

**MOTION TO SUBMIT ADDITIONAL EVIDENCE OF CAGIS MAP INACCURACY
OFFICE OF THE ZONING BOARD OF APPEALS
CITY OF CINCINNATI
JANUARY 30, 2023**

CASE#: Z-4077-2023 re: ZH20220159

**CASE TYPE: MOTION RE: DECISION OF THE ZONING HEARING EXAMINER DATED:
DECEMBER 14, 2022**

PROPERTY: 4106 VICTORY PARKWAY, CINCINNATI, OH 45229

PROPOSED PROJECT: VICTORY VISTAS RESIDENTIAL

APPLICANT: SUDER LLC

OWNER: KM REAL ESTATE HOLDING CO, LTD

CONTACT: CHINEDUM NDUKWE

**APPELLANT: PADDOCK HILLS ASSEMBLY/ NORTH AVONDALE NEIGHBORHOOD
ASSOCIATION**

Paddock Hills Assembly and North Avondale Neighborhood Association (“appellants”) hereby move for the admission of additional evidence, which documentary and testimonial (in the form of affidavits) evidence is filed herewith.

Appellants further hereby, and as set forth in separate filings:

(a) move to strike the testimony Ms. Ahouse, the Zoning Administrator, taken without oath as inadmissible;

(b) assert that the decision to approve the application is premature in light of the fact that the Hillside District statutes/regulations supersede any variance provisions and therefore failure to first consider the Hillside Overlay District statutes/regulations invalidates the decision granting variances, or at least the application approval based upon the granting of variances;

(c) assert that the Hillside Overlay District maps upon which an apparent determination was made (improperly, since such conclusion was not included in the staff report and for other reasons stated herein) that the property is not a Hillside Overlay District property, are inaccurate;

(d) assert that the hearing was an improper hearing on variances instead of a dispositive hearing on the merits of the application and, therefore, the hearing itself was improper and the approval is invalid;

(e) assert that neither the staff report nor the application addressed matters that were taken up during the hearing and therefore consideration of such matters at a hearing on the merits of the application (which this hearing should not have been) is improper and all evidence of the basis of exemption and relief from Hillside Overlay District requirements and all evidence of technical analysis to support this basis of exemption and relief from Hillside Overlay District requirements were withheld from the public;

(f) maintain that the application was incomplete because the required geotechnical report and hillside stability and other Chapter 1433 Hillside Overlay District requirements were not submitted;

Based upon applicant's and hearing examiner's testimony (which appellants assert separately is improper as testimony), and the application itself, no meaningful consideration of the superseding Hillside Overlay District statutes/regulations has occurred. Appellants assert that the status of the subject property as a Hillside Overlay District property is dispositive of the issue whether the application should be approved (i.e., the application cannot be approved as a legal matter for reasons other than the granting of variances); and

(g) warn of serious danger of damages to neighboring property, and potentially to persons, and attendant liability of the City for such damages if the application is approved.

This motion is justified for the reasons that follow. Further, the appellants hereby assert that the approval should be reversed due to both the invalidation of hearing testimony needed to support the approval and due to failure to consider Hillside Overlay District rules.

I. The Zoning Examiner put forth witness testimony without required oath

Appellants state that the previous testimony of the Zoning Administrator and Zoning Staff should be struck from the record because Mr. Stuke accepted their unsworn testimony in Case # ZH20220159 of November 16, 2022. This is the only evidence related to the location of the "principal building" relative to the CAGIS Hillside Overlay District Map. Relevant statute/regulation are provided below:

§ 1449-15. - Procedures for Appeals from Decisions of the Zoning Hearing Examiner or Historic Conservation Board.

The following procedures apply to appeals to the Zoning Board of Appeals from decisions of the Zoning Hearing Examiner or Historic Conservation Board:

(a)Application. The application procedure for appeals is as follows:

(1)A person with standing as specified in § 1449-09, Appeals to the Zoning Board of Appeals, must file a notice of appeal on forms prepared and supplied by the staff for the Board.(2)All appeals must be accompanied by materials specified on the application form.

(b) Transcript. Within 21 days of the filing of the notice of appeal, the appellant has the duty to cause a complete record of the proceedings, including a transcript of all testimony, pertaining to the decision being appealed to be filed with the staff for the board at the appellant's cost.

(c) Remand. The board may remand a matter to the examiner in order to cure a deficiency in the record or the proceedings below.

(d) Hearing. The appellant and any person who expressed a position in writing or testified in opposition below have an opportunity personally or through counsel to present arguments based on the evidence in the record. No other person has a right to be heard. The board is confined to consideration of the record and arguments based on the record as filed unless it appears on the face of the record or by affidavit filed by person affected that:

(1) The record does not contain a report of all evidence admitted or proffered below.

(2) The testimony adduced was not given under oath.

(3) The appellant or other person affected was not permitted to be heard in person or by counsel in opposition to the order appealed:

(A) To present the position, arguments and contentions of the appellant or other person affected.

