

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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: APPLICATION OF BRANDYWINE :
: SENIOR LIVING AT POTOMAC, LLC : Case No. CU 16-01
: :
: :
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A hearing in the above-entitled matter was held on December 3, 2015, commencing at 9:39 a.m., at the Stella B. Werner Council Office Building, 100 Maryland Avenue, Second, Floor, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Martin L. Grossman

Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:

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Rockville, Maryland 20850

P R O C E E D I N G S

1 MR. GROSSMAN: This is the continuation of a
2 public hearing in the matter of Brandywine Senior Living at
3 Potomac, LLC. Conditional Use 16-01, petition for a
4 conditional use under Zoning Ordinance Section
5 59.3.3.2.E.2.C., to establish a residential care facility
6 consisting of 140 beds for seniors needing assisted living
7 and memory care. The subject site constitutes a 4.02 acre
8 property identified as Parcel A of the Potomac Tennis Club
9 located at 10800 Potomac Tennis Lane, approximately 600 feet
10 north of the intersection with Maryland 189, that's Falls
11 Road in Potomac, Maryland. It is in the RE-2 Zone.

12 The hearing was begun on November 6, 2015 and
13 continued to today, December 3, 2015, as announced at the
14 public hearing, since it could not be completed in one day.
15 This hearing is conducted by the Office of Zoning and
16 Administrative Hearings. My name is Martin Grossman, I'm
17 the Hearing Examiner. I will continue to take evidence and
18 write a report and decision in the case.

19 Will the parties identify themselves, please for
20 the record?

21 MS. GIRARD: Yes, Erin Girard, with Linowes and
22 Blocher on behalf of the applicant, Brandywine.

23 MR. GROSSMAN: All right.

24 MR. KAUFMAN: Steve Kaufman also with Linowes and

C O N T E N T S

Witnesses: Direct Cross Redirect Recross
Donald Mitchell
By Ms. Girard: 26
By Mr. Uhre: 66/209
By Mr. Chen: 101/207 209
By Ms. Lee: 149
Anne M. (Nancy) Randall
By Ms. Girard: 153 200
By Ms. Lee: 172
By Mr. Chen: 174
By Mr. Uhre: 185 201
Ted Duncan
By Mr. Grossman 207/211
Susanne Lee
By Mr. Grossman 233
By Ms. Girard: 265

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105 Aerial exhibit 31
105-A 11x17 version of Exhibit 105 32
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108 Summary of Ted Duncan's Testimony 213
109 Statement of Susanne Lee 232

1 Blocher for the applicant.

2 MR. UHRE: Curtis Uhre.

3 MR. CHEN: William Chen representing Dr. and Mrs.
4 Ronald Paul.

5 MR. GROSSMAN: Okay. And I see Dr. and Mrs. Paul
6 sitting at the table. Is Susan Lee here? Yes, Ms. Lee?

7 MS. LEE: Yes, Susan Lee with West Montgomery
8 County Citizens Association.

9 MR. GROSSMAN: Why don't you come forward and have
10 a seat at the table? Since you have now filed all the
11 required papers on behalf of the Association.

12 MS. LEE: Thank you.

13 (Discussion off the record.)

14 MR. GROSSMAN: All right. Now is there anybody
15 else in the audience who wishes to be heard today?

16 (No audible response.)

17 MR. GROSSMAN: Seeing no hands, we will proceed.

18 As I mentioned the last time, these proceedings are a
19 combination of formality and informality, that is we proceed
20 pretty much the way a courtroom does. Witnesses are sworn
21 in and they are subject to cross-examination. There is a
22 court reporter who takes everything down. We publish the
23 transcripts on our website when they come in, which is
24 usually about 10 days after the hearing.

25 And objections and so on, pretty much the way a

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1 courtroom is, it's a little less formal than a courtroom.
2 And we have the rules of evidence that apply to
3 administrative proceedings. This is an application for a
4 conditional use which is not a variance, it doesn't vary
5 from the statute. It is a use that is permitted under the
6 Zoning Ordinance, if conditions are met that are specified
7 in the Zoning Ordinance. Both general conditions that are
8 set out for all conditional uses and specific ones that
9 apply to this specific type of conditional use.

10 All right. Now we have a few preliminary matters.
11 We completed three witnesses on November 6, Brenda Bacon,
12 Hal Bolton and Josh Sloan. The applicant has two additional
13 witnesses as I understand, it, Jeff Amato (phonetic sp.)
14 civil engineer and Nancy Randall, transportation --

15 MS. GIRARD: Don Mitchell. Don Mitchell will be
16 here on behalf of Jeff Amato.

17 MR. GROSSMAN: Okay.

18 MS. GIRARD: We had noted that in a submission
19 previously and submitted Don's resume.

20 MR. GROSSMAN: Don?

21 MS. GIRARD: Mitchell.

22 MR. GROSSMAN: I take it it's M-I-T-C-H-E-L-L?

23 MS. GIRARD: Yes.

24 MR. MITCHELL: Correct.

25 MR. GROSSMAN: Okay. Don't forget that I need

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1 electronic copies of any new exhibits, plans, maps, photos,
2 statements of operation, traffic statements, in Word for
3 text or at the very least text searchable PDF for text
4 documents.

5 I take you all received the e-mail exchange I had
6 with technical staff and the permitting services regarding
7 the question of protective golf ball nets. The technical
8 staff proposed a number of solutions, DPS said it didn't
9 seem to fit under the definition of fence from their
10 standpoint. I'm not sure, they didn't explain why that it
11 is, because it appears to me to fit within the definition of
12 fence. So I'd like to have anybody, I'd like to have the
13 applicant opine on that. Perhaps the solution from
14 technical staff of using alternative compliance would apply
15 under Division 6.8 of the Zoning Ordinance. But anyway, the
16 applicant can address it and any other party, I take it
17 you've all received the e-mail exchange I sent?

18 (No audible response.)

19 MR. GROSSMAN: Okay. The next thing I received an
20 e-mail request yesterday afternoon from Mr. Uhre to obtain
21 additional crash data from State Highway Administration.
22 It's Exhibit 104 in the case. The previous e-mail exchange
23 I mentioned to you about with technical staff and DPS is
24 Exhibits 100, 102 and 103.

25 And Mr. Uhre, when you originally asked for the

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1 crash data a number of months ago I asked technical staff to
2 arrange that and they did. Now you came in a day before the
3 hearing and asked for additional crash data. It's a little
4 too late for that because there wouldn't be time to obtain
5 it and to give the parties a fair chance to evaluate it and
6 comment on it. So asking for it the day before the hearing,
7 I'm not sure that anything has happened which is material
8 between the time of the last crash data and today, but in
9 any event, you can't ask for it the day before the hearing
10 and expect that it could be obtained and used.

11 As you may know from the last time the State
12 Highway Administration is reticent about sharing their crash
13 data in any event, so I actually have asked them formally to
14 change that policy. I haven't received a response yet in
15 general because I believe the crash data should be available
16 to all parties to these kinds of proceedings when they need
17 it. But in any event, that is in terms of this particular
18 case, now that we're here at hearing you can't ask on the
19 afternoon of the day before for this kind of data to be
20 supplied.

21 All right. I also want to mention that on
22 December 1st -- yes, Mr. Uhre?

23 MR. UHRE: May I comment, please?

24 MR. GROSSMAN: Sure.

25 MR. UHRE: Only to partially correct, I think the

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1 record in the sense that we were in a meeting on or about
2 September 30th with technical staff.

3 MR. GROSSMAN: Who is we?

4 MR. UHRE: Myself and two other persons.

5 MR. GROSSMAN: Who are parties here?

6 MR. UHRE: Excuse me?

7 MR. GROSSMAN: Two other persons who are parties
8 here?

9 MR. UHRE: No, they're not parties here.

10 MR. GROSSMAN: They were just with you --

11 MR. UHRE: They were simply citizens who were in
12 discussing this particular project with technical staff.

13 MR. GROSSMAN: Okay.

14 MR. UHRE: It wasn't until I asked a direct
15 question about traffic information that they disclosed that
16 in fact they were in possession of traffic information but
17 would not share it with us or could not share it with us.
18 It was only after it came to the attention, I believe, of
19 the Hearing Office, and in an e-mail indicated that perhaps
20 they would have interest in reviewing that data, that that
21 information became public. Suddenly in just a couple of
22 days the information that had been previously attained was
23 made public and then was put together with the help,
24 apparently of the applicant in a format. At the time we
25 discussed this, I had previously asked planning staff to

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1 update the information. We have had no update of the
2 information.

3 So I simply want the record to show that we
4 believe that this information has not been made public in a
5 timely way and I understand the lateness of this request.
6 It is partly in response to information that has come to our
7 attention and in fact there have been or at least has been
8 at least one accident with injury at this intersection in
9 2015. That's a recent occurrence to us and information that
10 has been indirectly provided to us. So I think that in the
11 interest of full understanding of the safety of the
12 intersection it would be helpful to have the 2015
13 information. I understand it is late, sir, and it may be
14 that it's not possible but I just want the record to
15 understand that I believe had we not asked for the
16 information directly no one would even have the 2012 to 2014
17 information.

18 MR. GROSSMAN: That may be the case and what
19 you're talking about is a kind of policy issue as to whether
20 or not that kind of information is provided. In terms of
21 the relevant evidence when you brought it to my attention I
22 did send an e-mail to technical staff and asked the you know
23 why hasn't this been provided and if you have it and they
24 then provided it, after I believe checking with the State
25 Highway Administration. I think the reason they didn't

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1 provide it is that when the State Highway Administration
2 provides crash data, it does so with a caveat that it's not
3 to be distributed publically because under the rules under
4 which it is gathered, that can't be used in a court
5 proceeding to establish liability. That's not what this is
6 and that's why I believe that's an over generalization by
7 the State Highway Administration. But apparently they did
8 provide it when you asked. Now I don't know when you asked
9 for an update earlier, when did you ask for an update of
10 this information?

11 MR. UHRE: I believe that I would have to go back
12 and look at my notes, but I believe that was discussed in
13 the original meeting we had the planning staff as to what
14 years of information were available.

15 MR. GROSSMAN: All right.

16 MR. UHRE: And I said we would certainly need --

17 MR. GROSSMAN: And they provided what they had at
18 that point and if you had asked two weeks ago or at the last
19 hearing for me, I would have pursued it with technical staff
20 to see if there was an update on information. But as I say,
21 I think that when you ask the afternoon before the hearing,
22 it's too late to have that fairly digested --

23 MR. UHRE: Thank you.

24 MR. GROSSMAN: -- and put into play. Yes, I agree
25 there's a policy issue problem. As I said I have pursued it

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1 formally with the State Highway Administration and I'm
2 trying to get that changed so that there won't be this kind
3 of issue in the future.

4 MR. UHRE: Thank you.

5 MR. GROSSMAN: All right. What I started to say
6 is that on December 1, that is this week, the council
7 adopted ZTA, Zoning Text Amendment 15-09, which is Omnibus
8 Clarifications and Corrections to the new Zoning Ordinance,
9 that's adopted under Ordinance 18-08. It goes into effect
10 on December 21, 2015, and I presume it will apply to this
11 case, as usually changes in Zoning Ordinances will apply
12 even to a pending application as long as there has not been
13 vesting of a right. But I'll hear from the parties on that
14 situation. I'm not sure that it will change anything as a
15 practical matter here, it does change some procedural
16 aspects of the review and the authority of the Hearing
17 Examiner to some extent. Although the authority of the
18 Hearing Examiner in this particular type of special
19 exception is fairly broad in any event. But I just thought
20 you ought to know that, that this case will probably be,
21 maybe I shouldn't even say probably, will be evaluated,
22 unless I hear a legal argument to the contrary, will be
23 evaluated under the Code as it is amended in Ordinance 18-
24 08, effective December 21 of this year.

25 Does anybody wish to, Ms. Girard, do you have

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1 anything to say about that issue?

2 MS. GIRARD: Honestly, I've followed it loosely,
3 the last I had checked there was nothing substantial that
4 impacts this case. But I can check at the lunch break and
5 make sure.

6 MR. GROSSMAN: Okay. I don't believe they've
7 changed the specifics of this particular conditional use.
8 They have changed some of the review standards that apply to
9 conditional uses in the sense that the hearing authority is
10 given a little more power to decide some of the things that
11 may not affect compatibility don't have to be evaluated.
12 But I don't think that it's, I don't think that changes
13 significant in this text case. But I do want people to have
14 an opportunity to look at that if they think there is a
15 change and know that that's the law under which this case
16 will be decided. All right.

17 MR. CHEN: I'll try to look at that before Monday,
18 we're going to be back here on Monday. I want to look at it
19 first.

20 MR. GROSSMAN: Well hopefully we won't have to be
21 back on Monday because you'll expeditiously all parties
22 present their case and we'll be finished before then.

23 MR. CHEN: That may be the case.

24 MR. KAUFMAN: So I'm assuming you're going to,
25 assuming that we do finish today and that the record will be

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1 closed, you would keep the record open for a week or two
2 anyway?
3 MR. GROSSMAN: That's correct.
4 MR. KAUFMAN: So I would assume that we would have
5 a point in time which we could comment in a memo on whether
6 we think there is any impact from the Zoning Text Amendment.
7 MR. GROSSMAN: Right. I usually leave the record
8 open until the transcript comes in which is a 10 day period
9 --
10 MR. KAUFMAN: Yes.
11 MR. GROSSMAN: -- or longer if parties request it
12 and they, you know, and it's appropriate. In this case I
13 think it would be appropriate to leave it open at least
14 until the day after the effective date of the statute so
15 there's no question about it.
16 MR. KAUFMAN: What was the date of that again,
17 sir?
18 MR. GROSSMAN: December 21, 2015 is the effective
19 date of the modification ordinance. Anybody else, comments?
20 (No audible response.)
21 MR. GROSSMAN: No? Okay. Any other preliminary
22 matters? We'll start with Ms. Girard.
23 MS. GIRARD: Yes, I have two brief ones. One is
24 we received a series of pictures from Mr. Chen and we may
25 get to them today or not. It would be helpful, I realize

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1 they're already submitted to have some idea of where they
2 were taken. At least I wanted to put out there that when
3 the witnesses testify to them if they can plan on
4 identifying in a map where it's really hard to digest what
5 we're looking at in these pictures.
6 MR. GROSSMAN: Sure.
7 MS. GIRARD: Yes.
8 MR. GROSSMAN: But they have to be identified and
9 that's part of that process.
10 MS. GIRARD: Right. And to the extent anything,
11 if we are here on Monday if anything is submitted between
12 now and then if a map with a directional arrow could be
13 submitted with it that would be suburb.
14 MR. GROSSMAN: Really?
15 UNIDENTIFIED PERSON: Oriented to north.
16 MS. GIRARD: Oriented to the north.
17 MR. GROSSMAN: Yes, I actually would ask that
18 those submissions be labeled, at least have a caption on
19 them because it will make it a lot easier to evaluate them
20 after the hearing. All right. Any other preliminary
21 matters?
22 MS. GIRARD: The second thing is the submission
23 that we received yesterday from Mr. Uhre about the State
24 Highway Administration doing some review. I just wanted to
25 put out there to the extent that he was submitting that to

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1 suggest that the record should be held open until that
2 review is complete in 90 days we would strenuously object to
3 that.
4 MR. GROSSMAN: Okay.
5 MS. GIRARD: And our traffic engineer will cover
6 today why that's not necessary.
7 MR. GROSSMAN: All right.
8 MS. GIRARD: But we wanted to get that on the
9 record right away.
10 MR. GROSSMAN: He hasn't asked that, so.
11 MR. KAUFMAN: Yet.
12 MR. GROSSMAN: All right.
13 MS. GIRARD: That's it for us.
14 MR. GROSSMAN: All right. Mr. Uhre, do you have
15 any preliminary matters?
16 MR. UHRE: No, sir.
17 MR. GROSSMAN: Mr. Chen?
18 MR. CHEN: Two very short things. I made mention
19 at the last hearing about I had been in contact with
20 surveyor and they got back to me days after the last hearing
21 and there's just no time for them to do anything. So I did
22 not amend our prehearing statement to disclose that, just
23 time ran out.
24 Secondly, under your rules, I think it's 4, you're
25 authorized to take a site visit?

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1 MR. GROSSMAN: Yes.
2 MR. CHEN: My clients would ask that you take a
3 site visit, including a site visit of their property. And
4 that can be coordinated, I'm sure anyway that Ms. Girard,
5 Mr. Kaufman and you want to do it, but my clients would ask
6 that you undertake a site visit, as you are authorized to
7 do. I understand it's discretionary probably, but in doing
8 that they would request that you also go on their property
9 to view the area.
10 MR. GROSSMAN: I mean unfortunately or
11 fortunately, depending on how you look at it, site visits
12 are a little bit complex under the law because all the
13 parties have to have an opportunity to be present, although
14 a court reporter is not present, so the statements can't be
15 made and it's just easy to have issues. In the last case
16 when it came up I couldn't get the parties to agree on an
17 itinerary of what the site visit would be and I ultimately
18 decided that it would be counterproductive under those
19 circumstances. What is the applicant feel about a site
20 visit?
21 MS. GIRARD: We have a couple of issues. One, I
22 agree timing wise, the logistics of having everyone and
23 doing it I feel like this is going to drag on and we have 25
24 pictures now in the record. And I feel like if they speak
25 to the pictures that certainly should be enough to cover the

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1 water one.
2 MR. GROSSMAN: Okay. And Mr. Uhre, do you have
3 any comment on that site visit suggestion?
4 MR. UHRE: I think as a person who has actually
5 viewed the site both from the Potomac Tennis Club viewpoint
6 and also from Dr. and Mrs. Paul's property, I think the
7 pictures tell a very small part of the story. I think
8 having a visual and firsthand look at the site brings things
9 much more into clarity for anyone trying to understand the
10 impact this will have on the Paul's property and the
11 surrounding homeowners. So it would be our suggestion that
12 the Hearing Examiner attempt and actually make a site visit.
13 I think it would be very helpful to a fair disposition of
14 this case.
15 MR. GROSSMAN: I should say I'm generally familiar
16 with the area, as my wife had a relative in the Manor Care
17 Potomac Nursing Home. So I have been there many times.
18 It's not part of the evidentiary record, but I am generally
19 familiar with the area.
20 MS. GIRARD: As a point of clarification too, I
21 don't understand obviously we can't go out there and see the
22 proposed improvements. So you know to the extent the
23 grading is going to change, the improvements on the subject
24 property are going to change, I'm not sure how productive
25 that's going to be.

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1 MR. CHEN: Well, on that very point I think a site
2 visit will be germane. I think the testimony that I expect
3 to hear, at least today from the applicant relative to
4 grading and the improvements on the site if you will recall,
5 Mr. Grossman, notwithstanding the testimony of Mr. Sloan,
6 the testimony of the architect, I think I have that right,
7 but I stand corrected with that. We now know that there
8 will be some type of an improvement, literally 6 inches on
9 the property line. And I think that area is significant, I
10 think it's significant as to what's going to transpire in
11 that area, as to the impact on my client's property. And I
12 certainly do not think that any photographs are going to
13 address that issue. And I think that goes to, as I said, a
14 major, major implication and you'll hear from my client and
15 I think the applicant is responding to it, or will have
16 information about it. So that I think this is one of those
17 situations where it's going to be important for you to
18 actually see this point of impact that will undeniably
19 affect my clients. And what you may want to do, frankly, is
20 you may want to wait until you hear some of this testimony
21 that may influence a decision you may make on it now.
22 As far as coordinating parties, you've got the
23 applicant, Mr. Uhre, somebody from West Montgomery and my
24 clients. I don't think that's really difficult on
25 coordination.

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1 MR. GROSSMAN: Well it's not so much coordination
2 as it is agreement on exactly where things should be viewed,
3 at least in the last case where it came up. But in any
4 event, I haven't reached a conclusion on the point yet. Ms.
5 Lee, do you wish to be heard on this point?
6 MS. LEE: I think our only concern is and I'm
7 happy to hear that you've been to Manor Care several times.
8 I think if you hadn't been out and see the curve and seeing
9 how many uses are already used there and the traffic I would
10 have a concern. But that's the --
11 MR. GROSSMAN: Well I mean I can't consider that
12 as an evidentiary thing because it's not an official
13 evidentiary gathering thing, but I mean I've lived in
14 Montgomery County for a long time and I'm familiar with most
15 of the county I'd say, probably, in a general way if that
16 aids people's understanding.
17 MS. GIRARD: Just one more point.
18 MR. GROSSMAN: Yes.
19 MS. GIRARD: I mean to the extent you're going to
20 consider this request, and consider it seriously, to get to
21 Mr. Chen's point we'd need to survey the property line, we'd
22 need to scope out, I mean if we're really there and review
23 the relationship of the properties, there's more to it than
24 just walking out there. We're going to have to stake where
25 the property line is, we're going to have to stake where the

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1 improvements will be, and that's going to take some work.
2 MR. CHEN: Well, I agree on that very point.
3 MR. GROSSMAN: Obviously before you address that,
4 as I recall and I haven't looked at it for a number of
5 years, but I don't think you can, when you say stake
6 something out and point out things, there's an issue as to
7 what you can and cannot say in a site visit, because you
8 don't gather testimony there and I forget the exact terms of
9 it --
10 MS. GIRARD: Yes, and we'd have to work around
11 that.
12 MR. GROSSMAN: -- but it is --
13 MS. GIRARD: My point just being I don't think
14 it's helpful to anyone to just walk out there and not really
15 know where the property line is or really know where the
16 improvements are going to be that we're talking about the
17 impact of.
18 MR. CHEN: Well, wait a minute.
19 MR. GROSSMAN: Mr. Chen?
20 MR. CHEN: Thank you. That's part of the
21 applicant's burden of proof. The applicant has the burden
22 of demonstrating the property line --
23 MS. GIRARD: And that's what I'm offering --
24 MR. CHEN: Excuse me, let me finish.
25 MR. GROSSMAN: Hold on. Let him finish talking.

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1 MS. GIRARD: Okay.
2 MR. CHEN: And the impact on my client's property.
3 Now I will tell you that there's a fence. There's a fence
4 along what we understand to be the property line and I don't
5 think that this is a technical matter. I don't think this
6 is a technical matter regarding exact location of
7 improvements of any sort. I think it's a matter of showing
8 the relationship between the two properties and I do not
9 believe you need to have to know the precise stakeout of the
10 property line to understand and appreciate that
11 relationship. Goodness, you're now going to do it, it'd be
12 proposed presumably, without even having a view of the site
13 off of documents that are being submitted. Certainly a view
14 of that area is much better than the documents that you
15 have. I mean I have --
16 MR. GROSSMAN: Well let me ask you this. If I
17 were to elect to do this, would it be all right with all the
18 parties noting your objection of course, but if I were to
19 decide to do it over your objection, that it would happen
20 while the record is open but after the hearing, so there
21 would be no further hearing process on it and that any
22 findings that I would make regarding the site visit would
23 just be a part of the report and decision that I would file?
24 Would that be agreeable to everybody?
25 MR. CHEN: That's agreeable to my client.

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1 MR. KAUFMAN: That would be agreeable.
2 MR. GROSSMAN: Ms. Lee, you have to speak up.
3 MS. LEE: Yes. Yes.
4 MR. GROSSMAN: All right. Ms. Girard?
5 MS. GIRARD: If that were the case, then I think
6 we would insist on being very particular about what is, if
7 we bear the burden of proof as Mr. Chen states, we're not
8 going to assume that the fence is on the property line.
9 We're going to be very particular about what is mapped out
10 in the site visit.
11 MR. GROSSMAN: Well when you say what is mapped
12 out as opposed to answering my question which is do you
13 object to that process --
14 MS. GIRARD: I need to say I don't think we would
15 object as long as we were given the opportunity to stake out
16 the property line and where the improvements are, so that we
17 can ensure that what you're visualizing on this visit is
18 accurate.
19 MR. GROSSMAN: Right. I mean the exact process of
20 the visit would be determined after discussion with the
21 parties.
22 MS. GIRARD: Yes.
23 MR. GROSSMAN: And then the idea would be that if
24 I did do it then we'd set a date and time that I would be
25 there or it would be open to the public as I recall, it has

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1 to be in these visits. And we'd all show up at the anointed
2 time or for those that wish to be there would show up and
3 then I would follow that plan. The only thing I was asking
4 is I don't want to have to issue a separate set of findings,
5 I don't want to have to have another hearing --
6 MS. GIRARD: I think --
7 MR. GROSSMAN: -- and so on.
8 MS. GIRARD: -- we don't either. We don't want to
9 drag this out.
10 MR. GROSSMAN: Okay. All right. So we're all
11 agreed on that at least. Then Mr. Chen, since it's your
12 suggestion, I'd ask that you submit let's see, today is the
13 3rd and as I said we're going to keep the record open for a
14 couple of weeks in any event. So let's say by December 10th
15 submit your proposal as to how this should be conducted.
16 And actually maybe that's even too long. Why don't we say
17 December 8th, because I'm afraid we have to have a time for
18 an exchange here and I suggest it would be a good idea to
19 call opposing counsel --
20 MR. CHEN: Yes, I am. I would do that.
21 MR. GROSSMAN: -- in the course of doing that --
22 MR. CHEN: Yes.
23 MR. GROSSMAN: -- so that you can reach an
24 understanding that's fine. So that would be by December 8th
25 and then by December 11th any response from any party and

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1 you should send a copy of whatever it is that you propose to
2 all the parties who are participating. And then I will
3 advise people, probably the easiest way to do it is by e-
4 mail since I have all your e-mail addresses what my decision
5 is in doing it and make sure we have a date which people,
6 the parties can attend, if I decide to go ahead with it.
7 All right? Okay. Any other preliminary matters?
8 (No audible response.)
9 MR. GROSSMAN: Seeing no hands, let's proceed to
10 the applicant's next witness.
11 MS. GIRARD: We are going to call Don Mitchell.
12 MR. MITCHELL: Move up here?
13 MR. GROSSMAN: Yes.
14 (Discussion off the record.)
15 MR. GROSSMAN: Go ahead, sir. Could you state
16 your full name please?
17 MR. MITCHELL: Donald Becknell Mitchell.
18 MR. GROSSMAN: All right. And your address?
19 MR. MITCHELL: Home address?
20 MR. GROSSMAN: You can give me your business
21 address.
22 MR. MITCHELL: 20251 Century Boulevard, Suite 400,
23 Germantown, Maryland.
24 MR. GROSSMAN: Would you raise your right hand,
25 please? Do you swear or affirm to tell the truth, the whole

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1 truth and nothing but the truth under penalty of perjury?
2 MR. MITCHELL: I do.
3 MR. GROSSMAN: All right. You may proceed.
4 MS. GIRARD: I would just note that Mr. Mitchell's
5 resume is in the record at Exhibit 75 A.
6 MR. GROSSMAN: All right.
7 DIRECT EXAMINATION
8 BY MS. GIRARD:
9 Q. Mr. Mitchell, what's your occupation?
10 A. I am a civil engineer.
11 Q. And how long have you been engaged in this
12 occupation?
13 A. 29 years.
14 Q. What's your professional educational background?
15 A. I have a Bachelor of Science Degree from the
16 University of Maryland College Park in civil engineering.
17 Q. And can you review for us your work experience in
18 the field of civil engineering?
19 A. It actually begins as in the United States Army
20 Corps of Engineers as a geodetic surveyor from 1977 until
21 about '84, including the reserve. And since then as a civil
22 engineer I've designed most all types of infrastructure
23 going up to the walls of buildings, so that includes
24 sediment control, water, sewer, storm drain, pre-
25 establishments, storm water management, rough and fine

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1 grading, highway design, site layout, landscaping. I'm
2 probably forgetting something.
3 Q. And have you ever been qualified as an expert in
4 civil engineering before?
5 A. I was as an expert witness for a case in
6 Montgomery County for a drainage issue that I was
7 representing the owner that was inundated by a developer
8 subdivision that sediment controls facilities failed and I,
9 they settled out of court in our favor.
10 MR. GROSSMAN: This was Court testimony that you
11 were --
12 THE WITNESS: This was before the court, they
13 didn't go to court, so it was a hearing under oath for a
14 court case.
15 MR. GROSSMAN: So did you testify?
16 THE WITNESS: I testified, yes.
17 MR. GROSSMAN: It didn't go to court, you mean at
18 a deposition or what?
19 THE WITNESS: In a deposition.
20 MR. GROSSMAN: Okay. You were sworn at the
21 deposition?
22 THE WITNESS: Yes.
23 MR. GROSSMAN: All right.
24 MS. GIRARD: Okay. We would move Mr. Mitchell's
25 admission as an expert in civil engineering.

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1 MR. GROSSMAN: Questions regarding Mr. Mitchells'
2 expertise, Mr. Uhre?
3 MR. UHRE: No, sir.
4 MR. GROSSMAN: Mr. Chen?
5 MR. CHEN: No, Your Honor.
6 MR. GROSSMAN: All right. Based on Mr. Mitchell's
7 experience and degree in civil engineering and his prior
8 testimony albeit a deposition as an expert in civil
9 engineering, I accept him as an expert in civil engineering.
10 BY MS. GIRARD:
11 Q. Mr. Mitchell, are you familiar with the
12 conditional use of this property, the surrounding area, and
13 application number CU 16-01?
14 A. I am.
15 Q. And have you analyzed the suitability of the
16 subject property for the proposed conditional use from a
17 civil engineering standpoint?
18 A. I have.
19 Q. What specific characteristics of the site have you
20 looked at in that regard?
21 A. Well, I field walked the site observing the
22 existing infrastructure. I've analyzed the existing storm
23 drain system and drainage patterns.
24 MR. GROSSMAN: You say you field blocked?
25 THE WITNESS: Walked.

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1 MR. GROSSMAN: Oh field walked. I'm sorry.
2 THE WITNESS: Would you like me to go on with what
3 I've done, the proposed conditions?
4 BY MS. GIRARD:
5 Q. Yes, if you want to walk us through your analysis,
6 that would be great.
7 A. I provided the design of the infrastructure
8 including layouts of dry utilities, gas, electric and
9 telephone. And the wet utilities, water, sewer, and storm
10 drain with special emphasis on the storm water management as
11 per today's Maryland State law which is ESD to the MEP, I
12 don't know if we're all familiar with that.
13 Q. Can you explain what that means?
14 A. Environmental Site Design to the Maximum Extent
15 Practicable, which is what this design was reviewed and
16 determined to be adequate at concept stage by the Department
17 of Public Permit Services in Montgomery County, with
18 approval of the concept.
19 Q. Okay. Can you explain for us the existing
20 drainage on the site?
21 A. Certainly. I don't know if it would be helpful to
22 do it on a map?
23 Q. Feel free to use exhibits and we have pointers
24 here in three different colors.
25 A. One will be enough, probably. If I can figure out

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1 how to use it. Shall I turn this or?
2 MR. GROSSMAN: Yes, maybe you could turn it so
3 everybody could see it. I can see it now.
4 MR. CHEN: Is this an existing exhibit?
5 MS. GIRARD: No, this is a new.
6 BY MS. GIRARD:
7 Q. Do you want to speak from this one, Mr. Mitchell,
8 or would you rather use NRI?
9 A. I'm happy to do it this, do you prefer the picture
10 or do you prefer the plan view? Either one is fine with me.
11 MR. GROSSMAN: Ms. Girard, I'll let you decide how
12 you want to display it if it's a new exhibit, we've marked
13 it.
14 MS. GIRARD: Sure. Well in this new exhibit,
15 largely in response to our discussion at the last hearing,
16 the Hearing Examiner had asked for measurements.
17 Unfortunately, they're not too legible there. It's to scale
18 and we can measure out various distances.
19 MR. CHEN: Does it have a number?
20 MR. GROSSMAN: Not yet.
21 MS. GIRARD: Not yet, this would be a new exhibit.
22 MR. CHEN: All right.
23 MS. GIRARD: So we might as well just put it in
24 right now so then we don't have to worry about it.
25 THE WITNESS: It will be useful in describing the

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1 different --
2 MR. GROSSMAN: This will be Exhibit 105.
3 (Hearing Exhibit No. 105 was
4 marked for identification.)
5 MR. GROSSMAN: Well for some reason my staff
6 marked it Exhibit 94, which you e-mailed me a copy of the
7 electronic version.
8 MS. GIRARD: That was of an exhibit that we
9 submitted at the last hearing.
10 MR. GROSSMAN: Okay.
11 MS. GIRARD: The electronic version of 94?
12 MR. GROSSMAN: Right. I don't know why it's
13 indicated here as an additional exhibit since it's already
14 in there as an exhibit.
15 MS. GIRARD: Right.
16 MR. GROSSMAN: You know since you didn't provide a
17 CD of it just an e-mail of the electronic version of it.
18 MS. GIRARD: Right. Do you need --
19 MR. GROSSMAN: So we'll cross that out of what my
20 staff wrote on the exhibit list and 105 will be the aerial
21 exhibit showing distances. Is that, what does it show?
22 MS. GIRARD: Right. It shows, I think that's
23 fine, showing distances.
24 THE WITNESS: Existing topography.
25 MS. GIRARD: And existing topography.

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1 THE WITNESS: Improvements in the area.
2 MR. GROSSMAN: It's actually a photo, right?
3 THE WITNESS: Of contour overlays.
4 MR. GROSSMAN: Showing distances and contour
5 overlays.
6 MS. GIRARD: Put 105 on there?
7 MR. GROSSMAN: Sure.
8 MR. KAUFMAN: It also shows improvements.
9 MR. GROSSMAN: I'm sorry?
10 MR. KAUFMAN: Existing improvements.
11 MS. GIRARD: Okay.
12 MR. GROSSMAN: I'd note with glee that north is
13 pointing up.
14 THE WITNESS: We made a special effort to do that.
15 MR. GROSSMAN: I appreciate that. And 105-A will
16 be the 11x17 version of that.
17 (Hearing Exhibit No. 105-A was
18 marked for identification.)
19 UNIDENTIFIED PERSON: Excuse me.
20 MS. GIRARD: On that point just for clarification
21 do you need them on CD as well or e-mail copy is sufficient
22 of electronic?
23 MR. GROSSMAN: It's fine to e-mail it to me, but
24 if it's useful to the other parties to have it
25

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1 electronically you should also CC them.
2 MS. GIRARD: I did.
3 MR. GROSSMAN: Okay.
4 MS. GIRARD: And I will, I just didn't know if you
5 needed it on CD as well.
6 MR. GROSSMAN: No. Sometimes if the copy, if it's
7 too much and it can handle by the e-mail system --
8 MS. GIRARD: Yes, then it will bounce back.
9 MR. GROSSMAN: Okay. All right. You may proceed.
10 THE WITNESS: For orientation, this is the project
11 site. The existing tennis facility because you're talking
12 about Tennis Lane, Manor Care and the Paul's residence. The
13 question was what are the existing drainage patterns for the
14 site. Today there is a stream valley that's being
15 maintained that follows this course --
16 MR. GROSSMAN: All right. This course being the
17 north of the site?
18 THE WITNESS: It runs from east to west.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: And then heads northwest.
21 MR. GROSSMAN: All right. But it's along the
22 northern edge of the site.
23 THE WITNESS: Yes, it's along the northern edge of
24 the site.
25 MR. GROSSMAN: You're just identifying it and

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1 asking you that for that record, because --
2 THE WITNESS: I will endeavor to do that.
3 MR. GROSSMAN: Thank you.
4 THE WITNESS: There is an additional course going
5 to the Paul's property that does run south to north and then
6 ties into that tributary that runs to the northwest.
7 MR. GROSSMAN: Okay.
8 THE WITNESS: There are four primary storm drain
9 outfalls from the project site. One here, one here, one --
10 BY MS. GIRARD:
11 Q. When you say here, can you identify --
12 A. Yes. One to the, thank you, northeast centered
13 north of the property line and then farther west along the
14 northerly property line and the last one being at Paul's
15 common line with the project along the westerly property
16 line. Which I believe was a picture that Mr. Chen sent to
17 us recently, which we could use to help describe that, it's
18 probably the best representation.
19 What's interesting and not uncommon about a site
20 of this age is that there are no storm water management
21 facilities existing. That's because there was no
22 requirement to provide storm water management prior to 1986
23 in the State of Maryland. But in addition to that, there
24 was no environmental constraints for stream valleys and so
25 the site's northern border has been filled and much of it is

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1 in concrete or asphalt or just very steep one to one slopes.
2 Up to near the property line where they precipitously fall
3 down to the stream valley. That is also the case right here
4 along the Paul's property line, the easterly property line,
5 westerly property line of the project, excuse me. And the
6 issue with these that I observed in the field and analyzed
7 hydraulically is that they do not have safe outfalls in the
8 storm drain. The storm drain, especially the one going into
9 the Paul's property is a nearly vertical drop near the one
10 to one that drop from the top of the slope from an open
11 ended pipe, if you remember this picture. And it falls
12 directly and then into the Paul's property and then runs
13 along that tributary described, that goes from south to
14 north into the main northwesterly tributary.
15 MR. GROSSMAN: And when you say it's a one to one
16 drop, you mean as you go one foot it drops one foot?
17 THE WITNESS: Or steeper. Yes. It's from the
18 picture that they provided electronically I guess yesterday
19 --
20 MS. GIRARD: Yes.
21 THE WITNESS: I'd like to --
22 MS. GIRARD: I think it's 99-C.
23 MR. GROSSMAN: Exhibit 94?
24 MS. GIRARD: 99-C.
25 THE WITNESS: I'd like to reference that if I

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1 could because I think that it explains a lot of the issues
2 out there today.
3 MR. GROSSMAN: You mean what was provided
4 yesterday was Exhibit 94, the electronic version of 94.
5 MS. GIRARD: Not from us, we're actually referring
6 to a photograph that Mr. Chen submitted.
7 MR. GROSSMAN: I see.
8 THE WITNESS: Yes.
9 MR. GROSSMAN: And what's the number we're at?
10 MS. GIRARD: 99C.
11 MR. GROSSMAN: Okay.
12 THE WITNESS: I believe this picture provides a
13 valuable insight into the drainage issue of the existing
14 tennis facility. As I --
15 MR. GROSSMAN: Hold on one second. One second.
16 THE WITNESS: Sure.
17 MS. GIRARD: Is that the exhibit?
18 THE WITNESS: It is.
19 MR. GROSSMAN: Okay.
20 MR. KAUFMAN: Do you have it Mr. Examiner? Here
21 it is.
22 MR. GROSSMAN: I do.
23 THE WITNESS: I would appreciate it if Mr. Chen
24 could verify the location of where that picture is. Is it
25 about right here, do you think?

