

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
LOCAL MAP AMENDMENT : 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
March 4, 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
Stacey Umunna	6, 12
Charlie Challstrom	14, 42, 66
Georgette Cole	69
Ron Seiboth	106, 115
David Ager	121, 155, 169
Anne Randall	172

* * * * *

EXHIBIT NO.

140	Excerpts from 1983 final draft of Gaithersburg Vicinity Master Plan	25
141	District Council Resolution 15-1586 approving application G-840	49

P R O C E E D I N G S

1 MS. ROBESON: I'm going to call the case of Local
2 Map Amendment Application G-910, application of Towne Crest
3 Apartments, LLC, requesting rezoning from the R-30 and R-
4 T12.5 zones to the PD-35 zone for property located at 17500
5 Towne Crest Drive, Gaithersburg, Maryland, and further
6 described as Towne Crest Parcel A. Are there any -- I think
7 we're beginning with Mr. Brown's next witness. Before we
8 begin, are there any preliminary matters?
9
10 MR. KAUFMAN: One preliminary matter, Madame
11 Examiner. Good morning first.
12 MS. ROBESON: Good morning, Mr. Kaufman.
13 MR. KAUFMAN: We would like to proffer to the
14 record today the transcript from the Montgomery County
15 Planning Board and the transcript from the Gaithersburg
16 Planning Board hearings. So --
17 MS. ROBESON: The Gaithersburg Planning Board?
18 MR. KAUFMAN: Yes.
19 MS. ROBESON: All right. Do you have any
20 objections, Mr. Brown? I know that the Planning Board we
21 had already spoken about. Do you have any objections to the
22 Gaithersburg, the Gaithersburg Planning Commission
23 transcript coming into the record?
24 MR. BROWN: No, to the extent that they considered
25 this application, we have no objection.

142	Housing element of the general plan approved and adopted in April of 2011	57
143	2009 Master Plan for the town of Washington Grove	61
144A	Poster of a walk on Daylily Lane	76
144B	CD of poster of a walk on Daylily Lane	76
145	Distance relationships, Scheme B	108
146A	Site line cone of vision	109
146B		
147	General chronology	137

1 MS. ROBESON: Okay. So the Planning Board
2 transcript will be 137.
3 MR. KAUFMAN: Hang on. That's the Park and
4 Planning, right?
5 MS. ROBESON: Yes, Montgomery Planning Board.
6 MR. KAUFMAN: No, I already have.
7 MS. ROBESON: How's that?
8 MR. KAUFMAN: I have 130.
9 MS. GIRARD: Here, I'll give you one.
10 MR. KAUFMAN: Okay. Could you hold on just a
11 minute --
12 MS. ROBESON: Sure.
13 MR. KAUFMAN: -- because I don't have the latest.
14 MS. ROBESON: Montgomery County Planning Board
15 transcript of hearing.
16 MR. KAUFMAN: It is 137?
17 MS. ROBESON: Yes. And then the Gaithersburg
18 Planning Commission transcript is 138. All right.
19 MR. KAUFMAN: I don't know if we have anything
20 else. Thank you.
21 MS. ROBESON: All right.
22 MR. KAUFMAN: Nothing further for us. Thank you.
23 MS. ROBESON: Mr. Brown, do you want to present
24 your next witness?
25 MR. BROWN: Yes, ma'am. We're calling Stacey

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1 Umunna. Would you state your full name for the record
2 please?
3 MS. UMUNNA: My name is Stacey Umunna.
4 MS. ROBESON: And can you spell it for the court
5 reporter?
6 MS. UMUNNA: Stacey is S-T-A-C-E-Y. Umunna is U-
7 M-U-N-N-A.
8 MS. ROBESON: And can you raise your right hand?
9 (Witness sworn.)
10 MS. UMUNNA: Good morning to everyone. My name --
11 MR. BROWN: Ms. Umunna, my understanding is that
12 you would like to read your letter into the record, is that
13 right?
14 MS. UMUNNA: Yes, that's correct.
15 MR. BROWN: Okay. Does this letter identify where
16 you live?
17 MS. UMUNNA: Yes, it does.
18 MR. BROWN: Well, go right ahead.
19 MS. UMUNNA: Okay. My name is Stacey Umunna. I
20 live at 7 Daylily Lane along with my husband and three small
21 children. Our property abuts the proposed Towne Crest
22 development. We have substantial concerns about how the
23 development would negatively impact our privacy, our quality
24 of life, property value and resell potential.
25 First, we do find some appeal in the plan to

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1 upgrade the condition of Towne Crest. It's long overdue and
2 the residents of Towne Crest deserve an affordable, clean,
3 safe and comfortable place to call home. Also, we're not
4 opposed to a reasonable amount of increased density to
5 advance the cause. However, we absolutely do not support
6 tripling the density as presented in the amended plan. We
7 also do not support the plan for Building B and the damage
8 it would cause to the trees on our property and in the
9 Westwoods.
10 We are requesting that the developers redesign the
11 plan in compliance with the zoning ordinance by providing at
12 least 100 feet of separation from our home. We hope this
13 can also achieve a reduction in density and eliminate the
14 need to remove trees from our property and the Westwoods.
15 The current plan partially acknowledges the
16 ordinance and now includes a setback for all of the
17 properties along Daylily Lane except ours. This decision to
18 acknowledge the zoning ordinance and then ignore it with our
19 property is disappointing because the setback of Building B
20 from our home is still inadequate and only 30 feet from our
21 property line.
22 We would like to see a redesign plan that does not
23 interfere with the peace and privacy we currently enjoy. As
24 it stands, we can only see one balcony from our children's
25 bedroom and when we open our rear-facing blinds and soak in

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1 natural light, privacy is not a major concern. Once the
2 leaves fill in in our backyard, our kids are perfectly happy
3 to enjoy a private backyard where we currently have no fears
4 about how our children's privacy is being compromised.
5 However, this would dramatically change if the
6 developers are permitted to build a massive, 4-story
7 building only 30 feet away from our property line. Multiple
8 rows of windows and balconies, along with a nearby parking
9 garage would completely strip us of any privacy for our
10 rear-facing children's bedrooms, our living space and
11 backyard. We also have anxiety about the unacceptable
12 amount of noise that would be emanating from the apartments
13 and nearby parking garage.
14 If this plan is allowed to move forward without a
15 redesign, then our privacy, quality of life and home value
16 will suffer. In addition, the tranquility of living near
17 the Westwoods will be diminished by the noise and traffic
18 pollution associated with living so close to such a densely
19 populated development. Also, the proposed height and
20 density of the development is not only worrisome to us, but
21 is incompatible with the historic nature of the town of
22 Washington Grove which is a community that prides itself on
23 the preservation and maintenance of green space, trees and
24 wooded areas.
25 The trees contribute to the character of the

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1 Westwoods and currently provide a privacy buffer for our
2 home. If the 100-foot setback is observed, it will not be
3 necessary to remove the trees. We welcome the redevelopment
4 of Towne Crest and hope that a thoughtfully redesigned plan
5 will reflect the concerns of their abutting neighbors and
6 the town of Washington Grove. Thank you all for your
7 consideration.
8 MS. ROBESON: Thank you.
9 MR. BROWN: Stacey, I have a few additional
10 questions for you. I'd like you to take a look at two
11 exhibits in the record. This is Exhibit 124 and it shows
12 over here lot 4, the last house on Daylily Lane. Is that
13 your house?
14 MS. UMUNNA: Yes, it is.
15 MR. BROWN: And do you see on here the Building B
16 which is relatively close to the northeast corner of the
17 property?
18 MS. UMUNNA: Yes, I do.
19 MR. BROWN: Is this the 30 feet that you are
20 talking about, the distance from the corner of the building
21 to the corner of your property?
22 MS. UMUNNA: That is the 30 feet I'm referring to.
23 MR. BROWN: All right. Now are you aware that the
24 applicant, although he's not, although the applicant is
25 not -- this is not the applicant's primary proposal, that

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1 they have done an alternative proposal that pushes this
2 building further away from your lot, have you seen this
3 diagram?
4 MS. UMUNNA: Yes, I have.
5 MR. BROWN: Do you believe that the, that this
6 diagram respects the 100-foot setback?
7 MS. UMUNNA: I believe that it does.
8 MR. BROWN: Looking at this new configuration for
9 Building B, do you still have concerns about the density of
10 the project in light of this possible change in the
11 configuration of Building B?
12 MS. UMUNNA: I do. The density is still triple
13 and I will be concerned about how that would impact the
14 traffic flow, how we would exit Daylily Lane, how long we
15 would have to wait to get onto the main Washington Grove
16 Lane and the noise that would come from living so close to a
17 densely populated community.
18 MR. BROWN: Just a couple more things. The letter
19 that you just read, was this a letter that you authored?
20 MS. UMUNNA: Yes.
21 MR. BROWN: I'd like to show you another letter.
22 This one is in the record as Exhibit 88K. Can you identify
23 this for us?
24 MS. UMUNNA: Yes. This is the letter that my
25 husband and I composed and it was addressed to the

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1 Montgomery County Planning Board.
2 MR. BROWN: And when did you send that letter?
3 MS. UMUNNA: It was sent approximately September
4 12th.
5 MR. BROWN: Of last year?
6 MS. UMUNNA: Of last year, yes.
7 MR. BROWN: Okay. I don't know whether you heard
8 this testimony or not, but the land planning expert retained
9 by the town, Mr. Joe Davis, has testified that he thought
10 that the property could be redeveloped from 107 to about 200
11 units. I noticed in your letter you talked about the --
12 expressing general agreement with some redevelopment of the
13 property. What is your attitude about almost doubling the
14 property from 107 to 200 units?
15 MS. UMUNNA: 200 sounds reasonable. I would have
16 no objection to doubling the community to be around 200
17 units if that also included the setback.
18 MR. BROWN: And what about the concern about
19 trees?
20 MS. UMUNNA: Well, there are trees along, on my
21 property and along the Westwoods property, the rear of my
22 property faces the Westwoods. So I am concerned about the
23 root damage that will be caused to one particular tree on my
24 property. I think it would be about 37 percent root damage
25 from what I'm reading and if that tree should fall or if

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1 it's damaged, it would probably fall right onto my
2 children's bedroom where my two little boys sleep. And I'm
3 concerned about how to best preserve the trees because it
4 does, at the moment acts as a privacy buffer between my home
5 and the Towne Crest community. And besides that, they're
6 beautiful. We often see deer in our backyard roaming around
7 the Westwoods. My kids enjoy the backyard space and we just
8 don't want it to be disturbed.
9 MR. BROWN: Do you believe that this tree could be
10 saved even if the project were increased to, from 107 to 200
11 units?
12 MS. UMUNNA: I'm not an expert. I can't testify
13 to that, but it seems reasonable to expect that the tree
14 could be saved if they set back from our property because
15 there would be no need to build so close to the trees and
16 the tree's roots, so --
17 MR. BROWN: I have nothing further.
18 MS. ROBESON: Okay. Mr. Kaufman, Ms. Girard?
19 MS. GIRARD: Yes. Good afternoon, Ms. Umunna.
20 MS. UMUNNA: Hello.
21 MS. GIRARD: Just a couple questions for you. Can
22 you first tell us, when did you purchase your house and move
23 in?
24 MS. UMUNNA: We closed on our home June 29, 2012.
25 MS. GIRARD: And at the time of your purchase of

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1 the house were there yellow and black signs posted on the
2 Towne Crest property indicating the rezoning application for
3 the property you had been applying for?
4 MS. UMUNNA: Yes.
5 MS. GIRARD: Did you research that application at
6 the time?
7 MS. UMUNNA: Yes.
8 MS. GIRARD: And also did you, when you were
9 purchasing your property, did you review the Gaithersburg
10 vicinity Master Plan and its recommendations for the
11 property?
12 MS. UMUNNA: No.
13 MS. GIRARD: Do you know what the current setback
14 is between your house and the closest Towne Crest building?
15 MS. UMUNNA: Anywhere from about 17 to 25 feet.
16 MS. GIRARD: Is that from the, the 17 to 25 feet
17 measuring from your property line to the building or your
18 house to the building?
19 MS. UMUNNA: I believe it's our property line.
20 MS. GIRARD: Okay. And what's the approximate
21 height even in stories of that building closest to you?
22 MS. UMUNNA: I believe it's about 50 feet.
23 MS. GIRARD: Existing?
24 MS. UMUNNA: Yes.
25 MS. GIRARD: Okay. Are you, well, you already

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1 answered that question that you are familiar with the
 2 alternate plan that has been submitted. You also mentioned
 3 the removal of trees and your concern for the trees. I
 4 don't recall -- were you in the room for the testimony of
 5 the landscape architect?
 6 MS. UMUNNA: No, I wasn't present.
 7 MS. GIRARD: Okay. That's all I have. Thank you.
 8 MR. ROBESON: Mr. Brown?
 9 MR. BROWN: No follow-up.
 10 MS. ROBESON: Okay. Thank you, Ms. Umunna.
 11 MS. UMUNNA: Thank you.
 12 MR. BROWN: My next witness is Charlie Challstrom.
 13 MS. ROBESON: All right. Please raise your right
 14 hand.
 15 (Witness sworn.)
 16 MR. BROWN: Would you state your name and address
 17 for the record and spell your last name?
 18 MR. CHALLSTROM: Charles William Challstrom, C-H-
 19 A-L-L-S-T-R-O-M. My address is 503 McCauley Street in
 20 Washington Grove.
 21 MR. BROWN: How long have you lived there, Mr.
 22 Challstrom?
 23 MR. CHALLSTROM: 34 years, since December of 1978.
 24 MR. BROWN: And what roles have you played in land
 25 use matters affecting the town during that time?

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1 MR. CHALLSTROM: During my residency there, I have
 2 served 17 years as an elected official, on the Town Council
 3 for 15 and the mayor for two, plus an additional 13 years as
 4 an appointed official serving on the Planning Commission and
 5 the Board of Zoning Appeals.
 6 In terms of lead roles, I think of the projects
 7 that I have spent time and energy on and include seven, I
 8 had a lead role in seven annexations, establishment of our
 9 railroad park, but I think most importantly I've had a major
 10 role in expanding the inter-governmental involvement of town
 11 representation particularly with Maryland (indiscernible)
 12 and with Park and Planning, including the Gaithersburg
 13 Vicinity Master Plan discussions with Park and Planning
 14 staff, with other County staff and with the County
 15 Executive. I also testified at the Gaithersburg Vicinity
 16 Master Plan hearings and then I participated in our
 17 Washington Grove Master Plan update in 1995 and I
 18 facilitated the 2009 Washington Grove Master Plan update.
 19 MR. BROWN: And what is your current role in the,
 20 in the town?
 21 MR. CHALLSTROM: I am Chairman of the town's
 22 Planning Commission.
 23 MR. BROWN: What has been the Planning
 24 Commission's involvement in evaluating the Towne Crest
 25 rezoning proposal?

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1 MR. CHALLSTROM: Through a work session and then
 2 discussions during our monthly meetings, the Planning
 3 Commission has evaluated the earlier proposals, as well as
 4 the latest proposal for redevelopment. We reviewed items in
 5 our town archives from a range of years, since 1965, the
 6 plat of the Towne Crest property, the files from 1981 to
 7 1985 on the Gaithersburg Vicinity Master Plan, the 1987
 8 neighboring annexation, information in 1994 on the dumping
 9 of trash adjacent to the Towne Crest property, plus a
 10 collection of forestry documents that we have on our town
 11 website.
 12 We consulted with County representatives,
 13 including Rick Brush, William Campbell, Atiq Panjshiri. Our
 14 Planning Commission members participated in meetings with
 15 the Park and Planning staff and with the Towne Crest
 16 representatives on several occasions to discuss the plans.
 17 This began predominantly for us October 10, 2011, with a
 18 town hall presentation by Towne Crest representatives. We
 19 continued with activities at our December Planning
 20 Commission meeting where we reviewed the issues involved and
 21 a set Towne Crest process to move forward. We held our work
 22 session January 11th of 2012 and then at our February
 23 Planning Commission meeting we approved our first Planning
 24 Commission evaluation to report to the town council.
 25 March 26th, our Planning Commission meeting, we

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1 edited the previous evaluation and approved an amended
 2 Planning Commission evaluation.
 3 MR. BROWN: Was this when the plan was a PD-60
 4 proposal?
 5 MR. CHALLSTROM: Yes.
 6 MR. BROWN: Go ahead.
 7 MR. CHALLSTROM: I believe it is. We continued
 8 each meeting with activities that are documented by minutes
 9 of all our Planning Commission meetings that are available
 10 on the town website, as well as the reports that are
 11 documented as part of the town council minutes also
 12 available on the town's website. The next most, perhaps
 13 most pertinent is June 6th we had a Planning Commission
 14 meeting where we approved the amended Planning Commission
 15 evaluation. I would note that that was after a May 16th, or
 16 shortly before that, meeting in the Town Hall where the
 17 Planning Commission members met with Towne Crest
 18 representatives.
 19 Continuing perhaps the next most significant,
 20 September 5th at, again, at our Planning Commission meeting
 21 we approved an updated Planning Commission evaluation and
 22 then on September 13th at the Montgomery County Planning
 23 Board meeting I testified on behalf of the Planning
 24 Commission.
 25 MR. BROWN: Was this on the PD-44 revised plan?

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1 MR. CHALLSTROM: That's correct.
2 MR. BROWN: Go ahead. So, I just want to refer
3 you to Exhibit 88E. The evaluation of the revised project
4 dated September 6, 2012, can you tell me what that is
5 please?
6 MR. CHALLSTROM: That was the evaluation adopted
7 in September by our Planning Commission with 10 primary
8 points. That was --
9 MR. BROWN: What is the difference between that
10 and Exhibit 88B, which is a September 10th letter to the
11 Planning Board?
12 MR. CHALLSTROM: The September 10th evaluation was
13 meant to present the summary points of that evaluation, but
14 if I might -- this September event resulted from that series
15 of work sessions and then the monthly Planning Commission
16 evaluations. The, each time that we had updates, these were
17 also reported by our liaison to the Town Council meetings
18 and also reported to the full town in the town bulletins and
19 they were all posted on the town's website. The evaluation
20 in September followed the evaluations posted to the website
21 of March 26th and June 6th as well.
22 MR. BROWN: Now these evaluations refer to the
23 project when it was still a PD-44 project. Bear with me one
24 second here. Can you tell me what this document is please?
25 MR. CHALLSTROM: This document is a memorandum for

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1 the record that I composed and signed on January 16, 2013.
2 It was meant to reflect the review of the amended submission
3 that was dated January 11, 2013, that we received from your
4 firm of Linowes and Blocher.
5 MS. ROBESON: Okay. I'm going to mark this as
6 139. Mr. Kaufman, do you have any objection?
7 MR. KAUFMAN: Give us a moment if you will?
8 MS. ROBESON: Okay.
9 MR. KAUFMAN: What are you calling it, Madame
10 Examiner?
11 MS. ROBESON: I guess Challstrom summary of --
12 what, is this your summary of a meeting or is this your
13 summary of -- what is this summary of?
14 MR. CHALLSTROM: This is an update on review of
15 the amended submission document dated January 11, 2013.
16 MR. ROBESON: Is it your update or is it --
17 MR. CHALLSTROM: It is my update as Chairman of
18 the Planning Commission.
19 MS. ROBESON: Is it representing the Planning
20 Commission's reviews or your views or --
21 MR. CHALLSTROM: This is in my personal evaluation
22 as, but as in my role and with respect as Chairman of the
23 Planning Commissioner.
24 MS. ROBESON: Okay. So this is -- how do you
25 say --

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1 MR. CHALLSTROM: Challstrom.
2 MS. ROBESON: Challstrom, thank you, Challstrom
3 Evaluation of Amended Application.
4 MR. KAUFMAN: We wouldn't have any objection based
5 upon the fact that it's just Mr. Challstrom's view and he's
6 indicated in answering to you that he did not call me, the
7 Planning Commission nor have them in-depth look at it. This
8 is his personal view. He did indicate that he did it as --
9 MS. ROBESON: Well, that's -- okay. You can make
10 that argument. Just for now I just want to know if you,
11 you're --
12 MR. KAUFMAN: Well, with that understanding, that
13 it's not --
14 MS. ROBESON: Well, I'm not going to understand.
15 You can make that argument later if you want.
16 MR. KAUFMAN: Well, we don't object that this is a
17 personal response from the witness. We do object if he says
18 it represents a decision of the Planning Commission.
19 MS. ROBESON: I think he's saying that this is his
20 evaluation.
21 MR. KAUFMAN: That's the point, so thank you.
22 MR. BROWN: Mr. Challstrom, what did you do to
23 update your, the analysis of the project in light of the PD-
24 35 change?
25 MR. CHALLSTROM: I reviewed that amended

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1 submission dated January 11th. I confirmed the density
2 calculation presented there. I reviewed the proposed
3 setbacks and the separation from the adjoining single-family
4 properties. I confirmed that the conclusions sited in the
5 Washington Grove resolution 2012-05 applied to this recently
6 amended submission.
7 MR. BROWN: Was your document dated January 16th
8 presented to the Planning Commission, the town Planning
9 Commission at a subsequent meeting?
10 MR. CHALLSTROM: Yes, on the Planning Commission
11 meeting of February 6th, our next regular meeting of the
12 Planning Commission, I presented this memorandum and there
13 were some, I believe there were some other correspondence
14 that had come in at that point as well. But, yes, this was
15 presented.
16 MS. ROBESON: Which meeting was that, the
17 January --
18 MR. CHALLSTROM: February 6, 2012.
19 MS. ROBESON: Oh, February. Okay.
20 MR. CHALLSTROM: Afterwards.
21 MR. BROWN: Did the Commission itself take any
22 formal action with regard to your report?
23 MR. CHALLSTROM: No.
24 MR. BROWN: Have you, did you hear Mr. Davis's
25 testimony and read his report?

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1 MR. CHALLSTROM: Yes, I did.
 2 MR. BROWN: I wonder if you could briefly describe
 3 how the Planning Commission's evaluation and conclusions
 4 compare with his.
 5 MR. CHALLSTROM: There is significant
 6 correspondence. We also concluded that the proposed
 7 development was not consistent with the planned development
 8 requirements in the County zoning ordinance. It's not
 9 consistent with the Master Plan for the Towne Crest
 10 property. It cannot be justified by proximity of transit
 11 and it is not compatible with the adjoining property in the
 12 town of Washington Grove.
 13 With regard to the specific plan development
 14 requires of the County zoning ordinance, the Washington
 15 Grove Planning Commission also concluded the proposed
 16 development is not consistent with the plan development
 17 clause because it will not produce a balanced and
 18 coordinated mixture of residential and convenience
 19 commercial uses. There are no commercial services available
 20 on or near the Towne Crest property.
 21 It also does not change the location of the
 22 property with respect to the existing and planned commercial
 23 and employment uses. The overwhelming number of trips and
 24 the overwhelming majority of trips from Towne Crest to
 25 commercial and employment areas will still be by automobile.

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1 Also, the proposed development is not compatible with the
 2 existing neighboring areas and land use and particularly
 3 does not meet the separation requirements for the adjacent
 4 residential property.
 5 MR. BROWN: Based on your long involvement in land
 6 use matters for the town, do you have anything particular to
 7 add to Mr. Davis's observations in the way of, you know,
 8 supplementing, clarifying or even correcting his
 9 observations? I'd like to go over this topic by topic if I
 10 could. First of all, with respect to Exhibit 88F, this is a
 11 1983 letter from you to the Planning Board chair. Why did
 12 you want this letter brought to the attention of the Hearing
 13 Examiner?
 14 MR. CHALLSTROM: I wanted to note that the town
 15 participated in the Gaithersburg Vicinity Master Plan
 16 process with testimony of hearings, work sessions with the
 17 Planning Board and planning staff and meetings with other
 18 County staff and the County Executive, as I mentioned
 19 earlier. We also invited County representatives to walk
 20 through our forest preserve, the west and the east woods.
 21 This participation included review and testimony regarding
 22 the staff draft of the Gaithersburg Vicinity Master Plan
 23 dated November 1981. At that earliest time we were
 24 primarily focused on the Oakmont area which was then a part
 25 of that plan.

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1 In 1983, there was the letter, as referenced, and
 2 a joint resolution of the town council and Planning
 3 Commission to help focus attention on other programs and
 4 needs, of the problems and needs, for instance, uncontrolled
 5 storm water runoff from the Towne Crest property, vandalism,
 6 litter and the lack of adequate services to support
 7 development. We noted particularly that single-family
 8 zoning provides the effective buffering to protect our
 9 forest preserve.
 10 As a result, many of the town's concerns were
 11 addressed in the final draft, the Gaithersburg Vicinity
 12 Master Plan, dated September 1983.
 13 MR. BROWN: Did you bring copies of an excerpt
 14 from that final draft today?
 15 MR. CHALLSTROM: I did. I believe it would be
 16 appropriate to share those.
 17 MS. ROBESON: Okay. So this will be --
 18 MR. BROWN: This is from the '83 Master Plan?
 19 MR. CHALLSTROM: Yes, these are stamped copies
 20 from this document, the 1983 Master Plan.
 21 MR. BROWN: Okay.
 22 MS. ROBESON: Okay.
 23 MR. BROWN: The final draft?
 24 MS. ROBESON: So this is the Gaithersburg Master
 25 Plan. So 140 --

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1 MR. BROWN: Final draft.
 2 MS. ROBESON: -- is excerpts from 1983 final draft
 3 of Gaithersburg Vicinity Master Plan.
 4 (Exhibit No. 140 was marked
 5 for identification.)
 6 MR. BROWN: Okay. Taking a look at Exhibit 140,
 7 Charlie, what would you like to bring to our attention from
 8 this document?
 9 MR. CHALLSTROM: In particular, I wanted to
 10 note a couple of items in the preface starting on this
 11 document and read these because I believe they're most
 12 pertinent. The plan takes into account the existing
 13 development at planned land uses with municipal boundaries.
 14 It goes on to say,
 15 "Because of these important relationships,
 16 we've engaged in considerable discourse with the
 17 municipalities. Our staff has discussed various
 18 aspects of the planning considerations with the
 19 staff of the cities. We have also been pleased to
 20 participate in and for and sponsored by
 21 Gaithersburg and Washington Grove community
 22 groups."
 23 And the plan continues with,
 24 "With regard to the Town of Washington Grove,
 25 the Planning Board has received from its

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1 representatives recommendations about specific
 2 parcels of land near the town. We believe we have
 3 responded in a manner satisfactory to the town. If
 4 there are remaining issues, we will be pleased to
 5 address them in the context of the Council's work
 6 session."
 7 To follow that up,
 8 "On behalf of the town, I testified at the
 9 public hearing November 10, 1983, before the
 10 Montgomery County Council to confirm support for
 11 the final draft regarding single-family zoning
 12 near the forest preserve to serve as a buffer in
 13 addition to our other recommendations and our
 14 appreciation for the cooperation. I recall there
 15 were many individuals and groups represented at
 16 each of the hearings I attended and participated
 17 in."
 18 MR. BROWN: Now you also asked to have included in
 19 the submission, our prehearing submission, Exhibit 88G, a
 20 letter from, a letter to you from Norman Christeller of
 21 April 10, 1987. Do you recall that?
 22 MR. CHALLSTROM: I do, yes.
 23 MR. BROWN: Why did you want to bring that to the
 24 attention of the Hearing Examiner?
 25 MR. CHALLSTROM: The 1987 letter from Chairman

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1 Norman Christeller reinforces the Gaithersburg Master Plan
 2 adopted in 1985, that it recommends single-family
 3 residential for the residential parcel along Washington
 4 Grove lane between Towne Crest and the Washington Grove
 5 Westwoods. This parcel is identified in this plan as
 6 Analysis Area 1 in Figure 16 on page 45 of the plan and in
 7 Table 3 on page 46, again, the adopted Gaithersburg Vicinity
 8 Master Plan. Prior to annexation by the town in 1987, this
 9 land was zoned R-90 in the County and contained a one-family
 10 detached residence.
 11 MR. BROWN: Let me stop you right there, Charlie,
 12 and ask you are we talking now about the land that now has
 13 the Daylily properties on it?
 14 MR. CHALLSTROM: That's correct.
 15 MR. BROWN: All right. Go ahead.
 16 MR. CHALLSTROM: After annexation, this land was
 17 subdivided and developed with three additional one-family
 18 detached residences in the town single-family zone along
 19 Daylily Lane. The letter from Chairman Christeller
 20 confirmed the uses and density permitted do not differ
 21 significantly before and after annexation. The Gaithersburg
 22 Master Plan and the Washington Grove, the Gaithersburg
 23 Vicinity Master Plan and the Washington Grove Master Plan
 24 are consistent for this residential land adjoining Towne
 25 Crest with respect to recommending single-family, one-family

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1 detached land use. The Washington Grove Planning Commission
 2 concluded, therefore, based on the explicit provision in
 3 County Code Chapter 59, the zoning ordinance, that no Towne
 4 Crest building can be constructed within 100 feet of this
 5 adjoining land.
 6 MR. BROWN: All right. I'd like you to turn your
 7 attention to the land use recommendations that actually
 8 appear in the final version of the 1985 Gaithersburg and
 9 Vicinity Master Plan. Would you point out for us the
 10 pertinent parts of those recommendations that you would like
 11 to bring to the attention of the Hearing Examiner?
 12 MR. CHALLSTROM: Yes. In looking at the 1985,
 13 January 1985 plan, which was also amended in May 1988, and
 14 amended July 1990, page 7 states,
 15 "As the cities of Gaithersburg and Rockville
 16 and the town of Washington Grove have their own
 17 powers of planning and zoning, this plan makes no
 18 land use recommendations for this area. This
 19 planning effort, however, has taken note of the
 20 planning policies and development in these
 21 jurisdictions and has involved the planning staffs
 22 and officials of this jurisdiction. So we,
 23 therefore, acknowledge and appreciate this
 24 cooperation, as well as the particular attention
 25 of details of concern to the town."