(B) To offer and examine witnesses and present evidence in support thereof.

(C) To cross-examine witnesses purporting to refute the position, arguments and contentions of the appellant or other person affected.

(D) To offer evidence to refute evidence and testimony offered in opposition to the position arguments and contentions of the appellant or other person affected.

(E) To proffer any such evidence into the record, if the admission thereof was denied by the examiner.

RULES OF PROCEDURE CITY ZONING HEARING EXAMINER

Section 4. - Hearing Procedures.

A. Appearing at a Hearing. An applicant may appear in person at a hearing, or may be represented by a duly authorized agent or attorney. Any reference herein to the term "applicant" shall be deemed to be inclusive of applicant's authorized agent or attorney. In the event that an applicant fails to appear at a scheduled hearing and has not requested a postponement as set forth in Section 3(C) above, then the ZHE, in its discretion, shall have the right to (i) continue the case until the next regularly scheduled hearing, or (ii) dismiss the case based on the applicant's failure to prosecute the application.

All parties of record, witnesses, and members of the public wishing to testify before the ZHE shall sign in on a sheet provided by the ZHE and located at the entrance to the hearing room. The ZHE shall have the right to exclude testimony of anyone who has failed to sign in.

B. Oath. All persons providing testimony before the ZHE shall be sworn by the ZHE prior to testifying. An attorney shall not be sworn unless the attorney is acting as a witness or providing testimony rather than acting as an advocate and providing argument.

II. Appropriate community organizations did not get proper notice

Appellants renew their previous assertion made at the hearing that, as “appropriate community organizations” under the relevant statutes, they are entitled to notice of the application hearing sufficient to prepare for such hearing. They were provided with only two days’ notice (in the case of Paddock Hills) and no notice (in the case of NANA). Therefore, appellants are entitled to submit additional documentary evidence and testimony (the latter of which is submitted in the form of affidavits and all of which is included in this filing) that they could not reasonably have provided at the time of the hearing.

The appellants assert that they were denied due process in the Zoning Hearing for Case # ZH20220159. Significant issues in notice and the opportunity to be heard include:

The North Avondale Neighborhood Association (NANA) was never notified of the Hearing.

Relevant statute/regulation:

City Code at 1443-05 requires “appropriate community organizations known to the examiner to be concerned with the application of zoning regulations to properties in the vicinity of the subject property at least 14 days in advance of the public hearing”. The variances for parking in front of the building, inadequate parking under Code and nonconforming location of the dumpster are all directly impacting North Avondale residents living across the street from the proposed Victory Vistas project.

III. The Zoning Hearing denied citizens evidence and notice and citizens were not permitted to be heard

The Zoning Examiner used a standard of review that was not contained in the application, not contained in the Staff Report and not presented as the applicable standard of review in any manner prior to the hearing. As this standard of review gave relief to the applicant from applicable standards of Code in Chapter 1433, the Zoning Decision was a de facto granting of an unlawful variance. Citizens were denied evidence of this intended action by complete omission from the Staff Report.

Mr. Sturkey offered the following in the Zoning Decision, not as Conclusion of Law or a Finding of Fact, but in the Public Interest: “The location of the principal building is not within a Hillside Overlay District and thus, not subject to the Hillside Overlay District guidelines” (Zoning Decision, page 6 paragraph 1). This is clearly not the law and is in direct opposition to the intent and language of the law which requires the full Chapter 1433 protections to be mandated for “Any real property either whole or in part within said moderately high or high susceptibility areas” (1433-05). Additionally, 1433-07 also makes clear that the Chapter 1433 requirements apply to property and not “principal buildings” as follows: “all regulations of the underlying zone districts and other applicable overlay districts apply to and control property in an HS District”. As there was no notice and no evidence of this standard of review and de facto variance, appellants were deprived of notice and evidence and were not “permitted to be heard” (1449-15(d)(1), 1449-15(d)(3)) as there was no time prior to the hearing to prepare a response to the Zoning Administrations intended actions. The futility of the public to participate in the Zoning Hearing is made clear from the following discussion contained in pages 97 through 100 of the Zoning Hearing for Case # ZH20220159:

97

HEARING EXAMINER: Okay. Thank you,

5 Ms. Orr.

6 I, you know, want to just attempt one final
7 time, and I am going to open this question up to
8 literally every person in the room, including the
9 zoning staff, and I'm going to share my screen, can
10 anyone tell me definitively whether or not this
11 building here, which I think is the northwest
12 corner, is going to overlap with the hillside
13 overlay district, which is the darkly shaded blue
14 color?

15 MS. AHOUSE: David, it's about 8 to 10 feet.

16 I can say, yeah, that was something we looked at and
17 based on the mapping in cages and the site plan, we
18 did not find that the building is being constructed
19 in the hillside boundaries.