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1 MR. GROSSMAN: What about that, Mr. Chen? Do we
2 know what direction that picture was taken?
3 MR. CHEN: Well, I'm going to have to witness for
4 that.
5 MR. GROSSMAN: I know, I'm asking for an advance?
6 MR. CHEN: It's looking eastbound.
7 MR. GROSSMAN: Okay.
8 THE WITNESS: So you're looking from here towards
9 there?
10 MR. CHEN: It's on the Paul property toward the
11 subject site. Yes.
12 THE WITNESS: Right. And I believe from my field
13 walk somewhere right around here.
14 MR. CHEN: I can't tell you that. Please --
15 THE WITNESS: Okay.
16 MR. CHEN: -- that's --
17 THE WITNESS: Can you tell me --
18 MR. CHEN: What you're showing right there is not
19 a good enough fidelity for me to be able to say yes or no.
20 THE WITNESS: I'm just trying to find some common
21 ground that we can agree on.
22 MR. CHEN: Yes.
23 THE WITNESS: We don't have to.
24 MR. CHEN: Please, I'm not trying to be difficult,
25 but I just can't tell from this exhibit --

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1 THE WITNESS: All right.
2 MR. CHEN: -- 105-A where that discharge point is.
3 THE WITNESS: Is there anything else that would
4 help you identify that on the plan says?
5 MR. CHEN: I'm looking at this --
6 MR. GROSSMAN: Yes, we're going a little far --
7 THE WITNESS: I'm sorry.
8 BY MS. GIRARD:
9 Q. Is it fair to say --
10 MR. GROSSMAN: -- asking for a proffer for that.
11 BY MS. GIRARD:
12 Q. -- that's generally that's what you recall?
13 A. So generally what I recall is right here, this is
14 the steepest area that's adjoining the property here and
15 here, and I'm not sure which one he's --
16 MR. GROSSMAN: And you're pointing to the extreme
17 point of the triangle, that makes up the site?
18 THE WITNESS: Fairly close to that extreme point
19 of the triangle.
20 MR. GROSSMAN: Okay.
21 THE WITNESS: Yes. That's the common line between
22 the Brandywine Tennis Facility and the Paul property.
23 MR. CHEN: If it helps, Mr. Examiner, if you go to
24 Exhibit Number, this is Exhibit, I believe it's 79-A-1.
25 MR. GROSSMAN: Yes, that's the conditional use

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1 plan.
2 MR. CHEN: Do you have that exhibit, Mr. Examiner?
3 MR. GROSSMAN: I do, it might take me a second to
4 get it out. Hold on.
5 MR. CHEN: Am I going too fast here, Mr. Grossman?
6 MR. GROSSMAN: Yes. Always. All right. I've got
7 79-A-1, give me a second. Yes.
8 MR. CHEN: Okay, Mr. Grossman, if you look at the
9 turnaround area --
10 MR. GROSSMAN: Right.
11 MR. CHEN: -- and you'll notice that area that MEP
12 that was going up to the 6 inch mark, you'll see under it a
13 long rectangle that's in lighter ink.
14 (Discussion off the record.)
15 MR. GROSSMAN: You're talking about the --
16 MR. CHEN: Do you see that area?
17 MR. GROSSMAN: Why don't you come forward and
18 point it out to me on the easel.
19 THE WITNESS: We have it up here for everyone to
20 see.
21 MR. GROSSMAN: Yes, I can try to.
22 MR. CHEN: My understanding is that it's --
23 MR. GROSSMAN: Watch for the cords.
24 MR. CHEN: I'll come over there.
25 MS. GIRARD: Okay.

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1 MR. CHEN: It's right about 3961.
2 MR. GROSSMAN: Okay.
3 MR. CHEN: Do you see that?
4 MR. GROSSMAN: I do.
5 MR. CHEN: I believe it's right at, right around
6 here.
7 THE WITNESS: Good. So we're in total agreement,
8 because that's where I was pointing previously.
9 MR. CHEN: We'll go back, sir, can I go back to
10 the picture then?
11 MR. GROSSMAN: Sure.
12 THE WITNESS: So I just wanted to make sure that
13 we were talking about the same location.
14 MR. GROSSMAN: Right.
15 THE WITNESS: So it is right here that we're
16 talking about this, which I totally agree is inadequate for
17 a safe conveyance of runoff. And that's the case for all
18 four of the outfalls is that there is a lot of erosion that
19 has occurred and in those four locations previously referred
20 to, so I won't repeat them. And the result that was
21 observed is that the sedimentation of both in the Paul's
22 property and along the stream course running parallel with
23 the northern property line. In addition of erosion, the
24 sedimentation has caused the river, the stream valley to not
25 flow very well and has spread out in the golf course side.

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1 So the bottom, my conclusion is that in existing
2 conditions there is free flow runoff on this site and it all
3 goes to those four locations, primarily. A small drainage
4 area goes out this way.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: So that's the existing conditions, I
7 would only add that in the existing conditions it is nearly
8 90 percent impervious. In other words, between the tennis
9 courts, the parking lots and the buildings and the dome, the
10 site has almost complete runoff, whatever water that falls
11 on it runs off the side.
12 BY MS. GIRARD:
13 Q. Why don't we scan storm water then and can you
14 explain for us what's proposed as far as storm water
15 management?
16 A. Yes, I'll bring up the other that haven't been
17 identified yet. This is an overlay of that same picture,
18 but with the proposed conditions showing in blue and not
19 green.
20 MR. GROSSMAN: Let's call that 106. And 106-A
21 would be the 11x17.
22 (Hearing Exhibit Nos. 106 and
23 106-A were marked for
24 identification.)
25 MR. CHEN: Yes.

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1 MR. GROSSMAN: This is the same aerial photo but
2 with an overlay of what?
3 THE WITNESS: With proposed condition overlays
4 existing.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: Including all improvements,
7 infrastructure and grading.
8 MR. GROSSMAN: So 106 is an aerial photo and
9 Exhibit 105 plus all the proposed improvements.
10 THE WITNESS: Exactly. So all proposed
11 improvements and infrastructure.
12 MR. GROSSMAN: Okay.
13 THE WITNESS: As I previously noted we've already
14 achieved storm water management concept approval from DPS,
15 Department of Permit Services in Montgomery County. What
16 we've achieved is 100 percent of the environmental design
17 requirements, which is in other words we're intercepting
18 exactly what is required by state law without any waverings.
19 This is representative of a PE which is the amount of rain
20 that is determined.
21 MR. GROSSMAN: What's a PE?
22 THE WITNESS: It's a percent equivalent and what
23 the equivalence is, all for this new state sewer water
24 management ordinance is to create a site that performs like
25 woods in good condition. In order to do that, we are

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1 required to intercept runoff and treat it so that it will
2 recharge the water table and to reduce the rate and time of
3 discharge from the site.
4 MR. CHEN: If I may, I'm objecting to this
5 exhibit.
6 MR. GROSSMAN: Okay.
7 MR. CHEN: The testimony is that this is supposed
8 to show proposed improvements and infrastructure. If I may?
9 What is the green on this exhibit?
10 THE WITNESS: That's landscaping.
11 MR. CHEN: Is it in existence now?
12 THE WITNESS: It's proposed.
13 MR. CHEN: Okay. So I object to this, because it
14 does not show the correlation that we've already got in
15 evidence of the relationship of the turnaround area which is
16 neatly under the proposed green, in other words the not yet
17 in place landscaping is not shown the correlation of the
18 site improvements and infrastructure as it relates to my
19 client's property.
20 MS. GIRARD: That's not true. The turnaround is
21 shown on the exhibit.
22 MR. CHEN: No, excuse me. The turnaround from
23 your own exhibit --
24 THE WITNESS: It's right here.
25 MR. CHEN: Mr. Examiner, if you go back to Exhibit

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1 92-A.
2 MR. GROSSMAN: I presume it shows a portion of the
3 turnaround but not the entire thing, is that what you're
4 saying, Mr. Chen?
5 MR. CHEN: Yes, it conveniently does not show the
6 portion that it goes up to my client's property, which the
7 testimony from their own witness was 6 inches off the
8 property line. What they've done is they've put in all that
9 nice green area of proposed landscaping and what that does
10 is shield or hide the fact that as shown on Exhibit 92-A,
11 the turnaround area, or a portion of it, literally goes to 6
12 inches of my client's property.
13 MR. GROSSMAN: I'll certainly let you bring that
14 out on your cross-examination and introduce any evidence you
15 want pertaining to it. I'm not going to prohibit the
16 exhibit from coming in. But the way in which it is --
17 MR. CHEN: I appreciate that.
18 MR. GROSSMAN: -- viewed or interpreted will be
19 affected by whatever evidence there is as to the document.
20 MR. CHEN: And you understand the point?
21 MR. GROSSMAN: I do.
22 MR. CHEN: Thank you.
23 MR. GROSSMAN: Mr. Uhre?
24 MR. UHRE: I would just like to simply add that
25 simply looking at this it appears that they put landscaping

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1 in only on one side. They haven't put the landscaping in
2 around the whole property. It's only as it relates to the
3 Paul's.
4 MR. CHEN: Right.
5 MS. GIRARD: Which is the relationship that's most
6 at issue in these proceedings. We have other exhibits that
7 show that and if everyone would let our witness speak to
8 what's shown and not shown, we could tell you all about it.
9 MR. GROSSMAN: Right. And in fairness, I think
10 that what actually needs to be corrected is the description
11 at least, the Exhibit 106 and derivatively 106-A doesn't
12 show all of the improvements proposed. It shows a portion
13 of the landscape.
14 THE WITNESS: If I could clarify that, sir?
15 MR. GROSSMAN: Yes.
16 THE WITNESS: It doesn't clearly show it because
17 the primary purpose was a pictorial overlay so that there
18 would be a perspective. It's all there, but you wouldn't
19 use this for a design plan. It's difficult to see because
20 there's lots of information on this, but the primary purpose
21 is really to show the relationship of the proposed building
22 to the existing buildings on the previous slides. All that
23 information is there, but there is much better plans as Mr.
24 Chen refers to that define those improvements.
25 MR. GROSSMAN: No, I think what the question

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1 raises, you're showing in bright green some of the
2 landscaping on the southwestern side of the property, but I
3 don't see equivalent showing of landscaping on, for example,
4 the northern side of the property, is there going to be
5 landscaping?
6 THE WITNESS: That's absolutely true. The
7 landscaping is not infrastructure so I did, the landscaping
8 shown here was just to try to show, to respond to the Paul's
9 concern.
10 MR. GROSSMAN: Right, I understand that. But I
11 just don't want to label on the exhibit --
12 THE WITNESS: Right.
13 MR. GROSSMAN: -- to mislead --
14 THE WITNESS: It does not, it's all landscaping.
15 MR. GROSSMAN: -- so we can say it's improvements
16 and a portion of the landscaping.
17 THE WITNESS: Yes, that would be more succinct.
18 (Discussion off the record.)
19 MR. GROSSMAN: All right. So the label on the
20 exhibit is so amended. Okay.
21 MR. GROSSMAN: So I was describing the storm water
22 management that we provided for the site and I'm not sure
23 this is the right image as the counsel refers to. This was
24 primarily described, the dimensions in the building, maybe
25 we'll come back to this and I'll move onto the storm water

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1 concept, where it clearly indicates that infrastructure.
2 MR. KAUFMAN: What exhibit are referring to?
3 MS. GIRARD: 79-E-i.
4 MR. GROSSMAN: 79-E --
5 MS. GIRARD: Yes, and then I.
6 MR. GROSSMAN: That's an exhibit that's already --
7 MS. GIRARD: 79-E-i.
8 MR. GROSSMAN: -- in the record.
9 THE WITNESS: So as I previously stated, we are
10 providing 100 percent of the storm water management as
11 required by the State of Maryland and by Montgomery County,
12 who is a reviewing and approving agency for the design. The
13 storm drain pipes are shown as this solid dashed line.
14 MR. GROSSMAN: And since this does not point to
15 the north, the upside --
16 THE WITNESS: Yes. Here is, north is to the right
17 of the page.
18 MR. GROSSMAN: Right. So you're looking at the
19 southern, southwestern you're pointing to it?
20 THE WITNESS: I'm really just speaking in general
21 that the storm drain is throughout the site is shown in this
22 line type. The storm drain picks up and intercepts water
23 from the surface outside the building and picks up water
24 from the building itself, through roof leaders. There is no
25 free flow discharge of runoff except for a small portion

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1 here that does not go in --
2 MR. GROSSMAN: Here being where?
3 THE WITNESS: Here, thank you, into the south
4 easterly apex of our triangle. Right here. That area goes
5 into, presently flows to Potomac Tennis Lane from a high
6 point right there. We're talking about a very small amount,
7 but I just wanted to be accurate in what I say. There is
8 also areas that are outside of our limit of disturbance,
9 which is part of the stream valley buffer that we are not
10 controlling, in fact, we are restoring to a wooded condition
11 from what it is today as asphalt and buildings.
12 But everywhere that's inside of what we call, what
13 the state describes as a project area inside the limit of
14 disturbance has met the storm water management criteria.
15 And with that method of storm water management treatment is
16 using bioplanters and bio retention filtering bases. And
17 there is over a dozen of them throughout the site in all
18 quadrants.
19 The outfalls for these structures are in three
20 locations, two along the northern property line in close
21 proximity to the existing outfalls. The difference in these
22 is that they are, the outfalls are lowered in elevation so
23 that they don't create an erosive condition to the stream,
24 the stream that it feeds which I've heard referred to as
25 running through it fairly much east to west.

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1 They also have riprap that goes from 10 to 20 feet
2 in length and designs such that the velocity of water is
3 reduced to a non-erosive speed.
4 MR. GROSSMAN: Why don't you define riprap for us?
5 THE WITNESS: Riprap is a stone that there's three
6 different classes of stone. And this hasn't been final
7 engineered but I expect it'll be between 9 and 12 inch in
8 diameter and it will be underlaid with a filter box. This
9 is, the primary purpose is to create a non-erosive velocity
10 of the water discharging from the storm drain systems.
11 MR. GROSSMAN: You're saying individual stones
12 will be 9 to 12 inches in diameter?
13 THE WITNESS: That's right. They're not a
14 constant diameter, there's a range it will be. The third
15 outfall is going to the northwesterly apex of the triangle
16 that adjoins the Paul's property. What this alignment is
17 different than what exists today as we have previously
18 looked at in that exhibit?
19 MS. GIRARD: 90, the picture.
20 MR. GROSSMAN: Okay.
21 THE WITNESS: I don't know if I have to refer to
22 exhibits. The picture of the existing storm drain pipe
23 flowing into the Paul's property that just drops off the
24 slope. We've removed 94 percent of the runoff that
25 presently goes to the Paul's property so that --

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1 MR. GROSSMAN: What percentage of the runoff?
2 THE WITNESS: 94 percent, I have an exhibit that I
3 can show at some point. Is now a good time?
4 BY MS. GIRARD:
5 Q. Sure. Unless you want to finish describing the
6 drainage first.
7 A. Well let me just finish the drainage and then I'll
8 move on to the specifics of the Paul property. The last
9 outfall also flows into the golf course now instead of to
10 the Paul's property. So that's this outfall here and it's
11 directed right into pretty the apex of northwesterly portion
12 of the site and then it flows into the stream valley. I
13 think I will go now to an exhibit that I suppose needs to
14 have a number attached to it.
15 (Discussion off the record.)
16 THE WITNESS: Do we want to label this?
17 MS. GIRARD: Yes. So this is a new exhibit.
18 MR. GROSSMAN: This will be Exhibit 107.
19 (Hearing Exhibit No. 107 was
20 marked for identification.)
21 MR. GROSSMAN: And the 11x17 will be Exhibit 107-
22 A.
23 (Hearing Exhibit No. 107-A was
24 marked for identification.)
25 MR. GROSSMAN: What is this an exhibit of?

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1 THE WITNESS: This is an analysis of the existing
2 and proposed drainage areas flowing into the Paul's
3 property.
4 MR. GROSSMAN: So it's a diagram analyzing
5 existing and proposed runoff onto the Paul's property.
6 THE WITNESS: As is the convention or necessity
7 for these kind of studies, a study point has to be
8 identified of where we're showing the accumulation of
9 rainfall where it leaves the project or where we're studying
10 it. And that's approximately where that storm drain pipe is
11 and I think it's a little farther to the west of it. But
12 using the existing topography as surveyed by VIKI, and then
13 added to it with the Park and Planning topo, tied together
14 at the property line. Because we didn't go onto your
15 property to survey, we were able to establish, I was able to
16 establish a study point that represented the drainage area
17 and existing conditions and that's this red line of what
18 flows onto their property. And I'll put on my glasses and
19 what I established was that the existing drainage area into
20 the Paul's property is 0.47 acres.
21 Now of course using the rational method you could
22 determine what the flow rate of water is but my analysis was
23 basically just look at drainage areas. It's an easy
24 relationship to convert it to cubic feet per second, but
25 unnecessary I felt at this stage.

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1 MR. GROSSMAN: Okay. So the area that's outlined
2 in red is the area that's 0.47 acres?
3 THE WITNESS: Yes.
4 MR. GROSSMAN: All right. And that is now the
5 current area, if I understand it, under the existing
6 conditions that flows from which water flows onto the Paul's
7 property.
8 THE WITNESS: I wish I could say it succinctly
9 like that. I'll make an effort.
10 MR. GROSSMAN: All right, sir.
11 THE WITNESS: The green outline is proposed
12 conditions of what drainage area will, in ultimate state,
13 flow into the Paul's property. This is where I refer to the
14 bottom right corner where I compare the drainage areas
15 magnitude and established that it is a 94 percent reduction
16 of runoff onto the Paul's property.
17 BY MS. GIRARD:
18 Q. And when you say flow, what does that mean? How
19 would the water from that area get onto the Paul property?
20 A. This is the water that is not by storm drain but
21 is actually surface flow through the parking lot of the
22 tennis club and the green is the area that's not intercepted
23 because it's in the buffer area between the Paul's property,
24 it's not intercepted in the storm water system, which is a
25 very small amount that I can't read without putting my

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1 glasses back on. 1,307 square feet which, Tom would you do
2 that math for that? 43560?
3 MR. UHRE: What's that?
4 BY MS. GIRARD:
5 Q. You can do.
6 MR. UHRE: Acreage?
7 (Discussion off the record.)
8 BY MS. GIRARD:
9 Q. And that is coming up pervious or impervious
10 surface? What's the nature of that?
11 A. In ultimate conditions that is pervious surface.
12 Q. Okay.
13 A. Because that will be the landscape area. And I
14 would note to address Mr. Chen's issue that this is that
15 location where there is a bio planter storm water facility
16 right here that's L shaped and it's at the end of the
17 turnaround that I intended to use as a buffer between the
18 Paul's property and to make sure that I maximized the
19 intersection of runoff. It's at right at the corner of
20 that, yes, well, I wish we were north, I'm getting
21 disoriented a little bit. I can understand why you have
22 those concern. Of the westerly property line where that
23 storm drain outfall, that corner of that micro bio planter
24 is as close as Mr. Chen said. It doesn't have to be, I put
25 it there because I wanted to make sure I intercepted the

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1 drainage area. I could easily reshape that and done an
2 analysis that we could take it off and put it up to 15 feet
3 from your property line and reshape it.
4 MR. GROSSMAN: And the L shape, the facility, the
5 storm water facility you're referencing is the one that
6 touches the small green area of the proposed area of water
7 flow?
8 THE WITNESS: Right. It would increase that
9 amount of green area by that width if we reconfigure that
10 bio planter. I don't think --
11 BY MS. GIRARD:
12 Q. So in other words the location of the bio planter
13 is intentional to try to intercept the maximum amount of
14 storm water?
15 A. I wanted to intercept all that I could because I
16 see this area as poorly graded and not something that you
17 would be able to get approved today if you tried to.
18 Q. Existing condition?
19 A. Existing condition. We have nothing steeper than
20 three, if that helps to, three horizontal to one vertical
21 versus steeper than one horizontal to one vertical which is
22 out there today.
23 Q. So based on this exhibit, is it your professional
24 opinion that the storm water draining to the Paul's property
25 will be improved as part of the condition --

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1 A. I can't emphasize enough that the erosion problem
2 is solved by this proposed condition that we are almost
3 entirely removing that runoff coming down that steep slope
4 onto your property that's happening today.
5 MR. GROSSMAN: When you say your property, are you
6 talking about the Paul's property?
7 THE WITNESS: The Paul's property that erosive
8 condition is moved with this proposed design and the storm
9 water management.
10 MR. GROSSMAN: Okay.
11 THE WITNESS: Which was an intent on my part
12 deliberately.
13 BY MS. GIRARD:
14 Q. And is it also your conclusion that the storm
15 water is similarly improved for other properties, the golf
16 course property particularly?
17 A. Absolutely. As I previously noted that outfalls
18 are now safely conveying the runoff from the project after
19 it's been treated through the environmental site design
20 facilities. I'd only add that normally a redevelopment
21 project like this would only provide 50 percent of the ESD
22 but it was the owner's correction that we try to maximize
23 the storm water management so we've maximized it and created
24 enough storm water that does the whole site.
25 Q. So we're meeting 100 percent of the storm water

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1 management?
2 A. 100 percent of storm water management criteria
3 required by state law and Montgomery County.
4 Q. Okay. Is that all you wanted to say about storm
5 water?
6 A. I think so.
7 Q. Did you also look at kind of completely flipping
8 gears, did you also look at the property for fire safety
9 access?
10 A. I did. This plan is a requirement for all site
11 plans, conditional use plans and it provided a path for fire
12 safety for fire trucks or firemen to be able to control any
13 fire that happened to occur in that building. The criteria
14 is very specific and --
15 MR. GROSSMAN: Excuse me, what exhibit are you
16 looking at?
17 MS. GIRARD: I'm looking for it.
18 THE WITNESS: Good question, sir.
19 MR. GROSSMAN: I only ask good questions.
20 THE WITNESS: You promise?
21 MR. GROSSMAN: Yes.
22 (Discussion off the record.)
23 MS. GIRARD: Okay. It's 39-b-i.
24 THE WITNESS: All upper case?
25 MS. GIRARD: No, lower case B, lower case I.

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1 MR. CHEN: B-I?
2 MS. GIRARD: B-I, yes.
3 MR. KAUFMAN: It's dated 9-10-15 it's the Fire
4 Marshall approval memorandum.
5 MS. GIRARD: No, it's I, so it's the fire access
6 plan.
7 MR. KAUFMAN: Oh okay, right.
8 THE WITNESS: So the fire access plan establishes
9 access for the Fire Department.
10 MR. GROSSMAN: Right.
11 THE WITNESS: And this was approved by Marie LaBaw
12 of that Department of Montgomery County. I'm not sure what
13 I need to add to that. I can answer questions if you do.
14 BY MS. GIRARD:
15 Q. Fire trucks accessing the site would not use the -
16 -
17 A. I think that's important to the policy and I will
18 address that. There is no requirement for fire trucks, in
19 fact there is not a space for a turnaround for fire trucks
20 along the westerly line along the Manor Care and the Paul's
21 property. This is just for hose able which you're allowed
22 to do for 450 feet. And so the only place that fire trucks
23 will access is along the easterly property line and then a
24 turn around that will be towards the west and then back out
25 to Potomac Tennis Lane. Everything else will be fire poles

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1 and two firemen if needed.

2 Q. As far as utilities on the site, did you also look

3 at you know water, sewer, utilities, are those all adequate?

4 A. They are adequate. The existing water and sewer

5 that serves the site, we're not using the onsite

6 connections, we're reconfiguring them for the particular

7 building that we're going to build. But they terminate in

8 the public systems on Potomac Tennis Lane.

9 Q. Okay. And as part of the review process, did you

10 coordinate with the Montgomery County Department of

11 Transportation and the Department of Permitting Services

12 regarding site access, particularly the terminus of Potomac

13 Tennis Lane?

14 A. I did with the Department of Transportation, we

15 had a reiterative process of layouts for this hammerhead

16 turnaround that exists today but is inadequate to meet

17 existing today's code.

18 MR. GROSSMAN: Where is the hammerhead?

19 THE WITNESS: The hammerhead is at the entrance to

20 the site from Potomac Tennis Lane at the southeasterly apex

21 of our triangle.

22 MR. GROSSMAN: Okay.

23 THE WITNESS: This improvement improves the public

24 portion of the project that's part of the right-of-way of

25 Potomac Tennis Lane and allows a turnaround of cars not a

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1 fire truck, fire trucks will have to come in and drive out

2 that way. But so cars within the public right-of-way. It

3 is tied to the entrance as it exists today for the project

4 as it was the determination by DOT that they did not want to

5 improve the residential appearance of the driveway apron

6 that's there. We were proposing to put curvilinear fillets

7 in for the entrance, mostly for aesthetic purposes, but it

8 was determined by DOT that we could clean pane the driveway

9 apron which are straight lines and I'll stay to the edge of

10 Potomac Tennis Lane at the southeasterly corner of the --

11 BY MS. GIRARD:

12 Q. So the terminus is shown on the conditional use

13 plan that's included, the most recent conditional use plan

14 included in the application that has been reviewed and

15 approved by DOT and DPS?

16 A. I would have to look at this to make sure it says

17 when I show it here, but yes, the conditional use is going

18 to get approved today but Park and Planning staff agreed

19 with DOT's decision.

20 Q. Did you want to check that, so here?

21 A. Yes, and it is --

22 MR. GROSSMAN: Do you want to look at the current

23 conditional use plan it's 79-A-i. I have that here.

24 THE WITNESS: I won't have to try to --

25 MR. GROSSMAN: Right.

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1 THE WITNESS: -- read this whole --

2 MR. GROSSMAN: This is the conditional use plan,

3 79-A-i.

4 THE WITNESS: And this plan at the southerly

5 connection to Potomac still shows that fillet because that's

6 what was submitted. And the final approval plan will be a

7 straight driveway which you can see is underlaid in a

8 lighter color on the conditional use plan.

9 MR. GROSSMAN: So are you telling me that 79-A-i

10 will have to be modified, the conditional use plan to

11 accurately depict what the proposed access will look like?

12 THE WITNESS: I believe that the permit drawings

13 build that will have to be approved by DOT. The width

14 doesn't change this is the just the structure of it. The

15 final permit drawing for paving will have to show that. I

16 don't believe that --

17 MR. GROSSMAN: Well, I just want to make sure that

18 the conditional use plan accurately reflects what the

19 circumstances will be. And I'm not sure whether your answer

20 answers that. Are you saying that this conditional use plan

21 in terms of the access does not accurately portray what will

22 be the access or are you saying that it does accurately

23 portray it?

24 THE WITNESS: It accurately portrays the access

25 width and location and grade. The tweaking of that line

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1 will go from a curve to a straight line.

2 MR. GROSSMAN: Which line? Point to the line.

3 THE WITNESS: I can use my finger, I think.

4 MR. GROSSMAN: Okay.

5 THE WITNESS: That line is the existing edge of

6 the driveway.

7 MR. GROSSMAN: Yes.

8 THE WITNESS: And that's what they want us to

9 maintain rather than put the units 25 foot radius curve.

10 MR. GROSSMAN: I see.

11 THE WITNESS: It doesn't move it, it just, they

12 didn't like the aesthetic. We prefer to do the aesthetic

13 curve and DOT wants to keep the residential look.

14 MR. GROSSMAN: All right. Why don't you submit an

15 amended conditional use plan that will show exactly what the

16 proposal will be.

17 BY MS. GIRARD:

18 Q. Okay. One final question as far as your analysis.

19 Is part of your analysis did you also prepare a sight

20 distances for the intersection of Potomac Tennis Lane and

21 Falls Road to address visibility concerns?

22 A. I did, we did the field work and I supervised the

23 profile and for sight distance, yes.

24 Q. And what was the finding of that analysis?

25 A. That it met the criteria for 425 feet at 42 inches

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1 of height to be able to see from the stop bar of Potomac
2 Tennis Lane at Falls Road looking to the west which was the
3 direction of the curve that there was adequate sight
4 distance horizontally, vertically for a safe right turn.
5 MR. GROSSMAN: All right. So this is, you have a
6 sight distance exhibit.
7 MS. GIRARD: Yes.
8 MR. GROSSMAN: What's the number of that?
9 THE WITNESS: Any idea where that's hiding?
10 MS. GIRARD: Yes, it's 39-I.
11 MR. GROSSMAN: 39-I. Okay.
12 BY MS. GIRARD:
13 Q. Did you analyze looking east as well?
14 A. We did at the direction of the traffic engineer
15 who requested that we reverse the direction so that you
16 could, it also met code looking, maybe I'm not understanding
17 your question. From Falls Road looking in towards the
18 intersection was also met the criteria. I'm getting a
19 little bit into shaky ground interpreting this traffic
20 engineering issue. I was really just the vehicle to provide
21 the work.
22 MR. GROSSMAN: So tell me exactly what this shows
23 again.
24 THE WITNESS: It provides a sight distance for a
25 person sitting in a car --

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1 MR. GROSSMAN: Right.
2 THE WITNESS: -- at the stop sign of Potomac
3 Tennis Lane and the intersection of Falls Road, if you look
4 to the left or to south --
5 MR. GROSSMAN: Yes.
6 THE WITNESS: -- if you look to the left, down
7 Falls Road I guess that's more east.
8 MR. GROSSMAN: Okay.
9 THE WITNESS: It's a perpendicular intersection
10 and you have free line of site for much farther than it
11 needs to be to meet criteria. But to the right there is a
12 curve. So we made an analysis to verify that horizontally
13 and vertically that you could see 425, you could see farther
14 than that, but you had --
15 MR. GROSSMAN: 425 feet along Potomac Tennis Lane
16 or along Potomac Tennis Lane or along Falls Road?
17 THE WITNESS: Along Falls Road because you're
18 parked at Potomac Tennis Lane and you're looking out. You
19 want to be able to make sure you have a safety at that
20 intersection.
21 MR. GROSSMAN: So the question is whether or not
22 you can safely emerge in terms of sight distance from
23 Potomac Tennis Lane onto Falls Road?
24 THE WITNESS: The line of sight distance, yes.
25 Because you need to be able to make a left into traffic that

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1 will be coming --
2 MR. GROSSMAN: Right.
3 THE WITNESS: -- south or east. East on Falls
4 Road from the west. It's curved, so it's not really north
5 south.
6 MR. GROSSMAN: Right. But in either direction
7 your conclusion is that --
8 THE WITNESS: Is that this intersection will
9 perform to meet the Code as required by State Highway
10 Administration in Montgomery County.
11 MR. GROSSMAN: In terms of sight distance?
12 THE WITNESS: In terms of sight distance.
13 MR. GROSSMAN: Okay.
14 BY MS. GIRARD:
15 Q. Okay. Mr. Mitchell, so based on your testimony
16 and your analysis that's in the record from an engineering
17 perspective, would the proposed conditional use cause undue
18 harm to the use, peaceful enjoyment or development potential
19 of abutting or confronting properties or the general
20 neighbor?
21 MR. CHEN: I object. He's already testified as to
22 the limited areas that he and his expertise as a civil
23 engineer and if the question is so narrowed to that extent I
24 don't have an objection.
25 MR. GROSSMAN: She narrowed it.

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1 MS. GIRARD: Yes, from an engineering --
2 MR. GROSSMAN: She started her sentence with
3 engineering perspective.
4 MR. CHEN: Yes, but he didn't talk about, she said
5 engineering perspective, but I don't think she covered the
6 full universe of engineering perspectives. What I've heard
7 the gentleman testify is there is like four to five areas,
8 storm water management, utilities, access, sight distances.
9 MR. GROSSMAN: I'll overrule that objection. I
10 think it's sufficiently identified. You can answer the
11 question.
12 THE WITNESS: In answer to your question in
13 regards to sight design, infrastructure design, sight
14 distance, all the things that are referred to that this
15 project will not endanger adjoining or abutting properties.
16 BY MS. GIRARD:
17 Q. From an engineering perspective, would the
18 proposed conditional use cause any undue harm to the health,
19 safety and welfare of the neighboring residents, visitors or
20 employees?
21 A. No.
22 MR. CHEN: Excuse me, again, for the limited
23 areas. But I think the answer, which I appreciate a moment
24 ago limited it and I appreciate that.
25 MR. GROSSMAN: I'll overrule the objection for the

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1 same reason.
2 THE WITNESS: I answered it. It will not
3 endanger.
4 MS. GIRARD: That's all I have.
5 MR. GROSSMAN: All right. Cross-examination, Mr.
6 Uhre?
7 MR. UHRE: Do you want to go first?
8 MR. CHEN: No.
9 THE WITNESS: Will I have to take off my shirt
10 I've already got my jacket off?
11 MR. GROSSMAN: You've rolled up your sleeves, I
12 think that's sufficient to intimidate the Examiner.
13 CROSS-EXAMINATION
14 BY MR. UHRE:
15 Q. Why don't we begin with the sight distance issue?
16 A. All right. You don't have it?
17 Q. I'm a little unclear. You said the person worked
18 under you. Now are you the responsible party for --
19 A. I'm a responsible professional engineer that
20 evaluates all work that I subordinate to others.
21 Q. Okay. So is your submission the sight distance is
22 your submission?
23 A. It is my submission. I just didn't do the
24 drafting of it.
25 Q. And as part of that analysis did you, well, let me

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1 first ask, can you explain what the word skew means from a
2 traffic standpoint or an intersection of two streets
3 standpoint?
4 A. I won't do it as part of the traffic because as I
5 said, I'm not a traffic engineer. But skew means for my
6 perspective, is that it varies from the direction that
7 you're traveling. If something is a skewed from, but I'm
8 not sure you're connotation or denotation.
9 Q. As I understand, you submitted a sight distance
10 analysis on the intersection --
11 A. I did.
12 Q. -- of Potomac Tennis Lane and Falls Road, is that
13 correct?
14 A. Yes.
15 Q. Okay. Did you determine the skew of Potomac
16 Tennis Lane with Falls Road, the angle --
17 A. It's not necessary to determine the angle --
18 Q. -- of the skew.
19 A. -- it's graphically shown on the plan view, the
20 line of sight will show on plan view and profile. I don't
21 believe that I defined the angle of the intersection
22 although I can from field walking and from observing it on
23 the plans, it's close to perpendicular.
24 Q. So do I understand the answer is you did not
25 determine the angle or skew of the two --

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1 A. No, as I said I did not determine what the precise
2 angle is because it's a graphic interpretation of the line
3 of sight based upon field survey data, both vertically and
4 horizontally. In other words it's graphic that you place an
5 observer at the stop bar and you draw a straight line as
6 visually either visually able to proceed and see where that
7 lines terminates for the opposite line of traffic. It's not
8 a question of well that's 39.7 degrees, it's a question of
9 that's how far you can see. Did you find it?
10 MS. GIRARD: This is 39-1 that we're referencing.
11 MR. KAUFMAN: Mark it, please.
12 THE WITNESS: So as you see here it's not quite
13 perpendicular.
14 MR. CHEN: What's the exhibit, sir?
15 MS. GIRARD: 39-1.
16 MR. KAUFMAN: What's an exhibit of?
17 THE WITNESS: It's an exhibit of the sight
18 distance from the park at the intersection of Potomac Tennis
19 Lane and looking at Falls Road.
20 BY MR. UHRE:
21 Q. And is that skew the angle of connection with
22 Potomac Tennis Lane and Falls Road?
23 A. As I've noted, a skew is a description of a
24 variance from a straight line. But it's not identified on
25 the plan or required.

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1 Q. Are you familiar with the Maryland State Highway
2 Access Manual standards?
3 A. I'm familiar only in usage in the last 29 years,
4 but I cannot quote it.
5 Q. Well, 10.4 establishes the requirements for sight
6 distance standards.
7 A. Yes.
8 Q. And it says appropriate adjustments to the
9 required sight distance shall be made for road grade skew
10 and predominate bus or truck traffic.
11 A. That's correct.
12 Q. So if you didn't determine skew or if skew was
13 outside of the ordinary --
14 A. It's this --
15 Q. -- how could you have a sight distance?
16 MR. GROSSMAN: Let him finish his question.
17 THE WITNESS: I'm sorry. Okay. The answer is I
18 tried to say is that it's graphically shown as skew but not
19 identified in the angular magnitude. So skew is shown
20 because you can see the angle and it's graphically
21 demonstrated to the line of sight and distance that way.
22 That is the normal level of care for a site distance study
23 which I have done 20 or 30 of.
24 BY MR. UHRE:
25 Q. So what is the skew of the two roads?

