

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND

- - - - -X
:
Petition of Theodore Butz, et al.:
Applicant :
: Local Map Amendment G-881
21901 Ridge Road, Germantown :
:
:
- - - - -X

A hearing in the above-entitled matter was held on

January 18, 2013, commencing at 9:34 a.m. at the Office of

Zoning and Administrative Hearings, 100 Maryland Avenue,

Rita Davidson Memorial Hearing Room, Rockville, Maryland

20850 before:

Martin Grossman

Hearing Examiner

A P P E A R A N C E S
For the Applicant:

Jody Kline, Esq.
Miller, Miller & Canby
200-B Monroe Street
Rockville, Maryland

Gary Unterberg, Expert, Land Use Planning
Wes Guckert, Expert, Traffic
Dusty Rood, Expert, Environmental Planning
Frank G. Bossong, IV, P.E., Expert, Civil Engineering

For the Opposition:

Mary Jane Goodrick
William Hancock, Individual

C O N T E N T S

Witness:	Direct	Cross	Redirect	Recross
Wes Guckert	17	--	62	--
By Mr. Hancock	--	38	--	63
By Ms. Goodrick	--	52	--	65
Dusty Rood	69	--	88	--
By Mr. Hancock	--	83/87	--	--
By Ms. Goodrick	--	86	--	--
Frank B. Bossong	90	--	129	--
By Mr. Hancock	--	120	--	--
By Ms. Goodrick	--	127	--	--
Gary Unterberg	136	--	--	--
By Ms. Goodrick	--	166	--	--

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

2 MR. GROSSMAN: This is the resumption of the
3 public hearing on the application of Theodore H. Butz, et
4 al., LMA Number G-881, for a local map amendment to the
5 zoning ordinance requesting reclassification of a 54.349
6 acre parcel from the RE-2 zone to the PRC zone.

7 The property is owned by the applicants and is
8 known as Parcel P-429 on Maryland tax map FV-122, also known
9 as the Butz property, or the Water Tank Farm Property
10 located at 21901 Ridge Road in Germantown, Maryland.

11 The applicants are proposing up to 140 age-
12 restricted single-family homes and a community center. The
13 hearing was begun on January 14, 2013, but could not be
14 completed on that date as specified in the public notice at
15 the initiation of this hearing. It will be resumed today on
16 January 18, 2013.

17 My name is Martin Grossman. I'm the hearing
18 examiner, which means I will take evidence and write a
19 report and recommendation to the Council sitting as District
20 Council. And the Council will make the final decision in
21 the case. Will the parties identify themselves for the
22 record, please?

23 MR. KLINE: Good morning. For the record, my name
24 is Jody Kline. I'm an attorney with the law firm of Miller,
25 Miller and Canby with offices at 200-B Monroe Street in

Statement:

William Hancock 171

Mary Jane Goodrick 173

E X H I B I T S

Exhibit No.		Marked/Received
1-88	Premarked	-- 187
89	Ltr. w/Forest Conservation Plan and Water Quality Plan	11 187
90	State Highway Admin. Ltr.	27 187
91	Excerpt re Trip Generation	91 187
92	Tiers Map	113 187
93	Revised Version Exhibit No. 66	150 187

1 Rockville. We have scheduled to call three witnesses this
2 morning, Mr. Grossman.

3 MR. GROSSMAN: All right. For the record, sir?

4 MR. HANCOCK: William Hancock. Resident of Brink
5 Meadow, adjoining property.

6 MR. GROSSMAN: Ms. Goodrick?

7 MS. GOODRICK: I'm Mary Jane Goodrick, and I'm
8 representing the Greater Goshen Civic Association.

9 MR. GROSSMAN: All right. And Mr. Kline, who are
10 your three witnesses today?

11 MR. KLINE: That would be Mr. Wes Guckert, Mr.
12 Dusty Rood, R-O-O-D, and Mr. Frank Bossong, B-O-S-S-O-N-G.
13 You have resumes in the file for all three of the gentlemen.

14 MR. GROSSMAN: Okay. Before we proceed, I have a
15 couple of preliminary matters. Once again, I remind the
16 applicant, but I also will be happy to receive copies,
17 electronic copies of anything they file from the opposition.
18 But the applicant, represented by counsel, is required to
19 file electronic copies, as well as hard copies of their
20 filings.

21 The second thing is, on January 15, 2013, I sent
22 and e-mail to Mr. Kline with copies to all the opposition at
23 this point. And I put a copy in the record. I raised four
24 points in the e-mail. And they are, the first was a
25 technical error on the development plan, and I misnamed it a

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1 schematic development plan. And I asked that that be
2 correct.

3 I asked that Mr. Kline have a witness here today
4 to explain precisely how his point totals were arrived at
5 for the amenities. I also asked that he have a witness
6 address the points made by Scott Whipple in Attachment 1 to
7 the Staff Report regarding potential impact on historic
8 setting. And I asked if the applicant was interested in
9 putting forth an alternative plan with a little less
10 density.

11 Mr. Kline since has filed a response to that last
12 point indicating that the applicant would not be putting
13 forth an additional plan. They wish to go forward with the
14 development plan they have.

15 Also, on January 16th, I sent an e-mail to
16 Technical Staff, with copies to the parties, and a copy is
17 in the record. And I asked a number of questions. I asked
18 whether technical staff agreed with my observations about
19 the applicant's proposed surrounding area, and I asked if
20 technical staff would give me some information about the
21 proposed, Exhibit 56, the proposed point count for the
22 amenities.

23 And I asked if the additional binding textual
24 element regarding ensuring that there would be, that the
25 homeowners association would enforce the age-restriction was

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1 something that would have to go back to the Planning Board.
2 Technical Staff responded to that e-mail, and their response
3 is also in the record, and indicated that they agreed that
4 the surrounding area should be as I suggested it, that is,
5 should include properties to the east of Ridge Road.

6 Secondly, they gave me information on how the
7 point totals were arrived at, although they are still up in
8 the air, the question of which figures they used to define
9 the amenities point count.

10 Specifically two of the questions that I believe
11 are still up in the air is which factor, age factor, do they
12 use. The manual that technical staff has to compute these
13 points indicates an age categories of seniors of 65-plus,
14 and adults range up to that age. And here, of course, the
15 community is restricted not to 65-plus, but to 50-plus. So
16 there's a question of which factor to use. The Technical
17 Staff said they would check to see what was done in Leisure
18 World, and would get back to me on that point.

19 The second issue I raised was whether or not the
20 point count for individual community space rooms was an
21 appropriate way to count that. And they will get back to me
22 on that point as well. All right. Let's see if there is
23 anything else here.

24 Oh yes. Also, Mr. Kline provided a disk with the
25 recording of the Planning Board session at which this case

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1 was discussed, and referenced some points in that
2 discussion, which he thought we should pay attention to.

3 I have not listened to that disk because in this
4 situation, although I think that it would be appropriate to
5 hear from, hear what some of the Planning Board members
6 said, given the brief letter that we got from the Planning
7 Board in Exhibit 54, I felt the opposition did not have the
8 opportunity to review this and to comment on it, which they
9 should have the opportunity to do.

10 So what I was going to suggest, Mr. Kline, is that
11 if you wish to have the Planning Board discussion in the
12 record, or portions of it, that you submit a transcript of
13 that discussion with, and copies to the opposition. And I
14 will give them time to respond and comment on any portions
15 of it that you wish to highlight, or any portions that they
16 wish to highlight. I think that's the only fair way to go
17 about this. Does that seem like a fair procedure to you?

18 MR. KLINE: That's fine with me.

19 MR. GROSSMAN: The opposition?

20 MS. GOODRICK: Yes.

21 MR. GROSSMAN: Okay. All right. I think the
22 easiest thing would be to provide them and me with not just
23 the hard copy transcript, but a disk of the transcript as
24 well, hopefully in Word format.

25 MR. KLINE: I'll reserve the right to do that at

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1 all, because I sort of made it available because questions
2 had come up. As long as everybody notes the duration of the
3 hearing which seemed to be in question, that was one of the
4 things I wanted to get through. So we'll let you know how
5 we're going to handle that.

6 MR. GROSSMAN: Okay. Ms. Goodrick?

7 MS. GOODRICK: But we, yes, we would appreciate a
8 transcript of --

9 MR. GROSSMAN: Right. Ordinarily, as I mentioned
10 at, I think, the last hearing, the proceedings before the
11 Planning Board are not usually in the record here, in part
12 because they don't have evidence under cross-examination and
13 that sort of thing.

14 But if any part seeks to introduce proceedings
15 before the Planning Board, then we look at the question of
16 what's appropriate to admit and what's not. I think in this
17 case when you just have a voice recording of it, which is
18 what was submitted to me, I presume, on the disk. I presume
19 the disk did not have a transcript, but was just a voice
20 recording?

21 MR. KLINE: It does not. Correct.

22 MR. GROSSMAN: Then it's very difficult for
23 anybody to make their objections or make their comments or
24 point to other portions of it that they wish to have viewed.
25 And so if anybody wants the Planning Board discussion in the

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1 record, as apparently Mr. Kline suggested he would, then I
2 think the way to do it is by transcript and by reference to
3 specific transcript pages that he thinks are particularly
4 relevant.
5 And then you would have the opportunity, I would
6 say 10 days, to come back with any portions that you think
7 are relevant, or any objections to what Mr. Kline has
8 proposed.
9 MS. GOODRICK: Yes, thank you.
10 MR. GROSSMAN: Okay. All right. Any other
11 preliminary matters?
12 MR. KLINE: One procedural matter, Mr. Grossman.
13 Exhibit 62 and 63 were put in the record on Monday were
14 copies of the Planning Board's resolution on forest
15 conservation plans --
16 MR. GROSSMAN: Yes.
17 MR. KLINE: -- and the water quality plan. In
18 yesterday's mail I received a transmittal from Park and
19 Planning of corrected resolutions --
20 MR. GROSSMAN: Okay.
21 MR. KLINE: -- which in both cases say, "The
22 correction of this resolution is only to assert the
23 applicant's name in the heading of the resolution," in both
24 cases.
25 MR. GROSSMAN: Okay.

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1 MR. KLINE: I submitted a copy, or I'm sorry, I
2 only had one copy, and I gave it to Ms. Goodrick and Mr. --
3 MS. GOODRICK: Hancock.
4 MR. GROSSMAN: Goodrick and Mr. Hancock.
5 MR. KLINE: I'm tired already. Yes. So I'd ask
6 that that be made an exhibit in the record.
7 MR. GROSSMAN: Okay.
8 MS. GOODRICK: Excuse me?
9 MR. GROSSMAN: Yes.
10 MS. GOODRICK: Can I ask another question?
11 MR. GROSSMAN: Yes.
12 MS. GOODRICK: And that is, the witnesses, I would
13 be just interested in the subject areas of the witnesses
14 that are being called.
15 MR. GROSSMAN: Okay. We'll get to that in one
16 second.
17 MS. GOODRICK: Okay.
18 MR. GROSSMAN: Let me just -- okay. So Exhibit 89
19 is Mr. Kline's letter of January 17, 2013, conveying 89(a)
20 which is the corrected resolution adopting the, approving
21 the forest conservation plan, (a), corrected Planning Board
22 resolution approving, they approved the preliminary forest
23 conservation plan or a final?
24 (Exhibit No. 89 was marked
25 for identification.)

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1 MR. KLINE: Preliminary.
2 MR. GROSSMAN: Preliminary forest conservation
3 plan. And 89(b) is the corrected Planning Board resolution
4 approving the water quality plan.
5 MR. KLINE: Preliminary also.
6 MR. GROSSMAN: Okay. The preliminary water
7 quality plan. All right. Mr. Kline, would you specify what
8 these additional three witnesses will testify to?
9 MR. KLINE: Mr. Guckert will be basically
10 qualified as a traffic engineer and transportation planner.
11 Mr. Rood, I have to dig my notes up here and get you an
12 exact title of what we want to certify him as. I had
13 written an expert in the field of environmental science.
14 You're actually going to be?
15 MR. ROOD: Why don't you go with environmental
16 planning and water quality and forest conservation.
17 MR. KLINE: Environmental planning, water quality,
18 and forest conservation. And Mr. Bossong in the area of
19 civil engineering, and will address public facilities, other
20 than transportation facilities.
21 MR. GROSSMAN: All right.
22 MR. KLINE: Okay. One last thing, Mr. Grossman.
23 MR. GROSSMAN: Yes, sir.
24 MR. KLINE: Mr. Hancock asked me a question before
25 the hearing started. I gave him an answer, what I thought

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1 was going to happen, and I don't always know how it will
2 flow. So maybe he will have an opportunity to ask the
3 question of you now, and maybe you can answer now, so I
4 didn't mislead him.
5 MR. GROSSMAN: Mr. Hancock.
6 MR. HANCOCK: I was just asking about the two
7 letters, the one we got yesterday from Elm Street, and one
8 from Miller, Miller and Canby, if they were going to be made
9 a part of the record, and if so, would we have an
10 opportunity to comment on them.
11 MR. GROSSMAN: I don't know of these letters.
12 What letters are we talking about?
13 MR. KLINE: They were submissions to your office,
14 and I'm trying to find you the exact one. It was actually
15 sent to you, e-mail.
16 MR. GROSSMAN: When was this?
17 MR. KLINE: Yesterday afternoon.
18 MR. GROSSMAN: Okay.
19 MR. KLINE: It would be Exhibit No. 78.
20 MR. GROSSMAN: Okay.
21 MR. KLINE: No. I'm going to take that back, Mr.
22 Grossman.
23 MR. GROSSMAN: Okay.
24 MR. KLINE: I guess it's 83.
25 MR. GROSSMAN: All right. So that was your

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1 letter, you hand delivered two letters to me. One was the
 2 letter in 83 stating why you declined to provide an
 3 alternative development plan for the proposed community, and
 4 the other was a letter which enclosed the MP-4, this audio
 5 version of the Planning Board session.
 6 MR. KLINE: Right.
 7 MR. GROSSMAN: Was there some other --
 8 MR. HANCOCK: It was a letter from Elm Street.
 9 MR. GROSSMAN: I don't think I received anything
 10 from Elm Street.
 11 MR. KLINE: It was in the bundled material.
 12 MR. GROSSMAN: I know we had, we had a letter from
 13 Elm Street that's in the record.
 14 MR. KLINE: No, this is a subsequent letter. It's
 15 listed as Exhibit No. 80(c).
 16 MR. GROSSMAN: Okay. Let's see.
 17 MR. HANCOCK: It's dated the 16th.
 18 MR. GROSSMAN: Okay. Okay. Yes. Date received,
 19 January 16, 2013. Oh, that was a filing that was made by I
 20 guess Mr. Orobona of your office brought them in. But in
 21 any event, there's a letter from Elm Street to me that
 22 outlines agreement with the applicant regarding local map
 23 amendment.
 24 MR. KLINE: Okay.
 25 MR. GROSSMAN: And when you say, will be made part

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1 of the record, we have a two-step process for what's in the
 2 record. The first step is, it's submitted, identified, and
 3 then at the end of the proceeding usually I ask the question
 4 whether or not the applicant wishes to have the exhibits
 5 admitted into evidence, to which they always say yes.
 6 And then I ask if there is any objection. And
 7 then the opposition has an opportunity to object or to
 8 submit their own exhibits when they appear. And then we
 9 rule on what is appropriate to be admitted and what would be
 10 excluded.
 11 Generally, in land use cases almost everything is
 12 admitted, and then it's treated according to its weight.
 13 But there may be, there are occasions in which something is
 14 so inherently unreliable or whatever, that it should not be
 15 admitted. So did you have something to say about these
 16 exhibits, Mr. Hancock?
 17 MR. HANCOCK: Yes. It was just, it was comment on
 18 what they were saying. I don't know if that's appropriate
 19 to do that here or if it should be submitted in writing.
 20 MR. GROSSMAN: Well, you are certainly welcome to
 21 submit something in writing, but you can definitely, when
 22 you have an opportunity to testify today, you can certainly
 23 comment.
 24 MR. KLINE: Well, he has testified before.
 25 MR. GROSSMAN: Right.

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1 MR. KLINE: We would not object to him testifying
 2 again, on that subject.
 3 MR. GROSSMAN: Sure. Okay. Any other preliminary
 4 matters? Ms. Goodrick.
 5 MS. GOODRICK: Similar to what Mr. Hancock
 6 requested --
 7 MR. GROSSMAN: Yes.
 8 MS. GOODRICK: -- Elm Street sent the letter in
 9 that had to do with an agreement between the Elm Street and
 10 the Butz property.
 11 MR. GROSSMAN: Yes.
 12 MS. GOODRICK: And we would like to discuss that.
 13 So do we need to say that to you now?
 14 MR. GROSSMAN: No. I mean, you have not
 15 testified.
 16 MS. GOODRICK: No, I have not.
 17 MR. GROSSMAN: And you will certainly, when it's
 18 your opportunity to testify, you can say whatever it is that
 19 you want about that, anything that's relevant to this case,
 20 and not too cumulative --
 21 MS. GOODRICK: No.
 22 MR. GROSSMAN: -- you will be permitted to testify
 23 on.
 24 MS. GOODRICK: And then they will respond?
 25 MR. GROSSMAN: They can. They don't have to.

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1 They have a right, they have a right after you put on your
 2 case to put on rebuttal evidence if they have any and they
 3 wish to. And it's also an opportunity to argue about the
 4 significance of something if they wish to argue about it,
 5 and we'll let you respond to any argument they make.
 6 MS. GOODRICK: Okay.
 7 MR. GROSSMAN: All right.
 8 MS. GOODRICK: Thank you.
 9 MR. GROSSMAN: We try to be fair to all sides.
 10 Everybody gets to be heard.
 11 MS. GOODRICK: Right. Thank you.
 12 MR. GROSSMAN: Okay. All right. Any other
 13 preliminary matters?
 14 MS. GOODRICK: No, sir.
 15 MR. GROSSMAN: All right. Then your next witness,
 16 Mr. Kline?
 17 MR. KLINE: Mr. Guckert. We'd like to call Mr.
 18 Wes Guckert as our next witness, please.
 19 MR. GROSSMAN: All right. Mr. Guckert, would you
 20 raise your right hand, please?
 21 (Witness sworn.)
 22 MR. GROSSMAN: All right. You may proceed.
 23 DIRECT EXAMINATION
 24 BY MR. KLINE:
 25 Q Good morning, Mr. Guckert. Would you please state

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1 and spell your name and give us your business address?
2 A Certainly. For the record, my name is Wes
3 Guckert, G-U-C-K-E-R-T. Business address is 9900 Franklin
4 Square Drive, Baltimore, 21236. I am employed by the
5 Traffic Group, Incorporated.
6 Q And your profession, Mr. Guckert?
7 A I'm a traffic and transportation planner.
8 Q Have you ever qualified as an expert in those
9 fields before this hearing examiner or this Office of Zoning
10 and Administrative Hearings?
11 A Dozens of times.
12 MR. KLINE: Mr. Grossman, Exhibit No. 55(e) is Mr.
13 Guckert's resume. And based on his previous qualification
14 and as explained in the resume, years of experience, I'd
15 like to offer him as an expert in the field of traffic
16 engineering and transportation planning.
17 MR. GROSSMAN: All right. Mr. Hancock or Ms.
18 Goodrick, do you have any questions regarding this witness'
19 qualifications?
20 MR. HANCOCK: No.
21 MS. GOODRICK: No, I do not.
22 MR. GROSSMAN: All right. Based on Mr. Guckert's
23 long experience of testifying as an expert in transportation
24 planning and traffic engineering, I accept him as an expert
25 as such.

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1 MR. KLINE: Thank you.
2 BY MR. KLINE:
3 Q Mr. Guckert, Exhibit No. 20 in the record of the
4 case is a local area transportation review prepared by you
5 and your firm related to this project. Would you please
6 describe the methodology of the report and then your
7 findings and conclusions?
8 A Certainly. Exhibit No. 20 was prepared under
9 basically the auspices or scoping agreement with the
10 Maryland National Capital Park and Planning transportation
11 staff. We submitted a scope agreement telling them what the
12 study would need to cover. They came back and said, you
13 need to look at these intersections, following these
14 particular guidelines.
15 MR. GROSSMAN: And what intersections did they
16 tell you to look at?
17 THE WITNESS: They told us to examine two
18 intersections, and that would be both locations along, along
19 Route 27 at both Brink Road and at Skylark Road. And that
20 is shown on page 12, Exhibit 5, my Exhibit 5 contained
21 within Exhibit No. 20.
22 MR. GROSSMAN: Okay.
23 THE WITNESS: Following, following the
24 identification of the intersections requested by staff, they
25 also provided us with a list of background developments,

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1 which, Mr. Grossman, as I think you are aware, background
2 developments are approved developments that have not yet
3 been constructed. And those developments were basically
4 Clarksburg Town Center, Clarksburg Village, Greenway
5 Village, and Goddard School.
6 We followed the standard guidelines and the LATR
7 guidelines, which is local area transportation review. We
8 determined, using Montgomery County trip generation rates,
9 the amount of traffic that would be generated by the four
10 developments, assigned that traffic to the study
11 intersections. And then went about to determine the amount
12 of traffic that would be generated by the subject property.
13 We utilized the institute of transportation
14 engineers trip generation formula for senior adult housing,
15 determined on page 21 of my report, that the 140 senior
16 units would generate about 30 morning peak hour trips, and
17 about 38 evening peak hour trips.
18 That traffic was then assigned, again, to the road
19 network, as shown on page 82, with about 85 percent of the
20 traffic proceeding to and from the south along Route 27.
21 The rest of it spread throughout north on 27, Brink Road,
22 and Snowden Farm Parkway.
23 MR. GROSSMAN: But before you go into the
24 specifics of any findings, I have before me three exhibits
25 relating to traffic. Exhibit No. 20, which you mentioned,

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1 Exhibit No. 31(a), and Exhibit No. 38(a).
2 THE WITNESS: What is the title of the other two
3 exhibits? Do you know?
4 MR. GROSSMAN: Exhibit No. 31(a) is also called,
5 traffic impact study. And it's dated April 2009.
6 MR. KLINE: You know what --
7 MR. GROSSMAN: But it says, updated July of 2009.
8 And then Exhibit No. 38(a) is dated July 20, 2012.
9 MR. KLINE: Mr. Grossman --
10 MR. GROSSMAN: Yes.
11 MR. KLINE: -- I gave you the wrong reference
12 number. Let us say that there was a traffic study prepared
13 in 2009 by a previous traffic engineer. And that's Exhibit
14 No. 20, and Exhibit No. 31 and 31(a). And that is
15 superseded by Exhibit No. 38(a) --
16 MR. GROSSMAN: Okay.
17 MR. KLINE: -- which is the traffic study Mr.
18 Guckert's been talking about.
19 MR. GROSSMAN: Okay.
20 MR. KLINE: I stand corrected.
21 MR. GROSSMAN: Okay. So that is Exhibit No.
22 38(a). And I also noticed that the original traffic
23 studies, 20 and 31(a) call the property Orchard Run, I
24 think.
25 MR. KLINE: It was a marketing name that we were

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1 using at the time.
2 MR. GROSSMAN: Okay. But right now, the name at
3 this point is, Courts at Clarksburg Village, is that
4 correct?
5 MR. KLINE: If it's liked enough to get developed,
6 yes, sir.
7 MR. GROSSMAN: Yes. Okay.
8 THE WITNESS: And so all of my references, for the
9 record, all of my references where I said Exhibit 20, should
10 be changed to Exhibit No. 38(a).
11 MR. GROSSMAN: I understand. Okay. So now to the
12 substance of what you were saying. 80 percent of the
13 traffic was --
14 THE WITNESS: So we assigned 85 percent of the
15 traffic to and from the south along Route 27. That was
16 found to be acceptable to all the agencies. We determined
17 the total peak hour traffic, then we undertook standard
18 critical lane volume analysis using the procedures set forth
19 in the guidelines, found that the intersections, site access
20 at Route 27 and Snowden Farm Parkway, which is A-305, Brink
21 Road, and Skylark Road, would all fall within the acceptable
22 standards determined by the Planning Commission staff.
23 MR. GROSSMAN: And what is that standard for those
24 intersections?
25 THE WITNESS: That standard is 1,425.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: And that standard is outlined on
3 page seven of the staff report that is dated December 20,
4 2012. And I would, is there an exhibit number for this
5 staff report?
6 MR. KLINE: There is. It looks like it's number
7 53.
8 MR. GROSSMAN: Yes.
9 THE WITNESS: Okay. So on page seven of Exhibit
10 No. 53, Mr. Grossman, under the title, local area
11 transportation review and policy area mobility review, the
12 third line indicates that the critical lane volume standard
13 is 1,425.
14 MR. GROSSMAN: Right. I just want to make sure
15 that Mr. Hancock and Ms. Goodrick understand what this
16 analysis is, what this local area transportation review
17 analysis is.
18 Essentially, the technical staff tells the
19 applicant which intersections they want to have studied.
20 That's considered the scope of the review. Each
21 intersection, each area in the County has a specification of
22 what the expected maximum traffic volume would be, or at
23 least what they call a critical lane volume standard for
24 that area. And the standard for this area, for those
25 intersections, is 1,425 critical lane movements.

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1 Then the applicant's expert does a study to
2 determine how many, what the number of trips would be that
3 would be generated by this proposed development. And then
4 he assigns those trips in particular directions and
5 determines what would be the impact, how many critical lane
6 movements would be going on through the particular
7 intersection as a result of this project.
8 He adds to that the existing background traffic.
9 And he adds to that the proposed projects that are already
10 in, have been approved and are in the process. And he comes
11 up with a total critical lane volume that is expected to be
12 imposed on those intersections by those factors.
13 And that's what Mr. Guckert just testified would
14 be less than the maximum critical lane volume assigned by
15 the County to these intersections. Did I summarize that
16 fairly, Mr. Guckert?
17 THE WITNESS: Yes, sir. I was going to, whether
18 we need to swear you in or not, I don't know. Yes, sir.
19 You did an excellent job.
20 MR. GROSSMAN: I've been sworn at by a lot of
21 people.
22 THE WITNESS: Excellent job. Thank you.
23 MR. GROSSMAN: All right.
24 MS. GOODRICK: Excuse me. So is 1,425 an
25 individual vehicle or motorcycle, is it the total volume?

