OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

PETITION OF CHELSEA SCHOOL : Case No. G-892
(REMAND HEARING - CONTINUED) :

A hearing in the above-entitled matter was held on March 23, 2012, commencing at 9:38 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Lynn Robeson, Hearing Examiner

A P P E A R A N C E S

ON BEHALF OF THE APPLICANT:

Robert R. Harris, Esq.
Cynthia M. Bar, Esq.
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ON BEHALF OF THE OPPOSITION:

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Knopf & Brown
401 East Jefferson Street, Suite 206
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WITNESSES:	Page:
Aakash Thakkar, on behalf of Applicant EYA 4800 Hampden Lane, Suite 300 Bethesda, Maryland 20814	26-117
Miguel I. Iraola, on behalf of Applicant Hord, Coplan, Macht, Inc. 750 East Pratt Street, Suite 1100 Baltimore, Maryland 21202	118-195
Mark Posner, Resident, on behalf of Applicant 709 Woodside Parkway Silver Spring, Maryland 20910	196-203
Chris Kabatt, Civil Engineer, on behalf of Applicant Wells and Associates 1420 Spring Hill Road McLean, Virginia, 22102	204-255
Bob Youngentob, Resident, on behalf of Applicant 4800 Hampden Lane Bethesda, Maryland 20814	257-265
Don Grove, Arborist, on behalf of the Opposition 505 Schuyler Road Silver Spring, Maryland 20910	267-306
Jean Cavanaugh, Resident, on behalf of the Opposition 9207 Worth Avenue Silver Spring, Maryland 20901	17-18 306-318
Victoria Warren, Resident, on behalf of the Opposition 503 Pershing Drive Silver Spring, Maryland 20910	324-353

E X H I B I T S

		Marked	Received
Exhibit No. 291(m)	Partial Transcript	11	--
Exhibit No. 331	Thomas Lagle Letter	8	--
Exhibit No. 332	Diane Martin Letter	8	--
Exhibit No. 333	Wardell C. Thompson Letter	8	--
Exhibit No. 335	Leck/Kronenberg DOT E-mail	210	--
Exhibit No. 336	Don Grove Curriculum Vitae	270	--

1 P R O C E E D I N G S

2 MS. ROBESON: This is a public hearing in the
3 remand of Local Map Amendment G-892, an application for a
4 local map amendment filed by Chelsea Residential Associates,
5 LLC, Case No. G-892. The applicant is requesting a rezoning
6 of property from the R-60 Zone to the RT-12.5 Zone for
7 property located at 630 Ellsworth Avenue, Silver Spring,
8 Maryland. The property's legal description is Lot 58,
9 Evanswood, Section 1. I'm going to skip the normal
10 introduction because I don't think anyone here needs an
11 introduction. I hesitate to say it but welcome back.
12 A few ground rules, a few preliminary matters for
13 this case. The issues, as you know, are limited to the
14 Council's remand, and those issues were the road alignment;
15 the decrease in mass and density to be more consistent with
16 the master plan and the surrounding area; the development
17 standards of the RT zone and environmental compliance, to
18 the extent they've changed from the prior application, and
19 that's in the remand order.
20 All evidence from the prior hearings, we do want
21 to try to expedite this, all the evidence from the prior
22 hearings remains in the file so you really don't need to
23 repeat it, and I am going to be, you know, we would like to
24 bring this to conclusion, so I am going to be a little tough
25 on that. If you -- so focus. When you testify, please

1 focus on what it is different from the prior application.
2 I do want to thank the parties very, very much,
3 both sides, for cooperating in the scheduling and the
4 exchange of the exhibits. That helped me tremendously to
5 prepare for the case and to identify the issues and the
6 questions that I have in advance, so I do appreciate that.
7 A few comments on some of the exhibits I saw and some of the
8 debates, and that is there are quite a few exhibits on smart
9 growth and I just want to clarify that this hearing is not a
10 referendum on smart growth and whether it will occur in the
11 County or not in the County. This is an application for a
12 single piece of property, and I am limited to the statutory
13 criteria which is in the code and it relates to, there is a
14 section on public interest but public interest has always
15 been interpreted in our office, by our office and by
16 judicial cases, as being adopted County plans and policies
17 because they are legislatively defined. So this is not a
18 referendum.
19 The new urbanism, which I saw mentioned in one of
20 the opposition exhibits, that is a policy debate for the
21 Council which I believe will probably, and I'm just
22 speculating, occur in the zoning rewrite that's coming up,
23 but for now it would be really helpful if we could focus on
24 the statutory criteria which is compliance with the -- and
25 I'm not saying smart growth isn't relevant, but what I am

1 required to make my decision on is the, whether it meets the
2 purposes of the zone, whether it complies with the master
3 plan and other adopted County policies and whether it's
4 compatible with the neighborhood. And that, if you can
5 address your testimony to those criteria, that would really
6 help me in making a decision in this case.
7 All right. Now, do the parties have any
8 preliminary matters?
9 MR. HARRIS: Yes, Ms. Robeson, a couple of things.
10 And then if I could make a brief opening comment as well, I
11 would appreciate that as well.
12 MS. ROBESON: Well, that's -- do you have anything
13 before an opening argument?
14 MR. HARRIS: Well, a couple of exhibits that I
15 received that I don't see in the exhibit list that I want to
16 make sure get introduced. I don't know if that has to be
17 taken care of now or whether you prefer to do that later.
18 MS. ROBESON: Okay. What, what exhibits?
19 MR. HARRIS: There are three letters that, from
20 the supporting witnesses that, at least from our perusal of
21 the exhibit list, did not appear to be in there.
22 MS. ROBESON: And when, do you know when these
23 were submitted?
24 MR. HARRIS: Yes. Within the, within the last --
25 let me have the copies.

1 MS. ROBESON: I see one, February 15th.
2 MR. HARRIS: Yes. Two are February 15 but for
3 some reason, I didn't see them in the list, and the other
4 one I believe just came in this week.
5 MS. ROBESON: Okay. Well, what I'm going to need
6 to do, if it's all right, I have our exhibit list expert
7 here. I'm going to ask her, I have no problem putting them
8 in the record. Let me just have her review whether --
9 there's like 400 exhibits so let me have her review them and
10 if necessary, I have no problem putting them in the record
11 unless Mr. Brown has an objection.
12 MR. BROWN: No objection.
13 MR. HARRIS: Okay. Thank you.
14 MS. ROBESON: Now, are you asking that they --
15 Victoria, did you say you did not receive them?
16 UNIDENTIFIED SPEAKER: I have never seen these
17 letters.
18 MS. ROBESON: Okay. Well, then I'm going -- if
19 you don't have an objection, we will get them in the record
20 right now.
21 UNIDENTIFIED SPEAKER: I'll make copies.
22 MS. ROBESON: What?
23 UNIDENTIFIED SPEAKER: I'll make copies.
24 MR. BROWN: I think we have copies. Yes. Yes.
25 MS. ROBESON: Mr. Brown, you don't have an

1 objection to putting these in the record?
2 MR. BROWN: No.
3 MS. ROBESON: I think he gave them to me. So --
4 (Discussion off the record.)
5 MS. ROBESON: So I'm going to mark, I have a
6 letter dated -- well, I don't see a date. I have a letter
7 from Thomas Lagle (phonetic sp.) and I am going to mark that
8 as Exhibit 331. And the next one is a letter dated February
9 15th from Diane Martin, and that will be 332. And then a
10 letter dated February 15th from Wardell C. Thompson, and
11 that will be 333.
12 (Exhibit Nos. 331-333 were marked
13 for identification.)
14 MS. ROBESON: All right. I'm assuming you have
15 opening statements.
16 MR. BROWN: I have a couple of housekeeping
17 matters.
18 MS. ROBESON: I'm sorry. Go ahead.
19 MR. BROWN: First of all, I do not have an updated
20 exhibit list past Exhibit No. 324 so I'm missing the, I'm
21 missing the identification of 325 to 329.
22 UNIDENTIFIED SPEAKER: Here we go.
23 MR. BROWN: Did we get that?
24 UNIDENTIFIED SPEAKER: It was outside the door.
25 MR. BROWN: I'm sorry. Okay. I got what I need

on that. I do have a question for Mr. Harris about Exhibit 291(m), the partial transcript of the Planning Board hearing. I received from his office a completed transcript of the hearing and I would ask that the partial transcript, 291(m), be replaced with the completed transcript. I think that was their intention anyway.

MS. ROBESON: Do you have an issue with that?

MS. BAR: No. Cindy Bar for the record. No, except for that I just want to be real clear that it was, there was additional material in the second one that you received, Mr. Brown, but it still is not complete. In other words, it didn't have everything in the Planning Board so it was basically part, still a partial transcript but it had more information. It had --

MS. ROBESON: Okay.

MS. BAR: So --

MS. ROBESON: Well, do you have any problem substituting the --

MS. BAR: No, no, no. Absolutely not.

MS. ROBESON: -- one with more information?

MS. BAR: No.

MR. HARRIS: No. No.

MS. ROBESON: Do you have an objection to that, Mr. Brown?

MR. BROWN: No.

1 MS. ROBESON: With that clarification that it's
2 still a partial transcript. So, so what we'll do, Victoria,
3 is remove what's existing 291 and substitute the longer
4 portion for 291. And does anyone have a --
5 MR. HARRIS: 291(m) in particular.
6 MS. ROBESON: Oh, good point.
7 MR. BROWN: I have a copy and it has 36 pages.
8 MS. ROBESON: Okay.
9 MR. BROWN: That's my point of reference.
10 MS. ROBESON: The only thing is I don't have a
11 copy. Can anyone give us a copy for the record?
12 MS. BAR: I think you actually do have the full
13 one.
14 MS. ROBESON: No. The big one. Not the full one,
15 right?
16 UNIDENTIFIED SPEAKER: The one that Mr. Brown has.
17 MS. BAR: I'll make another copy of that for you.
18 UNIDENTIFIED SPEAKER: I could make a copy of Mr.
19 Brown's.
20 MS. ROBESON: Okay.
21 UNIDENTIFIED SPEAKER: That way I'll make sure I
22 have, I put in what he wants to put in.
23 MS. ROBESON: You guys want to verify that this is
24 actually what you sent or --
25 MR. HARRIS: It is, it is 36 pages.

1 MS. ROBESON: Oh, all right then. Then that's the
2 one. Victoria, can you mark that right now?
3 UNIDENTIFIED SPEAKER: Yes.
4 MS. ROBESON: Could you mark whatever they're
5 giving you 291?
6 UNIDENTIFIED SPEAKER: Is this what you wanted to
7 substitute?
8 MR. BROWN: Yes. Yes.
9 MS. ROBESON: Yes. 291(m).
10 (Exhibit No. 291(m) was marked for
11 identification.)
12 MR. HARRIS: Okay. Thank you.
13 MS. ROBESON: Mr. Brown, do you have anything
14 else?
15 MR. BROWN: Yes. Just one other point that I feel
16 compelled to make a comment on, and that is concerning your
17 description of the hearing as being limited. You use the
18 word limited in certain respects and I took you to mean that
19 you feel that the hearing is limited by the remand order
20 which is the action item paragraph at the end of Exhibit
21 267, Resolution 17-286.
22 MS. ROBESON: That's correct.
23 MR. BROWN: Now, the problem I have with that is
24 that when you go back to the resolution, for example, on
25 page 8 of the resolution, I want to just read this paragraph

1 and explain it in context. The action paragraph says
2 nothing about concern about existing mature trees so one
3 could possibly interpret that action paragraph as, and your
4 comments, as saying you can't talk about the trees on the
5 property and the impact on the trees of the property, but
6 that issue is expressly left open by virtue of the paragraph
7 on page 8 of the resolution which reads as follows.
8 The opposition objected to the density of the
9 development partially because it would remove many of the
10 existing mature trees on the site which currently screen the
11 neighborhood from views of the CBD and other uses such as
12 Colesville Towers within the surrounding areas. Because the
13 District Council is hereby remanding the case for revision
14 at a lesser density, this is an issue that need not
15 presently be addressed. Now, what I take from this is --
16 MS. ROBESON: Which paragraph are you referring
17 to?
18 MR. BROWN: I'm referring to the paragraph two,
19 two paragraphs above the bold word compatibility on page 8.
20 MS. ROBESON: I see it. Okay.
21 MR. BROWN: Now, I just want to make this point in
22 a larger context. Not only is the issue of whether or not
23 this new project is going to have an impact on trees open
24 for discussion in this hearing, any issue that the, that was
25 not specifically decided in the course of the issuance of

1 this resolution is, in my mind, fair game for discussion at
2 this hearing because we are in fact faced with a new
3 project. It is true that the District Council has said RT
4 zoning is acceptable for this property but they didn't say
5 either what level of RT zoning, and anything that flows or
6 is related to how that project changes, changes what's
7 happening on this ground is, in my mind, fair game for
8 discussion at this hearing, notwithstanding the fact that it
9 isn't expressly mentioned in the action paragraph of the
10 order, and the impact on existing mature trees is one
11 example of that.
12 MS. ROBESON: Mr. Brown -- Mr. Harris.
13 MR. HARRIS: I have a very different view of that
14 for a number of reasons. One, in the original case, the RT-
15 15 with more density and more coverage, the Hearing Examiner
16 concluded that, that you agree that -- this is at page 92 of
17 your report -- that the Hearing Examiner agrees that the
18 proposed development will meet these requirements, that is
19 the forest conservation requirements, and finds that these
20 may be met during later stages of the development process.
21 So in that respect, your report indicates that it is both a
22 later issue to be addressed and two, that for the purposes
23 of zoning, we had met the requirement at that time for that
24 more dense plan.
25 Mr. Brown correctly points to page 8 of the

1 resolution in which the Council effectively says the same
2 thing and then by not including it in the operative
3 paragraph of the remand order, they reaffirm that they were
4 okay with the forest conservation plan as it stood, not
5 needing to have that defined at a zoning stage. Their
6 entire discussion that day during the oral argument, there
7 was not one word mentioned about a concern on any of their
8 parts about the trees. And so it's been addressed already
9 and it's not a relevant issue for the zoning anyway.
10 MS. ROBESON: Well, I tend to agree with Mr.
11 Harris on this one but I don't have the proper testimony. I
12 don't have, I can't remember the witness, Don --
13 MR. BROWN: Grove.
14 MS. ROBESON: -- Grove. You know, I don't have
15 his proper testimony. If it relates to the environmental,
16 you know, the forest conservation law or if it relates to,
17 you know, the compatibility, the compatibility of the new
18 plan, of the new plan, then I think it's relevant. But so I
19 guess what I would prefer, I know that you would like some
20 answer now, but I would prefer to get Mr. Grove on the stand
21 and hear what he has to say. I am going to limit his
22 testimony, though, to changes. It has to be tied to the
23 revised plan, all right, and not a rehash that would have
24 been applicable either to the original plan. Am I being
25 clear?

1 MR. HARRIS: Perhaps. Well, I guess not if the
2 answer is perhaps. The evidence that we will present will
3 show that this plan has less of an impact on forest than the
4 other plan did.
5 MS. ROBESON: Yes.
6 MR. HARRIS: Therefore, to the extent that the
7 other plan was deemed acceptable from a forest conservation
8 plan, this one is necessarily acceptable, and we're getting
9 way off track, I'm afraid, if we now start picking apart how
10 this plan may affect the trees.
11 MS. ROBESON: Well, let me ask you, Mr. Brown, not
12 having seen a summary of his testimony, I have pictures of
13 the trees in the, in the file but I don't know what he's
14 going to say, so can you proffer what his testimony is going
15 to be?
16 MR. BROWN: I believe his testimony is going to,
17 he's going to talk about the impact of this project on
18 mature trees on the property and that that's an adverse
19 impact.
20 MS. ROBESON: Is he going to testify as to the
21 difference between the prior plan and this plan?
22 MR. BROWN: I don't think, I don't think that that
23 was his intention. I haven't spoken to him but I just
24 believe that this --
25 MS. ROBESON: Oh, you haven't spoken to him?

1 MR. BROWN: No, I haven't.
2 MS. ROBESON: Okay. Well, then this is what I --
3 I know you want a resolution. I am tending to agree with
4 Mr. Harris.
5 MR. BROWN: All right. I want you to understand
6 why I regard Mr. Harris' argument as fallacious. Look --
7 MS. ROBESON: I, just hold on one second, I do see
8 your hand. I'd like to let Mr. Brown finish and then if you
9 want to say something, you may.
10 MR. BROWN: It is not true that if basketball team
11 A beats basketball team B and basketball team B beats
12 basketball team C that A is going to win or not win against
13 basketball team C. You have to look at the new plan.
14 MS. ROBESON: Is this the March Madness analogy?
15 MR. BROWN: He's making an argument along those
16 lines and it's just not acceptable to us. The notion that
17 basically, the 74/76 townhouse plan was rejected by the
18 District Council. We have a new plan before you. It seems
19 to me that except for issues that were expressly resolved in
20 the course of the District Council resolution, everything is
21 on the table.
22 MS. ROBESON: Okay. I disagree with that. So I
23 want to move this hearing along. I am going to give him the
24 opportunity, since you don't know what he's going to say, to
25 proffer what he's going to say when his, when you desire to

1 call him, so he will have the opportunity to proffer. I do
2 not think everything is on the table. I -- so, you know,
3 I'm going to leave it at that. I will give him a chance to
4 proffer what he's going to say, and I need to end this so we
5 can move on. And there was a hand in the audience. Yes.
6 Can you state your name and address for the record?
7 MS. CAVANAUGH: Yes. My name is Jean Cavanaugh.
8 I live at 9207 Worth Avenue, Silver Spring, Maryland. And,
9 just briefly, we have a preliminary forest conservation plan
10 for the original 76 townhouse plan but a second preliminary
11 forest conservation plan has not been done for the second
12 proposed plan.
13 MS. ROBESON: Well --
14 MS. CAVANAUGH: So we had to work off the first one
15 but there are, you know, similarities because --
16 MS. ROBESON: Well, I think --
17 MS. CAVANAUGH: -- townhouses are going in the
18 same places.
19 MS. ROBESON: Well, what --
20 MS. CAVANAUGH: And it's a compatibility issue
21 also.
22 MS. ROBESON: Well -- but the compatibility
23 related to density and massing. If there is an issue under
24 the current environmental standards, the forest conservation
25 standards, you know, that would be relevant. I guess if

there is an issue that you could, the current plan -- I think it's really going to be faster if the man himself comes and tells me what he's going to say rather than arguing about it now, all right?

MS. CAVANAUGH: Well, I just wanted to make the point that we don't have another preliminary forest conservation plan.

MS. ROBESON: I understand.

MS. CAVANAUGH: That we're working with the original and we see it as a compatibility issue to do with the way the neighborhood looks with its tree canopy or lack thereof.

MS. ROBESON: I see.

MS. CAVANAUGH: It's compatibility.

MS. ROBESON: Okay.

MS. CAVANAUGH: Thank you.

MS. ROBESON: Okay.

MR. HARRIS: Ms. Robeson.

MS. ROBESON: I do understand what you're saying. Let's move on.

MR. HARRIS: One, just --

MS. ROBESON: Okay.

MR. HARRIS: Let me clarify very briefly. There was a preliminary forest conservation plan submitted, that's correct. There is no requirement in the zoning case to

1 submit a forest conservation plan. That is a preliminary
2 plan and site plan issue.
3 MS. ROBESON: I --
4 MR. HARRIS: Nonetheless, we did submit that but
5 in the --
6 MS. ROBESON: They asked you to submit it.
7 MR. HARRIS: Right. In the staff report that is
8 before you now for this --
9 MS. ROBESON: I've read it.
10 MR. HARRIS: -- they say that that was submitted.
11 This plan has less of an impact. Therefore, to the extent
12 that that was satisfactory, this is.
13 MS. ROBESON: Okay. This is really what I want to
14 do. Move on.
15 MR. HARRIS: Okay. I agree.
16 MS. ROBESON: So I heard your point.
17 MR. HARRIS: Thank you.
18 MS. ROBESON: I want to get this hearing done.
19 I'm going to give him an opportunity to proffer what's
20 relevant and I'm sorry to cut -- I understand.
21 MR. HARRIS: I understand.
22 MS. ROBESON: I'm sorry to cut you off. Okay. So
23 any other preliminary matters? All right. Opening
24 statements. Mr. Harris.
25 MR. HARRIS: Yes. Picking up on your theme, I do

1 want to try to get this hearing done, hopefully, today if at
2 all possible and we will attempt to abbreviate our
3 testimony. We are focusing on the three issues that were
4 the subject of the remand, particularly focused in the
5 operative paragraph of that remand order on the last page.
6 The three issues being, one was a request that the Planning
7 Board consider the size of the environmental setting for the
8 Riggs Thompson House. We'll address that.
9 Second, that the revised SDP be submitted under an
10 RT zone with less density and massing, and we will do that.
11 And I note that the Council and the ZHE, during their oral
12 argument, both discussed the possibility of that being the
13 RT-12.5 Zone noting that it would be achievable because in
14 fact it already existed in other sites in the Silver Spring
15 area and that it could address the massing and density
16 issue. So that's the second issue. The third issue is that
17 the revised SDP would bring the alignment of the private
18 road into compliance with the historic setting, and we will
19 address that as well. As you've begun to intimate here
20 and --
21 MS. ROBESON: Well, I thought the -- I'm sorry to
22 interrupt.
23 MR. HARRIS: No, please.
24 MS. ROBESON: I thought it was to resolve the
25 various alignments and not necessarily specific to the

1 environmental setting, but go ahead.
2 MR. HARRIS: Well, bear with me. On that issue,
3 the last sentence, the revised SDP should also resolve
4 issues relating to the alignment of the private road to
5 comply with the environmental setting of the historic site
6 as set forth in the master plan. That's all it says.
7 MS. ROBESON: Well --
8 MR. HARRIS: Okay. In any respect, this is not a
9 hearing to determine whether the RT zone is appropriate.
10 That's been found already. It's not a remand to consider
11 adequacy of public facilities. Again, that finding has been
12 made. And as we've just been talking, I don't believe it's
13 a remand for consideration of storm water management or
14 forest conservation plans. Those, this is premature for
15 that issue to begin with but to the extent it needs to be
16 considered at all, it has been to the degree required and
17 findings have been made that both storm water management and
18 forest conservation can be met by an RT development plan
19 here.
20 Finally, I don't think it's appropriate to include
21 discussion about whether the historic property can be
22 included in the density calculations or the green space, the
23 subject of Mr. Brown's legal memorandum and my responsive
24 memorandum. That was presented before as an argument in the
25 case below, or in the first round of this case, and neither

1 the Zoning Hearing Examiner nor the Council agreed with the
2 opposition's position on that. We certainly don't agree
3 with it, and the Planning Board made it emphatically clear
4 at their hearing in January that that is not a correct
5 interpretation of the law or practice.
6 So on the three issues, the historic setting, I
7 believe that the remand was asking the Planning Board to
8 interpret the master plan and give you and the Council that
9 decision, and they have done that. They considered Ms.
10 Warren's research for which they complimented her on its
11 thoroughness, and I would as well. It is as thorough as any
12 research I've ever seen done. But that being said, having
13 heard that testimony, having seen that research and having
14 reviewed the issue with comments from the HPC staff and the
15 Planning Board, they concluded, they the Planning Board,
16 again, that the setting is 37,000 square feet. Now, this
17 time it was unanimous. Every one of the Planning Board
18 members agreed to that.
19 So they, the Planning Board has provided the
20 interpretation that the Council asked for. I don't think we
21 need to even have testimony on that here today. I don't
22 think that's before us. In terms of the density and
23 massing, yes, we will provide a lot of testimony about that
24 but again, there is, you know, a lot that has been decided
25 already by the Hearing Examiner and by the Council in terms

1 of compatibility of RT zoning.
2 You previously were concerned that the Planning
3 Board had not considered the density issue the first go-
4 around. I can assure you they considered it ad nauseum now,
5 and so their interpretation and their recommendation, I
6 think, is entitled to great weight here. So we want to try
7 to limit this hearing to what we think the Council was
8 asking us and you to do.
9 So, a couple of closing comments. We've had
10 considerable community support from day one. That remains.
11 We have submitted some additional letters that people have
12 written. We have not asked all of the same witnesses to
13 come back and reaffirm their support but, rest assured, they
14 are as supported, supportive, if not more so. We will have
15 a couple of witnesses come in, not to belabor the point but
16 just to reaffirm their support and that of others. It will
17 be far fewer than we otherwise would.
18 We also would ask that, in order to move this
19 forward, that Mr. Brown and I be allowed to make closing
20 arguments orally at the close of the hearing here so that we
21 don't have to wait longer for submitting, submission of
22 written arguments and so that, you know, the expenses of
23 this that have already gone way sky high for both sides can
24 be mitigated to some extent, and we would be prepared to do
25 that whenever the hearing ends today or Monday or whatever.

1 That's what I offer as opening comments.
2 MS. ROBESON: Well, why should I let you put,
3 generally, support -- if I'm excluding, if you want me to
4 exclude environmental testimony that relates to -- my goal
5 is to expedite this because I remember the complaints from
6 your client about moving the hearing along, so why should I
7 let general people come in and testify in support if I'm
8 going to not let them, allow --
9 MR. HARRIS: That's fair enough. We wanted to be
10 prepared, not knowing what might take place here. I have no
11 problem letting those people take the afternoon off on a
12 beautiful day.
13 MS. ROBESON: That's what I would do.
14 MR. HARRIS: Okay.
15 MS. ROBESON: As far as closing written arguments,
16 one could argue that the time it took was -- well, that's
17 neither here nor there. Mr. Brown, do you have opening
18 arguments?
19 MR. BROWN: I would just like to briefly follow up
20 on what I said before. My clients understand that certain
21 matters have been decided. You will not hear testimony from
22 them today saying that this property should remain R-60
23 Zoning for example. The question is what density of RT
24 zoning is appropriate and what would be compatible with the
25 neighborhood. These questions are open and we have a new

1 plan, and my client's testimony will be limited to looking
2 at the neighboring impacts of that new plan. That certainly
3 includes, it include things that even your remand order has
4 recognized should be included.
5 There are multiple road issues concerning the
6 relationship between the private road and the environmental
7 setting, the compatibility of the alignment and the traffic
8 patterns with the surrounding area and the consistency of
9 the alignment with the master plan. Those are matters you
10 expressly said should be addressed.
11 In general, I think that our time is better spent
12 putting on the evidence that we have and letting you decide
13 whether or not you feel that what has been said is or is not
14 within what you regard as the scope of the remand rather
15 than us having lengthy arguments about, about that during
16 the course of the testimony. I think I'm in general
17 agreement with Mr. Harris regarding submission on oral
18 argument at the end of the case, although, my clients, my
19 clients advise me that they would prefer to have written
20 argument at the end.
21 MS. ROBESON: Well, that's not, that's not a
22 decision I'm going to make right now.
23 MR. BROWN: Okay.
24 MS. ROBESON: We will do everything we can to
25 expedite the case. Anything else?

1 MR. BROWN: No. That's it.
2 MS. ROBESON: Okay. And one note. It has been
3 really helpful to have the exhibits in advance. I'm going
4 to be asking both sides questions and it's not an indication
5 of, it's not an indication that my mind is made up one way
6 or the other. I just am going to be testing some of your
7 positions, so don't get all upset about that.
8 All right. First witness. Now, would it save
9 time if we took all your witnesses at once and swear them
10 in?
11 MR. HARRIS: We can do that. Certainly.
12 MS. ROBESON: I don't want to do it to the
13 opposition yet because I don't know who is here and who
14 isn't here. So does the court reporter have the names of
15 all these people that I'm swearing in?
16 THE COURT REPORTER: Outside I do. Sign-in sheet.
17 MS. ROBESON: Okay, great. I'm going to ask you
18 to repeat your names when you come to testify. Please raise
19 your right hand.
20 (Witnesses sworn.)
21 MS. ROBESON: All right. We've taken care of
22 that. Now, it took me all five hearings to pronounce Mr.
23 Youngentob's name correctly, so can you pronounce for me
24 your name and state your business address for the record?
25 MR. THAKKAR: Sure. My name is Aakash Thakkar.

1 Hopefully, that will be easy enough to pronounce. Aakash.
2 MS. ROBESON: That is. Sometimes it's easier for
3 me than Youngentob. I don't know.
4 MR. THAKKAR: Than Youngentob. That's why you let
5 me testify.
6 MS. ROBESON: Okay.
7 MR. THAKKAR: EYA's business address is 4800
8 Hampden Lane, Bethesda, Maryland 20814.
9 MR. HARRIS: Okay. Let me interject here apropos
10 my comments about moving this along and trying to address or
11 keep focused on the issues. If you believe testimony is
12 getting out of line, please let us know and we will
13 abbreviate it.
14 MS. ROBESON: Oh, trust me. You don't need even
15 have to say that. Okay. Go ahead, Mr. Thakkar.
16 MR. HARRIS: Go ahead.
17 MR. THAKKAR: I have one question which is should
18 I address the size of the environmental setting? Mr. Harris
19 brought up our position on that.
20 MS. ROBESON: Yes.
21 MR. THAKKAR: Yes. Great.
22 MS. ROBESON: Because I disagree with his premise
23 on the scope of the remand order. Are these marked
24 anywhere? Oh, they're in the file.
25 MR. HARRIS: They're in the record, yes.

1 MS. ROBESON: This is a repeat of what's in the
2 file. Fine. Go ahead.
3 MR. THAKKAR: I did -- the numbers at the bottom.
4 These numbers at the bottom are not in the file, the 1, the
5 2, et cetera, so I just wanted to make that aware. I have
6 some notes throughout this.
7 MS. ROBESON: What's not in the file?
8 MR. THAKKAR: These numbers. The pages are
9 numbered, actually, and so when we submitted it, we didn't
10 have the pages numbered. I then numbered the pages to make
11 it easier for me and others to refer to what page we were
12 talking about.
13 MS. ROBESON: Okay. Why don't we do this. We're
14 going to substitute these --
15 MR. THAKKAR: Sure.
16 MS. ROBESON: -- with the page numbers because
17 that helps me write the decision, also, so people don't have
18 to search through. Okay. Let's go.
19 DIRECT EXAMINATION
20 MR. THAKKAR: Okay. Well, good morning. Thanks
21 for having us.
22 MS. ROBESON: Good morning.
23 MR. THAKKAR: And good morning members of the
24 community. I've been working on this project for almost
25 three years now and so I've gotten to know both the folks on

1 the supporting side and the opposite side as well and I look
2 forward to moving our case and moving the project forward.
3 As Mr. Harris indicated, we met with both the community at
4 the onset of this remand process as well as supporters and
5 we did try to do our best to integrate not only the concerns
6 that the community had but obviously, the concerns that the
7 Hearing Examiner and the Council had throughout the process.
8 So our goal, our homework, if you will, was to, was to pull
9 together all the different comments and put forth a plan
10 that we thought met the requirements and the desires of the
11 Zoning Hearing Examiner and the Council.
12 I'll start with the obvious I guess. We are
13 requesting RT-12.5 as opposed to RT-15 and that the Planning
14 staff, Transportation staff, Historic staff and the Planning
15 Board are unanimously supportive. And I say that because
16 sometimes when an applicant like myself or ourselves are
17 testifying, you know, we have an interest. We're making a
18 case. We do depend on technical staff to advise us as we go
19 through the process and then, and provide us guidance and
20 ultimately come to conclusions.
21 And so we think, probably more so than last time
22 with the unanimous Planning Board vote, what we found
23 particularly interesting is the concerns of Commissioner
24 Presley, in my view, the first time around were not unlike
25 the concerns of the Zoning Hearing Examiner, were not unlike

1 the concerns of the five council members that voted to send
2 this back. And I think her concerns were the size of the
3 environmental setting and density and massing.
4 I think in Chairman Francoise's initial letter to
5 the Zoning Hearing Examiner and Council, she indicated that
6 those were her concerns and I think through this process,
7 frankly because of the some of the information that Ms.
8 Warren put together, more information that we, it made us
9 all look at that issue much more closely and I think that we
10 were able to convince her, as well as the rest of the
11 members of the Planning Board, that both the environmental
12 setting is indeed 37,056 square feet and that this plan
13 does, is in fact more compatible at RT-12.5 than the prior
14 plan. Lastly, I'll say --
15 MS. ROBESON: Now, you don't have to talk fast.
16 MR. THAKKAR: Okay.
17 MS. ROBESON: I'm not in that much of a rush.
18 MR. THAKKAR: Okay.
19 MS. ROBESON: I want to hear from witnesses.
20 MR. THAKKAR: My wife said this morning, she said
21 just don't talk fast, it's an important case so take your
22 time.
23 MS. ROBESON: I want to hear from witnesses.
24 MR. THAKKAR: Okay. So, last but not least, you
25 know, we do believe, you heard us say this before, that we

1 think this will be a wonderful addition to the neighborhood.
2 And on this point, you know, I know that it may not fully
3 matter who the applicant is, but I think we've established
4 in this County, and you've heard even with Commissioner
5 Presley, for example, opposed us the first time, she said I
6 just want you guys to know, I think you do good work, I
7 think you do compatible work, I just have some issues with,
8 you know, the case before us.
9 But at the end of the day, what I'd say is that,
10 you know, compatibility, integration in neighborhoods, high-
11 quality, a commitment to architecture that is anything but
12 barracks, if you will -- you know, you've certainly read a
13 lot of these letters, is what we are committed to and what
14 we are known in the County for. I'll take the case of our
15 National Park Seminary project, and that is in the record
16 from last time around, but a situation where the County had
17 a number of proposals and they looked at them and they said
18 who do we know and trust to be, frankly, you know, the most
19 compatible with an extraordinarily, delicate and historic,
20 in that case, site, and they chose EYA and we built out that
21 project. And I think both the opponents at the time, as
22 well as the supporters, will say these guys paid attention
23 to detail, paid attention to compatibility and put forth a
24 project that did really work with that particular community.
25 So, I say all this to say that we're committed to

1 doing the right thing here, putting forth a first class
2 community, and we think the plan that we've proposed is the
3 beginnings of that. There's so much more, should this move
4 forward, still to go in terms of architecture and detail
5 that we'll help flesh that out but I think we are certainly
6 committed to proposing, again, a really first-rate project
7 at this property.
8 So I am going to limit my testimony to three
9 issues, and I've set it up that way. So the size of the
10 environmental setting is the first. So when we look at a
11 property, when EYA does, it was actually my job and Mr.
12 Harris' job to do feasibility work three years back, and I
13 think we went through a similar exercise to what Planning
14 staff and the Planning Board ultimately went through the
15 first time around and then more clearly the second time
16 around.
17 We started with the master plan, and I think folks
18 know the master plan is clear and I'm just going to read
19 what the master plan says. The Riggs-Thompson House is
20 located on a 1.4-acre parcel, so it does actually say that
21 this house is located on a 1.4-acre parcel. The
22 environmental setting is 37,056 square feet. So when we
23 looked at the project, we looked at that. We then did look,
24 Mr. Harris and myself, at the appendix. And the appendix
25 states the environmental setting for the Riggs-Thompson

1 House is 37,056 square feet and then it essentially says, it
2 goes on to say pending the approval of the Chelsea School
3 special exception by the Board of Appeals.
4 Now, as I think everyone is aware, at the time
5 during which this master plan was being written, the Chelsea
6 School was going through the special exception process and
7 so when we researched this three years ago, we knew that
8 that happened several years earlier and we researched it and
9 we concluded firmly that the Chelsea School did in fact get
10 their special exception. And I say that because both our
11 reading and the reading of the planning, Historic staff,
12 Planning staff and Planning Board was that at the point in
13 time at which the Chelsea School received their special
14 exception, which was in 2000 or so, the matter was closed.
15 That's the way we read it because there's, if --
16 again, just to read it, pending approval of the Chelsea
17 School special exception by the Board of Appeals. The Board
18 of Appeals, in fact, did approve it and so our view was that
19 there actually was an inconsistency between the two, the
20 master plan said 37,056 square feet and then the appendix
21 said if Chelsea School got their special exception, which
22 they did indeed get, then the environmental setting would be
23 37,056 square feet.
24 What I'd like to do is just turn to page 3 of the
25 letter from Chairman Carrier to --

1 MS. ROBESON: Okay. That's in the record.
2 MR. THAKKAR: Okay.
3 MS. ROBESON: So if you're going to read it --
4 MR. THAKKAR: Yes.
5 MS. ROBESON: What's your point?
6 MR. THAKKAR: My --
7 MS. ROBESON: What does that paragraph, what do
8 you want to prove with that paragraph?
9 MR. THAKKAR: My point is that it said that
10 although, although an appendix may shed light on the master
11 plan, the master plan is generally controlling to the extent
12 one may find an inconsistency -- I'm just reading from the
13 Planning Board's decision.
14 MS. ROBESON: I understand.
15 MR. THAKKAR: That the master plan, the 37,056
16 square feet is controlling.
17 MS. ROBESON: Well, okay.
18 MR. THAKKAR: That's my point.
19 MS. ROBESON: Are you, okay, are you going to
20 testify more on the environmental setting or is that the
21 substance of it?
22 MR. THAKKAR: That is the substance of it.
23 MS. ROBESON: Okay. Let me ask you something.
24 MR. THAKKAR: Yes.
25 MS. ROBESON: Well, why don't you finish --

MR. THAKKAR: Okay.

MS. ROBESON: -- with what you say, with your slides.

MR. THAKKAR: Okay. Okay. Did you not want me to quote from the letter because I --

MS. ROBESON: No. I don't want you to -- I've read the letter.

MR. THAKKAR: You know what's in the letter. Okay.

MS. ROBESON: I think everybody's read it. Has everyone read the letter? Heads are nodding, for the record, yes. Okay.

MR. THAKKAR: Okay.

MS. ROBESON: Go ahead.

MR. THAKKAR: Okay. So, you know, we too went through Ms. Warren's lengthy research and we concur with Historic staff, with Planning staff, with Planning Board that the easement is indeed 37,056 square feet. And as I said earlier I think, the Planning Board, the first time around, just for clarification, there was a Planning Board member that is no longer on the Planning Board at this point in time so in our view, sort of six commissioners having looked at the information all weighed in. More importantly though, this time around, the four, five commissioners, including one who had concerns about this, was convinced

1 really through our testimony but frankly, I think more so
2 through testimony of Historic staff which looked at this as
3 we did and came to a similar conclusion.
4 MS. ROBESON: Right. Well, this is my question
5 for you on this argument for the environmental setting, and
6 maybe it's a question for Mr. Iraola. I, there is a legal
7 principle about how you interpret statutes, all right, and
8 the primary thing you're looking for in a legal principle is
9 what was the Council's intent. So there is really cogent
10 testimony here that the Council, and I don't know if you
11 updated, there's really cogent testimony from Ms. Warren
12 that the Council intended a dual recommendation, and so the
13 question becomes what was their intent.
14 And there is an argument, and I know ,I keep
15 getting the same thing back, that you have to ignore what's
16 in the appendix but legally, the case law says I have to
17 interpret a master plan similar to the way I would construe
18 a statute. Now, her testimony, you know, is there, I think
19 she got a Fed Committee work session saying that, describing
20 this as a unique plan with a dual recommendation. So if
21 that was the Council's intent, why should I just ignore
22 that?
23 MR. THAKKAR: Because I would suggest that if it
24 was the Council's intent, I'm not sure why it didn't make it
25 into the plain language. And the way I'd say it is if

1 someone's walking up the street and they have to not go
2 through this lengthy process that we're going through to
3 determine what the environmental setting is --
4 MS. ROBESON: That's a policy. That's a policy.
5 MR. THAKKAR: Right. Okay.
6 MS. ROBESON: Whether you should or shouldn't have
7 to go through a lengthy process --
8 MR. THAKKAR: Right.
9 MS. ROBESON: -- is a policy.
10 MR. THAKKAR: I guess --
11 MS. ROBESON: Maybe it will be addressed in the --
12 I know Mr. Harris wants to address it in the zoning rewrite.
13 MR. THAKKAR: Right.
14 MS. ROBESON: And but what I'm telling you is so
15 what, do you have an answer as to that for --
16 MR. THAKKAR: My, my answer would be if that was
17 the intent, I'm unclear as to why it didn't make it into the
18 master plan --
19 MS. ROBESON: So --
20 MR. THAKKAR: -- or the master plan appendix.
21 MS. ROBESON: So you're suggesting from a legal
22 standpoint that if -- and you're not an attorney --
23 MR. THAKKAR: I'm not an attorney.
24 MS. ROBESON: But you're saying that if they
25 really wanted it to be a dual recommendation, they would

1 have put it in the text.
2 MR. THAKKAR: I would suggest absolutely. I
3 would, I would say that if that's what they wanted, then the
4 master plan - and, again, I don't mean to overly quote from
5 this Planning Board letter but --
6 MS. ROBESON: I know what the --
7 MR. THAKKAR: Okay. So --
8 MS. ROBESON: You know, reciting what the Planning
9 Board said.
10 MR. THAKKAR: Right.
11 MS. ROBESON: You've got to prove it --
12 MR. THAKKAR: Yourself.
13 MS. ROBESON: Yes.
14 MR. THAKKAR: Right. So I guess what I --
15 MS. ROBESON: And I know you've got all the ducks
16 with Technical staff and Planning Board on line with you.
17 MR. THAKKAR: Yeah. Yeah.
18 MS. ROBESON: So I'm fine with what they
19 recommended.
20 MR. THAKKAR: Okay. Right.
21 MS. ROBESON: But now I'm asking you my questions.
22 MR. THAKKAR: Right. And so I guess my
23 understanding is that the master plan document, not the
24 appendix, the master plan itself, is given the most weight.
25 And if, again, to answer to your question, if the Council

had wanted to make a dual recommendation, it would seem to me very easy for them, in fact, to put in that master plan, on those series of recommendations, 37,056 square feet for the Chelsea School only if the Chelsea School doesn't get the special exception or if the Chelsea School moves 20 years later, it should be 1.4 acres. I would think that would be a very clear and easy and simple thing for the Council to say if that's what they wanted or intended to do.

MS. ROBESON: Now, let me ask you something else.

MR. THAKKAR: Sure.

MS. ROBESON: Maybe Mr. Iraola is the person to answer it. I'm going to ask you because it's a question I'm going to ask the citizen's witnesses. What is the area of the, not the environmental setting, what is the area of the green area that you're showing around the house now? That, yes. That.

MR. THAKKAR: So let me walk through. May I get up and just walk you through it?

MS. ROBESON: Yes.

MR. THAKKAR: Okay. So the environmental setting is this cross-hatch.

MS. ROBESON: Yes.

MR. THAKKAR: 37,056 square feet. Then there's additional green space in the checks that we're calling public access green space on site. That's another .55

1 acres, okay? So that --
2 MS. ROBESON: Okay. But how much -- oh.
3 MR. THAKKAR: So we've got --
4 MS. ROBESON: 55 acres? Oh, .55.
5 MR. THAKKAR: .55 acres.
6 MS. ROBESON: I'm sorry.
7 MR. THAKKAR: .55 acres, right? So the
8 combination of those two is 1.3 acres on the site, so what
9 we are showing on our property is 1.3 acres.
10 MS. ROBESON: So you're just shy of the 1.4.
11 MR. THAKKAR: In a different configuration, right.
12 And we're not, just to be clear, we're not proffering this
13 additional .55 acres as the environmental setting but we are
14 suggesting it's going to be green space surrounding the
15 property. And just to finish, there's additional property
16 offsite which is around the house that is another .12 acres
17 and that's where we get the 1.5 acres. We're actually
18 closer, we're 1.3 something on just our property and then
19 we're just shy of that. We're over, over 1.4 if you include
20 what's off of the property.
21 MS. ROBESON: Okay. So what -- my question was as
22 far as is this going to be subject to an HOA?
23 MR. THAKKAR: Our proposal would be that we
24 haven't made the determination yet of what portion of the
25 property, to answer your question, goes with the house

1 because there will be a certain amount of property, not
2 determined yet, that goes with the house. The remaining
3 green space which will be part of the environmental setting
4 and additional green space not part of the environmental
5 setting will be subject to an HOA. However, what we've done
6 in the past and what we propose to do here is a public use
7 or public access easement so it will be maintained by the
8 HOA but a portion of that area that you see around the
9 house, the portion that doesn't go with the house will be
10 publicly accessible. That's our plan.
11 MS. ROBESON: Okay. I guess my question is is the
12 single-family house part of the HOA? Is that going to be
13 part of the HOA?
14 MR. THAKKAR: I would suspect that it would be.
15 MS. ROBESON: My question what I'm getting to is
16 that green area, you know, when it's common space for the
17 HOA --
18 MR. THAKKAR: Yeah.
19 MS. ROBESON: -- is it going to -- typically, in
20 your HOA docs, you dedicate, that's space that nobody can
21 develop in.
22 MR. THAKKAR: Right.
23 MS. ROBESON: So I guess my question is --
24 MR. THAKKAR: I guess to --
25 MS. ROBESON: My question is is that space going

to be either public access or HOA space that prohibits development?

MR. THAKKAR: Yes.

MS. ROBESON: Okay. My second question is if you're so close to the 1.4, is it just the boundary of the 1.4? What is the issue with simply just going with the 1.4?

MR. THAKKAR: Oh, okay. So this configuration, the close to 1.4 that I just laid out --

MS. ROBESON: Yes.

MR. THAKKAR: -- is a very different configuration from the 1.4 acres that the house sat on, the parcel, I think it's Parcel 73. So they're configured --

MS. ROBESON: So do you have an exhibit that shows me the configuration, the difference -- so what you're saying -- are you saying that you cannot keep the 1.4 in its present configuration --

MR. THAKKAR: Right.

MS. ROBESON: -- before what, design the logistics?

MR. THAKKAR: I guess let me take a step back.

MS. ROBESON: That's fine.

MR. THAKKAR: What we're saying is that we don't believe that the 1.4 acres is the historic setting.

MS. ROBESON: Well, forget that.

MR. THAKKAR: Right.

1 MS. ROBESON: I mean, don't forget that.
2 MR. THAKKAR: So --
3 MS. ROBESON: You're free to make that argument
4 but I really want the answers to my questions.
5 MR. THAKKAR: Sure, okay. So the layout of this
6 plan, in our view, with the 37,056 plus the additional
7 space, is superior, in our opinion, to a plan that would
8 have the environmental setting as it, as it is today.
9 MS. ROBESON: Yes.
10 MR. THAKKAR: Or I'm sorry, as --
11 MS. ROBESON: My question is --
12 MR. THAKKAR: Yes.
13 MS. ROBESON: -- why don't you just provide, if
14 you're providing 1.3-plus, why don't you just -- is there
15 some reason --
16 MR. THAKKAR: Right.
17 MS. ROBESON: -- you're not going with the
18 original environmental setting?
19 MR. THAKKAR: Yes.
20 MS. ROBESON: That's my question.
21 MR. THAKKAR: Yes.
22 MS. ROBESON: And what's that reason?
23 MR. THAKKAR: The reason is that we designed the
24 plan assuming, as we thought we should, that the setting was
25 37,056 square feet. We wanted to be responsive to --

1 MS. ROBESON: Okay. But is there a --
2 MR. THAKKAR: Yeah. Yes.
3 MS. ROBESON: -- practical reason?
4 MR. THAKKAR: Yes.
5 MS. ROBESON: Forget the whole past history of
6 whether it should be 37 or --
7 MR. THAKKAR: Yes.
8 MS. ROBESON: Is there some reason today --
9 MR. THAKKAR: Right.
10 MS. ROBESON: -- that you can't just follow the
11 footprint? And it could be, I don't care, it could be site
12 logistics. I'm asking you what the reason is --
13 MR. THAKKAR: Right.
14 MS. ROBESON: -- that you're not just going with
15 the original 1.3 acres.
16 MR. THAKKAR: Well, 1.4.
17 MS. ROBESON: 4. 4.
18 MR. HARRIS: Excuse me. Objection. There was no
19 original 1.4 acres. It was --
20 MS. ROBESON: Well, okay.
21 MR. HARRIS: Okay.
22 MS. ROBESON: Objection noted.
23 MR. THAKKAR: To answer your question, simply that
24 the 1.4 acre parcel that you’re talking about comes out
25 further here and so you lose -- if you, just looking at this

1 plan, you'd lose this row of townhouses and then you'd have
2 backs of townhouses facing onto the 1.4 acre that Madam
3 Hearing Examiner is talking about. So it's a different
4 plan.
5 MS. ROBESON: You don't have to call -- and don't
6 call me madam. No. I'm sorry. I --
7 MR. THAKKAR: What should I, what should I call
8 you?
9 MS. ROBESON: Just Ms. Robeson is fine.
10 MR. THAKKAR: MS. Robeson. Okay. So to answer
11 your question --
12 MS. ROBESON: I'm sorry.
13 MR. THAKKAR: -- it's a very, a very different
14 plan. Essentially, we'd have to, you know, go back to the
15 drawing board and look at that.
16 MS. ROBESON: So what you would have to do is, is
17 bring that row of townhouses either up closer to Pershing.
18 MR. THAKKAR: Right.
19 MS. ROBESON: Is that the deal?
20 MR. THAKKAR: I don't know that you could do that.
21 MS. ROBESON: Yes. That's what I'm saying.
22 MR. THAKKAR: Yeah. I don't you, I think you
23 would, you'd have to, you'd have to adjust the plan to
24 address, you know, that concern and again --
25 MS. ROBESON: And I guess my question -- okay.

