

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

FOR MONTGOMERY COUNTY

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USL2 MR MONTGOMERY VILLAGE : Case No. DPA 15-01
BUSINESS TRUST :
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A hearing in the above-entitled matter was held on August 24, 2015, commencing at 9:44 a.m., at the Stella B. Werner Council Office Building, 100 Maryland Avenue, 7th Floor Council 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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E X H I B I T S

| Exhibit No. | Marked/Received |
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Expert Witness - Transportation Planning:
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* * * * *

| Applicant's Witnesses: | Direct | Cross | Redirect | Recross |
|------------------------|--------|-------|----------|---------|
| F. Russell Hines | 13 | 25 | 191 | 238 |
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| Laurence J. Brady | 28 | 63 | 69 | -- |
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| Testimony of: | | | Direct | Cross |
| Elaine Miller | | | 129 | -- |
| John Driscoll | | | 134 | -- |
| Margie DeFino | | | 143 | -- |
| David Lechner | | | 193 | -- |

* * * * *

1 PROCEEDINGS
 2 MS. ROBESON: This is a public hearing in the
 3 application of USL2 MR Montgomery Village Business Trust,
 4 requesting an amendment to the development plan approved by
 5 the District Council on July 1st, 2009 in DPA 02-02 as an
 6 amendment to the development plan approved in LMA G 467 and
 7 G 468 to permit the construction of 86 townhomes on
 8 approximately 17 acres located at 19550 Montgomery Village
 9 Avenue, Gaithersburg, Maryland. This is a hearing conducted
 10 for the County Council. My name is Lynn Robeson, I'm the
 11 Hearing Examiner, and I'm going to take all the evidence and
 12 testimony in the case and then I'll write a report and
 13 recommendation to the County Council on whether to approve
 14 or deny it. The County Council doesn't take any additional
 15 evidence, so whatever you want to say, or whatever you want
 16 to submit it should be done here in this hearing. The
 17 Council, if anyone disagrees with my report and
 18 recommendation you have the opportunity to request oral
 19 argument before the County Council on the record that's made
 20 today.
 21 All right. I see -- can, I know it's the
 22 Applicant, can you identify yourself for the record, please?
 23 MS. LEATHAM: Sure. Erica Leatham, Law Firm of
 24 Ballard Spahr, representing the Applicant.
 25 MS. ROBESON: All right. I see a number of people

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| <p>1 here, is there anyone here that wishes to testify today in 2 opposition, or that is not associated, is not going to be 3 called by the Applicant? Okay. I see several hands. Is 4 there anyone who would like to act as a spokesperson for 5 those in opposition? And that means that you can come sit 6 at the table here, and you have the opportunity to ask 7 questions of the witnesses during their presentation.</p> <p>8 MR. LECHNER: Yes, I'll do that.</p> <p>9 MS. ROBESON: Okay. Why don't you come forward 10 and sit. Thank you. Please identify yourself for the 11 record, please.</p> <p>12 MR. LECHNER: David A. Lechner, L-E-C-H-N-E-R, 13 9404 Bethany Place, Montgomery Village 20886.</p> <p>14 MS. ROBESON: All right. I do have an Affidavit 15 of Posting from the Applicant, with a very nice picture, 16 they don't usually do that, but so, I am going to mark this 17 Affidavit of Posting as Exhibit 115.</p> <p>18 (Exhibit No. 115 was marked 19 for identification.)</p> <p>20 MS. ROBESON: Now, Mr. Lechner, I did see that you 21 submitted a number of exhibits, I haven't had the chance to 22 review them, I don't know if you have copies, and I haven't 23 had the chance to enter them in the record yet.</p> <p>24 MR. LECHNER: Yes, understood.</p> <p>25 MS. ROBESON: Okay? But you can either present</p> | <p>1 of people here that wanted to testify, do you, is it fair to 2 say that your testimony involves Master Plan compliance and 3 whether this is consistent with the Master Plan? What I'm 4 thinking of is if we could take some of this out of order, 5 have the Applicant present their testimony on the Master 6 Plan, and then have the opposition present their testimony 7 on the Master Plan. It doesn't -- I'm just saying for time 8 wise if we want to get as many people in as we can, we don't 9 have to do it that way.</p> <p>10 MR. LECHNER: I'm, not sure it matters, actually. 11 I'm not sure -- I don't understand the implications of the 12 change. I'm estimating that the total testimony opposition- 13 wise might be between 20 and 30 minutes --</p> <p>14 MS. ROBESON: Okay.</p> <p>15 MR. LECHNER: -- of various speakers.</p> <p>16 MS. LEATHAM: And our testimony may in fact not be 17 that long.</p> <p>18 MS. ROBESON: Okay. Oh, good. Okay, good 19 answers.</p> <p>20 MS. LEATHAM: Although I can keep it up for four 21 hours if you would like.</p> <p>22 MS. ROBESON: No. All right. With that, then, we 23 are going to proceed --</p> <p>24 MS. LEATHAM: Can I raise a preliminary matter?</p> <p>25 MS. ROBESON: Yes.</p> |
| Page 7 | Page 9 |
| <p>1 copies here, or I noticed that your printer wasn't working. 2 MR. LECHNER: Yes, I was trying to get the copies 3 for them, so I sent them. I can deliver copies, as well, in 4 a day or so if it matters I was --</p> <p>5 MS. ROBESON: No, it doesn't matter as long as you 6 know I haven't put them in the record yet.</p> <p>7 MR. LECHNER: Yes.</p> <p>8 MS. ROBESON: Okay.</p> <p>9 MR. LECHNER: Yes, which is fine.</p> <p>10 MS. ROBESON: So, 115 is the Affidavit of Posting. 11 All right. And then just a word about our proceedings, they 12 are informal, but they do have some formalities, your 13 testimony is under oath, so I will ask, I will swear you in, 14 and it's subject to cross-examination, which means the other 15 opposing party gets to ask questions of you. There is -- 16 the general order of proceeding is the opening statement if 17 you wish, the Applicant's testimony, questions of her 18 witnesses, the opposition's testimony and questions of their 19 witnesses, and then closing statements.</p> <p>20 So, the application is governed by the provisions 21 of state law and the 2004 Zoning Ordinance, this proceeding 22 is governed by OZAH's rules of procedure. All right.</p> <p>23 Now, one thing, I do see a number of people here, 24 I have just in case I saw that the Applicant estimated that 25 its case was going to be four hours. Okay. I see a number</p> | <p>1 MS. LEATHAM: We have four expert witnesses, three 2 of whom have been qualified by the Hearing Examiner in their 3 respective areas, can we stipulate to that now, or would you 4 prefer we do it as each witness comes up?</p> <p>5 MS. ROBESON: Well, why don't we -- they've been 6 qualified here as --</p> <p>7 MS. LEATHAM: Uh-huh. Yes, before --</p> <p>8 MS. ROBESON: -- an expert witness?</p> <p>9 MS. LEATHAM: Yes, before OZAH.</p> <p>10 MS. ROBESON: You know what, let's wait until 11 they're under oath --</p> <p>12 MS. LEATHAM: Okay.</p> <p>13 MS. ROBESON: -- and we don't have to go through 14 the whole voir dire, but we should go through some, so I 15 don't want to pre-stipulate at this moment that they're 16 expert witnesses.</p> <p>17 MS. LEATHAM: Okay, that's fine.</p> <p>18 MS. ROBESON: And I don't know what you're going 19 to qualify, I wasn't clear exactly what you're going to 20 qualify them as, so they can come up and we don't have to go 21 through the whole voir dire, but I would like something on 22 the record.</p> <p>23 MS. LEATHAM: Okay. That's fine.</p> <p>24 MS. ROBESON: All right? So, with that, Ms. 25 Leatham, you get the first shot at an opening statement; Mr.</p> |

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| <p style="text-align: right;">Page 10</p> <p>1 Lechner, you get the opportunity for an opening statement, 2 as well, all right?</p> <p>3 MS. LEATHAM: Okay. I'm going to keep my opening 4 statement brief because we're trying to --</p> <p>5 MS. ROBESON: Good answer.</p> <p>6 MS. LEATHAM: -- move through. We are -- I'm 7 sorry, let me start over. We have six witnesses, four 8 experts, Russell Hines, who is the President of Monument 9 Realty, and the Development Manager for the Applicant will 10 testify first with respect to some overall background on the 11 subject property; then our expert witnesses will testify on 12 the Development Plan Amendment itself, and its relationship 13 to the Master Plan and the underlying zoning. We've 14 arranged the testimony in what we thought was the most 15 logical order, so when it comes to having expert conclusions 16 on certain findings we skip around a little bit from what's 17 in the Zoning Ordinance, but we thought it made more sense 18 to do it that way. And then the last testimony will be 19 client Bob Hydorn who is a resident of Montgomery Village, 20 and in fact lives next to the subject property, he's not 21 here yet. And I'm hopeful by the time we get to him he will 22 be here.</p> <p>23 So, as the property is an unplattoned portion of the 24 former golf course, it's bounded --</p> <p>25 MS. MILLER: Can you turn up the volume on her?</p> | <p style="text-align: right;">Page 12</p> <p>1 that the proposal met all of the findings for, under the 2 Zone and under the DPA requirements the Planning Board 3 concluded, we respectfully disagree with the Planning Board 4 and the Technical Staff's finding that this is inconsistent 5 with the Master Plan, and we have, we'll be presenting 6 evidence that in fact it is consistent with the Master Plan 7 and therefore in the public interest. The Hearing Examiner 8 recognized case law that Master Plans are not absolute 9 requirements in very similar circumstances to this in DPA 10 05-02. What may drag out our testimony just a bit is that 11 this DPA has been amended over 20 times over the last 50 12 years, so while it starts out very simply, it gets a little 13 complicated and very nuanced, so we'll take the time to 14 break down a little bit of this puzzle and explain how this 15 DPA operates in the larger context of both the underlying 16 DPA and the Zoning and the Master Plan.</p> <p>17 Finally, we are proud to have the support of the 18 Montgomery Village Foundation, and certain neighbors who 19 have letters in the record of support, the Montgomery 20 Village Foundation President is here to testify later, not 21 as a witness of the Applicant. So, with that we, that 22 concludes my opening statement.</p> <p>23 MS. ROBESON: Okay. Mr. Lechner, now this isn't 24 the time to present your testimony, this is just what you're 25 going to prove, or what you believe.</p> |
| <p style="text-align: right;">Page 11</p> <p>1 We can't hear. We haven't heard anything she's said.</p> <p>2 MS. LEATHAM: Okay. I'll try to talk louder.</p> <p>3 MS. ROBESON: Try pressing --</p> <p>4 MS. LEATHAM: Oh, is it even, is it on?</p> <p>5 MS. ROBESON: I'm not sure, so try pressing it.</p> <p>6 MS. LEATHAM: No, it's not, the light's not on.</p> <p>7 COURT REPORTER: I don't believe it's on.</p> <p>8 MS. ROBESON: Okay. Then can you --</p> <p>9 MS. LEATHAM: I will project.</p> <p>10 MS. ROBESON: Well, Kathy, maybe you were right, 11 maybe we should move the witness, or whoever, well, that's 12 too cumbersome. Okay, if you can project, that would be 13 helpful.</p> <p>14 MS. LEATHAM: Okay. And actually, maybe I'll turn 15 a little bit.</p> <p>16 MS. ROBESON: That would be great.</p> <p>17 MS. LEATHAM: All right. So, the property is an 18 unplattoned portion of a former golf course that's bounded by 19 the PEPCO right-of-way on the south, Montgomery Village 20 Avenue on the west, and several communities on the other 21 side. As you noted, it's a proposal for 86 townhomes, this 22 is, this represents 75 market units, and 11 MPDUs, this 23 utilizes the remaining development capacity under the Zoning 24 and under the Development Plan.</p> <p>25 The Staff recommendation with one exception found</p> | <p style="text-align: right;">Page 13</p> <p>1 MR. LECHNER: I will make several basically a 2 summary discussion regarding specific exhibits which I have 3 provided the last 12 hours, roughly, once we finally got 4 everything organized, and copies to go to Counsel actually 5 for the Applicant, as well. And I believe that the 6 information that I will summarize and the references 7 provided shows that their proposed project is not consistent 8 with the Master Plan, and not consistent with the record of 9 development projects within Montgomery Village.</p> <p>10 MS. ROBESON: Okay.</p> <p>11 MR. LECHNER: In short. Thank you.</p> <p>12 MS. ROBESON: Thank you. All right. Ms. Leatham, 13 please call your first witness.</p> <p>14 MS. LEATHAM: Russell Hines with Monument Realty.</p> <p>15 MS. ROBESON: Mr. Hines, please raise your right 16 hand.</p> <p>17 (Witness sworn.)</p> <p>18 MS. ROBESON: Go ahead, Ms. Leatham.</p> <p>19 MS. LEATHAM: Okay. Please state your name, your 20 business address, and your occupation.</p> <p>21 MR. HINES: My name is Russell Hines; my business 22 address is Monument Realty, 1700 K Street, Northwest, 23 Washington, D.C. 20006; and my occupation is real estate 24 developer, I'm the President of Monument Realty.</p> <p>25 MS. LEATHAM: How long have you been in this</p> |

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| <p>1 position?</p> <p>2 MR. HINES: I've been the President for the last 3 seven years.</p> <p>4 MS. LEATHAM: And what are some of your duties and 5 responsibilities?</p> <p>6 MR. HINES: I run the day to day operations of 7 Monument Realty, and I lead the Development Team.</p> <p>8 MS. LEATHAM: Can you describe some recent 9 projects you've overseen?</p> <p>10 MR. HINES: Sure. Monument recently finished 11 development of a 320,000 square-foot office building, a 12 build-to-suit for the Boeing Company across from the 13 Pentagon; we're under construction on a 235-unit apartment 14 building in College Park; and we've recently started work on 15 a, another build-to-suit for the National Association of 16 Broadcasters, 130,000 square-foot building down by the 17 baseball stadium; along with a 165-unit residential 18 development.</p> <p>19 MS. ROBESON: Okay. Just let me stop you. Can 20 people hear? Can you hear him? Okay. Go ahead.</p> <p>21 MS. LEATHAM: Okay. So, is it fair to say you're 22 fairly established in the real estate development business?</p> <p>23 MR. HINES: Yes, I think so.</p> <p>24 MS. LEATHAM: What is your relationship to the 25 Applicant, Business Trust?</p> | <p>Page 14</p> <p>1 you want to admit it?</p> <p>2 MS. ROBESON: Okay. Well, let's mark it if he's 3 going to refer to it. Mr. Lechner, do you have any problems 4 with that aerial photograph coming in?</p> <p>5 MR. LECHNER: No, I know that area.</p> <p>6 MS. ROBESON: So, that'll be 116. Can you please 7 take a, someone please take a pen and mark in the lower 8 right hand corner 116, and that will be aerial view. 9 (Exhibit No. 116 was marked 10 for identification.)</p> <p>11 MS. ROBESON: Now, while he's doing that I am 12 going to, usually I am not texting, and I'm telling my Staff 13 to, we usually have a speaker system where they can hear 14 what I want them to do, but I'm going to tell my Staff to 15 begin printing out Mr. Lechner's exhibits.</p> <p>16 MR. LECHNER: Thank you.</p> <p>17 MS. LEATHAM: Can we get a copy of those exhibits, 18 also?</p> <p>19 MS. ROBESON: If we -- there's a lot of exhibits, 20 we will do our best --</p> <p>21 MS. LEATHAM: Okay.</p> <p>22 MS. ROBESON: -- to get copies, but if I can take 23 just a moment, that is what I'm doing. New technology, for 24 the record. All right. All right. I'm --</p> <p>25 MS. LEATHAM: Okay.</p> |
| <p>Page 15</p> <p>1 MR. HINES: So, as I mentioned I'm the President 2 of Monument Realty, and Monument Realty is the Development 3 Manager of the Applicant.</p> <p>4 MS. LEATHAM: And how long have you been working 5 with the subject property?</p> <p>6 MR. HINES: It's been approximately three years, I 7 started working in the summer, on this project the summer of 8 2012, and we closed on it in March of 2013.</p> <p>9 MS. LEATHAM: And what have you been doing during 10 that time?</p> <p>11 MR. HINES: Well, we've been doing a number of 12 things, but initially what we did is started an outreach 13 program with the local community, and we worked for about 14 the first 12 months of our ownership directly with 15 Montgomery Village Foundation in structuring a plan, a set 16 of charrettes and community meetings to work on a plan for 17 this property knowing that it was no longer going to be a 18 golf course.</p> <p>19 MS. LEATHAM: Okay. Can you describe the property 20 subject to the application? You don't have to be too 21 technical with metes and bounds.</p> <p>22 MR. HINES: Right. So, the property, it's shown 23 here --</p> <p>24 MS. LEATHAM: Let me interrupt you for a minute. 25 This is not in the record, this is just an aerial map, do</p> | <p>Page 17</p> <p>1 MS. ROBESON: -- finished. All I said was print 2 out Mr. Lechner's exhibits and bring them up. All right. 3 Go ahead.</p> <p>4 MS. LEATHAM: Okay. Can you describe the area 5 subject to the DPA?</p> <p>6 MR. HINES: Sure. So, it's the 17.3-acre parcel, 7 it's in a horse shaped configuration just east of Montgomery 8 Village Avenue, and to the north and east is Arrowhead Road, 9 and to the south is the PEPCO right-of-way.</p> <p>10 MS. LEATHAM: Why did you choose to, choose this 11 area for the Development Plan Amendment?</p> <p>12 MR. HINES: Well, for a number of reasons. First 13 of all, this is a standalone property from the other 14 properties that we own in Montgomery Village, it's not 15 contiguous with the rest of the former golf course; but also 16 it had the scale that we believed could make an immediate 17 impact on the community. We've argued from the outset, and 18 a number of the members of the Community have agreed that 19 the Community needs new housing, and so this, with the 86 20 units we thought that this was an appropriate scale to begin 21 that effort on that would have an impact. It was also 22 because of the golf course having closed we've also felt 23 that that hurt the image of the community having a vacant 24 150-acre golf course in the middle of the community, and we 25 believe that this was a way to impact, again, a large number</p> |

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| <p style="text-align: right;">Page 18</p> <p>1 of houses, it's the greatest concentration of houses around 2 the golf course, I think there's about 125 around this one 3 community, so we felt like it was a way by getting something 4 moving in this location it was a way to alleviate that 5 problem. And then there were also a number of sort of 6 technical reasons that we looked at this property, it has 7 good access to public right-of-way, there's very little 8 topographical challenges, and also it has very little impact 9 on environmentally sensitive areas.</p> <p>10 MS. LEATHAM: Will you just briefly describe your 11 acquisition of the property?</p> <p>12 MS. ROBESON: Let me just -- why are we going into 13 that? Is that relevant to my criteria?</p> <p>14 MS. LEATHAM: Well, it's part of the public 15 interest. I think it's important to establish that it's a 16 former golf course, it won't be a new golf course.</p> <p>17 MS. ROBESON: Well, the public interest as we've 18 interpreted it is compliance with County plans and policies. 19 So, I'm just trying to cut to the chase of what I need to 20 look at. If you want to make a brief statement, that's 21 fine, but let's keep it brief. I've already heard him say 22 it's good for the community because, so, anyway, go ahead.</p> <p>23 MS. LEATHAM: Okay. Briefly.</p> <p>24 MR. HINES: Okay. Very briefly, the former owner 25 owned the property and operated a golf course for 30 years;</p> | <p style="text-align: right;">Page 20</p> <p>1 MR. HINES: So, the Community, sorry, the area 2 that's subject to the DPA is not part of Montgomery Village 3 currently, it's not subject to the declaration that governs 4 Montgomery Village, so we have had some preliminary 5 discussions with the Montgomery Village Foundation about 6 incorporating this property into the Foundation, such that 7 it would be treated like any other property, and there are a 8 number of ways to do that, we're really in the preliminary 9 stages of discussing that with the Foundation. But it's, 10 from my discussions with them, and what I've heard from the 11 Community everybody is on the same page that they'd like 12 this property to be part of the Foundation ultimately.</p> <p>13 MS. LEATHAM: And there will be, which we will 14 describe in the next testimony, common open spaces in the 15 new community, how will those be maintained?</p> <p>16 MR. HINES: So, in this community there will be a 17 homeowners association formed, there will be covenants 18 associated with those homeowners associations, and it'll set 19 up the maintenance of the open space in this property.</p> <p>20 MS. LEATHAM: And --</p> <p>21 MS. ROBESON: What about the covenants that exist 22 saying it should be a golf course?</p> <p>23 MS. LEATHAM: There are no covenants that exist 24 that say it should be a golf course.</p> <p>25 MS. ROBESON: Well, can he answer that?</p> |
| <p style="text-align: right;">Page 19</p> <p>1 the golf course over the last 10 years or so became a no 2 longer a viable business alternative for him; he filed 3 bankruptcy in 2012; and we purchased the property out of 4 bankruptcy at a bankruptcy court sanctioned auction where we 5 were the only bidder.</p> <p>6 MS. LEATHAM: And what is the status of the golf 7 course, just one more time?</p> <p>8 MR. HINES: The golf course is closed, we closed 9 it in November of 2014; working on demolition permits for 10 the clubhouse; and have already auctioned off all the 11 personal property. It won't be a golf course again.</p> <p>12 MS. LEATHAM: Okay. So, moving on to the DPA, and 13 we're going to have our next witness describe the DPA in 14 more detail, but we just want to talk about timing and 15 phasing right now. So, what is the timing for development? 16 With the DPAs approved what happens next?</p> <p>17 MR. HINES: Well, we would move immediately to 18 Site Plan, and Preliminary Plan of Subdivision, and then 19 after getting those approvals if we in fact get those 20 approvals move towards permits to be in construction as soon 21 as possible.</p> <p>22 MS. LEATHAM: How many phases will this be?</p> <p>23 MR. HINES: This is one phase.</p> <p>24 MS. LEATHAM: And how will the new community be 25 integrated into Montgomery Village?</p> | <p style="text-align: right;">Page 21</p> <p>1 MS. LEATHAM: Yes.</p> <p>2 MS. ROBESON: Since he's the one under oath. Are 3 there really no covenants saying it'll be a golf course?</p> <p>4 MR. HINES: Yes, there are no covenants, we have 5 reviewed title, we've done this many times, we have 6 attorneys that review title, as well, and there are no 7 covenants that says this has to be a golf course.</p> <p>8 MS. ROBESON: Okay.</p> <p>9 MS. LEATHAM: Going back to the common open space, 10 the draft HOA documents Mr. Hines mentioned are Exhibit 11 40P --</p> <p>12 MS. ROBESON: Yes.</p> <p>13 MS. LEATHAM: -- and it's sections four, five, 14 nine, and 10, which cover maintenance, assessments, 15 maintenance and operation. All right.</p> <p>16 MS. ROBESON: Is this going to be a -- are the 17 assessments from the HOA just for this development, or are 18 they both justice, development, and Montgomery Village 19 Foundation?</p> <p>20 MR. HINES: Well, so Montgomery Village has a 21 number of separate HOAs, 2,000 or so --</p> <p>22 MS. ROBESON: Right.</p> <p>23 MR. HINES: -- and they have their own assessments 24 associated with whatever benefits they're providing to the 25 members of that association; and then the Montgomery Village</p> |