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1 Is that what the 1,425 is?
2 MR. GROSSMAN: No. It's actually a fairly
3 complicated little technique in which they develop which
4 movements through the intersection are considered critical
5 lane movements. So it's not precisely just how many. Mr.
6 Guckert could explain it better than I can.
7 MR. HANCOCK: Is there a time period assigned to
8 that?
9 THE WITNESS: It's the peak one hour, the peak
10 commuting hour in the morning, peak commuting hour in the
11 evening. And indeed, it's a mathematical calculation based
12 upon the number of left turns versus right turns versus
13 throughs versus the number of lanes.
14 MR. HANCOCK: And that's determined at 1,425 per
15 intersection?
16 THE WITNESS: As being the threshold without
17 needing improvements.
18 MR. HANCOCK: What is the 30 trips? How does that
19 work?
20 THE WITNESS: The 30 trips is the amount of
21 traffic that's spread out over the three access points.
22 MR. HANCOCK: In other words --
23 MR. KLINE: Well, how about if we do the cross-
24 examination at a later time, sir?
25 MR. GROSSMAN: I think that's fair. I wanted them

Page 26

1 to understand --
2 MR. KLINE: Okay
3 MR. GROSSMAN: -- what the testimony was. But I
4 think that's fair.
5 MS. GOODRICK: Yes. Thank you.
6 MR. GROSSMAN: All right.
7 BY MR. KLINE:
8 Q Mr. Guckert, in your opinion, do there need to be
9 any network improvements before we have occupancy and
10 traffic generation from the proposed units?
11 A Absolutely not. In fact, Mr. Grossman, the
12 Planning Staff concurred with my methodology, the analysis,
13 the calculations. The State Highway Administration did the
14 same, concurred with my report and my findings.
15 MR. GROSSMAN: Is there a letter in the file from
16 the State Highway Administration?
17 MR. KLINE: I believe it would be an attachment to
18 the staff report. If you want to give me a second, I can
19 look that up. That would be the normal way Park and
20 Planning would handle it.
21 MR. GROSSMAN: I don't recall it off the top of my
22 head. That's why.
23 MR. KLINE: Let's do it the easy way. Mr. Guckert
24 came well prepared and has a copy of it.
25 MR. GROSSMAN: All right.

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1 MR. KLINE: So after showing it to Mr. Hancock and
2 Ms. Goodrick, we'll submit it in the record.
3 (Discussion off the record.)
4 THE WITNESS: While Mr. Hancock is looking at it,
5 this letter was submitted to Ms. Kamen of Staff, and I,
6 quite frankly, do not remember seeing it inside of Exhibit
7 No. 53.
8 MR. GROSSMAN: No, I'm looking at it on page 19 of
9 the staff report, is a list of the attachments, and I don't
10 see that one. She attached everything else in the world,
11 but not that one.
12 THE WITNESS: But we have it here.
13 MR. GROSSMAN: Okay.
14 THE WITNESS: So we have complete agreement by
15 both of the agencies.
16 MS. GOODRICK: Is it possible that maybe staff can
17 make a copy of this? In other words, or give me two minutes
18 to write something down? One minute?
19 MR. GROSSMAN: Sure. Sure.
20 MS. GOODRICK: Okay. Sorry. Okay. I'm finished.
21 MR. GROSSMAN: We'll call that Exhibit No. 90.
22 Thank you. And that's September 13, 2012, letter from State
23 Highway Administration concurring in traffic study
24 conclusions. Okay. Mr. Kline.
25 (Exhibit No. 90 was marked

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1 for identification.)
2 BY MR. KLINE:
3 Q Is it your conclusion, then, Mr. Guckert, that the
4 surrounding transportation network is adequate to handle the
5 traffic that would be generated by the proposed development?
6 A Absolutely.
7 Q Would you address the issue of the successor for
8 PAMR. Does TPAR have anything to do with this, with a
9 little bit of explanation what those two words mean for the
10 folks sitting here?
11 A Sure. PAMR is an acronym for Policy Area Mobility
12 Review, which was a process that the planning staff and the
13 County Council used for several years as a step one of a
14 two-step process. PAMR, step one, local area review, or the
15 traffic study, step two.
16 PAMR has now been superseded by another acronym
17 called TPAR, Transportation Policy Area Review. TPAR has
18 now become simply an additional tax as it related to money
19 that developers or home builders need to pay to the County.
20 And in this particular area, while the rules are
21 still being tightened up, it's likely that the TPAR tax for
22 this project will be on a per unit basis at a rate of about
23 25 percent of the other tax, called a transportation impact
24 tax.
25 So there's a transportation impact tax, and there

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1 would be a TPAR tax. TPAR would be an additional 25 percent
2 of the transportation tax.
3 Q And give us an order of magnitude. What does that
4 mean? \$1,000, \$5,000?
5 A It will be in the range of about \$1,000 a unit,
6 \$600 to \$1,000 additional per unit.
7 Q All right. Thank you.
8 MR. GROSSMAN: Additional beyond the
9 transportation --
10 THE WITNESS: Yes, sir.
11 MR. GROSSMAN: Explain what PAMR is, because
12 actually, if I understand the way the statute is written,
13 PAMR is what applies to the rezoning, even though TPAR may
14 be what applies to your later transportation and public
15 facilities review, because PAMR is what was in place at the
16 time the zoning application was filed.
17 THE WITNESS: Certainly. You'll see in both the
18 staff report, which is Exhibit No. 53, and the recent State
19 Highway Administration letter, plus in, also listed in
20 Exhibit No. 38(a), there will be for PAMR, for this area,
21 for this type of project, there will be a lump sum tax that
22 would have to be paid for purposes of zoning.
23 It will not apply when we get to subdivision when
24 adequate public facilities are actually tested. But for
25 purposes of zoning, it's about a \$46,000 tax overall for the

Page 30

1 project.

2 MR. GROSSMAN: All right. And explain how that

3 was arrived?

4 THE WITNESS: If you'll give me one second, here.

5 It's arrived by first looking at the amount of traffic that

6 is generated. And here, the Courts at Clarksburg, is in the

7 Clarksburg policy area. And for fiscal year 2012, 10

8 percent of the trips must be mitigated or have a fee paid in

9 lieu. And on page 25 --

10 MR. GROSSMAN: That's 20 percent of new trips?

11 THE WITNESS: Correct. Page --

12 MR. KLINE: 10 percent.

13 THE WITNESS: I'm sorry, 10 percent of new trips.

14 MR. GROSSMAN: Okay.

15 MR. HANCOCK: Page 25 of Exhibit No. 38(a), Mr.

16 Grossman, has a two sentence description. 10 percent of all

17 the trips, and a, when those trips are less than 30, the

18 resulting trip is less than 30, in this case, 38 trips for

19 us in the evening peak hour. And if you look on page 26, we

20 result 10 percent require is four. And then you multiply

21 four times \$11,700, so that the resulting PAMR payment,

22 mitigation payment, is \$46,800. And that's on page 26 of

23 Exhibit No, 38.

24 MR. GROSSMAN: I'm sorry. What's the page

25 reference again?

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1 THE WITNESS: Page 26, Exhibit 38(a) --

2 MR. GROSSMAN: Okay.

3 THE WITNESS: -- describes the PAMR payment and

4 how it was arrived.

5 MR. GROSSMAN: Okay. So essentially, PAMR takes

6 the number of new trips that will be generated and

7 multiplies it times a factor, which in this case is 10

8 percent.

9 THE WITNESS: Yes.

10 MR. GROSSMAN: And then multiplies the result

11 times, it's \$11,700?

12 THE WITNESS: \$11,700.

13 MR. GROSSMAN: Which is the figure used to

14 determine the amount of the tax or the payment that would be

15 required of the applicant to compensate the County for the

16 new trips that would be generated.

17 THE WITNESS: That's correct.

18 MR. GROSSMAN: Okay. And TPAR you said is really

19 just a tax. How does TPAR work?

20 THE WITNESS: TPAR is a tax that the County

21 Council has established. And it's, the last iteration was

22 to take the transportation impact tax times a factor of 25

23 percent, and that becomes an additional tax. The TPAR tax,

24 additional tax, replaced PAMR.

25 MR. GROSSMAN: Okay. And where does the

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1 transportation impact tax come from?

2 THE WITNESS: That comes from the County Council.

3 They decide how much money they want each policy area or

4 each type of development to pay.

5 MR. GROSSMAN: So, is that generated by the number

6 of trips, that particular tax?

7 THE WITNESS: No, sir. No, sir.

8 MR. GROSSMAN: How is that calculated?

9 THE WITNESS: You'll have to ask the Council, but

10 they determine what they wanted each type of land use to

11 pay.

12 MR. GROSSMAN: All right.

13 THE WITNESS: I do not believe it's a mathematical

14 rational calculation, though.

15 MR. GROSSMAN: Okay. In fairness to the

16 witnesses, this is just going into effect January 1 of this

17 year. So I don't know that there are any projects yet that

18 have been analyzed under it.

19 THE WITNESS: Under TPAR?

20 MR. GROSSMAN: Yes.

21 THE WITNESS: I do not believe so, either, because

22 the payments are made at the time of building permit.

23 MR. GROSSMAN: All right. Okay. All right, Mr.

24 Kline.

25 BY MR. KLINE:

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1 Q Mr. Guckert, we've posted up here on one of the

2 easels Exhibit No. 34(g) which is an illustrative plan of

3 the proposed Courts of Clarksburg Development. you have

4 worked with Rodgers and Associates in laying out the

5 circulation system, both pedestrian and vehicular, and

6 bicycle for this community?

7 A Yes, sir.

8 Q Okay. In your professional opinion, are those

9 circulation systems safe, adequate and efficient, given the

10 transportation network shown?

11 A Absolutely safe and adequate and efficient. And

12 what's important, Mr. Grossman, is that as you are aware by

13 now, and I'm referring again to Exhibit No. 34(g), as you

14 are aware, there are three points, basically two points of

15 access for the southern portion of Exhibit No. 34(g). And

16 that's south of A-305 and north of Brink Road.

17 And when you take and you start to look at how the

18 property is distributed, it really is almost set up in

19 thirds, with the top third north of A-305, exiting on --

20 excuse me, yes, the top third north of 305, exiting onto

21 305.

22 The middle half of the project will likely exit

23 onto A-305. the southern half of the project likely exiting

24 out, for the most part, existing out onto Brink Road. And

25 as I stated earlier, with about 40 peak hour trips, you'll

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1 have, Mr. Grossman, about one car every four to five minutes
2 coming out each of the third of the entrances. So one car
3 every four to five minutes. A really, really small impact.
4 And therefore my statement about the efficiency of the
5 overall operation the way this has been designed.
6 MR. GROSSMAN: All right.
7 MR. KLINE: No further questions of Mr. Guckert.
8 MR. GROSSMAN: Before I open this to cross-
9 examination, let me just ask Mr. Guckert, there was some
10 testimony yesterday concerning the safety of the traffic on
11 Brink Road, or the safety of crossing Brink Road on the
12 southern end of the project in order to get to the park
13 across the street. Can you address that issue? Is there a
14 safety issue regarding traffic on --
15 THE WITNESS: I cannot address the safety issue
16 that was discussed, but the testimony was not about our
17 access point. The testimony was about coming, for whatever
18 reason, from the adjoining neighborhood to cross into the
19 park.
20 MR. GROSSMAN: No. Well, I mean, the testimony
21 was addressing the suggestion that was made that there would
22 be an exit from the community in which, and a crosswalk
23 established at that exit point on the southern end where
24 people could then cross directly to the park directly south
25 of Brink Road. That was --

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1 THE WITNESS: I disagree with you, but I'll
2 address your question.
3 MR. GROSSMAN: All right.
4 THE WITNESS: Okay. In our opinion, the access
5 and the sight distance at this location would be
6 satisfactory.
7 MR. GROSSMAN: When you say, at this location,
8 what location?
9 THE WITNESS: I'm sorry. At the access point to
10 the project shown on Exhibit No. 34(g), access point onto
11 Brink Road, in our opinion, would be safe and satisfactory.
12 MR. GROSSMAN: Okay.
13 BY MR. KLINE:
14 Q And that would be because why?
15 A That would be because of the amount of traffic,
16 number one, on the road, there's enough gaps. Number one.
17 And number two, there is sight distance that's satisfactory
18 at this location.
19 MR. GROSSMAN: No, my sense was that the sight
20 distance they were talking about is based in part upon the
21 hilly nature of the area, as described by the witness, and
22 the fact that they said traffic would be coming, I guess
23 from the east, would be a concern. I'm not sure about that.
24 But are you saying that in your opinion that a crosswalk
25 between the southern, located around the southern access

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1 point to the project, crossing Brink Road, would be a safe
2 crossing point for pedestrians?
3 THE WITNESS: Yes, sir. Otherwise, otherwise the
4 Department of Transportation would never allow the entrance
5 to be built.
6 MR. GROSSMAN: Well, is that a car, an auto -- is
7 that entrance on the southern end an automobile entrance?
8 THE WITNESS: Yes.
9 MR. GROSSMAN: Okay. But I'm talking about the
10 pedestrian traffic at the crosswalk.
11 THE WITNESS: I understand. But the sight
12 distance that's required by the Department of Transportation
13 is not just for cars. It's for pedestrians as well. You've
14 got to be able to see cars that are exiting from the
15 driveway, whether they are cars or people, crossing Brink
16 Road, have got to be able to see oncoming vehicles.
17 MR. GROSSMAN: Okay. So is it your opinion that
18 there would be no safety issue in establishing a crosswalk
19 at that point to give residents of the proposed project
20 access to the park south of Brink Road?
21 THE WITNESS: It is my testimony and opinion.
22 MR. GROSSMAN: All right.
23 BY MR. KLINE:
24 Q Mr. Guckert, does the proximity of that driveway
25 and that crossing which is what the real issue is, to the

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1 intersection of 27 and Brink Road, which is signalized, does
2 that help create the gaps you mentioned in terms of the
3 opportunities to cross?
4 A Well, indeed, it does, because as vehicles,
5 because vehicles that are westbound, and Mr. Grossman
6 indicated, some of them, if they're coming westbound across
7 Route 27, will be regulated by the traffic signal
8 themselves. Left turns will be regulated by the traffic
9 signals. So it's not as if it's a mid-block crossing of
10 Route 27 where traffic is moving constantly on a regular
11 basis.
12 Q You were here yesterday when you heard the
13 testimony, I think it would be of Mr. Wills, and maybe Mr.
14 Hancock as well, that there is some backup on Brink from the
15 intersection. Does that actually facilitate the pedestrian
16 movement across the road?
17 A Well, are you talking about in the eastbound
18 direction?
19 Q Yes, going eastbound?
20 A I don't know that that helps or hurts. But the
21 fact is, cars are, you know, if they are stopped at the
22 signal, they're going to be queued because that's what
23 signals do. They alternate the right-of-way.
24 Q Thank you.
25 MR. GROSSMAN: All right. Cross-examination, Mr.

Page 38

1 Hancock?

2 CROSS-EXAMINATION

3 BY MR. HANCOCK:

4 Q I mentioned some of these numbers, but did your,

5 do you or your firm actually do any traffic studies on Brink

6 Road, 27, or M-83?

7 A Do you mean traffic counts?

8 Q Yes.

9 A Yes, sir.

10 Q Okay. That was, you didn't do that? That was

11 provided by the County?

12 A No, sir. The County requires us to do that.

13 Q Okay. So you did the ones on 27 and, well, you

14 couldn't do M-83?

15 A Correct.

16 Q But on 27 and on Brink Road you've done the car

17 counts?

18 A Correct.

19 Q And it's your testimony that the line of sight is

20 sufficient to cross the street?

21 A At the proposed new entrance, yes.

22 Q I'm not sure --

23 MR. GROSSMAN: Proposed new southern entrance?

24 THE WITNESS: Yes, sir.

25 MR. HANCOCK: I'm not sure. Can I argue with

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1 that?

2 MR. GROSSMAN: You can't exactly argue, but you

3 can ask more questions about the point, if you wish. You

4 can certainly argue about it when you testify.

5 BY MR. HANCOCK:

6 Q The point, all right. What do you consider an

7 adequate distance, if I were standing there and I want to

8 cross the street, how many car lengths would you consider to

9 be adequate before I can safely cross?

10 A How many cars? What we would -- it's two

11 different ways to look at it. One, you typically want to

12 have about a five second interval as a pedestrian to cross.

13 People will walk at various speeds, at three and a half,

14 four feet per second.

15 Q It's four lanes at that point.

16 A A good rule of thumb would be that -- four lanes

17 on Brink Road?

18 Q Yes. That's to be extended. Isn't the four lanes

19 on Brink Road to be extended to the outlet from the

20 subdivision? That's my understanding it was.

21 A To the best of my knowledge, no.

22 MR. KLINE: We probably need a little help to

23 answer that question. Can he ask the engineer, so he can

24 answer the question at this point in time?

25 MR. GROSSMAN: Well, I guess there are two

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1 questions that are posed. One is whether or not it's going

2 to be, whether the road is going to be expanded to four

3 lanes, or is it currently four lanes. Is the road, is Brink

4 Road at this point currently four lanes or two lanes?

5 MR. HANCOCK: It's currently two lanes at that

6 point.

7 MR. GROSSMAN: Hold on, Mr. Hancock. Let's get

8 what the experts --

9 THE WITNESS: Two lanes.

10 MR. GROSSMAN: Okay. At the point of the intended

11 entry?

12 THE WITNESS: Correct.

13 MR. GROSSMAN: Okay. And do you know, Mr.

14 Guckert, whether or not it will be expanded to four lanes?

15 THE WITNESS: I'm not aware that it's going to be,

16 but it could be.

17 MR. GROSSMAN: Okay.

18 THE WITNESS: So I'm not aware, personally.

19 MR. GROSSMAN: Okay. And what's the speed limit

20 at that point?

21 THE WITNESS: You know, this road would typically

22 carry a 30 mile per hour speed limit. I'm not sure exactly

23 the posted speed. I know the posted speed on 27 --

24 MR. HANCOCK: Posted 35.

25 MR. GROSSMAN: All right. Well, he has to answer

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1 because --

2 MR. HANCOCK: I'm sorry.

3 MR. GROSSMAN: -- you're not the witness right

4 now.

5 THE WITNESS: So I would have expected it to be

6 posted around 30 miles an hour.

7 MR. GROSSMAN: Okay. What about the speed limit

8 on Ridge Road?

9 THE WITNESS: 40 miles an hour north of Brink, and

10 I think it's 45 miles an hour south of Brink.

11 MR. GROSSMAN: Okay. All right. Do you want to

12 continue your cross-examination, Mr. Hancock?

13 BY MR. HANCOCK:

14 Q Yes. A couple of other questions. I still don't

15 quite understand the 1,425 and 30. Do I understand

16 correctly that during rush hour, or prime time, as you call

17 it, that there will be 30 cars exiting this

18 subdivision?

19 A The staff, the State Highway Administration, and

20 myself all concur that with this type of development there

21 will be about 30 cars in the morning, maybe 40 cars in the

22 evening peak one hour exiting the subdivision. That's

23 correct.

24 Q Are they basing that on a retirement community of

25 age 50 where everybody is still working?

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1 A It's based upon standard senior adult housing
2 developments.
3 Q At 65 or at 50?
4 A It's not age, it's not age-centric.
5 Q Senior housing is age-centric.
6 A No. You asked me a question whether or not mine
7 is based upon age-centric. And the answer is, no, it's not.
8 It's call senior housing, which is what the staff basically
9 says we need to use. Some of them are working, some of them
10 are not working.
11 At our age, at our age, you have a circumstance
12 where you're not always having to go in 9:00 to 5:00. That
13 you are able to telecommute or work from home, or you have
14 opportunities not to work, or you're semi-retired. So it's
15 a different, it's a different circumstance. So therefore --
16 Q So they are --
17 A -- and therefore, if I can finish, therefore the
18 amount of traffic generated from this project without
19 children is significantly different in the peak commuting
20 hour than a full development, such as in Clarksburg Village,
21 where there are children present and there are younger
22 people.
23 Q So what they are saying is that, at age 50 and
24 above, only 20 percent of those people are going in to work?
25 A That's not what I said.

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1 Q That's what I'm trying to clarify. You say
2 there's 30 exits with 140 houses. I'm just trying to figure
3 out how many people are going to go to work at 150 houses.
4 I think 30 people out of 140 is a little bit low at age 50.
5 I'm just asking where you got that number?
6 A And I'll really re-explain. That number came from
7 national statistics that are used by the planning staff and
8 by State Highway Administration. Remember, not everyone
9 goes to work at the same hour. Okay.
10 The fact that we've got 40 trips for these units
11 in the peak one hour means you have other folks that are
12 coming and going in the hour before, other folks that are
13 coming and going in the hour after. We know that there's a
14 three-hour peak period. And this is the peak one hour
15 within that three hours.
16 Q On the 1,425 number --
17 A Okay.
18 MR. GROSSMAN: Before you get to the 1,425, I just
19 want to follow-up a little bit on what you just asked for a
20 second. What specifically was the source of the senior
21 housing standard that you used?
22 THE WITNESS: The Institute of Transportation
23 Engineering.
24 MR. GROSSMAN: Okay. So this is from, do you have
25 a particular page reference or figure reference in the

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1 manual?
2 THE WITNESS: You'll have to, as you know, it's
3 several thousand pages.
4 MR. GROSSMAN: I know, but I have a copy, so I
5 want to look it up.
6 THE WITNESS: It's ITE, ITE Land Use Code 251.
7 MR. GROSSMAN: Okay. Land Use Code 251. And you
8 use the term, at our age. What age are you talking about?
9 THE WITNESS: Folks that are 50 to 70.
10 MR. GROSSMAN: Okay. And I think Mr. Hancock is
11 raising an interesting point, and that is essentially
12 whether the source standard is appropriate to a 50-plus age
13 group, sort of the same question I was raising regarding
14 amenity measurements, whether or not the senior housing
15 standard at Land Use Code 251 is addressed to include this
16 type of community of 50-plusers or to address communities of
17 65-plusers, which would have fewer people leaving to go to
18 work in the peak hours, or coming back in the peak hours.
19 Do you know the answer to that question, whether that's --
20 THE WITNESS: I do know the answer. The answer
21 is, the transportation engineering field does not change
22 their trip rates based upon whether you switch from 49 years
23 old to 50 years old, or from 59 to 60. There are a variety
24 of people that live in these types of communities, active-
25 adult communities.