1 MR. THAKKAR: Yeah.
2 MS. ROBESON: You have answered and I'm sorry I'm
3 almost --
4 MR. THAKKAR: No, no, no.
5 MS. ROBESON: -- cross-examining you.
6 MR. THAKKAR: No, no, no.
7 MS. ROBESON: But I really want to know --
8 MR. THAKKAR: I appreciate it. I appreciate it.
9 MS. ROBESON: I really want to know the answer.
10 MR. THAKKAR: Yes.
11 MS. ROBESON: But it seems to me, and this is my
12 question for the citizens --
13 MR. THAKKAR: Yeah.
14 MS. ROBESON: -- so you can take notes on this,
15 but it seems to me you have an argument separate from the
16 whole appendix thing. And maybe this is for Mr. Iraola, but
17 it seems to me that you have an argument that you
18 substantially, that the theory behind the Chelsea School,
19 which was that you are essentially implementing the same
20 theory for the Chelsea School, that by limiting the, you're
21 limiting the environmental setting but in order to provide
22 rather than a campus-type atmosphere, a park-type
23 atmosphere. Is that something that your land planner is
24 going to address? And I would like the -- and I'm asking
25 the citizens to answer that question as to if they're

1 providing 1.3-plus acres, okay, why, and that space is going
2 to be open for the public, no building can occur on it, why
3 is that, why is it important to retain the outline of the
4 existing parcel? So is your land-planner going to address
5 that issue?
6 MR. THAKKAR: I think he will, but I was going to
7 address it from a big picture standpoint. What we heard
8 from the community and we heard from the Zoning Hearing
9 Examiner, what we heard from Council is this house is
10 important and whether or not you think it's 37,056 square
11 feet or 1.4 acres, it should have an appropriate buffer. So
12 our approach, since we got the remand, was we firmly believe
13 that setting is 37,056 square feet. However --
14 MS. ROBESON: But moving beyond that.
15 MR. THAKKAR: But moving beyond that.
16 MS. ROBESON: Okay.
17 MR. THAKKAR: However. However, we thought that
18 we should provide what we thought was a better, a more
19 appropriate buffer. It's a great house. I will point out
20 and I know -- this is Exhibit 122. You know, today, this is
21 the Riggs-Thompson House, right, and you have a number of
22 buildings on what, you know, is a 37,056 environmental
23 setting and off of it.
24 And so our thought was today, with all due
25 respect, the house is not sitting in this, whether it be

1 campus-like or park-like setting, it's, it's not a very, in
2 my opinion, strong preservation given the adjacent building,
3 the architecture really doesn't match. And so our view has
4 always been, the first time around and now, that, number
5 one, demolish those buildings, restore the house to its, you
6 know, maybe not original splendor but to a much more
7 historically satisfying view, and then provide an
8 appropriate buffer.
9 And so, again, to answer the question, as we
10 looked at this and said we've heard comments, let's provide
11 a great buffer. And we thought, and this is sort of part of
12 the, I don't know if frustration is the right word but we
13 genuinely thought that by saying okay, we don't agree on the
14 size of the setting but let's, to your point, move past that
15 and put something on the table that would just make sense.
16 And I think, you know, where, and I know you said not to
17 quote staff but I think where staff was is this is great
18 what you guys are doing, you're demolishing those buildings,
19 you're giving it a wonderful setting, it's going to be open
20 to the public. One can argue that it's maybe better than
21 the 1.4 that some think of the setting because, you know,
22 green area on this plan, you know, goes all the way up to
23 Springvale. This intersection makes it more public. So the
24 point from the start has been to provide a great buffer for
25 the house and --

1 MS. ROBESON: Now, what --
2 MR. THAKKAR: -- hope that we could come to
3 accommodation.
4 MS. ROBESON: Right. What is the debate about the
5 lot size for that house? I mean, have you thought through
6 how that land is going to be preserved as open space or why
7 are you debating the lot size for the house? I'm just
8 asking.
9 MR. THAKKAR: Okay. So, so what we would have to
10 do should this move forward is submit a preliminary plan of
11 subdivision, right?
12 MS. ROBESON: Right.
13 MR. THAKKAR: That would, that would plat this
14 site.
15 MS. ROBESON: Right. Including the --
16 MR. THAKKAR: Including the houses.
17 MS. ROBESON: Well, we'll get to the subdivision
18 argument but --
19 MR. THAKKAR: So we would submit a preliminary
20 plan of subdivision. We'd have to draw what we felt was an
21 appropriate lot, if you will, for this house, right? And we
22 could draw that. It could be, it could be here. It could
23 go further out here. It could be, you know, it could have a
24 larger backyard or a smaller backyard. So you'd have to --
25 there's no debate when --

1 MS. ROBESON: But if that lot were entirely within
2 your environmental setting, is this correct? Maybe you
3 aren't the person to ask.
4 MR. THAKKAR: Right.
5 MS. ROBESON: If that lot that you draw --
6 MR. THAKKAR: Yeah.
7 MS. ROBESON: -- is entirely within the
8 environmental setting, you would have to get a work permit
9 to make any changes to that lot, correct?
10 MR. THAKKAR: Yes. The lot or the house or both?
11 MS. ROBESON: Both.
12 MR. THAKKAR: Yes. We're going to have to get a
13 work permit regardless --
14 MS. ROBESON: I know.
15 MR. THAKKAR: -- to do whatever we're doing to the
16 house.
17 MS. ROBESON: I know that.
18 MR. THAKKAR: Right.
19 MS. ROBESON: But what I'm looking at is how much
20 of the space is, in reality, going to be preserved? That's,
21 that's what I'm asking you.
22 MR. THAKKAR: Right. So I thought I answered it
23 but all of the --
24 MS. ROBESON: You did.
25 MR. THAKKAR: All of the space that you see here

1 will be preserved, so the 1.3-plus as you said.
2 MS. ROBESON: But if you draw that lot for the,
3 for the Riggs-Thompson House within the environmental
4 setting --
5 MR. THAKKAR: Right. Within the 37,000? Just --
6 MS. ROBESON: Yes.
7 MR. THAKKAR: Okay. Right.
8 MS. ROBESON: We're not, I'm not arguing right now
9 whether, what the environmental setting is. I'm asking a
10 question.
11 MR. THAKKAR: Yes.
12 MS. ROBESON: If you draw it entirely within the
13 environmental setting, then they would have to get a
14 Historic Work Permit to add any structures.
15 MR. THAKKAR: Yes. Absolutely.
16 MS. ROBESON: Well, think about that.
17 MR. THAKKAR: Right.
18 MS. ROBESON: I'm asking you to think about -- my
19 concern is if I go with your plan --
20 MR. THAKKAR: Right.
21 MS. ROBESON: -- then how is this going to be,
22 this green area, this buffer going to be protected --
23 MR. THAKKAR: Right.
24 MS. ROBESON: -- legally from development or
25 encroachment?

1 MR. THAKKAR: So to be clear, whatever the lot
2 size of the house is, what we've proffered is that there
3 would be a public use easement on, on it or a lot. And in
4 either case, what those easements would say, either the
5 private or the public, is that no development could occur.
6 So I just want to very clear with you that our --
7 MS. ROBESON: Oh, okay. I see what you're --
8 MR. THAKKAR: Our intention, make 100 percent
9 clear, whether or not the land going with the house to a
10 third party or stays in the HOA, the documents will be clear
11 that, you know, that development can't occur in them with
12 the caveat that --
13 MS. ROBESON: I understand.
14 MR. THAKKAR: -- if you wanted to do something, as
15 you said, within the 37,056, regardless of if it was part of
16 the lot that went with the home or with the HOA, you'd
17 always have to get a work permit to do anything in
18 perpetuity.
19 MS. ROBESON: Right. But what happens if the guy
20 that buys this house wants to put a shed up and his house is
21 on a lot that won't be covered by the public, or maybe, you
22 know, I say a shed. There are sheds and there are sheds.
23 I've seen many weird -- I'm just asking. Don't get
24 frustrated with me because it doesn't help me get through
25 the hearing.

1 MR. THAKKAR: Right. So just to be clear again,
2 we will put in our HOA documents that you cannot build on
3 the areas that are publicly accessible.
4 MS. ROBESON: Yes.
5 MR. THAKKAR: And we can make it further clear
6 that easements with the house sale, that you can't build,
7 you know, you can't build on the property except what is
8 there today.
9 MS. ROBESON: Okay. So you're going to put that
10 limitation on the house lot.
11 MR. THAKKAR: Right. Let me just say though that
12 ultimately, whatever limitation we put on it, anything you
13 do within, not the house lot but the 37,056 square feet has
14 to go before, has to get a Historic Work Permit.
15 MS. ROBESON: Right.
16 MR. THAKKAR: In any event.
17 MS. ROBESON: Right. I'm getting to the area
18 that's not public access and not historic easement. That's
19 what I'm getting at, okay?
20 MR. THAKKAR: Got it. Okay. Right.
21 MS. ROBESON: There --
22 MR. THAKKAR: I understand.
23 MS. ROBESON: Patience is a virtue, Mr.
24 Youngentob.
25 MR. THAKKAR: Yes. I'm just trying to --

MS. ROBESON: I know. I know.

MR. THAKKAR: I'm not frustrated with you in the least. I was just trying to help the -- it is just the HOA will govern that area.

MS. ROBESON: All right. I am finished grilling Mr. Thakkar.

MR. THAKKAR: I enjoyed it.

MS. ROBESON: Mr. Brown. Now you get to be grilled by Mr. Brown. Oh, you haven't finished.

MR. HARRIS: He hasn't finished yet. Wishful thinking.

MR. THAKKAR: I'm sorry. I'm really truncating this hearing.

MR. THAKKAR: I have finished, I finished, I finished with point one of three.

MS. ROBESON: I know. I apologize. That's totally my fault. Okay. Go ahead.

MR. THAKKAR: Okay. The density and massing.

MS. ROBESON: Yes. This is important too.

MR. THAKKAR: This is a big one. It's huge.

MS. ROBESON: Yes. Go ahead.

MR. THAKKAR: Please feel free. I like the dialogue and the discussion. I'm going to actually just move forward. I think we all know where the property is.

MS. ROBESON: I've seen that map.

1 MR. THAKKAR: You've seen that map before.
2 MS. ROBESON: Yes.
3 MR. THAKKAR: It defines the surrounding area. I
4 will just note that since we last came together, development
5 on this roughly 200-unit multi-family project across Cedar
6 Street has commenced. As we all know, the CBD is part of
7 this defined surrounding area as is the surrounding
8 community and, you know, our view has always been that when
9 you walk around this site, there are a number of different
10 uses, whether it be park, whether it be the multi-family,
11 the high-rise multi-family building, the single-family
12 homes. Clearly, the senior housing, the library and the
13 park, their diversity of uses, and then the Chelsea School
14 frankly, adds to those uses and, you know, we will maintain
15 that. We think that a residential use replacing the
16 institutional use will add stability to the neighborhood,
17 will bring this parcel back to its originally intended
18 residential use and will be a good transition given those
19 various uses.
20 The zoning. I guess from a big picture
21 standpoint, we've got a number of binding elements. RT-12.5
22 zoning does not allow, as we all know, the same level of
23 density and massing as RT-15 and I think, you know, the two
24 keys to that are the minimum green area, so de facto with
25 the differences between the two, 50 percent on RT-12.5 with

1 30 as a minimum on the RT-15, and then just the allowable
2 density, the 12.5 in the 15. The 50 percent green area
3 really does, and I'll get to this, put forth a more open, a
4 more green, a plan potentially more in keeping with what the
5 Zoning Hearing Examiner and the Council were looking for.
6 This is, and I just want to put this board up. It
7 shows both plans and I want to put this up so I can move
8 onto the next slide.
9 MS. ROBESON: Now, that's in the record already,
10 right? That's just a large version of what's in the record.
11 MR. THAKKAR: Correct. That's right.
12 MS. ROBESON: Okay.
13 MR. THAKKAR: So what I'd like to do now, and the
14 reason I put this up, is just walk through sort of point by
15 point the revisions that we made, why we made them, how they
16 affect density and massing. So let's start with I guess
17 sort of the easy one if you will. As you know, on the prior
18 plan, there were a total of 77 units, this plan has 64
19 units. The prior plan had 10 MPDUs, this plan has 8 MPDUs
20 but from a percentage, from a density per acre standpoint,
21 we're right around 12.19 and from a, so 12.19 per acre and
22 from a reduction standpoint, 77 versus 64, so about a 17
23 percent reduction in density. And so we'll get into the
24 changes but we started with, we heard the Council, we heard
25 the Zoning Hearing Examiner and we think that's a pretty

1 sizeable reduction, 17 percent from the 77 and 64.
2 Well, okay then. So, you know, how did we get
3 there? We start with setback along Springvale at 25 feet
4 which is a mandate of the RT-12.5 Zone. Right here. In
5 terms of massing, what we did was reduce the lengths of
6 these strings adjacent to Springvale. So they were 132 feet
7 the last time we came. We reduced them by 12 feet, 10
8 percent or so, to 120 feet. What we also did was increase
9 the space, and this is hard to read on a plan like this,
10 between the courtyards. So the courtyards were 36 feet
11 approximately and now they're about 40 feet.
12 So what that does for you is it both reduces
13 string length and opens up the space between each of these
14 strings of townhouses. Couple that with the unit reduction
15 in each of these strings, we had eight and six units in
16 these strings or buildings in the first plan. We now have
17 five units on the one side, seven units on the other side.
18 So we reduced the density of the buildings, we reduced the
19 length of the buildings, we increased the setback on the
20 buildings and increased the open space between the
21 buildings.
22 And from the big picture standpoint, even in terms
23 of the number of buildings on the site, what we essentially
24 did in a big loss in the density is we just removed one of
25 the townhouse buildings. So if you look at the old plan

1 versus the new plan, you've got one, two, three, four, five,
2 six buildings right here on the south side of Private Street
3 A. You've got one, two, three, four, five on this plan, so
4 five versus six. We just got rid of one and we really
5 wanted to be responsive to, again, back to this question of
6 the house and providing an appropriate, appropriate buffer.
7 The ZHE specifically mentioned in the report that
8 she thought maybe these houses were too close and we weren't
9 providing that setting. So by removing that one full row of
10 townhouses, we moved from 28 feet, this plan right here,
11 about 28 feet to the Riggs-Thompson House. This plan is
12 approximately 92 feet to the Riggs-Thompson House. So what
13 we did again, in terms of density, in terms of massing,
14 creating this park-like setting around the Riggs-Thompson
15 House and really respecting, responding to the comment and
16 respecting that distance. The other thing we did is, and we
17 heard this comment loud and clear, was if you want to be
18 compatible, why are you requesting a waiver along this edge
19 of the property, and so we pulled back off of that property
20 and now we're respecting a 30-foot setback.
21 So if you look at sort of the combination of
22 changes and from an overall green space perspective, we were
23 going to bind ourselves 40 percent in the last plan. We're
24 now binding ourselves to 50 percent. This plan actually has
25 54 percent green space. The prior plan had about 47, 48.

1 So just from a general green space standpoint, when you talk
2 about density and massing, it's reduction, reduction of
3 number of units, reduction of the size of the buildings and
4 an increase in green space.
5 So our strategy, if you will, was really, again,
6 to provide this park-like setting, to respect the setbacks
7 and again, by lengthening the courtyards, reducing the
8 strings, we are providing more open space and address the
9 massing question directly by providing a greener site, a
10 site with less units and also smaller buildings if you will.
11 That, that is how we took the comments and how we addressed
12 them.
13 You'll also note, and I'll get more into this,
14 that, this relates to point three, that we now bring the
15 road out to Springvale and what that does is we don't run it
16 through the 37,056 square feet. We just, you know, we
17 pulled it completely out of that setting and we can talk
18 about the effects of that. What we, what we put forth we
19 think is an efficient circulation plan that works, that
20 doesn't impact the environmental setting. So those are the
21 nature of the changes.
22 If I can just move one step forward, this is our
23 green area plan. I think we'll -- I show this exhibit
24 because it struck me in terms of, again, we took this, you
25 know, to heart in terms of how do you reduce density and

massing. We thought we were close but we heard comments and if you look at this plan, both, not just around the house. I think around the house is an important part but if you look at the green space between the buildings all around the property, we've always talked about, and our attention the first time around and what we heard is, maybe we really didn't quite get there, is to really provide a buffer to the surrounding community while also relating to the surrounding community.

One of my fears is that, you know, if you pull back too far, let's say here or here, I don't think you want to hide this. I think if we agree that it is an RT zone and that townhouses are acceptable, that they should relate, they should just relate well. And so what we tried to do all along is maintain those buffers but, and we'll get to this should this project move forward, but relate to what's across the street on all sides through architecture, through detail and through the other things we think that we can do well should we move forward.

As far as the orientation -- and, you know, we may get questions, we certainly read all of the opposition's exhibits and submittals, you know, why did we, the question we get, why did we keep a similar orientation than what we did before and we tried to address this last time around.

Number one, probably the most important, we did

1 not want to and do not want to line Springvale Road with
2 townhouses. That could be an appropriate way. We saw a
3 prior plan, and I know the point is not to discuss other
4 plans but our view has always been, and we've done it in
5 other projects, is the best way to relate is to, as we have
6 in a binding element, you know, treat these sides as fronts
7 and not line a street on one side with townhomes and single-
8 family homes on the other.
9 So again, you know, you've got one, two, three,
10 four, five, six, seven, eight, nine, is that right? Nine
11 houses across from the ends of six of our townhome
12 buildings, and so we've always thought that that was an
13 appropriate way to work with what's happening across the
14 street.
15 The other constraint, if you will, of the site is
16 the grade. It's a lot lower here than it is here, and we
17 showed this diagram last time around. So the thought is to
18 really step up the street in a way that, again, gives that
19 single-family appearance and works with the stepping up that
20 happens across the street. We just thought that that would
21 be the best that we knew to approach compatibility. This
22 is --
23 MS. ROBESON: Can I just ask --
24 MR. THAKKAR: Sure.
25 MS. ROBESON: Well, no. You finish yours and then

I'll ask.

MR. THAKKAR: Okay. I wanted to both show this picture and this model. This project is Clarendon Park that we've talked about a fair bit.

MS. ROBESON: Why don't you set it on the table where people --

MR. THAKKAR: Sure.

MS. ROBESON: Maybe before cross-examination we'll take a break and then people can view and have a chance to examine it. So just --

MR. THAKKAR: So the purpose of this, both this picture and this model, essentially just to, to give a sense of what the relationship could be. I want to make a couple points. This project is 28 units per acre. It's off of Wilson Boulevard in Arlington. It is both adjacent to retail but it's also adjacent, as you can see in this picture, to single-family homes probably with lots a little larger than the lots in the R-60 neighborhood in Silver Spring. The challenge was nonetheless the same. The reason the density is higher is because this is closer to their CBD but again, the challenge remained. There are single-family homes on all sides of this and how do you make that work.

And so these houses are the townhouses. These are the single family homes. I also want to point out that in the model and in this picture, these homes are a lot taller

1 than what we're proposing. They're 45 feet. We are
2 proposing 35 feet. The courtyards in between these homes
3 that you can see in the models are smaller than the
4 courtyards that we are suggesting and because the density is
5 higher, what we've done in this case is wrap the courtyard
6 with additional building.
7 And so this is a much denser product. I want to
8 make it clear we're less than half the density of this
9 project. However, you know, this project has won numerous
10 awards. I think Mr. Iraola testified to the fact that this
11 has been an often copied use because there's always this
12 transition, how do you make it work best, and we think this
13 is one way to do that.
14 I brought the model because it's just a little bit
15 easier to see and feel how it works with, in regard to the
16 response about the architecture. Will this be barracks-like
17 and such, whether there are front porches, whether there is,
18 whether there's jogging, whether there are bays, whether
19 there are recessed doors and frankly, at the end of the day,
20 the quality of the materials, the quality of the
21 architecture, we think that speaks to how you can get to,
22 you know, compatibility at the end of the day and structures
23 that, you know, in our honest opinion will be, you know,
24 nothing close to barracks but in fact, you know, really
25 nice, high-quality homes that we hope people will buy and

1 live in.
2 And so the other thing I'd like to point out on
3 this picture, I think this really shows it well. This is 10
4 years after, give or take, that this project was developed.
5 What you'll find is, and some of the concern is, you know,
6 the massing and what happens down, you know, those alleys.
7 So a couple things. If you go back one so again, this is
8 sort of how it will look on the street. There will be some
9 lower walls and landscaping to address sort of those alleys,
10 so you're not going to see an alley or headlights coming
11 into your community if you're across the street.
12 But in addition to that, you know, what we've
13 proposed, and I don't want to say it's been overlooked but I
14 think it's a really important feature and one that we did
15 not employ here, is what I guess the landscape architect
16 called this, you know, double array of trees. And so in
17 this case, we've got one row of trees. I don't know how a
18 single array I guess of trees. So here's a tree 10 years,
19 10 years after planted. Here's another tree. And what that
20 starts to do is provide that buffer between what's across
21 the street, single-family homes, and the townhouses on the
22 other side with regard to the particular concerns we've
23 gotten around the alleys and how do you treat them. And so,
24 you know --
25 MS. ROBESON: Now, you have the double row of

trees in a binding element.

MR. THAKKAR: Yes.

MS. ROBESON: Is that still there?

MR. THAKKAR: It is.

MS. ROBESON: The double row of tree?

MR. THAKKAR: Yes, ma'am. Yes.

MS. ROBESON: I missed that.

MR. THAKKAR: Yes. Can you tell me which one it is? Is it not there? It wasn't intentional if it wasn't.

MS. ROBESON: I didn't see it. I think what the original one says, I don't have the exact language but I remember it had a double row of trees in it.

MR. THAKKAR: Okay. What this says is a linear green area along Springvale Road. That, honestly, was an absolute omission. As you can see on the plan, that's an intention.

MS. ROBESON: So you are going to revise that binding element --

MR. THAKKAR: We will revise.

MS. ROBESON: -- to include a double row of trees.

MR. THAKKAR: We will revise that binding element. Sorry for the omission. That was the intention.

MS. ROBESON: No. I just was curious.

MR. THAKKAR: Yes. That was, that was the intention. So again, my point is, and I think this goes

1 really to the heart of this case is, you know, how do you
2 make Springvale work in essence. I think we've done a great
3 job on both sides of the site. I think we've done a great
4 job here with this, and this model structure articulate how
5 to look and feel. I think that double array along with the
6 landscaping, along with the lower walls, along with the
7 height, which will be the same as, you know, what's allowed
8 in the R-60, all of those together will, and, you know, I
9 know that this is opinion at the end of the day, but all of
10 those, I think will, at the end of the day, will make the
11 project work very well with what's across the street.
12 What I just wanted to run through very quickly
13 are, you know, this is just simply to show, as I said at the
14 beginning of my testimony, sort of, you know, our
15 architectural variation and depth. We saw some pictures
16 before but again, these are all similar situations when we
17 have these townhouses on courtyards and as you can see, you
18 know, in the District, we've got one, you know, look. This
19 is the Clarendon Park project you see here and you can start
20 to see some of the front porches, the articulation, the
21 different types of doors and materials, roof, decks and --
22 MS. ROBESON: Now --
23 MR. THAKKAR: -- what have you.
24 MS. ROBESON: The articulations shown on that
25 model there, is that up to each homeowner to elect or is

1 that going to be incorporated?
2 MR. THAKKAR: It will be incorporated in our site
3 plan. They don't have that option. This is the same
4 Clarendon Park project and again, this courtyard is
5 significantly narrower than what we're proposing but again,
6 we've got, you know, just the sense of when it grows up, how
7 does it look and feel. And we like it and most importantly,
8 the residents, both across the street and within the
9 community, like it. Our Falls Grove project, our National
10 Park Seminary project and finally, our Park Potomac project.
11 And I show all of these just to simply say that we do have
12 architectural depth in our capability with regard to
13 materials, with regard to details and we obviously employ
14 those as a way to further the compatibility at the point in
15 time at which, you know, the process requests such detail.
16 MR. HARRIS: Before you move into the next --
17 MS. ROBESON: Well, the -- yes.
18 MR. HARRIS: No, you --
19 MS. ROBESON: Okay. Well, I had a question about
20 the double row of trees.
21 MR. THAKKAR: Yes.
22 MR. HARRIS: Yes. I wanted to clarify that. My
23 recollection is imperfect. It turns out that the binding
24 elements before did not say that. The binding element reads
25 the same as it did before except that the minimum green

space has grown from a state, a binding element of 40 percent to a binding element of 50 percent. You're certainly correct. We did -- the full testimony was that there would be a double row of trees.

MS. ROBESON: No. There was -- you submitted, and I remember the e-mail correspondence, you submitted a revised binding element and it did make the street trees subject to site plan approval, but it did say a double row of street trees.

MR. HARRIS: I'm looking --

MS. ROBESON: I swear.

MR. HARRIS: Okay. I'm looking at the ZHE report and the binding elements are quoted in there.

MS. ROBESON: Well, after --

MR. HARRIS: So if it changed, it was after your report and I don't think it --

MS. ROBESON: Well, maybe I messed up in the report.

MR. HARRIS: Okay. But in any respect --

MS. ROBESON: I was trying to get it out so I didn't further delay the case.

MR. HARRIS: In any respect, we're willing to put that in.

MS. ROBESON: Okay. My question is there's a standard that's not shown on your schematic development plan

1 but I think the Planning Board mentioned it, that the
2 buildings have to, I think every three have to have a two-
3 foot differential. Say that standard goes away in the
4 Zoning Ordinance rewrite. Are you still committed to that
5 standard or not?
6 MR. THAKKAR: So what we -- we've done a number of
7 projects in Montgomery County and sometimes we employ the
8 JOG method. What they're looking for, and what we I think
9 understood from going before the Planning Board on several
10 cases like this one is that they're looking for JOGS or
11 other ways to articulate so you could add bays, you could
12 recess doors. There are other things the Planning Board is
13 open to, to get to that goal, and so our thought was we
14 would look at sort of that array of options, if you will,
15 and put something before Planning Board that made sense.
16 MS. ROBESON: So you're not, so the standard may
17 remain in.
18 MR. THAKKAR: Right.
19 MS. ROBESON: I'm thinking that this is going to
20 go to site plan after the Zoning Ordinance rewrite. So the
21 Zoning Ordinance rewrite may or may not have that standard.
22 MR. THAKKAR: Right.
23 MS. ROBESON: So you, you're saying it may not
24 have that standard --
25 MR. THAKKAR: Right.

MS. ROBESON: -- even though that's what the Planning Board's relying on in their decision.

MR. THAKKAR: Honestly, I don't know if it has that standard. My understanding is as it relates to that standard as it is written today, assuming that that is the statement that we are held to, that there are a number of different ways to address that standard in our experience. I'm not saying --

MS. ROBESON: Oh, you're saying by adding porches, that will get, make the two-foot difference.

MR. THAKKAR: It is one way, or by recessing doors and other such things so --

MS. ROBESON: The reason I'm asking is the barracks Row.

MR. THAKKAR: Yeah.

MS. ROBESON: Which, you know, when you look at your site plan, I can definitely understand why that phrase comes into mind so that's why, and it doesn't mean I've made a, again, it doesn't mean --

MR. THAKKAR: Understood.

MS. ROBESON: I'm just pushing, pushing the edges.

MR. THAKKAR: Right.

MS. ROBESON: Now, I also have a question. Did you ever consider putting single-family detached on the property or is that -- for instance, you could take those

1 end cap units on Springvale and make them, take that second
2 unit in out and put them on the bottom of the southern end
3 and then you would have a line of single-family detached end
4 caps.
5 MR. THAKKAR: Right.
6 MS. ROBESON: Did you ever consider some kind of
7 configuration that would put some single-family detached?
8 And I'm pushing you. I'm just asking.
9 MR. THAKKAR: No, no. It's been mentioned to us
10 so certainly, you know, we thought about it. We've done
11 single-family homes. I think our very simple response is,
12 you know, given this location, given the market as we know
13 it and given our view that we can be very compatible, that
14 townhouses, you know, not to get into a debate about this,
15 we think they are very, maybe even inherently compatible
16 with single-family homes. We just -- sure, we thought about
17 it to answer your question. However, we concluded that we
18 could put forth a compatible plan with the home type,
19 frankly, that we think is what the market is calling for in
20 this location that is so close to Whole Foods, Metro, et
21 cetera, et cetera. So, yes, we thought about it, and we
22 concluded that this was a more appropriate product for this
23 market and that we could put forth a plan that was very
24 compatible with the surrounding uses.
25 MS. ROBESON: So your answer to the barracks

1 argument is architectural elements.
2 MR. THAKKAR: Yes.
3 MS. ROBESON: Landscaping and the, and the
4 alignment of the townhomes on, perpendicular to Springvale.
5 MR. THAKKAR: Right. I mean, you know, if, I
6 guess if -- you could call almost any townhouse, you know,
7 in terms of just, they're big, long rows and so, you know --
8 MS. ROBESON: Some are, some aren't.
9 MR. THAKKAR: Some aren't but many, you know, many
10 in our case, and that's why I particularly put these
11 pictures into my presentation because these are all long
12 rows of townhouses.
13 MS. ROBESON: That show the building articulation.
14 MR. THAKKAR: Some of them do, some of them don't.
15 This one. This one. They show the building articulation,
16 I'm sorry. Correct, yeah. And so, you know, as you can see
17 from these, we think that again, through architecture,
18 through landscaping, through details which can be seen in,
19 you know, many of our prior projects and this model as well,
20 we're very confident we can meet that, meet that standard
21 when we go, if and when we go before Planning Board.
22 MS. ROBESON: Okay. And I have one other question
23 on the site plan. I thought, and I haven't looked at the, a
24 revised site plan came in and I don't know what the
25 difference is. And maybe you could first tell me in your

1 responses that were due on March 19th I think, I thought
2 there's a revised site plan. What's the difference between
3 that and the one you submitted --
4 MR. THAKKAR: When you say, you mean revised SDP?
5 I think that's what you're referring to.
6 MS. ROBESON: Yes.
7 MR. THAKKAR: Yes. It's simply two binding
8 elements so that there's nothing, nothing --
9 MS. ROBESON: It's the Planning Board? The ones
10 for the faux fronts?
11 MR. THAKKAR: That stays in.
12 MR. HA: No. Was that --
13 MR. THAKKAR: That was, that was in the initial
14 submission to you. The initial submission we made, because
15 the Planning Board suggested it and then --
16 MS. ROBESON: Okay. Well, what's the difference
17 in the one that you submitted on March 19th and the one you
18 submitted earlier?
19 MR. THAKKAR: Right. So there are two binding
20 elements. Do you want me to read them or should I --
21 MS. ROBESON: Yes.
22 MR. THAKKAR: Because it's only binding elements.
23 MS. ROBESON: Because I couldn't read the little
24 teeny thing.
25 MR. THAKKAR: Right. Okay. So we added two

binding elements to really get at what I'm about to talk about next which is the private road.

MS. ROBESON: Okay. Well, then we'll get to that. That's the only change?

MR. THAKKAR: Yes.

MS. ROBESON: Okay. And --

MR. THAKKAR: We are checking. I believe that --

MS. ROBESON: Okay.

MR. THAKKAR: -- that the townhouse fronts recommended --

MS. ROBESON: While they check, I saw a thing on the site plan you originally submitted I think back in November --

MR. THAKKAR: Right.

MS. ROBESON: -- that I saw big lettering on the bottom of the site plan that said may encroach on the buffer, I mean at the SDP I mean, may encroach on the buffer at site plan or something like that. It was a big thing at the bottom of the plan. And my question is what does that mean?

MR. THAKKAR: Let us find, find that. You mean the initial SDP?

MS. ROBESON: The one in November, and I don't know if the current one -- one thing I could not parse through yesterday was the little exhibit that came in March.

1 MR. THAKKAR: Is it in a binding -- where would
2 the text that you're referring to be?
3 MS. ROBESON: Let me, let me -- did that hurt your
4 ears? Let me see if I can find it in the --
5 (Discussion off the record.)
6 MS. ROBESON: Well, I apologize. I don't want to
7 -- let me see if I can find it and then we can come back to
8 it.
9 MR. THAKKAR: I'd be happy to address it. We
10 don't -- we're looking, we are looking at a plan dated
11 November 21st, 2011.
12 MS. ROBESON: That was the one, and I -- sometimes
13 my memory does fail me.
14 MR. THAKKAR: We don't see it here.
15 MS. ROBESON: In the footnote. In the footnote 1
16 of 11/21/2011. What does that mean? Why is that in there?
17 It says the applicant intends to utilize Section 59-C-
18 1.732(a) at site plan. So on the one hand, you're saying
19 you're out of the buffer and on the other hand, you're
20 saying you're going to go into the buffer.
21 MR. THAKKAR: Let me address that. It was a
22 mistake and pulled over from the prior plan.
23 MS. ROBESON: Okay.
24 MR. THAKKAR: So we should strike that because we
25 have no intention of using that.

1 MS. ROBESON: Okay. I'm just checking.
2 MR. THAKKAR: No. It's great, yeah.
3 MS. ROBESON: I couldn't read that plan that came
4 in. Are you going to submit -- I haven't been through the
5 file enough to know. Are you going to submit electronic
6 versions of what you submitted after this plan is --
7 MR. HARRIS: I think we submitted electronically
8 things we have submitted so far.
9 MS. ROBESON: You did?
10 MS. BAR: No, we haven't.
11 MR. HARRIS: Oh.
12 MS. ROBESON: You haven't.
13 MS. BAR: We do it at the end.
14 MR. HARRIS: Oh, okay.
15 MS. ROBESON: Okay. Well, then --
16 MR. HARRIS: Once we clean it up.
17 MS. ROBESON: One question I'm going to ask you,
18 when you do your electronic version, can you put an exhibit
19 number because it's hard for me to figure, I have to open
20 every single thing on the disc to figure out which one is
21 what I'm looking for. So when you title the documents, can
22 you put the exhibit number on them?
23 MS. BAR: Right. We'll have to add those on.
24 Obviously, it won't be exactly the same as your exhibit.
25 MS. ROBESON: Well, if you're going to submit

1 everything at the end, you should have the exhibit list.
2 MS. BAR: Yes, no. It's not that. The numbers
3 will be the same. It obviously won't look the same as your
4 print of the exhibit number because I'll write it on.
5 MS. ROBESON: I don't want it -- no. That's not
6 what I'm saying. When you save the document, I'm not saying
7 put the exhibit number on it.
8 MS. BAR: Okay, fine.
9 MR. THAKKAR: In the name of the document.
10 MS. ROBESON: I'm saying when you save the
11 document, can you put the exhibit number on it?
12 MS. BAR: Yes.
13 MS. ROBESON: Okay. So that answers my question.
14 So this footnote shouldn't be on here.
15 MR. THAKKAR: It should not be on the plan.
16 MS. ROBESON: Okay. Just --
17 MR. THAKKAR: It is a, it is an erroneous holdover
18 from the old plan.
19 MS. ROBESON: Okay.
20 MR. THAKKAR: And we will strike it when we
21 resubmit the documents.
22 MS. ROBESON: Okay. All right. I'm finished my
23 questions and --
24 MR. HARRIS: Next issue.
25 MR. THAKKAR: Next issue. Okay.

1 MS. ROBESON: Mr. Brown will ask far harder
2 questions I know.
3 MR. THAKKAR: I'm sure he will. You're warmed me
4 up to at least answering questions. Okay. So all right.
5 Then the final issue that I would address is I think the
6 third issue in the remand, the private road, you know, where
7 is it and why is it where it is. So I guess, you know,
8 point one that I think we can all agree on and part of what
9 the remand I think requested was to take the road out of the
10 environmental setting I guess and/or make it more compatible
11 with.
12 MS. ROBESON: Well, I think what I intended in my
13 report, just so, I'm going to give you a head's up because
14 this is what I'd like to hear, what I intended was I didn't
15 think by a preponderance of the evidence that any of the
16 road alignments could meet all the requirements of the, it
17 wasn't just the environmental setting. It was is it going
18 to conflict with the master plan. Can you do this road
19 alignment?
20 MR. THAKKAR: Yep.
21 MS. ROBESON: You know, is this a real
22 possibility?
23 MR. THAKKAR: I think I, I think I can address
24 each of those concerns in detail.
25 MS. ROBESON: Okay.

1 MR. THAKKAR: Let me start by saying that based on
2 where we are, where we sit today, we think we, you know,
3 from the technical standpoint, staff standpoint, et cetera,
4 I'll get into that, that, you know, this road will be
5 acceptable, as proposed, to all parties. So I guess -- so
6 one, we're out of, out of the setting and two, and I guess I
7 want to get to kind of the heart of why this road may be
8 opposed by some and that, to me, is sort cut-through traffic
9 because what I think what we have heard is the issue with a
10 road -- the road used to come out to Pershing and now the
11 road bends and goes around to Springvale. So, you know, why
12 do we think this road works, number one, and number two, why
13 are we quite sure, and, you know, we feel very, very
14 strongly, you'll hear this in my testimony and you'll hear
15 this in Mr. Kabatt's testimony that this road will not at
16 all increase cut-through traffic.
17 So we'll start with the road on Springvale and
18 what I'll point out is that, referring to Exhibit 122, and
19 as I think most folks in the room know, there is a parking
20 lot that the school has that currently does have access to
21 Springvale. I just say that because that's an existing
22 condition and frankly, it does impact, pretty significantly,
23 traffic on Springvale Road. Springvale is, you know,
24 somewhat traveled by folks who, faculty, staff, students,
25 buses, et cetera. It is a road that's used to access the

1 school. Put it that way. There is an existing parking lot
2 there today that folks come in and out of which could impact
3 Springvale.
4 The road traffic volume and all that, Mr. Kabatt
5 will get into this further, but what we submit is that the
6 traffic volume from our project will be very, very minimal
7 and that this access will be an access that gets far more
8 utilized. This will be very small in terms of the number of
9 additional trips that it will add to the road. In addition
10 to this, just so we're all clear, the existing traffic
11 restrictions will be kept in place and I think the concern
12 about a road like this is there's a do not enter on
13 Ellsworth and so if you are coming from the CBD and you want
14 to go north into the neighborhood, you can't because you can
15 come in here, you can go to the library but physically,
16 there's a bump-out and a one way so you can't go north on
17 Ellsworth.
18 MS. ROBESON: You're not allowed.
19 MR. THAKKAR: You're not allowed, right?
20 MS. ROBESON: Right.
21 MR. THAKKAR: And I think the community will
22 state, I think you would agree that that is one measure to
23 avoid cut-through traffic or to reduce cut-through traffic.
24 And the second way to do it is, so now, I'll bring you back
25 to Cedar, is you cannot take a left onto Pershing. So the

1 two, basically the two roads around this property that you
2 could use to get you somewhere north and ultimately, maybe
3 you want to bypass Colesville, what have you, Colesville
4 Road being right here.
5 MS. ROBESON: Right.
6 MR. THAKKAR: You may want to bypass that and I
7 think that's the concern around cut-through traffic going
8 north.
9 MS. ROBESON: Right.
10 MR. THAKKAR: Right? And then potentially, you
11 know, well, wait a second, does this allow you to then
12 bypass this do not enter and this do not enter and go north.
13 MS. ROBESON: Right.
14 MR. THAKKAR: And so I'm, I'm prepared to address
15 that. So how are we doing that? We're keeping the existing
16 traffic restrictions. The road is designed, will be, it's a
17 relatively narrow road. It's a private road. It will have
18 pavers and other such things denoting that it is a private
19 road both on the parking and entry and exits. What we plan
20 is to, show some detail, is to put pavers and other such
21 things to design it in such a way that it looks and feels
22 like a private one. Probably more important than that, in
23 the exact same way that there's a do not enter here, there
24 is a do not enter here. We're proposing that this road be
25 accessible only to residents and guests of the project

1 because I think that --
2 MS. ROBESON: Now, is that going to be implemented
3 by signage?
4 MR. THAKKAR: It's going to be implemented by
5 signage.
6 MS. ROBESON: All right.
7 MR. THAKKAR: As important though. And so I think
8 the next question could be well, then how does it get
9 policed. So in short, and I'll just, you know, I'll skip
10 forward and then move back. So this is the type of signage,
11 you know, private property, no soliciting, loitering,
12 trespassing, violators will be prosecuted or something,
13 something to that effect. Now, if we agree that the
14 existing -- if the existing signage does not work, then you
15 have a cut-through traffic problem. If the existing signage
16 does work, and our evidence that Mr. Kabatt will get into
17 suggests that the current signage does in fact work and
18 prevent cut-through traffic and that's why it was put there,
19 if you believe that, then I would suggest that a sign like
20 this, so I'll bring it back to actually kind of, the actual
21 situation.
22 So you're driving on Ellsworth and you are, you
23 know, if you go this way, you're going to get hit with a one
24 way sign. If you go here you're going to be hit with the
25 sign that I just showed that says private property, no

1 trespassing. I would argue, you know, I might be more
2 concerned about trespassing, and we can get into, you know,
3 what police can do if you trespass but if you believe that
4 signs work, most law-abiding citizens wouldn't or couldn't
5 take either route. I further suggest that, you know, using
6 a private road on private property might be more of a crime
7 than going up the wrong way on a, on a one way street. You
8 can be arrested for trespassing and you can be fined up to
9 $500 for trespassing and other such things.
10 So in summary --
11 MS. ROBESON: Who is going to enforce that?
12 MR. THAKKAR: Great question and, you know, the
13 HOA would enforce that. And again, I'd submit just as this
14 community is very concerned about cut-through traffic,
15 imagine our buyers if their road is going to be used as cut-
16 through, they can put up, and folks have done this before,
17 you know, in real life, they can put up cameras, they can
18 call the police, get your license plate and at that point,
19 it's not, it's not, you know, just you're going up a wrong
20 way. You've trespassed on private property which again, is
21 a more serious crime. So the HOA would police that.
22 However, let's assume for a second that you broke
23 this law and you came through here. There's also, what
24 we're proposing here is a right in, right out so you cannot
25 make a left onto Springvale, right, and so --

1 MS. ROBESON: To get back to Colesville.
2 MR. THAKKAR: To go this way, not to Colesville.
3 MS. ROBESON: Or to Dale.
4 MR. THAKKAR: To Dale, right. Now, I'll get to
5 what happens if you go this way because you can take a
6 right. If you break the law and enter private property, you
7 can come out here and take a right, but let's stay with a
8 left. If you make this left, that will be illegal and our
9 view is that is an illegal action that you've taken onto a
10 public road. You're not allowed to make a left here. So
11 what I'm suggesting, it's almost a double suspender. You
12 can't, you can't enter here, and there will be signage,
13 there will be pavers, there will be other things denoting a
14 private street, and it will be trespassing subject to
15 whatever the law says with regard to trespassing. If you
16 break that, you also can't make a left here and that's a
17 policeable offense by the, you know, the County police
18 because you are taking a left, then back onto a public road.
19 MS. ROBESON: Well --
20 MR. THAKKAR: It's not allowed.
21 MS. ROBESON: I'm not sure that's the case if it's
22 on private property, but this is a legal --
23 MR. HARRIS: It would not be on the private
24 property. It would be on the public property.
25 MR. THAKKAR: You'd be making a left onto public

1 property that you are not --
2 MR. HARRIS: Onto a public street.
3 MR. THAKKAR: -- that you are not allowed to make
4 from that private property.
5 MS. ROBESON: Yes, but it's not a County -- well,
6 whatever.
7 MR. THAKKAR: Just not to --
8 MS. ROBESON: I understand. I don't want to get
9 into details.
10 MR. THAKKAR: Yeah. We've researched that and we
11 would submit that --
12 MS. ROBESON: You have? Because I used to do
13 stuff for Giant Food.
14 MR. THAKKAR: Right.
15 MS. ROBESON: And basically, if you have a stop
16 sign on private property, the police can enforce it but only
17 at the request of the --
18 MR. THAKKAR: The HOA.
19 MS. ROBESON: Yes.
20 MR. THAKKAR: Okay. And so --
21 MS. ROBESON: But who knows.
22 MR. THAKKAR: Not to get into too much detail but
23 we're, what we would submit, probably most importantly, is
24 just as much as folks in the community today don't want to
25 see cut-through traffic, we can't imagine an HOA that would

1 feel any differently. It's going to be their private road,
2 it's their private property. It kind of ups the ante in
3 terms of you own this piece of property and there's going to
4 be signage, and we will write in the HOA documents that this
5 road will be a private road for, as I said, residents and
6 visitors.
7 And my ultimate point though, even before we get
8 into reason is, if the signage works, I'm not sure why
9 someone would disobey our sign, if you will, and obey the do
10 not enter sign. I mean, in many ways, and, you know, I'll
11 go back to, you know, this example I have here, Fox Hall
12 Crescent. You know, I've got a friend that lives in Fox
13 Hall Crescent and it's got sort of, you know, this is one
14 way to approach it, prior to entry, just do some signage and
15 stuff. It's also got a sign here very similar to these no
16 trespassing, et cetera, and, you know, you rarely see folks
17 going in there because you get there and you're like I
18 clearly have no need to go in here, nor do I feel
19 comfortable at an entryway that looks like a more private
20 setting.
21 So we'll start with the signage and the pavers as,
22 you know, you wouldn't enter to begin with. If you did
23 enter, then the HOA will police that. We'd argue that HOA
24 policing and the fines that trespassing brings with it are
25 every bit as harsh as anything that could happen on the

1 public side.
2 Let me go back. So as I said, we have a binding
3 element to this effect which I believe this road will be
4 channelized right in and right out so you can't make, not
5 only can you not make the left turn from a signage
6 standpoint, again, what we really tried to do here is what
7 I'm talking about suspenders, suspenders, one on top of the
8 other. You can only make the right --
9 MS. ROBESON: Cumulative.
10 MR. THAKKAR: Cumulative, right. You can only
11 make the right out and only make the right in via a pork
12 chop so we're, and that's what we're proposing. We had
13 discussions with DOT. They said make this simple. Why
14 don't you put a pork chop there and that way right in, right
15 out and it reduces, you know, a whole bunch of concerns that
16 they may have otherwise had.
17 So the last thing I'll say is we did take it a
18 step further. So let's assume that you ignore, you break
19 the law and you enter, and then you break the law again and
20 make the left, or you break the law once when you enter and
21 you take the right which you're allowed to do but you've
22 already broken the law by entering. We looked at the travel
23 times in terms of okay, what does, where are people cutting
24 through and what does cut-through traffic get you in terms
25 of time savings. At the end of the day, you're cutting

1 because you want to save time.
2 So there's the signage. When I talked about
3 pavers, I just wanted to show some pictures of when you
4 start designing a private road, and this would be at site
5 plan. Things that we're talking about is not for the whole
6 road but when you enter, on both sides, you know,
7 crosswalks, what have you, you start using features like
8 this that make it feel like a private road as opposed to a
9 public road, again, part of, as you said, the cumulative
10 approach to ensuring cut-through traffic is not an issue.
11 So let's assume, as I said, that you want to get
12 to this location right here which is Dale and Colesville,
13 and I think that is certainly one of the concerns. Why
14 would you cut through, you know, you live here or you're
15 trying to go to get back to Colesville. So and Mr. Kabatt
16 will get into this. He did the study, I did not. But what
17 it shows is if this is peak hour traffic when we're going,
18 you're leaving the city so peak hour in the evening time,
19 what this shows is the average travel time, and so where
20 we're starting from is Spring or Cedar, if you will, and
21 Ellsworth is where you start, the quickest way in rush hour
22 to get to this point, as documented over, you know, a series
23 of counts, is still Colesville at 2 minutes and 36 seconds.
24 Then the second quickest, if you will, is you would again
25 break the law and I maintain that if you're not --

1 MS. ROBESON: I got that so --
2 MR. THAKKAR: Okay. So let's say you cut through
3 this way as you come through our site because you don't go
4 this way. And so my point is that at this point right here,
5 someone is saying I won't go up the one way because it's
6 inappropriate but I will go into private property. So they
7 come this way, come around, make the left onto Springvale,
8 go back out here, right? That is 3 minutes and 41 seconds,
9 and so it's 3:41 versus 2:36, a 63 percent difference. So
10 in short, if you're willing to, you know, disobey the
11 signage, then it's still going to take you a good bit
12 longer, and recall that this left turn is also not allowed.
13 You can, however, let's say you live here, what
14 have you, you can go through, enter again, you live right
15 here, and take a right. How do you get back to the Beltway?
16 I would say this is a pretty mazelike way to get back. You
17 want to get here but you're going away this way to get back
18 there. It's almost double the Colesville route in rush
19 hour.
20 And so, you know, we heard you the last time, Ms.
21 Robeson, saying hey, you guys need to look into cut-through
22 traffic and don't just tell me or don't have an expert tell
23 you that it won't be. Prove it to us. And so we had Mr.
24 Kabatt, who did the first series of studies look at this and
25 this is what we found.