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| <p style="text-align: right;">Page 22</p> <p>1 Foundation acts as a sort of master foundation which, and it 2 collects due, as well, for the maintenance and operation of 3 the community, the facilities and so forth. So, this 4 community will have its own HOA and they'll pay to take 5 care --</p> <p>6 MS. ROBESON: Very similar to Columbia. Yes.</p> <p>7 MR. HINES: Most likely. I'm not familiar exactly 8 how they have set up, but I know what you're talking about. 9 And then on top of that, as I said, we'll create a regime 10 such that the members here will also pay dues to the 11 Foundation so they can use the facilities of the Foundation, 12 and essentially mimic the same situation that's with all the 13 other HOAs.</p> <p>14 MS. ROBESON: Okay.</p> <p>15 MS. LEATHAM: And then I want to end Mr. Hines' 16 testimony with some talk about the community outreach, 17 there's already been some testimony in the record that 18 speaks to a lack of outreach, so we'd just like to discuss 19 that briefly.</p> <p>20 MS. ROBESON: Okay.</p> <p>21 MS. LEATHAM: There's also a list of outreach 22 efforts in Exhibit 40K, which you can refer to.</p> <p>23 MS. ROBESON: Right, I saw that.</p> <p>24 MS. LEATHAM: Mr. Hines, can you just briefly 25 describe the extent of the community outreach?</p> | <p style="text-align: right;">Page 24</p> <p>1 thing that's interesting about this golf course is obviously 2 the folks that are around it are very concerned with how 3 their views will be affected, but there are, all the views 4 aren't the same, and there are some areas that are very 5 open, and there are other areas where there are very mature 6 trees blocking existing homes on the golf course, so it's 7 really a mixed bag of things going on.</p> <p>8 We also, we met with homeowners, sometimes in 9 their homes, we had separate meetings, we've gone to all 10 kinds of meetings with the Foundation. At this point we've 11 had, I mean, dozens of community meetings over the last 12 couple of years. And then finally, we obviously, we have 13 attempted to get as much information out there, so we've had 14 a very robust website that kept track of all the information 15 every time, you know, questions, good and bad comments that 16 came out of these meetings with regard to the proposals we 17 put up there; we sent out a marketing piece showing the 18 entire plan to 10,000 households in Montgomery Village, 19 essentially everyone in Montgomery Village, and done a 20 number of other outreaches to more adjacent neighbors, some 21 additional information, but that's sort of in a nutshell 22 that's what we've been working on.</p> <p>23 MS. LEATHAM: Thank you. That's, we're concluded, 24 and I reserve the right for rebuttal.</p> <p>25 MS. ROBESON: Okay. With your witness you're</p> |
| <p style="text-align: right;">Page 23</p> <p>1 MR. HINES: Okay. Briefly, again. So, as I said, 2 we worked, we started working with the Foundation, set up an 3 outreach program, they created a committee, a joint property 4 committee made up of HOA presidents and local leaders, so --</p> <p>5 MS. LEATHAM: And the HOA presidents represented 6 HOAs that were established where?</p> <p>7 MR. HINES: In Montgomery Village, around the golf 8 course. And so, we began presentations, we did a number of 9 charrettes with the community, incorporated a number of 10 their comments, we went through that process. The Joint 11 Property, over a number of months the Joint Property 12 Committee made a recommendation to the Foundation, it was 13 ultimately a 10 to zero recommendation in favor of the plans 14 that we had proposed and worked on with the Community. The 15 Montgomery Village Foundation then had its own vote on the 16 matter and voted overwhelmingly in support of the plans. 17 This actually ended over a year ago, I mean, it's quite some 18 time ago at this point. And then we've continued 19 discussions with the Community, we've worked to continue to 20 disseminate information, we go to farmer's markets, we've 21 had a number of times the plans that we have proposed in the 22 Montgomery Village news letter, we conducted tours of the 23 golf course with community members, and the leaders, and the 24 Joint Property Committee members so that they can understand 25 we can all get on the same page in terms of the facts. One</p> | <p style="text-align: right;">Page 25</p> <p>1 concluded?</p> <p>2 MS. LEATHAM: With the witness, yes.</p> <p>3 MS. ROBESON: Okay.</p> <p>4 MS. LEATHAM: Not with the whole case.</p> <p>5 MS. ROBESON: Okay. You can be excused for now.</p> <p>6 MR. HINES: Thank you.</p> <p>7 MS. ROBESON: Oh, wait. I'm sorry. Mr. Lechner, 8 questions?</p> <p>9 MR. LECHNER: Well, I was wondering if I had to 10 hear all of them and then ask it or not?</p> <p>11 MS. ROBESON: No, no, no.</p> <p>12 MR. LECHNER: Okay. I did have a couple, if it's 13 okay? Mr. Hines, so I understand from the bankruptcy 14 records that you actually were in discussions with Mr. Doser 15 prior to them filing bankruptcy about the purchase.</p> <p>16 MS. LEATHAM: I object, this isn't relevant to the 17 DPA.</p> <p>18 MS. ROBESON: Well, you opened the door when you 19 had him testify about the bankruptcy, so I'm going to let it 20 in.</p> <p>21 MR. LECHNER: Okay.</p> <p>22 MS. ROBESON: Go ahead, Mr. Lechner.</p> <p>23 MR. LECHNER: So, how long were you in discussions 24 with Mr. Doser prior to bankruptcy about the purchase of the 25 property?</p> |

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| <p style="text-align: right;">Page 26</p> <p>1 MR. HINES: Roughly from the period I said that I 2 got involved in this property in the summer of 2012 until it 3 may have been spring, in late spring, but of 2012 until -- 4 MS. ROBESON: And who is Mr. Doser? 5 MR. HINES: Mr. Doser is the former owner of the 6 property, he filed bankruptcy. 7 MS. ROBESON: Of the golf course? 8 MR. LECHNER: Uh-huh. 9 MR. HINES: Yes. 10 MS. ROBESON: Okay. 11 MR. LECHNER: And when you were doing due 12 diligence about the property did you look at the previous 13 history of development with the IDI attempts maybe to 14 develop the property in 2006? 15 MS. LEATHAM: I object. I don't see how that's 16 relevant, either. 17 MS. ROBESON: Well, he opened the door to how he 18 came to -- I'm going to let it in, and it'll have the weight 19 it deserves. 20 MR. HINES: Can you repeat -- 21 MS. ROBESON: You can -- 22 MR. HINES: -- the question, please? 23 MR. LECHNER: During the due diligence did you 24 come across, or discuss with Mr. Doser, or find research 25 about the IDI attempt to purchase and develop the property</p> | <p style="text-align: right;">Page 28</p> <p>1 MS. ROBESON: All right. Any redirect? 2 MS. LEATHAM: No. 3 MS. ROBESON: All right. Now you may be excused. 4 You're still under oath if you get called back. 5 MR. HINES: Understood. 6 MS. ROBESON: All right. Ms. Leatham, your next 7 witness. 8 MS. LEATHAM: Okay. Larry Brady with Torti 9 Gallas. 10 MS. ROBESON: Mr. Brady, please raise your right 11 hand. 12 (Witness sworn.) 13 MS. ROBESON: Go ahead, Ms. Leatham. 14 MS. LEATHAM: Okay. Please state your name, 15 business address, and occupation for the record. 16 MR. BRADY: Yes. My name is Laurence J. Brady; my 17 business office address is 1300 Spring Street, 4th Floor, 18 Silver Spring, Maryland 20910; and my occupation is I'm a 19 Planner and Urban Designer. 20 MS. LEATHAM: I forgot to ask you with what 21 company? 22 MR. BRADY: Torti Gallas and Partners. I 23 apologize. 24 MS. LEATHAM: And how long have you been engaged 25 in planning and urban design?</p> |
| <p style="text-align: right;">Page 27</p> <p>1 in 2006? 2 MR. HINES: Yes, the only information I had about 3 IDI was really what came from Mr. Doser, and then some of 4 the members of the Community had indicated that Mr. Doser 5 had talked to some other developer about potentially 6 redeveloping the golf course, so I don't know -- 7 MR. LECHNER: Okay. 8 MR. HINES: -- specifics about their plan, but -- 9 MR. LECHNER: Okay. And when you were doing the 10 outreach to the community did you ever, was there ever like 11 a vote taken, or were the residents, was there a tally of 12 the resident input for or against the development plans you 13 were proceeding with one way or another? Anything numerical 14 or that you know of? 15 MR. HINES: No, there was, I mean, there was 16 certainly never a plebiscite on this, but there, the 17 Montgomery Village Foundation went through two election 18 cycles while we were in discussions about the plans, and 19 these proposals were really probably the number one issue in 20 both cycles, and in each case the candidates that were 21 supportive of our plan were elected, so, I mean, that could 22 stand in as an indication of where the community was on the 23 matter. 24 MR. LECHNER: Uh-huh. Very aware of that. Okay. 25 Thank you. That's all.</p> | <p style="text-align: right;">Page 29</p> <p>1 MR. BRADY: Fifteen years. 2 MS. LEATHAM: Have you testified before any Zoning 3 bodies in Montgomery County? 4 MR. BRADY: No, I have not, but I have presented 5 before County and Town Councils on multiple occasions. 6 MS. LEATHAM: In the Metro D.C. region? 7 MR. BRADY: In the Metro D.C. region it would be 8 before the Arlington Board, County Board. 9 MS. LEATHAM: And what is your professional 10 educational background? 11 MR. BRADY: I have two professional degrees, I 12 have a Master's in Economics from Georgetown University, and 13 a Master's in Architecture and Urban Design from the 14 University of Maryland at College Park. 15 MS. LEATHAM: And what industry certifications do 16 you have? 17 MR. BRADY: I possess an AICP certification, 18 that's with the American Institute of Certified Planners, 19 this is a certification that requires that you demonstrate 20 five years of experience in the field, and then you have to 21 take and pass a qualifying exam administered by the 22 Institute. 23 MS. ROBESON: Have you ever qualified as an expert 24 in any court? 25 MR. BRADY: No, I have not.</p> |

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| <p style="text-align: right;">Page 30</p> <p>1 MS. ROBESON: Formally qualified as an expert?</p> <p>2 No. Okay. All right. Go ahead.</p> <p>3 MS. LEATHAM: So, why don't we, I'm going through</p> <p>4 some voir dire and --</p> <p>5 MS. ROBESON: What are you proposing him as?</p> <p>6 MS. LEATHAM: An expert in planning.</p> <p>7 MS. ROBESON: Land planning?</p> <p>8 MS. LEATHAM: I'm sorry, planning and zoning, land</p> <p>9 planning and zoning. Or wait, I'm sorry.</p> <p>10 MS. ROBESON: Well, we usually do just land</p> <p>11 planning.</p> <p>12 MS. LEATHAM: Just land planning. Yes. Sorry.</p> <p>13 MS. ROBESON: Okay. Mr. Lechner, the test for</p> <p>14 being an expert is relatively low, no offense, but --</p> <p>15 MR. BRADY: None taken.</p> <p>16 MS. ROBESON: -- it's can they provide more</p> <p>17 expertise than a layman in understanding issues. Do you</p> <p>18 have any objections to qualifying the witness as an expert</p> <p>19 land planner?</p> <p>20 MR. LECHNER: No, I've heard Mr. Brady talk at</p> <p>21 several of the presentations, he seems very competent in</p> <p>22 discussing the issues and projects.</p> <p>23 MS. ROBESON: Okay. All right. I will qualify</p> <p>24 you as an expert in land planning, and you can now add that</p> <p>25 to your resume.</p> | <p style="text-align: right;">Page 32</p> <p>1 that show building footprints and property lines so that you</p> <p>2 can understand the relationship of the adjacent properties</p> <p>3 to the subject --</p> <p>4 MS. ROBESON: Okay.</p> <p>5 MR. BRADY: -- property.</p> <p>6 MS. LEATHAM: And are you familiar with both the</p> <p>7 2004 and the 2014 Montgomery County Zoning Ordinance?</p> <p>8 MR. BRADY: Yes, I reviewed them specifically with</p> <p>9 reference to this site, and I'm familiar with them generally</p> <p>10 from my work experience.</p> <p>11 MS. LEATHAM: And are you familiar with the 1985</p> <p>12 Gaithersburg and Vicinity Master Plan as subsequently</p> <p>13 amended?</p> <p>14 MR. BRADY: Yes. I have reviewed it for this</p> <p>15 project, and I also reviewed it for another project I worked</p> <p>16 for in the same area.</p> <p>17 MS. LEATHAM: Okay. Can you describe the subject</p> <p>18 property?</p> <p>19 MR. BRADY: Sure. I'm going to start to use some</p> <p>20 of these exhibits here.</p> <p>21 MS. LEATHAM: This is Exhibit 116, again.</p> <p>22 MS. ROBESON: Yes.</p> <p>23 MS. LEATHAM: Is this working?</p> <p>24 MS. ROBESON: This, if you could remember, you</p> <p>25 can't -- we're on a transcript, so you can't say here, or</p> |
| <p style="text-align: right;">Page 31</p> <p>1 MR. BRADY: Thank you. I appreciate that.</p> <p>2 MS. ROBESON: Okay.</p> <p>3 MS. LEATHAM: I like how you skipped through all</p> <p>4 the rest of my questions. Shortening things up as we go.</p> <p>5 Did there come a time when you were employed by the</p> <p>6 Applicant in this proceeding with respect to this DPA?</p> <p>7 MR. BRADY: Yes. My firm was contracted by the</p> <p>8 Applicant in I believe April of 2013, shortly after they</p> <p>9 came into possession of this property.</p> <p>10 MS. LEATHAM: Okay. And are you familiar with the</p> <p>11 original Montgomery Village Development Plan and its</p> <p>12 subsequent amendments?</p> <p>13 MR. BRADY: Yes, I have reviewed them.</p> <p>14 MS. LEATHAM: And are you familiar with the</p> <p>15 property?</p> <p>16 MR. BRADY: Yes, I have visited the property on</p> <p>17 multiple occasions, and I've also reviewed all relevant</p> <p>18 survey and topographic information of the property.</p> <p>19 MS. LEATHAM: And are you familiar with the</p> <p>20 surrounding property?</p> <p>21 MR. BRADY: Yes, I've toured all the surrounding</p> <p>22 neighborhoods, and I've also reviewed county cadastral maps</p> <p>23 of those same neighborhoods.</p> <p>24 MS. ROBESON: County what maps?</p> <p>25 MR. BRADY: Cadastral maps, they're basically maps</p> | <p style="text-align: right;">Page 33</p> <p>1 there, you have to say to the northwest corner, or something</p> <p>2 like that, just so you --</p> <p>3 MR. BRADY: Yes, to be clear. Okay. All right.</p> <p>4 So, I'm going to stand up and point to this.</p> <p>5 MS. ROBESON: That's fine.</p> <p>6 MR. BRADY: Okay. So, the subject property is</p> <p>7 located here in sort of the north central zone of Montgomery</p> <p>8 Village, this black line outlines the bounds of Montgomery</p> <p>9 Village.</p> <p>10 MS. ROBESON: Is it marked site on the --</p> <p>11 MR. BRADY: Yes, so here's the --</p> <p>12 MS. ROBESON: -- exhibit?</p> <p>13 MR. BRADY: -- site here, and that is the site</p> <p>14 with that label.</p> <p>15 MS. ROBESON: Okay.</p> <p>16 MR. BRADY: The site is located about two and a</p> <p>17 half miles north of the 270 interchange at Montgomery</p> <p>18 Village Avenue, and it's about two and a quarter miles north</p> <p>19 of the interchange with State Road 355, otherwise known as</p> <p>20 Frederick Road. Let's see, there's a second interchange</p> <p>21 currently planned for Montgomery Village, located here at</p> <p>22 the Watkins Mill Road --</p> <p>23 MS. LEATHAM: Can I interrupted you? Did you mean</p> <p>24 planned for 270? An interchange at 270?</p> <p>25 MR. BRADY: Yes, interchange. I'm sorry. I</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 apologize. So, there's another interchange planned here, 2 my -- yes?</p> <p>3 MS. ROBESON: And here was?</p> <p>4 MR. BRADY: At Watkins Mill Road --</p> <p>5 MS. ROBESON: And 270. Okay.</p> <p>6 MR. BRADY: -- and 270.</p> <p>7 MS. ROBESON: Go ahead. And Watkins Mill Road and 8 270 is, is it about halfway up that exhibit?</p> <p>9 MR. BRADY: Watkins Mill essentially runs 10 generally north in a sort of curvy fashion, but it is, this 11 new interchange will be northwest of the current 12 interchange.</p> <p>13 MS. ROBESON: Is it -- okay.</p> <p>14 MR. BRADY: Very good. So, the site is also about 15 one mile north of the Montgomery Village Center, which is 16 located here, very central to the community, and is about a 17 quarter --</p> <p>18 MS. ROBESON: Now, Montgomery Village Center on 19 that map is --</p> <p>20 MR. BRADY: Yes.</p> <p>21 MS. ROBESON: -- just about in the, on Exhibit 22 116, I see a larger white line preceding east/west 23 generally, yes, what --</p> <p>24 MR. BRADY: Yes.</p> <p>25 MS. ROBESON: -- is that a road or an easement?</p> | <p style="text-align: right;">Page 36</p> <p>1 survey of the site, so we can discuss its existing 2 conditions. So, the site itself is comprised of about 17.3 3 acres in size; it is bounded as follows, there's a PEPCO 4 right-of-way that runs to the south of the property, to the 5 west side of the property it has two frontages, here and 6 here, north and south along Montgomery Village Avenue. The 7 Arrowhead Community is located here to the north; Arrowhead 8 Road is located here on the northeast frontage of the 9 property. The Green Tee Community is located here on the 10 southeast portion of the property, which brings back around 11 to the right-of-way. The entire site essentially surrounds 12 the East Duffer Way Community, and essentially forms a rough 13 sort of horseshoe shape.</p> <p>14 MS. ROBESON: All right. Let me interrupt you one 15 second. Okay. I'm going to, I was just handed the first 16 set of attachments for Mr. Lechner, she's still printing the 17 second set. If you could verify that these are your 18 attachments then please hand them, let Ms. Leatham, we'll 19 take a break and she can look through them. I'm sorry, go 20 ahead.</p> <p>21 MR. BRADY: You'd like me to proceed? Okay.</p> <p>22 MS. ROBESON: Yes. Or give him one second to -- 23 there's another batch coming.</p> <p>24 MR. LECHNER: These are all part, I'm not sure 25 that, I have to start, look at my e-mail on the last set, it</p> |
| <p style="text-align: right;">Page 35</p> <p>1 MR. BRADY: This is, this just states Montgomery 2 Village. This was taken from a Google map --</p> <p>3 MS. ROBESON: Okay. So, the center --</p> <p>4 MR. BRADY: -- and it shows --</p> <p>5 MS. ROBESON: -- is generally at the middle, or at 6 the end of that line?</p> <p>7 MR. BRADY: That is correct.</p> <p>8 MS. ROBESON: Okay. Go ahead.</p> <p>9 MR. BRADY: The site is also located about a 10 quarter mile east of the Goshen Shopping Center, which is 11 located here on Goshen Road at the intersection with 12 Rothbury Drive.</p> <p>13 MS. ROBESON: Okay.</p> <p>14 MR. BRADY: About one-quarter mile east --</p> <p>15 MS. ROBESON: Okay.</p> <p>16 MR. BRADY: -- of the site. Let's see. I'm going 17 to change exhibits, if I could get some assistance here?</p> <p>18 MS. LEATHAM: Sure.</p> <p>19 MR. BRADY: Okay.</p> <p>20 MS. LEATHAM: These are, these exhibits are just 21 large size copies of what's already in the record, and --</p> <p>22 MS. ROBESON: Okay. Can you --</p> <p>23 MS. LEATHAM: -- we'll tell you the exhibit number 24 when we get to it. This is Exhibit 19.</p> <p>25 MR. BRADY: Okay. This is an existing condition</p> | <p style="text-align: right;">Page 37</p> <p>1 may take a minute or two to make sure. I think there's 2 maybe one e-mail with attachments missing, but these last 3 two might have everything, I just, I can't tell just by 4 looking.</p> <p>5 MS. ROBESON: Okay. But they're all from you?</p> <p>6 MR. LECHNER: So, let me just count them. Yes, 7 they are all from me, absolutely. Yes, this is probably the 8 full set. Yes. They are all from me.</p> <p>9 MS. ROBESON: Well, for now we'll give them to --</p> <p>10 MR. LECHNER: Yes. Absolutely.</p> <p>11 MS. ROBESON: -- if you could share them with Ms. 12 Leatham, and Ms. Leatham, we'll take a recess at some 13 point --</p> <p>14 MS. LEATHAM: Okay.</p> <p>15 MS. ROBESON: -- I'm going to let him finish and 16 you can look through them.</p> <p>17 MS. LEATHAM: Terrific. Thank you.</p> <p>18 MS. ROBESON: I just wanted to make sure to start 19 the process. Okay, Mr. Brady, go ahead.</p> <p>20 MR. BRADY: Thank you. So, of the three 21 communities that directly border on the property, once 22 again, Arrowhead, Duffer Way, and Green Tee, all are 23 composed of townhome communities, with the properties 24 basically backing up to the site, with the exception of a 25 few properties here in Arrowhead, which have an approximate</p> |

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| <p style="text-align: right;">Page 38</p> <p>1 perpendicular relationship to the site boundary. 2 MS. LEATHAM: When you say backup to the site you 3 mean the backs of the units? 4 MR. BRADY: The backs of the units face the site. 5 The site itself is composed of two fairways of the former 6 golf course, holes three and four, and the character of the 7 land is basically a lightly rolling topography, with a high 8 point here north and east end of the property, with the low 9 end down here at south and west, and there's roughly a 35 10 percent grade change across that section. 11 Currently, the property is flanked by mature trees 12 along the northern edges, the southern edges, and the edges 13 that surround the Duffer Way Community, and of course, we'll 14 be preserving those. And, but otherwise the land is 15 characterized as basically sort of open grassland with some 16 small vegetation here and there. 17 There are three easements on the property that 18 will impact the development, one is this Colonial Pipeline 19 easement, which runs approximately across the northern leg 20 of the property going from the southwest to the northeast. 21 MS. ROBESON: Okay. Is that, that's marked on 22 that exhibit as Colonial Pipeline? 23 MR. BRADY: Yes, it reads agreements with Colonial 24 Pipeline Company. 25 MS. ROBESON: Okay.</p> | <p style="text-align: right;">Page 40</p> <p>1 the question. 2 MS. LEATHAM: Do you want to go to Exhibit 40D? I 3 think it's on the other side. Okay. 4 MR. BRADY: So, let me pick up where I left off 5 here. So, basically, we were looking to sort of keep the 6 character and density -- 7 MS. LEATHAM: Before you go there can you just use 8 40D to answer the Hearing Examiner's question, the 9 neighborhood is bounded by the two roads and the right-of- 10 way, is that what you were saying? 11 MS. ROBESON: Okay, tell me -- 12 MR. BRADY: Yes. 13 MS. ROBESON: -- for the purposes of determining 14 compatibility -- 15 MR. BRADY: Yes. 16 MS. ROBESON: -- we have to have a surrounding 17 area defined, and what is, I heard you say Arrowhead Road, 18 what's the northern boundary? You said Arrowhead is the 19 northeastern -- 20 MR. BRADY: Is to the north, northeastern 21 boundary. 22 MS. ROBESON: Okay. 23 MR. BRADY: Arrowhead Community is the northern 24 boundary. 25 MS. ROBESON: Okay. So, the whole community. So,</p> |
| <p style="text-align: right;">Page 39</p> <p>1 MR. BRADY: Yes. Okay. There is a WSSC, that's 2 the Washington Suburban Sanitary Commission, they have an 3 easement here along this northwest portion of the property, 4 that is to remain, it won't be impacted by the development; 5 there's another easement for WSSC here on the southern leg 6 of the property, and that one will be relocated as a result 7 of the development. And we have a civil experts that will 8 testify later to that effect. 9 MS. LEATHAM: Can you describe the surrounding 10 area and neighborhoods? 11 MR. BRADY: Sure. Well, in general, we don't 12 believe that this development will have a large impact on 13 the community as a whole. Okay. There are three, as I 14 stated before there are three communities that are directly 15 impacted, once again, Arrowhead, Duffer Way, and Green Tee, 16 one reason we believe that there's not a major impact on 17 adjacent neighborhoods is the site is naturally, is actually 18 bounded by features such as Montgomery Village Avenue here 19 to the west, Arrowhead Road to the east, and the PEPCO 20 right-of-way here on the south, so that kind of limits the 21 impact to these three neighborhoods, the direct impact. 22 MS. ROBESON: Do you have a northern boundary? 23 MR. BRADY: The northern boundary? 24 MS. ROBESON: Of the neighborhood. 25 MR. BRADY: Is this -- I'm not sure I understand</p> | <p style="text-align: right;">Page 41</p> <p>1 on 40D is it that blue line that I'm, is it marked on 40D 2 those boundaries? 3 MR. BRADY: There is a black property line showing 4 the boundaries of the subject property on the -- 5 MS. ROBESON: No, no, not the boundaries of the 6 subject property, the boundaries of the area surrounding for 7 the purpose of determining compatibility. 8 MR. BRADY: Well, this exhibit does show in 9 addition to the Arrowhead Community, and the Duffer Way 10 Fairway Island Community, and the Green Tee Community, this 11 exhibit also shows the Partridge Place Community, which is 12 also a townhome community -- 13 MS. LEATHAM: Can I interrupt for just a second? 14 MR. BRADY: Yes. 15 MS. LEATHAM: The Applicant -- 16 MS. ROBESON: Do you have another witness that'll 17 address -- 18 MS. LEATHAM: Yes, we do, and the statement of 19 justification also defines the neighborhood, as well. 20 MS. ROBESON: Well, what does Technical -- I'm 21 just looking at the -- do you agree with Technical Staff's 22 delineation? 23 MS. LEATHAM: Yes. 24 MS. ROBESON: Okay. All right. Go ahead, Mr. 25 Brady.</p> |

