

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY

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:  
APPLICATION OF ADVENTIST : DPA 13-02  
HEALTHCARE & CABIN BRANCH COMMONS :  
:  
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A hearing in the above-entitled matter was held on July 29, 2013, commencing at 9:41 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:

Robert Harris,, Esq.  
Steven Robins, Esq.  
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For the Respondent:

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Jody S. Kline, Esq.  
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200-B Monroe Street  
Rockville, Maryland 20850

E X H I B I T S

Exhibit No.		Marked/Received
43	Letters to Planning Board	8
44	Affidavit of Posting	50
45	Slide Presentation	101

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Jonathan Sachs				
By Mr. Harris:	38			
By Mr. Kline:			42	
Kathy Hulley				
By Mr. Kline:			46	
By Mr. Harris:			48	
Elizabeth Buffington				
By Mr. Harris			54/69	
By Mr. Kline:			63	
By Mr. Chen:			70	
Marilyn Balcom				
By Mr. Chen:			75	
Michael Knapp				
By Mr. Kline:			80	
Barry Fantle				
By Mr. Chen:			85	
By Mr. Kline:			86	
Ibi Sofillas				
			88	
Ron Kaplan				
By Mr. Harris:	97			
By Mr. Chen:			136	

P R O C E E D I N G S

1  
2 MS. ROBESON: This is a public hearing in the  
3 application of Adventist Healthcare, Inc. and Cabin Branch  
4 Commons, Inc., requesting an amendment to the Development  
5 Plan approved by the District Council on September 9, 2003,  
6 in LMA G-806 which requests an amendment to increase the  
7 amount of retail space from 120,000 square feet to 484,000  
8 square feet, and to decrease the amount of office space from  
9 2,300,000 square feet to 1,935,000 square feet on property  
10 consisting of 283.5 acres east of Clarksville Road, west of  
11 I-270 and northwest, north of West Old Baltimore Road in  
12 Clarksburg, Maryland.  
13 All right. Are there -- my name is Lynn Robeson.  
14 I'm the Hearing Examiner in this case. I'm going to be  
15 taking all the testimony and evidence. I prepare a report  
16 and recommendation to the County Council, who makes the  
17 final decision on the case. Could the parties identify  
18 themselves for the record?  
19 MR. HARRIS: Good morning, Ms. Robeson. I'm Bob  
20 Harris of the firm of Lerch, Early, Brewer, representing the  
21 applicant.  
22 MS. ROBESON: All right.  
23 MR. KLINE: Good morning. Jody Kline with the law  
24 firm Miller, Miller & Canby with offices at 200-B Monroe  
25 Street in Rockville, representing the Peterson Companies,

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1 LLC.  
2 MS. ROBESON: All right.  
3 MR. CHEN: Good morning. My name is Bill Chen.  
4 I'm an attorney representing Wood Cobb (phonetic sp.),  
5 individually.  
6 MS. ROBESON: All right. Is there anyone in the  
7 audience who is not represented by one of the attorneys at  
8 the table? Okay.  
9 Seeing none, are there any preliminary matters?  
10 Let's start with Mr. Harris and then we'll get to everyone.  
11 MR. HARRIS: Yes, ma'am. First thing, I wanted to  
12 introduce an exhibit that is really a packet. These are the  
13 letters and e-mails that were submitted to the Planning  
14 Board as part of the, their deliberation. I think there  
15 are --  
16 MS. ROBESON: Are these the ones that are already  
17 attached to the Technical Staff Report?  
18 MR. HARRIS: Some are, but some aren't. When they  
19 did their Staff Report, there was still 10 days before the  
20 hearing, and so a number of letters came into the Planning  
21 Board subsequent to that Staff Report.  
22 MS. ROBESON: I see.  
23 MR. HARRIS: So there is some overlap and, but  
24 there are a number of other ones there as well. I think  
25 that is a total of 77 letters and e-mails in support.

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1 MS. ROBESON: All right. Any objections?  
2 MR. KLINE: No objection.  
3 MR. CHEN: Ms. Robeson, on behalf of my client,  
4 the issue that we have with these documents, as long as the  
5 Examiner recognizes, and I'm sure the Examiner will, that  
6 the standard by which the District Council will consider  
7 this application is not a plebiscite. My client is unable  
8 to organize 77 letters to come in, but my client has as much  
9 an interest in this matter. I suggest and submit as to any  
10 of the signatories to letters or the e-mail senders. So,  
11 accordingly, Ms. Examiner, so long as the Examiner  
12 recognizes that this process is not a plebiscite process, I  
13 have no objection to Mr. Harris submitting these documents  
14 for the record and I'd only ask what is the exhibit number  
15 you're going to assign to it?  
16 MS. ROBESON: Do you have a copy of the exhibit  
17 list?  
18 MR. CHEN: We were just handed one copy.  
19 Do you need a copy?  
20 MR. HARRIS: I think I have another one. Hold on.  
21 MS. ROBESON: I was going to make that point. I  
22 will take them in for the weight it deserves, understanding  
23 that 43, this will be 43, letters in support. Now we don't  
24 know -- are some of these duplicates, or are these  
25 everything that came in in that 10 days after the Staff

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1 Report?  
2 MR. HARRIS: There are some duplicates, Ms.  
3 Robeson.  
4 MS. ROBESON: All right. I'll just mark it  
5 letters in support of application, letters to Planning  
6 Board.  
7 (Exhibit No. 43 was marked for  
8 identification.)  
9 MS. ROBESON: All right. So that will be 43. All  
10 right. Anything else?  
11 MR. HARRIS: Yes, ma'am. Out of respect for Mr.  
12 Kline, but in the interest of --  
13 MS. ROBESON: You don't have to respect him. No.  
14 MR. HARRIS: But I do. I do. However, I do want  
15 to object to his participation in this proceeding. The  
16 rules of procedure clearly provide that clients represented  
17 by attorneys are to file pre-hearing statements 10 days  
18 before the hearing stating the grounds and submitting any  
19 reports identifying the witnesses they're going to call and  
20 a summary of their argument.  
21 As you're aware, I received a call just Friday,  
22 one business day ago, from Mr. Kline indicating that he was  
23 going to come and appear here in opposition on behalf of the  
24 Peterson Company. The Peterson Company, Mr. Kline had known  
25 about this case since it was filed. In fact, they knew we

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1 were going to be filing maybe even before we did because we  
2 talked with them about it. Mr. Kline certainly is  
3 knowledgeable about the rules of procedure here and this  
4 puts us at a disadvantage.  
5 I would note that the Peterson Company doesn't own  
6 any property that's affected by this Development Plan  
7 Amendment. They do have, as news reports have indicated, a  
8 desire to build a similar type facility across I-270 on  
9 property that's zoned for residential use. The Peterson  
10 Company has been quoted in the press as saying that only one  
11 of these projects could go forward. And despite the fact  
12 that they've got a long road ahead of them, they need a  
13 master plan amendment, they need a rezoning, they need water  
14 and sewer approval. They need water quality plan approval.  
15 They need --  
16 MS. ROBESON: Wait. Are you going to introduce  
17 this as --  
18 MR. HARRIS: Yes, ma'am.  
19 MS. ROBESON: Okay.  
20 MR. HARRIS: Yes, ma'am. In any respect, they  
21 have a long road to go and they have indicated through their  
22 actions and through their words that they're trying to  
23 either slow us down or stop us from proceeding. And I don't  
24 think their interest in whatever competitive, business  
25 competitive goals they have is a legitimate interest in the

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1 decision in terms of the standards under the MXPD zone.  
2 They will delay this proceeding and I think it's entirely  
3 inappropriate for them to come in at the eleventh hour and  
4 want to participate. So we would note our objection to  
5 that.  
6 MS. ROBESON: Mr. Kline, I assume you want to  
7 respond?  
8 MR. KLINE: Yes, probably so. Well, as Mr. Harris  
9 said, it's no surprise my client has had a long, had an  
10 interest in this application itself. In fact, even your  
11 staff asked me probably a month ago was I going to be  
12 involved and I thought not simply because that wasn't the  
13 role the Peterson Company wanted to take in this  
14 application, wanted to just go, let it go its course until  
15 the Planning Board came out with its recommendation to you  
16 which we thought was inaccurate and just embarrassing and  
17 for that reason the higher ups at Peterson Companies felt  
18 that they had to have their specific position expressed to  
19 you. And within minutes after being told, entering their  
20 appearance, I called Mr. Harris and advised your office.  
21 Mr. Harris will not, I'm sorry; the applicant will  
22 not be prejudiced in this case simply because you're just  
23 going to have Mr. Chen and I asking questions. I'm sure the  
24 applicant is capable of warding off an attack from both of  
25 us. I have requested to file, I'm sorry, to call in

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1 services of an expert witness. If we finish today, you're  
2 not going to see an expert witness testifying for me. If we  
3 don't finish today, then I'm going to have to get that  
4 witness lined up far enough in advance so the applicant is  
5 not prejudiced in its ability to present its case.  
6 With regard to what the applicant has done to try  
7 and complicate Peterson's efforts to move forward through  
8 his process, I will say it at the appropriate time in the  
9 hearing, not in a procedural request now, but I will state  
10 that the applicant is not prejudiced by my participation.  
11 Mr. Chen and I will coordinate so we will not be asking  
12 duplicative questions and it may take a little bit longer  
13 because we're both here, but I think you'll get a better  
14 record because of that. Thank you.  
15 MS. ROBESON: All right. Mr. Chen, do you want to  
16 weigh in on this or is this beyond your client's concerns?  
17 MR. CHEN: The only observation I would make is  
18 that I appreciate Mr. Harris's objection and certainly if  
19 Mr. Kline were sitting here today with an expert sitting in  
20 the audience and a report to give you today, I think Mr.  
21 Harris's position would be very well taken, but that is not  
22 the case. As I understand from what I've heard now, Mr.  
23 Kline is here on behalf of an interested party and his  
24 participation in this proceeding today is purely, as I hear  
25 it, cross-examination. I think that is permissible by the

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1 rules. Again, I am -- had Mr. Kline represented that he had  
2 a witness, an expert to present today and a report to  
3 present today, I think Mr. Harris would be correct, but  
4 that's not what I've heard. What I've heard is that Mr.  
5 Kline wants to cross-examine witnesses and I think that is  
6 entirely permissible under the rules.  
7 MS. ROBESON: Mr. Harris.  
8 MR. HARRIS: Two things, Ms. Robeson. First of  
9 all, the Planning Board hearing was on July 18. By 1  
10 o'clock on July 18, Mr. Kline and his client knew what the  
11 Planning Board's decision was. In fact, they knew the  
12 staff's position which was the same a week prior to that.  
13 It took them a week and a day to decide to enter their  
14 appearance here, leaving me no time other than the weekend  
15 in which to prepare for this, totally inappropriate under  
16 the rules.  
17 And I am hearing two things. I am hearing he only  
18 wants to participate to cross-examine, but then at the same  
19 time he's saying he's going to introduce an expert witness.  
20 Both dimensions extends the duration of this case which we  
21 could finish today but for that involvement. And, you know,  
22 it's just inappropriate to do that. I would note beyond  
23 that that the rules of procedure provide for having, if  
24 there are multiple opposing parties, to have them combine  
25 their cross-examination through one attorney. And so Mr.

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1 Kline and Mr. Chen --  
2 MS. ROBESON: Where is that in the rules of  
3 procedure? I haven't, I have never had that happen.  
4 MR. HARRIS: That is --  
5 MR. KLINE: You have the authority, Ms. Robeson,  
6 to basically designate and I've only seen that done when you  
7 have --  
8 MS. ROBESON: I thought that was a spokesperson.  
9 MR. KLINE: Yes, right, correct.  
10 MS. ROBESON: No, that's -- okay. We'll continue  
11 with your -- that is, go ahead with your argument.  
12 MR. HARRIS: So in any respect, I thought I had  
13 the rules here.  
14 MS. ROBESON: That's all right.  
15 MR. HARRIS: Okay. Steve, see if you can find the  
16 rules. Thank you, Bill.  
17 MR. CHEN: It's a spokesperson.  
18 MS. ROBESON: Yes, that is different than --  
19 MR. HARRIS: Okay. In any respect, we could  
20 finish today but for his involvement here. I don't think,  
21 as I said, his client's interest is a pertinent issue here  
22 and the extreme tardiness in entering his appearance  
23 complicates our case for us and unfairly.  
24 MS. ROBESON: All right. Well, a couple of  
25 things. Unfortunately, the Planning Board's recommendation,

1 plus there was a corrected Staff Report and that didn't get  
2 out until Friday. So, you know, they may have understood or  
3 it may be clear, but they're bound by the written  
4 recommendation as opposed to sometimes the written  
5 recommendations are more specific.

6 Mr. Harris, you, I thought, were the one that  
7 wanted an additional hearing date because you thought we  
8 wouldn't get finished today. But assuming, you know, I'm  
9 really not -- what we have done in the past, especially when  
10 the Planning Board report and then you even have a  
11 supplemental Staff Report, when I looked at the supplemental  
12 Staff Report, it had some substantive changes. It wasn't  
13 just see Item C below, there were some things on APF and  
14 because of that what we have done in the past when this  
15 happens is that we, if it goes beyond today, we set another  
16 hearing date within the time frames of the rules of  
17 procedure so that the, you're correct, if he proceeded on  
18 his case-in-chief today, you would be prejudiced. But if we  
19 have another hearing date, I don't see the prejudice,  
20 especially in light of the fact that the Staff Report and  
21 the Planning Board recommendation came out, were  
22 substantive, or the Staff Report was substantively changed  
23 and the Planning Board recommendation. And I was a little  
24 confused about some of the changes in the Staff Report, but  
25 in any event, it was late in the day.

1 So I am going to let him participate today. Now  
2 what I'd like you to do, we can consider additional hearing  
3 dates provided, you know, if we don't finish today and I'm  
4 going to read some off to you. Now because of another case  
5 that's pending, we don't have a lot of Mondays and Fridays.  
6 So some of these are Tuesdays and Thursdays which may mean  
7 that you have, you know, that there are Planning Board or  
8 Council.

9 MR. HARRIS: They're all on recess.

10 MS. ROBESON: For August, yes.

11 MR. HARRIS: Yes, ma'am.

12 MS. ROBESON: Yes. I have some September days  
13 too. So what I have is Friday, August 16th; Monday, August  
14 26th; Tuesday, August 27th; and Thursday, August 29th. So  
15 let us -- so I would like you, when we take a recess, you're  
16 going to have to coordinate with your witnesses I'm sure,  
17 check those dates. And if this goes beyond, we will set  
18 another hearing date for one of those dates. Yes, sir, Mr.  
19 Chen?

20 MR. CHEN: Pardon me. Thank you. Examiner  
21 Robeson, I thought you also said you had some possible  
22 September dates? Do you want to give those?

23 MS. ROBESON: Yes, but the -- it's very difficult.  
24 We have this monster case and it's very difficult to go into  
25 September.

1 MR. KLINE: This one doesn't qualify for that?

2 MS. ROBESON: Not yet. If you keep your cross-  
3 examination limited, it will not. So I would like to get  
4 the August dates because it's very difficult to schedule in  
5 September.

6 MR. CHEN: We're going to take a break and we can  
7 check things at that time?

8 MS. ROBESON: Yes.

9 MR. CHEN: I want to do it right now, but what is  
10 your preference?

11 MS. ROBESON: Well, I would like to, the deal is,  
12 colloquially, that we will proceed to see how far we get  
13 today and if we don't finish today, then we will set a date.  
14 You know, we'll take a break at lunchtime and you can check  
15 then because then I think we'll have a pretty good sense of  
16 where we're going, all right? And I'd like to get started  
17 now. Is there any other -- yes, sir?

18 MR. CHEN: I do have an additional preliminary  
19 matter, if I may?

20 MS. ROBESON: Yes.

21 MR. CHEN: By the way, just as a footnote to your  
22 prior comments about the Staff Report, that came to my  
23 office, I don't know about your office, but it came to my  
24 office by e-mail after business hours. Now I had been in  
25 depositions Friday. I didn't get to see it until Saturday

1 and, quite candidly, I do have an expert that we were  
2 disadvantaged in the sense of getting this out to my witness  
3 to look at and extrapolate, to pull into the analysis that  
4 he had previously done.

5 Now I've gotten to him on literally weekend  
6 notice, but your comments are very well taken with regard to  
7 when that report and the amendment to the report came in.  
8 As I say, I didn't even get a chance to look at it until  
9 Saturday and was able to immediately contact, fortunately,  
10 my expert to say, hey, look at this. That's just the way  
11 things go, but your comments are well taken.

12 MR. HARRIS: Ms. Robeson, may I respond to that  
13 briefly?

14 MS. ROBESON: No, just --

15 MR. HARRIS: Okay.

16 MS. ROBESON: -- are you going to make -- I mean,  
17 yes, in a minute --

18 MR. HARRIS: Okay.

19 MS. ROBESON: -- but --

20 MR. CHEN: I do have a motion to make, but I was  
21 just making an observation on your comments --

22 MS. ROBESON: Well, if he's making --

23 MR. CHEN: -- about the statement.

24 MS. ROBESON: -- an observation, I don't want to -  
25 - okay, you can go say something --

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1 MR. HARRIS: It's not --  
 2 MS. ROBESON: -- but I do want to move forward.  
 3 MR. HARRIS: It's not an accurate observation.  
 4 Everything that was in the Staff Report was discussed on  
 5 July 18th in a hearing where Mr. Chen was present. There  
 6 were no surprises there and there's nothing in there that  
 7 required him extra time.  
 8 MS. ROBESON: Okay. Point taken. Mr. Chen, what  
 9 is your motion?  
 10 MR. CHEN: I think that this application needs to  
 11 be dismissed and at the very least they cannot take any  
 12 evidence on it today as reasons, therefore, let me explain.  
 13 You have in the file Exhibit No. 2. Exhibit No. 2 is the  
 14 application. Let me give it to you.  
 15 MS. ROBESON: I have it.  
 16 MR. CHEN: The applicant in this proceeding, if  
 17 you look at the bottom, has signed as Adventist Healthcare,  
 18 Inc. Now I acknowledge and know that at the very top it  
 19 says Adventist Healthcare, Inc., and Cabin Branch Commons,  
 20 LLC. I understand that. But the application has to be  
 21 signed by the applicant and the only signature on this is on  
 22 behalf of Adventist Healthcare, Inc.  
 23 More significantly, much, much more significantly  
 24 if you look at your exhibit, I think it's 5, which is the  
 25 District Council resolution approving original zoning and

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1 development plan, you'll see that on the first sentence of  
 2 the resolution the District Council notes and states that  
 3 the applicants are Adventist Healthcare, Inc.; then FFTM-1  
 4 Limited Partnership and then King Farm Partnership, LLP.  
 5 Now this application, the original application, was  
 6 prosecuted as one applicant. In fact, if you go to page 2  
 7 of the District Council resolution, it states in the very  
 8 top paragraph, the next to last sentence, it states, quote,  
 9 the applicants propose to develop the entire Cabin Branch  
 10 community as a single plan development with residential,  
 11 employment, retail and service uses, end quote.  
 12 Then in the next paragraph, the first sentence  
 13 states, while each of the property owners retains a right to  
 14 proceed with the development of its property independently,  
 15 the development team approached the whole of the Cabin  
 16 Branch community as a single project. Now when you go to  
 17 the language contained in division, excuse me, Division 59-  
 18 D1, the development plan provisions, and you go most  
 19 specifically to Section 59-D1.74(a), the first sentence  
 20 says, filing, which is the title, and then it says, any  
 21 proposal by the applicant.  
 22 Now when you read the entire section on  
 23 development plans and development plan amendments, it's  
 24 talking about the applicant. The applicant in this  
 25 proceeding are three separate entities of which Adventist

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1 Healthcare is but one and they prosecuted this as an  
 2 applicant, as a single project. Now you have in front of  
 3 you one of the three original applicants.  
 4 I looked in your record, in fact, most recently I  
 5 looked in it about a half an hour ago because I saw there  
 6 was a statement in there, I think it's Exhibit 4 from Toll  
 7 Brothers, about how they apparently have no objection, but I  
 8 don't know how Toll Brothers relates to any of the other two  
 9 applicants or entities that were the applicant. I have not  
 10 seen any evidence that, number one, indicates that there's  
 11 any participation in this proceeding by two of the entities  
 12 that were part of the original applicant. Beyond that, they  
 13 must be, they or, and I would concede their successor and  
 14 interest demonstrated the successor interest, they must be  
 15 part of the application process and, indeed, it's because it  
 16 is one project and quite simply in that circumstance this  
 17 application is, in my opinion, fatally defective. In fact,  
 18 it even precludes taking anything on his application without  
 19 the participation of those two other entities or their  
 20 success as they've shown in the record. That's where I am.  
 21 MS. ROBESON: Mr. Harris.  
 22 MR. HARRIS: Creative, but largely inaccurate and  
 23 I don't know where the law is on any of that. I don't  
 24 believe it supports that. Adventist Healthcare controls the  
 25 land that is the subject of this change. That's a given.

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1 They were an applicant in the original proceeding. They  
 2 also control the Cabin Branch Commons property. They're a  
 3 part owner of that. And so they are the right applicant.  
 4 Properties have shifted ownership here over the  
 5 years. FFTM doesn't own anything more. King whatever it  
 6 was doesn't own anything more. And the fact that these  
 7 owners applied together for the rezoning certainly doesn't  
 8 mean that individual property owners can't pursue  
 9 development of their own property in the way they see fit.  
 10 This property has been subject to, I think, 14 site plans  
 11 and each of them processed individually by the respective  
 12 owners without the others' participation. You know, and,  
 13 well, you know --  
 14 MS. ROBESON: Okay. Mr. Kline?  
 15 MR. KLINE: I probably would have just approached  
 16 it a little bit differently than Mr. Chen. I understand  
 17 that the original three applicants have morphed into  
 18 different entities, so I guess my question would be are all  
 19 of the successor entities of the original applicant's  
 20 parties to this application and in the context of asking  
 21 that I see in the applicant's justification statement  
 22 there's a reference to something called SMTM Gaznel  
 23 (phonetic sp.) zone, property zone annex PD that has site  
 24 plan approval. So my question is do they no longer own that  
 25 land or do they still own MXPD land because I would say

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1 anybody who owns MXPDP land would be a successor or the  
2 original applicants and you have to have all the applicants  
3 in order to participate.  
4 I understand why Cabin Branch or, I'm sorry,  
5 Adventist basically owns the court it's changing, but there  
6 presumably are other binding elements, other things that  
7 could flow from that that would affect other property owners  
8 and I guess I'd like to know that SMTM has basically agreed  
9 to be bound by all the things that are going to occur if  
10 they're still a party. And I guess my question is do we  
11 have all the parties that still own, MXPDP-owned land as  
12 applicants in the case?  
13 MS. ROBESON: Do we have all the MXPDP? Well, and  
14 let me put it this way, do we have all the parties who are  
15 subject to, will be subject to this amendment? In other  
16 words --  
17 MR. HARRIS: They are not applicants. Each owner  
18 of the property in Cabin Branch has written a letter in  
19 support of this application.  
20 MS. ROBESON: No, wait, wait. That's not what I  
21 mean. Do we have all the applicants that are subject to  
22 MXPDP?  
23 MR. HARRIS: Do we have all -- no.  
24 MS. ROBESON: All the owners, all the owners of  
25 the MXPDP?

