

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY

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:  
APPLICATION OF BRANDYWINE : Case No. CU 16-01  
SENIOR LIVING AT POTOMAC, LLC :  
:  
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A hearing in the above-entitled matter was held on  
December 7, 2015, commencing at 10:05 a.m., at the Office of  
Zoning and Administrative Hearings, 100 Maryland Avenue,  
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 Applicant:

Erin E. Girard, Esq.  
Stephen Z. Kaufman, Esq.  
Linowes and Blocher, LLP  
7200 Wisconsin Avenue  
Suite 800  
Bethesda, Maryland 20814

On Behalf of the Opposition:

William Chen, Esq.  
Chen & McCabe, LLP  
200 A Monroe Street  
Suite 300  
Rockville, Maryland 20850

E X H I B I T S

Exhibit No.		Marked/Received
1-109		Pre-marked
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C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
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By Ms. Girard:			71	
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Toni Paul				
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Ronald Danielian				
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Ronald Paul				
By Ms. Girard:			206	
James Noonan				
By Mr. Chen:		214		

1 PROCEEDINGS  
2 MR. GROSSMAN: This is the continuation of a  
3 public hearing in the matter of Brandywine Senior Living at  
4 Potomac, LLC, conditional use number 16-01, petition for  
5 conditional use under Zoning Ordinance Section  
6 59.3.3.2.E.2.e to establish a residential care facility  
7 consisting of 140 beds for seniors needing assisted living  
8 and memory care. The subject site constitutes a 4.02 acre  
9 property identified as parcel A of the Potomac Tennis Club  
10 located at 10800 Potomac Tennis Lane, approximately 600 feet  
11 north of the intersection with Maryland 189, that's Falls  
12 Road, in Potomac, Maryland. It is in the RE-2 Zone. The  
13 hearing was begun on November 6, 2015, resumed on December  
14 3, 2015 and as announced at the November 6 and December 3  
15 public hearings was scheduled to resume again today,  
16 December 7. This hearing is conducted by the Office of  
17 Zoning and Administrative hearings. I am Martin Grossman,  
18 the Hearing Examiner. I will continue to take evidence here  
19 and write a report and decision in the case. Will the  
20 parties identify themselves for the record, please?  
21 MS. GIRARD: Erin Girard with Linowes and Blocher  
22 on behalf of the applicant.  
23 MR. KAUFMAN: Steve Kaufman, also of Linowes and  
24 Blocher on behalf of the applicant.  
25 MR. UHRE: Curtis Uhre.

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1 MR. GROSSMAN: On behalf of?  
2 MR. UHRE: Myself individually I guess down here.  
3 MR. CHEN: William Chen on behalf of Dr. and Ms.  
4 Ronald Paul.  
5 MR. GROSSMAN: All right.  
6 MS. LEE: Susanne Lee on behalf of the West  
7 Montgomery County Citizens Association.  
8 MR. GROSSMAN: And I see Dr. and Ms. Paul at the  
9 table also. Okay. Let me, since I think you all have been  
10 through this once I won't explain about the nature of the  
11 proceedings. Actually twice probably. Let me go through a  
12 few preliminary matters. We completed three witnesses on  
13 November 6, Brenda Bacon, Hal Bolton, and Josh Sloan on  
14 December 3. Applicant completed its case with Don Mitchell,  
15 a civil engineer, and Nancy Randall, a transportation  
16 planner.  
17 We also heard testimony from opposition witnesses  
18 Susanne Lee and Ted Duncan, although Mr. Duncan's testimony  
19 was somewhat truncated because it turned out that he was the  
20 president of the Brickyard Coalition and that he was  
21 offering what amounted to expert testimony on real property  
22 evaluation without giving the applicant prior notice. He  
23 ordinarily could do that as an individual but being that he  
24 does not live in the defined neighborhood and that he is the  
25 president of an organization that has been a party to this

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1 litigation for some time I felt that he was in effect trying  
2 to avoid the requirement of OZAH Rule 3.5 which provides  
3 that organized opposition must file expert evidence  
4 disclosures 20 days in advance of the hearing and I found  
5 that under these circumstances fundamental fairness required  
6 that the Hearing Examiner sustain the applicant's objection  
7 and bar the expert evidence, including his proffered Exhibit  
8 No. 108.  
9 Today we have opposition witnesses and rebuttal if  
10 any. Also at the December 3 hearing the Pauls requested I  
11 conduct a site visit to which the applicant objected. I  
12 gave the Pauls until December 8 to file a request outlining  
13 the proposed visit and gave the applicant until December 11  
14 to respond. I also suggested that since today would be the  
15 last day of the hearing that my findings relating to the  
16 site visit would just be part of my report and decision to  
17 which all the parties seemed to agree.  
18 When I reviewed OZAH's Rule 4.2.9 I realized that  
19 I can't do that because under Rule 4.2.9.4 the parties must  
20 be given an opportunity to respond to my site visit findings  
21 before the record closes. I also discovered there's a typo  
22 in the rules. I did print out a copy for everybody of that  
23 rule so that -- Ms. Girard, would you mind coming forward so  
24 people can get a copy of this just so that they can see what  
25 I'm talking about? They're on individual sheets. Thank

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1 you.  
2 MS. GIRARD: Uh-huh.  
3 MR. GROSSMAN: I'm not changing what I said. That  
4 is, the Pauls could still request it and I'd give them the  
5 time which I gave them to request it and the applicant the  
6 time to respond. But we couldn't, we can't under the rules,  
7 if we did go ahead with a site visit, we can't close the  
8 record and have my report. We'd have to have a separate  
9 announced findings and an opportunity for the parties to  
10 respond if we did it.  
11 And clearly under the rule also, you know, the  
12 route, et cetera, whatever you file, Mr. Chen, would have to  
13 indicate what I'm supposed to view from where just so we  
14 have a specific understanding in advance of what would  
15 happen if I elect to do a site visit. So in any event, I  
16 wanted to make sure you all understood that I had  
17 incorrectly stated what I thought was the rule on this.  
18 All right, next preliminary matter, don't forget  
19 electronic copies of any of the new exhibits. There are  
20 some new exhibits that were filed the last time and I want  
21 to make sure that I get electronic copies of anything that  
22 has been filed in Word for text, or text searchable PDF for  
23 text documents and PDFs for non-text documents, although  
24 photos can be .JPG.  
25 Does anybody, party wish to address the golf ball

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1 net fence issue which I raised the last time? Seeing no  
2 hands, nobody wishes to say anything about it, all right.  
3 Hearing Examiners left to their own devices are dangerous,  
4 but all right. Any comments on the application of the  
5 revised Zoning Ordinance per ZTA 1509 which I mentioned on  
6 December 3?  
7 MS. GIRARD: Yes. We did take a look at that and  
8 we're comfortable with that applying to this case.  
9 MR. GROSSMAN: Okay. Anybody on the other side?  
10 MR. CHEN: Since the record, excuse me, since the  
11 record won't close obviously I've not had a chance to look  
12 at it since Thursday --  
13 MR. GROSSMAN: Okay.  
14 MR. CHEN: -- and I do want to take a look at it.  
15 I'm aware of it, I just need to read it.  
16 MR. GROSSMAN: All right. I think you'll find if  
17 you look at the case law that it will apply no matter what  
18 we say but I did want you to be aware of it and if you had  
19 any comments I wanted to give you an opportunity to say  
20 something. All right. And let's see, any other preliminary  
21 matters? Mr. Kaufman --  
22 MR. KAUFMAN: Yes.  
23 MR. GROSSMAN: -- I see a hand.  
24 MR. KAUFMAN: Yes, two things, Mr. Examiner.  
25 First, I need to ask your permission to leave at 4:30 should

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1 the hearing go beyond that. I'm a sponsor of the Executive  
2 Ball and have to be there at 5:00 --  
3 MR. GROSSMAN: All right.  
4 MR. KAUFMAN: -- ergo the black tie. The other  
5 thing is I want to correct the record.  
6 MR. GROSSMAN: Yes.  
7 MR. KAUFMAN: Apparently I did misspeak about the  
8 access to the Pauls' property. The surveyors did have  
9 access to their property.  
10 MR. GROSSMAN: Okay.  
11 MR. KAUFMAN: So I wanted the record to be clear.  
12 MR. GROSSMAN: Okay, good. Yeah, by the way on  
13 the objection that you made, Mr. Chen, about Mr. Kaufman  
14 saying something that wasn't under oath, I'm familiar with  
15 case law regarding attorneys being witnesses in their own  
16 case. I don't consider any statement about whether there  
17 was access to be evidence in the case. It's really a  
18 procedural issue and attorneys speak on procedural matters  
19 all the time without being sworn in. So I don't think  
20 that's apropos. But in any event, the record has been  
21 corrected on that point.  
22 MR. CHEN: Yeah, with the correction of the record  
23 I don't think we need to get into different viewpoints --  
24 MR. GROSSMAN: Don't have to get into the weeds.  
25 MR. CHEN: -- and I appreciate Mr. Kaufman

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1 volunteering that information.  
2 MR. GROSSMAN: Very good. All right. Any other  
3 preliminary matters that people want to mention? All right.  
4 So now are we, who's the next, Mr. Uhre, did you wish to  
5 proceed now?  
6 MR. UHRE: Yes, please --  
7 MR. GROSSMAN: All right.  
8 MR. UHRE: -- Mr. Examiner.  
9 MR. GROSSMAN: All right. So, please come  
10 forward. Would you state for the record your name and  
11 address and on whose behalf you are here testifying?  
12 MR. UHRE: My name is Curtis B. Uhre. I reside at  
13 8513 Brickyard Road in Potomac, Maryland. I am here today  
14 to testify on behalf of the Brickyard Coalition, Inc. I am  
15 the chairman of that organization and been authorized by the  
16 Board to present the testimony here today.  
17 MR. GROSSMAN: All right. Would you raise your  
18 right hand, please?  
19 (Witness sworn.)  
20 MR. GROSSMAN: All right. Explain to me for a  
21 second, I know that when Mr. Duncan was here he said he was  
22 the president of the Brickyard Coalition. You say now  
23 you're the chairman. How does the authority work in the  
24 Brickyard Coalition?  
25 MR. UHRE: Well, the authority basically resides

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1 with the Board of Directors. Office, there are, we have an  
2 office of chairman and office of past -- basically the  
3 chairman is the past president of the organization.  
4 MR. GROSSMAN: Okay.  
5 MR. UHRE: And Mr. Duncan has just been recently  
6 reelected as the, as the president and we also have a  
7 secretary and treasurer.  
8 MR. GROSSMAN: Okay. So, when this case, when you  
9 filed things previously in this case you were then the  
10 president, now you're the chair --  
11 MR. UHRE: Yes, sir.  
12 MR. GROSSMAN: -- and Mr. Duncan is the president?  
13 MR. UHRE: That is correct.  
14 MR. GROSSMAN: Okay. I just didn't want the  
15 record to be confused about that because I wasn't quite sure  
16 myself. All right. You may proceed.  
17 MR. UHRE: Excuse me while I sort out all this  
18 paper.  
19 MR. GROSSMAN: Sure.  
20 MR. UHRE: You'll try to keep this, Mr. Examiner,  
21 this is a copy of the presentation that I will make today --  
22 MR. GROSSMAN: All right.  
23 MR. UHRE: -- and these are some exhibits I'm  
24 going to be requesting to have entered here today.  
25 MR. GROSSMAN: You have copies of this for --

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1 MR. UHRE: I do.  
2 MR. GROSSMAN: -- all the folks?  
3 MR. UHRE: I don't know if I have copies for  
4 everybody but I have certainly --  
5 MR. GROSSMAN: Well --  
6 MR. UHRE: -- one, at least one copy for each of  
7 the parties.  
8 MR. GROSSMAN: Yes, that will probably be  
9 sufficient. All right. So we're going to mark as Exhibit  
10 No. 110 your PowerPoint presentation.  
11 (Hearing Exhibit No. 110 was  
12 marked for identification.)  
13 MR. KAUFMAN: Give us a moment.  
14 MR. GROSSMAN: And the other, other than your,  
15 your PowerPoint presentation what is the other document that  
16 you've handed me? It says DRC comments --  
17 MR. UHRE: These are going to be exhibits I'm  
18 going to be asking to be admitted into evidence. They're  
19 currently public record documents mostly.  
20 MR. GROSSMAN: Okay. So these are separate items  
21 that you've just put together --  
22 MR. UHRE: Yes.  
23 MR. GROSSMAN: -- and you're going to be  
24 mentioning them as we go along?  
25 MR. UHRE: Yes.

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1 MR. GROSSMAN: Okay.  
2 MR. UHRE: I was unclear whether I also needed to  
3 have each individual item mentioned in the PowerPoint as a  
4 separate introduced exhibit so I --  
5 MR. GROSSMAN: Well, no, it doesn't have to be  
6 necessarily mentioned in a PowerPoint presentation but you  
7 will have to identify what they are --  
8 MR. UHRE: Yes.  
9 MR. GROSSMAN: -- as we go along.  
10 MR. UHRE: Yes, sir.  
11 MR. GROSSMAN: Okay. So I won't mark those until  
12 you get to them and identify what they are.  
13 MR. UHRE: Yes, sir.  
14 MR. GROSSMAN: Okay.  
15 MR. UHRE: That would be correct. That's what I,  
16 I just was trying to keep the up and down a little easier.  
17 MR. GROSSMAN: Sounds like a good idea. Okay.  
18 You may proceed.  
19 MR. UHRE: I want to thank the Examiner for the  
20 opportunity to present testimony here today. The Brickyard  
21 Coalition has formally taken a position in opposition to the  
22 conditional use that the applicant has filed in this case.  
23 The Brickyard Coalition is an organization of approximately  
24 200, 2,000 individual members in the Potomac area. Our  
25 mission is essentially to require a transparent, objective

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1 and competitive process to conform with the master plan or  
2 to ensure that conditional uses in this instance conform  
3 with the master plan, to ensure that a conditional use or  
4 any other use of property complies with the zoning  
5 regulations and generally to protect our residential  
6 neighborhood and our community.  
7 This is the first time we've had the opportunity  
8 to present any evidence before the Hearing Examiner or  
9 before the office but we have previously presented testimony  
10 before the planning commission and certainly have been  
11 active on a number of fronts with various suggested land  
12 uses in the Potomac area and particularly in our community.  
13 We basically object to the Brandywine application because we  
14 do not believe it complies with the Potomac master plan. We  
15 believe that it gives rather a harsh and adverse treatment  
16 to the abutting and the adjoining residential properties.  
17 We generally believe it's too large in scope and size for  
18 the proposed site. We believe that there are adverse  
19 pedestrian and traffic safety issues. And we do not believe  
20 it complies generally with the zoning code or the Maryland  
21 County code.  
22 MR. GROSSMAN: By the way, did you bring a CD with  
23 this, an electronic --  
24 MR. UHRE: Yes, I did.  
25 MR. GROSSMAN: -- copy of it?

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1 MR. UHRE: Yes, I did.  
2 MR. GROSSMAN: Do you have that for me?  
3 MR. UHRE: Yes, sir.  
4 MR. GROSSMAN: Thank you. I'm going to mark the  
5 CD envelope at least as 110(a).  
6 (Hearing Exhibit No. 110(a)  
7 was marked for  
8 identification.)  
9 MR. KAUFMAN: What was 110?  
10 MR. GROSSMAN: 110 is the --  
11 MS. GIRARD: The PowerPoint.  
12 MR. GROSSMAN: -- PowerPoint presentation.  
13 MR. KAUFMAN: Okay.  
14 MR. GROSSMAN: And let's see, and I take it that  
15 it is in some form of text searchable format?  
16 MR. UHRE: I hope so, sir.  
17 MR. GROSSMAN: Okay.  
18 MR. UHRE: If not, please let me know and we'll  
19 make sure that it is.  
20 MR. GROSSMAN: Okay.  
21 MR. UHRE: It's in PDF, text searchable.  
22 MR. GROSSMAN: All right. And one other question,  
23 on your point number two it says harsh, adverse treatment of  
24 abutting and adjoining residential properties plural. What  
25 other residential properties are there other than the Pauls

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1 that are adjoining and abutting?  
2 MR. UHRE: Well the, certainly I believe the Pauls  
3 are the only abutting but adjoining I understand to be one  
4 or two away and the site, or the new proposed site is  
5 clearly going to be visible out from other, some other  
6 residential properties as well in our opinion.  
7 MR. GROSSMAN: Well, abutting and adjoining are  
8 actually synonymous, adjacent is I think the word --  
9 MR. UHRE: Okay.  
10 MR. GROSSMAN: -- you're probably looking for  
11 there. So you're saying that there are other properties  
12 within view that are not abutting or adjoining the property  
13 line?  
14 MR. UHRE: That is correct.  
15 MR. GROSSMAN: Okay.  
16 MR. UHRE: This is our Exhibit 69(b) that was  
17 previously filed. This simply is somewhat our analysis of  
18 the proposed site. As you can see, this is where the truck  
19 loading zone is, or at least where they have indicated it is  
20 going to be. This right here is where the receiving area  
21 would be going into the applicant's, where, where things  
22 would be unloaded and received. This spot here, if the  
23 trucks are being parked here --  
24 MR. GROSSMAN: This part here being the garage  
25 entrance or --

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1 MR. UHRE: Uh --  
2 MR. GROSSMAN: When you say this spot here --  
3 MR. UHRE: Okay.  
4 MR. GROSSMAN: -- you have to identify what you're  
5 talking about.  
6 MR. UHRE: I'm sorry. This spot between the  
7 garage entrance and the truck loading zone which is --  
8 MR. GROSSMAN: Okay.  
9 MR. UHRE: -- which is where you're going to have  
10 the truck receiving or the truck unloading area located. In  
11 our opinion it's going to present a safety issue because  
12 you're going to have, if you have trucks parked here other  
13 trucks perhaps can't get by and you're also going to be  
14 having about 18 vehicles turning over up to three times a  
15 day going back and forth. So at times you're going to have  
16 a one-lane traffic with a truck sitting here and not have  
17 very good visibility coming in or out of the underground  
18 garage.  
19 MR. GROSSMAN: Does it not comply with applicable  
20 regulations for driveways?  
21 MR. UHRE: I think, Mr. Examiner, you're going to  
22 have to make a decision because we're going to touch on that  
23 later. There is specifically a safety clause in the truck  
24 unloading receiving areas that says it has to be safe and it  
25 should not interfere with other traffic or bicycles. We

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1 also are going to have the bicycles all parked in the  
2 underground garage. So any bicycle traffic will be subject  
3 to the same issues.  
4 MR. GROSSMAN: All right.  
5 MR. UHRE: The other thing you have is a slope  
6 approximately starting here or at some part that's going to  
7 slope down --  
8 MR. GROSSMAN: Here being?  
9 MR. UHRE: Here being on the service road before  
10 the truck receiving or the truck unloading zone that's going  
11 to slope down about nine percent.  
12 (Sound.)  
13 MR. UHRE: Excuse me?  
14 MR. GROSSMAN: I didn't say anything.  
15 MR. UHRE: Oh, I'm sorry, I thought somebody said  
16 something.  
17 MR. GROSSMAN: I think somebody blew their nose.  
18 I know that sound.  
19 MR. UHRE: No, I wasn't suggesting that at all.  
20 But I was, my hearing wasn't working very well today. A  
21 nine percent slope in the wintertime could cause other  
22 safety issues with cars or other trucks unable to stop with  
23 a parked truck in the, in the unloading zone. Here you have  
24 the Pauls' property --  
25 MR. GROSSMAN: Here being?

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1 MR. UHRE: Here, I'm sorry, on the southwest,  
2 right?  
3 MR. GROSSMAN: Once again, your diagram north is  
4 off to the right. Is that correct?  
5 MR. UHRE: This is a diagram of the applicant's so  
6 I --  
7 MR. GROSSMAN: Right.  
8 MR. UHRE: -- believe you're correct, north is,  
9 north is off to the right. Here you, in, in the northern,  
10 this would be the eastern part of the property you have the  
11 location of the trash. Currently --  
12 MR. GROSSMAN: Well, I think it's the western.  
13 MS. GIRARD: West.  
14 MR. UHRE: The western --  
15 MR. GROSSMAN: The western.  
16 MR. UHRE: -- I'm sorry, you're correct. You have  
17 the location of the trash receptacles, et cetera, that means  
18 that the trash trucks will have to go completely down the  
19 service road to be able to collect trash and then turn  
20 around in some fashion and we're going to get to the truck  
21 turnaround a little bit later. But currently I just wanted  
22 to make the point that the trash is, the trash pickup is  
23 right here.  
24 MR. GROSSMAN: Right here being?  
25 MR. UHRE: Right at the, at the entrance -- I'm

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1 very sorry, at the entrance to the property right off of  
2 Potomac Tennis Lane. So, the Pauls have no noise issue, for  
3 example, at the moment with the current setup as it relates  
4 to noise from trash trucks. We're going, the new  
5 application will move the trash cycle to probably within --  
6 or the trash pickup, to somewhere around 15 to 20 feet of  
7 the Pauls' property line so that will be a significant  
8 difference in the current use as opposed to some of the  
9 proposed use. You also have noise, et cetera, but I just  
10 wanted to kind of put this as an outline. We just believe  
11 that this proposal puts all of the commercial uses, the  
12 entry to the underground garage, the service road, the  
13 trash, the truck turnarounds adjacent to or very close to  
14 the Pauls' property that does not currently exist and we  
15 just think it's going to be and will cause an adverse effect  
16 to their property and to their use and enjoyment of that  
17 property.  
18 I'm not going to spend a lot of time, because I  
19 know that you're very well versed in non-inherent adverse  
20 effects except to say that they certainly are defined in the  
21 code and an unusual characteristic of the site can create a  
22 non-inherent effect. Just pulling from the staff report  
23 itself, they say that this site has a very unique shape and  
24 access situation. There's only a single 100-foot entrance  
25 along or from Potomac Tennis Lane. The proposed building is

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1 built on a slope down towards the back. In other words, it  
2 slopes up from the site to the Pauls'. You have a Stream  
3 Valley Buffer located in the northwest part of the property  
4 which apparently prohibits putting the service road on the  
5 other side of the property which would be a much better  
6 location for it than this. You're located on a dead-end  
7 street which requires that all the traffic access come and  
8 go through Falls Road. Essentially Potomac Tennis Lane is  
9 an extended driveway for ManorCare and for the site.

10 And in conclusion we just think that the non-  
11 inherent characteristics force the commercial uses into an  
12 area adjacent to or close to the Pauls' property and creates  
13 and adverse effect for them and the neighborhood. Potomac  
14 master plan provides for, in the section on page 35, in the  
15 section dealing with special exceptions now called  
16 conditional uses that the, there should be increased  
17 scrutiny in reviewing special exception applications for a  
18 highly visible site. They go on to define an example of a  
19 highly visible site as to include projects along major  
20 transportation corridors. We believe that Falls Road is  
21 certainly classified as a major transportation corridor and  
22 clearly would meet that definition. It does not limit or  
23 say that a highly visible site needs to be adjacent to a  
24 corridor. It also can be adjacent to situations like the  
25 C&O Canal. But clearly that helps to define that. We

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1 believe that the site is visible from Falls Road, it's  
2 certainly visible around the two sections of the golf  
3 course, easily visible, and it's visible clearly from the,  
4 from the Pauls' property.

5 There, in seeking a definition of increased  
6 scrutiny I wanted to draw the Hearing Examiner's attention  
7 to a filing in another case. And this would be the first  
8 request, this has been filed in the public record, or at  
9 least available on the DAC website which I believe makes it  
10 a public record. These are DRC comments provided by the  
11 area three planning team. And while this is on another case  
12 I believe it is applicable and can give, maybe help give  
13 some guidance at least as to some of the thinking of the  
14 planning staff. It says in essence that the 2002 Potomac  
15 Master Plan articulates a policy for conditional uses. It  
16 particularly recommends increased scrutiny and he says, this  
17 property in particular meets those specifications and  
18 they're talking about a different property obviously than  
19 the property here. But they go on to say that they'll have  
20 to meet higher standards for compatibility, for  
21 environmental impacts and design excellent, excellence more  
22 broadly issues of non-inherent adverse impacts will be of  
23 particular importance in analyzing this proposal. We would  
24 respectfully request that the Hearing Examiner apply that or  
25 a similar standard to this particular case because we

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1 believe it is a highly visible site. Now --  
2 MR. CHEN: I'm sorry, if I may interrupt you? One  
3 of the exhibits you gave seems to be that last --  
4 MR. UHRE: That's correct, I'm sorry. I don't  
5 know if that's the first exhibit. I was unclear as to  
6 whether, since it's included, whether you would want the  
7 full document. And if we could put that in as an exhibit?  
8 MR. GROSSMAN: All right. That'll be Exhibit No.  
9 111 I think we're up to. Hold on a second.  
10 (Hearing Exhibit No. 111 was  
11 marked for identification.)  
12 MR. CHEN: Do you want to make it 111, Mr.  
13 Examiner or --  
14 MR. GROSSMAN: Yes.  
15 MR. CHEN: -- sub or --  
16 MR. GROSSMAN: This will be 111. And 111 is DRC  
17 comments regarding CU --  
18 MR. KAUFMAN: Do we know what case that was, I  
19 mean --  
20 MR. GROSSMAN: It's CU 15-06, Old Angler's Inn.  
21 Okay. Has the full staff report been issued for --  
22 MR. KAUFMAN: No.  
23 MR. UHRE: No, sir.  
24 MR. GROSSMAN: Okay.  
25 MR. KAUFMAN: That's a case in process, isn't it?

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1 MR. GROSSMAN: Yes. This has not been heard yet.  
2 MR. UHRE: Yes, it's a long process. In this  
3 particular case the planning staff agreed with the first  
4 part. That is that the master plan clearly recommends  
5 increased scrutiny but then came up with what we believe is  
6 an application that does not comply with Potomac Master  
7 Plan. They said something to the extent, and I think I'm  
8 quoting correctly --  
9 MR. GROSSMAN: Now you're back to our case?  
10 MR. UHRE: Yes, I am, sir.  
11 MR. GROSSMAN: Okay.  
12 MR. UHRE: It says, the context, what they said  
13 about it is that yes it applies but the context in the  
14 master plan suggests that this related to visibility from  
15 major transportation corridors. We simply, obviously the  
16 master plan says what it says, but we simply believe that  
17 the plain language of the master plan says that it applies  
18 to an application, not the visibility from any site. And  
19 if, once, once stating that the, that the increase scrutiny  
20 applies it applies to an application, it does not apply  
21 simply to visibility located from a, from a highway.  
22 Potomac Master Plan does touch and have a, and  
23 does have provisions for housing for the elderly. I would  
24 simply like to point out that I believe that the comments on  
25 housing for the elderly contained in the Potomac Master Plan

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1 apply to all forms of senior living, not just to assisted  
2 forms. Nowhere in the master plan is the word assisted used  
3 in a description of the senior housing. So when you are  
4 looking at this you have to look at the, or units needed for  
5 all types of living, assisted or non-assisted, and I still  
6 believe that there is much, many more un-assisted types of  
7 elderly housing than there are assisted. It goes on to  
8 state that a reasonable senior housing target in the  
9 subregion over the next 10 to 15 years is approximately 40  
10 units. And in it says specifically --  
11 MR. GROSSMAN: 40 units per year.  
12 MR. UHRE: Per year, correct. And then it says  
13 specifically, when significant impacts cannot be mitigated  
14 the project should be located elsewhere in the subregion.  
15 So, I think they're very careful, it suggests to me they  
16 want particular attention to be paid to the location of  
17 senior housing and if it, if, if it doesn't, if it does have  
18 impacts it should be mitigated and located in a, in a, and  
19 their definition of mitigated is located in another area.  
20 MR. GROSSMAN: Well, I don't -- well hold on one  
21 second. It didn't say that. It said, when the impacts  
22 cannot be mitigated the project should be located elsewhere.  
23 It doesn't say that their definition of mitigated is located  
24 elsewhere. It's saying if you can't mitigate it on the site  
25 then you should locate it elsewhere.

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1 MR. UHRE: That would be correct.  
2 MR. GROSSMAN: Yeah.  
3 MR. UHRE: I didn't mean to misstate.  
4 MR. GROSSMAN: Okay.  
5 MR. UHRE: That would be, that would be correct.  
6 There's been a lot stated by the applicant that this is not  
7 going to increase the number of special exception or  
8 conditional uses in this particular area of the Potomac  
9 subregion. But clearly to us we still believe that the base  
10 standard of RE-2 should be used and that should be the  
11 comparison. But excepting for a second the applicant's  
12 suggestion, there is a significant difference between the  
13 intensity and the scope in our opinion of the current  
14 Potomac Tennis Club and the proposed club. The existing  
15 club has approximately a building of about 10,000 square  
16 feet. I'm estimating that from Google Earth but I think I'm  
17 reasonably close on that. The, this application has 135,000  
18 square feet. The existing building --  
19 MR. GROSSMAN: You mean of floor area?  
20 MR. UHRE: Excuse me?  
21 MR. GROSSMAN: Of floor area?  
22 MR. UHRE: Of floor area that's covered. The  
23 existing stories are two. The proposed, the proposed use is  
24 three stories. The hours of operation of the existing  
25 facility are limited from approximately 6:30 in the morning

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1 to 9:30 is I think, I believe the approximate time period.  
2 Whereas by their own testimony the new Brandywine site will  
3 be 24/7, 365 days of the year. And the current employees  
4 are approximately 10 and they have stated that on the  
5 Brandywine living center they would have up to 110  
6 employees.  
7 MR. GROSSMAN: Okay.  
8 MR. UHRE: So --  
9 MR. GROSSMAN: Now, are you suggesting that I  
10 should decide the compatibility by comparing the impacts of  
11 the existing site or the existing use with what is proposed?  
12 Is that your position?  
13 MR. UHRE: No, our position would be that you  
14 should compare compatibility with RE-2 because we believe  
15 that is the base. But I do believe --  
16 MR. GROSSMAN: Well RE-2 permits this use as a  
17 conditional use. You can't say, RE-2 is only for single-  
18 family homes if it permits by statute this as a conditional  
19 use, can you?  
20 MR. UHRE: I think the expectation in the eyes of  
21 most people is that RE-2 certainly would normally be used  
22 for residential homes. I understand that the code would  
23 permit it with this process. The code also has I believe  
24 safeguards built in as to what has to be demonstrated by the  
25 applicant to be approved for this use.

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1 MR. GROSSMAN: Certainly.  
2 MR. UHRE: And I believe it even goes so far to  
3 say that even if it meets all of the technical standards  
4 that the Hearing Examiner still would have a right to modify  
5 or reject --  
6 MR. GROSSMAN: I agree. That's clear in the  
7 statute. But getting back to my question that you answered  
8 in the negative, my question was, are you suggesting that I  
9 should decide compatibility by comparison with the current  
10 use versus the proposed use. You said no and then you added  
11 the but, but --  
12 MR. UHRE: Well --  
13 MR. GROSSMAN: -- so why would I consider your  
14 particular slide that you have on the screen now comparing  
15 existing and proposed square footage, hours of operation, et  
16 cetera?  
17 MR. UHRE: Because I think, maybe I'm, maybe I'm  
18 misunderstanding your definition of compatibility. But I  
19 think clearly as I understand you also the, judge the  
20 difference between the scope and intensity of the uses if  
21 that's part of compatibility then I would say that yes, it  
22 does measure into compatibility.  
23 MR. GROSSMAN: Scope and intensity is certainly a  
24 part of what I consider. But the question is, should I  
25 consider it in comparison with a use that will no longer be

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1 there if this use is approved. Should I consider it, should  
2 I consider compatibility in conjunction with what is  
3 presently there? I said at the beginning, I'm not going to  
4 do that. I think that any proposed use has to be considered  
5 on its own as to whether it is compatible with the  
6 surroundings, regardless of what is there now. If it were  
7 an empty lot now I'd have to still consider it based on what  
8 is the proposed use rather than comparing it to an empty  
9 lot.

10 MR. UHRE: Yes, I understand that.

11 MR. GROSSMAN: So I'm not sure I understand, given  
12 your answer, why I should consider this, this comparison  
13 that you've made here.

14 MR. UHRE: I, it's, I guess it's just my belief,  
15 as I understand, that the scope and intensity are part of  
16 the compatibility and that they are part of the overall --

17 MR. GROSSMAN: They are --

18 MR. UHRE: -- judgment.

19 MR. GROSSMAN: -- but the comparison, the question  
20 I have is should I be, in evaluating this, should I compare  
21 it with the imposition of the present use versus the  
22 imposition of the proposed use. Is that really the  
23 comparison that is the relevant one I should consider?  
24 MR. UHRE: I think the relevant one is the  
25 proposed use.

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1 MR. GROSSMAN: Okay. So I shouldn't consider this  
2 slide? I'm not trying to catch you up, I'm not going to  
3 press that any more. I'm just suggesting that that's, you  
4 know, an issue, that was raised at the very beginning and  
5 I'm saying that the way I view my evaluation of  
6 compatibility is not to view it in comparison with what's  
7 there. I mean, people could argue that the bubble which is  
8 not there the entire year is more of an imposition or less  
9 of an imposition than what is proposed and so on. I don't  
10 think that's a fair way to evaluate this. I think it should  
11 be evaluated on its own, how it will be compatible or not  
12 compatible with the surrounding and proposed uses if it is  
13 constructed. I should mention, in terms of hours of  
14 operation, I suspect that not much happens in this type of  
15 facility between 9:30 p.m. and 6:30 in the morning so I'm  
16 not sure that the hours of operation comparison is apropos  
17 in this case. But in any event, I will let you go to the  
18 next slide.

19 MR. UHRE: Okay. Thank you. I'd like to turn for  
20 a second to noise. Again, the County noise ordinance  
21 restricts noise at the receiving property line at 65  
22 decibels during the day and 55 decibels at the evening.  
23 These are some examples of noise examples. I've put several  
24 studies into the record. A garbage truck is making about  
25 100 decibels, power lawn mower about 100, motorcycle about

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1 the same. I did find one study from Washington State that  
2 said a metal garage opener was around 85 decibels and a leaf  
3 blower is approximately 95.

4 MR. GROSSMAN: Well, they'd be required to follow  
5 Montgomery County noise level restrictions at all times.  
6 That is a regulation of the County and all our conditional  
7 uses when they're granted have a condition that requires  
8 that any holder of the conditional use comply with all  
9 applicable regulations and that would include noise  
10 regulations, so.

11 MR. UHRE: Well, here is, again though, the noise  
12 exposure I believe is going to be much greater for the  
13 Pauls. I'm not sure how they're then going to comply for  
14 noise regulations for trash trucks because just using Waste  
15 Management for example, and this comes from our Exhibit No.  
16 69(e) doing their own study even with a window closed in the  
17 cab of the garbage truck they were at 88 decibels. Five  
18 feet away of the garbage bins they were 100 decibels. While  
19 compacting they were 89 decibels. SO, the trash truck  
20 basically is, is --

21 MR. GROSSMAN: You're saying that trash trucks  
22 can't operate in the County?

23 MR. UHRE: I'm saying that trash trucks likely are  
24 going to exceed the noise limit and I think if you talk to  
25 the noise people they would rather see a design of the

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1 property so that they don't have the complaints from the  
2 noise as opposed to allowing a design where noise is going  
3 to exceed the noise level at the property line in the code.  
4 I've had many conversations with them about noise as far as  
5 the neighborhood situation and they get very frustrated  
6 because they get called out continually because a design was  
7 permitted and maybe --

8 MR. GROSSMAN: Who gets called out? I'm sorry?

9 MR. UHRE: The noise ordinance enforcement people.

10 MR. GROSSMAN: Right.

11 MR. UHRE: And it becomes very difficult for them  
12 to control things because the initial design was at fault  
13 that permitted. And I think having the facility, the trash  
14 facility so close to the Pauls' residence is going to make  
15 it next to impossible for a trash truck not to exceed the  
16 noise levels at the Pauls' property line.

17 MR. GROSSMAN: Okay.

18 MR. UHRE: Next I'd like to turn to just an  
19 overview of traffic safety. We continue to believe that the  
20 Potomac Tennis Lane which joins Falls Road is at a dangerous  
21 curve. There's often traffic backups. The turn lanes we do  
22 not believe to be adequate. There have been numerous  
23 accidents along Falls Road. And we continue to object to  
24 the fact that the traffic accident information was not made  
25 available to us in a form that was usable until the day of

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1 the planning board hearing. And we just think that that was  
2 patently unfair.

3 MR. GROSSMAN: Well, hold on one second. How long  
4 ago was the planning board hearing?

5 MR. UHRE: Mid-October.

6 MR. GROSSMAN: Okay. So you've had it since Mid-  
7 October?

8 MR. UHRE: We've had it since Mid-October but the  
9 date of the first hearing was November 6th. There's no way,  
10 I made a couple calls trying to find someone who could help  
11 us analyze that and they said there was no way that it could  
12 get done and have it as support resubmitted in that time.  
13 It's, it's much more difficult for us as civic organizations  
14 to number one, find somebody first who will oppose or work  
15 on the opposition side. We just don't keep people on staff  
16 that can help on this so in any particular --

17 MR. GROSSMAN: Right.

18 MR. UHRE: -- case we have to go out and I just, I  
19 guess again say I just don't think there was a sufficient  
20 amount of time.

21 MR. GROSSMAN: The availability, I share a concern  
22 with you about the availability of crash data so that  
23 instantly when you asked for it I took action to encourage  
24 the technical staff to turn it over which they did --

25 MR. UHRE: And I appreciate that.

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1 MR. GROSSMAN: -- within a couple of days after  
2 that and as I mentioned earlier I have pursued this with the  
3 State Highway Administration which controls the crash data,  
4 or at least the State of Maryland does rather than our  
5 organization. So, you know, I share that concern about  
6 having it available. But I have to say that having had it  
7 now available since October and it's now December 7th you've  
8 had ample opportunity to deal with the crash data such as it  
9 is prior to this hearing being completed and prior to your  
10 testimony. So I don't, I don't feel that it unfairly  
11 impacted you here in terms of this. Whether it impacted you  
12 in terms of the planning board hearing I don't know.

13 MR. UHRE: Well, that's I think more to my point  
14 that it was given to us in a presentation, not even as a  
15 document, on the day of the hearing. I just, you know, we  
16 had no opportunity to, and it may or may not have impacted  
17 what the planning board decided to do or not do. I just  
18 think in fairness we ought to have at least 10 days to  
19 respond to that.

20 MR. GROSSMAN: Well, let me ask you this, in terms  
21 of the presentation that was made and in terms of what Ms.  
22 Randall testified to as to, I believe it was one accident at  
23 the intersection of Falls Road and Potomac Tennis Lane over  
24 the three-year study period, is there anything in that data  
25 that you can point to that shows that that is a dangerous

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1 intersection?

2 MR. UHRE: I think that, the traffic data is part  
3 of it. As you know, we are working on other paths with the  
4 regional State Highway people and they've agreed to do an  
5 assessment. I think that assessment comes in part by their  
6 analysis of the traffic data. Apparently, there has been a  
7 very serious accident at Potomac Lane and Falls Road in the  
8 2015 time period.

9 MR. GROSSMAN: I don't, you're saying apparently,  
10 I don't know that.

11 MR. UHRE: Well, I --

12 MR. GROSSMAN: It's not in my record.

13 MR. UHRE: I understand that. I have been told  
14 that directly but I --

15 MR. GROSSMAN: Well --

16 MR. UHRE: -- but I --

17 MR. GROSSMAN: -- that's a form of hearsay that I  
18 can't, I mean, we allow --

19 MR. UHRE: Okay.

20 MR. GROSSMAN: -- sometimes forms of hearsay but,  
21 you know, if it's an issue that pertains to this I would  
22 have to have, you know, more direct evidence of that --

23 MR. UHRE: Right. I'm not trying to --

24 MR. GROSSMAN: -- than you are --

25 MR. UHRE: -- go there.

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1 MR. GROSSMAN: Right.