20 HEARING EXAMINER: Okay. Got you. I guess

21 it is a slightly different question whether --

22 MR. KOUCKY: I would like to address that
23 because you can clearly see the property line and
24 the shaded area, and you can clearly see that the
25 shaded area overlaps the property line to the west

98

1 and north. It could not be clearer. The white
2 line is a property line --

3 HEARING EXAMINER: So Mr. Koucky --

4 MR. KOUCKY: -- and the corner of the
5 existing building.

6 HEARING EXAMINER: You're -- I believe
7 you're right. I don't think anyone is disputing
8 that there is overlap with the property line, my
9 question is more specifically will the building
10 overlap -- which you can see here on the site
11 plan -- will the building overlap with the blue and
12 the zoning department has determined that it won't
13 if I am understanding that correctly.

14 MS. AHOUSE: Yes, that was -- that was our
15 review.

16 HEARING EXAMINER: Okay.

17 MR. KOUCKY: I would assert the point is
18 moot because your city code says if any part of the
19 property is in a hillside, there's -- the entire
20 property must be treated as a hillside district,
21 so, yes, you are building on a hillside. That is
22 your code if I read it. I have attached that and
23 you can reference that later.

24 HEARING EXAMINER: Yeah, what is the code
25 reference on that?

99

1 MR. KOUCKY: It's in your hillside rules. I
2 will -- I will get it for you in a minute.

3 HEARING EXAMINER: Okay. Okay. Great.

4 All right. Ms. Orr, anything else that you
5 want to share at this time?

6 MS. ORR: Not at this time.

7 HEARING EXAMINER: Okay. Great. Okay.

8 MR. KOUCKY: I have it for you, Mr. Sturkey,

9 it's section 1433-05. The entire property must be
10 treated as a hillside, it goes as follows: Any
11 real property, either whole or part, within said
12 moderate, high or high susceptibility area should
13 be classified as being within a hillside district.
14 HEARING EXAMINER: Right. Well, we can --
15 we can dig down on that right now a little bit
16 more. We have our zone administrator here. So
17 what is your interpretation of that -- of that code
18 section? Does that mean that the area highlighted
19 in blue is what they have determined to be the high
20 susceptibility areas and, therefore, should be
21 treated differently?

22 MS. AHOUSE: And -- and did you say 1433-05,
23 is that --

24 MR. KOUCKY: Correct.

25 MS. AHOUSE: And that -- I would say that
100

1 we -- we use the boundaries shown in the cage's map.
2 We have never -- we use that as the effective
3 boundary of the hillside overlay district in the
4 city. The boundaries shown as the overlaying cages.

5 HEARING EXAMINER: Yeah, and I am not seeing
6 that in 1433-05.

Appellants' argument:

It is clear that the public had no advance knowledge of the fact that the Zoning Administrator and Zoning Examiner intended to circumvent the law in this matter as no evidence of this de facto variance was made public. It is evident that the Zoning Administrator had developed evidence that was withheld from the Staff Report as was any reference to the intended circumvention of applicable law. It is also clear that neither the Zoning Administrator nor the Zoning Examiner was familiar with the applicable City Code that they were circumventing. The public left the hearing under the misimpression

that once informed of the applicable law, the Zoning Examiner would be compelled to act in accordance with that law. The appellants assert that the Zoning Hearing was carried out in absence of any meaningful understanding of the law by neither the public nor the Zoning Administration. There is no more basic Constitutional Right to due process than to understand the law by which you are adjudicated at the time of your hearing. The Zoning Administrator developed key evidence that was withheld from the public. As such, this hearing offered no opportunity understand, much less rebut the actions of Zoning Administration for evidence not available to the citizens in this matter (1449-15(d)(1)).and the Zoning Appeals Board must offer the citizens opportunity to submit new evidence to provide for due process and an opportunity for the public to be “permitted to be heard” (1449-15(d)(3)).

IV. Hearing on the application was not a proper because it was in fact a hearing on variances that were not requested in the application nor heard at the Zoning Hearing

Appellants further assert that this action was, in fact, effectively constitutes a de facto and unlawful variance as it provided relief from locational standards of City Code. As a de facto variance, this action was not requested in application, noted in the staff report, or heard as a variance at the hearing. This means that relief from the applicable standards of Chapter 1433 could not be granted in the Zoning Decision. This unlawful relief from applicable standards did not follow any of the required variance procedures and further denied citizens an opportunity to be heard in the Zoning Examiner’s inappropriate granting of relief from Chapter 1433 Hillside Overlay District standards.

IV. Treatment of property as not a Hillside Overlay District based upon Zoning Administrator testimony (which testimony should be struck, anyway, for the reasons set forth above) was improper because this conclusion was not included in staff report

At the Zoning Examiner’s inquiry during the hearing, the Zoning Administrator asserted that she had conducted a study to show the “principal building” was not the portion of the property in the CAGIS Hillside Overlay District Map. No evidence was provided in the staff report nor the application nor at the time of the hearing to support this claim. The citizens were denied all evidence and notice and an were not “permitted to be heard” ((1449-15(d)(1), 1449-15(d)(3)) in this matter.

