

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND

-----X
: PETITION OF Case No. G-910
: TOWNE CREST APARTMNTS, LLC
: -----X

A hearing in the above-entitled matter was held on February 15, 2013, commencing at 9:30 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Lynn A. Robeson
Hearing Examiner

A P P E A R A N C E S

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Opening Statements: Page

Stephen Z. Kaufman, Esq. 8

David W. Brown, Esq. 16

Witnesses: Direct Cross Redirect Recross

Stacy Hornstein	18	60	--	--
Charlene Deloatch	66	68	70	--
Dave Ager	72/147	79	82	136
Barbara Goldberg-Goldman	128	133	--	--
Wilson Mancilla	151/156	--	--	--
Trini Rodriguez	157	184	197	--
Ronald Seiboth	198	222	--	--

P R O C E E D I N G S

1 MS. ROBESON: I'm going to call the case of Local
2 Map Amendment Application No. G-910, which is the
3 application of Towne Crest Apartments, LLC, requesting
4 rezoning from the R-30 and R-T 12.5 zones to the PD-35 zone
5 on property located at 17500 Towne Crest Drive,
6 Gaithersburg, Maryland, and further described as Towne Crest
7 Parcel A.

8 My name is Lynn Robeson. I am the hearing
9 examiner. I will be taking testimony and evidence in this
10 case. I will write a report and recommendation to the
11 County Council who will make a final decision based on the
12 evidence taken here today. So whatever you want to say in
13 the case, you should say it during these hearings.

14 Now we do have a sign language interpreter here today, two
15 sign language interpreters. And what I would like to do
16 now, if both of you could stand. Well, you're standing, but
17 if -- I'm going to ask you some questions and then have you
18 take an oath.

19 MR. MCCLEARY: Okay.

20 MS. ROBESON: Okay? Could each of you state your
21 name and business address for the record?

22 MR. MCCLEARY: My name is Joseph McCleary and I
23 work for a company called PCS out of Rockville, Maryland. I
24 can't think of the address off the top of my head --
25

A P P E A R A N C E S (continued)

Exhibits Marked/Entered

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1 MS. ROBESON: That's -- yes.

2 MS. YOKUM: My name is Jessica Yokum, and I also
3 work for PCS Associates in Rockville.

4 MS. ROBESON: Okay. And can you please describe
5 your qualifications?

6 MR. MCCLEARY: I have a national certification
7 through the Registry of Interpreters for the Deaf and I've
8 been a working sign language interpreter for nine years.

9 MS. ROBESON: Okay. And Ms. Yokum?

10 MS. YOKUM: I also have a national certification
11 through the Registry of Interpreters for the Deaf and I've
12 been working for the past three years as a professional sign
13 language interpreter.

14 MS. ROBESON: Thank you. And do you, do either of
15 you have any personal or professional affiliation, to your
16 knowledge, with the applicant, those opposing the
17 application, or with the property?

18 MR. MCCLEARY: I do not.

19 MS. YOKUM: I do not, as well.

20 MS. ROBESON: Okay. Please raise your right
21 hands. Well, do you want to do this one at a time?

22 MR. MCCLEARY: We can do it at that the same time.
23 That's fine.

24 (Interpreters sworn.)

25 MS. ROBESON: Thank you very much.

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1 MR. MCCLEARY: Can I say something? I'm the
2 person who they're working with. We also have a student
3 from Gallaudet University who is with our interpreters, as
4 well.

5 MS. ROBESON: Thank you. Just a word about these
6 proceedings. They are informal, but they do have certain
7 formalities. All testimony is under oath and subject to
8 cross-examination. There is an order to the hearing: the
9 opening arguments, beginning with the applicant; the
10 applicant's case; the opposition's case; the applicant's
11 rebuttal; and closing statements.

12 For those of you, there is, there are standards
13 for evidence here and testimony. I have the option of
14 excluding repetitive testimony or testimony that is
15 irrelevant to the case. This case is governed by the legal
16 standards set forth in the zoning ordinance and they're
17 summarized in the staff report. Your testimony -- those
18 standards and that's, that determination's relevance will be
19 based on whether or not it's relevant to meeting those
20 standards. Is there anyone here that opposes the
21 application that is not represented by counsel?
22 (No response.)

23 MS. ROBESON: All right. Is there anyone in
24 support of the application that is not represented by
25 counsel? One person. Okay.

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1 Will the parties please identify themselves for
2 the record? You don't have to stand.

3 I'm used to that in the courtroom, so good
4 morning, Madam Examiner. My name is Steve Kaufman. I'm a
5 partner at the law firm of Linowes and Blocher. Appearing
6 with me is Erin Girard, another partner in our firm. We
7 will be sharing duties in both questioning and presentation
8 during this proceeding. And, you know, I'll let you know or
9 we'll let you know who is going to do each witness's
10 questioning.

11 With me to the right is our client, a
12 representative of our client, Mr. Stacy Hornstein. Mr.
13 Hornstein is, excuse me for just a second, he is looking for
14 his qualifications. Mr. Hornstein is the senior vice
15 president and director of acquisitions and development for
16 the applicant.

17 MS. ROBESON: Okay.

18 MR. KAUFMAN: And he will be my, he will be my
19 first witness.

20 MS. ROBESON: Okay. Mr. Brown?

21 MR. BROWN: Good morning. It's David Brown of
22 Knopf & Brown. I represent the town of Washington Grove in
23 this matter. We will have as witnesses that I will, that
24 the town will be sponsoring certain individuals within the
25 town, but beyond that I am not representing any individuals

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1 who may elect to appear from the town either in favor or in
2 opposition --

3 MS. ROBESON: All right.

4 MR. BROWN: -- to this matter.

5 MS. ROBESON: All right. Thank you for that
6 clarification. Now out of an abundance of caution, I am
7 going to let everyone know that I was an associate with the
8 law firm that is representing the applicants, the applicant
9 today, Linowes and Blocher, and at the risk of revealing my
10 true age, I had to calculate this out, but I left in 1994.
11 So I'm not going to calculate it out for you, but it has
12 been quite a period of time. If anyone has an objection to
13 that, I'm disclosing it for the record. I have worked for
14 both Government and private sector for whatever amount of
15 time since then.

16 All right. Are there any other preliminary
17 matters?

18 MR. KAUFMAN: We do have the affidavit of posting.

19 MS. ROBESON: Well, let's do that when we get to
20 your, to, until I get to a sworn, somebody sworn, okay? All
21 right. Opening statements?

22 MR. KAUFMAN: Yes, I have an opening statement.
23 Forgive me for standing, but that's what I'm used to doing.

24 MS. ROBESON: You're making me uncomfortable.

25 MR. KAUFMAN: Well, first of all, let me just say

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1 that we're pleased to represent this applicant and that this
2 case, as you will see, has quite bit of support, although it
3 does have significant opposition. This is an application
4 for PD-35, 229 units. The current property is on 11, 8.11
5 acres and has approximately 107 units on it.

6 I think that what I'd like to have you focus on,
7 and as you will see from the testimony, this is really a
8 tale of two communities, a tale of two neighborhoods. The
9 primary opposition to this is people from the town of
10 Washington Grove. And as you will see from their testimony,
11 they believe that this is their, the community is in fine
12 shape and they like the atmosphere that they have, and they
13 feel that this application, if it is approved, will have a
14 detrimental impact on their community and on the, what they
15 refer to as the West Woods, which is a tree, a stand of
16 trees immediately to the west of the subject property.

17 Now I'd like to read very quickly from one of
18 their letters which was written by Reverend Joseph M. Clark,
19 which pretty well describes their position. And this is
20 what he says in part, and this is Exhibit 90D. "Currently
21 the neighborhood around Towne Crest is stable. The proposed
22 redevelopment will destabilize and harm our community."
23 That's pretty well the position of the opposition and the
24 residents of the town of Washington Grove.

25 Contrary to that, you have the position of the

1 people who primarily support this application, which are in
2 the communities immediately to the east of the subject
3 property if you look at the exhibit and you can see the
4 subject property. Immediately to the east are two townhouse
5 communities --

6 MS. ROBESON: Exhibit No. 10?

7 MR. KAUFMAN: Which is, which are Wedgewood 1 and
8 Wedgewood 2. And contrary to the position of the town of
9 Washington Grove, they feel that the situation is dire and,
10 in fact, that this application is needed and will help them
11 revitalize their community and provide amenities and other
12 things that will put this community onto a path of a much
13 better environment.

14 And I would like to read to you portions of two
15 letters that you received from them. The first one is from
16 the board of the Wedgewood 2 community and is written and
17 signed by all the board members, one of which is present
18 today and that is Shirley Deloatch, I'm not sure I'm
19 pronouncing it right, D-E-L-O-A-T-C-H, and she's in the
20 audience today and she is the lady that raised her hand that
21 was in support. And this is, in part, from their letter
22 which was Exhibit 96.

23 The signatures of this letter are the duly elected
24 and legal representatives of the 83 members of the Wedgewood
25 Court Townhouse Community, Association No. 2. This letter

1 was written in part in support and in part to address one of
2 their residents who is opposed, and indicating that that
3 particular person doesn't speak for the community, but the
4 board does. And what this letter says in part, "Our
5 community is truly a diverse community, including Hispanic,
6 black African and North African, Caucasian and Asian,
7 including Chinese, Japanese and Koreans. We are a community
8 of hard-working families.

9 While Washington Grove is a very idealistic place
10 to live, within 100 feet of its borders is a whole area of
11 depressed housing and high crime. While we understand
12 Washington Grove's desire to maintain its beaucolic setting
13 and trees, we support the effort to maintain as many trees
14 as possible. We do believe that it should not be solely at
15 our expense. Besides the numerous meetings with our
16 association, we understand that the developer has met with
17 our adjoining association, Wedgewood 1, who we also
18 understand supports the project. The developer has received
19 unanimous support in the form of a resolution from the city
20 of Gaithersburg.

21 As you can tell from the tone of this letter, we
22 are upset and we would like the record to be clear.
23 Wedgewood 2 supports the rezoning application No. G-910.
24 And please do not be swayed by one person who does not speak
25 for our community." That's from Wedgewood 1.

1 MS. ROBESON: Two?

2 MR. KAUFMAN: I mean Wedgewood 2. Then there's
3 also a letter that I'd like to read from which is Exhibit
4 98C. And this is a resident of the community of the
5 Wedgewood community. And I want to apologize up front
6 because it's often in broken English. This obviously is a
7 person who has come to our shores, a hard-working person.

8 "I am a resident of the Wedgewood Court community
9 since 1992 and I also belong to the board member, Wedgewood
10 2, but this moment I want to give individual opinion about
11 the redevelopment of the Towne Crest apartment. For me, do
12 I come to this country looking for better opportunity and
13 better place to live and I did found the perfect place right
14 here. I want to see, like my neighbors, attractive place
15 where children have the opportunity to grow up in decent and
16 better environment and not to grow up," I'm sorry, "And not
17 to grow up seeing how Towne Crest apartment felt down in
18 place because of years in making damage on it and make it
19 look, the rest of the adjacent neighborhood, poor place to
20 live.

21 I have the dream to see my house, like my
22 neighbor's house, re-valuate in the market, not de-valuate.
23 I am sure this new redevelopment will bring better benefit,
24 better environment to everyone. I understand that across
25 the street don't want to see our community improve, but with

1 respect I want them to know let us decide what is good or
2 bad for us. My decision to support Towne Crest apartment
3 new development is now for us and on behalf of our
4 children's future."

5 So the reason I read these letters, and if you'll
6 excuse me as I clear my throat a little bit, the reason I
7 read these letters, as you can see, you really have a vision
8 of two communities very different. And, of course,
9 Washington Grove is immediately to the west and they have
10 this stand of trees which does in many ways buffer and
11 protect them. But the people who are most directly
12 affected, the people to the east, feel that not only is this
13 a good application, but that it's needed to revitalize their
14 community. So you will see a lot of this throughout the
15 testimony.

16 Then there are the other usual issues in this
17 zoning case. There are the issues of is there enough green
18 area? Is the traffic going to be a problem? And I think
19 you'll find from the testimony that of all the issues, the
20 lease troubling is traffic in this particular, which is
21 usually a very big issue.

22 All right. You also, you'll also be treated, I
23 guess is the right word, to discussion of a master plan
24 which is now the second oldest master plan in Montgomery
25 County, originally approved in 1971 and modified in 1985.

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1 The recommendation for this property, however, was made in
2 1971. And it's important to note that the existing
3 subdivision was built just before the master plan came out.
4 And so there really is no recommendation in this master
5 plan. The master plan is 28 years old, but the
6 recommendation is over 40 years old for anything other than
7 what's there built today.

8 But one of the interesting things that you're
9 going to find when you hear testimony about this master plan
10 is that the approach was not on individual properties. It
11 was in areas. This particular area, which is area 2, was
12 recommended at that time for what was considered multi-
13 family and the highest densities in the County, which today
14 would be considered single family densities of mid-range.
15 This is a very important issue because it's one that
16 controlled the Planning Board's recommendation of denial.

17 I'm sure you've read the record and the record
18 indicates that the planning staff was very much in support
19 of this and felt that the master plan should be given little
20 weight because it was so old. However, in front of the
21 Planning Board, I mean in front of the Planning Board, the
22 chairperson focused in on just the master plan
23 recommendation. And all there is, there is a lot of
24 testimony in the record from other members of the Board
25 basically said we can't approve this not because we don't

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1 like it, but because it's not in agreement with the master
2 plan. And I would just point out, as I'm sure you know,
3 master plans are statement of policy to begin with. They're
4 not statutes. They're one of many things to be considered.
5 So this is something that I think throughout that you will,
6 you will find an interesting debate.

7 Other areas in terms of required setbacks and
8 green areas, all those things are issues that have been
9 raised by the opposition and will be addressed by our
10 witnesses. And then the last thing I'd like to point out,
11 and it's very timely and this will be presented as part of
12 our testimony, the Capital of Governments recently came out
13 with an analysis of what the area, the regional need in the
14 way of housing in the next 10 to 15 years. And
15 interestingly enough, with regard to Montgomery County,
16 their estimate is that there's a shortage, excuse me, of
17 85,000 housing units in the next 10 to 15 years. And one of
18 the biggest deficits is in affordable housing.

19 And this application is not just an application to
20 renew and regenerate a project, a multi-family project which
21 is now functionally obsolete, but it's also to maintain a
22 stock of affordable housing. Not only will there be a
23 maximum number of MPD used in this project, which will be 15
24 percent, which by the way the applicant is not looking to
25 use the bonus in terms of propensity, but the entire project

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1 will be affordable, affordable based upon the incomes of
2 what are MPDU and work force housing median incomes are in
3 the County. So that will stop and we'll present our case.
4 Thank you very much.

5 MS. ROBESON: Mr. Brown.
6 MR. BROWN: I'll try to be very brief, Ms.
7 Robeson. The town, Washington Grove, kept an open mind and
8 worked closely with the applicant in reviewing various plans
9 as this project moved down in density from PD-60 to PD-44,
10 and now to PD-35. And I have to say that my client is one
11 that is not a NIMBY sort of client. They are a public body
12 and they understand how, that things can change. And, in
13 fact, you will find in our presentation in this case that we
14 will be presenting testimony not that this property should
15 stay as it is or not be redeveloped, but that it should be
16 redeveloped at a lesser density, something in the range of
17 200 units rather than 329 units.

18 So one of the questions I think you ought to focus
19 on from the point-of-view of hearing the testimony about the
20 proposed benefits of this redevelopment is whether or not
21 those benefits are achievable at a lesser density than 329.
22 And the reason I stress the importance of that is because
23 the very first sentence of Section 59C7.11, the purposes of
24 the plan development zone says the following, quote: "It is
25 the purpose of this zone to implement the general plan for

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1 the Maryland-Washington regional district and the area
2 master plans by permitting unified development consistent
3 with densities proposed by master plans." Density is the
4 very first consideration under the purpose of the zone.

5 And what did the Planning Board find in this case?
6 I couldn't summarize our position any better than the
7 Planning Board did at page 2 of its report where they said,
8 "The Board finds that the proposed re-zoning and development
9 plan are so starkly inconsistent with the densities
10 enumerated in the master plan which specifically recommends
11 eight to 15 units per acre, that they should not be approved
12 as submitted. Although the Planning Board recognizes that
13 the applicable master plan is 27 years old and that the
14 condition of the existing aging development would make
15 redevelopment of the site at an appropriate density very
16 appealing, the Board is not persuaded by the applicant's
17 reasoning that the age of the plan and relative proximity to
18 transit justify a density approximately three times what the
19 master plan recommended."

20 We will amplify on that recommendation with our
21 testimony both from our land use planning expert, Joe Davis,
22 as well as the various citizens that I will be, asked to
23 testify in opposition to the project. And notwithstanding
24 Mr. Kaufman's efforts to characterize the position of the
25 town through a letter from a citizen that I do not

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1 represent, we are, we have very appropriate and constructive
2 concerns that we are not trying to stop a project from going
3 forward, but we just want a project to go forward that is
4 consistent with the various requirements for the PD zone
5 density just being the first of many. Thank you very much.
6 MS. ROBESON: Thank you. Mr. Kaufman or Ms.
7 Girard, please call your first witness.
8 MR. KAUFMAN: Yes. Our first witness will be Mr.
9 Stacy Hornstein.
10 MS. ROBESON: Mr. Hornstein, please raise your
11 right hand.
12 (Witness sworn.)
13 DIRECT EXAMINATION
14 BY MR. KAUFMAN:
15 Q Mr. Hornstein, please state your full name and
16 address.
17 A Stacy Hornstein. Business address is 1280
18 Maryland Avenue, Washington, D.C.
19 Q And what is your occupation and how long have you
20 been engaged in it?
21 A I am a real estate developer and have been doing
22 real estate development my entire career.
23 Q All right.
24 A Over 40 years.
25 MR. KAUFMAN: We're going to give you, Madam

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1 Examiner, his resume.
2 MS. ROBESON: Well, are you qualifying him as an
3 expert?
4 MR. KAUFMAN: Yes, I am going to try to qualify
5 Mr. Hornstein as an expert in development and real estate
6 development.
7 MS. ROBESON: Okay. I generally do not qualify
8 someone who has a conflict of interest, you know, who has a
9 personal interest in the case. That's not really what an
10 expert for the purposes of a hearing, a quasi-judicial
11 hearing does. You can submit your, the resume. I don't
12 have a problem submitting the resume if you want to bolster
13 the credibility of his testimony.
14 MR. KAUFMAN: That's fine.
15 MS. ROBESON: Okay. So I'm going mark this as --
16 do you have an objection, Mr. Brown?
17 MR. BROWN: I think your approach is eminently
18 appropriate, Ms. Robeson. Thank you.
19 MS. ROBESON: Resume, 103, resume of Stacy
20 Hornstein. All right.
21 (Exhibit 103 was marked
22 for identification.)
23 BY MR. KAUFMAN:
24 Q All right. Well, with that, Mr. Hornstein, would
25 you give us a little bit of history of your background and

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1 your past experience in this field?
2 A I initially started my career as a public official
3 in Dade County, Florida. I had primarily responsibility for
4 development of public projects, parks, fire stations, police
5 stations and so on and handled over 200 zoning cases. I did
6 that for 13 years of my life. I moved to Washington, D.C.
7 and engaged with a real estate development firm that
8 specialized in mixed use projects and retail. We did things
9 as creative as Potomac Mills where I was development
10 director, on to housing on Pennsylvania Avenue at Market
11 Square and I've been doing, working with them on and off for
12 about the last 30 years.
13 Q And what is your role with the Towne Crest
14 Apartments, LLC?
15 A Towne Crest is a family-owned property owned by
16 the Kramer family. Melvin and Lillian Kramer developed this
17 property in the '60's and Mr. Kramer has passed away and
18 Mrs. Kramer has now moved to Boca Raton and has basically
19 turned the property over to their children. And the
20 children have engaged our company to help redevelop this
21 property and bring it to contemporary standards.
22 Q And could you give us a little bit of the history
23 of the Towne Crest Apartments? I believe it was built in
24 the late '60's?
25 A It was built in the late '60's. Mr. Kramer, who

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1 was a developer himself, actually purchased the property and
2 subdivided it into the three communities that are there
3 today; the Towne Crest community, Wedgewood 2 and the
4 Wedgewood 1. In recent years, he recently passed away. It
5 is fallen in a little bit of lack of attention just given
6 the age of the family. But Mr. Kramer's son, Richard, who
7 is the primary force of our development company and our
8 development company is owned by Mr. Kramer, has started to
9 pay more attention to this property now that he's been given
10 control of it by his mother.
11 Q I see. And can you, using Exhibit 10, which I
12 believe is up on the -- can you identify the property, the
13 existing conditions and the surrounding area?
14 A This is the property here, 841 Acres, the
15 Wedgewood 1 and the Wedgewood 2 communities over here. We
16 have the stand of trees in Washington Grove which is
17 identified. We have the MARC station approximately .6 miles
18 away from the site. We have the ICC. We have Mid-County
19 Highway and Washington Grove Lane.
20 MS. ROBESON: Now the ICC is marked 200 on that
21 exhibit?
22 MR. HORNSTEIN: Yes.
23 MS. ROBESON: That building?
24 MR. HORNSTEIN: That's correct. And it ties in up
25 on Shady Grove Road. But the MARC station, we have the town

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1 of Gaithersburg, which is to the north, and the Saybrooke
2 community homeowners which is immediately to the left.
3 BY MR. KAUFMAN:
4 Q Okay. And I'd like you to take a look at these
5 pictures and tell me if you can identify them?
6 MS. ROBESON: Are these in the record?
7 MR. KAUFMAN: Yes.
8 MR. HORNSTEIN: These are images of --
9 MS. ROBESON: Just a second. I'm going to mark
10 these as Exhibit 104, 104A through D.
11 (Exhibit 104 was marked
12 for identification.)
13 MS. ROBESON: Now can you, Mr. Brown, do you have
14 any objections to these coming in at this point?
15 MR. BROWN: No, obviously they're, they could have
16 been submitted earlier, but I'm not going to, I'm not going
17 to try and interpose technical objections like that today.
18 Thank you.
19 MS. ROBESON: Thank you. All right.
20 MR. KAUFMAN: Well, can you --
21 MS. ROBESON: Go ahead, Mr. Hornstein.
22 BY MR. KAUFMAN:
23 Q -- identify the pictures that you were, first of
24 all, were these pictures taken at your request?
25 A They were. Actually --

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1 Q And what do they represent?
2 A This is, these four images --
3 MS. ROBESON: Did you take these pictures?
4 MR. HORNSTEIN: I did.
5 MS. ROBESON: You what?
6 MR. HORNSTEIN: I did.
7 MS. ROBESON: You did?
8 MR. HORNSTEIN: I did. I took these. These are
9 just four examples of what this property looks like today.
10 The first one is --
11 MS. ROBESON: Well, just before you get there,
12 when did you take these?
13 MR. HORNSTEIN: Within the last couple months.
14 MS. ROBESON: And do they fairly and accurately
15 depict the property aside from possible seasonal changes?
16 It looks like the leaves are on the trees. Do they fairly
17 and accurately depict the property as it is today?
18 MR. HORNSTEIN: They absolutely do.
19 MS. ROBESON: Or as of the time you took the
20 picture?
21 MR. HORNSTEIN: There's been no material change to
22 the infrastructure or these buildings since these pictures
23 were taken.
24 MS. ROBESON: And have you been out there since
25 you took the pictures?

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1 MR. HORNSTEIN: This week.
2 MS. ROBESON: Okay. Go ahead.
3 MR. KAUFMAN: These are just images taken. This
4 first image is taken from Towne Crest, right?
5 MS. ROBESON: Now the first image, is that 104A,
6 this?
7 MR. HORNSTEIN: Yes. Yes, ma'am.
8 MS. ROBESON: -- image here?
9 MR. HORNSTEIN: 104A is that. The next one where
10 it shows the streetscape is B. The third one is a picture
11 of one of the buildings and the fourth one was a picture,
12 104D is a picture showing the relationship to the Westwoods
13 and the existing structures.
14 MS. ROBESON: Okay. Well, let's have you describe
15 them. I just wanted to make sure for the record that they
16 know what exhibit we're talking about.
17 MR. HORNSTEIN: This first image is from Towne
18 Crest Drive looking at this building right here.
19 MS. ROBESON: Now this building you have to talk
20 like a transcript will talk. It's hard.
21 MR. HORNSTEIN: It's the southernmost building on
22 the apartment zone property.
23 MS. ROBESON: Okay. Good answer.
24 MR. HORNSTEIN: Yes, ma'am. The second image is
25 taken from the northernmost point on the site on Towne Crest

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1 Drive looking south.
2 MS. ROBESON: And that is 104B?
3 MR. HORNSTEIN: And that's --
4 MS. ROBESON: And this, this --
5 MR. HORNSTEIN: That's correct.
6 MS. ROBESON: -- a streetscape picture of it?
7 MR. HORNSTEIN: Or lack of a streetscape. As you
8 can see, there are no trees, no curb, no gutter. There's
9 only a sidewalk on this. That's the existing condition
10 thereto. The third image is taken at one of the buildings
11 on the south side of the property, again from Towne Crest.
12 What it shows --
13 MS. ROBESON: And that's 104C?
14 MR. HORNSTEIN: 104C, thank you. And basically we
15 can see from this building, this image that these buildings
16 are basically obsolete. They have passed their life.
17 There's little you can do to improve the aging of these
18 buildings. The last which is, I guess, B --
19 MS. ROBESON: Yes.
20 MR. HORNSTEIN: -- is looking from about midpoint
21 in the site and looking south along the edge of our
22 buildings that the stand of trees behind them. I think the
23 most striking part of this is, of this image is you can also
24 see on the aerial that these buildings are within 20 feet of
25 the property line. And in some cases, not shown on this

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1 aerial, you can see that actually that building is within 17
2 feet. That's the northernmost building is within 17 feet of
3 the property line. These were all built according to code
4 at the time and they are the existing condition.
5 BY MR. KAUFMAN:
6 Q Now I want to ask one other question. There are,
7 referring to Exhibit 10, there are some single family houses
8 along Daylily Drive toward the southern end of the
9 Westwoods?
10 A There are four single family homes that are on a
11 dead-end street called Daylily that comes in off of
12 Washington Grove Lane.
13 Q Right. Now was the subject development built
14 before or after those homes came?
15 A Towne Crest was built years before those homes
16 were.
17 Q So they came in after and --
18 A They were built, yes.
19 Q -- they were placed within 20 feet of your
20 existing buildings?
21 A The property lines were within 20 feet. The
22 buildings were probably closer to 30 feet.
23 Q Thank you. Now, Mr. Hornstein, are you familiar
24 with this application 910? I know you are, but I need to
25 ask that question.

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1 A Yes, sir.
2 Q And the plans and reports submitted in connection
3 with the application?
4 A I am.
5 Q And could you give us a little bit of the history
6 of this PD application? I understand it's had a number of
7 amendments and would you go through those and would you also
8 explain why the plan was amended and where it is today?
9 A We started this project recognizing that we are a
10 fixture in the community and have been there many years. So
11 we started discussing with our consultants about, and our
12 team about how to redevelop this property and what is its
13 best use. We originally came up with an original
14 application which --
15 MS. ROBESON: Is that in the record?
16 MR. HORNSTEIN: Yes. Could you -- the exhibit
17 number is on it.
18 MS. ROBESON: I see it, 46.
19 MS. GIRARD: It's Noland's 26.
20 MR. HORNSTEIN: This one is 26.
21 MS. ROBESON: And what's the big one?
22 MS. GIRARD: 46.
23 MR. KAUFMAN: Yes, it's 46B.
24 MS. ROBESON: Okay.
25 MR. HORNSTEIN: 26 is our original, our original

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1 development plan. It called for 469 units, using a PD-44
2 zoning category. It included four buildings. It had, it
3 maintained the four access points from Towne Crest Drive,
4 that currently serve, currently serves the property. They
5 were, two of the buildings were 5-story and the other two
6 buildings were, I believe one was four and one was three.
7 It improved the streetscape and that street, curbs, gutters
8 and trees along the edge and provided most importantly from
9 an amenity perspective structured parking.
10 Today, the existing property has its parking at
11 surface and what we had proposed here was a development that
12 wrapped the residential units around the parking garages.
13 This is a major benefit and it's one that is very
14 contemporary in terms of competition. When building a new
15 apartment, you want to be able to compete with the other
16 properties.
17 BY MR. KAUFMAN:
18 Q So all of your parking then will be in parking
19 structures and not surface parking, except for some visitor
20 parking?
21 A Well, that was the original plan.
22 Q All right. Is that not the plan in all the
23 iterations?
24 A Yes, it is.
25 Q All right. So it's still --

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1 A Yes.
2 Q -- a main feature of your current application?
3 A That's correct. That structured parking is very
4 expensive and we went through the evaluation methodology as
5 its benefits and this plan included many other benefits that
6 aren't there today for a residence, including pools and
7 Internet café and exercise facilities, libraries, a space
8 for children to do their homework, all as, packed together
9 into what we thought was a well-designed building.
10 Q And there came a time when you sought to amend the
11 application to a lower PD. Can you explain the
12 circumstances at what brought you to do that?
13 A Well, we started contacting the community,
14 Wedgewood 1, Wedgewood 2, Saybrooke to the north, the town
15 of Washington Grove and we got feedback from the community
16 that they would like to see something a little less dense.
17 The community, particularly Wedgewood 2, came up with what
18 we thought was an outstanding idea because we had these 5-
19 story buildings and they wanted to see something in their
20 community that was more compatible with their development.
21 And we came up with a solution that ultimately came into our
22 next phase which was when we lowered the density to 356
23 under our PD-35 zone, a plan that lowered the project from
24 five stories to four in the rear and along the Towne Crest
25 edge that faces these communities, we lowered the density to

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1 three stories and had a design that would blend in with the
2 townhouse community.
3 Q So you had a step-down feature from the west to
4 the east?
5 A That's what --
6 Q -- to address the most, the closest neighbor?
7 A From the stand of trees in the back, it would be
8 four stories, and then three stories along the entire Towne
9 Crest edge.
10 MS. ROBESON: Is 46 the PD-35 or the PD-44?
11 MS. GIRARD: 44.
12 MR. HORNSTEIN: 44.
13 MS. ROBESON: Okay. So 26 was the PD-66?
14 MS. GIRARD: 60, PD-60.
15 MS. ROBESON: 60? Okay. I thought -- okay.
16 That's fine. Go ahead. Sorry.
17 MR. HORNSTEIN: We also as part of the plan
18 created some townhouses on the south end of the property --
19 MR. KAUFMAN: Right.
20 MR. HORNSTEIN: -- and we, based on what we heard
21 from the community, we reduced the number of axis points
22 into the site. At all time we maintained all the amenities
23 that we had originally conceived.
24 BY MR. KAUFMAN:
25 Q All right. And that was, the density for the PD-

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1 44 dropped down from 469 to what?
2 A To 356 units. It was a major reduction of over
3 100 units in the property.
4 Q And then there came a time when you decided to
5 amend further and what were the circumstances of that and
6 explain how you changed the plan.
7 A Well, we recently felt that there is still some
8 concern, or was some concern that the 356 units, so we
9 decided, thought it would be very helpful to our plan and to
10 the project to get down to what really is the bare minimum
11 of a development that would support the amount of amenities
12 in this project and we subsequently reduced it now to PD-35
13 at 329 units.
14 Q And were there some issues with regard to the
15 proximity of the townhouses in the PD-44 to the houses along
16 Daylily Road?
17 A There were. We thought we were doing a good job
18 of changing that density or remember in the higher density
19 we actually had buildings down here, but we felt from a
20 design perspective that we create something along the edge
21 of Washington Grove that would be complimentary to the other
22 homes that were in Washington Grove and elsewhere and --
23 MS. ROBESON: Can you hold on one second?
24 MR. HORNSTEIN: Yes, ma'am.
25 MS. ROBESON: He needs to be able to see. Walk in

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1 front of whom?
2 UNIDENTIFIED SPEAKER: Can I stand closer to the
3 board?
4 MS. ROBESON: One second before you continue. Do
5 we need to angle the photos?
6 UNIDENTIFIED SPEAKER: No, I'm fine. Thank you so
7 much.
8 MS. ROBESON: Okay. I'm going to ask you, is
9 there somewhere else you can stand closer because I can't
10 see it? That's good. That works. Thank you. Okay,
11 continue, Mr. Hornstein.
12 MR. HORNSTEIN: I've just put up Exhibit 73B,
13 which is a current development plan.
14 MS. ROBESON: Okay.
15 MR. HORNSTEIN: This, what we did is in an effort
16 to try to deal with the issue of the setback of the four
17 homes along this area, we moved the actual buildings to now
18 100 feet from the rear property line. We've also scaled
19 back the, this is a building which is the building to the
20 north --
21 MS. ROBESON: So the rear property lines of the
22 homes along Daylily?
23 MR. HORNSTEIN: Daylily on that --
24 MS. ROBESON: I'm just doing that for the record.
25 MR. HORNSTEIN: Thank you. A building, B building

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1 townhouses now, A building being the building to the north,
2 B building being the building in the middle and the
3 townhouses to the south. We created a vista through here,
4 through the area between the townhouses and the building B
5 and we eliminated the size of the wing on building B by,
6 they're moving a whole bay of units and that reduction
7 created the site plan that we see today.
8 MS. ROBESON: Okay.
9 BY MR. KAUFMAN:
10 Q All right. Now I understand also that the number
11 of parking spaces has always exceeded those required, but
12 that there have been some reductions of that for the
13 current?
14 A Yes.
15 Q Could you explain that?
16 A Sure. The, these are wrapped parking. It is
17 proposed that the building A on the north side have three
18 floors of parking, three decks of parking. Building G would
19 have three decks of parking also, 80 parks per deck and A,
20 70 parks in building B. As we have reduced our plan in
21 density, we no longer need the amount of parking that was
22 originally designed for a larger project. So we have now
23 reduced the parking to two decks in building B and
24 keeping -- and the main reason, as I mentioned, we reduced
25 the density in building B as part of the plan.