2 MR. UHRE: I'm simply saying in response to your  
3 question that I, I think that the traffic data is only one  
4 part of trying to analyze what we believe is a, is a totally  
5 unsafe intersection that can be improved and we just believe  
6 that the applicant's use is going to make matters even worse  
7 than they are --

8 MR. GROSSMAN: Right. And I understand your point  
9 there. I'm just saying that in terms of the, your not  
10 having the crash data available to you, now that we do know  
11 what the crash data is for that three-year study period, it  
12 only reveals, as I understand it, one accident at that  
13 intersection. So, yes, while it is only part of the total  
14 picture I'm trying to understand why you feel that that, not  
15 having that information prior to October has prejudiced you  
16 in this hearing?

17 MR. UHRE: I'm simply, I guess I think it's more  
18 than just the crash data at the intersection. I think that  
19 the crash data all along this section of Falls Road would be  
20 important. The number of rear-end collisions which would  
21 indicate perhaps too much traffic, et cetera. I'm not a  
22 traffic expert. I don't pretend to be. I have driven this  
23 road for 10 years almost every day. I can tell you there  
24 are backups. I can tell you that traffic is horrendous. I  
25 am, I can tell you that you'd better be paying attention

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1 when you go around this curve and we just simply feel that  
2 the, however the measurement is made that the traffic has  
3 worsened. And we feel that it's probably going to get even  
4 worse with this conditional use if it's approved.  
5 MR. GROSSMAN: All right. Well, I'm going to hear  
6 testimony, I take it, from Mr. Chen's expert from this, in  
7 this regard but --  
8 MR. CHEN: Not on traffic.  
9 MR. GROSSMAN: Not on traffic? I thought you --  
10 MR. CHEN: I don't have a traffic expert.  
11 MR. GROSSMAN: Oh, I thought you did have a  
12 traffic expert, I'm sorry.  
13 MR. CHEN: While we're right at this, and I  
14 apologize for interrupting you, but I can't help but note  
15 that on the screen, the PowerPoint, it looks like it may be  
16 the same photograph that may be one of loose exhibits, am I  
17 mistaken, Mr. --  
18 MR. UHRE: That's correct.  
19 MR. CHEN: -- Uhre? So, are we, is this going for  
20 another exhibit?  
21 MR. UHRE: Yes, please.  
22 MR. GROSSMAN: All righty. So this will be  
23 Exhibit No. 112, I believe.  
24 (Hearing Exhibit No. 112 was  
25 marked for identification.)

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1 MR. CHEN: We're at 112?  
2 MR. GROSSMAN: Yes, 112.  
3 MR. CHEN: What's the title?  
4 MR. GROSSMAN: It's aerial photograph --  
5 MR. CHEN: Do you know when it was taken?  
6 MR. GROSSMAN: That's a fair question. Aerial --  
7 let me write what it is, aerial photo of intersection --  
8 MR. UHRE: I believe it was 2014 --  
9 MR. GROSSMAN: Hold on one second. Intersection  
10 of Falls Road and Potomac Tennis Lane.  
11 MR. CHEN: How are you entitling it, sir?  
12 MR. GROSSMAN: It's an aerial photo on the  
13 intersection of Falls Road and Potomac Tennis Lane.  
14 MR. CHEN: I'm sorry, I didn't hear when it was  
15 taken.  
16 MR. GROSSMAN: Right, we haven't gotten back to  
17 that yet. So now -- it's a Google Earth by the way. Do we  
18 know when it was taken, Mr. Uhre?  
19 MR. UHRE: It's using the last date in Google  
20 Earth. I think it's taken some time in October of 2014 but  
21 I could go back and look and get it specifically. I do not  
22 have that --  
23 MR. GROSSMAN: All right.  
24 MR. UHRE: -- for you.  
25 MR. GROSSMAN: Well, since you drive it every day

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1 can you say whether it accurately represents the  
2 intersection as it exists now?  
3 MR. UHRE: Yes, I can.  
4 MR. GROSSMAN: Okay.  
5 MR. CHEN: That's good.  
6 MR. KAUFMAN: I'm sorry, Mr. Examiner, what was  
7 111?  
8 MR. CHEN: It's the DRC comments.  
9 MR. GROSSMAN: 111 was the DRC --  
10 MR. KAUFMAN: Oh, okay.  
11 MR. GROSSMAN: -- Development Review Committee  
12 comments regarding CU 15-06. Okay.  
13 MR. UHRE: So the, and I think the point of this  
14 is, and there had been similar photographs introduced by the  
15 applicant, is simply again to point out that you have a --  
16 there it is. Coming in from here a very severe angle --  
17 MR. GROSSMAN: Coming in from --  
18 MR. UHRE: Coming, if you come --  
19 MR. GROSSMAN: -- Potomac Tennis Lane heading  
20 towards Falls Road?  
21 MR. UHRE: Correct.  
22 MR. GROSSMAN: Okay.  
23 MR. UHRE: Creates an angle with Falls Road if  
24 you, as viewed to your left of approximately as I measured  
25 it in the neighborhood of a 55 degree, using a compass,

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1 about a 55 degree angle.  
2 MR. GROSSMAN: Okay.  
3 MR. UHRE: And here you have, from the other way,  
4 an angle of approximately 180 degrees. Number two, you are  
5 coming across particularly to do a turn to your left you  
6 have to cross several lanes of traffic in order to reach  
7 that. The spot right here which was referred to --  
8 MR. GROSSMAN: Right here being?  
9 MR. UHRE: Right here being the -- I'm sorry.  
10 MR. GROSSMAN: I know it's an annoyance but just  
11 to make sure the record is clear --  
12 MR. UHRE: Right.  
13 MR. GROSSMAN: -- as to what you're talking about.  
14 MR. UHRE: The first entrance to the Normandie  
15 Farm Restaurant --  
16 MR. GROSSMAN: Yes.  
17 MR. UHRE: -- off of Falls Road directly south of  
18 the entrance to Potomac Tennis Lane --  
19 MR. GROSSMAN: Yes.  
20 MR. UHRE: -- I have personally observed numerous  
21 times when there's a rock façade on either side of the  
22 driveway entrance --  
23 MR. GROSSMAN: Yes.  
24 MR. UHRE: -- where automobiles have hit that  
25 façade and they have fallen down.

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1 MR. GROSSMAN: You've observed the --  
2 MR. UHRE: I --  
3 MR. GROSSMAN: -- automobiles hitting it or you  
4 have --  
5 MR. UHRE: I've observed the, the rocks --  
6 MR. GROSSMAN: -- or you've seen the rocks that  
7 dislodged?  
8 MR. UHRE: And I've seen at least two occasions  
9 where the cars were still sitting there with, with  
10 accidents.  
11 MR. GROSSMAN: Okay.  
12 MR. UHRE: I'm simply saying that it is a little  
13 bit more than legend. But this is just an example of what  
14 can happen on this curve and why we feel I think as a  
15 community that the, this particular curve and intersection  
16 are, are greatly in need of improvement and we'd be very  
17 happen if it would go back to RE-2 and we'd have less  
18 traffic coming into this intersection.  
19 MR. GROSSMAN: Well, when you say this  
20 intersection --  
21 MR. UHRE: The intersection --  
22 MR. GROSSMAN: -- now you're talking about the one  
23 with, with the Normandie Farms?  
24 MR. UHRE: No, I'm talking about Potomac Tennis  
25 Lane and if --

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1 MR. GROSSMAN: But I don't, I'm not sure I  
2 understand, what is the, the Normandie Farms' 90-degree  
3 right angle intersection there have to do with your Potomac  
4 Tennis Lane intersection in terms of your commentary? I  
5 don't understand that.  
6 MR. UHRE: Only that people coming around this  
7 curve don't negotiate the curve and they hit --  
8 MR. GROSSMAN: I see. So --  
9 MR. UHRE: -- they go off onto the driveway.  
10 MR. GROSSMAN: -- people going south, what amounts  
11 to south on Falls Road past Potomac Tennis Lane intersection  
12 will sometimes run into the rocks at Normandie Farms  
13 restaurant?  
14 MR. UHRE: Uh-huh. Driveway, yes.  
15 MR. GROSSMAN: And that particular one is a 90-  
16 degree angle with the road which I believe is what is  
17 usually recommended for accessing roads. So I'm not sure  
18 what the, how that factors into this. I don't --  
19 MR. UHRE: I -- okay, well we'll go onto --  
20 MR. GROSSMAN: Okay.  
21 MR. UHRE: The next photo is -- and I'm sorry,  
22 these are both exhibits that I have previously filed, the  
23 next two photos, but I do not have --  
24 MR. GROSSMAN: Okay.  
25 MR. UHRE: -- the exhibit numbers. So I apologize

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1 for that. This is a photo taken at Potomac Tennis Lane and  
2 Falls Road on October 14th, 2015 at 8:30 a.m. My back is to  
3 basically the Potomac Tennis Club. This is looking out  
4 south. If you, the, immediately south here would be the  
5 entrance to the Normandie Farm restaurant. It just shows an  
6 example of traffic backed up with people unable to make  
7 left-hand turns onto Potomac Tennis Lane. And it's not an  
8 uncommon experience for those of us who drive this road to  
9 see this type of a traffic backup.  
10 MR. GROSSMAN: Okay.  
11 MR. UHRE: And this is an example of traffic  
12 backup looking to the south taken on the same day. As you  
13 can see, the cars are backed up for some, for some distance.  
14 MR. GROSSMAN: I'm sorry, what, I'm having trouble  
15 orienting myself.  
16 MR. UHRE: Oh, north, I'm sorry, the second one is  
17 looking to the north.  
18 MR. GROSSMAN: Looking to the north --  
19 MR. UHRE: I'm sorry.  
20 MR. GROSSMAN: -- from the intersection of Potomac  
21 Tennis Lane?  
22 MR. UHRE: I have to have a map in front of me.  
23 MR. GROSSMAN: Is that, is that --  
24 MR. UHRE: Sorry.  
25 MR. GROSSMAN: -- are you saying this is -- which

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1 side are you standing on? Which side of Falls Road are you  
2 on taking this picture?  
3 MR. UHRE: I'm on the side with Potomac Tennis  
4 Lane --  
5 MR. GROSSMAN: Okay.  
6 MR. UHRE: -- with the Potomac Tennis Lane  
7 intersection  
8 MR. GROSSMAN: Okay.  
9 MR. UHRE: I'm standing a few feet back from the  
10 intersection --  
11 MR. GROSSMAN: Intersection and you're looking --  
12 MR. UHRE: -- of Potomac Tennis Lane.  
13 MR. GROSSMAN: -- north?  
14 MR. UHRE: This would be looking north.  
15 MR. GROSSMAN: Okay.  
16 MR. UHRE: It's just another demonstration of, of  
17 auto backup.  
18 MR. GROSSMAN: Okay.  
19 MR. UHRE: I would just basically like to put in  
20 the record and I have the next two, this is from the State  
21 Highway access manual.  
22 MR. GROSSMAN: Yes.  
23 MR. UHRE: So this would be, I think that some  
24 reference was made, the discussion prior to that, so this  
25 would be the next exhibit.

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1 MR. GROSSMAN: Okay.  
2 MR. UHRE: And draw your attention to where it  
3 says appropriate adjustments to --  
4 MR. GROSSMAN: Let me mark it and --  
5 MR. UHRE: Okay.  
6 MR. GROSSMAN: -- I'll add it. So this is a, I  
7 see you have three pages from the manual?  
8 MR. UHRE: That would be two pages, I believe.  
9 MR. GROSSMAN: Okay, it looks like --  
10 MR. UHRE: And then there's going to be a third  
11 page. This is for the next, it will be a separate exhibit.  
12 MR. GROSSMAN: All right. So we have two pages  
13 from the Highway Traffic Manual. Let me flip the page here.  
14 So we're on Exhibit No. 113.  
15 (Hearing Exhibit No. 113 was  
16 marked for identification.)  
17 MR. GROSSMAN: And this is pages 47 and 48 of the  
18 Maryland State Highway Access Manual, right?  
19 MR. UHRE: That is correct.  
20 THE COURT: All right. That's Exhibit No. 113.  
21 MR. KAUFMAN: Excuse me, Mr. Examiner, I think you  
22 said accident manual.  
23 MR. CHEN: Access.  
24 MR. GROSSMAN: Access.  
25 MR. KAUFMAN: Oh, okay. Sorry.

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1 MR. GROSSMAN: All right, sir.  
2 MR. UHRE: At the bottom of the page 47 and it is  
3 in bold on the sheet it says, appropriate adjustments to the  
4 required sight distance shall be made for road grade skew  
5 and predominant bus or traffic data. Clearly --  
6 MR. GROSSMAN: I'm looking for the bold. Where is  
7 the bold?  
8 MR. UHRE: Oh, the bold is on the --  
9 MR. GROSSMAN: Oh, okay.  
10 MR. UHRE: -- sorry, the bold is on the slide.  
11 But it is --  
12 MR. GROSSMAN: Where is it on the --  
13 MR. UHRE: Second line --  
14 MR. CHEN: Bottom two lines.  
15 MR. UHRE: Bottom two lines --  
16 MR. GROSSMAN: Okay, appropriate adjustments to  
17 the required sight distance shall be made for road grade  
18 skew and predominate bus or traffic, or truck traffic?  
19 MR. UHRE: Correct.  
20 MR. GROSSMAN: Okay.  
21 MR. UHRE: And what I understand they are  
22 referring to is skew is the angle of connection of the  
23 roads. There has been a sight distance analysis presented  
24 as an exhibit by the applicant. My understanding of the  
25 applicant's testimony is that they've made no adjustment for

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1 skew, therefore I would question the validity of the sight  
2 distance analysis that was submitted by the applicant.  
3 MR. GROSSMAN: Okay.  
4 MR. UHRE: The next slide would be the next  
5 exhibit which would be page 62 --  
6 MR. GROSSMAN: All right, let's --  
7 MR. UHRE: -- of the Maryland --  
8 MR. GROSSMAN: So, this will be Exhibit No. 114,  
9 page 62 of the Maryland State Highway Access Manual.  
10 (Hearing Exhibit No. 114 was  
11 marked for identification.)  
12 MR. GROSSMAN: That's Exhibit No. 114. All right,  
13 sir.  
14 MR. UHRE: And I would draw, like to draw  
15 particular attention to the Hearing Examiner of 12.1.2 which  
16 is about midway on the sheet --  
17 MR. GROSSMAN: Right.  
18 MR. UHRE: -- which simply says that a requirement  
19 for angle of intersection should be as close to possible to  
20 90 degrees but not greater than 70 or 110. It is my belief  
21 that the intersection of Potomac Tennis Lane and Falls Road  
22 exceeds those angles and thus would not be approved by the  
23 State Highway Administration under their current guidelines.  
24 MR. GROSSMAN: But the application here didn't  
25 design that intersection and they have no control over it.

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1 MR. UHRE: I understand. But I think it's a  
2 consideration when you're adding traffic to an intersection  
3 that would be not approved in today's environment. It's one  
4 thing to have an existing intersection. It's quite another  
5 to increase traffic or increase other types of impacts on  
6 that particular intersection.  
7 MR. GROSSMAN: If I understand the applicant's  
8 position on this they're actually going to be a net decrease  
9 in traffic use. I think that that's their argument.  
10 MR. UHRE: I, I understand the guidelines that  
11 they have presented. It's, we're going to get to that  
12 issues on the next slide.  
13 MR. GROSSMAN: Okay.  
14 MR. UHRE: So, if you would --  
15 MR. GROSSMAN: I'll hold off.  
16 MR. UHRE: Okay. Thank you, sir. Basically, the  
17 next exhibit we believe that the, a traffic study should be  
18 required by the applicant, that they are not exempt and the  
19 next exhibit is page 17 from the planning commissions LATR,  
20 TPAR guidelines.  
21 MR. GROSSMAN: Okay.  
22 MR. UHRE: That is the page that the applicant has  
23 used to claim their exception from a traffic study.  
24 MR. GROSSMAN: So this will be Exhibit No. 115.  
25 It is page 17 -- do you know which year of the LATR, TPAR

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1 guidelines this is?  
2 MR. UHRE: I don't, it's the current existing  
3 one --  
4 MR. GROSSMAN: Okay.  
5 MR. UHRE: -- from the website. I'd be happy to  
6 provide that if you would like me to.  
7 MR. GROSSMAN: All right.  
8 (Hearing Exhibit No. 115 was  
9 marked for identification.)  
10 MR. GROSSMAN: So this is Exhibit No. 115. Yes?  
11 MR. UHRE: And while there's been previous  
12 discussion it is our belief that if a use, if this were a  
13 renovation or if this was an expansion of a current use --  
14 MR. GROSSMAN: Right.  
15 MR. UHRE: -- it may qualify but this is neither a  
16 renovation nor an expansion and thus it is our position that  
17 this is a new use. By their own admission they triggered  
18 the 30-day, or the 30 total measurement of traffic and thus  
19 they should've provided a full blown LATR traffic study.  
20 MR. GROSSMAN: And it's not an expansion or a  
21 renovation because it's an entirely different facility, is  
22 that what your argument is, or?  
23 MR. UHRE: Correct.  
24 MR. GROSSMAN: Okay.  
25 MR. UHRE: It's not an expansion of the Potomac

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1 Tennis Club, not a renovation of -- by their own admission  
2 they're terminating all of that and creating a new use.  
3 MR. GROSSMAN: Well they testified, to my  
4 knowledge this is correct, that this is the way that  
5 technical staff, the planning department has been evaluating  
6 traffic for projects as far back as I remember. They look  
7 to the change from the existing facility and they consider  
8 it, I suppose, to fit under this as an expansion or a  
9 renovation even if it's an entirely new facility if the old  
10 one has been operating there for a period of time. So, I  
11 mean, that's consistent with what the planning department  
12 has been doing is the testimony. You may argue with that,  
13 that that doesn't comply with their own regulations --  
14 MR. UHRE: That is correct.  
15 MR. GROSSMAN: -- but that's the way they  
16 interpret it themselves.  
17 MR. UHRE: Well, I'm not necessarily willing to  
18 say that that is, I mean, various planning staff may hold  
19 different viewpoints on that issue. I'm simply saying that  
20 this is the rule, this is the guideline, this is the  
21 guideline that the public needs to work from and I just  
22 don't think you can create a policy outside of your  
23 guideline --  
24 MR. GROSSMAN: Well, I --  
25 MR. UHRE: -- if you're going to, if you're going

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1 to do, if you're going to, if you're going to create a new  
2 policy then create a new guideline so that the public is  
3 aware of what the standard is.  
4 MR. GROSSMAN: I think, I understand that  
5 argument. There is a doctrine in the law that says that  
6 agencies own interpretation of their own guidelines has to  
7 be given some deference. And I have a, so I have a question  
8 relating to that. Do you have an example of where they have  
9 interpreted it differently?  
10 MR. UHRE: Not offhand.  
11 MR. GROSSMAN: I'll give you the opportunity since  
12 the record will be open for some period of time at least,  
13 certainly until the 22nd of December. If you have some  
14 example of where they haven't followed that practice you can  
15 file that and I'll give the, we'll say within a week after  
16 this hearing, we'll say on the 14th of December and I'll  
17 give the applicant an opportunity to respond until the  
18 record closes, well at least until the 22nd. So, because if  
19 they are not interpreting it that way consistently I would  
20 like to know that. But I haven't seen one come through  
21 where they haven't interpreted it that way and that's been  
22 the evidence that's presented by the transportation expert  
23 of the applicant. So, we'd like to know because there is a  
24 doctrine, as I say, in the law about interpreting, an  
25 agency's own interpretation of its own regulations. Okay?

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1 MR. UHRE: Okay, thank you. I'd like to turn now  
2 to basically, to the pedestrian safety. I'm, I, I don't  
3 think there is a lot of disagreement on this so I'm not  
4 going to spend a lot of time on it. I think everybody  
5 agrees that there's no sidewalks along Falls Road from the  
6 bus stop which is located at Bullis School until you reach  
7 Potomac Tennis Lane. The federal highway data, and I've put  
8 in several examples of studies that they have issues,  
9 indicates that, that a person walking along the side of the  
10 road is 88 percent more likely, well it says specifically  
11 providing walkways separated from travel lines could help to  
12 prevent up to 88 percent of those walking along the roadway  
13 crashes. So, it is a very measurable safety situation.  
14 We're talking about a nine to one difference between the  
15 safety of a pedestrian walking along the side of a road, in  
16 this case a state highway, as opposed to walking along a  
17 sidewalk. I think that's a safety issue that we should all  
18 be very concerned about and do our very best to provide  
19 appropriate walkways from the bus stop to the applicant's  
20 location.  
21 MR. GROSSMAN: I guess I don't have a question but  
22 I understand that it's desirable to have sidewalks. I'm  
23 just not sure whether imposing it on this applicant is  
24 appropriate. I don't know what the cost is and so on. I  
25 just don't, nobody has presented any evidence on that, on

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1 that point.

2 MR. UHRE: This is an, the next photo, and this is

3 the next exhibit, is simply a photo of the sidewalk existing

4 along ManorCare, in front of ManorCare, I'm sorry.

5 MR. GROSSMAN: All right. Let's mark this. This

6 will be Exhibit No. 116.

7 (Hearing Exhibit No. 116 was

8 marked for identification.)

9 MR. GROSSMAN: And it's a photo of ManorCare

10 sidewalk and that's Exhibit No. 116. And where does this

11 sidewalk go, from where to where? I can't recall.

12 MR. UHRE: It goes along the front of ManorCare I

13 believe until almost ManorCare's driveway.

14 MR. GROSSMAN: The front of ManorCare?

15 MR. UHRE: If I could see the --

16 MR. GROSSMAN: You're talking about --

17 MR. UHRE: This is along Potomac Tennis Lane.

18 MR. GROSSMAN: Okay. So you're saying that this

19 sidewalk is along Potomac Tennis Lane --

20 MR. UHRE: Correct.

21 MR. GROSSMAN: -- in front of ManorCare?

22 MR. UHRE: Correct.

23 MR. GROSSMAN: And where does it terminate?

24 MR. UHRE: It terminates somewhere up in here

25 before they get --

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1 MR. GROSSMAN: Up in?

2 MR. UHRE: -- up, up to the northern part of the,

3 the location of ManorCare.

4 MR. GROSSMAN: Right, that's where it terminates.

5 Where does it begin?

6 MR. UHRE: It begins as the, to the best of my

7 understanding, approximately at the beginning of the

8 ManorCare frontage on Potomac Tennis Lane.

9 MR. GROSSMAN: So it doesn't run down Potomac

10 Tennis Lane to Falls Road?

11 MR. UHRE: Almost to Falls Road.

12 MR. GROSSMAN: Okay.

13 MR. UHRE: Almost to the boundary line.

14 MR. GROSSMAN: I'm trying to picture that exactly

15 but okay.

16 MR. UHRE: But no, it doesn't, but it doesn't

17 extend onto Falls Road. It's only, it is only on Potomac

18 Tennis Lane --

19 MR. GROSSMAN: Property?

20 MR. UHRE: -- lot that adjoins Potomac, yeah, the

21 lot, where the lot terminates.

22 MR. GROSSMAN: And what's the significance of

23 that --

24 MR. UHRE: Well --

25 MR. GROSSMAN: -- in the context of this hearing?

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1 MR. UHRE: Because I believe that the applicant

2 should at least have, provide sidewalks on their own

3 property and adjoining to this sidewalk. It would be a

4 beginning of providing sidewalks for anyone using the bus

5 stop.

6 MR. GROSSMAN: Okay.

7 MR. UHRE: And this is, I think we've pretty much

8 covered this but I'm just, you know, again saying that I

9 think that the, the planning staff indicated something about

10 maybe there were easements lacking for sidewalks. I just

11 don't think we should end the conversation there. I think

12 we should have more conversation. Is there, that they

13 should have pursued this, is there a way to do this, is there

14 a way to find, and not giving up quite so frankly, we've,

15 easily. We've talked about the, the sidewalk in front of

16 ManorCare and connecting to that. And I'll leave it up to

17 the discretion of the Hearing Examiner. I, I, we do need to

18 have sidewalks, somebody is going to have to help pay for

19 them to get those. I just don't believe we can continue to

20 allow the pedestrians or force the pedestrians to walk along

21 the side of the road. We're going to end up with a major

22 traffic incident.

23 I believe we talked, we've already talked about

24 the loading design and I paint your attention, this is

25 what's called safe design. It says each loading space must

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1 be designed and located to minimize conflicts with other

2 vehicle, bicycle or pedestrian traffic. Again, I just don't

3 believe their location of the loading zone, smack dab in the

4 middle of the service ally is a safe location, particularly

5 given the slope coming into the loading zone.

6 The zoning ordinance regarding the residential

7 care facility, part B, says that resident staff necessary

8 for the operation of the facility are allowed to live on

9 site. Planning staff actually agrees with that in the sense

10 of saying, yes it does say it must be allowed. I would

11 understand that's not a mandate that they have to live on

12 site.

13 MR. GROSSMAN: Right.

14 MR. UHRE: But neither do I believe the applicants

15 cannot even make an allowance for staff living on site. I

16 think they have to give the staff the option to live on site

17 which they have not done.

18 MR. GROSSMAN: I don't read that that way I have

19 to tell you. I don't read that as a mandate that a facility

20 must provide residential availability for staff to live on

21 site. They can. I read it as that they may allow it.

22 You're reading the allowed as that the staff have the right

23 to do it as opposed to allowed being that the facility may

24 allow it as I understand what you're saying.

25 MR. UHRE: I'm saying that they need to give the

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1 staff the option, so yes, that's what I'm saying.  
2 MR. GROSSMAN: I don't read it that way.  
3 MR. UHRE: Next we'll turn to, I believe this is  
4 Exhibit No. 92, which was supplied by the applicant. There  
5 seems to have been some confusion about whether this is  
6 still a valid proposal by the applicant or not. I think  
7 that the planning staff certainly was under the impression  
8 that some kind of screening was going to be put at this  
9 location and this is the location where we're, we're right  
10 in here. We're talking about whether we're going to have a  
11 fence or not.  
12 MR. GROSSMAN: You're pointing, you're pointing to  
13 the area about six feet to the rear of where the truck is  
14 situated on the photograph --  
15 MR. UHRE: Correct, about --  
16 MR. GROSSMAN: -- is what you're pointing to?  
17 MR. UHRE: -- six feet away from the Pauls'  
18 property line.  
19 MR. GROSSMAN: Okay.  
20 MR. UHRE: And I offer the last exhibit, or an  
21 exhibit here which is an e-mail exchange between Mr. Berbert  
22 and myself.  
23 MR. GROSSMAN: Okay. Let's see. This will be  
24 Exhibit No. 117.  
25 MR. KAUFMAN: So this is another version of 92, is

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1 that what --  
2 MR. GROSSMAN: No.  
3 MS. GIRARD: No, no, no.  
4 MR. GROSSMAN: This is an e-mail exchange --  
5 MS. GIRARD: It's an e-mail.  
6 MR. GROSSMAN: -- he's offering us. Exhibit No.  
7 117 is a, looks like 10/7/15 e-mail exchange between --  
8 MR. CHEN: What date did you -- it's October 7th.  
9 MR. GROSSMAN: October 7 --  
10 MR. CHEN: Yeah.  
11 MR. GROSSMAN: -- '15, 2015 e-mail exchange  
12 between Mr. Uhre and Ben Berbert of technical staff.  
13 (Hearing Exhibit No. 117 was  
14 marked for identification.)  
15 MR. CHEN: The only reason I asked, I don't have a  
16 copy of the, but I see it now.  
17 MR. GROSSMAN: All right. And let's see. Okay,  
18 yes, sir?  
19 MR. UHRE: This is simply a follow-up from our  
20 meeting, or a meeting I attended with Mr. Berbert September  
21 30th I believe where they discussed that the applicant was  
22 going to place some kind of a screen at the end of the truck  
23 turnaround which they refer to as the end of the service  
24 alley. So, it was simply my impression that they believed,  
25 the planning staff believed, that there was going to be a

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1 screening wall of some kind put at the end of the, of this,  
2 of the, of the truck turnaround. I think that followed  
3 through with the proposal made here before the hearing  
4 officer in Exhibit No. 92 and now I'm a little bit baffled  
5 because as I understand perhaps this exhibit has now been  
6 withdrawn or the proposal has now been withdrawn by the  
7 applicant. So, I'm a little unclear. In either event we're  
8 talking about either a fence or railing of 42 inches and I  
9 think that it really, either one I think still exceeds the  
10 six-and-a-half-foot limit and would bring into bear the  
11 setback requirements. I noticed also that the applicant  
12 dropped a hint --  
13 MR. GROSSMAN: I'm sorry, so first of all as I  
14 understand your first point is that your understand and you  
15 think that staff's understanding was that there was going to  
16 be a fence at this location six feet off the property line  
17 but screening where the trash trucks would be, right?  
18 MR. UHRE: yeah, they would screen the end of  
19 this --  
20 MR. GROSSMAN: Right.  
21 MR. UHRE: -- of the truck turnaround.  
22 MR. GROSSMAN: And then you're saying that this is  
23 an item that we did discuss before and there's a question as  
24 to whether or not it truly is proposed? And I'm going to  
25 ask the applicant to clarify that. But in any event what

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1 was your next point? Oh, yes, you said something about  
2 there would be a setback issue. I'm not sure what the  
3 setback issue is for a fence. What are you talking about,  
4 what setback issue?  
5 MR. UHRE: This is within less than 20 feet, I  
6 believe the side setback required for a care facility --  
7 MR. GROSSMAN: But fences are an exception to  
8 setback requirements.  
9 MR. UHRE: Only if they're less than six and a  
10 half feet --  
11 MR. GROSSMAN: Yeah.  
12 MR. UHRE: -- in total height.  
13 MR. GROSSMAN: Oh, I see. You're arguing that  
14 having this fence on top of the concrete here makes it a  
15 total of 11 feet from the height at the property line, is  
16 that your point?  
17 MR. UHRE: Right, correct.  
18 MR. GROSSMAN: And so --  
19 MR. UHRE: Or greater.  
20 MR. GROSSMAN: Right. That's an interesting  
21 question as to whether or not somehow a fence, they would be  
22 taking these two fences together in effect because there is  
23 also a fence at the property line --  
24 MR. UHRE: Yeah, but --  
25 MR. GROSSMAN: -- which is six feet.

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1 MR. UHRE: That fence is not the fence in  
2 question.  
3 MR. GROSSMAN: You're talking about the other  
4 fence and you're saying that the, that having it on top of  
5 the concrete which is the ground level where the truck is  
6 exceeds the height that a fence can be? I don't know about  
7 that but that's an interesting question. All right.  
8 MR. UHRE: And you know, there was some  
9 conversation or hint I think given by one of the applicant's  
10 witnesses, well maybe they could change the location of MEP  
11 but I'd suggest it really doesn't make any difference  
12 because even if they move it back a few feet they still need  
13 a retaining wall, they still would have to have a railing or  
14 fence on top of the retaining wall. So I'm not sure that  
15 moving it provides any realistic solution of the exemption  
16 from the setback requirements.  
17 MR. GROSSMAN: Okay. I will ask the applicant to  
18 respond to that because I'm not sure, I haven't had that  
19 issue presented to me before so I haven't had a chance to  
20 look at it.  
21 MR. UHRE: This is a photo very similar to several  
22 photos already in our exhibit. But it was a little clearer  
23 as to the back yard from the Pauls so I'd like to move  
24 admission of the next photo.  
25 MR. GROSSMAN: All right. Well right now we're

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1 not moving admission but we're marking the exhibits.  
2 MR. UHRE: Okay, I'm sorry.  
3 MR. GROSSMAN: So at the end we'll go, because  
4 there may be objections as there was to Exhibit No. 108. So  
5 this will be Exhibit No. 118.  
6 (Hearing Exhibit No. 118 was  
7 marked for identification.)  
8 MR. GROSSMAN: And this is a photo of -- Exhibit  
9 118, did you take this photo, sir?  
10 MR. UHRE: Yes, I did.  
11 MR. GROSSMAN: All right. And when did you take  
12 it?  
13 MR. UHRE: Approximately three weeks ago.  
14 MR. GROSSMAN: All right. So, in November of  
15 2015?  
16 MR. UHRE: Yes, sir.  
17 MR. GROSSMAN: And what is it depicting?  
18 MR. UHRE: This is depicting a view from the  
19 Pauls' yard showing the area basically where the applicant  
20 is proposing to place the truck turnaround.  
21 MR. GROSSMAN: All right. So you're looking from  
22 the Pauls' yard towards the truck turnaround area. So that  
23 would be in an easterly direction if I understand correctly  
24 the way things work. Is that correct?  
25 MR. UHRE: Northeast I believe.

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1 MR. GROSSMAN: And does this photograph accurately  
2 depict the scene as you observed it?  
3 MR. UHRE: yes, to the extent that it's, the scene  
4 is visible in the photograph, yes.  
5 MR. GROSSMAN: Okay. What is this structure that  
6 I'm looking at from the Pauls' yard? I see a fence and I  
7 see a stairway out on the outside of the fence.  
8 MR. UHRE: Correct.  
9 MR. GROSSMAN: And what is the structure that I'm  
10 looking at?  
11 MR. UHRE: The structure in the back is an  
12 existing shed that exists --  
13 MR. GROSSMAN: All right.  
14 MR. UHRE: -- as an existing --  
15 MR. GROSSMAN: That's a shed from the existing  
16 use?  
17 MR. UHRE: Correct.  
18 MR. GROSSMAN: Okay.  
19 MR. UHRE: And then you have the stairway that  
20 comes down. The post in the middle of the picture would be  
21 approximately where the truck turnaround would begin.  
22 MS. GIRARD: Which post?  
23 MR. UHRE: The middle post --  
24 MS. GIRARD: Oh.  
25 MR. UHRE: -- between the two trees, just using

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1 the overlay from the site --  
2 MR. GROSSMAN: Point to the one --  
3 MR. UHRE: -- site plan.  
4 MR. GROSSMAN: -- you're pointing her to.  
5 MR. UHRE: Approximately the post here in the  
6 middle of the two trees.  
7 MR. GROSSMAN: Okay. So right in the middle of  
8 the photograph --  
9 MR. UHRE: Is --  
10 MR. GROSSMAN: -- you're saying that's where the  
11 truck turnaround would be?  
12 MR. UHRE: Would be and --  
13 MR. GROSSMAN: Would begin, but it would be on a  
14 different elevation.  
15 MR. UHRE: Uh --  
16 MR. GROSSMAN: It would be a higher elevation,  
17 correct?  
18 MR. UHRE: That would be correct. The fence is  
19 approximately six or six and a half feet. The stairs are  
20 shown on the existing site plan. I was just trying to give  
21 a visual of what exists now as the current condition and  
22 you've got the stairs walking down. So you can see that  
23 there's a significant elevation between the, the fence or  
24 the bottom of the fence which is approximately where the  
25 Pauls' property line is and the, where the shed is --

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1 MR. GROSSMAN: Yes.  
2 MR. UHRE: -- and you see the fence distance over  
3 there. Mr. Sloan in his testimony further indicated that  
4 the use of the storm water management facility would be as a  
5 retaining wall. I don't think they're, the, the, whether it  
6 is the MEP or whether it's just a retaining wall I think  
7 what we're simply saying is that if you're going to expose  
8 the vertical of the concrete it becomes a retaining wall.  
9 And again he's reaffirming that at the middle there would be  
10 an elevation of approximately 11 feet with a fence and the  
11 concrete wall above the property line.  
12 MR. GROSSMAN: Okay.  
13 MR. UHRE: The next, the next exhibit is simply a  
14 mock-up that I did. I don't pretend that this is going to  
15 be exactly what things will look like but I just wanted to  
16 give, I mean, if you have a concrete wall with a fence or  
17 even if it's a railing and if it's going to stand right at  
18 your property line it's going to be a very visual object  
19 from the Pauls' property.  
20 MR. GROSSMAN: I don't know that a photo of a  
21 mockup could be, I mean, I'll mark it if you want me to mark  
22 it but I don't think I can really admit it and consider it  
23 because I don't know that it depicts anything, doesn't, by  
24 your own testimony, doesn't depict any actual item that's  
25 there or will be there. So --

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1 MR. UHRE: Other than the fact that there is  
2 certainly going to be a concrete wall of some type and form  
3 and either railing or a fence I understand. I was just  
4 trying to get an --  
5 MR. GROSSMAN: So --  
6 MR. UHRE: -- idea of --  
7 MR. GROSSMAN: -- I will leave it to you. Do you,  
8 as I say, I'm not going to, I can say I'm not --  
9 MR. UHRE: That's fine.  
10 MR. GROSSMAN: -- going to admit it so you --  
11 MR. UHRE: That's fine.  
12 MR. GROSSMAN: -- don't want me to mark it then?  
13 MR. UHRE: No.  
14 MR. GROSSMAN: Okay, I won't mark it. Okay.  
15 MR. KAUFMAN: We would've objected, so.  
16 MR. UHRE: Again, I'll just leave this as part, I,  
17 I'm not going to spend a lot more of the Examiner's time. I  
18 mean, he understands the definition of accessory structure  
19 and the definition of exemptions. I'd like to go kind of  
20 toward the end. I did have a chance this weekend to try to  
21 look a little bit at the Butler case. And I was struck by  
22 some similarities between that case and the existing case.  
23 MR. GROSSMAN: Okay.  
24 MR. UHRE: And I'm sure that the Examiner will  
25 review that case in any event. But in that case was

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1 considered mostly on noise. I think the driveway was  
2 approximately 22 feet from the adjacent property line. But  
3 the, what they upheld was the fact that the narrowness of  
4 the Butlers' property, in this case we've got other unique  
5 characteristics of this site --  
6 MR. GROSSMAN: Uh-huh.  
7 MR. UHRE: -- placing all of the noise and the  
8 commercial configurations against the property. And it was  
9 sufficient to deny the application. So I would just bring  
10 that to the Examiner's attention as something I think had  
11 similar issues to this.  
12 MR. GROSSMAN: I don't, I, I mean, Butler  
13 establishes the, the ability of the Board to deny it or  
14 grant it for that matter. But to consider these  
15 compatibility issues which it did.  
16 MR. UHRE: And we've basically already touched on  
17 this. I mean, we do have an issue when a planning report is  
18 provided we believe that the planning report shouldn't  
19 change; that the public should have 10 days to make a  
20 comment. In this instance the staff created or presented  
21 something different to the planning board. We were not  
22 aware of that. It's very difficult to respond as a  
23 citizen's group to a moving target.  
24 MR. GROSSMAN: So they presented, they presented a  
25 PowerPoint presentation.

