

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY

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:  
LOCAL MAP AMENDMENT G-910 : Case No. G-910  
R-30 AND RT 12.5 ZONES TO PD-60 :  
TOWNE CREST APARTMENTS, LLC. :  
:  
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A hearing in the above-entitled matter was held on February 25, 2013, commencing at 9:30 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Lynn A. Robeson  
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:

Stephen Z. Kaufman, Esq.  
Erin E. Girard, Esq.  
Linowes and Blocher, LLP  
7200 Wisconsin Avenue, Suite 800  
Bethesda, Maryland 20814-4842

Witnesses:	Direct
Perry Berman	6, 31, 40
Tim Longfellow	45, 68, 87
Kevin Foster	94, 118
Nancy Randall	123, 142, 146
Rick Floyd	147, 149, 150
Carla Weinberg	153, 156
Joe Davis	157, 160, 199, 222
Robert Bocher	235, 250

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P R O C E E D I N G S

1  
2 MS. ROBESON: I call the case of Local Map  
3 Amendment G-910, Towne Crest Apartments, LLC, applicant  
4 requesting rezoning from the R-30 and R-T12.5 zones to the  
5 PD-35 zone of property known as the Towne Crest parcel  
6 located at 17500 Towne Crest Drive in Gaithersburg,  
7 Maryland.  
8 Just as, just one housekeeping matter. We did, we  
9 had a little hiccup in the exhibit list as Ms. Girard  
10 pointed out. Thank you. While we were holding the hearing  
11 last time, a letter came in and that was, we were numbering  
12 exhibits here and then when our office got the letter, they  
13 moved up all the numbering. So what we've done, we wanted  
14 the hearing exhibits to correspond with what's in the  
15 transcript. So we took the letter that came in while the  
16 hearing was going on and put that at the end of the exhibit  
17 list. So if anyone has any questions, that's what happened.  
18 So with that, are there any preliminary issues?  
19 MR. KAUFMAN: We have just one, Madame Examiner.  
20 When Mr. Hornstein was testifying, he testified to an  
21 Exhibit 26 which is actually Exhibit 15.  
22 MS. ROBESON: Okay.  
23 MR. KAUFMAN: And this is the, it's an  
24 illustration of the current proposed development plan.  
25 MS. GIRARD: Not current, the original, PD-60.

EXHIBIT NO.	MARKED FOR IDENTIFICATION
121	11
122	27
123	--
124	48
125	56
126	57
127	66
128	--

1 MR. KAUFMAN: No, the PD-60, I'm sorry, that's  
2 right. It's the exhibit that shows illustration of the PD-  
3 60 layout.  
4 MS. ROBESON: I see. Okay. That's fine.  
5 MR. KAUFMAN: So it's actually Exhibit 15, not  
6 Exhibit 26.  
7 MS. ROBESON: Okay.  
8 MR. KAUFMAN: That's our only preliminary. I  
9 don't know if Ms. Girard has any.  
10 MS. ROBESON: Wow, that's pretty good. One other  
11 thing, I did look at the, re-look at the Gaithersburg  
12 Vicinity Master Plan in light of Mr. Ager's testimony  
13 because I just wanted to re-review it. I had one question,  
14 but you don't have to answer it now, you know, you can  
15 answer it later through a witness, but page 46, I think,  
16 yes, page 46 is analysis area 2. It says existing  
17 development, 171 townhouses, 60 garden apartments, which is  
18 231 DU's. So I guess my question is it looks like that they  
19 were authorizing what already existed?  
20 MR. KAUFMAN: That's right.  
21 MS. ROBESON: So, you know, you don't have to  
22 address it now, I just was -- when I was going through  
23 piecing together your, my notes from your testimony, if you  
24 could just address that, that would be fine.  
25 MR. KAUFMAN: I believe our witness will probably

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1 be addressing that.

2 MS. ROBESON: Okay. And I just realized that I do

3 not have a copy of the updated exhibit list here.

4 MR. KAUFMAN: Oh.

5 MS. ROBESON: So I am going to go off the record

6 for one second. I apologize, but it's not up here. So let

7 me go get that --

8 MR. KAUFMAN: That's fine.

9 MS. ROBESON: -- because I don't want any more

10 mix-ups in the exhibits. We're going to go off the record

11 for 2 minutes.

12 (Recess)

13 MS. ROBESON: I apologize for that. A moment. So

14 I believe, oh, the other thing is I'm going to take official

15 notice of the entire Gaithersburg Vicinity Master Plan so we

16 don't have to put the entire booklet in the record. Also

17 I'd like to take official notice of the Shady Grove Sector

18 Plan. I was just reviewing that to see how that treated the

19 PD-35 zoning. Unless there's objections, that's what I'm

20 going to do.

21 MR. KAUFMAN: No objection from us.

22 MR. BROWN: No objection.

23 MS. ROBESON: Okay. Now that that's done, Mr.

24 Kaufman, I think it's you, either your witness or Ms.

25 Girard's witness.

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1 MR. KAUFMAN: All right. Our first witness is Mr.

2 Perry Berman.

3 MS. ROBESON: Please raise your right hand.

4 (Witness sworn.)

5 MS. ROBESON: Thank you.

6 MR. KAUFMAN: We're going to have his resume

7 marked.

8 MS. ROBESON: This is his --

9 MR. KAUFMAN: Yes, that's his background. His

10 resume is --

11 MS. ROBESON: Is he on the witness list?

12 MR. KAUFMAN: No, he's not on the witness list,

13 but if you recall, we had some, we had a correspondence from

14 him which we wanted to put in the record.

15 MS. ROBESON: Oh, that's right. That's right.

16 You're correct.

17 MR. KAUFMAN: And we're bringing him in to testify

18 today.

19 MS. ROBESON: Okay. So 121 will Perry Berman

20 resume.

21 (Exhibit No. 121 was marked

22 for identification.)

23 MR. KAUFMAN: Excuse me. Just a minute. Okay,

24 Mr. Berman, would you please state your name and business

25 address?

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1 MR. BERMAN: My name is Perry Berman. My business

2 address, I have two of them, I apologize, 7910 Briarglen

3 Drive, Elkridge, Maryland 21075, and Scheer Partners at 9201

4 Corporate Boulevard, Suite 410, Rockville, Maryland 20850.

5 MR. KAUFMAN: And, Mr. Berman, what is your

6 occupation?

7 MR. BERMAN: Well, my occupation is city planner.

8 I have two aspects of that. I'm, I have a planning

9 consultant business that I run and that's who I'm speaking

10 on behalf of and I'm also a commercial real estate agent

11 with Scheer Partners.

12 MR. KAUFMAN: And what is your professional

13 background?

14 MR. BERMAN: Well, I have a master's degree in

15 public administration with a concentration in planning from

16 NYU and I have an undergraduate degree in, from Queens

17 College in history and political science.

18 MR. KAUFMAN: And how long have you practiced the

19 profession as a land planner?

20 MR. BERMAN: A long time, about, I've been a

21 planner in Montgomery County since the early '70's, so I'd

22 rather not give you the exact number, but since the early

23 '70's.

24 MR. KAUFMAN: And from some period of time were

25 you in the employ of the Planning Commission?

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1 MR. BERMAN: Yes, I was hired in the early '70's

2 and I worked my way up through the ranks there and for many

3 years I was chief of community planning and I was

4 responsible for the preparation of almost all the County's

5 master plans during a 20-year period and I have -- so I'm

6 familiar with, I like to tell people when they get stuck in

7 traffic congestion that I'm part of the problem in

8 Montgomery County, that I was involved with those kinds of

9 issues but, yes, I worked for the Park and Planning

10 Commission for a long time. I retired about 15 years ago

11 and set up my own planning work and to work as a commercial

12 real estate agent.

13 MR. KAUFMAN: So since you left the public employ,

14 you've continued your profession as a professional planner?

15 MR. BERMAN: That's right. Right now I'm

16 currently employed. One of my clients I work with, HOC,

17 where I assist them in reviewing master plans and partake as

18 their expert to advance their properties during the master

19 planning process.

20 MS. ROBESON: Now are you seeking to qualify him

21 as an expert in land use --

22 MR. KAUFMAN: Yes.

23 MS. ROBESON: -- planning?

24 MR. KAUFMAN: In land use planning and as a land

25 use planner and in master planning, yes.

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1 MS. ROBESON: And you've, I see from your resume,  
2 resumes, excuse me, that you've testified as an expert?  
3 MR. BERMAN: Yes, I have. Four cases that I've  
4 been certified before this Board of Appeals --  
5 MS. ROBESON: Mr. Brown, do you have an objection?  
6 MR. BERMAN: -- hearing examiner.  
7 MR. BROWN: No objection.  
8 MS. ROBESON: All right. I'll qualify him as an  
9 expert in land use planning.  
10 MR. KAUFMAN: And master plans. That's the --  
11 MS. ROBESON: Well, land use, I don't know of an  
12 expertise in master plans.  
13 MR. KAUFMAN: Well, I guess it's a subset of the  
14 land use.  
15 MS. ROBESON: You can make that argument, but I'll  
16 qualify him as an expert in land use planning.  
17 MR. KAUFMAN: I was about to ask him, as you did,  
18 what his previous history in testimony was. So, Mr. Berman,  
19 have you become familiar with the rezoning application here  
20 today, G-910?  
21 MR. BERMAN: Yes, but only just recently.  
22 MR. KAUFMAN: Okay.  
23 MR. BERMAN: Please let us know how you became  
24 involved, and as you said just recently?  
25 MR. BERMAN: I used to have a friend named Dave

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1 Ager who called me and asked me to help him out with some  
2 background on a case that he was involved with. And so he  
3 called me and we had lunch and chatted about it and I gave  
4 him my recollections of what happened and what we were  
5 trying to accomplish during that plan.  
6 MR KAUFMAN: Were you in some way involved with  
7 that master plan, the original Gaithersburg --  
8 MR. BERMAN: Yes, I was Chief of the Community  
9 Plan North Division at that time and I supervised the plan  
10 and attended all the work sessions and attended all the  
11 meetings with the Council. My job then was to really be the  
12 interface between the Council and the planning staff and to  
13 make sure all the planning recommendations were consistent  
14 and to get involved in the major re-policy issues. But --  
15 and we had a lot of master plans going on at that time.  
16 MR. KAUFMAN: To be clear now, you were Chief of  
17 Community Planning at the time?  
18 MR. BERMAN: Yes, sir.  
19 MR. KAUFMAN: And you list a master plan, which is  
20 the subject of these proceedings?  
21 MR. BERMAN: Yes, I did.  
22 MR. KAUFMAN: Well, was that done under your  
23 supervision?  
24 MR. BERMAN: Yes, they were.  
25 MR. KAUFMAN: Okay. And within the plan, did you

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1 participate in establishing the basic plan objectives and  
2 land use strategy?  
3 MR. BERMAN: Yes, I've done, I did that for all  
4 the plans. That was my major role was to, as I said, to  
5 take a look at the big picture issue and make all the plans  
6 consistent with each other as best I can, make sure no  
7 errors got out of the plan and I was the senior person  
8 supervising all the master plans.  
9 MR. KAUFMAN: And after you met with Mr. Ager and  
10 went over the background of the plan, did you prepare a  
11 letter summarizing your recollection and thoughts about the  
12 relationship between the Master Plan and in this case the  
13 subject property?  
14 MR. BERMAN: Yes, yeah.  
15 MR. KAUFMAN: All right. I'll show you a  
16 document.  
17 MR. BERMAN: Uh-huh.  
18 MR. KAUFMAN: Can you identify this document?  
19 MS. ROBESON: Just let me mark it. I'm marking it  
20 as Exhibit 122.  
21 (Exhibit No. 122 was marked  
22 for identification.)  
23 MR. BERMAN: Yes, this is my letter.  
24 MR. KAUFMAN: Exhibit 122.  
25 MS. ROBESON: And that will be February 14th

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1 letter from Mr. Berman to Dave Ager.  
2 MR. BERMAN: Right.  
3 MR. KAUFMAN: And, again, what brought you to  
4 write such a letter?  
5 MR. BERMAN: Well, I thought, I'm a public planner  
6 and that's my career and my history and David was explaining  
7 to me the one where that was occurring during these  
8 proceedings and I thought I could add some information that  
9 might make it easier for everybody to understand why we did  
10 what we did.  
11 MR. KAUFMAN: And at the time you wrote this  
12 letter, were you involved with this case?  
13 MR. BERMAN: No.  
14 MR. KAUFMAN: And were you in any way compensated  
15 for drafting this letter?  
16 MR. BERMAN: Nope, just helping out a friend.  
17 MR. KAUFMAN: I understand that you had lunch.  
18 Did you pay for the lunch?  
19 MR. BERMAN: He paid for lunch. It was an  
20 inexpensive lunch and he's going to pay for that.  
21 MR. KAUFMAN: Could you go over your letter and  
22 what you said, you know, what were your comments, what were  
23 your conclusions?  
24 MR. BERMAN: Yes. Let me set a little  
25 bit -- at that time, again, this is an old plan and

1 everybody has talked about that and I've seen that as I've  
 2 looked at the materials. So there was a plan written in  
 3 1985. I was, frankly, surprised how much I remembered about  
 4 this plan, but I do have gaps and I'll share with you what I  
 5 remember and what exactly I remember and what I sort of  
 6 remember, but the this was a very big plan. It covered a  
 7 whole area of the County, a big area of the County, and we  
 8 had two major issues that we wanted to deal with at the  
 9 time, the Montgomery County Airpark, whether that should, in  
 10 fact, continue, whether the County really needed an airpark  
 11 and what was the trade-off between that and housing, the  
 12 housing growth around there.

13 The second issue we had was the Intercounty  
 14 Connector. Actually the city of Gaithersburg was issuing  
 15 building permits in the right-of-way and we were trying to  
 16 get that resolved and we had to, we were concerned about the  
 17 interchange and I-270.

18 The principle goal of the plan was that we had to  
 19 coordinate, there were a variety of goals and we'll get into  
 20 that later, but the principle goal was Gaithersburg was a  
 21 corridor city and there were only four corridor cities in  
 22 the County and Gaithersburg was the biggest of those. And  
 23 we, and it was unyielding. It did not, it's not -- it's a  
 24 little more spaghetti than it is a whole plan, but we were  
 25 trying to make it more of a whole plan and we tried to make

1 it focused, to look at development and we had to coordinate  
 2 with the three cities. It was quite challenging.

3 We, one of the things that we really wanted to do  
 4 was accomplish more housing in Gaithersburg. That was --  
 5 when reviewing the goals of the plan, that's a big goal.  
 6 That was a big goal then and it continues to be a big goal.  
 7 The County continues to have, my estimation, a housing  
 8 shortage and will continue to have a housing shortage and we  
 9 wanted to do what we could to provide more housing.

10 We, as typical, we took the plan and in my letter  
 11 we took the plan and we divided it into districts,  
 12 neighborhoods and then districts and we looked at why  
 13 district, the information. But, again, this was 1985. So  
 14 the maps weren't as good as we have them now, the -- we were  
 15 just lucky to get all the streets on the maps. We didn't  
 16 have GIS. We just had, took different things and spliced  
 17 them together. We looked at each -- we looked at the  
 18 density that we thought we could get based upon the historic  
 19 average of the densities that we were experiencing and we  
 20 projected forward. You can see that some of that in our  
 21 tables and the report and the analysis.

22 MR. KAUFMAN: On the density, let me just stop you  
 23 for a second. How did you do that? Did you do that  
 24 property by property or did you do that by areas or  
 25 districts?

1 MR. BERMAN: We did that by area and there's  
 2 examples of that in the plan where you can see where we  
 3 actually discarded some of the property maps. In this map  
 4 you could see on, in the large scale map there was no  
 5 property line shown.

6 MR. KAUFMAN: So when you say this --  
 7 MR. BERMAN: There's a street, but there's no --  
 8 MR. KAUFMAN: -- you're referring to Exhibit 112?  
 9 MR. BERMAN: -- property line shown.

10 MR. KAUFMAN: You're referring to Exhibit 112?  
 11 MR. BERMAN: Yeah.

12 MR. KAUFMAN: It's an area exhibit?  
 13 MS. ROBESON: It's exhibit -- okay.  
 14 MR. KAUFMAN: Yes. That's area 2 there?

15 MR. BERMAN: Yeah, area 2. That on the large  
 16 maps and the maps in the plan you could see a street going  
 17 through the middle of it and you can see an outline of the  
 18 street pattern on the other side. There's no property line  
 19 and there was no intention to deviate or to split the  
 20 properties up. It was a district.

21 MR. KAUFMAN: All right. So I want to be clear.  
 22 So you looked at them by areas or districts and not by  
 23 individual property?

24 MR. BERMAN: That's correct.  
 25 MR. KAUFMAN: Okay. Please continue your --

1 MR. BERMAN: We then, we tried to -- let's go  
 2 back. Let's go right to the heart of the matter which is  
 3 this table 46, 46 on table 3.

4 MR. KAUFMAN: Of the Master Plan?  
 5 MR. BERMAN: Of the Master Plan. We prepared --  
 6 you can see the level of undetail, there's a word, or lack  
 7 of clarity or lack of detail in this plan. We put together  
 8 a table and that is the recommendations of each, for each  
 9 property. It's, it's actually, in looking back at it, this

10 is, some of these districts are 21 acres. In this case,  
 11 there's others, 80 acres. That's a pretty gross tract that  
 12 we were looking at. And so this was a broad view of the  
 13 world, 259 acres. That's a lot of acreage in one district.

14 And I'm sure we had a master plan scheduled to  
 15 meet that that made us have to keep going quickly. So we  
 16 put together this chart which now in hindsight is incorrect.

17 MR. KAUFMAN: Explain that if you would.  
 18 MR. BERMAN: Well, where it shows on line 5 --  
 19 MR. KAUFMAN: This is as to District 2, I would  
 20 take it?

21 MR. BERMAN: District 2 and I take District 2, 21  
 22 acres. I wouldn't swear that 21 acres is the actual number,  
 23 but at the time that's as close as we could get. We used it  
 24 preliminarily, which is in my letter. We traced the outline  
 25 of it. And then we put existing development, which appears

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1 to be correct. We put the zoning, which appears to be  
2 correct. And then we put 231 units potential and  
3 recommended optional, which appears to be incorrect.  
4 MR. KAUFMAN: Explain that.  
5 MR. BERMAN: Well, it appears to me that it is the  
6 actual sum of what was there at the time rather than a  
7 forecast of what could happen. And that gets back to the  
8 question of what we thought. So and at the same time we  
9 recommended this area for high-density residential. So it  
10 could be a conflict in that. So I apologize for that. I  
11 apologize for creating all the confusion in the room.  
12 MR. KAUFMAN: It's a little late, 28 years later,  
13 but that's --  
14 MS. ROBESON: So you're saying what, that you  
15 intended to have additional density there?  
16 MR. BERMAN: What I'm saying -- yes. I'm saying  
17 is that the, on page 11 of the plan --  
18 MS. ROBESON: Okay. I don't --  
19 MR. BERMAN: Yes. Okay.  
20 MS. ROBESON: Hold on.  
21 MR. BERMAN: I'm sorry, page 10 of the plan.  
22 MS. ROBESON: All right. I'm there.  
23 MR. BERMAN: Okay. On the top it says the  
24 recommended base density is that zone which represents the  
25 base, the best use of land if no increase optional method is

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1 desired or sought by the owner. We wanted to really  
2 recommend floating zones and use floating zones because at  
3 the time we weren't getting site plan review of the, of  
4 zones like R-20 and R-30 and we felt that we could through a  
5 process similar to what you're going through today make  
6 those kind of fine-grain decisions, compatibility, open  
7 space and that, and that floating zone process was better  
8 than we could get through a Euclidian zone.  
9 MR. KAUFMAN: So let me stop you for a second. So  
10 at that time you were just starting to use the concept of  
11 floating zones or overload zones?  
12 MR. BERMAN: Yeah. Yeah, that's correct. That's  
13 correct. I wouldn't say starting, but we were, we were  
14 attempting to encourage --  
15 MS. ROBESON: Yes, I was going to say --  
16 MR. BERMAN: -- we were attempting to encourage.  
17 MS. ROBESON: But optional method, I mean that's  
18 different from a floating zone. Optional method, you have  
19 some TDR optional method in here.  
20 MR. BERMAN: That's correct and why this was, why  
21 this area was not zoned for TDR, I don't know. I know that,  
22 as I said, I'll apologize again a couple times, I don't know  
23 why we didn't recommend TDR. I don't know why we didn't  
24 have a slash, a PD zone next to that other, on that chart on  
25 the other side. I don't know why we didn't do that.

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1 MR. KAUFMAN: Well, but I want to be clear. But  
2 is it your testimony that it was not your intent to limit  
3 this district to the existing zone?  
4 MR. BERMAN: That's the point I would say. There  
5 certainly would never have been a plan where we would  
6 discourage redevelopment. No, if we don't imply  
7 redevelopment, you could argue that one way or the other.  
8 But we certainly would, we would not say this area should  
9 never redevelop. I don't know that we've ever said that  
10 other than an R, not a residential area with lots, houses  
11 already in a community. So the intention is -- I'd go  
12 back -- I like, what I still like about the plan is the  
13 fundamental plan highlights the recommendations. I go back  
14 to that.  
15 MR. KAUFMAN: This is --  
16 MS. ROBESON: Hold on.  
17 MR. BERMAN: Where is that?  
18 MS. ROBESON: Is that chapter 1?  
19 MR. BERMAN: Yeah, that's chapter 1.  
20 MR. KAUFMAN: We have copies of that.  
21 MR. BERMAN: I got it. I have it, unless Mr.  
22 Brown needs one. Okay.  
23 MR. KAUFMAN: Hang on just a second. Let me give  
24 Mr. Brown a copy.  
25 MS. ROBESON: What page are you on in that?

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1 MR. KAUFMAN: This is page 1 of the Plan. I'll  
2 give this to you as well.  
3 MR. BERMAN: Maybe we could have this marked as a  
4 separate exhibit?  
5 MS. ROBESON: Do you have any objection, Mr.  
6 Brown?  
7 MR. BROWN: No, it's part of the Plan.  
8 MS. ROBESON: I just need --  
9 MR. KAUFMAN: Just hold on, Mr. Berman, a minute.  
10 MS. ROBESON: I apologize. I am looking for my  
11 exhibit list, here it is, among all these chapters of the  
12 Plan. Okay.  
13 MR. KAUFMAN: This would be 123, I believe.  
14 MS. ROBESON: Yes. And that's page 1?  
15 MR. KAUFMAN: Right. So you were about to refer  
16 to page 1 and what's the significance of this, Mr. Berman?  
17 MR. BERMAN: Well, these are the -- to me I, this  
18 is the key element that we're trying to accomplish in the  
19 Plan. We set forth the principle, major things that we were  
20 trying to accomplish. We were providing for employment  
21 opportunities, a sense of community and in today's  
22 discussion increase, the word increase is important, that  
23 County's total housing stock and provide for appropriate mix  
24 of affordable housing. That was a significant mission that  
25 we had for this area and which the counsel agreed with when

1 they adopted this Plan.  
 2 MR. KAUFMAN: So now the zoning that you had on  
 3 the subject property, if I recall, was multi-family, a  
 4 mixture of multi-family and townhouses?  
 5 MR. BERMAN: That's correct.  
 6 MR. KAUFMAN: And at the time that was considered  
 7 high-density?  
 8 MR. BERMAN: Yeah. Again, this is 1985 and we  
 9 were, if you, you know, the -- certainly at the time  
 10 Gaithersburg was developing, but the unit density was much  
 11 lower than it is today. But we wanted to have medium  
 12 density, all right density there or medium residential  
 13 density there. And we thought in our terminology eight to  
 14 15 was that, was that, the correct level.  
 15 MR. KAUFMAN: And at that time were you  
 16 considering MPDU's?  
 17 MR. BERMAN: MPDU's was on top of that density.  
 18 It's always, it should be always treated as -- it's always  
 19 an override on top of the density recommended.  
 20 MR. KAUFMAN: All right. And so in your opinion  
 21 then today if you would find that what would the range of  
 22 density be?  
 23 MR. BERMAN: Probably in the twenties.  
 24 MR. KAUFMAN: And then an MPDU on top of that?  
 25 MR. BERMAN: That's right.

1 MR. KAUFMAN: Okay. In the plans that are using  
 2 now, that the planning staff are coming up with using the CR  
 3 zone and the CRT zone, 20 units is a reasonable density and,  
 4 again, it requires structured parking. You know, in this  
 5 time no one thought we could do structured parking, no one,  
 6 it was just not, it was just not part of the understanding  
 7 of, we just didn't have that kind of dream that one day you  
 8 could do these kinds of new types of buildings.  
 9 MR. KAUFMAN: So the type of architecture then  
 10 that you were looking at was garden apartments for multi-  
 11 family?  
 12 MR. BERMAN: Yes, right. That's correct.  
 13 MR. KAUFMAN: And you, what we call now the wrap  
 14 type of architecture around the structured garage --  
 15 MR. BERMAN: Well, that's correct.  
 16 MR. KAUFMAN: Hang on just a moment.  
 17 MR. BERMAN: You had indicated earlier that you  
 18 looked at the land use and density allocations in this  
 19 Master Plan in terms of areas rather than individual  
 20 properties. So within the context of that did you,  
 21 therefore, anticipate that there would be the use of  
 22 clustering, in other words where certain parts of the area  
 23 would have more density than let's say 20 units to the acre,  
 24 15 units to the acre than, and other areas would have less,  
 25 is that correct?

1 MR. BERMAN: That's correct. We would have  
 2 supported -- we do support cluster. We will always support  
 3 cluster. Cluster was a big concept then and it continues to  
 4 be. And you see more of the County going that way in other  
 5 kinds of treatments in other areas. The property lines are  
 6 becoming less important. More important is the district  
 7 density.  
 8 MR. KAUFMAN: Excuse me just a second.  
 9 MS. ROBESON: Yes.  
 10 MR. KAUFMAN: So aside from the specific density  
 11 recommendations for planning areas for districts, could you  
 12 please review for us the general goals of the Master Plan  
 13 and how you believe the subject application may achieve that  
 14 today.  
 15 MR. BERMAN: Well, as I said, the principle goal  
 16 of this Plan was, one of the principle goals of the Plan was  
 17 to increase the housing stock. The and, in fact, the goal  
 18 was so important that we came up with a plan that said it is  
 19 better to close the Montgomery County Airpark if you had to  
 20 than not have housing. We had the --  
 21 MS. ROBESON: Where does it say that?  
 22 MR. BERMAN: Well, it doesn't, it doesn't quite  
 23 say that, but the, and the, that was the issue. The issue  
 24 was on page, I'll turn to page, let's see, the airpark  
 25 section.

1 MS. ROBESON: Because I thought the plan --  
 2 MR. BERMAN: And you saw the, that was really the  
 3 big, the biggest issue in the plan at that time was what,  
 4 did Montgomery County need an airpark and all would it be  
 5 better to have housing in that area. And we had several  
 6 proposals to do, build housing underneath the flight path of  
 7 the airpark. And a more bigger -- it's on page 40 of the  
 8 plan.  
 9 MS. ROBESON: Okay. Just one second. Okay.  
 10 MR. BERMAN: You see the aircraft light  
 11 operations?  
 12 MS. ROBESON: I do.  
 13 MR. BERMAN: Okay. Well, that -- we had a study  
 14 that, pretty hard as to what the flight paths were around  
 15 the airpark, what the noise levels were going to be and what  
 16 the safety issues were and should we permit housing  
 17 underneath those flight paths and flight patterns. And the  
 18 airpark was, flights were unregulated, which I think they  
 19 still are. There's no active, no tower there, but they, but  
 20 we really -- so there was a good deal of concern that  
 21 whether the airpark should continue or whether we should  
 22 have housing.  
 23 At the end of the day, we recommended housing. We  
 24 put people on notice that they, if they bought a house  
 25 underneath the flight path, they would have to be notified

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1 that they were buying a house under the flight path. But,  
2 nevertheless, we felt compelled to have more -- we could  
3 not, more important for the County to have housing in this  
4 area than the airpark. If we had to close it, that was,  
5 that was what would have to happen.  
6 MR. KAUFMAN: All right. Mr. Berman, I want to  
7 kind of take you through what, based upon your testimony,  
8 which is that you looked at this as districts and the fact  
9 that there were certain density recommendations at the time  
10 and how that would equate to the difference between what is,  
11 what was permitted there and what you would have for total  
12 area to, under that -- so let's sort of start with that. So  
13 the subject property is split zoned between R-30 and RT-  
14 12.5?  
15 MR. BERMAN: That's correct.  
16 MR. KAUFMAN: All right. And my understanding is  
17 based on that and based on the densities in the Master Plan  
18 at the time, and not 107 units would have been permitted  
19 there, but 134, is that right?  
20 MR. BERMAN: That's right.  
21 MR. KAUFMAN: All right. And then the total for  
22 the analogous area 2, including the rights-of-way under that  
23 scenario would have allowed for not what is there today, not  
24 the 231, but 331 units, is that correct?  
25 MR. BERMAN: That's correct.

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1 MR. KAUFMAN: All right. So there's a difference  
2 there of approximately 100 units, is that right?  
3 MR. BERMAN: That's right.  
4 MR. KAUFMAN: All right. And then if you added  
5 the, today's MPDU requirements at 22 percent density bonus,  
6 my understanding is you would equate, that would equate to  
7 approximately 384 units or 18.3 dwelling units per acre --  
8 MR. BERMAN: Uh-huh.  
9 MR. KAUFMAN: -- is that correct?  
10 MR. BERMAN: That's correct.  
11 MR. KAUFMAN: Okay. Excuse me just a second. Now  
12 take a look at your letter if you would. I know you moved  
13 it around. Is there anything else within the context of  
14 your letter that you'd like to bring to the attention of the  
15 Hearing Examiner?  
16 MR. BERMAN: Well, one of the things I said was  
17 that we had no, not too many people show up at the hearing.  
18 It was kind of poor. We had no one show up at the hearing.  
19 So having a hearing with a lot of people coming and  
20 testifying is a good way of cleaning up the Plan and we just  
21 didn't have that here. We just didn't have a lot of people  
22 saying, oh, this is confusing, why did you say this, why did  
23 you do that? So we couldn't, in this case we couldn't clean  
24 it up after the hearings because no one came. That's one,  
25 one way of apologizing.

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1 MR. KAUFMAN: Take your time.  
2 MR. BERMAN: Okay. I think that's about it.  
3 MR. KAUFMAN: All right. So I would submit the  
4 letter, of course, now as Exhibit 123 into the record, I'm  
5 sorry, 122.  
6 MS. ROBESON: Yes.  
7 MR. KAUFMAN: And page 1 of the Master Plan as  
8 123. Then, lastly, let me ask you --  
9 MS. ROBESON: I think, Mr. Brown, you didn't have  
10 any objections, correct?  
11 MR. BROWN: I question its relevance, but I don't  
12 see, I don't see any reason why you shouldn't consider  
13 whether it's relevant or not, therefore, I think it should  
14 be part of the record.  
15 MS. ROBESON: All right. Thank you. Go ahead.  
16 MR. KAUFMAN: Based upon your expertise, Mr.  
17 Brown, I mean Mr. Berman, if this Plan was to come up today,  
18 it's the, I believe, second oldest plan in the County, 28  
19 years old. And you were looking at it for housing as you  
20 indicated and multi-family. What do you believe would be  
21 the type of recommendations that would be made for this  
22 property today and the type of densities that would be  
23 considered today?  
24 MR. BERMAN: Well, I sort of thought the  
25 application actually was pretty good. I thought the

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1 application taking the density off the entire property and  
2 clustering it, I thought that made sense. I thought the  
3 idea of looking at structured parking in an area like this  
4 and getting, allowing it to get to the density is, I  
5 thought, that made a lot of sense. And I'm hearing the  
6 testimony and the issues of compatibility and buffering and  
7 I think that, that's an issue that I think we would take a  
8 look at. So I think, fundamentally I think this would  
9 probably be in keeping with what I would come up with in a  
10 new area, an area like this.  
11 MR. KAUFMAN: If you were to redo this plan?  
12 MR. BERMAN: Yes, if we would do this, right, I  
13 would probably be meeting with property owners and talking  
14 to people and community and seeing what, what would be  
15 reasonable. Certainly that's the trend county-wide. The  
16 County has a program that's in the Park and Planning  
17 Commission's budget to look at all garden apartments that  
18 are built on this type and see whether we could redevelop  
19 those. They tend to be obsolete. They tend to be  
20 problematic.  
21 I, one of the issues I go back into is that we  
22 want housing diversity in every area of the County and I  
23 think this area in the, actually when we were doing this  
24 Plan it was a problematic area. There was a lot of housing  
25 that got away from us that were not, that were causing

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1 problems in a variety of different ways and we wanted to  
2 stabilize this community by having newer housing come into  
3 it.  
4 MR. KAUFMAN: Now you say that. Now you were the  
5 principle planner responsible for this Master Plan?  
6 MR. BERMAN: That's correct.  
7 MR. KAUFMAN: And then your opinion as to what  
8 might or should be there today is, with that in mind, that  
9 you were the original principle planner of this?  
10 MR. BERMAN: That's right. I mean we would  
11 balance that with traffic numbers and school numbers and,  
12 you know, we would do an analysis, but that would be the,  
13 that would be my direction to accomplish. One thing  
14 fascinating going back is looking at this Plan and how we  
15 did this in 1980's, to look at the assumptions we used in  
16 that to come up with a recommendation, for example, a trip  
17 rates and school yields. I mean they're different than they  
18 were.  
19 MR. KAUFMAN: Trip rates are much lower than ours?  
20 MR. BERMAN: I mean we thought schools was the big  
21 issue, so when we were using .9 kids per dwelling unit and  
22 probably not getting anything near that kind of density. So  
23 when you look at the holding pass, your traffic rates, all  
24 the various things that you look at, that was 80, you know,  
25 even the level of congestion level you would assume. The

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1 standard is different because we now accept a higher level  
2 of congestion than we did in 1985.  
3 MR. KAUFMAN: Okay. That's our questioning for  
4 now.  
5 MS. ROBESON: Okay. Mr. Brown.  
6 MR. KAUFMAN: Thank you, Mr. Berman.  
7 MR. BROWN: Mr. Berman, could you point out for me  
8 first of all where the term high-density is used in relation  
9 to analysis area 2?  
10 MR. BERMAN: Well, let's go back to page, let's go  
11 back to the map on page 46. I guess it's 46. I'm sorry,  
12 not 46. Hold on just -- 43. The zip tone pattern there or  
13 the coloring -- it says multi-family there on that plan, on  
14 that level. On the big colored map --  
15 MS. ROBESON: Okay. Is that in the record, the  
16 colored map?  
17 MR. KAUFMAN: Yes, it is.  
18 MS. GIRARD: Yes.  
19 MS. ROBESON: I think Mr. Ager had an exhibit  
20 for -- can you just give me the exhibit number please?  
21 MR. AGER: 107. 107.  
22 MS. ROBESON: Go ahead.  
23 MR. BROWN: Okay.  
24 MS. ROBESON: Can you use 107 if you don't mind?  
25 MR. BERMAN: We have a series of circles on that

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1 map and the circle and it's colored in orange and it says  
2 high-density residential, eight to five units, eight to 15  
3 units per acre.  
4 MS. ROBESON: Now can you point that out on the --  
5 MR. BERMAN: Sure. Sure can.  
6 MS. ROBESON: Is it on 107 there?  
7 MR. BERMAN: Yes. Let me show you. It's -- can I  
8 approach?  
9 MS. ROBESON: I can see it.  
10 MR. BERMAN: Oh, you can see it? Okay.  
11 MS. ROBESON: So the red?  
12 MR. BERMAN: Yes. It's, that's an orange.  
13 MS. ROBESON: An orange?  
14 MR. BERMAN: It's an orange.  
15 MR. KAUFMAN: Red is usually retail.  
16 MR. BERMAN: I would call that orange.  
17 MR. KAUFMAN: Right.  
18 MS. ROBESON: Well, I understand. Okay.  
19 MR. KAUFMAN: That was high-density as a common  
20 use?  
21 MR. BERMAN: That's, yes, yeah.  
22 MR. BROWN: Mr. Berman, I direct your attention to  
23 page 1, the plan highlights.  
24 MR. BERMAN: Yes.  
25 MR. BROWN: The very first paragraph talks about

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1 the planning areas, remaining supply of vacant and  
2 uncommitted land.  
3 MR. BERMAN: Sir, Mr. Brown, I'm sorry, my hearing  
4 is really bad, so I'm going to -- I'm going to ask, I have a  
5 receiver here that's a microphone if you don't mind. I  
6 just, that forecasts to my ear.  
7 MR. BROWN: All right.  
8 MR. BERMAN: Thank you.  
9 MR. BROWN: You see the reference to vacant and  
10 uncommitted land in the very first couple of sentences of  
11 this page, page 1?  
12 MR. BERMAN: Yes.  
13 MR. BROWN: And then down in the paragraph belong,  
14 it identifies three significant areas still remain vacant  
15 and uncommitted --  
16 MR. BERMAN: That's correct.  
17 MR. BROWN: -- providing substantial opportunities  
18 to meet county-wide development goals, right?  
19 MR. BERMAN: Yes.  
20 MR. BROWN: And one of those areas is the airpark  
21 study area?  
22 MR. BERMAN: Right.  
23 MR. BROWN: All right. In the airpark study area,  
24 there is vacant and uncommitted land and there is developed  
25 land, correct --

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1 MR. BERMAN: Yes.  
2 MR. BROWN: -- at this time?  
3 MR. BERMAN: Yes, sir.  
4 MR. BROWN: Is that correct?  
5 MR. BERMAN: Yes, sir.  
6 MR. BROWN: And what was vacant or uncommitted  
7 about analysis area No. 2 at the time this plan was drawn  
8 up?  
9 MR. BERMAN: I don't think anything was vacant or  
10 unvacant.  
11 MR. BROWN: I'd like you to -- I'll refer you to  
12 page 9, if you would please. Do you see the middle  
13 paragraph on page 9 talking -- this is under about land use  
14 and density recommendations?  
15 MR. BERMAN: Yes, sir.  
16 MR. BROWN: The first sentence says on the second  
17 paragraph,  
18 "The optional zones and density shown on  
19 the land use plan are those which may be obtained  
20 either by approval of a floating zone for a  
21 property or by the use of transferable development  
22 rights,"  
23 is that correct?  
24 MR. BERMAN: That's correct.  
25 MR. BROWN: And you see on page 11 that all zoning

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1 is basically divided into two parts. We have base or  
2 Euclidian zones and then we have optional or floating zones  
3 as a single category, correct?  
4 MR. BERMAN: That's correct.  
5 MR. BROWN: So at that time you were thinking in  
6 terms of increased density that optional and floating zones  
7 were functionally achieving the same end, increased density,  
8 right?  
9 MR. BERMAN: Yes, sir.  
10 MR. BROWN: And then the table in Table 3 on page  
11 46 and 47 has a recommendation for both base and optional  
12 density for each of the 43 areas, right? Is that correct?  
13 MR. BERMAN: It's -- one more time, sir?  
14 MR. BROWN: The table on page 46 --  
15 MR. BERMAN: 46.  
16 MR. BROWN: -- and 47 --  
17 MR. BERMAN: Yes.  
18 MR. BROWN: -- Table 3 has recommended density  
19 limits for both base and optional, optional development,  
20 correct?  
21 MR. BERMAN: That's right.  
22 MR. BROWN: And isn't it fair in light of what we  
23 just looked at to conclude that the word optional here  
24 includes both TDR reception and floating zone possibilities?  
25 MR. BERMAN: That's right.

