

IN RE: DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING	*	BEFORE THE OFFICE OF
2 nd Election District	*	ADMINISTRATIVE HEARINGS
8 th Council District	*	FOR
(2310 W. Joppa Road)	*	BALTIMORE COUNTY
GREENSPRING MANOR	*	
GREENSPRING JOPPA FALLS, LLC	*	CASE NOS. 08-0922 and
<i>Owner/Applicant</i>	*	2021-0250-ASA
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**ADMINISTRATIVE LAW JUDGE’S
COMBINED DEVELOPMENT PLAN AND ZONING OPINION & ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for a public hearing on a development proposal submitted in accordance with Article 32, Title 4, of the Baltimore County Code (“BCC”). Greenspring Joppa Falls, LLC Owner/Applicant (herein known as “Owner”) and Atapco Properties, Inc., Developer (herein known as “Developer”) submitted for approval a 1-sheet redlined development plan (“Redlined Development Plan”) and a 1-sheet greenlined development plan (“Greenlined Development Plan”) prepared and sealed by Kimley-Horn known as “Greenspring Manor.” (Dev. Exs. 1 and 1B). The Developer proposes to build 61 single-family homes (the “Project”) on 39.4± acres of land split-zoned Density Residential - DR 1 and DR 2, located at 2310 W. Joppa Rd. (the “Property”). There is one existing house which is to remain.

The Developer has also filed a Petition for Special Variance from the Baltimore County Zoning Regulations (“BCZR”), §4A02.4.G to allow the development of the Property within the Falls Road and Joppa Road and Falls Road and Greenspring Valley Road failing traffic sheds. The development and zoning cases were filed as a combined hearing as permitted by BCC, §32-4-230.

The Concept Plan Conference (“CPC”) was held on March 9, 2021. A Community Input Meeting (“CIM”) was held on April 27, 2021. A Development Plan Conference (“DPC”) was held on August 11, 2021.

The Property was posted with the Notice of Hearing Officer’s Hearing (“HOH”) and Zoning Notice in compliance with the regulations. A public virtual WebEx hearing, in lieu of an in-person public hearing, was held on the following dates: September 1, 2022; September 20, 2022; September 21, 2022; October 27, 2022; October 28, 2022; November 1, 2022; December 5, 2022; December 7, 2022, January 30, 2023, February 10, 2023, March 27, 2023, April 11, 2023 and May 31, 2023 (Days 1-13).

Russell Powell, representative of the Developer, attended the HOH in support of the Plan. Also in attendance was Matthew Bishop of Kimley-Horn, the firm that prepared both the Redlined Development Plan and Greenlined Development Plan. Christopher Mudd, Esquire and Adam Rosenblatt, Esquire of Venable, LLP, represented the Developer. Michael McCann, Esquire represented Valleys Planning Council; Seminary Ridge Homeowner’s Association; Boxwood Homeowner’s Association; Heatherfield Homeowner’s Association; and Falls Road Community Association. Peter Max Zimmerman, People’s Counsel for Baltimore County also participated. In addition, Michael Wyatt, Esquire and Douglas Sachse, Esquire, neighboring property owners participated in the hearings. There were many property owners and interested citizens who attended some or all of the hearings.

COUNTY AGENCY WITNESSES

Numerous representatives from Baltimore County agencies who reviewed the Plan also attended the hearing, including the following individuals from the Department of Permits, Approvals and Inspections (“PAI”): Jerry Chen, the Project Manager, Jim Hermann on behalf of both Development

Plans Review (“DPR”) and Department of Recreation and Parks (“R&P”); LaChelle Imwiko from Real Estate Compliance (“REC”); Eugene Cauley from Development Plans Review (“DPR”); and Shawn Crawford, Office of Zoning Review (“OZR”). Also appearing on behalf of the County were Jeff Livingston from the Department of Environmental Protection and Sustainability (“DEPS”), and Brett M. Williams from the Department of Planning (“DOP”).

Shawn Crawford verified both the OZR DPC comments dated November 3, 2021 and the OZR Final (HOH) comments dated April 4, 2022. (County Exs. 1A, 1B). The list of changes/additions requested by OZR set forth in the DPC Comments were made on the Redlined Development Plan and as a result, OZR recommended approval. LaChelle Imwiko testified for REC and listed the DPC comments which included labeling the 100-year Floodplain Easements, and Drainage and Utility Easements. (County Ex. 2A, 2B). At the hearing, the final change requested by Ms. Imwiko, pertaining to the total acreage for the 10 Drainage and Utility easements, was made in green which then resulted in the Greenlined Development Plan. With that final correction, REC recommended approval of the Greenlined Development Plan. (Dev. Ex. 1B).

Jeff Livingston testified on behalf of 3 sections within DEPS: (1) Ground Water Management (“GWM”); (2) Stormwater Management (“SWM”); and (3) Environmental Impact Review (“EIR”). GWM provided a comment dated August 26, 2022 that GWM had no outstanding issues or comments. (County Ex. 4). On behalf of SWM, the Concept SWM Plan was approved on June 23, 2021 as confirmed by a SWM comment dated November 10, 2021. (County Ex. 5). Mr. Livingston confirmed that the SWM devices will consist of 2 submerged gravel wetlands.

EIR provided HOH comments dated August 26, 2022 indicating that EIR reviewed the Redlined Development Plan dated November 10, 2021. (County Ex. 3). A Forest Buffer Variance was approved by the Director of DEPS on September 24, 2021 and an Alternatives Analysis was approved on

September 21, 2021. ¹ The EIR HOH comments added 2 more minor changes that will need to be corrected prior to Final Development Plan approval. Finally, Mr. Livingston verified that the Director of DEPS approved the Developer's request for a Forest Conservation Variance to remove one (1) Specimen tree as set forth in the Director's letter dated September 21, 2021. (County Ex. 6).

In preparation for the HOH, Brett Williams provided a Memorandum on behalf of the DOP dated August 24, 2022 with an attached HOH Report dated November 18, 2021. (County Ex. 7). In response to DOP's DPC comments, the Developer provided a point-by-point response dated July 29, 2021. (County Ex. 9). DOP also reviewed and approved a School Impact Analysis ("SIA") with a filing date of July 9, 2021. (County Ex. 8). Mr. Williams explained that the projected enrollment for Riderwood Elementary School, Ridgely Middle School and Dulaney High School were under the State Rated Capacity ("SRC") and is 96.43%, 102.80% and 97.28% respectfully. Mr. Williams also stated that DOP reviewed the Redlined Pattern Book dated August 30, 2021 and found that it met all of the requirements of the Residential Performance Standards in BCZR, §260.

In the HOH Report, DOP addressed the Petition for Special Variance to develop within the 'F' level traffic shed of Falls Rd. and Joppa Rd., and Falls Rd. and Greenspring Valley Rd. Although BCZR, §4A02.4.G, requires DOP to provide a report to the Zoning Commissioner prior to consideration of the Special Variance in their HOH Report, DOP deferred the Petition to the Department of Public Works and Transportation (DPWT) for final recommendation and decision.

Jim Hermann, the Baltimore County Landscape Architect, testified that he approved the Schematic Landscape Plan on October 13, 2021 and, as a result, DPR recommended approval of the Redlined Development Plan from a landscaping perspective. (County Ex. 10). He added that a Final Landscape Plan would be filed in Phase II of the development process. In regard to Open Space

¹ The Protestants separately appealed these decisions to the Board of Appeals which approved of the same.

requirements, Mr. Hermann stated that for the 61 total proposed units, the required amount of Open Space (“OS”) under BCC, §32-6-108 is 60,000 sf (1,000 sf per unit). (County Ex. 11). The Developer will provide 148,300 sf of OS at the Property as shown on the OS Proposed Conditions Plan which will be owned and maintained by a private Homeowner’s Association (“HOA”). There are no Master Plan Greenways affected by this Project. As a result, on behalf of R&P, Mr. Hermann recommended approval of the Redlined Development Plan.

Eugene Cauley testified on behalf of both DPR and the Department of Public Works & Transportation (“DPWT”) in regard to roadways, sidewalks, storm drains, water and sanitary sewer systems. DPR’s general and site-specific comments were provided in the DPC comments dated August 10, 2021 (the “DPR DPC Comments”). (County Ex. 12A). He explained that a floodplain study need not be approved for filing in Phase I, and was permitted to be moved to Phase II of the development process. (County Ex. 12D).

Mr. Cauley testified that DPR could *not* recommend approval of the Redlined Development Plan with an ‘emergency only access gate’ because the number of homes adjacent to the Property exceeds 100, and therefore it is a violation of DPR Policy Manual, Access Guidelines, XIII.B. (Prot. Ex. 9). In regard to sewer capacity, he acknowledged the DPR DPC Comments dated August 10, 2021 indicated that eight (8) sewer segments do not have adequate capacity to accommodate 61 homes. (County Ex. 12A). Mr. Cauley confirmed that these 8-inch pipes were to be replaced and/or upgraded by Johns Hopkins when it built the 3 medical buildings at Greenspring Station as part of that prior development project. However, Mr. Cauley could not provide information as to when, or whether, JHH would be doing that work. He was clear that, as of HOH Day 1, the Johns Hopkins sewer segments had not been replaced/upgraded. The DPR DPC Comments also indicated that Johns Hopkins is obligated to complete that work by 2023. Mr. Cauley added that the Developer of this Project (Atapco), was required to

complete work on two (2) other sewer segments (MH 43793, 43794) for another development project but did not have specific information. (County Ex. 12A).

When asked about the Petition for Special Variance and failing intersections along Falls Rd., Mr. Cauley stated that a traffic impact study (TIS) was approved by State Highway Administration (SHA). In Case No.: 2021-250-ASA, DPR provided zoning advisory comments (“ZAC”) dated October 18, 2021 wherein it was reiterated that no development is permitted in a traffic shed or along local roads with an ‘F’ level of service (“LOS”) and that the Special Variance request needed to be coordinated/discussed with DPWT Traffic Design section. (County Ex. 12C). Mr. Cauley testified that he spoke with a County traffic engineer, Kristopher Nebre, PE, who works in the Traffic Planning and Traffic Engineering Section of DPWT. Mr. Cauley testified that Kris Nebre told him that DPWT had no further comment. From his conversations with Kris Nebre, Mr. Cauley understood that Falls/Joppa Rd. and Falls/Greenspring Valley Rd. were rated by the County as ‘F’ intersections. Mr. Cauley was also told by Kris Nebre that roadway improvements would be made to the intersection of Falls/Joppa but not to Falls/Greenspring Valley. When Mr. Cauley was shown the DPWT ZAC comment dated September 20, 2021 from Terry Curtis, PE - Engineer III with DPWT, Mr. Cauley acknowledged that, at that time, DPWT recommended denial of the Petition for Special Variance. (County Ex. 12B). Mr. Cauley then repeated the information provided to him by Kris Nebre that the traffic generated by the Project would have no net impact on the failing intersections. (County Ex. 12D). He testified that the levels of service for those intersections after the improvements are completed would still be rated as ‘F’. (County Ex. 12 D).

Because of Mr. Cauley’s testimony about traffic issues, at the request of the undersigned, Kristoffer Nebre, PE, Engineer IV, Division Chief of Traffic Engineering, Department of Public Works and Transportation (DPWT) was requested to testify. Kris Nebre testified that he reviewed the Redlined

Development Plan and the TIS prepared by the Developer's traffic engineer.

While he does not make the boundary line determination for traffic sheds, Kris Nebre did verify with the County GIS department that this Property is located within a failing traffic shed which includes both the Falls/Greenspring Valley intersection and the Falls/Joppa intersection. The relevant traffic shed does not include the Falls Rd. and Seminary Ave. (MD Rt. 131) intersection. He clarified that both Falls Rd. (MD Rt. 25) and Greenspring Valley Rd. (MD Rt. 130) are owned and maintained by the State of Maryland (SHA), while Joppa Rd. is owned and maintained by the County. As a result, the State, not the County, has jurisdiction to undertake work to physically improve those State-owned roadways, and/or to make changes to the signal timing. Alternatively, the State could approve plans by a developer to improve the roadways.

In order to rate intersections for the purpose of the Basic Services Map ("BSM"), Kris Nebre explained that the County uses the 'loaded cycle methodology' ("LCM") as found in the Highway Capacity Manual (1965). Under the LCM, the Traffic Engineering/Planning section employs a team of people to perform traffic counts at intersections for a 1-2 hours to evaluate each approach to an intersection. A traffic cycle becomes 'loaded' if on a green light, the last vehicle in line on a green light does not make it through the intersection. Stated in percentages, failing movements generate the assigned rating; an 'F' rated intersection has a load factor of 86-100%. For intersections rated 'D', 'E' and 'F', Kris Nebre explained that DPWT conducts annual traffic counts to reevaluate the ratings each year. For intersections rated 'A', 'B' and 'C', the counts are conducted every 3 years. He explained that because it is a snapshot in time, the LCM cannot be used to forecast future traffic generated by a proposed development.

Kris Nebre did confirm that both Falls/Greenspring Valley and Falls/Joppa are both rated by DPWT with a level of service of 'F.' He was not able to state which approach(es) for each of these

intersections was causing the 'F' rating, or how long either intersection had been rated an 'F'. He agreed that there were 12 intersections in the County with 'F' LOS, and that 3 of those 12 were located along the Falls Road corridor. (PC Ex. 9).

Kris Nebre also verified that SHA did not approve the Developer's proposed improvements to the Falls/Greenspring Valley intersection but did approve the proposed improvements to Falls Rd/Joppa Rd. intersection. Those improvements which will consist of one (1) additional left turn lane on both the eastbound and westbound approaches. He stated that these improvements will allow multiple movements simultaneously thus providing more time during green lights along the Falls Rd. corridor. After the improvements at Falls/Joppa Rd. are completed, SHA will change the signal timing. Kris Nebre stated that both the physical improvements at the Falls Rd./Joppa Rd. intersection, and the timing at the Falls Rd. intersections will improve traffic flow for Falls/Greenspring Valley intersection.

Kris Nebre explained that the standard for a Special Variance requires DPWT to analyze whether the proposed improvements to the roadway were such that the additional traffic generated by the development, will not make the intersections any worse. The roadway improvements must have the capacity to accommodate all new traffic generated from the development such that it would be as if no additional traffic was added to the intersection resulting in a net impact to the intersection. Having reviewed the TIS, and supplemental information provided to DWPT by the Developer's traffic engineer, it was Kris Nebre's opinion that the proposed development would result in a net zero impact along Falls Rd. (County Ex. 13).

Kris Nebre explained that when a development is being proposed, DPWT does not generate a TIS, nor does it conduct traffic counts. In analyzing a TIS to determine the impact of the development on a traffic shed, DPWT reviews the Critical Lane Volume ("CLV") and Highway Capacity Manual ("HCM") methodologies because, unlike the LCM, each method can project the number of trips to be

generated by a proposed development. He acknowledged that the intersections may still be rated as 'F'. In regard to whether Greenspring Manor development should have a permanent connection through Mays Chapel community, Kris Nebre deferred to DPR.

On cross examination, Kris Nebre acknowledged a series of emails obtained by the Protestants' counsel (the "DPWT Traffic Emails"). (Prot. Ex 15, 16, 17, 18 and 19). Kris Nebre explained that the DPWT Traffic Emails were created at a time when Greg Carski was the Bureau Chief of Transportation Planning and Transportation Engineering and Michael Filsinger was the Division Chief of Traffic Engineering. Kris Nebre now occupies the job of Division Chief. At the time of the DPWT Traffic Emails, both Mike Filsinger and Kris Nebre worked under Greg Carski. Greg Carski still works for the County. Kris Nebre also acknowledged DPWT DPC comments were prepared during review of the development plan dated August 12, 2021 ("DPWT DPC Comments"). (PC Ex. 6). Kris Nebre recalled that the DPWT DPC Comments were compiled by him and the DPWT team and he agreed that its contents were correct. (PC Ex. 6). He also acknowledged having seen the DPWT ZAC Comments authored by Terry Curtis, PE wherein DPWT recommended denial of the Petition for Special Variance. (County Ex. 12B).

DEVELOPER'S CASE

1) Erin Kuhn, SHA Associate District Engineer Traffic.

The Developer's first witness was Erin Kuhn, Associate District Engineer Traffic at SHA. She is assigned to District 4 which includes Baltimore County. District 4 reviews TIS and development plans but is not involved with the Special Variance. In this case, SHA reviewed the revised TIS dated December 9, 2020 and the Point-by-Point Response to State and DPWT comments. It was approved by SHA on January 21, 2021. (Dev. Ex. 15). The TIS included the proposed roadway improvements to Falls/Joppa Rd. (Dev. Ex. 16). By letter dated August 4,

2021, SHA did not object to the Development Plan for the Project, and by subsequent letter dated September 13, 2021, SHA had no objection to the Petition for Special Variance. (Dev. Exs. 17, 18).

Ms. Kuhn testified that as indicated in the March 7, 2022 Maryland Department of Transportation (“MDOT”) letter, SHA did not approve the proposed improvements to Falls/Greenspring Valley Rd. intersection. (Dev. Ex. 20). At that intersection, the Developer was proposing one (1) additional left turn lane from Greenspring Valley Rd. turning north onto Falls Rd. SHA denied those improvements and found that they would create a safety issue when traffic in those left turn lanes merge together to head north on Falls Rd. (Dev. Exs. 19, 20, 21). After SHA denied the proposed improvements, Lenhart Traffic Engineers resubmitted the same improvements for Falls/Greenspring Valley Rd. which were denied by SHA for a second time.

Ms. Kuhn added that all three (3) traffic signals along Falls Rd. operate through a coordinated signal system. After the Falls/Joppa Rd. improvements are completed, SHA will retime all 3 signalized intersections. Ms. Kuhn repeated that under both the CLV and HCM methodologies, the TIS showed that neither the LOS for Falls/Joppa, nor the Falls/Greenspring Valley intersections, operate at LOS ‘F’. However, as far SHA is concerned, when the proposed roadway improvements at Falls/Joppa Rd. are completed, the LOS for Falls/Joppa would change from LOS ‘E’ to ‘D.’

2) Russell Powell, Senior Vice President, Atapco Properties.

Russell Powell was the Developer’s second witness. As the Senior Vice President for the Developer, Mr. Powell is responsible for all new acquisitions. Atapco has a 100-year history in Baltimore. He described the Project as low impact with proximity to Greenspring Station and Johns Hopkins medical facilities. He highlighted that the proposed homes were being pushed

behind the existing house to preserve one-half the Property in OS. Atapco found the Property desirable for a by-right development, on cleared farm land, with its connection to utilities. The existing home will be sold to a new buyer. Atapco will contract with NVR Homes as the builder. He was also certain that community outreach with adjacent communities had been conducted. He stated that Atapco requested to meet with Valleys Planning Counsel (“VPC”) but VPC denied the request.

Mr. Powell informed that since the Concept Plan, the following changes to the Development Plan have taken place:

- 1) adding a berm and landscaping to enhance the vegetative buffer;
- 2) clustering the homes away from W. Joppa Rd.;
- 3) changing the Mays Chapel gate to emergency-access-only;
- 4) the addition of speed bumps on Tally Ho Rd.;
- 5) roadway improvements at Falls/Joppa; and
- 6) upgrade sections of the sewer system.

Mr. Powell confirmed that the Developer here has elected to proceed with construction drawings for both roadway improvements and sewer system repair/replacement prior to approval of the Greenlined Development Plan. During cross examination, Mr. Powell stated that, prior to the purchase of the Property, the Developer learned that Johns Hopkins had not repaired the sewer system as part of its development approval in Greenspring Station. He also stated that the community outreach was with Seminary Ridge HOA, Boxwood Community and Meadows Community. He confirmed that the proposed homes would have 2-3 car garages and 3-4 bedrooms. The homes would range between 3,000 sf–4,500 sf without basements. Market studies indicated that buyers want 3-car garages. He further acknowledged on cross that the proposed density was non-negotiable. The price point will range from 800,000.00-1,000,000.00.

3) Matthew Bishop, Landscape Architect, Kimley Horn.

Matthew Bishop was admitted as an expert in landscape architecture, land planning, in

development regulations and zoning process. In describing the location of the Property, Mr. Bishop stated it is located northwest of I-695, northeast of W. Joppa Rd., and east of Falls Rd. Immediately surrounding the Property are homes to the north and east, SHA property to the south, and to the west, Greenspring Station with mixed-use offices and medical facilities. The Property is split-zoned nearly in its center with Density Residential - DR1 to the south and DR2 to the north. The permitted density for 39.4 +/- acre Property is 61 homes which would be divided as 16 homes (16.8 acres +/-) in DR 1 and 45 homes in DR 2 (22.6 acres +/-). Mr. Bishop testified that the homes meet all bulk regulations and no variances were being requested.

Mr. Bishop conducted an analysis of the lots in the surrounding area and prepared a document showing lot size ranges from 6,500 sf-12,500 sf. (Dev. Ex. 4). This document was submitted to DOP in response to DOP's CPC comment. Street view photographs were provided. (Dev. Ex. 5A-5Y). A rendered Development Plan was provided to show Project. (Dev. Ex. 6). The Property has minimal topographical changes and therefore no retaining wall will be constructed thus minimizing the grading here. The first home will be located 550 ft away from W. Joppa Rd. The proposed access driveway will have dedicated in and out drive aisles.

After speaking with the Meadows and Boxwood Communities, the Developer is proposing the Mays Chapel Gate now be approved to be an emergency-access-only gate where Mays Chapel Rd. connects to the Property. The Mays Chapel Gate would prevent traffic between W. Joppa and Seminary Avenue. At the location of the Mays Chapel Gate, would be a 3-4 ft tall berm with large shade trees to buffer the Project from the Meadows and Boxwood communities. A Schematic Landscape Plan has been filed and approved by the County. There will be 1,000 new plantings including shrubs, shade trees, flowering trees and Evergreens.

The Project will provide more than double the amount of required OS with grass areas, a

pavilion, or gazabo and garden areas. The required amount of OS is 60,000 sf, while 148,000 sf of OS is being provided. A walking trail will proceed through Lots 2 – 9. The cost of the OS is \$308,000.000. Public sidewalks will be on both sides of the interior roads. The homeowner's association will own the OS. There currently are no SWM devices on the Property; 3 submerged gravel wetlands are being proposed to treat both 100-year water quantity and quality. There are SWM facilities located in the residential communities to the north of the Property and at Greenspring Station.

The existing floodplain which is currently located in the front of the Property in farm fields, will be contained within the Forest Buffer and Forest Conservation easement areas. The proposed driveway will be built on fill at a higher elevation. The environmental areas will be protected in perpetuity through easements. There will be no negative impact to adjacent properties.

Mr. Bishop used the Pattern Book to describe the proposed home styles which will have variable widths of 40 ft; 50 ft; and 55 ft. (Dev. Exs. 7A, 7B, 7C). There will be a mix of front-end loaded and side-loaded garages. Most 2-car front-loaded garages will have first floor living.

Mr. Bishop testified that the Project meets the Master Plan which is intended only as a guide. He opined that the Project is consistent with the T3 suburban transect zone in that it will have single family dwellings which are oriented to the streets in a grid pattern embellished with landscaping. T3 applies to lowest density zones DR1 and DR 2, and permits a wide variety of density, design and setbacks.

In regard to rehabilitation of the sewer segments, Mr. Bishop stated that the Developer has agreed to upgrade the 8 inch sewer pipes to 12 inch sewer pipes located across Joppa Rd. Plans for the rehabilitation have been prepared and filed with the County.

As to the Residential Performance Standards in BCZR, §260, Mr. Bishop opined that the

Project met each section. Specifically, he testified that the Project meets BCZR, §260.2 – *Site Planning* in that 27 specimen trees (“STs”) are being retained and only 1 ST is being removed, there is little forest clearing, and additional quality vegetation will be planted. Under BCZR, §260.3 – *Open Space*, the existing grading is being maintained, the homes are located 550 ft away from W. Joppa Rd., there are a mix of lot sizes without any panhandle lots. There will be plantings along the front of the Property which will link to the network of natural landscape open areas. All sidewalks will connect to Mays Chapel Rd. and a pedestrian path will be provided along W. Joppa Rd. All homes are oriented to open areas and to the gazebo park. The trail system will proceed through the open areas to adjoining communities. Under BCZR, §260.4 – *Streets and Parking*, there will be a street connection with Mays Chapel Gate being emergency-access-only to meet community concerns. In addition to garage parking, street parking is also provided. Under BCZR, §260.5 – *Landscape Design*, the entrance will be an inviting OS, with sidewalks leading to the OS. The gazebo, walking trail and garden are located in a pocket park. There is a berm on the northern end, and fencing on side and rear of the Property; tree canopy along the streets; a monument sign will be provided. Under BCZR, §260.6 – *Buildings*, under Subsection A, the Project provides a variety of housing types with variable widths and both front and side garage entries. All porches face the street and the front yard setbacks provide a uniform street edge. Decks and porches are available to buyers. The proposed gazebo provides the same architectural theme. The finish materials are provided in the Pattern Book, with similar materials and design on building facades, and compatible materials for siding using stone and brick. (Dev. Ex. 7). Under BCZR, §260.6.B, the front and side loaded garages are not the dominant theme. In conclusion, Mr. Bishop opined that the Project meets all Residential Performances Standards and the Development Plan meets all applicable development regulations.

On cross examination, Mr. Bishop acknowledged that the Developer was maximizing the number of density units on the DR2 and thereby condensing them onto the northern portion of the Property. He agreed that the smallest lot size was 7,507 sf (less than 1/5 acre) and the largest was 21,571 sf (less than 1/2 acre). He stated that 15 of the 61 homes have 3 car garages. He acknowledged that of the 61 lots, 24 of the lots are less than 10,000 sf and none will be near 30,000 sf. In regard to setbacks, the 3 typical lot layouts as shown on the Greenlined Development Plan provide the minimum required front, side and rear setbacks; there is no breakdown for the number of proposed lots which may have larger setbacks. He also acknowledged that the Floodplain Study had not been 'approved for filing' by the County as of the time of the hearing. The proposed driveway, connection to the sewer, and roadway widening of W. Joppa Rd. for acceleration/deceleration lanes, will all impact the floodplain. Bishop opined that there was no requirement under BCC, §32-4-414(c) to obtain a waiver to develop in the floodplain. Mr. Bishop recognized that his request to DPWT on June 28, 2021, for DPWT's confirmation that existing 'overtopping of water' on W. Joppa Rd. will not be made worse by the Project. (Prot. Ex. 23). DPWT did not respond to the request. In regard to SWM devices, Mr. Bishop explained that it is typical not to be able to treat all the water draining onto and off a property.

Mr. Bishop also explained that the Developer has agreed to repair/replace eight (8) sewer segments located on the SHA property across from this Property on W. Joppa Rd., and SHA has granted an easement to do the work. Mr. Bishop added that, in light of Johns Hopkins' failure to repair certain sewer segments for the medical and surgical buildings in Greenspring Station, he has not analyzed whether there is sufficient sewer capacity. He stated that he is relying on the County's expertise as to sewer capacity and the County was only requiring the rehabilitation of 8 sewer segments on SHA property.

4) John Canoles, Eco Science Professionals.

John Canoles of Eco Science Professionals was admitted as an expert environmental consultant with special knowledge of State and County requirements for Specimen Trees (“STs”) and Forest Conservation Variances. (Dev. Ex. 10). Mr. Canoles prepared the Application for Forest Conservation Variance (the “Forest Conservation Application”). (Dev. Ex. 12).

With regard to the Forest Conservation Variance, Mr. Canoles explained that the Developer is requesting approval to remove one (1) specimen tree – ST12 - as identified in the photo. (Dev. Ex. 11). The Forest Conservation Application reveals the location of the tree is on W. Joppa Rd. and needs to be removed due to widening of W. Joppa Rd. with the acceleration/deceleration lanes for the Project. The Forest Conservation Application indicates that the ST12 is a 43-inch, Norway Spruce in fair condition which has already been impacted by tree trimming for overhead BGE lines. The Director of DEPS approved the removal of ST12 finding that all requirements in BCC, §33-6-116(d) and §33-6-116(e) have been met. (County Ex. 6; Dev. Ex. 13). Mr. Canoles opined at the HOH that the removal of ST12 meets all requirements in BCC.

5) Nick Driban, PE, PTOE, Associate Vice President, Lenhart Traffic Consulting, Inc.

Mr. Driban is a senior traffic engineer with nearly 16 years of experience in the field of traffic engineering. He is a licensed professional engineer in the State of Maryland with a Professional Traffic Operations Engineer (“PTOE”) certification. He has worked for Lenhart Traffic Consulting (“Lenhart”) for the past 5 yrs. Although he has been accepted as an expert witness in other counties in Maryland, this was the first case in which Mr. Driban has testified as an expert witness in Baltimore County. In this case, he was accepted as a professional traffic operations engineer with special knowledge of the BCZR and development regulations. (Dev. Ex. 24).