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1 A. What you just quoted is not say that we needed to
2 specify the angle and I don't have anything that would
3 measure the angle. But did you forget your protractor?
4 MS. GIRARD: That's fine to just say that you
5 don't know.
6 THE WITNESS: I don't know the exact angle.
7 BY MR. UHRE:
8 Q. So you never determined the angle or the skew --
9 MS. GIRARD: Objection. He's asked that question
10 three times.
11 MR. GROSSMAN: Yes, I'll sustain that.
12 THE WITNESS: I'm going to take my shirt off in a
13 minute.
14 MR. KAUFMAN: Just relax please.
15 BY MR. UHRE:
16 Q. If we go could to the storm water management
17 exhibit, I forget the number.
18 A. Plan view?
19 Q. That's fine. Is that 79-E?
20 MS. GIRARD: This is 79-E-i.
21 BY MR. UHRE:
22 Q. Could you tell me the predominant soil
23 classification of the site please?
24 A. There's primary D soils those are identified with
25 these letters. Except for the very tip of the western apex

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1 of the triangle which are B soils. Ironically those are
2 mostly in areas that are not being having improvements on.
3 The definition of this is that D soils have the worst
4 infiltration rates of soils classification. B soils have
5 merely the best than for infiltration design A and B soils
6 are considered acceptable for infiltration design. C and D
7 soils are not. That's why the storm water management after
8 it's treated with seven-and-a-half feet of soil and stone
9 discharges the runoff with a perforated pipe for whatever it
10 does not infiltrate. And those are the figures there.
11 Q. So the connection then between the micro, the
12 MEP's and the exit, I forget what you called them, like at
13 the Paul's property, is that your word?
14 A. Storm drain outfalls.
15 Q. Outfalls? Is that connected all with perforated
16 pipe or with solid pipe?
17 A. No. The only portion that's perforated is in the
18 actual storm water devices.
19 Q. Within the confined --
20 A. The footprint of the, that allows whatever water
21 that doesn't infiltrate over 24 hour period to be able to
22 migrate to the perforated pipe and then to discharge into
23 the stream valley, running along the northerly property line
24 in the golf course.
25 Q. And would it be fair to say that you probably are

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1 going to discharge more water via the outfalls than through
2 the MEP for a D soil classification as opposed to a B
3 classification?
4 A. It's fair to say that to have, yes. Yes.
5 Q. And that's because the D soils have less
6 permeability --
7 A. That's right.
8 Q. -- than the B soils, correct? Now the submission
9 you made, I'm sorry, is this the document that was submitted
10 to the Department of or DPS for approval of the concept
11 management? Is this a concept management --
12 A. It is.
13 Q. -- to gain approval for the concept management
14 plan?
15 A. Yes, that's right. It's part of the set.
16 Q. And I think you earlier testified that there were
17 steep slopes along the property line adjoining the Paul's
18 and this subject property?
19 A. A portion of the common line and the what, and a
20 portion, most of the northerly line with the golf course.
21 Q. But specifically along the Paul's property line
22 which would be the westerly property line.
23 A. Along the rest of the property line there is two
24 areas one here and then one near the Manor Care --
25 MR. GROSSMAN: When you say here?

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1 THE WITNESS: Here being the westerly property
2 line common with the Paul's property. Not the entire
3 property line. But this is where that storm drain outfall
4 shown on the picture shows it coming off that cliff.
5 BY MR. UHRE:
6 Q. Right. So that's a reasonably steep slope is it
7 not?
8 A. A very steep slope.
9 Q. And does that slope not continue all the way to
10 the tip of the triangle along the --
11 A. It moderates as it goes towards the west, the apex
12 west and apex, it's still fairly steep slope that goes into
13 the Paul's property. But it's not, I'm trying to be concise
14 in saying that it's not continuing the same steepness that
15 that picture showed.
16 Q. Okay. But I think you stated that some of the
17 slopes were in excess of 25 percent, which would be a 4 to
18 1, that some of the slopes were even one to one, is that
19 correct along this property line?
20 A. One to one is a 45 degree angle.
21 Q. Okay. Were these slopes shown on the plan
22 submitted to DPP?
23 A. Yes. The drainage area map for the stone --
24 UNIDENTIFIED PERSON: NRI.
25 THE WITNESS: NRI is a better view, but I'm not

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1 sure that's where you want to focus.
2 BY MR. UHRE:
3 Q. I'm asking which plans were submitted to the
4 Department DPS?
5 A. Permit Services?
6 Q. Yes, the Department of Permitting Services to
7 secure the approval of the concept storm water plan?
8 A. That opens up more plans than just a concept plan
9 because we're required to submit the NRI as a precursor to
10 getting the storm water concept approved. So they saw the
11 storm, the NRI also, existing conditions map. So to answer
12 your question, not just the concept got submitted to DPS,
13 they also see the NRI.
14 Q. So what you're saying, is that the reason that the
15 slopes are not shown on the storm water concept plan then?
16 A. The storm water concept plan, this plan view is
17 only for the proposed conditions? It doesn't show the
18 drainage areas for, but there are drainage maps that were
19 part of the submission and even they don't need to show the
20 Paul's property because the drainage area falls away from
21 the project site into the Paul's property versus flowing in
22 to the site. Let me see if I can redirect that answer.
23 Because it requires a fuller understanding of how
24 environmental site design affect storm water management
25 site. Prior to the institution of the state law for ESD MEP

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1 what we refer to now, storm water management engineer, an
2 engineer that's designing for a site like this has to look
3 at existing conditions and proposed conditions to determine
4 what the existing flow rates are going off the site so that
5 you can match those flow rates or reduce those flow rates.
6 So in other words, you had to look at quality of the falls
7 as well as providing quality control when you design storm
8 water management.
9 My first design was in 1986 and that was the year
10 that they instituted storm water management design. It was
11 just for flood control then and they're going to go on and
12 on and on aren't I? In '96 they instituted where you did
13 quality and quantity control. First a half inch and then
14 later a one inch of water control over the impervious area.
15 What I sense you're asking is existing conditions flow rate
16 is immaterial in today's state law storm water management
17 design unless there is a known flooding problem. This area
18 is near the top of the drainage of the local area. The
19 matter of care being the highest point and then flowing down
20 to the stream valley.
21 So flood control is never an issue from the
22 perspective of DPS who would be the requiring agency saying
23 that you need to design for flood control. There's not that
24 flood issue. There is only the requirement to meet the
25 state law for ESD and MEP, which provide some quantity

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1 control because it has to go through these devices before it
2 outfalls. But it's not even required to stipulate what the
3 flow rates are reduced to. It's not material to a state law
4 now. We determine what the flow rate is coming out of these
5 storm drain pipes are based upon no control at all. We're
6 assuming that the water comes out of the buildings and the
7 parking lot, goes into the storm drain system and slows at
8 the pipe. Ignoring that we have 14 different storm water
9 devices, which in fact, filter the water over a 24 hour
10 period and reduce that rate. It's not material to the
11 approval of permitting. Does that help?
12 Q. Not exactly.
13 A. Okay. I took a shot.
14 Q. Let me see if I can just make this very simple.
15 A. Can I have some water here?
16 Q. Sure.
17 MR. KAUFMAN: It hasn't been touched.
18 THE WITNESS: Thank you. So it's not
19 contaminated.
20 BY MR. UHRE:
21 Q. Is it fair to say that steep slopes exist along
22 the Paul's property line in an area very close to proximity
23 to the Paul's property and the subject property?
24 A. I'm glad this was brought out because the slope
25 analysis is part of this design.

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1 MR. KAUFMAN: Tell us what that is again.
2 THE WITNESS: This is --
3 MR. GROSSMAN: Exhibit number?
4 THE WITNESS: -- the natural resource inventory
5 which is --
6 MR. KAUFMAN: Give us a second.
7 MR. CHEN: Hey Steve?
8 MR. KAUFMAN: Yes?
9 MR. CHEN: This is the exhibit number here,
10 beginning.
11 MR. KAUFMAN: I'm sorry?
12 MR. CHEN: This is the exhibit number right here.
13 MS. GIRARD: Trying to get to the beginning here.
14 MR. KAUFMAN: Hang on a second.
15 MR. CHEN: It's not in there, Steve.
16 MS. FREEMAN: I know where it is.
17 MS. GIRARD: Oh, it's 37-B.
18 MR. UHRE: This is 107.
19 THE WITNESS: 37-B?
20 MS. GIRARD: 37.
21 THE WITNESS: Large upper case B?
22 MS. GIRARD: No, lower case.
23 THE WITNESS: This is the plan that defines soils
24 which I assume that you're referring to. And when you said
25 25 percent that's the maximum we have to define. They're --

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1 but it's 25 percent or greater and those are the dark
2 hatching that you see primarily along the western node or
3 apex of the triangle.
4 The other hatching is here which establishes 15 to
5 24.9 percent soil, it's just defining ranges of soil. After
6 25 it's just no longer needed to be identified because it's
7 considered erosive.
8 BY MR. UHRE:
9 Q. Is the steep slope greater than 15 percent or
10 greater than 25 percent?
11 A. 15 percent slope is not too steep. It's
12 acceptable. You can only design a 25 percent or greater
13 slope in special conditions, usually in a commercial
14 setting.
15 Q. I guess my question is does not the Montgomery
16 County Code require the slope to be shown on the storm water
17 concept plan?
18 A. No, not the range of slope because it hinders the
19 ability to interpret the plan. That's why the NRI is part
20 of the submission.
21 Q. But steep slopes are not required to be
22 demonstrated on the storm water concept plan?
23 A. They are demonstrated on the NRI. I have shown
24 them on storm water concept plans when I see them as an
25 issue for the design.

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1 Q. Well I'm looking at the Code Section 19-23C or AC --
2 MS. GIRARD: Which code?
3 MR. UHRE: Montgomery County Code, Section 19-23.
4 BY MR. UHRE:
5 Q Describing the concept plan for storm water
6 management and Item C says the location of proposed limit of
7 disturbance, erodible soils, steep slopes and any area to be
8 protected during construction is to be shown --
9 A. I'm not proposing any steep slopes.
10 Q. It just says the location of.
11 A. Proposed.
12 Q. No, it doesn't say proposed.
13 A. Read it again.
14 Q. Proposed limit of disturbance, the location of
15 steep slopes.
16 A. I'm not proposing any steep slopes on this --
17 MS. GIRARD: Objection. This line of questioning
18 is going to a plan that DPS has already approved. Is he
19 challenging?
20 MR. GROSSMAN: I understand, but it's within the
21 realm of cross-examination. But he's already answered that
22 question.
23 MR. UHRE: Okay.
24 BY MR. UHRE:
25 Q. If we go could to, I think it's Exhibit 92, which

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1 is the detail of the truck turnaround, please.
2 A. We don't have a blowup of that.
3 MR. KAUFMAN: Mr. Examiner?
4 MR. GROSSMAN: Yes?
5 MR. KAUFMAN: Before Mr. Chen does his, I'd like
6 to take a five minute break.
7 MR. GROSSMAN: Yes, we will. I figured we'd take
8 a break when Mr. Uhre was.
9 MR. KAUFMAN: Okay. Great. Thank you.
10 THE WITNESS: Do I get food?
11 MR. GROSSMAN: Not supplied by the Government.
12 UNIDENTIFIED PERSON: I may be lucky.
13 THE WITNESS: I told you I was in the Army.
14 MR. KAUFMAN: We just need a facility break.
15 UNIDENTIFIED PERSON: I'm sorry, do we have the
16 exhibit?
17 MS. GIRARD: Our large scale we left here at the
18 end of the last hearing.
19 MR. GROSSMAN: All right. So it should be here.
20 MS. GIRARD: At the request of, yes.
21 MR. GROSSMAN: 92?
22 MS. GIRARD: Yes.
23 MR. MITCHELL: While we're waiting I'd say that
24 the maximum slope we're proposing is three to one.
25 MR. GROSSMAN: Maybe it's on a board.

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1 THE WITNESS: It was originally on a board.
2 MR. GROSSMAN: Yes, you left it on a board and
3 then it was brought in there --
4 MS. GIRARD: Yes.
5 MR. GROSSMAN: -- so it's probably, maybe it
6 didn't wander in here. Why don't we just take our break now
7 and I'll see if the board is in our office? We'll take a
8 five minute break and come back at 11:30 a.m.
9 (Off the record.)
10 (On the record.)
11 MR. GROSSMAN: We are back on the record.
12 MS. GIRARD: We found the exhibit. I did.
13 MR. GROSSMAN: Yes, we did locate the exhibits,
14 they've been brought in.
15 MS. GIRARD: And I put it on there. This is 92.
16 MR. GROSSMAN: Mr. Uhre?
17 MR. UHRE: Thank you.
18 MR. GROSSMAN: It's up to you.
19 BY MR. UHRE:
20 Q. Just a couple of general questions before we begin
21 on this exhibit. I think in your testimony you indicated
22 you used the words asphalt and tennis courts kind of
23 together. Are you suggesting that the existing tennis
24 courts are made of asphalt?
25 A. No.

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1 Q. Do you know what they're constructed of?
2 A. Not specifically, I think you brought it up last
3 time.
4 THE COURT REPORTER: I'm sorry, I'm having trouble
5 hearing you.
6 THE WITNESS: No, I don't know, I know that it's
7 an impervious material. That's all I know.
8 BY MR. UHRE:
9 Q. Well if you don't know what they're made of, how
10 do you know it's impervious?
11 A. Based upon any tennis courts that even a clay
12 tennis court is considered impervious.
13 Q. Could you show me in the definition of impervious
14 in the Montgomery County Code where they use the word clay?
15 MR. GROSSMAN: He doesn't have to do that --
16 MR. UHRE: Okay.
17 MR. GROSSMAN: -- and I don't understand why does
18 it make a difference, Mr. Uhre?
19 MR. UHRE: Well I think whether it's to be deemed
20 impervious or not.
21 MR. GROSSMAN: No, I mean, but I'm talking about
22 what is proposed, what I'll be considering is what is being
23 proposed. So why does it make a difference?
24 MR. UHRE: You're correct. I'm sorry.
25 MR. CHEN: So you're ignoring the preexisting or

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1 the existing development?
2 MR. GROSSMAN: I'm not ignoring it, I'm just going
3 to evaluate compatibility based on the proposed development.
4 MR. CHEN: Well then why is it, candidly or
5 respectfully, why isn't Mr. Uhre's question very germane?
6 Because what I understood where he was going is if you're
7 going to talk about this witness has, how wonderful this
8 site proposal would be as far as runoff and controlling
9 runoff, there's got to be a comparative basis and it seems
10 to me if you're talking then without a basis, you're looking
11 at the existing use.
12 MR. GROSSMAN: Yes. That's a fair point. There
13 isn't an element of comparative in the sense that one looks
14 at the fact that water flow will be diminished and off the
15 property will be diminished considerably that is that if
16 it's an improvement in a current state of being in terms of
17 what it's like. In terms of other compatibility features,
18 we usually evaluate it in terms of what is proposed. But I
19 understand your point I just don't know that it makes a real
20 difference whether or not the definition of clay whether it
21 be pervious impervious. I just don't see that factoring
22 into my decision.
23 BY MR. UHRE:
24 Q. Turning now to Exhibit 92, do you agree with the
25 testimony of your colleague that the vertical evaluation at

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1 the AA point would be approximately 5 feet of concrete plus
2 another 6 foot of fence?
3 A. the AA section, you mean?
4 Q. Right where AA intersections --
5 A. Are you talking about the --
6 Q. -- right where it intersects with the edge of the
7 MEP.
8 A. So right here?
9 Q. Correct.
10 A. And you're asking what?
11 Q. Your colleague testified that the concrete
12 elevation at that level of the MEP would be approximately 5
13 feet plus the 6 foot fence on top of that would be a total
14 of 11 feet at that point. Would you agree with that?
15 A. I would agree that the MEP is presently 5 foot
16 above grade at that point. The fence is actually not part
17 of any plan presently.
18 Q. I'm sorry, I'm trying to understand then. I
19 specifically asked Mr. Sloan whether this was including the
20 fence part of the proposed plan for Brandywine and he
21 categorically said yes. Are you saying it's not?
22 A. I'm saying that there's a privacy fence along the
23 property line, but there's nothing proposed on top of the
24 micro bio filtration.
25 Q. Just so I understand correctly, I'm just trying to

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1 understand what the proposal is. Are you saying that the
2 fence on top of the MEP is not part of --
3 MS. GIRARD: Objection. Asked and answered.
4 BY MR. UHRE:
5 Q. -- the Brandywine --
6 MR. GROSSMAN: Yes, he's answered. He said there
7 was no fence planned on top of the MEP. That's what his
8 answer is. The fence along the property line not on top of
9 the MEP. That's what his answer is.
10 BY MR. UHRE:
11 Q. If we were to calculate the elevation of the MEP
12 right at the property line, what would be the elevation of
13 the vertical MEP above the existing elevation at the
14 property line?
15 A. I don't know offhand, it will vary because there's
16 a slope running along the face of the wall. It's not a
17 constant.
18 Q. In looking then at the truck turn around at the
19 MVP, if you have a drop of at least five feet, are railings
20 necessary around the MEP?
21 A. Railings are required for any drop greater than 30
22 inches.
23 Q. And how high would those railings be?
24 A. 42 inches, normally in height.
25 Q. So even without the fence you would have 42, just

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1 so I'm understanding, you'd have 42 inches or 3 and a half
2 feet of railings plus five feet of vertical concrete, would
3 that be correct?
4 A. No. Because we're not proposing a railing on the
5 far side, we're proposing at the drive aisle side. Because
6 the railing is to protect pedestrian or vehicles from going
7 over it. So the railing will be at the curb line, not at
8 the face of the wall common with all the property.
9 Q. So you're saying that the railings will be between
10 the truck turnaround and the edge of the MEP?
11 A. Here rather than here. They haven't been final
12 designed yet, but that's what I would propose.
13 Q. And your statement would be that even though
14 railings would be necessary there where there is no drop to
15 the turnaround, railings would not be necessary around the
16 outside edge which has a drop greater than 30 inches?
17 MR. GROSSMAN: Mr. Uhre, I don't quite understand.
18 How does that railing affect the compatibility issues at
19 all? How does that play in?
20 A. I think the fence and the railing and the vertical
21 go right to the point of whether or not this is an accessory
22 structure or not, whether it meets the setback standards for
23 retaining wall which is what the other witness also stated
24 it was. And I'm simply trying, we've been from the
25 beginning trying to get detail on this truck turnaround,

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1 details as it relates to elevations and it keeps changing on
2 us. So I'm simply trying to establish --
3 MR. GROSSMAN: So you're inquiring as to whether
4 the storm water management facility is an accessory
5 structure? Is that what you're saying?
6 MR. UHRE: I'm basically stating when you have the
7 storm water management structure on a vertical above the
8 level of the property line or the slope, for 5 feet and you
9 would have a fence of 6 feet on top of that or a railing of
10 42 inches that exceeds the 6 and a half foot definition of
11 what can be constructed at the property line and would be
12 subject to setback.
13 MR. GROSSMAN: Well are you claiming that the
14 storm water management facility should be considered an
15 accessory structure. Is that what you're saying?
16 MR. UHRE: Their own witness stated it was a
17 retaining wall.
18 MR. GROSSMAN: Well how about just answering my
19 question.
20 MR. UHRE: Okay.
21 MR. GROSSMAN: Are you saying that? Are you
22 suggesting that I should evaluate a storm water management
23 facility as an accessory structure?
24 MR. UHRE: I am saying that when a storm water
25 management structure is visible in height above the slope of

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1 the property line, that yes it should be evaluated as an
2 accessory structure.
3 MR. GROSSMAN: All right. And so do you have any
4 law that suggests that in the Zoning Ordinance?
5 MR. UHRE: No, sir, other than the definition of a
6 structure, which I believe it meets and by their own
7 definition their witness said it was a retaining wall.
8 MR. GROSSMAN: Okay. Do you want to respond to
9 that on that issue in terms of whether or not a storm water
10 management facility should be considered an accessory
11 structure?
12 MS. GIRARD: I'm going to need to pull the
13 definitions of structure. My gut is that I've never known
14 that to be the case, but I'd have to pull the definition.
15 MR. GROSSMAN: Well it would fit into the
16 definition of structure. The question is whether that's
17 considered an accessory structure in the sense that
18 accessory structure --
19 MR. KAUFMAN: They're not described as one.
20 MR. GROSSMAN: -- as governed under the Zoning
21 Ordinance. But in any event, all right, I just wanted to
22 know why we're going into this issue because it seems to
23 me that it is, I've never had anybody suggest before that a
24 storm water management facility should be evaluated as an
25 accessory structure in terms of setbacks or whatnot. So if

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1 that's what you're pointing to, I'd like to know what the
2 legal basis is for that suggestion so we don't waste a lot
3 of time going over issues that are not really issues in the
4 case.
5 MR. KAUFMAN: To our knowledge a storm water
6 management facility has never been defined in the Code as an
7 accessory structure.
8 MR. GROSSMAN: Well let's get a little bit my
9 knowledge, let's get actual what the Code says.
10 MR. KAUFMAN: Well the only thing he said he's
11 relying on is the definition of a structure.
12 MR. GROSSMAN: Yes, we know it's a structure and
13 almost anything is a structure if it's got a permanent
14 attachment.
15 MR. KAUFMAN: We will certainly give you a --
16 MR. GROSSMAN: So. But I don't want to waste
17 everybody's time on an issue that's not really an issue. So
18 I don't, just aside from the question of whether or not it
19 meets the definition of accessory structure, and therefore
20 anything that might apply to that, the question would be
21 does it impact compatibility at all.
22 MR. UHRE: I believe, I'm sorry, Mr. Grossman, I
23 believe that it impacts in very real terms the visibility
24 enjoyed by the Paul's from their property by having this
25 type of structure right at their property line, where

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1 they're going to be staring at something some 20 feet wide
2 with a huge concrete wall with a railing or fence on top of
3 it, has a very real impact on their property value.
4 MS. GIRARD: Mr. Grossman, --
5 MR. GROSSMAN: Just if I may --
6 MS. GIRARD: -- can we suggest the Paul's are here
7 represented by counsel.
8 MR. GROSSMAN: Right.
9 MS. GIRARD: But I don't know --
10 MR. GROSSMAN: No, he has a right to -- no, but
11 no. To the extent that he is addressing a compatibility
12 issue whether it's the Paul's or the neighborhood in
13 general, he has a right to cross-examine. The question is
14 whether or not his questioning really goes to a
15 compatibility issue. I'm willing to be convinced yes or no
16 on the point but he certainly has a right to inquire as to
17 things that affect compatibility.
18 MR. CHEN: If I may just jump in for a moment?
19 MR. GROSSMAN: Yes, sir.
20 MR. CHEN: My clients don't object to Mr. Uhre
21 asking these questions, but I will alert the Examiner that
22 this is an issue that I intend to address somewhat
23 differently the approach I'm taking from Mr. Uhre is taking,
24 but certainly I think I agree with you and my clients
25 strongly agree that his line of inquiry does go to a

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1 compatibility issue and it's going to be revisited later on
2 through further examination.
3 MR. GROSSMAN: Well if you don't agree with me, I
4 don't have a position as to whether or not it's
5 compatibility. I'm just saying --
6 MR. CHEN: If I said it, I didn't mean to say
7 that.
8 MR. GROSSMAN: I'm saying that he has a right,
9 whether or not it affects --
10 MR. CHEN: Yes.
11 MR. GROSSMAN: -- the Paul's, he has a right to
12 inquire about things that impact.
13 MR. CHEN: That's what I thought. That's what I
14 agreed with.
15 MR. GROSSMAN: Okay.
16 MR. UHRE: I think, Mr. Grossman, what I'm trying
17 to inquire is exactly what their plan is. We have had now
18 two versions of what the plan is and how are we supposed to
19 be able to respond if we don't even know what their plan is?
20 MR. GROSSMAN: Well, when you say two versions, I
21 mean there have been a number to some extent these things
22 are always a work in progress. But let's hear from
23 applicant's counsel. Is there a change on the issue of
24 whether or not there will be a fence on top of the storm
25 water management facility?

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1 MS. GIRARD: No. I think that I just read the
2 transcript recently, I think Mr. Sloan was clear that the
3 fence was not currently shown on the plans, but that it was
4 something that was being proffered, you know, and further
5 trying to be responsive to the concerns that we were hearing
6 to put a fence up there to further mitigate any impacts from
7 lights or noise or whatever. I think it was more something
8 that Mr. Sloan suggested may be agreeable to the Hearing
9 Examiner and to the Paul's.
10 MR. GROSSMAN: Okay. But right now it's not in
11 the plans?
12 MS. GIRARD: Correct.
13 MR. GROSSMAN: Okay.
14 MR. CHEN: And let me jump in on that.
15 MR. GROSSMAN: Yes?
16 MR. CHEN: Consistent with what Mr. Uhre is
17 saying, this by the applicant is a consistent moving target.
18 The testimony, the comments of counsel, you've got to stand
19 on something and quite frankly my clients and I think Mr.
20 Uhre is at a disadvantage when they keep saying okay you
21 want this, yes, oh you're concerned with that, oh we can do
22 that. That's a moving target and that's not right.
23 MR. GROSSMAN: That's not a disadvantage to your
24 clients or to anybody in the community, it's an advantage
25 when the applicant is flexible try to adjust things to meet

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1 community concern. So it happens all the time as you know
2 Mr. Chen, in any complex hearing of this nature. If there
3 is a willingness by the applicant to try to address the
4 concerns and whether it's not by an adjustment of the plans
5 or by a condition that's imposed that doesn't make it worse
6 for the community, it makes it better for the community.
7 MR. CHEN: Well, I'm a little bit concerned about
8 what you just said. Because you are the decision maker --
9 MR. GROSSMAN: Right.
10 MR. CHEN: -- and you just characterized this type
11 of an approach as responding to the community concerns to
12 resolve those concerns. That, to me, raises a presumption
13 that the decision maker is interpreting that the applicant
14 is responding and satisfying community concerns. I don't
15 think that's appropriate.
16 MR. GROSSMAN: That's what counsel just said. She
17 said that it was suggested as part of a potential response
18 to a community concern. I'm just going by what she said.
19 MR. CHEN: Okay.
20 MR. GROSSMAN: And this happens all the time in
21 land use hearings where there are issues that come up that
22 affect the community, and an applicant is or is not willing
23 to agree to some change, sometimes changes are imposed on an
24 applicant by conditions of a grant. Sometimes their
25 application gets rejected because they won't accommodate

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1 things. But it's not a harm to the community if an
2 applicant is willing to make changes to accommodate
3 community requests. Anyway, enough time on that issue. Mr.
4 Uhre, do you have additional questions?
5 MR. UHRE: Mr. Grossman, I would simply go back to
6 the testimony of Mr. Sloan.
7 MR. GROSSMAN: Yes.
8 MR. UHRE: You were questioning Mr. Sloan exactly
9 on this point during his testimony as was I, and in answer
10 to the question so as I understand what we're saying, you're
11 attaching a 6 foot fence to the top of the MEP, is that
12 correct? Correct.
13 Now there was no equivocation, it was then made
14 part of the plan. I'm just trying to understand if it's
15 still part of the plan or as counsel is now saying, the
16 fence has now disappeared. I mean I just want to --
17 MR. GROSSMAN: Fair point, Mr. Uhre, so let's hear
18 from the --
19 MS. GIRARD: If you give me a minute to find it.
20 There are references by Mr. Sloan to the fact that it's not
21 part of the plans. Exactly what I just represented is in
22 fact in the transcript. I just need a minute to find it.
23 MR. GROSSMAN: What was the page in the
24 transcript?
25 DR. PAUL: 221.

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1 MR. UHRE: 221? I was on 200, 199.
2 MR. GROSSMAN: Give me your cup. Here you go.
3 THE WITNESS: Thank you.
4 MR. GROSSMAN: You're welcome.
5 UNIDENTIFIED PERSON: No, you're fine.
6 MS. GIRARD: Can I suggest it might take me a
7 couple of minutes to find it, so rather than have everyone
8 wait --
9 MR. UHRE: I think it's about 199 --
10 MR. GROSSMAN: 199, yes, I don't see the 221.
11 MR. UHRE: Yes, sir.
12 (Discussion off the record.)
13 MR. GROSSMAN: All right. So I'm looking at 199
14 where it says okay but is there anything on the planned
15 portion of it that shows me this additional fence. The
16 witness, it's only no in plain view it looks more like just
17 a piece of the wall so we indicate that more clearly with
18 that. Mr. Grossman. Yeah. I think it would have to, if
19 you're actually changing the plan and whether you call it
20 your technical terms an amendment or not, it's an amendment
21 for purposes of the Zoning Ordinance. The witness. We
22 have, we haven't put, we haven't put it on the plan yet we
23 don't know that it was necessarily something that you would
24 want to see. And I responded I'm just saying and it goes on
25 for there.

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1 MS. GIRARD: I'd also direct you to 220 where we,
2 he further was talking about it's trying to further mitigate
3 any visibility or adverse impacts. And then it came about
4 as a result of these hearings.
5 MR. KAUFMAN: What line?
6 MS. GIRARD: Well it starts at line 6.
7 MR. KAUFMAN: Line 6?
8 MR. GROSSMAN: I'm looking at it. So I asked and
9 we talked a little bit about a truck exhibit and new fence.
10 Is it your testimony that we're providing that fence to try
11 to further mitigate, we being Brandywine, trying to further
12 mitigate any visibility or adverse impacts? Answer, it is.
13 It's all above and beyond the requirements for screening and
14 buffering and landscaping to provide even an additional
15 layer of mitigation. So I think there's a fair point here,
16 at some point we have to say whether or not there is going
17 to be a fence on top of the storm water management facility.
18 Where do we stand on that? Is it something that will
19 improve things or not? I mean the suggestion is being made
20 here by Mr. Uhre's questioning that it would not improve
21 things.
22 MS. GIRARD: Right. I --
23 MR. GROSSMAN: It's plain from the transcript that
24 you were offering as something that would mitigate effects.
25 MS. GIRARD: Honestly, if the concern is visual

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1 then we won't include. If the concern is lighting and you
2 know further buffering, then we will include it. It's
3 really --
4 MR. GROSSMAN: All right. So you're flexible on
5 the point but right now it's not in the plans?
6 MS. GIRARD: Correct.
7 MR. GROSSMAN: Okay. So that's where it stands,
8 Mr. Uhre.
9 MR. UHRE: Okay. Thank you.
10 BY MR. UHRE:
11 Q. Going back to the truck turnaround then, could you
12 tell me what the slope is going up to the truck turnaround?
13 From the truck turnaround going down along the side of the
14 turnaround could you tell me what the basic slope is up to
15 the turnaround?
16 A. From here to here, it's labeled at 4 percent.
17 Q. I'm sorry. No, I'm talking outside down to the
18 boundary, down to the Paul's property down on the left hand
19 side --
20 A. From where to where?
21 Q. -- of the truck turnaround.
22 A. From where? From here to here?
23 Q. From the edge of the truck turnaround going
24 basically south, almost due south to the Paul's property
25 line. Or it would be on the left side of the picture of the

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1 truck, I guess, as you have it. What is the slope --
2 A. That's from here to here.
3 Q. -- going down to --
4 A. That's a 3 to one.
5 Q. A 3 to 1 slope. And the distance that that slope
6 will travel or how many feet of elevation does it have?
7 A. Two foot of fall requires 6 feet horizontal.
8 Q. Correct.
9 A. That's what it is.
10 Q. And in the front part of the truck turnaround or
11 the part that is between the MEP and the truck turnaround
12 itself, are there, no if you would go up to --
13 A. You want to do that? No? Okay.
14 Q. If you're looking at the truck turnaround going
15 basically south where it adjoins the MEP are there any
16 guardrails? Well let me ask the question. Are there any
17 guardrails at any location in the truck turnaround to
18 prevent trucks from going into the MEP?
19 MS. GIRARD: Objection. He's already answered
20 that.
21 MR. GROSSMAN: I am not sure that he's already
22 answered that, so I'm going to let him ask the question.
23 THE WITNESS: It's not for the trucks, because
24 that's a curb, so there's a 6 inch curb there. So there is
25 not a guardrail required for the truck.

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1 BY MR. UHRE:
2 Q. So there's no guardrail necessary --
3 A. Right.
4 Q. -- for the trucks. So there would be nothing to
5 prevent the trucks from sliding over a 6 inch, you're saying
6 a 6 inch guardrail --
7 A. It's a curb, six-inch curb that goes into the MEP.
8 MS. GIRARD: Objection. What is the relevance of
9 the trucks going into the MEP have to do with compatibility?
10 MR. GROSSMAN: All right. Mr. Uhre?
11 MR. UHRE: They can ask, to do, what, with safety.
12 You've got a four percent slope going down to that edge.
13 You've got huge --
14 MR. GROSSMAN: That's an onsite issue. That's
15 not, I mean safety is an issue but I'm not sure that that
16 particular aspect of it is on that we usually review, but
17 I'm going to let him inquire as to it. Go ahead.
18 BY MR. UHRE:
19 Q. So there would be no other railing or guardrails
20 other than the 6 inch curb between the MEP and the truck
21 turnaround, is that what your testimony is?
22 A. No, I'm not saying that.
23 Q. What would be there?
24 A. The present code is that if there is more than an
25 18 inch fall from the top of the curb to the bottom of the

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1 micro bio planter then a 42 inch safety rail and I'm
2 proposing one along this side of the micro bio planter.
3 MR. GROSSMAN: This side being the east west side?
4 THE WITNESS: Yes, the northerly side, the side of
5 the project and that's required for pedestrian safety.
6 BY MR. UHRE:
7 Q. But the greater than the 30 inch drop on the other
8 side of the MEP would have no such requirement?
9 A. Because it's protected by a rail on the --
10 MR. GROSSMAN: And what you didn't finish the
11 sentence.
12 THE WITNESS: I'm sorry. A rail, this railing
13 proposed on the northwesterly, northeasterly side would
14 forestall a rail needed on the far side. Because you have
15 limited access.
16 BY MR. UHRE:
17 Q. So the pipes then within this MEP shown around the
18 truck turnaround would have perforated pipe?
19 A. No.
20 Q. There would be on perforated pipe in this MEP?
21 A. The perforated pipe is only within the MEP, it's
22 not even shown on this diagram.
23 Q. I'm sorry that was question, if I misstated I
24 apologize.
25 A. This is a solid pipe.

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1 Q. Great.
2 MR. GROSSMAN: This being along the --
3 THE WITNESS: The HGEP pipe outside any of the
4 storm water facilities are solid pipe just to convey runoff.
5 BY MR. UHRE:
6 Q. Would there be any trees planted within 15 feet of
7 the perforated pipe?
8 A. Yes.
9 Q. And is that a good management practice?
10 A. I'm getting outside of my expertise, but they're
11 planted in planters all the time. It just depends on the
12 depth of the roots.
13 MR. UHRE: I have no further questions.
14 MR. GROSSMAN: All right. Mr. Chen?
15 MR. CHEN: Thank you.
16 CROSS-EXAMINATION
17 BY MR. CHEN:
18 Q. I'm going to jump around a little bit because I'm
19 trying to stay pertinent to the questioning. Going to
20 Exhibit 105-A, sir, excuse me, 107. I'm looking at 107-A.
21 UNIDENTIFIED PERSON: I think that's it.
22 MS. GIRARD: Yes.
23 UNIDENTIFIED PERSON: What is that?
24 MS. GIRARD: This one.
25 BY MR. CHEN:

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1 Q. You've got Exhibit 107, sir?
2 A. Yes.
3 Q. Okay. Thank you. As I understand it this exhibit
4 was prepared since the last hearing?
5 A. Is that a question?
6 Q. Yes. Is that right?
7 A. I believe that's the case. Yes.
8 Q. And I also understand your testimony the area
9 outlined in red where it's noted or labeled existing
10 drainage area 0.47 acres. Do you see that, sir?
11 A. I do.
12 Q. And as I understand it from your testimony that is
13 the study area that you considered since the last hearing?
14 A. To be more explicit the surface drainage area.
15 Q. Yes.
16 A. Yes.
17 Q. And as I understand it and correct me if I'm not
18 mistaken, my recollection from your testimony is that this
19 area and it's 0.47 acres, this is the area under the
20 existing conditions that drains onto the Paul property?
21 A. The surface drainage area existing conditions,
22 yes.
23 Q. Okay. Under existing conditions, is there any
24 other drainage onto the Paul property from the site?
25 A. As the picture you provided there is. There is a

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1 storm drain pipe.
2 Q. Okay. Well do you know if that storm drain pipe
3 is discharging any surface water onto the Paul property
4 other than from that 0.47 acre area?
5 A. I can say that it's much of it, it's just all
6 asphalt not, not a storm drain conveyance. I don't know
7 where that pipe upstream end is. I didn't account for that
8 additional amount of flow onto the Paul property.
9 Q. Okay. So I'm a little bit confused. You were
10 looking at the discharge pipe shown in the photograph that's
11 Exhibit Number --
12 MR. KAUFMAN: It's right here.
13 MS. GIRARD: 99-C.
14 BY MR. CHEN:
15 Q. 99-C, is that right, sir?
16 A. I can't see it right now. Yes.
17 Q. Now can you tell us and tell the Examiner, excuse
18 me, what area is draining to that discharge point?
19 A. I, as I just said, the surface drainage area is
20 what's outlined in red.
21 Q. So in layman's understanding am I correct in
22 interpreting what you just said to mean that the discharge
23 area that is shown in that exhibit, that photograph, is
24 discharging water from the 0.47 acre area, is that correct?
25 A. As a minimum. Like as I said it's the surface

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1 drainage area, it doesn't account for the storm drain pipe,
2 which may be, probably is more than.
3 Q. Okay. When you say doesn't account for the storm
4 drain pipe what do you mean by that?
5 A. I mean that the storm drain may be conveying water
6 in addition to the outline in red may be draining a roof as
7 far as I know. There's no plan that prescribes it.
8 Q. Okay. So that under the existing conditions that
9 it is your understanding or your opinion that the discharge
10 point that you've shown in that or is shown in that
11 photograph is not only discharging surface water from the
12 0.47 acre site, but it also could include other drainage?
13 A. It could.
14 Q. Okay. Have you calculated that at all?
15 A. I have no idea what it is.
16 Q. Okay. You also testified as I recollect, that
17 under again current conditions, the tennis club improvements
18 that there are four discharge points, is that correct, sir?
19 A. There are four storm drain points identified in
20 the Alta Survey as prepared by VIKA and observed by me.
21 Q. Where are they again, sir?
22 A. There is three along this, the northerly property
23 line and one along the southwesterly property line.
24 Q. This is existing conditions?
25 A. Existing conditions.

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1 Q. Okay. There is three on the northern side and one
2 where?
3 A. Along the common line between the Paul property
4 and the project.
5 Q. Okay. Including that four you are or are not
6 including the pipe discharge that's shown in the photograph
7 that is, excuse me, Exhibit Number 99-C?
8 A. I'm not quite certain of that answer, because that
9 pipe was not observed by me. I saw it when you showed the
10 picture.
11 Q. Okay. So you're telling us that when VIKA
12 analyzed the subject site and you yourself participated in
13 that analysis, that VIKA did not identify the discharge pipe
14 that is shown in Exhibit 99-C as a discharge point for
15 surface water off the subject property onto the Paul
16 property, is that right?
17 A. I'm not certain of that. As I said before,
18 existing conditions are secondary to ESD and the MEP site.
19 Q. Well let me ask you today, under existing
20 conditions how many points of discharge of surface water is
21 there that discharge water onto the Paul property from the
22 subject property?
23 A. We've only identified the one on this plan which
24 is shown coming here.
25 Q. Here being?

