

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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APPLICATION OF :
ADVENTIST HEALTHCARE, INC., : Case No. DPA 13-02
and CABIN BRANCH COMMONS, LLC. :
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A hearing in the above-entitled matter was held on August 12, 2013, commencing at 9:36 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Second Floor Hearing Room, Rockville, Maryland 20850 before:

Lynn A. Robeson

Hearing Examiner

A P P E A R A N C E S

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P R O C E E D I N G S

1 MS. ROBESON: This is a public hearing in the
2 application of Adventist Healthcare, Inc. and Cabin Branch
3 Commons, Inc., requesting an amendment to the development
4 plan approved by the District Council in LMA G-806,
5 requesting an amendment to -- I'll get there. I'm having a
6 hard time here.

7 Request an amendment to increase the amount of
8 retail space from 120,000 square feet to 484,000 square
9 feet, and to decrease the amount of office space from 2.3
10 million square feet to 1.935 million square feet on property
11 consisting of 283.5 acres east of Clarksburg Road, west of
12 I-270, and north of West Old Baltimore Road in Clarksburg,
13 Maryland.

14 Mr. Harris, I don't think I need to explain that
15 we're all very sorry for your loss.

16 MR. HARRIS: Thank you.

17 MS. ROBESON: Now, are there any preliminary
18 matters? Seeing none, I think, well, Mr. Kline, did you
19 obtain an expert? Did you retain an expert, I mean?

20 MR. KLINE: I have not, as of this point in time.
21 I was probably a little overly optimistic, forgetting I was
22 going to be out of town. And when I wasn't out of town,
23 other people were. I will have an answer by the 14th, which
24 is the date you -- the 12th, I'm sorry, the date you asked
25

Gary Unterberg, Senior Vice President, Rodgers Consulting
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C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Ron Kaplan				
By Mr. Kline:		11		38
By Mr. Harris:				37
Leonard Bogorad				
By Mr. Harris:	39	(Reserved)		
Christopher Turnbull				
By Mr. Harris:	61			76
By Mr. Kline:			68	
Gary Unterberg				
By Mr. Harris:	77			

E X H I B I T S

Exhibit No.	Marked/Received
1-54	Premarked Exhibits
55	Highlighted Exhibit No. 21 14
56	Resume of L. Bogorad 56
57	Resume of C. Turnbull 61
58	Resume of G. Unterberg 78
59	Amended Development Plan 7/29/13 81

1 for it.

2 MS. ROBESON: Okay. All right.

3 MR. HARRIS: Ms. Robeson, obviously, I was not
4 here when the discussion went on but I did read the
5 transcript, and my understanding was that Mr. Kline was to
6 have designated that person by 10 days before today, which
7 would have been, well 10 days before today, when we resume.

8 Frankly, I think the rules required him to do it
9 10 days before we convened the hearing on July 29. So 10
10 days before today would be a substantial accommodation, and
11 yet, we don't have it here today. I'm puzzled by that, and
12 I think that's inappropriate.

13 MS. ROBESON: I think what we had said was that --
14 okay. I apologize. I got back, I have not read this yet.

15 MR. KLINE: Maybe I'm the one who should be
16 apologizing, but I thought I had to have a name before the
17 12th per the understanding that we would be going into
18 September and there would be an adequate amount of time --

19 MS. ROBESON: Well, you need to have your expert
20 designated 10 days before a hearing. Now, I am assuming
21 that we are going to have more hearings than the 14th. And
22 we picked reserve dates. But you do need to provide notice.
23 I don't want to extend an additional hearing date at all.

24 MR. KLINE: I'm saying, that's what I said. I
25 will have an answer for you by Wednesday. I will tell you

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1 on Wednesday.

2 MS. ROBESON: I think I do agree with Mr. Harris.

3 I think the, what we had requested you to do is to designate

4 by the 14th.

5 MR. HARRIS: Ma'am, the transcript at page 168

6 says, talking about the 10 days, Mr. Kline says, "I will use

7 my best efforts to have somebody lined up and submit

8 whatever I can early enough so Mr. Harris could be

9 adequately prepared for the 14th." That means 10 days

10 before the 14th, not the 14th.

11 MS. ROBESON: Right. That's correct.

12 MR. HARRIS: And so that means the 4th.

13 MR. ROBINS: Can I chime in for one second. Steve

14 Robbins, also with Lerch Early and Brewer. When we had this

15 discussion, what the transcript specifically says is that we

16 would have a designation so that Mr. Kline could use his

17 expert on August 14th. And you said, we need to have your

18 prehearing 10 days before that, which would have been August

19 4th, which was a Sunday, so it was really August 5th, that

20 that expert had to be designated by.

21 I checked with your office on multiple occasions,

22 and no expert was ever designated. So it was our

23 understanding that there would not be an expert.

24 MS. ROBESON: Mr. Kline.

25 MR. KLINE: And my understanding, and maybe

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1 mistakenly, now that you've read the transcript was, I

2 wasn't going to be calling a witness on the 12th or on the

3 14th. That was for sure. So what I meant to say was, as

4 long as I gave them more than enough time to put on

5 testimony to address anything that would come up, they would

6 not be prejudiced. So I thought I was supposed to give you

7 a name on the 14th, knowing that that person wouldn't be

8 called until September.

9 MS. ROBESON: Well, we don't know that. We can be

10 optimistic. Mr. Chen, do you want to weigh in on this?

11 MR. CHEN: My only experience has been that as

12 long as it's 10 days before a hearing, that satisfies the

13 requirements of the rules.

14 MS. ROBESON: And that is how we've handled it.

15 So what I'm going to do, I do not want to delay a hearing.

16 So we will see after today, I think we'll have a better idea

17 after today whether we're going to use the September date.

18 I think it was September -- so I'm going to defer. I had

19 one reserved date, I thought, on the 4th. And one on the

20 6th. And I apologize. I just got back from Cape Cod.

21 Well, it was sort of a vacation. I was burying my parents.

22 MR. KLINE: You and the president. We understand.

23 MR. HARRIS: Ms. Robeson, not to belabor this, but

24 I go to page 167, even before that, and talking about when

25 he might have his witness. And it says, you say, right, how

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1 about the 14th? The 14th. Yes. I'll make that work.

2 MS. ROBESON: Okay.

3 MR. HARRIS: Which is for his expert witness. I

4 just, I'm --

5 MS. ROBESON: I understand. It's not, but it has

6 been our policy as long as the person gets it in 10 days. I

7 don't want to belabor the hearing on this. It has been our

8 policy as long as he can get the witness or the designation

9 in 10 days before the hearing that, you know, we will let

10 him do that.

11 Now, I'm not, what I'm not going to do, if we have

12 a September 4th or a September 6th hearing, I'm not, if you

13 don't have one by then, I am not going to delay it again.

14 Okay. So with that, and you're correct, Mr. Harris. That

15 is what was attested to. But as I said, our policy has

16 been, if you can get it in 10 days before a hearing. But

17 I'm not going to delay the next hearing if you don't have

18 the witness in with 10 days before the hearing.

19 MR. ROBINS: Unless we finish on the 14th.

20 MS. ROBESON: Unless we finish on the 14th.

21 MR. ROBINS: If we finish on the 14th, Mr. Kline's

22 position always has been --

23 MS. ROBESON: I understand.

24 MR. ROBINS: -- if we finish and he doesn't have

25 an expert, he doesn't have an expert.

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1 MS. ROBESON: I understand. Right. That's fine.

2 MR. HARRIS: And the final word I'll have on this

3 is that I would hope that no one at this table would engage

4 in any dilatory tactics then to extend it beyond the 14th

5 for the simple purpose of doing that.

6 MS. ROBESON: I was already with you.

7 MR. HARRIS: Yes. Okay.

8 MS. ROBESON: And I was already anticipating

9 riding herd. So that I understand our point.

10 MR. HARRIS: Thank you.

11 MR. CHEN: Madam?

12 MS. ROBESON: Yes, Mr. Chen.

13 MR. CHEN: Just looking at my notes, you had, by

14 my notes, that the transcript may not bear me out, but I

15 have on my notes that you had September 6th, Friday, as a

16 definite hearing date, and that September 4th was on the

17 table. I think that was your expression, that it was on the

18 table.

19 MS. ROBESON: That's my recollection also. And I

20 know you're in a major litigation, so --

21 MR. CHEN: These dates are fine. We went through

22 the dates --

23 MS. ROBESON: Okay. All right.

24 MR. CHEN: -- that you've got, we are fine.

25 MS. ROBESON: All right. You may want to double

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1 check. I'd like to get, if we can, you're correct. We had
2 the 6th firm. The 4th was tentative. If we can set the
3 4th, you know, if you want to check during the day today, if
4 we can use the 4th, I think that would be helpful. Okay.
5 All right. With that, Mr. Harris, you're up.
6 MR. HARRIS: I believe it's continued cross-
7 examination of Mr. Kaplan.
8 MS. ROBESON: Yes.
9 MR. KLINE: Remember, I was going to faint.
10 MS. ROBESON: That's correct.
11 MR. HARRIS: I'll cross-examine him if Mr. Kline
12 wants me to.
13 MS. ROBESON: Okay. Fine. Okay. Mr. Kline.
14 MR. KLINE: Sure. Could I ask if the applicant's
15 technical experts could restore the Cabin Branch mixed use
16 center exhibit. Mr. Harris, we changed the slides
17 somewhere.
18 MR. HARRIS: Which slide would you like?
19 MR. KLINE: Well, actually, I wanted, I know that
20 you marked it. Don't you have an overall site plan as well
21 of Cabin Branch?
22 MS. ROBESON: Now, this is in the hard copy of the
23 slides?
24 MR. KLINE: This is Exhibit No. 45. It was put in
25 the record.

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1 MS. ROBESON: Okay. Fine.
2 MR. KLINE: And then that was supplemented with a
3 single addition page later on.
4 MS. ROBESON: Right. Okay. Could I please have
5 the North District slide?
6 CROSS-EXAMINATION (Resumed)
7 BY MR. KLINE:
8 Q Mr. Kaplan, without trying to go back over some of
9 the questions I know that you testified about and that Mr.
10 Chen asked you, I just want to try and understand how this
11 all works. The red fingers, for lack of a better
12 description, that are arced around in the northern part of
13 the property, that represents the retail outlet center?
14 A These fingers?
15 MS. ROBESON: Okay, when you say these --
16 THE WITNESS: I'm sorry.
17 MS. ROBESON: -- you're pointing to the reddish --
18 MR. ROBINS: You have to describe where you are
19 pointing.
20 MS. ROBESON: -- the solid buildings, like
21 fingers?
22 BY MR. KLINE:
23 Q I'm counting, and red is the right way to look at
24 them. It kind of looks like six different builds or arcs
25 around that you described as pedestrian walkways?

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1 A Yeah, I believe. I believe there are eight
2 including these. And yes, that's the primary --
3 MS. ROBESON: Okay. You're saying there's eight
4 including the two pads across, or whatever they are, the red
5 pads across whatever road that is?
6 THE WITNESS: Correct.
7 MS. ROBESON: What road is that? Well, if you
8 don't remember --
9 THE WITNESS: Yeah.
10 MS. ROBESON: -- they are to the southwest of the
11 larger arcs. How is that? Okay. Go ahead.
12 THE WITNESS: Yes.
13 BY MR. KLINE:
14 Q Well, then that, I guess, would lead me into this
15 question then. So are the -- you have basically on a table
16 in the upper right hand corner which says, retail 430,000
17 square feet. Above that you have, restaurant/food of 30,000
18 square feet. The two pad sites to the lower left of the
19 core, if I may use that term --
20 MS. ROBESON: The southwest.
21 BY MR. KLINE:
22 Q -- southwest of that center are pad sites for
23 restaurants? That's a question. I'm sorry.
24 A Our final site plan is not complete, so this is --
25 Q I understand.

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1 A -- just not a site plan.
2 Q Is this a vision of how you would like it to work?
3 Those are probably pad sites for restaurants?
4 A Restaurants and possibly other retail. It's not
5 finalized yet.
6 Q Okay. Retail that would be classified as fashion
7 retail?
8 A In all honesty, I can't say. We don't know yet.
9 Q What I'm going to do, Mr. Kaplan, is, this is a
10 copy of the applicant's justification statement, which is an
11 exhibit in the record.
12 MR. ROBINS: 20?
13 BY MR. KLINE:
14 Q Thank you. Yes, Exhibit No. 20 on which I've
15 taken the liberty of highlighting some comments, just and
16 you'll see there's multiple pages that are highlighted.
17 MS. ROBESON: Now is this your highlighting?
18 MR. KLINE: Yes, ma'am. Because those are the
19 questions I want to ask him.
20 MS. ROBESON: I'm going to enter this as a
21 separate exhibit, and that way if I have to refer to the
22 highlighted areas for some reason, I will, I can refer to a
23 new exhibit. So this will -- unless anyone has an
24 objection? 55 will be highlighted version of Exhibit, what
25 exhibit is it?

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1 THE WITNESS: 21.
2 MS. ROBESON: Okay. Go ahead.
3 (Exhibit No. 55 was marked for
4 identification.)
5 BY MR. KLINE:
6 Q Mr. Kaplan, in the second paragraph, about the
7 middle of the second paragraph, probably about seven lines
8 down, there's a sentence reading, "The central square at the
9 food court will serve as the neighborhood square and will be
10 easily accessible by area residents." So looking at the
11 north district slide that we're looking at on our right hand
12 side, explain to me where the food court is?
13 A Again, with the caveat that this plan is early and
14 not a final site plan, okay, red dots don't help. So at the
15 southernmost part of the northern district with the red
16 fingers that we were describing, there is a number of
17 squares. One is at the very far south. And it's possible
18 that the food court will kind of be organized around that.
19 So that's what this --
20 Q You're reserving the location where the food court
21 would go?
22 A Again, I want to be really clear --
23 MS. ROBESON: I understand.
24 THE WITNESS: -- not definitively, but yes.
25 MR. KLINE: Yes.