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1 MR. BROWN: As we go through the table, we find  
2 that there are at least 17 particular areas out of the 43  
3 for which the optional amount of density is greater than the  
4 base density, correct?  
5 MR. BERMAN: That's correct and they appear to be  
6 all TDR's. There's only a couple PN zones there. There's  
7 no PD zones in any of those information. There's none --  
8 none of the recommended zonings list a PD I could find, so  
9 that, under that there would be no PD's at all.  
10 MR. BROWN: And you today are characterizing that  
11 as an error?  
12 MR. BERMAN: Yeah.  
13 MR. BROWN: As I recall from your resume -- and by  
14 the way, this plan was approved in 1985?  
15 MR. BERMAN: That's right.  
16 MR. BROWN: As I recall from your resume, you  
17 stayed with the Planning Board for at least an additional 11  
18 years after this plan was promulgated, correct?  
19 MR. BERMAN: That's correct. I left in 1997.  
20 MR. BROWN: And when did you discover this error?  
21 MR. BERMAN: This last week, last week when I was  
22 looking at it.  
23 MR. BROWN: It never came up in the 11 years that  
24 you were there that there was a mistake in the plan?  
25 MR. BERMAN: I -- no one, no. I, this -- no. I

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1 found other mistakes that I had made over the years that,  
2 but, while I was there. You know, why would I -- yeah. So  
3 it's a mistake. I mean if the plan recommended floating  
4 zones, it should have then taken the -- and it talks about  
5 floating zones option, it should have throughout the chart  
6 said more floating zones, but your reading is that it  
7 implies that there is no floating zones at all in the  
8 Gaithersburg area.  
9 MR. BROWN: Mr. Berman, you are familiar with the  
10 procedure in land transfer situations in Montgomery County,  
11 aren't you, where the actual contracts for sale must make  
12 reference to the fact that the buyer has had opportunity to  
13 examine the Master Plan affecting the area?  
14 MR. BERMAN: That's correct.  
15 MR. BROWN: Why is that, why is that provision in  
16 the law? What is the importance of the Master Plan in  
17 relation to land transfers?  
18 MR. BERMAN: It's important when people, as you  
19 probably remember the famous stories about people bought a  
20 house and didn't realize that they were backing up to the  
21 Rockville facility or the major highway being proposed. And  
22 real estate agents were selling houses to folks without  
23 telling them that there were information about what was  
24 going to occur within their area. And so the County said  
25 that prior to transactions -- any home being bought in the

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1 County, they, people should be presented with a master plan  
2 so they can see what is the future of their County and areas  
3 around it.  
4 MR. BROWN: One last thing, Mr. Berman. The  
5 master plan recommends that this property, that analysis  
6 area 2 be developed at, in the range of eight to 15 dwelling  
7 units per acre, correct?  
8 MR. BERMAN: That's correct, sir.  
9 MR. BROWN: And, in fact, the existing development  
10 on the property today is within that range, is it not?  
11 MR. BERMAN: Yes, sir.  
12 MR. BROWN: It's not at the top end of that range,  
13 is it?  
14 MR. BERMAN: No.  
15 MR. BROWN: It's not at the bottom end of that  
16 range, is it?  
17 MR. BERMAN: No.  
18 MR. BROWN: It's somewhere in the middle?  
19 MR. BERMAN: Right.  
20 MR. BROWN: About 11 units per acre?  
21 MR. BERMAN: That's correct.  
22 MR. BROWN: I have nothing further.  
23 MS. ROBESON: I have one question. I notice on  
24 page 49, can you hear me?  
25 MR. BERMAN: Here. Hang on a minute.

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1 MS. ROBESON: Can you hear her okay?  
2 MR. BERMAN: I got you again, thank you.  
3 MS. ROBESON: You got me in loud.  
4 MR. BERMAN: I got you. Thank you.  
5 MS. ROBESON: Somebody told me once I spoke  
6 loudly, so anyway, on page 49 it says another -- in the  
7 first paragraph it says another characteristic of this area  
8 is its proximity to the city of Gaithersburg and the town of  
9 Washington Grove, do you see that?  
10 MR. BERMAN: Yes, I see that.  
11 MS. ROBESON: How -- I'd like you, and I'm going  
12 to let Mr. Brown cross on my question and then you can  
13 redirect on both of us, okay? Everything else in that  
14 planning area, or not in the planning area, but if you look  
15 at that map, well, how does this recommend appropriate  
16 residential densities with buffering?  
17 MR. BERMAN: Well, let's talk about the buffering  
18 for a second. Certainly through a PD application you get a  
19 better opportunity to look at that issue and I'm not here to  
20 talk about their plan in terms of how that does or does not  
21 proffer with the community. I haven't looked at that.  
22 MS. ROBESON: Okay.  
23 MR. BERMAN: But that's what the application of a  
24 PD application is about, is about allowing you to make  
25 diatonic judgment in a better way than you can with the

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1 Euclidian zone.  
2 MS. ROBESON: I understand. Okay. I'm going to  
3 let Mr. Brown have, do you have any questions based on my  
4 questions and then, Mr. Kaufman, you can redirect on  
5 everything, okay?  
6 MR. BROWN: Thank you. Mr. Berman, this project  
7 orders the town of Washington Grove on the west side,  
8 doesn't it?  
9 MR. BERMAN: Yes, that's correct.  
10 MR. BROWN: And orders the town, the city of  
11 Gaithersburg on the north side, does it not?  
12 MR. BERMAN: That's correct.  
13 MR. BROWN: And on the east side it borders other  
14 property that is covered by this Master Plan, correct?  
15 MR. BERMAN: That's correct, sir.  
16 MR. BROWN: And within the purview of the County  
17 Master Plan, right?  
18 MR. BERMAN: Uh-huh.  
19 MR. BROWN: Do you want me to put that over here?  
20 MR. BERMAN: Yeah, I got it. Yeah, I got it.  
21 Thanks.  
22 MR. BROWN: Looking at the statement that Hearing  
23 Examiner Robeson read to you, is it your testimony that the  
24 density recommendations for analysis area 2 and the airport  
25 study area do not, or do take into account the concern about

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1 buffering next to the city of Gaithersburg and the town of  
2 Washington Grove?  
3 MR. BERMAN: I don't understand your question.  
4 Could you just give it one more time or put it another way?  
5 I'm sorry.  
6 MR. BROWN: Sure. A density of 11 dwelling units  
7 per acre for analysis area 2, which is essentially what the  
8 recommendation is, you agree with that, don't you? Does  
9 that recommendation take into account the concern expressed  
10 on page 49 about buffering in areas adjacent to the town of  
11 Washington Grove and the city of Gaithersburg?  
12 MR. BERMAN: Well, clearly from that map we show  
13 the town of Washington Grove boundaries, so and we show, and  
14 the land use is there. That's pretty clear. So it's  
15 definitely, the counsel by taking its action assumed that  
16 those things were compatible with each other because they  
17 are part of the same map and they show it abutting that  
18 property. And you can see on the other side of the woods is  
19 a similar kind of density, same similar kind of density,  
20 same similar kind of coloring. The fine grain compatibility  
21 issue, what I will call site planning issue, is left to you  
22 to decide during these proceedings or the planning board  
23 during its proceedings. But from a macro point-of-view,  
24 that's compatible and they did look at that issue.  
25 MR. BROWN: Thank you.

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1 MS. ROBESON: Mr. Kaufman.  
2 MR. KAUFMAN: Got just a few things. Mr. Berman,  
3 you did testify a few moments ago that in your opinion the  
4 proposed PD-35 is an appropriate land use for this property  
5 today, is that correct?  
6 MR. BERMAN: I did.  
7 MR. KAUFMAN: All right. And let's go back to  
8 this issue of buffering. You just said a moment ago that  
9 the, what the, what the plan sort of indicates is that what  
10 Washington Grove refers to, it's stand of trees there as the  
11 Westwood was an adequate buffer?  
12 MR. BERMAN: That's correct.  
13 MR. KAUFMAN: And would you consider it, given  
14 your testimony concerning a PD-35, as still being today an  
15 adequate buffer?  
16 MR. BERMAN: Yes.  
17 MR. KAUFMAN: In fact, it's quite large and the  
18 closest homes, other than the ones on Daylily, are quite a  
19 distance away from the subject property?  
20 MR. BERMAN: That's right. That's right.  
21 MR. KAUFMAN: And then, lastly, Mr. Berman, in  
22 your expertise, would you consider master plans to be  
23 essentially sort of living documents that evolve?  
24 MR. BERMAN: That's -- I certainly think that  
25 reading them as the Bible as we do in Montgomery County is

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1 probably a mistake.  
2 MR. KAUFMAN: I see.  
3 MR. BERMAN: And at every word, these are, every  
4 comma and every period is not what I would -- no wonder I  
5 had headaches every night when I left while with the  
6 Planning Commission, but --  
7 MR. KAUFMAN: They're not scripture?  
8 MR. BERMAN: It's not scripture.  
9 MR. KAUFMAN: And, in fact, technically master  
10 plans are statement of policy --  
11 MR. BERMAN: It's a --  
12 MR. KAUFMAN: -- on a given time?  
13 MR. BERMAN: It's a guide. And we've been  
14 wrestling with that, that dilemma since the early '70's,  
15 since I got here.  
16 MR. KAUFMAN: And then when you have a Master Plan  
17 as old as this one, which is at least 28 years old, and the  
18 recommendation for the subject area is almost 40 years old  
19 if you go back to the 1971 plan, that has not changed, you  
20 as a professional planner, what sort of weight would you  
21 give a Master Plan that --  
22 MR. BERMAN: Well, I think you're, I think the  
23 weight of the plan, you're going through that evaluation  
24 during this process. I think that's the good part of  
25 Montgomery County. It has a very good process, a hearing

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1 examiner process to go through the kind of weight it is.  
2 There's no -- each part of the County, each recommendation  
3 gets looked at individually. I give it less weight than I  
4 would one that was done five or 10 years ago for sure. I  
5 think somebody in the testimony said less luster, the plan  
6 has less luster. I thought that was artfully said.  
7 Certainly, it's something that we can't throw out. On the  
8 other side, we can't say it's not, you know, it's not there.  
9 It does, it is a little, it is policy of the County Council.  
10 It is important. They haven't changed it.  
11 But we should remember that it was done in the  
12 '80's, before a lot of, well, before things have changed and  
13 evolved. That's why we redo a plan every 10 years, 10 to 15  
14 years. This --  
15 MR. KAUFMAN: Some say --  
16 MR. BERMAN: -- was in the work program and it got  
17 dropped.  
18 MR. KAUFMAN: So there have been an awful lot of  
19 evolutions in the area of planning and land use since?  
20 MR. BERMAN: Right. And you can see that other  
21 sections of the Gaithersburg vicinity plan have been changed  
22 completely. I mean this plan is, every other page has been  
23 X'd out because it's been taken out and re-looked at and  
24 thought about. This area hasn't been done that way.  
25 MR. KAUFMAN: And as recently as the adoption of

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1 the Shady Grove plan and the White Flint master plans,  
2 there's quite a bit of difference between those two plans  
3 just within the few years?  
4 MR. BERMAN: Right. We are, I think, we're now  
5 into planning that's basically a transformational planning.  
6 I think you will see the plans that are coming out now are  
7 really, are much more transformational in -- for a while  
8 there we were, excuse the expression, adopting the aerial  
9 photograph, taking a look at an area and saying that's just  
10 about it is. Now planning, coming up with plans that are  
11 saying is this the best we can do and looking at, and re-  
12 looking at that. And it's very exciting, very exciting.  
13 MS. ROBESON: But those are done comprehensively?  
14 MR. BERMAN: And they should be and that's why  
15 they're done comprehensively.  
16 MR. KAUFMAN: Okay. Excuse me a second. That  
17 will conclude redirect.  
18 MS. ROBESON: Thank you. Thank you, Mr. Berman.  
19 MR. BERMAN: I hope that was helpful.  
20 MS. ROBESON: It was. Thank you.  
21 MR. KAUFMAN: Ms. Girard will do our next witness.  
22 MS. ROBESON: While we're switching witnesses,  
23 sorry, we can, but I did want to mention one other thing I  
24 had a question on that doesn't have to be addressed now, but  
25 on the waiver provision of the 100-foot setback, which is in

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1 7.15(b) or (c) --  
2 MR. KAUFMAN: Yes.  
3 MS. ROBESON: Well, if you look at (d), it permits  
4 a waiver if certain (d)(3) says the maximum building height  
5 under this waiver must not exceed 50 feet and I just didn't  
6 know -- I haven't gone through this with a fine-tooth comb,  
7 but if you can address it at some point, I'm not sure that  
8 (d), well, if you could address that issue at some point,  
9 that would be helpful.  
10 MR. BERMAN: Isn't it or there? I'm not, I can't  
11 remember. Give us a second just to look at it.  
12 MS. ROBESON: Well, I don't want, you don't  
13 need --  
14 MR. KAUFMAN: Okay.  
15 MS. ROBESON: -- to address it right now. If we  
16 could do one more witness and then we'll take a break.  
17 MR. KAUFMAN: Okay. That's great.  
18 MS. ROBESON: Please raise your right hand.  
19 (Witness sworn.)  
20 MS. ROBESON: Thank you.  
21 MS. GIRARD: Mr. Longfellow's resume is in the  
22 exhibit list, Exhibit No. 59C.  
23 MS. ROBESON: Okay.  
24 MS. GIRARD: Mr. Longfellow, can you state your  
25 name and business address?

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1 MR. LONGFELLOW: Yes. My name is Tim Longfellow.  
2 I'm at 3909 National Drive, Suite 250, in Burtonsville,  
3 Maryland 20866.  
4 MS. GIRARD: And what's your occupation?  
5 MR. LONGFELLOW: I'm a civil engineer.  
6 MS. GIRARD: And long have you been engaged in  
7 this occupation?  
8 MR. LONGFELLOW: For about 19 years.  
9 MS. GIRARD: Can you review for us your  
10 professional and educational background?  
11 MR. LONGFELLOW: Sure.  
12 MS. ROBESON: Just to, I don't mean to detract  
13 from your weighty background, but I do have your resume in  
14 the file. Mr. Brown, do you have any objections to  
15 qualifying him as an expert in civil engineering?  
16 MR. BROWN: No objection.  
17 MS. ROBESON: Mr. Longfellow, have you testified  
18 as an expert before in any courts or administrative  
19 proceedings?  
20 MR. LONGFELLOW: Sure, not in front of this  
21 office, but I have in Anne Arundel County and I have in  
22 Baltimore County, and I testified in front of other planning  
23 commissions in various counties throughout Maryland.  
24 MS. ROBESON: Okay. But, and have you been  
25 qualified as an expert in those proceedings?

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1 MR. LONGFELLOW: In Baltimore and Anne Arundel,  
2 I'm sorry, Baltimore and Howard I have been qualified as an  
3 expert.  
4 MS. ROBESON: Okay. And are you licensed in  
5 Maryland?  
6 MR. LONGFELLOW: Yes, I am.  
7 MS. ROBESON: Okay. I am going to accept him as  
8 an expert. His credentials are in the file. I'm going to  
9 accept him as an expert in civil engineering. Go ahead, Ms.  
10 Girard.  
11 MS. GIRARD: Okay. Mr. Longfellow, are you  
12 familiar with zoning application of a G-910?  
13 MR. LONGFELLOW: Yes, I am.  
14 MS. GIRARD: And are you familiar with the  
15 property that's the subject of the application?  
16 MR. LONGFELLOW: Yes, I am.  
17 MS. GIRARD: And are you familiar with the  
18 surrounding area?  
19 MR. LONGFELLOW: Yes, I am.  
20 MS. GIRARD: Are you also familiar with the PD-35  
21 zoning classification and requirements of the zone?  
22 MR. LONGFELLOW: I am, yes.  
23 MS. GIRARD: And was the schematic development  
24 plan the current one prepared under your supervision?  
25 MR. LONGFELLOW: Yes, it was.

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1 MS. GIRARD: And that's the current schematic  
2 development plan in the record is 73A, Exhibit 73A. Now  
3 when Mr. Hornstein testified last week, he mentioned that  
4 the parking numbers had decreased, that when the plan  
5 changed there was a decrease in the parking numbers that  
6 wasn't reflected on that schematic development plan, is that  
7 true?  
8 MR. LONGFELLOW: That's correct.  
9 MS. GIRARD: And do we have a revised plan that  
10 shows that the new parking numbers?  
11 MR. LONGFELLOW: Yes, we do.  
12 MS. GIRARD: Okay. Can you pull that up?  
13 MR. LONGFELLOW: Sure.  
14 MS. GIRARD: We're waiting on copies to come in to  
15 (indiscernible).  
16 MS. ROBESON: Okay. Can I ask you is it just a  
17 tabulation sort of change?  
18 MS. GIRARD: It's just in the tabulation.  
19 MS. ROBESON: Okay. And let's mark that as  
20 Exhibit 123.  
21 MR. KAUFMAN: That would be 124.  
22 MS. ROBESON: Oh, yes, 124, Revised Development  
23 Plan Correcting Parking Tabulations.  
24 (Exhibit No. 124 was marked  
25 for identification.)

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1 MS. ROBESON: I'm sorry, did you mark -- okay, I  
2 see it.  
3 MR. KAUFMAN: Yes, ma'am.  
4 MS. ROBESON: Okay. I see it. Thank you. You  
5 have to be your own -- we don't have clerks here.  
6 MR. KAUFMAN: I understand.  
7 MS. GIRARD: And as shown on this SDP, does the  
8 proposed development currently meet the development  
9 standards of the PD-35 zone?  
10 MR. LONGFELLOW: Yes, it does.  
11 MS. GIRARD: Can you review those standards and  
12 the proposed finding elements and indicate how the plan  
13 complies with requirements of the zone?  
14 MR. LONGFELLOW: Sure. As shown on the land use  
15 summary table in Exhibit 124, we go through and define the  
16 net tract area, which is the area of the application, the  
17 8.11 acres. We go through the, in that table and set forth  
18 both the required and provided density. In this case, the  
19 provided density is 329 units. We continue to go through to  
20 set the MPDU value which for the application, 12.5 percent  
21 was what was required. The applicant is, our client is  
22 providing 15 percent for a total of 50 units in this case.  
23 And then we go through and define the green area provided  
24 and required and also discuss the building heights, you  
25 know, as for buildings A and B at four stories and three

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1 stories and then for the townhouses we set the height at two  
2 stories.  
3 We further get into in the binding elements some  
4 of the specifics where we limit the types of uses for the  
5 application as multi-family and townhouse units. We also  
6 set the maximum dwelling units at 329 and basically agree  
7 that we're going to provide the 50 percent MPDU's. We limit  
8 the access points for the project to two. We define the  
9 green area requirements and add that as a binding element.  
10 And we also, again, reiterate the height that we're  
11 providing as a binding element as well.  
12 MS. ROBESON: And what is the height you're  
13 providing?  
14 MR. LONGFELLOW: For buildings A and B, they're  
15 both three and four-story buildings and for the townhouse  
16 units, they were two-story buildings.  
17 MS. ROBESON: Do you know the actual feet?  
18 MR. LONGFELLOW: We, at this point I would defer  
19 to the architect for the actual number, but what was said is  
20 that for buildings A and B, that they wouldn't exceed 50  
21 feet and for the townhouses that they wouldn't exceed 35  
22 feet in height.  
23 MS. GIRARD: And did you arrive at those numbers  
24 in consultation with the architect?  
25 MR. LONGFELLOW: Absolutely, yes.

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1 MS. GIRARD: Thank you.  
2 MR. LONGFELLOW: That may answer your question.  
3 MS. ROBESON: Yes, it does. I just -- thank you.  
4 MR. LONGFELLOW: Okay.  
5 MS. ROBESON: I read too much. Okay. Go ahead.  
6 MS. GIRARD: And, Mr. Longfellow, you mentioned  
7 the green space calculation. Now that was, has been a  
8 contentious issue. It was raised at Planning Board. Can  
9 you take a minute and walk through with us how you  
10 calculated green area?  
11 MR. LONGFELLOW: Sure. And the green area, you  
12 know, with every project is a big deal. So, you know,  
13 literally every project I get, I go to the zoning ordinance.  
14 I copy out the green area definition and, you know, we  
15 examine the features of the plan that are going to be  
16 counted or discounted as green area. In this case, the  
17 first items that are obviously to this counter are the  
18 buildings, the structured parking, any vehicular surfaces  
19 which, you know, are shown on Exhibit 124. We have the  
20 driveway that runs between buildings A and B and in east and  
21 west direction. And then we have the driveways that run  
22 along the western property line which provide the access  
23 into the parking structures.  
24 Additionally, we have, for the townhouse units, we  
25 have the other access point and then the rear driveway and

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1 then the driveways for vehicles to park behind the  
2 townhouses. As allowed for in the definition of the green  
3 area, you know, we then count all the lawn areas, the rec  
4 facility areas, sidewalks, lead walks, things of that nature  
5 and, you know, at the end of that we arrive at what we're  
6 allowed to treat as green area.  
7 MS. GIRARD: And in this case when we, the  
8 application was submitted, you were calculating green area  
9 based on the 8.11 acres, is that correct?  
10 MR. LONGFELLOW: That's correct.  
11 MS. GIRARD: And why was that?  
12 MR. LONGFELLOW: Well, the 8.11 acres was the area  
13 of the development plan. It was the gross area of the  
14 development plan on the application that was filed. So when  
15 we looked in the PD zone, it said, you know, green area, 50  
16 percent required based on the gross area. So that's what we  
17 initially did the calculations based on.  
18 MS. ROBESON: Okay. Is that the gross tract area?  
19 MR. LONGFELLOW: It says gross area in the zoning  
20 code. So when we look at the definition of green area, and  
21 if I can read from the definition --  
22 MS. ROBESON: Sure.  
23 MR. LONGFELLOW: -- it says --  
24 MS. ROBESON: Please.  
25 MR. LONGFELLOW:

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1 "An area of land associated with and located  
2 on the same tract of land as a major building or  
3 group of buildings or a prescribed portion of the  
4 land area encompassed by a development plan."  
5 So in this case the prescribed area encompassed by the  
6 development plan is the 8.11 acres which in this case the  
7 confusion I think is that becomes, that's the actual -- if  
8 you're speaking in terms of tract area, it's the net tract  
9 area. It's not the gross tract area --  
10 MS. ROBESON: Right.  
11 MR. LONGFELLOW: -- which would have included  
12 portions of the right-of-way --  
13 MS. ROBESON: Right.  
14 MR. LONGFELLOW: -- that were previously  
15 dedicated.  
16 MS. ROBESON: Okay.  
17 MR. LONGFELLOW: So in this case, we initially  
18 started with a net tract area, made our submission and  
19 through the review process it was then questioned and hence,  
20 you know, we started down the path of being asked to provide  
21 the calculations based on the gross tract area, which we  
22 were happy to oblige and in this case, you know, we still  
23 were able to meet the green area requirements based on the  
24 gross tract area.  
25 MS. ROBESON: Which is larger, the gross tract

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1 area or the 8.11?  
2 MR. LONGFELLOW: The gross tract area is larger,  
3 but because it includes portions of Towne Crest Drive and  
4 portions of Washington Grove Lane that were previously  
5 dedicated when the property was subdivided.  
6 MS. ROBESON: Right. Right. Okay. I, all right.  
7 I understand.  
8 MS. GIRARD: And how large is the gross tract  
9 area, just for the record?  
10 MR. LONGFELLOW: We have it as 9.415 acres on the  
11 land use summary table.  
12 MS. GIRARD: So during the review process of Park  
13 and Planning, you were asked to provide the calculations  
14 using the gross area, which you did, to staff, is that  
15 correct?  
16 MR. LONGFELLOW: That's correct.  
17 MS. ROBESON: The gross tract area?  
18 MS. GIRARD: The gross tract area. And although  
19 those calculations were provided, the gross tract area was  
20 otherwise not used for purposes of this application as far  
21 as pulling density off that area or anything like that?  
22 MR. LONGFELLOW: No, we were always using the 8.11  
23 acres until we were asked to provide it. So that's how that  
24 all got started.  
25 MS. GIRARD: And is it true that whether you

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1 looked at the net tract area or the gross area requested by  
2 staff that the 50 percent green space is met in either case?  
3 MR. LONGFELLOW: That's correct.  
4 MS. GIRARD: And in this, because it was requested  
5 by staff, is part of this application being, both the growth  
6 and the net were provided --  
7 MR. LONGFELLOW: Uh-huh.  
8 MS. GIRARD: -- and all submissions except for the  
9 one in January, is that correct, in only the gross area  
10 submitted in January?  
11 MR. LONGFELLOW: I believe that's correct. You  
12 know, initially we only submitted the net or the gross area  
13 of the application with the PD-60 application and then  
14 subsequently we were providing both, but we're still  
15 reflecting the desires of staff on the land use summary  
16 table, which was, you know, the gross analysis.  
17 MS. GIRARD: But in your professional opinion, the  
18 correct way to calculate it would be on the 8.11 acres --  
19 MR. LONGFELLOW: That's --  
20 MS. GIRARD: -- listed in the application?  
21 MR. LONGFELLOW: That's correct. That's -- yes.  
22 MS. GIRARD: Okay. One of the other issues that  
23 has been raised in this case is the setback from the houses  
24 along Daylily Lane which the Hearing Examiner just recently  
25 referenced. Were you here at the last hearing when the

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1 architect presented a plan, an alternative plan that adhered  
2 to that 100-foot setback should a waiver not be granted?  
3 MR. LONGFELLOW: Yes, I was.  
4 MS. GIRARD: And have you since that time been  
5 able to convert that sketch into an alternative, formal  
6 alternative development plan?  
7 MR. LONGFELLOW: Yes, I have.  
8 MS. GIRARD: Okay.  
9 MS. ROBESON: So this is 125? This would be  
10 alternative, I'm going to give it a letter, alternative B,  
11 and 124 will be alternative A.  
12 MR. KAUFMAN: This is 125?  
13 (Exhibit No. 125 was marked  
14 for identification.)  
15 MS. ROBESON: Yes.  
16 MR. KAUFMAN: Okay.  
17 MS. ROBESON: Does this have the correct parking  
18 tabulations or does that need to be changed on this one as  
19 well?  
20 MR. LONGFELLOW: We updated the parking tabulation  
21 based on the revision of the plan.  
22 MS. ROBESON: Okay. So this doesn't need a future  
23 amendment on parking?  
24 MR. LONGFELLOW: No. This one should be --  
25 MS. ROBESON: Okay. I was just checking.

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1 MR. LONGFELLOW: Okay.  
2 MS. ROBESON: Sometimes we get so many versions,  
3 I, it's hard to keep track. Okay. Thank you.  
4 MS. GIRARD: And to close the loop, did you also  
5 prepare a revised green area exhibit using the 8.11 acres  
6 with the 100-foot setback for the alternative fee, is that  
7 what we are calling it?  
8 MR. LONGFELLOW: Yes, I did.  
9 MS. ROBESON: Okay. So this is the alternative  
10 fee green space?  
11 MS. GIRARD: Correct.  
12 MS. ROBESON: And that's 126? Mr. Brown, do you  
13 have any objections or do you need a minute? Has Mr. Brown  
14 seen these?  
15 MS. GIRARD: No. They're hot off the press this  
16 week.  
17 MR. BROWN: I've never been given this.  
18 MS. GIRARD: 126.  
19 MS. ROBESON: I'm giving the alternative B green  
20 space is 126 and the alternative B development plan is 125.  
21 (Exhibit No. 126 was marked  
22 for identification.)  
23 MS. ROBESON: Let's do this. Let's take a 10-  
24 minute break and we'll give Mr. Brown a moment to look at  
25 these.

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1 MS. GIRARD: Okay.  
2 MR. KAUFMAN: Okay.  
3 MS. ROBESON: I apologize for interrupting your  
4 testimony, but --  
5 MR. KAUFMAN: I would just for the record, when  
6 the architect testified what constitutes alternative A is  
7 already in the record in that testimony. Remember, he had a  
8 sketch with, he showed you where the --  
9 MS. ROBESON: That was alternative --  
10 MS. GIRARD: B.  
11 MS. ROBESON: -- B, right?  
12 MS. GIRARD: B. Yes.  
13 MR. KAUFMAN: Yes. Correct.  
14 MS. ROBESON: Okay.  
15 MR. KAUFMAN: I just wanted the record to reflect  
16 that you have a version --  
17 MS. ROBESON: Right. Right. This is just --  
18 MR. KAUFMAN: Right.  
19 MS. ROBESON: That was a sketch and this is --  
20 MR. KAUFMAN: Right.  
21 MS. ROBESON: -- the real thing.  
22 MR. KAUFMAN: Right.  
23 MS. ROBESON: Okay.  
24 MR. KAUFMAN: Thank you.  
25 MS. ROBESON: But I understand your point. Okay.