Mr. Driban prepared the TIS dated September 14, 2020 and, due to comments he received from both SHA and DPWT - Traffic Engineering Section, he revised it on December 7, 2020. (Dev. Ex. 25). In the TIS, Mr. Driban analyzed the roadway improvements at intersections of Falls/Joppa and Falls/Greenspring Valley, as well as the Mays Chapel Gate as emergency-access-only. Mr. Driban explained that since the State of Maryland owns and maintains the intersections of Falls/Joppa and Falls/Greenspring Valley as well as both Falls Rd. (MD 25) and Greenspring Valley Rd. (MD 130), SHA has the authority to approve any proposed roadway improvements. While Joppa Rd. is a local County Road, he stated that SHA also has jurisdiction within 50 ft of the Falls/Joppa intersection. However, it was his understanding that DPWT is still responsible for oversight and review of traffic requirements under the BCZR.

Mr. Driban explained that the TIS is divided into: (1) existing conditions which includes roadway network, existing lane configurations and existing traffic counts; (2) background developments which includes all developments which have been approved prior to the TIS; and (3) a growth rate of 1.5% which accounts a projection for the effect of regional growth on the roadways. The total conditions include the existing conditions, the background developments plus the traffic generated by the Project.

Mr. Driban testified that in analyzing the traffic to be generated by the Project, he used the Institute for Traffic Engineers (“ITE”) Trip Generation Manual, 10th Edition. Mr. Driban explained that the ITE compiles studies conducted throughout the country for types of land uses and provides the number of morning peak hours and afternoon peak hours for vehicles which would enter and exit a site. For this case, Mr. Driban used Land Use Code 210 for Single-Family Detached Homes, and the ITE indicated that for the 61 proposed homes, 46 (11 in, 35 out) morning peak hours trips would be generated, and 61 afternoon peak trips (38 in, 23 out) would be

generated. (Dev. Ex. 25, p. 13).

He then explained that the total number of trips generated must be assigned directionally to a roadway network. Toward that end, he compiled a trip assignment chart contained within the TIS. (Dev. Ex. 25, p. 14). Mr. Driban projected that:

- (1) 60% of trips to and from the Project will turn onto Falls Rd. heading south or coming from I-695 and I-83;
- (2) 20% will head east on Joppa Rd;
- (3) 5% will cross over to Meadowood Regional Park;
- (4) 10 % will head north on Falls Rd. past St. Paul's Schools; and
- (5) 5% will turn left onto Greenspring Valley Drive.

Mr. Driban stated that his trip assignment projections are based on the theory that most travelers are going to regional destinations rather than to rural destinations.

The TIS also analyzed the LOS for each intersection using the CLV and HCM methodologies. CLV analyzes how much traffic passes through an intersection, while HCM looks at the average delay per vehicle at a given intersection. Mr. Driban described both the CLV and HCM as modern methodologies for analyzing traffic. Baltimore County was the only jurisdiction that applies LCM to rate intersections. He added that, conversely, LCM cannot be used to predict traffic to be generated by a development because LCM only reflects a specific moment in time, not the future.

Under the CLV analysis, Mr. Driban stated that in the morning peak hours, without the proposed improvements to Falls/Joppa, the CLV impact would be 13 vehicles added, and the LOS would remain an 'E'. With the proposed improvements, in the morning peak hours, he stated that Falls/Joppa would improve its LOS from 'E' to a 'D'. He also testified that, under CLV, Falls/Greenspring Valley would become LOS 'D'. (Dev. Ex. 25, p. 16). Similarly, under HCM, he concluded that the impact of the Project was negligible with Falls/Greenspring Valley remaining at LOS 'D' and Falls/Joppa improving from 'E' to a 'D'. (Dev. Ex. 25, p. 17).

Mr. Driban testified that the failing movements for the Falls/Joppa intersection is northbound in the morning peak hours, and for the Falls/Greenspring Valley intersection is the northbound in the afternoon peak hours. The roadway improvements proposed by the Developer are not to add lanes to the northbound direction on Falls Rd. Rather, Mr. Driban explained that the concrete median strip on W. Joppa Rd. at the intersection, will be removed to make way for an additional left turn lane for traffic heading south on Falls Rd. The lanes heading toward Meadowood Park will be repainted such that there will be 2 dedicated left turn lanes; 1 straight-thru lane toward Meadowood Park; and a dedicated/merge right turn lane heading north on Falls Rd. will remain. Heading eastbound from Meadowood Park toward the Property, the Developer is also repainting those lines to create a left-turn-only lane in order to provide 2 left-turn lanes heading north on Falls Rd., and 1 combined thru-lane/right turn only lane. An aerial photograph with the proposed improvements was provided. (Dev. Ex. 16). Prior to obtaining approval here, the Developer made the decision to proceed with SHA approval of the design plans for the roadway improvements.

Mr. Driban further testified that, only after the roadways improvements to Falls/Joppa are completed, will SHA retime the lights at each of the 3 intersections along Falls Rd. Mr. Driban prepared a document entitled 'MD 25 (Falls Road) Corridor Travel Times' (the "Corridor Analysis") using SHA's Synchro files factoring in Falls/Joppa roadways improvements and SHA retiming of the lights at the 3 intersections, to conclude that for every vehicle traveling northbound along Falls Rd., 45 seconds would be saved, and southbound 8 seconds would be saved. (Dev. Ex. 26). Without specifically stating the amount of time saved at each intersection, he then testified that some of the 45 seconds northbound would be saved at Falls/Seminary and that "it stands to reason that" some of the 45 seconds would also be saved at Falls/Greenspring Valley Rd. He then

concluded that, after the development is constructed, the proposed improvements and retiming of lights will have a positive impact on traffic along the Falls Rd. corridor.

In his opinion, Mr. Driban believes that the Project creates a small impact on traffic and that, with the proposed roadway improvements and retiming of the lights, any impact will be mitigated. With this opinion, Mr. Driban contends that the Special Variance standards have been satisfied. He asserts that the roadway improvements to Falls/Joppa will not only accommodate the traffic from the Project but will substantially improve the average delay along the entire Falls Rd. corridor. In terms of reserve capacity certificates, as specified in the Special Variance Standard, Mr. Driban did not find any. He concluded that the Developer has met all the County rules and regulations.

In regard to the neighborhood concern about cut-thru traffic particularly on Tally Ho Rd., Mr. Driban testified that Lenhart performed an Origin Destination Study. This study was conducted prior to installation of speed humps on Tally Ho Rd. in Fall of 2021. The result was that for the morning peak hours, an average of 3-10 vehicles drove on Tally Ho Rd.; 1.5 vehicles during mid-day and 5 vehicles in evening peak hours. It was Mr. Driban's understanding that the County does not have any threshold for when the amount of cut-thru vehicles amount to a traffic problem. He then concluded that there is not a substantial amount of cut-thru traffic on Tally Ho Rd.

Mr. Driban also opined that, the Mays Chapel Gate needs to be an emergency-only-access gate between the Project and The Meadows/Boxwood communities. Under his reading of the DPR Policy Manual, given that the proposed number of units is 61, there is no requirement for a second, permanent access. In his view, the DPR Policy does not mandate 2 separate access points. He reads the purpose of the DPR policy for more than 1 access point as needed to provide circulation

of vehicles and emergency access. Under that analysis, he reasoned that The Meadow has 99 units and 2 access points onto Mays Chapel Rd., and the 16 homes in Boxwood also have access to Mays Chapel Rd. He believes that an emergency-access-only gate gives full access to emergency vehicles headed to W. Joppa Rd. However, he then reasoned that if the DPR Policy did apply, the “unusual circumstances” exception in the DPR Policy should apply. According to him, those unusual circumstances are that Mays Chapel Rd. does not have any lights and is a local road which was not designed for a lot of traffic. (Dev. Ex. 28). Allowing full access through the Project would connect Seminary to Joppa Rd. and would attract 600-1,000 vehicles during both peak and non-peak hours, negatively impacting The Meadows and Boxwood communities.

In response to the DPWT email dated September 20, 2021 by Terry Curtis, PE, (County Ex. 12B; PC Ex. 6), Mr. Driban referred an email dated January 15, 2021 from Mike Filsinger, PE, who, at the time, was Chief, Division of Traffic Engineering, to Counsel for Developer stating:

While the proposed development is located within a failing traffic shed, the proposed improvements associated with the traffic impact study will mitigate the increased traffic generated by the proposed development. Any questions, let us know.

(the “Filsinger Jan. 15, 2021 Email”). (Dev. Ex. 30). Mr. Driban stated that he believed the Filsinger Jan. 15, 2021 Email provided DPWT’s approval that the Special Variance standard has been met. He testified that he assumed the Terry Curtis must have mistaken the TIS for the Sensitivity Analysis which was requested by Greg Carski and Mike Filsinger during a meeting Mr. Driban had with them in June, 2021. Mr. Driban testified that he submitted the Sensitivity Analysis on July 8, 2021 but it was never reviewed by Traffic Engineering prior to the transfer of both Greg Carski and Mr. Filsinger out of the Traffic Engineering department of DPWT. (Prot. Ex. 39). Mr. Driban then testified that, he did not want to “take for granted” that approval, and

continued to work with Kris Nebre, who had by that point become Acting Director of Traffic Engineering. Mr. Driban stated that, at Kris Nebre’s request, he continued to provide Kris Nebre with more analysis to address his concerns.

On cross examination, Mr. Driban acknowledged that this is the first case in Baltimore County in which he has been accepted as an expert, and, consequently, this case is the first time he has had to analyze the Special Variance standard. He agreed that a TIS is only one aspect considered under the Special Variance standard. In his discussions with the representatives in Traffic Engineering and Design, Mr. Driban was not expressly told that the ‘district standard’ as referenced in BCZR, §4A02.4.G was the CLV, HCM or a Corridor Analysis. Mr. Driban added that under the LCM used by the County, there is no model and therefore LCM cannot be utilized to project future conditions. On the other hand, he stated that both CLV and HCM have software which can calculate future projections.

Mr. Driban confirmed on cross that for Falls/Joppa Rd. intersection, the County traffic counts for **February 19, 2020**, showed the following existing morning and afternoon peak volumes, amount of vehicles:

<u>Direction</u>	<u>Morning Peak (7:00-9:00 am)</u>	<u>Afternoon Peak (4:00-6:00 pm)</u>
Northbound	1782 vehicles	1700 vehicles
Westbound	585 vehicles	726 vehicles
Southbound	1925 vehicles	1174 vehicles
Eastbound	259 vehicles	340 vehicles

(Dev. Ex. 25, p. 26).

Notwithstanding Mr. Driban’s opinion that the Project would generate 46 peak morning trips and 61 peak afternoon trips, he acknowledged that the Greenlined Development Plan at Note

11 indicates that the average number of daily trips (“ADT”) from the Project is 600 ADT. (Dev. Ex. 1B). He further conceded that he did not review the 200 studies which are the basis for the ITE trips and therefore, did not know whether any of the studies included 2-3 car garages. He then stated that he “would have to believe” the studies would include garages. In his view, the fact that 200 studies were conducted for Land Use 210 was a sufficient basis for his opinion, as the ITE trip generation numbers for other Land Uses were based on fewer studies. The ITE Manual is not a government publication but he referenced the most recent one. Mr. Driban did not know the age range of the studies contained therein but believes they go back 30-40 years, conducted between 1970-2010. The ITE trip generation numbers for this Project also do not factor in the number of drivers living in a home, nor the number of vehicles per home. Even with the proposed garages, he recognized that the Project also includes on-street parking. He summarized that the “best we can do is to use the trip generations.”

He further acknowledged that the Trip Assignment percentages are estimates based on “local and regional patterns.” (Dev. Ex. 25, p. 14). He agreed that his estimated percentages contain a margin of error. (*Id.*).

Mr. Driban agreed that the application of the ITE trip generation numbers for this Project does not account for additional trips in and out of the Property by residents, visitors, deliveries or vehicles providing a service, or to and from adjoining neighborhoods, or in and out of Greenspring Station. It also does not factor in trips in and out of Meadowood Regional Park for regular use or during athletic events, nor trips to and from the local private schools including St. Paul’s Schools located at Falls/Seminary Ave. The Greenspring Station access drives were not studied. The ITE trip generation numbers do not account for off-peak hour trips as the peak trips account for the worst traffic times. While emphasizing that Falls Rd./Seminary Ave. is not part of the traffic shed

for this Project, the Corridor Analysis included Falls Rd. and Seminary Ave. He also recognized that his Corridor Analysis is a projection where Synchro data of average overall travel speed was inputted and the focus is on how long it could possibly take a vehicle to drive through the 3 intersections along Falls Rd. The Corridor Analysis is not a speed study and he did not conduct one. He conceded that the Falls Rd. corridor has the most concentrated group of ‘F’ intersections in the County.

In regard his HCM Signalized Intersection Capacity Analysis for Falls/Joppa Rd. intersection, he admitted on cross examination that after the roadway improvements at Falls/Joppa are complete, the delay for three (3) movements (both turning and straight) will be longer than currently exist for the *morning* peak hours, namely: (1) eastbound left lane (“EBL”); (2) westbound right lane (“WBR”); and (3) southbound thru lane (“SBT”):

<u>Falls/Joppa Intersection</u>	<u>EBL</u>	<u>WBR</u>	<u>SBT</u>
AM Existing Delay (sec)	79.0	62.6	29.8
AM After Improvements Delay (sec)	92.1	67.3	33.5

In the morning peak hours for the Falls/Joppa Rd. intersection, there will be additional delays after the improvements are completed such that 2 of 3 existing eastbound movements will remain failing: EBL will drop from an ‘E’ to an ‘F’, and EBT will remain an ‘E’. For westbound traffic, all 3 movements will remain failing: WBL will remain at an ‘F’, WBR will remain an ‘E’, and WBT will become an ‘E’. For northbound traffic, LOS for NBL will become an ‘E’. For southbound traffic, LOS for SBL will become an ‘E’.

Likewise, after the improvements to Falls/Joppa intersection are completed, the *afternoon* delay increases for WBR and NBL:

<u>Falls/Joppa Intersection</u>	<u>WBR</u>	<u>NBL</u>
PM Existing Delay (sec)	59.9	23.2
PM After Improvements Delay (sec)	63.8	45.8

With regard to LOS in the afternoon peak hours after improvements are completed, two (2) eastbound turning movements will still be failing: EBL will remain at an ‘F’, and EBT becomes an ‘E’. For westbound traffic, all 3 turning movements will still be failing: WBL becomes an ‘E’, WBT becomes an ‘E’, and WBR becomes an ‘E’. For southbound traffic, SBL becomes an ‘E’. (Dev. Ex. 25; Prot. Exs. 36, 37).

For Falls/Greenspring Valley intersection which will not have an roadway improvements, the TIS confirms that for existing conditions, there are 5 failing turning movements: EBL – ‘E’; EBT- ‘E’; WBL – ‘E’; WBT – ‘E’; and SBL- ‘E’. Similarly, in the afternoon peak hours, there are 3 failing movements: WBL – ‘E’; WBT – ‘E’ and SBL – ‘E’.

Mr. Driban was also cross examined on the TIS ‘Results of Level-of-Service Analyses – CLV’ chart (“LOS-CLV Chart”) which he prepared for Falls/Joppa and Falls/Greenspring Valley intersections. He explained that the intersection letter grades for existing, background and total conditions on that chart were obtained from SHA. (Dev. Ex. 25, p. 16). He agreed that the CLV numbers for background and total conditions were projections. He conceded that the LOS-CLV Chart confirms that after the proposed roadway improvements to Falls/Joppa intersection are completed, the LOS for the Falls/Greenspring Valley intersection for both morning and afternoon peak hours decreases from a ‘B’ LOS to a ‘D’ LOS under SHA ratings. While the LOS-CLV Chart shows that, after the roadway improvements are completed, for the Falls/Greenspring Valley intersection, 3 trips will be added to the morning peak hours and 2 trips will be added in the afternoon peak hours. Likewise, under the CLV analysis, for the Falls/Joppa intersection, 13 trips

will be added to in the morning peak hours, and 16 trips will be added in the afternoon. Mr. Driban opined that these additional trips for Falls/Joppa Rd. are negligible because the overall ‘mitigation’ for Falls/Joppa intersection is 931% (-121/13) in the morning, and 819% (-131/16) in the afternoon. However, he agrees that, even after the improvements to Falls/Joppa intersection are completed, there is no mitigation by the Developer at Falls/Greenspring Valley Rd. intersection.

Similarly, Mr. Driban agreed that under the TIS ‘Results of Level-of-Service Analyses – HCM’ chart (“LOS-HCM Chart”) which he also prepared for Falls/Joppa and Falls/Greenspring Valley intersections, after the roadway improvements to Falls/Joppa intersection are completed, the LOS for Falls/Greenspring Valley, for both morning and afternoon peak hours, drops from a ‘C’ LOS to a ‘D’ LOS. (Dev. Ex. 25, p. 17). Moreover, he further acknowledged that the existing LOS for Falls/Joppa intersection as shown on the LOS-HCM Chart, was actually the average from the HCM Signalized Intersection Capacity Analysis. (Prot. Ex. 36, 37). Again, that average was calculated, in part, based on LOS designations for merge lanes for which there is never a delay because merging vehicles do not wait at lighted intersections. Mr. Driban countered that the LOS under the HCM analysis is for the whole intersection and not for individual turning movements. As with his LOS-CLV analysis, to the extent that his LOS-HCM Chart shows an increase in the average delay per vehicle at those intersections (i.e. 1.1 sec in morning; 1 sec in afternoon), in his view, these delays were negligible.

During cross examination, Mr. Driban acknowledged that neither the CLV nor HCM accounted for the multiple entrances into Greenspring Station from Falls Rd. and Joppa Rd. He added that again, the net effect of the access points was negligible as there were at most 100 vehicles using those access points as compared to 1,000 vehicles typically driving on Falls Rd. While looking at the aerial photograph of Greenspring Station, Mr. Driban did not know the

number of parking spaces in Greenspring Station.

With regard to the proposed emergency-access-only gate, on cross examination Mr. Driban testified that he was requested by Greg Carski and Mike Filsinger to conduct a Sensitivity Analysis. He testified that the results of the Sensitivity Analysis showed that if the gate remained permanently open, substantial traffic would be incentivized to use Mays Chapel Rd. as a cut-thru between Seminary and Falls Rd. such that several hundred vehicles in both morning and afternoon would use that connection. Mr. Driban also testified that he believes the September 20, 2021 DPWT ZAC comment written by Terry Curtis, and the nearly identical DPWT DPC comment dated August 12, 2021, mistakenly refer to the Sensitivity Analysis for the Mays Chapel Gate as a Supplemental TIS. (PC Ex. 6).

PROTESTANTS CASE

1) Blandy Becker - 1205 Clearfield Circle.

Since 2020, Ms. Becker has been the President of Seminary Ridge Homeowner's Association ("Seminary Ridge HOA"). Seminary Ridge HOA includes 167 homes next to the Property. Ms. Becker has lived in her home since 2015. At the HOH, she testified individually and on behalf of Seminary Ridge HOA. She described the concerns of Seminary Ridge HOA about the Project adding more traffic to the Falls Rd. corridor; the lack of sewer capacity; and the small lot sizes of the proposed homes. Ms. Becker testified that traffic for St. Paul's Schools backs up on Seminary Ave. to Tally Ho Rd. Maryvale School, adjacent to St. Paul's Schools, also contributes to area traffic. Mays Chapel heading south backs up to turn left onto Seminary Ave., which has 1 lane in each direction.

Ms. Becker, who has been a realtor since 2013, stated that most lots in Seminary Ridge and Heatherfield communities have an average lot size of 0.56 acres, and the homes in The Meadows

and Boxwood communities are 0.426 acre lots. She lives on the smallest lot in Seminary Ridge which is 0.33 acre. In her view, the proposed detached homes on 0.1 acre lots are not compatible with the neighboring communities. She testified that in order to construct 3,000 sf - 3,500 sf homes with garages, the homes have to be built taller. Some proposed homes have 2 and 3 car garages which will add more traffic. She agreed that most homes in Seminary Ridge do not have any garages. Ms. Becker acknowledged that the homes in Heatherfield are mostly brick/stone ranchers, some have basements and some do not. Trelawny Court has 6 homes on large lots. The Boxwood community consists of attached homes.

Seminary Ridge HOA is also concerned that the sewer shed is failing and is opposed to connecting more homes to it. She added that Johns Hopkins never repaired/replaced the sewer segments which was required as a condition of approval for the medical buildings in Greenspring Station. It is her understanding that the sewage from Johns Hopkins buildings, and the sewage from Seminary Ridge neighborhood, flows through the same pipes. Ms. Becker added that, since the inception of this Project, the Developer has never reduced the proposed number of homes. Seminary Ridge HOA is concerned that the proposed road improvements at Falls/Joppa will be less safe because it would be more difficult to make a left turn out of Greenspring Station; adding another lane of traffic will only aggravate the problem. She stated that, presently, making a left turn from Exxon Station/Snowball stand onto Joppa Rd. is very difficult.

While Seminary HOA is opposed to the Project, if it is approved, Seminary Ridge HOA wants the Mays Chapel Gate to remain permanently open so as to provide another means of access for traffic other than Tally Ho Rd. Over the years, the cut-thru traffic and speeding on Tally Ho Rd. warranted the removal of the stop signs and the installation of speed bumps. The traffic generated by St. Paul's Schools adds to the cut-thru on Tally Ho Rd. She highlighted that Tally

Ho Rd. has 77 homes and several bus stops, in addition to the number of walkers, bicyclists and dog walkers who use the road for exercise.

2) Sister Kathleen McNany, Emmanuel Monastery, 2229 W. Joppa Rd.

The property located at 2229 W. Joppa Rd. is located across from the intersection of Tally Ho Rd. and W. Joppa Rd. (Prot. Ex. 44). It is owned and occupied by Benedictine Sisters of Baltimore, Inc. and is known as Emmanuel Monastery. According to SDAT records, it measures 2.96 acres +/- and houses 10 sisters of faith. St. Kathleen McNany has lived in the Monastery since 1986 and she has been its Head since 2020.

The collective concerns of the Sisters about this Project are traffic, safety, and impact on sewer. In regard to traffic, Sr. McNany testified that, 2 months ago, an automobile collision occurred on W. Joppa Rd. There are several dangerous points including the left turn merge lane from I-83 onto W. Joppa Rd.; the left turn into and out of the Exxon/snowball stand; and the left and right turns in and out of the Monastery driveway when traffic backs up along W. Joppa Rd. Adding another left turn lane at Falls/Joppa is just another lane to cross adding to the safety issues. On weekends, Sr. McNany mentioned that, in addition to daily services, programs and activities at the Monastery chapel, there are 3 other churches on W. Joppa Rd. (Trinity Assembly of God, Valley Presbyterian, and a Korean Church) each of which hold similar services and programs which add to traffic. Additionally, driving from the Johns Hopkins medical buildings at Greenspring Station, making a left onto existing W. Joppa Rd. is already difficult due to all the traffic. Moreover, between Memorial Day through Labor Day, Roland Run Swim Club, which is located next to the Monastery on W. Joppa Rd., brings more people and traffic. There are no sidewalks on W. Joppa Rd. When asked about the proposed improvements to the intersection of Falls/Joppa, Sr. McNany testified that when Meadowood Park was opened 10 years ago, a left turn

lane was added to that intersection and it did not alleviate traffic problems; vehicle collisions still occurred.

In regard to impact on the sewer system, Sr. McNany described that the sewer lines for this Project and for Johns Hopkins medical buildings run through an easement on the Monastery property. In 2017, she was approached by the County to widen the existing easement by 15 ft which was needed to enlarge the sewer pipe from 8 inches to 12 inches. She understood that this was related to the sewer improvements for the Johns Hopkins buildings at Greenspring Station. Sr. McNany expressed that she was concerned about this additional easement in that it would negatively impact the walking garden in the rear yard which has mature pine trees and fencing, both of which are needed for a sound barrier and privacy from Falls Rd. After that interaction with the County, there have not been any other communication about the sewer improvements.

3) Michel Brassert, Film maker, Cinematographer

Mr. Brassert, a film maker and cinematographer is involved in both tv and films and was called as a witness to authenticate photos he took using a drone. Mr. Brassert has a commercial drone license. Mr. Brassert testified in regard to each of the photos he took of Greenspring Station and the surrounding roadways. (Prot. Exs. 40 A-H; 41A-J; 42A-Y) (Prot. Exs. 43A-D).

4) Peter George, 8214 White Manor Dr.

Mr. George has lived in his home since 1997. He grew up on Thornton Ridge and as a child, frequently visited Greenspring Station. Mr. George testified that the proposed improvements to Falls/Joppa intersection will not improve traffic. The 3 intersections are congested in all directions. Specifically, traffic backs up down W. Joppa Rd. to the Ruxton-Riderwood bridge. Driving on W. Joppa Rd. between 4:00-6:00 pm, traffic backs up past Thornton Rd., and up to and including where Bellona Ave. intersects with Joppa Rd. He emphasized that

the number of trips made by patrons to Greenspring Station to eat, shop, work and attend medical appointments should be considered in this case. Traffic backs up at Falls/Joppa from many directions. In his view, adding 61 homes with 3 vehicles per home, will be 183 vehicle trips, all entering and exiting onto congested Joppa Rd.

Mr. George testified that he has witnessed at least 10 collisions at Falls/Joppa and 12 collisions at Falls/Seminary Ave. Mr. George was living in this neighborhood prior to the opening of Meadowood Park. With sports events and park rentals for events and parties, the amount of people and traffic has increased in the Falls Rd. corridor, particularly in the summer months.

On HOH Day 9, Mr. George was recalled to identify photographs which he took after the HOH on December 7, 2022. The photographs depicted sewer lines next to Tally Ho Rd. being pumped by the County to unclog the lines. (Prot. Exs. 47 A-C). Mr. George described that, whenever there is a heavy rain, the sewer system backs up and the area floods.

Mr. George testified that, on the day he took the photographs, he observed sewer manhole 43819 (“MH”) near Tally Ho Rd. open and being flushed with water from the nearby fire hydrant. He mentioned that, in the Summer of 2022, he had observed the same flushing of the sewer lines due to a clog. Mr. George also provided a map from My Neighborhood GIA which showed not only MH 43819 but also MH43795 and MH43794A. Mr. George testified that either MH 43795 or MH 43794A was being unclogged that day.

5) Lynn Manthy, 8300 Tally Ho Rd.

Ms. Manthy has lived in her home, a 0.7 acre lot in the Heatherfield community for 13 years. She is a commercial banker. She described Heatherfield as having between 42-45 rancher style homes constructed in the 1950s on larger lots with a lot of green area. She is opposed to the Project finding that the area is already stressed with both traffic and sewer insufficiency. The

sewer system was never upgraded with the construction of the Johns Hopkins medical buildings. In her rear yard, there is a 6-7 ft wide stream located 45 ft from her home which overflows during rain events and fills her crawl space with water. (Prot. Exs. 30A, 30B).

In regard to traffic, Ms. Manthy stated that her husband was rear-ended at intersection of Falls/Joppa. She relayed that traffic backs up from Falls/Joppa past Tally Ho Rd. and that Tally Ho is used as a cut-thru for drivers wanting to avoid Falls Rd. traffic. She testified that many people and vehicles travel to Greenspring Station which has expanded. She highlighted that the group of townhouse style office buildings which abut the Property also have medical offices, dentists and orthodontists which generate traffic on W. Joppa Rd. Ms. Manthy indicated that she makes between 2-10 trips to and from her home each day including to and from Greenspring Station. She has personally observed northbound traffic approaching Falls/Seminary backing up through Falls/Greenspring Valley Rd. intersection.

6) Elias Pope, 308 Southwind Rd., Ruxton.

Mr. Pope does not reside in the communities immediately surrounding the Property. However, since 2010, he has worked in Greenspring Station. Having attended St. Paul's School, he has travelled W. Joppa Rd. many times. He also travels from his home to either work and to drop off/pick up his daughter from Maryvale School. Mr. Pope emphasized that both Falls/Joppa and Falls/Greenspring Valley Rd. are main thoroughfares for vehicles by-passing I-695. He stressed that a high volume of traffic outside of peak hours of 7:00-9:00 am and 4:00-6:00 pm. With the addition of Johns Hopkins outpatient services at Greenspring Station, the off-peak high volume of traffic is constant throughout the day. As someone who works in Greenspring Station, he testified that the parking lots at Greenspring Station are full during the work week.