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1 Q Now and the height of building A and B are now at
2 what height?
3 A We're going to need to talk to the architect about
4 that, but they're about 10 feet taller, I believe, than what
5 they are today.
6 Q No, I'm talking about number of stories.
7 A Number of stories? Four stories on building A
8 with three on the edge, four stories on building B with
9 three stories on the edge and the townhouses are two
10 stories.
11 Q And we, you're familiar with the PD-35 zone?
12 A Yes, sir.
13 Q And are you familiar with the requirement there
14 that normally 50 percent of the buildings need to be taller
15 than four stories?
16 A It does require that, yes.
17 Q And are you aware of the opportunity to seek a
18 waiver of that?
19 A Yes, and I believe we have done so.
20 Q And you have done that?
21 A Yes.
22 Q And I believe, Madam Examiner, that is in the
23 record. Do you know the exhibit number? It's Exhibit --
24 MS. GIRARD: 73.
25 MR. KAUFMAN: -- 73. And that's both a, it's a

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1 waiver for height and --
2 MS. GIRARD: No, it's just -- that's just the
3 waiver from height.
4 MR. KAUFMAN: Oh, just for the height, okay.
5 Okay.
6 BY MR. KAUFMAN:
7 Q Now during this entire period of time which is
8 quite a period of time when you made these amendments, would
9 you describe the efforts that were made to reach out to the
10 surrounding communities and your representatives?
11 A Yes. We had a number of meetings with the folks
12 in Wedgewood 2 and Wedgewood 1. We made a couple
13 presentations to the folks at Seabrook, Saybrooke, I'm
14 sorry.
15 Q Yes.
16 A We have written letters to all the four homeowners
17 on Daylily. We actually got a response ultimately from two
18 of them. We met with them. We actually walked the
19 neighborhood when we didn't get response from our letters
20 and knocked on the door. We talked to Mrs. Goode in the
21 second house from Washington Grove Lane, I think that's
22 Daylily 3. We walked in the home in Wedgewood 2. We walked
23 most of the homes in Wedgewood 1. We met with other
24 community groups that were registered with Park and Planning
25 as having an interest. We made a couple of presentations to

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1 the Shady Grove Alliance.
2 We also put up a web page and we did mailings to
3 over 1,200 people on a couple of occasions. The postcards
4 suggesting the folks go to our web page and get information
5 about the project and get updates on the project was very
6 successful in terms of number of people coming to the web
7 page.
8 Q And did you meet with the Planning Commission of
9 the town of Washington Grove?
10 A We --
11 Q I'm sorry, Gaithersburg?
12 A We did. We did make a presentation to number of
13 stuff and then we did make a presentation to the Planning
14 Commission in Gaithersburg. It was very, a wonderful
15 meeting for us because we got unanimous, a unanimous vote by
16 the Planning Commission which is something we understand
17 rarely happened in Gaithersburg in support of our project.
18 And I think the thing that as a developer, the thing that
19 was most gratifying for me in all the years I've been doing
20 this, which is all my adult life, the chairman of the
21 Planning Commission said something that will, that was very,
22 very, made me feel very well.
23 Q What was that?
24 A He said, this was in reference to density and he
25 said it's not the density, it's how you use it. And he said

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1 in this project you're using it the right way.
2 Q And I understand that they put a letter in this
3 record. Are you familiar with that?
4 A Yes.
5 Q We are looking, Madame Examiner, for the exhibit
6 number.
7 MS. ROBESON: I know it's in the record. I read
8 it.
9 MR. KAUFMAN: Okay. Okay.
10 MS. ROBESON: I believed you.
11 MR. KAUFMAN: Thank you. It's nice to know that
12 I've got some credibility there.
13 BY MR. KAUFMAN:
14 Q Now you engaged in a dialogue with Wedgewood 2
15 community and its board. Can you explain that? And I also
16 understand that you have an agreement with them?
17 A We do.
18 Q And could you tell us what that is and --
19 A Sure.
20 Q -- how that came about?
21 A Wedgewood 2 has a very active home owner's
22 association. We had the privilege of first bringing our
23 project to them. They had concerns, as I mentioned, on the
24 height of the building which was one of the most others.
25 And we listened to what they suggested and made amendments

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1 to our plan.
2 We entered into an agreement with them because,
3 and it's really kind of a cooperation agreement, for how
4 we're going to interact together as neighbors. Over the
5 years, as I mentioned, as Mr. Kramer, Sr., Melvin, fell into
6 ill, he really wasn't paying attention to this property and
7 there was a lack of communication and there was some
8 outreach from Wedgewood 2 to the ownership and it was not,
9 it was not really addressed. And immediately, the
10 community, they wanted to make sure that as we went forward
11 together that we would be cooperating for many years
12 together on our issues of mutual concern.
13 In addition, we felt it would be helpful at the
14 time we're redeveloping to help them with some of their
15 issues that they neither have the resources to address or
16 the expertise. And the thing that we, I'm most pleased that
17 we're able to help them with is right now Towne Crest Drive
18 is a dead end. What I didn't show you along this edge of
19 the Saybrooke in Gaithersburg, there's actually a 14 --
20 MS. ROBESON: Okay. Just a second. You have
21 to --
22 MR. HORNSTEIN: Sure. I'm sorry.
23 MS. ROBESON: -- what edge it is.
24 MR. HORNSTEIN: I guess that's why I'm not --
25 MS. ROBESON: Is it the eastern edge or I don't

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1 know where north is.
2 MR. HORNSTEIN: I guess that's why I'm not an
3 expert. The northern edge of the property along the border
4 with Gaithersburg --
5 MS. ROBESON: They --
6 MR. HORNSTEIN: -- has a 14-foot board on board
7 wooden fence. So this road, which is Towne Crest Drive on
8 the north side, will never move into that community. This
9 is just a dead end. The community in Wedgewood 2 has a
10 shortage of parking. And while we heard from the town that
11 Towne Crest created that parking, Wedgewood 2 will tell you
12 that the problems, they have two spaces for each of their
13 units. A number of their folks don't, they have more than
14 two cars and they have a parking problem.
15 They do, their developer was, recognized that, I
16 guess, and created a little overflow lot which the community
17 uses and permits for their folks.
18 MS. ROBESON: Okay. So that overflow lot on
19 Exhibit, no, 73B is directly east of building A?
20 MR. HORNSTEIN: Absolutely. Correct.
21 MS. ROBESON: Okay. Across Towne Crest Drive?
22 MR. HORNSTEIN: Across from Towne Crest Drive. So
23 we, in an effort to try to help them with their parking, we
24 came up with a solution. We went down to Montgomery County
25 and the professionals did and got some preliminary

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1 agreements from them that it would be a good idea to close a
2 portion of the road. That would be the portion from
3 Larchmont Terrace to the northern property line. Right now
4 it just dead ends. Larchmont Terrace is actually a loop
5 road, it goes around, so it makes sense that there won't
6 even need to be a cul-de-sac here because there's a loop
7 road.
8 So we worked with the town and we said with the,
9 with the homeowner's association, we can help you with your
10 parking. They wanted help with the parking and we came up
11 with this idea where we would close the road. They came up
12 with the idea that we would close the road, that we would --
13 MS. ROBESON: Close the road at the --
14 MR. HORNSTEIN: From Larchmont Terrace to --
15 MS. ROBESON: -- northernmost loop of --
16 MR. HORNSTEIN: The dead end portion.
17 MS. ROBESON: Yes.
18 BY MR. KAUFMAN:
19 Q Such as to close it, but also abandon it?
20 A To close and abandon it subject to our rezoning,
21 obviously, we wouldn't be doing this beforehand, but we
22 would put it as part of our redevelopment efforts. Then we
23 would get our half of the property back of the abandoned
24 road and the homeowner's association would get their piece.
25 What we then would do is we would take ours and

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1 treat it as green space, we'll add to our green space which
2 we would get our half and we would take our half on the
3 backside and on the side closest to the homeowners
4 association we would build a little overflow parking lot.
5 We would build it on their property and they would maintain
6 it, they would be responsible for its administration and
7 using it going forward.
8 MS. ROBESON: Who owns that property now?
9 MR. HORNSTEIN: It's the right-of-way, so when the
10 right-of-way is --
11 MS. ROBESON: All of that is the right-of-way?
12 MR. HORNSTEIN: All of that is the right-of-way.
13 MS. ROBESON: Oh, okay.
14 MR. HORNSTEIN: So when it's close, we both get
15 our halves.
16 MS. ROBESON: Yes. Okay.
17 MR. HORNSTEIN: Actually it's a little more
18 complex because we get this half and they get that half and
19 we worked out an arrangement where simultaneously our half
20 would be this half to the north.
21 MS. ROBESON: Right.
22 MR. HORNSTEIN: When you get the half to the
23 south, then that's where their parking would be and that
24 would add some, a real community benefit for them because
25 they have a parking problem.

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1 MS. ROBESON: Right.

2 MR. HORNSTEIN: Towne Crest has never had a

3 problem, a parking problem. We have plenty of surface

4 parking existing and under our redevelopment program we're

5 going to provide actually more than the code requires in our

6 structured parking.

7 BY MR. KAUFMAN:

8 Q And there were some other things. Could you tell

9 us a little bit about the security things that you agreed

10 to?

11 A The security was probably the most important

12 issue, even more important than parking. The homeowners

13 have taxed themselves, this association has taxed themselves

14 with off-duty police officers because of the problems in the

15 neighborhood. And they pay over \$10,000 a year to off-duty

16 officers to patrol the neighborhood. We recognize the, that

17 that is an issue with them and we have agreed to contribute

18 to those, the police officer for a number of years to

19 increase the amount of security along our mutual project.

20 And we have a further provision under that agreement that

21 we'll all look at it at a future date and see if we need to

22 do it some more and if we do, we'll continue to fund it. We

23 have this long-term relationship with them.

24 In addition, there are two monument signs that

25 announce Lakewood community. A, they are both in disrepair

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1 and we felt that it would be in our mutual best interest

2 that the community as we try to uplift ourselves and try to

3 uplift our neighbors that a couple of improvements to those

4 signs. We would just landscape them and fix them. The

5 letters are falling off today. But just try to improve.

6 Q And there's going to be testimony from your

7 experts in terms of land planning and urban design, but

8 could you briefly describe at this point how the streetscape

9 along Towne Crest Drive will be treated as well?

10 A Well, as you saw in the images referenced A, B,

11 B --

12 MS. ROBESON: 104B.

13 MR. HORNSTEIN: 104B, thank you, it's pretty

14 barren out there today. And what we've proposed to do is to

15 put curbs, gutters, to add trees along the entire edge of

16 the property, even coming around onto, on the south side on

17 Washington Grove Lane, to put sidewalks where there are no

18 sidewalks also on Washington Grove Lane. They would connect

19 all the way through our property and all the way around the

20 project.

21 MR. KAUFMAN: Okay.

22 BY MR. KAUFMAN:

23 Q And then while you were engaging the various

24 neighbors and community, I know that you, and you've already

25 indicated that you did engage with the town of Washington

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1 Grove. And could you explain the history of that

2 involvement and discussion with the town leaders?

3 A Well, I'm not an expert, but I've been doing this,

4 zonings all my life and projects. I probably had the most

5 frustrating experience with Washington Grove that I've ever

6 had. I think I've been, I've done a good job, our company

7 has done a good job in meeting with all the neighbors and

8 trying to address their issues wherever we can and I think

9 we've been successful in doing that.

10 The Town of Washington Grove we came first in

11 April of 2012 and made a presentation to the board and a

12 number of citizens. Following the discussion, I mean there

13 were a number of issues that were raised. They had our

14 plans in advance. They heard our presentation and they

15 expressed they were concerned about parking which was

16 surprising to us because we don't have a parking problem.

17 Wedgewood 2 has a parking problem. We don't have a parking

18 problem.

19 Westwood was, the tree stand behind was a major

20 issue. They were concerned with lights on the westward,

21 coming to the Westwoods, the damage that we would be doing

22 to the Westwoods and that was, that very hurtful for me

23 because we see that as a phenomenal resource and we do want

24 to protect it in the best way we can. As a matter of fact,

25 I didn't mention when we were reviewing our plans one of the

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1 things we did when we went from the PD --

2 Q 60.

3 A -- 60 plan down to the PD 44. We eliminated --

4 I'll show you a picture.

5 Q Refer to the exhibit number.

6 A Exhibit 26.

7 MS. ROBESON: Mr. Kaufman, I'm just wondering what

8 does this have to do with the criteria for approval, the

9 relationship with Washington Grove?

10 MR. KAUFMAN: Well, it has a lot to do with the

11 issue of the compatibility issue and the impacts that are

12 being claimed by the opposition.

13 MS. ROBESON: I just was wondering when he said it

14 was the most frustrating variance of his life, if he wants

15 to stick to the substance, that's fine, just --

16 MR. KAUFMAN: I understand.

17 MS. ROBESON: -- it's not my job to rule on how

18 frustrating --

19 MR. KAUFMAN: I understand.

20 MS. ROBESON: -- and perceptions and those things.

21 MR. KAUFMAN: If you would do that, if you would

22 stick to the --

23 MR. HORNSTEIN: I'm sorry. I only shared that

24 with you because I was putting context --

25 MS. ROBESON: That's fine.

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1 MR. HORNSTEIN: -- things I'm about to share with
2 you.
3 MS. ROBESON: That's -- you don't have to say
4 anything else.
5 MR. HORNSTEIN: On the Exhibit 26, you will see we
6 had along the edge of the tree stand a --
7 MS. ROBESON: Okay. Just, I'm sorry to interrupt
8 again. I think the interpreter needs to move closer to the
9 exhibit again.
10 THE INTERPRETER: I just didn't want to block your
11 view.
12 MS. ROBESON: No. If you could stand up toward
13 the table and I can move over. No, up toward that table.
14 There you go. Okay. I'm fine.
15 MR. HORNSTEIN: Along the western edge of the
16 property we had a drive-out and parking for the townhouses
17 behind those woods. And the reason we did that was to
18 provide for circulation and fire protection, do all those
19 good things. The town was concerned about and expressed
20 their concerns about that drive-out being along that edge.
21 One of the major issues of this project from an
22 environment prospective this far has been the way storm
23 water has been handled. In the '60's, life was different,
24 codes were different. Primarily the storm water from
25 Wedgewood 1 and Wedgewood 2 and Towne Crest all come across

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1 the property and outflow into two pipes, one in the very
2 center of the property between the A and the B building and
3 one on the south end between Daylily 3 and Daylily 5.
4 Basically the water daylight --
5 MS. ROBESON: When you say 3 and 5, that's lots 3
6 and 5?
7 MR. HORNSTEIN: I think that's their addresses.
8 MS. ROBESON: Oh, okay.
9 MR. HORNSTEIN: I believe. It's between the
10 middle of the two homes, the four homes that are out there,
11 it's between the two of them.
12 MS. ROBESON: Okay.
13 MR. HORNSTEIN: Essentially what's happened is
14 that this water, storm water was collected from all these
15 neighborhoods as well as Towne Crest is currently being
16 untreated and the big pipe, which is the one in the center
17 which picks up the majority of the water, outflows into the
18 Westwoods in a very concentrated way. And what it has done
19 is provided some erosion within the Westwoods and some trees
20 have damage as a result of that. That's the way it was
21 designed way back in the '60's and the town was concerned
22 about how storm water was going to be handled going forward
23 under this development.
24 Lastly, the town had expressed some concerns to us
25 about fencing and fencing has been an issue particularly

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1 with the Saybrooke folks and for the town. In our
2 discussions with the town, there didn't seem to be a
3 consensus whether they wanted a chain link fence, a wooden
4 fence or some wrought iron fence, something you could see
5 through. There was a lot of discussion about that.
6 So at that, after that meeting on April 3rd, we
7 went back and tried to redevelop our plan and redesign our
8 plan and ultimately we did come up with a lower density plan
9 that we thought addressed many of the issues that the town
10 had.
11 BY MR. KAUFMAN:
12 Q PD-44?
13 A PD-44 plan.
14 Q All right.
15 A Which was our second.
16 Q Then you met with them again in May of 2012 and
17 explain that.
18 A At our meeting on the, I believe the town, what
19 they, they took our application and directed it to their
20 planning commission for a, so we had a meeting with the, on
21 May 16th with the Planning Commission. We made a
22 presentation, but we were there mostly to hear. We did
23 address how we handled the overflow parking and that issue
24 we shared with them when we introduced our density. We
25 changed the drive aisles in the rear. We reduced the height

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1 of the buildings along Towne Crest Drive, all the things
2 we've talked about. We committed to how lighting would be
3 handled on the siding using light fixtures that are directed
4 down that wouldn't spill over into the neighborhood and
5 minimize what I thought were all the issues of, that they
6 had raised.
7 Q And you submitted these plans to the town and to
8 the chairman of their planning commissioner, Charlie
9 Challstrom?
10 A Yes, we did.
11 Q Okay. Then something happened on June 6th at the
12 planning commission meeting. Would you explain that?
13 A The, we attended the meeting. We weren't invited,
14 but it was a public meeting, so we, our counsel and I
15 attended the Planning Commission meeting. And the Planning
16 Commission at that time was reviewing either a memorandum or
17 a resolution that they were going to send to their full
18 counsel, that, who would deny the project, the
19 recommendation for denial.
20 Q And did Mr. Challstrom appear at that meeting --
21 A Yes.
22 Q -- do you recall? Do you recall --
23 MS. ROBESON: What's the relevance of this? I
24 really, you know, this case is going to stand on its merits
25 under the code, so I don't want to get into personalities or

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1 bad feelings. Are you saying that there is some improper
2 motive that the Planning Commission had or an unfair
3 procedure that biased their opinion or what?
4 MR. HORNSTEIN: Well, some things occurred at
5 that meeting where there was a denial by a representative of
6 the town that they had received any of these plans and that
7 they had been presented to them. And I --
8 MS. ROBESON: That they had not received any of
9 the plans?
10 MR. HORNSTEIN: Right. That's correct. I think
11 that's relevant because it does go to the motive of the
12 opposition.
13 MS. ROBESON: Well, let me ask you something, Mr.
14 Hornstein. I have something in the record dated February
15 2013, February 5, 2013, from the town saying they still
16 stand by their resolution. Have they seen these plans since
17 then?
18 MR. HORNSTEIN: I believe they were forwarded to
19 them, yes. I believe --
20 MS. ROBESON: And, so --
21 MR. HORNSTEIN: -- they were given to them. I
22 don't know if they looked at them.
23 MS. ROBESON: Just to shortcut this, I, you know,
24 whether they saw the plans at the time or not, there is some
25 exhibit which I don't have off the top of my head in the

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1 record dated February 5th, I believe, saying that they stand
2 by their resolution.
3 MR. HORNSTEIN: Yes, I just, I just think that the
4 course of dealing is very important here.
5 MS. ROBESON: And you need to tell me why, because
6 you need to tell me what the legal relevance of the course
7 of dealing is.
8 MR. HORNSTEIN: Well, the course of dealing has
9 actually been denied, anything that comes anywhere close to
10 the town.
11 MS. ROBESON: Well, that's not what I look at.
12 MR. HORNSTEIN: Yes, I understand.
13 MS. ROBESON: What, I mean what criteria is that?
14 MR. HORNSTEIN: Well, I think --
15 MS. ROBESON: They're trying to prove they're
16 NIMBY's, right, essentially?
17 MR. HORNSTEIN: I don't like the use of that term.
18 MS. ROBESON: Well, whatever term --
19 MR. HORNSTEIN: Yeah.
20 MS. ROBESON: -- you want to call it. I really am
21 not going to decide the case based on, you know, portraying
22 one side or the other and their different perceptions. I'm
23 going to decide the case on the criteria, I really am.
24 MR. KAUFMAN: I understand that, Madam Examiner.
25 I do think, however, the, as I said in the opening

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1 statement, the relationships between this community and how
2 they deal with their neighbors is significant. It's
3 significant in this case because you're dealing with a
4 master plan that basically is not functional anymore. And
5 the question is compatibility, okay?
6 MS. ROBESON: Well, how does the tale of two
7 neighborhoods, that's what you called it, how does that
8 relate to compatibility? I didn't understand that when you
9 said it.
10 MR. KAUFMAN: Well, I think, I think the, what one
11 neighborhood feels is compatible and what another
12 neighborhood feels is compatible is a very subjective thing.
13 MS. ROBESON: Well, is it, is it the
14 neighborhood's perception of compatibility because zoning is
15 not a plebiscite.
16 MR. KAUFMAN: That's correct. And that's --
17 MS. ROBESON: Or -- see you've trained me too
18 well.
19 MR. KAUFMAN: Well, you've made the point --
20 MS. ROBESON: No, I really --
21 MR. KAUFMAN: -- you're --
22 MS. ROBESON: I really am concerned about this.
23 MR. KAUFMAN: All right. I understand and I will
24 take your direction very much in -- but you made your own
25 point, or the point of this line of discussion which is this

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1 is not a plebiscite. This is not a plebiscite. This is a
2 correct, this is a case based upon the actual facts and what
3 the zoning ordinance requires and what you can rely on and
4 what you can't. And what you can't rely on, what you
5 yourself has said is a plebiscite and I believe there's
6 aspects of that in this case and there should not be.
7 MS. ROBESON: Well, there's no aspects of zoning
8 based on a -- oh, you're saying the Planning Commission's
9 recommendation is a plebiscite.
10 MR. KAUFMAN: Well, the Planning Commission's
11 recommendation is a whole different story. The Planning
12 Commission --
13 MS. ROBESON: I mean not Montgomery County.
14 You're saying the town of Washington Grove?
15 MR. KAUFMAN: Right.
16 MS. ROBESON: Well, I'll do this. Let's stick
17 with Washington Grove right now and you can just ask if
18 rather than cut through I was surprised that they've never
19 seen the plans, just ask him had they ever seen the plans
20 when they made their recommendation, how is that?
21 MR. KAUFMAN: I think that's terrific.
22 MS. ROBESON: Okay. So ask him that.
23 MR. KAUFMAN: Well, we just asked him that, so we
24 don't --
25 MS. ROBESON: Okay. But if you could just keep

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1 your answer, it can be a descriptive answer, but if you
 2 could keep the personal feelings out of it, that would be
 3 good.
 4 MR. KAUFMAN: Yes, ma'am. Can you answer the
 5 question?
 6 MR. HORNSTEIN: We delivered the plan, so I don't
 7 know if they looked at them or not.
 8 MS. ROBESON: Okay.
 9 BY MR. KAUFMAN:
 10 Q Why don't we move on here? Mr. Hornstein, are you
 11 familiar with the applicant's obligations to abide by the
 12 requirements of the proposed zoning reclassification of PD-
 13 35 and specifically the binding elements?
 14 A I do.
 15 Q And will you, you know, what is the intention of
 16 your company regarding that?
 17 A We still strictly follow the requirements as
 18 provided.
 19 Q Now there are a couple of other things. You have
 20 existing tenants?
 21 A Yes.
 22 Q And you're going to phase this property, this
 23 redevelopment I understand and how we would do that.
 24 A I don't know how to say this, but I'm very pleased
 25 with, the tenants are happy with our plans. Our plans are

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1 to develop the property in two phases. This is in an effort
 2 to try to keep our good tenants. We have tenants -- one of
 3 them has been there over 20 years. A lot of the county
 4 code requires how they are to be dealt with local and way
 5 beyond that and we made this commitment to go way beyond.
 6 We have two groups of buildings on our site on the
 7 north side and the south side. Our plan is to develop in
 8 two phases. About a year out, if we're approved, we will
 9 through attrition not refill the spaces on the south side.
 10 Prior to construction at our expense, we plan on moving a
 11 residence that will like to stay on the project and those
 12 who want to take advantage of the county code we'll provide
 13 that to them also. But those that want to stay with us,
 14 we're going to move them to the vacant community on the
 15 south side. We will develop the north side into its
 16 buildings.
 17 Once they're up and ready to go, we'll relocate
 18 the folks that are now living on the south side to units on
 19 the north side and then do the demolition on the south side
 20 and build the rest of the building B and the townhouses.
 21 Q So just quickly again, go over how the project
 22 would be phased in terms of development.
 23 A Two phases. Phase 1 on the north side, Phase 2 is
 24 the south side. This is where the storm water pipe is right
 25 here and that's an easement, so that's kind of like our

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1 demarcation line. So move the existing tenants over here on
 2 the north to the south buildings, demolish the south
 3 project, I'm sorry, the north project, build it, take the
 4 folks that are living on the south side, those that have
 5 been relocated there and those that have been living there
 6 for years and move them to the north side and then build the
 7 second phase.
 8 Q Now just lastly, you're familiar that the property
 9 was posted?
 10 A Yes.
 11 Q All right. And I'll show you this exhibit.
 12 A Yes.
 13 MS. ROBESON: And that will be 105, affidavit of
 14 posting?
 15 MR. KAUFMAN: Right.
 16 MS. ROBESON: Thank you.
 17 (Exhibit 105 was marked
 18 for identification.)
 19 MR. KAUFMAN: Yes, ma'am. Now, Mr. Hornstein, is
 20 there anything else --
 21 MS. ROBESON: Mailing too.
 22 MR. KAUFMAN: There's also an affidavit --
 23 MS. ROBESON: Just one second. Does someone have
 24 a cell phone on, because that interferes with the recording
 25 mic. Thank you. Go ahead.

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1 MR. KAUFMAN: There's a second affidavit, Madam
 2 Examiner, the zoning affidavit of mailing.
 3 MS. ROBESON: Okay.
 4 MR. KAUFMAN: And I'm handing that to Mr.
 5 Hornstein.
 6 MR. HORNSTEIN: Yes.
 7 MS. ROBESON: Thank you, Mr. Hornstein.
 8 MR. KAUFMAN: And that would be Exhibit --
 9 MS. ROBESON: 106. All right.
 10 (Exhibit 106 was marked
 11 for identification.)
 12 BY MR. KAUFMAN:
 13 Q My last question, Mr. Hornstein, on direct, is
 14 there anything else that you would like to bring to the
 15 Hearing Examiner's attention regarding the application, the
 16 company or how you want to proceed if this is approved?
 17 A Our company, Madame Hearing Examiner, has a
 18 reputation of developing quality products. We've come up
 19 here, I believe, a design that is quality that will, you've
 20 got nothing but good, good feedback on.
 21 MS. ROBESON: Okay. I had a question before I
 22 turned it over to Mr. Brown. I didn't mean to cut you off,
 23 you know, whether or not the Washington Grove Planning
 24 Commission looked at the plans, I think, could go to the
 25 credibility of their initial recommendation. So was there

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1 something that you felt was not proper or biased about their
2 presentation? I'll ask it that way.

3 MR. HORNSTEIN: Well, one of the issues and there,
4 yes, there is. And there are a number of things, but I'm
5 only going to focus on one for you.

6 MS. ROBESON: Okay. Well, first of all, did they
7 or did they not to your knowledge see the plans?

8 MR. HORNSTEIN: When I attended the meetings,
9 there were plans on the wall, our plans were on the wall.

10 MS. ROBESON: Okay.

11 MR. HORNSTEIN: So, yes I believe they did get
12 them.

13 MS. ROBESON: Okay.

14 MR. HORNSTEIN: They did receive them ultimately.

15 MS. ROBESON: All right.

16 MR. HORNSTEIN: One of the issues has been how the
17 western edge of our property and their property work
18 together.