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1 On page 36 of this plan, it states,
 2 "Unlike Shady Grove West, the land use
 3 pattern in the airpark study area is largely
 4 established. Instead of proposing new plan
 5 concepts for extensive amounts of vacant acreage,
 6 this plan addresses land use and zoning for
 7 relatively small parcels surrounded by existing
 8 development."
 9 We paid, we, the town of Washington Grove officials paid
 10 close attention to the recommendations for specific parcels
 11 and interacted with the Park and Planning staff, County
 12 staff and the County Executive to reinforce our concerns for
 13 appropriate zoning and buffering.
 14 On page 49 of this plan it states,
 15 "Another characteristic of this area --"
 16 that is the Mid-County Highway district,
 17 "-- is its proximity to the City of
 18 Gaithersburg and the town of Washington Grove.
 19 The plan reflects these borders by recommending
 20 appropriate residential densities near existing or
 21 planned developments and recommending buffering
 22 when necessary."
 23 The footnote on page 46 of this plan states,
 24 "The plan recommends single-family detached
 25 units at four units per acre near the town of

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1 Washington Grove's forest preserve."
2 I also want to note that with regard to optional
3 densities, page 10 of this plan states,
4 "The recommended optional densities represent
5 the upper limit that appears to be appropriate for
6 the parcel, taking into account the environmental
7 considerations, overall transportation capacity
8 and relationship to adjacent properties."
9 I believe this reinforces the intention not to recommend any
10 optional densities for the Towne Crest property in the
11 context of the specific recommendations for buffering.
12 MR. BROWN: Let me stop you right there, Mr.
13 Challstrom and ask you have you heard Mr. Berman's testimony
14 on this exact same point earlier in this case? Did you hear
15 what he had to say?
16 MR. CHALLSTROM: I did hear very much what he had
17 to say, yes.
18 MR. BROWN: Based on your involvement in this
19 process with respect to these particular properties, what is
20 your reaction to his testimony about there being a mistake
21 about the omission of optional density?
22 MR. CHALLSTROM: I want to say this carefully, but
23 I believe his characterization represented, representation
24 was unfortunate and inaccurate.
25 MR. BROWN: Let me ask you about the evolution

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1 over time since 1985 of the airpark study area. How has
2 that area changed or the area around it changed in relation
3 to what, you know, whether or not the recommendations in the
4 Master Plan have become outdated?
5 MR. CHALLSTROM: Based on my official, as well as
6 my personal experience, I find the character of the airpark
7 study area has not significantly changed since adoption of
8 the Gaithersburg Vicinity Master Plan in 1985. I've lived
9 in Washington Grove for more than 34 years. As I noted, I
10 served as a town official for 30 years. I note there are
11 more single-family detached housing that's been added along
12 Daylily Lane, Boundary Street and Silver Dollar Court and in
13 the Saybrooke community, and there are 32 townhomes now
14 being finished on the Mainhart property at the corner of
15 Washington Grove Lane and Mid-County Highway, and we have
16 the Inter-County Connector and the Mid-County Highway. But
17 with respect to Towne Crest and the airpark study area,
18 there's no added multi-family or other attached housing in
19 the immediate area. We have the same transportation
20 options, the same Ride-On bus service, the same walking
21 distance to Washington Grove MARC station and the same
22 suburban community and transportation character. I find the
23 Gaithersburg Master Plan, the Gaithersburg Vicinity Master
24 Plan is still appropriate and valid for the community.
25 MR. BROWN: Could you describe in a little more

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1 detail the public transit options that are available for
2 Towne Crest and Washington Grove residents?
3 MR. CHALLSTROM: The MARC commuter station at
4 Washington Grove provides limited commuter services. There
5 are four flag stops in the morning. There are five trains
6 in the evening coming back from Washington, D.C. It is a
7 one-way service. Those five trains, the first three of
8 those five are labeled as flag stops. The other two are
9 drop-off stops only. They're not intended for picking up
10 passengers. So this is a limited one-way service and this
11 is the updated schedule for MARC rail that was effective in
12 January. So it's not full transit. The --
13 MR. BROWN: What's the distance, walking distance
14 along the streets to, from Towne Crest to the MARC station?
15 MR. CHALLSTROM: I believe it's about .7 or .8
16 miles to make that walk.
17 MR. BROWN: Okay.
18 MR. CHALLSTROM: It might -- let me correct that
19 because I do see I made a note of what I had found using
20 Google Maps of .6 miles to Towne Crest to the Washington
21 Grove MARC station.
22 MS. ROBESON: Can I ask a question before you
23 continue? When you say flag stops, is that a stop where
24 somebody has to request a train? What is a flag stop?
25 MR. CHALLSTROM: The flag stop, as explained when

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1 I discussed this with a MARC director, Mr. Hogater (phonetic
2 sp.) recently, they have to, the engineer has to observe a
3 potential passenger on the platform --
4 MS. ROBESON: Oh.
5 MR. CHALLSTROM: -- in order to stop. Otherwise,
6 they breeze on through there without stopping.
7 MS. ROBESON: Okay.
8 MR. CHALLSTROM: It's, the adjustments were made
9 in order to accommodate tighter schedules, so they made more
10 of the stops throughout the system, flag stops where they
11 thought it was appropriate.
12 MS. ROBESON: Okay. Thank you.
13 MR. BROWN: Would you review the bus transit
14 options available to the town of Towne Crest and Washington
15 Grove?
16 MR. CHALLSTROM: The Ride-On bus service, Towne
17 Crest area of Washington Grove Lane, is served by a bus,
18 Ride-On bus route 57. Service is approximately every 30
19 minutes. The rider, the length of time to ride on that
20 route 57 from Towne Crest to Shady Grove Metro, for
21 instance, varies depending on the particular time during the
22 day and the expected number of stops along the way. It
23 ranges from 16 minutes at the very earliest hours of the
24 day. It is more typically 18 minutes throughout the day.
25 It gets up as high as a couple more than that, 22 or 23,

1 according to the, again, the most recent schedule available
2 for Ride-On route 57. I am one who uses route 57 to ride in
3 both directions, so I'm familiar with the Ride-On service
4 there.

5 MS. ROBESON: Is that the one that leaves from the
6 middle of Washington Grove or is that the one that has the
7 stop near Towne Crest?

8 MR. CHALLSTROM: This is the one that has the stop
9 near Towne Crest. It's proceeding from Lakeforest Mall
10 along Washington Grove Lane and then out into the Derwood
11 area before coming back to Shady Grove Metro. The other
12 Ride-On bus service does go -- there is another separate
13 route, 61, that rides along Railroad Street closer to the
14 tracks. So it is the same distance away as walking to the
15 MARC station.

16 MS. ROBESON: Okay.

17 MR. CHALLSTROM: It stops at the MARC station. So
18 that's another alternative if one walks the 6/10 of a mile
19 to pick up Route 61.

20 MR. BROWN: Are there any WMATA buses that
21 traverse this area?

22 MR. CHALLSTROM: No, there -- to my knowledge
23 there's none anywhere near. I only hesitate because I am,
24 I've never seen a WMATA bus on Mid-County Highway, but that
25 would be the only possible thing I could imagine that there,

1 but I don't believe there are, no.

2 MR. BROWN: All right. In connection with
3 preparing for this hearing, did you review the Shady Grove
4 sector plan?

5 MR. CHALLSTROM: Yes, I did.

6 MR. BROWN: What, are you familiar with that
7 sector plan? Did you have any involvement in it?

8 MR. CHALLSTROM: I stayed familiar from the
9 standpoint of receiving and hearing reports from our town
10 representatives who were more active than I was during the
11 development of that plan, the refinement of that plan and
12 particularly the involvement of hearing reports at town
13 council meetings from then Mayor John Compton.

14 MR. BROWN: Now --

15 MR. CHALLSTROM: But otherwise I have read through
16 the plan and I have also participated in meetings of the
17 Greater Shady Grove Civic Alliance where details of that
18 plan were periodically discussed as it went through
19 refinements and the adoption process.

20 MR. BROWN: Now the, as part of the pre-hearing
21 submission, we included pages from that sector plan, pages
22 35 and page 119, among others. Is there anything on those
23 pages that you would like to particularly point out to the
24 Hearing Examiner?

25 MR. CHALLSTROM: Well, in particular, on page 35,

1 there is a density distribution map that I believe is
2 pertinent to review. That provides, identifies some of the
3 areas, the neighborhoods, the Metro neighborhoods and I look
4 in particular at Metro West and Metro South, which are on
5 the westernmost side of the tracks. They have densities,
6 dwelling units per acre are identified on those diagrams.

7 The Metro West has two areas, one of which is shown as 30 to
8 40 dwelling units per acre and then another area farther
9 away from the Metro station is shown at 25 to 30 dwelling
10 units per acre. I would note that the, this area, both of
11 these areas are within an easy walking distance, less than a
12 half a mile. As I also look at Metro South, again, there is
13 a closer area, 30 to 40 dwelling units per acre, and then a
14 farther area delineated with 25 to 30 dwelling units per
15 acre.

16 I examined the walking distance, the easiest
17 walking distance in order to understand this area, being
18 somewhat familiar with the distances and the street layout
19 is already there. The farthest point from the Metro South
20 area to the closest entrance to the Metro Station at Shady
21 Grove is a walking distance by the shortest route of just
22 about .5 miles. It might be a smidgen over that, but it's
23 within .5 miles. And, again, that's an area that goes to a
24 maximum on this diagram of 30 units, 30 dwelling units per
25 acre.

1 If I might, I recall that there are potential
2 increases to these areas because as I read the diagram and
3 the information here, it notes that residential densities
4 may be increased by such things as MPDU's and TDR's. So I
5 believe that the, in evaluating these densities per acre,
6 one also has to take into account the potential of an
7 increase of say 20 percent per TDR's for those closest
8 areas. The 1.64 area ration areas which are shown on this
9 diagram of going 30 to 40 dwelling units per acre, I
10 understand from material in the Shady Grove Sector Plan on
11 page 41 that it explains that those dwelling unit totals
12 could go 50 to 60 dwelling units per acre for the closest.
13 But, again, all of these areas are within the half mile
14 walking distance criteria that I understand is most
15 appropriate for transit-oriented development.

16 MR. BROWN: Lastly, Mr. Challstrom, would you
17 please, based upon your familiarity with the Shady Grove
18 plan, with the Gaithersburg Vicinity Plan and the
19 circumstances of your area and your experience in dealing
20 with these matters over the past 34 years, what is your view
21 of the continued efficacy of the density recommendations for
22 Analysis Area 2 and the airpark study area of the 21 acres
23 that is, that I believe Mr. Ager said is currently built out
24 an average of, or has an allowed density of 18.28 dwelling
25 units per acre, counting all of the density bonuses?

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1 MR. CHALLSTROM: Yes. I've looked at the, this
2 area based on my familiarity and with its compliance with
3 the Master Plan and I note that the Master Plan captures the
4 expected density of a significant portion of that area very
5 accurately. By way of doing this analysis, I evaluated in
6 particular the townhouse occupied areas, the Wedgewood area
7 apartments, Wedgewood I and Wedgewood II. I, to do this
8 analysis and evaluation, I relied on the State Department of
9 Assessments Taxation website which provides ownership,
10 assessment and occupancy information for the Analysis Area 2
11 collection of townhouses.

12 The, that website, the SDAT website, indicates
13 that 91 of the 123 homes are owned or occupied. I find that
14 a very interesting and significant statistic. With such
15 individual ownership, I conclude that the density and
16 character of this portion of Analysis Area 2 was not likely
17 to change and, therefore, I find it will remain in complete
18 compliance with the Gaithersburg Vicinity Master Plan
19 density recommendations. I believe that this reinforces the
20 validity of the evaluations by the Washington Grove Planning
21 Commission with respect to compatibility with surrounding
22 residential area. I believe it's an accurate reflection of
23 the community for the foreseeable future.

24 MR. BROWN: What is your attitude toward
25 redevelopment of the Towne Crest property and particularly

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1 your reaction to Mr. Davis's suggestion that it is a
2 candidate for redevelopment at approximately 200 dwelling
3 units as opposed to 107 presently?

4 MR. CHALLSTROM: Well, I note based on the
5 specific objections and concerns and inconsistencies with
6 the zoning ordinance that I find that it is challenging, if
7 not impossible, to imagine a development of this property
8 under the planned development provisions of the zoning
9 ordinance. However, I believe that my individual view and
10 the view of the Washington Grove Planning Commission, we are
11 not against redevelopment. Such a development as proposed
12 with that kind of numbering, in my personal view, might be
13 extremely appropriate.

14 As demonstrated by the records and actions of town
15 officials and my involvement, I believe that we're seeking
16 buffering, compatibility and compliance with the County Code
17 as this project moves forward with a redesign effort. I
18 believe it's appropriate for the property, we believe it's
19 appropriate for the community to support redevelopment done
20 correctly and in compliance.

21 MR. BROWN: Anything else you'd like to add?
22 MR. CHALLSTROM: No, not at this time.
23 MR. BROWN: Okay.
24 MS. ROBESON: Thank you. I just have one
25 question. Do we have the aerial -- it's 10A or 10B, I

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1 think? I guess my question is this. You say you wish
2 buffering, but -- and I can't remember who made this
3 argument -- but there was an argument made that isn't the
4 buffering those two large, wooded areas. Can you address
5 the argument?

6 MR. CHALLSTROM: Let me, if I might, point out,
7 for instance, that footnote, I believe it's on page 46 of
8 the Gaithersburg Vicinity Master Plan.

9 MR. ROBESON: Okay.

10 MR. CHALLSTROM: I made a specific footnote to,
11 made a reference to single-family zoning adjacent to the, in
12 fact, it says R-90 adjacent to the woods. That was
13 referring specifically to this line here.

14 MS. ROBESON: Oh, in Saybrooke?
15 MR. CHALLSTROM: This is the Saybrooke, this is
16 the Saybrooke community which had been designated in the
17 plan as receptive area TDR-6. So, but what they were doing
18 was making a careful consideration is that they were looking
19 for strict R-90 zoning adjacent to the forest preserve as a
20 way of preserving inadequate spacing and appropriate land
21 use --

22 MS. ROBESON: Okay.
23 MR. CHALLSTROM: -- by way of follow-up on when
24 this project went forward, a representative of the
25 development company called and consulted with the town and

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1 in particular we were very pleased, and for this property to
2 specifically recommend that it be treated and looked like
3 almost an extension of those backyards. And with the
4 extension, one person who has built a little landscaping
5 into it, almost everybody along here has respected the woods
6 and treated it well. And we have had excellent, excellent
7 relationships and ongoing with that site.

8 We've also have been concerned about some other
9 properties as we got, looked at what was happening in this
10 area. Again, we were looking at property that was
11 originally proposed to be townhouses, but the Planning Board
12 made an adjustment there and went to single-family homes
13 because of its adjacency to the --

14 MS. ROBESON: To the road?
15 MR. CHALLSTROM: -- buffer. So there's been a
16 consistent effort --

17 MS. ROBESON: Okay. Just for the record --
18 MR. CHALLSTROM: -- to look at single-family.
19 MS. ROBESON: -- can you describe that's an area
20 north of Westwood Park?
21 MR. CHALLSTROM: And it's along Silver Dollar
22 Court.
23 MS. ROBESON: Okay. That's Silver Dollar Court --
24 MR. CHALLSTROM: Silver Dollar Court.
25 MS. ROBESON: -- that you referred to in your

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1 testimony. All right.
2 MR. CHALLSTROM: So, again, as a town
3 representative, I participated in those discussions as well
4 as the bordering discussions for Saybrooke. So that's what
5 we are pushing and urging, that there be adequate buffering
6 as necessary to protect and preserve the trees which will
7 be, I expect more testimony from our mayor, Georgette Cole,
8 regarding the trees aspect. But that's the kind of
9 buffering we're looking at, buffering and land use that
10 respects the trees and the Westwoods.
11 MS. ROBESON: Okay. I'm clear. That's clear.
12 Okay. That was my question. Mr. Kaufman?
13 MR. KAUFMAN: Yes, thank you, Madame Examiner.
14 Excuse me. I'm getting a cold, so my voice is not the best.
15 MS. ROBESON: Did you get your flu shot?
16 MR. KAUFMAN: I did have a flu shot.
17 MS. ROBESON: Good.
18 MR. KAUFMAN: And I did wash my hands. Mr.
19 Challstrom, in your testimony you indicated you've been a
20 resident of Washington Grove for 34 years, is that right?
21 MR. CHALLSTROM: That's correct.
22 MR. KAUFMAN: And you also indicated that you've
23 been a member of the leadership of the town for 30 years, is
24 that right?
25 MR. CHALLSTROM: That's correct.

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1 MR. KAUFMAN: And how, of that period of time, how
2 long have you been part or chair of the Planning Commission?
3 MR. CHALLSTROM: Of my, a little over 11 years on
4 the Planning Commission. I don't know the exact number of
5 years, but certainly more than half of that period of time
6 I've been chair of the Planning Commission.
7 MR. KAUFMAN: Okay. And then the other offices
8 that you've held in the town, what were they?
9 MR. CHALLSTROM: I was mayor from 1985 to '87. I
10 was on the Town Council from 1980 to '85, 1987 to '94. And I
11 was on the Town Council from 2007 to 2010.
12 MR. KAUFMAN: So would it be safe to say during
13 that entire period of time you were familiar either as a
14 member of the Planning Commission or as an officer of the
15 Town, of all the Master Plan and zoning cases that were
16 occurring in and around the vicinity of Washington Grove?
17 MR. CHALLSTROM: I was, I would not say all
18 because there was an intensive period where my Federal job
19 responsibilities caused me to have to balance away from the
20 town, so I was not as active in the town from 1994 to 2006.
21 I retired from the Federal Government in early 2006 so that
22 I could return to my involvement and volunteering for the
23 town.
24 MR. KAUFMAN: And then you now, you're now
25 Chairman again, so when did you resume that position?

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1 MR. CHALLSTROM: Let's see, that would have been
2 2011. Well, excuse me, I was on the Planning Commission
3 2007 to 2009, yes, after retiring, yes.
4 MR. KAUFMAN: All right. So you were also there
5 when the amendments to the General Plan occurred, is that
6 right, the County's General Plan?
7 MR. CHALLSTROM: I'm not familiar with the
8 County's General Plan amendments.
9 MR. KAUFMAN: Okay. Now, obviously, you have
10 extensive experience with the town and participating in land
11 use matters. Do you have any special or formal training as
12 an architect of plans?
13 MR. CHALLSTROM: No, my education is geodetic
14 science and surveying.
15 MR. KAUFMAN: So everything that you have become
16 familiar with is really more through your experience and
17 participating in the leadership of the town, is that right?
18 MR. CHALLSTROM: I believe that's correct.
19 MR. KAUFMAN: Now you mentioned there have been no
20 significant changes in the area since the time of the Master
21 Plan, is that correct? Is that your testimony?
22 MR. CHALLSTROM: That's a summary of my transcript
23 of my testimony, however, I was more specific in the
24 testimony with respect to the characterizations about what
25 aspects had not changed.

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1 MR. KAUFMAN: So then, again, you are familiar
2 that the recommendations for this particular property and
3 area 2 were developed actually in the 1970's?
4 MR. CHALLSTROM: I am familiar with that. I
5 reviewed the 1971 plan.
6 MR. KAUFMAN: And they haven't changed since then,
7 notwithstanding that there have been some amendments to the
8 Gaithersburg Plan?
9 MR. CHALLSTROM: There have been amendments,
10 refinements and corrections to the Gaithersburg Plan. Since
11 that time, the recommendations have not been consistent for
12 this property in the various drafts since 1971. There were
13 some variations noted very particularly in the 1981 Plan.
14 MR. KAUFMAN: Was the Mid-County Highway
15 constructed at the time of this Master Plan in 1983 to your
16 knowledge?
17 MR. CHALLSTROM: I don't recall the opening time
18 of the Mid-County Highway segments. I recall that it is
19 delineated on documents of the Master Plan. But as I recall
20 those documents, without looking at them here now, I believe
21 that would indicate it was not a completed project.
22 MR. KAUFMAN: And certainly you know that the ICC
23 was not constructed at the time of the Master Plan though,
24 is that right?
25 MR. CHALLSTROM: Again, I note that they were

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1 listed in the Master Plan as planned fragments and I believe
2 there is wording that indicates that the planning is based
3 on presumption of those transportation improvements.
4 MR. KAUFMAN: Would you agree with the statement
5 that the population and intended need for housing increased
6 since the time of this Master Plan based upon other county
7 and Master Plans and policies?
8 MR. CHALLSTROM: I totally agree with that, yes.
9 MR. KAUFMAN: Are you aware of the recent
10 projections regarding the future population, and
11 specifically in the Gaithersburg area?
12 MR. CHALLSTROM: I'm not aware of specific
13 population projections, no.
14 MR. KAUFMAN: So are you not familiar with the
15 Council of Governments recent projection indicating that
16 there's a need for 41 percent increase in housing for
17 population in the Gaithersburg area, you're not familiar
18 with that?
19 MR. CHALLSTROM: I am not familiar with it,
20 however, I have just heard a cursory report of that.
21 MR. KAUFMAN: And are you familiar with the fact
22 that there have been major shifts in the County policy since
23 the time of the Master Plan, including an increased emphasis
24 on the provision of affordable housing and locating housing
25 in transit-serviceable and other infrastructure areas?

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1 MR. CHALLSTROM: I am aware of many aspects of
2 that. I am not versed in all the details of those policies,
3 but I have certainly heard reports of those and understand
4 the gist of them.
5 MR. KAUFMAN: I want to show you the resolution
6 which is in the record of Case G-840, which is the -- the
7 name of that case again?
8 MS. GIRARD: Mainhart.
9 MR. KAUFMAN: Mainhart.
10 MS. GIRARD: I'm not positive it's in the record.
11 MR. KAUFMAN: Yes.
12 MS. ROBESON: Yes. That's not sounding familiar
13 to me. Let me --
14 MR. KAUFMAN: It's been discussed -- maybe the
15 resolution itself.
16 MS. GIRARD: Right. It has been discussed, but
17 I'm not sure if the resolution itself is --
18 MS. ROBESON: Did Mr. Ager discuss it?
19 MR. KAUFMAN: Yes. And also --
20 MS. GIRARD: And I believe that --
21 MR. KAUFMAN: -- Mr. Berman did.
22 MS. GIRARD: Well, and I believe that Mr. Davis
23 did as well.
24 MR. KAUFMAN: Yes.
25 MS. GIRARD: I think all three referenced it.

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1 MR. KAUFMAN: We have copies, all have copies.
2 MS. ROBESON: All right.
3 MS. GIRARD: No. I just ripped it out of my --
4 MR. KAUFMAN: Okay.
5 MS. ROBESON: Let me just make sure -- it's not in
6 here. I don't see it. So we'll mark it as a new exhibit.
7 Are you --
8 MR. KAUFMAN: Yes, I'd like to.
9 MS. ROBESON: Do you want to wait to introduce it
10 so you're --
11 MR. KAUFMAN: Well, I'd like to introduce it. I
12 think the, certainly you can take notice of it. It's an
13 official document. It's public.
14 MS. ROBESON: Okay. So I'm going to mark it as
15 141. This is the District Council resolution?
16 MR. KAUFMAN: Yes, it is. It's dated August 1,
17 2006, Resolution No. 15-1586. I believe it deals with the
18 townhouse, if you would show the hearing page?
19 MS. ROBESON: I'm sorry, what's the resolution
20 number again?
21 MR. KAUFMAN: The resolution number is 15-1586.
22 And it deals with the --
23 MS. ROBESON: Well, okay. We'll get to that.
24 MR. KAUFMAN: Okay.
25 MS. ROBESON: I'll just call it District Council

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1 Resolution 15-1586 approving application G-840.
2 MR. KAUFMAN: And it's exhibit, what was the
3 exhibit number?
4 MS. ROBESON: 141.
5 (Exhibit No. 141 was marked
6 for identification.)
7 MR. KAUFMAN: 141?
8 MS. ROBESON: Yes. Any objections, Mr. Brown?
9 MR. BROWN: No.
10 MR. KAUFMAN: Okay.
11 MS. GIRARD: We're looking for copies. I'm sorry.
12 I'm kind of scrambling here.
13 MR. BROWN: We need four copies.
14 MS. GIRARD: Okay.
15 MR. KAUFMAN: Let me give one to Dave.
16 MS. ROBESON: And these are, for the record, the
17 copies are highlighted.
18 MS. GIRARD: Which Mr. Ager will address when he's
19 recalled.
20 MS. ROBESON: Okay.
21 MR. KAUFMAN: Now I bring your attention -- let
22 Mr. Brown give you the document -- I bring your attention to
23 page 10 of that resolution, the middle paragraph where the
24 Planning Board says the following:
25 "The Planning Board, the technical staff and

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1 MR. CHALLSTROM: I don't, I'm not here to say that
2 that would apply in every case because I don't have the
3 details of every case.
4 MR. KAUFMAN: Okay. And didn't the town
5 vehemently oppose construction of the ICC?
6 MR. BROWN: I object to this --
7 MS. ROBESON: Yes.
8 MR. BROWN: -- continued line. I mean I don't
9 know where we're going with this.
10 MS. ROBESON: You're saying the town, the
11 town's -- it's your point that the town is a NIMBY?
12 MR. KAUFMAN: I don't like the use of that term.
13 MS. ROBESON: I know. I --
14 MR. KAUFMAN: I think it's very clear that the
15 town has done whatever is necessary to protect its borders
16 and maintain its quality of life based upon what they
17 thought was the highest and best use of its quality of life.
18 MS. ROBESON: So are you saying that --
19 MR. KAUFMAN: I'm saying there's --
20 MS. ROBESON: That they wouldn't approve any
21 development here?
22 MR. KAUFMAN: No, I'm not saying that because
23 you're heard the testimony.
24 MS. ROBESON: That's what I thought.
25 MR. KAUFMAN: As long as it's low-density, they're

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1 okay with it or they can't stop it. But that's -- I'm
2 cross-examining the witness. I think I have the right to
3 establish the town's sort of modus operandi or mentally with
4 regard to these matters. They participated in everything
5 for 30 years and it becomes very clear --
6 MS. ROBESON: Well, okay, now you're into
7 argument.
8 MR. KAUFMAN: Okay.
9 MS. ROBESON: You can make the argument later.
10 MR. KAUFMAN: All right.
11 MS. ROBESON: I'm going to let Mr. Kaufman
12 continue. How many more questions though? I do understand
13 your -- I was getting the point. So how many more questions
14 do you have in this line?
15 MR. KAUFMAN: I have a few, but I'll, you know,
16 I'll try to --
17 MS. ROBESON: Okay.
18 MR. KAUFMAN: I'll show you an excerpt from the
19 Zoning Ordinance, which is Section 59C-7.11, which is the
20 purpose clause of the PD zone. You're familiar with that,
21 right?
22 MR. CHALLSTROM: Yes.
23 MR. KAUFMAN: And I'd like you to read the area
24 I've highlighted in yellow, which is right under the purpose
25 clause in the first paragraph.