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1 We'll go off the record for 10 minutes.  
2 (Recess)  
3 MS. ROBESON: Ready to go back on the record.  
4 Okay. We're on the record. Mr. Longfellow, or Ms. Girard,  
5 if you want to continue?  
6 MS. GIRARD: Yes.  
7 MS. ROBESON: We have 125 and 126, which are  
8 alternative B's site plan and green space.  
9 MS. GIRARD: Mr. Longfellow, have you analyzed the  
10 suitability of the subject property for the proposed  
11 rezoning classification from a civil engineering standpoint?  
12 MR. LONGFELLOW: Yes, I have.  
13 MS. GIRARD: And can you review for us the  
14 findings of your analysis?  
15 MR. LONGFELLOW: Sure. As we went through the  
16 property and looking at the surrounding property, we, I  
17 guess, looked at a bunch of things from an engineering  
18 standpoint that included roads and utilities so, you know,  
19 the first thing that we saw is that the site is accessed off  
20 of Towne Crest Drive. You know, in the existing condition  
21 it had, I believe it was four access points and it had  
22 various water connections as shown on Exhibit 125 that are  
23 along Towne Crest Drive to serve the various buildings that  
24 it has. We then looked at the existing water and sewer  
25 that's in Towne Crest Drive. There's a 12-inch water line

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1 that runs through Towne Crest Drive that serves this  
2 property. There's also public sewer that serves the larger  
3 area and then also runs through our property between where  
4 buildings A and B are currently placed within a sewer  
5 easement and then also runs along the western property line  
6 and then out into Washington Grove Lane.  
7 Those water and sewers in service categories W3  
8 and S3, we have done sewer capacity modeling studies with  
9 WSSC and everything is adequate capacity. We then moved our  
10 attention onto the existing storm drain systems and there is  
11 public storm drain that runs in Towne Crest Drive and also  
12 runs through our property in an east-west direction between  
13 where buildings A and B are within a public storm drain  
14 easement and outflows into the Westwoods area in this  
15 location and then also at the southern end of the property  
16 there's a public storm drain system that runs through our  
17 property, again, and outflows between Lots 2 and 3,  
18 specially into Lot 3 along Daylily Lane there.  
19 MS. ROBESON: I'm sorry, can you point that out  
20 again? Where is it on the subject property?  
21 MR. LONGFELLOW: So the one at the northern end --  
22 MS. ROBESON: I have that one.  
23 MR. LONGFELLOW: You've got that one? So down  
24 here, the existing storm drain system starts on the east  
25 side of Towne Crest Drive. There's a little inlet along the

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1 roadside there. Then comes --  
2 MS. ROBESON: I see it. Okay.  
3 MR. LONGFELLOW: -- as an angle, and then as it  
4 comes into the site, you'll see the line and the easement  
5 that's associated with it --  
6 MS. ROBESON: Okay.  
7 MR. LONGFELLOW: -- that then comes over and then  
8 outfalls there.  
9 MS. ROBESON: Okay. I see it.  
10 MR. LONGFELLOW: Those systems were built some  
11 time ago. They're functioning now. Everything, you know,  
12 other than, you know, the typical getting things cleaned out  
13 along the, you know, some other portions of the facility,  
14 they outfall. This one outfalls into a rip-rap channel,  
15 the, at the northern end of the site. At the southern end  
16 of the site, you have the, you have a concrete apron and  
17 then it slows through a brass swale in lot 3 there.  
18 In addition, you've got all the other utilities,  
19 gas, electric, telephone, cable all run, you know, within  
20 Towne Crest Drive currently, currently serving this whole  
21 community and we would replace or reuse those utilities as  
22 we can.  
23 MS. ROBESON: And are you proposing, is that a  
24 bulb there? It says underground storm water management?  
25 MR. LONGFELLOW: That's correct. With -- I guess

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1 we had looked at a couple of different options and, you  
2 know, and the current plan right now we are providing for  
3 10-year quantity control for storm water management, in  
4 addition to also fulfilling the full lit ESD, or  
5 Environmental Site Design requirements, that are now the --  
6 MS. ROBESON: Right.  
7 MR. LONGFELLOW: -- law in Maryland. Currently  
8 the site doesn't have any storm water management at all,  
9 just drains. Either the sheet flows off or gets into the  
10 storm drain system and drains out. But at the time that's  
11 what --  
12 MS. ROBESON: It's okay.  
13 MR. LONGFELLOW: -- was, you know, it was all by  
14 law legal, you know, approved through the County. So --  
15 MS. ROBESON: And can I ask you one more question?  
16 MR. LONGFELLOW: Sure.  
17 MS. ROBESON: Is there, on the, let's see, that  
18 would be the west, the southwest corridor of building B,  
19 there's a little bracket. Is that the outline of the old --  
20 I'm trying to figure out where it was --  
21 MR. LONGFELLOW: It's --  
22 MS. ROBESON: -- moved back?  
23 MR. LONGFELLOW: This little gray dash --  
24 MS. ROBESON: Yes.  
25 MR. LONGFELLOW: -- here?

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1 MS. ROBESON: Is that --  
2 MR. LONGFELLOW: That's an existing building  
3 footprint.  
4 MS. ROBESON: Oh, okay.  
5 MR. LONGFELLOW: So the proposed building is, has  
6 a thin, but darker black line and then it has the gray hatch  
7 right here --  
8 MS. ROBESON: Right. Right.  
9 MR. LONGFELLOW: -- that outlines the footprint of  
10 the new building.  
11 MS. ROBESON: But is that, is that indent -- okay.  
12 Is that where it was moved back to be out of the setback?  
13 MR. LONGFELLOW: That's correct, to meet --  
14 MS. ROBESON: Okay.  
15 MR. LONGFELLOW: -- the 100-foot setback from the  
16 intersection of Lot 4 with our western property.  
17 MS. ROBESON: Okay. That's, that was my question.  
18 MS. GIRARD: Now I'm confused.  
19 MS. ROBESON: Sorry.  
20 MS. GIRARD: Just, no, no, I just want to make  
21 sure that this plan, which is Exhibit --  
22 MR. LONGFELLOW: This was the, this was the  
23 alternate plan.  
24 MS. GIRARD: -- 125, it's the alternate plan, but  
25 it doesn't have the previous plan under it, does it?

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1 MR. LONGFELLOW: No.  
2 MS. GIRARD: Isn't that existing conditions as  
3 they appear on site now?  
4 MS. ROBESON: Okay. All right.  
5 MR. LONGFELLOW: Right. That's what I said.  
6 That's the existing building --  
7 MS. ROBESON: Building.  
8 MR. LONGFELLOW: -- footprint that's there today  
9 that's --  
10 MS. ROBESON: Okay.  
11 MS. GIRARD: Right. So the only --  
12 MR. LONGFELLOW: Right.  
13 MS. GIRARD: -- place to compare where the  
14 buildings move for the setback purposes would be the  
15 architectural --  
16 MS. ROBESON: The original --  
17 MS. GIRARD: -- I think the architectural --  
18 MS. ROBESON: Oh, the sketch?  
19 MS. GIRARD: -- sketch.  
20 MR. LONGFELLOW: Oh --  
21 MS. ROBESON: Okay. That's fine. I understand.  
22 MS. GIRARD: Okay.  
23 MR. LONGFELLOW: Yes.  
24 MS. GIRARD: And are the conclusions, or in, as  
25 part of this case did you prepare an engineering report that

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1 basically outlines what you just testified to?  
2 MR. LONGFELLOW: I did.  
3 MS. GIRARD: And that's Exhibit 73F in the record.  
4 MS. ROBESON: Okay.  
5 MS. GIRARD: So as part of the storm water  
6 management, you mentioned that there's none today. In the  
7 letters of record there's concern that this development will  
8 increase the run-off from this property, is that your  
9 conclusion?  
10 MR. LONGFELLOW: The runoff, anytime you redevelop  
11 a site and you go from, you know, in this case the existing  
12 conditions, you know, of I guess a little bit less  
13 impervious to a plan like this where you have more  
14 impervious, there is additional runoff in the term, in the  
15 engineering terms of runoff. But in the terms of the  
16 discharge at the two storm drain outfalls, there will be no  
17 increase at all at those discharge points because of the  
18 fact that we're providing the quantity control measures  
19 onsite. So -- and in terms of the ESD's as well.  
20 The ESD requirements basically replace quality and  
21 quantity control and combine them all into one now. So for  
22 purposes of this plan, we're taking a project that has no  
23 storm water management at all right now, we provided full  
24 ESD treatment. In addition, we've provided some, another  
25 quality control device here that will be -- I'll show it on

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1 -- I don't think this is in the record yet.  
2 MS. GIRARD: No.  
3 MR. LONGFELLOW: But if I could --  
4 MS. ROBESON: Okay. Let's mark it as 127. And  
5 can you describe what that is?  
6 MR. LONGFELLOW: Sure. It is a illustrative plan  
7 of the conceptual storm drain and storm water management  
8 layout.  
9 MS. ROBESON: Okay. How about illustrative storm  
10 water management layout?  
11 MR. LONGFELLOW: That will work.  
12 (Exhibit 127 was marked  
13 for identification.)  
14 MR. KAUFMAN: And what number did you want?  
15 MS. ROBESON: 127.  
16 MR. KAUFMAN: 127. We have a small one for you.  
17 MS. ROBESON: Okay. Do you have one for -- no, I  
18 see.  
19 MS. GIRARD: And can you describe what this  
20 exhibit is showing us?  
21 MR. LONGFELLOW: Sure. So what we did is we took  
22 the conceptual storm drain and storm water management plan  
23 that was part of the original application and we just  
24 basically color-coded it for clarify for purposes of our  
25 discussions today. So in the different colored items, we

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1 identified areas that were providing ESD features, for  
2 instance, micro-bioretenion of rainwater harvesting. We  
3 also ID in the tan on Exhibit 127 the areas where providing  
4 the 10-year quantity control and then in the kind of pink  
5 will show another quality control device in the form of a  
6 structural measure, which is a storm filter. But, again,  
7 the plan was approved by Montgomery County's Department of  
8 Permitting Services, their Water Resources Section  
9 conceptually and, again, we're providing the ESD's. We're  
10 also providing a structural water quality facility and we're  
11 providing 10-year quantity control. So looking at the  
12 discharge points, you know, in the central location on the  
13 property and then at the southern end, the water will be  
14 controlled such that there is no increased discharge at  
15 those points.  
16 MS. GIRARD: Okay. So, Mr. Longfellow, based on  
17 your testimony, is it in your expert opinion that the host  
18 zoning classification as a PD-35 zone be served by adequate  
19 public facilities and services, including water, sanitary  
20 sewer, storm drainage and other public improvements?  
21 MR. LONGFELLOW: Yes, it will.  
22 MS. GIRARD: And in your opinion will the proposed  
23 zoning classification, the PD-35 zone, cause any adverse  
24 effects on the environment on the health, safety, security,  
25 morals or welfare of the residents, visitors or workers in

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1 the area?  
2 MR. LONGFELLOW: No. In fact, I think it's going  
3 to make it better. You're taking a site right now that's  
4 not providing any storm water management. You know, I don't  
5 think anybody disputes the fact that there is some existing  
6 erosion that's taking place in the Westwoods and, you know,  
7 this plan is not going to do anything to add to that  
8 problem. It's going to maintain the quantity control  
9 onsite. It's going to provide, you know, extensive quality  
10 control throughout the project. So it's really going to  
11 improve the quality of the water, you know, that's running  
12 off of this property and, you know, while not increasing the  
13 amount of water that's going to get to the Westwoods.  
14 MS. GIRARD: And in your expert opinion as a civil  
15 engineer, is the proposed zoning classification to the PD-35  
16 zone suitable for the site and compatible to the surrounding  
17 neighborhood?  
18 MR. LONGFELLOW: Yes, it is.  
19 MS. GIRARD: That's all we have.  
20 MS. ROBESON: Okay. No other questions?  
21 MS. GIRARD: That's it.  
22 MS. ROBESON: Mr. Brown.  
23 MR. BROWN: Mr. Longfellow, I'm looking at Exhibit  
24 127. It doesn't have your certification seal on it. Is  
25 this -- and it also is listed as option 1. Could you please

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1 explain, is this intended to replace an earlier exhibit as  
2 the, as a final version of your proposed storm drain and  
3 storm water management plan?  
4 MR. LONGFELLOW: It's not proposed to replace any  
5 version, it was merely prepared to use color for the  
6 purposes of demonstration for these proceedings.  
7 MR. BROWN: Is there anything different about this  
8 plan other than the fact that certain parts of it are in  
9 color as compared to some other exhibit?  
10 MR. LONGFELLOW: I do not believe there is  
11 anything different. When you say -- what would you like me  
12 to compare it to?  
13 MR. BROWN: You tell me. Which exhibit is this?  
14 It's simply an illustration of --  
15 MR. LONGFELLOW: It is an illustrative of the  
16 resubmitted conceptual storm drain and storm water  
17 management plan that accompanied the revised development  
18 plan for the --  
19 MS. ROBESON: So that would be 73 --  
20 MS. GIRARD: I believe it's 53F because it was  
21 approved prior to the January report, so it's part of the  
22 PD-44.  
23 MR. BROWN: So 53F?  
24 MS. GIRARD: Yes, 53F.  
25 MR. BROWN: So 53F is the current storm drain and

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1 storm water management plan proposal?  
2 MR. KAUFMAN: Did you hear the question?  
3 MR. LONGFELLOW: The current proposal is  
4 illustrated, is illustrated here. This is --  
5 MS. ROBESON: When you're saying here, you're  
6 saying 120 --  
7 MR. LONGFELLOW: On Exhibit 127. Again, as the  
8 plans have developed with these alternates, we've also tried  
9 to update the storm water management plan to illustrate, you  
10 know, how each step would continue to, you know, work with  
11 the plan so that it's a complete document.  
12 MR. BROWN: Mr. Longfellow, there's a difference  
13 between updating and illustrating. I'm trying to understand  
14 what the current version of the plan is. Is it Exhibit 53F  
15 or isn't it?  
16 MR. LONGFELLOW: Do you have 53F so I can look at  
17 it?  
18 MR. KAUFMAN: Give us a minute. Give him a minute  
19 to look at it.  
20 MS. ROBESON: Sure.  
21 MR. LONGFELLOW: The two plans are different.  
22 MR. BROWN: All right. So Exhibit 127, is it  
23 intended to replace Exhibit 53F or isn't it?  
24 MR. LONGFELLOW: Ultimately it would replace that  
25 exhibit, you know, as we -- would begin to file things with

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1 the Department of Permitting Services because it would  
2 reflect the proposed development as is to be approved in  
3 this proceeding, so that plan would demonstrate what we  
4 were, what we were going to, you know, send into DPS and we  
5 would seek permit approvals on.  
6 MR. BROWN: Well, one change I see, for example,  
7 is the reorientation of the townhouse units. That has an  
8 impact on your plans, doesn't it?  
9 MR. LONGFELLOW: Yes, it does.  
10 MR. BROWN: And isn't another potential area of  
11 impact the possibility that the building B will be shortened  
12 on the south side according to Exhibit 125?  
13 MR. LONGFELLOW: Yes.  
14 MR. BROWN: So all these things would have to be  
15 taken into account in revising this plan?  
16 MR. LONGFELLOW: Yes, sir.  
17 MR. BROWN: All right. I put up on here Exhibit  
18 73K. Mr. Longfellow, you're familiar with this, right?  
19 MR. LONGFELLOW: Yes, I am.  
20 MR. BROWN: This is, as I understand it, your  
21 latest green area calculation without the shortening of  
22 building B, but using the gross tract area, correct?  
23 MR. LONGFELLOW: Yes, sir.  
24 MR. BROWN: Now my question for you is how would  
25 the numbers change on this diagram if you omitted from the

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1 green area calculation any green area that's in the  
2 dedicated right-of-way?  
3 MR. LONGFELLOW: It would change to reflect the  
4 analysis that we provided as the green area for the net  
5 tract area and we would still be compliant with the 50  
6 percent green area requirement.  
7 MR. BROWN: I'm asking about a number, Mr.  
8 Longfellow. How many square feet of land in this particular  
9 diagram indicated as green area are in the right-of-way?  
10 MR. LONGFELLOW: I could do the calculation for  
11 you.  
12 MR. KAUFMAN: I would just like the record to  
13 reflect that he's going to need to calculate that number.  
14 MS. ROBESON: He said that's fine. You can't do  
15 it in your head?  
16 MS. GIRARD: That would be handy.  
17 MS. ROBESON: Take your time, Mr. Longfellow.  
18 MR. LONGFELLOW: The difference would be 32,409  
19 square feet between the gross tract area, green area  
20 calculation and the net tract area green area calculation.  
21 MR. BROWN: Looking at this Exhibit No. 126, I  
22 understand that you have based this exhibit on the net tract  
23 area, but you had earlier done one on the gross tract area.  
24 I guess my question would be what would the numbers look  
25 like on Exhibit 73K if the building, building B were shorter

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1 as shown on Exhibit 126?  
2 MR. LONGFELLOW: Could you restate that just so  
3 I'm clear?  
4 MR. BROWN: Well, you would have more green area  
5 if you made building B smaller on Exhibit 73K?  
6 MR. LONGFELLOW: Absolutely.  
7 MR. BROWN: How much more green area would you  
8 get?  
9 MR. LONGFELLOW: Okay. Hang on. I believe the  
10 number is 7,595, but please let me check that. It's  
11 approximately 7,600 square feet --  
12 MR. BROWN: Okay.  
13 MR. LONGFELLOW: -- if that's close, close enough,  
14 within a few square feet.  
15 MR. BROWN: So here we show 209,065.  
16 MS. ROBESON: What are you pointing to? Is that -  
17 -  
18 MR. BROWN: This is the green area shown on  
19 Exhibit 73K.  
20 MS. ROBESON: Okay.  
21 MR. BROWN: All right?  
22 MS. ROBESON: Yes.  
23 MR. BROWN: Now if you add 7,600 to that, what do  
24 we get, or 7,595?  
25 MR. LONGFELLOW: 216,665.

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1 MR. BROWN: About 216,665?  
2 MR. LONGFELLOW: Yes.  
3 MR. BROWN: Now you said that this diagram was  
4 inclusive of about 32,409 square feet of green area in the  
5 right-of-way?  
6 MR. LONGFELLOW: Yes, sir.  
7 MR. BROWN: If we subtract that green area from  
8 this diagram after adding in the 7,600, what do we get?  
9 MR. LONGFELLOW: I have 184,256.  
10 MR. BROWN: And that's less than 50 percent of the  
11 gross tract area, right?  
12 MR. LONGFELLOW: Less than 50 percent of the gross  
13 tract area, of the gross tract area? Yes.  
14 MR. BROWN: But is more than 50 percent of the net  
15 tract area?  
16 MR. LONGFELLOW: Yes, it is.  
17 MR. BROWN: So it's fair to say that whether or  
18 not you count green area in the right-of-way, whichever  
19 version of the plan you use, whether or not you count green  
20 area in the right-of-way is decisive as to whether or not  
21 this plan is compliant with the green area requirement?  
22 MR. LONGFELLOW: I don't agree with that. In  
23 both, in both conditions, in both conditions when we look  
24 at -- we've got to be careful with the nomenclature. The  
25 gross tract area is what we're showing on Exhibit 73K that

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1 encompasses the 8.11 acres of the application and the  
2 additional right-of-way areas that we had added in to make  
3 our gross tract area based on previous dedications and  
4 things of that nature. So with respect to the gross tract  
5 area and calculating the areas based on the green area  
6 definition, the green area calculations are satisfied for  
7 the gross tract area. When you also look at the net tract  
8 area or the area of the application, the 8.11 acres, we  
9 would at that point -- if you, for instance, looked at  
10 Exhibit 126, in comparison to Exhibit 73K, you'll see that  
11 we don't include any areas outside of the 8.11 acres and at  
12 that point we use the net tract area, the 8.11 acres and the  
13 green area that's within the net tract area which is also  
14 synonymous with the gross area of our application. So we've  
15 got to be careful when we're looking at this that we look at  
16 this as an entity and that as an entity. We can't look at a  
17 requirement that's based on the gross tract area encompasses  
18 this larger area, the 9.4 acres, and then compare it to a  
19 green area requirement based on the net tract area, the 8.11  
20 acres. It's, you know, it's -- they're just apples and  
21 oranges. They just -- it doesn't get you there.  
22 MR. BROWN: Mr. Longfellow, when you submit this  
23 application, you have to list the gross tract area of the  
24 property, right?  
25 MR. LONGFELLOW: Yes, and I think we do.

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1 MR. BROWN: And that has a very precise legal  
2 definition, doesn't it?  
3 MR. LONGFELLOW: Yes, it does.  
4 MR. BROWN: And it includes areas dedicated to the  
5 public?  
6 MR. LONGFELLOW: That's correct.  
7 MR. BROWN: And, in fact, sometimes there's a  
8 fight about whether or not the area has been dedicated as to  
9 whether or not it should be included in the gross tract  
10 area?  
11 MR. LONGFELLOW: I have not been involved in any  
12 of those fights but, yes, I understand those discussions.  
13 MR. BROWN: You've heard them, right?  
14 MR. LONGFELLOW: Sure.  
15 MR. BROWN: Now I understand that you are claiming  
16 less density in this project than would be allowed for the  
17 project considering the gross tract area, correct?  
18 MR. LONGFELLOW: That's correct. We've stated  
19 we're not, we're not taking our density calculations based  
20 on the gross tract area. We're only using the net tract  
21 area with the 8.1 area.  
22 MR. BROWN: I'm sorry, Mr. Longfellow, the statute  
23 talks about density in terms of the gross tract area,  
24 doesn't it? Isn't that what the requirement is?  
25 MR. LONGFELLOW: The -- you're allowed to take for

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1 your maximum density calculation the gross tract area, but  
2 you're not required to provide the maximum density based on  
3 the gross tract area if you desire to not have that much  
4 density.  
5 MR. BROWN: Yes and, in fact, you might desire  
6 less density because it might be considered too dense for  
7 the area where the project is being built. Maximum density  
8 is not by right, is it?  
9 MR. LONGFELLOW: That's outside of my --  
10 MR. BROWN: Outside of your job description?  
11 MR. LONGFELLOW: Well, it's outside of my  
12 expertise.  
13 MR. BROWN: Okay. The point is that the  
14 calculation of compliance with the density requirement is  
15 compliance with the maximum density requirement, not  
16 entitlement to the maximum density, isn't that correct?  
17 MR. LONGFELLOW: Could you restate that?  
18 MR. BROWN: You said that this is compliant with  
19 the code, the PV-35 zone, right?  
20 MR. LONGFELLOW: Yes.  
21 MR. BROWN: That zone has a maximum density  
22 requirement, correct?  
23 MR. LONGFELLOW: It has a maximum density ceiling?  
24 MR. BROWN: Yes. And that ceiling is based upon  
25 the gross tract area, correct?

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1 MR. LONGFELLOW: Okay. Yes.  
2 MR. BROWN: And that's why you have to show the  
3 gross tract area on your development plan, right?  
4 MR. LONGFELLOW: I'm not sure if it's exactly why  
5 it has to be shown but, yes, I would, I would, we'd show it  
6 and then in instances where the density is being calculated  
7 on that gross tract area then, yes, the --  
8 MR. BROWN: I'm sorry, Mr. Longfellow, there's  
9 nothing in the statute that talks about an option between  
10 choosing between which, which area of the property you  
11 calculate your density on. The statute says gross tract  
12 area, doesn't it?  
13 MR. LONGFELLOW: I believe it does.  
14 MR. BROWN: And one who needs to be reassured that  
15 the density requirement has been met doesn't look at the net  
16 tract area, they look at the gross tract area and they see  
17 whether or not the number of units per acre has been met for  
18 that gross tract area, correct?  
19 MR. LONGFELLOW: I believe the -- can I check it?  
20 I believe it's gross area, which in this case the gross area  
21 is the 8.11 acres, which is the area defined in our  
22 development plan application.  
23 MR. KAUFMAN: I'm not quite sure what the question  
24 is. I wonder if we could ask the court reporter to repeat  
25 the last question?

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1 MR. BROWN: I guess my question, Mr. Longfellow,  
2 looking at Section 59C-7.14, which is density of residential  
3 development in the PV zone, have you ever known that those  
4 densities were ever calculated on anything other than gross  
5 tract area?  
6 MR. LONGFELLOW: We would calculate the maximum  
7 density allowed based on the first tract area.  
8 MR. BROWN: Thank you. And the fact that you were  
9 claiming less than the maximum density doesn't mean that  
10 you're calculating the density on some other standard other  
11 than gross tract area, does it?  
12 MR. LONGFELLOW: I'm sorry, I didn't get that  
13 question. I wonder if you could repeat it?  
14 MS. ROBESON: Can you repeat it, Mr. Brown?  
15 MR. BROWN: The fact that you have to, that you  
16 calculate maximum density on gross tract area doesn't give  
17 you the option to calculate the density on some other  
18 standard, does it, Mr. Longfellow?  
19 MR. LONGFELLOW: No, I don't, again, for the  
20 maximum density you would calculate it based on the gross  
21 tract area to allow the maximum density that you're allowed  
22 to propose prior to any bonuses or --  
23 MR. BROWN: I gather also it's your testimony that  
24 in preparing this Exhibit 73K that you consider it  
25 appropriate for green area to be within the right-of-way,

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1 within the dedicated right-of-way?  
2 MR. LONGFELLOW: Yes, I do.  
3 MR. BROWN: Is that just so long as the street has  
4 not built in the green area?  
5 MR. LONGFELLOW: We would, again, we would  
6 reference the green area definition which says that we can't  
7 count vehicular surfaces which are the areas on 73K that are  
8 shown in gray. So we don't count those areas, we only count  
9 the areas that would meet the definition of green area.  
10 MR. BROWN: Let's take Washington Grove Lane, for  
11 example.  
12 MR. LONGFELLOW: Sure.  
13 MR. BROWN: The right-of-way for Washington Grove  
14 Lane as shown on Exhibit 73K is, I don't know, somewhere  
15 like 20 or 30 feet north of, north of the existing roadway,  
16 correct?  
17 MR. LONGFELLOW: Yes.  
18 MR. BROWN: All right. Now this area shown as  
19 green area on this diagram, 73K, adjacent to Washington  
20 Grove Lane could be converted to roadway through a widening  
21 project for Washington Grove Lane, correct, at some future  
22 date?  
23 MR. LONGFELLOW: Sure.  
24 MR. BROWN: In other words, you would have no  
25 control over whether or not that did or did not happen?

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1 MR. LONGFELLOW: That's correct.  
2 MR. BROWN: And if it did happen, it would no  
3 longer count as green area, would it?  
4 MR. LONGFELLOW: That's correct. Although, again,  
5 if I may, the, you know, our belief is that based on the  
6 8.11 acres of the application that equates to the gross area  
7 of the development plan which is what we need to base it on,  
8 which is in this case the 8.11 acres and we need the 50  
9 percent green area based on that analysis.  
10 MR. BROWN: You use the word gross area of the  
11 development plan.  
12 MR. LONGFELLOW: It's the gross area.  
13 MR. BROWN: Is there some other area of the  
14 development plan other than gross area?  
15 MR. LONGFELLOW: Well, not -- they're one in the  
16 same and in this case the gross area is the area that was on  
17 the application as the 8.11 acres. So, again, we initially  
18 filed the green area calculations based on the gross area of  
19 the development plan which to keep the nomenclature straight  
20 is also the net tract area and we demonstrated that we  
21 complied with the 50 percent green area. We only went down  
22 this rabbit hole when, with the gross calculations when we  
23 were asked to by staff to go down that. Just because we're  
24 asked to do something doesn't mean that we agree that it's  
25 right, but our client has asked us to try to comply with

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1 every request that we can. That was one of those requests.  
2 So we, I still contend that that's not the right  
3 calculation, that the calculation is based on the 8.11 acres  
4 and the green area provided within that area which is the  
5 gross area of the development plan for the net tract.  
6 MR. BROWN: I appreciate your reference to Lewis  
7 Carroll, Mr. Longfellow. We'll make additional reference to  
8 him in the closing argument.  
9 MS. ROBESON: All right.  
10 MR. BROWN: Let me finally ask you about Exhibit  
11 125. As compared to Exhibit 73A, I guess it is, the  
12 difference here is the shortening of building B, correct?  
13 MR. LONGFELLOW: That's the principle difference.  
14 We have 73A.  
15 MR. BROWN: This is the development plan you  
16 certified in January.  
17 MR. LONGFELLOW: Okay.  
18 MR. KAUFMAN: What exhibit is that?  
19 MS. GIRARD: 73A.  
20 MR. LONGFELLOW: This board is not marked, but I  
21 can mark it.  
22 MS. GIRARD: It's the same exhibit.  
23 MR. BROWN: I believe it's 73A.  
24 MS. GIRARD: With the same dates?  
25 MR. LONGFELLOW: 73A? I certified it January 10

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1 of this year?  
2 MR. BROWN: Yes.  
3 MS. GIRARD: So you can just label it 73A on the  
4 top corner somewhere.  
5 MR. LONGFELLOW: 73A.  
6 MS. ROBESON: Just say 73A, duplicate.  
7 MR. LONGFELLOW: Okay. Okay. Could you repeat  
8 the question just so I --  
9 MR. BROWN: I want, I'm trying to understand what  
10 differences there are between 73A and 125.  
11 MR. LONGFELLOW: Sure. So Exhibit 125 was  
12 developed, I guess, after Mr. Seiboth's testimony, I guess  
13 he presented an exhibit where he showed the 100-foot arc  
14 setback from the interception or the, you know, the  
15 intersection of lot 4 on our western property line. So he,  
16 I guess, demonstrated in that exhibit that this is what  
17 would need to occur to provide that 100-foot setback from  
18 that lot. So this plan, building B was modified to provide  
19 that setback. In addition, we had to update the unit  
20 breakdowns for the unit mix on the parking schedule was, you  
21 know, updated accordingly and we've also re-calculated based  
22 on the new plan, you know, what our new green area would be  
23 based on that plan showing the already discussed increase in  
24 that. And I believe that covers most of the highlights. We  
25 also updated the parking required table appropriately.

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1 MR. BROWN: I guess the question I have and I  
2 would think the Hearing Examiner as well would want to  
3 understand which of these two plans you wish to be  
4 considered the development plan for purposes of the  
5 application? Do you know the answer to that question?  
6 MR. LONGFELLOW: I believe we would appreciate the  
7 original plan being considered with the previous version of  
8 building B, but I guess I would defer specifically to my  
9 client to see if he has a preference, if he likes one better  
10 than the other. I think they, we've demonstrated, I  
11 believe, that each of the plans, you know, can meet the  
12 requirements of the zone.  
13 MR. BROWN: Well, I guess it comes down to your,  
14 your interpretation of the setback requirement for the  
15 house, the last house on Daylily Lane. Is it your belief  
16 that either plan complies with the setback requirement?  
17 MR. LONGFELLOW: It has been our position that  
18 the, 100-foot setback, quote, unquote, is not something that  
19 we felt we were required to satisfy. In areas where we  
20 could provide greater separation, we have provided that and  
21 this alternate on Exhibit 125 goes the next step and shows  
22 what the 100-foot setback from lot 4 would look like.  
23 MR. BROWN: But it's not the, it's not the  
24 applicant's proposal at this point, is that correct?  
25 MR. KAUFMAN: I don't think this witness has the



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1 reconfirmation?  
2 MR. LONGFELLOW: That's correct. That's correct.  
3 MS. GIRARD: So you don't see any problem with  
4 getting that approved?  
5 MR. LONGFELLOW: No, I don't see any problem at  
6 all with providing everything that they would want to see  
7 and a bit more.  
8 MS. GIRARD: Okay. Switching to the green area  
9 calculations, looking at Section 59C-7.16, which I believe  
10 we referenced earlier --  
11 MR. LONGFELLOW: Uh-huh.  
12 MS. GIRARD: This is the section relating to green  
13 area. Can you tell me how it says you need to calculate  
14 that green area?  
15 MR. LONGFELLOW: All right. It says based on  
16 percent of gross area.  
17 MS. GIRARD: And it was your testimony, was it  
18 not, that the gross area in this case was the 8.11 acres?  
19 MR. LONGFELLOW: That's correct.  
20 MS. GIRARD: Do you -- Mr. Brown had indicated the  
21 density was also, was based in the zone on gross tract area.  
22 Do you know is there a provision in 59C-7 that calls for  
23 density to be calculated on gross tract area instead of  
24 gross area?  
25 MR. LONGFELLOW: I do not believe so.

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1 MS. GIRARD: And have we in this case been  
2 calculating density off the gross tract area?  
3 MR. LONGFELLOW: We have not been calculating  
4 density based on the gross tract area.  
5 MS. GIRARD: It's just a line in the development  
6 table, is that correct?  
7 MR. LONGFELLOW: That's correct. That's correct.  
8 MS. GIRARD: And to your knowledge there's no  
9 requirement in this section that requires us to calculate  
10 density off the gross tract area?  
11 MR. LONGFELLOW: Not to my knowledge.  
12 MS. GIRARD: And looking at the definition of  
13 green area in the zoning area, 59A-2.1, can you just review  
14 for us one more time how, how you're calculating that and  
15 why you believe gross area in this case as noted under 59C-7  
16 of the zoning ordinance, when it talks about gross area for  
17 calculating green area, it would be the 8.11 acres in this  
18 case?  
19 MR. LONGFELLOW: Yes. You know, as I read  
20 earlier, the first two lines are so of the definition, at  
21 least on my version that I printed out says that it's, you  
22 know, when -- it's an area of land, I'll paraphrase, or a  
23 prescribed portion of the land area encompassed by a  
24 development plan, in this case the gross area is the area  
25 encompassed by a development plan which is the 8.11 acres.

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1 MS. GIRARD: All right. And to reiterate one more  
2 time, the reason it's showing up in the development plan is  
3 the calculation off gross tract area is a result of comments  
4 from technical staff at Park and Planning?  
5 MR. LONGFELLOW: That's correct.  
6 MS. GIRARD: And it was more responsive to their  
7 request for how to calculate that rather than your  
8 professional opinion as to how it should be calculated?  
9 MR. LONGFELLOW: Absolutely.  
10 MS. GIRARD: Have you ever, are you aware of any  
11 cases where an applicant has, in a PD zone has been required  
12 to calculate the gross tract, or calculate green area from  
13 the gross tract area, but was only allowed to provide it on  
14 a net tract area?  
15 MR. LONGFELLOW: I'm not aware of any cases of  
16 that manner, no.  
17 MS. GIRARD: And it was your opinion and you  
18 mentioned that that would be apples to oranges?  
19 MR. LONGFELLOW: Right. Yes.  
20 MS. GIRARD: And are you aware of any cases that  
21 did include, did base their, for right or for wrong --  
22 MR. LONGFELLOW: Uh-huh.  
23 MS. GIRARD: -- calculated green area off gross  
24 tract area, but also included some of the green areas within  
25 the right-of-way in the provided green area?

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1 MR. LONGFELLOW: Yes, I am aware of a case.  
2 MS. GIRARD: Do you happen to know the name of  
3 that case?  
4 MR. LONGFELLOW: I do. That was Case G-808.  
5 MS. GIRARD: Was that a case that your firm worked  
6 on?  
7 MR. LONGFELLOW: Yes, it was.  
8 MS. GIRARD: One final question. On -- I keep  
9 making, changing the sentence. The current development plan  
10 or the one with the 100-foot setback, I'm sorry --  
11 MR. LONGFELLOW: Oh.  
12 MS. GIRARD: -- so that would be 126?  
13 MS. ROBESON: I think it's 125.  
14 MR. LONGFELLOW: 125.  
15 MS. GIRARD: 125?  
16 MR. LONGFELLOW: Yes.  
17 MS. GIRARD: Sorry. Just to reiterate what we  
18 discussed earlier, in this plan the existing buildings are  
19 shown and the proposed building is shown. Do you know  
20 approximately how much more that proposed building is set  
21 back from the existing building in relation to the northern  
22 Daylily lot?  
23 MR. LONGFELLOW: I could verify. I believe it's  
24 about an additional 60 to 65 feet, but we could confirm  
25 that. The proposed building B is, no, 100 feet and the

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1 existing building that you're referring to earlier is about  
2 70 feet, so we had to move it about another 30 feet or so in  
3 that one.  
4 MS. ROBESON: Now much taller is building B than  
5 the garden that's there?  
6 MR. LONGFELLOW: I do not know that answer.  
7 MS. GIRARD: That's all I have.  
8 MS. ROBESON: Okay. Thank you, Mr. Longfellow.  
9 MR. LONGFELLOW: Thank you.  
10 MS. ROBESON: That was long.  
11 MR. LONGFELLOW: Yes.  
12 MR. KAUFMAN: Madame Examiner, on all these  
13 witnesses, of course, we reserve the right to bring them  
14 back as rebuttal.  
15 MS. ROBESON: Oh, certainly. All right. It is  
16 noon. How many more witnesses do you have, Mr. Kaufman?  
17 MR. KAUFMAN: We have two more I believe.  
18 MS. GIRARD: Two more, yes.  
19 MS. ROBESON: Okay. And how many do you have?  
20 MR. BROWN: I think plenty to take up the  
21 afternoon.  
22 MS. ROBESON: Okay. I'm just checking. We  
23 will -- let's take a 45 minute lunch and we'll come back at  
24 12:45. If we can all do that in the cafeteria, that would  
25 be good and see if we can get as many people in as possible.