19 MS. ROBESON: Is the western edge the forest?

20 MR. HORNSTEIN: That's the stand, those stand of
21 trees, yes.

22 MS. ROBESON: Yes, okay.

23 MR. HORNSTEIN: The, there are a number of
24 alternatives in how that could be handled, each one having a
25 different cost element to it, each having benefits and

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1 demerits to it. The three solutions we offered to give to
2 the town, we had our engineers design them. Some had more
3 trees that went, that had to be taken out. Some had less.
4 Some required that the town give us an easement for grading,
5 others didn't. So we promised to give them a series,
6 offered to give them a number of studies which they said
7 they would consider. And on June 11th, I believe, we
8 delivered those plans on that day prior to the time we
9 delivered them. They had already issued their denial of our
10 request of that.

11 MS. ROBESON: I see. So they didn't give you the
12 opportunity to --

13 MR. HORNSTEIN: A lot of money, time and expense
14 and a lot of thought went into this.

15 MS. ROBESON: Okay. I understand. All right.
16 That's helpful then. All right. Before I turn it over for
17 cross-examination, I see, is that, is it Mrs. Deloatch?

18 MS. DELOATCH: Deloatch, yes.

19 MS. ROBESON: Mr. Brown, I don't want to -- I was,
20 let's finish the cross-examination and then I wonder that
21 the parties would have an objection to allowing Ms. Deloatch
22 to testify out of order so that she doesn't have to -- I see
23 a long day --

24 MR. BROWN: Right.

25 MS. ROBESON: -- in front of us and possibly a

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1 second day. So I wondered, let's do the cross-examination
2 and then I wondered if anyone would have an objection to
3 letting Ms. Deloatch testify out of order?

4 MR. BROWN: Not at all.

5 MR. KAUFMAN: No, we don't either. In fact, we
6 appreciate the courtesy for her or any other of these
7 witnesses who may show.

8 MS. ROBESON: Okay. Well, there's only one to my
9 knowledge, so --

10 MR. KAUFMAN: Today.

11 MS. ROBESON: -- because it's only one, I'll go
12 out of order. Mr. Brown, why don't you continue with your
13 cross-examination and then we'll hear from Ms. Deloatch.

CROSS-EXAMINATION

BY MR. BROWN:

16 Q Mr. Hornstein, let's start with your dealings with
17 Wedgewood. Do I understand correctly that you have an
18 agreement with Wedgewood, I'm not sure if it's 1 or 2 or
19 both?

20 A I believe you put it in the record.

21 Q Yes, but I want to understand your understanding
22 of it. Is it your understanding that you will pursue a road
23 abandonment request with the County Council at some future
24 date?

25 A Yes.

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1 Q And is that date tied to approval of the project
2 or what?

3 A Do you have a copy of the agreement?

4 MS. ROBESON: Well, do you know the answer?

5 MR. HORNSTEIN: I don't recall. I'd like to see
6 the agreement. I'll be glad to answer. The agreement
7 speaks for itself.

8 MS. ROBESON: It is -- I think that it's 88
9 something. 88l.

10 MR. HORNSTEIN: Could you ask the question again,
11 please?

BY MR. BROWN:

13 Q The question is that the timing on request for the
14 road abandonment.

15 A Now, I don't see in here where the timing is in
16 here.

17 Q I didn't either and I'm just wondering what your
18 expectation is in that regard.

19 A My expectation is sometime prior to the start of
20 construction I think I would, from a timing perspective
21 because really as to create that parking lot is to be built
22 at the same time we build our parking lot and our pavement,
23 so there's a cost benefit of doing that. So it will, based
24 on our results it will tell us the time it will take to
25 perfect that closing, we'll start that at that time. My

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1 guess is it could be a year out before we start this.
2 Q At present, neither the petition of the road
3 abandonment nor the success of the petition are binding
4 elements to this development plan, are they?
5 A I'm sorry, which are not binding elements?
6 Q Neither the petition for road abandonment nor the
7 success of that petition are binding elements to this
8 development plan, are they?
9 A The petition is not a binding element. I don't
10 know what you mean by success.
11 MS. ROBESON: I think what he's saying is approval
12 of the road abandonment --
13 MR. BROWN: Yes.
14 MS. ROBESON: -- is not a binding element.
15 MR. HORNSTEIN: That's correct. If I had a
16 contractual obligation, there was.
17 BY MR. BROWN:
18 Q So essentially the agreement with Wedgewood is
19 that at some unspecified future date you agree to pursue a
20 road abandonment, but there is no assurance that that road
21 abandonment will actually take place, is that correct?
22 A I have a contractual obligation to prosecute it
23 and because of the decision making of that abandonment is
24 the function of the County Council, I can't obviously commit
25 that they will do that.

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1 Q I believe you used the following language with
2 respect to the current PD-35 plan and its, and the fact that
3 it has 329 units, that this is the number of units that's
4 the bare minimum to support the amenities. Did I get that
5 down correctly?
6 A You did.
7 Q That's an economic judgment, isn't it?
8 A It is.
9 Q What information is there in the application about
10 project economics?
11 A I don't recall any of it is in there. I don't
12 know.
13 Q Well, let me ask this question because it goes
14 back to this. Are the Kramers still the fee simple owners
15 of this property?
16 A They are.
17 Q Will they be the fee simple owners of the property
18 after it's developed as you, according to your request?
19 A That's their intent. That is their intent as they
20 stated to me.
21 Q So what is your economic relationship with them
22 and how does that figure into your conclusion about the
23 economics of 329 units?
24 MR. KAUFMAN: I object to the question of what his
25 economic relationship is with this employer, but if he's

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1 asking a question about the economics required to redevelop
2 this property, I don't object to that.
3 MS. ROBESON: Okay. He did -- he raised, you
4 raised in your testimony the economics of 329 units. So I
5 do think that cross-examination on that issue is relevant.
6 MR. KAUFMAN: Right. And I do not object.
7 MR. HORNSTEIN: Restate the question, please.
8 BY MR. BROWN:
9 Q Why, I don't understand why you are talking about
10 project economics when you are not the owner and as I
11 understand it from your testimony, you're simply acting as
12 an agent, a building agent for the owner of the property.
13 Aren't the economics within the control of the owner of the
14 property?
15 A We have been -- in answer to your question, yes.
16 Q All right. What information is there in the
17 record that the owner of the property regards 329 units as
18 the bare minimum necessary to support redevelopment of this
19 property?
20 A No, the owner has engaged a development company to
21 prosecute the redevelopment of the property and based on the
22 development company's analysis and based on the owner's
23 review, this is, that is the bare minimum that they can,
24 that are needed in order to finance and build this project.
25 Q And I take it that you would ask this hearing

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1 examiner to simply accept that information or that
2 conclusion as a bare conclusion rather than demonstrate the
3 economics of the project, is that your, is that your
4 position?
5 A Could you ask that again, it's a long question?
6 Q Could you read the question?
7 COURT REPORTER: That's fine.
8 MS. ROBESON: Okay. We're back on, so you can
9 continue.
10 MR. HORNSTEIN: We are an established development
11 company with a track record and that is our opinion and the
12 owner's opinion.
13 MR. BROWN: I have nothing further.
14 MS. ROBESON: Okay. I will say for the record I
15 did allow you to ask that because he raised it.
16 Unfortunately the other thing we can't take into account are
17 the economics of the project. All right. Is there anyone
18 else that has questions of Mr. Hornstein?
19 Ms. Deloatch, how long do you -- well, let's do
20 this. Let's take a 10-minute break and then we will come
21 back on with Ms. Deloatch and then the application can
22 continue with his case.
23 MR. BROWN: Thank you.
24 MS. ROBESON: All right?
25 MR. BROWN: That's fine.

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1 (Recess)
2 MR. BROWN: I thought to stand up, but I did.
3 MS. ROBESON: Thank you. Okay. Is everyone
4 ready? Are the interpreters ready?
5 THE INTERPRETER: Yes, we are.
6 MS. ROBESON: Cathy, are you ready? All right.
7 We're back on the record and Ms. Deloatch --
8 MS. DELOATCH: Uh-huh.
9 MS. ROBESON: -- why don't you come up and have a
10 seat? Please raise your right hand.
11 (Witness sworn.)
12 MS. ROBESON: Please state your name and address
13 for the record.
14 MS. DELOATCH: Charlene Louise Deloatch, 17765
15 Larchmont Terrace, Gaithersburg, Maryland 20877.
16 MS. ROBESON: Okay. And what would you like to
17 say?
18 MS. DELOATCH: I'm here today on vacation, this is
19 a vacation day for me.
20 MS. ROBESON: Okay. This is a sad day then.
21 MS. DELOATCH: No, it's because I'm passionate
22 about my community that I chose to ask and I'm here because
23 I need to see my community look like that.
24 MS. ROBESON: Okay.
25 MS. DELOATCH: I've been in my community for 21

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1 years. When my husband retired from the military, this is
2 where we chose to live and this is where we're choosing to
3 retire.
4 MS. ROBESON: Okay.
5 MS. DELOATCH: I've raised my daughter here. She
6 still lives here. She enjoys living here. Some of her
7 friends are still here. Some of them have moved out of the
8 neighborhood, but we need to see that happen.
9 MS. ROBESON: Okay. Anything else you'd like to
10 say?
11 MS. DELOATCH: That's basically it. I'm very
12 passionate about this.
13 MS. ROBESON: Okay.
14 MS. DELOATCH: My community is depressed. It's
15 very depressed. Every time I leave my house and I walk by
16 that, drive by that, that's not good. That's not good.
17 It's not good for the people who live there in those
18 apartments and it's not good for the community around that
19 apartment. And I feel that once this gets done, then the
20 whole community will look a whole lot better.
21 MS. ROBESON: All right. Is that everything you'd
22 like to say?
23 MS. DELOATCH: Uh-huh.
24 MS. ROBESON: Mr. Brown, do you have any
25 questions?

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1 MR. BROWN: Just a couple.
2 CROSS-EXAMINATION
3 BY MR. BROWN:
4 Q Ms. Deloatch --
5 A Yes?
6 Q -- you saw the, we were talking about an agreement
7 that I believe you signed with the developer --
8 A Yes.
9 Q -- in, I don't have a date on this particular
10 version, but you did sign an agreement where you worked out
11 some arrangements with them.
12 A Yes, I did.
13 Q Looking at the first page of that agreement, it
14 seems to me that you signed this agreement at a time when it
15 was still, that the applicant was still pursuing PD-44
16 zoning --
17 A Okay.
18 Q -- do you recall that?
19 A I know we signed -- I don't know all these
20 technical terms. I'm not a lawyer. I'm not a doctor. I'm
21 just a resident of Towne Crest.
22 Q I understand.
23 A I don't understand what you're saying, PD-44, PD-
24 35. They came to us. We discussed what they wanted to do.
25 We discussed the film, how we wanted it done and we came to

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1 an agreement.
2 Q And that agreement was at a time when there was
3 about 358 or nine units in the proposal --
4 A Yes. Uh-huh.
5 Q -- do you recall that?
6 A Yeah, it was.
7 Q Now did you hear Mr. Hornstein talk about how they
8 reduced the number to 329?
9 A Yes, I did.
10 Q Are you still supportive of the proposal and
11 comfortable with the agreement when they've reduced the
12 number from down to 329?
13 A Yes, I am.
14 Q What if they reduced it further, would you still
15 be supportive of the project?
16 A For me, I don't want to see any of my neighbors
17 leave, any of my neighbors leave. As you said, someone has
18 lived there 20 years. If 329 keeps all those people that
19 are there, 329. 200, then somebody has got to go.
20 Q Well --
21 A Who should it be?
22 Q Well, there are 107 units over there now, aren't
23 there?
24 A Then that way bring in some more good people.
25 Q You just want to make sure that all the people are

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1 able to stay?
2 A People are able to stay, people who are homeless
3 can find a place to live, people who don't live in a nice
4 place like this can come here and live. I'm all for people
5 having a place to live.
6 Q Thank you for that clarification.
7 MS. ROBESON: Anything else? Oh, yes, I'm sorry.
8 Yes, go ahead.
9 MR. KAUFMAN: Thank you.
10 REDIRECT EXAMINATION
11 BY MR. KAUFMAN:
12 Q Just one question, Ms. Deloatch. By the way, I
13 apologize for not being able to pronounce your name.
14 A That's okay.
15 Q I'm not too good at that.
16 MS. ROBESON: I knew how to do it.
17 BY MR. KAUFMAN:
18 Q I'm not really a good speller either. My question
19 is, I mean if this is built, do you and your neighbors feel
20 that this development and as it steps down to you from four
21 to three stories will be compatible with your community?
22 A Yes, it would be. It would be.
23 Q And do you feel that the, you know, how do you
24 feel about the amenities and other things that are proposed?
25 How will that impact your community?

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1 A One, the kids will have someplace to go. I think
2 it's wonderful.
3 Q Okay.
4 A And I'm just, I'm just really excited about the
5 whole thing. I'm just really excited that, you know, this
6 is being built, this is going to build my community and it's
7 going to make my community a better place to live.
8 Q Thank you. All right. Thank you. That's all the
9 questions I have. Thank you for being here today.
10 MS. ROBESON: Okay. About of an abundance of
11 caution, do you have any questions based on Mr. Kaufman's
12 questions?
13 MR. BROWN: No questions.
14 MS. ROBESON: All right. Thank you, Ms. Deloatch.
15 You can take the rest of the day, I hope, off.
16 MS. DELOATCH: Well, I got a little sick, so I
17 guess I'll have to go home and get in bed now.
18 MS. ROBESON: All right.
19 MS. DELOATCH: Thank you.
20 MS. ROBESON: I hope you -- thank you. Mr.
21 Kaufman?
22 MR. KAUFMAN: Yes. Our next witness is Mr. Dave
23 Baker and Ms. Girard will direct his questioning.
24 MS. ROBESON: I won't ask you to raise your right
25 hand yet.

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1 MR. AGER: Thank you.
2 MS. ROBESON: Now you can raise your right hand.
3 (Witness sworn.)
4 MR. AGER: I have an opening statement too. It's
5 a dark day for me. Today is my wife's birthday.
6 MS. ROBESON: Hopefully she won't be too mad about
7 it.
8 MR. AGER: No, she's passionate also.
9 MS. GIRARD: Okay, Mr. Ager -- Mr. Ager's resume
10 is Exhibit No. 73N in the record.
11 DIRECT EXAMINATION
12 BY MS. GIRARD:
13 Q Can you please state your name and business
14 address?
15 A My name is David Scott Ager. Business address is
16 630 Daybreak Circle, Suite 8150 in Clarksville, Maryland
17 21029.
18 Q And what is your occupation?
19 A I'm a landscape architect and I'm also a certified
20 planner.
21 Q How long have you been engaged in this occupation?
22 A For approximately 30 plus years.
23 MS. ROBESON: Okay. Mr. Brown, do you have any
24 objections to qualifying Mr. Ager as a land use planner?
25 MR. BROWN: None. None.

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1 MS. ROBESON: Okay. Is that what you were
2 qualifying him as?
3 MS. GIRARD: Yes, cut it right off, yes.
4 MS. ROBESON: Okay. But have you testified as an
5 expert before this body or elsewhere in Maryland?
6 MR. AGER: Yes. Currently I'm working on a
7 planned unit development in Frederick County, property zoned
8 at 50 acres. It's ongoing at this time.
9 MS. ROBESON: Have you testified as an expert
10 though?
11 MR. AGER: Yes, I have an I have testified before
12 the Frederick County, Montgomery County, the hearing
13 examiners here --
14 MS. ROBESON: Okay.
15 MR. AGER: -- and other places I could --
16 MS. ROBESON: Okay.
17 MR. AGER: -- you know.
18 MS. ROBESON: And are you licensed in Maryland?
19 MR. AGER: I am licensed as a landscape architect
20 in Maryland, Virginia and Delaware.
21 MS. ROBESON: Okay. And I will accept you as an
22 expert in land use planning.
23 MR. KAUFMAN: Thank you.
24 BY MS. GIRARD:
25 Q Are you familiar with rezoning application G-910?

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1 A Yes, I am.
2 Q Are you familiar with the property that's the
3 subject of the application?
4 A Yes, I am.
5 Q And the surrounding area?
6 A Yes, I am.
7 Q Okay. Are you familiar with the approved and
8 adopted Gaithersburg master plan and its recommendations
9 with respect to the subject property and surrounding area?
10 A Yes.
11 Q Are you familiar with the PD-35 zoning
12 classification and the requirements of the zoning ordinance
13 with respect to the rezoning requested?
14 A Yes.
15 Q Have you analyzed the suitability of the subject
16 property for the proposed rezoning classification from a
17 land planning standpoint?
18 A Yes, I have.
19 Q And is your report in the record as Exhibit 74A?
20 A Yes.
21 Q Can you walk us through the findings of your land
22 planning analysis?
23 A Absolutely. I have some exhibits for
24 clarification that aren't in the record. So I was going to
25 bring those out. There's some blow-ups of some of the

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1 master plans as I talk through it --
2 Q All right.
3 A -- if that's okay?
4 MS. ROBESON: Well, you can introduce them and
5 they're subject to objection from Mr. Brown.
6 MR. AGER: Okay.
7 MS. ROBESON: Are they actually reproductions of
8 the master plan?
9 MR. AGER: Yes, ma'am.
10 MS. ROBESON: Why don't we -- have you provided
11 copies to Mr. Brown?
12 MR. AGER: In the planning report there are page-
13 size versions of portions of them.
14 MS. ROBESON: And these are exact duplicates?
15 MR. AGER: They're exact duplicates with the
16 portion in question blown up on the same -- if I could, I
17 could show you an example.
18 MS. ROBESON: Why don't you do that?
19 MR. AGER: As an example, I'm referring to a
20 reproduction of the 1985 land use map signed and adopted.
21 This exhibit has on the left-hand side the entire map with
22 the signature block fully shown and on the right-hand side
23 it shows a blow-up within a boxed area on that map of the
24 subject property and the general surroundings in that master
25 plan context. I have that exhibit also for previous master

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1 plans so that we have a graphic to go along with testimony.
2 That's why I brought them along if that's helpful.
3 MS. ROBESON: That's fine. I'm going to mark them
4 because they are slightly different. I'm going to mark them
5 as new exhibits and they're subject to objection from Mr.
6 Brown.
7 MR. AGER: And while I'm --
8 MR. BROWN: Can we mark them all just so we
9 could --
10 MS. ROBESON: Yes, let's do that.
11 MR. BROWN: Yes. Okay.
12 MS. ROBESON: Now can you write on those?
13 MR. AGER: I will try. Unfortunately --
14 MS. ROBESON: Or at least have a sticky, do we
15 have stickies here?
16 MS. GIRARD: I have a sharpie.
17 MR. AGER: Thank you. I do have a sharpie also,
18 but --
19 MR. BROWN: I also have stickies.
20 MS. GIRARD: A sharpie should do it. Okay.
21 MS. ROBESON: Whatever does it. So this would be,
22 so 107 would be the land use plan from the, the 19, the
23 approved land use plan 1985, Gaithersburg vicinity map
24 master plan.
25 (Exhibit 107 was marked

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1 (Exhibit 107 was marked
2 for identification.)
3 MR. AGER: 107.
4 MS. GIRARD: Yes.
5 MS. ROBESON: Is that working?
6 MR. AGER: Yes, it is.
7 MR. KAUFMAN: I'm sorry, over here, okay?
8 MS. ROBESON: Okay. And the next one?
9 MR. AGER: I have an excerpt from the 1961 master
10 plan.
11 MS. ROBESON: And that's the land use plan from
12 the 1961 Gaithersburg master plan?
13 MR. AGER: Yes. I'd like to just clarify that
14 this is the generalized land use plan found in the text
15 within my research at Park and Planning. They were unable
16 to provide me with the actual maps, so this is a blow-up
17 from the text. I have the full text with me --
18 MS. ROBESON: From the text?
19 MR. AGER: -- as well.
20 (Exhibit 108 was marked
21 for identification.)
22 MS. ROBESON: Okay. And do you have others?
23 MR. AGER: I do.
24 MS. ROBESON: This will be 109.
25 (Exhibit 109 was marked
for identification.)

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1 MS. ROBESON: Did you mark the one --
2 MR. AGER: Yes, I did, 108.
3 MS. ROBESON: Okay. Yes. 109 is the zoning and
4 highway plan from the 1971 Gaithersburg master plan. Okay.
5 And which is this, 110?
6 MR. AGER: 1985 Gaithersburg highway and zoning
7 plan.
8 MS. ROBESON: Okay.
9 MR. KAUFMAN: That's 110, I believe.
10 MS. ROBESON: Yes, it's next, 110.
11 (Exhibit 110 was marked
12 for identification.)
13 MS. ROBESON: And this is 111?
14 MR. AGER: Yes.
15 MS. ROBESON: And this is the 1971, zoning and
16 highway plan 1971, Gaithersburg master plan?
17 MR. AGER: Right. And this, the differentiation
18 is the land use. It's on the back side.
19 MS. ROBESON: Okay. So it's zoning and highway
20 plan land use?
21 (Exhibit 111 was marked
22 for identification.)
23 MR. AGER: And I have one final exhibit I'll refer
24 to later in the discussion. And what this exhibit is is an
25 aerial photograph of the subject property and the general

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1 surroundings with analysis area 2 from the 1985 approved
2 master plan for Gaithersburg and vicinity. And within there
3 it delineates the existing number of units and outlines the
4 subject property and the balance of the analysis area.
5 MS. ROBESON: Okay. I'm just going to call that
6 aerial photograph of analysis area 2.
7 MR. KAUFMAN: I think that would be the right, the
8 right label.
9 MS. ROBESON: 112?
10 MR. KAUFMAN: Oops.
11 MS. GIRARD: There we go.
12 MR. AGER: Okay.
13 (Exhibit 112 was marked
14 for identification.)
15 MS. ROBESON: Mr. Brown, do you have any
16 objections at this point to admitting these?
17 MR. BROWN: I just have a couple of questions.
18 MS. ROBESON: Okay.
19 CROSS-EXAMINATION
20 BY MR. BROWN:
21 Q If I could clarify this, with reference to pages
22 23, 24 of the Towne Crest supplemental land use report, I
23 believe that Exhibit 108 was largely found on page 20,
24 Exhibit 111 is found on page 21 and 107 is found on pages 23
25 and 24, is that correct?

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1 A I'll have, I was fumbling with the paper, so I'll
2 have to ask you to repeat that. And if you could assist
3 me --
4 Q I understand. Let's start with 107. Does that
5 correspond to pages 23 and 24?
6 A Yes, it does.
7 Q 108, does that correspond to page 20?
8 A Yes, it does.
9 Q 111, does that correspond to page 21?
10 A Yes, it does.
11 Q Does page 22 correspond to anything?
12 A Yes.
13 MS. ROBESON: That's a close-up.
14 MR. BROWN? What?
15 MR. AGER: It's a detail of the same Exhibit 11.
16 We did a lay hand version of 111.
17 BY MR. BROWN:
18 Q Okay. Exhibits 109 and 110, what do they
19 correspond to in your report?
20 A You know, there's discussion in the report about
21 any zoning or highway or density, generally Exhibit 109
22 refers to that discussion for the 1971 Gaithersburg vicinity
23 master plan.
24 Q That's 109?
25 A 109, 109 refers to the 1971 plan.

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1 Q What is the difference between 109 and 111?
2 A There is limited differences in that master plan.
3 The same base was applied. They used zoning in highways on
4 this plan and on the other plan they used highways and land
5 use.
6 Q And 110?
7 A 110 is the approved zoning and highway plan for
8 the 1985 plan.
9 Q So that's just an excerpt from the current master
10 plan?
11 A Yes, if you take out the approval plan, the land
12 use plan on the reverse side of that thing, which I have a
13 copy of, this is what's on the back of that. This is part
14 of the fold-out map.
15 Q Is that the same plan that's been marked in
16 Exhibit 12A or 12B in the record?
17 A I'm not sure. I'd have to check.
18 MS. ROBESON: Is that -- do you have a --
19 MR. KAUFMAN: 12A or 12B. It's excerpts from the
20 Gaithersburg and vicinity, not part of the July 1998
21 approved and adopted Gaithersburg vicinity master plan map.
22 MR. BROWN: Well, I'm going to have to do a little
23 more checking, but --
24 MS. ROBESON: All right.
25 MR. BROWN: -- but I believe that subject to

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1 checking on 109 and 110 I don't have any objections to the
2 admission of all of these exhibits, but I definitely have no
3 objection to 107, 108, 111 and 112.
4 MR. KAUFMAN: We could certainly reserve his right
5 to object.
6 MS. ROBESON: Okay.
7 MR. AGER: And I'll try to reserve my comments to
8 those four that you just mentioned.
9 MR. KAUFMAN: Well, you can comment on them
10 subject to --
11 MR. AGER: Okay. That's fine.
12 MS. ROBESON: Now does the interpreter need these?
13 He's going to be referring to these. Do you need to come
14 over here?
15 THE INTERPRETER: Well, the person we're working
16 with said that actually this is less important for him to be
17 able to see.
18 MS. ROBESON: Okay. That's fine.
19 MR. KAUFMAN: Okay. Are you ready to proceed with
20 him?
21 MS. ROBESON: I am.
22 REDIRECT EXAMINATION
23 BY MS. GIRARD:
24 Q When you're ready, Mr. Ager, you can proceed with
25 walking us through your lien claim and analysis.

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1 A Okay. Madam Examiner, there's a, I was called in
2 on this property after the Planning Board hearing and I
3 specifically requested to comment on master plans and their
4 relevancy to this particular case and the age of this master
5 plan particularly. Now I've tried to summarize my findings
6 and my research in this report.
7 MS. ROBESON: Okay.
8 MR. AGER: The report outlines not only the
9 general background which will be, has been described and
10 will be described by other, other witnesses, but it does
11 talk about in more specifics the master plan and the
12 findings required by a PD zone for a master plan and that's
13 kind of the focus of this whole testimony. I may touch on
14 things relative to compatibility or other findings, but the
15 purpose of this testimony is for the master plan relevancy.
16 MS. ROBESON: All right.
17 MR. AGER: So I'm going to go through some
18 background information, some analysis, and then the summary
19 findings.
20 MS. ROBESON: Okay.
21 MR. AGER: There's five -- before I do that, I'd
22 just like to kind of highlight five points that will be kind
23 of the broad points that we're going to talk about. Number
24 one, the master plan of record is the 1985 Gaithersburg
25 vicinity master plan and it has an age of approximately 28

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1 years since its adoption relative to its recommendations for
2 this particular property in this particular case. It's
3 functionally obsolete because of that and I will go through
4 certain points to describe that in more detail.
5 Secondly, I want to just -- and I'm, for the
6 record really, if nothing else, and if I'm getting into too
7 much detail, you let me know, but there is an important
8 distinction here that master plans are policy statements and
9 not regulations and there's been some comments that there
10 are specific requirements and the finding is substantial
11 compliance. So I want to talk about that a little bit and
12 what that means in this particular case.
13 I'm going to make reference to other cases, one of
14 which is in the report, Case G-873, and how they handled a
15 very old master plan, the Westpark plan, and how they
16 looked, how the, I'm sorry, the district council looked at
17 that particular plan. I'm also, since the report was
18 submitted, I have identified two other cases that have a
19 similar circumstance and have district council approval and
20 comment on older master plans and how to deal with them.
21 Those cases are not in my report. They are Case G-909 and
22 Case G-840.
23 The, in those cases, as well as 873, which I did
24 make reference to, district council took a more flexible
25 approach to the way they interpreted the density and land

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1 use recommendations of the master plan looking at the
2 general situation with the particular property and less on
3 the specifics.
4 MS. ROBESON: G-909, was that Glen Alden?
5 MR. AGER: Glen Alden in, off, just west --
6 MS. ROBESON: No, I know where. I was the hearing
7 examiner for that.
8 MR. AGER: Yes.
9 MS. ROBESON: And then what is G-840?
10 MR. AGER: That's referred to by folks as the
11 Nayheart (phonetic sp.) property. And if I could go to the
12 map, it is --
13 MS. ROBESON: Which map? What's the exhibit
14 number?
15 MR. AGER: Thank you. I'll put it up. I'm
16 referring to Exhibit 112.
17 MR. KAUFMAN: That's lesson one, by the way.
18 What's the exhibit number?
19 MR. AGER: I, see if I can pay attention. I'm
20 referring to the aerial photo, Exhibit No. 112. In the
21 upper right-hand corner of that exhibit, which is an aerial
22 photograph taken in 2013, obtained by me through Google Maps
23 Pro, and the Nayheart property is at the corner of mid-
24 county, of the northwest corner of Mid-County Highway and
25 Washington Grove Lane. It's currently under construction in

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1 the map. The aerial photo reflects that.
2 MS. ROBESON: And that's the, it looks like it's a
3 graded area?
4 MR. AGER: That's correct. It's brown in texture,
5 in color on the map.
6 MS. ROBESON: Okay. I'm sorry to interrupt. Go
7 ahead.
8 MR. AGER: No, that's fine. That's fine.
9 BY MS. GIRARD:
10 Q And, Mr. Ager, is that property within the same
11 master plan that we're discussing?
12 A Yes. Thank you. That master, that property is in
13 the same master plan, but in a different analysis area
14 within the master plan. And as mentioned, excuse me, as
15 mentioned earlier, as mentioned earlier, the subject
16 application is 8.11 acres and the number of units proposed
17 by Binding Element is 329 and that's important. The second
18 point is --
19 MR. KAUFMAN: Give us a second if you would?
20 MR. AGER: And as described earlier, the property,
21 which I'll go into more detail as we go through this, but
22 the property was constructed with a combination of garden
23 apartments and townhouses in the mid-1960's and as will be
24 described in more detail by the zoning expert, and what's in
25 the record currently, the planning neighborhood, it's

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1 described on the north by the right-of-way for Mid-County
2 Highway, on the south by the southerly limits of Washington
3 Grove and I'm going to pronounce this name wrong, I believe
4 it's Ponton Drive on the south by Washington Grove, on the
5 west by the woods that were referred to earlier in
6 Washington Grove and on the north is the jurisdictional
7 boundary between Washington Grove, this property, other
8 properties within Montgomery County and the city of
9 Gaithersburg. The subject property is within that area in
10 the north central area. The analysis area, which I'll refer
11 to later within which this property is located is also
12 within that planning area. And I will be referring to
13 Exhibit 112 in the future when we talk about this.
14 Now the Gaithersburg master plan is approximately
15 30 square miles of area that was most recently approved in
16 1985 and it was updated, limited updates in 1988 and 1990.
17 The analysis area is 21 acres and it's located within the
18 mid-county district of the air park study area. So it's a
19 portion of a much larger study area. I apologize for the
20 delay.
21 The, just to repeat what's in the report, the,
22 again, the nature of the master plan is general. It's a
23 statement of policy, a series of goals and in this
24 particular era they were actually referred to as area master
25 plans rather than master plans for sector points because