V. Hillside Overlay District “HOD”) maps are inaccurate (see Eric Russo affidavit included in this filing)

Appellant had provided written testimony that these maps were inaccurate and that and that the Hillside was substantially larger than what was shown on the map. Citizens were unable to fully respond to the errors of using the HOD Map for site-specific analysis as citizens were never informed of the Zoning Administration’s intent to circumvent the law or able to see any evidence of the intent or Zoning Administration’s evidentiary analyses. Once again, the citizens were denied notice or evidence and an were not “permitted to be heard” ((1449-15(d)(1), 1449-15(d)(3)) in this matter as neither the application, not the Staff Report suggested that the HOD Map would be used in this manner and no evidence to support this claim was ever supplied nor were appellants permitted to be heard in addressing the shortcomings of this analysis.

VI. Potential damages and liability of the City if application is approved

The Zoning Administration allowing the applicant to proceed without the required protections of Chapter 1433, creates a serious danger of property damage to the Dohn Academy located above the landslide and attendant liability of the City for any resulting damages to property or person. Dohn Academy is already having issues with loss of parking lot area due to hillside instability. Although the citizens feel we have been treated extremely poorly in this matter to date, nothing more seriously erodes public confidence in the integrity of this process than the failure of Evans Engineering and the Zoning Examiner than failure to report this landslide. The Zoning Administration wants to assert that these issues will be properly addressed later in the process, the citizens confidence in this assertion could not be lower.

The appellants assert that they prepared materials for the hearing based on a belief that the Zoning Hearing would be conducted under applicable law and not under an arbitrary standard of review based on the location of the "principal building". The appellants assert that Mr. Sturkey made a site visit before and after the hearing and failed to report an active landslide at 4106 Victory Parkway. The appellants assert that the Zoning Administrator developed key evidence that was withheld from the public. The appellants assert that they were not given appropriate notice of the Hearing. The appellants appeal to the Zoning Appeals Board to address the failures of due process by allowing the submittal of additional evidence of photographs of the landslide taken during NANA's site visit after the Zoning Hearing and at the same approximate time as the Zoning Examiner's site visit after the hearing.

VII. New Evidence

Appellants submit new evidence similar to evidence provided as written testimony by NANA at the hearing. The evidence at the hearing documented that the CAGIS Hillside Overlay Map was inaccurate in that it underestimates the extent of the hillside areas with slopes of 20 percent or greater at the Victory Vistas location and that much more of this property would properly be treated as a Hillside Overlay District if proper site-specific analysis was conducted as required under Chapter 1433 Hillside Overlay District. This new evidence shows that the CAGIS Hillside Overlay Map has significant errors of greater than 50 feet at the top of the hillside above the Victory Vistas location showing a flat parking lot to be a steep hillside with slopes 20 percent or greater.

An additional graphic is provided to show that these errors are widespread as the CAGIS Hillside Overlay Map shows a flat area at Krohn Conservatory with no change of elevation for 180 feet to be a steep hillside with slopes of 20 percent or greater. This magnitude of inaccuracy makes the CAGIS Hillside Overlay Map unsuitable for site-specific analyses as an error of 50 or 180 feet could miss a site property entirely. This evidence shows that the CAGIS Hillside Overlay Map makes errors of two kinds, underestimating the extent of hillside areas such as the errors at 4106 Victory Parkway, and overestimating the extent of hillside areas such as at Dohn Academy and Krohn Conservatory identifying flat areas as steep hillsides. Errors of excluding dangerous hillsides from analysis and errors of requiring hillside analyses of properties with slopes less than 20 percent create liability for the City if used for site-specific analysis as currently done by the Zoning Administration.

The new evidence as follows is included in this filing:

Appellants' Exhibit A – Affidavit of Walter Koucky

Appellants' Exhibit B – Affidavit of Eric Russo

Appellants' Exhibit C – Showing CAGIS Hillside Overlay Map Inaccuracies

Appellants' Exhibit D – Detail of CAGIS Hillside Overlay Map Inaccuracies at Dohn Academy

Appellants' Exhibit E – Example of CAGIS Hillside Overlay Map Inaccuracies at Krohn Conservatory

Exhibit A Affidavit of Walter Koucky

**AFFIDAVIT OF WALTER KOUCKY
OFFICE OF THE ZONING BOARD OF APPEALS
CITY OF CINCINNATI
JANUARY 30, 2023**

CASE#•. Z-4077-2023 re: ZH20220159

CASE TYPE: APPEAL OF THE DECISION OF THE ZONING HEARING EXAM-
INER DATED: DECEMBER 14, 2022

PROPERTY: 4106 VICTORY PARKWAY, CINCINNATI, OH 45229

PROPOSED PROJECT: VICTORY VISTAS RESIDENTIAL

APPLICANT: SUDER LLC

OWNER: KM REAL ESTATE HOLDING CO, LTD

CONTACT: CHINEDUM NDUKWE

APPELLANT: PADDOCK HILLS ASSEMBLY/ NORTH AVONDALE NEIGHBOR-
HOOD ASSOCIATION

Walter Koucky, being first duly sworn and deposed according to law, deposes and states the following to his personal knowledge:

