARING EXAMINER: Oh, I see where it 8 is confusing on the website. Okay. So we're on 9 98A(ii), Arabic numeral 1. Is that where we are? 10 MS. LEE-CHO: Correct. Yes. 11 HEARING EXAMINER: Okay. 12 BY MS. LEE-CHO: 13 Q So just to clarify the exhibits, can 14 you explain the red line versus the existing site 15 plans that are in marked as exhibit -- I'm sorry. 16 Where are we? You have the original. 17 <b>A The original is 85A.</b> 18 Q 85A. So can you explain what you did 19 to create the red line and why? 20 <b>A Sure. There was -- I believe the date 21 was March 23rd. There was a series of questions 22 from the hearing examiner on the application and 23 drawings, and this -- these new exhibits were 24 submitted in the red line fashion to address those 25 questions and comments along with the response</b></p>	<p style="text-align: right;">88</p> <p>1 zoning in terms of areas, and at the time I 2 realized we had I believe quantified many of the 3 development standards under the more restrictive 4 R-200 zoning in reaction to the comment about 5 breaking up the zoning and there was actually one 6 structure on the R-90 zone part of the property. 7 The rest of the R-90 zone is vacant but 8 there is one structure being the field house, so 9 we broke out the development standards for both 10 zones so it's very clear the area of each zone and 11 the development standards in each zone from the 12 table. 13 We also added at the request of the 14 hearing examiner a number of accessible parking 15 spaces on campus in comparison to those that are 16 required as well as the bicycle parking required 17 and provided as well, and then there were some 18 associated footnotes added to clarify a number of 19 about four different items and I can go through 20 those. 21 BY MS. LEE-CHO: 22 Q Can you please? 23 <b>A Sure. Footnote number 5 was added to 24 clarify that the bus parking that's provided is 25 not included in the total number of vehicle</b></p>

<p style="text-align: right;">89</p> <p><b>1 parking spaces provide, so there's -- just as a</b> <b>2 way of example there's 310 parking spaces provided</b> <b>3 on campus. There's an additional 6 bus parking</b> <b>4 spaces provided.</b> 5 HEARING EXAMINER: Did you say 310 6 required -- 7 MR. LA VAY: Provided. 8 HEARING EXAMINER: -- or 310 provided? 9 MR. LA VAY: Provided. 10 HEARING EXAMINER: Okay. 11 MR. LA VAY: Footnote number 6 was 12 added as -- again the property is split zone R-90 13 and R-200 and there's a minimum lot requirement in 14 those zones, and so because the property is split 15 zone we just clarify that the number required is 16 the more restrictive of the two, and then number 7 17 is a clarification that in terms of front setbacks 18 required in the R-90 zone there are no structures 19 in the front, what can be quantified as the front 20 yard of the R-90. 21 The property has a side yard that takes 22 quite a jog and there's a single property located 23 in the R-90 zone. It's the field house that's on 24 this exhibit. It's on the I guess I'd call it the 25 far east side of the property just south of what's</p>	<p style="text-align: right;">91</p> <p>1 know, where the sidewalk connects to that bus stop 2 and as it leads up through the campus to the main 3 entrance, and then because there was a question 4 about lights in some of the perimeter features we 5 added to the legend the light poles and perimeter 6 fencing that were all field located by our 7 servers. That was added to the legend and that's 8 typical for each of the sheets I'm going to 9 continue to talk about. Moving -- 10 BY MS. LEE-CHO: 11 Q So just to clarify, those little tiny 12 circles represent locations of every light pole 13 that was surveyed and I put on these plans; is 14 that right? <b>15 A Correct, and that's consistent with</b> <b>16 what we talked about as in photo P-23 on Exhibit</b> <b>17 103A. That was those pictures. Moving on to</b> <b>18 Exhibit 98A(ii) 3 there are revision clouds.</b> <b>19 Again the legend was updated to show the lights</b> <b>20 and the fencing. The existing sidewalks that take</b> <b>21 you from the River Road bus stop and River Road</b> <b>22 right of way to the main entrance were clouded and</b> <b>23 labeled.</b> <b>24 We realized there was an accessible</b> <b>25 symbol missing from one of the parking spaces.</b></p>
<p style="text-align: right;">90</p> <p>1 marked as M-1 which is the track and field and as 2 you can see the side yard, you know, it's only 3 adjacent to side yards in terms of its southern 4 and eastern exposure. 5 And then lastly the field house is an 6 existing structure. The minimum or maximum 7 building height in the R-90 zone is 35 feet. The 8 structure is well under that. There were no -- I 9 looked back through all the plans of record on 10 file with the Board of Appeals. I was not able to 11 find a record height of that building, but from 12 visual observations we listed I think 25 feet is 13 the absolute maximum and just a clarification 14 that's an approximation from visits. 15 So that's the extent of red lining on 16 98A(ii) 1. We'll move on to 98A(ii) 2. Excuse 17 me. Just a couple of features. The hearing 18 examiner asked a question about the existing bus 19 stop. The label was very small on it so we added 20 the larger label to delineate where the bus stop 21 is on River Road. That's a public bus stop, a 22 public transit service, and then there was some 23 questions about sidewalks that lead to the campus 24 from that point. 25 We added a label just to indicate, you</p>	<p style="text-align: right;">92</p> <p><b>1 That was clouded as part of the comment about</b> <b>2 tabulating the accessible spaces. The bus parking</b> <b>3 spaces, a label was added and it was labeled</b> <b>4 before as bus parking, just the number wasn't</b> <b>5 showing. So we added number 6 to it to clarify</b> <b>6 there's 6 bus parking spaces, and then the bike</b> <b>7 racks were not shown previously and they've been</b> <b>8 added and labeled.</b> <b>9 And again there's one there today. The</b> <b>10 second will be offered as the school -- as a way</b> <b>11 to ensure that the required number of spaces can</b> <b>12 be provided without having to move the rack.</b> <b>13 Moving on to -- oh, there's one more thing. On --</b> 14 HEARING EXAMINER: Is the second one 15 shown on this plan? 16 MR. LA VAY: Yeah, there's two. 17 There's two leaders that point to two rectangular 18 fixtures or features. 19 HEARING EXAMINER: The second bike 20 rack? 21 MR. LA VAY: Yeah. 22 HEARING EXAMINER: Okay. Got you. 23 MR. LA VAY: And then lastly before 24 leaving this exhibit which is 98A(ii) 3 there's a 25 -- there was a question from the hearing examiner</p>

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<p style="text-align: right;">93</p> <p>1 about the tabulated setbacks and also being shown 2 on the drawings. They're shown -- they were shown 3 just about everywhere. 4 There was a couple of locations where 5 we added some dimensions, and so on this sheet 6 there's -- you can't visibly show the setback from 7 the nearest building corner of the gymnasium 8 building to the rear property line given its 9 distance, but a dimension, an arrow was shown as 10 1,335 feet to rear of property line. That was 11 added and clouded in this exhibit to clarify that 12 that is the closest point of the building, any 13 building to the rear property line. 14 BY MS. LEE-CHO: 15 Q So before we leave this sheet, and 16 thank you for identifying all the red clouding, 17 but you also indicated originally there were 18 dimensions from nearest point of structure to 19 property lines. I just wondered if you might 20 highlight a couple of those so that the hearing 21 examiner is aware of where they're located? 22 A <b>Yeah, those were shown originally on</b> 23 <b>exhibit -- let me see. I have to find it.</b> 24 Q Well, it's on the red line as well. 25 A <b>No, not those same dimensions.</b></p>	<p style="text-align: right;">95</p> <p>1 structures on the Holton-Arms campus to the 2 property lines. 3 HEARING EXAMINER: Okay. 4 MR. LA VAY: And those are consistent 5 with the setbacks, minimum setbacks in the table. 6 Now, there's some additional dimensions on here 7 just to give additional information. The setbacks 8 listed on 98A(ii) 1 are the minimum. 9 HEARING EXAMINER: Okay. 10 MR. LA VAY: So, for example, on sheet 11 98 -- 12 HEARING EXAMINER: What do you mean the 13 minimum? 14 MR. LA VAY: So the development 15 standards table lists the minimum setback required 16 in the zone. 17 HEARING EXAMINER: Yes. 18 MR. LA VAY: And then the provided 19 number -- 20 HEARING EXAMINER: Yes. 21 MR. LA VAY: -- is the bare minimum on 22 the campus but there are places where there's, you 23 know, multiple buildings set back from the same 24 property line. The minimum listed in the table is 25 the minimum of all those. There may be a building</p>
<p style="text-align: right;">94</p> <p>1 Q No, no, no, these measures -- 2 A <b>Oh, those.</b> 3 Q The setbacks. 4 HEARING EXAMINER: Wait, which -- I 5 just need to know which exhibit and which 6 dimensions you're referring to. 7 MS. LEE-CHO: The setbacks. 8 MR. LA VAY: I apologize. I was 9 confused -- 10 HEARING EXAMINER: Oh, that's okay. 11 MR. LA VAY: -- previous. There's an 12 exhibit in the record that shows setbacks of 13 adjacent homes to -- 14 HEARING EXAMINER: I saw that. 15 MR. LA VAY: -- areas of interest on 16 the campus. 17 HEARING EXAMINER: Yes. 18 MR. LA VAY: That's not to be confused 19 with setbacks required on this property of 20 structure to property line. 21 HEARING EXAMINER: From the property 22 line? 23 MR. LA VAY: Yeah, so on these exhibits 24 that I'm speaking to now which are 98A(ii) 1 25 through 5 there are specific dimensions from</p>	<p style="text-align: right;">96</p> <p>1 that's set back -- 2 MS. LEE-CHO: More. 3 MR. LA VAY: -- 20 feet and one that's 4 set back 200 feet. The minimum provided we listed 5 is 20. 6 HEARING EXAMINER: Got you. 7 Understood. 8 MR. LA VAY: And so if you look 9 through, for example, 98A -- Exhibit 98A(ii) 3 the 10 library building has a dimension to the western 11 property line of 17 feet which is the bare minimum 12 listed in the development standards table. 13 MS. LEE-CHO: Do you -- would you like 14 us to zoom in or -- 15 HEARING EXAMINER: Can you just tell me 16 what letter -- oh, I'm on the cover sheet. 17 MR. LA VAY: Yeah, that's okay. The 18 library would be letter L. 19 HEARING EXAMINER: Okay. I understand. 20 It's letter L on -- 21 MR. LA VAY: 80 -- oh, excuse me. 22 HEARING EXAMINER: -- 98A Roman numeral 23 (ii) 1, Arabic numeral 1. You know, we're going 24 to have a talk on covering these exhibits. It's 25 almost like the zoning ordinance. No offense, Mr.</p>

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1 Sloan. Okay. Go ahead.  
2 MR. LA VAY: So just as a way of  
3 example the library building is the -- an R-200  
4 zoned portion of the property, the closest to the  
5 western property line with a setback of 17 feet  
6 and the minimum required is 12 feet. Any further  
7 questions on that?  
8 MS. LEE-CHO: No, unless we wanted to  
9 like zoom in on anything that's fine.  
10 MR. LA VAY: No.  
11 MS. LEE-CHO: They're really hard to  
12 see, the numbers.  
13 MR. LA VAY: Yeah, you have to -- yeah.  
14 BY MS. LEE-CHO:  
15 Q So the next sheet?  
16 **A The next sheet would be Exhibit 98A(ii)**  
17 **4 which is SP -- sheet number SP-1.03. The only**  
18 **clouded items on this page are again the legend**  
19 **that was updated and then there's a dimension**  
20 **given for the -- from the field house which is --**  
21 **on the key is facility letter J.**  
22 **It's just south of the facility M-1**  
23 **which is the track and field, and then there's a**  
24 **dimension added to that to the -- although it**  
25 **couldn't graphically be dimensioned all the way to**

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1 the rear property line there's a text and a label  
2 that shows it's 1,086 feet to the rear property  
3 line.  
4 Similarly this has a dimension to the  
5 side yard of 26 feet. That is the same number  
6 that's referenced in the development standards  
7 table as the minimum side yard setback in the  
8 R-90s portion of the property as that facility is  
9 in the R-90 piece of the property. And then the  
10 only change to Exhibit 98A(ii) 4 is the legend,  
11 and then Exhibit 98A(ii) 6 again the only change  
12 is the legend.  
13 MR. ROGERS: I think you might have  
14 misspoke. Just for the record you were just  
15 referring to 98A(ii) 5 and 6. I think you said 4  
16 and 6.  
17 MR. LA VAY: Oh, yes, 5 and 6. Excuse  
18 me.  
19 MR. CHEN: Not 4?  
20 HEARING EXAMINER: No, 5 and 6.  
21 MR. CHEN: 5 and 6?  
22 MR. LA VAY: Yeah. 4 is the exhibit  
23 that had the field house shown.  
24 BY MS. LEE-CHO:  
25 Q Now, going back to 98A(ii) 1 --

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1 **A Uh-huh.**  
2 Q -- can you go through the general notes  
3 and identify the property, the legal description  
4 of the property?  
5 **A So the property --**  
6 HEARING EXAMINER: Oh, wait. Just for  
7 the Zoom operator which -- can you say the exhibit  
8 number again?  
9 MS. LEE-CHO: 98A(ii) 1.  
10 HEARING EXAMINER: Oh, okay.  
11 BY MS. LEE-CHO:  
12 Q And in particular general note 2  
13 identifying the properties associated with this  
14 special exception.  
15 **A Sure. The properties associated with**  
16 **this special exceptions are -- there's three**  
17 **record pieces of property. The largest piece is**  
18 **what's described as parcel 4 in the Burning Tree**  
19 **Valley/Holton-Arms School subdivision as shown on**  
20 **record plat 24741 which is recorded in I believe**  
21 **December of 2013, and then there's two additional**  
22 **unrecorded parcels of land that are entirely**  
23 **encumbered by forest conservation.**  
24 **Those are two deeded parcels referenced**  
25 **in the land records as parcels 1 and 2 in a deed**

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1 recorded at Liber 15417, page 146 in the  
2 Montgomery County land records. Those are on the  
3 far north end of the property, of the special  
4 exception property, and again those two pieces are  
5 entirely encumbered by category one conservation  
6 easement. The total area of the special exception  
7 including all three of those parcels is 58.273  
8 acres.  
9 Again the property is split zoned R-90  
10 and R-200. The area of the R-90 portion is  
11 approximately 24.73 acres, and the area of the  
12 R-200 -- area R-200 is 33.54 acres approximately.  
13 Let's see. The property is subject to a  
14 preliminary plan number 1-19871710. The property  
15 is located in the Bethesda Chevy Chase planning  
16 area. The existing water and sewer service  
17 categories are W-1/S-1. Should I go through all  
18 these?  
19 Q No. And just going back --  
20 MR. CHEN: Can you give us that number  
21 again, that preliminary plan number again slowly,  
22 please?  
23 MR. LA VAY: Sure. 1-19871710.  
24 MR. CHEN: Thank you.  
25 BY MS. LEE-CHO:

<p>101</p> <p>1 Q And with regard to that preliminary 2 plan have you recently filed an amendment? 3 <b>A Yes, our office did file an amendment</b> 4 <b>which is plan number 1-1987171A, and that was</b> 5 <b>filed with the Montgomery County Planning</b> 6 <b>Department to modify condition number 1.</b> 7 MR. CHEN: Could you give us that 8 number again slowly, please? 9 HEARING EXAMINER: Thank you. 10 MR. LA VAY: 1-198717A as in apple. 11 HEARING EXAMINER: 87171A. 12 MR. LA VAY: Oh, did I skip the 1? I'm 13 sorry. 14 MR. CHEN: Wait. 15 MR. LA VAY: I'll do it one more time 16 for you. 17 MR. CHEN: Yeah. 18 MR. LA VAY: 1-1987171A as in apple. 19 MR. CHEN: Okay. It was filed -- I 20 don't think he gave -- I think the question was 21 asked but not answered on file. 22 MS. LEE-CHO: It has been. 23 MR. LA VAY: It was filed with the park 24 and planning commission, correct. 25 MS. LEE-CHO: It has been answered.</p>	<p>103</p> <p>1 BY MS. LEE-CHO: 2 Q All right. While we describe the 3 special exception parcels I wondered if you would, 4 since it's a color and a better visual, using 5 Exhibit 97A identify the three parcels -- 6 <b>A Sure.</b> 7 Q -- that constitute the special 8 exception? 9 MR. CHEN: I have no problem. I just 10 want him to put it up. 11 HEARING EXAMINER: Are we at -- is this 12 97A? 13 MR. LA VAY: Yes, yes. 14 HEARING EXAMINER: Okay. 15 MR. LA VAY: So the property subject to 16 the special exceptions would be the yellow, the 17 orange and the blue, and again the orange and the 18 blue are the two pieces that are deeded parcels 19 entirely encumbered by forest conservation 20 easement. 21 BY MS. LEE-CHO: 22 Q Are you saying -- you mentioned it 23 earlier, Exhibit 50A which is the markup of the 24 original existing conditions site plan? 25 <b>A Correct.</b></p>
<p>102</p> <p>1 MR. LA VAY: The official upload, it's 2 in the intake process, was -- I believe it was 3 yesterday. Yeah, April 6th. 4 HEARING EXAMINER: And when you say 5 official upload just for the record you're 6 referring to the department of planning -- the 7 Montgomery planning department's DAIC, development 8 activity -- 9 MR. LA VAY: It's the intake and 10 regulatory compliance group. It's filed through 11 their E-plan system. 12 HEARING EXAMINER: Right. 13 MR. LA VAY: It goes through an intake 14 process. 15 HEARING EXAMINER: And the upload 16 occurs on their dashboard, right? 17 MR. LA VAY: Correct. It may not be 18 visible until it's formally accepted, but the 19 upload will show up on their dashboard. 20 HEARING EXAMINER: Okay. I'm just 21 saying this for the audience, that they have a 22 dashboard of development activity where all the 23 E-plans are revised and it's at 24 montgomerycountypanning.org, but I don't have the 25 exact link in memory.</p>	<p>104</p> <p>1 MR. CHEN: Exhibit 50? 2 MS. LEE-CHO: 50A. 3 MR. LA VAY: 50A. 4 BY MS. LEE-CHO: 5 Q I wonder if you could just address what 6 was intended with that markup and what the 7 dimensions indicate. 8 <b>A Sure. Let me pull it up here, a copy</b> 9 <b>on my computer if I can. I apologize. I'm just</b> 10 <b>getting a copy on my computer so I can see it</b> 11 <b>clearer. Yeah, this is intended to show the</b> 12 <b>distances -- approximate distances from -- and I</b> 13 <b>say approximate because we didn't survey locate</b> 14 <b>the existing homes offsite.</b> 15 <b>These are located in GIS but for the</b> 16 <b>purposes of this it's substantial. This is</b> 17 <b>intended to show the distances from those homes to</b> 18 <b>various usable features on the school. It would</b> 19 <b>be parking, drive aisles and athletic fields, and</b> 20 <b>the dimensions from the properties and houses not</b> 21 <b>owned by the school.</b> 22 Q Mr. La Vay, you prepared a forest 23 conservation plan associated with this 24 application, did you not, an amendment? 25 <b>A An amendment, that's correct.</b></p>

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<p>105</p> <p>1 MS. LEE-CHO: I would like to present 2 Mr. La Vay's testimony on the forest conservation 3 plan in conjunction with testimony when we are 4 discussing the traffic study, and so I would 5 reserve his return at that time and proceed with 6 the land use. 7 HEARING EXAMINER: Have you filed the 8 -- I think you filed the forest conservation plan, 9 correct? 10 MS. LEE-CHO: Mr. La Vay? 11 MR. LA VAY: That's correct, and for 12 the record the application number is F20260680. 13 HEARING EXAMINER: Oh, you've got to 14 give that to me again. I'm sorry. 15 MR. LA VAY: That's okay. F as in 16 Frank -- 17 HEARING EXAMINER: Yeah. 18 MR. LA VAY: -- 20260680. 19 HEARING EXAMINER: And is a copy of 20 this -- is a copy of that in our record? 21 MR. LA VAY: Yes. 22 MS. LEE-CHO: Yeah. 23 MR. LA VAY: Yeah, that was provided 24 with the March submittal. 25 MS. LEE-CHO: March 3rd submittal.</p>	<p>107</p> <p>1 address it? 2 MS. LEE-CHO: Yeah, that is the entire 3 purpose of the FCP, so with no objection I would 4 move on. 5 MR. CHEN: Well -- 6 HEARING EXAMINER: I'm waiting for his 7 -- to see if he has an objection. 8 MR. CHEN: So as I understand it, Mr. 9 La Vay, a civil engineer, will be presenting 10 testimony on the forest conservation plan; is that 11 right? 12 MS. LEE-CHO: Correct. 13 MR. CHEN: And you want to recall him 14 -- 15 MS. LEE-CHO: Correct. 16 MR. CHEN: -- at a different part of 17 your -- will that be today? 18 MS. LEE-CHO: Probably not. Tomorrow 19 or Thursday. 20 MR. CHEN: Okay. I don't have a 21 problem with recalling him. 22 HEARING EXAMINER: I don't either, and 23 so that's fine. 24 MS. LEE-CHO: So with that -- 25 HEARING EXAMINER: Can I have my own</p>
<p>106</p> <p>1 MR. CHEN: What exhibit number is it? 2 MR. ROGERS: That is Exhibit 86A 3 through C. 4 HEARING EXAMINER: Okay. Where is that 5 one? Okay. 6 MR. LA VAY: And to clarify just for 7 the record that is an amendment to the existing 8 forest conservation plan. The application number 9 that was given had a 2026 number in it. It would 10 lead you to believe it's a new application, but 11 it's just a matter of park and planning changing 12 things over to the new numbering system but it is, 13 in fact, an amendment. 14 MS. LEE-CHO: But in terms of the 15 details of that plan I would like to address that 16 more appropriately when we're discussing the 17 traffic study. 18 HEARING EXAMINER: Okay. Do you have 19 an objection to that? 20 MR. CHEN: Well -- 21 HEARING EXAMINER: Are you saying it's 22 because it's to accommodate the road improvements? 23 Is that -- 24 MS. LEE-CHO: Correct. 25 HEARING EXAMINER: -- why you want to</p>	<p>108</p> <p>1 personal recording of what you just said, I don't 2 have a problem with that either? 3 (Laughter.) 4 HEARING EXAMINER: Go ahead. I'm 5 sorry, Mr. Chen. Go ahead, Ms. Lee-Cho. 6 MS. LEE-CHO: So at this point I would 7 excuse Mr. La Vay and ask Mr. Josh Sloan unless 8 there was a desire to take a break. 9 HEARING EXAMINER: I think before we 10 get to Mr. Sloan I think it might -- he's -- I 11 suspect that witness is going to take a while. 12 MS. LEE-CHO: Yes. 13 HEARING EXAMINER: I have some 14 questions, yes. He's nodding no from the gallery. 15 Do you have a position on -- I think it might be 16 better to -- what I'm trying to say is I think it 17 might be better to take a break now. 18 MR. CHEN: I agree with you. 19 HEARING EXAMINER: Can I have a tape of 20 that? 21 (Laughter.) 22 HEARING EXAMINER: No, I'll stop. I'll 23 stop. 24 MR. CHEN: It's a quarter of 12:00, so 25 I assume this would be an appropriate -- what</p>