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1 We, our firm, have counted a number of them, and
2 found that these trip rates that are by ITE that we were
3 asked to use by the staff, are indeed accurate, because, and
4 I'll try to state it again. We're talking about a one-hour
5 out of a three or four-hour period when people come and go
6 to work.
7 So when people think or look at dwelling units,
8 they think that everybody is coming in and everybody is
9 going out in the peak one hour. But that's not what
10 happens. We don't, as a society, do not live that way.
11 Some people would leave before 6:00 in the morning. Some
12 people leave 6:00 to 7:00, 7:00 to 8:00, 8:00 to 9:00. Some
13 people will hang around until the complete rush hour is over
14 after 9:00 and then leave. Some will telecommute.
15 Our society in the way we travel and the way we
16 work has changed. And it's continuing to evolve. So when
17 we talk about peak hour, it's the heaviest one-hour out of
18 the three-hour commuting period.
19 MR. GROSSMAN: I understand. My question went to
20 whether or not the appropriate standard was being used. I
21 understand you were told to apply it, from what you
22 testified.
23 THE WITNESS: In my opinion --
24 MR. GROSSMAN: And my question went as to whether
25 or not that particular model is correct. You've testified

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1 that you believe it is, and that your experience in your
2 firm is that it is an accurate predictor of peak hour
3 traffic, or peak hour trips in communities such as this one.
4 THE WITNESS: Exactly.
5 MR. GROSSMAN: Okay. All right.
6 THE WITNESS: There's a 1,425 question out there.
7 MR. GROSSMAN: Yes. Mr. Hancock, you were asking
8 a question about the CLV of 1,425?
9 BY MR. HANCOCK:
10 Q I'd like a little bit more information on the
11 1,425. 1,425 for what, hour, day, minute?
12 A Critical lane volume.
13 Q Pardon?
14 A It's a, it is a mathematical summation that
15 government uses to set a standard metric for intersections
16 in different parts of the County. And it's computed, an
17 arithmetic computation that is included in the back of
18 Exhibit No. 38(a), for each of the intersections. And we
19 can go through, step-by-step, or provide you with the
20 calculations, or provide you with the processes, the detail
21 in the local area transportation review.
22 But basically, it's an arithmetic calculation
23 where you look at the number of vehicles in the one hour
24 that are through. You look at the number of opposing left
25 turns that are approaching those two vehicles. You examine

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1 the number of lanes, and you do that for all approaches of
2 an intersection.
3 And then you ultimately add up the heaviest
4 approach north-south, the heaviest approach east-west, and
5 that becomes your critical lane volume total. And then that
6 is measured against the standard for the policy area that
7 you're working in.
8 Q Does that, does that break down into revolutions
9 per hour of left turns, right turns, through, and so on? Is
10 there any relationship there?
11 A Revolutions?
12 Q Well, a car doing something.
13 A Yes, sure. Well, that's exactly what I just
14 talked about.
15 Q That's what I say, in other words you're saying
16 that essentially that intersection of 27 and Brink has 23
17 revolutions a minute?
18 A No, sir.
19 Q That's what I'm trying to arrive at.
20 A Well --
21 Q And I guess also, when you do these calculations,
22 do you actually look at the traffic pattern? For instance,
23 let me stay at 27 because you can't do anything at 83
24 because it doesn't exist. But at 27, do you figure out how
25 many cars are going to be backed up on Brink Road waiting to

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1 come across, either going east or going west?
2 A That's not a metric that is used for these types
3 of studies.
4 Q Okay. I misunderstood you then. I thought I
5 understood you to say, when you look at this, when you look
6 at all of the intersections that are effected, all of the
7 intersections that would affect 27 and Brink Road within a
8 reasonable distance, so you have intersection where the road
9 is going to come out from the subdivision, I would think
10 that you would look, it is my understanding that you look at
11 that in relation to how that's going to affect the
12 intersection at 27?
13 A I apologize. You did misunderstand. And we can
14 go back through this again if you want. But the counting,
15 certainly at this level of development, that is at the
16 zoning level, looks at the specific intersections that I've
17 gone through. I'm not going to go through them again unless
18 Mr. Grossman wants me to.
19 But we look at the critical lane volume standard
20 that is established by the County Council and the Planning
21 Commission at the effected intersections. In this case it's
22 at Route 27 and Brink, and further up at Skylark. And we
23 made projections for A-305.
24 MR. GROSSMAN: Essentially, they count the number
25 of movements in what they consider the critical lane through

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1 that intersection to determine, in that period. And they
2 determine whether or not it is, it exceeds the County
3 standard for that intersection.
4 And I think you're asking about whether or not
5 there is any kind of queuing analysis or delay analysis
6 done. And I think the witness has said that it's not --
7 MR. HANCOCK: I'm actually trying to find out if
8 they look at the entire traffic situation or just a lane
9 count or an intersection count. There is really more to it
10 than that. But I'm trying to find out if that's considered
11 too.
12 MR. GROSSMAN: Mr. Guckert?
13 THE WITNESS: I'm not sure I really understand the
14 question. The fact is, we look at the number of lanes, and
15 we look at the volume, and test that against the metric that
16 the County Council and Zoning Commission have given us.
17 MR. GROSSMAN: There are other methodologies for
18 looking, for measuring traffic. This is the particular one
19 that the County has used for some period of time. It's been
20 criticized for a variety of reasons, especially when the
21 intersections are failing, there it creates issues as to
22 whether or not it's accurately measuring the volume for an
23 intersection.
24 Now, that may not be the case here. In any event,
25 it does not include what is called queuing analysis, to

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1 determine the number of people queued up at an intersection.
2 It does measure the wait time for an intersection. That's
3 not part of this particular type of analysis, if that's what
4 you're asking.
5 MR. HANCOCK: Well, is that appropriate to do that
6 to see what's going to happen to the traffic?
7 MR. GROSSMAN: It can be done, but it is, in this
8 particular case and in general, it's not done unless there
9 are particular problems that are envisioned by the technical
10 staff.
11 When Mr. Guckert refers to staff, as he has
12 frequently done, he's referring to the technical staff of
13 the Maryland-National Capital Park and Planning Commission.
14 And they have a transportation planning staff as part of it.
15 And if they felt that there was a particular problem with
16 delays at the intersections that were being studied, they
17 might ask for additional queuing analysis, or delay
18 analysis. But they have not done that, I believe, in this
19 case.
20 THE WITNESS: You are 100 percent correct,
21 Mr. Grossman.
22 MR. GROSSMAN: That doesn't mean it doesn't exist.
23 They didn't find it, and that's not in the evidence here.
24 THE WITNESS: And we're dealing with overall
25 averages when we're looking at these types of analysis, not

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1 situations where there is a problem for 15 minutes, or even
2 30 minutes, where queuing and delays would occur. Because
3 it's not that specific of a process that government wants to
4 look at, at this level.
5 It could be, and indeed, from time to time staff
6 or Montgomery County Transportation, Montgomery County
7 Department of Transportation or State Highway Administration
8 may ask for more sophisticated, more detailed analysis and
9 modeling. But because of the condition that exists here,
10 they did not ask for that, and do not feel it is
11 appropriate.
12 MR. GROSSMAN: Well, we don't know that. They
13 don't ask for it.
14 THE WITNESS: Excuse me?
15 MR. GROSSMAN: You stated what they felt was
16 appropriate. We know they didn't ask for it. We don't know
17 what they feel is appropriate.
18 THE WITNESS: Well, not --
19 MR. GROSSMAN: It's not in the case. At this
20 point they didn't ask for anything beyond this, apparently.
21 THE WITNESS: Okay.
22 MR. HANCOCK: Thank you.
23 MR. GROSSMAN: All right. Ms. Goodrick.
24 CROSS-EXAMINATION
25 BY MS. GOODRICK:

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1 Q I'm trying to put this in perspective. So for
2 senior, this senior adult living community, you provided
3 statistics for that. If it were not, a non-senior, I'm
4 trying to understand the 30 trips. If it were non-senior,
5 this number of houses, just a regular development, is there
6 a number that would be generated from that? What you said
7 was --
8 MR. GROSSMAN: Well, you've asked a question. Let
9 him answer.
10 MS. GOODRICK: Okay. Okay.
11 THE WITNESS: The answer would be that it would be
12 in the range of about two and a half times, two to two and a
13 half times more traffic.
14 BY MS. GOODRICK:
15 Q Okay.
16 MR. HANCOCK: That's more realistic, too.
17 BY MS. GOODRICK:
18 Q So I believe that you said something along the
19 lines of, but they aren't taking age into consideration. Is
20 that correct?
21 A No, I didn't -- that's out of context for what I
22 stated. What is it that you are asking? The answer is no,
23 that's not correct.
24 Q I'm trying to determine the difference between
25 this statistic that seemed to be generated separate,

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1 generated from the number of houses and the population. In
2 other words, the population that is going to live there, I
3 believe you are saying, is going to have fewer trips.
4 A Yes.
5 Q And so that is a general standard. And I think
6 Mr. Grossman was asking, and I'm not sure I got the answer,
7 so is that for people who are 50 and above or people who are
8 65 and above?
9 A It's for people that are in, that are above 50-55.
10 The standard is not completely age-determinate. That is to
11 say, we, as traffic engineers and transportation planners,
12 did not go and do a census to determine how many people are
13 50 versus 51 or 52, or 60 or 62? We, as a community of
14 traffic engineers and transportation planners, look at a
15 project that is active adult. Okay.
16 Active adult, which means, no children, which
17 means that you're not driving back and forth, to taking kids
18 back and forth in the morning at a particular time, where
19 there's a little more flexibility in active adult
20 communities as to when you travel, where you travel, and how
21 you travel.
22 And so what we did was we looked at active adult
23 communities, senior communities, senior active adult
24 communities, and that's the type of trip rates that we
25 applied here. We know that that is consistent with other

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1 A And when you say intersection there, you're
2 talking about on Exhibit 34(g), the access on the A-305 from
3 the subject development?
4 Q Yes.
5 A Okay. And so this intersection will be designed
6 with adequate site distance, when we get to that point. We
7 know that the grades are such that we will have that. We
8 also know that with the median, that allows individuals to
9 make a two-step crossing. They can first cross to the
10 median, wait in the median, and then cross the second time.
11 We also expect that the Department of
12 Transportation will advise us, require us, we will request
13 that pedestrian crossing signs, and appropriate pedestrian
14 crosswalks will be installed at this location.
15 Q What is the width of the road there?
16 A This road here is going to be, for sake of
17 discussion, a two-lane road on each approach eastbound and
18 westbound.
19 MR. GROSSMAN: So this road here, you're talking
20 about A-305?
21 THE WITNESS: Yes.
22 BY MS. GOODRICK:
23 Q Yes. Which would be about 100 feet, is that
24 correct?
25 A No, it's going to be 24 feet, then a median, then

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1 another 24 feet. There's a difference between, I think
2 you're referring to the right-of-way width, which is not the
3 road width. It's much larger encompassing.
4 Q Then can you anticipate, I mean, that is the
5 feeder road from Clarksburg, and Clarksburg Village. And
6 going north on 27 the entrance into Clarksburg Village.
7 Excuse me?
8 MR. KLINE: I'm sorry.
9 BY MS. GOODRICK:
10 Q And so there is going to be generated a great deal
11 of traffic going across that intersection.
12 A Well, I think the question is, how is that going
13 to work? Exhibit 64 shows that A-305, that is just one of
14 multiple locations that feed into the Clarksburg Village
15 area. As you can see, there are multiple access points
16 north of A-305. There are multiple access points along
17 Brink Road. Excuse me, not along Brink Road, but along 355.
18 So this is just, A-305 is just one of numerous access points
19 into the Clarksburg Village areas.
20 Q Well, not just Clarksburg Village, but Clarksburg
21 itself. In other words, if you wanted to go north, up
22 farther north to Clarksburg, that area north of there, then
23 that is a feeder road. It is the --
24 MR. GROSSMAN: So, what's the question?
25 BY MS. GOODRICK:

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1 Q The question is, I'm talking about volume. I'm
2 concerned about the volume of traffic there, given what is
3 going on in --
4 MR. GROSSMAN: So what's the question you're
5 asking?
6 BY MS. GOODRICK:
7 Q The question is, I'm concerned about the safety of
8 people crossing there with increased traffic, going down
9 that --
10 MR. GROSSMAN: But that's not a question. That's
11 your concern. I'm asking you if you have a question of the
12 witness.
13 BY MS. GOODRICK:
14 Q Well my question is, when they do this analysis,
15 do they take into consideration the actual trips that are
16 being taken from a highly populated area seeking to go
17 south?
18 MR. GROSSMAN: That's a question.
19 THE WITNESS: And the answer is yes.
20 MS. GOODRICK: Okay. Just a second.
21 BY MS. GOODRICK:
22 Q I still have one more question about age. And
23 that has to do with, you said that, you were talking about
24 folks who are between 50 and 70. So are you, what are you
25 basing that on? What about, what about the 80 year olds and

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1 the 90 year olds? What about the higher concentration of 50
2 year olds? What is the reason for that?
3 A Well, active adult communities, historically have
4 been 50 to 70 or so. Some people start to move into,
5 depending on their health condition which is, we're kind of
6 getting beyond traffic engineering and transportation
7 planning.
8 But the active adult communities are typically 50
9 to 70. And those are people that are, some are retired and
10 some are semi-retired, most of which are without children,
11 and many of which have an opportunity to determine when they
12 go to work. So that's what I was talking about.
13 Some people, when they're in the 70 to 80 range,
14 start to move into other types of communities, where they
15 are continuing care communities, where you have independent
16 living. Then you can move to assisted living, and then to
17 nursing, and then to hospice.
18 So we're talking about a group of individuals that
19 are without children, typically in the 50 to 70 year old
20 range, that have options as it relates to when they go to
21 work. I'm not saying they're not working. I'm just saying,
22 they have options as to when they go to work.
23 MS. GOODRICK: All right. That's all the
24 questions I have now.
25 MR. GROSSMAN: Okay. Any redirect?

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1 REDIRECT EXAMINATION
2 BY MR. KLINE:
3 Q Mr. Guckert, I noticed in Exhibit B or Appendix B
4 of your LATR study, you noted that the a.m. peak hour, at
5 least for the intersection of Brink Road and Route 27, is,
6 I'm on page four of Appendix B, is 6:45 to 7:45 in the
7 morning?
8 A Yes.
9 Q So if I go to, want to be at my office at 9:00 in
10 Bethesda, I'm not likely to be leaving the property during
11 that peak hour, correct?
12 A You -- say that -- rephrase it.
13 Q Let me rephrase it again.
14 A Please.
15 Q Okay. There are, your projections are that 30 to
16 40 vehicles will be leading the property during 6:45 to
17 7:45?
18 A Exactly.
19 Q And so if I want to arrive at my office at 9:00,
20 I'm probably departing after the 7:45, which is probably
21 still within your range of peak hours, but on the shoulders,
22 as you call them, when there is lesser volumes on the road?
23 A That's correct.
24 Q So there are still people leaving. It's just not
25 during the period --

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1 A That's correct.
2 Q -- of most traffic usage of transportation?
3 A That's right.
4 MR. KLINE: No further questions.
5 THE WITNESS: And that's, and that's an important
6 point, Mr. Grossman. If you look at what Mr. Kline was
7 referring to, Appendix B, page four, upper right corner, the
8 street peak, what's actually occurring out on the street
9 today, the peak one hour between 6:30 and 9:30 in the
10 morning is at 6:45 to 7:45.
11 So it has a very early peak, that is, for people
12 that are coming down from Damascus and from other points of
13 the state are arriving at this intersection at between 6:45
14 and 7:45. That's the traffic time, and we added our traffic
15 to it. It's very early, very early in the morning where we
16 added traffic from our community.
17 MR. GROSSMAN: Okay. Any additional questions
18 relating to that particular redirect question? Mr. Hancock?
19 RE-CROSS-EXAMINATION
20 BY MR. HANCOCK:
21 Q I want to be sure I understand it. Basically,
22 this traffic plan has been designed with all the County,
23 State and Federal regulations, using their formulas in line,
24 and that you've complied with that. But that really no
25 consideration or very little consideration is given to the

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1 actual conditions. But you're complying with all local and
2 federal regulations?
3 A No, sir. I disagree with the question preceding
4 the last statement.
5 MR. GROSSMAN: Well, now that's confusing.
6 MR. HANCOCK: Yeah.
7 MR. GROSSMAN: So why don't you explain?
8 MR. KLINE: Build this up for us. Tell them how
9 you got the numbers, how you did the counts and where you
10 have the background.
11 MR. GROSSMAN: Well, let him answer the question,
12 first. And his answer was confusing.
13 THE WITNESS: Sorry.
14 MR. GROSSMAN: So let him explain his answer.
15 THE WITNESS: The answer was that we did take
16 existing traffic into consideration, because that was step
17 one, we conducted existing traffic counts. And then we
18 built upon those existing counts.
19 MR. KLINE: And step two of your building included
20 what?
21 THE WITNESS: Step two included looking at other
22 approved but unbuilt subdivision, other developments,
23 principally north and northwest of our site. We added
24 traffic in from all of those developments that have been
25 approved but not yet built. We assigned traffic to A-305,

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1 then we added traffic in from the subject property to the
2 intersections that we were asked to study. So we had
3 existing traffic, future traffic, and site traffic.
4 MR. KLINE: And the resulting conclusion was, the
5 traffic did not generate --
6 MR. GROSSMAN: Well, let your -- don't lead him as
7 to a resulting conclusion.
8 MR. KLINE: All right.
9 MR. GROSSMAN: He can answer as to what is the
10 resulting conclusion?
11 MR. KLINE: Your report states that the numbers
12 you ended up with did not exceed 1,425 critical lane
13 movements in the peak hours?
14 THE WITNESS: Correct.
15 MR. GROSSMAN: All right. Ms. Goodrick?
16 RE-CROSS-EXAMINATION
17 BY MS. GOODRICK:
18 Q Yes. What was the hour that you had for the
19 evening peak hour?
20 A They varied from intersection to intersection.
21 It's always, we always look at the worst single hour, but at
22 27 and Brink it was 4:45 to 5:45, was the peak one hour.
23 Q Okay. And in your report, does your report have
24 the existing traffic data in it?
25 A Yes.

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1 Q Okay.

2 MR. GROSSMAN: And you're certainly welcome, it is

3 in the file. You are welcome to look at it.

4 BY MS. GOODRICK:

5 Q Right. So can I have a copy of that? Can you --

6 MR. GROSSMAN: We may have the, part of what you

7 provided me electronically is a copy of the traffic report,

8 electronically. And that would be easy, unless you have an

9 extra copy here of the traffic report, the traffic analysis?

10 That is Exhibit No. 38(a).

11 BY MS. GOODRICK:

12 Q I don't have to have it now, but how did you

13 determine the existing traffic?

14 A Are we going back to the original testimony?

15 Q Well --

16 MR. GROSSMAN: How did you determine --

17 THE WITNESS: We conducted traffic counts.

18 BY MS. GOODRICK:

19 Q Okay. That's what I want to know. You have

20 someone who sits at a corner with a clicker, or something

21 like that.

22 A Not necessarily.

23 Q Or, you know, what is done?

24 A We conduct existing traffic counts. Today we use

25 video technology.

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1 Q Okay. And does it include, in your report, how

2 many days you spent on this, or is that included in the

3 report?

4 A Yes. It is.

5 Q You don't have to go into it, but I would like to

6 see that.

7 A Yes.

8 Q And when that was done.

9 A It's in the report in the file.

10 Q Okay. Is it possible for us to be provided with

11 that report? And we must have that report?

12 A That's up to someone other than myself to make

13 that decision.

14 MR. GROSSMAN: Do you have an extra hard copy

15 available, Mr. Kline?

16 MR. KLINE: Well, that's why we basically post the

17 property at the beginning of the process and tell the people

18 when the hearing is, so they can come in and look at the

19 file in advance, because to give her the traffic study,

20 she'll as that the record be left open for a period of time

21 to study it and comment. Then I'll have to go ahead and

22 respond to it. So the answer is, I'm not inclined to do

23 that. She should have done that before.

24 MR. GROSSMAN: Do we have an extra copy of the

25 plan? Do you have an extra copy of the traffic study?

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1 MR. KLINE: I believe Mr. Guckert did bring extra

2 copies. Yes, sir.

3 MR. GROSSMAN: Okay. I would ask Mr. Guckert to

4 give Ms. Goodrick a copy of Exhibit 38(a).

5 MS. GOODRICK: Thank you. Those are all the

6 questions that I have.

7 MR. GROSSMAN: Okay. All right. Thank you, Mr.

8 Guckert. You can call your next witness, please.

9 MS. GOODRICK: Mr. Rood.

10 (Discussion off the record.)

11 MR. GROSSMAN: Let the record reflect that Mr.

12 Guckert has turned over a copy of Exhibit 38(a) to Ms.

13 Goodrick. Okay.

14 MR. KLINE: Mr. Grossman, could we have a second

15 to put up some exhibits here?

16 MR. GROSSMAN: Yes. Sure.

17 MR. KLINE: While we're doing that, Mr. Guckert

18 does have another commitment in another jurisdiction, so I'm

19 going to release him unless there is some objection to that.

20 MR. GROSSMAN: Any objection to that?

21 MS. GOODRICK: There's no objection.

22 MR. GROSSMAN: No objection. All right. Thank

23 you, Mr. Guckert. I hope you're not going into a snow-

24 covered jurisdiction. By the way, you should all be

25 grateful that I arranged for no snow this morning.

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1 MS. GOODRICK: Yes. Thank you.

2 MR. GROSSMAN: I actually take credit for that,

3 because I took home with me the contact information for all

4 of you, so that in case there was a snowfall or something

5 that would prevent us from being here, I could contact you.

6 Now, had I not done that, I guarantee you we would have had

7 20 inches of snow, and ice.

8 MS. GOODRICK: Yes. Thank you.

9 (Discussion off the record.)

10 MR. GROSSMAN: All right. Sir, will you state

11 your full name, please?

12 MR. ROOD: Sure. Dusty Rood, R-O-O-D.

13 MR. GROSSMAN: All right, Mr. Rood, would you

14 raise your right hand, please?

15 (Witness sworn.)

16 MR. GROSSMAN: All right. You may proceed, Mr.

17 Kline.

18 DIRECT EXAMINATION

19 BY MR. KLINE:

20 Q Mr. Rood, would you please state and spell your

21 name and give us your business address?

22 A Sure. Dusty Rood, R-O-O-D. 19847 Century

23 Boulevard, Suite 200, Germantown, 20874.

24 MR. KLINE: Mr. Grossman, could I just speak to,

25 take one?

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1 MR. GROSSMAN: Sure. Sure.
 2 MR. KLINE: Thank you.
 3 BY MR. KLINE:
 4 Q Mr. Rood, have you ever qualified before as an
 5 expert in the fields of environmental planning, water
 6 quality, and forest conservation?
 7 A I have, and most recently on a case, zoning map
 8 amendment G-884, which was the Hanson property, before Mr.
 9 Grossman.
 10 MR. KLINE: Mr. Grossman, Mr. Rood's resume is in
 11 the record as Exhibit 55(c). And based on his previous
 12 qualification in the fields that I mentioned, and his
 13 experience, as described in that resume, I'd like to offer
 14 him as an expert in the field of environmental planning,
 15 water quality, and forest conservation.
 16 MR. GROSSMAN: All right. Any questions of this
 17 gentleman regarding his qualifications? Mr. Hancock?
 18 Ms. Goodrick?
 19 MS. GOODRICK: No.
 20 MR. GROSSMAN: All right. I don't recall, by the
 21 way, I recall you, Mr. Rood, but I don't recall precisely
 22 what you were qualified, how we, what the terminology used
 23 was for your prior testimony. But in any event, based on
 24 your resume and your testimony that you have qualified
 25 previously as an expert in environmental planning, water

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1 quality, and forest conservation, I do accept you as an
 2 expert in those fields.
 3 BY MR. KLINE:
 4 Q Mr. Rood, I think early on in day one, Mr.
 5 Grossman asked if the property was in a special protection
 6 area, which raises the question of water quality. So what I
 7 would like you to do is address the water quality issues
 8 associated with this application and this property?
 9 A Sure. Let me start off by saying that as Mr.
 10 Unterberg testified previously, the property is within the
 11 Clarksburg special protection area, which is an overlay
 12 zone, applied to this part of the County for the explicit
 13 purposes of providing an additional level of water quality
 14 protection through the development review and construction
 15 process.
 16 Along with that requirement come specific
 17 requirements addressed through the Montgomery County
 18 environmental guidelines specific to water quality, specific
 19 to impervious surface reductions, and related to forest
 20 conservation.
 21 Q All right. Please continue at your pleasure.
 22 A Yes, sure. So, those are the two sort of local
 23 items which relate to water quality. The third area that
 24 relates to water quality which has gained some notoriety and
 25 some more significance in recent years relates to the

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1 protection of the Chesapeake Bay through the total maximum
 2 daily load and increased focus on the role of nutrients,
 3 specifically nitrogen and phosphorus, as well as sediments
 4 in the protection of the Chesapeake Bay, as well as local
 5 water resources in the area.
 6 And that certainly marries with the intent of the
 7 special protection area. So that's relevant to what we are
 8 doing, although not explicitly elaborated into regulation
 9 yet. Those are being developed. It has become increasingly
 10 public policy, at the Federal, State and increasingly local
 11 level too, to acknowledge and deal with that issue.
 12 So how do we address that? The water quality plan
 13 review process begins with a pre-application meeting at
 14 which time the applicant meets with various agencies,
 15 including the Department of Permitting Services, the
 16 Department of Environmental protection, and the Park and
 17 Planning Commission where the concept for the property is
 18 presented and feedback is given from those agencies
 19 regarding the purposes of the special protection area to
 20 advise the applicant.
 21 General water quality items are discussed and set
 22 forth at that meeting, which is then followed by an
 23 application which was made for a preliminary water quality
 24 plan.
 25 That preliminary water quality plan addresses and

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1 proposes the approaches that the applicant and the project
 2 will take to ensure the performance goals are met and the
 3 water quality objectives are achieved.
 4 So for this property, that water quality plan
 5 starts with understanding the existing conditions of the
 6 property, and then builds upon that through integration of
 7 BMP's and other measures, which I'll discuss.
 8 Q Could you define BMP's for us?
 9 A Yes, yes. Sorry. Best management practices. So,
 10 starting with the existing conditions at the property, I
 11 believe Mr. Unterberg previously testified, the property is
 12 almost entirely unforested. Excluding the right-of-way for
 13 A-305, there is approximately two-tenths of an acre of
 14 forest. The rest of the property is in a rotation of crops
 15 and agricultural use.
 16 The nature of that use presents a challenge to
 17 water quality, in and of itself, through the ongoing
 18 application of fertilizers and herbicides to manage the
 19 agriculture, as well as the cultivation, tilling, and
 20 seasonable tilling of the soil, and turning it over,
 21 exposing it to erosive forces.
 22 So that's kind of the baseline conditions that we
 23 build off of. And it creates and opportunity for us,
 24 frankly, to improve those conditions from a water quality
 25 standpoint.

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1 So how do we do that? We really have a multi-
2 faceted approach for addressing water quality on this
3 property. The first component starts with the layout of the
4 project and the integration of best management practices
5 through a now mandated approach called environmental site
6 design.
7 And environmental site design seeks to create a
8 hydrologic condition comparable to woods in good condition.
9 It does that by decentralizing and distributing smaller best
10 management practices throughout the property, which will
11 ultimately reduce the amount of runoff, and really prevent
12 runoff from accumulating in the first place.
13 That runoff then filters naturally through mulch
14 and other soil media. To the extent that it can infiltrate
15 into the soil once it's been cleansed, it will. And then it
16 will ultimately be absorbed by plants, the water and the
17 nutrients will be absorbed by plants and other vegetation on
18 the property.
19 That's one component. As part of that design
20 process, and as the environmental guidelines require, we are
21 required to minimize our impervious surfaces to the extent
22 that it's feasible for the project.
23 This project does not have, is not subject to an
24 impervious surfaces cap, as other places in the County are.
25 So I wanted to clearly specify that. And through working

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1 with Park and Planning Commission staff, as well Department
2 of Permitting Services staff, the Department of Permitting
3 Services did approve the preliminary water quality plan, as
4 well as Park and Planning staff also recommended approval.
5 And the Planning Board subsequently approved the water
6 quality plan. And Mr. Kline provided the updated
7 resolution. I relayed that this morning.
8 MR. GROSSMAN: Is there a copy of the Department
9 of Permitting Services approval in the record? I can't
10 recall.
11 THE WITNESS: Yes. That is a part of the staff
12 report, yes, which is Exhibit No. 53, and their --
13 MR. GROSSMAN: It's an attachment.
14 THE WITNESS: -- the Department of Permitting
15 Services approval is Attachment 14.
16 MR. GROSSMAN: Right.
17 THE WITNESS: Of Exhibit 43, I'm sorry, 53.
18 MR. KLINE: It's like Attachment 14?
19 THE WITNESS: Attachment 14, correct, of Exhibit
20 No. 53. So that's the first, there's multiple approaches in
21 and of itself. But that's one element of the water quality
22 protection approach.
23 The other, the next measure which is employed to
24 help protect water quality out here is through substantially
25 increasing the amount of ultimate forest cover on the

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1 property. As I mentioned, excluding the right-of-way of A-
2 305, the property only contains about two-tenths of an acre
3 of forest in the northwest corner.
4 Through the forest conservation plan, which
5 Planning Staff also recommended approval of and the Planning
6 Board approved, we will be adding approximately 7.2 acres of
7 additional forest to the property, which is more than 35
8 times the amount of existing forest there presently today.
9 Exhibit No. 41(c), which is the preliminary forest
10 conservation plan that the Planning Board eventually
11 approved, shows those general locations that will be placed
12 within a category one conservation easement, and it will be
13 planted using native species as part of the development
14 plan.
15 I know some questions were asked earlier regarding
16 what those species might, what those species might entail,
17 as well as how the easement is protected. So I can talk
18 about that.
19 But generally what we attempted to do was, we
20 located those planting areas and those forest areas and
21 areas that we felt also complimented other plan objectives,
22 such as transitioning the property, as well as providing
23 some buffering to the adjacent properties to the west.
24 The largest of those three planting areas at about
25 2.8 acres is area B, which is along the western edge of the

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1 property. All three of these planting areas, I envision,
2 will probably be planted with a mix of evergreen and
3 deciduous species.
4 It would be appropriate within these areas to
5 plant American hollies, eastern red cedar, perhaps white
6 pine, as well as other deciduous species, to create a
7 diverse forest community that will eventually succeed into a
8 larger mature forest over time.
9 That will be protected in perpetuity through a
10 category one conservation easement, which is the most
11 restrictive of easements that is entered into with the
12 Planning Board, and then they enforce that easement to
13 ensure that no encroachments are occurring. And they have
14 an active program in doing that. And that has to be put in
15 place prior to grading commencing on the property,
16 basically.
17 So forest conservation and increase forest cover
18 is a key component of the water quality approach. Building
19 on that, this property, which is proposed to be provided,
20 sewer through the public sewer and not through private
21 septic is another key way that would help to minimize the
22 amount of nutrients, particularly nitrogen from entering the
23 watershed.
24 Homes that are built on private septic systems
25 load as much as 10 times the amount of nitrogen into the

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1 watershed as do public sewer facilities that treat them in a
 2 centralized waste water treatment plant such as this one
 3 would within the Seneca waste water treatment plan, which is
 4 actually being upgraded to the most state-of-the-art project
 5 presently, which is called, enhanced nitrogen removal
 6 technology.