In addition, there is heavy traffic on Falls Rd. for St. Paul's Schools and Maryvale,

particularly between 7:00-9:00 am. The Exxon station on Falls Rd. which is accessed by service road behind it is a frequently used gas station for larger trucks and contractor service vehicles. The restaurants in Greenspring Station also bring traffic. In his view, the surrounding roadways were not designed to handle the volume of traffic in and around Greenspring Station.

7) Richard Compton, 25 Seminary Farm Rd. Mr. Compton has lived in the Meadows at Greenspring community (“The Meadows”) for 53 years. He is the President of the Board of Directors of Meadows at Greenspring Homeowners’ Association (“Meadows HOA”) and was provided with the authority to speak on behalf of the Meadows HOA. Mr. Compton described the residents at The Meadows as having the average age of 75 years. There are no sidewalks or trails in the community. The residents walk in the street and have social gatherings there. Mr. Compton identified the photographs taken in August of 2021 of the neighborhood. (Prot. Exs. 32A-C).

Mr. Compton described The Meadows as consisting of 21 single family homes, and 78 cluster homes in groups of 2, 3 and 4, for a total of 99 homes. The 5 primary concerns of the Meadows HOA are: (1) overdevelopment of the Property by proposing the maximum number of homes (61); (2) the County’s previous approval of Johns Hopkins medical buildings in Greenspring Station with the existing sewer and traffic deficiencies; (3) existing traffic congestion and 3 failing intersections along Falls Rd.; (4) the existing sewer deficiency made worse by the addition of 61 homes; and (5) the Mays Chapel Gate must be an emergency-use-only or it will negatively impact the Meadows by becoming a cut-thru for traffic.

While The Meadows is against the proposed development, if it is permitted to proceed, they want the Mays Chapel Gate to remain closed for emergency-access-only. If the gate is permitted to remain open, the Meadows HOA is concerned about security, safety, outdoor socializing, exercise, character of neighborhood, and diminishing the value of those homes. The

Meadows will no longer be a retirement community. The neighborhood as it currently exists does not have crime because there is only 1 access point into Seminary Rd. The residents enjoy social gatherings and exercise in the streets. Some residents use canes or walkers.

8) Karen McGraw, 65 Seminary Farm Rd. Ms. McGraw resides in one of the cluster homes in The Meadows. She expressed the same concerns that Mr. Compton raised. She testified that the existing traffic on Seminary Ave. backs up to Thornton Rd., which makes a left out of the Meadows onto Seminary difficult. She is opposed to adding more homes along with a permanent pass-thru their neighborhood. She submitted a Petition signed by all of the property owners in The Meadows. (Prot. Ex. 33).

9) James Gary, 6 Trelawny Ct. Mr. Gary indicated that he and his family moved into his home in Seminary Ridge community in 2000. While he is now retired, he previously worked as an industrial engineer. His concern is the lack of capacity in the sewer infrastructure which currently overflows when it rains. Mr. Gary is opposed to adding development to that infrastructure which was not corrected with the developments at Greenspring Station. Mr. Gary is also concerned with the Falls Rd. and Joppa Rd. intersection in that, even with all the mitigating factors identified by Kris Nebre, that intersection will still be failing. Mr. Gary also noted that the Developer's HCM Signalized Intersection Capacity Analysis Chart included 3 dedicated merge lanes at Falls/Joppa which do not go through the lighted part of the intersection, namely: northbound, westbound and southbound. (Prot. Exs. 36 and 37). Because those merge lanes were included in the average calculation, it raised the LOS ratings for those lanes to an 'A' rating for northbound right turn lane and southbound right turn lane (westbound remains at 'E'). This inclusion, he reasoned, inflated the LOS.

Mr. Gary also testified about the existing safety problems at Falls/Joppa intersection based

on the fact that he has personally observed traffic accidents at that location. The speed limit southbound on Falls Rd. is 40 mph but is typically exceeded. Traffic and excess speeds prevent pedestrians from crossing from Meadowood Park to Greenspring Station and to the snowball stand next to the Exxon. He testified that the access road into the snowball stand and the Exxon is already dangerous. With the proposed removal of the concrete median on W. Joppa Rd., the conditions will be more dangerous. In support of the safety issue, Mr. Gary testified that the Developer failed to consider that the vehicles driving into and out of Greenspring Station at the Exxon access road, will have to cross 3 lanes of traffic when making a left onto W. Joppa Rd. He believes traffic will back up at the light at the Falls/Joppa intersection making the access into and out of Tally Ho Rd. more difficult. He reasoned that the proposed roadway improvements will not help the flow of traffic east and westbound on W. Joppa Rd.

10) Dan Radebaugh, Esq. 8212 Tally Ho Rd.

Mr. Radebaugh, a title attorney, and his family purchased 8212 Tally Ho Rd. in September of 2020. After renovating it, they began living there in February of 2022. He did not know about the proposed development. He has 4 children and has concerns about increased traffic. In Summer of 2022, his college-aged son was involved in an accident at Falls/Joppa intersection. Another son drives to Gilman School. Mr. Radebaugh drives his daughter to St. Paul's School and his 4 year old daughter to Hunt's Preschool. With the existing traffic in the morning, it takes a long time to drive anywhere. He described the traffic as backing up from St. Paul's Schools to Falls/Greenspring Valley Rd. He reiterated the testimony that, in the morning, Tally Ho Rd. has become a cut-thru to Seminary Ave. While the speed limit is 25 mph on Tally Ho Rd., there are always speeding vehicles through the neighborhood. He believes that if the Mays Chapel Gate remains closed, this will increase traffic on Tally Ho. Rd. He added that there are no sidewalks

on Tally Ho Rd., street parking is permitted and there are 3 bus stops. Each bus stop services approximately 5 children per bus stop. Additionally, children also bike in the street.

11) Renee Hamidi, Valleys Planning Council

Renee Hamidi, Executive Director of Valleys Planning Council (“VPC”), which currently has 450 members, and whose geographic boundaries include 130 square miles between Pretty Boy Reservoir in north, I-695 in south, I-83 to east, and Rt. 30 to west. Specifically, VPC territory includes Greenspring Station and Meadowood Park. Ms. Hamidi testified that, while the Property is not within the geographic boundaries of VPC, VPC considers the Falls/Joppa intersection to be the ‘gateway to the Valley.’ Ms. Hamidi testified that she was given authority to speak on behalf of the VPC which is opposed to the Project due to the traffic and sewer issues. By and through its website, VPC collected signatures of property owners adjacent to and outside the immediate area of the Property who were purportedly opposed to the Project (the “VPC Petition”). Upon close examination of the Petition at the HOH, Ms. Hamidi was requested to redact all duplicate signatures and all signatures from people outside the immediate area and to resubmit the VPC Petition. (Prot. Ex. 26). Additionally, Ms. Hamidi analyzed the lot sizes in the existing neighborhoods in terms of range, average, and median. (Prot. Ex. 28). She calculated that the greater percentage of existing 752 lots are larger (17, 870 sf) than the proposed lots at Greenspring Manor (11,400 sf; median 11, 300 sf).

12) Susan Shellhoss, 8207 Tally Ho Rd.

Susan Shellhoss has lived on Tally Ho Rd. for the last 4 years. For 15 years prior to that, she lived across from St. Paul’s Schools at 1407 W. Joppa Rd. as shown in photographs. (Prot. Ex. 29). She indicated that she is intimately familiar with the area, having moved 5 times within the 21093 zip code. In her experience the intersections along Falls Rd. have all been failing for over

30 years. There have been frequent collisions at Falls/Seminary Ave. intersection. Traffic backs up from St. Paul's Schools down Seminary Ave. where it is one (1) lane in both directions. Traffic regularly backs up from Falls/Seminary through the Falls/Greenspring Valley Rd., particularly turning into St. Paul's Schools in morning and afternoon. Heading north between Falls/Greenspring Valley and Falls/Seminary Ave. intersections, there is only 1 lane which contributes to the back-ups. Traffic increases at different times of the day, not just in morning and afternoon. In her view, the Developer here has not provided a traffic solution to the failing intersections along the Falls Rd. corridor, and the proposed improvements at Falls/Joppa Rd. are merely a 'band aid' to the traffic problems. She is concerned that adding another development combined with the 5 private schools in the area, only makes traffic problem worse. In listening to the Developer's witnesses, she calculates that the proposed 61 homes, with only 2 car garages, adds at least 122 vehicles to the existing traffic. She noted that during the summer months, foot traffic increases along W. Joppa Rd. due to Roland Run Swim Club and the snowball stand at Falls/Joppa.

13) Carol Berman, 2 Old Boxwood Rd.

Carol Berman has lived at 2 Old Boxwood Rd. with her husband for 15 years. She is the Secretary of Boxwood Homeowner's Association ("Boxwood HOA") and has been authorized to speak on its behalf. Boxwood is comprised of 27 homes, the owners of which are mostly retired. Boxwood HOA is opposed to the Project because it will add vehicles to existing traffic. She explained that traffic currently backs up from I-83 to Seminary Ave., and gets worse when there are sports events at St. Paul's Schools. If the Project is approved, the Boxwood HOA is opposed to the Mays Chapel Gate remaining open as indicated by the Petition signed by owners in Boxwood. (Prot. Ex. 34). Boxwood and Meadow communities have no sidewalks with narrow

streets which are used by the residents for exercise and social events.

14) Dean Merritt, Esq., Heatherfield Community Association, Inc.

Dean Merritt has lived with his family at 3 Horseshoe Circle for 8 years. Mr. Merritt is President of Heatherfield Association, Inc. which is a community association with 47 homes (“Heatherfield”). Mr. Merritt described most of the homes in Heatherfield adjoining the Property are 1 acre in size. Heatherfield Association is opposed to the Project due to the increase in traffic and lack of sewer capacity. Mr. Merritt testified that he drives in and out of his property 15 times a day. Heading in both directions on W. Joppa Rd., heading towards the Royal Farms store at Thornton Rd. eastbound on W. Joppa Rd., the typical vehicle back-up occurs between 3:00 pm - 5:00 pm each day. The backup on W. Joppa Rd. gets worse when there is a backup on I-695 and I-83 as vehicles find alternate routes. Mr. Merritt can see traffic driving on W. Joppa Rd. from his house. (Prot. Ex. 46).

Meadowood Park gets very busy with sports and other events, and there are no crosswalks from Meadowood across Falls Rd. The SHA property at the corner of W. Joppa Rd., across from the Property here has become a parking lot for BGE trucks and is now being used as a police motorcycle training facility. Because he works from home, he observes cut-thru traffic on Tally Ho Rd. throughout the day, describing Tally Ho as a ‘drag-racing-strip.’ It was only in April of 2021 that Heatherfield Association learned about the Project from Seminary Ridge HOA; the Developer had not reached out to Heatherfield. The density of the Project has not changed; no alternative proposals have been offered. After attending the CIM, the Developer then began to provide copies of the Development Plan and offered landscaping to buffer the view of the Project from the homes in Heatherfield. In August of 2022, Developer finally offered to meet with Heatherfield Association but by that point, Heatherfield had retained legal counsel. If the Project

is approved over Heatherfield's objection, Heatherfield wants the Mays Chapel Gate to remain permanently open. If the gate is permitted to be emergency-access-only, the traffic from the Project will use Tally Ho Rd. as a cut-thru.

In regard to the lack of sewer capacity, Mr. Merritt's home has a crawl space due to the high water table. In 2018, there was sewage backup into the crawl space. The County came to unclog the lines along W. Joppa Rd. Mr. Merritt explained that the sewage from the Project will flow in the same pipes as the sewage for Heatherfield.

15) Michael Wyatt, Esq., 4 Trelawny Ct.

Michael Wyatt, Esquire has lived in his home with his family at 4 Trelawny Court for 20 years. His property is less than 1 acre. He is a life-long resident of the neighborhood, having grown up on Clearfield Circle in Seminary Ridge prior to moving to Heatherfield. During his youth, Greenspring Station consisted of a golf driving range and Windy Valley ice cream store. Mr. Wyatt, who participated fully as an attorney during the hearings cross examining witnesses and testifying, stated that part of his law practice involves doing zoning work. His concerns are threefold: (1) existing and increase in traffic; (2) lack of sewer capacity for more homes; and (3) density of the Project.

Mr. Wyatt articulated that Falls/Joppa intersection is a unique location in that there "is a lot going on" in terms of the roadway network and many turns/approaches, sub-intersections into and out of Greenspring Station, the Exxon and snowball stand, as well as its proximity to I-83/I-695, and Meadowood Park. Specifically, he stated that vehicles coming off I-83 northbound onto Falls Rd. drive 55 mph in a 40-mph zone, and come to a halt when turning right onto W. Joppa Rd. The same speeding traffic occurs southbound on Falls Rd. Just as the right turn from I-83 onto W. Joppa Rd. is a sharp 130 degree turn, the turning angles into and out of Meadowood Park

onto Falls Rd. are irregular. (Wyatt Ex. A). He reasoned that, as a result, Falls/Joppa Rd. intersection is less safe than other intersections.

Mr. Wyatt provided a photograph of the existing median strip on W. Joppa Rd. which has been in that location a long time and is an added safety measure. (Wyatt Ex. I). That median strip also has 2 signs both warning drivers not to turn left into the Exxon access road during certain times of day. He noted that the proposed roadway improvements to east/west W. Joppa Rd. will only create longer wait times for vehicles entering and exiting the sub-intersections. The proposed additional left turn lane will be a safety hazard in an already complicated roadway network.

Meadowood Park was opened 15 years ago and holds many sporting tournaments and events which cause overflow parking onto the shoulders of Falls Rd. As reiterated by other Protestants, there are no sidewalks on either side of W. Joppa Rd. He testified that there was a fatal accident 10 years ago at the stone gate going into the Property. Having driven on that section of W. Joppa Rd. his whole life, he described the site line as 'bad' because a driver can not anticipate oncoming traffic until the vehicles have cleared.

Similarly, having driven through the Falls/Greenspring Valley intersection, he has witnessed an increase in commuter traffic at that intersection. In mornings and afternoons, traffic backs-up from Falls/Seminary through Falls Greenspring Valley for parents driving into and out of St. Paul's Schools. Traffic congestion is not only in the morning and afternoons but throughout the day. Afternoon school and sporting events both at area schools and Meadowood Park increase traffic in and around the Falls Rd. area. Using street view photos, he testified that making left turns out of Tally Ho onto W. Joppa Rd is very difficult in the morning. (Wyatt Ex. F-H). He described traffic typically being backed up on Joppa Rd. both east and westbound and particularly at the intersection with Thornton Rd. where the Royal Farms is located. Traffic also back up at Joppa

Rd/Old Court Rd. He indicated that W. Joppa Rd. is a commuter road to Towson. As a resident of the neighborhood, he is opposed to additional traffic generated by the Project using Tally Ho as a cut-thru because it is a safety concern for bikers and runners.

Mr. Wyatt believes that the Special Variance should be denied because Kris Nebre from DPWT conceded that the proposed roadway improvements would not change the LOS under LCM for any of the Falls Rd. intersections. Mr. Wyatt read the original emails from DPWT wherein DPWT denied the requested Variance. In reviewing the Developer's TIS, Mr. Wyatt testified that the opinions are based on theoretical trip calculations rather than analyzing the actual traffic. The TIS ignores the multiple trips in and out of all adjoining developments through all intersections that take place daily. The theoretical calculations contain a margin of error. The addition of lanes at the intersection of Falls/Joppa will make the traffic worse, not better. Greenspring Station and its tenants which include a couple banks, medical offices, pediatric medical offices, restaurants, a gas station, shopping and Post Office, generate these trips. Having lived in the neighborhood for years, he is in and out of his driveway 7-10 times a day. He has observed that the residents of his neighborhood with children are doing the same thing. Service and delivery trucks have also increased throughout the neighborhood. Mr. Wyatt also provided street view photographs of traffic on Falls Rd. (Wyatt Ex. A); and from southbound Mays Chapel, down Seminary Ave. (Wyatt Ex. B).

In regard to sewer capacity, Mr. Wyatt expressed that existing problems with the sewer lines have not been fixed, and more developments have only added to the problems. Finally, Mr. Wyatt finds that the proposed density of 61 homes on 10,000-12,000 sf lots is not consistent with the T3 transect of low density housing with deep setbacks. The proposed homes on the highest part of the Property will have a negative visual impact and, in his view, will resemble "a stadium

of townhomes.” The Greenspring Development Plan only provides a typical lot layout and shows the minimum required setbacks. He pointed out the front portion of the Property is a low-lying area prone to flooding which he believes, drove the Developer’s decision to push the homes toward the back of the Property. Mr. Wyatt added that he learned during the CIM that Developer was also seeking environmental variances. He also took photographs from his home showing his view toward the Property. The only concession offered by the Developer was landscaping, not a reduction in density. (Wyatt Ex. C-E).

16) Doug Sachse, Esq., 9 Sedgefield Ct.

Doug Sachse, an attorney, has lived with his family at 9 Sedgefield Ct. in the Seminary Ridge community since 1984. As with Mr. Wyatt, Mr. Sachse fully participated in the HOH, cross examining witnesses and testifying. Mr. Sachse reiterated much of the concerns raised including that all 3 intersections on Falls Rd. are dangerous. Mr. Sachse added that safety from additional traffic generated by the Project is a huge concern due to number of children who live in neighborhoods adjacent to the Property. Several bus stops are on Tally Ho. Rd. There are no sidewalks in his neighborhood so children ride bikes, skateboards and play in the streets. There are no crosswalks from Meadowood Park to W. Joppa Rd. Even with stop signs and speed humps, vehicles use Tally Ho as a cut-thru and this will only worsen with traffic generated by the Project. The proposed roadways improvements will not make the roads any safer.

17) Beth Winter, 10934 Mays Chapel Rd.

Beth Winter lives at 10934 Mays Chapel Rd. and is opposed to the Mays Chapel gate being permanently open. She added that Mays Chapel Rd. is narrow and cannot accommodate two-way traffic. It is used by residents to exercise and socialize; there are no sidewalks.

18) Edward Consroe, 71 Seminary Farm Rd.

Edward Consroe, who lives at 71 Seminary Farm Rd. is opposed to a permanent vehicular connection on Mays Chapel Rd. While there may only be 5 homes fronting on Mays Chapel Rd., he stated that the Meadows has 99 homes with over 200 residents, plus family, friends and visitors.

19) Susan Tinanoff, 10934 Mays Chapel Rd.

Susan Tinanoff has lived at 10934 Mays Chapel Rd. for 24 years. Her home is the first house fronting on Mays Chapel after turning from Seminary and prior to Seminary Farm Rd. Ms. Tinanoff is opposed to the Project. If it is approved, she is opposed to the Mays Chapel Gate remaining open. There are many dog walkers in the neighborhood. There are no walking trails for the residents to use. Mr. Tinanoff testified that if gate remains permanently open, all of the homes in neighborhood will be adversely affected.

20) Lauren Greenberg, 51 Seminary Farm Rd.

Lauren Greenberg lives at 51 Seminary Farm Rd. and is also opposed to the Project. Similar to other Protestants, Ms. Greenberg is concerned about traffic and safety. She mentioned that there are 4 stop signs in the Meadows and Boxwood communities. Adding a cut-thru between Seminary and W. Joppa Rd. will increase the opportunity for collisions. She believes the character of the neighborhood will change and property values will decrease.

21) Daniel O'Leary, PE, SWM Expert.

Daniel O'Leary, PE was accepted as an expert in stormwater management ("SWM") with specialty knowledge in Maryland Stormwater Design Manual and Baltimore County storm water management controls. Mr. O'Leary has not designed SWM devices for a development in the County. For the last 8 years, he has been working at ESB Associates in Baltimore as a civil and water resource engineer. Prior to working at ESB, he was the Sediment and Stormwater Management Chief at Maryland Department of Environment ("MDE").

Mr. O’Leary reviewed the Developer’s storm water management report dated May, 2021 (Prot. Ex. 51, 53) and a recent filing dated November 10, 2021. (Prot. Ex. 56). He explained that in determining the design of storm water management devices to control water quantity, the purpose is to compare the rate of discharge both pre- and post-development. To do so, a land use is chosen. Mr. O’Leary opined that the Developer used an incorrect land use category for non-forested land. The Developer used land use for ‘agriculture’ and should have used ‘meadow in good hydrologic condition.’ (Prot. Ex. 50). The ‘meadow’ land use category yields a conservative curve of 63 and will show water traveling over a wider area and at a slower pace. Mr. O’Leary calculated a rate of discharge of 0.39/hr for a curve of 63 in the ‘meadow’ category. He further calculated that the rate of discharge measured in cubic feet per seconds in a ‘meadow’ land use for the 10-yr storm as 56.78 cfs, and for the 100-yr storm at 167.69 cfs. Mr. O’Leary opined that the design of the storm water management devices should be based on more conservative numbers.

Under his analysis, the proposed storm water management devices here which consist of 3 submerged gravel wetlands and a retention ponds, is not enough for the Project. In his view, the proposed devices are insufficient to control the quantity of water from Property post-development. The Developer needs to either design larger ponds (30%-50% larger) or add another pond. Mr. O’Leary acknowledged that DPR does not consistently require the ‘meadow’ land use category to be applied. He further acknowledged that the County approved the proposed Concept Storm Water Management Plan and that the County will continue to review that plan.

22) Beth Miller, Architect, Green Towson Alliance.

Beth Miller, a licensed architect, was not offered as an expert witness. She is on the Executive Committee for Green Towson Alliance (“GTA”) which is an all-volunteer advocacy group that monitors development projects in Baltimore County. Part of her duties on the GTA

Executive Committee include keeping track of development projects. GTA has been recognized by the DOP as a formal organization who regularly receives notice of development projects within its geographic boundaries. GTA is also a member of Towson Community Alliance (“TCA”) which is an umbrella organization. She regularly attends DRC meetings, Planning Board meetings and Design Review Panel meetings. To track development projects in the County, Ms. Miller used My Neighborhood maps, SDAT, and the Baltimore County website.

In preparation for this case, Ms. Miller prepared a spreadsheet of development projects within the Jones Falls Watershed which are being proposed, which have been approved and are being constructed, and existing development already constructed. (Prot. Ex. 31). On January 24, 2023, she took photographs of some of the projects. (Prot. Exs. 31A-H). The purpose of the spreadsheet was GTA’s concern about the capacity of the sewer shed. The results of her investigation indicated that since 2012, 2.5 million sf of development has been, or will be, constructed in the Jones Falls Watershed. She explained that the County sewer sheds follows the streams.

On cross examination, Ms. Miller conceded that while the spreadsheet lists the number of beds, that number does not necessarily correspond to the number of plumbing fixtures or the number of bathrooms. She also conceded that some of the projects are redevelopment projects such as Lutherville Station which would already have had sewer and water connections. When asked about specific details of the data on her spreadsheet, she sometimes recalled, and sometimes did not recall, where the information came from. In some cases, she admitted that she was not sure if some of the projects listed were constructed in 2012 or thereafter.

In regard to a project adjacent to the Property, the spreadsheet provides that the John Hopkins University Greenspring Station, Pavilion III, 10751 Falls Rd. is 110,000 sf and was

constructed in 2019-2021 based upon SDAT records.

23) Lawrence Bruder, 74 Seminary Farm Rd.

Lawrence Bruder testified that he has lived in his home since April of 2022. He described his backyard as a low area where water drains to and forms a pool. In reviewing the Development Plan, he testified that his property will abut two (2) of the proposed homes. He is concerned that more water will drain from those homes onto his property and form a canal. He is concerned that all the wildlife which currently lives on the Property will move into his neighborhood. Mr. Bruder echoed the concerns about having the Mays Chapel Gate permanently open which will become a bypass and cut-thru road which will destroy the use and enjoyment of the residents of The Meadows. He explained that there are many walkers, children riding bikes, parents pushing strollers and elderly people who regularly walk on the streets in The Meadows; there are no sidewalks or speed bumps.

At a minimum, Mr. Bruder has observed at least 3 collisions at the intersection of Falls/Joppa. He is not convinced that the proposed roadway improvements to Falls/Joppa will alleviate any traffic congestion. He added that speed of vehicles on Falls Rd. becomes an even bigger problem when traffic is congested. The addition of the Johns Hopkins medical offices at Greenspring Station has increased the traffic. It is concerning to Mr. Bruder that the County did not ensure that Johns Hopkins repaired/replaced the sewer system prior to constructing the medical buildings.

24) Brooke Yearley, 66 Seminary Farm Rd.

Brooke Yearley, a preschool teacher, has concerns about the wildlife on the existing Property. She also had water flooding into her rear yard which causes her to use a dehumidifier in her basement. She echoed Mr. Bruder's concern that Johns Hopkins was required to make

improvements to the sewer system and never did. Ms. Yearley testified that traffic backs up along Seminary Ave. towards St. Pauls Schools during drop off and pick up times, which causes vehicles to make illegal U-turns in the middle of Seminary Ave. Vehicles do use Tally Ho Rd. as a cut-thru. She repeated that Meadows is a closed-loop community with young children on bikes and elderly people using walkers to walk in the streets. Ms. Yearley mentioned that, 2 years ago there was a fatal motor cycle collision at Falls/Greenspring Valley Rd. She added that the proposed improvements to Falls/Joppa will not improve traffic flow and will only cause additional volume.

25) Michael Singer, 10937 Mays Chapel Rd.

Michael Singer has lived in his home with his wife and 3 children since November of 2013. His home is located 2 houses down from Seminary Ave. on Mays Chapel. Mr. Singer is concerned about his children's safety if the Mays Chapel Gate remains permanently open. He explained that when driving his son to St. Paul's School in the morning he must leave before 7:30 am. Otherwise, the short drive will take 30-40 minutes. He believes that adding more traffic will negatively impact his property value. He is concerned about the safety of his other children who take the school bus from his neighborhood to Riderwood Elementary.

26) Michael Volley, 8 Trelawney Ct.

Michael Volley has lived in his home with his wife and 5 children for 18 years. Mr. Volley described a backup in the County sewer system on Trelawney Ct. which caused a backup into his basement on the evening of November 11, 2022. He took photographs of the manhole covers. (Prot. Ex. 48A, 48B). Mr. Volley explained that there was a blockage between the manholes (MH 45744 and MH 45722) as shown in the photographs. The County unclogged the sewer pipes by flushing the pipes with water from the fire hydrant. Mr. Volley hired a plumber to repair the issues inside his home. He noted that there was \$60,000.00 worth of damage and expense to his home,

and that he and his family were not able to use the basement for 2 ½ months. Mr. Volley described the raw sewage which leaked into his basement, was vacuumed up, and filled 25 large bags.

27. Randall Grachek, PE, expert waste water engineering/sewer systems.

Mr. Grachek is an environmental engineer employed by NewFields, Inc. Although he is not licensed as a professional engineer in the State of Maryland, Mr. Grachek was previously accepted as an expert before the BOA in Case No.: CBA-20-006, *In the Matter of CPC Falls Road, LLC (CPC Falls Road Project/Bluestem)* (“Bluestem”), and before OAH in Case Nos. 08-0919 and 2021-0274-SPHA *Torch Hill Project* (“Torch Hill”), 1400 W. Seminary Avenue. As such, in this Case, he was likewise admitted as a professional engineer, in waste water engineering, and in the evaluation of a sewer system and its capacity. (Prot. Ex. 58).

Mr. Grachek testified that he is familiar with the Baltimore County sewer system and specifically the sewer infrastructure from the Property to the Baltimore County/Baltimore City line. The County sewer system is a gravity flow system (no pumping of sewage) with lateral lines flowing into main trunk lines. All waste water from the Jones Falls sewer shed (shown in green on My Neighborhood Map) and from the Property (outlined in blue), is conveyed to City. (Prot. Ex. 59). He explained that the sewer shed follows the 3 major streams namely: Jones Falls, Towson Run and Roland Run each of which flow into Lake Roland. Each of those streams has a separate sewer shed which sends all waste water through interceptors to the main sewer (trunk) line under Lake Roland and then into the City. (Prot. Ex. 60). The My Neighborhood Map for the Jones Falls sewer shed at issue here was provided. (Prot. Ex. 61). The sewage path from the Property (highlighted in yellow) is shown by blue line which runs under Lake Roland and into the City. (Prot. Ex. 62). The specific manholes through which the sewage flows is shown by yellow highlighted line by manhole numbers (MH) beginning with MH 43819, into 43794, 43793, 43792, 43791, 43790, etc. until it proceeds through the sewer segments into MH 6888 under the

Lake Roland. (Prot. Ex. 63).