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1 A. Here being the northwesterly near the apex of the
2 triangle, common to the Paul property.
3 Q. Well even today, even after seeing the photograph
4 in 99-C, you're not including that as a point of discharge
5 of surface water onto the Paul property?
6 A. As I previously noted it may have been providing
7 additional runoff but it was not part of the plan.
8 Q. I understand the plan. Please, my question is not
9 the plan, I'm talking about what's there today, sir.
10 A. Well that may be the fourth outfall as far as I
11 know, I'm not sure.
12 Q. Oh.
13 A. Because existing conditions are not the basis of
14 ESD design.
15 Q. So as I understand what you just said you're not
16 sure whether the discharge point illustrated or shown by
17 Exhibit 99-C is or is not the fourth discharge point from
18 the subject property?
19 A. That's right.
20 Q. I thought you participated in the VIKA study to
21 identify all existing --
22 MS. GIRARD: Objection. He's asking our witness
23 to identify an exhibit that he submitted and he's not --
24 MR. GROSSMAN: I understand. I understand he has
25 a right to ask, you know, in terms of the weight to be given

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1 the testimony whether or not the witness was observant. I
2 think that's what this in effect goes to.
3 MR. CHEN: Yes.
4 MR. GROSSMAN: So he has a right to ask that
5 question and the witness has testified, I mean I think we've
6 beaten this into the ground.
7 MR. CHEN: But he shifted. He did shift, because
8 he said no it was not about five minutes ago and now he's
9 saying he's not sure.
10 MR. GROSSMAN: Okay. But in any event he says --
11 MR. CHEN: I just want to know --
12 MR. KAUFMAN: I object. Mr. Chen keeps trying to
13 confuse this witness so that he plays into whatever he's
14 trying to take it.
15 MR. GROSSMAN: Mr. Kauffman, he's entitled to the
16 cross-examination but I think that we've exhausted this
17 point and we're going to move along to something else. We
18 know that --
19 MR. KAUFMAN: It's a game.
20 MR. CHEN: No it's not. No, it's not at all.
21 MR. GROSSMAN: He's got a right to cross-examine
22 the witness about what that picture is depicting in
23 reference to the outfall that the witness described.
24 MR. KAUFMAN: Another thing, Mr. Examiner, my
25 client has asked to come on to this property to do a survey,

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1 they were not permitted. Their engineers were not permitted
2 to come onto this property.
3 MR. UHRE: You can address that.
4 MR. CHEN: They can address that when, I mean is
5 Mr. Kauffman sworn? There is a case on it. There is a
6 reported case on it. If Mr. Kauffman is going to give
7 factual information he's got to be sworn and subject to
8 cross-examination.
9 MR. GROSSMAN: Well --
10 MR. CHEN: And I'm going to want to cross-examine
11 him on that point, so I just want to know.
12 MR. KAUFMAN: I'm not testifying.
13 MR. GROSSMAN: In the old Zoning Ordinance there
14 was a provision that and I can't recall if they passed it
15 along to the new one saying that representations of counsel
16 were binding on the case. But I understand your point. We
17 don't have to press this issue any further, we've heard
18 enough about this outfall versus where the picture is so.
19 MR. CHEN: Well, I'll give you the case cite.
20 There's more --
21 MR. GROSSMAN: You don't have to give me the case
22 cite. To me it's not a significant point at this juncture.
23 MR. CHEN: Okay. Sir, the applicant has spent a
24 substantial amount of time talking about storm water runoff
25 from the subject property onto my client's property. All

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1 that I'm trying to nail down is how many under existing
2 conditions and this gentleman conducted part of the
3 elevation of existing conditions and all I want to know is
4 how many points of discharge of runoff currently are on to
5 my client's property.
6 MR. GROSSMAN: Well he's already answered that
7 question a number of times. He said one that he's aware of
8 and he's not sure whether the picture in 99-C --
9 MR. CHEN: Okay.
10 MR. GROSSMAN: -- depicts that one.
11 MR. CHEN: Okay.
12 MR. GROSSMAN: That's been answered.
13 MR. CHEN: Fine. Okay.
14 BY MR. CHEN:
15 Q. Sir, do you know how much of the surface water
16 runoff of the existing use of the site is being discharged
17 onto the Paul property?
18 A. No, not entirely because of that picture you
19 showed me. All I have defined is the drainage area for
20 runoff.
21 Q. Okay. And what is that?
22 A. 0.47 acres I think it says.
23 Q. That area in red?
24 A. Yes.
25 Q. Thank you. Now under the proposed conditional use

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1 how many points of surface water runoff discharge from the
2 site will there be?
3 A. Four.
4 Q. Where will they be located, sir?
5 A. Three along the northerly side of the property
6 into the golf course and one into the golf course at the
7 northwest apex of the triangle.
8 Q. Thank you. Okay. Let's, if I may, I apologize.
9 I just want to get some clarification on that. So other
10 than the three that are on the north side of the property,
11 the fourth will be discharging onto the golf course is your
12 testimony.
13 A. Yes.
14 Q. Let's stick with Exhibit 107. Sir, could you show
15 the Examiner where that fourth discharge point is?
16 A. The fourth?
17 Q. The fourth discharge. That one that goes onto the
18 golf course you said.
19 A. There is the existing pipe here.
20 MR. GROSSMAN: Here being?
21 THE WITNESS: There.
22 BY MR. CHEN:
23 Q. Here, there and everywhere.
24 A. At the northeast corner. But the ones we're
25 designing are this one, this one and this one.

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1 MR. GROSSMAN: This one being along --
2 MS. GIRARD: You have to explain where this one.
3 THE WITNESS: Well I've been asked to explain it
4 before. So the northwest apex and then these two here plus
5 this one at the northeast apex.
6 THE WITNESS:
7 Q. If I may go to the western side, the fourth one at
8 the apex. Thank you, sir. There is a little rectangular
9 spot, do you see where I'm indicating, sir?
10 A. Yes, I see it.
11 Q. Is that the discharge point?
12 A. That's the existing discharge point that we used
13 for, just where the drainage showed it.
14 Q. Do you have a plan showing the proposed discharge
15 point?
16 A. Yes, this is it.
17 Q. Okay. Show me on Exhibit 107 or any other exhibit
18 where the discharge point will be.
19 A. Right there.
20 Q. Okay.
21 MR. CHEN: Mr. Kaufman, may I use your green felt
22 tip?
23 MR. KAUFMAN: Can you go under oath and ask for
24 it?
25 BY MR. CHEN:

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1 Q. Could you highlight that area with this green felt
2 tip, sir, on Exhibit 107?
3 A. Showing the flow path?
4 Q. Well not the path, the discharge point. Okay.
5 Now on that little green dot that you've put, what will be
6 the improvement to treat the discharge, if anything?
7 A. That comes from this storm water facility here.
8 Q. Okay.
9 MR. GROSSMAN: The storm water facility being the
10 one --
11 THE WITNESS: The storm water facility at the
12 turnaround adjoining the Paul property, such as per our
13 previous conversations.
14 MR. GROSSMAN: Okay. Thank you.
15 BY MR. CHEN:
16 Q. Okay. Now if I may, when I look at your green dot
17 there is a little shaded area that's rectangular that seems
18 to be going in a westerly direction, am I correct, sir?
19 A. That this one --
20 Q. No, that's not what I'm talking about, sir. I'm
21 talking up here, up here where you put the green dot.
22 A. Uh-huh.
23 Q. Do you see that where I'm pointing?
24 A. Where the fence line is?
25 Q. No, I'm looking, sir, at this little rectangular

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1 area.
2 A. Oh that riprap.
3 Q. That's riprap?
4 A. Yes. It's a 20 foot section.
5 Q. And I take it water will come out of that green
6 dot onto the riprap?
7 A. At a zero percent slope?
8 Q. Whatever. And then the riprap takes it to the
9 property line?
10 A. To where that red arrow is.
11 Q. Okay. Well --
12 A. Do you have that exhibit?
13 Q. Okay. Help me for a minute, sir. Do you see
14 where that riprap is on the property line? I'm pointing at
15 it. DO you see it?
16 A. It's not on the property line.
17 Q. Where is the property line?
18 A. The property line is where the, the end of the
19 arrow is.
20 Q. I don't want to talk about that area. I want to
21 talk about where the riprap is, sir.
22 A. Okay. Do you want me to highlight it for you?
23 Q. Yes, please. Just the riprap. Okay. Thank you.
24 Now what happens to the water, at what point -- strike that.
25 As I look at the area that you've highlighted in yellow, it

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1 appears to me to be at the property line, am I mistaken?
2 A. It's running along, are you referring to the
3 Paul's property line?
4 Q. Yes.
5 A. It's running parallel, it hits at a corner edge of
6 the property line, yes.
7 Q. Okay. And so you're saying no water is going to
8 go onto the Paul property?
9 A. That's right.
10 Q. At that point? Okay. What's going to stop it
11 from going onto the Paul property?
12 A. It's been graded such that it flows, coming
13 straight down.
14 MR. GROSSMAN: Let's not markup the diagram
15 anymore.
16 THE WITNESS: Okay.
17 MR. GROSSMAN: Because I understand now the green
18 highlighting is the point of discharge and the riprap.
19 THE WITNESS: There is contours that create lower
20 that outfall such that it channelized it towards the golf
21 course.
22 BY MR. CHEN:
23 Q. Okay. So you're saying that at that point even
24 though it's on the property line that it would be
25 constructed in such a way that there will be no water that

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1 will go onto the Paul property?
2 A. That is correct.
3 Q. Okay. I'm going to be jumping all around, I'm
4 sorry. Let's go back to that, Mr. Uhre's -- I'm sorry, yes,
5 that's the one I want. Just go back for a minute. Going
6 back to this photograph of the discharge point, 99-C, do you
7 remember you were using it --
8 A. I remember.
9 Q. Your testimony that after the conditional use has
10 been installed or developed, that there will no water runoff
11 onto the Paul property from the subject property?
12 A. That wasn't my testimony.
13 Q. What will be the condition after construction of
14 the conditional use?
15 A. 6 percent of, if it's going the way it's designed
16 about 6 percent would still be going at that 0.47 acres
17 which you can do that math, I guess.
18 Q. Okay. So that pipe or whatever it is will still
19 be discharging --
20 A. No, the pipe won't be. This is only surface
21 runoff that I show on that.
22 MR. GROSSMAN: He's indicated on the Exhibit 107
23 the proposed drainage area will be 0.03 acres.
24 THE WITNESS: Thank you.
25 MR. GROSSMAN: To the Ronald Paul property from

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1 the Brandywine Senior Living.
2 BY MR. CHEN:
3 Q. And that will still exist?
4 A. Yes.
5 Q. Okay. Just so I'm clear on this, on this
6 discharge point that you've highlighted for us, what
7 percentage of the storm water runoff from the site will go
8 and be discharged off the site at that point?
9 A. I don't know off hand.
10 Q. Well, as I understand it just looking at the pipe
11 -- strike that. Are you telling us that you do not know the
12 amount or the percentage of runoff that will be discharged
13 from the site at each of the four proposed discharged points
14 under this proposal?
15 A. You're correct.
16 Q. Your report talks about -- bear with me one
17 second. You're familiar with your report, aren't you, sir?
18 A. I wrote it, yes.
19 Q. Okay. On page 4 you talk about runoff through
20 soil based media and then convey it to safe outfalls through
21 storm drain system. Do you see that?
22 A. Yes, I'm aware of it.
23 Q. But then the next paragraph says the runoff from
24 the larger storms will be conveyed through overflow inlets.
25 Do you recall that? Where are they located?

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1 A. In each of the micro bio filtration planters and
2 basics. They all have a yard inlet that controls runoff
3 that's beyond the design storm of the facility.
4 Q. Okay. And does that mean that for larger storms
5 the runoff will go to each one of those locations?
6 A. That's correct.
7 Q. Okay. And I apologize when we spoke about Mr.
8 Uhre's question a little bit of a different approach to it.
9 As I heard your testimony you also are involved in the
10 proposed grading for the site?
11 A. Yes.
12 Q. Am I correct in understanding that there's going
13 to be grading towards the westerly side of the service road
14 to raise up the elevation?
15 A. How do you -- I'm not sure where you're referring
16 t.
17 MR. GROSSMAN: Yes, the grading from where to
18 where?
19 BY MR. CHEN:
20 Q. I'm talking just generally. Going back towards
21 this area from the service road getting down into the
22 turnaround area that there will be grading on site to
23 elevate, raise up the grade?
24 A. No. There is, at this point it's a foot higher.
25 MS. GIRARD: This point being where?

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1 MR. GROSSMAN: This point being?

2 THE WITNESS: This point being the northerly end

3 of the turnaround adjacent to the golf course is

4 approximately one foot lower than existing grade, the

5 asphalt will be at the north, southwesterly turnaround where

6 the micro bio filtration based planter has been discussed

7 the grade is raised because in that area is where the slope

8 is exceeds Code requirements. It exceeds 3 to 1.

9 BY MR. CHEN:

10 Q. Yes. What is the current elevation at that

11 turnaround area at the present time?

12 A. I'm not really sure; this map doesn't show it.

13 Q. Do you have that exhibit will?

14 A. Yes, there's a lot of them here.

15 UNIDENTIFIED PERSON: The NRI, this one.

16 THE WITNESS: The storm water or the conditional

17 use plan. The NRI is existing conditions.

18 UNIDENTIFIED PERSON: Where are the existing

19 conditions?

20 MR. GROSSMAN: Mr. Chen, what exactly will your

21 line of questioning go to prove here? What is it that we're

22 heading, what are we proving here?

23 MR. CHEN: I want to find out what's going to

24 happen at this location that's 6 inches off my client's

25 property.

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1 MR. GROSSMAN: No, I understand but I mean --

2 MR. CHEN: That goes to compatibility I thought.

3 MR. GROSSMAN: That's in a general way. I mean

4 specifically you've asked a number of questions about

5 drainage and you've gotten the answers regarding the

6 drainage and the outfalls. I'm not sure what this can

7 elicit that is going to determine any better, the

8 compatibility. And I'm asking you to explain to me what

9 does this elicit that will go to that?

10 MR. CHEN: Well I'm trying to --

11 MR. GROSSMAN: So I can focus in on what your

12 point is.

13 MR. CHEN: -- find out what is going to be

14 constructed 6 inches off my client's property line.

15 MR. GROSSMAN: Well in other words, you're just

16 trying to find out what's going to be built there and I

17 think he's answered that. But go ahead, I'll give you a

18 little leeway --

19 MR. CHEN: I've heard --

20 MR. GROSSMAN: -- I don't want to go on

21 indefinitely on.

22 MR. CHEN: No, I've heard a lot of talk about the

23 micro biological retention area.

24 MR. GROSSMAN: Right.

25 MR. CHEN: I think it's a bit more than that.

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1 MR. GROSSMAN: Okay. Proceed.

2 THE WITNESS: I haven't answered that one.

3 BY MR. CHEN:

4 Q. Thank you. What is the current elevation?

5 A. The existing grade of that closest point to the

6 Paul's property at the corner of the micro bio retention

7 planter is elevation 388 in existing conditions.

8 Q. Okay. And what will it be after the installation

9 of the turnaround?

10 A. It will be 388 at the surface and that's where the

11 5 foot extension for the storm water facility is at its

12 maximum height.

13 Q. Is there going to be any requirement for backfill

14 at that area?

15 A. No.

16 Q. And as I understand this map or at least to the

17 exhibit 79-A-i, the micro biological retention facility

18 pretty much butts up against the turnaround area or part of

19 the turnaround area, is that right?

20 A. That's right.

21 Q. And as I understand your testimony it will be 5

22 feet above grade?

23 A. Yes.

24 Q. How much of it will be below grade?

25 A. Well, the whole planter is multiple sections, it's

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1 total depth is 7 and a half feet. So 2 and a half feet

2 then.

3 Q. When you say total depth, I just want to know

4 below grade, how much will be below grade?

5 A. Two and a half feet.

6 Q. So the total height of the structure including

7 below grade will be 7 and a half feet?

8 A. Below surface, yes.

9 Q. Yes. And what will that be consisting of?

10 A. It will be concrete wall.

11 Q. And where will this concrete wall be located?

12 A. At the footprint of the --

13 Q. Okay.

14 A. -- micro bio filtration planter as shown, as we

15 discussed it.

16 Q. So that it'll come within 6 inches of the property

17 line?

18 A. I think so.

19 Q. And what kind of buffer will there be between that

20 facility and my client's property?

21 A. At that corner there is nothing.

22 Q. Do you know what kind of, as I also understand

23 your testimony, in the general buffer area, there is

24 landscaping for proposed?

25 A. Yes.

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1 Q. And can we go back to 106? It's the one that we
2 started out with this morning, sir.
3 A. Okay.
4 Q. Now I direct your attention to what you described
5 earlier this morning as the landscape in the green color.
6 Do you see that, sir?
7 A. I do.
8 Q. Okay. Am I correct in understanding that your
9 testimony was that the green indicates landscaping?
10 A. It does.
11 Q. What will it consist of?
12 A. I'm not in a position, I'm not a landscaper, it's
13 a mix of different plants. I believe that previous, John
14 Sloan addressed that.
15 Q. So when I look at that green area, do you know the
16 age of any of the plantings that are depicted on that --
17 MS. GIRARD: Objection. He just said he's not
18 familiar with the landscaping.
19 MR. GROSSMAN: Well do you know the age?
20 THE WITNESS: I have no idea.
21 MR. GROSSMAN: Okay.
22 BY MR. CHEN:
23 Q. Who told you to put that green in?
24 A. I didn't put the green in.
25 Q. Who did?

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1 A. Someone in our office, based upon the plan.
2 Q. Is that person testifying?
3 A. No.
4 Q. Presumably that person, however, would know what
5 is the nature of that landscaping that is shown in green on
6 that Exhibit 106, is that correct?
7 A. I don't know.
8 Q. So basically all you can tell us about that green
9 area is that you know it's landscaping and that's all you
10 know?
11 A. That's correct.
12 Q. How can my clients find out what that landscaping
13 shown on Exhibit 106 consists of?
14 A. It's shown on the Landscape Plan.
15 Q. Okay.
16 MR. GROSSMAN: Mr. Mitchell, did I understand you
17 testified before that that bio retention facility that gets
18 as close as 6 inches from the property line could be moved
19 back further away from the property line but you put it
20 where you did to be most effective in terms of reducing the
21 amount of flow into the property over to the Paul's
22 property?
23 THE WITNESS: I did say that.
24 MR. GROSSMAN: Okay. And if it were moved back,
25 let's say 10 or 15 feet from the property line, what exactly

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1 would be the impact of that in terms of controlling the flow
2 of water?
3 THE WITNESS: I think it would be marginal. I
4 think that it could be done without causing runoff issues.
5 MR. GROSSMAN: Okay. Mr. Chen?
6 MR. CHEN: Mr. Examiner, based upon your line of
7 inquiry just now, for the record, my clients would object to
8 any condition that would go to the type of relocation that
9 you just inquired of the witness. At least my clients would
10 object without the opportunity to see such a change in
11 amendment to the application and make inquiry about it.
12 Just for the record, you know, we're still in the process, I
13 don't know what's going to happen. But I apologize, but
14 based upon that line of inquiry, I cannot avoid interpreting
15 that as I just did as indicated by my statement.
16 MR. GROSSMAN: Okay.
17 BY MR. CHEN:
18 Q. This will just cut it off. Essentially then you
19 were just, and this is not a new question, I just want a
20 clarification. There is no point in asking you any
21 questions about that landscaping because you don't know
22 anything about the landscaping, is that right?
23 MR. GROSSMAN: He's answered that.
24 MR. CHEN: Yes, okay, I just want to make sure
25 we're clear.

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1 MR. GROSSMAN: He's answered it.
2 MR. CHEN: Okay.
3 BY MR. CHEN:
4 Q. Your report talks about the constraints of the
5 site, do you recall that, sir?
6 A. Excuse me?
7 Q. Your report on page 1 says there are constraints
8 of the site.
9 A. Yes.
10 Q. What are they?
11 A. There is stream valley buffer that runs along the
12 golf course it's easily seen in this picture, the orange
13 dots. There's a wetland buffer in that same vicinity
14 adjacent to the golf course that's shown in blue dots.
15 Q. And so I understand your testimony the proposed
16 development is intended to safeguard or preserve those
17 areas?
18 A. I'm afraid I have to be a little more expansive
19 than that. They're presently disturbed and asphalted and
20 we're going restore them and plant them.
21 Q. Okay. Now were you at the meeting of the Planning
22 Board on this proposed conditional use?
23 A. I don't believe I was. I'm sorry?
24 Q. The Planning Board hearing.
25 A. Oh yes, I was. I was there.

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1 Q. Okay. Do you recall the inquiry that Mr.
2 Dreyfuss, a member of the Planning Board made relative to
3 that area?
4 A. No, I don't.
5 Q. The valley stream buffer area that you just
6 identified. Do you recall that inquiry?
7 A. He said several things, maybe you could narrow it
8 down for me.
9 Q. Do you recall that he mentioned to the staff that
10 the requirements for preserving the stream valley buffers
11 were guidelines, is that correct?
12 A. Yes, I did hear that.
13 Q. Okay. So that as I understand it there's no law
14 but there's guidelines?
15 A. That's what I understand.
16 Q. Okay. And indeed the current improvements that
17 are in there under the tennis club special exception while
18 they do invade that area, we all understand that, they're
19 not illegal?
20 A. That's my --
21 MR. GROSSMAN: I don't know that he's qualified to
22 state whether something is legal or illegal.
23 THE WITNESS: Thank you for saving me.
24 BY MR. CHEN:
25 Q. And as I also understand the proposed conditional

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1 use has been sited and the infrastructure sited on the
2 property so as to not invade or interfere with the stream
3 buffer area and these other sensitive areas on the northern
4 side, is that correct?
5 A. To restore them, yes.
6 Q. Yes. Okay. Your report does say, sir, on page 2,
7 that the proposed conditional use will be screened from view
8 of surrounding properties, do you recall that, it's on page
9 2?
10 A. What page number?
11 Q. Page 2.
12 A. You're on the numeral?
13 MR. GROSSMAN: I'm having trouble finding page
14 numbers on it.
15 THE WITNESS: Yeah, I don't have them, I failed to
16 numerate them.
17 MR. GROSSMAN: It's helpful when they're on there.
18 THE WITNESS: When we take a break, I'll number
19 them.
20 MR. GROSSMAN: That's all right. What's the
21 specific paragraph you're referring to?
22 MR. CHEN: At the very top of the page.
23 MR. GROSSMAN: Okay.
24 BY MR. CHEN:
25 Q. The service areas and parking are screened from

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1 view of surrounding properties by landscaping walls and
2 fencing. Do you see that, sir?
3 A. I do see that.
4 Q. Okay. How will the Paul property be screened from
5 view of this area of the micro biological retention area and
6 the turnaround area?
7 A. With landscaping.
8 Q. Okay. Where are the 25 percent slopes in
9 relationship to the Paul property?
10 A. It was previously shown on the NRI, you can find
11 that. It was shown here too, existing condition plan is not
12 blown up. If you --
13 Q. Give it a second.
14 A. The 25 percent and greater slopes are all the
15 heavy hatched areas.
16 Q. 37-B is the exhibit.
17 A. Which is 37-B at the northwest and southwest areas
18 of the triangular property.
19 Q. And as I understand your report, most of the site
20 are Jacqueline Silts Loam, is that right, sir?
21 A. Those would be, yes.
22 Q. And as I understand those soils, I think that your
23 report says permeability is very slow with those types of
24 soils.
25 A. That's right.

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1 Q. And so that there will be a permeability issue
2 given the soils?
3 A. The existing soils, yes.
4 Q. Yes. You also say there's no forest on the site.
5 And there's only one significant specimen tree, a 24 inch
6 Honey Locust. Do you see that in your report?
7 MS. GIRARD: Is this still on page 2?
8 MR. CHEN: Yes. I'm sorry, yes.
9 THE WITNESS: Oh of the forest and preservation
10 area?
11 BY MR. CHEN:
12 Q. Yes.
13 A. Yes, 24 inch Honey Locust.
14 Q. Where is that tree?
15 A. I'm not certain, I didn't prepare the NRI. This
16 was, I did the engineering portion of the report. Not the
17 full conditional use report. I don't, I'm not a landscape
18 architect, this was actually done by an environmentalist in
19 our company.
20 Q. Okay.
21 MR. CHEN: I'd just note that the prehearing
22 submission said that this or the gentleman that he was
23 replacing would be testifying relative to this report.
24 MR. GROSSMAN: He doesn't know the answer to your
25 question.

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1 THE WITNESS: If you'd like I'll find it for you.
 2 Right here.
 3 MR. KAUFMAN: You've got to say where that is.
 4 THE WITNESS: That's in the northeast apex area
 5 adjacent to the golf course, that's where the 24 inch Honey
 6 Locust is located.
 7 BY MR. CHEN:
 8 Q. Okay. Thank you for whoever gave you that
 9 information.
 10 A. I found it on the plan.
 11 Q. Thank you. And moving to page 3, you also talk
 12 about impacted specimen trees on adjacent properties, do you
 13 see that?
 14 A. Yes.
 15 Q. Are there any such specimen trees on the Paul
 16 property?
 17 A. There is a 24 inch tulip popular but that's not a
 18 specimen tree. There's a 33-inch sycamore, number 13 is a
 19 specimen tree and it's not being impacted.
 20 Q. Okay. To what extent will there be any grading on
 21 the subject property on its northern side where it abuts the
 22 Paul property?
 23 A. With the, it actually abuts the property on the
 24 southwestern side of the project.
 25 Q. I'm only concerned about grading that will be

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1 adjacent to or abutting the Paul property.
 2 A. That's the southwestern side.
 3 Q. Okay.
 4 A. And there's no proposed grading outside the
 5 project.
 6 Q. What grading will occur onsite at that location?
 7 A. That's where I previously highlighted that green
 8 riprap, so it creates a riprap outfall, it lowers the grade
 9 there so that it channelizes to avoid going into the Paul
 10 property.
 11 Q. Got you. Okay. You also state again on page 3
 12 that a 25 foot wetland buffer is provided. Where is that
 13 located, sir?
 14 A. That it's easier to see on this, it's the
 15 turquoise dots that's the buffer for the wetland.
 16 MS. GIRARD: This being what?
 17 THE WITNESS: Being in the northwest and southwest
 18 quadrant of the offsite area of the project.
 19 MS. GIRARD: On Exhibit 106-A?
 20 THE WITNESS: On 106, probably.
 21 MS. GIRARD: 106.
 22 BY MR. CHEN:
 23 Q. Well as I understood the statement on page 3,
 24 maybe I'm mistaken, but I thought it said that a 25 foot
 25 wetland buffer is going to be provided and I assume that

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1 will be on site. Am I mistaken?
 2 A. Your only mistaken that the wetland buffer is
 3 shown for all the wetland including offsite in Paul property
 4 and in the golf course. But it does go into the
 5 northwesterly side at the --
 6 Q. Yes.
 7 A. -- apex on site, but that's the only area where
 8 the wetland buffer protrudes into the project.
 9 Q. I see. Okay.
 10 A. It's not being disturbed. None of the buffer is
 11 being disturbed.
 12 Q. Have you done any calculation as to the amount of
 13 impervious space on the existing site with the tennis club
 14 special exception?
 15 A. No.
 16 Q. Have you done any calculation of what will be the
 17 amount of impervious area on the site after the installation
 18 of the conditional use?
 19 A. Yes.
 20 Q. What will that be?
 21 A. I don't know the answer to that, it's broken out
 22 into some 14 different drainage areas.
 23 Q. Well what would be the total amount of impervious
 24 area on the site?
 25 A. I don't know offhand.

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1 Q. Doesn't the amount of impervious space on a site
 2 influence the amount of runoff?
 3 A. Yes.
 4 Q. Have you done any calculations to ascertain the
 5 amount of runoff from this site after the installation of
 6 the conditional use?
 7 A. Yes.
 8 Q. Has it taken into account the amount of impervious
 9 space on the site after approval of the conditional use?
 10 A. Yes.
 11 Q. But you don't know the amount of impervious space
 12 on the site after approval of the conditional use?
 13 A. Correct.
 14 Q. How can you do that?
 15 A. As I said it's broken into 14 different drainage
 16 areas, each one of them have an amount of impervious area in
 17 them. The total amount I don't have, it could be provided.
 18 But it's a matter of adding up numbers on dozens of
 19 spreadsheets.
 20 Q. Is there any larger building that could be
 21 constructed on this site given the consideration for the
 22 stream valley buffer?
 23 A. I don't know.
 24 Q. By the way, on the micro biological retention
 25 facilities, I know you told us how tall that one would be on

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1 the western side, but I'm a little bit up in the air on
2 them. Are these facilities at ground level flush with the
3 grade?
4 A. The planters are not. They require a foot of air
5 space that includes the mulch and then 3 to 6 inches of free
6 board to pass the larger storm events through the control
7 structure.
8 Q. So that with the planters, am I correct in
9 concluding that surface water would not flow into them
10 unless the surface water was high enough to go over the
11 boundary, I guess, of the micro biological retention
12 facility?
13 A. That's correct. Unless it's hooked by a pipe.
14 Q. So am I correct that as to those planters the only
15 water that they, assuming a rain event does not have so much
16 water to create enough surface water to go over the
17 boundary, that the only water that it would be receiving
18 would be water that fell directly into it from the sky, I
19 assume --
20 A. You're correct.
21 Q. What?
22 A. Sorry, I didn't let you ask your question.
23 Q. Well, you're going where I wanted to. I'm just
24 curious what water would those facilities then being
25 treating?

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1 A. There is a curb cut for the one that I think
2 you're referring to at the turnaround, so that that
3 turnaround asphalt area flows by gravity into the planter.
4 Q. Okay. And the rest?
5 A. That's all of it.
6 Q. Okay.
7 A. Because the planter is at the low point of that
8 area.
9 Q. Okay. So on that one, on the one that's
10 associated with my client's property, it would be flush with
11 the grade?
12 A. It would not. There is a curb cut at the low
13 point the rest of it's got a 6 inch curb, but then there is
14 a 2 foot opening to allow the water to flow.
15 Q. Okay. So it's flush at 2 feet?
16 A. Or 1 foot.
17 Q. Whatever it is, yes.
18 A. I haven't sized it.
19 Q. Okay. Are there any areas on the subject property
20 that cannot be completely treated for storm water runoff?
21 A. Yes.
22 Q. Where are they?
23 A. The best way of showing that is the drainage area
24 map that defines, if I can find it.
25 MR. KAUFMAN: Let's get a number on it. That was

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1 that long list.
2 MS. GIRARD: 79-e-i-i, little I's.
3 THE WITNESS: How about the E?
4 MS. GIRARD: E is lower case.
5 THE WITNESS: Is it I-I, or triple I?
6 MS. GIRARD: I believe it's just I-I. Yes.
7 THE WITNESS: Okay.
8 MS. GIRARD: Drainage.
9 THE WITNESS: So the heavy dashed lines are
10 drainage areas to the storm water devices. The property
11 line is on the golf course side here, and the Manor Care and
12 Paul property and the tennis lane and the golf course here.
13 So the area that's outside the dash line and from to the
14 property line is part of the project that is not going into
15 a storm water management device.
16 BY MR. CHEN:
17 Q. Okay. Will there be any standing water on this
18 site for you know a day or so after a rain event?
19 A. By definition of standing water, no.
20 Q. By non-definition of standing water?
21 A. Well these are a storm water management filtration
22 basin so water comes into it, it can go up to a foot of
23 depth before it overflows.
24 Q. Okay.
25 A. It's continually infiltrating through the device.

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1 Q. Okay. So in those facilities you could have
2 standing water for some period of time while it's filtering
3 through?
4 A. Yes.
5 Q. Thank you.
6 MR. GROSSMAN: While Mr. Chen is looking, I just
7 want to make sure I recollect correctly, the micro bio
8 retention planter that has been the source of discussion
9 here, the one that will come within 6 inches or so of the
10 property line, that in and of itself extends 5 feet above
11 the ground level?
12 THE WITNESS: Yes.
13 MR. GROSSMAN: Okay. But you had mentioned in
14 answering Mr. Chen's other questions that ordinarily they
15 only extend a foot and a half or so above?
16 THE WITNESS: We're talking the outside versus the
17 inside.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: See these are planters, so the
20 outside wall is 5 feet high at the highest point. The
21 inside wall is 18 inches at the maximum.
22 MR. GROSSMAN: Okay.
23 THE WITNESS: To the soil.
24 MR. GROSSMAN: All right. But what is the purpose
25 of the outside wall?

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1 THE WITNESS: In this case?
2 MR. GROSSMAN: All right. In this case and then -
3 -
4 THE WITNESS: In this case it is to make up for
5 grade that is very steep in that area. It allows this
6 turnaround to be built because there is that 25 percent or
7 greater slope that exists in that under that footprint
8 today.
9 MR. GROSSMAN: Well then do I understand you to
10 say that for this particular micro bio retention planter
11 that it's not the planter that calls for the wall, the wall
12 is the result of bringing up the grade so that the
13 turnaround can be had there?
14 THE WITNESS: Correct.
15 MR. CHEN: I thought I asked that question.
16 MR. GROSSMAN: Maybe you did and I didn't --
17 MR. CHEN: No, maybe I misstated it, but go ahead,
18 you're doing fine.
19 MR. GROSSMAN: Thank you, Mr. Chen. Okay. I'm
20 finished.
21 MR. CHEN: And I apologize. I thought that I did
22 ask that, but apparently as usual I asked it incorrectly --
23 MR. GROSSMAN: You may have asked it, I may just
24 not have processed it.
25 MR. CHEN: -- some other way I didn't make myself

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1 clear.
2 BY MR. CHEN:
3 Q. Sir, I just want to be clear on this with you.
4 A. Of course.
5 (Discussion off the record.)
6 MR. GROSSMAN: Exhibit 92.
7 BY MR. CHEN:
8 Q. Let's stick with the Exhibit --
9 MS. GIRARD: 92.
10 MR. CHEN: Is it 92? Thank you.
11 BY MR. CHEN:
12 Q. Could you please explain to us, sir, what type of
13 grading will be required for the installation of this micro
14 biological retention facility and the turnaround area, that
15 whole area that is shown on this Exhibit --
16 MS. GIRARD: 92.
17 BY MR. CHEN:
18 Q. 92, excuse me, I apologize. Just fill us in and
19 including the extent to which there might be a need for
20 infill. I think you just made a statement about backfill or
21 infill on this area or this wall that's going to be
22 installed.
23 A. Now I understand your context. It's that filling
24 of the planter with the media, the stone, for the filtering
25 that's contained by a concrete or with probably some kind of

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1 a façade on it that is that wall that you see in blue. And
2 the fill is actually contained inside that wall.
3 Q. Okay. And that's what brings up the grade? Or
4 raises the grade, I guess.
5 A. And creates this depth needed for the storage.
6 The filtering for the storm water management.
7 Q. Now as I understand the existing conditions right
8 now in this area where the turnaround is and the micro
9 biological facility, the slopes are part of that steep drop-
10 off, is that right, sir?
11 A. Yes, you can see that here. That's the 25 percent
12 or greater.
13 Q. Got you. And that's part of what's going to
14 change after the installation of the conditional use?
15 A. Instead of that sheer slope it will be brought up.
16 Q. Okay. And as I also am looking at Exhibit Number
17 92 and I'm not going to get too far into the landscaping, I
18 just want there is landscaping that is indicated with these
19 X's are trees, right?
20 A. There are.
21 Q. Okay. All right. Did you do any calculations,
22 sir, of runoff from the subject property if it were
23 developed with detached houses? I think two detached houses
24 would be permissible on a site this large. Did you do any
25 type of calculation --

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1 MR. KAUFMAN: We object to that.
2 MR. GROSSMAN: Yes, sustained.
3 MR. CHEN: Has it been asked? I apologize.
4 MR. GROSSMAN: It's not that it's been asked and
5 answered, it's not relevant. The fact that there could be a
6 skidillion (phonetic sp.) other possible developments on the
7 property that are not before me. So this question of what
8 it would be if you put something else there is not relevant
9 to this inquiry.
10 MR. CHEN: Well, excuse me this is going back to
11 the preliminary matter that I raised at the very first day
12 of hearing, and the ordinance language and I'm going to
13 abide by the Examiner's ruling. Please I just want to make
14 a record on this. That under the language of the Zoning
15 Ordinance I think that the analysis has to include and the
16 burden is on the applicant to provide the analysis of the
17 subject property without the special exception and as a
18 permitted use on the site and as I understand this zone, the
19 permitted use are detached houses. And this site is so
20 large that it would accommodate two lots for detached
21 houses, and the burden on, just for the record, I'm not
22 arguing I just want to please to make a record. That under
23 the law that the analysis that the applicant has to make and
24 show the Examiner comparison has not been done at all in
25 this application, is under permitted use on the site. I'll

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1 leave it at that.
2 MR. GROSSMAN: Okay.
3 MR. CHEN: If I could. And I appreciate you
4 allowing me to put it in the record.
5 MR. GROSSMAN: I'm happy to give counsel the
6 opportunity to respond if they wish to.
7 MS. GIRARD: I would just note as the Examiner has
8 said at the beginning of both of these hearings, conditional
9 uses are permitted uses in the zones provided that
10 conditions are met. That's carried out in case law. It is
11 Mr. Chen's argument then that for every conditional use
12 allowed in the zone we have to do a similar analysis? It
13 just logically does not make sense. There is no such burden
14 on the applicant.
15 MR. GROSSMAN: Okay. Anyway, the objection was
16 sustained.
17 MR. CHEN: Just so we know, I did say, I said
18 permitted use.
19 BY MR. CHEN:
20 Q. Your report on page 4 also says that the micro
21 biological retention planters and basins are going to treat
22 110 percent of the required ESD volume. Do you see that's
23 in your report?
24 A. I don't have page 4.
25 MS. GIRARD: It's not numbered or you don't have

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1 it?
2 THE WITNESS: I don't know there's no page
3 numbers. What's the Roman numeral?
4 BY MR. CHEN:
5 Q. I have it Arabic at the bottom 4.
6 A. What paragraph?
7 Q. It's at the very bottom of page 4, and it trips
8 over, I apologize to the top of page 5 and it says the
9 concept proposed is five micro biological --
10 A. What's the paragraph heading?
11 Q. The runoff. Down at the very bottom. The last
12 paragraph --
13 A. I have your location. She has the location and I
14 follow it.
15 Q. Now as I understand that statement you are going
16 to try treat 101 percent of the required ESD total volume
17 required, right?
18 A. That's what it says, yes.
19 Q. But that's not necessarily the total amount of
20 storm water, isn't that right?
21 A. I don't understand the question.
22 Q. What I understand your report is saying is we're
23 going to do 101 percent of what is required of us under the
24 ESD, right?
25 A. Yes.