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1 MS. ROBESON: You're being clear that it's not a
2 final plan.
3 BY MR. KLINE:
4 Q I'm not trying to trick you here.
5 A Yes. Okay.
6 Q I'm just trying to get a sense of where --
7 A I'm just trying to be really, just trying to be
8 really honest. Yeah, the goal is, I guess, as importantly
9 what this is trying to say is --
10 MS. ROBESON: When you say square, you mean the
11 green area, the green space?
12 THE WITNESS: Yes.
13 MS. ROBESON: Or this oval?
14 THE WITNESS: Well, I don't, I didn't write the
15 justifications. So when they say the central square, I
16 think what they're talking about is a gathering place.
17 MS. ROBESON: Okay.
18 THE WITNESS: I don't know if it's that specific
19 oval or that specific rectangle.
20 MS. ROBESON: Okay.
21 THE WITNESS: But it's saying that there is going
22 to be an effort to create an environment that acts as
23 something easily accessible by area residents.
24 MS. ROBESON: Okay.
25 THE WITNESS: Whether that's round or rectangular,

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1 but that recognizing in older developments, food courts
2 tended to be buried, and drew people back. This is
3 something that's going to try to be open and accessible to
4 the residents in some sort of gathering spot type place. If
5 that's helpful.
6 BY MR. KLINE:
7 Q And do you have any sense at this point in time
8 what is the size of the food court?
9 A No. We don't know yet exactly.
10 Q Well, and let me tell me why I'm asking the
11 questions. I'm trying to nail down some of these numbers
12 because the line on the table in the upper right hand corner
13 says, restaurants, food 30,000 square feet. If you go to
14 the exhibit I gave you that's been marked as Exhibit No. 55,
15 if you go up in the first paragraph, the middle of the
16 highlighted text it says, including 14,000 square feet of
17 restaurants and a substantial marketplace food court.
18 So I, well, let me ask the question this way. I
19 mistakenly assumed that the two buildings in the southwest
20 of the core area were pad site restaurants at 7,000 apiece,
21 and that the other apparently 16,000 square feet would be
22 devoted to a food court? Or am I wrong on that and the
23 restaurants, food court are more disbursed than I have just
24 suggested?
25 A Well, the food court won't necessarily be

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1 disbursed. It will be around this kind of central area.
2 There will be some pad sites that are restaurants. There
3 will be some food up here. This is describing, I believe --
4 Q Okay, you know, can you sit up there and tell us
5 what you are pointing at?
6 A The northernmost piece of the north district, if
7 you will.
8 MS. ROBESON: Okay. Across is that --
9 THE WITNESS: 121.
10 MS. ROBESON: Yes.
11 BY MR. KLINE:
12 Q So we have, so what you were just pointing on,
13 north side 121, we see some small red boxes, squares. Those
14 are retail uses and may have some restaurants?
15 A They may. I can't speak to that, but they may.
16 Q I think you used the phrase, point of activation,
17 something like that phrasing. The squares. Do you have a
18 sense of kind of how that's going to be used or what program
19 has been envisioned for it?
20 A Can you help me? I want to answer what you're
21 asking, and I'm not sure when you say, which programming?
22 Q Going again down to the lower paragraph on this
23 first page of the Exhibit No. 55. The central spur of the
24 food court will serve as the neighborhood square and be
25 easily accessible by area residents. So my question is,

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1 what's going to happen in the neighborhood square? Or is it
2 just hardscape and green land?
3 A I'm struggling because I want to try to answer
4 you, and I want to make sure --
5 MS. ROBESON: I'm not sure I understand what
6 you're trying to get. I don't know what you're asking.
7 MR. KLINE: Since the statement is made that
8 that's serving as the neighborhood square, I'm just trying
9 to see, is it a physical place or is it a place of
10 animation? And he has suggested it is a place of animation.
11 And my question was, what is going to occur there?
12 MS. ROBESON: Okay. Okay.
13 THE WITNESS: There would be seating, I guess, for
14 people to be able to eat inside or outside. There'd be, I
15 guess that's the thing I'd add that maybe I hadn't said
16 before.
17 BY MR. KLINE:
18 Q So at this point in time that's the extent to
19 which you can answer the question?
20 A Yes.
21 Q Going back to Exhibit No. 55, the last sentence
22 that I've highlighted says, over the longer term as build
23 out occurs, approximately 66,000 square feet of
24 entertainment uses will be added. Can you tell me what
25 those entertainment uses are and where they go?

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1 A I hate to keep sounding like a lawyer because I'm
2 not, but I'm feeling the pressure of being in a legal
3 setting. So with the caveat that not definitively, this was
4 really trying to -- the point I hope that I made in my
5 beginning remarks was that you do try to think ahead. And
6 you try to think ahead long term, understanding that you
7 can't be definitive.
8 So as we look longer term and envision the area
9 getting more and more built out, it was possible that you
10 might put entertainment uses down here in this southern
11 portion I'm pointing to along 270. What you see here in
12 blue, that might be mixed use, possibly office above, some
13 entertainment uses. Not sure yet, but that's a possibility
14 of a place where that may make sense.
15 And you try to block those things out a little bit
16 to look at the future and say, will these work if the demand
17 is there to do that. And at a very preliminary level, it
18 looks like it could. So we've delineated that.
19 Q Can you give me an example of what would be an
20 entertainment use that would be installed in one of those
21 locations?
22 A I would think of a bowling alley as an
23 entertainment use to give one, you know, something that's
24 not specifically retail and is more entertainment oriented.
25 Q So you would take the space for a bowling alley,

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1 take it out of the office component, rather than the retail
2 component?
3 A I don't actually know legally how a bowling alley
4 would be classified. I just am not familiar. I'm sure my
5 lawyers are. But I can't answer that, to be honest. I
6 don't know how that gets classified.
7 Q Well, I guess -- okay. I mean, I don't want to go
8 through the list of all the entertainment uses, but what I'm
9 trying to do is figure out what pigeonhole you are putting
10 it to. And the reason I'm saying that is, I'm trying to add
11 up all of the red that's in there, plus what is potentially
12 more retail that's not even red, and see, are you able to
13 keep everything within 484,000 square feet?
14 MS. ROBESON: Okay. That was helpful, because I
15 was just going to ask you where you were going with this.
16 MR. KLINE: If you don't mind me giving a little
17 extemporaneous speech, that's what I was trying to lead us
18 to.
19 MS. ROBESON: Yes, well, consider I asked you a
20 question.
21 BY MR. KLINE:
22 Q Yes. I'm trying to kind of get a little bit of a
23 bookkeeping.
24 A Yes. No, that's --
25 Q And it may well be that there is another more

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1 appropriate witness for that. But I'm just asking you,
2 because you are the first one out there.
3 A Yes. No, that is helpful, because I was not sure.
4 One of the key things you just said that really helped me
5 is, I think you used the work pigeonhole, and that's kind of
6 exactly what I can't do right now. That's all of the
7 caveats I keep giving are to say, you can't look at a plan.
8 I referenced when I first spoke, we did a 10 phase
9 plan, literally, a 10 phase plan at Bethesda Row, and it
10 took 16 years before the 10th phase was actually built. And
11 it was definitely different than when we had envisioned it
12 16 years earlier. I think even the zoning had changed.
13 So it's as much trying to just look down the road
14 and say, you can know what's next up. You can know what
15 your first phase is. You can look and envision future
16 development coming. You can imagine the different,
17 continuing on that mixed use theme that was so encouraged in
18 the Master Plan, trying to envision how that might come out.
19 Whether that all precisely today, and whether the
20 zoning is the same in the future, a whole host of things
21 will come into play. So it's hard, Mr. Kline, for me to
22 give you, I think, what you're looking for which is a super
23 precise accounting. But this does try to break out, as we
24 see it today, where might you lay out these different uses
25 and how might they interrelate.

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1 There's a lot of transportation, pedestrian-
2 orientation, where are the gathering places, that you can
3 try to set those today, and what might this look like. And
4 that's what this is trying to be, a vision of that.
5 MS. ROBESON: Okay. I guess my question is, is
6 the hotel, bank, entertainment, restaurant and retail, are
7 you considering all of that, that's all part of the
8 employment that -- okay. Okay.
9 I'm trying to figure out, you've requested 484,000
10 or something like that, in retail. So I haven't added it
11 up, but I see retail 430. So are you considering all of the
12 ones above retail, all of the uses above retail, are you
13 considering all of that retail?
14 THE WITNESS: No. Everything above this line that
15 says retail, like the hotel would not be retail, for sure.
16 MS. ROBESON: Well then, I guess, maybe you have
17 another witness that's going to go into this, because he's
18 not a land use expert.
19 MR. HARRIS: May I offer this. If you look back
20 at the current development plan --
21 MS. ROBESON: Yes.
22 MR. HARRIS: -- you'll see a number of categories
23 in there. If you add them all up, they exceed the total
24 development there. The development plan, rather, had pods
25 with ranges of development in them, so that --

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1 MS. ROBESON: Oh, and then an overall cap.
2 MR. HARRIS: -- and an overall cap.
3 MS. ROBESON: I see.
4 MR. HARRIS: And so you can't always add one plus
5 one to equal two.
6 MS. ROBESON: Right. Okay. That's where I was
7 confused.
8 MR. HARRIS: Yes.
9 BY MR. KLINE:
10 Q I understood that, and that's clearly set forth in
11 the development plan. But the table seemed to be even more
12 specific. And so are you suggesting there should be ranges
13 for these numbers rather than specific numbers? I should
14 have asked --
15 A Well, no, I mean, but --
16 MS. ROBESON: I think you are deviating from
17 procedure and getting into a discussion, but go ahead. He
18 did ask a question.
19 THE WITNESS: Yes. No, in the spirit, I guess, of
20 trying to explain what we were hoping to accomplish in the
21 area, why, hopefully, my enthusiasm for this came through
22 last time, you know, I prepared some slides to try to help
23 to illustrate what we were doing. I'm not an attorney. And
24 I'm not a land use expert, as you just pointed out.
25 So yes, maybe perhaps legally if this, that would

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1 need ranges if we were submitting it as some sort of site
2 plan or something. But this was me trying to share a big
3 picture of how a developer looks at --
4 MS. ROBESON: So this is simply, what you are
5 saying is, this is simply conceptual, and that these numbers
6 are not hard and firm, and whatever happens there is going
7 to come in within the 484,000? Is that --
8 THE WITNESS: Absolutely, because there's a legal
9 side of the development plan amendment that has caps of 484.
10 And this is trying to show how this may play out. But
11 obviously we're not deviating from what you're legally
12 allowed to build.
13 BY MR. KLINE:
14 Q But we are agreed that the entertainment uses --
15 well, let me ask you this question. This chart, north
16 district slide, says, entertainment, 75,000 square feet.
17 The written statements said 66,000 square feet. Is that the
18 range we are talking about, between 66,000 and 75,000 or is
19 that just some discrepancy that we just need to reconcile,
20 if you know?
21 A Again, from my standpoint, my experts may disagree
22 with me, but I view this as a conceptual illustration of how
23 this may lay out, and how it may layout over a long period
24 of time, for a framework for us to be able to move forward.
25 We have a legal restriction based on zoning, and then

Page 25

1 ultimately site plan of maximum numbers of all sorts of
2 development that we're going to have to adhere to.
3 But when you start, you know, you start somewhere
4 with a plan, and you start laying it out. And we know the
5 first thing that we'll be building. We don't know its exact
6 configuration. We don't know exactly which tenants will be
7 there or how they will be configured. But obviously they
8 will have to fit within, you know, on the retail side,
9 they'll have to fit within 484. Is that helpful? I'm
10 trying to answer you.
11 Q Yes. No, I understand. We don't completely know
12 the numbers. So let me try and wrap it all up, I guess.
13 Looking at Exhibit No. 55, and the paragraph at the top of
14 the page we talked about, 450,000 square feet of employment
15 based retail, and that includes 14,000 square feet of
16 restaurants, and a substantial marketplace food court.
17 So everything that's in red in there, including
18 the food court, is all treated as being retail within 450.
19 And then you go, pointed to needed additional retail north
20 of 121 of some amount. I can't remember if we used a
21 number. Those of us in the room know the number. I'm not
22 sure you recalled what that was.
23 And then there is some more for neighborhood
24 serving retail south of the exhibit we've got up there right
25 now. Correct?

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1 A That sounds accurate.

2 Q Okay. When I add all those up, which are clearly

3 retail, we can't squeeze 66,000 square feet of entertainment

4 in there and stay within 44. So your testimony is,

5 entertainment would be treated as an office use. It would

6 not come out of the retail 484,000 that you're asking for?

7 A I can affirmatively state that we wouldn't build

8 more than 484,000 feet of retail because we wouldn't be

9 allowed to.

10 Q And your point, if entertainment was treated as

11 retail, you just wouldn't build as much entertainment as you

12 thought?

13 A Correct. Correct.

14 Q Could you take me to what I'll call the overall

15 plan, rather than I mentioned, I used the term, neighborhood

16 serving retail. Maybe that's not the right term, but in the

17 middle of the exhibit there's two more red boxes sort of in

18 the center. That's to be the neighborhood serving retail.

19 Is that -- what does that red represent? Let me put it that

20 way.

21 A Retail.

22 Q Your statement talks about having some office use,

23 probably upstairs. Do you have a sense of what the mix

24 might be, or have you envisioned how you'd like to do that?

25 A I think ideally it'd be something like you see at

Page 27

1 Bethesda Row, where you might have ground floor retail with

2 some floors of office above.

3 Q Any sense of the amount of square footage that's

4 available to be used in that area, or is depicted in that

5 location? If you know.

6 A Yeah, I don't know, by the way, how much that was.

7 Q But you have said it will not include a grocery

8 store?

9 A Right. We committed at the Planning Board, there

10 was a limit on square footage of size of tenant which they

11 felt was in order to ensure, frankly, we agreed that there

12 wasn't a major grocery store that would compete with town

13 center.

14 Q Well, I don't recall the square footage limitation

15 being related to anything other than specialty retail. So

16 it didn't relate to a grocery store in the location, did it?

17 A Which location?

18 Q The one we're talking about in the southern, the

19 middle of the project.

20 MS. ROBESON: The red in the middle of the

21 project.

22 THE WITNESS: I believe what came out of the

23 Planning Board, and the commitment that we made, was to a

24 square footage limitation.

25 MS. ROBESON: But I thought you testified

Page 28

1 earlier --

2 THE WITNESS: We're not going to build a grocery

3 store. That's correct.

4 BY MR. KLINE:

5 Q Of any size.

6 A Right. Right. We're committed to, we've made

7 that commitment personally to the developers of town center.

8 Q We all have the benefit of being able to read your

9 transcript, Mr. Kaplan, and I wanted to ask you some

10 questions about how you, to use a loose colloquial phrase,

11 how you get turned on by the idea of an amphitheater? You

12 said that in your review, I guess, of the town center, you

13 saw that there had been recommended for an amphitheater at

14 town center, and then office and people, and where that idea

15 can be integrated into your development.

16 Just tell us more about who you talked to and

17 basically how you are going to make that work, or why you

18 thought it would be appropriate here?

19 A Uh-huh. So let me wrap all that together. So the

20 turned on part is because I just, and my partners get

21 excited by creating developments that really activate and

22 are positive for a community. And we really believe this

23 one has the potential to do that. And we kind of in every

24 meeting heard that from the community. So that's exciting.