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| <p style="text-align: right;">Page 42</p> <p>1 MR. BRADY: Do you want me to continue with this 2 description?</p> <p>3 MS. LEATHAM: No.</p> <p>4 MR. BRADY: Okay. Thank you. However, I do want 5 to refer to this exhibit, which is 40D, in order to design 6 this community in a compatible fashion one of the things we 7 did was study the densities of the adjacent and impacted 8 communities, and what we were able to demonstrate utilizing 9 the county cadastral maps I mentioned earlier was we were, 10 since there's properly scaled there, CAD drawings, we were 11 able to actually measure off the size of building 12 footprints, and lots, and related open spaces associated 13 with each of these communities, and as a result we were able 14 to calculate the density each of these neighborhoods 15 expressed in number of dwelling units per acre. So, for 16 example, the Arrowhead Community has about seven units, 17 dwelling units per acre; the Fairway Islands or Duffer Way 18 Community has about nine units per acre; and Green Tee 19 Community has about 6.5 units per acre. What we're 20 proposing here in the subject property is a density of about 21 five dwelling units per acre.</p> <p>22 MS. LEATHAM: Okay. Can you describe the proposed 23 Development Plan Amendment?</p> <p>24 MR. BRADY: Yes. I want to note, first off, that 25 in the pre-hearing submission included an amendment to this</p> | <p style="text-align: right;">Page 44</p> <p>1 testimony on the outreach, and compatibility isn't really 2 based on outreach to, it's not based on a plebiscite of 3 whether people like it or not.</p> <p>4 MR. BRADY: Okay.</p> <p>5 MS. ROBESON: So, if you could just address from 6 land planning terms why it's compatible with the surrounding 7 community?</p> <p>8 MR. BRADY: Sure. So, in general the original 9 Development Plan in Montgomery Village was based on a 10 concept known as cluster development, which is the notion of 11 that you should try and sort of concentrate building impact 12 on a site in order to maximize the available open space, so 13 we followed very much that principle in this design for the 14 site. We did that utilizing a number of things, such as 15 trying to break up clusters wherever we could, utilizing 16 some of the street framework to do that; in addition we 17 preserved landscape buffers wherever we could across the 18 site, and I'll speak to some of those in a moment; we also 19 kept the buildings compatible with the adjacent communities, 20 so we're talking about a townhouse community that is 21 adjacent to other townhouse communities.</p> <p>22 One other thing is we recognize that compatibility 23 doesn't rob you sort of the different character in each 24 neighborhood, each of the existing neighborhoods has their 25 own sort of unique character, so there's some flexibility</p> |
| <p style="text-align: right;">Page 43</p> <p>1 application that added two units to bring the total to 86 2 units, and we did this by adding one market rate unit, and 3 one MPDU, moderately priced dwelling unit, to the plan. 4 That amended plan or submission was the one that was 5 actually reviewed by Planning Staff and the Planning Board.</p> <p>6 MS. ROBESON: So, you're at 75 markets, and 11 7 MPDUs?</p> <p>8 MR. BRADY: That's correct. Okay. So, our 9 objective here in designing this community was to apply best 10 planning practices, so that began with an extensive 11 community outreach effort to take into consideration the 12 perspectives, and opinions, and comments of the community, 13 these were open events that anyone could attend, but those 14 that were impacted directly here, we had an opportunity to 15 speak to them directly during that process.</p> <p>16 MS. LEATHAM: This is Exhibit 40C.</p> <p>17 MR. BRADY: Thank you.</p> <p>18 MS. ROBESON: 40C?</p> <p>19 MS. LEATHAM: As in cat.</p> <p>20 MR. BRADY: Yes. In addition, we met with the 21 Montgomery Village Foundation on multiple occasions to 22 try --</p> <p>23 MS. ROBESON: Okay.</p> <p>24 MR. BRADY: Yes?</p> <p>25 MS. ROBESON: I don't want to -- we've had</p> | <p style="text-align: right;">Page 45</p> <p>1 within the sort of larger development to express a unique 2 character for each neighborhood. At the same time, one 3 wants to make sure that that character doesn't step beyond 4 the sort of natural compatibility that we would seek here. 5 So, we would characterize this new neighborhood as a 6 walkable hamlet, that was kind of our concept going in, and 7 we organized this community around a series of neighborhood 8 moments and events, principally open space events. In 9 general, we sought wherever possible to make sure that the 10 townhomes face on streets lined with sidewalks, or as an 11 alternative in some cases open space. Parking wherever 12 possible was located behind the units. More than anything 13 we did this in order to promote a more walkable 14 neighborhood, we believe that by minimizing curb cuts into 15 the street that would make the sidewalk experience and the 16 cycling experience more pleasant, and would avoid possible 17 conflicts with cars.</p> <p>18 MS. ROBESON: Where is parking?</p> <p>19 MR. BRADY: Okay. So, parking typically is 20 located, we have an access lane here off the main street 21 that provides access to the back of these townhomes, and 22 then each townhome has an integral garage. In addition, we 23 were able to provide in some instances tandem spaces behind 24 the garage so then in addition to the two parking spaces in 25 the garage we'll have additional two tandem spaces provided.</p> |

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| <p style="text-align: right;">Page 46</p> <p>1 MS. LEATHAM: Is there also on-street parking? 2 MR. BRADY: Yes, we have, we provided on-street 3 parking on one side of the street, you'll see here, with 4 about 35 spaces. I lost my thought here. 5 Okay. So, the planning sequence kind of works as 6 follows, starting here at the northwest one would come in 7 off of Montgomery Village Avenue through a full movement 8 intersection, and one would immediately encounter a small 9 cluster of homes here set within an ample open space, in 10 demonstrating the principle of cluster development; this 11 open space also includes one small recreation area, which 12 could be a tot lot, playground or some sort. One crosses 13 the Colonial Pipeline, you're not allowed to have any 14 structures other than roadways within that easement, or 15 immature trees for that matter; and then one encounters sort 16 of the first cluster here on the northeast, and as I 17 described earlier these are basically townhomes that for the 18 most part face either an open space here, or face onto the 19 road with parking located behind. As part of this cluster 20 there's another set of townhomes here that actually face to 21 the northeast, which is basically the Arrowhead Road 22 frontage, but between Arrowhead Road and these townhomes 23 we've located an amenity green, what I like to call the 24 hamlet green, this provides a public amenity both for the 25 residents in this neighborhood, as well as surrounding</p> | <p style="text-align: right;">Page 48</p> <p>1 used configurations here is what we call them, so 2 essentially the townhomes are oriented perpendicular to the 3 street with each of the townhomes will face on a semi- 4 public -- 5 MS. MILLER: We don't hear him, and he's standing 6 in the way. 7 MR. BRADY: I'm sorry. 8 MS. ROBESON: Okay. Let's do this, can you move 9 the easel, can you -- 10 MR. LECHNER: Yes, 90 degrees, and if he stood 11 this way you would then project to everyone, I think. 12 MR. BRADY: Maybe if I go on this side. 13 MS. ROBESON: Yes, if you can move -- 14 MR. LECHNER: Yes. No. 15 MS. ROBESON: -- it I -- 16 MR. BRADY: I don't want to block their view 17 either. 18 MR. LECHNER: Oh, that might work, too. 19 MS. ROBESON: You know what, I'm going to move 20 over here. If you can move the easel slightly toward them 21 I'm going to move down here. 22 MR. LECHNER: Help him with the other leg. 23 COURT REPORTER: Do you need to go that far? 24 MS. ROBESON: Do you need the light? That works. 25 It's okay, Kathy, I can -- does that work for you?</p> |
| <p style="text-align: right;">Page 47</p> <p>1 neighborhoods, and also provides a little bit of buffering 2 from the Arrowhead Road frontage. 3 The next part, let me just point out, this is our 4 second access point here, which comes out to Arrowhead Road 5 at the intersection with Rothbury Drive, everything aligns 6 correctly so that we can maintain safe movement through that 7 intersection. We then come to this next cluster here on the 8 southeast of this open space, and I'll speak to that in just 9 a moment, in here the homes are similarly arrangements as 10 they were on the northern portion. Here in the center we 11 have what we call the crescent green, this is a sort of 12 community gathering space and a central node for the 13 community. 14 MS. ROBESON: This is opposite the access road? 15 MR. BRADY: This is opposite the access road, that 16 is correct. And so we saw this as an excellent opportunity 17 to sort of utilize some of the geometry of this site to 18 create a sort of unique public space. This public space 19 will allow us to preserve some of the existing trees on the 20 site, and also kind of create this wonderful public amenity 21 on which these duplexes can face. We've actually kind of 22 reduced, what we've decided to do was locate duplexes here 23 because they allowed us to sort of set them more evenly 24 around this curve shape. 25 Moving to the next cluster we get into a series of</p> | <p style="text-align: right;">Page 49</p> <p>1 MS. LEATHAM: Okay? 2 MS. ROBESON: Okay. Is -- now, can he, if he 3 stands on their side I -- 4 MR. LECHNER: Have him stand on the other side. 5 MS. MILLER: Stand on the other side. 6 MR. LECHNER: Stand on the other side to the left. 7 MS. ROBESON: Yes, but then I can't see it. Then 8 I can't see it, and I need to see it. 9 MR. LECHNER: He'll be closer, let's try. 10 MS. ROBESON: So, let's see, can you stand 11 slightly behind it, Mr. Brady? 12 MR. BRADY: That'll work. 13 MS. ROBESON: All right. 14 MR. BRADY: Thank you. Okay. So, I was 15 discussing the next cluster, which is located here on the 16 southeastern portion of the southern leg. This is 17 configured as a series of townhome mews, which essentially 18 allows these townhomes to face onto a semi-public open space 19 with parking service behind coming off a lane that comes 20 perpendicular of the adjacent road. I'll note that one of 21 the reasons we chose this particular configuration was at 22 the request of the members of the Duffer Way Community here, 23 the alternative was to actually have a double-loaded road 24 coming through this section which would have townhomes 25 backing up to their property, and they specifically</p> |

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| <p style="text-align: right;">Page 50</p> <p>1 requested that we consider this option instead since that 2 tended to pull the development away from their property. 3 MS. LEATHAM: And how is that more compatible? 4 MR. BRADY: Well, there's a number of things, one 5 thing is that it provides sort of views out to the open 6 space of the right-of-way, it preserves that, and then it 7 also allows us to maintain a solid buffer here along that 8 edge, a landscape buffer that will be able to augment the 9 existing mature trees with additional plantings, and some 10 understory.</p> <p>11 Moving on to the mews configuration we come across 12 an opportunity to create a future road connection, we just 13 kept that as an option, it may or may not happen, in the 14 meantime it can operate as a mews for these townhomes that 15 face onto it.</p> <p>16 And then the last small cluster here is similar to 17 what we encounter on the northern cluster since we're 18 actually approaching the second Montgomery Village Avenue 19 point of egress, so we --</p> <p>20 MS. ROBESON: The southern -- 21 MR. BRADY: The southern one. 22 MS. ROBESON: -- egress? 23 MR. BRADY: Yes, that's correct. And now, here 24 the land is more constricted so there was less opportunity 25 to do --</p> | <p style="text-align: right;">Page 52</p> <p>1 MS. LEATHAM: When the signage plan is in place 2 will it be, what will it be consistent with? 3 MR. BRADY: Well, let me move ahead here to get 4 the citation correct. So, we'll have to, during site plan 5 we'll have to comply with Section 6.7 of the Zoning Code, 6 and of course during the site plan process we'll document 7 exactly what the signage will be and how it's designed for 8 that review.</p> <p>9 MS. LEATHAM: Okay. One of the zoning standards 10 is that the community is designed in an efficient and 11 orderly relationship, can you describe that?</p> <p>12 MR. BRADY: Well, I would first note that the 13 configuration of the property is somewhat constrained, so 14 that limited some of what we were able to do, for example, 15 points of egress, and placement of roads, but in general we 16 tried to lay out the road as efficiently as possible, 17 provide access to the parking of the units as efficiently as 18 possible, and basically provide access points to the site as 19 efficiently as possible, for example, aligning here with 20 Meadowcroft Lane across from Montgomery Village Avenue, and 21 aligning with Rothbury Drive here at the intersection at 22 Arrowhead.</p> <p>23 MS. LEATHAM: Okay. What about the relationship 24 between the buildings and the land, the built environment 25 and the landscape element?</p> |
| <p style="text-align: right;">Page 51</p> <p>1 LE: Environmentally, or just space? 2 MR. BRADY: Just, yes, just space-wise, so we 3 wanted to maintain proper setbacks and everything from 4 adjacent property lines, even though it's a right-of-way. 5 And then we, you actually have an egress going here back 6 onto Montgomery Village Avenue, in this case, though, this 7 is not a full movement intersection because there's a median 8 island here in Montgomery Village Avenue, so this will only 9 be right-in, right-out traffic movement.</p> <p>10 MS. LEATHAM: How many MPDUs are being provided? 11 MR. BRADY: Okay. We're providing 11 MPDUs, which 12 is 12.5 percent of the allowable 75 units.</p> <p>13 MS. LEATHAM: And it's very early, this is still 14 conceptual, but where will they be located? 15 MR. BRADY: We've essentially distributed evenly 16 throughout the project, they're generally townhomes like 17 there's one located here, kind of eyeballing, in one of the 18 areas here.</p> <p>19 MS. LEATHAM: But just generally they're scattered? 20 MR. BRADY: But generally we've evenly distributed 21 them throughout the site.</p> <p>22 MS. LEATHAM: Is there a signage plan for the 23 property? 24 MR. BRADY: Not at this time. This is a bit early 25 in the design process to provide a signage plan.</p> | <p style="text-align: right;">Page 53</p> <p>1 MR. BRADY: Well, once again, I reiterate that we 2 used a strategy -- 3 MS. ROBESON: Can you speak up, Ms. Leatham? I'm 4 having trouble hearing you now. 5 MS. LEATHAM: Oh, I'm sorry. No, my apologies, 6 I'm looking down. Can you describe the relationship between 7 the built element and the landscape elements? 8 MR. BRADY: Okay. Well, once again, we, utilizing 9 a strategy of cluster development the objective was to 10 maintain as much open space as possible, and minimize the 11 impact of development on the site. So, the relationship of 12 buildings is such that they always try and either face a 13 street or open space, and their parking is generally located 14 in the rear which minimizes curb cuts, and we do that as 15 convenience and efficiency of the design. And we've also 16 maintained landscaping buffers, not only to screen the site 17 from the adjacent communities, but also to provide a 18 backdrop to the back of the homes in the new community. 19 MS. LEATHAM: Can you describe the pedestrian and 20 bicycle circulation system? 21 MR. BRADY: Right. So, we provided sidewalks and 22 some trails throughout, so we have a trail that sort of 23 comes in here and runs through the crescent green, we have 24 sidewalks at least on one side in every case, but usually 25 two-sided along the entire drive that runs through the</p> |

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| <p style="text-align: right;">Page 54</p> <p>1 property, and the drive extends out here to Arrowhead Road. 2 We've provided the opportunity for connections to adjacent 3 communities should they request that, so we've provided 4 that. We also met early on with the Montgomery Village 5 Foundation and their design team for their improvements to 6 their trail system throughout the Village, and we've tried 7 to coordinate our efforts with their larger strategy for a 8 trail system throughout the community. Once we tie into 9 that trail system and the sidewalk system our new residents 10 will have easy access to many of the amenities located 11 throughout Montgomery Village.</p> <p>12 MS. LEATHAM: Are curb cuts minimized and why?</p> <p>13 MS. ROBESON: He already said that, I think.</p> <p>14 MR. BRADY: Yes, I kind of covered that already.</p> <p>15 MS. LEATHAM: All right. I think we talked about 16 this already, too, but just can you describe how the 17 property's perimeter was defined, and your underlying goals 18 for the perimeter?</p> <p>19 MR. BRADY: Well, once again, I just reiterate 20 that --</p> <p>21 MS. ROBESON: Can you stand --</p> <p>22 MR. BRADY: I'm sorry.</p> <p>23 MS. ROBESON: I just want to make sure people can 24 see.</p> <p>25 MR. BRADY: Yes.</p> | <p style="text-align: right;">Page 56</p> <p>1 standards permitted by right in conventional zoning 2 categories?</p> <p>3 MR. BRADY: Yes, we designed the community to be 4 compatible with adjacent neighborhoods based on the concept 5 of cluster development, which maximizes open space within 6 the neighborhood, proposed new neighborhood; we looked to 7 provide efficient means of egress to and from the community 8 for both vehicular, pedestrian, and bicycle circulation; and 9 we provided a number of amenity space evenly distributed 10 throughout the plan.</p> <p>11 MS. LEATHAM: Is the height consistent with the 12 limitations set in other zoning classifications for areas of 13 similar density or similar uses?</p> <p>14 MR. BRADY: Yes, the townhomes will be limited to 15 two and a half to three stories in height, which is 16 compatible with the neighborhoods immediately adjacent, and 17 will never exceed 40 feet.</p> <p>18 MS. LEATHAM: Does this DPA meet the parking, 19 loading, and queuing standards in Section 6.2 of the 2014 20 Zoning Ordinance?</p> <p>21 MR. BRADY: Yes, it does, we've provided a minimum 22 of two parking spaces for each unit, we've also provided 23 some additional parking as I described, including the 40 on- 24 street, excuse me, the 35 approximately on-street spaces for 25 visitors to this neighborhood.</p> |
| <p style="text-align: right;">Page 55</p> <p>1 MS. ROBESON: Thank you.</p> <p>2 MR. BRADY: Just reiterate again that once again 3 with respect to the perimeter of the property we were 4 generally looking wherever feasible to sort of maintain a 5 sort of landscaped edge that could also act as a buffer and 6 also serve as a means for preserving existing tree stands 7 for compliance with our forest conservation plan. We also 8 looked for ways to provide open space at the perimeter in 9 cases such as here, along Arrowhead Road, and keep broad 10 slots of open space, for example, here along Montgomery 11 Village Avenue, both north and south access points.</p> <p>12 MS. LEATHAM: Okay. So, actually, do you want to 13 sit down?</p> <p>14 MR. BRADY: Thank you.</p> <p>15 MS. LEATHAM: Just to wrap up your expert 16 testimony I'm going to ask the witness several questions as 17 they relate to the finances just to make sure we have it on 18 the record. In your expert opinion does this plan provide 19 housing for families of low or moderate income?</p> <p>20 MR. BRADY: Yes, as I stated before, it provides 21 11 MPDU units, or at the 12.5 percent required.</p> <p>22 MS. LEATHAM: And does this plan provide for 23 flexibility in development, and achieve the integration of 24 mutually compatible uses and optimum land planning with 25 greater efficiency, convenience, and amenity than the</p> | <p style="text-align: right;">Page 57</p> <p>1 MS. LEATHAM: And are loading and queuing areas 2 required in this at all?</p> <p>3 MR. BRADY: My understanding of the Zoning Code is 4 under Section 6.2 they are not required and have not been 5 included in this plan.</p> <p>6 MS. LEATHAM: Does this DPA meet the sign 7 standards in Section 6.7 of the 2014 Zoning Ordinance?</p> <p>8 MR. BRADY: Well, as I discussed earlier, we're 9 not quite at that level of design here, but we will bring 10 that into compliance with our site plan application.</p> <p>11 MS. LEATHAM: Is the pedestrian circulation 12 system, and are the points of external access efficient and 13 adequate?</p> <p>14 MR. BRADY: We believe so, yes. We've provided a 15 system of trails and sidewalks throughout the site, they 16 connect to all existing access points to all existing 17 sidewalks at the periphery of the site; we've coordinated 18 our efforts with Montgomery Village Foundation in terms of 19 their larger trail system. We believe that the actual 20 intersections themselves have been designed efficiently for 21 ease of traffic movement and the safety of pedestrians and 22 bicyclists.</p> <p>23 MS. LEATHAM: That concludes our direct testimony. 24 Reserve the right to redirect.</p> <p>25 MS. ROBESON: Mr. Brady --</p> |

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| <p style="text-align: right;">Page 58</p> <p>1 MR. BRADY: Yes?</p> <p>2 MS. ROBESON: -- I have a question, this is a</p> <p>3 little unusual, I think --</p> <p>4 MR. BRADY: Yes.</p> <p>5 MS. ROBESON: -- this case because you have a</p> <p>6 planned community of 2,500 acres, correct? Or is it 2,500</p> <p>7 people? 2,500 acres. Montgomery Village.</p> <p>8 MR. BRADY: Montgomery Village is --</p> <p>9 UNIDENTIFIED MALE SPEAKER: It's 40,000 people.</p> <p>10 MS. ROBESON: No, just a second. No, you can't</p> <p>11 call out from the audience. I think it's 2,500 acres. How</p> <p>12 big is Montgomery Village as a whole, the whole thing?</p> <p>13 MR. BRADY: Do we have that in here?</p> <p>14 MS. LEATHAM: We can get it.</p> <p>15 MR. BRADY: I don't want to get the number wrong</p> <p>16 here, so --</p> <p>17 MS. LEATHAM: It's on the DPA.</p> <p>18 MR. BRADY: It's on the DPA.</p> <p>19 MS. LEATHAM: It's on the DPA.</p> <p>20 MR. BRADY: Here?</p> <p>21 MS. LEATHAM: No.</p> <p>22 MR. BRADY: Do we have the large report available?</p> <p>23 MS. LEATHAM: I'm not sure.</p> <p>24 MR. BRADY: If you'll bear with us a moment.</p> <p>25 MS. ROBESON: I think it's on the land use</p> | <p style="text-align: right;">Page 60</p> <p>1 MS. ROBESON: Do you know the planning principles</p> <p>2 that Montgomery Village was, the entirety of Montgomery</p> <p>3 Village was based on?</p> <p>4 MR. BRADY: Well, the planning principle was</p> <p>5 associated with the new town movement of kind of post-war</p> <p>6 movement for planning new communities. There are examples</p> <p>7 throughout the region, such as Columbia, Maryland, Reston,</p> <p>8 Virginia, et cetera. These communities were originally</p> <p>9 conceived as sort of being independent and freestanding</p> <p>10 communities in their own right with all the sort of</p> <p>11 amenities and services one would require contained within</p> <p>12 the community, the reality has actually been somewhat</p> <p>13 different, those concepts were a little bit utopian, most of</p> <p>14 these communities have become bedroom communities to larger</p> <p>15 metropolitan areas. Generally, the principle there in that</p> <p>16 movement was very much the preservation of open space, as I</p> <p>17 mentioned, and that was primarily achieved by placing</p> <p>18 development in such a way as to minimize its impact on the</p> <p>19 land. One sees that throughout the original development</p> <p>20 plan where one sees a large quantity of open space. Now, I</p> <p>21 would note that the golf course itself was never a part of</p> <p>22 Montgomery Village Foundation or entity itself, even though</p> <p>23 it was always treated as a private entity, it was</p> <p>24 established I presume by the developers in concert with the</p> <p>25 original owner of the golf course as an amenity for the</p> |
| <p style="text-align: right;">Page 59</p> <p>1 probably.</p> <p>2 MR. BRADY: We found it, it's 2,435 acres.</p> <p>3 MS. ROBESON: Right. And so, you're</p> <p>4 surrounding -- and is it fair to say that the whole 2,500</p> <p>5 acres was based on a plan?</p> <p>6 MR. BRADY: Yes, there was an original development</p> <p>7 plan, this is an amendment to that development plan.</p> <p>8 MS. ROBESON: Right. And I guess what I'm saying</p> <p>9 is, I guess my question is that I want to know is you've</p> <p>10 defined a surrounding area that's kind of a microcosm of</p> <p>11 this larger community, what's the impact of this development</p> <p>12 on the overall plan for Montgomery Village?</p> <p>13 MR. BRADY: Well, it's a rather broad question.</p> <p>14 First of all, this development will fall within the</p> <p>15 allowable density cap as originally stipulated by the</p> <p>16 Development Plan and the zoning.</p> <p>17 MS. ROBESON: Well, I guess I'm getting to the</p> <p>18 point where the original plan had this very large amenity --</p> <p>19 MR. BRADY: Yes.</p> <p>20 MS. ROBESON: -- as a central feature, so how does</p> <p>21 this impact the larger community from a planning</p> <p>22 perspective? Is it consistent with the original plan? Is</p> <p>23 it messing up the original plan colloquially? That's my</p> <p>24 expert question.</p> <p>25 MR. BRADY: Sure.</p> | <p style="text-align: right;">Page 61</p> <p>1 community. The problem here, of course, is that the golf</p> <p>2 course itself in the long run did not prove to be a viable</p> <p>3 commercial entity, and as a consequence, and this is a</p> <p>4 general trend we've seen throughout the country, that golf</p> <p>5 courses are kind of overbuilt and underutilized.</p> <p>6 MS. ROBESON: Right. But why not just keep it</p> <p>7 open, you know, keep it an amenity space, I guess --</p> <p>8 MR. BRADY: Right.</p> <p>9 MS. ROBESON: -- is my question?</p> <p>10 MR. BRADY: Sure. Well, it's privately owned</p> <p>11 land. My understanding --</p> <p>12 MS. ROBESON: Well, I mean from a land planning</p> <p>13 perspective.</p> <p>14 MR. BRADY: Right. From a land planning</p> <p>15 perspective who takes ownership? Someone would have to take</p> <p>16 ownership of this property, and convert it into some viable</p> <p>17 form of open space. We had discussions with the Montgomery</p> <p>18 Village Foundation, they're in no position, as I understand</p> <p>19 it, to acquire this land; we spoke with the County, the</p> <p>20 Parks Department, they're in no position at this time to</p> <p>21 acquire the land and maintain it, create and maintain it as</p> <p>22 a park. Therefore, one starts to run out of alternatives.</p> <p>23 Your only viable third alternative since Monument Realty is</p> <p>24 not a public entity, they're a private entity that develops</p> <p>25 land, this seems to be the only viable third alternative.</p> |

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| <p style="text-align: right;">Page 62</p> <p>1 One could argue that this site given that it's no longer a 2 viable golf course is an optimal site for infill, the reason 3 being is that if we can utilize land within existing urban 4 boundaries that are well serviced by existing utilities and 5 other features such as road systems and such, we can 6 minimize impact on the surrounding regions around this 7 metropolitan area. So, from a planning perspective given 8 the alternatives that there's no viable alternative to 9 maintain this as a park or an open space or a golf course, 10 the only reasonable alternative is to utilize it for infill, 11 but in a way that is compatible with the original 12 development plan, well, with the adjacent communities and 13 the intent of the original development plan.</p> <p>14 MS. ROBESON: And how is it compatible with the 15 intent of the original development plan?</p> <p>16 MR. BRADY: The original development plan said 17 where development occurs one should utilize a system of 18 design that minimizes the impact of development on the 19 landscape, and maximizes open space within the development 20 subject to the permitted densities within that development.</p> <p>21 MS. ROBESON: Well, that could be said of any 22 development.</p> <p>23 MR. BRADY: Well, not every development 24 necessarily is required to use a cluster system of 25 development, that is cluster development to, a lot of</p> | <p style="text-align: right;">Page 64</p> <p>1 MR. LECHNER: Is it east or west of the site? 2 MR. BRADY: My understanding is it's south of the 3 site. 4 MR. LECHNER: South of the site. And are you 5 familiar with the density, population density credit 6 calculations in terms of the Montgomery Village? 7 MS. LEATHAM: We have another -- 8 MR. LECHNER: Okay. 9 MS. LEATHAM: -- expert who will testify to that. 10 MR. LECHNER: Oh, okay. I'll hold for that, then. 11 Okay. And within the constructs of the South Village, 12 Middle Village, and North Village are you familiar with the 13 very concepts of design as far as density planning in those 14 three areas from the Village? 15 MR. BRADY: Generally as I've previously 16 discussed. 17 MR. LECHNER: And could you refresh me, again? 18 I'm sorry, I didn't quite relate the term. 19 MR. BRADY: Generally, the principle that 20 development should be such that it seeks to preserve open 21 space within those neighborhoods by trying to concentrate 22 development. Does it necessarily achieve that in every 23 case? One could argue pro/con depending on the specific 24 neighborhood, but I think generally what I observed was that 25 is the general planning principle observed throughout</p> |
| <p style="text-align: right;">Page 63</p> <p>1 development just sprawls out on the landscape and doesn't 2 take into consideration preservation of open space at all, 3 that's what's sort of unique about the development plan of 4 Montgomery Village. And we think we have addressed that and 5 respected that in the layout of this new neighborhood. 6 MS. ROBESON: Okay. Mr. Lechner, any questions? 7 MR. LECHNER: I have a couple, actually, and I 8 appreciate, Paul, thank you so much for providing a great 9 information and overview. A question, are you familiar with 10 the term South Village, Middle Village, and North Village 11 within the construct of how Montgomery Village was planned? 12 MR. BRADY: Yes. 13 MR. LECHNER: You are? And which part of those 14 three does, does this property fall into one of those three 15 areas? 16 MR. BRADY: Well, I don't know the specific 17 boundaries of those, but I would say if anything it's kind 18 of in the north Montgomery Village. 19 MR. LECHNER: Yes. Actually, I think that's 20 correct. And Crabbs Branch Stream, are you familiar with 21 that location of Crabbs Branch Stream? 22 MR. BRADY: The Cabin Branch? 23 MR. LECHNER: Cabin Branch, that's it. That's it. 24 MR. BRADY: It's not immediately adjacent to this 25 site.</p> | <p style="text-align: right;">Page 65</p> <p>1 Montgomery Village. 2 MR. LECHNER: Okay. And just there's the stripe 3 below the property that's where the powerlines are? 4 MR. BRADY: Yes, that's the PEPCO right-of-way, 5 they own that property. 6 MR. LECHNER: Are you all considering any 7 mitigation activities as far as between the houses and the 8 powerlines as far as the design? 9 MR. BRADY: In that edge we are, I'm not sure that 10 we need to mitigate for PEPCO, so I'm not sure I understand 11 the question. 12 MR. LECHNER: I'm just concerned if the powerlines 13 is a concern as far as the layout of the property. 14 MR. BRADY: Only with respect that we saw that as 15 sort of open land, and that's why we chose to, that's one of 16 the reasons we chose to utilize and use configuration 17 adjacent to that by right-of-way. 18 MR. LECHNER: Okay. 19 MS. ROBESON: Is the PEPCO right-of-way is that 20 improved with overhead powerlines? 21 MR. BRADY: Yes, there's a, yes, high tension 22 powerlines. 23 MS. ROBESON: Okay. I'm sorry, go ahead. 24 MR. LECHNER: Okay. And how big is the crescent 25 green area, you have a little semi-circle up there? Is</p> |