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1 MR. HARRIS: Do we have them as applicants here?  
2 MS. ROBESON: Yes.  
3 MR. HARRIS: No. The applicants are as Mr. Chen  
4 correctly stated, Adventist Healthcare and Cabin Branch  
5 Commons. Their properties are the ones where this retail  
6 change would occur.  
7 MS. ROBESON: So there's other applicants within  
8 the MXPDP zone?  
9 MR. KLINE: Other owners.  
10 MS. ROBESON: I mean other owners; I'm sorry,  
11 other owners of the MXPDP zone?  
12 MR. HARRIS: There are, Winchester Homes, Toll  
13 Brothers and the FFTM. Actually, that, yes, that one does  
14 still exist. I beg your pardon. I was thinking that was  
15 Jody's old client.  
16 MR. KLINE: The Fowlers?  
17 MR. HARRIS: The Fowlers, Fowlers, yes. Right.  
18 But the Gaznel entity, SSTM, still does exist. They own  
19 property that's separated from this by Maryland Route 121  
20 and it's not involved in this application. And they have  
21 sent in a letter of support.  
22 MR. CHEN: May I be heard?  
23 MS. ROBESON: Yes.  
24 MR. CHEN: I have the highest regard for Mr.  
25 Harris and Mr. Kline, but I object to what you've heard them

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1 both say just now about ownership. That type of information  
2 which is factual from legal counsel in this type of a  
3 proceeding, and if we have a break I'll give you a cite on  
4 it, it's a decision within the last five or six years of the  
5 Court of Special Appeals, that information from legal  
6 counsel is not properly before you at this time.  
7 Now having said that, having said that, the fact  
8 that there may have been site plan approvals does not mean  
9 anything. We're talking about the development plan, the  
10 overall plan for the MXPDP zoned area. And what we've heard  
11 already this morning is, number one, not all the property  
12 owners, just the property owners, are parties to this  
13 proceeding, but apparently there are still some successors  
14 in interest that I've heard some representations that have  
15 been made. Mr. Kline made one representation of which I  
16 think is improperly before you. But even if you accept it,  
17 even if you accept that there are successors, they  
18 nonetheless still must be an applicant and they're not.  
19 That's where we are.  
20 MS. ROBESON: Well, thank you. I am not going to  
21 dismiss this out of hand for sure because some of this may  
22 be corrected. If what you're saying is true, I did not  
23 bring 59D. No, I don't want to look at it now. So you can  
24 give me your legal cite. What's your legal cite?  
25 MR. CHEN: I apologize. I don't have it printed

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1 out, but I'll get it to you. If we're going to have a break  
2 for lunch, I think I can --  
3 MS. ROBESON: And what's the proposition that this  
4 stands for?  
5 MR. CHEN: That legal counsel in these, in this  
6 type of a proceeding, in fact, I believe in that case it was  
7 a special exception administrative adjudicatory hearing.  
8 MS. ROBESON: What can't they do?  
9 MR. CHEN: They cannot give factual information to  
10 the Board and in that particular case one of the errors was  
11 that legal counsel was not sworn.  
12 MS. ROBESON: Well, but I could -- well, you may  
13 be right. I haven't read the case. I'd like it before  
14 lunch. It, well, yeah, we'll take a break, but I know that  
15 there are cases saying that it's okay to rely on counsel's  
16 representations.  
17 MR. CHEN: I appreciate that. In fact, I used to  
18 be of that same understanding until, it's a decision written  
19 by Judge Shurp (phonetic sp.) and --  
20 MS. ROBESON: Is it a Court of Special Appeals?  
21 MR. CHEN: Yes, it is Court of Special Apps and  
22 I'll try to get it to you at the break if there's a time  
23 when I can pull it. I'll --  
24 MS. ROBESON: Yes, because if you're going to say  
25 dismiss it out of hand, I'm not going to do it without

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1 reading your case. Well, I'm not going to do it, but --  
2 MR. CHEN: And I'm, please, I'm not saying that  
3 the application can't be amended --  
4 MS. ROBESON: Yes.  
5 MR. CHEN: -- okay? My issue is these entities  
6 must be parties and, in fact, they must be parties to at the  
7 very minimum the presentation of the evidence because it  
8 does impact and this is supposed to be an overall project  
9 and they either have to be here to participate to say, you  
10 know, we have no problems with this or they have to appear  
11 before you and say that they are a property owner, they are  
12 subject to it, they are the successor in interest and that  
13 they have no objection to what is being questioned by the  
14 amendment.  
15 MS. ROBESON: Okay.  
16 MR. CHEN: But that requires an amendment to the  
17 application.  
18 MR. HARRIS: I'm just, when Mr. Chen was talking  
19 earlier about where what he just said is in the zoning  
20 ordinance --  
21 MS. ROBESON: Well, where -- can you cite to 59D  
22 again?  
23 MR. CHEN: Yes. The, first of all, what I said  
24 was that I'm relying upon Division 59D-1, which is the  
25 development plan also.

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1 MS. ROBESON: Right.  
2 MR. CHEN: When you go through that and it starts  
3 with Section 59D-1.1, when you go through that and read the  
4 entire section, you then come to 59D-1.74 which deals with  
5 the nature of this proceeding which is a proceeding to amend  
6 and approve the development plan after it has been approved  
7 by the District Council. And the opening words in that  
8 section say any proposal by the applicant. Now the words  
9 the applicant as used in that section turn back to  
10 everything in that section, Division 59D-1. It talks about  
11 the applicant, the applicant, the applicant and in this  
12 particular case what happened, and I think I understand why,  
13 three entities chose, chose to seek the rezoning, chose to  
14 have a development plan approved under one umbrella of all  
15 three and they were the applicant, technically under the law  
16 they were the applicant. They remain, as we sit here today,  
17 those three entities remain the applicant.  
18 MS. ROBESON: Well, it's whoever their success --  
19 according to your theory --  
20 MR. CHEN: Yes, they could be.  
21 MS. ROBESON: -- it's whoever their successors  
22 are.  
23 MR. CHEN: Yes. Yes. I was coming to that. They  
24 remain today, either those three, or their successor.  
25 Please, I'm not saying that some entity that no longer

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1 exists --  
2 MS. ROBESON: Yes.  
3 MR. CHEN: -- must be resurrected. I'm not saying  
4 that. And I appreciate that there could be a successor, but  
5 naturally in that particular case then the successor becomes  
6 an applicant and there is evidence in the record showing  
7 that they are the successor.  
8 MR. HARRIS: Madam Hearing Examiner, each of them  
9 was individually an applicant. They were not a joint  
10 venture. They were not a partnership. Each was an  
11 applicant. There were multiple applicants. And I still  
12 have not heard Mr. Chen say where in the zoning ordinance it  
13 says every applicant has to join in a development plan  
14 amendment. It doesn't say that.  
15 MS. ROBESON: Okay. I understand both sides, all  
16 right? So with that, are there any -- I hesitate to ask,  
17 but are there any other preliminary matters? Yes, sir, Mr.  
18 Kline?  
19 MR. KLINE: I would just ask this. I know that on  
20 occasion your office has conversations with the Park and  
21 Planning Commission to help get, understand your  
22 interpretation of the materials that have been transmitted  
23 here. That may well occur before the hearing. But I would  
24 ask that any communications with Park and Planning from your  
25 office after this point in time be on the record so that we

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1 can basically participate in that.  
2 MS. ROBESON: That's fine.  
3 MR. KLINE: Thank you.  
4 MS. ROBESON: All right. Anything else? All  
5 right.  
6 MR. HARRIS: Oh, excuse me. There is one other  
7 thing. Again, I want to correct Mr. Chen. The rules of  
8 procedure under cross-examination say, it doesn't only talk  
9 about a spokesperson, it says the Hearing Examiner may  
10 require that a spokesman for allowing parties to designate  
11 to conduct cross-examination. I --  
12 MS. ROBESON: Where are you?  
13 MR. HARRIS: I'm on Rule 4.4. And so in light of  
14 that, I would -- and so as to keep this hearing moving and  
15 not avoid any further, you know, delays, I would request  
16 that you ask or appoint one of the two of them to conduct  
17 the cross-examination.  
18 MS. ROBESON: I'm not going to do that because  
19 they each have clients with different interests and if I  
20 require them to -- I understand your concern, especially  
21 after 4831 West Lane. But I understand your concern, but  
22 they each have clients with different interests and it is  
23 within my discretion and I don't want to have an appealable  
24 issue. And I think it's better to -- I would request that,  
25 what I am going to say is the cross-examination, I'm going

1 to be relatively strict about staying within the scope and  
 2 relevance, but I'm not going to require them to funnel  
 3 questions through one attorney. Yes, Mr. Kline?  
 4 MR. KLINE: Can I just get a clarification where  
 5 we are on Mr. Chen's, maybe not the motion, but the  
 6 discussion? Are you waiting for us to basically give you  
 7 some ammunition as to whether that we have all the proper  
 8 parties before us?  
 9 MS. ROBESON: Yes. Well, I'm going to look at it.  
 10 I wish that you had, Mr. Chen, you had made the motion  
 11 earlier so we didn't have this delay, but I want the case  
 12 from the Court of Special Appeals and I did not bring 59D  
 13 with me and I don't want to recess the hearing just so I can  
 14 read it. So that will be my lunchtime homework, all right?  
 15 MR. KLINE: Yes.  
 16 MS. ROBESON: Your lunchtime homework, no,  
 17 you're -- we'll take a break at some point and you're going  
 18 to get me the case, correct?  
 19 MR. CHEN: I'm, at break I'm going to run back to  
 20 my office and jump into my files to pull the case.  
 21 MS. ROBESON: Well, no, no, no. You don't have  
 22 anyone you can call?  
 23 MR. CHEN: No, I don't. No, I don't, I don't have  
 24 someone I can call.  
 25 MS. ROBESON: Well, where is your office?

1 MR. CHEN: On the other side of the parking lot.  
 2 MS. ROBESON: Oh, okay. I'm just checking because  
 3 I'm thinking --  
 4 MR. CHEN: Yes.  
 5 MS. ROBESON: And it's not going to be --  
 6 MR. CHEN: I'm two minutes away.  
 7 MS. ROBESON: -- an hour break before lunch.  
 8 MR. CHEN: No, no, no, I'm two minutes away, two  
 9 minutes away.  
 10 MS. ROBESON: Okay. All right. Anything else?  
 11 Yes, sir?  
 12 MR. HARRIS: Would you entertain a brief opening  
 13 argument?  
 14 MS. ROBESON: Yes, I am going to do that. So with  
 15 that, before we get to that, any other preliminary matters?  
 16 (No audible response.)  
 17 MS. ROBESON: All right. Mr. Harris.  
 18 OPENING STATEMENT BY ROBERT HARRIS, ESQ.  
 19 MR. HARRIS: Thank you, Madam Hearing Examiner. I  
 20 would start by saying there is even a question whether any  
 21 DPA is even required here. The MXPDP zone allows 20 percent  
 22 retail within the commercial component and the existing  
 23 approved development plan gives major flexibility for the  
 24 Planning Board at the time of preliminary planning site plan  
 25 to define what the uses are within that undefined commercial

1 envelope.  
 2 There is no need in a development plan to define  
 3 each and every use that's going to be located within an MXPDP  
 4 property and, in fact, in this own case the hotel that has  
 5 been approved at site plan for the, what we would refer to  
 6 as the Gaznel property on the north side of 121 is not  
 7 mentioned in the development plan anywhere, but yet it has  
 8 been approved through preliminary plan and site plan  
 9 approvals. Even the hospital that was going to go here  
 10 before is not identified in the development plan.  
 11 The, when we met earlier with Park and Planning  
 12 staff they asked us to seek a development plan so that it  
 13 was clear what we were doing and that's what we did, but  
 14 there really isn't even a requirement for that. To the  
 15 extent a development plan amendment is required; this is  
 16 quite minor in nature. The MXPDP zone is already in place,  
 17 properly zoned. All the findings applicable to the MXPDP  
 18 zone have been made by the District Council. We're talking  
 19 about the same 283 and a half acres, no change in that, and  
 20 we're talking about the same total density. It's the same  
 21 residential development, same commercial development that  
 22 was approved in the development plan.  
 23 The, in terms of the justification for the  
 24 development plan amendment, I think it's substantial.  
 25 Planning Staff took five months prior to the Planning

1 Board's hearing to evaluate this. Their Staff Report was  
 2 not based on a knee-jerk reaction at all, but after their  
 3 thorough evaluation they provided their full support for  
 4 this in a 44-page, detailed Staff Report, not including the  
 5 various attachments.  
 6 As you have in the record, Exhibit 43, there were  
 7 77 letters and e-mails in support of this. There were, I  
 8 think, three, maybe four letters of opposition to it. But  
 9 the Planning Board went through a really thorough  
 10 discussion. I think it was a three hour plus hearing on the  
 11 18th and in the end unanimously supported this with  
 12 Commissioner Presley. I think her word was, I  
 13 enthusiastically support this. And I would also note that  
 14 the chair, Francoise Carrier, was the zoning hearing  
 15 examiner that heard the original MXPDP and the development  
 16 plan. So she had personal, intimate knowledge not only of  
 17 who the applicants were in that proceeding, but in every  
 18 dimension. And as all of us know, she is one thorough  
 19 person and doesn't forget anything. And so the fact that  
 20 she was in support told me a lot.  
 21 Under Maryland law and zoning hearing examiner  
 22 precedent, the Planning Board's support and in particular  
 23 its interpretation of the master plan is entitled to great  
 24 weight and that's the Watkins case, Watkins v. Secretary of  
 25 the Department of Public Safety. And so we have here

1 unanimous Planning Board support that's entitled to great  
 2 weight. Unfortunately, we're going to spend a lot of time  
 3 going sideways, I think, with claimed experts who are going  
 4 to try to discredit the Planning Board, but I think they've  
 5 got a tall task. I also note the quantity and, indeed, the  
 6 quality, the substance of the letters of support that you,  
 7 the Zoning Hearing Examiner, have gotten. I think as of  
 8 this morning there are 98 such letters of support and they  
 9 come from people like, from people like former council  
 10 member Mike Knapp (phonetic sp.); from Barry Shandel  
 11 (phonetic sp.), the head of the Clarksburg Civic  
 12 Association; Cathy Holly (phonetic sp.), who is very  
 13 involved; Dave Flanagan, who is developing the town center  
 14 talking about it not impacting them; Marilyn Balcom  
 15 (phonetic sp.) from the Gaithersburg/Germantown chamber.  
 16 And, as I say, letters of support from all of the other  
 17 property owners in the Cabin Branch community, the most  
 18 affected properties. So this is a very compelling case.  
 19 On the other hand, what we have is opposition from  
 20 a competing business interest, the Peterson Group, that does  
 21 not even own their land and as I said earlier, way far  
 22 behind us in terms of their development approval process.  
 23 And we've got an individual who owns a property in the  
 24 historic district more than a quarter, maybe even more than  
 25 a half a mile away from this and separated by I-270. Under

1 Maryland law, I don't believe that either of them has a  
 2 special interest in this that entitles them to party status.  
 3 And, but in any respect, they have been allowed to  
 4 participate here and I, you know, I think their testimony  
 5 will be considered for what it's worth. But it's a  
 6 compelling case and we're going to spend a lot of time going  
 7 sideways on it to my regret. The only other thing I would  
 8 say is the applicant agrees to the binding element that the  
 9 Planning Board has recommended as it's worded there. Thank  
 10 you.  
 11 MS. ROBESON: Thank you. Just to clarify, I don't  
 12 think you need, you need a grievance status to appeal, but the  
 13 test for a party is much different. So --  
 14 MR. HARRIS: That is my point. I agree with that.  
 15 MS. ROBESON: Okay. Mr. Chen.  
 16 MR. CHEN: Madam Examiner, I defer to the  
 17 presentation of the opposition.  
 18 MS. ROBESON: All right. Mr. Kline.  
 19 MR. KLINE: You actually, despite all the blue  
 20 suits in this room, you're actually going to find this a  
 21 pretty easy case to digest and --  
 22 MS. ROBESON: That's good.  
 23 OPENING STATEMENT BY JODY KLINE, ESQ.  
 24 MR. KLINE: That's a good thing. And it's as  
 25 simple as if you can recall the opening statement that you

1 read, that you either read or stated at the beginning of the  
 2 hearing, the proposal is to increase the amount of retail  
 3 from 120,484 and reduce the amount of employment from  
 4 whatever number it was, whatever number it was. And the  
 5 premise on which you're going to hear us objecting is very  
 6 clear language in the master plan that says there will not  
 7 be more than 120,000 square feet of retail development in  
 8 the Cabin Branch neighborhood. So what has been described  
 9 as being minor in nature is a jump from 120,000 to 484,000,  
 10 which I do not believe any reasonable person would consider  
 11 to be minor in nature.  
 12 I wouldn't have said this but for the preceding  
 13 comments and that is as the applicant's justification study  
 14 points out is that the, let's say that some of the moving  
 15 parties and the people participating, I'm sorry, attending  
 16 here today are basically the ultimate developers of the  
 17 property. Though the application is filed in the name of  
 18 the property owner, Simon Properties, New England  
 19 Properties, if I have that correct, and other entities are  
 20 basically going to be the developers of a retail element  
 21 shopping center on this property on behalf of, presumably as  
 22 contract purchasers from Adventist Hospital who, as the  
 23 material you got, has explained that we were going to build  
 24 a hospital there once and because we did not get our  
 25 certificate of need, we now have X-hundred thousand square

1 feet of land that we can't do anything with. It's an  
 2 albatross on our, around their neck, and some clever  
 3 developer came in and said, hey, Peters and Company has  
 4 announced they're going to do this on the east side of I-  
 5 270, why don't we go ahead and do it on the west side of I-  
 6 270 because we've got property that's available. So I would  
 7 argue that, well, actually I'm not going to argue. I'm just  
 8 going to say there's competing interest on both sides from a  
 9 competition point-of-view. So I'd just soon not talk about  
 10 that.  
 11 But I will just say that the letters that you've  
 12 got in your file from employees of Adventist who don't live  
 13 anywhere close to the property who are saying you need to  
 14 help us out because we've got to get this albatross off  
 15 around our neck is basically not a reason to go ahead and  
 16 rezone the property to, in a way that's contrary with the  
 17 master plan.  
 18 MS. ROBESON: Mr. Harris, your first witness?  
 19 MS. HARRIS: My first witness would be Jonathan  
 20 Sachs from Adventist Healthcare.  
 21 MS. ROBESON: Mr. Sachs, please raise your right  
 22 hand.  
 23 (Witness sworn.)  
 24 MS. ROBESON: Okay. Go ahead, Mr. Harris.  
 25 BY MR. HARRIS:

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1 Q Mr. Sachs, would you state your name and business  
2 address for the record?  
3 A Yes, Jonathan Sachs, 820 West Diamond Avenue,  
4 Gaithersburg, Maryland.  
5 Q And can you inform us who employs you and what  
6 your position is?  
7 A I'm the director of public policy and community  
8 engagement with Adventist Healthcare.  
9 Q And can you briefly describe Adventist Healthcare?  
10 A Yes. We're a non-profit, faith-based healthcare  
11 hospital system. Our two hospitals in the Maryland area,  
12 Washington Adventist Hospital, Shady Grove Adventist  
13 Hospital, we've been in the community for over 100 years and  
14 we're the largest employer in Montgomery County, largest  
15 private employer of Montgomery County.  
16 Q How long have you been employed at Adventist  
17 Healthcare?  
18 A I'm starting my ninth week.  
19 MS. ROBESON: Welcome.  
20 THE WITNESS: Thank you.  
21 BY MR. HARRIS:  
22 Q Have you had occasion to study the history of the  
23 Cabin Branch project to any degree?  
24 A Yes, I can tell you what I know. In the late  
25 1990's, we began to see growth and demand for healthcare in

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1 the up-county and we saw a future need for a full hospital,  
2 you know, between Shady Grove Adventist Hospital and  
3 Frederick, about 25 miles around there, saw a growing  
4 population in Germantown, Clarksburg, Urbana, lots of  
5 places, up-county and we saw problems with limited land  
6 sites and saw land up-county starting to be sold and  
7 purchased quickly and we decided that as an organization we  
8 had an obligation to begin planning for a hospital. We  
9 bought approximately 170 acres along I-270 at Cabin Branch.  
10 We had a plan for a hospital, MOB, outpatient centers,  
11 nursing, senior housing and other employment and we had to  
12 wait to seek a CON to get the numbers of people who live up  
13 there to get the necessary zoning and site plans.  
14 Winchester and others own the remainder of the 535  
15 acres of the Cabin Branch tract. With other Cabin Branch  
16 property owners in 2000, we began what turned out to be a  
17 very lengthy development approval process for mixed use  
18 neighborhood with all types of housing, retail, employment,  
19 entertainment and medical and a hospital and we spent seven  
20 years and hundreds of thousands of dollars getting water and  
21 sewer, category change for Stage 3 MXPZ zoning, a  
22 development plan that would allow uses for mixed employment  
23 and retail, preliminary plan of subdivision, infrastructure  
24 site plan, water quality and forest conservation plan and  
25 many related approvals. We also agreed to co-fund an

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1 obligation for infrastructure which, you know, I understand  
2 totals more than \$100 million.  
3 We had land use approvals to seek a CON and we  
4 entered into that process. We had a competitive review at  
5 the state with the Holy Cross site in Germantown.  
6 Unfortunately, we were not awarded the CON. It was given to  
7 Holy Cross versus us in that comparative review.  
8 MS. ROBESON: All right.  
9 BY MR. HARRIS:  
10 Q Since the loss of the hospital opportunity, have  
11 you explored other uses for your land?  
12 A Well, we're not, we're not a developer, we're a  
13 healthcare company and, you know, we're looking to do  
14 something, you know, different where a ton of money tied up  
15 in land. But we're also, you know, had a pro rata share of  
16 the infrastructure costs which was starting to approve for  
17 our organization and we want to, you know, rededicate our  
18 capital that we have tied up into healthcare. You know,  
19 we're a non-profit healthcare company. We have fixed rates  
20 from the state. The Maryland Hospital Associations released  
21 a report that says that, you know, those rates are not  
22 keeping up with inflation over at least the last three years  
23 and hospitals in Maryland absorb the full 2 percent cut from  
24 sequestration. So we're looking to reinvest in healthcare.  
25 We were seeking a purchaser for at least part of

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1 the land that we had in Clarksburg. We didn't have  
2 interest. In 2012, we had expressions of interest in retail  
3 and outlet. We had four interested parties in building such  
4 a center on that land, including Peters Inn and the Tanger  
5 Outlets and after careful evaluation of all of them, as we  
6 were going through the CON process, we spent a lot of time  
7 interacting with the community and learning about what their  
8 needs were in Clarksburg. We selected Streetscape New  
9 England Development and Simon, we felt that they had the  
10 best record working with the community and delivering on  
11 their commitments to a community. We thought that they had  
12 the best product and they had the best prior performance and  
13 we thought that it was the best for Clarksburg and  
14 Montgomery County.  
15 Q Did you participate in outreach efforts with the  
16 community about your plans and if so what was the response  
17 that you got?  
18 A We did. We did and we had, you know, an  
19 overwhelmingly positive response. Recently I was at the  
20 presentation in front of the Economic Development Committee  
21 of the Gaithersburg/Germantown Chamber of Commerce where we  
22 had a very, you know, warm welcome encouraging us to get  
23 started and get moving on this project. Park and Planning,  
24 the community and business leaders seemed enthusiastic about  
25 the project.

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1 Q Just one follow-up then. Did you say that the  
2 Peterson and Tanger Outlet parties were, did submit an  
3 expression of interest in buying the land?  
4 A Yes.  
5 Q Okay.  
6 MR. HARRIS: No further questions.  
7 MS. ROBESON: Mr. Chen.  
8 MR. CHEN: I have no questions.  
9 MS. ROBESON: Mr. Kline.  
10 CROSS-EXAMINATION  
11 BY MR. KLINE:  
12 Q Mr. Sachs, can you recall the date or the time in  
13 which Adventist became aware that it would not receive the  
14 certificate in need, thus making this property sort of  
15 surplus?  
16 A I can't, no, I mean I think it was late 2011, but  
17 I'm not, I'm not positive.  
18 Q Thank you.  
19 MS. ROBESON: Redirect?  
20 MS. HARRIS: No, thank you.  
21 MS. ROBESON: Okay. Next witness, please.  
22 MR. HARRIS: Madam Examiner, it's clear that this  
23 case is going to go on for awhile. I was, when I originally  
24 scheduled it there was no opposition and, but I had arranged  
25 with a number of community residents to give up their time

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1 to come and speak to the Hearing Examiner. They are here  
2 now and I would ask permission to interrupt our direct case  
3 to let some of those folks speak so they can get onto their  
4 daily lives.  
5 MS. ROBESON: Any objections?  
6 MR. CHEN: No.  
7 MR. KLINE: No, I mean assuming --  
8 MS. ROBESON: Okay. That's fine.  
9 MR. KLINE: -- that the same courtesy would be  
10 extended if --  
11 MS. ROBESON: Yes.  
12 MR. KLINE: -- people come on day two or they --  
13 MS. ROBESON: We do try to accommodate people.  
14 All right. That's fine.  
15 MS. HARRIS: Okay. Thank you. Okay. Marilyn --  
16 Marilyn? Okay. Yes?  
17 MS. HULLEY: No, Kathy Hulley.  
18 MR. HARRIS: Oh, Kathy? I'm sorry. I beg your  
19 pardon.  
20 MS. HULLEY: Good morning.  
21 MS. ROBESON: Good morning. Please raise your  
22 right hand.  
23 (Witness sworn.)  
24 MS. ROBESON: Thank you. Go ahead.  
25 MS. HARRIS: She's not my witness, so --

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1 MS. ROBESON: Oh, she's not?  
2 MR. HARRIS: Yes.  
3 MS. ROBESON: Oh, I'm sorry. Please state your  
4 name and address for the record.  
5 MS. HULLEY: My name is Kathy Hulley. I live at  
6 21809 Diller (phonetic sp.) Lane in Boyds.  
7 MS. ROBESON: Okay. If you would kindly make sure  
8 the court reporter has the spelling of your name --  
9 MS. HULLEY: Yes.  
10 MS. ROBESON: -- before you leave?  
11 MS. HULLEY: Yes.  
12 MS. ROBESON: Or did you sign the sign-up sheet  
13 outside?  
14 MS. HULLEY: No, but I can on the way out if you  
15 want me to.  
16 MS. ROBESON: If you could sign the sign-up sheet  
17 with your e-mail address and print clearly your name?  
18 MS. HULLEY: Okay.  
19 MS. ROBESON: That's good too. Okay. I'm sorry.  
20 Go ahead.  
21 MS. HULLEY: I've lived in Clarksburg for 33  
22 years. I've been associated with the civic association and  
23 the master plan since before its inception.  
24 MS. ROBESON: Which civic association, Clarksburg?  
25 MS. HULLEY: Clarksburg Civic Association.