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1 they covered broad, broad geographical areas. It is
2 referenced also in the report, the functional life as
3 described by Park and Planning for a master plan is 10 to 15
4 years. And there's a big difference between the general
5 plan, master plan, sector plans and functional plans. So
6 we're referring to a master plan here, not a sector plan and
7 not a plan of high specifics.
8 The master plans, again, generally are flexible
9 guidance to be interpreted and used accordingly. They are
10 not regulations. They are not statutes, but they do have
11 certain guidance that is important for development and the
12 PD zone is dependent on it because there is a relationship
13 between the PD zone approval and the master plan.
14 Briefly, a very important issue I think, this is
15 my personal feeling on this, when I was asked to do this
16 research, I went back to the state enabling legislation,
17 which has just recently been updated, so I had a little bit
18 of searching to do actually --
19 MS. ROBESON: The Land Use Article?
20 MR. AGER: The Land Use Article. Thank you. And
21 so I re-read it just to make sure it hadn't changed
22 substantially. But the point, I guess the point I want to
23 make is that in Maryland by statute everybody, every
24 jurisdiction is required to at least look at their master
25 plan every six years. Now there are a couple of exceptions

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1 to that. There's Prince George's and Montgomery County.
2 But the professional opinion of the people at the state and
3 the people in the profession is that it's reasonable,
4 customary and appropriate to look at master plans every six
5 years.
6 In Prince George's County, they update their area
7 master plans every six years, at least that's their policy,
8 and they look at their general plan every 10 years. In
9 Montgomery County, in Montgomery County there's the unique
10 carve-out so to speak in the state legislation that says
11 that Montgomery County looks at their master plans based
12 upon their work program and their budget and there's no
13 relationship to time. And what's also interesting is when
14 you look at the master plans within Montgomery County,
15 there's many that have been updated at least once and
16 multiples times over the period of time that we're talking
17 about that this master plan occurred back in 1985. In fact,
18 there's only three master plans in Montgomery County and
19 only two that are this old and two that are just slightly
20 older than Capital View and Westbard, which is a sector
21 plan. And so you could say that this is probably one of the
22 oldest master plans in the state itself.
23 MS. ROBESON: If everyone followed the state
24 schedule?
25 MR. AGER: That's, well, even if they don't follow

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1 the state schedule, every jurisdiction is required to update
2 their land use element every six years except for these two
3 jurisdictions and Montgomery has that unique situation. So
4 what, my point is -- there's kind of two points. One is
5 this master plan as it relates to this property is 28 years
6 old. In fact, the land use, we'll talk a little later,
7 really goes back to the 1971 plan. What's, and so you have
8 that. Then you have Montgomery County saying it's useful
9 life of a master plan in their own words is 10 to 15 years.
10 And then you have --
11 MS. ROBESON: And where do they say that?
12 MR. AGER: They say it in their -- it's
13 referenced, it's footnoted in the report and I'll try and
14 find that.
15 MS. ROBESON: Okay, don't. You don't have to.
16 MR. AGER: But it's --
17 MS. ROBESON: It's in the report.
18 MR. AGER: -- it's in, it's in a document dated
19 September 1997, the master plan process, Montgomery County,
20 Maryland.
21 MS. ROBESON: Okay.
22 MR. AGER: And so, and so it seems reasonable that
23 a master plan would be looked at somewhere in the
24 neighborhood of six to 10 years, you know, it would at least
25 be reviewed. But we're in a different situation than this

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1 one because this one in particular as it relates to this
2 property is 28 years old and when you look at the history,
3 which I'll go through in a minute, the land use
4 recommendation really goes further back than that and that's
5 primarily due to the relationship of the master plan timing
6 and the construction of the property which I'm going to go
7 through a chronology and I have a, I have a handout if
8 that's helpful of the dates.
9 MS. ROBESON: No, that's fine.
10 MR. AGER: Okay. So that's pretty much the
11 framework, the big picture framework from the state and how
12 this is unique statewide. Now on the history of this
13 property, when Park and Planning was first established it
14 was a, roughly a 300-square mile area that was around the
15 capital, around the District of Columbia, and it covered
16 parts of Prince George's and Montgomery County.
17 Gaithersburg was not within that area.
18 So in the early, so let's say from 1930's to the
19 1950's, planning was primarily, in fact, we would call it
20 down counting, not in this subject area. In 1932, they
21 adopted, you know, a highway plan for the Maryland
22 Washington regional district, which is what that 300-square
23 mile area was referred to.
24 In 1957, there was the beginnings of development
25 pressure in the old 70 south corridor, which is now the

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1 Interstate 270 corridor, and the Park and Planning created a
2 study called the preliminary master plan for residential
3 land use. That, in combination with the mass transportation
4 survey report in 1959 and the policies planned for the year
5 2000, was basically the groundwork for the 1964 wedges and
6 corridors plan. And I'll just jump a little ahead in
7 history a little bit, a 1969 update to that plan was a
8 result of the underestimation population growth in the 1964
9 plan and that was the primary reason in 1969 that that plan
10 was updated.
11 So historically that plan was looking at
12 population projections in the late 1950's and then
13 developing some policy statements that eventually became the
14 1964 plan and then that plan had to be updated in 1969. And
15 what's important about that is that this property was in
16 that context, in that era, and was developed in about the
17 1965, 1966 range and the developer could probably give you a
18 more specific date. My understanding from the record is
19 it's about 1966. So it's the recommendations, the land use
20 strategies, the whole concepts that were in place at the
21 master plan level at this time were really from the 1950's
22 and by the, on the record in 1969 they were, in fact,
23 underestimated.
24 Now I'm going to jump back to the master plan now
25 and we'll come back to the general plan in a minute. The

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1 master plans in this area took place in 1961, 1971, 1985.
2 And the plan that's up on the right-hand easel is an
3 excerpt --
4 BY MS. GIRARD:
5 Q Exhibit 108?
6 A I'm sorry, Exhibit 108. I already failed the
7 test. Exhibit 108 on the right-hand easel is an excerpt
8 from the 1961 Gaithersburg vicinity master plan. And as you
9 -- chronologically it predates the general plan because it
10 was one of the first plans to be looked at because it was
11 development pressure in the area. So they wanted to get a,
12 they want sporadic sprawl development of, so there was this
13 plan that jumpstarted planning in this area. What that plan
14 says is that Gaithersburg in particular, well, it says a
15 couple things. One, it says that Gaithersburg, Rockville
16 and a couple of other master plans which are adopted in 1961
17 became a part of this, are a part of this plan. And what
18 this plan says is that the subject property is within a high
19 density mixed use area that surrounds the downtown of, which
20 was planned at the corner of Summit and where the current
21 train station is. And let me just refer to that generalized
22 land use plan.
23 This is essentially the Emory Grove Road --
24 MS. ROBESON: Is that labeled or --
25 MR. AGER: Oh, I'm sorry.

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1 MS. ROBESON: Describe this.
2 MR. AGER: Thank you. I'm sorry. On this plan,
3 which is Exhibit 108, there is a demarcation between what's
4 high density and what's low density.
5 MS. ROBESON: Okay.
6 MR. AGER: There is a road described there that
7 pretty much creates that demarcation.
8 MS. ROBESON: Okay.
9 MR. AGER: And that road is essentially the Mid-
10 County Highway, Emory Grove alignment, which was called the
11 eastern arterial in that day. The other delineating element
12 for the high density portion of this satellite town is the
13 70 south right-of-way, which is also referred to as a line.
14 And so north of that is the high-density area. The rail
15 line is actually shown on the plan running roughly through
16 the center of that area. And below that it's referred to as
17 medium density. North of that is referred to as medium
18 density and low density and then --
19 MS. ROBESON: Wait. What's --
20 MR. AGER: Of those road alignments.
21 MS. ROBESON: Is there a key on the -- yes?
22 MR. AGER: Yes, there is.
23 MS. ROBESON: Okay. All right. Go ahead.
24 MR. AGER: And in the text there's also more
25 information.

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1 MS. ROBESON: Yes.
2 MR. AGER: I have a copy of the text is you need
3 it. So based upon those road alignments and the third road
4 alignment I like to describe as the original road alignment
5 for Shady Grove Road and it actually shows that the southern
6 demarcation for this satellite town is the industrial
7 portion or what's known as the industrial district that
8 separates Gaithersburg from Rockville on this plan which is
9 now the Shady Grove Road aerial. So I've identified a rough
10 location for the subject property and analysis area to, on
11 this map and it's on Exhibit 108.
12 MS. ROBESON: Okay.
13 MR. AGER: And it falls within that higher density
14 area. So that predated the construction of the subject
15 property as it exists today, which is 1966 roughly. Then in
16 1969, as I mentioned previously, there was an update to the
17 Montgomery County wedges and corridors plan and in reading
18 that text it's clear that the original 1964 plan, one of the
19 key issues was that it was, it grossly underestimated the
20 population in this area, well, in general, but in this area
21 in specific as well. Gaithersburg was planned on Exhibit
22 108 roughly as 35,000 persons.
23 So that's the 1969 plan. And in both of those
24 general plans there was this understanding that development
25 would be focused along the transportation corridor. That's,

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1 thus, wedges and corridors. And it's not low density, it's
2 not suburban, it's high density and it's clear in both plans
3 that that's what the general land use guidance is.
4 Now soon after that 1969 update, there was a 1971
5 plan which is shown on Exhibit 111 and that was adopted in
6 1971, but the work was being done in the 1968, '69 time
7 frame, 1970 time frame. That plan shows this property
8 recommended for high-density residential and it actually
9 shows zoning on the ground that is more than what exists
10 today. And the reason for that, I believe, and I, it's my
11 opinion, is that in 1966 the Towne Crest project was
12 constructed and the zoning on the ground reflected that
13 construction.
14 MS. ROBESON: And what was the zoning?
15 MR. AGER: R-30 on the north and RG-12 1/2 --
16 MS. ROBESON: Oh.
17 MR. AGER: -- on the south.
18 MS. ROBESON: Oh, the -- okay.
19 MR. AGER: As it exists today. It hasn't changed.
20 MS. ROBESON: Okay.
21 MR. AGER: Well, what's interesting and, again,
22 I'm referring to analysis area to Exhibit 111 is that it
23 actually envisioned more multi-family than what is referred
24 to --
25 MS. GIRARD: Wedgewood 2 is northern.

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1 MR. AGER: Wedgewood 2, thank you. In the area
2 that's commonly referred to as Wedgewood 2. And the reason
3 for that, I believe, is that this marked area was
4 constructed and Wedgewood 2 was yet to be constructed in
5 1971. So there was a plan for more multi-family in this
6 area, but the developer and the property owner built
7 townhouses in the intervening years and then later on the
8 zoning caught up with the construction and essentially we
9 have, it's now R-30 portion of the ground today. But the
10 point I want to make is that even back in 1971 there was an
11 area within that analysis area greater than what is today
12 that was shown for multi-family and the general plan here
13 was for multi-family. And the reason for that is if you go
14 to the text of the 1971 plan, it refers to a series of
15 neighborhoods with community centers and it's actually a
16 typo in the text. If you read it, this is referred to as
17 the northwest area, but it's not, it's the northeast area.
18 And it has a symbol on it that shows a community center
19 which was for, you know, local services and that sort of
20 thing planned in the general vicinity of Emory Grove Road
21 and the future Mid-County Highway.
22 MS. ROBESON: Is this the 1971 plan?
23 MR. AGER: 1971 plan.
24 MS. ROBESON: Okay.
25 MR. AGER: And I have the text with me. I can --

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1 MS. ROBESON: No, this one?
2 MR. AGER: The point I want to make there is even
3 in the 1971 plan you can see there's a substantial amount of
4 townhouse multi-family zoning and land use recommendations
5 because it anticipated its future community center. So it
6 has a focused density in this general area, part of which is
7 inside our analysis area and part of which is outside of our
8 analysis area. So the point, the point is that, and this
9 occurred throughout the 1971 plan. It's kind of like the
10 Columbia plan, the local neighborhood.
11 And that takes us to the 1985 plan, which is the
12 approved plan on Exhibit 107 and that's the reference, the,
13 I'm sorry, the master plan record for this application.
14 What I've delineated on this plan on the left-hand side
15 again is a signed copy, an authorized copy of this plan
16 which I have a paper copy that came from Park and Planning.
17 I've blown up the area surrounding the subject property.
18 I've outlined analysis area 2, again, that's 21 acres. We
19 are 8.11 acres over 21 and that 21 acres comes from the text
20 of the master plan. It's not something I measured. It's
21 the actual measurement that Park and Planning did.
22 And the map clearly shows that this property is
23 recommended for high-density residential. And on this map
24 it refers to high-density residential as 8 to 15 along each
25 breaker. In the text there's a footnote that says NPD use

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1 in the density print would be added to that. So it's
2 actually 18.3 on the high side, 18.3 along each breaker.
3 In addition to that, it shows that multi-family
4 not just for the subject property or a portion of it, it
5 doesn't reflect the buildings on the ground, it reflects
6 future development and it shows that high-density
7 residential for the entire analysis area and that's unique
8 to that analysis area. You can start to see that other
9 areas have zoning that reflects build conditions and that
10 sort of thing, but this is actually a recommendation that's
11 higher than existing development, and rightfully so. It's a
12 master plan. It's supposed to envision something 20 years
13 in the future, 15 to 20 years in the future.
14 In 1988 to 1990, this master plan was amended, but
15 made no reference to this particular property or the
16 analysis area. It was silent on it. The other important
17 point about this master plan and, is that the -- it was,
18 again, what was referred to in that area, and I'm talking
19 eras because we're in a different era now, as an area master
20 plan. It is similar to the way other large jurisdictions
21 handled their zoning with a broad brush application of an
22 average lands use with the expectation that a detailed
23 development will occur during the zonings or, you know,
24 preliminary plans or site plans and those details will be
25 fine now. That's not how master plans are done today.

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1 Today they have incredible specificity. This master plan
2 does not. In fact, on this property, it really doesn't say
3 much about anything. It says, it says it's multi-family, it
4 gives a density, it actually says it's multi-family for the
5 entire analysis area, I should clarify, and then gives the
6 density for that area, but it doesn't say anything other
7 than -- and it would be appropriate for floating zones such
8 as the PD zone.
9 There's other references in the master plan.
10 There's a Table 3 that refers to optional, base and optional
11 densities. I will get into that a little later on. I
12 believe that's, that table is not consistent and is
13 specifically not consistent for this particular property.
14 In the text, and I want to, on page 9 --
15 MS. ROBESON: At which point on the '85?
16 MR. AGER: Of the 1985 --
17 MS. ROBESON: Okay.
18 MR. AGER: -- adopted master plan --
19 MS. ROBESON: All right.
20 MR. AGER: -- there's language that specifically
21 talks about future development and utilizing optional
22 method. Floating zones PD is one of the number of zones
23 that is specifically listed and I think, I believe it's
24 Table 1 if I'm not mistaken, and I can double-check that if
25 you need it. And then in Table 3 there was this reference

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1 to this property and several other properties within the air
2 park study area and it broke it down into three districts.
3 The one we're in is the mid-county district. And within
4 there it's broken down into analysis areas that are not
5 necessarily, that sometimes follow property lines and
6 sometimes do not. These analysis areas were used to give
7 average densities across the board and they were, there was
8 very little discussion about it.
9 While I was doing my research and since I wrote
10 the report and was handed in this record for this hearing, I
11 actually contacted the person who was the chief planner for
12 this master plan and I got some interesting information I
13 wasn't aware of because he has institutional mileage that I
14 don't have.
15 MS. ROBESON: And who is that?
16 MR. AGER: His name is Kerry Berman. He was, if
17 you go to the master plan where the list of planners --
18 MS. ROBESON: Yes.
19 MR. AGER: -- are, he's the chief planner. He was
20 the person on staff responsible for this master plan.
21 MR. BROWN: If Mr. Ager is about to tell us what
22 Mr. Berman said, I object.
23 MS. ROBESON: I was kind of going down that road
24 myself. I think it's better because it is -- hearsay is
25 admissible, but I'm reluctant in this instance to let it in.

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1 MR. AGER: Okay. If I, if I had it in writing,
2 would that make a difference? I have his opinion in
3 writing.
4 MR. KAUFMAN: Well, we also would make Mr. Berman
5 available for cross-examination.
6 MS. ROBESON: Okay. Why don't we do that. Is he
7 -- what do you have in writing? Is it in the record?
8 MR. KAUFMAN: No.
9 MR. AGER: It is not in the record. This is
10 conversations I had with him subsequent to the submission of
11 the report and it actually came about because when I was
12 reviewing the opposition's testimony, they have an expert
13 witness, his name is Joe Davis, who was actually in --
14 MS. ROBESON: Yes.
15 MR. AGER: -- well, as part of this plan. So I
16 thought I would try and reach out and find Mr. Berman, ask
17 him questions about the plan, what he recollected about the
18 plan.
19 MS. ROBESON: I would prefer on that critical
20 issue if he could come in and testify on his own and be
21 subject to cross-examination.
22 MR. AGER: Okay.
23 MS. ROBESON: And I'm not saying, it's not because
24 I don't trust what you said, it's just --
25 MR. AGER: That's fine.

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1 MS. ROBESON: -- it's a critical issue --
2 MR. AGER: Sure.
3 MS. ROBESON: -- and I would prefer to hear it
4 from the witness.
5 MR. KAUFMAN: Yes, that's fine. And we --
6 MR. AGER: And I completely understanding and I
7 have no problem obviously with that. I think that there's
8 certain, there's enough information in the record as well
9 from my --
10 MS. ROBESON: Okay. That's fine.
11 MR. KAUFMAN: Just on that, Mr. Berman has not
12 been employed by our client, has not been paid any
13 compensation for these comments or for the letter he wrote.
14 MR. AGER: That's correct.
15 MR. KAUFMAN: However, when we bring him in as a
16 witness, since he is a professional, he would probably have,
17 be compensated for his testimony. So --
18 MS. ROBESON: That's fine. I mean I'm sure all of
19 the experts here are --
20 MR. KAUFMAN: I just wanted the record to be clear
21 that --
22 MS. ROBESON: No, I understand.
23 MR. KAUFMAN: -- he has not been retained and he
24 had volunteered this information and also the letter.
25 MS. ROBESON: Okay, Mr. Ager.

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1 MR. AGER: Okay. Well, one other point about the
2 general master plan is that there was an amendment in 1993
3 to the general plan. So that post-dates the 1985 adopted
4 master plan.
5 MS. ROBESON: I'm sorry, when was the amendment?
6 MR. AGER: 1993.
7 MS. ROBESON: Okay. Go ahead.
8 MR. AGER: So it would seem reasonable that when
9 the general plan is updated that the master plan should be
10 updated soon after or briefly thereafter, after that time
11 period. In this case, the subject master plan is out of
12 sequence with the general plan. So it, the general plan's
13 guidance about affordable housing, about patterns of
14 development that haven't been described in this master plan
15 because it hasn't been reviewed and that sort of thing. So,
16 but it's out of sequence.
17 MS. ROBESON: Okay. In the course of your
18 research, did you find anything indicating why Montgomery
19 County exempted, well, the state exempted Montgomery County
20 out of the 6-year requirement? Did you see?
21 MR. AGER: I did not see any particular evidence.
22 The only thing I know is that that was the practice of
23 Montgomery County to use the work programs to describe how
24 they're going to do the master plans.
25 MS. ROBESON: Okay.

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1 MR. AGER: But beyond that I don't know.
2 MS. ROBESON: Okay. I'm sorry to interrupt.
3 MR. AGER: Well, that's okay. That's fine. So
4 that's the general context, the general history of the
5 master plan. A lot of -- what I tried to do in my report is
6 footnote this information. If I missed something in my
7 testimony --
8 MS. ROBESON: No, that's fine.
9 MR. AGER: Yeah.
10 MS. ROBESON: It was very thorough.
11 MR. AGER: So I've got in my notes here, it looks
12 like if I said it, I'm repeating myself, I apologize, but
13 there are count -- the master plan findings are not only
14 just specific to master plan language and density, but to
15 county policies in general. And if a master plan is this
16 old, how many county policies are there that have occurred
17 in 28 years that are not being recognized or considered in
18 the context of this master plan?
19 So the important thing about that is essentially
20 with its age it has the, you know, the general guidance.
21 It's reasonable and probably valid, but the specifics are
22 probably not. And I'll give you a great example. I had the
23 opportunity to work on the Kentlands project in the city of
24 Gaithersburg from day one and in 1986 Joe Alfandre worked
25 with the mayor, Ed Bohrer, mayor of Gaithersburg at the time

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1 and that project started a revolution of land use
2 considerations in this country and internationally. That
3 was 1986. This master plan was 1985. This master plan
4 doesn't even envision the possibility of, as an example,
5 that's just one of them.
6 Another example, Governor Glendening and the
7 additions that were in 1992, the smart, what we refer to
8 generally as smart growth, that's 1992. Now the general
9 guidance in the master plan is for concentrated growth and
10 dense patterns of development, but it pre-dates the smart
11 growth. So there's several things and I can go through many
12 others, but it happened since then that aren't even in this
13 master plan or even considered. So it's not only just the
14 time elapsed for this master plan, but all of the things
15 that have occurred since then, the state of the art so to
16 speak for land development, architecture, landscape
17 architecture, storm water management, green infrastructure.
18 MS. ROBESON: Well, I guess, I mean I
19 understand --
20 MR. AGER: And some of those are outside the
21 context of the findings that --
22 MS. ROBESON: Right. Well, I guess my conundrum
23 is the zone requirements are that it comply with the master
24 plans. Now you've given me a lot of reasons why I should
25 ignore the master plan, but I, you know, the same can be

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1 said about many, many master plans, that they pre-dated the
2 storm water, they predated a lot of the more recent housing
3 policies and so I guess, but I have, my criteria for
4 approval is to say, in the PD zone, is to say that it's
5 consistent. So I guess my question to you is in what ways,
6 not why I should ignore it, but in what ways is this
7 consistent with the master plan?
8 MR. AGER: Very good. Thank you. Thank you.
9 I'll focus on that. What I'd like to do then is maybe jump
10 to some calculations I did in my report --
11 MS. ROBESON: Okay.
12 MR. AGER: -- and talk about that. In direct
13 response to what you just asked, one is the master plan
14 recommends high density residential. It has a -- so we're
15 consistent with that. It has a land use recommendation for
16 multi-family and we're consistent with that. It --
17 MS. ROBESON: Well, how do you define high-density
18 residential?
19 MR. AGER: Well, today it's not what it was in
20 1985. In 1985, and I can tell you --
21 MS. ROBESON: Can I just --
22 MR. AGER: Yes, sure.
23 MS. ROBESON: -- tell you what I'm struggling
24 with?
25 MR. AGER: Yes.

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1 MS. ROBESON: Because I do have this
2 recommendation from the Planning Board that I think needs to
3 be addressed. And so you and I can say I have someone come
4 in here and say, well, under the building code, high density
5 residential is, you know, whatever, but that's a different
6 context. That's for occupancy rating.
7 MR. AGER: Uh-huh.
8 MS. ROBESON: And so what you're kind of -- I need
9 to get to a point where I can say the master plan is a
10 legislative act. One could argue that they didn't change
11 the master plan because it didn't need fixing, especially
12 when, especially when it's done by a work program.
13 MR. AGER: Uh-huh.
14 MS. ROBESON: -- instead, no, just listen. I'm
15 just making the argument. I'm not deciding.
16 MR. KAUFMAN: No, I know. I just want to say
17 something when you're done.
18 MS. ROBESON: Okay. That's fine. So I guess if
19 you could tell me where your context of high-density
20 residential at 329, from eight to 15 units in a total of
21 18.3 units to -- I'm blanking out on what this density is
22 per acre, but you know how do I get from there to here
23 consistent with the master plan and what did you want to
24 say, Mr. Kaufman?
25 MR. KAUFMAN: You're right, is an action of the

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1 County Council. It's non-statute. It's strictly a
2 statement of policy and I think that distinction is very
3 important. I'm sure you're familiar with the Court of
4 Appeals decision for master plans. There are one criteria
5 that one might consider. With all due respect to the
6 Planning Board, I think they treated it as if it was a
7 statute.
8 And I think that the fact that they adopted does
9 not make it rise to the level of enforceable law. And in
10 the case of this master plan as the witness has indicated
11 before, the standard is substantial compliance, not strict
12 compliance.
13 MS. ROBESON: Okay.
14 MR. KAUFMAN: And I do believe something, I'll
15 make a closing argument, that the Planning Board did not
16 focus on that.
17 MS. ROBESON: Okay.
18 MR. KAUFMAN: Okay.
19 MS. ROBESON: So, Mr. Ager --
20 MR. AGER: Yes, ma'am?
21 MS. ROBESON: So you're going to tell us what this
22 substantially complied?
23 MR. AGER: Yes.
24 MS. ROBESON: Okay.
25 MR. AGER: There's a very important --

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1 MS. GIRARD: You can proceed. I think now would
2 be a good time to go into your analysis about the specific
3 property in this area.
4 MR. KAUFMAN: In Area 2, right.
5 MR. AGER: Again, there's an important distinction
6 and that's the concept of analysis there is with what Park
7 and Planning established in this master plan. So because
8 it's old and because it's, doesn't have a detailed
9 recommendation for each property like you see in more
10 current master plans, it's clear that the master plan was
11 developed on an area-wide basis. You use the term area, you
12 know, analysis areas.
13 MS. ROBESON: Uh-huh.
14 MR. AGER: There's examples. I can show you
15 examples where analysis areas have multiple properties like
16 ours. We have 125 property owners within our analysis area.
17 I can show you other areas where there's a single property
18 owner. But they, what seems to be the common element with
19 these analysis areas is that they were grouped geographical
20 areas with common circumstances that they want to apply a
21 very generalized density to. And you can look at the master
22 plan map and you can see that and you can look at it in more
23 detail with references to the TDR's and that sort of thing
24 where the lowest density was to the north of the air park
25 study area. It recommended roughly three units per acre,

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1 plus a very broad area. And then that they graded down to
2 four, five, six and eight to 15 and for us. And we're not
3 the only property with that recommendation. When you look
4 at the plan, you can see that the preponderance of those
5 higher density uses are closest to where the plan's compact
6 development is, along the rail line, along the highway
7 infrastructure and where the water and sewer were proposed
8 and essentially feathering of density up to the road.
9 So that's, this master plan general context. Now
10 that tells you that it is very appropriate to analyze
11 density on an analysis area basis and that's what I did in
12 my report. So we have 21 acres and in the report I'll go
13 through the --
14 MS. ROBESON: You're saying the master plan took
15 the broad brush approach, is that what you're saying --
16 MR. AGER: That's exactly what I'm saying and it
17 was consistent with master plans of that era. Again, we're
18 talking about three decades ago. And there are, you know,
19 the Germantown plan, we're going back to that date?
20 MS. GIRARD: Let's say --
21 MS. ROBESON: Yes, let's --
22 MR. AGER: Yes.
23 MS. GIRARD: Let's stay on this analysis area.
24 MS. ROBESON: -- stay on master plan compliance.
25 MR. AGER: All right. Sorry. So there's been

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1 discussion, well, let me go through the numbers. Again, the
2 analysis area is 21 acres within which this property is
3 located. It's 8.11 acres. The entire analysis area is
4 recommended in the plan for multi-family and densities
5 between eight and 15 units and I can talk to that number
6 specifically later. I'll run, just go through the
7 calculation first.
8 MS. ROBESON: Yes.
9 MR. AGER: When you do a simple calculation for
10 the analysis area and you include the MPDU, which is an
11 apples to apples comparison between the application plus
12 residential homes that will remain, and the master plan
13 density, you'll -- what you do is you come out with 800 and,
14 I'm sorry, 384 dwelling units for analysis area 2 to take
15 that, to take the generalized elements and turn it into a
16 unit number, it's 384, roughly 18.3 dwelling units per acre
17 and that's 21 acres times 15 times 22 percent for 1.22 for
18 the MPDU's.
19 Now the density within, if this application was
20 approved as submitted, 329, and I'm referring to aerial
21 photo Exhibit 112, it would be 329 units within the
22 application area and the remaining 124 units. And that
23 simple addition is 453 units. So the difference between
24 453, the proposal on an analysis area basis, and the master
25 plan recommendation on analysis area basis is that the

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1 density within the analysis area would be 18 percent greater
2 than what's proposed here on the master plan. So that's the
3 simplest way to explain all that number crunching.
4 MS. ROBESON: Right.
5 MR. AGER: And if I was unclear --
6 MS. ROBESON: You spread the density out -- I see
7 what you're doing. Rather than doing it density per acre,
8 you're taking total number of units and dividing it by --
9 MR. AGER: What I'm doing is I'm following the
10 master plan. The master --
11 MS. ROBESON: Well --
12 MR. AGER: Yeah.
13 MS. ROBESON: -- I'm just trying to figure out --
14 MR. AGER: Yeah.
15 MS. ROBESON: -- how you're --
16 MR. AGER: Yeah.
17 MS. ROBESON: -- following the master plan.
18 MR. AGER: Well, let me, let me, let me try again.
19 MS. ROBESON: You're not doing it by units,
20 well --
21 MR. AGER: I am doing it by units per acre. Let
22 me go through it again for clarity.
23 MS. ROBESON: You're taking total units.
24 MR. AGER: I'm comparing -- let me back up. I
25 obviously wasn't clear and I apologize.