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| <p style="text-align: right;">Page 66</p> <p>1 that, you know, in terms of acreage, or square feet? 2 MR. BRADY: I'm trying to remember, but let's see 3 if it's on here. Provided an inventory of open space. Save 4 this. If I may do a calculation? 5 MS. ROBESON: You may. 6 MR. BRADY: I believe about something in the 7 neighborhood of about 7,200 square feet. 8 MR. LECHNER: 7,200 -- 9 MR. BRADY: Square feet. 10 MR. LECHNER: -- square feet. 11 MR. BRADY: Plus or minus, it's a rough 12 calculation. 13 MR. LECHNER: And you said that, you've considered 14 that a benefit to the houses around there that they have 15 that open space there, it's a feature, design feature, 16 positive design feature? 17 MR. BRADY: Yes, we do. 18 MR. LECHNER: Okay. And would a -- if that was 19 taken away from the property and filled in with something 20 else that took away the green recreational nature would you 21 consider that to be positive for the houses there, or 22 negative? 23 MR. BRADY: That's not currently proposed, so I 24 don't really understand the question. 25 MR. LECHNER: Well, I'm trying to assess your</p> | <p style="text-align: right;">Page 68</p> <p>1 golf courses currently? 2 MS. LEATHAM: I object. I don't know how relevant 3 whether they have a golf course is. 4 MS. ROBESON: Well, he's saying golf courses are 5 dying, and he's -- I'm going to let him answer the question. 6 MR. LECHNER: I don't know the particulars of 7 those communities. I know them as examples of the new town 8 movement, beyond that I don't know their configurations. 9 MR. LECHNER: Okay. One other question, then, you 10 said, you talked to Montgomery Village and the County, I 11 assume you mean the Montgomery County Recreation, MCRA 12 Revenue Administration? 13 MR. BRADY: We've met with multiple staff members, 14 including the Parks Department. 15 MR. LECHNER: Yes. Yes. Did you ever talk to a 16 golf course operating company? 17 MS. LEATHAM: I object, this isn't the right 18 witness to ask that question. 19 MR. LECHNER: Oh, okay, he brought it up before. 20 MS. ROBESON: Well, just -- okay. No cross talk, 21 you can't -- 22 MR. LECHNER: Oh, I'm sorry. 23 MS. ROBESON: -- just address the witness. He did 24 open the door to it, I'm going to let him answer the 25 question.</p> |
| <p style="text-align: right;">Page 67</p> <p>1 value as far as that feature as part of the overall project. 2 Do you consider that a positive valuable feature for the 3 overall project? 4 MS. LEATHAM: I object. He's already stated that 5 it's a valuable feature of the overall project, and we're 6 only talking about -- 7 MR. LECHNER: That's correct. 8 MS. LEATHAM: -- this proposal, so -- 9 MR. LECHNER: Small area. 10 MS. LEATHAM: -- any -- 11 MS. ROBESON: I'll sustain it. 12 MR. LECHNER: Okay. Very good. 13 MS. ROBESON: Go ahead, Mr. Lechner. 14 MR. LECHNER: Was there ever any other use for 15 this property? It used to be, just if I remember right it 16 used to be farming, and then it's been a golf course, and 17 then it was, it's now being proposed as housing, was there 18 any other use? 19 MR. BRADY: I don't know the history of the 20 property beyond the golf course. 21 MR. LECHNER: Okay. Okay. And you mentioned 22 Columbia, Maryland and Reston as other similar planned 23 communities? 24 MR. BRADY: Yes. 25 MR. LECHNER: And both of those communities have</p> | <p style="text-align: right;">Page 69</p> <p>1 MR. BRADY: Can you restate the question? 2 MR. LECHNER: Do you know did you ever do outreach 3 to golf course operating companies to bring them in to 4 assess the viability independently, or profitability, or 5 things like that? 6 MR. BRADY: I as a Planner did not participate in 7 any meeting of that kind. 8 MR. LECHNER: Okay. Very good. Thank you. 9 MS. LEATHAM: I just have two redirect questions. 10 We've been talking about, a lot about on the DPA the actual 11 townhouse units, but there's a lot of open space that 12 remains, or is there a lot of open space that remains? 13 MR. BRADY: Yes. 14 MS. LEATHAM: Okay. 15 MR. BRADY: It exceeds the requirement of 15 16 percent, as I recall. 17 MS. LEATHAM: Right. 18 MS. ROBESON: I'm sorry, what's the requirements? 19 MR. BRADY: I believe it's 15 percent. We have 20 another witness that can testify more specifically to that. 21 MS. LEATHAM: Okay. I'm going to save another 22 question for later. 23 MS. ROBESON: Okay. Any questions based on, just 24 based on her questions? 25 MR. LECHNER: No.</p> |

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| <p style="text-align: right;">Page 70</p> <p>1 MS. ROBESON: Okay. Mr. Brady, you may be 2 excused.</p> <p>3 MR. BRADY: Thank you.</p> <p>4 MS. LEATHAM: I only had about two minutes to look 5 through these exhibits, can we, can I take a quick break and 6 look at them?</p> <p>7 MS. ROBESON: Yes.</p> <p>8 MS. LEATHAM: Or do you want to keep going?</p> <p>9 MS. ROBESON: Then let me see, that'll give me an 10 opportunity -- it's 11:10 now, we'll be back at 11:20, and 11 you can check those exhibits, also, Mr. Lechner, I'm going 12 to see where your second submission is --</p> <p>13 MR. LECHNER: Okay.</p> <p>14 MS. ROBESON: -- okay?</p> <p>15 MS. LEATHAM: If we have any objections to some of 16 these are we, when are we going to talk about that?</p> <p>17 MS. ROBESON: Well, when he introduces them --</p> <p>18 MS. LEATHAM: Okay.</p> <p>19 MS. ROBESON: -- on his, I don't want to take them 20 without any foundation.</p> <p>21 MS. LEATHAM: Right. Okay. Got it.</p> <p>22 MS. ROBESON: All right. We're off the record for 23 10 minutes.</p> <p>24 (OFF THE RECORD.)</p> <p>25 (ON THE RECORD.)</p> | <p style="text-align: right;">Page 72</p> <p>1 years, 16 years in private practice, seven years with the 2 Montgomery County Planning Department. I have a Masters of 3 Landscape Architecture, I'm licensed as a landscape 4 architect in two states, and I am a member of the American 5 Institute of Certified Planners.</p> <p>6 MS. ROBESON: Okay. And is one of the states 7 Maryland?</p> <p>8 MR. SLOAN: Yes.</p> <p>9 MS. ROBESON: All right. I'm going to qualify Mr. 10 Sloan as an expert in land planning. Go ahead, Ms. Leatham.</p> <p>11 MS. LEATHAM: Okay. Can you describe briefly 12 where your private practice experience has occurred?</p> <p>13 MS. ROBESON: Well, do we have to go into that?</p> <p>14 MS. LEATHAM: Okay. We'll skip it.</p> <p>15 MS. ROBESON: Because --</p> <p>16 MS. LEATHAM: All right. Did there come a time 17 when you were employed by the Applicant for this proceeding 18 with regard to the proposed DPA?</p> <p>19 MR. SLOAN: Yes, I began consulting for the 20 Petitioner about eight months ago.</p> <p>21 MS. LEATHAM: Now, are you familiar with the 22 original Montgomery Village DPA and its subsequent 23 amendments?</p> <p>24 MR. SLOAN: Yes, I've studied the development plan 25 in relation to this amendment and several others. My</p> |
| <p style="text-align: right;">Page 71</p> <p>1 MS. ROBESON: All right, we're back on the record. 2 Okay, Ms. Leatham, your next witness?</p> <p>3 MS. LEATHAM: Joshua Sloan.</p> <p>4 MS. ROBESON: Okay. Mr. Sloan, please raise your 5 right hand.</p> <p>6 (Witness sworn.)</p> <p>7 MS. ROBESON: Go ahead, Ms. Leatham.</p> <p>8 MS. LEATHAM: Mr. Sloan has previously been 9 admitted by the Hearing Examiner as an expert in planning 10 and landscape architecture.</p> <p>11 MS. ROBESON: Do you know which case?</p> <p>12 MS. LEATHAM: Mr. Sloan, do you remember which 13 case?</p> <p>14 MR. SLOAN: It was Creekside for, with Marty, we 15 had the first rezoning under the new Zoning Ordinance.</p> <p>16 MS. ROBESON: Okay. H101. All right. Mr. 17 Lechner, do you have any objections to Mr. Sloan testifying 18 as an expert in land planning?</p> <p>19 MR. LECHNER: I don't know the background. I 20 don't remember him, actually, as far as the meetings, but I 21 won't object.</p> <p>22 MS. ROBESON: Well, let's do this, can you just 23 briefly state your qualifications, very briefly your 24 education and your work experience, quickly?</p> <p>25 MR. SLOAN: I've worked in the field for about 23</p> | <p style="text-align: right;">Page 73</p> <p>1 primary focus of research on this has been determining the 2 proper entitlement process, and the standards under which 3 the DPA would be evaluated.</p> <p>4 MS. LEATHAM: And when you were in, when you 5 worked for Montgomery County, I'm sorry, with Maryland 6 National Capital Park and Planning Commission did you also 7 evaluate the Montgomery Village Development Plan?</p> <p>8 MR. SLOAN: I did. I worked on several cases, none 9 related to this property.</p> <p>10 MS. LEATHAM: Okay. Are you familiar with this 11 property and the surrounding properties?</p> <p>12 MR. SLOAN: I am familiar with this property, I've 13 visited it and the surrounding areas. I'm actually a 14 resident of Gaithersburg and visit here often. My doctor's 15 office was here for awhile, right across the road.</p> <p>16 MS. LEATHAM: Are you familiar with the 2004 and 17 2014 Montgomery County Zoning Ordinance?</p> <p>18 MR. SLOAN: I'm quite familiar with both 19 Ordinances.</p> <p>20 MS. LEATHAM: And are you familiar with the 1971 21 and the 1985 Gaithersburg and Vicinity Master Plan as 22 amended?</p> <p>23 MR. SLOAN: Yes, I'm familiar with the Master 24 Plans of this property.</p> <p>25 MS. LEATHAM: And are you familiar with Chapter</p> |

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| <p style="text-align: right;">Page 74</p> <p>1 22A of the Montgomery County Code?</p> <p>2 MR. SLOAN: I regularly oversee and professionally</p> <p>3 seal forest conservation lands and variance requests under</p> <p>4 Chapter 22A.</p> <p>5 MS. LEATHAM: And I believe I actually forgot to</p> <p>6 qualify Mr. Sloan as an expert in landscape architecture, as</p> <p>7 well as planning.</p> <p>8 MS. ROBESON: Any objections, Mr. Lechner?</p> <p>9 MR. LECHNER: No.</p> <p>10 MS. ROBESON: Okay.</p> <p>11 MS. LEATHAM: Okay. Can you describe the</p> <p>12 development history of Montgomery Village?</p> <p>13 MR. SLOAN: So, Montgomery Village, as has been</p> <p>14 discussed a bit, was developed in the mid-1960s by the</p> <p>15 Kettler brothers, it was formerly mostly farmland, but none</p> <p>16 of the extensive zoning categories at that time could cover</p> <p>17 such a new town development concept, and so the T-S Zone was</p> <p>18 developed specifically for this property in this</p> <p>19 development. That zoning had to cover everything from</p> <p>20 single-family detached homes to office building, so it's</p> <p>21 been, has to be flexible, and most of the actual development</p> <p>22 parameters were established through the development plan,</p> <p>23 and development plan amendments, and then further developed</p> <p>24 and development standards are created through the cycling</p> <p>25 process after that.</p> | <p style="text-align: right;">Page 76</p> <p>1 been implemented through the DPA process development plan</p> <p>2 amendment process, 59D-1, and analyzed under those</p> <p>3 requirements, and then subsequent site plans have</p> <p>4 established the specific uses and the development standards.</p> <p>5 MS. LEATHAM: Okay. The Development Plan</p> <p>6 Amendment, the original development plan has been amended</p> <p>7 almost 20 times, they're listed on the DPA, which is Exhibit</p> <p>8 40 -- I'm sorry -- all the exhibits are, I mean, sorry, all</p> <p>9 the amendments are listed on 40I, so, unless the Hearing</p> <p>10 Examiner desires I'm not going to go through all of them.</p> <p>11 Okay.</p> <p>12 MS. ROBESON: No. Thank you.</p> <p>13 MS. LEATHAM: Okay. So, let's talk about the</p> <p>14 Master Plan and how it's been implemented, or not, in</p> <p>15 Montgomery Village.</p> <p>16 MR. SLOAN: Okay. So, this is the, an unusual</p> <p>17 case where a zoning classification was established and not</p> <p>18 allowed to be changed for 50 years. Master plans which</p> <p>19 established traditionally learned use and zoning and are</p> <p>20 reviewed frequently, relatively frequently, by law they're</p> <p>21 supposed to be reviewed every 10 years, ours in Montgomery</p> <p>22 County are typically reviewed about every 20 years. The</p> <p>23 existing Master Plan is from 1985. So, this really has been</p> <p>24 looked at primarily through the development plan process,</p> <p>25 it's been looked at as you noted almost 20 times over the</p> |
| <p style="text-align: right;">Page 75</p> <p>1 MS. LEATHAM: And in your experience, and based on</p> <p>2 your research how has new development been evaluated?</p> <p>3 MR. SLOAN: New development is typically evaluated</p> <p>4 as it relates to the development plan itself, previous</p> <p>5 amendments, and the T-S Zone categories. The, really the</p> <p>6 basis of zoning is not as you traditionally think about it,</p> <p>7 setting land uses and density is not established in the zone</p> <p>8 itself, it's established by the development plan, and so</p> <p>9 that is what I'd look to when I was in staffing, that's what</p> <p>10 I've analyzed while I've been working for the Petitioner on</p> <p>11 this project. Other than density which is established on</p> <p>12 usually less persons per acre, and only for the entire T-S</p> <p>13 Zone area, there are no development standards in the T-S</p> <p>14 Zone. The consistency requirements are really based, as I</p> <p>15 said, on the T-S Zone standards, and then under the old</p> <p>16 Zoning Ordinance, 59D-1, which is the development plan</p> <p>17 standards and procedures for review, that process is really</p> <p>18 the only way that a zoning classification that was not</p> <p>19 allowed to be changed for 50 years could keep up with</p> <p>20 changes in the community and the area, otherwise I'd</p> <p>21 consider it kind of unfair to keep someone locked into</p> <p>22 something, a land plan for 50 years, half a century.</p> <p>23 MS. LEATHAM: So, technically speaking how have</p> <p>24 changes to the development plan been implemented?</p> <p>25 MR. SLOAN: Changes to the development plan have</p> | <p style="text-align: right;">Page 77</p> <p>1 last 50 years. In that time the population has doubled for</p> <p>2 Montgomery County, the --</p> <p>3 MS. LEATHAM: Over that time, the time since the</p> <p>4 Master Plan?</p> <p>5 MR. SLOAN: Over the time since the T-S Zone was</p> <p>6 put here, since the last Master Plan the population has gone</p> <p>7 from 750,000 to over a million, so that is kind of unusual</p> <p>8 for a Master Plan not to be able to change things and deal</p> <p>9 with that kind of change over that time. So, that's where</p> <p>10 you really look to the T-S zoning and the flexibility</p> <p>11 allowed in that zoning, and the Development Plan Amendment</p> <p>12 process to accommodate change over time.</p> <p>13 MS. LEATHAM: Well, before we do the Master Plan</p> <p>14 does the State and does the County recognize that sometimes</p> <p>15 Master Plans may become stale?</p> <p>16 MR. SLOAN: They do. There have been, there's</p> <p>17 been case law, and precedents for acknowledging that change</p> <p>18 over significant periods of time, it's not reflected in</p> <p>19 older Master Plans, can be accommodated through amendment</p> <p>20 procedures, and there's planning recommendations if they're</p> <p>21 not allowed to evolve with current contemporary planning</p> <p>22 objectives, can override broad recommendations of a Master</p> <p>23 Plan and it wouldn't be included in that.</p> <p>24 MS. ROBESON: Well, isn't it true, isn't it true</p> <p>25 that there's some case, recent case law suggesting that the</p> |

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| <p style="text-align: right;">Page 78</p> <p>1 Master Plan should have a, be more controlling? Now, you're 2 not an attorney and this is a legal opinion, but I would say 3 that there is case law, I think it's Greater Boden Citizens 4 Association, which suggests that there is less flexibility 5 to deviate from a Master Plan. But you can testify as a 6 land planner --</p> <p>7 MR. SLOAN: Right.</p> <p>8 MS. ROBESON: -- as to your understanding of how 9 you've looked at -- you're not an attorney, you can testify 10 as to your understanding as to how you've applied the 11 standards.</p> <p>12 MR. SLOAN: Correct. And I -- yes, I will avoid 13 my opinions on the case law specifically. But as a land 14 planner a document that's over 20 years old is not 15 necessarily reflective and proper for the community to 16 follow if things have changed.</p> <p>17 MS. ROBESON: Well, it's not a matter of whether 18 it's proper or not, I guess -- well, just, okay, just keep 19 talking.</p> <p>20 MR. SLOAN: So, when there are very specific 21 recommendations for property --</p> <p>22 MS. ROBESON: I guess what I'm getting at is 23 proper and unfair those are not considerations for me. So, 24 as a planner you could testify as to your experience as to 25 how this has been applied.</p> | <p style="text-align: right;">Page 80</p> <p>1 because the text did not make any recommendations for 2 changes to those areas.</p> <p>3 MS. ROBESON: Well, I had one, and it was a local 4 map amendment G-910, which was this plan where the map was 5 used, but go ahead.</p> <p>6 MS. LEATHAM: Well --</p> <p>7 MR. SLOAN: Within --</p> <p>8 MS. ROBESON: That was a denial, so --</p> <p>9 MR. SLOAN: Speaking specifically with Montgomery 10 Village and recommendations, not to the map for the rest of 11 the Master Plan area is also covered by this.</p> <p>12 MS. ROBESON: So, why should Montgomery Village be 13 treated differently?</p> <p>14 MR. SLOAN: If there were texts they went along 15 with the map that made specific recommendations then I think 16 those should be looked at, but the evidence of previous 17 approvals in the CSAC proceeding, and also in the Rothbury 18 proceeding, and then in the Montgomery Village Plaza, all 19 three of those, two of them had recommendations for school 20 sites with some open space, it was deemed adequate to comply 21 with the recommendation for ball fields to be put aside to 22 just provide some open space, in one case in Rothbury it was 23 only a couple, it was minimal area, and not even enough room 24 for ball fields, and it was not -- so, there was substantial 25 compliance. The --</p> |
| <p style="text-align: right;">Page 79</p> <p>1 MR. SLOAN: So, in this particular case the 2 implementation section of the Master Plan actually does 3 refer to the Master Plan itself on page 105, as a guide to 4 the area's physical development. And in many cases for this 5 particular Master Plan area there have been changes to 6 recommendations for certain properties, certain properties 7 were recommended, for example, for schools, I mean, if 8 schools were not provided that some amount of space could be 9 given for open space, there are, which did not always 10 happen, but is what was specifically said in the Master 11 Plan. So, the Master Plan has been used as a guide, not as 12 a restrictive regulatory requirement for development in this 13 Master Plan area for Montgomery Village. So, that's how I 14 viewed this case, to look at the Master Plan as a guide, and 15 to implement the intent of that guidance.</p> <p>16 MS. LEATHAM: Specifically, there's two elements 17 to the Master Plan, there's the text of the Master Plan, and 18 there's the map, the land use map, in your experience how 19 have those been connected or not?</p> <p>20 MR. SLOAN: The text has been referred to in 21 council opinions on development plan amendments, the map has 22 never been referred to in those opinions, the map was also 23 not used as a definitive or guiding document for Planning 24 Staff in their review of development plan amendments, it was 25 really looked at as a statement of what existed at the time</p> | <p style="text-align: right;">Page 81</p> <p>1 MS. ROBESON: Now, which one was that?</p> <p>2 MR. SLOAN: With both Rothbury and --</p> <p>3 MS. ROBESON: Is that 1202 Rothbury and --</p> <p>4 MS. LEATHAM: Rothbury is 02-2.</p> <p>5 MS. ROBESON: The Autistic Association is 01 --</p> <p>6 MR. SLOAN: 01-4, so in that the recommendation 7 was that the scale and density of the proposed facility is 8 similar to a public elementary school, and that although 9 there was a recommendation when schools weren't used that 10 the ball field area be put aside, there was no ball field 11 area to put aside, it was open space provided. In Rothbury, 12 which was 02-2 --</p> <p>13 MS. LEATHAM: Before you leave that one, what was 14 the land use plan designation for that site, for the --</p> <p>15 MR. SLOAN: Right. So, in all three of those 16 cases that I'm talking about the land use plan itself when 17 you look at the designation the first two, the CSAC and the 18 Rothbury, those are recommended for residential medium 19 density in the plan itself.</p> <p>20 MS. ROBESON: Now, when you say the plan itself 21 there are --</p> <p>22 MR. SLOAN: The map.</p> <p>23 MS. ROBESON: -- two kind of plans, there's the 24 map and the --</p> <p>25 MR. SLOAN: There's the map.</p> |