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1 Thank you.  
2 (Recess)  
3 MS. ROBESON: All right. I believe you're about  
4 to call your next witness.  
5 MS. GIRARD: I'd like to call Kevin Foster.  
6 MS. ROBESON: Please raise your right hand.  
7 (Witness sworn.)  
8 MS. GIRARD: Mr. Foster, can you please state your  
9 name and business address?  
10 MR. FOSTER: Kevin A. Foster, 3909 National Drive,  
11 Suite 250, Burtonsville, Maryland 20866.  
12 MS. GIRARD: And Mr. Foster's resume is in the  
13 record as Exhibit No. 59B.  
14 MS. ROBESON: Okay.  
15 MS. GIRARD: I can go through the questions or --  
16 MS. ROBESON: Well, are --  
17 MS. GIRARD: -- would you seek to --  
18 MS. ROBESON: -- are you qualifying him as an  
19 expert?  
20 MS. GIRARD: As an expert in landscape  
21 architecture.  
22 MS. ROBESON: Any objections, Mr. Brown?  
23 MR. BROWN: No.  
24 MS. ROBESON: Are you licensed in Maryland?  
25 MR. FOSTER: Yes, I am.

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1 MS. ROBESON: And have you testified before any  
2 administrative bodies before or courts?  
3 MR. FOSTER: Multiple times in front of the  
4 Hearing Examiner's Office and also I've been qualified as an  
5 expert in Prince George's County as well.  
6 MS. ROBESON: All right. I'll qualify him as an  
7 expert in landscape architecture.  
8 MS. GIRARD: Mr. Foster, are you familiar with  
9 rezoning application No. G-93?  
10 MR. FOSTER: Yes, I am.  
11 MS. GIRARD: And are you familiar with the  
12 property that's the subject of the rezoning application?  
13 MR. FOSTER: Yes, I am.  
14 MS. GIRARD: And are you familiar with the  
15 surrounding area?  
16 MR. FOSTER: Yes, and I'd like to describe that a  
17 little bit. I'm referring to a copy of Exhibit 24 I think  
18 it is, which is the approved Natural Resources Inventory and  
19 Forest Stand Delineation --  
20 MS. ROBESON: Okay.  
21 MR. FOSTER: -- that was approved by Maryland  
22 National Park and Planning back in 2011. Just describing  
23 the general area as it relates to the subject property to  
24 the north is the single-family detached neighborhood. It  
25 was in Gaithersburg. To the west, excuse me, to the east is

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1 Wedgewood 1 and 2 townhouse subdivisions. To the south,  
2 several single-family detached houses on the opposite side  
3 of Washington Grove Lane within the town of Washington Grove  
4 and on the west side there are four single-family homes  
5 along Daylily Drive and then there is a larger tree stand  
6 area that's called the Westwoods. That tree stand area, my  
7 understanding of the history of this area was logged  
8 sometime after World War II and is now developed into the  
9 tree stand we see today there which is more of a mono-  
10 cultural stand of fairly mature poplars with a very tight  
11 over-story canopy, very little under-story, pretty heavy,  
12 invasive ground cover or under-story within that area.  
13 That's basically the surrounding area.  
14 MS. GIRARD: And when you were developing this NRI  
15 in just your preparation for this hearing and your  
16 assessment of existing conditions, have you been working  
17 with a certified arborist?  
18 MR. FOSTER: Yes, we've been working with Mr.  
19 Keith Pitchford.  
20 MS. GIRARD: And did he, has he examined your  
21 conclusions regarding the health and status of the  
22 Westwoods?  
23 MR. FOSTER: Yes, he, yes, he has and he pretty  
24 much confirms the same analysis for the condition of the  
25 Westwoods and really the quality of the stand and what's

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1 there today.  
2 MS. GIRARD: Okay. Do you have photographs of  
3 existing conditions you wanted to use?  
4 MR. FOSTER: Yes, I'd like to use Exhibit 24, but  
5 also I'd like to introduce into the record just some  
6 photographs that I personally took probably two weeks ago  
7 and I've put them on a couple of boards just to give  
8 everyone a better, a clearer understanding of what's out  
9 there when we're talking about trees because it's --  
10 MR. FOSTER: Okay.  
11 MS. GIRARD: -- easy to look on a map and not  
12 really understand really what's out there, so --  
13 MS. ROBESON: So I'm going to mark, if you would  
14 kindly mark that as Exhibit 128? And how would you describe  
15 that, photos of existing, these are existing trees?  
16 MR. FOSTER: Yes, this is a photo inventory of  
17 existing trees.  
18 MS. ROBESON: Okay. And there's actually two  
19 sheets with --  
20 MS. ROBESON: Two sheets?  
21 MR. FOSTER: Yes.  
22 MS. ROBESON: Well, this will be A then, if you  
23 can add an A?  
24 MR. FOSTER: And 128B.  
25 MS. ROBESON: And what are the A trees on --

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1 MR. FOSTER: Well --  
2 MS. ROBESON: -- on Exhibit A, what are these  
3 trees?  
4 MR. FOSTER: 128A is two things. On the top of  
5 128A is a planned view of the subject property and located  
6 around the subject property there are small circles and  
7 arrows. All of the circles correspond to the photographs  
8 that are on A and --  
9 MS. ROBESON: Okay.  
10 MR. FOSTER: -- and B. And there's also an arrow  
11 associated with each circle that gives you the direction  
12 that the photograph was taken.  
13 MS. ROBESON: Okay.  
14 MR. FOSTER: So when you're looking at the  
15 photographs, you can orient yourself and see where they were  
16 taken, okay? And I'm going to start in the northern end of  
17 the subject property, along Towne Crest Drive up by the edge  
18 of Saybrooke community by the town of Gaithersburg. And  
19 photograph 1, which is the lower left-hand corner of 128A is  
20 specimen tree 1, which is a red maple.  
21 Now to describe the whole property itself, I think  
22 there's been other experts or other testimony about what the  
23 property is from the buildings and parking lots, but nobody  
24 has really described it from a, more of a landscape point-  
25 of-view. There are, obviously this is a bit of an aged

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1 community, but it's mostly grassland. There's not a lot of  
2 landscaping associated with the buildings or the grounds  
3 themselves. There are basically 14 trees on site that  
4 qualify as specimen trees under Park and Planning's  
5 categories.  
6 Trees in Montgomery County are considered specimen  
7 trees when they're over 24 inches in diameter and then  
8 there's another qualifier on that is there are specimen  
9 trees that are over 30 inches which take special concern.  
10 So in this case there are, on site there are 14 trees that  
11 are at least over 24 inches in diameter and this inventory  
12 of the first four pictures show the major specimen trees  
13 along Towne Crest Drive, although I did want to point out in  
14 the original natural resource inventory, trees 3 and 4,  
15 which were 26-inch white pines that were along Towne Crest  
16 Drive roughly in the middle of the site, sometime last fall  
17 were removed by Pepco because of -- from what I understand  
18 from the superintendent, it was part of their upgrading of  
19 trying to provide better quality electric service and they  
20 were concerned about these two trees hanging over the wire.  
21 So they just ended up disappearing. It was a little bit out  
22 of our control I think.  
23 So getting back into the photographs, the first  
24 four there's a mulberry along Towne Crest Drive, a poplar  
25 which is picture 3 along Towne Crest Drive, and 4 are some

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1 white pines right along Washington Grove Lane. And then  
2 when we get into 128B, these are -- once we're starting  
3 photograph 5, you're standing on Washington Grove Lane  
4 looking --  
5 MS. ROBESON: So that's 5 through what?  
6 MR. FOSTER: Five through 15.  
7 MS. ROBESON: Okay. So that will be photo  
8 inventory --  
9 MR. FOSTER: Right.  
10 MS. ROBESON: -- of existing trees 5 through 15?  
11 MR. FOSTER: Through 15. And 128B, these  
12 photographs basically comprise the property, the western  
13 property line along the town of Washington Grove.  
14 Photograph 5 starts at Washington Grove Lane. This, the  
15 house that you see in photograph 5 is the first house on  
16 Daylily. You can see there's a single row of trees along  
17 the property line and those trees are all on the subject  
18 property and there's a fence behind it that is directly on  
19 the property line.  
20 Now all of these individual trees are not located  
21 on the forest stand lineation. They're shown was a general  
22 treed area, but the requirements for Park and Planning is  
23 not to locate every tree, it's to locate the specimen trees  
24 or the trees of critical concern. But you do see the  
25 condition in photographs 5, 6, 7 and 8 of the four houses

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1 basically along Daylily, but there's pretty much a single  
2 row of trees running along the fence line. So there's not a  
3 very broad buffer in that area, just an existing stand of,  
4 not really a stand, it's a line of trees that have kind of  
5 grown up on their own. It's a mix of mulberries and poplars  
6 and red maples. So it's not, it's obviously not a line of  
7 trees that were planted. It's typically not trees that  
8 would be used that way.  
9 Further into the photographs 10, 11, 12, you see  
10 more of basically moving up toward the Westwoods itself  
11 which is, if we're going back and looking at Exhibit 128A,  
12 it's roughly a third of the way up the western property line  
13 we get to the Westwoods. And as you can take a look at the  
14 Westwoods and you can see there are very large, fairly  
15 mature poplars, but if you look at the photographs very  
16 closely, you will also see there's a fence, a chain link  
17 fence along the Westwoods and that fence is basically on the  
18 property line and there are a number of trees along that  
19 edge that are on the subject property. So not all of the  
20 trees that you see in these photographs are all the  
21 Westwoods. Some of these trees that are on the subject  
22 property are going to be removed as part of the, part of the  
23 development.  
24 And in the natural resources inventory, the trees  
25 that are with the larger circles, I am now pointing to 128A,

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1 the trees, the circles, the trees with the circles on them  
2 are specimen trees and those circles represent the critical  
3 root zones. That's the root zone that has to be evaluated  
4 when you're looking at the impacts to those trees. And as  
5 part of our analysis, Park and Planning requires us to  
6 locate all of those trees basically within 100 feet of the  
7 subject property.  
8 MS. GIRARD: And can you review for us the  
9 compliance of the rezoning application for the forest  
10 conservation laws?  
11 MR. FOSTER: Certainly. Let's see here. Now I  
12 was looking back through the record, this, this is the  
13 signed forest conservation plan from Park and Planning and  
14 I'm not sure this is actually in the record.  
15 MS. ROBESON: Okay.  
16 MR. FOSTER: Because I was looking at the plans  
17 that were submitted --  
18 MS. ROBESON: So this is 129 and the final  
19 approved?  
20 MR. FOSTER: The final, signed, approved plan. It  
21 wasn't signed until 1/29. It was until later that we had  
22 realized --  
23 MS. ROBESON: I don't -- your latest submission, I  
24 think, was 73?  
25 MR. FOSTER: Right. We had requested a signed

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1 copy from Park and Planning and they didn't have one, so  
2 they had to sign one. So that didn't occur until it looks  
3 like the end of January.  
4 MS. ROBESON: All right.  
5 MR. FOSTER: But this, this is the plan.  
6 MS. ROBESON: Well, we'll put it in as a new  
7 exhibit.  
8 MR. FOSTER: Right.  
9 MS. ROBESON: Final Planning Board approved  
10 forest, Preliminary Forest Conservation Plan.  
11 MR. FOSTER: This will be 129?  
12 MS. ROBESON: Yes.  
13 (Exhibit No. 129 was marked  
14 for identification.)  
15 MR. FOSTER: That's actually a three-sheet set, so  
16 there will be an A, B and a C. Okay. First --  
17 MS. ROBESON: Is this sheet A?  
18 MR. FOSTER: This is sheet A, Exhibit 129A.  
19 MS. ROBESON: And what's that called?  
20 MR. FOSTER: Preliminary Forest Conservation Plan.  
21 MS. ROBESON: Oh.  
22 MR. FOSTER: Okay.  
23 MS. ROBESON: I'll just call it sheet 1.  
24 MR. FOSTER: Okay.  
25 MS. ROBESON: Or what is it? Yes, sheet 1.

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1 MR. FOSTER: This is sheet 1 of 3.  
2 MS. ROBESON: Okay.  
3 MR. FOSTER: Now Exhibit 129A is the planned view  
4 and charts as part of the Preliminary Forest Conservation  
5 Plan. As part of the requirements, we're required to  
6 analyze the impacts of the proposed development on the  
7 existing trees on site and any other impacts that this  
8 proposed development would have. We're also required to  
9 meet a minimum forest threshold on any site. For this site,  
10 the minimum threshold is 15 percent. Based on the analysis  
11 done with the NRIFST, there is no existing forest on site  
12 today. So one of the things that we have to do as part of  
13 the forest conservation plan is bring the site up to the  
14 minimum threshold and we'll go into that with the later  
15 sheets.  
16 But the purpose really of sheet 1 of the  
17 Preliminary Forest Conservation Plan was to identify all  
18 the, since there's no forest, is really identify the impacts  
19 to specimen trees, those are trees 24 to 30 inch and then  
20 any special specimen trees I guess you would call them over  
21 30 inches in diameter that require a variance from the  
22 Planning Board. And on Exhibit 129A, the critical root  
23 zones of any of the specimen trees over 30 inches in  
24 diameter that were being impacted are shown in blue on the  
25 plan view. Their critical root zones are shown in blue and

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1 then they're also highlighted on the chart so that it's easy  
2 to depict which trees are being impacted.  
3       There are, I guess, 14 specimen trees on site over  
4 30 inches, excuse me, 14 specimen trees on site that are 24  
5 and greater, four of which were 30 inches and greater that  
6 will be impacted on site. Three of those were being removed  
7 and one was a maple tree on the north end of the site was to  
8 remain.  
9       There were, I think, 14 trees along the edge of  
10 the property that were actually located in part of the  
11 Westwoods that were being impacted. You can see all of the  
12 critical root zones of a lot of these trees along the edge  
13 and as part of the Preliminary Forest Conservation Plan, we  
14 were planning, we had proposed to do significant progressive  
15 tree pruning, crown cleaning, implementation of root growth  
16 regulator on these trees to try to minimize the impacts of  
17 these trees. So all of the trees that you see in blue, we  
18 were confident we could construct the buildings, install the  
19 utilities, impact the trees, but provide the work necessary  
20 to try to save as many of the trees along that edge as  
21 possible.  
22       And as part of the approval from Park and Planning  
23 in the resolution, there were also specific requirements put  
24 on the applicant as far as the Forest Conservation Plan goes  
25 that we have to at the time of the site plan, if this gets

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1 rezoned and this moves forward to site plan, we have to  
2 provide a tree safe plan as a component of final site plan  
3 that would address all the impacts of trees along the  
4 Washington Grove municipal boundary and that we have to work  
5 with, work with the town on any of these off site trees and  
6 any possible mitigation. But that was a requirement of the  
7 resolution which I think is the exhibit in the record.  
8       MS. GIRARD: 73L.  
9       MR. FOSTER: Okay. Exhibit 73L. The second and  
10 third sheet of the Forest Conservation Plan, the page 2 is  
11 the tree canopy coverage. As part of the forest  
12 conservation plan requirements, as I mentioned earlier, we  
13 have to bring the site up to the minimum threshold because  
14 this is considered a redevelopment of an existing site,  
15 Prince George's, Montgomery County regulations allow us to  
16 use tree cover to meet the minimum requirements in  
17 redevelopment sites and sites that have higher densities.  
18 Sheet 2, which is 129B, is used to demonstrate conceptual  
19 landscape plan which shows all of the proposed trees planted  
20 around the proposed buildings and the credit that we're  
21 going to be getting for those trees to create that tree  
22 canopy to bring the site up to the 15 percent minimum. So  
23 that's, that's really the purpose of this sheet is to  
24 demonstrate that tree coverage.  
25       And then sheet 3 of the set, which is 129C, it's

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1 in here somewhere, is a specimen tree mitigation plan. As  
2 part of the request for a variance to impact tree of 30-inch  
3 caliper were larger. We also were providing mitigation for  
4 impacting those trees and the current plan has removal on  
5 site of four trees and Park and Planning's policy now is  
6 that for every four inches in diameter of tree that is  
7 removed, you have to replace that with one inch of new trees  
8 planted at a minimum three inches in size. So the plan  
9 shows the mitigation that would be required for the  
10 placement of the four onsite trees that were going to be  
11 removed. It's a combination of, it looks like sour wood and  
12 black gum that we are planting, which are native species  
13 that we are going to be planting as part of the  
14 redevelopment.  
15       MS. GIRARD: And you mentioned variances were  
16 necessary for the removal of trees on site. Were those  
17 granted by the Planning Board?  
18       MR. FOSTER: Yes, they were.  
19       MS. GIRARD: Letters in the record from residents  
20 of the town expressed concern over the loss of the trees in  
21 the Westwoods. Do you believe there will be significant  
22 loss of trees in the Westwoods as a result of the proposed  
23 redevelopment?  
24       MR. FOSTER: No, I don't. I think, I think in  
25 combination with our arborist have taken a look at it and

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1 we're proposing some -- really what they are today is state-  
2 of-the-art actions to try to mitigate and help protect these  
3 trees using progressive root burning, which is -- you  
4 usually start two or three years out in front of the  
5 development and the first year out you would prune a third  
6 of the impact and the next year you would prune another  
7 third of the impact. So by the time you get ready to  
8 construct the buildings you've really created a situation in  
9 the ground where the trees are much better at being able to  
10 deal with that root loss. So it's a combination of that, of  
11 crown cleaning, trying to reduce the overhead canopy area of  
12 the trees, put, and putting growth regulator on the trees to  
13 reduce the amount of leaf growth and water required while  
14 you're doing construction so that it's putting that much  
15 less stress on the trees while you're building. So I think  
16 with all of those things that we're proposing, we're going  
17 to, we're really trying hard not to impact the trees in the  
18 Westwoods.  
19       MS. GIRARD: And in your collaboration with the  
20 arborist on the Westwoods, did he supply you with a letter  
21 regarding his thoughts on the Westwoods?  
22       MR. FOSTER: Yes. He did provide a letter to my  
23 client describing his thoughts about the Westwoods. This  
24 will --  
25       MS. GIRARD: This is 15?

1 MR. FOSTER: Yes, it is.  
 2 MS. ROBESON: Well, is this -- are you introducing  
 3 this as a new exhibit?  
 4 MS. GIRARD: Yes.  
 5 MS. ROBESON: Exhibit 130, letter -- thank you,  
 6 letter dated February 22, 2013, from Keith Pitchford.  
 7 (Exhibit No. 130 marked  
 8 for identification.)  
 9 MS. ROBESON: Okay. Go ahead. Mr. Brown, do you  
 10 have any objections?  
 11 MR. BROWN: This is not a -- I thought I was going  
 12 to read a letter from Mr. Pitchford about the efficacy of  
 13 the progressive root growing process. This is a, this is a  
 14 critique of the Westwoods. I don't see what relevance it  
 15 has to this proceeding.  
 16 MS. ROBESON: Do you want to proffer the  
 17 relevance, Ms. Girard?  
 18 MR. BROWN: Yes, the relevance or proffer.  
 19 MS. ROBESON: Oh, well, yes, go ahead.  
 20 MS. GIRARD: I'll let Mr. Kaufman speak.  
 21 MR. KAUFMAN: Do you want to do it?  
 22 MS. GIRARD: No, you can.  
 23 MR. KAUFMAN: It's very significant because  
 24 Westwoods is not a sustainable stand of trees. And if  
 25 nothing happened, these trees will disappear because they

1 are not sustainable. It's not what is known as a climax  
 2 forest. And so, you know, the issue of what you do to  
 3 protect the trees that are there, yes, that's significant.  
 4 What's also very significant, and we'll be glad to bring in  
 5 this arborist if you want to hear from him, is that these  
 6 trees are in very bad condition and they are long-term, not  
 7 a healthy stand of woods.  
 8 MS. ROBESON: Well, I guess I don't know of any  
 9 Montgomery County policy or reforest conservation or any  
 10 type of policy that says this forest is going to disappear  
 11 in the near future, so, you know, we can herd. I'm not --  
 12 MR. FOSTER: Well, we're not suggesting that.  
 13 What we are suggesting --  
 14 MS. ROBESON: I know, but I guess I don't -- this  
 15 to me is counter to most of the policies that I have seen  
 16 Montgomery County adopt, so I guess I don't know the  
 17 relevance of it. I mean the best I can say is you're saying  
 18 it doesn't matter what we do to the -- or it doesn't matter  
 19 that much what we do to the woods because they're going to  
 20 disappear?  
 21 MR. FOSTER: No, we're not saying that. We're not  
 22 saying it doesn't matter what happens to these woods. It  
 23 does matter very much what happens to these woods.  
 24 MS. ROBESON: Then why do you have this in here?  
 25 MR. FOSTER: Well, because my client has proposed

1 a number of things to this community which they have  
 2 rejected to help save these woods. And so on the one hand I  
 3 don't see how you can argue that you're destroyed our woods  
 4 when you know that as a matter of fact you have a stand of  
 5 trees which is not healthy and on the other hand say, well,  
 6 we're not going to accept anything that you would do to help  
 7 us because we don't want you to redevelop your property.  
 8 MS. ROBESON: Well, you know, I see how that in  
 9 the negotiation aspect of this that may be relevant. I  
 10 really don't see the relevance as to, as to this application  
 11 under the standards. I mean --  
 12 MR. FOSTER: Well, you have an expert here who is  
 13 basically telling you what the condition of the tree stand  
 14 is.  
 15 MS. ROBESON: Yeah.  
 16 MR. FOSTER: We have an issue in this case which  
 17 is we want to protect our woods and so, you know, the two  
 18 are intertwined with each other. I mean you can't just say  
 19 put your head in the sand and say, okay, we've got a problem  
 20 here, but we're just going to ignore it. We have an  
 21 application here that has proposed forest mitigation and has  
 22 proposed, you know, a number of techniques, best practices  
 23 to preserve. You know, in other words, you know, you can't,  
 24 you can't on the one hand say you're destroying my woods and  
 25 on the other hand say, you know, the quality is pristine.

1 MS. ROBESON: Well, I guess I haven't heard what  
 2 they're going to say yet.  
 3 MR. FOSTER: No. Well --  
 4 MS. ROBESON: You know, maybe that's the  
 5 disconnect that I'm having because --  
 6 MR. FOSTER: Right.  
 7 MS. ROBESON: -- I've never had an application  
 8 let's, what I'm going to do is exclude it at this time and  
 9 then --  
 10 MR. FOSTER: We can bring it then, sure.  
 11 MS. ROBESON: Yeah. So that is not 130.  
 12 MS. GIRARD: Okay. Just picking back up, but your  
 13 answer -- let me just ask the question again. As currently  
 14 proposed, however, you do not believe there will be  
 15 significant tree loss in the Westwoods as a result of this  
 16 application?  
 17 MR. FOSTER: No, I do not.  
 18 MS. ROBESON: Define significant.  
 19 MR. FOSTER: Well, what we're proposing today we  
 20 think gives all of those trees a good chance of survival.  
 21 MS. ROBESON: Percentage wise, what would the  
 22 chances be?  
 23 MR. FOSTER: Well, I think even on the approved  
 24 forest conservation plan --  
 25 MS. ROBESON: Okay.

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1 MR. FOSTER: -- which is, that's not it, I think  
2 that issue was brought up on the reforest conservation plan.  
3 So Exhibit 129A. You look in the list, there were, of all  
4 of the I think 14 trees that are basically along the edge of  
5 the Westwoods, there were four that are noted due to the  
6 degree of critical root zone impact, these trees, to these  
7 trees, the potential exists that they may not ultimately  
8 survive. However, vigorous tree save measures will be taken  
9 to attempt to save each of these trees, including pervasive  
10 root printing over a number of years in advance of  
11 construction, application of tree growth regulator and crown  
12 cleaning. So when we were looking at that, we figured there  
13 were four trees that, out of the 14 that there posed some  
14 risk to. Is that a 50/50 or 60/40? It's hard to tell. It  
15 depends on the, you know, the trees themselves.  
16 MS. ROBESON: Yes.  
17 MR. FOSTER: But --  
18 MS. ROBESON: Maybe I'll do it this way. What is  
19 your plan for saving the Westwoods, any impact on Westwood  
20 trees?  
21 MR. FOSTER: Those are the trees we're talking  
22 about.  
23 MS. ROBESON: Oh, it is?  
24 MR. FOSTER: Yes.  
25 MS. ROBESON: Oh, okay. I'm sorry. I'm --

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1 MR. FOSTER: Yes. Yes, those trees that I was  
2 talking about were just those.  
3 MS. ROBESON: Okay.  
4 MR. FOSTER: Yeah.  
5 MS. ROBESON: All right. That's helpful.  
6 MR. FOSTER: Okay.  
7 MS. GIRARD: Was there more you wanted to say on  
8 that or was that --  
9 MR. FOSTER: No, that was it.  
10 MS. GIRARD: Okay.  
11 MS. ROBESON: Okay.  
12 MS. GIRARD: There are also letters in the record  
13 and you hit on this a little bit in your pictures, but  
14 there's letters in the record, including one from, I  
15 believe, an arborist associated with Washington Grove  
16 suggesting an existing wooded buffer between the subject  
17 property and the Daylily lots and some letters suggest maybe  
18 even trees on the Daylily lots themselves would be removed  
19 as part of the redevelopment. Can you review that for us?  
20 MR. FOSTER: Sure.  
21 MS. ROBESON: Going back to 128?  
22 MR. FOSTER: 8B. Again, I think photographs 5  
23 through 8, probably 5 through 9 and including 10, 5 through  
24 10 on Exhibit 128B show that there's, I think in the letter  
25 it talked about a 35-foot wide buffer when, in fact, there

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1 is really a single row of trees right along the edge of the  
2 property and you can see these trees are relatively tall.  
3 MS. ROBESON: Which numbers, just so when I go  
4 back and read the --  
5 MR. FOSTER: Okay.  
6 MS. ROBESON: -- read the transcript, which  
7 numbers show the Daylily transition?  
8 MR. FOSTER: The Daylily lots are shown on photos  
9 5 through 10.  
10 MS. ROBESON: Okay.  
11 MR. FOSTER: Okay? It's basically everywhere you  
12 see a solid wood fence.  
13 MS. ROBESON: Okay.  
14 MR. FOSTER: Once you get past the solid wood  
15 fence and you get to the Westwoods, that's a chain link  
16 fence.  
17 MS. ROBESON: Okay.  
18 MR. FOSTER: So it's pretty clear in the, you  
19 know, you can see the fence behind the trees that are on the  
20 subject property and any of the trees that were on the  
21 subject property, yes, they are proposed --  
22 MS. ROBESON: Okay.  
23 MR. FOSTER: -- to be removed, but we're not  
24 proposing to remove any trees on any of the Daylily lots.  
25 MS. ROBESON: Okay.

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1 MS. GIRARD: And in your opinion, in the future  
2 condition, will the tree canopy and landscaping on the  
3 property be greater than what exists there today?  
4 MR. FOSTER: We're proposing a, I think there's  
5 proposed a pretty extensive landscape buffer along that back  
6 edge is what's being anticipated. So I would say that there  
7 will be a pretty significant buffer along that edge.  
8 MS. GIRARD: And what about on the rest of the  
9 property, will it be greener than it is today or --  
10 MR. FOSTER: Oh, there will be a significant,  
11 well, current conditions today is very limited tree cover on  
12 the existing property, so the plan that is shown on Exhibit  
13 28B, excuse me, 129B, 129B, which is the conceptual  
14 landscape plan, that plan in itself meets the minimum  
15 requirements of bringing the site up to 15 percent forest  
16 cover and that's significantly better than what's there  
17 today. That plan itself doesn't even take into  
18 consideration, you know, the typical other landscaping  
19 that's involved which isn't out there either.  
20 MS. ROBESON: What is the distance between the  
21 property line and the drive aisle in the rear of all the new  
22 buildings?  
23 MR. FOSTER: The drive aisle is, you know, a  
24 pretty limited area where they're just coming into the --  
25 now we're referring to 73A, a duplicate of 73A. And --

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1 MS. ROBESON: Well, should you be using 125?  
2 MR. FOSTER: 125? Okay. 125, the drive aisle  
3 runs along the edge of the property for about 310 feet and  
4 it scales, it looks like about five feet from the property  
5 line.  
6 MS. ROBESON: Okay. All right.  
7 MR. FOSTER: Yes, it doesn't run the entire length  
8 of the property. It's --  
9 MS. ROBESON: Okay.  
10 MR. FOSTER: -- just right behind the center of  
11 the buildings.  
12 MS. GIRARD: Mr. Foster, in your expert opinion,  
13 will the proposed zoning request in the PD-35 zone cause any  
14 adverse effects on the health, safety, security and morals  
15 or general welfare of the residents, visitors or workers in  
16 the area?  
17 MR. FOSTER: It will not.  
18 MS. GIRARD: And in your expert opinion when the  
19 proposed zoning classification and proposed development have  
20 any adverse impact on the environment?  
21 MR. FOSTER: No, I don't think it will have an  
22 adverse impact on the environment. In fact, I think in this  
23 case it would be added tree cover and landscaping that's  
24 going to be added in the buffering. I think it's actually  
25 going to be in better condition.

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1 MS. GIRARD: Thank you. That's all I have.  
2 MS. ROBESON: He answered it right. Just, okay,  
3 go ahead. Go ahead. You don't have any other questions?  
4 MS. GIRARD: No.  
5 MS. ROBESON: Mr. Brown.  
6 MR. BROWN: Good afternoon, Mr. Foster.  
7 MR. FOSTER: Good afternoon.  
8 MR. BROWN: You said that the variances, the tree  
9 variances were approved by the Planning Board, correct?  
10 MR. FOSTER: Correct.  
11 MR. BROWN: Do you happen to know whether or not  
12 those approvals are final or whether they are subject to  
13 appeal in circuit court?  
14 MR. FOSTER: I do not know.  
15 MR. BROWN: Okay. I'm looking at Exhibits 53I, J  
16 and K because it's a lot easier for me to read those than to  
17 read Exhibits 129A through C. Do I understand correctly the  
18 only difference between them is that the Planning Board has  
19 signed off on the 129, is that right?  
20 MR. FOSTER: Yes, that's correct.  
21 MR. BROWN: Okay. Let's start with Exhibit 129B,  
22 the tree canopy picture, the diagram. The one I have, 53J,  
23 has the, has the trees shaded in green showing a large  
24 portion of the green area with tree canopy. Would you  
25 please let me know if my understanding is correct that what

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1 we're really seeing here is the projected tree canopy 20  
2 years after the project begins?  
3 MR. FOSTER: Yes. Montgomery County, that's how  
4 they calculate or give you -- that's how they calculate the  
5 tree cover that you're creating is based on a future median  
6 tree growth. They use a 20-year canopy.  
7 MR. BROWN: Okay. Going back to 129A, I'd like to  
8 ask you about seven particular trees which, as I understand  
9 it correctly, they are numbered from one to 72, right?  
10 MR. FOSTER: That's correct.  
11 MR. BROWN: Okay. So if you could bring your  
12 Exhibit 129A back up on the board? Could you point out tree  
13 No. 11 and tell us about it and where it is and what its  
14 impact is going to be?  
15 MR. FOSTER: Tree No. 11, tree No. 11 is a 27 1/2  
16 inch red oak proposed to be saved. It's offsite. It's  
17 right on the corner of the fifth house on Daylily Lane right  
18 in the very corner of the property. That's typically, as we  
19 discussed, that's one of the trees that we've been providing  
20 the progressive root grooming, ground cleaning, application  
21 of the growth regulators.  
22 MR. BROWN: This is -- the chart shows something  
23 called CRZ impact percentage of 39 percent, is that right?  
24 MR. FOSTER: Yes.  
25 MR. BROWN: I'm sorry.

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1 MR. FOSTER: No.  
2 MR. BROWN: 37 percent, No. 11, 37 percent.  
3 MR. FOSTER: Okay. Yes, sir.  
4 MR. BROWN: Is that right?  
5 MR. FOSTER: Yes.  
6 MR. BROWN: Is there a sort of a rule of thumb,  
7 threshold beyond which one is concerned about the survival  
8 of a tree in terms of the percentage of critical root zone  
9 impact?  
10 MR. FOSTER: Well, I think if you talk to a lot  
11 of, whether it's Park and Planning or other professionals  
12 doing forest conservation plans, they usually use, you know,  
13 30 percent as the baseline of when you need to start  
14 considering, you know, other measures to provide for the  
15 adequate protection of the trees.  
16 MR. BROWN: But is there a percentage point that's  
17 sort of what we might call the point of no return for a  
18 tree?  
19 MR. FOSTER: No, I think it's all based on, you  
20 know, individual trees and that's part of what the final  
21 tree save plan is all about is, you know, once everything  
22 gets to final construction, we know exactly where the LOD's  
23 are and we can go out and individually analyze these trees.  
24 We look at the individual application that's needed to save  
25 each and every tree. So, no, there's not a specific line,

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1 you know, line in the sand.  
2 MR. BROWN: Well, I'm trying to get some kind of a  
3 practical sense here. If you had a 90 percent impact, would  
4 you bother trying to go through these advanced preparation  
5 measures?  
6 MR. FOSTER: Well, I mean I guess it all comes  
7 down to what the impact is. You know, I've had a lot of  
8 situations where you have almost 100 percent impact, but  
9 impact is are you just driving a, needing to drive a truck  
10 across the critical root zone, so you mat the tree, mat, you  
11 know, you put matting down and you completely protected it,  
12 but it's technically an impact. That's what I was saying.  
13 You have to analyze each tree and what the impact is to be  
14 able to totally know what's going to happen and that's the  
15 point of the final tree save plan.  
16 MR. BROWN: Okay. Without going through all of  
17 the other additional trees, I'd like to know whether you  
18 agree with my perception. If you could jot these numbers  
19 down before you go up to the board, these additional tree  
20 numbers, in addition to No. 11. 14, 27, 34, 40, 53, 54, and  
21 72. My question with regard to all of these trees,  
22 including No. 11, is whether or not each of them meets this  
23 30 percent initial criteria for concern about damage to  
24 offsite trees.  
25 MR. FOSTER: It's about, I mean tree 40?

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1 MR. BROWN: Yes.  
2 MR. FOSTER: Okay. They're all, you know, above  
3 33 percent, which was that point that I stated so, yes, all  
4 those trees would, you know, require special attention.  
5 MR. BROWN: And they're all on Washington Grove  
6 property?  
7 MR. FOSTER: Let me check that to make sure. Yes,  
8 it looks like they are.  
9 MR. BROWN: Okay. Now imagine if you would for a  
10 moment that building A and building B were to be, were  
11 required to be set back from the property line something  
12 like twice the distance that they are currently shown on  
13 this plan as being set back. Would that reduce the critical  
14 root zone impact of these trees that I've just talked about?  
15 MR. FOSTER: Probably not.  
16 MR. BROWN: And why not?  
17 MR. FOSTER: Because a sewer line and utilities  
18 right along that edge that I thought were also being, they  
19 were going to be impacting those trees as well, so it's just  
20 moving the buildings I didn't really think changed the  
21 impact.  
22 MR. BROWN: Is the sewer line in a position where  
23 it couldn't be moved?  
24 MR. FOSTER: That's not really my area of  
25 expertise.