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1 Q. Okay. But that ESD does not account for all storm
2 water that would runoff from this property. You're meeting
3 a Government mandated standard.
4 A. That's correct. The area that I showed you
5 adjoining the golf course that's not being controlled.
6 That's not, some of it's compensated, but it's not
7 controlled.
8 Q. The green area. Okay. Will your seven micro bio
9 retention planters and basins treat 100 percent of all storm
10 water?
11 A. No.
12 Q. What amount of the storm water will it treat?
13 A. I don't know what that means.
14 Q. Well if you acknowledge that it will not treat all
15 storm water?
16 A. Within the project it does. It does 100 percent
17 of what's required in the project.
18 Q. When you say required, what do you mean by
19 required?
20 A. As mandated by state law.
21 Q. Okay. Your report on page 5 also says that a
22 sediment trap will be located at the westerly corner of the
23 site which is the site's lowest point. Do you see that?
24 A. I do.
25 Q. Where is that on one of your maps? Could you

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1 point that out?
2 A. We have a sediment control plan view.
3 MR. GROSSMAN: Counsel do you have the exhibit
4 number for that?
5 MS. GIRARD: I'm working on it.
6 MR. GROSSMAN: Mr. Chen, while they're looking,
7 how much do you anticipate for cross-examination?
8 MR. CHEN: I've got a few more pages of notes.
9 MR. GROSSMAN: Give me a time, because I want
10 people to be able to get some lunch and I don't want --
11 MR. CHEN: I would certainly hope to be done by
12 1:30 p.m.
13 MR. GROSSMAN: All right.
14 MS. GIRARD: 84-A.
15 MR. GROSSMAN: 84-A.
16 MR. CHEN: I'll try to go faster.
17 MR. GROSSMAN: Yeah, I don't want them to run out
18 of food there for people, and they will.
19 THE WITNESS: That's a possibility?
20 MR. GROSSMAN: Yes, they will.
21 MR. CHEN: That's not like the Army.
22 MR. GROSSMAN: So if you're going to finish by
23 1:15 p.m. or so that would be helpful.
24 MR. KAUFMAN: We're there now.
25 MR. GROSSMAN: We'll we're not, we're at 7 after.

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1 MR. CHEN: Let me try. To accommodate you, Mr.
2 Grossman, let me try.
3 MR. GROSSMAN: Okay.
4 THE WITNESS: Here is the sediment trap. It's in
5 the northwesterly apex of the triangle on site.
6 BY MR. CHEN:
7 Q. What exhibit are you on? 8-A?
8 MS. GIRARD: 84-A.
9 THE WITNESS: 84.
10 BY MR. CHEN:
11 Q. 84-A. Okay. Excuse me. Is that sediment trap,
12 what is the function of that sediment trap?
13 A. It is to intercept sediment laden water during
14 construction so that it doesn't inundate downstream
15 properties.
16 Q. Will it be used after construction?
17 A. No.
18 Q. Will it be removed?
19 A. Yes.
20 Q. On that same page you also say that earth dike and
21 dike swales will be designed to convey the site runoff to
22 the trap which will now fall into an existing water course.
23 Do you see that language?
24 A. I'm aware of it.
25 Q. Explain that to me.

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1 A. Earth dikes and dike swales are what are shown
2 here. These are dikes, these are dike swales. They convey
3 the runoff, this area flows onto the site. This area would
4 flow off of the site without an earth dike. So these are
5 dikes and dike swales convey the water into the trap that is
6 safely outfall incidentally in the same riprap area as that
7 outfall that we talked about earlier in the northwest
8 quadrant of the apex of the triangle.
9 Q. Okay. And when they say that it will convey to
10 the trap, is that the same trap that is known as a sediment
11 trap that you just described for us?
12 A. Yes.
13 Q. Will there be a need for those dikes after
14 construction?
15 A. No.
16 Q. Are there any permanent sediment controls?
17 A. No.
18 Q. By the way will there be a hydrant down that at
19 the western apex of the proposed building?
20 A. Fire hydrant, no.
21 Q. I thought your report said that all three apexes
22 there would be a hydrant.
23 A. It was preliminary proposed there. Marie Laball's
24 comment for the fire access plan determined that we were not
25 required to provide a fire hydrant at that location.

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1 Q. Okay. Do you know the elevation at which the
2 trash receptacle area will be at?
3 A. I would have to look at it. I believe it's about
4 elevation 393, 394. 394.
5 Q. How does that compare to the elevation at that
6 site at the present time?
7 A. 396 to 397.
8 Q. Will there be a need for any grading to
9 accommodate the trash receptacle area on the backfill or
10 anything like that?
11 A. No, just as I, it's the difference between 393 and
12 394, or 396 and 394. That means there's 2 foot of cut in
13 order to take it down to the grade of the asphalt and then
14 there will be probably concrete then it will be 8 inches to
15 the subgrade. So 3 foot of cut, roughly.
16 Q. Will that also be needed for the rest of the
17 turnaround area?
18 A. No.
19 Q. Will there be a need for any grading at the
20 turnaround at all?
21 A. Yes.
22 Q. What will that be?
23 A. At the northerly side adjacent to the golf course
24 the grade of the asphalt approximately a foot lower than the
25 existing grade. And at the turnaround where the micro bio

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1 filtration planter is located there is, as noted before,
2 there's a 5 foot wall going there and then backfilled.
3 Q. Will there be any screening of that wall?
4 A. Landscaping.
5 Q. Okay. We've already covered that.
6 A. We have.
7 Q. All right.
8 MR. CHEN: That's all I've got. Hold on.
9 MR. GROSSMAN: Don't build up my hopes.
10 MR. CHEN: I'm done.
11 MR. GROSSMAN: Ms. Mitchell, I mean Ms. Lee?
12 MS. LEE: I just have one.
13 CROSS-EXAMINATION
14 BY MS. LEE:
15 Q. One request for information. I think when you
16 first started out and you talked about the impermeable
17 surface, currently now 90 percent, as the recent discussion
18 of clay, but you mentioned that you have the information
19 with regard to what the final proposal is for this site and
20 that you could just add the numbers up. I just wondered if
21 you could add those up so we would have the total amount of
22 impervious surface?
23 A. I will provide that.
24 Q. Okay.
25 MR. GROSSMAN: Okay. All right. Any redirect?

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1 MS. GIRARD: No.

2 MR. GROSSMAN: All right. Thank you, Mr.

3 Mitchell, you have survived.

4 THE WITNESS: Are you sure?

5 MR. GROSSMAN: You're still vertical. All right.

6 So we'll break for lunch now, it's 1:15 p.m. and come back

7 at 2:00 p.m.

8 (Discussion off the record.)

9 (Off the record.)

10 (On the record.)

11 AFTERNOON SESSION

12 MR. GROSSMAN: All right. Hello, we're back on

13 the record and my staff informs me that there's a Mr. Duncan

14 here who wished to be heard. Mr. Duncan?

15 MR. DUNCAN: Yes.

16 MR. GROSSMAN: Are you here on your own behalf or

17 on behalf of an organization?

18 MR. DUNCAN: My own behalf.

19 MR. GROSSMAN: And did you wish to testify in

20 support, in opposition or just commentary?

21 MR. DUNCAN: I believe it will be viewed as

22 opposition.

23 MR. GROSSMAN: Okay. Hopefully, we'll have time

24 today. You certainly are free to testify during the

25 hearing. I'm not sure what our schedule will be today,

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1 however.

2 MR. DUNCAN: Yes.

3 MR. GROSSMAN: We've set, reserved a date on

4 Monday as well to come back if we can't finish all the

5 witnesses today.

6 MR. DUNCAN: Right.

7 MR. GROSSMAN: We we'd be more than happy to --

8 MR. DUNCAN: I don't think I'll take --

9 MR. GROSSMAN: Pardon me?

10 MR. DUNCAN: I don't think I will take that long.

11 MR. GROSSMAN: Okay.

12 MR. DUNCAN: Less than 10 minutes.

13 MR. GROSSMAN: All right. Well we will be more

14 than happy to hear from you. We'll just have to fit you in

15 at some point.

16 MR. DUNCAN: I understand.

17 MR. GROSSMAN: All right. Thank you. All right.

18 Your next witness?

19 MS. GIRARD: Yes. Our next witness is Ms. Nancy

20 Randall.

21 MR. GROSSMAN: Ms. Randall, how are you today?

22 MS. RANDALL: I'm good, thank you.

23 MR. GROSSMAN: Good. Will you state your full

24 name and work address, please?

25 MS. RANDALL: My full name, legal name is Anne

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1 Randall, nickname of Nancy. My business address is 8730

2 Georgia Avenue, Suite 200, in Silver Spring.

3 MR. GROSSMAN: Would you raise your right hand,

4 please? Do you swear or affirm to tell the truth, the whole

5 truth and nothing but the truth, under penalty of perjury?

6 MS. RANDALL: I do.

7 MR. GROSSMAN: All right. You may proceed.

8 MS. GIRARD: Ms. Randall's resume is in the record

9 as Exhibit 36-C. She's previously testified before the

10 hearing examiner as an expert in transportation planning.

11 MR. GROSSMAN: Yes.

12 MS. GIRARD: And we would move her admission as

13 such.

14 MR. GROSSMAN: All right. Any questions, Mr.

15 Uhre?

16 (No audible response.)

17 MR. GROSSMAN: Mr. Chen?

18 (No audible response.)

19 MR. GROSSMAN: Ms. Lee?

20 (No audible response.)

21 MR. GROSSMAN: I guess I'm familiar, Ms. Randall

22 has testified before me as an expert in transportation

23 planning and based on her qualifications, I accept her as an

24 expert in transportation planning.

25 MS. RANDALL: Thank you.

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1 DIRECT EXAMINATION

2 BY MS. GIRARD:

3 Q. Ms. Randall, are you familiar with conditional use

4 property and the surrounding area in application number CU

5 16-01?

6 A. I am.

7 Q. And are you familiar with the County's Adequate

8 Public Facilities Ordinance and Transportation Policy Area

9 Review for Development?

10 A. I am.

11 Q. Have you analyzed the suitability of the proposed

12 conditional use for the subject property from a

13 transportation planning standpoint?

14 A. I have.

15 Q. And can you review for us your findings and

16 conclusions?

17 A. In accordance with the County and Park and

18 Planning LATR and TPAR guidelines, when you prepare what's

19 called a Traffic Exemption Statement for this property, as

20 you know there is an existing use on the property. It's the

21 tennis club and the proposed assisted living will generate

22 in accordance with the LATR guidelines and their trip

23 generation rates, less traffic than the proposed use of

24 assisted living. So we filed an exception, exemption letter

25 on March 27, 2015, and staff reviewed that and requested

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1 that we use the ITE trip generation rates for assisted
2 living. When we did that analysis, the morning peak hour it
3 increased the trip generation by four vehicles and in the
4 evening it was a reduction of nine vehicles. That's a
5 combination of both the inbound and the outbound movements.
6 MR. GROSSMAN: How did LATR figures compare to
7 that?
8 THE WITNESS: The LATR figures, the reduction was
9 12 trips in the morning peak hour and a reduction of 32 in
10 the evening peak hour.
11 MR. GROSSMAN: Okay.
12 THE WITNESS: That report, both of the reports and
13 the most recent one, September 11th, was reviewed and
14 approved by Park and Planning staff. Then as we were going
15 through and receiving comments, letters that had been
16 written to staff regarding the project, we were hearing
17 concerns from the community that are typically not issues
18 within the LATR guidelines, but we went ahead and started to
19 address some of the concerns and do further investigation.
20 I produced a report dated September 25, 2015 and submitted
21 that to Mike Garcia.
22 And in doing that --
23 MR. GROSSMAN: Is there an exhibit number on that?
24 There is a September 11, 2015 revised traffic statement by
25 Ms. Randall.

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1 THE WITNESS: Yes.
2 MR. GROSSMAN: But I presume that's not what
3 you're referring to because it's dated September 11th.
4 THE WITNESS: Yes, no that was the exemption
5 letter.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: The September 25, 2015 letter to
8 Mike Garcia addressing additional analysis that we had done
9 had been sent to Mike. I do have copies if we need them.
10 MR. GROSSMAN: Thank you.
11 MS. GIRARD: And I believe it was attached to the
12 Staff Report.
13 MR. GROSSMAN: All right. First of all, the
14 September 11th one your revised traffic statement which you
15 call the exemption letter, is Exhibit 39-D as in dog.
16 THE WITNESS: The supplemental analysis dated
17 September 25th is Attachment 7 to Exhibit 61.
18 MR. GROSSMAN: Okay. All right. So 61 is the
19 Technical Staff Report.
20 MS. GIRARD: Correct.
21 MR. GROSSMAN: So Exhibit 61, attachment --
22 MS. GIRARD: Seven.
23 MR. GROSSMAN: -- 7, it's a supplemental, Ms.
24 Randall's supplemental report. All right.
25 THE WITNESS: The additional analysis that we did

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1 was to provide turning movement counts. They were conducted
2 at the intersection of Tennis Lane and Falls Road and Bullis
3 (phonetic sp.) School entrance at Falls Road, which is just
4 south, slightly off this photograph, you'll note I --
5 BY MS. GIRARD:
6 Q. You're looking at Exhibit 75, I can't read it
7 upside down.
8 A. B. Sorry. I oriented this so that north is
9 north.
10 MR. GROSSMAN: Bless you.
11 THE WITNESS: It's easier for me too. We looked
12 at the morning peak hour, the afternoon peak hour, as well
13 as including the time of day when the school is letting out.
14 The morning peak hour encompassed when school is opening --
15 MR. GROSSMAN: Right.
16 THE WITNESS: -- for class. And we also included
17 the time period when school was letting out at the end of
18 the day because we were hearing comments about hues from the
19 Bullis School.
20 MR. GROSSMAN: Right.
21 THE WITNESS: And the concern for hues coming into
22 the site. With that information, we ran intersection
23 analysis, including an HCM analysis, which is the highway
24 capacity manual method --
25 MR. GROSSMAN: Right.

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1 THE WITNESS: -- for unsignalized intersection.
2 In both the CLV as well as in the HCM, we assumed as a worst
3 case that the increase in the morning peak hour from this
4 project would all be in that left turn. It's an inbound
5 movement increase of five cars, outbound it was a reduction
6 of one automobile from the existing traffic.
7 From a worst case scenario, we assumed that all
8 five would be making that left hand turn during that one
9 peak hour. In both the CLV and the HCM they more than were
10 well below the standard for Potomac, which I believe is at
11 1,450 and I apologize if I'm wrong with that number, it
12 maybe 1,425. But they were in the 900 range. It's shown on
13 table 1 of that exhibit.
14 In addition that we did cues, a cue count at both
15 intersections to see what the left turn inbound max cue was
16 and the southbound left hand turn into Bullis School to see
17 whether or not those cues overlapped, because for lack of a
18 better description, there is a center lane that connects
19 between Bullis School and Tennis Lane that occupies the left
20 turn lane for Tennis Lane and also provides a left turn lane
21 into Bullis School.
22 During that day, both morning as well as an
23 extended afternoon time period at no time did those cues
24 connect or exceed the space available for those cues.
25 MR. GROSSMAN: Okay.

1 THE WITNESS: We also did gap analysis which is
 2 the space and the time between automobiles on the main line.
 3 Now the HCM analysis collects that information as well but
 4 it's a mathematical calculation of gap. And this was an
 5 observed gap to ensure that for the vehicles that will make
 6 the left into our site that there is sufficient gaps so that
 7 they will not cue up. So we were concerned about in this
 8 case it would be the westbound through volume that's going
 9 past Tennis Lane, is there sufficient gap for the lefts to
 10 go and make that left, so that that cue does not overlap.
 11 The other thing I should note about my analysis is
 12 that we have a reduction in volume, I did not reduce the
 13 existing volume. I kept it as it was in my analysis and
 14 added in the few increases.
 15 MR. GROSSMAN: You mean for the gap analysis?
 16 THE WITNESS: For the gap analysis, for the HCM,
 17 for all of it. I did not take, there is a reduction as I
 18 noted in the p.m. peak hour --
 19 MR. GROSSMAN: Right.
 20 THE WITNESS: -- of nine vehicles. So I didn't
 21 reduce the existing volume, I kept it as it was.
 22 MR. GROSSMAN: Did you do your gap analysis in
 23 both directions?
 24 THE WITNESS: We did the gap analysis for the
 25 northbound for the lefts that want to turn into Bullis

1 School. Again, the focus was on the potential --
 2 MR. GROSSMAN: Northbound they want to turn into
 3 Bullis School or are you talking about the --
 4 THE WITNESS: Northbound through for the
 5 southbound lefts. If I might?
 6 MR. GROSSMAN: Okay.
 7 THE WITNESS: Let's assume that Bullis School is
 8 right here.
 9 MR. GROSSMAN: Yes.
 10 THE WITNESS: If I want to make a left hand turn
 11 into Bullis School I'm impeded from doing that by the
 12 through volume coming north.
 13 MR. GROSSMAN: Okay.
 14 THE WITNESS: And so it's the gap there. But it
 15 should be noted that during the morning peak hour there is a
 16 police officer out there. That was part of their
 17 conditional use or I think it might have been a special
 18 exception at that time, where he is to monitor that cue and
 19 stop the northbound through to allow those lefts, so that
 20 they don't overflow that movement. And we did observe the
 21 police officer out there.
 22 MR. GROSSMAN: Okay.
 23 THE WITNESS: And then the last thing was the
 24 accident data review.
 25 MR. GROSSMAN: But the results of your gap

1 analysis was?
 2 THE WITNESS: It shows that there is sufficient
 3 gap for both northbound and southbound, particularly, with
 4 obviously the police officer creating those gaps.
 5 MR. GROSSMAN: Okay.
 6 THE WITNESS: But when the police officer is not
 7 there, and we did not observe him in the afternoon, only in
 8 the morning, there were sufficient gaps. Part of the reason
 9 for that is besides just the fact that there is typical
 10 distances between vehicles, but to the south there is the
 11 signalized intersection. So you're getting the tuning from
 12 the signalized intersection of Democracy and Falls Road.
 13 MR. GROSSMAN: Okay.
 14 THE WITNESS: That naturally occurs.
 15 MR. GROSSMAN: And in terms of the southbound gap,
 16 that's to determine whether or not there is enough space for
 17 somebody to make a left hand turn onto Potomac Tennis Lane?
 18 THE WITNESS: Exactly.
 19 MR. GROSSMAN: From Falls Road?
 20 THE WITNESS: Yes.
 21 MR. GROSSMAN: Okay.
 22 THE WITNESS: Yes. And then the last thing that
 23 we did if you recall the accident information was requested.
 24 MR. GROSSMAN: Yes.
 25 THE WITNESS: Staff provided me that information

1 years ago in my public life for Anne Arundel County and also
 2 for the City of Annapolis, one of the things that I was
 3 charged with doing was reviewing accident data for both of
 4 those agencies. And so I had it at the interpretive manual
 5 that goes along with the state's accident reports. It's
 6 just a code, you're not interpreting anything they will tell
 7 you whether it's sunny, whether it's snowing, whether it's
 8 wet and I merely took that information, decoded it and put
 9 it out on the sheet. I provided then a copy of the code to
 10 Mike Garcia so that he too could take a look at what we had
 11 done with the information. He found actually one coding
 12 error on my part and that was corrected in his Staff Report.
 13 MR. GROSSMAN: Okay.
 14 THE WITNESS: And subsequently corrected in my
 15 document as well. The results of that analysis was we
 16 looked at three years of data, from 2012, 2013, and 2014.
 17 Those are the most recent dates available. When I was doing
 18 this review and I don't know whether this has changed or
 19 not, but when I was doing the review for the County and also
 20 for the City of Annapolis, they collect all of the accident
 21 reports from the Police Departments. They then code it in
 22 but before it's released as a printed document, they wait
 23 for the entire year to be done and then they run their
 24 reports. Which is why there is information available for
 25 2015, to the best of my knowledge and they may have changed

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1 it, but to the best of my knowledge there is no 2015 data
2 available for anybody.
3 So we're working with the most current. It's
4 similar to their ADT counts. You don't get those for three
5 or four months after they'll publish after the year is
6 ended.
7 MR. GROSSMAN: Okay.
8 THE WITNESS: And the results of that analysis
9 indicate that there was one accident that occurred in the
10 vicinity of Potomac Tennis Lane and Falls Road, in
11 accordance with the state's coding it was not intersection
12 related, and there were a total of, and I apologize let me
13 find my summary for each one of these.
14 MR. GROSSMAN: One accident during that entire
15 three year period?
16 THE WITNESS: One accident for an entire three
17 year period at that intersection, that's correct. We
18 provided and I believe that Mike Garcia did a nice summary
19 of the types of accidents. There was one drunk driving
20 accident which really doesn't got to trans because you can't
21 design for somebody who is impaired. But that was it. So
22 we did not see any indication that there is an accident or
23 safety problem along this stretch of roadway.
24 There was one other accident slightly south of
25 Falls Road. Again the condition of the driver on that one

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1 is unknown, so I don't know in either case quite frankly,
2 they'll put in normal or unknown so without the actual
3 accident report I can't tell you what the condition of the
4 driver is.
5 MR. GROSSMAN: You said slightly south of Falls
6 Road.
7 THE WITNESS: Yes, I believe it was at the --
8 MR. GROSSMAN: South of Potomac Tennis Lane, you
9 mean?
10 THE WITNESS: -- entrance, yes. I'm sorry. My
11 apology. Slightly south of Potomac Tennis Lane further
12 south on Falls Road and in the vicinity of the driveway of
13 the restaurant that's just to the south.
14 MR. GROSSMAN: Okay.
15 BY MS. GIRARD:
16 Q. Ms. Randall, are you aware that staff prepared an
17 exhibit to demonstrate where those accidents occurred as
18 part of their presentation?
19 A. Yes.
20 Q. Is this that exhibit?
21 A. That's correct. This is page 19.
22 Q. Yes.
23 A. Page 19 of the staff's presentation, which is
24 exhibit, hold on I have it written down, 74-A.
25 MS. GIRARD: That page itself is not numbered, but

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1 the ones before and after is.
2 (Discussion off the record.)
3 MR. GROSSMAN: All right. You're saying page 12?
4 MS. GIRARD: 19.
5 MR. GROSSMAN: 19, I thought you said.
6 MS. GIRARD: It's an aerial and it has color coded
7 dots on it.
8 MR. GROSSMAN: Yes, I've got it.
9 MS. GIRARD: Yes. Okay.
10 MR. GROSSMAN: Okay. So they reference apparently
11 three, they have three different symbols, one at Nantucket
12 Place.
13 THE WITNESS: Yes, that's to the east, Nantucket
14 Place is about there.
15 MR. GROSSMAN: All right. All right. I see,
16 okay. I've got you.
17 BY MS. GIRARD:
18 Q. I kind of broke your stride a little bit.
19 A. No, no.
20 Q. Is there anything else you wanted to --
21 A. No, that was it.
22 Q. A couple of questions. One, just to clarify, Mike
23 Garcia is technical staff for Park and Planning?
24 A. Yes, he is.
25 Q. And he agreed with your conclusions --

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1 A. Yes.
2 Q. -- that you just reviewed?
3 A. Yes, he did.
4 Q. And the accident data, is it typical to look at a
5 three year period to get a sense of what's going on at an
6 intersection?
7 A. It is. It is typical.
8 Q. And back to the ITE rates that you were talking
9 about. How were those numbers generated?
10 A. Trip generation data is collected and, let me back
11 up a little bit. It's ITE, which is the Institute of
12 Transportation Engineers. ITE puts out a manual every
13 couple of years providing information of data that has been
14 collected across the country for all kinds of uses, from
15 office to shopping centers to single family developments,
16 from industrial uses. And one of the categories that they
17 have is assisted living. They've collected data all across
18 the country. Similar to what Montgomery County had done in
19 collecting their trip generation rates, that's what's been
20 done by ITE but with a much greater or a larger sample than
21 was available to Montgomery County staff, which is why I
22 believe they asked us to go to ITE.
23 MR. GROSSMAN: Why do you think there is such a
24 significant disparity between the projections of the trip
25 generation projections between LATR and ITE?

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1 THE WITNESS: I would say it probably has
2 something to do with the sample that they took. If that
3 assisted living facility was, as an example, and Alzheimer's
4 facility, you --
5 MR. GROSSMAN: Right.
6 THE WITNESS: -- may not have as many visitors.
7 It depends on the size. I don't know what their sample was
8 but staff clearly was questioning the use of that, which is
9 why they asked us to go with ITE, which we were happy to do.
10 MR. GROSSMAN: Okay.
11 BY MS. GIRARD:
12 Q. And the ITE rates, they account for all the
13 traffic, that's just not employees, right?
14 A. Exactly.
15 Q. Does that incorporate more than that?
16 A. Exactly. It counts every vehicle. Employee,
17 delivery, mail truck, FedEx, visitor. It's everything that
18 crosses the entry into the project.
19 MR. GROSSMAN: Are you suggesting by your question
20 that LATR figures do not include everything?
21 MS. GIRARD: No, I just want to make it clear. I
22 think sometimes there's confusion that you're only counting
23 it based on employees. I wanted to make sure that --
24 MR. GROSSMAN: It's more.
25 MS. GIRARD: -- everyone understood it encompassed

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1 everything.
2 MR. GROSSMAN: Okay.
3 BY MS. GIRARD:
4 Q. Okay. Ms. Randall, so based on your analysis and
5 from a transportation planning standpoint, do you believe
6 that the proposed development will be in harmony with the
7 character of the surrounding neighborhood, considering
8 traffic conditions?
9 A. I do and in fact, I believe it will make things
10 better since there will be a reduction in volume.
11 Q. And from a transportation planning standpoint,
12 will the proposed conditional use have any detrimental
13 effect on vehicular or pedestrian traffic or safety?
14 A. No, it will not.
15 Q. And from a transportation planning standpoint,
16 will the proposed development cause undue harm to the
17 health, safety or welfare of the neighboring residents,
18 visitors, or employees?
19 A. No, it will not.
20 Q. So in conclusion, in your expert opinion and from
21 the standpoint of transportation planning, is the proposed
22 conditional use and development suitable for this site and
23 compatible to the surrounding neighborhood?
24 A. It is.
25 MS. GIRARD: That's all I have.

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1 MR. GROSSMAN: What about internal vehicular and
2 pedestrian traffic in terms of safety and efficiency?
3 Access and internal?
4 THE WITNESS: The circulation within the site, the
5 parking lot is well laid out. That's where the majority of
6 individuals will be parking, both visitor and potentially I
7 believe it was also part of his testimony that the few
8 automobiles that may be there for the resident will also be
9 up in that front parking lot area. So it's easily visible
10 and easily circulated.
11 Again, there is for the fire truck, there is this
12 turnaround that can be used by obviously by a motor vehicle.
13 The truck delivery is down along the side. The turnaround
14 is there. Pedestrian sidewalks and pathways are provided
15 throughout. There is great connection across the street for
16 the connection to the pathway to adjacent property.
17 MR. CHEN: I object and move to strike. The lady
18 is a traffic, transportation expert, which I have no
19 problems with, but she's now getting into pedestrian access
20 and things of that nature. And I don't think she's
21 qualified for that. And you know I don't think it's within
22 her area of expertise.
23 MR. GROSSMAN: You don't think that the
24 transportation planner can consider and be knowledgeable in
25 an expert way regarding pedestrian?

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1 MR. CHEN: Not internally, no I don't. And I
2 didn't hear any qualification that she had expertise in that
3 area.
4 MR. GROSSMAN: What about that, Ms. Randall?
5 THE WITNESS: Part of my training and work both
6 within my government as well as private industry, I've been
7 working with pedestrian circulation, bicycle circulation,
8 transit circulation, truck circulation, site design as it
9 relates to those issues for the last 35 years.
10 MR. GROSSMAN: All right. And I'm going to
11 overrule the objection and I find that she is qualified in
12 that area.
13 MR. CHEN: Well in light of the Examiner's
14 inquiry, I can understand the ruling.
15 MR. GROSSMAN: All right. So I'm sorry but I lost
16 track of your answer in lieu of considering the objection.
17 So I regret asking you to repeat it, but what was your
18 evaluation?
19 THE WITNESS: There is pedestrian circulation
20 throughout the site with these --
21 MR. GROSSMAN: Right.
22 THE WITNESS: -- courtyards, with the pedestrian
23 walkway here which provides access to the parking lot.
24 BY MS. GIRARD:
25 Q. Here being where?

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1 MR. GROSSMAN: Here being the eastern side.
2 Right.
3 THE WITNESS: My apologies. Yes, the eastern side
4 of the property, the surface parking lot is running
5 vertically north and south with the front entryway and
6 service to the vehicles that are there.
7 MR. GROSSMAN: So what is your evaluation as to
8 the efficiency and safety of vehicular, pedestrian and
9 bicycle traffic if there is such, both access and on the
10 site?
11 THE WITNESS: From the resident point of view --
12 MR. CHEN: Objection. I object, but go ahead.
13 MR. GROSSMAN: All right. Well we have to deal
14 with your objection. What's your objection?
15 MR. CHEN: I haven't heard anything establishing a
16 foundation for any analysis much less an opinion about
17 internal circulation. I've heard no information about that
18 at all. I understand your ruling on maybe the
19 qualifications, that's not what I'm objecting to.
20 MR. GROSSMAN: All right. Well let's hear your
21 answer, I'll overrule that and will consider it in the
22 context.
23 THE WITNESS: From the pedestrian point of view
24 for the resident, it's well connected with relatively short
25 walks considering the average age of the resident that's

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1 there. For the visitor, you've got connectivity, pedestrian
2 connectivity from the parking lot into the facility.
3 As far as circulation within the property, this is
4 no different than the immediate adjacent neighbor in terms
5 of what they've provided with their surface typical drive
6 aisle for surface parking lot.
7 I don't see anything in here that is inherently
8 problematic, but what I do like about it is that they have
9 generally separated the truck circulation and the truck
10 related types of maneuvers separate and apart from the main
11 parking lot, but for the typical UPS, mail delivery that
12 would come most likely to the front door.
13 MR. GROSSMAN: Okay. I don't think I heard a
14 conclusion regarding safety.
15 THE WITNESS: Oh, based on the design I don't see
16 anything that is unsafe with regards to the design. There
17 is, I don't know how quite to say you would do a safety
18 study on a planned parking lot. If I had an existing
19 parking lot where there may have been some accidents, we
20 could take a look at that, but this is no different than any
21 other typical parking lot in terms of its parking space
22 size, aisle width and ability to turn around and head back
23 out in a forward position.
24 MR. GROSSMAN: All right. Do you have any further
25 questions as a result of my questions?

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1 MS. GIRARD: No.
2 MR. GROSSMAN: Okay. Cross-examination, well
3 let's start from Ms. Lee, this time.
4 CROSS-EXAMINATION
5 BY MS. LEE:
6 Q. I just had one question that came up at the
7 Planning Board. There was a great concern about employees
8 who might be arriving by bus and the difficulty of depending
9 on which side of the street they're on and there was some
10 discussion about requiring them to reconstruct the sidewalk
11 from where the bus stop is up to the facility so that folks
12 would feel safer. Right now there is no sidewalk so people
13 sort of have to scurry along the edge, and I wonder if in
14 looking at your safety conclusions you also considered
15 safety of employees who would be coming on the T2 buses.
16 A. Yes. In fact, I believe that representatives from
17 Brandywine have already testified to that. They don't know
18 exactly where their employees are going to come from at this
19 particular point. Whether they would be taking the bus or
20 transit but what they have indicated they will provide a
21 shuttle for their employees. They're going to have
22 different shift times and they're going to have later
23 evening where the bus is not providing service. So it makes
24 sense to provide for a shuttle that would then operate for
25 the employees.

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1 MR. GROSSMAN: All right.
2 MS. LEE: If I could just follow up?
3 MR. GROSSMAN: Yes.
4 BY MS. LEE:
5 Q. So it just seems a little bit incredible that if
6 you've got 40 or 50 employees and they live all over the
7 area, I guess is that a commitment that they will in fact
8 provide transportation for each employee to get to their
9 home or to the subway or however they --
10 A. No. And if I lead you to believe that, I
11 apologize. No. What they have offered to do was to find
12 out which of their employees will be taking transit and if
13 it works out that staff wants to take and use transit
14 they'll provide the shuttle. But at this point they don't
15 know and it's too soon to make a commitment for a shuttle
16 that no one will use. That doesn't make a whole lot of
17 sense. It should also be noted that they are going to have
18 a shuttle for the residents. So if it's one or two
19 employees there is that opportunity to provide that for
20 those one or two employees at the facility to pick them up
21 at transit.
22 MR. GROSSMAN: All right. Are you finished Ms.
23 Lee?
24 MS. LEE: Yes.
25 MR. GROSSMAN: All right. Mr. Chen?

1 CROSS-EXAMINATION

2 BY MR. CHEN:

3 Q. What is the frequency of bus service on Falls
4 Road?

5 A. To the best of my recollection when I looked at
6 it, I believe it's about every half an hour.

7 Q. Do you know which line that is?

8 A. I don't recall.

9 Q. Do you know if there is a set schedule for
10 allowing the shuttle service?

11 A. (No audible response.)

12 Q. You mentioned that the applicant would be
13 providing shuttle service. Can you elaborate on that? What
14 is that service?

15 A. Sure. As was previously testified, they will have
16 a shuttle bus, for lack of a better description, for the
17 residents. And that's an on demand where they'll be taken
18 to various events or shopping or you know it's kind of
19 regular but there's no set schedule, it's available. There
20 is opportunity if you have a few employees that are taking
21 transit because of the time of day, particularly for the
22 evening, to use that to get somebody to and from public
23 transportation.

24 Q. Okay. So that's the extent of your knowledge of
25 any commitment --

1 Q. Okay. All right. So you were just giving us
2 today what you had heard at the prior hearing?

3 A. That's correct.

4 Q. Okay. Were you given any information prior to the
5 hearings about the nature of traffic that will be coming to
6 the site?

7 A. I'm not sure I understand your question.

8 Q. Well there's different types of traffic, isn't
9 there?

10 A. Yes.

11 Q. Okay.

12 A. Yes.

13 Q. Were you given any information about the type of
14 traffic that would be coming to this site from the applicant
15 before the hearings?

16 A. I'm not sure I understand the question.

17 Q. Well, did they give you any information about the
18 truck traffic?

19 A. No. Again, ITE trip generation rates include
20 truck traffic. I believe that they will have the standard
21 kind of deliveries that as an example, the tennis club does,
22 with FedEx, UPS, mail truck, garbage collection. They'll
23 have that typical kind of truck traffic that will come in.

24 And similarly to the trucks that come in and service the
25 Manor Care. I think the only thing that would be different

1 A. Yes, as I've --

2 Q. -- to an employee shuttle service?

3 A. -- as I've indicated, they don't know who may or
4 may not want to take public transportation. I want to make
5 clear though that I made no assumption with regards to the
6 trip generation for this property taking transit. And it
7 should also be noted that the ITE trip generation rates do
8 not include reductions for transit. So this is, everybody
9 drives to place of business, everybody leaves from the place
10 of business. There is no public transportation that has
11 been factored into the ITE. They look at suburban
12 locations. They'll let you know if they're doing an urban
13 location with public transit.

14 Q. Okay. But is there any, I guess regularized or
15 routine or schedule for the shuttle service for employees
16 that you know of?

17 A. Again, we're not making a promise for a shuttle,
18 we're making a promise to find out whether or not the
19 employees who would like that service.

20 Q. Okay. So there's no commitment to a shuttle?

21 A. You would have to ask the property --

22 Q. Okay.

23 A. -- manager.

24 Q. That's fair. Thank you.

25 A. This is what I heard in testimony, so.

1 where they would not be able to potentially have a same
2 delivery, as it were, you know, you'd have the same mail
3 truck, you'd have the same FedEx or the same UPS truck
4 coming in for delivery and maybe even potentially some of
5 the same food deliveries. Some produce truck or that kind
6 of thing. But where they won't will be in the trash aspect
7 of it. That will be separate. So in that sense we had
8 conversation about whether there was opportunity to share
9 trucks.

10 Q. Did your analysis involve any type of safety
11 evaluation?

12 A. Yes, it did, as it relates to the accident
13 history.

14 Q. Yes, you gave that information.

15 A. Yes.

16 Q. So and I'd be correct that that type of
17 information would be limited to reported accidents and
18 things of that nature?

19 A. That's correct.

20 Q. Okay. So if there were any other types of
21 accidents or difficulties with the traffic in the area that
22 was not reported, that would not be available to you?