25 And part of that is trying to step back and say,

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1 you know, what creates that excitement and what's missing in

2 a community. And the amphitheater, I do get excited by the

3 fact that town center is planning an urban kind of outdoor

4 entertainment space, and we're planning an outdoor

5 entertainment space that we believe could be very

6 complementary and serve a need that's not being served right

7 now, because there is no space of this size there where a

8 performer could actually perform right now. So I'm not an

9 expert in this, but I've had the pleasure of partnering with

10 Strathmore and the folks there.

11 Q You told us about it.

12 A So I spoke with them about it. I've spoken with

13 the folks at Black Rock about it. I've tried to surround

14 myself and speak to a bunch of --

15 MS. ROBESON: With who?

16 THE WITNESS: There's another music center called

17 Black Rock, which is up 270 closer upcounty, music venue

18 similar but smaller than Strathmore. And I've spoken to

19 both of them, frankly, about both spaces, the town center

20 space. I've had meetings with the town center developers

21 and these experts talking about how you might program those.

22 And the community has been pretty positive. And those folks

23 thought that this might be an amenity that we could create

24 for the County that could be exciting. So that was the

25 nature of it.

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1 BY MR. KLINE:
2 Q Well, you use the word complementary, and in fact,
3 you used that term the first time. So I'm trying to
4 understand, how does it function? How is it complementary
5 in the sense that presumably you don't compete against these
6 other venues. Is this Merriweather Post Pavilion, or is
7 this just a grass hillside and a banjo player?
8 A Because of its scale is why it's complementary.
9 It affords a different type of programming. It is a grassy
10 amphitheater, so it's not a Merriweather Post Pavilion, but
11 it is of a different scale than you could create at town
12 center.
13 And that, you know, you program a small space with
14 more of a banjo player kind of setting. And something like
15 this you may actually bring in stages and loudspeakers, and
16 actually be able to hold a much larger kind of performance.
17 So that's the way that I meant complementary. You just, you
18 couldn't host something of this size, a similar performance
19 in a small square in a town center. You just, they're
20 different.
21 Q You used the phrase that you've talked to the
22 developer of the town center, and you've found that they
23 could be complementary uses.
24 A Uh-huh.
25 Q This is a copy of Mr. Flanagan's letter in the

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1 record. It's number 37.
2 MS. ROBESON: I have it.
3 BY MR. KLINE:
4 Q In the second paragraph down at the bottom, the
5 second sentence says, specialty outlet retail will
6 complement and augment the retail development of the town
7 center, as long as a grocery store is not included in the
8 specialty outlet retail. It will generate additional
9 economic activity and bring new people and shoppers to
10 Clarksburg and the town center.
11 You've said that the uses will complement each
12 other. I read this to say the retail outlet center will
13 create economic complementary. Isn't it a bit of an
14 overstatement to say the town center developer has said your
15 amphitheater will complement would they want to do in
16 activation in the town center in light of the text of Mr.
17 Flanagan's letter?
18 A I don't think his letter references the
19 amphitheater at all.
20 Q Correct. All he talks about is how the specialty
21 outlet retail will complement and augment the retail
22 development of the town center. So it's an economic issue
23 not a social or activation issue. This letter does not say
24 the amphitheater will operate in a complementary fashion,
25 correct?

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1 A That's correct. This letter doesn't talk about
2 the amphitheaters. I was relaying conversations. But this
3 letter clearly doesn't talk about the amphitheaters.
4 Q If you're not the right person to ask, answer this
5 question, just tell me so. I believe you talked about
6 transit oriented. And can we get back to the north
7 district? How is this layout transit oriented? Or what
8 transit services are available, and where?
9 MR. HARRIS: Objection. I'm not sure the witness
10 did testify to that, at least I don't recall it. I could
11 stand corrected. But I think that's going beyond the scope
12 of his direct testimony.
13 THE WITNESS: Regardless, I'm not sure I'm the
14 best person to answer the question.
15 MS. ROBESON: Then we'll save it.
16 MR. KLINE: I'll defer the question to another
17 witness.
18 MS. ROBESON: I see transit in the transcript at
19 78-7, 81-11 and 96. That was a reference to the corridor
20 city's transit way. So I'm going to let another witness
21 deal with that.
22 BY MR. KLINE:
23 Q Could I draw your attention to page nine of
24 Exhibit No. 55 that I gave you, or highlighted text there?
25 Going to the middle of that paragraph, the second sentence,

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1 the fashion center employment retail proposes part of the
2 final DPA will be a catalyst to the development of the
3 remainder of the employment center. There is a proven track
4 record to substantiate this statement.
5 Can you or will you have another witness give us a
6 description of how a retail outlet fashion center stimulated
7 an otherwise more of an office market? Do you have an
8 example? You say there is a proven track record, so I
9 assume there is some backup somewhere. Can you tell us what
10 that is and when we're going to hear it?
11 A Again, I'd only want to speak from my own personal
12 experience. We have found that time and again, actually,
13 around the country.
14 Q Excuse me. We? Who is we?
15 A Let me say I, since I'm speaking, rather than we.
16 I've found that time and again across the country where
17 we've brought in retail tenants, often fashion oriented, and
18 it has proven to be a catalyst for a pretty significant
19 development around it, because absent that, you often don't
20 have the activation that people are looking for, the
21 excitement of that.
22 So one of the earliest examples of that would be
23 in Santa Monica, California, on the Third Street Promenade
24 where the office market and the rents changed dramatically
25 as Third Street Promenade retail got developed. The same

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1 thing happened in the Gaslamp Quarter of San Diego. Again,
2 just referencing personal experiences. We saw it even in
3 the development in San Jose, and certainly in Bethesda,
4 closer to home.

5 Q Mr. Kaplan, your place making credentials are
6 unchallenged. You are very good. But I haven't heard, the
7 examples you all mentioned, Santana Row, et cetera, all
8 sound to me like urban settings. And I don't think any of
9 those qualify as a retail outlet fashion center operation
10 that would have stimulated an office park. Am I correct?

11 A The ones that I just described, they're not outlet
12 centers. That's correct. They're what this talks about,
13 fashion center employment retail. They were primarily, they
14 were largely fashion. They were retail. They didn't have a
15 value orientation necessarily.

16 Q And my question is going to go to, and this will
17 be my final question, and that is, there is sort of an
18 element in the application that is, built it and they will
19 come, meaning, build the retail outlet center and the office
20 will come. And that's why I'm asking you to give us an
21 example where that is true, because at least of the ones
22 that we have talked about in this room, Leesburg,
23 Queenstown, Hagerstown, that's certainly not a good example
24 at all. So where is the example, because you say there is a
25 proven track record?

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1 A Well, first off, I don't say. You're reading --

2 Q I'm sorry, and maybe I misunderstood. Since this
3 was written so well and you speak so well, I assumed you had
4 a material hand in putting this together. Is that not true?

5 A So let me try to answer the question that I think
6 you're getting to. My background is in retail, and I do
7 believe from my personal experience, again, not as
8 qualifying as an expert on this particular statement, but in
9 my experience in development for over 20 years in retail, it
10 has a truly catalytic experience.

11 We've worked with a lot of office developers and a
12 lot of residential developers, and if retail can go
13 somewhere, the others all wanted to partner and follow,
14 because that created that excitement. That made that unique
15 from any other piece of land where you might just put an
16 office building, and there wasn't anything.

17 If you could find land where retail could go, so
18 you had amenities for the people that would be working in
19 the office, and it applies to residential, too, it became
20 the gating issue. If you could have that retail, we would
21 have our pick sometimes of the office developer or the
22 residential developer versus the land as it sits today
23 without that retail. There is a lot of land without retail
24 where somebody can choose to put an office building.

25 And I think I referenced, you know, the recent

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1 example that I know the Park and Planning staff who knows
2 far more about this than any of us, I think they're really
3 trying to --

4 MS. ROBESON: Don't say that. It's okay. Go
5 ahead.

6 THE WITNESS: But I was just going to reference,
7 there's a big vacancy rate in kind of the office only
8 centers that are even local. So I've just seen this happen
9 many, many times on a personal level, and have been in lots
10 of sessions with people who are experts on it that talk a
11 lot about that.

12 BY MR. KLINE:

13 Q Well, all I'm trying to get you to do is sort of
14 distinguish between the retail outlets and the retail,
15 because you have had your hand in a number of retail
16 operations where I have no doubt that people built office
17 close to them.

18 But I just haven't seen any demonstration, and
19 maybe it's to come, that the retail outlets in the fashion
20 center will draw office. That seemed to me a bigger jump.
21 And I'm asking whether your case will include any examples
22 of that?

23 A I mean, I can't answer your question differently
24 than I have.

25 MS. ROBESON: Anything else, Mr. Kline?

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1 MR. KLINE: Probably I should thought of it, but
2 that will be fine. Thank you.

3 MS. ROBESON: Okay. Good. I mean, not good, but
4 Mr. Chen.

5 THE WITNESS: He already cross-examined me.

6 MR. CHEN: Yes.

7 MS. ROBESON: You must forgive me. I really was
8 on a personal --

9 MR. KLINE: You've been to Cape Cod. We heard
10 that.

11 MR. HARRIS: A good vacation.

12 MS. ROBESON: No, I had family business that I had
13 to take care of. So Mr. Harris.

14 REDIRECT EXAMINATION

15 BY MR. HARRIS:

16 Q Two quick questions. You were asked about
17 Hagerstown and Queenstown and the extent to which those
18 outlet centers had or had not generated office development
19 around them. Would you compare or contrast those locations
20 with Clarksburg, in terms of office?

21 A Yes, from my perspective, they're no comparable at
22 all. Over the long term, the reason I-270 was designated as
23 a technology corridor was the access to the type of people
24 that would work in those types of centers, the easy
25 proximity, the easy access.

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1 Hagerstown and Queenstown are demographically very
 2 different. I wouldn't have anticipated that you would see
 3 lots of office development around those. But one can
 4 clearly envision, as the Master Plan did, as we do, this
 5 becoming a very vibrant longer term employment district.
 6 MR. HARRIS: That's really all I have then.
 7 MS. ROBESON: Recross, Mr. Kline?
 8 MR. KLINE: Yes, simply because Leesburg wasn't
 9 included.

RECROSS-EXAMINATION

10 BY MR. KLINE:
 11 Q Leesburg does seem to be a little bit closer in.
 12 I agree Queenstown and Hagerstown are off the face of the
 13 earth from our point of view. But --
 14 MS. ROBESON: Hey, I'm from Garrett County.
 15 MR. KLINE: But they are lovely communities.
 16 MS. ROBESON: Yes. Okay. Go ahead.
 17 MR. KLINE: Cumberland is just a wonderful place.
 18 MS. ROBESON: Go ahead. I'm sorry.
 19 BY MR. KLINE:
 20 Q But how does Leesburg fit into that formula? I
 21 mean, there certainly are, there certainly are office
 22 buildings in Leesburg. Are there any office buildings close
 23 to, I can't remember the name of the outlet center there?
 24 A I don't know the answer to that question.

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1 MR. KLINE: Okay. That's fine. All right.
 2 MS. ROBESON: Mr. Chen, any recross?
 3 MR. CHEN: No.
 4 MS. ROBESON: All right. Mr. Harris?
 5 MR. HARRIS: Yes. We have, our next witness is
 6 Mr. Bogorad.
 7 MS. ROBESON: Do you need a minute to put a slide
 8 up or anything?
 9 MR. HARRIS: I don't think he has a slide
 10 presentation.
 11 MS. ROBESON: Okay.
 12 MR. KAPLAN: I'll turn this off.
 13 MR. HARRIS: Yes. Thank you.
 14 MS. ROBESON: Raise your right hand.
 15 (Witness sworn.)
 16 MS. ROBESON: Okay. Mr. Harris.

DIRECT EXAMINATION

17 BY MR. HARRIS:
 18 Q Mr. Bogorad, would you state your name and
 19 business address, please?
 20 A Leonard Bogorad, RCLCO, which is five letters,
 21 R-C-L-C-O. 7200 Wisconsin Avenue, 11th Floor, Bethesda,
 22 Maryland.
 23 MS. ROBESON: Can you spell your last name?
 24 THE WITNESS: Yes. B as in boy, it's a strange

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1 one. B as in boy, O-G-O-R-A-D, as in David.
 2 MS. ROBESON: Thank you.
 3 MR. HARRIS: We have introduced a resume, bio on
 4 Mr. Bogorad. If we could have, that would be Exhibit --
 5 MS. ROBESON: 56.
 6 MR. HARRIS: -- 56. Thank you very much.
 7 MS. ROBESON: Any objections?
 8 MR. KLINE: No objection.
 9 MR. CHEN: No objection.
 10 MS. ROBESON: 56 will be resume of Leonard
 11 Bogorad.
 12 (Exhibit No. 56 was marked for
 13 identification.)
 14 BY MR. HARRIS:
 15 Q Can you describe your experience, in general, in
 16 terms of fiscal and economic impact analyses?
 17 A Yes. I've conducted about a hundred fiscal and
 18 economic impact studies for both public and private clients
 19 in the Greater Washington area, including downtown Silver
 20 Spring, National Harbor, Chevy Chase Lake recently, in
 21 Montgomery County. Obviously, National Harbor is in Prince
 22 George's. And I've also conducted a number of studies,
 23 similar studies around the country.
 24 Q Do you also have experience regarding retail and
 25 office market analyses and the impacts of one retail center

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1 on another?
 2 A Yes. I've conducted many retail and office market
 3 analyses and studies of mixed use developments as well in
 4 the Washington area, and elsewhere in the United States.
 5 And I've also analyzed the impact of shopping centers on
 6 other retail areas.
 7 Among other things, I prepared a handbook on
 8 analyzing the impact of shopping centers on downtowns for
 9 the U.S. Department of Housing and Urban Development.
 10 MR. HARRIS: Madam Examiner, we are going to offer
 11 Mr. Bogorad as an expert in real estate market and economic
 12 impact analyses.
 13 MS. ROBESON: All right. Any objection?
 14 MR. CHEN: Could you repeat that?
 15 MR. HARRIS: Real estate market and economic
 16 impact analyses.
 17 MR. CHEN: Thank you.
 18 MS. ROBESON: Okay
 19 MR. KLINE: Ms. Robeson?
 20 MS. ROBESON: Yes.
 21 MR. KLINE: I certainly have no problem
 22 stipulating Mr. Bogorad as an expert. The prehearing
 23 statement identified him, and on which I based the scope of
 24 my cross-examination questions said, he will testify as an
 25 expert in the field of fiscal impact and market analysis.