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1 MR. BROWN: Okay. But it is your testimony that  
2 under the present plan and using the mitigation and advanced  
3 tree protection efforts that you've outlined on this plan,  
4 that each one of the trees that I've mentioned by number has  
5 a good chance for survival under this plan?  
6 MR. FOSTER: I think as shown on the approved  
7 forest conservation plan we think we have a good chance of  
8 those trees surviving, yes.  
9 MR. BROWN: Okay. Are there any, one last thing,  
10 are there any specimen trees onsite that are going to be  
11 saved other than tree No. 1?  
12 MR. FOSTER: No.  
13 MR. BROWN: I have nothing further.  
14 MS. ROBESON: Any redirect?  
15 MS. GIRARD: No.  
16 MS. ROBESON: Okay. Thank you, Mr. Foster.  
17 MR. FOSTER: Thank you.  
18 MS. GIRARD: Our next witness is Nancy Randall.  
19 MS. ROBESON: Please raise your right hand.  
20 (Witness sworn.)  
21 MS. GIRARD: Ms. Randall, can you state your name  
22 and business address?  
23 MS. RANDALL: Yes. My name is Ann N. Randall, go  
24 by Nancy. My business address is 170 Jennifer Road, Suite  
25 260, Annapolis, Maryland.

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1 MS. GIRARD: And Ms. Randall's resume is Exhibit  
2 No. 13D in the record. I believe she recently appeared  
3 before you --  
4 MS. ROBESON: Yes.  
5 MS. GIRARD: -- and was qualified as an expert.  
6 MS. ROBESON: Do you have any objection to  
7 qualifying her as a transportation planner?  
8 MR. BROWN: No objection.  
9 MS. ROBESON: All right.  
10 MS. GIRARD: Ms. Randall, are you familiar with  
11 rezoning application No. G-90?  
12 MS. RANDALL: I am.  
13 MS. GIRARD: And are you familiar with the  
14 property that's the subject of the application?  
15 MS. RANDALL: I am.  
16 MS. GIRARD: And are you familiar with the area  
17 surrounding the property?  
18 MS. RANDALL: Yes, I am.  
19 MS. GIRARD: Are you familiar with -- I'm sorry,  
20 hold on, I'm reading from the wrong -- they're particular  
21 about switching the order. Bear with me. Now she sent me  
22 something.  
23 MS. RANDALL: I think I've got an extra set.  
24 MS. GIRARD: I've got it. Are you familiar with  
25 Montgomery County requirements for the review of adequate

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1 public facilities and local area transportation review  
2 guidelines?  
3 MS. RANDALL: Yes, I am.  
4 MS. GIRARD: Are you familiar with the approved  
5 and adopted Gaithersburg Master Plan and its transportation  
6 recommendations for the road network surrounding the subject  
7 property?  
8 MS. RANDALL: Yes.  
9 MS. GIRARD: Have you analyzed the proposed use of  
10 the subject property from a transportation planning  
11 standpoint?  
12 MS. RANDALL: Yes, I have.  
13 MS. GIRARD: Can you please describe for us the  
14 area roads available, public transportation site access and  
15 circulation plan?  
16 MS. RANDALL: Yes. I'd like to refer to an aerial  
17 exhibit to give you context if that's okay?  
18 MS. ROBESON: Sure. Is it in the record?  
19 MS. GIRARD: I believe it is.  
20 MR. KAUFMAN: I think it's Exhibit A10.  
21 MS. ROBESON: Is that marked anywhere by any  
22 chance?  
23 MS. GIRARD: It is, Exhibit 10.  
24 MS. ROBESON: Okay. Thank you.  
25 MS. RANDALL: Up in the right-hand corner.

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1 MS. GIRARD: It was the last page of Exhibit 10.  
2 MS. ROBESON: Okay. Thank you.  
3 MS. RANDALL: The site is located on the center of  
4 Exhibit 10 towards the top portion of the exhibit. And for  
5 orientation purposes from my testimony, I'm generally going  
6 to indicate direction for Washington Grove Road is generally  
7 running north-south, Mid-County Highway, which is to the  
8 north of the property, generally running east-west, and down  
9 at the bottom of the page, the East Diamond and Railroad  
10 Street, which form a Y intersection with Washington Grove,  
11 are generally running east-west again.  
12 MS. ROBESON: Okay.  
13 MS. RANDALL: Off the site or off to the edge is  
14 the interchange of 370 and the beginning of the ICC. South  
15 and slightly to the east of that and, again, off the page is  
16 the Metro station. There's a MARC station located down on  
17 Railroad Street. And the Washington Grove Road intersection  
18 with Towne Crest Drive is located here at the edge of the  
19 corner of the property.  
20 MS. ROBESON: That's southeast corner?  
21 MS. RANDALL: Southeast corner, thank you, of the  
22 property. All of the access for the site will be coming out  
23 Towne Crest Drive onto Washington Grove Road. Currently the  
24 site has four cuts along Towne Crest Drive. That's going to  
25 be reduced to two. So we're reducing the number of access

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1 points.  
2 There is an existing bus stop located right at the  
3 intersection with Towne Crest Drive and Washington Grove  
4 Road and at that location there is a crosswalk. It's not --  
5 the last time I was out there, which was about a month and a  
6 half ago, was not well-marked and part of the plan for this  
7 project is to restripe that and sign that, and also to  
8 provide for a bus shelter which does not exist today at that  
9 bus stop.  
10 The, as we indicated before, the MARC station down  
11 on the central southern portion of Exhibit 10 is located  
12 approximately .6 miles from this site, so within --  
13 MS. ROBESON: As the crow flies or as you drive?  
14 MS. RANDALL: No, as the crow flies. But you can  
15 walk through the town of Washington Grove to gain access to  
16 that site or you can walk along the edge of Washington Grove  
17 and cut over to Railroad Street. But, more importantly, is  
18 the bus stop itself has direct lines to the Metro station.  
19 The bus goes, there are bus routes that go directly --  
20 MS. ROBESON: The Metro or the MARC?  
21 MS. RANDALL: No, to the Metro station, Shady  
22 Grove --  
23 MS. ROBESON: The Metro?  
24 MS. RANDALL: -- Metro.  
25 MS. ROBESON: Okay.

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1 MS. RANDALL: Yeah. One other clarification I did  
2 see in a citizen letter, they were concerned about the speed  
3 limit on Washington Grove Lane. There is a posted speed  
4 limit, a legal limit of 30 miles per hour. There is an  
5 advisory speed limit which is the yellow sign that you will  
6 often see on the road, that is an advisory speed, not a  
7 legal speed, and they're recommending going 20 miles per  
8 hour over the speed humps that are in Washington Grove Road.  
9 MS. GIRARD: And can you review for us the  
10 findings and conclusions of your traffic impact analysis  
11 which is Exhibit 21A is the original analysis in Exhibit 73E  
12 was an update to that?  
13 MS. RANDALL: Yes. We prepared for this zoning  
14 case, we prepared a traffic impact study in accordance with  
15 the LATR guidelines. We scoped out what was required.  
16 Given the number of trips that would be generated by the  
17 site sets the number of intersections that you're required  
18 to look at. Our study intersection was Mid-County Highway  
19 and Washington Grove Lane, Towne Crest Drive and Washington  
20 Grove Lane and East Diamond, Railroad Street and Washington  
21 Grove. Those three intersections were the required areas.  
22 MS. ROBESON: Those are all signalized?  
23 MS. RANDALL: They are not all signalized. The  
24 intersection of Towne Crest and Washington Grove is not  
25 signalized. This is a signalized intersection and so is

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1 this.  
2 MS. ROBESON: Okay.  
3 MS. RANDALL: The counts were conducted. We also  
4 got information from Park and Planning with regards to  
5 background developments. We went through the analysis for  
6 the existing conditions, the background conditions of which  
7 I believe there were about five. If you can bear with me,  
8 I'll turn to the right page. There were the Jackson  
9 property, the residence at Hidden Creek, Archstone at Old  
10 Town, the Mainheart property, which in other aerial  
11 photographs is this area that you saw under construction,  
12 there are about 32 town homes there and then the Casey  
13 property. Those were the developments that staff requested  
14 that we include in our analyses.  
15 Again, we went through the analysis for background  
16 conditions. Then we added the site traffic to our analysis  
17 and the site at that time was going to consist of -- I'm  
18 going to take a step back. We're allowed to take obvious  
19 credit for the apartments and the town homes that exist on  
20 the property today. So today there are 60 apartments and 47  
21 townhomes. Those generate 49 trips in the morning and 68 in  
22 the evening peak hour.  
23 The proposed development at the time that we did  
24 this analysis was going to be 469 dwelling units. That was  
25 going to generate 191 morning peak hour trips and in the

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1 evening 221. So we would be adding in the morning the  
2 difference between the 49 and the 191 would be 142 morning  
3 peak hour trips, sorry, and in the evening we would be  
4 adding 153. So that is what the analysis was done, is that  
5 the site is open and occupied, we would be adding additional  
6 trips, 142 and 153.  
7 When we add the traffic from that part of the  
8 development into the intersections and the distribution of  
9 these trips was based on Montgomery County distribution  
10 requirements and approved and reviewed before we even start  
11 the traffic impact study, that, those trips were then  
12 distributed to the road system. We analyzed again. And  
13 when we go through all three of the intersections would meet  
14 or would be well below the congestion standard for these  
15 intersections.  
16 MS. ROBESON: What is the distribution?  
17 MS. RANDALL: The distribution for this site is 45  
18 percent of the site traffic to and from the southeast via  
19 Mid-County Highway, so coming off from the southeast, 10  
20 percent to and from the northwest via Mid-County Highway, 5  
21 percent to and from the northeast via Washington Grove Lane  
22 going north toward Howard County, 25 percent to and from the  
23 northwest via East Diamond Avenue, so they would travel  
24 south, but then head in that direction. And 15 percent to  
25 and from the southeast via Railroad Street.

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1 In all cases, all three of the intersections for  
2 existing background and total future, all three of the  
3 intersections are below the congestion standard of 1475.  
4 The intersection that came closest to that 475 was  
5 Washington Grove and Mid-County Highway during the a.m. peak  
6 hour with a CLV of 1422.  
7 After we've gone through and done this based on  
8 the original plan with 469 dwelling units on the site, over  
9 time, as you know, through negotiations with the citizens,  
10 the development quantities have come down substantially. So  
11 I have prepared a trip generation comparison table that will  
12 show you the difference between what is being proposed now  
13 and what was proposed previously.  
14 The, excuse me, previously we had, which is Table  
15 1B.  
16 MS. ROBESON: I'm sorry, is this in the record?  
17 MS. RANDALL: Oh, no, it is not. I apologize.  
18 MS. ROBESON: So this is Exhibit 130. Is this,  
19 you have Table 1A. Is this a supplemental sheet to your --  
20 MS. RANDALL: This may be an attachment to my  
21 updated letter which I think did make it into the record.  
22 MS. ROBESON: Yes, that's in the record. I think  
23 that was 77.  
24 MS. RANDALL: Yes, that may very well be a  
25 duplicate of this. The numbers have changed, tweaked here

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1 and there, every time you turn around there's something  
2 tweaking the numbers, so --  
3 MS. GIRARD: 73A was her --  
4 MS. ROBESON: Okay.  
5 MS. GIRARD: -- updated letter.  
6 MS. ROBESON: Was this identical to 73A?  
7 MS. RANDALL: I believe it is.  
8 MR. KAUFMAN: We'll check it to make sure. Let us  
9 make sure it's identical.  
10 MS. ROBESON: Okay.  
11 MR. KAUFMAN: There might be a slight difference.  
12 MS. ROBESON: That's what I just wanted to double-  
13 check it.  
14 MR. BROWN: What's the number?  
15 MS. GIRARD: 73A. No, E, 73E, sorry.  
16 MR. KAUFMAN: Madame Examiner, while we're  
17 waiting, one of the citizens from Wedgewood 1 has come in  
18 and I'm wondering if we finish this witness, if we --  
19 MS. ROBESON: Sure.  
20 MS. RANDALL: Yes, it is the same.  
21 MS. ROBESON: Okay. So we're looking at a  
22 duplicate of 73, I'm sorry, what letter?  
23 MR. KAUFMAN: E.  
24 MS. RANDALL: In that letter, I describe a --  
25 MS. ROBESON: Oh, attached is tables 1 -- I see

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1 it.  
2 MS. RANDALL: Yeah. Okay.  
3 MS. ROBESON: I didn't see that part.  
4 MS. RANDALL: Yes.  
5 MS. ROBESON: Okay.  
6 MS. RANDALL: And in that table we were, we had,  
7 we now had 329 dwelling units replacing the 107 that are  
8 there today. So now instead of in our previous analysis  
9 where we were working with 142, which is shown in Table 1B,  
10 the old analysis table, 142 trips, we're now looking at 87  
11 a.m. trips.  
12 MS. ROBESON: Okay.  
13 MS. RANDALL: And in the p.m. peak hour we're now  
14 working with 92 trips versus the 153.  
15 MS. ROBESON: Okay. Did you say 87?  
16 MS. RANDALL: 87 a.m. peak hour trips.  
17 MS. ROBESON: Oh, I see it. Okay.  
18 MS. RANDALL: And 92 in the p.m. peak hour.  
19 MS. ROBESON: Okay.  
20 MS. RANDALL: So the impact at this project would  
21 decrease obviously based on the decrease in the number of  
22 trips from what we had done in this original analysis.  
23 MS. GIRARD: Is there anything else you wanted to,  
24 anything else?  
25 MS. RANDALL: Yes. In addition to that, looking

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1 at the time in which we started this project, and just under  
2 the abundance of caution, we also went out recently and  
3 recounted all three of these intersections. We recounted  
4 the intersection of Washington Grove and Mid-County Highway,  
5 Towne Crest Drive and Washington Grove Lane, as well as East  
6 Diamond and Railroad Street and Washington Grove. And all  
7 three of the intersections had volumes that had been reduced  
8 or equal to what we had in our previous analysis. And I do  
9 have copies for the record of those three counts.  
10 MS. ROBESON: All right. And that would be 130?  
11 And how would you describe this, updated traffic counts?  
12 MS. RANDALL: Yes. There are three separate  
13 intersections and updated counts.  
14 MS. ROBESON: Any objections, Mr. Brown?  
15 MS. RANDALL: And then I'll give Mr. Brown a  
16 complete packet as well.  
17 MS. GIRARD: I just gave him one.  
18 MS. RANDALL: Oh, you did? Okay. I thought  
19 this --  
20 MR. KAUFMAN: Is it more than one sheet or just  
21 one sheet?  
22 MS. GIRARD: There are three sheets.  
23 MS. RANDALL: There are three separate sheets.  
24 MR. KAUFMAN: Okay. So I don't know if Dave has  
25 all three sheets.

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1 MS. GIRARD: If you passed them along?  
2 MR. KAUFMAN: Oh, one, two --  
3 MS. GIRARD: Those are --  
4 MS. ROBESON: Okay.  
5 MS. RANDALL: In addition to that, with the new  
6 development quantities and with the new turning movement  
7 counts, and I apologize, I will bring this, I'm fairly  
8 certain the record will not be closing today. I did not  
9 bring with me the CLV worksheets, but we did re-analyze all  
10 three intersections and with the new development quantities.  
11 And in this case the intersection of Washington Grove and  
12 Mid-County Highway, which was previously had a CLV of, I  
13 believe, 1422 if my memory serves me that --  
14 MS. ROBESON: That's what you said.  
15 MS. RANDALL: -- five seconds ago is now, has a CLV  
16 of 1390 --  
17 MS. ROBESON: Okay.  
18 MS. RANDALL: -- with a reduction of trips and the  
19 new count information. Well, it's just one copy.  
20 MS. GIRARD: Okay.  
21 MS. ROBESON: Wait. Is that in addition to what  
22 you gave me as Exhibit 130, which are the updated --  
23 MS. RANDALL: Just the turning movement counts.  
24 And this is the results --  
25 MS. ROBESON: Okay.

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1 MS. RANDALL: -- of the CLV analysis. And what I  
2 did not bring with me, Madame Hearing Examiner, were the  
3 actual critical lane calculation worksheets, so I will make  
4 sure that the record has those.  
5 MS. ROBESON: Okay. I'm just going to label this  
6 as a different exhibit and this would be the --  
7 MS. RANDALL: Updated CLV analysis?  
8 MS. ROBESON: Right. These are the actual counts  
9 and these are the --  
10 MS. RANDALL: Critical lane volume analysis.  
11 MR. KAUFMAN: Can we just have when these were  
12 done last?  
13 MS. RANDALL: Yes, at the top of each one of these  
14 counts it gives the date which was in the first full week of  
15 February, February 6th. I'm sorry, to make the record  
16 complete, February 6th of this year.  
17 MS. ROBESON: Yes.  
18 MR. KAUFMAN: Madame Examiner, we can provide to  
19 the record the CLV worksheets if you'd like them.  
20 MS. ROBESON: The CLV worksheets?  
21 MR. KAUFMAN: I mean the --  
22 MS. RANDALL: Yes, this table that I gave to you  
23 with the CLV Table 2A and 2B.  
24 MS. ROBESON: Yes.  
25 MS. RANDALL: There were calculations that go



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1 there is bus stops up at the intersection of Mid-County  
 2 Highway and Washington Grove Road. There's a bus stop and  
 3 station at that location as well.  
 4 MS. GIRARD: And you mentioned the sidewalk along  
 5 Washington Grove Lane and our property frontage. Will that  
 6 sidewalk extend down Towne Crest Drive as well?  
 7 MS. RANDALL: It will and that's what I had  
 8 indicated. It runs along the entire length of the property  
 9 within Towne Crest Drive, sorry.  
 10 MS. ROBESON: Oh, okay. I have it.  
 11 MS. RANDALL: It will start here and then continue  
 12 all the way back --  
 13 MS. ROBESON: Right.  
 14 MS. RANDALL: -- through.  
 15 MS. ROBESON: Yes. Sorry.  
 16 MS. GIRARD: And we alluded to this earlier, but  
 17 as part of the redevelopment, will any changes, are any  
 18 changes proposed to that bus stop and the crosswalk?  
 19 MS. RANDALL: Yes, there are. As I described,  
 20 we're going to enhance that. The crosswalk will be  
 21 repainted with better, advanced signing and marking to  
 22 indicate the upcoming crosswalk, as well as putting in a bus  
 23 shelter for the bus stop that is located there today.  
 24 MS. GIRARD: And existing traffic and any improved  
 25 road improvements, in your expert opinion are nearby roads

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1 adequate to serve the proposed development?  
 2 MS. RANDALL: They are.  
 3 MS. GIRARD: And in your opinion will the proposed  
 4 zoning classification and development have any detrimental  
 5 effect on vehicular or pedestrian traffic or safety?  
 6 MS. RANDALL: It will not.  
 7 MS. GIRARD: In your opinion, based on your  
 8 testimony and study, will the proposed zoning classification  
 9 and development cause any adverse effect on the health,  
 10 safety, security, morals or general welfare of residents,  
 11 visitors or workers in the area?  
 12 MS. RANDALL: No, it will not. In fact, it will  
 13 enhance, as I indicated, with the crosswalk and the bus  
 14 stop. I believe it will be to a benefit.  
 15 MS. GIRARD: Finally in conclusion, in your expert  
 16 opinion from the standpoint of traffic impacts, is the  
 17 proposed zoning classification and development suitable for  
 18 the subject property and compatible with the surrounding  
 19 neighborhood?  
 20 MS. RANDALL: It is.  
 21 MS. GIRARD: That's all I have.  
 22 MS. ROBESON: Okay. Mr. Brown.  
 23 MR. BROWN: Good afternoon, Ms. Randall. Just a  
 24 few things. Looking first at this latest exhibit, is this  
 25 131?

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1 MS. ROBESON: The updated CLV analysis, Table 2A?  
 2 MR. BROWN: Yes.  
 3 MS. ROBESON: Yes.  
 4 MR. BROWN: 131? I notice on here that the  
 5 critical lane volumes in the updated study are generally  
 6 lower, except along the morning traffic on Washington Grove  
 7 Lane at East Diamond Avenue. Is that, am I reading this  
 8 correctly?  
 9 MS. RANDALL: If I am -- are you comparing total  
 10 future or are you comparing existing? Which --  
 11 MR. BROWN: On all three.  
 12 MS. RANDALL: Okay. It went up slightly from 873  
 13 in the morning peak hour to 888.  
 14 MS. ROBESON: Wait a minute. Where are you on  
 15 Exhibit 131?  
 16 MR. BROWN: I'm in intersection 3.  
 17 MS. RANDALL: Comparing intersection 3 with Table  
 18 2A versus Table 2B?  
 19 MR. BROWN: And the morning, just the morning  
 20 traffic.  
 21 MS. ROBESON: Oh, I see, okay.  
 22 MS. RANDALL: Yes. And, yes, as I had indicated,  
 23 the volume had gone down, generally gone down. But when  
 24 you're working with critical lane volume, it is the  
 25 summation of different movements. So a particular movement

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1 may have gone up, but others may have gone down which is why  
 2 rather than just doing the turning movement count, we went  
 3 through the exercise of also running the CLV to be sure.  
 4 MR. BROWN: I was just wondering why the numbers  
 5 went up at intersection 3, but went down at the other two  
 6 intersections, whether you had any thoughts on why that  
 7 happened.  
 8 MS. RANDALL: Again, without going through and  
 9 looking at a specific movement, it may be that there was a  
 10 change in the volume on East Diamond or on East Railroad  
 11 that would not affect nor would turn onto Washington Grove  
 12 or up to Mid-County.  
 13 MR. BROWN: When you did your transportation  
 14 analysis, did you happen to evaluate what the public  
 15 transportation options were for the residents of Towne Crest  
 16 in 1985?  
 17 MS. RANDALL: No, and I don't know that I would  
 18 have a way to go back historically to find out what the  
 19 transportation options were in 1985.  
 20 MR. BROWN: Did you study the scheduled bus time  
 21 or the direct bus service from the bus stop at the frontage  
 22 of the property on Washington Grove to Shady Grove Metro?  
 23 MS. RANDALL: Yes. As part of the LATR  
 24 requirements, the bus route information is contained without  
 25 our LATR report with the stops and scheduled times for both

1 the Mid-County Highway, as well as other bus routes within  
2 the area. We didn't look just at what's immediately  
3 adjacent to site, but what's available within the area.  
4 But, again, we took no reduction. We made no assumption  
5 with regards to bus or transit ridership with our trip  
6 generation.

7 MR. BROWN: If someone wanted to rely on public  
8 transit and live in the Towne Crest development, they would,  
9 as I understand it, they would either, they would either  
10 take the bus to MARC or take the bus to the Shady Grove  
11 Metro, is that right?

12 MS. RANDALL: Well, they could rely on bus and  
13 take the route wherever the route may go. The route doesn't  
14 just go to the MARC station or to the Shady Grove Metro. In  
15 the case of Shady Grove Metro, they could catch other buses  
16 so that they could take other locals if Metro was not of  
17 their choosing. Some of the routes that are better noted  
18 within the report take individuals into Gaithersburg. They  
19 have several different routings. It's not just selectively  
20 to the MARC station or to the Metro station.

21 MR. BROWN: And where does the MARC rail connect  
22 with the Metro system?

23 MS. RANDALL: I believe that the MARC connects at  
24 Shady Grove and then continues down, but I could be wrong  
25 with regards to where it connects. But I know that it goes

1 through Gaithersburg. It continues on down through, I  
2 believe, Rockville and does this thing. Again, because we  
3 were not taking any kind of reduction for transit within our  
4 analyses, I didn't follow the entire MARC route for this.

5 MR. BROWN: Okay. That's all I have.

6 MS. ROBESON: Okay. Any redirect?

7 MS. GIRARD: Ms. Randall, just one question.  
8 While you didn't take any credit for proximity to MARC,  
9 Metro, the bus being out in front, would you expect that  
10 there would be some use of public transportation coming off  
11 the property?

12 MS. RANDALL: Absolutely and, in fact, I believe  
13 that Mr. Stacy Hornstein would be the better person to  
14 answer this question, but it's my understanding that  
15 residents that are living there today currently use the bus,  
16 the MARC.

17 MS. ROBESON: Is that based on your knowledge or  
18 someone else's?

19 MS. RANDALL: Conversations with Stacy Hornstein  
20 and his conversations with his tenants. So, yes. No,  
21 absolutely I would expect them to take, and to avail  
22 themselves to the transit that's available.

23 MS. GIRARD: That's all we have.

24 MS. ROBESON: All right. Now I believe we have --

25 MR. KAUFMAN: Yes. A resident of Wedgewood 1, Mr.

1 Rick Floyd, is here taking time out from his busy day to --  
2 he'd like to make a statement.

3 MS. ROBESON: Okay. Mr. Brown, do you have an  
4 objection?

5 MR. BROWN: No.

6 MS. ROBESON: Okay. Come forward, sir. Please  
7 raise your right hand.

8 (Witness sworn.)

9 MS. ROBESON: He's not one of your witnesses, he's  
10 coming forward on his own?

11 MR. KAUFMAN: He's a, yes, private citizen.

12 MS. ROBESON: Okay. Please state your name and  
13 address for the record.

14 MR. FLOYD: My name is Rick Floyd. I reside at  
15 8421 Towne Crest Court.

16 MS. ROBESON: Okay. And what would you like to  
17 say?

18 MR. FLOYD: Well, first of all, Madame Hearing  
19 Examiner, I would like to say thank you for allowing me to  
20 speak and as well as the audience. As a resident of  
21 Wedgewood 1, I have been at that location since 1982. As  
22 you might suggest, a lifelong resident. My family grew up  
23 there. My daughter grew up there. From that same residence  
24 I took her to Girl Scouts and sat in parking lots and waited  
25 for the pow-wows to be complete. I did all those wonderful

1 things while living there.

2 And our community has undergone change as most  
3 communities have. However, I can say that the residents of  
4 Wedgewood 1 Court are truly excited about the possibility of  
5 this, this project. We chat about it all the time. People  
6 ask me things about it. I direct them to our, to the  
7 websites. I try to get information if I can.

8 But what I can say that the people that are there  
9 are looking forward to this change because we haven't had  
10 this kind of change since I've been there. This is a major  
11 project that will impact our community greatly, a community  
12 that's in need of change, in need of new development and the  
13 potential for growth.

14 And we'll do anything that we can to help this  
15 along because we know the kind of impact it will have on our  
16 communities at Wedgewood 1, as well as Wedgewood 2. There  
17 are two townhouse developments along the corridor of Towne  
18 Crest Drive., Wedgewood 1, of course, located at Towne Crest  
19 Court and Wedgewood 2, located at Larchmont. And we truly  
20 believe that this is one of the best things that could  
21 happen to us.

22 In speaking with the representatives from the  
23 public land development, everything that I've heard,  
24 everything that I've experienced suggest that this is going  
25 to be a turning point for our community, not just the

1 principle communities of Wedgewood 1 and Wedgewood 2, but  
2 generally as a whole for that area. We believe that it will  
3 bring about great things and improvements and these  
4 improvements are not easy to come about. I know. I'm one  
5 of those people that contact the County and work with  
6 various divisions and ask for things that the County is just  
7 not in the position to do. And we do believe that through  
8 this project some of the major things that we believe that  
9 are important, improvement of the roads, sidewalks, the  
10 transportation zones, all those things will be a better  
11 asset to the community that's located along Towne Crest  
12 Drive.

13 MS. ROBESON: Okay.

14 MR. FLOYD: So thank you.

15 MS. ROBESON: Thank you. Mr. Brown, do you have  
16 any questions?

17 MR. BROWN: Mr. Floyd --

18 MR. FLOYD: Yes.

19 MR. BROWN: -- very briefly, are you speaking  
20 today to state your own personal views or those of the  
21 Wedgewood Home Owners Association?

22 MR. FLOYD: These are my personal views, as well  
23 as, as well as members of the home owners association.

24 MR. BROWN: In other words, other people in your  
25 community share your views?

1 MR. FLOYD: Yes.

2 MR. BROWN: Not everyone shares your views,  
3 though, do they?

4 MR. FLOYD: The people whom I have spoken with,  
5 the people that have asked me about the project has. They  
6 support this.

7 MR. BROWN: Thank you.

8 MS. ROBESON: Go ahead, Mr. Kaufman.

9 MR. KAUFMAN: Mr. Floyd, first of all, thank you  
10 for being here today. I appreciate your taking the time  
11 from your busy schedule. In speaking with not just  
12 yourself, but in speaking with the other residents that you  
13 say support, have you discussed the fact that there will be  
14 329 units here and have you, do you have a position as to  
15 whether that would be compatible with your existing  
16 community?

17 MR. FLOYD: We, well, I visited the website. I've  
18 looked at the project design. And I have talked to a  
19 variety of people and --

20 MS. ROBESON: I'm sorry to interrupt, but normally  
21 I would let this go, but why don't you just tell me what you  
22 think is, because I don't know if you're a member of the  
23 board, if you're authorized to testify on behalf of other  
24 people. Why don't you tell us what you think as far as  
25 compatibility?

1 MS. RANDALL: I believe that it's compatible with  
2 what, with what they are trying to do in that location. Of  
3 course, the project that's now standing, you know, is pretty  
4 much run down --

5 MS. ROBESON: Okay.

6 MR. FLOYD: -- and obviously at some point it's  
7 going to need to be taken out, taken down or replaced  
8 anyways. What we believe, what I believe is that this is  
9 going to be, you know, once again, a very important project  
10 for our community as a whole. I am, I do project myself, if  
11 you look at it in those terms to find out what's going on  
12 around a community, you know, what's taking place in our  
13 community and from everything that I have experienced and  
14 what I have discussed with various people, this is something  
15 that everyone is looking forward to.

16 MS. ROBESON: Okay. Anything else?

17 MR. KAUFMAN: I don't think so.

18 MS. ROBESON: All right. You may be excused.

19 MR. KAUFMAN: Thank you very much.

20 MS. GIRARD: Thank you.

21 MR. BROWN: Thank you.

22 MS. ROBESON: Thank you for coming.

23 MR. KAUFMAN: I believe that's our case-in-chief.

24 MS. ROBESON: Okay. So, Mr. Brown, are you ready  
25 to proceed with your witnesses?

1 MR. BROWN: Well, we have, I think, a total of  
2 five witnesses. I have three of them here this afternoon.

3 MS. ROBESON: Okay. Why don't we take a 15-minute  
4 break and then we'll begin with your first witness, Mr.  
5 Brown?

6 MR. BROWN: Okay.

7 MS. ROBESON: And then we'll go to 5 o'clock.  
8 Yes, sir?

9 MR. KAUFMAN: Yes, I must stop at 5:00 because I  
10 have to be at Montgomery College for a board of trustees  
11 meeting at 5:30.

12 MS. ROBESON: Okay. Well, I don't want to get --

13 MR. KAUFMAN: And that's --

14 MS. ROBESON: -- in trouble with the dean, but  
15 we'll try to break a little before if that helps you.

16 MR. KAUFMAN: Yes, because that's in Germantown,  
17 so if you could maybe stop at --

18 MS. ROBESON: Yes. Yes. We can --

19 MR. KAUFMAN: -- quarter of, I would appreciate  
20 it.

21 MS. ROBESON: Okay. I understand. All right.  
22 We'll take a 15-minute break and then we'll come back with  
23 Mr. Brown's first witness.

24 (Recess)

25 MS. ROBESON: Everyone ready? Okay. We're back

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1 on the record.

2 MR. BROWN: Madame Hearing Examiner, while you

3 were getting ready, I switched places. I received a request

4 form a resident who asked to testify today and I thought

5 perhaps (indiscernible) gotten so far, maybe Mr. Kaufman

6 would not have an objection to having this person testify to

7 get started.

8 MR. KAUFMAN: We don't have an objection.

9 MS. ROBESON: Thank you. Why don't you have that

10 person come up?

11 MR. BROWN: Carla Weinberg.

12 MS. ROBESON: Is she your witness or --

13 MR. BROWN: She's not my witness.

14 MS. ROBESON: Okay. Ms. Weinberg, I'll wait until

15 you get seated. Please raise your right hand.

16 (Witness sworn.)

17 MS. ROBESON: Okay. Please state your name and

18 address for the record.

19 MS. WEINBERG: My name is Carla Weinberg. I

20 reside at 17729 Larchmont Terrace in Gaithersburg. I'm a

21 resident of Wedgewood No. 2 townhouses and have lived there

22 since 1975.

23 MS. ROBESON: Okay.

24 MS. WEINBERG: I'm one of the original owners.

25 MS. ROBESON: All right.

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1 MS. WEINBERG: I'm a little baffled by the

2 testimony of the witness preceding me who was the resident

3 of Wedgewood townhouses No. 1, which is a different

4 townhouse community from ours. He mentioned that he was

5 looking forward to improvement of the streets. I would love

6 to see some improvement of the streets, but I have not heard

7 any plans for any improvement of either Washington Grove

8 Lane or Towne Crest Drive. Those are fairly narrow, one

9 lane in each direction streets and the impact of the

10 application for the redevelopment of the Towne Crest

11 townhouses apartments, the impact on the traffic and the

12 parking situation is what concerns me. I am delighted to

13 see that they want to redevelop the apartments. They are

14 sorely needed and would improve the whole neighborhood, but

15 I am very concerned about the density that they are

16 proposing.

17 I am also a little baffled by the results of the

18 traffic study that was just discussed. I can't cite numbers

19 or counts, I just drive a car there and can tell you from

20 living there and driving my car on those streets what my

21 experience has been over the last few months. I'm retired

22 and I travel to stores in the area, to the senior center in

23 Gaithersburg. I volunteer at an animal shelter in Old Town

24 Gaithersburg, so I'm traveling along East Diamond Avenue. I

25 go to doctors, to vet appointments, I transport the animals

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1 to the vet, so public transportation is not something that I

2 would be using in transporting the animals.

3 Right now I'm sitting through two changes of the

4 traffic light at Washington Grove Lane and Mid-County

5 Highway waiting to turn left. A new townhouse development

6 on that corner isn't even fully populated yet and the same

7 problem exists at the intersection of Washington Grove Lane

8 and Railroad Street. I can't imagine how many traffic light

9 changes will be needed to make those left turns if the Towne

10 Crest density increase is approved, is tripled as proposed.

11 The neighborhood streets are just not equipped to

12 handle the proposed population density increase at Towne

13 Crest. Triple the number of school buses and school children

14 and cars, triple the number of double-parked trucks and

15 visitors cars blocking Towne Crest Drive. The proposed

16 parking garage is inadequate for the residents and their

17 visitors regardless of what the County's standards are.

18 Yes, I'm sure that they meet County standards, but the

19 reality is that 1.5 parking spaces per household has proven

20 in my neighborhood, it has been proven over decades to be

21 inadequate and it will have a significant adverse impact on

22 the neighborhood.

23 My Wedgewood 2 townhouse community has two spaces

24 per household and I haven't been able to have a party in

25 decades because there is no visitors parking whatsoever.

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1 That has impacted my quality of life for the past 20 years

2 and I've been told, well, that's too bad, why don't you

3 move? Sure, I can move, but is that what you want to tell

4 all the others in my development too who are now neighbors

5 fighting neighbors over parking spaces because they only

6 have two spaces per household and they've got three and four

7 cars? Is that what you want to tell all the people who are

8 moving into Towne Crest apartments, if you can't make due

9 with 1.5 spaces per household including visitors, then move

10 out? That's not a great solution. Neither is approving the

11 current Towne Crest apartments' application.

12 MS. ROBESON: Okay. Anything else you'd like to

13 say? All right. Mr. Kaufman?

14 MR. KAUFMAN: Yes. Ms. Weinberg, are you aware

15 that the board and president of Wedgewood 2 has filed a

16 letter in support of this application?

17 MS. WEINBERG: Yes. I have a copy of a letter

18 that the president sent to all the residents at the end of

19 January that caused many of the flood of letters from our

20 residence to come in in the beginning of February and she

21 lists in this letter that was sent to every house in my

22 community that there would be increased cooperation,

23 improved cooperation, improved neighborhood landscaping.