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1 MS. ROBESON: Okay.  
2 MS. HULLEY: I'm a secretary back in 1990 and the  
3 master plan was adopted in 1994. At that time, FDA was  
4 going to build on that land and we would have had a perfect  
5 Government town, but that didn't happen and the Clarksburg,  
6 the hospital fell off, so we didn't have that either.  
7 I view this project as being a plus for  
8 Clarksburg. It's in an ideal best position, I believe.  
9 It's -- Clarksburg needs something that will draw people  
10 from out of the town center to that area. I live on the  
11 very southern part of the planning area and it's certainly  
12 something that would draw me to go to Clarksburg, otherwise  
13 I would have no real -- the town center is not going to be  
14 what was promised in the master plan. The master plan has  
15 changed a lot.  
16 The retail has changed a lot. Originally the town  
17 center retail was to go first and then Clarksburg Village  
18 got the, because of the tie-ups with the town center put the  
19 Newland, Clarksburg Village got to go first. So I see this  
20 as being a great -- if this doesn't go forward, it could be  
21 in limbo for years. I was on the Germantown forward master  
22 plan committee and they've approved so much more commercial  
23 for that area that Clarksburg is going to be way behind  
24 again. It's millions and millions, hundreds of millions of  
25 -- I'm not quite sure how much, but a great deal. And so

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1 Clarksburg, which would have been developed, is going to be  
2 down the line yet further.  
3 MS. ROBESON: Okay.  
4 MS. HULLEY: So --  
5 MR. HARRIS: Okay.  
6 MS. HULLEY: -- and the interchange will be built,  
7 which we need. It's got to be built before any building can  
8 be occupied.  
9 MS. ROBESON: All right. Do you have any --  
10 MR. KLINE: No, ma'am.  
11 MS. ROBESON: Okay. Mr. Chen, cross-examination?  
12 Mr. Kline?  
13 BY MR. KLINE:  
14 Q Ms. Hulley, you used the phrase, I think the  
15 phrase was out of the town center, so it sounded to me like  
16 you were saying that this facility would basically draw  
17 people out of the town center because it's not, it's not --  
18 A No.  
19 Q -- reaching its vision?  
20 A It would draw people who were in the whole area of  
21 the Clarksburg planning area to that town center area, town  
22 center district.  
23 Q Town center as we describe it in the master plan?  
24 A Well, there's two things that people get confused  
25 in, especially in Clarksburg, is the town center which is

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1 the area which is very densely populated and then there's  
2 the over-broader area which is the town center district.  
3 And this is just outside the town center district --  
4 Q Right.  
5 A -- but right adjacent to it.  
6 Q Okay. Well, but I understood your phrase to be it  
7 would draw people out of the town center because the town  
8 center is immature --  
9 A No.  
10 Q -- or not developed? No?  
11 A It would draw people who are out of the town  
12 center to the town center. It would take people away from  
13 the town center.  
14 Q Okay.  
15 A It would draw people into the town center.  
16 Q Then what's the significance of your comment that  
17 the town center has not developed the way it was promised in  
18 the master plan?  
19 A Because the original vision for the real town  
20 center was to have, it was to have retail, commercial and,  
21 what's the word I want to --  
22 Q Residential?  
23 A No.  
24 Q Civic?  
25 A Civic.

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1 Q Yes.  
2 A And it's not going to have what was promised. So  
3 if you don't have the civic and the areas to draw people in,  
4 then it's not going to be the viable town center that it was  
5 going to be originally.  
6 Q And maybe it's not a question you can answer, but  
7 why is it not going to reach that vision in the master plan?  
8 What's the changed circumstance that's going to keep it from  
9 fulfilling that image?  
10 A Because it's my belief that too much residential  
11 was allowed and then the area that was left for the  
12 commercial and, commercial and civic was reduced.  
13 Q Thank you.  
14 A And --  
15 MR. KLINE: I have no further questions.  
16 BY MR. HARRIS:  
17 Q Ms. Hulley, are, you know, you saying that you  
18 believe this project would have a positive impact on the  
19 town center?  
20 A Yes, because it would draw people to, adjacent to  
21 the town center and into the town center.  
22 Q Thank you.  
23 MS. ROBESON: Anything else?  
24 THE WITNESS: I believe, too, that once it's  
25 built, a lot of people in Clarksburg will shop there and not

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1 need to go elsewhere.  
2 MS. ROBESON: I see -- thank you, you can, you may  
3 be excused. I see some people standing at the doorway. Are  
4 they your witnesses, Mr. Harris, or --  
5 MS. HARRIS: One is a -- no, no, no, some of them  
6 are, yes.  
7 MS. ROBESON: Just an interested citizen?  
8 MR. HARRIS: Yes.  
9 MS. ROBESON: Okay. And is anyone else there  
10 going to testify?  
11 MR. HARRIS: Yes, ma'am, at least two of them.  
12 There are community witnesses that we've met with, so they  
13 do plan to testify.  
14 MS. ROBESON: Okay. All right. Is there anyone  
15 sitting in the audience that is a civic or individual that  
16 wishes -- are you for the case or against -- for the --  
17 MS. BUFFINGTON: I'm not against the case per se,  
18 but I would like -- I'm a business owner in the center of  
19 Clarksburg and I would like to speak. I didn't know all  
20 these witnesses were coming to speak.  
21 MS. ROBESON: Okay. All right. And how many do  
22 you have there?  
23 MR. HARRIS: One, two, three, I think three  
24 speakers.  
25 MS. ROBESON: Okay. Then let's have, ma'am, you

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1 can come forward. And then we'll take, I'm sorry, I don't  
2 have your names.  
3 MS. BALCOLM: Marilyn.  
4 MS. ROBESON: Okay. And then we'll take the two  
5 of you that want to testify. Okay.  
6 MR. HARRIS: Before we do this, I should have done  
7 this, I have the affidavit of posting.  
8 MS. ROBESON: Oh, yes, that will be 44.  
9 (Exhibit No. 44 was marked for  
10 identification.)  
11 MR. HARRIS: Thank you.  
12 MS. ROBESON: Exhibit 44. Come forward and have a  
13 seat.  
14 MS. BUFFINGTON: Okay.  
15 MS. ROBESON: Thank you. All right. Please raise  
16 your right hand.  
17 (Witness sworn.)  
18 MS. ROBESON: Can you please state your name and  
19 address for the record?  
20 THE WITNESS: My name is Elizabeth Buffington,  
21 known as Betty Buffington, and my Clarksburg address with my  
22 business is 23315 Frederick Road, Clarksburg, Maryland.  
23 MS. ROBESON: And did you sign the sign-up sheet  
24 outside?  
25 THE WITNESS: I signed in, yes.

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1 MS. ROBESON: Yes. Okay. What would you like to  
2 say?  
3 THE WITNESS: Well, my husband and I bought land  
4 in Clarksburg for commercial development to develop our new  
5 real estate office, Remax Realty Center there in 2006 and it  
6 took us over six years to develop it. And in the process of  
7 developing it, the community told us they wanted a  
8 restaurant there. So in addition to moving our -- we built  
9 a 14,288 square foot commercial building in the historic  
10 district in the center of Clarksburg.  
11 MS. ROBESON: Okay.  
12 THE WITNESS: Through some of the people here, I  
13 believe, you know, Kathy Hulley opposed us at the time, but  
14 finally did agree to say that it was okay for us to have a  
15 building there. But, anyway, we went through many hoops and  
16 we went through the Historic Commission to build the  
17 property. So after all this time, we do have our building  
18 built. We started to occupy it in August a year ago and we  
19 first put our Remax office there and then we built the  
20 Bennigans. We had to do the Bennigans because, ourselves,  
21 my husband and I did, because no one else would step up to  
22 the plate because Clarksburg is known as a difficult area to  
23 develop in.  
24 So, anyway, at this time I am sitting as one of  
25 the lone businesses in the historic district that has any

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1 viability. And the reason I wanted to speak on this is we  
2 were very excited when we heard that the Peterson company  
3 was going to develop adjacent to the historic district in  
4 outlet center. And at that time I didn't know about the  
5 Simon property which was proposed across Route I-270. And  
6 the reason I feel that this plan for Peterson, I have  
7 nothing against the Simon mall or anything else, I'm sure it  
8 would be nice, is that it draws things away from the center  
9 of Clarksburg and sort of puts it on the fringe. And Ms.  
10 Hulley said, it is not adjacent to the center of Clarksburg,  
11 it is all the way across 270. It's going to segregate and  
12 make shopping difficult for those in the center.  
13 The plan that David Flanagan has for the  
14 neighborhood grocery store mall --  
15 MS. ROBESON: Okay.  
16 THE WITNESS: -- and --  
17 MS. ROBESON: I don't know names, so --  
18 THE WITNESS: Okay.  
19 MS. ROBESON: -- is that Elm Street that, the  
20 owner of town center?  
21 THE WITNESS: The Elm Street plan --  
22 MS. ROBESON: Okay.  
23 THE WITNESS: -- for the town center would be  
24 walkable within the historic district to the Peterson  
25 property which is, you know, adjacent. It would be like a

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1 15-minute walk which is good planning to me because, you  
2 know, Clarksburg was supposed to be walkable, it was  
3 supposed to have a vibrant, commercial district. The  
4 Peterson project will bring sewer to that historic district  
5 which currently has many, many failing sewers, septic  
6 systems, which is actually polluting the creek, the 10-mile  
7 creek at this time. So that, plus the transportation center  
8 was going to come there. Peterson was going to help put  
9 that in, you know, which is something that the citizens long  
10 wanted and now there won't be any reason to bring it there.  
11 There isn't enough commerce there in the center of  
12 Clarksburg to bring a transportation center. So the sewer,  
13 the walkability to the two commercial centers, these are  
14 some of the reasons that I, you know, I favor the Peterson  
15 project over this one which I think will marginalize  
16 Clarksburg because right now we have a grocery store which  
17 is on the fringes up near Route 27, Harris Teeter being  
18 built. It's a small neighborhood thing.  
19 MS. ROBESON: Okay.  
20 THE WITNESS: And then if this one were to go  
21 through, then we have this one way on the other side and the  
22 center of Clarksburg has nothing.  
23 Oh, the other thing that Peterson was going to do  
24 was to put that bypass in.  
25 MS. ROBESON: Okay.

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1 THE WITNESS: You know, and if they don't do it,  
2 that won't come through either.  
3 MS. ROBESON: What bypass?  
4 THE WITNESS: The bypass around the historic  
5 district will --  
6 MS. ROBESON: I see. Okay.  
7 THE WITNESS: Which will take traffic, you know,  
8 more or less around the historic district so that it's not  
9 so congested on Route 355.  
10 MS. ROBESON: Okay.  
11 THE WITNESS: Which it is right now. So those  
12 are --  
13 MS. ROBESON: Okay.  
14 THE WITNESS: -- other three important benefits  
15 the Peterson Group would have had that I feel -- that's why  
16 I'm, I'm just not liking the way the design is going right  
17 now.  
18 MS. ROBESON: All right. Mr. Harris?  
19 BY MR. HARRIS:  
20 Q Ms. Buffington, is it safe to say that you want at  
21 least one of these projects, one of the outlet centers, but  
22 that your preference was for the Peterson one?  
23 A Correct.  
24 Q And do you have any feel for how long it will take  
25 the Peterson project to come to fruition?

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1 A Well, I don't know how long it takes anybody to  
2 develop in Montgomery County. I know it took us six years  
3 to build a 14,000 square foot building.  
4 Q So would it be your assumption that to build a  
5 400,000 square foot retail center would take at least six  
6 years?  
7 A I don't know.  
8 Q Do you -- were you present at the Planning Board  
9 hearing on July 18th?  
10 A That was the one where you were --  
11 Q Correct, yes.  
12 A -- approved? Yes.  
13 Q Yes. And did you hear Gwen Wright talk about how  
14 the Peterson project would be bad for the town center, but  
15 that the Simon property, Simon development would be good for  
16 the town center?  
17 MR. KLINE: Objection. I don't believe that's an  
18 accurate characterization.  
19 THE WITNESS: She, she --  
20 MR. HARRIS: Okay. I'll quote it.  
21 THE WITNESS: She didn't say that. She didn't say  
22 that --  
23 MR. HARRIS: I'll quote it.  
24 THE WITNESS: -- exactly.  
25 MR. HARRIS: Let me quote it then.

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1 MS. ROBESON: Is this from the transcript?  
2 MR. HARRIS: It is my transcription.  
3 MS. ROBESON: Mr. Harris, I'm not going to allow  
4 that in without any more documentation.  
5 MR. HARRIS: Okay.  
6 BY MR. HARRIS:  
7 Q Did you hear Ms. Wright speak?  
8 A I did.  
9 Q Did she support the Peterson project or criticize  
10 it?  
11 A She didn't name anything directly. I'm not sure  
12 which project she was talking about.  
13 Q Did she support the Simon project?  
14 A I didn't hear her support or not support anything  
15 particularly.  
16 Q Did you hear the Planning Board?  
17 A I did.  
18 Q Did they support the Simon project?  
19 A Yes, they voted to let it -- they voted to let it  
20 go forward, the amendment.  
21 Q And did they hear arguments from Mr. Cobb and his  
22 attorney that those two individuals believed it would be  
23 adverse to the town center?  
24 A I'm not sure what you mean.  
25 Q Did Mr. Cobb testify?

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1 A Yes.  
2 Q Did Mr. Cobb testify in opposition to the Simon  
3 property?  
4 A He testified in addition to, yes, he did.  
5 Q And was part of his opposition a claim that it  
6 would be adverse to the town center?  
7 A Yes.  
8 Q And did the Planning Board agree with him or  
9 disagree with him?  
10 A They didn't express their agreement or  
11 disagreement.  
12 Q Okay. Has Peterson Company said that they're  
13 going to pay for sewer to come to the town center or to the  
14 historic district?  
15 A They said they would provide it, yes.  
16 Q So they, your expectation is that they will pay  
17 the cost --  
18 A Yes.  
19 Q -- for that? And that is all the way up to your  
20 properties?  
21 A Well, my property has sewer.  
22 Q Okay. So you -- but for the other historic  
23 properties, that's what you're looking for?  
24 A They will bring -- it's my understanding that they  
25 will bring them to the point where the citizens can connect,

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1 yes.

2 Q Without a cost to the citizens?

3 A Well, you know, I mean these things -- yes, I'm

4 assuming that they're going to bring the main sewer in so

5 the citizens don't have to pay for that whole, big thing to

6 be brought in.

7 Q Okay. And the same question with respect to the

8 bypass, is it your understanding that they're going to pay

9 for the bypass?

10 A Yes.

11 Q Do you believe that --

12 A And they actually, they proposed to bring it

13 through Gateway instead of bringing yet another road,

14 because the historic, the people in the historic district do

15 not want to move the old schoolhouse where that inter-

16 connector road would go through and it would have to move

17 it. So the people in the historic district don't want that.

18 Q And so part of your basis for preferring the

19 Peterson is your understanding that they will pay for the

20 sewer to the historic district and they will pay for the

21 construction of the bypass?

22 A Correct, through Gateway. They propose it to go

23 through Gateway. And so it doesn't disrupt the historic

24 district when, you know, so it comes in without disrupting

25 the historic district, comes in and avoids, you know, a lot

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1 of traffic in the historic district. I think, I see all

2 kinds of benefits to it.

3 Q If -- are you aware that they are, Peterson is

4 telling the community that they'll have their center built

5 and open by 2015?

6 MR. KLINE: Objection. We're getting into dueling

7 shopping centers here and that's not the purpose of this

8 hearing.

9 MR. HARRIS: That was the whole basis --

10 MS. ROBESON: Well, that's --

11 MR. HARRIS: -- of her testimony.

12 MS. ROBESON: -- that is the gist of her

13 testimony, but Mr. Harris, you know, what people say -- I

14 don't care what people -- I think it's a little far.

15 MR. HARRIS: Normally I would not care, Madam

16 Examiner, but --

17 MS. ROBESON: I understand.

18 MR. HARRIS: -- but her preference, my position is

19 that that center, if it is every approved, will be years off

20 and I'm trying to understand whether that would affect Ms.

21 Buffington's support.

22 MS. ROBESON: Well, why don't you ask her to

23 assume that?

24 MR. HARRIS: Okay. Let's --

25 MR. KLINE: Let me ask you this. I would -- don't

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1 think we should go down this line because then I'm going to

2 be compelled to basically go ahead and cross-examination,

3 cross-examine their witnesses on their press releases, on

4 their time schedule and have to disprove what they're

5 saying.

6 MS. ROBESON: Well, the --

7 MR. KLINE: And we don't want to get into public

8 relations.

9 MS. ROBESON: No, the problem is, Mr. Kline, that

10 she's saying she prefers your client's center because it's

11 better, it will come soon, it's better for Clarksburg.

12 MR. KLINE: And that's a valued -- did she say

13 it's coming sooner? She said as value judgment it would be

14 better. I'm not sure she said it's coming sooner.

15 THE WITNESS: Well, what I --

16 MS. ROBESON: Well, what's your position? Does it

17 matter to you the timing?

18 THE WITNESS: Ms. Robeson, it, the timing, you

19 know, Clarksburg has been delayed from getting all kinds of

20 benefits for so many years. I've been involved, my husband

21 and I have been invested and involved in this property since

22 2006 and we've seen Clarksburg citizens, Mr. Fantle who is

23 about to speak, he knows all of the disruption there was in

24 Clarksburg and why the town center never even got developed.

25 So people there don't have anything, but it's not like, oh,

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1 if I can deliver this six months sooner than you can, then

2 you'll take me because I'm faster. I don't get that

3 argument.

4 MS. ROBESON: Well, what if it's five years

5 sooner?

6 THE WITNESS: Well, you know, that's something

7 that is not up to me. I think that both -- I'm told by, you

8 know, council member Rice that both projects can finish at

9 the same time. And I don't think the timing is that big of

10 an issue.

11 MS. ROBESON: All right.

12 MR. HARRIS: Have you had discussions --

13 THE WITNESS: Because if you do poor planning --

14 MS. ROBESON: No, go --

15 THE WITNESS: Because if you do poor planning and

16 you don't make the center of Clarksburg, the vision of

17 Clarksburg was for the center to be vibrant, for it to be

18 the commercial center, not to have it on the fringes and

19 that's what's happening right now. It's going on the

20 fringes.

21 MS. ROBESON: Go ahead. Do you have other

22 questions?

23 MR. HARRIS: Yes.

24 MS. ROBESON: Go ahead.

25 BY MR. HARRIS:

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1 Q What did Mr. Rice tell you about this, the Simon  
2 project?  
3 A He didn't tell me anything about the Simon  
4 project.  
5 Q You just said that he said both projects could go  
6 forward at the same time?  
7 A Yeah. Let me correct that. His staff person,  
8 Sharon St. Pierre, told me that Craig said this is, you  
9 know, that both projects could finish the same time.  
10 Q So you had a discussion with Sharon St. Pierre  
11 about the --  
12 A Yes, I did.  
13 Q -- the timing of -- okay.  
14 MS. ROBESON: When was that?  
15 THE WITNESS: It's been about a month ago.  
16 MS. ROBESON: All right.  
17 THE WITNESS: It was when Craig was going to have  
18 his meeting with the Clarksburg citizens. It was right, the  
19 night before that.  
20 BY MR. HARRIS:  
21 Q Do you know whether other people have had such  
22 discussions with Sharon?  
23 A No.  
24 Q Have you had any discussions directly with Craig?  
25 A No.

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1 Q Have you had discussions with Peterson about their  
2 project?  
3 MR. KLINE: Objection.  
4 MS. ROBESON: Yes, what -- she can have  
5 discussions with Peterson.  
6 MR. HARRIS: I have no problem with that. I'm --  
7 I want to find out the nature of those discussions.  
8 MS. ROBESON: No, I don't. I don't see how that's  
9 relevant.  
10 MR. HARRIS: I want to find out when they told her  
11 they were delivering.  
12 MS. ROBESON: We'll ask her. No, don't go there.  
13 MR. HARRIS: Okay.  
14 MS. ROBESON: Just ask it.  
15 MR. HARRIS: Okay. No more questions.  
16 MS. ROBESON: All right. Mr. Chen?  
17 MR. CHEN: No questions.  
18 MS. ROBESON: All right.  
19 MS. ROBESON: Mr. Kline?  
20 MR. KLINE: I have a simple one.  
21 CROSS-EXAMINATION  
22 BY MR. KLINE:  
23 Q You said you bought your property in Clarksburg  
24 six years ago?  
25 A In 2006, seven years now.

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1 Q Did you have an opportunity to take a look at the  
2 master plan and the structure of the master plan?  
3 A Of course, we were battling, interested in that.  
4 Q Okay. Would I be inaccurate in describing it as  
5 being the town center was the core and the new cut  
6 neighborhood now known as Clarksburg Village, I guess, the  
7 Cabin Branch were subordinate, what I think you called  
8 fringe development?  
9 A Well, Cabin Branch wasn't -- when we purchased,  
10 they were still trying to get the hospital in over on that  
11 side of 270 and it wasn't until lately that this happened.  
12 Q But the principle focus in the master --  
13 A But --  
14 Q -- plan or the hierarchy we're talking was focused  
15 on the town center?  
16 A Correct.  
17 Q This was the development of the town center?  
18 A Yeah, and that's why we bought that property. We  
19 though it's great. It will be right in the center of the  
20 town and it's going to be good planning and it's going to be  
21 walkable and the whole thing and then, you know, we have a  
22 different --  
23 Q And the way --  
24 A -- thing coming along.  
25 Q -- the town center was going to basically get on

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1 its feet earlier was the staging element in the master plan?  
2 A Right.  
3 Q And that --  
4 A Right.  
5 Q -- they are requiring 90,000 square feet of  
6 development, retail development in the town center before  
7 you could do the new cut or Cabin Branch?  
8 A Right.  
9 Q That was changed in 2011? But do I understand  
10 your testimony to be you're concerned that that hierarchy of  
11 uses will be a diminished --  
12 MR. HARRIS: Objection. He's leading the witness  
13 here with --  
14 THE WITNESS: No. Let me just say this --  
15 MS. ROBESON: Well, she's not his witness, but --  
16 THE WITNESS: Yeah.  
17 BY MR. KLINE:  
18 Q I will make it a little bit more precise. In your  
19 opinion, does the Cabin Branch proposal detract from the  
20 structure in the master plan the way it was organized and  
21 intended to be played out from development?  
22 A Absolutely.  
23 Q Okay.  
24 A Absolutely.  
25 Q And why?

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1 A Well, because the town center is not going to be  
2 the town center anymore and I don't know who will develop  
3 that property and make the town center vibrant if it doesn't  
4 go the way it's, you know, scheduled to go with Peterson.  
5 Q Thank you.  
6 A I don't know who else will come in and build  
7 something over in there.  
8 MS. ROBESON: In the town center?  
9 THE WITNESS: No, other than this neighborhood  
10 grocery store which is a 12-acre whatever plot, it will have  
11 another grocery store.  
12 MS. ROBESON: Okay.  
13 MR. KLINE: I have no further questions, but I do  
14 have a proposal and that is it sounds like we're going to  
15 spend a lot of time on who is going to get there first. I'd  
16 have no problem with basically us giving you a matrix that  
17 suggests what we each think is the development pattern for  
18 each of our properties so that we don't have to go through  
19 what do you think, who is going to be there first.  
20 MS. ROBESON: Well, I guess the thing is who, who  
21 is on first is relevant because part of, I think what you're  
22 arguing is whether the, whether this is going to defeat the  
23 goal of the town, having the town center. And that's  
24 what -- she is not represented by you --  
25 MR. KLINE: Okay.

