



STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 FAX: (217) 785-4111

DOCKET ITEM: A-02	BOARD MEETING: June 2, 2015	PROJECT NUMBER: 10-031
PERMIT HOLDERS(S): Pecatonica Pavilion, LLC Revere Healthcare Ltd.		
FACILITY NAME and LOCATION: Pecatonica Pavilion, Pecatonica		

STATE BOARD STAFF REPORT
PERMIT RENEWAL REQUEST

I. Background

On March 21, 2011, the State Board approved Project #10-031. The permit authorized the establishment of a 24-bed skilled care unit as part of a 120-bed campus containing assisted living, memory support, and independent living units. Board Staff notes the project was not originally approved under the CCRC variance, the project is obligated, and the current project completion date is March 31, 2015. Project cost for the skilled portion: \$1,767,400.

Board Staff notes the permit holders submitted this permit renewal request on March 30, 2015. This submittal **was not** in accordance with 77 IAC 1130.740(d), which states that renewal requests must be received by the State Agency at least 45 days prior to the permit expiration date. A \$500.00 permit renewal fee and a \$500.00 late fee accompanied the renewal request.

II. Findings

The State Agency notes this is the **third** renewal request for this project. Board staff notes that on October 18, 2010, the permit holders submitted a Type B modification, establishing the proposed skilled care facility as part of a Continuum of Care Retirement Community (CCRC). It appears the permit holders have submitted all of the information required in Section 1130.740 for their third permit renewal. Listed below is the permit holders chronology of past permit renewal requests.

- 1) February 28, 2012: 18-month renewal March 31, 2012 – September 30, 2013
- 2) November 5, 2013: 18-month renewal September 30, 2013 – March 31, 2015

III. The Permit Renewal Request

- A. Requested Completion Date: The permit holders request a project completion date of September 30, 2016. This would extend the project's completion date by eighteen months, from March 31, 2015 to September 30, 2016.
- B. Status of the Project and Components Yet to be Finished: The permit holders state the project has undergone an extensive site excavation/preparation phase, the final architectural drawings are complete, and excavation for utility and sewer services. The construction phase has not commenced.
- C. Reason(s) Why the Project Has Not Been Completed: The permit holders' state the following events occurred, which delayed completion of the project:
- The permit holder states the delay is attributed to setbacks encountered with the financing for the CCRC development, which were caused in part by an Administrative Review Complaint and various court rulings associated with said financing. This event made it necessary for the permit holder to work with its lenders and supporters to continue their commitment for project funding, delaying the project further than anticipated.
- D. Evidence of Financial Commitment to Fund the Project: The permit holders indicate that approximately \$2,000,000 has been committed to date for the entire CCRC development, that 100% of the \$1,767,400 in project specific funds have been obligated, and that sufficient resources exist to complete the project.
- E. Anticipated Final Cost of the Project: The permit holders estimate the final project cost will be within the originally approved permit amount of \$1,767,400.

IV. Project Description & Other Background Information

The permit authorized the establishment of a 24-bed skilled nursing unit on the campus of Pecatonica Pavilion, a 120-bed retirement community in Pecatonica. Project cost: \$1,767,600.

Permit Issuance Date: March 21, 2011

Original Project Completion Date: March 31, 2012

Project Obligation Date: December 31, 2011

Proposed Project Completion Date: September 30, 2013 (18 months)
(First Permit Renewal)

Proposed Project Completion Date: March 31, 2015 (18 months)

(Second Permit Renewal)

Proposed Project Completion Date: September 30, 2016 (18 months)

(Third Permit Renewal)

V. Applicable Rules for Permit Renewal Requests

77 IAC 1130.740 specifies that a permit holder may request a change in the approved project completion date by applying for a permit renewal.

77 IAC 1130.740(b) states that failure to complete a project or to renew a permit within the prescribed timeframes will subject the permit holders to the sanctions and penalties provided in the Act and this Subpart.

77 IAC 1130.740(c) states that a permit renewal will commence on the expiration date of the original or renewed completion period.

77 IAC 1130.740(d) states that the State Board must be in receipt of a permit renewal request at least 45 days prior to the expiration date of the completion period, and include the following: 1) the requested completion date; 2) a status report on the project detailing what percent has been completed and a summary of project components yet to be finished and the amount of funds expended on the project to date; 3) a statement as to the reasons why the project has not been completed; and 4) confirmatory evidence by the permit holders' authorized representative that the project's costs and scope are in compliance with what the State Board approved and that sufficient financial resources are available to complete the project.