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1 MS. ROBESON: No, no, it's -- I think it's me.
2 MR. AGER: The master plan, when you take the very
3 general plan --
4 MS. ROBESON: Yes.
5 MR. AGER: -- and you take what information you
6 have between the map and the document --
7 MS. ROBESON: Yes.
8 MR. AGER: -- you have a master plan that broke a
9 30-square mile area into a series of analysis areas.
10 MS. ROBESON: Right.
11 BY MS. GIRARD:
12 Q Maybe we, can we like perhaps walk you through?
13 So isn't it, this analysis area is 21 acres, correct?
14 A Yes, that's correct.
15 Q And you're multiplying that by the high end of the
16 range, which is eight to 15, so times 15.
17 MS. ROBESON: So 18.3.
18 BY MS. GIRARD:
19 Q So 21 acres times 15 and then you add the 22
20 percent density bonus, correct?
21 A Right, which is written into the master plan.
22 Q And that's how you got to your original number?
23 MS. ROBESON: So you're spreading the -- okay. I
24 got you.
25 MR. AGER: I'm giving you a number to reflect that

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1 approved plan.
2 BY MS. GIRARD:
3 Q And it's your opinion that it was common in this
4 master plan and in master plans at the time to spread the
5 density out over an analysis area?
6 A Yes, and there was going to be some areas within
7 the analysis area that have densities lower than the average
8 and areas within the analysis area that have higher
9 densities within the average. And a good example is Flower
10 Hill, just up the road. It's in this master plan. It has
11 an average density, but some areas have single family homes
12 and townhouses that are lower than the average and some
13 portions of that project final approval has --
14 MS. ROBESON: But if you develop at this density,
15 there's no more capacity in Area 2, right?
16 MR. AGER: That's, that's correct. And can I make
17 a comment to that?
18 MS. ROBESON: Sure.
19 MR. AGER: Two points. One is the support for this
20 project is inside analysis Area 2. The opposition is
21 occurring outside.
22 MS. ROBESON: Okay.
23 MR. AGER: If there was anything in the record
24 that would suggest a property owner wanted to object because
25 we were stealing their density or something along those

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1 lines, you would have it in the record. You don't. The,
2 this, these homes are supported by essentially the
3 clustering concept and if this was brought in, you know, as
4 one product, you would see it that way and so you have
5 100 -- the second point, and it's more speculation, but I
6 wanted to say that in my experience getting three property
7 owners to agree to a redevelopment in an up-zoning and get
8 their neighbors to agree to it is an extremely difficult
9 proposition. To get 124 individual property owners to agree
10 on something is highly improbable. I can't say never, but I
11 can't imagine when that would occur.
12 The advantage you have here is you have one
13 property owner who has essentially maintained ownership of
14 this property and he has the ability to make these sorts of
15 improvements. So that's -- so that's my comment to that.
16 MS. ROBESON: Okay.
17 BY MS. GIRARD:
18 Q So using this analysis, you've concluded that with
19 the 329 acres, 329 units proposed, that would be an 18
20 percent increase over the master plan density?
21 A That's correct.
22 Q And have you done -- is that consistent with other
23 cases in the County where the master plan density has been
24 exceeded?
25 A Yes, that is consistent. It's actually lower than

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1 some that we referenced.
2 Q Do you have some specific examples that you can
3 briefly point to, at least the case numbers?
4 A Yeah. In the report I made reference to Case 873,
5 G-873, and that was the Westbard plan. And the key point
6 there is that that plan was adopted in 1984. So in that, on
7 that particular property, the District Council determined
8 that it was reasonable to have a slightly higher density
9 than what was, the number, the number in the master plan by
10 about 33 percent. I'm not saying that that's perfectly
11 analogous, but what I am saying is that that particular plan
12 is very much on point because of the age of the master plan
13 and the, and the issue of being outdated. And, in fact,
14 when you look at the reference that I have in my master, in
15 my report I filed here, they make specific comment in that
16 District Council opinion that it's appropriate to look at
17 the broad policy objective of the plan, but clearly the
18 specific details over that period of time would be outdated
19 and they use the word outdated in their opinion. So that's
20 why I'm referencing them.
21 Q And, Mr. Ager, the case that you referenced
22 earlier, this G-909, did that similarly exceed?
23 A Yes, it has some similarities. It's in Bethesda,
24 but it's the higher density. But similarities are it's a
25 1950, '60 era garden apartment project, lower income end of

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1 the scale. It had a single owner. It was very helpful to
2 provide affordable housing in that area. It had a base zone
3 of, I believe, of R-10. It may have been varied. So it had
4 a Euclidean base zone and that application was recommending
5 for PD-88 and PD-100 and the District Council concluded that
6 the PD-100 was two variations on the PD-100, that the PD-100
7 was appropriate which was, in fact, higher than the numbers
8 recommended in the master, the density in the sector plan.
9 Q Do you know approximately how much higher
10 percentage wise?
11 A It depends on how you calculate it.
12 MS. ROBESON: 15 percent.
13 MR. AGER: How much was it?
14 MS. ROBESON: 15.
15 MR. AGER: 15 percent?
16 MS. ROBESON: I guess the only thing on that is
17 there was a legislative indication that the council wanted
18 more density in that Battery Lane district which, you know,
19 I don't know if that's here or not. So --
20 MR. AGER: Right. There was a couple of other
21 things, I believe, and correct me if I'm wrong. There was a
22 desire for affordable housing in that general area of the
23 master plan. There was a big deficit in affordable housing
24 in Bethesda in general and this was an opportunity to
25 provide some of that.

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1 MS. ROBESON: Is there a deficit in affordable
2 housing in the Gaithersburg area?
3 MR. AGER: In the analysis area you have two.
4 MS. ROBESON: No, no, I'm talking about in the,
5 oh --
6 MR. AGER: The analysis Area 2, the, my --
7 MS. GIRARD: I believe there's letters in the
8 record that speak to that specifically.
9 MS. ROBESON: Okay.
10 MR. AGER: And we have no MPDU's and the property
11 owner, applicant is proposing 50 MPDU's. And that is above
12 what was the required, I believe she just did the
13 calculation for MPDU's, for providing more than the density,
14 provide additional for the units basically. So he's
15 providing voluntarily more MPDU's, and he's meeting the, the
16 County in general, the need for affordable housing on this
17 property. So that's an important point.
18 BY MS. GIRARD:
19 Q And, Mr. Ager, we, just to back up. So you
20 started this analysis and provided some analysis to the
21 hearing examiner, but the Planning Board did not have it in
22 front of it during their discussion of master plan density,
23 correct?
24 A That's correct.
25 Q And in their conversation, did they talk about

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1 what, what type of increases of density they would find to
2 be in compliance with the master plan?
3 A Yeah, I'm going to paraphrase. And different
4 members of the Planning Board had different opinions, but
5 one mentioned 18 percent and one mentioned 20 percent at the
6 end of the testimony.
7 MS. ROBESON: But were they referring to -- they
8 were referring to just the 8.11 acres?
9 MS. GIRARD: Correct. They didn't have the
10 benefit --
11 MS. ROBESON: Not the whole --
12 MS. GIRARD: -- of Mr. Ager's analysis of, about
13 an analysis area --
14 MS. ROBESON: Right. What they were saying --
15 MS. GIRARD: -- rather than an individual
16 property.
17 MS. ROBESON: They were saying 18, no, they were,
18 if your -- I wasn't there.
19 MR. AGER: Well, I wasn't there.
20 MS. ROBESON: So it's not --
21 MR. AGER: I wasn't there either. I viewed it, I
22 viewed the hearing online after the fact because I wasn't
23 involved in the case.
24 MS. ROBESON: No, that's fine. I'm not
25 questioning what you said.

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1 MR. AGER: There was two, yeah, there was two
2 things that they said. There were comments that they liked
3 the plan, but they were hung up on this whole question of
4 the master plan.
5 MS. ROBESON: Right.
6 MR. AGER: And the density didn't bother them as
7 much. Some did, some didn't. There were comments about
8 compatibility of a 4-story building as to a 1-story
9 building.
10 MS. ROBESON: Right.
11 MR. AGER: But they were struggling with it
12 clearly and they did make comments of 18 to 20 percent and
13 you may be right that it was only 8.11. I'm not, you know,
14 yeah.
15 MS. ROBESON: Okay. Go ahead.
16 MR. AGER: Ms. -- okay. Have you concluded your
17 analysis as far as the density and how -- and it's your
18 opinion that the 18 percent increase in density over the
19 analysis area would be in substantial compliance with the
20 master plan?
21 MR. AGER: Yes, I do.
22 BY MS. GIRARD:
23 Q And just to reiterate what you -- and it's your
24 conclusion on that that as a master plan ages, the general
25 guidance should be given precedence over specific numbers --

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1 A Absolutely.

2 Q -- isn't that part of that analysis?

3 MS. ROBESON: And how do you define high-density?

4 MR. AGER: High-density for me is 40 to 60 units

5 per acre.

6 MS. ROBESON: And why is it that for you?

7 MR. AGER: Well, because -- well, there's several

8 ways to look at it. If you look at what was the state-of-

9 the-art in 1971 to '85, what was, what were people building,

10 what could they invent? It was garden apartments with

11 surface parking.

12 MS. ROBESON: Okay.

13 MR. AGER: The very big change in the way multi-

14 family is constructed today is that there's a way to provide

15 very compatible multi-family housing by stacking parking.

16 The number one generator for density is parking, not units.

17 And it's clear that this plan with its back parking is a

18 significant benefit and improvement and the density is not

19 the issue, it's really a question of compatibility. And so

20 if this plan was written today and the master plan

21 recommended this property for high-density residential, it

22 could be consistent with all the plans back to 1961 --

23 MS. ROBESON: Okay.

24 MR. AGER: -- I am very confident that it would be

25 much higher with 15 units to the acre because they -- in

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1 1985, there was no such thing as wrapped parking or stacked

2 parking. It wasn't even on people's radar screens at that

3 time. That was something that happened in the late 1990's

4 and early 2000's.

5 MS. ROBESON: Okay.

6 MR. AGER: So it's a very different, it's a very

7 different number today and it can be completely compatible.

8 BY MS. GIRARD:

9 Q And, Mr. Ager, is it your opinion that aside from

10 the simple density issue, that this project is compatible

11 with the master plan and its guiding principles and other

12 recommendations?

13 A Yes.

14 Q One more question that I had, just to make it

15 crystal clear, all right, I think it might have been clear,

16 but the -- so the Planning Board did not look at the

17 analysis area, but it's your opinion that they should have?

18 A They absolutely should have. And the staff was,

19 didn't direct them to do that during the discussion is my

20 recollection from viewing the video.

21 Q Okay. Mr. Ager, did you have any other conclusion

22 that you would like to get on the record?

23 A Well, in the report I made a general comment, you

24 asked me the question and I commented back. There have been

25 tremendous changes in the state-of-the-art and I've listed

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1 them in the report and I have some concluding comments in

2 the report that, again, if necessary for the record, I'd

3 like to read them, you know, verbatim, but they're in the

4 report.

5 MS. ROBESON: Well, if they're in the report, just

6 in the interest of time --

7 MR. AGER: That's fine. I just want to be --

8 MS. ROBESON: -- I will --

9 MR. AGER: I just want to be sure.

10 MS. ROBESON: -- I have read your report and I

11 know that I will be re-reading it again. So that's fine.

12 BY MS. GIRARD:

13 Q Oh, actually, I'm sorry, there was one more

14 question. Mr. Ager, do you know if the master plan is

15 scheduled to be updated in the near term?

16 A The, I saw a copy of the spring 2013 work program.

17 I believe it's scheduled for adoption in 2015.

18 Q And has it been continuously delayed up to this

19 point?

20 A Yes, it has.

21 Q I believe that's all we have.

22 MS. ROBESON: Thank you. And, Mr. Kaufman, did

23 you?

24 MR. KAUFMAN: Well, you're at quarter to 1:00. I

25 don't know if you want to break or you want to just go

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1 ahead. I think that Mr. Brown may have a lot of questions.

2 MS. ROBESON: Yes. I was going to say can you --

3 I would like to break and take a lunch break now. Now one

4 thing I'm going to ask the parties to think about, I'm

5 getting a very strong feeling that this is going to go into

6 another day. I did out of an abundance of caution, I did

7 get two additional potential hearing dates. So if the

8 parties could check with their witnesses and I have one that

9 will be on Monday, February 25th at 9:30. I have a second

10 that would be Monday, March 4th at 9:30. So, yes?

11 MR. KAUFMAN: You may need both I think.

12 MS. ROBESON: Well, that's what I'm wondering.

13 MR. KAUFMAN: Yes.

14 MS. ROBESON: So --

15 MR. KAUFMAN: We have several more witnesses. I'm

16 sure there will be some more citizens. I'm sure Mr. Brown

17 will want to present a number of witnesses.

18 MS. ROBESON: Well, then why don't each of the

19 parties check and let me know their availability for those

20 dates and if we need a different date, you know, we can

21 arrange that too. I just need one date to be able to

22 continue -- today I just need one date to be able to

23 continue the case to. So --

24 MR. KAUFMAN: Okay. For me, just for Mr. Kaufman,

25 both of those dates would work, although on the, I'm sorry,

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1 the 25th, I do, I'm the chairman of the board of trustees of
2 Montgomery College and I do have to be at the college by
3 about 5:30, okay?
4 MS. ROBESON: Oh, I think we can --
5 MR. KAUFMAN: Okay.
6 MS. ROBESON: -- handle that. Or Ms. Girard
7 can --
8 MS. GIRARD: Soldier on without you.
9 MR. KAUFMAN: I'm imminent, I'm imminent --
10 MS. ROBESON: Just for a brief period.
11 MR. KAUFMAN: Well, no, no. I've reached a point
12 in my life where I know I'm imminently replaceable, so --
13 MS. ROBESON: Oh, no. Anyway, I know you'll need
14 to check with your witnesses too.
15 MR. KAUFMAN: Yes, we will.
16 MS. GIRARD: We'll do that.
17 MS. ROBESON: So thank you for that. And we'll be
18 back at quarter to, quarter until 2:00.
19 MR. KAUFMAN: Thank you.
20 MS. ROBESON: All right. Thank you. Is everyone
21 ready?
22 MR. KAUFMAN: Well, we do have one -- we have
23 someone who wants to testify. It's Barbara Goldberg,
24 Goldman.
25 MS. ROBESON: Let me go back on the record.

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1 MR. KAUFMAN: Okay.
2 MS. ROBESON: Are we back on the record, Cathy?
3 Okay.
4 MR. KAUFMAN: All right. With your indulgence,
5 Madame Hearing Examiner, the co-chair of the Affordable
6 Housing Conference of Montgomery County --
7 MS. ROBESON: Yes.
8 MR. KAUFMAN: -- is here to testify. She has a
9 very short window of time and I was wondering if she, we,
10 she might just make her statement and then go on.
11 MS. ROBESON: Do you have any objection, Mr.
12 Brown?
13 MR. BROWN: No objection.
14 MR. KAUFMAN: Okay.
15 MS. ROBESON: That's fine. Can she come forward?
16 MR. KAUFMAN: Yes. Dave, you'll have to sort
17 of --
18 MS. GOLDMAN: Thank you very much for
19 accommodating me.
20 MR. KAUFMAN: You do have to take an oath.
21 MS. ROBESON: Yes. Please raise your right hand.
22 (Witness sworn.)
23 DIRECT EXAMINATION
24 BY MR. KAUFMAN:
25 Q All right, Ms. Goldman, would you just sort of

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1 identify yourself and your role with the Affordable Housing
2 Conference?
3 A Absolutely.
4 MS. ROBESON: Well, I need a name and address at
5 minimum, okay?
6 MS. GOLDMAN: Barbara Goldberg-Goldman. I'm the
7 co-chair of the Affordable Housing Conference of Montgomery
8 County, Maryland. We're located in Rockville, Maryland, at
9 133 Rolands Avenue.
10 MS. ROBESON: Okay.
11 MR. KAUFMAN: Okay. Do you need a private address
12 or just --
13 MS. ROBESON: No, no, no.
14 MR. KAUFMAN: Okay.
15 MS. ROBESON: An address.
16 MR. KAUFMAN: Let me ask you this, first off, I
17 appreciate your being here today.
18 MS. ROBESON: Is she your witness?
19 MR. KAUFMAN: Yes.
20 MS. ROBESON: Okay.
21 BY MR. KAUFMAN:
22 Q Okay. Appreciate you being here today and I'd
23 like to ask you has the Affordable Housing Conference had a
24 chance to familiarize itself with this proposal?
25 A Yes, we have.

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1 MR. KAUFMAN: All right. And do you, did you take
2 a position on it and would you explain it?
3 Q Yes, we did take a position on it. The Affordable
4 Housing Conference, for those who are not familiar with us,
5 has been in existence for 22 years. We bring elected
6 officials, housing and community development leaders,
7 business professionals, activists, developers, realtors,
8 anyone who has even a remote interest in the affordable
9 housing arena together on a number of levels and --
10 MS. ROBESON: Oh, I'm sorry, I don't have
11 interpreters.
12 MR. KAUFMAN: Oh.
13 MS. ROBESON: Is the gentleman here, just for the
14 record, is the gentleman here that needed the interpreters?
15 Is he present?
16 MS. ROBESON: Okay. I just realized that there
17 was something missing over to the side here. All right.
18 I'm sorry to stop you.
19 MS. GOLDMAN: That's okay.
20 MS. ROBESON: Go ahead.
21 MR. KAUFMAN: Maybe we ought to just clarify that
22 the interpreters were for the hearing impaired and that they
23 were here this morning.
24 MS. ROBESON: Yes.
25 MR. KAUFMAN: Okay. Not language interpreter.

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1 MS. ROBESON: Yes. Thank you. Go ahead.
2 MS. GOLDMAN: Thank you. And we bring people,
3 these people from all walks of life who have interest in the
4 affordable housing and economic development arenas together
5 on a number of levels. We advocate for affordable housing
6 components in all developments. We also advocate for
7 redevelopment of communities so that they improve the
8 quality of life for the neighborhoods surrounding them. We
9 also hold events during the course of the year that
10 culminate into one summit, which this year will take place
11 on May 10th.
12 So we are very pleased to be able to speak in
13 favor of this particular development and I'm prepared to go
14 through my testimony if that's okay with you --
15 MR. KAUFMAN: Sure. Please.
16 MS. GOLDMAN: -- or would you like to just --
17 BY MR. KAUFMAN:
18 Q Proceed.
19 A Okay. You understand the mission of the
20 Affordable Housing Conference, so advocating for private
21 initiatives such as the Towne Crest apartments come as
22 second nature to us. There are very few opportunities now
23 that exist that create and maintain affordable housing here
24 in Montgomery County. We have a waiting list over 1,000
25 families. Unfortunately, public funds are nowhere

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1 sufficient to meet those needs of those people who
2 oftentimes, believe it or not, can be living on the side of
3 the road in a vehicle. We have seen it. We know it exists.
4 And while Montgomery County is often thought of the most
5 enlightened community in the nation and one of the most
6 affluent, we still have the same problems that besiege many
7 large, urban areas that surround the United States.
8 So when a private sector proposes to, a member of
9 the private sector proposes to invest and redevelop aging
10 apartments as new, modern and affordable, it should be
11 vigorously encouraged. That's if we're truly serious about
12 meeting this desperate need. And while we are seeing some
13 light at the end of the tunnel, there is a population, our
14 working -- I don't want to use the term working class, but
15 those people that provide the engine to our lives here in
16 Montgomery County, our wait staff, service industry on all
17 levels, our nurses, our bus drivers, our school teachers, we
18 get very encouraged and we feel that we want to do
19 everything we can to make sure that these kinds of
20 communities are developed.
21 The two neighborhoods closest to Towne Crest had
22 seen over the course of many years the deterioration of this
23 particular property and they have experienced crime problems
24 in their neighborhoods. They've spoken firmly in support of
25 this redevelopment. I understand that the city of

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1 Gaithersburg Planning Commission also recommended in favor,
2 as did the professional staff of the Planning Board.
3 Neighbors and observers have weighed in urging
4 county officials to change the downward course of this
5 property and to permit its redevelopment. Well, we share
6 the view. These plans present an outstanding opportunity to
7 the much-needed affordable housing where it is clearly
8 needed.
9 The community today, as I mentioned houses, the
10 engine that drives this county. This population is rich in
11 diversity and ethnic origins. The current residence, I
12 understand, will be invited to return to live in the new
13 apartments at a comparable rent rate once they, the units
14 have been completed and they can move back in. I also
15 understand that they are being relocated to other units in
16 that same community.
17 So we strongly encourage you to recognize the
18 opportunity before you. Your positive decision on this
19 application will reflect the reasoned, careful opinions of
20 housing professionals, as well as ours. Montgomery County
21 has done very well to recognize the shortage of affordable
22 housing, but the need greatly surpasses the supply. Your
23 support of this application will enable a private developer
24 to completely redevelop a deteriorated property. This will
25 contribute to the quality of life for those families that

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1 will live in there and enhance the overall community. I
2 thank you very, very much for allowing me to be here today
3 and for accommodating our schedule.
4 MS. ROBESON: Thank you. Any other questions?
5 MR. KAUFMAN: Just one.
6 BY MR. KAUFMAN:
7 Q First of all, thank you very much, Ms. Goldman,
8 for being here. I just want to be clear on the record. My
9 understanding is this is the position of the leadership of
10 the Affordable Housing Conference, correct?
11 A That's correct.
12 Q Okay. Thank you. I have no other questions.
13 MS. ROBESON: All right. Mr. Brown, do you have
14 any questions?
15 MR. BROWN: Yes, I'll be brief. Ms. Goldman,
16 Goldman, Goldberg-Goldman, is that right?
17 MS. GOLDMAN: It is.
18 CROSS-EXAMINATION
19 BY MR. BROWN:
20 Q Do you happen to know how many MPDU's are being
21 proposed for this project?
22 A Well, I assume it's the, I would assume it's
23 somewhere around 12 1/2 percent, is that correct?
24 MR. KAUFMAN: It's actually larger.
25 MR. BROWN: Actually it's 15 --

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1 MS. ROBESON: Let her answer.
2 BY MR. BROWN:
3 Q Just subject to correction from Mr. Kaufman, my
4 understanding is it's 15 percent and 50, 5-0 units?
5 A That makes me feel even better because any plan
6 that exceeds the minimum requirement is absolutely doing
7 exactly what it should be doing.
8 Q Would you be even happier then, I take it, if
9 there were 59 units?
10 A Would I be happier?
11 Q Yes.
12 A Well, I would be happy to increase on every single
13 development as many affordable units as possible. I don't
14 know the numbers and I don't know if it would work, if 59
15 would be a deal breaker in getting this off the ground, then
16 I couldn't. But if -- and, again, I'm coming at this
17 without knowledge of how the numbers have been worked up so
18 that if 59 units become problematic for enabling this to
19 move forward, then no I wouldn't. If they do not impact the
20 numbers, then I would say absolutely, the more you can
21 achieve, the better it would be.
22 Q All right. In fact, the 59 was their original
23 proposal, did you know that?
24 A I did not know that.
25 Q I have nothing further.

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1 MS. ROBESON: Anything else?
2 MR. KAUFMAN: I'm sorry. Excuse me. Yes. Since
3 you don't know the numbers, I think it's important for you
4 to understand the --
5 MR. BROWN: Objection. Is there a question?
6 MS. ROBESON: I was getting there. Let me ask you
7 something. Was she on your witness list, because she's
8 representing an organization?
9 MR. KAUFMAN: No, they came forward to make this
10 presentation themselves. They're not on my expert witness
11 list, no.
12 MS. ROBESON: Okay. But anyone representing an
13 organization is required to file a statement stating their
14 position 10 days in advance of the hearing to give the
15 opposing side --
16 MS. GOLDMAN: I only know that we learned of this,
17 and I'm not even sure how we learned of this particular
18 development, but we were very solicitous in wanting to come
19 and speak in favor of it.
20 MS. ROBESON: That's fine. What I would do is, if
21 it is acceptable to you, is leave the record open and we're
22 going to have another time for hearing in at least 10 days
23 so that the applicants have a, I mean the opposition has the
24 opportunity to digest your testimony and comment on it,
25 okay?

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1 MS. GOLDMAN: Absolutely.
2 MR. KAUFMAN: Yes. And that would be fine and we
3 can ask --
4 MS. ROBESON: And do you have a question?
5 MR. KAUFMAN: No, I do not.
6 MS. ROBESON: Okay.
7 MR. KAUFMAN: That's it.
8 MS. ROBESON: Okay.
9 MR. KAUFMAN: Okay.
10 MS. ROBESON: All right. Thank you. You may be
11 excused.
12 MS. GOLDMAN: Thank you very much.
13 MR. KAUFMAN: Thank you.
14 MS. ROBESON: All right. Mr. Ager is back in the
15 hot seat. He came back from lunch. Mr. Brown, I think it's
16 your chance for cross-examination.
17 MR. BROWN: Thank you. Good afternoon, Mr. Ager,
18 how are you?
19 MR. AGER: Very well, thank you.
20 RECROSS EXAMINATION
21 BY MR. BROWN:
22 Q I'm looking at my notes on your testimony. You
23 made reference to the fact that in other parts of the state
24 master plans have to be looked at every six years, remember
25 that testimony?

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1 A Yes, I do.
2 Q In fact, what the statute is, what you were
3 referencing as the statute there requires each county to
4 take a look at its comprehensive plan for the entire county
5 every six years, isn't that right?
6 A It's a, yes, a comprehensive plan.
7 Q And, in fact, there are a number of counties that
8 don't have anywhere near the number of sub-plans, what do
9 you call them master plans or sector plans or whatever, that
10 break out the comprehensive plan into exhaustive detail,
11 isn't that so?
12 A Could you repeat the question just to make sure I
13 understand?
14 Q The question is whether or not there are a number
15 of counties, especially the lower population counties in
16 Maryland, that do not have a large number of these sub-plans
17 that break out the comprehensive plan in greater detail in
18 sub-areas of the county?
19 A Yes, that would be true.
20 Q Now you also mentioned that the 1985 Gaithersburg
21 plan is functionally obsolete. Do you recall that
22 testimony?
23 A Yes, I do.
24 Q And I think there was a fairly long list of
25 reasons that you gave for why that plan is functionally

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1 obsolete, correct?
2 A Yes, there is.
3 Q One of them was that it's out of sequence with the
4 1993 general plan amendment and another one was that it pre-
5 dates the advent of a smart growth plan, correct?
6 A Smart growth as defined specifically.
7 Q Yes.
8 A Yeah.
9 Q I want to ask you about one of the plans that's
10 mentioned in your report that is much more recent in the
11 vicinity of this plan and that is the Shady Grove sector
12 plan. That was, that was finalized in 2006, was it not?
13 A I believe so, yes.
14 Q Does that plan suffer from any of the infirmities
15 that you, that you charge to the Gaithersburg master plan?
16 A Infirmities defined as?
17 Q Whatever your criticisms were of the Gaithersburg,
18 the 1985 Gaithersburg plan, does the Shady Grove sector plan
19 suffer from any of them?
20 A My criticism of the Gaithersburg plan is that is
21 it extremely old and the area of the Gaithersburg sector
22 plan that is specific to this property is very old. And I
23 believe my testimony was that that land use goes way back
24 into time, but it doesn't reflect anything since 1985.
25 That's basically --

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1 Q Mr. Ager, I'm not asking you to repeat your
2 testimony. I'm asking you to answer my question. Would you
3 like me to repeat it?
4 A Yes, I would please.
5 Q My question is whether or not the Shady Grove
6 sector plan suffers from any of the infirmities that you
7 claim exist with regard to the 1985 Gaithersburg master
8 plan?
9 MS. GIRARD: I'd like to object to that. Mr. Ager
10 did not speak to the Shady Grove sector plan and how can he
11 possibly be expected to have done an analysis of that plan
12 and its potential infirmities?
13 MS. ROBESON: I think what Mr. Brown is saying is
14 you listed this as being obsolete because it didn't comply
15 with current storm water management and there was a whole
16 list of things. And I think that's what he's getting at.
17 Was your question particular to the Shady Grove --
18 MR. BROWN: Yes, it is.
19 MS. ROBESON: If you know, does the Shady --
20 MR. AGER: Yes.
21 MS. ROBESON: -- Grove sector plan share those
22 infirmities that you listed with respect to the
23 Gaithersburg, I mean, yeah, the Gaithersburg master plan?
24 MR. AGER: Not necessarily, because it was adopted
25 in 2006, so there were certain things that it reflected that

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1 were current to 2006. So I'm sorry if I'm not understanding
2 the question, but I think there's a difference, yes, but it
3 has, it reflects thinking in 2006. I'm not sure if I'm
4 answering your question directly enough for you.
5 MS. ROBESON: Well, I'll let Mr. Brown follow-up
6 on my question.
7 BY MR. BROWN:
8 Q Well, let's just focus on one element of that
9 thinking. Does -- are you at all familiar with the Shady
10 Grove sector plan?
11 A Yes, I am, somewhat.
12 Q Do you believe that it reflects smart growth
13 principles as they were understood in 2006?
14 A Yes, because it focused density at the Metro
15 Center, yes. Yes.
16 Q Now I'd like to turn your attention to the
17 Wedgewood area. Is it your understanding that the, that the
18 homes in Wedgewood 1 and Wedgewood 2 are more or less
19 individually owned by homeowners?
20 A Yes, that's my understanding, yes.
21 Q I think you have a calculator there, Mr. Ager, is
22 that right?
23 A Yes.
24 Q I'd like you to run through a few numbers with me
25 if you would please because I don't see these in your

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1 report. But some of these numbers are derived from the
2 numbers that are in your report and I'm referring
3 particularly to page 12.
4 MR. KAUFMAN: Page 12 of the report?
5 MR. BROWN: Okay?
6 MR. AGER: Okay.
7 BY MR. BROWN:
8 Q You calculate the master plan density recommended
9 in the 1985 plan for the entire analysis area 2 at averaging
10 18.28 dwelling units per acre, right?
11 A Yes.
12 Q And that includes the, that includes adding bonus
13 density for affordable housing, right?
14 A That is correct.
15 Q Now if you were to multiply 18.28 times 8.11, the
16 acreage of the property in question here, what number do you
17 get?
18 A I get 148, plus .25.
19 Q That matches my calculation. So if, that would be
20 the number of units according to the recommended density for
21 the area if the only amount of the density that is unused
22 was, that went to your project was that associated with your
23 portion of the acreage, correct?
24 A Yes. I mean let me just clarify if I could. If
25 we measured our property times the master plan calculation

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1 we used earlier, just by 8.118, it would be 148 units, is
2 that the question?
3 Q Yes, that's the question.
4 A Okay.
5 Q But now let's do one more, an even simpler
6 calculation. You have a total number of existing
7 development for analysis area 2 at 231 units and you have
8 the master plan recommended density at 384. What's the
9 difference between those two numbers?
10 A 231 represents the number of units that are built
11 and exist on the ground today. 384 is a calculation of the
12 land use map recommendation, plus the MPDU bonus.
13 Q Yes. I'm sorry I wasn't clear in my question.
14 I'm asking you to do the subtraction.
15 A Oh, I'm sorry. Well, I believe it's 153 units.
16 Q Okay. Now that's -- we'll call that the, I think
17 we can call that the unused density for analysis area 2, is
18 that a fair summary, that number?
19 A Sure.
20 Q Now there are currently 107 units on the Towne
21 Crest property, right?
22 A That is correct.
23 Q If we add all 153 unused density units to the
24 Towne Crest property, how many units do we get?
25 A 260 units.