- (1) I am retired consultant
- (2) I have a Master of Science Degree from The University of Cincinnati, College of Civil and Environmental Engineering, 1984
- (3) I have over 40 years of professional experience and 35 years of consulting experience
- (4) I have relevant professional experience as an expert witness and in technical anal-

ysis, litigation support, civil and administrative hearings and case development for various clients, including:

The United States Environmental Protection Agency,

The United States Department of Justice,

The State of New York,

The State of New Jersey,
The Commonwealth of Pennsylvania,
The Sierra Club,
The United States Steelworkers Union,
The Southern Poverty Law Center

(5) I have used geographic information systems (GIS) and topographic mapping and analysis routinely in my 35 years of consulting. Relevant projects include:

Developing GIS maps for USDOJ and NOAA for settlement of litigation involving historical contamination of the LA Harbor and Santa Monica Bay,

Developing GIS maps of statewide transportation and emissions maps for the USEPA as part of

the State Implementation Plan for the Commonwealth of Virginia,

Mapping and analysis to support regulatory development for USEPA's proposed Short-Term

Sulfur Dioxide (SO₂) Standard,

Performing the nation's first human health risk assessment for USEPA under the Carol Browner's

Combustion Policy regarding hazardous waste combustion in Chanute, Kansas, and

Scores of risk assessments and environmental modeling projects requiring topographic analysis;

Additionally in 2021 I authored a "Summary of Report of Landslide Evaluation (CIVIL & ENVIRONMENTAL CONSULTANTS, INC.) for the Clinton Hills Swim Club in Cincinnati, Ohio.

(6) I am an interested party to this appeal due to my role as the Zoning Committee Co-Chairman for the North Avondale Neighborhood Association (NANA), my residence is in

North Avondale and is partially on a Hillside Overlay District Map, and my concerns that

the Zoning Administration's use of the "principal building" location relative to the CAGIS

Hillside Overlay District Map is technically unsound as this map is inaccurate and not capable of substituting for site-specific analysis of properties near Hillside Districts.

(7) The Zoning Examiner stated at the hearing that he believed a site visit was necessary:

Additionally, during the hearing the Zoning Examiner stated that he intended to conduct the required site visit to the proposed Victory Vistas site in the future (Hearing transcript, page 127 lines 8 -13) "I also am required under the zoning code to do a site visit, which typically is sort of a drive and walk around type -- type of thing and I think that might be appropriate in this case. I can actually be on the ground and not just looking through Google maps". NANA concurred that a site visit was necessary and NANA visited the District #4 police station, the Dohn Academy and the site at 4106 Victory Parkway occupied by the renter, JDD Landscaping. NANA was allowed entry and the right to enter and take photographs at all three locations.

(8) I attest that the photos submitted as new evidence and contained in the Motion to Submit

Additional Evidence of a Landslide were taken by me using my Google Pixel 6+ phone on Monday, January 9, 2023 and are an accurate representation of the conditions I observed during my site-visits on that day. These conditions being repairs to the Dohn Academy parking lot from a "sink hole" on the Asmann Avenue side and an active landslide on the 4106 Victory Parkway site that extended to past the front West side door of the existing

building and required periodic clearing according to the employee on site named Kyle Rouse who granted NANA permission to enter the site and take photographs.

(9) I attest that the graphic exhibits submitted as new evidence in the Motion to Submit Additional Evidence of CAGIS Map Inaccuracy were constructed by me and are within my professional competence in a multi-decade career working with geographic information systems and topographic mapping and analysis.



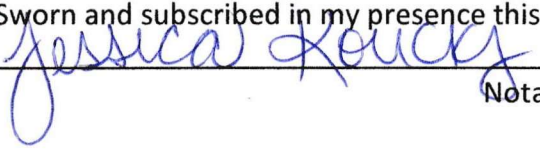
Walter Koucky

STATE OF OHIO

) ss.:

COUNTY OF HAMILTON)

Sworn and subscribed in my presence this 31st day of January 2023.