1 The last thing that, you know, I'll comment on
2 right now is the, as I think you know, Ms. Robeson, and you
3 may have been bringing this up in terms of is this road
4 actually achievable. And as you may have seen, there was a
5 letter from DOT saying that hey, this is, you know -- number
6 one, DOT, as I think everyone knows, is supporting our new
7 road on Springvale and they don't have concerns, at least
8 that they've expressed to us or put in any correspondence
9 with regard to a road on Springvale.
10 MS. ROBESON: It's the distance from the
11 intersection.
12 MR. THAKKAR: It's the distance. It's the
13 distance. So to cut to the chase, we've had detailed
14 discussions with them over the past probably three or four
15 weeks. We believe that they are, they ultimately be,
16 ultimately will be completely comfortable with this access
17 point as it is located today.
18 MS. ROBESON: What happens if you have to move it
19 further west? Aside from Mr. Wilson's house, what happens?
20 MR. THAKKAR: So if we have to put it here?
21 MS. ROBESON: Yes.
22 MR. THAKKAR: For example, so that's what he
23 suggested, right? It's not our preference because what that
24 does is --
25 MS. ROBESON: It encroaches into your public

1 access area.
2 MR. THAKKAR: It pushes into our public access
3 area. Now, you know, there are ways to look at it and to be
4 clear, we think we could do that. That's where DOT ended
5 up. We think it's an issue for site plan. As you saw in
6 the letter from the Planning Board, the Planning Board said
7 we like this and you know we like this.
8 MS. ROBESON: Right.
9 MR. THAKKAR: DOT has recommended this. And we
10 can do either and we can respect this plan we think by and
11 large with either, certainly with the binding elements we're
12 putting in place. I think more importantly, since the time
13 that we got that letter from DOT, we have said, you know, we
14 think this is the right, given the volume, really, at the
15 end of the day, and I've talked about, you know, why we
16 think this makes sense but it provides additional parking
17 because you're not going through an alley, it minimizes the
18 impact of headlights into homes when you're headed --
19 MS. ROBESON: Right.
20 MR. THAKKAR: -- across the street here to the
21 side and we made that case to them. The private road will
22 not face the backs of garages which it would do if you took
23 it up to your question this way. It's better fire access
24 and it sets the units farther from our area.
25 But to answer your question, we could do either.

1 We're prepared to do either but I want to be clear that it's
2 our, based on our subsequent discussions with DOT that have
3 included Park and Planning staff, Park and Planning
4 Transportation, DOT staff, specifically K.B. (phonetic sp.),
5 the engineer, and Greg Leck, we believe very strongly that
6 based on our correspondence they're going to end up being
7 very comfortable with this ultimately because there's
8 adequate site distance and the volume is so low that -- 100
9 feet is a guideline. It is not a set in stone policy, and
10 we walked them through why we think this makes sense from a
11 site plan objective and said look, we could put it here but
12 I think people like, Park and Planning likes the setting we
13 created for the house so it would impact that. We like, you
14 know, having a road as opposed to an alley. We like
15 traditional parking.
16 And again, subsequent to that letter, we of course
17 met with them and said give us a chance to prove to you that
18 this is the right setting, right placement for the road and
19 you will believe that's the case. Again, to the extent that
20 that changes, which we don't think it will, we can put it
21 through here at the time of site plan, we're confident we
22 could access in either case.
23 MS. ROBESON: I noticed in, I mean, I thought that
24 you weren't opposed, at least in concept, to a cul-de-sac.
25 MR. THAKKAR: Right.

MS. ROBESON: And I wasn't clear what connectivity, I wasn't clear from the staff about connectivity issue. Now, if you have an expert that's going to address that, you know, I'll wait for the expert but I was --

MR. THAKKAR: We do, but I can just very quickly.

MS. ROBESON: Very quickly.

MR. THAKKAR: So let's start with sort of --

MS. ROBESON: Because I don't want to duplicate.

MR. THAKKAR: Yeah. So let's start with the emergency vehicles.

MS. ROBESON: Yes.

MR. THAKKAR: They're clear, fire and rescue, that they can live with one --

MS. ROBESON: Right.

MR. THAKKAR: -- one ingress, egress. They prefer two and we prefer two. And we prefer two -- when you say connectivity, I think their general thought, as is ours, is that the folks who live here should have access to the broader street network as opposed to just one ingress and egress. So for the, we started with that assumption. Then we said okay, if we are impacting cut-through traffic or compatibility in any way, then we, we would not rule out the cul-de-sac for instance. But as we got deeper into this and we met with the County, all the different folks, we just

1 felt this was the best approach because it did allow,
2 whether it's for our residents or for fire and emergency,
3 let's say something gets blocked here or blocked here, you
4 have a couple of different routes. You can build a
5 mountable curb on a pork chop and it's just a better, more
6 efficient flow of traffic in our view and that's why we
7 ended up where we did.
8 MS. ROBESON: All right. All right. Keep going.
9 MR. THAKKAR: I'm close to being done. So the
10 binding elements that you, that you --
11 MS. ROBESON: Yes.
12 MR. THAKKAR: This is probably the appropriate
13 time just to read those, you know, for you just so you know
14 what's changed.
15 MS. ROBESON: That's fine.
16 MR. THAKKAR: Okay. So binding element no. 10 on
17 the latest SDP that we submitted, and it gets to the heart
18 of what is --
19 MS. ROBESON: Now, this is what you submitted on
20 March 19th?
21 MR. THAKKAR: That's right.
22 MS. ROBESON: So this answers that question.
23 MR. THAKKAR: This answers that question.
24 MS. ROBESON: Okay.
25 MR. THAKKAR: It also gets to the heart of what I

just walked through --

MS. ROBESON: Okay.

MR. THAKKAR: -- in terms of the, you know, the cumulative approach to ensuring there's no cut-through traffic.

MS. ROBESON: Right.

MR. THAKKAR: The internal private road will be restricted to use by residents and visitors of Chelsea Court and will include design features to avoid cut-through traffic such as limited roadway width, on-street parking, special paving at each of the two ingress-egress points, signage prohibiting cut-through traffic and other control measures to be finalized at site plan approval. So what we tried to do was put a binding element in that incorporates much of what I just said with regard to signage, with regard to channelization --

MS. ROBESON: I see.

MR. THAKKAR: With regard to the pavers.

MS. ROBESON: Right.

MR. THAKKAR: With regard to all the things we think, you know, allow us to have this belt and suspenders approach.

MS. ROBESON: Right. All right. So your response to cut-through traffic are those -- all right.

MR. THAKKAR: Can I summarize?

1 MS. ROBESON: But if --
2 MR. THAKKAR: Would you like me to summarize our
3 response to cut-through?
4 MS. ROBESON: No.
5 MR. THAKKAR: If, if you wanted, I can --
6 MS. ROBESON: I feel rude but I really do want to
7 get through this so if you have anything to add, add it, but
8 if you don't --
9 MR. THAKKAR: Right.
10 MS. ROBESON: -- let's, let's move on, okay?
11 MR. THAKKAR: Nothing to add except just to
12 clarify that again, if the old signs, if the existing signs
13 work --
14 MS. ROBESON: Yes.
15 MR. THAKKAR: -- we think these signs will work.
16 If they don't work, which we don't think will be the case,
17 it still doesn't make sense to cut through and we studied,
18 you know, we studied both of those.
19 MS. ROBESON: Okay. All right.
20 MR. THAKKAR: That's all.
21 MS. ROBESON: I am going to give a 15 minute break
22 because I want everyone to have an opportunity to study the
23 actual model here before we get to cross-examination and
24 then after cross-examination, we'll take a brief lunch
25 break.

1 Mr. Harris, with regard to the, Mr. Grove's
2 testimony on trees, I think the fastest way to do it is for
3 you to note, you know, rather than fighting over what he's
4 going to say and what he isn't going to say, I agree with
5 Mr. Brown. I think it's faster just, you can note a
6 continuing objection. I think it's faster to let him
7 testify and I'll give it the weight that it deserves, all
8 right? I just, I think that's far more productive than
9 trying to argue about something that nobody's testified to
10 yet.
11 MR. HARRIS: Just for the record, we do continue
12 to object to it in terms of being beyond the scope of the
13 remand, number one.
14 MS. ROBESON: Yes.
15 MR. HARRIS: Number two, being irrelevant and
16 immaterial at this time given that's an issue for
17 preliminary plan and site plan. Number three, I'm not sure
18 I would yield that he is an expert of any sort and we would
19 continue to object to that as well.
20 MS. ROBESON: Well, we haven't qualified him yet.
21 MR. HARRIS: Exactly.
22 MS. ROBESON: Okay. So noting those objections,
23 and I'm even going to let you repeat those objections when
24 we get to his testimony and then let's let him testify
25 because I think it's faster, all right? And he may have a

1 valid point that we haven't yet discovered because I think
2 it's borderline. There could be some things that are
3 relevant, so that's how I'm going to handle that.
4 So we're going to take a 15 minute break. I
5 invite people to look at the exhibit because all we've seen
6 is the picture, and then we're going to come back for cross-
7 examination. I'm asking you to take, after cross-
8 examination, we will take a very short lunch break and I'm
9 thinking a half an hour, so the best you can do to get lunch
10 in and out or if you want to use this break to buy it,
11 that's fine. And then we'll proceed with the rest of -- how
12 many more witnesses do you guys have?
13 MR. HARRIS: Just two more.
14 MS. ROBESON: And who, who is it?
15 MR. HARRIS: Mr. Kabatt, or I'm sorry, Mr. Iraola
16 will speak again.
17 MS. ROBESON: The land -- okay.
18 MR. HARRIS: And then Mr. Kabatt.
19 MS. ROBESON: And Mr. Kabatt is your
20 transportation engineer?
21 MR. HARRIS: Yes, correct.
22 MS. ROBESON: Okay. All right. So we'll go off
23 the record for 15 minutes.
24 (Whereupon, at 11:37 a.m.., a brief recess was
25 taken.)

1 MS. ROBESON: Mr. Harris, well, before you, one
2 issue because I want to give you fair warning, you know,
3 before, while I think of it is the reason I disagree with
4 your position that we don't have any, that the Hearing
5 Examiner doesn't have any authority, I think you made in
6 your closing argument an argument that only the Planning
7 Board, under the remand order, only the Planning Board has
8 the ability to determine the environmental setting. The
9 reason that I don't think legally that's correct is the only
10 reason to include the Planning Board in the remand order,
11 that is, that that's the procedure. That's a legal
12 procedure to get it back to technical staff. They remand it
13 to me and then I have to remand it to the Planning Board.
14 Were the order read to mean that only the Planning Board can
15 make that determination, then you would lose the quasi-
16 judicial part of our quasi-judicial process. So I just --
17 MR. HARRIS: I respect that. Just for the record
18 though or not the record, whatever, I wasn't saying you
19 didn't have authority to do it. I was simply repeating what
20 the Council said.
21 MS. ROBESON: Yes.
22 MR. HARRIS: That they wanted the Planning Board
23 to determine that. That's what they said. And in fact, I
24 went back and I listened to their debate. They were pretty
25 clear. Basically, they'd rather not deal with it. They'd

rather defer it to the Planning Board. They're the experts. Let them tell us what to do.

MS. ROBESON: Well, they can't do, they can't defer it to the Planning Board.

MR. HARRIS: Okay.

MS. ROBESON: They don't have the ability to do that.

MR. HARRIS: Okay.

MS. ROBESON: I mean, your interpretation as to they didn't want to deal with it may be true but, you know, ultimately, it's going to be them that makes the decision.

MR. HARRIS: That's fine.

MS. ROBESON: We would all like to defer things many times. Anyway. So, Mr. Brown, are you ready for cross-examination?

MR. BROWN: Yes, I am.

CROSS-EXAMINATION

MR. BROWN: Mr. Aakash, good afternoon.

MR. THAKKAR: Good afternoon, Mr. Brown.

MR. BROWN: It's almost afternoon. Let's look first at this exhibit, this is part of 327. This one shows the initial schematic development plan in RT-15 Zone basically directly above the revised schematic development plan for the RT 12.5 Zone. Now, you talked about the comparison between these too this morning, right?

1 MR. THAKKAR: I did.
2 MR. BROWN: Is it a fair summary of your testimony
3 that because the 12.5 plan has reduced density, reduced
4 density and reduced length of townhouse rows and greater
5 setbacks that it's a better plan?
6 MR. THAKKAR: I didn't say it's a better plan. I
7 said there's many more points, I'm not going to make them,
8 that it's a more compatible plan and addresses the issues
9 brought up by the ZHE and the Council.
10 MR. BROWN: You also testified about the content
11 of the master plan with regard to the environmental setting.
12 I wonder if you've had an opportunity to examine Exhibit
13 324, Vicki Warren's letter and the attachments.
14 MR. THAKKAR: I haven't in depth.
15 MR. BROWN: To the extent that you have, did you
16 find any factual errors in her narrative of events that took
17 place in 1999 and 2000 when the master plan was created?
18 MR. HARRIS: Objection. If you know.
19 MR. BROWN: If you know.
20 MR. THAKKAR: I don't know.
21 MR. BROWN: Do your plans include any restrictions
22 on how the Riggs-Thompson House will be used after, after
23 the project is approved and the property is developed?
24 MR. THAKKAR: Well, by rezoning it to an RT-12.5,
25 you'd have to have a residential use. Beyond that, we

1 haven't put any further restrictions on it. Our intention,
2 as you know, is that it be a single-family home. We've
3 maintained that throughout the process and so we have, other
4 than saying it, the fact that it's in RT-12.5, it can't be
5 an apartment building, for example, it can't be an office
6 building, for example. It would have to be a single-family
7 home. That is our intention for the Riggs-Thompson House.
8 MR. BROWN: If you know, is there a present
9 intention to sell it to a private person that would own it
10 and reside in it?
11 MR. THAKKAR: That, we haven't made a firm
12 decision but that is the likely course of action.
13 MR. BROWN: I listened with some interest to the
14 Hearing Examiner's questions about the practical
15 difficulties of adhering to the 1.4 acre setting that is,
16 whether you describe it as the alternative or whatever, it's
17 the other setting that's depicted in the appendix to the
18 master plan. You know the configuration that I'm talking
19 about, right?
20 MR. THAKKAR: I do know the configuration you're
21 talking about.
22 MR. BROWN: And I was listening to your answers to
23 her questions but I did not hear anything that suggested to
24 me that there was some physical or practical constraint to
25 adhering to that setting but that you chose a different

1 configuration of close to 1.4 acres for reasons that related
2 to better integration with your plans for the rest of the
3 property. Is that a fair summary?
4 MR. THAKKAR: Not entirely. The reason that we,
5 we believe, as I said, that the setting is 37,056. That's
6 been our assumption all along, it's what we continue to
7 believe and it's how we plan to plan. That said, what we
8 heard, we weren't responding to folks who think that the
9 setting is 1.4 acres as depicted in the appendix. What we
10 were responding to is people thought this Riggs-Thompson
11 House was very important. People thought it should have a
12 wonderful park-like setting, have green space around it.
13 And so we were saying okay, we understand that the community
14 thinks, and the ZHE and the Council thinks this house is
15 important. It's historic. Scott Whipple of HPC staff, you
16 know, has made it very clear that, you know, the Commission
17 thinks it's historic and important.
18 So what we tried to do is look at all the factors,
19 say okay. It appears that hundreds of folks think that we
20 need a better setting for this home and that is why we put
21 this forward. We thought, we honestly thought, you know,
22 when we met with you way back that folks would say wow, this
23 is a good compromise because although you may think it's
24 1.4, we think it's 37,000. We'll maintain that but at the
25 end of the day, we think we put something forth that is

1 better than the 1.4 because of the layout, because it
2 actually, you know, rises all the way, all the way to the
3 corner of Springvale and Pershing. It's a better overall
4 setting in our opinion for the house but we maintain that,
5 you know, the 37,056 is what guided us. We did this as what
6 we thought would be an accommodation to folks who wanted a
7 better, larger buffer.
8 MR. BROWN: Let me try one more time and I'll try
9 to rephrase the question in a way that may make it easier to
10 answer. Indulge for a moment the assumption that the
11 Hearing Examiner and the District Council make an ultimate
12 determination that the original configuration, I'm sorry,
13 forget the word original, but the configuration in the
14 appendix to the master plan --
15 MR. THAKKAR: Right.
16 MR. BROWN: -- at 1.4 acres in the exact location
17 shown in the appendix is going to be the historic setting.
18 If you will just indulge that assumption for the moment, I
19 would ask you again whether or not if that happens, you
20 could design a practical and reasonable townhouse project
21 with the remainder of the land.
22 MR. THAKKAR: We haven't looked at it so I don't,
23 I don't know. Surely one could do that. You know, we've
24 got a contract with the Chelsea School with certain
25 obligations on both sides. I can't answer the question

1 because we haven't looked at it in any detail with regard to
2 that configuration.
3 MR. BROWN: Okay.
4 MS. ROBESON: I think his question is getting to
5 you could do a less dense project, correct?
6 MR. BROWN: Correct.
7 MR. THAKKAR: Sure, we could do -- well --
8 MS. ROBESON: No. I'm just asking.
9 MR. THAKKAR: I don't know if the school would
10 sell it to us to allow us to do that. Theoretically, yes,
11 one could always do a less dense project. Again, we thought
12 this whole plan, the whole plan was an accommodation.
13 MS. ROBESON: Okay. You don't -- I heard, I know
14 what you -- that's fine. Go ahead.
15 MR. BROWN: Would you bring up the picture of the,
16 which show the historic setting and the additional land in
17 purple?
18 MR. THAKKAR: Sure.
19 MR. BROWN: Okay. Now, I'd just like to ask you a
20 question about the cross-hatched area where we see the
21 little square.
22 MR. THAKKAR: Yes.
23 MR. BROWN: That is the land that you propose for
24 a park that's not part of the historic setting, correct?
25 MR. THAKKAR: Either park or land that would go

with the house, both of which would be maintained by the HOA and wouldn't allow any building on it, just to be clear.

MR. BROWN: So what exactly are the legal restrictions on building on that cross-hatched piece of property?

MR. THAKKAR: So in short, it's whatever we say they are, and they will be that no building will be allowed on a cross-hatch piece of property, period.

MR. BROWN: You testified that you thought that the new schematic development plan changes only the binding elements, right?

MR. THAKKAR: Yes.

MR. BROWN: Could you --

MR. THAKKAR: When you say new --

MS. ROBESON: Are you talking about the March 19th?

MR. THAKKAR: Yes.

MR. BROWN: I'm talking about the latest SDP for March 19th, yes.

MS. ROBESON: Okay.

MR. BROWN: There was a question in our mind about whether or not the radius of the curve of the internal road changed from the earlier plan to the March 19 plan. Do you know whether or not that happened?

MR. THAKKAR: I don't know. We do have our

engineer who is an expert on this and can comment. I don't know.

MR. BROWN: Will Mr. Iraola be able to address that question?

MR. THAKKAR: I don't know that he will unless he asks Ms. Stires, our engineer, who is here.

MR. BROWN: Well, I guess I would ask you to, if you could supplement your testimony.

MR. THAKKAR: Sure.

MR. BROWN: If there's been any change, we'd like to know about it.

MR. THAKKAR: Happy to.

MR. BROWN: Let's return now to the, to the exhibit, the part of 327, your slides that show rush hour travel times.

MR. THAKKAR: Yes.

MR. BROWN: Can you tell me when the traffic counts, the traffic times were done for this study?

MR. THAKKAR: I can tell you that they were done in the evening hours, rush hour, roughly 4 to 6:30.

MR. BROWN: But when? What month were they done in?

MR. THAKKAR: This was done prior to the Planning Board hearing. I'm assuming, you can get an exact date from Mr. Kabatt but --

1 MS. ROBESON: Well --
2 MR. THAKKAR: -- January. January.
3 MS. ROBESON: Well, if he's --
4 MR. HARRIS: He'll be here to testify.
5 MR. THAKKAR: Oh, he's testifying.
6 MS. ROBESON: Can he defer rather than asking --
7 MR. BROWN: Very good. Do you know why this study
8 did not look at, look at eastbound routes out from Dale
9 Avenue and west to Colesville?
10 MR. THAKKAR: You mean coming into the, you mean
11 coming into the CBD? What do you mean?
12 MR. BROWN: As I understand it, this was, this
13 particular study was basically designed to show the
14 infeasibility of saving time getting to Colesville by
15 cutting through Chelsea Court, right?
16 MR. THAKKAR: Correct.
17 MR. BROWN: But what about the infeasibility of
18 saving time by going east from Dale rather than to
19 Colesville Road?
20 MR. THAKKAR: I'll let, I'll let Mr. Kabatt answer
21 because I think in their expert opinion, the most, by far,
22 the most likely reason to cut through would be to get back
23 to Colesville, not to go eastward.
24 MR. BROWN: Okay. With regard to the do not enter
25 signs or the private property signs, those will be posted on

1 private property, won't they?
2 MR. THAKKAR: They will.
3 MR. BROWN: Do you have any correspondence from
4 DOT with regard to your prediction that they will be
5 comfortable with the, with an access point at the, at the
6 north end of the property?
7 MR. THAKKAR: I did actually just receive an e-
8 mail from DOT to that effect.
9 MS. ROBESON: Can you --
10 MS. BAR: We just got it.
11 MS. ROBESON: Okay. All right.
12 MR. THAKKAR: I think, I think, folks, not
13 everyone was copied but I think it looked like on my e-mail
14 Mr. Gurwitz was copied. Maybe he had met with Mr. Leggett
15 in the past.
16 MS. ROBESON: Do you want to take a minute to look
17 at that, Mr. Brown? What we may want to do, is Mr. Kabatt
18 going to testify to this?
19 MR. HARRIS: Yes, ma'am.
20 MS. ROBESON: What we may want to do to give you a
21 chance to, you know, we had the scheduling order and I know
22 that the timing is, the DOT issue is something you can't
23 control. If you want to take a minute, I'd rather you have
24 a real opportunity to look at this e-mail so is it possible
25 to delay your questions and --

1 MR. BROWN: I'll save them for Mr. Kabatt.
2 MS. ROBESON: Okay.
3 MR. BROWN: With regard to the question of single
4 versus double entry to the project, I understand your
5 testimony to be that a single entry is feasible but you
6 would prefer the double entry for connectivity purposes, is
7 that correct?
8 MR. THAKKAR: That's correct. We believe that
9 double entry is better.
10 MR. BROWN: And I believe you said that the reason
11 for this is that you want the residents of Chelsea Court to
12 have access to a broader street network, correct?
13 MR. THAKKAR: Correct.
14 MR. BROWN: That means access to those streets
15 north of Springvale.
16 MR. THAKKAR: North of Springvale, east of
17 Springvale.
18 MR. BROWN: Yes.
19 MR. THAKKAR: It's a way for them, frankly, to get
20 into the CBD. They can come and take a right out of their
21 property, they're got to make a left but ultimately, it is a
22 way for them, another way for them to get into the CBD.
23 MR. BROWN: But the most direct access to the CBD
24 is from, would be from the Ellsworth side, wouldn't it?
25 MR. THAKKAR: It depends where you're going in the

1 CBD. If you're going by Colesville where the new, not the
2 Fillmore, the new concert hall is, probably. If you're
3 going sort of to the other side, you know, down by Whole
4 Foods and kind of to the east of that, then probably not.
5 MR. BROWN: Let's go back to the rush hour travel
6 times exhibit.
7 MR. THAKKAR: Yes.
8 MR. BROWN: Isn't the lesson one should draw from
9 this exhibit for the Chelsea Court residents themselves is
10 that connectivity through the north end is not the most
11 feasible way for them to get up to Colesville and out to the
12 east but rather, to go back down Ellsworth?
13 MR. THAKKAR: I think the lesson is that to get to
14 Colesville, to get to Colesville, that is the lesson. I
15 think our broader point was for a development of this size,
16 60-some odd units, the idea of connectivity for the
17 residents makes sense to us because they do have access to
18 the road network as you said, to the north. So I can't
19 predict where they'll be going.
20 I can say it provides more connectivity and, you
21 know, in terms of compatibility, I think that's what we're
22 getting at, we looked at, you know, if we can provide our
23 residents more connectivity, Park and Planning, frankly,
24 pushed us in this direction in terms of cul-de-sacs or
25 similar not being kind of an urban form when developing in-

1 fill close to Metro and such, their, one of their sort of
2 targets is connectivity. So the way we looked at this was
3 we'd like to be able to provide for that desire but also
4 ensure that cut-through traffic would not be any different,
5 frankly, from this, from how it is today and I guess --
6 MS. ROBESON: I thought they, I thought the whole
7 idea was the pedestrian connectivity, not car or vehicular.
8 MR. THAKKAR: Again, I'd suggest that from what we
9 understand, they would like to see, I'm not saying they
10 would mandate it, that they would also prefer more, more
11 vehicular/pedestrian connectivity as opposed to less. We
12 looked at all of the options.
13 MS. ROBESON: Can I make a policy comment? Go
14 ahead. They seem contradictory but that's -- keep going,
15 Mr. Brown.
16 MR. BROWN: Mr. Aakash, this model here.
17 MR. THAKKAR: Yes.
18 MR. BROWN: This is a model of townhomes built by
19 EYA on North Danville Street in Arlington, is that right?
20 MR. THAKKAR: It is. It is.
21 MR. BROWN: Is that right?
22 MR. THAKKAR: North Danville. I actually don't
23 know if it is on North Danville..
24 MR. BROWN: Does this refresh your recollection?
25 MR. THAKKAR: I wasn't with the company at the

1 time that it was developed. Yes. That's right.
2 MR. BROWN: Now, as I understand it, there are
3 basically three of these courts right in a row along North
4 Danville and they back up against a large commercial
5 building, is that correct?
6 MR. THAKKAR: That is correct.
7 MR. BROWN: So one who is traveling down Danville
8 is going to see these three courtyards one after another and
9 each one of them has a, sort of a limit, sort of an internal
10 limit of this particular backing such that all you see is a
11 row of about four townhomes with a backing of another
12 townhome, is that right?
13 MR. THAKKAR: I'm counting five, so five. Five
14 townhomes in the back which allows it to be more dense as I
15 said in my testimony earlier.
16 MR. BROWN: Yes. Now, taking a look at, back at
17 this exhibit here, what we see if someone were driving along
18 Springvale and looking down through these mews or
19 courtyards, well, you've described them as courtyards but
20 they aren't really courtyards in the sense that there isn't
21 a, there isn't an end to them, is there?
22 MR. THAKKAR: Well, there's, there's a street that
23 separates them so again, our thought here was, frankly, more
24 openness as I said than this project which is more dense and
25 sort of closes it off. There's a street. There certainly

1 is an end. You cross the street into another green space
2 and open space but it's separated by, I don't know the exact
3 distance, probably 55 feet or so, you know, from face of
4 building to face of building across the street. So I'd say
5 there would be significant separation to divide the private
6 street.
7 MR. BROWN: But the actual length of the mews that
8 one would see if one were looking down into the project from
9 the street is quite a bit longer than this one, and there's
10 no, there's no genuine courtyard appearance, is there?
11 MR. THAKKAR: I'm not sure how you're defining
12 courtyard. I would suggest that exactly what we're showing
13 is a courtyard. I'm not sure what -- you're saying a
14 courtyard has to be enclosed. I don't know that I agree.
15 MR. BROWN: You don't think that a courtyard has
16 to be closed at one end?
17 MR. THAKKAR: We can call it a mews then if you
18 will. Our point simply is to have a large open space in
19 front of these townhouses.
20 MR. BROWN: All right. Mr. Aakash, I was going --
21 MS. ROBESON: I have asked them to adjust the
22 temperature. I'm sorry to interrupt, Mr. Brown.
23 MR. BROWN: I was going to ask you about that
24 continuing footnote on the schematic development plan but
25 the Hearing Examiner stole that question from me so I'm

1 done.
2 MR. THAKKAR: I'm glad she did. FYI, you know
3 Aakash is my first name, right? I just wanted to make sure
4 that you knew that.
5 MR. BROWN: What?
6 MR. THAKKAR: Aakash is my first name so I didn't
7 know if you knew that.
8 MR. BROWN: I thought I was addressing you by your
9 last name.
10 MR. THAKKAR: That's what I thought you thought so
11 I'm just letting you know.
12 MR. BROWN: I'm sorry.
13 MR. THAKKAR: That's okay.
14 MR. BROWN: Mr. Thakkar.
15 MS. ROBESON: We know you're both friends on the
16 outside.
17 MR. THAKKAR: We are, we're friends. Absolutely.
18 MR. BROWN: I take it all back, Mr. Thakkar.
19 Thank you.
20 MR. THAKKAR: Thank you.
21 MS. ROBESON: Is that it? Anyone else? Okay.
22 Mr. Harris.
23 MR. HARRIS: A couple quick ones.
24 REDIRECT EXAMINATION
25 MR. HARRIS: With respect to the controls over the

1 open space around the house, to what extent do you believe
2 the site plan approval by the Planning Board will restrict
3 that use or allow other uses?
4 MR. THAKKAR: We think the site plan will confirm
5 what we're suggesting which is not to allow any other uses.
6 MR. HARRIS: With respect to the issue of the
7 signage into and out of this property, can you expand a
8 little bit on your understanding of the enforceability of
9 that? Let's say first of all, from a traffic standpoint.
10 Do you believe that the police can enforce those turn
11 restrictions at least if --
12 MR. BROWN: I object. I didn't ask questions
13 about enforceability.
14 MS. ROBESON: That is true.
15 MR. HARRIS: Okay. With respect to the connection
16 to Springvale, do you believe these residents might have
17 reason to want to go out Springvale to reach a neighbor's
18 property in SOECA?
19 MR. THAKKAR: Sure. Absolutely.
20 MR. HARRIS: And do you believe that they would
21 have a reason to go to the Whole Foods or the library in
22 Silver Spring?
23 MR. THAKKAR: I do. And they can certainly, as I
24 explained to Mr. Brown, use this as a way to get there.
25 MR. HARRIS: And is this way to get, is the

1 Springvale access point better for both of those purposes
2 than the Ellsworth?
3 MR. THAKKAR: Again, I'm not a traffic expert but
4 that's what I say. If you're going to Colesville, I think
5 Ellsworth is better. If you're going to Whole Foods and
6 that vicinity, I would argue Springvale is better.
7 MR. HARRIS: That's all I have.
8 MS. ROBESON: All right. How long do you
9 anticipate your, who is your next witness?
10 MR. HARRIS: The next witness is Mr. Iraola and in
11 light of testimony already and your comments, we're going to
12 abbreviate it. That's my obligation for the next half hour
13 is to figure out how to do that. How long, to answer your
14 question --
15 MS. ROBESON: Okay. Let's do this. Let's break
16 for lunch. We'll come back at 1:00, all right?
17 MR. HARRIS: Thank you.
18 MS. ROBESON: Thank you.
19 (Whereupon, at 12:22 p.m., a luncheon recess was
20 taken.)
21 MS. ROBESON: We're back on the record in Case No.
22 G-892, Chelsea School Residential Associates. Mr. Harris, I
23 take it your next witness is Mr. Iraola.
24 MR. HARRIS: That is correct.
25 MS. ROBESON: Mr. Iraola was previously sworn.

(Witness previously sworn.)

MR. ROBESON: Can you state your name and address for the record?

MR. IRAOLA: Certainly. Miguel Iraola, 750 East Pratt Street, Suite 1100, Baltimore, Maryland 202, 20102 I believe.

MS. ROBESON: No. It should be -- well, anyway.

MR. IRAOLA: 21202. 21202.

MS. ROBESON: We know where to find you.

MR. IRAOLA: All right.

MS. ROBESON: So go ahead, Mr. Harris.

DIRECT EXAMINATION

MR. HARRIS: Okay. Mr. Iraola, we had a lot of testimony earlier about this project but I briefly want you to review how the revised proposal under the RT-12.5 zoning complies with the requirements of the Zoning Ordinance.

MR. IRAOLA: Certainly, and I'll refer to the revised schematic development plan which is dated March 16th, I believe, not 19th, 2012. Essentially, it does, the development that is shown on the schematic development plan does conform to the development standards outlined in Section 59C-1.73 of the Zoning Ordinance. The applicant is not seeking any waivers or reductions with regards to these requirements and for the record, here are some of the changes.

The maximum density that is required under the RT-12.5 is 12.5 units to the acre. However, using the 22 percent bonus density for providing 15 percent MDPUs, that bumps the density to 15.25 dwelling units per acre and on this subject property, that would equate to about 80, 80 units. The applicant is proposing 64 units, 63 towns and one single-family detached home.

MS. ROBESON: Does the 80 units include an MPDU bonus?

MR. IRAOLA: Well, you get a 22 percent bonus for providing 15 percent MPDUs under that scenario.

MS. ROBESON: Okay. Go ahead.

MR. IRAOLA: And I'd just like to clarify that the applicant is going to be lotting off the historic home to create a single-family detached lot with regards to that.

MS. ROBESON: Right, but that's still counted toward --

MR. IRAOLA: It's toward --

MS. ROBESON: -- your density.

MR. IRAOLA: Absolutely. It absolutely does. So that really equates to the total density as being proposed of 12.19 dwelling units per acre. A couple of other things that really changed were the building setbacks. The code calls for land classified in a one-family zone as 30 feet minimum is required. Thirty feet is being provided on the

1 southern boundary. If you recall, if you recall, in the RT-
2 15 plan, there is a proposal to reduce this requirement to
3 21.8 acres. Please note that again, no waivers to this
4 requirement are being requested under this current 12.5, RT-
5 12.5 plan.
6 The building setbacks from a public street right-
7 of-way, 25 feet minimum is required. What is being provided
8 is 25 feet along Springvale Road, 25 feet from Ellsworth and
9 23.35 feet for Pershing, and that's to accommodate the
10 Riggs-Thompson House which is set back --
11 MS. ROBESON: That's bumped out.
12 MR. IRAOLA: That's correct. To the right.
13 MS. ROBESON: On the --
14 MR. IRAOLA: To the right-of-way. That's correct.
15 MS. ROBESON: All right.
16 MR. IRAOLA: The maximum building height remains
17 at 35 feet. That is not changed. The green area, 50
18 percent is, minimum is required which is a, which is 30
19 percent less at the RT-15. This is at 50 percent so it's a
20 much greater green area. What is being provided is, on this
21 plan is 51 percent, however, when we do do the crunching of
22 the numbers, it more than likely will be more than that,
23 would exceed probably 51 percent. I can get --
24 MR. HARRIS: Do you believe this plan provides any
25 better protection of trees on the property than did the

earlier plan?

MR. IRAOLA: Well, certainly with 10 feet additional dimension on the southern boundary, which is where the predominantly larger trees are aggregated between the Cedar homes and the subject property, yes. Ten feet, does, would make a difference. Certainly. It relaxes some of the slopes and provides a little bit more areas, certainly, for mature trees to be preserved.

MS. ROBESON: Maybe this is a question for your engineer but are, is this going to be completely mass graded, or are you going to have some existing trees, or do you want the engineer to address it?

MR. IRAOLA: I would say that there will be some grading involved in, in this.

MS. ROBESON: But are any of the existing trees --

MR. IRAOLA: Yes. There will be trees in this part of this --

MS. ROBESON: No, no, no. Any retained?

MR. IRAOLA: Any retained.

MS. ROBESON: Not your fault. I didn't make it clear.

MR. IRAOLA: Right. Along, certainly along the edge, there will be some retained and certainly within the, near the house, the Riggs-Thompson House, would be certainly retained.

1 MS. ROBESON: Okay.
2 MR. HARRIS: A big issue that we've been asked to
3 address is the compatibility and the consistency of this
4 project with the neighborhood there. Can you go into some
5 detail about your opinion on that?
6 MR. IRAOLA: Certainly. I do feel that this is in
7 conformance, certainly with the recommendations in the 2001
8 West Silver Spring Master Plan as well. As you're aware,
9 you know, the site is located on the periphery of a CBD and
10 there's residential densities that range from six units to
11 the acre to up to 430 acres to the acre, so there's a fair
12 amount of diversity certainly in unit types within the
13 immediate area. I think that at 12., the density of 12.19
14 units to the acre is a moderate density and certainly
15 appropriate as a transitional density based on its proximity
16 to the CBD and also, the varying building types.
17 But that's not really the only, certainly, reason
18 that it would be compatible. The property is in an area of
19 the County certainly where residential development of the
20 12, of the RT-12.5 density is compatible. There's numerous
21 cases within the Silver Spring area that are zoned at 12.5.
22 Townhouses are a use which are more compatible with the
23 surrounding Seven Oaks-Evanswood neighborhood than the
24 current, current use.
25 The development of the site with townhomes will

1 preserve and enhance the predominantly residential character
2 of the area. The proposed RT-12.5 development will provide
3 housing choice for diverse lifestyles in a convenient
4 location for residents who live near and around the Silver
5 Spring CBD. As was noted in the Hearing Examiner's report,
6 this site is also appropriate for additional residential
7 density due to its location and proximity to amenities
8 within the CBD such as Metro, neighborhoods serving retail,
9 civic uses, employment opportunities and such. The
10 residents of this new community will be able to walk to
11 these amenities. These everyday functions associated with
12 the RT-12.5 are compatible with and shared by the, the
13 community at large. The ability to walk to all these basic
14 needs also reduces automobile trips and dependency on
15 automobiles which is really about, all about urban living.
16 Townhome development at Chelsea Court will also
17 provide new publicly accessible open spaces which will be
18 established on the property with the rezoning. The RT zone
19 is compatible because flexibility in the proposed design and
20 layout provides for more open space amenities normally not
21 associated with by right R-60 zoning and frankly, is
22 severely lacking in the neighborhood.
23 RT-12.5 density for this site is compatible given
24 its location in an area with a variety of neighboring uses
25 including the high-rise multi-family housing, senior

housing, public parks, the library, which is a public institutional use, nonresident professional office and moderate density single-family detached residential. And I'd like to refer to it as moderate density single-family because it really isn't RDT or RET, RE-2C or R-200. Those are, you know, one-acre plus type of densities. This is, these are 6,000 square foot lots. Some of them are closer to 5,000 square foot lots. So this is truly moderate density single-family detached lots.

Chelsea Court is appropriately located where it can utilize the substantial public investment for the revitalization, and I should mention that it exceeds $450 million worth of public investment in transit and other civic uses within Silver Spring. Certainly at the appropriate density of 12.16, enhances this investment by providing increased pedestrian activity certainly to support those revitalization efforts. With regards to why the site I think is particularly suitable for RT-12.5 townhouse, townhouse uses --

MS. ROBESON: Wait. I don't think the issue here is the suit -- I think they've already decided, the County Council already decided it's suitable for -- oh, but you're saying RT-12.5. Got you. Are you going to address the master plan language stating that the transition will be by use and not structure type?

1 MR. IRAOLA: No. I would, I would not categorize
2 it that way. I would say that the transition really, this
3 is part of a transition but the transition certainly could
4 occur at Cedar as was indicated in the Hearing Examiner's --
5 MS. ROBESON: But Cedar is single-family detached
6 homes.
7 MR. IRAOLA: But with the designation of
8 nonresidential professional office as well so it's a quasi-
9 commercial.
10 MS. ROBESON: It's something, I think that if
11 you're going to get through this case you can't avoid trying
12 to address which is that master plan recommendation. The
13 master plan recommendation for this particular transition,
14 because what I heard from you is the justifications that you
15 used last time that this is an appropriate density, but part
16 of it was massing as well.
17 MR. IRAOLA: Sure.
18 MS. ROBESON: And part of it is master plan. Part
19 of the argument is master plan compliance and there is that
20 language in the master plan. And so if there's any way you
21 can address that, that would be helpful.
22 MR. HARRIS: Later in his testimony, he will be
23 addressing that.
24 MS. ROBESON: Am I jumping ahead?
25 MR. HARRIS: Would you hold and --

1 MR. IRAOLA: Massing and --
2 MR. HARRIS: We certainly --
3 MS. ROBESON: Okay. All right.
4 MR. HARRIS: And the master plan. We certainly
5 want to address that issue.
6 MS. ROBESON: Okay. I'm sorry. I apologize.
7 MR. HARRIS: No. You, please, interrupt.
8 MS. ROBESON: Go ahead.
9 MR. IRAOLA: Okay. Essentially, the site is
10 terraced and this topography is certainly optimum for
11 townhouses as it's an appropriate building type since they
12 absorb the grade very efficiently. The grade sloping from
13 Pershing to Ellsworth also allows for building placement
14 perpendicular to Springvale Road. That is why the site plan
15 is designed, certainly, the way it is.
16 With the reduction in density from, going from the
17 RT-15 to the RT-12.5 scenario, the density is more relaxed
18 essentially. It allows for additional setbacks. It is more
19 green, certainly, than the, by requirement and also,
20 certainly would exceed that but there's also greater
21 separation between, between the strings.
22 The building placement allows for the creation of
23 true fronts. I know they've been, they've been certainly
24 characterized as faux or fake or cosmetic in nature but
25 these are true fronts. These will have a doorway that opens

1 up into a living area. It's not the back door into the
2 units. These are true fronts that will be, that would have
3 essentially, or they could potentially have a Springvale
4 address. That is what they are addressing, much the same as
5 if you look at the model. You can see that the model, those
6 are, the front facade there is a front facade.
7 MS. ROBESON: So these are going to be
8 functional --
9 MR. IRAOLA: Absolutely.
10 MS. ROBESON: -- doorways.
11 MR. IRAOLA: Absolutely.
12 MS. ROBESON: Okay. All right.
13 MR. IRAOLA: And I don't know how it was
14 characterized in cosmetic in any way but these are true
15 fronts. And I don't know if it was introduced, the
16 photograph of this --
17 MS. ROBESON: Yes.
18 MR. IRAOLA: But I just wanted to make sure that
19 the photograph is certainly --
20 MS. ROBESON: It is.
21 MR. IRAOLA: -- in, is part of the record.
22 MS. ROBESON: Now, actually, that raises a point.
23 Are you going to introduce that model into the record?
24 MR. HARRIS: We have a photograph of it.
25 MR. IRAOLA: That we'd want to, wish to introduce.

1 MS. ROBESON: Well, I think it's already in the
2 March 19th --
3 MR. IRAOLA: Yes. Yes, it is.
4 MR. HARRIS: Yes, it is. Okay. That's all we
5 plan to introduce.
6 MS. ROBESON: All right. Go ahead. I'm sorry.
7 MR. IRAOLA: All right. The proposed development
8 on the property will create cohesive, attractive and
9 pedestrian-friendly streetscape for the community. The RT-
10 12.5 allows for flexibility to design units fronting onto
11 existing streets without garage entrances. This orientation
12 reinforces the rhythm and scale appropriate for this
13 neighborhood and frankly, it's found all within the
14 neighborhood, the direct orientation to, to streets and
15 certainly appropriate for something near an active urban
16 area.
17 The proposed development will also provide an
18 additional internal street and pedestrian circulation
19 system. Chelsea Court will be a pedestrian-friendly
20 community and will enhance walking opportunities and
21 linkages to onsite as well as offsite community amenities.
22 The RT zone is one of the more versatile zones and is used
23 in a wide variety of settings such as near the central
24 business districts, also near major roadways and on former
25 institutional sites.

1 I'd also like to introduce now, or I think it's
2 already in the record as Exhibit 291(f) which are the
3 colored aerials of townhomes. There's 12 pages of them. I
4 have copies of them.
5 MS. ROBESON: Yes. They're in the record. Mr.
6 Brown, you didn't have, did you have objections at all to
7 this?
8 MR. BROWN: No. Not at all.
9 MS. ROBESON: Okay. Go ahead.
10 MR. IRAOLA: This is purely factual. And what I
11 have done on this particular exhibit is actually, I put a
12 number on it so that it's easier to, or number, not, I put a
13 letter so that when it gets introduced as, so it's easier to
14 refer to.
15 MS. ROBESON: Got you.
16 MR. IRAOLA: All right?
17 MS. ROBESON: We're going to do the same thing
18 then. I'm going to ask you to submit this --
19 MR. IRAOLA: In electronic format?
20 MS. ROBESON: -- with the numbers on it so that
21 it's easier for everyone to read through.
22 MR. IRAOLA: So this is Exhibit --
23 MS. ROBESON: Does Mr. Brown have a numbered --
24 MR. IRAOLA: Yes.
25 MS. ROBESON: Or a lettered version?