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1 MS. ROBESON: -- and she brought it up because  
2 that's what she feels. And so I do think at some level the  
3 impact of this development on the town center is on the  
4 table. I don't know if the timing of the two of them has  
5 anything to do, but I think that, you know, when you have  
6 an, someone that's not your witness bring it up, then I  
7 think that it's, he's entitled to cross-examine on it.  
8 MR. KLINE: Well, I'm my suggestion is to try and  
9 get each of our best arguments in front of you so we don't  
10 have to waste time asking witnesses at this point, that's  
11 all.  
12 MS. HARRIS: I would be interested in submitting  
13 that.  
14 MS. ROBESON: Well, I guess my question is for  
15 you, Ms. Buffington?  
16 THE WITNESS: Buffington? Yes.  
17 MS. ROBESON: Is, does it make a difference to you  
18 which comes first?  
19 THE WITNESS: Does it make a difference to me  
20 which comes first?  
21 MS. ROBESON: For instance, say these guys go  
22 first. I mean --  
23 THE WITNESS: These, Simon?  
24 MS. ROBESON: Why --  
25 THE WITNESS: Well, the reason it makes a

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1 difference is because if Simon goes first, nothing is going  
2 to happen in the town center for a long, long time. And I'm  
3 going to be, I --  
4 MS. ROBESON: But, okay, but and why is that? Why  
5 is nothing going to happen in the town center?  
6 THE WITNESS: Because they're going to have such a  
7 huge -- they, you know, they're, what, doubling at least the  
8 amount of retail that was to be over there on that side and  
9 there won't be, there won't be enough of merchants. It's a  
10 14,000, there's 14,600 or whatever citizens in Clarksburg,  
11 so how are you going to get another commercial developer to  
12 come in there and develop that town center when you've  
13 already got this humongous development going around over  
14 across 270 on the other side? It's just not going to happen  
15 in my opinion. You know, I'm going to, I'll be sitting  
16 there with my little restaurant by myself in my real estate  
17 company and all the money that me and my husband have  
18 invested in Clarksburg and hope that the citizens will  
19 finally allow David Flanagan to build his grocery store  
20 complex and it just seems to me that not only is it bad for  
21 my business --  
22 MS. ROBESON: Well, there is a letter of --  
23 THE WITNESS: -- but it's --  
24 MS. ROBESON: Okay.  
25 THE WITNESS: -- it's not good for the district.

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1 MS. ROBESON: I'm not going to go there.  
2 THE WITNESS: It's not good -- it doesn't, it  
3 doesn't conform to the vision of Clarksburg.  
4 MS. ROBESON: Okay.  
5 BY MR. HARRIS:  
6 Q A couple of follow-up. The 1994 master plan  
7 doesn't call for an outlet mall on the Peterson site, does  
8 it?  
9 A No, it calls for development of -- it doesn't say  
10 outlet mall or not outlet mall. I don't think it matters.  
11 It's just the commercial development.  
12 Q And the same is true for the Cabin Branch project,  
13 it also recommends MXPD zoning there and general commercial  
14 development, right?  
15 A Right.  
16 Q The Peterson site is in stage 4 of the master  
17 plan, isn't it?  
18 A Yes.  
19 Q And the Cabin Branch property is in stage 3? Yes?  
20 A Okay. If you say so.  
21 Q Do you want -- do you know?  
22 MS. ROBESON: No.  
23 THE WITNESS: That's okay.  
24 MR. HARRIS: May I --  
25 THE WITNESS: I mean that's fine. I take your

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1 word for it.  
2 MS. ROBESON: But --  
3 BY MR. HARRIS:  
4 Q And was stage 3 expected to proceed before stage  
5 4?  
6 MS. ROBESON: If you know? You don't have to --  
7 THE WITNESS: I don't know.  
8 MS. ROBESON: Okay.  
9 MR. HARRIS: Fine.  
10 MS. ROBESON: Any follow-up questions? Yes, Mr.  
11 Chen.  
12 MR. CHEN: Thank you.  
13 CROSS EXAMINATION  
14 BY MR. CHEN:  
15 Q Ms. Buffington, you just made a statement a moment  
16 ago about Mr. Flanagan and a grocery store?  
17 A He has a grocery, a neighborhood grocery store  
18 shopping center planned hopefully. But he calls his  
19 situation, I guess he named that part which he bought for a  
20 dollar because it was so contentious and all the citizens  
21 and Kathy Hulley --  
22 MS. ROBESON: Okay.  
23 THE WITNESS: -- they all got up and objected to  
24 it, so the last developer went away. So David Flanagan  
25 named his third try, okay, try, because he paid a dollar for

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1 it. And they're trying to get a neighborhood grocery store  
2 retail --  
3 MS. ROBESON: Right.  
4 THE WITNESS: -- small development in. The  
5 citizens have not yet approved it, what he wants to do.  
6 He's trying. So --  
7 MS. ROBESON: Did that answer your question --  
8 MR. CHEN: Yes.  
9 MS. ROBESON: -- Mr. Chen?  
10 MR. CHEN: Yes, it did and I have another  
11 question.  
12 MS. ROBESON: Okay.  
13 BY MR. CHEN:  
14 Q A moment ago -- thank you very much, ma'am. So  
15 that the Flanagan -- is that Elm Street?  
16 A Yes.  
17 Q And their project in the town center --  
18 A We support that, absolutely, I do.  
19 Q And that project is for a grocery store?  
20 A It's a neighborhood grocery store, little mall.  
21 Q Okay. Now a moment ago Mr. Harris asked you  
22 questions about the master plan. Is there any mention in  
23 the master plan to your knowledge of any outlet mall either  
24 in any place in the planning area?  
25 A Not really, no, I haven't seen that.

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1 MS. ROBESON: Okay.  
2 MR. CHEN: Thank you. No further questions.  
3 MS. ROBESON: All right. What I'm going to do is  
4 this. Because it is a basis for -- you may be excused.  
5 THE WITNESS: Thank you.  
6 MR. KLINE: Thank you.  
7 MS. ROBESON: Thank you for coming and being  
8 cross-examined.  
9 What I'm going to do is this. Do you, are you  
10 going to provide direct evidence, the timing of the Peterson  
11 property?  
12 MR. KLINE: I had not planned on doing that, no.  
13 I didn't consider it to be an issue.  
14 MS. ROBESON: Well, what was your matrix that you  
15 proposed?  
16 MR. KLINE: Well, because apparently we're going  
17 to be arguing about what are the various timing, so I just  
18 suggest that that's going to become an issue. We'll go  
19 ahead and give it to you so I don't want to have to spend  
20 time --  
21 MS. ROBESON: Well, I guess then the cross-  
22 examination could be limited to whether the timing makes a  
23 difference to their opinion, all right?  
24 MR. CHEN: Well --  
25 MS. ROBESON: Yes, sir? I'm not limiting it in

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1 advance depending on what people say. I'm just saying we  
2 don't have to go through the whole history via cross-  
3 examination, all right? Ma'am, do you -- I know your first  
4 name but I don't want to say, just Marilyn come up. So  
5 would you come up. She's not represented by you, Mr.  
6 Harris?  
7 MR. HARRIS: No, ma'am.  
8 MS. ROBESON: Please raise your right hand.  
9 (Witness sworn.)  
10 MS. ROBESON: Please state your name and address  
11 for the record.  
12 THE WITNESS: I'm Marilyn Balcom. My work address  
13 is 910 Clopper Road, Gaithersburg, Maryland.  
14 MS. ROBESON: And have you signed in in the sign-  
15 up sheet?  
16 THE WITNESS: I did not, but I will.  
17 MS. ROBESON: Could you sign-in on the way out?  
18 All right. What would you like to say?  
19 THE WITNESS: Okay. I do have a statement. I'm  
20 speaking on behalf of my board, so I just want to get it out  
21 before --  
22 MS. ROBESON: And your board is?  
23 THE WITNESS: Oh, I'm the president and CEO for  
24 Gaithersburg/Germantown Chamber of Commerce.  
25 MS. ROBESON: Okay.

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1 THE WITNESS: Thank you for the opportunity to  
2 speak. I'm here today to express the support for the  
3 chamber for the Cabin Branch project plan amendment.  
4 The applicant did make a presentation before our  
5 economic development committee and our board of directors,  
6 after reviewing the project, has approved and has voted to  
7 support the project. We believe that the additional retail  
8 services in the up-county will benefit all aspects of the  
9 community, not just Clarksburg, but the up-county. It's a  
10 project that will bring retail services to the area that  
11 currently don't exist in Montgomery County. So to go to --  
12 go to an outlet retail, people go to Virginia or drive right  
13 by Clarksburg on their way to Hagerstown in Washington  
14 County for this type of experience.  
15 We think the project will serve as a catalyst for  
16 other employment at Cabin Branch, restaurants, stores,  
17 entertainment opportunities for the citizens of Clarksburg,  
18 but also the whole county region and also the workers,  
19 employees that work in the area. We also note that the  
20 project already has approval for roughly 2.5 million square  
21 feet of commercial uses as the water and sewer lines and  
22 constructing the public road improvements that will serve  
23 the project. That was one of the issues that my board  
24 looked at was transportation infrastructure. And with the  
25 completion of the interchange, we felt that that was

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1 critical.  
2 This project is, can be brought online very  
3 quickly without public expense and we think that it's  
4 important to move forward in a timely manner on the project.  
5 We understand that the project has received the necessary  
6 environmental approvals which was another issue that our  
7 board was interested in and that there will be no adverse  
8 environmental impacts.  
9 Clarksburg has waited a long time for retail and  
10 restaurants. We feel that it's a timely project that could  
11 be built in a timely manner and we would look at, ask for  
12 your recommendation for approval of the project.  
13 MS. ROBESON: All right.  
14 MR. HARRIS: No questions.  
15 MS. ROBESON: Mr. Chen?  
16 MR. CHEN: Thank you.  
17 CROSS-EXAMINATION  
18 BY MR. CHEN:  
19 Q Ms. Balcom, did I mispronounce your --  
20 A Balcom is right.  
21 Q Thank you very much. During the course of your  
22 statement, I wrote down and I put in quotes, I hope I got it  
23 right, I believe you stated, quote, retail services that  
24 currently do not exist in Montgomery County, is that  
25 correct?

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1 A That's correct.  
2 Q Okay. What are you referring to, ma'am?  
3 A The outlet mall.  
4 Q So it's your understanding that the proposed  
5 development plan amendment would be for an outlet mall?  
6 A Yes.  
7 Q Thank you very much.  
8 MR. CHEN: No further questions.  
9 MS. ROBESON: Mr. Kline?  
10 MR. KLINE: No, thank you.  
11 MR. HARRIS: Thank you very much, Ms. Balcom.  
12 MS. ROBESON: Thank you.  
13 MR. HARRIS: Mr. Mike Knapp is here and I would  
14 like to have him speak --  
15 MS. ROBESON: Okay.  
16 MR. HARRIS: -- if I could? Thank you.  
17 MS. ROBESON: Please raise your right hand.  
18 (Witness sworn.)  
19 MS. ROBESON: Okay. Did you sign the sign-in  
20 sheet?  
21 THE WITNESS: I did.  
22 MS. ROBESON: Thank you.  
23 THE WITNESS: Thank you.  
24 MS. ROBESON: Go ahead.  
25 THE WITNESS: My --

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1 MS. ROBESON: Now just --  
2 THE WITNESS: Sure.  
3 MS. ROBESON: -- so I, this is clear for the  
4 record, he is not your witness either?  
5 MR. HARRIS: That is correct.  
6 MS. ROBESON: Okay. Go ahead, Mr. Knapp.  
7 THE WITNESS: Thank you very much. My name is  
8 Michael Knapp. I'm testifying today as a resident of  
9 Germantown in the up-county of Montgomery County and as a  
10 former county council member representing the Clarksburg  
11 community. I have remained active in the community in many  
12 respects and have retained a keen interest in the future of  
13 the communities that I had the honor to represent in the  
14 county as a whole. I respectfully ask to support the, for  
15 the proposed development at Cabin Branch.  
16 Unfortunately, through no fault of its own,  
17 Clarksburg has struggled to achieve the master plan and  
18 community vision of a mixed-use village where one can live,  
19 work, shop and play. For a variety of reasons, housing  
20 retail and infrastructure development have taken  
21 inordinately much longer to achieve critical mass required  
22 to sustain the growing community. In spite of these  
23 challenges, the residents of this community have continually  
24 sought opportunities to stimulate economic activity, raise  
25 housing values and create places to shop, work and play in

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1 conjunction with the places where they live.  
2 As the last and newest city in the corridor city's  
3 concept of creating employment centers along the I-270  
4 corridor, there is not yet significant demand for employment  
5 space in Clarksburg and, unfortunately, I am fearful that  
6 with the Governor's and the County's announcement this week  
7 that the corridor city's transit way will only be funded for  
8 planning to Watkins Mill, this demand will continue to face  
9 challenges. However, I believe that a major retail facility  
10 in Clarksburg will help simulate other employment growth in  
11 Clarksburg while at the same time providing the types of  
12 amenities and services many in Clarksburg have been waiting  
13 to see for so long. Unfortunately, however, there always  
14 seems to be a reason for delayed activity in Clarksburg and  
15 we can no longer afford to do this.  
16 Retail with a reasonable draw I don't believe will  
17 detract from town center neighborhood retail and, in fact, I  
18 think would serve as a catalyst for other types of  
19 development in the community as well as the town center  
20 itself. I have been concerned given the development in  
21 Gaithersburg and in Urbana and Frederick that their  
22 commercial development is leap-frogging Clarksburg. In  
23 fact, there is devoid, we're moving from Gaithersburg up to  
24 Urbana and that we're going to bypass Clarksburg all  
25 together for any type of development.

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1 I believe there's to be future office and R&D  
2 employment here. Clarksburg first will require stores and  
3 restaurants to support that employment and the creation of a  
4 reasonable destination to help to generate sufficient  
5 economic activity from the outside to support the stores and  
6 restaurants, thereby providing time for the local population  
7 to increase and provide a sustainable base of support on its  
8 own.  
9 I believe the County should approve the  
10 development for Cabin Branch that would enable the type of  
11 retail to be developed there as the first phase of a major,  
12 mixed use employment area. Now, it's my understanding that  
13 the property is already zoned MXPDP, which would enable early  
14 construction of the proposed retail, the property of  
15 subdivision approvals, as well as water and sewer service  
16 and grading of the site and infrastructure when installation  
17 is underway.  
18 I also understand the traffic allocation already  
19 has been made for the Cabin Branch project through the  
20 subdivision approval and that road improvement is necessary  
21 to serve the entire Cabin Branch project. They're planned  
22 and funded by developers such that traffic issues will be  
23 taken care of.  
24 All environmental approvals to enable the  
25 development of Cabin Branch have been issued and ensured.

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1 It appears as though this is a site for the type of use and  
2 development proposed by Simon and streetscaping can proceed  
3 at the earliest possible date.  
4 The residents of Clarksburg have struggled  
5 valiantly for the past decade to obtain a toe hold that  
6 could lead to the implementation of the broader vision of  
7 their community. I believe that the approval of this  
8 project can provide a critical step for future activities  
9 that will make Clarksburg a community it aspires to be and  
10 it's time for us to stop finding reasons not to do things in  
11 Clarksburg. Thank you very much.  
12 MS. ROBESON: Thank you.  
13 MR. HARRIS: No questions.  
14 MS. ROBESON: Mr. Chen?  
15 MR. CHEN: No questions.  
16 MS. ROBESON: Mr. Kline?  
17 MR. KLINE: Well, I would not want to pass up the  
18 opportunity.  
19 CROSS-EXAMINATION  
20 BY MR. KLINE:  
21 Q Just so you know, this is what goes on down here  
22 when you've got to sit upstairs.  
23 A I know. I never got to come in here before. It's  
24 nice.  
25 Q It's a simple --

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1 MS. ROBESON: So far.  
2 THE WITNESS: That's okay.  
3 BY MR. KLINE:  
4 Q It's actually a simple question.  
5 A Yes, sir.  
6 Q If we're to have a regional outlet with a regional  
7 draw in Clarksburg, would it make sense, would it not make  
8 sense to have one that would be at the CCT station to  
9 basically try and give that as an impetus to pull the CCT up  
10 from Watkins Mill?  
11 A I've always struggled with the use of transit for  
12 any kind of retail use just because I struggle to see how  
13 that works. But that being said, my general premise is any  
14 activity is going to be getting more activity and so I don't  
15 see one at the exclusion of the other. I think a transit  
16 draw will certainly enable certain retail to occur and I  
17 think other retail activities will allow other activities to  
18 occur. I don't see any mutual exclusivity in either going  
19 forward.  
20 Q Thank you, Mr. Knapp.  
21 A Thank you.  
22 MR. KLINE: No further questions.  
23 MS. ROBESON: Okay. Anything else?  
24 MR. HARRIS: No, ma'am.  
25 MS. ROBESON: Thank you very much --

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1 THE WITNESS: Thank you very much. I appreciate  
2 it.  
3 MS. ROBESON: -- for your testimony.  
4 MR. HARRIS: Let's see, Mr. Fantle, Barry Fantle  
5 please.  
6 MS. ROBESON: And he is not your witness?  
7 MR. HARRIS: Again, not my witness, correct.  
8 MS. ROBESON: Okay. Please raise your right hand.  
9 (Witness sworn.)  
10 MS. ROBESON: Please state your name and address  
11 for the record.  
12 THE WITNESS: Barry Fantle, 12711 Clarks Crossing  
13 Drive, Clarksburg, Maryland 20871. That's in Clarksburg --  
14 MS. ROBESON: Okay.  
15 THE WITNESS: -- Town Center.  
16 MS. ROBESON: Okay. And have you signed the sign-  
17 in sheet?  
18 THE WITNESS: Yes.  
19 MS. ROBESON: Good. All right.  
20 THE WITNESS: As I stated, I am a Clarksburg town  
21 center resident. I'm also president of the Clarksburg Civic  
22 Association, but I'm here today speaking as a resident.  
23 I've lived in Clarksburg for almost 11 years.  
24 I support the Planning Board decision to allow the  
25 Cabin Branch development to move on to the next step and I

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1 urge the Hearing Examiner to also. I think this is a good  
2 use of the land. The Planning Board says that it's  
3 consistent with what the master plan says, so I see no  
4 reason to not recommend this.  
5 I think, you know, as a resident of Clarksburg we  
6 waited a long time for retail and the County doing anything  
7 to delay things I think is just not good. We've waited a  
8 long time and we deserve retail. Numerous residents, they  
9 always complain about having to drive down to Germantown for  
10 things or even further. An outlet mall in general I think  
11 is good for Clarksburg. It will draw people from all over,  
12 from Germantown, Frederick, Urbana. Living in Clarksburg,  
13 we drive to Leesburg sometimes to shop at outlet malls.  
14 There's been a lot of talk of an outlet mall  
15 detracting from town center. I'm not a retail expert, but  
16 I've talked to Elm Street about it and what they have said  
17 is that the only thing they feared most would be another  
18 grocer coming in and there will not be a grocery store in  
19 Cabin Branch.  
20 We've listened to the Planning Board testimony,  
21 the Gwen, I can't remember her last name, talked about  
22 retail begetting more retail. So I think an outlet mall  
23 would not harm town center in that respect. We talked a lot  
24 about walkability. I think even if the Peterson project  
25 were approved, I don't think walkability would be used by

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1 the residents of town center. You're just not going to walk  
2 to an outlet mall and buy three boxes full of shoes,  
3 clothes, purses and then walk all the way back to town  
4 center. The people in Clarksburg Village would certainly  
5 not walk to the outlet mall and the same goes with Aurora  
6 Hills.  
7 I heard it mentioned that I objected to the  
8 Clarksburg town center retail design. We supported the  
9 approved plans that were in front of the planning board.  
10 Elm Street has since re-designed those plans and has not  
11 presented them to the Planning Board. He's had community  
12 meetings and we have done nothing to oppose those plans. So  
13 we're not holding up any development in Clarksburg town  
14 center. Newland, when they were there, could have started  
15 any time they wanted to.  
16 Town center is supposed to be 193,000 square feet  
17 of retail, so there will be plenty of room, I think, for an  
18 outlet mall somewhere and for Clarksburg town center. And  
19 Clarksburg town center on the current time frame is slated  
20 to be completed, I believe, by 2018. That's what the  
21 developer, Elm Street, is saying. And that's pretty much --  
22 that's it.  
23 MS. ROBESON: Okay. Questions?  
24 MR. HARRIS: No questions, but thank you for  
25 coming.

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1 MS. ROBESON: Mr. Chen?  
2 MR. CHEN: Thank you.  
3 CROSS-EXAMINATION  
4 BY MR. CHEN:  
5 Q Mr. Fantle, you've referenced to discussions  
6 you've had with Elm Street Developers?  
7 A Yes.  
8 Q Who would that be?  
9 A David Flanagan and Kate Coubet (phonetic sp.).  
10 Q And I believe you stated they've told you that  
11 their concern is the establishment of another grocery store?  
12 A That is correct. I believe he said that in public  
13 at some of these community meetings.  
14 Q And --  
15 A And you don't see him here speaking against either  
16 of these plans actually.  
17 Q Yes. You also stated, and I put it in quotes, I  
18 want to make sure I've got it correctly. You said, there  
19 will not be a grocery store in Cabin Branch, end quote, is  
20 that correct?  
21 A That is what we've been told.  
22 Q Who has told you that?  
23 A I believe the Cabin Branch Developers in the  
24 public meetings have told us. I think Dave Flanagan has  
25 also told us. They also, the Planning Board limited the, I

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1 think they limited the size of retail I know on the outlet  
2 area. It's 50,000 square feet I think. They did leave the  
3 120 the same, so I guess there could still be a grocery  
4 store, but they've said they're not going to put one there.  
5 Q That's all I've got. Thank you very much.  
6 MS. ROBESON: Mr. Kline.  
7 BY MR. KLINE:  
8 Q What I think I heard you say down at the Planning  
9 Board was you're not speaking in opposition of either of the  
10 potential retail outlet sites, is that still correct?  
11 A That is correct.  
12 MR. KLINE: No further questions.  
13 MS. ROBESON: Okay. Anything else?  
14 MR. HARRIS: No. Thank you very much.  
15 MS. ROBESON: Thank you for coming. Okay. Is  
16 there any other individual --  
17 MR. HARRIS: I think there are two more.  
18 MS. ROBESON: Yes? Yes, ma'am?  
19 MS. SOFILLAS: Hello.  
20 MS. ROBESON: Good morning. Please raise your  
21 right hand.  
22 (Witness sworn.)  
23 MS. ROBESON: Okay. Please state your name and  
24 address for the record.  
25 THE WITNESS: Ibi Sofillas, 2220 Canterfield Way,

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1 Germantown, Maryland.  
2 MS. ROBESON: Is that Ibi, I?  
3 THE WITNESS: Ibi, I-B-I.  
4 MS. ROBESON: Okay. Did you sign the --  
5 THE WITNESS: Sofillas.  
6 MS. ROBESON: -- sign-in sheet?  
7 THE WITNESS: Yes, I did.  
8 MS. ROBESON: Okay. Go ahead.  
9 THE WITNESS: Okay. I also have a statement as  
10 well --  
11 MS. ROBESON: That's fine.  
12 THE WITNESS: -- that I'm going to read. My name  
13 is Ibi Sofillas. I'm a real estate broker, business owner  
14 and mother of three children who have attended school in  
15 Clarksburg. For years there has been buzz amongst my  
16 friends, clients and neighbors about potential retail  
17 development in Clarksburg. As someone who is very involved  
18 in my community, I've reviewed the facts about all of the  
19 Clarksburg development proposals.  
20 I believe the facts show the Clarksburg Premium  
21 Outlets at Cabin Branch is the best proposal for Clarksburg.  
22 First, the Cabin Branch Outlet Center's existing time line  
23 will allow this project to be open by the end of 2015,  
24 beginning of 2016. That means more jobs, more investment  
25 and greater benefits for Clarksburg communities sooner

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1 rather than later.  
2 Second, I believe the location of the Adventist  
3 Healthcare property is a good location for the development  
4 on this scale. Building on this site will not impact 10-  
5 mile creek and after personally meeting the development  
6 team, I'm satisfied that they are ready to make the  
7 necessary investments and the road improvements that will  
8 provide direct access to the property. It's a shovel-ready  
9 development that will bring long-term benefits to Clarksburg  
10 and its residents.  
11 The current retail proposal at Cabin Branch can  
12 help make Clarksburg more vibrant now and this will  
13 ultimately make the town center and the rest of Clarksburg a  
14 more viable neighborhood. I am, therefore, recommending  
15 approval of this project as it is a major step to our making  
16 Clarksburg the livable community that the residents want.  
17 MS. ROBESON: All right. Thank you.  
18 MR. HARRIS: Thank you. No questions.  
19 MS. ROBESON: Mr. Chen?  
20 MR. CHEN: Please spell your last name, ma'am.  
21 THE WITNESS: S-O-F-I-L-L-A-S.  
22 MR. CHEN: A-S?  
23 THE WITNESS: Yes.  
24 MR. CHEN: And your first name is?  
25 THE WITNESS: I-B-I, Ibi.