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1 MR. UHRE: Correct.  
2 MR. GROSSMAN: Right.  
3 MR. UHRE: But there were modifications.  
4 MR. GROSSMAN: Sort of like the one you presented  
5 here today --  
6 MR. UHRE: Yeah, with modifications --  
7 MR. GROSSMAN: -- without, without submitting it  
8 in advance.  
9 MR. UHRE: Well, there was a, there was a planned  
10 modification, et cetera. So that basically would  
11 conclude --  
12 MR. GROSSMAN: The staff's PowerPoint presentation  
13 is in our record, so --  
14 MR. UHRE: I do understand that.  
15 MR. GROSSMAN: Okay.  
16 MR. UHRE: Except that I would like to provide one  
17 final exhibit. This is simply a petition that has been  
18 distributed and contains somewhere about 120 to 130  
19 signatures in opposition to the Brandywine application.  
20 MR. GROSSMAN: And have you provided copies of  
21 this for --  
22 MR. UHRE: I have copies.  
23 MR. GROSSMAN: Okay. Distribute that. I'll mark  
24 this as Exhibit No. 119.  
25 (Hearing Exhibit No. 119 was

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1 marked for identification.)  
2 MR. GROSSMAN: And this is a petition in  
3 opposition with how many signatures did you say?  
4 MR. UHRE: You know, I didn't have time to count  
5 but I believe there's more than 125 and less than 130.  
6 MR. GROSSMAN: Well, let me see how many pages  
7 there are. There are 12, pretty much around 12 on each  
8 page, so one, two, three, four, five, six, seven, eight,  
9 nine, ten, eleven, so around 130 or so signatures --  
10 MR. UHRE: That would be --  
11 MR. GROSSMAN: -- 11 times 12.  
12 MR. UHRE: -- correct.  
13 MR. GROSSMAN: And do we have any idea of how many  
14 of these signators live within the defined neighborhood?  
15 MR. UHRE: I believe that most of them do but I  
16 have not, there were many people circulating this so I'm  
17 not, I have not tried to --  
18 MR. GROSSMAN: Okay. All right. Exhibit 119, all  
19 right. Let me return this to you.  
20 MR. UHRE: Thank you.  
21 MR. GROSSMAN: Anything else, sir?  
22 MR. UHRE: No, that concludes my --  
23 MR. GROSSMAN: All right.  
24 MR. UHRE: -- testimony.  
25 MR. GROSSMAN: Then cross-examination?

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1 MS. GIRARD: Sorry, can I just have a minute just  
2 to look --  
3 MR. GROSSMAN: Absolutely.  
4 MS. GIRARD: -- through this? We haven't seen it  
5 before.  
6 MR. CHEN: Do you want to take a five-minute  
7 break, Mr. Examiner?  
8 MR. GROSSMAN: Would that be helpful to you, Ms.  
9 Girard?  
10 MS. GIRARD: That actually would, yeah.  
11 MR. GROSSMAN: Okay.  
12 MS. GIRARD: Thank you.  
13 MR. GROSSMAN: So why don't we take a break until  
14 a quarter to 12:00.  
15 (Off the record.)  
16 (On the record.)  
17 MR. GROSSMAN: All right. Are we ready to  
18 proceed?  
19 MS. GIRARD: Thank you.  
20 MR. GROSSMAN: All right. We're back on the  
21 record.  
22 MS. GIRARD: Thank you.  
23 CROSS-EXAMINATION  
24 BY MS. GIRARD:  
25 Q. Mr. Uhre?

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1 A. Uhre --  
2 Q. Uhre.  
3 A. -- but that's --  
4 Q. Uhre, I'm sorry.  
5 A. That's fine.  
6 Q. Every time I look at it I --  
7 A. It's a tongue-twister.  
8 Q. Yes. I just want to get a little clarification.  
9 So, so you're here on behalf of the Brickyard Coalition,  
10 Inc.?  
11 A. Correct.  
12 Q. And you're, you're also, these are also your  
13 thoughts and opinions? In some of your submissions you were  
14 an individual and some you were on behalf of Brickyard. So  
15 how does that work as far as which views are yours and which  
16 are sanctioned by Brickyard?  
17 A. The narrative that I just provided was sanctioned  
18 by Brickyard and I was speaking solely as a representative  
19 of Brickyard.  
20 Q. Okay. And you were here at the last hearing when  
21 Mr. Duncan appeared and he is the current president, as you  
22 noted. Did you hear him say he was not aware of the  
23 Brickyard's involvement in this case?  
24 A. I don't recall that in particular, no, but --  
25 MR. GROSSMAN: I don't recall anything like that

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1 either.  
2 MS. GIRARD: He said when, when we questioned as  
3 to whether he was a member and why he didn't submit he said,  
4 I wasn't aware of this appeal and I wasn't, and we said,  
5 Brickyard's been a party, I --  
6 MR. KAUFMAN: It's in the transcript.  
7 MS. GIRARD: Maybe the transcript will read it  
8 differently but that was --  
9 MR. GROSSMAN: Yeah.  
10 MS. GIRARD: -- our understanding of what he said.  
11 MR. GROSSMAN: All right, well I don't remember.  
12 MS. GIRARD: Okay. I just, I wondered how that  
13 could be.  
14 MR. GROSSMAN: Okay.  
15 BY MS. GIRARD:  
16 Q. So, can you just explain to us how the board of  
17 directors reviewed the testimony you provided today?  
18 A. Well, no, I wouldn't go so far as to say that the  
19 board of directors reviewed every iota of testimony I  
20 provided today but the board of directors officially voted  
21 to take a stand in opposition --  
22 Q. Uh-huh.  
23 A. -- and to allow me to testify in opposition to  
24 this at a conditional use hearing.  
25 Q. Okay.

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1 MR. GROSSMAN: Wait a minute.  
2 MR. KAUFMAN: When was that done?  
3 MS. GIRARD: Oh, sorry, I can't read Mr. Kaufman's  
4 handwriting.  
5 BY MS. GIRARD:  
6 Q. And when was that done? When was that vote taken?  
7 A. Probably, it was taken before a submission,  
8 probably several months ago. I don't have the --  
9 Q. And you mentioned that you have 2,000 members.  
10 How are those, just from reviewing your website, how was the  
11 Brickyard Coalition formed and why?  
12 A. The Brickyard Coalition comes out of a proposal by  
13 certain public officials to place numerous commercial soccer  
14 fields on the Brickyard school site.  
15 Q. Okay.  
16 A. That goes back to the, wow, 2011 or something like  
17 that. The community organized in opposition and we decided  
18 that the best method of doing so was to form a non-profit  
19 which was the Brickyard Coalition. We raised money, we  
20 hired law firms, we gained membership and filed a number of  
21 lawsuits and eventually were able to prevail and the elected  
22 official gave back any rights to the Brickyard School site  
23 to the Board of Education.  
24 Q. And is it fair to say that most of your membership  
25 joined at that point?

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1 A. Yes.  
2 Q. In that effort?  
3 A. Yes.  
4 Q. And is your membership aware of the Brickyard's --  
5 MS. GIRARD: Strike that.  
6 BY MS. GIRARD:  
7 Q. How is membership, is it updated yearly? Is there  
8 a fee that people pay?  
9 MR. GROSSMAN: Hold on. Two questions actually.  
10 MS. GIRARD: Sorry.  
11 MR. GROSSMAN: Is it updated yearly?  
12 MR. UHRE: Well, we try, as with any membership  
13 organization, you know, providing our e-mail list is kind of  
14 our bread and butter. We try to update that as we go along.  
15 People move in, people move away. But the way our  
16 organization is setup that those people who initially were  
17 contributors to the Brickyard effort have been given  
18 membership for a period of years and new people are allowed  
19 to join for a fee of \$25 a year.  
20 BY MS. GIRARD:  
21 Q. Okay. And do you have annual meetings?  
22 A. Yes, we do.  
23 Q. Okay. And about, approximately how many people  
24 show up at those meetings?  
25 A. The last annual meeting was I think early October.

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1 We had approximately 45 to 50 people in attendance. All  
2 members of the district 16 delegate, delegation were in  
3 attendance and made a presentation.  
4 Q. Okay. And did you discuss this case?  
5 A. We did not specifically discuss this case, no. It  
6 was mentioned but it was not, there was not a discussion of  
7 this case.  
8 Q. So while the board of directors voted to take this  
9 position the general membership did not?  
10 A. The way our group is set up is the board of  
11 directors are enabled by the bylaws to act on behalf of the  
12 membership. Certainly we communicate with membership and  
13 I'd have to go back and double check but I'm certain that  
14 the, this has been communicated to our membership in some of  
15 our e-mail advisories.  
16 Q. Okay. Via listserv, is that how you do it?  
17 MR. GROSSMAN: Say that again, I'm sorry?  
18 BY MS. GIRARD:  
19 Q. Via a listserv, like an e-mail blast?  
20 MR. GROSSMAN: Via a listserv?  
21 MR. UHRE: Like an e-mail blast.  
22 BY MS. GIRARD:  
23 Q. And do you have any sense, approximately what  
24 percentage of your membership may belong to the club  
25 currently?

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1 MR. GROSSMAN: Club, you mean the --  
2 MS. GIRARD: The Potomac Tennis and Fitness  
3 Club --  
4 MR. GROSSMAN: Oh.  
5 MS. GIRARD: -- that exists on the property now.  
6 MR. UHRE: We have, I don't, I don't know that I  
7 can answer that question. I just know from anecdotal  
8 information that there are a few but it's, it would be not a  
9 very high percentage.  
10 BY MS. GIRARD:  
11 Q. Okay. And the petition that you submitted, I  
12 guess it's Exhibit No. 119, in response to the Hearing  
13 Examiner's question as to whether most of these people lived  
14 in the defined neighborhood you answered in the affirmative.  
15 A. I said I believe so but I have not gone through,  
16 this has been an ongoing operation with a number of people.  
17 I did not go through line by line and look at every person.  
18 I simply assembled the results of the petition and submitted  
19 it here.  
20 Q. When you say ongoing with a number of people what,  
21 all Brickyard members?  
22 A. Brickyard people, yes, other interested people. I  
23 mean, I, I, I was not personally in charge of the, in  
24 collecting the, the signatures on this.  
25 Q. Do you have an opinion as to why people from

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1 Annandale, Virginia, Gaithersburg, Rockville --  
2 A. Because --  
3 Q. -- signed this petition?  
4 A. I guess they decided to sign our petition.  
5 Q. Do you think it's members of the tennis club?  
6 A. Perhaps, don't know.  
7 Q. And when, when we talk about the defined  
8 neighborhood you understand what that means, right?  
9 A. Defined neighborhood being?  
10 Q. The one that's, there's an exhibit that shows  
11 basically the area of influence of the conditional use.  
12 MR. GROSSMAN: We could show the witness --  
13 MR. UHRE: Well --  
14 MR. GROSSMAN: -- from the staff report, it's  
15 shown in the staff report what the defined neighborhood is.  
16 MR. CHEN: There it is.  
17 MR. GROSSMAN: On page 5 of the technical staff  
18 report you can see that one, the top.  
19 MR. UHRE: Okay, I see what it, when I talked  
20 about a defined neighborhood I'm talking about the Potomac,  
21 mostly in the Potomac are which is kind of our principal  
22 area of operation from the Brickyard. I was not  
23 interpreting this to mean this --  
24 MR. GROSSMAN: The --  
25 MR. UHRE: -- this particular definition --

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1 MS. GIRARD: Right.  
2 MR. UHRE: -- of a defined --  
3 MR. GROSSMAN: Okay.  
4 MR. UHRE: -- neighborhood. I'm sorry.  
5 BY MS. GIRARD:  
6 Q. Okay. So you don't know whether any of these  
7 people live --  
8 A. I do not.  
9 Q. Okay. There were some measurements that you were  
10 using in your testimony, one of which was that it was 15  
11 feet from the property line to the trash receptacle,  
12 proposed trash receptacle, is that true?  
13 A. Approximately, yes.  
14 Q. And how did you, how did you calculate that  
15 number?  
16 A. I calculated that using the conditional use plan  
17 and simply taking a measurement on a piece of paper with a  
18 legend and applying it to kind of the same way it's been  
19 done, as I understand, here previously and getting a  
20 ballpark estimation as the, to the distance.  
21 Q. Okay. So you can't swear as to exact distance?  
22 A. No. Close but no.  
23 Q. You also, there was, I'll just kind of go through  
24 in the order in which you testified. Do you know  
25 approximately how far the property is from Falls Road?

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1 A. Which?  
2 Q. The tip of the subject property to Falls Road.  
3 A. Probably several hundred feet but I don't know the  
4 exact distance.  
5 Q. Okay. And yet it's your opinion -- let me  
6 clarify. You talked about sites that are highly visible but  
7 then it seemed that you were saying scrutiny doesn't,  
8 visibility isn't necessarily what should be the determining  
9 factor as to when you apply increase scrutiny, is that  
10 correct?  
11 A. No, I'm saying that I think the master plan  
12 clearly says that sites that are highway visible should be  
13 subject to increase scrutiny. It uses an example, I  
14 believe, in the master plan of saying increase, a highly  
15 visible site includes sites along major transportation  
16 corridors. I'm not here to say that that would be the only  
17 highly visible site.  
18 Q. Is it your opinion that, that the site is, quote  
19 unquote, highly visible in terms of the master plan from  
20 Falls Road?  
21 A. Yes.  
22 Q. Even though it's 500, 600 feet away?  
23 A. Yes.  
24 Q. Are you familiar with the exhibit that was in the  
25 staff report --

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1 A. Yes.  
2 MS. GIRARD: Sorry, I should've had it flagged at  
3 the break but I was looking at the petition.  
4 BY MS. GIRARD:  
5 Q. Page 16 of the planning board presentation. Are  
6 you familiar with that picture?  
7 MR. CHEN: What exhibit is that?  
8 MS. GIRARD: It's page 16 of Exhibit --  
9 MR. GROSSMAN: 74(a).  
10 BY MS. GIRARD:  
11 Q. Are you familiar with that?  
12 A. I've seen that photo, yes.  
13 Q. And it's your opinion that with this screening, as  
14 proposed, this constitutes highly visible?  
15 A. I, I'm not sure that the master plan says with the  
16 screening proposed. I think the master plan says a highly  
17 visible site. That's an example of one view of the site. I  
18 think the planning staff themselves said that this is a  
19 highly visible site. My difference of what the planning  
20 staff is how they interpret the application to this. It's  
21 not just the visible area but it is the entire application  
22 once you make a, once you judge it a highly visible site  
23 then the whole application is subject to the increased  
24 scrutiny, not just the view from a corridor.  
25 Q. So, so just so I'm clear as to what you're saying,

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1 so you're saying that once you're highly visible then you're  
2 subject to increased scrutiny even though it has nothing to  
3 do with the visibility of the site?  
4 A. Yes, there's nothing about the visibility of the  
5 site in the master plan.  
6 Q. And you cite to as an example the Old Angler's Inn  
7 in what you submitted?  
8 A. The comments were part of the record in the Old  
9 Angler's Inn, correct.  
10 Q. Right. And where is the Old Angler's Inn located?  
11 A. On MacArthur Road.  
12 Q. Do we have --  
13 MR. PAUL: Boulevard.  
14 MR. UHRE: Is it Boulevard? Sorry.  
15 BY MS. GIRARD:  
16 Q. Do you have a, do you have an aerial or anything  
17 depicting where that is?  
18 A. No, it --  
19 Q. How close is that to the closest transportation  
20 corridor?  
21 A. The proposed site location is several hundred  
22 feet, I'm not exactly, I don't have a measurement. But  
23 that's a, that's about a five acre site and it sits  
24 approximately, I believe, it's been a while since I've  
25 looked at those plans, approximately in the middle of that.

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1 So, probably about the same distance as Falls Road is from  
2 the Brandywine site.  
3 Q. Does the property abut MacArthur Boulevard?  
4 A. It does.  
5 Q. But you're saying that the proposed --  
6 A. The location within the site is somewhat distance  
7 from MacArthur Boulevard.  
8 Q. But we're clear that the property in this case  
9 will not abut Falls Road?  
10 A. The property is located on Potomac Tennis Lane,  
11 although I'd have to say that the zoning, the actual address  
12 listed for this in the zoning map is 10720 Falls Road, not  
13 10800 Tennis Lane.  
14 Q. I understand but that has nothing to do with its  
15 proximity to Falls Road, does it?  
16 A. Probably not.  
17 Q. And you note that staff evaluated, in that case,  
18 and determined that that was in a highly visible corridor,  
19 correct, and applied increased scrutiny there?  
20 A. Excuse me --  
21 MR. GROSSMAN: I'm not sure I understand that  
22 question. Can you restate --  
23 MS. GIRARD: From what he submitted --  
24 MR. GROSSMAN: -- that question?  
25 MS. GIRARD: -- let me find the exhibit he

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1 submitted on. I mean, I'm assuming you submitted this for  
2 the --  
3 MR. GROSSMAN: This being?  
4 MS. GIRARD: Exhibit No. 111.  
5 MR. GROSSMAN: Okay.  
6 MS. GIRARD: The proposal meets both those  
7 specifications and would therefore have to meet higher  
8 standards for compatibility.  
9 MR. UHRE: And the question?  
10 BY MS. GIRARD:  
11 Q. In the instant case did staff, in the case of  
12 Brandywine did the staff conduct a similar analysis?  
13 A. Not that I'm aware of?  
14 MR. KAUFMAN: Yeah, 111 was bracket the Angler's  
15 Inn.  
16 MR. GROSSMAN: Right, I got it.  
17 MS. GIRARD: Right.  
18 BY MS. GIRARD:  
19 Q. Not that you're -- so you're not aware whether the  
20 staff did look at whether this, under the master plan this  
21 would qualify for increased scrutiny and if so whether it  
22 met that standard?  
23 A. Well, the staff report itself says it is, it, that  
24 this particular application is subject to increased  
25 scrutiny. So, I think --

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1 MR. GROSSMAN: The staff report in which case?  
2 MR. UHRE: The staff report for the conditional  
3 use application for Brandywine.  
4 MR. GROSSMAN: Okay.  
5 BY MS. GIRARD:  
6 Q. And did it find that it was, it met that standard  
7 and should be approved?  
8 A. It recommended approval with conditions but I will  
9 tell you I disagree with the interpretation they gave in the  
10 application of it.  
11 Q. Okay. Regarding, I'm not going to dwell too long  
12 on this, but your, your comparison of the existing and  
13 proposed where you had the number of staff and all of that  
14 and I understand the relevance, we agree with the Hearing  
15 Examiner the relevance of that is very slim if existent, did  
16 you look at, when you were comparing those, the number of  
17 memberships at the tennis club?  
18 A. No, I had no access to that.  
19 Q. And are you aware that their approvals will  
20 actually allow them in the winter months to operate until  
21 midnight?  
22 A. I'm simply, I simply took the hours of operation  
23 from their website. I'm not sure what the approvals allow  
24 or don't allow.  
25 Q. So do you have any idea what, what the allowed

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1 membership is there?  
2 A. No.  
3 Q. Would you agree that that's relevant if you're  
4 comparing trips to and from the site?  
5 A. I'm not sure that membership gives you relevance  
6 as opposed to trips.  
7 Q. You also mentioned 10 employees. Do you have any  
8 idea how many employees they're approved for under their  
9 existing special exception?  
10 A. No, I'm just, just a guess --  
11 Q. Okay.  
12 A. -- observation.  
13 Q. When you --  
14 MR. GROSSMAN: I'm sorry, your 10 employee figure  
15 was a guess?  
16 MR. UHRE: Well, it, I have been in the tennis  
17 club, I see very few employees on staff. They don't have a  
18 restaurant, they don't have, there are no people living on  
19 site. So, my estimate was based on just conversations with  
20 some people that approximately there was about 10 employees.  
21 But it is an estimate. I do not have a factual number.  
22 MR. GROSSMAN: Okay.  
23 BY MS. GIRARD:  
24 Q. You also testified regarding noise and you had  
25 some measurements as to how much noise certain things

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1 generate. Did you take into account in that analysis the  
2 impact of distance and things like fencing on noise impacts?  
3 A. I think the exhibits speak for themselves.  
4 There's no, the, I don't recall that, in most instances  
5 except for a cab that had the window rolled up there was any  
6 significant impact as it relates to noise.  
7 Q. I understand but would you agree that the further  
8 away from a source you get the less there is a noise impact?  
9 A. Yes.  
10 Q. And would you agree that when there's intervening  
11 things such as fencing that would further reduce the noise  
12 impact?  
13 A. In some cases. But if your source of the noise is  
14 located above the level of the fencing I don't think it  
15 would have any impact.  
16 Q. But you don't, do you have any knowledge, I mean,  
17 are you an acoustical engineer?  
18 A. No.  
19 Q. You also mentioned that the planning board --  
20 MR. GROSSMAN: Hold on one second, Ms. Girard.  
21 So, that raises an interesting question here. You say on  
22 the, on your how loud it is slide in your PowerPoint  
23 presentation the noise exposure levels behind the garbage  
24 truck while compacting 89 decibels. How far behind the  
25 garbage truck? I mean, I'm not sure that that, it does

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1 raise a point about distance here. You do have banging on  
2 garbage bin, I'm not sure exactly where that comes from,  
3 five feet away, 100 decibels. What's the distance from  
4 which these measurements were taken?  
5 MR. UHRE: I, this was a study done by Waste  
6 Management in evaluating noise levels --  
7 MR. GROSSMAN: Uh-huh.  
8 MR. UHRE: -- with their own facilities. The full  
9 report is included as an exhibit. This is only part of the  
10 report. I don't happen to have that in front of me but I  
11 don't know that there -- there was any, here where the  
12 distance is stated in there then I would assume that there's  
13 a, there is a, there's a, you know, that's where the noise  
14 was measure and it's not stated I assume it would be very  
15 close.  
16 MR. GROSSMAN: All right. Noise measurements are  
17 usually made from the lot line, that's why --  
18 MR. UHRE: Correct.  
19 MR. GROSSMAN: -- because it could be --  
20 MR. UHRE: Right.  
21 MR. GROSSMAN: -- some distance away. Okay.  
22 Thank you.  
23 MR. UHRE: But as I understand in this instance  
24 we're going to be in the neighborhood of 15 or 20 feet away  
25 from a lot line so that's not a very significant distance

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1 where the location of the trash dumpster --  
2 MR. GROSSMAN: I don't know without somebody  
3 interpreting how fast the noise dissipates in terms of that  
4 type of noise.  
5 BY MS. GIRARD:  
6 Q. You also indicated that the planning board, there  
7 was new information not contained in the, in the original  
8 staff report and you felt that the planning board didn't,  
9 maybe I'm, maybe I just misheard you, that they didn't have  
10 in front of them the accident date. You indicated you  
11 weren't sure what the planning board would've done. Were  
12 you referring to the accident data or your analysis of the  
13 accident data?  
14 A. Our ability to object to the accident data.  
15 Q. Did you appear in front of the planning board?  
16 A. Yes.  
17 Q. Did you object to the accident --  
18 A. Yes.  
19 Q. -- data? And did staff have a --  
20 A. Absolutely.  
21 Q. -- presentation and analysis of the accident --  
22 A. Excuse me?  
23 Q. Did staff have in its presentation an analysis of  
24 the accident data?  
25 A. I think the staff said they couldn't analyze the

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1 data, they were only presenting the data that your person  
2 had provided to that. That's my best recollection of what  
3 the planning staff said.  
4 Q. When you say our person provided to them, you're  
5 not suggesting that she made up the accident data?  
6 A. I have no idea how that was done.  
7 Q. And did the board in fact have in front of it at  
8 least the identification of where the accidents occurred  
9 according to the state highway records?  
10 A. I believe so, yes.  
11 Q. You've also testified that this application would  
12 make the intersection of Potomac Tennis Lane and Falls Road  
13 worse.  
14 A. Yes.  
15 Q. And I realize that after making that statement you  
16 went through your disagreement with the LATR, how the LATR  
17 guidelines should be approved. But --  
18 MR. GROSSMAN: You mean should be applied.  
19 MS. GIRARD: Sorry?  
20 MR. GROSSMAN: You said how the LATR guidelines  
21 should be approved, you mean applied.  
22 MS. GIRARD: Applied.  
23 MR. GROSSMAN: Yes.  
24 MS. GIRARD: Yes. I'm glad you corrected that  
25 because I hate reading that on the transcript that I had the

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1 complete wrong word.  
2 BY MS. GIRARD:  
3 Q. You would agree that, or would you agree that the  
4 existing tennis club generates a fair amount of traffic?  
5 A. It certainly generates traffic, yes.  
6 Q. And when you opined that the proposed use will  
7 make it, make the intersection worse what is that based on?  
8 A. I guess it's based on our experience as a civic  
9 organization looking at different uses and knowing what the  
10 result is from some of the new uses that have gone in and,  
11 and increased traffic. I just believe that this is much  
12 larger in scope and will have more traffic than the existing  
13 facility.  
14 Q. And you say that when you just admitted you're not  
15 sure of how many employees the tennis club has or its  
16 membership.  
17 A. I don't know that we raised a connection between  
18 the number of memberships and the traffic. I say that just  
19 based on experience. We just believe that this type of  
20 facility will increase the severity of the traffic.  
21 Q. Above an existing commercial use?  
22 A. Above the existing use there.  
23 Q. You also had in your PowerPoint some pictures that  
24 were taken on October 14th at 8:30 a.m.  
25 A. Yes.

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1 Q. Was there anything unusual going on in the area on  
2 October 14th?  
3 MR. CHEN: What exhibit are we at?  
4 MR. GROSSMAN: In his PowerPoint.  
5 MS. GIRARD: In his PowerPoint.  
6 MR. KAUFMAN: It's in his PowerPoint which is  
7 Exhibit 110.  
8 MR. GROSSMAN: Well, it was marked, they don't  
9 have a page, he doesn't have page numbers in this.  
10 MR. KAUFMAN: You did mark the Falls Road at  
11 Potomac intersection at 112 as --  
12 MR. CHEN: Is that then one you're using then?  
13 MR. KAUFMAN: No, no, it's the pages after that.  
14 MR. CHEN: Oh, okay.  
15 MR. GROSSMAN: But I think --  
16 MR. CHEN: But they, they --  
17 MR. GROSSMAN: -- Ms. Girard is talking about a  
18 different photo. Are you --  
19 MS. GIRARD: Yes.  
20 MR. GROSSMAN: -- Ms. Girard?  
21 MS. GIRARD: Yeah.  
22 MR. GROSSMAN: Which one are you talking about?  
23 MS. GIRARD: Yeah, that's it.  
24 MR. KAUFMAN: Yeah, it has, I'm sorry, it has --  
25 MR. GROSSMAN: Okay.

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1 MR. KAUFMAN: -- at the top 8:30 a.m., October  
2 14th, 2015. And the question -- well, go ahead.  
3 MR. GROSSMAN: Okay.  
4 BY MS. GIRARD:  
5 Q. On October 14th was there anything unusual going  
6 on in the areas of Potomac, Bethesda, that altered traffic  
7 in the area?  
8 A. I don't know about either but I don't know what  
9 Bethesda would have to do in Potomac.  
10 Q. Were you aware there was a water main break on  
11 Wisconsin Avenue the day before that was not repaired that  
12 morning?  
13 A. Wisconsin Avenue is one long ways away from this  
14 intersection.  
15 Q. Are you aware that people commuting from 270 were  
16 trying to get to 35, trying to get into Bethesda, so it may  
17 use this as a cut through to get over to Democracy?  
18 A. No, I'm not aware of that.  
19 Q. Let me ask it this way, is Democracy to Old  
20 Georgetown Road an alternative to 355 if you're trying to  
21 get into Bethesda?  
22 A. I don't know.  
23 Q. So you wouldn't --  
24 A. It's not a --  
25 Q. -- and you don't know if River Road --

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1 A. -- it's not a --  
 2 Q. -- is a --  
 3 A. -- it's not a pattern that I travel.  
 4 Q. And at 8:30 a.m., do you know what the hours are  
 5 at Bullis School, when they start school?  
 6 A. I believe at 8:00.  
 7 Q. But you're not sure?  
 8 A. No, I don't.  
 9 MS. GIRARD: Can we just have a minute?  
 10 MR. GROSSMAN: Sure.  
 11 MS. GIRARD: Okay, that's all we have, thank you.  
 12 MR. GROSSMAN: All right. Mr. Chen?  
 13 MR. CHEN: Thank you very much.  
 14 CROSS-EXAMINATION  
 15 BY MR. CHEN:  
 16 Q. Mr. Uhre, just I wanted some clarification.  
 17 Sticking with these two photographs --  
 18 MR. GROSSMAN: Which two?  
 19 MR. CHEN: That Ms. Girard --  
 20 MR. GROSSMAN: The traffic photographs?  
 21 MR. CHEN: -- was making inquiry, the ones of 8:30  
 22 a.m. of October 14 of this year.  
 23 MR. GROSSMAN: Yes.  
 24 MR. UHRE: Correct.  
 25 BY MR. CHEN:

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1 Q. If I recollect, your testimony is, how often do  
 2 you travel along Falls Road at this location?  
 3 A. Until I retired approximately a year ago I, every  
 4 weekday morning and every evening.  
 5 Q. Still travel it?  
 6 A. Still travel it, not quite as often.  
 7 Q. All right. Are these -- and again, I apologize, I  
 8 don't have a transcript of what you said half hour ago but I  
 9 believe your testimony was that these two views are typical  
 10 of traffic at this time at this location?  
 11 A. I'm saying that I have observed traffic in a  
 12 similar fashion multiple times. It's not every day but it's  
 13 not uncommon whatsoever to see this type of a traffic backup  
 14 along Falls Road.  
 15 MR. CHEN: That's all I have.  
 16 MR. GROSSMAN: All right. Ms. Lee, do you have  
 17 any questions?  
 18 MS. LEE: (No audible response.)  
 19 MR. GROSSMAN: All right. Thank you, Mr. Uhre. I  
 20 appreciate very much your coming down here and sharing your  
 21 views and those of the Brickyard Coalition.  
 22 MR. UHRE: Thank you.  
 23 MR. GROSSMAN: It's always wonderful to have  
 24 community participation. All right. Our next witness?  
 25 MR. CHEN: Thank you, Mr. Examiner, my next

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1 witness would be Ms. Toni Paul.  
 2 MR. GROSSMAN: All right. Ms. Paul?  
 3 MR. CHEN: If I said next witness I was incorrect,  
 4 it was --  
 5 MR. GROSSMAN: I understand what you mean.  
 6 MR. CHEN: -- my first witness.  
 7 MR. GROSSMAN: Your first witness.  
 8 MS. LEE: The next witness of the day, that's what  
 9 we understood you to mean.  
 10 MR. GROSSMAN: All right. Before we, state your  
 11 full name and address, please?  
 12 MS. PAUL: Toni Paul, 10827 Lockland Road,  
 13 Potomac, Maryland.  
 14 MR. GROSSMAN: All right. And how do you spell  
 15 Toni?  
 16 MS. PAUL: T-O-N-I.  
 17 MR. GROSSMAN: All right. Could you raise your  
 18 right hand, please?  
 19 (Witness sworn.)  
 20 MR. GROSSMAN: All right. You may begin, Mr.  
 21 Chen.  
 22 DIRECT EXAMINATION  
 23 BY MR. CHEN:  
 24 Q. Ms. Paul, I take it you are one of the owners of  
 25 the property which is abutting the subject property, is that

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1 correct?  
 2 A. Yes.  
 3 Q. And I assume you want to give the Examiner a  
 4 statement?  
 5 A. Yes.  
 6 Q. Okay. Why don't you do that?  
 7 THE WITNESS: Mr. Grossman --  
 8 MR. GROSSMAN: Yes, ma'am.  
 9 THE WITNESS: -- this is my first time in a  
 10 formal, public hearing room. The laughter I have heard  
 11 upsets me. This is not some joke. It's my future life  
 12 that's being addressed. The engineer made a comment about  
 13 maybe needing a shot of vodka after being here. I didn't  
 14 appreciate that comment. It made light of this hearing and  
 15 makes light of something that's serious to me. On Thursday  
 16 there was a man sitting in the back of the room, someone  
 17 from Brandywine smiling and waving at me for the whole  
 18 morning. He wanted my attention. I wasn't sure why he was  
 19 smiling or why he was waving at me. It was distracting and  
 20 not in keeping with the seriousness of this hearing. He  
 21 left at the lunch break. I asked if someone from Brandywine  
 22 knew him and knew about why he was trying to get my  
 23 attention and no one, no one really knew. Is this the way  
 24 all the hearings are? I felt he wasn't taking the  
 25 proceeding seriously. I do, Mr. Grossman.

1 We chose to build our house on a secluded lot at  
 2 the dead end of Lockland Road. When we purchased the lot it  
 3 was covered in trees, it was a quiet corner of Potomac. We  
 4 asked the architect to build our house toward the rear of  
 5 the lot and at an angle to give us more quiet and more  
 6 privacy. Our neighbors' houses are all parallel and close  
 7 to the street. Our house is at the end of a long driveway.  
 8 We completed and moved into our dream home with our four  
 9 young children in August of 1991. That was over 24 years  
 10 ago. We actually built our house thinking about our old  
 11 age. We, we hoped to live in our house as we continued to  
 12 age. The doorways are all wide enough for wheelchair  
 13 access. Our bedroom is on the first floor. In those days  
 14 it was quiet.

15 We were only aware of the tennis club when they  
 16 decided to put a backboard at the very rear of their  
 17 property. It was almost in our backyard. Suddenly we had  
 18 to deal with frequent noise. The noise was hard to live  
 19 with, the banging of the tennis balls against the backboard.  
 20 We complained to the tennis club about the noise and they  
 21 insulated the backboard. This deadened the sound. Quiet  
 22 returned to our lives. Since then we have never had a  
 23 problem with the tennis club. They don't make noise and I  
 24 don't think they even use that backboard anymore.

25 The whole back side of our house is windows. Most

1 of the bottom level of our house is a walkout basement. Mr.  
 2 Grossman, I spend many hours each day in my kitchen cooking.  
 3 My husband still works and he likes to relax and eat at  
 4 home. Why am I telling you this? The proposed nursing home  
 5 would stand three stories high on a hill that adds at least  
 6 a story to this measurement. The facility would loom over  
 7 us. People working there, and there will be many in their  
 8 three shifts, will be able to look in all of our windows. I  
 9 like to sit and read and relax in our family room.

10 Brandywine's drawing shows proposed trees. They stated that  
 11 these trees would provide privacy for us. I invite you to  
 12 come to our home. There are no trees tall enough to give us  
 13 privacy. We will be on display.

14 We like to go to sleep early. They will be  
 15 changing shifts at 11:00 p.m. The garage will be opening  
 16 and closing repeatedly. You know what a garage door sounds  
 17 like, especially a large, commercial garage door. They will  
 18 disturb us. There will be noise. They have a large staff  
 19 and that will be a lot of activity in our back yard day and  
 20 night. What happened to our secluded, private lot? Ms.  
 21 Bacon said there would be only seven to 10 people working at  
 22 night. They may have hired seven to 10 people for nights  
 23 but this doesn't show what happens in assisted living  
 24 facilities.

25 I have personal experience with assisted living

1 facilities. I have been visiting someone every Saturday  
 2 since 2002. She is now 99. I stay at least five hours each  
 3 visit. I have seen what an upscale nursing home is. My  
 4 friend has been at Chevy Chase House in Chevy Chase for the  
 5 last five years. It's a very upscale assisted living  
 6 facility comparable to Brandywine. They have a core staff  
 7 but most residents have their own private aids. Each work  
 8 eight to 12 hour shifts. Children who have money don't want  
 9 their parents neglected so they insist on hiring private  
 10 aids. I asked the manager at Chevy Chase House how many  
 11 people worked the night shift. She told me seven are on  
 12 their books, just like Brandywine. Then I asked her how  
 13 many residents have night aids and she estimated more than  
 14 half.

15 My friend always tells me who died that week.  
 16 Most weeks I see photos in memorium. They are displayed  
 17 outside the dining room. When they die, new people move in.  
 18 One week I remember my friend told me five new people had  
 19 moved in. There will be regular visits by moving trucks,  
 20 whether it is to move the new residents in or to move the  
 21 deceased's furniture and belongings out. Chevy Chase House  
 22 has furniture in each apartment for new residents but many  
 23 new residents come from affluent circumstances and they want  
 24 to live with their own furniture. I expect Brandywine  
 25 residents will want to do the same. They want comfort and

1 they have comfort in what's familiar to them. The moving  
 2 will be constant, just like Chevy Chase House. This is the  
 3 nature of the business.

4 I always see the aids on the side of Chevy Chase  
 5 House smoking. They are not allowed to smoke in the  
 6 building or near the front entrance. Will they be in my  
 7 back yard for their smoking break? I don't know exactly  
 8 where they will smoke but I do know many of them will smoke  
 9 and what better place to go than in the back by the dumpster  
 10 or by the truck turnaround. Brandywine will change shifts  
 11 again at 7:00 a.m. Many arrive before then. The service  
 12 road will be used and the garage will be opening and  
 13 closing. More noise. What happened to my quiet morning?

14 Mr. Grossman, if I go to the kitchen for a drink  
 15 of water at night I'd better be sure I'm wearing my  
 16 bathrobe. Remember, the whole back of our house is windows.  
 17 I love looking at the trees and animals, even looking at the  
 18 snow. This was the reason for having windows, to look out  
 19 at the beauty around us. You may laugh at this but this is  
 20 what it means, our whole life will be exposed. This  
 21 facility will loom over us.

22 What about the delivery trucks? They make that  
 23 beep, beep when they back up. It's not only the garbage  
 24 trucks or the delivery or, of the food. It's so many other  
 25 services that are required by large scale assisted living

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1 facilities and this is large, 140 residents. Could you live  
2 with that beeping? When I'm in my kitchen that proposed  
3 turnaround is exactly -- it's not very far away from where I  
4 cook and where I live. The service road goes right down the  
5 side of their property facing, all facing our back yard. We  
6 will see their lights at night.

7 Mr. Grossman, we picked this lot because it was  
8 quiet and secluded. I believe their trash dumpster is right  
9 next to our property line. They will be using it daily and  
10 there will be three professional pickups each week. The  
11 noise from emptying the dumpster is loud and it takes about  
12 10 minutes to complete. I watched Waste Management empty  
13 the dumpster at Chevy Chase House last week. The truck is  
14 very, very noisy. Brandywine stated, there is nothing bad  
15 about this because the trash bags are all closed. Have you  
16 ever smelled your own trash can even though you close, put  
17 it in closed bags? After one day it stinks. I can't  
18 believe that they could put a frequently used dumpster  
19 closely bordering a residential property. I hope the wind  
20 is always blowing away from our house.

21 Brandywine will use salt on the service road and  
22 that salt will end up on our property. It might kill some  
23 of the trees we have planted over the years. Do you know  
24 how long it takes to grow a tree to maturity? I know if you  
25 plant a 10-foot tree it still takes at least 10 years for it

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1 to mature. My life is too short to wait for new trees to  
2 mature. We have a problem with water run-off in the back of  
3 our yard. Nothing ever grows in one corner of our lot. We  
4 wanted to plant something there to give us privacy. We  
5 finally had some success. We planted bamboo. Bamboo likes  
6 water. When we have a heavy rain a small river cascades  
7 down from the tennis club. After the rain it takes several  
8 days for the land to absorb the water. What will happen if  
9 a large building is there? Will the bamboo survive?

10 What will be the effect of the value, on the value  
11 of our, the, our home? Can you imagine a real estate agent  
12 is taking you to see a house, a very expensive house? The  
13 prospective buyer likes it, likes the neighborhood. Then he  
14 walks in the back yard and sees next door a three story  
15 building on a hill. As a client, you're probably going to  
16 say, oh well what else can you show me?

17 Quiet and privacy are important to me. I need a  
18 place to sit and see trees and birds and deer. I hope this  
19 never happens to you. A few years ago I had lung cancer. I  
20 realized that our days are not forever. I put aside time  
21 each day to relax and enjoy my life because I don't know how  
22 long there is now. The idea of a three story assisted  
23 living facility being built in my back yard is very  
24 stressful and keeps me from sleeping. When ManorCare  
25 decided to build Arden Courts we were upset. The day they

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1 began construction they cut down all the trees between our  
2 property and theirs. I remember planting 20 15-foot trees  
3 to begin to give us privacy. After five years they would  
4 give us adequate coverage. Some of them didn't mature for  
5 10 years. Some of them died. And when they were -- and  
6 then we had to replace them with new large trees. Arden  
7 Courts is only one story tall. So we don't see that  
8 building. The deliveries are all in the front of the  
9 building. The staff and visitors park in the front of their  
10 facility so we never hear them.