23 A. To the best of my knowledge it's not available to
24 anybody.

25 Q. Okay.

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1 MR. GROSSMAN: Well when I asked you a question
2 about safety you said you just mentioned the crash data.
3 But what about the sight distance and just the general
4 structure of --
5 THE WITNESS: Right.
6 MR. GROSSMAN: -- the roads?
7 THE WITNESS: Right.
8 MR. GROSSMAN: Do you evaluate safety on that?
9 THE WITNESS: Yes, in fact, they've flattened out
10 the curve slightly. I believe when Manor Care came in they
11 also provided for right turn deceleration lane short, right
12 turn deceleration lane at that location. I'm sorry, I
13 forgot the first part of your question.
14 MR. GROSSMAN: Well I guess what I'm asking is --
15 THE WITNESS: My apologies.
16 MR. GROSSMAN: -- is your safety evaluation solely
17 based on the crash data or are you taking into account the
18 sight distances --
19 THE WITNESS: The sight distances.
20 MR. GROSSMAN: -- and the structure of the road?
21 THE WITNESS: Well the road itself, I've driven
22 this quite a bit in looking at the site. Through this
23 section of the road the pavement seems fairly new. It looks
24 like they've done some recent and by recent within the last
25 10 years, enhancements out here. But there are sections of

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1 Falls Road clearly that need some resurfacing, but the
2 State's relatively good with keeping up with resurfacing.
3 As far as sight distance is concerned, VIKA went through and
4 looked and found that there was adequate sight distance in
5 both directions. When I drove it just visually, you could
6 see past the Bullis School entrance and you could see past
7 the tennis club. So you had more than sufficient distance
8 to judge the gap to make entry into or out of Potomac Tennis
9 Lane.
10 MR. GROSSMAN: Okay.
11 BY MR. CHEN:
12 Q. Did your analysis, well, let me strike that. As I
13 understand though your testimony you really did not get into
14 any issue about the availability or the quality of sidewalk
15 surface on Falls Road in this area?
16 A. No, there are no sidewalks in this area.
17 Q. Yes. Okay. So you didn't even get into that
18 subject as far as provisions --
19 A. No.
20 Q. -- for it? Okay. Were you, and I mean I've
21 tripped over it a little bit of the Examiner's questioning,
22 but not quite the way I would have gotten into it. Did you
23 do any type of analysis of the traffic that would be
24 utilizing the service drive?
25 A. Internal, no, I did not.

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1 Q. Okay. And what was the source, I was not clear in
2 this and I apologize I may not have made it clear, what was
3 the source of your information relative to the traffic
4 generation of the existing special exception tennis club?
5 A. The requirement for looking at LATR is to look
6 again and do a comparative analysis for ITE.
7 Q. Okay.
8 A. So we used ITE, tennis club compared to ITE
9 assisted living. It should be noted, I believe, that we
10 under counted, because they had recently --
11 MR. GROSSMAN: Undercounted what?
12 THE WITNESS: Undercounted the volume of traffic
13 potentially, I don't know this with certainty, but possibly
14 undercounted because we looked only at a tennis club.
15 MR. GROSSMAN: That's one source. You said --
16 THE WITNESS: ITE.
17 MR. GROSSMAN: Okay. No, I don't mean that you.
18 You said you believe you undercounted the potential traffic
19 from what?
20 THE WITNESS: Okay. Let me back up, maybe counted
21 is the wrong terminology. ITE for racket club, it describes
22 the ancillary uses within a racquet club and one of the
23 things that they don't have in there is a whole health club.
24 And part of the use at the tennis club is a health club. So
25 it's very possible that our comparison was under enumerating

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1 the volume of traffic that could be generated by this
2 particular facility compared to the assisted --
3 MR. GROSSMAN: By facility you mean the tennis
4 club?
5 THE WITNESS: Yes, exactly.
6 MR. GROSSMAN: That's what I'm trying to get at,
7 what did you undercount.
8 THE WITNESS: Yes.
9 MR. GROSSMAN: Underestimated.
10 THE WITNESS: But we looked, we didn't also take
11 the square footage allocated for the health club portion of
12 it, because you can be a separate member.
13 MR. GROSSMAN: So if I understand what you're
14 saying is in comparing the traffic generated presently by
15 the tennis club with the potential traffic to be generated
16 by the proposed use you believe you understated the amount
17 of traffic that the tennis club actually generates?
18 THE WITNESS: That's correct. Thank you.
19 BY MR. CHEN:
20 Q. And the classification, that's my word but the
21 classification you used was racquet club.
22 A. Tennis club.
23 Q. Okay. Because you said racquet club.
24 A. My apologies. Because there are, yeah, tennis
25 club.

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1 Q. And I take it in the ITE definition of that it
2 does provide the nature of the activities for a tennis club?
3 A. It provides the activities and I've got actually I
4 believe I've got the pages from that section.
5 MR. GROSSMAN: I don't think he asked for that.
6 Do you want her to have that?
7 MR. CHEN: Well, she's going in the right
8 direction.
9 THE WITNESS: And it just, it gives the --
10 MR. CHEN: Because I would want to know what are
11 the assumptions made for that classification.
12 MR. GROSSMAN: Okay.
13 THE WITNESS: Well it's not assumptions that I
14 made.
15 BY MR. CHEN:
16 Q. I know that. I didn't say you, it's for the
17 definitions.
18 A. Yes. And I could get you the page, I believe that
19 I have the assisted living page, but for the tennis club,
20 tennis racquet club --
21 Q. Right.
22 A. -- they have a description of the use is in there.
23 Q. Right.
24 A. And they will have like a weight room but they
25 won't have separate membership, they won't have a separate -

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1 -
2 Q. I understand.
3 A. -- health club.
4 Q. And I take it you also have one for this assisted
5 living type facilities, is that correct?
6 A. Yes. Yes.
7 Q. Okay. Can we just have those supplied for the
8 record?
9 A. Sure.
10 Q. Fine. Thank you very much. Could we have it by
11 Monday?
12 A. Yes.
13 Q. Okay.
14 MS. LEE: If I might ask one other thing? I'm
15 just sort of relying questions that our membership has asked
16 us about.
17 MR. GROSSMAN: Well, we're in the middle of --
18 MS. LEE: I'm sorry, excuse me. I didn't mean to
19 interrupt.
20 MR. GROSSMAN: -- Mr. Chen. If he grants you --
21 MR. CHEN: I have no problem. Go right ahead.
22 MR. GROSSMAN: Okay. Go ahead.
23 MS. LEE: I just sort to follow up on that one.
24 BY MS. LEE:
25 Q. There's sort of alleging that people run into the

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1 Normandy Farms fence all the time and the owner of Normandy
2 Farms is constantly having people come in and apologizing to
3 him and being willing to pay for the fence. Was there any
4 sense of gathering additional information concerning non,
5 it's not a not an accident that would be reported and they
6 are happy to pay for the fence and not get it reported to
7 their insurance companies. I just wondered if you had any
8 sense of that?
9 A. No, I don't.
10 Q. How many times that old, you know, the Normandy
11 Farms is sort of iconic.
12 A. Yes.
13 MR. GROSSMAN: No urban legend consideration.
14 THE WITNESS: No.
15 MR. GROSSMAN: Okay. All right. Mr. Chen?
16 MR. CHEN: Okay. Thanks. I think I'm just about
17 done.
18 BY MR. CHEN:
19 Q. Just so I'm clear on this final point that we're
20 talking about. The ITE definitions. So that as I
21 understand your testimony the analysis that you undertook
22 was based upon those definitions rather than getting
23 firsthand information from either the existing use or the
24 proposed use?
25 A. It was to do an apples to apples comparison.

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1 That's correct.
2 Q. All right. Thank you. That's all I've got.
3 MR. GROSSMAN: Okay. Mr. Uhre?
4 MR. UHRE: Thank you.
5 CROSS-EXAMINATION
6 BY MR. UHRE:
7 Q. In looking at your table 1 on your, I believe it's
8 the last table at least --
9 MR. GROSSMAN: Which exhibit are you looking at?
10 MR. UHRE: Wow. Sorry.
11 MR. GROSSMAN: Which one?
12 BY MR. UHRE:
13 Q. Is it 39-D, is that the table 1? It said it's a
14 revised traffic statement?
15 A. Yes. Trip generation table.
16 MR. GROSSMAN: That would be 39.
17 MR. CHEN: For site generation table 1?
18 MR. GROSSMAN: Be 1. This is the September 11,
19 2015 report --
20 MR. CHEN: Correct.
21 MR. GROSSMAN: -- and the trip generation table
22 attached to it?
23 MR. UHRE: Yes, I just have the trip generation
24 table, I'm sorry. This is the one that
25 MR. GROSSMAN: Well there is on that replaced

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1 Exhibit 20, that's why, or replaced Exhibit 20, I'm sorry.
2 MR. UHRE: I think it's 39.
3 MR. GROSSMAN: So I just want to make sure you're
4 using the --
5 BY MR. UHRE:
6 Q. Is that your revised --
7 A. Yes.
8 Q. Okay.
9 A. It is.
10 Q. And the attached table to it? In any event, the
11 table that I have says the proposed assisted living facility
12 has a total of 20 a.m. peak hours and 31 p.m. peak hours.
13 Are we on the same table?
14 A. Well, no. I think you misspoke. It's not 20
15 hours, it's 20 vehicle trips.
16 Q. 20 vehicle trips per hour?
17 A. Per hour. One peak hour.
18 Q. But it's 20 in the morning and then it's 31 in the
19 p.m.?
20 A. That's correct.
21 Q. Is that correct? And so the total peak hours
22 would be a combination of those two?
23 A. No. You're confusing hours with vehicle trips.
24 There will be based on ITE trip generation there will be 13
25 vehicles that will enter the site and seven vehicles that

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1 will exit the site, for a total of 20 vehicle trips --
2 Q. Correct.
3 A. -- during a one hour period during the morning
4 peak period. And typically the morning peak hour is a two
5 hour window. So it is, it could be for some uses between
6 7:15 a.m. and 8:15 a.m. or from 7:00 p.m. to 8:00 a.m. or
7 from 8:30 a.m. to 9:30 a.m. But they're looking at a one
8 our window for typically a two to three hour peak period.
9 And the same thing in the afternoon.
10 Q. But those would be peak hour trips then?
11 A. That's correct.
12 Q. So to get the total peak hour trips you would add
13 the a.m. trips plus the p.m. trips?
14 A. No. Because you would still only be looking at
15 two hours. They don't occur at the same time.
16 Q. I understand that. I'm just trying to get in the
17 issue of measurement of traffic I'm just trying to
18 understand how you determine the total number of vehicle
19 trips peak hour trips for a development.
20 A. It's shown, it's shown there. It's 20 in the
21 morning that's a peak hour.
22 Q. Correct.
23 A. And in the p.m. peak hour it's 31.
24 Q. And to get the total for a development do you not
25 add the p.m. and the a.m.?

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1 A. No, you do not.
2 Q. They're considered in isolation?
3 A. They're considered in isolation.
4 Q. In your submission, you submitted with this table
5 an exemption from a traffic study.
6 A. That's correct.
7 Q. And your basis for that exemption was?
8 A. The LATR guidelines themselves.
9 Q. I think you said specifically page 17.
10 A. I reference page 17 because there is an issue for
11 newer projects, existing projects. If a developer builds
12 something that is a permitted use and goes in as a matter of
13 right and then the following year decides to tear it down
14 and let's say that existing use generates 30 trips, so we
15 avoided having to do an LATR study and the next year he
16 builds a use on that property that generates 60 trips, but
17 the net increase is only 30 vehicles, so he avoids the LATR
18 requirement so the reason for me highlighting that was for
19 the purpose of reminding staff that if an existing use has
20 been in place for more than 12 years, it is not considered
21 building on or adding to because when I am going through
22 this I want to be mindful that I can do this exemption
23 letter and I don't need to look at the assisted living in
24 isolation by itself. I get to take credit for what the
25 existing facility has put on the road.

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1 Q. I understand.
2 A. There are other locations that I could have
3 pointed to within the LATR guidelines. I've got them marked
4 off with pink where it describes new trips and that's what
5 you are to look at in terms of deciding whether or not
6 something qualifies for an exemption letter.
7 Q. But in your opinion this would have been a
8 renovation or an expansion of an existing use?
9 A. I believe that it is an expansion of a use or
10 expansion. Let me go to the specific language on that
11 particular on, so I don't muck it up because it is, you've
12 got to read the comments. I think it was on page 17, yes.
13 If I can I'll just read the paragraph.
14 MR. GROSSMAN: What are you reading from?
15 THE WITNESS: This is from the LATR guidelines.
16 MR. GROSSMAN: What date?
17 THE WITNESS: The date of this is January 2013. I
18 believe it's the most recent Local Area Transportation
19 Review and Transportation Policy Area Review guidelines
20 better known as LATR and TPAR.
21 MR. GROSSMAN: Right.
22 THE WITNESS: This is the third paragraph --
23 MR. GROSSMAN: You said page?
24 THE WITNESS: 17.
25 MR. GROSSMAN: 17.

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1 THE WITNESS: 17. I want to make sure that I get
2 the correct, I'm going to read actually the two paragraphs
3 that are here, if you can put up with my poor reading
4 skills. It's project size and location. To warrant an LATR
5 traffic study comma, a proposed development must have a
6 measureable traffic impact on a local area. Measureable
7 traffic impact is defined as a development that generates 30
8 or more total existing and this is in parenthesis, existing
9 new pass by and diverted weekday peak hour trips in the
10 morning, that's their peak hour is 6:30 a.m. to 9:30 a.m.
11 and or in the evening from 4:00 p.m. to 7:00 p.m. peak
12 periods. If the proposal generates less than 30 trips, or
13 is a renovation of an existing development and will generate
14 no net increase in trips, a traffic exemption statement is
15 required instead of the traffic study.

16 The second paragraph goes to the 12 year, an LATR
17 traffic study is not required for any expansion that
18 generates five or fewer additional peak hour trips. If use
19 and occupancy permits for at least 75 percent of the
20 originally approved development were issued more than 12
21 years before the LATR traffic study exemption request. And
22 it goes on from there. And there are other sites within and
23 I can point to those if you need them.

24 BY MR. UHRE:
25 Q. So you're saying the basis then? Let me just make

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1 sure I understand this. Are you then stating you believe
2 this is an expansion of an existing use?

3 A. It's not the use, it's the intensification of, I
4 don't know how else to tell --

5 Q. Where does it say --

6 A. -- this is --

7 Q. Where does it say intensification? It says
8 expansion.

9 A. I'll read the paragraph again. It doesn't say
10 what you say it says. So, for any expansion that generates
11 five or fewer, it doesn't say use.

12 Q. It says expansion.

13 A. Right.

14 Q. So --

15 A. And it's an expansion of --

16 Q. Of?

17 A. -- trips. It is an expansion of development on
18 this property but it's not going back to the tennis club.

19 Q. Well it says an expansion of an approved
20 development.

21 A. I don't see where it says that. LATR is not
22 required --

23 Q. It says of the original --

24 A. -- any expansion that generates. And this has
25 been the staff interpretation --

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1 MR. GROSSMAN: Well that's my question.
2 THE WITNESS: -- for the last 20 years.
3 MR. GROSSMAN: You've been dealing with this issue
4 before in terms of --
5 THE WITNESS: Yes.
6 MR. GROSSMAN: -- one use replacing another?
7 THE WITNESS: Yes.
8 MR. GROSSMAN: And how has technical staff applied
9 LATR guidelines with this question?
10 THE WITNESS: They have always applied that you
11 get credit for the existing use so long as that existing use
12 has been in existence for 12 years or more.
13 MR. GROSSMAN: Okay.
14 BY MR. UHRE:
15 Q. As it relates to the intersection between Falls
16 Road and Potomac Tennis Lane, I think you said that you
17 thought that the sight distance was adequate for that
18 intersection?
19 A. Based on the testimony that I heard earlier and
20 based on my own observation, but I did not do a measurement
21 of sight distance.
22 Q. Are you familiar with the word skew as it's used
23 for an intersection of one road with another road?
24 A. Sure. Yes.
25 Q. In your opinion, well, can you tell me what the

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1 current standard for intersection with a state highway would
2 be for a street such as this as it relates to skew?

3 A. No. There is State Highway Administration if you
4 were building a brand new road system, wants their
5 intersections to come in at a 90 degree angle. In this
6 particular case, Potomac Tennis Lane has been there for
7 quite some time. However, what they have done and it's only
8 very faintly shown is that they have taken the stop bar, if
9 I can, it's very faint, but they've angled the stop bar so
10 that the vehicle when it gets to that stop bar is 90 degrees
11 to the road, to the curvature of that road. So that you can
12 --

13 MR. GROSSMAN: By the stop bar, do you mean the
14 white line on the road?

15 THE WITNESS: A very faint white line that's here
16 in this photograph.

17 MR. GROSSMAN: Okay.

18 THE WITNESS: That's correct. And that corrects
19 for that skew. If this came in at a more acute angle --

20 MR. GROSSMAN: This being Potomac Tennis Lane?

21 THE WITNESS: Potomac Tennis Lane --

22 MR. GROSSMAN: At the intersection with Falls
23 Road?

24 THE WITNESS: Yes. Yes. That's sight distance
25 could be more of an issue, potentially, however not likely

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1 because you're on the outside of this curve and so the road
2 is going off on either side of you not at a 90 degree angle
3 where you have to turn your head to look right or left. You
4 can actually, it's better. But if this driveway were here -
5 -
6 MR. GROSSMAN: Yes.
7 THE WITNESS: -- on this side, and that driveway
8 were skewed, that could be problematic.
9 MR. GROSSMAN: By this side you mean on the
10 opposite side of the road --
11 THE WITNESS: On the opposite side in the Bullis
12 property, my apologies --
13 MR. GROSSMAN: Right.
14 THE WITNESS: -- on the south side of Falls Road.
15 MR. GROSSMAN: Just want the record to understand
16 what you're saying.
17 THE WITNESS: Yes.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: So when you're designing a brand new
20 roadway they ask you to design it to a 90 degree and that's
21 what you need to understand about the SHA guidelines, that's
22 a design manual for building new roads. They want you to
23 achieve that when you can on existing roads, but they have
24 done that through the use of pavement markings.
25 MR. GROSSMAN: Okay.

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1 BY MR. UHRE:
2 Q. I think you spoke about shuttle buses and in
3 particular I think what I'd like to focus on is the bus stop
4 opposite Bullis Road.
5 MR. GROSSMAN: There is no Bullis Road. Are you
6 talking about the Bullis School?
7 MR. UHRE: Bullis School, I'm sorry.
8 MR. GROSSMAN: Okay.
9 MR. UHRE: It's been a long day. I apologize.
10 BY MR. UHRE:
11 Q. So anyone who currently would exist that bus stop
12 would have to walk along the side of Falls Road until they
13 reached Tennis Lane, would that be correct?
14 A. If they were approaching Manor Care or the
15 restaurant, yes.
16 Q. And there is a sidewalk in front of Manor Care or
17 most of Manor Care, is that correct?
18 A. I believe that's correct, yes.
19 Q. And as I look at the Brandywine site there's not
20 even a sidewalk connecting the Brandywine site with the
21 property line, is that correct?
22 A. On the plan, I thought that there was a plan to
23 extend that sidewalk but I could be wrong. But that's what
24 I recall is that the sidewalk would connect.
25 MR. GROSSMAN: Would connect to what?

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1 THE WITNESS: If they had frontage I thought that
2 there was a sidewalk in that area on that plan.
3 MR. GROSSMAN: By that area --
4 THE WITNESS: But they may not own that property,
5 so it's a question of ownership.
6 MR. GROSSMAN: Let's identify what areas --
7 THE WITNESS: My apologies.
8 MR. GROSSMAN: -- are you referring to?
9 THE WITNESS: The east side of Tennis Lane.
10 MR. GROSSMAN: Okay. So you thought that there
11 was a sidewalk in the plan that connected the subject site
12 along Potomac Tennis Lane to what, how far?
13 THE WITNESS: Well just along their property
14 frontage. But if they don't own that piece then they
15 wouldn't be putting it in.
16 MR. GROSSMAN: Okay.
17 THE WITNESS: That may be where the confusion. I
18 know that they were putting it in along their parking lot.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: But if they don't have ownership of
21 that they would not be putting that sidewalk in.
22 MR. GROSSMAN: Okay.
23 BY MR. UHRE:
24 Q. Are you saying then on the plans it is your belief
25 that there is a sidewalk at least to the lot line, between

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1 the internal sidewalk?
2 A. That's what I recall but I could have read the
3 plan incorrectly.
4 Q. Okay. Did you hear the testimony earlier that
5 there would be approximately 40 employees in each of the
6 two, or at least some of the daytime shifts for Brandywine?
7 A. No, I did not.
8 MR. GROSSMAN: Did you say at least 40 or a
9 maximum 40?
10 MR. UHRE: I said up to 40.
11 THE WITNESS: I did hear that?
12 MR. UHRE: Sorry.
13 MR. GROSSMAN: Maximum.
14 BY MR. UHRE:
15 Q. And you're indicating on your peak hour trips that
16 there would be 13 peak hour trips in and 7 peak hour trips
17 out?
18 A. That's correct.
19 Q. I guess I'm just having some problems if you've
20 got 40 employees coming and 40 employees going,
21 hypothetically, we can pick a number of 35 if you want, I
22 don't understand how we can have 13 in and 7 out. I mean --
23 A. Well, if you recall in the earlier testimony
24 different staff members had different shifts. The kitchen
25 staff is the earliest in they're coming in around 6 o'clock,

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1 you've got another group of people that are coming in at
2 7:00 a.m., you've got another group that will come in around
3 8:30 a.m., 9 o'clock, you may have another group where
4 they're coming in just for a brief period in the middle of
5 the day and then going back out. So there is not a shift
6 where you have 30 or 40 people coming in at one time.
7 That's not how this functions. And one of the reasons why
8 when you look at the ITE trip generation rates, when you
9 look at those this is from national numbers, it reflects
10 that very thing. There is shift work that happens within
11 these facilities and you don't have to have and maintain a
12 staff of 40 on site at all times. That's not how they
13 operate.
14 Q. So is it your understanding from the bus stop at
15 Bullis School that the Brandywine applicant is offering a
16 shuttle service for those people as well to shuttle them to
17 the Brandywine --
18 A. No.
19 Q. -- project?
20 A. No. As I've indicated that bus stop, just so that
21 you know the majority of people that use that bus stop are
22 actually going to and from Bullis School. That's why it was
23 placed there and there's a crosswalk there and there is also
24 a police officer that helps individuals and teachers,
25 assistants, staff and I understand believe there might be

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1 one or two students that may use that bus as well, cross at
2 that location. What we've indicated before is that we don't
3 know who the employees will be at this point, where they're
4 going to be coming from and so that there is an opportunity
5 once the individuals have gone through the hiring process
6 and the asking process of do you want to take public
7 transportation there is an opportunity to provide that
8 service for them. We're not going to provide a service if
9 no one chooses to use transit service, which is why in my
10 analysis I made no assumption with regard to transit.
11 Q. So if 10 employees stated that they want to use
12 the bus stop by Bullis School for their employment with
13 Brandywine, is it your understanding that Brandywine would
14 provide a shuttle service for those 10 employees to reach
15 the Brandywine location?
16 A. No, and in fact, I would discourage them to do so.
17 I would think that it would be better for them to pick them
18 up at a transit location if they'd taken metro to pick it up
19 the transit service because by the time they get on this
20 particular bus they will have had to make several different
21 transfers to have all 10 people all take this one bus that
22 arrived every half an hour, you would get a whole lot better
23 ridership on transit if you pick them up at a transit
24 station where a lot of service is provided. Different bus
25 lines and the like.

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1 Q. I appreciate that as far as the planning staff way
2 but that wasn't quite my question. The question was if in
3 fact an employee states that they want to use that bus
4 service, is it your understanding that Brandywine will
5 supply a shuttle from that bus stop to Brandywine?
6 A. No, I can't say that and I would recommend that
7 they not.
8 Q. And so if they don't then all of the people would
9 have to walk along the side of the road if they chose to use
10 the bust stop to reach Brandywine, correct?
11 A. Again, I think by virtue of having the
12 conversation with the staff that are coming and going and
13 the transit service and a half an hour headway on that bus,
14 I think that they would be better served and I think the
15 employee would agree, better served by having the central
16 location to pick up transit staff, the employees.
17 Q. All right. Thank you.
18 MR. GROSSMAN: Any direct?
19 MS. GIRARD: I just have one quick question.
20 REDIRECT EXAMINATION
21 BY MS. GIRARD:
22 Q. When you were recalling about a sidewalk --
23 A. Thank you.
24 Q. -- was this what you were visualizing?
25 A. Yes, thank you.

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1 MR. GROSSMAN: BY this identify for the record
2 what you're talking about.
3 MR. KAUFMAN: What exhibit --
4 THE WITNESS: If I can, turning at northbound it
5 is the southern edge, the sidewalk right here.
6 MR. GROSSMAN: Right from the access --
7 THE WITNESS: Yes.
8 MR. GROSSMAN: -- up to a point --
9 THE WITNESS: Yes.
10 MR. GROSSMAN: -- about parallel with entrance.
11 THE WITNESS: Exactly, which then connects them to
12 the rail system.
13 MR. GROSSMAN: Any cross-examination on that one
14 question?
15 MR. UHRE: That one question?
16 MR. GROSSMAN: Is that it, counsel?
17 MS. GIRARD: That's it, yes.
18 RE-CROSS EXAMINATION
19 BY MR. UHRE:
20 Q. Just so I'm clear here, that sidewalk connects to
21 the Potomac Tennis Lane does it not? It doesn't connect in
22 a normal sidewalk fashion to the boundary of the property
23 line?
24 A. That's correct.
25 MR. GROSSMAN: Anybody else?

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1 (No audible response.)
2 MR. GROSSMAN: Okay. All right. Thank you, Ms.
3 Randall.
4 THE WITNESS: Thank you very much.
5 MR. GROSSMAN: Is that it?
6 MR. KAUFMAN: A break?
7 MR. GROSSMAN: Yes, in one second. A question
8 here, Mr. Uhre. You submitted I think it was Exhibit 101,
9 perhaps, correction to your earlier statement you had filed,
10 but you didn't say what exactly the corrections were. So
11 during the break, could you take a look and tell me what
12 you've changed in your letter?
13 MR. UHRE: Sure.
14 MR. GROSSMAN: Okay.
15 MR. KAUFMAN: That's Exhibit 101, did you say?
16 MR. GROSSMAN: I'm looking. Something around
17 there.
18 MR. KAUFMAN: If I can remember a letter from Mr.
19 Uhre on 11/30/15.
20 MR. GROSSMAN: Yes, a corrected version of his
21 October 27, 2015 letter.
22 MR. KAUFMAN: Yes, that actually would just let us
23 know what that is with the --
24 MS. GIRARD: I also have the impervious numbers.
25 Do you want me to recall Don Mitchell to give those or do

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1 you want me to just say them?
2 MR. CHEN: Why don't we just hear, if we can avoid
3 calling the gentleman.
4 MR. GROSSMAN: Okay.
5 MS. GIRARD: Right.
6 MR. GROSSMAN: Yes, what are they?
7 MS. GIRARD: According to the VIKA the existing
8 impervious is 68 percent and the proposed is 56.
9 MR. GROSSMAN: So the existing is 68, did you say?
10 MS. GIRARD: Correct.
11 MR. GROSSMAN: And proposed is 56?
12 MS. GIRARD: Yes.
13 MR. GROSSMAN: Okay. Now Mr. Kaufman, you asked
14 for a break for five minutes?
15 MR. KAUFMAN: Yes, that would be appropriate.
16 MR. GROSSMAN: Okay. All right. And is the
17 applicant now done?
18 MS. GIRARD: Yes.
19 UNIDENTIFIED PERSON: Yes.
20 MR. CHEN: Okay. Can I just get back to you on
21 this after the break?
22 MR. GROSSMAN: Okay. Is the applicant done with
23 their case?
24 MS. GIRARD: Yes, we are.
25 MR. GROSSMAN: Okay. All right. So after the

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1 break we'll move into the, the other thing is I'm not sure
2 how long your case will take.
3 MR. CHEN: There are several people who wish to
4 speak. Mr. Duncan, I was aware of. I suggest we put him on
5 first because he has issues with today.
6 MR. GROSSMAN: Okay.
7 MR. CHEN: I believe that Ms. Lee has a statement
8 to make and I believe that Mr. Uhre has a statement to make
9 also.
10 MR. GROSSMAN: Right. I'm asking what order do
11 you wish to proceed. Do you want to have Mr. Duncan --
12 MR. CHEN: They're ready to go in that order,
13 something like that.
14 MR. GROSSMAN: Anybody object to having Mr. Duncan
15 first?
16 MR. UHRE: No, I'm sorry.
17 MR. GROSSMAN: Okay. All right. All right. So
18 we'll do that when we come back in five minutes and Mr.
19 Duncan will take the stand.
20 MR. UHRE: Just if we get to my testimony today as
21 you understand, I ask to request a PowerPoint, so I'll need
22 a few minutes to set that up.
23 MR. GROSSMAN: All right.
24 MS. GIRARD: I didn't hear him.
25 MR. GROSSMAN: He wants to make a PowerPoint

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1 presentation. Do you have a copy of the PowerPoint
2 presentation?
3 MR. UHRE: Yes.
4 MR. KAUFMAN: How will that be done?
5 MS. GIRARD: How do you project that in here?
6 MR. GROSSMAN: If you have a --
7 MR. UHRE: I was told that it would be projected
8 on the wall, but I see it's a very dark wall so I don't know
9 what's been --
10 MR. GROSSMAN: You might try it on the back wall
11 or on this wall, or on this wall I guess you could try it.
12 MS. GIRARD: Yeah, that seems --
13 MR. GROSSMAN: Usually people set it up in
14 advance.
15 (Discussion off the record.)
16 (Off the record.)
17 (On the record.)
18 MR. GROSSMAN: Back on the record again. So Mr.
19 Uhre what exactly did we change or correct in your letter?
20 MR. UHRE: I'm sorry I don't have both copies with
21 me but there was three or four locations where it said our
22 property that I simply changed it to the residential
23 property.
24 MR. GROSSMAN: Okay.
25 MR. UHRE: That's the extent of it, there's no --

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1 MR. GROSSMAN: No substantive change?
2 MR. UHRE: I think Ms. Girard had raised, brought
3 to my attention that there was those typos so there's no
4 material change in the letter.
5 MR. GROSSMAN: Okay. Glasses in the other room.
6 All right. Don't do anything that requires me to see
7 anything. All right. And also Mr. Chen has requested the
8 opportunity to cross-examine briefly, very briefly, Mr.
9 Mitchell on the permeable surface question.
10 MR. KAUFMAN: If he calls him back doesn't he
11 become his witness?
12 MR. CHEN: No.
13 MR. GROSSMAN: No. He can be called back to
14 cross.
15 MR. CHEN: He didn't have the information at the
16 time he was crossed examined.
17 MR. GROSSMAN: Right. So sir, would you mind the
18 microphone is up here.
19 MR. MITCHELL: Good.
20 MR. GROSSMAN: You get the good seat this time.
21 MR. MITCHELL: Thank you.
22 MR. GROSSMAN: All right, sir.
23 MR. CHEN: Thank you very much.
24 MR. GROSSMAN: You're still under oath, by the
25 way.

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1 MR. MITCHELL: I appreciate that, sir.
2 FURTHER CROSS-EXAMINATION
3 BY MR. CHEN:
4 Q. Mr. Mitchell, we received the information that as
5 to the impervious space the existing tennis club is at 68
6 percent and the proposal would be at 56 percent. Okay. Now
7 can you identify orally, you don't need to use an exhibit if
8 you can't, what are the spaces that constitute the
9 impervious space under both the existing and the proposed.
10 A. Well under the existing conditions it's asphalt
11 parking lot, and drive lanes, the tennis courts, the bubble,
12 the large garage and that shed foundation which is left.
13 I'm not certain if they, I had someone measure this a little
14 while ago. I'm not certain if they included the stairs that
15 were going down the hill, they probably didn't.
16 Q. It was mentioned off of plans here during the
17 lunch break?
18 A. Yes, it was in my office.
19 Q. And on the proposed?
20 A. The proposed was taken from the storm water
21 management calculations that were done to design the micro
22 filtration basins and planters.
23 Q. So that's picking up as far as permeable it's
24 picking up the space in the stream valley buffer?
25 A. That was for the impervious, for the overall site.

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1 Q. Yes, I mean what I'm saying is that in arriving at
2 your 56 percent under the proposed --
3 A. Right.
4 Q. -- as I understand it that would leave 44 percent
5 pervious?
6 A. Correct.
7 Q. Okay. Now of that 44 percent, I assume that that
8 includes the stream valley buffer area that you picked up.
9 A. Correct.
10 Q. So are you able to, if you know and you may not, I
11 apologize if I have you at a disadvantage, it's not a trick
12 question --
13 A. Thank you.
14 Q. -- but if you were to include the buffer area as
15 part of the -- strike that. Do you know what amount of the
16 44 percent is the pick up from the stream buffer area?
17 A. No, no.
18 Q. Okay. But what we do know is that now what you're
19 able to do is to include in that 44 percent the stream
20 buffer area.
21 A. The whole site, so yes.
22 Q. Now my recollection of your testimony this morning
23 and I checked it during the break and so maybe we're at the
24 crossroads again, but that your testimony was that the
25 impervious area was 90 percent.

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1 A. And I followed by saying I haven't actually
2 measured any of that it was my, and in my mind I was
3 excluding the stream valley areas that were green. I was
4 thinking of it in the sense of the project area.
5 Q. Okay. So that's why the numbers changed.
6 A. That and it was just an estimate rather than a
7 computer analysis which is what we did this afternoon.
8 Q. Okay. That's fine.
9 MR. CHEN: That's all I've got.
10 MR. GROSSMAN: Any questions from anybody in the
11 opposition on what was just asked?
12 MR. UHRE: Just one question.
13 FURTHER CROSS-EXAMINATION
14 BY MR. UHRE:
15 Q. On the number, the percentage for the existing
16 conditions, are you including within your calculation the
17 tennis courts?
18 A. Yes. They're counted as impervious.
19 Q. Okay. Thank you.
20 MR. GROSSMAN: Any redirect on?
21 MR. CHEN: Just on that.
22 FURTHER RE-CROSS EXAMINATION
23 BY MR. CHEN:
24 Q. But by the same token under your existing, you
25 have the situation with the improvements that are in the

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1 stream valley buffer, that's in your count?
2 A. Sure.
3 Q. Understood. Thank you.
4 MR. GROSSMAN: Any redirect?
5 MS. GIRARD: No.
6 MR. GROSSMAN: All right. Thank you, Mr.
7 Mitchell, you survived a second time.
8 MR. MITCHELL: I can have the rest of the day off
9 now?
10 MR. GROSSMAN: Yes, absolutely. All right. Mr.
11 Duncan, would you be so kind as to take the hot seat?
12 MR. DUNCAN: All right. Thank you. While I'm not
13 going to read the testimony I have some basic information
14 printed out if people want --
15 MR. GROSSMAN: Okay. Let's start out first --
16 MR. DUNCAN: -- the information. Okay.
17 MR. GROSSMAN: -- would you state your full name
18 and address, please?
19 MR. DUNCAN: My full name is Ted Duncan, 7800
20 Buckboard Court, in Potomac, Maryland 20854.
21 MR. GROSSMAN: All right. And did you use the
22 sign in sheet so that we have a place to send a notice to
23 you?
24 MR. DUNCAN: Yes.
25 MR. GROSSMAN: Okay. All right. Would you raise

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1 your right hand, please? Do you swear or affirm to tell the
2 truth, the whole truth and nothing but the truth under
3 penalty of perjury?
4 MR. DUNCAN: I do.
5 DIRECT EXAMINATION
6 MR. GROSSMAN: All right. You may proceed.
7 MR. DUNCAN: All right. So while as I stated, I'm
8 not going to read any testimony but I have copies of some of
9 the information that I'm going to go through and happy to
10 give copies, I have about 10 copies for those who would like
11 it. I assume that you would like one for the record.
12 MR. GROSSMAN: Let me see what we're talking about
13 here.
14 MR. DUNCAN: We're looking mostly at the real
15 estate. I'm a real estate agent, so I'm looking at property
16 values and the impact of this facility on property values.
17 MR. GROSSMAN: Well there's an issue here, then
18 you're offering in effect to give expert testimony.
19 MR. DUNCAN: I, I suppose that's a designation you
20 might put on me. I mean I am --
21 MR. GROSSMAN: Well I will allow it to the extent
22 that it's not objected to, but it is an issue usually when
23 somebody is planning to call an expert witness we give all
24 parties advance notice of that so that they can prepare to,
25 I mean we find out in advance what it is that they propose

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1 to say, the same reason I asked you if you were here on
2 behalf of an organization.
3 MR. DUNCAN: Right.
4 MR. GROSSMAN: It's the same kind of disclosure so
5 that all the parties are prepared to examine the opinion and
6 cross-examine on it. So that's the issue.
7 MR. DUNCAN: For what I have done is something
8 that I often do on my own, I was not called by any party.
9 MR. GROSSMAN: I understand that.
10 MR. DUNCAN: So I mean, okay. Anyway --
11 MR. GROSSMAN: To the extent that you're offering --
12 MR. DUNCAN: -- are there objections, I guess,
13 it's a question.
14 MR. GROSSMAN: Let's mark this as an exhibit.
15 MS. GIRARD: We object to the admission into the
16 record of the exhibit.
17 MR. GROSSMAN: Okay. Usually what we do is there
18 comes a time at the end of the hearing when I ask for
19 anybody moving any exhibits in and if there's an objection
20 to one coming into evidence as opposed to just being in the
21 administrative record, then it can be raised at that time.
22 MS. GIRARD: Just giving you a preview.
23 MR. CHEN: What is the number we're going to
24 assign to this? The number you're going to assign to it,
25 sir?

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1 MR. GROSSMAN: The number would be 108.
2 (Hearing Exhibit No. 108 was
3 marked for identification.)
4 MR. GROSSMAN: Exhibit 108.
5 MS. GIRARD: We don't have a copy.
6 MR. GROSSMAN: Would you mind --
7 MR. DUNCAN: No.
8 MR. GROSSMAN: -- just giving the that?
9 MR. CHEN: Is there a title to it?
10 MR. DUNCAN: I put effects of abutting, I don't
11 have my glasses on, effects of abutting --
12 MR. GROSSMAN: I'll give a title to it. It's
13 essentially summary of Ted Duncan's testimony. How's that?
14 Is that fair enough?
15 (Discussion off the record.)
16 MR. GROSSMAN: Is it --
17 MR. DUNCAN: There, there's some loose pages with
18 it as well.
19 MR. GROSSMAN: But they're just part of the whole
20 ball of wax?
21 MR. DUNCAN: Correct.
22 MR. GROSSMAN: So they'll all be Exhibit 108.
23 MR. DUNCAN: So I'll start just by asking some
24 rhetorical questions which is, you know --
25 MS. GIRARD: He's not been qualified as an expert.