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1 MR. CHEN: Thank you very much.  
2 THE WITNESS: Yes.  
3 MS. ROBESON: Mr. Kline?  
4 MR. KLINE: No questions.  
5 MS. ROBESON: All right. Thank you. Thank you  
6 very much for coming --  
7 MR. HARRIS: Thank you very much.  
8 MS. ROBESON: -- out.  
9 MR. HARRIS: And then I think we have one more  
10 witness, Mr. Way.  
11 THE WITNESS: I think he stepped away.  
12 MR. HARRIS: Oh.  
13 THE WITNESS: He's in the building, inside, but he  
14 stepped away.  
15 MR. HARRIS: Okay. All right. Well --  
16 MS. ROBESON: Okay. Who is your next witness?  
17 MR. HARRIS: My next witness is Mr. Kline.  
18 MS. ROBESON: Who is?  
19 MR. HARRIS: Oh, Ron Kline.  
20 MR. KLINE: Sure, I'll go get him. Do you want me  
21 to get him?  
22 (Discussion off the record.)  
23 MS. ROBESON: Yes, I was like --  
24 MR. HARRIS: No, Tony Kline is going to testify.  
25 (Discussion off the record.)

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1 MS. ROBESON: Is he an expert or --  
2 MR. HARRIS: No, he's one of the -- not the  
3 applicant --  
4 MS. ROBESON: One of the applicants?  
5 MR. HARRIS: -- he's one of the developers.  
6 MS. ROBESON: Okay. Why don't you put him on?  
7 What I'd like to do is get through the citizen witnesses --  
8 MR. HARRIS: Yes.  
9 MS. ROBESON: -- if we can and then Mr. Chen can  
10 walk in his office and we'll take a break at --  
11 MR. HARRIS: All right. Well, do we want to hold  
12 off a minute and see if Mr. Way is still here?  
13 MS. ROBESON: Why don't we do that?  
14 MR. HARRIS: Okay.  
15 MS. ROBESON: Well, I tell you what, why don't we  
16 do this? Why don't we take the break now and how long do  
17 you think you need, Mr. Chen?  
18 MR. CHEN: I'm going to run to my office, not  
19 walk.  
20 MS. ROBESON: Well, how about, how about can you  
21 do 15 minutes?  
22 MR. CHEN: Let me, I'll do my best.  
23 MS. ROBESON: Okay. Well, let's do this --  
24 MR. CHEN: I can't pull it this fast --  
25 MS. ROBESON: -- 20, we'll do 20 minutes. We'll

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1 be back at 11:40, all right? Thank you.  
2 MR. HARRIS: Thank you.  
3 (Recess)  
4 MS. ROBESON: Are the parties ready?  
5 MR. HARRIS: Yes.  
6 MS. ROBESON: And the court reporter? Thank you,  
7 Mr. Chen. I -- that was quick. It's now 11:41 or two. Did  
8 you, well, we'll get to that later. Are you ready to  
9 proceed? Do we have the other person?  
10 MR. HARRIS: The other gentleman left, so we do  
11 not have him, so we'll move on to Mr. Kaplan.  
12 MS. ROBESON: Okay.  
13 MR. HARRIS: Also known as Mr. Kline.  
14 MS. ROBESON: He doesn't look like it.  
15 MR. KLINE: You did have Mr. Chen run back, so I  
16 mean I guess I'd like to raise the issue of is this a  
17 hearing we can go forward with because you do or do not have  
18 all of the necessary applicants in front of you?  
19 MS. ROBESON: I did review, I did review the --  
20 MR. KLINE: 59B-1?  
21 MS. ROBESON: Yes. And I believe it is that we  
22 can go forward with it and the reason is that an applicant,  
23 if you look at 59H as to who can be an applicant --  
24 MR. KLINE: Right.  
25 MS. ROBESON: -- anyone with a proprietary

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1 interest in the property can be an applicant. Now that  
2 being said, I am going to ask Mr. Harris to -- I, to have  
3 all of the property owners. The key to having everybody  
4 sign off is that they all consent to be bound by the  
5 conditions, the binding elements of the conditions of  
6 approval, but the binding element. I know there's some in  
7 there, but I have no idea if it's all of the people. So I  
8 am going to ask you to have them, every owner, or submit  
9 binding, or --  
10 MR. HARRIS: Consent.  
11 MS. ROBESON: -- consent and agreement to be bound  
12 by the binding elements because that to me is the key.  
13 That's the reason for requiring people with an ownership  
14 interest to apply.  
15 MR. KLINE: And that will require, if I can ask a  
16 question of Mr. Harris, that will require getting something  
17 from how many parties? Winchester?  
18 MR. HARRIS: Winchester, Toll --  
19 MR. KLINE: Madison Hill?  
20 MR. HARRIS: -- and Gaznel.  
21 MR. KLINE: And you have Toll already, in essence?  
22 MR. HARRIS: Right. Right.  
23 MS. ROBESON: I saw Toll and Winchester. I don't  
24 know if -- and there is --  
25 MR. HARRIS: There is a letter from SSTM in there

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1 as well that's Gaznel.  
2 MS. ROBESON: Well, I'd like you --  
3 MR. HARRIS: But it doesn't specifically say we  
4 agree to the, and so --  
5 MS. ROBESON: And that's what I would like.  
6 MR. HARRIS: -- so I understand what the mission  
7 is.  
8 MS. ROBESON: Okay. Thank you.  
9 MR. CHEN: If I may?  
10 MS. ROBESON: Yes.  
11 MR. CHEN: Obviously I understanding your ruling  
12 and abide by the ruling, but as I understand what you're  
13 saying, which I think supports our position, and that is all  
14 property owners subject to the development plan must sign  
15 onboard one way or another --  
16 MS. ROBESON: Yes.  
17 MR. CHEN: -- as to the amendment? Now my  
18 client's position is they cannot merely agree. They have to  
19 be an actual applicant. And the reason goes to the very  
20 reasons that you've stated. I'm not going to, we're not  
21 going to get into it any further, but I abide by your  
22 ruling.  
23 MS. ROBESON: I understand.  
24 MR. CHEN: I said that.  
25 MS. ROBESON: And you're raising your objection

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1 for any appeal. I understand that.  
2 MR. CHEN: And I have the case cited if you want.  
3 MS. ROBESON: I would like that actually. If the  
4 law has changed, I would like to know.  
5 MR. CHEN: The point that I raised was I objected  
6 to the statements, if you recall, of both Mr. Harris and Mr.  
7 Kline because my position on that was that's testimony and  
8 that that testimony has to be under oath. Remember, I told  
9 you that at the time.  
10 Now the case is Heard v. Foxshire, 145 Md. App.  
11 695, 806 A.2d 348. It's a 2002 --  
12 MS. ROBESON: I'm sorry, what's the Maryland cite?  
13 MR. CHEN: 145 Md. App. 695.  
14 MS. ROBESON: Okay.  
15 MR. CHEN: It's a 2002 decision by the Court of  
16 Special Appeals written by Judge Sheer. If you go to page  
17 707, the court says in pertinent part, however, we do not  
18 say that the evidence given by an attorney in those  
19 circumstances does not have to be under oath or that it can  
20 be given by way of statement or narrative as an advocate  
21 rather than as a sworn witness. It is imperative that  
22 evidence given before an adjudicatory body be under oath  
23 whether from an attorney or lay person, a lay witness or an  
24 expert witness.  
25 They go on to say that in this particular case

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1 that was before the court, the appellate court, that -- I  
2 believe it was a special exception -- that the evidence of  
3 record to satisfy the statutory standards in order to grant  
4 the special exception was dependent upon the testimony of  
5 the lawyer for the applicant. I mean I've seen that for  
6 decades and when I was a hearing examiner I didn't like it  
7 and when I've been on this side I've generally objected and  
8 wanted to cross-examination which would get everybody upset.  
9 But be that as it is, in this decision the court  
10 ultimately held that because the record did not reflect that  
11 the testimony given by the applicant's attorney was under  
12 oath, that the burden of proof to satisfy the statutory  
13 standards in the --  
14 MS. ROBESON: Okay.  
15 MR. CHEN: -- zoning ordinance was not met, and  
16 therefore the grant was improper. I think I've got it  
17 right. I'm going to give you a copy of it and I'm going to  
18 give Mr. Harris a copy of it as well. It goes on to say on  
19 that very point, we cannot, and this is still at page 707 of  
20 Volume 145, we cannot conclude from the record that  
21 Schlosberg (phonetic sp.), that was the attorney, a well-  
22 known attorney in land use, was sworn as a witness and that  
23 the words he spoke were spoken under oath. Because the  
24 record does not tell us that he was a sworn witness, we  
25 conclude that he was not. Therefore, we consider what he

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1 told the Board to have been argument and not evidence that  
2 the Board ought to have considered and that the Board ought  
3 to have considered in its fact-finding function. Nor, in  
4 fact, can we ascertain from the transit who among the other  
5 persons who quote, testified, end quote, was sworn as a  
6 witness.  
7 It goes on at page 709, this is the last quote  
8 I'll give you. Nonetheless, we observe that the better  
9 practice before administrative boards and agencies is for  
10 the presiding officer to be certain that each witness is  
11 sworn and identified individually as that witness takes the  
12 witness chair. It is incumbent upon a presiding officer to  
13 maintain an orderly process in the interest of fairness to  
14 all parties through litigation, as well as to persons whose  
15 direct or indirect interest may be affected by the outcome  
16 of the proceedings.  
17 MS. ROBESON: Okay.  
18 MR. CHEN: Hearing Examiner, here's a copy of the  
19 decision.  
20 MS. ROBESON: Thank you.  
21 MR. HARRIS: I don't believe I testified as a fact  
22 witness. I offered argument.  
23 MS. ROBESON: Well, you were representing as part  
24 of a procedural motion what the status of the ownership was.  
25 Now has any of this gone to individual home sales or not?

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1 MR. HARRIS: Not yet.  
2 MS. ROBESON: Okay. Thank you, Mr. Chen, that was  
3 very helpful. All right. Mr. Harris, you're next witness.  
4 MR. HARRIS: I call Ron Kaplan.  
5 MS. ROBESON: Please raise your right hand.  
6 (Witness sworn.)  
7 MS. ROBESON: Okay.  
8 DIRECT EXAMINATION  
9 MR. HARRIS:  
10 Q Mr. Kaplan, would you state your name and business  
11 address for the record?  
12 A Ron Kaplan, Streetscape Partners, 1420 Springhill  
13 Road, McLean, Virginia.  
14 Q And are you part of the development team involved  
15 in the project that's the subject of this development plan  
16 amendment?  
17 A I am.  
18 Q Can you give us a little background on your  
19 professional experience?  
20 A I can and want to thank you, Madam Hearing  
21 Examiner, for the time you're devoting to this and what is  
22 going to be dwarfed by the time you do devote to this after  
23 we're done. I appreciate it because it's important and it's  
24 something that I'm very passionate about. I've been a  
25 Montgomery County resident and developer for two decades,

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1 for 20 years and I've had the pleasure of focusing my career  
2 on creating mixed-use, pedestrian-oriented developments.  
3 I started the division at Federal Realty that  
4 expanded that company from a shopping center company solely  
5 to run the integrated uses together and created things such  
6 as the project that I was in charge of, Bethesda Row, which  
7 was six blocks that we were fortunately able to gain control  
8 of and ultimately develop into what it is today. As I say,  
9 my background has been extensively in that I co-founded  
10 Streetscape Partners with a primary focus on residential and  
11 in Montgomery County have had the pleasure of creating  
12 Symphony Park, the town homes that are at the Strathmore  
13 site where we partnered with Strathmore Music Center and  
14 went on to win best new community northeast. We've won  
15 platinum awards. It's been a very well-received and  
16 gratifying thing because people are excited to live there.  
17 And I would just share with you that this project  
18 appealed to us because of the impact that it can have on  
19 community. It's not often that one finds, certainly not in  
20 Montgomery County, something that is both of the scale that  
21 this is, that has what probably exceeds five years worth of  
22 pre-development approvals. It takes that long to get  
23 through all of the processes, which is as it should be,  
24 frankly, I believe so that you protect all the different  
25 interests.

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1 But to come into a piece of property owned by a  
2 land owner, not just simply what our entire company is  
3 focused on, somebody like Strathmore Music Center, American  
4 Speech, Hearing and Language Association, these were  
5 entities that owned land that are doing good for their  
6 community. And Adventist Healthcare, obviously, by their  
7 very nature does that. So to be able to facilitate  
8 something, in this case helping them with the burden of some  
9 of the financial responsibilities, they have relative  
10 offsite improvements, it's simply unique to find something  
11 like this that is so well-received by the community and will  
12 have such an impact on the community. So it's something  
13 we're extraordinarily excited about and focused on.  
14 Q Can you take us through a little bit about your  
15 knowledge of the Cabin Branch community and how you envision  
16 this development plan amendment advancing the objectives of  
17 that?  
18 A I can. Is it fair to, you asked specifically  
19 about the development team and I spoke mostly about myself.  
20 I just realized that and apologize. But if I may, I'd like  
21 to expand because there's a few folks that are involved in  
22 this, a few companies. And is it okay to --  
23 MS. ROBESON: Yes.  
24 THE WITNESS: -- otherwise, as to facilitate that?  
25 MS. ROBESON: And do we have a --

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1 MR. HARRIS: Paper copy?  
2 MS. ROBESON: -- hard copy of that?  
3 MR. HARRIS: We do, yes.  
4 MS. ROBESON: Is it in the record or --  
5 MR. HARRIS: It is not in the record.  
6 MS. ROBESON: Okay. Let's put it in the record  
7 so --  
8 MR. HARRIS: Okay.  
9 MS. ROBESON: -- and that will be 45. Do you have  
10 copies of that?  
11 MR. HARRIS: I do.  
12 MS. ROBESON: And how would you describe this?  
13 Project overview?  
14 THE WITNESS: Yes.  
15 MR. HARRIS: Yes.  
16 THE WITNESS: Yes.  
17 MS. ROBESON: Slide presentation, project  
18 overview. Do you want to reserve any objections or do you  
19 want to object or?  
20 MR. KLINE: If I could ask, Mr. Harris, is it  
21 substantially similar to what you provided Park and Planning  
22 Commission --  
23 MR. HARRIS: Yes.  
24 MR. KLINE: -- or identical?  
25 MR. HARRIS: No, it's not identical, but it's

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1 substantially the same.  
2 MR. KLINE: Thanks.  
3 MS. ROBESON: Okay.  
4 MR. KLINE: I'm okay. I shouldn't speak for Mr.  
5 Chen.  
6 MS. ROBESON: Okay. That will be 45.  
7 (Exhibit No. 45 was marked for  
8 identification.)  
9 THE WITNESS: So when we first, we were working  
10 with Adventist Healthcare and working at their entire  
11 property. They have some age-restricted entitlements for  
12 residential and they really asked us to step back and look  
13 at their property holistically and give them our opinion  
14 about what might happen here. And, as I say, there were a  
15 few things that attracted us to this. One of them was not  
16 only was the community clearly clamoring, as you've heard  
17 from just a few, but you've heard in volumes, I think, and  
18 letters, clamoring for kind of some amenities, whether that  
19 be restaurants or other retail, gathering places equally  
20 important.  
21 You also had an actual need for the retail, not  
22 just by the residents, but by the -- there's actually demand  
23 for this and often you lose sight in the planning world and  
24 you can do great plans, but they don't come to fruition even  
25 through best efforts if there isn't actually demand. And

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1 the mere fact that we and even the Peterson Companies, you  
2 know, attempted to purchase this property is because there's  
3 real, genuine demand. So this is something that's very real  
4 and that's exciting. Nobody likes to go through these  
5 processes and then find out, whoops, something happened.  
6 To try to assure and increase the certainty that  
7 this happened, we assembled a team of developers. One is a  
8 company that I had mentioned. I co-founded Streetscape  
9 Partners and these are just some shots of, a background from  
10 Bethesda Row, some of the things that we did that are really  
11 about community building and how one builds that, how you  
12 actually create livable, walkable communities.  
13 But we also had the pleasure of partnering with a  
14 company called New England Development. And New England  
15 Development has Montgomery County experience for building  
16 quite significant things in cooperation with the community  
17 and this is Wisconsin Place where the Bloomingdales opened.  
18 There's a Whole Foods, there's office, there's residential,  
19 an incredibly complicated project. They bring an amazing  
20 amount of expertise and have been in business for many  
21 decades and really just share with us a passion for quality  
22 and you see it when you see these types of developments.  
23 Together, we brought a third partner in which is a  
24 company called the Simon Property Group. Simon Property  
25 Group has the distinction of being the largest real estate

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1 company in the world. It's sort of a funny thing to say.  
2 They have a division, one of a few divisions that is called  
3 their Premium Outlet Division, and within the narrower  
4 category of outlet development, they are the largest outlet  
5 developer in the world by quite a significant margin.  
6 Size alone wouldn't have attracted us to them,  
7 though, but they actually produce some of the highest  
8 quality outlet centers that you see and in the retail world  
9 the way that you measure that is by how productive those  
10 properties are and productivity is measured by sales per  
11 foot. And there is no competitor that has a portfolio that  
12 produces anywhere close by a very wide margin kind of the  
13 sales per square foot. So, you know, some people have these  
14 images of outlet centers that are down by the beach, as an  
15 example, and you know they can be fine, but they're not what  
16 one might want to bring to Clarksburg. So it's very  
17 important when we reached out to Simon we did that very  
18 specifically, one, because of the quality that they bring;  
19 two, because of the tenant relationship so that we felt very  
20 confident. You know, frankly, we're out talking in the  
21 community every day and I don't want to be representing  
22 things that I don't just wholeheartedly, if you ask me to  
23 surrender that, but just, you know, but I don't  
24 wholeheartedly believe that.  
25 And I believe with my whole heart that we will

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1 open this property 95 percent leased and bring 100 tenants  
2 or more probably to this community. And Ms. Buffington  
3 testified earlier how difficult it was to try to fill one  
4 restaurant space, so difficult that they, through an  
5 incredible entrepreneurial spirit actually went and opened  
6 it themselves, which is the right idea, unfortunately risky  
7 for them, but is the right idea because retail will beget  
8 retail. And so we looked at that and that mitigated one  
9 risk for us.  
10 The other risk that gives me confidence about  
11 certainty is sometimes financial markets can change and  
12 we've seen that all. We just all lived through that. When  
13 you have a balance sheet and lines of credit where you can  
14 write a check for hundreds of millions of dollars, there's  
15 no need to raise third-party money. There's all these other  
16 risks in the real estate development business that were  
17 mitigated, frankly, by bringing Simon in. So it's another  
18 reason for the enthusiasm.  
19 Mr. Harris just asked me to talk a little bit  
20 about the background on Cabin Branch. As I said, we started  
21 talking with Adventist Healthcare very broadly and they have  
22 a property that has, as I said, a lot of entitlements and a  
23 lot of approvals, frankly, we're the beneficiary of a lot of  
24 other people's work because that is a long process.  
25 But what, again, drew us to it initially, today

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1 there just, the honest answer, and it says it in the Staff  
2 Report from Park and Planning, you've heard people testify  
3 today, there's not tremendous demand for office today and  
4 there's a lot of entitlements in the area for commercial  
5 development. Fortunately --  
6 MS. ROBESON: What do you mean entitlements?  
7 THE WITNESS: There's, there's, like at Cabin  
8 Branch, 2.4 million square feet of employment, it's --  
9 MS. ROBESON: Oh, I see. I see what you're  
10 saying --  
11 THE WITNESS: -- that kind of, so there's pods  
12 identified for where if you had office tenants you could  
13 actually --  
14 MS. ROBESON: Yes.  
15 THE WITNESS: -- build office today.  
16 MS. ROBESON: Yes.  
17 THE WITNESS: The problem is, and you see it most  
18 clearly that the idea of stand alone office parks is really  
19 something of the past. People don't necessarily want to  
20 live where, don't want to work, excuse me, where they can  
21 only go to the deli in the bottom of their office building.  
22 They really do want to be in more active areas and you see  
23 all the development. Peterson did a wonderful job of that  
24 at Washingtonian. You mix these uses and they become more  
25 attractive. So we really see this not just -- the other

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1 exciting thing for us is we really believe this opportunity  
2 will be the catalyst to a lot of other development and more  
3 jobs and really enlivening Clarksburg.  
4 There's a community near to all of us, Rock  
5 Spring, which was just office building. It's got 30 percent  
6 vacancies despite being close-in to Bethesda because nobody  
7 wants to be there. It's just -- if your a CEO, you don't  
8 want to, your employees don't want to be there and you don't  
9 want to locate your office there. So we're excited because  
10 this has such a catalytic, we believe, opportunity to really  
11 enliven and start what should be the vision and was the  
12 vision for it.  
13 It's interesting to me when one does a master  
14 plan, and this was done almost 20 years ago, the foresight  
15 that the people that did that master plan had was pretty  
16 extraordinary because as I say, people were building these  
17 standalone office parks and yet in that master plan they  
18 make it very, very clear and they encourage that the current  
19 zoning that existed at the time of that master plan be  
20 changed because it really isolated and said you'll do some  
21 residential and you'll do some things here. There wasn't  
22 even really room for retail and they said please change this  
23 to an MXPD zone and nine years ago they did. And that was  
24 really pretty prescient and, again, we're the beneficiaries  
25 of that hard work. So that hopefully answers some of that.