1 MR. BROWN: Yes, I do.
2 MR. IRAOLA: So this is Exhibit 2, is it 291?
3 291.
4 MS. ROBESON: I think 291 is --
5 MR. IRAOLA: (f) I believe.
6 MS. ROBESON: Okay. That was my --
7 MR. IRAOLA: (f) and it's Exhibit A through L
8 within that.
9 MS. ROBESON: Okay.
10 MR. IRAOLA: Townhomes zoned RT-12.5 and RT 15 are
11 regularly located within residential neighborhoods near
12 CBDs. Examples of the approvals along the edge or near a
13 CBD include Exhibit A which is Woodside Station, G-339,
14 which is located at Spring Street and Georgia Avenue along
15 the northern edge of the Silver Spring CBD. Another example
16 is Rosedale Park, which is Exhibit B, which is RT-12.5.
17 It's located between Chestnut Street and Rosedale Avenue
18 along the, on the edge east of the Bethesda CBD. This is
19 also an example of essentially townhomes sharing the same
20 frontage as a single-family and they also confront directly
21 across the street.
22 Good Counsel, which is Exhibit C, G-798, RT-15, is
23 located between Arcola Avenue and Georgia Avenue along the
24 edge north of the Wheaton CBD. Fairview Court in Silver
25 Spring is F-892, Exhibit D, RT-12.5 located on Fairview Road

1 on a block along an edge north of the Silver Spring CBD.
2 It's technically not adjacent but it's within a block and
3 has a similar orientation or position I should say.
4 Similarly, townhomes in RT-12.5 zoning or higher
5 are often located near the edges of single-family areas
6 which are not, not even next to a CBD. For example, the
7 Courts of Woodside, which is Exhibit E, which is G-817, RT-
8 12.5 zoning, located on Georgia Avenue and Noyes Drive is
9 approximately on 1100 feet north of the Silver Spring CBD.
10 Winchester/Plyers Mill, G-786, Exhibit F, RT-15 zoning, it's
11 located approximately 2300 feet south of the Wheaton CBD.
12 Please note that this case also abuts RT-12.5 zoning. In
13 the smaller zoning inset, you'll see the zoning which is
14 more internal for the site and certainly next to single-
15 family detached homes.
16 Ottawa Place, no case number for this one, it's
17 Exhibit G. It's in East Silver Spring, RT-12.5 zoning. I'm
18 sorry. This is yes, it's Silver Spring. It's not East
19 Silver Spring. It's located on Georgia Avenue and Highland
20 Drive. It's approximately 1760 feet north of the Silver
21 Spring CBD. Bonaire Court, no case number again, Exhibit H,
22 RT-12.5 zoning, located on Sligo Avenue and Bonaire Court,
23 approximately 1500 feet east of the Silver Spring CBD. So
24 they do --
25 Ritchie Avenue, no case number again, Exhibit I,

1 this is the last one in this grouping, RT-12.5 zoning
2 located on Ritchie Avenue south of Sligo Avenue,
3 approximately 700, 1700 feet east of the Silver Spring CBD.
4 Point being is that these are fairly, they're located
5 outside or near CBDs but in some cases, they're more
6 internal and within single-family detached neighborhoods.
7 Sound land use planning and logical urban design
8 practice certainly argue for a variety of residential unit
9 types to meet a diverse market and lifestyle. Silver Spring
10 would be well-served by additional townhomes to fill a
11 growing housing niche and to add to the housing diversity
12 such as diversity, and such diversity certainly would be
13 compatible and encouraged.
14 Again, I don't think I have to mention the housing
15 element with regards to that because I think you, it's
16 mentioned in, it's certainly in keeping with the general
17 plans, new housing element as well.
18 Its proximity to, Chelsea Court's proximity to the
19 Silver Spring CBD is much closer than, than many of the RT-
20 12.5 or RT-15 cases near the CBD. It's only 155 feet from,
21 from the CBD boundary which is simply the center line of
22 Cedar Street, but some of the cases that are much further,
23 Courts of Woodside, Exhibit E, is 1100 feet away; Winchester
24 Plyers Mill, Exhibit F, is 2300 feet away from the CBD;
25 Ottawa Place, Exhibit G, is 1700 feet from the, from the

1 CBD; Bonaire Court and really Ritchie Avenue in East Silver
2 Spring, both those two cases, H and I, are in excess of 1500
3 feet from the CBD in East Silver Spring.
4 Although this site does not front on a major road,
5 it occupies the major, the majority of an entire block
6 around an adjoining CBD. Frontage on a major street is not
7 a requirement of the RT-12.5 Zone and again, there's a lot
8 of other examples with regards to that in the North and West
9 Silver Spring planning area and also, the East Silver Spring
10 Planning Area, and I'll just mention them. Exhibit H,
11 Exhibit D, Exhibit I, and there's other numerous examples,
12 certainly, throughout there that, that show RT-12.5 not
13 necessarily fronting on a major road.
14 With regards to density and massing, in light of
15 the master plan recommendations, the proposed revisions
16 certainly going from an RT-15 Zone to an RT-12.5 is in
17 general conformance with the North and West Silver Spring
18 Master Plan. Certainly in the first chapter, which I think
19 is probably the most significant one, is with regards to
20 community preservation, stability and character. This
21 particularly applies to this particular case since it does
22 address preserving the existing neighborhood and the
23 character, more importantly, of the North and West Silver
24 Spring neighborhoods.
25 The plan describes the established neighborhoods

1 and articulates the intent of the master plan is to preserve
2 the existing residential character and to reinforce the many
3 desirable features. The plan also recognizes that the
4 residential character is affected by traffic, which will be
5 addressed by Mr. Kabatt, nonresidential uses and certainly,
6 for adjacent commercial uses as well.
7 The row along the single-family homes along Cedar
8 noted as, appropriately as non, nonresidential professional
9 offices, form a partial buffer from the CBD along with the
10 current school site. The introduction of the townhomes at
11 the RT-12.5 density on the balance of this block essentially
12 not only replaces the institutional use but certainly
13 stabilizes it. This proposal expands on that narrow buffer
14 along Cedar and certainly enhances the character with the
15 residential use. This is one of the methods that the North
16 and West Silver Spring identified as appropriate for edge
17 blocks to the CBD.
18 MR. HARRIS: Let me interject here a minute. Are
19 you, can you tell us whether those features make this plan
20 consistent with at least those provisions of the master
21 plan?
22 MR. IRAOLA: With regards to?
23 MR. HARRIS: With regards to, let's take them one
24 by one. Does the transformation of this site from an
25 institutional use to a residential use advance objectives of

1 the master plan?
2 MR. IRAOLA: I believe that speaks directly to the
3 stabilization. It does stabilize the neighborhood.
4 Otherwise, there could be another school that perhaps would
5 come in here or some other, another use. Certainly, the
6 addition of fee-simple townhomes brings new ownership and
7 new folks that actually live in them, would live in the
8 neighborhood, that adds to, certainly, stability of a
9 neighborhood.
10 MR. HARRIS: And does the open space that will be
11 provided and available to the public address any master plan
12 objectives?
13 MR. IRAOLA: Absolutely. I think what that does
14 is certainly strengthens the distinction between what is
15 residential and what is commercial by the addition of
16 additional green space. Green space in the form of lawns
17 and trees, as opposed to plazas which are inherently a
18 little bit more urban, certainly adds to that distinction.
19 Plus, the addition of open space, which is normally not
20 really part of an R-60 zoning since people aren't willing to
21 give up their lot to create a park per se in the middle of a
22 neighborhood, this does afford that, the ability to provide
23 additional open space for, for the residents and also, it
24 speaks to the character as well.
25 MR. HARRIS: And do the planned pedestrian

1 improvements on this block address the master plan
2 objectives?
3 MR. IRAOLA: Absolutely. I think that, you know,
4 the neighborhood doesn't have a whole lot of sidewalks
5 within it. People actually walk on the streets. They're
6 fairly calm streets. Excuse me. This will provide, this
7 proposal does provide actual sidewalks within, within a
8 designated right-of-way, also some internal to the site but
9 they would access the open space as well. The open space
10 connectivity with regards to pedestrian access, you know,
11 they're located at the edges where they are really
12 accessible by the public and really part of the public realm
13 if you will. But that does certainly add to the character
14 and stabilization to the existing neighborhood.
15 MR. HARRIS: Please continue.
16 MR. IRAOLA: Okay. A portion of the Silver Spring
17 CBD is located within the surrounding area and therefore,
18 the general themes as certainly outlined within the sector
19 plan should be considered. The Silver Spring Central
20 Business District and vicinity sector plan policies are
21 interrelated with the other plans including the North and
22 West Silver Spring. The CBD is a major center and the
23 nucleus of the Greater Silver Spring Area. The Council and
24 Planning Board recognize that land uses between the CBD
25 Sector Plan and the surrounding master plans are

1 interrelated. That's why these plans were prepared
2 simultaneously together with the East Silver Spring plan and
3 the Takoma Park plan as well. The CBD Sector Plan certainly
4 articulates six themes in a shared vision for the
5 revitalized CBD.
6 MS. ROBESON: Right. And I think we went through
7 those before.
8 MR. HARRIS: Yes. In fact, to abbreviate things
9 here, in the ZHE report, pages 83 to 89, you made a number
10 of findings about ways in which this, the RT-15 project
11 addressed master plan objectives, either in the North and
12 West Silver Spring Master Plan or the CBD Master Plan.
13 Rather than repeating those, I would just propose that to
14 the extent that plan addressed those objectives, so does
15 this one.
16 MS. ROBESON: Mr. Brown, any objection?
17 MR. BROWN: No.
18 MS. ROBESON: All right.
19 MR. IRAOLA: But with, certainly with regards to
20 connectivity and protection and stabilization, there's
21 really nothing in the master plan that would prohibit the
22 connection of this development with the rest, with the rest
23 of the neighborhood through streets or anything like that,
24 nor does it really prohibit a street going through this
25 property to access it. There are other protections within

1 the street network that certainly protect and help stabilize
2 the neighborhood and keep, maintain the integrity of it.
3 MR. HARRIS: Before you leave the master plan
4 issue, one other question I meant to ask is to what extent
5 do you believe the preservation of the historic house
6 addresses a master plan objective?
7 MR. IRAOLA: Well, it certainly would -- it turns
8 it back into a residential use, you know, that right now it
9 would be part of a school. It's part of a school and
10 essentially nonresidential use. It would be, it would bring
11 it back and essentially preserve the character and nature of
12 a residential development by creating a new home, new home
13 site and one that actually is beloved in the neighborhood.
14 The preservation of that, of that home, you know, provides
15 identity and certainly a focal point for the community at
16 large. It will be preserved. There will be, there will be
17 someone living in it and certainly taking care of it.
18 MR. HARRIS: I know you're going to get into the
19 Historic Preservation site later so we'll skip anything
20 along that. If you just then continue with respect to your
21 opinion on the compatibility of the proposal with the
22 neighboring development.
23 MR. IRAOLA: Okay.
24 MS. ROBESON: Wait. Have you finished master plan
25 compliance?

MR. IRAOLA: There are some --

MS. ROBESON: You keep going.

MR. IRAOLA: Right. I mean, there are some things to add to --

MS. ROBESON: What I really want to --

MR. HARRIS: If you have more questions, please ask them.

MR. IRAOLA: Go ahead.

MR. IRAOLA: What I really want you to tell me, pretend, the master plan is a flexible guide.

MS. ROBESON: Yes.

MR. IRAOLA: What I want you to address is how does this conform with the master plan language that says the transition shall be by use but not by structure type. In other words, the master plan is saying the transition in this area is going to be by single-family homes. Now, it's -- assume. Assume that because that's what I read in the plan, but we can argue about it, but for my purposes right now, I'm asking you to confront that as an assumption. What would you say to me as to why this complies with the master plan?

MR. HARRIS: I --

MS. ROBESON: Don't. I --

MR. HARRIS: I think you're assuming something that's --

1 MS. ROBESON: Yes, but he's an expert.
2 MR. HARRIS: Okay.
3 MS. ROBESON: He can --
4 MR. HARRIS: Okay. Just so --
5 MS. ROBESON: He can give me a hypothetical.
6 MR. HARRIS: -- he doesn't believe that that's
7 what the master plan says because I don't think that is
8 what --
9 MS. ROBESON: Hum?
10 MR. HARRIS: I don't think the master plan says
11 that single-family residential --
12 MS. ROBESON: Your objection is noted.
13 MR. HARRIS: Okay.
14 MS. ROBESON: I'm asking him assuming because I
15 think that's what the citizens think it says.
16 MR. HARRIS: Okay.
17 MS. ROBESON: So forget what -- what if it said
18 that?
19 MR. IRAOLA: If it said that --
20 MS. ROBESON: Now, keep in mind in your answer
21 that a master plan is flexible. It's a guide. So in what
22 sense does this project meet that criteria?
23 MR. IRAOLA: First of all, you know, the master
24 plan does not say that this should be single-family detached
25 homes.

MS. ROBESON: So say what if it does?

MR. IRAOLA: What if it did?

MS. ROBESON: Yes.

MR. IRAOLA: I still don't understand your question.

MS. ROBESON: Okay.

MR. IRAOLA: One more time.

MS. ROBESON: Hypothetically.

MR. IRAOLA: Yes. Hypothetically.

MS. ROBESON: What if the master plan intended that the transition in this area, because I'm well aware of all -- from a planning standpoint, there are benefits. One could argue arguably because I'm not taking sides, but one could argue there's a lot of planning benefits to this use. What if the intent of the master plan was that the transition in this area be by single-family detached structure even if it's not used for a single-family detached use? How does this comply, assuming that is what the master plan intended, intended, how does this comply with that?

MR. IRAOLA: Well, it complies in the sense that you are, you'd be adding uses that are the same essentially as the, as the neighborhood to the north, not necessarily to the neighborhood, or to some buildings or other parts of the site to east, to the east or to the west. It still, there would probably -- I would assume if that, if they made that

1 distinction, that this site would be solely exclusively
2 single-family detached homes, there would be considerations
3 to circulation, for example. Perhaps the single-family
4 detached homes might not need to live by the same
5 restrictions that are, that are given in that, in that
6 particular thing. It speaks to kind of circulation chapter.
7 MS. ROBESON: Well, I think last time you said
8 but, I think your argument last time, and maybe I
9 misconstrued it but I thought your argument last time was
10 having the end cap units with faux fronts mirrors single-
11 family detached uses, right?
12 MR. IRAOLA: Yes. In terms of orientation.
13 MS. ROBESON: So that's still your argument.
14 MR. IRAOLA: Correct. I mean, single-family
15 detached homes would also have the same orientation I would
16 gather.
17 MS. ROBESON: Yes.
18 MR. IRAOLA: Yes. They would still -- that
19 relationship still would certainly hold true. Under a, you
20 know, it's really dependent on who designs it but that would
21 be my, that would be certainly the preference, to maintain
22 the same orientation along there.
23 MS. ROBESON: Because when I --
24 MR. IRAOLA: Not with -- go ahead.
25 MS. ROBESON: No. You go ahead.

1 MR. IRAOLA: Well, notwithstanding unit type.
2 Single-family homes, whether they're attached or detached,
3 would certainly be appropriate here and certainly, I would
4 say that if you had enough dimension, you know, you could
5 certainly increase the density along the edge.
6 MS. ROBESON: What does that do? What do you
7 mean?
8 MR. IRAOLA: Like if you have three or four blocks
9 to deal with and let's say that Chelsea School is three or
10 four blocks.
11 MS. ROBESON: Oh, I see. If you could put three
12 rows or another set of eight townhouses.
13 MR. IRAOLA: Correct. You could, you know,
14 transition because the CBD is the CBD and it's right, it is
15 there. The intensity and all the uses --
16 MS. ROBESON: Okay. But I don't think the master
17 plan is, for whatever reason, you know, there's a -- again,
18 I'm trying to get you to focus on -- what I have to do is
19 say consistency with the master plan and that's different
20 from saying if I'm just a planner out there designing on a
21 blank slate, all right, I would design it this way. I mean,
22 those are persuasive arguments for compatibility but not
23 necessarily compliance with the master plan. So say the,
24 but the master plan is also flexible so it's not a Bible
25 that you must, well, whatever term you want to use, but

so --

MR. IRAOLA: But the zone also --

MS. ROBESON: -- in what way does this mirror single-family detached structures? In what way have you incorporated that master plan recommendation that the use be by structure?

MR. IRAOLA: And I -- these are fee-simple single-family homes as well.

MS. ROBESON: Right. So generically, you use --

MR. IRAOLA: Ownership is a big, is a big part of it.

MS. ROBESON: What?

MR. IRAOLA: Ownership. This is, these aren't, these aren't townhomes, or these are not, I'm sorry, these are not apartments. These aren't any kind of multi-family condominiums, you know, where you have over and under kind of, over/under conditions. It's not a high-rise.

MS. ROBESON: Right.

MR. IRAOLA: It's not, these are essentially --

MS. ROBESON: Well, focus on detached because what I'm getting is what -- and I'm not, this is really not prejudging. I'm really asking the questions because I want to know the answer. You know, one could argue what the citizens are arguing, that they're just lines and rows and they're not reminiscent of a detached, single-family

1 detached structure, so what is your answer to that, to what
2 they're saying?
3 MR. IRAOLA: That they are not single-family
4 detached structures.
5 MS. ROBESON: Yes. That they're long rows, not
6 even broken up rows like three at a time, six at a time,
7 five at a time.
8 MR. IRAOLA: Townhomes are, by nature, in rows.
9 They have a common property --
10 MS. ROBESON: Right.
11 MR. IRAOLA: -- a common dividing line.
12 MS. ROBESON: And I think --
13 MR. IRAOLA: Just by the, the nature of the RT
14 zone certainly is that.
15 MS. ROBESON: Right. But I think their answer to
16 that is they don't have to be. Look at, you know, what I
17 see in the record is exhibits of smaller clusters.
18 MR. IRAOLA: Sure.
19 MS. ROBESON: So why, why, how does this address
20 that issue?
21 MR. IRAOLA: There's certainly a lot of
22 efficiencies when it comes to that building type. A longer
23 building essentially going parallel to the grade versus
24 creating a smaller, smaller building that you essentially
25 have to grade all the way around. If you get, get some

1 additional, you get units essentially that are tied together
2 in these rows which essentially will have fronts. They have
3 individual look to them, they're not exactly all the same,
4 they have a, the character of them is indicative certainly
5 of the, of the neighborhood that surrounds it from a
6 compatibility standpoint.
7 MS. ROBESON: So you're saying through the use of
8 architectural elements --
9 MR. IRAOLA: Absolutely.
10 MS. ROBESON: -- landscaping, alignment and
11 functional front doors, they will, are you going to -- now,
12 what about the alleyways because that's come up? What --
13 and you're going to have the double row of landscaping in
14 the alleyway.
15 MR. IRAOLA: Right. I mean, I have that in here.
16 I do have that in here to address it kind of specific.
17 MS. ROBESON: I'm sorry. Maybe I'm jumping over.
18 I'm just wanting, I really want this issue to be addressed.
19 MR. IRAOLA: Okay. All right.
20 MR. HARRIS: Before you get to it, let me try to
21 zero in on what you're saying. Let me ask you a few pointed
22 questions here. Does the, in your opinion, does the Silver
23 Spring Master Plan, North-West Silver Spring Master Plan,
24 prefer residential uses over nonresidential uses within the
25 residential areas?

MR. IRAOLA: I would categorize that as yes. In terms of, in keeping with the master plan, I would say yes.

MR. HARRIS: And is this property today used for residential or nonresidential purposes?

MR. IRAOLA: It is used for nonresidential purposes. Institutional.

MR. HARRIS: So does the conversion of it from nonresidential to resident address one objective of the master plan?

MS. ROBESON: Well, let me just -- that's not what I meant.

MR. HARRIS: But I think that's the foundation to that. That was the last question along that line. If you could answer.

MS. ROBESON: The issue is the detached recommendation in the master plan. That's the issue and that's what I want to hear. Assuming. Assuming that's what the master plan says, what I really wanted to ask you is how does this meet that, that the transition should be by use and not by structure type. In other words, it should be -- assuming it said it should be single-family detached, although it could be professional offices, assuming --

MR. IRAOLA: If it had a specific recommendation that --

MS. ROBESON: No. Forget that.

MR. IRAOLA: Okay.

MS. ROBESON: I want you to assume that that's what it says.

MR. IRAOLA: Single-family detached.

MS. ROBESON: Detached. But master plans are flexible so that, you know, just because -- how does this address the detached, the recommendation regarding being detached?

MR. HARRIS: How close does this come to that were that the recommendation?

MR. IRAOLA: How close? I would say it comes, I would say it would, it would be in conformance.

MR. HARRIS: To what extent does the --

MR. IRAOLA: If the question is, is about groupings and the length of these buildings and how that --

MS. ROBESON: Yes. That's it.

MR. IRAOLA: -- is certainly compatible with regards to that.

MS. ROBESON: Yes.

MR. IRAOLA: You know, there is one building here that is three units.

MS. ROBESON: Yes.

MR. IRAOLA: Not all of them are so that does -- the length of that particular building certainly would, would address that. Its orientation is slightly different

1 but nonetheless, part of the, part of the community.
2 MR. HARRIS: Is the open space around the
3 perimeter of this property part of that response? To what
4 extent does that address the goal of having this residential
5 quality?
6 MR. IRAOLA: You know, these do live to the front.
7 These units do live to the front. I think that's --
8 MS. ROBESON: What does that mean?
9 MR. IRAOLA: Meaning that, you know, they do have
10 alleys but folks really, the trade-off between having an
11 alley and --
12 MS. ROBESON: Oh, I see.
13 MR. IRAOLA: -- not having rear yard is having a
14 tremendous front.
15 MS. ROBESON: I see.
16 MR. IRAOLA: The quality of that particular front,
17 I mean, I think is critical. It's critical. That's why
18 there are setbacks, there's additional landscaping that will
19 be under control of the HOA. That quality of the front
20 certainly is reminiscent of or compatible with single-family
21 detached houses even though people aren't really mowing
22 their lawns, it will be an HOA perhaps, so forth. These are
23 all under control of an HOA. Certainly that, the front
24 yards. And really, everything else that's concealed,
25 garage, is really internal within, within an alley.

MS. ROBESON: Okay. I see.

MR. IRAOLA: They're concealed from the --

MS. ROBESON: I see what you're saying. So what you're saying is people relate based on the front of the townhouse.

MR. IRAOLA: Absolutely. You don't see really, you know, exposed rears essentially along this. They're either fronting onto green space or fronting onto, onto streets. And even, and just to address kind of the visual aspects of that, of the rears because I think that that was one of the concerns --

MS. ROBESON: Yes. That's -- I would like you to address that.

MR. IRAOLA: That would be certainly one of the concerns. Again, these townhomes are stepping down in grade. The gradient along, along Springvale -- can I use this?

MS. ROBESON: Yes.

MR. IRAOLA: All right. Essentially, the, it's a little flatter up here along, I'm referring to the revised March 16, 2012 schematic development plan.

MS. ROBESON: Okay.

MR. IRAOLA: You know, visually these things are, the rows of townhomes are stepping down with the grade much the same as the homes across, across the street are also.

1 There are certain viewsheds. No one really looks at homes
2 in kind of that front elevation. It's really more of an
3 architectural representation certainly. When you look at
4 along, along the street frontage, there's certain, what is
5 being proposed are, are essentially screen walls at the ends
6 of the townhomes so you're not going to be able to see kind
7 of the cars or anything parked in there from certain --
8 MS. ROBESON: Wait. By screen walls, are you
9 talking about trees on the street?
10 MR. IRAOLA: I'm talking about masonry walls that
11 would essentially --
12 MS. ROBESON: Oh, where are they?
13 MR. IRAOLA: -- grow out of ,from the rear of
14 this, of this lot. And it's probably shown better on the
15 model because it's the same, it's exactly the same.
16 MS. ROBESON: Oh, I see it. How tall are those
17 masonry walls?
18 MR. IRAOLA: It's undefined right now but they
19 really need to mitigate kind of the, visually from the
20 street, they really need to mitigate.
21 MS. ROBESON: That --
22 MR. IRAOLA: You can see one right here. As
23 you're kind of walking down the street or in a car, at that
24 level, you can certainly mitigate visually.
25 MS. ROBESON: I understand.

MR. IRAOLA: And that would be certainly continuous. Now, additionally, there's going to be some landscaping to help augment that too against that. So again, we're going down the slope. The landscaping picks up from your vantage point as you're coming through there.

MS. ROBESON: Yes.

MR. IRAOLA: Also, there's a double row of trees here.

MS. ROBESON: Yes.

MR. IRAOLA: And the double row of trees essentially picks up from kind of that, where this picks up, leaves off essentially, you'll have the canopy of the tree. Eventually, you'll have a big canopy of a tree here. These alleys also are articulated in a way, you're not looking at a back, essentially the back of these, of a very blank facade. They do have bay windows. They do have patios and so forth like that, or not, or decks I should say. Also, certainly the facades. The roof lines have been modulated, the same thing you see here, because they, the grade, you can step townhomes between, between the units. That's why you have modulation certainly in the, in the roof line. That's why this one is coming up because this is actually like a couple feet taller. So that does, they do modulate.

MS. ROBESON: What's the grade from Springvale down to Cedar Street?

MR. IRAOLA: There's about, well, there's about 40 feet of grade change in all.

MS. ROBESON: No. But I think there's, that's the grade change east-west but what's the south-north grade change?

MR. IRAOLA: There's a small little plateau here and then it comes down so essentially --

MS. ROBESON: Toward. It comes down towards Springvale?

MR. IRAOLA: Correct because the high point of the site is actually right here where the house is. It sits fairly prominent.

MR. HARRIS: With respect to the alternative of groups of three or four townhouses versus the five or six, do you see a positive effect of taking the green space that would be between those units and putting it out at Springvale and at Ellsworth and in a park at the corner of Pershing and Springvale?

MR. IRAOLA: Yeah. I mean, I think that this housing type, townhomes, certainly affords you the ability to provide a lot more green space. This plan also is, it's been compressed in some places in order to accommodate it but also, it's been widened. It's kind of hard to describe. It has been compressed essentially in this direction towards, towards Ellsworth. Not to compromise it. This is,

1 this is a green space also. It's part, certainly --
2 MS. ROBESON: Right.
3 MR. IRAOLA: -- part of the plan, but it has been
4 compressed.
5 MS. ROBESON: Shifted.
6 MR. IRAOLA: Shifted I should say.
7 MS. ROBESON: Yes.
8 MR. IRAOLA: And also, it's been expanded
9 certainly between, between the rows to create those
10 additional dimension in the gaps. It's a little bit similar
11 to that.
12 MS. ROBESON: Right.
13 MR. IRAOLA: What that's been done except for the
14 fact that it's more of a mews or an unenclosed courtyard per
15 se. But that shift essentially has, has made accommodations
16 on the --
17 MS. ROBESON: Right.
18 MR. IRAOLA: -- on the corner of Ellsworth and
19 Pershing, or Springvale and Pershing.
20 MR. HARRIS: Okay.
21 MS. ROBESON: That's what, that was helpful. I'm
22 sorry.
23 MR. HARRIS: No, no, no.
24 MR. IRAOLA: That's all right. No, I got --
25 MS. ROBESON: I didn't articulate it as well. Go

ahead.

MR. HARRIS: Your questions need to be answered as well. Okay. Go ahead, Mr. Iraola.

MR. IRAOLA: Okay.

MR. HARRIS: I think you were going to address the compatibility of the project which does overlap a little bit what we were talking about.

MR. IRAOLA: Right. And just some dimensional things because I know there were some questions with regards to dimensions, distances from buildings and so forth. But the plan certainly does maintain that required 30-foot dimension on the southern, southern boundary, and I believe Mr. Doggett's original plan also assumed 30 feet is, as certainly appropriate with regards to a setback. Let's see. The setback from the nearest townhouse to Pershing Drive has been increased by 60 feet so that dimension is from --

MS. ROBESON: By 60 feet.

MR. IRAOLA: By 60 feet. From that point to this red line here.

MS. ROBESON: So how much is the total setback now?

MR. IRAOLA: It went from 67 in the previous plan to 127 feet now, so there's 127 feet dimension along there. Moreover, on Pershing Drive, the distance from the nearest townhouse to the nearest existing home on 714 Pershing Drive

has been increased by 66 feet, from 230 feet to 296 feet and that's nearly a football field in length. So in other words, from this point right here across to this lot 20 which is I think 714 Pershing, that building face to that building face is nearly a football field in length. So essentially, it's been, the townhome strings have been shifted over.

The green space certainly has been, has been increased. This additional green space certainly has resulted in enhancements to the publicly accessible green area that we've been talking about. It's HOA green space but certainly around the edges, it would be welcoming to the public as well. Also that, moving from 30 to 50 percent requirement has allowed the courtyards to expand by nearly four feet in each one, so that additional dimension allows for the gaps, essentially, that we've been talking about to be a little bit, a little bit wider.

As we mentioned about the string lengths, they've been also reduced as well from the RT-15 and that had to do in part to the, we were at 21.6 feet on the southern boundary and about 25 feet at the top.

MS. ROBESON: Right.

MR. IRAOLA: That afforded the ability to reduce the buildings in each string. So what was previously a six unit building, building has now been reduced to five and

1 what was previously an eight unit string was reduced down to
2 seven.
3 MS. ROBESON: Except for the three.
4 MR. IRAOLA: That's correct. The combined total
5 reduction in building length essentially is 171 feet and
6 that speaks kind of to massing and, of the building as well.
7 MS. ROBESON: By building length, you mean the
8 string.
9 MR. IRAOLA: Correct. Overall. Cumulative.
10 Cumulative. The string of townhome south of Private Street
11 A has been eliminated altogether. Again, that's to
12 accommodate the expanded setbacks, particularly around the
13 Riggs-Thompson House for additional green area. The
14 reduction in density also results in overall less massing as
15 a result of that. You have less building square footage.
16 With the Riggs-Thompson House, an associated
17 environmental setting also has been enhanced essentially.
18 The Hearing Examiner's report suggested that additional
19 setbacks from the townhouses to the Riggs-Thompson House
20 would help to ensure compatibility. The minimum distance,
21 again, from the nearest townhouse to the Riggs-Thompson
22 House has been increased from 64 feet, no, has been
23 increased by 64 feet, essentially from 28 to 92. So it's
24 about a 60-foot shift in that direction to certainly
25 accommodate the, the additional dimension there. But this,

1 but that relaxed density also affords the ability to really
2 create an outstanding setting for the, for the Riggs-
3 Thompson House. It sits high. It's very prominent. It's
4 very prominent. Combined, combined with all the open space
5 and the environmental setting really provides a fairly, a
6 very meaningful position or setting, essentially, for it,
7 for the home itself.
8 I can talk about, I would like to talk a little
9 bit about my metrics because my metrics kind of expand a
10 little bit on that.
11 MS. ROBESON: What's a metric?
12 MR. IRAOLA: This, you know, compatibility.
13 There's no really, there's no rules or guidance from the, in
14 any master plan or any Park and Planning document that says
15 that here, you know, to ensure compatibility, this is kind
16 of what we test for or certainly look at.
17 MS. ROBESON: Oh, I remember the metrics from your
18 prior testimony, yes.
19 MR. HARRIS: The measures.
20 MR. IRAOLA: Right. Because, you know,
21 compatibility isn't --
22 MS. ROBESON: Sorry.
23 MR. IRAOLA: -- doesn't necessarily mean sameness,
24 you know.
25 MS. ROBESON: Right.

1 MR. IRAOLA: It definitely doesn't mean sameness
2 but it does imply that there's some existing or proposed
3 elements that are proposed can certainly live in harmony.
4 Incompatibilities can be made compatible using some of these
5 methods and they're used, certainly, throughout different
6 jurisdictions but I'm certainly of the opinion that one way
7 of measuring them is to really kind of look at, you know,
8 these eight items which includes, you know, complimentary
9 land uses, massing and scale, building height, architectural
10 style, building orientation, setbacks, buffers and
11 landscape, which I think is important, and traffic. And I'm
12 not going to really get into too much traffic because I'll
13 leave that up to Mr. Kabatt.
14 But with regards to complimentary land uses,
15 townhomes exist in all parts of the County in harmony with
16 single-family detached homes. I think that's pretty, pretty
17 evident. And also in established neighborhoods. They're
18 not necessarily in brand new neighborhoods but also in
19 established neighborhoods. And in some, some cases, such as
20 Rosedale Park, they actually, you know, are, they share the
21 same frontage. They have the same yard depth as, as the
22 single-family homes and they're in perfect harmony.
23 Chelsea Court also, again, it's going to replace
24 this institutional use with residential, again, to address,
25 certainly, stability that the master plan had talked about.

1 It certainly starts to preserve a former residential use and
2 reverting it back to a residential use in the Riggs-Thompson
3 home and certainly, from a connectivity part, it also kind
4 of progresses. I'll get into connectivity in just a little
5 bit.
6 But in terms -- but character. Character is also
7 certainly important. You know, by reinstating certainly the
8 Riggs-Thompson House as a residential use, that speaks,
9 again, to character. It provides a, you know, use that will
10 be the focal element and certainly meaningful to the
11 community at large.
12 Massing and scale. Compatibility can be achieved
13 through the appropriate massing and scale of buildings.
14 Architectural massing, and it's not mass, it's massing
15 essentially, is what we're really dealing with. But it's
16 essentially composing and manipulating three-dimensional
17 forms into a coherent architectural composition,
18 essentially, is really what we're talking about with regards
19 to massing. But the proposed townhomes will have
20 architectural details that break up the massing essentially
21 and some of the techniques that are used are certainly
22 varying roof lines and types, whether they're reverse gable
23 or reverse hip grooves, the use of dormers definitely, but
24 articulated facades. And you can see that, just from the
25 model, that these facades are highly articulated. Let me

1 turn it around a little bit.
2 MR. HARRIS: To you?
3 MR. IRAOLA: No. To --
4 MS. ROBESON: Yes. I, I saw that.
5 MR. IRAOLA: They're highly, they're highly
6 articulated but also, not only that but that does provide a
7 lot of visual interest with regards to massing. These were
8 just, these were just monolithic cubes that somehow some
9 folks have felt represented by this particular exhibit.
10 They're not monolithic cubes. They have a lot, a fair
11 amount of articulation to them as well. Again, the natural
12 grade provides for the building placement that's
13 perpendicular to Springvale. That also provides varying
14 heights since you're actually going downhill, it does
15 provide the varying heights that help to break up the
16 massing as you descend down, down the street. And again, as
17 I mentioned before, the single-family homes across the
18 street essentially do the same thing. They have to. They
19 have to be, with regards to the grading condition that
20 exists there.
21 The gaps at the courtyards, courtyards that are
22 created between the buildings. They separate and spread the
23 building mass along the street as opposed to a continuous
24 building wall more typical of, say, Baltimore townhomes.
25 That is, to me, is not what this is proposing and frankly,

1 not the, the grades would not certainly allow for something
2 like that as well for a very, for a continuous kind of
3 relentless street wall along there of solid building mass.
4 Also, the gaps have been increased with this
5 revised plan which adds for that additional separation and
6 breaks, essentially having a mass void kind of relationship
7 along the street. You have a mass and you have a void.
8 That articulation as you're going down the street is, is
9 certainly very, very important to help in breaking up the
10 mass and really being more compatible with the neighborhood.
11 Again, as I mentioned six fronts of these
12 townhomes will confront essentially nine fronts of the
13 existing townhomes. In some cases, there's some ends that
14 they're facing as they turn, I believe, down Springvale
15 Lane. There's some ends of homes that you'll be facing but
16 nonetheless, it's addressing the street and I think that's
17 the relationship that is, that is important, that you're
18 addressing Springvale in this particular case. I guess
19 when, when it comes down to it really, when you're comparing
20 the previous RT-15 and this RT-15 arrangement, this one is
21 less compressed in a sense so essentially, but it has been
22 shifted. The strings placed further apart are, therefore,
23 create a massing that is a lot more relaxed and certainly
24 more compatible than the RT-15 proposal.
25 Since -- the parking has been visually addressed

1 by providing the rear-loaded garages access by the alley.
2 In other words, the car really has been mitigated. It's
3 really kind of placed in the alley. They're not in the
4 fronts of these, of these units unless it's, unless it's in
5 an on-street parking situation which is a little bit more
6 urban in terms of how, it's not in places. There are, there
7 is one occasion where there is some on-street, off-street
8 parking here but essentially, the parking has been pretty
9 much mitigated.
10 MS. ROBESON: Wait. There's one situation where
11 there's on-street parking.
12 MR. IRAOLA: Well, correct. There's on-street
13 parking, parallel.
14 MS. ROBESON: Which is on the private road.
15 MR. IRAOLA: Correct. There's on-street parallel
16 and there's on-street perpendicular parking.
17 MS. ROBESON: Where's the on-street perpendicular?
18 MR. IRAOLA: There's a small little -- right here
19 in this corner.
20 MS. ROBESON: Okay.
21 MR. IRAOLA: Okay. But for the most part, for,
22 you know, parking 63 townhomes and one single-family
23 detached, the visual impacts of parked cars has been
24 mitigated because it's been relegated to, certainly, the
25 rears and into an alley condition.

1 But again, special attention has been given, given
2 to these, these alleys. You know, decorative walls, as I
3 mentioned, that would essentially grow from the facade and
4 augmented with additional landscaping right next to the
5 wall. You know, certainly it will help visually screen the
6 garage doors from most vantage points, particularly those
7 folks walking and those in, in a vehicle. I will say that
8 the trees, when they're certainly maturing, do fill that
9 other gap and also, you know, the architecture is very
10 interesting here with regards to how it's expressed and the
11 traditions that it's, that it's trying to emulate. That ,to
12 me, is visually appealing, you know. You cannot dismiss the
13 fact that it's going to be, it's going to be an attractive
14 facade to, to look at.
15 Scale.
16 MS. ROBESON: But that's not -- the architectural
17 elements I think what we're dealing with, you can't discount
18 them but isn't it fair to say that they're a matter for site
19 plan?
20 MR. IRAOLA: They're absolutely a part of site
21 plan, although --
22 MS. ROBESON: You don't have a binding element
23 relating to --
24 MR. IRAOLA: No.
25 MS. ROBESON: -- architecture, right?

1 MR. IRAOLA: No. They are -- although, you know,
2 Park and Planning doesn't really review architecture per se,
3 only as it relates to kind of access points and things like
4 that but stylistically and all that, they tend to not --
5 there's no architectural review board per se. That's why I
6 think in the Zoning Ordinance, that two-foot offset and so
7 forth like that is really help, to help articulate the
8 facade in, certainly, a townhome kind of scenario but again,
9 as Mr. Thakkar had mentioned, you know, that, you know, with
10 the use, creative use of bay windows and projections and
11 eaves and so forth, that certainly is addressed at the time
12 of site plan with regards to that.
13 But again, the alleys, per se, will have decks
14 and, in lieu of rear yards and there will be balconies and
15 bays and terraces that would certainly be out there so, so
16 to me, I think that also helps to articulate that facade
17 even though it is less important than the front facade in
18 this, in this case.
19 But with regards to scale, scale is, tends to deal
20 with proportions relative to human proportions essentially
21 and is really subject to some individual's perception, and
22 I'll give you an example. You know, in an elementary school
23 bathroom, when you go there, it's scaled for children. It's
24 not scaled for adults. So it's really a matter of
25 perception with regards to that.

1 But townhouses are, these townhouses are going to
2 be traditionally proportioned. In other words, you know,
3 the entryways will be scaled for humans, the amount of
4 fenestration or openings will be, again, scaled appropriate
5 to the, to the particular style but they will feel very
6 humanlike as opposed to, again, a cube, for example, a very
7 contemporary expression which is not, obviously not the,
8 appropriate for this, for this area. But again, the
9 architectural detailing with regards to that helps, helps
10 with regards to scaling down the building into its elemental
11 pieces.
12 The front facades that face Springvale, I can't
13 make, I want to stress this more. These are true fronts.
14 They're not cosmetic, they're not faux. There's nothing to
15 try to conceal something. These are, they're actually true
16 fronts. So I think that that's, it's been kind of
17 mischaracterized in a lot, in a lot of cases.
18 MR. HARRIS: Excuse me. Let me interject here.
19 MR. IRAOLA: Uh-huh.
20 MR. HARRIS: I know you've got other elements
21 here. I do want to keep this moving along.
22 MR. IRAOLA: Okay.
23 MR. HARRIS: Could you briefly identify the other
24 metrics and really hit a few of the high points as to why --
25 MS. ROBESON: To the extent that, I mean, these

are some of the issues you've already addressed in the --

MR. IRAOLA: Right.

MS. ROBESON: -- original rezoning.

MR. HARRIS: Right.

MS. ROBESON: So if there's anything different --

MR. IRAOLA: Okay. Building height, 35 feet. Again, architectural style in context with, with the neighborhood. Building orientation, we had already --

MS. ROBESON: Right.

MR. IRAOLA: We certainly talked to these again. These look to the front. The front is very important with regards to that.

MR. HARRIS: The setbacks, that's one issue that has changed.

MR. IRAOLA: Setbacks. Absolutely. The, you knew, again, the setback along the southern property line, that 10 feet certainly affords more green space, separation from the rears of the, of the Cedar Street homes and professional offices that occupy that area. That's additional. It certainly enhances tree preservation which I think was, was a concern especially if you try to mitigate visually the Colesville Towers building that's across the street. But also, the setback along Pershing --

MS. ROBESON: Do you have anyone that's going to testify the differences as far as tree preservation goes?

1 Is your engineer going to address that?
2 MR. HARRIS: Well, I'll be frank. We did not
3 think that that was a relevant issue here so we were not
4 going to but I've now heard that you would still like to
5 hear testimony on that.
6 MS. ROBESON: Well, I'm not sure it is or it isn't
7 yet.
8 MR. HARRIS: Okay.
9 MS. ROBESON: But I am curious as far as you still
10 have to prove the compatibility. Even though they said RT
11 zoning is appropriate, you still need to prove the
12 compatibility of 12.5 so --
13 MR. HARRIS: Well, here's --
14 MS. ROBESON: -- just think about it.
15 MR. HARRIS: I will. Here's my dilemma though.
16 As we all agreed, other than the binding elements, this plan
17 is not fixed. It gets fixed --
18 MS. ROBESON: Yes. Right.
19 MR. HARRIS: -- at preliminary plan and site plan
20 and so necessarily, what trees are effected is not
21 determined at this point in time either. We have to conform
22 with --
23 MS. ROBESON: Do you have a prelim -- I thought
24 they made you do a preliminary.
25 MR. HARRIS: Just to show how it might be done.

1 That, you know, that was not binding on anybody, not them
2 and not on us.
3 MS. ROBESON: Well, do you have anybody that's
4 going to testify as to that? No.
5 MR. HARRIS: It's essentially the same plan except
6 that we'll preserve more of the trees on the south side, but
7 we can testify to that. I just --
8 MS. ROBESON: Well, just whatever you have to
9 testify.
10 MR. HARRIS: Yes. Fine. We will do that.
11 MS. ROBESON: Okay. GO ahead.
12 MR. IRAOLA: Okay. Proffers and landscape I think
13 I touched on with regards to that.
14 MS. ROBESON: Yes.
15 MR. IRAOLA: The spaces are public and so forth.
16 And traffic I will leave to our traffic engineer
17 essentially, but my take on that is that overall, the
18 traffic is, you know, is favorable compared to this current
19 school use and certainly, the special exception expansion
20 but with regards to the traffic, I'll let our traffic
21 engineer deal with that.
22 MS. ROBESON: Okay.
23 MR. HARRIS: One question on the turn radius of
24 the Private Street A. Did you have a chance to talk with
25 the engineer and do you know whether that radius did change?

1 MR. IRAOLA: Yes. There --
2 MR. HARRIS: And if so, what impact that has, if
3 any?
4 MR. IRAOLA: There was a slight modification. The
5 revised plan shows a 30-foot inside curb radius right here
6 on building string no. 6 essentially. It was widened from
7 25 feet I believe. It was a 25-foot radius and now it's a
8 30-foot, 30-foot radius.
9 MS. ROBESON: Okay. Now, were you going to say --
10 I have another hypothetical but I'd like you to address it.
11 Assume -- well, how is this plan in conformance with the
12 master plan as far as the environmental setting aside from
13 the technical appendix argument which we've been through
14 multiple times?
15 MR. IRAOLA: Okay.
16 MS. ROBESON: Does this achieve the master plan
17 goals in any way other than merely size?
18 MR. IRAOLA: Okay. I, well, first --
19 MS. ROBESON: Does this plan achieve the master
20 plan --
21 MR. IRAOLA: Yes. I believe, yes. I believe it
22 does.
23 MS. ROBESON: And can you --
24 MR. IRAOLA: Sure. I mean, first, I don't think
25 there was ever a, the 1.4 acre was designated.

1 MS. ROBESON: Okay. We're --
2 MR. IRAOLA: We're good with that?
3 MS. ROBESON: -- going beyond that.
4 MR. IRAOLA: All right.
5 MS. ROBESON: Because I've heard that. That
6 doesn't mean I'm discounting the argument.
7 MR. IRAOLA: Sure.
8 MS. ROBESON: I'm just saying do you have another
9 argument.
10 MR. IRAOLA: Well --
11 MS. ROBESON: That it's consistent with the master
12 plan.
13 MR. IRAOLA: Yeah. I think it improves on the
14 master plan language.
15 MS. ROBESON: And in what sense?
16 MR. IRAOLA: First of all, the delineation of the
17 37,056 square feet is fairly irregular and I think that's
18 based partly because it was trying to go around existing
19 buildings. That's why it has a fairly strange little jaunt
20 here. You know, there's no rhyme or reason for that.
21 That's just strictly my interpretation that it's probably
22 trying to avoid buildings at the time in how it was
23 delineated.
24 Together with the open space and all the shift of
25 the strings back, it does provide, I think, an exceptional

1 setting for the Riggs-Thompson home. In addition to the
2 preserving 37,056 environmental setting, it opens up the end
3 of the block essentially to green area that's punctuated by
4 a, by an historic home. It's actually sitting very
5 prominently on the site. From that regard, in that regard,
6 I think that certainly is in keeping with it. It also --
7 MS. ROBESON: Have you measured out exactly how
8 much green space is, it's 1.3 and change?
9 MR. IRAOLA: Yeah. Do we have Exhibit -- well,
10 let me, I'll try to point this out essentially.
11 (Discussion off the record.)
12 MS. ROBESON: Well, I can, I know that exhibit
13 so --
14 MR. IRAOLA: Okay.
15 MR. HARRIS: Okay.
16 MR. IRAOLA: All right. I had some notes with
17 regards to that. What it does, it does essentially square
18 off the site. Regardless of the 1.4 or where that is, it
19 does, which that 1.8 was approximately here, but what it did
20 -- and this is kind of this corner. Corners are very
21 important. I mean, they're intersections, and where you
22 place open space ideally would be at corners or along edges.
23 What this proposal does is essentially squares off this and
24 redistributes essentially the same area as the 1.4. What is
25 shown in not only cross-hatched but the square checked thing

is approximately 1.3 acres.

Now, what has not really been shown or talked about is this dark purple here which is, it will be a curb extension, essentially, along Pershing Drive since you don't need the drop-off for the, for the school bus.

MS. ROBESON: I see.

MR. IRAOLA: So from the curb, if you add that little sliver of area which would be in the public right-of-way but nonetheless green and perceived, for all intents and purposes from anybody walking around, that the edge of that curb where the street tree is located to this edge, that whole area is green. That, in excess, is in excess of about 1.5 acres so you're nearly, you're right in between. You're right in between the magic number of 1.4 acres.

MS. ROBESON: So what you're saying is it provides a better --

MR. IRAOLA: It's absolutely better because you would -- the thing is if you were not, if you were to hypothetically abide by that parcel 72, which in fact is just a tax parcel, it's just a tax parcel and kind of --

MS. ROBESON: Well, it was -- it is now.

MR. IRAOLA: Yeah.

MS. ROBESON: I understand what you're saying.

MR. IRAOLA: Regardless of where that was, it was just positioned kind of, to me kind of arbitrarily as the

1 school kind of was, was developed but by doing that -- and
2 what it did, it kind of dismissed that corner to a certain
3 extent, so that same area just shifted around essentially
4 converts this remnant which otherwise potentially could have
5 been density for that matter, could have had townhomes up on
6 this corner, is now converted into open space and certainly
7 augments the setting that is part of the Riggs-Thompson
8 House.
9 MS. ROBESON: Oh, that exhibit is helpful.
10 MR. IRAOLA: So essentially, you're redistributing
11 this over here, squaring this parcel up and really creating
12 a more meaningful space.
13 MS. ROBESON: Okay. Thank you.
14 MR. HARRIS: Now, alternatively, if you were, if
15 the 1.4 acre parcel were to be preserved rather than what is
16 shown in purple here, would it be your expectation that the
17 area above that would be then used for residential
18 development?
19 MR. IRAOLA: Yes. I would, I would say you'd want
20 to utilize that that piece.
21 MR. HARRIS: Including all the way over to the
22 corner.
23 MR. IRAOLA: Yes.
24 MR. HARRIS: And do you have an opinion as to
25 which is preferable from a public open space perspective?

1 MR. IRAOLA: I think that this would be, you know,
2 the --
3 MS. ROBESON: Or from the master plan compliance
4 perspective.
5 MR. IRAOLA: Again, character building,
6 stabilization, preservation language which is --
7 MS. ROBESON: Historic setting language
8 MR. IRAOLA: Historic setting language. My sense
9 is that, you know, you'd want to preserve the setting. You
10 know, you could build right up to that, to that setting.
11 There's nothing to preclude that you could build right up to
12 it. Even if it was a single-family detached home under a
13 straight R-60 scenario, you could build right up to it and
14 put yards and all kinds of stuff along that edge. But what
15 I think this does is allows you to create a meaningful space
16 that RT-12.5, from a compatibility standpoint also, affords
17 the ability to make that much stronger from a, would help,
18 you know, deals with preservation. It certainly deals with
19 stability in that, in that regard too because you're
20 reinstating that particular use there as well.
21 MR. HARRIS: Can you put up that aerial photograph
22 of the existing condition.
23 MR. IRAOLA: Is it under here? This one?
24 MR. HARRIS: Yes. That's fine. Yes. Thank you.
25 Do you have an understanding as to whether the master plan

allows for those, the school building and the building that's attached to the Riggs-Thompson House to remain? If the school remains there, can those buildings remain? Let me put it another way. Does the master plan require demolition of those buildings?

MR. IRAOLA: No. It does not require demolition.

MR. HARRIS: Okay. So to what extent -- but will those buildings be demolished under the development plan?

MR. IRAOLA: No. It's, all intents and purposes, to have --

MR. HARRIS: No. Under the development plan.

MS. ROBESON: The answer is --

MR. IRAOLA: Under the development, yes.

MR. HARRIS: Right.

MS. ROBESON: It's okay. It's hard to be on the hot seat.

MR. HARRIS: Yes. And that will be converted to open space instead.

MR. IRAOLA: Yes.

MR. HARRIS: And do you believe that advances the historic preservation objectives of the master plan?