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| <p style="text-align: right;">Page 82</p> <p>1 MS. ROBESON: -- text of the Master Plan, so -- 2 MR. SLOAN: Right. 3 MS. ROBESON: -- which one was -- 4 MS. LEATHAM: What does the text of the Master 5 Plan say about Montgomery Village? 6 MR. SLOAN: The text of the Master Plan does not 7 say anything for those land uses, it's only in the parks, 8 the community facilities area does it talk about these sites 9 at all, and it says that if the school is not used that it 10 should be some area during redevelopment, or during any 11 development should be put aside for ball fields, it says 12 nothing about the use that it would be used for. But the 13 map then for both of those cases says this is residential 14 medium density area, the best I can tell, the colors are 15 kind of faded, it's odd. But it's at least residential 16 medium density would be the highest category likely. In one 17 case it was used for an institutional use, in the other case 18 it was used for higher density residential, 17.2 units per 19 acre, and that was considered compatible because it was 20 adjacent to land recommended for, or land developed with 21 higher density residential. So, there was in my mind a bit 22 of a jump, but certainly one that's allowed by the zoning 23 and the development plan amendment process.</p> <p>24 In the case of Montgomery Village there's no text, 25 there's nothing about the property in the text of the Master</p> | <p style="text-align: right;">Page 84</p> <p>1 and community based planning made the finding that, or made 2 the recommendation that it complied with the development 3 plan in a larger sense, and they really looked at the four 4 greater objectives of the Gaithersburg Vicinity Plan to 5 determine that a development plan was not amended, and the 6 Planning Board agreed and ultimately granted a mixed use 7 project approval on that property.</p> <p>8 MS. LEATHAM: And what did the land use plan 9 recommend? Or what did the land use plan show on that 10 property?</p> <p>11 MR. SLOAN: The land use plan showed retail 12 commercial, and so that was retained in part, but then added 13 to, and so that is really the way that I've looked at this 14 application providing a greater open space for a greater 15 number of people because it's not private and restricted to 16 membership, while adding to it something that is compatible, 17 like they did in the Rothbury case, similar density on land 18 next to similar density that was already built.</p> <p>19 MS. LEATHAM: All right. To kind of sum all of 20 this up, what is the implication if you have a Master Plan 21 that has no textual recommendations for the entire 22 Montgomery Village area, what does that mean from a planning 23 perspective? What is your guiding document?</p> <p>24 MR. SLOAN: Our guiding document in that case is 25 to look at the, any approved entitlements that are on the</p> |
| <p style="text-align: right;">Page 83</p> <p>1 Plan. The land use map recommends that as retail commercial 2 property -- 3 MS. LEATHAM: I'm sorry, let me interrupt you. 4 That's Montgomery Village Plaza, 8/2006, 0400, it's Exhibit 5 113D and E. 6 MR. SLOAN: Sorry. Yes. So, in that case there 7 was a proposal for mixed use residential, high density 8 residential apartment -- 9 MS. ROBESON: I'm sorry, which one are we on? 10 MR. SLOAN: 8/2006, 0400 Montgomery Village Plaza. 11 MS. ROBESON: Okay. 12 MR. SLOAN: It's right on Lost Knife Road, the 13 contour road going around it. 14 MS. ROBESON: Okay. 15 MR. SLOAN: In that case community based planning 16 looked at the application and decided that not even a 17 development plan amendment would be required because the 18 entire area that that is within, the 1B, Section 1 -- 19 MS. LEATHAM: 1B is in the Development Plan? 20 MR. SLOAN: In the Development Plan, Section 1B of 21 the Development Plan, allowed residential within that, and 22 so, you know, at that time I was on staff, we didn't even 23 look at the plan to see, for conformance, we were looking at 24 the land use plan for the Master Plan, we were looking at 25 the Development Plan Amendment that was previous approved,</p> | <p style="text-align: right;">Page 85</p> <p>1 property, which would be the development plan itself. 2 MS. ROBESON: So, you don't look at the Master 3 Plan at all? 4 MR. SLOAN: We look at the Master Plan for its 5 general objectives, and we seek compliance with those 6 general objectives because there's no specific language 7 about the property. 8 MS. LEATHAM: And so, what does that lead the land 9 use plan to function as? Is that -- 10 MR. SLOAN: In the case of the T-S Zone in this 11 Gaithersburg area, the T-S Zone, the development plan, the 12 land use plan as part of the development plan is actually 13 the Master Plan guiding document, it establishes 14 transportation routes, it establishes land uses, and density 15 in larger community areas, not specific neighborhoods. 16 MS. LEATHAM: So, in this particular case with 17 respect to the land use plan and how, what it shows for this 18 particular property, how much weight do you give that? 19 MR. SLOAN: In this particular case I think that 20 the spirit of it should be maintained, and open space and 21 tying into the open space network and the open space 22 amenities that are expected for this community should be 23 followed, but the specific designation of in this case it's 24 private conservation or recreation is not a determining 25 factor, in fact, there's no conservation area on, there's no</p> |

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| <p style="text-align: right;">Page 86</p> <p>1 land conserved in any of the golf, former golf course. 2 MS. ROBESON: Well, doesn't one of the -- I 3 brought our library copy, if, this would help me, can you, 4 do you have a copy of the large foldout Master Plan? 5 MR. SLOAN: I do, I have one copy, they're very 6 hard to come by. 7 MS. ROBESON: Yes, I know, I've been trying to get 8 an electronic version from Park and Planning. 9 MR. SLOAN: They don't exist. 10 MS. ROBESON: Actually, it will. It would be 11 helpful to me to mark the locations of the 01-04 I think it 12 is, and 02-02, and if we do that I'm going to have to take 13 your map because it'll have to be an exhibit in the case 14 because it's marked, but I will have electronic versions. 15 But what I would really like to do is know what use that 16 land use plan places on it. No, you have to mark right on 17 the map because the stickies will come off. 18 MS. LEATHAM: This is going to be Exhibit 117? 19 MS. ROBESON: Yes. 20 (Exhibit No. 117 was marked 21 for identification.) 22 MS. LEATHAM: Okay, that one. 23 MR. SLOAN: Okay. So -- 24 MS. ROBESON: Here. Because I was looking for 25 them, and I just, for the record I'd like to know exactly</p> | <p style="text-align: right;">Page 88</p> <p>1 and west of -- these aren't labeled, oh, Montgomery Village 2 Avenue, that was approved development plan amendment 88-1 3 for townhouses, and they did set aside space for one ball 4 field that was already existing. In that case the 5 underlying code color of the map was to the best I can tell 6 medium density residential, and that is the closest to the 7 text of the, meeting the text of the Master Plan. 8 The other two cases that I was talking about, one, 9 Rothbury, which was case 02-2, is directly north of 10 Rothbury, and it, and below to the right is -- 11 MS. ROBESON: Burr Oak Drive. 12 MR. SLOAN: -- Burr Oak Drive, exactly. That was 13 indicated for a school, and the text said if a school wasn't 14 used that a ball field should be put aside during 15 development, in that case I believe it was two acres of land 16 was put aside for open space as a buffer, and the underlying 17 zoning on that, however, or designation of that was also for 18 residential medium density, which is indicated for up to the 19 five to seven units per acre. In that case the Council 20 found that because it abutted land that was developed at a 21 higher density indicated and developed for this high density 22 residential up to 15 units per acre, that 17.2 units per 23 acre was in substantial compliance with the Master Plan. 24 This CSAC site, case 01-04, is on East Village 25 Avenue just north of the intersection of Lewisburg Drive</p> |
| <p style="text-align: right;">Page 87</p> <p>1 where they area. And 117 will be markup of land use plan. 2 MR. SLOAN: Was it 17? 3 MS. ROBESON: 117. If you want -- 4 MR. LECHNER: Did you mark the Plaza one? 5 MR. SLOAN: Yes, it's hard to see -- 6 MR. LECHNER: It's hard to see. 7 MR. SLOAN: -- there's quite a bit -- 8 MR. LECHNER: Right there. 9 MR. SLOAN: -- and it's indicated with 8/2006. 10 Okay. So, Exhibit 117 is the Land Use Plan for the 11 Gaithersburg Vicinity Master Plan. 12 MS. ROBESON: And marked, for the record marked 13 with a green marker is? 14 MR. SLOAN: And marked with a green marker over 15 red on Lost Knife Road, and Lost Knife Road to the sort of 16 southwest, and Contour Road to the northeast, on the east 17 it's bordered by another commercial property, is Montgomery 18 Village Plaza, that's indicated with the darker red on the 19 map which in the key is delineated retail commercial. That 20 is a property that was approved for, approved by a site plan 21 for mixed use residential apartment building and retail, 22 that was not considered even a change drastic enough to go 23 through a development plan amendment. There are actually 24 three sites that were originally considered potential sites 25 for schools, one on Apple Ridge, just north of Apple Ridge</p> | <p style="text-align: right;">Page 89</p> <p>1 with East Village Avenue, and that was recommended for a 2 school, the Council found that although the designation 3 again was for residential medium density that an 4 institutional use was close enough to be considered in 5 substantial compliance with the Master Plan. Again, no ball 6 fields were set aside, there was some open space along the 7 back that's really just maintained as this field, as lawn 8 area right now. So, those are the cases that run through 9 how the Master Plan has been interpreted most recently, and 10 so they were sort of, they were the guiding principles for 11 how I looked at this application in relation to the Master 12 Plan and the Land Use Plan Map. 13 MS. LEATHAM: You can probably sit down. 14 MR. SLOAN: So, the one thing that in the opinion 15 for Rothbury that I took as sort of a kind of key statement 16 was that rigid hearings to the recommendation for a field 17 sport recreation facility is not necessary to substantially 18 comply with the Master Plan, and the evidence reflects that 19 MVF does not, Montgomery Village Foundation, does not desire 20 a field sport recreation area at this location. The 21 Development Plan Amendment includes a two-acre area of 22 landscaped open space providing an aesthetic amenity and an 23 open space buffer in keeping with the general intent of the 24 Master Plan. So, rather than ball fields, medium density 25 development, the higher density apartment uses and the two</p> |

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| <p style="text-align: right;">Page 90</p> <p>1 acres was deemed in keeping with the general intent of the 2 Master Plan. In our case we have no recommendation in the 3 text for any kind of open space, or let alone ball field. I 4 may be getting a little ahead of myself. We are providing, 5 we'll be providing 2.6 acres of land in conservation area 6 for actual conserved area, and then significant other open 7 space.</p> <p>8 MS. ROBESON: Now, the Land Use Plan as I see on 9 the, it actually says golf course, correct? Now, I'm 10 reading a bigger version. Just --</p> <p>11 MR. SLOAN: It says --</p> <p>12 MS. ROBESON: Just south of Stewartstown --</p> <p>13 MR. SLOAN: Right, along --</p> <p>14 MS. ROBESON: Road.</p> <p>15 MR. SLOAN: -- Cabin Branch?</p> <p>16 MS. ROBESON: Yes. Uh-huh.</p> <p>17 MR. SLOAN: So, along Cabin Branch, which runs, 18 it's not part of this property, Cabin Branch runs east/west 19 over to Great Seneca, that area is labeled just to the west, 20 or east of Montgomery Village Avenue as golf course. And 21 then the green color itself which covers all of the former 22 golf course is labeled, is delineated in the key 23 conservation/recreation.</p> <p>24 MS. ROBESON: So, you don't read that golf course 25 designation as applying to all of the green area?</p> | <p style="text-align: right;">Page 92</p> <p>1 it didn't happen that way, changes have occurred to how 2 people wanted to build, and how their affinities for infill 3 development versus, you know, having to walk further, those 4 kinds of things, those have changed, and the development 5 plan amendments have kept up with that change by 6 reallocating densities here and there throughout the 7 properties.</p> <p>8 With regard to open space, I think it's key to 9 getting some kind of land in conservation and actually 10 fulfilling that aspect of the Master Plan, and some forest, 11 2.6 acres of so will be put into forest conservation 12 easements meeting the conservation goals, and a significant 13 amount of open space, parkland and facilities, or park area, 14 however it's owned, probably by the HOA or the Foundation, 15 will be put into this plan meeting the greater community's 16 requirements and needs for open space rather than a private 17 membership golf club.</p> <p>18 MS. LEATHAM: And --</p> <p>19 MS. ROBESON: So, your interpretation of the 20 Master Plan, because 59D-1., I think it's the findings under 21 development plan still refers to the Master Plan.</p> <p>22 MR. SLOAN: Yes.</p> <p>23 MS. ROBESON: So, you're saying it's consistent 24 with the Master Plan because it incorporates open space?</p> <p>25 MR. SLOAN: It's -- well, it substantially</p> |
| <p style="text-align: right;">Page 91</p> <p>1 MR. SLOAN: I do, but I read it as an indication 2 of what was there at the time. And at least --</p> <p>3 MS. ROBESON: Okay.</p> <p>4 MR. SLOAN: -- allowed to be changed through 5 subsequent development plan amendments as the other areas 6 that were residential medium density and retail commercial 7 to be changed over time to the development plan.</p> <p>8 MS. LEATHAM: So, based on what you just 9 described, particularly how Rothbury was found to be in 10 substantial compliance, how do you find this DPA to be in 11 substantial compliance with the Master Plan? Or I'm sorry, 12 consistent with the uses and densities recommended by the 13 Master Plan?</p> <p>14 MR. SLOAN: The densities I consider compliance 15 because it's within the 15 persons per acre that is 16 stipulated for the entire area.</p> <p>17 MS. ROBESON: But it says Master Plan.</p> <p>18 MR. SLOAN: The Master Plan does not make any 19 recommendations for density. It's --</p> <p>20 MS. ROBESON: Okay.</p> <p>21 MR. SLOAN: -- in the text itself there's nothing 22 there. In previous cases several of the development plan 23 amendments have moved densities around from area to area, 24 and changed those original designations of where, you know, 25 in 1965 they thought population would be concentrated, and</p> | <p style="text-align: right;">Page 93</p> <p>1 complies with the Master Plan for the few reasons, one, 2 because there is open space being provided, there's 3 conservation area being provided, and there is density 4 allowed through the zoning and the development plan itself. 5 The Master Plan is recognized as a guide in the 6 implementation section of the Master Plan, and the Council 7 and the Planning Board have all recognized that 50-year 8 zoning designation will require amendments to keep pace with 9 the needs of the community, and there are several overriding 10 or larger planning principles in the Master Plan that are 11 met for providing housing, for providing open space, and 12 that those are really what I looked at in considering this 13 compliant, whether or not it was compliant and agree that it 14 was substantially compliant.</p> <p>15 MS. ROBESON: Okay.</p> <p>16 MS. LEATHAM: Can you just reiterate that you 17 looked at more than just the land use plan to determine 18 whether it was substantially compliant?</p> <p>19 MR. SLOAN: Yes. Yes. I looked at the, not only 20 the land use plan, but the text in the Master Plan itself, 21 the overriding goals of the Master Plan that, you know, I 22 took my cue from community based planning when they looked 23 at the Montgomery Village Plan and said that this is 24 allowable, you can transfer densities from one area to 25 another within the plan, and provide the housing on a site</p> |

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| <p style="text-align: right;">Page 94</p> <p>1 that was recommended for retail commercial because it met 2 those four larger policy objectives.</p> <p>3 MS. ROBESON: But that's not this Master Plan?</p> <p>4 MR. SLOAN: It is.</p> <p>5 MS. ROBESON: I don't understand. You're saying 6 the new Montgomery Village Master Plan? No, the old 7 Gaithersburg Vicinity Master Plan?</p> <p>8 MR. SLOAN: The Gaithersburg Vicinity Master Plan.</p> <p>9 MS. ROBESON: What?</p> <p>10 MR. SLOAN: The Gaithersburg Vicinity Master Plan.</p> <p>11 MS. ROBESON: Okay.</p> <p>12 MR. SLOAN: So, to sort of very definitively put a 13 sort of my guidance based on community based planning's 14 review of that project --</p> <p>15 MS. ROBESON: Wait, or what project?</p> <p>16 MR. SLOAN: Of the 8/2006 0400 --</p> <p>17 MS. ROBESON: The site plan?</p> <p>18 MR. SLOAN: -- Master -- right. So, since the 19 project proposed by the Applicant is consistent with the 20 uses identified for Section 1B on the development plan, an 21 amendment of the development plan is not required. So, they 22 looked at the development plan, saw that 1B as a whole 23 allowed residential, although this specific land use plan 24 map, this specific, the one that accompanied the Master Plan 25 did not have that use, they did not think a development plan</p> | <p style="text-align: right;">Page 96</p> <p>1 Master Plan --</p> <p>2 MR. SLOAN: They were, they, in the previous cases 3 that actually went through a development plan amendment they 4 indicated in their opinions that specific adherence to, 5 exact adherence to specific recommendations even for 6 property were not necessary to find substantial compliance.</p> <p>7 MS. LEATHAM: So, let's just talk about this DPA 8 for a minute more specifically. What does the DPA do that 9 is consistent with the overall principles of the Master 10 Plan?</p> <p>11 MR. SLOAN: So, when I looked at the plan and 12 worked with Torti Gallas on this the DPA does several things 13 in my mind, one, it provides uses that are compatible, and 14 more appropriate for the greater community.</p> <p>15 MS. ROBESON: What does appropriate mean?</p> <p>16 MR. SLOAN: Well --</p> <p>17 MS. ROBESON: And why more compatible? So, start 18 with appropriate, what does that mean?</p> <p>19 MR. SLOAN: With appropriate there are, in my mind 20 it was a question of how many people need a private 21 membership golf course, versus how many people need better 22 connectivity through the community, open space that they can 23 actually use, and townhouses which are really, as the 24 Foundation has kind of put it a jolt in the arm that's 25 needed for this community that's seen very little</p> |
| <p style="text-align: right;">Page 95</p> <p>1 amendment was required.</p> <p>2 MS. ROBESON: What's the equivalent of 1B here?</p> <p>3 Would it be Blue Mary at four?</p> <p>4 MR. SLOAN: It's not -- we can look at the 5 original, or the last development plan.</p> <p>6 MS. ROBESON: And this is Exhibit?</p> <p>7 MR. SLOAN: Forty-five.</p> <p>8 MS. ROBESON: Okay.</p> <p>9 MR. SLOAN: This is the latest approved</p> <p>10 development plan amendment. So, you can see that there are 11 large areas that are indicated with a Roman numeral and a 12 capital letter. This area is simply, this and the PEPCO 13 easement and a couple of other areas are simply left off, 14 they're not designated on the development plan amendment.</p> <p>15 MS. ROBESON: So, when you say this area there's a 16 light, it's not shaded, it's light colored --</p> <p>17 MR. SLOAN: It's not shaded, it's just the --</p> <p>18 MS. ROBESON: -- on 45?</p> <p>19 MR. SLOAN: -- contours are shown, but it's not 20 labeled anything in particular. It's closest to in our 21 sense of the neighborhood to 3F.</p> <p>22 MS. LEATHAM: Okay. So, the language you cited 23 from the Montgomery Village Plaza case was that also -- or 24 the concepts, the principles also adopted by the Council in 25 their approval of the previous DPAs you mentioned? That the</p> | <p style="text-align: right;">Page 97</p> <p>1 redevelopment over the past several years, and there really, 2 there aren't many opportunities without taking down existing 3 housing at this point.</p> <p>4 MS. ROBESON: So, you're saying that because the 5 golf course isn't open to the public it doesn't provide any 6 benefit?</p> <p>7 MR. SLOAN: It provides an aesthetic visual 8 benefit. I think it provides actually an environmental 9 concern in my mind, and I think there can be better open 10 space facilities for the greater community. If the 11 community had wanted and could afford a private membership 12 golf course it would have stayed viable, so I think that 13 that's really a question that needs to be answered through 14 redevelopment, what is better for the community, what's a 15 better fit? That's what I looked at in terms of 16 appropriate. I think the compatibility question is similar, 17 it's been discussed quite a bit by Larry, but it's similar 18 to the Rothbury case, you look at what is adjacent, and the 19 Council looked at what's adjacent and despite the 20 recommendation on the land use plan said okay, this is a 21 good fit, it's a match, it's a similar use, and it's 22 therefore compatible. In our case --</p> <p>23 MS. ROBESON: Okay.</p> <p>24 MR. SLOAN: -- we're providing a similar use but 25 even a lower density.</p> |

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| <p style="text-align: right;">Page 98</p> <p>1 MS. ROBESON: And what was your second point? You 2 said that was appropriate. I'm trying to get specific on 3 why you think it's consistent with the Master Plan. So, one 4 is it's, you think the Master Plan, this provides more 5 appropriate open space?</p> <p>6 MR. SLOAN: I think it does.</p> <p>7 MS. ROBESON: Okay. And the density is the --</p> <p>8 MR. SLOAN: The density is less than the 9 surrounding neighborhoods --</p> <p>10 MS. ROBESON: And then --</p> <p>11 MR. SLOAN: -- but of similar use.</p> <p>12 MS. ROBESON: -- what about the land, the 59D says 13 land use?</p> <p>14 MR. SLOAN: The land use designation?</p> <p>15 MS. ROBESON: Uh-huh.</p> <p>16 MR. SLOAN: Well, in that case I think it is a 17 change, but it's a change that's acceptable under 18 substantial compliance as was found in those previous cases.</p> <p>19 MS. ROBESON: Okay.</p> <p>20 MS. LEATHAM: And what else does this DPA do that 21 meets the goals, the overall goals of, and objectives of the 22 Master Plan?</p> <p>23 MR. SLOAN: I think this will, this enhances 24 connectivity, both vehicular, pedestrian, cyclist 25 connectivity for the community by connecting Arrowhead to</p> | <p style="text-align: right;">Page 100</p> <p>1 strict requirement, could be all sorts of outdoor 2 activities, it could be a dirt bike course, it could be who 3 knows what. But then this is, the substantial compliance 4 question in my mind is whether or not you're allowed to 5 deviate at all in part of the question, and you can, and 6 over 50 years in terms of the zoning, and 20 years in terms 7 of the Master Plan you can deviate somewhat, just not 8 completely, and I think this plan meets that.</p> <p>9 MS. ROBESON: Okay.</p> <p>10 MS. LEATHAM: Unless the Hearing Examiner has any 11 more questions on the Master Plan I'm ready to move on.</p> <p>12 MS. ROBESON: To?</p> <p>13 MS. LEATHAM: To zoning, to the T-S Zone 14 standards.</p> <p>15 MS. ROBESON: Oh, from Mr. Sloan?</p> <p>16 MS. LEATHAM: From Mr. Sloan, yes.</p> <p>17 MS. ROBESON: Okay, go ahead.</p> <p>18 MS. LEATHAM: Okay. All right. So, please 19 describe the purpose of the T-S Zone.</p> <p>20 MR. SLOAN: So, the T-S Zone was developed as a 21 tool to create a town from what was previously farmland, it 22 has five specific objectives in the purpose clause, to be 23 self-sufficient; to have all necessary uses, commercial, 24 employment, cultural, recreation for its residents; to 25 provide a diversity of housing types, and that included</p> |
| <p style="text-align: right;">Page 99</p> <p>1 Montgomery Village. Any time you can disburse traffic and 2 give people options it's better for the network overall. It 3 provides conserved area for forest that's not existing now. 4 It will bring stormwater management up to contemporary 5 standards, there's no stormwater management right now for 6 this golf course, golf course require a lot of water, and 7 they have a number of environmental concerns in terms of 8 water and in terms of maintenance that we'll seek to correct 9 and mitigate through improved stormwater management. And I 10 think the publicly accessible open space is key to this 11 proposal, it's a connectivity network and open space network 12 that was put in place and now the townhouses, my reading of 13 Torti Gallas' plan the townhouses were built --</p> <p>14 MS. ROBESON: Of whose plan?</p> <p>15 MR. SLOAN: Torti Gallas' plan.</p> <p>16 MS. ROBESON: Oh, the --</p> <p>17 MR. SLOAN: The land use plan.</p> <p>18 MS. ROBESON: -- land planners here. Okay.</p> <p>19 MR. SLOAN: The townhouses were worked around that 20 network and open space, and with thoughtful consideration to 21 the next door neighbors. I don't think a strict reading of 22 the land use plan is necessary for substantial compliance, 23 it wasn't in several other cases, and in this particular 24 case it would lead to, it could lead to sort of absurd 25 results, private recreation if that was held as the, as a</p> | <p style="text-align: right;">Page 101</p> <p>1 different building types as well as rental and ownership to 2 cluster, urban densities; and be able to save significant 3 areas of open space and the open space network; and to 4 provide the necessary transportation facilities, and the 5 necessary public utilities to accommodate development.</p> <p>6 MS. LEATHAM: And does this DPA conform to the 7 purpose clause?</p> <p>8 MR. SLOAN: It does, it provides actually all five 9 of the, meets all five requirements or objectives of the 10 purpose clause.</p> <p>11 MS. LEATHAM: Can you just touch on the open 12 space, I think the Hearing Examiner had a question for Mr. 13 Brady that I wanted to bring back about open space, so does 14 this DPA add open space to the overall Montgomery Village 15 Community?</p> <p>16 MR. SLOAN: It does. The golf course was never 17 considered part of the original open space calculation, the 18 T-S Zone required that at least 10 percent of its entire 19 area be devoted and set aside for open space, and it defined 20 open space as publicly accessible, and so the golf course 21 didn't even meet the definition of open space. So, by 22 providing publicly accessible open space in this area we'll 23 be expanding the amount of open space.</p> <p>24 MS. ROBESON: Where does it provide the definition 25 of open space?</p> |

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| <p style="text-align: right;">Page 102</p> <p>1 MR. SLOAN: In the old Code. 2 MS. LEATHAM: There's also -- 3 MS. ROBESON: Is it in -- 4 MS. LEATHAM: -- a tabulation -- 5 MS. ROBESON: Is it in the zone? 6 MR. SLOAN: It's in the zone, there's a tabulation 7 on the development plan that excludes the golf course from 8 that calculation of open space. 9 MS. ROBESON: And I don't have the, did -- well, 10 rather than finding the development plan in here -- 11 MR. SLOAN: So, the definition of open space is 12 59C-7.244, not less than 10 percent of the total area of the 13 town sector zone shall be devoted to open space, this may 14 include publicly owned, community-wide, or common open space 15 facilities, but may not include streets and parking areas. 16 And in the development plan -- 17 MS. ROBESON: And why does that exclude the golf 18 course? 19 MR. SLOAN: Because it's privately owned. 20 MS. ROBESON: Well, it just says this may include, 21 but it doesn't say, it doesn't prohibit privately owned 22 land. 23 MR. SLOAN: It's my inference from that and the 24 exclusion of this from the open space calculation in the 25 table that this was not --</p> | <p style="text-align: right;">Page 104</p> <p>1 calculations were done in 2006, and at that time 238 people 2 were remained as allowed density, and then two apartments 3 were added I think to Rothbury replacing office areas, or 4 leasing areas, and so that went down to 232 population 5 credits, and we are taking 77 market rate townhouses, or 76 6 market rate townhouses out of the 77 that would be allowed. 7 MS. ROBESON: Do you want to expand briefly on how 8 the number of people is calculated? 9 MR. SLOAN: So, there's -- 10 MS. ROBESON: It's a formula, correct? 11 MR. SLOAN: So, there is a formula in the T-S Zone 12 that per development type, or per building type for 13 residences you calculate how many people are assumed to be 14 in those units, and the last full audit and calculation was 15 done in 2006 that tabulated all of those and came up with 16 the remaining unused potential -- 17 MS. ROBESON: Minus the two units in -- 18 MR. SLOAN: Minus the two units, the -- 19 MS. ROBESON: -- DPA -- 20 MR. SLOAN: -- office -- 21 MS. ROBESON: -- 11-02. 22 MR. SLOAN: And also, the units, that includes 23 units that were, Montgomery Village Plaza that had never 24 been built, either. 25 MS. ROBESON: Okay.</p> |
| <p style="text-align: right;">Page 103</p> <p>1 MS. ROBESON: Now -- okay. I'm just -- 2 MR. SLOAN: -- considered open space. 3 MS. ROBESON: I'm not trying to give you a hard 4 time, I'm just trying to get to the nuts and bolts of how 5 you got to this conclusion. So, why in exhibit, which 6 exhibit is that? 7 MR. SLOAN: Exhibit 40I, the area and density 8 analysis lists the various uses, and excludes the golf 9 course from the calculation of open space. 10 MS. ROBESON: And that's on the upper table? 11 MR. SLOAN: And that's on the table in the center 12 right. 13 MS. ROBESON: Okay. 14 MS. LEATHAM: Okay. Is the DPA consistent with 15 the density credits available under the T-S Zone and under 16 the DPA? 17 MR. SLOAN: It is. 18 MS. LEATHAM: I'm sorry, under the original 19 development plan? 20 MR. SLOAN: The development plan allowed 15 21 persons per acre. 22 MS. LEATHAM: Is that the same as the Zoning 23 Ordinance? 24 MR. SLOAN: And that is the same as the Zoning, 25 it's -- and we were within that, the last real formal</p> | <p style="text-align: right;">Page 105</p> <p>1 MR. SLOAN: So, those, that could still go forward 2 under this. 3 MS. LEATHAM: Okay. Can you address how this plan 4 meets other T-S Zone regulations? 5 MR. SLOAN: So, we talked about the purpose, the 6 land uses, land uses are not established by the T-S Zone, 7 they're established by the development plan, and the 8 development plan allows these uses, they're actually 9 formalized through site plan even, not through the 10 development plan, and that's why Montgomery Village 11 Foundation, or Montgomery Village Plaza was allowed to go 12 forward without an amendment, because the site plan approved 13 those uses of residential. The area requirements are 14 satisfied by the entire T-S Zone area; density is met, we're 15 within the 15 persons per acre allowed by the zoning and the 16 development plan. Height is established by site plan, and 17 it has to be consistent with similarly zoned zoning, similar 18 zoning classifications, in our case it would be something 19 like a townhouse zone, which allows 40 feet, but then again, 20 that's finalized at site plan. 21 MS. ROBESON: Old or new townhouse zone? 22 MR. SLOAN: Yes. 23 MS. ROBESON: Twenty-four -- no, really, 2014, or 24 is it your position it should be a 2004 ordinance and you're 25 proceeding through the 2004 Code?</p> |