7 So that's key. But by connecting into the public
 8 water system, we would not be utilizing on-site wells which
 9 would extract water from the local aquifer. So we will be
 10 tapping into the public water system for providing water
 11 service to the property.

12 Another key element of water quality is how the
 13 properties are maintained in the future. That's something
 14 that we've talked about and thought about. Given the nature
 15 of this use as an active-adult community, it will be
 16 maintained by, the outside, the yards and the landscaped
 17 facilities, will be maintained by a common landscape
 18 contractor, as opposed to effectively 140 individuals taking
 19 care of their lawn.

20 As such, it's much easier to control not only the
 21 aesthetic of the community, but also how the lawn is cared
 22 for. In this case, as one of our goals, and one of our
 23 measures to help protect, minimize nutrients, we will be
 24 regulating through covenants the, how the lawns are
 25 fertilized and cared for so as to restrict, so as to

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1 restrict fertilization in order to prevent runoff of
 2 nutrients.

3 So all of those, all of those measures combined
 4 will actually help to reduce the amount of nitrogen,
 5 phosphorus, and sediment that's currently running off the
 6 property significantly. Nitrogen will be reduced by at
 7 least 18 percent, phosphorous and sediment by more than 50
 8 percent from its existing condition, just simply by the
 9 nature of the land uses and the combination of the practices
 10 that are proposed for this.

11 MR. GROSSMAN: Is it possible, by the way, to
 12 change the location of the water treatment facility that's
 13 currently located on the northwestern side of the property,
 14 and have it, have some of that forestation along there?

15 Because I think one of the complaints of the
 16 adjacent community is that in that area it looks like there
 17 is much less screening than would be provided by the
 18 forestation that you have further to the south and western
 19 side. And that seemingly would be, you know, might be
 20 remedied. That issue might be remedied by changing the
 21 location of that water treatment facility.

22 THE WITNESS: I think probably Mr. Bossong is the
 23 most appropriate person to talk about that storm water
 24 management facility specifically.

25 MR. GROSSMAN: All right.

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1 THE WITNESS: But it could be, it could be moved,
 2 relocated, reduced in size, reconfigured in such a way that
 3 in my opinion would not conflict with the water quality
 4 objectives of the --

5 MR. GROSSMAN: Okay.

6 THE WITNESS: The other thing that I guess I will
 7 just mention real quick is with regard to forest
 8 conservation and chapter 22(a). The property does have an
 9 approved natural resource inventory that was approved by the
 10 Park and Planning Commission staff. And that describes the
 11 characteristics of the property, which I've talked about
 12 previously.

13 And that was followed up by an approved
 14 preliminary forest conservation plan which proposes the
 15 retention of all of the existing forest within the net track
 16 area of the property, as well as proposes to meet the entire
 17 forest conservation requirements of chapter 22(a) on site.
 18 And that's supported by staff's recommendation and the
 19 Planning Board approval.

20 MR. GROSSMAN: Okay. Mr. Kline, anything further
 21 of this witness?

22 BY MR. KLINE:

23 Q Were you finished, Mr. Rood? I had a feeling you
 24 had some other words of wisdom you wanted to add.

25 A No, I think that covers it, unless there is

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1 something specifically that you would like me to?

2 Q Sure. No, I'll just ask you a couple of summary
 3 questions then. So is it your opinion that based on the
 4 environmental testimony you have given that this plan, and
 5 the measures you've described, contribute to satisfying
 6 water quality goals of the master plan?

7 A I do very much believe that through reducing the
 8 amount of nitrogen, phosphorus and sediment through
 9 substantially increasing the amount of forest cover. And as
 10 the Department of Permitting Services and the Planning Board
 11 have supported as well, I believe that it does achieve that.

12 Q And in your opinion, is the forest conservation
 13 plan that you talked about adequate to contribute to the
 14 plan goal of creating a transition in the green belt, in the
 15 separation between Germantown and Clarksburg?

16 A I do think so. As I mentioned previously, the
 17 area that's being placed into a category one easement, and
 18 will be afforested, is entirely consistent through the
 19 planting of evergreen, a mix of evergreen and deciduous
 20 plants, is consistent with creating that transition.

21 Q And the landscaping, or the forest conservation
 22 plan you talked about, I guess along the west and on the
 23 north would block, or at least create filtered views between
 24 the existing residences and the new residences within the
 25 community?

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1 A Correct. That's correct. Although there are a
2 few trees and small shrubs that are there currently, that
3 will be built upon through the additional planting of trees,
4 shrubs, and evergreens which will mature over time and help
5 to filter and buffer that view.
6 MR. GROSSMAN: You're talking about in the area
7 that you are reforesting, right, the green area on that
8 exhibit?
9 THE WITNESS: The green area along the -- correct.
10 MR. GROSSMAN: Right. But as I say, not in the
11 area where you have the --
12 MR. KLINE: Where you mentioned the storm water
13 management facilities, yes. There we have what, a hedgerow,
14 and we're limited in what we can do to supplement the
15 hedgerow.
16 THE WITNESS: We are, you are unable to plant on,
17 basically, the embankment of a storm water facility.
18 However, you are not prevented from planting additional
19 trees on the uphill side of the storm water management
20 facility, or if the toe of your embankment is far enough
21 away from the edge of the property, you could plant trees
22 there as well, if you had room, if the facility was able to
23 be reconfigured in some way.
24 MR. GROSSMAN: All right.
25 BY MR. KLINE:

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1 Q And using your example and looking at Exhibit
2 41(c), so you were saying that if, for some reason, the
3 storm water management facilities could become narrower, we
4 would have an opportunity to plant along the property line,
5 would that still qualify as forest? Would it have enough
6 depth to qualify as forest? You could still plant, but
7 would it still be within a category one?
8 A It might be. It depends on how it was configured.
9 You would need at least a 50-foot wide area in order to
10 qualify for being placed in an easement and being an area.
11 But within a smaller area, you could still plant. It just
12 might not necessarily be within an easement or receive
13 forest conservation credit, per se.
14 MR. KLINE: All right. No further questions of
15 Mr. Rood.
16 MR. GROSSMAN: All right. Mr. Hancock.
17 CROSS-EXAMINATION
18 BY MR. HANCOCK:
19 Q In your expert opinion, is the lack of runoff from
20 this 54 acres going to affect the wells for the property to
21 the west?
22 A No, I don't think so.
23 Q I'm concerned about the strip where the upper pond
24 is.
25 MR. GROSSMAN: The upper pond meaning the water

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1 treatment facility?
2 MR. HANCOCK: Water treatment facility.
3 MR. GROSSMAN: Okay.
4 BY MR. HANCOCK:
5 Q The line of trees that is there now is a single
6 tree about every 15 feet. And they're mulberry. They're
7 junk trees, and, you know, there is no blocking of the view
8 or anything else. And we would really want to push for
9 something at least 35 feet wide, you know, everywhere you
10 can block that view.
11 I notice that's really the only part, except where
12 the gas line easement goes through, although the property,
13 the lower pond, that's actually, the topography of that is
14 on a hill, so the house to the left there sets up on a hill
15 and looks down into that pond. And that really should have
16 something there. But the problem there is --
17 MR. GROSSMAN: Well, you have to round this
18 into --
19 BY MR. HANCOCK:
20 Q -- that the reforestation is going to block the
21 street.
22 MR. GROSSMAN: You have to round this into a
23 question.
24 MR. HANCOCK: Yes.
25 MR. GROSSMAN: Is there a question of the witness?

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1 BY MR. HANCOCK:
2 Q Can that be, can that lower pond also be moved
3 because with reforestation it's going to block the street?
4 A The lower pond, you mean along Brink Road?
5 Q Along Brink Road, yes.
6 A Can it be moved? Not significantly. It may be
7 minimally reconfigured with the final engineering as that
8 goes forward. But generally speaking, that is a lower part
9 of the property. And actually we're trying to honor natural
10 drainage divides and --
11 Q That's sort of the same problem with the pond, the
12 other one. It's the lowest part of the property. How deep
13 would that retention pond be?
14 A The depth of it?
15 Q Uh-huh.
16 A Well, it's a dry facility, so it's not going to
17 hold water for indefinite periods of time. I think Mr.
18 Bossong would probably have to testify to the engineering
19 design and with regard to the depth.
20 MR. HANCOCK: That's it.
21 MR. GROSSMAN: Ms. Goodrick, do you have any
22 questions of this witness?
23 CROSS-EXAMINATION
24 BY MS. GOODRICK:
25 Q Just one, and that is that, what, I guess ideally

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1 MR. GROSSMAN: All right. You may proceed.
2 DIRECT EXAMINATION
3 BY MR. KLINE:
4 Q Mr. Bossong, would you please state and spell your
5 name, and give us your business address?
6 A Yes. For the record, my name is Frank G. Bossong.
7 That's B-O-S-S-O-N-G. My work address is 19847 Century
8 Boulevard, Suite 200, Germantown, Maryland 20874.
9 Q And you're associated with the firm of Rodgers and
10 Associates, actively involved in this case?
11 A That is correct.
12 Q And your profession is what, Mr. Bossong?
13 A My education is civil engineering and surveying.
14 Q And have you ever qualified as an expert in the
15 field of civil engineering before Mr. Grossman or one of his
16 colleagues or this Board or this hearing?
17 A Several times before Mr. Grossman, and many in
18 front of this Board.
19 MR. KLINE: Mr. Grossman, Exhibit 55(d) in the
20 record is Mr. Bossong's resume. And based on his previous
21 qualification and his experience stated in that resume, I'd
22 like to offer him as an expert in the field of civil
23 engineering.
24 MR. GROSSMAN: All right. Any questions related
25 to Mr. Bossong's qualifications as a civil engineer?

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1 MS. GOODRICK: No.
2 MR. GROSSMAN: All right. Based on Mr. Bossong's
3 previous testimony as an expert in civil engineering, and
4 his resume in the record, I accept him as an expert in civil
5 engineering.
6 And before you go on with Mr. Bossong, I should
7 mention that I thought it would be useful to have in the
8 record a copy of the page from the Institute of
9 Transportation Engineers manual, trip generation, 8th
10 edition, page 472, which describes the land use, 251, which
11 Mr. Guckert used as the base for the trip generation
12 standards, since it describes the senior adult
13 housing/detached which was used as the model here.
14 And I'm going to mark it as Exhibit No. 91. And I
15 have copies for you, Mr. Kline, and for Mr. Hancock and Ms.
16 Goodrick.
17 (Exhibit No. 91 was marked
18 for identification.)
19 MS. GOODRICK: Thank you.
20 MR. GROSSMAN: I should mention that there are
21 numerous other pages in that publication which then describe
22 how you, how many trips are generated and how they are
23 generated. But this is the page that describes the
24 particular land use, 251. It's 472 of ITE trip generation,
25 8th edition, land use 251, senior adult housing/detached.

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1 Okay. All right. You may proceed with Mr. Bossong.
2 BY MR. KLINE:
3 Q Well, Mr. Bossong, I know you are going to address
4 several things, but maybe kind of as a good segue from our
5 previous discussion with storm water management, why don't
6 we start with that subject?
7 A Okay. You don't mind if I work from the easel.
8 I'm trying not to duplicate some of the testimony by Mr.
9 Rood. I'll try to go through this sort of quickly. First
10 of all, in regards to storm water management for Montgomery
11 County, we have to meet the requirements of Chapter 19.
12 It's the County Code which basically sets the controls for
13 water management.
14 Recently, in the last several years, the State of
15 Maryland has changed the way storm water management is
16 implemented, designed, and then constructed. And what Mr.
17 Rood mentioned earlier is the term ESD, environmental site
18 design. That is the new, say level, or playing field that
19 we're dealing with regarding storm water management.
20 In this particular case, it was mentioned both by
21 Mr. Unterberg and Mr. Rood, in developing the site, and --
22 MR. GROSSMAN: Well, you're now referring to --
23 THE WITNESS: I'm referring to Exhibit No. 34(s).
24 MR. GROSSMAN: Okay.
25 THE WITNESS: In using Exhibit No. 34(s) in

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1 developing the layout, the lot layout, the road layout, and
2 trying to minimize, what we try to do is minimize the amount
3 of grading that has to take place in order to develop this
4 project. And so we work very closely with the land
5 planners, the landscape architects, environmentalists, and
6 the civil engineers to do that.
7 Now, what we've done here, and regarding
8 specifically storm water management, this Exhibit No. 34(s)
9 basically illustrates the different type of storm water
10 management facilities that are being proposed on the
11 project, going from the orange symbols, which you can see
12 are scattered throughout the project, which we're calling
13 bio retention facilities, to the lighter green areas, which
14 are extended detention dry facilities, which I'll get into
15 more detail about those in a minute, to the grass swales
16 which help transport some of the water to infiltrate back
17 into the ground, as do the other facilities I just
18 mentioned.
19 And then rooftop disconnect, basically, is
20 allowing the lawn areas to receive the downspouts, per se,
21 spread the water out, and then promulgating infiltration
22 into the ground.
23 In doing this type of design, essentially what
24 we've done is created a network of facilities. And by doing
25 this, we're maximizing the amount of recharge, ground water

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1 recharge back into the ground.
2 And in going back to what I mentioned, the ESD
3 type measures that we are using, all of these will be
4 designed using the ESD type bio filters, micro-bios, bio
5 swales, and so forth like that. In doing that, we're able
6 to meet the, what I'm going to call it is the full ESD
7 requirements utilizing ESD measure.
8 Because, in the way the County and the State has
9 set up the storm water management regulations, they want you
10 to utilize ESD measures up to a certain level. And then
11 after that level, if you cannot continue with ESD measures,
12 to use, I'm going to say, more conventional type measures,
13 which you are probably used to throughout Montgomery County,
14 is more typical of the storm water management ponds.
15 We're trying to get away from storm water
16 management ponds, central storm water management ponds
17 today, and going with more of a smattering or a sprinkling
18 of storm water management facilities throughout a project,
19 to where it will be like existing conditions of trying to
20 get the water into the ground.
21 In this design that we were able to accomplish is,
22 we were able to do 100 percent ESD through ESD measures. So
23 essentially what that's going to do is, and in agreement
24 with what Mr. Rood says, in doing that we're bringing the
25 entire property back into what's called, or back to a level

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1 of woods in good condition.
2 So essentially, utilizing these techniques that we
3 have proposed here, the runoff, if you want to say, will
4 mimic this property as if it was completely forested in
5 woods in good condition.
6 So the bottom line is that the recharge is going
7 to be greater into the ground water. The filtration will be
8 better. And the amount of runoff will technically be less
9 than what's happening today with the plantings and the
10 farming operations.
11 BY MR. KLINE:
12 Q All right. If I can catch up with you here. So
13 you hear Mr. Hancock's question earlier to Mr. Rood about,
14 is this going to affect my well water.
15 A No.
16 Q And since you used the term infiltration and
17 recharge a lot, you're confident that this will not hurt his
18 well system at all?
19 A Absolutely. Confident.
20 Q All right. Then did I also understand you to say,
21 Jody, if all we did were the orange features, that would
22 satisfy the County requirements for storm water management?
23 A That is correct. Basically, utilizing, I'm going
24 to say, the orange facilities that are scatter throughout
25 this exhibit, using the grass swales, the darker green, and

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1 the rooftop disconnect, using those three facilities alone,
2 meets 100 percent of the storm water management requirement
3 of Montgomery County's new laws in effect today per chapter
4 19.
5 Q So the green ones, is that that cautiousness? Or
6 why are they being shown? Because, as you know from Mr.
7 Hancock, they are of interest to him.
8 MR. GROSSMAN: We're talking about the light green
9 colored storm water facilities that are on the western end
10 of the site.
11 THE WITNESS: Which on this exhibit is designated
12 extended detention.
13 MR. GROSSMAN: Okay.
14 THE WITNESS: And essentially we're showing two
15 extended detention facilities on our storm water management.
16 And what that is, is if going through the details of this,
17 that we are for some reason unable to maximize as we've
18 designed it today, there would be these areas designated for
19 the additional storm water management that may be necessary
20 but that could not be encompassed into the ESD's, still
21 meeting the County requirement. We absolutely have to meet
22 the minimum ESD County requirement, which we have to do, and
23 then over that, these facilities would only be utilized for
24 that.
25 The other thing is, these facilities, and I know

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1 Mr. Hancock you mentioned to me some concern about water,
2 you know, during heavy rains or whatever, that you get some
3 water down in this area. These --
4 MR. GROSSMAN: In this area --
5 THE WITNESS: I'm sorry. Mr. Hancock --
6 MR. GROSSMAN: -- immediately to the west of the
7 northern --
8 THE WITNESS: West of the property, just north of
9 Mr. Hancock's house.
10 MR. GROSSMAN: All right. So we're talking about
11 just west of the upper green colored storm water management
12 facility pond that you have depicted on the exhibit.
13 THE WITNESS: Correct, Mr. Grossman.
14 MR. GROSSMAN: Okay.
15 MR. KLINE: Which is an out lot, rather than part
16 of Mr. Hancock's property itself, right?
17 THE WITNESS: That's my understanding.
18 BY MR. KLINE:
19 Q Okay. Go ahead.
20 A So utilizing these facilities, if in fact we
21 wanted to reduce the amount of water, surface water for,
22 let's say large storms, we could even say a 100-year storm,
23 that these facilities could be designed to limit the
24 intensity of the water that would exit the property,
25 especially in this area.

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1 This is not a requirement of Montgomery County,
2 because we've already met the storm water management
3 requirements of Montgomery County through the ESD measure
4 throughout the entire site.
5 MR. GROSSMAN: And as I understand it the County
6 requirements are stricter than the State requirements, is
7 that correct? Or you've repeatedly referred to meeting the
8 Montgomery County requirements.
9 THE WITNESS: Right.
10 MR. GROSSMAN: Do the other, the facilities other
11 than these storm water retention ponds, the other facilities
12 meet the State requirements as well?
13 THE WITNESS: These would all, you were correct
14 in your first statement, Mr. Grossman. Montgomery County
15 storm water management general, the way it's written, is
16 stricter than the State. But I have to meet minimum of the
17 State. Then I have to go to the County level, and then
18 further level if, in fact, we see there is a need for that.
19 MR. GROSSMAN: What I was trying to ascertain is,
20 because there is an issue about screening along the western
21 side of this property, if those ponds were made smaller,
22 would that, so as to allow for a greater amount of screening
23 in those areas, would that affect whether you are meeting
24 all of your environmental site design requirements, both for
25 the State and the County?

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1 THE WITNESS: No, it would not.
2 MR. GROSSMAN: Okay.
3 THE WITNESS: In fact, in looking at this, there
4 is room here, again, this is preliminary design. It has
5 been approved by both Montgomery County Department of
6 Permitting Services. DEP also looked at it from the water
7 quality standpoint, and Park and Planning has also looked at
8 it from their environmental planning division as well.
9 There is some room that there potentially could be
10 screening here. One thing which has not been --
11 MR. GROSSMAN: Here being?
12 THE WITNESS: I'm sorry. West of the shown
13 extended detention facility, adjacent to Mr. Hancock's
14 property.
15 MR. GROSSMAN: That's the northern one. And what
16 about the southern one?
17 THE WITNESS: The southern one, again, similar,
18 same usage here, there could be areas of screening.
19 However, something a little bit different, the topography is
20 much different in the southern facility than it is in the
21 northern facility.
22 The northern facility that we just discussed is
23 basically in the low lying area of the site. It's flowing
24 down, flowing through Mr. Hancock's out lot, and continues
25 down into the stream valley. This one, the ground is mostly

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1 falling --
2 MR. GROSSMAN: This one being the southern one?
3 THE WITNESS: The southern one, adjacent to Brink
4 Road, the topography is mostly falling directly towards
5 Brink Road. So the ground is actually rising to some degree
6 from Brink Road into the site. And then, so the water
7 actually goes towards Brink Road. So a little bit different
8 there as far as how this facility lays into the topography,
9 versus how the southern facility lays into the topography.
10 But going back to the original comment, is there
11 area here --
12 MR. GROSSMAN: Here being along the western --
13 THE WITNESS: Is there area here along the
14 property line, the western property line, where additional
15 plantings could be done? I believe there is. Plus, when we
16 design the storm water management facilities, we do
17 incorporate a landscape portion, or a landscape design into
18 the storm water management facilities.
19 Mr. Rood is absolutely correct. You cannot plant
20 vegetation on the dam of the facilities. But on the
21 upstream back sides, further away from the tow or the slope
22 of the facilities, landscaping can be planted.
23 My only concern is that when Mr. Rood was doing
24 his presentation, he was talking about regarding forest
25 conservation, and how we were meeting the forest

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1 conservation. We were not really talking about landscaping.
2 And there is going to be an abundance of landscaping
3 throughout the subdivision, through street trees and the
4 like, home landscaping, and so forth like that.
5 So even up in the area to the northern pond,
6 there's going to be street trees abutting the roadways,
7 which will create some, obviously, visible aesthetics, and
8 some screening as well, although not heavily screening, but
9 there will be street tree screening. You'll see vegetation.
10 MR. GROSSMAN: Right.
11 THE WITNESS: So, I mean, just quickly, if I can
12 use exhibit -- the same orientation, this is Exhibit No.
13 34(g). This is just basically a rendering of the project.
14 Again, the darker green areas, which is labeled as letter or
15 number 3 on the western side of the property, is where the
16 afforestation is taking place.
17 But you can see in the central area where the
18 development is little green circles, representing additional
19 proposed landscaping as the project goes forward. And this
20 will be detailed and reviewed at the subdivision stage, and
21 the site plan stage, through the next go round.
22 BY MR. KLINE:
23 Q I'm going to ask you to -- go ahead and get rid of
24 that, unless you're not finished with that.
25 A Okay.