77 IAC 1130.740(e) states IDPH will review the request and prepare a report of its findings. If the findings are that the request is in conformance with all HFPB criteria, and if this is the first request for this project, then the request, IDPH's findings, and all related documentation shall be sent to the Chairman. The Chairman, acting on behalf of HFPB, will approve, deny or refer the request to the HFPB for action. If IDPH finds that all criteria are not positive or, if this is not the first request for this project, or if the Chairman refers this to HFPB for action, then HFPB will evaluate the information submitted to determine if the project has proceeded with due diligence (as defined in 77 IAC 1130.140). Denial of a permit renewal request constitutes HFPB's Notice of Intent to revoke a permit and the permit holders will be afforded an opportunity for an administrative hearing.

VI. Other Information

Appended to this report are the following: the permit holders' documents for a permit renewal.



FOLEY & LARDNER LLP

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March 28, 2015

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VIA FEDERAL EXPRESS AND EMAIL

MAR 30 2015

CLIENT/MATTER NUMBER
100284-0102

**HEALTH FACILITIES &
SERVICES REVIEW BOARD**

Mr. Michael Constantino
Project Review Supervisor
Illinois Health Facilities & Services Review Board
535 West Jefferson Street
Springfield, IL 62761-0001

Re: Third Permit Renewal Request for Project No. 10-031,
Pecatonica Pavilion (the "Project")

Dear Mr. Constantino:

We are counsel to Pecatonica Pavilion LLC (the "Permit Holder"). Pursuant to 77 Ill. Admin. Code § 1130.740, and on behalf of the Permit Holder, we are hereby submitting this permit renewal request for Project No. 10-031. This is the Permit Holder's third permit renewal request for Project No. 10-031 (the "Third Permit Renewal Request").

Background Facts

On May 19, 2010, the Permit Holder filed its original application (the "Original Application") for permit under the Illinois Health Facilities Planning Act seeking to establish and operate a forty six (46) bed skilled nursing unit, as part of a much larger 120 bed independent living, assisted living, and Alzheimer's continuing care retirement community ("CCRC"), in Pecatonica, Illinois. Pecatonica is a small rural community situated in western Winnebago County, and bordering Stephenson County, Illinois. Pecatonica does not currently have a skilled nursing facility in its town.

The Original Application was supported by a Market Feasibility Analysis conducted by Revere Healthcare, Inc. and contained 35 separate letters of support. The Original Application was backed by State elected officials representing the Pecatonica region, hospital administrators and executives, physicians serving the Winnebago County community, and 27 members of the public who sought a nursing care facility located in their rural community so that they would not be forced to later leave their home town.

On October 18, 2010, the Permit Holder filed a Type B Modification to the Application (the "Modified Application"), reducing the number of skilled beds from forty six (46) to twenty four (24) (the "Modified Project"). The Modified Application was filed after the Illinois Health Facilities & Services Review Board (the "Board") approved a ninety (90) bed skilled nursing facility in Freeport, Illinois, on July 27, 2010. See Project No. 10-007 (Manor Court of Freeport). Meaning, in light of the changing demand for services, the Permit Holder voluntarily chose to reduce the size of the Project. So, as of the Modified Application, the Permit Holder was proposing to establish and operate a twenty four (24) bed skilled nursing unit, as part of a much larger 120 bed CCRC (the "CCRC Development"). In other words, the skilled nursing beds would only constitute twenty percent (20%) of the beds in the planned CCRC Development.

The Modified Application stated that the Modified Project would cost \$1,767,400 (the "Permit Amount") and that the Modified Project would be completed on March 31, 2012 (the "Original Project Completion Date").

On March 21, 2011, the Permit Holder appeared before the Board and the Board unanimously approved the Modified Project. On March 24, 2011, the Board issued a permit letter for the Modified Project. Shortly thereafter, the Permit Holder began work on the overall CCRC Development (and the Modified Project). On December 30, 2011, the Permit Holder obligated the Modified Project as set forth in the Modified Application.

On or about April 26, 2011, Medina Nursing Center, Inc., Alpine Fireside Health Center, Ltd., Neighbors Rehabilitation Center, LLC, and Fairview Nursing Plaza, Inc. (the "Plaintiffs") filed a complaint for administrative review of the Board's approval of the Modified Project in the Circuit Court for the Seventh Judicial Circuit of Illinois, Sangamon County, case No. 2011 MR 000176 (the "Administrative Review Complaint"). The Plaintiffs are four competing skilled nursing facilities located in Winnebago County. Over the next few years, the Administrative Review Complaint worked its way through the Illinois judicial system, ultimately resulting in a decision from the Illinois Appellate Court on July 12, 2013 (the "Remand Order"). It should be noted that the Permit Holder vigorously challenged the Administrative Review Complaint in the Circuit Court and the Appellate Court and has incurred tens of thousands of dollars in legal fees in doing so. On September 25, 2013, the Board issued its Response to the Remand Order and offered strong and compelling support for the Board's approval of the Permit Holder's Modified Application.