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1 MR. DUNCAN: -- likely understand the value of
2 property and given, given two homes one that is in close
3 proximity to a commercial space and one that is not, my
4 question would be which one would you prefer? And I know
5 there can be lots of ways that question is answered, but I'm
6 guessing most people would prefer to look upon woods rather
7 than look upon a three story building or something like
8 that. And you know one would rather look on the woods than
9 perhaps on a golf course or a tennis facility and so on.
10 And even if that structure is hidden, that
11 commercial property is hidden simply by the fact that you
12 know that it is there will make you value a property less
13 than if it is actually not there.
14 MR. GROSSMAN: This would be true of any
15 commercial property next to a residential?
16 MR. DUNCAN: Absolutely.
17 MS. GIRARD: Can we just get clarification? Is he
18 just testifying as a lay person?
19 MR. DUNCAN: Yes.
20 MS. GIRARD: This feels like it wants to be expert
21 testimony.
22 MR. GROSSMAN: That's what it sounds like to me
23 that you're offering an expert opinion, but are you saying
24 this is your personal opinion about what you'd prefer?
25 MR. GROSSMAN: Correct.

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1 MR. DUNCAN: And --
2 MR. GROSSMAN: All right. So let's --
3 MR. DUNCAN: Okay. So yes, this is me as a
4 realtor and --
5 MR. KAUFMAN: Well no I'll object to that.
6 MR. DUNCAN: Okay.
7 MR. KAUFMAN: Either you're a person up there as
8 an individual --
9 MR. DUNCAN: Okay.
10 MR. KAUFMAN: -- or you're offering it as an
11 expert. Which is it?
12 MR. GROSSMAN: If you're offering as an expert,
13 then you'd have to be qualified as an expert --
14 MR. DUNCAN: Okay.
15 MR. GROSSMAN: -- and then we'd have to open it up
16 to what they call voir dire, you've heard the other experts.
17 MR. DUNCAN: So is it wrong for me to, as a
18 realtor, I am able to pull data from house sales and things
19 like that?
20 MR. KAUFMAN: You can't offer, no.
21 MR. DUNCAN: Is that something that I can include
22 in my testimony?
23 MR. GROSSMAN: Yes. But once again --
24 MR. DUNCAN: That is in, it's in the public
25 record?

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1 MR. GROSSMAN: Yes. But it's beyond the can of
2 layman, that is I don't have that data, that you know or the
3 access to it or an opinion based on it. I think what you're
4 offering now is more, you're certainly welcome to state your
5 personal feeling about that you don't, you would rather not
6 be next to a commercial property.
7 MR. DUNCAN: Okay.
8 MR. GROSSMAN: But that's no different from
9 offering something more global, which is what I think you're
10 trying to do. Then now --
11 MR. DUNCAN: Sorry, go ahead.
12 MR. GROSSMAN: -- if you are attempting to offer
13 expert testimony you'd have to go through a qualification
14 process with you, which we can do if there's no objection to
15 it.
16 MR. DUNCAN: As I have no idea how to proceed.
17 MR. GROSSMAN: Let's first off, what is, I take it
18 you are seeking to be an expert in real property or property
19 values? Is that --
20 MR. DUNCAN: Yes.
21 MR. GROSSMAN: Okay. And what is your educational
22 background?
23 MR. DUNCAN: I got a B.S. in physics from Saint
24 Lawrence University, theater minor. I have been selling
25 real estate since 1992. I grew up in the D.C. area, I have

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1 lived in the current home where I am since I was 7 years old
2 in River Falls. My wife and I now have given my parents a
3 place to stay there while, you know, to age in place. So I
4 do predominately most of my work occurs in the Potomac
5 region. I represent both sellers and buyers. My current
6 status in my officer, I was the number four agent last year,
7 number nine in the company. I did about 13 million dollars'
8 worth of production last year, and again, normally in the
9 Potomac region.
10 MR. GROSSMAN: And the real estate property you're
11 dealing is residential, commercial? What is it?
12 MR. DUNCAN: I go across the board. I mostly do
13 residential but I also have done assemblages, where I've put
14 together a whole block of land that I've tried to market it
15 out to developers. I have, I've met with people to sell,
16 investors who are interested in commercial property as well.
17 So I have a wide range of abilities.
18 MR. GROSSMAN: And do you have any experience or
19 knowledge in appraisals of homes?
20 MR. DUNCAN: No, I've never been an appraiser.
21 Simply in my practice of real estate I give market analysis,
22 so I don't know if that, that does not fall under an
23 appraisal, but it is a means by which we value properties as
24 realtors.
25 MR. GROSSMAN: All right. Do you have any

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1 training in economics?
2 MR. DUNCAN: I took courses in it but no degree in
3 it.
4 MR. GROSSMAN: I'm going to open this up to the
5 floor in terms of questions regarding Mr. Duncan's expertise
6 to evaluate real property values.
7 MS. GIRARD: Right. First I want to get on the
8 record our objection to the fact that Mr. Duncan walked in
9 today and is trying to qualify as an expert, when clearly
10 under the rules we're supposed to be given notice of anyone
11 who wants to provide expert testimony.
12 MR. GROSSMAN: Yes. Do you want to cite a
13 particular rule that says that?
14 MS. GIRARD: I can. Let me finish the thought.
15 MR. GROSSMAN: Yes.
16 MS. GIRARD: Secondly we object to anyone a real
17 estate broker trying to opine as to the value of a property.
18 The state law is clear you need to get--
19 MR. GROSSMAN: I don't claim he intends to be a
20 broker, I think an agent, correct?
21 MR. KAUFMAN: It's not, yes.
22 MS. GIRARD: He's not an appraiser --
23 MR. GROSSMAN: Correct.
24 MS. GIRARD: -- and under state law you have to
25 either have an appraiser's license or certification to opine

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1 as to the value of a property. It's very stringent and we
2 object to any testimony that he's going to try to present as
3 to the value of the property or diminution or confliction
4 thereof.
5 MR. KAUFMAN: I'm just going to give you the
6 section.
7 MR. DUNCAN: Do you want me to respond to those
8 things?
9 MR. GROSSMAN: Not just yet.
10 MR. DUNCAN: Okay.
11 MR. GROSSMAN: She's stating her objection.
12 MR. DUNCAN: Sure.
13 MS. GIRARD: Now I'm looking for the section. I
14 know it's in here somewhere.
15 MR. GROSSMAN: You can give it to me afterwards,
16 if you would.
17 MS. GIRARD: Okay.
18 MR. GROSSMAN: So you welcome members of the
19 community coming in to testify, but I also have to have a
20 fairness standard and I'm concerned when somebody is going
21 to present what amounts to expert testimony that we're fair
22 to the other side also.
23 MR. DUNCAN: I understand.
24 MR. CHEN: Can I maybe help on this a little bit?
25 MR. GROSSMAN: Sure.

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1 MR. CHEN: Because I think we're in voir dire.
2 BY MR. CHEN:
3 Q. As part of your services that you provide to your
4 customers, sir, both you represent either sellers or buyers,
5 it doesn't make any difference?
6 A. Absolutely.
7 Q. And as part of the service that you provide, do
8 you give them advice as to the amount of an offering or a
9 selling price?
10 A. Yes.
11 Q. Are you the person that makes that recommendation?
12 That number?
13 A. I am.
14 Q. And is that a normal course of the service that
15 you provide to your clients?
16 A. It actually --
17 MR. KAUFMAN: I object. He's leading him with
18 his.
19 MR. CHEN: I can lead.
20 MR. GROSSMAN: Yes. It's voir dire he has a right
21 to lead.
22 THE WITNESS: In my practice that is actually one
23 of the things that I am most known for amongst my
24 colleagues, within my office, I am often brought in whenever
25 somebody is pricing a property or wants an accurate value of

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1 a property they bring me in and if my testimony is allowed
2 to proceed, I think you'll understand why.
3 BY MR. CHEN:
4 Q. Okay. But hold on a minute. How often do you
5 think you've done it over the course of your career?
6 A. 500 times.
7 Q. Now and that is advising your clients or I guess
8 someone in your office who is a client of your office, as to
9 the implication of adjacent land uses on a sale price or an
10 offering price?
11 A. Absolutely.
12 Q. Okay. And that's part of the service you provide?
13 A. Right.
14 Q. And I take it does that involve you becoming aware
15 of an adjacent land use and what it might have an impact on,
16 property that's being offered or being considered for
17 purchase?
18 A. Not only is that part of my practice, that is
19 actually a fiduciary responsibility of an agent to know what
20 is being done.
21 Q. Okay. So we're not really talking about an
22 appraisal, you're talking about the impact of an adjacent
23 property on the sale or offering price of the property, is
24 that correct?
25 A. Yes.

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1 MS. GIRARD: How does that vary from an appraisal?
2 MR. GROSSMAN: Well you can't ask him the
3 question. You can ask the witness.
4 MS. GIRARD:
5 Q. How does that vary from an appraisal?
6 A. One of the biggest problems we have in my end of
7 the world in real estate right now is that appraisals are
8 completely subjective. While they are licensed one
9 appraiser can come in and say you've got an extra parking
10 space and that's worth \$40,000, another appraiser can come
11 in the same day, do the same appraisal and say no that space
12 is only worth \$10,000. Each appraiser is entitled to their
13 own opinion and absolutely nothing you can do can persuade
14 them differently and the fact that you have two appraisals
15 that have completely different values assigned to things is
16 irrelevant. And if you try and question an appraiser on it,
17 they will say that's my opinion, you know, thank you very
18 much, don't call me again. And I've had this through
19 experience.
20 In fact, even if you'd like a quick anecdotal, I had
21 one appraiser --
22 MR. GROSSMAN: Oh no, no, no, let's not give --
23 MR. DUNCAN: Okay. Fine.
24 MR. GROSSMAN: -- anecdotal.
25 BY MS. GIRARD:

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1 Q. I still don't understand how that's different from
2 what you do. How you're saying appraisals are subjective
3 but you're objective.
4 A. Yes.
5 Q. How so?
6 A. If you'd like to, well, if you look you'll see I
7 got a degree in physics and I can't escape my nerdiness. So
8 when I go to analyze a property I actually will take into
9 consideration factual data, appraised value which is done by
10 an independent third party, State of Maryland appraises, or
11 sorry, assess, assesses a property. The State of Maryland
12 assesses a property. Then that value is assigned, that's
13 what we pay our taxes on. That assessed value, if two homes
14 sit next to each other and one is assessed for more than the
15 other it is reasonable that the one that is assessed for
16 more will sell for more than the one that is assessed for
17 less. Do you follow that and does that make sense?
18 Q. Right, but is it --
19 A. Okay. So using that information I then go and
20 plot that value, the assessed value to all kinds of
21 different data and you may shake your head and say this is
22 crazy, I have done this, as I said over 500 times, it is
23 astounding how accurate these come out to be. And to the
24 point where I have colleagues coming to me saying show me
25 how you do this because this is invaluable for pricing

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1 properties.
2 So I do the objective analytical aspect and you
3 said how is that objective? That is objective because I'm
4 taking raw data, putting it into an Excel spreadsheet,
5 plotting that data on a graph. There are two graphs in this
6 little presentation.
7 Q. I understand that.
8 A. And then I take the subjective aspect of any given
9 property or the conditions to that property. So in a normal
10 situation if a house has a better location in the
11 neighborhood that may bring subjective, my subjective value
12 into it. Okay. But the objective aspect is fact and raw
13 data that I don't create, it's simply crunching numbers and
14 spits out information. And I go into these things not
15 knowing what they're going, what's going to happen and
16 that's what I did in this case. I had no idea what my data
17 would produce, but then it came out and that's when I said
18 this should be shared.
19 Q. I want to get back to that, but I have --
20 A. Okay.
21 Q. -- two other questions when you're talking about
22 going into this having no idea what it's going to show. Are
23 you a member of the tennis club by any chance?
24 A. No.
25 Q. And are you associated with Brickyard Coalition?

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1 A. Yes.
2 Q. Are you in fact on the Board of Directors?
3 A. I'm the President.
4 Q. Okay. That ties back into our objection that the
5 Brickyard Coalition has notified that they were going to
6 participate in these proceedings and did not notify us that
7 they were going to try to call experts.
8 A. I am here on my behalf.
9 Q. But more to what you were saying you say that it's
10 all objective and you base it on assessments.
11 A. Yes.
12 Q. So those are state assessments?
13 A. Yes.
14 Q. And there are assessors --
15 A. They're in, they're in here.
16 Q. -- from the state that go in and perform these
17 assessments, correct?
18 A. The, if you'd like to know technically how it's
19 done --
20 MR. GROSSMAN: Well no, I'm going to --
21 MR. DUNCAN: Okay. I don't know what the --
22 MR. GROSSMAN: -- because how long ago did you
23 learn of this hearing?
24 MR. DUNCAN: I attended the first one briefly.
25 And so I don't know the exact date, but.

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1 MR. GROSSMAN: So you've known about it for a
2 month or more?
3 MR. DUNCAN: I guess that would be accurate, yes.
4 MR. GROSSMAN: All right. And you are the current
5 President of the Brickyard Coalition?
6 MR. DUNCAN: Yes.
7 MR. GROSSMAN: I think that's fundamentally unfair
8 and a violation for you to come in and offer expert
9 testimony now under the, I'm going to use the word guise,
10 because I don't mean that in a pejorative sense, but under
11 the assumption that it's your personal testimony rather than
12 on behalf of the organization. This in effect is generated
13 by the organization and it's unfair, it's a violation of
14 OZHA's rules to allow you to testify without giving advance
15 notification to the applicant. It's just fundamentally
16 unfair. So I mean I'd probably rule the same way even if
17 you weren't connected with the Brickyard Coalition, but the
18 fact that you've known about this for a month or more, have
19 not bothered to file anything indicating that you
20 anticipated producing expert testimony here and your
21 connection as president of the Brickyard Coalition which has
22 known about it for many months, that's just fundamentally
23 unfair. Because you haven't given the other side notice.
24 Why didn't you give the other side notice?
25 MR. DUNCAN: If you see my dates on this, I just

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1 wound up cranking this up about a week ago. So I didn't
2 know where the numbers were going to fall until I go and
3 actually enter them into the database and start producing
4 graphs and start looking at the data. Over the course of
5 the week, I've probably spent I don't know 10 hours on this
6 looking at it and trying to see. So I didn't know that I
7 was going to be testifying until.
8 MR. GROSSMAN: Okay. The only testimony I would
9 allow from you under these circumstances, is your personal
10 opinion that you are or sense that you don't want this
11 project here or you do want it or you think it'll have some
12 ill effects, but I won't accept a scientific analysis from
13 you of this, because I just think it's unfair to the other
14 side.
15 MR. DUNCAN: So may I have an opportunity to come
16 back because all I'm doing --
17 MR. GROSSMAN: I don't know.
18 MR. DUNCAN: -- this is information that anyone in
19 this room can find. If they chose to.
20 MR. GROSSMAN: It's the analytical part of it that
21 you're offering, that is the issue here. You're offering in
22 effect give expert testimony in real estate valuations. And
23 I've had numerous people give testimony to me in real estate
24 valuations, they're always declared as experts, they always
25 give their qualifications in advance and they submit their

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1 material in advance so the other side has an opportunity to
2 meet it. It's just a fundamental fairness question and I
3 encourage people from the community to testify, but this is
4 an issue when you come in even though the Brickyard
5 Coalition has known about this for a very long time. So I'm
6 not going to let you testify about your scientific data.
7 MR. DUNCAN: So what if it's just like that chart
8 on the front is just raw numbers? It's simply saying these
9 properties --
10 MR. GROSSMAN: I'm not going to allow --
11 MR. DUNCAN: -- took an average date of sale.
12 MR. GROSSMAN: -- I'm not going to allow a
13 surprise in this context. Okay?
14 MR. DUNCAN: Okay.
15 MR. GROSSMAN: In terms of raw numbers --
16 MR. DUNCAN: I mean you can look at that, it's
17 looking at two sets of homes, those that are in close
18 proximity or have a direct view of commercial property and
19 those that do not. That's what those two sets represent.
20 Set 1 is those that do not have direct access to commercial
21 property; set 2 are either about or have view.
22 MS. GIRARD: Objection. He is now providing
23 testimony.
24 MR. GROSSMAN: Well that doesn't mean that it's
25 going to be considered by me in evaluating the case.

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1 MR. DUNCAN: Yes, I'm asking a question. I don't
2 know if that's testimony.
3 MR. GROSSMAN: I'm just, as I say, I'm
4 uncomfortable with the unfairness aspect. You certainly
5 could have made this known beforehand. If you have a
6 personal opinion separate from the data collection and
7 analysis, you're free to give it.
8 MR. DUNCAN: I don't, I don't have a personal
9 opinion because --
10 MR. GROSSMAN: Okay.
11 MR. DUNCAN: -- I mean this is my livelihood that
12 is affected by it.
13 MR. GROSSMAN: Look, your information and analysis
14 may be valid. I'm not saying it's not. I'm just saying
15 that we have to follow a fundamentally fair process here.
16 MR. DUNCAN: So --
17 MR. GROSSMAN: And coming in at the last minute
18 like this on the day of the hearing, actually on the
19 afternoon of the hearing without any notice, even though
20 you're the president of an entity that's been a party to
21 this action, is unfair.
22 MR. DUNCAN: Is the Brickyard Coalition a party?
23 MR. GROSSMAN: Yes. They are a party because
24 they're participating in a hearing and offered testimony,
25 they're a party of record under our OZHA rules.

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1 MR. DUNCAN: My original question, I believe if
2 this gets extended to Monday I think, am I able to --
3 MR. GROSSMAN: No that still, you're still --
4 MR. DUNCAN: I don't know. This is the first time
5 I've been to a hearing. You keep flying over there and
6 shaking your head and I don't appreciate that.
7 MR. GROSSMAN: Yes, no we --
8 MR. DUNCAN: I'm here as an individual.
9 MR. GROSSMAN: I don't appreciate that either.
10 MR. KAUFMAN: You're offering yourself --
11 MR. GROSSMAN: Mr. Kaufman. Okay. This is a
12 question of fundamental fairness and as I said I'm not going
13 to allow Exhibit 108 or your testimony on it.
14 MR. DUNCAN: May I come in Monday if it gets
15 extended?
16 MR. GROSSMAN: No.
17 MR. DUNCAN: Okay.
18 MR. GROSSMAN: No, because it's still the same
19 problem you have to give it well in advance, I forget if
20 it's 20 days or 30 days in advance.
21 MR. DUNCAN: I don't know, I didn't have it 20
22 days ago. Okay. All right. So I don't --
23 MR. GROSSMAN: The party is going to, all right, I
24 don't want to repeat myself, you understand?
25 MR. DUNCAN: I understand, yeah. Okay.

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1 MR. GROSSMAN: Even though I love physics.
2 MR. DUNCAN: Well when it does stuff like this
3 it's tough to argue. All right. I don't have, you know, I
4 live, you know, five miles away, so I'm not impacted other
5 than in my livelihood, and I guess I can't even address
6 that.
7 MR. GROSSMAN: Okay.
8 MR. DUNCAN: Thank you for your time.
9 MR. GROSSMAN: Thank you, sir. All right.
10 MR. DUNCAN: I'm happy to talk to Mr. Kaufman, if
11 you'd like that.
12 MR. KAUFMAN: I'm not interested in that.
13 MR. DUNCAN: Okay.
14 MR. GROSSMAN: All right. So Exhibit 108 I will
15 note will not be admitted, however it will be in our
16 administrative record. Mr. Uhre, did you know about Mr.
17 Duncan's intended testimony today?
18 MR. UHRE: I knew that he had inquired as to
19 whether or not he could give testimony and I said I
20 understood it was his ability to give, he could give
21 individual testimony. I'm sorry, I don't understand this
22 expert non-expert division that goes on.
23 MR. GROSSMAN: But you do understand that an
24 organization, the restrictions on organization offering
25 testimony without giving an advance notice?

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1 MR. UHRE: Right.
2 MR. GROSSMAN: All right.
3 MR. CHEN: Just for the record, my client and I
4 had no prior knowledge about --
5 MR. GROSSMAN: Okay.
6 MR. CHEN: -- we wish Mr. Duncan could testify but
7 I will tell you that we had no, I mean, but you heard today,
8 I heard it for the first time.
9 MR. GROSSMAN: Okay. All right. Our next
10 witness, did you say that Ms. Lee, you wish to see it?
11 Okay. Watch any cords that are --
12 MS. LEE: I will.
13 MR. GROSSMAN: -- across the way here.
14 MS. LEE: I'm going to read mine in the narrative
15 form, so I'll give you an advance copy here.
16 MR. GROSSMAN: This is Exhibit 109.
17 (Hearing Exhibit No. 109 was
18 marked for identification.)
19 MR. CHEN: That's 109?
20 MR. GROSSMAN: 109.
21 MR. CHEN: Ms. Lee, yes they need more to go.
22 MS. LEE: And the only other, the only exhibits
23 that I've included are pages that I had previously included
24 in my submission that I did as my prehearing statement and I
25 just pulled them out so that they're easier to deal with as

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1 I walk though.
2 MR. GROSSMAN: Okay. So this is statement and
3 Lee, President of West Montgomery Citizen's Association.
4 MR. CHEN: Would this be identified as statement
5 of Susanne Lee, Mr. Examiner?
6 MR. GROSSMAN: Yes, it is, Exhibit 109 is
7 statement of Susanne Lee, President, West Montgomery County
8 Citizen's Association. Okay. Ms. Lee, would you state your
9 full name and address, please?
10 MS. LEE: My name is Susanne Lee, I live at 12900
11 Circle Drive, Rockville, Maryland 20850.
12 MR. GROSSMAN: Would you raise your right hand,
13 please? Do you swear or affirm to tell the truth, the whole
14 truth and nothing but the truth under penalty of perjury?
15 MS. LEE: I will.
16 DIRECT EXAMINATION
17 MR. GROSSMAN: All right. You may proceed.
18 MS. LEE: I'm the current President of the West
19 Montgomery County Citizen's Association. West Montgomery is
20 an umbrella civic organization founded in 19476 and made up
21 of residents from throughout the Potomac Subregion. The
22 organization seeks to preserve the areas rich environmental
23 resources and the character of our neighborhoods by ensuring
24 that new development and redevelopment is consistent with
25 zoning and county and state land use policies.

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1 A critical document that guides our activities is
 2 the Potomac Subregion Master Plan. West Montgomery was
 3 actively involved in the development of the Master Plan.
 4 Four members of our board served on the Master Plan Advisory
 5 Group including the chair of the group. Two of these
 6 individuals are current board members.

7 It is an amazing document that continues to guide
 8 land use decisions in a way that ensures orderly growth
 9 while protecting the low density residential green wedge
 10 character of the subregion. The Master Plan is over 10
 11 years old, yet when you drive through the area it is
 12 striking has development has occurred in a manner consistent
 13 with the Master Plan. It provides protection for the
 14 watersheds, the C&O Canal, our residential areas and
 15 provides a buffer for the AG Reserve while providing for
 16 more intense development in certain concentrated designated
 17 areas.

18 We oppose the application of Brandywine Senior
 19 Living for conditional use for senior housing in the form of
 20 1356,000 square feet 140-bed residential care facility in
 21 the heart of the RE-2 Zone at 10800 Potomac Tennis Lane in
 22 Potomac, Maryland.

23 Approval of this facility at this site is
 24 inconsistent with the plain language of the Master Plan
 25 regarding where senior housing is to be located. I provided

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1 pack of key pages for the Master Plan as an attachment to
 2 our prehearing statement, but today I've attached particular
 3 pages from that packet in the order I'll be referring to
 4 them. So bear with me as we go down the paper rabbit hole
 5 page by page.

6 Special exceptions may be granted only if they are
 7 consistent with the Master Plan. So I first direct your
 8 attention to page 35 of the Master Plan which states that a,
 9 this is the first page, a special exception may be denied if
 10 the concentration of such uses is deemed to be excessive or
 11 if it is inconsistent with Master Plan recommendations.

12 The overarching principal behind and goal of the
 13 Potomac Master Plan is preserving the subregions rich
 14 natural environmental and unique ecosystems and it's
 15 character as a low density green wedge between much more
 16 massive development surrounding it. As a result, the Master
 17 Plan designates almost the entire subregion as low density
 18 residential but with carefully and specifically delineated
 19 areas for commercial development and higher density housing,
 20 with the exception of the limited commercial zone of Potomac
 21 Village at Falls and River, and the even smaller Travilah
 22 Shopping Center at Travilah and Glen Road. All commercial
 23 development and denser housing must be located on the
 24 periphery near existing commercial development and major
 25 transportation corridors.

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1 The environmental principal supporting the Master
 2 Plan are described on pages, it's sort of not summarized, on
 3 pages 11 and 33, which are your next two pages. I'm not
 4 going to focus on those, but they give a good overview of
 5 what it is.

6 The Master Plan was unique, it was the first and
 7 probably the only Master Plan that was based on
 8 environmental principals, primarily because of where it's
 9 located and the incredible richness of the area.

10 So those first couple of pages will give you a little
 11 bit of idea, 11 and 33 of the overview. But then we get to
 12 page 1, which gives a little bit more about the specifics
 13 and that's the plan highlights.

14 So at the top of the page it first states what
 15 I've said before which is that the Master Plan is to
 16 maintain and reaffirm a low density residential green wedge
 17 for most of the subregion. If you look at a map the entire
 18 area is a lot of RE-2 Zone, RE-1 Zoning and then along the
 19 edges they're sort of R-200 but it's basically a large
 20 residential area.

21 In addition to that, though, at the bottom it
 22 lists what the exceptions are for that green wedge. So what
 23 you'll see is the list which says that under the Master Plan
 24 they're going to rezone a limited number of development and
 25 redevelopment sites.

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1 MR. CHEN: What page is that on?
 2 MS. LEE: On page 1. So at the top you have the
 3 basic confirmation that it's supposed to be a residential
 4 green wedge and then down at the bottom it talks about
 5 relying on the land use frame, work established by earlier
 6 plans to strengthen and support the subregion's residential
 7 communities. But then it goes into what the plan provides
 8 for. Rezoning a limited number of development and
 9 redevelopment sites. Rezoning the Cabin John Center and so
 10 I'm not going to read all of these but I want to indicate to
 11 you that there are certain areas that the Master Plan was
 12 very clear about, they wanted the development to be
 13 concentrated in. So we're talking about rezoning limited
 14 numbers, the Cabin John Center, which I'm sure you all know
 15 where Cabin John is, the shopping center, Fortune Park which
 16 is the massive development that is located above between
 17 Montrose Road and Wooten Parkway on I-270. It was placed
 18 there, it's a big massive new development, Founding Farmers,
 19 all of those places are there.

20 And they also focused on Potomac Stone Quarries
 21 and if you've ridden on River Road lately, you'll see what's
 22 happened there. So Stoneyhurst is a massive new condominium
 23 development that's right on River Road close to the beltway.
 24 So that's where they wanted to focus development and the
 25 entire Master Plan is made up of going through and looking

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1 at each use with regard to whether or not it's consistent
2 with that basic overlay.
3 So when you get to housing for the elderly, the
4 provision they're very specific, they have provisions in the
5 Master Plan that deal with housing for the elderly. And it
6 begins on page 36 which is the next page that I've pulled
7 out for you.
8 Obviously they want to encourage housing for the
9 elderly. On page 36 they actually indicate that the
10 subregion should meet its own senior housing needs within
11 its boundaries and they attach Map Number 4. The next page
12 up shows you exactly where the existing facilities had been
13 pending or approved ones and then the potentials. And if
14 you look at these and see the legend, it shows you a little
15 bit about the subregion. Here is where the Potomac Village
16 commercial is and there's nothing else that's up in this
17 way. No commercial, none whatsoever. Everything is in
18 circles, circles the area. So we're talking all the way to
19 I-270 up along the beltway up to I-270. So that's where it
20 is and including all the new potential senior housing.
21 When you get to the next page, we have the
22 statement which the applicant has relied on heavily, and
23 it's certainly there that say --
24 MR. GROSSMAN: Can I stop you for a second?
25 MS. LEE: Excuse me, I'm sorry.

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1 MR. GROSSMAN: I saw in your submission --
2 MS. LEE: Yes.
3 MR. GROSSMAN: -- at Exhibit 96 that you filed
4 earlier.
5 MS. LEE: Okay.
6 MR. GROSSMAN: And in terms of where senior
7 housing can be located, yet the statement consistent is on
8 page 2.
9 MS. LEE: Okay.
10 MR. GROSSMAN: Consistent with those delineations
11 the Master Plan specifically states where senior housing is
12 to be located. And then you know you reference these
13 specific locations that --
14 MS. LEE: Yes.
15 MR. GROSSMAN: -- are suggested. What you seem to
16 ignore the statement in the paragraph right above it that
17 says quote senior housing is appropriate throughout the
18 subregion wherever zoning permits this use either by right
19 or as a special exception use. I don't understand why you
20 ignore that --
21 MS. LEE: I'm not ignoring it. I think that's the
22 broad statement, that's what applies I think in the entire
23 county and it's absolutely true and it's absolutely true
24 with regard to the provisions that they've made for these
25 specific sites that they've indicated. I think they're

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1 saying as a general matter it's true and then in the next
2 couple of sentences here it talks about they must meet the
3 Zoning Ordinance when a significant impact.
4 MR. GROSSMAN: Right.
5 MS. LEE: And then the last sentence it says where
6 it says special exception the project must also meet the
7 special exception guidelines in the Master Plan. But I'm
8 saying and if you were to treat it in any other manner, you
9 would basically be opening up the entire subregion to
10 special exception for senior housing.
11 MR. GROSSMAN: Wherever it's allowed by the Zoning
12 Ordinance in the Master --
13 MS. LEE: Yes and what I think they're saying
14 though is that they are making the determination that for
15 whatever reason and I would propose that it's because they
16 want to put concentrated used in areas where there is
17 commercial, where there is transportation. They don't want
18 them stuck out somewhere in the middle of the green wedge.
19 MR. GROSSMAN: I understand your point.
20 MS. LEE: Yes.
21 MR. GROSSMAN: I'm just saying that they didn't
22 seem to be as restrictive as you're suggesting and even when
23 they cite these specific locations they say the following
24 locations appear to be appropriate for elderly housing. And
25 then they say in addition there may be other sites,

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1 including, they don't say excluding others they include that
2 there may be other sites. I just don't see it quite as
3 restrictive in terms of interpretation nor apparently did
4 technical staff of the Planning Department or the Planning
5 Board.
6 MS. LEE: Well I don't think they even and that's
7 one of our issues is, they were very quick to jump on the
8 language you've mentioned and the unmet need. Nowhere in
9 any of their documents did they ever address this list.
10 They absolutely ignore it.
11 UNIDENTIFIED PERSON: Yeah, they do.
12 MS. LEE: I mean it's just, in their Staff Report,
13 for example, they never go through these sites. They never
14 discuss it at all. And I think what happened here was that
15 the County Council, they're the ones who decide, looked at
16 those areas that they thought would be appropriate for
17 whatever reason, close to transportation, increased uses,
18 and determine that this is where they were willing to
19 propose it. And I hadn't brought his up because I know
20 legislative history, nobody wants to hear about it.
21 But I do think it's relevant because you brought
22 up the issue.
23 MR. GROSSMAN: Sure.
24 MS. LEE: It's sort of what did folks have in
25 mind. Did they, because I think that word that it might be

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1 appropriate means you still have to look at to see if it
2 works under what standards you're dealing with et cetera.
3 MR. GROSSMAN: Sure.
4 MS. LEE: I think too what I'm going to go to
5 next, is not only did they list these here, they took
6 absolutely every one of these and the Potomac Master Plan is
7 known for being very precise about what they're allowing.
8 So they went through and at each of these sites, they
9 carefully described what they were willing to provide for as
10 far as where the elderly housing should be located. So
11 they've done these by name and in the Potomac Village one it
12 shows you how extremely complex and how they were in the
13 weeds about deciding this use is fine, this use is not, this
14 will be an unwarranted invasion in to the residential area
15 around it.
16 I point that out only because if you were to
17 decide that these were not the Master Plan recommendations
18 for senior housing and notwithstanding the list that they
19 have and decided to open up the entire subregion to this,
20 you know, conditional use, wherever they want to try, I
21 think it would be a major breach in the Master Plan. And
22 what I wanted to point out a little bit of legislative
23 history.
24 MR. GROSSMAN: Okay.
25 MS. LEE: To show you that what I think that the

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1 County Council, this is in the back of the Master Plan.
2 MR. GROSSMAN: Okay.
3 MS. LEE: And I just happened to see last night
4 and I look at it and I thought you know people don't want to
5 hear about the legislative history. If they wanted it
6 there, they would have put it. But it's page 6 of the
7 council and this is what the Council gets the Master Plan
8 and they look through it line by line and they decided what
9 they like and what they don't. So just in order to be able
10 to sort of say what it is, so they've taken that page, they
11 say it's page 36, it's really 38 now in the current plan,
12 and they show the language that was in there before and what
13 they deleted and then what they added. So it looks like an
14 earlier version and I'm sorry if you folks have got a copy
15 of the Master Plan, but the earlier version has a set of
16 bullets that sort of talk about what you're going to look
17 at, you know, it has because of the characteristics, this is
18 what the language used to say when it went to the Council,
19 because of the characteristics of Potomac not every
20 acceptable site will meet all these criteria. Preferred
21 locations include in or adjacent to activity centers,
22 planned --
23 MR. GROSSMAN: What page are you on?
24 MS. LEE: I'm sorry, at the very back of the
25 Master Plan.

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1 MR. GROSSMAN: No, I'm on the back of it, it's
2 page 6, where?
3 MS. LEE: In page 6 --
4 MR. GROSSMAN: Point to where you're reading from.
5 MS. LEE: -- and I'm sorry, it's a reference to
6 page 36.
7 MR. GROSSMAN: Okay. Because of the
8 characteristics of Potomac.
9 MS. LEE: Yes. So it looks like they were looking
10 at this exactly this. They were looking at maybe we'll
11 throw this open to a lot of sites and so well look at these
12 criteria, you can look at these criteria well served by
13 public transportation, convenient to shopping, located in
14 priority funding areas, for less convenient locations,
15 sufficient size to promote amenities. They deleted that.
16 MR. GROSSMAN: Right.
17 MS. LEE: And instead they made, I think they made
18 a determination. They made a determination, because they
19 said the following locations appear, not to meet the
20 criteria listed above to be appropriate for elderly housing.
21 So I would say that I think that they had these criteria in
22 their mind and they knew they were approving these intensive
23 uses on the periphery and one in Potomac proffer and as a
24 result they made these recommendations. And so I think it
25 supports our position it's just that I don't, you know, you

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1 don't want to use legislative history as the basis.
2 MR. GROSSMAN: Well, usually we turn to
3 legislative history if the language is not clear.
4 MS. LEE: Yeah.
5 MR. GROSSMAN: But you're making an assumption as
6 to why they deleted --
7 MS. LEE: Yes.
8 MR. GROSSMAN: -- this material --
9 MS. LEE: And I couldn't make that --
10 MR. GROSSMAN: -- on what was page 36.
11 MS. LEE: -- it's just that I think it shows you
12 that they made a conscious decision that they wanted to put
13 it in those locations. They weren't opening up to anybody
14 else who can come along and make the arguments for other
15 sites.
16 MR. GROSSMAN: Okay.
17 MS. LEE: So that's it.
18 MR. GROSSMAN: I understand your interpretation.
19 MS. LEE: Yeah, I understand. Yeah.
20 MR. GROSSMAN: Apparently it's different from the
21 technical staff of the Planning Department that put the plan
22 together and the Planning Board that approved it and sent it
23 to the council.
24 MS. LEE: Well I think it's a really interesting
25 is that and I have serious problems with that Staff Report

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1 from the Planning Board. It is a very poorly done report
2 and I'll go through some of my examples of that. But you
3 know I really I recommend that you read it carefully, you
4 know what the standards are and read through that because
5 when he comes to the language from the Master Plan he never
6 ever, ever looked at that. All he did was talk about how
7 there's a need and the fact that it's a special exception
8 it's okay if you have a special exception anywhere in the
9 area. And I just can't believe that they didn't even
10 consider that basic element. So I'm not even sure that the
11 Planning Board was aware of it at the time that they
12 considered it. Because it wasn't highlighted anywhere in
13 any of the documents. It's not in the record in anything
14 that you have in front of you, so.

15 MR. GROSSMAN: Did you appear before the Planning
16 Board?

17 MS. LEE: I did but at the time and I'll tell you
18 this is a really honest of why I didn't bring it up before
19 is, it's almost personal. I spent a lot of time this year
20 with my mother in an assisted living facility. I consider
21 those to be health facilities, a nursing assisted living.
22 So when I went to the Planning Board I thought we were
23 talking about basically a medical facility, like a nursing
24 home and I have no idea what the requirements are for that.
25 But as soon as I started to hear Brandywine using this

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1 section and saying this is senior housing and they are,
2 they're an independent people it's not nursing home level of
3 care. That's when I realized that wow we should be looking
4 at the senior housing, the housing provisions in the Master
5 Plan. And that was after I had appeared at the, you know,
6 it was just me not digging far enough at the Planning Board.
7 And so that's really just the honest truth is I would have,
8 if I had realized it, I would have been at the Planning
9 Board bringing this up as well.

10 MR. GROSSMAN: Okay. All right. Well anyway, I
11 apologize for interrupting your --

12 MS. LEE: That's all right. No, no, no, that's
13 all right.

14 MR. GROSSMAN: -- presentation, you may resume.

15 MS. LEE: And I understand. I understand. I do
16 think you need to step back, it's a very big issue if you're
17 going to decide to go beyond those sites. And I raise it as
18 an issue for you because it sets an incredible precedent.