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| <p style="text-align: right;">Page 106</p> <p>1 MR. SLOAN: With the similarly zoned -- I don't 2 know, I'd have to -- if we look at the units per acre that 3 we're proposing we're more like an R-200 TDR or something 4 under the old Zoning Ordinance, it's an odd one because 5 we're not very high density, we're not a high density enough 6 to --</p> <p>7 MS. ROBESON: What about RT8? 8 MR. SLOAN: We're lower than that. 9 MS. ROBESON: I know. But what -- just for -- 10 MR. SLOAN: Right.</p> <p>11 MS. ROBESON: I just want to get an idea, what are 12 you proposing as to height, and what are, what do you think 13 is the height equivalent for whatever zone you think is the 14 appropriate zone?</p> <p>15 MR. SLOAN: I think three and a half stories would 16 be typical, 40 feet is allowed.</p> <p>17 MS. ROBESON: Where? Where is it allowed? 18 MR. SLOAN: Well, it's allowed --</p> <p>19 MS. ROBESON: In which zone? 20 MR. SLOAN: In the old zones? 21 MS. ROBESON: Yes. 22 MR. SLOAN: Well, with -- under various site plan 23 provisions it's allowed in most zones in, like I said, I'm 24 going to have to do that all from memory, but R-60 and R-90 25 I believe allowed you to go to three and a half stories with</p> | <p style="text-align: right;">Page 108</p> <p>1 maybe? Subject to --</p> <p>2 MR. SLOAN: Well, 35 to the midpoint, 40 max, and 3 that's where we're really looking for compatibility, 35 4 midpoint.</p> <p>5 MS. ROBESON: Why don't you just explain what that 6 means, midpoint?</p> <p>7 MR. SLOAN: So, you measure the building height 8 from, in this case it'll be from average grade elevation to 9 the, if it's a sloped roof the midpoint between the eaves 10 and the peak.</p> <p>11 MS. ROBESON: Okay. All right.</p> <p>12 MS. LEATHAM: How about utilities?</p> <p>13 MR. SLOAN: So, utilities, just based on our 14 initial look at what's out there, utilities are available on 15 the roads that we front on, and will be provided by the 16 developer through the development, and the procedures 17 required are the development plan amendment and the site 18 plan that we'll be following.</p> <p>19 MS. LEATHAM: You spoke to this I think 20 tangentially earlier, what are the setback requirements for 21 the Zone?</p> <p>22 MR. SLOAN: There are no setback requirements in 23 the Zone, they're established by site plan, so really it's a 24 question of compatibility as we get to those site plan 25 findings for setbacks.</p> |
| <p style="text-align: right;">Page 107</p> <p>1 site plan findings of compatibility, certainly the R-200 2 zone allows height up to 50 feet. The floating zones, the 3 old R-T Zones allow 35 feet.</p> <p>4 MS. ROBESON: Right, that's what I was thinking 5 of. And so, yours are --</p> <p>6 MR. SLOAN: To the midpoint.</p> <p>7 MS. ROBESON: -- up to, subject to final design 8 you're saying up to 40 feet?</p> <p>9 MR. SLOAN: Up to 40 feet, I think. Yes. The 10 townhouses have changed a lot, but the R-T Zones were not -- 11 that's why they changed to the new townhouse zones, 12 construction methods have changed, building code has 13 changed, fire code has changed.</p> <p>14 MS. ROBESON: Right. I'm just trying to -- and 15 also -- well, that doesn't matter. But I'm just trying to 16 find out in this 7.21, or not 21, but in the area 17 requirements, wait, there's some, height is mentioned, and 18 I'm trying to understand what your basis is for saying this 19 height is okay?</p> <p>20 MR. SLOAN: I think the most similar would be, in 21 the old Code would be the R-T Zones, and they allow 35 feet 22 to the midpoint, and that's probably what we're going to be 23 doing.</p> <p>24 MS. ROBESON: Okay, 7.26 is the height. Okay. 25 So, you're saying the R-T Zones, which are 35 and you're 40,</p> | <p style="text-align: right;">Page 109</p> <p>1 MS. LEATHAM: Is the required -- is there the 2 required school capacity for the proposed DPA?</p> <p>3 MR. SLOAN: Yes, we've provided Exhibit 40M to 4 show that there is capacity, school capacity.</p> <p>5 MS. LEATHAM: If this DPA is approved what are the 6 next steps?</p> <p>7 MR. SLOAN: So, the next steps, we're doing a lot 8 of planning, we have entitlement plans to go through, 9 preliminary plan, and site plan; we have forest conservation 10 plans; we have landscape plans to do; several engineering 11 studies; stormwater management plans; sediment erosion 12 control plans; road plans; sight distance evaluations; 13 grading plans, we've got a lot to go through and at least 14 another round of public hearings.</p> <p>15 MS. LEATHAM: Okay. I'm going to ask you some 16 questions in your expert opinion as a land planning. Does 17 the proposed project comply with the purpose clause of the 18 T-S Zone?</p> <p>19 MR. SLOAN: Yes, it does, it enables further self- 20 sufficiency for the entire town sector zone area; it 21 provides a new type of housing stock for the area; it 22 creates clustered density with large amounts of open space; 23 improves transportation infrastructure; and provides the 24 public utilities serving the new development.</p> <p>25 MS. LEATHAM: Are the proposed land uses permitted</p> |

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| <p style="text-align: right;">Page 110</p> <p>1 under the T-S Zone?</p> <p>2 MR. SLOAN: They are, townhouse, duplex,</p> <p>3 residential development generally is allowed by right.</p> <p>4 MS. LEATHAM: Is the density permitted by the DPA</p> <p>5 and the zone?</p> <p>6 MR. SLOAN: The density is under the 15 persons</p> <p>7 per acre allowed by the zone and the development plan.</p> <p>8 MS. LEATHAM: Does the proposed development</p> <p>9 substantially comply with the use and density indicated by</p> <p>10 the Master Plan, and not conflict with the general plan, the</p> <p>11 County CIP, or other applicable County plans and policies?</p> <p>12 MR. SLOAN: Yes, I believe we've had very</p> <p>13 complicated technical discussion about it. In the end the</p> <p>14 density is established by the T-S Zone and allocated to the</p> <p>15 development plan, and is and has been allowed to move from</p> <p>16 area to area. The use is allowed by the T-S Zone and the</p> <p>17 development plan, and being reallocated from one portion of</p> <p>18 the tract from another, as was previously done meeting the</p> <p>19 larger objectives of the Master Plan. And the conversion of</p> <p>20 private recreation to publicly accessible open space, the</p> <p>21 introduction of actual conservation area, and the creation</p> <p>22 of better circulation network are the foundation of the</p> <p>23 development plan's compliance with the Master Plan, and</p> <p>24 contemporary planning objectives and policies that were not</p> <p>25 thought of in this Master Plan.</p> | <p style="text-align: right;">Page 112</p> <p>1 density that was previously approved.</p> <p>2 MS. ROBESON: Okay.</p> <p>3 MR. SLOAN: So, when we started looking at this,</p> <p>4 you know, it was kind of, it took awhile for that to click,</p> <p>5 but then we were really looking at 7.7.1B(3), which requires</p> <p>6 that density and height not be increased from the original</p> <p>7 approval, which similar to the argument on C(3), 7.7.1C(3)</p> <p>8 we made, and it requires that certain setbacks be met, those</p> <p>9 setbacks are not, there are no setbacks and development</p> <p>10 standards, so there's nothing really to retain or satisfy,</p> <p>11 although we'll be making setbacks at site plan.</p> <p>12 MS. ROBESON: Well, you could say the setbacks</p> <p>13 shown on the development plan, couldn't you?</p> <p>14 MR. SLOAN: There are none. The closest we could</p> <p>15 come to is if we looked at the setbacks approved with the</p> <p>16 site plans for the adjacent development, but this is not</p> <p>17 even a recorded lot, so we don't, there are no setbacks or</p> <p>18 anything involved with this property. But I don't know that</p> <p>19 those necessarily went through site plan because that was</p> <p>20 actually added to the T-S Zone, some of them --</p> <p>21 MS. ROBESON: What was added?</p> <p>22 MR. SLOAN: The site plan requirement, not all</p> <p>23 properties in the T-S Zoned area of Montgomery Village have</p> <p>24 site plans.</p> <p>25 MS. LEATHAM: Finally, in your expert opinion is</p> |
| <p style="text-align: right;">Page 111</p> <p>1 MS. LEATHAM: Section 7.7.1B(3) of the 2014 Zoning</p> <p>2 Ordinance has two requirements for DPAs, does this DPA</p> <p>3 conform to both?</p> <p>4 MS. ROBESON: B(3)?</p> <p>5 MR. SLOAN: B(3).</p> <p>6 MS. LEATHAM: B(3).</p> <p>7 MS. ROBESON: Isn't this analyzed under C?</p> <p>8 MS. LEATHAM: Well, C(3) under my Code was</p> <p>9 expansion of floor area, and this isn't commercial space.</p> <p>10 MR. SLOAN: So, this is another curious thing for</p> <p>11 the new Ordinance. The C(3) provision, 7.7.1C(3) were</p> <p>12 drafted really to get at concerns about expansion of floor</p> <p>13 area that was existing for zones like the C-T, the H-M, the</p> <p>14 O-M Zones that, you know, people were concerned they had</p> <p>15 existing approvals and could add to existing floor area.</p> <p>16 And so, that section itself was entitled expansion of floor</p> <p>17 area existing on 30/2014. There is on floor area existing</p> <p>18 on this site, it's also not a density that's calculated in</p> <p>19 floor area.</p> <p>20 MS. ROBESON: But it's an expansion? There's no</p> <p>21 density calculated as floor area, correct, but isn't an</p> <p>22 expansion in density of an existing approval?</p> <p>23 MR. SLOAN: Well, the development plan is approved</p> <p>24 for 15 persons per acre, and we're not expanding that, we're</p> <p>25 within that cap, so I don't think it's even an expansion of</p> | <p style="text-align: right;">Page 113</p> <p>1 this DPA in the public interest?</p> <p>2 MR. SLOAN: I think it is in the public interest,</p> <p>3 I think it is a higher and better use than vacant land in</p> <p>4 the middle of a community, which could not be supported or</p> <p>5 sold to create, to continue any kind of complete open space.</p> <p>6 MS. ROBESON: Okay. What's the basis for your</p> <p>7 contention that it couldn't be sold? Is it your personal</p> <p>8 knowledge, or is it from other people you've spoken to on</p> <p>9 the development team?</p> <p>10 MR. SLOAN: This is not my personal knowledge --</p> <p>11 MS. ROBESON: Okay.</p> <p>12 MR. SLOAN: -- this is --</p> <p>13 MS. ROBESON: Keep going.</p> <p>14 MR. SLOAN: The, I think it needs to be developed</p> <p>15 with the appropriate, sensitive integration with the</p> <p>16 community, open space and uses. There are existing</p> <p>17 facilities present and infrastructure, capacity,</p> <p>18 transportation capacity have all been analyzed; stormwater</p> <p>19 will be improved; tree canopy will be improved; forest</p> <p>20 stands will be created, I think all of those things are</p> <p>21 important aspects of the public interest. Grading and tree</p> <p>22 impacts will be minimized during redevelopment, and they'll</p> <p>23 also be completed under special approvals for grading and</p> <p>24 forest conservation. The use and density is compatible with</p> <p>25 the surrounding neighborhoods. I think this is a good</p> |

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| <p style="text-align: right;">Page 114</p> <p>1 example of smart growth, it's an infill development where 2 facilities are present, it's good planning to place housing 3 where people can walk to the schools, to amenities, to 4 services. It provides additional affordable housing for the 5 community. It is designed to take into account the existing 6 built environment, and the, and minimize impacts on the 7 neighbors, and to blend with those existing communities. It 8 improves safety through the reuse of a vacant lot and 9 improve pedestrian connections.</p> <p>10 MS. ROBESON: Well, okay, those are planning 11 principles, what we're done is interpreted in terms of 12 adopted plans and policies.</p> <p>13 MR. SLOAN: For public interest.</p> <p>14 MS. ROBESON: Yes. Which would be the Master 15 Plan, but not necessarily planning principles, those go 16 toward compatibility.</p> <p>17 MR. SLOAN: Okay. I really did touch on the no 18 adverse impact on the public facilities, the environmental 19 issues, the improvements to those things, and the provision 20 of affordable housing. The general health, safety, welfare 21 aspects are I guess an aside.</p> <p>22 MS. LEATHAM: Okay. Moving on to the forestry 23 plan, can you describe the significant features found on the 24 NRI, which is Exhibit 40F, as in Frank?</p> <p>25 MR. SLOAN: I can pull that exhibit up, if we'd</p> | <p style="text-align: right;">Page 116</p> <p>1 of forest and mitigation trees, rather than the monoculture 2 of white pines that are, and the non-native trees that are 3 there now.</p> <p>4 MS. LEATHAM: How will this project satisfy the 5 County's forest conservation requirements under Chapter 22A?</p> <p>6 MR. SLOAN: Our estimation of the requirements 7 that were approved with the preliminary forest conservation 8 plan are that 2.6 acres of new forest will have to be 9 planted, and we have done initial layout of those to show 10 how we're primarily doing that against existing tree stands 11 and as using it as a buffer between the proposed and the 12 existing developments. And then we also have mitigation 13 tree requirements which will be done throughout this site, 14 those are trees that are provided for mitigation for taking 15 down or impacting, we're taking down the, any specimen 16 trees, and those will be planted in areas without easement 17 so they will be additional to the forest conservation 18 stands.</p> <p>19 MS. LEATHAM: What is the affect on air quality as 20 a result of the proposed DPA?</p> <p>21 MR. SLOAN: Golf courses generally require a large 22 amount, a larger than typical amount of maintenance by gas 23 powered equipment, and of course this use or that 24 maintenance requirement will no longer be needed. The 25 increase simply in plant, plant material, what's called</p> |
| <p style="text-align: right;">Page 115</p> <p>1 like to look at it, there really, it's a site dominated by 2 two golf holes, the tees, the fairways, and the greens; it's 3 edged with primarily evergreen landscaping trees; the soils 4 are actually pretty good, B-type soils, but there's not much 5 else on here, on other natural features.</p> <p>6 MS. LEATHAM: Part of the forest conservation plan 7 includes a tree variance request, can you briefly describe 8 that?</p> <p>9 MR. SLOAN: The tree variance request is going to 10 look at removals or impacts that we're projecting at this 11 point, which is relatively early, we've submitted and had 12 approval of the preliminary forest conservation plan and the 13 variance. Most of those trees that we're impacting were 14 planted on the edges of the fairway and the golf green and 15 tee box, all but seven of those specimen trees are white 16 pines and non-native spruce, the white pines are really 17 approaching the end of their typical lifespan for a 18 landscape condition, and their removal will be necessary for 19 providing for grading and implementing the development plan 20 under the Zoning and the Development Plan Amendment.</p> <p>21 MS. LEATHAM: Did the MN-CPPC Staff and County 22 Arborist agree with the variance request?</p> <p>23 MR. SLOAN: Staff and the Arborist agreed with it, 24 and the Planning Board approved the variance, it really 25 results in a more natural and ecologically sound replanting</p> | <p style="text-align: right;">Page 117</p> <p>1 plant biomass will be significant and improve air quality, 2 and then you have your general principles of infill 3 development where people can walk to services, amenities, 4 and schools that reduces the need to drive by single 5 occupancy vehicle that will improve air quality.</p> <p>6 MS. LEATHAM: All right. So, just to sum up, in 7 your expert opinion are the tree variances justified?</p> <p>8 MR. SLOAN: I think the tree variance is 9 justified, and as shown by the approval by the Planning 10 Board, it meets the requirements of the Zone, requires 11 temporary site disturbance which will impact those trees and 12 some removals, but it is an opportunity, actually, to get 13 better forest stands and a better landscape of native trees 14 on the property.</p> <p>15 MS. LEATHAM: And in your expert opinion does the 16 proposed development meet the requirements of Chapter 22A of 17 the Montgomery County Code?</p> <p>18 MR. SLOAN: It does. We will be planting the 19 required forest and the mitigation trees.</p> <p>20 MS. LEATHAM: Okay. That's the end of our direct, 21 but we reserve the right to redirect.</p> <p>22 MS. ROBESON: To -- right. Okay. Let me do this, 23 let me, it's quarter to 1:00, approximately, 20 to 1:00, are 24 people -- how many more witnesses do you have?</p> <p>25 MS. LEATHAM: We have three, one will testify on</p> |

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| <p style="text-align: right;">Page 118</p> <p>1 civil engineering, traffic, and some more background to 2 respond to a question you asked about personal knowledge of 3 what this could be used for. 4 MS. ROBESON: What do you mean? What? 5 MS. LEATHAM: Well, we have someone who has 6 personal knowledge of whether this could be used, could be 7 sold to a golf course. 8 MS. ROBESON: Who is that? 9 MS. LEATHAM: Mr. Bob Hydorn, who is on our 10 witness list. 11 MS. ROBESON: Okay. So -- 12 MS. LEATHAM: I think the rest will move more 13 quickly. 14 MS. ROBESON: -- you have a civil engineer -- 15 MS. LEATHAM: Uh-huh. A transportation planner -- 16 MS. ROBESON: Okay. 17 MS. LEATHAM: -- and then a non-expert witness. 18 MS. ROBESON: Okay. Now, for those who wish to 19 testify how long do you have to stay? 20 UNIDENTIFIED MALE SPEAKER: Till the end of the 21 day. Till the end of the day. 22 MS. ROBESON: Till the -- okay. 23 MR. DRISCOLL: We can't stay. 24 MS. MILLER: We can't stay the whole day. 25 MS. ROBESON: Okay.</p> | <p style="text-align: right;">Page 120</p> <p>1 than welcome to stay, but you also have the opportunity to 2 leave, you can be excused if you wish. All right, Mr. 3 Lechner, go ahead. 4 MR. LECHNER: Okay. Actually six, but they're 5 short. So, Mr. Sloan, you talked about the improved air 6 quality by the increased biomass, do you have any estimate 7 of whether the improved air quality from the biomass would 8 be a better, positive that carbon footprint compared to the 9 85 townhouse and their cars that would be there? 10 MR. SLOAN: No, I don't have that calculation. 11 MR. LECHNER: Okay. So, that may or may not be 12 better than in a net as far as the impact on the residents 13 in the Montgomery Village Community, but we'll assume that 14 those people are going to live somewhere, right? So, they 15 will have a carbon footprint. And as far as density numbers 16 are you familiar with the South Village, Middle Village, 17 North Village design principles for Montgomery Village, and 18 how the density was laid out? 19 MR. SLOAN: In general terms when it was dealt 20 with in the Master Plan. 21 MR. LECHNER: But not from the development plan? 22 MR. SLOAN: From the development plan, certainly, 23 I mean, that lays out individually in the separate sections 24 what densities were imagined for which areas. 25 MR. LECHNER: Is there a general trend in that as</p> |
| <p style="text-align: right;">Page 119</p> <p>1 MS. MILLER: We can give you a copy of what was 2 going to be read. 3 MS. ROBESON: Right. The only thing is if you 4 give me written material I can't give it as much weight 5 because it's not subject to cross-examination. How long is 6 your presentation? 7 MS. MILLER: Ten minutes. 8 MS. ROBESON: Well, do you have any objection if 9 they testify -- 10 MS. LEATHAM: No. 11 MS. ROBESON: -- now? And if you -- we still have 12 cross-examination of Mr. Sloan, so you can stay for the -- 13 in other words, Mr. Lechner gets to ask Mr. Sloan questions 14 about his testimony, we can let Mr. Lechner do that, or we 15 can take your, and then take your testimony, and then break 16 for lunch. How long do you think you'll be, Mr. Lechner? 17 MR. LECHNER: I imagine speaking for 15 to 20 18 minutes, and then probably -- 19 MS. ROBESON: No, I mean on cross-examination? 20 MR. LECHNER: Oh, cross, I have four questions, 21 relatively short. 22 MS. ROBESON: Okay. Let's do this, then, let's 23 let Mr. Lechner cross-examine Mr. Sloan, and then we'll take 24 whoever would like to speak, if you're not fainting from 25 hunger whoever would like to speak, and then you're more</p> | <p style="text-align: right;">Page 121</p> <p>1 far as physical layout? 2 MR. SLOAN: The increase in density towards core 3 areas. 4 MR. LECHNER: Core areas. And are you familiar 5 with what the density is for the North Village area? 6 MR. SLOAN: Overall? No -- 7 MR. LECHNER: Yes. 8 MR. SLOAN: -- I don't know what number that is. 9 MR. LECHNER: Okay. You're not familiar with 10 that. And you talked about density being transferred back 11 and forth through the various DPAs? 12 MR. SLOAN: Right. 13 MR. LECHNER: Why was that happening, do you know? 14 Can you talk a little bit more about it? 15 MR. SLOAN: Why? 16 MR. LECHNER: Why they were moving density around? 17 MR. SLOAN: I don't know specifically. 18 MS. ROBESON: Were they actually moving density, 19 or were they -- I didn't understand what you meant by that. 20 MR. SLOAN: Yes, they, in the opinions they 21 specifically refer to reallocating density from one area to 22 another. 23 MR. LECHNER: Are you familiar with the density 24 movements in DPA E-848? 25 MR. SLOAN: E-848?</p> |

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| <p style="text-align: right;">Page 122</p> <p>1 MR. LECHNER: Yes, the second one. The second big 2 one. Montgomery Village is that at 155 acres. 3 MR. SLOAN: Right, that was an annexation, so no, 4 I did not look at the reallocation of density with that 5 allocation, or that annexation. 6 MR. LECHNER: Okay. And the three DPAs that you 7 talked about earlier that were all school sites, does the 8 school system provide some sort of input on that decision 9 when those were removed from the school sites? 10 MR. SLOAN: In each case the school board, as 11 discussed in the opinion said that they did not need those 12 sites for schools. 13 MR. LECHNER: Which school board? 14 MR. SLOAN: The Montgomery County -- 15 MR. LECHNER: Montgomery school board -- 16 MR. SLOAN: -- School. 17 MR. LECHNER: -- that's a public school board? 18 MR. SLOAN: Right. 19 MR. LECHNER: Okay. And the one site that was a 20 retail conversion to a mixed use over by the shopping plaza 21 there, was any of that open space at all, or was -- 22 MR. SLOAN: No. 23 MR. LECHNER: -- it all retail? That was all 24 retail. And you talked about 2.6 acres of forest 25 conservation area being an advantage as part of the plan,</p> | <p style="text-align: right;">Page 124</p> <p>1 view without balancing other things is it better to have 2 more trees? 3 MR. SLOAN: Well, yes. I'm a landscape architect, 4 I love trees. 5 MR. LECHNER: Okay. That's all. It's a simple 6 question. Thank you so much. I said they would try to be 7 quick. 8 MS. ROBESON: All right. Any redirect? 9 MS. LEATHAM: Can I just have one minute on that? 10 MR. LECHNER: Sure. 11 MS. ROBESON: Yes. 12 MR. LECHNER: I've got one more question then, 13 too, can I? 14 MS. ROBESON: Okay, one more, and then we're going 15 to stop. 16 MS. ROBESON: Ms. Leatham, before you do any 17 redirect -- 18 MS. LEATHAM: Uh-huh. 19 MS. ROBESON: -- Mr. Lechner has one more 20 question. 21 MS. LEATHAM: Okay. 22 MR. LECHNER: You talked about the, whether or not 23 the golf course was part of the open space calculations in 24 the Rothbury DPA, I forget the exact number there, but you 25 talked about the calculations there, did you look at the</p> |
| <p style="text-align: right;">Page 123</p> <p>1 would five acres be a bigger advantage? 2 MS. LEATHAM: I object, that's speculative. 3 MS. ROBESON: Well, in his expertise as a land 4 planner he can answer. He's allowed to have an opinion. 5 MR. SLOAN: Would five acres of forest 6 conservation area be better -- 7 MR. LECHNER: Better than 2.5 acres -- 8 MR. SLOAN: -- than 2.5 acres? 9 MR. LECHNER: -- 2.6 acres? 10 MR. SLOAN: It depends on what that other 2.4 11 acres would otherwise be used for. If it was used for 12 different purposes than other objectives then not 13 necessarily. 14 MR. LECHNER: Okay. So, you're talking about the 15 overall benefit of the plan, looking at all the uses of all 16 the land, but just looking at the amount of forest 17 conservation what's the general principle, is it more is 18 better, or less is better? 19 MR. SLOAN: Again, it depends on what is put in 20 lieu of that forest conservation. If it was development far 21 afield rather than infill development it might be better. 22 In this particular case -- 23 MS. ROBESON: I think he's asking you -- 24 MR. SLOAN: -- I don't think so. 25 MS. ROBESON: -- solely from a forest conservation</p> | <p style="text-align: right;">Page 125</p> <p>1 open space calculations of some of the earlier DPAs, in 2 particular E-327? 3 MR. SLOAN: E-327? The original development plan? 4 MR. LECHNER: Yes. 5 MR. SLOAN: Only in its larger sense of how much 6 it was providing. 7 MR. LECHNER: Okay. 8 MR. SLOAN: The 422 acres and all that? 9 MR. LECHNER: Uh-huh. Okay. Thank you. 10 MR. SLOAN: Yes. My understanding of that 422 11 acres it always made a note that it was exclusive, it did 12 not include the golf course in it. 13 MR. LECHNER: Do you believe that E-327 did not 14 show a calculation that had the golf courses included in the 15 open space, are you sure of that? 16 MS. ROBESON: That's asked and answered, you had 17 your shot. 18 MR. LECHNER: Okay. 19 MS. ROBESON: You can prove him wrong. Ms. 20 Leatham, any redirect? 21 MS. LEATHAM: Okay. One question, on E-848, that 22 was the first development plan amendment, have there been 23 density shifts throughout Montgomery Village since that 24 time? 25 MR. SLOAN: There have been several. That was an</p> |