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<p>109</p> <p>1 you're indicating is that --</p> <p>2 HEARING EXAMINER: A lunch break, yes.</p> <p>3 MR. CHEN: Okay. I agree with that.</p> <p>4 Relative, though, to Mr. Sloan and Mr. La Vay,</p> <p>5 what is the examiner's procedure for</p> <p>6 cross-examination and things of that nature?</p> <p>7 HEARING EXAMINER: Well, you're -- it's</p> <p>8 at -- oh. He's reminding me.</p> <p>9 MS. LEE-CHO: I forgot cross.</p> <p>10 HEARING EXAMINER: What he's saying is</p> <p>11 -- I get it. Do you want to cross-exam on what</p> <p>12 you've heard so far or do you want to wait until</p> <p>13 he finishes his testimony? Either one is fine</p> <p>14 with me.</p> <p>15 MR. CHEN: Oh, okay. When do you</p> <p>16 anticipate Mr. La Vay being recalled?</p> <p>17 MS. LEE-CHO: Thursday. You can either</p> <p>18 cross-exam today or --</p> <p>19 MR. CHEN: No, I understood what the</p> <p>20 examiner was saying. We can wait until Thursday.</p> <p>21 Do you agree with that?</p> <p>22 UNIDENTIFIED MALE SPEAKER: Sure.</p> <p>23 MR. CHEN: Yeah, we can -- let's get it</p> <p>24 in. I mean, yeah, I can hold off on -- I have</p> <p>25 cross-examination for Mr. La Vay. I don't think</p>	<p>111</p> <p>1 thinking about the dates and your instruction that</p> <p>2 the parties try to work out dates. There are</p> <p>3 people who I do not represent in attendance and I</p> <p>4 -- from what I'm informed they want to testify and</p> <p>5 participate, so accordingly obviously those folk</p> <p>6 need to be involved in any discussions about</p> <p>7 dates.</p> <p>8 HEARING EXAMINER: Yes.</p> <p>9 MR. CHEN: I suggest, Madam Examiner,</p> <p>10 that you provide at some point a discussion off</p> <p>11 the record among the attendees trying to figure</p> <p>12 out dates because if we don't do it now we're</p> <p>13 going to be going back with phone calls --</p> <p>14 HEARING EXAMINER: We're going to lose</p> <p>15 dates.</p> <p>16 MR. CHEN: -- E-mails.</p> <p>17 HEARING EXAMINER: Okay. But all the</p> <p>18 parties aren't here because I'm looking at the</p> <p>19 Zoom --</p> <p>20 MR. CHEN: Yeah.</p> <p>21 HEARING EXAMINER: -- attendees --</p> <p>22 MR. CHEN: Uh-huh.</p> <p>23 HEARING EXAMINER: -- and I agree with</p> <p>24 you I could -- if -- well, all the Zoom attendees</p> <p>25 -- I'm trying to think how to do this. I was</p>
<p>110</p> <p>1 it's exhaustive at all and I have no problems</p> <p>2 waiting until Thursday.</p> <p>3 MS. LEE-CHO: If it's topical to his</p> <p>4 testimony today it might be more fresh on Mr. --</p> <p>5 in Mr. La Vay's mind if --</p> <p>6 MR. CHEN: Mr. La Vay is going to have</p> <p>7 no problem answering my questions.</p> <p>8 HEARING EXAMINER: Okay. And for the</p> <p>9 people in -- I call it the gallery, the people in</p> <p>10 -- that are here that are parties I'm going to</p> <p>11 delay cross-examination from Mr. La Vay until he</p> <p>12 completes his testimony on did you say Thursday?</p> <p>13 MS. LEE-CHO: Thursday.</p> <p>14 HEARING EXAMINER: So you will be able</p> <p>15 to cross-examine at the same time or give your</p> <p>16 questions to Mr. Chen at the same time, so I'm not</p> <p>17 ignoring you. Write down your questions, and I</p> <p>18 won't have a transcript, you won't have a</p> <p>19 transcript, but -- so make notes of your questions</p> <p>20 and we'll proceed. We'll take an hour for lunch</p> <p>21 so we'll be back at 12:45. Anything else before</p> <p>22 we go off the record?</p> <p>23 MR. CHEN: If I may?</p> <p>24 HEARING EXAMINER: Yeah.</p> <p>25 MR. CHEN: I've been sitting here</p>	<p>112</p> <p>1 thinking that I could keep them -- no, you can't</p> <p>2 use the meeting, this meeting.</p> <p>3 Well, what you could do is this: You</p> <p>4 could -- you have the E-mail addresses of everyone</p> <p>5 that's been made a party to this proceeding. If</p> <p>6 you want to work with the people here today I can</p> <p>7 stop early and give everyone a half hour in the</p> <p>8 library, in our library, or this room.</p> <p>9 I don't think our library will fit</p> <p>10 everyone. If that's helpful, but you have to know</p> <p>11 from the people in the gallery because I recognize</p> <p>12 some of them are already parties. You know, you</p> <p>13 may want to check with them and see whether</p> <p>14 they'll be available. I could do that either this</p> <p>15 afternoon or I could do it on Thursday.</p> <p>16 MR. CHEN: I think it's going to be</p> <p>17 more productive the sooner the better --</p> <p>18 HEARING EXAMINER: Okay.</p> <p>19 MR. CHEN: -- I really do, especially</p> <p>20 if we're going to try to contact folk who are on</p> <p>21 Zoom because my thinking is we'll use your</p> <p>22 distribution list of your E-mail from yesterday</p> <p>23 about the dates and report to everybody whatever</p> <p>24 agreement can be reached.</p> <p>25 HEARING EXAMINER: Let me take the hour</p>

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<p style="text-align: right;">113</p> <p>1 at lunch and verify those dates -- 2 MR. CHEN: Okay. 3 HEARING EXAMINER: -- one last time. 4 MR. CHEN: Fine, yeah. 5 HEARING EXAMINER: All right. And then 6 I can provide them from you -- with -- to you and 7 we can stop the hearing at 4:30 and give you an 8 opportunity as a group to -- 9 MR. CHEN: Yes. 10 HEARING EXAMINER: -- coordinate the 11 dates. 12 MR. CHEN: Yeah, and then we can report 13 to the people on the Zoom. 14 HEARING EXAMINER: Yes. 15 MS. LEE-CHO: If I might suggest? 16 HEARING EXAMINER: Yes. 17 MS. LEE-CHO: Once you provide the 18 dates that are available for the hearing 19 examiner's office I can immediately tell you which 20 dates the applicant -- 21 MR. CHEN: That's great. 22 MS. LEE-CHO: -- is available. 23 MR. CHEN: That's great. 24 MS. LEE-CHO: Okay. We can provide 25 that immediately.</p>	<p style="text-align: right;">115</p> <p>1 is excellent, that when you are able report the 2 dates that we have Ms. Cho-Lee can let us know 3 later on -- 4 MS. LEE-CHO: Lee-Cho. 5 MR. CHEN: I apologize, Ms. Lee-Cho can 6 tell us today what dates are good or bad. If the 7 gallery folk and I, yes, can confer at 4:30 we'll 8 be able then to report to the people on Zoom. 9 HEARING EXAMINER: And we'll do it on 10 the record and that way you'll all be here 11 virtually, and I will probably not say anything 12 until you come up with some dates. 13 MR. CHEN: Okay. 14 HEARING EXAMINER: Okay. 15 MR. CHEN: Can we then have an hour 16 until -- 17 HEARING EXAMINER: Yeah, I'm going to 18 go have our staff verify what dates we have 19 available in April. 20 MR. CHEN: So we're reconvening at -- 21 HEARING EXAMINER: At -- well, now 22 we're reconvening at 12:50. 23 MR. CHEN: Okay. Thank you. Thank 24 you, Madam Examiner. 25 (Whereupon, a luncheon recess was taken</p>
<p style="text-align: right;">114</p> <p>1 MR. CHEN: That's great. 2 HEARING EXAMINER: Okay. That would be 3 great. 4 MS. LEE-CHO: I would suggest that 5 tomorrow since there is no hearing that that could 6 be the time that all the other parties can get 7 together and confer on dates. 8 MR. CHEN: That's not going to happen. 9 MS. LEE-CHO: No? 10 MR. CHEN: No. I -- 11 MS. LEE-CHO: But you suggested by 12 E-mail? 13 HEARING EXAMINER: I think -- 14 MR. CHEN: No, I would do it today, 15 then shoot an E-mail out toward the other folk who 16 are on Zoom who are not here. 17 HEARING EXAMINER: Well, we can also -- 18 I can't really leave -- I could do it on the 19 record and leave them participating at 4:30 and 20 you can have your conversation on the record if 21 you wish. 22 MR. CHEN: What we could do is -- I 23 apologize for interrupting you. 24 HEARING EXAMINER: That's okay. 25 MR. CHEN: I think what you just said</p>	<p style="text-align: right;">116</p> <p>1 in the proceedings.) 2 HEARING EXAMINER: Okay. I had a few 3 thoughts on -- first let me start we have 4 confirmed all the dates plus April 15th, the dates 5 we already sent to you, so you have that. I don't 6 think I can keep the hearing -- what I'm going to 7 do is this, this afternoon. 8 We'll stop at 4:30. I'm going to 9 adjourn the hearing and leave. Otherwise, your 10 whole discussion has to be under oath but I will 11 leave the Zoom operator, I will leave the Zoom 12 meeting in place. 13 MR. CHEN: How do we communicate and 14 how do they communicate back? 15 HEARING EXAMINER: Well, they can talk 16 into the Zoom meeting. 17 MR. CHEN: Oh. 18 HEARING EXAMINER: You don't have a 19 computer, though. 20 MR. CHEN: No. 21 UNIDENTIFIED FEMALE SPEAKER: I do. 22 MR. CHEN: Okay. 23 UNIDENTIFIED FEMALE SPEAKER: So -- 24 UNIDENTIFIED FEMALE SPEAKER: We can 25 log in.</p>

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<p>117</p> <p>1 MR. CHEN: Let's try. 2 MS. LEE-CHO: Is the cutoff 5 o'clock 3 for the Zoom technician? 4 HEARING EXAMINER: I don't know. I 5 should have asked you since you are integral to 6 the -- 7 THE TECHNICIAN: Technically it's 4:30, 8 but I've just got to make a quick phone call and 9 let them know. They have a time and a half 10 penalty for an extra half hour. There's no 11 problem. I can make that work. 12 MR. CHEN: Do you want to stop at 4:00? 13 HEARING EXAMINER: We can stop at 4:00 14 -- well, 4:00 -- okay. We can stop at 4:00. Yes. 15 Yes. 16 MS. LEE-CHO: In the E-mail inquiry to 17 staff I believe the -- or I E-mailed everybody we 18 thought we were going to be going until 5:00 every 19 day. Is that not the case on a daily basis? 20 HEARING EXAMINER: It is -- yeah, I 21 thought you guys were at 5:00. 22 THE TECHNICIAN: I was scheduled by my 23 employer until 1:00 and I know normally I go until 24 at least 4:30 and I was hoping it ran for today, 25 but I'm not sure. I can stay until 5:00 today. I</p>	<p>119</p> <p>1 usually emptied by 9:30 across the street, so to 2 answer your question I did not know that. I'll 3 have to get back to you. 4 MS. LEE-CHO: Well, for today I would 5 have to request a break in Mr. Sloan's testimony 6 for the board president who is on his way here. 7 He's only here today. 8 MR. CHEN: Yeah, we agreed to that. 9 MS. LEE-CHO: So we can do it in the 10 middle of Mr. Sloan's testimony and then we may 11 not get through all of Mr. Sloan today as a result 12 of this so -- 13 MR. CHEN: That happens. 14 MS. LEE-CHO: -- I'm just explaining. 15 HEARING EXAMINER: How much can he say? 16 MS. LEE-CHO: If that's fine we were 17 trying to, you know, wrap it up today but we can 18 continue on Thursday. 19 HEARING EXAMINER: We're trying. We're 20 trying to -- I'm trying to get through this -- 21 MS. LEE-CHO: That's -- 22 HEARING EXAMINER: -- and I understand 23 -- 24 MS. LEE-CHO: Yep. That's the only 25 consequence of breaking earlier to have this</p>
<p>118</p> <p>1 can make that work. 2 HEARING EXAMINER: Well, no. We're 3 going to need somebody until 5:00 every day. 4 THE TECHNICIAN: You're going to need 5 to communicate that to my employer. They 6 scheduled me until 1 o'clock. 7 HEARING EXAMINER: What? 8 THE TECHNICIAN: You're going to need 9 to articulate that to my employer because he only 10 put me on the books today until 1:00 so I can make 11 it work and stay until 5:00 today, it's no 12 problem, but you're going to need to let them 13 know. 14 HEARING EXAMINER: I might have to go 15 the hour -- to the counsel for -- 16 THE TECHNICIAN: Yeah, Yeah, I -- 17 HEARING EXAMINER: -- for counsel staff 18 to see if we can't do that -- 19 THE TECHNICIAN: No problem. I can -- 20 HEARING EXAMINER: -- because we're 21 going to need every half hour until 5:00. 22 THE TECHNICIAN: I can stay until 5:00 23 today. It's no problem. 24 HEARING EXAMINER: The reason we start 25 at 9:30 is the parking, the juror parking lot is</p>	<p>120</p> <p>1 conversation. 2 HEARING EXAMINER: Understood. So are 3 we breaking at 4:00 so you can go home by 4:30 -- 4 THE TECHNICIAN: I can -- 5 HEARING EXAMINER: -- or can you -- can 6 we break by 4:30? 7 THE TECHNICIAN: We can break at 4:30. 8 I can make that work today. 9 HEARING EXAMINER: Okay. So with that 10 if the parties are ready -- is the witness ready? 11 MR. SLOAN: Yes. 12 HEARING EXAMINER: Okay. Let's 13 proceed. If we aren't already on the record we'll 14 go back on the record. 15 Mr. Sloan, please raise your right 16 hand. Do you solemnly affirm under penalties of 17 perjury that the statements you are about to make 18 is the truth, the whole truth, and nothing but the 19 truth? 20 MR. SLOAN: Yes. 21 HEARING EXAMINER: Okay. Please state 22 your name and business address for the record. 23 MR. SLOAN: Josh Sloan, VIKA Maryland. 24 The address is 20251 Century Boulevard, Suite 400, 25 Germantown, Maryland, 20874.</p>

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<p>121</p> <p>1 MS. LEE-CHO: We are offering Mr. Sloan 2 as an expert in the field of land planning. He is 3 -- 4 MR. CHEN: We have no objection. 5 HEARING EXAMINER: Let me, yeah, cut 6 you off. Okay. With that he has testified before 7 OZAH as an expert in land planning before, so with 8 that I will qualify -- so qualify him. 9 MR. CHEN: As a land planner? 10 HEARING EXAMINER: As a land planner. 11 MS. LEE-CHO: And his resume is at 12 Exhibit -- labeled Exhibit 88A. I would still 13 like to ask some background questions as far as 14 his experience and preparation for -- 15 MR. CHEN: Sure. 16 MS. LEE-CHO: -- the land use report. 17 HEARING EXAMINER: Well, wait a minute. 18 Wait a minute. 19 MS. LEE-CHO: It's not for 20 qualification of expert witness purposes, but to 21 give context to his experience. 22 HEARING EXAMINER: I don't know what -- 23 I need -- I'm trying to get through this hearing 24 in nine days. 25 MS. LEE-CHO: It'll be quick.</p>	<p>123</p> <p>1 staff reports; is that correct? 2 <b>A Yes.</b> 3 Q How many special exceptions or 4 conditional uses would you say you've worked on 5 both as a professional working at the planning 6 department and private sector? 7 <b>A Taking a conservative estimate I'm</b> 8 <b>guessing about 30 or more.</b> 9 Q Okay. And in preparing the land use 10 report in this case can you please provide a brief 11 overview of the various components of the land use 12 report? 13 <b>A Sure. So my land use report is broken</b> 14 <b>into several sections. It starts with an</b> 15 <b>introduction basically summing up the requested</b> 16 <b>modification, then there's a synopsis of previous</b> 17 <b>approvals, a summary of current primary ancillary</b> 18 <b>uses.</b> 19 <b>I then describe the extent of the</b> 20 <b>property, the neighborhood context, the</b> 21 <b>surrounding area of adjacent properties. I then</b> 22 <b>go into the proposed modifications in some detail</b> 23 <b>and summarize the proposed primary and ancillary</b> 24 <b>uses. Based on that I analyze the --</b> 25 HEARING EXAMINER: Before -- I'm sorry</p>
<p>122</p> <p>1 HEARING EXAMINER: Okay. 2 DIRECT EXAMINATION 3 BY MS. LEE-CHO: 4 Q How many years did you work at 5 Montgomery County Planning Department? 6 <b>A Seven years, from 2006 to 2013.</b> 7 Q And what was your title just prior to 8 your departure to the private sector? 9 <b>A It was a supervisor.</b> 10 Q Okay. And you authored this land use 11 report prepared and submitted in this case marked 12 as Exhibit 79, correct? 13 <b>A Yes.</b> 14 Q And how many land use reports would you 15 estimate that you've prepared during your tenure 16 at VIKA? 17 <b>A At VIKA I am guessing about 12 I</b> 18 <b>directly authored, but I also have built up a</b> 19 <b>staff of many others and there are several under</b> 20 <b>my guidance or supervision.</b> 21 Q So let me ask your title at VIKA? 22 <b>A My title at VIKA, I'm a vice president</b> 23 <b>and director of landscape architecture and</b> 24 <b>planning.</b> 25 Q And before that you wrote planning</p>	<p>124</p> <p>1 to interrupt. Before we get into that can you 2 give the exhibit number of your land use report 3 for the record so we all know? 4 MR. SLOAN: The exhibit is 79. 5 HEARING EXAMINER: Okay. Thank you. 6 MR. SLOAN: So once the summary of the 7 proposed modifications is provided I then -- I 8 analyze those modifications in relation to the 9 master plan, the Thrive, the general plan for the 10 county, and general compatibility considerations. 11 Then I go through the findings required 12 for modification of the special exception for the 13 private educational institution, and then the 14 second section of findings on the modifications to 15 the special exception of a child daycare facility 16 and conclude with a summary of my opinion. 17 BY MS. LEE-CHO: 18 Q And in preparing the land use report on 19 any special exception case, but in this case in 20 particular what was one of the first inquiries 21 that you made in your process of evaluating the 22 proposed application? 23 <b>A So the first thing that I looked at is</b> 24 <b>the modifications requested to make sure that I</b> 25 <b>understand what they are or what they entail and</b></p>

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1 then which standards of evaluation need to be  
2 analyzed.  
3 I then review those standards of  
4 evaluation against the proposed modifications to  
5 determine whether there are any noninherent  
6 impacts associated with the modifications or  
7 whether they remain inherent impacts as previously  
8 -- as the previous approvals have delineated.  
9 That differentiation on whether or not  
10 there are any noninherent impacts is really  
11 crucial to how I set up the rest of the framework  
12 for my analysis.  
13 Q And before we get into your findings as  
14 far as the inherent impacts and whether there are  
15 any noninherent, have there been any findings on  
16 this issue that exist in the approval history of  
17 this case in particular that you believe continues  
18 to have relevance in the current proceedings?  
19 A Yes, so when I made my review of the  
20 modifications requested, my analysis, I then read  
21 through the case history and one of the important  
22 elements that I found key to my further analysis  
23 was in regard to -- or in the report, the 2004  
24 OZAH report that's Case Number CBA-1174-D,  
25 S-2503-A, and that's Exhibit 97A.

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1 In that report and recommendation it  
2 says -- I'm going to quote -- in determining the  
3 inherent generic physical and operational  
4 characteristics associated with a given use, the  
5 evaluation standard does not include the actual  
6 physical size and scale of the operations of the  
7 proposed use.  
8 So in my review of that the fact that  
9 the proposed modifications are specifically  
10 increased as a scale of operations, there are not  
11 any change in use, that means my analysis really  
12 needs to focus on whether the change -- the  
13 changes meet the threshold of incompatibility  
14 because we have -- when I write these reports and  
15 do these recommendations we always -- we know that  
16 inherent adverse impacts alone cannot be grounds  
17 for dismissal, but -- or grounds for denial, but  
18 also have to lead to other specials.  
19 Q But in that case that you reference  
20 what was the argument that was being attempted  
21 that was rejected by the hearing examiner in that  
22 case?  
23 A So the argument that was being -- that  
24 was under consideration for that one, and I don't  
25 have the report in front of me so I'm going a

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1 little off memory.  
2 Q It is in the record.  
3 A I was trying to look for that. I  
4 couldn't find it.  
5 Q One second. 97A starting at page --  
6 A Oh, that's right.  
7 Q -- PDF 46. Do you want the report?  
8 A Yes, please.  
9 HEARING EXAMINER: Do you mind putting  
10 that on the thing?  
11 MS. LEE-CHO: I'd like to have --  
12 MR. CHEN: Thank you.  
13 MR. SLOAN: So in that case on page 43  
14 it was where the critical areas were that I was  
15 looking at. There was a request to -- for an  
16 enrollment increase and the argument was being  
17 made that the increase in enrollment -- I'm trying  
18 to quote so I don't misquote -- so the argument  
19 was that the increase in enrollment was a  
20 noninherent impact that was being requested, that  
21 there was nothing about a certain number of  
22 students that is inherent.  
23 And my analysis and understanding of  
24 the hearing examiner's report is that that is not  
25 the case, that in fact the increase in enrollment

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1 does not imply a noninherent impact.  
2 BY MS. LEE-CHO:  
3 Q Now, can you please expand on how you  
4 determined with the current modification what the  
5 inherent and noninherent impacts to be?  
6 A So this has been analyzed of course in  
7 every opinion on this project over the years and  
8 we'll look at some of those previous approvals  
9 later, I found that the best framework outlining  
10 the process that I typically take in the opinion  
11 from CBA-1174 in 2002 that approved --  
12 Q What was the letter of that amendment  
13 modification?  
14 A That was CBA-1174-C, but the same  
15 analysis was done in other amendments, too. This  
16 just laid out the steps that we take when we  
17 analyze these very clearly in a matter of, one, to  
18 establish the general neighborhood; two, to  
19 establish the physical and operational  
20 characteristics to set the standards for  
21 evaluation.  
22 So in this case, for example, a school,  
23 and the school has recreation facilities, it has  
24 recess times, it has night, evening programs,  
25 things like that. Then you determine the physical

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1 and operational characteristics of the proposed  
2 modifications, so you've got two sets of physical  
3 and operational characteristics, and the fourth  
4 step is to confirm that the -- that the proposed  
5 modifications are inherent in nature and under the  
6 standard evaluation set for the use general.  
7 So those are the steps that I take, and  
8 with regard to the general neighborhood  
9 importantly I'll just -- which we'll talk about  
10 later, I'll note that the standard is in regard to  
11 the overall area, not to individual properties.  
12 So we're looking at the community, the residential  
13 community as a whole, the neighborhood as  
14 described and defined by land use report and  
15 staff.  
16 So when we look at the physical and  
17 operational characteristics, evaluate it based on  
18 a school, a facility and the use like parks,  
19 community centers, recreation facilities, public  
20 schools, there are in -- as my basis of standard  
21 evaluation part of the fabric of a residential  
22 neighborhood. They are integral to these  
23 neighborhoods and communities and they're  
24 throughout the county and in mostly urban  
25 settings.