19 But as you go through it, you'll find that each of
20 these sites, Cabin John Center, we don't need to dwell on
21 them but Cabin John Center, goes very specifically on the
22 next page at 46, 75 units of elderly or affordable housing
23 to be generally located. So they've taken it and they've
24 gone very specifically site by site, described how many
25 there, where they should be located, same way at Fortune

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1 Park and at the Stoneyhurst Quarry. So it's not as if it
2 was just sort of oh well, it was yes, right there, right
3 there, right there. And I also, I mean also because I must
4 be honest that we at West Montgomery when we first saw the
5 proposal we didn't want to take sides one way or the other
6 with the tennis club, where we have members in this tennis
7 club, but we know people want to have a lovely facility like
8 this. I think that's why we got in though when we realized
9 about the Master Plan issues. So it's something that is of
10 particular interest to us, because of the Master Plan.
11 Fortune Park as well and then Potomac Village is a
12 special case to, especially to look at it just because when
13 you get down to it it's page 67 and this is a description of
14 the Habib and Sorora Property. It shows you and how in the
15 Master Plan people came in because they wanted to do stuff.
16 Everybody's got stuff that they want to do and they want to
17 develop. But the Master Plan very carefully did
18 negotiations with property owners. The Sorora property is a
19 big chunk of property around the Potomac Post Office and
20 they wanted to come in and they wanted to see one, they
21 wanted to upgrade all that and you can see that they
22 carefully talked to them about what they would be willing to
23 do and they said housing for the elderly would be an
24 appropriate special exception for that site. But there's
25 also language elsewhere about no more. We do not want you

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1 invading any of the residential areas around that.

2 MR. GROSSMAN: What language are you talking
3 about?

4 MS. LEE: I'll have to find that. There is
5 language in it about, well for example, if you look, it's
6 just a little complex to do it here but if you look at the
7 whole paragraph and they talk about --

8 MR. GROSSMAN: Which paragraph?

9 MS. GIRARD: Wait, which paragraph?

10 MS. LEE: I'm sorry. Paragraph Habib Sorora.

11 MR. GROSSMAN: What page?

12 MS. GIRARD: What page?

13 MS. LEE: It's page 67.

14 MR. GROSSMAN: 67, okay.

15 MS. LEE: It's the last page of the ones that I
16 had given you folks.

17 MR. GROSSMAN: Right.

18 MS. LEE: If you go, you'll see how the Master
19 Plan carefully determined where the residential areas were,
20 so they requested a zoning change from R-200 to C-1,
21 convenience commercial zone, reasoning that the residential
22 uses. I pointed, despite the fact that the rezoning could
23 possibly facilitate a bypass move, that's a whole other
24 issue. The property presently forms a transition from the
25 commercial core to the single family residential area

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1 bordering the village. When Olden Drive forms an
2 appropriate northern boundary for the commercial area while
3 an extension would tend to destabilize the abutting
4 residential area to the north. The zoning change based on
5 the existence of special exception would be an undesirable
6 precedent as special exceptions exist as transition uses on
7 several other edges of the commercial core.
8 IT's that kind of reasoning that they made with
9 regard to every use that they allowed that wasn't
10 residential in the Potomac Subregion.
11 MR. GROSSMAN: Well they add, however, housing for
12 the elderly --
13 MS. LEE: Yes, exactly.
14 MR. GROSSMAN: -- would be an appropriate special
15 exception --
16 MS. LEE: Yes.
17 MR. GROSSMAN: -- use for this site and may
18 facilitate the implementation of a bypass loop and we're not
19 talking about rezoning here, we're talking about a --
20 MS. LEE: No.
21 MR. GROSSMAN: -- special exception with a
22 conditional use.
23 MS. LEE: Excuse me. But that's exactly states my
24 case, is that this was one of the ones, that was one of the
25 ones that was listed in the Master Plan. The Potomac

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1 Village Sorora property, it's Habib and Sorora properties it
2 was a specific one.
3 It also shows you that they were not willing to
4 increase the commercial or higher density housing outside
5 the core Potomac Village. And so that's just an indication
6 that that's how tight they were when they decided where that
7 senior housing was going to be going. They had specific
8 sites in mind.
9 MR. GROSSMAN: Yes, but I want to understand what
10 you're saying, but it seems to me that the language of the
11 code, even the language you referenced is much broader in
12 terms of allowing special exceptions for senior housing than
13 you are allowing. Especially that sentence afterwards,
14 however housing where they rejected a rezoning they do
15 endorse --
16 MS. LEE: Yeah.
17 MR. GROSSMAN: -- a special exception for it.
18 MS. LEE: For that one narrow issue. That one
19 narrow place. But and if you go back to the special
20 exception policy in the Master Plan, the very top page of
21 mine, a special exception may be denied if it's inconsistent
22 with the Master Plan recommendation. Now I don't want to
23 play the devil's advocate too much here, but if those aren't
24 recommendations as to where the senior housing is supposed
25 to go, I don't know how much stronger they could have made

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1 it.
2 MR. GROSSMAN: They're examples. It's not
3 recommendations of where it's restricted to, but that's the
4 point. The point is the specifics on page 38 of the plan
5 are examples of where it should go. That's why they say
6 locations appear to be appropriate. The second group they
7 say there may be other sites and they include those, but
8 they're general statement endorses saying it's appropriate
9 throughout the subregion wherever the zoning permits the
10 use, either by right or a special exception. I don't know
11 how your logic gets around that broad support for it.
12 MS. LEE: Well I guess if you don't look at it as
13 a broad statement, which is true anywhere in the county, but
14 in this Master Plan area this is where these are going to be
15 and you look at the Potomac Subregion Master Plan and you
16 look at this map, and you see what high density either
17 commercial or housing would be approved, you're basically
18 saying that it could occur anywhere in the subregion and I
19 think that just undermines the entire --
20 MR. GROSSMAN: Not commercial, I mean commercial
21 is very different from senior housing residents. That's not
22 the same thing.
23 MS. LEE: But when you look at, no but it's denser
24 development than low density residential green wedge, which
25 is the overwhelming piece and then that's it and then

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1 through the Master Plan they pointed out specific areas
2 where they were willing to do increased density.
3 MR. GROSSMAN: Okay.
4 MS. LEE: Okay. That's our position. I
5 understand what you're saying.
6 MR. GROSSMAN: I understand. Okay.
7 MS. LEE: I understand what you're saying.
8 MR. GROSSMAN: I understand what you're saying.
9 MS. LEE: All right.
10 MR. GROSSMAN: Okay.
11 MS. LEE: Okay.
12 MR. GROSSMAN: So I cut you off and I'll let you
13 resume back there.
14 MS. LEE: No, no, no, that's okay. No, no, it's
15 good because it's exactly it goes to the core of it, I
16 think. So but I will go back to reading. So approval of
17 Brandywine at this site will return these Master Plan
18 provisions for senior housing on their head. The R-E-2
19 parcel proposed for this conditional use clearly is not
20 located at or near any of these locations. It's not located
21 adjacent to the Potomac Village and instead it is in the
22 heart of the residential green wedge. Approval for senior
23 housing at this site would be a major breach of the Master
24 Plan.
25 Furthermore, such a violation is unnecessary.

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1 There has been an explosion in the number of high end
2 assisted living facilities successfully constructed since
3 the Master Plan was enacted. They provide hundreds of new
4 units of the same type of senior housing, all were
5 constructed in accordance with the Master Plan at sites
6 specifically delineated in the Master Plan or on the
7 periphery of the subregion on major transportation corridors
8 or commercial centers. Not one has been approved for
9 construction in the residential zones outside these areas.
10 These include Brookdale Potomac at Cabin John Shopping
11 Center, The Villages formerly The Lutheran Home on Scott
12 Drive that added assisted living housing units in 2013.
13 Brightview Falls Road on Darnstown Road was 70
14 assisted living units and 24 memory units. Ingleside at
15 Kings Farm with 32 assisted living units. Sunrise at Fox
16 Hill at River Road and the beltway with 90 new assisted
17 living units and just recently by one of the Hearing
18 Examiners here, a new facility, Artis, that was approved for
19 construction adjacent to the Stone Hurst Quarry with site
20 with 72 beds. And I just, I know this isn't scientific but
21 I just made a recent phone survey to as many that would
22 answer the phone and they all said that they had vacancies.
23 So nobody had a waiting list.
24 Approval of this conditional use at this site will
25 result in grossly inequitable treatment in favor of the

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1 applicant and by violating the Master Plan set a precedent
2 for R-E-2 and R-E-1 sites throughout this subregion.
3 MR. GROSSMAN: What's grossly inequitable? I'm
4 not sure I understand that.
5 MS. LEE: Well I'll tell you, we have lots of --
6 MR. GROSSMAN: You can disagree about the Master
7 Plan --
8 MS. LEE: Yeah, yeah, yeah.
9 MR. GROSSMAN: -- but what's grossly inequitable.
10 MS. LEE: Well because I think, I don't know who,
11 you know, I don't know why but why we, it may be because we
12 lost caliber. I don't know. But there have been lots of
13 people who have come through to West Montgomery and said we
14 want to put something here or there or whatever and they've
15 never gotten very far. I think they were stopped at the
16 planning office. I just don't know, I can't tell you I have
17 no idea which other folks wanted to build. The group that
18 are up at Falls Grove came down and talked to us. So that's
19 at the Falls, the Brightview Falls Grove on Darnstown Road,
20 I'm pretty sure that, came down and wanted to put a very,
21 very large facility like they have at Falls Grove. I think
22 it's on the Sorora's property or close to that, right in the
23 Village. And we looked at it and though whoa that looks
24 like a ship. But we didn't even get to that because I think
25 they went to the Planning Board and the staffers there said

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1 this just doesn't work.
2 MR. GROSSMAN: You did say it looks like a ship,
3 didn't you?
4 MS. LEE: Well I mean I don't know if --
5 MR. GROSSMAN: I thought you might have said
6 something else.
7 MS. LEE: Oh no, I didn't say that. It's a lovely
8 facility. But if you go into Falls Grove it looks like
9 you're, there's a cruise ship on the thing.
10 MR. GROSSMAN: I see. Okay.
11 MS. LEE: No, no, no. But that's so why I don't
12 know whether people went to, for some reason nobody else got
13 approval. And so I think they were playing by the rules.
14 They went where they should have been. I mean I just I
15 don't know why there's not body else that's where before you
16 or that had gotten it approved. I think that the planning
17 staff just, they just, I mean we have lost Colin Murray and
18 he used to know, you know, whatever.
19 MR. GROSSMAN: WE all loved Colin Murray but
20 that's not the issue.
21 MS. LEE: No it's not the issue --
22 MR. GROSSMAN: I don't think that he --
23 MS. LEE: -- but I think it is unfair because
24 these people all put their facilities out where they were
25 supposed to be and these folks are going to be given a very

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1 big pass to put theirs in the middle of an area that has no
2 other uses that have been approved like this. This will be,
3 well, you know, I mean what's to stop anybody from going
4 anywhere in the zone?
5 MR. GROSSMAN: Well when you say no other uses,
6 it's right next to Manor Care.
7 MS. LEE: Uh-huh. That was approved in 1975
8 before the --
9 MR. GROSSMAN: Yes, but I don't see how you can
10 say no other uses in this area like this is it's adjacent to
11 now.
12 MS. LEE: Yes, no, no it is. It is, but the --
13 MR. GROSSMAN: It's different, it's somewhat
14 different it's adjacent to Manor Care.
15 MS. LEE: Yeah, no, no it is, it is --
16 MR. GROSSMAN: It's somewhat different because
17 it's a nursing home, but still.
18 MS. LEE: -- but Manor Care was put there before
19 we had this Master Plan with its specific items. Okay.
20 That.
21 MR. GROSSMAN: All right.
22 MS. LEE: So we say that the Planning Board and
23 tis technical staff recommendations, I'm not sure did I say
24 this about their monthly rent as high as \$8,000 and \$9,000?
25 Brandywine will also do nothing to provide housing for

1 moderate and middle level households, the highest priority
 2 for housing under the Master Plan. And as I say I don't
 3 think the Planning Board and the technical staff looked at
 4 this at all. By them getting to the next piece which is
 5 it's more, its which is what's actually out there at that
 6 site right now. You know if we had to do it over again,
 7 sort of, I mean I can just I can repeat the language it's in
 8 my testimony but it, it's a terrible site. We've got so
 9 much traffic out there, that was another reason why our
 10 members came to us and said are you kidding me? We'd like
 11 to decrease the number of special exceptions out there. I
 12 wonder if the tennis club came to us today and hadn't been
 13 there whether people would even support it at that site. I
 14 think if anything it's time for the county to step back and
 15 say wait a second, the amount of traffic, people are already
 16 jammed twice a day it's already jammed back to Bells Mill.
 17 We've got kids running across the road there. We've got
 18 domestic helpers who are trying to get on the bus at that
 19 site and it's really dangerous. I mean these are just, you
 20 know, in your face kind of ideas and when you look at what's
 21 there now I think people just need to step back and say I
 22 know they're looking at the traffic patterns with regard to
 23 what's there with the current tennis facility, but they
 24 really should be thinking about should there even be another
 25 use there. Because I agree it's already a really impacted

1 area and it wasn't supposed to be. It's a two lane road,
 2 it's not supposed to be a major transportation area. It's
 3 already impacting people that live in that area as to
 4 whether they can even get out into the street certain times
 5 of the day. The traffic when they have the events at
 6 Bullis, et cetera. As they testified today they already
 7 have to hire somebody just to stand out there, you know to
 8 make sure the kids don't get hit.
 9 So with regard to the standard about the use when
 10 evaluating convection with existing approved uses nearby
 11 increase the number, intensity, and scope of uses
 12 sufficiently to effect the area adversely and further alter
 13 the predominantly residential neighborhood, we just think
 14 that's just the case. It's already just crammed. The
 15 Bullis School with their ever expanding programs, Manor Care
 16 with its parking lots jammed and busy, the heavily utilized
 17 Falls Road Golf Course and Normandy Farms already a popular
 18 destination is approved under the Master Plan for expansion
 19 to a country inn.
 20 I'll just skip over those issues, because we've
 21 brought them up. And also with regard to compatibility it's
 22 really been an education for me to find out what the
 23 standard is, RE-2, what if it was two house, I'm trying to
 24 learn that. But I think just basic compatibility the
 25 proposed facility is just too big. It's as intense as they

1 could possibly get on that site for the size of the site and
 2 its location at that sharp dangerous curve on Falls Road.
 3 And I also just want to point out, it's absolutely
 4 incompatible with the surrounding RE-2 residential zoning
 5 and a parkland the golf course if it weren't there would be
 6 parkland. So you have to think about that too. Would we
 7 plop such an intense use in the middle of an area like that.
 8 Now may be best to get to the Planning Board
 9 staff. This is my last point. Because I think it means
 10 that you're going to have to look more closely at it
 11 yourself. Because I think when you look through the
 12 Planning Board staff, I would hate to see you rely on some
 13 of the statements that they made and the conclusions that
 14 they made.
 15 For example, the Planning Board's technical staff
 16 are fatally flawed because they applied the wrong standard
 17 of comparison. I hate to make a joke, but it's almost as if
 18 the staff loved the facility and hated tennis. But anyway.
 19 But instead of evaluating the proposed conditional use
 20 versus the surrounding RE-2 residential character they
 21 erroneously evaluated it based on its current but soon to
 22 expire use as a tennis club and the Manor Care conditional
 23 use next to it. For example, the staff report compared the
 24 number of trips from the tennis facility and I understand
 25 about that issue and triggering it. But I still think that

1 they should have at least thought about the amount of
 2 traffic that was coming in and out of that facility and how
 3 bad it is already.
 4 Likewise the staff erroneously found the height
 5 compatible because it was quote, and these are all quotes
 6 right from the Staff Report, it was only one foot higher
 7 than the tennis bubble and the density compatible as well
 8 because it was quote, not out of character with the
 9 neighboring Manor Care facility. The Staff Report
 10 continues, the lot coverage is going to be reduced by this
 11 application from the current conditions with much more
 12 landscaping and open space and on site category conservation
 13 easements. The tennis facility and this is important, was
 14 first approved as a conditional use in 1975, when the
 15 property was designated for quote, public or private
 16 recreational use.
 17 Not only were the uses in entirely different but
 18 different building standards, storm water management,
 19 environmental protections were all different. To compare
 20 the Brandywine lot coverage to the tennis facility, rather
 21 than lot coverage of the surrounding sort of RE-2
 22 residential areas is just wrong and cannot be relied upon as
 23 a basis for establishing compatibility and I think you agree
 24 with us on that as well.
 25 MR. GROSSMAN: I do. Yes, I agree with you on

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1 that.

2 MS. LEE: Absolutely.

3 MR. GROSSMAN: I think that the staff has always

4 followed the, in terms of traffic evaluation, this looking

5 at what's there and whether --

6 MS. LEE: Yes.

7 MR. GROSSMAN: -- the proposed is going to add to

8 or subtract from the volume of traffic and I think that

9 makes sense.

10 MS. LEE: Yes.

11 MR. GROSSMAN: In terms of evaluating the volumes

12 of traffic.

13 MS. LEE: Yes.

14 MR. GROSSMAN: I think it's quite different in

15 terms of compatibility you should look at the proposed use,

16 not what it's replacing.

17 MS. LEE: Yes.

18 MR. GROSSMAN: And I mean it might be an

19 interesting factoid but you know the height is similar or

20 whatever to the bubble which is there, only a portion of the

21 year. But I don't think they're wrong in looking at the

22 fact that it's next to Manor Care because that's an

23 immediate neighbor. Or that it's next to a golf course

24 that's also an immediate neighbor. And there is one single

25 family residential use and that needs to be looked at also.

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1 So you know I agree with the thrust of what you're saying.

2 MS. LEE: Yes. And I guess and this is for me to

3 learn as I go on here, if I ever come back again, but to

4 learn what that standard is. We're not supposed to look at

5 what it is if it were RE-2, but we certainly would look I

6 would guess at the, for example, coverage or permeability or

7 where will you ever get to the fact that it's surrounded by

8 green space and how compatible it is with the golf course,

9 the imperviousness of a golf course or residential and I

10 just raise those as rhetorical questions, because I don't

11 know how because otherwise then are you sort of stuck with

12 just taking whatever is already there, or but that's, when

13 determining whether the Brandywine proposal meets the

14 requirements of the Master Plan Special Exception Policy,

15 the Staff Report fails entirely to address the plain

16 language of the requirements. And mistakenly focused I

17 don't know how this person got there, but he focused on the

18 sort of, the comma parts of the, it talks about excessive

19 you know concentrations, but he focused on high visibility

20 as being the issue. When the requirement with regard to

21 avoiding excessive concentration is much broader than just

22 high visibility. And even when erroneously focusing only on

23 visibility, continues to make comparisons with the existing

24 tennis club. So this is quotes, furthermore the proposed

25 structure will actually be less visually impactful to

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1 surrounding properties given the sheer size, color and

2 illumination of the large existing tennis bubble currently

3 on the site.

4 The Staff Report conclusions continue with what

5 seems to be just nonsensical findings. For example, it

6 finds the proposal as harmonious with the neighborhood and

7 is consistent with the overall policies of the Master Plan

8 because quote, the application does provide elderly housing

9 for as many as 140 residents. However, because the

10 residents are elderly, they do not have the same impact on

11 public facilities as 140 residents of mixed age would have

12 on the neighborhood. Most residents will not have a car and

13 a chauffeured service will be available for running errands.

14 This is on neighborhood compatibility. I just, on that same

15 page when evaluating whether Brandywine will alter the

16 predominately residential nature of the area, the staff

17 continues to compare erroneously with the tennis facility.

18 Quote, the existing tennis bubble currently at the site is

19 approximately 35 feet in height and is a white dome

20 structure that is not residential in appearance. And then

21 finally, page 30 of the Staff Report continues to make

22 erroneous findings of compatibility with the character of

23 the residential neighborhood by citing to the Manor Care and

24 concludes that he believes, quote, the proposed use will

25 actually be more compatible with the surrounding

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1 neighborhood than the existing use on the site. The

2 application replaces an existing special exception for a

3 private tennis club with tennis bubbles that is less

4 landscaped, has more impervious surfaces. Similarly, large

5 permanent structure and a similar level amount of site

6 generated traffic.

7 We believe that the Staff Report is so flawed that

8 it should not be relied upon by you, the Hearing Examiner.

9 MR. GROSSMAN: Okay.

10 MS. LEE: Okay.

11 MR. GROSSMAN: All right. Hold on one second.

12 MS. LEE: Okay.

13 MR. GROSSMAN: Cross-examination? Shall we start

14 with Chen?

15 MR. CHEN: (No audible response.)

16 MR. GROSSMAN: Mr. Uhre?

17 (No audible response.)

18 MR. GROSSMAN: All right.

19 MS. GIRARD: I guess I'm it.

20 MR. GROSSMAN: Ms. Girard.

21 CROSS-EXAMINATION

22 BY MS. GIRARD:

23 Q. So just so I can fully understand your point is

24 West Montgomery would like to see what here, just two single

25 family homes?

1 A. Yes, yes. I mean I guess there seems to be a
 2 history of once you get a special exception even if it's I
 3 guess the tennis club could go on, but we didn't take sides
 4 one way or the other. But basically, yes, it should be
 5 especially given what that curve and that corner have turned
 6 into with the increase in Bullis, the number of students,
 7 the fact that Normandy Farms is going to be a country inn,
 8 you know, yes, I think basically we'd like to have reduce
 9 the number of special exception, conditional uses,
 10 especially on that corridor.
 11 Q. And you've also indicated that you feel like that
 12 would result in less coverage.
 13 A. Less coverage?
 14 Q. Less, you suggested that this conditional use has
 15 a lot of coverage of the site?
 16 A. Oh yes.
 17 Q. If I read your testimony right, it seems --
 18 A. I mean when I talked to the Planning Board staff
 19 they said you know it is right up to, it is, you know, it is
 20 lot line to lot line. It's as packed as it could possibly
 21 be.
 22 Q. And are you familiar with the coverage standards
 23 in the RE-2 Zone for single family?
 24 A. No, that's the thing, I am not. I'm not at all.
 25 I'm, no not at all. I do know, I mean it just does seem to

1 be just a sort of a common sense that if there were two
 2 houses there even if they're big Potomac houses with all the
 3 bells and whistles, there would be less impervious surface
 4 than there is, than that would be.
 5 Q. Do you have any idea what the size of a typical
 6 house in the adjacent neighborhood is?
 7 A. I do. But that doesn't mean that it has to be
 8 that way, it doesn't and some people, I mean it doesn't mean
 9 that they're going to build anything like that. I'm sorry,
 10 I'm just not an expert at all on that, so.
 11 Q. Okay. And in your testimony you seem to, the
 12 provisions you're relying on in the Master Plan about where
 13 uses should go, is it your position that senior housing is
 14 within a subset of commercial and high density residential?
 15 A. It certainly, it's multifamily, I think it's
 16 called, it's certainly not RE-1 and it's not RE-2. And so
 17 and it's not R-200, et cetera. It seems to have its own
 18 category. It seems, I think, I'm not an expert on this it
 19 just it looks like it's multifamily residential, multi
 20 person residential.
 21 Q. And you believe that the fact that its separately
 22 called out in the Master Plan under separate section housing
 23 for the elderly doesn't take it into a separate category or
 24 have a special focus different than the discussion of
 25 commercial and high density?

1 A. I think it's a discussion of higher density
 2 housing, just I'm trying to think is there something like
 3 right before, it's always good with the Master Plan to look
 4 and see, the next one is affordable housing. And also you
 5 know we have all the time assisted living facilities in our
 6 neighborhoods, because under the zoning if you're under a
 7 certain size then you can come in by right. I don't know
 8 what it is now, six or seven people can be, you can have
 9 them in their homes. So I have one that's just down the
 10 street from me. We never object to those because they seem
 11 to be they're low key, they're accepted by right they don't
 12 need special, they don't need conditional uses there.
 13 Q. And so if I'm understanding you correctly on page
 14 38, the language the following locations appear to be
 15 appropriate or there may be other sites. You're reading
 16 that to be restrictive language?
 17 A. Yes. Yes. And I think also when you take it from
 18 what the council had in front of it, it had a set of
 19 criteria and instead of putting those criteria in, it
 20 deleted them and instead it actually made a determination
 21 that these appear to be appropriate and I think appear to be
 22 appropriate means that they're not making an absolute
 23 decision. These places still have to go through the bells
 24 and whistles and in fact if anything that's confirmed by the
 25 fact that they went to through very specifically told on

1 each site where they thought the housing, the elderly
 2 housing should be.
 3 Q. But wouldn't you agree that if they intended to
 4 limit senior housing to just these locations they would have
 5 said it's limited to?
 6 A. I don't, I don't think so. I don't know because I
 7 think these are Master Plan recommendations, I don't think
 8 they would say that they were limiting to. I think what
 9 they've done is when they've gone to the specific sites
 10 they've limited exactly where they can be at that site. And
 11 also if it's not the case, I mean for us at West Montgomery
 12 to step back and say if you're going to open up the entire
 13 subregion to a facility that size, we have a lot of RE-2, we
 14 have a lot of big lots. Where is the limit? I mean it just
 15 it will just absolutely undermine and undercut the entire
 16 plan, especially these kinds of facilities. They're, you
 17 know, they're dense, they're big. It just means that we'll
 18 have them everywhere. There won't be any, they'll use this
 19 as precedent and what will stop anyone else from being able
 20 to say that even if they're not anywhere close to the
 21 commercial zone, even if they're not anywhere close to the
 22 periphery, you know.
 23 Q. But in the sentence above that so the second
 24 paragraph on 38 and I've heard you to say senior, where it
 25 says senior housing is appropriate throughout the subregion

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1 wherever zoning permits.
2 A. Yes. Sure --
3 Q. -- this us by right or special exception.
4 A. Yes.
5 Q. If I heard you right your interpretation is
6 throughout the subregion doesn't mean throughout the
7 subregion it's just a general county policy?
8 A. No, that's, I think that's a general statement. I
9 think it's appropriate throughout and then the next sentence
10 says projects must meet the Zoning Ordinance standard when
11 significant impacts cannot be mitigated they should be
12 located and then where it says special exception the project
13 must also meet the special exception guidelines in this
14 Master Plan and then the following locations appear to be
15 appropriate.
16 Q. Well wouldn't you agree that that language, when
17 significant impacts cannot be mitigated, projects should be
18 located elsewhere, where it's a special exception it must
19 meet the standards. Doesn't that get at the heart of your
20 concern that these facilities can't be plopped down anywhere
21 in the RE-2 Zone that they're appropriate anywhere where
22 they can meet these compatibility standards?
23 A. No because, no. Because I don't understand,
24 you're talking about the compatibility standards meaning the
25 setbacks, et cetera, et cetera. We're talking about the

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1 ones that the council had talked about which are they near
2 an area that's you know near commercial, near the corridor,
3 the transportation --
4 Q. That's not what this says.
5 A. -- corridor.
6 Q. But that's not what this says.
7 A. Well no but that's what every one of these is.
8 These confirm exactly that that's where they want them to
9 be. And as I say, I think if you're going to open it up you
10 know I think it needs a Master Plan amendment if you're
11 going to open it up to putting these anywhere on, you know,
12 it's a very big subregion.
13 Q. And going with your argument that it's limited to
14 these sites, are you aware does Fortune Park have senior
15 housing?
16 A. I'm not sure whether they do. They're allowed to,
17 but you know I think I looked and this is just calling up
18 and saying Fortune Park Assisted Living and nothing popped
19 up, so I'm not sure whether they actually have, they
20 certainly have a lot of housing. But I don't know whether
21 they do.
22 Q. And the quarry and Cabin John Shopping Center, do
23 they have senior housing?
24 A. Well Cabin John for sure in fact I mean that's the
25 one I called, it's an assisted living facility. And I would

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1 say, I know you handled Artis, that that's basically the
2 quarry. I don't think they had irradijacent (phonetic sp.)
3 to the quarry --
4 Q. That's not --
5 A. -- and it has all those characteristics which is
6 it's right out there at the periphery, it can't be any
7 closer except to bore in the quarry and it's right on River
8 Road and it's close to 270 and it's close to the beltway.
9 Q. Are you aware there was opposition in that case
10 that argued it was not in compliance with the Master Plan?
11 A. I know, I know and we weren't involved, so I was
12 away at the time.
13 Q. You also characterized that to be approved. Are
14 you aware of the current status of that?
15 A. I think they've appealed. I mean the Hearing
16 Examiner has approved it for what, a really high number,
17 like 72 units. I didn't realize it was that big. But
18 that's a memory unit too.
19 Q. With regard to the others that you list, I guess
20 these aren't paginated --
21 A. Yes.
22 Q. -- the other facilities that you've listed
23 Ingleside at King Farm is that within the Potomac Subregion?
24 A. No. These are on the periphery because the
25 Potomac Subregion is not supposed to have high density.

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1 It's supposed to have a very small commercial core at
2 Potomac and Travilah, it's got the Stony, the subregion
3 includes Stoneyhurst, it includes Fortune Park. But you
4 know, and it includes a portion of Darnstown. But that's
5 why I think those places are they. They know they're not
6 allowed uses in the rest of the subregion.
7 Q. Could you follow me to page 36, the first
8 paragraph under housing for the elderly in the last sentence
9 of that?
10 A. The first, the second paragraph or the first?
11 Q. The first paragraph.
12 A. The first paragraph.
13 Q. Yes.
14 A. The subregion should meet its own senior housing
15 needs within its boundaries and then attached is Map Number
16 4. And it shows you where those are.
17 Q. Does it show Ingleside at King Park?
18 A. No, but I'm just showing you what, I listed those
19 as examples of ones that are right on our borders and
20 therefore provides services for people in our area. And it
21 also indicates that they're on the border because they can't
22 come in because they can't come into this green wedge.
23 Q. So my last question for you barring any from
24 Steve, if your argument is that the locations where senior
25 housing is appropriate are limited to just these couple.

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1 A. Yes. Yes.
2 Q. And that how you're going to meet is outside the
3 boundaries of the subregion, with places like Ingleside and
4 Fox Hill --
5 A. Yes.
6 Q. -- how are the clear objectives of the Master Plan
7 going to be met to provide senior housing within the
8 subregion?
9 A. Well first of all I think if even your own numbers
10 said you were pretty close to already providing. It's
11 already provided.
12 Q. Based on what?
13 A. I think you had some numbers about when pressed
14 about actually how many more they needed compared to the, I
15 don't have these, I can submit them but it's in the
16 testimony. I think from the planning staff at the Planning
17 Board when they actually asked how many had been added over
18 the last 10 years, that they're pretty close up. Well I
19 mean, but I would say that they would be able to meet their
20 own senior housing needs within its boundaries. And then
21 they show where those could be and so if you had one, if you
22 add these all up they may be pretty close to --
23 Q. But if Fortune Park doesn't have a senior housing
24 component then that's out. So then you're down one.
25 A. Yes. Yes, but I don't know what the numbers are.

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1 I think we're pretty close and I think also you know they're
2 so close and then neither, these are relatives that we're
3 going to have. I think the idea that they're going to be at
4 King Farm instead of the Potomac, what is it two or three
5 miles? I mean these are not big issues.
6 Q. That's not what the language in the Master Plan
7 says, correct?
8 A. Okay. Well, I mean we'd be glad to put together
9 the numbers on how many units and this also raises the issue
10 which is, is this really the senior housing we were talking
11 about? Is this the moderate and affordable housing and
12 housing versus was basically sort of a healthcare issue.
13 Maybe we have tons of assisted, we've got plenty of assisted
14 living but what people really want to do is age in place or,
15 I mean when we hear at the association is we want to age in
16 place, there's a whole new group for that, we want to put a
17 granny house, we're getting some issues with zoning. We
18 want to put granny stuff on. I'm not sure what the need is
19 now for assisted living versus independent. In fact, they
20 mention the one thing that they really needed in this
21 subregion was life care facility at the top. The county
22 currently does not have any, let's see, a life care facility
23 and I'm assuming that means you know sort of like a Lutheran
24 home where you've got cottages and you know all three levels
25 of care. I mean I think if anything I think it might work

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1 against you because I think your facilities are not
2 providing probably what the real need is. But I have, I'm
3 not an expert on that, I'm not testifying on it.
4 Q. So just on your point that you're hearing seniors
5 want to age in place, but your testimony is that they should
6 be relegated to the periphery of the subregion?
7 A. No, no, no. No, no, no, no, no. I mean, no,
8 that's not it at all. I don't understand what you're
9 saying. And relegated sounds like you know you're miles
10 away. I mean Ingleside is pretty close to where I live.
11 Cabin John is right in the middle of the subregion. Artis
12 is going to be right there. I was surprised at how many
13 there were and the fact that none of them have waiting
14 lists.
15 Q. Even though some of them are not actually in the
16 subregion?
17 A. I mean the Lutheran Home is on the subregion stops
18 at Scott Drive and the Lutheran Home is on that side of
19 Scott Drive and the subregion in Glen Hills is on this side
20 of it. And I think it's reasonable because there might not
21 be given what the Master Plan says is that many spots where
22 they should be, you know, they are where they should be and
23 they've been provided.
24 Q. One last question. So you're criticizing the
25 staff's interpretation of the Master Plan, but you don't

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1 believe that the staff and the Planning Board have any
2 expertise to evaluate and lay the recommendations --
3 A. No, I mean I totally --
4 Q. -- of the Master Plan.
5 A. -- I mean I love the Planning Board staff, I have
6 never dealt with this gentleman, I didn't meet him
7 beforehand because as I say, we really have, our association
8 sort of stepped back from it, you know, and we weren't
9 involved. But I have never seen a Staff Report that was
10 that bad. I just, I mean I couldn't believe it. As I say,
11 I'm not going to, I feel badly but I think they were just, I
12 don't know, they just.
13 MS. GIRARD: That's all we have.
14 MR. GROSSMAN: Okay. All right. I think that's
15 it then.
16 THE WITNESS: Okay.
17 MR. GROSSMAN: You can go sit down. Thank you,
18 Ms. Lee, I appreciate you coming down --
19 THE WITNESS: Thank you.
20 MR. GROSSMAN: -- here and expressing your views -
21 -
22 THE WITNESS: Absolutely.
23 MR. GROSSMAN: -- and that of the association.
24 THE WITNESS: No, thank you.
25 MR. GROSSMAN: I appreciate it.

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1 THE WITNESS: Thank you.
2 MR. GROSSMAN: All right. Well we've actually hit
3 5 o'clock. We could stay here longer if Mr. Chen can fit
4 all of his case in the next 15 minutes.
5 MR. CHEN: No, sir, I can't even get one in that.
6 MR. GROSSMAN: All right. Well we have Monday
7 which will be --
8 MR. KAUFMAN: Can we get a sense of how many
9 witnesses Mr. Chen and Mr. Uhre are going to call?
10 MR. GROSSMAN: Well, Mr. Chen has listed he had
11 two, I think.
12 MR. CHEN: Yes.
13 MR. GROSSMAN: Let me see I have --
14 MR. CHEN: Yes, yes, two. I've listed everybody.
15 MR. KAUFMAN: Yes, okay.
16 MR. CHEN: Steve, I'm hurt. I've listed everybody
17 MR. GROSSMAN: Yes, he's been forthcoming.
18 MR. KAUFMAN: I didn't mean it --
19 MR. GROSSMAN: It's just Mr. Uhre, then I presume
20 Doctor and maybe Mrs. Paul and he's listed James Nunen and
21 Ronald Daniel.
22 MR. KAUFMAN: So that could be as many as five?
23 MR. GROSSMAN: It could be but I would assume that
24 the testimony from the Pauls wouldn't take as long.
25 MR. CHEN: The way I've, very bluntly, tried to

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1 organize that is that it would be straight through. And I
2 don't think you want them to QA, QA, QA, for an hour and a
3 half. So now my clients do want to testify. They have
4 important things to say that are very germane.
5 MR. GROSSMAN: Right.
6 MR. CHEN: And what I've --
7 MR. GROSSMAN: In other words a narrative
8 testimony from them?
9 MR. CHEN: Yes.
10 MR. GROSSMAN: Okay. So yes, I mean it would be
11 those --
12 MR. KAUFMAN: I'm just trying to gauge whether we
13 will actually reach the Promise Land by the end of --
14 MR. GROSSMAN: I think we may finish. I doubt
15 we'll make the Promise Land. But that's --
16 MR. KAUFMAN: Finishing in my opinion is the
17 Promise Land.
18 MR. CHEN: No, I've been very mindful. Seriously,
19 I've been very mindful about that.
20 MR. GROSSMAN: Okay.
21 MR. CHEN: And I've tried to organize it that way.
22 MR. GROSSMAN: Is there anything else that we have
23 to, there is another hearing, by the way here tomorrow in
24 another case. So and you can't leave stuff here.
25 MR. CHEN: 9:30 a.m. here Monday?

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1 MR. GROSSMAN: I'm glad you mentioned that. I
2 actually have an obligation Monday morning. I probably will
3 be here by 9:30 a.m. but I might not be here until 10:00
4 a.m. So maybe we should say that we'll actually start at 10
5 o'clock.
6 MR. CHEN: That makes sense.
7 MR. KAUFMAN: 10:00 a.m. on Monday?
8 MS. GIRARD: We're going to start at 10:00 a.m.?
9 MR. GROSSMAN: On Monday, just because I'm not
10 quite sure I'll make it by 9:30 a.m.
11 MR. CHEN: All right. So 10 o'clock?
12 MR. GROSSMAN: Yes.
13 MR. CHEN: Then I can walk the dogs.
14 MR. GROSSMAN: Always a good thing to do. They'll
15 get to the Promised Land. All right. Anything further?
16 MR. CHEN: Thank you, Mr. Examiner.
17 MS. GIRARD: Thank you.
18 MR. GROSSMAN: All right. Then we will see you
19 all at 10 o'clock on Monday morning.
20 MR. CHEN: Thank you.
21 (Whereupon, at 5:03 p.m., the hearing was
22 concluded.)
23
24
25

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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that
the attached pages represent an accurate transcript of the
electronic sound recording of the proceedings before the
Office of Zoning and Administrative Hearings for Montgomery
County in the matter of:

Application of Brandywine Senior Living at Potomac, LLC
Case No.: CU 16-01

By:

Diane Wilson, Transcriber

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