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| <p style="text-align: right;">Page 126</p> <p>1 annexation of additional area, and then they reallocated 2 density several times. 3 MS. LEATHAM: Okay. That's all. Thank you. 4 MS. ROBESON: All right. Any questions based on 5 that one question? 6 MR. LECHNER: No. 7 MS. ROBESON: Okay. If everybody -- let's take a 8 five-minute break, and then we're going to have anybody who 9 wants to testify now may come up and testify. So, we're 10 going to go off the record for five minutes, and before we 11 go off, when I checked earlier I believe that those are all 12 of Mr. Lechner's exhibits that were provided. No? Yes? 13 MR. LECHNER: Yes, I calculated -- 14 MS. ROBESON: Because that's what I'm going to 15 check, double-check. 16 MR. LECHNER: -- I calculated 35 single sheets 17 scans of jpeg, and it looks like that maybe only 25 of them 18 are here. 19 MS. ROBESON: Okay. So, let me just double-check 20 that when -- 21 MR. LECHNER: Possibility. 22 MS. ROBESON: -- when I go down. So, we're going 23 to take a five-minute break, when we come back anyone who 24 wishes to testify may do so. All right. We're off the 25 record till 11:57. As long as it takes me to get down and</p> | <p style="text-align: right;">Page 128</p> <p>1 So, now, I don't want to rush you, but if you're okay, Mr. 2 Lechner, with letting other people come and present their 3 testimony while you double-check your exhibit? 4 MR. LECHNER: I'm certainly fine with that. I'm 5 certainly fine with that, and I appreciate the ability to 6 keep the whole thing moving along, actually. 7 MS. ROBESON: Okay. So, would whoever like to 8 come up that is not being called by Ms. Leatham as a 9 witness, please come up. 10 MR. LECHNER: So, I think that's good, that's a 11 full set there now. 12 MS. MOSELEY: Okay, great. 13 MR. LECHNER: Yes. Do you want to just run this 14 through a machine? 15 MS. ROBESON: Yes, let's do it so they can have a 16 copy. 17 MS. MOSELEY: Okay. 18 MR. LECHNER: Okay. Yes, expert, I -- 19 MS. MOSELEY: Is this the order you want them in? 20 MS. MILLER: This is two pieces. 21 MS. ROBESON: Okay, don't talk yet. Don't talk 22 yet. Okay. I can't have too many people talking at once. 23 Now, come sit down and don't talk till I swear you in, okay? 24 MS. MILLER: Okay. 25 MS. ROBESON: Okay. Please raise your right hand.</p> |
| <p style="text-align: right;">Page 127</p> <p>1 back. 2 (OFF THE RECORD.) 3 (ON THE RECORD.) 4 MS. ROBESON: On the record. What our 5 Administrative Assistant just did is hand Mr. Lechner back 6 some of the documents he sent. Sara, would you stay here in 7 case there's -- 8 MS. MOSELEY: Yes. 9 MS. ROBESON: -- until -- 10 MS. MOSELEY: Does he have the other ones? 11 MS. ROBESON: Well -- 12 MR. LECHNER: They didn't -- 13 MS. ROBESON: -- can you give back the ones he 14 had? Take your time, Mr. Lechner. 15 MS. MOSELEY: Yes, I just want to make sure we 16 have those, okay? 17 MS. ROBESON: If we could do this -- 18 MS. MOSELEY: In the order you want them to be in. 19 MS. ROBESON: -- I'm going to let other people, 20 unless you object, Mr. Lechner, I'm going to let other -- 21 MR. LECHNER: I'm sure I won't. 22 MS. ROBESON: -- people come forward and testify 23 while you're piecing together that exhibit, and once you get 24 it pieced together you can give the whole thing. It looks 25 like a lot of it is just old items from the public record.</p> | <p style="text-align: right;">Page 129</p> <p>1 (Witness sworn.) 2 MS. ROBESON: Please state your name and address 3 for the record. 4 MS. MILLER: Elaine Miller, 9520 Duffer, D-U-F-F- 5 E-R, Way, Montgomery Village, Maryland 20886. 6 MS. ROBESON: Okay. Go ahead. 7 MS. MILLER: I have two pieces, one is a personal, 8 the other is a document that Kettler Brothers sent to the 9 residents in October 29th, 1980. Paul and I chose this 10 lot -- 11 MS. ROBESON: Now, why don't you -- okay, you gave 12 your address. Okay, go ahead. 13 MS. MILLER: Paul and I chose this lot because we 14 knew no one could build behind us, that guarantee after 38 15 years is null and void. Another concern is the traffic, now 16 it takes 15 minutes in rush hour to go from Duffer Way to 17 the light at 355 to get on 270. Add an additional 86 or 600 18 homes, that's a scary thought. Kettler had set aside the 19 property on Wharf Berry Drive for an elementary school, but 20 it wasn't needed, so they sold the property to build 21 apartments. Now, has anyone considered how many schools 22 will need to be built to accommodate up to 600 houses, or 23 even 84 residents? Monument is telling us the price tag for 24 these new homes will be \$600,000-plus, do we really believe 25 people will believe that amount for their children to attend</p> |

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| <p style="text-align: right;">Page 130</p> <p>1 the schools in Montgomery Village? 2 MS. ROBESON: Okay. And did you say 600 houses? 3 MS. MILLER: That's the, that's the, one of the 4 numbers that's been projected once they are allowed to 5 develop the entire site. 6 MS. ROBESON: Oh. Oh, okay. 7 MS. MILLER: Okay? 8 MS. ROBESON: I understand. 9 MS. MILLER: Now, this is a letter from Clarence 10 Kettler who sent it out again October 29th, 1989. Dear 11 Resident, when Kettler Brothers built the Montgomery Village 12 Golf Club as an amenity to the new town we were developing 13 it was our plan to own and operate the facilities as an 14 excellent golfing establishment; however, our inexperience 15 lay in the areas related to building of homes, it became 16 evident over the next 14 years that the management of the 17 golf club requires skills and know-how the Kettler Brothers 18 as a company does not possess. Clearly, this is an age of 19 speculation. Kettler Brothers recently sold the Montgomery 20 Village Golf Club -- 21 MR. LECHNER: Specialization. 22 MS. MILLER: Oh, yes, you're right. Special -- 23 clearly this is an age of specialization. Kettler Brothers 24 recently sold the Montgomery Village Golf Club to Mr. Jack 25 Doser formerly with the Washingtonian Golf and Country Club,</p> | <p style="text-align: right;">Page 132</p> <p>1 golfing and related purposes. No homes can, nor will, be 2 built on this property. 3 At Kettler Brothers our goal is to make Montgomery 4 Village one of the finest places to live in Metropolitan 5 Washington. Proper management and maintenance of the 6 Montgomery Village Golf Club is but another step in that 7 direction. Signed by Clarence Kettler. That's it, I'm 8 done. 9 MS. ROBESON: Okay. Is that letter in our record? 10 Do you want, do you have a copy of it by any chance, or -- 11 MR. LECHNER: Just pull it out. 12 MS. MILLER: Pull it out. 13 MR. LECHNER: Can you pull it out? I can pull it 14 out. 15 MS. MILLER: Okay. 16 MS. ROBESON: Do you have any objection if I mark 17 this as I think we're on 118? 18 MS. LEATHAM: No objection. We'll have an 19 opportunity to speak to its weight later. 20 MS. ROBESON: Thank you. 21 MS. MILLER: You're welcome. 22 MS. ROBESON: This is the entire letter, the one 23 page? 24 MS. MILLER: Yes. 25 MR. LECHNER: Both sides.</p> |
| <p style="text-align: right;">Page 131</p> <p>1 as a homeowner with property bordering the golf club I felt 2 you would be interested in knowing the measures Kettler 3 Brothers has taken to be sure your interests are protected. 4 When you purchased your home in Montgomery Village your 5 prime location overlooking the well kept golf course grounds 6 was an important factor in the decision. Kettler Brothers 7 is aware how vital the maintenance of the club and its 8 facilities is to you, and we have gone to great length both 9 in reviewing Mr. Doser's qualifications, and in writing the 10 protective covenants of the purchase contract to allay your 11 concerns. Until settlement on the purchase of the Club 12 February 27, 1981 Kettler Brothers will continue to manage 13 the Club, and maintain its facilities. Be sure that under 14 the new management the Montgomery Village Golf Club will be 15 cared for in the same fashion or better as Kettler Brothers 16 cared for the property, this includes upkeep of all boundary 17 fences, roadways, grassy areas, streambeds and ponds. Mr. 18 Doser is dedicated to preserving the aesthetics of the golf 19 course for all surrounding homeowners, and to keep the 20 appearance on par with that of any first rate golf club in 21 Montgomery County. As with all Village facilities, Kettler 22 Brothers will retain architectural control over any changes 23 to the existing buildings, grounds, and exterior signage. 24 Of course, current Zoning and the Town Sector Ordinance also 25 assures you that the Club will be used exclusively for</p> | <p style="text-align: right;">Page 133</p> <p>1 MS. MILLER: Look. 2 MS. ROBESON: Oh, I see. Okay. 3 MS. MILLER: Okay. 4 MS. ROBESON: So, that'll be 10/29/80 letter 5 from -- 6 MS. MILLER: Clarence Kettler. 7 MS. ROBESON: -- Clarence Kettler. 8 (Exhibit No. 118 was marked 9 for identification.) 10 MS. ROBESON: All right. Any questions, Ms. 11 Leatham? 12 MS. LEATHAM: No. 13 MS. ROBESON: Okay, you may be excused. Thank 14 you. 15 MS. MILLER: Thank you. 16 MS. ROBESON: Anyone else? Please raise -- 17 MR. DRISCOLL: How are you tonight? 18 MS. ROBESON: I'm fine. Please raise your right 19 hand. 20 (Witness sworn.) 21 MS. ROBESON: Okay. Please state your name for 22 the record. 23 MR. DRISCOLL: I'm John Driscoll, 9316 Judge 24 Place, Montgomery Village, Maryland 20886. 25 MS. ROBESON: And where is that, Judge Place?</p> |

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| <p style="text-align: right;">Page 134</p> <p>1 What is that relative to the subject property? 2 MR. DRISCOLL: It's south of the golf course, 3 closer to the lake, it's on Lake Whetstone. 4 MS. ROBESON: Okay. Go ahead, Mr. Driscoll. 5 MR. DRISCOLL: I'm John Driscoll, President of the 6 Board of the Montgomery Village Foundation. The Board has 7 nine members that are elected by about 12,000 property 8 owners, our responsibility is to do what's best for the 9 entire community. We recognize that some residents in 10 Montgomery Village oppose redevelopment of the golf course, 11 but while some residents oppose redevelopment, the Board 12 recognizes that redevelopment is in the best interest of the 13 Village. Simply speaking, redevelopment of the golf course 14 affects the entire Village, and benefits the redevelopment, 15 and the benefits of the redevelopment would be felt 16 throughout the community. 17 Recently our Board supported Monument's 18 redevelopment concept plan by a vote of eight to one. We 19 have elections each years and three Directors are voted into 20 office every year. In the past two cycles the opposition 21 has not been able to elect a candidate. 22 The community has been aware of the redevelopment 23 issues for years, residents in the community who are opposed 24 to the golf course have had several years in which they 25 could elect board members to focus on opposing</p> | <p style="text-align: right;">Page 136</p> <p>1 committee included presidents of the communities that 2 bordered the golf course, in particular, Patton Ridge, the 3 President whose community, homeowners association is 4 directly around this particular development was on that 5 committee. The vote was 10 to zero in favor of the 6 development of the golf course. Later on, on March 25th, 7 2014 the MVF Board approved the concept plan for the entire 8 golf course that includes the community described in the 9 DPA. 10 The sooner Monument can build these houses, the 11 better. I am frustrated because I know firsthand that the 12 community wants this redevelopment, and they want it as soon 13 as possible, yet the approval process works very slowly. As 14 President I have gone to every meeting held, and personally 15 reached out to everyone I could who expressed concern about 16 the benefits of redevelopment. Many residents in the 17 neighborhoods closest to the golf course want this 18 redevelopment because they know it'll have a greater benefit 19 for Montgomery Village. Even in our slow economy of the 20 past few years other communities in our areas have moved 21 forward with successful revitalizations, but nothing is 22 moving ahead in the Village. Our residents have eagerly 23 worked with Monument for the last two years, and hoped that 24 this project could have begun by now. We need new housing 25 to stimulate further revitalization, it won't help the</p> |
| <p style="text-align: right;">Page 135</p> <p>1 redevelopment, but that has not happened. Nevertheless, the 2 MVF Board has provided an opportunity at every board meeting 3 for residents to voice their opinions, and we have 4 considered their arguments and their views. 5 Our Board and the MVF community have worked with 6 Monument Realty for more than two years resulting in a plan 7 submitted to you in the DPA. The MVF Board adopted a 8 resolution that we submitted to you that explains why we 9 support the DPA, and the record, and it's on the record for 10 you to review. 11 It is a good resolution, but I feel that I have to 12 tell you more about why this project is important to the 13 Village. The Village community overwhelmingly supports 14 redevelopment as soon as possible. The DPA may be new to 15 the Planning Board, Montgomery Village has been discussing 16 redevelopment of the golf course since 2010, when the MVF 17 appointed a steering committee to plan MVF's future out to 18 the year 2030. For the first time ever MVF hired 19 professional land planning firms to coordinate community 20 charrettes on its own in 2011 while the County delayed the 21 review of our Master Plan. This result in vision 2030 22 report that considered redevelopment of the golf course, so 23 when Monument purchased the property MVF quickly appointed a 24 committee to provide input and get community involved in the 25 process, that lead to the DPA that's before you today. This</p> | <p style="text-align: right;">Page 137</p> <p>1 Village if this property sits unused for years, that will 2 only create more negatives for Montgomery Village, and make 3 it even harder for us to move forward. 4 Update of our Master Plan was supposed to start in 5 2012, so yes, I am frustrated that so much time has gone by 6 since MVF first tried to stimulate redevelopment when we 7 began our vision 2030 community charrettes. We knew even 8 then that someday the golf course would probably close, that 9 day has come, fortunately, Monument Realty is ready to 10 undertake a huge investment in our community, and I think 11 the value of that investment to Montgomery Village is 12 greater than the value to Monument Realty. Let's move 13 forward now. With all the planning that Monument and 14 Montgomery Village residents have done over the past years I 15 am not surprised that the Planning Board Staff has 16 determined Monument's application meets the design standards 17 for the DPA. But again, what frustrates me is three little 18 words, open space recreation on a plat from a Master Plan 19 developed 30 years ago could keep Montgomery Village from 20 joining the prosperity that the rest of Montgomery County 21 seeks. 22 Although the County Council and the Planning Board 23 may have believed Montgomery Village was carved in stone, 24 change in Montgomery Village, as elsewhere, does not happen 25 on a schedule set by master plans. So, we end up today with</p> |

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| <p style="text-align: right;">Page 138</p> <p>1 changed circumstances that few could have envisioned in 1985 2 when Montgomery Village was thriving. Instead, we have a 3 closed golf course, static housing supply, lackluster 4 commercial centers, all which need to be revitalized. And 5 how could any progress be planned when the Master Plan has 6 been ignored since 1985? We have a great project ready to 7 jumpstart, Montgomery -- excuse me. We had a great project 8 ready to jumpstart Montgomery Village into the future, let's 9 not be captive to a 30-year-old Master Plan. And that's all 10 I have.</p> <p>11 MS. ROBESON: Mr. Lechner, do you have any 12 questions?</p> <p>13 MR. LECHNER: Yes, just two, John. The vision 14 2030 report --</p> <p>15 MR. DRISCOLL: Uh-huh.</p> <p>16 MR. LECHNER: -- has that been admitted on the 17 record so far, do you know? The vision 2030? Part of the 18 record yet?</p> <p>19 MS. ROBESON: I think --</p> <p>20 MR. LECHNER: I think it might have been.</p> <p>21 MS. ROBESON: -- it is.</p> <p>22 MR. DRISCOLL: It should have been.</p> <p>23 MS. ROBESON: But let me just --</p> <p>24 MR. LECHNER: I think I sent it, actually. No, 25 no. Do you recognize that name on the pages? Does that</p> | <p style="text-align: right;">Page 140</p> <p>1 place to reside for many years to come.</p> <p>2 MR. LECHNER: Yes, I remember. Thank you so much.</p> <p>3 And then the other question, you said that overwhelmingly 4 support within the community for the plan, did the 5 Foundation do any polling or have any proof of that word 6 overwhelming?</p> <p>7 MR. DRISCOLL: No, as a matter of fact, that's my 8 opinion. However, I have spent, I don't know, in the last 9 four years at least two nights a month going to various 10 charrettes, meetings, I probably have attended more meetings 11 on this than anybody else, and what I have found 12 consistently as though there is a hardcore opposition, that 13 primary, most of that hardcore opposition lives directly on 14 the golf course, and then people once they realized the golf 15 course was going to shut down and no longer be active their 16 opinion of what needed to be done with the golf course 17 became more positive toward Monument's development.</p> <p>18 MR. LECHNER: Okay. And oh, I'm sorry, one other 19 one. As far as the election results you talked about how 20 many, do you remember how many ballots -- you just won an 21 election if I recall, do you remember your numbers? How 22 many votes --</p> <p>23 MR. DRISCOLL: No, I don't, but I was, I was the 24 leading vote getter. I think I had something like 3,200 25 votes, but don't hold me to it.</p> |
| <p style="text-align: right;">Page 139</p> <p>1 look like that right thing?</p> <p>2 MR. DRISCOLL: Oh, absolutely.</p> <p>3 MR. LECHNER: Okay. And do you mind just reading 4 for the record what that talks about for the golf course?</p> <p>5 MR. DRISCOLL: Montgomery Village Golf Course, the 6 golf course of vital green space in the heart of the 7 Village, and supports the character of the Village 8 landscape. As other areas of the Village redevelop it is 9 important to mean large expanses of green space and active 10 and passive parks. The golf course provides premium views 11 of well maintained landscaped areas for homeowners and those 12 who travel by the course on several major roadways. Develop 13 multiple family housing, potential senior housing on the 14 overflow parking lot which is considered an acceptable means 15 of providing an economic benefit to extend the economic life 16 of the golf course. If the golf course were to cease 17 operation and funding could not be secured to preserve and 18 maintain all the green space a plan of mixed housing which 19 would provide minimum impact to existing views by 20 landscaping and carefully siting new homes while retaining 21 most of the golf course for green space and recreational 22 active and passive could be developed. Today, MVF's Board, 23 as did Kettlers almost 50 years ago, wants to set a vision 24 so that development can be implemented over time to help 25 make Montgomery Village a vibrant, beautiful and convenient</p> | <p style="text-align: right;">Page 141</p> <p>1 MR. LECHNER: And that's typically two votes per 2 household or address?</p> <p>3 MR. DRISCOLL: No, as I understand it it's two 4 votes for single-family, one vote per townhouse, and then I 5 think apartments and they have a block vote.</p> <p>6 MR. LECHNER: And the largest apartment block vote 7 is 500 units, if I recall?</p> <p>8 MR. DRISCOLL: I believe it might be more than 9 that. It might be 600.</p> <p>10 MR. LECHNER: Okay. Thank you.</p> <p>11 MS. ROBESON: Okay. Ms. Leatham, do you have any 12 questions?</p> <p>13 MS. LEATHAM: No.</p> <p>14 MS. ROBESON: Okay. You may be excused. I do see 15 the vision 2030 plan is 77A in the record, so it is in the 16 record.</p> <p>17 MR. LECHNER: That was page three for this.</p> <p>18 MR. DRISCOLL: Okay. Thank you.</p> <p>19 MS. ROBESON: Okay, thank you. Anyone else wish 20 to testify? Seeing none --</p> <p>21 MR. LECHNER: Marge, she was going to be here all 22 day.</p> <p>23 MS. ROBESON: Well, why don't you come up now 24 while we're --</p> <p>25 MR. LECHNER: On a roll. It probably will not be</p> |

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| <p style="text-align: right;">Page 142</p> <p>1 too long, so that's --</p> <p>2 MS. ROBESON: Please raise your right hand.</p> <p>3 (Witness sworn.)</p> <p>4 MS. ROBESON: Please state your name and address</p> <p>5 for the record.</p> <p>6 MS. DEFINO: My name is Margie DeFino, I live at</p> <p>7 9611 Duffer Way in Montgomery Village.</p> <p>8 MS. ROBESON: And where is that in relation to</p> <p>9 this property?</p> <p>10 MS. DEFINO: I actually, my property backs up</p> <p>11 directly behind hole number four, so it is the property in</p> <p>12 question.</p> <p>13 MR. LECHNER: Right in the middle.</p> <p>14 MS. ROBESON: Okay. Okay. I don't know if we</p> <p>15 have hole number four marked on any plan, can you just, I do</p> <p>16 know generally, the property loops --</p> <p>17 MS. DEFINO: What?</p> <p>18 MR. LECHNER: Point to your house. Go point to</p> <p>19 your house.</p> <p>20 MS. ROBESON: -- around as in a horseshoe.</p> <p>21 MS. DEFINO: We're probably right in this area</p> <p>22 here.</p> <p>23 MS. ROBESON: Okay. So, that would be -- are</p> <p>24 there lots or anything marked on that, can you see?</p> <p>25 MS. DEFINO: Fairway Islands, we're in Fairway</p> | <p style="text-align: right;">Page 144</p> <p>1 legal and binding and should be kept as such. Monument</p> <p>2 Realty to my knowledge has never mentioned or referenced</p> <p>3 either of these documents in any meetings that they have</p> <p>4 held since they purchased the land at auction where they</p> <p>5 were the only bidder. Monument claims and prides themselves</p> <p>6 in working with the Montgomery Village Community, regarding</p> <p>7 these covenants and restrictions Monument has made no</p> <p>8 attempt to contact the 400 residents that adjoin the golf</p> <p>9 course property to discuss the covenants and restrictions.</p> <p>10 The Patton Ridge HOA did have Park and Planning</p> <p>11 come out and speak to the Patton Ridge Community where the</p> <p>12 majority of residents were in opposition. I and a few</p> <p>13 neighbors have signed statements from close to half the</p> <p>14 adjoining neighbors to the golf course property, including</p> <p>15 all of the Duffer Way Community. We did provide all the</p> <p>16 residents an opportunity to support the development, without</p> <p>17 hesitation most were against, less than one percent were in</p> <p>18 favor of this development. I have provided the Clerk of the</p> <p>19 Hearing a copy of all signed statements and ask that they be</p> <p>20 entered into the record of hearing.</p> <p>21 MR. LECHNER: Did you do that already?</p> <p>22 MS. DEFINO: No.</p> <p>23 MR. LECHNER: Okay. She has them.</p> <p>24 MS. DEFINO: So, I have the signed statements, and</p> <p>25 I also have petitions.</p> |
| <p style="text-align: right;">Page 143</p> <p>1 Islands.</p> <p>2 MS. ROBESON: Okay. And that's Exhibit?</p> <p>3 MS. DEFINO: 40E.</p> <p>4 MS. ROBESON: 40E. Okay. Thank you.</p> <p>5 MS. DEFINO: Uh-huh. I'm a resident of Montgomery</p> <p>6 Village and live on Duffer Way. My property adjoins what</p> <p>7 was the Montgomery Village Golf Course directly behind hole</p> <p>8 four. I believe that rezoning this property for residential</p> <p>9 development would be detrimental to the Montgomery Village</p> <p>10 Community, in fact, this was not the vision of the Kettler,</p> <p>11 what the Kettler Brothers had in mind for the Montgomery</p> <p>12 Village Golf Course.</p> <p>13 Under the current town sector the property is</p> <p>14 designated private recreation conservation. What is a major</p> <p>15 concern to me is that Clarence Kettler and Mr. Doser in the</p> <p>16 original bill of sale dated October 27th, 1980, executed</p> <p>17 explicit covenants and restrictions protecting the golf</p> <p>18 course from development. Clarence Kettler subsequently sent</p> <p>19 a letter dated October 29th, 1980 to all residents adjoining</p> <p>20 the golf course reassuring them that houses would never been</p> <p>21 built on this property.</p> <p>22 Even though this private property, both of these</p> <p>23 documents need to be considered by Montgomery County as a</p> <p>24 legal and valid covenants and restrict any development on</p> <p>25 this land. I believe these covenants and restrictions are</p> | <p style="text-align: right;">Page 145</p> <p>1 MS. ROBESON: Have you shown them to Ms. -- okay.</p> <p>2 Can you show them to Ms. Leatham?</p> <p>3 MS. DEFINO: And this --</p> <p>4 MS. LEATHAM: They're separate.</p> <p>5 MS. DEFINO: These are from the people who live</p> <p>6 behind the golf course. Let's see. Let's see. We also</p> <p>7 petitioned the neighborhoods of the Montgomery Village</p> <p>8 Community and outside the Community, as well, it became very</p> <p>9 clear to us most were not in favor of more density or</p> <p>10 development placed either behind their home or in the</p> <p>11 Montgomery Village Community. I have also provided the</p> <p>12 Clerk of the Hearing a copy of all the signed petitions, and</p> <p>13 have asked that they be entered into the record on the</p> <p>14 hearing.</p> <p>15 As I continue to petition I realized I had become</p> <p>16 the voice for the community. Most of the residents thought</p> <p>17 the development of the golf course was inevitable, a done</p> <p>18 deal, they had no idea this was just the beginning. I had</p> <p>19 given my neighbors hope. I believe adding more density by</p> <p>20 developing the golf course will not bring vitality back to</p> <p>21 the Montgomery Village Community, and in fact, add to</p> <p>22 current traffic problems and County services overload,</p> <p>23 developing the golf course is in my opinion a distraction</p> <p>24 from very serious issues that plague this community and</p> <p>25 should be the number one priority at this time.</p> |