24 This was curious. She said Towne Crest residents parking

25 will be removed from the streets. If that were so, that

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1 would be lovely because then our residence would use that  
2 street parking along Towne Crest Drive. But from what I can  
3 see there, the apartment residence and their visitors are  
4 going to be parking along Towne Crest Drive as well because  
5 they're not going to have enough spaces in the garage,  
6 certainly not for all their visitors and trucks.  
7 Republic will build some new parking for our  
8 community. She didn't say how much, so our residents, oh  
9 wow, we're getting, we're getting new parking spaces and  
10 they're going to build it for us. I think we're getting 10  
11 spaces more. That's like a drop in the bucket.  
12 It just, you know, goes on to say it will improve  
13 the community. There's no mention of any possible adverse  
14 effects and she asks everyone to submit a letter of support  
15 to the Hearing Examiner and send individual letters for the  
16 project by February 15th. So, yes, I am aware that the  
17 president sent out that letter. It's all positive impact  
18 that she is citing and not mentioning or bringing up any  
19 possible adverse -- you know, that's, when you have a point-  
20 of-view, you want to advance it and you don't want to bring  
21 up any negatives. So, yeah.  
22 MR. KAUFMAN: I don't have any other questions.  
23 MR. BROWN: Nothing further.  
24 MS. ROBESON: All right. You may be excused.  
25 Thank you.

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1 MR. BROWN: Our first witness is Joe Davis.  
2 MS. ROBESON: All right. Please raise your right  
3 hand.  
4 (Witness sworn.)  
5 MR. BROWN: Would you state your name and business  
6 address for the record please?  
7 MR. DAVIS: Yes. My name is Joseph R. Davis. My  
8 business address in Maryland is 1037 Tanley Road, Silver  
9 Spring, Maryland 20904.  
10 MR. BROWN: And your occupation, Mr. Davis?  
11 MR. DAVIS: I'm a land planner.  
12 MR. BROWN: And is your CV in the, is a matter of  
13 record here, Exhibit 88D?  
14 MR. DAVIS: Correct.  
15 MS. ROBESON: Mr. Brown, to you have an objection,  
16 are you seeking to qualify him as an expert in land  
17 planning?  
18 MR. BROWN: Land planning and zoning, yes.  
19 MS. ROBESON: Land planning and zoning? Okay.  
20 And I did look at his CV. Do you have any objection, Mr.  
21 Kaufman or Ms. Girard, to --  
22 MR. KAUFMAN: Ms. Girard will do the cross exam,  
23 but we have some concerns here, yes.  
24 MS. ROBESON: Do you want to state those?  
25 MR. KAUFMAN: Well, certainly I know Mr. Davis.

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1 MS. ROBESON: Or do you want -- I'll let Mr. Brown  
2 continue with his voir dire.  
3 MR. KAUFMAN: Right. I think that would be best  
4 and then --  
5 MS. ROBESON: Okay. Go ahead.  
6 MR. BROWN: All right. Would you please summarize  
7 the highlights from Exhibit 88D, your CV, please?  
8 MR. DAVIS: Okay. Basically I have my own  
9 planning, consulting business. I established it in 2007  
10 upon retiring from Montgomery County where I served as  
11 redevelopment director working primarily in downtown Wheaton  
12 for about three years. Prior that, I worked with the  
13 Maryland National Capital Park and Planning Commission where  
14 I worked for approximately 31 years, I believe it was, and  
15 then retired, I retired from the Park and Planning  
16 Commission.  
17 My career at Park and Planning I first started in  
18 Prince George's County with the commission and working in  
19 comprehensive zoning and then my experience in Montgomery  
20 County with the commission involved looking at zoning  
21 applications, zoning legislation, preparing for the Planning  
22 Board and the County Council, also assisting with master  
23 plans, looking at implementation strategies for  
24 recommendations contained in the master plans. And then I  
25 was made, went to -- I was subdivision coordinator then for

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1 about eight years where I worked with the Subdivision  
2 Process which, as you know, is different from the zoning  
3 process.  
4 And then I was the Chief of the Development Review  
5 Division from 1998 until I retired in 2004.  
6 MS. ROBESON: Have you ever testified, qualified  
7 as an expert in land planning in the court or an  
8 administrative proceeding like this?  
9 MR. DAVIS: Yes, I have, two cases before the  
10 Circuit Court in Montgomery County qualified for. One was  
11 back in about 1990 and then a second case about two years  
12 ago where I qualified. That was a case that involved, it  
13 was in the White Flint area. It was a condemnation case and  
14 I testified as a land planner for that. I've qualified  
15 before the hearing examiners beginning back in 1982 with  
16 Martin Klauber (phonetic sp.), Phil Tierney (phonetic sp.),  
17 most recently with Marty Grossman, qualified on a zoning  
18 case in Wheaton about two years ago.  
19 MS. ROBESON: Okay. Mr. Kaufman or Ms. Girard,  
20 what are your concerns?  
21 MR. KAUFMAN: Well, I just want to establish Mr.  
22 Davis's background in terms of his education. I wonder if I  
23 could ask a few questions?  
24 MS. ROBESON: Yes.  
25 MR. KAUFMAN: Okay. So, Mr. Davis, do you have

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1 any formal education in land planning from, or degrees in  
2 land planning from any institution of higher learning?  
3 MR. DAVIS: My master's degree is in social  
4 science. The emphasis was in public administration.  
5 MR. KAUFMAN: All right. And in your time at the  
6 Planning Commission, you were the head of subdivision  
7 review, is that right?  
8 MR. DAVIS: That's correct.  
9 MR. KAUFMAN: And that reviews primarily the  
10 subdivision applications to see whether they are in  
11 compliance with the zoning ordinance, is that right, and the  
12 subdivision --  
13 MR. DAVIS: Zoning and also with master plans.  
14 MR. KAUFMAN: But you never in your time there  
15 headed up any group that actually created and analyzed a  
16 master plan and created a master plan, did you?  
17 MR. DAVIS: No, I've never been the primary  
18 planner for a master plan.  
19 MR. KAUFMAN: So other than your professional  
20 experience that you've just testified to and the few times  
21 that you say you've qualified in Circuit Court, those, is  
22 there anything else in your background that you think would  
23 qualify you as an expert in land planning?  
24 MR. DAVIS: In terms of master plan work, I've  
25 been involved in a larger number of master plans both in

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1 Prince George's and Montgomery Counties. I have done work  
2 for a developer that was a particular case I worked for in  
3 Howard County where I was providing advice to a property  
4 owner and a developer on a site, so in terms of land  
5 development, but --  
6 MR. KAUFMAN: This is since you've been in private  
7 practice?  
8 MR. DAVIS: Yes, this is since private practice.  
9 Of course, when I was in Wheaton with the redevelopment  
10 office, they're always working with private developers in  
11 terms of looking at projects that were being considered for  
12 downtown Wheaton and some of those did come to fruition.  
13 MR. KAUFMAN: You were facilitating the  
14 implementation of that?  
15 MR. DAVIS: Correct.  
16 MR. KAUFMAN: All right. When you testified in  
17 circuit court, you said one was an eminent domain  
18 proceeding, is that right?  
19 MR. DAVIS: Yes. Uh-huh. Yes.  
20 MR. KAUFMAN: And you qualified as a land planner?  
21 MR. DAVIS: Yes.  
22 MR. KAUFMAN: And how about the other case, what  
23 was that?  
24 MR. DAVIS: That was a case back in, I believe it  
25 was 1991 and I remember the case. It was, I think, Sammy

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1 Toda v. Harry Leet, which I think went onto to the appeals  
2 court, but I qualified as a land planner there.  
3 MR. KAUFMAN: Okay. Excuse me. So with that, you  
4 know, we would accept this witness with the caveat  
5 concerning what we consider to be somewhat limited  
6 experience and education as a land planner.  
7 MS. ROBESON: Well, when they're an expert, we  
8 don't usually caveat their expertise. I mean you can cross-  
9 examine to that effect --  
10 MR. DAVIS: Well, I think that he's established --  
11 MS. ROBESON: -- as to --  
12 MR. KAUFMAN: -- that he's done a good bit of work  
13 in the area, so --  
14 MS. ROBESON: Yes, doesn't subdivision implement  
15 master plan?  
16 MR. DAVIS: Correct. In fact, there are specific  
17 requirements where the Planning Board must, can't approve a  
18 plan that conflicts with it unless certain criteria are met.  
19 MS. ROBESON: I'm going to qualify him as to, as  
20 being an expert in land planning.  
21 MR. BROWN: Mr. Davis, I'm going to ask you about  
22 your familiarity with certain items. All I need is a sort  
23 of a yes or no answer here on these. Are you familiar with  
24 the G-910 application?  
25 MR. DAVIS: Yes.

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1 MR. BROWN: How about the Towne Crest property in  
2 particular?  
3 MR. DAVIS: Yes, I have been to the site.  
4 MR. BROWN: Are you familiar with the neighborhood  
5 area surrounding Towne Crest?  
6 MR. DAVIS: Yes.  
7 MR. BROWN: Are you familiar with the Montgomery  
8 County zoning ordinance?  
9 MR. DAVIS: Yes.  
10 MR. BROWN: Are you particularly familiar with the  
11 requirements of the PD zones?  
12 MR. DAVIS: Yes, I am.  
13 MR. BROWN: Are you familiar with the 1985  
14 Gaithersburg Master Plan?  
15 MR. DAVIS: Yes, I am.  
16 MR. BROWN: Are you familiar with the General  
17 Plan?  
18 MR. DAVIS: I am.  
19 MR. BROWN: How about master plans in the  
20 Rockville, Gaithersburg and Germantown area that have been  
21 adopted since 1985?  
22 MR. DAVIS: Yes, I am.  
23 MR. BROWN: Did you prepare a report on the G-910  
24 application?  
25 MR. DAVIS: Yes, I did.

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1 MR. BROWN: And how did it come about that you  
2 prepared that report?  
3 MR. DAVIS: I was contacted by your office, as  
4 well as by the town of Washington Grove and they asked me to  
5 take a look at this case and the application, and they were  
6 interested in engaging my services to help provide advice to  
7 them and recommendations concerning the project.  
8 MR. BROWN: So how did you go about preparing your  
9 report?  
10 MR. DAVIS: I reviewed application material that  
11 had been provided to me, the technical staff report from  
12 Park and Planning Commission. I looked at the latest plans  
13 that had been submitted, in other words the PD-35  
14 application. I didn't look at prior, the prior renditions  
15 of the plan. I also looked at correspondence associated  
16 with the application that had been sent to me and I prepared  
17 a report based on that.  
18 MR. BROWN: Did you look at the Planning Board  
19 staff report --  
20 MR. DAVIS: Yeah.  
21 MR. BROWN: -- technical staff report?  
22 MR. DAVIS: Yes, I did.  
23 MR. BROWN: How about the Planning Board  
24 recommendation itself?  
25 MR. DAVIS: I did read that.

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1 MR. BROWN: And the analyses of the report by the  
2 applicant's land planners, Ms. Rodriguez and Mr. Ager?  
3 MR. DAVIS: Yes, I read those reports.  
4 MR. BROWN: Did you read the evaluations of the  
5 plan by the Washington Grove Planning Commission?  
6 MR. DAVIS: I don't recall seeing the Washington  
7 Grove Planning Commission comments.  
8 MR. BROWN: Okay. Does your report go beyond  
9 offering simply a sort of a thumbs up or a thumbs down  
10 opinion on the application?  
11 MR. DAVIS: Yes, I did look at, I did, in terms of  
12 reviewing the application material, then I did look at say  
13 what potentially might work for the property.  
14 MR. BROWN: Were you here for the testimony of Ms.  
15 Rodriguez and Mr. Ager?  
16 MR. DAVIS: Yes, I was.  
17 MR. BROWN: And I, and were you here for Mr.  
18 Berman's testimony earlier today?  
19 MR. DAVIS: Yes, I was.  
20 MR. BROWN: All right. Based on that testimony  
21 and other, anything else you might have heard in the earlier  
22 proceedings, is there anything in your report you'd like to  
23 correct or revise with your testimony here today?  
24 MR. DAVIS: The only item would be a letter --  
25 there's, I believe there's a January 11th letter from the

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1 applicant to the hearing examiner in which they noted that  
2 they were requesting a waiver associated with the height  
3 requirement in the PD zones for buildings over -- 50 percent  
4 of the buildings would need to be over five stories in  
5 height. I was not aware that the waiver letter had been  
6 submitted, so -- but I would note, though, that in terms of  
7 the technical staff report, it was a PD-44 application, the  
8 same waiver would have been necessary there, but I don't  
9 recall seeing anything associated with a waiver request or  
10 an analysis of the waiver request by the staff.  
11 MR. BROWN: Have you analyzed the waiver request  
12 that was submitted on January 11th?  
13 MR. DAVIS: Yes, I have.  
14 MR. BROWN: What is your opinion about that waiver  
15 request?  
16 MR. DAVIS: I don't believe that the waiver  
17 request is justified.  
18 MR. BROWN: And why is that?  
19 MR. DAVIS: Well, first of all, I have difficulty  
20 with the densities that are being asked for in light of the  
21 master plan recommendations. I also have concerns about  
22 the, where I believe the application does not satisfy  
23 certain requirements of the planned development zones. And  
24 I believe that there are certain compatibility issues with  
25 the application that I think raise a serious question as to

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1 whether the application could be approved.  
2 MR. BROWN: But I'm only talking now and narrowly  
3 focused on the requirements for the waiver, assuming that  
4 the plan is otherwise acceptable.  
5 MR. DAVIS: Okay. Well, there are -- the terms of  
6 the basis for the waiver, we'd be looking at whether or not  
7 there's an environmental finding that could be made that  
8 would justify it and then there's also the other finding  
9 that deals with the -- I don't have the language directly in  
10 front of me, but the, secondly would be it deals with, I  
11 think, it's over 150 units wouldn't apply, but then if it  
12 does apply, there could be a waiver, I think, if it's found  
13 to be in compliance with the Master Plan.  
14 MR. BROWN: Okay. Well, I'd like to now, Mr.  
15 Davis, to go through your report and summarize for the  
16 Hearing Examiner your principle findings and conclusions.  
17 And I'll highlight particular topics in your report and ask  
18 you to sort of briefly elaborate on your findings and  
19 conclusions.  
20 MR. DAVIS: Okay.  
21 MR. BROWN: How about, maybe the best place to  
22 start is with your analysis of compliance with the 1985  
23 Master Plan.  
24 MR. DAVIS: Okay. Well, I think that the 1985  
25 Master Plan recommended what's called at that time high-

1 density residential and it was recommending a density  
2 between 11 and 15 dwelling units per acre. And in examining  
3 that, I do agree with the MPDU density would be on top of  
4 that and looking at what would be the highest densities  
5 associated with that, if 15 percent of the units would be  
6 moderately priced dwelling units, there's a 22 percent  
7 density bonus associated with that and so I think that there  
8 could be development of the property at approximately 18.28  
9 dwelling units per acre I think would be in accordance with  
10 the Master Plan.

11 The applicant's proposal, however, is beyond that.  
12 It's a higher density than that. There is -- Court's  
13 indulgence here -- the --

14 MR. BROWN: Did you prepare a summary of your  
15 analysis of the, of Mr. Ager's density calculations --

16 MR. DAVIS: I did.

17 MR. BROWN: -- and his testimony?

18 MR. DAVIS: Yes, I did.

19 MR. BROWN: And when did you prepare that?

20 MR. DAVIS: I prepared that, I believe I  
21 delivered it to you on Friday.

22 MR. BROWN: Is this that document?

23 MR. DAVIS: Yes, sir.

24 MS. ROBESON: I'm marking this as Exhibit 132,  
25 which would be summary of density calculation.

1 (Exhibit No. 132 was marked  
2 for identification.)

3 MR. BROWN: Before we get into density --

4 MS. ROBESON: Wait. Mr. Kaufman asked for a few  
5 minutes to --

6 MR. BROWN: Okay.

7 MS. ROBESON: -- to look at this. Okay, Mr.  
8 Kaufman.

9 MR. KAUFMAN: Well, obviously, I was going to ask  
10 him some questions about it. We may have some questions on  
11 cross.

12 MS. ROBESON: Okay. Right now then it is admitted  
13 as Exhibit 132, summary of density calculation.

14 MR. BROWN: I'd like you, Mr. Davis, to walk us  
15 through the calculations and the reasoning underlying those  
16 calculations in relation to what you heard in the testimony  
17 last week.

18 MR. DAVIS: Okay. Basically we're dealing with a,  
19 the area, analysis area 2, AA2 as I refer to it here,  
20 consisting of 21 acres. The upper limit recommendation in  
21 the master plan is 15 dwelling units per unit, excuse me, 15  
22 dwelling units per acre. That would result in a total of  
23 315 dwelling units for the analysis area. There is the  
24 opportunity for density bonus associated with the provision  
25 of a maximum number of moderately priced dwelling units and

1 that would be a 22 percent, for the provision of 15 percent  
2 moderately priced dwelling units, there would be a density  
3 bonus such that it's a 22 percent increase in units.

4 So taking that into account, it would appear that  
5 the maximum density for the analysis area would be, the  
6 maximum density would be 18.28 dwelling units per acre for a  
7 total of 384 dwelling units. The, if you look at the, then  
8 look at the site in terms of the Master Plan's maximum  
9 density, this would appear to allow maximum of 148 dwellings  
10 on the 8.1 acre Towne Crest property. And, again, we're  
11 assuming maximum MPDU potential there. The maximum number  
12 of dwelling units for the Wedgewood area across the street  
13 would go up to 236 dwelling units.

14 So it would appear that there's available density  
15 with, in terms of 231 existing units and going up to a  
16 maximum of 384. There is room for an additional 153  
17 additional dwelling units within the analysis area. That  
18 would break down into 41 additional units that would be  
19 available for the Towne Crest property and 112 potential  
20 units on the Wedgewood property.

21 And, again, I'll point out that at the total of  
22 148 units would represent 15 percent moderately priced  
23 dwelling units in a full 122 percent development for the  
24 site.

25 MS. ROBESON: What about the applicant's argument

1 that this is 30 units, also the density limitations  
2 shouldn't apply?

3 MR. DAVIS: Okay. The master plan is an old  
4 master plan as you compare it to other plans that exist in  
5 the County. And I do think that it means that there should  
6 be, you know, an additional look that's taken at it to make  
7 sure where we are. And I'm not convinced that the  
8 recommendations contained in the 1985 master plan are no  
9 longer valid for this particular area. I would note that in  
10 the course of the last 28 years there have been updates and  
11 modifications made to the Gaithersburg Vicinity Master Plan  
12 certainly dealing with the area over on Shady Grove West,  
13 the Shady Grove West study area that was completed in 1990.  
14 We've had a new master plan that was done for the Shady  
15 Grove transit station area and I believe that it was 2006  
16 that that plan was approved. There was also more recently  
17 in 2008, there was an update to the special study area plan  
18 over on the west side for the new technology corridor, the  
19 Seneca Technology Corridor Plan that was done. And there  
20 was significant increases in development potential for those  
21 area taking into account the availability of transit and  
22 those features.

23 I would note that this area is not identified in  
24 the plan and has not been identified by the County  
25 subsequently as being a transit development area. I think

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1 that's significant. When I look back at the plan of 1985, I  
2 see that there was a recognition of the development that was  
3 in place there and it was the Master Plan recognized that  
4 development. In effect, it did recommend the status quo for  
5 the number, but as we've noted in the discussion of density,  
6 there is opportunity for some density increase under the  
7 existing plan that would be available for the property. So  
8 I think what it boils down to is how much density, you know,  
9 would be appropriate today. And I think that that's a very  
10 significant policy question that's being brought before the  
11 Council with this rezoning application.

12 I think that the planned development zone, it's  
13 very important to note that one of the requirements of the  
14 planned development zone is that it implements the  
15 recommendations of the Master Plan. So my concern is that  
16 if you take away the Master Plan as being the base and then  
17 what you have as the basis. So I think that that raises a  
18 pretty big policy question.

19 I'd also note that within the planned development  
20 zone, the question of transferring density, because that's  
21 one of the, I think, one aspect of the proposal in this  
22 application is to transfer the density from Wedgewood across  
23 the street to Towne Crest and I have problems with that  
24 because there really isn't, it's not discussed or mentioned  
25 in the Master Plan, number one. Number two, there's no

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1 provisions that I see within the planned development zone to  
2 do that.

3 But I would also note that within the zoning  
4 ordinance there are provisions available for transferring  
5 density in other zones. There's the TDR zones you're  
6 familiar with, but also within the central business district  
7 zones there's the ability to transfer some densities if it  
8 can be done following procedures and the procedures are,  
9 one, that it be in accordance with the plan; and, number  
10 two, would be that there would be documentation that would  
11 through the form of easements and covenants and things like  
12 that that would sort of memorialize the transfer that's  
13 taking place. I don't see that opportunity here. I just, I  
14 see that there's a question about a master plan that maybe  
15 should consider more density, but I don't see the procedure  
16 that's available to do that short of amending the Master  
17 Plan. So I think those are my concerns with, you know, the  
18 density question, the ability to transfer the density and  
19 procedures available for that. I can continue through --

20 MR. BROWN: Now is there anything more that you'd  
21 like to summarize from your density calculations?

22 MR. DAVIS: Just that I think that it's important  
23 to note in terms of sort of the amount of change that we're  
24 seeing here and I discuss some of that on page 2, and first  
25 of all I think that if you were to add the units, the

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1 development that's proposed by the applicants, additional  
2 development of, what is it, added to the 107 units,  
3 applicants proposing 260 dwelling units fully utilizing  
4 available density, so that's the transfer of density and  
5 that would get the density up to about 32 dwelling units per  
6 acre for this site. Then there's also --

7 MS. ROBESON: For the site or the analysis? For  
8 the site?

9 MR. DAVIS: This would be for the site.

10 MS. ROBESON: For the site? Okay.

11 MR. DAVIS: And in addition to that, the  
12 applicants are suggesting that there is additional density  
13 that could come into the area and I believe that that was on  
14 the order of 69 additional dwelling units. And that would  
15 have the effect of raising the density to over 40 dwelling  
16 units per acre. Now I would just note that that's sort of  
17 comparable into getting into the densities that are  
18 contained in the Shady Grove transit station area --

19 MS. ROBESON: In the section plan?

20 MR. DAVIS: -- plan. In the sector plan area.  
21 And I have serious concerns about whether that's appropriate  
22 or not, taking into account the location of this property,  
23 the more limited availability of transit service, the MARC  
24 station, which is really not a full service type station and  
25 doesn't contain the sort of full movement in terms of train

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1 to bus that you have in other transit stations.

2 MS. ROBESON: I don't understand what you mean by  
3 that.

4 MR. DAVIS: The MARC service here, I think in the  
5 morning there's --

6 MS. ROBESON: In the Washington Grove station?

7 MR. DAVIS: Yes, the Washington Grove station,  
8 there's about, I think in the morning, 11 trains that come  
9 through there, but only I think, I think it's just six that  
10 stop, okay? In the afternoon it might be 10 or 11 that will  
11 come out and, again, we're looking at a situation where  
12 maybe five or six of the trains stop. So that's very  
13 limited service. And it doesn't, as you know, the MARC  
14 trains don't stop at all of the stations through the day.

15 MS. ROBESON: I didn't know.

16 MR. DAVIS: And so that to me is very limited.  
17 When you go to the --

18 MS. ROBESON: Is there bus service there?

19 MR. DAVIS: I think there's a bus that stops  
20 there, but I'm not aware of the schedule associated with  
21 that. But I would contrast that, though, with a, like if  
22 you're at the Shady Grove or Rockville or any of the other  
23 Metro stations, there's regular bus service that you have  
24 that will take people to and from the station to other  
25 locations. So I think we have to recognize that this is

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1 really a limited service capacity or a limited service  
2 transit that's available to serve the area.  
3 MS. ROBESON: And how far -- but then there's  
4 Shady Grove Metro station, right?  
5 MR. DAVIS: Right.  
6 MS. ROBESON: Now far is that from this property,  
7 do you know?  
8 MR. DAVIS: Well, I mean it's on the other side of  
9 Shady Grove Road. I'm just trying to think. I think these  
10 drawings show the --  
11 MS. ROBESON: I'm sorry, only the witness can  
12 answer, so maybe that's something either party can  
13 provide --  
14 MR. DAVIS: Could spell out, sure.  
15 MS. ROBESON: -- later on.  
16 MR. KAUFMAN: What was the question?  
17 MR. BROWN: We will have testimony on transit  
18 time.  
19 MS. ROBESON: Oh, I'm sorry. Okay.  
20 MR. BROWN: Mr. Davis, Mr. Ager made reference to  
21 rezoning G-873 to, in reference to the additional density of  
22 69 additional dwelling units, is that right?  
23 MR. DAVIS: Correct.  
24 MR. BROWN: What, did you look at G-873 as a  
25 potential precedent for increasing the density?

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1 MR. DAVIS: I did. I looked at that. That's a  
2 case that's down in Westburg and I believe it's the old,  
3 maybe the old Marriott offices that are down there and that  
4 was a recommendation in the Westburg plan for, I believe it  
5 was a PD-28, and there's existing offices, in fact, offices  
6 have changed to a school and they are going to retain the  
7 school and then there was a discussion of having some  
8 residential development also on the property.  
9 I did not see that as a basis or a precedent for  
10 increasing density as is being requested in this case. I  
11 saw that the residential component that was there, it had  
12 been master planned for residential use. So I didn't see  
13 that as different. And I don't think that there was really  
14 a density issue with that site.  
15 MS. ROBESON: Now why wasn't there a density  
16 issue?  
17 MR. DAVIS: Because it was a PD-28, but it was  
18 being done as a mixed use and so you had a mix of uses  
19 there.  
20 MS. ROBESON: I see.  
21 MR. DAVIS: So, you know, to say that a certain  
22 amount of it would be commercial and a certain amount would  
23 be residential.  
24 MR. BROWN: What, do you happen to recall what  
25 percentage of the allowable density for residential was

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1 approved with that rezoning?  
2 MR. DAVIS: What I recall is around 30 percent,  
3 somewhere in that neighborhood of about a third of the  
4 density that, of the PD-28 density was being located on the  
5 site in residential form.  
6 MR. BROWN: One more thing about Table 2, I'm  
7 sorry, Table 3 in the Master Plan and which is the airpark  
8 analysis areas.  
9 MR. DAVIS: Yes.  
10 MR. BROWN: Does this -- column 5 refers to  
11 potential units recommended and it has two numbers, base and  
12 optional. Are you familiar with that?  
13 MR. DAVIS: Yes.  
14 MR. BROWN: Are there instances here where  
15 optional method zoning is recommended for increases in  
16 density over the base?  
17 MR. DAVIS: Well, in terms of the area that we're  
18 discussing here, the Flower Hill district, the airport  
19 district, really there's not. There's only one incident or  
20 instance where I see that there's a recommendation for  
21 higher density utilizing a plan development type zone and  
22 that's in Flower Hill and that's for the planned  
23 neighborhood zone.  
24 MS. ROBESON: Is that in the Mid-County district?  
25 MR. DAVIS: It's actually in the Flower Hill

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1 district.  
2 MS. ROBESON: What about Mr. Berman's comment that  
3 no PD is recommended?  
4 MR. DAVIS: There's no PD's that are recommended  
5 on the, basically on the east side of 270 in these areas  
6 that were identified. The PD --  
7 MS. ROBESON: Is the PD recommended elsewhere in  
8 the Gaithersburg plan?  
9 MR. DAVIS: Yes. In the, on the west side of 270.  
10 MS. ROBESON: Okay.  
11 MR. DAVIS: Certainly the MXPDP area, which I was  
12 involved in the MXPDP zone being created and worked with that  
13 case.  
14 MS. ROBESON: For the --  
15 MR. DAVIS: That's right. And, but those were  
16 more developable areas where you had vacant properties and  
17 the PD zones were recommended for a number of the properties  
18 over on the west side.  
19 MS. ROBESON: What about Mr. Berman's testimony  
20 that this meets the cluster? I had down that he said that  
21 this was a cluster concept. It's a good planning tool. Is  
22 this a cluster concept or --  
23 MR. DAVIS: Are you talking about the Plan, the  
24 Master Plan?  
25 MS. ROBESON: The location of the higher density



1 other type of development. So that raises a concern for me.  
2 Also I believe that the Master Plan did make  
3 reasonable density recommendations for the property, taking  
4 into account what was available to the Council and what the  
5 intents and goals were of the Master Plan in 1985. I just  
6 don't see that anything has changed such that you would not  
7 rely on this Master Plan for consideration of a PD zone at  
8 this location.

9 MS. ROBESON: So you're saying no additional  
10 density?

11 MR. DAVIS: I'm saying that the Master Plan would  
12 allow this site to go from 107 units to 148 units, okay,  
13 based on the 18.28 dwelling units per acre. Now for it to  
14 go more than that, then I would say what's the policy basis  
15 for making that kind of finding given the requirements of  
16 the plan development zones, that it be in accord with the  
17 Master Plan.

18 MS. ROBESON: Okay.

19 MR. DAVIS: I'd also note there's a master plan  
20 amendment process that the property owners could file under  
21 if they wanted to take, to address this in a master plan  
22 context.

23 MR. BROWN: Now one of the, the next area that I  
24 would like you to discuss is your conclusions with regard to  
25 compatibility with neighboring uses.

1 MR. DAVIS: Okay. Well, certainly development on  
2 the other side of Towne Crest Drive is consistent with the  
3 townhouse, community townhouse development. I believe that  
4 the existing garden apartments which are basically two, two  
5 to three floors in height, I think that they're compatible.  
6 The question would be would additional height potentially be  
7 compatible and I certainly think that you could have some  
8 four-story building height that could be done in a way that  
9 could be compatible. But I would, I don't believe that it  
10 would be appropriate to go above that height for  
11 compatibility and I would note that the applicants are not  
12 proposing any height greater than four stories for the  
13 subject site.

14 In terms of other uses around the property, we do  
15 have one-family detached dwellings that are located south of  
16 the subject site on the opposite side of Washington Grove  
17 Lane. There's also four detached homes that are located on  
18 Daylily Lane which is located on the southeast corner of the  
19 subject property. And as you know with the planned  
20 development zones, there are 100-foot minimum setback is  
21 required where a PD zone adjoins one-family detached zoning  
22 if a unit other than a detached home is being proposed for  
23 that area. And it appears now that they have met those  
24 setback requirements in terms of the detached homes on the  
25 south side, the southeast side. There's also detached homes

1 located on the north side of the property that would be, I  
2 guess, within the city of Gaithersburg. Those are also  
3 setbacks that are appropriate from those locations as well.  
4 The only area that I --

5 MS. ROBESON: Are you saying now you're referring  
6 to 125, Exhibit 125, which is the alternative B development  
7 plan with setback?

8 MR. DAVIS: Correct, because there was a change to  
9 the setback from the fourth lot --

10 MS. ROBESON: Okay. I'm just --

11 MR. DAVIS: -- on Daylily.

12 MS. ROBESON: -- making sure the record knows what  
13 now is.

14 MR. DAVIS: Okay. Very good. Let me see. So the  
15 only, I guess the one area that I would note concern about  
16 setbacks and compatibility is I already mentioned the  
17 concern about the setback from the woods area, I am  
18 concerned that the, you have a 25-foot building setback,  
19 you've got a 5-foot setback from the parking or the drive  
20 lanes associated with the parking garages. And that seems  
21 to be sort of a minimal situation I'm concerned with the  
22 report in terms of the potential for trees that could be  
23 damaged, but I'm not a forester or landscape architect, so  
24 that's about as far as I would go with that discussion. I  
25 do think it should be looked at more carefully.

1 MR. BROWN: Are you, I'm trying to understand what  
2 you're saying. Are you saying that one way to address that  
3 would be to have a greater setback between the Washington  
4 Grove, Westwoods end of the buildings?

5 MR. DAVIS: Yes. When I had looked at this from  
6 my February 4th report I prepared, I suggested that probably  
7 they should be thinking about something on the order of 50  
8 feet as a sufficient to protect that particular wooded area.

9 MR. BROWN: Now you may have heard the testimony  
10 earlier today that this exhibit, 126 I think it is, showing  
11 a greater setback for building B is simply proposed and that  
12 the applicant would prefer the other version which does not  
13 eliminate the south, the southern end of building B on the  
14 grounds that the 100-foot setback is not applicable. What  
15 we have in the record is the claim that it's not applicable  
16 because it's dealing with property in an adjacent  
17 jurisdiction. Do you recall reading that claim?

18 MR. DAVIS: Yes, I do recall that.

19 MR. BROWN: Do you have an opinion with regard to  
20 that interpretation of the zoning ordinance and what is it  
21 based upon?

22 MR. DAVIS: Okay. First of all, I believe that  
23 the, it is appropriate to consider the normal setback from  
24 the zone from the adjacent property, even though it would be  
25 in a jurisdiction, a planning jurisdiction other than the,

1 under the County zoning ordinance.

2 MS. ROBESON: Well, what was the practice of Park

3 and Planning? Did you run into this issue?

4 MR. DAVIS: Well, I did dealing with Prince

5 George's. The property was adjacent to the boundary with

6 Prince George's County and this was --

7 MS. ROBESON: What was the interpretation?

8 MR. DAVIS: We met with the staff from Prince

9 George's County, the planning staff, commission staff, and

10 we sat down and we talked about it. And in that instance we

11 were recommending that there should be 100-foot setback from

12 single-family detached homes that were, zoning that was

13 existing in Prince George's County. That was a case that

14 goes back -- it was sometime in the mid-1980's. I don't

15 know what ultimately it was approved for, but I remember the

16 meetings and discussion about that.

17 I also recall meetings where we met with staff

18 from the City of Rockville and talked with them about, you

19 know, issues of development along the boundaries. We always

20 took into account what was planned and what was thought

21 about for the adjacent properties. We never treated it as

22 it was the end of the world and it didn't have to be looked

23 at. In fact, I think there may be even a memorandum of

24 understanding between Prince George's and the commission,

25 Prince George's side of the commission and Montgomery's side

1 of the commission, but that would have been probably 10 or

2 15 years ago.

3 MS. ROBESON: Okay.

4 MR. DAVIS: I agree with the comments that were

5 provided by chair, Chairwoman Carrier of the Planning Board

6 where she felt that the setbacks would also apply based on

7 her experience.

8 MR. BROWN: You have seen the green area

9 exhibits --

10 MR. DAVIS: Yes.

11 MR. BROWN: -- Mr. Davis?

12 MR. DAVIS: Yes.

13 MR. BROWN: Do you believe that the applicant has

14 been computing the green area correctly?

15 MR. DAVIS: Well, I'm concerned that the applicant

16 is basing, one point was basing green area, I guess, on the

17 net area and then we're looking at it based on the gross

18 tract area. I think the PD zones speak to gross area, gross

19 tract area. It's in the sort of the nature of the zones. I

20 say that because typically with PD, my experience has been

21 you came into new properties without development on them, so

22 you were looking at a gross situation where there would be

23 dedication.