Through a Public Information Act (“PIA”) request, Protestant’s counsel obtained a County prepared chart analyzing the sewage flow for Greenspring Station dated 2013 - updated as of October 8, 2015 with Johns Hopkins credits - (the “2015 County Jones Falls Interceptor Chart”). (Prot. Ex. 64). Protestant’s counsel also produced the PIA request and emails from the Director of DPWT, verifying that when DPWT was reviewing the sewer capacity for this Project, they used the data from the same 2015 County Jones Falls Interceptor Chart. (Prot. Ex. 64A). The manholes at issue here through which the sewage from the Property flows (MH 43794 – 43786) are highlighted in yellow (Prot. Ex. 64) correspond to the same manholes shown on the My Neighborhood Map. (Prot. Ex. 63). Using the 2015 County Jones Falls Interceptor Chart, Mr. Grachek explained that the sewer lines between those manholes were listed by the County as each being 8 inches in diameter, and were between 94% to 100% full capacity. (Prot. Ex. 64).

Mr. Grachek referred to a Complaint filed on July 26, 2005 by the Environmental Protection Agency (“EPA”) against Baltimore County in the United States District Court of the District of Maryland, Northern Division, Case No.: 1:05-cv-02028-AMD, regarding the discharge of tens of millions of gallons of untreated wastewater containing raw sewage into navigable waters and waters of the State beginning in 1997. (Prot. Ex. 66). Those waters included Towson Run, Lake Roland and the Jones Falls. The lawsuit resulted in a Consent Decree (“CD”) dated September 21, 2005 in which the County was provided a legal framework and direction to eliminate sanitary sewer overflows (“SSOs”), the term used to describe when a sewer pipe reaches overcapacity causing sewage to flow into waterways. (Prot. Ex. 65). Mr. Grachek testified that when SSOs occur, often the manhole cover is pushed open. He explained that the concept of Inflow and Infiltration (‘I&I’) results from water from a storm event leaking into the sewer system pipes via cracks or defects.

Mr. Grachek explained that, under the CD, the County was charged with conducting a full evaluation of the system, inspecting the condition of the pipes, and modeling it with different weather events to determine whether the pipes were at overcapacity. Toward that end, the County hired consulting engineering firm Rummel, Klepper & Kahl, LLP (“RKK”) to perform the study. RKK evaluated, inspected, and modeled the system using software to input data showing where the pipes were at capacity during both dry and wet weather events. He further explained that wet weather flows occur during and after rainfall event. Conversely, a dry weather flow results from users. RKK prepared a Long Term Capacity Report dated November, 2012 (“RKK-LTC 2012 Report”). (Prot. Ex. 68).

Mr. Grachek emphasized that the RKK-LTC 2012 Report recommended that the County take corrective action, depending on the storm event. Specifically, RKK studied 5 different storm events: (1) 2-Year, 6-hour storm; (2) 2-year, 24-hour storm; (3) 10-year, 6-hour storm; (4) 10-year, 24-hour storm; and (5) 20-year, 24-hour storm. RKK’s recommended corrective action was set forth in the Sewershed Repair, Replacement and Rehabilitation Plan dated December, 2012 (the “SRRR 2012 Plan”). (Prot. Ex. 67). The RKK-LTC 2012 Report is appendix L to the SRRR 2012 Plan. In reviewing the SRRR 2012 Plan, Mr. Grachek stated that he agreed with the RKK modeling used. For the 2 yr, 24 hr storm, RKK recommended rehabilitation to 16 service areas including upsizing pipes and sealing manholes. For the 10 yr, 6 hr storm event, RKK recommended all of the corrective items for the 2 yr, 6 hr storm event which would result in installing 2,000 linear feet of relief sewer. He explained that a relief sewer pipe is a storage unit which may include an underground vault or additional parallel piping designed to temporarily manage water during these storm events.

Mr. Grachek’s firm prepared an additional chart combining the data from the RKK-LTC 2012 Report with the 2015 County Jones Falls Interceptor Chart in order to compare in the information about sewer capacity (the “Comparison RKK/DPWT Capacities Chart”). (Prot. Ex. 69). Mr. Grachek stated

that numbers shown in green where sewer capacity is less than 100% on the Comparison RKK/DPWT Capacities Chart, indicates that the County analyzed those sewer pipes during dry weather which is not the industry standard. He confirmed that DPWT's numbers in green were taken from the 2015 County Jones Falls Interceptor Chart which included Johns Hopkins existing use credits as shown in yellow highlighted section. (Prot. Ex. 64). The Comparison RKK/DPWT Capacities Chart also confirms that for the 8 inch sewer pipes connecting MH 43792 through 43786 (highlighted in yellow on Prot. Ex. 64), which were determined by DPWT/County to be at 100% capacity and over capacity, were the sewer segments that Johns Hopkins was to replace/repair as part of the 3 medical buildings constructed at Greenspring Station. (Prot. Ex. 69). In addition, the blue highlighted numbers indicate that nearly all of the sewer pipes are at least 100% or overcapacity. (*Id.*). Moreover, Mr. Grachek testified that the red highlighted numbers show existing 10 inch pipes (MH 44216-44212) were to be upsized to 18 inches, or that relief sewers (ranging from 10 inches - 30 inches) were to be added because each of those pipes exceeded 100% capacity. (*Id.*).

Future pipe capacity charts were prepared by DPWT using data from the RKK-LTC 2012 Report (Prot. Ex. 68). Mr. Grachek opined that a sewer system should only be designed/repared to manage sewage flow during wet weather, not dry weather. Toward that end, he reviewed the Baltimore County Design Manual which directs that the system should be designed to accommodate 90% capacity for trunk/interceptors; 80% for lateral pipes; and 70% for connector pipes; and that "flows above 90-95% of full depth are considered unstable and may result in a sudden loss of carrying capacity with surcharging at manholes." (Prot. Ex. 70, p. 6-27). He explained that pipes at greater than 90% capacity prevents water from flowing and can causes manhole covers to push open. A photograph of the manhole located northwest of Lake Roland showing the manhole lid was pushed open in 2019 and repaired in 2020. (Prot. Ex 71). He stated that the industry standard is 90% peak flow of sewage during dry and

wet weather.

Mr. Grachek added that the trunk or interceptor pipe underneath Lake Roland is a 42-inch, reinforced concrete pipe, and was installed in the 1940s-1950s. As part of his testimony in the *Bluestem* case from 2019, he used an aerial map to identify the pipe capacity to the Lake Roland interceptor during each of the 5 storm events. (Prot. Ex.73). This aerial showed that certain sewer pipes are over 100% capacity for each of the 5 storm events. (*Id.*). From his review of the SRRR 2012 Plan, Mr. Grachek opined that there were 541 defects found in the sewer system, and the most defective pipe, MH 6888-6887, and contained 536 of the 541 total defects. (Prot. Ex. 77).

Mr. Grachek further explained that SSOs pose health risks when raw sewage with I&I is leaked into streams. On this issue, Mr. Grachek reviewed E coli sampling results from studies performed by the County. (Prot. Ex. 75). Based on COMAR 26.08.02.03-3, he explained that the standard geometric means is 126. (Prot. Ex. 74). The Lake Roland sampling results from April, 2016 - August, 2022 as posted on the County website showed varying levels of E coli. (Prot. Ex. 75). Mr. Grachek stated that during his site visit to Lake Roland on January 20, 2023, he took 3 photographs of 'Stream Sense' signs erected by the County to alert people to the presence of E coli in water. (Prot. Ex. 76). He opined that the recurrence of SSOs increases the risk of high E coli levels.

In regard to the performance assessment required under the Consent Order, the County hired RJN Group who prepared a Performance Assessment Report dated May 27, 2021 (the "2021 RJN-Performance Assessment"). (Prot. Ex. 78). Mr. Grachek explained that while work was performed in 4 meter basins (BC02, BC03, BC04, BC09), as shown on Map 2, the meter basin for the flow of sewage within the sewer pipes from the Property to the Jones Falls interceptor, begins in BC05. He opined that, other than minor work on manholes, no work has been performed in meter basin BC05 and in particular, no upsizing of 10 inch pipes to 18 inches has been completed. He also found it significant that MDE has

not approved the proposed corrective action. Toward that end, Protestant's counsel confirmed with MDE via email in February and March of 2023, that MDE has not reviewed the SRRR 2012 Plan, and confirmed that the latest communication between MDE and the County occurred in April of 2021. (Prot. Exs. 79A, 80, 80A). MDE acknowledged in the email that while the County provided a response dated June of 2022, MDE has not responded. (Prot. Ex. 80).

In the 2021 RJN Performance Assessment Report, Mr. Grachek highlighted that for the lesser 2 year, 6 hr storm event, the model predicted SSOs showed a problem with the flow path from the Property to the Jones Falls interceptor in terms of both capacity and manholes. (Prot. Ex. 78, Map 3). In short, he explained that the 2021 RJN Performance Assessment Report presents a more dire situation than the RKK-LTC 2012 Report which showed overcapacity in the sewer pipes for sewage flowing from the Property to the Jones Falls interceptor, and then from Jones Falls interceptor to Lake Roland. Mr. Grachek's firm prepared a summary chart entitled 'Comparison of Sewer Pipe Capacities for greater than 90% GS Manor from the Property to the City line for both RJN existing and RJN post-rehab data (the "RJN Pre-Rehab and Post-Rehab Chart"). (Prot. Ex. 81). The manholes reflected on that RJN Pre-Rehab and Post-Rehab Chart are also shown in yellow highlighted line from My Neighborhood Map (Prot. Ex. 63). He emphasized that, for the 10 yr, 6-hr storm event, the 2021 RJN-PAR, the percentage of over-capacity exceeds 100% for the relevant sewer segments and more specifically, of the 40 pipes to be rehabbed, 36 indicate increased capacity usage post rehab (>90%); 4 pipes showed decreased capacity deficits. (Prot. Ex. 81). The Jones Falls Wet weather analysis which is contained in the 2012 RJN-PAR shows that for the 10 yr/6 hr storm event, the post- rehab for one of the sewer segments that Johns Hopkins was to fix (43793) is calculated as .52 peak capacity divided by a full pipe of .37.

Mr. Grachek also testified that it was incorrect for RKK and RJN to use population projections based on year 2008. (Prot. Ex. 83). Rather, he asserts that the population projections for the years 2013-

2030 should have been used. (Prot. Ex. 84). The population projections for 2013-2030 were obtained pursuant to a PIA request. (Prot. Ex. 84A). Additionally, he indicated that projected developments should also be considered as those have an effect on the sewer system. (Prot. Ex. 31).

Mr. Grachek then explained that in 2013-2014, the County hired Hazen and Sawyer (“Hazen”) to perform a comprehensive evaluation of the accuracy of the data from the RKK models. A copy of the Hazen’s newsletter was provided. (Prot. Ex. 85). Hazen’s scope of services was provided pursuant to a PIA request. (Prot. Ex. 86). Hazen issued a progress report dated February 6, 2023. (Prot. Ex. 107). Hazen also issued a Model Pipe Capacity Report (the “Hazen Report”) evaluating each pipe in the system as modeled during the 5 storm events. (Prot. Ex. 108). Mr. Grachek concluded that the sewer pipes from the Property to the County/City line as modeled during the 5 storm events shows >100% capacity. (Id.). Specifically, during the 10 year/6 hr storm event, the existing capacity for the sewer segment immediately below the Property through which sewage from the Project would flow, beginning with MH 43794 – MH43793, is greater than 100% (other than MH 43787-MH 43786 which is at 80% capacity). (Prot. Ex. 108, p. 9). Mr. Grachek stated that all 8 inch pipes are above 100% capacity and therefore deficient. He confirmed that the data on the Hazen Report nearly matches the information on the Comparison RKK/DPWT Capacities Chart (Prot. Ex. 69). He clarified that the reason the data is not an exact match is due to Hazen’s adjustment of the model. Likewise, the Hazen Report shows that for MH 20753 – MH 20761 during the 10 yr/6 hr storm event, which are located immediately before the Lake Roland interceptor, the existing capacity of the sewer segments is >100% and in one segment is > 500% capacity. (Prot. Ex. 108, p. 3).

Mr. Grachek next explained that the County subsequently hired Ramboll Americas Engineering Solutions, Inc. (“Ramboll”) for the development of design documents for the repair and rehabilitation of the interceptors, manholes, and junction chambers located within Lake Roland Park. Ramboll

prepared a Data Evaluation Report dated June, 2022 (the “Ramboll Report”). (Prot. Ex. 87). He stated that the Ramboll Report informs that the area of study included 19,550 linear feet of pipe (43 segments) ranging in size from 24 inches to 42 inches in diameter and their associated 43 manholes. The Ramboll Report reads that the County requested a detailed review/evaluation of available existing system data to:

- Confirm the condition of the pipelines and manholes associated with this project based on available system inspection data.
- Verify the rehabilitation recommendation (pipelines and manholes) included as part of this project.
- Identify data gaps requiring additional/follow up field evaluation efforts.
- Develop a preliminary list of permitting needs/requirements for the project.

(Prot. Ex. 87, p. 2). The scope of Ramboll’s work included the inspection of 24 sewer segments by closed-circuit television, the videos for which saw I&I. Included in the Ramboll Report is an aerial map with sewer segments being rehabbed in red, and the manholes to be rehabbed in green circles. Mr. Grachek opined that in order to do this work, temporary lines would need to be installed. He further opined that these 70-year old pipes have structural integrity problems. In his review of the 2021 RJN Performance Assessment Report, the Hazen Report, and the Ramboll Report, the County has not certified that the work has been completed, and the County has not taken all corrective action as required under the CD.

28. Robert Summers, Ph.D.

Robert Summers, Ph. D., was admitted as an expert in environmental engineering, water quality standards, and regulatory enforcement as the regulations relate to sewer systems. (Prot. Ex. 98). Mr.

Summers testified that the dominant bacteria source from the E coli sampling in Lake Roland was from humans. He based his opinion on the fact that the spikes of bacteria were from rainfall events which leads to the conclusion that the sewer system is leaking into Lake Roland. Mr. Summers testified that he is familiar with the bacteria monitoring program of the Jones Falls which began in 2014. Mr. Summers testified about his review of a document entitled ‘Total Maximum Daily Loads of Fecal Bacteria for the Non-Tidal Jones Falls Basin in Baltimore City and Baltimore County, Maryland’ (the “TMDL”) from September of 2006 which was an analysis of the fecal source and recommendation for limiting the bacteria in the Jones Falls basin. (Prot. Ex. 96). In Table 2.4.1, only 16% of the homes in the Jones Falls have septic systems. (Prot. Ex. 96, p. 20). The map in Figure 2.4.1 shows 84% sewer service for Jones Falls. (Prot. Ex. 96, p. 21).

In Table 2.4.4, bacteria contamination from human sources for the entire year (not only spring/summer months) shows contamination in the sub-sewer sheds as follows: JON0082 between 44%-56%; UQQ0005 between 40%-67%; and JON0184 between 44%-46%. (Prot. Ex. 96, p. 29). During Spring/Summer, the distribution of bacteria source loads in Jones Falls watershed are higher than the annual data. (Prot. Ex. 96, p. 30). Mr. Summers attributes the higher seasonal data to the increase in rain fall events between May – September. When taking seasonal water samples from Lake Roland, the County does not examine the source of the contamination. He explained that ‘high flow’ is defined as a rain event with run-off when river levels are higher. Based on that data that 84% homes use sewer system and the sources of contamination are human bacteria, Mr. Summers concluded that sewage is leaking from the sewer system into the streams and into Lake Roland.

The TMDL conclusion was to eliminate SSOs in County sewer system. Mr. Summers referenced the Clean Water Act which provides standards to achieve the elimination of SSOs. He found that the TMDL was consistent with the requirement in the Consent Decree to evaluate the sewer

system by modeling under dry and wet weather conditions to identify the existing problems. He added that modeling is the EPA standard for predicting future capacity and to eliminate SSOs. Toward that end, Mr. Summers testified that through the SRRR 2012 Plan, the County has identified existing problems in the sewer system and the future model-predicted capacity problems. (Prot. Ex. 67).

Similarly, the 2021 RJN Performance Assessment provides updated modeling and monitoring projections and in particular, for the 10 yr/6 hr storm event, showed model-predicted SSOs in BC0022 which is downstream from the Property. Importantly, the 2021 RJN Performance Assessment shows worsening of conditions in BC0022 than the original model in the SRRR Report. As a result of the model-predicted SSOs in BC0022, recommended upgrading the size of the sewer pipes. He also testified that all of the modeled deficits for the 2 yr/6 hr storm event apply to the 10 yr/6 hr storm event. He agreed that the County had only upgraded the 4 meter basins BC02, BC03, BC04 and BC09 which are not applicable to the Property here. Likewise, the Hazen Report shows increased levels of I/I during high rainfall (i.e. during wet weather).

Mr. Summers also discussed the MDE Design Guidelines from 2016 which provides standards for designing wastewater facilities. (Prot. Ex. 100). As such, according to the MDE Guidelines, a sewer system should be designed to accommodate peak flows during wet weather, or the highest flow in the sewer pipes to account for I/I. The State recommended standards from 2014 were also provided. (Prot. Ex.101).

Mr. Summers went on to describe that the capacity for the sewage from the Jones Falls travels through the Metered basin into the City and finally into the Back River Waste Water Treatment Plant. Mr. Summers testified that under a separate Consent Decree which the City entered into with EPA, the County still has not provided the City with information on flows in order that the City can address its problems. Toward that end, he offered a copy of the Phase II Plan for the City's Modified Consent

decree (Prot. Ex. 97). However, that exhibit was not admitted because the work required by the City under its Consent Decree with EPA, whether provided by the County to date or not, is not relevant to the issues regarding the sewage flow from this Property.

On cross examination, Mr. Summers added that the Consent Decree also has quarterly and annual reporting requirements wherein the County reports to MDE showing the rehabilitation of the sewer system. He also acknowledged on cross that the Consent Decree was dated 2005, the TMDL was dated 2006, and he was not certain if there have been updates since 2006. He indicated that the County does not perform its own TMDL monitoring. MDE relies on data collected and reports same to EPA under the Clean Water Act. Additionally, if there was new data since the TMDL in 2006, it could change the number of homes on sewer and septic systems. During the 16 years since 2006, there could be more homes on septic systems than connected to the sewer system.

PEOPLE'S COUNSEL CASE

1) Eric Rockel, Greater Community Timonium Council

Eric Rockel, 1610 Riderwood Drive, is President of Greater Community Timonium Council ("GCTC"), an umbrella organization of 40 community associations. The GCTC was originally formed in the 1970s and then reformed in 1989. Some of the local community associations involved here are part of GCTC such as Seminary Ridge Community Association, Heatherfield, Meadows and Boxwood communities. The Property is included within the GCTC boundaries which are: Schwann Rd. to north; I-695 to south; Dulaney Valley Rd. to east; and Falls Rd. to west. Mr. Rockel was previously employed by the County in Land Acquisition Department for 26 years when he retired from County in 2007. While working in Land Acquisition Department (now known as 'Real Estate Compliance'), he was a supervisor of County right-of-ways.

GCTC is opposed to the Project because it is too dense as noted by DOP in its CPC comments dated March 1, 2021. (Prot. Ex, 4; PC Ex. 3). Sixty-One homes are still being proposed. The proposed lot sizes are not compatible with the adjoining developments where existing lots measure in the 30 sf lot range. On Seminary Farm Rd. there are 5 homes which measure 23,300-26,600 sf, and on Old Boxwood there are 4 lots over 10,000 sf. The lots for the Project range from 8,800 sf (smallest) to 17,640 sf (largest) with average being 12,500 sf.

GCTC also opposes the Mays Chapel Gate as emergency-access-only gate because it is in violation of DPR Policy Manual which requires a second means of access for more than 100 homes (Meadows and Boxwood communities = 111 homes). GCTC contends that if the Project is approved, it is more practical to leave the Mays Chapel Gate open as a thru-street between Seminary Ave. and Joppa Rd. for not only the additional vehicles generated by the Project but also for emergency service vehicles

2) Ying Wei Lum, MD, 8308 Tally Ho Rd.

Ying Wei Lum, MD lives at 8308 Tally Ho Rd. with his wife and children. Dr. Lim is a vascular surgeon at Johns Hopkins Hospital. He testified that the proposed roadway improvements to Falls/Joppa Rd. with the additional left turn lane and removal of the existing concrete median strip will be more dangerous for vehicles turning from the access road behind the Exxon/snowball stand, and for those turning left onto Joppa Rd. out of Greenspring Station at Station Dr. Not only will left turning vehicles have to cross an additional lane of traffic but they will also need to navigate into the traffic from I-83 turning right onto Joppa Rd. Additionally, Tally Ho Rd. is a cut-thru street where extra traffic is obvious on weekends and outside of the peak hours. Dr. Lim testified that there are 4 bus stops on Tally Ho. picking up/dropping off 10-12 children per bus stop. Tally Ho is used by residents for biking, walking and neighborhood events.

COMMUNITY TESTIMONY

1) Michael Tanczyn, Esquire, 9 Old Boxwood Lane.

Michael Tanczyn is a retired zoning attorney who has lived in the Boxwood community since January of 2009. He provided a series of street view photographs. (Tanczyn Exs. 4A, 4B). Mr. Tanczyn is concerned about the traffic on Seminary Ave. and indicated that there are site distance issues turning into The Meadows. He witnessed a collision on Seminary Ave. He prepared a hand drawn diagram of the developments along Seminary Ave. (Tanczyn Ex. 5). He confirmed that his research of area record plats showed: (1) homes in the Boxwood community from a 1985 Plat; (2) homes on Seminary Ridge on a Plat from 1967; and (3) the Seminary Fields I development constructed in 1987 and Seminary Fields II in 1988. Mr. Tanczyn testified that the speed limits for the surrounding roads are: Seminary Ave. – 40 mph; Tally Ho – 25 mph; Joppa Rd. 30 mph; and Falls Rd. – 40 mph. In short, Mr. Tanczyn is not opposed to the Project but is opposed to the Mays Chapel Gate remaining permanently open. He noted that the Project is proposing 3-car garages which will generate a lot of traffic up Mays Chapel Rd. and vehicles will be backed up to exit onto Seminary Ave.

2) Fred Hallahan, 76 Seminary Farm Rd.

Fred Hallahan's home at 76 Seminary Farm Rd. is on the corner of Mays Chapel Rd. next to the Property. While he signed the Petition opposing the Project, Mr. Hallahan requested to speak on his own behalf. He stated that he is not opposed to the 61 homes but is opposed to the Mays Chapel Gate remaining open because Mays Chapel Rd. will become a primary thruway. He recommended that, in lieu of a gate, that a permanent 14 ft berm be created in that location to permanently close off May Chapel Rd. to traffic. The berm would be directly behind his home. Mr. Hallahan presented his idea to the Board of Directors of Meadows but they did not agree.

3) Susan Weiss, 8302 Tally Ho Rd.

Ms. Weiss has lived in her home which abuts the Property since 1978. She has seen the extent of development in the area including at Greenspring Station. She recalls when the Greenspring Inn and Windy Valley Ice Cream were at Greenspring Station. She emphasized that Joppa Rd. is dangerous for walkers as there are no sidewalks. Her husband is a cardiologist and worked at the Greenspring Station Johns Hopkins medical buildings and she acknowledged that the presence of Johns Hopkins medical buildings in Greenspring Station has contributed to the increased traffic. She believes Johns Hopkins Pavilions I and II were constructed in the 1980s and Pavilion III was constructed more recently. She regularly walks at Meadowood Park which requires driving to the western side of Falls Rd. because it is too dangerous to cross Falls Rd.

REBUTTAL

1. Nick Driban.

In rebuttal, Mr. Driban was recalled by the Developer and went over the same points covered in his direct testimony. Mr. Driban testified in rebuttal that the ‘district standard’ for the Special Variance requires evidence that after roadway improvements are completed, the relevant intersections will be no worse than currently exist. After the roadway improvements to Falls/Joppa intersection are completed, he reiterated that the Developer would be mitigating more than it would be impacting. He did not agree that adding a left turn lane at Falls/Joppa would create a safety issue and that was because the lines would only be shifted 1-2 feet. He repeated that the trip generation numbers used in TIS are based on 200 studies as set forth in the ITE Manual, and are based on the number of proposed units, not the number of vehicles generated by the each unit. As in direct, he opined again that leaving the Mays Chapel Gate permanently open will induce a “substantial amount of traffic” and Mays Chapel, a local road, will become a cut-thru. He opined

that Falls Rd. as an arterial street should be handling most of the traffic. In regard to accident data for the last 3 years, the SHA crash data for the 3 intersections along the Falls Rd. corridor was 0.54%. He added that if crash data was greater than or equal to 1.0, than it would warrant further action by SHA before considering improvements. The SHA data is derived from both State and County police. SHA had no record of a fatal crash at Falls/Joppa. Therefore, in his view, Mr. Driban opined that there is no safety issue. He added that he reviewed a federal data base for crash modification factors which indicates that adding a left turn lane will reduce the number of accidents by 20%.

Mr. Driban also testified that Lehnart set up 9 cameras along Falls Rd. corridor as follows: 2 – Falls/Joppa; 1 Falls/Greenspring Valley; 2 – Falls/Seminary; and 4 – W. Joppa Rd. near Property access. These cameras were set up during the period of Wednesday, January 18, 2023 - Saturday, January 21, 2023 (3.5 days total) and recorded the data by video. (Dev. Exs. 38, 39). He testified that after 9:00 am, queuing is non-existent, with minimal delay at the intersections which equates to a LOS of 'A' and 'B' under the HCM during off-peak hours. He also submitted photographs taken showing traffic builds around 3:00 pm when schools let out and at 5:00 pm with traffic from I-695 and I-83. He agreed that traffic peaks during lunch hour from 12:00-1:00 pm. He concluded that the amount of traffic shown in the videos and photographs is typical for an arterial road.

Mr. Driban did admit on cross examination that he did not watch the videos for all 9 cameras for all 3 days; he only watched the videos in real time at key locations. He did not keep a log when he watched the videos. While he saw some queuing at Station Drive next to the Property at the orthodontist/dentist office buildings, he did not see queuing on the videos at Station Drive towards Tally Ho Rd., or at Tally Ho Rd. Mr. Driban testified that over the last 3 years, he

had met with Greg Carski, Mr. Filsinger, and Kris Nebre at various times regarding the Special Variance standard. Mr. Driban described that he spent more than 2 years attempting to interpret the Special Variance standard and researching its legislative history. He believes that the only decision interpreting the Special Variance standard is the decision in *Torch Hill*, Case Nos.: 08-0919 and 2021-0274-SPHA. (Dev. Ex. 37).

Mr. Driban further agreed in cross examination that the week the videos were taken was a 4-day work week due to Martin Luther King, Jr. Holiday on January 16, 2023. He was not certain whether the DPWT also used cameras to conduct traffic counts to rate intersections under the LCM. Mr. Driban also explained that the furthest camera was placed east of Tally Ho Rd. but not as far as Thornton and Bellona at the Royal Farms store. There were no cameras placed along Tally Ho Rd.

2. Matthew Bishop.

Mathew Bishop, landscape architect, was also recalled as a rebuttal expert witness. In response to the Protestants' testimony, Mr. Bishop opined that the proposed homes meet the 3 goals of the Master Plan 2020 ("MP 2020"). (Dev. Ex. 35, p. 1). He further opined that the Project meets the T3 – Land Use Transect, and highlighted that T zones are only a guide providing conceptual and general standards and should not be read literally. He added that the transect zones replaced the conventional separate land uses in that the zones overlap and provide for a variety of housing types. Mr. Bishop testified that the Project exceeds the County design manuals which support the requirements in the BCC and BCZR. In response to Protestant's testimony that the lot sizes are compacted together in a certain area of Property, Mr. Bishop indicated that this is due to a planning practice of clustering homes on a property to preserve environmental areas. Mr. Bishop testified that the proposed clustering here is protecting the natural resources. Mr. Bishop added

that the proposed 30 ft building to building setbacks are also seen on the homes on Trelawny Ct. and Scottsdale Ct.

In regard to Mr. Hallahan's proposed 14 ft landscape berm, a 4 ft landscape berm is proposed by the Developer and there is a 10 ft Drainage and Utility Easement designated for that area to carry water away from the Property. He also pointed out that the proposed environmental and SWM areas labeled on the Development Plan. (Dev. Ex. 1B). On cross examination, Mr. Bishop agreed the adjacent neighborhoods have a variety of housing types with variable lot sizes. He also agreed that only Lot 29 is greater than 29,000 sf, and that there were a 'significant' number of larger lots in the adjacent neighborhoods.

3. Nicholas Leffner, PE, Kimley, Horn

Nicholas J. Leffner, PE was accepted as an expert professional engineer with special knowledge in development and development related policies, sewer design, sewer capacity analysis and storm water management design. (Dev. Ex. 41). Mr. Leffner has been a professional engineer in Maryland since 2013, and has been accepted as an expert witness in zoning and development cases in Baltimore County. Mr. Leffner testified that he has been involved with 12-24 sewer design projects in Baltimore County some of which included residential projects. In the past 3 years, he has worked on 1 case in the Jones Falls Sewershed which involved the redevelopment of a commercial property at 6400 Falls Rd. Civil engineering includes sanitary sewer design and engineering. Mr. Leffner agreed that modeling, using computer software to analyze sewer capacity, is accepted in the industry.