MR. IRAOLA: Yes.

MS. ROBESON: All right. Do you have anything further, Mr. Iraola before I set the chomping Mr. Brown on you? Take your time.

MR. IRAOLA: Private road. I'd just like to touch a little bit on the private road.

MS. ROBESON: Okay.

MR. IRAOLA: With regard, just from a design standpoint.

MS. ROBESON: Yes.

MR. IRAOLA: And certainly connectivity. You know, the previous alignment went right through the environmental setting certainly but it's, but it's purpose was really to provide connectivity. I do feel, believe that connectivity is certainly important with regards to that and, and --

MS. ROBESON: I'm confused by the staff report. What is the connectivity?

MR. IRAOLA: What is meant I think is, is moving from a, from a loops and lollipops pattern of roadways where you have cul-de-sacs and loop roads that merge onto --

MS. ROBESON: The Columbia-type pattern.

MR. IRAOLA: Exactly.

MS. ROBESON: Yes.

MR. IRAOLA: To a much more traditional gridded neighborhood that gives you multiple access points. That gives you, folks actually more, more --

MS. ROBESON: I see. And what --

MR. IRAOLA: -- more ability, more mobility

1 essentially.
2 MS. ROBESON: And what's the benefit of that?
3 MR. IRAOLA: The benefit here is that one, I think
4 that it's from, certainly from an emergency standpoint,
5 access standpoint, I think that's certainly important. And
6 what I mean by that is that, you know, if there's, if
7 there's an accident that blocks --
8 MS. ROBESON: Right.
9 MR. IRAOLA: -- blocks an intersection, you want
10 to be able to get to it from multiple different points as
11 well. I think that's certainly an advantage. People
12 walking around the block is also, you know, key to that.
13 You know, cul-de-sacs typically, under a single-family
14 detached scenario, typically, you'll have homes on the ends
15 of them, you know, that kind of blocks the ability to kind
16 of cross and make that --
17 MS. ROBESON: Well, you're going to have those
18 parks.
19 MR. IRAOLA: Correct. But you want to, you want
20 to connect back to the park certainly.
21 MS. ROBESON: Right. So why can't you do that?
22 Why can't you do that with a cul-de-sac because you're going
23 to have a park? Why can't you walk down the cul-de-sac?
24 MR. IRAOLA: I'm not saying you can't walk down
25 the cul-de-sac.

1 MS. ROBESON: Yes.
2 MR. IRAOLA: I just think it's preferred to do, to
3 have, to be able to walk from multiple vantage points.
4 MS. ROBESON: Okay.
5 MR. IRAOLA: And to the, and to the cul-de-sac.
6 MS. ROBESON: Okay. I just was confused about --
7 MR. IRAOLA: Or to the park.
8 MS. ROBESON: -- what type of -- I understand now
9 it's from a planning concept connectivity.
10 MR. IRAOLA: And also from a, also from --
11 MS. ROBESON: A public safety.
12 MS. IRAOLA: -- public safety and also looking at
13 it from a human scale point of view. You know, this is a
14 private street essentially, you know, and it will be
15 expressed certainly as a private street. It's not going to,
16 it may be built to public street standard but it will have
17 cobble paving. Certainly, it will be a little bit narrower
18 say, for example, than the other streets. The narrowness
19 certainly may, helps to slow down traffic. It's a bit of a
20 deterrent. It also, there's some off-street parking on this
21 narrow street too. So together with that kind of separation
22 between the parked cars, the street tree and a sidewalk
23 makes it a little cozier for, for people to, to certainly
24 navigate. It's a little bit more legible I should say.
25 Cul-de-sac neighborhoods are very illegible and

1 frankly, don't really, aren't really found, they're
2 anomalies I should say inside the Beltway. You don't see
3 too many of them. It's a, it's a post-World War II suburban
4 construct. To me, I think it would be extremely out of
5 character to do loops and lollipops versus a traditional
6 grid inside the Beltway. So from a, certainly from a
7 character standpoint, that's why I feel that making two
8 connections into, into a through street is far more
9 preferred.
10 MS. ROBESON: Okay.
11 MR. HARRIS: I have nothing further.
12 MS. ROBESON: Do you want to take a minute and
13 look at your notes, Mr. Iraola before I sic Mr. Brown on
14 you?
15 MR. IRAOLA: He's not that bad.
16 MS. ROBESON: I don't know. I've seen him -- no.
17 Go ahead. Are you finished?
18 MR. IRAOLA: Yes. I am finished.
19 MR. RO: Okay. Mr. Brown, go ahead.
20 MR. BROWN: Thank you.
21 CROSS-EXAMINATION
22 MR. BROWN: Mr. Iraola.
23 MR. IRAOLA: Yes.
24 MR. BROWN: Last time we had a conversation on the
25 record, I asked you a question along these lines and you

1 answered along these lines, and I'm not trying to perfectly
2 recreate the situation but just to get the gist of it. I
3 asked you whether or not in your evaluation of this project
4 from the point of view of compatibility at RT-15 you had
5 also looked at the compatibility of developing the land at
6 an R-60 level, and your answer was essentially that there
7 was no obligation to demonstrate what that would look like
8 and in fact, you hadn't been asked to do that. Is that a
9 fair summary?
10 MR. IRAOLA: Yes.
11 MR. BROWN: So let me take, let me bring us up to
12 date and ask you whether or not this time around you've
13 looked at whether or not the objectives to be that you have
14 told us about that this plan fulfills could not also be
15 achieved or would they be greater achieved or lesser
16 achieved at a, at an RT level other than 12.5 such as RT-10
17 or RT-8.
18 MR. IRAOLA: I did not look at that.
19 MR. BROWN: Is it your testimony that by talking
20 about the, well, let's use your words, the more lax and more
21 compatible results of going from RT-12 to RT, from RT-15
22 might not also be, might not also characterize a development
23 at RT-10 or RT-8?
24 MS. ROBESON: I think he's asking can't the same
25 benefits be achieved in a lesser density. Is that what

you're asking, Mr. Brown?

MR. BROWN: Yes. Yes.

MR. IRAOLA: If that's -- with the exception of --

MS. ROBESON: Well, as far as the planning principles that you've just outlined.

MR. IRAOLA: The planning principles. No. Technically, it probably could but I will say that this is preferred

MR. BROWN: I do want to crunch a few numbers with you if you would. You may need to look at your, the details of your schematic development plan.

MR. IRAOLA: Okay.

MR. BROWN: As old versus new. What I get from these numbers if is you compare the, you compare the overall length of the buildings that are in, that are lined up in a row across the internal street, one of the, in the old plan, there were two different lengths. One of them was 132 feet and the other one was 110 feet, is that right?

MR. IRAOLA: Are you referring to the --

MR. BROWN: I'm referring to the sticks of townhomes.

MR. IRAOLA: For the 15 or the 12? I'm sorry.

MR. BROWN: For the 15.

MS. ROBESON: He's comparing the 15 and the 12.

MR. IRAOLA: Okay. Is this to scale? Okay.

Question?

MR. BROWN: Let me just restate this. In the old plan, if you looked all the way down from to top bottom, you would have one stick at 132 feet and another stick at 110 feet.

MR. IRAOLA: Yes.

MR. BROWN: Is that right?

MR. IRAOLA: Yes.

MR. BROWN: For a total of 242.

MR. IRAOLA: Yes.

MR. BROWN: And now, we have 120 both on the north and the south side.

MR. IRAOLA: Uh-huh.

MR. BROWN: For a total of 240.

MR. IRAOLA: Yes.

MR. BROWN: So the overall length of the row, well, of the, from one side to the other is a reduction of two feet.

MR. IRAOLA: Yeah.

MR. BROWN: Okay.

MR. IRAOLA: Yes.

MR. BROWN: Now, also, with regard to comparing the widths of the mews across, looking across in the opposite direction, in the original plan, the mews were 36 feet and the buildings were 36 and 42 feet in width or

depth, is that right?

MR. IRAOLA: 36 and 42, that's correct.

MR. BROWN: And the mews was 36?

MR. IRAOLA: Yes.

MR. BROWN: And now the buildings are 38 and 42 with a 40-foot mews.

MR. IRAOLA: Yes.

MR. BROWN: Okay. And we have reduced the, you testified that you've reduced the string lengths from six to five in one case and from eight to seven in the other case.

MR. IRAOLA: Yes.

MR. BROWN: And looking at the plan, it's the darker shaded ones that have more units in the, in the row, correct?

MR. IRAOLA: Yes. Yes. Those are the seven, seven-unit buildings.

MR. BROWN: Okay. So looking down from top to bottom, we're going from 28 to 24 units along the row, is that right?

MR. IRAOLA: You're saying that the --

MS. ROBESON: North and south of the private --

MR. BROWN: Looking at a combined pair of units across, you know, facing each other across the mews.

MR. IRAOLA: Okay.

MS. ROBESON: Oh, I see.

1 MR. IRAOLA: Right. There's less, you're saying
2 there's less units in the 12.5.
3 MR. BROWN: Yes. Okay. Now, I'd just kind of
4 like to do a little broad experiment with you. We'll use
5 this plan here. You'll recall Hearing Robeson talking with
6 you about how to achieve compatibility through use. Having
7 already established that -- well, let me just set up a
8 predicate for this. I'm sorry. Referring back to the, to
9 the District Council's resolution, I just want to read you a
10 little excerpt from page 8. I'm sorry, from page 7. This
11 is the last, in the last two paragraphs of page 7. The
12 evidence in this case supports the applicant's contention
13 that an RT zone is appropriate at this location although not
14 at the density proposed. Do you see that?
15 MR. IRAOLA: Yes.
16 MR. BROWN: And in the next paragraph, we see the
17 District Council agrees with SOECA and others opposing the
18 application, however, that an additional transition is not
19 necessary between the higher density multi-family
20 residential uses in the CBD and the single-family detached
21 homes north of Cedar Street. Do you see that?
22 MR. IRAOLA: Uh-huh.
23 MR. BROWN: What I thought I heard the Hearing
24 Examiner saying was that given those findings by the
25 District Council, what is it about, how are you addressing

1 the compatibility concern not from the, not from the point
2 of view of the transition requirement in the master plan,
3 which is already satisfied, but rather, within how the
4 property is being utilized.
5 So here's my question. We have these rows, and
6 some would characterize this as court but I tend to think of
7 them more as rows, long rows that are, that would be visible
8 from the pedestrian, certainly by pedestrians walking along
9 Springvale, and would one possible way to reduce the massing
10 or, problem or the massing issue would be, for example, what
11 if the middle home were eliminated from each of these sticks
12 and the, and the remaining homes were, they had actual green
13 space between them and they were staggered. Would that be
14 one way to address the concern that was being, that was
15 being articulated by the Hearing Examiner?
16 MR. IRAOLA: As far as shorter, shorter --
17 MS. ROBESON: Massing. I think he's asking about
18 massing.
19 MR. BROWN: Yes.
20 MR. IRAOLA: Massing? Yeah. I think the
21 alignment would be certainly the same. I don't think it
22 necessarily makes the massing any less compatible.
23 MR. BROWN: Another house, another possibility
24 that occurred to me would be that say instead of having the
25 10 along here, you had three groups of three, and instead of

1 having the 14 along here, you had three groups of four such
2 that there would be a street either on the, between the
3 first and the other two groups depending on which side it
4 made more sense to put it. Is that a, would that be another
5 feasible way to address the compatibility issue to make
6 these blocks of homes look more compatible with single-
7 family residences in the neighborhood?
8 MR. IRAOLA: No. I don't believe so.
9 MR. BROWN: Why not?
10 MR. IRAOLA: I believe that, you know, that
11 certainly the articulation that you see on the ends of those
12 units far outweighs any kind of issue there might be with
13 regards to building length.
14 MR. BROWN: But you did say in your testimony that
15 one of the benefits of this project was that it provide a
16 more relaxed approach to the, and more compatibility because
17 of the reduced density of the project.
18 MR. IRAOLA: It is.
19 MR. BROWN: Isn't that so?
20 MR. IRAOLA: Absolutely it is.
21 MR. BROWN: And in fact, isn't the problem with
22 what I proposed just now that you would lose, I don't know,
23 something like 8, 10 or 12 additional units?
24 MR. IRAOLA: Yes. You would lose units.
25 MR. BROWN: And you regard that as a problem

1 because of the proximity of this area to the CBD. Isn't
2 that right?
3 MR. IRAOLA: Yes.
4 MR. BROWN: With regard to the historic setting,
5 you said that you felt that the original lot, parcel, I
6 think it was called P-72 you said?
7 MR. IRAOLA: Yeah.
8 MR. BROWN: Is that the --
9 MR. IRAOLA: 73.
10 MR. BROWN: P-73. You said that the shape of that
11 was an arbitrary tax map, tax map property. Is that what
12 you testified to?
13 MR. IRAOLA: It is a tax map number, parcel.
14 MR. BROWN: Did you happen to review the minutes
15 and other records that were available regarding the
16 discussions that the Historic Preservation Commission went
17 through back in the 1990s when they originally recommended
18 that the, that that entire parcel meet the historic setting
19 of the property?
20 MR. IRAOLA: I don’t believe that there was
21 anything that designated the 1.4 as the historic setting.
22 MR. BROWN: But my questions is about what you did
23 in preparation for this hearing.
24 MR. IRAOLA: No, I read through the research that
25 was done with regards to that.

1 MR. BROWN: Are you talking about Vicky Warren's
2 letter --
3 MR. IRAOLA: Yes.
4 MR. BROWN: -- and the material?
5 MR. IRAOLA: Yes.
6 MR. BROWN: Okay. And it's your testimony that
7 that that -- that the designation of that historic setting
8 was nevertheless an arbitrary one?
9 MR. IRAOLA: I'm not saying that it was arbitrary;
10 I'm referring to the -- the geometrics of that particular
11 line.
12 MR. BROWN: Were arbitrary?
13 MR. IRAOLA: Well, I mean arbitrary in the sense
14 that it is a -- referring to a tax parcel number. It's a
15 real line at that --
16 MR. BROWN: In fact --
17 MR. IRAOLA: On a tax parcel number.
18 MR. BROWN: In fact, reflected the real estate
19 that the owner of that house actually owned, didn't it?
20 MR. IRAOLA: I'm sure that the original owner of
21 this house owned a lot more than 1.4 acres.
22 MR. BROWN: I'm talking about the owner at the
23 time in 1999.
24 MR. IRAOLA: '99, yes, they owned that property.
25 MR. BROWN: With regard to the issue of using a

cul-de-sac type configuration for entry and exit from the property, would it not be the case that pedestrian connectivity from Springdale could still be facilitated with that type of plan?

MR. IRAOLA: Yes, I -- it can, but it's certainly not preferred.

MR. BROWN: Looking at this particular diagram from Exhibit 327 showing the area that will be preserved in purple --

MS. ROBESON: I'm sorry; do you have the numbered anywhere?

MR. HARRIS: No.

MR. BROWN: It's called green space around historic house.

MS. ROBESON: Thank you. Okay. Just so the record -- just for the record.

MR. BROWN: You testified that if the historic setting and parcel -- were you, if the parcel P-73 were used for the historic setting, the northern or northeastern portion of this purple area would likely be used for townhome construction, right?

MR. IRAOLA: It could, yes.

MR. BROWN: There would be nothing precluding the applicant from proposing that that area nonetheless be green space, isn't that correct?

1 MR. IRAOLA: Nothing that would preclude.
2 MR. BROWN: Him from doing so?
3 MR. IRAOLA: Sure. That's correct.
4 MR. BROWN: You were here when Mr. Bakkar
5 (phonetic sp.) testified, Mr. Iraola?
6 MR. IRAOLA: Bakkar?
7 MR. HARRIS: Thakkar.
8 MR. BROWN: Thakkar, I'm sorry.
9 MR. IRAOLA: Yes, I was.
10 MR. BROWN: Mr. Thakkar testified? I haven't even
11 got the last name right.
12 MS. ROBESON: You're as bad as me.
13 MR. BROWN: You were here when Mr. Thakkar
14 testified?
15 MR. IRAOLA: Yes.
16 MR. BROWN: I believe he said, and correct me if
17 you'd have any disagreement, that a cul-de-sac type
18 arrangement could still pass muster with fire and rescue?
19 MR. IRAOLA: It could. It's not preferred.
20 MR. BROWN: I understand.
21 MR. IRAOLA: Yes.
22 MR. BROWN: With regard to either one of those,
23 either configuration, what is the -- do you know what the
24 procedure is with regard to fire trucks coming onto the
25 property? Do they go into the courtyards or would they go

1 into the front yards?
2 MR. IRAOLA: No, they would go -- they would use
3 the access paved surfaces.
4 MR. BROWN: So if there were a fire in one of
5 these units they -- say in the middle of this project. They
6 would access that project from the alleyway rather than from
7 the mews?
8 MR. IRAOLA: Well, they would access it from --
9 Private Street A or Springvale. The -- it's a function of
10 150-feet hose distance. So a pumper essentially parked on
11 either curb line of Springvale or Private Street A has
12 plenty of room for the apparatus to extend its stabilizers
13 and hook up to a hydrant and fight a fire.
14 MR. BROWN: Without having to park on the mews or
15 the -- or in the --
16 MR. IRAOLA: Right. It's not necessary.
17 MR. BROWN: In the back alley? This is -- each
18 one of these units, however, will have an individual street
19 -- would have an individual street address?
20 MR. IRAOLA: Sure, yes.
21 MR. BROWN: And that would be on this internal
22 street or would there be a Springvale address?
23 MR. IRAOLA: It would be yet to be determined.
24 Park and Planning is the one that determines the addressing,
25 and yet to be determined.

1 MR. BROWN: EYA has other townhouse projects in
2 the vicinity that have a single access point, don't they?
3 How about Cameron Hill?
4 MR. IRAOLA: Cameron Hill? I can't recall.
5 MR. BROWN: Okay.
6 MR. IRAOLA: I'm sure there's an access. At least
7 one.
8 MR. BROWN: Yes. I'd like you to take a look at
9 -- which exhibit number is this?
10 MR. IRAOLA: This is 291(f).
11 MR. BROWN: 291(f). 291(d), Fairview Court?
12 MR. IRAOLA: Yes.
13 MS. ROBESON: 291(f), page (d).
14 MR. HARRIS: Right.
15 MS. ROBESON: Okay.
16 MR. BROWN: Oh, I'm sorry. 291(f), page (d).
17 This is Fairview Court. The have only one access, right?
18 MR. IRAOLA: Yes.
19 MR. BROWN: Okay. That's all I have.
20 MS. ROBESON: Very well. Mr. Harris, any
21 redirect?
22 MR. HARRIS: The others in that -- those slides,
23 the other townhouses have more than one access point?
24 MR. IRAOLA: Yes.
25 MR. HARRIS: With respect to that corner land up

1 there that Mr. Brown was asking you whether there would be
2 any reason you couldn't put that as open space, even if you
3 kept the -- or if you were required to preserve 1.4 acres,
4 you said that you could keep it as open space. My
5 question's a little different. Do you see any reason that
6 someone would keep that as open space rather than use it for
7 development if they were already meeting the green space
8 requirement elsewhere including to a 1.4 acre square parcel?
9 MR. IRAOLA: Yeah, I mean you could rearrange the
10 site and essentially put units up on that -- in that corner,
11 and that would displace other units in other places which
12 you would convert to green space.
13 MR. HARRIS: The -- you were asked about the 1.4
14 acre parcel being under separate ownership. Do you know who
15 owned the property in 1999?
16 MR. IRAOLA: I believe it was the Little Sisters.
17 Or I'm sorry, '99?
18 MR. HARRIS: Yes.
19 MR. IRAOLA: Sorry.
20 MS. ROBESON: The Holy Sisters.
21 MR. IRAOLA: Oh, I'm sorry. Holy Sisters.
22 MR. HARRIS: The Little.
23 MR. IRAOLA: Sorry.
24 MR. HARRIS: And do you know whether they owned
25 the whole area or did they just own the 1.4 acres?

1 MR. IRAOLA: The owned the whole site.
2 MR. HARRIS: So it was all in one ownership?
3 MR. IRAOLA: That's correct.
4 MR. HARRIS: The -- with respect to taking out one
5 townhouse in the middle of each stick, do you have a belief
6 as to whether that provides relief in terms of massing and
7 density better or worse than leaving those units there and
8 providing more generous green space around the exterior?
9 MR. IRAOLA: I think that the site would be better
10 served by consolidating the green space in other -- in
11 places. In other words, the displacement having a gap
12 essentially of about 20 feet is -- or 16 feet or whatever;
13 it doesn't necessarily do -- it's more private oriented
14 rather than more public oriented. So my sense is, is that
15 the building placement is appropriate and that that extra
16 room can be displaced and utilized better elsewhere on the
17 site.
18 MR. HARRIS: I have no other questions.
19 MS. ROBESON: All right.
20 MR. HARRIS: Thank you. We have one resident from
21 the community who did want to come and testify, and so if we
22 could interrupt our witnesses out of respect for his
23 schedule? I did request that the others stay home. This
24 gentleman was very interested in testifying, and I'm not --
25 MS. ROBESON: Okay. Mr. Brown --

1 MR. HARRIS: -- to say no.
2 MS. ROBESON: -- do you have an objection?
3 MR. BROWN: No.
4 MS. ROBESON: Okay.
5 MR. HARRIS: Thank you. Mr. Posner, thank you for
6 coming.
7 MR. POSNER: Thank you.
8 MS. ROBESON: Mr. Posner?
9 MR. POSNER: Yes.
10 MS. ROBESON: Please raise your right hand. Were
11 you here earlier --
12 MR. POSNER: Yes.
13 MS. ROBESON: -- when I swore the witnesses in?
14 MR. POSNER: No, no, no. I was here at the last--
15 MS. ROBESON: Okay. Please raise your right hand.
16 (Witnesses sworn.)
17 MS. ROBESON: Go ahead.
18 MR. POSNER: Okay, thank you. My name is Mark
19 Posner. I live at 709 Woodside Parkway, which is about two
20 blocks from the Chelsea property. I am offering this
21 statement in support of EYA's zoning application. At the
22 outset, because I did testify in the previous hearing, I
23 won't go over the background material that I discussed last
24 time, but I will briefly note a couple of things. I've
25 lived with my family at my current address since 1987.

1 I served on the SOECA task force in 2010, which
2 investigated the facts relating to EYA's Chelsea property
3 proposal. After that, I attended several meetings organized
4 by SOECA regarding this issue, organized community meetings
5 at my house so that neighborhood residents could meet with
6 EYA, hear more about the project and provide neighborhood
7 input, and also have attended community meetings at other
8 neighbor's houses to also hear from EYA and provide input.
9 After reviewing EYA's current proposal, I conclude that the
10 proposed development is fully compatible with my
11 neighborhood and would be a strong asset to the neighborhood
12 and to the near downtown area of Silver Spring and to
13 Montgomery County generally.
14 The area where I and my SOECA neighbors live is a
15 blend of urban and suburban. On the one hand we live
16 immediately adjacent to downtown Silver Spring to a large
17 apartment building, which is located on our southwestern
18 border, to the Silver Spring Library, which is on our
19 western border, to the assisted living facility on the
20 eastern border, and to the new apartment complex which is
21 being built on our southern border. On the other hand the
22 inner portion of the neighbor consists entirely of single-
23 family homes.
24 Accordingly, I believe that any new development
25 must be evaluated by considering both of these aspects of my

neighborhood. In other words, a new development which is to be located on the southern or southwestern border, very close to downtown Silver Spring and the existing urban development, may appropriately reflect and be consistent with that denser level of land use. A new development located in the inner portion of the neighborhood, on the other hand, should respect the existing pattern of single-family homes.

MS. ROBESON: Well, okay, Mr. Posner, I do appreciate your testimony, but I don't feel it fair to restrict other people to what has changed in the application and not, you know, do the same for you. Because I've been pretty -- believe it or not, I've been pretty strict in keeping that. And I don't want to open the door up and have people -- when you testify generally, then that -- that opens the door up for a lot of other testimony. So if you have points to make --

MR. POSNER: Okay.

MS. ROBESON: -- that are based just on the changes, I would be happy to hear them. But I don't feel that it's fair to permit you to give generalized testimony that other people aren't going to get a chance to do.

MR. POSNER: Okay, sure. Well, I guess my first point is that I do believe that the significant reduction in the number of townhouses and the large increase in the

1 setting for the Riggs-Thompson House makes the development
2 fully compatible; that the level of massing presented by the
3 lines of -- by the townhouses is of -- is consistent with
4 the massing of the single-family homes, especially in the
5 context of the use of green space and the fact that the
6 townhouses will be of a similar height and design to the
7 existing homes. Secondly, I would like to address the
8 traffic issue. I guess there are two aspects of the traffic
9 issue. One would be the traffic that's produced by the new
10 development itself, and then the other issue is the cut-
11 through traffic. I could discuss both or perhaps just focus
12 on the cut-through --
13 MS. ROBESON: Well, the traffic in terms of
14 adequacy of the roads, we've already -- that's not on the
15 table right now. If you want to address cut-through
16 traffic, you can.
17 MR. POSNER: Certainly. Well, the point I would
18 have made, or the point that I would make about the traffic
19 from the development is I think it is -- I think it is fully
20 something that can be absorbed within the community because
21 there's so little traffic right now in the community. But
22 in terms of cut-through traffic, I do not see that as a
23 problem either.
24 I guess there are two aspects of the cut-through
25 traffic. There's the morning rush hour and then there's the

1 evening rush hour. With regard to traffic heading downtown
2 in the morning, toward downtown Silver Spring and
3 Washington, D.C., I walk every to work on Pershing to the
4 subway, and that street is essentially deserted of traffic.
5 This is true despite the fact that in my view Pershing
6 already presents the opportunity for cut-through traffic
7 because people can drive down Pershing, make a right on
8 Springvale, make a left on Ellsworth, and then continue into
9 downtown. And so the additional street that is going to be
10 placed in this community is really just mimicking an
11 existing cut-through opportunity, but that cut-through
12 opportunity is really much more theoretical than real
13 because I don't believe that -- it's practically nobody or
14 nobody is using that opportunity right now. So I don't see
15 that as a problem.
16 The question of the evening rush hour, I think it
17 is quite unlikely that anyone will think that trying to
18 travel through the meandering route that one would have to
19 undertake on Ellsworth through the EYA development and
20 through our neighborhood would offer them any advantage in
21 travel time. Furthermore, any issue that could exist I
22 think can be fully addressed by traffic restrictions such as
23 the ones that have already been imposed in my neighborhood,
24 and further traffic restrictions involving traffic coming
25 out of this development and turning onto Springvale can

1 provide further protection. So for those reasons, I don't
2 think cut-through traffic is a problem, I think massing is
3 appropriate, and I think this project will be a benefit to
4 Montgomery County as a whole.
5 MS. ROBESON: All right.
6 MR. HARRIS: Thank you.
7 MS. ROBESON: Mr. Brown, any questions?
8 MR. BROWN: Mr. Posner, I've copied down your
9 words here. Significant reduction in the townhouses makes
10 this development fully compatible. That's your testimony?
11 MR. POSNER: That's what I said, yes.
12 MR. BROWN: Isn't it the case that when you
13 testified here when this was an RT-15 application, you felt
14 that the development at that level of number of townhomes
15 was fully compatible?
16 MR. POSNER: Yeah, I guess what I'm trying to say
17 is that I think it was compatible then and I think it
18 continues to be compatible at this level. Yes.
19 MR. BROWN: So I gather if there were yet a
20 further reduction in the number of townhomes it would still
21 be fully compatible?
22 MR. POSNER: Well, what -- I mean there are
23 varying interests that are being served here. I, you know,
24 compatibility is one issue. Part of my testimony that I
25 didn't really get into it is that I believe that there's a

1 need for using this property that's close to downtown in a
2 way that involves denser development than a single-family
3 dwelling. So, you know, certainly you could build --
4 MS. ROBESON: Okay, Mr. Posner, my criteria is
5 adopted county policy, okay? So if you can identify -- it
6 has to be in the public interest, but that's always been
7 interpreted as an adopted county policy like a master plan
8 or the housing elements plan or something like that. So if
9 you -- can you point me to which policy this furthers?
10 MR. POSNER: Well, I'm not here to -- you know,
11 I'm not here to testify as someone who's an expert in
12 planning. I'm here to testify and to provide my views in
13 terms of what I believe is good for the neighborhood. I
14 think that --
15 MS. ROBESON: And you did so. I assume that that
16 would be -- your prior testimony on this application is
17 still in the record.
18 MR. POSNER: Yes.
19 MS. ROBESON: Just so you know.
20 MR. POSNER: Yes.
21 MS. ROBESON: So if it's different from that, but
22 to the -- I'm really trying -- you know, the developer --
23 both sides, this has been a long and somewhat arduous
24 process, and I'm trying to cut to the chase.
25 MR. POSNER: Sure.

1 MS. ROBESON: So, you know, if you expressed your
2 belief that this should be more dense because of proximity
3 to the metro, that's already in the record.
4 MR. POSNER: Okay.
5 MS. ROBESON: Unless there's something else that
6 you want -- I don't want to preclude you from testifying,
7 but I'm trying to be fair to everyone.
8 MR. POSNER: Sure. Well, I was trying to answer
9 his question. I felt like his question was focusing on one
10 factor exclusive of others, and
11 MS. ROBESON: Okay.
12 MR. BROWN: Yes.
13 MS. ROBESON: So it was related to compatibility?
14 MR. POSNER: Yes. So I don't believe that's the
15 sole factor.
16 MS. ROBESON: Okay.
17 MR. POSNER: So that's my testimony.
18 MS. ROBESON: That's fine.
19 MR. BROWN: Nothing further.
20 MS. ROBESON: All right, anything on redirect?
21 MR. HARRIS: No, nothing for me. Thank you, Mr.
22 Posner.
23 MS. ROBESON: Okay.
24 MR. POSNER: Okay, thank you.
25 MS. ROBESON: Thank you.

1 MR. HARRIS: Okay.
2 MR. POSNER: Sure.
3 MR. HARRIS: Okay. What? Excuse me one second.
4 Yes, fine. Want them to talk about that? Mr. Kabatt will
5 testify. Mr. Kabatt, would you state your name and business
6 address for the record, please?
7 MR. KABATT: Chris Kabatt with Wells and
8 Associates. The business address is 1420 Spring Hill Road,
9 Suite 600, in McLean, Virginia 22102.
10 MR. HARRIS: I do not recall whether you were
11 accepted as an expert last time or not.
12 MS. ROBESON: I think it was Mr. Wells.
13 MR. HARRIS: Mr. Kabatt was scheduled to testify
14 and his wife had a baby.
15 MS. ROBESON: He had a baby.
16 MR. HARRIS: So I couldn't recall. Okay.
17 MS. ROBESON: Congratulations.
18 MR. KABATT: Thank you.
19 MR. HARRIS: Have you been qualified as an expert
20 in the past as a traffic engineer?
21 MR. KABATT: I have. Most recently with a hearing
22 examiner for the Hoyt property. It was Mr. Grossman.
23 MR. HARRIS: Okay.
24 MS. ROBESON: How about have you been -- what were
25 you qualified? Are you an engineer or a transportation

planner? Are you a civil engineer?

MR. KABATT: My degree is civil engineering.

MS. ROBESON: Okay.

MR. KABATT: And I'm a registered professional engineer in Maryland.

MS. ROBESON: Okay. So you're asking to be qualified as a transportation engineer. And have you testified in any courts? Or primarily administrative bodies?

MR. KABATT: Primarily administrative bodies.

MS. ROBESON: And that would include here?

MR. KABATT: Yes, here.

MS. ROBESON: Okay.

MR. KABATT: I was qualified as an expert in the Town of Leesburg for a court case, but I never went on. I just deposed, but I never --

MS. ROBESON: Right.

MR. KABATT: Okay.

MS. ROBESON: Okay. Mr. Brown, do you have any problems qualifying Mr. Kabatt as an expert in transportation engineering?

MR. BROWN: No, I think we should get on with it, although we probably should have his CV in the record.

MR. HARRIS: Okay.

MS. ROBESON: Do we have that?

1 MR. HARRIS: Not yet but we will.
2 MS. ROBESON: And I have this CV as 334, CV -- I'm
3 sorry, what is your first name?
4 MR. HARRIS: Chris.
5 MR. KABATT: Chris.
6 MS. ROBESON: Chris. Sorry. Chris Kabatt. Okay.
7 Please --
8 MR. HARRIS: Okay --
9 MS. ROBESON: I just need his -- oh, he did that.
10 Okay. You go ahead, Mr. Harris.
11 MR. HARRIS: Mr. Kabatt, you've heard that we're
12 not getting into APFO issues and adequacy of capacity, but
13 we do want to basically look at the differences between this
14 proposal and the prior proposal. So what I'd ask you to do
15 is to compare the traffic generation of this project with
16 the Chelsea School today and the RT-50 --
17 MS. ROBESON: Well, wait.
18 MR. HARRIS: -- plan.
19 MS. ROBESON: Why the Chelsea? He already did
20 that.
21 MR. HARRIS: Fine.
22 MS. ROBESON: Well, wait --
23 MR. HARRIS: That's in --
24 MR. BROWN: That's not cut-through this.
25 MS. ROBESON: Huh?

MR. BROWN: That's not cut-through; that's traffic generation. You said we weren't going to do that.

MS. ROBESON: Yeah, well, I thought --

MR. HARRIS: Yeah, that's what she's saying, yeah. But he should have -- I don't have a problem if he doesn't repeat it --

MS. ROBESON: It's better, right?

MR. HARRIS: Yes. Yes, we -- yes, it's better.

MS. ROBESON: Because the density is reduced.

MR. HARRIS: Right. Exactly. So if we can stipulate to that.

MS. ROBESON: Is that the case, Mr. Kabatt?

MR. KABATT: That is correct.

MS. ROBESON: Okay.

MR. HARRIS: All right, so --

MS. ROBESON: I'm sorry to mess you guys up, but I am trying to --

MR. HARRIS: That's fine.

MS. ROBESON: -- move along.

MR. HARRIS: Yes.

MS. ROBESON: I'm going to be hard on them as well, so get ready.

MR. HARRIS: Let me look at it. Bear with me a minute.

MS. ROBESON: Cut-through traffic.

1 MR. HARRIS: Let's go -- start with the access to
2 Springvale and the suitability of that.
3 MS. ROBESON: That's a good place to start.
4 MR. HARRIS: Okay. So would you lead us through a
5 little bit of a discussion about your studies, your
6 analysis, and your opinion with respect to the suitability
7 of the Springvale Road access point?
8 MR. KABATT: Sure. Access to Springvale is
9 preferred to no access because it provides the Chelsea Court
10 residence connectivity to the surrounding area, to Whole
11 Foods in downtown Silver Spring without using Colesville
12 Road. This is comparable to the access existing SOECA
13 residents enjoy today.
14 MR. HARRIS: Can you explain a little bit the
15 alternative paths someone from this project would have to
16 the Whole Foods with and without the Springvale Road access?
17 MR. KABATT: Sure. Without Springvale Road
18 access, residents would have to exit via Ellsworth, turn
19 right onto Spring Street, then left onto Colesville Road,
20 and then travel south and turn left onto Fenton Street to go
21 back towards Whole Foods. With the Springvale Road access,
22 they would be able to turn right onto Springvale, and then
23 they would have to travel north on Pershing, but then they
24 could get out to Wayne Avenue and then down to the CBD.
25 MR. HARRIS: And do you find that access route to

be superior for those residents than the first one you discussed?

MR. KABATT: I find it to be an option, a better route. Colesville Road, as you hear from the last proceedings, is a busy road.

MR. HARRIS: Okay. And do you believe that the Springvale Road access improves emergency access?

MR. KABATT: Yes. Again, it's a preferred -- Springvale Road access is preferred because it does provide better emergency access, and it is good urban design; modern community design disfavors cul-de-sacs and prefers connectivity for good community building, similar to the kind of streets in the neighborhood to the north. The -- did the transportation planning staff and community planning staff and others look at the Springvale Road access and to what extent did they make findings?

MR. KABATT: Yes, I would like to note that the engineering details will be reviewed at preliminary and site plan. Transportation staff, the community planning staff, Historic Preservation Commission staff, the Planning Board, and Montgomery County Department of Transportation staff; they support the access to Springvale Road.

MR. HARRIS: And does the master plan prohibit connections to Springvale Road?

MR. KABATT: No, it does not. Chelsea School -- I

1 would note that Chelsea School, as we know, they already
2 have a connection to Springvale Road and it is their parking
3 lot.
4 MS. ROBESON: Mr. Kabatt, we just received an e-
5 mail. It's not in the record yet, but it's dated today at
6 noon, from DOT. Have you had a chance to review that?
7 MR. KABATT: I have, yes.
8 MS. ROBESON: Okay. Should we mark that? Since
9 you brought up the access to Springvale, should we mark
10 that?
11 MR. HARRIS: Yes, I think that's a good idea.
12 MS. ROBESON: All right. Do you want to introduce
13 it into the record?
14 MR. HARRIS: Yes. Yes, we do.
15 MS. ROBESON: So this will be 335.
16 (Exhibit No. 335 was marked for
17 identification.)
18 MR. BROWN: Mr. Brown, any objection?
19 MR. BROWN: No objection.
20 MS. ROBESON: And this is an e-mail, well, from
21 Greg Leck to Bob Kronenberg, dated March 23rd.
22 MR. HARRIS: Okay, and would you --
23 MR. KABATT: Would you like me to read it or --
24 MS. ROBESON: Well, just can you describe the
25 background of your discussions with DOT vis-à-vis the road

1 access and what this -- just describe what this says.
2 MR. KABATT: Okay. We have been meeting with DOT,
3 and one of their comments had been that the proposed access
4 could work on Springvale Road but one of the things they
5 pointed out was the spacing of the private road intersection
6 with the intersection with Pershing. We've had a series of
7 discussions and meetings with DOT, and I think once they
8 understood the facts of the case and understood other
9 interests in the case, and the fact that the townhouse --
10 the proposed townhouses would add fewer trips to Springvale
11 Road than the existing school and would not have -- would
12 have less of an impact than the existing school, that there
13 would be -- the traffic operations of the driveway and at
14 Pershing and Springvale Road would adequate; that they
15 concluded that the distance, the spacing, even though it did
16 not meet the 100-feet, would be adequate, safe, and
17 efficient.
18 MR. HARRIS: Would you take a step back and tell
19 us a little bit about the guidelines under which you were
20 operating, and then how you evaluated the applicability of
21 those guidelines to this site with DOT before they came to
22 that conclusion?
23 MR. KABATT: Sure. In my professional opinion, I
24 believe the proposed location meets the objective of the
25 private access design and location guidelines for

commercial, industrial, multi-family, and cluster development.

MS. ROBESON: Are these DOT guidelines?

MR. KABATT: These are DOT guidelines.

MS. ROBESON: Okay.

MR. KABATT: Per the introduction of the guidelines, it is recognized that driveway design and location is not an exact science. No one set of regulations or standards can be expected to apply to access requirements, even for a single type of land use. Therefore, these standards should be expressed as guidelines, subject to administrative interpretation, and based on sound engineering judgment.

MR. HARRIS: Is that a quote from the guidelines?

MR. KABATT: That reads straight from the guidelines, yes.

MR. HARRIS: Yes, thank you. Go ahead and continue.

MR. KABATT: I would just further like to say that the guidelines do state that the safe location of a driveway with respect to an intersection depends primarily on the character and magnitude of projected on street traffic. So we did -- we went through an analysis the last time, and found that the APFO findings were met, that those streets were low volume and that they operated safely at, quickly

1 and efficiently. We brought this to DOT. We showed them
2 that there is -- that there would be no queuing on
3 Springvale Road from Pershing Drive, and that Chelsea Court,
4 the proposed townhouses in fact would only generate or would
5 only add three a.m. peak hour trips and three p.m. peak hour
6 trips to Springvale Road.
7 MS. ROBESON: So did you do a queuing analysis? A
8 delay or queuing analysis?
9 MR. KABATT: We did look at -- we did look at --
10 MS. ROBESON: With existing traffic volume, I
11 guess, is what I'm asking.
12 MR. KABATT: Well, we did. We took the existing
13 traffic at Pershing and Springvale. We did not remove any
14 and we added on to three trips from Chelsea Court, and we
15 found that there would be virtually no queue at the stop
16 sign on Springvale Road at Pershing.
17 MS. ROBESON: Okay. I wasn't sure whether you
18 were using the traffic approved under the special
19 instruction, you know, or whether you were using the
20 existing volumes. But you said you're using existing
21 volumes?
22 MR. KABATT: Yes, correct.
23 MS. ROBESON: Okay.
24 MR. HARRIS: Okay, so the existing turn
25 restrictions, how do they fit into this whole picture?

MR. KABATT: Okay, so there are existing turn restrictions in the neighborhood today. We know that eastbound Springvale must turn left at Pershing Drive. Southbound Pershing Drive must turn right at the intersection. The westbound Springvale approach and northbound Pershing can -- that could turn left through or right. There are do not enter signs on Pershing Drive at Cedar Street. And there are restrictions on Ellsworth that prohibit northbound traffic and restricts out on traffic to Colesville Road via Spring Street. Lefts out of the private road on the Springvale and lefts -- left turns into the private street will be prohibited by channelization and signage. This was another --

MS. ROBESON: What's channelization? Is that the width and the paving and the on-street parking?

MR. KABATT: The --

MS. ROBESON: Of the private road?

MR. KABATT: In our discussions with DOT, one of the comments was to channelize. And what channelization is would be some type of -- it could be a concrete curve.

MS. ROBESON: I see.

MR. KABATT: A barrier where it forces traffic exiting the public street to turn onto Springvale.

MS. ROBESON: Oh, that's the pork chop.

MR. KABATT: The pork chop.

MS. ROBESON: Okay.

MR. KABATT: And --

MS. ROBESON: I understand.

MR. KABATT: And in the discussions with DOT it -- that channelization for the private road at Springvale would limit the movements at that intersection to right turns in and right turns out only.

MR. HARRIS: And that was a request of DOT's?

MR. KABATT: Yes.

MR. HARRIS: Okay. Continue.

MR. KABATT: We also looked at the line of sight vehicles exiting the private drive onto Springvale Road. We'll have good lines of sight; more than the 200 feet that are required. Additionally, there are many locations throughout the county and in this immediate area where driveways are within 100 feet of an intersection. For example, the Springvale Terrace driveway on Springvale Road just to the east is approximately 25 feet from the Pershing Drive intersection -- Pershing Road intersection.

MS. ROBESON: Okay, it would help me. I am looking through this. I know -- oh, here. I just found it. I'm looking at -- for everyone's reference -- what's part of 291, I guess it's all (d). There's a chart in here showing the traffic patterns. I think it's the last chart. It looks like it's showing the traffic patterns, and I don't

1 know what the numbers are. Volumes?
2 UNIDENTIFIED SPEAKER: Let's see whether or not --
3 MS. ROBESON: This is 291(d) is where I have it.
4 It's a packet of pictures.
5 MR. HARRIS: Yes, I think 291 was Aakash's slides.
6 MS. ROBESON: Yes, it is.
7 MR. BROWN: I'm sorry, which one?
8 MR. HARRIS: 291.
9 MR. BROWN: Yes.
10 MS. ROBESON: It's this --
11 MR. HARRIS: (d) --
12 MS. ROBESON: It's this exhibit.
13 MR. HARRIS: I don't think you used that today.
14 MR. BROWN: Yes, I didn't do that. I can -- it's
15 in there.
16 MR. HARRIS: It's in there?
17 MR. BROWN: Yes.
18 MR. HARRIS: Okay. Did they get it before --
19 MS. ROBESON: I found those very helpful because I
20 don't have a brain like Mr. Millson, and I can't visualize
21 verbally all the street restrictions.
22 MR. BROWN: Is that it?
23 MS. ROBESON: Yes, that's it.
24 MR. HARRIS: And I think there was a former --
25 MS. ROBESON: Oh.

MR. HARRIS: -- Exhibit 167. That's what this is showing.

MS. ROBESON: Okay. Okay. I see. So it's 167 from the prior case before remand.

UNIDENTIFIED SPEAKER: Yes.

MR. HARRIS: I think it's the same, yes.

MS. ROBESON: Yes. Okay. All right.

MR. HARRIS: To that extent, it's slightly the overstates.

MS. ROBESON: It's just a different schematic development plan overlaid on it.

MR. HARRIS: Right.

MS. ROBESON: Okay. So we're going to call it 291C because it does have a different plan on it. All right, go ahead. I'm sorry to interrupt. Go ahead, Mr. Kabatt.

MR. KABATT: Okay. I would just point out in our discussions with DOT we noted that there are other jurisdiction standards or guidelines that indicate driveways can be located safely within 100 feet of an intersection.

MS. ROBESON: And how far is this from the intersection?

MR. KABATT: The way this intersection is measure, the 100-foot standard is the measurement of the tangent, so it's not center line to center line.

1 MS. ROBESON: Oh, I see.
2 MR. KABATT: It's the tangent from the curve
3 return.
4 MS. ROBESON: The curve, yes.
5 MR. KABATT: So if I get up here, I'll just point
6 to this exhibit that's showing here, but it would be (d),
7 the curve return to the curve return. So the tangent.
8 MS. ROBESON: I see.
9 MR. KABATT: The straight distance is 100 feet.
10 MS. ROBESON: And how far is it on the plans? 100
11 feet?
12 MR. KABATT: Well, with the -- no. We would be --
13 would not be at 100 feet.
14 MS. ROBESON: Okay.
15 MR. KABATT: That tangent section with the
16 channelization and the revisions that we had discussed with
17 DOT, we would be just under 60 feet. It would be
18 59.somethiung, but it would be just under 60 feet. And,
19 again, I would just like to point out, for example,
20 Washington, D.C., standards is 60 feet from the curb lines
21 extended on far busier streets such as Connecticut Avenue.
22 So I'm just pointing out that these distances do work safely
23 and adequately.
24 MR. HARRIS: The curb line extended, what would
25 our measurement be if it were measured on a curb line

extended basis?

MR. KABATT: I would have to measure that.

MR. HARRIS: Is it more than --

MR. KABATT: It would be --

MR. HARRIS: -- 59.something?

MR. KABATT: It would be more than the 59.something.

MR. HARRIS: Okay.

MR. KABATT: And in our discussion with DOT yesterday, they were happy to see and it was part of the reason for this e-mail that that distance was increasing as we -- again, with the channelization and with the bump out on Pershing Drive had taken away the -- that so-called school bus drop off area. Here, the Montgomery County Department of Transportation and the Department of Fire and Rescue Services support access to Springvale Road, and they will review the details at preliminary plan and site plan. I'd just reiterate that, well, it's in this e-mail, but DOT has indicated approval of the current location as proposed but other alternatives are possible as well. The proposed townhouses will have less of an impact on Springvale. Again, that was for changing the school use to the residential use. The existing road -- the road counts today suggest that the road carries 24 a.m. peak hour trips and about 14 p.m. peak hour trips. And, again, the majority of

1 those are the school trips. The townhouses are projected to
2 generate three a.m. peak hour trips and three p.m. peak hour
3 trips using Springvale. The curb bump out on Pershing drive
4 between the Springvale Road intersections improves the
5 existing condition. This is the drop-off area for the
6 students. That would become green space and sidewalk,
7 reducing the width of the intersection and making it more
8 pedestrian friendly.
9 MR. HARRIS: And so were those factors that DOT
10 considered in their evaluation?
11 MR. KABATT: Yes.
12 MR. HARRIS: Okay.
13 MR. KABATT: And just as we noted -- as I noted
14 previously, Park and Planning staff and the Planning Board
15 support this plan. In fact, per the staff report, staff
16 finds traffic impacts from the proposed residential
17 development to be similar to that of the existing use on the
18 property and to be compatible with the surrounding
19 residential area. Staff is of the opinion that the proposed
20 internal street network will not have any detrimental effect
21 on the adjacent residential neighborhoods. Staff also finds
22 the proposal to be consistent with the general
23 transportation planning and master plan and goals for the
24 area. Based on the analysis that we have done and our
25 discussions with DOT, we conclude that the private road

intersection at Springvale Road will operate safely, adequately, and efficiently, and will be compatible with the community.

MR. HARRIS: Okay. The ever-present issue of cut-through traffic, which I believe they mean outside or outsiders from outside of the neighborhood cutting through this area. Can you discuss a little bit about your analysis of that?