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1 So the first thing that I determined  
2 was that there are no noninherent characteristics  
3 proposed by the modifications, and this led me to  
4 the broader and much more detailed analysis of  
5 compatibility.  
6 Q And when you approach the compatibility  
7 analysis what -- how would you describe the nature  
8 and scope of that analysis?  
9 A So in most cases we have a great number  
10 of things that we look at. We look at things like  
11 building location, building size, the design of  
12 the building, architectural elements, landscape  
13 design, signage, all of those. This -- these  
14 proposed modifications do not change anything on  
15 site.  
16 They're not proposing to change  
17 anything physically with the site. They are all  
18 operational in character. So the existing  
19 facility, the locations of those facilities, the  
20 operations of those facilities, the site design,  
21 the layout have all been found to be compatible  
22 and it's my opinion that they remain so because  
23 we're not changing them. So the increase -- the  
24 only thing that I'm really focused on is the  
25 increase in the number of students and the number

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1 of onsite activities.  
2 So the question that I was focused on  
3 is whether those increases sufficiently change the  
4 character of the neighborhood such that the use  
5 would become incompatible or have an adverse  
6 impact on the character of the residential  
7 community. And as I found in my report the school  
8 will remain compatible, a compatible use despite  
9 the increase in traffic and more frequent  
10 activities allowed by the modification, and I'll  
11 expand on that in sections that we'll talk about a  
12 little more.  
13 Q Is it possible or reasonable to  
14 conclude that a proposed use is incompatible based  
15 on one particular property owner's perception of  
16 impact or even a group of community members  
17 perception of impact?  
18 A No, my reading of the previous  
19 approvals and other cases that I've been involved  
20 in is that the standard evaluation is that the use  
21 must not adversely affect or change the character  
22 of the surrounding residential community, and that  
23 is part of the findings that are being met, and  
24 that to the extent possible we need to analyze  
25 those impacts as objectively as we can.

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1 We use ordinances, regulations. The  
2 previous case history is to do so, for example,  
3 traffic standards, noise ordinances in previous  
4 cases to make our findings. We're not allowed to  
5 present or provide information in support of the  
6 case that really cannot be analyzed and opined  
7 upon by our agency peers to which we submit all  
8 these documents going through technical staff and  
9 the various agencies that we submit documents to,  
10 and so that's what we relied on largely for our  
11 presentation materials.  
12 Q Would you say it's relevant to consider  
13 whether an objecting property owner came to the  
14 proposed use? Is that -- where use has already  
15 been established is that a consideration?  
16 A I think it's only relevant in -- with  
17 respect to the fact that you could assume that  
18 those uses are going to be continued and can -- in  
19 modifications can be requested. A threshold  
20 question, though, will remain whether the use  
21 adversely impacts the character of the residential  
22 community, not any individual property.  
23 Q Okay. Did you also note in the  
24 school's approval history where planning staff  
25 concluded in a 2001 report that a then proposed

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1 secondary access drive was deemed to be a  
2 noninherent impact?  
3 **A Yes, that was the one place going over**  
4 **the history that I found a discussion of**  
5 **noninherent impacts, for the second access drive**  
6 **which was proposed at the northern end of the site**  
7 **where Mr. La Vay testified there are two parcels**  
8 **on the one -- on the exhibit that we're looking**  
9 **at.**  
10 Q Yeah, actually can I get that exhibit?  
11 Where did that go? It was 97. I lost it.  
12 MR. ROGERS: It's Exhibit 97A.  
13 MS. LEE-CHO: 97A?  
14 MR. SLOAN: Yep. So in Exhibit 97A two  
15 parcels were identified in --  
16 MS. LEE-CHO: Can we bring up 97A --  
17 oh, page 2?  
18 THE TECHNICIAN: What page are we on?  
19 MS. LEE-CHO: Page 2, PDF 2.  
20 MR. SLOAN: So in this exhibit they are  
21 the parcels to the north of the page, top right of  
22 the plan view. They're orange and blue. So the  
23 access drive was going to be -- was proposed  
24 there, and staff had a very long discussion of  
25 this, about the environmental impacts that were --

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1 that would take place to put that road in.  
2 They included removing some forest  
3 conservation easement, impacts to flood plain,  
4 steep slopes and other things. There was no  
5 proposed access, secondary access to Burdette  
6 Road. This was only in regard to this proposed  
7 northern access point.  
8 BY MS. LEE-CHO:  
9 Q In the current application is there  
10 secondary access that's being proposed?  
11 **A No, there are no changes in access**  
12 **proposed.**  
13 Q Would you agree with planning staff's  
14 characterization of that past proposed secondary  
15 access as a noninherent impact?  
16 **A Generally not. Many schools have two**  
17 **or more entrances. It's the access point itself**  
18 **or a second or third access are noninherent**  
19 **impacts. The --**  
20 Q Could you just clearly -- noninherent?  
21 **A Noninherent impacts. It was in this**  
22 **case --**  
23 HEARING EXAMINER: It's like not  
24 nonconforming that is also used in the 2004 zoning  
25 ordinance.

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1 MS. LEE-CHO: Which is why it got  
2 rewritten.  
3 MR. SLOAN: Got one thing done.  
4 (Laughter.)  
5 MR. SLOAN: It was the environmental  
6 impacts, the unusual circumstances of that  
7 proposal that led them to conclude that it was  
8 noninherent, a noninherent impact, but that was  
9 removed from the request anyways and never  
10 pursued. Those conservation easements remain and  
11 that will be protected in perpetuity.  
12 BY MS. LEE-CHO:  
13 Q Before we dive deeper into particular  
14 compatibility issues I wonder if we could just go  
15 back to your list of approval histories and touch  
16 upon a couple of notable items. I keep using this  
17 report, and the report is on Exhibit 79 and I'm  
18 looking at page 3 of the land use report. The  
19 previous approval summary begins on page 2, the  
20 listing. First when was this special exception  
21 first approved for the school?  
22 **A The special exception was approved in**  
23 **1961.**  
24 Q And when was the school opened?  
25 **A And the school opened in 1963.**

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1 Q And then it appears that in your  
2 chronology that later in 1987 the planning board  
3 approved the preliminary plan --  
4 **A Correct.**  
5 Q -- platting one lot totaling 54.6  
6 acres; is that correct?  
7 **A That's right.**  
8 Q You heard previous testimony from Mr.  
9 La Vay regarding the current amendment that has  
10 been filed?  
11 **A Correct.**  
12 Q What is your understanding as to why  
13 that was requested by planning staff?  
14 **A So my understanding is that planning**  
15 **staff wanted to clean up the record based on the**  
16 **preliminary plan condition that limited the number**  
17 **of school -- limited school enrollment despite the**  
18 **fact that the public facilities were viewed and**  
19 **analyzed and approved by the Board of Appeals but**  
20 **this will clean up that record, remove that**  
21 **condition, and no other changes were proposed.**  
22 Q And you mentioned the Board of Appeals  
23 findings on adequate public facilities. Was that  
24 done subsequent to the 1987 preliminary plan?  
25 **A It was done in each of the**

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<p>137</p> <p>1 <b>modifications to the enrollment, yes.</b> 2 Q And it's your understanding what 3 provision -- do you know the provision of the 2004 4 zoning ordinance that allowed the Board of Appeals 5 to conduct adequate public facilities analysis? 6 Am I putting you on the spot? I'm sorry. 7 <b>A Yeah, I have all the findings listed.</b> 8 Q We can let you check on that one. 9 Moving on to later in 2002 are you aware -- you 10 have here the Board of Appeals approved S-2503 11 allowing a summer camp for up to 645 children and 12 that occurred in 2002. What is your understanding 13 as to why the school applied for that special 14 exception at that time? 15 MR. CHEN: Objection. The decision 16 speaks for itself. 17 HEARING EXAMINER: I'll let it in and 18 give it the weight it deserves. Go ahead. 19 MR. CHEN: So he's going to be able to 20 testify on a 2002 opinion of the Board of Appeals 21 as to why they granted the opinion -- the special 22 exception? 23 MS. LEE-CHO: No, not why it was 24 granted, why it was applied for. 25 MR. CHEN: Why it was applied for?</p>	<p>139</p> <p>1 MR. SLOAN: And any hearings and 2 reports and recommendations. 3 HEARING EXAMINER: And this is on the 4 preliminary plan? 5 MS. LEE-CHO: No, the -- 6 MR. SLOAN: No, this is on the -- 7 MS. LEE-CHO: The summer camp. 8 MR. SLOAN: The way the summer camp was 9 broken out. 10 MR. CHEN: S-2503? 11 MS. LEE-CHO: Correct. 12 MR. SLOAN: S-2503. 13 HEARING EXAMINER: Don't talk from the 14 gallery. I don't mean to sit on anybody, but you 15 can shut that door. For the record individuals in 16 the gallery were asking that the door be closed. 17 What's your objection if it's in a report? 18 MR. CHEN: Then give us the report. 19 HEARING EXAMINER: I think it -- I 20 recall seeing it in the record, but the record is 21 so extensive I'm not sure after all this I didn't 22 -- 23 THE REPORTER: I'm sorry, Mr. Chen. I 24 think your microphone is on mute. 25 MR. CHEN: Oh. Don't get me wrong,</p>
<p>138</p> <p>1 MS. LEE-CHO: Yes. 2 MR. CHEN: So -- 3 HEARING EXAMINER: Well, do you know 4 why it was applied for first hand? 5 MR. SLOAN: First hand, no, I was not 6 there at the time the decision was made. 7 HEARING EXAMINER: How old were you in 8 -- don't answer that. You're under oath. 9 MS. LEE-CHO: I'll ask. 10 HEARING EXAMINER: No, don't, don't, 11 don't. 12 BY MS. LEE-CHO: 13 Q In your review of the history of this 14 application and the Holton-Arms approvals did you 15 review the history to an extent that it would 16 allow you to answer as to why that was applied for 17 in 2002? 18 <b>A I did read through the history and --</b> 19 HEARING EXAMINER: When you say the 20 history are you talking the application and the 21 staff report and all that? 22 MR. SLOAN: Primarily the report and 23 recommendations and the resolutions. 24 HEARING EXAMINER: The staff report and 25 recommendation and the resolution?</p>	<p>140</p> <p>1 Madam Examiner, but I don't think it should be 2 characterized. I think if it's in a report and 3 the witness reviewed the report certainly the 4 witness can go to the report and say here it is. 5 HEARING EXAMINER: Well, my 6 recollection is that it was in an opinion, the 7 staff -- the first staff report that had every 8 single opinion dumped all over the place. 9 MS. LEE-CHO: Well, let me ask a 10 different -- 11 HEARING EXAMINER: But -- but if you 12 can't, you know, is it important? 13 MS. LEE-CHO: It is. I would request a 14 little bit of leeway. 15 BY MS. LEE-CHO: 16 Q Mr. Sloan, when you undertook this case 17 and looked in terms of the special exception 18 modification being requested did it strike you as 19 unusual that the summer camp component was under a 20 separate special exception approval from the 21 private school special exception? 22 <b>A The short answer is yes, and to provide</b> 23 <b>a little more color on that before I had read</b> 24 <b>previous opinions I looked at the modifications, I</b> 25 <b>looked at the proposal for -- I looked at the code</b></p>

<p>141</p> <p>1 <b>and the definition. The definition of a private</b> 2 <b>educational institution allows these numerous</b> 3 <b>things as ancillary uses.</b> 4 HEARING EXAMINER: Wait. What does? 5 MR. SLOAN: The definition of a private 6 educational institution. As a code, the 2004 code 7 definition when I -- you know, at the time that it 8 was when -- I guess in 2014 given that the 9 definition included ancillary uses such as summer 10 camps I didn't understand why there was a separate 11 number because it could be approved under the 12 basic -- under the school use. 13 And so I began writing my report in 14 that vein, but then went into the case history 15 when I got to that part of my analysis and 16 research and going back through the cases found 17 the show cause hearings, the violations that were 18 discussed in those and the Board of Appeals 19 opinion that decreased enrollment did a number of 20 things. 21 So I had to kind of wade through that a 22 little bit just to understand why the special 23 exception was applied for and in discussions with 24 my team and the school the summer camp was in 25 operation and they did not want to lose a summer</p>	<p>143</p> <p>1 Q It's marked 41G and it starts at PDF 2 page 52. 3 A So that's -- that zoning text amendment 4 <b>02-01 from -- I think it was adopted April 2nd,</b> 5 <b>2002 which aligns with all the reading and</b> 6 <b>research I was doing on the 2002 resolutions and</b> 7 <b>hearings.</b> 8 <b>This had a lot of -- this zoning text</b> 9 <b>amendment was adopted to allow -- when we write</b> 10 <b>the definition of a private educational</b> 11 <b>institution to allow some grandfathering of</b> 12 <b>previous uses and in my words basically allow a</b> 13 <b>lot of schools that were -- had these uses to</b> 14 <b>catch up in code to compliance under the new</b> 15 <b>definition.</b> 16 <b>And like I said, my discussions with</b> 17 <b>the school and the team are via the ZTA wasn't</b> 18 <b>moving as fast as necessary to keep the school</b> 19 <b>summer program open so a special exception was</b> 20 <b>(inaudible) --</b> 21 HEARING EXAMINER: The special 22 exception was what? 23 MR. SLOAN: For the summer camp under a 24 child care facility was filed. 25 BY MS. LEE-CHO:</p>
<p>142</p> <p>1 of operations, so quickly filing a special 2 exception to keep it alive while the ZTA was 3 pending and finally approved it did allow the 4 summer camp use and it's been bifurcated every 5 since. 6 And so I think it all has to be looked 7 at holistically because it's very hard to tease 8 apart the impacts or traffic from one or the other 9 because there are a lot of overlapping schedules. 10 There's a lot of -- you know, kudos to whoever 11 manages all of that, but that's my overview and 12 understanding of the history of why that was 13 separated out and why I had to kind of shift gears 14 a little bit and bring this S-2503 in, although at 15 any time I think the school could have withdrawn 16 that and just filed any modification under the 17 1174 -- CBA-1174 application. 18 BY MS. LEE-CHO: 19 Q You mentioned a ZTA. Can you specify 20 for the record what ZTA you're referring to? 21 A <b>Yeah, there --</b> 22 Q And that I believe is in -- marked -- 23 A <b>April 22nd?</b> 24 Q -- 41G. 25 A <b>Oh, sorry. Yeah.</b></p>	<p>144</p> <p>1 Q So you mentioned a early 2001 board 2 show cause hearing. Did this zoning text 3 amendment directly respond to that process and the 4 findings that certainly ancillary uses were beyond 5 the scope of a private school? 6 MR. CHEN: Objection. 7 HEARING EXAMINER: Basis? 8 MR. CHEN: The question is was the 9 zoning ordinance -- and please, I'm not 10 intentionally misrepresenting. If I am I 11 apologize for that, but as I understand the 12 question is was the show cause proceeding related 13 to the ZTA. 14 MS. LEE-CHO: No, it wasn't. 15 MR. SLOAN: It was the reverse. 16 MS. LEE-CHO: It was the reverse, does 17 the ZTA respond to what occurred in the show 18 cause. 19 MR. CHEN: Fine. Same point. Now 20 we're going to what the county council was 21 intending to do when it adopted the text 22 amendment. 23 MS. LEE-CHO: Would you mind reading 24 the recitals of the ZTA? 25 MR. CHEN: That's a different question.</p>

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<p>145</p> <p>1 MS. LEE-CHO: Which --</p> <p>2 MR. CHEN: That's in evidence -- pardon</p> <p>3 me. If that is in evidence, and I believe it is,</p> <p>4 the county council's opinion is in evidence that</p> <p>5 speaks for itself.</p> <p>6 HEARING EXAMINER: I believe the ZTA is</p> <p>7 in evidence.</p> <p>8 MR. CHEN: Yep. We put it in.</p> <p>9 HEARING EXAMINER: Huh?</p> <p>10 MR. CHEN: We submitted it.</p> <p>11 HEARING EXAMINER: You did?</p> <p>12 MR. CHEN: Yeah.</p> <p>13 HEARING EXAMINER: Okay.</p> <p>14 MR. CHEN: It speaks for itself.</p> <p>15 MS. LEE-CHO: I believe it mentions --</p> <p>16 I thought it mentioned -- all right. I thought it</p> <p>17 actually mentioned the --</p> <p>18 MR. CHEN: It has an opinion. The</p> <p>19 legislative process --</p> <p>20 HEARING EXAMINER: Can anyone give me</p> <p>21 an exhibit number?</p> <p>22 MR. CHEN: I think it was --</p> <p>23 MS. LEE-CHO: 41G.</p> <p>24 MR. CHEN: It's 41G.</p> <p>25 HEARING EXAMINER: Oh, I see. Okay.</p>	<p>147</p> <p>1 MS. LEE-CHO: I moved on from that.</p> <p>2 HEARING EXAMINER: You're done with</p> <p>3 that. Okay. So we don't need to go there. So</p> <p>4 it's -- 59 -- I think it's G. It's in the special</p> <p>5 --</p> <p>6 MR. SLOAN: Yes.</p> <p>7 HEARING EXAMINER: -- exception section</p> <p>8 contains the authority -- correct me if I'm wrong,</p> <p>9 contains the authority --</p> <p>10 MS. LEE-CHO: Correct.</p> <p>11 HEARING EXAMINER: -- for the Board of</p> <p>12 Appeals to make the ATF -- okay. So --</p> <p>13 MS. LEE-CHO: Then I withdraw my</p> <p>14 question because --</p> <p>15 HEARING EXAMINER: Okay.</p> <p>16 MR. CHEN: It's actually two separate</p> <p>17 sections of the ZO.</p> <p>18 HEARING EXAMINER: Yes, you're correct.</p> <p>19 MR. CHEN: Thank you.</p> <p>20 HEARING EXAMINER: So I just -- okay.</p> <p>21 So we're clear where we are.</p> <p>22 MS. LEE-CHO: Okay.</p> <p>23 HEARING EXAMINER: Okay.</p> <p>24 BY MS. LEE-CHO:</p> <p>25 Q All right. Now, if we can turn to --</p>
<p>146</p> <p>1 MS. LEE-CHO: I'll just go back to the</p> <p>2 preliminary plan question. Did you find this --</p> <p>3 MR. SLOAN: Public facilities.</p> <p>4 MS. LEE-CHO: Oh. Can you share with</p> <p>5 him?</p> <p>6 MR. SLOAN: Okay. So in the --</p> <p>7 MR. CHEN: Excuse me. Is there a</p> <p>8 question posed?</p> <p>9 MS. LEE-CHO: Just going back to the</p> <p>10 1987 preliminary plan I am asking him on what</p> <p>11 basis does the Board of Appeals have the authority</p> <p>12 to conduct adequate public facilities in lieu of</p> <p>13 the planning board --</p> <p>14 HEARING EXAMINER: Wait. Now I'm</p> <p>15 getting -- that's in the code.</p> <p>16 MR. SLOAN: That is in the code.</p> <p>17 HEARING EXAMINER: In the 2004 zoning</p> <p>18 ordinance.</p> <p>19 MR. SLOAN: That's right.</p> <p>20 MS. LEE-CHO: Yes.</p> <p>21 MR. SLOAN: I just needed to bring the</p> <p>22 reference to the top of my head.</p> <p>23 HEARING EXAMINER: So I'm not sure what</p> <p>24 you -- you were trying to get at why the ZTA was</p> <p>25 adopted.</p>	<p>148</p> <p>1 back to your land use report. What would you say</p> <p>2 are the main issues of compatibility involved in</p> <p>3 this case?</p> <p>4 HEARING EXAMINER: Now, for the Zoom</p> <p>5 reporter the land use report is 79. Go ahead, Ms.</p> <p>6 Lee-Cho. I'm just having him bring it up.</p> <p>7 MR. SLOAN: The primary limits of</p> <p>8 compatibility that I focused on were traffic and</p> <p>9 noise.</p> <p>10 HEARING EXAMINER: What, traffic?</p> <p>11 MR. SLOAN: Traffic and noise.</p> <p>12 HEARING EXAMINER: I couldn't hear the</p> <p>13 last word. I don't know what it is.</p> <p>14 MR. SLOAN: That's ironic. Noise.</p> <p>15 HEARING EXAMINER: Oh, okay.</p> <p>16 MS. LEE-CHO: Noise.</p> <p>17 (Laughter.)</p> <p>18 BY MS. LEE-CHO:</p> <p>19 Q Let's take noise first. At the time of</p> <p>20 the land use report, in your preparation of the</p> <p>21 land use report in this case did you have the</p> <p>22 benefit of any noise measurements that had been</p> <p>23 taken of the school's outdoor activities?</p> <p>24 A I did not. The measurements were</p> <p>25 pending the resumption of certain sporting</p>

<p style="text-align: right;">149</p> <p><b>1 activities so that we could get accurate readings</b> <b>2 and review them that had not been started yet</b> <b>3 because it was winter.</b> 4 Q So then on what factors did you base 5 some of your conclusions and statements contained 6 in the report relative to potential noise impacts 7 and your conclusions of compatibility? 8 HEARING EXAMINER: Well, isn't is the 9 report -- if it was a report -- 10 MS. LEE-CHO: I'm referring to his 11 report. I'm asking -- 12 HEARING EXAMINER: Oh, I'm sorry. 13 MS. LEE-CHO: -- on what factors did he 14 rely if the measurements had not been taken 15 because he wrote the report before. 16 HEARING EXAMINER: Okay. I'm sorry. 17 MS. LEE-CHO: Okay. 18 HEARING EXAMINER: I'm trying. I've 19 had the hummus and avocados and -- okay. Go 20 ahead. 21 MR. CHEN: I'm going to have to object. 22 If this gentleman is being offered as an expert 23 witness to testify on noise he's not qualified to 24 do that. Now, in all candor to the examiner a 25 land planner can testify to many things, traffic,</p>	<p style="text-align: right;">151</p> <p>1 HEARING EXAMINER: I remember. 2 MS. LEE-CHO: -- buffer, and so I am 3 trying to elicit from my expert the factors that 4 he considered without noise measurements at the 5 time to conclude why -- because his report does 6 conclude that there is noise compatibility, so I'm 7 trying to get at what he had looked at at the time 8 of his writing of his report. 9 MR. CHEN: For that I'd have to object 10 if it's being offered as an expert. 11 HEARING EXAMINER: I agree. I mean, he 12 can say, he can -- on rebuttal he can -- and we 13 can hear from the noise expert and he can come 14 back -- 15 MS. LEE-CHO: Uh-huh. 16 HEARING EXAMINER: -- and say -- but he 17 really isn't a noise expert. As a land planner he 18 can come back in rebuttal and say, you know, based 19 on X, Y and Z's testimony. I don't even know why 20 it's necessary at this stage to be honest. 21 MR. CHEN: May I, Madam Examiner? Just 22 to expedite the process as I said I recognize that 23 under the case law this gentleman as a land 24 planner can testify to areas outside land 25 planning, but it's accepted as a layman's with no</p>
<p style="text-align: right;">150</p> <p>1 but the cases hold that that testimony is no 2 better than a lay witness testimony. 3 It's not expert to a land planner, so I 4 appreciate that any person, a lay person can 5 testify as to noise and I'm sure you're going to 6 hear about that, but unless this gentleman has 7 been recognized as an expert, as a noise expert 8 his testimony on this subject is no better than a 9 layman's. 10 MS. LEE-CHO: He is not testifying as 11 to his measurements. If I could be allowed to 12 complete my questions. 13 HEARING EXAMINER: Well, why don't you 14 proffer -- to avoid this -- 15 MS. LEE-CHO: Uh-huh. 16 HEARING EXAMINER: -- why don't you 17 proffer where you're going with this testimony. 18 MS. LEE-CHO: At the time of his 19 writing of his report -- 20 HEARING EXAMINER: Yes. 21 MS. LEE-CHO: -- and the report has 22 some statements and conclusions, observations 23 which the hearing examiner also referenced in the 24 questions about the topography and forested areas 25 --</p>	<p style="text-align: right;">152</p> <p>1 greater value than that given to a layman and in 2 that context, you know, I think the gentleman can 3 testify. 4 My problem with the proffer was that he 5 was being offered as an expert. Attorney Lee-Cho 6 used the word expert. She just said as a layman 7 it's admissible but as an expert it's not. 8 BY MS. LEE-CHO: 9 Q Since the writing of your report have 10 you been presented with information from the noise 11 consultant relative to the noise measurements that 12 have been taken at the property? <b>13 A I have. I have been given the data on</b> <b>14 the noise analysis taken at the property, and I</b> <b>15 actually participated in one of the measurements</b> <b>16 when they were out there recording so I could</b> <b>17 understand better.</b> 18 MS. LEE-CHO: My focus of testimony 19 with regard to Mr. Sloan is not the actual noise 20 measurement component of this. It is -- 21 HEARING EXAMINER: Just a minute, Mr. 22 Chen. Go ahead. 23 MS. LEE-CHO: It is the inherent 24 impact, and that is within his scope as a land 25 planner.</p>