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1 And I read that to mean, if this occurs, it will generate
2 this much income per family, and it will be a benefit, and
3 that would include some of the general provisions of the
4 MXP zone.
5 It says, respond to market demand, provide a
6 positive fiscal impact on an area. I did not understand
7 this to say he would be making a value judgment of how,
8 using my phrase, build it and they will come. So I would
9 object to his testimony, because it's beyond the scope of
10 what I understood his testimony was going to be, and he has
11 written to date, in terms of how the retail outlet center
12 lures the office development, because that, I think is a
13 land use issue, not an economic, fiscal impact.
14 MS. ROBESON: Mr. Chen, do you want to weigh in on
15 this?
16 MR. CHEN: No. I have no problems with the nature
17 of how he wants to characterize his expertise. But his
18 expertise is limited to his prehearing statement. And Mr.
19 Kline picked up on it quicker than me, because I was going
20 to start objecting if we're getting past the fiscal impact
21 analysis, or area that he has identified in his prehearing
22 statement. Now, I don't know where we're going with this,
23 but I think it's got to be that narrow.
24 MS. ROBESON: I am not going to narrow it like
25 that. I know what he was -- your fiscal impact analysis

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1 showed the amount of revenue that would be generated.
2 Correct?
3 THE WITNESS: Yes, and expenditures. Yes.
4 MS. ROBESON: Yes. And now you're saying you're
5 going to testify as to how the real estate market or the
6 retail generates office.
7 THE WITNESS: Among other things. I consider that
8 part of market analysis, which is what I do most of my life
9 with.
10 MS. ROBESON: Okay. Well, what I'm going to do
11 is, we have time -- I'm going to let it in because it's too
12 important and you, it's going to be 10 days well in advance
13 for you to prepare a rebuttal case. So I --
14 MR. KLINE: That's fair. Since this is strictly
15 fiscal impact analysis. I think it's entering into an
16 area --
17 MS. ROBESON: I saw that, too, and I wondered why
18 it was in there, because it was mostly the revenue generated
19 by these to local jurisdictions, and not necessarily the
20 link between now. But I am going to let it in, and you will
21 have a chance to rebut. If you want to reserve cross-
22 examination to another, you know, 10 days, that's fine as
23 well.
24 MR. HARRIS: Let me weigh in on this. I haven't
25 said anything. But it's entirely within the scope of what

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1 his expertise is, and what he was offered as. We're not
2 expected to present his entire testimony in our prehearing
3 statement.
4 MS. ROBESON: Well, what is your summary in your
5 prehearing statement? In your prehearing statement you're
6 supposed to give a summary of what is going to be testified
7 to.
8 MR. HARRIS: "Expert in the field of fiscal impact
9 and market analysis, and explain how the project will
10 respond to market demand and provide a positive fiscal
11 impact." So it's not just the fiscal impact.
12 MS. ROBESON: Well, I'm going to give them an
13 opportunity if they -- I'm going to let him testify as an
14 expert in real estate market and economic impact analysis.
15 I'm going to hear the analysis. I am going to let them, if
16 they choose, to reserve cross-examination.
17 MR. HARRIS: The only problem I have with that is,
18 it's my full intention to finish our hearing on Wednesday,
19 as we discussed at the outset today. So I --
20 MS. ROBESON: Well, they can defer -- oh, I see
21 what you're saying.
22 MR. HARRIS: They can cross-examine him all they
23 want today. He's not -- the only report that he is
24 presenting is the report that's been in the record for
25 months.

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1 MS. ROBESON: Okay. I see what you're saying.
2 All right.
3 MR. KLINE: And we have no objection to that. We
4 probably wouldn't have asked any questions on that.
5 MR. CHEN: That's right.
6 MR. KLINE: What he is adding in is what we would
7 want to ask questions about.
8 MR. HARRIS: Well, you can ask those questions.
9 MR. CHEN: No, wait a minute. The report that was
10 submitted doesn't get into this whole other area. You
11 described the area that I presume, and based upon your
12 reading of the report, as did Mr. Kline and myself. That
13 report doesn't get into this other area whatsoever.
14 MS. ROBESON: Okay. This is what I'm going to do.
15 You can, if you wish, you can reserve cross-examination to
16 8/14. But it's a bare bones statement in the justification,
17 and the report may have led you a different way. If you
18 wish, you can reserve cross-examination until 8/14, but I'm
19 not going to delay it by the 10 days. All right. Okay.
20 Mr. Harris?
21 BY MR. HARRIS:
22 Q Thank you. Were you retained by the applicants in
23 this proceeding to analyze the fiscal impact of the proposed
24 outlet retail, both in the County and in the State of
25 Maryland?

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1 A Yes, I was.
2 Q And did you submit a report on that?
3 A Yes, I did.
4 Q And is that Exhibit 23(d) as in David in the
5 record?
6 A Yes, that's my understanding.
7 Q Can you explain what you did and what you found,
8 as reflected in that report?
9 A Yes, I conducted a complete analysis of Montgomery
10 County revenues and expenditures, and State of Maryland
11 revenues that will result from development of the retail
12 center over the next 20 years, including both direct and
13 indirect impacts. And I also analyzed the likely employment
14 that will result in the retail center.
15 And I then calculated the next fiscal impact on
16 the County by year, and in total during this period. And we
17 found that the County will receive a very substantial net
18 fiscal impact of almost \$39 million dollars over the next 20
19 years. And we found that the State will receive
20 approximately \$403 million dollars in revenues over the next
21 20 years.
22 We also found that the construction of the center
23 will support approximately 2,000 temporary jobs in the
24 State, and the operation of the center itself will support
25 approximately 2,200 permanent jobs, including indirect

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1 impacts and --
2 MS. ROBESON: What is indirect impacts? I had
3 that question.
4 THE WITNESS: Yes.
5 MS. ROBESON: I looked for it, but I didn't see
6 it.
7 THE WITNESS: Sure. So let's break it down.
8 That's a good question. 1,660 of these 2,200 jobs would be
9 at the center itself. So these would be, of the permanent
10 jobs, would be actual jobs working, you know, people
11 reporting to work at the center for managers of stores, to
12 maintenance people, to clerks and so on.
13 And then in the economic activity that occurs,
14 basically, in this case, paying the salaries and wages of
15 the people who work there, those people take that money and
16 in part spend money for different things, some of which are,
17 a good chunk of which are within the County and an even
18 larger percentage are elsewhere within the State.
19 And that money then generates additional pieces of
20 jobs as they spend money. And it goes through the economy.
21 It's basically a multiplier effect, is another term that's
22 used. And there are very elaborate models that have been
23 set up and used.
24 MS. ROBESON: That was my next question.
25 THE WITNESS: Yes. They're called input/output

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1 models, and they trace things through an economy. And
2 eventually, the multiplier effect dies out because, you
3 know, spending is happening somewhere in a different part of
4 the country, and some of it is obviously saved, and so on.
5 But it's a pretty, it's a very well-established
6 methodology that estimates what the impact is of a given
7 amount of economic activity. And I think the bottom line is
8 that this is a major employment concentration, and will be a
9 major employment concentration, and a lot of the jobs on-
10 site and a range of jobs off-site. And those jobs that are
11 resulting from this are also a range of types. You know,
12 they are everything from lawyers and accountants to minimum
13 wage workers, and so on.
14 BY MR. HARRIS:
15 Q Based on your expertise, in terms of doing market
16 analyses for different developments, do you have an opinion
17 regarding the potential of office development at Cabin
18 Branch?
19 MS. ROBESON: No, I'm going to let -- I
20 understand. You can note your objection. Well, say your
21 objection.
22 MR. CHEN: Well, it goes back to what I said
23 before. This is beyond what was presented.
24 MS. ROBESON: Yes.
25 MR. CHEN: And in order to not pose a problem, if

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1 the Examiner will note a continuing objection.
2 MS. ROBESON: A continuing objection. Just for
3 the record, as I -- the summary, the statement of
4 justification was bare bones. But I don't see him as
5 limited by his exhibit. And that's why I'm going to allow
6 him to testify because have qualified him in the area that
7 he was submitted on his resume. So just for the record,
8 that's my clarification. And I will note your continuing
9 objection.
10 MR. CHEN: Thank you.
11 MS. ROBESON: Okay, Mr. Harris.
12 BY MR. HARRIS:
13 Q Okay. Do you recall the question, Mr. Bogorad?
14 A Yes, do I have an opinion regarding potential for
15 office development at Cabin Branch. I believe there is long
16 term potential for office development. I think it is
17 distinct from a location like Hagerstown or Queenstown,
18 which really have no, there's no office demand to speak of
19 in those corridors and in those general areas.
20 There is demand and will be more over time in the
21 I-270 corridor, and it's clearly, you know, a lot of reasons
22 why that's true. But I think it's also critical to
23 recognize, and I see this in all the office market studies
24 that I do, and so on, in this region, that the office market
25 has been very challenged, particularly from Clarksburg

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1 through Gaithersburg. And there's been very limited demand
2 that's actually shown up there. And I expect this to
3 improve in the long run, but not that fast, quite honestly.
4 To offer a few data points from Costar, which is
5 the established source for these kinds of data, the average
6 annual net absorption in the area from Clarksburg through
7 Gaithersburg --
8 MS. ROBESON: Office absorption?
9 THE WITNESS: Office absorption, sorry, yes, has
10 been only 74,000 square feet per year over the past five
11 years in this portion of the I-270 corridor. 16 percent of
12 that office space is vacant. Average rents are a little bit
13 lower now than they were five years ago. And absorption has
14 been declining every year since mid-2010, despite the
15 economic recovery.
16 Why is this? It's in part because of the amount
17 of office space that companies and government agencies are
18 leasing has been dropping significantly. And there have
19 been a lot of articles about this. One of the key reasons
20 is that these office users, whether they are public or
21 private sector, have been using a lot less space, leasing a
22 lot less space per employee, with more open offices, more
23 working from home, and so on.
24 So even when there is healthy employment growth,
25 and we've had pretty good employment growth in this region,

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1 we have not seen nearly the office demand that we've seen in
2 the past. And so that makes the demand side of the picture
3 challenging. It's not going to be easy to get office
4 development in any particular location in this corridor.
5 The situation has been made even more challenging
6 by the addition of substantial capacity, basically
7 competition for office development in Germantown and in the
8 Life Sciences Center in Gaithersburg, both of which I would
9 consider for most tenants to be more desirable locations
10 than Clarksburg.
11 So the absorption is going to be a lot more
12 limited than we would all like. There is a tremendous
13 amount of office capacity planned at Cabin Branch, even with
14 subtraction of the proposed retail piece of that, which
15 obviously would reduce the maximum somewhat. But there is
16 still a tremendous amount of office space left. And it will
17 be many years before that's all used up, given the market
18 conditions.
19 BY MR. HARRIS:
20 Q Do you have an opinion regarding the impact of the
21 proposed retail on the desirability of the remainder of the
22 Cabin Branch employment envelope?
23 MR. KLINE: Could I ask for clarification, or more
24 specification.
25 MS. ROBESON: Wait. Okay go.

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1 MR. KLINE: Yes. I mean, there's two kinds of
2 retail here. I guess I'm asking what kind of retail are you
3 talking about.
4 THE WITNESS: Okay. Sure.
5 MS. ROBESON: Okay. Can we save their future
6 questions for cross-examination?
7 MR. KLINE: Yes, ma'am.
8 MS. ROBESON: Thank you.
9 BY MR. HARRIS:
10 Q Let's try to -- I'll take the cue though. Do you
11 have an opinion regarding the impact of the proposed
12 specialty retail, sometimes called outlet retail being
13 proposed at Cabin Branch on the desirability of the
14 remainder of the Cabin Branch employment envelope?
15 A Yes. As I just said, it's going to be challenging
16 to absorb the office capacity that's there. So I think the
17 key thing is to recognize that any sort of competitive
18 advantage is going to be very important in getting office to
19 Clarksburg and to this location, given all the competition.
20 And the competition is not just within Montgomery County.
21 It's Northern Virginia, in particular. It's in Frederick
22 County and other places.
23 But I've prepared many market analyses of office
24 and mixed use developments, as I said. And I've seen a lot
25 of these projects that are being proposed right now, and

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1 what is being desired by developers and by tenants. And one
2 thing that's clear is that the office, the sterile sort of
3 office park, the office only kind of development, is really
4 a dinosaur at this point.
5 That's not something that most office tenants or
6 government agencies or others are looking to move into. Our
7 development clients are steering away from those, and are
8 doing everything they can to provide a mix of uses. And
9 retail is typically one of the most desired uses, because it
10 does liven up the mixed use development; create a mixed use
11 development, provide services and options for those who are
12 working there, and so on.
13 I think following up on the discussion in the
14 previous testimony, I think it is important to recognize,
15 you know, no question that it's a somewhat untested
16 proposition that outlet retail would be the kind of catalyst
17 that you would see demonstrated in places like Reston Town
18 Center and Bethesda Row and so on that Mr. Kaplan talked
19 about.
20 But we also have to recognize that we are talking
21 about Clarksburg. We're talking about a place where those
22 kinds of centers are not going to happen, for better or for
23 worse. And so if we were going to --
24 MS. ROBESON: What do you mean, they're not going
25 to happen?

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1 THE WITNESS: There's just not market demand for a
2 high density mixed use development like a Bethesda Row or
3 Reston Town Center. And I could go into, you know, I could
4 go on at length why that's the case.
5 And so if one said, all right, you're either going
6 to have all office, an all office development, or you're
7 going to have a, you know, a proven kind of mixed use
8 development like Bethesda Row, you could wait for 100 years
9 and it's not going to happen here. And so you would have an
10 all office development which is not going to be competitive
11 with a lot of other options that are being built.
12 And we're working with clients along the Dulles
13 Access Road in Loudoun and Fairfax, and every one of those
14 is planning a mixture of uses with significant retail, for
15 example. And they're very much competing in Montgomery
16 County with those locations, and not all that successfully
17 in some cases.
18 And so to compete with those and with other
19 locations, it's, you know, really important, I think, to
20 have that mix of retail. And we have to have retail that
21 there is a market for or it's not going to happen. And the
22 kind of retail that there clearly is a market for in this
23 area, one of those key types is specialty or outlet type
24 retail as evidenced by two proposals for that kind of use
25 here.