Notary Public

KOUCKY
Public, Site
of Ohio
By \$res



JESSICA
Notary
My Comm. jm

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AFFIDAVIT OF ERIC RUSSO
OFFICE OF THE ZONING BOARD OF APPEALS
CITY OF CINCINNATI JANU-
ARY 13, 2023

CASE#: Z-4077-2023 re: ZH20220159

CASE TYPE: APPEAL OF THE DECISION OF THE ZONING HEARING EXAMINER

DATED: DECEMBER 14, 2022

PROPERTY: 4106 VICTORY PARKWAY, CINCINNATI, OH 45229

PROPOSED PROJECT: VICTORY VISTAS RESIDENTIAL

APPLICANT: SUDER LLC

OWNER: KM REAL ESTATE HOLDING CO, LTD

CONTACT: CHINEDUM NDUKWE

APPELLANT: PADDOCK HILLS ASSEMBLY/ NORTH AVONDALE NEIGHBOR-
HOOD ASSOCIATION

Eric Russo, being first duly sworn and deposed according to law, deposes and states the following to his personal knowledge:

- (1) I am the executive director of Hillside Trust
- (2) I have been the executive director of The Hillside Trust for 22 years, and for 11 years prior I was its assistant director. The Hillside Trust is a non-profit organization that advocates for the thoughtful use and preservation of our region's hillsides through a three-part mission of advocacy, research and education, and land conservation.
- (3) I am an interested party to this appeal due to my concerns about an inaccurate boundary line within one of the City's Hillside Overlay District (HOD) maps.
- (4) Specifically, I have reviewed an HOD map of property located at 4106 Victory Parkway that was superimposed over a CAGIS topographic map, the product of which was

produced by Walter Koucky who first brought this to my attention. It is clear to me that the boundaries of the HOD map do not match up with the contour lines of the CAGIS topo map at this location by a difference of approximately 50 feet.

(5) In my professional opinion the discrepancies between the HOD map and the CAGIS topographic map are highly concerning. The HOD map is used to determine whether professional and legal review by the City of Cincinnati is warranted within Chapter 1433 - Hillside Overlay Districts.

(6) I have reviewed the photographs of the subject property located at 4106 Victory Parkway, including photographic evidence of an active landslide that was presented by the North Avondale Neighborhood Association.

(7) In my professional opinion, based upon the topographic maps, and the hillside and landslide photographs, this subject property qualifies as a Hillside Overlay District property under Chapter 1433 - Hillside Overlay Districts.

(8) The purpose of the regulations governing Chapter 1433 — Hillside Overlay District, is to

"establish standards to assist in the development of land and structures in existing hillside areas and procedures for the review of proposed hillside development, so that development will be compatible with the natural environment and respect the quality of the urban environment in those locations where the hillsides are of significant public value. These regulations are intended to prevent damage to the City's hillsides."

(9) I have 19 years of experience with Hillside Overlay District legislation since it was codified in early 2004, having orally testified or having submitted written testimony on many multiple hillside development cases heard by the City's Hearing Examiner.

(10)The Greater Cincinnati and Northern Kentucky region is one of four (4) identified landslide hazard areas in the nation as defined by the U.S. Geological Survey. The city of Cincinnati, itself, has a long history of landslide damages. According to figures gathered from the city's Department of Engineering and Transportation, the city has spent over \$113 million dollars since 1989 towards landslide repairs and maintenance affecting public infrastructure. This figure was cited in the recent "Living With Landslides" documentary that was commissioned by The Hillside Trust and produced by Laure Quinlivan. This figure does not include damages to private property within the city, the numbers of which are neither documented nor publicized.

(11)It is my professional opinion that the city performed an incomplete review of 4106 Victory Parkway, claiming that the proposed development was outside of the HOD boundaries. More importantly, and more troubling, the engineering and design plans for 4106 Victory Parkway neither acknowledge nor address active sliding that is occurring on the subject property.

(12)How is the city going to handle other development applications where a subject parcel consists of HOD and non-HOD boundaries. Based on 4106 Victory Parkway, it appears that the HOD map is generalized and not site specific if its boundaries do not comport with CAGIS topo lines. In future development cases where a property is divided between HOD and non-HOD, what will be the city's response? How (or will) it accurately identify critical boundary delineations? Section 1433-03-L of the code, refers to "Landslide Indicia, meaning geographical contour information included in the CAGIS data that illustrate both the degree of slope (see Section 1433-03-S) as well as irregularities, the presence of which indicate existing or potential landslides." Is the city

not required to follow this secondary means of steep slope identification to ensure that it is performing all manner of due diligence when it comes to its hillside development reviews?

(13)The case of 4106 Victory Parkway is the first time I have witnessed a discrepancy in identifying an HOD boundary per a city hillside development review, the implications of which are significant. I would urge the city to effectively address this problem so that future hillside development review cases neither under step nor over step their reach.



Eric Russo

STATE OF OHIO

) SS. :

COUNTY OF HAMILTON)

Sworn and subscribed in my presence this day of January 2023.



JEREMY BLAIR
Notary Public, State of Ohio
My Commission Expires:
05/18/2025



Notary Public

Exhibit C Showing CAGIS Hillside Overlay Map Inaccuracies.