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<p>153</p> <p>1 HEARING EXAMINER: Well, he can say -- 2 he can say noise is considered an inherent impact, 3 but he can't say whether the noise from this 4 facility is inherent or noninherent. 5 In other words, say they had 52 6 amplifiers out there playing, you know, hard rock 7 all day long. He can't opine on whether the noise 8 is -- he can opine that it is a component of 9 inherent analysis and that some noise may be 10 inherent, but he cannot opine on whether the noise 11 in this case is inherent or noninherent. He could 12 after we hear from -- I don't know who your expert 13 is, but I don't see any point in having a layman's 14 testimony. 15 MS. LEE-CHO: So we can bring him back 16 after -- 17 HEARING EXAMINER: Yeah. 18 MS. LEE-CHO: -- the -- and he can 19 based on the given testimony of the land use 20 expert opine -- 21 HEARING EXAMINER: Yeah, because what's 22 he going to base it on, vegetation? 23 MS. LEE-CHO: Then we'll have to -- 24 well, that was -- there was an element of that. I 25 mean, it's not a hundred percent, but there was an</p>	<p>155</p> <p>1 flexible and coming back, Mr. Sloan, because you 2 have to, but go ahead. 3 MS. LEE-CHO: All right. Then let's 4 just move on to you assisting us in understanding 5 what the existing and proposed operations are of 6 the school. Again we're testifying from Exhibit 7 79. 8 HEARING EXAMINER: And you're not -- 9 are you going to have someone from the school 10 testify to that? 11 MS. LEE-CHO: No, he's -- it's part of 12 his report. 13 HEARING EXAMINER: He's going to do it? 14 MS. LEE-CHO: Yes, it's presented in 15 his report. 16 HEARING EXAMINER: Okay. Okay. 17 MR. SLOAN: Do you want me to start? 18 BY MS. LEE-CHO: 19 Q So for the record, yeah, if you could 20 summarize the existing and proposed operations. 21 <b>A Okay. This is when we did get specific</b> 22 <b>questions about -- and the hearing examiner</b> 23 <b>provided basically a bulleted list of this is your</b> 24 <b>understanding of these elements. This is what is</b> 25 <b>and what isn't proposed and I think they're</b></p>
<p>154</p> <p>1 element of that that he looked at to reach his 2 conclusions in his report. 3 HEARING EXAMINER: Yeah, but I have had 4 -- I've been a hearing examiner too long. I've 5 had a lot of expert testimony on various ways to 6 mitigate noise, so I don't want to hear from him 7 as to how to mitigate -- what natural features 8 will mitigate noise. Okay. So he can come back 9 and he can say DBA levels of X, Y and Z are 10 noninherent or inherent, whatever, but I -- 11 MS. LEE-CHO: Then we can bring him 12 back after the testimony of Mr. Matthew Foster 13 because we do have that information. I was trying 14 to elicit it while I had him here. 15 HEARING EXAMINER: I understand. I 16 understand. 17 MS. LEE-CHO: But if -- 18 HEARING EXAMINER: I just really -- I 19 had a case once, I did, where noise was an issue 20 and the noise was down in a bowl and I discovered 21 a lot of information about noise. 22 MS. LEE-CHO: Then we can just bring 23 him back and so that'll be possibly Friday at this 24 point. Okay. 25 HEARING EXAMINER: Thank you for being</p>	<p>156</p> <p>1 <b>generally spot on. I'll run through quickly so</b> 2 <b>that we all understand as quickly as I can.</b> 3 <b>The school itself is a proposal to</b> 4 <b>increase the number of students from 670 to 870</b> 5 <b>plus 11 additional faculty and staff. This</b> 6 <b>operates of course Monday through Friday, fall</b> 7 <b>through spring. There's no change in the schedule</b> 8 <b>of hours, so arrival typically happens by 8:00</b> 9 <b>a.m. and departure is by 3:30 p.m. There is</b> 10 <b>allowed early arrival and late departure which</b> 11 <b>some students do take advantage of.</b> 12 <b>The daycare facility, it has 31</b> 13 <b>children, 10 staff, no changes. Again that</b> 14 <b>basically aligns with the schedule of the school,</b> 15 <b>but arrival can be -- and arrival can be -- it's</b> 16 <b>7:30 but departure can be up to 6:00 p.m. for some</b> 17 <b>of the daycare participants, but no change in that</b> 18 <b>is proposed.</b> 19 <b>The summer camp the proposed proposal</b> 20 <b>is to increase to 970 campers with 61 additional</b> 21 <b>employees of driving age and there are other</b> 22 <b>counselors that are not of driving age who will</b> 23 <b>also be engaged in the new programs.</b> 24 HEARING EXAMINER: May I interrupt you 25 there because I did have a question -- don't worry</p>

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<p>157</p> <p>1 -- it's not mean -- on the core school -- 2 MR. SLOAN: Yes. 3 HEARING EXAMINER: -- on the academic 4 portion. 5 MR. SLOAN: Yes. 6 HEARING EXAMINER: Are you adding 7 staff? 8 MR. SLOAN: Up to 11 staff -- 9 HEARING EXAMINER: Up to 11 staff. 10 MR. SLOAN: -- will be added. 11 HEARING EXAMINER: Because that should 12 have been in the staff -- okay. Up to 11 staff. 13 And then for the summer camps are you adding 61 14 staff; is that what I'm hearing? 15 MR. SLOAN: 61 staff of driving age. 16 There will be some other counselors that won't be 17 able to drive there, but I'm mainly looking at it 18 for its compatibility in terms of traffic. 19 HEARING EXAMINER: And how many total 20 staff are you adding, do you know, for the summer 21 school? 22 MR. SLOAN: Yes. 23 MS. LEE-CHO: It's 61. 24 HEARING EXAMINER: No, he said 61 that 25 are driving there.</p>	<p>159</p> <p>1 MR. SLOAN: That's right. 2 HEARING EXAMINER: -- driving -- 3 MR. SLOAN: That's right. 4 HEARING EXAMINER: -- of driving age, 5 and then for the school you're having an increase 6 to 870 students with up to 11 additional staff. 7 Okay. So we usually -- because of the traffic we 8 usually place a condition at a minimum on the 9 approval of how many students, how many staff. Do 10 you have a -- there was -- 11 MS. LEE-CHO: No. 12 HEARING EXAMINER: Okay. At the end of 13 the day how are the nondriving staff for the 14 summer camp getting there? 15 MR. SLOAN: I don't know. There could 16 be many different ways, bus, car pool or dropoff. 17 HEARING EXAMINER: Okay. That has been 18 nagging in my mind so now I'm clear on it. Okay. 19 Go ahead. 20 MR. SLOAN: Okay. So the fourth 21 element of propose for change is the third party 22 use. 23 BY MS. LEE-CHO: 24 Q Can you just go back to the summer camp 25 --</p>
<p>158</p> <p>1 MS. LEE-CHO: Oh. You mean nondriving 2 age? 3 HEARING EXAMINER: Yeah, that's -- 4 MR. SLOAN: Yes. 5 HEARING EXAMINER: He said there would 6 be some of driving age. 7 MS. EVINS: Junior counselors, right? 8 THE REPORTER: I'm sorry. You're going 9 to have to identify yourself for the record. 10 HEARING EXAMINER: Yeah. You have to. 11 MS. LEE-CHO: Right now? 12 HEARING EXAMINER: Because you spoke. 13 Yes. 14 MS. EVINS: Oh, I'm sorry. I'm Penny 15 Evins, head of school at Holton-Arms. 16 THE REPORTER: All right. Thank you. 17 MS. LEE-CHO: I just -- sorry. 18 HEARING EXAMINER: I know, but she does 19 since she spoke. 20 MS. LEE-CHO: I don't think it's -- 21 HEARING EXAMINER: So you're having 900 22 -- an increase of 970 students plus -- I mean an 23 increase -- I see someone saying no, but I 24 misspoke. An increase to 970 students plus an 25 additional 61 staff --</p>	<p>160</p> <p>1 <b>A The summer camp.</b> 2 Q -- because I think the hours -- 3 <b>A Oh, right.</b> 4 Q -- are staggered? 5 <b>A So summer camp there -- summer camp I</b> 6 <b>noted the number of campers and additional</b> 7 <b>employees of driving age. That is Monday through</b> 8 <b>Friday in the summer. Arrival is by 9:00 a.m.,</b> 9 <b>departure is by 3:00 p.m. with some early arrivals</b> 10 <b>at 7:30 in the morning and late departures up to</b> 11 <b>6:00 p.m., and these are --</b> 12 HEARING EXAMINER: Why -- okay. Why 13 are there early arrivals to the summer camp? Do 14 they go into daycare, is that what happens? 15 MR. SLOAN: So there is a pre -- I 16 don't know what it's called. Let me see. 17 MS. LEE-CHO: Before and after. 18 MR. SLOAN: It's like before and after 19 care almost, so -- 20 HEARING EXAMINER: Okay. 21 MR. SLOAN: But then also, too, within 22 that period of time between 9:00 and 3:00 there 23 are staggered -- 24 HEARING EXAMINER: Arrivals? 25 MR. SLOAN: -- arrivals so that some</p>

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<p>161</p> <p>1 students are only here for these couple of hours, 2 some for these, you know, students, campers, these 3 hours and these hours so that we not get everybody 4 all at once. 5 HEARING EXAMINER: Okay. Go ahead. 6 BY MS. LEE-CHO: 7 Q And moving on to proposed third party 8 usage -- 9 A <b>Yeah, so third party use is the</b> 10 <b>increase in programming that is proposed. This is</b> 11 <b>for the outdoor facilities that includes the turf</b> 12 <b>field, the track and field and the tennis courts.</b> 13 <b>They use these all seasons, so there's not a</b> 14 <b>seasonality to this one.</b> 15 HEARING EXAMINER: Wait. This is the 16 turf, the outdoor athletic fields? 17 MR. SLOAN: The turf field, the track 18 and field and the tennis courts are really what 19 they're focused on for use. 20 HEARING EXAMINER: I think there's 21 something for the pool in there, too, but -- 22 MR. SLOAN: The pool has a separate -- 23 MS. LEE-CHO: That's not outdoor. 24 MR. SLOAN: That's not an outdoor 25 facility.</p>	<p>163</p> <p>1 MS. LEE-CHO: Yes. 2 MR. SLOAN: Yes. 3 HEARING EXAMINER: I'm just trying to 4 clarify. It's a lot to absorb because they're 5 pushing all this -- I don't say that pejoratively 6 but there's a lot going on. They're pushing some 7 kind of rental into 15 hours a day for almost 7 8 days a week, so it's -- I just had these questions 9 on it. So those are the outdoor rentals, and when 10 do they start? 11 MR. SLOAN: So the trip timing is 12 limited by condition. They were not proposing to 13 change. These activities have to be outside of 14 peak hours of the school. 15 HEARING EXAMINER: And that's defined 16 in the traffic report -- 17 MR. SLOAN: It's -- 18 HEARING EXAMINER: -- the peak hours? 19 MR. SLOAN: It's actually designed -- 20 defined in -- I don't know which exhibit this is 21 -- Exhibit A to our revised statement of 22 justification. 23 MS. LEE-CHO: Statement of operations. 24 So that is 78A, Exhibit 78A. 25 HEARING EXAMINER: Okay. I know what</p>
<p>162</p> <p>1 HEARING EXAMINER: Okay. So you're 2 just talking outdoor? 3 MR. SLOAN: I'm talking very 4 specifically -- 5 HEARING EXAMINER: Okay. 6 MR. SLOAN: -- about each set of 7 programs. 8 BY MS. LEE-CHO: 9 Q And just can you just restate the three 10 -- the outdoor facilities we're talking about? 11 A <b>The third party use will be of the turf</b> 12 <b>field, the track and field and the tennis courts.</b> 13 Q So no softball field? 14 A <b>No.</b> 15 Q Thank you. 16 A <b>As I noted this will be during all</b> 17 <b>seasons, and one request is to change the number</b> 18 <b>of groups allowed at any one time from 2 to 3 and</b> 19 <b>the total number of participants on campus at any</b> 20 <b>one time from 60 to 120.</b> 21 HEARING EXAMINER: Okay. So you're 22 talking third party? 23 MR. SLOAN: Third party. 24 HEARING EXAMINER: These are going to 25 be rentals?</p>	<p>164</p> <p>1 you're talking about. Okay. 2 MR. SLOAN: Yeah. 3 MS. LEE-CHO: There's -- could you read 4 the footnote? 5 MR. SLOAN: So peak hours are 7:15 to 6 8:15 a.m. and 3:15 to 4:30 p.m. Monday through 7 Friday. 8 HEARING EXAMINER: Yeah, I think those 9 are the hours in the -- well, there may be a 10 15-minute -- okay. 11 MR. SLOAN: There is a 15-minute 12 difference from the traffic -- 13 HEARING EXAMINER: Yeah. 14 MR. SLOAN: -- on the TR, yes, you're 15 right. So the -- so the trips, arrival and 16 departure for those have to be outside of those 17 peak hours which is after 6:00 p.m. on weekdays is 18 when they're wrapping up. The current number of 19 sessions allowed are 48 per year. 20 The proposed number of sessions allowed 21 would be twice a week on weekdays and on 22 Saturdays, Sunday afternoons only during the 23 school year, and these third party uses, 24 specifically of all that I read through require 25 advance notice to the neighborhood liaison</p>

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<p>165</p> <p>1 committee and we're not proposing -- 2 HEARING EXAMINER: Is there a 3 neighborhood liaison committee? I didn't think 4 there -- I heard there wasn't at one of the 5 hearings. 6 MS. LEE-CHO: Would you like me to 7 answer? 8 HEARING EXAMINER: Yeah, I do. 9 MS. LEE-CHO: The school has -- 10 HEARING EXAMINER: I'm just trying to 11 figure this out. 12 MS. LEE-CHO: No, they -- under 13 previous approvals they're required to convene and 14 have had neighborhood meetings. The attendance 15 has been waning in recent years. 16 HEARING EXAMINER: When was the last 17 meeting? 18 MS. LEE-CHO: I would not know. 19 MS. EVINS: I'm Penny Evins. 20 HEARING EXAMINER: Yes. Well, you're 21 not under oath yet. You don't have to answer. 22 MS. LEE-CHO: So yeah, we can answer 23 later. 24 HEARING EXAMINER: Yeah. 25 MS. LEE-CHO: All right.</p>	<p>167</p> <p>1 HEARING EXAMINER: No, I get that. I'm 2 just -- I've been trying to get the concrete 3 parameters of what this is. So the HANA program, 4 though -- well, I guess we'll get to who controls 5 all this later, but a group -- if two tennis 6 players want to come and that's a group does that 7 count towards your 48 sessions? 8 MR. SLOAN: Well, the sessions are now 9 not by a total -- a said number but twice a week 10 on weekdays, every Saturday and Sundays during the 11 summer, so -- 12 HEARING EXAMINER: But what was the 48? 13 I thought you had -- oh, you're getting rid of the 14 48? 15 MR. SLOAN: Correct. 16 HEARING EXAMINER: I will get this 17 straight. I have studied this. 18 MR. SLOAN: I've tried 10 different -- 19 HEARING EXAMINER: So you're getting 20 rid of the 48. You're going to two weekdays on 21 the shaded chart. 22 MR. SLOAN: Yeah. 23 HEARING EXAMINER: And then -- 24 MR. SLOAN: Saturdays. 25 HEARING EXAMINER: -- Saturday and then</p>
<p>166</p> <p>1 HEARING EXAMINER: Wait, wait, wait. 2 So we've got -- now, who are groups? You say 3 limited to two groups or three groups. I can't 4 remember what you said. 5 MR. SLOAN: Limited to three groups is 6 the proposed. 7 HEARING EXAMINER: And what's a group? 8 Like if I have two teams that want to use the 9 soccer field is that one group or is that two 10 groups? 11 MR. SLOAN: In my -- my understanding 12 was that it would be -- both teams would be part 13 of the same group using that one field. 14 HEARING EXAMINER: Okay. 15 MR. SLOAN: But there has been outreach 16 also through the HANA program which is to -- 17 HEARING EXAMINER: I saw that there. 18 MR. SLOAN: -- which would allow 19 neighbors to, for example, use the tennis courts, 20 and so -- 21 HEARING EXAMINER: Well, are they a 22 group? 23 MR. SLOAN: That's how I look at that, 24 yes. In all these cases you need at least two 25 teams I think to make any of these things work.</p>	<p>168</p> <p>1 there was something Sunday? 2 MR. SLOAN: Sunday during the summer. 3 HEARING EXAMINER: Yeah. Okay. But 4 you're still staying with the three groups at one 5 time? 6 MR. SLOAN: Correct. 7 HEARING EXAMINER: Okay. 8 MS. LEE-CHO: One with the groups 9 identified. 10 BY MS. LEE-CHO: 11 Q So Mr. Sloan is looking at the 12 statement of operations, Exhibit 78, which has 13 more information about the groups -- <b>14 A Yeah, this --</b> 15 Q -- in question. <b>16 A I definitely did not commit this to</b> <b>17 memory. The potential users are listed in this --</b> <b>18 which exhibit is it?</b> 19 Q 78. <b>20 A 78, the Wolves Field Hockey, M&amp;D</b> <b>21 Lacrosse Club, Maryland Bobcat Soccer and Bethesda</b> <b>22 Soccer.</b> 23 HEARING EXAMINER: So they're all one 24 group? 25 MR. SLOAN: So they're individual</p>

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<p>169</p> <p>1 groups. 2 HEARING EXAMINER: So if they have an 3 intermural or -- 4 MR. CHEN: He said they're separate 5 groups. 6 MS. LEE-CHO: They're individual -- 7 they're separate groups. 8 MR. SLOAN: Yeah, they're separate. 9 HEARING EXAMINER: Okay. 10 MR. SLOAN: Each one of those is a 11 group. 12 HEARING EXAMINER: Maybe I need more to 13 eat. Okay. Go ahead. 14 MR. SLOAN: So maybe instead of groups 15 they could say organizations probably need to -- 16 HEARING EXAMINER: Well, not if you're 17 using the HANA program. 18 MR. SLOAN: Except we need to clarify 19 that. Yes. 20 HEARING EXAMINER: So -- okay. Now I'm 21 clearer on what you're saying. 22 MS. LEE-CHO: But we will note your 23 questions and have more testimony to help 24 corroborate. 25 HEARING EXAMINER: That's fine.</p>	<p>171</p> <p>1 <b>A Case Number CBA-1174-D.</b> 2 Q So this was part of that approval? 3 <b>A This was part of that approval.</b> 4 Q So the last column was what was 5 approved under that case? 6 <b>A Right, that was the conditions of</b> 7 <b>approval for each of these different ancillary</b> 8 <b>uses.</b> 9 Q And this, I believe Exhibit A, the red 10 -- do you have the red line version? 11 MR. ROGERS: He does. 12 BY MS. LEE-CHO: 13 Q Okay. So this -- it's been red lined. 14 What does a red line indicate? 15 <b>A So the red line indicates proposed</b> 16 <b>changes.</b> 17 Q Proposed changes to what was approved 18 under? 19 <b>A To the conditions of approval for each</b> 20 <b>of these ancillary uses, yes.</b> 21 Q Okay. So if you could just run through 22 a summary of the changes. 23 <b>A I have to put it in order. Okay. So</b> 24 <b>for the -- what we're now retitling enrichment and</b> 25 <b>preparatory classes, this is things like SAT prep</b></p>
<p>170</p> <p>1 BY MS. LEE-CHO: 2 Q So if you could, let's go back to minor 3 changes to other programs. 4 <b>A Sure. So there --</b> 5 MS. LEE-CHO: And if I might just 6 reference the hearing examiner to the Exhibit A 7 attachment to the statement of operations in the 8 tables. 9 HEARING EXAMINER: Okay. Is -- where 10 -- which exhibit is the -- 11 MS. LEE-CHO: 78A. 12 HEARING EXAMINER: Oh, I see it. I see 13 it. Exhibit A. 14 MR. SLOAN: Yep. 15 HEARING EXAMINER: Okay. 16 BY MS. LEE-CHO: 17 Q So just to kind of describe this 18 exhibit what is it representing with the last 19 column? 20 <b>A So last column are the conditions for</b> 21 <b>continuation, and this was all a part of that ZTA</b> 22 <b>and the updates to allowances.</b> 23 Q I think there's a case -- what case -- 24 <b>A Oh.</b> 25 Q -- was this adopted under?</p>	<p>172</p> <p>1 <b>and things like that.</b> 2 HEARING EXAMINER: What page are you on 3 because I was looking for that and I don't see 4 that on 78, Exhibit A? 5 MR. ROGERS: If you're in 78A you 6 should start on -- 7 HEARING EXAMINER: Oh. 8 MR. ROGERS: -- PDF page 9. 9 MS. LEE-CHO: It's in 78. 10 HEARING EXAMINER: Okay. 11 MR. SLOAN: It was -- 12 HEARING EXAMINER: Where does it say 13 preparatory classes? 14 MR. SLOAN: Just at the top. So it 15 says college entrance examination, preparatory 16 classes. We're changing that to a more general 17 term of -- 18 HEARING EXAMINER: I'm sorry. I will 19 get this. Okay. Go ahead. 20 MR. SLOAN: So I'll just run through 21 the changes. Changing this from 4 to 6 sessions 22 per year, no change in the number of students per 23 session, removing a preference for 20817 zip code 24 residents, allowing the Saturday hours to be 25 extended until 5:00 p.m. instead of 1:00 p.m. and</p>