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1 So we are going, you know, that's, we know we can
2 get that kind of retail here. We know we're not going to
3 get something like Reston Town Center here. And in my
4 judgment, based on all of my work in market analysis on
5 these kinds of developments, seeing what I'm seeing
6 throughout the region in proposals for mixed use
7 developments, I believe that the types of retail, the
8 specialty outlet retail that's being proposed here, will be
9 a significant advantage in attracting office to Cabin
10 Branch.
11 And therefore, I would say that if you look ahead
12 10 years, 20 years, 30 years, there will be more office
13 developed at Cabin Branch with this retail than without it.
14 You may say, that's counter-intuitive, there's going to be
15 somewhat less capacity for office. But as I said a minute
16 ago, a few minutes ago, there is plenty of capacity for
17 office here.
18 There's plenty of capacity, a number of other
19 sites in Clarksburg and in Frederick and in Gaithersburg and
20 so on, Germantown. But what's really important is having
21 that competitive advantage. And I believe that having some
22 of this office capacity sliced off for retail will actually
23 improve the capability of this site to attract the office
24 development.
25 BY MR. HARRIS:

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1 Q There has been some testimony about the
2 relationship between this retail and the Clarksburg Town
3 Center retail. Do you have an opinion with respect to the
4 impact of this proposal on the Clarksburg Town Center?
5 MR. CHEN: Is my objection noted?
6 MS. ROBESON: Yes.
7 MR. CHEN: This is land use.
8 MS. ROBESON: I think it is and it isn't because
9 many of, the goal of the Master Plan was to have the town
10 center at a certain time period vis-a-vis this. And I
11 understand your objection, but I'm going to overrule it. Go
12 ahead.
13 THE WITNESS: Yes. And I do think I'm answering
14 this from a market analysis perspective. I do think that's,
15 I defer to my planning brethren for land use opinions, but I
16 do believe this is key element of market analysis. It's a
17 part of this, answering your question, Mr. Harris.
18 The, and I have been evaluating, you know, every
19 time I do a retail market analysis, I'm considering the
20 impact and the effects of other retailers and retail
21 concentrations. And as I said, I wrote a handbook on this
22 for HUD a number of years ago that looks at the impact of
23 retail on and other retail from a market perspective.
24 And when analyzing this question, it's critical to
25 evaluate the specific types of retail that will be included,

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1 as well as the locational characteristics of each area. And
2 I don't believe that the retail that will be built at Cabin
3 Branch under this proposal will significantly compete with
4 the retail that is likely to be attracted to the town
5 center, which is going to be much more neighborhood and
6 community oriented, rather than serving a substantial
7 portion of the outlet center's market will be regional and
8 travel oriented, not that it won't get some shoppers for the
9 types of value retail, and so on, that will be at Cabin
10 Branch.
11 So I don't believe this is going to have a
12 negative impact on the potential for the town center. And
13 it's probably most important to think about the supermarket
14 because that's the key element to the town center. That's
15 what the town center really needs is a full scale
16 supermarket.
17 Once that is signed up, I truly believe there will
18 be significant demand and substantial demand for the types
19 of retail that goes along with a supermarket, and it will be
20 built and be a successful town center.
21 But I am concerned that there may well not be
22 enough demand for another supermarket, as is currently
23 planned for Cabin Branch, and if that were being sort of a
24 threat that's hanging over the town center, that maybe there
25 will be another supermarket at Cabin Branch, I think that

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1 would make it more difficult to attract that critical
2 supermarket to the town center.
3 So I think the commitment to not have a full size
4 supermarket here is really important for the town center.
5 And then again, much of the retail, most of the retail,
6 really, at the town center, is not going to be overlapping
7 with the types of retail that are at, planned for Cabin
8 Branch, which certainly is planning to have some
9 neighborhood related retail serving primarily, I would
10 think, without the supermarket, the residents of Cabin
11 Branch itself.
12 These will not be directly competing centers, and
13 in my view, will not be detrimental to each other. And I
14 also think it's important to take a kind of a statement that
15 Mr. Flanagan made in his letter which we talked about a
16 minute ago which is that this will be a source of vitality
17 and economic activity for Clarksburg, which I think badly
18 needs that. It will create jobs, and people who will, to
19 some extent, be shopping at the town center. It will put
20 Clarksburg more on the map as a retail area.
21 Some of the people who come to shop at outlet
22 stores will be looking for interesting restaurants, unique
23 kinds of things like that, that I expect will be at the town
24 center. So I think on balance, this will actually be
25 positive for the town center.

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1 MR. HARRIS: No further questions.
2 MS. ROBESON: I just had a question. You don't
3 have the benefit of this maybe, but in the Master Plan, I
4 look on page 43 is a town center district land use plan.
5 And it has R&D and office industrial park.
6 THE WITNESS: If someone could help me find --
7 MR. HARRIS: R&D is this.
8 MS. ROBESON: I'll give you a moment to read the
9 legend.
10 THE WITNESS: Has it along 270, you're saying?
11 MS. ROBESON: Yes. And I guess my other question
12 is, how is this going to impact that employment use, or if
13 you know? If you don't know --
14 THE WITNESS: I really don't know what the, I
15 don't know much, if anything, about those sites over there,
16 who owns them, what the plans are.
17 MS. ROBESON: Okay. So your testimony is that the
18 retail component in Cabin Branch is not going to compete
19 with the retail of town center?
20 THE WITNESS: I mean everything competes a little
21 bit, but not significantly and not in the way that would
22 harm the town center or decrease the odds of having that
23 town center built, correct.
24 MS. ROBESON: Okay. Any follow-up questions based
25 on my question?

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1 MR. KLINE: No, ma'am.
2 MS. ROBESON: Okay. Mr. Kline, do you want to
3 reserve your cross-examination? I'm assuming yes.
4 MR. KLINE: The answer is yes.
5 MS. ROBESON: Okay. Mr. Chen, you as well?
6 MR. CHEN: Yes.
7 MS. ROBESON: Okay. And then on the 14th, Mr.
8 Harris, you will get the opportunity to redirect as well.
9 MR. HARRIS: Yes. Thank you.
10 MS. ROBESON: You're welcome. All right.
11 MR. CHEN: If I may.
12 MS. ROBESON: Yes.
13 MR. CHEN: This last comment of this gentleman,
14 about preparation -- I'll wait. I'll wait.
15 MS. ROBESON: I know I'm going to hear more on
16 this.
17 MR. HARRIS: May we take a five-minute break
18 before our next witness?
19 MS. ROBESON: Let's take a 10-minute break.
20 (Whereupon, at 10:56 a.m., a brief recess was
21 taken.)
22 MS. ROBESON: Okay. Let me just check one thing.
23 We're back on the record. All right. Just to remind
24 everyone, we're not going to take a lunch because we are
25 adjourning at 12:30 today. All right. So Mr. Harris.

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1 MR. HARRIS: Yes. Our next witness is Mr. Chris
2 Turnbull.
3 MS. ROBESON: Okay. Please raise your right hand.
4 (Witness sworn.)
5 MS. ROBESON: Okay. Go ahead, Mr. Harris.
6 DIRECT EXAMINATION
7 BY MR. HARRIS:
8 Q Would you state your name and business address for
9 us, please?
10 A Christopher Turnbull, 210 Wirt Street, Southwest,
11 Suite 201, Leesburg, Virginia.
12 Q And by who are you employed, Mr. Turnbull?
13 A I work for Wells and Associates.
14 Q And what is your profession?
15 A Transportation planning and transportation
16 engineering.
17 MR. HARRIS: I've circulated to the parties here a
18 copy of your resume. Can we have that marked as Exhibit No.
19 57?
20 MS. ROBESON: Yes. Any objections?
21 MR. KLINE: No objection.
22 MR. CHEN: No.
23 MS. ROBESON: That will be resume of Christopher
24 Turnbull.
25 (Exhibit No. 57 was marked for

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1 identification.)
2 MR. HARRIS: Okay. Mr. Turnbull, would you tell
3 us a little bit about -- well, we're going to offer Mr.
4 Turnbull as an expert in transportation and traffic
5 engineering. I think both opposing counsel have used him
6 before, so before I go through the preliminary questions I
7 will just see if there is any objection.
8 MS. ROBESON: Any objection.
9 MR. KLINE: No objection to his qualification as
10 an expert in the field.
11 MS. ROBESON: Mr. Chen, any objection?
12 MR. CHEN: I concur with Mr. Kline.
13 MS. ROBESON: All right. You are qualified as an
14 expert in transportation planning and engineering.
15 THE WITNESS: Transportation planning, yes.
16 MS. ROBESON: What?
17 THE WITNESS: Transportation planning. I'm not a
18 professional engineer.
19 MS. ROBESON: Okay. All right. Transportation
20 planning.
21 BY MR. HARRIS:
22 Q Okay. Mr. Turnbull, did you have an involvement
23 in the Cabin Branch project in the past?
24 A Yeah, I've been involved with the Cabin Branch
25 since 2001.

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1 Q Can you tell us a little bit about your history of
2 involvement with the Cabin Branch project?
3 A We completed traffic analyses, the local area
4 traffic review starting with the first submittal which was
5 in July of 2003, which was approved for the phase one
6 preliminary plan approval, which also included the zoning
7 element of Cabin Branch.
8 We also completed an updated LATR for the phase
9 two portion of the project which was approved in 2004. And
10 then of recently, we've completed an LATR updated in April
11 2013.
12 MR. HARRIS: And I believe that LATR update from
13 2013 is in the record as Exhibits No. 23(b) and (c).
14 MS. ROBESON: Okay.
15 BY MR. HARRIS:
16 Q So, Mr. Turnbull, would you explain to us what you
17 did in connection with preparing Exhibit No. 23(b) and (c),
18 your LATR update?
19 A Well, we took a look at the transportation impacts
20 of changing out the medical hospital and medical office use
21 for specialty retail of 20 percent of the total commercial
22 area which accounted for 484,000 square feet of specialty
23 neighborhood retail.
24 Q And do you have an overall conclusion as to how
25 that, how the traffic generation from that revised use would

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1 compare with the traffic generation from the previously
2 approved use?
3 A Yeah. The specialty retail replaced the
4 commercial uses and would generate fewer trips than was
5 approved in the preliminary plan in November 2004. The
6 other conclusions are that, you know, we also looked at the
7 current traffic out at the critical intersections, and the
8 existing intersections still operate below the critical lane
9 volume standard of 1,425.
10 We included and updated background developments,
11 mostly, well, all of which are on the east side, seven of
12 which are unbuilt projects. So we included those traffic
13 layered on top of the existing traffic.
14 And then we calculated the specialty retail trips
15 in lieu of the hospital medical campus uses, and found that
16 those, the overall trips of the project would be
17 approximately 10 percent fewer during the a.m. and the p.m.
18 peak hours.
19 We then completed a traffic analysis using the
20 same assumptions that we did in the original approval, and
21 we found that each of the critical intersections would
22 operate below the CLV standard of 1,425.
23 The intersections on the east side, which was also
24 part of the original site, would also operate better than
25 previously analyzed due to the incremental decrease in those

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1 trips. In addition, as expected, that the impact of the
2 east side intersections would be further decreased if a
3 regional retail distribution of trips is used for the
4 specialty retail.
5 In other words, we are using the super district
6 distribution as provided by Park and Planning for commercial
7 use. And that kind of dictates how trips arrive to the
8 site, having it be an outlet center, which draws from maybe
9 a larger area, would maybe concentrate more on I-270, so
10 there could be a change in the distribution coming to the
11 site. So that's, you know, that's where you would
12 anticipate a decrease in those impacts on the intersections
13 on the east side, as there are fewer trips on that side.
14 This would not necessarily be the case if a
15 similar project was developed on the northeast portion of
16 Clarksburg, because that's where the trips are going to,
17 specifically.
18 And we also did a supplemental analysis because
19 retail trips operate as a peak during a Saturday. And
20 although the Saturday retail trips increased from 700 p.m.
21 peak hour trips, to 1,900 Saturday peak hour trips, the
22 overall project total decreases by 6 percent.
23 So when we change out the retail for the
24 commercial, we're still below the overall trip generation
25 that was expected to Cabin Branch by 6 percent.

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1 MS. ROBESON: It's just, but it's just
2 concentrated differently.
3 THE WITNESS: Correct, during the --
4 MS. ROBESON: I'm looking for the, I remember the
5 supplemental analysis, and I'm looking for the exhibit
6 number here. What were the levels of service for the peak
7 hour? When is the peak hour on Saturday?
8 THE WITNESS: On Saturday it's roughly from 11:00
9 to 2:00. So it's during the midday time frame.
10 MS. ROBESON: And what were you, I can't recall
11 what your levels of service were?
12 THE WITNESS: They were all below the 1425, in
13 fact --
14 MS. ROBESON: They were.
15 THE WITNESS: In fact, the analysis shows that the
16 p.m. peak hour during the typical weekday is the most
17 critical time period, because that's when all of the trips
18 occur; that is, the office, the research and development,
19 the retail, and the residential trips all occur. On
20 Saturday, you get a big decrease in the commercial traffic
21 because the employment associated with those don't generate
22 trips during the weekend, per se, or not a large amount.
23 MS. ROBESON: I see. I understand. Okay.
24 BY MR. HARRIS:
25 Q Would you turn to your Saturday analysis, and just

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1 answer the hearing --
2 MS. ROBESON: Do you by any chance have the
3 exhibit number for that?
4 MR. HARRIS: I thought that was 23(b), but let me
5 find my exhibit list. I misspoke.
6 MR. ROBINS: It might be (c).
7 MR. HARRIS: (c). Yes.
8 MS. ROBESON: Oh, I'm sorry. I missed that.
9 MR. HARRIS: Yes. 23(b) and (c).
10 MS. ROBESON: I see it. I have it now.
11 MR. ROBINS: Is (c) the Saturday analysis?
12 MR. HARRIS: (c) is the Saturday analysis.
13 MS. ROBESON: Yes.
14 MR. HARRIS: And (b) is the LATR study.
15 MS. ROBESON: Okay. I'm sorry. Go ahead.
16 THE WITNESS: That's okay. The CLV's are
17 summarized in table one, which is attached to the
18 memorandum.
19 MS. ROBESON: Right.
20 THE WITNESS: Behind all the figures. But the
21 most critical intersection is the I-270 northbound on and
22 off ramp at Clarksburg Road. And they had a total CLV of
23 1,203. And I believe the p.m. peak hour had a CLV of 1,300,
24 in that range. And as you go further to the west, the CLV's
25 decreased for the critical intersections.