On or about February 15, 2012, the Permit Holder filed its first permit renewal request for Project No. 10-031 (the "First Permit Renewal Request"), seeking to extend the Original Project Completion Date to September 30, 2013 (the "Extended Project Completion Date"). On February 28, 2012, the Board approved the Permit Holder's First Permit Renewal Request.

On or about September 27, 2013, the Permit Holder filed its second permit renewal request for the Modified Project (the "Second Permit Renewal Request"), seeking to extend the Extended Project Completion Date to March 31, 2015. The need for the Second Permit Renewal Request was mainly attributable to the delays and uncertainty caused by the Administrative Review Complaint. On November 5, 2013, the Board approved the Permit Holder's Second Permit Renewal Request.

Elements Required by 77 Ill. Admin. Code § 1130.740

As you know, 77 Ill. Admin. Code § 1130.740(d) requires a party seeking a permit renewal to provide the following information to the Board: (1) the requested completion date; (2) a status report on the project detailing what percent has been completed and a summary of the project components yet to be finished and the amount of funds expended on the project to date; (3) a statement as to the reasons why the project has not been completed; (4) evidence of financial commitment to fund the project; and (5) the anticipated final cost of the project. Based upon this information, the Board must ultimately conclude that the party seeking the permit renewal "proceeded with due diligence," as that phrase is defined at 77 Ill. Admin. Code § 1130.140. For the reasons set forth in this letter, the Permit Holder believes that it has established the necessary predicates for a permit renewal for the Modified Project.

Requested Completion Date

The Permit Holder hereby seeks an eighteen (18) month extension of the Extended Project Completion Date. More specifically, the Permit Holder requests a new project completion date of September 30, 2016.

Status of the Project; Components Yet to be Finished; Reasons for Delay

As stated above, the Permit Holder obligated the Modified Project on December 30, 2011.

The Permit Holder has: (1) leveled and excavated the Modified Project Site (and the entire site for the CCRC Development); (2) completed all of the engineering for the Modified Project; (3) completed the final architectural drawings for the Modified Project; (4) installed electric service for construction trailers and administration on the Modified Project Site; (5) installed transformer, cable, meter and distribution for 110 volt service for the Modified Project Site; (6) initiated EPA requirements toward maintaining the Modified Project Site for building and equipment; (7) graded and maintained drainage, storm water inlets and curbing on the Modified Project Site; (8) surveyed, dug to, and located water service lines on the Modified Project Site to accommodate fire and sanitary water lines onto the Modified Project Site; (9) installed new utility services throughout the Modified Project Site (including, electric, telephone, and cable); (10) disconnected and/or removed "old" service lines from the Modified Project Site;

(11) controlled illegal and vandalized dumping at the Modified Project Site by daily monitoring and cleanup/removals; and (12) conducted local public seminars and discussions regarding the status of the Modified Project.

At this point, the Permit Holder has spent nearly \$2,000,000 in funds attributable to the entire CCRC Development. And the Permit Holder has obligated 100% of the \$1,767,400 in funds committed in the Modified Application for the Modified Project.

That all said, the need for this Third Permit Renewal Request is mainly attributable to the delays associated with the financing for the CCRC Development (of which the Modified Project is a component). Those delays were caused, in part, by the Administrative Review Complaint and the various court rulings and appeals (which created an inordinate amount of consternation and follow-up analysis by the Permit Holder's lenders and lenders' appraisers) and, in part, by delays associated with the EB-5 component of the financing of the Modified Project (of which the Modified Project is a component). The United States Department of Homeland Security, Office of United States Citizenship and Immigration Services (the "Immigration Office") administers the Immigrant Investor Program (also known as the "EB-5 Program"), which was created by the United States Congress in 1990 to stimulate the US economy through job creation and capital investment. The Immigration Office has been overwhelmed with EB-5 Program applications and the processing of EB-5 Program applications associated with the financing for the CCRC Development (of which the Modified Project is a component) has taken longer than expected.

Fortunately, the Permit Holder's transaction counsel, Mr. David Waggoner of the Waggoner Law Firm, and the Permit Holder's lender have been able to navigate around the Immigration Office delays and the financing for the CCRC Development (of which the Modified Project is a component) is scheduled to close on **April 24, 2015**. To that end, \$3,500,605 has already been deposited into Chicago Title & Trust Company, Escrow Account Number DIF 201314327, to serve as an escrow for the financing transaction (which covers both the CCRC Development and the Modified Project). See the attached Affidavit of George Anderson (the "Anderson Affidavit"), Chief Executive Officer for the Permit Holder, in support of the aforementioned statements.

Evidence of Financial Commitment to Fund the Project

The Modified Project will continue to be funded as originally approved by the Board. See the attached Anderson Affidavit as support for this element.

Mr. Michael Constantino
Third Permit Renewal Request for Project No. 10-031
March 28, 2015
Page 5

Anticipated Final Cost of the Project

The Permit Holder believes that the final cost of the Modified Project will be within the Permit Amount of \$1,767,400.