Mr. Leffner first addressed the issue of SWM and the testimony of Protestants' expert in SWM, Daniel O'Leary, PE. Mr. Leffner testified that Baltimore County does not require the designation of existing conditions for farm fields as "meadow". (Prot. Ex. 50). It was Mr.

Leffner's understanding that Mr. O'Leary's emphasis on the red highlighted box is misplaced because the County, in its control of floodplains and SWM studies, determines downstream flooding. Mr. Leffner emphasized that the County approved the Concept SWM Plan here which process he described as a conservative review that ensures the minimal County requirements are met. In response to Mr. O'Leary's opinion, Mr. Leffner testified that Phase II of the SWM process will identify the type and location of SWM devices. Given the Phase II process, he added that changing the existing conditions to 'meadow' at this stage would not change the type of device or current location on the Concept SWM Plan.

Contrary to the testimony of Mr. Grachek/Mr. Summers, Mr. Leffner testified that MDE approved the SRRR 2012 Plan by letter to the County dated September 6, 2013, and EPA approved the same by letter dated December 9, 2013. (Dev. Ex. 43). Mr. Leffner prepared an exhibit showing the sewage flow (in pink) from the Property to the County/City line. In regard to the specific manholes and sewer segments through which the sewage from the Property will flow, the Developer obtained an updated status of the sewer line from David Bayer, PE by emails dated May 30, 2023 and an accompanying spreadsheet. (Dev. Exs. 45A and B). The emails and spreadsheet confirm what manholes and sewer segments were repaired, what repairs were determined not to be needed, and/or what repairs have been approved. The email address 8 manholes and 2 sewer segments. The most recent repair date was 2019. By way of example, on September 29, 2014, the County installed an inflow insert at MH 43820. ²

Mr. Leffner testified that repairs to the sewer system were also made in BC02, BC03, BC04

² Developer offered an Internal Memo (Dev. Ex. 46) which was on DWPT letterhead dated May 1, 2023 which Counsel for Developer and Counsel for Protestants agree was prepared for the benefit of the County Council to address questions/concerns about the capacity and repairs to sewer system under the Consent Decree. Because the Memo had no author, and there was no County employee offered to testify and be cross examined as to its contents, and given that it appears to address many issues raised in this case, it was not admitted into evidence as it was found to be unduly prejudicial to the Protestants and People's Counsel.

and BC09 meter basins or sub-sewer sheds because they were exhibiting a high degree of I&I into the sewer system and were contributing to the SSOs. (Prot. Ex. 78). Those meter basins are depicted in yellow-shaded area on Map 6-1 of the 2012 SRRR Plan. (Prot. Ex. 67). Mr. Leffner testified that the repairs to those meter basins made an impact on the whole sewer system; I&I has been kept out of the system thereby creating more reserve capacity. He added that the proposed 61 homes would produce 19,000 gallons of sewage per day.

In regard to the 2021 RJN Performance Assessment Report, Mr. Lessner stated that it was his understanding that the red areas on Map 3 are only model predicted and do not include current information verified in the field by the County. (Prot. Ex. 78, Map 3). He indicated that the information on Mr. Grachek's RJN Pre-Rehab and Post-Rehab Chart (Prot. Ex. 81) is also not field verified by the County. Mr. Lessner testified that DPWT installed flow meters in 5 manhole locations (MH 44220, MH 44217, MH 44215, MH 53270, MH 44209) to monitor if SSOs occur. It was his understanding that, the data from those flow meters did not show any active SSOs. (Dev. Ex. 47A). The model-predicted SSOs in the 2021 RJN Performance Assessment are in the same areas where the flow sensors are located. Mr. Lessner also opined that a sewer pipe which is at 100% capacity is not defective but just flowing at full capacity; none of the pipes are under pressure. He added that the Sewer Design Manual actually requires smaller sewer laterals and mains, not larger ones because oversized pipes have a slower velocity. He added that there is no restriction in the Sewer Design Manual that limits the operation of a pipe which is at overcapacity.

In regard to questioning about whether the 2021 RJN Performance Assessment identified problems in the sewer system, his response was "I don't think so." In support of this opinion he mentioned that as listed in the CD, "fats, oils and grease" ("FOG") cause blockages in the sewer system. (Prot. Ex. 65, p. 35). The CD further mentions other causes of blockages in the sewer

system including, illegal storm drain discharges (p. 42) and pumping stations repairs and replacements (p. 43). The 2021 RJN Performance Assessment primarily analyzed large storm events which do not frequently occur in the County.

Mr. Leffner reviewed the Quarterly and Annual Reports for the Jones Falls sewer shed required to be prepared by the County under the CD (p. 67) (the “Quarterly/Annual Reports”). He testified that the Quarterly/Annual Reports contain all of the required updates as well as the construction projects during the last 3 years. (Dev. Exs. 47-54). He emphasized that, even with model-predicted SSOs, there were no actual SSOs in Jones Falls Sewershed in the Quarterly/Annual Reports. He acknowledged that there is a structural SSO at the Marnat Rd. location which does not affect the sewage flow from this Property (the “Marnat Rd. SSO”). The Marnat Rd. SSO is the reason that the CD has not been terminated. In light of the amount of work performed by the County on the sewer system, he opined that the absence of SSOs shows that the purposes of the CD have been met. In his opinion, the proposed 61 homes will produce minimum sewage flow as compared to the flow in the existing sewer system.

Mr. Lessner acknowledged the email response of Lisa Eicholtz, PE of DPWT’s dated September 4, 2020 to the Developer that the 8 inch sewer segments (MH 43794 – MH 43786) do not have adequate capacity to accommodate the 61 homes proposed in the Project. (Dev. Ex. 55). Mr. Lessner testified that the Developer here has provided the design for upsizing 2 sewer segments (MH 43794 - MH 43792).

In regard to Mr. Grachek’s conclusion that the model-predicted analysis was based on dry weather in the 2015 County Jones Falls Interceptor Chart, Mr. Lessner testified that it was his understanding that the column “Infil. MGD” and “Inflow MGD” concerned flows beyond the sewer system. (Prot. Ex. 64). As for the Lake Roland Ecoli sampling results, Mr. Leffner opined

that there is a lot of variability in the sampling with no particular source found. The locations where the sampling occurred was shown in an aerial photograph. (Dev. Ex. 56). He highlighted that Lake Roland is not the only location where the County conducts sampling and *Stream Sense* signs are located in other parts of the County. (Dev. Exs. 57, 63). Mr. Lessner disagreed with Mr. Gracheck's and Mr. Summer's conclusion that SSOs were the source of the E coli readings and mentioned that those readings could also come from agricultural use and septic systems. He reasoned that since there have not been any SSOs since 2019, humans cannot be the source of the E Coli. He pointed out that there are 60,000 septic systems. (Dev. Exs. 58, 59). He obtained a color-coded map from the County of the septic systems located within the Lake Roland watershed wherein 635 homes are on septic. (Dev. Ex. 60). The County does not monitor septic systems. He provided an aerial map from My Neighborhood showing the extent of agricultural uses (green) (including horse farms) within the confines of the Jones Falls watershed (red) which could contribute to the E Coli levels. (Dev. Ex. 61). The County has not issued any advisory warnings as of May 26, 2023. (Dev. Ex. 62). Accordingly, it was Mr. Lessner's opinion that the E Coli readings in Lake Roland were from varied sources including wildlife, agricultural uses and septic systems. While he reviewed the TMDL Report, in his view, that because there have not been SSOs in last 3 years, humans cannot be the E Coli source.

In regard to the Hazen and Ramboll reports, Mr. Lessner testified that neither report was required under the CD but were prepared for the County to be proactive in its ownership, maintenance, operation and repair of the sewer system. (Prot. Exs. 85, 86, 87). He described the Hazen and Ramboll reports as the County's future long term planning for the capital budget. Mr. Lessner testified that neither Hazen nor Ramboll reports were cause for any concern. Mr. Lessner sees the relining of the main under Lake Roland as a planned improvement but not necessarily a

capacity issue, and the Project would not have any effect on that relining.

On cross examination, Mr. Lessner agreed that the CD requires the County to conduct the LTC evaluation and the SRRR 2012 Plan to identify long term deficiencies and corrective actions necessary to correct those deficiencies in the sewer system. (Prot. Ex. 67). Toward that end, he acknowledged that the County hired RKK to perform that evaluation and prepare the RKK-LTC 2012 Report. (Prot. Ex. 68). In regard to whether the RKK recommendations were necessary to repair the deficiencies, Mr. Lessner found that there were a lot of assumptions which were not verified including population projections that went into the recommendations. Therefore he reasoned that the recommended improvements may not be required and alternative repairs were available. As far as he knew, the County never determined that the RKK recommended actions were not necessary.

Mr. Leffner agreed that the ‘majority’ of the corrective actions identified in the SRRR 2012 Plan (Paragraph 6.14) has been done but otherwise, those actions have not been fully implemented by the County including the reduction and rehabilitation of I&I. (Prot. Ex. 67). As of May 31, 2023, Mr. Leffner agreed that there are areas of the County which are still exhibiting I&I. The Hazen Newsletter shows areas at least surrounding the Property in red where there is I&I. (Prot. Ex. 85). He conceded that 2021 RJN Performance Assessment found areas of model-predicted SSOs, through which sewage from the Property will flow, and specifically, as shown on Map 3. (Prot. Ex. 78). He also agreed that Ramboll Report identified 19,550 linear feet or 43 sewer segments (several miles) and 43 junction boxes in and around Lake Roland that could be repaired to control I&I but, did not agree that I&I is the reason for the model-predicted overflows. (Prot. Ex. 81). He further acknowledged that the Ramboll Report indicates that 24 of the 43 segments had active infiltration at sewer joints, and 14 of which had some structural defects; of the remaining

19 segments, 11 had structural defects. Given the Hazen Newsletter, the Ramboll Report and 2021 RJN Performance Assessment Map 3, Mr. Lessner agreed that corrective action 1 in the SRRR 2012 Plan (Paragraph 6.14) is not completed and that, while there was the ‘balance of the area within the JF Sewershed’ which was still outstanding, he did not know how many still needed to be repaired. He clarified that one of the areas which is outstanding is within the limits of proposed sewer improvements for the Project.

Mr. Leffner also conceded that the work in the Hazen Report has not been completed. He was not sure whether the County had performed any capacity improvements listed in Paragraph 6.14.2 the SRRR 2012 Plan. (Prot. Ex. 67). Specifically, as shown in red on Map 6.1 of the RKK-LTC 2012 Report for the 10 yr/6 hr storm, Mr. Leffner agreed that RKK recommended that sewer segments be repaired by sealing manholes and/or installing relief sewers, and that Map 6.1 includes all of the recommended repairs and replacements. (Prot. Ex. 68). In particular, RKK recommended upsizing the sewer segment pipe at MH 44219 (Meter Basin BC 22). (Prot. Ex. 68, ¶ 5.1). He was not sure whether MH 44219 had the manhole sealed but acknowledges that the upsizing of the pipe to 18 inches was not completed. However, he qualified his opinion stating that he does not believe the improvements recommended by RKK were an exhaustive list of improvements and that there could be alternative repairs/replacements for the 10 yr/6 hr storm event. He believes these were recommendations at the time RKK issued the report.

As to SRRR 2012 Plan, he agreed that Paragraph 6.14.3 correctly identified structural deficiencies, given that those structural deficiencies which were also identified in the Ramboll Report from June, 2022. Mr. Leffner stated that it ‘could be’ that ‘structural deficiencies’ listed in the SRRR 2012 Plan are inclusive of only the deficiencies identified therein, and not in the Hazen and Ramboll Reports.

As to Paragraph 6.14.5, as to confirming model simulations and revise if necessary, he agreed that RJN mostly updated the RKK model and recalibrated a portion of the model. The CD includes on-going analysis for a finite amount of work. While Hazen is conducting a comprehensive evaluation of the JF Sewershed for future ‘planning’ as opposed to required improvements. He believes that Hazen Report is beyond the study period of what is required by the CD.

In regard to rehabilitation work completed as shown on Map 2 of the 2021 RJN Performance Assessment, Mr. Lessner conceded that Map 2 shows that there was little work completed within Meter Basin 22 where the sewage would flow from the Property (i.e. green square/yellow circle – sewer lining); no relief sewers or upsizing of pipes has been completed. (Prot. Ex. 78). After the 2021 RJN Performance Assessment was issued, he testified that “presumably” more improvements have been completed within the sewage path from the Property and he referenced those improvements as the ones identified by Dave Bayer in the DPWT Email dated May 30, 2023. (Dev. Exs. 45A, 45B). Some of the improvements listed in DPWT May 30, 2023 Email were from the 2021 RJN Performance Assessment.

The 2021 RJN Performance Assessment discusses work performed in Meter Basins 02, 03, 04 and 09 which is not the area where the sewage from the Property will flow. Sewage from the project will flow through the JF interceptor, whereas sewage from Meter Basins 02, 03, 04 and 09 where rehabilitation was performed will flow through Roland Run interceptor. While he described Map 3 of the 2021 RJN Performance Assessment as a ‘snapshot in time’, he qualified his direct testimony by stating that he agrees that Map 3 shows future information. He stated that the RJN modeling has not been verified by flow sensor monitoring. Yet, Mr. Lessner did not have the data from flow sensor monitoring. He acknowledged that there is a difference between SSOs and

hydraulic restrictions on Map 3. In his view, Map 3 of the 2021 RJN Performance Assessment did not show a worsening of conditions from the RKK-LTC 2012 Report, even if pipes are over 100% capacity. He recognized that the 2021 RJN Performance Assessment used the same 2008 population projections as the RKK-LTC 2012 Report. (Prot. Ex. 83).

Mr. Leffner agreed that the Comparison Chart RJN Pre-Rehab and Post-Rehab Chart showed an increase in hydraulic restrictions (red). (Prot. Ex. 81). He also agreed that on the 2015 County Sewer Capacity Chart, DPWT determined that there is not adequate capacity because the 8 segments were at 94%-100% capacity. (Prot. Ex. 64). He agreed that numerous segments below the 8 segments for 10 yr/6 hr storm event are shown to be over-capacity. On the 2015 Jones Falls Interceptor Chart, based on his conversations with County representatives, Mr. Lessner understood that the modeling was based on wet weather as shown by columns labeled: 'Infil MSG' and 'Inflow MSG'. Yet, he indicated that infiltration can also occur in dry weather. (Prot. Ex. 64). There is an Appendix 5A to the RKK-LTC 2012 Report which lists capacity during dry weather. (Prot. Ex. 68). He agreed that the CD requires evaluation of capacity, modeling and corrective action is based on wet weather flow.

With regard to the DPWT May 30, 2023 email, his office inquired as to what repairs had been completed. (Dev. Ex. 45A, 45B). Mr. Leffner agreed that sewage from the Property does not flow through MH 43820. (Prot. Ex. 63). The repairs listed on DPWT May 30, 2023 email are minor and that none of those listed repairs increase capacity of the segments or capacity of the manhole. In his view, sealing manholes and lining pipes will increase capacity. (Dev. Ex. 45A, 45B). He admitted that the repairs listed in the DWPT May 30, 2023 email are not the repairs that were recommended in the 2012 RJN Performance Assessment, or in the Ramboll Report.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to BCC § 32-4-229, the “Hearing Officer *shall* grant approval of a development plan that complies with these development regulations and applicable policies, rules and regulations.” (Emphasis Added). In *People’s Counsel v. Elm Street Development, Inc.*, 172 Md. App. 690 (2007), the Court of Special Appeals held that if the county agencies recommend approval of a development plan, it is “then up to [protestants] to provide evidence rebutting the Director’s recommendations.” *Id.* at 703.

The Property is the last remaining undeveloped parcels in this area. Residential neighborhoods and the large commercial complex known as Greenspring Station have grown up around, and encircle it. Across from the Property is Meadowood Park, a public park, which attracts volumes of people year-round. The Property’s location on W. Joppa Rd. - a local County road - and its proximity to the failing Falls/Joppa Rd. intersection, with numerous sub-intersections, make it a challenging place for 61 homes.

As shown by the County agency comments in review of the Development Plan and in their review of the Petition for Special Variance, as well as the emails and other documents produced in response to PIA requests, DPR and DPWT found that the Project did not comply with the development regulations and applicable policies due to the traffic, proposed emergency-access-only gate, and inadequate sewer capacity. After 13 days of hearings over many months, the Protestants and People’s Counsel provided compelling evidence to counter the evidence produced by the Developer’s in its case-in-chief, which evidence was then not sufficiently rebutted. Substantial evidence is merely “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Elm Street*, 917 A.2d 166, 174 (2007), (quoting *Md. State Police v. Warwick Supply & Equip. Co., Inc.*, 330 Md. 474, 494, 624 A.2d 1238 (1993)). Accordingly,

the Greenlined Development Plan must be denied under BCC, §32-4-229(b)(1). *Elm Street, supra*, 172 Md. App. at 696, for the reasons set forth herein.

A. Traffic.

The Property lies on the north side of W. Joppa Rd. The aerial photographs produced by the Protestants set the scene more accurately than words can describe showing the extensive surrounding development and intricate roadway network involved here. (Prot. Exs. 38, 40-44). It is undisputed that the Property lies within the a failing traffic shed which includes the intersections of both Falls Rd. and Joppa Rd., and Falls Rd. and Greenspring Valley Rd. DPWT determines the boundaries of the traffic sheds. For decades, both intersections have maintained an ‘F’ rating on the County Basic Services Map. The County owns and maintains W. Joppa Rd. The State of Maryland owns and maintains Falls Rd. (MD 25) and Greenspring Valley Rd. (MD 130) as well as the intersections of Falls/W. Joppa Rd. and Falls/Greenspring Valley Rd.

1. Transportation Basic Services Map Standard.

Before addressing the evidence which was presented on the Petition for Special Variance BCZR, §4A02.4.G, an issue arose during the HOH as to whether the standards employed by the County to rate intersections for the purposes of the Basic Services Map and the standards which a petitioner needs to meet for a Petition for Special Variance, were the same. Protestants and People’s Counsel assert in their Post-Hearing Memorandums that the ‘loaded cycle methodology’ (“LCM”) as set forth in the Highway Capacity Manual (1965) is the only standard which must be applied for both the Basic Services Map and a Special Variance; the Developer contends that the LCM cannot be used to meet the burden of proof in a Special Variance case. Consistent with the holding in *Torch Hill* and in review of the plain language in the Transportation Basic Services subsection and the Special Variance subsection, in my reading of the relevant provisions, the LCM

can only be used for Basic Services Map purposes.

In order to determine whether public facilities are adequate to meet the demands of a proposed development, the County applies the LCM to assign letter grades A-F to intersections within a mapped area (A being the best and F being the worst). When an intersection has received an 'E' or 'F' rating under the LCM, there is an automatic prohibition on the issuance of a building permit within that failing traffic shed, thereby regulating development.

Using the LCM, the Traffic Engineering/Planning section of DPWT performs traffic counts at intersections during a two-hour period to evaluate each approach during both morning and afternoon peak hours. Peak hours are 7:00-9:00 am and 4:00-6:00 pm. A traffic cycle becomes 'loaded' if on a green light, the last vehicle in line at the light does not get through the intersection. It is undisputed that an intersection which has just one (1) failing movement will be assigned an "F" rating. Stated in percentages, an 'F' rated intersection has a load factor of 86-100%. (See County Website, DPWT). For intersections rated D, E and F, DPWT conducts annual traffic counts and reevaluates the intersections each year. For intersections rated A, B and C, the counts are conducted every 3 years.

Because it compiles traffic counts from a specific day, the LCM is limited in its application. The singular purpose of the LCM is set forth in the express language of the general purpose and intent of Basic Services Map as found in BCZR, §4A02.1:

§4A02.1. - Purpose and intent.

The County Council finds that important public facilities in certain predominantly urban areas of the county are inadequate to serve all of the development that would be permitted under the regulations of the zones or commercial districts within which those areas lie. **Basic Services Maps are hereby established to regulate nonindustrial development** in those under-served areas to a degree commensurate with the availability of these facilities. Basic

Services Maps are not permanent and will be reviewed annually with reports to the County Council.

In BCZR, §4A02.3, the Basic Services Map for water, sewer and transportation was adopted by the County Council. There is language in BCZR, §4A02.3 about the Transportation Basic Services Map. BCZR, §4A02.3.E.3.b informs that the Transportation Map shall be amended after DPWT certifies that the needed facility has been constructed and is performing where there has been actual construction to correct a deficiency in a failing intersection, by either the County through the capital improvements program, or through private funds of a developer. BCZR, §4A02.3.F makes clear that it was the intended goal to correct water, sewer or transportation deficiencies listed on the Basic Services Map in accordance with the Master Plan and the capital improvements program. BCZR, §4A02.3.G provides that no building permit or subdivision approval can be granted unless the Director of the DOP has issued a reserve capacity use certificate for the proposed development.

In BCZR, §4A02.4 are the mapping standards for water, sewer and transportation. The standards for each of the public facilities – water, sewer and transportation – are individually established for the purposes of designations on the Basic Services Map: (1) water supply standards are found in Subsection B; (2) the sewer standards are found in Subsection C; and (3) the transportation standards are set forth in Subsection D.

As title alone ‘*BCZR, §4A02.4 - Basic services mapping standards*’ makes expressly clear, the LCM is a Basic Services Mapping Standard which forms the basis for the delineation of areas on the Transportation Basic Services Map as well as to evaluate development applications and restrict the issuance of building permits for failed intersections:

§ 4A02.4. - Basic services mapping standards.

A. Generally. The standards contained herein are intended to form the basis for the delineation of areas on the Basic Services Maps as well as for the evaluation of development applications in accordance with the requirements of this article.

B. Water supply standards.
* * * *

C. Sewerage standards.
* * * *

D. Transportation.³

1. Intent. The **transportation standards and maps are intended to regulate nonindustrial development** where it has been determined that the capacity of arterial and arterial collector intersections is less than the capacity necessary to accommodate traffic both from established uses and from uses likely to be built pursuant to this article. Such development is not intended to be restricted unless there is a substantial probability that an arterial and arterial collector intersection situated **within the mapped area will, on the date the map becomes effective, be rated at level-of-service E or F under standards established by the Highway Capacity Manual, 1965,** published by the Highway Research Board of the Division of Engineering and Industrial Research, National Academy of Sciences National Research Council.

The Transportation Basic Services Map explains that the standards from the 1965 HCM will control how to rate intersections within a mapped area and to the review of development applications to make sure that a building permit is not automatically issued. It is significant in Subsection D.1 that the phrase ‘be rated at level-of-service E or F’ precedes the phrase ‘under standards’.

³ The word ‘standards’ is missing from sub-title in ‘D. Transportation.’ Given that the word ‘standards’ appears after both ‘water supply’ and ‘sewer’ in those subsections, and the section title is ‘Basic services mapping standards’, and the phrase ‘transportation standards’ appears in the ‘Intent’ paragraph, this appears to be an inadvertent error in drafting.

In this case, the LCM served its purpose in that an ‘F’ LOS rating was assigned by DPWT under the Highway Capacity Manual, 1965 to both Falls/Joppa Rd. and to Falls/Greenspring Valley Rd. intersections which resulted in both intersections being part of a failing traffic shed. By doing so, it prevented the issuance of a building permit, which in turn, forced the Developer here to file the Petition for the Special Variance under BCZR, §4A02.4.G.

From the unambiguous language above, the Basic Service Mapping standards and the Special Variance standards are not one and the same. As cited by People’s Counsel in his Post-Hearing Memorandum, citing Judge Brynja [sic Brianna] Booth in *Mayor and City Council of Baltimore v. Thornton Mellon*, 478 Md. 396, 429 (2022) statutory construction must make sense as:

“Finally, we check our interpretation against the consequences of alternative readings of the text.....Doing so ensures that we adopt an interpretation that avoids a construction that is ‘illogical, unreasonable, or inconsistent with common sense.’.... Indeed, ‘it has been called a golden rule of statutory interpretation that, when one several possible interpretations produces an unreasonable result, that is reason for rejecting that interpretation in favor of another which would produce a reasonable result.’” Internal citations omitted.

(PC Memo, p. 13). The only logical, reasonable and consistent-with-common-sense reading is that the Special Variance standard is something other than the LCM.

2. Special Variance Standard.

From reading the above sections, the logical, reasonable and consistent interpretation is that the Special Variance standard is separate from the letter grade assigned under the Basic Services Map. While the building permit is withheld, BCZR, §4A02.4.G provides that an exception or waiver (i.e. a Special Variance) can be sought if the evidence meets the requirements in BCZR, §4A02.4.G.1:

G. Petitions for special variance from provisions of this subsection.

1. The Zoning Commissioner may, after a public hearing, grant a petition for a special variance from a provision of this subsection, only to an extent that will not violate that provision's purpose, pursuant to a finding:

a. That the demand or impact of the development proposed will be less than that assumed by the district standard that would otherwise restrict or prohibit the development, or that the standard is not relevant to the development proposal; and

b. That the granting of the petition will not adversely affect a person whose application was filed prior to the petitioner's application in accordance with Section 4A02.3.G.2.b.

Because the burden of proof includes proving what impact a proposed development (not yet built) would have on the failing traffic shed, the LCM, with its limited application, cannot be applied. Therefore, the letter grade assigned under the LCM for inclusion on Basic Services Map does not need to change to a better letter grade. Indeed, if an intersection rating on the Basic Services Map is to be changed, DPWT is the County agency charged with that task and the County Council would need to approve the change. But that is not to say that if demand and impact are shown using the CLV or HCM methods, that changes in letter grades are not important.

To determine logical, reasonable and consistent-with-common-sense reading of BCZR, §4A02.4.G.1, a Special Variance can only be granted if under Subsection G.1, it does 'not violate that provision's purpose.' As set forth above, the purpose or intent of the Transportation *Standards* found in Subsection D.1 is a determination that:

...the capacity of arterial and arterial collector intersections is less than the capacity necessary to accommodate traffic both from established uses and from uses likely to be built pursuant to this article.

From the Transportation Standards, the only logical, reasonable and consistent interpretation is as follows:

- (1) the phrase "...it has been determined that the capacity of arterial and arterial collector intersections is *less than...*" refers to the determination by DPWT to assign a letter grade for the intersection using LCM;
- (2) the phrase "...the capacity [of the intersection] necessary to accommodate traffic..." refers to the district standard; and
- (3) the phrase "...traffic both from established uses and from uses likely to be built..." refers to "the demand or impact of the development proposed..." which is in Subsection G.1.a. above.

Read together, a Special Variance requires a finding, after a hearing, that the demand or impact of the development proposed will be less than that assumed by the capacity which is necessary to accommodate traffic. As a result, it is clear that assigning a letter grade to an intersection using LCM does not answer the question of what the *capacity* of the existing intersection is, or what the impact of the development will be on that capacity.

3. OAH Cases on Special Variances.

The Special Variance provision BCZR, §4A02.4.G.1 has been also been interpreted in previous OAH cases. Thus, Mr. Driban was not correct when he testified that the only case which has interpreted the Special Variance provision was *Torch Hill*. In this case, People's Counsel provided copies of previous OAH Opinion and Orders from 8 cases involving the issue of Special Variance. (PC Ex. 38). These cases were helpful in terms of not only the type of evidence which can be provided in a Special Variance case, but the factors considered by OAH in making findings:

- (1) what is the capacity of the intersection?
- (2) what is traffic generated by existing uses?
- (3) what is the traffic from the uses likely to be built (i.e. the development project)

(4) what is the capacity of the intersection that is needed to accommodate both existing and future uses?

To answer those questions, OAH has previously looked to a series of factors including, without limitation, whether: (1) the project is for less than 10 homes; (2) the trip generation number for the homes; (3) the distance of the property from the 'F' intersection; and (4) the direction of the traffic to and from the intersection.

In 2000 case, Deputy Zoning Commissioner ("DZC") Timothy Kotroco in Case No.: 00-557-SA, granted a Special Variance for 7 homes. DZC Kotroco was persuaded by a traffic study conducted by DPWT (f/k/a 'County Bureau of Traffic & Transportation') which study analyzed what percentage of vehicles would exit from an adjacent apartment complex to determine whether those vehicles would utilize the failing intersection. The developer's traffic engineer was C. Richard Moore, a retired head traffic engineer with Baltimore County for 31 years. Mr. Moore testified that the driving habits of the apartment complex residents would be representative of the future property owners of the proposed 7 homes. Because of his experience with the County, he was able to testify that the same traffic shed containing the 'F' intersection at issue had existed for 30 years. Mr. Moore opined that traffic shed did not apply to the property because the traffic patterns had changed due to the construction of additional streets and roads.