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1 BY MR. HARRIS:
2 Q Okay. And do you have an opinion as to whether
3 this revised or this development plan amendment then meets
4 the County's applicable transportation standards?
5 A It could meet the transportation standards. It
6 would be below the CLV, and it would not create an adverse
7 impact to the surrounding network.
8 Q And is it within the traffic, all of the traffic
9 allocation that has already been made for the Cabin Branch
10 project?
11 A It is. It generates fewer trips than was
12 previously approved with the project.
13 Q And do you know whether the Park and Planning
14 staff and the Planning Board have reviewed your analysis,
15 and if so what their conclusion is?
16 A They have reviewed it, and they concluded that it
17 meets the standards for the LATR.
18 MR. HARRIS: I have no further questions.
19 MS. ROBESON: All right. Mr. Kline?
20 MR. KLINE: Thank you.
21 CROSS-EXAMINATION
22 BY MR. KLINE:
23 Q Bear with me because I only have 23(c). So if my
24 questions are predicated on 22(b), I apologize. In 23(c) on
25 page four --

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1 A Is that the Saturday analysis?
2 Q Yes, sir.
3 A Okay. All right.
4 Q On page four in the paragraph titled, site trip
5 generation, you talk about the development program or the
6 report discusses the development program, lists the number
7 of households, 500, only have this 2.420 square feet of
8 commercial space, which includes 450,000 square foot outlet
9 center. So the first question that comes to me, do retail
10 outlet centers have a different trip generation rate than
11 retail?
12 A They do.
13 Q They do?
14 A They do. ITE, the Institute of Transportation
15 Engineers has a database associated with outlet centers.
16 And generally those trips are fewer during the peak hours
17 than typical retail, and for other commercial, like office.
18 Q Because I don't have (b) this question is going to
19 be a little bit vague. In 22(b), which I guess is the LATR
20 referenced, how much square footage did you allocate to
21 retail and entertainment uses in terms of calculating the
22 trip generation?
23 A The total square footage was 484,000 square foot
24 is allocated to the retail/specialty retail.
25 Q Okay. If I understood that, so you're saying

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1 34,000 square feet would be attributable to --
2 A A neighborhood retail type of trip generation,
3 correct.
4 Q You heard my questions of Mr. Kaplan. How did you
5 treat the 66,000 square feet of entertainment uses that were
6 mentioned in the applicant's justification statement?
7 A I actually didn't see Mr. Kaplan's testimonies. I
8 was scrambling across the street.
9 Q Did you have an opportunity to review the
10 applicant's justification statement --
11 A I did not.
12 Q -- to participate at this time. Bear with me a
13 second here. Thanks. Mr. Turnbull, this is the applicant's
14 justification statement marked as Exhibit No. 55. And I
15 highlighted some things, so I'd have some questions to ask
16 Mr. Kaplan. And basically, in the first paragraph I
17 highlighted here, it talks about a 450,000 square feet
18 employment based retail with 14, including 14,000 square
19 feet of restaurants and substantial marketplace food court.
20 A Yes.
21 Q And then further on it talks about, as time goes
22 on, maybe construction 66,000 square feet of entertainment
23 uses to be added. Is that broken out in any way in terms of
24 your trip generation rate?
25 A Not the 66,000 square foot. But if the

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1 entertainment uses came out of the 450, it would, in the
2 eyes of ITE, it includes those type of entertainment uses
3 within the retail component. So if you had like a --
4 MS. ROBESON: But I thought you said that retail
5 outlet centers had a different trip generation rate?
6 THE WITNESS: They do. They do. But, and not
7 typical for outlet centers to have like entertainment
8 centers like a theater, for example. But it could have
9 restaurants, those other types of components of
10 entertainment which is encapsulated in the total trip
11 generation, because it's an average of a lot of different
12 studies, so it captures a lot of types of different uses for
13 outlets.
14 So I'm not sure what the 66,000 would, and I did
15 understand there is a discussion about an amphitheater of
16 some sort that might be part of the entertainment. If
17 that's the consideration in this, the amphitheater would not
18 necessarily generate peak hour trips that would be
19 attributable to the critical time periods.
20 BY MR. KLINE:
21 Q So your 66,000 then is included within the
22 category of retail?
23 A Right.
24 Q I didn't write fast enough when you made a comment
25 but we're back on 22(c) now. The trip generation from the

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1 new mix of uses, I think I heard you say that Saturday trip
2 generation at Cabin Branch at build out would be 700 trips
3 during the peak hour?
4 A Let me check my notes here. That relates directly
5 to the retail trip generation. Previously, there as 120,000
6 square foot of retail. That generated 700 p.m. peak hour
7 trips. And during the Saturday it's 1,900.
8 Q Okay. So the 484 is equivalent to 1,700? Is that
9 what you just said?
10 A Well, I can look at the trip generation and see
11 what the equivalency is.
12 Q It's not a trick question. I was trying to get
13 the comparison of the two numbers.
14 A I think the overall comparison is, during a
15 Saturday, Cabin Branch generated X number of trips with the
16 approved Cabin Branch. And when you replace it with the
17 outlet center, we're still 6 percent lower than what was
18 previously approved.
19 Q Well, and that 484,000 square feet of retail in
20 lieu of 120,000 would be the equivalent of how much?
21 A In lieu of 120 plus the hospital that was
22 accounted for. So there is like 360,000 square foot of
23 commercial development that's being converted over.
24 Q Okay. Understood. So it went from 700 to how
25 many?

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1 A Let me --
2 Q I know it's there, because I heard you say it
3 before.
4 A Well I did. Unfortunately, it was a comparison of
5 the previous. I didn't include that document in here. So
6 there's a trip generation comparison for the Saturday is
7 what I think that 700 is. So I didn't include the by right
8 trip generation for Saturday. So that's where that came
9 from, that 700.
10 Q All right. Let me try to back into it. You said
11 that the total trip generation would be less with the new
12 proposal --
13 A Right.
14 Q -- than the approved proposal --
15 A Correct.
16 Q -- by 6 percent.
17 A On Saturday.
18 Q On Saturday.
19 A Right.
20 Q So does that tell me that the number that I'm
21 asking about is less than 700? Because I thought I heard
22 you have a four digit number.
23 A No, the number of trips for the Saturday, for the
24 retail component is a fairly large number.
25 Q Give me in order of magnitude. Three times, two

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1 times, five times?
2 A Well, maybe 100 percent or something like that, or
3 two times.
4 Q 1,400 or 1,500, something like that?
5 A Uh-huh.
6 Q And the last one is more of a, I mean, we all deal
7 with the adequate public facilities harness. And what
8 you're saying is, the levels of service are okay. And the
9 transportation network can handle all the traffic no matter
10 what, what form it is in?
11 A Correct.
12 Q But is there not a qualitative difference in terms
13 of the traffic on Saturdays compared to the capacity of the
14 networks? In other words, if I had bought a house in Cabin
15 Branch and thought I was going to be driving to the grocery
16 store on a Saturday morning, I'm now dealing with,
17 apparently, twice as much traffic as I thought I was going
18 to have before. And doesn't that change the character of
19 the community, at least for the Saturday dimension?
20 A I'm not sure. I don't know that that would be a
21 consideration, because the outlet is near the interchange.
22 And if you were shopping, you may go local. So you may not
23 be mixing with those folks. And there is also an
24 expectation on Saturday that you do intermingle with those
25 types of trips. I think the change comes in your behaviors,

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1 is that you're not trying to get to work by 8:30 in the
2 morning, so you're sense of urgency to get through the
3 network is not as high.
4 Q So the numbers that we're talking about may be
5 twice as much as under the approved plan actually differ.
6 It may not be so much of the southern end, but it would be
7 more traffic on the northern end than there is on the
8 southern end, attributable to people visiting the retail
9 outlet center?
10 A Sure.
11 Q Yes.
12 A I mean, it's still only 6 percent lower.
13 Q Right.
14 A So there was a level of traffic expected in the
15 first place.
16 Q And I can tell, this is just my blank spot, but if
17 we're 6 percent lower, why are we twice as much traffic?
18 Six percent is the day long number?
19 A Uh-huh.
20 Q And the twice as much is just during the peak
21 hours?
22 A Just during those peak hours.
23 Q Which is 11:00 to 2:00?
24 A Well, it's one hour in that time period usually.
25 MR. KLINE: Fine. Fine. No further questions of

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1 Mr. Turnbull.
2 MS. ROBESON: Okay. Mr. Chen?
3 MR. CHEN: No questions.
4 MS. ROBESON: All right. I just have one
5 question. How did you determine the peak hour?
6 THE WITNESS: Well, we actually completed traffic
7 counts for a Saturday.
8 MS. ROBESON: On a Saturday?
9 THE WITNESS: On a Saturday, we actually counted,
10 we counted --
11 MS. ROBESON: You did it the same way?
12 THE WITNESS: Yeah, we counted the traffic and we
13 picked the highest peak hour during that time period.
14 MS. ROBESON: Okay.
15 THE WITNESS: And then we applied the peak hour
16 numbers from the ITE.
17 MS. ROBESON: Okay. All right. Mr. Harris?
18 MR. HARRIS: Just one follow-up question.
19 REDIRECT EXAMINATION
20 BY MR. HARRIS:
21 Q Can you advise us whether Saturday counts are
22 required under the County's transportation analysis, or
23 whether this is something that was done beyond the
24 requirements?
25 A Yes, we did this beyond the requirements. We

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1 actually could have just done a trip generation comparison
2 and just showed we're underneath the trips associated with
3 the preliminary plan approval. So we kind of did one step
4 above and beyond, partly to get a good sense of how the
5 traffic will work with the retail center.
6 Retail is a very discretionary trip, and most
7 retailers are very cognizant of that. And so their road
8 network, they tend to have their road network in a very good
9 order, if you will.
10 MS. ROBESON: Okay. Any redirect, Mr. Chen? All
11 right. Mr. Harris?
12 MR. HARRIS: Okay. Our next witness is Gary
13 Unterberg. It may take him a moment to set up here.
14 (Discussion off the record.)
15 MS. ROBESON: Okay, Mr. Unterberg. Please raise
16 your right hand.
17 (Witness sworn.)
18 MS. ROBESON: Okay.
19 DIRECT EXAMINATION
20 BY MR. HARRIS:
21 Q Mr. Unterberg, would you state your name and
22 business address, please?
23 A My name is Gary Unterberg, with Rodgers
24 Consulting. We're at 19847 Century Boulevard, Suite 200,
25 Germantown, Maryland 20874.

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1 Q And what is your position with Rodgers?
2 A I am a senior vice president. My background is in
3 landscape architecture and land planning.
4 MR. HARRIS: We have submitted what I think would
5 be marked Exhibit No. 58, a statement of qualifications for
6 Mr. Unterberg. And again, we would offer him as an expert
7 in land planning. And I don't believe either person,
8 counsel, has any objection to that.
9 MS. ROBESON: Well, I will let you speak for
10 yourselves.
11 MR. CHEN: I don't.
12 MR. KLINE: No objections.
13 MS. ROBESON: Okay. You were right. 58 will be
14 resume of Gary Unterberg.
15 (Exhibit No. 58 was marked for
16 identification.)
17 BY MR. HARRIS:
18 Q Would you tell us a little bit about your
19 particular experience with respect to Montgomery County
20 Master Plans and the Clarksburg Master Plan in particular?
21 A I've been practicing in Montgomery County, in
22 particular, for a little over 25 years. And more
23 particularly, in Clarksburg for the last 15 years. More
24 specifically, I've worked on Cabin Branch since the year
25 2000. And also I provided the zoning, Master Plan and land

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1 use, the expert testimony for the original zoning case,
2 G-806.
3 And then some of the other properties we have
4 worked with, or clients we have worked with, in addition to
5 Cabin Branch, which includes Adventist Healthcare,
6 Winchester Homes, Toll Brothers, Cabin Branch Commons. We
7 also have been working with LCOR on the Comsat property in
8 Clarksburg. We've worked with the Linthicums who own two
9 properties. They since have sold one and developed, which
10 was developed by Pulte Homes.
11 And we've also work with Natelli Communities and
12 Pulte on other properties in Ten Mile Creek. And also, most
13 recently, we've worked on the Courts of Clarksburg. And I
14 provided expert testimony for those zoning case, which is
15 G-881. Also in Clarksburg, we've been very active with the
16 Clarksburg Civic Association. And I attend most of the
17 civic meetings and planning meetings throughout the year.
18 MS. ROBESON: When you say we, who is we?
19 THE WITNESS: Rodgers Consulting, as a company.
20 BY MR. HARRIS:
21 Q Okay. Would you take us through a little bit of a
22 tour of the site via the exhibits that you have put up
23 there. And then I think one of them needs to be marked as a
24 new exhibit. It is a copy of the development plan
25 amendment. The difference between it and what was submitted

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1 previously is that this has on it the proposed binding
2 element that the Planning Board proposed, and which we have
3 accepted.
4 MS. ROBESON: About the 50,000 square feet
5 limitations?
6 MR. HARRIS: That's correct.
7 MS. ROBESON: Any objections? Okay. So what
8 date, does that have a date on it?
9 THE WITNESS: It is dated July 29th.
10 MS. ROBESON: Okay. I'm going to --
11 THE WITNESS: And it includes binding element
12 number 10 which is from the landlord.
13 MS. ROBESON: I'm going to just label it, amended
14 development plan, dated July 29th, 2013.
15 MR. ROBINS: Do you want us to put an exhibit
16 number on it?
17 MS. ROBESON: I do. I thought he had done that.
18 THE WITNESS: No.
19 MS. ROBESON: Exhibit, can you just write Exhibit
20 No. 59 on there?
21 (Exhibit No. 59 was marked for
22 identification.)
23 THE WITNESS: Do you have a preference to which
24 corner?
25 MS. ROBESON: Lower right. Thank you.

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1 BY MR. HARRIS:
2 Q Okay, so using Exhibit -- sorry.
3 MR. KLINE: Could we ask, since it's just coming
4 in, not that it's unexpected, but could we get a copy of it?
5 Could you have -- I don't need it now.
6 MR. HARRIS: Sure.
7 MR. KLINE: Could Mr. Unterberg just e-mail,
8 because I'm guessing we're still going to be talking to Mr.
9 Unterberg on Wednesday.
10 MR. HARRIS: Probably.
11 MR. KLINE: I'd like to have those in hand, and
12 copies to Mr. Chen and myself.
13 MS. ROBESON: And if you could e-mail one, send us
14 an electronic copy, that would be helpful.
15 THE WITNESS: I can e-mail them. I do have a
16 couple of extras today. I don't know if I have enough for
17 everybody, but if that would be helpful.
18 MS. ROBESON: Well, if it's the only change, I can
19 use the one in the file. But, so it's up to you. If you
20 have it now --
21 MR. CHEN: If you've got it now, I'll take it.
22 MS. ROBESON: -- for Mr. Chen and Mr. Kline,
23 that's fine.
24 MR. KLINE: I really wanted to see the text of the
25 binding element more than anything else.

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1 MS. ROBESON: Okay.
2 MR. KLINE: Because I'm assuming the ranges don't
3 change at all.
4 THE WITNESS: Correct.
5 MR. KLINE: Yes.
6 BY MR. HARRIS:
7 Q Okay. So using Exhibit --
8 MS. ROBESON: I'm sorry.
9 MR. HARRIS: I'm sorry.
10 MS. ROBESON: Is the text identical to the
11 Planning Board's recommending binding element?
12 THE WITNESS: It is. It is the text that's in
13 their memo of recommendation.
14 MR. KLINE: Then I have it. Thank you.
15 MR. CHEN: And I'd like to still get it.
16 THE WITNESS: Okay.
17 MS. ROBESON: You're going to provide copies.
18 THE WITNESS: Yes, we'll provide copies. I can,
19 well, I guess afterwards, I can dig out what I have.
20 BY MR. HARRIS:
21 Q Okay. So would you take us for a tour, using
22 Exhibit No. 58 as the base, explaining the site and --
23 MS. ROBESON: Wait. I have Exhibit No. 59.
24 BY MR. HARRIS:
25 Q I'm sorry, 59.