Conclusion

Accordingly, the Permit Holder believes that it is entitled to a permit renewal for the Modified Project on the terms set forth in this letter. If you need any other information, please call. The Permit Holder has also sent, under separate cover, a check in the sum of \$1,000 to cover the processing fee.

Sincerely,



Edward J. Green

cc: George Anderson, Pecatonica Pavilion LLC
Grant Shumway, Revere Healthcare Ltd.

Pecatonica Pavilion LLC

March 27, 2015

Mr. Michael Constantino
Project Review Supervisor
Illinois Health Facilities & Services Review Board
535 West Jefferson Street
Springfield, IL 62761-0001

Re: Third Permit Renewal Request for Project #10-031
Pecatonica Pavilion (the "Project")

Dear Mr. Constantino:

I hereby certify, under penalty of perjury as provided in § 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, and pursuant to 77 Ill. Admin. Code § 1130.740(d)(4), to the following:

1. All of the statements and information set forth in the Third Permit Renewal Request filed by Pecatonica Pavilion LLC (the "Permit Holder") are true and correct.

2. The need for the Third Permit Renewal Request is mainly attributable to the delays associated with the financing for the CCRC Development (of which the Project is a component). Those delays were caused, in part, by the Administrative Review Complaint and the various court rulings and appeals (which created an inordinate amount of consternation and follow-up analysis by the Permit Holder's lenders and lenders' appraisers) and, in part, by delays associated with the EB-5 component of the financing of the CCRC Development (of which the Project is a component). The United States Department of Homeland Security, Office of United States Citizenship and Immigration Services (the "Immigration Office"), administers the Immigrant Investor Program (also known as the "EB-5 Program"), which was created by the United States Congress in 1990 to stimulate the US economy through job creation and capital investment. The Immigration Office has been overwhelmed with EB-5 Program applications and the processing of EB-5 Program applications associated with the financing for the CCRC Development (of which the Project is a component) has taken longer than expected.

3. The Permit Holder's transaction counsel, Mr. David Waggoner of the Waggoner Law Firm, and the Permit Holder's lender have been able to navigate around the Immigration Office delays and the financing for the CCRC Development (of which the Project is a component) is scheduled to close on April 24, 2015. To that end, \$3,500,605 has already been deposited into Chicago Title & Trust Company, Escrow Account Number DIF 201314327, to serve as an escrow for the financing transaction.

4. The Permit Holder has sufficient and readily accessible funds to complete the above-referenced Project.

Sincerely,



George Anderson
Chief Executive Officer

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May 12, 2015

FEDERAL EXPRESS

Ms. Courtney Avery, Administrator
Health Facilities and Services Review Board
525 West Jefferson Street, Second Floor
Springfield, Illinois 62761

**Re: Public Comment Opposing Third Renewal Request for Project # 10-031,
Pecatonica Pavilion**

Dear Ms. Avery:

Medina Nursing Center, Inc. ("Medina") and Alpine Fireside Health Center, Ltd. ("Alpine Fireside") object to the proposed **Third** Permit Renewal Request ("Third Renewal") related to Project # 10-031, Pecatonica Pavilion ("Project"). They respectfully request that the Health Facilities and Services Review Board ("HFSRB" or "Board") deny the renewal request.

There are four core issues with regard to the status of the Project:

1. The Project cannot exhibit the necessary due diligence because, as evinced by their own documentation, nothing has been achieved since the last permit renewal was granted;
2. There are substantial questions about the financing, including who is providing the financing and whether the Permit Holder has improperly altered the Project without Board approval;
3. It appears that over four years after approval, despite claiming to have spent over \$2,000,000, virtually nothing has been achieved regarding the establishment of the Project; and
4. There still is not a need for the Project – even less than when the Project was originally approved – which is why Medina and Alpine Fireside continue to voice their opposition to the Project.

Ms. Courtney Avery, Administrator
May 12, 2015
Page 2

The first issue is evident from a review of the documentation submitted by the Permit Holder, as well as the documentation not submitted. Despite being approved in March 2011, this Permit Holder has only submitted two annual reports. This is a violation of HFSRB regulations and, upon information and belief, it is our understanding that, in the interim, the Permit Holder both agreed to and failed to abide by the terms of the Consent Agreement with the Board regarding this conduct.

Regardless, even a cursory review of the two annual reports which have been filed (one in October 2013 and the other in March 2015) reveals the two documents to be virtually identical. The only new information contained in the 2015 annual report is information about the new financing arrangement the Permit Holder claims to have secured.¹ The 2015 report contains even less information about the costs incurred to date than does the 2013 report.