The area in blue shows a 50' flat area of Dohn Academy parking lot that is errantly included in the CAGIS Hillside Overlay Map as having 20 percent slope or greater slope. and the areas in brown are Victory Vista hillsides with a 20 percent or greater slope omitted from the Map that would be identified had the Zoning Examiner required the legally mandated elements of Chapter 1433.

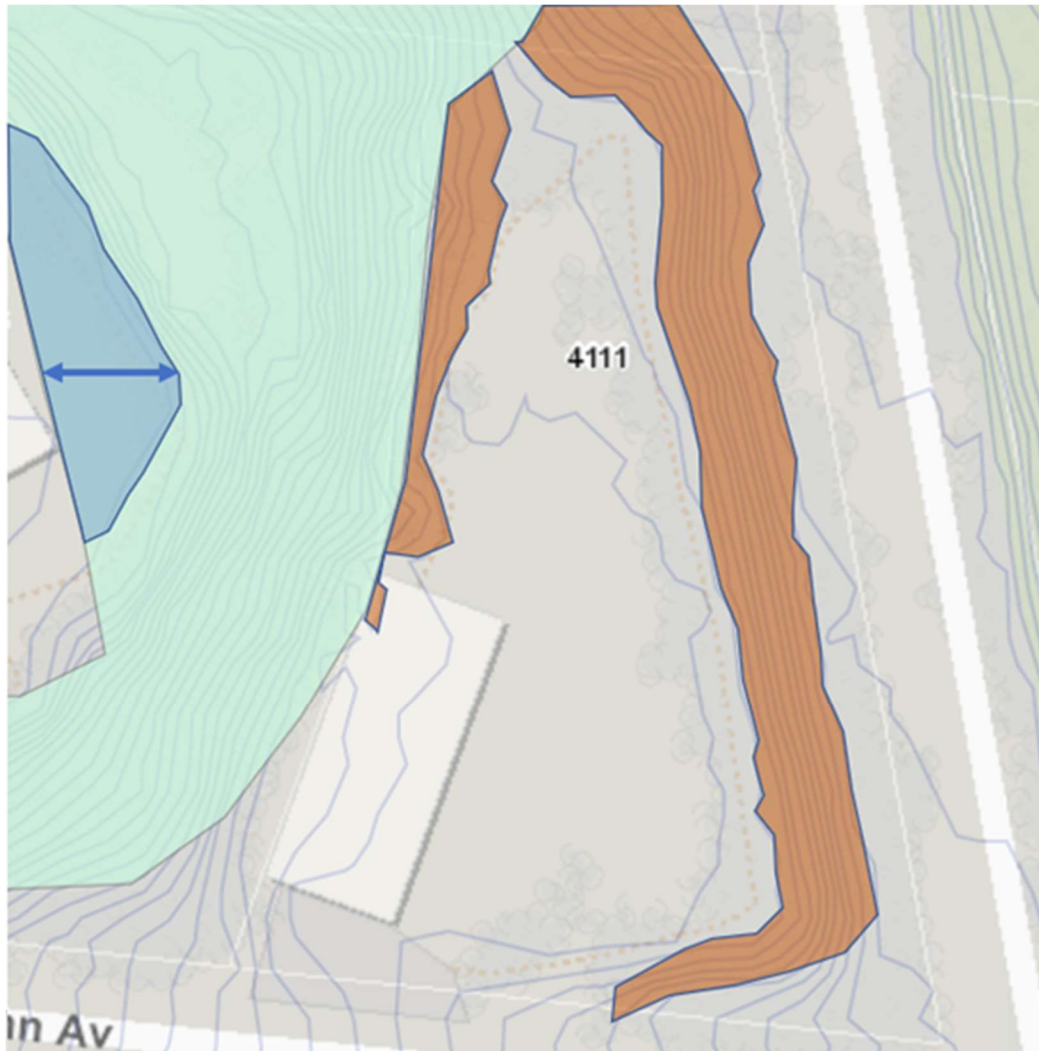


Exhibit D

This figure shows an error of greater than 50 feet in the CAGIS Hillside Overlay District Map erroneously including the parking lot above the proposed Victory Vistas development as an area with a slope greater than 20 percent slope. The green area CAGIS Hillside Overlay District, the parking lot in the Hillside Overlay is shaded blue over the green with the arrow showing an error in the CAGIS Hillside Overlay District Map of greater than 50 feet. A 1996 CAGIS areal coverage is used to show that the parking lot was in place in 2004 at the time the Hillside Overlay map was created.