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1 MR. CHALLSTROM:
2 "It is intended that the zoning category be
3 utilized to implement the general plan, the area
4 Master Plans and other pertinent count and new
5 policies."
6 MR. KAUFMAN: And now given your experience with
7 the Planning Commission and as a leader in the town, you're
8 aware that, you're aware that what this section says, I'm
9 mean you're personally familiar with it, right?
10 MR. CHALLSTROM: I am, yes.
11 MR. KAUFMAN: And are you aware that it says that
12 it must consider not only the specific Master Plan, but the
13 general plan?
14 MR. CHALLSTROM: I'm aware that it says that, yes.
15 MR. KAUFMAN: And are you aware that when a
16 general plan is adopted, it automatically amends all
17 existing Master Plans?
18 MR. CHALLSTROM: I am not aware of that. That's
19 not in my area of expertise.
20 MR. KAUFMAN: And are you -- you testified before
21 that you weren't aware of the 2013, no, 2011, I believe,
22 update of the General Plan?
23 MR. CHALLSTROM: No, I am not.
24 MS. ROBESON: Is that the housing element of the
25 General Plan?

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1 MR. KAUFMAN: The housing element of the General
2 Plan, right. I'd like to have this marked.
3 MS. ROBESON: You may. And that would be 142.
4 (Exhibit No. 142 was marked
5 for identification.)
6 MR. KAUFMAN: Right.
7 MS. ROBESON: Is this the entire thing or
8 excerpts?
9 MS. GIRARD: The entire thing.
10 MS. ROBESON: Okay.
11 MR. KAUFMAN: I'll give you a copy of this
12 document which is the housing element of the General Plan
13 approved and adopted in April of 2011.
14 MR. CHALLSTROM: Okay.
15 MR. KAUFMAN: Do you want to take a minute and --
16 MR. CHALLSTROM: I've never seen it before.
17 MR. KAUFMAN: You're the chairman of the Planning
18 Commission of Washington Grove and you've never --
19 MS. ROBESON: That's not -- you're on cross-exam.
20 In fact, strike that.
21 MR. KAUFMAN: I bring your attention to the first
22 page entitled, Housing Element of the General Plan, the
23 first paragraph is abstract, and I bring your attention to
24 the last paragraph starting master and sector plans. Would
25 you please read that paragraph?

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1 MR. CHALLSTROM: This document states,
2 "Master and Sector Plans look ahead 20 years
3 from the date of adoption, although they are
4 intended to be revised every 10 to 15 years.
5 Moreover, circumstances when a plan is adopted
6 will change and the specifics of a plan may become
7 less relevant over time. Plans do not specify all
8 development possibilities. Their sketches are for
9 illustrative purposes only and intended to give a
10 sense of desirable future character rather than a
11 recommendation of a particular design."
12 MR. KAUFMAN: But you do acknowledge that this
13 plan, which is formally adopted by the Montgomery County
14 Council, does indicate that plans can become obsolete and
15 not functional based upon age?
16 MR. CHALLSTROM: I do not read that from here, no.
17 MR. KAUFMAN: Okay. And then I bring your
18 attention to page 17 of this document, an item marked 4.10,
19 do you see that, 4.10?
20 MR. CHALLSTROM: Yes, I do see that.
21 MR. KAUFMAN: All right. And do you note that
22 this is under the policies, do you see at the top?
23 MR. CHALLSTROM: I do.
24 MR. KAUFMAN: Okay. And would you read that into
25 the record, 4.10?

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1 MR. CHALLSTROM:
2 "4.10, ensure that all Master Plan and sector
3 plan amendments address the need for housing below
4 moderate and middle-income households and promotes
5 specific strategies to meet that need, including
6 height and density incentives and flexibility."
7 MR. KAUFMAN: All right. Now you're aware,
8 through the testimony, you were here, that at the time of
9 the development of the current Towne Crest property and also
10 at the time of the adoption of the new Master Plan that the
11 type of construction proposed for this application was not
12 used in the region? This is what we call wrap construction.
13 MR. CHALLSTROM: I am aware of that. I heard that
14 testimony, yes, sir.
15 MR. KAUFMAN: Right. And there were several
16 other, shall we say, best practices enhancements that have
17 occurred since then?
18 MR. CHALLSTROM: That's correct.
19 MR. KAUFMAN: So would you say that it's a fairly
20 correct statement to state that isn't it exactly the
21 density, it's how you, what you do with it, how you deal
22 with the density that makes a development compatible or not
23 compatible with its neighbors, would you agree with that?
24 MR. CHALLSTROM: I would agree with most of the
25 sentiment of that. Without putting aside the importance of

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1 density as still an important issue, I agree with the
2 objectives of good design planning.
3 MR. KAUFMAN: And you did indicate, however, that
4 you were not aware that the adoption of an amendment to the
5 general plan would change automatically to be considered
6 amendments to the --
7 MS. ROBESON: He already said that.
8 MR. KAUFMAN: Okay. All right. I want to bring
9 your attention to the Town's Master Plan, the 2009 Master
10 Plan. I believe that is, isn't that in the record, I'm not
11 sure?
12 MS. ROBESON: No.
13 MR. BROWN: I don't believe so.
14 MR. KAUFMAN: Do you have an objection to the
15 Town's Master Plan being in the record, Mr. Brown?
16 MR. BROWN: No, I don't have any objection.
17 MS. ROBESON: Are you planning to -- I can take
18 official notice of it, unless you're planning to have him
19 read from it.
20 MR. KAUFMAN: I am going to have him read from it.
21 MS. GIRARD: Here, let me see.
22 MR. KAUFMAN: What is that? Is that it?
23 MS. GIRARD: No. It is, but I have highlighting
24 on one page.
25 MR. KAUFMAN: Well, that's all right. I'm sorry,

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1 can we have it marked?
2 MS. ROBESON: You may. It would be 143, or I
3 don't know the title of the -- what is the title of the
4 document?
5 MR. KAUFMAN: It's 2009 Master Plan.
6 MS. ROBESON: For the town of Washington --
7 MR. KAUFMAN: Grove.
8 MR. ROBESON: -- Grove?
9 (Exhibit No. 143 was marked
10 for identification.)
11 MR. KAUFMAN: We'll give you a copy too, Madame
12 Examiner. I apologize for not having sufficient copies
13 right away. While we're waiting for that to come up to you,
14 if I could ask you were the chairman of the Planning
15 Commission at the time that this adopted?
16 MR. CHALLSTROM: I believe I was. As I stated
17 earlier, I facilitated the development and refinement of
18 this Master Plan for the Town. I wasn't Chairman when we
19 adopted it, just to correct that.
20 MR. KAUFMAN: So --
21 MR. CHALLSTROM: John McClellan was chairman.
22 MR. KAUFMAN: Were you on the Commission at the
23 time?
24 MR. CHALLSTROM: I was on the Commission at the
25 time, yes.

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1 MR. KAUFMAN: And did you become Chairman after
2 that?
3 MR. CHALLSTROM: That's correct.
4 MR. KAUFMAN: Okay. I'm sorry, Madame Examiner,
5 what was the number?
6 MS. ROBESON: 143.
7 MR. KAUFMAN: In fact, if you turn to page 2, it
8 does list you as Counsel Liaison on the Commission.
9 MR. CHALLSTROM: That's right.
10 MR. KAUFMAN: I want to bring your attention to
11 page 32. And in the next to last paragraph I'd like you to
12 read into the record starting mid-way in that paragraph, the
13 State Highway Administration, would you read the rest of
14 that paragraph please?
15 MR. CHALLSTROM:
16 "The State Highway Administration, Federal
17 Highway Administration and the Maryland Historic
18 Trust as the state Historic Preservation Officer,
19 concurred in the determination of no impact and,
20 thus, no mitigation was included in the memorandum
21 of understanding required for impacts on historic
22 resources. The town has vigorously challenged
23 this determination, it has presented evidence to
24 and held meetings with representatives of the
25 regulating authorities in order to demonstrate the

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1 basis of his objections."
2 MR. KAUFMAN: And that dealt with your opposition
3 to the ICC, didn't it?
4 MR. CHALLSTROM: It definitely does, yes.
5 MR. KAUFMAN: All right. And you did indicate
6 earlier at the time that this Master Plan was adopted in
7 1983, that the ICC had not been built, right?
8 MR. CHALLSTROM: That's correct.
9 MR. KAUFMAN: Yet notwithstanding that all of
10 these agencies found that there was no impact that would
11 damage the town or the Westwoods, that the town vehemently
12 disagreed with that, on what basis did you disagree with
13 that?
14 MR. CHALLSTROM: There, I have a letter in my
15 record from Jay Rodney Little that documents in his words
16 that the town would not hear the ICC. That letter has
17 always been a source of great frustration for the town
18 because it's so obviously incorrect. We have had long-
19 standing concerns about the noise evaluation, we, therefore,
20 hired our own noise consultants and we negotiated and
21 discussed follow-on noise assessments that we expect still
22 to be done.
23 MR. KAUFMAN: Wasn't all of that submitted to the
24 State Highway Administration?
25 MR. CHALLSTROM: It absolutely was.

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1 MS. ROBESON: Mr. Kaufman, I do understand where
2 you're going. I don't want to try the ICC case. I
3 understand -- how much further are you going down this road?
4 MR. KAUFMAN: I just have one other area in this
5 Master Plan here. And I want to bring your attention to
6 page 41 at the bottom.
7 MS. ROBESON: 41?
8 MR. KAUFMAN: Page 41 of the Master Plan. Are you
9 there?
10 MR. CHALLSTROM: I am, yes.
11 MR. KAUFMAN: And at the bottom, would you read
12 that paragraph starting with, "Since adoption."?
13 MR. CHALLSTROM:
14 "Since adoption of the 1975 Master Plan --"
15 and again that's the, the Town of Washington Grove 1975
16 Master Plan,
17 "-- additional housing has been constructed along
18 the portion of both the east and Westwoods borders. The
19 east woods are now encircled by housing, but as a result of
20 the new housing, some with lawns extending to the woods and
21 occupants who look out for and develop concern for the woods
22 has been to reduce points of entrance to the woods and some
23 of the associated impact such as trash dumping, motorized
24 vehicles and vandalism."
25 MR. KAUFMAN: Now that statement sort or

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1 recognizes, if I'm correct, it does recognize that if you
2 have more eyes on the woods that you wouldn't have some of
3 the vandalism and other impacts, trash dumping and so on in
4 the woods, is that correct?
5 MR. CHALLSTROM: I believe that this refers back
6 to the same situation that I described with the Saybrooke
7 community where we have had neighboring single-family
8 housing adjacent to the woods and we have found that for
9 those portions of the woods we have not experienced trash
10 dumping or entry of motorized vehicles or vandalism. That's
11 what this is capturing as opposed to the area along the
12 Towne Crest border.
13 MR. KAUFMAN: Well, around, on the Towne Crest
14 border you have complained, have you not, that there have
15 been a lot of dumping and other problems occurring from the
16 Towne Crest property, right?
17 MR. CHALLSTROM: We have documented repeated
18 instances of dumping and need for attention to remove trash
19 deposited over the fence, apparently from the Towne Crest
20 property. We have documented that in information you will
21 find in our town website in a 2007 report. That's our
22 experience. This was contrasted with the Towne Crest in
23 this right up here.
24 MR. KAUFMAN: But you've indicated that you feel
25 that a revitalization should occur and wouldn't part of that

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1 be a benefit to your woods?
2 MR. CHALLSTROM: Absolutely.
3 MR. KAUFMAN: Excuse me. The last question. You
4 indicated that this particular project doesn't have a mix of
5 commercial uses as required by the PD zone, is that right?
6 MR. CHALLSTROM: I indicated it wasn't consistent
7 with the purpose clause with respect to the intention that
8 development in the zone produce a balanced and coordinated
9 mixture of residential convenience and commercial uses
10 reading from the purpose clause of the --
11 MR. KAUFMAN: Well, you're not saying that all
12 PD's have to have commercial uses, are you?
13 MR. CHALLSTROM: No, I'm not saying that. This is
14 one of the purposes stated and it didn't assist with moving
15 ahead in this intention.
16 MR. KAUFMAN: That's it.
17 MS. ROBESON: Okay. We're going to take a 10-
18 minute break and then we'll come back for cross-examination.
19 MR. BROWN: Redirect you mean?
20 MS. ROBESON: Yes, I meant that, yes.
21 (Recess)
22 MS. ROBESON: We are back on the record. Mr.
23 Brown.
24 MR. BROWN: Just a couple of things, Mr.
25 Challstrom.

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1 MR. CHALLSTROM: Uh-huh.
2 MR. BROWN: You're familiar with the table on
3 pages --
4 MR. KAUFMAN: I'm sorry, we --
5 MS. GIRARD: We're on the record.
6 MR. KAUFMAN: I know. I mean are we on the
7 Gaithersburg Master Plan?
8 MR. BROWN: You're familiar with Table 3 of the
9 Gaithersburg and Vicinity 1985 Master Plan on pages 46 to
10 48?
11 MR. CHALLSTROM: I am, yes.
12 MR. BROWN: Do you know whether or not that table
13 or some substantial equivalent to it was in the 1971 Master
14 Plan?
15 MR. CHALLSTROM: I do now know whether there was a
16 tabular form. I do not recall seeing it in that plan and a
17 quick scan of the plan doesn't reveal it. I don't recall
18 that. I thought that that tabular form first appeared in
19 the 1983 final draft version.
20 MR. BROWN: Of the '85 plan?
21 MR. CHALLSTROM: Yes, of the Gaithersburg Vicinity
22 Master Plan. I believe the 1983 final draft which led up to
23 the '85 adopted version, I believe the '83 Plan was the
24 first to have the tape.
25 MR. BROWN: One other thing, getting back to this

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1 notion of Mr. Kaufman is reluctant to use the word NIMBY,
2 but I just want to ask you a NIMBY sort of question. You
3 have said that the town would not be opposed to
4 redevelopment of the property, perhaps where there's much as
5 200 units as compared to the 107 units now. Why is the town
6 willing to accommodate these changes if, in fact, your
7 testimony is that the area in the vicinity, the Towne Crest
8 project area and the vicinity around it really hasn't
9 changed very much?
10 MR. CHALLSTROM: The, I can reflect discussions of
11 the Planning Commission, some of which are documented in the
12 minutes of the Planning Commission that recognize that
13 improvements to the property would be valuable to the larger
14 community. In our minutes of February 1, 2012, it states
15 that some of the features of the proposed redevelopment were
16 particularly noted as being valuable for the larger
17 community and the town in particular. The Planning
18 Commission members, I believe there was no opposition among
19 those discussions to issues such as the structured parking.
20 We felt that the, a proposal that involved structured
21 parking was a more efficient way of redeveloping the
22 property with a smaller footprint.
23 Part of the issues of that are good green
24 planning, environmental concerns, but in particular from the
25 town's perspective, a smaller footprint we felt would allow

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1 more flexibility to locate the redevelopment in such a way
2 as to lessen its impact and damage on trees within the town.
3 MS. ROBESON: Okay.
4 MR. BROWN: I have nothing further.
5 MS. ROBESON: Thank you. Thank you, Mr.
6 Challstrom. Your next witness?
7 MR. BROWN: I have one more witness, the mayor.
8 MS. ROBESON: That's fine.
9 MR. BROWN: The mayor.
10 (Witness sworn.)
11 MR. BROWN: Would you state your name and address
12 for the record please?
13 MS. COLE: Georgette Cole, 217 Ridge Road,
14 Washington Grove.
15 MR. BROWN: Are you picking that up?
16 MS. COLE: Uh-huh.
17 MR. BROWN: Okay. And how long have you lived
18 there?
19 MS. COLE: Not quite 10 years.
20 MR. BROWN: And what positions have you served in
21 and on behalf of the town of Washington Grove?
22 MS. COLE: I was a Council member for six years
23 and I've been the mayor for about 1 1/2 years now.
24 MR. BROWN: What has been your involvement in
25 evaluating the Towne Crest project?

1 MS. COLE: I've been present at all of the
2 meetings with the Towne Crest representatives and with the
3 M-NCPPC planning staff throughout 2011 and '12.

4 MR. BROWN: Okay. This is Exhibit 88H that's been
5 submitted for the record. Can you tell me what your
6 involvement was in this, in preparation of this exhibit?

7 MS. COLE: Yes. This is the council resolution of
8 September 10, 2012. I go to not all, but most of the
9 Planning Commission meetings and I am the Planning
10 Commission liaison. Both work on making sure that the
11 Council gets all of the information coming from the Planning
12 Commission and understands what's going on. After they
13 evaluated the PD-44 plan, the Council decided to officially
14 express agreement with the resolution and that's how our
15 Council resolution came about, which is the Exhibit that Mr.
16 Brown just mentioned. That was a unanimous vote and it was
17 a fairly easy one because we've been getting a lot of
18 feedback from town residents supporting it.

19 MR. BROWN: Now this resolution is focused on the
20 earlier version, the PD-44 proposal. Has the town updated
21 its views in light of the change to PD-35?

22 MS. COLE: Yes, we have. The Council has been
23 informed of any changes to the Towne Crest plan basically at
24 each council meeting. It's a standard item on our agenda
25 under the mayor's updates as Towne Crest. So it's basically

1 touched on at each council meeting and if anybody has
2 questions, they ask and David Young who is the Planning
3 Commissioner is on the line to answer. Charlie's memo came
4 out --

5 MR. BROWN: Is that Exhibit 139?

6 MS. COLE: Yes, sorry, Exhibit 139, the Planning
7 Commission chair's memo on the updated Towne Crest --

8 MR. BROWN: Yes.

9 MS. COLE: -- selection. Yes. We've all read
10 that and support the conclusions. And when I say we, the
11 mayor and council read the amended conclusion and agree with
12 it. In fact, it was on our agenda on February 11th.

13 MR. BROWN: Have you had an opportunity to
14 review the revised PD-35 plans and the supporting materials?

15 MS. COLE: Yes.

16 MR. BROWN: Do the modifications to the plan, have
17 they caused you to change any of your views as expressed in
18 the resolution from September regarding the ten conclusions
19 recommending denial?

20 MS. COLE: Not with the current PD-35 plan.

21 MR. BROWN: You heard Mr. Davis's testimony?

22 MS. COLE: Yes.

23 MR. BROWN: Did you review his report?

24 MS. COLE: Yes, I did.

25 MR. BROWN: How does your and the council's

1 evaluation and conclusions regarding the project compare
2 with his?

3 MS. COLE: I would consider them essentially the
4 same.

5 MR. BROWN: I wonder if you could briefly
6 highlight for us from your perspective and that of the town
7 council the principle concerns the town has about this
8 project?

9 MS. COLE: Okay. I would like to make it clear
10 that we're not opposed to redevelopment on the property. I
11 would say we agree that it's a great idea to improve the
12 housing conditions both on the property for the people there
13 and to improve the neighborhood overall. Our concerns
14 relate to several different areas, the foremost being
15 density, proximity to the single-family homes on Daylily
16 Lane and impact on the existing trees.

17 MR. BROWN: Let's talk first then about the
18 density.

19 MS. COLE: Yes. Can you give me some water?

20 MR. BROWN: Do you want some water?

21 MS. COLE: Yes, please.

22 MR. BROWN: Here you go.

23 MS. COLE: Thank you. Okay. The proposed density
24 on the current plan is not consistent with the applicable
25 Gaithersburg Airpark Vicinity Master Plan and we feel

1 strongly that this is contrary to the purpose clause for PD
2 zoning. The LMAG-910 asks for PD-35 designation with 329
3 units, an almost threefold increase in density which we do
4 not consider compatible with the surrounding single-family
5 areas. And basically at over 40 units, sorry, 40 dwelling
6 units per acre, it feels particularly incompatible with
7 Washington Grove, which is at my calculation 1.08 dwelling
8 units per acre.

9 The proposed plan also fails to follow setback
10 requirements of the County Zoning Code. The August 30, 2012
11 stack report says that because the properties to the south
12 and west are within the Town of Washington Grove and not
13 within the zoning controls of Montgomery County, the setback
14 provisions of Section 59C-7.15D do not apply along these
15 borders. The town does not agree with this interpretation
16 of the law by the staff. In fact, when we first read it, we
17 were pretty appalled because the County has always been so
18 good about following that in our experience.

19 We feel that the applicant is trying really hard
20 to fit a large development on a small property and from the
21 first PD-60 onward they've observed the 100-foot setback on
22 three of the four borders that they have, but because of the
23 density that they would like to have with the structured
24 parking, the PD-60 and the PD-44 did not allow for the 100-
25 foot setback for the Daylily Lane homes. On the PD-35, they

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1 have moved the town homes, the realigned them so that they
2 meet the 100-foot setback for the first three homes on
3 Daylily. And when I say that, I should say specifically the
4 first home on Daylily is the address on Washington Grove
5 Lane. I believe it's 565.
6 MS. ROBESON: Okay. I didn't -- okay.
7 MS. COLE: Yes, because otherwise --
8 MS. ROBESON: The southernmost house?
9 MS. COLE: Yes, the southernmost house is 565
10 Washington Grove Lane, but the next house in is No. 3
11 Daylily. So it's 3, 5 and 7.
12 MS. ROBESON: Okay.
13 MS. COLE: And my feeble brain tends to translate
14 the first house into No. 1. Anyway, the PD-35 plan, because
15 I think the Planning Board had expressed discomfort with the
16 lack of 100-foot separation, they did establish it for the
17 first three houses there, but not for No. 7. So the
18 official plan that's currently submitted doesn't have that,
19 although the modified one that I think they've, alternative
20 PD-35 plan, Exhibit 125, but only a back-up to their
21 preferred plan. On that one, they do fully honor the 100-
22 foot setback.
23 MR. BROWN: I understand you've prepared a
24 poster exhibit to illustrate compatibility issues along
25 Daylily?

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1 MS. COLE: Yes and I don't --
2 MR. BROWN: Could you go over that for us please?
3 MS. COLE: -- have multiple copies of the poster,
4 but I've brought CD's with basically the slides that I
5 prepared the photos from.
6 MS. ROBESON: Okay.
7 MS. COLE: So --
8 MS. ROBESON: Let's get -- is that everything --
9 MS. COLE: And you, of course, get to keep the
10 poster?
11 MS. ROBESON: What?
12 MS. COLE: You get to keep the poster.
13 MS. ROBESON: Thank you.
14 MS. COLE: And who should I give --
15 MR. BROWN: Give one to them.
16 MS. COLE: -- this to?
17 MR. BROWN: And one to me.
18 MS. ROBESON: All right. I -- so this poster
19 is --
20 MS. COLE: I need a pen.
21 MS. ROBESON: Thank you. That poster will be 144A
22 and the CD will be 144B. And how do you describe that
23 poster? What is that?
24 MS. COLE: I've been descriptive. I call it a
25 walk on Daylily Lane.

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1 MS. ROBESON: Okay. Poster of a walk on Daylily
2 Lane.
3 (Exhibits 144A and 144B were
4 marked for identification.
5 MR. KAUFMAN: 144 is which, Madame Examiner?
6 MS. COLE: It's the walk on Daylily and B is the
7 CD that has (indiscernible).
8 MS. ROBESON: Okay. Would you mind turning that
9 to me just a little more? I can't quite see. There, that's
10 better. Can everyone else see? All right. Thank you.
11 MS. COLE: The first photograph is from Washington
12 Grove Lane as you're about to turn left on Daylily. So this
13 565 Washington Grove Lane. As you turn and go in, and this
14 is shooting alongside of that property, so you mostly see
15 their side yard. To tell you the truth, a lot of the point
16 that I want to make with these is sort of what the area
17 feels like. The plan that's been submitted, all the plans
18 have been submitted, will basically be removing the trees
19 that are on the corridor between Towne Crest property and
20 Daylily Way, which I understand that is necessitated by, I
21 think, the work they need to have done on the sewer line
22 there. There is a WSSC easement on the back of the Towne
23 Crest property adjacent to Daylily.
24 But it does, as I recall, some gaps in it and they
25 list perhaps seven or eight trees along there that are

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1 specifically on the forest conservation plan. But really
2 when I looked up the Montgomery County requirement for
3 forest conservation plans, they talk about listing
4 everything at least six inches (indiscernible) and greater
5 within 25 feet of the line of disturbance, which I would
6 think would be approximately the property line. So there
7 are a lot of trees there that aren't specifically on the
8 forest conservation plan and the loss of them will really
9 make a difference to this area. So say these trees here
10 will go away. This back here --
11 MS. ROBESON: Okay. You're pointing at the
12 upper --
13 MS. COLE: Yes.
14 MS. ROBESON: -- right photograph?
15 MS. COLE: Usually this is an easier one to see.
16 So the upper right-hand photograph, these trees here --
17 MS. ROBESON: They're large trees in the rear of
18 the photo?
19 MS. COLE: The large trees in the rear of the
20 photo hitch on in between No. 3 Daylily and 565 Washington
21 Grove Lane and are really definitely not on the forest
22 conservation plan. The council member for forestry and I
23 sort of did a rough measurement of DVH, so at 4 1/2 foot off
24 the ground, we just ran the tape around, got the
25 circumference and back-calculated DVH which I have written

1 down on my sheet and don't remember. I can go back there
2 for a moment. Okay. So this is two specific trees. One is
3 a twin tulip poplar that we measure at 20.7 inch and 25-inch
4 DVH and then a tree that neither of us could identify that's
5 larger at 29.3 DVH.

6 And there are a lot of trees back there. I didn't
7 try and measure a lot of them, but there's quite, there are
8 a number that while nowhere near, you know, 30-inch of
9 specimen, but there are quite a number of threes back there
10 and they're in the 50 to 60-foot high range. And when
11 they're removed, a lot of this is going to look very, very
12 different. So these trees would vanish and those are the
13 ones on the upper right-hand photograph at the top, right-
14 hand side of the picture. As you move down to the second
15 photograph on the right-hand side, this is another one where
16 all of the trees, the tall ones that you can see back here,
17 will be removed by the proposed construction.

18 MS. ROBESON: Are those trees, to your knowledge,
19 are you saying they're on the Daylily Lane on the
20 property --

21 MS. COLE: No.

22 MS. ROBESON: -- or the other person's property?

23 MS. COLE: They are definitely on the applicant's
24 property.

25 MS. ROBESON: Okay.

1 MS. COLE: The one thing that's a little strange
2 is that behind the trees that I measured back here, I don't
3 know how many of you have been over there, but there's a
4 fence that runs along the border between Daylily Lane and
5 Towne Crest. And there's one point behind the second
6 property, No. 3, where the fence zigzags on and I am
7 speculating that it looks to me as though whoever installed
8 the fence decided that it would be easier to move the fence
9 onto the Towne Crest property than to try and wriggle it
10 through the trees. And so they look like they are in No.
11 3's backyard because of the way the fence runs, but I'm
12 pretty sure the fence is simply there because whoever
13 installed it was lazy. And I'm sure those trees are on
14 Towne Crest's property.