In 2013, the Permit Holder claimed to have spent nearly \$2,000,000, \$400,000 of which would be attributable to the Project. In 2015, the Permit Holder claims to only have obligated the funds necessary for the Project. The Permit Holder's own documentation calls into substantial question what, if anything, has been achieved over the last two years?

The March 2015 description of the status of the Project simply restates several of the items that were already identified as completed in the October 2013 documentation. Further, the Permit Holder is including "local public seminars and discussions about the status of the project" as progress that has been made. This is more akin to conduct that takes place prior to HFSRB approval than a status report regarding the construction of a skilled nursing facility.

There Are Substantial Questions About The Financing

The status of the financing for the Project is, unusually, a secondary question (although relevant to obtaining a **third** permit renewal). The primary question is why the Permit Holder altered the Project by modifying the financing without obtaining approval from the Board?

Financing Timeline

- The initial application was submitted on May 19, 2010 and proposed financing in the amount of \$18,595,253 through a "40 year nonrecourse HUD insured loan."
- The application was modified on October 18, 2014 and approved March 21, 2011 with \$16,315,713 in the form of a "HUD 30 year nonrecourse USDA loan."

¹ It is discussed more fully below that changing financing in this manner may constituted an improper alteration of the Permit.

Ms. Courtney Avery, Administrator
May 12, 2015
Page 3

- The Second Permit Renewal Request (“Second Renewal”) was submitted on September 27, 2013.

In the Second Renewal, the Permit Holder informed the Board that in the prior days, the Permit Holder was at a point of having to consider withdrawing the Project. However, the Permit Holder then represented that it had “spent the past few days working with its lenders and equity supporters and **has obtained the necessary commitments to continue to fund the CCRC Development (and the Modified Project) through its conclusion.**” This language would seem to suggest that the Permit Holder was working with financing other than a “HUD 30 year nonrecourse USDA loan.” Regardless, the Board approved the Second Renewal.

- The Third Request was received on March 30, 2015.

The Third Request introduces an entirely new financing structure. For the first time, there is a discussion regarding delays caused, in part, by the United States Department of Homeland Security and its administration of the EB-5 component of the Immigrant Investor Program for financing the Modified Project.

Improper Alteration

The Project was approved with a “HUD 30 year nonrecourse USDA loan.” If the Permit Holder has abandoned its original source of approved financing and is now pursuing alternative financing, this constitutes an alteration of the Project and requires either Board notice or Board approval. Depending on the structure of the financing and the interest being obtained (or how it is secured), it is possible that this new financing could invalidate the permit by introducing a necessary co-applicant that was not part of the Project as approved. To date, no information has been provided to the Board and made part of the public record to explain the new financing arrangements, nor has an application to alter the Project been submitted.

Overall Status of the Project

The most relevant question is the status of the nursing home that is supposedly being built in Pecatonica? It has been over four years since the Project was approved. The Permit Holder continues to argue delay caused by the administrative review case, but it has been over two years since the case was argued in the Appellate Court.

A picture is worth a thousand words, so we have attached a series of pictures (Exhibit A) that show the site (as of mid-April 2015) upon which the Permit Holder claims to have spent \$2,000,000 developing a skilled nursing facility and continuing care retirement community. Additionally included is a Google Map aerial image of the intersection (Exhibit B) simply to illustrate that the photo depicting the corner of 7th and Grove is the same intersection as Sumner

Mark Silberman Opposition Comments

Ms. Courtney Avery, Administrator
May 12, 2015
Page 4

and Grove where the proposed facility is to be located. We make no representation as to the timeframe reflected in the Google image.

This Project cannot evidence the due diligence necessary to warrant a permit renewal. The Permit Holder has failed to inform the Board about the status of its financing, failed to keep the Board informed about the status of the Project, and failed to take any meaningful steps towards the construction of the Project.

We would respectfully ask the Board to **deny the Third Permit Renewal Request** for Pecatonica Pavilion.

Best regards,

A handwritten signature in black ink, appearing to read 'Mark J. Silberman', with a large, stylized flourish at the end.