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1 Q So looking at 34(s), stated rather crudely, I
2 think what you're saying is, after this is all over, you
3 could sit down with Mr. Hancock and say, all right. What do
4 you want, more trees or more water protection, and work out
5 something? And you could scrape that entire green area and
6 basically give him more landscaping. But here you've kind
7 of done him a favor by trying to capture some of that water
8 at the site of this property today?
9 A Right. I mean, I understand there was a concern.
10 There's a difference between whether I consider it flooding
11 or not, but I know there was a concern there. This is a
12 logical place to put a facility, especially if we are, for
13 some reason, unable to meet the entire 100 percent ESD.
14 Q So I guess the more technical question is, we have
15 some flexibility in trying to address the adjacent property
16 owners' concerns?
17 A Yes.
18 Q Thank you.
19 A The other thing I wanted to mention regarding --
20 MR. GROSSMAN: Before you leave that, one of the
21 things I was considering was, when the Council considers
22 this, whether or not they should consider putting in a
23 resolution, if they would decide to improve this, something
24 about increasing the screening in those areas. But if, in
25 fact, increasing the screening would create additional water

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1 problems for the neighbors, maybe that wouldn't be an artful
2 thing to do. So do you have any comments about that?
3 THE WITNESS: From a storm water management
4 standpoint --
5 MR. GROSSMAN: Yes.
6 THE WITNESS: -- what we have shown here, and what
7 has been approved preliminarily, approved through the review
8 agencies, meets all of the storm water management
9 requirements. Right now, these green facilities are not a
10 requirement of Montgomery County to the applicant or to this
11 property.
12 Understanding that there was a, I had heard that
13 there was some concern about water down in this area, and
14 if, in fact, we cannot get in front of a design 100 percent
15 ESD through the scattered facilities, this would be a
16 logical place to put an additional facility, which could
17 take care of any differences we have from 100 percent, let's
18 say down to 90 percent using ESD measures, also to reduce
19 the amount of water that's coming off the property.
20 But as I said in my opening statement, sort of
21 opening is, we are basically, there's going to be less water
22 coming off of this site after this is developed than there
23 is today. So in putting all these facilities in, excluding
24 the green facilities, the extended retention facilities, my
25 professional opinion is, there will be less water exiting

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1 this property by the measures that we have incorporated.
2 MR. GROSSMAN: I understand that. I'm just trying
3 to figure out a way to balance all of that in what I say to
4 the Council.
5 MR. KLINE: It's a bit of a dilemma from our point
6 of view.
7 MR. GROSSMAN: Right.
8 MR. KLINE: But it is something that the applicant
9 clearly, it is to help Mr. Hancock, and try to work
10 something out later on.
11 MR. GROSSMAN: Well, we'll hear from Mr. Hancock
12 on the point in testimony, so we'll have some basis for what
13 to say to the Council.
14 THE WITNESS: Previous testimony, I think there
15 was a question to Mr. Rood about, what would the depths of
16 these facilities be.
17 MR. GROSSMAN: Yes.
18 THE WITNESS: Typically, these are extended
19 detention dry facilities. They would have anywhere from two
20 to four feet, depending on the amount of water that we want
21 to retain, and how large the facility is. If we want to
22 make it a little smaller, possibly because of the volume
23 requirements, the water may go a little deeper. If I spread
24 the facility out further, the water will be less deep.
25 So typically in these facilities, we're talking

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1 about two to four feet of ponding. Over a 12-hour period,
2 and this goes back to just quickly the mosquito issue. I've
3 been designing these facilities since the late seventies,
4 and since storm water management basically started. The
5 way, we don't want standing water in these facilities for an
6 extended period of time. These facilities are designed to
7 drain down over a 12-hour period, therefore restricting the
8 standing water, possible mosquitoes, and so forth like that.
9 Also --
10 MR. GROSSMAN: Drain down to the point where
11 they're dry?
12 THE WITNESS: They're dry again, correct. And
13 then, of course, as Mr. Rood said, they do have to be
14 maintained. These are grass facilities, so they have to be
15 mowed. Any trash that would get in there would be cleaned
16 out, and so forth.
17 MR. GROSSMAN: Do they have a drain at the bottom,
18 or they just evaporate?
19 THE WITNESS: Typically, the way these are
20 designed is, you'll have a slope in the facility where
21 sometimes you'll have a pilot channel, sometimes not, to a
22 controlled structure, which is at the low point of the
23 interior of the facilities which captures all the water. So
24 basically, it all drains to that point. And then any other
25 water would basically infiltrate, especially in Montgomery

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1 County, the type of facilities. If you're in other
2 jurisdictions with coarse topography, you don't want that.
3 But that's a different --
4 MR. GROSSMAN: Well, I lost the last, if you're in
5 other counties, what was the rest of that sentence?
6 THE WITNESS: An example is, I guess I've gone a
7 little too far here. Up in Frederick County, you have a
8 soil which is coarse topography which causes sink holes.
9 You don't want the water to be infiltrated in the ground.
10 So basically, you put a liner in to stop it from
11 infiltrating. Not in Montgomery County.
12 MR. GROSSMAN: Okay.
13 THE WITNESS: Okay. So basically, for storm water
14 management we have a preliminary water quality approval,
15 preliminary storm water management concept approval. This
16 is the plan that was approved.
17 On sediment control, staying with chapter 19, just
18 want to also reiterate that, you know, we've worked with
19 these plans minimizing the amount of sediment and earth
20 moving. We've also agreed with the County agencies that the
21 sediment control measures during construction will be
22 designed at a capacity of 125 percent.
23 So instead of it being 100 percent, we're going at
24 25 percent additional storage in the sediment control
25 measures during the construction operations here. That's

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1 pretty much it for storm water management.
2 BY MR. KLINE:
3 Q If you've completed that, can you address the
4 adequacy of public facilities, other than transportation
5 covered by Mr. Guckert?
6 A Okay. I'll start with schools. Since this is an
7 age-restricted development, it is interpreted that there
8 will be no school children generated from this development.
9 So therefore there is no impact to the receiving schools.
10 And there is a letter from, or an e-mail from Bruce Christel
11 (phonetic sp.), from the schools, Montgomery County Public
12 Schools.
13 MR. GROSSMAN: That's attached to the Technical
14 Staff Report.
15 THE WITNESS: It was attached to the Staff Report.
16 I've made copies. It was Attachment Number 7 to the Park
17 and Planning Staff Report. So, I don't know, if it's
18 already an exhibit, I guess we don't need it.
19 MR. GROSSMAN: Yes. I don't need to make it an
20 exhibit.
21 THE WITNESS: But basically, Mr. Christel said,
22 there is no impact to the schools based on this type of
23 development. So as far as schools, there is no impact.
24 Regarding police, fire and rescue, from this site
25 the closest police station is the Germantown Police station,

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1 which is approximately 2.1 miles away. Then you have, from
2 fire aspect, there are actually four fire/rescue facilities
3 within this area. I'll just go through them real quick.
4 You have, the furthest one away is the Hyattstown,
5 which is approximately five miles away from the property, or
6 5.9 miles away, I'm sorry. The Gateway, which is up along
7 270, just south of the Maryland 121 interchange, that's
8 approximately 2.3 miles away. You have the Germantown
9 station, which is 2.2 miles away.
10 And then you have a station, what the Montgomery
11 County designates as Station 34, which is 1.1 miles away,
12 down on 355 in, just in the intersection, sort of in the
13 area of 27, Father Hurley, and the 355 area.
14 BY MR. KLINE:
15 Q So are police and Fire and Rescue services
16 therefore deemed to be adequate to service this area?
17 A Yes, very much so.
18 Q How about sewer and water?
19 A Okay.
20 Q How are we going to serve the property -- well,
21 actually, I guess we ought to start with the history
22 probably, because it has some effect on the --
23 A Yes. I'll briefly go through the history of,
24 let's say, sewer, more sewer than water, on this property.
25 When the 1994 master plan was being adopted, and obviously

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1 when you go through a master plan process, it's several
2 years prior to that getting to the final adoption of the
3 master plan.
4 There were, I'm going to call it, capacity issues
5 and conveyance issues for this part of the County. I'm
6 going to say basically the Clarksburg, the southern
7 Clarksburg area from sewer. There was the Crystal Rock Pump
8 Station that had some capacity issues. The Seneca Waste
9 Treatment Plant had some capacity issues, and there was
10 really no conveyance way to bring sewer from this part of
11 the County to, let's say towards the west, towards the
12 Seneca Waste Water Treatment Plant.
13 So back in 1994, when this was adopted, since
14 those restrictions were there, that's one of the reason I
15 believe that this property was designated of RE-2, because
16 of those hindrances to public sewer.
17 Quickly, just to go through public water, then
18 I'll go back to the sewer, just to get that out of the way.
19 Public water for this property, there is existing 16 inch,
20 24 inch, 48 inch lines in Maryland Route 27. There is
21 existing 16 inch water in Brink Road today. So water access
22 capacity is not an issue at all for this property.
23 Now, going back to the sewer, that's 1994, the
24 master plan designated this property as RE-2, adjacent
25 property, but left the green ridge area as R-200, because

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1 they knew that eventually, potentially, there could be sewer
2 service to this area. So they left that as R-200.
3 Then in 2001, the County Council approved or
4 adopted, amended the comprehensive water and sewer master
5 plan for development of stages two and three, which this
6 area of the County was what they designated as stage two and
7 three.
8 So in 2001 there became capacity at the treatment
9 plant, there became capacity at the pump station, the
10 Crystal Rock Pump Station, and there also became a
11 conveyance system just to the south of the Clarksburg
12 Village subdivision, which would allow this area of the
13 County to have sewer conveyance from the east to the west,
14 eventually making --
15 Q And when you say sewer conveyance, it's a trunk
16 line of --
17 A It's a trunk line.
18 Q -- of X dimension or X inches?
19 A That's correct. Yes. So that was also in place,
20 which basically, since there was now capacity at the
21 treatment plant, capacity at the, additional capacity at the
22 pump station, add a conveyance measure to collect this area,
23 they went ahead and changed. They amended it to open to
24 water or sewer service.
25 So then in March 27th, 2001, the County Council,

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1 actually on our property, changed the designation of sewer
2 category for the property that we're talking about today, to
3 W1-S3.
4 Q From?
5 A From a W6, basically W6-S6. And that was
6 predicated on a PIF, you know, private institutional
7 facility.
8 Q So we, what, we were going to build a church on
9 the property or something?
10 A That's correct.
11 Q Okay.
12 A At that time. So the County Council changed this
13 property to, at that time, W1-S3. In 2009, when this
14 application was submitted, we also submitted a request that
15 the category change not be tied strictly to a PIF. And then
16 moving on in July of 2011, the County Council actually
17 deferred action on the category request pending the outcome,
18 or pending what comes out of the rezoning of the property to
19 PRC.
20 So now as far as, when I say this capacity and so
21 forth, this is verified when we're going through the
22 process, there is a letter dated February 1st, 2012, that I
23 also believe is in the staff report of Park and Planning as
24 an attachment, from WSSC, indicating that yes, in fact,
25 water capacity and sewer capacity is available for the

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1 development shown here.
2 Q At the beginning of your discussion you were
3 talking about how the availability of sewer had an influence
4 on the zoning of the property to go from R-200 to RE-2.
5 Tell us about what's happened on a statewide level now that
6 draws into issue the question of the sewer category and the
7 development potential of the property?
8 A In 2012 Maryland legislature passed the Maryland
9 sustainable growth and agricultural preserve act of 2012,
10 which basically designated to, all across the entire State
11 of Maryland to the respective jurisdictions, to create a
12 tier level of sewer, let's say between public sewer and
13 septic fields.
14 As Mr. Rood discussed earlier, there's a concern
15 with the amount of nitrogen runoff going into the bay, and
16 deteriorating the bay, and so forth like that, which comes a
17 lot from septic fields, as you mentioned in that.
18 What the State wanted to try to do was basically
19 limit or restrict where septic fields could be, in lieu of
20 public sewer areas. So Montgomery County through Park and
21 Planning had to come up with these tier maps. And if I can,
22 this is a new exhibit. We have to put a --
23 MR. KLINE: Gary, do we have a number on it?
24 MR. UNTERBERG: We do not.
25 THE WITNESS: This is a new exhibit.

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1 MR. KLINE: Fine. This would be a new exhibit to
2 be placed in the record, Mr. Grossman.
3 MR. GROSSMAN: All right. This will be Exhibit
4 No. 92.
5 (Exhibit No. 92 was marked
6 for identification.)
7 THE WITNESS: Do you mind if I just write right on
8 it.
9 MR. GROSSMAN: Yes, please do.
10 THE WITNESS: That was Exhibit?
11 MR. GROSSMAN: 92. And we'll call it a tiers map.
12 THE WITNESS: Yes.
13 BY MR. KLINE:
14 Q And why don't you tell us what's on here. It
15 looks like this is like an excerpt from some publication of
16 Park and Planning or something.
17 A Yes. This is an excerpt out of the, Park and
18 Planning was the agency who had to initiate the tiers map,
19 the tiers through Montgomery County and which the Council
20 would approve. So this is the section of where our property
21 is, the subject property is located.
22 On the tier map, Exhibit No. 92, on the right hand
23 side of the exhibit is basically an aerial. And what is
24 shown on here is labeled site, with an arrow going to show
25 where our site it. What has been done is the tiers, our

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1 public sewer, and be restricted from having private septic.
 2 BY MR. KLINE:
 3 Q Okay. The only thing I would say from that, then
 4 is, how would we actually -- you talk about how you serve it
 5 with water lines. You say we have capacity, we have
 6 conveyance. How would we actually service the property with
 7 sewer?
 8 A On this plan, the lines that you see in red are
 9 basically the proposed sewer lines.
 10 MR. GROSSMAN: What exhibit are you looking at?
 11 THE WITNESS: I'm looking at Exhibit No. 34(t).
 12 MR. GROSSMAN: Okay.
 13 THE WITNESS: On Exhibit No. 34(t), it basically
 14 shows a preliminary water and sewer layout. WSSC has
 15 reviewed this as part of their approval letter. What we're
 16 doing is, we're going to be able to, by gravity, collect the
 17 entire site, by gravity, to a sewer line that will be
 18 proposed in Snowden Farm Parkway, that will go from, will
 19 travel in Snowden Farm Parkway from east to west to the
 20 proposed cul-de-sac. It's really kind of hard to see on
 21 this, but to a proposed cul-de-sac in Clarksburg Village,
 22 which that road is going to be called Castle Oak Court.
 23 MR. GROSSMAN: What exhibit are you looking at?
 24 THE WITNESS: I'm looking at Exhibit No. 34(q).
 25 On 34(q), here is our, I'm pointing to what's called J-140

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1 units. That's the subject property. Bisecting the subject
 2 property is A-305.
 3 The sewer line will collect both sides of our
 4 project with A-305, take the sewer towards the west and
 5 north to the first cul-de-sac in Clarksburg Village, which
 6 is to the left hand side of what's designated A-80 units.
 7 There's a small cul-de-sac to the west hand side of A-305.
 8 That is where we will extend our sewer line to connect into
 9 there, which eventually goes down into the existing trunk
 10 line through the stream valley.
 11 MR. GROSSMAN: Have you told the people in that
 12 cul-de-sac you're sending them your sewerage?
 13 THE WITNESS: There is nobody living in that cul-
 14 de-sac today. So --
 15 MR. GROSSMAN: I don't think you're getting a
 16 thank you note is what my point.
 17 THE WITNESS: No. It's a public line. So that's
 18 how we'll be serving the project through public sewer is
 19 conveyance.
 20 MR. KLINE: Mr. Bossong, I didn't actually have
 21 any more questions for you. Is there something that you
 22 wanted to add? No. No further questions of Mr. Bossong.
 23 MR. GROSSMAN: Before you go to cross-examination,
 24 I noticed that the only ground level photos I saw in the
 25 file were in the technical staff report. Are there other

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1 ground level photos you have, or should you have a witness
 2 identify these ground level photos in the technical staff
 3 report?
 4 MR. KLINE: We could do that. I mean, certainly
 5 everybody on the team has visited the property.
 6 MR. GROSSMAN: Right. I didn't know. Were there
 7 other photos I just didn't happen to see?
 8 MR. KLINE: Not really.
 9 MR. GROSSMAN: It's useful, I find, to have at
 10 least a couple of photos at ground level of the site. And
 11 were you planning to call back your land planner for
 12 anything?
 13 MR. KLINE: You had asked us to provide additional
 14 testimony. So Mr. Unterberg will be testifying on the
 15 recreational calculations.
 16 MR. GROSSMAN: Well, the, I guess that he could
 17 then identify the photograph --
 18 MR. KLINE: Sure. Okay.
 19 MR. GROSSMAN: -- on pages 2 and 3 of the Staff
 20 Report. Okay. Cross-examination.
 21 CROSS-EXAMINATION
 22 BY MR. HANCOCK:
 23 Q Can you get your chart on your water? Yeah.
 24 Okay. On what we're calling the upper pond, or the northern
 25 pond, I can't quite read through this area.

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1 MS. GOODRICK: It's upside down.
 2 BY MR. HANCOCK:
 3 Q It's upside down. Yeah. Can you give me the, can
 4 you give me the topo reading at the south end of the pond,
 5 and at the north?
 6 A You mean the existing topography today?
 7 Q Yes.
 8 A You're basically at a --
 9 Q No, at the south end, right at the bottom. Yes.
 10 What's the topo there?
 11 A The existing topography, as shown on Exhibit No.
 12 34(s) at this location is approximately 578 above sea level.
 13 Q And the top end?
 14 A And the top --
 15 MR. GROSSMAN: At this location being the
 16 southern?
 17 MR. HANCOCK: No, at the top end of the pond. The
 18 northern --
 19 MR. GROSSMAN: Yes, being the southern portion of
 20 the pond, which is of the northern pond?
 21 THE WITNESS: Right. And approximately at this,
 22 at the northern end of the northern pond, existing
 23 topography is shown here at 580.
 24 BY MR. HANCOCK:
 25 Q I don't understand. You say that there is only a

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1 two-foot difference in the topo?
2 A No.
3 Q You said 578 and 580?
4 A Right. From on this plan, there is no -- I think
5 what's happening here, there is actually, call it a large
6 swale, which comes like, this is sort of the swale area.
7 This is the center of the swale.
8 MR. GROSSMAN: All right. So the swale area
9 you're talking about incorporates the entire pond.
10 THE WITNESS: Correct.
11 MR. GROSSMAN: Okay.
12 THE WITNESS: So at both ends, because it's a bowl
13 shape, those elevations are relatively the same on each end
14 here, from existing topography standpoint.
15 MR. HANCOCK: Okay. I mow it. I can barely get
16 the mower uphill. I don't know how -- I'm confused.
17 MR. GROSSMAN: I don't know if I can clear up that
18 confusion.
19 MR. HANCOCK: The rise, maybe, I can't really see.
20 I don't want to block Mr. Grossman.
21 MR. GROSSMAN: Mr. Kline can volunteer to come out
22 and mow your --
23 MR. HANCOCK: The grade, this is the low end --
24 MR. KLINE: You're going to have to speak up, Mr.
25 Hancock.

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1 MR. HANCOCK: -- oh 574.
2 THE WITNESS: That's 574 there.
3 MR. HANCOCK: 574.
4 THE WITNESS: You asked me here.
5 BY MR. HANCOCK:
6 Q And when you're up in here, you're at 576. Is
7 that 576? Or 578?
8 A 578.
9 Q Okay. I don't understand because there's at least
10 a 20 foot rise from here to there.
11 MR. GROSSMAN: From here being the southern end to
12 the northern end of the pond?
13 MR. HANCOCK: Yes. Yes, sir. I mean, I can
14 barely even get my lawn mower up it.
15 THE WITNESS: Well, I think what you're saying is,
16 from the center line of the swale or the bowled area, two,
17 four, six, eight, 10, 12, 14, 16, 18 feet. That's close to
18 your 20 feet.
19 MR. HANCOCK: I agree. Yeah.
20 THE WITNESS: From down in here, up that hillside.
21 MR. KLINE: So you're talking about the center --
22 THE WITNESS: The center of the bowled area, the
23 center of what I call the swale, the drainage area.
24 MR. GROSSMAN: All right.
25 BY MR. HANCOCK:

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1 Q This land rises this way. This is low. This is
2 coming up.
3 A Correct.
4 Q And this point, I, well, I don't see how it's
5 going to work at three-feet in, I mean, three-feet deep.
6 That was why I was concerned.
7 A Okay.
8 Q How can you make the pond three-feet deep when
9 there's a lot more rise than what you are showing there.
10 I'm confused.
11 A Is that a question?
12 MR. GROSSMAN: Yes. That's a question.
13 THE WITNESS: Okay.
14 MR. GROSSMAN: How can, is a question.
15 THE WITNESS: Okay. What we would do, in the
16 center of the swale or the bowl area, we would create a dam
17 here. Okay.
18 MR. KLINE: You're talking about on the west side
19 of --
20 THE WITNESS: On the west side of the green area,
21 basically, as fill in across the bowl area. The water, what
22 I was mentioning earlier, the two to four feet of depth,
23 that is the storm water depth, the ponding depth of the
24 water. The dam may be six or eight feet high. Okay. But
25 the ponding depth is two to four.

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1 BY MR. HANCOCK:
2 Q That's what I'm driving at.
3 A Okay.
4 Q In other words, on the bottom end, that rise to
5 create the pond is going to be eight or nine feet above
6 existing grade.
7 A It could be, yes.
8 Q That's what I'm after.
9 A Yeah.
10 Q That's why I couldn't understand you, you were
11 saying four feet, and I thought you were talking four feet
12 all the way. So there's going to be a mountain created back
13 there.
14 MR. GROSSMAN: Is that a problem in your mind,
15 Mr. Hancock, or that might add to the screening?
16 MR. HANCOCK: It's just visual. And I didn't
17 realize that it wasn't required. If it's not required,
18 don't do it.
19 MR. GROSSMAN: Well, if that mountain, if that
20 quote, mountain, is there, would it be grass covered?
21 THE WITNESS: Yes.
22 MR. GROSSMAN: Okay. So would that be a problem
23 in your mind, to have something that was taller, grass
24 covered, which would provide additional screening?
25 MR. HANCOCK: It's just very unsightly. I mean --

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1 MR. GROSSMAN: Well, that's what my question is.
2 Is that really unsightly?
3 MR. HANCOCK: The yard all runs downhill of that,
4 and now all of the sudden, you go up seven or eight feet.
5 You can't mow the side of that thing. They're very steep.
6 You have to grass whip it to be able to cut it.
7 MR. GROSSMAN: Well, it wouldn't be on your
8 property.
9 MR. HANCOCK: I'm sorry?
10 MR. GROSSMAN: It wouldn't be on your property?
11 MR. HANCOCK: I know, but I'm looking, it's right
12 at the edge of the property. I'm looking at it all the
13 time. So I was just curious --
14 MR. GROSSMAN: Okay.
15 MR. HANCOCK: -- as to how high that is going to
16 be.
17 THE WITNESS: It has not been final designed yet.
18 and basically, it may, you know, depending on it, it may
19 even be there. As far as your slope concern, Montgomery
20 County does have requirements as far as how steep the dams
21 have to be. So they have to be maintainable. So it's not
22 a --
23 MR. HANCOCK: See, I personally don't care how
24 much water comes across. It just makes a nice green grass.
25 So, from my point of view, you could eliminate that pond.

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1 MR. GROSSMAN: Why don't we save that for your
2 testimony. We can get your point of view on anything that's
3 happened today. And do you have any other questions for
4 this witness?
5 MR. HANCOCK: No. That's was just it.
6 MR. GROSSMAN: Ms. Goodrick, do you have any
7 questions for this witness?
8 CROSS-EXAMINATION
9 BY MS. GOODRICK:
10 Q I just have one. And that is that Mr. Rood said
11 that all of the water, the storm water, is maintained within
12 the site. Do you agree with that?
13 A As far as the volume --
14 MR. GROSSMAN: Well, that's not exactly what he
15 said. He said that to the extent that a natural forest
16 would retain the water. It will be equivalent to or better
17 than, but equivalent to a natural forest retention of water.
18 MS. GOODRICK: Okay.
19 MR. GROSSMAN: It's not necessarily all the water.
20 BY MS. GOODRICK:
21 Q So there is runoff, or there would be runoff?
22 A There will still be runoff.
23 Q Okay.
24 A A perfect example of that is, where Mr. Rood was
25 saying this is going to be an afforested area here --

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1 MR. GROSSMAN: Here being the northwest corner.
2 THE WITNESS: -- the northwest portion of our, of
3 the subject site, we're really not planning on grading it.
4 We're planning on planting there. So it's going to be a
5 forest. So depending on over and above what would naturally
6 be infiltrated in a forest condition there possibly could be
7 some runoff of some sort, especially, let's say, on a very
8 intense storm. There is a lot of rainfall coming in a short
9 period of time.
10 So there still will be some runoff. But the
11 bottom line is, the runoff, in my professional opinion, the
12 runoff leaving this site is going to be less than what's
13 leaving the site as we stand here today.
14 MR. GROSSMAN: Okay.
15 BY MS. GOODRICK:
16 Q Okay. Well just then one other question. What
17 about the runoff from roads that runs onto the property? Is
18 that a part of your calculations?
19 MR. GROSSMAN: Which roads?
20 MS. GOODRICK: The roads that surround the
21 property.
22 MR. GROSSMAN: Okay.
23 MS. GOODRICK: Not the internal roads.
24 MR. GROSSMAN: Okay.
25 MS. GOODRICK: He's talked about that. I'm

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1 talking about the roads that surround the property, the big
2 roads.
3 THE WITNESS: All storm water management from any
4 improvements has to, per State and local jurisdictions, has
5 to be controlled by storm water management. So A-305 will
6 be. The water on A-305 has to be contained and treated and
7 put back in as if A-305 is forest in good condition. And
8 basically, other improvements that are done to public roads,
9 you know, whether it's interior residential roads or offsite
10 roads.
11 BY MS. GOODRICK:
12 Q So then you are responsible for those roads as
13 well, near the property?
14 A Not if they're existing. If there's an
15 improvement to them, then that has to be taken into
16 consideration.
17 MR. GROSSMAN: All right. Any redirect?
18 MR. KLINE: Well, if you will allow me, you should
19 never put a pen in the hand of an attorney, but can I just
20 use, this is the only blank space I can find, Exhibit No.
21 34(s).
22 REDIRECT EXAMINATION
23 BY MR. KLINE:
24 Q So if I understand it, the green --
25 MR. GROSSMAN: Well, before you write on it, tell

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1 me what you are planning to write.
2 MR. KLINE: Well, what I want to do, here's what I
3 want to do. I want to try and do what I think is the
4 graphic of what's actually going to happen. The green pond
5 on the west side of the property essentially straddles the
6 swale.
7 MR. GROSSMAN: Yes.
8 MR. KLINE: I heard the phrase mountain. I think
9 if I drew the swale on here, in essence, what we're going to
10 do is just going to fill in the swale, which is not creating
11 a mountain. It's basically just creating a continuous
12 pattern of grass across the property.
13 MR. GROSSMAN: I understand, but I don't think you
14 have to draw a picture.
15 BY MR. KLINE:
16 Q Fine. If I had drawn that, would that have been
17 an accurate representation of what would be the west side of
18 the retention facility?
19 A Yes, it would.
20 Q Thank you.
21 MR. GROSSMAN: Any --
22 MR. KLINE: No further questions.
23 MR. GROSSMAN: Thank you. Any recross examination
24 on that point alone?
25 MS. GOODRICK: No.

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1 MR. GROSSMAN: All right. Thank you, sir. All
2 right. Then you wanted to call back Mr. --
3 MR. KLINE: I have a feeling there's going to be a
4 lot of stuff that's going to come up. I would just safe Mr.
5 Unterberg for rebuttal and do the other issues that you had
6 asked for as part of rebuttal.
7 MR. GROSSMAN: Well, I actually prefer it in the
8 case in chief.
9 MR. KLINE: Okay. Do you want to just keep going,
10 Mr. Grossman?
11 MR. GROSSMAN: Yes. Yes.
12 MR. KLINE: Okay. Mr. Unterberg.
13 (Discussion off the record.)
14 MR. GROSSMAN: Mr. Unterberg, you are still under
15 oath. Do you understand that, sir?
16 MR. UNTERBERG: I do.
17 MR. GROSSMAN: All right.
18 (Discussion off the record.)
19 MR. GROSSMAN: Let's start out with identifying
20 the photos because I'll forget. Page 2, let's say, first,
21 of the technical staff report, there were two photos, land
22 level photos. One is labeled Figure 1, subject site looking
23 north.
24 THE WITNESS: Bear with me for a second.
25 MR. GROSSMAN: All right.