11 I went to see ManorCare for myself to see if I  
12 remembered the building correctly. It's only two stories  
13 tall. ManorCare is not even close to our property. It's  
14 pretty far away. Mr. Grossman, we built this house, we  
15 never dreamed this could happen to us. Where is the  
16 protection for the homeowner? We've been here almost 24  
17 years, almost 24 years, and now suddenly our lives may be  
18 dramatically changed.

19 MR. GROSSMAN: All right.

20 MR. CHEN: Mr. Examiner, may I approach with some  
21 exhibits?

22 MR. GROSSMAN: Yes, you may. You asked a question  
23 by the way, Ms. Paul, and that was why is there laughter,  
24 aren't these hearings serious. Yes, of course they're  
25 serious but I find that humor is helpful in a dry hearing

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1 such as land use hearings are. And you asked, is there  
2 always laughter. In my hearings, yes, I hope there is always  
3 a little laughter even though the matters are often serious,  
4 okay, or usually serious. That's in answer to your question  
5 you asked me at the beginning. All right, yes?

6 MR. CHEN: Thank you. Mr. Examiner, just to give  
7 you a heads up, I'm going to go through a series of  
8 photographs --

9 MR. GROSSMAN: All right.

10 MR. CHEN: -- are part of my clients' pre-hearing  
11 submission.

12 MR. GROSSMAN: All right.

13 MR. CHEN: And this is Exhibit No. 70(b) and they  
14 are color photographs. And what you'll see on the exhibits  
15 in your file and Mr. Kaufman and Ms. Girard have them and  
16 I've told them, you'll see in the bottom of each of those  
17 photographs there's also a number in parentheses.

18 MR. KAUFMAN: I'm sorry, which exhibit are we  
19 talking about?

20 MR. GROSSMAN: 70(b) as in boy.

21 MR. KAUFMAN: 70(b)?

22 MS. GIRARD: From his pre-hearing statement.

23 BY MR. CHEN:

24 Q. You've seen these photographs before, is that  
25 right --

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1 A. Yes.  
2 Q. -- Ms. Paul? When were they taken?  
3 A. You know, I'm trying to remember the date. But I  
4 know one was on a holiday, was that Columbus Day?  
5 Q. Yeah, that was the --  
6 A. And then that was, that was the second group and  
7 it was the Saturday before that that they were originally,  
8 the first group was --  
9 Q. Okay.  
10 A. -- whatever that date is.  
11 MR. PAUL: You have the exact dates.  
12 BY MR. CHEN:  
13 Q. I believe they were, October 17 sound right?  
14 A. Yeah, and they, and then followed by Columbus Day.  
15 Q. Okay. Let me real quick show you, I'll identify  
16 the photographs and you just explain to the Examiner what it  
17 shows, okay?  
18 A. Okay.  
19 Q. Showing you Exhibit 70(b)(1).  
20 A. This is the, looking from where Brandywine would  
21 be into our family room.  
22 MR. GROSSMAN: Can you hold on one second, Mr. --  
23 MR. CHEN: Sure.  
24 MR. GROSSMAN: -- Chen? Let me get out the  
25 exhibit list.

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1 MS. GIRARD: Would it be helpful to put up an  
2 aerial or no?  
3 MR. CHEN: No.  
4 MS. GIRARD: No? Okay.  
5 MR. CHEN: What do you need, Mr. Examiner, do you  
6 need the exhibits?  
7 MR. GROSSMAN: I'm just, no, I'm just looking for  
8 the exhibit list. I have it. Okay. Ah, okay, the  
9 photographs are not identified in the exhibit list so I  
10 think it would be helpful to have --  
11 MR. CHEN: Oh, okay.  
12 MR. GROSSMAN: -- a, when she identifies it to  
13 list them out. So, 70(b) --  
14 MR. CHEN: She's --  
15 MR. GROSSMAN: -- unless you have, unless you have  
16 printed --  
17 MR. CHEN: Yeah.  
18 MR. GROSSMAN: -- do you have a printed list  
19 identifying each item?  
20 MR. CHEN: Yes, bear with me. All of the photos  
21 are part of 70(b).  
22 MR. GROSSMAN: I understand.  
23 MR. CHEN: Each individual photo in your file --  
24 MR. GROSSMAN: Right.  
25 MR. CHEN: -- has in the corner an Arabic number

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1 in parentheses.  
2 MR. GROSSMAN: Yes.  
3 MR. CHEN: And the one that I've just shown to Ms.  
4 Paul is the one with a 1 in the corner.  
5 MR. GROSSMAN: I understood that. What I'm asking  
6 you is do you actually, she's identifying them now --  
7 MR. CHEN: I don't have a separate list.  
8 MR. GROSSMAN: That's what I was asking if you  
9 have a list, a typed out list of, identifying each --  
10 MR. CHEN: No.  
11 MR. GROSSMAN: Okay, could you submit that so  
12 that'll save --  
13 MR. CHEN: Yeah.  
14 MR. GROSSMAN: -- us from having to write down,  
15 identify each one --  
16 MR. CHEN: Sure.  
17 MR. GROSSMAN: -- that she does?  
18 MR. CHEN: Sure.  
19 BY MR. CHEN:  
20 Q. Okay. And you've identified that photograph?  
21 A. Yeah.  
22 MR. KAUFMAN: I'm sorry, are we re-marking these  
23 or are we just using --  
24 MS. GIRARD: No.  
25 MR. GROSSMAN: No. We're just going to use, he's

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1 already got them, they're already marked --  
2 MR. KAUFMAN: Yeah.  
3 MR. GROSSMAN: -- as 70(b)(1), (2) --  
4 MR. KAUFMAN: Right, right.  
5 MR. GROSSMAN: -- et cetera.  
6 MR. KAUFMAN: I understand.  
7 MR. GROSSMAN: And then he's going to provide a  
8 typed out list of what, of the identification of each --  
9 MR. KAUFMAN: Okay.  
10 MR. GROSSMAN: -- photograph.  
11 MR. CHEN: But you've got them?  
12 MS. GIRARD: Yes.  
13 MR. CHEN: Okay.  
14 BY MR. CHEN:  
15 Q. Showing you Exhibit No. 70(b)(2), could you  
16 identify that for the Examiner?  
17 A. This is looking into our family room from the  
18 outside from the angle of where, it's from the grass, not  
19 from up high where Brandywine would be but it just shows  
20 the, the family room, can sort of see the couch in there.  
21 Q. It's ground level?  
22 A. Yeah.  
23 Q. Okay. Showing you Exhibit No. 70(b)(3). Identify  
24 that, please.  
25 A. It again is the family room, showing that it's all

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1 windows all the way around.  
2 Q. Okay. Showing you 70(b)(5), can you identify  
3 that, please?  
4 MR. GROSSMAN: You skipped 4?  
5 MR. CHEN: Yeah.  
6 MR. GROSSMAN: Okay.  
7 MR. CHEN: We don't have to go through all of  
8 them.  
9 MR. GROSSMAN: All right.  
10 THE WITNESS: This is taken so that you can see,  
11 it, there is on the left side is a porch. But if you look  
12 to the, sort of the middle part, that's my kitchen and  
13 that's where I spend most of my life.  
14 BY MR. CHEN:  
15 Q. Showing you Exhibit No. 70(b)(10). Can you  
16 identify that?  
17 A. Yes. This is, on the bottom is a portion that's  
18 the walkout basement --  
19 Q. Is that ground level?  
20 A. At ground, yes. And above it is the living room.  
21 Q. Showing you Exhibit No. 70(b) --  
22 MR. GROSSMAN: Hold on one second.  
23 MR. CHEN: Sure.  
24 MR. GROSSMAN: On 70(b)(10) what do I, what am I  
25 looking at to the side, on the extreme left-hand side of the

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1 photograph, 70(b)(10)?  
2 THE WITNESS: Which one is that?  
3 MR. GROSSMAN: I don't think I'm looking at the  
4 same photograph, am I?  
5 THE WITNESS: Which one is it?  
6 MR. CHEN: This one here.  
7 THE WITNESS: This one?  
8 MR. CHEN: I think this is what he's indicating.  
9 THE WITNESS: Oh, what's that. That's the  
10 upstairs of the house, I think. No, I don't know what it  
11 is. Wait a second. It's, I think what it is, here, is -- I  
12 know what it is. This tree is covering it up but it's, the  
13 kitchen is back here.  
14 MR. GROSSMAN: So it's a portion of your house?  
15 THE WITNESS: Yes, it's all my house.  
16 MR. GROSSMAN: How many stories is your house?  
17 THE WITNESS: It is, it depends where you are. If  
18 you're on this side --  
19 MR. GROSSMAN: Yes.  
20 THE WITNESS: -- it's two stories here and here.  
21 BY MR. CHEN:  
22 Q. The walkout basement area?  
23 A. Yeah, that's two, if --  
24 MS. GIRARD: Wait. When you say here and here,  
25 can I just see --

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1 MR. GROSSMAN: Yeah.  
2 MS. GIRARD: -- what you're gesturing to?  
3 THE WITNESS: Okay. The basement, the walkout  
4 basement is the bottom level.  
5 MS. GIRARD: Okay.  
6 THE WITNESS: Then this is the level above it.  
7 MR. GROSSMAN: All right.  
8 THE WITNESS: That's the --  
9 BY MR. CHEN:  
10 Q. Is that the main level?  
11 A. Yes. That's the main level. And to -- here, on  
12 the right --  
13 MS. GIRARD: Uh-huh.  
14 MR. CHEN: All right, yes.  
15 MR. GROSSMAN: On your left as you're facing the  
16 picture.  
17 THE WITNESS: All right, now that would be down  
18 lower where you can't see in because of the tree, it's still  
19 got leaves, is the kitchen. But above the kitchen is a  
20 bedroom.  
21 MR. GROSSMAN: All right. And how many stories is  
22 that, that structure, that part of the structure?  
23 THE WITNESS: That, that part of is three stories  
24 because you see, you can see, you can see the bottom --  
25 MR. GROSSMAN: Correct.

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1 THE WITNESS: -- which is the basement. This  
2 that's covered by the, mostly by the tree is the kitchen and  
3 there's one window that you can see at the top.  
4 MR. GROSSMAN: Okay.  
5 THE WITNESS: That's part of the bedroom.  
6 MR. GROSSMAN: All right. Mr. Chen, go ahead.  
7 MR. CHEN: Okay.  
8 BY MR. CHEN:  
9 Q. I'm showing you Exhibit No. 70(b)(11). Can you  
10 identify that, please?  
11 A. Again, that is from a different point of view. It  
12 is the lower level on the bottom, the walkout, you can see a  
13 sliding door. Then above it here, living room, this is the  
14 second set of windows, living room there's four windows  
15 there and then our bedroom, three windows.  
16 Q. Now, from the rear as you said, you're looking at  
17 three stories because the basement is a walkout basement,  
18 correct?  
19 A. Yes.  
20 Q. Okay. Now, from the front of the house how many  
21 stories? Now the front of the house I'm talking about.  
22 A. Two stories.  
23 Q. Thank you. Can I have these back?  
24 MR. CHEN: I have no further questions.  
25 MR. GROSSMAN: All right. Cross-examination?

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1 MS. GIRARD: Yes. If I can just pull up an  
2 aerial? I just want to confirm one thing.  
3 MR. GROSSMAN: Which exhibit is that?  
4 MS. GIRARD: 105.  
5 MR. GROSSMAN: All right.  
6 CROSS-EXAMINATION  
7 BY MS. GIRARD:  
8 Q. Can you see this, Ms. Paul? If I'm looking at  
9 this correctly based on what you just described, so this is  
10 your family room here --  
11 A. Yeah.  
12 MR. GROSSMAN: Pointing to the --  
13 MS. GIRARD: And when I say this I'm looking at  
14 the rectangle on the eastern side of the Pauls' residence  
15 closest to the subject site.  
16 MR. GROSSMAN: Okay.  
17 MS. GIRARD: How's that?  
18 MR. GROSSMAN: That's great.  
19 MS. GIRARD: That was pretty good.  
20 MR. GROSSMAN: That was great, Ms. Girard.  
21 BY MS. GIRARD:  
22 Q. And I believe the pictures took us around the  
23 side --  
24 A. Uh-huh.  
25 Q. -- of the house --

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1 A. Yes.  
2 Q. -- on the north side?  
3 A. Yeah.  
4 Q. And there was a picture of a screened-in porch and  
5 your kitchen beyond.  
6 A. Right.  
7 Q. Can you identify where that is? Is that back  
8 here?  
9 MR. GROSSMAN: Back here being?  
10 BY MS. GIRARD:  
11 Q. Right in the north side, north --  
12 A. I mean, it's right --  
13 Q. -- east side --  
14 A. -- at the corner where you're --  
15 MR. GROSSMAN: You don't have to stand up. I'll  
16 give you a pointer.  
17 THE WITNESS: Okay.  
18 MS. GIRARD: Oh, we have a pointer too.  
19 THE WITNESS: It's, I mean, it is --  
20 MR. GROSSMAN: Here. Just press the button.  
21 THE WITNESS: Oh, my hands shake too much.  
22 MR. GROSSMAN: Oh, okay.  
23 THE WITNESS: I can't do it. I have to do it this  
24 way.  
25 MS. GIRARD: I'm sorry.

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1 THE WITNESS: It's okay. Our house, family room  
2 here --  
3 MS. GIRARD: Uh-huh.  
4 MR. UHRE: Can he see this?  
5 MR. GROSSMAN: I can.  
6 MR. UHRE: Okay.  
7 THE WITNESS: Sorry. Here I am and here and  
8 here --  
9 MS. GIRARD: Right.  
10 THE WITNESS: -- is the porch and the kitchen.  
11 MR. GROSSMAN: Ms. Girard --  
12 MS. GIRARD: Okay.  
13 MR. GROSSMAN: -- identify the location for the  
14 record, what she's pointing to.  
15 BY MS. GIRARD:  
16 Q. If you look carefully on the exhibit and you just  
17 want to make sure I'm saying this right there's like a  
18 series of white rectangles on a portion, on the north-east  
19 portion of the building and that's the screened-in porch, is  
20 that correct? And then the kitchen is this little  
21 protrusion. Do I have that right?  
22 A. Well, the kitchen is more than the protrusion.  
23 Q. Okay.  
24 A. The kitchen is, it goes deeper --  
25 Q. Right.

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1 A. -- and the porch is part, part --  
2 Q. The kitchen window that you've talked about is,  
3 which, is that facing north-east?  
4 A. The kitchen window is here as well as, as well as  
5 here.  
6 Q. Okay.  
7 A. It, it, it --  
8 Q. There's windows on both sides?  
9 A. -- goes, the porch --  
10 Q. Okay.  
11 A. -- because it's a porch, on the roof, since this  
12 is an aerial view --  
13 Q. Uh-huh.  
14 A. -- you're seeing the roof.  
15 Q. Okay.  
16 A. But you're not seeing the glass under the roof.  
17 Q. Okay.  
18 A. So under, under here is glass. You can't see  
19 it --  
20 Q. Right, it's shown in the pictures.  
21 A. -- windows --  
22 Q. Right.  
23 A. -- but the window is looking at the proposed  
24 facility would be here -- I'm sorry --  
25 Q. No, that's okay.

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1 A. -- and here. So the kitchen is really more of an  
2 L and the porch is here.  
3 Q. Okay.  
4 MS. GIRARD: Do you need further, do you need me  
5 to explain that further, Mr. Grossman?  
6 MR. GROSSMAN: No.  
7 MS. GIRARD: Okay.  
8 MR. GROSSMAN: Thank you.  
9 BY MS. GIRARD:  
10 Q. You mentioned that when you purchased your lot it  
11 was a secluded lot and it was heavily treed, is that  
12 correct?  
13 A. All, yeah, they were all --  
14 Q. All trees? And did, you obviously had to clear  
15 some trees for your house. Did you also clear it for your  
16 yard? Did you clear the trees?  
17 A. Everything and --  
18 Q. Okay.  
19 A. -- it was totally treed at that point.  
20 Q. Right.  
21 A. Even though they were, they were all poplars too  
22 interestingly enough --  
23 Q. Okay.  
24 A. -- except maybe one oak. Because we saved the  
25 trees that were different that were, that the builder

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1 thought were pretty trees.  
2 Q. Right. But you had to remove, given where you  
3 chose to site the house on the property you had to remove a  
4 great deal of those trees, is that correct?  
5 A. Yes.  
6 Q. Okay. And let me, again looking at 105, this is  
7 the existing ManorCare facility. So I believe you said that  
8 you can't see it?  
9 A. No --  
10 Q. Or it's not --  
11 A. -- what I said is the other ManorCare, you see the  
12 one down here --  
13 Q. This one, the one on the south?  
14 A. Yeah, I never even know it was there.  
15 Q. Okay.  
16 A. Okay.  
17 Q. Can you see the ManorCare, or Arden Courts that's  
18 closest to your --  
19 A. Arden Courts --  
20 Q. -- property?  
21 A. -- is barely visible because it's one story and we  
22 put up a lot of trees over the years. So it's, you know,  
23 it's really not, as far as we're concerned it's not there.  
24 We don't hear it and we hardly see it.  
25 MS. GIRARD: Just one second.

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1 MR. GROSSMAN: Sure.  
2 MS. GIRARD: That's all we have.  
3 MR. GROSSMAN: All right. Ms. Lee, do you have  
4 any questions for this witness?  
5 MS. LEE: (No audible response.)  
6 MR. GROSSMAN: All right. All right, thank you  
7 very much. Oh, I should ask, is there any redirect?  
8 MR. CHEN: No.  
9 MR. GROSSMAN: All right. Thank you, Ms. Paul.  
10 MS. PAUL: Thank you.  
11 MR. GROSSMAN: I appreciate your coming down here  
12 to testify. The next witness, sir?  
13 MR. CHEN: Yeah. Thank you, Mr. Grossman, my next  
14 witness will be Mr. Ronald Danielian.  
15 MR. GROSSMAN: All right. Sir, would you state  
16 your full name and your business address?  
17 MR. DANIELIAN: Ronald L. Danielian --  
18 MR. GROSSMAN: How do you spell your last name?  
19 MR. DANIELIAN: D-A-N-I-E-L-I-A-N, 12605 Native  
20 Dancer Place in Darnestown, Maryland --  
21 MR. GROSSMAN: All right.  
22 MR. DANIELIAN: -- 20878.  
23 MR. GROSSMAN: Would you raise your right hand,  
24 please?  
25 (Witness sworn.)

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1 MR. GROSSMAN: All right. Mr. Chen?  
2 DIRECT EXAMINATION  
3 BY MR. CHEN:  
4 Q. Mr. Danielian, what is your occupation?  
5 A. I'm a realtor.  
6 Q. Okay. And you've previously provided a resume.  
7 And for the record that's Exhibit 78(a) --  
8 A. Yes, I did.  
9 Q. -- right, sir, is that your resume?  
10 A. Yes, I did.  
11 Q. Thank you.  
12 MR. GROSSMAN: Hold on a second if you would while  
13 I get that out. Okay.  
14 MR. CHEN: Ready?  
15 MR. GROSSMAN: Yes, sir.  
16 MR. CHEN: Great.  
17 BY MR. CHEN:  
18 Q. Mr. Danielian, what does a realtor do?  
19 A. A realtor helps and analyzes real property for  
20 buyers and sellers and provides brokerage, relationships  
21 with them to either buy or sell a house.  
22 Q. Okay. What type of services does a realtor  
23 provide in that regard?  
24 A. A realtor would provide comparative market  
25 analysis of properties. A realtor would provide guidance to

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1 a client of what the property, the boundaries of the  
 2 property, the surroundings on the property, what's on the  
 3 other side of all of the sides of a property.  
 4 MR. GROSSMAN: Let me interrupt for one second.  
 5 You know, I realize that I didn't ask Mr. Uhre if you had  
 6 any questions of Ms. Paul.  
 7 MR. UHRE: I did not.  
 8 MR. GROSSMAN: Okay.  
 9 MR. UHRE: Thank you.  
 10 MR. GROSSMAN: I just wanted to make sure I didn't  
 11 skip anybody.  
 12 BY MR. CHEN:  
 13 Q. Did you complete your answer, sir?  
 14 A. Yeah, I had.  
 15 Q. Okay. And I take it you represent as clients both  
 16 buyers and sellers?  
 17 A. Yes, I do.  
 18 Q. Okay. And what is an offering price?  
 19 A. An offering price is a price that a buyer has  
 20 to --  
 21 MR. GROSSMAN: Well, let me, let me stop you for a  
 22 second. Are you offering this gentleman as an expert  
 23 witness?  
 24 MR. CHEN: I was going to do a little bit more  
 25 before I got into that but --

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1 MR. GROSSMAN: Well, I think he's offering an  
 2 expert opinion as to what an offering price is, so let's,  
 3 let's qualify him as an expert if you're --  
 4 MR. CHEN: Okay.  
 5 MR. GROSSMAN: -- going to offer him as an expert  
 6 first --  
 7 MR. CHEN: Well, okay, but --  
 8 MR. GROSSMAN: -- before you get into anything  
 9 substantive.  
 10 MR. CHEN: I wasn't asking an opinion. I said  
 11 what was an offering, that was --  
 12 MR. KAUFMAN: That's a defined term.  
 13 MR. GROSSMAN: Why do we have to get into that  
 14 before we get into his expertise?  
 15 MR. CHEN: Okay. Based upon what he's testified  
 16 to and based upon Exhibit No. 78(a) I would offer Mr.  
 17 Danielian as an expert witness as a realtor to provide  
 18 services typical of a realtor.  
 19 MR. GROSSMAN: An expert as a realtor, an expert  
 20 in what, to provide property values or --  
 21 MR. CHEN: No.  
 22 MR. GROSSMAN: -- just as a realtor? I'm not sure  
 23 what that exactly means in terms of this case. So I just  
 24 want to make sure --  
 25 MR. CHEN: That's why my last question was not an

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1 opinion because it's a term. The realtors provide advice to  
 2 clients. This is not an expertise as far as an opinion.  
 3 Among the services, and I'll proffer to the Examiner for the  
 4 record --  
 5 MR. GROSSMAN: Yes.  
 6 MR. CHEN: -- among the services that a realtor  
 7 provides is to advise clients as to an offering price and a  
 8 selling price for property and that that is part of the  
 9 normal services that a realtor provides to a client  
 10 regardless of whether the client is selling property or  
 11 purchasing property. When you do that a realtor has to go  
 12 through certain investigations.  
 13 MR. GROSSMAN: Well, I'm going to stop you because  
 14 I want to hear it out of the witness' mouth really, not out  
 15 of yours, for the proffer. But I just, at this point I want  
 16 to make sure that when you're offering him for his expertise  
 17 that I know exactly --  
 18 MR. CHEN: Yeah.  
 19 MR. GROSSMAN: -- what the expertise is that  
 20 you're identifying.  
 21 MR. CHEN: Right.  
 22 MR. GROSSMAN: So right now you're just saying,  
 23 offering him as an expert realtor --  
 24 MR. CHEN: And it --  
 25 MR. GROSSMAN: -- in, let's do it in a different

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1 way, not as who he is but as an expert in what.  
 2 MR. CHEN: In provide -- excuse me -- information  
 3 and advice to clients to establish buying and selling prices  
 4 and the process in reaching that type of advice, what is  
 5 taken into consideration.  
 6 MR. GROSSMAN: Providing information regarding  
 7 buying and selling properties --  
 8 MR. CHEN: Establishing the buying, the buying and  
 9 selling price and the --  
 10 MR. GROSSMAN: And how you establish the price?  
 11 MR. CHEN: Yes. Now, I can go further on a  
 12 proffer but I'm not sure you want but again, the proffer  
 13 would go to investigation of adjacent land uses and the  
 14 significance of adjacent land uses in establishing buying  
 15 and selling prices.  
 16 MR. GROSSMAN: And the significance of adjacent  
 17 properties --  
 18 MR. CHEN: When I say adjacent I including  
 19 abutting, confronting, adjacent.  
 20 MR. GROSSMAN: I understand. Properties in  
 21 arriving at a price. All right. That's a pretty long  
 22 thing. Providing information -- now I have to try to read  
 23 my own handwriting which is always a challenge. Providing  
 24 information regarding buying and selling properties and how  
 25 you establish price and -- there you go -- including

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1 adjacent properties in arriving at price.  
2 MR. CHEN: And when I say adjacent I mean  
3 adjacent, abutting and confronting.  
4 MR. GROSSMAN: Okay. All right. That's the  
5 proffer of expertise. Do you have any questions of this  
6 witness regarding his expertise?  
7 MR. CHEN: If I may just follow-up on that?  
8 MR. GROSSMAN: Yes.  
9 BY MR. CHEN:  
10 Q. How long have you provided that service, sir?  
11 A. Since 1989 in the state of Maryland, also in  
12 Virginia and the District of Columbia.  
13 Q. Is this a type of service that is normally  
14 provided by realtors to their clients regardless of whether  
15 they're buying or selling property?  
16 A. Generally speaking, yes.  
17 Q. And you've mentioned a comparative market  
18 analysis.  
19 A. That's correct.  
20 Q. Okay. Is that part of providing that service?  
21 A. Yes, it is.  
22 Q. Okay. And again, without giving any opinions,  
23 excuse me, that information is included in providing a  
24 comparative market analysis?  
25 A. That's correct.

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1 Q. Okay.  
2 MR. GROSSMAN: All right. Questions of this  
3 witness in terms of his expertise?  
4 CROSS-EXAMINATION  
5 BY MS. GIRARD:  
6 Q. Are you licensed as a real estate appraiser?  
7 A. No, I'm not.  
8 Q. Can you explain to me how your proposed testimony  
9 varies from an appraisal?  
10 A. An appraisal contains, an appraiser does three  
11 things. It will give a market analysis of a property, it  
12 will, and give a, a possible sales price or possible value  
13 on the property from that but it's not the economic value of  
14 the property. It's just an assessment of what he believes  
15 is a value on the property. The second thing he'll do is he  
16 might do it by cost analysis basis; that is, what's the  
17 replacement cost of the property. And the third thing is  
18 not relevant here, it happens to be for commercial, you do  
19 it based on income.  
20 Q. But you're proposing to testify as to what, if I'm  
21 understanding correctly, what a house should list for and  
22 what, if you're doing a buyer how much you should list it  
23 for and if you're representing --  
24 A. What, we are asked a question by all, by parties,  
25 either side of the transaction, whether a buyer or seller,

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1 what is the house worth. The house is only worth what the  
2 buyer or -- what the seller is going to sell it for or what  
3 the buyer is willing to buy it for. And in that regard we  
4 would provide information to them of what's happened with  
5 sales in the area, what's happened with sales exactly the  
6 size of their house as opposed to the size of the other  
7 houses, and go by actual sold, let's say for a buyer, the  
8 actual solds. We'll also provide that to a seller because  
9 the seller is going to want to know, should I list my house  
10 for, I'll be absurd here, should I list my house, a 5,000  
11 square foot house, should I list it for two million dollars  
12 or should I list it for a price lower than that, that kind  
13 of a.  
14 MS. GIRARD: So, I'm just struggling with his  
15 expertise to talk about the value of a house when that's  
16 clearly the role of an appraiser.  
17 MR. GROSSMAN: Well that's an argument. Do you  
18 have any other questions of the witness?  
19 MS. GIRARD: No.  
20 MR. GROSSMAN: All right.  
21 MS. GIRARD: Steve does.  
22 MR. GROSSMAN: Well, no, one, one person questions  
23 the witness.  
24 MR. KAUFMAN: Let me just talk to her.  
25 MR. GROSSMAN: When I say one person, one person

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1 from a party questions any given witness.  
2 MS. GIRARD: Okay.  
3 BY MS. GIRARD:  
4 Q. Have you, do you have any experience particularly  
5 with regard to houses next to assisted living facilities?  
6 A. No.  
7 Q. And how many houses have you sold in the Potomac  
8 area?  
9 A. Recently? Four or five.  
10 Q. Recently being how long?  
11 A. Being within the last two or three years.  
12 Q. And what were the approximate values of those  
13 houses?  
14 A. Two of them were over a million dollars, a million  
15 one with original listing prices higher.  
16 MR. GROSSMAN: All right. Mr. Uhre, do you have  
17 any questions of this witness regarding his expertise?  
18 MR. UHRE: No.  
19 MR. GROSSMAN: Ms. Lee, do you have any questions?  
20 MS. LEE: (No audible response.)  
21 MR. GROSSMAN: Okay. All right. Do you have a  
22 position regarding this witness's expertise?  
23 MS. GIRARD: We don't object to him being  
24 qualified as a realtor but we're going to be very careful  
25 about when that tips over into appraisal and I think as long

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1 as he's not purporting to, to speak to the appraised value  
2 then we'll hear his testimony with regard to his broker.  
3 MR. GROSSMAN: All right. I mean, there's clearly  
4 an overlap in, in what he's proposing in terms of pricing  
5 information and its influence on adjacent, from adjacent  
6 properties and what appraisers do in terms of the bottom  
7 line here. But, you know, I have to qualify him as an  
8 expert because an expert is not necessarily someone who has  
9 a particular degree but somebody who can offer information,  
10 opinion beyond the ken of a layman that will be helpful to  
11 the fact finder in reaching a, a conclusion. And so I think  
12 he qualifies in that terms and I do accept him as an expert  
13 in providing information regarding buying and selling  
14 properties and how to establish price, including impacts of  
15 adjacent properties. But once again, there may be a caveat  
16 with regard to when you get to the question of that versus  
17 appraisals.  
18 MR. CHEN: Just as a footnote --  
19 MR. GROSSMAN: Yes?  
20 MR. CHEN: -- Examiner, please, on page 2 of  
21 Exhibit No. 78(a) --  
22 MR. GROSSMAN: Yes.  
23 MR. CHEN: -- we reference to a prior special  
24 exception case where Mr. Danielian was recognized as an  
25 expert in a, at that time was a special exception matter and

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1 it was at that time before the full board of appeals rather  
2 than the Hearing Examiner.  
3 MR. GROSSMAN: Okay.  
4 MR. CHEN: Okay. If I may? Thank you, Mr.  
5 Grossman.  
6 MR. GROSSMAN: Thank you.  
7 DIRECT EXAMINATION CONTINUED  
8 BY MR. CHEN:  
9 Q. Again, if I may go back then, Mr. Danielian, to my  
10 question --  
11 MR. GROSSMAN: Let me stop you. I'm sorry to stop  
12 you for a second but how long do you figure Mr. Danielian's  
13 testimony will take?  
14 MR. CHEN: The better part of an hour.  
15 MR. GROSSMAN: Okay.  
16 MR. CHEN: It's got to be, it's got to be.  
17 MR. GROSSMAN: Okay. Then probably we should  
18 break now because I want people to be able to get some lunch  
19 from the cafeteria.  
20 MR. CHEN: Okay.  
21 MR. GROSSMAN: We'll come back --  
22 MR. CHEN: When we resume --  
23 MR. GROSSMAN: Pardon me?  
24 MR. CHEN: I was just going to ask when we were  
25 going to resume.

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1 MR. GROSSMAN: All right. We'll come back at  
2 2:00.  
3 MR. CHEN: Thank you.  
4 (Off the record.)  
5 (On the record.)  
6 MR. GROSSMAN: So, if we're all ready, we'll go  
7 back on the record. And Mr. Chen, you may begin your direct  
8 examination.  
9 MR. CHEN: Thank you. Mr. Grossman, may I just  
10 bring up a brief preliminary matter?  
11 MR. GROSSMAN: Sure.  
12 MR. CHEN: I just, we were standing out in the  
13 corridor with counsel for the applicant. You want a letter  
14 from me tomorrow about site visit, is that correct?  
15 MR. GROSSMAN: Right.  
16 MR. CHEN: Okay. Do you still want it tomorrow in  
17 light of the fact that the record's probably going to be  
18 open longer than you anticipated, in fact everybody  
19 anticipated?  
20 MR. GROSSMAN: I'm not sure I understand what you  
21 mean.  
22 MR. CHEN: Well, you still want to hold to  
23 tomorrow on that letter in light of the fact that the record  
24 has to --  
25 MR. GROSSMAN: Yeah, because it has to, at some

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1 point we have to get the stuff in --  
2 MR. CHEN: Okay.  
3 MR. GROSSMAN: -- so that we can make a  
4 decision --  
5 MR. CHEN: Okay.  
6 MR. GROSSMAN: -- so that we can --  
7 MR. CHEN: Okay.  
8 MR. GROSSMAN: -- go on from there. If I decide  
9 not to, if we finish today and I decide not to --  
10 MR. CHEN: Okay.  
11 MR. GROSSMAN: -- have a site visit then we can  
12 probably have the record close on December 22.  
13 MR. CHEN: All right. Okay. And that does bring  
14 up just one other point that counsel and I had an exchange  
15 of information about. And I don't want to speak for counsel  
16 but we don't think you can finish today.  
17 MR. GROSSMAN: Even going at all deliberate speed?  
18 MR. CHEN: Yes, sir. Yes, yes, that's absolutely  
19 correct, even going with all deliberate speed. Because I  
20 would love to finish today and get everything but we had a  
21 candid conversation, I think, out in the hallway and --  
22 MR. GROSSMAN: Oh, those are the worst kind.  
23 Maybe if the court reporter can stay late I can certainly  
24 stay late today to finish.  
25 MR. CHEN: Okay. Okay.

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1 MR. GROSSMAN: She says yes so maybe we --  
2 MR. CHEN: All right, let's try.  
3 MR. GROSSMAN: -- can finish.  
4 MR. CHEN: Okay. Thank you. We're back then with  
5 Mr. Danielian.  
6 MR. GROSSMAN: Okay.  
7 BY MR. CHEN:  
8 Q. Mr. Danielian, I believe where I was at the point  
9 of voir dire on your qualification was I was asking you, or  
10 about to ask you, about the types of services you provide as  
11 a realtor related to offering and selling prices.  
12 A. Yes, we look at the competitive market analysis at  
13 the impact of the location of the property, what's around  
14 the property has on the property to be able to assess for a  
15 buyer or seller what they're looking at.  
16 Q. That includes advice about establishing a selling  
17 and purchasing price?  
18 A. What we do is we provide them the information  
19 there is on surrounding properties, what sales have been for  
20 comparable like houses and we invariably get the question,  
21 well what do you think the, what do you think the selling  
22 price should be or the buying price should be.  
23 Q. And you give your advice?  
24 A. I would give my advice, yes.  
25 Q. Okay. Now, when you do that what are the

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1 considerations that you take into account in arriving at  
2 that advice?  
3 A. Location of the house, the condition of the  
4 property and what the prices that are there on record that  
5 we know are on record that we pull and are able to look at,  
6 what those prices are.  
7 Q. Do surrounding land uses have any role in that?  
8 A. Yes, they do.  
9 Q. What is that?  
10 A. If the surrounding land use is not of the same  
11 type there's liable to be an effect on the property and we  
12 can't, you know, it's difficult, you can't say right there  
13 what the quantifiable effect would be in terms of pricing  
14 but you can say that there would be an effect if it happens  
15 to be. I'll have to be in the absurd so you understand what  
16 I'm talking about. If it's a cement factory there's a  
17 problem, it's going to be a problem with it. If there's  
18 not, if it's a one-story whatever that very well might not  
19 be a problem for the property. We look at it in terms of  
20 giving advice on what, what may happen in the future.  
21 There's no way of knowing.  
22 Q. Do you familiarize yourself with the nature of the  
23 surrounding land uses?  
24 A. Yes.  
25 Q. Okay. I think I asked this as far as your

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1 qualifications but I do want to come back to it. How often  
2 do you have to do that?  
3 A. You mean this kind of testimony or --  
4 Q. No.  
5 A. -- advice to a client?  
6 Q. Advice to the client.  
7 A. All right, the advice to my clients? Every time a  
8 client engages us.  
9 Q. Okay. How many times you think you've had to give  
10 that type of advice to a client?  
11 A. Quite a number of times in the past, over, over  
12 the last 26 years.  
13 Q. Hundreds?  
14 A. It could be, I haven't added it up.  
15 Q. But in that range?  
16 A. Yeah, it very well could be, I just --  
17 Q. Okay.  
18 A. -- I don't, you know, I don't necessarily keep a  
19 log of all that going all the way back to 1989.  
20 Q. But you do it virtually every time that you have a  
21 client either selling --  
22 A. Yes.  
23 Q. -- or purchasing?  
24 A. Because we'll get the question from the clients --  
25 Q. Okay.

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1 A. -- as they're supplied with the figures.  
2 Q. Have you undertaken this type of an analysis for  
3 the conditional use that's involved in this case in the Paul  
4 property?  
5 A. I've looked at the figures of what sales have been  
6 in the area, what sales have been in his area and what the  
7 actual sold price is, as the economic value is basically in  
8 the sold price and that's not, that's determined once it,  
9 once it sells for some price.  
10 Q. Okay.  
11 A. And, and in another area that's very close to  
12 this.  
13 Q. Okay. And I, I take it you have reviewed -- well,  
14 excuse me. First of all, you've listened and sat through  
15 all of the hearings that we've had thus far --  
16 A. Yes.  
17 Q. -- on the proposed conditional use in this case,  
18 is that right?  
19 A. Yes.  
20 Q. And you've looked at some of the application  
21 documents as well?  
22 A. Yes.  
23 Q. Okay. And based upon that review and the  
24 information that you have received -- and excuse me, let me  
25 even back up. You've even, as I take it, visited the Paul

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1 property?  
2 A. Yes, I visited the Paul property on two different  
3 occasions, once in October and once in November for an hour  
4 or more to walk around and I've taken some pictures of the  
5 property and pictures of what they will be up against in  
6 terms of looking at, on that side of their property.  
7 Q. Okay. And have you also in your, your inquiries  
8 and your site visit also gone to the area where the Paul  
9 property abuts the proposed site of the conditional use?  
10 A. Yes, I had to walk over there.  
11 Q. Okay. And you say you've taken a series of  
12 photographs?  
13 A. Yes.  
14 MR. CHEN: What's our next exhibit?  
15 MR. GROSSMAN: Next exhibit number?  
16 MR. CHEN: Yeah. Is it 107 -- 18, 19? I'm  
17 looking down here.  
18 MS. GIRARD: I think we're up to 120.  
19 MR. CHEN: Yeah, 120.  
20 MR. GROSSMAN: It is 120 would be the next number.  
21 MR. CHEN: Okay. Let me do this. Mr. Examiner,  
22 I've got a series of photographs. Why don't we give them  
23 all 120 then go A, B, C.  
24 MR. GROSSMAN: Okay.  
25 MR. CHEN: Ms. Girard, I gave you a set of these

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1 last week.  
2 MS. GIRARD: Okay.  
3 MR. GROSSMAN: These are in general photos of the  
4 site?  
5 MR. CHEN: Yeah.  
6 MR. GROSSMAN: I have an extra set here.  
7 MR. CHEN: I've got plenty of sets. Mr. Examiner,  
8 let me hand you the set and I said --  
9 MR. GROSSMAN: Okay.  
10 MR. CHEN: -- we'll make this 120 and we'll go A,  
11 B, C.  
12 MR. GROSSMAN: Fair enough.  
13 (Hearing Exhibit No. 120 was  
14 marked for identification.)  
15 MR. CHEN: May I stand over near the witness?  
16 MR. GROSSMAN: Sure.  
17 MR. CHEN: Thank you.  
18 BY MR. CHEN:  
19 Q. Okay, Mr. Danielian, let me show you, by the way  
20 on Exhibit No. 120 did you take all of these photographs?  
21 A. Yes, I did.  
22 Q. When did you take them?  
23 A. On two different dates. I can give you the dates.  
24 They are October, October 29th and November 4th.  
25 Q. And I take it all these --

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1 MR. GROSSMAN: I take it of this year?  
2 THE WITNESS: That's correct, I'm sorry, 2015.  
3 BY MR. CHEN:  
4 Q. All these photographs, you'll go through them each  
5 one but they all accurately depict that which they purport  
6 to show?  
7 A. Yes.  
8 Q. Starting with what I've marked as Exhibit No.  
9 120(a) --  
10 MR. GROSSMAN: Okay, I've got you.  
11 BY MR. CHEN:  
12 Q. -- can you please describe this?  
13 A. Yes. I'm standing at the -- is there a pointing?  
14 MR. GROSSMAN: You want a pointer? I have one.  
15 Here it is.  
16 THE WITNESS: Thank you. I am standing right here  
17 at this corner --  
18 MS. GIRARD: This corner being which?  
19 THE WITNESS: I've got to get used to that --  
20 MS. GIRARD: I know.  
21 THE WITNESS: -- I know.  
22 BY MR. CHEN:  
23 Q. The southern-most side of the Paul residence?  
24 A. Yes, the southern corner and facing east-southeast  
25 I guess, something like that.