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1 BY MR. HARRIS:  
2 Q Have you seen changes in other master plans such  
3 as Germantown or the Life Sciences Center, also known as the  
4 Great Seneca Science Center, that affect your conclusions  
5 with respect to demand for office?  
6 A There have been. They're not encouraging for  
7 office in Clarksburg, sadly, because they both were  
8 increases, significant increases. Germantown, I think, went  
9 from 8 million square feet to 24 million square feet of  
10 potential office product. So these are just competing other  
11 nodes. The Life Science Center increased its potential, I  
12 believe, from 11 million square feet to nearly 18 million  
13 square feet potential, staggeringly huge numbers.  
14 MS. ROBESON: Well, I guess my question really is  
15 after reading the master plan, it seemed to me that the goal  
16 was to create an employment in the sense of office  
17 technology corridor regardless, and they say it is a long-  
18 term goal.  
19 THE WITNESS: Uh-huh.  
20 MS. ROBESON: Now whether particularly I think  
21 it's a great idea to target a particular industry, but it's,  
22 that's not my call and the question is long-term is this  
23 going to jeopardize that goal?  
24 THE WITNESS: It's a great question and I'm,  
25 you're a little bit leading. I don't know if I'm a witness,

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1 but it's almost a leading question because I appreciate the  
2 question because the answer is I would do the exact opposite  
3 in my opinion of jeopardizing the goal. You have very  
4 little hope of creating a standalone life science  
5 employment, meaning only office as you're defining it,  
6 center without amenities. It's just -- and I don't believe  
7 that was actually the exclusive goal of the master plan.  
8 The master plan really clearly calls for it, it encourages a  
9 rezoning to MXPD, which was implemented, which is a mix of  
10 uses. You just can't have these standalone parks. So the  
11 only way really --  
12 MS. ROBESON: Is life sciences a standalone park?  
13 THE WITNESS: Yeah, it's just, it's more narrowly  
14 defining the type of office tenant you might lease to.  
15 MS. ROBESON: I mean because when you say office,  
16 the market is bad because they've added all that space, that  
17 bases long-term space.  
18 THE WITNESS: I'm just trying to be very candid.  
19 I'm not a lawyer.  
20 MS. ROBESON: No, it's okay. I just want to know.  
21 THE WITNESS: Today there's not a lot of office  
22 demand whether for life science or other office users in  
23 Clarksburg. That's a fact. Absent creating great housing,  
24 great retail amenities, absent creating the amenities,  
25 Clarksburg will remain at a disadvantage compared to these

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1 other competing places where office uses or life science  
2 uses could go because we have the real demand, because the  
3 citizens are really looking for this and have in kind of  
4 unprecedented numbers supported what we're trying to do and  
5 because we have the financial wherewithal and the experience  
6 to actually make this a reality, it really will be the  
7 catalyst to this happening. There's just no reason why if  
8 you don't have a nice place to walk out to, a plaza to  
9 gather in, a restaurant, food court, shopping, why somebody  
10 is going to say, hey, let me locate on that farm today and  
11 start it. So we were very careful. And I'll walk you  
12 through in some detail --  
13 MS. ROBESON: Okay.  
14 THE WITNESS: -- kind of our plans. We were  
15 really careful to look long-term and I appreciate your  
16 emphasis on long-term. When I did Bethesda Row, we did a  
17 10-phase master plan just for the six blocks that we owned.  
18 And it was, and this was, I'm sorry to say to the citizens  
19 of Clarksburg, but this is just the reality, 15 years after  
20 we did that master plan, we finished Phase 10, but because  
21 we had thought ahead, we were able to do that. And then  
22 what happens is despite however much you may control, we  
23 controlled six city blocks. It's kind of unprecedented.  
24 There are other blocks and they suddenly came to life.  
25 There's another interesting parallel of Bethesda

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1 which is unlike in this case where we've had this great  
2 outpouring of support, we had nothing but opposition.  
3 Everybody said, if people recall, Bethesda was what was  
4 defined as, downtown Bethesda was defined as the Woodmont  
5 Triangle. There were 100 restaurants in the Woodmont  
6 Triangle and we were going to be the death of downtown  
7 Bethesda because where we were buying was a little bit of  
8 car repair shops, some industrial, but we were only, we were  
9 walking distance. We were only 10 blocks away. So we,  
10 clearly, by controlling that going to kill downtown  
11 Bethesda.  
12 So we had, we didn't have 100 letters of support.  
13 I don't know that we had 100 letters of opposition, but we  
14 had a lot of opposition. But time and again, whether it's  
15 Montgomery County or development I've done in California,  
16 when you create it, it actually, it catalyzes the whole area  
17 and there was more office development as a result of it,  
18 residential prices have increased tremendously. The  
19 Woodmont Triangle has never been more successful even as the  
20 tenth phase of Bethesda actually finally got built. It's  
21 just, you can do, Urban Land Institute studies this. It's  
22 kind of the white paper generating group that looks at these  
23 things across the country. And you can bring them in. They  
24 would be very in support of that kind of concept as to how,  
25 how we ever have a hope of achieving that kind of office

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1 use, if you will, though I think employment defined it more  
2 generally. But if you're talking specifically about office,  
3 you won't without the catalyst of the retail.  
4 BY MR. HARRIS:  
5 Q One further question before you get into the  
6 concept plan itself. Does this development plan amendment  
7 preserve any degree of opportunity for office development  
8 and if so, how, how does that relate?  
9 MR. CHEN: I object to that. This gentleman may  
10 be a developer, may be a fine gentleman, but this question  
11 calls for a professional opinion and I don't think he is, at  
12 least he's not demonstrated yet the credentials to express  
13 that type of opinion.  
14 MS. ROBESON: Well, I haven't qualified him as an  
15 expert because he's the applicant and experts are supposed  
16 to be, you know, objective. But he does have experience, so  
17 I'm going to let him answer.  
18 MR. CHEN: Based upon his experience rather than  
19 being an expert witness?  
20 MS. ROBESON: Yes.  
21 MR. CHEN: Okay.  
22 THE WITNESS: I'm not sure it takes experience to  
23 read a plan and the plan preserves a tremendous amount of  
24 office space, the development plan and --  
25 MS. ROBESON: Yes, well, let me just clarify that

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1 for the record too. I don't think that you need to be an  
2 expert necessarily. This is not a hypothetical question.  
3 The question is, or an opinion, the question is is this  
4 going to provide opportunities for office?  
5 MR. KLINE: Can I actually follow his objection  
6 then and here's what I would say. Does he have experience  
7 in developing outlet centers because that's the premise,  
8 that the outlet center will basically be the catalyst.  
9 MR. CHEN: They're asking for an opinion?  
10 MR. HARRIS: No. I asked a question of whether  
11 this preserves space for office development.  
12 MS. ROBESON: That's all --  
13 MR. HARRIS: That's a factual question.  
14 MS. ROBESON: That is all he asked.  
15 MR. KLINE: If it's space, that's fine.  
16 THE WITNESS: Absolutely. It's even part of the  
17 long-term plan on the property that we would be purchasing.  
18 So not only throughout the whole Cabin Branch plan, but  
19 specifically.  
20 MS. ROBESON: And we is --  
21 THE WITNESS: We being --  
22 MS. ROBESON: -- the team?  
23 THE WITNESS: -- the development team that I  
24 was --  
25 MS. ROBESON: And exactly what is the land that

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1 you will be, where is the land that -- well, I don't want to  
2 take you out of context and --  
3 MR. HARRIS: We can come back to this question  
4 after he --  
5 MS. ROBESON: You're getting --  
6 THE WITNESS: And I'll address exactly where the  
7 land is so that you can see that.  
8 MS. ROBESON: Okay.  
9 MR. HARRIS: Okay.  
10 BY MR. HARRIS:  
11 Q Well, why don't you take us through the concept  
12 plan while people are interested in seeing that?  
13 MS. ROBESON: The development plan.  
14 MR. HARRIS: Development plan, I'm sorry.  
15 THE WITNESS: The overall Cabin Branch area is  
16 actually 535 acres, 2.4 million square feet of commercial  
17 development, some public uses and when I initially started  
18 looking at the age-restricted, residential units. So we  
19 stepped back. And actually, for the record, I'd like to  
20 applaud Park and Planning staff actually. They requested  
21 that we do that and I think it was the right thing to do  
22 because it actually improved our thinking and we hired one  
23 of the, really nationally, they're actually an international  
24 firm, but regarded master planning companies to actually  
25 step back and really look at this for us so that we can make

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1 sure that we were trying to anticipate how would this  
2 best -- we really see this investment as the first of many  
3 and, as I said, kind of catalytic. So the more planning you  
4 can do consistent with the master plan today, the better.  
5 And that's what they helped us achieve.  
6 This is the north district of the Cabin Branch  
7 plan. I've just kind of zeroed in.  
8 MS. ROBESON: And this would be, it's entitled  
9 north district on Exhibit 45.  
10 THE WITNESS: And so what I'm just zeroing in on,  
11 just to make it a little bit more visible is this area up  
12 here.  
13 MS. ROBESON: And this area, the transcript --  
14 THE WITNESS: Sorry.  
15 MS. ROBESON: -- when you read the record, it  
16 doesn't know what this area is. So the area --  
17 THE WITNESS: So the northern, the northern-most  
18 portion really at the intersection of 121 and 270.  
19 MS. ROBESON: It's at the southwest, or the  
20 southern quadrant of, southwestern quadrant of the  
21 intersection of 121 and 270. Okay. Keep going.  
22 THE WITNESS: This area, once built out, should  
23 have some, close to approximately a million square feet of  
24 development. There is already a hotel that's been approved  
25 on this piece of property, some banks, entertainment uses

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1 are planned, restaurant and food that I spoke about. The  
2 buildings that are in the exhibit that are red, the larger  
3 block buildings are where the specialty outlet retail would  
4 go, live/work units, multi-family units.  
5 MS. ROBESON: What's live/work units?  
6 THE WITNESS: Live/work is where you'll have  
7 office on the ground floor and the people may actually  
8 reside above, the actual owners --  
9 MS. ROBESON: Okay.  
10 THE WITNESS: -- of that space may actually reside  
11 above.  
12 MS. ROBESON: Now the live/work units, are they  
13 along Clarksville Road in the blue?  
14 THE WITNESS: That's correct. Those would be  
15 these units here.  
16 MS. ROBESON: Oh, wait, that's not Clarksville,  
17 that's -- is that Cabin Branch? I forget what it's called,  
18 Cabin --  
19 THE WITNESS: Cabin Branch Avenue.  
20 MS. ROBESON: Yes, is that what you're referring  
21 to, and along Cross Street?  
22 THE WITNESS: This street is Well Spring. It's  
23 Cabin Branch Avenue.  
24 MS. ROBESON: Okay.  
25 THE WITNESS: So along those two streets are where

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1 you see some live/work.  
2 MS. ROBESON: Okay. And where are the  
3 restaurants?  
4 THE WITNESS: You'll have restaurants and I'd  
5 stress it's a preliminary plan.  
6 MS. ROBESON: I know. I know.  
7 THE WITNESS: You do these kind of things, so I  
8 don't want to -- but we envision these as restaurants.  
9 MS. ROBESON: Okay. These are the smaller red  
10 buildings?  
11 THE WITNESS: Yes, just to the west of --  
12 MS. ROBESON: Okay.  
13 THE WITNESS: -- the main entrance drive.  
14 MS. ROBESON: Okay.  
15 THE WITNESS: And importantly, and something I'm  
16 particularly excited about, we have a large amphitheater  
17 opportunity here also. One of the things we heard, and this  
18 wasn't in our initial thinking, but my whole company was  
19 formed on the premise of really partnering, whether it be  
20 with a land owner, whether it be with a community. And  
21 you'll see later when I show you the amount of outreach that  
22 we've done, we've learned a lot from the community and we've  
23 listened carefully and it really seemed like there was,  
24 there just is nowhere for them to have this kind of outdoor  
25 at the scale that we're talking about here.

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1 One of the other things that we heard from the  
2 community was the importance of a town center. Town center  
3 plan calls, they actually use the same word, I would have  
4 named it something differently, but they say amphitheater.  
5 So when I first started hearing the community say they  
6 wanted an amphitheater, one of the first things we did was  
7 we tried to probe and clarify a little what that meant. We  
8 went to our partners at Strathmore and talked to them about  
9 different kind of uses and how town centers work. And in  
10 terms of being an expert on the comment I'm about to make, I  
11 will qualify myself as one, even though I am the applicant,  
12 having done Bethesda Row, I formed the group that did the  
13 first Bethesda Row Arts Festival. Activating community  
14 spaces is something I know quite a bit about. And having  
15 partnered with Strathmore and created for them an outdoor  
16 entertainment space where they could use things that we will  
17 donate back to the County, we heard that.  
18 We also immediately went and sat down with Elm  
19 Street and said what is it you're planning because what we  
20 do not want to do is compete, we want to complement the town  
21 center development. That was at the premise of, you'll hear  
22 from the community they're looking for it. We want to  
23 catalyze that. And as you've probably seen in their letter  
24 of support, they fully understand that and say that we will,  
25 in fact, complement the town center development,

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1 notwithstanding certain claims to the contrary. So this  
 2 amphitheater --  
 3 MS. ROBESON: And that's in the lower left, the  
 4 southernmost portion of that picture?  
 5 THE WITNESS: Yes, exactly right, right in this  
 6 area. I've been told by the Park and Planning staff that  
 7 are in charge of forests that this is one of the nicest  
 8 forests she's see in Montgomery County that we'll have as a  
 9 backdrop. So we tried to utilize the topography and the  
 10 natural resources, something else we really believe a lot  
 11 in.  
 12 And the other thing we did, this access to this is  
 13 along a road that's going to mirror the already approved  
 14 development of the street. So this street for the community  
 15 that's going to be developed here, which is ultimately over  
 16 9,000 employees and 6,000 residents, literally parallels  
 17 this, has a jogging path right alongside the roadway and  
 18 creates this wonderful connection at this terminus where the  
 19 amphitheater will be with other parks that are throughout  
 20 the community.  
 21 MS. ROBESON: And that's shown in red on the plan,  
 22 on this north district?  
 23 THE WITNESS: Well, the road I'm talking about  
 24 here is this purple roadway.  
 25 MS. ROBESON: Purple? Okay.

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1 THE WITNESS: Purple roadway.  
 2 MS. ROBESON: It looks red on the paper copy.  
 3 THE WITNESS: Yes.  
 4 MS. ROBESON: Purple/red.  
 5 THE WITNESS: Purple/red. And we spent a lot of  
 6 time -- it's not, an amphitheater is one thing and that's a  
 7 certain type of use and we've spoken of Blackrock and, as I  
 8 said, got a lot of input to make sure that it was  
 9 complimentary to the type of public space that was going to  
 10 be developed at the town center which is a much different  
 11 kind of space as I said.  
 12 And along the way in accessing that are some  
 13 really wonderful public gathering spaces also. One of the  
 14 gratifying things about Bethesda before it became really all  
 15 that it is today, but very early on, was when people started  
 16 saying, we'll meet you at the fountain. There's a small  
 17 fountain in front of the Barnes and Noble at the corner of  
 18 Bethesda Avenue and Woodmont, and that's community-building,  
 19 things as simple as that which is why it's really  
 20 gratifying.  
 21 To do these things takes a lot of experience and  
 22 focus on what creates these gathering places? What makes  
 23 one property more successful than another? What adds to a  
 24 community more than the other? And it's got to do with  
 25 doing sustainable development, it's got to do with

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1 understanding environment and using it as a plus rather, as  
 2 I said on this forest conservation part, you know, using  
 3 what's there rather than trying to come on top of it.  
 4 It is, why I say the master plan was visionary,  
 5 because the first thing an employment employee is making  
 6 that every expert will tell you is about mix of uses and  
 7 creating some public space. So when they encourage that  
 8 MXPD, even though the land they were writing the master plan  
 9 about didn't yet have a mixed use, they knew to encourage it  
 10 and, fortunately, MXPD understood that 20 percent of  
 11 whatever they approved should be retail as kind of a guiding  
 12 principle. And when you look around the country, that is  
 13 actually about the right percentage. It's a very good  
 14 guideline.  
 15 So we stepped back and said how will this work,  
 16 how do you integrate some neighborhood retail with our  
 17 employment specialty retail? Where are the schools, the  
 18 community center, future neighborhood retail, other  
 19 employment centers, this would probably be the life science  
 20 area in the long-term, and we created the overlay to the  
 21 master plan that will help guide how this land over the next  
 22 20 years develops consistent with the master plan.  
 23 This starts to show you the benefit of mixes of  
 24 use. What they become is active. They become places that  
 25 people like to go to. It's self-serving from a developer

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1 standpoint because it means that they stay leased. It means  
 2 they generate sales. It means you get higher rent as you  
 3 try to create a profit for the development in taking those  
 4 risks. But it's not, it's just very real because it impacts  
 5 your community.  
 6 These are some precedents that Simon Property  
 7 Group has done and you can see why we were attracted to them  
 8 in creating these, you know, outdoor fireplaces and  
 9 fountains and really getting local artists who did some of  
 10 the pretty wonderful little developments there and artistic  
 11 insertions of kind of special places that you find as you  
 12 wander through it. This is looking at precedence around how  
 13 can you create really exciting outdoor spaces? What might  
 14 you one day be able to do with that amphitheater space since  
 15 we thought ahead and put it there? It could have just been  
 16 parking if we hadn't really thought it through or, instead,  
 17 it could be something like this on a summer evening for the  
 18 community.  
 19 Very important is what's the existing public space  
 20 network, what's the planned public space network, how will  
 21 that interface with what we're planning today which is  
 22 simply one small piece of, as we keep saying, a very long-  
 23 term build-out, but the critical, catalytic piece. And by,  
 24 obviously, our very important piece. So we researched where  
 25 the existing bike networks, where might we be able to add

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1 additional bike networks. And what we're talking about,  
2 they are not just on-road or sidewalk, but some dedicated  
3 bike lanes that actually are planned. That's another one of  
4 my favorite kind of how do you do a very natural outdoor  
5 space that people would enjoy?  
6 BY MR. HARRIS:  
7 Q Let me come back to the question I asked earlier.  
8 Do you have an estimate of how much non-retail employment  
9 this preserves as part of the current development plan?  
10 A The development plan --  
11 MR. CHEN: Objection.  
12 THE WITNESS: -- amendment shows 1.9.  
13 MS. ROBESON: Just a moment.  
14 MR. CHEN: I object.  
15 MS. ROBESON: And that is --  
16 MR. CHEN: Is another opinion. You're taking  
17 everything in as experience, which I understand, but I just  
18 believe that this gentleman cannot sit here and based upon  
19 his experience say a given opinion as to the estimated non-  
20 retail employment that will be in this area. That's a  
21 number.  
22 MS. ROBESON: I don't, I don't understand your  
23 objection. How --  
24 MR. CHEN: How he's qualified to give -- and very,  
25 quite simply, and I apologize, I don't mean to interrupt the

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1 Examiner, but as I understand the question, the question is  
2 give us a number of the -- I think the question is estimate  
3 the non-retail employment that will be in this neighborhood.  
4 MR. HARRIS: I'm just asking him to subtract  
5 484,000 from 2,420,000.  
6 MS. ROBESON: Well, why don't you rephrase it and  
7 say how much --  
8 MR. HARRIS: Can you subtract --  
9 MS. ROBESON: -- permitted, how much permitted,  
10 non-retail --  
11 THE WITNESS: The development plan amendment, as I  
12 read it, and I believe anybody that looks at it regardless  
13 of their expertise would read it says there's 1.9 million  
14 square feet of remaining employment.  
15 MS. ROBESON: And you got that figure how? I'm  
16 just, I know how --  
17 THE WITNESS: There's two --  
18 MS. ROBESON: -- but I want to --  
19 THE WITNESS: There's 2.4 million square feet of  
20 commercial --  
21 MS. ROBESON: Permitted?  
22 THE WITNESS: -- permitted, commercial, permitted.  
23 The development plan amendment takes out of that 484,000  
24 feet of retail and that results in approximately 1.9 million  
25 square feet of additional office.

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1 MS. ROBESON: Okay.  
2 MR. CHEN: I was not objecting to that. I thought  
3 we were going to get a number of -- I thought we were  
4 talking about what was going to be the amount of employment,  
5 non-retail.  
6 MS. ROBESON: Oh, oh.  
7 MR. CHEN: That's where I, that's -- the way the  
8 question was posited, that's how I interpreted it.  
9 MS. ROBESON: Okay.  
10 MR. CHEN: Square footage I understand and I can  
11 see where he's coming from. You can certainly testify to  
12 that.  
13 MS. ROBESON: Okay.  
14 BY MR. HARRIS:  
15 Q Does this plan in any way affect the employment  
16 development potential on the Comsat property across 270?  
17 A It does not affect the legally allowable amount.  
18 It absolutely will have a posited impact in catalyzing the  
19 area.  
20 Q Can you -- what are the positive aspects you see  
21 about this site in terms of being able to achieve this  
22 result in a timely manner?  
23 A As I mentioned earlier, I have not been involved  
24 in a property that was so far along in the process, but  
25 still looked just like a piece of dirt. This is almost a

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1 lay language behind the series of approvals, though there  
2 are folks here that are experts that could testify in, you  
3 know, voluminous detail the number of years it took and the  
4 amount of analysis and study that had to go into creating  
5 these approvals. But a few of them are stage 3 and the  
6 master plan is already open. The MXPDP zoning was put in  
7 place nine years ago and allows 20 percent retail, exactly  
8 the amount that suggested an MXPDP and exactly the amount  
9 that we're planning over the long-term.  
10 The preliminary plan for employment use was  
11 approved. The water and sewer wasn't only approved, it's  
12 under construction for Cabin Branch. APFO looked at and  
13 analyzed the full development envelope, this 2.4 million  
14 square feet amazingly. The water quality plan was approved.  
15 The infrastructure site plan wasn't just posited and  
16 planned, it was posited, planned, submitted, debated and  
17 approved. The forest conservation plan is in place.  
18 Everyone of these is a separate process and a separate  
19 approval.  
20 There's more than \$40 million as a result of these  
21 plans for this much of development of required arterial road  
22 improvements. They will be developer funded. We already  
23 know that. There's no request for that coming from  
24 somewhere else, developer funded state and County arterial  
25 road improvements staged with the development and, in fact,

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1 those aren't false promises, those are requirements and  
2 they're actually under construction. Route 121, as one part  
3 of this, actually gets straightened. That road bed is being  
4 graded as we speak. It's very exciting when you look at  
5 that and realize -- the interesting thing about the  
6 development process is when you start with a raw piece of  
7 land before you have any of these approvals, the only way to  
8 start a dialogue, to have a conversation with an approving  
9 body, Park and Planning, any of the bodies, is you have to  
10 come up with what you think could work from a -- what you  
11 think could work in all --  
12 MR. CHEN: Excuse me. I apologize to interrupt.  
13 Are we outside Exhibit 45? I apologize, but I don't see --  
14 MS. ROBESON: I don't understand, what do you mean  
15 outside?  
16 MR. CHEN: I don't, I don't --  
17 MR. HARRIS: That's --  
18 MR. CHEN: -- that's part of exhibit -- in my copy  
19 I'm looking for it and I can't find it.  
20 THE WITNESS: I decided to augment my comments  
21 with a few slides. I had many more comments than I have  
22 slides for.  
23 MR. CHEN: Different exhibit. I'm not --  
24 THE WITNESS: Not different exhibit --  
25 MS. ROBESON: No.

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1 THE WITNESS: -- I don't have an exhibit. I'm  
2 just speaking.  
3 MS. ROBESON: This is, there is no -- I'm not  
4 aware of anything saying -- is your question has he moved on  
5 from this exhibit? I'm not aware of anything saying he has  
6 to confine his testimony.  
7 MR. CHEN: I'm not saying that. I'm saying that  
8 which exhibit are we in because I can't find what he's --  
9 MS. ROBESON: I don't think we're in an exhibit.  
10 MR. CHEN: What are you looking at?  
11 MS. ROBESON: Excuse me?  
12 MR. CHEN: I apologize, but that's an exhibit, I  
13 believe. I mean I'm not objecting to the exhibit, but I  
14 just want to --  
15 MS. ROBESON: I don't understand your objection.  
16 I don't think there's any formal process. He can supplement  
17 whatever he wants in his oral testimony.  
18 MR. CHEN: I have no objection to oral testimony.  
19 If he's going to use a slide, it's got to be an exhibit  
20 because you are considering it.  
21 MS. ROBESON: But he's not using a slide.  
22 MR. CHEN: I thought he was going down the list?  
23 THE WITNESS: I finished going through the list  
24 and I then started --  
25 MS. ROBESON: Okay. I don't --

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1 THE WITNESS: -- providing --  
2 MS. ROBESON: -- want another objection like this  
3 because this to me is a baseless objection. This is  
4 baseless.  
5 MR. CHEN: How do we address this exhibit then?  
6 MS. ROBESON: You'll have full opportunity to  
7 address it. I don't even see what the basis of your  
8 objection is. I, you will have full opportunity to cross-  
9 examine on it.  
10 MR. CHEN: I'm not objecting. I'm just trying to  
11 get the record clear if the gentleman is using a slide, it  
12 should be identified as an exhibit because the slide is part  
13 of the record and it's not part of what I thought was the  
14 exhibit that he was using, just Exhibit 45.  
15 MS. ROBESON: What isn't part of the exhibit he's  
16 using?  
17 MR. CHEN: The slide that was of, the slide that  
18 was up on the screen that's no longer on the screen.  
19 THE WITNESS: That's part of this.  
20 MS. ROBESON: Is the full, is all these slides in  
21 Exhibit 45 or not?  
22 MR. HARRIS: The one that was up there is not in  
23 there, but he --  
24 MS. ROBESON: Oh.  
25 MR. HARRIS: -- he testified every word on that --

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1 MS. ROBESON: Okay. You can't --  
2 MR. HARRIS: -- sheet.  
3 MS. ROBESON: -- do that --  
4 MR. HARRIS: Okay.  
5 MS. ROBESON: -- guys.  
6 MR. HARRIS: Fine.  
7 MR. CHEN: We'll just put it in the record.  
8 THE WITNESS: That's, I apologize.  
9 MS. ROBESON: Just put it --  
10 MR. HARRIS: We'll get a copy and put it in the  
11 record.  
12 MS. ROBESON: Okay. Because --  
13 THE WITNESS: I didn't understand.  
14 MS. ROBESON: -- if we want to make this go  
15 forward --  
16 MR. HARRIS: Yes.  
17 MS. ROBESON: -- just for your knowledge,  
18 everything that you have up there -- I'm sorry, Mr. Chen, I  
19 didn't understand what you were saying. Everything that  
20 goes up there has to be --  
21 MR. HARRIS: Okay. We will put that into the  
22 record.  
23 THE WITNESS: That's actually, for the record,  
24 that's not my attorney's fault. I added a slide and I  
25 didn't --

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1 MS. ROBESON: Well, don't go slipping beyond  
2 what's in the record --  
3 THE WITNESS: No, no, my mistake.  
4 MS. ROBESON: -- or you'll just delay things --  
5 THE WITNESS: Yes, I apologize.  
6 MS. ROBESON: -- and we don't want that, all  
7 right?  
8 MR. HARRIS: Okay. We will put it in, we'll try  
9 to get it this afternoon and have it for you.  
10 MS. ROBESON: Okay.  
11 MR. HARRIS: Okay. Thank you.  
12 MR. CHEN: Will that be a number? Do you want to  
13 give a number to it?  
14 MS. ROBESON: No, not yet.  
15 MR. HARRIS: Well, once we bring it, yes.  
16 MS. ROBESON: Because I'll just, when they bring  
17 it in, we'll give it a number.  
18 MR. HARRIS: Yes. Okay.  
19 BY MR. HARRIS:  
20 Q I'd like you to briefly summarize both what you,  
21 well, did the Planning Board and its staff offer any  
22 comments at the hearing that you took as encouraging in  
23 terms of the attractiveness of this project?  
24 A Besides the unanimous vote for it?  
25 Q Yes.