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1 THE WITNESS: Let me get two exhibits, our
2 illustrative plan and our aerial photo. And you are looking
3 at the Staff Report.
4 MR. GROSSMAN: Yes. Exhibit No. 53, plus Exhibit
5 No. 56.
6 THE WITNESS: And Figure 1 is subject site looking
7 north. Okay.
8 MR. GROSSMAN: And does that appear, number one, I
9 take it you didn't take that photo?
10 THE WITNESS: I did not take these photos. These
11 are technical staff, is my assumption.
12 MR. GROSSMAN: But does that photo look like an
13 accurate depiction of the site, looking north? And I'm not
14 sure, they don't say from where.
15 THE WITNESS: It looks like it's from somewhere in
16 the middle of the site.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: And this looks like if it wasn't
19 this summer, it was the summer prior. And this is, it looks
20 like soybeans to me, the crop that was on the property. But
21 it looks like it's somewhere within the site looking north.
22 MR. GROSSMAN: And you've visited the site.
23 THE WITNESS: Yes. Yes.
24 MR. GROSSMAN: And so does this look like a fairly
25 accurate depiction of it?

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1 THE WITNESS: Yes. And from this aerial photo,
2 even though this is more of a winter condition, it shows the
3 agricultural feel.
4 MR. GROSSMAN: The aerial photo you are referring
5 to is Exhibit?
6 THE WITNESS: It is Exhibit No. 34(e).
7 MR. GROSSMAN: Okay.
8 THE WITNESS: And this depicts the winter
9 condition, which is an open farm field.
10 MR. GROSSMAN: Right.
11 THE WITNESS: But during the summer, when you
12 travel by here, you see green crops.
13 MR. GROSSMAN: Okay. Now, Figure 2, also on page
14 2 of the Staff Report, the subject site looking northwest.
15 THE WITNESS: And it looks like it's approximately
16 the same location. And in the distance, I think you start
17 to pick up the tree line on the western boundary.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: Which you can see on the right hand
20 side of that photo.
21 MR. GROSSMAN: And then on page 3, there's Figure
22 3 that says, Haus (phonetic sp.) farm, parens, Yaeger County
23 Inn. Where is this?
24 THE WITNESS: My assumption, the actual, the
25 Yaeger, and I'm going to Exhibit No. 34(g) because on the

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1 other exhibit we're off the page. The actual historic
2 house, there are some outbuildings on the edge of this
3 graph. The actual historic house is right were this
4 boundary line is.
5 MR. GROSSMAN: All right. And the Yaeger County
6 Inn is the historic house, you say?
7 THE WITNESS: The Yaeger property or the Haus
8 house is the historic resource that's mentioned. We'll be
9 taking about that in a moment. And my assumption, and the
10 house is way far in the background. My assumption is, it's
11 somewhere on the property, roughly where A-305 is going to
12 cross through.
13 MR. GROSSMAN: You're saying that the picture was
14 taken from --
15 THE WITNESS: Taken.
16 MR. GROSSMAN: -- on kind of the north end of the
17 property, about where 305 crosses it, looking towards the
18 west-northwest where the Yaeger --
19 THE WITNESS: Towards the west.
20 MR. GROSSMAN: -- country inn is?
21 THE WITNESS: Yes. And the house is in the
22 background, the kind of white farmhouse that is very small,
23 upper left hand corner. That's the Yaeger house from this
24 photo.
25 MR. GROSSMAN: And is this scene accurately

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1 depicted in the photograph?
2 THE WITNESS: I believe so.
3 MR. GROSSMAN: Okay. Now, the fourth, Figure 4,
4 also on page 3 of the Staff Report says, Brink Road and
5 Ridge Road intersection. It doesn't say from which
6 direction that's taken.
7 THE WITNESS: Well, but I, I think I have it
8 figured out that you're on the site, which is north of Brink
9 Road, and you're actually looking back to the east to Ridge
10 Road, because you see the traffic signal in the background.
11 MR. GROSSMAN: Okay. So this is from the site,
12 southern end of the site, looking eastward towards the
13 intersection of Brink Road and Ridge Road.
14 THE WITNESS: Correct.
15 MR. GROSSMAN: And does that accurately depict
16 that scene?
17 THE WITNESS: Yes.
18 MR. GROSSMAN: All right. Okay. I think that
19 gives us some --
20 THE WITNESS: Does that help?
21 MR. GROSSMAN: -- relevant photographs to identify
22 it.
23 THE WITNESS: Okay. And, yes, we have not taken
24 any other photographs --
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: -- or introduced any for the record.
2 MR. GROSSMAN: All right. Now, Mr. Kline, I
3 return Mr. Unterberg to your tender care.
4 DIRECT EXAMINATION
5 BY MR. KLINE:
6 Q Well, I'm just going to use your two e-mails as
7 sort of a checklist, and maybe, since you were already
8 talking about the Yaeger farm or the Haus farm --
9 MR. GROSSMAN: Right.
10 BY MR. KLINE:
11 Q -- why don't we go ahead and address that issue
12 where you've asked for you to critique Mr. Whipple's
13 comments?
14 A Okay. The e-mail refers to the technical staff
15 report, which is --
16 MR. GROSSMAN: I didn't say critique. I said
17 address. You may critique it, but I used the term address.
18 BY MR. KLINE:
19 Q I hope he will be critical of it.
20 A I have two questions on it. The attachment one is
21 from the Technical Staff Report, and there's two pages.
22 This was written in September 17th, 2009, and it was to
23 Renee Miller from Scott Whipple, and it talks about the
24 house.
25 Go back to Exhibit No. 34(g), the country,

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1 actually bear with me one moment. Let me grab another
2 graphic to show the whole property.
3 Q So you put up a copy of Exhibit No. 7, the
4 certified zoning vicinity map?
5 A It's 7. Also we've labeled it 34(f) which is
6 included in the land use report, which is on the tag on the
7 board. This shows the subject site in yellow. The Yaeger
8 property is shaded in the dark shading, which is also zoned
9 country inn. And the house, the historic house, sits in the
10 upper western, northwest corner.
11 MR. GROSSMAN: I'm sorry, what's the exhibit
12 number?
13 THE WITNESS: This is 34(f), but there is also a
14 duplicate for the stand alone graphic.
15 MR. GROSSMAN: Right.
16 MR. KLINE: Exhibit No. 7.
17 THE WITNESS: So we spoke earlier, I spoke earlier
18 in the week of the zoning. There is an existing entrance
19 road that comes off of Ridge Road.
20 MR. GROSSMAN: Right.
21 THE WITNESS: Travels back and travels back to the
22 house. I'll leave that up. On the western plan, which is
23 34(g), we show the driveway. The house itself is right on
24 the edge of the exhibit, actually right off the exhibit,
25 again, in the upper northwest corner of the property.

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1 That property itself contains a stream valley,
2 which is also shown on this illustrative plan, which is the
3 drainage way that drains to the west. So we will reference
4 the property itself to where we're at.
5 Attachment one, which is from the technical staff
6 report, is two pages. It was written in September, on
7 September 17th, 2009, and to be critical of it, it is
8 incomplete, in my opinion. It just notifies that the
9 subject house is historic, and that there is, it has been
10 noted as historic and associated area and view shed and so
11 forth.
12 It does talk about density, to a certain extent.
13 But then also the second page, which is attachment two,
14 which I know you have a copy of, but just, it does show the
15 Butz property, G-881. It shows the Yaeger property. To the
16 east it's labeled Snowden Farm property, or Snowden Farm
17 Road, but fails to show A-305, Snowden Farm Parkway. This
18 document does not reflect A-305 master plan road. Again,
19 that was written in 2009.
20 MR. GROSSMAN: So you think attachment two is
21 actually attached to attachment one as opposed to the -- I
22 assumed that attachment two was the current map provided by
23 technical staff, the general location map and vicinity map.
24 THE WITNESS: Well, in either case, my question,
25 and why it's incomplete, it shows the future master plan

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1 road, Snowden Farm Road, which is M-83, to the east of Ridge
2 Road. It does not show master plan A-305, which travels
3 through the subject site and travels through the Yaeger
4 property.
5 MR. GROSSMAN: Right.
6 THE WITNESS: So it does not show this road.
7 MR. GROSSMAN: Right.
8 THE WITNESS: And this memo does not mention that
9 road back in 2009. Okay.
10 MR. GROSSMAN: So how does that affect your
11 analysis of the impact on the historic site?
12 THE WITNESS: Let's fast forward to 2010. This,
13 and what exhibit is our appendix?
14 MR. GROSSMAN: The fat appendix.
15 THE WITNESS: The fat appendix.
16 MR. GROSSMAN: That's 34(b), I think. Yes, 34(b).
17 THE WITNESS: That's fine. I'm right here. In
18 the appendix we included the staff report, but it's noted
19 under roads R-2, Snowden Farm Parkway, A-305, mandatory
20 referral memorandum, December 6, 2010.
21 MR. GROSSMAN: Let me find it.
22 THE WITNESS: Okay. I also have a copy of, which
23 I don't know if we need to make this another exhibit. I
24 took that report and added from printing out from Park and
25 Planning's website, the Planning Board agenda that notes

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1 that this was approved back in December, and I don't know if
2 by adding --
3 MR. GROSSMAN: What was approved?
4 THE WITNESS: This went to mandatory referral, and
5 the Planning Board approved --
6 MR. GROSSMAN: What's the this? What's the
7 antecedent to the word, this?
8 THE WITNESS: This is item three, water quality
9 plan, forest conservation plan, and mandatory referral, MR-
10 2010814, Snowden Farm Parkway, A-305, from Morningstar Drive
11 to Ridge Road, Maryland 27.
12 MR. GROSSMAN: Well, I'm not reviewing A-305.
13 Maybe you misunderstood the point.
14 MR. KLINE: No. He's going to get there. We
15 understand what you are asking for. It will all be clear.
16 MR. GROSSMAN: All right.
17 THE WITNESS: In this report, which is in the
18 appendix, which is already entered in as an exhibit --
19 MR. KLINE: Let me pass one of these out to these
20 folks.
21 MS. GOODRICK: Yes. Do you have two?
22 MR. KLINE: I don't have two.
23 MS. GOODRICK: Okay.
24 THE WITNESS: The mandatory referral took into
25 account, again, the water quality, forest conservation and

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1 mandatory referral for the road, from Morningstar Drive,
2 which is north on Exhibit 34(g) south.
3 In particular, the historic resource is discussed.
4 And it talks about whether or not the driveway itself, which
5 goes from Ridge Road to new A-305, is of importance or not.
6 And that is not original to the plan. And in fact, this
7 plan reapproves the driveway location to the new 305.
8 It also discusses the setting, which is primarily
9 the house itself, on the northwest portion of the site.
10 Therefore --
11 MR. GROSSMAN: When you say the site, the
12 northwest?
13 THE WITNESS: The northwest corner of the Yaeger
14 property site.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: Therefore, with A-305 being built
17 and going through the Butz property, and through the Yaeger
18 property, with the realignment and re-establishment of the
19 driveway, that has all been reviewed by Park and Planning
20 and signed off by Park and Planning.
21 BY MR. KLINE:
22 Q That meaning the limits of the environmental
23 setting associated with the historic resource?
24 A The limits and the impact of the construction of
25 A-305 for the mandatory approval in December of 2010.

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1 Q All right. Hereto, before this all occurred,
2 basically, the affected area of the property, was the entire
3 property, with all the historic resource, so the
4 environmental setting was the entire property, was it not?
5 A Way back when.
6 Q Way back when. So A-305 they redrew it and
7 reduced it? And can you tell us the boundaries of the
8 environmental setting now?
9 A Well, it's roughly the house itself. It does even
10 mention the subsequent approvals, because the house was here
11 long before the Brink Meadows was built, and the houses that
12 are located adjacent to it, and/or the Morningstar or the
13 Green Ridge Acres neighborhood to the north, and the houses
14 that were built adjacent to that.
15 And to that context, the closest house which is in
16 the Green Ridge Acres neighborhood, is approximately 400
17 feet from the historic house that has been built and there
18 for many years. Our closest house proposed from the
19 northern portion of the property, north of 305, is over 800
20 feet to the historic resource.
21 MR. GROSSMAN: Right. Well, it's not just, you
22 don't just have a house, because you have 140 houses. So my
23 question, if, I take it from what Mr. Kline just asked you,
24 and your answer and your testimony here today is that, what
25 you're saying is that these observations by Mr. Whipple in

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1 attachment one, are no longer applicable because the
2 historic setting was cut back to just include the Yaeger
3 house as a result of the A-305 approval. Is that what you
4 are saying?
5 THE WITNESS: Correct. Because that memo was
6 written in 2009, and subsequently the mandatory referral
7 went forward in December of 2010.
8 MR. GROSSMAN: The mandatory referral for A-305?
9 THE WITNESS: For A-305 --
10 MR. GROSSMAN: All right.
11 THE WITNESS: -- which included the conversation
12 with the road which is not mentioned in the 2009 memo.
13 MR. GROSSMAN: Okay. And so as we sit here today,
14 you're telling me that the actual historic site is just the
15 house, and that the setting, the historic setting, it does
16 no longer include an of the remainder of the Yaeger
17 property, is what you're saying?
18 THE WITNESS: Correct. It does not include the
19 driveway. The remainder of the Yaeger property is primarily
20 the house and several of the outbuildings surrounding the
21 house.
22 MR. GROSSMAN: Okay. And your opinion as to
23 whether or not the proposed development has any impact on
24 the historic setting?
25 THE WITNESS: It does not. And we are far away

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1 from the historic setting.
2 MR. GROSSMAN: Okay. You disagree with Mr.
3 Whipple.
4 THE WITNESS: I disagree with Mr. Whipple.
5 MR. GROSSMAN: Okay.
6 MR. KLINE: He's updating Mr. Whipple.
7 THE WITNESS: And Mr. Whipple, though I disagree,
8 it's dated and incomplete.
9 MR. GROSSMAN: All right. Mr. Whipple himself
10 says that this is not, this would not be a matter that would
11 go to the Historic Planning -- what is it?
12 MR. KLINE: HPC, Historic Preservation.
13 MR. GROSSMAN: Preservation. I couldn't think of
14 it, Historic Preservation Commission, because it's actually
15 outside of the setting. But in any event, he still found
16 that there would be an adverse impact. But you disagree
17 with him on that point for the reasons you stated.
18 THE WITNESS: Correct.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: Yes.
21 BY MR. KLINE:
22 Q And I see in the material you have given us, Mr.
23 Unterberg, that there's a reference to how the property is
24 being used with a parking lot for 63 vehicles. Where is
25 that located?

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1 A Well, that's the other thing, because it's
2 mentioned several times that since it is zoned country inn,
3 it's my understanding right now that it is vacant. I don't
4 know if anyone is living there. I know Mr. Yaeger passed
5 away a few years ago. And whether or not, I think it's
6 vacant.
7 But it does have an approval that it can be used
8 for country inn. There is reference made to a 63-space
9 parking lot that has been approved that needs to be
10 accommodated also on this property. It talks about the
11 southwest corner, although the eastern part of the property
12 is primarily stream valley.
13 MR. GROSSMAN: Yes.
14 THE WITNESS: So the southwest corner must be west
15 of the house, that there's provision to, if this was
16 rehabilitated as a country inn, that there would be a 63-
17 space parking lot west of the house.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: So it has been approved for an inn
20 per the zone.
21 MR. GROSSMAN: Okay. All right. Did you want to
22 go onto another point.
23 MR. KLINE: I was going to ask him to address the
24 recreational calculations. And I've got a feeling that's
25 going to take a while. So that's really, do you want to

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1 consider taking a break now or let us get started on it?
2 MR. GROSSMAN: I was hoping that we would not take
3 a lunch break and just finish.
4 MR. KLINE: Unfortunately, we're not going to
5 finish before a lunch that most people would think is the
6 lunch hour. I mean --
7 MR. GROSSMAN: I can live off the fat of the land
8 for a while, but I know that you skinny folks have more of a
9 problem.
10 MR. KLINE: Well, I'm glad to plus along with Mr.
11 Unterberg, but I've got a feeling he's going to take more
12 than 38 minutes, just on this subject alone. I think he'll
13 be up there a bit longer himself.
14 MR. GROSSMAN: What other topics are we having him
15 cover?
16 MR. KLINE: The only other one you asked for would
17 be recreational, but we do have some proposed modifications
18 plans that we wanted to discuss with you also.
19 MR. GROSSMAN: Okay. Well, let's see if he can be
20 succinct.
21 MR. KLINE: Okay.
22 MR. GROSSMAN: Epigrammatic, compendious
23 sententious summary and concise. How is that, when
24 addressing the amenities issue.
25 BY MR. KLINE:

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1 Q So let me try, and I'll let you get organized,
2 first of all. And do you have adequate copies we can pass
3 out of anything you're going to --
4 A I do. You keep going and I'll catch up as I
5 get --
6 Q Well, really, I'm going to phrase the question I'm
7 going to ask you to get you started, based on Mr. Grossman's
8 inquiry to either both Ms. Kamen or to us.
9 MR. GROSSMAN: We also have gotten a response from
10 Ms. Kamen on the point, which is in the record now. You all
11 got copies of it by e-mail, which helped me understand a
12 little bit better what their calculation, the calculation.
13 She didn't answer the question fully yet about the point
14 allocation for each individual room in a community center.
15 And she also was going to check further on the
16 question of what standard should be used when the term
17 senior, as defined in the recreation manual that they use,
18 does not comport with senior as it's used here, senior here
19 being 50 plus, and senior there being 65 plus. And I'm not
20 sure how that affects the numbering system. So she's going
21 to get back to us on that.
22 MR. KLINE: Well, what we should do, then, is
23 probably submit to her very promptly whatever we give you
24 today, so she has the benefit of what we are providing to
25 you today.

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1 MR. GROSSMAN: Right.
2 BY MR. KLINE:
3 Q Are you ready, Mr. Unterberg?
4 A Yes. To be succinct, I'm going to edit part of my
5 testimony.
6 Q Okay. What can I do, and do you have two copies?
7 A Actually, why don't you give me that clip back?
8 That is one copy. And this is the second copy. And this is
9 a copy for Mr. Grossman.
10 Q Will you be standing during this? Probably so,
11 right?
12 A I'll stand because of --
13 Q So the question was, indicate precisely how the
14 point totals for amenities were arrived at. And I would
15 like to see the map. And factor in the dialogue that was
16 going on between Park and Planning and the hearing examiner
17 which everybody has copies of, so we understand how it's
18 evolved, and the question of what's the proper category to
19 use comes up in this?
20 A Right.
21 MR. GROSSMAN: Right. I understand how the
22 process works. And also, as reflected in the e-mail, I
23 recognizes that this is really a question for site plan
24 review. However, I wanted to make sure that since we have
25 an exhibit now, 66, which has some numbers in it, that the

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1 numbers properly reflect the approved upon analysis by the
2 staff. And the staff didn't address it directly, so I guess
3 we need that clarification.
4 THE WITNESS: Let me explain, and I guess this is
5 all going to be a new exhibit that I just handed out.
6 Because what we've done it, Exhibit No. 66 was a snapshot of
7 what we were proposing as far as recreation on-site. Again,
8 we meet recreation on-site and the number of points or point
9 system meets it for the seniors. Okay.
10 MR. GROSSMAN: Okay.
11 THE WITNESS: What we did is we took a step back
12 based on, well, all yesterday, based on the e-mails, and
13 have come back with a more conservative tally of points.
14 MR. GROSSMAN: Okay.
15 THE WITNESS: And also clarifying, we had shown,
16 we are still proposing three meeting rooms. And in the past
17 we've had applications that have been approved and received
18 credit for the multiple meeting rooms. Okay.
19 What I have done is, this first one should be
20 revised 117-13, and this is a more conservative analysis of
21 the recreation facilities for seniors. Seniors in the
22 recreation guidelines are defined as 65-plus, and they're
23 also known as column D-5. Okay.
24 MR. GROSSMAN: Okay. And this will be Exhibit No.
25 93(a), the first page of what you've handed me, which is the

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1 revised, the revised Exhibit No. 66, in fact. Is that
2 correct?
3 (Exhibit No. 93 was marked
4 for identification.)
5 THE WITNESS: Correct.
6 MR. GROSSMAN: So revised --
7 THE WITNESS: Or another version, a more
8 conservative version of Exhibit No. 66 to demonstrate that
9 we meet the need on-site.
10 MR. GROSSMAN: So revised, or rather, more
11 conservative recreational facilities calculation, I'll say,
12 formerly 66. Okay.
13 BY MR. KLINE:
14 Q And when you say conservative, Mr. Unterberg,
15 careful --
16 A It looks like it's empty.
17 Q I'll take care of that. When you say
18 conservative, what were the changes that you made to Exhibit
19 No. 66 to give you a different set of items?
20 A If we go to category A on this exhibit, thank you.
21 Category A of this exhibit has not changed. That speaks to
22 the demand, which is for 140 single-family units. The
23 demand, 15 years, is 18.2.
24 Previously we had Exhibit No. 66, we had
25 pedestrian system, bike system, natural areas, three indoor

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1 community space, each for the three meeting rooms, and a
2 community garden. And that supplied 37.31, which is over
3 and above the 18.2 demand that is required.
4 What we did is we went back and looked at the
5 community space, and took a more -- indoor community space,
6 took a more conservative approach. If we only took credit
7 for an indoor community space. Also if we only took credit
8 for a pedestrian system, a bike system. We are no longer
9 taking any credit for a natural trail, particularly since we
10 have not shown a specific trail that may go through some of
11 the forest conservation areas. We took that off. So we've
12 narrowed down the number of points to total up for our
13 supply.
14 And with that, with one indoor community space, we
15 total 21.84 points which exceeds the 18.2 requirement. So
16 being more conservative and not counting the three meeting
17 rooms for the rec requirement, we still exceed the
18 requirement, and we provide the supply points for recreation
19 on-site per Park and Planning's guidelines.
20 MR. GROSSMAN: And that makes the assumption that
21 seniors, if seniors wasn't the right category, what would
22 that property demand number be.
23 THE WITNESS: Well, let's go to the next page.
24 MR. GROSSMAN: Okay, 93(b) we'll call the next
25 page.

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1 THE WITNESS: And actually, before we get there,
2 if we could also go to, I guess, page 42 out of the
3 guidelines. I guess that would be 93(c).
4 MR. GROSSMAN: Yes.
5 THE WITNESS: There is a definition for indoor
6 community space, and that would be page 42 out of the rec
7 guidelines, which are now Exhibit 93(c). Definition of
8 multipurpose facility serving the recreation needs of the
9 community may include a multipurpose meeting room, game
10 room, craft or club room, party room, pantry, restrooms,
11 office. Area, must have a threshold of 1,200 square feet to
12 accommodate a maximum of 200 dwelling units.
13 Okay. We are proposing a clubhouse right now
14 that's 1,400 square feet, for 140 dwelling units. So based
15 on this definition, the size of our clubhouse, indoor
16 meeting space, is adequate. Actually, it's more than
17 adequate per this definition.
18 MR. GROSSMAN: What was the overall size of the
19 community center proposed?
20 THE WITNESS: What we're proposing is 1,400 square
21 feet, 35 by 40.
22 MR. GROSSMAN: Okay.
23 THE WITNESS: And this has a threshold of 1,250.
24 Now, back to your age question. The categories are outlined
25 in the rec guidelines. There's a D-1 tot category, zero to

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1 four years old; D-2 children, five to 11 years; D-3, teens,
2 12 to 17; adults 18 to 64; and then seniors 65 plus. We
3 just talked about the D-5 or the seniors.
4 What is now Exhibit 93(b), we added up the points
5 based on this same supply proposal as in 93(a). Again, 140
6 single-family units. The block, the grouping A shows us our
7 math and our supply points that we would need, would be
8 177.8 points for 140 units. And then with the same supply
9 under B-1, pedestrian, bike, indoor community space, one
10 indoor community space, community garden, we would have a
11 supply for adults 18 to 64 of 195.58 points.
12 MR. GROSSMAN: Okay.
13 THE WITNESS: So these facilities, the facilities
14 served both, and we're bridging the gap in the ages on the
15 rec guidelines, but adults 18-64, and we're going to start
16 at 50 to 64, we meet that requirement on-site. And then
17 also as shown on 93(a), we meet the seniors 65 and above on
18 site.
19 MR. GROSSMAN: All right.
20 THE WITNESS: Okay. So that's the short version
21 of how we meet the recreation on-site, not only for adults
22 and seniors, as depicted with the age, but with the
23 amenities we've proposed.
24 MR. GROSSMAN: Okay.
25 THE WITNESS: Do you have anything else?

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1 BY MR. KLINE:
2 Q Lastly, could you put up a copy of the development
3 plan? Mr. Unterberg, when time permits, it's your intention
4 to submit a new copy of Exhibit No., what is that?
5 A 41(b).
6 Q 41(b), with a certification block properly
7 reflecting the fact that this is a development plan, rather
8 than a schematic development plan?
9 A Correct. It apparently says schematic development
10 plan. We need to remove the word schematic.
11 Q And the applicant is prepared to add a binding
12 element that will be restricted to residents of 50 years or
13 older, or some language that I still need to create, Mr.
14 Grossman, that will kind of track the definition of the PR
15 zone in the zoning ordinance so we don't have to bother you
16 for a development plan amendment.
17 MR. GROSSMAN: Right.
18 MR. KLINE: But we are binding ourselves to
19 whatever is the applicable law at the time.
20 MR. GROSSMAN: Right. The reason I raised the
21 schematic, I figured since you had -- I would have just
22 crossed it out when I was doing the certification. But
23 since you had to revise the plan anyway --
24 THE WITNESS: Yes, we grabbed the wrong one off
25 the web.