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1 MR. GROSSMAN: Well --  
2 THE WITNESS: Oh, no right here, excuse me, I'm  
3 sorry. Right here. I'm on this side, not this side. All  
4 right. And that's what you see in the picture at the left-  
5 hand side. That's the wall of that, that structure coming  
6 out. That's correct. And that's looking toward where the,  
7 where the facility will be.  
8 MR. GROSSMAN: So looking east?  
9 THE WITNESS: East, generally east, that's  
10 correct.  
11 BY MR. CHEN:  
12 Q. Let me show you what has been marked as Exhibit  
13 No. 120(b). Can you please --  
14 A. All right.  
15 Q. -- tell the Examiner what is, what Exhibit No.  
16 120(b) is showing?  
17 A. There is a gazebo in the middle here halfway  
18 between the property line from this all the way to the  
19 property line of the Pauls' property.  
20 Q. Okay.  
21 MR. GROSSMAN: Once again looking east?  
22 THE WITNESS: Looking east again. And it's  
23 approximately on that, is that 298, 296 -- 398 or 396 level  
24 that that, that line. Because it's, it's not, it's not  
25 steep, there's no, it's fairly flat going up to the gazebo.

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1 And this is walking toward the property. And --  
2 BY MR. CHEN:  
3 Q. When you say walking toward the property --  
4 A. No, of the, of the petitioner.  
5 Q. The proposed condition --  
6 A. The proposed, yeah.  
7 Q. -- the proposed conditional use?  
8 A. Yeah.  
9 Q. Next --  
10 A. And the next is --  
11 Q. Hold on --  
12 A. Oh.  
13 Q. -- please.  
14 A. I'm sorry.  
15 Q. I'm showing you Exhibit No. 120(c).  
16 MR. GROSSMAN: Okay, I've got it.  
17 THE WITNESS: Yes.  
18 BY MR. CHEN:  
19 Q. Okay. What does this photograph show?  
20 A. And this photograph shows, you're sitting in the  
21 gazebo, it's not a rather large gazebo but a nice one.  
22 You're sitting in the gazebo and you're looking east again.  
23 Q. And what's in the background?  
24 A. In the background you are seeing what basically  
25 the shadows of what was in the first, A --

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1 Q. Okay.  
2 A. -- you are seeing the structure and the, and the,  
3 all the white there is actually the tennis bubble --  
4 Q. Okay.  
5 A. -- part of the facility.  
6 Q. Okay. There was mention previously about a shed  
7 that was on the property, the --  
8 A. That's on the left of this picture.  
9 Q. Okay. Is that that little rectangular area?  
10 A. That's the door to the shed.  
11 Q. Okay. And showing you Exhibit No. 120(d).  
12 A. Okay.  
13 Q. What does Exhibit No. 120(d) show?  
14 A. I'm walking closer now to the property line and as  
15 I get, as I get closer it rises just a little bit, the land,  
16 because just beyond these trees here there's a little swale.  
17 And it shows a better view of what you're looking at in  
18 terms of, and you asked me what is that, a shed, a so forth.  
19 MR. GROSSMAN: So once again you're looking east  
20 again --  
21 THE WITNESS: I'm walking down closer --  
22 MR. GROSSMAN: -- you're walking east?  
23 THE WITNESS: -- and I walk, I'm walking closer.  
24 MR. GROSSMAN: How far are you from the property  
25 line where --

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1 THE WITNESS: Well, the line there is about, at  
2 least on there as it shows, what, 147 feet. So I have to be  
3 three-quarters of the way now.  
4 MR. GROSSMAN: So, you're about 30 feet or so from  
5 the --  
6 THE WITNESS: Yeah, maybe --  
7 MR. GROSSMAN: -- property line?  
8 THE WITNESS: -- yeah --  
9 MR. GROSSMAN: Okay.  
10 THE WITNESS: -- about.  
11 BY MR. CHEN:  
12 Q. In addition to the shed and the area beyond what  
13 else is shown in this photograph?  
14 A. There is a, in this one there's obviously a dip in  
15 between, right in front of the camera over to the property  
16 line and the fence. You can see the fence on the property  
17 line, at least in this part.  
18 Q. Do you see the stairs?  
19 A. Not in this, the stairs are over to the left.  
20 Q. Okay.  
21 A. I did see them, I didn't take a picture of them.  
22 Q. Okay. Exhibit No. 120(e).  
23 MR. GROSSMAN: So, I take it that when you say  
24 over to the left they would be further north?  
25 THE WITNESS: North, that's correct.

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1 MR. GROSSMAN: Okay.  
2 THE WITNESS: Would be the stairs.  
3 MR. GROSSMAN: Okay. So 120(e). Okay, I got it,  
4 thank you.  
5 BY MR. CHEN:  
6 Q. Showing you Exhibit No. 120(e)>  
7 A. Yeah.  
8 Q. Do you see it?  
9 A. Yeah.  
10 Q. Okay. What is this photograph showing?  
11 A. I'm right up against, almost up against the  
12 property line here. It's showing, number one, in the right-  
13 hand corner a straight black line coming down. That's the  
14 fence that has, I guess the foundation of that fence has  
15 eroded and fallen over. And it shows other property fences  
16 that are on the property at a higher level but I'm down in a  
17 little swale. And there's a pipe there and that pipe is a  
18 drainage pipe. And I had to wear boots to get out there.  
19 Q. Okay.  
20 MR. GROSSMAN: All right, so once --  
21 THE WITNESS: At the time in October.  
22 MR. GROSSMAN: -- once again you're facing east  
23 but this time --  
24 THE WITNESS: I'm --  
25 MR. GROSSMAN: -- you're right at the property

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1 line?  
2 THE WITNESS: That's just about at the property  
3 line right there.  
4 MR. GROSSMAN: Okay.  
5 THE WITNESS: I mean, five, 10 feet, five feet,  
6 eight feet. There's also garbage in there too. Somebody's  
7 having lunch and throwing it over the fence.  
8 MR. GROSSMAN: Okay.  
9 BY MR. CHEN:  
10 Q. Okay, showing the next, okay, showing 120(f). Do  
11 you see it?  
12 A. Yes.  
13 Q. What is this photograph illustrate or show?  
14 A. It's just the full view, I'm right up against it  
15 so it's the, the, the height there which I guess is, some  
16 people have attested to and the large building. And it also  
17 shows that this is approximately a little bit higher than a,  
18 than a one-story building but they're going to put a three-  
19 story building up there. It's going to be quite high.  
20 MR. GROSSMAN: Now this is still looking east?  
21 THE WITNESS: I'm, I'm looking --  
22 MR. GROSSMAN: Or northeast?  
23 THE WITNESS: -- a little bit northeast now --  
24 MR. GROSSMAN: Okay.  
25 THE WITNESS: -- because I turned my head.

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1 Because that's what catches your eye, that large building.  
2 BY MR. CHEN:  
3 Q. Okay, using, with your background and experience  
4 preparing these CMAs, do you have an opinion as to whether  
5 the proposed conditional use will have an impact in  
6 establishing the offering or sales price for the Paul  
7 property?  
8 A. Yes.  
9 Q. Right now this is yes or no.  
10 A. Yes.  
11 Q. Okay. And what is that opinion?  
12 A. It will have a detrimental effect on the, on the  
13 property. It will have a reduced value from a similar  
14 property without --  
15 MS. GIRARD: Objection.  
16 MR. GROSSMAN: And what's your objection?  
17 MS. GIRARD: He's --  
18 THE WITNESS: I said value.  
19 MR. GROSSMAN: Hold on, hold on.  
20 MS. GIRARD: The value, I think we need to be  
21 careful about value. If he's speaking as to what he thinks  
22 the listing price would be before and after that's one  
23 thing. But he can't speak to the appraised value of the  
24 property.  
25 MR. GROSSMAN: Do you want to respond to that?

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1 MR. CHEN: He wasn't giving that information. He  
2 wasn't giving an appraised value. My question went to  
3 establishing the offering or sales price.  
4 MR. GROSSMAN: All right. Well with that caveat  
5 that that's what he is saying, because I think he did use  
6 the term value --  
7 MS. GIRARD: Uh-huh.  
8 MR. GROSSMAN: -- but so why don't you answer with  
9 that understanding that you're not testifying as to value  
10 but as to sales price.  
11 THE WITNESS: As to a sales price --  
12 MR. GROSSMAN: Right. Or a purchase price, right,  
13 a price.  
14 THE WITNESS: -- that the client has to determine  
15 what he wants to do.  
16 MR. CHEN: Yeah.  
17 THE WITNESS: That's correct.  
18 BY MR. CHEN:  
19 Q. And what is your, that opinion again?  
20 A. The opinion of that --  
21 Q. Yeah.  
22 A. -- is that it would be lower than other comparable  
23 houses in the area. And there would be a, you could use a  
24 percentage of, et cetera, et cetera for, for, for this.  
25 Q. Okay.

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1 A. Somebody's going to stand where this first picture  
2 is, they're going to see just the shadow and they're going  
3 to ask me what it is. And they're going to want to walk the  
4 property line. And when they walk the property line as we  
5 get closer they're going to say, what is this, what's, you  
6 know, et cetera, et cetera. They have to make a decision  
7 what they want to bid on the house.  
8 Q. Okay. By the way, did you make any attempt to  
9 find if there were any comparable sales in this area?  
10 A. There is a comparable sale but the Paul's house  
11 is, is extremely large and --  
12 Q. Okay, hold on. I'm going to come to that. Okay.  
13 Where was the comparable that you found?  
14 A. The one main comparable was in their neighborhood.  
15 They're at one end of Lockland Drive, or yeah I guess it's  
16 Lockland Drive, and all the way at the other end there is a  
17 house of similar size and it sold.  
18 Q. When did it sell?  
19 A. In 2013.  
20 Q. And how much was the sale price?  
21 A. \$2.495 million.  
22 Q. Would that be a comparable sales or purchase price  
23 for the Paul property?  
24 A. At that, at that, in that year?  
25 Q. Sure.

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1 A. Yeah, okay. In that --  
2 Q. Well, excuse me, in that year, yes, in 2013.  
3 A. Yeah, it would have to, it would have to equate to  
4 that --  
5 Q. Okay. How about --  
6 A. -- or it should equate to that.  
7 Q. Okay. On the assumption --  
8 A. But in that year it would be lower than that  
9 price.  
10 Q. Okay. Now, assuming, well my next question is,  
11 aside from 2013 as I understand your testimony that  
12 comparable house in size sold for \$2.5 million in 2013?  
13 A. Uh-huh.  
14 Q. Okay. And as I understand your testimony the Paul  
15 property, that would be a comparable sales or offering price  
16 for the Paul property in 2013?  
17 A. Yes, it would --  
18 Q. Okay.  
19 A. -- it would equate to that.  
20 Q. Okay. Now --  
21 A. I mean --  
22 Q. Okay, let's come forward to 2015 or excuse me,  
23 let's, let's bring it forward to an approval of the proposed  
24 conditional use on the adjacent, on the abutting,  
25 confronting property. Give an opinion as to whether or not

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1 the Paul property would have that same comparable sales or  
2 offering price.  
3 A. I don't think it would.  
4 Q. Why?  
5 A. Because of the effect that I have experienced with  
6 people looking at properties that have things on their  
7 abutting, you know, abutting properties that affect their  
8 judgment as to what the property is worth.  
9 Q. So, it would not be, establishing in your  
10 professional opinion, the sales or offering price would be  
11 lower?  
12 A. Yes.  
13 Q. Now, and investigating adjacent, abutting and  
14 confronting uses, did you also look at the ManorCare and  
15 Arden Court properties?  
16 A. Yes, I looked at it.  
17 Q. Are you, are you familiar with that property?  
18 A. I'm familiar with Arden Courts.  
19 Q. Okay, how is that?  
20 A. My mother was there in mid-2000 so I was there  
21 quite often.  
22 Q. Okay. Has that facility had the same type of  
23 impact on the offering or sales price for, for the Paul  
24 property?  
25 A. It wouldn't be the same degree because it's a one-

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1 story, it doesn't have any roads or anything behind it or  
2 service areas, doesn't have any service areas on either side  
3 of it and is very quiet. Everything's done in front of it,  
4 not, not on the sides or in the back. So it really poses no  
5 obvious detriment that I can see that would turn people off  
6 per se. I mean, there might be a small adjustment but no,  
7 not the kind that would happen in looking at a three-story  
8 building.  
9 Q. Okay. Now, when you say just now looking at the  
10 three-story building, what are, and if I've asked this  
11 question I'll withdraw it, I don't think I have. What are  
12 the specific features or characteristics of the proposed  
13 conditional use which lead you to your conclusion that the  
14 sales price or offering price would be reduced?  
15 A. Well, the noise, you know, there's peaceful  
16 enjoyment of your property and you're going to have a  
17 problem with that with a lot of noise with the trucks and so  
18 forth, at least from some of the testimony I've heard. And  
19 you have the unit at the very corner, the bottom corner of  
20 the property, I don't know what they were calling it, the  
21 bio, the turnaround area that's within a very close distance  
22 to the property line.  
23 Q. Six inches.  
24 A. Yeah, six inches and the --  
25 MR. GROSSMAN: The Stormwater Management facility.

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1 THE WITNESS: Okay, that's correct. And the, one  
2 of the testimony's earlier days indicated there was a six-  
3 inch curb the rest of the way and a lot of people I show  
4 properties to are going to say, truck could go over that  
5 easily, six inches doesn't withhold anything if they're  
6 skidding down there.  
7 MR. CHEN: Okay.  
8 THE WITNESS: The pipe presents a problem because  
9 of water, water on the property. One thing that really  
10 turns people off is standing water on a property. And I  
11 believe earlier in the last day's testimony Mr. Mitchell  
12 said that, yes, there would be, you know, at deluge there  
13 would be standing water back there. One of the things that  
14 happens is in a sale of the house --  
15 BY MR. CHEN:  
16 Q. Does that include water coming from the  
17 conditional use site?  
18 A. That's correct. And in the sale of a house in the  
19 state of Maryland you have the option of filling out a  
20 disclosure or disclaimer statement and it's required one or  
21 the other. You either disclose --  
22 MR. GROSSMAN: I don't recall the witness  
23 testifying that, that after the Stormwater Management  
24 facility is operative that there would be standing water  
25 from the conditional use site over onto the Pauls' property.

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1 That's not what I recall hearing. Well, that there would be  
2 some water onto the golf course side but none, no standing  
3 water, as I understand it, would come off of the --  
4 MR. CHEN: Leaving the golf course --  
5 MR. GROSSMAN: Yeah.  
6 MR. CHEN: -- part aside just for a moment --  
7 MR. GROSSMAN: Right.  
8 MR. CHEN: -- and I, I, I'm not disputing your  
9 recollection on that testimony, the testimony also was that  
10 the gentleman did not know where the pipe was in, shown in I  
11 believe it was Exhibit No. 99(c) and that there still would  
12 be afterwards a certain amount of, and I'm now looking at  
13 Exhibit No. 107(a), a certain amount of runoff that would be  
14 coming from the, and he said it would be much low, less but  
15 he said nonetheless that surface runoff would be coming from  
16 the 0.47 acres of site outlined in red in Exhibit No. 107(a)  
17 would be still surface runoff, surface water runoff.  
18 MR. GROSSMAN: No, not 0.47 acres, that's what it  
19 current condition is. The amount that would be coming off  
20 and that's in green is a smaller amount as I recall from  
21 that exhibit.  
22 MR. CHEN: Well we --  
23 MR. GROSSMAN: Do you see a green, do you see a  
24 green --  
25 MR. CHEN: Yeah, I --

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1 MR. GROSSMAN: And what's the, what's the amount  
2 on that portion?  
3 MR. CHEN: It says 0.03.  
4 MR. GROSSMAN: Yeah, 0.03 --  
5 MR. CHEN: Yeah.  
6 MR. GROSSMAN: -- versus --  
7 MR. CHEN: Well, my understanding was that the,  
8 and please, you're --  
9 MR. GROSSMAN: Right.  
10 MR. CHEN: -- going to, you're the decider of  
11 fact, you're going to make this, but my understanding is  
12 that there still would be water runoff coming from the site.  
13 But that's okay, you know, I appreciate different minds,  
14 different recollections.  
15 MR. GROSSMAN: Okay.  
16 BY MR. CHEN:  
17 Q. What about the structure itself on the conditional  
18 use?  
19 A. Well, it's not a, certainly isn't the same as  
20 Arden Courts in terms of the size. It's, it's high enough  
21 that it's going to have an effect on people looking at it  
22 from the, from the property if somebody comes in to buy this  
23 property they're going to see it. But you can already see  
24 in picture number one or A --  
25 Q. Uh-huh.

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1 A. -- the, just the outlines, the darker outline  
2 there you can see across of the shed. And when you, you  
3 know, as you're walking out first question is, what's that.  
4 And as we get further into it it shows and they're going to  
5 see.  
6 Q. Okay.  
7 MR. CHEN: No further questions.  
8 MR. GROSSMAN: All right. Before I turn to the  
9 applicant, Ms. Lee, do you have any questions?  
10 MS. LEE: (No audible response.)  
11 MR. GROSSMAN: Mr. Uhre?  
12 MR. UHRE: No questions.  
13 MR. GROSSMAN: All right. Applicant, do you have  
14 any questions of this witness?  
15 MS. GIRARD: Yes.  
16 CROSS-EXAMINATION CONTINUED  
17 BY MS. GIRARD:  
18 Q. Mr. Danielian, when you're considering listing a  
19 property do you typically go to this degree that you've  
20 described here, you know, looking at plans, interpret  
21 grading plans --  
22 A. No.  
23 Q. -- interpret architectural -- so you're not  
24 experienced in --  
25 A. I, I don't look at grading plans but I walk a

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1 property.  
2 Q. You walk a property.  
3 A. Yeah.  
4 Q. But I'm saying in this case you're projecting what  
5 a future impact would be and in order to do that you're  
6 interpreting architectural, stormwater plans that, of, of  
7 not yet built improvements, correct?  
8 A. In Stormwater case, yes.  
9 Q. Well in Stormwater --  
10 A. In terms of the building --  
11 Q. -- and architectural in the siting of the  
12 building.  
13 A. It's a huge, it's a large building. That's going  
14 to, that will have an impact. People will see that. It's  
15 a, it's a structure, don't even call it --  
16 Q. Right.  
17 A. -- what it, it's just a structure, it's a huge  
18 structure.  
19 Q. And you say that people exiting the property now  
20 would say, what's that shed?  
21 A. They're going to, they won't even know it's a  
22 shed. They'll say, what is that.  
23 Q. Right.  
24 A. And as you walk back now the building comes into  
25 view.

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1 Q. And your, is your testimony that you believe that  
2 the proposed building will be about where that shed is only  
3 it will be larger?  
4 A. No, it's, as I understand from your submissions  
5 it's a little bit further back. That happens to be where  
6 the turnaround's going to be for the, for the garbage  
7 trucks.  
8 Q. Right. And do you have any expertise as far as  
9 what distance does to sight lights as far as the height?  
10 The height may be taller but when it's set back further it's  
11 not perceived to be as large. Do you have any experience in  
12 trying to --  
13 A. Only in terms of properties that I've looked and  
14 what's far away and what's not.  
15 Q. Right. But you haven't had occasion before to  
16 interpret plans and project out where improvements would be  
17 on a site and what they would look like?  
18 A. No.  
19 Q. And when you say you were looking at the sales in  
20 the area and in another area, what, what exactly do you  
21 mean, what --  
22 A. The area closer to Falls Road off of Glen Road  
23 there is Normandie Farm Drive --  
24 Q. Uh-huh.  
25 A. -- and Broom Court and that area is an area

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1 accessed similar to this area by one street, Normandie Farm  
2 Drive, and there are two properties at the very end of Broom  
3 Court where you've got, they, they, they literally are right  
4 next to the 140-some odd parking lot, 140-car parking lot  
5 of, of the Normandie Farm, the restaurant.  
6 Q. Uh-huh.  
7 A. And to the effect that sometimes that might be a  
8 pretty full parking lot, it's going to have an impact  
9 somebody looking at it and saying, what's that. I mean,  
10 it's open, you can see it, it's right there, it's only --  
11 Q. And when --  
12 A. -- maybe 50 feet away.  
13 Q. When you're comparing, I just want to make sure I  
14 understand what you're saying, so when you're comparing the  
15 other sale on Lockland Drive, this \$2.5 million sale --  
16 A. Yeah, approximately.  
17 Q. -- what surrounds that property?  
18 A. Woods, trees, on the, it would be the north,  
19 northern side on the property line of that house would be  
20 the golf course but you have the full, full golf course, no,  
21 nothing else there and other houses. Only, you know, it's  
22 two acres only in there so you've got other houses that  
23 would be around it.  
24 Q. And you're considering, when you look at the sale  
25 value of that house and if you look at the property as it

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1 stands today are you suggesting that they're equivalent and  
2 that there's no impact currently from the ManorCare property  
3 and the tennis club?  
4 A. Equivalent to what?  
5 Q. When you're using that sale, that \$2.5 million  
6 sale, can you, perhaps you could just explain to me the  
7 relevancy of that to your assessment of the Paul property.  
8 A. The relevancy of that is it's an indication of  
9 what a sales value is of a, of a house that's basically, you  
10 take square footage by square footage, we use the assessor's  
11 square footage because they're kind of uniform. On two  
12 levels they say the Pauls' house is 9,000 square feet,  
13 that's 9,000 square feet, but both houses are closer to  
14 16,000 or 17,000 square feet with their completely finished  
15 basements. When you look at that and you look at other  
16 houses in the neighborhood that's the only one besides the  
17 Paul property of that, of that size. And you have to  
18 consider that size in terms of the, of the, what might be a  
19 possible sales price that a buyer would have to consider or  
20 a seller would have to consider.  
21 Q. So, if you were to use that, let's just assume for  
22 purposes of this discussion that the house is otherwise  
23 equivalent. It is for area but otherwise equivalent. Are  
24 you suggesting that today the Paul house could sell for that  
25 amount?

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1 MR. CHEN: Objection, that was not his testimony.  
2 MS. GIRARD: I'm --  
3 MR. GROSSMAN: No, she's asking. That's  
4 legitimate cross-examination question so I'll overrule it,  
5 overrule the objection.  
6 MR. CHEN: Well, the predicate is not accurate  
7 though.  
8 MR. GROSSMAN: No, she just asked a question, is,  
9 are you suggesting that this, the Paul home --  
10 MR. CHEN: Oh, okay.  
11 MR. GROSSMAN: -- could sell today for that given  
12 its current surroundings.  
13 MR. CHEN: Got you.  
14 THE WITNESS: If the market conditions today would  
15 be exactly the same as 2013, no.  
16 BY MS. GIRARD:  
17 Q. So you're suggesting --  
18 MR. GROSSMAN: I couldn't, wait, I didn't hear  
19 that --  
20 THE WITNESS: Yes.  
21 MR. GROSSMAN: Yes, okay.  
22 THE WITNESS: If the market conditions were the  
23 same.  
24 BY MS. GIRARD:  
25 Q. So if I'm understanding correctly, market

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1 conditions, all other things --  
2 A. Yeah.  
3 Q. -- aside, a current prospective purchaser looking  
4 at the Paul property and looking at this other property,  
5 even though the other one is surrounded by a golf course and  
6 trees and this one is surrounded by ManorCare and a tennis  
7 facility you're saying that there would be no, currently you  
8 wouldn't say there would be any depreciation of value  
9 because of the adjacent uses?  
10 MR. GROSSMAN: You don't mean value, you mean  
11 price.  
12 MS. GIRARD: Am I misspeaking again?  
13 MR. GROSSMAN: The restriction that you wanted to  
14 impose on this witness.  
15 MS. GIRARD: Yes.  
16 MR. KAUFMAN: Suggested sales price.  
17 BY MS. GIRARD:  
18 Q. Suggested sales price.  
19 A. Okay --  
20 MR. CHEN: If I may, I have to object again  
21 because that was not his testimony. He said that as to the  
22 existing ManorCare and Arden Court there might be a slight  
23 reduction in sales price is what his testimony was --  
24 MR. GROSSMAN: Well, I don't actually think he  
25 said that but in any event I am overruling the objection and

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1 you may answer the question.  
2 THE WITNESS: Could you repeat it?  
3 MS. GIRARD: I'm sorry?  
4 THE WITNESS: Could you repeat it, please?  
5 MS. GIRARD: Let's see if I can get my verbiage  
6 correct this time.  
7 BY MS. GIRARD:  
8 Q. Are you suggesting that the Paul house right now  
9 if you were advising the seller of the other and seller of  
10 this, or purchaser rather, that you would not think that the  
11 value is at all diminished by the adjacent ManorCare and  
12 Tennis facility?  
13 A. Well, I'll have to split that up. I think in  
14 terms of Arden Courts I don't think there will be that much  
15 of a difference and I think I said that. In terms of a  
16 three-story building --  
17 MR. CHEN: No.  
18 MR. GROSSMAN: No, the tennis facility.  
19 THE WITNESS: Oh, the present tennis facility?  
20 MS. GIRARD: Correct.  
21 THE WITNESS: Okay. There would be a slight  
22 difference because people would want to know what it is.  
23 They don't have traffic coming down except for that building  
24 right at the very end. I can't, you know, I can't speak to  
25 what's going to happen once that disappears and a, and you

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1 know, whatever this board decides or whatever is going to go  
2 up there. We don't know.  
3 BY MS. GIRARD:  
4 Q. How familiar are you with the operations of the  
5 tennis club?  
6 A. Operations?  
7 Q. Operations where people are driving, how they're  
8 using the site?  
9 A. I drove on the site, that's all. I drove on it, I  
10 didn't go into any of the building.  
11 Q. So, as shown on the aerial, is there an existing  
12 drive isle where one is, is there one where one is proposed?  
13 The tennis club, does it have a drive isle that goes along  
14 the south --  
15 A. I, I --  
16 Q. -- and west property line?  
17 A. -- I did not see on their site one going all the  
18 way down to the tip.  
19 Q. Have you compared --  
20 A. I did see going down --  
21 Q. -- the existing and proposed?  
22 A. -- to the, to the, to the shed.  
23 Q. Right.  
24 A. To the, to that shed.  
25 Q. Do you know how heavily that's used?

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1 A. No.  
2 Q. Are there parking spaces along that drive out? Do  
3 you recall?  
4 A. I don't recall. I didn't want to go on the  
5 property by foot like that. I just drove, drove around and  
6 made a, you know, I didn't, so I --  
7 Q. You also mentioned the shed. Do you, you opine  
8 that it's a little over one story. Do you have any idea how  
9 tall that is?  
10 A. Probably one and a half stories.  
11 Q. Do you have any idea how tall in feet?  
12 A. I'd have to look that up.  
13 Q. Okay. So you're not sure?  
14 A. No. You could tell by figuring out what kind of a  
15 door that is, it's a roll-up.  
16 MR. GROSSMAN: When you were standing at, right at  
17 the Paul home --  
18 THE WITNESS: Yes.  
19 MR. GROSSMAN: -- could you see the tennis bubble  
20 and shed?  
21 THE WITNESS: You actually, you actually, you can,  
22 it doesn't come out in the picture because it's white with  
23 the clouds in the background.  
24 MR. GROSSMAN: Uh-huh.  
25 THE WITNESS: So it's all white. And you can see

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1 it. And to the eye in certain cases you wonder what it is.  
2 But it, when you take a picture of it it looks just like  
3 part of the sky.  
4 MR. GROSSMAN: And this was right from or right  
5 next to the Paul home?  
6 THE WITNESS: Right next to the corner.  
7 MR. GROSSMAN: Okay.  
8 THE WITNESS: That's why I did --  
9 MR. GROSSMAN: Thank you.  
10 BY MS. GIRARD:  
11 Q. Do you believe a prospective purchaser would  
12 inquire as to whether those tennis bubbles are lit at night?  
13 A. They'd probably want to know what the operation is  
14 of that or how it operates, yes.  
15 Q. And do you know if they are?  
16 A. I do not know whether they are.  
17 Q. You also talked about the runoff on the existing  
18 property.  
19 A. Uh-huh.  
20 Q. And I believe your comment was something to the  
21 extent that a standing water and drainage is of concern for  
22 a prospective --  
23 A. Yes.  
24 Q. -- purchasers. And you were here for the  
25 testimony, were you not, of Mr. Mitchell regarding the storm

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1 drainage from the property onto the Pauls'?  
2 A. Yes.  
3 Q. And do you recall what the conclusion of that was?  
4 A. I don't recall at that time but from the  
5 discussion here some people think it's a little bit more  
6 than what he thinks it might be, but you have, you have  
7 runoff coming off there. You have runoff going into that  
8 swale. And you're still going to have runoff there and it's  
9 going to be, as I call it, squishy back there and you'd have  
10 some standing water.  
11 Q. When you say there's still going to be runoff  
12 there what are you basing that on?  
13 A. The question was asked of Mr. Mitchell.  
14 Q. And are you, are you familiar, were you here when  
15 Exhibit No. 107 was introduced --  
16 A. Yes.  
17 Q. -- into the record?  
18 A. And I think that was when he answered that  
19 question and he said, yes, there would be standing water.  
20 Q. Do you recall Mr. Mitchell's testimony to be that  
21 there would be a reduction in the --  
22 A. Yes.  
23 Q. -- drainage?  
24 A. That there would be a reduction.  
25 Q. Significant reduction?

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1 A. I don't know how much of a reduction.  
2 Q. And it was your interpretation that Mr. Mitchell  
3 also said there would be standing water left on the Pauls'?  
4 A. That there would be, on a heavy rain there would  
5 be standing, from the runoff there would be standing, there  
6 would be some water on the property.  
7 Q. And you don't recall that he was referring to the  
8 storm, the bioplanter itself when he made that comment as  
9 far as standing water?  
10 A. No, because it was, I thought it was after, after  
11 the discussion of all of that and the question was asked I  
12 guess by Mr. Chen will there be water, will there be  
13 standing water on the property.  
14 MR. GROSSMAN: Well, let me ask you this. First  
15 of all, I've already indicated that in terms of  
16 compatibility I'm going to assess the proposed conditional  
17 use in comparison with its surrounding, not in reference to  
18 what presently exists. However, since the opposition has  
19 raised the question about price, prices being reduced by the  
20 proposed use I guess the only thing to compare that to is  
21 the present price. So I guess we have to engage in that to  
22 that extent as to, in terms of your testimony to the extent  
23 it's relevant whether prices would be reduced. So you've  
24 testified that one of the things you believe that would  
25 reduce prices if I understand you is that there would be

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1 standing water?  
2 THE WITNESS: Yeah.  
3 MR. GROSSMAN: Is that correct?  
4 THE WITNESS: Yes.  
5 MR. GROSSMAN: Now, what if the proposed use  
6 actually reduced the standing water from the present  
7 situation?  
8 THE WITNESS: I don't know whether --  
9 MR. GROSSMAN: Would that increase the price?  
10 THE WITNESS: No, the fact that there's standing  
11 water, it's either a yes or no question on the state form.  
12 And a seller either answers it or answers no questions about  
13 his property. And if a seller has lived there for 20 years  
14 or 30 years and says, I'm not saying anything about my  
15 property it raises a question in buyers' minds, what's he  
16 hiding.  
17 MR. GROSSMAN: No, but right now, right now  
18 according to your testimony and according to all the  
19 evidence because of that pipe there there's standing water  
20 in that, in that location --  
21 THE WITNESS: Yeah, I had --  
22 MR. GROSSMAN: -- is that correct?  
23 THE WITNESS: -- I had to wear my fishing boots --  
24 MR. GROSSMAN: Right.  
25 THE WITNESS: -- to go back there.

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1 MR. GROSSMAN: And if I understand you correctly,  
2 the concern in terms of price is that standing water can  
3 reduce the price --  
4 THE WITNESS: Yes.  
5 MR. GROSSMAN: -- if I hear you correctly.  
6 THE WITNESS: That's correct.  
7 MR. GROSSMAN: So that seems logical to me and you  
8 answer it if I'm wrong, that if you were to reduce,  
9 substantially reduce the standing water that that would  
10 increase the price that you'd get.  
11 MR. CHEN: Excuse me, the Examiner please --  
12 THE WITNESS: It's not proportional to how much  
13 water there is.  
14 MR. CHEN: If I may?  
15 MR. GROSSMAN: You can object to my question if  
16 you'd like to. No, that's perfectly possible, he can object  
17 to my question.  
18 MR. CHEN: There's, there's two problems with it  
19 quite frankly.  
20 MR. GROSSMAN: Yes?  
21 MR. CHEN: What the witness answered was, you have  
22 on a standard form to indicate whether or not there is  
23 standing water.  
24 MR. GROSSMAN: Right.  
25 MR. CHEN: Now, what he was saying was that there

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1 would be still nonetheless standing water so that form  
2 answer would have to be answered that way. That's number  
3 one. Number two, we don't know about substantial reduction.  
4 There's, all that --  
5 MR. GROSSMAN: You have contrary evidence to what  
6 was introduced by the engineer?  
7 MR. CHEN: Please, Mr. Mitchell never gave us any  
8 numbers or even percentages of amounts. He said, you have  
9 this area that this area will be having runoff and I  
10 understand what you're saying and it will be a reduction of  
11 that area. But you do not have any testimony as to how  
12 much, much less to support your question quite candidly  
13 which I don't think is really fair to say substantial. You  
14 just don't have that.  
15 MR. GROSSMAN: Well --  
16 MS. GIRARD: Objection --  
17 MR. GROSSMAN: -- I disagree with you that that's  
18 the --  
19 MS. GIRARD: -- Exhibit No. 107 clearly has  
20 numbers on here.  
21 MR. GROSSMAN: Right. I --  
22 MS. GIRARD: It says, is being reduced by 94  
23 percent.  
24 MR. GROSSMAN: To be fair about this, Mr. Chen,  
25 that's what the evidence is. If you have a contrary expert

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1 opinion that's one thing. But the expert's testimony, the  
2 clear implication of the expert's testimony is that he will  
3 leach, there is no, currently no stormwater management on  
4 the site. When they bring that site into complete  
5 compliance with environmental site design it will  
6 significantly reduce the amount of water runoff. There's no  
7 disputing that testimony.  
8 MR. CHEN: Pardon me, the plans do not show that.  
9 MR. GROSSMAN: Well, you can argue about that but  
10 I'm telling you the only reasonable interpretation --  
11 MR. CHEN: Well --  
12 MR. GROSSMAN: -- of his testimony is that it will  
13 be significantly reduced, that water runoff will be  
14 significantly reduced.  
15 MR. CHEN: Oh, please, I'm not arguing but --  
16 MR. GROSSMAN: Okay.  
17 MR. CHEN: -- my point on this is you have to go  
18 by what the plan is showing. They even gave you one, one  
19 plan. And please, all I'm asking, and we'll come to this,  
20 is that, sir, there is no plan that shows that. Mr.  
21 Mitchell can talk all he wants. He even said, well we can  
22 move this, we can do that. But, and he talked, and I recall  
23 and I acknowledge what he said and I recall his testimony  
24 about there's going to be a swale and to guide it out. But  
25 please, at the end of the day, at the end of the day if this

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1 conditional use is approved what will be looked at, and they  
2 know this, what will be looked at will not be the  
3 transcript, it will be the approved conditional use plan.  
4 And that's, that, that's why you have to have one I  
5 understand are the zoning ordinance requirements. So,  
6 please, go forward with the question and we'll come back,  
7 we'll circle back to this. But go on the assumption of what  
8 you heard orally will be the case and I'm just counseling a  
9 caveat to accepting that but I understand where the  
10 question's coming from and I, and I wasn't trying to mislead  
11 the Examiner. I understand the oral testimony.  
12 MR. GROSSMAN: I'm not even taking into  
13 consideration the fact that Ms. Paul indicates she likes  
14 standing water because it makes her bamboo grow. I'm just  
15 dealing with the price testimony --  
16 MR. CHEN: Yeah, right.  
17 MR. GROSSMAN: -- of the witness. And it seems to  
18 me if he's testifying that one of the reasons he reaches his  
19 conclusion --  
20 MR. CHEN: Right.  
21 MR. GROSSMAN: -- that the price would be  
22 diminished by the building that might go up next door, he  
23 can't rely on the fact that this would produce more standing  
24 water because the evidence here is that it would produce  
25 less standing water.

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1 MR. CHEN: Yeah, got you.  
2 MR. GROSSMAN: Okay? Is that not correct that --  
3 THE WITNESS: It was not the more standing water  
4 or less. It's that there is standing water period.  
5 MR. GROSSMAN: But then there's no effect on price  
6 at all is what you're saying --  
7 THE WITNESS: There would be.  
8 MR. GROSSMAN: Well wait a minute. There's no  
9 effect on price from this proposed use if I understand it  
10 because there is currently standing water and what you're  
11 saying is from your understanding of the testimony there  
12 would be standing water. So there is no, no change in that  
13 at all from this proposed use. It's not the, it's not the  
14 proposed use that's causing the standing water. It's  
15 already standing water.  
16 THE WITNESS: Yes.  
17 MR. GROSSMAN: It's not a trick question.  
18 THE WITNESS: No, no, I know.  
19 MR. GROSSMAN: It's, there is already --  
20 THE WITNESS: But with a --  
21 MR. GROSSMAN: -- standing water there. My  
22 understanding of the evidence is that it will be  
23 significantly reduced but you say that doesn't matter. But  
24 regardless, it's not going to be, it's not a situation where  
25 the proposed use is causing the standing water. It's

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1 already there. So you can't say that the price is changed  
2 as a result of that from the conditional use that's  
3 proposed. The price may be changed because there's standing  
4 water and you may think there's more or less, it doesn't  
5 matter. But you can't say it's because of the proposed  
6 conditional use, can you?  
7 THE WITNESS: Not if they're claiming that, that  
8 it will be significantly less but --  
9 MR. GROSSMAN: Well even if they weren't claiming  
10 that you're saying that it doesn't matter whether it's  
11 increased or decreased. It's just standing water. They are  
12 claiming that but that's, from what you're saying it doesn't  
13 matter. Standing water, price goes down. But here the  
14 price is already down because of the standing water if I  
15 understood your testimony.  
16 THE WITNESS: Well, what I was saying is if they  
17 have to answer the question yes on the form --  
18 MR. GROSSMAN: Right.  
19 THE WITNESS: - then, then, then that creates some  
20 sort of a red flag for most buyers.  
21 MR. GROSSMAN: And currently now they have to  
22 answer yes on the form, correct?  
23 THE WITNESS: That's correct.  
24 MR. GROSSMAN: So the conditional use proposed  
25 here doesn't affect that, isn't that true?