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<p>173</p> <p>1 removing the note about the SAT exams at the                  2 bottom.                  3 HEARING EXAMINER: So you're not going                  4 to give SAT exams?                  5 MR. SLOAN: It could, but it's not                  6 separate from what would fit in those other                  7 parameters.                  8 HEARING EXAMINER: So you are going to                  9 give SAT exams?                  10 MR. SLOAN: Those could be given, yes.                  11 HEARING EXAMINER: Okay. Keep going.                  12 MR. SLOAN: So what was called the                  13 center of the arts now is just a little more                  14 general about auxiliary programming for music                  15 theater and sports clinics.                  16 So running through the conditions, no                  17 change in the openings or the number of                  18 participants on campus at any one time, removal of                  19 the preference for families in the 20817 zip code,                  20 removal of the requirement for 50 percent Holton                  21 participation, extension of the Saturday hours                  22 from 9:00 a.m. to noon to 9:00 a.m. to 5:00 p.m.,                  23 and then note that the Sundays may be used for                  24 makeup sessions.                  25 HEARING EXAMINER: Okay.</p>	<p>175</p> <p>1 BY MS. LEE-CHO:                  2 Q Yes. All right. Do you want to move                  3 on?                  4 A <b>The artistic performances, there are</b>                  5 <b>two venues on site. The Lewis venue, it has up to</b>                  6 <b>12 events annually, no change proposed. A Black</b>                  7 <b>Box has up to 6 events annually and no change.</b>                  8 HEARING EXAMINER: Okay. What is the                  9 Lewis and the Black Box, are they different rooms,                  10 different venues?                  11 MR. SLOAN: They are different venues                  12 on campus.                  13 HEARING EXAMINER: Okay.                  14 MR. SLOAN: There are really no changes                  15 proposed to this except the cost sharing basis                  16 requirement, so they all have limited seating                  17 capacity, the hours stipulated, outside of peak                  18 hours for both the school and River Road.                  19 HEARING EXAMINER: Okay.                  20 MR. SLOAN: Those all remain. The                  21 indoor recreation facilities, there are two.                  22 There's the gyms and then there's the pool. For                  23 the gyms the only requested change is remove the                  24 preference for 20817 zip code residents and the                  25 removal of the cost sharing basis, the arrivals,</p>
<p>174</p> <p>1 MS. LEE-CHO: And did you mention the                  2 no change to nonpeak hours?                  3 MR. SLOAN: Yeah, no change to nonpeak                  4 hour arrivals. I'm sorry. I was only focused on                  5 the changes, and no changes to the Monday through                  6 Friday time periods.                  7 HEARING EXAMINER: But the Holton                  8 enrollees can come during --                  9 MR. SLOAN: They can. It's just not a                  10 required 50 percent.                  11 MS. LEE-CHO: Because they're already                  12 there? I mean, I guess I don't understand the                  13 question.                  14 HEARING EXAMINER: Yeah.                  15 MS. LEE-CHO: Oh. But they're not                  16 coming.                  17 MR. SLOAN: Right, they're already                  18 there. There's just not a requirement that                  19 there's a 50 percent --                  20 HEARING EXAMINER: I guess I have to                  21 put together -- what I don't have in this chart is                  22 the hours that you're going to have all these, so                  23 maybe it is there, I just didn't see it. So go                  24 ahead. There it is. 2:15 to 8:30.                  25 MR. SLOAN: 2:15 to 8:30.</p>	<p>176</p> <p>1 departures outside of peak hours, the no more                  2 frequently than 8 weekday nights per month and 8                  3 (sic) weekends per month and no more than 60                  4 participants on campus at any one time, those                  5 three elements all remain unchanged.                  6 HEARING EXAMINER: That says swimmers.                  7 Is it --                  8 MR. SLOAN: Yeah.                  9 HEARING EXAMINER: -- all the gyms or                  10 just the swimming pool?                  11 MR. SLOAN: No, this is -- this says 60                  12 participants. The next one is the swimmers.                  13 HEARING EXAMINER: Oh, okay.                  14 MS. LEE-CHO: So you were talking about                  15 the indoor gym facility?                  16 MR. SLOAN: I was talking about the                  17 indoor gyms.                  18 HEARING EXAMINER: Okay.                  19 MR. SLOAN: So the indoor rec facility                  20 swimming pool, there was a request to change to 60                  21 swimmers per session rather than 40, no change in                  22 the timing, weekdays 1 morning and 2 evening                  23 sessions. The hours remain 5:00 to 7:00 Monday                  24 through Friday, 5:00 to 7:00 a.m. Monday through                  25 Friday, 5:00 to 9:00 p.m. Monday through Friday</p>

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<p style="text-align: right;">177</p> <p>1 outside of peak hours with the proposed removal of 2 a little bit earlier Friday at 4 o'clock to 9:00 3 p.m., so we're just switching everybody Monday 4 through Friday 5:00 to 9:00 p.m. 5 HEARING EXAMINER: Are there health 6 department regs on the maximum number of swimmers 7 per pool? 8 MR. SLOAN: Yes. 9 HEARING EXAMINER: So I assume 60 meets 10 that? 11 MR. SLOAN: Yes. 12 HEARING EXAMINER: Do you know that? 13 MR. SLOAN: No. 14 HEARING EXAMINER: I had a feeling. 15 (Laughter.) 16 HEARING EXAMINER: Okay. Just -- 17 MS. LEE-CHO: We can put a pin on that 18 because the answer is -- there is an answer, but 19 Mr. Sloan doesn't know it. 20 HEARING EXAMINER: Okay. Go ahead. 21 MR. SLOAN: Yeah, like fire code 22 there's certain people allowed, a number in a 23 room, and yeah, I'll let someone else speak to 24 that. On Saturday there's a requested change from 25 7:00 a.m. to 5:00 p.m. rather than noon, and then</p>	<p style="text-align: right;">179</p> <p>1 HEARING EXAMINER: This was the 2 original structure? 3 MS. LEE-CHO: Yes. 4 MR. SLOAN: The original structure. 5 HEARING EXAMINER: I understand. Okay. 6 Go ahead. 7 MR. SLOAN: We're simplifying it. Then 8 we're at the third party use which we've covered 9 earlier. 10 HEARING EXAMINER: And that's the -- 11 okay. Okay. 12 MR. SLOAN: So it was under 13 miscellaneous uses. We're just being very clear 14 that this is about the three facilities outside 15 for third party use. 16 HEARING EXAMINER: Is there anything 17 different in here? Why did you change from 2 18 groups to 3 groups? 19 MS. LEE-CHO: I believe he testified to 20 that before when we were talking about the outdoor 21 facilities. 22 MR. SLOAN: Yeah, we looked up the 23 individual groups that may be participating and 24 there may be up to 3 instead of 2. 25 HEARING EXAMINER: Okay. Now, are you</p>
<p style="text-align: right;">178</p> <p>1 Sunday stays the same and a request to remove the 2 cost sharing basis. 3 For the charitable events that use the 4 pool or the gym no change in the number of events 5 which is 3 events per year, no change in the 6 number of participants per -- in the gym which is 7 60. No more -- the change requested is to change 8 40 to 60 for people allowed in the pool and to 9 remove the cost sharing basis. 10 HEARING EXAMINER: Why do you 11 differentiate charitable events from just regular 12 use of the pool? 13 MR. SLOAN: I don't know. I mean -- 14 HEARING EXAMINER: Okay. 15 MR. SLOAN: -- I've never seen these 16 sets of conditions on uses before anywhere, so 17 just try and understand that. 18 HEARING EXAMINER: I just know the 19 dramas we've had over what's a charitable use and 20 what isn't a charitable use, and I'm envisioning 21 drama but I don't understand if there's a reason 22 to differentiate it. I don't see why you would. 23 Go ahead. 24 MS. LEE-CHO: This was just originally 25 part of --</p>	<p style="text-align: right;">180</p> <p>1 or someone else going to testify about who manages 2 all this? 3 MS. LEE-CHO: We'll have that 4 separately -- 5 MR. SLOAN: I am not. 6 MS. LEE-CHO: -- from the chief of 7 operating. 8 HEARING EXAMINER: Okay. 9 MS. LEE-CHO: Chief operating officer. 10 So moving on in your land use report -- 11 HEARING EXAMINER: Which is 79? 12 MS. LEE-CHO: Yes. 13 BY MS. LEE-CHO: 14 Q Let's just begin on page 6 with your 15 property description. Is this consistent with 16 what we heard before from Mr. La Vay? 17 A Yes, yes. 18 HEARING EXAMINER: Can you give a page 19 number, please? 20 MR. SLOAN: Page 6. 21 HEARING EXAMINER: Okay. That's 22 helpful. 23 MR. SLOAN: So Mr. La Vay described the 24 property, the acreage and all of its elements. I 25 won't repeat them here, but --</p>

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<p>181</p> <p>1 HEARING EXAMINER: Okay. I'm going to 2 interrupt because I can see a gentleman just 3 entered the room, and I'm guessing is that the 4 person you wanted to interrupt his testimony for? 5 MS. LEE-CHO: Yes, yes. 6 HEARING EXAMINER: Do you want to try 7 -- 8 MS. LEE-CHO: So this might be a good 9 time -- 10 HEARING EXAMINER: -- and finish or -- 11 MS. LEE-CHO: Well, why don't we break 12 here -- 13 HEARING EXAMINER: Okay. 14 MS. LEE-CHO: -- because this actually 15 is a perfect timing that he arrived before we get 16 into more of the land use report. If I could just 17 have five minutes -- 18 HEARING EXAMINER: Sure. 19 MS. LEE-CHO: -- to confer that would 20 be good. 21 HEARING EXAMINER: Well, let me give 22 you seven. 23 MS. LEE-CHO: Okay. 24 HEARING EXAMINER: And we'll be back at 25 1:15.</p>	<p>183</p> <p>1 Q I just want to start by just asking 2 what is your professional background and 3 experience? 4 <b>A I've been CEOs of many companies, 5 several of them local here. CEO of Sunrise Senior 6 Living, the Village Corporation, the mall company, 7 and many others over the years. I'm also 8 currently on the board of the Carlyle Group.</b> 9 Q And are you -- what is your title at 10 the school, what is your role at Holton? 11 <b>A I'm president of the board.</b> 12 Q And how long have you been on the 13 board? 14 <b>A This is my eighth year, my eighth and 15 final year.</b> 16 Q Yes. And you've had a daughter at the 17 school? 18 <b>A Yes, Hannah graduated last year. She 19 was at the school for 10 years.</b> 20 Q Wonderful. What are the goals that the 21 board and the school administration is trying to 22 achieve through this current application, and why 23 has it become necessary from your perspective? 24 <b>A Well, schools like Holton, if you drive 25 by from the outside appear to be prosperous, but</b></p>
<p>182</p> <p>1 MS. LEE-CHO: That's very specific. 2 MR. CHEN: 2:00. 3 HEARING EXAMINER: 2:00, is it 2:00? 4 Yes, you're right. 5 (Whereupon, a brief recess was taken in 6 the proceedings.) 7 MR. ORDAN: Good afternoon. 8 HEARING EXAMINER: Thank you. Please 9 raise your right hand. Do you solemnly affirm 10 under penalties of perjury that the statements you 11 are about to make are the truth, the whole truth, 12 and nothing but the truth? 13 MR. ORDAN: Yes. 14 HEARING EXAMINER: Okay. Please state 15 your name and business address for the record. 16 MR. ORDAN: Mark Ordan, and my business 17 address is in Sunrise, Florida. 18 HEARING EXAMINER: You have to do a 19 little better than Sunrise, Florida. 20 MR. ORDAN: Of course. 1301 Concord 21 Terrace, Sunrise, Florida, 33323. 22 HEARING EXAMINER: There we go. Okay. 23 Go ahead, Ms. Lee-Cho. 24 DIRECT EXAMINATION 25 BY MS. LEE-CHO:</p>	<p>184</p> <p>1 <b>if you look inside it's a very different story. 2 To be able to make ends meet in schools like 3 Holton-Arms it's a very difficult task. 4 The costs every year go up well beyond, 5 especially in an area like this, go well beyond 6 inflation and there's no way that increases in 7 tuition can cover that. So schools like Holton 8 end up in a -- could easily end up in a financial 9 --</b> 10 Q You want to speak to us, sorry. 11 <b>A I don't do this often. Can easily end 12 up in a financial bind, and that's the situation 13 that we've been in and we saw it, you know, 14 brewing over time and it's been exacerbated by the 15 economics of this area, of the Bethesda/Montgomery 16 County area.</b> 17 Q And the three components -- 18 HEARING EXAMINER: Because of the 19 layoffs from the federal government you mean or -- 20 MR. ORDAN: No, it's a very high priced 21 area and -- 22 HEARING EXAMINER: Oh, I see. I see. 23 I understand. 24 MR. ORDAN: Wage pressure is very high. 25 Holton is nothing without its extraordinary</p>

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1 faculty, and one could again if you don't know the  
2 inner workings of the school assume well, you  
3 could just keep raising tuition.  
4 A very major part of the school is our  
5 financial aid, so we welcome many people who could  
6 not pay that tuition so you could turn the school  
7 into a school for rich kids which would be, you  
8 know, devastating to the mission of the school.  
9 HEARING EXAMINER: Okay. Thanks for  
10 clarifying.  
11 MR. ORDAN: Sure.  
12 BY MS. LEE-CHO:  
13 Q And what is that mission of the school?  
14 A **The mission is to educate young women**  
15 **in a really nurturing environment and the motto of**  
16 **the school is to find your way or make your way,**  
17 **and I think as a father of three daughters I think**  
18 **there's really no better thing for young women to**  
19 **aspire to and it's not easy in this world, and I**  
20 **think that means not just a great education but**  
21 **really feeling like you're part of the community.**  
22 I will say my role on the board as  
23 president of the board, I was a parent for years  
24 but I will also say I've been a significant donor  
25 to the school and every penny that I've donated to

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1 the school has been for financial need, so those  
2 of us who really appreciate what's special about  
3 Holton-Arms want it to be accessible for everybody  
4 and we're proud of the fact that it is.  
5 Q I'm sorry. You probably already said,  
6 but you said you've been on the board for how  
7 long?  
8 A **Eight years.**  
9 Q Eight years. And in the time that  
10 you've been serving on the board you've been aware  
11 of the history of the Holton-Arms School with  
12 regard to its special exception approvals --  
13 A **Yes.**  
14 Q -- I would assume? What has prevented  
15 the school from proceeding until now --  
16 A **Well --**  
17 Q -- if the need was so great?  
18 A **Well, long before I arrived the school**  
19 **agreed to constraints many years ago which I think**  
20 **may have been suitable at the time, but it**  
21 **surprised me that the school locked itself for**  
22 **that long a time.**  
23 You could look at any organization in a  
24 snapshot of time and say these constraints seem  
25 appropriate but over time they become difficult,

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1 **so I think during the time that I was in the board**  
2 **we all regretted the fact that people had kind of**  
3 **boxed us in the way we had -- the way they had.**  
4 Q And you've been apprised of the show  
5 cause history of the school that --  
6 A **Yes.**  
7 Q -- was triggered?  
8 A **Yeah.**  
9 Q What triggered all of that?  
10 A **Well, I think what happened was in the**  
11 **early 2000s so, you know, it was a long time ago**  
12 **but I think, you know, George W. Bush was**  
13 **president at the time. This was a long time ago**  
14 **and I think that there were changes that the**  
15 **school had made.**  
16 There were questions about a second  
17 access to the school but this is, you know, way in  
18 the past so I think to those of us on the board we  
19 said, you know, we should step back and take a  
20 fresh look at this. We're a very good neighbor,  
21 we're very responsible about what we do.  
22 There really is a need to make a  
23 change. I'm a neighbor so I'm very sensitive to  
24 what -- you know, how the school sits in the  
25 middle of the neighborhood. One of the first

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1 things we did when we thought about this was we  
2 said the last thing we're going to do is ask for a  
3 second access or anything like that.  
4 We just simply wanted to do something  
5 which we felt would have minimal impact on the  
6 neighborhood, but be a clear positive for the  
7 school.  
8 Q You've mentioned a couple of times that  
9 the school was locked down or locked in and I --  
10 it's kind of a curious terminology. Was that --  
11 somehow in subsequent years was the school  
12 vindicated, did they sort of come out of it?  
13 A **Well, I think the school's position was**  
14 **vindicated and I think that the school has been,**  
15 **you know, very responsible. I know that over time**  
16 **if ever we exceeded the cap that was imposed on**  
17 **the school we were very transparent about it. We**  
18 **-- you know, there's no deviousness at**  
19 **Holton-Arms. It's a school.**  
20 Q But did that experience damage or how  
21 did it affect your strategic planning or efforts?  
22 A **Well, it makes it very difficult to**  
23 **have what I would say is an artificial constraint,**  
24 **a specific number of constraint. It is very**  
25 **difficult. You have wages across the board**

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1 increasing every year.  
2 As I've said before, we raise tuition  
3 every year and you look at what other schools are  
4 doing, and again you have an enormous need to give  
5 -- to provide financial aid. Just the upkeep of  
6 the campus is enormously expensive.  
7 When people look at an institution and  
8 they look at the endowment and say oh, they got  
9 plenty of money, well, think about what it costs  
10 to maintain it and to get through difficult times.  
11 And again in this area the wage pressure is  
12 enormous for -- to be able to attract the top  
13 faculty and pay them competitively in a market  
14 like this is extremely difficult.  
15 Q You mentioned --  
16 A I would say to anybody that would look  
17 at the financials of a school like Holton-Arms  
18 they would say something has to give.  
19 Q And you mentioned the second access.  
20 Did the school end up having to agree to covenants  
21 on certain parcels that they owned that at the  
22 time was --  
23 A Yes.  
24 Q -- considered for the second access?  
25 What -- to prohibit any future use --

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1 A Right.  
2 Q -- in that nature? Why did the school  
3 agree to such covenants?  
4 A You know, I think --  
5 MR. CHEN: Objection. They were --  
6 it's 20 years ago. The gentleman said he's been  
7 there for 8 years.  
8 MS. LEE-CHO: But as the president of  
9 the board he's aware of the reasoning of the  
10 school's agreement.  
11 HEARING EXAMINER: Well, I think my  
12 question --  
13 MR. CHEN: Foundation.  
14 HEARING EXAMINER: Just a second. Why  
15 are we going there, what do you want to show with  
16 regard to this application and whether it meets  
17 the zoning ordinance requirements?  
18 MS. LEE-CHO: There were subsequent  
19 meetings with members, parties of record on this  
20 topic and the issue of additional covenants being  
21 requested for properties. We're trying to address  
22 those.  
23 MR. CHEN: Okay.  
24 HEARING EXAMINER: I understand, but --  
25 I do get that, but covenants have nothing to do

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1 with zoning.  
2 MS. LEE-CHO: Uh-huh.  
3 HEARING EXAMINER: If it's a matter of  
4 what caused the distrust if there is distrust  
5 between the parties, and I don't know if there is,  
6 but that's sort of beyond what I'm going to  
7 consider, and I appreciate you taking the time to  
8 come here and speak but I don't want to get into  
9 covenants that have nothing to do with the  
10 standards of approval.  
11 MS. LEE-CHO: Okay.  
12 HEARING EXAMINER: I do get -- I do  
13 understand what you're saying. I think that you  
14 keep referring to a constraint. I take that to be  
15 the enrollment cap is the constraint.  
16 MR. ORDAN: The enrollment cap and --  
17 HEARING EXAMINER: Is the constraint  
18 that doesn't allow you to address the financial  
19 realities of today if I can paraphrase what you've  
20 been saying.  
21 MR. ORDAN: Yeah. No, that's --  
22 HEARING EXAMINER: I get that.  
23 MR. ORDAN: That's precisely the point.  
24 MR. CHEN: Just for the record, Madam  
25 Examiner, I've not objected to any --

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1 HEARING EXAMINER: Is this about  
2 covenants?  
3 MR. CHEN: No.  
4 HEARING EXAMINER: Oh.  
5 MR. CHEN: You have allowed testimony  
6 relative to the properties and I've not objected  
7 and you've allowed it. My only concern is the  
8 gentleman might get into something that he doesn't  
9 have a first-hand basis. That's the only concern  
10 I have going.  
11 HEARING EXAMINER: Well, that's fine.  
12 I prefer not to get into it because we've got --  
13 it's 2:30 now and we've got a lot of witnesses to  
14 get through even if we're going to make the 10-day  
15 schedule, so if it's not pertinent to the  
16 standards for approval -- if it is I'll listen,  
17 but if it's not --  
18 MS. LEE-CHO: Well, it's pertinent to  
19 what has been submitted by parties in this case,  
20 so if you're not interested in continuing in this  
21 line of questioning I can move on to a question  
22 that Mr. Ordan does have very personal experience  
23 in.  
24 HEARING EXAMINER: I'd be happy to hear  
25 it.

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1 MS. LEE-CHO: Yeah.  
2 BY MS. LEE-CHO:  
3 Q So in conjunction with this application  
4 process was there a meeting that you participated  
5 in with the head of school and members of the  
6 community?  
7 A Yes, and Penny Evins, our head of  
8 school, had suggested that that would be great to  
9 invite some of the neighbors in, some of the  
10 neighbors who seem particularly interested in this  
11 topic, and I thought that was a great idea.  
12 Being a neighbor, knowing the school as  
13 well as I do I thought that -- and being on the  
14 board I thought it would be great to join Penny.  
15 I don't run the school day to day, but I  
16 understand -- and again being a neighbor I thought  
17 -- I was really looking forward to it.  
18 I thought this would be a great  
19 opportunity for people who don't really understand  
20 what drives Holton-Arms to get a first-hand look,  
21 so I was very interested. You know, you don't get  
22 paid to be on the board. It's the opposite. It's  
23 an expensive role and you do it because you love  
24 the school.  
25 And again as a neighbor and somebody

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1 whose daughter has already graduated I have no  
2 reason to be here or to go to meetings like that  
3 or to be on the board other than I love the school  
4 and I feel grateful for what it's done for my  
5 daughter and many other daughters in the past and  
6 to come. So yes, that meeting was arranged and I  
7 was excited. I work full time. I do things that  
8 I like to do and I was looking forward to it.  
9 Q And when did that meeting occur, do you  
10 recall?  
11 A I think it was August, wasn't it? I  
12 don't have the date in front of me.  
13 Q Okay.  
14 A But I think it was in August.  
15 Q Was it this past August or --  
16 A I think so.  
17 Q -- before then? And do you recall who  
18 you met with?  
19 A Well, I did -- I remember Vivian, I  
20 just talked to her a few minutes ago, but Vivian  
21 Reifberg and Meg VandeWeghe and Kim Brinkman. I  
22 anticipated this would come up so I reminded  
23 myself.  
24 Q And can you just share with us what  
25 came of that meeting, what was your impressions?