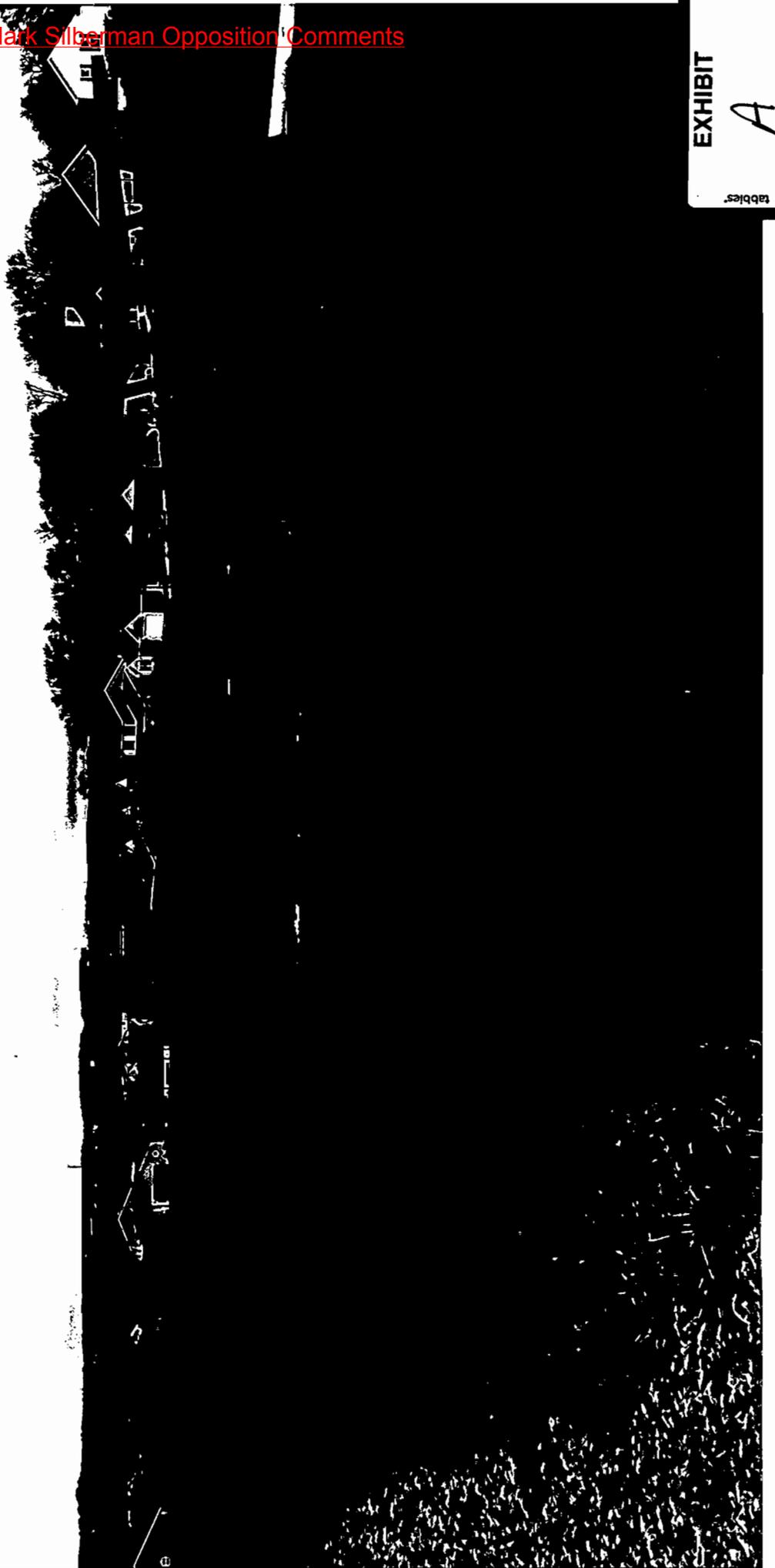
Mark J. Silberman

MJS

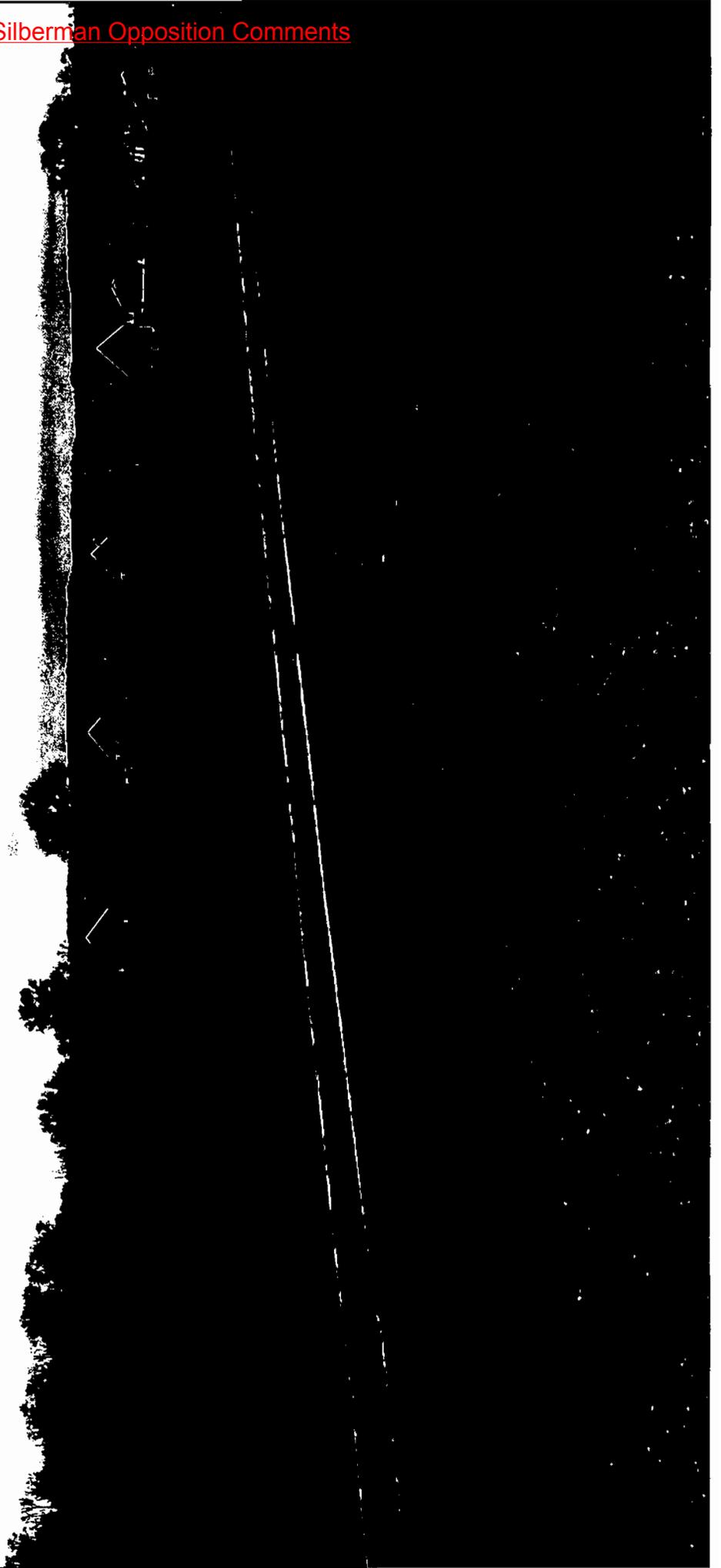
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