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1 MR. KLINE: Not a problem.
2 MR. GROSSMAN: Right.
3 THE WITNESS: But, yes, we can get this.
4 MR. GROSSMAN: And I did get a response back. I
5 think I put it in the record also, from technical staff
6 indicating that just to add this binding element we wouldn't
7 have to send it all back to the Planning Board, at least
8 that's what --
9 MR. KLINE: We saw Ms. Kamen's memo, yes.
10 MR. GROSSMAN: Okay. Because I figured that would
11 save some time. We're required, under the zoning ordinance,
12 to give the Planning Board a crack at any change in the
13 development plan.
14 MR. KLINE: Right.
15 MR. GROSSMAN: But I figured this was not
16 something that would probably require a complete, full, re-
17 view. So I wanted to get that.
18 MR. KLINE: Well, I'm not finished.
19 MR. GROSSMAN: Yes.
20 MR. KLINE: But I hope you still feel that way
21 about it, because I'm going to ask Mr. Unterberg to, we
22 probably gave Mr. Hancock a start, unnecessarily so. So I'd
23 like Mr. Unterberg, when he's organized here, to basically
24 talk about the attached units on the plan.
25 MR. GROSSMAN: Okay.

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1 MR. KLINE: Unfortunately, during our presentation
2 the other day, apparently attached units, which we commonly
3 know as townhouses, and the phrase townhouse came up.
4 MR. GROSSMAN: Right.
5 MR. KLINE: And that caused some concern on the
6 part of Mr. Hancock and probably others.
7 BY MR. KLINE:
8 Q Can you describe, and why don't you first of all
9 read what the what the labels are for A and B, which are the
10 two sections in the plan, and what is meant by the
11 definitions of the attached residential unit?
12 A Okay. On the development plan --
13 Q You're looking at Exhibit number what?
14 A Exhibit No. 41(b), you just spoke, that was going
15 to be revised to update a couple cleanup issues. Under box
16 A, we describe the proposed land use, predominantly detached
17 residential with attached residential up to 35 foot in half,
18 approximately 38.1 acres. And then we have a
19 detached/attached, 100 to 130 units, which is describing the
20 totals for area A.
21 Q Okay. And in B?
22 A And B is predominantly detached residential, same
23 language. It's 10 acres and then detached/attached 25 to 35
24 units in area B.
25 Q And what is meant by the phrase, attached

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1 residential?
2 A Attached, we want to clarify that it's a senior
3 product. It's primarily a single level product with the
4 master bedroom on the first floor. Some people in the
5 industry call them villas versus a townhouse. It would not
6 be a townhouse. It may have a second floor, a loft, a
7 bedroom or office.
8 But the intent is that these would be a, primarily
9 a first-floor living villa that's attached, not too
10 dissimilar from the single-family unit, the same concept.
11 They have your living space, your master bedroom on the
12 first floor. Any second floor would be extra space, such as
13 an office or another bedroom. The only difference would be,
14 these would be attached if the market warrants that.
15 Q And do you propose, or does the applicant propose
16 to alter the number of attached units associated with the
17 project?
18 A We have discussed reducing that from 20 percent to
19 15 --
20 Q Go ahead and go to your PRC. Turn it sideways so
21 we can look at it better. So your third block is titled PRC
22 yield summary.
23 A Yes. We show detached 80 percent, 112 units,
24 attached not to exceed 20 percent, or 28 units. We'd like
25 to modify that and change that to the attached, and we'd

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1 like to put a definition for the attached. That would be
2 the villa, first floor master.
3 MR. GROSSMAN: So you'd like to change the
4 percentage of potential attached to --
5 THE WITNESS: From 20 to 15 percent, which would
6 be a maximum of 21 units for the attached, still not to
7 exceed 140 total would hold.
8 MR. KLINE: So, Mr. Grossman, the way I had kind
9 of doodled this up was that we would just asterisk where
10 attached appears in block A, block B, and the PRC zone
11 analysis, and in the definitions, and then come up with an
12 appropriate definition for attached residential, which was a
13 subject before we came in here today to try and get the
14 right, master bedroom, that is all understood. It's what
15 happens, if it happens at all, in that upper level.
16 MR. GROSSMAN: Right.
17 MR. KLINE: And we would come back with something.
18 But I guess the point I want to make, it isn't a multi-level
19 townhouse. That is for sure.
20 MR. GROSSMAN: Well, it's fine with me. I mean,
21 we would have to do the following. When do you think you'd
22 have this revised development plan together?
23 MR. KLINE: I'd say that probably we could submit
24 it to you by Tuesday or Wednesday.
25 MR. GROSSMAN: Okay. So, let's see, today is the

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1 18th. Why don't we say, just to be safe, by Friday the
2 25th?
3 MR. KLINE: Okay. Fine.
4 MR. GROSSMAN: So 1/25/13. At the same time, I'd
5 ask you to submit copies to all of the opposition personnel,
6 and to technical staff. And then what do you think is a
7 reasonable time in terms of their review? I would ask
8 Technical Staff to review it and to determine whether or not
9 Planning Board has to look at it.
10 MR. KLINE: Yes. I understand.
11 MR. GROSSMAN: And then get back to me, or to all
12 of us. What is a reasonable time for that?
13 MR. KLINE: Well, I can't speak for these folks,
14 but I was actually very impressed that Ms. Kamen got back to
15 you so quickly on something that she's not really that good
16 at.
17 MR. GROSSMAN: Right.
18 MR. KLINE: So she really got it done right away.
19 So I have a feeling that staff could probably do it within a
20 week. If it had to go to the Board, that's a little bit
21 different.
22 MR. GROSSMAN: Right. I would hope that it
23 wouldn't have to go back to the Board --
24 MR. KLINE: I know.
25 MR. GROSSMAN: -- because you're not changing the

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1 kind of structural elements.
2 MR. KLINE: Absolutely. And there's nowhere in
3 the report where there was a reference to an attached unit
4 as being something --
5 MR. GROSSMAN: Right.
6 MR. KLINE: -- incompatible with the neighborhood.
7 MR. GROSSMAN: But we do have to, under the
8 statute, we have to give them --
9 MR. KLINE: I understand. Well, we would probably
10 contact Ms. Kamen, brief her on it, and get her copied as
11 quickly as possible.
12 MR. GROSSMAN: Right.
13 MR. KLINE: I would suggest a week. I know you
14 typically like to check in with them and make sure that
15 sounds reasonable to her.
16 MR. GROSSMAN: Right. What if we say, we can say
17 10 days for both, for all parties, and that would be,
18 because that's anyway. That's essentially the same thing,
19 because that becomes February 4th, which is a Monday. So
20 it's -- so 2/4/13, for any comments from the opposition and
21 technical staff. And if technical staff says they need more
22 time, then I would extend it. I'd have to extend it by a
23 formal order.
24 MR. KLINE: I understand.
25 MR. GROSSMAN: And do you want any additional time

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1 to respond to any comments you might get from staff and/or
2 the opposition?
3 MR. KLINE: February 4th is what day of the week?
4 MR. GROSSMAN: That's a Monday.
5 MR. KLINE: It's a Monday. February 5th would be
6 fine.
7 MR. GROSSMAN: Okay.
8 MS. GOODRICK: Excuse me. What was that February
9 the 5th? What happens on February the 5th?
10 MR. GROSSMAN: We're giving Mr. Kline a day, he
11 can have more than that if he wants, but he said he only
12 needs a day to respond to any comments from technical staff
13 or the opposition that you would be filing by February 4th.
14 MS. GOODRICK: All right.
15 MR. GROSSMAN: Okay. Do you think a day is enough
16 time, Mr. Kline?
17 MR. KLINE: Yes, sir.
18 MR. GROSSMAN: Okay. Could I ask you also, in the
19 10 days before you submit the amended plan to talk to the
20 opposition about whether or not it makes any sense to have a
21 larger, a wider screening area, and reduce the size of the
22 collection pool, since it apparently is not required by
23 County or State?
24 I'm very leery about putting anything in my report
25 about doing that kind of thing without everybody being on

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1 board, because I'm fearful that, I don't want to create, I
2 don't want the Council, if it decides to approve this, to
3 create some kind of a straightjacket that would be, that
4 would create more problems than it would solve.
5 So I think maybe, and it may be that it should be
6 left the way it is. I have no opinion on it. I just wanted
7 to, see, since I know people who live to the west of the
8 site.
9 MR. KLINE: As I gratuitously stated earlier, we
10 would be meeting with Mr. Hancock, in any event, for -- so
11 we'll just accelerate that, and we can make ourselves
12 available, and he can invite anybody else he wants to do the
13 meeting with. Yes, we would be glad to meet with him within
14 those 10 days to see what could be worked out.
15 MR. GROSSMAN: Okay. All right. Anything further
16 on that?
17 MR. KLINE: There's nothing further on that in
18 terms of the scheduling.
19 MR. GROSSMAN: Okay.
20 MR. KLINE: That completes our presentation in
21 chief.
22 MR. GROSSMAN: Okay. And while we're talking
23 about dates, it would be my plan, then, if these dates are
24 agreeable, as apparently they are, that the record would
25 then close at close of business on February 5, 2013. And

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1 the way the system works, if my report is due 45 days
2 thereafter. And I can extend that time, but I almost never
3 do.
4 And we send out a notice then to all the people
5 who have participated in the hearings that the report has
6 been issued and it will be, the full report will be on our
7 website. If anybody has problems in accessing websites or
8 whatever, we can send out, we can make other arrangements.
9 But that's the statutory requirement, that we send out a
10 notice indicating that the full report will be on our
11 website. Yes, ma'am.
12 MS. GOODRICK: Okay. I just have a couple of
13 questions. So then it goes to the Council?
14 MR. GROSSMAN: Yes.
15 MS. GOODRICK: And how much time, you know, how
16 much time does it, do they have to react?
17 MR. GROSSMAN: Yes.
18 MS. GOODRICK: Or is there a deadline there?
19 MR. GROSSMAN: Yes, they do. They have a 60-day
20 requirement. They have to act with 60 days after I issue
21 the report. You and/or Mr. Kline, anybody, any aggrieved
22 party has 10 days after the report is issued within which to
23 request oral argument before the Council. But the Council
24 may not consider anything outside of the record that we
25 compile here. In other words --

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1 MS. GOODRICK: May not consider anything outside
2 of --
3 MR. GROSSMAN: Outside of the record. They may
4 not consider any additional evidence. All of the evidence
5 the Council will consider will be from the record that is
6 compiled here.
7 MS. GOODRICK: Can we --
8 MR. GROSSMAN: And the only oral argument is a
9 request to make an argument on issues. It's not a request
10 to put in any additional information.
11 MS. GOODRICK: Okay.
12 MR. GROSSMAN: And then if there is a party, if a
13 party does request oral argument, then the Council can
14 decide whether or not it wants to hear oral argument. If it
15 decides to hear oral argument, then it will set a date on
16 which it will hear oral argument. And then, usually, it
17 allows each side 20 minutes or something like that to
18 present their oral argument.
19 And the hearing examiner sits at the table and
20 speaks up if somebody tries to go outside of the record, to
21 the extent that I can remember.
22 MS. GOODRICK: Okay.
23 MR. GROSSMAN: And that's the way, and it's
24 conducted by the president of the Council with the other
25 members present. And then they vote on the issue. If they

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1 decide not to have oral argument, they will just -- or if
2 nobody requests oral argument, they will just, at the time
3 when they set it for their review, and usually that is set
4 two to three weeks after my report would go up there.
5 At the time they set for their review, they will
6 then discuss it, ask any questions of me that they might
7 have, and once again I would stay within the record, and
8 then it would be, they would act on it. They'll vote on it.
9 MS. GOODRICK: Okay.
10 MR. GROSSMAN: Up, down or remand.
11 MS. GOODRICK: Okay. And I have a question of Mr.
12 Unterberg.
13 MR. GROSSMAN: Oh yes, did I forget to allow
14 cross-examination.
15 MS. GOODRICK: Yes.
16 MR. GROSSMAN: Yes. We got into the date setting.
17 MS. GOODRICK: Got you. Got it. Got it.
18 MR. GROSSMAN: We'll get back to it. We'll get
19 back.
20 MS. GOODRICK: That's right. Okay.
21 MR. GROSSMAN: But before we get back to that, so
22 everybody clear on that, and the dates are good, and we
23 understand all of that? Okay. All right. So now, we have
24 finished then with your questions on direct of Mr.
25 Unterberg?

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1 MR. KLINE: I'm finished. Yes.
2 MR. GROSSMAN: Okay. So let's, we'll reverse the
3 order and Ms. Goodrick, any questions?
4 CROSS-EXAMINATION
5 BY MS. GOODRICK:
6 Q I just want to ask about the chart because this is
7 the --
8 A Direct, which exhibit?
9 Q Well, it was 66 that it was revised to --
10 A Okay.
11 Q -- 93(a), (b) and (c), if I --
12 MR. GROSSMAN: Right.
13 THE WITNESS: Keep going.
14 BY MS. GOODRICK:
15 Q Okay.
16 A I'm just --
17 Q Okay. One of the things I asked the last time was
18 that on the bike system if you just had any kind of trails
19 you got these points, 1.82, right?
20 A Correct.
21 Q Okay. And so --
22 A It has to connect somewhere, which we do.
23 Q Okay. It has to connect somewhere outside the
24 site?
25 A Well, to a bike trail. And the bike trail along

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1 A-305 continues up, and there's a bike trail on, existing
2 and to be built on Route 27 that continues down to
3 Germantown.
4 Q Okay. And the pedestrian system, is that the
5 same? Where does that have to connect?
6 A Same concept to interconnect. Internally it
7 connects, then we have the external connection to the Ridge
8 Road park to the south, and then it connects to the sidewalk
9 system on the adjoining road.
10 Q Okay, so what we seem to have some trouble with is
11 determining where these crosswalks are going to be. And so
12 does this pedestrian system then, is it drawn to such an
13 extent that we can see where those crosswalks are going to
14 be that are outside the property?
15 A At site plan the sidewalks will be shown, whether
16 the ones we are proposing or the existing ones, whether they
17 are -- and there is a current plan for A-305, and for Ridge
18 Road that's in progress. So those, by the time we get to
19 site plan, those hopefully are all approved, so we can show
20 those plus any new ones we are proposing, all at site plan.
21 Q Okay. But site plan would be -- will we have,
22 will we have access to that before we go, this goes to the
23 Council?
24 A No. Site plan would come after zoning. If the
25 zoning is approved, that level of detail would be then taken

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1 forward.
2 MR. GROSSMAN: And that's done by technical staff
3 and the Planning Board.
4 BY MS. GOODRICK:
5 Q Okay, because -- okay. All right. So one of the
6 other things that was brought up the last time was that when
7 we, if you look at Exhibit 66, that it had on there some
8 things that have not been built. Remember we talked about
9 that, and it said, Seneca Meadows Crossing Park?
10 A That is --
11 Q And then you've deleted that from Exhibit No.
12 93(a)?
13 A Yes. We went back and double checked. The list
14 of amenities that are shown, they all exist on Ridge Road
15 Recreational Park. So on the new 93(b), everything that is
16 shown exists in Ridge Road. We included on Exhibit No. 66,
17 also, Seneca Meadows Crossing Park, to make the point that
18 that park is there. It's dedicated. It's rough graded.
19 But again, there are no facilities there, and we did confirm
20 that we have not taken credit for any facilities on Seneca
21 Meadows Crossing Park.
22 Q Okay. So then this revised paper, exhibit, 93(b)
23 is the one that you present with this proposed, is this
24 presented with this proposal as a formal document?
25 MR. GROSSMAN: When you say presented, what do you

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1 mean by that?
2 BY MS. GOODRICK:
3 Q Well, is this a formal document that will go, does
4 this go to site planning. Is that what you're saying this
5 document, where does this document go?
6 A Actually, we're doing this probably premature.
7 It's typically not done at zoning, but to clarify how we
8 meet the recreation on site, we've documented that. There
9 will be another version of this at site plan. We are
10 committing by binding element. We are doing the community
11 center. We will have, per the roads and the bikeways, those
12 will all be part of the plan. And then we're proposing
13 right now to do the community garden.
14 Any other recreation amenities that Park and
15 Planning may recommend will be added to this. So this is
16 subject to change at site plan.
17 Q Okay.
18 MR. GROSSMAN: And they do have, technical staff
19 has their recreation guidelines online. So you can look at
20 how these figures are arrived at, demand, supply, and the
21 factors that are multiplied out. It's confusing. I will
22 give you that.
23 MS. GOODRICK: Okay. All right.
24 MR. GROSSMAN: But they are online.
25 MS. GOODRICK: All right.

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1 MR. GROSSMAN: These figures, what they've done in
2 93(a) and 93(b), 93(a) assumes that the definition that
3 applies is that of seniors. But seniors does not directly
4 correspond. Then 93(b) assumes that the definitions that
5 apply is that of adults. And adults, it doesn't directly
6 correspond either. So that's the question.
7 And they've given both versions, and under both,
8 they are suggesting that these figures establish that they
9 would meet the point total evaluations that technical staff
10 uses to determine whether they site, the proposed
11 development, meets its recreational guidelines. It is a
12 site plan issue, not a zoning issue.
13 MS. GOODRICK: Okay. All right. That's all of my
14 questions.
15 MR. GROSSMAN: Okay. Any redirect? Oh, I guess
16 we forgot Mr. Hancock. Any questions?
17 MR. HANCOCK: No, I'm fine.
18 MR. GROSSMAN: All right. No redirect? All
19 right. Thank you. See, you were pithy, terse, and laconic.
20 THE WITNESS: Thank you.
21 MR. GROSSMAN: All right. Have you any other
22 additional evidence?
23 MR. KLINE: I have no further witnesses.
24 MR. GROSSMAN: All right. Before we go through
25 the exhibit list, we'll ask Mr. Hancock, I think I swore you

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1 in --
2 MR. HANCOCK: Yes.
3 MR. GROSSMAN: -- on Monday.
4 MR. HANCOCK: Yes.
5 MR. GROSSMAN: So if you have additional testimony
6 regarding what's come up today, please feel free to give
7 that to us now.
8 STATEMENT BY WILLIAM HANCOCK
9 THE WITNESS: Yes. I'd like to, if I may, make a
10 comment on two letters that we received yesterday by e-mail.
11 MR. GROSSMAN: Okay.
12 THE WITNESS: One from Miller and Canby, and one
13 from Elm Street. My comments are very brief. The Miller,
14 Miller, Canby, excuse me, denying the request to reduce the
15 density. And in the next paragraph they say that reducing
16 below, reducing the number of units below 140 --
17 MR. GROSSMAN: Yes.
18 THE WITNESS: -- is not economically feasible.
19 But I don't see any place in any regulations or laws that
20 Montgomery County owes Mr. Butz a living. When he first
21 started to testify, he was testifying about the economics of
22 farming not being good. Well, the economics of less than
23 140 units aren't good, maybe he needs to find another way.
24 MR. GROSSMAN: It's not a factor in my
25 consideration, as I told Mr. Butz when he was testifying.

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1 I'm not empowered to evaluate his finances or whether or not
2 something is economically feasible. I mean, I may have the
3 educational background to do it, but that's not what I'm
4 about here. It's not within my purview. And so --
5 THE WITNESS: Well, actually, I'm agreeing with
6 that. It shouldn't be considered.
7 MR. GROSSMAN: Right. Right. I will only look at
8 the land use issues.
9 THE WITNESS: And the other thing is, Elm Street,
10 the lady made a very nice presentation, and they followed it
11 up with a letter saying that they think this is the greatest
12 thing since high-button shoes. And that I just don't
13 understand why it's so great. They've been dealing with
14 this Clarksburg for 10 or 12 years, 15 years, why they
15 haven't included it in their plan before.
16 If it's such a good idea, why in all the planning
17 that's gone on, the Clarksburg, the Clarksburg Village, and
18 that whole area, has this never been addressed before.
19 MR. GROSSMAN: That's also not an issue that I
20 can address.
21 THE WITNESS: Okay.
22 MR. GROSSMAN: I mean, I would just be speculating
23 as to why. I have to act on evidence.
24 THE WITNESS: Then I'm through. Then I'm through,
25 sir.

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1 MR. GROSSMAN: All right. Mr. Hancock. Thank
2 you. Ms. Goodrick, would you, I presume you want to
3 testify?
4 MS. GOODRICK: Yes, I do.
5 MR. GROSSMAN: All right. Would you raise your
6 right hand please?
7 (Witness sworn.)
8 MR. GROSSMAN: All right. You may proceed.
9 STATEMENT OF MARY JANE GOODRICK
10 THE WITNESS: Well, I wanted to ask some questions
11 about the Elm Street Development letter that was written on
12 January the 16th, 2013, that was in response to our request
13 for an agreement about the HOA arrangements between the Butz
14 property and Clarksburg Village. And they responded.
15 MR. GROSSMAN: Right.
16 THE WITNESS: And so I would like to ask whether
17 this response is binding? Because in the letter it says,
18 the possible incorporation of Mr. Butz property into the
19 Clarksburg Village HOA was initially determined as follows.
20 And it's (a), (b) and (c). And it says, at the sole option
21 of Mr. Butz, for example. So I would like to have that
22 answered. So is it --
23 MR. GROSSMAN: I'm not sure I understand. First
24 of all, are you asking me whether it's binding? What are
25 you, who are you asking?

1 THE WITNESS: Okay. I'm not sure of the
2 procedures. What I would like to do is to, I would like to
3 ask Mr. Kline or Mr. Butz to, in this document, whether this
4 is binding on Elm Street and the Butz property owners, this
5 document that tried to -- in other words, our concern was
6 whether, even though they are saying that all of these --

7 MR. GROSSMAN: You mean whether these offers can
8 be withdrawn at some point?

9 THE WITNESS: Yes, can they be withdrawn and, you
10 know, they are saying, one of the requirements is that you
11 have these off-site facilities that people who live at the
12 Butz property can use.

13 MR. GROSSMAN: Yes.

14 THE WITNESS: And we had Elm Street come in and
15 testify to say that they had these agreements with the Butz
16 property owners. And then they wrote a document, which we
17 appreciated. They responded to our request.

18 MR. GROSSMAN: Right.

19 THE WITNESS: But what it doesn't seem to be
20 binding. It seems to be --

21 MR. GROSSMAN: It may not be, and it is, as the
22 saying goes these days, it is what it is. That is, this is
23 your opportunity for testimony, not for questioning, ma'am.

24 THE WITNESS: Well, I thought that's what I was
25 asking for, but I'm sorry.

1 MR. GROSSMAN: And I'm not sure that -- you're
2 essentially asking for a legal opinion. So I don't think
3 that they are in a position to give you that in this
4 context.

5 THE WITNESS: Okay.

6 MR. GROSSMAN: That's something, you can ask your
7 own lawyer whether or not he or she thinks it's binding, but
8 that's not really within this context.

9 THE WITNESS: Okay. So if this is said to me, I
10 would like to suggest that this isn't binding, and that
11 then, that it can be rescinded at any time, and so I, I am
12 concerned that there will be, I'm interested to know the
13 adverse effects that would happen to the Butz property
14 owners if these facilities are not available. So I question
15 the, well, the bindingness of this, and whether it could be
16 rescinded at any time, that this paper doesn't show that
17 sufficiently.

18 I would like to speak about the safety for the
19 people who would be, the seniors who would be living in the
20 Butz property. And though we had testimony today about the
21 transportation that surrounds the property, it didn't
22 include, for example, and it wasn't asked to include, for
23 example, the impact of Mid-County Highway, which the
24 terminus of Mid-County Highway is at the A-305, which goes
25 through that property, which will create a tremendous number

1 of vehicles and traffic.

2 The Snowden Park Farm Parkway is not completed,
3 but it will be completed, because it's supposed to be
4 completed by the developers. And the traffic that will be
5 coming down, a tremendous amount from Clarksburg, will be
6 going through that property.

7 And it's Clarksburg and Clarksburg Village, which
8 is a large development. The traffic that will be going down
9 from Ridge Road will be coming from Damascus, Mt. Airy, and
10 the northern part of the County, and will be going down 27.
11 27 is a major route to 270. And there is going to be a
12 tremendous amount of traffic there.

13 Brink Road is also a very busy and one of the
14 major east-west corridors for the County. If you are going
15 south on 270, excuse me, south on 270, you can exit at exit
16 18 and you go south, and you will go -- if you want to get
17 to that property or to other parts of, eastern part of the
18 County, you will go down Brink Road.

19 If you are going north on Ridge Road, if you are
20 trying to get to the property or to Clarksburg or to
21 Damascus, you will be going north on Ridge Road. And you
22 would be turning left on Snowden Farm Parkway if you are
23 going to Clarksburg.

24 So threading that property are roads of huge
25 impact, and potential huge impact. Again, the M-83, you

1 know, it's going through the process of investigation by DOT
2 about whether M-83 will be completed or not. And the
3 likelihood that Park and Planning will make a report about
4 that this summer is likely, so that we would then have a
5 better idea if M-83 will be built.

6 And if it is, that traffic will begin at Goshen
7 and Mid-County, large roads. It will pass passed, go
8 through Montgomery Village Avenue and go north. It will be
9 a huge feeder road. And its terminus is at the intersection
10 of Brink and, I mean, of 27 and Snowden Farm Parkway. So
11 that will have a light to it, but it is already a huge road
12 anyway.

13 The potential for Ridge Road, it's to be four
14 lanes, and whereas one of the testifiers today said that if
15 you have an island in the middle, that that's protective of
16 people. But you have a community of 50 year olds, 60 year
17 olds, 70 year olds, 80 year olds, and 90 year olds, and they
18 are expected to be able to cross those large roads.

19 And one of the concerns that you have in the
20 statute for a PRC is that it be safe. And the, it says in
21 the purpose clause, this would be section 59-C-7.4, and the
22 purpose clause is 59-C-7.41, and I am not a lawyer, but what
23 this says here in the first sentence is that, should I read
24 down to there or do I just comment?