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1 A So that was slightly tongue and cheek.  
2 Q Well --  
3 A I apologize.  
4 MS. ROBESON: Okay. Well, wait a minute. Just --  
5 I know what the Planning Board approved.  
6 THE WITNESS: Right.  
7 MS. ROBESON: And I have their written  
8 recommendation and I don't see the need for him to go into  
9 hearsay about what the Planning Board said or didn't say.  
10 MR. HARRIS: Fine.  
11 MS. ROBESON: So let's move on from that.  
12 BY MR. HARRIS:  
13 Q Let's turn to community support. Can you  
14 summarize for us the extent and the substance of the  
15 community support that is in exhibits --  
16 MS. ROBESON: Well, you don't even have to  
17 summarize that because you know what, I have read everything  
18 that I've gotten, every single letter I've gotten so far and  
19 I will read every single letter. So you don't have to  
20 summarize it.  
21 THE WITNESS: So what I would like to say on the  
22 community support side, and I started to mention it, if  
23 you're planning a good development, it's not necessarily  
24 hard to stand up in front of people at a homeowner's  
25 association or a civic association and have them say that

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1 sounds really great and thank you for coming and presenting.  
2 It's actually extraordinarily hard for those people to feel  
3 so motivated that they take the time to write a letter.  
4 That's actually like a giant leap. It doesn't sound like it  
5 but, you know, we're all busy and have families and somebody  
6 has got to go and actually say this is meaningful enough to  
7 me. So when I say that it's gratifying, I, this is one area  
8 I will agree with you. I'm absolutely not an expert. I  
9 don't have, I don't see all of the projects that you see  
10 come through or at Park and Planning. So I went and I asked  
11 three of the senior Park and Planning members because I  
12 just, I wanted the context, I wanted to know the answer. I  
13 said we have, you know, Park and Planning I think it was 77  
14 letters of support that people have written and I think  
15 we're up to 93 that have written separately to the Zoning  
16 Hearing Examiner. I said can you put that in context for me  
17 because it's, you know, I'm personally gratified, but I just  
18 don't know where does that fall in context? All three of  
19 them used the same word. They said it's unprecedented.  
20 MS. ROBESON: Well, I have to disagree and it's  
21 not unprecedented and many of them are form -- to me how the  
22 numbers of people that write in in support are not relevant.  
23 It's good to see, I'm glad they're excited, but it's not  
24 relevant to me. What is relevant to me is meeting the  
25 standards for a development plan amendment.

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1 THE WITNESS: That's correct. That's right.  
2 MS. ROBESON: And I don't -- if that is what staff  
3 said, I don't necessarily agree. But go ahead.  
4 THE WITNESS: It was gratifying to me personally  
5 nonetheless because it's hard to get people to write in.  
6 MS. ROBESON: I'm glad.  
7 THE WITNESS: But I agree with you, this should be  
8 focused on doing the development plan amendment and, as I  
9 said, you know, it was really extraordinary to me how the  
10 master plan was written and that it recognized a need for  
11 these types of developments to be integrated and it's proven  
12 out across the country that that's, that is how these  
13 developments happen.  
14 MS. ROBESON: Okay.  
15 BY MR. HARRIS:  
16 Q I have no further questions. Anything else that  
17 you wanted to add?  
18 A If I may, I was struck by Mr. Knapp's testimony as  
19 he read his comments because as I heard them, I'm  
20 paraphrasing, I'm not quoting, but what I heard was this  
21 should happen as quickly as it can happen because people  
22 have waited a long time for it. He's been there as an  
23 expert in that area far longer than I. And there's this  
24 notion that, you know, you're competing properties, are we  
25 competing with town center, are we competing with Miles

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1 Copolla (phonetic sp.), are we competing with --  
2 MS. ROBESON: Miles Copolla?  
3 THE WITNESS: Is a property that that Peterson  
4 Companies has under contract I believe.  
5 MS. ROBESON: That your, Mr. Kline's client's  
6 properties? Okay. Sorry to interrupt.  
7 THE WITNESS: And I firmly believe the  
8 development, good development and good community building  
9 does help catalyze other things. There is no reason why the  
10 Elm Street companies that controls the town center site  
11 would say, and I am reading here, especially outlet retail  
12 on either side of I-270 will have an equally positive impact  
13 on Clarksburg and the town center that he's planning to  
14 develop. That's true. One won't have more of a positive  
15 impact, both of them will. And one day both of them may  
16 actually be built. There are examples around the country  
17 where more than one outlet center exists in a community.  
18 The challenge, it was so striking to me, the  
19 challenge that Ms. Buffington personally experienced in  
20 getting one retailer to go to Clarksburg is because there  
21 are no precedents. If you're a retailer, it is a risky  
22 proposition today if you're one retailer to go into  
23 Clarksburg because there's just -- who is doing what? What  
24 sales are generated? How are they doing?  
25 When we open the Clarksburg Premium Outlets at

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1 Cabin Branch and we're successful, that is going to make it  
2 easier. If Ms. Buffington was then trying to lease her  
3 restaurant, it will be easier in exactly the same way that  
4 the Woodmont Triangle expanded when Bethesda Row was  
5 successful, in the exact same way that the Leesburg historic  
6 district is successful with the Leesburg Outlets right down  
7 the road. These things catalyze areas. They generate a lot  
8 of jobs and the Peterson Companies is an excellent developer  
9 and I have no doubt that what they, once they get through  
10 their many, many series of approvals that we're fortunate to  
11 have and figure out exactly what, how much residential do  
12 they build and how much retail and what kind of retail, I  
13 have no doubt that our development will actually be a  
14 positive for them in helping theirs develop and they won't  
15 be the first developer to be able to essentially do a major  
16 expansion, if you will, a major, another project that  
17 capitalizes on the investment and risk that we took. We're  
18 simply on different timelines, so that's going to reduce  
19 risk, frankly, for them in the long-run.  
20 But it's -- you see this around the country, you  
21 see areas where when they're successful, other employment  
22 comes. It won't just be the 1,500 jobs our phase I  
23 development will do. It will be the ancillary things that  
24 happen in the historic district, in the town center. So  
25 it's our pleasure and I really do appreciate it and

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1 hopefully our enthusiasm, our thoughtfulness about how to do  
2 this, how to do it in a way that benefits the community and  
3 the passion that we bring to it has come through. So thank  
4 you.  
5 MS. ROBESON: Thank you.  
6 MR. HARRIS: Thank you.  
7 MS. ROBESON: Okay. Mr. Chen.  
8 MR. CHEN: Thank you.  
9 CROSS-EXAMINATION  
10 BY MR. CHEN:  
11 Q Mr. Kaplan, a moment ago you used the word  
12 specialty outlet retail, do you recall that, sir?  
13 A Yes, I do.  
14 Q What do you mean by that?  
15 A Are you familiar with Leesburg Premium Outlets?  
16 Q Yes, sir, I've been there.  
17 A So that would, that would be the best way for me  
18 to analogize what I mean by specialty outlet stores.  
19 Q Okay. Is that, is the Leesburg Outlets a Simon  
20 development?  
21 A Yes, Simon owns Leesburg Premium Outlets.  
22 Q I asked -- you mentioned precedence also on, your  
23 slide showed some photos. Does Simon also have the  
24 Hagerstown Premium Outlets?  
25 A Simon acquired from another developer, the

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1 Hagerstown Outlets, yes.  
2 Q And how about what are known as the Queenstown  
3 Outlets, is that also Simon?  
4 A That is. They also acquired that property.  
5 MS. ROBESON: Okay. If you don't know the answer,  
6 you can't --  
7 THE WITNESS: No, no, I do, I'm just --  
8 MS. ROBESON: Okay. I just saw you nodding with  
9 him, so do you --  
10 THE WITNESS: No, but I do, I do know that.  
11 MS. ROBESON: Okay. That's fine.  
12 THE WITNESS: Thank you.  
13 MS. ROBESON: Go ahead.  
14 THE WITNESS: I promise not to answer something I  
15 don't know.  
16 MS. ROBESON: Just checking. Go ahead.  
17 BY MR. CHEN:  
18 Q Sir, how long has the Leesburg Outlets been there?  
19 A I believe 12 years.  
20 Q Hagerstown?  
21 A I don't know.  
22 Q How about Queenstown?  
23 A I also don't know.  
24 Q Okay. You also mentioned the neighborhood retail  
25 center.

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1 A I'm sorry, the what retail center?  
2 Q I -- if I, you didn't hear me, it's the  
3 neighborhood retail center, I believe, on Exhibit 45? I  
4 don't have the -- the pages are not numbered  
5 A It would be the north district.  
6 MR. HARRIS: I think you would like him to put up  
7 the north district slide?  
8 BY MR. CHEN:  
9 Q Excuse me. There is a graphic, Mr. Kaplan,  
10 entitled, employment and place making.  
11 A Is this the graphic you're referring to?  
12 Q I believe it is. I apologize. My eyesight is  
13 horrible, but as I look at that, you have little circles for  
14 different areas and one of them says neighborhood retail  
15 center, do you see that, sir?  
16 A Yes, I see two circles that say neighborhood  
17 retail center.  
18 Q Yes, okay, thank you. You're right. How much  
19 retail will be in each of those centers?  
20 A I can't answer that definitively.  
21 Q Excuse me?  
22 A I cannot answer that definitively right now.  
23 Q Can you approximate?  
24 A In what time frame are you inquiring?  
25 A Any time frame.

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1 Q Longer term, I believe, there will be significant  
2 neighborhood retail in these different areas as this plan is  
3 developed over time.  
4 Q Okay. Is, as I understand the master plan, it  
5 calls for retail use, is that correct, sir, in the Cabin  
6 Branch neighborhood?  
7 A Correct.  
8 Q Okay. Is specialty outlet retail a subpart of  
9 retail use?  
10 A I apologize, but I'm not --  
11 MS. ROBESON: If you don't understand, just say  
12 so.  
13 THE WITNESS: I'm, yeah, I'm not sure I understand  
14 your question.  
15 BY MR. CHEN:  
16 Q Okay. You understand that the master plan calls  
17 for retail use, is that correct?  
18 A Yes.  
19 Q Okay. Now is what you refer to as specialty  
20 outlet retail part of retail, the same thing as retail?  
21 A It is a form of retail, yes.  
22 Q Thank you. It's a form of retail. How much  
23 square footage will be in the outlet center?  
24 A The final plans aren't done. We're not yet at  
25 site plan approval, so I could only tell you, but

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1 approximately I'd anticipate 450,000 feet or so.  
2 Q Okay. And what is the total amount of retail  
3 currently under the current master plan for this Cabin  
4 Branch neighborhood?  
5 MR. HARRIS: Excuse me. Can you clarify whether  
6 you mean master plan or the development plan?  
7 MR. CHEN: I apologize, I thought I said master  
8 plan, but I mean the master plan.  
9 THE WITNESS: In my reading of the master plan,  
10 they talk about 120,000 feet of retail to be located west  
11 of, I apologize, I'm not sure, the dividing road or line,  
12 and they encourage a rezoning to MXPDP which would allow an  
13 additional 20 percent of 2.4 million. So I don't know what  
14 that totals, but specifically they summarize all of that in  
15 the chart that has the number 120 if that's what you're  
16 looking for simplistically.  
17 BY MR. CHEN:  
18 Q Yes, that's the chart on page 67 of the master  
19 plan?  
20 A I don't know what page number it's on, but there's  
21 a chart that shows 120,000 feet.  
22 Q Square feet?  
23 A Yes.  
24 Q Okay. Thank you. And --  
25 A To clarify, I don't believe that's what the master

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1 plan -- I don't believe that was a limit on the amount of  
2 retail square footage given the encouragement of the MXPDP's  
3 rezoning, but at the time they wrote it, they didn't have  
4 that rezoning done.  
5 Q Okay. But the chart says 120,000 square feet of  
6 retail?  
7 A Yes, that's a fact.  
8 Q And how about the approved development plan, what  
9 is the amount of retail authorized under the approved  
10 development plan?  
11 A I'm not allowed to look and ask somebody  
12 something, so I apologize, I don't know the answer.  
13 Q Okay. You don't know?  
14 A No.  
15 Q Okay. And under the master plan, where is the  
16 neighborhood retail proposed to be located?  
17 A My understanding is that again, and I really  
18 applaud the foresight that whoever was responsible for this  
19 almost 20 years ago had, the, it was not clear at the time  
20 that this master plan was written that the zoning would  
21 allow any retail. There were two different zones that  
22 existed, zoning designations that existed. And I believe  
23 there was a concern that since those zoning designations  
24 didn't specifically allow retail, that there was a risk  
25 there might not be any retail.

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1 So the, they wanted to make sure that in the  
 2 southern portion of the site on the west site where it was  
 3 even more uncertain whether the zoning allowed any retail to  
 4 happen, that in order to assure that at least some retail  
 5 happened, they specified in that location that there would  
 6 be, there would be retail.  
 7 Q And what was the amount specified at that  
 8 location?  
 9 A That's the table that you were referring to  
 10 earlier.  
 11 Q 120,000 --  
 12 A 120,000 --  
 13 Q -- square feet?  
 14 A -- feet.  
 15 Q Do you know what the approved development plan  
 16 provided for as far as the location of the retail?  
 17 A Not off the top of my head.  
 18 Q Okay. You also stated that -- I've got this in  
 19 quotes, but if I'm mis-quoting you, just let me know.  
 20 A Okay.  
 21 Q The Examiner will let you. You stated, and I  
 22 believe you used the word fact, that not a lot of demand for  
 23 office uses or life science uses exist, is that a fair  
 24 statement for a clear reflection of what you stated, sir?  
 25 A It is and I'd love to clarify it, which is I am

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1 not an expert and I only like to speak to things. If I say  
 2 something definitively, I like to feel like I have some  
 3 expertise to make that statement. So that statement is  
 4 based on me having spoken with folks that know the leasing  
 5 market better than I do and/or our landowners who have been  
 6 trying to rent or lease space and it has been a long slog.  
 7 That doesn't mean there isn't some, that doesn't mean  
 8 somebody may not be able to lease some space. But  
 9 everything that I have read, everything that I have heard,  
 10 even everything I've heard today from some folks is that it  
 11 is a very, very small market today.  
 12 Q Okay. You don't have any studies that have been  
 13 conducted on that point though, have you?  
 14 A I don't personally have any studies, no.  
 15 Q You also, as I recollect your testimony, stated  
 16 and used the word that the proposed amendment would be a,  
 17 quote, catalyst, as I recollect your testimony, for  
 18 development of office uses. Is that an accurate statement  
 19 of your testimony, sir?  
 20 A It's an accurate statement and it's based on  
 21 having seen similar things happen many times across the  
 22 country.  
 23 Q Okay. So your testimony is based upon your  
 24 experience of seeing, according to your testimony, similar  
 25 situations?

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1 A Of having seen it, as well as having, as I've  
 2 mentioned, I've been a bit of a student and a little bit of  
 3 a nerd about mixed use development, so I've read a  
 4 tremendous amount about this and had the pleasure of working  
 5 with some of the foremost experts in it internationally  
 6 actually.  
 7 Q But, again, you don't have any study that has been  
 8 conducted on that point?  
 9 A In my library? Yes, I have studies on that point  
 10 but, no, not that I've submitted to the Zoning Hearing  
 11 Examiner.  
 12 Q Okay. And you also referred to white papers that  
 13 have been prepared, do you recall that testimony?  
 14 A I do.  
 15 Q Have you provided any of those white papers to the  
 16 Examiner?  
 17 A I have not, Mr. Chen. I have tried to focus on  
 18 the specific issue before the Zoning Hearing Examiner rather  
 19 than try to impress anybody with what's been a very  
 20 gratifying and fortunate career to have worked with some of  
 21 the literally foremost experts worldwide in urban planning;  
 22 master planning; having been asked and done significant pro  
 23 bono work for the mayor's office of D.C. on master planning  
 24 both around the southwest waterfront, around the baseball  
 25 stadium; having been selected individually to advise them

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1 and solely negotiate and formulate the master plan for what  
 2 is now the largest development going on in D.C. which is  
 3 called City Center on 10-square, 10 acres downtown; having  
 4 advised the London Olympics on some of the things that they  
 5 have done and the head, the CEO of the Olympic Park Legacy  
 6 Corporation. So I feel very gratified and fortunate in my  
 7 career to have had an opportunity to work with people who  
 8 are far smarter and far more nerdy and have spent their  
 9 lifetime reading white papers. So if that's something that  
 10 the Zoning Hearing Examiner wants, I would have no trouble  
 11 having those submitted.  
 12 Q Assuming the specialty retail outlet goes forward  
 13 and the development plan amendment is approved and you get  
 14 your 450,000 square feet for the premium outlet, how much  
 15 will be left over for the neighborhood retail?  
 16 A In order to answer your question, can I ask you to  
 17 define neighborhood retail for me?  
 18 Q Yes. I'm referring to the neighborhood retail,  
 19 retail quote referred to in the master plan. Remember, you  
 20 pointed out where it was supposed to go?  
 21 A There is neighborhood retail -- I have to repeat  
 22 my question to you. Can I ask you to define for me so that  
 23 I can answer your question how you would define neighborhood  
 24 retail?  
 25 Q Yes. I would use the definition you used in the

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1 employment and place making exhibit. Do you see where, the  
2 two circles that say neighborhood retail center, do you see  
3 that? How do you define that?  
4 A The reason that I'm hesitating is your question  
5 presupposes a relatively simplistic answer that I'm  
6 uncomfortable giving because it's not a math question of  
7 450,000. I believe what you're trying to lead the question  
8 to be is 484,000 feet minus 450,000 feet and what is that  
9 and that would be kind of absurdly and on its face overly  
10 simplistic and would lead to a misleading answer.  
11 The reality is, and here's the real reality, when  
12 you create exciting, walkable community developed  
13 thoughtfully places that have restaurants and retail, and  
14 they're compelling enough to draw people from 10 or 20 or 30  
15 miles away, the people that use them most frequently are the  
16 people in the neighborhood because they have easiest access  
17 to it. Some of them walk to it, some of them bike to it,  
18 and they use those restaurants and they use that retail and  
19 they shop there and they gather there and sometimes they  
20 just gather there and they don't shop there.  
21 So there is within specialty retail elements of it  
22 that are by any definition neighborhood retail and,  
23 therefore, the math is not as simplistic as you're asking it  
24 to be. And I don't want to state something on the record  
25 that I don't believe or feel is misleading. So --

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1 Q You do agree, though, that the master plan does  
2 have a numeric amount for retail, isn't that correct?  
3 A I believe what I've stated. There's a table in  
4 there that is referring to a specific site where they wanted  
5 to assure that despite the zoning designation that existed  
6 at the time, which might have precluded retail, that they  
7 understood the need for retail and they said let's make sure  
8 there's at least this much retail and let's encourage a  
9 rezoning so we can actually get what's necessary to build a  
10 livable community. That's what I believe and I can't state  
11 it more clearly than that.  
12 Q All I'm asking --  
13 A That's what I believe.  
14 Q -- is that the master plan does have a figure, a  
15 number, isn't that correct, sir?  
16 A Yes, we've already designated -- I've already  
17 acknowledged that it has a table in there that says 120,000  
18 square feet.  
19 Q Similarly, doesn't the approved development plan  
20 also have a number?  
21 A I assume that it does. You asked me what that  
22 number was. I said I couldn't tell you.  
23 Q I understand that, but just -- can we agree that  
24 there are these numerical, numeric levels, isn't that right,  
25 sir?

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1 A That's correct.  
2 Q Okay.  
3 A Absolutely.  
4 Q And as I understand the proposal that is before  
5 the Examiner today is to increase the amount to 484,000  
6 square feet, is that right?  
7 MS. ROBESON: Wait, is that in the record?  
8 MR. CHEN: Yes.  
9 MS. ROBESON: It's in this exhibit?  
10 (Discussion off the record.)  
11 MS. ROBESON: Oh, okay, it is.  
12 THE WITNESS: Unless the zero skipped.  
13 MS. ROBESON: Go ahead.  
14 THE WITNESS: It better be.  
15 MS. ROBESON: Just checking. Go ahead.  
16 THE WITNESS: Sorry.  
17 MR. CHEN: Ms. Examiner, actually I wasn't being  
18 intentionally disrespectful earlier about that, but I just  
19 wanted --  
20 MS. ROBESON: I didn't understand. That's good to  
21 know. I didn't understand your objection, but let's not  
22 delay on that. Let's keep going. He's admitted he doesn't  
23 know what the development, exactly what the development plan  
24 says, but the master plan says 120,000 square feet.  
25 THE WITNESS: Correct.

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1 BY MR. CHEN:  
2 Q And the proposal that is before the, consideration  
3 for the recommendation of the Examiner is to increase the  
4 retail to 484,000, is that correct, sir?  
5 A Yes.  
6 Q Okay. Now -- and I'm just trying to get some  
7 clarity because the master plan and the approved development  
8 plan does have numeric numbers or levels. You are showing,  
9 as I understand it, on your exhibit an employment retail  
10 entertainment area which is, I understand, that's where the  
11 outlet, Premium Outlets will be located?  
12 A Correct.  
13 Q Okay. And then you are showing these two other --  
14 is that word node? Is that a proper word?  
15 A That's right.  
16 Q Thank you. You were then showing two nodes for  
17 neighborhood retail center and there are two separate  
18 locations, correct?  
19 A Correct.  
20 Q All I'm trying to get an understanding of, sir, is  
21 after the Premium Outlet is developed, how much retail  
22 square footage will be available for those two nodes of  
23 neighborhood retail centers?  
24 A The one node, as you'll notice, in the  
25 northernmost quadrant overlaps as, frankly, not for ease of

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1 discussion, but for practical good building reasons that  
2 we've been talking about these mix of uses, these areas  
3 overlap --  
4 Q Yes.  
5 A -- so I can't tell you --  
6 Q But that node, as I see it, that node is located  
7 outside the premium retail location that you ferreted out?  
8 A There's property by another entity that has  
9 approved retail already on that site.  
10 Q How much square footage are they approved for?  
11 A I'm not sure.  
12 Q Okay. And how much would be available then to the  
13 neighborhood retail node to the south?  
14 A With the caveat that I believe the answer to that  
15 is 50 to 100,000 square feet is what I think potentially may  
16 ultimately be built there.  
17 Q Okay. I also understand that the amendment does  
18 not propose a grocery store in this Cabin Branch  
19 neighborhood, is that correct?  
20 A There had been a grocery store planned in the,  
21 potentially in the northern quadrant and we have agreed, to  
22 be totally clear on the record, we have agreed we will not  
23 build a grocery store.  
24 Q So the DP, the development plan amendment would  
25 delete that as a use in the Cabin Branch neighborhood?

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1 MR. HARRIS: Objection.  
2 MS. ROBESON: Yes?  
3 MR. HARRIS: I don't believe the development plan  
4 mentions grocery at all.  
5 MS. ROBESON: It doesn't. He's asking you --  
6 MR. HARRIS: He's saying it would delete it. It's  
7 not in here.  
8 MS. ROBESON: Oh, I see.  
9 MR. CHEN: I apologize.  
10 BY MR. CHEN:  
11 Q So that it's not part of the development plan  
12 amendment, is that correct, sir?  
13 A I don't believe the development plan amendment  
14 lists the type of retailers. What I can tell you is we've  
15 made a commitment to the community, we've made a -- it would  
16 be completely inconsistent with everything I just shared  
17 with you today that we believe then that we would do  
18 something that would be harmful to the town center. We want  
19 to be complimentary. Somebody else, not me, but I believe  
20 it was a community member, testified that they had heard Elm  
21 Street specifically say that the one thing that would assure  
22 they didn't get built was if somebody built a grocery store.  
23 So we have committed not to build a supermarket.  
24 Q Okay. Thank you.  
25 MR. CHEN: That's all I have.