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1 A That's correct.
2 Q What did I miss?
3 MS. ROBESON: You missed Gary Unterberg, Mr.
4 Unterberg's --
5 MR. HARRIS: Oh, yes. Thank you.
6 MS. ROBESON: I keep interrupting. I'll let you
7 go this time.
8 THE WITNESS: The site itself. Cabin Branch as a
9 whole is roughly 535 acres. The part of it that is zoned
10 MXPDP is 283 and a half acres. And on the eastern side we
11 have I-270. To the north, which is just a little bit off
12 the page, we have the Maryland Route 121. Then to the north
13 and west which creates the western boundary, the existing
14 Maryland Route 121. It's all the way down.
15 And then to the south, the southern boundary is
16 West Old Baltimore Road that continues, and actually West
17 Old Baltimore Road continues underneath I-270, but there is
18 not an interchange there. Park entrance, Black Hill
19 Regional Park is to the south, and that has its main
20 entrance on West Old Baltimore Road which is closer to 270.
21 Of that 535 acres and those three roads that
22 create this triangle almost all that is Cabin Branch. On
23 the southern piece there is a small outlet of single family
24 homes that are not part of the property.
25 When we come to the zoning, everything in orange,

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1 this orange outline, those are 283 and a half acres, which
2 is primarily the eastern half of the property. The western
3 half, which is approximately 251 acres, is zoned RMX-TDR.
4 What I'd like to do is go through the history a
5 little bit of the site and what's happened in the last 10-13
6 years or so. And what I'd like to do is go to this exhibit,
7 which is the approval exhibit, which is already in the file.
8 And I've got noted that 21(f) let me double check that--
9 BY MR. HARRIS:
10 Q 21(h).
11 A 21(h), which is the approval exhibit.
12 Q Yes. That's fine.
13 A Okay.
14 Q The approvals.
15 MS. ROBESON: Can you mark that 21(h) duplicate?
16 (Discussion off the record.)
17 THE WITNESS: Again, to orientate everyone, 270 is
18 on the eastern side of Maryland Route 121, West Old
19 Baltimore Road. We have a number of colors here, and also
20 283 and a half acres that's MXPDP as outlined before.
21 The zoning was approved in 2003, and since then
22 there has been, actually before the zoning there was a pre-
23 application submitted to Park and Planning went through and
24 made some recommendations that were carried through with the
25 zoning. And then in 2004, a preliminary plan was approved

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1 for the property, which was for the whole property. And the
2 whole layout was shown, but approximately two-thirds of the
3 density was approved at that time.
4 Subsequently at 2008, amendment to the preliminary
5 plan was submitted and the full density was approved, which
6 was 1,186 residential units, the 2,420,000 square feet of
7 employment and retail, and also 500 senior units were
8 approved. The APFO was passed, and so forth, and a 2008
9 amendment, which was the amendment.
10 Also, one of the requirements was to do an
11 infrastructure site plan, which was an overall site plan
12 that included roads, Maryland Route 121, it's relocated and
13 comes through the site. Currently, it comes up around the
14 top edge of the site.
15 The interchange at 270 is widened from two lanes
16 to six lanes, to where it comes through as six lanes, a
17 roundabout, come down four lanes, another roundabout, and
18 then continues down, transitions to two lanes, and comes
19 down to West Old Baltimore Road.
20 The infrastructure site plan included an overall
21 water quality plan, since Clarksburg is a special protection
22 area. A number of, well, all of the storm water management
23 ponds at the time. And then also an overall forest
24 conservation plan, which is also approved with that.
25 And subsequently, there's been a series of site

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1 plans that have come through and approved. And these are
2 all the colors, which is primarily the western half, if not
3 two thirds of the property. As you can see, a number of
4 them do overlap between the two zones, the MXP zone and the
5 RMX zone.

6 And as this breaks down, that the light brown or
7 taupe color is Winchester phase one, the orange if
8 Winchester phase two, the yellow is Winchester phase three.
9 Also the pinks or the darker pink is Toll Brothers phase
10 one, and then to the west is the lighter pink which is Toll
11 Brothers phase two. All of these have been approved. A
12 couple, actually, have been re-approved with amendments from
13 2010, 2007 to 2010, and the most recent was 2013.

14 Also part of the approval, the SMTM where the
15 Gosnell property has also been approved, a site plan
16 approved, which is the northern retail employment area,
17 north of the new 121. And that has site plan approval.

18 Also, the water tower tank location, which is this darker
19 blue, has gone through mandatory referral and approval of
20 Park and Planning.

21 And then also currently there's about 10 or 11
22 storm water management ponds that also have been approved.
23 And in particular, ponds one, two, three, four, five, six,
24 seven, eight, nine, 13 and 11 and the farm pond all have
25 been approved and have met, particularly with the new storm

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1 water regulations, the grandfathering deadline that was May
2 3rd of this year.

3 As far as construction, construction has begun.
4 Mass grading for Winchester phase one is currently in
5 progress. Pond 11 has been built. Pond five has been
6 built. Pond six has been built. Most of this light brown
7 or taupe area has been graded.

8 Broadway, which I the main north/south road, that
9 was Second Avenue in the old development plan is currently,
10 utilities are going in, has been graded. 121, the new 121
11 has been mass graded. And that's partly graded and in
12 operation.

13 Q Can you then take a little time and explain to us
14 how the new DPA compares with the approved development plan?

15 MS. ROBESON: Now, is that a duplicate exhibit
16 there?

17 THE WITNESS: This is a duplicate exhibit. And
18 this is the sign which goes back to --

19 BY MR. HARRIS:

20 Q I think number 6, certified development plan.

21 A This is number 6.

22 MS. ROBESON: Okay. Can you just write, just
23 write EX 6 duplicate.

24 THE WITNESS: And the next one, which is going
25 back to 20, 21(f) is a duplicate, which is this one.

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1 MS. ROBESON: Okay. Just write, or Mr. Robins --
2 okay. Go ahead. It's faster for you to do it. I'm just,
3 we're going to break at 12:30.

4 THE WITNESS: Okay. Exhibit No. 6, which is the
5 signed development plan.

6 MS. ROBESON: Yes.

7 THE WITNESS: So this is the model that was signed
8 is black and white, and so this is the approved, all the
9 notes, numbers, et cetera. For discussion purposes, I have
10 a color version, which is duplicate 21(f).

11 MS. ROBESON: Okay.

12 THE WITNESS: Which has the same notes and so
13 forth. As we went through the hearings, we did use the
14 color version. But what we did do with the zoning, we
15 labeled E for employment, TH for townhouse, which carried
16 through on the black and white.

17 MS. ROBESON: Okay.

18 THE WITNESS: So that's why you see, Exhibit No.
19 6, you see the gray fuzzy area. So for comparison,
20 duplicate 21(f) is the color version of the approved
21 development plan. And then on the left is new Exhibit No.
22 59, which is the latest version of the development plan.

23 MS. ROBESON: Okay.

24 THE WITNESS: And what I'd like to do is walk you
25 through a couple of the differences. As from the first

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1 glance, you can see they look the same. We have a chart, A,
2 B, C, D, and a maximum yield summary. That has stayed the
3 same, so the same format. Our orange line that shows the
4 283 acres is the same on both. The coloring is the same.

5 One of the things Park and Planning did ask us to
6 do is, particularly as we go back to the previous exhibit
7 which is 21, 21(h), every, on the new development plan,
8 which is Exhibit 59, everything that has site plan approval,
9 we've updated the line work.

10 So this is the zoning line. Everything west of
11 the MXP zone, the 251 approximate acres has site plan
12 approvals. We've updated that line work mix and so forth.

13 We have two main north/south streets. One that's the
14 western edge of the zoning is known as Broadway, which was
15 formerly known as Second Avenue, or A-304. It's now
16 Broadway. We've updated the nomenclature.

17 And then we also have a second north/south street,
18 which is Cabin Branch Avenue, which goes through bubbles B
19 and C. And that was, on the old plan, First Avenue. And
20 those are relatively the same location. Again, I mentioned
21 Maryland Route 121 relocation.

22 Also to the southern portion, which separates area
23 C and area D is A-302, which was and still is in the Master
24 Plan, Newcut Road. And there will be a future interchange,
25 which is not part of the Cabin Branch approvals, which is

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1 now called, here it's Newcut Road, A-302. The new name is
2 Little Seneca Parkway, and the street that continues east is
3 also Little Seneca. So Newcut Road is now Little Seneca
4 Parkway. So those names have been updated.
5 As mentioned, we've updated binding element number
6 10, which is the language from the Planning Board memo
7 recommendation for approval. And then what we've done is
8 the format and charts have stayed the same, and the key
9 component is that, for this discussion, retail was 120,000
10 square feet out of the 2,420,000 and employment overall with
11 retail is 2,420,000 of which 120,000 is retail, and
12 2,300,000 was employment.
13 As noted on the new one, the not to exceed number
14 is 484,000 square feet of retail, and 1,936,000 square feet
15 of employment. Again, not to exceed 2,420,000 square feet.
16 MS. ROBESON: Is a hotel part of that 424,000?
17 THE WITNESS: 484,000?
18 MS. ROBESON: I mean, yes.
19 THE WITNESS: A hotel is not. In particular, I
20 will mention the Gosnell site plan that has approval.
21 MS. ROBESON: Yes.
22 THE WITNESS: And that resolution from Planning
23 Board they have 87,500 square feet of employment approved
24 which includes a hotel and two banks as employment. And
25 then they also have, which has not changed, and we're not

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1 changing the Gosnell SMTM property.
2 They also have 8,600 square feet of retail
3 approved. And this case includes a gas station, a car wash,
4 and a convenience store. So the Planning Board has already
5 made that designation or clarified a hotel is employment and
6 office.
7 MS. ROBESON: Okay.
8 THE WITNESS: So overall, that's the difference
9 between the two, and also, accordingly, the numbers and the
10 ranges in A and B, C and D have been updated to match the
11 current layout that is proposed.
12 BY MR. HARRIS:
13 Q I think next we wanted to walk through the zone.
14 A Yes.
15 Q So would you, using the zoning ordinance, which it
16 looks like you have on the --
17 A Dig out my --
18 Q Yes, dig it out. Yes.
19 A Keep going.
20 Q The MXPDP zone, section 59-C-7.5 in the zoning
21 ordinance.
22 A Yes.
23 Q Okay. First of all, are you familiar with the
24 MXPDP zone?
25 A I am.

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1 Q Would you summarize for us any conclusions you
2 have with respect to how this DPA conforms with the
3 standards and purposes in the MXPDP zone.
4 Q To start with, the property, the 283.5 --
5 MR. CHEN: Excuse me. Madam Examiner, I
6 understand that he may testify and give an opinion as to
7 compliance with the zone, standards of the zone. I'm a
8 little bit off base here as a general question, tell us
9 about what you think about compliance with the zone because
10 this zone has lots of standards in it. I think it's pretty
11 amorphous to say, what is your opinion about compliance when
12 we're talking about this type of a zone? It should be tied
13 to the standards, I submit.
14 MS. ROBESON: What was your question, Mr. Harris?
15 I thought you said the purposes.
16 MR. HARRIS: Would you walk us through the
17 purposes and standards of the zone. I think we're talking
18 about the same thing.
19 MR. CHEN: Are you doing the same thing? Okay.
20 Fine. Fine.
21 MS. ROBESON: That was my understanding, too. All
22 right. Proceed.
23 THE WITNESS: The property itself, the 283.5
24 acres, is zoned MXPDP. It was zoned in 2003. At that time,
25 the development plan was found in conformance with the zone

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1 which includes chapter 59-D-1.61, 59-C-7.5, and also 59-D-3.
2 And at that time it was found to be an integrated mix of
3 uses of all types, comprehensively planned with the emphasis
4 on mix of uses.
5 MR. ROBINS: Excuse me, Mr. Unterberg. The
6 reporter is having a little trouble hearing. I just want to
7 make sure that you can speak up a little.
8 (Discussion off the record.)
9 THE WITNESS: Also, and that talks to the zone
10 itself. And then also as the number, various plans have
11 moved forward, this preliminary plan, the infrastructure
12 site plan, and the site plan that have been in the MXPDP
13 zone, they have all been found in conformance of the zone.
14 And then in particular, the July 18th staff report
15 from Park and Planning that was from the hearing, which
16 states on pages 20 through 28, that is all documented, point
17 by point how we comply with the zone itself.
18 MS. ROBESON: Are you adopting that as your own
19 finding?
20 THE WITNESS: I'm adopting that as my testimony
21 and in agreement with that.
22 MS. ROBESON: Okay.
23 THE WITNESS: Particularly since the property is
24 zoned and we need to meet the statutes of the zone.
25 BY MR. HARRIS:

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1 Q Okay. In terms of the Clarksburg Master Plan, I
2 think you testified about, what is your familiarity with the
3 Clarksburg Master Plan?
4 A Very familiar with the Master Plan, and as I
5 mentioned before, in addition to the Cabin Branch, the
6 number of properties in Clarksburg that we've had in the
7 Master Plan.
8 Q And can you tell us whether the DPA is, in your
9 opinion, in compliance with the use and density
10 recommendations of the Clarksburg Master Plan, and whether
11 it conforms with County plans and policies?
12 A I believe it does, and also with the particular
13 use and density recommendations of the '94 Clarksburg Master
14 Plan. The staff report, again, the July 18th, 2013,
15 planning staff report on pages 13 through 20 specifically
16 show how we are in compliance with the use and density of
17 the Master Plan. And I also would adopt that as my
18 testimony.
19 Q Can you give us any supplemental comments you
20 would have beyond the findings that the staff and the Park
21 and Planning made on that topic?
22 A A few things. Overall, as has been discussed with
23 the Planning Board and is also included in the Master Plan,
24 Master Plans are a guide and a snap shot over time, and the
25 best prediction. And this was the 1994 Master Plan which

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1 next year will be 20 years old. They are not meant to be
2 straightjackets in that flight.
3 Also, from the Master Plan itself on page BII,
4 which talks about the timing, talks about how it should be
5 flexible over time, the Master Plan. That specifics --
6 MS. ROBESON: Is that in the introduction?
7 THE WITNESS: Yes.
8 MS. ROBESON: Okay.
9 THE WITNESS: The Clarksburg Master Plan, it's one
10 of the preambles.
11 BY MR. HARRIS:
12 Q And has it been your experience that Master Plans
13 are interpreted more flexibly over time, and if so, on what
14 do you base that conclusion?
15 MR. CHEN: Objection.
16 MS. ROBESON: Basis.
17 MR. CHEN: I think it's pure speculation. Unless
18 you can give a list of every time he's been in a case where
19 a Master Plan has not been followed, if there is that
20 foundation, fine. But this question is improper without a
21 foundation.
22 MS. ROBESON: Mr. Harris, can you repeat the
23 question for me?
24 MR. HARRIS: Do you know -- I don't remember what
25 I said, but I think it was implied. Is it your

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1 understanding that Master Plans are interpreted more
2 flexibly over time, and if so, can you give us examples of
3 your experience?
4 MS. ROBESON: I think he's giving examples. I'm
5 going to let it in.
6 MR. CHEN: He has not given any examples. The
7 only two were --
8 MS. ROBESON: Mr. Unterberg, are you going to give
9 more than two examples?
10 THE WITNESS: Yes, I have one specifically that I
11 was going to be speaking on.
12 MS. ROBESON: More than two?
13 THE WITNESS: I can discuss more than two, yes.
14 MS. ROBESON: Okay. Well, I'm going to let it in
15 for the weight it deserves. I understand your point, but
16 I'm going to let it in. We have taken testimony like this.
17 Whether it's persuasive or not is another matter. So I'm
18 going to let it in for the weight it deserves. Okay. Go
19 ahead.
20 THE WITNESS: Well, and let me give two examples,
21 and one in particular is a recent case, which was The Courts
22 at Clarksburg, and wherein the Master Plan flexibility was
23 taken into account. And specifically, this is from the
24 hearing examiner's report.
25 MS. ROBESON: In 881?