MR. KABATT: Sure. While the community claims that a new connection may create cut-through traffic, it simply is not true. Based on my analysis and my professional opinion, Dale Drive is the northern most access to Colesville Road that's less than a half of a mile from Spring Street. The new street is a private street and will be narrow; only 20 feet wide with parallel parking. Also, special paving at entrances will denote privacy.

MS. ROBESON: I'm sorry, is it including the parallel parking or is it 20 feet wide curb to curb or plus the parallel parking?

MR. KABATT: It's 20 feet wide plus --

MS. ROBESON: Plus the parallel parking.

MR. KABATT: -- the parallel parking.

MS. ROBESON: Okay.

MR. KABATT: Such streets calm traffic and discourage cut-through traffic. Left turns from the private

1 street onto Springvale Road and from Springvale Road onto
2 the private street will be prohibited, as will access onto
3 the private street from Ellsworth and Springvale by non-
4 residents or their visitors. Therefore, restricting traffic
5 in all direction to residents and visitors of Chelsea Court
6 because of the private signs, private property signs.
7 The new street has a 90-degree turn -- has a 90-
8 degree turn and does not provide a direct connection to Dale
9 Drive. Motorists would have to make multiple turns to find
10 their way into and through the area and back to Colesville
11 Road or Wayne Avenue. Intersections along Colesville Road
12 and Wayne Avenue in the site vicinity would operate within
13 the congestion standard of -- per the APFO findings during
14 the a.m. and p.m. peak hours. This indicates that there is
15 available capacity along Colesville Road and Wayne Avenue.
16 We already talked about the existing turn restrictions in
17 the community, but these have worked well to stop any cut-
18 through traffic within the neighborhood. Again, the
19 neighborhood streets are low volume streets. Based on our
20 observation and even testimony from the community in the
21 previous hearings, cut-through traffic is not a problem.
22 All the existing restrictions will remain in place
23 and will continue to work in the future. This project will
24 employ the same type of turn restrictions, again, the
25 channelization at the private road and Springvale, and

signage at both intersections. The residents of Chelsea Court will also ensure -- will ensure policing of the private road. The county does have the authority to erect traffic signs -- traffic control signs on private streets and enforce them per Section 31-2 of the Montgomery County Code, which states in part the county executive is authorized to approve by executive order said traffic control signs and devices, which shall then have the same effect as those public traffic control signs and devices erected by the direction of the county executive provided that all such signs and devices on private property shall be constructed, erected, and maintained at the cost of the owner of said land.

Looking at this chart here of the average travel times by route that Mr. Thakkar talked to earlier, Colesville Road -- the Colesville route is the shortest and fastest route from the CBD. Travel times indicate on average using Colesville Road is a faster route by one minute and 25 seconds of the two minutes and nine seconds. We did take these counts when school was in session on January 10th and January 12th of 2012, and we took them between 4:00 and 7:00 p.m., these travel time runs.

MS. ROBESON: How do you do a travel time run? Do you have someone actually get in a car and then you time them or?

1 MR. KABATT: Yes. In fact, where -- for this --
2 these runs that we did here, we actually used GPS devices,
3 Geo loggers, and they --
4 MS. ROBESON: Oh.
5 MR. KABATT: You basically turn them on and they
6 record your position and time. And so we, as shown here, we
7 started down that at Spring Street, Cedar, and Ellsworth,
8 and we did --
9 MS. ROBESON: And how did you represent the
10 private road? I mean what route did they take around the
11 property?
12 MR. KABATT: Well, for the green and gold routes
13 that are shown --
14 MS. ROBESON: Yes.
15 MR. KABATT: -- we obviously did not go through
16 the property today.
17 MS. ROBESON: Right.
18 MR. KABATT: So we started basically mid-point on
19 Springvale Road and to account for --
20 MS. ROBESON: Okay.
21 MR. KABATT: To account for the time through the
22 Chelsea Court project, through the townhouses, what we
23 simply did was we mimicked the time that it took to travel
24 the same distance along Pershing Drive or along Ellsworth.
25 MS. ROBESON: Okay.

1 MR. KABATT: And you can see that Pershing and
2 Ellsworth are, you know, they're rather straight shots
3 compared to the 90-degree curve and everything that you
4 would go through the neighborhood -- through the new Chelsea
5 Court.
6 MS. ROBESON: Okay.
7 MR. KABATT: So we thought that would be fairly
8 conservative. Our findings on cut-through traffic are
9 corroborated by Transportation staff and the Planning Board.
10 Again, per the staff report, staff has no technical reason
11 to believe that the proposed internal street connections
12 will encourage cut-through traffic through the larger
13 neighborhood to the north between the Silver Spring CBD and
14 Dale Drive, Colesville Road, or Wayne Avenue. And also per
15 the Montgomery County Planning Board's letter to the County
16 Council, there's not persuasive evidence presented to the
17 Board that the connection will encourage or increase cut-
18 through traffic from the Silver Spring CBD through the
19 nearby residential neighborhoods. In fact, the applicant
20 offered convincing evidence to the contrary. The letter
21 goes on to state --
22 MS. ROBESON: Well, okay.
23 MR. KABATT: Okay.
24 MS. ROBESON: I know what the -- I guess what I'd
25 like to hear from you is your expert opinion; not -- I'm

1 going to of course take the Planning Board's recommendation
2 into account, but I can read it.
3 MR. KABATT: Okay.
4 MS. ROBESON: So now is the time for your expert
5 opinion.
6 MR. KABATT: Well, in my professional opinion and
7 that, as I stated a few moments ago, I do not believe that
8 cut-through traffic will be a problem, again, based on these
9 travel time runs, Colesville Road over several of these
10 runs, and on average it is the faster route. Traveling
11 through the neighborhood, part of those streets are narrow
12 and more circuitous. There's on-street parking. And the
13 data shows that they are not faster routes. The proposed
14 circulation system is safe, adequate, and efficient. Again,
15 it will not create the cut-through traffic.
16 MR. HARRIS: Excuse me; let me interject. Do you
17 also find any effect from the existing traffic restrictions?
18 Do you believe they work?
19 MR. KABATT: Yes, I believe I said that before
20 that, but --
21 MR. HARRIS: Yes.
22 MR. KABATT: -- if I didn't, I'll repeat. The
23 existing traffic restrictions do work and they will remain
24 in place. We -- based on our observations when we were
25 doing these runs and when we were doing traffic counts out

there, we have not seen cut-through traffic as a problem.

MR. HARRIS: And will -- and do you have the same opinion with respect to the turn restrictions and the channelization that's proposed for the subject project?

MR. KABATT: Yes, I believe that channelization, the right turns out only would force residents of Chelsea Court, or if there were any violators going through and trespassing through the community, that they would have to turn right onto Springvale and then they would have to turn left onto Pershing. And as you can see here, Pershing is the route or green or the bar in green, and that route is the route that is over 2 minutes longer than if you were to use Colesville.

MR. HARRIS: Okay, carry on with your conclusions.

MR. KABATT: Okay. Again, in my professional opinion, the access with Springvale Road is preferable to the situation with no access to Springvale Road. It is compatible with the community and will be an improvement over existing conditions with Chelsea School. I'll just reiterate that my opinion is confirmed by the support and professional opinions of Park and Planning staff, DOT, and the Planning Board.

MR. HARRIS: Thank you. I have no further questions.

MS. ROBESON: Mr. Brown?

1 MR. BROWN: I have a couple of questions for Mr.
2 Kabatt about this latest exhibit, but in general --
3 MS. ROBESON: Which one are you referring to?
4 MR. BROWN: 335. It's the new e-mail, which is --
5 MS. ROBESON: Oh, okay.
6 MR. BROWN: -- basically of today.
7 MS. ROBESON: All right.
8 MR. BROWN: But in general I'm going to ask for a
9 little leeway here and allow you, if you would, to let Mr.
10 Gurwitz examine Mr. Kabatt. And in support of that I want
11 to say that Mr. -- what the applicant is doing here is
12 repeating a pattern that has been shown in this case of not
13 providing advance expert reports or summaries of expert
14 testimony, and we have to react on the fly, during the
15 hearing to what he has to say. In this particular case, if
16 we had a report in advance I would have been able to sit
17 down with my client, who is intimately familiar with the
18 comings and goings of traffic in this area. And I'm not --
19 I don't live there. Mr. Gurwitz does live there, and I
20 believe he can respond on the fly with appropriate questions
21 for Mr. Kabatt where I can't.
22 MS. ROBESON: Well, let me ask you would it be
23 better to -- we're not going to get through this case today.
24 We're definitely going to Monday because it's already 3:30.
25 And you all haven't started your case yet.

1 MR. BROWN: It's time consuming and expensive for
2 my client to do that. It's simpler, easier, and more
3 efficient if you just give Mr. Gurwitz the opportunity to
4 ask questions based on his knowledge of the neighborhood and
5 his familiarity with this issue.
6 MS. ROBESON: Well, Mr. Harris, do you object?
7 MR. HARRIS: I don't object to that. But we
8 didn't provide a report because we don't have a further
9 report. The testimony is basically the same thing that was
10 at the Planning Board but for Mr. Leck's e-mail which we too
11 just received today.
12 MS. ROBESON: Oh, okay. Well, Mr. Gurwitz, if --
13 do you have an objection -- oh, but there's unauthorized
14 practice.
15 MR. HARRIS: No, he's a lawyer.
16 MS. ROBESON: Are you a lawyer?
17 MR. GURWITZ: I am a lawyer.
18 MS. ROBESON: Are you admitted in Maryland?
19 MR. GURWITZ: I am not, no. I'm a New York
20 lawyer.
21 MS. ROBESON: You're a New York lawyer. You know
22 what we say about that. Well, Ms. Spielberg?
23 MS. SPEILBERG: I'm not actually admitted in
24 Maryland actually either. He is a plaintiff as well. I
25 don't know if that -- an individual plaintiff, if that

1 helps.
2 MS. ROBESON: Oh, he's acting -- okay.
3 MS. SPEILBERG: So he could --
4 MS. ROBESON: You're taking off your Mr. Brown
5 client hat and putting on your pro se hat?
6 MR. GURWITZ: I can do that.
7 MS. ROBESON: Do you want to put on your pro se?
8 MR. GURWITZ: Yes.
9 MS. ROBESON: Okay.
10 MR. HARRIS: Well, now is this in lieu of Mr.
11 Brown's cross-examination?
12 MR. BROWN: No, I'm talking about something we
13 just got in the -- two to three hours ago.
14 MR. HARRIS: Well, Mr. Gurwitz has the right to
15 present testimony on this, and that was -- that would be the
16 point of that. If you want to cross-examination Mr. Kabatt,
17 I don't have a problem with that.
18 MS. ROBESON: I'm willing to -- I don't want to
19 break the ethics rules. Believe it or not, for those who
20 aren't attorneys, lawyers do have ethical rules.
21 MR. BROWN: I have a couple of questions for SOECA
22 and then Mr. Gurwitz can take the rest pro se.
23 MR. HARRIS: Wouldn't it be better to just have
24 him testify to his position? And he'll have an opportunity
25 to testify. And then we're not coming even close to the

1 edge of ethical issues. Clearly he has the right to
2 testify.
3 MS. ROBESON: What do you think?
4 MR. BROWN: I'm trying to save time and --
5 MS. ROBESON: I know.
6 MR. BROWN: -- my client's money by doing --
7 MS. ROBESON: We all are.
8 MR. BROWN: -- this in a simple, practical manner.
9 And I don't think we should spend any more time arguing over
10 this. I simply should be allowed to ask a couple of
11 questions and then turn the questions over to Mr. Gurwitz.
12 End of story.
13 MS. ROBESON: Mr. Gurwitz, what questions do you
14 want to ask?
15 MR. GURWITZ: I'd like --
16 MS. ROBESON: Hypothetically.
17 MR. GURWITZ: Hypothetically it would be questions
18 related to how the new residents would get around my
19 neighborhood to places like Whole Foods, and how they might
20 come in and out of this new Springvale access, which is my
21 road.
22 MS. ROBESON: Okay. Well, and what -- do you have
23 particular questions on that --
24 MR. GURWITZ: I do. I've written them --
25 MS. ROBESON: -- in your mind?

1 MR. GURWITZ: I've written them down, yes.
2 MS. ROBESON: Well, why don't you hypothetically
3 give one to me?
4 MR. GURWITZ: Hypothetically, the applicants and
5 the witness have talked about residents needing to drive to
6 Whole Foods, but given what I understand about EYA's slogan
7 of life within walking distance and their desire to build
8 here, could not the residents walk to the Whole Foods like
9 the rest of us?
10 MS. ROBESON: Mr. Kabatt, why can't they -- why is
11 connectivity so important when the whole idea of this
12 development and what EYA is proposing is walkability, why is
13 it so important to have connectivity?
14 MR. KABATT: Well, I could use Whole Foods as an
15 example. Surely some of the residents will walk to Whole
16 Foods, but on occasion going to a grocery story you may have
17 more things than you would like to carry back and you would
18 use your vehicle.
19 MS. ROBESON: Well, that's just occasionally,
20 though. So why --
21 MR. KABATT: Well, see --
22 MS. ROBESON: I'm asking --
23 MR. KABATT: I'll get to the connectivity. The
24 importance --
25 MS. ROBESON: Yes.

1 MR. KABATT: -- of the connectivity is it's a
2 preferred situation and --
3 MS. ROBESON: What's a preferred situation?
4 MR. KABATT: Having two --
5 MS. ROBESON: Two access points.
6 MR. KABATT: -- access points, not only for fire
7 and rescue. If there was some incident blocking access at
8 Ellsworth -- at the Ellsworth driveway, fire and rescue and
9 the residents would have another means to get in and out of
10 their townhouse community. It also provides connectivity,
11 vehicular connectivity towards Wayne Avenue and the CBD. If
12 we were to limit the access to Ellsworth residence, by the
13 restrictions that are out there today would have to turn
14 right on Spring Street and then use Colesville Road. Even
15 if they wanted to go northeast on Wayne Avenue, they would
16 have to use Colesville Road and then cut back east either
17 through Woodside Parkway, Dale Drive, or to the south using
18 Fenton Street to get over to Wayne. So it's a matter of
19 providing choices and dispersing traffic through a grid of
20 streets, which works -- the gird of streets typically work
21 well in urban areas
22 MS. ROBESON: Now, Mr. Gurwitz, do you have
23 another -- hypothetically, do you have another question?
24 MR. GURWITZ: I do have another hypothetical
25 question. Because I'm wondering if the applicant is

1 testifying that traffic going up Colesville Road towards
2 Dale and beyond is not a concern, then why would traffic
3 going the other way down Colesville Road --
4 MS. ROBESON: You mean traffic going south?
5 MR. KABATT: Going south into the CBD, why would
6 that be such a concern for the residents who might want to
7 drive to Whole Foods occasionally? If the traffic's not so
8 bad one way, then way is it suddenly so bad the other way?
9 MS. ROBESON: I'm going to adopt his question and
10 convey it -- throw it to you. Can you answer that?
11 MR. KABATT: Again, it's --
12 MS. ROBESON: As he phrased it?
13 MR. KABATT: Sure. Again, it's -- again, it's
14 choices and it's alternatives that residents would have. It
15 would -- to go -- to leave on Ellsworth, turn right onto
16 Spring Street, and then get over into the left-hand turn
17 lane to turn left on Colesville, and turn left and go down
18 to Fenton Street and then back across Fenton Street through
19 the commercial area to get to the Whole Foods, residents
20 would have the opportunity to use Springvale, travel north a
21 block and then cut -- and then drive over to Wayne Avenue
22 and then south into the CBD.
23 MS. ROBESON: Well --
24 MR. KABATT: It's another option. And a
25 preferable option.

MS. ROBESON: Well, Whole Foods is one thing. Are you saying, though, that if your walkability score is 89 -- for some reason that sticks in my head, but it may not be right. I mean the only example you've given of the need to get by automobile to the CBD is the Whole Foods.

MR. KABATT: Surely there are other uses. If you wanted to continue further south using a vehicle, or as I mentioned Wayne Avenue to the north, and east to get to Wayne, you would have to drive west to get to Colesville and then presumably you would either turn right on Colesville and then turn back into the neighborhood via Woodside Parkway or Dale. And to get over to Wayne, I guess alternatively you could turn left onto Colesville again and, you know, you're double-tracking back on Fenton to get over to Wayne Avenue if you wanted to get to the east. The Springvale Road access, in our opinion, is a -- is preferable for the residents of these townhomes. By our own admission we are only protection three a.m. peak hour trips and three p.m. peak hour trips. Not a significant impact.

MS. ROBESON: Okay. Mr. Gurwitz, do you have another question you hypothetically would ask?

MR. GURWITZ: I do because I'm fascinated by this hypothetical pork chop, which I never knew is called a pork chop. If it's my understanding that the channelization will curve to the right towards Pershing, then my question is

will people be able to enter into a curved road from Springvale back into the townhouse development, then would they be able to do so from either way? Because it seems to me that if you're coming east on Springvale and there's a curve going to the right, are you going to make a wide turn into the other lane? I'm just sure it's about how people enter into it.

MS. ROBESON: Okay. I think I understand your question. If you're coming from the east approaching the site from the east on Springvale, can you enter from that pork chop, and is the pork chop going to cause -- make it more difficult to enter this way?

MR. KABATT: If you entering -- if you are traveling --

MS. ROBESON: Traveling, no, I'm sorry.

MR. KABATT: If you're coming from the east?

MS. ROBESON: No.

MR. KABATT: And traveling westbound?

MS. ROBESON: Yes.

MR. KABATT: You would not --

MR. HARRIS: No, the other way. The other way. Answer both ways.

MR. KABATT: Well, I'll answer both ways.

MS. ROBESON: Well, yes, because I'm confused. Go.

1 MR. KABATT: If you were on -- if you were
2 traveling from Pershing traveling west on Springvale you
3 would be prohibited from turning left onto the private
4 street by this pork chop.
5 MS. ROBESON: Okay, so where do those people enter
6 the site? Do they take a left onto Pershing and then a
7 right onto -- how do those people get to the site?
8 MR. KABATT: Let me -- this exhibit that's up
9 here, I think I could --
10 MR. HARRIS: There's two on the plat. You want a
11 bigger plat?
12 MR. KABATT: Sure.
13 MR. HARRIS: The aerial's right there too. Here
14 you go.
15 MR. KABATT: Right, okay. And showing on this
16 exhibit, if you were traveling from Pershing west on
17 Springvale you would be prohibited from turning left from
18 the pork chop. So if you were -- if a motorist was -- or a
19 resident or a visitor that wanted to come to these townhomes
20 at Chelsea Court and they were coming from say Wayne from
21 the north end eat, they would come along Dale or through one
22 of the other cross streets, but they would have to come over
23 to Ellsworth and then travel eastbound along Springvale to
24 turn right into the private dive. Or the other route is to
25 stay on Wayne Avenue, turn left onto Cedar Street, cut

1 across to Ellsworth.
2 MS. ROBESON: Ellsworth.
3 MR. KABATT: And then turn north and then turn
4 right.
5 MS. ROBESON: I mean a right onto the private
6 road.
7 MR. KABATT: A right onto the private street.
8 MR. HARRIS: And the other example of eastbound?
9 MS. ROBESON: Now, yes, let's do eastbound.
10 MR. KABATT: So if you were traveling eastbound on
11 Springvale from Ellsworth you would be able to turn right
12 into the private drive. You would also be -- if you were
13 coming from that direction you would be using Ellsworth
14 originally and you'd be also to stay straight on Ellsworth
15 through the Springvale intersection, continue south, and
16 turn left into the private drive into the community.
17 MS. ROBESON: Okay. Now if you wanted to get from
18 Whole Foods, can you just outline the route? Say I do want
19 to go Whole Foods and I want to -- what's the route from the
20 Ellsworth access?
21 MR. KABATT: This exhibit's not going to show the
22 -- any of -- we need a large --
23 MR. HARRIS: There's an aerial of the area behind
24 that, I think.
25 UNIDENTIFIED SPEAKER: There's one here.

1 MR. KABATT: Here, well, there's this --
2 MR. HARRIS: Oh, I thought there was a whole
3 neighborhood in here.
4 MR. KABATT: Well, this, it doesn't show it all.
5 MR. HARRIS: I'm sorry.
6 MS. ROBESON: Well, you can just describe it. I
7 mean can you -- does it -- are you looking for Fenton, is
8 that what you're looking for?
9 MR. KABATT: Yes, I'm looking for Fenton.
10 MS. ROBESON: That's on that neighborhood exhibit,
11 that one you're holding in your hand.
12 MR. KABATT: This right here?
13 MS. ROBESON: It's on that.
14 MR. KABATT: 208 was that --
15 MR. HARRIS: How about this?
16 MR. KABATT: Sure. Either one.
17 MR. HARRIS: Or it's that one.
18 MR. KABATT: It's this one. This here.
19 MS. ROBESON: And what is that exhibit for the
20 record?
21 MR. HARRIS: It's unmarked.
22 MR. KABATT: We could use this here.
23 MS. ROBESON: Let -- okay. That should have --
24 MR. HARRIS: Yes, that exhibit.
25 MS. ROBESON: The very bottom street on that

should be Fenton. Okay, now say you exit out from the Ellsworth side of the site. How do you get to Whole Foods?

MR. KABATT: Well, then so let me just get my bearings.

MR. HARRIS: It's got a different orientation.

MS. ROBESON: I think the bottom most purple street is Fenton.

MR. KABATT: This is Colesville.

MR. HARRIS: Right.

MR. KABATT: Here's Fenton.

MR. HARRIS: Right.

MR. KABATT: Okay. And this is Cedar. Okay, so-- okay, so if you were exit the subject property onto Ellsworth, again, you're compelled to turn right onto Spring Street, and then you'd have to turn left onto Colesville, come down and travel south to Fenton Street, and then cross Fenton Street to the -- to Wayne Avenue where the Whole Foods is.

MS. ROBESON: Okay. Mr. Gurwitz, do you have another hypothetical --

MR. GURWITZ: Yes, and --

MS. ROBESON: -- question?

MR. GURWITZ: I'm going to limit my hypothesizing for the, though, for the benefit of the people who need to testify today.

1 MS. ROBESON: Well --
2 MR. GURWITZ: If that's okay.
3 MS. ROBESON: -- okay. Go ahead.
4 MR. GURWITZ: Excuse me; another hypothetical has
5 come to my attention.
6 MS. ROBESON: How many more hypothetical questions
7 do you have?
8 MR. GURWITZ: I have about -- I could think of
9 about six more hypotheticals or I could combine into --
10 MS. ROBESON: Can you combine them?
11 MR. GURWITZ: Yes, I will try my best to combine
12 them. I'm -- it's my understanding that the presence of the
13 townhouse develop will be policing the internal road for
14 people who might be trespassers, but I wonder how they'll be
15 able who's a trespasser, who lives there but just lives
16 another stick so they don't know their car, who's a guest.
17 I don't know how they're going to start policing cars unless
18 they can memorize every single car and the car of every
19 single guest and family member.
20 MS. ROBESON: Can you answer that, Mr. Kabatt?
21 MR. KABATT: Sure. I would -- based on the -- our
22 practice and we -- from time to time are actually approached
23 by HOAs to perform or to evaluate traffic calming measures,
24 and it, you know, you live -- you live in these townhouses
25 and these are ownership, so presumably you wouldn't be

1 having turnover every year and that you would get to know
2 your neighbors or surely you would get to know at least the
3 cars that they drive or, you know, what they look like or
4 what the people look like, whether you're friends with them
5 or not. But I think living in the neighborhood you would --
6 you would be able to know the cars that you routinely see
7 there, and if you notice that people are driving through
8 this neighborhood you could see them drive and turn left at
9 the 90-degree turn and you know that they're leaving the
10 site. And if you see people repeatedly doing that, I
11 imagine you would call the police or you would go to your
12 HOA and say, hey, we have a -- we have an issue here; let's
13 try to stop it by -- I think Mr. Thakkar had noted earlier
14 that people use cameras in their private communities or they
15 could call the police and have them --
16 MS. ROBESON: What about system?
17 MR. KABATT: -- monitor the area.
18 MS. ROBESON: Do people use permit systems?
19 MR. KABATT: Permit parking or --
20 MS. ROBESON: That --
21 MR. HARRIS: Tags on the cars
22 MR. KABATT: -- tags on the cars, sure. You know
23 the HOA, they could hand out some kind of stickers for
24 visitors to display on your -- to display on your
25 windshield, on your dashboard. We do that in the building

that I live in. Or you could have a sticker on your car that says Chelsea Court. Sure, those are --

MS. ROBESON: Okay. These are good question, so what -- do you have another one?

MR. GURWITZ: I do. Getting back to going to Whole Foods, and most of the time presumably people will walk. Right now the residents of Seven Oaks and Evanswood, when we do decide to drive to Whole Foods we are forced to take some circuitous routes -- circuitous routes based on where we live. We might need to take Dale to Wayne to downtown Silver Spring or Ellsworth to Spring Street to the CBD or Pershing to Dale to Wayne Avenue. So if the current residents of Seven Oaks and Evanswood have to occasionally take circuitous routes to get to Whole Foods by car, would it not be fair if the residents of the townhouse develop did the same occasionally?

MS. ROBESON: Now I'm adopting it as my question.

MR. KABATT: Yes, if they chose to leave the site via Springvale, they would have to travel north on Pershing for a short distance and then they could turn right to use a road to get out to Wayne Avenue, and then turn right on Wayne to get down to Whole Foods. There is -- I will just note that there is the turn restriction --

MS. ROBESON: Yes.

MR. KABATT: -- that you cannot turn right onto

1 Pershing to go south.
2 MS. ROBESON: Right. Well, it sounds -- okay.
3 Anything else?
4 MR. GURWITZ: Yes. The witness has testified
5 about the current traffic generated by the school and the
6 buses and employees, saying it compares unfavorably to the
7 anticipated traffic from the townhouse development. So my
8 question to the witness is doesn't it make a difference that
9 the employees of the school do not live at the school and
10 may not be driving on weekends and holidays and in the early
11 evening and that they are there temporarily, whereas the
12 townhouse residents will live there and do all sorts of
13 things that people who live at places drive and at sorts of
14 times?
15 MS. ROBESON: You mean have you analyzed the
16 impact of the use outside the peak hour? Is that what
17 you're saying?
18 MR. GURWITZ: It's difficult for me to see how
19 they can compare drive -- the use of cars by employees of a
20 workplace versus the use of cars that people who live at the
21 location, which as we know you drive it for all different
22 reasons at all different hours.
23 MS. ROBESON: Okay, I'm not sure -- what -- I
24 think that's something that you can bring up in your
25 testimony.

1 MR. GURWITZ: Okay. I can -- I have other
2 hypotheticals. Okay. Allow me to -- give me one second,
3 please. I would like to know the month and year that the
4 applicant conducted traffic counts at the intersection of
5 Dale and Colesville Road.
6 MS. ROBESON: I think he said that, but go ahead.
7 I think it was January 2012 and --
8 MR. HARRIS: Technically he answered about --
9 MS. ROBESON: Oh, the intersection --
10 MR. HARRIS: -- the travel time. It's a different
11 question.
12 MS. ROBESON: Oh, not traffic counts, okay.
13 MR. KABATT: The traffic counts that we conducted
14 for the transportation study that was submitted in the
15 previous hearing, the count at Colesville and Dale was
16 collected on May 25th, a Tuesday, in 2010.
17 MS. ROBESON: Okay.
18 MR. GURWITZ: Has the applicant taken into account
19 that since January there has been roadwork at Dale and
20 Colesville, with regard to any data they might have gotten
21 from that intersection?
22 MS. ROBESON: Okay, but I will say that roadwork
23 is not something that I think would be taken into
24 consideration because, you know, it's temporary. So when --
25 MR. GURWITZ: I would just -- I would say that if

1 the roadwork affects travel time in the data that they're
2 using on travel time was taken was gathered while this
3 roadwork is being conducted, I think it would skew their
4 data.
5 MS. ROBESON: Oh, I see what you're saying. Did
6 you understand that, Mr. Headberg (phonetic sp.)?
7 MR. HARRIS: Mr. Kabatt.
8 MS. ROBESON: Did your data account for the fact
9 that -- oh, sorry. I just had GA-62, and I'm getting them
10 all mixed up. Plus -- anyway. Mr. Kabatt, did your travel
11 times, would they be -- did they take into account the fact
12 that there's roadwork going on?
13 MR. HARRIS: There's no evidence that there was
14 roadwork going on there at that time, so if the premise of
15 the question --
16 MS. ROBESON: Well, hypothetically -- I think you
17 could ask it did it take into account existing conditions?
18 MR. KABATT: When we did the travel time runs, we
19 -- and when we do any traffic count, we do them on typical
20 weekdays, and if there are any instances or accidents or
21 some kind of -- something that would skew the results of the
22 count, we don't use that. Park and Planning staff and --
23 when we go through our review we look at previous counts or
24 we try to --
25 MS. ROBESON: How many times -- how many timing

1 studies did you do?
2 MR. KABATT: The timing studies we did over the
3 course of two days. We did it on a Tuesday and a Thursday.
4 MS. ROBESON: And did you do multiple studies of
5 the same route?
6 MR. KABATT: We drove -- we did the travel times
7 from 4:00 to 7:00 p.m., and we --
8 MS. ROBESON: On both days?
9 MR. KABATT: On both days. And we continued to
10 drive -- we collected 14 or so or, I forget the exact
11 number, but we -- we didn't just do one per hour. We did
12 several runs.
13 MS. ROBESON: And where is the intersection that
14 you say roadwork is occurring?
15 MR. GURWITZ: That would be at the intersection of
16 Dale Drive and Colesville Road. They're widening it.
17 MS. ROBESON: Oh, for that new lane?
18 MR. GURWITZ: Right, by Mrs. K's.
19 MS. ROBESON: Are you familiar with that, Mr.
20 Kabatt?
21 MR. KABATT: Yes. In fact, I drove by there the
22 other day and saw there's construction occurring today.
23 MS. ROBESON: Well, in your opinion, would that
24 affect the outcome of your study?
25 MR. KABATT: As I said, if there was some kind of

1 lane closure or impedance on our counts or travel runs we do
2 not use them. We use data that's collected on typical
3 travel days and travel situations.
4 MS. ROBESON: But in this instance you're relying
5 on two time studies that were taken on two days. Was there
6 road construction both days?
7 MR. KABATT: I don't -- I do -- I am not aware
8 that there was roadwork on Dale Drive on those two days.
9 MS. ROBESON: Okay. So he doesn't know.
10 MR. GURWITZ: Okay. Also, I was wondering since
11 Mr. Kabatt testified that cut-through traffic's not a
12 problem, could that be because there is no cut-through now
13 because of the traffic restrictions?
14 MR. KABATT: We agree that traffic restrictions
15 are working and could be a reason why there is no cut-
16 through traffic. We maintain that we're having a private
17 street. We don't believe that the private narrow street
18 with a 90-degree curve and the channelization and the
19 signage will promote cut-through traffic. These findings
20 were supported, and DOT's staff and Park and Planning's
21 staff and the Planning Board agreed with these opinions and
22 their opinion as well.
23 MS. ROBESON: Now your three trips, that comes
24 from the trip distribution that you were given by Park and
25 Planning, correct? Your addition of three trips to the

1 intersection of Springvale?
2 MR. KABATT: Yes, part of the process of putting
3 together a traffic study you use the guidelines, and then
4 there are distribution tables where -- maybe coming from the
5 other districts in the county and other states and counties.
6 MR. GURWITZ: I have a good hypothetical.
7 MS. ROBESON: Okay.
8 MR. GURWITZ: It seems that the road on Ellsworth
9 and the road on Springvale would provide the residents of
10 the townhouse development the opportunity to enter our
11 neighborhood from Ellsworth and exit our neighborhood to
12 Springvale, yet we're told that this will be for residents
13 only. Is it fair that these residents of our neighborhood
14 will enjoy a privilege that the longtime residents of this
15 neighborhood will be denied?
16 MS. ROBESON: Well, that's a mixed legal question.
17 I guess you could say -- and this will -- I guess you could
18 say that are existing residents going to have longer travel
19 times than the residents of Chelsea Court?
20 MR. KABATT: I'd --
21 MS. ROBESON: Say, take Mr. Millson's property
22 right on Springvale, which is right -- a little further in
23 from the intersection now on Springvale. Is he going to
24 have a more difficult time getting to the central business
25 district than existing residents? I mean the future

1 residents.
2 MR. KABATT: No.
3 MS. ROBESON: Okay.
4 MR. KABATT: You would be able to turn left from
5 Springvale onto southbound Ellsworth to get to Colesville
6 Road and then to the CBD or you'd be able to travel east on
7 Springvale Road, turn left on Pershing, and then turn right
8 to get out to Wayne Avenue, and then down into the CBD.
9 MS. ROBESON: Now is it fair to say that the most
10 circuitous route is traveling east?
11 MR. KABATT: Yes.
12 MS. ROBESON: All right. Does that exhaust your
13 hypothetical?
14 MR. GURWITZ: If I -- I'd like to ask one final
15 hypothetical.
16 MS. ROBESON: All right.
17 MR. GURWITZ: It's my hypotheticals. Will we
18 residents of Seven Oaks and Evanswood because considered
19 trespassers if we use this internal road?
20 MS. ROBESON: Yes --
21 MR. KABATT: Yes.
22 MS. ROBESON: -- that's a legal question, but --
23 MR. KABATT: No, yes, but --
24 MS. ROBESON: -- I think I -- yes.
25 MR. KABATT: It's a -- it depends how the rest of

1 the hearing goes.
2 MS. ROBESON: Well, no, no. Based on the
3 testimony thus far, yes. But he also testified that it's
4 not going to provide any additional advantage.
5 MR. GURWITZ: Hypothetically as somebody who has
6 to enter my neighborhood not via Ellsworth but either via
7 Colesville or Wayne, I would like the advantage and benefit
8 of being able to enter my --
9 MS. ROBESON: Well, okay. That's testimony. I
10 think --
11 MR. GURWITZ: I withdraw the hypothetical
12 question.
13 MS. ROBESON: I think that you can go home and map
14 the roads and then give affirmative testimony.
15 MR. GURWITZ: I apologize. I got caught up in
16 this.
17 MS. ROBESON: No, it's not -- it's fine. All
18 right, any more questions?
19 MR. GURWITZ: Yes, one last.
20 MS. ROBESON: Okay. Wait, that's what you said
21 last time.
22 MR. GURWITZ: Well, I said I had two.
23 MS. ROBESON: Okay, all right.
24 MR. GURWITZ: Did Mr. Kabatt consider that there
25 might be other cut-through destinations aside from people

1 who would be coming through to Dale to Colesville to get to
2 the beltway? Did he consider people might be cutting
3 through the new development to take Dale to Takoma Park or
4 other areas?
5 MS. ROBESON: Did you consider that?
6 MR. KABATT: We did not look at those travel
7 routes, and we did not look at them because per our traffic
8 study Wayne Avenue operate -- the intersections along Wayne
9 Avenue operate well within the congestion standard. And,
10 again, Wayne Avenue, traffic does go north, but then right
11 around Dale it veers to the east. So I -- we did not see
12 why there -- why it would be advantageous to cut through the
13 neighborhood and travel basically due north to get to Dale
14 and then east again over to Wayne Avenue. And, again, the
15 capacity analysis indicate that Wayne has capacities that
16 are -- there was no reason for us to think that people would
17 use that as a cut-through route.
18 MS. ROBESON: Okay. Anything further?
19 MR. GURWITZ: I have no further questions.
20 MS. ROBESON: Okay. Mr. Brown?
21 MR. BROWN: Just a couple of questions about
22 Exhibit 335, Mr. Kabatt. If you could take a look at that
23 for a minute?
24 MR. KABATT: Okay.
25 MR. BROWN: On page 2, the third paragraph says --

1 and I think this is Mr. Leck talking. The applicants have
2 demonstrated the proposed private street intersection
3 location, eliminating the parenthetical for the moment, will
4 satisfy our sight distances requirements for a secondary
5 residential street. Is that kind of their bottom line as a
6 result of their phone conversation yesterday?
7 MR. KABATT: Well, that is -- it's one of their --
8 one of the engineering details that DOT looks at, the lines
9 of sight, the sight distance when evaluating entrances.
10 MR. BROWN: Yes, and I'm only talking about sight
11 distance now.
12 MR. KABATT: Is this their bottom line, saying
13 that it will
14 MR. BROWN: As to --
15 MR. KABATT: satisfy? It will satisfy?
16 MR. BROWN: Yes.
17 MR. KABATT: They -- we have shown them sight
18 distance exhibits that show that the sight distances met and
19 they concurred.
20 MR. BROWN: Now I want to add in the parenthetical
21 now. The parenthetical essentially says that the -- that
22 the demonstration was based upon improvements on I guess the
23 -- on the Chelsea side of the -- of Springvale right-of-way
24 that would be added to that right-of-way, is that right?
25 MR. KABATT: Bear with me a second.

1 MR. HARRIS: He's asking about the improvements.
2 MR. KABATT: Yes, the lines of sight were
3 calculated assuming that the proposal, the proposed
4 townhouse plan was in place.
5 MR. BROWN: Yes, and then we have three bullet
6 points which list the improvements that will need to be done
7 in order to make -- in order to make that condition, that
8 approval, or that finding viable, is that right? I'm just
9 trying to understand this communication.
10 MR. KABATT: Yes, DOT, the points that they listed
11 here are their reasons why they concluded that the driveway
12 location or the private access road is appropriate.
13 MR. BROWN: So at the bottom of the page they say
14 as a result we accept the proposed intersection location and
15 proffered improvements; details to be refined at subdivision
16 and/or permit basis. Right?
17 MR. KABATT: Yes.
18 MR. BROWN: The proffered improvements are the
19 three bullet points, is that correct?
20 MR. KABATT: Yes.
21 MR. BROWN: And those are things that the
22 applicant will have to do in the right-of-way, is that also
23 correct?
24 MR. KABATT: It's in the right-of-way, I believe,
25 the reconstruction of the curb line in the southwest corner

of Springvale and Pershing.

MS. ROBESON: I'm not sure -- why does it make a difference whether it's in the right-of-way or it isn't.

MR. BROWN: I'm just trying to understand what it is that is triggering the conditional approval.

MR. HARRIS: And he testified that it was a whole bunch of things.

MS. ROBESON: Well, can you kind of give me -- where are you going with this?

MR. BROWN: Well, I think that any finding that this is an acceptable solution should be conditioned upon the applicant having -- basically being required to proffer and make sure all of these things are done.

MS. ROBESON: So you're saying you would like these, I guess, in the binding elements or?

MR. BROWN: I'm not -- I'm not sure that's the right place for it, but I want there to be a finding that ties any positive finding in this respect to the fact that this is conditioned upon providing these proffered items.

MS. ROBESON: Well, I think --

MR. HARRIS: We do intend to proffer these, if I may interject. We didn't have this e-mail until today.

MS. ROBESON: Okay. Okay, a proffer then in what way? To testimony or --

MR. HARRIS: Testimony, we can do that, sure.

1 MS. ROBESON: Okay. All right.
2 MR. BROWN: That's all I wanted to get at.
3 MS. ROBESON: I understand. Anything else?
4 MR. BROWN: No.
5 MS. ROBESON: Good points. All right, any
6 redirect, Mr. Harris?
7 MR. HARRIS: I'm not going to succumb to the
8 temptation.
9 MS. ROBESON: Thank you. No, it's fine. Let's do
10 this. Is that your last witness or --
11 MR. HARRIS: No, Mr. Youngentob was going to --
12 although I --
13 MS. ROBESON: No, no.
14 MR. HARRIS: He's a surprise witness, but he --
15 MS. ROBESON: He is a surprise witness.
16 MR. HARRIS: I know. But --
17 MR. YOUNGENTOB: I was waiting for your guys --
18 MR. HARRIS: But yes.
19 MS. ROBESON: Okay.
20 MR. YOUNGENTOB: What could possibly be a
21 surprise?
22 MS. ROBESON: Sure. Come forward. No, I think he
23 was on the list, so --
24 MR. HARRIS: He was on the list originally, yes.
25 MS. ROBESON: Come forward.

1 MR. YOUNGENTOB: Okay.
2 MS. ROBESON: And just state your name and address
3 for the record.
4 MR. YOUNGENTOB: Sure. For the record, my name's
5 Bob Youngentob and my work address 4800 Hamden Lane,
6 Bethesda, Maryland.
7 MS. ROBESON: Okay.
8 MR. HARRIS: The floor is yours, Mr. Youngentob.
9 MR. YOUNGENTOB: I actually wasn't planning on
10 testifying because I'm actually out of the country on
11 Monday, so --
12 MS. ROBESON: Oh.
13 MR. YOUNGENTOB: -- I wasn't going to be here.
14 But with that being, just a couple of things that I'd like
15 to I guess focus on. First being, you know, we're a very
16 practical company I think in many ways and look for
17 practical solutions for issues. And I think we listened
18 very carefully to all the testimony that came out of the I
19 think five days of hearings that we had previously, the
20 Planning Board previous hearing, and the -- obviously your
21 report, and the process of oral arguments in front of the
22 council. And I think, you know, we heard a lot of different
23 things that came out of those discussions. And one of them
24 was that it was a five to four vote; it wasn't a nine to
25 nothing vote.

1 There was a general acceptance of the RT zone and
2 there was an acknowledgement of it should be less. The
3 question was how much less should it be was never really
4 addressed even though there was some discussion that there
5 are other RT-12.5 sites in the area. And so when we looked
6 at creating the new plan we tried to address I think the two
7 things that we felt were the most vocally I guess
8 represented. And one was the sensitivity around the Riggs-
9 Thompson House and the historic setting, and the other was
10 the density of the RT-15 to go to some lower density level.
11 And what we felt we came back with in the form of this 17
12 percent reduction in density, which is significant reduction
13 in density. And really you focused on this earlier, but the
14 idea of a better or more practical historic setting than
15 either the 37,000 square feet as it's defined and approved
16 in the master plan or potentially hypothetically if the
17 original parcel was ever meant to be the 1.4 acre historic
18 setting.
19 As we looked at the site and looked and heard and
20 listened to people not really having any desire for
21 significant amounts of open space down at Ellsworth because
22 there was already a park across the street; where they
23 really wanted the open space concentrated was at the
24 intersection of Springvale and Pershing. And so by
25 recreating in effect a new effective -- and I'll use the

1 word effective -- historic setting through the combination
2 of the exact approved 37,000 plus the additional open space
3 that will be totally protected through easements and no-
4 build covenants around that land, we felt we were creating a
5 better historic setting. And from -- you know I was sworn
6 in as an expert in land planning of townhouse communities in
7 the original hearings.
8 As I look at the plan today, that setting, which
9 including the area that's just off sight of 1.5 acres while
10 we expand the curve and get rid of that kind of a bus drop-
11 off area, of 1.5 acres, I personally think -- my opinion,
12 professional opinion in doing this for 25 years now, that
13 that is a far superior setting, not only for the house but
14 as a community amenity in the shape of the park. I think
15 the reduction in density is a significant reduction in
16 density, trying to address the concerns of the neighborhood,
17 trying to address the concerns that you raised, and also
18 trying to address what was a somewhat balanced view of the
19 council where some were actually very supportive of RT-15
20 and some were saying we think it should be less; we hear the
21 Hearing Examiner come back. And so we thought we were doing
22 that. One of the other things that was raised by the
23 council in that discussion was the sensitivity around MPDUs,
24 and you talk about master plan goals and objectives, the
25 desire to provide affordable housing in close proximity to

1 downtown was a huge issue for the council. And many of the
2 four that voted for this were extremely, I think,
3 disappointed or frustrated in the lack or the loss of MPDUs.
4 And so we're trying to balance that reduction. We've gone
5 from 10 of the original plan down to eight, but feel again
6 that's trying to achieve one of those significant
7 objectives.
8 The other things I guess I'd like to address was
9 something around the gaps in units that was discussed
10 earlier; this idea of mass and what happens if you were to
11 take these strings and just, you know, take one unit out as
12 Mr. Brown suggested. Imagine where you have that site
13 dropping from basically a 10-foot grade between each of the
14 strings as it steps down the hill, and all you did was you
15 took out a 16-foot or an 18-foot slice out of the middle of
16 that section with two 35-foot tall buildings on both sides
17 of that 15-foot cavity. A, very little sunlight; probably
18 nothing's going to grow in there, and it's a slope of 10
19 feet over approximately 38 feet to 40 feet in length. A
20 very steep sloped area between those two units. Has no
21 useable benefit. From a perspective viewpoint, if you're
22 standing on Springvale Road and looking down a 40-foot
23 channel, you'll never see those gaps in those units. So I'm
24 not sure what it really achieves.
25 And so our goal, again, was to concentrate that

1 open space around the perimeter of the sight, maximize the
2 effective use of the historic setting, the effective
3 setting, and also maximize the buffer and the setbacks,
4 removing the need for any type of waivers with regard to
5 setbacks on both sides. And that's why we felt it was more
6 appropriate to put the spaces as opposed to sticking them a
7 short string or a break in those buildings. I would like to
8 say a couple of words about the cul-de-sac alternative
9 because I know that's come up a number of times.
10 In looking at the cul-de-sac and, you know, we did
11 study it, just like when we were here at the hearings we
12 showed a cul-de-sac plan. The practical side of the cul-de-
13 sac, as you come up Ellsworth, you're making that grade up,
14 you hit the cul-de-sac. The cul-de-sac is -- in effect it
15 has to be a minimum of a 90-foot turnaround for the fire
16 trucks. That cul-de-sac basically ends up closer to the
17 historic home than the turn in the road does today. It
18 requires a significant retaining wall because you're not
19 able to make up -- you have an extra approximately 150 of
20 grade as you make that turn to hit the grade at Springvale
21 that you wouldn't have. So the cul-de-sac is at a lower
22 grade, creating a significant retaining wall from the
23 historic setting down to the cul-de-sac. And that was
24 something we felt in combination with our belief that we
25 don't see why Mr. Geeworts (phonetic sp.) has any greater

1 right --
2 MR. GURWITZ: Gurwitz.
3 MR. YOUNGENTOB: Gurwitz, pardon me, has a greater
4 right to the access of public Springvale Road than the three
5 trips that might occur from this particular project. It's a
6 public road, Springvale. Park and Planning, every staff
7 members was pushing for connectivity. Everybody has their
8 different -- their own definition of why connectivity is
9 important, why pedestrian connectivity is important, why
10 vehicular connectivity is important. But the practical site
11 design limitations of a cul-de-sac down low, the fact that
12 it was eating into a greater portion of this effective
13 historic setting because of its size, and the fact that it
14 required a significant retaining wall creating we felt a
15 very big disconnect from the historic setting to the new
16 private street coming through, we felt that this was a far
17 better solution. And it was also supported dramatically in
18 a very strong way from Planning staff. And so I think, you
19 know, we're trying to be responsive, we're trying to
20 compromise, trying to listen to everything that was out
21 there, and really do believe that the plan we put forward is
22 an excellent plan and we hope that you'll support it.
23 MS. ROBESON: Thank you. Now, Mr. Brown, any
24 questions?
25 MR. BROWN: Just one.

1 MS. ROBESON: Yes.
2 MR. HARRIS: Before you begin, may I -- you wanted
3 somebody to testify to proffering the improvements.
4 MS. ROBESON: Oh, yes. Can you do that?
5 MR. YOUNGENTOB: Absolutely. We will commit to
6 the improvements that are required --
7 MS. ROBESON: That are referenced on --
8 MR. YOUNGENTOB: -- in Mr. Leck's letter.
9 MS. ROBESON: -- Exhibit 130 or 335?
10 MR. YOUNGENTOB: 335, yes, in accord with Mr.
11 Leck's letter.
12 MR. HARRIS: Obvious --
13 MR. YOUNGENTOB: Exhibit 335.
14 MR. HARRIS: Obviously they'd be subject to DOT
15 approval, but they're --
16 MS. ROBESON: Yes.
17 MR. HARRIS: -- the memo pretty much says that.
18 MS. ROBESON: That's why I'm not sure they're
19 appropriate for binding elements.
20 MR. HARRIS: Exactly.
21 MS. ROBESON: But okay. Thank you.
22 MR. HARRIS: I'm sorry.
23 MS. ROBESON: No, that's fine. Mr. Brown, any
24 questions?
25 MR. BROWN: Mr. Youngentob, I take your point that

creating a gap between two townhomes on a sloped surface creates what you described a largely unusable space between them. But would that gap also not facilitate a more aggressive approach to staggering units such that one group could be offset more from the other and thus reducing the corridor effect between the rows of townhomes?