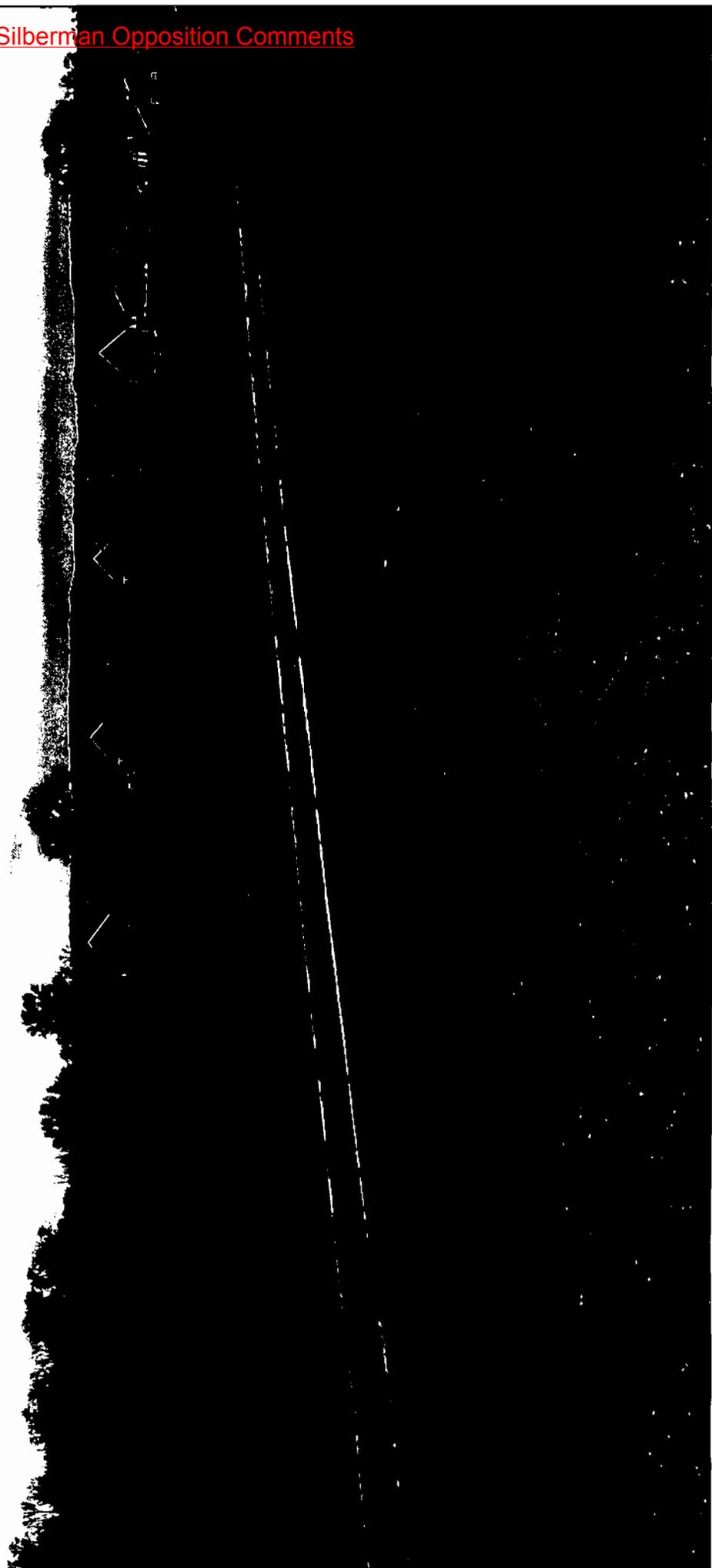
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Mark Silberman Opposition Comments