15 And if they have to do something about the sewer,
16 I can understand that the trees will obviously be impacted
17 and probably have to be removed because they're right on the
18 border between the two properties, but mostly on Towne
19 Crest. But it will very much change the appearance of this
20 area and a lot of what makes it green is going to have to
21 stay on the Westwoods side, the forest side in front of them
22 and it will be very, very different behind.

23 This is actually the No. 7 Daylily, the last
24 property, and the majority of the trees that you can see in
25 this photo because these were sort of taken when I wasn't

1 sure what I needed to say about it and obviously this was
2 quite a few months ago because everything is very green. So
3 most of the trees that you see here will be staying because
4 they're on the (indiscernible) property. There's just some
5 here in the back that would be, that would be leaving.

6 Most of what is between Daylily and Towne Crest is
7 more going back from the property line and actually there's
8 one the back on their property and then several going along
9 the area right between the -- some in Towne Crest, some in
10 Westwoods. And then this was just the rear elevation of
11 building, the bottom right-hand photograph is the schematic
12 rear elevation of Building B. So this is the corner of the
13 building that would be very close to being on the list and
14 that's one of the reasons I think that they're very
15 concerned with it being pulled at least 100 feet away from
16 them.

17 You can actually see a lot of these trees on the
18 photos that I, one of the things that you --

19 MS. ROBESON: The applicant's photos?

20 MS. COLE: It's Exhibit 128B. And it doesn't look
21 quite as dramatic because the photos were taken with no
22 (indiscernible), so it looks kind of squiggly in one place,
23 the forest don't look the best in white.

24 MR. BROWN: Why don't you take a look at Exhibit
25 128B and see if there's anything on there you'd like to

1 point out to the Hearing Examiner.

2 MS. COLE: The tree, well, the trees that I'm
3 talking about are in these photographs. Let me just
4 familiarize myself a moment. Okay. You can actually see
5 the jog in the fence line that I was talking about here.
6 And all of this (indiscernible) I would say are on the Towne
7 Crest property. And --

8 MR. BROWN: You're referring to the second photo?

9 MS. COLE: Yes, the second photo --

10 MS. ROBESON: The second from the left.

11 MS. COLE: No, photo No. 6. And they're not small
12 trees. If the sewer has to be replaced, then the trees will
13 undoubtedly have to go. But it's been a very, very dramatic
14 change to the area. You can see the job in the fence more
15 clearly here and how many trees are here. I believe there
16 may be some trees down on the -- I recall trees on the
17 forest conservation plan that looked as though they were
18 sort of in between No. 3 and No. 5. I would speculate again
19 that perhaps whoever was doing the forest conservation plan
20 didn't want to, you know, like try -- it might not even have
21 been able to find somebody home to ask the people who walked
22 in what looked like their backyard to do an analysis of the
23 trees. I -- No. 5, no, No. 3, No. 3 Daylily don't answer
24 their door very readily. They have a disabled child that --
25 they're just a little leery, but I established contact

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1 through e-mail and got permission to come in and do a bit of
2 measuring. So, anyway, as I said, it looks scrubby when
3 they don't have any leaves on them, but it will make a big
4 difference to the area and to the looks of the area. So I'm
5 going to go back to my nice, comfortable seat.
6 MR. KAUFMAN: We don't have any objection to that
7 being in an exhibit.
8 MR. BROWN: Mayor Cole, have you had some arborist
9 assistance in evaluating the preliminary forest conservation
10 plan?
11 MS. COLE: Yes. Okay.
12 MR. BROWN: What assistance have you gotten?
13 MS. COLE: We have been -- we worked over some
14 time with an arborist named Melissa Gildea. She has a
15 consulting firm called Lotus Design and Consulting. She's
16 an ISA certified arborist and a Virginia certified
17 horticulturist and we asked her to review the PD-44
18 proposals, forest conservation plan, and give us an
19 evaluation of its effect on the existing trees. So that
20 would be Exhibit 88B, which was her original evaluation --
21 MS. ROBESON: Okay.
22 MS. COLE: -- and that was sent to me prior to the
23 Planning Board hearing on September 13, 2012. Recently we
24 asked her to suggest forestry remedies specific to the
25 amended PD-35 plan and that's Exhibit 88L, the addendum

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1 dated February 5, 2013.
2 MR. BROWN: Could you --
3 MS. COLE: And that's, I would like to go back
4 just a moment.
5 MR. BROWN: I understand, that's why I was going
6 to take you back.
7 MS. COLE: Okay.
8 MR. BROWN: If you could go back to your evaluation
9 of the forest conservation plan that's in the record and
10 tell us based upon your evaluation and your consultation
11 with the arborist what you understand to be the impact on
12 trees in the, within the Town of Washington Grove?
13 MS. COLE: Okay. Other than the, the ones that
14 I've just been talking about, the PD-35 plan impacts the
15 tree on the northeast corner of No. 7 Daylily's property.
16 It is, on the forest plan, it's No. 11. It's a 27.5 EBA
17 tread oak in good condition.
18 MS. ROBESON: Is this on No. 7 or is this on Towne
19 Crest?
20 MS. COLE: It's actually on No. 7's property. I
21 believe she mentioned it when she was testifying --
22 MS. ROBESON: Yes.
23 MS. COLE: -- because --
24 MS. ROBESON: Yes, she did.
25 MS. COLE: -- she's concerned about if the

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1 significant amount of the critical root zone is impacted
2 that it might be dangerous to her property and her home.
3 The plan also impacts 57 very large or significant trees in
4 the Westwoods. Seven of these trees, No. 11, 14, 27, 34,
5 53, 54 and 72 are labeled save with two asterisks and all of
6 these have critical root zone impacts of 30 percent or more.
7 The asterisks refer you to a footnote that says that
8 rigorous tree save measures will be used. They, but they
9 admit that due to the amount of critical root zone involved,
10 not only they ultimately survive, we are concerned that the
11 life span of a mature tree that loses a third to a half of
12 its critical root zone is going to be shortened, perhaps
13 drastically. The loss of large trees on the forest edge
14 also endangers the health of the remaining trees because
15 water flow and wind patterns change and they're not used to
16 it. The trees are then exposed.
17 Okay. Mr. Hornstein says that the town has
18 rejected his offer to join in stewardship of the Westwoods
19 and we have to date. We thought that entering into an
20 agreement that would be financial in nature would be
21 inappropriate during a time period when we were really in
22 significant disagreement about how the property should be
23 developed. So that is something that hasn't happened.
24 The town does have ongoing plans for restoration
25 and maintenance of the forest preserves. We have one that

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1 started in 2007 and it is actually going on quite
2 aggressively in terms of both control of non-native,
3 invasive species and to try and do what we can with the
4 erosion that's very much present because of the outfall from
5 the pipe that comes through from the Towne Crest area.
6 The loss of trees affects the integrity and
7 aesthetic value of the Westwoods as a whole and because of
8 that the town and even the larger community, because we do
9 get quite a fair number of people who walk in the woods, so
10 it's a amenity not just for the town, but also for the
11 community surrounding us. A loss of tree canopy will have a
12 deleterious effect on the already serious storm water run-
13 off problems here. This run-off is from the current Towne
14 Crest development and the development east of it from
15 Wedgewood.
16 The applicant has acknowledged a heritage
17 responsibility for the run-off problems in verbal
18 conversations with us because of the family that did the
19 original development on Wedgewood and Towne Crest and is now
20 proposing the re-development on the Towne Crest property.
21 They feel that the site plan will improve the problem
22 because they're going to have more control over all of the
23 water that comes onto the Towne Crest site.
24 Our tree consultant, Melissa Gildea, indicates
25 that she's concerned that that won't be the case and

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1 certainly not in the short-term. She estimates that 1,000,
2 sorry, 143,600 square feet of canopy, and that's Exhibit
3 88B, page 1, will be eliminated and will greatly impact the
4 flow of storm water across the property. They will be
5 adding new trees, but because as is normally the case, the
6 tree canopy coverage is calculated for a 20-year plan. The
7 storm water in the short-term, which apparently has the rain
8 fall, but literally the leaves on the trees have a
9 significant impact on the amount of storm water that
10 actually reaches the ground and flows. I should have
11 written down that number, but I didn't. Okay.

12 MR. BROWN: Did Ms. Gilday recommend any
13 particular prophylactic measures to go along with
14 construction?

15 MS. COLE: She did suggest and that's in Exhibit
16 88L, that it would be far more protective for the trees and
17 less good if a tree protection fence was installed at 40
18 feet from the property line.

19 MR. BROWN: One of the purposes of the PD zone in
20 Section 59 C7.11 reads as follows.

21 "Additionally, it is the purpose of this zone
22 to preserve and take the greatest possible
23 aesthetic advantage of trees and in order to do
24 so, minimize the amount of grading necessary for
25 construction of the development."

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1 What is the town's position on whether or not this project
2 would fulfill that purpose?

3 MS. COLE: We think that particular purpose clause
4 for PD zoning hasn't been met.

5 MR. BROWN: Directing your attention to the -- we
6 included as part of our submission package Exhibit 88I, the
7 Wedgewood HOA, Home Owner's Association No. 2 Agreement.
8 Did you provide this for inclusion in the record?

9 MS. COLE: Yes.

10 MR. BROWN: And why, how did you obtain that
11 document?

12 MS. COLE: One of the Wedgewood 2 residents, in
13 fact, Carla Weinberg, who testified I believe in the last
14 session, she had talked to our town clerk and some of the
15 other residents at the Planning Board hearing and she came
16 to us later with the documents simply saying that she
17 thought we might be interested in it.

18 MR. BROWN: Why did you think that this should be
19 brought to the attention of the Hearing Examiner?

20 MS. COLE: One of the town's concerns does relate
21 to density and parking, and we felt that the documents
22 basically were relevant to the parking problems that they
23 have in that area.

24 Washington Grove residents, Boundary Street, we
25 have one street that's, comes off of Washington Grove Lane

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1 that, I could show you on the --

2 MR. BROWN: I'll put it up for you.

3 MS. COLE: Okay. Okay. If you look at where
4 Towne Crest ends, the yellow area, there's a small street
5 that comes off right on the edge there. I think that's
6 McCauley. Is that --

7 MS. ROBESON: No. McCauley is labeled --

8 MR. BROWN: It's a little further.

9 MS. COLE: Oh, I'm sorry. Okay.

10 MS. ROBESON: -- further south.

11 MS. COLE: So that isn't Boundary.

12 MR. BROWN: This is Boundary.

13 MS. ROBESON: Okay. So it's to the northeast of
14 Towne Crest off of Washington Grove, Washington Grove Lane.

15 MS. COLE: Okay. So it's the last little bit
16 that's in Washington Grove.

17 MR. BROWN: Yes, the --

18 MS. COLE: I don't want to make a mistake.

19 MR. BROWN: This delineation is incorrect.

20 MS. COLE: Okay.

21 MR. BROWN: This line here.

22 MS. COLE: Okay.

23 MR. BROWN: This line on the back.

24 MS. COLE: So Boundary is the last little bit
25 that's actually in Washington Grove.

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1 MS. ROBESON: Wait. Are you saying that those --

2 MR. BROWN: This is incorrect.

3 MS. ROBESON: -- white dash line should include up
4 to Boundary Road?

5 MR. BROWN: Yes. It includes to the middle of
6 Boundary Road, Boundary Street.

7 MS. ROBESON: And that's part of the town?

8 MR. BROWN: That is part of the town, yes.

9 MS. ROBESON: Okay.

10 MR. BROWN: I'm very familiar with it. I live
11 right there, so I'm very familiar with it.

12 MS. COLE: So we've gotten quite a few complaints
13 from our residents there about parking. They say that
14 residents from somewhere else, usually they say from
15 Wedgewood 2 or Towne Crest, overflow and park along Boundary
16 Street. Now we do know that Wedgewood has a serious parking
17 problem. They basically allowed two parking spaces per
18 townhouse there and it's apparently woefully inadequate.

19 One of the concerns with the new Towne Crest plan,
20 they're only required to allow 1.43 units, sorry, parking
21 spaces per unit and I think that must be because for a PD
22 zoning area like this, they would expect it to be a lot
23 closer to public transportation and then a lot more people
24 would use public transportation. No? Okay. Anyway --

25 MS. ROBESON: I don't know.

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1 MS. COLE: -- they require 1.43. The PD-35 has
2 allowed 1.7 parking spaces per unit. And if they use the
3 plan where they shift units so that they have 100 foot away
4 from No. 7 Daylily, they'll go from --
5 MS. ROBESON: The alternative B --
6 MS. COLE: Alternative B.
7 MS. ROBESON: -- which is, has the 100-foot
8 setback?
9 MS. COLE: Yes.
10 MS. ROBESON: That one?
11 MS. COLE: They'll go from 570 parking spaces to
12 500, which would bring them down to 1.52 spaces per dwelling
13 unit. So I'd say that that's probably legal, but inadequate
14 and because parking is something that we're concerned about,
15 I did want to say that is a big concern.
16 MR. BROWN: Any other, let me ask this question.
17 We asked Charlie about this. I wonder, I wondered what your
18 view is. You said that the town's views of the, of Mr.
19 Davis's report really aren't different. Let's talk
20 specifically about his suggestion that 200 units would be an
21 appropriate re-development. Are you -- would you be in
22 favor of re-developing the site and, if so, would you be in
23 favor of something like 200 units? How does the town feel
24 about that?
25 MS. COLE: When I say this, of course, I'm

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1 representing the sentiments that I've heard at Council and
2 from the Council members and things that were basically in
3 agreement with.
4 There's a lot of concern about trash accumulation.
5 We're coming up on our annual Arbor Day celebration which
6 usually involves a big trash clean-up, which Towne Crest has
7 been fabulous about. They, usually the kids sign up for
8 community service hours and they've been working with us for
9 years for doing this.
10 And I'd like to emphasize that I in no way want to
11 imply that the trash problems we have there are actually due
12 to Towne Crest. We have no idea where it all comes from.
13 But they have been great on working with us on the trash out
14 days and the trash is a concern. And we have continued
15 concerns about the impact of the storm water run-off. The
16 applicant has really been good about acknowledging some
17 responsibility for assisting with the storm water situation
18 and we do look forward to working with them in the future on
19 addressing that issue.
20 At this time, however, we do feel as though the
21 project would benefit from being redesigned to the level of
22 density that Mr. Davis recommends somewhere around 200
23 units. So approximately, an approximate doubling of what's
24 there, but not a tripling.
25 MR. BROWN: Is that viewpoint in any way related

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1 to your concern about impact on the larger trees in the
2 Westwoods that are near the property border?
3 MS. COLE: I think that there's quite a good
4 chance that if the, if the redevelopment as designed to a
5 lower density, for example, they very likely wouldn't need
6 the retaining wall that's currently scheduled to go in on
7 the border between the Towne Crest property and the
8 Westwoods. I think that that's what's going to have the
9 most significant impact on the critical root zones there.
10 And if the project could be redesigned without that, it
11 would be a lot better for the health of the woods.
12 MR. BROWN: Anything else you'd like to say?
13 MS. COLE: No.
14 MR. BROWN: All right. We're done.
15 MS. ROBESON: All right. Or Ms. Girard?
16 MS. GIRARD: Sorry, I'm going to tell you the same
17 thing I told everyone else. I tend to jump around. So bear
18 with me as we go through this.
19 MS. COLE: Okay. I tend to do the same thing.
20 MS. GIRARD: All right. I guess starting first on
21 the trees, can you tell me, did you take the pictures that
22 are shown on Exhibit 144A?
23 MS. COLE: Yeah. They were taken by one of our
24 County residents, Shelley Winkler.
25 MS. GIRARD: Okay. Do you know approximately when

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1 she took those pictures?
2 MS. COLE: Yes. I would say probably in late July
3 because we were heading towards September Planning Board
4 hearing.
5 MS. GIRARD: Okay. And the trees that you
6 identified on the rear of the property, and you seem to
7 acknowledge that, see where improvements would be largely
8 disturbing them, would that be true whether or do you have
9 an opinion as to whether that would be true or whether it
10 was a PD-20 zone, PD-35?
11 MS. COLE: I don't have the expertise to say that.
12 MS. GIRARD: Okay. And the trees you identified,
13 those are mainly, along that property line, those are mainly
14 deciduous trees as it seems from --
15 MS. COLE: Yes. Yes, that's very clear from that
16 exhibit.
17 MS. GIRARD: Are you familiar with any testimony
18 or exhibits showing generally what the proposed landscaping
19 plan would be for the Towne Crest property under the current
20 proposal?
21 MS. COLE: Yes. I didn't really see, I don't
22 recall exactly what's along the property line there. I've
23 looked at both the PD-44 and the PD-35 plans and I probably
24 looked at the PD-44 more often.
25 MS. GIRARD: Okay.

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1 MS. COLE: Whatever they put along there, which
2 could eventually be perfectly reasonable, probably won't be
3 incredibly tall trees because if they're going to be
4 planting them over the top of the sewer line, that actually
5 wouldn't be very prudent. But they can plant something
6 there that will actually look quite nice. I'm sure they
7 could.

8 MS. GIRARD: And would you agree that perhaps a
9 mix of deciduous and evergreen trees might even provide
10 better screening than what exists today?

11 MS. COLE: A sensitively done landscape plan would
12 undoubtedly provide something that would look good. I would
13 agree. You know, a landscape planners are very good at
14 that, but it takes time. Trees don't grow fast.

15 MS. GIRARD: Yes. And, but you are agree -- were
16 you here for the testimony of the landscape architect who
17 actually opined that the tree canopy coverage post-
18 development would be more than what exists on the property
19 today?

20 MS. COLE: I'd really like to see specific figures
21 for that. I did hear him say that.

22 MS. GIRARD: Okay. And on the bottom right corner
23 of Exhibit 144A, that's just a flat elevation of the side of
24 the proposed building, you're not suggesting that that would
25 be the view that would be from Daylily 7 or any of the other

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1 property zone?

2 MS. COLE: I, well, it would depend on exactly
3 where Building B started. In the PD-44 plan, that building
4 actually started adjacent to the Umunna's home. But in the
5 PD-35, it is further away and in the PD-35 amended, it's
6 quite a quite further away.

7 MS. GIRARD: All right.

8 MS. COLE: So that it's more looking out over
9 woods than the Umunna's house.

10 MS. GIRARD: And would you say generally that
11 what, the views from the Daylily house, particularly Daylily
12 7, are more the corner of a building and not a flat
13 elevation?

14 MS. COLE: Oh, yes. Yes. But it's still four
15 stories high.

16 MS. GIRARD: And you mentioned storm water
17 management and the 88L from your arborist, I believe.

18 MS. COLE: Yes.

19 MS. GIRARD: Can you tell me, is the main
20 difference between 88L and 88B, is it just the last page
21 that --

22 MS. COLE: Yes.

23 MS. GIRARD: -- that at the top says addendum,
24 that was the only change?

25 MS. COLE: Yes.

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1 MS. GIRARD: And do you have any -- what
2 experience does Ms. Gildea have in storm water management
3 planning or engineering? Does she have any background in
4 that?

5 MS. COLE: She's a landscape design firm, but I'm
6 pretty sure her technical expertise is trees, although tree
7 health is greatly impacted by storm water, so she would be
8 aware of it from that perspective.

9 MS. GIRARD: She's looking at it from that, when
10 she's talking about capping discharge pipes, does she, is
11 she --

12 MS. COLE: No, I looked at --

13 MS. GIRARD: -- representing that she has any
14 knowledge as to whether that would even be possible?

15 MS. COLE: You know, honestly, I have no idea and
16 when I looked at that I thought, my goodness, that would
17 really need to be evaluated by the County water people.

18 MS. GIRARD: Right.

19 MS. COLE: It sounds interesting, but I would say
20 that the town is not particularly recommending that
21 particular remedy --

22 MS. GIRARD: Okay.

23 MS. COLE: -- without a heck of a lot of an
24 evaluation.

25 MS. GIRARD: Okay. And the parking in the PD

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1 zone, you mentioned that you thought it might be, the 1.43
2 spaces per unit might be because of proximity to transit?

3 MS. COLE: I was speculating.

4 MS. GIRARD: Okay. So it wouldn't surprise you to
5 know that parking requirements of the zoning code are
6 completely separate from the zones, that they're the same
7 whether you're close or not, whether you're in a PD or
8 residential?

9 MS. COLE: Sure.

10 MS. GIRARD: Okay. And you mentioned that
11 there's, is it Boundary Lane, Boundary Street?

12 MS. COLE: Boundary Street.

13 MS. GIRARD: There's speculation that the overflow
14 parking is coming from somewhere on Towne Crest Drive, but
15 no one has ever been able to conclude that those residents
16 who are parking on the street are coming, are in any way
17 associated with Towne Crest?

18 MS. COLE: That's correct.

19 MS. GIRARD: You've also stated that the town
20 would be generally supportive of a redevelopment with
21 approximately 200 units. Has the town at all looked at
22 whether, you know, when the town takes that position, do you
23 know is that based on an idea that that would also include
24 structured parking?

25 MS. COLE: I don't think we've talked about that

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1 at all.
2 MS. GIRARD: Do you think that the town would
3 support it if it meant all surface parking to service those
4 units?
5 MS. COLE: I don't know.
6 MS. GIRARD: Okay. And you also mentioned that
7 you felt that the 200 units would take away the
8 necessitation for the retaining wall that's currently along
9 the Westwoods?
10 MS. COLE: I think what I said was that I hoped it
11 would --
12 MS. GIRARD: Okay.
13 MS. COLE: -- because we really don't like the
14 retaining wall.
15 MS. GIRARD: Right. You don't know?
16 MS. COLE: And that there might be some other way
17 to do it.
18 MS. GIRARD: Okay. That's all I have. Thank you.
19 MR. BROWN: Nothing further.
20 MS. ROBESON: All right. Thank you. Is that all
21 your witnesses?
22 MR. BROWN: That concludes the presentation by the
23 town. If there are other witnesses who are close to the
24 project who want to testify, they're not my witnesses.
25 MS. ROBESON: Okay. Is there anyone else here who

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1 wishes to testify in opposition? All right. Seeing none,
2 Mr. Kaufman, how many witnesses do you have?
3 MR. KAUFMAN: We have three, maybe four rebuttal
4 witnesses.
5 MR. ROBESON: Okay. Well, we will take 45 minutes
6 for lunch, so we will come back at 2:15. Thank you.
7 (Recess)
8 MS. ROBESON: Are the parties ready?
9 MS. GIRARD: We're missing Steve.
10 MS. ROBESON: I guess not.
11 MS. GIRARD: He said he'd be right back. I'm not
12 sure where he went.
13 MS. ROBESON: Well, do you think we're safe in
14 proceeding? Can you hold down the fort? My reason is --
15 here he is.
16 MS. GIRARD: Here he is.
17 MS. ROBESON: I have to leave, okay, we're back on
18 the record. I have to leave today right at 5:00. I can't
19 go over. So --
20 MR. KAUFMAN: Didn't, excuse me, Madame, didn't we
21 have another date that we could use?
22 MS. ROBESON: We do. We do. All right, Mr.
23 Kaufman, or Ms. Girard, I believe it's your rebuttal.
24 MR. KAUFMAN: Yes. The first witness would be Mr.
25 Hornstein.

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1 MS. ROBESON: You're still under oath, Mr.
2 Hornstein.
3 MR. HORNSTEIN: Yes, ma'am.
4 (Witness sworn.)
5 MR. KAUFMAN: Okay. And just for the record, Mr.
6 Hornstein, would you please state your name, address and
7 your affiliation.
8 MS. ROBESON: Well, you don't need to --
9 MR. KAUFMAN: Okay. You don't need that. All
10 right.
11 MS. ROBESON: We can get back - we know who he is.
12 MR. HORNSTEIN: It hadn't changed.
13 MR. KAUFMAN: It's been awhile.
14 MS. ROBESON: And he's been there the whole place.
15 Go ahead.
16 MR. KAUFMAN: So, Mr. Hornstein, you've been here
17 the entire hearing and you've heard all the testimony from
18 all the witnesses?
19 MR. HORNSTEIN: I have.
20 MR. KAUFMAN: And you're familiar with this
21 alternative B which changed the nature of Building B in the
22 development plan?
23 MR. HORNSTEIN: I am.
24 MR. KAUFMAN: And should the Hearing Examiner feel
25 that that better serves the purpose of the Master Plan and

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1 the zone, the PD-35 zone, are you and your company prepared
2 to have that be a binding element?
3 MR. HORNSTEIN: We are.
4 MR. KAUFMAN: So either alternative A or B would
5 be a binding element?
6 MR. HORNSTEIN: Yes.
7 MR. KAUFMAN: Excuse me a second. There was some
8 testimony just recently about overflow parking that is
9 coming into the neighborhood which is part of Washington
10 Grove. Would you mind going to Exhibit, I believe this is
11 Exhibit 10, is that what that says?
12 MR. HORNSTEIN: 10A.
13 MR. KAUFMAN: 10A. Again, there is an area that
14 apparently is not in the white boundary line just I would
15 say east or southeast of the current line on that exhibit.
16 All right.
17 MR. HORNSTEIN: Boundary Lane, I think it is?
18 MR. KAUFMAN: Right. Now you heard some testimony
19 that there's been complaints by some of the citizens who
20 live in Washington Grove that people come and park there.
21 To your knowledge, are any of those potentially overflow
22 parkers coming from your project, Towne Crest?
23 MR. HORNSTEIN: All property measurement folks say
24 we've got plenty of parking, that we are not the cause of
25 any parking problems.

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1 MR. HORNSTEIN: And how about from Wedgewood 1
2 or 2?

3 MR. HORNSTEIN: You know they are mostly 3 and
4 4-bedroom townhouses in here and there's only two parking
5 spaces, so there is a recognized problem which is one of the
6 reasons we entered into an agreement to provide them some
7 additional parking as part of the Towne Crest redevelopment.

8 MR. KAUFMAN: Well, do you have an opinion as to
9 where this parking may be coming from?

10 MR. HORNSTEIN: I do. As a matter of fact, as
11 we've previously identified that the two properties
12 immediately to the east on the south side of the Towne Crest
13 property are churches and that on occasions they do overflow
14 onto Towne Crest Drive and I would speculate that they are
15 also parking in the neighborhood too on occasion.

16 MR. KAUFMAN: There was some testimony that, I
17 think by the mayor, but she was hoping if you reduced your
18 density you wouldn't have to provide a retaining wall, do
19 you recall that?

20 MR. HORNSTEIN: I do.

21 MR. KAUFMAN: Okay. Is that, in fact, correct or
22 is there some other proposal?

23 MR. HORNSTEIN: We provided, based on the town's
24 indicating their concerns for what goes on between the edge
25 of the Towne Crest property and with the stand of trees, we

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1 gave it to our engineers and we actually came up with three
2 different solutions, one of which was the wall. One of the
3 solutions which I believe had less impact on the trees was a
4 grading plan where we needed to come into the Westwoods and
5 get an easement from the town in order to minimize the
6 impact on the trees. We need no wall as a result of that.
7 Because we have been unable to have an agreement with the
8 town, we went with a solution that allowed us to go forward
9 which is the same on our property, leave the wall in.

10 MR. KAUFMAN: So the wall is necessitated for two
11 reasons, one, because it can all be done on your property?

12 MR. HORNSTEIN: Correct.

13 MR. KAUFMAN: And in order to do a grading plan
14 that would eliminate the wall, you would need the
15 cooperation of the town?

16 MR. HORNSTEIN: That's correct.

17 MR. KAUFMAN: Okay. And then my last question
18 deals with trash. There was testimony by various witnesses
19 from the town that they occasionally have problems with
20 trash in the Westwoods from your project.

21 MR. HORNSTEIN: Well, first of all, I appreciate
22 the mayor bringing to light the fact that the Towne Crest
23 residents do participate in the trash clean-up of the
24 Westwoods. Our property manager does spend a lot of time
25 working with our residents to make sure to the best of her

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1 ability that the, that there is no trash thrown over that
2 fence. There may have been in the past and we've seen some
3 photos of that. We work very hard with our tenants now and
4 the young people to try to keep the litter down to as little
5 as possible.