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1 A I was surprised. I think we've all had  
2 times when you look forward to a meeting where you  
3 think it's going to be -- even meeting your family  
4 where you think it's going to be an exchange  
5 getting to know each other and you find out that  
6 that's not -- it certainly seemed to me that that  
7 wasn't everybody's intent.  
8 I know that Penny Evins and I came to  
9 the meeting so that people could get to understand  
10 Holton better and really -- you know, really get  
11 to see what drives us as an institution and I had  
12 the strong impression from the very beginning that  
13 -- as a matter of fact, I think it was Vivian that  
14 said I really have no idea why we're here and I  
15 thought well, that's a tough way to start off a  
16 meeting.  
17 But as it progressed it didn't seem  
18 like there was much interest at all in hearing  
19 what Penny and I had to say, and as a matter of  
20 fact on the subject of finances of the school I  
21 said, you know, a school like Holton in a place  
22 where we are, it's hard to even think of how we  
23 can sustain the school over many years given the  
24 financial, you know, box that we're in.  
25 And I remember Ms. Reifberg turned

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1 abruptly and said are you threatening us, like  
2 that you're going to pick up the school and leave  
3 and I was like well, first of all, why would I  
4 threaten. The school is not going to pick up and  
5 leave and I said it's the opposite of a threat.  
6 I'm trying to have you understand, just understand  
7 what's going on here, what the reason for this is.  
8 And so I was disappointed, and as a  
9 matter of fact we all walked out together and I  
10 sort of scratched my head. I thought we're not up  
11 to -- you know, we're not Philip Morris, we're not  
12 up to any -- we're not processing petro chemicals.  
13 We're educating young women and we're part of the  
14 neighborhood and the parents overwhelmingly are in  
15 the neighborhood.  
16 Like we wouldn't shoot ourselves in the  
17 foot, so I thought why wouldn't you want to get to  
18 know us a little bit better and understand like  
19 what a good neighbor we are and I know, I'm a  
20 hundred percent certain that that was Ms. Evins'  
21 intention in setting up the meeting, to think  
22 about how we could be a place that could convene  
23 people in the community and, you know, understand  
24 what the people in the community could get from,  
25 you know, Holton-Arms on a day-to-day basis, and

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1 **it just seemed like that there was no interest in**  
2 **that.**  
3 Q Uh-huh.  
4 **A So I walked away thinking it was**  
5 **unfortunately a waste of time.**  
6 Q Well, was there any discussion about  
7 what was the nature of the opposition and what the  
8 school could do or what could bridge the gap  
9 between --  
10 **A No.**  
11 Q -- the parties?  
12 **A There didn't seem to be an interest in**  
13 **bridging the gap. I felt that people simply felt**  
14 **that this was a bad idea and they were adamant**  
15 **that they weren't -- it wasn't a two-way**  
16 **conversation.**  
17 Q And this meeting occurred in advance of  
18 the broader communitywide Zoom meeting --  
19 **A Yeah.**  
20 Q -- I understand that was held --  
21 **A I may be naive but I think we thought**  
22 **wow, if people, you know, in the community are all**  
23 **these people who are interested and people who are**  
24 **more just in the background we thought boy, if**  
25 **people who are interested really, really knew us**

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1 **and saw how we operate, you know, like from the**  
2 **horse's mouth it would be a great -- it would be**  
3 **great to do that before a bigger meeting.**  
4 **We really thought that they would come**  
5 **away thinking we get it and let's be**  
6 **collaborative, not just, you know, on opposite**  
7 **sides, so I was very surprised. You know, I went**  
8 **to -- I graduated from Vassar College and I was on**  
9 **the board for 20 years from Poughkeepsie, New York**  
10 **and we had a very similar thing where the school**  
11 **wanted to expand and we met with neighbors who**  
12 **were at first just like what's going to happen to**  
13 **us.**  
14 **And it ended up turning around the**  
15 **neighborhood. It drove up property values, people**  
16 **were thrilled, but people came to those meetings**  
17 **wanting to hear what we were talking about so, you**  
18 **know, there are two ways to approach meetings.**  
19 Q Is it -- and this is my -- is it your  
20 view that Holton-Arms increases the value and  
21 quality of the neighborhood?  
22 MR. CHEN: Objection.  
23 MS. LEE-CHO: He lives in the  
24 neighborhood.  
25 HEARING EXAMINER: He's a property

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1 owner.  
2 MR. CHEN: Fine.  
3 HEARING EXAMINER: You used that case  
4 against me.  
5 MR. CHEN: Yes.  
6 HEARING EXAMINER: He can testify.  
7 I'll let him testify, give it the weight it  
8 deserves. Go ahead.  
9 MR. ORDAN: Well, I also have spent my  
10 career in real estate. It is unquestionable that  
11 having an institution like that makes -- Holton,  
12 Landon, having a great institution which is always  
13 a great neighbor because no school wants to be at  
14 odds with the neighbors.  
15 The neighbors send their kids to that  
16 school, so I think it's unquestionable that it  
17 supports property values and, you know, in  
18 Highland Park in Texas, the Hockaday School. This  
19 is not unique to Holton-Arms. Yes, I think it's a  
20 major positive.  
21 MS. LEE-CHO: I have nothing further.  
22 MR. ORDAN: By the way, it's a major  
23 positive in so many other ways. We have security  
24 full time. You know, we prepare for disasters.  
25 There are so many things that a school like that

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1 does in the neighborhood that neighbors wouldn't  
2 otherwise, you know, be able to do on their own,  
3 you know, having a police presence. There's so  
4 many things that -- we're lucky we have a school  
5 like Holton in the neighborhood.  
6 HEARING EXAMINER: I have a -- well,  
7 maybe I -- well, let me ask a question and then if  
8 you all have any questions based on my questions  
9 you can ask, but to your knowledge is there a  
10 neighborhood liaison committee or have you -- has  
11 Holton participated in a neighborhood liaison  
12 committee?  
13 MR. ORDAN: I think over the years  
14 there was a neighborhood group. I don't know if  
15 the group -- I remember early on when we looked at  
16 this there were groups that were no longer in  
17 force. There were groups that had been formed and  
18 I think that our chief financial officer, Tracey  
19 Fudge, and Susanna Jones, our late head of school,  
20 had met with community groups over time.  
21 HEARING EXAMINER: Do you know anything  
22 currently?  
23 MR. ORDAN: No.  
24 HEARING EXAMINER: You said I think Ms.  
25 Evins arranged that meeting, but you're not aware

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<p>201</p> <p>1 of any continuing meetings? 2 MR. ORDAN: When we started -- when we 3 started this process Penny naturally -- naturally 4 the head of school would do that. It's natural 5 for someone, especially like Penny, to do that, 6 wanting to reach out to people in the community 7 who were particularly interested. 8 I mean, I was very close with and 9 thought the world of Susanna Jones but she wasn't 10 as open a person as Penny, so Penny's style which 11 I love is to be, you know, very welcoming and to 12 invite neighbors in and, you know. 13 HEARING EXAMINER: Okay. Do you have 14 anything else, Ms. -- you'll get redirect -- 15 MS. LEE-CHO: Sure. 16 HEARING EXAMINER: -- if you need it. 17 Mr. Chen, do you -- or Ms. -- who is -- please 18 state your name for the record. 19 MS. VANDEWEGHE: My name is Meg 20 VandeWeghe. My address is 7713 Zulima Court, 21 Bethesda, Maryland. 22 HEARING EXAMINER: And I think we have 23 your E-mail. 24 MS. VANDEWEGHE: You have my E-mail. 25 HEARING EXAMINER: All right. You're</p>	<p>203</p> <p>1 Q Okay. Do you think it would take some 2 investment in good science facilities to be the 3 number one STEM high school in Montgomery County? 4 A Sure. 5 Q It's nice that Holton made that. Can 6 you tell me -- 7 MS. LEE-CHO: I'm sorry. Is this 8 testimony? 9 MS. VANDEWEGHE: I'm getting there. He 10 talked about financial problems. 11 HEARING EXAMINER: Well, no, you're not 12 getting there. 13 MS. VANDEWEGHE: Okay. 14 HEARING EXAMINER: You can't testify. 15 MS. VANDEWEGHE: Okay. I won't 16 testify. 17 HEARING EXAMINER: You can ask your 18 questions. 19 MS. VANDEWEGHE: I'll ask my questions. 20 BY MS. VANDEWEGHE: 21 Q Do you know what Holton-Arms endowment 22 is? 23 A <b>It's approximately 50 million dollars.</b> 24 Q Do you know how that compares to an 25 endowment, for instance, for Landon?</p>
<p>202</p> <p>1 not going to testify, are you? 2 MS. VANDEWEGHE: I'm just going to ask 3 questions. 4 HEARING EXAMINER: I'm just checking. 5 MS. VANDEWEGHE: I'm just asking 6 questions. 7 HEARING EXAMINER: I would have to 8 swear you in. 9 MS. VANDEWEGHE: Yep. 10 HEARING EXAMINER: Go ahead. 11 CROSS-EXAMINATION 12 BY MS. VANDEWEGHE: 13 Q Mr. Ordan, we have met, so nice to see 14 you. Can you tell me what the number one college 15 preparatory high school in Maryland is? 16 A <b>The number one?</b> 17 Q College preparatory high school in 18 Maryland, the number one ranked college 19 preparatory high school in Maryland? 20 A <b>I would guess it's St. Albans or NCS.</b> 21 Q It's Holton-Arms. 22 A <b>Oh.</b> 23 Q Can you tell me what the number one 24 best high school for STEM is in Montgomery County? 25 A <b>I don't know offhand.</b></p>	<p>204</p> <p>1 A <b>It's smaller than Landon's endowment --</b> 2 <b>well, if you take the absolute amount Landon</b> 3 <b>raises much more money than Holton does every</b> 4 <b>year. The endowment that Holton has was</b> 5 <b>overwhelmingly from the sale of our original</b> 6 <b>campus.</b> 7 Q I'm just asking you what the size of 8 the endowment is. 9 A <b>But if you're asking I assume it's for</b> 10 <b>a financial reason, so every year the budget of</b> 11 <b>the school increases and you rely on the endowment</b> 12 <b>and an increasing endowment to provide money to</b> 13 <b>supplement which you get from tuition. So the</b> 14 <b>fact that the endowment has grown more slowly than</b> 15 <b>expenses has created this constraint. If our</b> 16 <b>endowment grew at the same pace it would be very</b> 17 <b>different, so I assume that's why you were asking.</b> 18 Q Do you know what the program services 19 are for the school for the last reported year 20 which was the fiscal year ending 6-24? 21 A <b>What the --</b> 22 Q Program services. 23 A <b>You mean the amount or --</b> 24 Q Uh-huh. 25 A <b>Not off the top of my head, no.</b></p>

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1 Q Do you know whether it was smaller or  
2 larger than Landon's?  
3 A **I don't know off the top of my head.**  
4 Q Okay. Do you know how the school's  
5 total salaries and compensation paid to teachers  
6 and faculty compares to other schools in the area?  
7 A **Well, I know that we're competitive.**  
8 **We look very carefully what other schools are**  
9 **paying and I know that there's a real give and**  
10 **take with faculty members to keep them but, you**  
11 **know, that number is a complex number, too,**  
12 **because it also is affected by the tenure of the**  
13 **faculty.**  
14 Q Yeah.  
15 A **So you can look at an average but**  
16 **that's very distorted. One of the things that**  
17 **Holton takes great pride in I think like rightly**  
18 **so is a very well tenured faculty, and a very well**  
19 **tenured faculty is more expensive than a time**  
20 **where you have all new faculty members, so I**  
21 **assume when you ask a question like that you're**  
22 **thinking about that as well.**  
23 Q You talk about the tenure of faculty.  
24 There have been -- can you talk about how many  
25 faculty members and/or senior staff have left

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1 during the last year and a half, two years?  
2 A **I don't know the number, but I do know**  
3 **that the number -- I don't know the numbers off**  
4 **the top of my head. I do know when we look at**  
5 **this closely it is not any different than it has**  
6 **been over time.**  
7 Q Okay. Do you know how the grants, the  
8 total amount of grant money per student compares  
9 to other schools in the area?  
10 A **I don't.**  
11 Q Okay. Do you know if you look at the  
12 total assets for the school how it compares to  
13 other schools in the area?  
14 A **I don't, but I'd also say that that's a**  
15 **-- that's not a helpful number. That's a derived**  
16 **number because you have to look at what the actual**  
17 **expenses are for any institution and look at the**  
18 **property plant and equipment.**  
19 **You look at what deferred maintenance**  
20 **was, you look at whether schools have a swimming**  
21 **pool or they don't have a swimming pool, so there**  
22 **are many factors that go into what the relative**  
23 **wealth of an institution is. When you just look**  
24 **at a number like the endowment or any one number**  
25 **it gives you a very distorted picture.**

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1 Q Uh-huh.  
2 A **What you could look at is the annual**  
3 **budget of a school and say well, what are the**  
4 **surpluses. You take -- you give out some amount**  
5 **of financial aid, you take in money from tuition,**  
6 **you pay faculty, you maintain the grounds, you**  
7 **rebuild where you need to.**  
8 **You spend a few million dollars**  
9 **repairing and replacing the pool equipment because**  
10 **we're one of the few schools that has an indoor**  
11 **pool in a building that wasn't well designed for**  
12 **it and you say okay, when you're done with all of**  
13 **that is this actually a prosperous school and what**  
14 **you find if you look at those things, that we're**  
15 **not, that we're not.**  
16 **And if you look in the future because**  
17 **you can project a line, you say how can you**  
18 **maintain this, and I've been on the budget and**  
19 **finance committee of the school for years and my**  
20 **background is in finance and I would say that if**  
21 **you look with your eyes partially open at the**  
22 **budget of the school that the only thing, the only**  
23 **thing that can change the finances of the school**  
24 **to make it clearly sustaining is a change in**  
25 **enrollment.**

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1 **You can't do it by cutting faculty**  
2 **because you'll cut the quality. You can't count**  
3 **on constantly raising tuition above other schools**  
4 **because you will lose that way, too. We are a**  
5 **stone's throw from Whitman, Pyle and Burning Tree**  
6 **so people have choices, and you can push them --**  
7 **you can push it only so far.**  
8 **So I assume based on the questions that**  
9 **you're asking that you know this full well, that**  
10 **-- and plenty of schools like Holton with famous**  
11 **names go out of business every year and you say**  
12 **how could that have happened, and there are plenty**  
13 **of liberal arts colleges that have gone out of**  
14 **business or some that are on the brink like a**  
15 **Franklin & Marshall which you would say how could**  
16 **that be, but they do.**  
17 Q Okay. You talk about money coming into  
18 the school. Do you know what the three biggest  
19 components of revenues are for the school?  
20 A **Tuition, the money from our -- the**  
21 **money from our endowment, and donors like me.**  
22 Q Okay. Some of those answers were  
23 right. Let's move on to meeting.  
24 A **I'm curious which ones were wrong.**  
25 Q We'll go back and talk about that

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1 later. I'm not allowed to testify today.  
2 HEARING EXAMINER: No, you're not.  
3 MR. ORDAN: Oh, that's right, just  
4 answer.  
5 BY MS. VANDEWEGHE:  
6 Q The meeting on August 18th of 2025 that  
7 I attended as did Vivian and Kim, do you remember  
8 Ms. Reifberg saying at the start of the meeting  
9 are there any updates that you would like to  
10 provide to us on your plans?  
11 A I do.  
12 Q Okay. And what was the answer to that?  
13 A I think the answer was that no, this  
14 was a general discussion so that we could get to  
15 know each other better. There wasn't a specific  
16 update or a specific cause for that meeting. It  
17 was, as I said earlier, to get to know one another  
18 so that you'd have a better understanding of how  
19 we operate.  
20 And by the way, I would have expected a  
21 lot of the kind of questions that you were asking  
22 just now would have come up in our meeting like  
23 that.  
24 Q Do you remember Ms. Evins saying that  
25 if we didn't allow the school to expand that they

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1 would move?  
2 A No, it was me. I said, you know, if a  
3 school like this couldn't stay -- you know, one of  
4 the most valuable things we have actually is the  
5 campus and my point wasn't that we're going to up  
6 and leave but I said, you know, schools go out of  
7 business.  
8 There was a reason years ago that the  
9 school sold its campus. Other schools have done  
10 that, so I said that and then Vivian replied as I  
11 said before are you threatening that you would  
12 move the school and I said no, I'm trying to have  
13 you understand the financial picture of  
14 Holton-Arms.  
15 Q Do you remember what my answer was when  
16 Ms. Evins asked what our biggest concern about the  
17 expansion plans was?  
18 A Not off the top of my head, no.  
19 Q Okay. Do you think that it's possible  
20 that increased traffic in a small neighborhood  
21 could increase the real estate values or decrease  
22 the real estate values?  
23 A I think -- I think it depends.  
24 HEARING EXAMINER: Well, your question  
25 was in a small neighborhood.

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1 MS. VANDEWEGHE: Okay.  
2 HEARING EXAMINER: He's not an expert.  
3 MS. VANDEWEGHE: Okay.  
4 HEARING EXAMINER: He can talk about  
5 how valuable Holton is, but he can't talk about  
6 whether generically it would increase or decrease.  
7 MS. VANDEWEGHE: Okay.  
8 MR. ORDAN: Well, if it's okay I'm a  
9 neighbor.  
10 HEARING EXAMINER: No, please.  
11 MR. ORDAN: Okay.  
12 BY MS. VANDEWEGHE:  
13 Q In Holton's neighborhood does  
14 increasing traffic generically increase real  
15 estate values?  
16 A I think increased traffic is a natural  
17 byproduct of development and prosperity. I was  
18 chairman of the board for years of Federal Realty.  
19 Federal Realty's real estates ventures have  
20 increased traffic and increased property value at  
21 the same time, so it is not the case that  
22 increased traffic decreases property values.  
23 In the most prosperous areas, in  
24 Greenwich, Connecticut traffic is heavy and  
25 property values are high. In Miami properties are

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1 through the sky, values are through the sky, in  
2 Palm Beach. So if you want to say that there's a  
3 correlation between traffic -- the reason traffic  
4 increases is because people want to be there.  
5 And to Holton's -- Holton -- you're  
6 also obviously talking about River Road, and you  
7 think about River Road and the components of the  
8 traffic on River Road, the biggest indicative as  
9 far as traffic is concerned is the United States  
10 Government which I don't think is picking up and  
11 moving either, so Holton has not created the  
12 traffic problem on River Road.  
13 MS. VANDEWEGHE: Okay. I think the  
14 rest of my questions can be for later.  
15 CROSS-EXAMINATION  
16 BY MR. CHEN:  
17 Q Sir, what was the endowment for Holton?  
18 I know you said. I don't remember.  
19 A About 50 million dollars.  
20 Q 50 million. And how long have you been  
21 involved with Holton-Arms on the board?  
22 A Eight years.  
23 Q Are you aware of a purchase of  
24 properties that Holton has engaged in over the  
25 course of years?

<p style="text-align: right;">213</p> <p>1     <b>A Yes.</b></p> <p>2     Q Do you remember the last one -- excuse</p> <p>3 me. Strike that. Does the board approve those</p> <p>4 purchases?</p> <p>5     <b>A Oh, yeah, yeah.</b></p> <p>6     Q And what was the last approved</p> <p>7 purchase?</p> <p>8     <b>A I don't remember the address on</b></p> <p>9 <b>Burdette Court, but it was on Burdette Court.</b></p> <p>10    Q Do you remember what -- you don't</p> <p>11 remember the address?</p> <p>12    <b>A I don't remember the specific address,</b></p> <p>13 <b>no.</b></p> <p>14    Q Do you remember the purchase price?</p> <p>15    <b>A Around a million dollars.</b></p> <p>16    Q How about if I said 2 million?</p> <p>17    <b>A It could have been. We've bought a few</b></p> <p>18 <b>houses.</b></p> <p>19    Q Okay. And are you aware that over the</p> <p>20 last, I don't know, 20, 25 years Holton has spent</p> <p>21 over 10 million dollars in purchasing properties</p> <p>22 that about campus?</p> <p>23    <b>A Yes. Not only that, but as -- I've</b></p> <p>24 <b>been one of the members of the board who has been</b></p> <p>25 <b>a strong advocate of doing that.</b></p>	<p style="text-align: right;">215</p> <p>1 any redirect?</p> <p>2     MS. LEE-CHO: None at all.</p> <p>3     HEARING EXAMINER: Okay.</p> <p>4     MR. CHEN: Oh, pardon me. I do have a</p> <p>5 question I forgot.</p> <p>6     HEARING EXAMINER: I knew it.</p> <p>7     (Laughter.)</p> <p>8     BY MR. CHEN:</p> <p>9     Q You mentioned Holton has police</p> <p>10 presence. Can you elaborate on that? What do you</p> <p>11 mean by that?</p> <p>12    <b>A I meant that we have security at the</b></p> <p>13 <b>school.</b></p> <p>14    Q Is that what you meant?</p> <p>15    <b>A Yes.</b></p> <p>16    Q What is the security on campus?</p> <p>17    <b>A Well, we have our own security</b></p> <p>18 <b>department and then in the mornings and in the</b></p> <p>19 <b>afternoons we have police helping control the flow</b></p> <p>20 <b>of traffic.</b></p> <p>21    Q How long has that been going on?</p> <p>22    <b>A Certainly as long as I've been around.</b></p> <p>23    Q Why is that? Why are the police</p> <p>24 providing that service?</p> <p>25    <b>A The same reason that -- you know, I</b></p>
<p style="text-align: right;">214</p> <p>1     Q Why, why are they purchasing the</p> <p>2 properties?</p> <p>3     <b>A I think it's very good to as much as</b></p> <p>4 <b>possible -- you know, you want to be a good</b></p> <p>5 <b>neighbor. You want to have as little impact on a</b></p> <p>6 <b>neighborhood as possible, so people who are right</b></p> <p>7 <b>outside it's natural, and any school that I know</b></p> <p>8 <b>of has done exactly that.</b></p> <p>9     <b>Yale, Harvard, Vassar where I lived the</b></p> <p>10 <b>process to do that, it's always good for a school</b></p> <p>11 <b>to have as much of the neighborhood as they can</b></p> <p>12 <b>and it also gives us flexibility to provide</b></p> <p>13 <b>housing for faculty, so we rent -- we buy the</b></p> <p>14 <b>houses and we rent them out, but it gives us much</b></p> <p>15 <b>more flexibility. I don't know any school that</b></p> <p>16 <b>doesn't try to do something like that.</b></p> <p>17    Q What is Holton doing with the</p> <p>18 properties that it owns that surround the campus?</p> <p>19    <b>A We rent them out.</b></p> <p>20    Q Okay.</p> <p>21    <b>A And one of the properties we own is the</b></p> <p>22 <b>house for our head of school.</b></p> <p>23     MR. CHEN: Okay. I have no further</p> <p>24 questions.</p> <p>25     HEARING EXAMINER: Okay. Ms. Lee-Cho,</p>	<p style="text-align: right;">216</p> <p>1 <b>started a company here called Fresh Fields which</b></p> <p>2 <b>is now Whole Foods and we always liked to have</b></p> <p>3 <b>police helping guide traffic. It decreases the</b></p> <p>4 <b>chances of a problem. It helps things flow. It</b></p> <p>5 <b>helps people who are coming into the school get in</b></p> <p>6 <b>more efficiently and get out more efficiently. I</b></p> <p>7 <b>think that's just part of being a good citizen.</b></p> <p>8     MR. CHEN: I have no further questions</p> <p>9 of this gentleman.</p> <p>10    HEARING EXAMINER: I'm taking you up on</p> <p>11 your offer this time.</p> <p>12    MR. CHEN: Yes.</p> <p>13    HEARING EXAMINER: Ms. Lee-Cho, do you</p> <p>14 want to have --</p> <p>15    MS. LEE-CHO: No, nothing further. I</p> <p>16 just wanted to make sure of something.</p> <p>17    HEARING EXAMINER: Okay. Thank you,</p> <p>18 Mr. Ordan, for your testimony and for taking the</p> <p>19 time to come and you may be excused.</p> <p>20    MR. ORDAN: Thank you.</p> <p>21    HEARING EXAMINER: Okay. Which means</p> <p>22 Mr. --</p> <p>23    MS. LEE-CHO: Sloan.</p> <p>24    HEARING EXAMINER: -- Sloan is back on</p> <p>25 the hot seat. Are we going back to Exhibit 79?</p>