In a 2008 case, Case No.: 08-264-A, DZC Thomas H. Bostwick noted that Petitions for Special Variance were "rarely considered" by OAH (f/k/a Office of Zoning Commissioner) and that it was "a case of first impression" for him. The development there was for five (5) homes.

As DZC Bostwick repeated Subsection G.1.a, and wrote it contained a two-prong test:

First, the [ALJ] must determine that the demand or impact of the proposed development will be less than that assumed by the district standard that would otherwise restrict or prohibit the development, or that the standard is not relevant to the development proposal. *Second*, the [ALJ] must find

that the granting of a petition would not adversely affect a person whose application was filed prior to Petitioner's application.

In his application of the two-prong test in that case, DZC Bostwick was provided a copy of the failing traffic shed, the boundaries of which included the property at issue. Importantly, DZC Bostwick made clear that, given the property's location within the failing traffic shed, there were two (2) ways that a building permit could be issued:

As the subject property is located within the shed, building permits cannot be issued nor development approval given until the intersection is improved and no longer failing or special variance relief is granted.

(Emphasis Added). DZC Bostwick's reading supports the interpretation that the 'standard' for a Special Variance is different than the Basic Services Map standards for assigning letter graded to intersections to prevent building permits from being issued.

In that 2008 case, DZC Bostwick addressed the term "district standard" and wrote that it was:

.....neither a defined term nor is it described anywhere in Article 4A. In fact, testimony offered at the hearing is that the Baltimore County Bureau of Engineering has not defined the term and it is not a phrase used in the parlance of traffic engineers.

In pursuit of the meaning of "district standard," DZC Bostwick looked to a 2005 case written by DZC John V. Murphy (Case No.: 05-336-SA) where a Special Variance was granted to build three (3) homes. In the 2005 case, the "district standard" was interpreted to be the impact normally associated with a development of the type and size:

...whether the anticipated impacts on traffic as they relate to such issues as volume, congestion, movement and timing of the proposed development **would be less than the impact normally associated with a development of that type and size**. He concluded that if the impacts were less, then relief could be granted pursuant to a petition for special variance. **Specific factors such as the anticipated**

volume of traffic to be generated, the route (including access and exit) of traffic to and from the proposed development, anticipated road improvements in the area, the nature and timing of the traffic generated by the proposed development, existing potential development patterns in the area, the nature of the land use proposed for development and existing development in the area are all factors that need [to] be considered in determining whether special variance relief should be granted.

(Emphasis Added). While the factors in the 2005 case are directed towards the existing traffic and traffic to be generated, I must *respectfully* disagree with DZC Murphy's interpretation of "district standard" as that term more likely refers to the *capacity* of an intersection as discussed below.

Nevertheless, in the 2005 case, the evidence provided to DZC Murphy in support of the Variance in Case No.: 05-336-SA was primarily from the testimony of two (2) County officials who both appeared and testified namely, Walter Smith, project manager for PAI, and Steven Weber, Chief of Traffic Engineering Division of DPWT. Steven Weber testified that the road at issue, Putty Hill Avenue, was the subject of ongoing County capital improvement program to widen that road at its intersection with Harford Rd. He also testified in regard to a County study which showed the actual number of vehicles (3,100) which used the failing intersection. He then compared actual counts to the 2.55 trips to be generated by the proposed 3 homes. After doing so, Mr. Weber opined that the daily fluctuations of traffic using the failing intersection were greater than the added trips from the proposed 3 homes. Additionally, Mr. Weber - who was subject to cross examination by residents of adjacent properties - testified that Special Variances were *generally granted in failing traffic sheds when the number of lots is less than 10*.

In another 2008 case, Case No.: 08-264-A, DZC Bostwick granted a Special Variance for 5 homes, and found that 'the impact of the proposed development will be less than anticipated,' by weighing the fact that the subject property was located 'a significant distance to the southwest of the failing intersection of Middle River and Pulaski Highway and was not easily accessible

thereto.’ He also found that the residents of the proposed development would not even use the failing intersection during either morning or evening peak hours. In determining whether the anticipated impact of the development will be less than that assumed by the ‘district standard,’ he determined the intersection capacity by considering the existing traffic patterns; anticipated road improvements; the contemplated volume direction; and the anticipated timing of traffic to and from the proposed development.

In a later case, Zoning Commissioner (“ZC”) William J. Wiseman, III, in Case No.: 08-436-SA, adopted the same 2-prong test and analyzed the same impact factors set forth in Case Nos.: 05-336-SA and 08-264-A. ZC. In that case, when building permit was sought, the County informed property owners that the permit would not be issued because the property was in a failing traffic shed. ZC Wiseman summarized the Special Variance relief as one for “the issuance of building permits for fifteen (15) single-family dwelling units where it has been determined that the capacity of the public facilities necessary to accommodate same (transportation) is less than necessary.” The Petition language there speaks to the “capacity [of the intersection] necessary to accommodate...” In regard to the impact a proposed development would have, ZC Wiseman repeated DZC Bostwick’s analysis that:

Obviously, the manner in which a proposed development will impact specific directions/movements in the intersection is a significant consideration in determining the merits of a special variance request.

The type of persuasive evidence provided to DZC Wiseman included a copy of the County’s data collection sheet and traffic analysis for the applicable intersection. That exhibit depicted the traffic counts for the intersection and analyzed the LOS for the respective movements through that intersection. In ZC Wiseman’s case, he granted the Special Variance for 15 homes based on the

fact that the proposed improvements to the failing intersection were included within the State of Maryland's capital budget, that it was anticipated that SHA would complete the improvements, and that the building moratorium would be lifted by Summer of 2009. He also emphasized that there were numerous alternative routes to the subject property, each of which avoided the failing intersection.

Subsequently, ZC Wiseman in Case No.: 2009-0080-XSA granted a Special Variance to allow a proposed addition to an office building located within the failing traffic shed of Loch Raven Blvd./Joppa Rd. In that case, Stephen Weber, then Chief of Traffic Engineering Division of DPWT, provided a written comment addressing the Special Variance noting specific facts considered by him in support thereof:

Based on the relatively small size of the addition, the distance of this site from the critical intersection, and recognizing that the eastern border of the moratorium area only lies 200 feet to the east at the Beltway, we would find that the additional traffic impacts from this site on the critical intersection would be nearly imperceptible and therefore we would have no objection to the granting of a Special Variance for this proposal.

In another 2009 case (Case No.: 2009-275-SA), the same failing traffic shed of Loch Raven Blvd./Joppa Rd. was at issue. The Petitioner there sought to construct an office building. DZC Bostwick applied the same impact factors applied by DZC Murphy in Case No.: 05-336-SA. In that case, DZC Bostwick was provided with County's data collection sheet and traffic analysis for the intersection of Loch Raven Blvd. and East Joppa Rd. from 2 separate years. Those traffic counts analyzed the capacity for specific movements through the intersection. DZC Bostwick noted the ZAC comment from Stephen Weber, Chief of County Division of Traffic Engineering to Dennis Kennedy with County's Bureau of Development Plans Review supporting the Special Variance Petition. He factored in that the property there was located some distance to the east of

the failing intersection and the only direction of travel that is failing was westbound in the morning peak hours away from the property. He concluded that the location of the property was largely unaffected by the failing intersection.

Summarily, the evidence presented here did not address the important factors identified in the prior OAH cases.

4. Fallacies of TIS.

Applying the analysis from Case Nos.: 00-557-SA, 05-336-SA, 08-264-A, 08-349-SA, 08-436-SA, 09-0080-XSA, 09-0275-SA to the facts here, I find the TIS was flawed in several ways. First, the demand or impact of the development was based on the ITE Manual. While the ITE Manual can be useful in some cases to determine demand and impact of a proposed development, in this particular case, given the existing residential, commercial and County park land development surrounding this remaining undeveloped parcel, as well as the State and County roads and location within a failing traffic shed, reliance solely on the ITE Manual underestimates the real trip generation numbers.

On this issue, ALJ Lawrence Stahl in Case No.: 2012-0060-SA denied a Petition for Special Variance for a proposed health/fitness facility at Greenspring Station where a racquet club existed. In that case ALJ Stahl recognized the traffic engineer did not only rely on the trip generation numbers from the ITE Manual for a comparable land use category but also referred to a related traffic study for another building in the area (the Osler building study). In that case, the traffic engineer candidly conceded that he did not want to only use the ITE numbers due to their ‘regional inaccuracy’:

.....the IT[E] materials not accurate, as he noted that in this situation in the Baltimore/Washington region it was the custom to use other numbers rather than the ITE figures; and offered that the ITE manual itself suggests *the use of local data where appropriate.*

(Emphasis Added). In denying the Special Variance, ALJ Stahl articulated that use of the ITE Manual is akin to “running the numbers” and was not impressed with either the ITE trip generation numbers, or with the additional traffic study:

Further, no additional traffic count studies were carried out on the Petitioner’s behalf to produce “real” numbers or at least to focus, supplement or extend traffic count studies already available.

Instead, Petitioner’s traffic expert created a structural definition on paper of what he opined to be the accurate description of the Petitioner’s present facility. The resulting description was then fit into the ITE land use categories to which the ITE formulae and resulting numbers were applied. The ITE manual (and software programs utilized) are admittedly consisting of compilations and averages useful to a degree, especially in the absence of actual numbers. Unfortunately, even the ITE acknowledges that it is sometimes inapplicable and may not reflect actual use in a particular situation. Petitioner’s own traffic expert applied this caution in rationalizing his use of the “Osler building study” instead of the ITE numbers relative to the proposed medical office building facility.

Unlike the proposed Greenspring Station development before ALJ Stahl, the demand or impact of the development here is based solely on the ITE trip generation numbers for single family detached homes (Land Use 210) and nothing more. (Prot. Ex. 35; Dev. Ex. 25). Borrowing Judge Stahl’s analysis, it was incumbent upon Developer’s traffic engineers to do more than just “running the numbers” by finding a use and plugging the trip generation numbers into the TIS. It is inconceivable given the Property location as depicted in the photographs taken by Mr. Brassert, that the 61 homes would only generate 46 am peak trips and 61 pm peak trips and it defies common sense. (Prot. Exs. 40, 41, 42, 43).

Second, the Greenlined Development Plan proposes 60 new homes with 47 – 2-car garages, and 13 – 3-car garages which is a minimum of 135 vehicles, not to mention that the existing home

could also have, at a minimum 3 vehicles, for a total of at least 138 new vehicles. This total does not include visitors, deliveries, or service vehicles which add to the traffic in and out of the Property. That fact alone contradicts the ITE numbers. Third, the ITE numbers are inconsistent with the Greenlined Development Plan at Note 11 confirms that the average daily trips (ADT) is 600. (Dev. Ex. 1B). Mr. Driban did not provide any explanation as to that inconsistency.

Fourth, the Property's location next to Greenspring Station, private schools, Meadowood Park, US Post Office, religious institutions, and Roland Run Swim Club, to name just a few local destinations screams for a TIS which factors in those obvious daily non-peak trips. Greenspring Station, an immense commercial area with medical offices, restaurants, a bank, and retail stores, was not factored in to the number of trips generated. Mr. Driban did not opine that any of the single family housing developments in the ITE were next to a commercial area such as Greenspring Station or near a public park.

Fifth, while the ITE trip generation numbers underestimate the trips to be generated, I note that in support of his Sensitivity Analysis, Mr. Driban testified that "600" vehicles would use Mays Chapel in the morning peak hours, and "1,000s" of vehicles would use Mays Chapel in evening peak hours if the emergency-access-only gate was not approved. The trip numbers increased when advocating for an emergency-only-access gate, but were minimized when addressing trips generated from the development or how the proposed roadway improvements would account for the purported trips generated.

Sixth, I agree with People's Counsel's characterization that the ITE trip generation numbers are based on obsolete studies from 21 states other than Maryland, and included Ontario, Canada and those studies were dated from the 1980s, 1990s, 2000s and 2010s. There was no evidence as to how many studies were from Maryland, or whether any studies were from Baltimore

County and if so, the year of any Baltimore County studies. While Mr. Driban continued to repeat that 200 studies formed the basis for the ITE trips, he conceded that he did not review any of those studies, and none were produced in evidence. (Prot. Ex. 35). As a result, it is unclear whether any of those studies were for single family homes with garages as proposed here. Even still, the ITE informs that for at least 30 of the study sites from the 22 states and Ontario, data on the number of residents and number of household vehicles was *actually available*. However, no such data was discussed by him and no data was produced in evidence. (Prot. Ex. 35).

Seventh, as pointed out by Protestants, the County traffic counts from February 19, 2020 for Falls/Joppa Rd. intersection showed that in the morning peak hours, 1,782 vehicles were northbound, 1,925 were southbound, 259 were westbound, and 585 were eastbound. In the evening peak hours, 1,700 vehicles were northbound, 1,174 were southbound, 340 were westbound, and 726 were eastbound. (Dev. Ex. 25). The volume of existing traffic is an important factor considered in the prior OAH Special Variance cases, and these volumes are not insignificant. What ALJ Stahl saw in the Greenspring case was also present here in that no traffic counts were conducted to produce “real” numbers for existing traffic, or even to focus, supplement or extend the County’s February of 2020 traffic counts:

.... no additional traffic count studies were carried out on the Petitioner’s behalf to produce “real” numbers or at least to focus, supplement or extend traffic count studies already available.

Here, I find that these 2020 County numbers show a heavy volume of traffic and should, at the least, have been a red-flag to conduct an accurate, updated traffic count.

Eighth, Mr. Driban’s Trip Assignment contained in the TIS where he stated that 60% of traffic from the Project would head southbound toward I-83/I-695, 20% would go eastbound on W. Joppa Rd., 10% would drive north past Falls/Seminary Ave., 5% would head west toward

Meadowood Park, and the remaining 5% would turn left onto Greenspring Valley Rd., was not persuasive. (Dev. Ex. 25). He explained this Trip Assignment was on based on “applying local and regional patterns” where, without explanation, he opined that most traffic from the Project would head toward “urban regional destinations,” rather than a local road. These assignments are not only estimates, but are self-serving in that they seemingly only exist to justify the proposed additional left turn lane on Falls/Joppa Rd intersection heading towards I-83/I-695. Yet on the issue of trip assignment, the County’s actual traffic counts from February 19, 2020 support the opposite conclusion. The County traffic counts show that for the left-turn lane heading southbound on Falls Rd. toward I-83/I-695, there were only 230 vehicles in the morning peak hours, and 292 in the evening peak hours, contrasted with 1,782 vehicles headed north in the morning, and 1,700 vehicles headed north in the evening. I find it more probable that vehicles from the Project would follow the existing traffic patterns, and head north which is the failing movement. Given that there was no basis to support his “urban regional destination” theory of trips assignment from the Project, his opinion on this issue is unsubstantiated.

Ninth, comparing the County traffic counts of February 19, 2020 (ITS, p. 26 of 79) with the TIS Existing Peak Hour Volumes of Traffic (TIS, p. 8 of 79 – Exhibit 3), Lenhart transposed the County traffic counts for both northbound right turn from W. Joppa Rd. and southbound left turn onto W. Joppa Rd. This mistake made it appear that there were less vehicles heading northbound after turning right onto Falls Rd. from W. Joppa Rd. in both the morning and evening peak hours, as well as less vehicles in the southbound left turn lane onto W. Joppa Rd. from Falls Rd. driving toward, to, or past the Property in the evening peak hours. Specifically, Lenhart transposed the County numbers from the Property turning right at Falls/Joppa Rd. heading northbound: the County’s northbound counts were 249 (339), not 230 (292). As a result, there

were actually 19 more vehicles in the morning, and 47 more vehicles in the afternoon, turning right from W. Joppa northbound onto Falls Rd. This is not inconsequential given Mr. Driban’s testimony that northbound is the failing movement at Falls/Joppa is in the morning peak hours, as well as at Falls/Greenspring Valley in the afternoon peak hours heading toward Seminary Ave.

The other Lenhart error was for the southbound left turn from Falls Rd. onto W. Joppa Rd. driving toward the Property’s access in the evening peak hours. The County’s southbound counts making the left turn onto W. Joppa Rd. were 318 (255), not 371 (237). While the morning counts turning left decreased, Lenhart’s error for the afternoon counts resulted in 18 more vehicles headed in the direction of the Property access point. Both of these errors directly impact the existing traffic numbers and undermine the credibility of the TIS and the traffic engineering opinions expressed at the hearing.

Tenth, in regard the HCM Signalized Intersection Capacity Analysis for Falls/Joppa Rd. intersection, Mr. Driban admitted on cross examination that after the roadway improvements at Falls/Joppa are complete, the delay for three (3) movements (both turning and straight) will be longer than currently exist for the morning peak hours, namely: (1) eastbound left lane (“EBL”); (2) westbound right lane (“WBR”); and (3) southbound thru lane (“SBT”):

<u>Falls/Joppa Intersection</u>	<u>EBL</u>	<u>WBR</u>	<u>SBT</u>
AM Existing Delay (sec)	79.0	62.6	29.8
AM After Improvements Delay (sec)	92.1	67.3	33.5

Additionally, after the improvements are completed, 2 of 3 existing eastbound movements will remain failing: EBL will drop from an ‘E’ to an ‘F’, and EBT will remain an ‘E’. For westbound traffic, all 3 movements will remain failing: WBL will remain at an ‘F’, WBR will remain an ‘E’,

and WBT will become an ‘E’. For northbound traffic, LOS for NBL will become an ‘E’. For southbound traffic, LOS for SBL will become an ‘E’.

While it need not be proven that the LOS under the LCM changes to a better letter grade due to the nature of that methodology being singularly focused on rating intersections for the Basic Services Map, the same is not true for the LOS under the CLV and the HCM. As indicated, both the CLV and HCM are methods used to measure the impact of the proposed development and/or the impact of proposed roadway improvements. The previous OAH Special Variance cases emphasized that turning movements at the intersection at issue is a significant factor used to analyze the impact of the traffic generated by a development and the efficacy of the roadway improvements. Here, the CLV and HCM were the chosen methodologies and, as shown in the TIS, the LOS will be worse for the morning peak hours at the very intersection where the improvements are proposed. That fact does not help the Developer’s case.

Likewise, after the improvements to Falls/Joppa intersection, the afternoon delay for two (2) turning movements (*i.e.* westbound right lane (“WBR”) and northbound left (NBL”)) will also be longer than currently exists as follows:

<u>Falls/Joppa Intersection</u>	<u>WBR</u>	<u>NBL</u>
PM Existing Delay (sec)	59.9	23.2
PM After Improvements Delay (sec)	63.8	45.8

With regard to LOS in the afternoon peak hours after improvements are completed, two (2) eastbound turning movements will still be failing: EBL will remain at an ‘F’, and EBT becomes an ‘E’. For westbound traffic, all 3 turning movements will still be failing: WBL becomes an ‘E’, WBT becomes an ‘E’, and WBR becomes an ‘E’. For southbound traffic, SBL becomes an ‘E’. (Dev. Ex. 25; Prot. Exs. 36, 37). As with the morning peak hours, the LOS for these turning

movements at Falls/Joppa intersection will be worse after the improvements are completed.

Also, it is not lost that, according to the TIS, Falls/Greenspring Valley intersection (which will not have any roadway improvements) currently has 5 failing movements in the morning peak hours: EBL – ‘E’; EBT- ‘E’; WBL – ‘E’; WBT – ‘E’; and SBL- ‘E’. Similarly, in the afternoon peak hours, there are 3 failing movements: WBL – ‘E’; WBT – ‘E’ and SBL – ‘E’. Given that the roadway improvements to Falls/Joppa Rd intersection have not been shown to improve that intersection, there is even less reason to believe that Falls/Greenspring Valley Rd. will improve.

The distance of a failing intersection and the route (access to and from a property) were additional factors considered in the previous OAH Special Variance cases. As applied here, the Falls/Joppa Rd. intersection is the closest intersection to the Property and there was no dispute that it will be heavily used by vehicles going to and leaving the Property. Consequently, its capacity to function, after the proposed improvements, and with the additional traffic from the Project, is worse than the existing capacity.

Eleventh, the HCM Signalized Intersection Capacity Analysis in the TIS incorrectly included the westbound-right turn, southbound-right turn and northbound-right turn lanes in assigning individual letter grades. This resulted in the inflation of the average LOS for the Falls/Joppa Rd. intersection after the improvements are completed. (Prot. Ex. 36, 37). Each of those turns were merge lanes for which vehicles do not go through the light and as such, those vehicles would never be delayed. As a result, when Lenhart averaged all of the letter grades for all of the turning movements, the average letter grade was artificially inflated.

Twelfth, Mr. Driban’s testimony was that the proposed roadway improvements are “substantial”. As the above facts have already shown that Falls/Joppa Rd. intersection is worse *after the improvements*, I find the Falls/Joppa Rd. roadway improvements are minimal at best.

Thus, it was not surprising that Developer had already proceeded with having design plans for the improvements at Falls/Joppa approved by SHA because the roadway improvements are nothing more than removing a median strip and repainting lines. Worse yet, there are no physical roadway improvements proposed along the northbound direction of Falls Rd. at either Falls/Joppa or Falls/Greenspring Valley intersections to improve the failing movement.

I also find proposed removal of the concrete median combined with the creation of an additional lane of traffic creates an additional safety problem given the substantial number of vehicles that need to navigate in many directions and with several access roads at the Falls/Joppa Rd. intersection. While SHA approved of the improvements, because SHA does not consider Falls Rd. corridor intersections to be failing, there is no harm in repainting the lines and adding an extra lane at Falls/Joppa Rd. Those improvements are at no-cost to the State which has no plans to make physical roadway improvements. The County will never be making improvements to Falls Rd. or Greenspring Valley Rd. since they are State-owned.

As for the Corridor Analysis, it does not validate the proposed roadway improvements to Falls/Joppa Rd. (Dev. Ex. 26). It amounts to projections created using traffic software program to show an overall decrease in delay on Falls Rd. It is not persuasive because it does not breakdown the time purportedly saved at each failing intersection.

Thirteenth, the LOS-CLV Chart confirms that after the proposed roadway improvements to Falls/Joppa intersection are completed, the LOS for the Falls/Greenspring Valley intersection for both morning and afternoon peak hours worsens from a 'B' LOS to a 'D' LOS using SHA ratings. While the LOS-CLV Chart shows that, after the roadway improvements are completed, for the Falls/Greenspring Valley intersection, 3 trips will be added to the morning peak hours and 2 trips will be added in the afternoon peak hours. Likewise, under the CLV analysis, for the

Falls/Joppa intersection, 13 trips will be added to in the morning peak hours, and 16 trips will be added in the afternoon. I do not see these trips as ‘negligible’ particularly in light of the fact that even after the improvements to Falls/Joppa intersection are completed, there is no mitigation by the Developer at Falls/Greenspring Valley Rd. intersection.

These 13 fallacies with the TIS as expressed above undermine the expert opinions expressed by Mr. Driban. In *Rockland v Stevenson*, 471 Md. 1 (2020), Maryland adopted the *Daubert* standard in regard to expert testimony. By adopting *Daubert*, the Court held that an expert opinion “must provide a sound reasoning process for inducing its conclusion from the factual data and must have an adequate theory or rational explanation of how the factual data led to the expert’s conclusion”. (*Id.* at 32). “Maryland law makes clear that an expert cannot assert an admissible opinion without an adequate factual basis or reliable methodology.” *Giant Food, Inc. v Booker*, 152 Md. App. 166, 188 (2003). “Our cases hold that an expert’s opinion is of no greater probative value than the soundness of his reasons given therefor will warrant. Otherwise stated, we have said that ‘an expert’s judgment has no probative force unless there is a sufficient basis upon which to support his conclusions.’ (*Id.*) (quoting *Beatty v. Trailmaster Prods., Inc.*, 330 Md.726, 741 (1993)). The Court of Appeals has explained:

The premises of fact must disclose that the expert is sufficiently familiar with the subject matter under investigation to evaluate his opinion about the realm of conjecture and speculation, for no matter how highly qualified the expert may be in his field, his opinion has no probative force unless a sufficient factual basis to support a rational conclusion is shown. The opinion of any expert, therefore, must be based on facts, proved or assumed, sufficient to form a basis for an opinion, and cannot be invoked to supply the substantial facts necessary to support such conclusion. The facts upon which an expert bases his opinion must permit reasonably accurate conclusions as distinguished from mere conjecture or guess.

(*Id.* at 189) (quoting *Beatty*, 330 Md. at 741. Along these lines, an expert’s opinion may not

amount to a ‘because I think so’ opinion. (*Id.* at 188). For these reasons, the TIS was not compelling evidence to meet the burden of proof necessary for the Special Variance.

5. DPWT – Opposition to Special Variance.

At the HOH, in fairness to Mr. Cauley who works in DPR and not in Traffic Engineering of DPWT, he could only testify as to what he had been told and was not able to testify in any specific detail about the merits of traffic concerns in this case. In the interest of transparency and to seek information, the undersigned had to request the testimony of a DPWT representative, Kris Nebre. Kris Nebre’s testimony largely repeated his email to Mr. Driban dated August 16, 2022 that there would be “net zero impact along the corridor.” (County Ex. 13). However, in reviewing the chronology of events learned from the documents produced pursuant to the Protestants’ PIA request, I find that DPWT’s official position, which was well-reasoned and thorough, had already been provided prior to the August 22, 2022 email.

On October 8, 2020, Developer’s traffic engineer, Mike Lenhart, submitted to DPWT officials, the TIS dated September 14, 2020. (Prot. Ex. 16). At time of the DPWT emails, Kris Nebre’s title was Traffic Engineer III and he was supervised by both Greg Carski, the Bureau Chief for the Bureau of Transportation, and Michael Filsinger, PE, Chief of Division of Traffic Engineering. In addition to Kris Nebre, Terry Curtis, PE, also had the title of Traffic Engineer III. Upon receipt of the TIS, on October 8, 2020, Greg Carski sent an email to Mike Filsinger, Kris Nebre, Vishnu Desai (DPR) and Rahee Famili questioning why a TIS would have been submitted for an ‘F’ rated traffic shed:

Why would they do a traffic study for a development in a F level traffic shed? Isn’t this development dead on arrival?

(Prot. Ex. 16). By email dated October 13, 2022, Mike Lenhart requested a response from the DPWT

officials. (Prot. Ex. 15). In reply, Greg Carski wrote:

Good Morning Mike – we took a quick peak at the study. As noted, the site falls within a LOS F traffic shed, thus prohibiting development. As you are aware, the LOS F determination based on actual peak hour field observations of the intersection. Theoretical calculations do not override our observations and ratings.

* * * *

(Prot. Ex. 15). After the October 13, 2020 email, it appears that, based on an email dated October 22, 2020, DWPT officials had a discussion(s) with Developer’s representatives in regard to Developer’s proposed roadway improvements. (Prot. Ex. 17). On October 23, 2020, Greg Carski circulated those roadway improvements to the Mike Filsinger and Kris Nebre to which Mr. Filsinger replied:

Let’s discuss on Monday – this is interesting that they want to developer in a deficient shed.

(Prot. Ex. 17). On October 27, 2020, Mike Filsinger sent an internal email to Kris Nebre questioning whether the proposed roadway improvements at Falls/Joppa Rd. would help or hurt the Falls/Greenspring Valley Rd. intersection when he wrote:

Kris – looking at this – the intersection just to the north is failing badly with a 92% load in the NB direction in the PM hours. If the improvements were made to the intersection to the south as the report shows, would it help or hurt the intersection to the north? From a common sense perspective, I can’t see that it would help, therefore it would improve the overall failing shed. Your thoughts?

(Prot. Ex. 19). Between October 29 - October 20, 2020, the DPWT officials continued to review the proposed roadway improvements. (Prot. Ex. 18).

By email dated November 13, 2020 (of which both Mr. Filsinger and Kris Nebre were copied), the official response of DPWT was to oppose the development. (Prot. Ex. 18). In that email, Greg Carski wrote that *improvements would need to be done to all 3 failing intersections*

to handle the additional traffic from the development, and that it was not sufficient to propose improvements to only one intersection for the approval requested:

Good Afternoon Adam –

In regards to the traffic analysis for the 2310 W Joppa Rd site, we offer the following comments:

The proposed site is currently within a failing traffic shed as identified on the 2020 Basic Service Map. Furthermore, it actually lies within overlapping failing traffic sheds from three failing intersections, Falls Rd & Joppa Rd, Falls Rd & Greenspring Valley Rd and Falls and Seminary Ave. With new traffic being introduced into the three failing intersections, improvements would also need to be done to handle additional traffic at all three intersections. Since we are required to count all three intersections at the same time per the county council bill, the three intersections along the Falls Rd Corridor from Joppa to Seminary must be analyzed together. Because of this council bill which combines the corridor into one study, the increased traffic along the corridor needs to be accounted for and improvements would also be needed at the three intersections. Because of the special conditions that are in place to study this corridor and the fact that we have overlapping traffic sheds, it is not sufficient to propose improvements to only one intersection for the approval of this site.