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1 THE WITNESS: It's in the mind of the buyer but  
2 the, they, they, they --  
3 MR. GROSSMAN: From your testimony isn't that  
4 true? You have to give me a straightforward answer to this,  
5 sir.  
6 THE WITNESS: How, how can I say yes when, or no  
7 when, when I'm not determining the buyer's inference.  
8 MR. GROSSMAN: You've already, you've already --  
9 THE WITNESS: No, no --  
10 MR. GROSSMAN: -- testified about the buyer.  
11 THE WITNESS: -- I'm saying that, that they will  
12 have, they will view that negatively. They always have.  
13 MR. GROSSMAN: Right. But it's not, you're not  
14 testifying that it's created by the conditional use. You're  
15 saying that it's already there. Your testimony is --  
16 THE WITNESS: Yeah, I understand what you're  
17 saying.  
18 MR. GROSSMAN: -- you were offered here to show  
19 that there's an effect on price, that's what the, what your  
20 testimony is being offered to show that somehow the proposed  
21 conditional use is going to affect price. And that may be  
22 the case, but you can't, from what I understand and what  
23 you're saying about standing water, you can't count that in  
24 as one of the things that's affecting the price from this  
25 conditional use. There's no cause and effect there.

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1 THE WITNESS: So, they're in the same situation is  
2 what you're saying?  
3 MR. GROSSMAN: From your testimony that it doesn't  
4 make a difference whether they're improving it. I actually  
5 will take the evidence here from the expert that in fact  
6 that situation will be a lot better. But from your  
7 testimony in terms of price it will have no impact. That's  
8 what I'm, I'm taking from your testimony.  
9 THE WITNESS: That it's very possible --  
10 MR. GROSSMAN: Is that fair?  
11 THE WITNESS: -- to have no impact.  
12 MR. GROSSMAN: All right. What if, you mentioned  
13 a certain number of other things too, noise --  
14 THE WITNESS: Yeah.  
15 MR. GROSSMAN: -- the location of the Stormwater  
16 Management facility six inches off the property, a six-inch  
17 curb which you feel is too small to stop traffic going over  
18 the edge, those were, and the, the actual size of the  
19 proposed facility. If the trash location were moved away  
20 from that point to a different side of the building that  
21 would remove that concern of yours?  
22 THE WITNESS: It would if it's moved out of the  
23 way and to a different side of the building, not in the same  
24 location.  
25 MR. GROSSMAN: And if that Stormwater Management

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1 facility were moved back as the engineer testified that  
2 could be done here, that would also alleviate that price  
3 concern?  
4 THE WITNESS: It should.  
5 MR. GROSSMAN: And if the third story on the rear,  
6 the side that is closest to the Pauls' residence were  
7 reduced or eliminate the third story up to the point of that  
8 courtyard, that first courtyard, I take it that would also  
9 impact on your, your concern about price?  
10 THE WITNESS: Well, that judgment on sight  
11 distance and so forth and how imposing it looks --  
12 MR. GROSSMAN: Right.  
13 THE WITNESS: -- is a value judgment and I, I  
14 mean, it's there, you show somebody it and some people will  
15 say, well that's far enough back, that's fine, we don't  
16 care. But a lot of people will not.  
17 MR. GROSSMAN: Okay. Thank you. All right, Ms.  
18 Girard?  
19 MS. GIRARD: Yeah, just to piggy-back on the  
20 discussion.  
21 BY MS. GIRARD:  
22 Q. So if you had a prospective buyer and in one  
23 instance they have a form that's checked with the box that  
24 says there's standing water and in another they have a no  
25 such box checked. You're suggesting that the no box checked

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1 would be, would have a higher asking price or selling price?  
2 A. It would be preferable to the checking that there  
3 is standing water because it creates a red flag for buyers.  
4 Q. Just a couple more questions. In doing your  
5 analysis did you look at any comparables for properties  
6 adjacent to, I believe you said you did not look at any  
7 comparables for houses next to assisted living facilities,  
8 is that correct?  
9 A. In general, no.  
10 Q. And did you look at any compared to tennis clubs?  
11 A. No. But in this particular development I must add  
12 if I could, in the Pauls' development all the other houses  
13 are between 4,000 and 6,000 square feet. So the size of  
14 the, of the, of the residential structures, those two, are  
15 just significantly larger than anything else in there.  
16 Q. And what's the relevance of that comment?  
17 A. Relevance in there is that, is that they are at a  
18 higher level and will command a higher price but as opposed  
19 to the other properties. So it's difficult to narrow down,  
20 and I'm not going to get into price, I'm not, I'm not an  
21 appraiser, but it's difficult to nail down what effect that  
22 might have. It will have, the overall effect on a  
23 percentage basis would be if both houses were up for sale at  
24 the exact same time today people would prefer, majority of  
25 the people would prefer the one at the other end of, than

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1 this one once they walk the property. Assuming that the  
2 facility was up. We're looking at a proposed impact that  
3 this might have on the, on the, either the quiet enjoyment,  
4 peaceful enjoyment of the property or the, or the overall  
5 value on the property.  
6 Q. I just want to be clear as to what you just said.  
7 Are you saying if they were both on the market now with the  
8 tennis club?  
9 A. No, no, no, with your proposal.  
10 Q. Okay. What about right now with the tennis club?  
11 A. It's probably much less of a difference, a less of  
12 a difference. There would be a difference but it's going to  
13 be less because it's not as imposing.  
14 Q. Based only your interpretation of the plans?  
15 A. Yes.  
16 Q. Which you've acknowledged you don't typically do?  
17 A. (No audible response.)  
18 Q. You don't typically have to read plans and make  
19 projections --  
20 A. No --  
21 Q. -- as to what the --  
22 A. -- based on the testimony --  
23 Q. -- impact is --  
24 A. -- I have heard in the last three, two days up  
25 until today. It's a three-story building.

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1 Q. And how tall is the Pauls' residence?  
2 A. Three, three stories.  
3 MR. GROSSMAN: Any redirect?  
4 MR. CHEN: No.  
5 MR. GROSSMAN: All right. Thank you, sir.  
6 MR. DANIELIAN: Thank you.  
7 MR. GROSSMAN: I appreciate your coming down here  
8 and sharing your views. All right, next witness?  
9 MR. CHEN: Thank you, Mr. Examiner. My client's  
10 next witness will be Dr. Ronald Paul.  
11 MR. GROSSMAN: Dr. Paul, would you state your full  
12 name and address, please, for the record?  
13 MR. PAUL: Yes, Ronald A. Paul, 10827 Lockland  
14 Road, Potomac, Maryland.  
15 MR. GROSSMAN: All right. And would you raise  
16 your right hand, please?  
17 (Witness sworn.)  
18 MR. GROSSMAN: All right. And would you swing  
19 that chair a little bit back so that it doesn't interfere  
20 with my view? Thank you. That's perfect.  
21 COURT REPORTER: If I may, Mr. Paul, you'll need  
22 to speak louder or approach the mic.  
23 THE WITNESS: Is this the mic?  
24 COURT REPORTER: Thank you.  
25 THE WITNESS: Let me get closer. Okay. I wrote a

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1 narrative --  
2 MR. GROSSMAN: All right.  
3 THE WITNESS: -- and I've got my notes to be  
4 thorough. One thing before I start, if I understood you  
5 correctly you said that my wife liked the standing water  
6 because of her bamboo?  
7 MR. GROSSMAN: That's what she testified.  
8 THE WITNESS: No, I don't think she meant that.  
9 MS. PAUL: No.  
10 THE WITNESS: I don't think she meant that. I  
11 think she basically said that was the only thing that would  
12 grow, you know, saying, she didn't say she liked it. She  
13 said that was the only thing that would grow. We had  
14 problems with other things.  
15 MR. GROSSMAN: Okay. Well, it doesn't --  
16 THE WITNESS: Okay.  
17 MR. GROSSMAN: -- my understanding of the  
18 record --  
19 THE WITNESS: Just wanted to set the record --  
20 MR. GROSSMAN: -- was in effect saying there --  
21 THE WITNESS: -- straight.  
22 MR. GROSSMAN: -- doesn't -- because I don't  
23 consider that to be --  
24 THE WITNESS: Okay.  
25 MR. GROSSMAN: -- to impact on what I would --

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1 THE WITNESS: All right. I just wanted to --  
2 MR. GROSSMAN: -- decide.  
3 THE WITNESS: -- record straight.  
4 MR. GROSSMAN: Okay.  
5 THE WITNESS: I followed the testimony of the  
6 witnesses that Brandywine felt were important to their case.  
7 I will attempt to show that the picture they presented is  
8 skewed and generalized. I will explain how Brandywine is an  
9 intrusive and complex commercial enterprise to be put in an  
10 area that was previously zoned for two houses. The tennis  
11 club which predated my buying of our property is not  
12 intrusive and is a much simpler operation. I will follow  
13 chronologically the internet version of the previous  
14 testimony.  
15 But before I do I want to bring this up and Mr.  
16 Grossman you, you said something earlier, same thing as my  
17 wife, at various times I've seen people laugh and so on and  
18 so forth. And I know to many of the people sitting in this  
19 room it's just another working day. But to my wife and I  
20 this is extremely serious, it's very stressful, anxiety  
21 provoking and mentally and even physically painful. We've  
22 gone home each day exhausted. Hopefully none of you will  
23 ever have to go through anything like this because this has  
24 really been a horrible experience from where we're sitting.  
25 Mr. Grossman, what you decide will directly affect

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1 our lives. We did nothing wrong except being in the wrong  
2 place at the wrong time. And I'm sure if this was Mr.  
3 Kaufman's property, if this was Ms. Bacon's property or Mr.  
4 Girard's property, meaning my house, they would have a whole  
5 different attitude having something like this put in their  
6 backyard. We're not here on a whim. This experience, it's  
7 expensive due to lawyers, due to lost work time, probably  
8 lost property value and the effect it will have on our day  
9 to day lives.  
10 Also one other thing I wanted to bring up. I've  
11 heard insinuations, not today but previously, that -- and  
12 nobody has come out and said it more or less but it's more,  
13 everybody in Potomac is rich and has a big house and that's  
14 not true. If you go around Potomac that's not true. And I  
15 feel that's done for obvious reasons to sway opinion. You  
16 know, my parents, neither of them were, were, were high  
17 school graduates. They had a tough time and you know,  
18 whatever we did or didn't, were able to obtain it was due to  
19 hard work.  
20 All right. First as I said, I wanted to go  
21 through the internet testimony. First we heard Mr. Sloan.  
22 He was introduced as an expert on land planning and a  
23 landscape architect. He answered Ms. Girard's questions  
24 clearly and enthusiastically but when Mr. Chen or Mr. Uhre  
25 asked anything he would speak in a low voice that I

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1 sometimes strained to hear. Looking at his exhibits I'm  
2 still not sure what's north, what's south, what's east or  
3 what's west. He spoke, I thought, in generalities.  
4 When asked to be specific on certain vital issues  
5 including stormwater management, distances, fencing, glare,  
6 which he said would be decreased by a fence, and a loading  
7 dock which was not on the site plan he was vague and often  
8 deferred to the architect or the engineer for an answer. He  
9 gave questionable information such as ManorCare and other  
10 houses in the neighborhood being three stories high. I  
11 never really thought of our house as being three stories  
12 high as they said today. But for the most part I don't know  
13 of any other three-story houses. And Brandywine will be  
14 three stories.  
15 He stated he would put in trees and a six-foot  
16 fence as a buffer to our vision of the building. But if you  
17 saw the property in person from where we sit you would see  
18 that that will not buffer our vision. He said in his  
19 opinion there will be no undue harm on the neighborhood,  
20 neighboring properties but could not answer specific  
21 questions as to why not. He has never been to our property  
22 so how could he be sure of this? He's never seen the view  
23 of Brandywine that we'll have.  
24 Next was Mr. Bolton, the architect. And again,  
25 I'm following everything chronologically from the internet.

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1 He said there would be no undue noise, light, activity or  
2 odor problems that we would experience. And again, I'm not  
3 directly quoting him, I'm giving the gist of what he said.  
4 When Mr. Chen asked specifically how he knew this he said he  
5 could not give a specific answer or he said that this was  
6 not his expertise. Again, I bring your attention to  
7 generalities.  
8 Like Mr. Sloan, he was unsure of distances  
9 including the garage and trash dumpster which he said needed  
10 further study. The chiller location was to be determined  
11 and when Mr. Grossman asked could he decrease the height of  
12 the facility closest to us that was to be determined. The  
13 garage will be opening and closing 24 hours a day but he did  
14 not know the noise level or what the doors will be made of.  
15 He said the generator will be in the west and closest to us.  
16 He did, again, didn't know the noise level and if asked if  
17 it would be tested weekly said, that doesn't sound right.  
18 That's a direct quote, he said that. I know generators and  
19 I can tell you, due to liability when you're running a big  
20 assisted living home they'll be tested plenty, probably  
21 weekly.  
22 Again, the condenser and other mechanical devices  
23 in the area he was unsure of. Like Mr. Sloan, he said the  
24 building will be screened from our view by vegetation. Even  
25 if that's true, which it's not, what if the trees die, what

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1 about the six months of the year they have little or no  
2 leaves. Don't forget that this three-story building is  
3 elevated to our property. We look up to it from our house.  
4 And then he used exhibits. And again, I hope I'm using the  
5 right exhibit. I think it was Exhibit No. 79, Roman numeral  
6 I is a proposed view and Exhibit No. 75(b) was a Google air  
7 rendering view, a Google rendering view with leaves and  
8 mature trees. How long will they take to mature? What if  
9 they die? How about the little or no leaves six months a  
10 year?  
11 He again, like Mr. Sloan, said this building and  
12 its activity will not interfere with neighborhood enjoyment  
13 but was not specific about that or any problems with glare  
14 or third-floor windows facing west toward us or odors  
15 despite the trash dumpster on the west end. Can you imagine  
16 the amount of trash, the noise, the amount of trash, the  
17 noise of the generator and the rooftop mechanical devices  
18 including the chiller and the condenser and also the sound  
19 level of the garage doors opening and closing. He, like Mr.  
20 Sloan, said there were other three-door, three-story  
21 buildings and houses in the neighborhood. Now, we came to  
22 this earlier and Mr. Kaufman said that Brandywine wanted to  
23 send someone to our property to evaluate such things but he  
24 did say earlier today that that's note. I mean, he did not.  
25 Mr. Grossman, you said that, that Brandywine will

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1 be flexible to community concerns. And I say this maybe out  
2 of ignorance but once they leave this room what's their  
3 motivation? Why wouldn't they just do whatever costs the  
4 least and the least they have to do? Like everyone else,  
5 they're in business to make money and whatever. Next, the  
6 four, the four letters from support from the neighbors.  
7 Well, they did have four letters and two of them --  
8 MR. GROSSMAN: By the way, in just, in the context  
9 of that that you put that, I didn't say that they would be  
10 flexible, I said that they were being criticized for  
11 changing the plan and I said I don't, first of all, plans  
12 change in the course of these proceedings. Most often it is  
13 to accommodate objections that have been made by community  
14 witnesses. So I said, you could hardly criticize them for  
15 being willing, being flexible enough to change the plan in  
16 order to accommodate some of the concerns raised by the  
17 community. That was the context of that.  
18 THE WITNESS: Okay. Thank you. Next the four  
19 letters of support from the neighbors. Well, I didn't know  
20 two of other people but one was an endodontist and another  
21 was from a gourmet food market. Boy, you know, if I was a  
22 neighbor the more people there the better, I would've said  
23 the same thing. Next, Ms. Bacon's testimony --  
24 MR. GROSSMAN: I don't know what that means. What  
25 are you essentially --

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1 THE WITNESS: Well, in other words what I'm saying  
2 is you've got four, they, they, at one point on the first  
3 day introduced four letters from the neighborhood, people in  
4 the neighborhood that said they don't mind --  
5 MR. GROSSMAN: Letters of support, yeah.  
6 THE WITNESS: -- Brandywine being built. And my  
7 point is, if I'm an endodontist which one letter was from  
8 and if I run a food market which another letter was from of  
9 course I'm going to say yes. I want to build 10, 10  
10 different structures.  
11 MR. GROSSMAN: Oh, I see.  
12 THE WITNESS: You know, that's, I'm saying it, to  
13 me it was a lot of --  
14 MR. GROSSMAN: Okay.  
15 THE WITNESS: -- whatever.  
16 MR. GROSSMAN: All right.  
17 THE WITNESS: Okay. Next, Ms. Bacon's testimony.  
18 And first let me give you my qualifications for saying this.  
19 I'm a graduate of George Washington University Medical  
20 School. I'm a, I've been in solo practice of obstetrics and  
21 gynecology in both Washington, D.C. and Maryland for more  
22 than 35 years. The majority of my patients have aged with  
23 me and thus most are 60 or older. I've also been associated  
24 with Georgetown University Medical School as a clinical  
25 instructor. I have an extensive background in the operation

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1 of both assisted living and nursing homes. For the last 23  
2 plus years I've been a medical consultant to both the Ring  
3 House and the Landow House which are assisted living  
4 facilities in Rockville, Maryland. And in addition, I'm on  
5 the board of directors of the Hebrew Home which is a nursing  
6 home which oversees both of these assisted living  
7 facilities. I was a medical consultant to the Hebrew Home  
8 for more than 20 years.

9 Unlike an assisted living facility which has only  
10 nurses as Ms. Bacon said they would have, the Hebrew Home  
11 has doctors of several specialties on its campus 24 hours a  
12 day. I am still on the quality control committee of the  
13 Hebrew Home which oversees different problems that come up  
14 day to day and how they are handled by both the assisted  
15 living facilities and the nursing home facilities. These  
16 include things like falls, bed sores, medication mistakes,  
17 illnesses. As you see, my extensive experience will give  
18 you a real world view of assisted living facilities. I'm  
19 both a board member overseeing their operation and on the  
20 firing line as a medical consultant to them. I will discuss  
21 Ms. Bacon's testimony and how it affects issues that are  
22 vital to us on the service road and the west end of the  
23 property including excess activity, noise, lighting, odors  
24 and ultimately the negative effect it will have on our  
25 property value and lifestyle. So again, I apologize for

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1 reading all this but --

2 MR. GROSSMAN: It's okay.

3 THE WITNESS: -- there's no way I would've  
4 remember to say all this. Assisted living facilities  
5 consist of many old and frail residents. They are not the  
6 active, silver-haired strollers that you see in the  
7 brochures. Brandywine will consist of people, Ms. Bacon  
8 said, average age 85 who will increasingly have multiple  
9 health problems including high blood pressure, heart  
10 disease, osteoporosis, walking problems, degenerative joint  
11 disease and also high rates of cognitive decline and  
12 dementia which includes intellectual decline, memory loss,  
13 challenges in judgment and decision making,  
14 inappropriateness of behavior, toileting problems,  
15 incontinence, difficulty dressing and undressing, and  
16 showering.

17 I bring this up because you really, to understand  
18 you have to understand what goes on. And I will correlate  
19 it all with this whole proceeding. As you see, the assisted  
20 living business is extremely complex and difficult. The  
21 absolute biggest and most feared concern they have is the  
22 threat of liability and lawsuit. Day to day this affects  
23 all decisions and evaluations. They are deathly afraid of  
24 liability, not only from money reasons but due to publicity  
25 and how that will affect their future customers.

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1 Chronologically in her testimony, Ms. Bacon said  
2 there will be 140 beds of average age 85 of which 30 to 35  
3 will be dementia patients. They will get round the clock  
4 service. She said, there will never be more than 40  
5 employees at any time of the day, rare personal aids and  
6 seven to 10 people at night including three to four case  
7 managers and two nurses. You can image I listened very  
8 carefully to what she said because I'm very familiar. I can  
9 tell you patients and especially the dementia patients will  
10 be difficult and needy. They need help with meals,  
11 medication, rooming, bathing, dressing, feeding, nighttime  
12 disturbances, bathroom care and use of the toilet and  
13 incontinence. Sometimes they will have anxiety, aggressive  
14 behavior, agitation and wandering, all the basis we take for  
15 granted.

16 In a press release by Johns Hopkins University of  
17 Medicine on assisted living facilities in Maryland they  
18 found that 67 percent of people in assisted living  
19 facilities had some form of dementia or cognitive  
20 impairment. Also, 25 percent had anxiety, depression and  
21 similar disorders. If you need it, I've got a copy of this  
22 press release if anybody is interested. Also, the study was  
23 funded by the National Institutes of Mental Health and this  
24 report originally appeared in the October 2004 of the  
25 Journal of the American Geriatric Association. Support for

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1 these findings also appeared in the Journal of the American  
2 Psychiatric Nurses Association in March 2008. Again, I  
3 have, if anybody wants to peruse this.

4 The conclusion was that in many respects the care  
5 needs for people in assisted living facilities are similar  
6 to nursing home including medication management. There will  
7 be much more dementia and cognitive impairment than  
8 Brandywine advertised. The diagnosis might not be obvious  
9 on admittance as families tend to rationalize their parents'  
10 behavior. Remember, most patients are in because the  
11 families are uncomfortable with their loved ones without  
12 help. Dementia waxes and wanes. What will happen with  
13 these seven to 10 employees at night when patients become  
14 confused, need ambulation, bathroom help, soiled beds,  
15 wander, and I also include those others of age 85 who  
16 supposedly aren't mentally impaired. I see these supposedly  
17 healthy people in my office daily who have the same  
18 problems.

19 Ms. Bacon spoke of other times during the day,  
20 especially the a.m. when she needed a maximum of help. She  
21 said there would never be more than 40 employees maximum.  
22 Do you think all these people who need help during the day  
23 will sleep soundly a night? You made a comment it would be  
24 quiet at night. I'm going to tell you, it's not going to  
25 be. Brandywine will need more help, if not, if not when

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1 there are problems they will be very liable and that is the  
2 last thing this or any other assisted facility, living  
3 facility wants.  
4 MR. GROSSMAN: So is your point in listing these  
5 concerns that ultimately Brandywine will have more staff on  
6 hand --  
7 THE WITNESS: Yes.  
8 MR. GROSSMAN: -- than they are suggesting?  
9 THE WITNESS: Yes.  
10 MR. GROSSMAN: Okay.  
11 THE WITNESS: Yes, absolutely. And to, to lay  
12 people this is what I do. And to lay people, besides having  
13 a private practice, to lay people everything she said  
14 sounded wonderful. But it's not, what I'm saying is, under  
15 oath, this is definitely not reality. Talking about  
16 liability, with all of the falling and medical issues they  
17 will need doctors' evaluations. Brandywine or any other  
18 assisted living facility will take no chance of a lawsuit.  
19 Ms. Bacon said she will have round the clock nursing care.  
20 Can you imagine if a nurse gives an incomplete or incorrect  
21 diagnosis? They are not doctors. Many of the patients will  
22 have trouble communicating their problems adequately. Mr.  
23 Grossman, if it was your mother, what would you think? You  
24 know, would you want, if she fell, what would you --  
25 MR. GROSSMAN: One of the things we shouldn't do

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1 as fact-finders is try to put ourselves --  
2 THE WITNESS: Okay.  
3 MR. GROSSMAN: -- in these situations. I have to  
4 stay objective.  
5 THE WITNESS: I'm sorry about that, okay.  
6 Assisted living facilities are a difficult place for  
7 everyone, employees and patients. They have their share of  
8 suffering. Families will be demanding and difficult and  
9 Brandywine will take no chances. This is a high-end  
10 facility. They want affluent people but affluence brings  
11 families that have demands, not wishes. This is what I've  
12 faced for the last 25 years. Ms. Bacon said personal aids  
13 are rare. Not in this environment. There will be many.  
14 At Chevy Chase House which my wife, she said by  
15 mistake it's a nursing home, it's an assisted living  
16 facility, offers many of the same things but does not have  
17 as affluent prices as Brandywine's. There are, in Chevy  
18 Chase House there are more than 50 personal aids for 110  
19 patients. Brandywine says they are full service. With more  
20 service you need more employees. Can you imagine just for  
21 the swimming pool much less anything else? More employees  
22 will be needed 24 hours per day to supervise, dress,  
23 undress, ambulation, safety, bathroom and personal care  
24 including showers for patients with cognitive impairments.  
25 All this will cause more activity, noise, cars, ambulances

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1 which she said were rare, they will not be, and her own  
2 health transport company will be very active. That was the,  
3 she said there would be a bus or something to transport  
4 people.  
5 Another fact, elderly people die all the time.  
6 That will cause much more activity, ins and outs. So, in  
7 that respect and Ms. Bacon, in that part of Ms. Bacon's  
8 testimony I'll try to give you the gist of my concerns.  
9 Now, commenting on Ms. Bacon's other testimony about the  
10 service road in the west end which also affect our property.  
11 Several times Ms. Bacon said the service road was for a food  
12 truck three times per week only. Mr. Girard got -- Ms.  
13 Girard got irritated when Mr. Chen kept asking if that was  
14 all. This is all in the testimony. Ms. Bacon kept saying,  
15 yes, that is all. As time went on it was established that  
16 the service road will be for trash trucks, food trucks,  
17 mechanical trucks and a 16-passenger Brandywine bus. And  
18 what about parking, indoor parking in snowstorms or bad  
19 weather. Dumpster, generators, chillers, condensers, et  
20 cetera, will all be close by on the west end.  
21 Exhibit, and again I hope I'm giving the right  
22 exhibit, Exhibit No. 75(b) is a prospective picture with  
23 trees that she said, she said experts will specify the size  
24 and types of trees to screen us. What if the trees die?  
25 What happens when their leaves fall? The basic problem is

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1 the building is so high it won't be screened from us under  
2 any circumstances. What about odors from the dumpster,  
3 noise, glare and stormwater management to name a few. My  
4 point is, in all the testimony from Mr. Bolton, Mr. Sloan,  
5 Mr. Matthews and Ms. Bacon so much was generalities,  
6 uncertain and vague. No one was sure, was sure of different  
7 things and they kept passing on many of the vital specifics  
8 to the next person. With this enormous project how can so  
9 many issues be unresolved? I mean, aren't they in three or  
10 four states? You know, when I was in medical school I  
11 would've failed medical school if I reported on something  
12 like that, if I had said, just gave generalities, being  
13 unable to cite specifics or punting to the next person.  
14 The facts include there are three stories of the  
15 assisted living facility on an elevation looking down on us.  
16 The back of our home is filled with windows. This includes  
17 two upper bedrooms and one lower bedroom, a kitchen, a  
18 family room and a patio. Also the bottom level of our house  
19 includes a walkout basement that is the lowest point on our  
20 property. This are is filled with windows also. Because  
21 people would be able to see in our house this will affect  
22 how we live and dress day to day. What I wear in my house  
23 will be on display to the employees at, and residents of  
24 Brandywine because they can certainly see in the window.  
25 Through our windows we will see external lights, emergency

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1 lights, and lights from the Brandywine windows facing west.  
2 There will be increased noise, activity and orders from the  
3 dumpster.  
4 The tennis bubble is opaque, they have no windows  
5 and no bothersome lighting. Arden Courts is not a problem.  
6 It consists of one story only, it's not an imposing building  
7 looking down on us and as was said its deliveries are in the  
8 front. Stormwater management I feel still has not been  
9 addressed. The water and salt runoff from the rain and  
10 melting snow could cause a catastrophe with trees, plants  
11 and put my house at risk including my basement. Salt could  
12 destroy everything in its path. Finally, the west side by  
13 us will be filled with lights, odors and noise. They said  
14 trucks would only come between 7:00 a.m. and 7:00 p.m.  
15 Well, how about weekends? Have you heard the, as my wife  
16 said, have you heard the beeping of trucks when they back up  
17 to turn around? This will happen on the service road. Will  
18 the, will the dead which will happen all the time, will they  
19 be carried out between 7:00 a.m. and 7:00 p.m.? And how  
20 about the noise of the employees outside on their breaks?  
21 Finally, Ms. Randall who gave all those  
22 statistics. I will only comment on those outside the  
23 Brandywine campus. I have no idea what goes on on the --  
24 I'm talking about outside on the streets. I disagreed with  
25 many of her conclusions. I must question how many of those

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1 responsible for these statistics have ever actually been to  
2 this area. Brandywine will have 140 beds with families,  
3 friends, personal aids, business trucks, deliveries, et  
4 cetera, coming and going. She said, if I understood her  
5 right, she said it's almost the same activity as the tennis  
6 club. I doubt that. She stated, peak time for employees  
7 was 6:30 to 9:30 and 4:00 to 7:00 p.m., 6:30 to 9:30 a.m.  
8 and 4:00 to 7:00 p.m.  
9 I drive on Falls Road daily around those times  
10 going to and from work. The traffic is almost always bumper  
11 to bumper. You know, Ms. Girard said that -- and you said  
12 something similar at the Park and Planning Commission  
13 meeting when I think Mr. Uhre gave you a, a picture and you  
14 said, well, at the Park and Planning Committee meeting you  
15 said, that was because Cedar Road in Bethesda was, was, had  
16 a problem that day. You know, we live a long way from Cedar  
17 Road in Bethesda. As I said, the traffic is always, almost  
18 always bumper to bumper. And one thing Mr. Uhre didn't say,  
19 there are blinking yellow caution lights before the curves  
20 on Falls Road going in each direction approaching Tennis  
21 Club Lane. These lights were put there to warn drivers of  
22 this dangerous part of the road. Walking from the bus stop  
23 with no sidewalk will be treacherous, especially in bad  
24 weather such as snow, rain or ice.  
25 Due to, due to cars, the Bullis School and

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1 Normandie Farms restaurant have had to repair their fences  
2 over the, over the years and plus as was brought out earlier  
3 they do have a crossing guard at Bullis. Because of  
4 insurance costs, people are reluctant to report these  
5 accidents. It happened to my wife, it went unreported. In  
6 addition, I think Ms. Lee said on Thursday and that  
7 Normandie Farms has been approved for an addition, thus more  
8 traffic. Brandywine as mentioned, it was actually Ms. --  
9 well, Brandywine has mentioned about maybe picking up  
10 employees at the subway station. I wonder if that's due to  
11 the potential danger they realize of the employees getting  
12 off the bus and walking with no sidewalk to Tennis Lane or  
13 going opposite from, from the Falls to Brandywine. I wonder  
14 if they are afraid of a little critical, the critical  
15 judgment of this presentation.  
16 Ms. Randall said that she didn't know from where  
17 employees would be committing. Then, and again look at the  
18 testimony, then she said a little bit after that that they  
19 will be encouraged to take the subway because for various  
20 reasons the bus would not work as well. These are my words,  
21 not direct quotes. These statements seem to be  
22 contradictory. The closest subway stops are at Grosvenor  
23 and in Rockville, they are a long way off. My employees  
24 have always done whatever is cheapest and easiest for their  
25 commuting, nothing else matters. She mentioned the shuttle

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1 bus may pick up the employees when they take the residents  
2 somewhere. How often will they schedule resident activity  
3 at the employee arrival or departure time which she said the  
4 peak was 4:00 to 7:00 and 6:30 to 9:30, certainly not  
5 regularly. Her whole testimony was filled with we, it was  
6 always we, we meaning I guess her and Brandywine. I guess  
7 one will never know. And you know, I wonder if she was  
8 personally accountable for these potential problems would  
9 she have come on so strong. And again, I don't mean to  
10 point you out but --  
11 MR. GROSSMAN: Feel free.  
12 THE WITNESS: -- don't take my word for any of  
13 this, Mr. Grossman. Park, you park and walk across the  
14 street from Falls Road from the bus stop to the proposed  
15 facility and back. Do it on a clear day and also when there  
16 is rain, snow or ice. And then you will get a realistic  
17 viewpoint.  
18 My last thing about this is, I wasn't sure whether  
19 I should say this but I'm a gynecologist and about a year  
20 and a half ago the statisticians for the government put out  
21 a study about women shouldn't get mammograms. I see  
22 probably six to seven new cases of breast cancer a month and  
23 but statistically, you look at the statistics and nothing  
24 else and they said it wasn't worth the money to do so take  
25 that for whatever you want.

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1 MR. GROSSMAN: I'm not sure how that pertains to  
2 this.

3 THE WITNESS: Well, my point is --

4 MR. GROSSMAN: I share your concerns about that --

5 THE WITNESS: -- my point is --

6 MR. GROSSMAN: -- last announcement, that's --

7 THE WITNESS: -- statistics don't tell the whole  
8 story. You can cite all the statistics you want. But when  
9 you're on the firing line, when you're on Falls Road and you  
10 go there every day and it's bumper to bumper and things like  
11 that you see directly what really happens there. And all  
12 these cute questions and cute answers and all this other  
13 stuff doesn't stop that. You go there and look at it. Pick  
14 any day you want and go during those times in the morning  
15 drive or the afternoon drive and you'll see how this is  
16 really a scary thing.

17 MR. GROSSMAN: I can't go and create my own  
18 evidence.

19 THE WITNESS: Okay, but you know, you're making a  
20 big decision --

21 MR. GROSSMAN: I understand that --

22 THE WITNESS: -- and it's going to affect a lot of  
23 lives.

24 MR. GROSSMAN: -- but my decisions are based on  
25 the evidence that's before me. I'm not an expert at traffic

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1 and in my visiting once or twice to the roadway will not be  
2 a fair representation of what traffic can be expected. So  
3 one shouldn't reason that way and I'm sure you understand  
4 that in terms of making this kind of decision.

5 THE WITNESS: Mr. Grossman, thank you for giving  
6 my wife and I the opportunity to speak. In closing, you  
7 know, your decision affects not only my property value but  
8 also our day to day lives in addition to our financial  
9 health and retirement. Since this is such an important  
10 decision for us I do hope you come and do a property, a site  
11 visit. The pictures and testimony you have heard do not  
12 adequately describe the impact that a change of land use  
13 would make. Imagine the change from a quiet, secluded lot  
14 to living with constant noise, activity, lights, odors,  
15 sights of a fully active assisted living facility. I think  
16 for most people in this room that would have, no matter  
17 whose side you're on, if it was you that would have an  
18 adverse impact on your life and an adverse impact as a  
19 property owner. Again, I'm not anti-development, I come  
20 from a family where there's a couple of developers. So,  
21 that's not where I'm coming from.

22 Over the last 24 years I've invested much of my  
23 net worth building, buying -- buying, building and paying  
24 for the upkeep of this property. We keep this, we bought  
25 this particular lot because it was private, secluded, quiet

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1 and at the end of a cul-de-sac. We then oriented the house  
2 to the back of the property to further secure privacy. If  
3 you come to our street you will see our house in the back of  
4 a lot unlike any of the other houses. Behind us when we  
5 bought the property the tennis club was already there. It's  
6 a vastly different structure in operation than Brandywine.  
7 They have proved to be a good, quiet, and unobtrusive  
8 neighbor. Living next to Brandywine will be a dramatic  
9 change. We never could've anticipated this in 1991 when we  
10 bought the property. It doesn't seem fair.

11 I asked a respected and experienced realtor to  
12 assess all of this. He told me if we put the house on sale  
13 people will come and maybe like it. But when they notice  
14 Brandywine they will either walk away or offer much less.  
15 The Brandywine area was originally zoned for two houses.  
16 That would've been nice. With Brandywine my property value  
17 will decrease. This will directly affect my retirement  
18 capital and income and my day to day life in so many ways as  
19 I tried to point out to you. All my working life the  
20 capital I've put in my house was the central part of my  
21 retirement plan. Since this started with Brandywine my wife  
22 and I have been anxiety and fearful. It has upset our life,  
23 even affecting our sleep. This situation affects not only  
24 our daily life but also our future which we thought we had  
25 carefully planned for over the years. If Brandywine is

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1 allowed to build, my wife is already talking about putting  
2 the house on sale and leaving. As you see, we have a lot to  
3 lose based on your decision. Innocent homeowners should be  
4 provided protection. You know, the reality, the reality of  
5 the whole thing is in 1991 when we bought the property if we  
6 could've foreseen this we would not have bought the  
7 property, I mean, no way. And, you know, one last comment  
8 and thank you for letting me talk.