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<p style="text-align: right;">217</p> <p>1 MS. LEE-CHO: Yes, we are. 2 MR. CHEN: Can we take a mid-afternoon 3 break? 4 HEARING EXAMINER: We can take five 5 minutes to 3 o'clock. 6 MR. CHEN: Yeah. 7 HEARING EXAMINER: I got the time 8 right. Okay. Go ahead. We're off the record. 9 (Whereupon, a brief recess was taken in 10 the proceedings.) 11 HEARING EXAMINER: Okay. We're back on 12 the record. Ms. Lee-Cho, we have Mr. Sloan 13 continuing his testimony on his land use report, 14 Exhibit 79? 15 MS. LEE-CHO: Yes. 16 HEARING EXAMINER: Okay. 17 DIRECT EXAMINATION (CONTINUED) 18 BY MS. LEE-CHO: 19 Q Mr. Sloan, in connection with your 20 efforts to prepare this land use report did you 21 have a site visit with the director of facilities 22 of the Holton-Arms School? 23 <b>A I did. I visited the school and he</b> 24 <b>gave me a comprehensive tour of how the operations</b> 25 <b>on this school work.</b></p>	<p style="text-align: right;">219</p> <p>1 Q So I would refer you to -- 2 <b>A I believe it's this.</b> 3 Q -- 98A(ii) 1. 4 HEARING EXAMINER: Yeah, we will have 5 that talk. 98A(ii) 1. 6 MR. SLOAN: I think Microsoft made the 7 decision. 8 HEARING EXAMINER: I've got it in front 9 of me. 10 MS. LEE-CHO: Is it going to be brought 11 up on the screen? 12 HEARING EXAMINER: Can you go to 13 98A(ii) 1, or Roman numeral (ii) 1? 14 MS. LEE-CHO: Can you possibly zoom in 15 on the -- 16 MR. CHEN: On the left. 17 MS. LEE-CHO: No, down. More up. Up. 18 Up. Okay. And then bring the plan to the left. 19 There you go. 20 MR. SLOAN: So this is Exhibit 98A(ii) 21 1. On roughly the left center of the screen the 22 dark gray is the building. The letter B towards 23 the southern part of the building, just to the 24 left of that there is gray space in a building 25 that's sitting on labeled I.</p>
<p style="text-align: right;">218</p> <p>1 Q And can you speak to some of the back 2 of house operations in particular, how deliveries 3 and that kind of thing is taken care of at the 4 school? 5 <b>A Sure. We toured through the area that</b> 6 <b>is termed the back of house where services are --</b> 7 HEARING EXAMINER: For some reason I 8 have trouble hearing you. 9 MR. SLOAN: It's my voice. 10 HEARING EXAMINER: What house? 11 MR. SLOAN: Back of house, so where the 12 maintenance facilities are -- 13 HEARING EXAMINER: Oh, I understand. 14 MR. SLOAN: -- and where the trash is. 15 HEARING EXAMINER: Okay. 16 MR. SLOAN: Where the deliveries are 17 taken. 18 HEARING EXAMINER: I get it. Thank 19 you. 20 MR. SLOAN: And actually while I was 21 there a trash truck came and took trash and left, 22 so it was interesting and -- 23 HEARING EXAMINER: Can you show me 24 where that is on the site plan, any plan? 25 BY MS. LEE-CHO:</p>	<p style="text-align: right;">220</p> <p>1 The back of house area where 2 deliveries, service, maintenance facilities occur 3 is in that area that Mr. La Vay described as down 4 about 10 feet below the parking lot. It is just 5 to the left of the building, the part of the 6 building labeled A. 7 HEARING EXAMINER: Okay. 8 MR. SLOAN: So in that area that's 9 where most of the deliveries and services are 10 taken care of. 11 BY MS. LEE-CHO: 12 Q And what is your understanding in terms 13 of the number of deliveries and if there will be 14 additional need for back of house type activities 15 in conjunction with the increases that are being 16 requested under this application? 17 <b>A So in my discussion with the applicant</b> 18 <b>team the number of deliveries will not need to</b> 19 <b>change. Many of the trucks show up and they're</b> 20 <b>not completely full anyway. The change is not</b> 21 <b>substantial enough to require additional</b> 22 <b>deliveries or the other elements like trash pickup</b> 23 <b>or the grease trap, removal of the grease from the</b> 24 <b>grease trap which is just a WSSC requirement that</b> 25 <b>has to be done, and --</b></p>

<p>221</p> <p>1 Q And how often is that done? 2 A <b>That is required to be done once a 3 month, but they do it every two weeks so that they 4 can maintain security at the building and not have 5 to worry about any issues interior.</b> 6 Q And even that you're saying that is not 7 anticipated to increase in any way? 8 A <b>Correct, no increase in any of those 9 service vehicle deliveries or otherwise.</b> 10 Q Okay. That's the last remaining 11 operational question I had. I would like to move 12 into the more typical sections of the land use 13 report and -- 14 HEARING EXAMINER: So we're going back 15 to 79? 16 MS. LEE-CHO: Exhibit 79, page 6. 17 HEARING EXAMINER: When I turn and 18 speak to the gentleman to my right for the record 19 I'm speaking to the Zoom operator. 20 THE TECHNICIAN: What page? 21 HEARING EXAMINER: 79. 22 MS. LEE-CHO: 6. 23 HEARING EXAMINER: Exhibit 79. 24 MR. SLOAN: Page 6. 25 MS. LEE-CHO: Page 6.</p>	<p>223</p> <p>1 visual of the map. Page 9 is the zoning map -- 2 HEARING EXAMINER: Okay. 3 MR. SLOAN: -- that's zoomed in a 4 little bit. 5 HEARING EXAMINER: So 8 would be 6 better. Thank you. 7 MR. SLOAN: Yes. I can -- on page 7 8 there's a specific list of those boundaries. I 9 can -- I don't think I need to read it into the 10 record. I generally, probably 99 percent agree 11 with technical staff. 12 I just typically like to break 13 neighborhood boundaries at roads rather than 14 through properties and things and so I made minor 15 tweaks, but for compatibility analysis I 16 completely agree with their general boundary. So 17 I'll just describe a little bit about what's in 18 the neighborhood, the surrounding neighborhood 19 from my analysis. 20 It's certainly primarily residential in 21 nature. This is R-200 and R-90 zoning, so single 22 family lots on typically 20,000 square foot 23 properties and single family lots down to 9,000 24 square feet. There's also the -- within the 25 neighborhood the Burning Tree Elementary School,</p>
<p>222</p> <p>1 BY MS. LEE-CHO: 2 Q So where we left off I think my last 3 question was whether you agree with the property, 4 the legal description that was testified to by Mr. 5 La Vay. 6 A <b>Yes, Mr. La Vay described it and I 7 don't need to repeat that.</b> 8 Q Can you discuss the surrounding 9 neighborhood that you determined for purposes of 10 the special exception analysis? 11 A <b>Yes, so for each special exception 12 analysis we define a neighborhood to which we can 13 then make our determination of compatibility. 14 This one is relatively complex because of the 15 nature of the road network around and the shape of 16 the subject parcel. I can --</b> 17 HEARING EXAMINER: Pardon me. Can you 18 go to -- 19 MR. SLOAN: Page 8? 20 HEARING EXAMINER: -- PDF page 9 -- 21 MR. SLOAN: Okay. 22 HEARING EXAMINER: -- of Exhibit 79? 23 I'm speaking with the Zoom operator so everybody 24 can see it. 25 MR. SLOAN: So page 8 has a larger</p>	<p>224</p> <p>1 the Burning Tree local park, the -- there's a 2 country club to the west of Burdette Road. 3 There is an assisted living facility, a 4 primary day school is there, the nursery that Mr. 5 La Vay mentioned, so numerous different uses 6 provide primarily a residential community in 7 nature. 8 Q All right. Can you please describe a 9 little bit about the property's frontage along 10 River Road and available public transportation 11 services along this stretch? 12 HEARING EXAMINER: Well, did you 13 characterize the surrounding -- are we moving -- 14 MS. LEE-CHO: Oh. 15 HEARING EXAMINER: -- on to adequate 16 public facilities? 17 MS. LEE-CHO: No, I was just moving 18 through his report. 19 HEARING EXAMINER: Oh, okay. 20 MS. LEE-CHO: I think he did 21 characterize but did you want to restate? 22 HEARING EXAMINER: He listed some uses 23 that were in there, but I didn't -- I don't recall 24 hearing the characterization. 25 MR. SLOAN: In general terms it's a</p>

<p style="text-align: right;">225</p> <p>1 residential -- suburban residential community. 2 HEARING EXAMINER: Okay. What's the 3 zoning? 4 MR. SLOAN: R-200, R-90. 5 HEARING EXAMINER: And consisting 6 primarily of single family detached? 7 MR. SLOAN: Single family detached 8 homes but with some other uses, such as the 9 primary day school, the nursery, the country club, 10 the assisted living facility. 11 HEARING EXAMINER: Okay. 12 BY MS. LEE-CHO: 13 Q Did you also mention the public school? 14 A <b>And the public school, yes, and the 15 public park that are to the east of the property, 16 Burning Tree Elementary School and Burning Tree 17 local park.</b> 18 Q How would you describe some of the 19 existing site conditions? 20 A <b>So the existing site is quite diverse 21 in nature. It's got a very large area of natural 22 woodland and a stream. The Booze Creek, a 23 tributary of the Cabin John Creek, runs 24 north/south basically dividing the property almost 25 in half with the track and field surrounded by</b></p>	<p style="text-align: right;">227</p> <p>1 the recording mics are really sensitive, so if you 2 don't mind you can go outside if you need to say 3 something. Thank you. Go ahead. 4 BY MS. LEE-CHO: 5 Q I'm sorry. Were you done with this 6 site conditions? 7 A <b>I think so. Certainly the land use 8 report has a lot of detail on this. Typically we 9 go into much more detail and analysis on the 10 existing conditions and the proposed conditions 11 because site conditions are proposed to change. 12 In this case they're not.</b> 13 Q Okay. Are there offsite components to 14 this application? 15 A <b>The offsite components to this 16 application are completely focused on traffic 17 which our traffic consultant will get into in much 18 more detail, but they certainly do include the -- 19 my reading of the traffic study, improvements to 20 the intersection at River Road and Royal Dominion 21 and operational improvements.</b> 22 Q Great. Can you speak to just the 23 circulation -- the onsite circulation and parking? 24 A <b>Yes. So one of the key things that I 25 was interested in and the director of facilities</b></p>
<p style="text-align: right;">226</p> <p>1 <b>forest on the east side, the northeast side that 2 the track and field complex is -- sits well below 3 a large berm, a large rise in land that's further 4 to the east towards the residential community, as 5 Mr. La Vay described a large area of forest 6 conservation.</b> 7 <b>I think there's about almost 26 acres 8 of forest conservation onsite, so that 9 significantly constrains anything that can be done 10 to protect the stream buffer. The property itself 11 or the school itself sits roughly in the middle of 12 the site a little bit to the west in the north, 13 south, middle, on the west side of the stream.</b> 14 <b>It sits on a sort of plateau that steps 15 down in the front towards the east to the parking 16 lot area for most of the students and faculty. 17 There's some parking up by the tennis courts. The 18 entrance is off of -- a single entrance off of 19 River Road at a signal intersection, then 20 there is additional fields to the west of this 21 site, or of the building and as I noted the 22 service and maintenance area to the west of the 23 building.</b> 24 HEARING EXAMINER: If you don't mind 25 please we can't have talking in the background and</p>	<p style="text-align: right;">228</p> <p>1 <b>walked me through -- well, we rode through on a 2 golf cart was how the queuing and circulation 3 works and they've got several staging areas and 4 then they have the ability to quickly divert 5 traffic and increase their queuing lengths to get 6 up to a couple of thousand linear feet of queuing 7 areas for when they might have more than one event 8 or anything. So you come in off of River Road. 9 You circulate up through the site and if you're 10 going to --</b> 11 Q Before we continue -- 12 A <b>Oh, sorry. The circulation plan?</b> 13 Q -- can we just redirect to page 14 -- 14 A <b>Yeah.</b> 15 Q -- page 14 of the land use report? 16 A <b>So page 14 of Exhibit 79 is the 17 circulation plan, and you can see the color coded 18 aerial view. The green is the intro from River 19 Road. All vehicles take that path. If you're 20 going to the lower school viewing you would take a 21 left and follow the yellow path and you can see 22 certain adersion loops. If they need to increase 23 the queuing length they can up to 1700 feet.</b> 24 <b>If you're going to the main school or 25 facilities to the north or east side of the campus</b></p>

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1 you follow along in the blue and there are several  
2 routes and there are people stationed as you  
3 arrive for any given event that direct you to  
4 where you should be going for dropoff and pickup  
5 or where to park.  
6 So you can follow the blue line, a  
7 simple loop, or that can be extended up to -- a  
8 simple loop to the front door which is the little  
9 area that's called a PU/DO zone, a pickup/drop off  
10 zone right in front of the school, and that's  
11 where the kind of lasso, the blue lasso to the  
12 left of that is.  
13 Traffic can be diverted up to take a  
14 longer path, increase the queuing length and if  
15 necessary, and my understanding is it only happens  
16 once in a while, traffic can then be further  
17 diverted up on the purple path which goes all the  
18 way out to the track and field complex on the east  
19 side of the site, so a significant area for  
20 circulation for vehicles.  
21 These paths do have sidewalks adjacent  
22 to them so that you can walk down to the  
23 signalized intersection where there are bus stops  
24 for the M-82 bus which runs east/west on River  
25 Road.

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1 Q You've reviewed the LATR, the traffic  
2 impact study that was done for this application,  
3 correct?  
4 A Yes.  
5 Q Can you summarize your understanding of  
6 the major components of the LATR's findings?  
7 HEARING EXAMINER: Wait. Why is he  
8 doing that?  
9 MR. CHEN: Yeah.  
10 MS. LEE-CHO: Well, it's just in his  
11 report, so he's not -- we can -- we're going to  
12 have our traffic engineer.  
13 HEARING EXAMINER: Thank you.  
14 MS. LEE-CHO: We can skip over it.  
15 HEARING EXAMINER: Unless you have an  
16 objection to that, Mr. Chen.  
17 MR. CHEN: Candidly Ms. Lee-Cho was  
18 correct, it is in the report. I don't think it's  
19 unusual for --  
20 HEARING EXAMINER: All right.  
21 MR. CHEN: I'm okay with it.  
22 MS. LEE-CHO: We can move on to the  
23 master plan analysis.  
24 HEARING EXAMINER: No, you can go  
25 through the traffic report, but I've read the

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1 traffic report so I would prefer not to --  
2 MS. LEE-CHO: That's fine.  
3 HEARING EXAMINER: -- have to go  
4 through it.  
5 MS. LEE-CHO: We can come back to Mr.  
6 Sloan and have findings at the end.  
7 MR. CHEN: Just -- I apologize. Did I  
8 interrupt you?  
9 MS. LEE-CHO: No.  
10 MR. CHEN: Okay. I think -- I read the  
11 report and I thought that where Mr. -- I thought  
12 his answer was going to be that he agreed with the  
13 LATR analysis that has been submitted and I think  
14 that's throughout his report. I don't think he  
15 did anything else, but --  
16 HEARING EXAMINER: Okay. Do you have  
17 anything else to say?  
18 MR. SLOAN: No.  
19 HEARING EXAMINER: Okay.  
20 BY MS. LEE-CHO:  
21 Q So we can move on to the master plan,  
22 planning and analysis on page 17. What is the  
23 master plan that is applicable to the school site?  
24 A The property is within the 1990  
25 Bethesda/Chevy Chase master plan.

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1 Q And what were the specific guidelines  
2 for special exceptions within this planning area?  
3 A The master plan lays out an entire  
4 section that provides guidelines on special  
5 exceptions generally and in the report, page 18  
6 through 19, I go through those special exception  
7 guidelines and my analysis of how the project  
8 complies with them.  
9 The first is avoiding excess  
10 concentration of special exceptions along major  
11 highway corridors. There's certainly not an  
12 increase in concentration of special exceptions.  
13 It already exists and has been found to -- in  
14 compliance before. Most of this was actually if  
15 you read in detail in the master plan about access  
16 points and issues with office uses and commercial  
17 uses along these residential corridors.  
18 So it really doesn't impact this  
19 application and none of the turning movements or  
20 anything are unusual. The other is to avoid  
21 overconcentration of commercial services or office  
22 type special exceptions in residential  
23 communities. This of course does not apply. It's  
24 a private educational facility.  
25 To protect major highway corridors and

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1 residential communities from incompatible design,  
2 this really talks a good bit about architectural  
3 design, screening, parking, landscape and there's  
4 architectural elements in the landscape that again  
5 are not being modified by this proposal, although  
6 the building is designed I think quite  
7 harmoniously with a residential feel given its  
8 pitch grooves, its windows glazing and things like  
9 that.  
10 The parking is not visible. It's very  
11 far away from River Road. It is well screened,  
12 well landscaped and fits within the residential  
13 community. In terms of design the fourth is  
14 support special exception uses that contribute to  
15 the housing objectives of the plan. This  
16 certainly is not a -- providing housing although  
17 it does provide elements for a residential  
18 neighborhood that are typical providing the, you  
19 know, educational facilities or the recreational  
20 facilities that help buttress the residential  
21 elements of the neighborhood.  
22 Fifth, support special exception uses  
23 that contribute to the service and health  
24 objectives of the plan. An interesting one that  
25 hasn't really crossed my memory in a master plan,

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1 but this does provide daycare uses and daycare  
2 uses for the elderly is specifically cited in the  
3 plan. It does not provide that. It does provide  
4 daycare uses, summer camp and recreation  
5 opportunities which do promote health and  
6 well-being.  
7 The provision of all of the different  
8 uses such as the arts and crafts programs, the  
9 theater programs, dance, recreation and whatnot  
10 certainly contribute to physical and mental health  
11 for the community, and as noted there's a high  
12 demand for such activities and this is one of the  
13 few facilities in the area that has some of the  
14 facilities that could accommodate the demand, for  
15 example the turf field and the indoor pool which  
16 although expensive to upkeep are -- should be  
17 taken advantage of because they provide excellent  
18 benefits to the overall community.  
19 Q So just looking back on the five  
20 guidelines that you've gone through and the one  
21 that sort of peaks my interest is the one that  
22 says protect major highway corridors and  
23 residential communities from incompatible design.  
24 MR. CHEN: Where are you in the  
25 exhibit, please?

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1 MR. SLOAN: 18, page 1.  
2 MS. LEE-CHO: Page 18.  
3 MR. SLOAN: Or page 18.  
4 MR. CHEN: Page 18.  
5 MR. SLOAN: Number 1.  
6 MR. CHEN: Okay.  
7 BY MS. LEE-CHO:  
8 Q So you have said that that  
9 recommendation or guideline in the master plan is  
10 a focus on architectural aspects of a proposed --  
11 or property. I wonder if that guideline could be  
12 read to somehow suggest that what is being  
13 proposed in this application is inconsistent with  
14 that guideline in the master plan?  
15 A No, protecting major highway corridors  
16 in the residential communities from incompatible  
17 design is really focused on the architectural  
18 design, not operational elements. That's covered  
19 I think more in guideline one which is really also  
20 about office uses which doesn't specifically apply  
21 in this case.  
22 Q And number one talks about --  
23 HEARING EXAMINER: Well, it also says  
24 that could be raised by access points and  
25 conflicting turning movements, so it's not just

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1 architectural design, wouldn't you say?  
2 MR. SLOAN: Correct. Guideline one,  
3 yes.  
4 HEARING EXAMINER: Yeah.  
5 MR. SLOAN: Yes, and one of the things  
6 that I think this was getting to was when you have  
7 a lot of small special exception commercial uses  
8 along a neighborhood, major highway corridor each  
9 one has their own access points.  
10 HEARING EXAMINER: Right.  
11 MR. SLOAN: And then you start having  
12 these conflicting movements and since this master  
13 plan covered a very large area like, you know, for  
14 the areas that do have small commercial centers  
15 that were growing in the special exceptions I  
16 think that was addressing that issue.  
17 BY MS. LEE-CHO:  
18 Q And the date of this master plan being  
19 1990 was the school -- the school was well  
20 established by the time that this was done; is  
21 that correct?  
22 A The school was well established. It  
23 was -- it had an access point. It had the ROD,  
24 the signalized intersection. The turn lanes were  
25 all built. It was in and anticipated to continue.