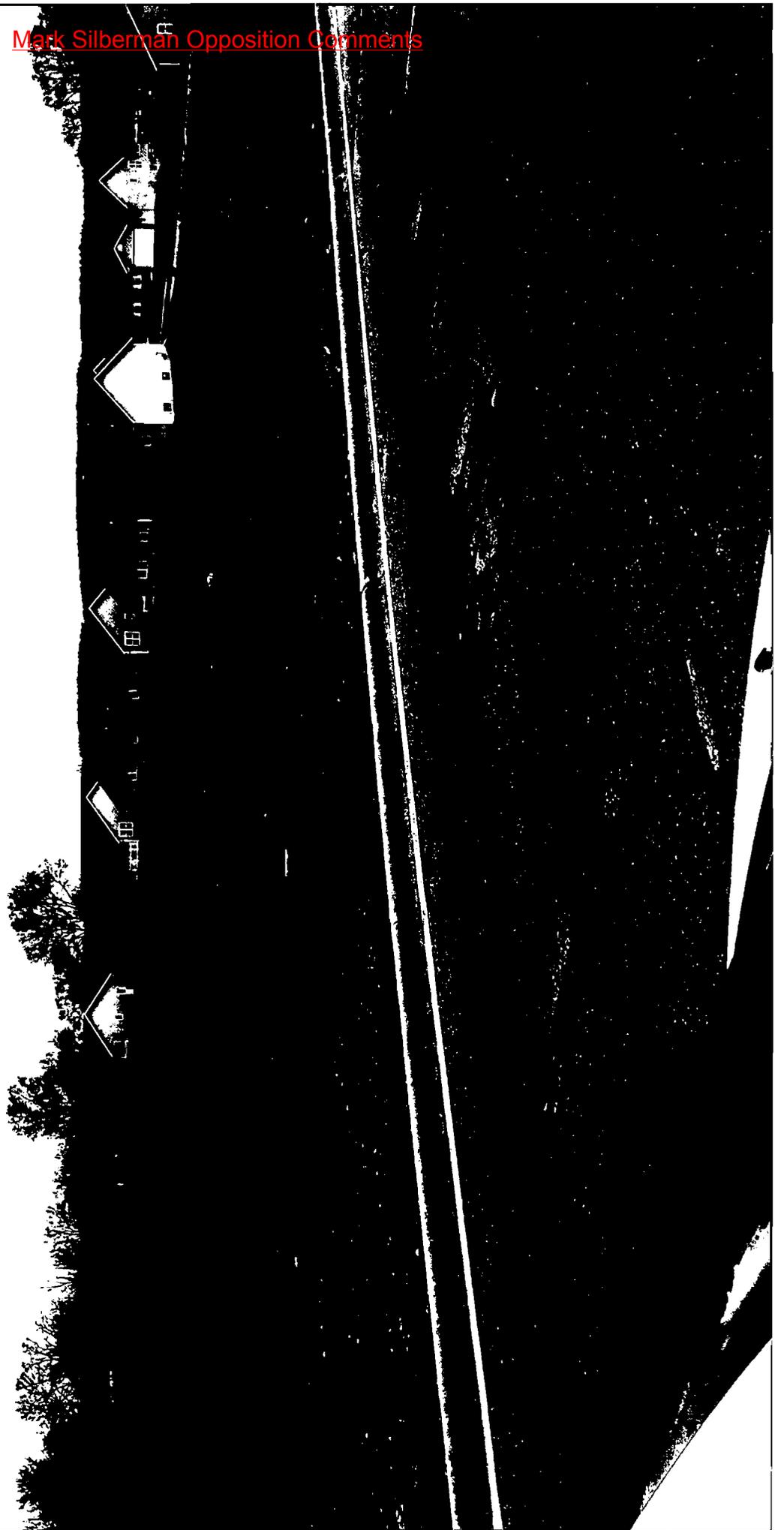
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