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1 Q 260, right? Is that what you said?
2 A Yes, that is correct.
3 Q Okay. And if you divide that number by the
4 acreage for Towne Crest of 8.11, what would be the average
5 dwelling units per acre for the Towne Crest property with
6 all of that density added to Towne Crest?
7 A I believe it's 32 units, 32 dwellings to the acre.
8 Q 32 dwelling units per acre, correct?
9 A That's correct. Yes, I'm --
10 Q All right.
11 A Yeah.
12 Q And what percentage increase would that be over
13 the expected density with just giving the Towne Crest
14 property only the density that would be associated, the
15 unused density that would be associated with their acreage?
16 A Well, I think you have an error in your
17 calculation. You're asking me questions that have a
18 fundamental error in them.
19 Q Hold that thought.
20 A Do you want me to --
21 Q Let me restate the question.
22 A -- continue in error or do you want me to fix it?
23 MS. ROBESON: No, just let him --
24 MR. BROWN: Let me restate the question.
25 MS. ROBESON: -- ask the question.

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1 MR. BROWN: We have -- in the number 32.05, we
2 have placed all of the unused density on the Towne Crest
3 property, correct?
4 MR. AGER: Yes.
5 MR. BROWN: In the 18.28 dwelling unit per acre
6 where we come up with 148 units, we are placing on the Towne
7 Crest property only that portion of the unused density that
8 is proportionate to the amount of acreage, right?
9 MR. AGER: Yes, I believe that's correct.
10 MR. BROWN: Okay.
11 MR. AGER: I'm trying, I believe, yes, I believe
12 that's correct.
13 MR. BROWN: All right. So the increase in the
14 density from 18.28 dwelling units per acre to 32.05 dwelling
15 units per acre in these two calculations is what percent
16 increase?
17 MR. AGER: An increase over what?
18 MR. BROWN: Over 18.28.
19 MR. AGER: Well, it's roughly 75 percent higher.
20 MR. BROWN: Actually I got 64 percent, but maybe
21 you're right, but --
22 MR. AGER: Maybe I'm wrong.
23 MR. BROWN: Maybe you're wrong. At any rate, let
24 me move on to the next calculation. You are -- you are
25 attempting to justify 329 units on 8.11 acres, correct?

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1 MR. AGER: No, I'm not. What I'm justifying, or
2 my testimony -- I mean what my testimony reflects is the
3 calculation that should be considered when considering
4 master plan density. The justification for 320 units on the
5 property is part and parcel of the compatibility and the
6 nature of the PD zone that's been applied. And, again, at
7 some point I'd like to fix the error in your calculation,
8 but --
9 MS. ROBESON: Well, your attorney will have a
10 chance to ask you more questions.
11 MR. AGER: Okay.
12 BY MR. BROWN:
13 Q Well, let's just do the math, if you would, Mr.
14 Ager. What is 329, the number of proposed dwelling units on
15 this project, divided by 8.11 acres work out to as the
16 number of dwelling units per acre?
17 A 40.56.
18 Q Yes, and what percentage is that of 18.28?
19 A It's approximately, it's a little over two times
20 the --
21 Q Yes, about 221 percent increase, right?
22 A 221 percent, that's correct.
23 Q That's all I have.
24 MS. ROBESON: I'm trying to get your report, just.
25 I think in your report, but correct me if I'm wrong, I think

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1 in your report you have a total envelope of density
 2 permitted by the master plan for area, analysis area 2, is
 3 that correct? I'm trying to find it in here.
 4 MR. KAUFMAN: It's page 12 of the report.
 5 MR. AGER: Page 12.
 6 MS. ROBESON: Thank you. So you had a total --
 7 okay, so of the total units of density allowed in analysis
 8 area 2, what percentage would your 329 units be?
 9 MR. AGER: 72.6 percent.
 10 MS. ROBESON: Okay. All right. So the -- okay.
 11 Now, okay. Do you have any questions or, Ms. Girard, do you
 12 have questions on redirect?
 13 MS. GIRARD: I do. I'm going to relieve the
 14 pressure over here and ask him what the error in Mr. Brown's
 15 analysis was.
 16 MS. ROBESON: No pressure. No pressure.
 17 MS. GIRARD: No, I mean pressure building up. He
 18 couldn't wait to --
 19 MS. ROBESON: No, I --
 20 MS. GIRARD: -- get it out.
 21 MR. AGER: No, it's -- the 107 units is what
 22 exists on the property. It doesn't necessarily mean what
 23 the zoning is or what the master plan is. So comparing 107
 24 units and some percentage number to it, doubling the
 25 density, tripling the density, comments like that, is

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1 immaterial to the comment or the calculation that we need to
 2 do on the master plan basis. If we had five units on this
 3 property, we would have an enormous percentage increase from
 4 existing to master, to proposed, but that doesn't -- has
 5 nothing to do with the master plan. So the seed of the
 6 comment that Mr. Brown started with is existing units on the
 7 ground and that's what I believe is, it's not characteristic
 8 to what we should be counting.
 9 MS. ROBESON: Were -- okay. If these were --
 10 you're saying, I understand what you're saying. You're
 11 saying the starting point is the master plan density?
 12 MR. AGER: That's correct.
 13 MS. ROBESON: The density recommended in the
 14 master plan and so it's not a good comparison increase above
 15 the existing units?
 16 MR. AGER: It's a fundamentally flawed comparison
 17 because if we had vacant land or one or two houses, it would
 18 be a ridiculous comparison.
 19 MS. ROBESON: Nevertheless, this is going to --
 20 all right. I understand that different things, I think the
 21 compatibility issue relates to the -- well, go ahead, Ms.
 22 Girard, finish your questions.
 23 FURTHER DIRECT EXAMINATION
 24 BY MS. GIRARD:
 25 Q Okay. Getting back to the comments on the Shady

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1 Grove sector plan, have you examined the density in that
 2 plan and compared it to what current best practices would be
 3 for smart growth around Metro?
 4 A No, I have not.
 5 Q So when you say that you're familiar in, it
 6 reflects the practice --
 7 A In general.
 8 Q -- in 2006 --
 9 A In general.
 10 Q -- you haven't done that analysis as to the
 11 appropriateness --
 12 A That's correct.
 13 Q -- of the density and what may have occurred since
 14 2006?
 15 A That's correct.
 16 Q Okay. One second, I'm sorry. Okay. So just in
 17 conclusion to bring it all back to, we had a number of
 18 percentages flying around, looking at -- it's your opinion
 19 that you look at the analysis area, that's the appropriate
 20 way to look at it, the master plan density for that area and
 21 when you do that, in fact, during this proposal what
 22 percentage increase are we talking?
 23 A 18 percent increase. And I'd like to, if I could,
 24 expand on it just to repeat for purposes of clarity that
 25 this is the way the master plan was written by analysis

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1 area. There are not specific property-by-property
 2 recommendations. Second, this is a developed area with
 3 multiple properties on the balance that are in support of
 4 this application. The master plan makes recommendations for
 5 clustering. The master plan on page 1 is strongly
 6 supportive of --
 7 MS. ROBESON: How is this clustering? You mean
 8 it's not single-family homes?
 9 MR. AGER: Yes, within the context of an analysis
 10 area.
 11 MS. ROBESON: Okay. That's not really what I
 12 think of when --
 13 MR. AGER: Right.
 14 MS. ROBESON: I think of clustering as a planning
 15 technique where you -- but, anyway, go ahead.
 16 MR. AGER: The last thing is, on page 1, one of
 17 the fundamental objectives of this plan is the affordable
 18 housing component and the increase in the housing stock.
 19 And, again, that's a very important public purpose.
 20 MS. ROBESON: It is.
 21 MR. AGER: -- that's in the --
 22 MS. ROBESON: But I guess the question is wouldn't
 23 any redevelopment of this site meet that goal?
 24 MR. AGER: That, it would, but this particular
 25 proposal exceeds the minimum requirement and that's the

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1 point. They're actually providing more MPDU's than would be
2 required under the calculation.
3 MS. ROBESON: So 15 percent?
4 MR. AGER: Yeah. And by actually capping their
5 units, they're actually taking away market rate units in
6 order to accommodate additional, affordable units, and
7 there's a difference of three units, three additional MPDU's
8 that wouldn't be required if we went with a straight
9 calculation based upon a density.
10 MS. ROBESON: Okay.
11 MS. GIRARD: That's all we have.
12 MS. ROBESON: All right.
13 MR. KAUFMAN: We now have been joined by Mr.
14 Wilson Mancilla, who is a resident of Wedgewood 2, I
15 believe, and he is the gentleman from which I read one, from
16 Exhibit 98C, I read some excerpts from his letter. He's
17 here. He'd like to make a statement if that's permitted
18 before I move on.
19 MS. ROBESON: Is, okay. Mrs. Deloatch, was she
20 also from Wedgewood 2?
21 MR. KAUFMAN: She was, yes, she was, but she was
22 speaking for the board and also personally. He makes a
23 personal statement.
24 MS. ROBESON: Do you have an objection, Mr. Brown?
25 MR. BROWN: No objection.

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1 MS. ROBESON: Okay. That's fine.
2 MR. KAUFMAN: Ask Mr. Wilson Mancilla to come
3 forward.
4 MS. ROBESON: Come up here so the microphone can
5 pick your voice up and please raise your right hand.
6 (Witness sworn.)
7 MS. ROBESON: Thank you. And please state your,
8 is he your, no?
9 MR. KAUFMAN: No, he's just going to make a
10 statement.
11 MS. ROBESON: Please state your name and address
12 for the record.
13 MR. MANCILLA: My name is Wilson Mancilla. I'm
14 living in 17637 Larchmont Terrace and I'm living in that
15 address for, since 1992. The reason I came over here is
16 just to give my personal, you know, testimony based on what
17 I see in this 21 year living on Larchmont.
18 This is a wonderful place to live. And if you
19 notice, I'm not a native American. I'm immigrant. But the
20 reason I came down here is to improve my life, improve my
21 style of life, and I believe this sector in this country
22 gave me the opportunity to take it.
23 I'm a hard worker like many others neighborhood in
24 the area. I know most of them. I talk to them, most of
25 them every single day and I have a dream. My dream is to

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1 improve my life, improve my life, my family's life and I
2 believe it's, my neighbors have the same dreams.
3 I'm not a lawyer. I'm not engineering. I'm a
4 normal human being. I try to give my opinion, what I want,
5 what I want to see my neighborhood growing up and I believe
6 we have the right to dream. We have to dream for us, for
7 our family, but especially for the children in our
8 neighborhood. And I would like to see children growing up
9 in better environment. I want to see my neighborhood be
10 happy to live in better environment, improve their life.
11 Our house, you know, is poor for many of us. It's
12 the support for the future, the future of the children. Our
13 house is, the backup we have for that time and we need to
14 negotiate our house to get some lawn, and send our kid to
15 the school.
16 What I'm seeing right now is the idea is
17 evaluating according what you see, the Towne Crest apartment
18 is getting older, are already older. And every year they
19 already look very poor. Who is going to be interested to
20 come back and live in that area? This is not in our favor.
21 It's against us. So my idea is why don't let us to have our
22 dream and see our neighborhood improve, improve because
23 those apartments is coming down in pieces. And I believe in
24 a few more years it's not going to be even secure for the
25 residents.

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1 Like I say, I'm not, I'm not engineering, I'm not,
2 who knows on the situation, but you can see when you driving
3 or walk to along the area, you see part of the roof, big
4 damage, walls and damage. So all this testimony is on my
5 behalf, on my family's behalf and then my neighborhood's
6 behalf and the children, the future of the children. I
7 would like to see the children, the neighborhood running
8 happy, seeing, you know, the new environment. I know that
9 this renovation involves many things. So many people don't
10 like to see another people growing up have better life maybe
11 because they don't have a dream already. They're already
12 set up. They're already -- did everything. But we are not
13 in that situation. We are in the situation we have to
14 continue we're in.
15 This country gave me opportunity to become a
16 citizen. I feel so proud to be a citizen, become a citizen.
17 I'm not native, like I said, but I feel like I'm native.
18 And I believe we need what we deserve to live in better
19 environment and I really appreciate it, you listen to me, I
20 really appreciate it if everybody listened to me, what I
21 think is our future, you know? I'm seeing old town
22 Gaithersburg, this historic place, beautiful place, I love
23 it. One of the reasons I live around there for 21 years.
24 But it's not the same anymore.
25 They tore down so many houses, beautiful houses

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1 and they have to bring the new development for residents.
2 It's improved the lives. On the corner of Washington Grove
3 and Mid-County, they develop new buildings, beautiful
4 buildings. That improve all our neighborhood. Include us.
5 We are in between those.
6 Our houses will be re-evaluated. That we want.
7 Our house going up in price and no de-evaluating. If people
8 don't let us or don't let that re-development on the Towne
9 Crest change, it's going to make big damage to us. You're
10 going to make big damage to me. In Washington Grove
11 courtyard, they did change us. Nobody asked us if we want
12 those changes, minor development, not huge. It's not huge,
13 minor. But still trees took down, plants took down, two
14 beautiful houses, beautiful. Another house make a big deck,
15 beautiful. That big houses don't let the other house in the
16 back to see the courtyard, but nobody cared.
17 What we care is good for them. We feel happy for
18 them because they want to improve their life. It's the same
19 feeling we have for us. Last year they finish their
20 pedestrian sidewalk all along the Washington Grove. That is
21 improve of the neighborhood. It improved us too. Who
22 complain about that? Nobody, because they improved, the
23 world has changed. Prosperity is changing. Since those
24 houses was built, Washington Grove doesn't look the same
25 anymore.

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1 Old Town Gaithersburg doesn't look the same
2 anymore. Washington Grove and Mid-County doesn't look the
3 same anymore. It's because it's changed. We have to be
4 open for the change. We have to be open for the prosperity
5 and that is my dream, to see all my neighborhood prosper. I
6 want to see all my neighbors feel happy where they live. I
7 don't want to see people come in, don't like the
8 neighborhood because they already look poor and run away. I
9 want to see everybody feel happy.
10 That is my testimony, my humble testimony, 100
11 percent myself. I belong to the board member and I have to
12 give something to this country. This country give me a lot
13 and I've got to give something back working with the
14 community. And I've been doing that for around 10 years,
15 giving my free time to help my neighbors. And I believe
16 according to my conversation with a majority in the
17 neighborhood they are very happy to see this new change. I
18 appreciate your time.
19 MS. ROBESON: Thank you, Mr. Mancilla.
20 MR. KAUFMAN: Can I ask him a question?
21 MS. ROBESON: Yes.
22 MR. KAUFMAN: Thank you.
23 MS. ROBESON: Well, were you finished?
24 MR. MANCILLA: Yes.
25 MR. KAUFMAN: I just wanted to ask you --

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1 MR. MANCILLA: Okay. I'm sorry.
2 DIRECT EXAMINATION
3 BY MR. KAUFMAN:
4 Q So from your testimony, am I correct in asking you
5 do you support the approval of this project?
6 A I've always supported since it's on my behalf and
7 my neighborhood behalf.
8 Q Then one last question. If it's built in the way,
9 what's currently proposed, do you feel that it will be
10 compatible with you and your neighbors?
11 A They are very happy and I believe the change would
12 be for better, you know? Maybe some trees will come down,
13 but better environment will be on the side because I believe
14 those trees will be replaced by others. So what we have,
15 we'll have will be much better than we have already.
16 Q Thank you very much.
17 A Thank you.
18 MS. ROBESON: Just a second, Mr. Mancilla.
19 MR. BROWN: I'm sorry. No questions.
20 MS. ROBESON: Mr. Brown, no questions? Okay. You
21 may be excused.
22 MR. MANCILLA: Thank you very much.
23 MR. KAUFMAN: Thank you for being here.
24 MS. GIRARD: Thank you for coming.
25 MR. MANCILLA: And I'm sorry if I missed

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1 something.
2 MR. KAUFMAN: You didn't. Thank you. All right.
3 MR. MANCILLA: I've got to leave.
4 MR. KAUFMAN: You did fine. Okay. If you're
5 ready to proceed, our next witness is Ms. Trini Rodriguez.
6 And I believe -- is her resume in that --
7 MS. GIRARD: It is. It's Exhibit 13C.
8 MS. ROBESON: All right. Raise your right hand.
9 (Witness sworn.)
10 DIRECT EXAMINATION
11 BY MR. KAUFMAN:
12 Q Ms. Rodriguez, would you please state your full
13 name and your business address?
14 A My name is Trini Rodriguez. I work for Rodriguez,
15 Inc., and our address is 101 North Union Street, Alexandria,
16 Virginia.
17 Q And what is your area of expertise and occupation?
18 A I'm a landscape architect and a planner and have
19 worked in the field, oh, since 1985. Initially worked --
20 MS. ROBESON: What are you seeking to qualify Ms.,
21 I assume she's an expert witness?
22 MR. KAUFMAN: Yes.
23 MS. ROBESON: In what area?
24 MR. KAUFMAN: In the area of land planning, zoning
25 and urban design.

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1 MS. ROBESON: Land planning, zoning and urban
2 design. Go ahead. Mr. Brown, do you have any objection?
3 MR. BROWN: Was that land planning and zoning?
4 MS. ROBESON: Yes, and urban design.
5 MR. BROWN: No objection. No objection.
6 MS. ROBESON: Okay. Are you licensed in Maryland?
7 MS. RODRIGUEZ: Yeah.
8 MS. ROBESON: And then have you ever testified as
9 an expert witness in a court or administrative proceeding?
10 MS. RODRIGUEZ: Yes, I have, several jurisdictions
11 and here at this board.
12 MS. ROBESON: Okay. I'll accept her in those
13 areas.
14 MR. KAUFMAN: All right. I'd still like to ask
15 her a little about her education and background if that's
16 permissible. Okay.
17 BY MR. KAUFMAN:
18 Q So would you please give us a little bit of
19 understanding about your professional education and
20 background and what professional associations that you
21 belong to.
22 A So I'm a registered landscape architect and
23 registered planner, AICP. And then member of the Urban Land
24 Institute and I participate in a lot of their sessions. I
25 have --

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1 MS. ROBESON: Well, wait a minute. I'm trying to
2 shorten the hearing. Is there something you want to elicit
3 from --
4 MR. KAUFMAN: Well --
5 MS. ROBESON: Her resume is in the record.
6 MR. KAUFMAN: Okay.
7 MS. RODRIGUEZ: Right.
8 MS. ROBESON: -- right?
9 BY MR. KAUFMAN:
10 Q The only other thing is that I wanted to establish
11 that she's done a lot of work in Montgomery County and
12 generally in this area, so --
13 A The one thing that I should probably just, you
14 know, briefly kind of summarize is that as a planner and as
15 a planner, landscape architecture, we are very active in the
16 area nationally and somewhat internationally. And one of
17 the things that I wanted to sort of suggest is that
18 throughout the years that we've been practicing, we're
19 seeing a huge change in topologies of buildings and designs
20 that actually are kind of relevant to how master plans have
21 evolved and kind of take into consideration this kind of
22 ways of accommodating density.
23 As part of my work in looking, and I did a study
24 for Prince William County, but it was awhile back, I mean
25 probably about 15 years ago, on the issues of growth and how

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1 to accommodate growth because growth is a tough issue for
2 all of us. We, you know, change is difficult and how do you
3 accommodate change in a way that you're sensitive to the
4 surroundings and address compatibility and there's a lot of,
5 you know, some subjectivity to some of those issues. I have
6 worked on large master plans, as well as smaller and there
7 are, you know, certain things that you apply to these
8 different scales.
9 Q All right. So to move on because --
10 A Yes.
11 Q -- I think that's more than sufficient --
12 A Yes.
13 Q -- Ms. Rodriguez, are you and did you become
14 familiar with application G-910 --
15 A Yes.
16 Q -- the PD application? And are you also familiar
17 with the property that is the subject of the application?
18 A Yes, I visited the site.
19 Q Have you visited the site?
20 A Yeah, I visited the site and the area.
21 Q Are you also familiar with the area surrounding
22 the property?
23 A Yes.
24 Q And what we call the zoning or land use
25 neighborhood?

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1 A Yes, I'm very familiar and I think I probably
2 won't go back to define the neighborhood because I think Mr.
3 Ager did a good job, but I should probably just point out --
4 Q Okay. Why don't we put that exhibit up?
5 A Yes. I'm going to get to it.
6 MS. ROBESON: And what exhibit is that again?
7 MR. KAUFMAN: It's the exhibit that shows the
8 zoning there.
9 MS. ROBESON: I know. I'm just looking for the
10 number.
11 MS. RODRIGUEZ: It is, it is --
12 MS. GIRARD: It is the last page of Exhibit 14,
13 which was your initial land planning --
14 MS. ROBESON: Yes, it's a reprint of Exhibit
15 14. Okay.
16 MS. RODRIGUEZ: And, you know, this is the entire
17 area and specifically what we define as a neighborhood, a
18 zoning neighborhood. I should say that I did talk to many
19 of the residents of the area and in a lot of cases a lot of
20 the neighbors voiced some concerns about the conditions in
21 terms of crime and deterioration and voiced the needs of --
22 BY MR. KAUFMAN:
23 Q Well, let's just establish the boundaries of the
24 neighborhood on this.
25 A Yes, let me establish the boundaries again.

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1 MS. ROBESON: Because where did you talk to the
2 residents? Which residents did you talk to?
3 MS. RODRIGUEZ: We talked to the residents in this
4 area.
5 MS. ROBESON: Okay.
6 MS. RODRIGUEZ: What I should do is maybe just
7 establish the boundaries very briefly.
8 MS. ROBESON: I don't -- just go through the land
9 use issue.
10 MS. RODRIGUEZ: Right. And, well, within this
11 boundary what I wanted to highlight is Washington Grove
12 Lane, which is a main roadway, actually splits the area in
13 just sort of two zones and then there is this woodland that
14 actually happened to kind of also create a zone of its own.
15 To the south, we have the town of Washington Grove which I
16 have to admit is an absolute jewel. It's a wonderful
17 neighborhood, it's always admired and I think all planners
18 do.
19 To the north of the area is, it's a collage of
20 sort of sub-neighborhoods and communities that actually have
21 shown a lot more deterioration. They're planning a
22 different, in a different manner. We think this area, as
23 you can see, is the Towne Crest and --
24 MS. ROBESON: Now which area you say is
25 deteriorating?

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1 MS. RODRIGUEZ: To the north.
2 MS. ROBESON: So --
3 MS. RODRIGUEZ: This area has -- it's to the
4 north.
5 MS. ROBESON: You're saying Wedgewood 1 and
6 Wedgewood 2 --
7 MS. RODRIGUEZ: Wedgewood 2.
8 MS. ROBESON: -- and how about south of that
9 Washington -- I can't see, Washington Square Park?
10 MS. RODRIGUEZ: It --
11 MS. ROBESON: That area as well?
12 MS. RODRIGUEZ: There is a little bit, but I mean
13 the apartments are aging in there. I have to admit that we
14 concentrated our research of the immediate surroundings of
15 the site. I should also point out that Washington Grove
16 actually is sort of a divider and these areas -- it's a very
17 discreet area because it's only access is by Towne Crest
18 Drive and it's very internal. The other thing that I should
19 point out, should be pointed out is that the Washington
20 Grove neighborhood is a very cohesive neighborhood, very
21 internal oriented and it has very defined edges which are
22 quite distinct from this area to the north.
23 BY MR. KAUFMAN:
24 Q All right. So as part of your analysis, I assume
25 you did a report, is that correct?

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1 A I did.
2 Q All right. And were you also involved in the
3 urban design of the current report?
4 A Yes.
5 Q All right. And you prepared that?
6 A Yes.
7 Q All three versions?
8 A Yes.
9 Q Okay. Could you --
10 A In collaboration with the architects.
11 Q In cooperation with, right. Could you describe
12 the proposal and how it relates to the surrounding
13 communities from a point-of-view of compatibility, et
14 cetera? I think we ought to use the most recent PD-35.
15 A I think you have, everybody has heard sort of the,
16 a bit of the history of the evolution.
17 Q Well, if you would take us through and explain the
18 elements of the buildings and the urban --
19 A Right.
20 Q -- design, that would be very helpful.
21 MS. ROBESON: And that's Exhibit 73B?
22 MS. RODRIGUEZ: 73B, correct. I think you've all
23 heard of the evolution of the project as it is, you know, to
24 the point that we are here today. Exhibit 73B shows the
25 latest plan, which is a PD-35. One thing that should be

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1 pointed out from the very beginning is that side has, is
2 very long and very narrow, which presents its own
3 constraints. The plan in front of you has, you know, it's
4 being designed to actually address issues of compatibility
5 and we do think that design and urban design can maybe get a
6 lot of those, a lot of those issues and it has
7 compatibility. One of the things that this plan does
8 immediately is, in terms of mass and it's creating a step up
9 in massing not only in the number of units and density, but
10 also in height and size of buildings.
11 To the south are the townhouses which are located
12 in two smaller buildings fronting Towne Crest Drive and it
13 has a front to Washington Grove. One of the goals of this
14 plan had always been to create sort of a new gateway into
15 the southern area where Washington Grove is. So the
16 building has been set back and we're proposing a park at the
17 front as a gesture and a gateway into that lower area.
18 As you come into the community, the buildings have
19 been set back 25 feet and so you can see created a
20 continuous streetscape where there is nothing today. I
21 think you saw the pictures that have been shown in the past.
22 There is no curbs, no trees, a very, very narrow sidewalk
23 that is not even continued. So continuous sidewalks,
24 continued treatment of street, trees, continuous planting
25 strip. Now this sidewalk, which I will take you that a

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1 little later, actually becomes sort of, you know, a loop and
2 a lake, so the other amenities within the site.
3 To these townhouses, you access at one point and
4 all the access to the townhouses are in the rear. These
5 townhouses have been set back about 100 feet from the back
6 property line and in the rear there is extensive landscaping
7 that has been added to provide buffering.
8 As we move northward, we have Building B, which
9 you can see also the massing has been undulated and set
10 back. The minimum set back from the front is also 25 feet
11 and creates a series of courtyards in the front that are
12 used as amenity features.
13 The buildings themselves are stepping from three
14 feet, three stories to four stories and this is something
15 that has been sort of part of the evolution of the plan to
16 enhance its compatibility. Within this building, the
17 parking is in the rear and as we move further north, we have
18 Building A, which is the largest of the buildings. The
19 Building A and Building B are separated by a new internal
20 street that has been created with, you know, sidewalks and
21 street trees. It functions as a normal street, part of the
22 fabric, and from there we gain access to the two buildings.
23 The parking is all in the rear and it's accessed, you know,
24 through the back.
25 One of the things that we should point out about

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1 this topology, these are some of the new topology that have
2 been developed in the last, you know, 10 to 15 years. I
3 mean actually this is even more recent, this sort of
4 particular topology.
5 BY MR. KAUFMAN:
6 Q When you say topology, are you talking about the
7 wrap building?
8 A The wrap-around buildings, I was just about to
9 describe this, where you have the parking in parking
10 structures. These are actually quite costly structures
11 which is one of the reasons why one needs sort of an
12 increased density in order to provide a viable product of
13 this type. It, they're very well-received in the market and
14 create a wonderful sense of community because they really
15 are not exposed parking, nor exposed structures of any kind.
16 The buildings are accessed internally. The units are
17 accessed internally.
18 The Building A, as you can see, well, it looks
19 like a larger building, it's going to be perceived as a
20 series of sort of smaller buildings. We've created wings
21 that protrude out that actually we laid in scale to sort of
22 the surrounding buildings with corridors, as I mentioned,
23 and then through, in the middle of these wings there are a
24 series of corridors which are all amenity areas. Services
25 for these buildings are internal, trash and loading are

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1 internal to the buildings.
2 Very briefly, I'll just describe the amenities.
3 Package, these, you know, the current project has no
4 amenities and what this project is proposing is a very
5 completely package of amenities that includes, you know, two
6 tot lots that are located geographically to serve the
7 different areas of the project, there is a series of
8 corridors and sitting areas. There are grooming areas.
9 There is a pool which is internal, an internal courtyard
10 fenced in. And then to the north we have a large amenity
11 area which was put in the area where we set back the
12 building 100 feet from the north.
13 On the edge that backs onto the Westwoods, we've
14 proposed additional planting. And I think you can see in
15 here one of the things that we've been working with is the
16 engineers to integrate a storm water management system that
17 is really part of the fabric and is not sort of an
18 afterthought.
19 Q A couple of other questions. Where the townhouses
20 are, what is the setback there from the edge of the property
21 line?
22 A From here?
23 Q Yes.
24 A 100 feet, yes, I think I mentioned that.
25 Q Okay. And then also could you just briefly

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1 describe how the streetscape along Towne Crest Drive needs
2 to be changed?
3 A Right. The, and I think I mentioned that those,
4 there is currently no streetscape, so we have a continuous
5 sidewalk, trees, streets and a continuous planting strip.
6 It's a very, very green edge.
7 Q And then you mentioned the wrap concept where the
8 parking is all contained in the structured parking. To your
9 knowledge did that even exist even as late as 1985 version
10 of this plan, if you know?
11 A You know, I don't know exactly the dates. It's a
12 typology that has been evolving. I mean we do a lot of work
13 in urban and fill. This is, even still is sort of a Class A
14 suburban typology. It's not, this is not the urban
15 typologies that we're, you know, doing in Bethesda or Silver
16 Spring or anything. Just it's --
17 Q Does it replace the concept of the garden
18 apartment?
19 A This replaces the concept of garden apartments. I
20 mean I think some of the densities that we've been talking
21 about and even in the master plan, eight to 15, those are
22 literally townhouse densities today, I mean the low
23 townhouse densities. We do townhouses now in the densities
24 of, you know, 30 to the acre. So --
25 Q So what's the range of densities today using this

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1 particular architectural product?

2 A You know, I am going to decline to respond to that

3 because I think the architects have a better handle in

4 densities than I do. I mean I, I can tell you what the

5 ranges are, but I don't do all the unit subdivisions, so I

6 think the architect will be better prepared.

7 Q Okay. Now, Ms. Rodriguez, are you familiar with

8 the PD zone?

9 A Yes.

10 Q And are you familiar with the purpose clause of

11 the zone?

12 A Uh-huh.

13 Q And are you familiar with the specific

14 requirements of the zone?

15 A I am.

16 Q All right. In your own words, can you tell us how

17 the current proposal comports to the specifics and the

18 purpose clause of the zone?

19 A Yeah. I mean in general, you know, obviously we

20 need to be consistent with the essences of the proposed

21 master plan as it's being, you know, argued here before. We

22 strongly believe that the master plan and the age of the

23 master plan renders, you know, this more as a guide. The

24 higher densities at that time were very different from what

25 we consider high densities today. So with that, I believe

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1 that all the other clauses, you know, in terms of achieving

2 flexibility in design and integrating the uses as we've done

3 is, it's a key purpose of achieving, you know, greater

4 efficiency I think through careful, skilled building,

5 massing and sensitive architectural design which you'll hear

6 pretty soon.