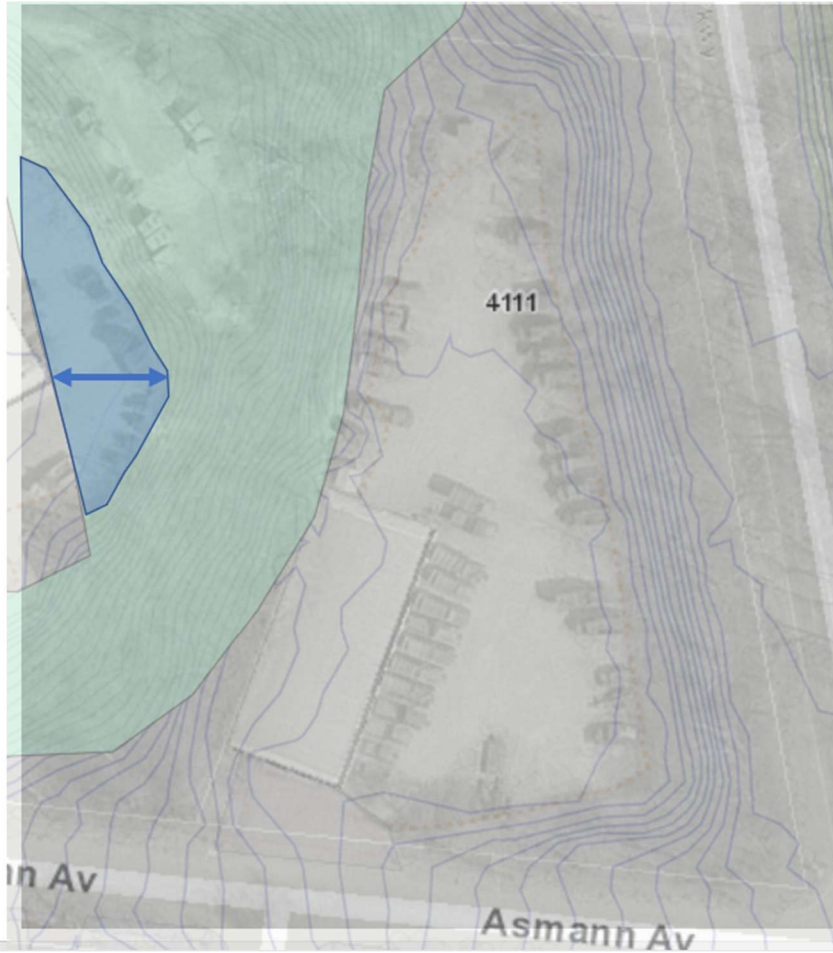
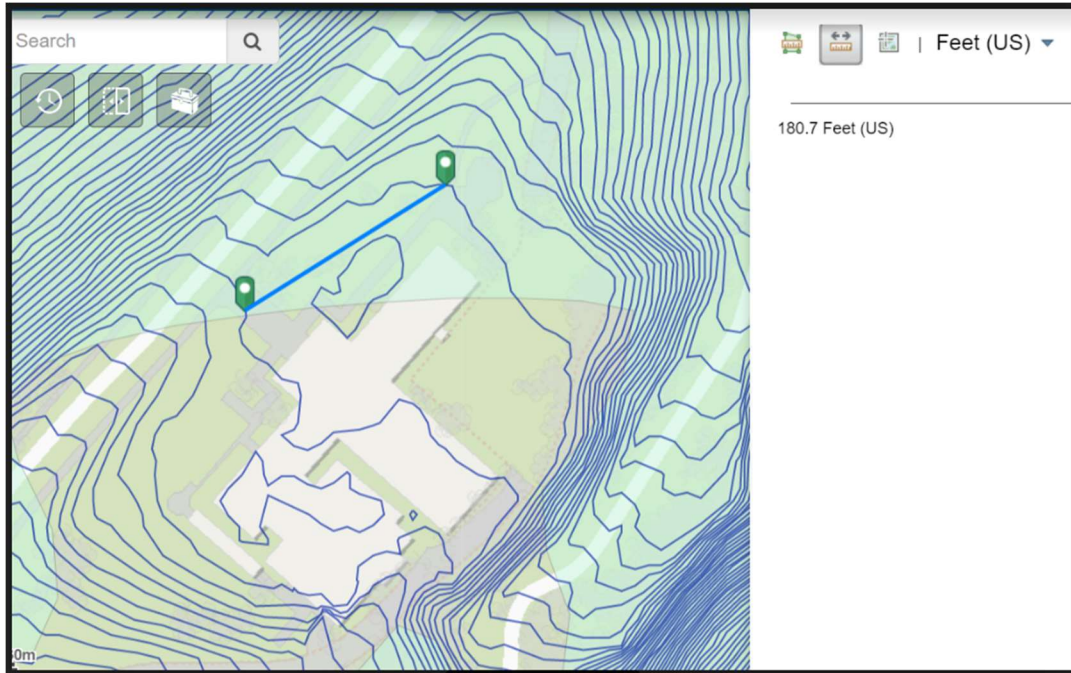


Exhibit E Example of CAGIS Hillside Map inaccuracy showing Krohn Conservatory Building and Garden as a Hillside with greater than 20 percent slope and photo of matching area. This error shows an area of flat land over 180 feet long as being in a hillside.



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