24 But I would point out the relationship between

25 density in terms of calculating density over the gross tract

1 area and then the provision of the, again, this is the

2 minimum green area requirements. There was a relationship

3 in terms of the size of the tract that was being counted for

4 density and counted for green area. And I think that, you

5 know, that was important. The fact that the technical staff

6 pointed out that they felt it should be based on the gross

7 tract area, then in my mind I was concerned when I saw that

8 there was green area being proposed within the right-of-way

9 area. And I don't disagree that the way the definition of

10 green area is. You can have land within a right-of-way that

11 meets the definition of green area. My problem is is to

12 apply that, to say that it can count. For the minimum green

13 area to me is a problem because one of the requirements of

14 the development plan is that you've got to be able to assure

15 long-term or perpetual maintenance of these common

16 facilities and these green areas.

17 So my, I believe that to show green area, minimum

18 green area within the right-of-way is a mistake. I'm not

19 aware -- I don't recall any case that I was involved in

20 where it was counted and I don't recall any cases in terms

21 of discussions I've had with some of the site plan

22 reviewers, former site plan reviewers where they would have

23 allowed that either. I just think it would be bad public

24 policy because of the potential of having to widen streets

25 or, you know, any number of things.

1 In this particular case, I think it's important to

2 note that the Department of Transportation has not yet

3 reviewed Towne Crest Drive in terms of what improvements

4 will be necessary to that road to be able to accommodate

5 safe ingress/egress. Also, I would note that today Towne

6 Crest Drive terminates up near the north property line. And

7 I think when you look at the map of the surrounding area, it

8 appears that at some point there was an intent to continue

9 the road through to the development, into the development to

10 the north.

11 MS. ROBESON: Into Saybrooke?

12 MR. DAVIS: Yes.

13 MS. ROBESON: Or the Gaitersburg --

14 MR. DAVIS: Yes. Now if that's not to occur, then

15 it's part of this, this would go forward to the subdivision

16 process. The Department of Transportation would have to

17 look very carefully at what would be the appropriate

18 termination of the road and normally that would be a cul-de-

19 sac --

20 MS. ROBESON: Right.

21 MR. DAVIS: -- would be done. Now I understand in

22 this situation there's discussion about potentially pursuing

23 abandonment of a part of Towne Crest Drive such that they

24 would not have to do a cul-de-sac. But, again, it doesn't

25 show on here in that fashion, so who knows whether an

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1 abandonment would occur, who knows whether there would be a  
2 cul-de-sac, so I just see that as problematic to be counting  
3 a green area within a right-of-way where you've got these  
4 types of uncertainties. We don't know at the entrance if  
5 they're going to have to do some sort of monumental entrance  
6 because of the densities where they'd have to have a right  
7 turn in and then, you know, a left turn lane coming in,  
8 potentially two lanes going out and having that extend  
9 possibly as far as the first street within the community.  
10 So that would, again, widen, take additional space to  
11 accommodate those roads.  
12 I don't know if there's going to be requirements  
13 for deceleration or acceleration lanes along the Washington  
14 Grove Lane and that could also affect that. So I just see  
15 problems with counting green area as, counting, excuse me,  
16 land within the right-of-way as minimum green area. I mean  
17 if you can meet the minimum green area on site, well, then  
18 it's just, in effect, additional green area. It doesn't  
19 create a zoning problem if you lose that. So I think that  
20 that's a critical issue in this application.  
21 MR. BROWN: One more thing, Mr. Davis. Putting  
22 aside the issue of compliance with any other various  
23 standards that we've talked about so far, and just looking  
24 at this property from the perspective of a land planner and  
25 looking at and considering what's around it, what's

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1 available and all of that, what do you see as an appropriate  
2 development for this property and what would be an  
3 appropriate zone for development of this property?  
4 MR. DAVIS: Okay. First of all, I did look at it  
5 from the standpoint of what I thought could potentially work  
6 for this project here and I think that if the density were  
7 brought under control in terms of what the master plan had  
8 been thinking about, I mean even if the Council were of a  
9 mind to say, well, we could entertain some limited amount of  
10 density into it, I could see something on the order of like  
11 a PD-22 zone, which I think could work well with the site.  
12 Again, remember, this proposal involves a very significant  
13 structured parking component.  
14 I don't know whether the structured parking  
15 component would still work or not but, again, that would be  
16 part of a pro forma that a developer would have to put  
17 together as to whether or not that type of a proposal could  
18 work. But I would, I would think that we're, you're talking  
19 about some type of minimal increase that could be argued in  
20 terms of the logic of the passage of time. I think that  
21 could tend to be logical rather than looking at a proposal  
22 that, in effect, could have, change it from 15 units per  
23 acre to 40 units per acre which are densities associated  
24 with the transit station that was just recently planned. So  
25 I just think that we have to think more --

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1 MS. ROBESON: How does this compare with the  
2 transit station as far as the density?  
3 MR. DAVIS: I was looking at some of the densities  
4 in the plan.  
5 MS. ROBESON: Is PD-30, I guess my question is is  
6 PD-35 here meet the same policy objectives as at the transit  
7 station?  
8 MR. DAVIS: I don't believe so and, again, it's  
9 because of the --  
10 MS. ROBESON: Planning objectives?  
11 MR. DAVIS: Yes.  
12 MS. ROBESON: Maybe planning objectives?  
13 MR. DAVIS: Again, you wanted to, under smart  
14 growth scenario, you want to put density where it can be  
15 best served in terms of transit facilities and things like  
16 that. Where you have the Shady Grove station, you have a  
17 full service transit station with full service bus  
18 capability. So I think that that fact from a smart growth  
19 perspective is the area where you would want to concentrate  
20 your higher densities. In looking at the kind of densities  
21 that were proposed around Shady Grove, I would say that  
22 they're incomparable to the densities that are being  
23 proposed at this site which is 6/10 of a mile located from a  
24 limited service MARC station.  
25 MR. BROWN: Mr. Davis, are you referring to page

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1 119 of the Shady Grove sector plan?  
2 MR. DAVIS: Yes, I am.  
3 MR. BROWN: That's an attachment to our prehearing  
4 statement, correct, Exhibit 88 --  
5 MR. DAVIS: Yes.  
6 MR. BROWN: -- A?  
7 MR. DAVIS: Yes, that's correct.  
8 MR. BROWN: Go ahead.  
9 MR. DAVIS: I would just note that for some of the  
10 properties, like the KC-6, for example, on page 119 under  
11 the upper Mill Creek area, for the KC, well, let me start  
12 with KC-7. That's shown as a PD-18 with a limit of 305  
13 dwelling units and .3 FAR of commercial development to PD-  
14 18. The KC-6 tract is identified as I-3 with a .3 FAR of  
15 development with 130 dwelling unit maximum. There is a  
16 residential option that's available in the I-3 zone. So  
17 that, again, would be on the order of maybe 300,000 square  
18 feet of commercial development with 130 dwelling units.  
19 In the metro neighborhoods, the metro west  
20 neighborhood, you see the TOMX-2 TDR and TOMX-2 zones.  
21 There those are FAR-based zones and I'm just looking, just  
22 looking quickly at 1.4 FAR with 70 percent minimum  
23 residential. I'm just, you know, looking at that as  
24 probably in the order of about 45 dwelling units per acre,  
25 45, 48 dwelling units per acre. So the metro south sites

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1 are somewhere around 40 to 45 dwelling units per acre and,  
2 again, this is just a quick thumbnail type look at this.  
3 Those are fairly significant densities, yet this application  
4 is proposing something comparable to that. I don't think  
5 it's a comparable situation at all.  
6 MS. ROBESON: All right.  
7 MR. BROWN: Do you know whether or not those  
8 density recommendations in the Shady Grove sector plan have  
9 resulted in actual construction in those neighborhoods of  
10 development at anywhere, at, along those lines?  
11 MR. DAVIS: No, I haven't noticed any development.  
12 I mean I haven't, I didn't specifically, I haven't  
13 specifically driven through that area in the last six  
14 months.  
15 MR. BROWN: Okay. One other thing, Mr. Davis.  
16 You heard Mr. Berman's testimony this morning --  
17 MR. DAVIS: Yes.  
18 MR. BROWN: -- or, he mentioned a rezoning G-808  
19 with respect to the green area controversy.  
20 MR. DAVIS: Yes.  
21 MR. BROWN: Did you have an opportunity to look at  
22 the hearing examiner's executive summary of that rezoning?  
23 MR. DAVIS: Yes, I looked at that when we were on  
24 lunch break. G-808 was filed March 12, 2003, and looking at  
25 the gross tract area and looking at the green space in terms

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1 of those calculations, it appears to me that the green area  
2 was calculated based on gross tract area. It's described  
3 here on the executive summary, acreage to be developed,  
4 23,238 square feet, which includes 21,101 square feet to be  
5 rezoned, plus 596 square feet of Battery Lane right-of-way  
6 to be dedicated, plus 1,541 square feet of County-owned  
7 Woodmont Avenue. So there that was a, based on a gross area  
8 and the green area, when we calculated the green area, 30  
9 percent required at 6,971 square feet, which was 30.1  
10 percent of the 23,238 square feet of gross tract area.  
11 MS. ROBESON: Okay.  
12 MR. BROWN: Do you have any other, any other  
13 comments or reactions to Mr. Berman's testimony?  
14 MR. DAVIS: I was just surprised to hear Perry  
15 say, you know, 28 years later that he believes it was a  
16 mistake at that time in terms of higher density not being  
17 planned for the site. I would just, I was surprised by  
18 that. I could hear him maybe say that he felt that over  
19 time more density probably is justified there and I wish I  
20 knew it at the time, but I don't think that this rose to an  
21 issue of a mistake at all because as I looked at the data  
22 and looked at the tables again in the Master Plan, pages 46  
23 and 47, I think it was very clear, you know, what was being  
24 recommended and why and the TDR densities that were  
25 recommended for certain of the sites on the east side, the

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1 PD zonings on the west side, I think that those were all  
2 carefully thought through and I'm just surprised by the  
3 comment.  
4 MR. BROWN: Mr. Davis, is there anything about  
5 your report that you haven't highlighted for the Hearing  
6 Examiner that you'd like to mention before I turn you over  
7 to Mr., to Mr. Kaufman and Ms. Girard?  
8 MR. DAVIS: No, I believe the comments I've made  
9 have, are reflected in the report that I've provided.  
10 MS. ROBESON: All right.  
11 MR. BROWN: Okay.  
12 MR. KAUFMAN: Ms. Girard will do the cross.  
13 MS. ROBESON: Okay. Ms. Girard.  
14 MS. GIRARD: Good afternoon, Mr. Davis.  
15 MR. DAVIS: Good afternoon.  
16 MS. GIRARD: And I'm going to apologize in advance  
17 if I jump around from my notes. I'm scribbling, so we may  
18 change topics and then change back, so --  
19 MR. DAVIS: Okay.  
20 MS. GIRARD: -- bear with me. So start with the  
21 green area calculation. Are you aware of what, and I know  
22 you were here this morning, but are you aware of the area  
23 that's included in the application, the development area of  
24 the application?  
25 MR. DAVIS: The, all that I've heard mentioned of

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1 has been the 8.1 acre area that's been associated, I guess,  
2 with the request for the density.  
3 MS. GIRARD: And in your testimony you said  
4 typically a PD application would come in and calculate  
5 everything off of gross tract area?  
6 MR. DAVIS: That was my experience with the PD  
7 zone applications.  
8 MS. GIRARD: But it is possible, is it not, that  
9 an application would come in and just use what we know of,  
10 and not to confuse the terms, but a net tract area, so it  
11 would not include previously dedicated rights-of-way?  
12 MR. DAVIS: No, I'm not -- again, the zone is not  
13 based on a net lot area. There are zones that are based on  
14 net lot areas in terms of what you count for development and  
15 what you count for green area, but the PD zone is not one of  
16 those zones. I believe that the zones are clear in terms of  
17 speaking in terms of gross area, gross tract area referenced  
18 two different ways in here. And I think, again, that's  
19 important because a relationship oftentimes between the  
20 density that's asked for and the green area. So it's built  
21 into the zone for that.  
22 I think here what we see is a situation where it's  
23 not coming in at a maximum density request and so I don't  
24 know that you just get to pick and choose in terms of  
25 whether you want to come in on a net lot area or gross tract

1 area basis. I think the zone specifies how you would do  
2 that.

3 MS. GIRARD: But does it? Is -- can you point me  
4 to an explicit place in the PD zone it says gross tract area  
5 is what you need to use?

6 MR. DAVIS: They used gross tract area and gross  
7 area.

8 MS. GIRARD: But you're reading into -- does it, in  
9 fact, say gross tract area or does it say gross area is my  
10 question?

11 MR. DAVIS: The, under the density it talks about,  
12 let me see, I don't have that specific page. Oh, here we  
13 go. Thank you. Under Section 59C-7.14, which is the  
14 density residential development that talks about dwelling  
15 units per acre, and that's the maximum density, under -- I'm  
16 looking for the green area. There we go. This is in 59C-  
17 7.16. It talks about percent of gross area.

18 I don't really see that those are in conflict with  
19 each other. I think that it's generally based on a gross  
20 tract area calculation. I think that if it were intended to  
21 come in on a net basis, there would be language that would  
22 talk about you would come in on a net basis.

23 MS. GIRARD: But it doesn't --

24 MR. DAVIS: -- in terms of either the area that's  
25 applied for or the, or the green area density calculation.

1 MS. GIRARD: But nowhere does it explicitly say  
2 that your density, the green area needs to be based on gross  
3 tract area, gross tract area being a defined term in the  
4 zoning ordinance.

5 MR. DAVIS: Yes, gross tract area is defined. I  
6 take gross area to be another word that's used for gross  
7 tract area. Sometimes --

8 MS. GIRARD: So you're reading in tract?

9 MR. DAVIS: Sometimes in the zoning ordinance  
10 you'll find that tract, a particular term through the  
11 ordinance, is difficult. You'll find that it's used a  
12 slightly different way.

13 MS. GIRARD: Believe me, I know. I'm very  
14 familiar with that. But, in fact, you're reading in the  
15 word tract in your analysis?

16 MR. DAVIS: Yes.

17 MS. GIRARD: And do you agree that under the  
18 definition of green area it does talk about an area  
19 prescribed, I've got to find the actual, a prescribed  
20 portion of the land area encompassed by a development plan?

21 MR. DAVIS: Uh-huh. Yes.

22 MS. GIRARD: And you heard the testimony of Mr.  
23 Longfellow this morning --

24 MR. DAVIS: Yes.

25 MS. GIRARD: -- and it's his opinion that the

1 green area is properly calculated on 8.11 and that's what  
2 he's done. Do you disagree that if you were to calculate,  
3 and I know you may not have reviewed all the plans, but do  
4 you disagree that if you calculate it based on net, or the  
5 8.11 acres, and look at what's provided, it would meet --  
6 and alternatively if you looked at the gross tract area and  
7 the staff directed the applicant to do and compared that to  
8 what's provided, it would meet it as well?

9 MR. DAVIS: No, I don't believe that. I believe  
10 that the only way you could meet it is if you were based on  
11 net areas for both the calculation of the density and then  
12 the calculation of the green area and I don't think that's  
13 intended in the zone. I think that the zone allows you to  
14 go to the gross tract area for your calculation of density  
15 and then the quid pro quo would be then that your green area  
16 would also be calculated on the basis of the gross tract  
17 area.

18 MS. GIRARD: So you think they're connected at the  
19 hip because it's a quid pro quo of your getting density, but  
20 you're also getting a higher green area requirement?

21 MR. DAVIS: That's my belief.

22 MS. GIRARD: Which in this case they're not taking  
23 any of the density off because it's not included in the  
24 green area, correct?

25 MR. DAVIS: Say that one again.

1 MS. GIRARD: I'll move on from that. You also  
2 mentioned Exhibit G-808 and, I'm sorry, I was writing when  
3 you went through the numbers, but was it your contention  
4 that in that case there was green area, that green area in  
5 the right-of-way was not included in the green area  
6 calculation?

7 MR. DAVIS: The green area calculation took into  
8 account the gross tract area of that property which included  
9 right-of-way.

10 MS. GIRARD: Right. Was it not your testimony  
11 that area within the right-of-way should not be included,  
12 should not be counted toward green area --

13 MR. DAVIS: It should not be counted towards --

14 MS. GIRARD: -- because it could later be --

15 MR. DAVIS: -- the minimum green area, because I  
16 recognize the definition of green area and you can have area  
17 within right-of-way that meets the definition of green area.  
18 But I don't think it's appropriate to count it towards the  
19 minimum green area requirement because you can't assure the  
20 long-term maintenance or management in perpetuity that's  
21 required by the development plan requirements.

22 MS. GIRARD: This is your opinion or is this a  
23 stated policy?

24 MR. DAVIS: For now I'll say it's my opinion, but  
25 I can't recall any time it was done otherwise. In fact,

1 this was sort of the opportunity to see one and it wasn't.  
 2 MS. GIRARD: And just so I'm following, so you  
 3 contend that in G-808 that the green area that was included  
 4 for purposes of green area calculation in the right-of-way  
 5 was access above and beyond what was required by the 30  
 6 percent?  
 7 MR. DAVIS: It shows as 30.1 percent green area  
 8 for the site and I'm not saying that any of that is located  
 9 within the right-of-way. I'm just saying that the  
 10 calculation of green space coincides with the gross tract  
 11 area of the project. So the gross tract area and the green  
 12 area were done based on gross tract area.  
 13 MS. GIRARD: And have you reviewed the actual  
 14 development plan?  
 15 MR. DAVIS: For G-808?  
 16 MS. GIRARD: For G-808?  
 17 MR. DAVIS: No, I have not.  
 18 MS. GIRARD: In fact, so you wouldn't know whether  
 19 there was or was not area within that right-of-way that was  
 20 counted --  
 21 MR. DAVIS: Correct.  
 22 MS. GIRARD: -- and how much that would be?  
 23 MR. DAVIS: Correct.  
 24 MS. GIRARD: Okay. I'm going to try to keep my  
 25 thoughts together, so if you could bear with me for a second

1 here? You also testified regarding the 100-foot setback  
 2 from the western property line.  
 3 MR. DAVIS: Correct.  
 4 MS. GIRARD: And --  
 5 MR. DAVIS: Actually, there's the -- I don't  
 6 believe there's a 100-foot setback from the west property  
 7 line. I think that, you know, there was a recognition that  
 8 the zoning for the woods, the Westwoods area is under a  
 9 forest resource --  
 10 MS. GIRARD: Okay.  
 11 MR. DAVIS: -- type zone. So I don't believe that  
 12 the 100-foot setback applies there. But I think what has to  
 13 be determined as part of this process is what is the  
 14 appropriate setback that would satisfy the objectives of the  
 15 zone and in this case I would say the objective of the zone  
 16 to preserve as many trees as possible.  
 17 MS. GIRARD: I was referring specifically to your  
 18 recollection of dealings with Prince George's County --  
 19 MR. DAVIS: Oh, okay.  
 20 MS. GIRARD: -- and other areas right, master  
 21 plans recommending and whether you need to, whether  
 22 Montgomery County needs to abide by the zoning  
 23 recommendations outside their jurisdiction. If I recall  
 24 correctly, was it not your conclusion in your report that  
 25 that was more of a legal issue?

1 MR. DAVIS: I think that it certainly does rise to  
 2 the level of a legal issue.  
 3 MS. GIRARD: So your testimony was more your  
 4 opinion based on your experience with Prince George's County  
 5 in this case and you're not making a legal --  
 6 MR. DAVIS: That's correct. That was the planning  
 7 process that we generally would go through, would be to  
 8 coordinate with other jurisdictions and do our best to abide  
 9 by --  
 10 MS. ROBESON: Was that the agency's interpretation  
 11 of that?  
 12 MR. DAVIS: I don't think it ever rose to the  
 13 level of where anybody had to get an interpretation. That  
 14 was the practice.  
 15 MS. GIRARD: And when you say it was a practice,  
 16 was the practice based on the one example that you can  
 17 recall or were there --  
 18 MR. DAVIS: I'm sure that there were probably  
 19 others. I mean, you know, we have the City of Rockville,  
 20 the City of Gaithersburg, Washington Grove. There's any,  
 21 you know, this opportunity happens wherever you butt up  
 22 against another planning jurisdiction. Not so much with  
 23 Howard County. We have a river.  
 24 MS. GIRARD: You also mentioned that with regard to  
 25 setbacks that you thought a 50-foot setback would protect

1 the trees in the Westwoods more appropriately, is that  
 2 correct?  
 3 MR. DAVIS: Correct.  
 4 MS. GIRARD: And were you here for the testimony of  
 5 the landscape architect, the project landscape architect,  
 6 Mr. Foster, earlier?  
 7 MR. DAVIS: Yes, uh-huh.  
 8 MS. GIRARD: And did you hear his conclusion that  
 9 doubling the setback would not significantly impact the  
 10 health of those trees?  
 11 MR. DAVIS: Yes, I did.  
 12 MS. GIRARD: And what is the basis for your  
 13 disagreement with that?  
 14 MR. DAVIS: Well, I, it's not so much that I  
 15 disagree with it. I think that, I think that this gets into  
 16 the area where I think you should have people who are  
 17 trained obviously in doing the specific NRI's, natural  
 18 resource inventory, forest stand delineation, make the call.  
 19 I laid that out as a suggestion in terms of my experience  
 20 where oftentimes we would try and create some type of buffer  
 21 to help protect the trees. And, in fact, talking with staff  
 22 at the Park and Planning Commission, they do say it's sort  
 23 of a case-by-case call.  
 24 I think what I would say here is that I think that  
 25 there needs to be a more careful look taken by someone in

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1 terms of making sure that the Westwoods area is being  
2 protected as much as possible given the requirements of the  
3 zone.  
4 MS. GIRARD: And when you say a careful look needs  
5 to be taken by someone, you're discounting the review that  
6 was done by not only the project landscape architect, but  
7 the Park and Planning staff and ultimately the Planning  
8 Board who approved the preliminary forest conservation plan?  
9 MR. DAVIS: I have concern that I'm not sure,  
10 reading the staff report, I'm not sure that the  
11 environmental staff looked at this from the standpoint of a  
12 planned development zone application and a higher rigor or  
13 procedural requirement in terms of protection of tree. I  
14 think this goes to a different level of finding than you  
15 would for just a typical forest delineation issue.  
16 MS. GIRARD: And what are you basing that on?  
17 MR. DAVIS: Again, basing it on my experience and  
18 issues looking at trees. I was involved in helping develop  
19 the first tree protection ordinance that was done in the  
20 County back in 1988, 1989, and then I worked with Cathy  
21 Conlin (phonetic sp.) when the State was, you know, going  
22 about the process or the procedures for requiring forest  
23 conservation and forest retention. And so I have experience  
24 of the discussion of the problems and I recognize that it's  
25 technical in terms of the protection of individual and

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1 specific trees and I certainly defer to the professionals  
2 who are foresters or who are trained in that regard.  
3 MS. GIRARD: You defer to that, but you're at the  
4 same time implicating that that analysis was not done here?  
5 MR. DAVIS: I don't think Park and Planning did it  
6 sufficiently for the purposes of a planned development zone  
7 case. I think that, I think that the, I think that it  
8 should have been more explicit in terms of the analysis that  
9 was performed by the staff that this was for a planned  
10 development zone application and recognition that there is a  
11 higher standard, I believe, for the review of a plan  
12 development case where it butts forested land.  
13 MS. GIRARD: So --  
14 MR. DAVIS: That's my opinion.  
15 MS. GIRARD: It's your opinion, but you recognize  
16 that the preliminary forest conservation plan was reviewed  
17 and approved by the Planning Board?  
18 MR. DAVIS: I recognize that.  
19 MS. GIRARD: As I promised to jump back and  
20 forth --  
21 MR. DAVIS: Okay.  
22 MS. GIRARD: -- I had one more thought on the  
23 green area calculations and the right-of-way. One of the  
24 other comments you made when you were reviewing that is that  
25 there's no certainty as to what DOT would require,

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1 Department of Transportation would require with regard to  
2 entrances, a potential future abandonment of the end of  
3 Towne Crest Drive or whatever. How do you know that these  
4 issues have not yet been vetted with DOT?  
5 MR. DAVIS: I asked staff at Department of  
6 Transportation if there, if they had reviewed this plan from  
7 the standpoint of improvements that would be required to the  
8 street and I was told that it had not yet been reviewed by  
9 the Department of Transportation staff.  
10 MS. GIRARD: You spoke to one person at Department  
11 of Transportation about this?  
12 MR. DAVIS: Yes, I did. Yes, I did.  
13 MS. GIRARD: So you're not aware of whether the  
14 applicant has had meetings with Department of Transportation  
15 and I believe it was on the record by at least one of the  
16 witnesses that there had been at least one meeting regarding  
17 the potential future abandonment of Towne Crest Drive. Did  
18 you hear that testimony?  
19 MR. DAVIS: I did hear that testimony and the  
20 individual I spoke with at Department of Transportation did  
21 say that there had been discussions associated with the  
22 question of abandonment, but it hadn't gone beyond, it  
23 hadn't reached any level of a decision.  
24 MS. GIRARD: With regard to density in the master  
25 plan, are you aware, are there any plans in the County that

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1 are older than the Gaithersburg Vicinity Master Plan?  
2 MR. DAVIS: Westburg plan is.  
3 MS. GIRARD: And is your opinion that plans  
4 reaching the age of almost 30 years old, is that unusual in  
5 the County?  
6 MR. DAVIS: Yes, I do believe that is unusual.  
7 MS. GIRARD: Would you argue that it's good  
8 planning practice to let plans go 30 years without updating  
9 them?  
10 MR. DAVIS: No, I think that they should be looked  
11 at more often than once every 30 years. I think that the,  
12 there would be an emphasis on trying to do it within the  
13 prescribed periods in the state law.  
14 MS. GIRARD: And you mentioned the master plan  
15 amendment process. I think you were referring to the minor  
16 amendment process?  
17 MR. DAVIS: Yes.  
18 MS. GIRARD: Is that what you meant? Are you  
19 familiar with requirements for those and the likelihood that  
20 Park and Planning and the County would take up one that  
21 dealt with one or potentially two properties?  
22 MR. DAVIS: Well, I understand the issue where  
23 they're concerned about effects on their work program. I'm  
24 just saying that that's a process that's available that the  
25 County could consider, that the County Council could

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1 consider in terms of trying to decide this, what I would  
2 call a major policy decision. But, again, I know that  
3 there's gatekeepers there and sometimes it's very difficult  
4 to get things moving that otherwise should probably go  
5 forward.  
6 MS. GIRARD: And in your testimony you were  
7 comparing the densities to the Shady Grove sector plan and I  
8 just want to make sure I have the numbers correct. And I  
9 know you were doing them on the fly, but under the TOMX  
10 zone, it was your conclusion that some of those densities  
11 near the Metro were 45 to 48 dwelling units per acre, is  
12 that correct?  
13 MR. DAVIS: Yes, and what I was looking at were  
14 the FAR's with 70 percent minimum residential and just  
15 trying to work some math off of those and the size of the  
16 property.  
17 MS. GIRARD: And the PD-35 that's proposed here,  
18 you're calling the 10 units per acre a difference comparable  
19 in your opinion?  
20 MR. DAVIS: Well, first of all, I don't think the  
21 situations are comparable in terms of the locations in the  
22 properties, but I think that, well, in terms of what I found  
23 in the density, we were looking at a potential increase of  
24 over, to a density of over 40 units per acre with the 329  
25 dwelling units.

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1 MS. GIRARD: Right, but I was talking specifically  
2 to the comparison of the two, the Shady Grove 45 to 48 and  
3 proposed here is 35? It's your, you would call those  
4 numbers comparable?  
5 MR. DAVIS: I would say that the numbers are  
6 comparable. I don't think the areas are comparable. But 10  
7 units per acre would be significant, fairly significant  
8 difference on a 10-acre site. It's 150 units.  
9 MS. GIRARD: I'm referring to, you referenced Case  
10 G-873?  
11 MR. DAVIS: Yes.  
12 MS. GIRARD: That's the, we'll call it Westburg  
13 case, easy reference. You mentioned that there are  
14 distinguishing factors in that case that make it different  
15 from the instant case, but are you familiar with the  
16 language in there that did speak to the age of that master  
17 plan and how that age affects the weight to be given to the  
18 Master Plan?  
19 MR. DAVIS: Yes, I did see that language.  
20 MS. GIRARD: Do you recall what it said?  
21 MR. DAVIS: Well, I mean, I think in terms of what  
22 you just summarized is pretty good. The idea there was that  
23 the Council felt that you could give some weight to a  
24 recommendation contained in a master plan that had been in  
25 existence for a long time.

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1 MS. GIRARD: I'm not sure that that's how I  
2 represented it.  
3 MR. DAVIS: Oh.  
4 MS. GIRARD: Was the County Council in that case  
5 saying that you should, that the weight, the weight of the  
6 specific recommendations of the plan is maintained no  
7 matter how old the Master Plan is?  
8 MR. DAVIS: No, I think that they felt that they  
9 had flexibility where they could take into account the age  
10 of the Master Plan when they were considering a rezoning for  
11 an area where the Master Plan was pretty old.  
12 MS. GIRARD: And we discussed the, some of the  
13 specifics of the plan, but -- and that there was an increase  
14 in residential units. Do you recall how much of an increase  
15 over the recommendations of the plan was allowed in that  
16 case?  
17 MR. DAVIS: I don't remember that there were, if  
18 the dwelling units were over the recommendation of the plan.  
19 I believe it was a PD-28, but only about a third of the site  
20 was being utilized for residential. So it was actually less  
21 than the residential density recommended in the Master Plan.  
22 I think the issue there was because there were other land  
23 uses on the site, the private school that's located there  
24 and the floor area associated with that. I was just trying  
25 to look to see if this really had any bearing in terms of

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1 the case that we have before us today and my conclusion is I  
2 didn't think it represented a precedent. I thought the  
3 issues were different.  
4 MS. GIRARD: So even though a 1/3 increase in the  
5 residential units was permitted, you don't feel that has --  
6 MR. BROWN: Objection. She's mis-stating the  
7 record.  
8 MS. GIRARD: Okay. Then I will pass down to Mr.  
9 Davis a copy of the hearing examiner's report and  
10 recommendation, G-808. If could please read the underlying  
11 language?  
12 MR. BROWN: At the bottom?  
13 MS. GIRARD: AT the bottom.  
14 MR. DAVIS: Did you say G-808 or --  
15 MS. GIRARD: 873.  
16 MR. DAVIS: 873? Okay. The area underlined in  
17 the red?  
18 MS. GIRARD: Yes.  
19 MR. DAVIS: Okay.  
20 MS. GIRARD: Can you please read that for the  
21 record?  
22 MR. DAVIS: Yes.  
23 "The applicant here has proposed a maximum  
24 amount of school space equivalent to the amount of  
25 office space the second plan recommended and



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1 lower, so that, move that density around?  
2 MR. DAVIS: But my recollection is that that was  
3 all contained within a plan such that all of the lands were  
4 contained within the plan. It wasn't just that part of it  
5 came in and took density from someplace else and brought it  
6 in. I don't recall that. I mean I would be more  
7 comfortable if this application encompassed a larger area  
8 and it wanted to shift the density, then I think that would  
9 be a different matter.  
10 MS. GIRARD: And you were here for Mr. Berman's  
11 testimony this morning that when they planned this area,  
12 they meant it to be an analysis area in which density could  
13 move around?  
14 MR. DAVIS: Yes, I heard that.  
15 MS. GIRARD: And you disagree with those  
16 conclusions?  
17 MR. DAVIS: Yes, I do.  
18 MS. GIRARD: And with regard to general density,  
19 do you believe that when, if and when the Master Plan is  
20 finally updated --  
21 MR. DAVIS: Uh-huh.  
22 MS. GIRARD: -- that analysis area 2, even if left  
23 alone, would be granted a higher density, that the density  
24 recommendation would be increased?  
25 MR. DAVIS: I think that if the County Council

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1 from the standpoint of a master plan feels that  
2 redevelopment is appropriate, then I would think it would be  
3 normal to provide for some type of an incentive in terms of  
4 a density increase to be able to help that come about. I  
5 think that's actually the proper way to do it would be for  
6 some type of a master plan amendment or some type of a  
7 policy document that could help provide the guidance for how  
8 that would occur.  
9 MS. GIRARD: And until such time and such  
10 amendments were forthcoming, property owners should just sit  
11 and wait?  
12 MR. DAVIS: That may be. You know, I can recall a  
13 situation that we had in Wheaton where we actually went to  
14 the Council with legislation so that we could provide or  
15 create a policy basis for some change associated with the  
16 overlay zone. We didn't tell people go file applications  
17 (indiscernible) because we knew they were going to get shot  
18 down for lack of conformance with the Master Plan. But I  
19 think that's an example where you go through a public  
20 process of, in effect, addressing the policy and having the  
21 County Council establish what they feel the policy should be  
22 and they did that in Wheaton. We asked for that. So I  
23 think, you know, with redevelopment, and this really is a  
24 redevelopment opportunity, you know, I think that you have  
25 to offer some type of incentive to help it move forward. I

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1 just feel very uncomfortable with the level that's being  
2 proposed in this application without having any kind of a  
3 policy basis to help it move forward.  
4 MS. GIRARD: May I just have a moment? That's all  
5 we have.  
6 MS. ROBESON: Okay. Mr. Brown.  
7 MR. BROWN: Just a couple of things, Mr. Davis. I  
8 want to make clear from your own calculations, you regard  
9 the density of this property as, you look at it on a net  
10 tract area basis the way the applicant does as 329 units  
11 divided by 8.11 acres --  
12 MR. DAVIS: Yes.  
13 MR. BROWN: -- is that right?  
14 MR. DAVIS: Yes.  
15 MR. BROWN: And how many dwelling units per acre  
16 is that?  
17 MR. DAVIS: 315.  
18 MR. BROWN: No, how many dwelling units per acre?  
19 MR. DAVIS: Oh, per acre. It's --  
20 MR. BROWN: Here's a calculator if you need it.  
21 MR. DAVIS: I think there's like -- again, I'm  
22 looking at the 315?  
23 MR. BROWN: 329 units.  
24 MR. DAVIS: Oh, that was wrong. It's about 40.6  
25 dwelling units per acre.

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1 MR. BROWN: So when you want to compare the  
2 density here to the density in the Shady Grove Sector Plan,  
3 which number is more appropriate, 35 or 40?  
4 MR. DAVIS: For this subject site?  
5 MR. BROWN: Yes, to compare it to Shady Grove.  
6 MR. DAVIS: Probably the 35 to 40 units. It's  
7 kind of the range for the properties.  
8 MR. DAVIS: No, Ms. Girard kept talking about this  
9 project as having a density of 35 units and asking you to  
10 compare that to something like 45 in the Shady Grove sector  
11 plan and my question to you is whether the more appropriate  
12 comparison is 40 rather than 35 to the Shady Grove sector  
13 plan?  
14 MR. DAVIS: I believe 40 would be the more  
15 favorable comparison given.  
16 MR. BROWN: The more favorable or the more  
17 appropriate?  
18 MR. DAVIS: The more appropriate.  
19 MR. BROWN: And have you actually worked out the  
20 numbers for the Shady Grove Sector Plan in terms of what  
21 those Metro, Metro neighborhoods work out to in actual  
22 dwelling units per acre rather than FAR?  
23 MR. DAVIS: No, I haven't done that. I just --  
24 MR. BROWN: Are you familiar with any, any sector,  
25 any sector plan or updated Gaithersburg area Master Plan

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1 that recommends densities, residential densities in the  
2 range of 35 to 40 dwelling units per acre, any further, any,  
3 any closer to the Shady Grove Metro station than this  
4 particular property?  
5 MR. DAVIS: No, I don't believe so. In fact, when  
6 I was looking at the Casey 7 property, which is located  
7 farther north moving towards the subject site, PD-18.  
8 MR. BROWN: I noticed on your resume that you seem  
9 to have some background in the concept of smart growth urban  
10 planning, is that correct?  
11 MR. DAVIS: Yes.  
12 MR. BROWN: How does smart growth planning relate  
13 to this question of proximity of density to the  
14 transportation notes?  
15 MR. DAVIS: Well, I think that under concept of  
16 smart growth, you would like to begin to, you would want to  
17 maximize your densities as, at locations that can be, where  
18 they can be serviced by appropriate infrastructure. For  
19 example, if you've got a transit station, that area would be  
20 in a better position of accommodating a higher density  
21 because more people would be able to benefit from the use of  
22 the facility.  
23 MR. BROWN: With a reduction in automobile  
24 transportation?  
25 MR. DAVIS: Yes, it ties into that.