9 MR. GROSSMAN: Well, you have a right, it's not  
10 just --

11 THE WITNESS: Okay.

12 MR. GROSSMAN: -- my letting you have a right.

13 THE WITNESS: Well, thank you for letting me talk  
14 and say what I want to say, I should say it that one. One  
15 last thing. You know, a lot of questions were asked and so  
16 on and so forth and I realize that's part of the, what you  
17 do in a, even though this is the first time I've ever been  
18 in anything like this. You know, I don't care how you put  
19 it or how anything else, having a big, imposing thing  
20 elevated and imposing in our backyard will affect our  
21 property value. And I don't care whether there's this much  
22 standing water or that much standing water or anything else  
23 it will. And I guarantee you, any of you if you were going  
24 to buy a property like that you'd notice it and it might  
25 make a big difference. And if you were going to sell it and

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1 it was your own you'd be here talking like me, you wouldn't  
2 be on the other side.  
3 MR. GROSSMAN: Thank you.  
4 THE WITNESS: And one last thing, again, the  
5 studies I've cited I've got here if anybody wants them if  
6 they're of any use.  
7 MR. GROSSMAN: All right. You have additional  
8 questions of your witness?  
9 MR. CHEN: No.  
10 MR. GROSSMAN: All right. Any cross-examination,  
11 Ms. Lee?  
12 MS. LEE: No.  
13 MR. GROSSMAN: Mr. Uhre?  
14 MR. UHRE: No.  
15 MR. GROSSMAN: Applicant?  
16 MS. GIRARD: Yeah, just a couple questions.  
17 CROSS-EXAMINATION  
18 BY MS. GIRARD:  
19 Q. Dr. Paul, you mentioned concerns about if the  
20 trees die and the number of employees. Are you familiar  
21 with the conditional use, when you're at the end of this you  
22 get a plan and there's conditions. Are you, are you  
23 familiar with how that's enforced by the County?  
24 A. As I said, I've never been through this before.  
25 Q. But are you familiar just from the adjacent

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1 special exceptions at all?  
2 A. Vaguely.  
3 Q. Okay. So do you, do you understand that people  
4 would come out and inspect and if trees die they would cause  
5 them to be replaced?  
6 A. For how long?  
7 Q. Until the next inspection.  
8 A. How often do they occur? What happens after the  
9 first year is what I'm asking.  
10 Q. Okay, but are you aware that there are  
11 inspections? Ongoing inspections.  
12 MR. GROSSMAN: Once a year usually, I mean,  
13 Department of Permitting Services --  
14 THE WITNESS: For the next 20 years?  
15 MR. GROSSMAN: -- or if there's a complaint.  
16 Yeah, indefinitely --  
17 MS. GIRARD: For as long as --  
18 MR. GROSSMAN: -- as long as there's a conditional  
19 use and you can always, you can always file a complaint if  
20 there's a problem, if there's an inconsistency with the way  
21 the conditions are being met you can file a complaint with  
22 the Department of Permitting Services or with my office, it  
23 used to be the Board of Appeals, and then there's a process  
24 for checking out that complaint in which the Department of  
25 Permitting Services comes out, does an inspection and then

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1 issues a violation notice. Conditional uses can be revoked  
2 if there is, if conditions are not complied with. So, if  
3 you have one that's where a substantial amount of money has  
4 been spent they have a very strong incentive to meet the  
5 conditions.  
6 BY MS. GIRARD:  
7 Q. And that would go to number of employees as well.  
8 They, they could come out and count the employees.  
9 A. I think what I was trying to say is, and again it  
10 sounds wonderful to the lay people who have never been  
11 involved, there is no way, they're going to have more  
12 employees, a lot more, plus they're going to have personal  
13 aids and so on and so forth. And just keep adding and  
14 adding and adding.  
15 Q. So you're suggesting that Ms. Bacon set an  
16 artificial number of employees and then will violate he  
17 special exception?  
18 A. I'm saying --  
19 Q. Conditional use.  
20 A. -- Ms. Bacon, and I don't know, perhaps, you know,  
21 she wants a place of affluence. You know, in my field, boy,  
22 to deal with the daughters of the elderly, and they're the  
23 ones I deal with most often because I see their mothers, and  
24 they're tough and they will have, many of them will have  
25 aides because seven to 10 people with, at least 25 percent

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1 having dementia and having bathroom problems and everything  
2 else that dementia can cause will not be adequate.  
3 Q. And you saying this --  
4 A. I'm not saying she's lying. I'm just saying I  
5 don't know. I don't know where she got her figures from.  
6 But I'm saying it's not realistic in my experience.  
7 Q. Right.  
8 A. Okay.  
9 Q. And your experience is limited to being a medical  
10 consultant to living facilities and you're on the board of  
11 another? Is that --  
12 A. I was a medical consultant for two assisted living  
13 facilities for 24 years. I was a medical consultant to a  
14 nursing home for almost the same amount of time. I still  
15 serve in the assisted living facilities. I'm on the board  
16 of a facility that oversees these things and we get all the  
17 problems and all the difficulties because Montgomery County  
18 has some difficult standards. And I'm also on the quality  
19 control committee which looks into all the different  
20 problems that happen, all the falls, all the bed sores,  
21 everything else.  
22 Q. And you believe that qualifies you to opine as to  
23 the appropriate number of employees, et cetera?  
24 A. Let me say this, and I don't know which way you're  
25 asking, I've worked for these things for 24 years. I may

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1 not be an expert, I don't know what your definition of an  
2 expert is, but I know what I know and I'm saying, yes, it's  
3 going to be a problem if they have 140 people. And how many  
4 of those people that aren't diagnosed are going to have  
5 dementia or some type of cognitive impairment, a lot.  
6 Q. Have you ever --  
7 A. Have you, have you have ever been in a nursing  
8 home, if you've spent time in a nursing home visiting and so  
9 on and so forth, you know, you, you, then you know what I'm  
10 talking about because if you haven't spent time its, oh it's  
11 this glorious place that has all these wonderful things.  
12 It's tough place for everybody.  
13 Q. Have you ever been to a Brandywine facility?  
14 A. No.  
15 Q. So you can't speak to the --  
16 A. I have no idea.  
17 Q. -- operations of Brandywine's facilities?  
18 A. I've been to the Ring House and the Landow House  
19 in Rockville and I happen to know those places are financed  
20 very, very well and they get, they get millions of millions  
21 of dollars a year to, that people give and you know, it's,  
22 they do the best because if they don't do the best people  
23 are going to go crazy. I mean, the families will not be  
24 happy. So I can't assume --  
25 Q. But you're likening them --

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1 A. -- it's any better. I --  
2 Q. But you can't assume it's not.  
3 A. You know, in the real world it's not.  
4 Q. Without you having visited a Brandywine facility.  
5 A. Good, whatever you say.  
6 Q. When you, you mentioned that the tennis club was  
7 there when you bought your property?  
8 A. Yes.  
9 Q. And as your wife indicated, when you sited the  
10 house you removed some woods.  
11 A. Did we remove woods? Oh, yeah, yeah --  
12 Q. Trees.  
13 A. -- yeah, the whole, the whole property was just  
14 all trees, yes.  
15 Q. Right. And was some of that removed between your  
16 property and the existing tennis club property? Did you  
17 remove --  
18 A. Well, some of it to build the house but I think  
19 every tree that we could keep up that wouldn't interfere  
20 with our house we kept. Am I saying it right?  
21 MS. PAUL: Yeah.  
22 THE WITNESS: Yeah. We did not want to, we tried  
23 to cut the minimum, you know, we had to cut a certain amount  
24 of trees but we wanted to cut the minimum.  
25 BY MS. GIRARD:

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1 Q. And when, how familiar are you with the  
2 operations, either then when you were looking at purchasing  
3 and now of the existing tennis club?  
4 A. How familiar was I?  
5 Q. Right.  
6 A. I don't know if I was familiar with the day to day  
7 operations but I certainly did my homework as to how, how  
8 much I could do, as to how much we thought it might  
9 interfere with us. We didn't buy the land lightly. We  
10 tried to do the best homework we could do.  
11 Q. Did you look at things like if they have a  
12 generator or what the noise producing sources on the  
13 property are?  
14 A. Well, we were there different times of the day --  
15 Q. Uh-huh.  
16 A. -- and we tried to do it over a period of time and  
17 we never heard, and to this day have never heard a  
18 generator.  
19 Q. But you don't know whether there is or is not?  
20 A. No.  
21 Q. And did you, you assumed that -- or your testimony  
22 is that if you knew this was going to happen you wouldn't  
23 have purchased it?  
24 A. Yes.  
25 Q. Did you assume that it would just stay a tennis

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1 club indefinitely?  
2 A. Let's put it this way, I certainly never assumed  
3 that there would be a big, imposing thing like, I thought I  
4 would be, ignorantly I thought that Montgomery County would  
5 protect me from something like that.  
6 MS. GIRARD: That's all we have.  
7 MR. GROSSMAN: Okay. Any redirect?  
8 MR. CHEN: (No audible response.)  
9 MR. GROSSMAN: All right. I thank you, Dr. Paul.  
10 All right. Let's take a brief break before your next  
11 witness. Let's come back at a quarter to 4:00.  
12 (Off the record.)  
13 (On the record.)  
14 MR. GROSSMAN: All right, you can call your next  
15 witness.  
16 MR. CHEN: My next witness, sir, will be Mr. James  
17 Noonan.  
18 MR. GROSSMAN: All right, Mr. Noonan.  
19 MR. NOONAN: Good afternoon.  
20 MR. GROSSMAN: Good afternoon, sir. Could you  
21 state your full name and address, please?  
22 MR. NOONAN: James T. Noonan, 10245 Old Columbia  
23 Road, Columbia, Maryland.  
24 MR. GROSSMAN: Can you raise your right hand,  
25 please?

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1 (Witness sworn.)  
2 MR. GROSSMAN: You may proceed.  
3 MR. CHEN: Thank you.  
4 DIRECT EXAMINATION  
5 BY MR. CHEN:  
6 Q. Mr. Noonan, what is your occupation?  
7 A. I'm a senior planner, land planner with Straughan  
8 Environmental in Columbia, Maryland.  
9 Q. How long have you been a land planner?  
10 A. I've been a planner for 43 years working during my  
11 career in a variety of infrastructure and public policy  
12 areas including development of local competence plans and  
13 zoning ordinances and evaluation of those and for, for some  
14 time working on land use policy for the state of Maryland.  
15 Q. Could you just briefly, if you would, sir, in  
16 summary form give the Examiner your educational background  
17 and your previous employers?  
18 A. Okay. I have a bachelor's degree from the  
19 University of Maryland in 1972. I have a master's degree in  
20 urban planning from Johns Hopkins University in 1976. I  
21 worked for about 37 years with the Maryland Department of  
22 Planning where I was, at the end point of that career was  
23 director of local planning assistance where I had a staff of  
24 about 20 planners around the state that did local competence  
25 plans and local zoning ordinances. I was also director of

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1 infrastructure planning where I commented on and provided  
2 the department's input on any state transportation policy,  
3 public school construction and water and sewage planning.  
4 Q. Your resume is Exhibit No. 78(b), is that correct,  
5 sir?  
6 A. Yes, sir.  
7 Q. Okay. And that more in detail gives your  
8 background?  
9 A. Yes.  
10 Q. And have you previously been recognized as an  
11 expert witness in the area of land planning?  
12 A. Yes, here in Montgomery County in front of this  
13 board with the Cabin Branch development plan amendment which  
14 was in 2013 I believe, summer or fall of 2013.  
15 MR. GROSSMAN: The planning, you're talking about  
16 in front of the planning board?  
17 MR. CHEN: No --  
18 THE WITNESS: No, it was actually --  
19 MR. CHEN: -- this office --  
20 THE WITNESS: -- in this room --  
21 MR. CHEN: -- different examiner.  
22 MR. GROSSMAN: Okay.  
23 MR. CHEN: And it was the Cabin Branch development  
24 plan amendment and --  
25 MR. GROSSMAN: Oh, I see DPA --

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1 MR. CHEN: -- Examiner Robeson was the Examiner on  
2 that matter and it was, I believe, two years ago.  
3 MR. GROSSMAN: Okay. All right.  
4 MR. CHEN: Mr. Examiner, I would submit that Mr.  
5 Noonan is an expert in the area of land planning.  
6 MR. GROSSMAN: All right. Any questions regarding  
7 this witness' expertise?  
8 MS. GIRARD: Just one clarification. In the Cabin  
9 John, Cabin Branch --  
10 THE WITNESS: Cabin Branch, yes, sorry.  
11 MS. GIRARD: -- case were you --  
12 THE WITNESS: There are many cabins.  
13 MS. GIRARD: -- did you testify on behalf of the  
14 applicant in that?  
15 THE WITNESS: No, I worked with Mr. Chen and I was  
16 there, a gentleman who, who owned property and was a, a  
17 storeowner in the historic district in Clarksburg was  
18 worried about the impact of the development on the viability  
19 of the Clarksburg Town Center.  
20 MS. GIRARD: Okay, so it was opposition?  
21 THE WITNESS: Yes.  
22 MS. GIRARD: Okay.  
23 THE WITNESS: Yes, ma'am. I will try to be brief.  
24 MR. GROSSMAN: Okay. Any other questions.  
25 MS. GIRARD: No.

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1 MR. GROSSMAN: Any questions, Mr. Uhre or Ms.  
2 Lee --  
3 MR. UHRE: No.  
4 MS. LEE: (No audible response.)  
5 MR. GROSSMAN: -- about this witness' expertise?  
6 Does anybody challenge this witness's expertise? All right.  
7 Based on Mr. Noonan's education, background, experience and  
8 prior testimony as an expert in land planning I accept him  
9 as an expert in land planning.  
10 MR. CHEN: Thank you.  
11 BY MS. GIRARD:  
12 Q. Mr. Noonan, I'd like to just start out by  
13 directing your attention to Exhibit No. 79(i), I think it's  
14 called the extended site section.  
15 A. Okay.  
16 Q. Are you familiar with this exhibit, sir?  
17 A. Yes.  
18 Q. Sir, is this an accurate depiction of the  
19 relationship between the Paul property and the proposed  
20 conditional use improvements?  
21 MR. GROSSMAN: Can you hold on one second while I  
22 get that exhibit out?  
23 MR. CHEN: No.  
24 MR. GROSSMAN: Please? If I say pretty please?  
25 Here we are, 79(i), all right.

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1 THE WITNESS: All right, in answer to the  
2 question, no, I don't think it's an accurate depiction of --  
3 BY MR. CHEN:  
4 Q. Why?  
5 A. Why? Well, first of all it was intended, I  
6 believe, to be an illustration, you know, based on knowledge  
7 of, and GIS techniques about where the land, the land  
8 surfaces on the Pauls' property and how, and purported to,  
9 how visible the proposed structure was going to be --  
10 Q. Yes.  
11 A. -- once it was constructed. So, what you see when  
12 you look at it is a small human figure down next to an  
13 illustration of the Pauls' property looking up through a  
14 series of trees to the peak. And what it's purporting to  
15 show is that there's enough vegetation and trees and trees  
16 are high enough based on general measurements to, to block  
17 the view or at least inhibit the view, if that's the right  
18 word, of the proposed structure from the, from the Pauls'  
19 property. I have a number of issues with it in addition to  
20 the fact that clearly the person who drew this didn't have  
21 the opportunity to be on the property actually see that. So  
22 these aren't, these aren't engineering measurements in any  
23 way. This is an illustration and should be taken for that,  
24 I mean, that's as far as it goes.  
25 Q. Have you been on the property?

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1 A. Yes, I've been on the property a couple of times,  
2 one time in particular to try to address and see whether or  
3 not from the various perspectives this was, this  
4 illustration was accurate. And second of all, you know, was  
5 it, was it take from the right perspective, from the Pauls'  
6 perspective.  
7 Q. If I may, Exhibits No. 97(a)(i) and 97(a)(ii), do  
8 you have them there, sir?  
9 A. Yes.  
10 Q. Can I just see them one moment?  
11 A. Which one do you want?  
12 Q. Give me the single one first.  
13 A. Here you go.  
14 Q. I apologize one moment.  
15 MR. CHEN: Mr. Examiner, do you have those?  
16 They're in the file.  
17 MR. GROSSMAN: I'm sure I do.  
18 THE WITNESS: They're photographs.  
19 MR. GROSSMAN: Hold on.  
20 THE WITNESS: You might have noticed we've all  
21 taken photographs.  
22 MR. GROSSMAN: Yes.  
23 BY MS. GIRARD:  
24 Q. Okay, can you explain --  
25 MR. CHEN: Do you have them, Mr. Examiner?

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1 MR. GROSSMAN: Not yet.  
2 MR. CHEN: Okay. Ms. Girard, do you have it?  
3 MS. GIRARD: Yes, we have them.  
4 MR. CHEN: Okay.  
5 MR. GROSSMAN: I may never get the file back  
6 together again. All right, I have the photographs.  
7 MR. CHEN: Great, thank you very much.  
8 BY MR. CHEN:  
9 Q. Mr. Noonan, if you would, please, if you will,  
10 describe to the Hearing Examiner what, first of all, when  
11 were these two photographs taken, Exhibits No. 97(a)(i) and  
12 (ii)?  
13 A. They were taken on, and I have the date written  
14 down, give me a moment, on November 18th.  
15 Q. This year?  
16 A. Of this year. Yes, sir.  
17 Q. Okay. And directing your attention first -- and  
18 just summary, do both, you took both photographs?  
19 A. I took both pictures, yes, sir.  
20 Q. Okay. And they accurately depict that which they  
21 purport to show?  
22 A. Yes.  
23 Q. Okay. 97(a)(i), could you please explain to the  
24 Examiner what this photograph shows and if you could help  
25 him also where this photo was taken from.

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1 A. Right. Perhaps I could use the exhibit that's up  
2 here --  
3 Q. 105?  
4 A. -- as well, yes --  
5 Q. Okay.  
6 A. -- to kind of illustrate that. And I'm also going  
7 to stand because I'm not quite as good with the pointer  
8 either --  
9 Q. Okay.  
10 A. -- if you don't mind. The first picture you can  
11 see was taken at somewhat of a more elevated position, okay.  
12 MR. GROSSMAN: Okay.  
13 THE WITNESS: So it was actually taken from  
14 roughly this location.  
15 BY MR. CHEN:  
16 Q. Now, when you say this --  
17 A. This, excuse me, yes, I told myself I wasn't going  
18 to do that. It was taken from a point roughly, let's see,  
19 you know, 15 yards away from the, from the south corner of  
20 the Pauls' residence at a higher elevation looking back  
21 towards lower ground where I believe that, that based on the  
22 illustration we're talking about --  
23 MR. GROSSMAN: So you are looking north-northwest?  
24 THE WITNESS: Yes, I was looking, yes, away  
25 from --

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1 MR. GROSSMAN: Okay.  
2 THE WITNESS: -- I was looking towards the north  
3 and the west --  
4 MR. GROSSMAN: Okay.  
5 THE WITNESS: -- north-northwest, right. Looking  
6 back to where the human figure would be depicted on this  
7 thing.  
8 MR. GROSSMAN: Okay.  
9 THE WITNESS: And what I, the only thing I was  
10 attempting to show was, was the difference in elevation on  
11 the Pauls' property. This, if you look at where this, this  
12 figure would occur based on the line drawing --  
13 MR. GROSSMAN: Okay, this figure being the figure  
14 shown in 79(i)?  
15 THE WITNESS: 79(i), yes.  
16 MR. GROSSMAN: Okay.  
17 THE WITNESS: If you look at the perspective, the  
18 transect from the proposed facility to the Pauls' house  
19 which is in the lower right of that exhibit --  
20 MR. GROSSMAN: Right.  
21 THE WITNESS: -- it would indicate down at the  
22 lower level of the Pauls' property which is down around in  
23 this area --  
24 MR. GROSSMAN: Right.  
25 THE WITNESS: -- roughly, I mean, this is an

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1 illustration, which is at some of the lower elevations close  
2 to the Pauls' house.  
3 MR. GROSSMAN: Okay.  
4 THE WITNESS: Okay. So the second picture I took,  
5 if you --  
6 MR. GROSSMAN: It's the northeast side of the  
7 house sort of to the middle area and --  
8 THE WITNESS: Yes.  
9 MR. GROSSMAN: -- you said 10 or 15 yards away  
10 from the house?  
11 THE WITNESS: Yes, in recalling I think it was Ms.  
12 Paul's testimony, that's really at the point where the  
13 walkout would be roughly --  
14 MR. GROSSMAN: Okay.  
15 THE WITNESS: -- from the lower level, the  
16 basement level, okay, of the house.  
17 BY MS. GIRARD:  
18 Q. By the way, it's three stories at the back, is  
19 that right?  
20 A. Yeah, I kind of refer to the basement as a story.  
21 But yes, at the ground level walkout for the basement is in  
22 the back of the house --  
23 Q. Okay.  
24 A. -- and that's roughly where that, that illustrated  
25 human being would be on this.

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1 Q. Okay. But the point being it's a walkout  
2 basement?  
3 A. Right.  
4 Q. Okay.  
5 A. Yes.  
6 Q. From the front of the house how many stories does  
7 it have?  
8 A. Two stories.  
9 Q. Okay. Thank you.  
10 A. Okay.  
11 Q. Go ahead.  
12 A. Anyway, the second photograph which is 97(a)(ii),  
13 if you look at 97(a)(i) there's a little pine tree there.  
14 If you walk back up to that up towards the house --  
15 Q. Uh-huh.  
16 A. -- you can see that pine tree at the very right-  
17 hand corner of the, of the photograph here. I think that's  
18 it.  
19 Q. 97(a)(ii) or --  
20 A. 97(a)(ii)  
21 Q. -- double I.  
22 A. So I wanted to go back up to the higher level --  
23 MS. GIRARD: Excuse me, can you just gesture on  
24 the, walk you're looking at, the pine tree so I'm sure I'm  
25 looking at the right thing?

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1 THE WITNESS: This pine tree right here --  
2 MS. GIRARD: Okay.  
3 THE WITNESS: -- okay, and then if you look at the  
4 next photograph --  
5 MS. GIRARD: Okay.  
6 THE WITNESS: -- it's up on the other side looking  
7 back down to it.  
8 MS. GIRARD: That's --  
9 BY MR. CHEN:  
10 Q. Okay. Would you show that to the Hearing Examiner  
11 as well?  
12 A. Yes, I'm sorry.  
13 THE WITNESS: Okay. There's two photographs.  
14 Looking up to the house and the pine trees --  
15 MR. GROSSMAN: Yes.  
16 THE WITNESS: Right.  
17 MR. GROSSMAN: That would be on Exhibit No.  
18 97(a) --  
19 THE WITNESS: -- 97(a)(i).  
20 MR. GROSSMAN: Okay.  
21 THE WITNESS: Walk up to the top up to this upper  
22 level here, the flat area, and turn around and look back so  
23 you're down, looking down past the pine tree.  
24 MR. GROSSMAN: Now, this is Exhibit No. 97(a) --  
25 THE WITNESS: 97(a)(ii).

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1 MR. CHEN: Double I.  
2 MR. GROSSMAN: (a)(ii).  
3 MR. CHEN: Not two, double I.  
4 THE WITNESS: (a)(i), (ii), thank you.  
5 MR. GROSSMAN: Okay.  
6 THE WITNESS: So, what you're looking at here, Mr.  
7 Examiner, is looking back towards the, the existing tennis  
8 club, looking almost directly east, okay, from the, from the  
9 area up here which is the living area of the Pauls' house  
10 rather than the lower level.  
11 MR. GROSSMAN: Right.  
12 THE WITNESS: Looking back towards the tennis club  
13 facility. Okay?  
14 BY MR. CHEN:  
15 Q. Now, in sticking with Exhibit No. 97(a)(ii) --  
16 A. Right.  
17 Q. -- okay, there's a structure in the background.  
18 A. Uh-huh.  
19 Q. What is that?  
20 A. That is the existing storage building, storage  
21 shed, it's been called a couple of things.  
22 Q. Okay. For the tennis club special exception?  
23 A. Yes.  
24 Q. Okay.  
25 A. It's on the special exception site.

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1 Q. Okay.  
2 A. What I would point out about this photograph, and  
3 this, again, this is in late, mid-November, November 18th,  
4 most of the leaves are off the tree by now. So it's a  
5 fairly decent perspective. This photograph was taken with  
6 my cellphone so as best I can tell it's close to the normal,  
7 you know, focal length of what the human eye would see as  
8 opposed to a telephoto view, okay. There is some  
9 enlargement here but what's interesting about this picture  
10 in in leaf-off condition you can not only, not only do you  
11 see the roof of the existing structure you can see the  
12 ground level pretty clearly I think. You can actually see  
13 some coloring difference at the building right at the ground  
14 level. So you can see the entire structure. Now, there are  
15 trees in between as would be illustrated here but it isn't  
16 like the trees are all lined up. So especially in leaf-off  
17 conditions this existing structure is clearly visible in the  
18 photograph. The other thing I would show because  
19 illumination has been talked about a couple of times and I  
20 didn't really try to address that here, you can't really see  
21 the tennis bubble behind it mainly because it's really a  
22 white surface and there's a white sky, a bright sky behind  
23 it so it kind of washes out. But looking at, looking at it  
24 you, one of the things that structure does is it blocks the  
25 illumination from the existing tennis bubble. The structure

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1 the Pauls most often see is not the lit tennis bubble is the  
2 storage building. You can see that. That's another  
3 interesting perspective. But what I wanted to show from  
4 this is, as opposed to what's illustrated in the extended  
5 site selection --  
6 Q. 97(i).  
7 A. -- 97 -- 79(i) --  
8 Q. 79(i).  
9 A. -- you can clearly see from Exhibit 97(a)(ii) that  
10 the structures in the tennis club are clearly visible from  
11 the living area in the Pauls' structure.  
12 MR. GROSSMAN: So your, your presumption from that  
13 is that the proposed facility --  
14 THE WITNESS: Would also be visible.  
15 MR. GROSSMAN: -- would also be visible?  
16 THE WITNESS: Because, I'm not quite sure of what  
17 the height of the, the storage shed is, it looks like to be  
18 about 25 to 30-foot structure, set back behind it a little  
19 bit is going to be a structure going up of about 50 feet.  
20 But if you can see base of the 30-foot structure you should  
21 be able to see a substantial portion of the proposed  
22 structure once this is gone. This won't be here when the  
23 retirement living facility is there. This structure goes  
24 away. So --  
25 MR. GROSSMAN: Right.

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1 THE WITNESS: -- the building they're proposing to  
2 construct is what would be visible at that point. And  
3 that's --  
4 BY MR. CHEN:  
5 Q. Okay. I think also the testimony from --  
6 A. Unless you have a follow-up. Okay.  
7 Q. -- the architect was that the, I think at least,  
8 if not all but many of the proposed vegetation on this  
9 extended site section is not, it's just, it's just there for  
10 illustration. Do you recall that testimony?  
11 A. Maybe you should repeat that question --  
12 Q. Okay.  
13 A. -- I don't want mischaracterize that.  
14 Q. As I understand it, most of this proposed  
15 vegetation that is shown on Exhibit 79(i) --  
16 A. Oh, oh, 79(i). I, I believe he, he attempted to  
17 locate some of the major trees through using GIS --  
18 Q. Okay.  
19 A. -- but as I said, the perspective would be from  
20 the wrong angle.  
21 Q. Right.  
22 A. Even if those are all there it's from the wrong  
23 angle in terms of seeing the visibility of the structure.  
24 Q. Great. Okay. Thank you very much. If I may,  
25 would you please go to Exhibit No. 92(a)?

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1 A. Okay. All right, 92(a).  
2 Q. What is -- okay, hold on one second. Hang on.  
3 MR. CHEN: Mr. Examiner, I need your input for a  
4 minute.  
5 MR. GROSSMAN: Okay. Hold on one second.  
6 MR. CHEN: I'm at Exhibit -- one second. I've got  
7 a --  
8 MR. KAUFMAN: Truck alley there.  
9 MR. CHEN: I'm sorry?  
10 MR. KAUFMAN: Oh, I'm just talking to myself, I'm  
11 sorry.  
12 MR. CHEN: Okay. Mr. Examiner, you've got Exhibit  
13 No. 92(a). What I have got in my hand --  
14 MR. GROSSMAN: Yes.  
15 MR. CHEN: -- is an excerpt which I'm going to  
16 give a copy to Ms. Girard --  
17 MS. GIRARD: Thank you.  
18 MR. GROSSMAN: Okay, 92(a) being the 11 by 17 of  
19 the turnaround exhibit?  
20 MR. CHEN: Yeah.  
21 MR. GROSSMAN: The 11 by 17.  
22 MR. CHEN: How do you want to mark this?  
23 MR. GROSSMAN: Well, we can mark it as a new  
24 exhibit since it's in your case. That will also be -- but  
25 this would have to be your last exhibit because I've now run

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1 out of space on the back of this.  
2 MR. KAUFMAN: That would expedite the hearing.  
3 MR. GROSSMAN: All right. Exhibit No. 121 is  
4 would be --  
5 MR. KAUFMAN: 121, okay.  
6 MR. GROSSMAN: -- I'll say Pauls' portion of  
7 Exhibit No. 92(a).  
8 (Hearing Exhibit No. 121 was  
9 marked for identification.)  
10 MR. CHEN: Thank you. And if I may, you have in  
11 the record three exhibits that are photographs that are  
12 97(b)(i) --  
13 MR. GROSSMAN: Yes, I've got that.  
14 MR. CHEN: -- and 97(b)(ii) --  
15 MR. GROSSMAN: Got that.  
16 MR. CHEN: -- and 97(c)(i).  
17 MR. GROSSMAN: All right.  
18 MR. CHEN: Now --  
19 MR. GROSSMAN: I've got that.  
20 MR. CHEN: Great, thank you.  
21 BY MR. CHEN:  
22 Q. Mr. Noonan, if I may --  
23 MR. CHEN: May I approach the witness, sir?  
24 MR. GROSSMAN: Sure.  
25 MR. CHEN: Thank you.

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1 BY MR. CHEN:  
2 Q. Directing your attention, Mr. Noonan, to those  
3 three photographs that I've just identified.  
4 A. Uh-huh.  
5 Q. Can you identify these photographs?  
6 A. Yes, these are photographs I took of the stairwell  
7 area close to the location or I believe at the location  
8 where the proposed truck turnaround would be constructed --  
9 Q. Okay.  
10 A. -- as well as the, the bioretention pond.  
11 MR. GROSSMAN: So if you climbed the stairway to  
12 the top of the stairway would be the location of the  
13 bioretention --  
14 THE WITNESS: Well, actually on, it's Exhibit No.  
15 121, the stairway is actually visible and it is located on  
16 that exhibit. If you look at on, right where the turnaround  
17 begins there's a proposed tree there, there's a --  
18 MR. GROSSMAN: Yes, I see it.  
19 THE WITNESS: -- rectangular structure with  
20 crosshatching in it.  
21 MR. GROSSMAN: Yes.  
22 THE WITNESS: That's the location of the existing  
23 stairway.  
24 MR. GROSSMAN: Okay.  
25 THE WITNESS: So it's actually shown on this.

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1 MS. GIRARD: Oh, okay, yeah.  
2 THE WITNESS: I have to admit the first time I  
3 looked at the conditional use plan I missed this. But this,  
4 this gives us a very good indicator of where the turnaround  
5 structure will actually be because you've got something  
6 existing on the ground to locate it upon.  
7 MR. GROSSMAN: Where's the, which is the bottom of  
8 the stairway?  
9 THE WITNESS: The bottom would be away from you on  
10 the west side. So it goes from, the high end is on the east  
11 side roughly at the, at the level of the existing storage  
12 shed and then it drops down about 10 to 11 feet to the --  
13 BY MR. CHEN:  
14 Q. In a westerly direction?  
15 A. In a westerly direction to the existing tennis  
16 practice area with the wall they used to hit balls off of.  
17 Well, I'll show you that in a few minutes as well.  
18 MR. GROSSMAN: So it drops down in a westerly  
19 direction.  
20 THE WITNESS: Right.  
21 MR. GROSSMAN: So the bottom is --  
22 THE WITNESS: On the top.  
23 MR. GROSSMAN: -- if you were holding this  
24 vertically it would be the top portion would be the bottom  
25 of the steps?

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1 THE WITNESS: Yes.  
2 MR. GROSSMAN: Okay.  
3 MR. CHEN: You've got a prior couple of photos  
4 showing those stairs I believe.  
5 THE WITNESS: Well, I've got --  
6 MR. CHEN: I know you've got that --  
7 MR. GROSSMAN: He's got that.  
8 MR. CHEN: -- but they've already been --  
9 THE WITNESS: Okay.  
10 MR. CHEN: -- we've already identified them.  
11 BY MR. CHEN:  
12 Q. By the way, when were these photographs taken?  
13 A. Pardon me?  
14 Q. When were these photographs taken?  
15 A. Oh, again, November 18th.  
16 Q. Okay. And they accurately depict that which they  
17 purport to show?  
18 A. Yes.  
19 Q. Okay.  
20 A. They depict the stairway and the existing  
21 topography and the drop-off down from the upper level of  
22 where the storage shed is down to the flat area where the  
23 practice area is.  
24 Q. And I apologize if I've jumped ahead of you a  
25 little bit. It's my fault.

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1 A. It's okay.  
2 Q. But if you could in a more slow manner please,  
3 just take the Examiner through each, what each one of these  
4 three photographs show.  
5 A. Okay. Beginning with Exhibit No. 97(b)(i),  
6 first --  
7 MR. GROSSMAN: Right.  
8 THE WITNESS: -- I actually marked it with an A  
9 but it's 97 small B, small I. With an arrow on Exhibit No.  
10 121 I tried to, I depicted the angle from which that picture  
11 was taken.  
12 MR. GROSSMAN: I got you.  
13 THE WITNESS: I was standing in the Pauls'  
14 property looking back to the stairway. The Pauls' property  
15 can be recognized, and again this wasn't surveyed but, you  
16 know, reasonably close to this purpose by the chain-link  
17 fence you can see in the photograph.  
18 MR. GROSSMAN: Yes.  
19 THE WITNESS: Okay, that's really the property  
20 line between the Pauls' property and the, and the, the  
21 applicant's property. So you're looking back towards that,  
22 the stairway and you can see --  
23 BY MR. CHEN:  
24 Q. When you say back toward, you mean we're looking  
25 in a --

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1 A. The back --  
2 Q. -- easterly direction?  
3 A. -- easterly towards the upper, yeah, the stairway  
4 is, you're looking at the stairway so up on the stairway is  
5 in the easterly direction.  
6 Q. Yeah, and the Paul residence is behind you?  
7 A. Yes, the Paul residence is behind us.  
8 Q. Okay. Next photo --  
9 A. Well, I, I actually want to point out something --  
10 Q. Okay.  
11 A. -- on this one before I go to the next one.  
12 Q. Go ahead.  
13 A. If you look at the chain-link fence to the right,  
14 not all the way but about three quarters of the way over on  
15 the photograph there is a vertical support.  
16 MR. GROSSMAN: I see it.  
17 THE WITNESS: I want to use that as a point of  
18 reference for the next photograph.  
19 MR. GROSSMAN: Okay.  
20 THE WITNESS: So you can tell, you can tell from  
21 the photograph I'm standing where I say I'm standing.  
22 MR. GROSSMAN: All right.  
23 THE WITNESS: Okay. So now if I can go to  
24 97(b)(ii) you can see that, that vertical support for the  
25 chain-link fence just on the left side.

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1 MR. GROSSMAN: I do see it.  
2 THE WITNESS: I'm now looking directly across at a  
3 right angle to basically the midpoint of, of the stairway.  
4 MR. GROSSMAN: Yes.  
5 THE WITNESS: If, if you look at the, the drawing  
6 on 121, it depends, it depicts on crosshatches where the  
7 steps are and this stairway goes down in segments. It steps  
8 down, it flattens out, it steps down again then it flattens  
9 out. The, the edge of the proposed Stormwater Management  
10 facility, okay, would over, would be over on top of this.  
11 It would build up above this level, okay, and would be  
12 roughly six inches, it's been said several times, six  
13 inches, I haven't measured it, it could be eight inches,  
14 from the Pauls' property right at this point where the chain  
15 link fence is.  
16 MR. GROSSMAN: Right.  
17 THE WITNESS: You would be looking at it if you  
18 were standing here let's say a year from now or two years  
19 from now. You would be looking at the support structure for  
20 the, for the MBP facility, the Stormwater Management  
21 facility and the structural work they would have to do to  
22 support that and the truck turnaround.  
23 MR. GROSSMAN: Right.  
24 THE WITNESS: Because as I'm going to demonstrate  
25 even further in a few minutes this has got to be built up

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1 from the ground.  
2 MR. GROSSMAN: Right.  
3 THE WITNESS: Okay. This is good. Well, we'll  
4 talk about how high it is. So, and again, visually, you're  
5 standing here in the Pauls' property and you would be  
6 looking, you know, with, at the, at the structure for, to  
7 support the Stormwater facility, no more than six inches on  
8 the other side of that fence line. Okay. So now if we go  
9 down, go down further along towards the west along the  
10 Pauls' property --  
11 BY MR. CHEN:  
12 Q. How do you, how do you, if I may interrupt, how do  
13 you screen that six inches?  
14 A. How do I screen?  
15 Q. Six inches.  
16 A. I don't know how you would screen six inches. I  
17 mean, there's nothing I can put between the fence line,  
18 assuming the fence survives the construction and, and the  
19 facility to screen it. Six inches is, I don't know what I  
20 would put there, maybe a curtain or something, I don't know.  
21 Q. Okay.  
22 A. I wouldn't, I wouldn't, I would not have  
23 speculated. I don't know --  
24 Q. Okay.  
25 A. -- how to do that.

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1 Q. Can you screen it?  
2 A. Can I screen it?  
3 Q. Yeah. Can that wall --  
4 A. I would think the, I would think the wall would be  
5 constructed in some way to, that they would do something  
6 with the wall to cut back its visibility from the thing.  
7 You couldn't screen it independently if that makes any  
8 sense.  
9 Q. So it's going to be seen?  
10 A. Pardon me?  
11 Q. It would --  
12 A. Yeah, it would be seen, it would have to be seen.  
13 MR. GROSSMAN: Can it be made into kind of a, can  
14 there be a green wall in effect?  
15 THE WITNESS: Well, it could be a wood surface,  
16 yeah, but again what you're going to be looking at is a  
17 wall, not, not air and a fence and slope behind it. You're  
18 going to be looking at, you would be able to tell there's  
19 something there and it's being supported.  
20 MR. GROSSMAN: You can't put vegetation to grow on  
21 the way --  
22 THE WITNESS: I'm sure you could.  
23 MR. GROSSMAN: -- make it a green wall fence or  
24 something?  
25 THE WITNESS: I'm sure you could. But if you've

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1 ever been to Wrigley Field you can still see the wall on the  
2 other side.  
3 MR. GROSSMAN: Never been to Wrigley.  
4 THE WITNESS: I don't, I don't mean to be flippant  
5 about it --  
6 MR. GROSSMAN: I'm not making a site visit.  
7 THE WITNESS: -- but seriously --  
8 MR. GROSSMAN: I'm not making a site visit to  
9 Wrigley Field.  
10 THE WITNESS: Okay.  
11 MR. GROSSMAN: All right.  
12 THE WITNESS: No matter what you put on it to do  
13 it it's clearly going to be a support structure and a wall  
14 for the turnaround facility --  
15 MR. GROSSMAN: I understand.  
16 THE WITNESS: -- and the other facility, I can't  
17 say it any differently.  
18 MR. CHEN: Okay, continue.  
19 THE WITNESS: Again, if you look at Exhibit No.  
20 121 you can see that the proposed facility moves out from  
21 this, this close point to the, to the, the fence at a  
22 vertical angle roughly to the, the, the north and the west  
23 out for about 10 to 15 feet. You can see that? I'm trying  
24 to, I didn't measure this, I probably should have, at an  
25 angle. So if you, if you, if you take it and look at

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1 photograph 97(c)(i) which is, again, further west along the  
2 Pauls' property looking back towards the, the vertical wall  
3 that's part of the tennis practice facility --  
4 MR. GROSSMAN: Yes.  
5 THE WITNESS: -- if you remember Ms. Paul's  
6 testimony they were --  
7 MR. GROSSMAN: Bouncing off the wall, right.  
8 THE WITNESS: -- hitting balls off of it. That's  
9 what that was for --  
10 MR. GROSSMAN: All right.  
11 THE WITNESS: -- you know. So there's a flat area  
12 in front of it. But again, right in front of you you can  
13 see the fence line, damaged by the way. We'll get to that  
14 later. But again the fence line. Back towards the stairway  
15 which is just to the right, okay, in this view. And if you  
16 can imagine that the, the talked about wall is roughly at  
17 392 feet, the existing wall, okay. And that coming out  
18 maybe two feet lower than that according to the plan down to  
19 about 390 feet. But only two feet from the top to that  
20 bottom and that's a structure that you'd visibly see coming  
21 out towards you from this photograph. I'm trying to depict  
22 what, something that I can't draw on the thing but trying to  
23 illustrate to you what you would be seeing in terms of  
24 the --  
25 MR. GROSSMAN: Why can't --

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1 THE WITNESS: -- massiveness of the structure.  
2 MR. GROSSMAN: -- why can't you draw it on there?  
3 It might actually be helpful if you did have photographs  
4 which would show what this structure would look like --  
5 THE WITNESS: Uh-huh.  
6 MR. GROSSMAN: -- if it were there --  
7 THE WITNESS: Well, I've got --  
8 MR. GROSSMAN: -- depicted on the photograph.  
9 MR. CHEN: It's not our, it's not our obligation.  
10 MR. GROSSMAN: I didn't say it was your  
11 obligation. I would say that if you wanted to depict, if  
12 you wanted to show me what it's going to look, because even  
13 if I go out to the site I'm not going to see what it would  
14 look like. But if you have a, an exhibit which showed, as  
15 the applicant submitted exhibits purporting to show what  
16 their project will look like. If you had something that  
17 showed what it would look like superimposed on the picture  
18 that might be helpful.  
19 THE WITNESS: Uh-huh.  
20 MR. GROSSMAN: But I'll leave that to you. But  
21 also don't forget you need to give me electronic copies of  
22 all the extra exhibits you have filed today.  
23 MR. CHEN: Okay. If I may, I thought we had done  
24 that but I'll confirm the electronic --  
25 MR. GROSSMAN: The new ones that were filed today?

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1 THE WITNESS: Yes, we did.  
2 MR. CHEN: Yeah.  
3 MR. GROSSMAN: Okay.  
4 MR. CHEN: But I'll double check that.  
5 MR. GROSSMAN: Okay.  
6 MR. CHEN: I didn't say at my obligation.  
7 MR. GROSSMAN: What's that?  
8 MR. CHEN: On illustrating what will be there. I  
9 appreciate your comment, Mr. Examiner, I sincerely  
10 appreciate your comment that, you know, if my client had  
11 found a, I guess a graphic artist or something to make a, an  
12 illustration. Respectfully, this is the obligation of the  
13 applicant. The applicant has not come forward showing this.  
14 The applicant, one initial witness was talking about buffer  
15 area and how many feet until finally on cross-examination  
16 they came down to six inches. And respectfully, and I  
17 appreciate what you're saying and I, I wish I could say to  
18 my client, these are the undisputed facts, let's find  
19 somebody that can do it, these facts keep changing. And  
20 respectfully, I emphasize that I believe under at least the  
21 Zoning Ordinance that the obligation for providing adequate  
22 information so that the Examiner could see what was going to  
23 physically be there upon an approval which I think is  
24 fundamental that's the responsibility of the applicant.  
25 MR. GROSSMAN: Okay. You want to respond to that?