6 Also, one of the benefits of the parking garages
7 is elimination of the dumpsters that are currently on the
8 site and as a result of that, as with dumpsters, sometimes
9 people are not careful with how they use those dumpsters and
10 trash does overflow. By putting the recycling and trash
11 collection inside the buildings, inside the parking garages,
12 we expect there to be a much more attractive project as a
13 result of that.

14 MR. KAUFMAN: So if you were fortunate enough to
15 have the plan approved and it was built, would all service
16 then be contained inside the parking garage?

17 MR. HORNSTEIN: All services would be contained
18 inside the parking garage.

19 MR. KAUFMAN: As well as parking for residents?

20 MR. HORNSTEIN: That's correct. All parking will
21 be inside those buildings other than the little surface lot
22 behind the townhouses.

23 MR. HORNSTEIN: And in addition to the parking
24 that might be provided to Wedgewood 2, will you still have
25 some excess parking?

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1 MR. HORNSTEIN: We are, as proposed under both
2 alternative A and B, we have over 30 spaces in excess of the
3 code requirement. The code is based on number of bedrooms.
4 So we have provided the 30 extra spaces to be for our
5 visitors and guests in addition to that would service our
6 residence.

7 MR. KAUFMAN: And that doesn't --

8 MS. ROBESON: Although the bedroom count can
9 change, right, depending on the market at the time? That's
10 not a binding element, is it in your plan?

11 MR. HORNSTEIN: It is not. The market, what we've
12 identified is historically now a balance, basically one
13 bedrooms and two bedrooms. The plan is currently envisioned
14 as 25 3-bedrooms.

15 MR. KAUFMAN: And the reason for that?

16 MR. HORNSTEIN: It's part of the affordable --
17 when we met with Rick Nelson in Housing, he very encouraged
18 us that there is a shortage of 3-bedroom affordable units in
19 Montgomery County and since we were taking out some three
20 bedrooms as part of our townhouses. We agreed to put 25, 3-
21 bedrooms into the mix to be part of solving the affordable
22 housing issue.

23 MR. KAUFMAN: And there will be an agreement with
24 DHA on the MPDU issue?

25 MR. HORNSTEIN: Yes, and I did commit to him and

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1 we will commit to him and then we will commit to him that he
2 gets some of those three bedrooms.
3 MR. KAUFMAN: I don't have any other questions of
4 this witness.
5 MS. ROBESON: Mr. Brown.
6 MR. BROWN: Mr. Hornstein, do you happen to know
7 how many parking spaces are on the site now for 107 units?
8 MR. HORNSTEIN: I don't recall off the top of my
9 head.
10 MR. BROWN: I have nothing further.
11 MS. ROBESON: Any redirect or --
12 MR. KAUFMAN: No, I'm fine.
13 MS. ROBESON: Okay. Thank you, Mr. Hornstein.
14 Your next witness?
15 MS. GIRARD: Our next witness will be Ron
16 Seiboth, the architect.
17 (Witness sworn.)
18 MS. ROBESON: You are still under oath, Mr.
19 Seiboth.
20 MR. SIEBOTH: Yes, ma'am.
21 MS. GIRARD: Mr. Seiboth, you were present this
22 morning, were you not, for the testimony of Mrs. Umunna, who
23 lives at 7 Daylily Lane?
24 MR. SIEBOTH: Yes.
25 MS. GIRARD: And there was some back and forth

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1 about the relationship between the existing Towne Crest
2 buildings and proposed Towne Crest buildings to her
3 property. Have you done any studies on that that would be
4 helpful and everyone understanding?
5 MR. SIEBOTH: Yes, I have. I prepared two
6 exhibits showing the relationship between 7 Daylily where it
7 is and the existing properties and 7 Daylily with the
8 proposed properties.
9 MS. ROBESON: Which proposal?
10 MR. SIEBOTH: I did -- yeah. I actually did a
11 scheme showing both proposals. The one that I'm calling
12 Scheme B, the one that respects the 100-foot setback to the
13 property lines.
14 MS. ROBESON: And I did have a question, I
15 apologize. You don't consider Westwoods or Maple Lake
16 Park, Westwoods, you don't consider that a single-family
17 zone? Did you look at that issue?
18 MR. SIEBOTH: Which parcel is that?
19 MS. GIRARD: It is the woods.
20 MS. ROBESON: It's the one, see the --
21 MR. SIEBOTH: The woods?
22 MS. ROBESON: Yes.
23 MR. SIEBOTH: No.
24 MS. ROBESON: Okay. Go ahead.
25 MR. KAUFMAN: I believe that's Maple Lake,

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1 Westwoods and --
2 MR. SIEBOTH: Right.
3 MR. KAUFMAN: -- and Westwoods Park.
4 MR. SIEBOTH: Right.
5 MR. KAUFMAN: Sorry.
6 MS. ROBESON: No. No problem. Okay. So I'm, I'm
7 marking this as -- okay, I'm marking -- which do you want to
8 address first, the color?
9 MR. SIEBOTH: Yes, the colored plan showing the
10 distance relationships from the closet points at 7 Daylily
11 to both the existing -- and this one shows just, just the
12 scheme B, which is 100-foot setback.
13 MS. ROBESON: Okay. Let me just say that will be
14 Exhibit 145 and it will be distance relationships, Scheme B.
15 (Exhibit No. 145 was marked
16 for identification.)
17 MR. KAUFMAN: Which one is 145?
18 MS. ROBESON: I have this as being 145.
19 MR. SIEBOTH: So what this shows is the
20 relationship of 7 Daylily to the, to the, the west, from the
21 west point of the house to the existing buildings are noted
22 in the orange color. The distance as they exist today is 56
23 feet from their garage to the deck of the closest apartment
24 building. The proposal shows with a 100-foot setback to the
25 property line there would be 140-foot distance between the

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1 corner of the garage, rear corner of the garage and the
2 closest building to them which is Building B.
3 The bottom figure shows the relationship in terms
4 of building height. The location of the 2-story building,
5 which is closer to her house, is in a proportion to the
6 further distance of the proposed house which proposed
7 building which is four stories high.
8 The second diagram, this part --
9 MS. GIRARD: Yes.
10 MS. ROBESON: You have to show me which, which one
11 are -- is it sight line cone of the -- oh, these are
12 stapled?
13 MR. SIEBOTH: Yes.
14 MS. ROBESON: So this will be 146? And that will
15 be site line cone of vision.
16 (Exhibit No. 146A and 146B
17 were marked for
18 identification.)
19 MR. SIEBOTH: The cone of vision --
20 MS. ROBESON: Just a second, is 146A and B.
21 MR. KAUFMAN: It goes up to two pages?
22 MS. ROBESON: Yeah.
23 MR. SIEBOTH: Is A the plan?
24 MR. KAUFMAN: A is the front page.
25 MR. SIEBOTH: A, okay, the --

1 MR. KAUFMAN: And B is the front page.
 2 MR. SIEBOTH: The B shows in plan the relationship
 3 from the center of the property line at the closest point
 4 for lot 7 to the existing building to the building that's
 5 proposed in scheme A, Building B, and the distance to
 6 Building B in scheme B. The first sheet shows that
 7 relationship from the, if a person was standing on the
 8 property line looking towards Towne Crest property, the cone
 9 of vision of existing, standing on the property line and
 10 looking directly at the building shows that the building is
 11 in a cone of vision of approximately 22 degrees. When you
 12 translate that to Scheme A, which is the closer of the two
 13 schemes, the cone of vision goes to about the top of the
 14 third floor because of the distance separation.
 15 But in scheme B where we're 100 foot off the
 16 property line, the cone of vision at 22 degrees is well-
 17 above the building. So it gives you a sort of a graphic
 18 description of the relationship on how you view the
 19 buildings from that property line.
 20 MS. GIRARD: So, Mr. Seiboth, like in more
 21 layman's terms, it would be your opinion that under the
 22 existing condition versus scheme B, you would be seeing a
 23 lot more skylight? Can you just explain?
 24 MR. SIEBOTH: Well, it gives you the opportunity,
 25 of course, being further away and because the building is

1 further away, even though it's four stories, it creates a
 2 more open feeling than it would even if it were, even the
 3 two-story existing condition does today. Of course, also
 4 the distance creates the opportunity for more screening and
 5 landscaping to appease the concerns of the residents at lot
 6 7 Daylily.
 7 MS. ROBESON: Have you submitted a revised
 8 landscape plan based on alternative B?
 9 MR. SIEBOTH: No.
 10 MR. KAUFMAN: That wouldn't be this, with this, it
 11 would be the --
 12 MS. ROBESON: Landscape architect, Mr. Foster?
 13 MR. KAUFMAN: Yes.
 14 MS. ROBESON: Okay.
 15 MS. GIRARD: So just to elaborate on that, 146A,
 16 which is showing cone of vision, in reality would it be your
 17 expectation that there would be plantings between where the
 18 person is standing and where the buildings were proposed?
 19 MR. SIEBOTH: Yes, I would.
 20 MS. GIRARD: And that this -- is it your opinion
 21 that such landscaping would likely further secure any use of
 22 the building?
 23 MR. SIEBOTH: Yes, it would.
 24 MS. GIRARD: And looking at 146B, or the existing
 25 conditions versus the proposed building Scheme A and Scheme

1 B, is it your opinion or can you explain to us what the
 2 difference, if there is any, do you think there is between
 3 looking at the existing condition which is more of a flat
 4 wall and the proposed conditions which is more of the corner
 5 of the building, how that would affect your perception?
 6 MR. SIEBOTH: Well, because they'd be looking at
 7 the corner in perspective and each side of the building is
 8 kind of going away from him, I think it's going to feel much
 9 more open than it does today. The fact that there's so many
 10 two-story buildings that are close to the property line I
 11 think is more obtrusive than one larger building further
 12 away. And the cone of vision kind of shows that it's a
 13 little more open.
 14 MS. GIRARD: And with regard to -- we also heard
 15 this morning some concerns about noise in the proposed
 16 development. Can you give us your thoughts on what noise
 17 increase, if any, would be expected and what the major, what
 18 you believe the major components of the noise generation
 19 would be?
 20 MR. SIEBOTH: Generally in these kind of --
 21 MS. ROBESON: Are you qualified as a noise expert
 22 or --
 23 MR. SIEBOTH: Well, we take great pains to
 24 separate our residents within our communities from
 25 disturbing each other from the noise factor. So when we

1 design these buildings, today especially noise is a big
 2 concern for the owners and the buyers. I think that in this
 3 case most of the outside noise would be created by an air
 4 conditioning condenser or something like that. My
 5 understanding is today that the condensers are on the roofs
 6 of the existing buildings. They're flat roofs.
 7 In our proposed buildings, we'll probably be
 8 putting the air conditioning condensers on each deck inside
 9 a room, so there will be insulation around the condenser.
 10 The ventilation for the condenser will be on the exterior
 11 wall with a screen. So we found that within the communities
 12 at least there's much less noise generation that affects the
 13 residents of the community.
 14 In terms of the parking garage, I think that an
 15 enclosed parking garage is much, there's much less noise
 16 transfer than if a car is parked out on in an open space.
 17 So I think that the garage itself will provide some
 18 insulation from noise and other aspects of the parking
 19 situation.
 20 MS. GIRARD: So in your opinion as an architect
 21 who designs buildings obviously, not a noise expert, in your
 22 opinion will the proposed development be noisier than what
 23 exists today because it's more dense?
 24 MR. SIEBOTH: No, I don't think it will be. I
 25 think it probably in most cases you'll find that it's less

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1 noisy because of the higher insulation values in the
2 buildings.

3 MS. GIRARD: Hold on one second, sir. Okay. And,
4 Mr. Seiboth, you've heard testimony from Washington Grove
5 that a development more like a PD-20 something, in the
6 neighborhood of 200 units would be more desirable. Can you
7 just quickly, and I know you haven't studied this, can you
8 quickly describe for us what you think the differences would
9 be between such projects and from an architectural
10 perspective would it seem much less dense with only 200
11 units?

12 MR. SIEBOTH: Probably a 200 unit scheme on the
13 site we would, we'd probably go to a different product type.
14 My guess is it would be more smaller buildings and surface
15 parking. You know, it translates to the ground value per
16 unit would have to be increased, so you would have to
17 decrease the amount of cost you put into amenities and, you
18 know, just the nice stuff that's in the site, you know, the
19 landscaping and the paving and all the amenities. So my
20 guess is that with more smaller buildings it would look more
21 dense than it would with a fewer taller buildings.

22 MS. ROBESON: Wouldn't there be open areas between
23 the smaller buildings?

24 MR. SIEBOTH: There would, but the way we've
25 designed -- I feel very confident that the way we have

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1 designed this building, the way the penetrations go into
2 the courtyards along the street, that we're doing pretty
3 much the same thing.

4 MS. ROBESON: Okay.

5 MR. SIEBOTH: And we're hiding the additional
6 density that people are concerned about within the building.
7 I mean there's, you know, fewer walkways into the buildings.
8 People pretty much enter the buildings from one controlled
9 spot, so you don't have as many access points along the
10 roadway so it looks much less cluttered.

11 MS. ROBESON: Well, you could that with a PD, with
12 a 200-unit building, right?

13 MR. SIEBOTH: Well, if it was designed the same
14 way. What I'm saying is that because it's a lower density
15 on this site, we have to look at the cost of construction
16 development.

17 MS. ROBESON: Yes, I understand that, but as far
18 as access points, you could still consolidate hypothetically
19 access points?

20 MR. SIEBOTH: Yeah, but if you divided the site
21 into smaller, you know, more smaller buildings,
22 theoretically each building would have at least one access
23 point whereas this one, you know, one building has as many
24 access points as a smaller building would.

25 MS. ROBESON: Well, okay. I used to -- I've seen

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1 apartment communities that have only one or two access
2 points in multiple buildings.

3 MR. SIEBOTH: Uh-huh.

4 MS. ROBESON: So I just, I don't know if you
5 couldn't do it. Are you saying it couldn't be designed that
6 say?

7 MR. SIEBOTH: You mean at lower density design the
8 building the same way?

9 MS. ROBESON: Yes.

10 MR. SIEBOTH: Theoretically you could.

11 MS. ROBESON: I'm just --

12 MR. SIEBOTH: But I think if you didn't have the
13 parking garage, you know, that's, your control point from --

14 MS. ROBESON: Is the cost of the parking garage?

15 MR. SIEBOTH: I mean you'd be going from a parking
16 space out on the surface --

17 MR. ROBESON: Right.

18 MR. SIEBOTH: -- into a building.

19 MS. ROBESON: Right. Right.

20 MR. SIEBOTH: I think that's the big difference.

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

22 MR. KAUFMAN: That's all we have.

23 MS. ROBESON: Mr. Brown.

24 MR. BROWN: Mr. Seiboth, I want to go over these
25 two exhibits very briefly. First of all, Exhibit 145 does a

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1 comparison between the existing buildings and the proposed
2 alternative to the main, to the main application plan that
3 is the drawing in Exhibit 125, correct?

4 MR. SIEBOTH: Yes.

5 MR. BROWN: You didn't do one for the main plan
6 where the 100-foot setback to the corner of No. 7 Daylily is
7 preserved?

8 MR. SIEBOTH: I didn't. It's ghosted in on the
9 plan. You can kind of see that it's inside that, the cone
10 of the setback cone.

11 MR. BROWN: I'm sorry, I may have mis-spoke, but
12 we don't have on this, on Exhibit 145 a comparison between
13 the 56 feet to the existing and the distance from the corner
14 of the house to the corner of Building B if we use Exhibit
15 124, is that correct?

16 MR. SIEBOTH: Well, which one is 124?

17 MS. ROBESON: 124 is Alternative A Revised
18 Development Plan with covering part woods development
19 covering, no, Revised Development Plan covering parking
20 tabulations. I'm not sure that's the right name for it,
21 but --

22 MR. BROWN: Yes, 124.

23 MR. SIEBOTH: Right.

24 MR. BROWN: It doesn't show the distance to this
25 corner --

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1 MR. SIEBOTH: Right.
2 MR. BROWN: -- that's here?
3 MR. SIEBOTH: Right.
4 MS. ROBESON: No, I didn't. I'm sorry. Can you,
5 I'm looking for the plan. For some reason it's not up where
6 it should be.
7 MR. KAUFMAN: Is it over there, 24?
8 MS. ROBESON: Well, go ahead. What is your
9 response to the question?
10 MR. SIEBOTH: Well, he's asking if the Exhibit 145
11 shows a --
12 MS. ROBESON: 145, oh, okay. I've got it.
13 MR. SIEBOTH: -- shows the relationship between
14 the house and the original plan where the Building B is
15 closer and I said it didn't.
16 MR. BROWN: Turning to Exhibit 146, the conclusion
17 that I draw from the first page, I'd like to know if you
18 agree with it, is that compared to the existing condition,
19 Scheme B provides one with an apparent, an apparent
20 perception of a building that's smaller than the existing
21 building?
22 MR. SIEBOTH: Yes.
23 MR. BROWN: Is that right?
24 MR. SIEBOTH: That's right.
25 MR. BROWN: So using that same language, would you

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1 also agree that Scheme A in comparison to the existing
2 condition shows a building that appears larger than the
3 existing condition?
4 MR. SIEBOTH: That's correct.
5 MR. BROWN: And in comparison to Exhibit 145, on
6 the second page of Exhibit 146, you do show the distance, at
7 least from the center line of the property to the corner of
8 the building if it were built according to Exhibit 124?
9 MR. SIEBOTH: Yes.
10 MR. BROWN: Okay.
11 MS. ROBESON: I thought there was testimony
12 somewhere to the extent that the existing condition or the
13 existing building was 50 feet?
14 MR. BROWN: Let me ask a question on that.
15 MS. ROBESON: I'm sorry. Go ahead.
16 MR. BROWN: The existing condition number on page
17 2 of Exhibit 146 refers to the setback distance between the
18 building and the property line, is that right?
19 MR. SIEBOTH: That's right.
20 MR. BROWN: It does not refer to the building
21 height?
22 MR. SIEBOTH: No, it doesn't.
23 MS. ROBESON: Oh.
24 MR. BROWN: Did you hear Ms. Umunna talk about the
25 estimated building height?

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1 MS. ROBESON: Yes, I did.
2 MR. SIEBOTH: Yes.
3 MR. BROWN: She said 50 feet. Do you agree with
4 that number?
5 MR. SIEBOTH: No, I don't.
6 MR. BROWN: It's what?
7 MR. SIEBOTH: I would say it's closer to 30 feet.
8 But it's close, so it probably feels like 50 feet to her.
9 MR. BROWN: Lastly, Mr. Seiboth, if I remember
10 correctly, your firm specializes in multi-family dwellings?
11 MR. SIEBOTH: Yes.
12 MR. BROWN: Recognizing that all land use
13 situations are not economically equivalent, would it be your
14 testimony that a, that in general structured parking is
15 simply economically infeasible for a multi-family unit or
16 units of 200?
17 MR. SIEBOTH: Well, yeah, it really depends on how
18 urban it is. I mean if you're within the city limits, you
19 obviously would, if you had 200 units you'd be doing
20 structured parking because of the ground values closer to
21 the urban core is. As you get further away from the urban
22 core, you're less likely to have structured parking.
23 MR. BROWN: Okay. Thank you. I have nothing
24 further.
25 MS. ROBESON: Thank you. Any redirect, Mr.

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1 Kaufman?
2 MS. GIRARD: No.
3 MS. ROBESON: No? Okay.
4 MR. KAUFMAN: Can he be dismissed? He has to go
5 to Philadelphia.
6 MS. ROBESON: Yes, except I have -- if we finish
7 today, I have a question on green space. Would he answer
8 that or not?
9 MS. GIRARD: It would kind of more be the engineer
10 I think.
11 MS. ROBESON: Okay.
12 MR. KAUFMAN: Well, he could be the engineer for,
13 would he, well, we might have to give you that in -- we're
14 going to give you a memo, so --
15 MS. ROBESON: Okay. All right. And I take it the
16 third witness, your next rebuttal witness is Mr. Ager?
17 MS. GIRARD: Yes.
18 MR. KAUFMAN: So Ron Seiboth can be dismissed?
19 MS. ROBESON: Yes.
20 MR. KAUFMAN: Thank you very much.
21 MR. SIEBOTH: Thank you.
22 MS. ROBESON: Yes. You're still under oath.
23 (Witness sworn.)
24 MS. GIRARD: You're ready, Mr. Ager?
25 MR. AGER: I think I'm ready.

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1 MS. ROBESON: You stay under oath for the rest of
2 your life after you're done.

3 MS. GIRARD: Mr. Ager, were you present for the
4 testimony of Joe Davis and all the representatives of the
5 town of Washington Grove regarding who finds the application
6 for the PD zone in the Gaithersburg Vicinity Master Plan?

7 MR. AGER: Yes.

8 MS. GIRARD: Do you agree with Mr. Davis's
9 analysis regarding Master Plan compliance?

10 MR. AGER: No.

11 MS. GIRARD: Could you please address for us what
12 the deficiencies of his analysis are in your view?

13 MR. AGER: Well, a couple of points. As a general
14 comment, a lot of the opposition testimony has compared
15 gross densities to net densities. It's a very important
16 distinction.

17 MS. GIRARD: All right.

18 MR. AGER: And I'll go through that later, but I
19 can touch on it now. It has to do with her testimony with
20 respect to Shady Grove, it has to do with respect to how
21 this, how they calculate this. The other thing is there's
22 been a lot of testimony that has to do comparing a proposed
23 density to the existing conditions. Now that is something
24 you can bring up or make a comment about, but it's not the
25 point where you make Master Plan compliance, establishing

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1 compliance from a density standpoint.

2 So there's been a lot of testimony about tripling
3 the density, but that's not the Master, I mentioned that
4 earlier in testimony, that's not the Master Plan.

5 MS. ROBESON: Well, what is -- okay. Well, go
6 ahead.

7 MR. AGER: Well, so the zoning, the existing
8 conditions on the ground if you just look at the
9 application, it's 107 units. We've heard that in testimony
10 previously. The zoning on the ground would allow 134 units,
11 16.52 dwelling units per acre. The comments by Mr. Davis
12 using the gross tract area would be 154 units, 16.36 is my
13 estimate on that. When you look at the entire analysis
14 area, it would be 331 units or 15.7 dwelling units per acre.

15 So that's just -- there's a difference in the
16 numbers. The second point I guess is that the Master Plan
17 is the, an older Euro Master Plan. It's a very important
18 distinction. I went through as many master plans as I could
19 since the last hearing and looked at them and the general
20 trend is they become more complicated, more detailed and
21 more specific the newer they are, the comparison of Shady
22 Grove to White Flint as an example, the comparison of
23 Gaithersburg in '85 to Clarksburg in '94. Clarksburg in
24 '94, for example, used districts. They used large areas to
25 establish density. And then within there they provided

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1 certain parameters for the area, multiple property areas
2 that didn't establish who got what with respect to that. In
3 fact, a lot of the zoning lines don't follow property lines,
4 but it was the negotiation required between property owners
5 and those sorts of things. It's a very critical difference.
6 So there's this evaluation of master plans over time. And,
7 again, we're talking about 1985 Master Plan stuck in 1985.

8 MS. ROBESON: Yes, I understand that.

9 MR. AGER: Yes, I'm sorry, I just wanted --

10 MS. ROBESON: I got that point.

11 MR. AGER: I'm sorry.

12 MS. ROBESON: It's a 30-year-old Master Plan.

13 MR. AGER: Yes.

14 MS. ROBESON: I've got it.

15 MR. AGER: And it's different, but the Clarksburg
16 is like it except they provide more illustrative diagrams
17 and a little more narrative on explaining what they'd like
18 to see. So --

19 MS. GIRARD: And Mr. Kaufman had referred to
20 language earlier in the PD zone that talks about compliance,
21 let me get the exact language.

22 MR. KAUFMAN: I have it here.

23 MS. GIRARD: The purpose under 59C-7.11 of the
24 Zoning Ordinance with which I'm sure you're familiar talking
25 about the zoning category being utilized to implement the

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1 general plan area Master Plans and other pertinent County
2 policies. Have you taken a look at what other policies may
3 be relevant in this analysis that have not previously been
4 mentioned?

5 MR. AGER: Yes. Just to pick up where we left
6 off, we talked a lot about the General Plan and the --

7 MS. ROBESON: The housing element you mean?

8 MR. AGER: Well, yes. There's the, in the report
9 there's the '85 and then there's a '93 refinement of the
10 General Plans.

11 MS. ROBESON: Right.

12 MR. AGER: But since then during 2000, especially
13 2007 to 2010, there was this enormous amount of effort on
14 affordable housing and that plus the population after it
15 occurred during 8.0, well, 8.0 at COG and at the County
16 level, the housing element to the General Plan, the
17 amendment to the general plan was very specific about
18 affordable housing and housing in general and how those
19 should be accomplished. And that plan influences and
20 informs all the Master Plans throughout the County.

21 MS. ROBESON: I know that, but I remember actually
22 it was Mr. Brown's cross-examination in another case and I
23 guess I'm really struggling with some and I'm just telling
24 you upfront so you can address some of my concerns. The
25 housing element, you know, theoretically we get everybody

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1 coming in and saying this housing element we deserve X
2 amount of density because of the housing element of the
3 general plan and the need to add 75 or -- I forget how many
4 households it recommends. But, you know, but then doesn't
5 every project do this? And there's language in this plan,
6 and I can't remember exactly where, that says you need to
7 preserve existing neighborhoods.

8 MR. AGER: Uh-huh.

9 MS. ROBESON: And so as I said, why does it
10 justify PD-35 as opposed to PD whatever, a lower density is?

11 MR. AGER: It's part of the equation. It's not
12 necessarily all of it. But what's important is that this
13 Master Plan on page, give me just a second to --

14 MS. ROBESON: Which one are you on?

15 MR. AGER: I apologize, the 1985 --

16 MS. ROBESON: Oh.

17 MR. AGER: -- Gaithersburg Vicinity Master Plan on
18 page 1 and this was referenced in Case G-9, I'm sorry 840
19 this morning.

20 MS. ROBESON: Yes.

21 MS. AGER: That they used it, they saw this as an
22 important factor for recommending for that project. On page
23 1, plan highlights, and this is referenced in the District
24 Council decision, increasing the County's total housing
25 stock and currently providing an appropriate mix of

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1 affordable housing is one of the key six elements to this
2 Plan, the 1985 Plan.

3 MS. ROBESON: But wouldn't any increase in density
4 do that?

5 MR. AGER: Would any increase in density provide
6 an appropriate mix of affordable housing? Yes, unless there
7 was a very modest density increase, yeah.

8 MS. ROBESON: I guess what I'm really struggling
9 with and the reason is your theory that, the Master Plan,
10 it's a very odd way. If your theory is correct and all we
11 should look at is the aggregate number of dwelling units in
12 Analysis Area II, I mean that leaves you with the
13 possibility of here that you go from zero to 200 in, so to
14 speak, in terms of density. And that's not typical in
15 planning, it just isn't what you normally see. And also the
16 Master Plan expresses it in units per acre which is not a
17 typical way you would -- if it were a total density cap, you
18 wouldn't really express it in units per acre. So I guess my
19 concerns about your arguments, which are very good
20 arguments, but my concerns are it kind of leaves you with
21 this pod of relatively high density surrounded by very low
22 density.

23 MR. AGER: Can I, would you like me to --

24 MS. ROBESON: Yes, I do.

25 MR. AGER: -- comment? Yes. I have to back-up a

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1 little bit and I have to mention that Mr. Davis said a
2 couple different things in his testimony, correct me if I'm
3 wrong. He said in his report that it would be appropriate
4 for 200 more or less units on the property. Later in oral
5 testimony he said that the property would be appropriate for
6 PD-22 and in other testimony he said that things should be
7 measured on the growth tract area, whether that's the
8 application or not. So there's kind of three different
9 numbers that he's put out there.

10 And I sat down and I tried to estimate what they
11 are and the first one is 200. That's the number in his
12 report, more or less, plus or minus. The second one, based
13 upon the 8.11 acres, is 217 units. And if we base it on the
14 gross tract area, it would be 253 units. That's my
15 interpretation of his three different numbers that he's
16 expressed in his testimony.