Given the above, we have noted that the report calls for proposed changes to the signal/striping/geometrics at the Joppa/Falls Rd intersection. The change is to remove the split phasing and go to a more conventional phasing. In addition, lane assignments were changed along Joppa and Falls to allow for double left turns on both legs. Since the proposal is to remove the split phasing, we believe that the dashed lines providing guidance to the drivers making that movement are extremely close to one another and we would have concerns making that movement. Unfortunately, the geometry of the intersection in our opinion would not be conducive to allowing this movement without the split phasing. Additionally, it does not appear that the proposed changes would bring the intersection of Falls Rd/Joppa Rd out of the failed rating given the fact that the level of service following the improvements with site traffic is worse than the existing level of service. Clearly the changes would not ameliorate the currently failing intersection.

Based upon the above information, this report does not justify approval of the additional development within the failing traffic

shed.

Please contact us if you have any questions. Thank you.

Greg
Gregory W. Carski, Bureau Chief
Bureau of Transportation
410-887-3554

(Prot. Ex. 18). As of that date, DPWT's objection was that the improvements were only proposed to Falls/Joppa Rd., along with the removal of split-phasing signal timing in place of conventional phasing. The roadway improvements proposed today are the same ones proposed in 2020 and proposed adding a left turn lane to the eastbound and westbound of Joppa Rd. The DPWT email expressed concern with the removal of split-phasing signal timing. Significantly, DPWT wrote that the 'level of service following the improvements with site traffic *is worse than* the existing level of service.' (Id.). As a result, the position of DPWT was that the TIS did not 'justify approval of the additional development within the failing traffic shed.' (Id.).

Dissatisfied with DPWT's position, an internal email dated November 24, 2020 between Mike Filsinger, Greg Carski and Kris Nebre notes that, the Developer was then asking whether '...with the improvements will the intersection operate better than existing.' (Prot. Ex. 19). That email ends with the Developer's deadline for DPWT to respond by 'early next week.' (Id.).

By December of 2020, the TIS reads that it was modified slightly to retain the existing split signal-phasing but the same left turn lanes were proposed for the east-west directions. (Dev. Ex. 25, p. 4). In Memorandum dated December 9, 2020 which is attached to the TIS, Lenhart responded to comments posed by SHA from December 1, 2020 and from DPWT dated December 3, 2020. (Dev. Ex. 25). In that Memorandum, Mike Lenhart wrote that the 100 ft long concrete median on W. Joppa Rd. which was proposed for removal, did not serve any significant purpose,

and its removal would assist with snow plowing. With regard to the intersection of Falls/Greenspring Valley Rd., one comment (Comment #3) from MDOT SHA Office of Traffic and Safety noted that the LOS at that intersection was ‘F’ in the AM and ‘D’ in the PM and that eastbound Greenspring Valley Rd. was not a free right turn as the lane became a mandatory right turn after the signal.

Developer produced an email dated January 15, 2021 from Mike Filsinger to Counsel for Developer stating that the proposed roadway improvements would mitigate the increased traffic generated by the Project:

Adam,
Hope this is what you are looking for:
While the proposed development is located within a failing traffic shed, the proposed improvements associated with the traffic impact study will mitigate the increased traffic generated by the proposed development. Any questions, let us know.

Mike Filsinger, PE
Chief Division of Traffic Engineering

(Dev. Ex. 30).

Importantly, at the HOH there was no testimony by Mike Filsinger, Greg Carski or DPWT to explain what facts had changed to reverse course if that was what it was. In my view, in order for the Developer to meet its burden of proof under *Elm Street, supra*, there needed to be evidence as to what relevant facts had changed after the DPWT’s November 13, 2020 email. The proposed roadway improvements to Falls/Joppa Rd. were the same, and there were no improvements being made to Falls/Greenspring Valley Rd. Although Mr. Driban testified that he believed that Mike Filsinger’s January 15, 2021 email was the official approval of DPWT for the Special Variance Petition, Mr. Driban’s thoughts about Mr. Filsinger’s email do not rise to the level of testimony of County witnesses, particularly in light of the *subsequent DPWT emails* after January 15, 2021 which made clear that the

opposite was true.

Moreover, given the failing traffic shed which has existed for decades where the Property is located, comparing this January 15, 2021 Filsinger email with Mr. Filsinger's comment to Kris Nebre on October 27, 2020 indicating his concern that "from a common-sense perspective," Mike Filsinger did not see the proposed improvements to Falls/Joppa Rd. as improving the failing Falls/Greenspring Valley intersection. Mr. Filsinger's comment on October 27, 2020 was consistent with the DPWT November 13, 2020 official position in opposition to the Project, which is evidence that DPWT was not convinced that the proposed roadway improvements at Falls/Joppa Rd. would have any meaningful impact on Falls Rd/Greenspring Valley Rd. intersection. Even more, I find that the Filsinger email of January 15, 2021 could not actually be DPWT's official position because otherwise it would have been found in the Development File, and/or in the Special Variance file; however, it was not. This cannot actually be DPWT's official position, because it did not provide notice to anyone, or even other County agencies reviewing the Development Plan, other than the Developer.

The chronology continues in that, after the Mike Filsinger January 15, 2021 email, DPWT then issued both a DPC comment dated August 12, 2021, and a separate ZAC comment dated September 20, 2021, which expressed failings of the TIS and opposition to the Project. The DPWT DPC comment entitled *Baltimore County Department of Public Works & Transportation, Development Review – Agenda and Approval* was acknowledged by Kris Nebre at the HOH as one that he worked on with DPWT representatives, and which contains his initials 'KN' in the 'Traffic' section. (PC. Ex. 6). The 'Miscellaneous Comments' section makes clear that DPWT wanted to be sure that PAI considered its opposition particularly because it was being submitted *after the DPC* on August 11, 2021:

MISCELLANEOUS COMMENTS These comments are coming in after the DPC. We are asking PAI to take these into consideration.

(PC Ex. 6). This Miscellaneous Comment shows the *ongoing concern* that DPWT and Kris Nebre still had for the traffic problems in this traffic shed even after the Mike Filsinger January 15, 2021 email.

In the DWPT DPC comments, DPWT expressed concern about worsening of traffic problems at Falls/Greenspring Valley Rd. As noted therein, DPWT saw a bias in the TIS, that there was a relationship between the existing traffic on Falls Rd., the additional traffic to be generated by the Project, and the worsening of traffic at Falls Rd. and Greenspring Valley Rd. due to the proposed emergency-access-only gate:

Comments:

Traffic

We have received and reviewed the Greenspring Station Development – Supplemental Traffic Impact Study. We offer the following comments:

A TIS needs to present an unbiased view of traffic conditions pre/post development. This study was clearly written with the bias not to provide the required connection to Mays Chapel Rd. This connection is required by DPWT due to amount of homes (over 100) in The Meadows of Greenspring community. It should be a traffic impact not a “sensitivity analysis”.

The report does not note that the proposed development is in LOS F Traffic Shed. It also falls to mention the 3 LOS F rated intersections along Falls Rd.

The analysis clearly shows a reduction of critical lane volumes at the subject intersections along Falls, due to the bypass traffic generated from the extension of Mays Chapel acting as permanent connecting road from Seminary to Joppa, and with the increased capacity from the proposed improvements by the developer at Falls & Joppa. The benefits of the connection to Falls Rd is glossed over.

Furthermore, the conclusion stated on the cover letter says that the Mays Chapel connection is not recommended. It then is stated that

Falls Rd. is designed to handle significant volumes more than Mays Chapel which is obviously true. However, this development is currently in an 'F' traffic shed, which by definition is at capacity and cannot handle anymore volume. **The initial report which did not have the Mays Chapel bypass accounted for, already showed an increase of CLV at Falls and Greenspring Valley at full build out conditions.** The supplemental report does not address Falls and Seminary with the scenario of no bypass with full build out. In accordance to the ordinances tied with the basic service map, this development should have some improvement to result in 0 net critical volume trips added to the affected 'F' intersections along Falls Rd.

(PC. Ex. 6). Using the CLV analysis, Falls/Greenspring Valley Rd. would be worse after the Project was built. The Traffic Engineers within DPWT present a neutral, objective view of the actual conditions and their real concerns with adding traffic to this failing traffic shed. This is particularly true given that as with all development plan files, DPWT issued this DPC comment in the normal course of reviewing the Development Plan here. I find that, if DPWT's official position on the development plan was already expressed in Mr. Filsinger's January 15, 2021 email to the Developer, there is no need to issue this DPC comment. This DPWT DPC comment was contained within the Development Plan file.

Additionally, after the DPC comment was issued and provided to PAI, DPWT issued a ZAC comment dated September 20, 2021 which was filed in the companion Special Variance file, Case No.: 2021-0250-ASA. (County Ex. 12B). Terry Curtis, PE of DPWT wrote the ZAC comment and copied Kris Nebre. While the DPWT ZAC Comment is nearly verbatim of the DPWT DPC Comment, it added a new sentence at the beginning which was not found in the DPWT DPR comment, definitively expressing that DPWT's position was to deny the Petition for Special Variance:

* * * *

**The Department of Public Works and Transportation (DPWT)
Bureau of Traffic Engineering and Transportation Planning**

feels this request must be denied based on the following reasons. We have received and reviewed the Greenspring Station Development – Supplemental Traffic Impact Study. We offer the following comments:

1) A Traffic Impact Study needs to present an unbiased view of traffic conditions pre/post development. This study was clearly written with the bias not to provide the **required** connection to Mays Chapel Road. This connection is **required** by DPWT by regulation due to amount of homes (over 100) in The Meadows of Greenspring community. It should be a traffic impact study not a “sensitivity analysis”.

2) The report does not note that the proposed development is in LOS F Traffic Shed. It also fails to mentioned [sic] the 3 LOS F rated intersections along Falls Road.

3) **The analysis clearly shows a reduction of critical lane volumes at the subject intersection along Falls, due to the bypass traffic generated from the extension of Mays Chapel acting as permanent connecting road from Seminary to Joppa, and with the increased capacity from the proposed improvements by the developer at Falls & Joppa.** The benefits of the connection to Falls Rd is glossed over.

4) Furthermore, the conclusion stated on the cover letter says that the Mays Chapel connection is not recommended. It then is stated that Falls Road is designed to handle significant volumes more than Mays Chapel which is obviously true. However, this development is currently in an ‘F’ traffic shed, which by definition is at capacity and cannot handle anymore volume. **The initial report which did not have the Mays Chapel bypass accounted for, already showed an increase of CLV at Falls & Greenspring Valley at full build out conditions.** The supplemental report does not address Falls & Seminary with the scenario of no bypass with full build out. In accordance to the ordinances tied with the basic service map, this development should have some improvements to result in net critical volume trips added to the affected ‘F’ intersections along Falls Rd.

If you have any questions please feel free to contact me anytime.

Terry Curtis, Jr.
Engineer III
Department of Public Works and Transportation

(County Ex. 12B). As occurs with all zoning files, this DPWT ZAC comment was issued in the normal course of reviewing the Petition for Special Variance here. There is no ambiguity in DPWT's position. It is obvious to me that there was clear coordination by DPWT, Kris Nebre and Terry Curtis to be consistent in reviewing the Development Plan and Special Variance Petition. Accordingly, the official position of DPWT was, once again, to deny the Special Variance.

The DPWT DPC and DPWT ZAC comments were also the basis for the original postponement of the Case in November of 2021. The email written by Kris Nebre to Mr. Driban dated August 16, 2022 came after the Case was already postponed. Unlike the *Torch Hill* case where 8 vehicles were projected to be generated from that development and the proposed lengthening of the left turn lane prior to Falls/Seminary Avenue accounted for those 8 vehicles, the additional left turn lanes proposed east-west for Falls/Joppa Rd. does not result in a net zero impact within the traffic shed. It results in worsening of conditions at both Falls/Joppa Rd. and Falls/Greenspring Valley Rd.

5. Developer's Proposed Falls/Joppa Rd. Roadway Improvements - Falls/Greenspring Valley Rd. Intersection.

Both DPWT 2021 comments are consistent with Mike Filsinger's original email to Kris Nebre dated October 27, 2020 wherein Mike Filsinger did not see the proposed improvements to Falls/Joppa Rd. as improving the failing Falls/Greenspring Valley intersection. And there is no doubt that the Developer's traffic engineer recognized DPWT's continuing concern about Falls Rd./Greenspring Valley Rd. because Mr. Driban then prepared and filed with SHA a document entitled "Supplemental Analysis for 2310 Joppa Road Traffic Impact Study" dated January 19,

2022, which for the first time proposed roadway improvements to Falls Rd./Greenspring Valley Rd. intersection. (Dev. Ex. 20). Those roadway improvements, as shown on an aerial photograph, included adding a left turn lane for vehicles headed north toward Falls/Seminary Ave. (Dev. Ex. 19).

Unfortunately for the Developer, by letter dated March 7, 2022, SHA rejected the proposed Falls Rd/Greenspring Valley Rd. improvements and instead, asked the Developer to make improvements to Falls/Seminary Ave. which SHA described as a ‘critical intersection’, or to the beltway (I-695):

1. The new lane will only hold 2 cars. The lane will get blocked, and people will not want to use the lane because it drops immediately. It does not seem a significant amount of capacity will be added.
2. The lane drop looks too small for the double left turn incoming volumes at MD 25 @ MD 130. A high volume of vehicles would have to merge into the lane drop.
3. Please consider looking at the intersection of MD 25 @ MD 131 (Seminary), which is a critical intersection, or the beltway for mitigation efforts.
4. The left turning path should be able to accommodate for the biggest trucks (WB40/WB50) regardless of the current truck restrictions. The turning path crosses the island even in the cut median, which is highlighted by the green line.
5. The island toward the north is planned to be reduced. However, the island at the south might also need to be reduced because the turning path crosses the shoulder and almost touches the median.

(Dev. Ex. 20). The SHA response here informs of at least 2 existing problems with the north and south medians at Falls/Greenspring Valley Rd.

After SHA rejected the proposed Falls/Greenspring Valley Rd. improvements, Mr. Driban testified, and Ms. Kuhn of SHA confirmed, that Mr. Driban resubmitted the same improvements for Falls Rd/Greenspring Valley Rd. a second time. Unfortunately for the Developer, SHA again

rejected those improvements. (Dev. Ex. 21).

With the second rejection by SHA, and knowing the County's concern for the negative impact on Falls Rd. Greenspring Valley Rd., the "Corridor Analysis" chart purports to make up for the lack of physical improvements to Falls/Greenspring Valley Rd., or to anywhere else along the Falls Rd. corridor, by contending that there will be an overall time savings after SHA retimes each of the signalized intersections. I am not persuaded by the Corridor Analysis as it does not show the alleged savings in delay times at each intersection.

Because of the negative impact to Falls/Greenspring Valley Rd. within this traffic shed, I find that the TIS does not show mitigation of the increased traffic generated by the proposed development.

B. Emergency-Access-Only Mays Chapel Gate Connecting Mays Chapel Rd.

Seeking to gain the support of the Meadows and Boxwood communities, the Developer's proposal is that the Mays Chapel Gate be an emergency-access-only gate, rather than a thru-street. Indeed, the Greenlined Development Plan expressly describes that the May Chapel Gate is being proposed as an emergency-access-only gate. Accordingly, the issue is whether, as proposed, the Mays Chapel Gate, as emergency-access-only, meets all development policies, rules, and regulations. BCC, §32-4-229(b)(1); not whether the undersigned should change the Developer's Greenlined Development Plan proposal to a thru-street.

Throughout the HOH, the Mays Chapel Gate became a tense issue which pitted the residents of The Meadows and Boxwood communities against the adjoining neighborhoods of Seminary Ridge and Heatherfield. As shown by their Petitions, the Meadows (99 homes) and Boxwood communities (27 homes) were entirely opposed to the Project (other than the one resident who was out-of-the-country when the Petition was circulated). (Prot. Exs. 33, 34).

Additionally, the Meadows and Boxwood communities only wanted the Mays Chapel Gate to be emergency-access-only *if* the Project was approved. Their collective testimony described their neighborhood as an enclave with internal, walkable streets used daily by residents for exercising and socializing which would be permanently changed if Mays Chapel Gate was permitted as a thru street. Both The Meadows and Boxwood communities access Seminary Rd. via Mays Chapel Road. There are currently 4 homes which front on Mays Chapel Rd. Conversely, while the Seminary Ridge and Heatherfield communities were equally opposed to the Project, if approved, they advocated for a permanent thru-street to redirect the cut-thru traffic away from Tally Ho Rd.

DPR Policy Manual, XIII.B reads as follows:

B. ACCESS GUIDELINES 1. Maximum Number of Units with One Means of Access

a. Limits of Units

- 100 units with no future street extension proposed
- 150 units when a future street extension is proposed and is feasible
- >150 ↑ 2"d means of access must be constructed

b. Exception These limits may be increased when restricted by a limited or controlled access highway or other physical barrier or limitation as advised by the Department of Public Works

c. Emergency access points in place of full-use access points generally will be discouraged, but may be approved in unusual circumstances.

(Prot. Ex 9). DPR in its DPC comment dated August 10, 2021 stated that the proposed emergency-access-only gate was not permitted as follows:

Since the number of (off-site) units are over 100, Mays Chapel needs to be a full access road and not an emergency access road.

(County Ex. 12A, p. 8). At the HOH, DPR representative Eugene Cauley, PE, further explained

that DPR could not recommend approval of the Greenlined Development Plan because the total units in the Meadows and Boxwood communities, combined with the 61 units in this Project, totals 126 units. Therefore, under DPR's interpretation, a full access road is required by DPR Policy Manual, XIII.B.

DPR, as the County agency whose Manual and policy is at issue here, has the authority to interpret and administer DPR Policy Manual, XIII.B. The Court of Appeals in *Marzullo v. Kahl*, 366 Md. 158, 783 A.2d 169, 177 (2001), quoting *In Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 729 A.2d 376 (1999), held that an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts. *Lussier .v Md. Racing Commission*, 343 Md. 681, 696-697, 684 A.2d 804, 811-812 (1996), and cases there cited; *McCullough v. Wittner*, 314 Md. 602, 612, 552 A.2d 881, 886 (1989) ('The interpretation of a statute by those officials charged with administering the statute is . . . entitled to weight'). Furthermore, the expertise of the agency in its own field should be respected. *Fogle v. H &G Restaurant*, 37 Md. 441, 455, 654 A.2d 449, 456 (1995); *Christ [ex rel. Christ] v. Department of Natural Resources*, 335 Md. 427, 445, 64 A.2d 34, 42 (1994) (legislative delegations of authority to administrative agencies will often include the authority to make 'significant discretionary policy determinations'); *Bd. of Ed. For Dorchester Co. v. Hubbard*, 305 Md. 774, 792, 506 A.2d 625, 634 (1986) (application of the State Board of Education's expertise would clearly be desirable before a court attempts to resolve the legal issues).

Accordingly, based on DPR's opposition , I find the Greenlined Development Plan must be denied because the proposed emergency-access-only gate violates DPR Policy Manual, XIII under BCC, §32-4-229. Moreover, given that the Developer's proposal for Mays Chapel is emergency-access-only and not a full access road, that proposal can only be approved or denied;

the undersigned will not rectify this policy non-compliance by changing the Mays Chapel Gate to a full access road, in order to approve the Greenlined Development Plan.

I also note that in its original review of the Development Plan and Petition for Special Variance, DPWT agreed with DPR’s interpretation of the DPR Policy Manual. The facts reveal that two days after the DPR comment above, DPWT took a definitive position that the Mays Chapel Gate must be permanently open. (PC Ex. 6). That DPWT DPC comment dated August 12, 2021 was initialed by Kris Nebre ‘KN’, and confirms that DPWT was also requiring the Mays Chapel remain open as a thru street:

A TIS needs to present an unbiased view of traffic conditions pre/post development. This study was clearly written with the bias not to provide the required connection to Mays Chapel Rd. This connection is required by DPWT due to amount of homes (over 100) in The Meadows of Greenspring community. It should be a traffic impact study not a “sensitivity analysis”.

* * * *

(County Ex. 12A; PC Ex. 6). In that DPWT DPC comment, the impact of the Mays Chapel Gate on traffic was described by DPWT. DPWT noted that, prior to changing the Mays Chapel Gate to emergency-access-only, the Developer’s TIS showed an *improvement* in traffic conditions (reduction in critical lane volumes) along Falls Rd. However, with the Mays Chapel Gate as emergency-access-only, the traffic at Falls and Greenspring Valley Rd. intersection increased:

The analysis clearly shows a reduction of critical lane volumes at the subject intersections along Falls, due to the bypass traffic generated from the extension of Mays Chapel acting as permanent connecting road from Seminary to Joppa, and with the increased capacity from the proposed improvements by the developer at Falls & Joppa. The benefits of the connection to Falls Rd is glossed over.

* * * *

The initial report which did not have the Mays Chapel bypass

accounted for, already showed an **increase of CLV at Falls & Greenspring Valley at full build out conditions.**

(Emphasis Added). (*Id.*). A little over 1 month later, Terry Curtis, PE of DPWT issued the nearly identical ZAC comment on September 20, 2021 which was contained in Case No.: 2021-0250-SPH in its review of the Special Variance case here. (County Ex. 12B; PC Ex. 6).

In its Post-Hearing Memorandum, Developer states that the DPWT DPC comments were not presented to PAI. Yet, there was no evidence of that; the DPWT DPR comment expressly state that the comments are for PAI's review. Nevertheless, the nearly identical comment was in the Petition for Special Variance file. On this issue, it is unclear why, after the DPWT DPC comment and the DPWT ZAC comment, that the DPWT HOH Report dated August 26, 2022, deferred the Mays Chapel Gate issue to the undersigned, rather than just reasserting its prior position. (County Ex. 12D). When asked at the HOH about the Mays Chapel Gate and its impact on DPWT's recommendation of the Greenlined Development Plan, Kris Nebre testified that DPWT would not take a position, and that this issue was for DPR. Accordingly, based on the DPWT DPC comment and the DPWT ZAC comment that the Mays Chapel Gate does not comply with DPR Manual Policy XIII, is another reason that the Greenlined Development Plan under BCC, §32-4-229 must be denied.

The Developer asserts that the proposed emergency-access-only gate qualifies under the exception in the DPR Policy Manual XIII.B.c. because there are 'unusual circumstances' warranting such a gate with this Project:

c. Emergency access points in place of full-use access points generally will be discouraged, but may be approved in unusual circumstances.

With this issue, the Developer in its Post-Hearing Memorandum, uses the failing intersections

within the traffic shed to suggest approval of the emergency-access-only gate is warranted. I do not find that there are any ‘unusual circumstances’ presented in this Case. To the contrary, it is merely the Property’s location within failing traffic shed. This is a typical development proposal where the maximum number of homes is being proposed within the allowable density located within a congested area. An exception is not warranted here.

In addition to the non-compliance with the DPR Policy Manual, XIII, I also find that the Mays Chapel Gate as emergency-access-only does not comply with BCZR, §260.4.A.1 – *Residential Performance Standards* which requires:

A. A development proposal shall:

1. Provide for at least one street connection to an adjoining neighborhood or an adjoining property, not including the principal access to the subdivision, in order to facilitate good traffic circulation.

(PC. Ex. 13). As proposed, the emergency-access-only gate does not provide for the street connection between the Property and the Meadows/Boxwood communities. The effect of the emergency-access-only gate is to have abutting residential communities which do not have a street connection between them; only emergency vehicles would be permitted to drive between those neighborhoods. As a result, because the Greenlined Development also violates BCZR, §260.4.A.1, it cannot be approved under BCC, §32-4-229.

C. Lack of Sewer Capacity.

Greenlined Development Plan at Note 3 reads that the Property is located in an ‘Area of Concern’ on the 2020 Basic Services Map Sewer Deficient and Areas of Concern. (Dev. Ex. 1B, DPR, Note 3). On the 2021, 2022 and 2023 Basic Services Maps, the Property is still located in ‘Area of Concern’. (Prot. Exs. 92, 93, 95). Unlike the sewer capacity here, the sewer capacity in

Torch Hill was not located within an ‘Area of Concern’ on the Basic Services Map. In the Growth Management Act, and Basic Services Map, BCZR, §4A02.4.C.2, states that sewage capacity must be capable of serving already established uses, and new uses likely to be established.

In the *Torch Hill* Case, there was clear evidence from DPWT that there was adequate capacity in the sewer segments stemming from the Property. The County support was derived from the following evidence: (1) an email from Dave Bayer, PE dated September 2, 2021 (*Torch Hill*, Dev. Ex. 19); (2) DPR/DPWT – DPC comment dated November 1, 2021; and (3) the testimony of DPR representative at the *Torch Hill* HOH. To be clear, the sewage path for *Torch Hill* development is not the same path here. The sewage path here flows through Metered basins BC05, BC22, BC18, BC31, and TSJF01. (Prot. Exs. 62, 63; 78). (Dev. Ex. 44).

In this case, I am faced with a Property which has continued to be designated by DPWT as an ‘Area of Concern’ on the 2023 Basic Services Map and prior Maps, coupled with reports of consultants hired by the County, that overcapacity defects and model-predicted SSOs are within this sewage path from this Property. While I do not disagree with the Developer’s position that the testimony of Protestants’ expert witnesses, at times, focused on what, their view, the County’s obligations were under the Consent Decree, and the County’s obligation (or not) to provide information to Baltimore City, or the City’s obligations to the County under the City’s separate Consent Decree, this is not an enforcement case against the County or the City. I am charged with determining whether the sewerage from this Property, created by the proposed Project, along with the existing sewage, will flow through an adequate, safe and efficient sewer system which is in compliance with all County regulations and policies. In that regard, this Order and Opinion will only focus on the issue at hand.

In examining the adequacy of the sewer capacity for this Project, a review of the

chronology is enlightening. It begins by way of email dated August 26, 2020 from Developer’s engineers asking DPWT whether there was “adequate capacity in the downstream sewer system for [62 sic] new single family detached homes.” (Dev. Ex. 55). DPWT’s email response dated September 4, 2020 from Lisa Eicholtz, PE, Chief of Sewer Design Section to Matthew Bishop, Developer’s landscape architect, was that the 8 sewer segments of 8 inch pipes immediately downstream from the Property (MH 43794 - MH 43786), do not have adequate capacity for the proposed 62 homes. (Dev. Ex. 55). DPWT’s email sheds light on the lack of capacity:

Matt,

We’ve reviewed your request and determined the following 8” sewer segments do not have adequate capacity to accommodate the proposed 62 home subdivision at 2310 West Joppa Road:

<u>Upstream MH</u>	<u>Downstream MH</u>	<u>Length</u>	<u>Diameter</u>	<u>Status</u>
43794	43793	137.96	8”	
43793	43792	192.31	8”	
43792	43791	87.36	8”	Part of Hopkins project
43791	43790	60.00	8”	Part of Hopkins project
43790	43789	316.80	8”	Part of Hopkins project
43789	43788	232.57	8”	Part of Hopkins project
43788	43787	159.01	8”	Part of Hopkins project
43787	43786	76.00	8”	Part of Hopkins project

As noted in the table shown above, six of the segments are included in the Hopkins project which has not been constructed. As we discussed on the phone, my understanding is that there is an outstanding right-of-way issue that is holding up the project. Vishnu Desai from Development Plans Review may be able to offer more information on the status of that sewer replacement project.

Dave Bayer of Sewer Design had a copy of the drawing showing the work that was to be completed by Hopkins. The drawing is attached for your reference.

(Dev. Ex. 55). The sewer segments for which Johns Hopkins was to repair/replace are shown on My Neighborhood map. (Prot. Ex. 88). The above DPWT email regarding easement issues is consistent with the testimony of Sr. Kathleen McNany, 2229 W. Joppa Rd. Sr. McNany testified

that in 2017, she was approached by a representative from the County in regard to widening the existing sewer easement on the Monastery property by 15 ft, in order to enlarge the sewer pipes from 8 inches to 12 inches. She testified that she understood this request was part of the Johns Hopkins buildings to be constructed at Greenspring Station. After that contact in 2017, Sr. McNany stated the Monastery was not again contacted.