MR. YOUNGENTOB: I mean you could do it that way. Again, you know, our experience in as shown and demonstrated by the model and other situations that a 40-foot green common area between the units doesn't need townhouses to be, you know, at one point 45 feet and another point 35 feet away from each other. That the landscaping, the streetscapes, the articulation of the architecture provides, in every case we've ever done it, a very attractive setting looking into that common green area.

MR. BROWN: Nothing.

MS. ROBESON: All right.

MR. BROWN: Hang on one second.

MS. ROBESON: Oh, I'm sorry. I thought he said --

MR. HARRIS: He did but he's got help. Nothing further.

MR. HARRIS: Okay.

MS. ROBESON: Okay redirect?

MR. HARRIS: No thank you.

MS. ROBESON: Thank you, Mr. Youngentob.

1 MR. YOUNGENTOB: Thank you.
2 MS. ROBESON: All right. Do you have additional
3 witnesses?
4 MR. HARRIS: No, not at this time.
5 MS. ROBESON: Okay. Do you want to reserve the
6 right to bring --
7 MR. HARRIS: Yes, and Mr. Shires (phonetic sp.)
8 would be available if we need him to testify. I think we
9 covered the issues already, but depending on what, you know,
10 they --
11 MS. ROBESON: Right.
12 MR. HARRIS: The opposition says.
13 MS. ROBESON: That's fine.
14 MR. HARRIS: Yes, okay.
15 MS. ROBESON: Okay. Mr. Brown, do you have
16 witnesses that need to testify today?
17 MR. BROWN: Yes, we have some that can't be here
18 on Monday.
19 MS. ROBESON: How many are there?
20 MR. BROWN: I don't know.
21 MS. ROBESON: Can --
22 UNIDENTIFIED SPEAKER: We need our own time
23 without EYA watching.
24 MS. ROBESON: Okay. Well, let's -- you'll have to
25 arrange that on your own. I will take a 15-minute break and

be back at 4:30, okay? Is that going to give you pow-wow time?

MR. BROWN: That's more than enough time.

MS. ROBESON: I'm sorry?

MR. BROWN: That's more than enough time.

MS. ROBESON: Okay.

(Whereupon, at 4:17 p.m., a brief recess was taken.)

MS. ROBESON: -- on the record. Mr. Brown, have you -- I see Mr. --

MR. BROWN: Grove.

MS. ROBESON: Grove. Have you -- how many witnesses do you think you'll have this evening?

MR. BROWN: I think just --

UNIDENTIFIED SPEAKER: Just one. Just Don.

UNIDENTIFIED SPEAKER: Well, the two --

UNIDENTIFIED SPEAKER: -- Don and the slideshow. The only ones we have to get on are Don and the slideshow which is with -- sorry. It's basically one -- it's two but they're kind of together, that need to go on today.

MS. ROBESON: Okay.

MR. BROWN: And that's --

MS. ROBESON: In addition to Mr. Grove?

UNIDENTIFIED SPEAKER: No, no. Don and the slideshow.

1 MR. BROWN: In conjunction.
2 MS. ROBESON: In conjunction. Okay.
3 UNIDENTIFIED SPEAKER: So that's all we need to go
4 on today. Other people may come back on Monday.
5 MS. ROBESON: Okay. All right, well, let's keep
6 going then and we will do that. Can those who wish to
7 testify in opposition who plan to testify, can you all stand
8 at one time? And make sure that the court reporter has your
9 name and address, all right? Can you raise your right
10 hands?
11 (Witnesses are sworn.)
12 MS. ROBESON: All right, great. Now please --
13 MR. BROWN: Can you pass that down to the court
14 reporter? Thank you.
15 MS. ROBESON: You are -- please state your name
16 and address for the record.
17 MR. GROVE: My name is Don Grove, G-R-O-V-E, like
18 a grove of trees. 505 Schulyer Road, S-C-H-U-L-Y-E-R, in
19 Silver Spring, Maryland.
20 MS. ROBESON: Okay.
21 MR. GROVE: 20910.
22 MS. ROBESON: And now are you the tree person?
23 MR. GROVE: Yes.
24 MS. ROBESON: Okay. Well, I'm going to say the
25 same thing to you as I have to other people that we -- what

1 I really want -- I think the scope of the remand may or may
2 or not include trees in general. What it does -- what is
3 part of the remand is compliance with all the standards of--
4 the revised plan's compliance with all the standards of
5 approval, all right? So if you could focus your testimony
6 on that, we'll go from there.
7 MR. GROVE: I think my testimony will already tend
8 to focus on the fact that the trees and the townhouses can't
9 be in the same place. So it goes directly to the density of
10 the townhouse development.
11 MS. ROBESON: Okay. Keep going. And it's -- what
12 I want to do -- do you want to restate your continuing
13 objection?
14 MR. HARRIS: I'd be happy to. I do object for
15 three reasons, I guess. One is I believe that evaluation of
16 the impact of this project on trees at this point in the
17 development approval process is irrelevant and immaterial,
18 and that those are issues addressed at preliminary plan and
19 site plan. The layout of this project is not defined now,
20 so we don't which trees will impact -- be impacted and which
21 ones won't. Secondly, it is beyond the scope of the remand
22 in my opinion. Council limited it to three issues and said
23 nothing about reviewing the forest conservation law or the
24 impact on trees. And actually I see I have four.
25 MS. ROBESON: Well, I asked in my remand order --

1 it's got to show compliance with the development standards
2 of the zone and environmental standards, and technical staff
3 did address the forest conservation law. So to the extent--
4 MR. GROVE: And I will --
5 MS. ROBESON: -- you can stay focused on that,
6 will be much more appropriate than going through the entire
7 site or to -- to the extent you can stay focused on the
8 changes between this plan and the other plan would be
9 helpful. All right?
10 MR. GROVE: Okay.
11 MR. HARRIS: And then the third reason, at least
12 at this point in time I am not convinced that Mr. Grove is
13 an expert in forest conservation law or forest conservation.
14 MS. ROBESON: Mr. Grove, have you ever qualified
15 as an expert in a proceeding like this or in a court?
16 MR. GROVE: I have not, but for 16 years I've been
17 certified as an arborist by the International Society of
18 Arboriculture, which is the international body that
19 certifies arborists. They have standards based on education
20 and training. For their certification they require an exam
21 and continuing education units for arborists. I've also
22 been a Maryland tree expert.
23 MS. ROBESON: Okay, I'm being handed a document.
24 MR. GROVE: For 10 years.
25 MS. ROBESON: IS this your curriculum vitae?

1 MR. GROVE: Yes.
2 MS. ROBESON: I'm going to mark it as 336.
3 (Exhibit No. 336 was marked for
4 identification.)
5 MS. ROBESON: And what I'm going to do -- the
6 threshold for an expert is relatively long. Can they --
7 since he does have education -- what's a registered Maryland
8 licensed tree expert? What is that?
9 MR. GROVE: The requirements are similar to those
10 for certification as an arborist by the International
11 Society for Arboriculture. There's an exam, there's
12 prerequisites for training and education and experience.
13 MS. ROBESON: And there's an actual license that
14 you get?
15 MR. GROVE: It's an actual license. It's a
16 Maryland licensed tree expert. It's --
17 MS. ROBESON: Okay.
18 MR. GROVE: We do it annually.
19 MS. ROBESON: All right. I'm going to qualify you
20 as an expert arborist.
21 MR. GROVE: Okay.
22 MS. ROBESON: All right. And you can continue.
23 MR. HARRIS: Before we do that, to clarify that --
24 MS. ROBESON: I'm listening. I'm just marking
25 this.

1 MR. HARRIS: I believe per your comments a few
2 moments ago, the relevant issue in your mind, even if we
3 disagree on any relevancy, the relevant issue on your mind
4 is the extent to which the revised plan will comply with the
5 requirements or not vis-a-vis the other plan. So it has to
6 do with compliance with the forest conservation regulations
7 in Montgomery County. It's not about what it takes to save
8 a tree or what type of tree it is or what's wrong with that
9 tree that's dying. It is the forest conservation law and
10 requirements. And so far I've not heard anything about Mr.
11 Grove's expertise with respect to our forest conservation
12 laws.
13 MS. ROBESON: Well, let's -- well, he hasn't
14 testified.
15 MR. GROVE: I'm actually planning to quote some --
16 MS. ROBESON: Wait.
17 MR. GROVE: Oh, sorry.
18 MS. ROBESON: This is what I want to do. I want
19 to move on because I don't want to argue about it. If you
20 really get hot about it, you can object. But what I'd like
21 to -- I don't think -- I agree with Mr. Brown that I don't
22 think it's helpful to argue it in advance. And I've asked
23 you to focus on what I do think is a limited issue. You
24 have to convince me that -- on the compatibility issue, but
25 I'm willing to listen. So let's get through it, and I think

1 that's going to be faster. All right?
2 MR. GROVE: Okay. Well, then if I could, I'll
3 begin by saying that the Maryland National Capital and Park
4 and Planning Commission's tree technical manual observes
5 that Montgomery County has experienced loss of forest
6 coverage during the last 25 years at a rate that's the
7 highest among the Washington regions' major jurisdictions.
8 These losses are significant because forest and trees
9 provide benefits to increasingly urbanized environment,
10 which cannot be readily replaced. As development pressure
11 continues, it's necessary to implement a program of
12 conserving tree resources. Now that was in 1992.
13 As I said, I've been in this community working
14 with trees since 1972. I've observed lots of large trees
15 removed. So this concern is even greater now that we
16 preserve what remains of the large tree canopy. So these
17 large, tall, mature trees provide oxygen for us to breath,
18 they remove pollutants, they provide shade and cooling in
19 summer, reduce energy usage. The tall trees provide a
20 visual screen that helps to mitigate the presence of
21 towering structures in the central business district for
22 residents who live nearby. They help to prevent soil
23 erosion. They absorb copious amounts of water.
24 MR. HARRIS: Objection. I'm going to interject
25 here.

1 MS. ROBESON: Okay, I agree with you. I agree
2 with you. Okay, I'm going to be just as hard on you as I
3 was on other people. What I need you to do is focus on the
4 difference between -- it seems to me -- let me put it this
5 way. It seems to me that the plan with lesser density has
6 less impact on the trees. Because we did go through quite a
7 lot of tree testimony the first time and how their
8 characteristic. I think Mr. Doggett testified how they're
9 characteristic of the neighborhood. So the question is what
10 is -- it seems to me that this would have less impact on
11 trees, not more, because it's lower density.
12 MR. GROVE: Are we limited to the proposed reduced
13 plan or still further reduction? It's -- my point is
14 basically that it's very important that the trees be
15 preserved, particularly the large, mature trees which can't
16 be replaced in any reasonable period of time. I mean some
17 of -- one of these trees is probably 130 years old; a large
18 oak, White Oak tree. I mean that -- these trees --
19 MS. ROBESON: Okay, well, then -- okay.
20 MR. GROVE: And -- so it's a question of whether
21 these trees or the townhouses will occupy this space. The
22 more we reduce --
23 MS. ROBESON: So you're saying in the --
24 MR. GROVE: -- the concentration of townhouses --
25 MS. ROBESON: -- terms of compatibility of this

12.5 density versus the lower density?

MR. GROVE: Yes.

MS. ROBESON: All right.

MR. HARRIS: I mean I think it goes without --

MR. GROVE: And --

MR. HARRIS: -- saying that the few the units, the greater the number of trees. But we don't know which trees are coming out.

MS. ROBESON: I understand that.

MR. HARRIS: So it's also relevant --

MR. GROVE: We --

MS. ROBESON: Okay, stop.

MR. GROVE: Okay.

MS. ROBESON: I'm talking. Let's let him go, and I'll give it the weight it deserves. I don't want to go through every tree in the middle of the site, because your time to do that was before. All right, but there's specific trees that are impacted by this plan that weren't impacted by the prior plan. You can address that.

MR. HARRIS: I want to note for the record that I object to that type of artificial curtailment of testimony.

MS. ROBESON: It's noted.

MR. HARRIS: Thank you.

MR. GROVE: I have a quotation here from the Montgomery County forest conservation law.

MS. ROBESON: Yes.

MR. GROVE: I think --

MS. ROBESON: That's fine.

MR. GROVE: So can I emphasize --

MS. ROBESON: Yes.

MR. GROVE: Okay. The County Council finds that the trees and forest cover constitute an important natural resource. Trees filter ground water, reduce surface runoff, help alleviate flooding, and supply necessary habitat for wildlife. They cleanse the air, offset the heat island effect of urban development, and reduce energy needs. They improve the quality of life in a community by providing for recreation and compatibility between different land uses.

MS. ROBESON: Okay.

MR. GROVE: And aesthetic appeal.

MS. ROBESON: So that goes to the compatibility of this project versus a lesser -- a lesser, less dense --

MR. GROVE: Less dense.

MS. ROBESON: Right.

MR. GROVE: And the concluding sentence, the Council finds that tree loss as a result of development and other land disturbing activities is a serious problem in the county.

MS. ROBESON: All right. Go -- continue.

MR. GROVE: So for the purpose of the forest

1 conservation law is to save, maintain, and plant trees for
2 the benefit of county residents and future generations. And
3 this law's purpose is also to establish procedures,
4 standards, and requirements to minimize tree loss as a
5 result of development. And to protect trees during and
6 after construction or other land disturbing activities. The
7 forest conservation law applies to applications for
8 development permits and requires a plan for conservation of
9 trees. You asked that I not get into any details about the
10 trees, but I would like to point out --
11 MS. ROBESON: Well, you can get in -- if it
12 relates to the compatibility of the project with the
13 surrounding neighborhood and the level of density, you can
14 get into that.
15 MR. GROVE: Well, for example, the present
16 preliminary forest conservation plan notes that a number of
17 trees are preserved, but when you look at which trees are
18 preserved -- I'll leave out a lot of my details here; many
19 of them are on the adjoining properties. And the suggestion
20 is that it was the decision to preserve these trees that was
21 made in lieu of their removal. Of course these trees
22 couldn't be removed. They're on someone else's property.
23 They're behind someone's house in their yard. And the
24 preservation has to do with the obligation to limit the
25 disturbance of this development to an area beyond the root

zone, the critical root zone of those trees. And so I'd just like to emphasize the nature of these very large mature trees. Their root structure underground extends well beyond their canopies, which are themselves very extensive. So a tree in the adjoining yards, not to mention the trees that are on the development site, have critical root zones that extend perhaps 90 feet in diameter around a 30-foot diameter tree.

MS. ROBESON: Are there any trees on the property that are being preserved?

MR. GROVE: There are some trees that are being preserved, but they're primarily in the area surrounding the Riggs-Thompson House, the historic area. And while two of them are fairly large, two Southern Magnolias up near Pershing, most of those trees that are being preserved are smaller. They're ornamentals, they're Dogwoods, or Japanese Red Maple. The largest and slowest growing mature trees, like a grove of White Oaks in the southwest quadrant of the property, are slated for removal. And although the tree inventory that accompanies the preliminary conservation plan lists a lot of trees as being preserved, those are all the outside trees with a few exceptions to --

MS. ROBESON: Now where are those outside trees? Where on the site roughly?

MR. GROVE: On the backyards of the properties --

1 MS. ROBESON: Cedar Street?
2 MR. GROVE: -- on Cedar Street, on the adjoining
3 properties across the street, just around the -- the outside
4 the boundary of the site nearby, but --
5 MS. ROBESON: Which boundary? The --
6 MR. GROVE: All way --
7 MS. ROBESON: -- west?
8 MR. GROVE: All the way around.
9 MS. ROBESON: Oh, all the way around.
10 MR. GROVE: Yes. So, again, the trees that are
11 preserved within are primarily small trees up near the
12 Riggs-Thompson House.
13 MS. ROBESON: And -- okay.
14 MR. GROVE: This is a large grove of mature White
15 Oak --
16 MS. ROBESON: Now you're looking at --
17 MR. GROVE: -- trees.
18 MS. ROBESON: What exhibit is that?
19 MR. GROVE: I'm sorry, it says 21 on the bottom.
20 MS. ROBESON: No, no, no. That's the site number.
21 MR. GROVE: Sorry.
22 UNIDENTIFIED SPEAKER: Sorry, that's our exhibit.
23 MR. HARRIS: I'll tell you in a minute.
24 MR. GROVE: Another point I'd like to make that
25 just relates to the nature of these trees underground, trees

1 will be planted to replace those that are removed, but they
2 can never replace these large mature trees because of their
3 crowded conditions. The trees that are planted --
4 MS. ROBESON: I'm sorry.
5 MR. BROWN: 314(k).
6 MS. ROBESON: 314(k). Okay. What can't replace
7 these large trees?
8 MR. GROVE: The trees that are shown in the
9 development plan such as these here along the street. The
10 street trees.
11 MS. ROBESON: The street trees?
12 MR. GROVE: Don't have the expansive area in which
13 their roots can extend. You've seen roots of trees exuded
14 over curbs like molten candle wax, cracking asphalt and
15 concrete. This is the tree's roots trying to expand when
16 they're in a confined space, which is the nature of street
17 trees. So even though these trees technically would have
18 the capacity, the potential to grow large in time, they can
19 never do so because of their proximity to one another, their
20 proximity to the adjoining buildings, and the limited space
21 in which their roots can expand. Tree's roots don't grow
22 straight down like a carrot. They spread out near the
23 surface.
24 There's going to be grading on this site. Even if
25 it's minimal, they're disturbing the delicate surface roots

1 of these trees and there will be die-back in the trees. And
2 back to the ones that are supposed to replace them, a lot of
3 the work I do as an arborist is pruning or removing trees
4 that were planted in developments that were cute when they
5 were put in but quickly become too large for their location.
6 I've been to townhouses where a Bradford Pear that people
7 love when it flowers is now encroaching on their house.
8 It's become dark. The branches are rubbing against the
9 windows. And at that point you have to mutilate the tree in
10 order to get some light back into the house, in order to
11 stop the branches from actually touching the structure, and
12 this is not to mention the trees encroaching on one another
13 which prevents them for growing large. In a timber
14 operation, trees are thinned specifically for that reason,
15 so that they'll grow large. And this situation, these
16 replacements trees would never be able to replace the large
17 trees that are slated for removal, even if we had over 100
18 years for them to get that way. These trees are --
19 MS. ROBESON: Well, I thought that there are
20 street trees now that -- whose roots go straight down. You
21 know, that, are --
22 MR. GROVE: Some are --
23 MS. ROBESON: -- put in to -- so their roots do go
24 straight down. In other words is parallel.
25 MR. GROVE: To some extent. Some trees have more

of a tap root than others. But even so, trees will spread when they can. And this is also a lot of what gives the tree structural support and what helps them to absorb water and reduce runoff, some of the advantages that have been cited by the County Council and by Montgomery County Park and Planning Commission. But --

MS. ROBESON: So -- okay, go ahead.

MR. GROVE: The replacement trees are chosen and the number of them chosen based on the concept of tree cover. And tree cover means the combined area in square feet of the crowns of all the trees in the track. So for replanting purposes, that tree cover is the typical crown area for a specific tree 20 years later.

MS. ROBESON: Right.

MR. GROVE: So if those trees ever make it to 20 years -- some of them won't because of the crowding; their tree cover is not likely to be as much as what would be typical for a tree not in this crowded condition. And in any case, we're not going to get trees that are tall enough that their total volume of canopy would ever equate to that of the trees that were removed. So let's say these trees somehow did actually achieve the projected tree cover for their species, which is hard to do because they're so close to one another; that because of their proximity they won't grow tall, so the volume of their canopy won't be anywhere

1 near these towering oaks and Tulip Poplars that are now
2 going to be gone. And it's the total volume of that canopy
3 that provides the benefits that were cited by the County
4 Council and the Park and Planning Commission; the ability to
5 provide oxygen, to remove pollutants from the air. The more
6 leaves there are in the canopy, the more we get those
7 benefits. A tree that's shorter, even if it had the same
8 surface area when viewed from above, won't provide the same
9 volume of canopy and same total benefits.
10 MS. ROBESON: Well, let me ask you something. I
11 mean I think the County Council when it adopted those
12 guidelines recognized what you're saying, but I have a
13 technical staff report that says the requirements of the
14 forest conservation law can be met on this site. So are you
15 suggesting that they do something more than the requirements
16 of the conservation law?
17 MR. GROVE: I'm saying that just simply meeting
18 the requirements of the forest conservation law doesn't
19 necessarily address the legitimate concerns of the
20 residents, who --
21 MS. ROBESON: As far as green --
22 MR. GROVE: Yes, who chose to move to this area in
23 large part because of the assurance that preservation of
24 trees and these attendant benefits were Montgomery County
25 policy. Although we have a forest conservation law and it's

1 implementing standards that might allow something that's
2 technically adequate, we're not in fact deriving the
3 benefits that we had expected when moved here.
4 MS. ROBESON: I see what you're saying. Now the
5 one way I can think of as far as the relevancy of your
6 testimony -- so what you're suggestion? The Council has
7 already said we're going to zone this RT. So that means
8 there's going to be grading on this site. There is -- there
9 are going to be townhouses on this site. So can you address
10 that as far as your position on what should be or what
11 shouldn't be allowed?
12 MR. GROVE: I personally would like to preserve
13 the oldest and slowest growing trees, which would be White
14 Oaks. It takes the longest period of time to get a tree of
15 that species of that size again. And those are concentrated
16 in the southwest corner of the property. There are
17 significant trees, specimen trees on the property. To the
18 extent the density can be lowered to accommodate those and
19 keep them in place here and there around the property, I
20 think that would be worthwhile.
21 I'll grant you it takes a large amount of
22 protected area to preserve a large tree. The formula for
23 calculating the critical root zone I think is a foot-and-a-
24 half of radius for every inch of diameter. So, as I said
25 before, a 30-inch diameter tree would have a critical root

zone about 90 feet, which is large. They put up a protected fence around that and keep equipment and supplies and the grading beyond that protected area so that those roots remain undisturbed. I'm not saying specifically what should and shouldn't be done. I am in no position to redesign the townhouse development except to say broadly that the more density is reduced, the more of these trees can be preserved, and as I've tried to lay out the benefits in preserving these trees to the extent we're able to do so.

MS. ROBESON: Okay. Do you agree with technical staff that it meets the requirements of the forest conservation law? Have you reviewed the staff report?

MR. GROVE: I have.

MS. ROBESON: Yes.

MR. GROVE: And I've talked with one of my -- well, yes, I have.

MS. ROBESON: And what's your opinion on that?

MR. GROVE: As I said, provisions for conforming with the forest conservation law don't necessarily meet the expectations of Montgomery County residents who came here because of large mature trees and what they understood to be county policy to preserve them.

MS. ROBESON: Okay.

MR. GROVE: I'm -- I don't mean to disparage the tree conservation law. I'm happy that we have it. I think

it's done a lot of great things, but there are shortcomings. I do a lot of work on trees that are too crowded for their location. That's probably most of what arborists do in this area. And --

MS. ROBESON: Well, let me ask you. There's a double row of street trees on Springvale. Is it better to have a double row or a single row?

MR. GROVE: I hate to disappoint those who may prefer the double row among my neighbors, but, frankly, the crowded trees are more vulnerable to decease, the air doesn't move through as much, there's not as much light getting through. I mean light is food to trees. One of the problems with them is that when they're crowded, they start letting limbs die off because they're unable to engage in photosynthesis and the tree sections off that limb and lets it atrophy and die. Crowded trees, double row, I mean I guess you try to get what you can, but in this case less is probably more.

MS. ROBESON: Is it fair to say that in short-term you're better off with the double row and in the long-term you're better off with the single row?

MR. GROVE: I guess you could say that. It's -- the double row would provide greater density as a visual screen sooner.

MS. ROBESON: Yes.

MR. GROVE: But eventually those trees are going to be encroaching on each and probably fairly soon.

MS. ROBESON: Okay. Anything else?

MR. GROVE: I'd just like to reiterate the fact that these tall mature trees are more capable of mitigating this view of tall buildings downtown. I think that's one of the things that we could never get out of the replacement trees.

MS. ROBESON: So that's the compatibility issue?

MR. GROVE: That's the compatibility issue. As far as this serving as a buffer to the downtown business district, right now when those deciduous are in leaf the residents nearby see the trees instead of the tall buildings. Once those trees are gone, these other trees that were planted to replace them will never serve that function unless you're right up close to them. I have a lot more that I would have covered, but I know time is tight and you have my letter.

MS. ROBESON: No, can you -- do you want to summarize it really quickly?

MR. GROVE: I will say that out of 128 trees that were listed in the preliminary plan, 44 of those were shown as technically preserved. And those 44 are not on the site. The site is basically clear-cut with the exception of the small trees up in the Riggs-Thompson House area. There's

virtually no preservation of trees. Almost every single large tree on the development site is slated for removal. The area surrounding this development site already has higher -- a larger percentage of tree canopy than the site itself. And what's proposed would reduce it even further.

MS. ROBESON: All right.

MR. GROVE: The -- Jean Cavanaugh has --

MS. ROBESON: Okay, first -- first Mr. Harris gets to --

MR. GROVE: Oh, okay.

MR. BROWN: I've got a couple of questions.

MS. ROBESON: Oh, I'm sorry. Go ahead.

MR. BROWN: Mr. Grove, is the -- you've seen the PowerPoint presentation that was put together. Does that illustrate the White Oak trees in the southwest corner?

MR. GROVE: Yes, it does.

MR. BROWN: I wonder if we could show that slide?

MS. CAVANAUGH: I'm going to move to laptop --

MS. ROBESON: That's fine.

MS. CAVANAUGH: -- so we don't go through all of the pictures.

MS. ROBESON: That's fine.

MS. CAVANAUGH: We wanted the trees to speak for themselves, but -- excuse me.

MR. GROVE: Okay. That one you just passed, Jean?

MS. CAVANAUGH: There's two of them.

MS. ROBESON: Now is -- this is in the record, right? I saw these?

MR. GROVE: Yes.

MS. ROBESON: Yes.

MS. CAVANAUGH: This is 314.

MS. ROBESON: 314, okay.

MR. GROVE: Since these are deciduous trees, in winter we're able to see the tall buildings in the background that you would not see if these trees were in leaf.

MS. ROBESON: Who took these photographs?

MS. CAVANAUGH: Members of the community. There were four of us who took pictures.

MS. ROBESON: Okay.

MR. BROWN: This is -- and this is what you would describe as the most critical area for saving trees if possible?

MR. GROVE: Yes, in my view.

MR. BROWN: One of other aspect of this case, and particularly on remand, is the issue of the size and configuration of the environmental setting for the Riggs-Thompson House. Have you also reviewed pictures that show differences in tree loss as between the two basic options of .85 acres and 1.4 acres?

MR. GROVE: I actually have not, no.

MR. BROWN: Okay.

MR. GROVE: I have not --

MR. BROWN: Well, have Ms. Cavanaugh deal with that.

MS. ROBESON: How big are those street trees going to get on Springvale?

MR. GROVE: It depends on what kind of trees they put in. You made the point that some trees have more of a tendency to send their root down as a tap root and some spread a little.

MS. ROBESON: I know they use -- or at one point they used those in the central business district.

MR. GROVE: Yes.

MS. ROBESON: The central business district, so -- all right. Say you got the best tree you could. How tall would the street trees grow?

MR. GROVE: Again, the best is the question of what you want to achieve. To me, the best is slow growing and long lived because we've lost so many of that type of tree; American Beech, White Oak, Red Oak, Hickories. And some I'm anxious to see that part of the canopy restored.

MS. ROBESON: And how tall would they grow?

MR. GROVE: If they had enough area for their roots, they could get maybe 100 feet. But the point is they

1 don't have enough area for their roots. And it's one of the
2 unique features of this site is that these trees have had
3 the room for their roots to expand, and --
4 MS. ROBESON: Okay, I guess I'm asking you say you
5 have street trees along Springvale, like in that schematic
6 develop plan. How tall are those trees going to grow?
7 MR. GROVE: Most the street trees that I see
8 around here would probably be representative of what these
9 would eventually get to, although that's going to be many
10 year, and that would be say 60 to 80 feet.
11 MS. ROBESON: Okay.
12 MR. GROVE: And that's just speaking very broadly
13 over a range of --
14 MS. ROBESON: Different types.
15 MR. GROVE: -- types of trees we see on the street
16 around the Washington metropolitan area and Montgomery
17 County.
18 MS. ROBESON: Yes.
19 MR. GROVE: Various Maple trees, too few oak trees
20 and Beech trees, Zelkovas, which is like a sort of a Chinese
21 elm, a vase-shaped tree.
22 MS. ROBESON: Yes.
23 MR. GROVE: They're tolerant of pollutants and --
24 MS. ROBESON: Things.
25 MR. GROVE: -- they can grow quite tall. But then

there's problems with stability when those trees get that tall and don't have enough root structure to support them.

MS. ROBESON: Right.

MR. GROVE: And then you accompanying complications like upheaval of asphalt and concrete. Pepco publishes a list of the trees that it would like to see planted under power lines. One of the problems we have is when there's power lines along the street and the trees get tall enough that they have to be topped-off or have a V cut out of them.

MS. ROBESON: Are there power lines on this street?

MR. GROVE: I think there are on some. I actually haven't looked closely. I think some of these streets have them and some don't. Probably some of the residents can --

MS. ROBESON: Okay, well, we'll --

MR. GROVE: -- say which streets it is. So I think -- I didn't actually look at that detail, but I would say out of the four streets surrounding this, there's going to be some that need to stay short enough to stay under the power lines. That would be like Japanese, Red Maples, Crabapples, Cherries, ornamentals.

MS. ROBESON: All right. Anything else?

MR. BROWN: That's all I have.

MS. ROBESON: Okay.

1 MR. HARRIS: Mr. Grove, thank you. A few
2 questions here. First of all, I think you'd agree with me
3 that the Montgomery County forest conservation law does not
4 preclude the removal of trees?
5 MR. GROVE: I would agree.
6 MR. HARRIS: And it also has all the requirements
7 when you do remove them, you can either plant or do off-site
8 work?
9 MR. GROVE: Yes. And I can I comment further on
10 that? Obviously that's another means of developing sites
11 like this, which would not benefit the immediate residents
12 at all. You can get credits for planting trees elsewhere.
13 I work with Isaac Walton League. I was just working on a
14 large tract of trees that we planted out there in order to
15 put into a permanent easement a forest there to allow
16 development elsewhere in Montgomery County. Obviously, if
17 that is the alternative or partially the alternative, it may
18 be great for Montgomery County overall but not specifically
19 for the local residents who lost the big trees that were
20 their neighbors.
21 MR. HARRIS: And in fact there are benefits by
22 creating forests, which this is not today? A habitat for
23 animals, for instance, is better if you create a forest,
24 isn't it?
25 MR. GROVE: It has different benefits.

1 MR. HARRIS: The -- you're aware that the forest
2 conservation requirements are addressed by Park and Planning
3 at the time of preliminary planning subdivision and site
4 plan? Are you aware of that?
5 MR. GROVE: Yes, I realize that there's going to
6 be subsequent stages of finalizing the plan and coordinating
7 with what would ultimately be a forest conservation plan.
8 MR. HARRIS: So you're aware that we'll have to
9 meet those requirements at the proper time?
10 MR. GROVE: Right.
11 MR. HARRIS: And I don't hear you saying anything
12 that we won't meet those requirements?
13 MR. GROVE: I'm just saying that the less the
14 density, the more trees are preserved.
15 MR. HARRIS: But that's not the requirement of the
16 law?
17 MR. GROVE: It's built into the philosophy
18 underlying the law. I think that's important.
19 MR. HARRIS: Okay. We're dealing with the law,
20 though, no philosophy. If you would agree --
21 MS. ROBESON: Mr. Harris, I can -- I know what the
22 letter -- read what the law says.
23 MR. HARRIS: You're saying that we could meet the
24 law but that doesn't necessarily satisfy the residents?
25 MR. GROVE: Right. And nor the expectations based

1 on the policy that has been established by Montgomery
2 County.
3 MR. HARRIS: Well, let's talk about that. The
4 expectations, would you say a resident's expectations are
5 more justifiably based on what the law is or some generic
6 policy?
7 MR. GROVE: I don't know that that's within my
8 range of expertise.
9 MR. HARRIS: Well, if the law says you have to
10 meet this forest conservation requirement, Chapter 22, I
11 could understand where somebody would be -- have a right to
12 rely on that. But the fact that there are trees on this
13 property that could be taken down under that law, I don't
14 understand why -- where the right to rely on those trees
15 being there in perpetuity comes from? Where does that come
16 from?
17 MR. GROVE: It comes from the benefits that have
18 been described by Capital Park and Planning and the
19 Montgomery County Council. A lot of the benefits that they
20 describe as being so important, and the caution that they
21 pout out about, the loss for many years of the mature trees
22 in Montgomery County, is actually inconsistent with some of
23 the possibilities under the forest conservation law.
24 MR. HARRIS: You look --
25 MR. GROVE: You could -- you could readily --

1 MS. ROBESON: So what you're saying is the law --
2 the law itself is inadequate in your opinion to accomplish
3 its goals? That's really what you're saying, right?
4 MR. GROVE: I hate to disparage the law, because I
5 think it's done a lot of good things. But in this case,
6 yes, I think it's important to preserve these large mature
7 trees, and, yes, under the law they could be removed and you
8 could meet the technical requirements. And obviously the
9 residents would feel that the policy of Montgomery County
10 had not been fulfilled.
11 MR. HARRIS: Talking of the law for a minute, the
12 -- are you aware that the law does require -- let me back
13 up. You talked about the fact that the plan, the old
14 preliminary forest conservation plan shows trees off-site
15 here. Are you aware that the forest conservation law
16 required us to show those trees?
17 MR. GROVE: Yes, I was. I didn't mean to suggest
18 that there was any -- anything deceitful or -- only that a
19 person reading the tree inventory and totaling the number of
20 trees that were preserved out of the total trees in the
21 inventory would understandably suppose that there was a
22 decision made not to remove those trees, and but for that
23 decision they would have been removed, which is -- which I'm
24 just pointing out is not actually what the plan is saying.
25 It's just saying that we will protect them because their

roots extend into your development site.

MR. HARRIS: And that is something valuable to --

MR. GROVE: That's good --

MR. HARRIS: -- preserve those trees even if they're off-site?

MR. GROVE: -- and I commend -- well done.

MR. HARRIS: Thank you. Thank you.

MR. GROVE: And hopefully --

MS. ROBESON: Okay.

MR. GROVE: -- will bring in a few more.

MR. HARRIS: Okay.

MR. GROVE: Also close to the edge maybe.

MR. HARRIS: And I'm sure you would agree that by moving the units further from -- I'll call it the south property line where some of those big trees are; that provides an opportunity to better preserve trees in that area?

MR. GROVE: Yes.

MR. HARRIS: The --

MR. GROVE: The further they are from the roots of the trees, the less damage to the roots of the trees.

MR. HARRIS: You apparently looked at the old preliminary forest conservation plan and -- but we haven't had to submit anything updated for the new plan.

MR. GROVE: I understand.

1 MR. HARRIS: We would do that a later stage, you
2 understand that. So you haven't done your own forest
3 conservation plan for the new project, if you will -- the
4 revised project?
5 MR. GROVE: No, but I did look at the old plan and
6 I looked at the revised project, and I can see that there's
7 very little room with this present configuration to save the
8 largest trees. There'd need to be some shifting at least,
9 some reduction probably, if they were to be preserved.
10 MR. HARRIS: Again, your preference would be to
11 preserve the White Oaks, particular at the southwest corner,
12 and I honestly don't know which of those trees will be
13 preserved under this plan. It is different than the other
14 plan. Have you looked at that?
15 MR. GROVE: You're asking me would the placement
16 of the new plans, townhouses, do they overlap the root zone
17 of the trees --
18 MR. HARRIS: Well --
19 MR. GROVE: -- already there?
20 MR. HARRIS: Well, if you look at the two plans
21 there and you'll see that in that southwest corner there
22 there's a much greater green area than there was on the plan
23 up top.
24 MR. GROVE: There's presently sort of an asphalt
25 pathway that rises rather steeply up in this area.

MS. ROBESON: Wait, when you say this area, you're looking at --

MR. GROVE: I'm looking at this --

MS. ROBESON: -- the area from --

MR. GROVE: From Ellsworth --

MS. ROBESON: Close to the houses on Cedar Lane from Ellsworth going east into the site?

MR. GROVE: Yes. Running in a parallel to Cedar.

MS. ROBESON: And what exhibit are you looking at?

MR. HARRIS: I don't know -- I'm sorry. I don't remember what that one -- that --

MS. ROBESON: It's the one --

MR. BROWN: It's part of the PowerPoint.

MR. HARRIS: It's part of the PowerPoint.

MS. ROBESON: It's the one showing the initial development plan and the current schematic development plan.

MR. HARRIS: Okay, thank you.

MS. ROBESON: Okay, go ahead.

MR. GROVE: This grove of White Oaks is in the proximity of that asphalt pathway. And it's, as you described, the southwest quadrant of the site. Many of them are between that pathway and the southern boundary of the site.

MR. HARRIS: So the elimination of that alley that we have coming down that way on the top plan and the

movement of those units further away from that south property line does help to preserve at least some of those trees in that area?

MR. GROVE: I think it's a step in the right direction, but I don't think it moved from far enough from them to preserve them.

MR. HARRIS: Okay. In any respect, there is no -- the law doesn't require that we preserve those specific trees. We have to meet the forest conservation calculations, but we can take down those trees?

MR. GROVE: The low doesn't specify and that's where an interpretation of the objectives that are expressed I think is relevant, although, not as binding as the letter of the law. I can understand that you have to lay out some specific requirements in order to have the tree conservation law, and that if you couldn't rely as a developer on the letter of the law you'd have no guidance and could never build these townhouses at all, low density or not.

MR. HARRIS: And you mentioned that the tall trees down along the south property line there are an asset to have because they block the views from the residents of the tall buildings in the CBD, which those tall buildings are otherwise visible from say Springvale Road?

MR. GROVE: Yes, Springvale residents are nodding their heads.

1 MR. HARRIS: Yes, okay. So don't -- doesn't the
2 placement of townhouses here block the view of those tall
3 buildings?
4 MR. GROVE: Well, they're 35 feet and the trees
5 are more like 80 feet.
6 MR. HARRIS: But if you're standing on Springvale
7 Road, your line of sight is not -- doesn't it go up at, you
8 know, at an angle that would relate to those 35-foot height
9 of that so that -- if that townhouse is there, you can't
10 tell me that you could see any of the tall buildings in
11 downtown Silver Spring, are you?
12 MR. GROVE: I'd have to get there and look at it.
13 MR. HARRIS: But so it may be that the townhouses
14 do block the view of those tall buildings?
15 MR. GROVE: If they do block the view, they don't
16 add oxygen to the air.
17 MR. HARRIS: No, it would just --
18 MS. ROBESON: Well, now we're dealing with the
19 word shifting between compatibility and the forest.
20 MR. GROVE: I understand.
21 MS. ROBESON: Now we're dealing with
22 compatibility.
23 MR. HARRIS: In fact, the residents will draw
24 oxygen. I'll accept that as well. But the one issue of
25 blocking the view, and one of the community's objections,

that would do it so that they wouldn't have to look at the office buildings?

MR. GROVE: But the -- those who are viewing or looking toward the office building from that portion of Springvale Road that's adjoining the townhouses are only some of the people some of the time who would otherwise see the office buildings.

MR. HARRIS: Okay.

MR. GROVE: And those trees block the view for more people than just standing proximate to the townhouse development on Springvale Road.

MR. HARRIS: And a number of the trees you've already mentioned that are in that area are actually off this property. So there's no plan to remove those?

MR. GROVE: No.

MR. HARRIS: So they will still stay there and that will be part of the screening as well?

MR. GROVE: Right. But virtually every large tree is slated for removal from the site.

MR. HARRIS: Every large tree off the property?

MR. GROVE: On the property.

MR. HARRIS: Aren't there large trees -- my point was aren't there large trees --

MS. ROBESON: Right. I thought that he said, yes, there are large and they'll stay there.

1 MR. HARRIS: And they're not coming down?
2 MS. ROBESON: Right.
3 MR. GROVE: They're not coming down. They can't
4 come down.
5 MR. HARRIS: Right. Exactly. Did you look at the
6 plan that the community has put forth for development of
7 this property?
8 MR. GROVE: I don't think so. Could you tell me a
9 little more? I may have. I've looked at some things.
10 MR. HARRIS: Exhibit --
11 MS. ROBESON: Is this from the last hearing?
12 MR. HARRIS: Yes.
13 MS. ROBESON: Is this from the last hearing?
14 MR. HARRIS: Yes, ma'am. Exhibit 187 was a plan
15 that they had put forth.
16 MR. BROWN: I object to any reference to that.
17 MR. HARRIS: Okay.
18 MR. BROWN: At this point.
19 MR. HARRIS: These are the existing homes along
20 Cedar Street.
21 MS. ROBESON: That's fair. All right, he can ask.
22 MR. HARRIS: The big trees are back here.
23 MS. ROBESON: Just a second.
24 MR. HARRIS: I'm sorry.
25 MS. ROBESON: It's that I think it's relevant in

reference to his testimony that southwest quadrant should be preserved. So go ahead.

MR. HARRIS: So these are the existing Cedar Street homes and this is what they proposed in terms of developing the site with duplexes and single-families. And I think you'd agree with me that -- and let's start with these single-families along Springvale Road. Because at that development with the driveways and houses, that will take out every single tree that's along there, wouldn't it?

MR. GROVE: Quite a few anyway. I don't know how many would fall in between the driveway.

MR. HARRIS: Well, but you have to run sewer lines, water lines, electric lines underground, et cetera, and mass grade the thing. So probably all those trees are gone?

MR. GROVE: Most.

MR. HARRIS: And wouldn't you agree with me that in order to put in this cul-de-sac that they've shown there and to grade these lots to build the duplexes and putting in their driveways, that that area would be cleared as well?

MR. GROVE: Well, is this plan under consideration?

MR. HARRIS: Well, by them it is, but not by us.

MS. ROBESON: Let's --

MR. GROVE: Well, I haven't seen this plan.

1 MS. ROBESON: No, just a second. No. No
2 outbursts. It's their cross-examination for his testimony
3 as to compatibility. So go ahead.
4 MR. HARRIS: Their community proposed this plan as
5 a better plan when we were here the last time. We resisted
6 it, but I'm just trying to understand whether this would do
7 the same things to those trees that you're talking about
8 now.
9 MR. GROVE: It looks like it would take out a lot
10 of trees.
11 MR. HARRIS: What it would do would preserve an
12 area around the historic house?
13 MR. GROVE: Mm-hmm.
14 MR. HARRIS: But of course we're planning to
15 preserve most of that there anyway, and I think you've
16 already said that those aren't the significant trees anyway.
17 MR. GROVE: Yeah, some are large, but --
18 MR. HARRIS: Okay.
19 MR. GROVE: -- many are ornamental.
20 MR. HARRIS: And are you aware that the Chelsea
21 School, the current tenant on the property obtained approval
22 to redevelop the property or to expand the school on the
23 property in a way that was going to take out a number of
24 trees as well?
25 MR. GROVE: I am somewhat aware of that. I looked

at the history, so --

MR. HARRIS: And they would have had to meet the law, so if they got that approval, they must have shown that you can meet the law by taking out the trees that they were taking out?

MR. GROVE: Presumably, yes.

MR. HARRIS: I have no further questions.

MS. ROBESON: All right. Do you -- is he your witness, Mr. Brown? I wasn't sure.

MR. BROWN: I think --

MS. ROBESON: Do you have any redirect?

MR. BROWN: No, I don't.

MS. ROBESON: Okay. Would you like to say anything else based on the questions you had to answer?

MR. GROVE: No, I'd just -- this is going to -- I would just say that these trees have been here longer than we have, and they would be here probably after these townhouses have been gone, if they're allowed to stay.

MS. ROBESON: Okay. Thank you.

MR. HARRIS: Thank you, Mr. Grove.

MR. GROVE: Thanks. Thanks for your tolerance.

MS. ROBESON: Oh, no, that's fine.

MR. GROVE: I know I was wandering the field a bit.

MS. ROBESON: No, it was helpful. Thank you.

MR. GROVE: Thanks.

MS. ROBESON: Mr. Brown, your next witness?

MR. BROWN: The next witness is one of the citizen witnesses, not one of my clients.

MS. ROBESON: That's fine.

MR. BROWN: It's Jean Cavanaugh.

MS. ROBESON: That's fine.

MS. CAVANAUGH: Should I state my name again for the record?

MS. ROBESON: No, I think you've done it already.

MS. CAVANAUGH: Yes.

MS. ROBESON: So that's fine. This will be very brief. I'm going to move over to the PowerPoint because I have to change PowerPoints.

MR. BROWN: I'll change places with Jean.

MS. CAVANAUGH: Okay.

MR. HARRIS: Do you want to chair over there?

MS. CAVANAUGH: Let me just set up this for a second. Okay. All right, I'm going to be very brief. I just wanted to say a couple of things.

MS. ROBESON: Okay.

MS. CAVANAUGH: One is about the compatibility of keeping a substantial tree canopy on the property.

MS. ROBESON: Okay.

MS. CAVANAUGH: And we used the Montgomery County

tree canopy tool to measure the current tree canopy on the Chelsea School property and compared that to the surrounding single-family home neighborhood.

MS. ROBESON: Okay.

MS. CAVANAUGH: And that's where the compatibility lies. I would like to submit a new exhibit that shows a graph with the --

MS. ROBESON: Well, wait a minute.

MR. HARRIS: Well, wait a minute.

MS. CAVANAUGH: Oh.

MR. HARRIS: I'm going to object.

MS. ROBESON: I really -- I know. I really need to keep the same rules for all the parties, and the deal was that we were going to exchange exhibits in advance.

MS. CAVANAUGH: Okay. I thought the odd exhibits that were submitted by EYA that we hadn't seen, which --

MS. ROBESON: Which exhibits?

MS. CAVANAUGH: A handful of them. I heard my neighbor saying -- I'm thinking the ones in the like 320s and --

MS. ROBESON: The letter from Tom's legal?

MS. CAVANAUGH: There was a handful in the upper 320s.

UNIDENTIFIED SPEAKER: The Tom Leck email.

MS. CAVANAUGH: The Leck e-mail.

MS. ROBESON: In the upper 20s?

MS. CAVANAUGH: Upper 320s, 330s.

MS. ROBESON: I have two letters of opposition from two citizens associations. Everything else --

MS. CAVANAUGH: Okay, well, I apologize. I thought I saw new exhibits being introduced --

MS. ROBESON: Well, there one new exhibit that came in --

MS. CAVANAUGH: -- over the course of the day.

MS. ROBESON: The one new exhibit that came in was from DOT.

MS. CAVANAUGH: Mm-hmm.

MS. ROBESON: But that is an exhibit that wasn't prepared or nobody until today.

MS. CAVANAUGH: I am content to describe to you the tree canopy ratios on the Chelsea School property and the surrounding neighborhoods.

MS. ROBESON: That's fine.

MS. CAVANAUGH: As a matter of compatibility. And we would like to keep a compatible tree canopy over the Chelsea School property.

MS. ROBESON: Okay.

MS. CAVANAUGH: And preserving some of the large trees --

MS. ROBESON: Okay.

1 MS. CAVANAUGH: The large canopy trees that --
2 MS. ROBESON: Right.
3 MS. CAVANAUGH: -- Mr. Grove described is a big
4 part of that.
5 MR. BROWN: Before we get to that, I just don't
6 understand your ruling. Exhibits 332 and 333 are letters of
7 support dated February 15th. One from Diane Martin and one
8 from Wardell Thompson (phonetic sp.).
9 MS. ROBESON: But those are -- but they -- they're
10 not a -- how do I say this? They're just letters of --
11 they're letters of support but they're not a formulation of
12 a chart that would want to know how it was formulated, that
13 type of thing. And so, yes, I let in the -- I also let in
14 the -- we had letters of opposition from two civic
15 associations. And so generalized letters about position or
16 support is not the issue. The issue is for technical
17 documents; did they have the opportunity to see them in
18 advance. So, yes, I will let in letters of support and
19 letters of opposition, but I'm not going to let in something
20 that was just created that could have been created with a
21 time -- within the time -- Trier time deadlines. So that's,
22 you know, it's not a gotcha moment. So if you could
23 continue --
24 MS. CAVANAUGH: Okay.
25 MS. ROBESON: -- in your description, I'm sure

your description will be more than --

MS. CAVANAUGH: Yes. The tree canopy, according to the county's tree canopy tool, over the Chelsea School property is about 46 percent right now, and the tree canopy in the surrounding neighborhoods is about 70 percent, give or take a couple of percents. So we would like to keep that -- I would like to see the tree -- a consistency of tree canopy throughout our Seven Oaks Evanswood neighborhood.