17 MS. ROBESON: But -- go ahead.

18 MR. AGER: I wanted to add that there's a couple
19 of unique circumstances to Analysis Area II, one of --
20 again, Mr. Davis's testimony mentioned that we should have a
21 crew cut effect, everybody get the same equal treatment
22 based on land area allocation. But, in fact, the Master
23 Plan -- so and it, that's a valid argument. But there's
24 also some information in the Master Plan that within
25 Analysis Area II, there's two important factors. One is our

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1 property has the higher density zoning, so you could make an
2 argument that if everything was to increase, this would be
3 proportionally more on this property. The second part or
4 second unique circumstance --

5 MS. ROBESON: But what would -- okay. Go ahead.

6 MR. AGER: And this could be argued with different
7 numbers, but the second point I think, and I tried to make
8 this earlier, is that we have a very established
9 neighborhood in Wedgewood I and II and the 1971 plan, which
10 this is a carryover from, showed multi-family zoning and
11 proposals on Wedgewood II. So there was an anticipation for
12 more density within Analysis Area II. And since '71 to '85,
13 townhouses were built. And so we have the same density
14 proposed in 1985, but less has been on the ground and it's
15 unlikely or highly unlikely to be unique to expect that that
16 single-family neighborhood essentially would redevelop, it
17 would require multiple property owners getting together to
18 look at a proposal and that sort of thing. So it's not hard
19 to --

20 MS. ROBESON: Yeah, but does that mean PD-35 is
21 appropriate next to the --

22 MR. AGER: I think, I think that the PD-35 versus
23 28 or 22 or whatever is a compatibility question, not a
24 Master Plan question. It's not the density necessarily, but
25 it's how you use it and how it's clustered and how it's not

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1 clustered, if it's done well or poorly. So I think it's --
2 the question you're asking is more of a compatibility
3 question.
4 MS. ROBESON: It is, but it's also a master -- I
5 mean it's also a Master Plan question I think because it's
6 what is the intent of the Master Plan for this area and I
7 think once you look at an aggregate number of units, then
8 you get these, to interpret a Master Plan giving you these
9 kind of next to each other densities, I'm not being very
10 clear, but that would be unusual.
11 MR. AGER: I don't know that would be unusual and
12 I can jump to Shady Grove Master Plan which has been brought
13 up by the opposition and I could show you examples there and
14 I'd be happy to do that now or later in the testimony.
15 MS. ROBESON: Go ahead --
16 MR. AGER: Okay.
17 MS. ROBESON: -- whenever you want to.
18 MR. AGER: Okay. I think it's important and I'll
19 show that.
20 MS. GIRARD: Why don't we --
21 MR. AGER: Want to jump to that?
22 MS. GIRARD: Yes, why don't we move right into
23 that then?
24 MR. AGER: In the Shady Grove Master Plan, earlier
25 testimony today talked about an exhibit on page --

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1 MR. KAUFMAN: Take your time.
2 MR. AGER: -- 35, I think it was. On page 35 of
3 the Master Plan --
4 MR. KAUFMAN: This is the Shady Grove?
5 MS. ROBESON: On the Shady Grove?
6 MR. AGER: I'm sorry, the 2006 Shady Grove Sector
7 Plan, page 35.
8 MS. GIRARD: Just take a moment.
9 MS. ROBESON: Okay.
10 MR. AGER: The testimony earlier was that we had
11 these different districts which are labeled on this plan,
12 Metro West, Metro North, East and South. I want to bring,
13 just for the discussion about this density next to, you
14 know, high-density versus, next to low-density, I want to
15 draw your attention to Metro East and it's not as with all
16 land use situations, there's, no two are exactly the same,
17 but this has some similarities.
18 And what I would like to also ask you to do is
19 look at, if you flip to page 59 of that same Sector Plan,
20 pan down, I'm looking at the Metro East, so it's bounded on
21 the north by Redland Road and you'll see a dark brown symbol
22 there and that's residential multi-family. Now that's the
23 same recommendation we have in the Gaithersburg Master Plan
24 for the application, residential multi-family. Next to
25 that, those areas immediately to the south, are what's

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1 referred to in this Sector Plan Master Plan as Old Derwood.
2 The historic area, I'm sorry, let me back up, it's an older
3 area with historic resources and it was seen as something
4 that wanted to be retained and honored so that transition
5 from those properties to the properties that I just
6 mentioned, was very important of mention, in the Master
7 Plan. And then if you flip to page 121 of that same Master
8 Plan, you'll see the zoning for those properties. The
9 zoning is recommended R-90 base, PD-35. And immediately --
10 MR. KAUFMAN: This is part of our exhibit --
11 MS. ROBESON: I'm sorry, can you --
12 MR. KAUFMAN: We have this --
13 MR. AGER: I'm sorry, am I going too --
14 MR. KAUFMAN: It's in Exhibit 88.
15 MS. ROBESON: Oh, okay.
16 MR. KAUFMAN: Most of these pages are part of our
17 Exhibit 88A.
18 MS. ROBESON: Okay. And what page --
19 MR. KAUFMAN: He's on 121.
20 MR. AGER: 121.
21 MS. ROBESON: Oh, okay.
22 MR. AGER: I'm sorry, if I'm going too fast, I
23 apologize.
24 MS. ROBESON: No. Okay, 121, I'm here.
25 MR. AGER: So what I'm saying is we have property

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1 recommended for PD-35 next to historic resources across the
2 street. I ask you to do, go two other places and I
3 apologize for this, but I think it's important. You have to
4 flip back to page 49. And on page 49 in the lower left
5 corner you'll see a Metro East and Metro North WMATA
6 illustrative plan that was a result of an extensive process,
7 I believe, which was a charrette and followed through and
8 was endorsed by this Master Plan. And what it shows on
9 those properties is the interpretation of how the PD and the
10 adjoining RT-6 should be accomplished. And what it shows is
11 a transition on the proposed properties with single-family
12 and townhouses and then multi-family behind that. And in
13 this same plan it talks about a 4-foot height limit for
14 these properties.
15 MR. KAUFMAN: You mean 4-story?
16 MR. AGER: I'm sorry, 4-story, I -- thank you. I
17 stand corrected, 4-story height limit. The last place I
18 would like you to look is on page 119. There's a --
19 MR. KAUFMAN: That one is in our exhibit.
20 MS. ROBESON: Okay.
21 MR. AGER: And on that page these same properties
22 are listed as the VEIP property, Somerville property and the
23 Derwood Business Condominiums, which is the RT-6. So the
24 first two are the PD-35. And what I want to note is that
25 they recommend the PD-35, but they don't have a unique cap

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1 recommended in the Master Plan. So they're leaving it up to
2 the PD application to determine compatibility, but they
3 clearly in the Master Plan have expressed, one, that
4 townhouses and single family on the property immediately
5 across the street is a transitional compatibility element.
6 They also talked about multi-family is the balance of the
7 property and 4-story is the height limit. So there are
8 some -- this is a Master Plan that's been discussed by
9 others and it does show how a PD-35 next to single-family
10 and historic resources can accommodate the Master Plan
11 intent.
12 And on our application, we are utilizing and one
13 alternative, well, in both alternatives a setback of 100
14 feet to some of the property and we're using townhouses as a
15 transitional element and it's been expressed in many zoning
16 cases that townhouses are, in fact, by design and by type
17 are compatible single-family. So you're talking about the
18 same compatibility relationship in townhouses and single-
19 family. So it has a similarity. I think I've answered that
20 kind of basic question on the --
21 MS. ROBESON: Okay.
22 MR. AGER: -- I don't have anything else to say on
23 that.
24 MS. GIRARD: I just wanted to get back to two
25 things that we were on before we took the detour. One is

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1 you were talking about numbers and I think you had concluded
2 that under one of the methods of analysis that Mr. Davis got
3 to 253, is that correct?
4 MR. AGER: Yeah, well, again he said three
5 different things, one of which was a hard number, 200 more
6 or less, but then he also said if you measure things on the
7 gross tract area and you use the PD-22, you would get that
8 number, yes.
9 MS. GIRARD: And then as a result of 76 units from
10 what we're proposing, is that correct?
11 MR. AGER: That's correct, 76 units.
12 MS. GIRARD: And you had also mentioned the
13 General Plan and Amendments --
14 MR. AGER: Could I add one other thing to that?
15 MS. GIRARD: Sure.
16 MR. AGER: It's that -- he didn't explain how he
17 came to that number or he didn't do a plan, but he said it's
18 about right or something along those lines. But that number
19 is seven units below what I refer to as the analysis area
20 number. So he's close to that analysis area number
21 calculation that I came up with. So he didn't say it, but
22 he's kind of saying the same thing I was saying in a
23 different way. And our plan is slightly above that number.
24 MS. GIRARD: And with regard to the General Plan
25 and the amendments to the General Plan and its relationship

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1 to the Gaithersburg Master Plan, have you prepared a time
2 line that kind of sets out the important dates that you've
3 been referencing in the previous testimony and your
4 testimony today?
5 MR. AGER: Yes, I did do that.
6 MS. GIRARD: Would you like to distribute that for
7 the record just to aide everyone in following the --
8 MS. ROBESON: When was Towne Crest built?
9 MR. AGER: 1966, approximately 1966.
10 MR. KAUFMAN: It was actually built before the
11 1970 Master Plan.
12 MS. ROBESON: Right.
13 MR. KAUFMAN: If you recall --
14 MS. ROBESON: Yes, I do. I recall it all.
15 MR. KAUFMAN: It's hard to recall everything.
16 MS. GIRARD: Well, that's why I think perhaps this
17 document will be useful for everyone.
18 MR. KAUFMAN: Excuse me.
19 MS. ROBESON: And you're proposing this as an
20 exhibit?
21 MS. GIRARD: Yes.
22 MS. ROBESON: Mr. Brown, do you have any
23 objections? Then, well, maybe I should ask did Mr. Ager
24 prepare this exhibit?
25 MR. AGER: Yes, I did. And it was an attempt to

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1 summarize many of these dates that we've discussed.
2 MR. KAUFMAN: Yes, here you go. What number was
3 it?
4 MS. GIRARD: 147.
5 MS. ROBESON: So this will be 147.
6 MR. BROWN: No objection.
7 MS. ROBESON: And this would be what, chronology
8 of local map amendment?
9 MR. AGER: I call it a General Chronology.
10 MS. ROBESON: Okay. General Chronology.
11 (Exhibit No. 147 was marked
12 for identification.)
13 MS. GIRARD: In your original testimony, you
14 referred to comments made by the plaintiff with regard to
15 the application and density and that transcript has now been
16 entered into the record as Exhibit 137. Have you gone back
17 and reviewed that transcript again and what assumptions the
18 Planning Board was operating under regarding density?
19 MR. AGER: Yes, I have.
20 MS. GIRARD: Was there anything you wanted to
21 highlight or discuss about the Planning Board's analysis and
22 how it may or may not relate to your analysis?
23 MR. AGER: Well, again, I was not at the hearing.
24 I viewed it online and I read this transcript. What I take
25 away from it are a couple of important points is that when

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1 the discussion occurred towards the end of the case, the,
2 there was a discussion between Planning Board members which
3 more or less regards approximately on page, I've got 94,
4 it's approximately 94 on the transcript. And there was this
5 discussion about the Master Plan and how different members
6 were struggling with the, at the time they were looking at
7 the PD-44 zone application. And there wasn't any feedback
8 from staff during this discussion and there was a
9 conversation about this continual increase of three times
10 the density, but that's a comparison of that PD-44 proposal
11 to the existing units on the ground. It's not a comparison
12 of the proposal to the Master Plan. So I think that's an
13 important distinction.

14 MS. ROBESON: What was the difference between a
15 comparison between your proposal and the Master Plan,
16 because I do agree with --

17 MR. AGER: 69 units. If you're looking at it as a
18 unit number --

19 MS. ROBESON: Now, and is that based on the
20 aggregate amount of units in the Master Plan or is that
21 based on dwelling units per acre, or is that based on the
22 underlying zoning?

23 MR. AGER: I can give it to you in different ways.
24 What I, the number I just expressed to you is a comparison
25 of the proposal plus the remaining units in Analysis Area

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1 II. And, again, the Master Plan uses that --

2 MS. ROBESON: Okay. Forget that for a moment.

3 MR. AGER: Okay.

4 MS. ROBESON: What's the difference between this
5 proposal and what's developable under the underlying
6 zoning --

7 MR. AGER: Underlying zoning?

8 MS. ROBESON: -- recommended in the Master Plan?

9 MR. AGER: Okay. Give me just a second to
10 recollect. Okay. This proposal is 329 units.

11 MS. ROBESON: Right.

12 MR. AGER: The underlying zoning based upon the
13 gross tract area, if we redevelop under that proposal, would
14 be 154 units was my estimate.

15 MS. ROBESON: Is that with an MPDU or --

16 MR. AGER: Zoning.

17 MS. ROBESON: -- or just --

18 MR. AGER: That's with MPDU.

19 MS. ROBESON: With MPDU's?

20 MR. AGER: And if you were to do that same
21 analysis on area of the application that's before you, the
22 8.11 acres, we'd be 134 units. So it would be that
23 difference.

24 MS. ROBESON: The gross tract area is 159.

25 MR. AGER: 154.

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1 MS. ROBESON: 154. And based -- okay, gross tract
2 area, base zoning is 154.

3 MR. AGER: And I could give it to you in dwelling
4 units per acre if that's helpful.

5 MS. ROBESON: No, no, I can -- I'm still
6 recovering from a car accident, so -- 150, so 329 is yours,
7 154 is under the Master Plan recommended zoning based on
8 gross tract area --

9 MR. AGER: That's right.

10 MS. ROBESON: -- with MPDU bonus?

11 MR. AGER: That's correct.

12 MS. ROBESON: Okay. Okay. What is your density
13 based on the gross tract area?

14 MR. AGER: For the application?

15 MS. ROBESON: 329, yes.

16 MR. AGER: 329? I have that. I need a
17 calculator.

18 MS. ROBESON: Okay. You don't have to -- what's
19 the gross tract area?

20 MR. AGER: 9.41 acres. I'll give you that in a
21 second.

22 MR. KAUFMAN: We have a calculator. Somehow I
23 knew we'd get in the numbers.

24 MS. ROBESON: We get a lot of numbers here.

25 MR. KAUFMAN: Yeah.

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1 MS. ROBESON: Many, many calculations.

2 MR. KAUFMAN: It's a big calculator.

3 MR. AGER: Do you want to know to the, just to
4 make sure what the question is.

5 MS. ROBESON: Potential density growth tract area.

6 MR. AGER: Potential density gross tract area --

7 MS. ROBESON: Based on the -- no, no, I'm sorry.
8 Your 329 divided by the gross tract area.

9 MR. AGER: It's 34.9 dwelling units per acre,
10 roughly 35 dwelling units per acre.

11 MS. ROBESON: So it is a PD -- okay. That's what
12 I was wondering.

13 MR. AGER: It's slightly less.

14 MS. ROBESON: Yeah.

15 MS. GIRARD: Mr. Ager, you were reviewing it. Was
16 there anything else you wanted to talk about the cleaning
17 discussion?

18 MR. AGER: Yes. Starting on page 90, line 16,
19 there's an unidentified person speaking and these are all in
20 the context of the Planning Board members discussing the
21 application. I believe this was Commissioner Anderson. And
22 he --

23 MS. ROBESON: But you don't know?

24 MR. AGER: I, well, I'm comparing this -- it says
25 unidentified person and I could be wrong about this.

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1 MS. ROBESON: Okay.
2 MR. AGER: But I looked at the, I looked at the --
3 MS. ROBESON: I'm just saying --
4 MR. AGER: I could be wrong. It's one of the
5 Planning Board members, let's put it that way. And I'm
6 going to read from it. In some areas on page 91, line 2, to
7 have something like this happen, there needs to be
8 improvement in density if it is permitted in the Master Plan
9 or concurrent with redevelopment. Later on the same
10 commissioner mentions, so there's a balancing act with how
11 much density needs and they could redevelop without
12 substantially affecting the neighborhood.
13 And on page 92, that same conversation, same
14 person on line 5 says,
15 "And I think there's enough flexibility in my
16 view in the Master Plan to be able to do something
17 like this,"
18 because the sense that relates, I'm sorry, because the sense
19 that relates to what extensive is, it says high-density
20 residential in the map and then is says 815. I don't think
21 there's anyone who would think that eight to 15 is high-
22 density residential in today's terminology.
23 On page 96, another unidentified commissioner says
24 if --
25 MS. ROBESON: You're sure it's a -- where are you,

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1 96?
2 MR. AGER: On page 96 of the transcript.
3 MS. ROBESON: Are you taking the fact that it's a
4 commissioner from the context --
5 MR. AGER: I'm taking --
6 MS. ROBESON: -- of the discussion?
7 MR. AGER: I'm going from my recollection of
8 looking at the --
9 MS. ROBESON: The tape?
10 MR. AGER: -- hearing on the tape and comparing it
11 to the time frame and --
12 MS. ROBESON: But you don't know if it's the same
13 unidentified person?
14 MR. AGER: No, there's a lot of unidentified
15 persons.
16 MS. ROBESON: Yes.
17 MR. AGER: But I can say this much, this is the
18 end, this is towards the end of the testimony. This is the
19 discussion amongst the commissioners. Mr. Kaufman was in
20 some of this.
21 MR. KAUFMAN: I can tell you what I --
22 MS. ROBESON: No. Sorry.
23 MR. AGER: But it's in the, it's in there. And
24 this unidentified commissioner says,
25 "If this were a Master Plan, we'd be

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1 talking about a Master Plan for this area, I would
2 not have to think very hard to recommend density at
3 this level that would make this, it would invite you to
4 go have you do exactly what you're proposing."
5 And, again, this is a PD-44 plan that they were looking at.
6 I just can't get over the deviation in the Master Plan. So
7 there was this, you know, struggle with the process over the
8 substance I guess is the point.
9 MS. GIRARD: And, Mr. Ager, when you were talking
10 about the density recommended in the Master Plan, were they,
11 had you supplied them with any of your analysis regarding
12 how to properly calculate the density?
13 MR. AGER: No, I was not involved at this point.
14 MS. GIRARD: And what assumptions were they
15 working under when they were talking about the density
16 allocated in the Master Plan?
17 MR. AGER: They, there was reference to three
18 times the density and that's it. That's all that was, you
19 know, it was noted with any thorough analysis beyond that is
20 my recollection of what I saw there and there was testimony
21 from opposition that, you know, that comparing the proposed
22 to the existing.
23 MS. GIRARD: And they were focusing solely on the
24 subject property? Was there any discussion about the
25 analysis area?

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1 MR. AGER: Not to my knowledge.
2 MS. GIRARD: Do you believe that the Planning
3 Board might have had a different discussion if they looked
4 at the analysis hearing?
5 MR. BROWN: Objection. Speculative.
6 MS. ROBESON: Sustained.
7 MR. AGER: I was going to agree with you. I would
8 have to speculate.
9 MS. ROBESON: Thank you.
10 MS. GIRARD: Are you done with that? Okay.
11 MR. AGER: Yeah.
12 MS. GIRARD: You previously mentioned specific
13 cases that supported your analysis and I believe that Mr.
14 Davis went through a few as well. Please review those cases
15 in more detail and explain how you think they're relevant to
16 this application.
17 MR. AGER: There were three cases mentioned, G-
18 873, G-909 and G-840. And at this point I'd like to make a
19 correction if I could to earlier testimony.
20 MS. GIRARD: Yes.
21 MR. AGER: Mr. Davis mentioned that I had
22 misinterpreted the additional density in the 873 case and so
23 I want to correct that. That is I do agree with Mr. Davis
24 on that. But it doesn't change the fact that, and I would
25 like to have my report reflect that that density --

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1 MS. ROBESON: That's fine.
2 MR. AGER: Yeah. But it doesn't change the fact
3 that other cases have seen reasons to increase density of
4 the Master Plan and Case 909 is exactly that type of case
5 because it saw there was a public purpose benefit and there
6 was some age to the Master Plan or some information from, in
7 that case 2006 to 2012 that had some variance on the
8 decision, at least that's my interpretation of working with
9 part of the case. And then, so I think that's an important
10 point still that even though the Master Plan may have a cap
11 with age and with circumstance, the District Council has
12 found that increases above that number can occur.
13 In G-40, I'm sorry, G-840, I think the important
14 point to take away from there is, and I don't remember the
15 exhibit number --
16 MS. GIRARD: MG-840. That was the District
17 Council resolution, 15-86, which is Exhibit 141.
18 MR. AGER: Yeah.
19 MS. GIRARD: It was submitted earlier.
20 MR. AGER: Right. And on page 9 on the copy that
21 was handed, that became the exhibit, I highlighted what I
22 believe are relevant to this case. One, Item 1 is that even
23 though it was an RT case and it didn't have Master Plan
24 compliance issues, it strongly referenced the general plan
25 and what I previously mentioned is one of the principle

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1 goals of the plan outlined on page 1. And that's all
2 outlined on page 9. And increasing the County's total
3 housing stock and currently providing an appropriate mix of
4 affordable housing was a key decision found by the District
5 Council in that case and it's in the center of this
6 property.
7 The other point, the final point, I guess, on
8 these cases that I think is important is that going back
9 to -- even though I misinterpreted the language on page 11
10 of G-873, the language on page 10 is still relevant and
11 important because it's an old Master Plan. And I'll read it
12 to you.
13 "Under Master Plan consistency -
14 this is towards the top of the page,
15 "-- in the present case this is 873, the
16 hearing examiner, Planning Board and technical staff
17 found that the proposed development was in substantial
18 compliance with the recommendations of the 1982
19 approved and adopted Westbard sector plan, the sector
20 plan. The District Council agrees, noting that because
21 this sector plan is 26 years old, many years beyond the
22 time frame generally anticipated for master and sector
23 plan updates, it is appropriate to place more weight on
24 the sector plan's general recommendation than on very
25 specific recommendations which by their nature are more

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1 likely to become outdated."
2 So that is, this is a similar era Master Plan and --
3 MS. ROBESON: I guess the question is really, and
4 the question is because I recommended approval of 909 that
5 there is some variance based on the age, the question really
6 is how much of a variance and what justifies the amount of
7 variance you're requesting. That's what the issue is in my
8 mind.
9 MR. AGER: And in 909 there was 15 percent and in
10 our case it was 18 percent is the variance.
11 MS. ROBESON: Where do you get 18?
12 MR. AGER: I'm comparing the analysis area --
13 MS. ROBESON: The aggregate, the 231 units?
14 MR. AGER: The aggregate -- yeah.
15 MS. ROBESON: Okay. All right. Mr. Brown, or --
16 MS. GIRARD: Wait --
17 MS. ROBESON: I'm sorry.
18 MR. KAUFMAN: We're not quite finished.
19 MS. ROBESON: When she's quiet, I think you're
20 done. No, I --
21 MS. GIRARD: Sorry.
22 MS. ROBESON: I apologize.
23 MS. GIRARD: Sir, I wanted to finish this thought,
24 or writing it down --
25 MS. ROBESON: Yes.

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1 MS. GIRARD: -- before I looked up again. Sorry.
2 We are almost at the end. But, Mr. Ager, Mr. Davis, who
3 represented the towns, have also discussed the concept of
4 smart growth and how the Shady Grove Master Plan and its
5 density recommendations may evidence current thinking on
6 smart growth. Can you first give us your thoughts on what
7 smart growth really is and also discuss it in terms of the
8 densities or what exactly the densities are that are
9 recommended in the Shady Grove Master Plan?
10 MR. AGER: Well, smart growth is anti-sprawl as
11 they put it. It's trying to get development where there's
12 infrastructure and services, and that includes
13 transportation. It doesn't differentiate between bus
14 service or heavy rail, light rail, but it's a public
15 investment and increases in growth through population where
16 there's already services. That's the key there. It's not
17 only if you are sitting on top of the Metro, it's other
18 factors as well. So it's a broader definition than I think
19 has been expressed by some others.
20 MS. GIRARD: In recognizing that in this case the
21 request is for a PD-35 zoning, you did review where the PD-
22 35 zone was recommended in the Shady Grove Master Plan. But
23 is there, are there also higher densities recommended even
24 closer to the Metro station in that plan?
25 MR. AGER: Yes, there is.

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1 MS. GIRARD: And can you just quickly review what
 2 those densities were because I think the record isn't
 3 entirely clear on that?
 4 MR. AGER: Yeah. The -- give me just a second.
 5 On page 121 of the Sector Plan, there --
 6 MS. GIRARD: This would be the Shady Grove Sector
 7 Plan?
 8 MR. AGER: Shady Grove Sector Plan 2006. I'm
 9 referring to the land, to the proposed zoning map and it's
 10 also shown on page 59 in the proposed land use map that
 11 highest densities, of course, are located near the entrance
 12 to the Metro station itself. And as we discussed earlier,
 13 there's these four basic districts or neighborhoods around
 14 the Metro, north, south, east and west. And the zone that
 15 was determined to be closest, placed closest to the Metro
 16 or, in other words, the highest density zone, is the TOMXTDR
 17 zone. That zone has a, essentially a FAR of 1.6 and there,
 18 as discussed by others earlier, there is recommendations in
 19 the Master Plan for increases above that density for work
 20 force housing and MPDU's.
 21 When you look at that zone and you look at the
 22 recommendations of the Shady Grove Sector Plan, you'll see
 23 that they, there is reference to a minimum of 70 percent
 24 residential. It's a mixed use zone. So there's commercial
 25 and then there's residential. And it's a minimum of 70

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1 percent if they wanted to have as many residential units
 2 close to the Metro as possible.
 3 And so if you take Metro West as an example, in
 4 the Master Plan it says it's 14.25 acres, and you express
 5 that in residential units, you would first convert the FAR
 6 to square feet and then divide by a reasonable road square
 7 foot number for a residential unit. If you run through that
 8 calculation and you use 1,000 square feet as a gross
 9 residential unit, you come up with 695 units. The reason
 10 I'm doing this is to try and give you a dwelling unit per
 11 acre number so you can compare apples to apples.
 12 So on a gross basis, that's 695 with, divided by
 13 1425 acres is about 48.77 dwelling units per acre on the
 14 gross. Now that assumes there's no commercial density.
 15 That assumes that, you know, it's all residential which is
 16 not going to be the case. And if you go back to the
 17 illustrative plan that I showed earlier, you can see that
 18 the parcels have been -- I can --
 19 MS. ROBESON: It's on 49. I'm looking at it.
 20 MR. AGER: Yes, you can see that clearly there
 21 is residential buildings and there's commercial buildings.
 22 So it's undetermined at this point how much, but the point
 23 is that you can't calculate those residential units on the
 24 gross because some of it has to be accommodated for
 25 commercial. So that actual net density is going to be much

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1 higher.
 2 And if you just take it, you know, on a 70/30 land
 3 split, you know, would be one thing, but I'm not sure that
 4 would definitely be the case. It's commercial and it may or
 5 may not be a higher or lower density. So we don't have an
 6 exact number. But what I do want to do for you is take you
 7 through --
 8 MS. ROBESON: Are there height limits?
 9 MR. AGER: Not that I'm aware of. There's the
 10 density limit.
 11 MR. KAUFMAN: And that's --
 12 MR. AGER: But the number I just gave you, the
 13 48.77, that's before you add in MPDU's, TDR's, workforce
 14 housing and things of that nature. So you could be as high
 15 as 918 dwelling units on that same area again.
 16 MS. ROBESON: Just in terms of density?
 17 MR. AGER: Just in terms of density.
 18 MS. ROBESON: Not bulk regulations?
 19 MR. AGER: That's correct. Master Plan level
 20 recommended density.
 21 MS. ROBESON: How much per acre?
 22 MR. AGER: I'm at 918 dwelling units and, again,
 23 looking at that on the district basis, if you apply that
 24 across the entire district, it would be one number, but
 25 really you can't because there's the requirement that has to

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1 be some level of commercial there, somewhere between zero
 2 and 30 percent. And what that land area is is unknown. So
 3 let's just say for argument sake it's a 70/30 split land
 4 area wise just to run through these numbers.
 5 Well, you would be at 90, almost 92 dwelling units
 6 per acre. I'm still talking about the gross now. I'm not
 7 talking about a lot or an individual application. I'm
 8 talking about the land area within the district --
 9 MS. ROBESON: Right.
 10 MR. AGER: -- that --
 11 MS. ROBESON: I know.
 12 MR. AGER: I just want to make sure, I'm sorry,
 13 I'm slowing down myself a little bit. I apologize. The
 14 land area within the district on a gross basis. So when you
 15 start to take individual lots, you know, when you start to
 16 take out a potential road or some other improvement, you
 17 could have a higher number. So you could, you're clearly
 18 approaching 100 dwelling units per acre in that area.
 19 Now on the other side of the Metro East, there's a
 20 same zone, but the area that -- and there's a lower number
 21 of dwelling units proposed. On the west side there's not a
 22 cap. On the east side there is. And it's crossing a much
 23 larger area, so the dwelling unit count is down in the 30,
 24 let me just get that correct, about -- and it's the Metro
 25 North is what I'm referring to, not -- I said east. It

1 would be, it could be as low as 25 dwelling units per acre.
 2 But, clearly, it's a TOMX zone that on the net basis would
 3 have a higher number. But when you express that across the
 4 entire, what they call a neighborhood or district in that
 5 Sector Plan, you're looking at 25 dwellings per acre. So
 6 these number calculations are, you know, are -- you can
 7 calculate them in different ways. I think the key here is
 8 if you're going to compare the application to something
 9 that's happening in Shady Grove, you should compare the, a
 10 lot area to a lot area, not, you know, or the entire
 11 analysis area to an analysis area, do you see what I'm
 12 saying?