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1 MR. BROWN: All right. I want to point out to you  
2 a couple of passages from resolution 16-525, which Ms.  
3 Girard was asking you about. This is Exhibit 1 to your  
4 report, correct? This is the resolution with regard to the  
5 G-873 --  
6 MR. DAVIS: Yes.  
7 MR. BROWN: -- Westburg?  
8 MR. DAVIS: Yes.  
9 MR. BROWN: First of all, on page, on page 11 of  
10 the resolution, what does the resolution say with regard to  
11 the sector plan recommended density limits for this  
12 property?  
13 MR. DAVIS: It says up to 353 dwelling units and  
14 180,000 square feet of office space that were commensurate  
15 with the PD-28 zone.  
16 MR. BROWN: Did you say or or and when you read  
17 that sentence?  
18 MR. DAVIS: And.  
19 MR. BROWN: Going back to page 6 of resolution 16-  
20 525, what was the development proposal for the project in  
21 terms of dwelling units and office space?  
22 MR. DAVIS: It was 121 dwelling units and 175,000  
23 square feet of space.  
24 MR. BROWN: Is there anything about that proposal  
25 that is in excess of the Master Plan recommendation?

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1 MR. DAVIS: No. The, no, there's not.  
2 MR. BROWN: Ms. Girard suggested that you had  
3 agreed with her that the, in terms of the gross tract area  
4 and a calculation of the green area, that the two were, I  
5 think she used the phrase connected at the hip, do you  
6 remember that?  
7 MR. DAVIS: Yes.  
8 MR. BROWN: Do you draw a distinction between  
9 maximum density and appropriate density in light of other  
10 possible considerations?  
11 MR. DAVIS: Say that again.  
12 MR. BROWN: Do you draw a distinction between  
13 maximum allowed density under the zoning code and an  
14 appropriate level of density in light of other  
15 considerations other than the maximum that might be allowed?  
16 MR. DAVIS: Yes. When examining a case that, if  
17 it comes in at maximum density, but there are issues, there  
18 are problems associated with it, then you would look towards  
19 changes. Oftentimes it would be less density that would  
20 address whatever problem there is.  
21 MR. BROWN: What if the result of those  
22 recommended changes were to reduce the density by, you know,  
23 a significant number of units, would that still be a plan  
24 that was consistent with the PD zone?  
25 MR. DAVIS: No, I think there should be some

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1 relationship between the density that they ask for, the  
2 density they can achieve, and the requirements of that zone.  
3 The requirements of the zone are sort of based on the  
4 density. So if you end up pulling the density out too much,  
5 then you'll, you potentially can have a situation where the  
6 density asked for doesn't really comport to the requirements  
7 that you have or the requirements associated with the zone.  
8 MR. BROWN: And was that the history of this  
9 particular project?  
10 MR. DAVIS: Well, there have been certainly  
11 changes where it's gone from a PD-60 to a PD-44 and now to a  
12 PD-35 with the, with reductions in density. There were  
13 changes to the zone requested to be more in line with the  
14 density requested.  
15 MR. BROWN: But if I understand your testimony  
16 correctly, none of that would justify switching from gross  
17 tract area to net tract area calculations?  
18 MR. DAVIS: I don't believe so. I still believe  
19 that the PD zones, the practice with those zones has been to  
20 utilize the gross tract area for purposes of density and  
21 also for green area. And I have seen other cases that  
22 didn't come in at the maximum density, but I didn't, I don't  
23 recall any of those cases of them trying to switch to a net  
24 lot area situation. And, again, I note there are zones and  
25 there are zoning ordinance that do require that you examine

1 development and green area based on a net lot situation.  
 2 MR. BROWN: Lastly, with respect to this rezoning  
 3 G-808, you first heard about this when?  
 4 MR. DAVIS: Well, this morning, the testimony.  
 5 MR. BROWN: Have you had an opportunity to examine  
 6 the development plan?  
 7 MR. DAVIS: For G-808? No, I just looked at the  
 8 summary sheet.  
 9 MR. BROWN: Let's suppose it were to turn out when  
 10 you did examine the development plan that some of the, some  
 11 of the green area shown on that development plan was in the  
 12 right-of-way. Would that change your mind about the, your,  
 13 about the, about the general applicability of the rule that  
 14 you described?  
 15 MR. DAVIS: No, I, to me, that, to me it's bad  
 16 public policy to start counting minimum green area  
 17 requirement on land that's located in the right-of-way. I  
 18 just don't think that makes sense to do that.  
 19 MR. BROWN: Well, what if they did it in this  
 20 particular case?  
 21 MR. DAVIS: Then I would say they probably made a  
 22 mistake.  
 23 MR. BROWN: Okay. I have nothing further.  
 24 MS. ROBESON: I hate to ask this because I know  
 25 Mr. Kaufman is going to leave.

1 MR. KAUFMAN: Yes, I'm going to have to.  
 2 MS. ROBESON: Can Ms. Girard sit for an extra 10  
 3 minutes or do you want to -- I have --  
 4 MR. KAUFMAN: I don't know who his next witness  
 5 is, so --  
 6 MS. ROBESON: Well, I had a couple of questions of  
 7 Mr. Davis based on what he just said.  
 8 MR. KAUFMAN: Okay. And the other thing I was  
 9 going to ask first, will you take a brief recess for --  
 10 MS. ROBESON: Well, when do you have to leave?  
 11 MR. KAUFMAN: Well, I think I should leave about  
 12 quarter of 5:00.  
 13 MS. ROBESON: Okay. So Mr. Davis will be our last  
 14 witness essentially because that leaves me only 20 minutes  
 15 for the next witness.  
 16 MR. KAUFMAN: And you had some questions you said?  
 17 MS. ROBESON: Well, I just had a couple of  
 18 questions, but they relate -- I guess what I'm trying to,  
 19 and you may have said it and I just didn't get it, but are  
 20 you saying -- does this comport with smart growth policies  
 21 or not?  
 22 MR. DAVIS: This particular application?  
 23 MS. ROBESON: Yes.  
 24 MR. DAVIS: I believe that it does not comport  
 25 with smart growth policies.

1 MS. ROBESON: And that's because?  
 2 MR. DAVIS: Because I believe that the basis for  
 3 the increased density in terms of relationship to MARC train  
 4 station, bus service, doesn't rise to the level of where you  
 5 would actually go against the, not go against, but where you  
 6 would allow a development at significantly higher densities.  
 7 I don't see this as a smart growth situation.  
 8 MS. ROBESON: Okay. All right. That was my  
 9 question and I know you're probably going to want -- do you  
 10 want to follow-up question on that?  
 11 MS. GIRARD: No.  
 12 MR. KAUFMAN: No.  
 13 MS. ROBESON: Okay. Well, there you go. What I  
 14 think -- who is your next witness, Mr. Brown?  
 15 MR. BROWN: Is Mr. Booher here?  
 16 MR. KAUFMAN: Yes.  
 17 MR. BROWN: Mr. Booher.  
 18 MS. ROBESON: Is he available on March 4th?  
 19 MR. BOOER: I could probably be available then.  
 20 MS. ROBESON: How long do you think his testimony  
 21 is going to take?  
 22 MR. BROWN: I don't know. We haven't rehearsed  
 23 it.  
 24 MS. ROBESON: Oh, okay. Why don't you take a 5-  
 25 minute break and you can talk to him and then we'll come

1 back and I'll make a decision on, given Mr. Kaufman's  
 2 schedule on how far we want to go, all right? I mean  
 3 tonight.  
 4 (Recess)  
 5 MS. ROBESON: We are back on the record. Mr.  
 6 Brown, how long do you think your witness will be?  
 7 MR. BROWN: I think I can get through Mr. Booher  
 8 in about 10 to 15 minutes, depending on how long they want  
 9 to cross-examine after that.  
 10 MS. ROBESON: Would you prefer to wait so you can  
 11 go or --  
 12 MR. KAUFMAN: Well, we can do one of two things.  
 13 We could wait or I can let Ms. Girard, who is quite capable  
 14 of dealing with this without me, handle this witness.  
 15 Whatever you desire is fine.  
 16 MS. ROBESON: I would prefer to -- I don't know  
 17 how many hearing dates we have left because we have Costco  
 18 in March that's taking a lot of hearing dates, so --  
 19 MR. KAUFMAN: I would like to suggest that when  
 20 you do finish today, that we do find one extra day just in  
 21 case we need it because next time we come back, he has to  
 22 finish his case. We may have some rebuttal witnesses --  
 23 MS. ROBESON: Right.  
 24 MR. KAUFMAN: -- and then there's closing  
 25 argument. So just out of an abundance. I would love to

1 finish next time we're here --  
 2 MS. ROBESON: Right.  
 3 MR. KAUFMAN: -- but I --  
 4 MS. ROBESON: No, I don't have a -- I understand  
 5 what you're saying and I don't, I don't have a problem with  
 6 that. So, but I can't do it now. So --  
 7 MR. KAUFMAN: No, I understand that you'll, if  
 8 you'll have a tentative date and Erin will check with my --  
 9 MS. ROBESON: I can't get you a tentative date  
 10 tonight.  
 11 MR. KAUFMAN: Oh, okay. That would be --  
 12 MS. ROBESON: I can, but we can work on that. I  
 13 just need the fourth date to be able to continue the case to  
 14 without the advertising. But after tonight, we'll work on a  
 15 date and we can do that --  
 16 MR. KAUFMAN: That's fine because then I'll be  
 17 able to check my calendar.  
 18 MS. ROBESON: Right. Right.  
 19 MR. KAUFMAN: So with that, I'll say thank you and  
 20 I'll take my leave.  
 21 MS. ROBESON: Thank you.  
 22 MR. KAUFMAN: All right.  
 23 MS. ROBESON: Now before we start, I did want to  
 24 say I did look up the land use article of the code because I  
 25 wanted to see what it said about Montgomery County as

1 opposed to the other jurisdictions and I did happen to find  
 2 out that there are several bills in the legislature changing  
 3 the, to change the six-year requirement to 10 years. So  
 4 just so you know that, I'm just disclosing it. I don't know  
 5 if it affects your testimony or not. There's also a couple  
 6 of bills to eliminate the growth tiers. So I'll throw that  
 7 out there. I did find that.  
 8 MR. KAUFMAN: When you saw growth tiers, you mean  
 9 the State's areas where they see expansion of your  
 10 developable area and these are currently pending bills, is  
 11 that what you're saying?  
 12 MS. ROBESON: Yes.  
 13 MR. KAUFMAN: Maybe, you know, thank you for  
 14 letting us know and we'll take a look at those.  
 15 MS. ROBESON: So I don't know if six years is  
 16 going to be the standard or 10 years, I don't know, and  
 17 there's no amendment to change Montgomery County's practice  
 18 of updating by work program. Apparently, the State Planning  
 19 Office, and this is via Carol Ruben, considers any amendment  
 20 to a master plan an update and it does say in the Master  
 21 Plan that it's an update to the general plan. So they, the  
 22 Council legislatively determines the update via the work  
 23 program.  
 24 MR. KAUFMAN: There's nothing that you know of  
 25 that goes beyond 10 years. I mean there's no 20-year or 30-

1 year --  
 2 MS. ROBESON: I didn't look hard. I didn't see  
 3 anything, no.  
 4 MR. KAUFMAN: Okay.  
 5 MS. ROBESON: So that's why I say you can argue  
 6 the impact of it. I'm just disclosing it because I feel  
 7 obliged because I found --  
 8 MR. KAUFMAN: Thank you very much.  
 9 MS. ROBESON: Okay.  
 10 MR. KAUFMAN: Okay. Bye-bye.  
 11 MS. ROBESON: All right, Mr. Brown.  
 12 MR. BROWN: I'm calling Bob Booher.  
 13 MS. ROBESON: Okay, Mr. Booher, please raise your  
 14 right hand.  
 15 (Witness sworn.)  
 16 MR. BROWN: Would you state your full name for the  
 17 record and spell your last name please, Mr. Booher?  
 18 MR. BOOER: Robert Brian Booher. It's B-O-O-H-E-  
 19 R.  
 20 MR. BROWN: And where do you live, Mr. Booher?  
 21 MR. BOOER: 111 Maple Avenue in Washington Grove.  
 22 MR. BROWN: And how long have you lived there?  
 23 MR. BOOER: About 24 years.  
 24 MR. BROWN: And what positions have you served in  
 25 or on behalf of the town during that time?  
 MR. BOOER: For, the largest number of years on

1 the Historic Preservation Commission. And I've been on  
 2 various other committees and work groups, but that's my  
 3 primary focus.  
 4 MR. BROWN: And what education, training,  
 5 experience, or other background do you bring to this task?  
 6 MR. BOOER: I'm an architect and registered  
 7 architect in Maryland. And I work for a firm in Washington,  
 8 D.C., that does both large-scale and small-scale development  
 9 work and preservation work. Half of our portfolio is doing  
 10 Federal, modernization of Federal office buildings.  
 11 MS. ROBESON: Okay.  
 12 MR. BROWN: And your current position in the  
 13 Historic, in the Washington Grove Historic Preservation  
 14 Commission?  
 15 MR. BOOER: I'm the chair.  
 16 MR. BROWN: What has been the HPC's involvement in  
 17 evaluating the Towne Crest project?  
 18 MR. BOOER: We examine the initial application.  
 19 As a group, we made comments and investigations as to the  
 20 context and the impact of the project on Washington Grove  
 21 and the surrounding areas. We debated it and then we  
 22 prepared a letter which was submitted then to the Planning,  
 23 the Montgomery County Planning Board. I also testified at  
 24 the hearing.  
 25 MR. BROWN: What -- maybe this is an aside, but

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1 could you just briefly elaborate on the working relationship  
2 between your Historic Preservation Commission and the County  
3 Historic Preservation Commission?  
4 MR. BOOER: Well, they're actually two separate  
5 and parallel bodies. They provide guidance and regulatory  
6 action on properties that are on their historic  
7 preservation, on their historic atlas. And whereas  
8 Washington Grove is on the, both the state and the national  
9 register of historic places, it's not on the County atlas.  
10 Therefore, we would defer to them to ascertain impacts of  
11 development that would take place without our borders on  
12 their historic property as we would and vice versa. I  
13 don't -- there may be other, there is inter-governmental  
14 courtesy between the two bodies and to respect the various  
15 resources and presumably we share the same goals,  
16 preservation goals. I'm not aware of a statutory  
17 requirement.  
18 MR. BROWN: And has the County HPC weighed in in  
19 any way on this proposal?  
20 MR. BOOER: They did. They had, they did at the  
21 very last minute actually on pressure from us and requests  
22 from us and it is pretty much just a conversation about the  
23 trees.  
24 MR. BROWN: Okay. Exhibit 88J is a September 4,  
25 2012 letter from you to the chair of the Planning Board.

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1 Does this summarize the HPC's position on the proposal when  
2 it was a PD-44 proposal?  
3 MR. BOOER: Yes, it does.  
4 MR. BROWN: Exhibit 99B is a February 5th letter  
5 to the Hearing Examiner. This letter is also from you?  
6 MR. BOOER: Yes.  
7 MR. BROWN: Is this letter an update of the HPC  
8 position on the application?  
9 MR. BOOER: Yes, it is. We amended that after  
10 reviewing the revised application.  
11 MS. ROBESON: When you say revised, the one on  
12 February 5th is updated to a review of the PD-35 plan?  
13 MR. BOOER: Yes, it is.  
14 MS. ROBESON: Okay.  
15 MR. BROWN: Is there any significant change in the  
16 views expressed by the HPC between the two letters?  
17 MR. BOOER: We didn't feel that there was a  
18 substantive change from a preservation standpoint between  
19 the two applications, so our views on it are substantially  
20 the same.  
21 MR. BROWN: Have you reviewed Mr. Davis's report?  
22 MR. BOOER: Yes.  
23 MR. BROWN: Did you hear his testimony today?  
24 MR. BOOER: A part of it.  
25 MR. BROWN: How do your evaluations, the HPC's

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1 evaluations and conclusions compare with his?  
2 MR. BOOER: They support each other. I was  
3 actually very encouraged by his interpretations and they  
4 really do fit together well, I think.  
5 MR. BROWN: I want to ask you to summarize where  
6 you or the HPC stand on particular questions that have come  
7 up. What would you regard as the impact of the application  
8 if it were approved as it is presently formed on the impact  
9 on historic resources within Washington Grove?  
10 MR. BOOER: Well, with such an urban project, it  
11 would have a lot of, a lot of impact, in addition to the  
12 change in the zoning and really the change in the  
13 fundamental view, planning view of the area. And there  
14 would be several parts to that. The -- it would  
15 significantly alter the context of Washington Grove as an  
16 historic resource. The context of Washington Grove, the  
17 founding context was farms and fields, forests, really as an  
18 antidote to an urban environment, Washington, D.C., that  
19 subsequently has become a suburban context as clear here  
20 with some diminution of the original context of the Grove,  
21 with a step to an urban context which this implies that  
22 would have significantly, significant impact and would  
23 essentially negate the context of Washington Grove, the  
24 founding context of Washington Grove.  
25 It also would create a precedent at the edge, at

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1 the very edge of Washington Grove that if that precedent  
2 were followed around the perimeter, it would create a very  
3 intense focus of that which is, of course, the -- would be  
4 applied at the Washington Grove station, the MARC station,  
5 it would have a significant impact on the Grove which is a  
6 low-density development. The connectivity then between that  
7 type of development and the focus of that development, which  
8 would be the MARC station, would be directly through the  
9 Grove. So it would have a very, potentially a cumulative  
10 effect on the context and the very nature of Washington  
11 Grove.  
12 MR. BROWN: Do you see this as potentially  
13 impacting your status on the National Historic Register?  
14 MR. BOOER: Yes, it could very well do that.  
15 MS. ROBESON: Can I ask you, what's the boundary  
16 of the National Historic District?  
17 MR. BOOER: It is smaller than the boundary that  
18 you see there.  
19 MS. ROBESON: Okay. Is it beyond the developed  
20 town? Does it include some of the woods?  
21 MR. BOOER: Yes. Yes, it includes this part.  
22 Well, no, actually it doesn't include either of the woods.  
23 MS. ROBESON: It doesn't include the woods?  
24 MR. BOOER: No, but that boundary when it was  
25 placed on the register, that was over 30 years ago and that

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1 boundary and the nature of historic properties has changed  
2 radically over the period of time. Now what they're doing  
3 is including context as part of --  
4 MS. ROBESON: Oh, I see.  
5 MR. BOOHER: -- part of a natural resource. And  
6 we are actually in the process of trying to update, we will  
7 go through a process of updating that registration in order  
8 to include contact.  
9 MS. ROBESON: Okay.  
10 MR. BROWN: Mr. Davis addressed compatibility  
11 concerns. I'd like you to address your compatibility  
12 concerns and if necessary please distinguish between your  
13 concerns as the sort of the chair of the commission, the  
14 Historic Preservation Commission, and your concerns as a  
15 resident if you can, if they are, if they should be  
16 separated, but I'd like you to talk about both if they're  
17 different.  
18 MR. BOOHER: Well, they would be pretty much  
19 congruent. The -- we do not feel that the project is  
20 compatible by any means with the context neither in terms of  
21 scale or in terms of use or in terms of organization. The  
22 similar scale is probably the primary measure or element of  
23 compatibility and as we have heard, we, the project has  
24 proposed 329 units on 8 acres, a little over 40 units per  
25 acre, compared to Washington Grove which is 225 units on 200

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1 acres. That's a little over one per acre.  
2 The project also proposes to aggregate most of,  
3 both, almost all of its units into two fairly large single  
4 structures, 4-story structures, and that is immediately  
5 adjacent to single-family, attached, single-family detached  
6 and a forest. It's hard to actually compare those two and  
7 call them compatible either in density or in actual scale  
8 and massing. On a detailed level, they have, they have made  
9 an attempt to variegate --  
10 MS. ROBESON: And you're referring to 129?  
11 MR. BOOHER: 129A, yes. To variegate the, this  
12 façade, which faces the Towne Crest Drive in relationship to  
13 the adjacent property, but they've essentially turned their  
14 back on this part, which is adjacent to the woods. And they  
15 have provided no, on a scale have provided no public  
16 recreation space at all which is, it's essentially a closed,  
17 insular community in and of itself. It doesn't -- it's not  
18 open to the surrounding communities. It's not integrated  
19 with the surrounding communities.  
20 In addition, well, in contrast, Washington Grove,  
21 and I'll put Exhibit 10 back up, Washington Grove is  
22 actually an example of a 19th century smart growth  
23 community. The houses are actually clustered, I deferred to  
24 clustered before, in a clustered way in order to preserve  
25 the surrounding woods. They are laid out on walking paths.

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1 There's ample recreation space which is open to all, all the  
2 community. It has, it also has a small, commercial area  
3 adjacent to the train. So it -- and this is all a vibrant,  
4 thriving community. So it's really a very good example of  
5 smart growth on a smaller scale.  
6 The adjacent neighborhood of Saybrooke, which is  
7 right here --  
8 MS. ROBESON: Wait, I can't see where.  
9 MR. BOOHER: Right here.  
10 MS. ROBESON: North of Maple Lake Park woods and  
11 the subject property?  
12 MR. BOOHER: Yes, and this I'll refer to Exhibit  
13 10A, which is this area right here. That's the Saybrooke  
14 community, single-family homes. That was developed by Joe  
15 Alfandre in direct relationship to Washington Grove. He  
16 knew and understood Washington Grove in the context and did  
17 this development as a compatible relationship to Washington  
18 Grove both in scale and character.  
19 He also respected the Westwoods and knowing that  
20 that was an integral part of the Washington Grove community.  
21 The Amity community, which is here, is indeed here --  
22 MS. ROBESON: No, wait, is that -- it's southeast  
23 of Washington Grove Lane?  
24 MR. BOOHER: Yes.  
25 MS. ROBESON: Okay.

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1 MR. BOOHER: The Amity community is a mixture of  
2 single-family, multi-family and town homes and has  
3 integrated public facilities to use, as does Washington  
4 Grove, as does Saybrooke. So these communities that  
5 surround this property provide that integrated, conceptual  
6 basis both in terms of organization, use and density.  
7 The purpose clause of the PD zone, my  
8 understanding is that it's supposed to provide an increase  
9 in compatibility over a normal zone and an increase in  
10 public space and an increase in social interaction. That's  
11 what the PD zone is supposed to encourage as opposed to  
12 normal zone. It doesn't seem like this project is really  
13 doing that.  
14 MR. BROWN: I'd like to address in terms of your  
15 knowledge either as a, on the HPC or as a long-time  
16 resident, elaborate on the, on Mr. Davis's statements about  
17 whether or not this is, this project exhibits the kind of  
18 smart growth that promotes higher level density near transit  
19 nodes considering the public transit options available in  
20 your community.  
21 MR. BOOHER: Yeah, the public transit options, and  
22 I'll put this back down and refer to Exhibit 10 again, there  
23 is bus, there are bus lines. Just like throughout the  
24 County, there's bus lines. The unusual thing, of course, is  
25 the MARC station. And he, through, he was trying to

1 remember how many of the trains actually stop at Washington  
2 Grove and in the morning it's four and in the afternoon it's  
3 five. We have been trying for years and years to increase  
4 the number of trains that stop there and it's, it's,  
5 actually it decreases. It's been decreasing. So it's  
6 not --

7 MS. ROBESON: During what, do you know what time  
8 of day, I mean is it spread out over the morning or is in  
9 rush hour or do you remember?

10 MR. BOOHER: Yeah. I actually take the train.

11 MS. ROBESON: Okay.

12 MR. BOOHER: And I don't take it as regularly as I  
13 would because the frequency of the trains is not  
14 sufficiently frequent to meet my schedule.

15 MS. ROBESON: Okay.

16 MR. BOOHER: So I either go by train or I take the  
17 bus to the Metro and go via Metro. So they are, yes, during  
18 rush hour there's an early morning train and the last train  
19 is actually, stops at 8:30 in the morning. Afternoon,  
20 there's an early afternoon back that's about 2:00 and it  
21 goes until 7:30.

22 MS. ROBESON: Okay.

23 MR. BOOHER: The last train. So, yeah, this, if  
24 we compare this to the Shady Grove plan, which Mr. Davis  
25 described pretty accurately, generally what, in a smart

1 growth situation you start with the highest density, right  
2 at the Metro stop, you have integrated community retail, and  
3 then the density tapers off until it reaches the half-mile  
4 walking distance from the transit stop where it no longer  
5 becomes a transit-oriented development. This is just the  
6 opposite. The highest density piece that we see here is  
7 being, is right at the edge of the, of Washington Grove and  
8 the lowest density piece, which we intend and want to remain  
9 low-density is between the high-density piece and the actual  
10 transit stop.

11 In addition, this is beyond the half-mile limit  
12 that the Montgomery County planning principles use as the  
13 feasible walking distance to transit. And the -- we  
14 participate in the Shady Grove Sector Plan both in the,  
15 endorsed and the ultimate plan that came out as a proper  
16 smart growth and transit-oriented development. They have  
17 retail integrated with it. They have a school. They have  
18 a library. They have office space. That's an integrated,  
19 planned community. That's what the plan development is  
20 supposed to make, not just density in one spot.

21 So if this kind of density becomes a precedent for  
22 this area, including Gaithersburg over here, it has pretty,  
23 pretty -- and on this side of the tracks, which is part of  
24 the County, that's pretty serious consequences for the  
25 nature of Washington Grove. Another, the other things that

1 I picked out of the purpose clause of the PD zone is to  
2 produce a balanced and coordinated mixture of residential  
3 and retail convenience uses to promote a broad range of  
4 housing types where we have two, we have several small  
5 townhouses and apartments and to ensure the compatibility  
6 and coordination with each development and surrounding land  
7 areas. This project does not do that in my opinion.

8 MR. BROWN: Do you happen to know the bus rush  
9 hour transit time from Towne Crest to the Shady Grove Metro?

10 MR. BOOHER: Not from Towne Crest. The one that I  
11 take is actually from here and it's pretty direct to Shady  
12 Grove. This one actually travels a pretty long distance  
13 around. I never take the one that would go by here because  
14 it takes so long to do it.

15 MR. BROWN: Just so that we know what you're  
16 pointing out, when you said this one, you're referring to  
17 traveling northeast from Towne Crest?

18 MR. BOOHER: Well, yes, it goes in this direction.  
19 It goes around somewhere and comes back around to --

20 MS. ROBESON: So it goes northeast and then east  
21 and then comes south toward the Metro?

22 MR. BOOHER: Yeah. Yeah. And I, and, again, I,  
23 it just takes too long. I would never take it.

24 MR. BROWN: And you take a bus from somewhere near  
25 the MARC station?

1 MR. BOOHER: Yes, there's a stop right here and a  
2 stop at the MARC station. That bus actually that goes past  
3 here, then continues along this --

4 MS. ROBESON: Wait. Wait. Which bus?

5 MR. BOOHER: The bus that stops at the Towne Crest  
6 property.

7 MS. ROBESON: Okay. Goes south --

8 MR. BOOHER: Which is --

9 MS. ROBESON: Goes south on Washington Grove Lane?

10 MR. BOOHER: Correct and then --

11 MS. ROBESON: And then where does it go?

12 MR. BOOHER: It goes into Gaithersburg.

13 MS. ROBESON: Oh, okay.

14 MR. BOOHER: So it travels like that.

15 MS. ROBESON: And then circles -- wait. Where  
16 does it go?

17 MR. BOOHER: I can describe it.

18 MS. ROBESON: Take me the route, okay, so I can  
19 understand.

20 MR. BOOHER: Okay. Beyond Gaithersburg, I don't  
21 know where it goes, but it goes to downtown Gaithersburg and  
22 goes, comes along, what is this, Girard, and -- is this  
23 Girard?

24 MR. BROWN: Diamond.

25 MR. BOOHER: Diamond, this is Diamond, and right

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1 to the corner of where Washington Grove is, it turns on  
2 Washington Grove Lane, goes north past the Westwood, past --  
3 MS. ROBESON: I see.  
4 MR. BOOHER: -- past the Towne Crest development  
5 and comes up here. I don't know whether it turns down Mid-  
6 County --  
7 MS. ROBESON: Okay.  
8 MR. BOOHER: -- or if it continues to go to the  
9 Flower Hill area.  
10 MS. ROBESON: Okay. So it proceeds from --  
11 MR. BOOHER: I think it does.  
12 MS. ROBESON: -- Gaithersburg southeast and then  
13 turns northeast on Washington Grove Lane and then at some  
14 point turns east or southeast and back to Shady Grove?  
15 MR. BOOHER: And I believe it goes to the Flower  
16 Hill community before it goes there.  
17 MR. BROWN: Does the Historic Preservation  
18 Commission have any avenue or authority to address  
19 compatibility concerns that might arise after the  
20 development were approved?  
21 MR. BOOHER: No, not really because we're not part  
22 of the normal County review process, especially if it goes  
23 directly to site planning. There isn't going to be much  
24 opportunity to comment on that.  
25 MR. BROWN: Any other items of concern you'd like

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1 to note for the record?  
2 MR. BOOHER: Well, yeah. My concern about the  
3 master plan process and sort of the bypassing of the master  
4 plan process to -- the whole process, my understanding, is  
5 to avoid piecemeal development and to encourage  
6 participatory comprehensive deliberation over an entire area  
7 that take into consideration all of the needs of the  
8 community and come up with an integrated plan that works for  
9 everybody. This process, which would de facto rezone one  
10 portion of it, is bypassing that whole integrative, the  
11 benefit of that integrative process and if there's a  
12 property that's going to rise about that normal process, it  
13 should have such clear benefits to the, to the whole, the  
14 surrounding community and the County in general that it,  
15 there would be no question as to what the impacts were or  
16 the negative aspects and I don't think that this project  
17 rises to that level of being such a clear benefit.  
18 MR. BROWN: Thank you. That's all I have.  
19 MS. ROBESON: Ms. Girard.  
20 MS. GIRARD: Mr. Booher, good afternoon.  
21 MR. BOOHER: Hi.  
22 MS. GIRARD: Just to be clear, you're speaking as  
23 a, as the chair of the Historic Preservation Commission  
24 resident, but you're not an expert in smart growth planning,  
25 you weren't speaking as an expert architect --

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1 MR. BOOHER: No.  
2 MS. GIRARD: -- or any of that? And you  
3 referenced the County HPC weighing in, did I hear that  
4 correctly?  
5 MR. BOOHER: Yes, there was a letter that they  
6 provided I seem to recall that discussed the trees.  
7 MS. GIRARD: Is that in the record do we know?  
8 MR. BOOHER: I don't.  
9 MS. ROBESON: I, that is not familiar to me. I  
10 don't -- can you check, Mr. Brown --  
11 MR. BROWN: I will.  
12 MS. ROBESON: -- if it's in the record and --  
13 MR. BROWN: I will.  
14 MS. ROBESON: -- I don't recall it being in the  
15 record.  
16 MS. GIRARD: And approximately when did the County  
17 Historic Preservation Commission take that action? Was it  
18 an action --  
19 MR. BOOHER: Yes.  
20 MS. GIRARD: -- or a letter?  
21 MR. BOOHER: It was a letter.  
22 MS. GIRARD: Okay.  
23 MR. BOOHER: And it was the day before the  
24 hearing.  
25 MS. GIRARD: The last date, the last hearing date?

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1 MR. BOOHER: Yes.  
2 MS. GIRARD: And do you know what process was  
3 followed to obtain that letter? Did they have a hearing?  
4 Was --  
5 MR. BOOHER: No. My understanding, and this is  
6 just my understanding from discussing it with the chair,  
7 with the, actually what's his name, I forgot his name, was  
8 that they were just asked to look at it and write a letter,  
9 essentially make a comment.  
10 MS. GIRARD: Okay. So --  
11 MR. BOOHER: Because it was not on the County  
12 atlas, there was no formal process that was, needed to be  
13 followed.  
14 MS. GIRARD: Right. I'm just wondering what  
15 information they were looking at and whether staff did an  
16 analysis or you're not sure?  
17 MR. BOOHER: If it was, it was fairly quick  
18 because it was the day before the hearing.  
19 MS. GIRARD: And you spoke quite a bit about  
20 compatibility. Do you believe the existing development  
21 there today is compatible?  
22 MR. BOOHER: I feel it's more compatible than  
23 proposed.  
24 MS. GIRARD: In terms of appearance, density?  
25 MR. BOOHER: But the largest one is in terms of



1 requirements of the zone as to when you can introduce  
2 commercial and retail uses into a PD development?

3 MR. BOOHER: Not specifically, no.

4 MS. GIRARD: So it wouldn't surprise you to know  
5 that the reason none is proposed here is because it's  
6 prohibited by the actual zone?

7 MR. BOOHER: It wouldn't surprise me, no.

8 MS. GIRARD: And with regard to the bus route, you  
9 mentioned that your, the bus stop you take or the bus route  
10 you take is more, is direct --

11 MR. BOOHER: Yes.

12 MS. GIRARD: -- to the Metro? Would anything  
13 prohibit someone to figure this out at Towne Crest from  
14 walking down to your stop and taking your bus rather than a  
15 more circuitous route?

16 MR. BOOHER: Nothing would prohibit it, no, though  
17 it's, again, over, it would be over half a mile to do so.

18 MS. GIRARD: But half a mile is generally  
19 recognized as --

20 MR. BOOHER: The limit.

21 MS. GIRARD: -- a comfortable walking distance.

22 MR. BOOHER: The limit of the walking distance.

23 MS. GIRARD: That's all I have.

24 MS. ROBESON: All right. Mr. Brown.

25 MR. BROWN: Nothing further.

1 MS. ROBESON: All right. What we're going to do  
2 then is continue this case to March 4th at 11:00. How many  
3 more witnesses do you have, Mr. Brown?

4 MR. BROWN: I have three.

5 MS. ROBESON: More?

6 MR. BROWN: Three more.

7 MS. ROBESON: Okay. All right. And I will look  
8 for another day on the hearing calendar just as a safety  
9 valve since we're starting late on the 4th. A letter did  
10 just come in today, just so you all know, from Montgomery  
11 Preservation, but I, it hasn't been numbered as an exhibit  
12 yet, all right?

13 So with that, we will adjourn until March 4th at  
14 11:00 a.m. Thank you very much.

15 (Whereupon, at 5:05 p.m., the hearing was  
16 concluded.)

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C E R T I F I C A T E

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

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

By:

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Tracy Hahn, Transcriber

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