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1 MS. GIRARD: I would actually. On that point we  
2 actually had tried to, based on the photographs that were  
3 submitted I worked with our engineer and the client and the  
4 architect to see if we could create just such an exhibit --  
5 MR. GROSSMAN: Yes.  
6 MS. GIRARD: -- because I think we're all  
7 struggling with the grades and it's hard --  
8 MR. GROSSMAN: And trying to figure out the many  
9 views?  
10 MS. GIRARD: It's very hard to visualize. And to  
11 that end I was trying to have us all create that. The  
12 problem was without actually having our guys go on the  
13 property and take a picture so that they know, you know, how  
14 tall they are when they're taking the picture, exactly where  
15 they're located, it's guesswork on our behalf. So we're  
16 happy to do it if we can get access to the property to take  
17 the picture.  
18 MR. GROSSMAN: What about that, Mr. Chen?  
19 MR. CHEN: My clients have no problem. They  
20 wanted somebody there, want to see them and you know,  
21 opportunity to cross-examine and all those other aspects of  
22 evidence that would be before the Examiner.  
23 MR. GROSSMAN: Have you requested that previously?  
24 MS. GIRARD: We haven't aside from when we  
25 initially had, you know, requested to meet with the Pauls we

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1 haven't tried again to get access to the property.  
2 MR. CHEN: My clients have never denied access to  
3 the property.  
4 MR. GROSSMAN: Okay.  
5 MR. CHEN: There was a meeting and they asked for  
6 a meeting at Dr. Paul's office. There was such a meeting,  
7 he accommodated that. Okay, there has been no --  
8 MR. GROSSMAN: I understand.  
9 MR. CHEN: -- you know, I hear what is being said  
10 but --  
11 MR. KAUFMAN: I think we had asked for a follow-up  
12 meeting.  
13 MR. GROSSMAN: Well, all right --  
14 MS. GIRARD: Be that as it may, yeah.  
15 MR. GROSSMAN: -- it's all neither here nor there.  
16 MS. GIRARD: Yeah, I mean --  
17 MR. GROSSMAN: I mean, the point is that, that it  
18 would just be helpful and he is, Mr. Chen is right, that it  
19 is the applicant's obligation to show. I just thought that  
20 if you wanted to show from your perspective what it would  
21 look like that would be a helpful exhibit. Maybe depending  
22 on our schedule today that may or may not fit into the  
23 scenario.  
24 MR. KAUFMAN: Mr. Examiner, if you don't mind,  
25 it's time --

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1 MR. GROSSMAN: Yes, you have to leave.  
 2 MR. KAUFMAN: -- for me to go. I have to go.  
 3 MR. GROSSMAN: Okay. Thank you, sir.  
 4 MR. KAUFMAN: I'll turn into a pumpkin now.  
 5 MR. GROSSMAN: You're excused.  
 6 MR. KAUFMAN: Thank you, I apologize.  
 7 MR. GROSSMAN: I can't say have a nice weekend  
 8 because I don't think it's a weekend now.  
 9 MS. GIRARD: No, I wish.  
 10 MR. GROSSMAN: All right, sir.  
 11 THE WITNESS: But, to address exactly the point  
 12 about how much construction and fill would be in there, I  
 13 wanted to go back to the, actually conditional use plan  
 14 which actually shows, and the reason I want to do this is it  
 15 actually shows the existing topography --  
 16 MR. GROSSMAN: Yes.  
 17 THE WITNESS: -- and location of existing  
 18 structures in addition to what's proposed.  
 19 BY MR. CHEN:  
 20 Q. And we're talking about --  
 21 A. And that's Exhibit --  
 22 Q. -- 79(a)(i)?  
 23 A. Yeah, that's correct, 79(a)(i).  
 24 MR. GROSSMAN: I just happen to have that right  
 25 here.

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1 THE WITNESS: Yeah, you can see I've used mine.  
 2 And the enlargement the applicant gave is very helpful  
 3 because it actually pointed out a couple of things that I  
 4 had missed in my previous review of this.  
 5 BY MR. CHEN:  
 6 Q. Before you start, do you want to use this? What's  
 7 your preference?  
 8 A. I actually don't, don't know what I did with my  
 9 copy. So I'm actually --  
 10 Q. Okay.  
 11 A. -- using the, the original, the original document.  
 12 It shows the same thing. That's actually helpful.  
 13 MR. CHEN: What's our next exhibit?  
 14 MR. GROSSMAN: So what are you looking at now,  
 15 sir?  
 16 MR. CHEN: He's got --  
 17 THE WITNESS: It's a photocopy of the relevant  
 18 portion of 79 --  
 19 MR. GROSSMAN: Okay.  
 20 THE WITNESS: -- the conditional use plan.  
 21 MR. GROSSMAN: All right.  
 22 THE WITNESS: No alterations on it. Other than  
 23 that it's easier to handle.  
 24 MR. GROSSMAN: Okay.  
 25 THE WITNESS: The one difference is it tends to

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1 highlight the contour lines a little bit more than the  
 2 original document did which I think is useful for this  
 3 purpose.  
 4 MR. GROSSMAN: All right. We can give it Exhibit  
 5 No. 122. And that's enlargement of western corner of  
 6 conditional use plan.  
 7 (Hearing Exhibit No. 122 was  
 8 marked for identification.)  
 9 THE WITNESS: Okay.  
 10 MR. GROSSMAN: All right, sir.  
 11 THE WITNESS: Okay. I'd like to point out two  
 12 things. First of all, in, in dash, in dash lines we have  
 13 both existing, we have existing contour lines here --  
 14 MR. GROSSMAN: Yes.  
 15 THE WITNESS: -- that's the existing slope but  
 16 also in, in, in solid and straight lines we have proposed  
 17 grade.  
 18 MR. GROSSMAN: Yes.  
 19 THE WITNESS: So you can see both the existing and  
 20 proposed elevations on this. That's why I wanted to refer  
 21 to this. If you look at the, again this stairway is located  
 22 on, on the, the illustration.  
 23 MR. GROSSMAN: I see it.  
 24 THE WITNESS: Okay. If you look just to the right  
 25 of the top of that stairway, the, the east end of the

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1 stairway there's a rectangle there. That is in fact the  
 2 existing, the outline of the existing storage building.  
 3 MR. CHEN: Do you see, Mr. Examiner?  
 4 MR. GROSSMAN: No, I'm not.  
 5 THE WITNESS: Here, may I?  
 6 MR. GROSSMAN: Sure. Is that this large rectangle  
 7 here?  
 8 THE WITNESS: No, that's, that's actually the  
 9 practice area and I'll show this to the others. This  
 10 rectangle here is the storage building.  
 11 MR. GROSSMAN: Oh, okay, this one.  
 12 THE WITNESS: Okay? Yes.  
 13 MR. GROSSMAN: Okay.  
 14 THE WITNESS: And you can see also the, the  
 15 existing tennis bubble.  
 16 MR. GROSSMAN: Okay, so it's, it's the rectangle  
 17 that covers a portion of the trash enclosure?  
 18 THE WITNESS: Yes, exactly. That's --  
 19 MR. GROSSMAN: All right.  
 20 THE WITNESS: -- again, that's part of the point.  
 21 MR. GROSSMAN: All right.  
 22 THE WITNESS: Yes. So, the elevation at that  
 23 level at the very corner is roughly 396 feet currently.  
 24 Now, what the applicant's testimony has said they're going  
 25 to do is, is actually decrease the slope of the driveway.

1 They're going to grade it a little bit in order to decrease  
 2 the slope --  
 3 MR. GROSSMAN: Right.  
 4 THE WITNESS: -- at the bottom end. So, and this  
 5 also has to do with stormwater but I'll get to that later.  
 6 I don't want to mix too many things up. So then at the, at  
 7 this level it's going to be 396 feet. But if you can see  
 8 the existing contour lines past the rectangle for the  
 9 existing build it's such a drop off relatively  
 10 precipitously, sorry --  
 11 MR. GROSSMAN: All right.  
 12 THE WITNESS: -- that's the area they've  
 13 identified as steep slope of over 25 percent and the, the  
 14 natural resources inventory I believe as well. And that's  
 15 also the area you could see on the photograph where the,  
 16 where you could see a fairly steep slope behind that  
 17 stairway and how quickly it drops off.  
 18 MR. GROSSMAN: And if my eye is not incorrect the  
 19 trash enclosure, the closest trash enclosure to the property  
 20 line looks like about 30 feet, is that fair?  
 21 THE WITNESS: I think that's fair, yes, for the  
 22 trash, for the trash enclosure --  
 23 MR. GROSSMAN: Right.  
 24 THE WITNESS: -- yes. Okay. And the trash  
 25 enclosure, if you look at the, the proposed contours as a

1 solid line that goes up to the far western corner is at, is  
 2 at 394 feet.  
 3 MR. GROSSMAN: Okay.  
 4 THE WITNESS: Okay, so you've got the building at  
 5 392, like I said, they're going to grade it and fill so it's  
 6 going to go up to 394. But the existing contours drop off  
 7 quickly from the foot of the existing storage building down  
 8 towards the flat area, that other rectangle you pointed out  
 9 is the flat area for the tennis practice area.  
 10 MR. GROSSMAN: Okay.  
 11 THE WITNESS: Okay. That, that's roughly 12 feet,  
 12 that's an elevation of 384 feet. So it's 12 feet down from,  
 13 vertically down from, from the, the elevation of the storage  
 14 building.  
 15 MR. GROSSMAN: Right.  
 16 THE WITNESS: If you look at the truck turnaround  
 17 and the proposed pond which forms kind of an L shape around  
 18 the truck turnaround. Okay. That, that is going to be at  
 19 an elevation according to this of 390 feet. It's somewhat  
 20 lower than the trash compactor. Okay?  
 21 MR. GROSSMAN: Okay.  
 22 THE WITNESS: So, but that's the new contour.  
 23 But, but the contour below it, the existing surface is 384  
 24 feet. So there's a, there's a six-foot difference between  
 25 the top of that, that filtration structure, that Stormwater

1 Management structure and the existing surface.  
 2 MR. GROSSMAN: Right.  
 3 THE WITNESS: So, for this entire area located  
 4 from roughly the edge of the trash enclosure all the way  
 5 back to the remainder of, of the proposed Stormwater  
 6 structure all has to be built up and supported because it  
 7 currently would be in, you know, there's no ground there at  
 8 the moment. It all, it all has to be filled in and  
 9 constructed to support that.  
 10 MR. GROSSMAN: Okay.  
 11 THE WITNESS: Okay. So that, the, so what happens  
 12 there is they have to build that up, fill it, I don't know  
 13 how, I don't, I'm not a stormwater person so I don't know  
 14 what the stormwater structure is in terms of the gravel and  
 15 that kind of thing.  
 16 MR. GROSSMAN: Right.  
 17 THE WITNESS: But it has to have a retaining wall  
 18 to hold it.  
 19 MR. GROSSMAN: Sure.  
 20 THE WITNESS: Okay. Just to, just to make sure it  
 21 doesn't over time push out and collapse. The other thing to  
 22 look at, however, is that there's going to be some  
 23 additional grading behind it. So that looking west, going  
 24 to the west of this structure you're not going to see a  
 25 vertical drop. They're going to grade it and gradually drop

1 it down to the existing 384-foot level down towards the end  
 2 of where that stormwater outfall is.  
 3 MR. GROSSMAN: Right.  
 4 THE WITNESS: Not quite all the way down but part  
 5 way down. The interesting thing that happens though is that  
 6 the ground level on the Pauls' property remains at its  
 7 existing elevation.  
 8 MR. GROSSMAN: Right.  
 9 THE WITNESS: So when you get to the fence line  
 10 you've got a variation from anywhere from two to 12 feet of  
 11 vertical drop at the Pauls' line.  
 12 MR. GROSSMAN: Okay.  
 13 THE WITNESS: Okay. There's no indication that  
 14 there's a structure there. So, my, my assumption --  
 15 MR. GROSSMAN: There's no indication that there's  
 16 a structure where?  
 17 THE WITNESS: At, at the, on the Pauls' property  
 18 line to support that grade difference.  
 19 MR. GROSSMAN: Okay.  
 20 THE WITNESS: So there's going to be a relative  
 21 vertical drop-off at some relatively steep slope between  
 22 elevations 384, 386, 388, and 390 feet all the way back to  
 23 that, that six-inch piece, you know, straight down at the  
 24 Pauls' structure. Now, right at the six inches you'll see  
 25 it as the wall but it'll look like it's going to be ground

1 or some kind of graded maybe planted earth further to the  
2 west of that along the property line.

3 MR. GROSSMAN: Okay.

4 THE WITNESS: So what you have from the Pauls'  
5 perspective however is a really steep slope. So it's going  
6 to look a lot similar to what we see in current photographs  
7 up a lot further up here where there's a vertical drop-off  
8 in one of the, one, one of the photographs showed the  
9 existing stormwater pipe which was much further up on the  
10 east of this property and how vertical that drop was, that's  
11 going to now be recreated in an area alongside the Pauls'  
12 property that is currently flat because the stairway goes  
13 down there and it levels off and that's where they practice.

14 MR. GROSSMAN: Right.

15 THE WITNESS: So there's construction not only to  
16 support the turnaround and the, and the filtration pond but  
17 there's also an impact for which I don't see anything in  
18 terms of talking about stabilizing that slope between the  
19 rest of the earthen, movement of earth on the west side of  
20 the parcel back to where the lines coincide with on the Paul  
21 property. What this tends to show, if you look along the,  
22 the, along the Pauls' property which is on the, the south  
23 and west side of these lines, it kind of shows all these  
24 topo lines and then there's a nice little dotted line  
25 pointing out of the Pauls' property. Well, what really

1 happens, there's got to be some transition between those two  
2 points.

3 MR. GROSSMAN: Right.

4 THE WITNESS: Okay, I mean, it doesn't just go out  
5 that way if, if that isn't the current, where the  
6 current land is. So there's going to be a drop-off at these  
7 locations. That's another impact that really hasn't been  
8 discussed too much. But visually what you have at this,  
9 this structure is at least two to four feet of structure  
10 visible from all along the edge of the Pauls' property  
11 looking back towards that Stormwater Management, whether  
12 it's going to be a planted berm or it's going to be the  
13 actual support structure that has to be back in there to  
14 hold the facility in place.

15 MR. GROSSMAN: Right.

16 THE WITNESS: And in part of that you're actually  
17 going to see the structure. So I think that's a visual  
18 impact that the Pauls are going to be dealing with.

19 MR. GROSSMAN: Right. I'm less concerned about  
20 the seeing a berm than I am about seeing a wall --

21 THE WITNESS: Right.

22 MR. GROSSMAN: -- so, okay.

23 THE WITNESS: But, you know, I wanted to show that  
24 they were taking care of the slope to make sure it didn't  
25 erode and --

1 MR. GROSSMAN: Right.

2 THE WITNESS: -- you know, doing their due  
3 diligence on the subject property.

4 MR. GROSSMAN: Right.

5 THE WITNESS: But because of the constraints of  
6 this site and it gets so narrow down at this point and  
7 there's very little space between that structure and the  
8 Pauls' property there's very little they can do to do an  
9 average and graded slope between the Pauls' property --

10 MR. GROSSMAN: I understand.

11 THE WITNESS: -- and the structure.

12 MR. GROSSMAN: If they put that particular  
13 structure there?

14 THE WITNESS: Well, that's the proposal.

15 MR. GROSSMAN: I understand and that's what you'd  
16 have to testify to. Okay.

17 THE WITNESS: Okay. What are these -- I'm not  
18 sure why, I'm sorry, I think I'm done with the structure  
19 itself. But I guess my point -- oh, there is one more thing  
20 on this illustration you should, you should look at. And I  
21 know it's been pointed out to you in the past and that's  
22 the, the dashed line that shows the setback line of 20 feet.  
23 And I know you've had a conversation with previous  
24 testifiers as to whether to, the Stormwater Management  
25 structure is a structure for the purpose of that setback.

1 And normally I guess I, if it were, if it were ground level  
2 I wouldn't, wouldn't argue with you but the fact that you  
3 have to build it up eight to 10 feet it's --

4 MR. GROSSMAN: No, we know it's a structure. The  
5 question is whether it fits in the definition of accessory  
6 structure --

7 THE WITNESS: Ah.

8 MR. GROSSMAN: -- which is a more particularized  
9 term.

10 THE WITNESS: Right. And I don't see it in that  
11 definition --

12 MR. GROSSMAN: Okay.

13 THE WITNESS: -- or referred to that as one.

14 MR. GROSSMAN: So, clearly it fits the definition  
15 of structure. So, if that were moved considerably away from  
16 the property line --

17 THE WITNESS: Uh-huh.

18 MR. GROSSMAN: -- and if the trash enclosure were  
19 moved maybe to the northeastern section of this property --

20 THE WITNESS: Uh-huh.

21 MR. GROSSMAN: -- you could eliminate some of  
22 those constraints and have a more gradual hill there down to  
23 the, the Pauls' property, is that correct?

24 THE WITNESS: Presumably there would be no reason  
25 to change the grading and --

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1 MR. GROSSMAN: Right.  
2 THE WITNESS: -- change the existing condition  
3 except, you know, to improve it visually and do away with  
4 the tennis supply thing.  
5 MR. GROSSMAN: Uh-huh.  
6 THE WITNESS: I guess the issue is, given the  
7 constraint of the triangular site and the amount of space  
8 they use for the actual, the primary structure, the  
9 residential care facility --  
10 MR. GROSSMAN: Right.  
11 THE WITNESS: -- so I don't know where they would  
12 put this.  
13 MR. GROSSMAN: You mean, where they would put  
14 the --  
15 THE WITNESS: I mean, I guess that's not my role  
16 but I don't know --  
17 MR. GROSSMAN: You mean where they'd put the trash  
18 enclosure or where they would put the --  
19 THE WITNESS: Put any of these facilities.  
20 They're there for a reason.  
21 MR. GROSSMAN: Right.  
22 THE WITNESS: You know, and now I am getting in  
23 ahead of myself a little bit but the reason is that they're,  
24 they're putting a good public face to the main entrance to  
25 the facility which I would too to make it look good and keep

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1 it, keep it clean and pleasant looking. They're also  
2 presenting a very nice face both for the residents and for,  
3 for environmental reason to the conservation area to the  
4 north. But in this constrained site where do you put all  
5 the business end of the thing. And where they've chosen to  
6 put it on this drawing is, is on the south and west end next  
7 to the Pauls' property. And we can go through the list of  
8 things that are over there and argue about any one of them  
9 are really that huge. But they're there because the site  
10 constraints, that's the only place they're allowed to be.  
11 MR. GROSSMAN: I, I know that the question was  
12 raised about why couldn't the driveway be placed on the  
13 northeastern side instead of the southwestern side and then  
14 it kind of, I'm not sure exactly why the Planning Board  
15 decided that, not to do that or not to request that. I'd  
16 like more information about that and whether or not the  
17 trash enclosure could be moved to the northeastern corner  
18 somewhere because there appears to be a fair amount of room  
19 there in the parking area. And if that is moved could not  
20 then the Stormwater Management facility be moved at least 15  
21 feet away from the, the western property line there. And  
22 finally, what is the problem in moving, in having the  
23 driveway, flipping the facility, in effect having the  
24 driveway on the northeastern side. I don't really have,  
25 since you've presented a plan and I understand that that's

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1 the plan that's being addressed, I would like to know since  
2 compatibility with the Pauls' residence is the real  
3 compatibility issue in this case is there a way to handle  
4 these issues and still have, you know, a substantial  
5 facility here and whether or not that third story -- and I'm  
6 addressing applicant's counsel now, whether that third story  
7 coming back from the courtyard could be removed on the  
8 western side, go down to two stories there so you'd present  
9 less of a structure there so that that which is impacting  
10 the Pauls could be significantly reduced. Those are the  
11 questions I have.  
12 MS. GIRARD: Can I just walk through your  
13 questions on the plan to make sure I'm getting --  
14 MR. GROSSMAN: Sure.  
15 MS. GIRARD: -- it right? When you say flip the  
16 facility you mean this trash enclosure here --  
17 MR. GROSSMAN: Well let me put my glasses on so I  
18 can see what you're doing.  
19 MS. GIRARD: Sorry. I think that's what you mean  
20 but when you said flip the facility I just wanted to --  
21 MR. GROSSMAN: Yeah, well, the flipping would be  
22 the, would be putting the driveway, the access way on the  
23 northeast side. That was what I meant by flipping. Moving  
24 the trash enclosure wasn't what I meant by flipping but I  
25 would --

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1 MS. GIRARD: Oh, okay.  
2 MR. GROSSMAN: -- I said why not move that trash  
3 enclosure all the way down to the northeast corner, yeah,  
4 far away from where it would create any noise or disturbance  
5 or odors or anything else for the, for the Pauls. There  
6 seems to be room there and I wonder why that couldn't be  
7 done. And then if you, then you would have room,  
8 presumably, to move that --  
9 MS. GIRARD: This back?  
10 MR. GROSSMAN: Yeah, move the --  
11 MS. GIRARD: Right.  
12 MR. GROSSMAN: -- Stormwater Management facility  
13 away so it wouldn't be six inches from the property line  
14 which I could see would be potentially problematic  
15 especially if it's going to be a wall. So, and then the  
16 final thing is looking at the, the entire western --  
17 MS. GIRARD: Yeah.  
18 MR. GROSSMAN: -- end of that whether that portion  
19 of it could be reduced to two stories so as not to be as  
20 imposing. Not even --  
21 MS. GIRARD: Right.  
22 MR. GROSSMAN: -- not necessarily going all the  
23 way around --  
24 MS. GIRARD: Right here.  
25 MR. GROSSMAN: -- to the --

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1 MS. GIRARD: Yeah.  
2 MR. GROSSMAN: -- past the courtyard but just on  
3 that portion from the courtyard, the western end of the  
4 courtyard, by west of course the --  
5 MS. GIRARD: And by flipping what did you mean?  
6 MR. GROSSMAN: I meant --  
7 MS. GIRARD: I just want to make sure.  
8 MR. GROSSMAN: -- whether or not the driveway  
9 could be moved --  
10 MS. GIRARD: This?  
11 MR. GROSSMAN: -- from the west, southwestern and  
12 the whole driveway to the northeastern side which is  
13 something that was raised, I believe, earlier before the  
14 Planning Board.  
15 MS. GIRARD: Oh, oh, is that sliding this and  
16 putting it here?  
17 MR. GROSSMAN: Yeah.  
18 MS. GIRARD: Okay.  
19 MR. GROSSMAN: Putting a driveway on that side.  
20 MS. GIRARD: I got it. I was, I was being  
21 backwards for some reason.  
22 MR. GROSSMAN: Because that's the, the nut of the  
23 complaint here from the Pauls is that they're going to have  
24 all this activity, they have, first of all the Stormwater  
25 Management facility within six inches of their property,

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1 they have a trash thing and that's not all that far from  
2 their property line and then they have various service  
3 things going on along the, the driveway. And I'd like to  
4 see if that can be explored to see if that particular  
5 portion of their concern could be eliminated by flipping  
6 where the driveway is to the other side of the building.  
7 MS. GIRARD: Understood. Okay.  
8 MR. CHEN: I'm not sure where that leaves us.  
9 THE WITNESS: Well, where I am is, I think I've  
10 explained as much as I can without exhausting Mr. Grossman's  
11 patience the discussion about the, the facility. So maybe  
12 we should go to some of the other questions.  
13 MR. GROSSMAN: How much more of Mr. Noonan's  
14 testimony do you have?  
15 MR. CHEN: Well we're still going.  
16 MR. GROSSMAN: I understand, just give me a  
17 guesstimate here.  
18 MR. CHEN: Oh, I apologize, half hour.  
19 MR. GROSSMAN: Okay.  
20 MR. CHEN: 20 minutes, half hour, it's got to be.  
21 MR. GROSSMAN: Just wondering what the most  
22 efficient way to do this is. And given what I've now heard  
23 from the opposition it raises these questions in my mind and  
24 I wonder whether we're in effect going to have to have  
25 another session to hear those responses and any revised plan

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1 and to hear any testimony regarding that which looks like it  
2 must be the case. Anybody have any ideas? Ms. Girard?  
3 MS. GIRARD: I was just going to say, to the  
4 extent we were talking about how to plan the night, we were  
5 going to call back the applicant, the land planner and we  
6 were going to call an appraiser. So --  
7 MR. GROSSMAN: Okay, so --  
8 MS. GIRARD: -- I think we could be --  
9 MR. GROSSMAN: So we're not going to finish today?  
10 MS. GIRARD: Yeah, I --  
11 MR. GROSSMAN: All right.  
12 MS. GIRARD: -- I know we said we'd go late but I  
13 don't know how late you're willing to go?  
14 MR. GROSSMAN: Yeah. All right.  
15 MS. GIRARD: So we could definitely have answers  
16 to your questions. We can roll that into when we were going  
17 to call back the land planner anyway and have --  
18 MR. GROSSMAN: All right. And may I make a  
19 suggestion? That not only confer with your own folks but  
20 talk to Mr. Chen and Mr. Uhre and Ms. Lee and see if you all  
21 can agree on some modification that would eliminate many of  
22 those concerns. You're not going to eliminate the traffic  
23 concern but it will be reduced if you take a portion of the  
24 building off and have fewer beds but maybe many of the  
25 concerns can be eliminated. And let's face it, I mean,

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1 senior residence is a desirable thing for the County so, and  
2 it's not just a question of whether there are adverse  
3 consequences to the, to the neighbors because when the  
4 Council allows, voted in its Zoning Ordinance to allow  
5 conditional uses such as this one in the zone they've made a  
6 decision that they realize that there may be adverse  
7 consequences, some adverse consequences to the neighbors but  
8 they feel that the public good has to be rolled into that  
9 consideration. And so they create the system to evaluate  
10 how much of an imposition it will be and in fact the way  
11 it's structured is in terms of whether or not the adverse  
12 consequences are inherent in this kind of use. And if there  
13 were no non-inherent characteristics then there would be no  
14 basis for denying a conditional use. But if there are non-  
15 inherent, that is those that are created by either the  
16 particular type of project that's proposed or by the site  
17 conditions then there could be, there would be a  
18 consideration as to whether or not those create undue  
19 adverse consequences or if there are a combination of  
20 inherent and non-inherent they can also be considered. So  
21 what I'm trying to say to you is, you know, the Council  
22 recognized in passing the Zoning Ordinance that there might  
23 be impacts that would be considered adverse to neighbors.  
24 But they try to create a balancing situation. So we do  
25 consider all of those things in terms of the compatibility

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1 evaluation. And in this particular conditional use the  
2 Council gave the Hearing Examiner considerable latitude in  
3 terms of adjusting the proposal based on compatibility  
4 considerations. So, that's what I'm, you know, I want the  
5 parties to consider and to consult with each other. What's  
6 a good day to come back here?  
7 MS. GIRARD: I can commit my consultants to  
8 anything, right? Yeah, I mean, we would like to move  
9 expeditiously but maybe the end of this week?  
10 MR. GROSSMAN: It can't be the end of this week  
11 because under the Zoning Ordinance I must give 10 days'  
12 notice. I can make the announcement at the public hearing  
13 and give 10 days' notice but there must be at least 10 days'  
14 notice, either a continued or resumed hearing. Let me see,  
15 there was a calendar under here somewhere buried under all  
16 this stuff.  
17 MS. GIRARD: Can we do it exactly in 10 days then  
18 on the 17th?  
19 MR. GROSSMAN: I think I would prefer to do the  
20 18th.  
21 MR. CHEN: I'm good on the 18th if the 18th works.  
22 MR. GROSSMAN: Can you do the 18th?  
23 MS. GIRARD: That works for me as well.  
24 MR. GROSSMAN: Okay.  
25 THE WITNESS: Do you have a time?

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1 MR. GROSSMAN: It would be 9:30.  
2 MR. CHEN: Wait, we've got a problem, we've got a  
3 problem.  
4 MR. UHRE: No, I can't be here on the 18th but I  
5 don't want to preclude you from going forward.  
6 MR. GROSSMAN: Can Mr. Duncan if he's forgiven me  
7 take your place?  
8 MR. UHRE: That's going to be very difficult  
9 probably to do but I certainly, Suzanne and others can be  
10 here, I think that they could express our feelings. But  
11 I --  
12 MR. GROSSMAN: What do you look on the 17th?  
13 MR. UHRE: I'm out of commission until --  
14 MR. GROSSMAN: Okay.  
15 MR. UHRE: -- basically the 1st of the year --  
16 MR. GROSSMAN: Okay.  
17 MR. UHRE: -- starting on the 18th.  
18 MR. GROSSMAN: Okay.  
19 MR. UHRE: If my plans change that's another  
20 thing. But the question I would have, it's, is if I may?  
21 MR. GROSSMAN: Yes.  
22 MR. UHRE: Am I permitted to ask a question?  
23 MR. GROSSMAN: Absolutely.  
24 MR. UHRE: As we're trying to go through this  
25 configuration I think one of the things that at least I have

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1 found difficult is if we, if there is another proposal can  
2 we at least have a few days of seeing that proposal before  
3 we appear here in front of the Hearing Examiner? I think it  
4 would be very helpful to --  
5 MR. GROSSMAN: Yes.  
6 MR. UHRE: -- be able to look at it, touch it,  
7 feel it and try to figure out?  
8 MR. GROSSMAN: I fully agree with you. Can --  
9 MS. GIRARD: Yes.  
10 MR. GROSSMAN: By when could you get us, today is  
11 the 7th, can you get it by the 14th? That's the Monday,  
12 that's one week.  
13 MR. KAUFMAN: To give a response that's thorough  
14 to the things that the --  
15 MS. GIRARD: Right.  
16 MR. KAUFMAN: -- Examiner asked that's a fair  
17 request.  
18 MS. GIRARD: Yes.  
19 MR. KAUFMAN: We're not, we're not, I mean, I  
20 think it needs to be clear that we don't know if any of it's  
21 feasible, you know what I mean --  
22 MS. GIRARD: Right.  
23 MR. KAUFMAN: -- we'll answer the questions and  
24 provide a response.  
25 MS. GIRARD: Right.

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1 MR. KAUFMAN: Yes.  
2 MS. GIRARD: Understanding there, you know, there  
3 may be some additional things that need to be worked out --  
4 MR. PAUL: Why don't we just do it the first week  
5 of January?  
6 MS. GIRARD: -- but we'll --  
7 MR. GROSSMAN: Okay.  
8 MS. GIRARD: -- explain that.  
9 MR. CHEN: No, I can't, I can't. First week of  
10 January --  
11 MR. GROSSMAN: There's your answer, your attorney  
12 can't.  
13 MR. CHEN: I've got --  
14 MR. GROSSMAN: Okay.  
15 MS. GIRARD: Yes --  
16 MR. CHEN: -- hearings --  
17 MS. GIRARD: -- we can do that.  
18 MR. GROSSMAN: All right. So why don't we say  
19 that then, we'll say by the, note this down here, by  
20 December 14 you will produce the responses and if necessary  
21 a proposed revised plan and we'll meet here on the 18th of  
22 December, 2015, at 9:30 a.m., same place.  
23 MR. PAUL: December 18th at 9:30?  
24 MR. GROSSMAN: Yes, December 18 at 9:30 a.m.  
25 That's a Friday, the Council Office Building, hearing room

1 200. I announce it at the public hearing because that's the  
2 requirement it has to be published or announced at a public  
3 hearing. Now, what is your pleasure? Do we want to resume  
4 with Mr. Noonan now so that potentially you can be finished  
5 or does it make sense to wait? What do you think?  
6 MR. CHEN: I think it's going to make sense, I'm  
7 going to want to see on the 14th, I just asked him what his  
8 availability is because I want --  
9 MR. GROSSMAN: Right.  
10 MR. CHEN: -- him to see it. Everything now is  
11 predicated on something different quite frankly.  
12 MR. GROSSMAN: All right.  
13 MR. CHEN: So I'm, my suggestion --  
14 MR. GROSSMAN: All right.  
15 MS. GIRARD: I agree.  
16 MR. CHEN: -- is let's, let's cut here and go for  
17 the 18th --  
18 MR. GROSSMAN: Okay.  
19 MR. CHEN: -- with the information.  
20 MR. GROSSMAN: All right.  
21 MR. CHEN: I'll get you a letter tomorrow --  
22 MR. GROSSMAN: Yes.  
23 MR. CHEN: -- about a site visit so that it sounds  
24 like I think you were thinking of if you were going to  
25 conduct a site visit the 8th I thought you were, am I

1 mistaken on that, or you were going to make a decision by  
2 the 8th or --  
3 MR. GROSSMAN: No, well, you were going to get me  
4 the letter by the 8th and then I gave the applicant a few  
5 days to respond --  
6 MR. CHEN: Right.  
7 MR. GROSSMAN: -- because they objected --  
8 MR. CHEN: Got you.  
9 MR. GROSSMAN: -- to doing a site visit at this  
10 point. And I mean, my concern about the site visit is more  
11 a question of will it really show me anything more than I've  
12 seen in a lot of photos here. The real concern I have is  
13 what it will look like when the building is up.  
14 MR. CHEN: Yeah.  
15 MR. GROSSMAN: And that I won't see in a site  
16 visit.  
17 MR. CHEN: Right.  
18 MR. GROSSMAN: So I'm not sure it's going to show  
19 me what I really need to see.  
20 MR. CHEN: Okay.  
21 MR. GROSSMAN: Ms. Lee?  
22 MS. LEE: Just one concern, especially if Curt is  
23 not going to be around is just I, because this is my first  
24 time with these, is just making sure that if things start to  
25 really change during the hearing --

1 MR. GROSSMAN: Yes.  
2 MS. LEE: -- on the 18th and people are making  
3 commitments that we just have a chance to respond to that in  
4 some meaningful way --  
5 MR. GROSSMAN: Absolutely.  
6 MS. LEE: -- whether writing or when Curt is  
7 available or --  
8 MR. GROSSMAN: Yes. Two things will happen. If  
9 new plans come in, number one they'll have to be submitted  
10 not only to the other parties here but to technical staff  
11 for its review. And it may tell me that it can't be done  
12 for some reason, you know, for potentially environmental, I  
13 just don't know. So they would have to review it and if  
14 they wanted to they could send it to the Planning Board  
15 again but I don't know that they would do that. Usually  
16 they review it for changes and plans. Then you would  
17 certainly be given an opportunity to respond. That's why  
18 preliminarily before a hearing here you're going to see  
19 whatever it is that's being newly proposed on the 14th --  
20 MS. LEE: Okay.  
21 MR. GROSSMAN: -- of December. So, you know, we  
22 want to get it right here as best as possible.  
23 MR. UHRE: Mr. Grossman?  
24 MR. GROSSMAN: Yes?  
25 MR. UHRE: May I ask just one last question? If

1 the applicant should by way come back and say they can't do  
2 any of the things that you requested or at least they can't  
3 move the truck turnaround could they provide us with a more  
4 detailed drawing because they've not been allowed to go on  
5 the site that would show that in greater detail so we have a  
6 better grasp of what that's going to look like?  
7 MR. GROSSMAN: A more detailed drawing of what?  
8 MR. UHRE: Of the truck turnaround area, if --  
9 MR. GROSSMAN: They did.  
10 MR. UHRE: -- if they say they can't move it, if  
11 they say for example they're coming back and can't move it  
12 so we're back to square one I think we had talked previously  
13 of them providing some more detail of that area was, or was  
14 I incorrect in understanding?  
15 MR. GROSSMAN: I'm not sure what exactly more  
16 detail there can be in that area. I'm not sure what you're  
17 getting at.  
18 MS. GIRARD: Did you mean the perspective that we  
19 were talking about?  
20 MR. GROSSMAN: Perspective from the, from the  
21 Pauls' property --  
22 MR. UHRE: Yes.  
23 MR. GROSSMAN: -- with the building inserted as a,  
24 we often see that by the way when I, you know, on cell tower  
25 cases. They produce photographs showing what the cell tower

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1 will look like from various parts and so that kind of thing  
2 can be done and it does give you an idea of what the, what  
3 the visual impact will be. That would be helpful in this  
4 kind of case.  
5 MR. UHRE: Okay.  
6 MR. GROSSMAN: And by the way, the applicant  
7 doesn't have to make any of these changes, they can go  
8 forward with their plans exactly as they are and then I will  
9 have to evaluate it in the context of all the evidence I've  
10 heard.  
11 MR. UHRE: I was just wondering if anything could  
12 be, we're all struggling with this truck turnaround  
13 obviously and I didn't know if there was any way to better  
14 provide additional information.  
15 MR. GROSSMAN: You can certainly talk to counsel  
16 and see if there's some additional information that you  
17 think needs to be provided. I'm not sure what additional  
18 information there can be about a truck turnaround --  
19 MR. UHRE: Okay.  
20 MR. GROSSMAN: -- exactly, so.  
21 MR. UHRE: Thank you.  
22 MR. GROSSMAN: Sure. Anything else that we need  
23 to cover? All right. Then we will see everybody back here  
24 on the 18th. We'll be getting a response from the applicant  
25 and maybe changed plans on the 14th and when you submit it

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1 to me to save time also not only to them but also submit it  
2 to technical staff.  
3 MS. GIRARD: I made a note, yeah.  
4 MR. GROSSMAN: Okay.  
5 MR. UHRE: And will that be sent electronically on  
6 the 14th?  
7 MS. GIRARD: Uh-huh.  
8 MR. UHRE: Okay, thank you.  
9 MR. GROSSMAN: Yes.  
10 MS. GIRARD: Yeah.  
11 MR. GROSSMAN: Electronically would be fine.  
12 MR. UHRE: Thank you.  
13 MS. GIRARD: And it's really the easiest.  
14 MS. LEE: Are you going to be submitting it to  
15 the, you're talking about the technical staff at Park and  
16 Planning?  
17 MR. GROSSMAN: Yes.  
18 MS. LEE: Will it be going to them before you  
19 submit it on the 14th? Are you going to be asking for their  
20 recommendations?  
21 MR. GROSSMAN: They won't be able to turn it  
22 around instantly, so --  
23 MS. LEE: Okay.  
24 MR. GROSSMAN: -- they'll send it to them at the  
25 same time she sends it to you --

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1 MS. LEE: At the same time she sends to us, okay.  
2 MR. GROSSMAN: -- on the 14th and before I would  
3 act on it I'll get something back from them. You're  
4 certainly free to discuss it with them --  
5 MS. LEE: Uh-huh.  
6 MR. GROSSMAN: -- beforehand just to see if they  
7 have any --  
8 MS. GIRARD: Yeah, if there's --  
9 MR. GROSSMAN: -- feeling that you can get.  
10 MS. GIRARD: -- something that we think may be an  
11 issue --  
12 MR. GROSSMAN: Right.  
13 MS. GIRARD: -- we obviously would talk to them to  
14 say, can we do this, before we draw up plans to do it.  
15 MR. GROSSMAN: Right. Okay? All right. Then we  
16 are adjourned until the 19th of December.  
17 (Whereupon, at 4:57 p.m., the hearing was  
18 concluded.)  
19  
20  
21  
22  
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24  
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1 C E R T I F I C A T E  
2 DEPOSITION SERVICES, INC., hereby certifies that  
3 the attached pages represent an accurate transcript of the  
4 electronic sound recording of the proceedings before the  
5 Office of Zoning and Administrative Hearings for Montgomery  
6 County in the matter of:  
7 Application of Brandywine Senior Living at Potomac, LLC  
8 Case No. CU 16-01  
9  
10 By:  
11  
12  
13  
14 Brandon Fields, Transcriber  
15  
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