7 We can reduce, you know, we can be compatible and

8 we can also reduce the negative visceral impacts of the

9 automobile by having parking which is something that even in

10 the current proposal is not present in the current project,

11 excuse me, is not present. Another purpose is to encourage

12 maximum social interaction and community interaction and we

13 believe that this plan does that not only for the residents,

14 the existing residents, but future residents. We strongly

15 believe, and I think this is being voiced by many of the

16 immediate neighbors, that this area need a catalyst for

17 revitalization and this will definitely do that.

18 We have created a number of spaces that provide

19 social interaction not only internally, but externally.

20 Even the playgrounds are open for the use of the community

21 as you can see.

22 MS. ROBESON: The community of Towne Crest or the

23 community of Wedgewood 2?

24 MS. RODRIGUEZ: It's actually open. I mean they're

25 strategically located and nothing they'd be able to use,

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1 yeah.

2 MS. ROBESON: But legally are they open or are

3 they dedicated to public use, do you know, or not? I

4 just --

5 MS. RODRIGUEZ: No, they're not dedicated to

6 public use.

7 MS. ROBESON: I'm just trying to figure out which

8 community.

9 MS. RODRIGUEZ: No, they're not.

10 MS. ROBESON: Okay. All right.

11 BY MR. KAUFMAN:

12 Q I mean that's a question you could ask the

13 developer, I mean, right?

14 A Yes.

15 Q Continuing on, what about the balance and

16 coordinated mixture of residential uses?

17 A Right. We are providing a variety of unit types

18 and affordability. I also believe that this brings to the

19 areas a typology that is not present. I mean when you

20 analyze, when you look at the larger area, the apartments

21 there are mostly, you know, the units there are mostly

22 townhouses or single family. This brings a new typology

23 that is not present. There is a, you know, a broad range of

24 housing types as I mentioned.

25 The other point is to preserve to the greatest

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1 extent possible and take advantage of the trees. One of the

2 things about this particular site, I think you saw many of

3 the pictures, there are very few trees within the site per

4 se. We are now preserving one of the larger trees and the

5 revised plan actually moved the location of a tot lot away

6 so we could preserve that.

7 MS. ROBESON: The tot lot on the northern --

8 MS. RODRIGUEZ: On the northern side, correct.

9 Excuse me. There are very few trees on this side. There

10 are a few pine trees and mulberry, which is really an

11 invasive. Two of the existing trees have actually been cut

12 down and we believe that it was Pepco after a storm, but I'm

13 not entirely sure, so I -- but one thing to that particular

14 purpose is as you can see in this exhibit, we are planting

15 an incredible amount of trees. You can see just on the

16 street trees there is a huge amount, but we are planting all

17 along the perimeter, in the amenity areas and these will

18 result in a much greater canopy cover, but by a large factor

19 than what we have there today.

20 BY MR. KAUFMAN:

21 Q What about pedestrian circulation networks, you

22 know --

23 A Correct.

24 Q -- separate from the vehicle roadways?

25 A Correct. We have, as you can see, a system of

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1 pedestrian networks that ties into different courtyards and
2 amenity and they create loops that you can actually take
3 throughout the community. They're basically all integrated
4 and actually you can even come through the rear. So it's --
5 I haven't done a calculation, but it's, you know, it's very,
6 very extensive in terms of its length and connectivity.
7 Q Are you familiar with within the PD-35 category
8 the requirements for minimum setbacks, minimum grade and the
9 parking requirements, are you familiar with those?
10 A Yes.
11 Q All right. And can you address those please?
12 A The, in terms of the minimum setbacks, we have,
13 let's see --
14 Q Take your time.
15 A Yeah. We talked about the setbacks to the north,
16 setback 100 feet. We have setback 100 feet from this area.
17 Then I would believe this setback really doesn't apply and
18 the reason for that was that, as you can see in this land
19 use plan, the area which is Exhibit --
20 MS. GIRARD: 107.
21 MS. RODRIGUEZ: -- 107, the area behind the woods,
22 behind this property is shown as open space and that's the
23 certified plan, the master --
24 BY MR. KAUFMAN:
25 Q That's in the county's master plan?

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1 A On the county, and the Gaithersburg vicinity
2 master plan.
3 MS. ROBESON: All right. I don't understand that.
4 You're saying you only have to set back 100 feet if it's --
5 MS. RODRIGUEZ: From an area that is designated
6 single family.
7 MR. KAUFMAN: In a county --
8 MS. RODRIGUEZ: Single family.
9 MR. KAUFMAN: -- master plan, in the area --
10 MS. RODRIGUEZ: In the county.
11 MR. KAUFMAN: -- master plan for the county?
12 MS. ROBESON: Well, all right. Okay. I
13 understand what you're saying.
14 MR. KAUFMAN: Well, if I could just -- our
15 position --
16 MS. ROBESON: No. No.
17 MR. KAUFMAN: But not interfering with her.
18 MS. ROBESON: Let's --
19 MR. KAUFMAN: Legally we've presented you an
20 argument on that and we'll do so further in --
21 MS. ROBESON: Okay.
22 MS. RODRIGUEZ: Yes.
23 MS. ROBESON: That's fine.
24 MS. RODRIGUEZ: Yes, I cannot argue on the legal
25 aspects of it.

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1 MS. ROBESON: You can't. I know. And you're
2 lucky.
3 MS. RODRIGUEZ: Yes.
4 MS. GIRARD: Very lucky.
5 MS. RODRIGUEZ: I would not do well on that.
6 BY MR. KAUFMAN:
7 Q But, nonetheless, you are set back from the
8 property line on the south side from the Daylily community
9 100 feet?
10 A 100 feet, right.
11 Q What about the green space calculation, can you --
12 A Yeah, the green space calculation, we meet the 50
13 percent and I'm going to let the engineer who did the
14 calculation sort of take you through that, but --
15 MS. ROBESON: Okay. Can I ask one question?
16 MS. RODRIGUEZ: Uh-huh.
17 MS. ROBESON: I thought when I read through the
18 record that there, just pretend there is 100-foot set back.
19 There is still, I thought there was some from No. 7 Daylily
20 Lane --
21 MS. RODRIGUEZ: Yes.
22 MS. ROBESON: -- that it does not meet the
23 setback?
24 MS. RODRIGUEZ: That's correct. This corner here
25 does not meet the setback.

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1 MS. ROBESON: Okay. Where would the setback run
2 if you met the whole 100 feet?
3 MS. RODRIGUEZ: It would take that corner.
4 MS. ROBESON: Okay. All right. They don't --
5 yes.
6 MR. KAUFMAN: And there will be testimony on that
7 from the architect --
8 MS. ROBESON: Oh, there is?
9 MR. KAUFMAN: -- for that issue and how to address
10 that issue.
11 MS. ROBESON: Okay. All right. Then I won't go
12 into it further.
13 BY MR. KAUFMAN:
14 Q Okay. So to continue on, so, Ms. Rodriguez, are
15 you familiar with the technical staff's analysis of the
16 application and also the recommendations of the Planning
17 Board?
18 A I am and I mean I read the letter from the
19 Planning Board to you and, obviously, she feels very
20 strongly about the master plan issues and density issues
21 with, in reference to the master plan, but I wanted to
22 highlight that in that letter the one thing that didn't
23 convey was the amount of discussion from Board members and
24 the fact that this was a good design that they believed that
25 this needed revitalization, that this would be a good --

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1 MS. ROBESON: Okay. All right. My problem is I
 2 don't have that discussion in the record.
 3 MS. RODRIGUEZ: Correct.
 4 BY MR. KAUFMAN:
 5 Q You have some in the letter that was sent where
 6 she refers to one of the Board members and that position --
 7 A Right. Yeah.
 8 Q -- in the original letter.
 9 MS. ROBESON: In the original recommendation?
 10 MS. RODRIGUEZ: Yes.
 11 MS. ROBESON: Okay.
 12 MR. KAUFMAN: Yes. And we can, and we'll also
 13 submit the transcript of that hearing.
 14 MS. ROBESON: If you wish. I --
 15 MR. KAUFMAN: Yes.
 16 MS. ROBESON: I'm just concerned about
 17 representing what the Planning Board did or what the
 18 Planning Board's motives are when I don't have that in the
 19 record.
 20 MR. KAUFMAN: Well, what we will do is we'll
 21 submit the transcript and we'll bring your attention to
 22 those comments so you can see them for yourself.
 23 MS. ROBESON: All right.
 24 BY MR. KAUFMAN:
 25 Q Hang on just a second here. So you've read the

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1 letter, the letter is in the record. So in your expert
 2 opinion do you agree with the position taken by the
 3 plaintiff?
 4 A Planning?
 5 Q Planning Board.
 6 A No.
 7 Q And what's your position with regard to the
 8 staff's report?
 9 A Well, my position is that I think, you know, we
 10 should look at the master plan in the manner that Mr. Ager
 11 has described. I really do think it's a guidance. I mean I
 12 think it's -- even the opening word of that, of that master
 13 plan says that it's dynamic guidance, dynamic, I'm sorry, am
 14 I to quote it --
 15 Q Take your time.
 16 A Yes, I think I have it somewhere and I thought
 17 that an interesting, what they put in it. I don't know what
 18 I did with it.
 19 Q Here.
 20 A All right. It says, "Manages and directs a
 21 dynamic growth potential of the Gaithersburg vicinity master
 22 planning area." It really tells it all. Growth is so
 23 dynamic and, you know, plans that you have not looked at for
 24 28 years are obviously, you know, they're not doing justice
 25 to that. But I do believe that a lot of the other goals and

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1 objectives of that master plan have been met through this
 2 and I don't think they gave enough weight to that, to that
 3 other aspect of the master plan.
 4 MS. ROBESON: Did you agree with the technical
 5 staff analysis on the PD-44 zone?
 6 MS. RODRIGUEZ: PD-44?
 7 MS. ROBESON: Technical staff would be in the
 8 technical staff report.
 9 MS. RODRIGUEZ: Right. Right. Yes.
 10 MS. ROBESON: You did?
 11 MS. RODRIGUEZ: Uh-huh.
 12 MS. ROBESON: Okay.
 13 BY MR. KAUFMAN:
 14 Q Okay. So to answer your specific questions, in
 15 your expert opinion would a proposed zoning reclassification
 16 of PD-35 satisfy the requirements of the purpose clause of
 17 the PD zone?
 18 A I do.
 19 Q Also in your opinion, would the proposed zoning
 20 reclassification be compatible with existing and plant lane
 21 uses in the surrounding area?
 22 A I do. I think all the massing, stepping and
 23 articulation and provision of open space does that.
 24 Q From your area of expertise, do you see this
 25 application for PD-35 causing any adverse effects on the

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1 health, safety, security and morals on everybody else?
 2 A No, I actually believe this will be, you know, a
 3 catalyst for revitalization of the area and I think it will
 4 increase safety.
 5 MS. ROBESON: What area?
 6 MR. KAUFMAN: Which area?
 7 MS. RODRIGUEZ: Oh, the general area, but I think,
 8 you know, especially the immediate surroundings, you know,
 9 the immediate vicinity.
 10 MS. ROBESON: If you go forward, they can't
 11 redevelop.
 12 MS. RODRIGUEZ: Excuse me?
 13 MR. KAUFMAN: I think what you're -- if I could --
 14 MS. RODRIGUEZ: Revitalization is really, I mean I
 15 think all this houses, you know, for one, they keep losing
 16 value. You know, once the area --
 17 MS. ROBESON: So property values will go up?
 18 MS. RODRIGUEZ: Property values and when people,
 19 when their values go up, they take care of their houses, you
 20 know, people move in.
 21 MS. ROBESON: I was just curious.
 22 MS. RODRIGUEZ: Okay.
 23 MR. KAUFMAN: Well, if I could just expand on
 24 that?
 25 BY MR. KAUFMAN:

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1 Q I think your question, and I don't want to put
2 words in your mouth, is that under the current master plan,
3 if this went forward, that would prohibit any further
4 development within the area 2 because of the proposal. But
5 my question to you, Ms. Rodriguez, is do you anticipate that
6 this master plan will be redone any time in the foreseeable
7 future?
8 A Well, knowing how long it has taken to do any of
9 this and it's not going to be any time soon, and when they
10 do, I mean it takes about five years to go through one.
11 Q So if it were redone, what would you think the,
12 you know, the proposals for this area would -- how would
13 they change?
14 A I, you know, my gut feeling is they will be
15 looking at the rationales. Pretty much Mr. Ager has
16 described, you know, this is within the wedges and
17 corridors. There is an increased densification, especially
18 in these areas. I mean I do think there is an article very
19 recently from COG on, I think this has been in the news and
20 I know they claim that the growth in our area is phenomenal.
21 It goes to, I don't know, 7 point some million and
22 increasing. Montgomery County is quite large and I think
23 the city of Gaithersburg was No. 5 on the list of growth.
24 So once, you know, once there is an area that can
25 be densified, I think if you do it in the right way, that's,

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1 you know, that's what you want to do. So my gut feeling is
2 that they would be looking at these opportunities for
3 densification and, you know, assume that that's --
4 Q So it's not density per se, it's how you do it?
5 A It's how you do it.
6 Q All right.
7 A All right.
8 Q All right. I have two, just two last questions.
9 Again, in your opinion, will the public facilities and
10 services be adequate if this project is approved and built?
11 A I know the analysis for the school was done. The
12 elementary school is the only one that is over capacity, but
13 we would have to pay a facilities fee. And both the police
14 and the fire are within close proximity to and four miles
15 from the site.
16 Q And then, lastly, do you feel -- what is your
17 opinion concerning the proposed zoning reclassification
18 being suitable and compatible with the surrounding
19 neighborhood?
20 A I think it is.
21 MR. KAUFMAN: Okay. That's my direct. Thank you.
22 MS. RODRIGUEZ: Thank you.
23 MS. ROBESON: Okay. Thank you.
24 MR. KAUFMAN: I tried to take a hint from you and
25 move it along.

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1 MS. ROBESON: Mr. Brown.
2 CROSS-EXAMINATION
3 BY MR. BROWN:
4 Q Ms. Rodriguez, good afternoon. I really don't
5 have too much to go over with you. I wonder if you might
6 first turn to page 6 of your report? This is Exhibit 73C,
7 your latest version of the report.
8 A Yes.
9 Q You seemed quite leery in your direct examination
10 to get into the legal aspects of the setback requirements,
11 yet as I read page 6, it's almost entirely devoted to a
12 legal analysis of the setback requirements. Why is this in
13 your report?
14 A That's a good question. I mean we did put it
15 because it was part of our discussion and it is part of our
16 report, but I don't feel that I can actually argue
17 extensively that it's --
18 Q I noticed from your resume you don't seem to have
19 a legal background.
20 A I --
21 Q So this is not your work, is it?
22 A This particular section is something that is
23 routinely discussed and put part of the master plan and it
24 is in my report, but I don't feel like I can, this goes
25 beyond what's in here.

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1 Q I understand. Thank you. Now you said that you
2 agree with the technical staff report when it was a, when
3 its focus was on the project at a PD-44 zone, right?
4 A Uh-huh.
5 Q Have you seen Ms. Carrier's letter, it's Exhibit
6 91, dated February 5th?
7 A Yes, I do.
8 Q Let her get a copy of it.
9 A Yes.
10 Q Do you have that handy?
11 A Yes.
12 Q I just want to highlight from that letter the
13 second paragraph where Ms. Carrier advises Ms. Robeson,
14 "Your letter requested a recommendation from technical staff
15 on the revised development plan. In consideration of
16 staff's previous analysis and recommendations of approval of
17 the original LMA requested, PD-44, which is more intensive
18 than the current PD-35 rezoning request. The proposed
19 reduction in units in mind are building modifications do not
20 significantly impact staff's previous analysis or
21 conclusions." Would you agree with that observation? Do
22 you understand my question?
23 A Yes, I do.
24 MS. GIRARD: She didn't have the right document in
25 front of her. Right here.

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1 MS. RODRIGUEZ: Oh, okay. I thought that was the
2 second one I got.
3 BY MR. BROWN:
4 Q I'm asking you if you agree with the observations
5 that --
6 A Right.
7 Q -- that Chair Carrier made in the first sentence,
8 second paragraph.
9 MS. GIRARD: She's just reading. She has it now.
10 MS. RODRIGUEZ: Wait a minute. I was --
11 MS. GIRARD: She was --
12 MR. BROWN: I understand.
13 MS. RODRIGUEZ: I was looking for something.
14 MR. BROWN: All right.
15 MS. RODRIGUEZ: Yes.
16 MR. BROWN: First sentence, second paragraph.
17 MS. RODRIGUEZ: Yeah.
18 MR. BROWN: And the second sentence.
19 MS. RODRIGUEZ: Yes, I agree.
20 BY MR. BROWN:
21 Q So essentially what she's saying and what I think
22 you would be saying is that since the staff found approval,
23 would recommend approval of this project at PD-44, surely
24 they would still recommend approval at PD-35, right?
25 A Yes.

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1 Q And what would be your advice to Ms. Robeson in
2 terms of trying to, in terms of where she should put the
3 weight of her -- how she should weigh the conflicting advice
4 as between the Planning Board and the Planning Board staff?
5 Do you believe she should place more weight on the technical
6 staff and on the Planning Board's recommendation?
7 A Well, I -- you know, I believe that she should
8 weigh on the staff's analysis. I don't know if I should say
9 this. I know Ms. Carrier, she's a very intelligent woman
10 and her charge is to really, you know, sort of, she's always
11 gone by the book and she does very much so. I know that she
12 feels very strongly about making sure that it does conform
13 with the master plan and I believe that her staff is sort of
14 thinking outside of the box and, you know, looking at other
15 components of that like we have. Like it's age and the fact
16 that there are tools within our arsenal of planning and
17 design that actually help mitigate some of these issues and
18 actually set aside some, you know, all the other purposes of
19 the, not only of the master plan, but of the zone.
20 Q Well, I take it from your answer then that you
21 would urge Ms. Robeson to find the technical staff analysis
22 more persuasive than the Planning Board's recommendation?
23 A Yes.
24 Q Are you familiar with the -- I wonder if you could
25 take out the technical staff's analysis? Have you got a

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1 copy of that? It's Exhibit 60.
2 A I don't know if I do.
3 MR. KAUFMAN: Give us a minute.
4 MS. RODRIGUEZ: Yeah.
5 MS. GIRARD: She has it.
6 MR. BROWN: Do you have it?
7 MS. RODRIGUEZ: Yeah.
8 BY MR. BROWN:
9 Q Would you turn to page 14 and 15 please?
10 A Sure.
11 Q And 16?
12 A Uh-huh.
13 Q This is where the technical staff analyzes the
14 purposes of the PD zone, right?
15 A Uh-huh.
16 Q Are you familiar with this analysis?
17 A Yes, I probably, if you ask me a specific
18 question, I'd probably have to re-read some of --
19 Q MR. BROWN: I understand.
20 A MS. RODRIGUEZ: -- it again.
21 Q MR. BROWN: At the time that the staff prepared
22 this, which version of your land use planning report was
23 available to the staff?
24 A I believe the previous version, the --
25 Q Would that be Exhibit 46C?

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1 A I would think so.
2 MR. KAUFMAN: I don't know. That's technical.
3 The exhibit list.
4 MR. BROWN: Dated 6/8/12.
5 MS. RODRIGUEZ: Yes, 53D, I think.
6 MR. KAUFMAN: 53D is revised land use support
7 dated July 31, 2012. Do we have that?
8 MS. GIRARD: Yeah.
9 MR. KAUFMAN: Can we have a few minutes to find
10 it?
11 MS. ROBESON: Certainly, because I'm looking for
12 it as well. So why don't we take a 5-minute break because
13 that may be conducive to moving along more smoothly. I'm
14 sorry, before we go off the record, what page are you
15 looking for in this report, Mr. Brown, or was it 46 --
16 MR. BROWN: Well, I wasn't sure whether there had
17 been an update from 46 to, by the time Mr., Mr. Gilbert did
18 his analysis, but I gather 53 would be the correct one.
19 MR. KAUFMAN: 53D.
20 MS. ROBESON: Okay. Well, let's take -- let's let
21 her refresh her memory. We'll take a 5-minute break and
22 we'll be back at 3:21.
23 (Recess)
24 MS. ROBESON: That would be great. We're not on
25 the record yet.

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1 MR. BROWN: What's our next exhibit number, 107?
2 MR. KAUFMAN: No. The next one is 111, I think,
3 or 112 --
4 MS. ROBESON: No.
5 MR. KAUFMAN: No, wait a minute. No, the next is,
6 our next would be 113.
7 MS. ROBESON: 113.
8 (Exhibit 113 was marked
9 for identification.)
10 MR. BROWN: Okay. I'm behind the times. That's
11 right, you've got all of these.
12 MR. KAUFMAN: Will we ever get electronics in this
13 room?
14 MS. ROBESON: You can talk to the Council or talk
15 to the budget people. Some are saying will we ever get a
16 new council office building, so you can put in your two
17 cents.
18 MR. KAUFMAN: They certainly ask me for more than
19 two cents.
20 MS. ROBESON: Are we ready to go? Oh, you're
21 still handing these out. Okay.
22 MS. GIRARD: Sorry.
23 MS. ROBESON: One moment.
24 MR. KAUFMAN: Was there a second thing I thought
25 you said, a date?

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1 MS. GIRARD: Oh, if you wanted to talk about
2 dates, all of our consultants are available on the two dates
3 that you offered.
4 MS. ROBESON: Okay. Mr. Brown, have you -- well,
5 I have to go back on the record for that, so are we, are the
6 parties ready?
7 MR. KAUFMAN: Yes, we are.
8 THE COURT REPORTER: Madam, we're back on.
9 MS. ROBESON: We're back on the record. Have you
10 had a chance to look at dates?
11 MR. BROWN: I have, Ms. Robeson. I'm wide open
12 for February 25h. On March 4th, I have a hard to reschedule
13 appointment with my cardiologist in Alexandria at 8:30 in
14 the morning. I could --
15 MS. ROBESON: Oh.
16 MR. BROWN: -- I could be here at 10:30 I'm pretty
17 sure.
18 MS. ROBESON: You're pretty sure?
19 MR. BROWN: Yes.
20 MS. ROBESON: Do you have an issue with that, Mr.
21 Kaufman?
22 MR. KAUFMAN: No, I don't.
23 MS. ROBESON: Because it's more important -- this
24 is important, but it's also important.
25 MR. KAUFMAN: Well, I thought maybe on March, if

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1 we use the March 4th date maybe to give Mr. Brown a little
2 bit of time, maybe start right after lunch or, you know, I
3 don't -- whatever he desires.
4 MS. ROBESON: Well, how about 11:00 and just give
5 you --
6 MR. BROWN: Okay.
7 MS. ROBESON: -- a little traffic leeway.
8 MR. BROWN: Thank you.
9 MS. ROBESON: And, all right. We'll do that.
10 MR. KAUFMAN: And then I'm assuming on the 25th
11 you would start at a normal time, 9:30?
12 MS. ROBESON: 9:30? I will announce that at the
13 end of the hearing.
14 MR. KAUFMAN: And just for the record, all of the
15 applicant's consultants are available for those days.
16 MS. ROBESON: That's great. Did you check with
17 your consultants, Mr. Brown, or --
18 MR. BROWN: Yes.
19 MS. ROBESON: Okay. All right. We are continuing
20 with Mr. Brown's questioning of Ms. Rodriguez. Why don't
21 you continue, Mr. Brown?
22 MR. BROWN: All right. Ms. Rodriguez, you have
23 both versions of your prior, prior versions of your report
24 available?
25 MS. RODRIGUEZ: Yeah, I have --

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1 MS. ROBESON: And that would be Exhibit --
2 MS. RODRIGUEZ: -- July.
3 MS. ROBESON: -- 53D?
4 MR. KAUFMAN: 53D and 46C.
5 MS. ROBESON: Okay.
6 MR. KAUFMAN: So we're up to 113?
7 MS. ROBESON: Yes.
8 MR. KAUFMAN: What is 113?
9 MS. ROBESON: No, we're up to 112. The next
10 exhibit would be 113. 112 is the aerial photo of analysis
11 area 2.
12 MR. KAUFMAN: All right.
13 BY MR. BROWN:
14 Q I'd like you to look at what I'm going to ask to
15 be marked as 113.
16 A Okay.
17 Q Let me just tell me what it is first, Ms.
18 Rodriguez.
19 A Uh-huh.
20 Q I've taken pages 14 and 15 and 16 of the staff
21 report and I've highlighted portions of them. These
22 highlightings come from, the wording comes from Exhibit 46C,
23 which upon inspection seems to me to be pretty close to the
24 same as Exhibit 53D. And the impression I get is that in
25 large part the staff adopted word for word your analysis of

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1 why the application conforms to the PD zone. Do you have a
2 different impression than I do based upon comparing the
3 staff report with your recommendation?
4 MS. ROBESON: What page is her recommendation on
5 in 53D?
6 MR. BROWN: Well, those, those are primarily --
7 MS. ROBESON: Oh, I see what you're saying. Okay.
8 MR. BROWN: I think primarily it's drawn from
9 pages 11 and 12, thereabouts, maybe --
10 MS. ROBESON: Oh, I see --
11 MR. BROWN: -- a few --
12 MS. ROBESON: -- what you're, I --
13 MR. BROWN: -- in a few other places.
14 MS. ROBESON: Yes, I see what you're saying.
15 MS. RODRIGUEZ: To be honest with you, you're more
16 perceptive than I am, but I didn't analyze it this way,
17 but --
18 MR. BROWN: Well, I mean the question was if you
19 can answer it. I don't know if you can or not, so --
20 MS. ROBESON: Well, why doesn't Mr. Brown repeat
21 his question?
22 MR. BROWN: I'm just asking whether she agrees
23 with my perception that the staff analysis of the compliance
24 or the PD zone seems to be drawn in a very large part from
25 your analysis of compliance with the PD zone?

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1 MS. RODRIGUEZ: Well, this is all pretty factual,
2 so I guess I just borrowed some of the language.
3 MR. BROWN: You don't disagree with my perception?
4 MR. KAUFMAN: I think she answered the question.
5 MS. ROBESON: Well, I didn't understand.
6 MR. BROWN: I think she didn't.
7 MS. ROBESON: I --
8 MS. RODRIGUEZ: Uh-huh.
9 MS. ROBESON: I didn't understand what you meant.
10 What do you mean it's all pretty factual? Is that a yes or
11 a no?
12 MS. RODRIGUEZ: Please repeat the question so I
13 know what I'm answering. Sorry. Sorry.
14 MR. BROWN: My question is that the staff's
15 analysis of compliance with the PD zone is drawn in large
16 part from your analysis of compliance with the PD zone, do
17 you agree with that perception?
18 MS. ROBESON: If it helps your answer, I think
19 what Mr. Brown has done is highlight those areas of the
20 staff report that are identical to page 8, page 7 and 8 of
21 your report.
22 MS. RODRIGUEZ: Yeah, I --
23 BY MR. BROWN:
24 Q Or other pages.
25 A Right, I said that it appears that they borrowed

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1 some of the language, but I don't know that that in
2 conclusion, you know, that that says that their utilizing my
3 rationale.
4 MS. ROBESON: Okay.
5 MR. KAUFMAN: Just for the record, I object to the
6 relevance of this questioning because I mean part of the
7 process is you submit to staff all of your analysis or
8 reports and who knows.
9 MS. ROBESON: I don't think Mr. Brown's point is
10 that you did anything wrong. Go ahead, Mr. Brown.
11 MR. BROWN: I'm actually done.
12 MS. ROBESON: Okay.
13 MR. KAUFMAN: Okay.
14 MS. ROBESON: Is there any objection to admitting
15 this?
16 MR. KAUFMAN: No, I don't --
17 MS. ROBESON: 113?
18 MR. KAUFMAN: I think it's actually already
19 admitted in some way as part of the staff report, so --
20 MR. BROWN: Well, not the, not the highlighted.
21 MS. ROBESON: Not the highlighted.
22 MR. KAUFMAN: Yes. Okay. I don't have an
23 objection. I do have a little bit left.
24 MS. ROBESON: Redirect?
25 MR. KAUFMAN: Just a tad.

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1 MS. ROBESON: Okay.
2 REDIRECT EXAMINATION
3 BY MR. KAUFMAN:
4 Q I just want to be clear, Ms. Rodriguez. The work
5 in your report, is that all your work? No one else
6 instructed you what to do, did they?
7 A No.
8 MS. ROBESON: Well, wait. Did you say the legal
9 argument on the waiver --
10 MS. RODRIGUEZ: Right. And --
11 MS. ROBESON: -- was not necessarily yours?
12 MS. RODRIGUEZ: What I'm saying is, you know,
13 usually a report summarizes your work as a team, you know?
14 There is a lot of people at work and this kind of project is
15 not just individually, so in summarizing in here a number of
16 findings, you know, and work that we've done as a team and
17 this was part of that work and those findings. I just
18 cannot argue for that because I'm not a lawyer and I just
19 can't -- I'm having hard time doing that.
20 MR. KAUFMAN: Well, my point was and is, since she
21 answered the question, no one instructed her to put anything
22 in the report other than her own work.
23 MS. ROBESON: Oh, okay. Yes.
24 MR. KAUFMAN: No, that's it. I don't have
25 anything else.

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1 MS. ROBESON: Okay. How about our next witness --
2 how many more witnesses do you have, Mr. Kaufman?
3 MR. KAUFMAN: If you'd give me a second? I have
4 one, two, three, four, five more. No, four more, four more.
5 The next witness that I would call today, which may, whether
6 we'll get through or not I don't know, is the architect.
7 MS. ROBESON: Okay. We can do that.
8 MR. KAUFMAN: Is there a particular time you want
9 to stop or something?
10 MS. ROBESON: Well, I would like to stop at 4:45
11 just so we can get everything on the record. But if it goes
12 over that, if it's, if we're getting to the close, we'll
13 finish, we'll finish with this witness, okay?
14 MR. KAUFMAN: All right. If you desire to break
15 it up, you know, the direct and then cross at another time,
16 we can do that too.
17 MS. ROBESON: Okay. Thank you. Please raise your
18 right hand.
19 (Witness sworn.)
20 MR. KAUFMAN: Just give me a moment, please.
21 Okay.
22 DIRECT EXAMINATION
23 BY MR. KAUFMAN:
24 Q Mr. Seiboth, would you state your full name and
25 business address?