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1 Q Could that one be read in any way --  
2 avoiding excessive concentration, could that be  
3 interpreted to address an increase in the  
4 enrollment and operations as being requested in  
5 this application?  
6 A **No, I don't read it to have anything to  
7 do with scale.**  
8 Q So it says if concentration being an  
9 excessive number of different special exceptions;  
10 is that what --  
11 A **Individual numbers, yes.**  
12 Q And just moving on to specific property  
13 recommendations you highlight on page 19, can you  
14 speak -- explain what -- some of the specific  
15 property recommendations in the plan?  
16 A **Sure. Yeah, thank you. We're on page  
17 19. One of the first references on page 33 in the  
18 master plan is about private schools and other  
19 institutions throughout the planning area of being  
20 continued, and it does note that new large scale  
21 special exception uses are generally not  
22 appropriate for these sites because they would  
23 change the residential character of the adjacent  
24 areas.**  
25 **They may be allowed on a case-by-case**

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1 **basis to ensure compatibility with area residences  
2 in conformance with other plan objectives. This  
3 is not a new use. It was one of the listed large  
4 land uses in -- on table 1 on page 36 in the  
5 master plan so it's not new, but I still take to  
6 heart what it said about ensuring compatibility  
7 and conformance with the plan objectives with this  
8 modification.**  
9 Q Would you have categorized the  
10 Holton-Arms School as an existing large scale  
11 special exception even at the current approval at  
12 665 students?  
13 A **Yes, it's one of the --**  
14 Q Is there any way that this language  
15 could be interpreted to apply in this application  
16 to suggest that the increase that is being  
17 requested is not allowable under the master plan  
18 or inconsistent with this aspect.  
19 A **No, it specifically says they should be  
20 allowed on a case-by-case basis ensuring  
21 compatibility.**  
22 Q Okay.  
23 A **So one of the things that it does  
24 recommend is maintaining -- noting it has limited  
25 development potential. As has been described by**

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1 **previous testimony it is very constrained. The  
2 land is constrained both by properties around it,  
3 and then you have roads around it, and then you  
4 have the stream buffer protected by conservation  
5 easements, so it has limited development  
6 potential, that the trees and slopes should be  
7 protected.**  
8 **It was very -- the master plan is very  
9 concerned about the environmental character,  
10 maintaining and enhancing that, and in my walk  
11 through the property I think they've done an  
12 excellent job in maintaining and working carefully  
13 with park and planning staff who works with them  
14 on maintenance of the forest to keep this a very  
15 pleasant environmental site, environmentally  
16 sensitive site.**  
17 **It does talk about connecting paths to  
18 be provided. I think most of that discussion is  
19 conjecture. It has been cut off by the neighbors,  
20 but it does have a nice set of paths within the  
21 school itself and it does note that the existing  
22 private school conforms to the existing  
23 development pattern and I don't believe any of  
24 those elements are changing with this proposed  
25 modification. The development pattern is**

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1 **identical, and as other experts will testify it  
2 meets the other objective standards for traffic  
3 and noise.**  
4 Q So if that is the case then, all that  
5 is, what is left in terms of your analysis, I  
6 guess?  
7 A **So what I turn to are the general goals  
8 and objectives of the master plan, you know, just  
9 re-refer to this one quote on page 33, that on a  
10 case-by-case basis to ensure compatibility with  
11 area residences and conformance with other plan  
12 objectives, so I look at those other plan  
13 objectives. Those are on pages 19 to 20 in the  
14 master plan.**  
15 **I've paraphrased and provided my  
16 analysis on each of those on page 20 of the land  
17 use report, so should I run through those? In  
18 general, in general the proposed modification  
19 increases the opportunities for young women,  
20 children, community members to obtain an excellent  
21 education, participate in social/athletic  
22 activities, perpetuating the high quality of life  
23 in the planning area, so a general objective of  
24 maintaining a high quality of life is met by this  
25 proposed use and modification.**

<p style="text-align: right;">241</p> <p>1 As has been previously testified, the 2 school maintains a facility employing 225 people 3 and potentially more if this application is 4 approved in a highly competitive professional 5 environment. These are good jobs, well paying 6 jobs, and through its financial aid program it 7 provides opportunities for a diverse economic 8 range of students supporting a social framework 9 needed for housing diversity and equity in the 10 area. 11 Regarding the land use recommendations 12 there really are no changes. The proposed 13 modifications are operational. The site remains 14 largely natural in nature, residentially 15 landscaped and maintained as a sort of estate 16 grounds I would call it, and they are maintaining 17 the environmental protections required through 18 their conservation easements and management 19 programs. 20 I won't speak too much about the 21 transportation recommendations except to note that 22 I do agree with the LATR, the traffic study, and 23 add on to that that you can get to the school in 24 about 26 minutes from the Bethesda Metro Station. 25 It's --</p>	<p style="text-align: right;">243</p> <p>1 Q Was there anything in the plan? 2 A The master plan didn't want to maintain 3 the transportation corridor at the required 4 congestion levels or improve them. 5 HEARING EXAMINER: Wait. They did 6 what? 7 MR. SLOAN: Maintain the corridor -- 8 the corridors as -- to meeting congestion levels 9 or improving them in the general objectives. 10 Regarding environment -- 11 HEARING EXAMINER: Was it Potomac with 12 the two-lane road policy or was it this one? 13 MR. SLOAN: Potomac has the two-lane 14 road policy -- 15 HEARING EXAMINER: Okay. 16 MR. SLOAN: -- for primarily I think 17 River Falls and Glen. With environment there are 18 really -- there are no impacts except that there 19 will be some kind of afforestation requirement or 20 something because of the offsite improvements, and 21 we'll discuss that I think later with Mr. La Vay, 22 and later there are general objectives about 23 public facilities in the community. 24 And I think as I've stated several 25 times in my land use report schools, parks,</p>
<p style="text-align: right;">242</p> <p>1 Q One thing I found notable about your 2 report on transportation here is relative to the 3 traffic signal -- 4 A Uh-huh. 5 Q -- at Burdette Road. Was that traffic 6 signal in existence at the time of the plan? 7 A No, it was not. So the traffic signal 8 at Burdette Road came in after 1990 when the plan 9 was written and so it did help -- it helped deal 10 with traffic corridor operation issues that our 11 transportation expert can speak to when you get to 12 it. 13 Q Were there any concerns about traffic 14 then at the time of the 1990 plan that may not -- 15 well, you know, should be read with context? 16 MR. CHEN: Objection. What's the 17 foundation for that question? 18 MS. LEE-CHO: I'm just asking if the 19 plan made any -- expressed any concerns about 20 traffic in this area based on the fact that there 21 was no signal. 22 MR. CHEN: That wasn't the question but 23 that question you can ask, was there anything in 24 the plan. 25 BY MS. LEE-CHO:</p>	<p style="text-align: right;">244</p> <p>1 community facilities such as this are integral to 2 residential communities. The programs they 3 provide really address a lot of the social 4 concerns and things, and most of that is not 5 talked about in the master plan but more in Thrive 6 when they really recognize how much a land use 7 plan can determine how equity issues and other 8 social issues are addressed. 9 As our previous planning board chair 10 used to say land use planning and civics, and this 11 is an excellent example of community and programs 12 being built into the social fabric of the 13 community, and I think it supports very much the 14 public facility community guidelines in the master 15 plan. 16 BY MS. LEE-CHO: 17 Q Now, have you moved on to Thrive yet? 18 I'm sorry. I thought I heard -- 19 A No, I mentioned it. It was my 20 transition. 21 Q Yeah. All right. Thank you. 22 A So as we noted the master plan is I 23 think 36 years old. It has a -- like every master 24 plan has the note in the front, a notice to 25 readers that master plans are typically meant to</p>

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1 live for about -- to look ahead for about 20 years  
2 but be revised about every 10 years.  
3 Montgomery County has too many master  
4 plans to be able to revise them in that time  
5 frame, so it does put the reader on notice that  
6 land use policy and things deriving redevelopment  
7 and development may change in the master plan, may  
8 become more -- less relevant as time goes on.  
9 I don't think that's particularly an  
10 issue with this proposal because it does meet all  
11 the master plan recommendations, but a significant  
12 change of course is that we have a new general  
13 plan and the general plan, Thrive Montgomery 2050  
14 adopted recently really does focus on several  
15 different issues.  
16 It has three overarching goals,  
17 economic competitiveness, racial equity and social  
18 justice, and environmental health and resilience.  
19 When -- it's hard to get some of the historical  
20 data and I did footnote where I found the  
21 information I used. In 1990 we had about 760,000  
22 people. Today we have well over a million people.  
23 The number of people who identify as  
24 people of color has changed from a minority to a  
25 majority of the population, of I think 24 percent

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1 to 50 something, and median income has changed, so  
2 I think Thrive was really trying to focus on how  
3 to accommodate land use planning moving forward to  
4 address some of the complexities that these issues  
5 bring up.  
6 So several of the things that this  
7 school offers I think are very important in terms  
8 of our analysis of the general plan and its  
9 bearing on the case. One is simply the number of  
10 students that move from Holton-Arms on to  
11 four-year education plans is astounding. It's a  
12 hundred percent get enrolled and get accepted to  
13 four-year higher education programs.  
14 So in my analysis roughly 200 more  
15 young women getting enrolled in higher education  
16 is a fantastic element of both economic  
17 competitiveness, and because of the financial aid  
18 programs and the other third party programs and  
19 what help they provide it also meets a lot of the  
20 racial equity and social justice goals.  
21 And then finally with regard to the  
22 economic development generally there has been a  
23 recent economic development strategy adopted by  
24 Montgomery County and education is a fundamental  
25 piece of that providing a greater work force and

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1 educational opportunities and increasing  
2 enrollment and the ability to have the various  
3 programs that we've discussed supports that  
4 strategy.  
5 I think those are the key elements I  
6 wanted to talk about. I think there's other  
7 things in the report we don't need to go into.  
8 MS. LEE-CHO: So the remainder of my  
9 questions would have explored the compatibility  
10 analysis of Mr. Sloan's reports, but because it's  
11 based -- premised on the LATR and the noise  
12 testimonies that are coming I think we can stop  
13 here --  
14 HEARING EXAMINER: Okay.  
15 MS. LEE-CHO: -- because I will have to  
16 bring him back after those testimonies are put  
17 into the record.  
18 MR. CHEN: What was that, I apologize?  
19 I didn't hear all of that. You're going to bring  
20 him back?  
21 MS. LEE-CHO: Mr. Sloan after the noise  
22 experts --  
23 HEARING EXAMINER: He was going to go  
24 through the compatibility, but a lot is based on  
25 the noise and the traffic so he can bring him back

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1 after we have that expert testimony.  
2 MR. CHEN: Okay.  
3 HEARING EXAMINER: But I would like to  
4 -- do you have cross, Mr. --  
5 MR. CHEN: I think I'm in the same  
6 position as I am with Mr. La Vay. I mean, Mr. La  
7 Vay is coming back. Mr. Sloan is coming back. I  
8 can do it at that point in time.  
9 HEARING EXAMINER: So they'll come back  
10 as part of the case in chief. Does anyone else  
11 have any burning questions? Okay. Hearing none I  
12 do have one. I'm still trying to wrap my head --  
13 I saw that Mr. Grossman wrote that theory about  
14 inherent/noninherent adverse impacts and I'm still  
15 trying to wrap my head that we can't take the size  
16 of enrollment into account.  
17 He -- his case I think was 20 people,  
18 an increase of 20 people, and yeah, every school  
19 has an enrollment, but what if you had a school  
20 that wanted to just hypothetically increase to  
21 200,000? I mean, I couldn't say that's  
22 noninherent? That doesn't make sense to me.  
23 MR. SLOAN: I agree that doesn't make  
24 sense, and I think in some of the other opinions  
25 there were parameters put around the general

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<p style="text-align: right;">249</p> <p>1 characteristics of a given use, so a school can be 2 expected to have large buildings and surface 3 parking and buses coming and going and being of a 4 certain size. 5 And I think one of the opinions focused 6 specifically on elementary schools for some reason 7 -- this has more grades than that -- and provided, 8 you know, most elementary schools have roughly 9 this number of students so that's probably a good 10 area to be in, so if I had to -- 11 HEARING EXAMINER: So why can't I take 12 it into account in this case? 13 MR. SLOAN: I think you can, but I 14 still thinks it's inherent. 15 HEARING EXAMINER: I could take density 16 into account. Why can't I say this enrollment, 17 you know, on this size of the property is 18 noninherent. Why can't I say that? 19 MS. LEE-CHO: May I ask a question? 20 Isn't there a standard in the zoning ordinance 21 that speaks to this very issue of density and 22 number of people? 23 HEARING EXAMINER: Yeah, there's a -- 24 MR. SLOAN: Yes. 25 HEARING EXAMINER: Yes. Oh. I know</p>	<p style="text-align: right;">251</p> <p>1 standards of evaluation and you get a median 2 number of students that go to every school that 3 has this grade or age you can probably get some 4 kind of comparison, and if the standard of 5 evaluation for that versus the standard of 6 evaluation for the proposed modification is 7 200,000 those don't compare, the standards of 8 evaluation are off, that could I think -- that 9 could be noninherent to -- 10 HEARING EXAMINER: So why can't I do 11 that -- I keep reading this -- I read staff's -- 12 they all say the same thing, staff's analysis of 13 inherent and noninherent. Why can't I do that 14 here? 15 MR. SLOAN: I do think it is a -- 16 HEARING EXAMINER: Or I just don't 17 understand. I read it like five times. 18 MS. LEE-CHO: May I ask a question? 19 HEARING EXAMINER: Yeah, go ahead. 20 BY MS. LEE-CHO: 21 Q So is it that you're saying that 22 enrollment or density is completely divorced from 23 inherent, noninherent analysis or is it that 24 you're saying that it is not noninherent, that it 25 is inherent?</p>
<p style="text-align: right;">250</p> <p>1 you weren't asking me, but I just can't believe 2 that the size of enrollment requested is divorced 3 from inherent and noninherent. What you're really 4 saying is I can't look at the density proposed as 5 an inherent or noninherent characteristic although 6 it could be an operational one, but I can -- let 7 me finish and I want him to answer. I don't want 8 you -- 9 MS. LEE-CHO: I'm not going to answer. 10 HEARING EXAMINER: I don't want you to 11 ask a question. 12 MS. LEE-CHO: Okay. 13 HEARING EXAMINER: But -- so I could 14 take the impact -- I guess I could take the impact 15 of 200,000 people on a 58-acre campus like in 16 terms of traffic and say -- but I can't say that's 17 noninherent -- 18 MR. SLOAN: In -- 19 HEARING EXAMINER: -- if I can't take 20 enrollment into account. 21 MR. SLOAN: Well, I don't think 22 enrollment is completely off the table. I think 23 it's based on the standards of operation -- the 24 standards of evaluation for a given years. 25 And if you say a school has these</p>	<p style="text-align: right;">252</p> <p>1 HEARING EXAMINER: Wait. Don't do the 2 not noninherent. 3 MR. SLOAN: It is -- 4 HEARING EXAMINER: Can we just -- so I 5 can follow you -- all I'm trying to do is follow 6 you. 7 MS. LEE-CHO: Yeah, he'll ask -- he'll 8 answer. 9 MR. SLOAN: I just want to get it 10 correct. 11 HEARING EXAMINER: Because this is a 12 fair -- percentagewise it's a fair amount of 13 increase, a third. Well, I don't know -- this 14 summer camp is larger. 15 MR. SLOAN: Why can't I find that 16 reference? 17 HEARING EXAMINER: Maybe they put it 18 off too long, I don't know. 19 MR. SLOAN: The reference that has that 20 quote, the standard of evaluation. Oh, it's -- 21 okay. I just wanted to make sure that I read it 22 correctly and then don't parse my answer. 23 HEARING EXAMINER: As long as it 24 doesn't have a double negative I'm okay. 25 MR. SLOAN: Okay. Yeah, so I did use</p>

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1 the double negative in my wording on page 27.  
2 I'll try to get rid of it.  
3 HEARING EXAMINER: Well, just -- okay.  
4 I'll live with it. Go on.  
5 MR. CHEN: What page are you on, sir?  
6 MR. SLOAN: On page 27, Exhibit 79, the  
7 second paragraph this is the quote from the  
8 1-9-2004 report and recommendation that Mr.  
9 Grossman wrote on the subject, three special  
10 exceptions in that case.  
11 The board has repeatedly stated that in  
12 determining the inherent general physical and  
13 operational characteristics associated with a  
14 given use the evaluation standard does not include  
15 the actual physical size and scale of operations  
16 of the use proposed.  
17 So I take that piece, but I do pair it  
18 with the standards of evaluation which have some  
19 kind of relationship to this use in similar  
20 situations. I don't think you could say 200,000  
21 just cannot be --  
22 HEARING EXAMINER: Noninherent or  
23 cannot be inherent?  
24 MR. SLOAN: Noninherent, yes. That  
25 would be a noninherent once you get so far away

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1 from the standard of evaluation for comparison.  
2 HEARING EXAMINER: Where do I draw the  
3 line? Isn't that what we're here to do? Why do  
4 you think this is inherent and 200,000 is  
5 noninherent?  
6 MR. SLOAN: I can do it one of two  
7 ways. One would be to look at -- I think in our  
8 -- one of the statements that was submitted had  
9 other school enrollments that are similar, and  
10 this is lower than a lot of them so I just -- I  
11 didn't go there frankly and we could. I just  
12 didn't put it in there.  
13 And the second is I do have to  
14 regardless look at compatibility and compatibility  
15 is -- can be for -- it doesn't matter whether it's  
16 inherent or noninherent if compatibility --  
17 HEARING EXAMINER: Well, it's a big  
18 difference, though, because it's -- if there's  
19 noninherent it only boils down -- I mean --  
20 MR. SLOAN: Right, if it's inherent.  
21 HEARING EXAMINER: I apologize. If  
22 it's inherent it only boils down to compatibility.  
23 MR. SLOAN: Right.  
24 HEARING EXAMINER: If it's noninherent  
25 that's a different story.

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1 MR. SLOAN: Right, but I have to do the  
2 analysis. Either way compatibility is still the  
3 crux when the standards of evaluation in my  
4 opinion are comparative, and in this case they  
5 are. There is a tipping point where the standards  
6 of evaluation would push it into a noninherent and  
7 then it's noninherent --  
8 HEARING EXAMINER: But you don't have  
9 that tipping point defined.  
10 MR. SLOAN: Not in my land use report.  
11 I agree -- in that sentence I agreed with  
12 technical staff and I agreed with the board and I  
13 read the elements --  
14 HEARING EXAMINER: The planning board?  
15 When you say board you mean the planning board?  
16 MR. SLOAN: The planning board, sorry,  
17 the planning board, and in one of the -- in the  
18 tables of comparison of educational facilities,  
19 but those were in my mind but not explicitly  
20 stated in there.  
21 MS. LEE-CHO: So this is Exhibit 30  
22 which is the September 12th, 2025 petitioner's  
23 revised statement of justification and summary of  
24 proof. Where is it? Which has not -- in many  
25 respects is not superseded. We just sought to

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1 clarify. Where is the table? I think I passed  
2 it.  
3 HEARING EXAMINER: And just for  
4 everybody's -- I don't know if there's a clock up  
5 here, but it's 4 o'clock.  
6 MR. CHEN: Seven of.  
7 HEARING EXAMINER: Yes.  
8 MS. LEE-CHO: So what page? It's  
9 Exhibit 30.  
10 MR. SLOAN: So in Exhibit 30, page 19  
11 part of my research and analysis was, you know,  
12 reading all the documents that have been  
13 submitted. This has a list of schools, the  
14 grades, enrollment. I'm not sure I know what the  
15 -- remember what the asterisk means.  
16 HEARING EXAMINER: I'm sorry. Tell me  
17 the page again.  
18 MR. SLOAN: Page 19, and the table is  
19 up on the screen for those on Zoom.  
20 HEARING EXAMINER: Okay.  
21 MR. SLOAN: So as we kind of alluded to  
22 but didn't explicitly say, there is a portion of  
23 the ordinance that says when you hit 87 students  
24 per acre --  
25 HEARING EXAMINER: Right.

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1 MR. SLOAN: -- you're bumped up into  
2 this. You got to go through a lot more evaluation  
3 in terms of compatibility on issues. We're  
4 certainly nowhere near that. The number of  
5 students enrolled here, and you can see  
6 Holton-Arms is listed at 655 now. The proposal is  
7 870. 870 is within the range of these other  
8 schools that -- I don't need to read them all.  
9 They're all --  
10 HEARING EXAMINER: No, I understand.  
11 Okay.  
12 MR. SLOAN: And so in my mind that gave  
13 me some standard of evaluation that I could have  
14 better explicitly stated in here --  
15 HEARING EXAMINER: Okay.  
16 MR. SLOAN: -- to maintain an inherent  
17 --  
18 MS. LEE-CHO: Just so that the record  
19 -- could you actually state the students per acre  
20 for the Holton-Arms? That's a current number,  
21 correct?  
22 MR. SLOAN: The current number is  
23 11.42. I do think I put in my land report what it  
24 would be with the 870 and --  
25 HEARING EXAMINER: 870 divided by 50?

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1 MR. SLOAN: 54.6. Yeah, that's the  
2 math. I'm a designer.  
3 HEARING EXAMINER: I thought it was --  
4 MR. SLOAN: It's 15.9.  
5 BY MS. LEE-CHO:  
6 Q So that's 15.9 students?  
7 **A 15.9 students per acre. The**  
8 **comparables here run from 5.6 to 37 -- no, 54.61**  
9 **at Sidwell, but that's, you know, there's quite a**  
10 **diversity in each one. Should the --**  
11 HEARING EXAMINER: How do you think the  
12 usable area affects that analysis?  
13 MR. SLOAN: Like if you took out the  
14 conservation easements because they could never be  
15 developed?  
16 HEARING EXAMINER: Uh-huh.  
17 MR. SLOAN: If I had found in my visit  
18 to the campus and my analysis of the operations  
19 and things, if those operations couldn't be  
20 contained, had spilled out, you know, that's  
21 potential for discussion, but this is unusual in  
22 the way that it is carved around the natural  
23 features.  
24 HEARING EXAMINER: Well, the queuing  
25 is.

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1 MR. SLOAN: The queuing is in the  
2 fields. You know, they are dispersed around.  
3 MS. LEE-CHO: And I believe your report  
4 discussed the existing facilities as supportive of  
5 the requested increase, did it not?  
6 MR. SLOAN: It did. I mean --  
7 HEARING EXAMINER: I understand that.  
8 MR. SLOAN: I mean, another piece that  
9 I -- we'd probably get into with findings is the  
10 fact that -- maybe it's another opinion that we  
11 need to look at, is that previous opinions have  
12 held that the request for modification is what's  
13 under scrutiny.  
14 And so the school building, for  
15 example, is not under scrutiny right now and if it  
16 doesn't need to be expanded to accommodate the  
17 proposed enrollment increase we don't have to get  
18 into the compatibility of the building.  
19 HEARING EXAMINER: I don't know what  
20 that has to do with inherent, noninherent, though.  
21 I mean --  
22 MR. CHEN: Especially with a major  
23 modification and provisions under the zoning  
24 ordinance for that --  
25 HEARING EXAMINER: Yeah.

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1 MR. CHEN: -- special exception.  
2 HEARING EXAMINER: But I'll leave it.  
3 I'm thinking. I'm allowed to think. I just -- I  
4 didn't agree with whatever Mr. Grossman wrote, so  
5 are there any questions? I know I've taken up  
6 with some cross-examination. What's wrong?  
7 MS. LEE-CHO: I'm just seeing if you  
8 have anything else to add.  
9 HEARING EXAMINER: I don't know. Did  
10 you have any questions based on my questions or  
11 you want to wait?  
12 MR. CHEN: I'm going to wait.  
13 HEARING EXAMINER: Okay. All right.  
14 MR. CHEN: By the way, I think just to  
15 help you, Mr. Sloan, it's page 30 where you -- the  
16 bottom paragraph.  
17 MR. SLOAN: Oh, yeah. I did that  
18 calculation. Yes, thank you.  
19 HEARING EXAMINER: Okay. Thank you.  
20 All right. So we have a half hour. I can do one  
21 of two things. We can start a new witness or you  
22 can start -- I'm going to adjourn this hearing to  
23 -- or I can adjourn and continue it to April 9th  
24 at 9:30, and you can discuss -- and I can leave  
25 the Zoom recording up so you can speak off the

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1 record.  
2 Nothing that goes on in this -- when I  
3 leave, and the court reporter is going to leave  
4 with me, okay, you're just here to figure out --  
5 agree on dates so nothing after I leave is on the  
6 record, so I can do that now and give you all a  
7 head start.  
8 MR. CHEN: And if you adjourn until the  
9 9th --  
10 HEARING EXAMINER: Yes, at 9:30 a.m.  
11 here.  
12 MR. CHEN: -- hopefully at that point  
13 in time we will have resolved -- we will have  
14 resolved the dates concern and we will report to  
15 you and it can be then handled on the record at  
16 that point.  
17 HEARING EXAMINER: Okay. That would be  
18 great. Okay. So hearing no objection to  
19 proceeding like this I am going to adjourn this  
20 hearing to Thursday, April 9th at 9:30 in this  
21 Room 200 of the council office building. All  
22 right. And Court Reporter, you can go off the  
23 record now and pack up and leave.  
24 (Whereupon, Day 1 of the Hearing was  
25 adjourned at 4:00 p.m. EST.)

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1 CERTIFICATE OF TRANSCRIBER  
2 I, Bonnie K. Panek, do hereby certify  
3 that the foregoing transcript is a true and  
4 correct record of the recorded proceedings; that  
5 said proceedings were transcribed to the best of  
6 my ability from the audio recording and supporting  
7 information; and that I am neither counsel for,  
8 related to, nor employed by any of the parties to  
9 this case and have no interest, financial or  
10 otherwise, in its outcome.  
11  
12 *Bonnie K. Panek*  
13  
14 BONNIE K. PANEK  
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1 CERTIFICATE OF DIGITAL REPORTER - NOTARY PUBLIC  
2 I, Lee Utterback-Pair, a Notary Public  
3 in and for The State of Maryland, the officer  
4 before whom the foregoing proceedings were taken,  
5 do hereby certify that the foregoing transcript is  
6 a true and correct record of the proceedings; that  
7 said proceedings were recorded by me digitally and  
8 thereafter reduced to typewriting under my  
9 supervision; and that I am neither counsel for,  
10 related to, nor employed by any of the parties to  
11 this case and have no interest, financial or  
12 otherwise, in its outcome.  
13 IN WITNESS WHEREOF, I have hereunto set  
14 my hand and affixed my notarial seal this 13th day  
15 of April, 2026.  
16  
17 *Lee Utterback-Pair*  
18  
19  
20 NOTARY PUBLIC IN AND FOR  
21 THE STATE OF MARYLAND  
22  
23  
24  
25

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