13 MS. ROBESON: I hear you.

14 MR. AGER: Yes. Yes.

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

16 MR. AGER: Okay. So --

17 MS. ROBESON: I'm not sure I agree.

18 MR. AGER: Okay.

19 MS. ROBESON: But --

20 MR. AGER: But the point is, the point is that the
 21 densities at the Metro are much higher than the densities
 22 proposed on this property. You can measure it.

23 MS. ROBESON: Are potentially much higher?

24 Potentially.

25 MR. AGER: That's true. That hasn't been --

1 MS. ROBESON: Because when they do the
 2 comprehensive plan, they look at parcel by parcel and they
 3 may have a more, and I'm not, I'm just saying what you're
 4 saying is they have a potentially higher density. They
 5 don't have a cap on the units per area as this, as this did,
 6 correct?

7 MR. AGER: On the west side, that's correct.

8 MS. ROBESON: Yes.

9 MS. GIRARD: Mr. Ager, just one last thing. And
 10 with regard to the Shady Grove Plan in general, and whether
 11 it does or does not represent smart growth as currently
 12 envisioned by the County, have you had a chance to compare
 13 it to such plans as White Flint which are much more current
 14 plans?

15 MR. AGER: Yes. Yes, I have.

16 MS. GIRARD: And what's your -- can you just
 17 quickly run us through that comparison?

18 MR. AGER: Well, in the White Flint plan, for
 19 example, there's the new zone that's been created --

20 MS. ROBESON: Right.

21 MR. AGER: -- since 2006, CR zone. At the same
 22 relative location to the Metro, the FAR is 4.0. That's the,
 23 as compared to 1.6 in the TOMX. And in the TOMX, and my
 24 recollection is in that zone itself talks about it being the
 25 transition from Metro to other -- it's not intended to be

1 necessarily there, but there were some decisions during the
 2 Shady Grove plan that brought the density, I don't, I can't,
 3 you know, say why, but today it's done at a much higher
 4 density at the Metro.

5 MS. GIRARD: That's all I have for Mr. Ager.

6 MS. ROBESON: Oh, so you're saying that they redid
 7 this 2006 plan today, the density would be higher, is that
 8 what you're saying?

9 MR. AGER: If they treated, if they treated Shady
 10 Grove like they treated White Flint, it would be higher.

11 MS. ROBESON: Okay.

12 MR. AGER: Again, it's a very interesting issue.
 13 They have a zone that wasn't contemplated in 2006.

14 MS. ROBESON: Right.

15 MR. AGER: We have multiple things that weren't
 16 contemplated in 1985, the wrapped parking and --

17 MS. ROBESON: Right. Right.

18 MR. AGER: -- all the things that we've talked
 19 about.

20 MS. ROBESON: Right. Ms. Girard, anything else?

21 MS. GIRARD: No, that's all we have.

22 MS. ROBESON: Mr. Brown?

23 MR. BROWN: So if I understand, Mr. Ager, you're
 24 saying that because of White Flint and the way they've
 25 handled the rezoning and planning of White Flint, exactly

1 the same result should obtain north of Washington Grove for
 2 some undefined reason?

3 MR. AGER: No, I didn't say that.

4 MR. BROWN: So what is the relevance of what has
 5 been decided on a, in a very specific site, White Flint, to
 6 what should be decided in this case?

7 MR. AGER: What I was trying to do and I apologize
 8 if I wasn't clear is that there's been testimony that our
 9 densities at our property are higher than or like the
 10 densities at the Metro. The first point I was trying to
 11 clarify is there's been an apples to oranges comparison and
 12 I wanted to clarify that by explaining what's happened at
 13 Shady Grove and that the densities at Shady Grove are going
 14 to be higher.

15 MR. BROWN: I'm not asking you about Shady Grove,
 16 Mr. Ager. I will get to Shady Grove. I'm asking you about
 17 White Flint right now.

18 MR. AGER: Well, you interrupted. I wasn't
 19 finished.

20 MR. BROWN: Well, you weren't getting there.

21 MS. ROBESON: Just, you, just answer his question
 22 about White Flint. You have an attorney that can bring
 23 these things out on redirect, so just, if you could just
 24 answer his --

25 MR. AGER: White Flint was developed later.

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1 There's no change in policy, the direction and thoughts by
2 the County. They have new zones. They're reviewing their
3 zoning ordinance as we speak. And from the period of time
4 2006 to 2012, that particular Metro site was handled much
5 differently at a higher density.
6 MR. BROWN: So what does that tell us about what
7 should be done out at Shady Grove and out, and further out
8 from Shady Grove? Why isn't that a unique situation? Why
9 isn't Shady Grove a unique situation? Why shouldn't each
10 one be decided on its own merits?
11 MR. AGER: Well, they should, I agree with you,
12 they would be decided on their own merits. What I'm trying
13 to, the point I'm trying to make is there's information
14 available today that wasn't available in 2006 and it may
15 change the way that Shady Grove was looked at. It's, the CR
16 zone did not exist at that time and the other point is that
17 there has been a lot of discussion about the need for
18 housing and there is a shortage of 62,000 housing units per
19 the County, affordable housing units in the County.
20 MR. BROWN: Okay.
21 MR. AGER: We have to find places for them. And
22 we have a very limited amount of area within the County that
23 can be redeveloped.
24 MR. BROWN: We will get to that, the housing
25 element in a minute, but let's go to your conclusions about

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1 Shady Grove to begin with. And I would like to, first of
2 all, direct your attention to page 121 which is part of our
3 Exhibit 88A, I believe. Do you have that age?
4 MR. AGER: Yes, I do.
5 MR. BROWN: Now this diagram is actually to scale,
6 isn't it?
7 MR. AGER: Yes, I believe.
8 MR. BROWN: And you see the big, black M more or
9 less in the middle of the page?
10 MR. AGER: Yes, I do.
11 MR. BROWN: That's the Metro station, right?
12 MR. AGER: Yes.
13 MR. BROWN: And approximately how far away is the
14 recommended PD-35 zone?
15 MR. AGER: I don't have a scale to determine, but
16 it's --
17 MR. BROWN: Well, you do see the scale at the
18 lower right-hand corner, don't you?
19 MR. AGER: It's, the scale, it varies. It appears
20 to vary from about 400 feet to about 1,500 feet.
21 MR. BROWN: Now you see the town of Washington
22 Grove at the top of that map?
23 MR. AGER: Yes, I do.
24 MR. BROWN: And do you see the southern end of the
25 Towne Crest property just above that?

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1 MR. AGER: Yes, I do.
2 MR. BROWN: What's the approximate distance
3 according to this scale between the Metro and the Towne
4 Crest property just on a crow's fly basis?
5 MR. AGER: You measured from Towne Crest,
6 Washington Grove?
7 MR. BROWN: From the southern end of Towne Crest
8 on a straight line basis to the Metro station?
9 MR. AGER: 9,000 to about 10,000 feet.
10 MR. BROWN: Something in the range of two miles on
11 a straight line basis, right?
12 MR. AGER: Yes.
13 MR. BROWN: And quite a bit further if you're
14 taking, if you're in a vehicle, bus or car, right?
15 MR. AGER: That's correct.
16 MR. BROWN: Do you see any other PD-35 zone
17 property within the Shady Grove sector plan other than this
18 one that's less than half a mile away?
19 MR. AGER: No.
20 MR. BROWN: In fact, there's some R-200 and PD-2's
21 much closer to the Metro than Towne Crest, right, that is
22 within the sector plan?
23 MR. AGER: Yes.
24 MR. BROWN: Let's go back to page 119 now. You
25 talked about Metro North. There are two properties there.

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1 One of them is 41.5 acres for WMATA and the other is 45 for
2 CSP, right?
3 MR. AGER: Uh-huh.
4 MR. BROWN: And the number of units recommended
5 for WMATA is 530 and the number of units for CSP is 960?
6 MR. AGER: That's correct.
7 MR. BROWN: Which of the two is more dense?
8 MR. AGER: I believe the CSP is.
9 MR. BROWN: Yes. And if you divide the number of
10 acres into the number of units, what do you come out with as
11 a density per acre?
12 MR. KAUFMAN: Do you know if you need big numbers?
13 MR. AGER: 21.3.
14 MR. BROWN: Let's go back now to page 35. Did you
15 hear Mr. Challstrom's testimony regarding the dwelling unit
16 per acre recommendations on this page?
17 MR. AGER: Yes, I did.
18 MR. BROWN: Let me see if you agree with my
19 interpretation. Let's take Metro West, for example, and the
20 part of Metro West that's more dense, 1.6 FAR and 30 to 40
21 dwelling units per acre.
22 MR. AGER: Right.
23 MR. BROWN: Do you see the note at the bottom of
24 the page, all residential densities may be increased by the
25 provision of MPDU's, TDR's and workforce housing where

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1 applicable?

2 MR. AGER: Yes, I do.

3 MR. BROWN: Did you hear Mr. Challstrom say that

4 those numbers would have to be increased because of that

5 note at the bottom?

6 MR. AGER: I believe he said that, yeah.

7 MR. BROWN: I beg your pardon?

8 MR. AGER: I said I believe he said yes.

9 MR. BROWN: Yes?

10 MR. AGER: Yes.

11 MR. BROWN: Okay. Now is it not a fair conclusion

12 that what this Master Plan shows is an approximation of the

13 number of dwelling units before bonus increases that one

14 would expect at 1.6 FAR development?

15 MR. AGER: Can you repeat that question?

16 MR. BROWN: All right. Isn't it a fair

17 interpretation of this page in the master, in the sector

18 plan that the 1.6 FAR in the judgment of the preparer of the

19 plan or this page is roughly equivalent to 30 to 40 dwelling

20 units per acre before density bonuses are added?

21 MR. AGER: Well, measured across the entire gross

22 area.

23 MR. BROWN: And those are TOMX-2 zones in the

24 Metro West and Metro South just as they are in the Metro

25 North area, correct, looking back at page 119?

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1 MR. AGER: Well, there's a difference. Some

2 properties are zoned TOMX and some are, have the TDR bonus.

3 MR. BROWN: Yes. And under, in Table 3 of the

4 airpark analysis area for the Shady, for the Gaithersburg

5 and Vicinity Master Plan, there's no TDR bonus for area 2,

6 is there?

7 MR. AGER: That's correct.

8 MR. BROWN: Although there are TDR bonuses for a

9 large number of other areas within the airpark study area,

10 right?

11 MR. AGER: That's correct.

12 MR. BROWN: Okay. Let's go to the discussion of

13 the Master Plan density in the Planning Board's hearing. I

14 would direct your attention to pages 65 through 67. Have

15 you reviewed those pages? Actually 64 through 67. Have you

16 reviewed --

17 MR. AGER: Can I just refresh --

18 MR. BROWN: -- those pages?

19 MR. AGER: Yes, I'm refreshing my memory.

20 MR. BROWN: Okay. I just have a couple of

21 questions for you about that discussion. Isn't it the case

22 that the, that what was going on in this particular part of

23 the discussion was the Planning Board scrutinizing the

24 recommendations of density for Analysis Area II in Table 3?

25 MR. AGER: Yes.

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1 MR. BROWN: With respect to the three cases that

2 you discussed one way or another in your, in your report,

3 let's first go to Case No. 873 and you said you believe you

4 made a mistake. What -- the mistake that you made was to

5 put a 33 percent bonus on top of the existing density

6 recommendation in the Master Plan, isn't that correct?

7 MR. AGER: Yes.

8 MR. BROWN: That was a PD zone application, right?

9 MR. AGER: I believe so. Yes, it was PD-28.

10 MR. BROWN: Yes. And that's worth noting isn't it

11 because the very first sentence of the purpose of the PD

12 zone is to implement the general plan for the Maryland

13 Washington Regional District and the area Master Plans by

14 permitting unified development consistent with densities

15 proposed by Master Plans, right?

16 MR. AGER: Uh-huh.

17 MR. BROWN: Now were the other two cases that you

18 mentioned, 909 and 840, were those PD zones where there was

19 an issue about making sure that the density was consistent

20 with the Master Plan?

21 MR. AGER: In 840 it was not the case. In 909,

22 there was a discussion about density and comparing the

23 density to the Master Plan.

24 MR. BROWN: Yes, I understand, but it was not a PD

25 rezoning, was it?

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1 MR. AGER: Are you referring to Case 909?

2 MR. BROWN: Yes.

3 MR. AGER: It was a PD zone, yes, it was.

4 MR. BROWN: It was?

5 MR. AGER: Yes.

6 MR. BROWN: Okay. Turning to Exhibit 142, the

7 housing element, would you turn to page 9?

8 MR. AGER: Yes. Give me one second please. Page

9 9?

10 MR. BROWN: Page 9.

11 MR. AGER: Okay.

12 MR. BROWN: What is the first goal of the housing

13 element?

14 MR. AGER: Concern and care for existing

15 neighborhoods and existing housing.

16 MR. BROWN: Would you please read into the record

17 the second paragraph under this goal?

18 MR. AGER:

19 "Older neighborhoods of modest, single-family

20 or town homes or garden apartments are especially

21 vulnerable to decline. If services are not

22 adapted and maintained and housing zoning codes

23 are not enforced, there's also, there are also

24 susceptible --"

25 I'm sorry, I apologize.

1 "They are also susceptible to tear down and
 2 in so development because they often, they are
 3 often well-located in down-County and mid-County
 4 areas near employment and shopping centers,
 5 services and public transit routes. These
 6 neighborhoods also contain the bulk of housing
 7 affordable to households with moderate and middle
 8 incomes in Montgomery County over 140,000
 9 affordable units in 2009. This is double the
 10 number of affordable new units that can be
 11 reasonable, that can reasonably be expected to be
 12 added to the housing stock by 2030. Master Plans
 13 in particular must devote special attention to
 14 protecting existing neighborhoods."
 15 MR. BROWN: Mr. Ager, would you characterize the
 16 Towne Crest property as a mid-County development near
 17 employment and shopping centers, services and public transit
 18 routes?
 19 MR. AGER: Yes, generally.
 20 MR. BROWN: Would you characterize the units as
 21 affordable to households with moderate and middle incomes in
 22 Montgomery County?
 23 MR. AGER: Yeah, I would, yes, generally.
 24 MR. BROWN: Would you --
 25 MR. AGER: I'd have to --

1 MR. BROWN: Would you conclude that those units,
 2 107 units, are within 140,000 affordable units in the County
 3 in 2009?
 4 MR. AGER: Yes.
 5 MR. BROWN: Could you read the second goal please
 6 of the housing element?
 7 MR. AGER:
 8 "The concentrated new housing and mixed use
 9 transit-oriented areas."
 10 MR. BROWN: Is the, is Towne Crest in what's been
 11 designated as transit-oriented development area?
 12 MR. AGER: It -- are you asking from a zoning
 13 perspective, Master Plan --
 14 MR. BROWN: Yes.
 15 MR. AGER: -- perspective?
 16 MR. BROWN: Yes.
 17 MR. AGER: Zoning?
 18 MR. BROWN: Well, I don't -- what is the
 19 difference in your mind?
 20 MR. AGER: Well, transit is generic. It's bus,
 21 rail, and other, you know, those sorts of services. So the
 22 property is, in fact, transit accessible. It is a transit-
 23 oriented area because it's in the corridor. It's close to
 24 services. The neighborhood in general is mixed use. The PD
 25 application is mixed use, so I'm --

1 MR. BROWN: Isn't there, aren't there provisions
 2 in the zoning ordinance that talk about achieving the
 3 greater level of density if you're in a transit-oriented
 4 development area?
 5 MR. AGER: Greater -- could you repeat the
 6 question?
 7 MR. BROWN: Greater density or other, or other,
 8 other incentives to build in -- in what are labeled as
 9 transit-oriented areas that are designated such in Master
 10 Plans?
 11 MR. AGER: Well, if you start at the general plan,
 12 the corridor is differentiated from the wedges by the fact
 13 that it's, in fact, the place where this is supposed to
 14 occur.
 15 MS. ROBESON: Right. I think his question is --
 16 tell me if I'm wrong -- it, I think his question is, are
 17 there specific areas in Master Plans designated as transit-
 18 oriented residential districts? Is that your question?
 19 MR. BROWN: Yes.
 20 MR. AGER: I'm sorry, some, I apologize for not
 21 understanding the question. Yes, there are some Master
 22 Plans that designate transit-oriented areas.
 23 MR. BROWN: And this area is not within any such
 24 designation, the Towne Crest area, is it?
 25 MR. AGER: No.

1 MR. BROWN: Let's go to Objection No. 1 on page
 2 14. What's the name of Objection 1?
 3 MR. AGER: Housing and neighborhood connectivity.
 4 MR. BROWN: And the implementing main topic
 5 sentence for that objective is -- could you read that aloud
 6 please?
 7 MR. AGER:
 8 "Concentrate most new housing near public
 9 transportation and provide easy, multi-modal
 10 connections to jobs, schools, shopping, recreation
 11 and other leisure activities."
 12 MR. BROWN: All right. And would you read
 13 policies 1.1 and 1.2 under Objective 1.
 14 MR. AGER:
 15 "1.1. Build the majority of new housing in
 16 transit-oriented locations and near jobs and
 17 employment centers. Policy 1.2. Increase in-fill
 18 housing opportunities and suburban office parks,
 19 shopping centers and other under-utilized
 20 properties."
 21 MR. BROWN: If I understand your testimony, you
 22 would say that this, this new housing would be in a transit-
 23 oriented location by virtue of the fact that there is MARC
 24 rail within 6/10 of a mile and bus service both to MARC rail
 25 and to Shady Grove, is that right?

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1 MR. AGER: As is the case for other parts of the
2 corridor and general area, yes.
3 MR. BROWN: Yes? And with regard to 1.2, we're
4 not talking about a suburban office park or a shopping
5 center, are we?
6 MR. AGER: No.
7 MR. BROWN: We're just, we're basing your
8 fulfillment of policy 1.2 on the notion that this property
9 could handle additional density?
10 MR. AGER: No, I'm referring to, I think it's all
11 done in the category of under-utilized properties.
12 MR. BROWN: Yes. That's what I'm saying.
13 MR. AGER: It specifically -- no, I just wanted to
14 use the language in the policy.
15 MR. BROWN: Oh, very good.
16 MR. AGER: In the policy.
17 MR. BROWN: Okay. I don't have anything else.
18 MS. ROBESON: All right. Redirect, Mr. Kaufman,
19 or Ms. Girard, sorry?
20 MS. GIRARD: Just a couple questions. That's
21 fine. Going back to page 9 of the housing element, existing
22 neighborhoods, are you familiar with the current situation
23 at Towne Crest and the Wedgewood community?
24 MR. AGER: Yes, well, generally yes.
25 MS. GIRARD: And you were here, were you not, for

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1 the testimony of some of the residents of Wedgewood?
2 MR. AGER: Yes.
3 MS. GIRARD: Would you describe that area
4 generally as a vibrant community that should remain as it
5 is?
6 MR. AGER: Well, I think, I think the, there's
7 several of the folks that testified that they call this
8 their home, but they also had testified that they recognize
9 that this property needs improvement.
10 MS. GIRARD: And with regard to designation as a
11 transit-oriented area, does the Gaithersburg Vicinity Master
12 Plan specifically identify transit-oriented areas? You
13 mentioned that some Master Plans do and some don't.
14 MR. AGER: I would have to just double-check the
15 Master Plan, but I don't believe the 85.
16 MS. GIRARD: Well, do you generally say that a
17 site must be officially designated as a transit-oriented
18 area in a Master Plan to qualify as such?
19 MR. AGER: No, of course not.
20 MS. GIRARD: Just one second. That's all we have.
21 MS. ROBESON: Okay. Thank you, Mr. Ager.
22 MR. AGER: Thank you. It's been a pleasure.
23 MS. ROBESON: That was a tough one, I know.
24 MR. AGER: No, that's all right.
25 MS. GIRARD: We just have one more witness.

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1 MR. KAUFMAN: Can we take a 5-minute break?
2 MS. ROBESON: You may. How many more --
3 MS. GIRARD: Just one more.
4 MS. ROBESON: Is it Ms. Randall?
5 MS. GIRARD: Yes. And she shouldn't be very long.
6 MS. ROBESON: Okay. All right. Five minutes.
7 (Recess)
8 MS. ROBESON: All right. We are back on the
9 record. Ms. Randall, you are still under oath.
10 MS. RANDALL: Yes.
11 (Witness sworn.)
12 MS. GIRARD: Ms. Randall didn't want to sit next
13 to Steve who has a cold, so I hope you don't mind.
14 MS. ROBESON: I've been listening to him. I would
15 offer Ibuprofen, but the mom in me says --
16 MR. KAUFMAN: I actually have Ibuprofen.
17 MS. ROBESON: Okay.
18 MR. KAUFMAN: First, let me apologize to everybody
19 in the room. Normally I wouldn't even have come to work
20 today, but since we had a hearing --
21 MS. ROBESON: No, I understand.
22 MS. RANDALL: Excuse me just a moment. I want to
23 get my reading glasses.
24 MS. ROBESON: Okay.
25 MS. RANDALL: It's fine print.

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1 MS. GIRARD: Yes.
2 MR. KAUFMAN: She usually likes me more though.
3 MS. GIRARD: Ready?
4 MS. RANDALL: Yes. Thank you.
5 MS. GIRARD: Ms. Randall, since you were here last
6 we've heard a lot of testimony and we've had back and forth
7 about the transit options and transportation options serving
8 the property. When you previously testified, you referenced
9 some information at the back of your report, but you didn't
10 go into it in detail and I'm wondering if you could take a
11 minute for us and explain what transportation and transit
12 options are available to a resident of Towne Crest.
13 MS. RANDALL: Yes. As I had indicated, there are
14 several different options for transit in and around the
15 site. There is a bus stop that's immediately in front of
16 Towne Crest Drive. There are several stops along the way.
17 There is one at McCauley. There are a few others as you go
18 up and down the road. But bus 57 stops immediately in front
19 of, on Washington Grove Lane and has --
20 MS. ROBESON: And that's Ride-On?
21 MS. RANDALL: Yeah. Uh-huh. Bus 57. And it goes
22 to the Gaithersburg MARC station. And the Gaithersburg MARC
23 station is a scheduled stop station and it has stops at 5:23
24 in the morning, 5:45, 6:11, 6:35, 6:54, 7:11, 7:34, 7:51 and
25 8:19 in the morning. It is a 5-minute bus ride to the

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1 station and from that station going down to Rockville it's a
2 17-minute run. And it has the one stop which was, as I
3 understand it, noted for the Washington Grove station which
4 is a flag station, which I think was described to you
5 before. If there's somebody there, they'll stop. If
6 somebody is not -- but there is a scheduled station and a
7 bus that serves that station.

8 In addition to that, at the top of Washington
9 Grove Lane, up at Mid-County Highway, there is a bus stop
10 there. That's bus route 60. And that route goes from, that
11 over to the Shady Grove Metro and from Shady Grove Metro,
12 obviously you can go on to Rockville as well. And Rockville
13 is a transit hub. It should be noted also that MARC, the
14 MARC station goes into the District as well.

15 At Gaithersburg there are several other different
16 buses within the town of Gaithersburg that you could hook up
17 with and go to different locations as well, but I just
18 wanted to point out that there are a definite schedule and
19 opportunity. And I believe that there was some discussion
20 about the bus route that goes up and circulates in
21 communities. That is an option. It's a long one, but you
22 can take the bus up if you wanted to, if the weather were
23 bad, get off, get on, transfer and get on Bus 60.

24 MS. ROBESON: And Bus 60 is the one that --
25 MS. RANDALL: The one that has the stop on Mid-

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1 County Highway.

2 MS. ROBESON: Okay.

3 MS. GIRARD: And just to be clear, if I were
4 taking the MARC from either Washington Grove or Gaithersburg
5 and I wanted to get to Metro, what's the easiest way to do
6 that?

7 MS. RANDALL: If you wanted to get to Metro, the
8 easiest way if you're taking the MARC would be, and the one
9 that would be consistent would be to take the Bus 57 to the
10 Gaithersburg MARC station, take the MARC to the Rockville
11 station and switch on to the red line, Metro red line at
12 Rockville.

13 MS. GIRARD: Is that all you had on the --
14 MS. RANDALL: It is.

15 MS. GIRARD: -- exhibit? And also we were
16 discussing earlier what smart growth and how it's generally
17 recognized that smart growth is building near existing
18 infrastructure which would also include highways and roads.
19 Could you give us your opinion on whether this project is
20 consistent with smart growth in terms of its relationship
21 not just to the transit options you just discussed, but also
22 the highways?

23 MS. RANDALL: Yes, it is. And the infrastructure
24 is here in the Gaithersburg area. A tremendous amount of
25 money has been put into Mid-County Highway and its

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1 improvements over the years, obviously to the ICC, to 370,
2 to the entire road network and there's excellent access to
3 that road network and, obviously, the transit services. And
4 there were plenty of smart growth projects in this state
5 that have occurred that have no transit. One example that
6 comes to mind is the Annapolis Towne Center. The
7 infrastructure is there. It's in Parole and it's surrounded
8 by a great highway system. Glen Arden, Woodmore Towne
9 Center, again, the Metro station is probably two miles away
10 from it as, I don't know whether you're familiar with where
11 the Wegman's is that's there. Again, all being put out
12 there and going through the smart growth review.

13 So it's not just about transit services, but
14 building where the infrastructure is so that you're not
15 having to expand or build additional highways to get out.
16 What they're trying to do is to push back on the urban
17 sprawl that was going and pushing out further and further
18 from the urban areas.

19 MS. GIRARD: And just one last question just to
20 reconfirm. I know, I believe you testified to it before,
21 but regardless of these options and the accessibility of
22 transit, you took no credit for that in your
23 (indiscernible), correct?