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1 A My name is Ronald Seiboth, spelled S-E-I-B-O-T-H.
2 My address is 240 North 22nd Street, Philadelphia,
3 Pennsylvania.
4 Q And what is your occupation?
5 A I am an architect.
6 Q And how long have you been engaged in this
7 profession?
8 A I've been registered for 40 years.
9 Q And what jurisdictions are you registered?
10 A New York, New Jersey, Pennsylvania, Maryland and
11 Virginia.
12 Q And are you a member of a professional society?
13 A American Institute of Architects.
14 MR. KAUFMAN: Now his resume is in the record.
15 MS. ROBESON: Yes. Are you -- do you seek to
16 qualify him as an expert in architecture?
17 MR. KAUFMAN: I do, and especially in this type of
18 multi-family residential architecture.
19 MS. ROBESON: Mr. Brown?
20 MR. BROWN: I'm certainly willing to stipulate to
21 this expertise as an architect. Beyond that, I think it
22 should, I think his testimony should speak for itself.
23 MR. KAUFMAN: I mean I can qualify him if you
24 want.
25 MS. ROBESON: No. Why don't we just focus on the

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1 multi-family. Have you ever testified as an expert?
2 MR. SEIBOTH: In Anne Arundel County for Waugh
3 Chapel, which is in Crofton; Annapolis Town Center, which is
4 in Parole; and South River Colony. They're all in Anne
5 Arundel County.
6 MS. ROBESON: Yes, I know. All right. Let's --
7 I'll accept him as an expert in architecture. If you want
8 to go through the multi-family specialty, you can do that.
9 BY MR. KAUFMAN:
10 Q I'd like to do that for just a moment or two.
11 Okay. Well, first, can you give us the full name of your
12 professional organization, your firm?
13 A The firm name is the Martin Architectural Group.
14 Q All right. And does that group specialize in a
15 particular type of architecture?
16 A We over the past 50 years have specialized in
17 multi-family architecture. We work for most of the large,
18 multi-family national corporations like Pulte, Toll
19 Brothers, Bazzuto and we help them with their multi-family
20 projects.
21 MS. ROBESON: Okay.
22 BY MR. KAUFMAN:
23 Q And approximately how many multi-family projects
24 have you personally worked on over the last 10 years and
25 where were those general locations?

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1 A Well, I'm the director of design for our firm, so
2 I touch every project that goes through the office and we've
3 probably been involved in hundreds of thousands of units
4 between New York and Florida.
5 MS. ROBESON: Okay.
6 MR. KAUFMAN: I would think that that would
7 qualify him not only as an architect, but as an expert in
8 this particular type of architecture and I would submit it
9 as such.
10 MS. ROBESON: All right. I'll qualify him then.
11 BY MR. KAUFMAN:
12 Q Mr. Seiboth, are you familiar with this particular
13 application?
14 A Yes, I am.
15 Q And are you familiar with the subject property?
16 A Yes, I am.
17 Q Can you describe the property and its shape and
18 how you would address it from your area of expertise?
19 A It's an irregular-shaped property which is the
20 most unusual aspect of it. It's wide at the north end and
21 it's narrow at the south end, which offers, you know, an
22 interesting need for the kind of, you know, the kind of
23 building that you place on the site and also the shape of
24 the site in relationship to the stand of trees to the west
25 end of the particular roads that are on the east and south.

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1 A I note that you're currently looking at Exhibit
 2 73B, is it?
 3 MS. GIRARD: Yes.
 4 MR. KAUFMAN: Yes.
 5 MR. SEIBOTH: 73B.
 6 MR. KAUFMAN: Right.
 7 MR. SEIBOTH: Yes.
 8 BY MR. KAUFMAN:
 9 Q Now also are you familiar with the surrounding
 10 area in terms of, you know, its land use and the type of
 11 units that are there?
 12 A Yes, I've driven through the areas extensively.
 13 Q All right. Now did there come a time where you
 14 were asked to determine what type of architecture might be
 15 used on this property to best lend itself to redevelopment
 16 and that would also be compatible to the surrounding area?
 17 A Yes, we were commissioned to design a high-quality
 18 project with numerous amenities and, you know, based on the
 19 shape of the site and the fact that security was an issue on
 20 this particular site, the wrap building seemed to be a very
 21 appropriate solution for design to the site.
 22 Q Can you give me a little bit of history of this
 23 particular type of architecture when it came about and what
 24 are its attributes compared to what preceded it, which I
 25 understand was primarily garden apartments?

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1 A Yeah. The, it's, the wrap building is predicated
 2 upon a precast parking structure in a center of, surrounded
 3 by units. Now it was developed in order to appease
 4 communities in terms of what a project looks like from the
 5 street, especially garden apartment jobs and higher density
 6 residential jobs, you see a lot of parking associated with a
 7 garden apartment because there's a lot of units in each
 8 building. So by hiding, by putting the parking in the
 9 center of the building, you really drive by a project, by
 10 the community and you don't see any cars which, you know,
 11 once you've seen one of these jobs that's up, it's very
 12 appealing because you're seeing a lot of architecture and a
 13 lot of living units and it allows for a much more open space
 14 because the parking is stacked. And that gives the
 15 impression as you're driving by that it's a much lower
 16 density than it actually is.
 17 If I can elaborate a little bit on the need for
 18 density? The building code changes every three years and
 19 every time there's a national disaster, they add things to
 20 the code that require additional structure, the additional
 21 fire protection, accessibility because of handicap
 22 requirements and, of course, there's energy requirements
 23 that we're trying to live up to in today's world. And
 24 because of those kinds of constraints, the need to increase
 25 the capacity on a particular site are much greater because

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1 the cost of construction is obviously much more and
 2 proportionately than it was 10 years ago even.
 3 Q Well, for example, in the county today do all
 4 structures have to at least certify as LEED's qualified?
 5 A It's a county by county requirement and most
 6 counties, I would expect by the time this is built it would
 7 have to be, it would have to conform to some kind of a LEED
 8 certification. Even if it's not certified, it would have to
 9 live up to the requirements.
 10 Q Now you're familiar with the PD-35 and its --
 11 A Yes.
 12 Q -- requirements, not just its permit requirements,
 13 but its development standard?
 14 A Yes.
 15 Q Okay. And do you believe that this particular
 16 type of architecture will meet those requirements?
 17 A Yes, I do.
 18 Q All right. Now I'd like you to kind of go through
 19 a little bit of the, of the type of project and I want to
 20 refer you to some of the exhibits that are in the record.
 21 You already have 73D up there, I believe. Did we, is
 22 that --
 23 A No, that's B.
 24 Q Okay. The ones I want to do first are 46N and
 25 73D. Those are floor plans and elevations. Would this

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1 help? Is that your pointer?
 2 A No, I'll just describe it generally.
 3 Q Well, let's --
 4 A While she's getting the exhibits --
 5 Q Yes.
 6 A -- I can explain that when I look at a project
 7 with a client, we generally have square footages of single
 8 families average about 1,800 square feet. And for
 9 townhouses, they would average about 1,400 square feet. Now
 10 this particular project is probably averaging closer to
 11 1,000 square feet per unit. So the units --
 12 Q Sorry, we're having a little trouble. Did you --
 13 MS. GIRARD: Did you bring --
 14 MR. SEIBOTH: Yes, I did.
 15 MS. GIRARD: Okay.
 16 MR. SEIBOTH: It's --
 17 MS. GIRARD: Are they clipped together?
 18 MR. KAUFMAN: I think you may have to clip them.
 19 Excuse the light. Okay. So the first ones are 46N and 73D.
 20 MR. SEIBOTH: I don't have them. I just have the
 21 elevation.
 22 BY MR. KAUFMAN:
 23 Q Why don't you continue with what you were
 24 saying --
 25 A Yes. The units here are, range from 38 percent

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1 one-bedrooms, 55 percent two bedrooms and 7 percent three
2 bedrooms. So it's --
3 MS. ROBESON: I'm sorry, I missed that. How many
4 one bedrooms?
5 MR. SEIBOTH: 38 percent, 55 percent twos and 7
6 percent ones.
7 MR. KAUFMAN: You mean threes?
8 MR. SEIBOTH: Threes I mean. I'm sorry.
9 MR. KAUFMAN: I understand that's about 25 units,
10 27 units?
11 MR. SEIBOTH: Yeah.
12 MS. ROBESON: And what did you say the square
13 footage of the average unit is?
14 MR. SEIBOTH: About 1,000.
15 BY MR. KAUFMAN:
16 Q What about the 3-bedroom?
17 A The 3-bedroom itself is closer to 1,200. And
18 within that mix there are one dens, two dens and there are
19 efficiencies. So it's a, it's because of the three bedrooms
20 we're oriented a little more family-oriented than most of,
21 of the projects in this density are.
22 Q So it's really, it's not oriented more towards
23 singles and empty-nesters, more towards families?
24 A Yes.
25 Q Okay. So which one is that?

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1 MS. GIRARD: This is new. This is just a colored
2 version of 73.
3 MR. KAUFMAN: This is 73B?
4 MS. ROBESON: Well, that's just --
5 MS. GIRARD: 73D. It's a colored version of that.
6 I made extras.
7 MR. KAUFMAN: Can we give one to Mr. Brown?
8 MS. ROBESON: Yes.
9 MS. GIRARD: Mr. Brown, do you want it folded?
10 MS. ROBESON: He has the used copies.
11 MR. KAUFMAN: We have some reduced copies. Here's
12 a reduced copy and maybe also for the Hearing Examiner.
13 MS. ROBESON: So this is 114 and how would you
14 describe this? I'm going to add it as a separate exhibit.
15 It's a wren bird something.
16 MR. SEIBOTH: Elevation.
17 MS. ROBESON: Thank you.
18 MR. SEIBOTH: It's the view of the building's arch
19 from Towne Crest Drive. So they would be what you would see
20 as you're driving down Towne Crest.
21 MS. ROBESON: It would be an east elevation then
22 generally?
23 MR. SEIBOTH: Yes.
24 MS. ROBESON: So 114 will be east elevation.
25 (Exhibit 114 was marked

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1 for identification.)
2 MS. ROBESON: Okay. Go ahead.
3 BY MR. KAUFMAN: Okay.
4 Q So why don't you use that exhibit, you know, walk
5 us through it and explain, you know, what it represents.
6 A What we've done is, as everybody said, as we, as
7 the building gets closest to Towne Crest Drive, it's three
8 stories and then it steps back against the parking deck
9 that's four stories tall. We've also put in hip roofs which
10 soften the edges of the building as you, as, in a taller
11 building. We've used a stone base to the building and it's
12 going to be a hardy plank or cement board siding to maintain
13 a residential feel. We used an architecture that was more
14 traditional so it would fit in with the surrounding
15 architecture.
16 Q Okay. Then we have a couple of other new
17 exhibits. We have one that talks about the structured
18 parking. Do you have that with you?
19 MS. GIRARD: What are you referring to?
20 MR. KAUFMAN: The colored exhibits.
21 MS. GIRARD: That's what you just --
22 MR. KAUFMAN: Oh.
23 MS. GIRARD: No. No, no.
24 MR. KAUFMAN: I'm sorry.
25 MS. GIRARD: That bullet point ends this. This is

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1 just the things to talk about.
2 BY MR. KAUFMAN:
3 Q Oh, okay. So -- well, why don't you describe the
4 structured parking. I understand there's been somewhat of a
5 change from the PD-44 to the PD-35.
6 A Yes. The Building A, which is the northernmost
7 building, has a 4-story deck and they're generally -- we try
8 to accommodate all the units within the parking deck that's
9 associated with the units around it. The nice thing about
10 this configuration is a person can drive into the parking
11 deck and essentially drive up to their floor and then walk
12 into their floor level. So there isn't as much stress on
13 stairways and elevators in the building as a traditional
14 building.
15 The other aspect is that each, Building A and B
16 have elevators in them which make all the units able to be
17 accessible for the handicapped. A lot of garden or walk-up
18 apartments you don't have enough units to accommodate, or
19 the height to accommodate the need for an elevator.
20 Q Okay. I'm sorry, did you describe the building
21 materials?
22 A Yes, I did.
23 Q Okay. And can you go over the, from an
24 architectural perspective the different situation with
25 regard to a sloped hip roof versus slat roofs and how does

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1 that interact with the compatibility of the existing
2 neighborhood?
3 A Well, most of the houses in the general area are
4 traditional, sort of a builder's traditional design and they
5 have, they all have sloped roofs. So we were keeping our
6 building in keeping with that. And by the ends sticking out
7 and the width of the building is in disproportionate, the
8 width of the building you're looking at is not
9 disproportionate to the size of the structures in the
10 surrounding community.
11 Q And the relationship of the building mass in
12 articulation from a compatibility point-of-view to the
13 community's Wedgewood 1 and 2 to the east?
14 A Yeah, that's, that's kind of what I just said.
15 The --
16 Q I'm sorry. Please say it again for me because I
17 missed it.
18 A Oh, okay. The ends of the buildings are, by
19 stepping down and hiping the roofs and presenting a narrow
20 width to the community gives it a more proportional feel to
21 the existing structures that are in the neighborhood.
22 Q Okay. And then there was then discussion about
23 the setbacks that are required by the PD zone in
24 relationship to, when is next to a single family recommended
25 zone, are you familiar with that?

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1 A Yes.
2 Q All right. And can you describe the situation
3 that you understand exists under the current PD development
4 plan?
5 A The townhouses were set back 100 feet. The, there
6 is a 100-foot setback perpendicular from the last house on
7 the lot on --
8 MS. GIRARD: Daylily.
9 MR. SEIBOTH: -- Daylily Drive. The corner of the
10 B building does encroach on the 100-foot setback.
11 BY MR. KAUFMAN:
12 Q If you use an arch, is that how you --
13 A That's, yeah, I have that diagram.
14 Q Have you looked at that situation and looked at
15 whether there is a solution for it?
16 A Yes.
17 Q All right. And have you prepared something that
18 addresses that?
19 A Yes, I have.
20 Q Okay. I'd like to have this exhibit marked as --
21 MS. ROBESON: Well, this would be 115, which is,
22 can you describe that?
23 (Exhibit 115 was marked
24 for identification.)
25 MR. KAUFMAN: I was about to ask him to do that.

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1 BY MR. KAUFMAN:
2 Q Before you actually describe the exhibit and walk
3 through it, can you explain what you did in terms of how you
4 came about studying this and suggesting this solution?
5 A Yes. The, I'm pointing to the last lot on Daylily
6 and this is called lot 4. In the corner of the property is
7 approximately there and this represents the 100-foot setback
8 line behind the townhouse.
9 Q This meaning the red dotted --
10 A The red dotted line --
11 Q Right.
12 A -- is the arch going through the B building from
13 that corner, which is 100 feet in diameter, in radius.
14 Q All right. And so you suggested a solution. Can
15 you describe it and why do you feel it will work?
16 A What we did was we removed the units that
17 encroached on the 100-foot setback and we placed them on top
18 of the parking deck on Building B, so there will be two
19 levels of units above the parking deck. The parking deck is
20 two levels and there will be two levels of units. So there
21 will still be a 4-story building in the back.
22 Q So there was originally three levels of parking,
23 is that correct?
24 A That's correct.
25 Q That is under the PD-44 plan?

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1 A Right. And --
2 Q So --
3 A -- by reducing the number of units, we also
4 reduced the number of parking spaces. We're still within
5 the code range.
6 MS. ROBESON: The code range for what?
7 MR. SEIBOTH: For parking, the number of cars per
8 dwelling unit.
9 MS. ROBESON: I see. Okay.
10 MR. SEIBOTH: And by being able to reduce the
11 levels of parking in Building B, which has fewer units
12 anyhow, we were able to accommodate the units that
13 encroached on the setback on top of the parking desk without
14 increasing the height of the building.
15 BY MR. KAUFMAN:
16 Q Okay. And what, is there a change in unit numbers
17 or is it the same?
18 A It's the same number of units.
19 Q 329 under this alternative plan?
20 A Yes, that's correct.
21 Q Okay.
22 MS. ROBESON: You'll have to say it because the
23 tape, the transcript won't know if you don't say it. Some
24 people just nod. Did you give this back to the, when you
25 submitted this to the Planning Board or the planning staff,

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1 do you know if the Board had the opportunity to take this
2 into account?
3 MR. SEIBOTH: As far as I know, they didn't.
4 MS. ROBESON: Okay.
5 MR. KAUFMAN: As you know, just to reflect on
6 that, as you know our position is that you didn't need it.
7 So --
8 MS. ROBESON: You didn't need what?
9 MR. KAUFMAN: We didn't need to have --
10 MS. ROBESON: The setback?
11 MR. KAUFMAN: -- 100 foot setback.
12 MS. ROBESON: Okay.
13 MR. KAUFMAN: You know, so that was our argument.
14 It didn't seem to be the main issue or what the issue was
15 with the master plan. So, but we do feel that it is a
16 legitimate issue that has been raised and it needs to be
17 addressed and, obviously, the purpose of this is to show
18 that there is absolutely a solution to it if you feel it's
19 significant.
20 MS. ROBESON: Well, I can't condition it, so you
21 have to amend your plan.
22 MR. KAUFMAN: Right.
23 MS. ROBESON: What, how much did the original PD-
24 35 lay out -- what's the, how much did that encroach into
25 the 100 feet, the original PD-35?

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1 MR. KAUFMAN: Well, we have, if someone has a
2 scale, we can tell you. I want to be clear just for the
3 record. We're not conceding the point, but we are showing
4 that if it's something that it is addressing.
5 MR. BROWN: This is 115?
6 MR. KAUFMAN: This is Exhibit --
7 MS. GIRARD: Yes.
8 MR. KAUFMAN: -- 115.
9 MS. ROBESON: So this isn't a binding element?
10 MR. KAUFMAN: At the moment it is not, no. But
11 fortunately in this type of case, unless you, you can change
12 your development plan right up to the time that it is or is
13 not adopted. So --
14 MR. SEIBOTH: It was 35 feet from corner to
15 building.
16 MS. ROBESON: Okay. So it was 65 feet into the
17 100-foot setback --
18 MR. KAUFMAN: Yes.
19 MS. ROBESON: -- of the building? Okay.
20 MR. KAUFMAN: I'm sorry. You're asking with the
21 wing that exists on the current development plan proposal
22 how far back it was from the --
23 MS. ROBESON: Yes.
24 MR. KAUFMAN: -- property line? That was 65 feet,
25 not a setback. Okay.

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1 MS. ROBESON: No. The building, it's 35 feet from
2 7 Daylily Lane to the corner of the original PD-35 layout,
3 which is a 65-foot --
4 MR. KAUFMAN: 65 foot, right.
5 MR. SEIBOTH: -- encroachment.
6 MR. KAUFMAN: Right. I understand.
7 BY MR. KAUFMAN:
8 Q Then also are you familiar with the waiver of
9 provisions of the PD-35 and the zoning ordinance from the 4-
10 story, I mean from the 5-story 50 percent requirement?
11 A Yes.
12 Q And are you familiar with the fact that there's
13 been a waiver requirement requested?
14 A Yes, I am.
15 Q Okay. Excuse me just a moment. Lastly, just you
16 indicated that there are parking changes that have occurred
17 from the PD-44 to the PD-35. Can you just kind of go over
18 what is required from a per unit basis and what is currently
19 proposed and how much, if any, it's over code requirements?
20 A Yes. The current plan has 329 units and it's, the
21 zoning requires a breakdown of cars based on the number of
22 bedrooms. So breaking out the percentages, the requirement
23 is 1.43 cars per unit. We have on the site 500 units which
24 is 500, we have 329 units and we have 500 parking spaces.
25 MS. ROBESON: For a minute I was like that's

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1 really more than the -- no, go ahead.
2 MR. SEIBOTH: So that's 1.52 cars per dwelling
3 unit. So we're still slightly over. We're about 32 cars
4 over the requirement.
5 BY MR. KAUFMAN:
6 Q Based upon the number of units, bedrooms, et
7 cetera?
8 A It's -- yeah.
9 MS. ROBESON: Is there any guess parking or
10 visitor parking I'm missing?
11 MR. SEIBOTH: The parking requirement in the
12 zoning ordinance requires so many cars per bedroom --
13 MS. ROBESON: Right.
14 MR. SEIBOTH: -- and that takes into account guest
15 spaces.
16 MS. ROBESON: Okay. And, Mr. Kaufman, were you
17 going to ask him whether the labor, whether this meets the
18 labor standards or not?
19 MR. KAUFMAN: I thought I did, but since you put
20 it so succinctly --
21 MS. ROBESON: Oh, well, maybe I missed it.
22 MR. KAUFMAN: Okay.
23 BY MR. KAUFMAN:
24 Q So why don't you answer the Hearing Examiner's
25 question. Does it meet the labor requirements for the 5-

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1 story versus 4-story?
2 A The waiver is for a reduction of five to four
3 stories, correct?
4 Q Yes.
5 A Yes, it does meet it.
6 MS. ROBESON: And why?
7 MR. SEIBOTH: Because all the buildings are no
8 taller than four stories.
9 MS. ROBESON: Okay. I thought he said you could
10 get a waiver from the setback?
11 MR. KAUFMAN: No.
12 MS. ROBESON: The 100-foot setback.
13 MR. KAUFMAN: There is a provision for that. Hang
14 on just a minute.
15 MS. ROBESON: I'm back on the setback.
16 MR. KAUFMAN: Yes. We've been down this road.
17 MS. ROBESON: I know the setback issue is old hat
18 to you guys, but not so much to me. So --
19 MR. KAUFMAN: Apparently our January --
20 MS. GIRARD: 11th.
21 MR. KAUFMAN: -- 11th cover letter provides,
22 covered this and the provision is as follows. This is
23 Section 59C-7.1 and it states as follows: "The district
24 councilman waived the percentage requirements for one family
25 in multi-family dwelling unit in terms of the setback if it

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1 finds a proposed development is more desirable for stated
2 environmental reasons than a development in accordance with
3 these limits." Or, B, if I have B here, do you want to read
4 the rest of that thing?
5 MS. GIRARD: No, you should have it. B, it's --
6 MR. KAUFMAN: Where is B?
7 MS. GIRARD: Right here.
8 MR. KAUFMAN: Oh, okay. Or, B, "Achieves goals,
9 policies or recommendations stated in an approved and
10 adopted master plan or sector plan," but it's more.
11 MS. ROBESON: Okay. So, Mr. Seiboth, is it both
12 or both?
13 MR. SEIBOTH: Both.
14 MS. ROBESON: Seiboth, does it meet that -- I
15 assume it would be Standard B. If you developed the
16 original plan, does it meet that waiver standard?
17 MR. SEIBOTH: Yes.
18 MS. ROBESON: Why?
19 MR. SEIBOTH: Well, all the buildings will be four
20 stories. Well --
21 BY MR. KAUFMAN:
22 Q I'm not sure you understand. In other words,
23 there are two reasons why you can have less than five
24 stories --
25 A Uh-huh.

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1 Q -- if you meet the waiver requirements.
2 A Yeah.
3 Q One of them is it's more desire from an
4 environmental point-of-view and, of course, you know, we
5 have this issue with the Westwoods to the west of us and the
6 other is, B, that it achieves the goals and policies which
7 has been discussed here earlier by other testimony or
8 recommendations stated in an approved and adopted master
9 plan. So I guess my first question is as to A, to be
10 specific, do you feel it would meet the better and more
11 desirable environmental situation if it's this lower
12 building rather than a higher building?
13 A Well, yes, the neighbors expressed concern about
14 the height of the building, so I take that as being an
15 environmental concern.
16 Q All right. And then as to B, you've heard the
17 testimony before from Mr. Ager and Ms. Rodriguez concerning
18 the master plan. Do you feel in your expertise that it
19 would meet those, that requirement?
20 A Yes, I do.
21 MR. KAUFMAN: I'm sorry for the confusion.
22 MS. ROBESON: No, it's, it could be me.
23 MR. KAUFMAN: Well, it's a lot, it's a very
24 complex set of issues here, so --
25 MS. ROBESON: Yes.

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1 BY MR. KAUFMAN:
2 Q Okay. So let's kind of move along here. So in
3 your expert opinion as an architect, there's a proposed
4 zoning reclassification PD-35 suitable for the site and
5 compatible with the surrounding neighborhood?
6 A Yes, I do. I think it provides an excellent
7 opportunity for a different housing type for the
8 neighborhood.
9 Q And do you see it, again, from your expertise and
10 using this particular type of architecture, do you see where
11 it would in any way be detrimental to the use, peaceful
12 enjoyment, value, as well it was indicated by a previous
13 speaker or development of surrounding properties or the
14 general neighborhood including the Washington Grove plan?
15 A No, I don't think it would be detrimental.
16 Q Okay. And then, lastly, this is a question we
17 have to ask all the witnesses, it's peculiar to Montgomery
18 County, do you think the proposed zoning classification is
19 anyway adverse to the health, safety, security, moral or
20 general welfare of the residents, visitors or workers in
21 this area?
22 A No, it's not.
23 Q Okay. And that would be our direct.
24 MS. ROBESON: Okay. Mr. Brown, any questions?
25 MR. BROWN: Just a few.

1 CROSS-EXAMINATION

2 BY MR. BROWN:

3 Q Mr. Seiboth, I was a little taken aback by the
4 effort to qualify you in multi-family, so I went back to
5 look at your resume, Exhibit 13E. I know that Ms. Robeson
6 has qualified you, but I nonetheless can feel it's fair to
7 ask you about the strength of your qualifications in this
8 area. You have listed three projects here as project
9 profile. What was the purpose of listing them in your
10 resume?

11 A Because they were in Maryland. I was being
12 specific to the state of Maryland.

13 Q I see. They're not all multi-family projects, are
14 they?

15 A They all have multi-family components within them.
16 They're mixed use approximately.

17 Q In fact, a multi-family component of Central Park
18 never got built, did it?

19 A Central Park?

20 Q Central Park at Victoria Falls? No, I take that
21 back. You're right. That did have multi-family components.
22 I'm sorry. I wanted to ask you about the building on your
23 expertise on multi-family. If you had a site that was not
24 constrained because of the size or the shape as we have in
25 this situation, what would you consider to be desirable

1 way line. So the separation between buildings is a little
2 more important or a little less important, but it really has
3 a lot to do, a lot more to do with the environment it's in
4 than anything specific.

5 Q Okay. This particular diagram does not show that
6 feature except as between these two, these two sticks of
7 townhomes, correct?

8 A Correct.

9 Q This is to scale, this spacing?

10 A That's to scale from the site, yes.

11 Q Now to really get a picture of the entire
12 streetscape along Towne Crest, we would have to essentially
13 slice this picture, this exhibit into three strips and
14 attach them out into one, long strip, right?

15 A That's correct. That's correct.

16 Q My question to you is in your professional expert
17 opinion, do you think that the proportion of open space
18 between these units if we set it up that way is appropriate?

19 A Yes, I do.

20 Q And why is that?

21 A Well, the distance between Building B, which is
22 the center building, and the townhouses is probably over 100
23 feet. The separation between the A and B, which has a
24 street, sidewalks between it is probably about 60 feet
25 apart.

1 spacing between multi-family buildings along a street,
2 especially when there is townhouses across the street?

3 A When you say spacing, do you mean setback from a
4 right-of-way?

5 Q No, I'm talking about spacing between the
6 buildings along the street.

7 A Oh.

8 Q Streetscape spacing of the multi-family buildings.

9 A I would say 40 feet is a reasonable separation.

10 Q Does it depend at all upon the length of the
11 building?

12 A Well, that's a different question. The length of
13 the building, in most areas what you try to do is break up
14 the façade so that it doesn't -- where there are two long
15 buildings or 40 feet apart or 1,000 feet apart is of little
16 relevance. It's how you break up the architecture along the
17 street that's important.

18 Q Is there sort of a percentage goal then that you
19 would want to achieve as a ratio of open space between
20 buildings to the total length of buildings?

21 A In some, in some areas you might, but in most
22 cases it depends on, you know, it depends on the
23 architecture and it depends on, you know, what the setback
24 is off the street. When we do a building in an urban area
25 we're basically within, within a few feet of the right-of-

1 Q The distance between the townhouses in Building B
2 used to be a lot less than it is today, didn't it, when it
3 was first designed?

4 MR. KAUFMAN: Under which plan?

5 BY MR. BROWN:

6 Q Let's go back to the original development plan.
7 Did you have a hand in --

8 A Yes.

9 Q -- in developing that original development plan?

10 MS. ROBESON: Was that the PD-60?

11 MR. KAUFMAN: Yes.

12 MR. SEIBOTH: Well, the PD-60 had a 3-story
13 component.

14 MR. KAUFMAN: A 3-story building, I believe.

15 MS. ROBESON: Well, I need the witness to answer
16 if he can.

17 MR. SEIBOTH: Yes. There was about an 80-foot
18 separation between the townhouses and the next building
19 over, which is a 3-story building.

20 BY MR. BROWN:

21 Q I believe you said, for the record give the
22 exhibit number.

23 A The exhibit number is 26.

24 Q Now I just want to show you Exhibit 16 to make
25 sure we're on the same page literally.

1 MR. KAUFMAN: Hang on a minute.
 2 BY MR. BROWN:
 3 Q This is your, this is the development plan for the
 4 original project at PD-60. You see here the gaps between
 5 Building A to B and between Building B to C and between
 6 Building C to D?
 7 A Right. Between B and -- A and B, the distance has
 8 not changed. Between B and the C Building, which is the
 9 next one over, was 50 feet. And between C and the
 10 townhouses was 80 feet.
 11 Q All right. And it's your testimony that this,
 12 this is an appropriate streetscape for this particular block
 13 with townhouses across the way?
 14 A Yes.
 15 Q And, therefore, almost as sort of an aperture,
 16 even greater amount of space, which you, which is now shown
 17 as even better --
 18 A Yes.
 19 Q -- is that right?
 20 A Yes.
 21 MR. BROWN: I have nothing further.
 22 MS. ROBESON: All right.
 23 MR. KAUFMAN: We don't have any redirect. You've
 24 got quarter after 4:00. Our next witness is the civil
 25 engineer. I think it's going to take awhile for that

1 testimony. So I don't know whether you want to start?
 2 MS. ROBESON: Okay. In that case --
 3 MR. KAUFMAN: And Ms. Girard will handle that
 4 questioning.
 5 MS. ROBESON: So what I'm going to do is we'll end
 6 for today. I am going to -- we will reconvene on Monday,
 7 February 25th. I'm sorry, Mr. Brown, which day did you need
 8 to be here at 11:00?
 9 MR. BROWN: The 4th.
 10 MS. ROBESON: The 4th? Okay. We will reconvene
 11 on Monday the 25th at 9:30. Thank you.
 12 MR. KAUFMAN: Thank you.
 13 MS. GIRARD: Thank you.
 14 (Whereupon, at 4:14 p.m., the hearing was
 15 concluded.)
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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that
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 electronic sound recording of the proceedings before the
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 County in the matter of:

LOCAL MAP AMENDMENT G-910
 R-30 AND RT 12.5 ZONES TO PD-60
 TOWNE CREST APARTMENTS, LLC.

By:

 Tracy Hahn, Transcriber

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