As part of their PIA request, Protestants obtained an internal memo dated March 3, 2021, from Dave Bayer, PE who was then the Acting Chief of Sewer Design Section, to Vishnu Desai, Supervisor in DPR which reads the same as the above Lisa Eicholtz email to the Developer:

18. The following existing 8” sewer segments do not have adequate capacity to accommodate the proposed 61 home subdivision at 2310 West Joppa Road, known as Greenspring Manor:

<u>Upstream MH</u>	<u>Downstream MH</u>	<u>Length</u>	<u>Diameter</u>	<u>Status</u>
43794	43793	137.96	8”	
43793	43792	192.31	8”	
43792	43791	87.36	8”	Part of Hopkins project
43791	43790	60.00	8”	Part of Hopkins project
43790	43789	316.80	8”	Part of Hopkins project
43789	43788	232.57	8”	Part of Hopkins project
43788	43787	159.01	8”	Part of Hopkins project
43787	43786	76.00	8”	Part of Hopkins project

Six of the segments noted above were to be addressed by the Johns Hopkins at Greenspring Station development prior to issuance of their use and occupancy permit. PAI did not enforce this requirement and the project was completed without the necessary sewer system improvements being completed. **The Greenspring Manor development may not connect to public sewer until the agreement with Johns Hopkins at Green Spring Station is enforced and all sewer improvements are completed, including the additional improvements to segments 43794-43793 and 43793-43792 noted in the above table.**

19. Developer is responsible for acquisition of off-site easements for downstream sewer improvements.

(Prot. Ex. 13). The contents of that internal County Memo were then inserted into DPWT CPC comment dated March 8, 2021. (Prot. Ex. 12)

There were additional emails obtained by the Protestants through a PIA request. On March 15, 2021, after the CPC occurred on March 9, 2021, the then-Executive Director of VPC sent an email to the Acting Chief of Bureau of Engineering and Construction in DPWT, Jeffrey Peluso, PE, inquiring about information that was discussed by DPWT during the CPC (*i.e.* that Johns Hopkins work on the sewer segments was required as part of the approval of the surgical center at Johns Hopkins Medical at Greenspring Station). (Prot. Ex. 89). By that point, the VPC email confirms that the surgical building was constructed and occupancy permits had been issued. Indeed, the GTA spreadsheet indicates that, based on SDAT records, John Hopkins Pavilion III (110,000 sf) was constructed between 2019-2021. (Prot. Ex. 31).

In order to answer the VPC email, the same day, Jeff Peluso, PE sent an email to Dave Bayer, PE with a copy to Lisa Eicholtz, PE, inquiring as to the status of the Johns Hopkins sewer work. David Bayer, PE timely responded the same day stating the following:

Hopkins' engineer just stopped working on the project.
They never got the permits that are needed, and they never acquired the offsite right of way that is needed.
PAI issued the occupancy for the building without requiring that Hopkins fulfill their obligations in accordance with the agreement.

(*Id.*). Given that the CPC had occurred on March 9, 2021, and the CIM was scheduled for April 27, 2021, Jeff Peluso, PE followed up with another email dated March 22, 2021 to Dave Bayer, PE and Lisa Eicholtz, PE asking the following questions:

1. Was Hopkins to prepare all plans and specifications along with permits for [the] their project? If so, were we (Engineering) sending it up to contracts? Who is responsible for securing the R/W?
2. Does this feed the Jones Falls Sewershed (Lafferty)?
3. If Hopkins didn't do the improvements, what are the ramifications of their new connection?
4. If Greenspring Manor were to continue through development, is there

another way to provide capacity? Is there a “breaking point” for Greenspring Manor (no. of units)?

(Prot. Ex. 90). Dave Bayer, PE responded the same day that **no units could be built at the**

Property without causing an SSO:

1. Yes, as outlined in the MOU Section 2, Hopkins was to prepare the drawings, and get all of the permits and off-site right-of-way. Yes, we agreed to manage the Contract from Request to Advertise through construction after we received all of the BLD Ready Documents and the easements were acquired by Hopkins.

2. Yes.

3. Sanitary sewer overflows.

4. Storage (and DPW has been opposed to that option) would be one option, finding another location that avoids the capacity deficient areas would be another option, however, we believe that option would be unfeasible. Zero is the “breaking point” of number of units that could be built without causing an SSO.

(Prot. Ex. 90). This internal email by and among the County civil engineers in the Sewer Design Section (Bayer, Eicholtz and Peluso) who are charged with, and have special knowledge of the County sewer system, were unequivocal that, *as of March of 2021*, there were “capacity deficient areas” within the sewer path from the Property. Conclusively, they determined that zero units could be built at the Property without causing SSOs. Additionally, the County engineers did not agree with alternative capacity options.

Only two months later, on May 27, 2021, the 2021 RJN Performance Assessment was issued and sent to Dave Bayer, PE. (Prot. Ex. 78 – See Cover Letter). By way of Map 2 attached therein, it confirmed that the only work actually performed as recommended by the SRRR 2012 Plan within the sewage path from the Property were 2 minor repairs:

- “Inflow Insert & Replace Frame and Cover” (yellow circle inside green square); and

- “Inflow Insert & Grout Bench and Riser” (yellow circle inside pink square).

(Prot. Ex. 78). Additionally, Map 3 of the 2021 RJN Performance Assessment supports Dave Bayer’s PE’s concern for SSOs in that for the County-chosen storm events (i.e. the 2 yr/6 hr and 10 yr/6 hr), there are model-predicted SSOs along the sewage path of the Property. (*Id.*). Consistent with Mr. Bayer’s opinion that SSOs would result from the construction of any homes for this Project, these model-predicted SSOs are not only within the Johns Hopkins’ sewer segments (Prot. Ex. 88), but are also downstream of the Johns Hopkins’ segments, and again within the Project’s sewer flow path. (Prot. Ex. 78, Map 3). I place great amount of weight on expertise and knowledge of DPWT engineers and shown in the DPWT CPC comment and Dave Bayer’s internal email to DPWT colleagues, that if any homes were added to the sewer system, SSOs will occur. (Prot. Ex. 89, 90). Weighed against the DPWT engineers’ collective judgment, Mr. Lessner’s testimony in rebuttal that these model-predicted SSOs should not be outcome-determinative here because they have not been field-verified, and because no SSOs have been reported within the last 3 years on the Quarterly/Annual Reports, is not convincing.

As part of their PIA request, Protestants also obtained an internal memo dated August 2, 2021 from Lisa Eicholtz, PE, Chief of Sewer Design Section to Vishnu Desai, Supervisor in DPR again reiterating that the sewer segments lacked capacity for the proposed homes:

The following eight 8” sewer segments do not have adequate capacity to accommodate the proposed 61 home subdivision at 2310 West Joppa Road, known as Greenspring Manor.

Upstream MH	Downstream MH	Length	Diameter	Status
43794	43793	137.96	8”	*
43793	43792	192.31	8”	*
43792	43791	87.36	8”	Part of Hopkins project
43791	43790	60.00	8”	Part of Hopkins project
43790	43789	316.80	8”	Part of Hopkins project
43789	43788	232.57	8”	Part of Hopkins project
43788	43787	159.01	8”	Part of Hopkins project
43787	43786	76.00	8”	Part of Hopkins project

* required sanitary sewer upsizing from 8” to 12” by this developer is shown on the development plan.

Six of the segments noted above were to be addressed by the Johns Hopkins at Greenspring Station development. To date, these improvements have not been completed.

Issuance of Use and Occupancy permits for the residential units at Greenspring Manor development should be subject to completion of the system improvements noted above, including those Johns Hopkins at Greenspring Station is obligated to complete.

(Prot. Ex. 14). All of this evidence shows DPWT has maintained the same position on the lack of sewer capacity.

By August 10, 2021, during its review of the Development Plan here, DPR/DPWT issued a DPC comment which was also consistent with both the CPC comment and with the DPWT emails above:

20. The following eight -8” sewer segments do not have adequate capacity to accommodate the proposed 61 home subdivision at 2310 West Joppa Road, known as Greenspring Manor. Six of the segments noted are to be addressed by another developer. To date, these improvements have not been completed. This developer is required to complete the other two segments noted with a *. Issuance of Use and Occupancy permits for the residential units from the Greenspring Manor development should be subject to completion of the system improvements noted above, including those by the other developer. Currently the other developer is obligated to complete this by August 2023.

<u>Upstream MH</u>	<u>Downstream MH</u>	<u>Length</u>	<u>Diameter</u>
43794	43793	137.96	8” *
43793	43792	192.31	8” *
43792	43791	87.36	8”
43791	43790	60.00	8”
43790	43789	316.80	8”
43789	43788	232.57	8”
43788	43787	159.01	8”
43787	43786	76.00	8”

(County Ex. 12A).

When asked at the HOH on September 1, 2022 (Day 1) about the 8 deficient sewer

segments in DPR/DPWT DPC comment, Eugene Cauley, PE (who works in DPR and not DPWT) stated that he did not know whether, or when, Johns Hopkins would be completing that work; he added that he would have to look into the issue. As of Day 13 of the HOH (May 31, 2023), there was no evidence provided by the Developer that Johns Hopkins had begun, or would be completing its sewer work on those sewer segments through which the sewage from this Property will flow. Mr. Cauley's testimony was also that this Developer was completing the work on segments 43794-43792 but for *another* development project. When asked about the details of that other development project, he stated he would have to look into it. There was no evidence presented by the Developer as to any *other* development project for this Developer.

Contrary to the Developer's Post Closing Memorandum that DPWT (through DPR) recommended approval of the Greenlined Development Plan, as the above chronology reflects, DPWT and the Sewer Design team engineers have maintained their steadfast opposition to adding 61 homes to the sewer system due to inadequate capacity and concern for SSOs. There was no evidence presented by the Developer that DPWT had changed its position, or that DPWT engineers were satisfied that the deficiencies would ultimately be corrected. But-for the County documents produced through PIA requests, we would not know the extent of the DPWT concerns about the sewer for this Project. Consequently, the presumption of the development plan compliance in *Elm Street, supra*, is not found here, as there was substantial evidence by DPWT to the contrary. Accordingly, I place significant weight on DPWT's Sewer Design team engineers' opposition, and that evidence alone is enough to deny the Greenlined Development Plan due to lack of sewer capacity.

Additional evidence provided by the Protestants as part of their PIA request was instructive and again confirmed the inadequate sewer capacity. Specifically, Protestants asked

DWPT for its sewer capacity analysis for this Project. By confirmation email dated November 10, 2021, DPWT verified that the 2015 County Jones Falls Interceptor Chart was the chart used by DPWT to analyze capacity for this Project, and that there was no other analysis conducted, or information used. (Prot. Exs. 64, 64A). Although the information on the 2015 County Jones Falls Interceptor Chart was dated 2015, it nevertheless formed the basis for the DPWT's position that there was not adequate capacity within above sewer segments to support the proposed 61 homes. (Prot. Ex. 64).

Comparing the data from the 2015 County Jones Falls Interceptor Chart, with the information in the RKK-LTC 2012 Report, Mr. Grachek created the Comparison RKK/DPWT Capacities Chart (Prot. Ex. 69). The Comparison RKK/DPWT Capacities Chart revealed that, for the County-selected storm events (2 yr/6 hr and 10 yr/6 hr storms) most of the sewer segments from the Property exceed the peak flow of 90-95%. The DPWT Design Manual for Sanitary Sewers prohibits sewage flows above 90-95%:

Flows above 90-95% of full depth are considered unstable and may result in a sudden loss of carrying capacity with surcharging.

(Prot. Ex. 70, p. 6-27). Mr. Grachek testified that 90% peak flow is also the industry standard. The DPWT Design Manual further prohibits SSOs from occurring at any time. Yet, SSOs have been model-predicted within the Property's sewage path as shown by Map 3 of the 2021 RJN Performance Assessment. (Prot. Ex. 70, p. 6-22). Based on this evidence, the sewage for this Project violates the DPWT Design Manual and should be denied on that basis.

In particular, the RKK recommendation for those pipe segments on the Comparison RKK/DPWT Capacities Chart which were shown to exceed 90-95% flow between MH 44216- MH 44212, was to upsize the pipes to 18 inches. Similarly, the recommendation for MH 20759 - MH 20755 which were also over capacity, was to install 10 inch relief sewers. (Prot. Ex. 69). It

is undisputed that no upsizing of pipes or installation of relief sewers within the sewage path of the Property has been completed. While Developer argues in its Post Hearing Memorandum that any recommendations from the RKK-LTC 2012 Report need not have been completed, Mr. Lessner's opined that flows above 90% were not "cause for concern" and that upsizing of deficient sewer pipes is worse than a smaller pipe. The DPWT Design Manual states that the County's Bureau of Engineering and Design has the authority to determine the size of the sewer pipes. In this regard, I find that the sewage path from the Project does not comply with DPWT Design Manual, p. 6-2 which "provides a sanitary sewer system that safely collects and transports wastewater without harm to human health or environment...."

The Developer agrees in its Post-Hearing Memorandum that the SRRR 2012 Plan is the "operative document[s] for Baltimore County's efforts to address the sewer system issues." (Dev. Memo, p. 35). The Developer further acknowledged that the Consent Decree described the SRRR 2012 Plan as: "...the document that controls and 'describes the deficiencies identified through the Collection System Inspection and provides for the performance of any repair, replacement, rehabilitation or other corrective action necessary to address those deficiencies.'" (Dev. Memo, p. 36). The Developer also agreed in its Post-Hearing Memorandum regarding the Corrective Action Recommendation Plan in SRRR 2012 Plan, Paragraph 6.14 (and Map 6.1) that "only these specified improvements within the SRRR 2012 Plan (i.e. to address I/I, capacity improvements and correcting structural deficiencies), were required. (Dev. Memo, p. 38).

With those facts not in dispute, during the cross examination of Mr. Lessner, he agreed that some of those action items dictated by the SRRR 2012 Plan, Section 6.14 - Corrective Action Recommendation Plan to address model-predicted SSOs in the Jones Falls Sewershed for the County selected 10 hr/6 yr storm event, have not been completed as follows:

1. Complete comprehensive I/I reduction rehabilitation of public manholes and sewers within SSA's exhibiting excessive I/I or other areas that contribute to model predicted SSOs determined by model simulations using the 10-Year/6-hour SCS Type II storm event.
2. Complete select capacity improvements based on a model simulation of the 10-Year/6-Hour SCS Type II storm event.
3. Correct identified structural deficiencies through rehabilitation or replacement.
4. Complete post-construction flow monitoring and analysis to confirm the I/I reduction effectiveness.
5. Confirm model simulations or revised the collection system model, if necessary.
6. Determine if additional improvements are needed based on the updated collection system model.

With regard to I/I reduction, Mr. Lessner agreed that Corrective Action 1 has not been completed. The 2021 RJN Performance Assessment Report informs that I/I reduction was only completed in Metered basins BC02, BC04, BC09 which is in the Timonium area and not in the sewage path from the Property. (Prot. Ex. 78). In its Post-Hearing Memorandum, while conceding that "...the total number of improvements completed at the time were less than the total required under the SRRR Plan...", Developer highlights that the Timonium area improvements reduced I/I and reduced predicted SSOs in the Timonium area. However, the Timonium area work does not remedy the inadequate sewer capacity within the sewage path from this Property. The Developer's other argument that SSO volumes are trending "downward overtime" does not address the existing and future problems along the sewer path from this Property. (Dev. Memo, p. 41). Indeed, Map 2 of the 2021 RJN Performance Assessment Report confirms that only 2 minor repairs involving "Inflow Inserts" as above have been completed in the sewage path for this Property (BC05).

With regard to Corrective Action 3 – correcting structural deficiencies, I find there is no

basis for Mr. Lessner’s opinion that those structural deficiencies only refer to those listed in the SRRR 2012 Plan and not in the Ramboll or the Hazen Reports. Neither the Ramboll Report nor the Hazen Report were produced in evidence in *Torch Hill*. In terms of the Ramboll Report which was issued June of 2022, I am not convinced by Mr. Lessner’s opinion that it was only “a planning document” and only used for “capital budget” purposes. (Prot. Ex. 87). It matters not whether the Ramboll Report was prepared under the Consent Decree. It was created at the County’s request and it informs the County about sewer capacity. The Ramboll Report provides the express purpose for which the County retained Ramboll:

The County engaged Ramboll Americas Engineering Solutions, Inc. (Ramboll) for the development of design documents for the repair and rehabilitation of the interceptors, manholes, and junction chambers located within Lake Roland Park. The primary focus of this project is to minimize the inflow and infiltration (I/I) into the interceptors to reduce the likelihood of sanitary sewer overflows.

* * * *

1.2 PURPOSE

As part of the preliminary engineering efforts for the project, the County requested a detailed review/evaluation of available existing system data in order to identify/accomplish the following:

- Confirm the condition of the pipelines and manholes associated with this project based on available system inspection data.
- Verify the rehabilitation recommendation (pipelines and manholes) included as part of this project.
- Preliminarily identify access and bypass requirements.
- Identify data gaps requiring additional/follow-up field evaluation efforts.
- Develop a preliminary list of permitting needs/requirements for the project.

(Prot. Ex. 87, pp. 1-2). Upon completion of the analysis, the Ramboll Report indicates that after

County approval, it will proceed with design activities to rehabilitate the sewer segments and manholes. With the clear directives outlining the scope of Ramboll’s work including analyzing the sewer pipes and manholes, as well as the future corrective actions to be taken by Ramboll upon County approval, the Ramboll Report cannot be discounted as just a “planning document.”

Importantly, the Ramboll Report referred to, and used the data from the 2021 RJN Performance Assessment. (*Id.* p. 3). Ramboll examined the sewer pipes using closed circuit television cameras (CCTV), performed sonar inspections, and physically inspected manholes to confirm that sewer pipes were suitable for trenchless rehabilitation technologies. I find that these efforts by Ramboll are examples of ‘field verification’ of the information from the 2021 RJN Performance Assessment that Mr. Lessner stated was not performed. (Dev. Memo, p. 43). As with the 2021 RJN Performance Assessment, I agree that, unfortunately, the results of the Ramboll Report showed a worsening of condition of the sewer system wherein it reads:

The review of the CCTV inspections showed 24 segments with active infiltration at pipe joints, 14 of which included some level of structural defects. Of the remaining 19 segment inspections available, 11 segments had structural defects alone and 8 segments either showed no structural defects or infiltration.

Upon completion of manhole inspections, Ramboll determined that:

...all 44 manholes within the system will need rehabilitation. Of the 43 manholes, 31 assets show evidence of infiltration. There are 2 manholes that are noted as 24” in their inspection reports. Field verification will be required to confirm that they are 24”. Should this confirm manhole size, it will require full replacement to facilitate CIPP lining of the adjoining pipe segment.

Similarly, the Hazen Report dated February 6, 2023 also confirmed that sewer pipes are still over 100% capacity. (Prot. Exs. 107, 108). Similar to the Ramboll Report, whether prepared under the Consent Decree or not, the Hazen Report cannot be discounted as only a “planning

document.” While the County may *also* use it for capital budget planning, the County hired Hazen to perform a comprehensive evaluation of the accuracy of the data from the RKK models and to update those models. Pursuant to the Protestants’ PIA request, the Hazen scope of services, which are on-going, were provided. (Prot. Exs. 106 A, B, C).

Hazen issued a progress report dated February 6, 2023. (Prot. Ex. 107). Hazen’s Model Pipe Capacity Report evaluated each pipe in the system as modeled during the 5 storm events which showed that the sewer pipes from the Property to the County/City line will be over 100% capacity. (Prot. Ex. 108). Specifically, during the County-selected 10 yr/6 hr storm event, the existing capacity for the sewer segment immediately below the Property through which sewage from the Project would flow, *beginning* with MH 43794 – MH43793 and continuing through the sewer segments, is greater than 100% (except for MH 43787-MH 43786 which is at 80% capacity). (Prot. Ex. 108, p. 9). Accordingly, I find that both the Ramboll Report and the Hazen Report provide compelling evidence that the pipes in the sewage path from the Property are at over-capacity and that SSOs are predicted to result during the County-selected 10 yr/6 hr storm event.

The evidence provided by the Protestants in regard to overcapacity defects and model predicted SSOs within the sewage path here was not sufficiently rebutted by the Developer. To this point, neither Dave Bayer, nor Lisa Eicholtz, nor any representative from DPWT with knowledge of the sewer system, testified to support Developer’s position in rebuttal. If there was a change in DPWT’s position, or clarification to explain the evidence presented by the Protestants, then testimony and further evidence from the DPWT was necessary. Given the importance of the sewer capacity issue in this case, Mr. Lessner’s understanding of his interactions with DPWT representatives, his investigation of Map 3 of the 2021 RJN Performance Assessment with DPWT, and specifically his conversations with Dave Bayer, PE, is not the best evidence to meet the burden

of proof, particularly given the DPWT comments and emails as above have expressed the opposite view. With the facts presented in this case, the best evidence is to have the DPWT witnesses testify, particularly if, as the Developer writes in its Post Hearing Memorandum, the “County regards the model upon which Map 3 was based as being ‘unverified’ in the field.” (Dev. Memo, p. 46). The DPWT Sewer Design Team engineers needed to provide that testimony.

I also find that, if Mr. Lessner’s understanding of his interactions with DPWT is correct as described in the Developer’s Post-Hearing Memorandum, and there was a change in DPWT’s position, Dave Bayer would have included the same in his email dated March 8, 2023 wherein, at the request of the Developer, he lists the flow sensors downstream from the Property; yet, he did not. (Dev. Exs. 47A, 47B). Similarly, in his email dated May 30, 2023, Dave Bayer could have provided any change in DPWT’s position wherein, at the request of the Developer, he listed the corrective action status for rehabilitation/repairs that had either been completed, or were determined not to be needed; yet, he did not. (Dev. Exs. 45A, 45B). The silence is deafening.

As to Mr. Lessner’s point that the 2019, 2020 and 2021 Quarterly/Annual Reports (Dev. Exs. 48-53) did not document SSOs, this fact certainly did not alleviate Dave Bayer’s real concern for SSOs as shown in his internal email to his DPWT colleagues dated March 22, 2021, and, without question, Dave Bayer has access to those Quarterly/Annual Reports. (Prot. Exs. 89, 90). What’s more, each of the defects in the manholes which were listed in David Bayer’s May 30, 2023 email as being corrected, were performed in 2014, 2017 or 2019, and therefore, when he wrote the March 22, 2021 email, he would have known about those repairs. (Dev. Exs. 45A, 45B). Thus, given the years of those repairs, Mr. Lessner’s testimony that “presumably” repairs/rehabilitation were completed after the 2021 RJN Performance Assessment, was not accurate. (Id.).

In addition to the violation of DPWT Design Manual as above, based on the collective evidence presented, I also find that the sewage to be generated by this Project does not comply with BCC, §32-4-410 (b) which requires sewage facilities to function safely:

(b) *Sewage.* Proposed public or private sewage facilities shall be designed and located to function safely and without danger of contaminating groundwater, surface water, or public or private water supplies.

Additionally, in not providing safe or adequate sewerage, I further find that the sewage generated by this Project also does not comply with BCC, §32-4-102:

(b) *Intent of laws.*

(1) This title is intended to protect and promote public health, safety, and welfare and to ensure that public facilities, services, and amenities are provided.

(2) This title is intended to ensure that proposed development projects are safe, adequate, convenient and, where applicable, provide for the following:

* * * *

(iv)sewerage,.....

Moreover, I find that the sewage from the Project does not comply with BCC, §32-4-103(a):

(a) *In general.* This title is adopted for the following purposes:

(8) To provide adequate and efficient.....sewerage,and other public requirements and facilities;

Finally, I find that, as supported by the evidence, the Greenlined Development Plan also violates the DPR Policy Manual which provides that: “As part of any land subdivision or development of land, provision shall be made for the safe and sanitary treatment and disposal of sewage without detrimental effects to the public health or environment.” (DPR Policy Manual, p. 18).

Each of these regulations and policies requires sewage facilities to safely, adequately and efficiently function. Here, the overwhelming evidence shows that, for this particular sewage path, it will not. As a result, I cannot accept the argument that just adding the sewage from 61 new homes to the sewer system is “inconsequential when compared to the amount of sewage which flows through the system.” It was clear to me that the sewage path from this Property cannot handle the existing sewage which flows along that path, much less the additional sewage which will come from adding 61 homes to the sewer system.

With regard to the Johns Hopkins’ sewer segments, as mentioned by People’s Counsel in his Post Hearing Memorandum, under BCZR, §4A02.4.E.1.h, health care and surgery centers are exempt from the Basic Service Map. (PC Memo at p. 19). According to People’s Counsel, the exemption was enacted after Johns Hopkins’ Petition for Special Variance was denied in *Foxleigh Enterprises*, CBA 2012-0060-SA. (PC. Ex. 11). If that exemption applies, it may explain why Johns Hopkins was permitted by PAI to construct the 3 medical pavilions without first repairing/rehabilitating the sewer segments. If that is accurate, the exemption was not mentioned in any of the DPWT internal emails, or in the DPC comments. Again, the DPR DPC comment dated August 10, 2021 states that the Johns Hopkins is obligated to complete sewer segments repair/rehabilitation by August of 2023. (County Ex. 12A). The Dave Bayer emails confirm that Johns Hopkins stopped working on the sewer. (Prot. Ex. 89, 90).

Accordingly, if Johns Hopkins is entitled to an exemption from the Basic Services Map standards, it would stand to reason that DPR and/or DPWT would have known about it. For this case however, that exemption would mean that the Johns Hopkins will never be repairing/rehabilitating those sewer segments. On the other hand, if Johns Hopkins is not exempt and is still required to complete the repair/rehabilitation, there was no evidence presented as to

whether or when John Hopkins will complete the work. The undersigned even posed questions of DPR during the HOH but no information was known. Ultimately, this issue goes to the Developer's burden of proof in its case-in-chief that adequate sewer capacity exists in the sewage path for this Project, including the repair/rehabilitation by Johns Hopkins. Given the lack of any direction on this important issue, contrary to the suggestion by DPR DPC comment, I am not willing to condition approval here on the possibility that Johns Hopkins may, or may not, complete that work. (County Ex. 12A).⁴

For all the reasons specified regarding sewer incapacity and deficiencies, the Greenlined Development Plan must be denied under BCC, §32-4-229.

D. Remaining Issues.

Given the denial of the Greenlined Development Plan on the basis of traffic, emergency-access-only gate and inadequate sewer capacity, there is no need to address the issues of alleged Master Plan conflict, alleged E Coli contamination, stormwater management, Forest Buffer Variance for a Specimen Tree, or floodplain issues.

CONCLUSION

⁴ As the Board of Appeals held *In the Matter of Bluestem*, CBA-20-006, in response to the Developer's argument in Bluestem that the Development Plan should be approved with a condition that no building permit be issued until the sewer-shed deficiencies are remedied, the Board of Appeals wrote:

Certainly, the ALJ is neither compelled to approve the Plan in the face of evidence that it fails to comply with development laws, regulations, policies, or rules, nor is the ALJ compelled to impose conditions in lieu of denying approval. To the contrary, the Code mandates the ALJ's decision in only one set of circumstances: where the ALJ finds the development plan complies with development laws, regulations, policies and/or rules. BCC §32-4-229(b)(1). The ALJ did not find that the Plan so complied, ergo, the ALJ had the discretion to deny approval. Similarly, the Code confines the ALJ's discretion when imposing conditions, requiring that the conditions be tethered to certain evidence and in furtherance of certain goals. BCC §32-4-229(d). On the other hand, the APFO [Adequate Public Facilities Ordinance] neither identifies circumstances requiring approval of a development plan, nor does it mandate approval with conditions.

I am cognizant that the owners of this Property are permitted by right to develop the Property with residential uses. Unfortunately, the Property's location within failing traffic sheds, and within an 'Area of Concern' in the public sewer system, made worse by the existing development of surrounding commercial, residential, educational and public uses, define the limits for this last, undeveloped Property. The existing residential communities are justifiably concerned about the additional traffic, inadequate sewer system, and the proposed emergency-access-only gate, all of which negatively impact the surrounding properties. While there may be a common notion that I approve a lesser number of homes on the Property, the Developer did not provide any testimony or evidence concerning a potential project based on a lesser number of units. Accordingly, I am tasked with the job of approving or denying the Greenlined Development Plan as submitted – for 60 new homes and 1 existing home, with an emergency-only-access gate. For the reasons set forth herein, I must deny the Greenlined Development Plan.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 31st day of **July, 2023**, that the Greenlined Development Plan for the Project known as “**GREENSPRING MANOR**” (Dev. Ex. 1B), be and it is hereby **DENIED**.

IT IS FURTHER ORDERED that the Petition for Special Variance from the Baltimore BCZR, §4A02.4.G to allow the development of the subject property within the Falls Road and Joppa Road and Falls Road and Greenspring Valley Road traffic sheds, be, and it is hereby **DENIED**.

Any appeal of this Order shall be taken in accordance with Baltimore County Code,
§ 32-4-281.

A handwritten signature in black ink that reads "Maureen E. Murphy". The signature is written in a cursive style with a large initial 'M'.

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm/dlw