MS. ROBESON: Okay.

MS. CAVANAUGH: And that's a big part of compatibility of the townhouse development.

MS. ROBESON: Okay.

MS. CAVANAUGH: And I think by preserving, especially the trees in the southwest corner of the property that Mr. Grove described, that would go a long way to preserving some of the canopy.

MS. ROBESON: Okay.

MS. CAVANAUGH: And I would like to suggest that the community be allowed to give you a list of trees that should be preserved in the southwest corner and they be admitted into a binding element and added to the site plan.

MS. ROBESON: Okay.

MS. CAVANAUGH: I also wanted to refer --

MS. ROBESON: Do you have that list with you?

MS. CAVANAUGH: We can prepare it for you.

1 MS. ROBESON: Okay.
2 MS. CAVANAUGH: We have it marked. This is
3 Exhibit 314L, and these are the trees that would be
4 preserved if the original 1.4 historic setting were
5 preserved.
6 MS. ROBESON: Okay.
7 MS. CAVANAUGH: So this -- preserving these
8 significant specimen trees would also add to retaining a
9 significant tree canopy that would be compatible with the
10 rest of the neighborhood.
11 MS. ROBESON: Okay.
12 MS. CAVANAUGH: So I just wanted to show you a few
13 of these.
14 MS. ROBESON: Wait, go back. Where is that on the
15 site?
16 MS. CAVANAUGH: This is in back of the school.
17 MS. ROBESON: And I'm looking at a slide for the
18 record it's Silver Maple specimen tree at 36 inches.
19 MS. CAVANAUGH: That's the diameter.
20 MS. ROBESON: Yes.
21 MS. CAVANAUGH: Yeah.
22 MS. ROBESON: Okay.
23 MS. CAVANAUGH: And that's tree number 26 on the--
24 MS. ROBESON: Oh, is that what the number 26 is?
25 MS. CAVANAUGH: Right.

MS. ROBESON: Okay.

MS. CAVANAUGH: I'm sorry.

MS. ROBESON: That's easier to --

MS. CAVANAUGH: The tree in the --

MS. ROBESON: No, I'm doing this for the record so keep going.

MS. CAVANAUGH: Right. In this Exhibit 341(l) as well as the Exhibit 314(k) --

MS. ROBESON: Okay.

MS. CAVANAUGH: -- I believe what we submitted a while ago, all of the trees have numbers referring to the preliminary forest conservation plan.

MS. ROBESON: Right.

MS. CAVANAUGH: Submitted by EYA.

MS. ROBESON: Right.

MS. CAVANAUGH: And that was Exhibit 40(d), as in dog.

MS. ROBESON: Okay.

MS. CAVANAUGH: So, you know, you can refer and see which ones, but we can also make a separate list.

MS. ROBESON: No, that's all right.

MS. CAVANAUGH: Okay. So these are the -- whoopsie, sorry. These are the trees that would additionally be preserved.

MS. ROBESON: If what happened?

1 MS. CAVANAUGH: If we keep the 1.4 historic
2 setting, the parcel 93.
3 MS. ROBESON: So these are all on the current
4 historic setting?
5 MS. CAVANAUGH: Yes.
6 MS. ROBESON: Okay.
7 MR. HARRIS: Objection. The current historic
8 setting is 37,056 square feet.
9 MS. ROBESON: Oh, all right. I --
10 MS. CAVANAUGH: So --
11 MS. ROBESON: It's late.
12 MS. CAVANAUGH: The historic, historic setting.
13 MR. HARRIS: Touché.
14 MS. ROBESON: The one P-73. All right.
15 MS. CAVANAUGH: P-73.
16 MS. ROBESON: Okay. So -- all right.
17 MS. CAVANAUGH: And some of these are along the
18 borders of the backyards of the houses on Chelsea.
19 UNIDENTIFIED SPEAKER: Cedar.
20 MS. CAVANAUGH: Sorry, Cedar.
21 MS. ROBESON: Now are you saying -- and your point
22 about these is do you know under the new plan if these are
23 going to be eliminated?
24 MS. CAVANAUGH: I don't know under the new plan if
25 they're going to be eliminated. No. I don't know what's

1 going to be eliminated under the new plan.
2 MS. ROBESON: Okay.
3 MS. CAVANAUGH: But there were a lot of trees that
4 were going to be eliminated under the old plan.
5 MS. ROBESON: Right.
6 MS. CAVANAUGH: I sort of didn't understand why
7 they were being eliminated. For example, some along
8 Pershing. Like these; these trees, these Norway Spruces
9 along Pershing are marked for elimination, for removal.
10 MS. ROBESON: Okay.
11 MS. CAVANAUGH: Even though they're next to the
12 historic house, and one would think they would be preserved,
13 as well as this Dogwood. And that's all I have.
14 MS. ROBESON: Okay.
15 MS. CAVANAUGH: Thank you.
16 MS. ROBESON: Thank you. Can you go back to the
17 ones along the southern property line?
18 MS. CAVANAUGH: Mm-hmm. We have two PowerPoints.
19 MS. ROBESON: Well, let me just ask you generally,
20 under the new plan -- these trees you took from the first
21 plan?
22 MS. CAVANAUGH: Correct.
23 MS. ROBESON: But there's a -- you don't know if
24 these trees along that southern property line will be
25 allowed to remain under the new plan?

MS. CAVANAUGH: We don't know at this point, no.

MS. ROBESON: Okay.

MS. CAVANAUGH: But we would like assurance in a binding kind of way that they will be preserved.

MS. ROBESON: Well, you --

MS. CAVANAUGH: These oaks.

MS. ROBESON: And so what you're saying is that you are going to submit a binding element requiring what? Requiring that specific trees be preserved?

MS. CAVANAUGH: Yes.

MS. ROBESON: Okay. Okay.

MS. CAVANAUGH: Okay.

MS. ROBESON: Yes. Did you have any more questions?

MR. HARRIS: A couple.

MS. CAVANAUGH: Sure.

MR. HARRIS: You're aware that the forest conservation law doesn't require us to preserve specific trees that -- the ones in which you might be interested?

MS. CAVANAUGH: Correct.

MR. HARRIS: So what you're essentially --

MS. CAVANAUGH: Right.

MR. HARRIS: Okay.

MS. CAVANAUGH: This is in pursuit of compatibility.

1 MR. HARRIS: I understand. The -- and I assume
2 you would agree with me that if the area around the historic
3 house has grown as it has under the new plan compared to the
4 old plan, that it enables for many more trees in that area
5 to be preserved?
6 MS. CAVANAUGH: I hope that you will preserve more
7 trees with the expanded historic setting.
8 MR. HARRIS: And similarly the movement away from
9 the southern property line enables, as Mr. Grove has
10 testified earlier, enables preservation of more trees in
11 that area as well?
12 UNIDENTIFIED SPEAKER: Objection.
13 MS. CAVANAUGH: We would like to see binding
14 confirmation.
15 MS. ROBESON: He has to object.
16 MR. HARRIS: Okay, but by moving the units further
17 from that property line it enables the preservation of more
18 trees?
19 MS. CAVANAUGH: I cannot attest to that, no.
20 MR. HARRIS: So --
21 MS. CAVANAUGH: I'm not going to --
22 MS. ROBESON: She answered --
23 MR. HARRIS: The location of the units doesn't
24 affect the preservation of trees?
25 MS. CAVANAUGH: The location of the units affect

1 preservation of trees.
2 MR. HARRIS: So if you move units away from the
3 trees, it enables more to be preserved?
4 MS. CAVANAUGH: Yes, it does. But the current
5 configuration, I don't know if these -- this particular
6 current configuration, how it affects the tree roots of the
7 trees that we're concerned about.
8 MR. HARRIS: Yes, I understand.
9 MS. ROBESON: So she --
10 MR. HARRIS: I'm not saying you've studied it.
11 MS. ROBESON: I don't want to continue. She
12 doesn't -- she doesn't know and it's not your time to chime
13 in.
14 MS. CAVANAUGH: Okay.
15 MR. HARRIS: And the tree canopy about which you
16 spoke could actually go up as a function of the planting of
17 new trees that -- new trees in other words provide tree
18 canopy?
19 MS. CAVANAUGH: I'm not an expert. I'm not an
20 arborist. Mr. Grove --
21 MS. ROBESON: Mr. Harris, I know where -- what
22 you're getting at, but I don't think she testified as to --
23 I don't think she testified to anything about the extent
24 that the new trees would cover.
25 MR. HARRIS: She did not. She said there's a 46

1 percent tree canopy there today, and her implication is that
2 -- in fact her statement was they'd like to keep that. What
3 I'm trying to establish --
4 MS. ROBESON: Well, why don't ask her if she has
5 had the opportunity to calculate the new tree canopy?
6 MR. HARRIS: Okay. That's essentially what I was
7 asking, but I think you've done it more effectively. Can
8 you answer that?
9 MS. CAVANAUGH: I have not had the opportunity --
10 MR. HARRIS: That's fine.
11 MS. CAVANAUGH: -- to calculate the new tree
12 canopy because we haven't seen the new preliminary forest
13 conservation plan.
14 MR. HARRIS: That's fair enough. Yes, okay.
15 That's all.
16 MS. CAVANAUGH: Okay, thank you.
17 MS. ROBESON: Okay. Do you have any redirect, Mr.
18 Brown?
19 MR. BROWN: Nothing.
20 MS. ROBESON: Okay. Well, thank you. Thank you
21 for your --
22 MS. CAVANAUGH: Thank you.
23 MS. ROBESON: -- presentation, and we will expect
24 the graph -- those proposed binding elements.
25 MS. CAVANAUGH: Okay. And, Mr. Brown, who would

1 be your next witness?
2 MR. BROWN: My --
3 MS. ROBESON: What I'd like to -- I can go to 6:30
4 unless that's not working for everybody else.
5 MR. BROWN: Let me put it this way. Mr. Doggett
6 is a key witness and he can't testify until he gets back
7 from his doctor's appointment, his surgeon, who he has to
8 see on Monday morning at 11:30. So we are -- we have to --
9 we have to have part of this hearing Monday afternoon no
10 matter what.
11 MS. ROBESON: Okay. Okay.
12 MR. HARRIS: Is there some reason he couldn't
13 testify now?
14 MS. ROBESON: Well, but -- but my -- I can already
15 foresee, I don't think we can get Mr. Doggett in in 40
16 minutes. So just based on last time. So the question is
17 what are you asking me to do? Do you --
18 MR. BROWN: I think that --
19 MS. ROBESON: -- have one more witness that you
20 think can be put on now or would you --
21 MR. BROWN: Sure.
22 MS. ROBESON: -- like to defer until Monday
23 morning?
24 MR. BROWN: Let me check with Anne.
25 MR. HARRIS: So as to not run over on Monday, I

1 would prefer to go now.
2 MS. ROBESON: I know.
3 MR. BROWN: Is there anybody else who goes today?
4 MS. WARREN: I would be the next person, and I'm
5 not sure if that's going to be a while.
6 MS. ROBESON: And your testimony relates to?
7 MS. WARREN: To the historic setting --
8 MS. ROBESON: Okay.
9 MS. WARREN: -- research with all the documents.
10 MR. BROWN: And we need to go in that order, and
11 she would -- we would like to kick off with her on Monday
12 morning.
13 MS. ROBESON: Okay. How about this, guys? How
14 about making the hearing -- I'm going to get screams from
15 staff; what about making the hearing a half early at 9:00
16 a.m. and then we can cut it on the early end rather than the
17 late end?
18 MR. BROWN: The problem is we have to have hearing
19 in the afternoon. We have to have Mr. Doggett in the
20 afternoon.
21 MS. ROBESON: Yeah, but he's got rebuttal. In
22 other words --
23 MR. HARRIS: How many witnesses do you plan to
24 call?
25 MS. WARREN: He gave you a list.

1 MR. HARRIS: Pardon?
2 MS. WARREN: He gave you a witness list.
3 MR. HARRIS: Okay, but do you -- so you plan to
4 call all of them?
5 MS. WARREN: At the least.
6 MR. HARRIS: That will take all morning, if we
7 spend -- so we should start at 9:00.
8 MS. ROBESON: I can't -- I know you submitted your
9 witnesses. I remember seeing it, but I can't remember how
10 many.
11 MS. WARREN: I wish we could stand -- I'm not --
12 can we stand up? Would that help?
13 MS. ROBESON: Okay. Oh, sure. I can count.
14 Okay. Sometimes when it gets to be about seven -- one, two,
15 three, four, five, six, seven.
16 MS. WARREN: Is Judy here?
17 UNIDENTIFIED SPEAKER: Yeah, Judy's here.
18 MS. ROBESON: Yes, that is going to take --
19 MR. HARRIS: Yes.
20 MS. ROBESON: Eight.
21 MS. WARREN: Mr. Doggett would be eight.
22 MR. BROWN: At about --
23 MS. ROBESON: I counted them. Well, I'm looking
24 at total.
25 MR. HARRIS: Yes.

1 MS. ROBESON: And then Mr. Harris has rebuttal, so
2 I think it's fair to say that the entire day is going to be
3 used. And the question is can we do this without going to a
4 third day? Which, you know, I don't want to rush people,
5 but it is limited on remand, and I do want to hear from
6 everybody. I've tried to be as tough on both parties as
7 possible. So let's do this. Let's instead of -- I can't
8 just change our normal starting time without checking with
9 some people. So if you -- what you're saying is you have no
10 more witnesses than can go tonight?
11 MS. WARREN: I can go.
12 MR. BROWN: I could -- sure.
13 MS. ROBESON: I don't want to start the historic
14 district.
15 MR. BROWN: Okay, that's fine. Who are your
16 others going to testify on? Victoria.
17 MS. WARREN: Yes.
18 MS. ROBESON: Is there an issue if the hearing
19 starts at 9:00, is there some reason we do 9:30 instead of
20 9:00?
21 MS. WARREN: Because of the parking. Sometimes
22 the public parking in the garage, it's full. And after 9:00
23 you can part across the street in the jury lot at no cost
24 and no chance of being towed. If you park there before
25 9:00, you have a chance of getting towed. And generally the

1 jury selections are on Monday, Wednesday, and Friday.
2 MS. ROBESON: Okay. All right. Let's do this.
3 What were you going to tell -- what are your topics of
4 testimony?
5 MS. WARREN: There's, well, there's the historic
6 setting, there's the road and the traffic, there's the
7 density and massing in compatibility with -- and consistency
8 with the master plan and with the surrounding neighborhood.
9 So we're -- I mean we're covering the topics of the remand
10 order.
11 MS. ROBESON: Okay. Okay, Ms. Warren?
12 MS. WARREN: Yes.
13 MS. ROBESON: Are you willing to at least get
14 through the first part of your testimony tonight?
15 MS. WARREN: Yes, I am.
16 MS. ROBESON: Are you willing --
17 MS. WARREN: Yes.
18 MS. ROBESON: -- to do that?
19 MS. WARREN: I'm willing to start.
20 MS. ROBESON: What I'd like to do is cut it off --
21 Mr. Harris, I'd like to cut her testimony off at -- after
22 the direct testimony and pick up Monday morning at 9:30.
23 All right. So, Ms. Warren -- is that acceptable to you, Mr.
24 Brown?
25 MR. BROWN: Yes.

1 MS. ROBESON: All right.
2 MS. WARREN: Okay.
3 MS. ROBESON: Ms. Warren --
4 MS. WARREN: Yes.
5 MS. ROBESON: -- I do want to compliment you. I
6 heard you got through those from the Planning Board, but
7 that is some of the best research I've seen. So it is
8 really good.
9 MS. WARREN: Thank you. Well, in this -- first of
10 all, my name's Vicky Warren. I live at 503 Pershing Drive
11 in Silver Spring. I've been there for 27 years. In full
12 disclosure, I'm also the vice president of the citizens
13 association. From the very beginning, you know that I've
14 been concerned about the ability to integrate the historic
15 house and its property holistically into the kind of
16 development that was proposed. And I just want to correct
17 something for the record right off the bat. EYA stated
18 earlier that they've always known that the historic setting
19 was 37,000 square feet. This is something I introduced in
20 the last hearing before you, Exhibit 190, where we have EYA
21 environmental setting set at 16,805 square feet, not the
22 37,056. Yes, this is from your first plan that you entered.
23 And I --
24 MS. ROBESON: Well, to be honest --
25 MS. WARREN: Yes.

1 MS. ROBESON: I don't recall them ever proposing,
2 and I think I said in my decision --
3 MS. WARREN: It was on the drawing boarder. It
4 was on the drawing that that was the environmental setting.
5 And then the road bordered it here. So I just wanted to
6 reiterate that --
7 MS. ROBESON: Okay, well --
8 MS. WARREN: That we've moved on from there. But
9 I wanted to clear that up. And then I'll go into the
10 research. All of the research that I'm going to present
11 today is new research. It builds from what I presented at
12 the earlier hearing in front of you. You had asked the
13 question: how do we determine the intended size of the
14 environmental setting of the Riggs-Thompson historic
15 resource given the language in Appendix D of the North
16 Silver Spring Master Plan. So specifically I set out to
17 determine how it was that the body of the plan differ from
18 what was in the appendix. I started with the hearings
19 before the Historic Preservation Commission in June of 1998.
20 I followed the language which was presented to
21 them by staff, which allowed for the dual setting. If the
22 Chelsea special exception goes forward, the setting will be
23 37,056. If not, it will be the full 1.4-acre parcel. In my
24 research I showed how there was some confusion even at that
25 time. Even at that time staff said to the Historic

1 Preservation Commission that the setting was 1.4. At one
2 point there was a document that I found in the files from
3 the appendix that had the setting is 1.4. That document was
4 taped over, but when you took the tape off you could clearly
5 see it. That's all been entered into the record.
6 From there, there were public hearings, and it was
7 explained to the public that there would be this dual
8 environmental study. Steven Spurlock (phonetic sp.)
9 testified in November 1998, again, to the dual environmental
10 study. If Chelsea goes forward, it would be a smaller
11 environmental study. If Chelsea does not go forward, it
12 would be the full 1.4-acre parcel. That continues through
13 the Planning Board deliberations, which occurred on March --
14 MS. ROBESON: You mean it was the full 1.4-acre
15 parcel?
16 MS. WARREN: If the Chelsea special exception does
17 not go forward.
18 MS. ROBESON: Okay.
19 MS. WARREN: And that was always the way it was
20 explained. And I think it's also important to understand
21 that it was very unusual to have a dual historic setting.
22 The customary procedure, and this was mentioned in all of
23 the hearings; the customary procedure is the environmental
24 setting is the entire parcel at the time of designation.
25 Had the Riggs-Thompson House been proposed to be on the

1 historic register earlier, it would have been 1.4. But the
2 fact that Chelsea was considered -- considering buying the
3 property and combining those two parcels, made the system --
4 this situation very unique. And that was made clear every
5 step of the way. So then we get to the March 25th, 1999,
6 work session.
7 MS. ROBESON: Okay.
8 MS. WARREN: Okay. This is the only time that the
9 Planning Board really discussed the environmental setting of
10 the Riggs-Thompson House. And they voted and they laid it
11 out very clearly. There's language in the transcript that--
12 where Planning Board members say I don't understand this,
13 it's one way for one person, it's different for someone
14 else. Staff explains the very uniqueness of the situation,
15 but staff also goes on to say -- and I think this is what's
16 really important; before the vote they say that in the
17 future essentially what the plan is suggesting is to see
18 that -- is a sort of either or environmental study, which is
19 that the special exception which is that if the special
20 exception does not go forward, if this property remains in
21 its current ownership, its current use, or some other use,
22 then the setting should be our normal process, the 1.4-acre
23 parcel on which it's located. That's Exhibit 6. That's the
24 tape that I had transcribed.
25 MS. ROBESON: And that was before the Planning

1 Board?
2 MS. WARREN: This is before the Planning Board.
3 MS. ROBESON: Okay.
4 MS. WARREN: This is a work session before the
5 Planning Board.
6 MS. ROBESON: Okay.
7 MS. WARREN: Now I think at this point you should
8 be aware of the fact that after we came before you and it
9 was remanded, I had asked for these documents from the
10 Planning Board so that I could go through all of these
11 documents and do this research. I was denied access to all
12 of those documents for 77 days. It wasn't until a few days
13 before our hearing before the Planning Board in January that
14 I was given access to those documents. So I spent
15 considerable time going through all the microfiche to find
16 every agenda for every Planning Board meeting, and then
17 going through those agendas to find out when they discussed
18 the master plan. Then going through the microfiche of the
19 minutes of those work sessions so that I could find out when
20 they talked about the environmental setting. The only time
21 I could find out that they talked about this was in this
22 March 25th, 1999, session.
23 However, when I was finally given access to the
24 documents about a week before the Planning Board meeting,
25 all of the minutes and all of the transcripts pertaining to

the Riggs-Thompson House were missing from those files. Now I had a copy of that tape that had been given to me by a citizen who was on that advisory board, you know, for the master plan. They had citizens that were on the advisory board. So I transcribed it for the Planning Board myself. I have since had it professionally transcribed and entered into the record. But you --

MS. ROBESON: You know can file -- well.

MS. WARREN: You can do what?

MS. ROBESON: Go ahead.

MR. HARRIS: Can I ask you to clarify?

MS. WARREN: Yes.

MR. HARRIS: What was the tape you transcribed? I'm sorry.

MS. WARREN: It was the tape of the work session of March 25th, 1999.

MR. HARRIS: A Planning Board tape?

MS. WARREN: Yes.

MR. HARRIS: Okay.

MS. WARREN: They tape their work sessions.

MR. HARRIS: Yes, okay.

MS. WARREN: But I did it, but for the one that I entered into the record is professionally transcribed and I paid for that.

MR. HARRIS: Thank you.

1 MS. WARREN: Okay. So that -- those decisions
2 that were made at that work session, they hold all of the
3 way through until October of 1999.
4 MS. ROBESON: Okay, I'm sorry.
5 MS. WARREN: Okay.
6 MS. ROBESON: I'm still thinking about something
7 else.
8 MS. WARREN: Okay. Go ahead.
9 MS. ROBESON: I apologize.
10 MS. WARREN: No, that's okay. Why don't you just
11 ask it?
12 MS. ROBESON: March 25th, 1999, is the only record
13 of the Planning Board hearing mentioning Riggs-Thompson.
14 Are there minutes of that?
15 MS. WARREN: Mm-hmm. There in the -- I submitted
16 them as exhibits.
17 MS. ROBESON: Okay.
18 MS. WARREN: Yeah. Here, let me get my exhibit
19 list. The minutes of the -- it's Exhibit 7.
20 MS. ROBESON: Okay, thanks.
21 MS. WARREN: Are the minutes. Okay. From that
22 work session -- it is not a hearing; it's a work session.
23 MS. ROBESON: Right.
24 MS. WARREN: Okay. From that work session, staff
25 was directed to write what was to appear in the master plan.

1 The master plan and the appendix. It was made clear in that
2 March 25th work session. And that appears in the approved
3 minutes, is that language is to be consistent in the body of
4 the master plan and the appendix. So the language was
5 drafted and it was changed once. But in May of 1999 that
6 language was decided on, and it states the environmental
7 setting shown in the shaded area below is recommended only
8 if the special exception application by the Chelsea School
9 is approved. In the event that the Chelsea School plan does
10 not go forward, the designated environmental setting is the
11 entire 1.4-acre parcel, P-73, on which the house is located.
12 They added another sentence, which was really
13 important, and that is important to the Planning Board.
14 They made sure the sentence was in. An important goal of
15 the proposed Chelsea School plan is the integration of the
16 Riggs-Thompson House into the campus. So that was a huge
17 selling point. That and the fact that the Sisters of the
18 Holy Names had already said they would not support a
19 historic designation if the sale to Chelsea did not go
20 through. So this language that was drafted in May of 1999
21 is that the language that is sent out to people, it's held
22 out in public situations, it is the language. And it
23 remains the language until October 28th, 1999.
24 On that day a packet is prepared for the Planning
25 Board. Attached to the packet is a draft of the final

1 master plan. In that draft the language is changed to the
2 language we see today in the body of the master plan, the
3 same language that EYA has submitted in that Xerox. And the
4 thing is that there is no evidence at all of any
5 authorization by the Planning Board to have that language
6 changed. So they then vote on November 4th. They vote on
7 the final draft of the master plan. Now I also submitted
8 that tape -- a transcript of that tape. That is -- one
9 second. That is Exhibit 12.
10 In that transcript, Nancy Sturgeon very carefully
11 lays out every change that's been made between the
12 preliminary draft and the final draft. There is absolutely
13 no mention that this critical language defining what is to
14 happen to the environmental setting in the case if Chelsea
15 goes forward or if Chelsea doesn't go forward. There is no
16 mention that that language has been changed. That language
17 is incorporated in the master plan in the draft -- final
18 master plan. It goes to the County Council. So this is the
19 next step. This is answering the question that Francoise
20 asked at the Planning Board, which I didn't have the
21 information at that point. I've researched this since she
22 asked this question, and this is an important question. How
23 do you find that legally something that the Planning Board
24 may have intended but that didn't make it into the final
25 document should be what we consider legally to have the

1 greatest weight? And the reason is because it's also what
2 the County Council believed they were voting on when they
3 voted on the master plan. And the reason is a document that
4 was prepared for them by Jean Arthur, who's a legislative
5 analyst, and in that document she says -- this is the
6 memorandum that she gives to the County Council as part of
7 that.
8 MS. ROBESON: Is it the County Council or the Fed
9 Committee she gave it to?
10 MS. WARREN: She gave it to the Fed committee,
11 right, but they're also members of the Council.
12 MS. ROBESON: Right.
13 MS. WARREN: Three of them, yes. Okay. In that
14 memorandum she advised the committee, and this is what
15 they're going on; her advising. And she says the plan
16 recommends an environmental setting of 37,056 square feet
17 for the immediate area surrounding the house assuming the
18 special exception is approved. Alternatively, the plan
19 recommends the entire 1.4-acre parcel as the environmental
20 setting if the special exception is denied. And this is
21 what she gave to them. There is no other indication that
22 they had other materials given to them.
23 The action that they took was that they voted this
24 out of Fed committee and this was what they believed was in
25 the master plan. She goes further. I showed her the final

1 copy of the master plan and the fact that this language is
2 not in it. And she was incredulous. So she went back
3 through her own documents and talked to other people who
4 were involved in this decision and wrote me this e-mail.
5 She says -- I'm in Exhibit 18; I looked through everything I
6 could find on this property and I found nothing else except
7 what you already have. This historic designation was done
8 as part of the master plan for the north and south Silver
9 Spring, and that's an error. Actually it was for the north
10 and west Silver Spring.
11 So in reality, the Council did not spend a lot of
12 time on the historic designation. I went through the final
13 resolution and there's no mention at all about the historic
14 designation. I have discussed this with other staff people.
15 The best conclusion we have is -- and that we have to accept
16 -- the best conclusion we have is that we have to accept
17 what the Council approved as its intention, that the smaller
18 environmental setting applied only if the Chelsea School got
19 the special exception. So this is the final thing that we
20 have is that the Council intended that the smaller
21 environmental setting be tied to the special exception. So
22 in conclusion, what I would like to say is that the Historic
23 Preservation Commission, the Planning Board, and the
24 District Council were all in total agreement that the
25 important historical significance of the Riggs-Thompson site

1 made it worthy of designation and preservation. For that
2 reason, each body's clear intent all along the way was that
3 there would be language in the master plan that would fully
4 protect the property.
5 In addition, believing that the Chelsea School was
6 earnest in its intent to protect the property, they stated
7 their desire, the Planning Board and HPC wanted to allow
8 flexibility for the school to achieve its goals. That was
9 the basis of the dual language that the Historic
10 Preservation Commission and the Planning Board worked on for
11 inclusion in both the body of the master plan and in
12 Appendix D. The Council relied on the information they
13 received and they also intended to both protect the property
14 and allow the special exception to move forward. Council
15 legislative analyst, Ms. Arthur's assessment that the
16 Council only intended for the smaller environmental setting
17 for the Riggs-Thompson House to apply to the Chelsea School
18 is correct, and today we are not dealing with a situation in
19 which the Riggs-Thompson House is expected to continue to be
20 integrated into an institutional use of any sort or any form
21 of continuation or transfer of the special exception to
22 which the reduced environmental setting is so clearly tied.
23 Based on this additional evidence about intent that I've
24 presented, I believe that you should reaffirm your prior
25 conclusion that the environmental setting of the Riggs-

1 Thompson House is the 1.4 acres if the Chelsea School ceases
2 to operate on the property under the special exception.
3 MR. HARRIS: May I ask a clarification question?
4 What you're reading, those are your words or you quoted
5 them?
6 MS. WARREN: No, they're my own words.
7 MR. HARRIS: Okay.
8 MS. WARREN: Okay, and then on one personal note.
9 I just was to add a comment about process. There was always
10 a very clear process outlined for how the master plan was
11 supposed to be decided. There was community input, there
12 was the Planning Board, in the case of historic designation
13 there was the Historic Preservation Committee, and all along
14 the way everyone adhered to that process. They agreed on a
15 dual track setting for the environmental setting. That
16 process was then co-opted without knowledge of those
17 involved by an individual or a group of individuals when
18 they changed the language in the body of the master plan
19 without authorization.
20 I personally believe that that action violated the
21 integrity of the process, and I believe if we hold up that
22 language today knowing that it's not accurate, that it's not
23 a true reflection of what the intent was, then we've missed
24 an opportunity to correct that law and that mistake and that
25 violation of the process. And also to enhance the public

trust. That's all.

MS. ROBESON: Okay. What about the applicant's argument? You're -- okay. There's a couple of things that I've noticed between the two arguments.

MS. WARREN: Okay.

MS. ROBESON: You're saying -- you're taking the language and saying they intended it to revert to what -- I'm sorry, 37,056 in the event another use comes on the property.

MS. WARREN: Revert to 1.4.

MS. ROBESON: Yes.

MS. WARREN: To the original parcel.

MS. ROBESON: I'm sorry.

MS. WARREN: That's okay.

MS. ROBESON: Yes. This is why I can't go beyond -- to 7:00. Okay. So the applicant is saying, well, the language says if the Chelsea School was approved, and it was approved. So because the Chelsea School is approved -- was approved, they're saying why does that undermine the -- what was the Council's intent? How do you ask -- answer that argument?

MS. WARREN: well, I think Jean explained it very well, Jean Arthur, when she said to me that the Council tied the smaller environmental setting to the special exception for the Chelsea School. So in her mind, if --

1 MS. ROBESON: But it was approved. It was
2 approved.
3 MS. WARREN: The special exception for the Chelsea
4 School was approved.
5 MS. ROBESON: Right.
6 MS. WARREN: Okay. But if no special exception,
7 that special exception expires when they leave. The special
8 exception is only for the Chelsea School.
9 MS. ROBESON: I see what you're saying. And
10 you're also -- okay, so you're saying that -- and that the
11 Council's intent -- they wouldn't have had a smaller
12 environmental setting had they known it wouldn't be combined
13 with a larger parcel, campus-like parcel?
14 MS. WARREN: Yeah, and I think what really -- what
15 really emphasizes that is if you go back to the testimony on
16 Steve Allenberg (phonetic sp.), who was the attorney who
17 testified --
18 MS. ROBESON: Yes.
19 MS. WARREN: -- for Chelsea. He testified in
20 front of the Council, and I think it's really important to
21 read his words. He said -- this is what he's telling the
22 Council. So they have Jean's memo which says if the Chelsea
23 School goes forward then, you know, the plan says it will be
24 smaller, but if it doesn't then it will revert back. But
25 then he testifies -- the other thing they have, and he says

to them -- and give me just a minute while I try to find that out. Because I think -- I think it's really important. I know he says -- he calls it the jewel of the campus.

UNIDENTIFIED SPEAKER: It's earlier.

MS. WARREN: It's earlier? Thank you. I have my assistant here to help me.

MS. ROBESON: I think I remember it.

MS. WARREN: Yes. He says -- he told the members of the Council that the school would be turning the Riggs-Thompson House into the jewel of the campus. We will be taking what is right now - we'll be taking what, right now, is a proposed environmental setting that's covered with some asphalt and non-contributing buildings, taking all that down, turning it into a beautiful setting for the building, removing the hedges which actually block the view of the building from the community. So it's really a win-win situation. He promised the Council the county is going to get a caretaker for this facility that's not just going to keep it from deteriorating but is going to maintain it as a viable part of its campus. And that was important not just to them, but there was also a member of the Planning Board that was completely won over by that argument.

If you go back to the transcript of the March 25th, 1999, we don't know exactly who's who because it's an audio tape, but there's a male member of the Planning Board

1 that specifically says now you're not going to sell this
2 off; it's not going to be cast adrift. That was really
3 important to him, and Allenberg says to him no, we're not.
4 It's going to be integrated into part of the campus.
5 MS. ROBESON: Well, I -- let me ask you this then.
6 Because why -- if this is integrated into a larger 1.3 to
7 1.5, depending on what you count, why is that not similar?
8 MS. WARREN: Okay, I'll tell you why; because
9 unless the entire 1.4-acre parcel is designated as the
10 environmental setting, it has no protection. I'm not
11 talking about, you know, a HOA covenant or EYA telling me
12 they're not going to build on it. The truth is that if it's
13 designated as the environmental setting it has the
14 protection of the Historic Preservation Commission. Any
15 work that is done on the setting or the house is protected.
16 So that's --
17 MS. ROBESON: So you're saying that --
18 MS. WARREN: That protection is vital. It's
19 vital.
20 MS. ROBESON: Okay. So you're saying that --
21 well, the house is protected. The house is within the
22 environmental setting.
23 MS. WARREN: Well, the house is protected in its
24 own right. It's been designated as a historic property.
25 And then there's also --

1 MS. ROBESON: Right.
2 MS. WARREN: -- the property around it.
3 MS. ROBESON: And then the 37 -- but what I'm
4 saying is the entire house is in the 37,056. So you're
5 saying that EYA's proffers that that area is going to be
6 legally restricted are not sufficient?
7 MS. WARREN: No.
8 MS. ROBESON: In your mind to protect the house?
9 MS. WARREN: No. I mean it wasn't sufficient that
10 Chelsea said they were going to turn it into the jewel of
11 the campus and they were going to be a caretaker. I think
12 what we've learned is that we cannot protect -- I mean we
13 can't depend on individual entities or corporations or
14 companies to protect what we as citizens and we as a
15 government need to protect, and that's our history. We need
16 to protect it ourselves and then -- and that way you have to
17 make the full -- the 1.4-acre --
18 MS. ROBESON: Well, assume this --
19 MS. WARREN: Okay.
20 MS. ROBESON: -- for one moment. Assume that it
21 will be protected. Just assume that for a moment. Do you
22 feel that the current environment -- assume via whatever
23 means it will be legally locked up tight like a drum. Do
24 you feel that the current configuration adequately
25 accomplishes what, you know, highlighting the house?

MS. WARREN: I would say that it would be better to go back to the original setting. The original 1.4-acre parcel.

MS. ROBESON: And why is that?

MS. WARREN: Why is that? Because the house was set on that parcel for a reason. The front of the house has a larger front yard and side yard, and it's facing that larger side and front yard, and I feel that that parcel --

MS. ROBESON: Wait a minute.

MS. WARREN: Okay.

MS. ROBESON: I thought the front yard's the same?

MS. WARREN: No. The front yard in the original 1.4-acre.

MS. ROBESON: Where is that other exhibit?

MR. HARRIS: It's right there.

MS. ROBESON: Yes, what number is that -- thank you.

MS. WARREN: Which one do you want me to use?

MS. ROBESON: You're like my twin sister. He knows what -- 190 is it?

MS. WARREN: Yes.

MS. ROBESON: 190?

MS. WARREN: Yeah. This is the original setting right here.

MS. ROBESON: Right.

1 MS. WARREN: So this much more, this green area,
2 this is the front of the house right here.
3 MS. ROBESON: Right.
4 MS. WARREN: So this much more.
5 MS. ROBESON: But what I'm saying is assume -- go
6 back, if you would.
7 MS. WARREN: Okay.
8 MS. ROBESON: Go back to the new schematic
9 development plan.
10 MS. WARREN: Okay.
11 MS. ROBESON: Down at the bottom.
12 MS. WARREN: This one, this one. Okay.
13 MS. ROBESON: Okay. Assume that because now
14 you're in about halfway up there, halfway to the western
15 boundary of the original environmental parcel. Assume that
16 that could be locked up tight.
17 MS. WARREN: You're saying that this entire
18 section right here?
19 MS. ROBESON: Yes.
20 MS. WARREN: Is all going to be the new historic
21 setting, the new environmental setting? So that this is no
22 longer going to be a public access park?
23 MS. ROBESON: No, no, no, no. What -- well,
24 what's the difference if it's a public access park?
25 MS. WARREN: Again, we go back to who's protecting

1 it. If this entire area -- and I would still go back to
2 original one, two, three, four, five; I would go back to
3 here. If this entire parcel is designated as the
4 environmental setting, then the house and its land stays
5 intact, it's protected by the Historic Preservation
6 Committee. If some of this area, they don't know how much,
7 maybe this, maybe that is sold with the house to a new
8 owner; but this is all going to be open to the public, okay,
9 there's no protection. So basically you just truncated the
10 environmental setting right there.
11 MS. ROBESON: Well, why isn't there protection?
12 MS. WARREN: Because --
13 MS. ROBESON: Because I --
14 MS. WARREN: Who --
15 MS. ROBESON: No, just let me finish.
16 MS. WARREN: Okay.
17 MS. ROBESON: Let me finish. I think what EYA is
18 saying is that they're going to place restrictions not only
19 allow public access but place restrictions on the ability to
20 put anything in there. Is that -- am I mischaracterizing
21 it?
22 MR. HARRIS: That's correct.
23 MS. ROBESON: So I guess my question is if that's
24 the case, why do you think that that area is not going to be
25 protected?

1 MS. WARREN: Okay, let's just flip it. If this is
2 the case that nothing is going to happen in here, then why
3 can't it all be the environmental setting? If this land --
4 MS. ROBESON: Because --
5 MS. WARREN: -- is never going to be touched and
6 it's going to stay with the house?
7 MS. ROBESON: Well, because the Council has to do
8 that via a master plan. But so what you're saying is --
9 wait a minute. What you're saying is that it gets better
10 protection via being designated as an environmental setting
11 versus having private covenants on it restricting
12 development?
13 MS. WARREN: I think so. Not only that, it keeps
14 it with the house. And let me just go back to what you said
15 the Council has to do via the master plan.
16 MS. ROBESON: Yeah.
17 MS. WARREN: I believe the Council did it via the
18 plan.
19 MS. ROBESON: I know that.
20 MS. WARREN: Yeah.
21 MS. ROBESON: I mean I'm playing devil's advocate
22 here.
23 MS. WARREN: That's okay.
24 MS. ROBESON: You -- every -- he gets mad when I
25 say it was 1.4 and you guys get mad when I say it's --

1 MS. WARREN: No, I'm not mad. I'm just --
2 MS. ROBESON: No, I know you aren't. So I'm just
3 trying to get at the underlying issues.
4 MS. WARREN: Yes.
5 MS. ROBESON: So you feel that it's important to
6 have the original environmental setting because you're not
7 sure that it will be maintained properly if it's put in the
8 HOA documents?
9 MS. WARREN: Yes.
10 MS. ROBESON: Okay.
11 MS. WARREN: You know, unfortunately we have a
12 little bit of history to look back on. I mean we have
13 Chelsea's promises, Chelsea School's promises. Their
14 attorney guaranteed everybody this and that. And I mean,
15 you know, the truth of the matter is if the house is not
16 kept with the property, we have no idea. I mean -- you
17 know.
18 MS. ROBESON: When you say with the property, you
19 mean with whatever open space -- like it could be the
20 environmental setting, it could be --
21 MS. WARREN: No, when I say with the property, I
22 mean that the 1.4-acre parcel is designated as the
23 environmental setting for the Riggs-Thompson House. That is
24 -- there's complete clarity there. There's no ambiguity.
25 There's no dual ownership. It's all with the house. It's

1 protected by the HPC. Any work that's done, any
2 construction, any driveways, any garages that -- this house
3 doesn't have a garage. Any garages that are to be built.
4 And sheds that are to go up, those all have to go through
5 HPC and that have to get a work order.
6 MS. ROBESON: Well, what if the entire lot is
7 within the environmental setting? The entire single-family
8 lot is within the environmental setting?
9 MS. WARREN: Then the people that own this house
10 will have to go to HPC for anything that they want to do.
11 Because the entire, this entire 1.4-acre parcel will have
12 been designated at the environmental setting for the house.
13 So then when this --
14 MS. ROBESON: No, the --
15 MS. WARREN: No.
16 MS. ROBESON: Assume for a minute the 37,056.
17 MS. WARREN: Okay.
18 MS. ROBESON: What happened -- what if they carve
19 that -- carve a single-family lot that's entirely within the
20 environmental setting?
21 MS. WARREN: Okay, so let's look at that. So we
22 have this. This is what they're saying is the environmental
23 setting. So this property then goes with the house.
24 MS. ROBESON: No, no.
25 MS. WARREN: That's what you're saying?

1 MS. ROBESON: No.
2 MS. WARREN: No. Okay.
3 MS. ROBESON: It's going to be -- I'm assuming
4 whatever goes with the house is going to be smaller than the
5 environmental setting.
6 MS. WARREN: Okay, but see that's where I feel
7 like we're really, we're really going down a bad road there.
8 I mean the most important thing to do is to keep the house
9 and the land together under the protection of the Historic
10 Preservation Commission because --
11 MS. ROBESON: Well, just, you know -- it's really
12 hard and I don't know about you but I don't work so well
13 after --
14 MS. WARREN: Yeah.
15 MS. ROBESON: When my stomach gets hungry, but --
16 MS. WARREN: Yeah. Well, we can stop.
17 MS. ROBESON: No, no.
18 MS. WARREN: We can start again Monday.
19 MS. ROBESON: I guess I just want to ask you this.
20 If the historic setting is not going to change or at least
21 the minimum historic setting is not going to change,
22 correct?
23 MR. HARRIS: Correct.
24 MS. ROBESON: The 37,000 we know going in,
25 nobody's arguing that's the environmental setting.

1 MS. WARREN: Okay.
2 MS. ROBESON: And your concern about structures
3 being built within a 1.4-acre area. If that -- the single-
4 family home lot is entirely within the environmental
5 setting, you don't have to worry about that guy, right?
6 MS. WARREN: As far as I know. If the entire
7 environmental setting is sold with the house --
8 MS. ROBESON: No -- okay.
9 MS. WARREN: -- all of that will be under HPC.
10 MS. ROBESON: Why is it important that the entire
11 environmental setting go with the house? It seems to me you
12 would want as little as possible of the environmental
13 setting going with the house.
14 MS. WARREN: No, I don't. I want the whole 1.4-
15 acre parcel going with the house --
16 MS. ROBESON: No.
17 MS. WARREN: -- being the designated environmental
18 setting. I do.
19 MS. ROBESON: And why would you want -- but that--
20 why would you put more into the -- what I'm getting at is
21 the more you have that goes to that private dude that's
22 going to own that house --
23 MS. WARREN: Yes.
24 MS. ROBESON: -- the more you're likely to have
25 someone go to have that environmental guy -- or have that

house guy go and ask for permits over .85 acres. Why would you do that?

MS. WARREN: I'm not sure what I -- I don't get your question.

MS. ROBESON: Yes, it's late.

MS. WARREN: Yes.

MS. ROBESON: Maybe I should -- maybe I should stop. Does anyone understand what I'm asking?

MR. BROWN: No.

MR. HARRIS: Yes. I do.

MS. ROBESON: What I'm asking is -- okay, we can wait. But, well, I'll try it one more time.

MS. WARREN: Or somebody else can explain it to me.

MS. ROBESON: No, let me just try it.

MS. WARREN: Okay.

MS. ROBESON: But you don't have to answer it. We can all take a break and start again. What I'm saying is your -- the concern you expressed is you want a restriction on -- as strong a restriction as possible on the ability to put anything either in the 1.4 acres or in these 1.5 acres. You feel that the best protection is having it designated as an environmental setting, okay. My question goes to assuming that the Council decides, yeah, they're right; 37,056. Okay, assume that for a moment. If you have a

single -- if you draw a lot around the Riggs-Thompson House that's less than 37,056 --

MS. WARREN: Okay.

MS. ROBESON: -- isn't that better for your position? Because if the guy that owns the Riggs-Thompson House eventually, he may put pressure on the HPC to say I want a shed here, I want a -- but the less he owns, the more unlikely you're going to get pressure anywhere in that 1.5 acres to erect a shed.

MS. WARREN: Okay, can I just speak now?

MS. ROBESON: Yes.

MS. WARREN: Okay. I don't buy that.

MS. ROBESON: Okay.

MS. WARREN: I'm sorry.

MS. ROBESON: That's fine.

MS. WARREN: And I'm sorry, I don't buy it all. I'm talking about a concept that I believe has the power to continue long after I'm gone. And that's keeping the land with the house. The murkier this situation gets, they own this -- you know, the public owns this, HOA owns this, this belongs to somebody else; suddenly we have a house on an island.

MS. ROBESON: I see what you're saying. So you're saying that you're concerned that the legal -- once the parcels get separated and have different legal documents

governing them that somewhere in that process it's -- the area is not going to be preserved?

MS. WARREN: Yes.

MS. ROBESON: That's what you're saying?

MS. WARREN: Yes. I'm concerned what happens after I stop researching it. Okay, let's just look -- let's just look at the history. Okay, you know, these were separate parcels. This was P-73 and this was N, you know, whatever.

MS. ROBESON: Yes.

MS. WARREN: Okay. So let's just look --

MS. ROBESON: 80.

MS. WARREN: Let's just look at how things got all, you know, mushy and compressed since the two parcels were combined. So I'm not -- my concern is that the clear things are that the greater ability down the road they have to still be clear. And if this 1.4-acre parcel goes with the house and it's all under the protection of the Historic Preservation Commission, to me that gives us the greatest protection into the future.

MS. ROBESON: Okay. I understand where you're coming from.

MS. WARREN: Okay.

MS. ROBESON: Is there anything else you want to add?

1 MS. WARREN: Oh, I do want to say one other thing.
2 MS. ROBESON: Sure.
3 MS. WARREN: That P-73 is not arbitrary as Mr.
4 Iraola said earlier. That was the parcel that the house was
5 on.
6 MS. ROBESON: I know it's a deeded lot.
7 MS. WARREN: Yes, yes.
8 MS. ROBESON: It was a --
9 MS. WARREN: But also it's not just that, it's --
10 historically when a house is designated, the entire parcel
11 that it sits on goes with it. So even though it may seem
12 like that's an odd configuration, that's the parcel that
13 would have stayed with the house if it had been designated
14 earlier or if Chelsea had never decided to buy the property,
15 if they just decided to lease it from Holy Names, or if the
16 Chelsea sale had come up later. We wouldn't be sitting here
17 arguing. It would be on a 1.4-acre parcel and it would have
18 been designated.
19 MS. ROBESON: Yes. Well, hindsight is always
20 20/20. I understand. I do get your point.
21 MS. WARREN: Okay.
22 MS. ROBESON: All right. Well, it's 6:30. Mr.
23 Harris, can you -- I'm asking you to forestall cross-
24 examination and we will continue this case until Monday the
25 -- March 26th at 9:30.

1 MR. HARRIS: I'm sorry, 9:30 it is then?
2 MS. ROBESON: Yes.
3 MR. HARRIS: Okay.
4 MS. ROBESON: Yes. And we'll continue that way.
5 But we will try to move through expeditiously. All right,
6 thank you and we'll go off the record.
7 (Whereupon, at 6:28 p.m., the hearing was
8 concluded.)
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✓ Digitally signed by Josephine Hayes

ELECTRONIC CERTIFICATE

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

PETITION OF CHELSEA RESIDENTIAL ASSOCIATES, LLC

Case No. G-892

By:

Josephine Hayes

Josephine Hayes

Transcriber