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1 THE WITNESS: G-881, yes. And this is from page
2 65, and I quote,
3 "The hearing examiner finds the proposed
4 development substantially complies with the use
5 and density recommendations of the Master Plan.
6 When one interprets the Master Plan, due
7 consideration for its goals and objectives, and in
8 light of development standards since adopted and
9 according to case A-881."
10 So that was when the use and density, the intent
11 is there, and purpose over, in my words, over a period of
12 time when things have changed.
13 And I will give as a second example, I will use
14 Cabin Branch as an example. And this goes back to 2003
15 where the Master Plan specifically recommends that A-302,
16 which at the time was Newcut Road, which is now Little
17 Seneca Parkway, the Master Plan specifically recommends that
18 this road continue all the way west, through the property to
19 121.
20 And at that time the better idea and
21 interpretation of the Master Plan is that we should not do
22 that, and primarily because the environmental weight was
23 given to the stream valley, which is the Cabin Branch or the
24 western stream valley. So that road was removed from the
25 approvals for Cabin Branch to move forward. So that's

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1 another example how the Master Plan has been interpreted and
2 something has changed along the way.
3 MS. ROBESON: And what's changed as far as this?
4 THE WITNESS: As far as Cabin Branch?
5 MS. ROBESON: Well, what, in the past we've taken
6 changed circumstances which means, well, maybe the exact
7 vision couldn't be accomplished, but this will accomplish
8 the overall goal. What is preventing the exact vision from
9 being accomplished here?
10 THE WITNESS: Actually, as I continue, we're going
11 to get to that.
12 MS. ROBESON: Okay.
13 THE WITNESS: And the different options that were
14 available and how we got to 2003.
15 MS. ROBESON: Okay.
16 THE WITNESS: And how we are justifying where we
17 are going today.
18 MS. ROBESON: Okay.
19 BY MR. HARRIS:
20 Q So why don't you go to the general recommendations
21 in the Master Plan and how you believe this development plan
22 amendment conforms with the general recommendations?
23 A Okay. What I would like to do is go through
24 those, which is a number of them.
25 MS. ROBESON: Okay. Where are you in the Master

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1 Plan?
2 THE WITNESS: We are, well, I will start with page
3 VII and though there's a series of these. I'll quote the
4 page as I go, because we go from page six to page 10.
5 MS. ROBESON: Okay. Now, I do not have a full
6 copy of the Master Plan in the record. What I've done
7 before is taken judicial notice of what is on the Park and
8 Planning website. But if someone would prefer to have the
9 hard copy in the record, I'll need somebody to supply one.
10 MR. HARRIS: We'll be happy to do that. I can't
11 give you mine now.
12 MS. ROBESON: I know.
13 MR. HARRIS: You wouldn't want it anyway. It's
14 all dog-eared from years of use.
15 MS. ROBESON: Okay, It's just that I've had people
16 object to taking judicial notice of what's on the website.
17 So I just said --
18 MR. KLINE: Before you leave there, two things.
19 One, because I think we do want you to have it, because I
20 have a feeling you're going to be looking at those and it
21 will be a lot easier to find it in a book than it will on a
22 computer screen, but didn't I see you holding a copy at the
23 first day of hearings for the plan itself out of your
24 library?
25 MS. ROBESON: We, for some reason, we have had

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1 Master Plans in the library disappear. And all I could find
2 was one of the drafts, and I was not able to find the -
3 MR. KLINE: I think we all agree that it would
4 best that you have your own copy.
5 MS. ROBESON: Well, I printed a bunch out, but not
6 everything.
7 BY MR. HARRIS:
8 Q Okay. Let's go, you know, through the pages that
9 you wanted to site in terms of the general recommendations
10 in the Master Plan.
11 A Okay. And I will note that, also, which I think I
12 already mentioned, in the stack of pages, 13 through 20,
13 also walk through a similar list for reference.
14 We'll start off with page VII, which is on the
15 preamble of the Master Plan and quote,
16 "It's recognized that circumstances will
17 change following adoption of plans and that the
18 specifics of a Master Plan may become less
19 relevant over time."
20 The Master Plan was adopted in 1994, which is 19 years old.
21 June of next year it will be 20 years old.
22 If we go to page six of the Master Plan, and these
23 are all general or overall goals of the Master Plan, II,
24 "The plan emphasizes the importance of I-270
25 as a high technology corridor for Montgomery

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1 County, as a region, in the region, and preserves
2 key sites adjacent to I-70 for future employment."
3 MR. CHEN: That project, you said II?
4 THE WITNESS: Page six.
5 MR. CHEN: I'm on page six. I don't see II.
6 MS. ROBESON: No, he said the first quote was from
7 page VII.
8 MR. CHEN: Yes.
9 MS. ROBESON: Page seven, Roman numeral.
10 MR. CHEN: I got that. I got that. But he's on
11 page six now, I think?
12 MR. HARRIS: It is page six, yes.
13 MR. CHEN: Where is he reading from? He said II.
14 MR. HARRIS: He didn't say II.
15 MR. CHEN: I'm sorry. What did he say?
16 MR. HARRIS: Number eight.
17 MS. ROBESON: I don't think he said II for the
18 second page.
19 MR. HARRIS: Number eight.
20 MR. CHEN: Okay.
21 MS. ROBESON: So you're on page six of the Master
22 Plan.
23 THE WITNESS: Yes, which is number eight.
24 "The plan emphasizes the importance of I-270
25 as a high technology corridor for Montgomery

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1 County and the region and preserves key sites
 2 adjacent to I-270 for future employment options.”
 3 This is a key component for Cabin Branch, and it is a part
 4 of the employment corridor that’s identified along 270 as
 5 the western portion, and with the 2,420,000 square feet that
 6 have been approved, with this proposal of the 20,000 or 20
 7 percent to be retail of 484,000 square feet.
 8 It leaves 80 percent, which is the 1,936,000
 9 square feet for, specifically for the employment, and to
 10 accomplish this goal. And also the zone itself speaks to
 11 this, where 20 percent is allowed for retail, thus leaving
 12 the 80 percent for the technology and office employment
 13 corridor.
 14 Go to page 10. Double check it. This is at the
 15 top of page 10.
 16 “To promote a healthy economy, including a broad
 17 range of business, service, and employment
 18 opportunities at appropriate locations.”
 19 Also if you go further down the page, the second from the
 20 bottom,
 21 “provide an attractive land, provide for
 22 attractive land uses that encourage opportunity
 23 for social interaction and promote community
 24 identity.”
 25 I believe that this plan also does that, particularly with

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1 the mix of plans, and as noted in the Park and Planning
 2 staff report. We’re trying to get the greatest mix possible
 3 with the parameters of the zone, and also to move forward
 4 with a technology corridor and employment corridor, we need
 5 the variety of mixes to accomplish that. And we believe
 6 adding to the retail will do that.
 7 And page 16, top of the page.
 8 “The plan envisions Clarksburg as a town and
 9 a larger scale than proposed in the 1968
 10 Clarksburg Master Plan, but smaller than corridor,
 11 city center, Germantown.”
 12 This particularly applies to Cabin Branch, because
 13 Cabin Branch as a whole is on the west side of 270. It has
 14 the mix of uses that include residential employment, retail,
 15 public uses, senior houses. So as a whole, that mix is
 16 coming together to make the project as a whole.
 17 BY MR. HARRIS:
 18 Q Does this DPA change the amount of development or
 19 the scale of development that has been approved under the
 20 prior development plan?
 21 A It does not. We still are capped at the 2,420,000
 22 square feet. We’re clarifying the uses, particularly the
 23 retail use and within the parameters of the MXPDP zone and
 24 the Master Plan.
 25 Let’s go to page 16. Well, we are on page 16.

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1 The bullet second from the bottom,
 2 “Recognizes the importance of civic spaces and
 3 public uses to development of a town concept.”
 4 Again, Cabin Branch, one of the key components of Cabin
 5 Branch are the civic spaces, and I’ll walk through the green
 6 spaces, the civic spaces, and the organization of the plan
 7 in a little bit. Let’s go to page 18.
 8 Q How about back to page 16, the bullet above that.
 9 A The one that says, strives to maintain an identity
 10 for Clarksburg separate from Germantown or Damascus?
 11 Q Yes. Do you believe this development plan
 12 amendment does that?
 13 A I do because with the addition of the retail, the
 14 specialty retail, in addition to our neighborhood retail,
 15 this would give Cabin Branch and Clarksburg as a whole kind
 16 of a spot on the map, which is unique for the area, and
 17 thereby accomplishing or helping to accomplish this.
 18 Let’s go to page 18. Where did this one occur on
 19 the pages? Has everyone located that? It speaks to, the
 20 Master Plan speaks to significance and concerns regarding
 21 natural environment and developing in a responsible and
 22 sensitive manner.
 23 Q Well, let me ask you this, whether --
 24 MS. ROBESON: Yes.
 25 THE WITNESS: I understand.

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1 BY MR. HARRIS:
 2 Q Generally, what does page 18 recommend, in your
 3 opinion?
 4 A Well, page 18, as the title says, is the natural
 5 environment, speaks to the importance of the natural
 6 environment. And this has been one of the key features of
 7 the plan from the beginning. There are two stream valleys
 8 on the plan. One is the eastern stream valley, the Little
 9 Seneca stream valley. The second is the western stream
 10 valley, which is the Cabin Branch stream valley. Both of
 11 these have been identified and set aside.
 12 Overall, we’ve tried to treat the plan
 13 comprehensively. That speaks to an overall water quality
 14 plan, an overall forest conservation plan. And then as each
 15 site plan moves forward, those plans are updated with those
 16 specifics.
 17 The other thing is we are, Clarksburg is in a
 18 special protection area. About half to two-thirds of this
 19 site is technically in the special protection area. We have
 20 proffered from the beginning that the whole site should be
 21 treated as a special protection area to meet this goal.
 22 Page 20 speaks to, the plan recommends a multiple
 23 purpose greenway system along the stream valleys. This goes
 24 to what I was just speaking of. And I’ll point out on the
 25 plan, again, the eastern stream valley, Little Seneca, has

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1 been set aside as green space. The western tributary, Cabin
2 Branch, has been set aside as green space.
3 You will also have, which is more evident details
4 of the site plans, there is a number of green connections
5 east to west. And this one shown in this view is known as
6 Tribute Parkway, which is a common park system that connects
7 our local park to the stream valley park greenway with
8 housing on either side. So there is a number of connecting
9 greenways from east to west within the plan itself. Page
10 28.
11 MS. ROBESON: Mr. Unterberg, this will be your
12 last point. Okay. Because it's 12:25.
13 THE WITNESS: Okay. The -- let's see. I copied
14 these all out of the Master Plan, but I should have
15 highlighted these on each page so I could cross-check. Page
16 20 speaks to, the plan establishes a mixed use and
17 interconnected system of streets in each neighborhood to
18 encourage pedestrian travel and reduce dependency on the
19 automobile.
20 The Exhibit 59 shows this pretty well. We've
21 embraced from day one that this would be a traditional
22 neighborhood design, grid street system. We have
23 north/south streets and we have east/west streets. And this
24 grid system does not stop at the residential or the
25 employment.

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1 In particular, which we'll be speaking to more of
2 on Wednesday, Wellspring connects our school site and local
3 park with the greenway along the street. And that street
4 continues through into area B on the development plan, and
5 then also area A, which is our residential or mixed use, and
6 then our employment areas. And all our streets do
7 interconnect. And overall, we have a grid system for the
8 streets, which complies with this goal.
9 MR. HARRIS: Okay. Do you --
10 MS. ROBESON: I think that's all we're going to be
11 able to get in.
12 MR. HARRIS: Okay.
13 MS. ROBESON: So with that, I would like the
14 parties, if you could, check your calendars to see if
15 September 4th is available. And we can do, and your
16 witnesses, and we can do, we can make the final arrangements
17 Wednesday.
18 Also, I think Mr. Harris and Mr. Robins, that you
19 were going to submit statements from the other owners of the
20 MXPD consenting to the binding elements. I just don't want
21 that to fall through the cracks. I don't need them yet, but
22 I did want to remind you. And so we will try to September
23 4th, and will make the final determination the 14th.
24 Anything else before we continue?
25 MR. CHEN: Are we here on Wednesday, or upstairs?

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1 MR. HARRIS: I think upstairs.
2 MR. CHEN: Okay.
3 MS. ROBESON: Yes.
4 MR. HARRIS: Seventh floor.
5 MS. ROBESON: Seventh floor. Yes. Anything else?
6 Okay. With that, I am going to adjourn this case until,
7 continue this case to August 14th at 9:30 in the seventh
8 floor. If for any reason the seventh floor changes, we have
9 one backup hearing room, and we will post that notice at the
10 front door, or the door to the garage. All right. Thank
11 you.
12 (Whereupon, at 12:28 p.m., the hearing was
13 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:
Application of Adventist Healthcare, Inc. and
Cabin Branch Commons, LLC.
DPA 13-02

By:

Teresa S. Hinds, Transcriber

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