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1 MS. ROBESON: I just have one question. I'm  
2 looking at your neighborhood retail and the bullets, the  
3 circle, employment and place making, this here. Is that --  
4 (Discussion off the record.)  
5 MS. ROBESON: That one, yes. Maybe I'm not  
6 reading it right. Is a portion of that neighborhood retail  
7 in the northern portion, is the area on the other side of  
8 121 included in this development plan amendment, the area  
9 north of 121?  
10 MR. HARRIS: No.  
11 THE WITNESS: That's --  
12 MS. ROBESON: No? I just, I'm trying to --  
13 THE WITNESS: You're talking about the area right  
14 here north of 121?  
15 MS. ROBESON: Yeah.  
16 THE WITNESS: That's property owned, I can't say  
17 the official owner. I believe --  
18 MS. ROBESON: All I want to know if whether it's  
19 part of this application.  
20 THE WITNESS: No.  
21 MS. ROBESON: Okay.  
22 MR. KLINE: But it is part of this application.  
23 The development plan amendment covers the entire area zone  
24 MXP. There may not be any changes being made to that, but  
25 it is part of the application because we're amending the

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1 entire development plan. It runs for all the MXP. property.  
2 MS. ROBESON: So, okay. So the area north of 121  
3 is also within the original development plan, but not  
4 specifically part of -- okay. I understand what you're  
5 saying, but I'm going to, I need to get the pieces  
6 together --  
7 MR. KLINE: I understand.  
8 MS. ROBESON: -- for myself. So the area north of  
9 121 was part of the original development plan to your  
10 knowledge or do you not know?  
11 THE WITNESS: I don't feel expert enough to answer  
12 that question.  
13 MS. ROBESON: No, it's fine.  
14 MR. KLINE: Right.  
15 MS. ROBESON: Okay. He doesn't -- you can get to  
16 it for me. I'm just trying to isolate all these parts,  
17 okay?  
18 MR. KLINE: Okay.  
19 MS. ROBESON: All right. You're finished with  
20 your questions?  
21 MR. CHEN: Yes.  
22 MS. ROBESON: Mr. Kline, do you have any questions  
23 on his testimony?  
24 MR. KLINE: No, not, more than I'm going to be  
25 able to accomplish before I faint from not eating.

1 MS. ROBESON: We have to eat? Okay. All right.  
 2 We will take an hour for lunch. We'll be back at, well, 55  
 3 minutes. We'll be back at 2:00. And are there -- before  
 4 everyone leaves, before we go off the record, are there any  
 5 other citizens that need to testify, because I'm willing to  
 6 have Mr. Kline keel over if there are.  
 7 Okay. With that, we'll be back at 2 o'clock.  
 8 (Recess)  
 9 MS. ROBESON: Are the parties ready?  
 10 MR. KLINE: Yes, ma'am.  
 11 MR. RPBERTS: Yes.  
 12 MS. ROBESON: Okay. Let's talk -- we were going  
 13 to talk about the date of another hearing. Have you all had  
 14 the chance to confer?  
 15 MR. KLINE: Mr. Chen and I have had a chance to  
 16 confer. We have not had a chance to talk to Mr. Harris who  
 17 is not present when we returned.  
 18 MS. ROBESON: Right. I understand he's had a  
 19 personal emergency.  
 20 MR. ROBINS: Should I identify myself?  
 21 MS. ROBESON: Yes, please.  
 22 MR. ROBINS: Okay. For the record, Steven Robins  
 23 with the law firm of Lerch, Early & Brewer. I'm sitting in  
 24 for Mr. Harris at this moment who had to leave on an  
 25 unexpected personal emergency.

1 MS. ROBESON: Okay. Have -- are you able to  
 2 commit to dates or not?  
 3 MR. ROBINS: I think I'm able to commit as best as  
 4 I can to dates that we can come up with. I know that before  
 5 Mr. Harris -- actually I received a quick voicemail just  
 6 saying please pick out dates as soon as possible that are,  
 7 that everyone agrees to.  
 8 MS. ROBESON: Okay. So with that instruction, we  
 9 can pick out dates. Did you --  
 10 MR. ROBINS: And he was good with all the dates  
 11 that you, that you gave.  
 12 MS. ROBESON: Okay.  
 13 MR. ROBINS: That's my understanding.  
 14 MS. ROBESON: Mr. Kline and Mr. Chen?  
 15 MR. KLINE: If I can go first?  
 16 MS. ROBESON: Yes.  
 17 MR. KLINE: On my calendar on -- you gave us the  
 18 16th of August?  
 19 MS. ROBESON: Yes.  
 20 MR. KLINE: I will be in Canada at that time. I  
 21 will not be available on that date. I am available for 26,  
 22 27 and 28th.  
 23 MS. ROBESON: Okay. Mr. Chen.  
 24 MR. CHEN: I'm available on the 16th.  
 25 MS. ROBESON: And what about the 26th?

1 MR. CHEN: I'm in depositions every day,  
 2 previously scheduled. It's a case. Quite bluntly, I've  
 3 been taking, I've been in depositions for the better part of  
 4 last month, so it's a pretty big case and, in fact, on the  
 5 one day, the 29th, I've got two depositions. But these have  
 6 been previously scheduled.  
 7 MS. ROBESON: How about September?  
 8 MR. CHEN: I've got depositions in September, but  
 9 I've got more time in September than August because, yes, I  
 10 do have depositions, it's just what day are we talking  
 11 about?  
 12 MS. ROBESON: Well, let me do this.  
 13 MR. ROBINS: Is it possible to do half day, even  
 14 if it's a half day during these August dates?  
 15 MS. ROBESON: Well, before you go there --  
 16 MR. ROBINS: Okay.  
 17 MS. ROBESON: -- let's, if we can, I'd like --  
 18 there may be some more August dates depending on if the  
 19 Council hearing room is available, all right? I'd like to  
 20 get this done in August. So if you don't mind waiting  
 21 for -- we're going to go off the record and I'm going to  
 22 call upstairs --  
 23 MR. CHEN: Okay.  
 24 MS. ROBESON: -- and see if we can get one of the  
 25 other hearing rooms.

1 MR. ROBINS: That would be fine.  
 2 (Discussion off the record.)  
 3 MR. ROBINS: Do you have dates that you want to  
 4 give me so --  
 5 MS. ROBESON: I don't have -- I have to call  
 6 upstairs before I know what dates I can have for the 7th  
 7 floor. The other option is sometimes we can get the first  
 8 floor auditorium.  
 9 MR. ROBINS: Yes. And counsel is on recess for  
 10 the whole month of August, so hopefully that will work.  
 11 MS. ROBESON: Well, that's what I was hoping. So  
 12 let me go back and see if I can't figure that out. And are  
 13 you gone, Mr. Kline, are you gone the whole week of the  
 14 13th, the 12th, or the 11th through the --  
 15 MR. KLINE: No, I --  
 16 MS. ROBESON: -- 16th?  
 17 MR. KLINE: No, I'll be departing on the 15th,  
 18 returning on the 26th. So I am available on the 12th or  
 19 13th or 14th.  
 20 MR. CHEN: I have a huge deposition that is  
 21 probably going to go at a minimum of a whole day on the  
 22 13th.  
 23 MS. ROBESON: How about the 12th? Oh, wait, I  
 24 won't be here the 12th. That week is out for me actually.  
 25 I'm out until the -- oh, no, I'm back on the 12th. So the

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1 12th is a possibility.  
2 MR. CHEN: I'm back on the 12th also. I could do  
3 a half day on the 12th.  
4 MS. ROBESON: Well, do you -- and then, I'm sorry,  
5 Jody, what dates were you not available?  
6 MR. KLINE: I'm not available from the 15th  
7 through, until the, through the 25th. So the last week of  
8 August and the first three days of the week beginning August  
9 12th I'm available.  
10 MS. ROBESON: And, Mr. Chen, why don't you give me  
11 the days in August that you do have?  
12 MR. CHEN: I'm clear on the 14th.  
13 MS. ROBESON: Okay. That's a possibility then?  
14 MR. ROBINS: Yes. Yes, ma'am. Yes, Your Honor.  
15 Yes, Madam Examiner.  
16 MS. ROBESON: Whatever you want to call me is  
17 fine.  
18 MR. ROBINS: Thank you.  
19 MS. ROBESON: Well --  
20 MR. ROBINS: I understand. Do you want me -- I'm  
21 good the 14th.  
22 MS. ROBESON: Okay. Any other -- okay then. Jody  
23 is gone. So are you good at all the week of the 26th?  
24 MR. CHEN: Every day I'm in depositions, literally  
25 every day. I could probably, you know, suggest to counsel

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1 half days. We could do, well, right now we have the 12th  
2 and the 14th, right?  
3 MR. ROBINS: Right.  
4 MS. ROBESON: Then let's pick the earliest  
5 September date.  
6 MR. CHEN: I can do a half day on the 12th is what  
7 I was saying.  
8 MR. ROBINS: And I would say even if it's a half  
9 day --  
10 MR. CHEN: Yes.  
11 MR. ROBINS: -- let's take it if we could.  
12 MS. ROBESON: But morning or --  
13 MR. CHEN: Pardon me.  
14 MS. ROBESON: That's okay.  
15 MR. CHEN: My client, Mr. Cobb, just told me his  
16 son is in surgery on the 12th. He cannot be here.  
17 MS. ROBESON: Okay. So we have the 14th. How  
18 about Tuesday, September 3rd?  
19 MR. CHEN: I have a deposition.  
20 MS. ROBESON: Okay, Mr. Chen.  
21 MR. CHEN: I'm in -- I, this is a huge case.  
22 MR. KLINE: Tell them what it is. They maybe  
23 know.  
24 MR. CHEN: It's been in the press. It's a lawsuit  
25 involving the Fraternal Order of Police in Montgomery County

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1 and their campaign activities during 2012 general election.  
2 And I mean we've been going hot and heavy for over two weeks  
3 now and --  
4 MS. ROBESON: I know. I understand. The problem  
5 is I don't want to delay this case because they've been  
6 going on for quite awhile. Let me do this. Let me --  
7 MR. CHEN: I'm good the rest of that week, by the  
8 way. The 4th -- I apologize to interrupt, Madam.  
9 MS. ROBESON: You mean the 4th?  
10 MR. CHEN: 5th and 6th I'm good.  
11 MS. ROBESON: Jody, how are you?  
12 MR. KLINE: We're good. Are those --  
13 (Discussion off the record.)  
14 MR. KLINE: Those dates are open for me.  
15 MR. CHEN: Madam Examiner --  
16 MS. ROBESON: Yes?  
17 MR. CHEN: -- the following week --  
18 MS. ROBESON: Yes?  
19 MR. CHEN: -- I'm clear Wednesday through Friday.  
20 MS. ROBESON: Are you clear Friday?  
21 MR. CHEN: Which day?  
22 MS. ROBESON: The 6th? Oh, that's Rosh Hashanah.  
23 (Discussion off the record.)  
24 MR. CHEN: No, Friday the 6th is not Rosh  
25 Hashanah.

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1 (Discussion off the record.)  
2 MR. CHEN: Rosh Hashanah is on Wednesday, the 4th.  
3 MS. ROBESON: Okay.  
4 MR. CHEN: I'm good, I'm good Friday the 6th.  
5 MS. ROBESON: Jody, how are you Friday the 6th?  
6 MR. KLINE: That is open, Ms. Robeson.  
7 MS. ROBESON: Steve?  
8 MR. ROBINS: What -- I'm a little confused from  
9 the date.  
10 MS. ROBESON: Friday the 6th?  
11 MR. ROBINS: Friday the 6th?  
12 MS. ROBESON: Right now I've got Wednesday the  
13 4th. Jody, how are you on Wednesday?  
14 MR. KLINE: I am open on that day also, yes.  
15 MS. ROBESON: Okay. Wednesday the 4th, or yes,  
16 Wednesday the 4th, Friday the 6th and, Steve, how are you on  
17 those days?  
18 MR. ROBINS: I mean that's fine. It's really  
19 Bob's schedule that I need to check with and I'll make sure  
20 that he's good. But also the August 14th we're not giving  
21 up, are we?  
22 MS. ROBESON: No. I'm looking for the second day.  
23 MR. ROBINS: Right.  
24 MS. ROBESON: So let me do this. Let me go make  
25 sure that I can find a room for August 14th, because the

1 Board will be in here, the Board of Appeals. So let me go  
 2 make sure I can -- yes, sir?  
 3 MR. CHEN: I apologize. Mr. Cobb told me that on  
 4 the 4th another family member is in the hospital on the 4th.  
 5 MS. ROBESON: Well, you know, at some point does  
 6 he -- we're not even -- I'm going to keep the 4th open. If  
 7 I can avoid it, I will, but I'm going to keep it open until  
 8 I see room availability, all right? If I can do it the 5th  
 9 and, or the 6th instead of the 4th, I'm fine, but I'm  
 10 keeping it on the table.  
 11 MR. CHEN: Didn't we also have an August date?  
 12 MR. ROBINS: August 14th.  
 13 MS. ROBESON: August 14th.  
 14 MR. CHEN: Madam Examiner --  
 15 MS. ROBESON: Yes?  
 16 MR. CHEN: -- if you're looking at Wednesdays, I'm  
 17 clear Wednesday the 21st, August 21st. Oh, that's right,  
 18 I'm sorry, you're -- okay.  
 19 MS. ROBESON: He's in Canada. How about the 28th?  
 20 (Discussion off the record.)  
 21 MR. CHEN: I'm in depositions on the 28th.  
 22 MS. ROBESON: Okay. So right now I have got  
 23 August 14th, we'll try for Friday, September 6. I'm going  
 24 to keep September 4th on the table until I can find room  
 25 availability. So with that, let me go check with the powers

1 that be --  
 2 MR. ROBINS: Was there a possibility of -- I can't  
 3 remember where we flushed out on August the 12th for half a  
 4 day.  
 5 MS. ROBESON: Mr. Cobb had family in surgery.  
 6 MR. CHEN: Son is in the hospital.  
 7 MR. ROBINS: Oh.  
 8 MS. ROBESON: So with that, I'm going to go off  
 9 the record and see if I can find a room somewhere. Well,  
 10 before I do that, let me just get one more back-up date on  
 11 the week following --  
 12 MR. CHEN: The 6th?  
 13 MS. ROBESON: Yes.  
 14 MR. CHEN: I'm good Wednesday the 11th, Thursday  
 15 the 12th and Friday the 13th.  
 16 MS. ROBESON: I can't do -- I have another case  
 17 Friday the 13th.  
 18 MR. CHEN: How about the 11th and the 12th?  
 19 MS. ROBESON: The 11th and the 12th. Mr. Kline?  
 20 MR. KLINE: Those are both open on my -- or I can  
 21 move things around.  
 22 MR. ROBINS: I can't remember, what did you say  
 23 about the week of August 5th there? Are you gone that week?  
 24 MS. ROBESON: Yes.  
 25 MR. ROBINS: Okay.

1 MS. ROBESON: And the week of -- I've got  
 2 September 11th and 12th as possibilities.  
 3 MR. ROBINS: The September 11th, I think, would be  
 4 okay. September 12th is a date that Mr. Unterberg has  
 5 another case at the Planning Board. I do too, but I'm not  
 6 as important here as he is.  
 7 MS. ROBESON: Okay.  
 8 MR. ROBINS: So I think the 12th will be, will be  
 9 tough because we don't even know what the Planning Board's  
 10 schedule is right now. September 11th would work.  
 11 MS. ROBESON: Okay. I think that's enough. So I  
 12 just need to, really all I have to do today is get, check on  
 13 August 14th to make sure I can get a room.  
 14 MR. ROBINS: That would be great if we could get a  
 15 room.  
 16 MS. ROBESON: And then we can firm up the second  
 17 day. If I can firm it all up today, that's good, okay? All  
 18 right.  
 19 MR. CHEN: Are the dates, again, you're working  
 20 with is August 14th, September 4, September 11 and possibly  
 21 September 6, or --  
 22 MS. ROBESON: No, September 6th, before September  
 23 4th --  
 24 MR. CHEN: Oh, yes, you're right.  
 25 MS. ROBESON: -- because I thought that --

1 MR. CHEN: Yes, ma'am.  
 2 MS. ROBESON: Okay.  
 3 (Discussion off the record.)  
 4 MS. ROBESON: Wait. Oh, you, we have a very  
 5 efficient staff.  
 6 MR. ROBINS: Well, she's listening.  
 7 MS. ROBESON: -- who has already booked the 7th  
 8 floor for August 14th.  
 9 MR. ROBINS: Great. Good.  
 10 MS. ROBESON: So, Sarah, I was going to have her  
 11 check the other date. Let me go off the record for 5  
 12 minutes and then we'll come back on and we'll just announce  
 13 the dates, all right?  
 14 MR. ROBINS: Thank you very much.  
 15 (Recess)  
 16 MS. ROBESON: Record. Are we -- okay.  
 17 MR. ROBINS: We talked amongst ourselves while you  
 18 were out of the --  
 19 MS. ROBESON: Yes?  
 20 MR. ROBINS: -- out of the chambers and if we  
 21 could also see on August 12th, that half day, if we could do  
 22 it in the morning, that would work.  
 23 MS. ROBESON: Okay. I don't -- let me do this. I  
 24 have the 7th floor reserved. Oh, the 12th?  
 25 MR. ROBINS: Yes, so the 14th is good. The --

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1 MS. ROBESON: Okay. I just have to make sure we  
2 have a hearing room --  
3 MR. ROBINS: Okay.  
4 MS. ROBESON: -- because --  
5 MR. ROBINS: Sarah is probably listening and we'll  
6 probably hear in one second.  
7 MS. ROBESON: She is good. Let me just see what  
8 our schedule says. I'm sorry, that was August 12th?  
9 MR. ROBINS: August the 12th in the morning and  
10 then the 14th all day.  
11 MS. ROBESON: All right. Thank you. Okay. We  
12 can do the morning of the 12th in this room. So what I have  
13 is the morning of Monday, August 12th -- when is your  
14 deposition, Mr. Chen?  
15 MR. CHEN: My deposition is all day on Tuesday.  
16 My, it was the client that had the issue on the 12th.  
17 MS. ROBESON: Oh, okay. That's right.  
18 MR. CHEN: And he's agreed to forgo the morning.  
19 MS. ROBESON: Okay. So what we can do is the  
20 morning of August 12th and a full day on August 14th. And  
21 then I am going to ask people just in case because, as I  
22 said, we sort of got a monster case going on that's usurping  
23 all the hearing dates. So what I'd like to do, I have the  
24 7th floor on Friday, September 6th --  
25 MR. ROBINS: Okay.

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1 MS. ROBESON: -- because the Council doesn't come  
2 back from recess until the 9th. So I'd like the parties to  
3 reserve that date as well and that will be at 9:30. And  
4 that -- so --  
5 MR. CHEN: That would be all day too?  
6 MS. ROBESON: What?  
7 MR. CHEN: That would be all day too?  
8 MR. ROBINS: Assuming that we finish?  
9 MS. ROBESON: Yes. So I'm going to -- okay. So  
10 we have those three dates. Now, Mr. Kline --  
11 MR. KLINE: Yes, ma'am.  
12 MS. ROBESON: -- how long is it going to take you  
13 to get an expert, because what I'd like --  
14 MR. KLINE: Sure.  
15 MS. ROBESON: -- Mr. Harris's, to give him the  
16 full 10 days.  
17 MR. KLINE: Oh, yes, sure.  
18 MS. ROBESON: Are you going to make the 12th? Can  
19 you make the 12th is my question?  
20 MR. KLINE: Good point. Good point. That  
21 probably would be difficult to get the person lined up and  
22 have it in timely so somebody could prepare. But if it's  
23 only half day, I don't believe the applicant is going to be  
24 finished.  
25 MS. ROBESON: Right. How about the 14th?

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1 MR. KLINE: The 14th, I, yes. I'll make it work.  
2 MS. ROBESON: Okay. Well, wait a minute. You  
3 have to submit your statement --  
4 MR. KLINE: Right, 10 days in advance.  
5 MS. ROBESON: Right. Okay. And that way the 6th  
6 will be good. Then we may have to go to the 6th to give him  
7 the benefit of the full 10 days.  
8 MR. KLINE: I will use my best efforts to have  
9 somebody lined up and submit whatever I can early enough so  
10 Mr. Harris could be adequately prepared for the 14th.  
11 MS. ROBESON: Okay. Thank you.  
12 MR. KLINE: I'll do my best.  
13 MR. ROBINS: I appreciate that.  
14 MS. ROBESON: Okay. Thank you. All right. With  
15 that, is there anything else before -- I'm going to continue  
16 this case to Monday, August 12th at 9:30. Does anyone --  
17 I'm going to, I don't have to announce the other dates yet,  
18 so is there anything else anybody wants to say? Yes, Mr.  
19 Robins?  
20 MR. ROBINS: I mean just I would like to just  
21 point out I do want to run these dates, obviously, by Mr.  
22 Harris and I will get in touch with -- assuming it's Mr.  
23 Harris can't get in touch with Mr. Kline and Mr. Chen  
24 immediately, I will take the responsibility to get in touch  
25 with them to --

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1 MS. ROBESON: Okay.  
2 MR. ROBINS: And, obviously, with you too to make  
3 sure that these dates --  
4 MS. ROBESON: The only problem is I have to  
5 announce the date on the record today or --  
6 MR. ROBINS: Right.  
7 MS. ROBESON: -- you will have to re-advertise.  
8 MR. ROBINS: Okay.  
9 MS. ROBESON: So if you don't feel comfortable --  
10 MR. ROBINS: Can we go off the record for five  
11 minutes?  
12 MS. ROBESON: And confer?  
13 MR. ROBINS: I just, well, I don't need to confer  
14 with anyone.  
15 MS. ROBESON: Yes.  
16 MR. ROBINS: I just need to make a phone call.  
17 MS. ROBESON: Call him? Sure.  
18 MR. ROBINS: Okay.  
19 MS. ROBESON: We're off the record.  
20 (Recess)  
21 MS. ROBESON: Well, let's -- can we go --  
22 (Discussion off the record.)  
23 MS. ROBESON: We're back on the record. Thank  
24 you. I also got a cancellation just as I walked back in  
25 there of, no, it's September 13th. So that date is

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1 available too.  
2 MR. CHEN: Actually --  
3 MS. ROBESON: What?  
4 MR. CHEN: That's Yom Kippur.  
5 (Discussion off the record.)  
6 MR. ROBINS: We can --  
7 (Discussion off the record.)  
8 MR. ROBINS: We could check -- are we on the  
9 record?  
10 MS. ROBESON: Well, we don't -- yes.  
11 MR. ROBINS: Okay. We can check that date.  
12 MS. ROBESON: Yes. I don't have to set that  
13 today, I just need the next date.  
14 MR. ROBINS: I had one -- I checked with, I tried  
15 to check schedules --  
16 MS. ROBESON: Yes, I know.  
17 MR. ROBINS: -- as best I could. And I think  
18 let's go with the 12th and the 14th. Can you announce both  
19 dates so that if the 12th, for example, is a problem, that  
20 we have the 14th without re-advertising? I mean I think  
21 that would work if we say --  
22 MS. ROBESON: Well, the question is -- I mean if  
23 worst comes to worst, I can convene it and continue to the  
24 14th --  
25 MR. ROBINS: Right.

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1 MS. ROBESON: -- that's just --  
2 MR. ROBINS: That's true.  
3 MS. ROBESON: -- that's just expensive for us to  
4 call in a court reporter just to, you know, convene a case.  
5 MR. ROBINS: Right.  
6 MS. ROBESON: But I can do that.  
7 MR. ROBINS: I've had that done before too, so --  
8 MS. ROBESON: You know, I can do that. So --  
9 MR. ROBINS: Okay. So we'll --  
10 MS. ROBESON: We'll continue to August 12th,  
11 Monday, August 12th at 9:30.  
12 MR. CHEN: Half a day?  
13 MS. ROBESON: Yes. I don't need to announce the  
14 end, I just need to announce the beginning, so that's all  
15 I'm doing. But, yes, contemplated a half day and then we  
16 have in reserve August, Wednesday, August 14th at 9:30;  
17 Friday, September 6th. Now Monday I will do -- I forgot to  
18 do this. Monday the 12th will be in this room.  
19 MR. ROBINS: Okay.  
20 MS. ROBESON: In the second floor. And then we,  
21 so we have also Friday, September 6th in reserve.  
22 MR. ROBINS: So the 6th is reserved and you want  
23 us to check on -- and then the 13th is a back-up possibly?  
24 MS. ROBESON: Well, we haven't checked on it, but  
25 I would prefer if you could coordinate and --

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1 MR. ROBINS: Okay. We'll coordinate.  
2 MS. ROBESON: -- Mr. Kline, you will try to get  
3 something in time for the 14th?  
4 MR. KLINE: Yes, ma'am.  
5 MS. ROBESON: Okay. All right. That being said,  
6 this case is continued. Thank you very much.  
7 MR. ROBINS: Thank you.  
8 (Whereupon, at 2:30 p.m., the hearing was  
9 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:  
**Petition of Adventist Healthcare and  
Cabin Branch Commons  
DPA 13-02**

By: \_\_\_\_\_  
Tracy Hahn, Transcriber

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