24 MS. RANDALL: That's correct.
25 MS. GIRARD: That's all we have for Ms. Randall.

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1 MS. ROBESON: Okay, Mr. Brown.
2 MR. BROWN: No questions.
3 MS. ROBESON: You may be excused.
4 MS. RANDALL: Thank you.
5 MS. ROBESON: All right.
6 MR. KAUFMAN: Not from us.
7 MS. GIRARD: No.
8 MS. ROBESON: All right. Do you have closing
9 statements?
10 MR. KAUFMAN: I do.
11 MS. ROBESON: Okay. You can go ahead. Before you
12 start, I apologize, do you have anything that is going to
13 address your theory on the legal requirements of the green
14 space as far as growth and that --
15 MR. KAUFMAN: Yes, we're going to submit, part of
16 what I'll say at the end is we're going to submit a memo or
17 we want to submit a memo of law --
18 MS. ROBESON: Okay.
19 MR. KAUFMAN: -- on several issues and that's one.
20 MS. ROBESON: Okay. I'm sorry to -- I just wasn't
21 sure you were going to address it somewhere along the line,
22 so that's fine.
23 MR. KAUFMAN: Well, first, let me again apologize
24 for my cold. I hope I don't get anyone sick here today.
25 If you recall, Madame Examiner, when I started,

1 were only 200 units, they'd still have to take the trees
2 down because of the sewer line. So in many ways this case
3 comes down to not so much what is the density, but how do
4 you treat the density?

5 And we've had testimony from our architect and
6 from others that what is being proposed here in terms of
7 architecture compared to what was looked at in the, at the
8 time this was done, garden apartments versus what we call
9 wrap architecture, with the benefits that you get from
10 structured parking. And there's no question, there's no
11 question that in order to get structured parking, you need
12 to have sufficient density so that you can afford to build
13 it. And I believe either, though not directly, the
14 witnesses when cross-examined that Mr. Brown had admitted
15 that.

16 So you have testimony from the community that is
17 opposing this project. Well, we're not opposed to
18 redevelopment, we think there are some benefits. We could
19 support 200 units, knowing full well that you couldn't build
20 structured parking and you would end up with another, if you
21 had it, multi-building project with surface parking. Where
22 is the benefit of that? I really ask you, where is the
23 benefit of that?

24 And why should the County that has basically
25 ignored this area for 28 years and really since 1970, why

1 should they say to this community and to this applicant,
2 well, we're sorry, we haven't gotten around to your Master
3 Plan, so you're just going to have to live with it until we
4 get to it. And, you know, there was testimony by Mr. Davis,
5 well, they could seek an amendment. There is now, as you
6 are aware, a new process for what they call a minor Master
7 Plan amendment. The threshold to reach the significance of
8 that is so great that I would respectfully say it's very
9 difficult for this property to rise to that. In fact,
10 Westbarg tried to do that.

11 MS. ROBESON: Well, wait, that's not in evidence.

12 MR. KAUFMAN: I know.

13 MS. ROBESON: So let's not go there, all right?

14 MR. KAUFMAN: Excuse me for a minute.

15 MS. ROBESON: All right.

16 MR. KAUFMAN: There were several cases testified
17 to, G-87, G-840, G-909. And it was disputed as to whether
18 they dealt with how much of an increase in density and all.
19 But what those cases stand for and what they're really
20 important are really two things. One, an old Master Plan is
21 generally looked at with less weight given to it and if that
22 is the case and if you're looking at what are best planning
23 practices today, additional density, as long as it could be
24 compatible, is not only appropriate but needed. And you
25 yourself were the Hearing Examiner in one of those cases.

1 There are several other issues which have been
2 addressed. This 100-foot setback, you know, it's a
3 technical development standard issue. Our client has said
4 to you today that they will be bound by Alternative B is
5 that's what you feel is appropriate. We don't concede this
6 issue of 100 feet and what we'll give you a, you know, that
7 it's required because it's an adjacent, it's an adjacent
8 community and an adjacent Master Plan. And we will give you
9 in our memo a discussion of that.

10 Also this issue of height compatibility where
11 there's been a waiver requested to go from five stories to
12 four, but you have to look at the history and the background
13 of that request for a waiver. The original R, PD-60 met the
14 height. We met with the city. The city said that's too
15 tall. Our client came in and said, okay, I'll reduce the
16 height to be more compatible for you. So on the one hand
17 they're saying we don't need it, but on the other hand
18 they're saying that if you come down, you know, it would be
19 helpful.

20 Let's take 100-foot setback just in terms of the
21 history. This project was built before any of the houses on
22 Daylily were built. In their own Master Plan they call the
23 Westwoods a buffer and a forest, not a -- I mean they may
24 have it zoned as single family residential and here you have
25 existing houses on Daylily which are 20 some feet off of the

1 property line, I mean which from the property line to the
2 existing units are only 20 some feet and every iteration of
3 this plan, PD-60, PD-45 and PD-35, have moved considerably
4 back from that line. And so you have the town come in and
5 say, okay, we're going to build these houses right on the
6 property line, but anybody else that comes in, they have to
7 be back 100 feet. Even under existing zoning if you
8 redeveloped, you would have to be back 100 feet because it's
9 multi-family.

10 Green space. The argument that I'm hearing from
11 Mr. Brown and his clients is you have to look at the gross
12 area, but you can only get the green space out as a net
13 area. That's apples to oranges. We've had testimony on
14 both sides, if you want to look at our gross, it meets the
15 definition. If you want to look at it at math, it meets the
16 definition. And if you go to Plan B, you will be more than
17 50 percent. So they can't have it both ways. You can't say
18 you have to calculate everything on the gross, but you can
19 only get your green space out of the net. It's got to be
20 one or the other and, of course, we'll address that in a
21 legal memo as well.

22 Forest conservation plan. A lot of testimony from
23 the opposition that this will have a very detrimental impact
24 on the woods, but a Forest Conservation Plan was presented,
25 approved, well, Preliminary Forest Conservation Plan

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1 approved by the Planning Board which, of course, now the
2 town has appealed. But every single expert who looked at
3 this Forest Conservation Plan, including the Planning
4 Board's own experts, said it meets the requirements and it
5 will go a long way towards saving a lot of these trees. And
6 then, of course, you have the proposal by the applicant that
7 there will be a whole lot of additional new trees. Yes,
8 sure, a lot of them will be smaller and it will take years
9 for them to mature, but they're talking about a long-term
10 quality of life that I'm sure 20 years from now the people
11 in Washington Grove will still want it to look like it does
12 today.

13 The Planning Board, in my opinion, did not really
14 look at this Master Plan and what it said. There were
15 several on the Planning Board that said if this was under a
16 new Master Plan, it would take a nanosecond, I mean you can
17 read the transcript yourself, for us to approve it. But
18 it's, we're stuck in this Master Plan which says that it's,
19 you know, 107 units and what you're proposing is way too
20 much to exit. They didn't look behind just the strict
21 numbers. They didn't really question their staff as to why
22 staff found that it was an old Master Plan and the old
23 Master Plan should be given less weight. And it's really
24 the staff that has the expertise to determine, you know,
25 what a master plan's guts should be.

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1 The people on the Planning Board are very
2 professional and so on, but they're not the professional
3 staff. And with all due respect to the chairperson, she
4 focused on that and she pretty well closed down the hearing.
5 And all the discussion you're going to see in that
6 transcript is basically saying we can't get around the
7 Master Plan, mostly from the chairperson.

8 Now I'd like to read you some excerpts from
9 another Planning Commission if I can find it. Oh, and by
10 the way, there is one, one resident on Daylily and they have
11 put a letter in the record, a Mr. Acheampong, I think I'm
12 saying it right. That's Exhibit 63. He strongly supports
13 this application. And I believe there probably are some
14 other people in Washington Grove that would but, of course,
15 you know, there's this issue of what has our leadership
16 said.

17 Turning to the transcript of the proceedings
18 before the City of Gaithersburg Planning Commission on June
19 20, 2012, reading first from page 13 of that transcript,
20 this is Commissioner Winbourne:

21 "I just want to say this is an exciting
22 redevelopment. This is a great example of taking
23 something that's old and outdated and just really
24 just turning it into something fantastic. I'm so
25 excited to see this. I wish it was in the city."

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1 I think this is significant because we have a
2 neighboring jurisdiction that says you should take our
3 position into account. Well, they're not the only
4 neighboring jurisdiction. The town, the city of
5 Gaithersburg is also right on the border of this property.
6 Let's go to a couple of letters.

7 Exhibit 19, this is the chairman, Mr. Booher.

8 "One of the things I think we need said in a
9 lot of the plans we've reviewed in the city is
10 that density in and of itself is not good or bad.
11 It's what you do with it and I appreciate that you
12 all have backed off a little bit so that there's
13 more opportunity to do green space and more
14 opportunity to do those nice architectural
15 transitions from the big building to the little
16 building and create a better transition."
17 Then Chairman Booher again on page 21,
18 "So you're right, so the mass of both the
19 demonstrated kind of coverage, but also that it
20 can --"
21 oh, I'm sorry.

22 "So you're right. So the mass of both the
23 demonstrated kind of coverage, but also that it
24 can transition into something that's a scale
25 probably more compatible with the adjacent

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1 neighborhoods, it seems to demonstrate a good
2 fit."
3 He was referring to Towne Crest Drive and the effort made in
4 the architecture to step down.

5 MS. ROBESON: That's not in the record, so I've
6 got to keep you to what's in the record.

7 MR. KAUFMAN: Okay. Page 23. This is
8 Commissioner Hopkins.

9 "Yes, I think we understand the city, what's,
10 in the city, what some of those trade-offs are.
11 You know, some of the density is trade-off for a
12 larger and better designed pedestrian environment.
13 It's also a trade-off for structured parking,
14 which is obviously enormously expensive. Some of
15 that density is a trade-off for that. And just
16 getting people on the street here is, people on
17 the street in a pedestrian environment is what I
18 think created a community and not, you know, and
19 some sort of grand, you know, macro-management
20 way. But crime, whatever the sense of a community
21 is enhanced by actually getting people on the
22 street rather than people getting from their door
23 to their car to work, door to car to shop."
24 And then, lastly, this is Commissioner Winbourne
25 referring to the letter that he received.

1 "Well, no, I would just make sure that our
2 letter talks about, you know, the fact that this
3 is a great redevelopment. You know, I just want
4 to make sure you put that in there."

5 If you take Mr. Ager's position that you look at
6 this entire area 2, which is about 25 acres, and you take
7 Mr. Davis's position that a PD-22 would be appropriate, you
8 would come up with a 452 units of housing in this area of 21
9 acres. 385 at the 22 percent MPDU, or just 47 units below
10 the current purpose of density in the Master Plan for the 21
11 acres and what Mr. Ager said was that's just 18 percent
12 more. I know there's a lot of numbers and you'll have to
13 look at that. That's just 18 percent more than what you
14 have.

15 Of course, there's the difference between just
16 specific property and the 21 acres. But, again, even as Mr.
17 Davis said, when the 9.4, it's only 76 units and that's only
18 22 percent more. And if you look at the transcript of the
19 Planning Board, they were talking about an 18 to 20 percent
20 increase in density. Of course, they didn't consider it
21 across the entire area.

22 You know, so it really comes down to, you know,
23 how do you look at this Master Plan? How do you look at the
24 events that have occurred since the original proposal in
25 1970? And Mr. Berman did say to you we didn't propose

1 anything for this area because the project had just been
2 built.

3 Now, you know, I have a lot of respect for Joe
4 Davis, but Joe Davis is not a formally trained expert in
5 planning. His primary position at the Planning Commission
6 was subdivision review and I would respectfully suggest that
7 he approach this project as someone that looked at a
8 subdivision review, not as a Master Planner. I'm going to
9 thank you for your time and, you know, we look forward to
10 your decision.

11 MS. ROBESON: Thank you. Mr. Brown.

12 MR. BROWN: If I could just start by pointing to a
13 couple of exhibits. Let's start with this one right here.

14 MS. ROBESON: That's 10A, I think?

15 MS. RANDALL: This is Exhibit 10A. With respect
16 to the town of Gaithersburg's enthusiasm for this project,
17 there was no opposition testimony at that hearing as far as
18 I can tell. The town of Washington Grove did not
19 participate and you can see instantly from this particular
20 photograph, aerial photograph, there's a relative difference
21 in impact between the two towns. We have a very narrow
22 stretch of land at the north end of the project that is
23 impacting some single-family homes already developed in
24 Gaithersburg and the plans are for there to be a 100-foot
25 setback from those homes, which is considerably more than is

1 already existing on the property. I can understand from
2 their, from their parochial perspective their enthusiasm for
3 this project.

4 The town of Washington Grove, on the other hand,
5 has a very long common border with the property and they are
6 very concerned about the impact of this project on their
7 Westwoods, as well as the impact on single-family residences
8 that border it on the west side. They -- I submit to you
9 that the town of Washington Grove has given this project a
10 much more thorough and careful look than the town of
11 Gaithersburg did.

12 The other diagram that I wanted to point out is
13 this one. I'll guess we'll be getting the legal memorandum
14 from Mr. Kaufman on the issue of net versus gross tract area
15 for the green area, but you can see here that what they have
16 done in this particular calculation with the alternative
17 plan that respects the 100-foot setback is to calculate
18 green area on the basis of net tract area rather than gross
19 tract area. Now Mr. Kaufman said that they meet the test
20 either way, but the numbers I have written down here from
21 the testimony of their engineer are that the amount of, the
22 amount of space in the right-of-way that has been removed
23 from this calculation that was green area in an earlier
24 version was 31,974 square feet and the amount of footprint
25 that was reduced here is 7,595 square feet. That's in the

1 testimony.

2 When you think about what they've taken away from
3 the denominator and what they've taken away from the
4 numerator in the calculation, they just don't make it under
5 the, under the net tract area calculation, under the gross
6 tract area calculation, I'm sorry, if you use gross tract
7 area which we say is the correct way to go. Now they say we
8 were comparing, not comparing apples to apples, but rather
9 apples to oranges, but a proper reading of the zoning
10 ordinance is to use gross area. And Mr. Davis explained why
11 that's appropriate, because you can't depend upon, you can't
12 depend upon the availability of the -- I'm sorry -- the
13 proper calculation is to use gross tract area for the
14 denominator, but to count only green space in the numerator
15 that's in the net tract area because you cannot count on the
16 land that's in the public right-of-way being available
17 continuously. It may be a case that for a long time Towne
18 Crest Drive will continue to be in its current
19 configuration. But if any street in this area is a
20 candidate for widening, it would be Washington Grove Lane
21 and that would certainly be exactly the kind of thing that
22 we're talking about.

23 But let me -- I will concede to one thing to what
24 Mr. Kaufman said and that has to do with Mr. Davis's density
25 calculations which were submitted as an addendum to his

1 testimony. Those calculations are based upon the net tract,
2 which is the way that they've been trying to present the
3 density to you on a net tract basis. So our numbers are, in
4 Mr. Davis's testimony, based upon a net tract area.

5 So what would you have to do and how would Mr.
6 Davis's numbers be adjusted if we went to gross tract area?
7 The difference here is we've got a gross tract area of 9.415
8 acres versus a net tract area of 8.11 acres. I've just done
9 kind of a rough calculation here to see what the difference
10 would be in Mr. Davis's calculation. Mr. Davis said that
11 there would be a total of 148 dwelling units if you add in
12 all of the MPDU's and you basically allocated the unused
13 density evenly between the two properties. If you use the
14 gross tract area, I believe that that number would go up to
15 172.

16 Either way, there is still only, there is 153
17 unbuilt units between the Master Plan recommendation for the
18 property with MPDU bonus and the existing. That number is
19 undisputed. And it's also undisputed that if you pour all
20 of the extra density into the Towne Crest property, the top
21 end that you get is 260 units. And although Mr. Davis
22 characterized that as an increase in the number of dwelling
23 units from 13.2 dwelling units per acre to 32, if you do
24 that, if you do the gross calculation instead, you're going
25 from 11.36 units per acre to 27.5. It's still an increase

1 of nearly 2 1/2 times which is essentially what he was
2 talking about in his testimony. So whether you do it on a
3 gross or you do it on a net, you're still talking about a
4 major increase in the density. And, finally, when you add
5 the additional 69 units that the applicant proposes to go
6 from 260 to 329, again, if you do it on a gross instead of a
7 net, you get 34.8 dwelling units per acre, almost twice the
8 maximum density recommended in the Master Plan.

9 Now so you ask yourself where did the extra 69
10 units come from? They came from what we heard today from
11 Mr. Ager was a mistake. He multiplied by 133 percent of the
12 260 to get to 329 and he got that percentage, that extra 33
13 percent from a mistaken interpretation of the decision in G-
14 873. So we should never be talking about anything higher
15 than 260 even if it were fair to pour all of the extra
16 density in the Master Plan into this property. 260 would be
17 the upper limit.

18 Now Mr. Davis said that he had in mind something
19 in the neighborhood of 200. It's obvious that Mr. Davis had
20 not worked out any kind of detailed plan or analysis. He
21 was just suggesting something in the range of what he
22 thought would be appropriate for this property and it's
23 certainly not incumbent upon the opponents to the plan to
24 come up with a complete alternative plan for submission at
25 the hearing. It was just a kind of a ballpark idea. So

1 whether you talk about a difference of 69 units or a
2 difference of 74 units, there is a substantial difference
3 there and Mr. Davis also did not think that it was
4 appropriate for the, for the way the Master Plan evolved for
5 all of the extra density that was unused in Area 2 to
6 basically pour over into the Towne Crest property. He just
7 didn't see where that was justified, particularly when it is
8 then magnified by additional density that comes from
9 essentially nowhere to get up to 329 units.

10 We think that the, that the Planning Board was
11 imminently correct and feeling obliged to carefully consider
12 the density recommendation in the Master Plan because, as
13 I've said in my opening argument, I'll repeat here today,
14 the very first sentence of the purpose of the PD zone is to
15 implement the general plan for the Maryland Washington
16 Regional District and the area Master Plans. How? By
17 permitting unified development consistent with densities
18 proposed by Master Plans. That's the lead issue in the PD
19 zone. And, in fact, if you look at the PD zone, it's broken
20 up into 18 subcategories of the PD zone. And every one of
21 those subcategories the primary difference is the amount of
22 density that is proposed. Getting the right density for a
23 PD zone is the question in terms of Master Plan.

24 Mr. Davis has said 35 is too high, but something
25 in the range of 18 to 22 might not be but, of course, we

1 don't have such a plan here, but it is the fervent hope of
2 the folks in the town of Washington Grove that if the
3 applicant were obliged to come back at a lower density, we
4 would see greater protection for the Westwoods. And
5 ironically enough, that fits in exactly with what I've just
6 read in the transcript of the Gaithersburg Planning
7 Commissioner. I wasn't there, but they seemed to see
8 significant benefit in the fact that there would be possibly
9 reduced crime with greater community interaction in the open
10 space that is provided by this property.

11 Well, guess what? At that particular time, June
12 20, 2012, they were looking at a PD-60 and the plan, the
13 alternative plan that is before you that you see here
14 provides even more open space than that plan does. So I
15 would conclude that the people in Gaithersburg would welcome
16 reduced density to increase the amount of interaction
17 between and among the members of the Wedgewood community and
18 the Towne Crest community. In fact, among other beneficial
19 purposes, perhaps a reduction in crime that comes from this
20 notion that a neighborhood is better protected from crime if
21 people are out and interacting and watching what's going on
22 around them. So I don't see anything in that report that's
23 been cited here that wouldn't point them in the direction of
24 even more support for a less dense project.

25 That also, that factor also in my mind does a

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1 pretty fair job of impeaching the staff analysis in this
 2 case because the staff had no problem with the PD-60 plan
 3 and they were ready to recommend approval to the Planning
 4 Board of a PD-60 plan in terms of the density. But they
 5 went back to the drawing board, the applicant went back to
 6 the drawing board over this green space business and came up
 7 with a PD-44 plan. And the staff, of course, having, had no
 8 problem with the PD-60 density, had no problem with the PD-
 9 44 density.

10 Mr. Kaufman asked the question what is it to do
 11 with a 28-year-old Master Plan and my answer to that
 12 question is you look carefully to see whether or not in this
 13 particular context, in this particular situation the
 14 recommendations in the plan are outdated by virtue of
 15 changes in the neighborhood or circumstances. And Mr.
 16 Challstrom went through item by item why that, why there are
 17 no significant changes in this neighborhood that would
 18 justify that. There hasn't been a major increase in
 19 development around it. There hasn't been any significant
 20 change in the transit options anywhere. Everything is
 21 pretty much the same.

22 The additional density that's going in up at the
 23 corner is not something that the town opposed, even though
 24 it's, I suppose it's like a mile or so up the road on
 25 Washington Grove Lane, but the town does not see that as a,

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1 as any kind of a threat to the preservation of their low-
 2 density neighborhood and the town has endorsed Mr. Davis's
 3 position that this project could well serve to be
 4 redeveloped, but at a lesser density than is proposed
 5 because of their concern about the Westwoods, their concerns
 6 about possible overflow parking from that many residential
 7 units and we simply do not know on this record whether or
 8 not structured parking would be impossible for this property
 9 at a lower density.

10 It's possible that if the applicant were to come
 11 to the town and say the absolute minimum that we could do in
 12 terms of density for this project and still have structured
 13 parking is X and that's higher than 200, which you proposed,
 14 I think at that point the town could make an intelligent
 15 decision as to whether or not the trade-off in terms of
 16 getting the structured parking versus a lower density made
 17 sense, but that's not the project that we have before us.
 18 We have what the applicant wants to do and propose rather
 19 than what, rather than something that's reasonably close to
 20 the density limitations in the Master Plan, even
 21 interpreting them liberally to allow this significant pour
 22 over into their property.

23 The Westwoods is not zoned single-family
 24 residential, it's zoned forest in the town zoning ordinance
 25 and that's not a single-family zone. We are not claiming

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1 that 100-foot setback for single-family properties is
 2 applicable along the Westwoods. We are claiming that an
 3 appropriate setback is, should be had to the Westwoods and
 4 our position is very simple there, the kind of setback that
 5 should be applied is one that effectively reduces up to a
 6 miniscule level, the kind of risk to the root zones of trees
 7 in the woods that would come from constructing this project
 8 which we think can be accomplished by moving the project
 9 slightly eastward to the point where the critical root zones
 10 are not impacted and we think any problems associated with
 11 either storm water management or sewer lines existing on the
 12 property can be mediated and dealt with in such a way that
 13 these trees are protected. If the town cares enough about
 14 the protection of these trees that they have asked me to
 15 file a lawsuit challenging the variances that were granted
 16 by the Planning Board to endanger those trees in the
 17 construction process. That proceeding in circuit court is
 18 ongoing and probably won't be resolved before you have to
 19 make a recommendation in this case, but you should not
 20 regard that, those variances as final at this point because
 21 they are on appeal.

22 And, finally, with regard to the notion that it's
 23 just kind of -- it's just a tough break for the applicant
 24 because they're going to have to live with the Master Plan
 25 until the Council gets around to amending it. My answer to

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1 that is that I don't think it would be that difficult for
 2 the Council to recommend and agree to approval of a
 3 development plan that was at or near the kind of densities
 4 that Mr. Davis has been proposing if we were to sit down and
 5 work out with them exactly how trees would be saved at these
 6 lower level densities and actually earn our support for the
 7 plan going forward. Mr. Kaufman has mentioned to you that
 8 the only significant opposition to this plan is coming from
 9 the town and if the applicant could remove that significant
 10 opposition by working with us to achieve a solution that
 11 works for everyone, I think that they can overcome the
 12 problem of the fact that the Master Plan doesn't give them
 13 exactly the kind of density that they want. But having
 14 failed to do that with us to this point, I don't think that
 15 they have earned the right to go to the Council and say in
 16 light of the admonition in Section 59C-7.11, development
 17 consistent with the densities, they haven't earned the right
 18 to go up and ask for a major increase in density of the type
 19 proposed here, however you measure it, without that, over
 20 our objection. Thank you very much.

21 MS. ROBESON: Thank you. Mr. Kaufman, briefly.
 22 MR. KAUFMAN: Yes, very, very briefly. First off,
 23 you know, I'd like to just bring your attention to this
 24 green air issue. It's at 59A-2.1. And the green area
 25 definition is clear.

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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 There's a lot of confusion over gross and net, but what was
6 filed here was a plan on 8.11 acres which is the prescribed
7 area encompassed by the development plan and that equates to
8 net.
9 Also, Mr. Davis constantly insisted that it has to
10 be on the gross tract. That's the 9.415, but yet he did all
11 his calculations based on 8.11 acres. And I just reiterate,
12 I know you're tired of all this, but our expert said if you
13 do it on Area 2, it's 15 units per acre times 22 percent
14 bonus for MPDU's. That's 18.3 units per acre or 384 units
15 for the analysis area.
16 If you take what is left from just 8.11, which is
17 153, and you take the existing housing on the tract, which
18 is 107, you get 260. If you take 329 minus 260, you get 69
19 units. Mr. Ager said that it's just 18 percent above. Even
20 what this very old Master Plan recommended, it's not 300
21 percent. The numbers are all there. I really don't envy
22 you having to look at all those numbers, but they are
23 definitely there.
24 In referring to the city of Gaithersburg, Mr.
25 Brown indicated that there's nothing here that showed that

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1 they understood why this needed to be done, but there is
2 testimony which I read to you in here that says they
3 understood the expensive, the tremendous expense for
4 structured parking.
5 You've had testimony from our witnesses that if
6 you can't get at least sufficient density for structured
7 parking which allows you to do so many better things in
8 terms of compatibility, you have to get it to a garden
9 apartment type of structure, you have to go to surface
10 parking. And, by the way, they were not thinking, they were
11 not presented a PD-60. This was after we had modified the
12 PD-44 and now it's down to PD-35.
13 I appreciate what Mr. Brown has said about
14 negotiating with the city, but I would say respectfully my
15 client has been very respectful of the city and has tried
16 three times now to modify its plan to accommodate them. I
17 don't know what to tell you about the fact that this is an
18 old Master Plan and what to do with it, but I do know that
19 this County has been remiss in addressing this plan for a
20 heck of a long time.
21 And the County Council does have the authority
22 even though we have an old Master Plan to take current
23 conditions into account. And let's not forget Master Plans
24 are just statements of policy. They are not statutes. It's
25 the County Council that makes legislation. Thank you very

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1 much.
2 MS. ROBESON: Thank you. I take it that you want
3 to submit a -- did you say a memorandum?
4 MR. KAUFMAN: Yes. We're going to submit a
5 memorandum on the legal questions because many of them do
6 have to deal with legal aspects and not just --
7 MS. ROBESON: That's fine.
8 MR. KAUFMAN: -- testimony of experts.
9 MS. ROBESON: And when do you expect to be able to
10 do that?
11 MR. KAUFMAN: Let me consult with my --
12 MS. GIRARD: The one who will be drafting it.
13 MR. KAUFMAN: I think we need about at least two
14 weeks.
15 MS. ROBESON: Two weeks? Okay. That would be the
16 18th of March. And, Mr. Brown, when do you, do you foresee
17 being able to respond?
18 MR. BROWN: Oh, I should have something out by the
19 20th. No, I'm just kidding.
20 MS. ROBESON: All right. I take it -- let's give
21 you two weeks.
22 MR. BROWN: That's fine. Thank you.
23 MS. ROBESON: All right.
24 MR. KAUFMAN: That would be what then?
25 MS. ROBESON: That would be April Fool's Day.

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1 MR. KAUFMAN: Okay. That's good.
2 MS. ROBESON: So the applicant's memo will be due
3 April 18th --
4 MR. BROWN: March 18th.
5 MS. ROBESON: I'm sorry, yes, 18th. And Mr.
6 Brown's will be due on April 1st. Okay. And then that's
7 plenty of time for the transcript to get in the record, so
8 the record will close on April 1st.
9 MR. KAUFMAN: I apologize for keeping you here
10 since, you know --
11 MS. ROBESON: That's fine. All right. With that,
12 this hearing is closed except the record will remain open to
13 receive the two memos and we'll close on April 1st at the
14 close of business, 5:00, all right? Thank you very much.
15 MR. BROWN: You saved the day.
16 (Whereupon, at 5:17 p.m., the hearing was
17 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
R-30 AND RT 12.5 ZONES TO PD-60
TOWNE CREST APARTMENTS, LLC.

By:

Tracy Hahn, Transcriber

**Local Map Amendment No. G-910
Towne Crest**

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