25 MR. GROSSMAN: It's up to you. But it's --

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1 THE WITNESS: Okay. "The purpose and intent of
2 PRC zone is to provide for the establishment of a planned
3 retirement community type of development accessible to, or
4 providing within it, most of the day-to-day recreational,
5 medical, retail, commercial, and similar services required
6 by the residents thereof, in accordance with the
7 comprehensive development plan approved by the Planning
8 Board and so designed as to achieve a maximum of
9 coordination between the development the surrounding uses,
10 including a maximum of safety."
11 So you guys probably have this memorized, but I do
12 have a copy with me.
13 MR. GROSSMAN: No, you don't have to hand that --
14 THE WITNESS: I don't have to give it. Okay.
15 MR. GROSSMAN: But if you want to give me a copy
16 of your testimony or something like that.
17 THE WITNESS: No.
18 MR. GROSSMAN: But we have the zoning ordinance.
19 THE WITNESS: Okay. So the issue that I would
20 like to raise is that the statute itself creating the PRC
21 says that it has to be designed to achieve a maximum
22 coordination between the development and its surrounding
23 uses. So that, so if you are living in that property, you
24 have to cross a major road to get out of it. And if you are
25 a senior, and not all seniors drive, so you would have to be

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1 crossing these major roads, or you would have to get into
2 your car and get onto these major roads that will be
3 increasing in traffic.
4 And again, the studies did not take into account
5 proposed and existing roads that will be completed.
6 MR. GROSSMAN: Well, we don't say will be
7 completed.
8 THE WITNESS: May be completed.
9 MR. GROSSMAN: You have to understand, the only
10 expert testimony I have here is that it will be safe. I
11 have that testimony and I have it in the record from
12 technical staff.
13 THE WITNESS: Well, but -- okay.
14 MR. GROSSMAN: That's a difficult hurdle for you
15 to get past in terms of safety, unless you've got some more
16 direct evidence on the point.
17 THE WITNESS: Well, I think that the point is that
18 M-83 is something that is being closer to being built.
19 There is a process that is studying M-83 and other
20 alternates so that, and if that came to fruition, it would
21 have a huge impact on that property. And even --
22 MR. GROSSMAN: You understand that all of these
23 safety issues, these roadway issues will be looked at at
24 preliminary plan, at subdivision, and at site review. These
25 are issues that are, they are looked at here in a much more

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1 peripheral way in a rezoning, because the Council can't get
2 into the nitty-gritty of the individual parts of the, such
3 as this, the detail of an individual road, the curvatures,
4 that kind of thing. That's not something for the Council to
5 look at.
6 Broader issues about traffic and, you know, are
7 something. But that's not really the focus of the rezoning.
8 The rezoning, the focus is on the purpose and standards in
9 the zone, compatibility with the surrounding area, and the
10 public interest. That's really the focus. They're also
11 very specific questions for this type of zone.
12 There are a series of zones that are required
13 development plans. The PRC zone is one of those zones. And
14 in cases that require development plans, there are specific
15 questions that the Council has to, findings the Council has
16 to make. And so in that connection, they do make a finding
17 regarding access and that sort of thing.
18 But it's still not the kind of detail, it's still
19 not the kind of detail that is gone into when they do site
20 plan review and subdivision planning. So, you know, those
21 are the more direct places to look at those issues.
22 THE WITNESS: Okay.
23 MR. GROSSMAN: See, really, the question for the
24 Council really is, based on this development plan, is it
25 reasonable to conclude that the, that safe access and safe

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1 traffic and so on can be developed in this.
2 THE WITNESS: Right.
3 MR. GROSSMAN: Because they know that later on
4 that issue is going to be looked at. That's not exactly the
5 way it's phrased in the zoning ordinance, but that's really,
6 when you come down to it, that's what they are looking at.
7 THE WITNESS: Okay. The Greater Goshen Civic
8 Association --
9 MR. GROSSMAN: Yes.
10 THE WITNESS: -- is opposed to this zoning change.
11 And due to density and the -- due to density. And then the
12 concerns of seniors who are being placed in a property that
13 is surrounded by major traffic. And the requirement of
14 either crossing, being unable to exit the property without
15 crossing a major road, whether by a pedestrian or by a
16 vehicle.
17 MR. GROSSMAN: I understand.
18 THE WITNESS: We also would like to try to make
19 sure that the development remains as a PRC and that it not
20 be allowed to convert to some other type of housing. I
21 don't know how those assurances can be made.
22 MR. GROSSMAN: Well, it can't be changed. I mean,
23 the zone cannot be changed without the Council acting on it.
24 So it would have to go through, as you have probably
25 observed, this is a fairly lengthy process --

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1 THE WITNESS: Yes.

2 MR. GROSSMAN: -- beginning with the filing of an

3 application, a review by technical staff, a review by

4 Planning Board in an open session, a due process hearing, a

5 report and recommendation to the Council, and the Council's

6 action. So it is not any easy process.

7 The zone will be the PRC zone unless, if the

8 Council approves it, unless the Council changes it. There

9 is nothing that an individual owner can do to change the

10 zone without the Council approving their process.

11 THE WITNESS: Okay. I would also like to say that

12 there has been a lot of talk about the lack of senior

13 housing. And I believe that they were limiting that to

14 Clarksburg, and Clarksburg Village. But also nearby, there

15 is a lot of other senior housing. And that is Asbury,

16 Leisure World, Meadow Ridge, Lutheran Home. There is a lot

17 of other senior housing in the area.

18 And I suppose they are correct, if they say,

19 within the limits that they made, that there is no senior

20 housing other than the 100 units of low income housing

21 that's across the street. But there is senior housing

22 elsewhere in the County.

23 MR. GROSSMAN: Okay. I'm sorry. So I heard you

24 say, Leisure World --

25 THE WITNESS: Asbury.

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1 MR. GROSSMAN: -- Asbury.

2 THE WITNESS: Yes. Meadow Ridge.

3 MR. GROSSMAN: Meadow Ridge.

4 MR. HANCOCK: Churchill.

5 THE WITNESS: Churchill, King Farm.

6 MR. GROSSMAN: Hold on. Churchill --

7 THE WITNESS: King Farm. That is a Lutheran home.

8 MR. GROSSMAN: King Farm. Lutheran home. And so

9 for each one of these things, I know a little bit more about

10 Leisure World in terms of its similarities to this kind of

11 thing. But what about Asbury? Where is that and what kind

12 of housing is Asbury?

13 THE WITNESS: Well, I'm not sure that I can go

14 into each one of these and say, Asbury is a very, very large

15 facility.

16 MR. GROSSMAN: But you say facility. Is it --

17 THE WITNESS: A senior housing. And it's at --

18 UNIDENTIFIED MALE: 1,240 units.

19 MR. GROSSMAN: No, you can't speak from the

20 audience.

21 THE WITNESS: Yes, okay, it's 1,240 units.

22 MR. GROSSMAN: Okay. When you say it's senior

23 housing, are you talking about single-family homes?

24 THE WITNESS: There's some single-family homes.

25 There are some attached homes.

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1 MR. GROSSMAN: Okay.

2 THE WITNESS: They have some where there is care

3 for if you are ill, you could --

4 MR. GROSSMAN: And where is that located?

5 THE WITNESS: That is at --

6 UNIDENTIFIED MALE: Russell Avenue.

7 THE WITNESS: Odenthal and Russell Avenue.

8 Odenthal and Russell Avenue. What I can do is provide you a

9 list, and I will research that information.

10 MR. GROSSMAN: Okay.

11 THE WITNESS: Will that be helpful?

12 MR. GROSSMAN: Well, yes, except that in fairness

13 we have to give the applicant an opportunity to respond to

14 each of these. So let's, for a second, just go through

15 orally. Where is Meadow Ridge and what type of facility is

16 that?

17 THE WITNESS: Okay. Meadow Ridge is a disabled

18 and senior citizens complex that is at Wightman and

19 Prathertown Road.

20 MR. GROSSMAN: And are those individual homes or

21 is this a --

22 THE WITNESS: They are individual homes.

23 MR. GROSSMAN: All right. And what about

24 Churchill?

25 THE WITNESS: I don't know.

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1 MR. GROSSMAN: Okay. And King Farm?

2 THE WITNESS: I don't know specifically.

3 MR. GROSSMAN: And Lutheran Home?

4 THE WITNESS: I don't know.

5 MR. GROSSMAN: Okay. All right. Since we have 10

6 days until the applicant submits its revised development

7 plan, within that 10-day period, if you wish, you may submit

8 a list of these other senior facilities and a description of

9 what type of facility we're talking about. And I think it

10 should be, if we're talking, I'm talking about, I'm

11 interested in comparable things, that is, things with

12 single-family homes, not a nursing home or that kind of

13 thing.

14 THE WITNESS: Uh-huh.

15 MR. GROSSMAN: And where they are located, and the

16 number of units.

17 THE WITNESS: Okay.

18 MR. GROSSMAN: And then Mr. Kline will have the

19 same 10-day period to respond to that.

20 THE WITNESS: Okay.

21 MR. GROSSMAN: Okay. All right. Okay. That

22 concludes my testimony.

23 THE WITNESS: Okay. Any rebuttal, Mr. Kline?

24 MR. KLINE: No questions of Ms. Goodrick.

25 MR. GROSSMAN: Okay. And, oh yes, I should have

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1 given you an opportunity for cross-examination and I think I
2 screwed up there, perhaps with Mr. Hancock as well, I'm not
3 sure. Did I invite you to --
4 MR. KLINE: Not a problem.
5 MR. GROSSMAN: Okay. So you have no cross-
6 examination?
7 MR. KLINE: No, sir, of either.
8 MR. GROSSMAN: Okay. All right. And did you have
9 any rebuttal evidence you wished to put on?
10 MR. KLINE: No, sir.
11 MR. GROSSMAN: All right. Now, I would presume
12 that you wish to move the exhibits into evidence?
13 MR. KLINE: The applicant would request that
14 Exhibits No. 1-93(b) be accepted into the record and they
15 all be made a part of the record, request that those
16 exhibits be made part of the record.
17 MR. GROSSMAN: You don't want 93(c) in there?
18 MR. KLINE: That would have been that last
19 schedule, wasn't it. I didn't write that one down. Yes,
20 sir. Please.
21 MR. GROSSMAN: Okay. So Exhibits -- any
22 objection?
23 MS. GOODRICK: No.
24 MR. GROSSMAN: All right. So Exhibits No. 1-93(c)
25 and their subparts are admitted. And I will also admit the

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1 revised development plan when it's submitted. And the list
2 of additional senior facilities that Ms. Goodrick will
3 supply at her option will also be admitted. And any
4 comments back and forth about those two items.
5 And the deadlines that apply to that are the same
6 ones that apply to the development plan, that is January 25,
7 '13, for the development plan as amended. February 4 for
8 the technical staff and responsive comments. And then
9 February 5 for any reply. By responsive comments I mean, as
10 far as the development plan, responsive comments from the
11 opposition. And as far as the list of senior housing from
12 the opposition, the responsive comments would come from the
13 applicant. All right. Is there anything further that we
14 haven't hit?
15 (Exhibit Nos. 1-93 were
16 admitted in evidence.)
17 MR. KLINE: Well, I'm actually going to do
18 something I rarely do. I think you know my style enough.
19 But the day is shot, as it is, so I'd actually like to do a
20 little bit of a closing argument if I could.
21 MR. GROSSMAN: Okay. That seems fair.
22 MR. KLINE: And then I'll offer the same to them.
23 And it comes up in the context of maybe because myself and
24 most of the, a number of people who are with me today, all
25 kind of work in this environment all the time, and are not

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1 surprised to see the technical staff of Park and Planning
2 Commission Planning Board have a disagreement, maybe not so
3 much as denial and then a 5-0 positive vote. But so I can
4 understand maybe the opposition scratching their head
5 saying, well, how could there be such a vast difference
6 between the two of them.
7 And so I would like to kind of take the cover page
8 of the staff report where the staff summarizes its
9 recommendations and kind of lead you through what I think is
10 all the testimony you've heard today, just to kind of try
11 and wrap that all up.
12 MR. GROSSMAN: You know, as you mentioned, I
13 should have also said you were going to make a decision as
14 to whether or not you want to put the portions of the
15 transcript of the --
16 MR. KLINE: Yes.
17 MR. GROSSMAN: Is that on the same time element?
18 Do you want that 10-day period?
19 MR. KLINE: If we can do it, and I really need to
20 talk to the client about that.
21 MR. GROSSMAN: Right.
22 MR. KLINE: But yes, we could comply with the time
23 frame.
24 MR. GROSSMAN: Okay. So we'll also include,
25 that's a third thing that if the, if the applicant wishes to

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1 put in Planning Board transcript, they would have until
2 January 25 to do that. You would have, and included in that
3 would be a transcript plus citations to any particular parts
4 of the transcript they thought were appropriate to note.
5 And you would have, that's the opposition would have until
6 February 4, 2013, to respond to that, and note any comments
7 or objections. And then Mr. Kline would have until February
8 5 to respond to that.
9 MR. KLINE: Thank you.
10 MR. GROSSMAN: And the record will close on
11 February 5, 2013. Okay. Go ahead. I'm sorry to interrupt
12 you.
13 MR. KLINE: No, no problem. On page 1 of the
14 staff report, the staff summarized in four bullets kind of
15 what was the gist of its recommendation to the Planning
16 Board. And the first bullet said, "The project does not
17 substantially comply with the density provisions in the
18 master plan."
19 And that's why we had Ms. Russel go through so
20 much detail of actually giving you each of the pages of the
21 master plan so that you could appreciate while there was,
22 why there was reasonable minds could disagree about what the
23 master plan wanted to say.
24 MR. GROSSMAN: All right.
25 MR. KLINE: The second bullet they've got in the

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1 staff report is, "Does not provide adequate transition in
2 density between the two planning areas." And in my opinion,
3 that's the thing that I thought the Board was most impressed
4 about with what the applicant had achieved.
5 There is, in the master plan elements that have
6 been given to you, a section dealing with, create a
7 transition, supplement the green belt between Germantown and
8 Clarksburg.
9 And as I said to the Planning Board, what we have
10 tried to do is kind of push the density a little bit further
11 to the north to be able to create that green, supplement the
12 green belt and create the transition in the southeast corner
13 on the west side, to some extent, and on the east side,
14 although I'm not talking so much about that, but basically
15 creating that green buffer at the lower southeast corner.
16 And, in fact, what the Board basically concluded,
17 that you did a good job of that, in their letter. "You meet
18 the overall goals in density of the Brink Road transition
19 area and provide an appropriate transition." So I think
20 regardless of what the density should have been, we still
21 achieved the transition, which I thought was the driving
22 force in the plan, as it related to the density as well.
23 "The project requires public sewer and water
24 that's not recommended in the master plan." And that's what
25 I will call a contemporaneousness issue, that's sort of hard

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1 to do.
2 We're dealing with a 1994 plan which is, as the
3 witnesses testified, was predicated on a misunderstanding of
4 being able to sewer the property. We have now overcome that
5 problem, that situation. Sewer is around, all around us,
6 and in fact, we, ourselves, are entitled to hook up to sewer
7 today, if we wanted to build a church on the property.
8 But we've been able to overcome the physical
9 problems with getting sewer on the property. And then
10 you're left, and this is the problem that we have had
11 through the whole way, staff just locking into that density
12 issue. It isn't recommended for the density you want, or
13 the sewer, and feeling that everything flowed from there
14 after that.
15 And as I say, that represents, I think, a lack of
16 adaptability to what is the current situation. It's
17 highlighted in the testimony you heard about, and I won't be
18 able to say it properly, but that Maryland's sustainable
19 growth and agricultural preservation act, which in essence
20 leaves Mr. Butz in this catch 22 where he can't get, well,
21 under staff's position, he can't get to the PRC zone, which
22 he thinks is a better sustainable land use of the property,
23 yet were he to develop it with McMansions, which would be
24 his default solution, he can't do that either, because the
25 government is not going to allow him to put those houses on

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1 a septic system.
2 So the staff position, we didn't feel, adapted to
3 the current set of circumstances that we are dealing with,
4 that would justify, we thought, the kind of project we're
5 talking about.
6 The project, going on in the staff report, "The
7 project does not meet the purpose clause of the PR zone."
8 And I'll kind of give you a couple of page references to
9 that, because on page nine it says, it does not contain the
10 day-to-day services generally anticipated with a planned
11 unit development.
12 Ms. Russel gave you the history of the evolution
13 of the PRC zone which basically has said, if you're down to
14 25 acres, and in this case 50 acres plus, we don't expect
15 you to be able to provide a retail center like Leisure World
16 has along Georgia Avenue. And the advantage of, in this
17 case, was one of the Planning Board members, Mr. Dreyfus,
18 was with the firm that developed Leisure World.
19 So he knew darn well what happened when the PRC
20 zone changed, and realized, no, no, as long as you can get
21 to it, as long as you can basically have accessible or
22 providing within, and noted that accessible comes first. So
23 as long as we can get people to the services, including both
24 recreational facilities, as well as those services needed by
25 the people who would be relying in the community, then we've

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1 satisfied the purpose clause in that part of it.
2 The staff also, on page 10 said, "The project does
3 not provide a variety of on-site recreational facilities,
4 such as swimming, bocce ball," which has been the subject of
5 some humor among the team, "and shuffleboards."
6 Well, Mr. Unterberg has given you multiple sheets
7 of paper showing whether it's seniors or whether it's
8 adults. We are able to meet the recreational requirements
9 on-site that the Planning Board would have approved at the
10 time of site plan. So basically, the calculations
11 demonstrate that that's an incorrect assumption that we
12 don't have the appropriate on-site amenities.
13 Compatibility is addressed on page 15 of the staff
14 report, and it's phrased this way. "We find that the
15 proposed uses are similar in nature to the uses surrounding
16 the property." I'm on page 15 at the top of the paragraph,
17 which is paragraph number two entitled, compatible
18 surrounding area.
19 MR. GROSSMAN: Okay.
20 MR. KLINE: And the first sentence says, "The
21 staff finds their proposed uses are similar in nature to the
22 uses surrounding the site." So it's not a matter of having
23 two different types of land uses. They are both residential,
24 ergo they should be able to work together.
25 But if you drop down about five lines below that

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1 it says, "The density, however," and this is, I think,
2 driving the staff, the theme of the staff, "The density,
3 however, is two and a half times the upper limits of what
4 the master plan recommends, and the clustering of houses is
5 not characteristic of the surrounding rural character of
6 Green Ridge Acres and Brink Meadows."
7 And then the last line says, "Clustering and
8 higher densities proposed do not align with the vision of
9 the master plan." You know, nowhere in there did I really
10 kind of see or hear anything that said, a house on two acres
11 is incompatible with a house on a 7,000 square foot lot. It
12 still goes back to the master planning density issues, and
13 thinking that they are inherently incompatible.
14 And we've tried to demonstrate to you by
15 basically, by taking the screening, by having the separation
16 that Mr. Unterberg went into in a lot of detail, about the
17 distances, and then trying to maximize the amount of
18 vegetation between the two, to what I call the blocked views
19 or filtered views, at best, if you do the landscaping right.
20 We should be able to have a compatible situation between the
21 two properties in that location.
22 MR. GROSSMAN: I'll tell you, if there were no
23 exit points on the western side of the subject site directly
24 into those properties immediately to the west, except for --
25 MR. KLINE: You make a good point in terms of

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1 linkage. Normally, we're talking about linkages. But for
2 this community to link into the RE-2 neighborhood probably
3 doesn't make sense. There is no trail system within there
4 that we would be able to link into.
5 I mean, if Mr. Hancock said he would love to be
6 able to walk over to our community center for Bingo on
7 Wednesday nights, yes, we would probably work something out
8 for him. But I don't think, there has been no suggestion
9 that that would be of interest.
10 MR. GROSSMAN: No, I think the suggestion that's
11 been made is that he wants to be more separated from that
12 development. But it's just an observation. I assume I'm
13 reading that correctly that there are no linkages to that
14 community.
15 MR. KLINE: There are none now, which is not to
16 say they couldn't occur if the community said that they want
17 to be some relationship between the way.
18 MR. GROSSMAN: Yes. I'm not suggesting there
19 should be. I'm just saying --
20 MR. KLINE: Understood.
21 MR. GROSSMAN: -- that that's, I think that
22 sometimes in terms of compatibility issues there are those
23 concerns. But that is not a concern here.
24 MR. KLINE: Basically, on that point, the Planning
25 Board said, when you come up with --

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1 MR. GROSSMAN: Excuse me, sir. Sir, in the back,
2 please? Thank you. I'm sorry.
3 MR. KLINE: -- the development plan, with the
4 arrangement of units, coupled with the forest buffers and
5 the setbacks, provides compatibility with the surrounding
6 neighborhood. So I think the Board was able to make that
7 leap to say, no, this can be done, has been done in a way
8 that it will be compatible.
9 And the last thing I'll say is, and I think it's a
10 thing that I think the staff didn't put any weight or give
11 us any credit for at all is, all the number of public
12 benefits that flow from the application, Ms. Russel tried to
13 point out to you, the plan is 94 years old. A lot of the
14 things that we're talking about trying to achieve today
15 weren't even really contemplated at all in 1994.
16 And you heard them today in the context of Mr.
17 Bossong talking about the storm water management with less
18 water coming off the property than today. Mr. Rood talking
19 about the environmental enhancement, with the nitrogen
20 loading on the property because of the agricultural
21 activities on the property. Substantial improvement
22 consistent with all the Chesapeake Bay environmental
23 preservation ideas.
24 The, basically the housing, the need for the
25 housing product in the area, that Ms. Russel also stressed.

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1 Mr. Butz gave you that much stuff in the appendix that you
2 can look at, at your leisure, saying this is a product that
3 we really need.
4 And then Ms. Kubit acknowledging that our product,
5 basically, gives the Clarksburg Village, and then this area,
6 a larger, what I call, a full life-cycle community. So
7 we're the converse of what Mr. Hancock said. We're actually
8 plugging in a hole something that gives something that
9 really makes it, as I said, that full life-cycle community.
10 Those public benefits, which staff really didn't
11 identify at all, I think are what really rounded out in the
12 context of satisfying all the technical requirements and
13 getting, when you get down to that public interest, it's
14 just the right thing to do at this time in the world, 2013,
15 rather than 1994. Thank you.
16 MR. GROSSMAN: So Mr. Kline, you ought to make
17 these closing arguments more often. You do it very well.
18 MR. KLINE: Thank you.
19 MR. GROSSMAN: All right. Mr. Hancock, did you
20 wish to make a closing statement?
21 MR. HANCOCK: Very, very short. The opposition
22 completely agrees with the staff at Park and Planning. We
23 agree with everything they say, and that this should be
24 denied.
25 I would dispute that Jody, or Mr. Kline, in that

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1 Mr. Butz is precluded from developing this property. He
2 can't do RE-2. He can't put septic on it. But that doesn't
3 preclude him from building half-acre, developing this as
4 half-acre.
5 So it may not be what one of his partners terms as
6 economically feasible, but that's not our problem. He's not
7 precluded from developing the property. This is not his
8 only avenue of developing this property. And I think that's
9 very important.
10 MR. GROSSMAN: It's not really the question that
11 either I or the counsel have to deal with, because he's
12 entitled to have the development that he's proposed
13 evaluated. It's, we can't say, well, there were lots of
14 other things you could have done.
15 He's entitled to have the development he's
16 proposed, evaluated, and to see whether he meets the
17 statutory criteria. So it's not a question of whether he
18 can do anything else.
19 MR. HANCOCK: Well, I would just disagree with
20 what Mr. Kline said --
21 MR. GROSSMAN: I understand.
22 MR. HANCOCK: -- that he's precluded from doing
23 anything else. That's not quite the case.
24 MR. GROSSMAN: I understand. Okay.
25 MR. HANCOCK: That's really all I have.

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1 MR. GROSSMAN: Thank you, sir. Ms. Goodrick, did
2 you have any additional closing statement to make?
3 MS. GOODRICK: Okay. I would like to suggest, I
4 mean, because I don't get to ask a question, is that
5 correct?
6 MR. GROSSMAN: That's correct.
7 MS. GOODRICK: Okay. So then I would like to say
8 that I believe that Mr. Kline, representing the Butz
9 property and others, met with the Planning Staff. They met
10 with the Planning Staff before the report, and I believe
11 after the report was written. So meeting with the planning
12 staff, the staff still determined that it would make these
13 recommendations, you know, after having heard these
14 arguments that they made.
15 And I would like to thank you, and that is for
16 requesting the written transcript of the Park and Planning
17 hearing, because I tried to get one, but they don't make
18 them. You have to listen to the recording.
19 MR. GROSSMAN: Right.
20 MS. GOODRICK: And it's hard to take notes. And
21 so when that request was made, I appreciate you requesting
22 that it would be a written transcript for us.
23 MR. GROSSMAN: Well, certainly. I mean, I try to
24 look out for everybody.
25 MS. GOODRICK: It's fair.

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1 MR. GROSSMAN: It's my job.
2 MS. GOODRICK: Yeah, I think that's fair. It is
3 absolutely fair.
4 MR. GROSSMAN: Okay. And by the way, you said,
5 you asked if you could ask a question. You can ask me a
6 question if you want, but you can't ask them a question.
7 MS. GOODRICK: No, no. I wanted, no. Thank you.
8 MR. GROSSMAN: Okay. All right. Thank you. Is
9 there anything further?
10 MR. KLINE: Just to verify, submission by the
11 25th, and follow-up on the 4th and the 5th.
12 MR. GROSSMAN: That's correct.
13 MR. KLINE: To close on the 5th?
14 MR. GROSSMAN: Record to close on the 5th.
15 MR. KLINE: All right.
16 MR. GROSSMAN: That's correct. Okay.
17 MR. KLINE: Thank you very much, Mr. Grossman.
18 MR. GROSSMAN: Thank you, sir.
19 MS. GOODRICK: Yes. Thank you.
20 MR. KLINE: Mr. Grossman, a question. You have
21 copies of all of these. Do you want all the sheets?
22 MR. GROSSMAN: Not all of them. I don't have all
23 of them. But I have most of them. So the ones I want are
24 the ones that were admitted during the hearing.
25 MR. KLINE: Okay.

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1 MR. GROSSMAN: Because those are the ones. And
2 there were a couple that we modified the surrounding area
3 exhibits, both the --
4 MR. KLINE: We'll put them all in order.
5 MR. GROSSMAN: Okay. Because I think there are at
6 least three. There are the surrounding area map. There's a
7 surrounding area aerial. Both of those were modified. And
8 there is the one today showing the tiers. I don't know if
9 there were any others.
10 (Whereupon, at 2:15 p.m., the hearing was
11 concluded.)
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. Digitally signed by Teresa S. Hinds

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 in the matter of:

Petition of Theodore Butz, et al.
Local Map Amendment No. G-881

By:

Teresa S. Hinds, Transcriber

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