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| <p>1 Furthermore, another concern I have is the 2 architectural look of the proposed development. It simply 3 doesn't fit with the current architectural standards that 4 are already in place throughout the Village. It seems to be 5 it's all about density and how many townhouses can be 6 crammed on one piece of property, and the amount of money 7 one can make. This will certainly take away from the charm 8 and uniqueness of what is Montgomery Village, and all for 9 the sake of greed. We do not need another Clarksburg, 10 Rockville Town Center, Kentlands, King Farm, or Crown Farm 11 built on a very small piece of property in the middle of 12 this community. This was truly not the vision Kettler 13 Brothers had for the Montgomery Village Community.</p> <p>14 On a personal note, my family and I moved to 15 Gaithersburg back in 1975. Montgomery Village at that time 16 was the up and coming place to live, in fact, I worked at 17 the Montgomery Village Shopping Center at Jeremiah Toy and 18 Hobby. I saw Saturday Night Fever at the movie theater, and 19 frequently met friends at the outdoor eatery, this indeed 20 was flourishing. My question is what happened? What has 21 happened to the Montgomery Village Shopping Center and 22 surrounding residential area is what really needs to be the 23 focus of concern. Adding more density is not going to bring 24 back what we had in the '70s, or make Montgomery Village 25 flourish. Thank you.</p> | <p>1 MS. LEATHAM: -- I don't know -- 2 MS. ROBESON: -- okay. 3 MS. LEATHAM: -- if it's that petition or not. 4 MS. ROBESON: I'll do this, I'm going to let it in 5 and give it the weight it deserves, okay? I'm going to let 6 in the petition as Exhibit 119, and then I'm going to let 7 in, what are these other documents? 8 MS. DEFINO: Those are for the -- 9 MS. ROBESON: A letter? 10 MS. DEFINO: -- adjoining neighbors -- 11 MS. ROBESON: Okay, so -- 12 MS. DEFINO: -- the people who back up to the golf 13 course. 14 MS. ROBESON: -- 119 will be the petition; and 120 15 will be the letters from property owners adjoining the 16 development. 17 (Exhibit Nos. 119 and 120 were 18 marked for identification.) 19 MS. LEATHAM: And I have the same objection to the 20 letters, they're factually incorrect. 21 MS. ROBESON: That's noted. Okay. Did you have 22 any questions of the -- 23 MS. LEATHAM: I don't have any questions for Ms. 24 DeFino, but perhaps for you. Your order postponing the 25 hearing, Exhibit 80, was very specific that any, the</p> |
| Page 147 | Page 149 |
| <p>1 MS. ROBESON: Thank you. Ms. Leatham, do you have 2 those exhibits that you -- 3 MS. LEATHAM: I have them, and I object to 4 entering them for a couple of reasons, the first -- 5 MS. ROBESON: Well, can I -- 6 MS. LEATHAM: Oh, yes. 7 MS. ROBESON: -- see them? 8 MS. LEATHAM: Sorry. I need to look at them 9 again. 10 MS. ROBESON: Okay. Go ahead. Your reasons? 11 MS. LEATHAM: In the short time I had to look 12 through them there are signatures in there from Boyes and 13 from Poolesville, I don't know how much weight those should 14 be given, plus the premise, the paragraph at the top is 15 factually incorrect, so if someone's signing it based on 16 what's there they are not getting the correct information. 17 MS. ROBESON: Okay. That's -- do you have any, is 18 there anything that makes you think this petition wasn't 19 signed by the people that signed it? 20 MS. LEATHAM: I haven't had a chance to look at 21 it. I do know that someone was approached to sign that 22 petition, an affiliate of the Petitioner in Poolesville, and 23 was told that just to sign the petition to protect the 24 environment, so -- 25 MS. ROBESON: Well --</p> | <p>1 existence of any covenants was not a matter for the Hearing 2 Examiner and for this DPA, so we continue to -- 3 MS. ROBESON: Right. 4 MS. LEATHAM: -- alluded to these covenants. Mr. 5 Hines, sorry, testified that there are any as reviewed by 6 his title counsel -- 7 MS. ROBESON: Well -- 8 MS. LEATHAM: -- so -- 9 MS. ROBESON: -- there clearly are some kind of 10 covenants, whether they bind the adjoining land and not the 11 golf course, I don't know, but there are already in the 12 record covenants. And I think what I said in the order is 13 the covenants are, act independently of Zoning, but they 14 were admissible for the purpose of showing the original 15 plan. 16 MS. LEATHAM: For what it's worth the original 17 intent -- 18 MS. ROBESON: The planning principles -- 19 MS. LEATHAM: Certainly. 20 MS. ROBESON: -- on which the Montgomery Village 21 was founded, so I think they're already in the record from 22 Mr. Lechner, and I'm going to let them in. They don't 23 control the outcome of this case, but I think they do 24 demonstrate what the original planning principles behind 25 Montgomery Village were, certainly the golf course was</p> |

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| <p style="text-align: right;">Page 150</p> <p>1 important enough to assure people that it, right or wrong 2 that it would be restricted from development. 3 So, with that, Mr. Lechner, do you have any 4 questions of the witness? 5 MR. LECHNER: No. Thank you. 6 MS. ROBESON: All right. Now, I have one more 7 thing on what you handed me, did you mean to introduce that 8 as an exhibit? 9 MR. LECHNER: No. 10 MS. ROBESON: Okay. 11 MR. LECHNER: Extraneous. 12 MS. ROBESON: All right. So, with that, it's 13 quarter to 2:00, I'm assuming somebody has to be hungry, is 14 this -- and the cafeteria closes for food at 2:30, so I am 15 going to take a lunch break at this point. If anyone who's 16 already testified you may be excused, so you don't have to 17 stay, and we'll reconvene here at quarter to 3:00. 18 (OFF THE RECORD.) 19 (ON THE RECORD.) 20 MS. ROBESON: Okay, we're back on the record. Ms. 21 Leatham, it is your turn for your next witness. 22 MS. LEATHAM: All right. We're calling John 23 Clapsaddle with Vika. 24 MS. ROBESON: Okay. Mr. is it Clapsaddle? 25 MR. CLAPSADDLE: Clapsaddle, correct.</p> | <p style="text-align: right;">Page 152</p> <p>1 through -- are you licensed in Maryland? 2 MR. CLAPSADDLE: Yes, I am. 3 MS. ROBESON: Okay. I am going to, because you 4 have been qualified as an expert civil engineer, I'm going 5 to qualify you as an expert in civil engineering. Is your 6 resume in the file? 7 MS. LEATHAM: Yes, it's in 40R. 8 MS. ROBESON: Okay. Go ahead. 9 MS. LEATHAM: Okay. Did there come a time when 10 you were employed by the Petitioner for this proceeding with 11 regard to the proposed DPA? 12 MR. CLAPSADDLE: Yes. Vika, our firm, was hired 13 to prepare the supporting documentation for the submittal in 14 this case, and we prepared various exhibits and studies to 15 present the case during this proceeding. 16 MS. LEATHAM: Are you familiar with the property? 17 MR. CLAPSADDLE: Yes, I am. I've walked the 18 property, and am familiar with the general drainage 19 patterns, the topography, and the surrounding uses, and also 20 the existing utilities that surround the development. 21 MS. LEATHAM: And are you familiar with Montgomery 22 County Code Section, or sorry, Montgomery County Code 23 Chapter 19? 24 MR. CLAPSADDLE: Yes, I am. Chapter 19 of the 25 Code deals with erosion, sedimentation, and stormwater</p> |
| <p style="text-align: right;">Page 151</p> <p>1 MS. ROBESON: Okay. Please raise your right hand. 2 (Witness sworn.) 3 MS. ROBESON: Okay, go ahead, Ms. Leatham. 4 MS. LEATHAM: All right. Please state your name, 5 address, and occupation. 6 MR. CLAPSADDLE: For the record, my name is John 7 Clapsaddle, I'm a Maryland Licensed Professional Engineer 8 and Civil Engineer of record for this project, and I'm 9 employed by Vika Maryland, and my work address is 20251 10 Century Boulevard in Germantown, Maryland. 11 MS. LEATHAM: Have you been qualified as an expert 12 in civil engineering before the Montgomery County Office of 13 Zoning and Administrative Hearings? 14 MR. CLAPSADDLE: Yes, I have on a couple of other 15 projects that I've worked through this same Board with, 16 Aspen Hill Estates was one of those projects, located in 17 Aspen Hill, Maryland, that was off of Bel Pre Road at 18 Homecrest Road, I think the case number was G-836, that was 19 a Local Map Amendment, and a Development Plan for rezoning 20 from RE-2 to PD-2 for 38 single-family structures. Another 21 case was G-803, Olney Manor, located just north of Route 108 22 on Route 97 in Olney, and that was also a Local Map 23 Amendment and Development Plan for a four-story 104-unit 24 senior housing development. A third one was -- 25 MS. ROBESON: Okay, you don't have to go</p> | <p style="text-align: right;">Page 153</p> <p>1 management controls. This Code forms a basis of design to 2 reduce erosion and sedimentation, and for controlling 3 stormwater management, and is the, we use this Code for all 4 the design projects that require permitting through 5 Montgomery County for development; we prepare the plans and 6 specifications based on this Code, and all the plans and 7 specifications go through a review and approval through the 8 County agencies. 9 MS. LEATHAM: Okay. Specifically to the subject 10 property, what utilities currently serve the site, and will 11 they be available for the new development? 12 MR. CLAPSADDLE: Sure. We have done research 13 mapping and determined that water and sewer is readily 14 available to the property, also gas, electric, telephone, 15 and cable services are available in the immediate vicinity 16 of the property. So, all these utilities would be available 17 for services of any new homes. 18 MS. LEATHAM: Okay. Please describe the proposed 19 grading plans. 20 MR. CLAPSADDLE: The intent of our grading plan is 21 to minimize disturbance as much as possible to the ground 22 areas, minimize removal of vegetation, and keep cut and fill 23 quantities to a minimum, while still providing adequate 24 drainage to our development to keep water away from roads 25 and from structures.</p> |

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| <p style="text-align: right;">Page 154</p> <p>1 MS. LEATHAM: Okay. Are there any environmental 2 resources on the property?</p> <p>3 MR. CLAPSADDLE: The property is not designated 4 under any special protection area, or primary management 5 area; there have been no wetlands found on the property; 6 there have been no forest by definition found on the 7 property. There is a floodplain on part of the property, on 8 the southern toward the eastern side of the property, that's 9 the extent of the Federal Emergency Management Agency's FEMA 10 mapping, and that is shown on our exhibit, I believe it's 11 40F, which I can point to.</p> <p>12 MS. LEATHAM: I think it's on the other side. Is 13 that it there all tied up?</p> <p>14 MR. CLAPSADDLE: Exhibit 40G, it's indicated by a 15 red line coming up, it's basically on the southern portion 16 of the property toward the southeastern side next to the 17 Green Tee development. It enters the property in this 18 basically the last corner of that FEMA, the FEMA map shows 19 the very corner of the FEMA study.</p> <p>20 MS. LEATHAM: Can you explain how that floodplain 21 line will be adjusted?</p> <p>22 MR. CLAPSADDLE: Yes. What we have determined 23 through our studies, the Federal Emergency Management 24 Agency's mapping is generally based on large scale 2000 25 scale mapping, and we have gotten more detailed mapping of</p> | <p style="text-align: right;">Page 156</p> <p>1 MS. ROBESON: Okay.</p> <p>2 MR. CLAPSADDLE: -- directly north off of that 3 last stick of units.</p> <p>4 MS. ROBESON: Okay, the last townhouse units?</p> <p>5 MR. CLAPSADDLE: Correct.</p> <p>6 MS. ROBESON: Okay.</p> <p>7 MR. CLAPSADDLE: In the Green Tee development.</p> <p>8 MS. ROBESON: Okay.</p> <p>9 MR. CLAPSADDLE: That little corner shows over top 10 of four of the proposed units that we have installed.</p> <p>11 MS. ROBESON: Okay. And you're going to do a FEMA 12 map amendment, is that your --</p> <p>13 MR. CLAPSADDLE: We would do both a County 14 floodplain study to identify that exact limits of that 15 floodplain, and then based on that approved County study 16 we'll go back to FEMA and have the map amended.</p> <p>17 MS. LEATHAM: Are Park and Planning Technical 18 Staff aware of this?</p> <p>19 MR. CLAPSADDLE: Yes. Yes.</p> <p>20 MS. LEATHAM: And have they raised any objection?</p> <p>21 MR. CLAPSADDLE: They have raised no objection to 22 this procedure, and our intent in doing so.</p> <p>23 MS. LEATHAM: Okay. Mr. Brady testified, 24 described the existing easements on the property, do you 25 want to add a little explanation about the one easement that</p> |
| <p style="text-align: right;">Page 155</p> <p>1 the area from Park and Planning and from aerial surveys, and 2 have done a more detailed study of this particular area.</p> <p>3 The County in the County Code designates under a floodplain 4 regulations that a floodplain is any area that is inundated 5 by waters of 100-year storm, but they also designate that 6 any watersheds that are smaller than 30 acres would not be 7 subject to this Code. With our detailed mapping we have 8 determined the drainage area at the very southern part of 9 the property, the amount of water draining to this point at 10 the property line, which is the shaded area, southeastern 11 side of the site is 24 acres. So, we have determined that 12 this little glitch in the FEMA map really shouldn't be there 13 by County Code, it is not designated as a floodplain based 14 on the Code. So, our intent would be to modify the FEMA 15 mapping to remove that area from the floodplain designation.</p> <p>16 MS. ROBESON: Are you showing any development on 17 that floodplain area now?</p> <p>18 MR. CLAPSADDLE: We are currently showing, as it 19 nips up in this corner it comes to a point.</p> <p>20 MS. ROBESON: Is there a, is there something you 21 can reference on the exhibit that kind of points out where 22 it is?</p> <p>23 MR. CLAPSADDLE: Sure. It's basically the 24 southern, southwestern corner of the Green Tee 25 development --</p> | <p style="text-align: right;">Page 157</p> <p>1 has to be relocated?</p> <p>2 MR. CLAPSADDLE: Sure.</p> <p>3 MS. ROBESON: The what?</p> <p>4 MS. LEATHAM: The one easement that's to be 5 relocated.</p> <p>6 MR. CLAPSADDLE: Yes, there are several easements 7 on the property, I believe they're exhibits, is that 18?</p> <p>8 MS. LEATHAM: Yes.</p> <p>9 MR. CLAPSADDLE: Exhibit 18 shows, actually it 10 shows four easements, the Colonial Pipeline easement that 11 was discussed runs through the northern leg of the property, 12 and that will not be affected other than a road crossing; 13 there are two WSSC easements, one runs through the south leg 14 of the property basically north/south direction just past 15 the Green Tee development itself, and in a north/south 16 direction. This particular easement will be modified 17 because we will also be modifying the physical sanitary 18 sewer line that runs within that easement to snake back 19 through and turn across our development so that it obviously 20 doesn't run through any of our proposed houses. So, we will 21 modify this easement with the new sewer line that will be 22 installed. The other WSSC easement up in the northwest 23 corner will not be affected by our development, that 24 contains a sewer line, as well, that conveys sanitary sewer 25 from the Arrowhead development back into Montgomery Village</p> |

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| <p style="text-align: right;">Page 158</p> <p>1 Avenue. The fourth easement is just a storm drain easement 2 on the very eastern, on the very western side of the 3 northern portion of the project, and that storm drain 4 easement will either be modified or expanded upon to address 5 drainage that has to come off the property and enter the 6 storm drain system on Montgomery Village Avenue. 7 MS. LEATHAM: Okay. Good segue. How will the 8 proposed project satisfy the stormwater management 9 requirements in Chapter 19?</p> <p>10 MR. CLAPSADDLE: Under Chapter 19 we're required 11 to provide three stages of stormwater management design, and 12 we'll go through the three stages, the conceptual stage will 13 happen during preliminary plan, site plan stage during site 14 plan, if those two preliminary and site end up being 15 combined we'll do our conceptual combined, as well, that 16 will address the first two stages of the requirement; the 17 third stage will have a detailed engineering phase after the 18 site plan and the Planning Board approves the site plan. 19 So, that will address the three-stage requirement in the 20 Montgomery County Code. The Code also requests or requires 21 that we use best management practices to treat stormwater 22 management, and those are basically outlined in the Chapter 23 5 of the Maryland Department of Environment Stormwater 24 Management Design manual, and those are referred to under 25 Chapter 5 as environmental site design techniques, and we</p> | <p style="text-align: right;">Page 160</p> <p>1 these bioretention facilities that will meet the ESD 2 requirements of Chapter 5 in the manual. 3 MS. ROBESON: Okay. 4 MS. LEATHAM: Okay. Have you evaluated the sight 5 distance at all three proposed intersections? 6 MR. CLAPSADDLE: Yes, we have. Looked at the 7 sight distance for both of the intersections proposed on 8 Montgomery Village Avenue, the southern access point is, as 9 we stated previously, just going to be a right-in, right-out 10 condition, there will be nobody coming out of that 11 intersection and turning left, so the sight distance applied 12 there will only be looking to the left, and that sight 13 distance is somewhere in excess of 800 feet, the required 14 sight distance of that location would be, let me look at my 15 paperwork, I believe it's 500, or it may be just less than 16 500 feet. 17 MS. ROBESON: What is the speed limit on -- 18 MR. CLAPSADDLE: I believe it's posted at 40. 19 MS. ROBESON: Okay. 20 MR. CLAPSADDLE: Or is it 45? 21 MR. LECHNER: Thirty-five. 22 MR. CLAPSADDLE: Forty-five? 23 MR. LECHNER: No, no, no. Thirty-five. 24 MR. CLAPSADDLE: Is it 35? 25 MR. LECHNER: Yes.</p> |
| <p style="text-align: right;">Page 159</p> <p>1 will be using those -- 2 MS. ROBESON: To the maximum extent practicable? 3 MR. CLAPSADDLE: To the maximum extent 4 practicable, that's correct. 5 MS. ROBESON: This is, did you testify this is not 6 in a special protection area? 7 MR. CLAPSADDLE: Yes, ma'am. 8 MS. ROBESON: Okay. And you don't have a plan at 9 the moment, preliminary -- 10 MR. CLAPSADDLE: We have a bubble plan -- 11 MS. ROBESON: -- a stormwater concept plan? 12 MR. CLAPSADDLE: We do have a bubble plan, I can't 13 remember which exhibit it is. 14 MS. LEATHAM: Twenty-one. 15 MR. CLAPSADDLE: Exhibit 21. 16 MS. ROBESON: Okay. 17 MR. CLAPSADDLE: Entitled Potential Stormwater 18 Management. 19 MS. ROBESON: All right. 20 MR. CLAPSADDLE: And in this claim we show a 21 number of small referred to as micro-bioretention facilities 22 surrounding and throughout the community, and we also show a 23 swale running along about half of the roadways in the 24 development, and between the water running off into the 25 swale, which will absorb runoff, and the water running into</p> | <p style="text-align: right;">Page 161</p> <p>1 MR. CLAPSADDLE: So, based on the design, speed, 2 criteria of 45 miles an hour, which is 10 miles above that, 3 we require 400 feet, and we have in excess of 800 feet. At 4 the other intersection up at Meadowcroft we have in excess 5 of 500 feet in both directions, right and left, and again, 6 even at a 45-mile-an-hour speed the requirement is 400 feet, 7 so we well exceed those requirements. At the proposed 8 intersection at Arrowhead that's currently a three-way stop 9 condition, and we would propose it to become a four-way stop 10 condition with our plan, and there is adequate sight 11 distance there, although with the stop condition not as 12 critical because each vehicle at each leg will have to stop. 13 We do note that there is parking along the street which may 14 have to be truncated and pulled back away from that 15 intersection so that the cars don't cause a sight problem, 16 sight distance line problem. 17 MS. LEATHAM: In your expert opinion are utilities 18 available to serve the site and be installed underground? 19 MR. CLAPSADDLE: Yes, they are. We've looked at 20 each utility that is in the surrounding area and believe 21 that adequate service is provided by these utilities. 22 MS. LEATHAM: That in your expert opinion by its 23 design, by minimizing grading and other means the proposed 24 development would tend to prevent erosion of the soil and 25 preserve natural features of the site?</p> |

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| <p style="text-align: right;">Page 162</p> <p>1 MR. CLAPSADDLE: Yes, it will. As part of our 2 design we'll be designing, implementing practices which will 3 prevent that sedimentation from running off the site. 4 MS. LEATHAM: And finally, that the proposed 5 development meets the requirements of Chapter 19 of the 6 County Code? 7 MR. CLAPSADDLE: Yes, it does. 8 MS. LEATHAM: Thank you. That's the end of our 9 direct. 10 MS. ROBESON: All right. Any questions, Mr. 11 Lechner? 12 MR. LECHNER: Yes, just one, sir. So, the water 13 from the road, where is it going to runoff to? 14 MR. CLAPSADDLE: The water from? 15 MR. LECHNER: From the looping road there, the big 16 one? 17 MR. CLAPSADDLE: Yes, we've planned for some sort 18 of a swale system, so we would be looking at doing some 19 grass swales, and grass swales would help promote the 20 infiltration of water into the soil instead of running off. 21 Other areas of the paved surfaces will be diverted to micro- 22 bioretention facilities which will filter and also absorb 23 the water, so that we have less runoff from the development. 24 MR. LECHNER: And when you said you're doing a, 25 proposing an amendment to the map as far as the stormwater,</p> | <p style="text-align: right;">Page 164</p> <p>1 eastern curve of houses? Below the access road on that 2 exhibit? 3 MR. CLAPSADDLE: Right, we have -- 4 MS. ROBESON: That's 40 -- 5 MR. CLAPSADDLE: -- in general we have aerial 6 survey for this development, which was done at one-foot 7 intervals, so we have that topography available for our 8 whole site. 9 MS. ROBESON: And what exhibit is that? 10 MR. CLAPSADDLE: I don't know if we have a special 11 exhibit list. 12 MS. ROBESON: It's in the lower -- 13 MR. CLAPSADDLE: The information is reflected 14 behind, for instance, this Exhibit 21, that information is 15 shown on that exhibit. 16 MS. ROBESON: Okay. 17 MR. LECHNER: Okay. Thank you. 18 MS. ROBESON: Okay. Any other questions, Mr. 19 Lechner? 20 MR. LECHNER: No, thank you. 21 MS. ROBESON: Okay. Any redirect? 22 MS. LEATHAM: No. 23 MS. ROBESON: All right. You may be excused, and 24 you can call your next witness. 25 MS. LEATHAM: All right. Mike Workosky with Wells</p> |
| <p style="text-align: right;">Page 163</p> <p>1 the 100-year map -- 2 MR. CLAPSADDLE: The floodplain. 3 MR. LECHNER: Floodplain, does that make the, that 4 doesn't make the water go away, but your engineering would 5 improve the situation somehow? 6 MR. CLAPSADDLE: It would technically reduce the 7 runoff, and would reduce the runoff for the one-year storm 8 event, that is the Code, to minimize and have the one-year 9 event maintained on the site without getting released, 10 that's the Code. The 100-year event, which is a, we're 11 talking about a substantial storm event, is not managed 12 through any of our devices, that would be the storm that 13 contributes to the floodplain areas, and that's why it's 14 important to keep those floodways and floodplains open so 15 that that water can convey downstream safely. 16 MR. LECHNER: And the contours there are they one- 17 foot contours, or not 10-foot contours? 18 MR. CLAPSADDLE: I believe we were using two-foot, 19 we were using, actually on some of our surveys we had one- 20 foot contour intervals. 21 MR. LECHNER: Right behind the house? 22 MR. CLAPSADDLE: Yes, this even shows one-foot 23 contour intervals. 24 MR. LECHNER: Okay. 25 MS. ROBESON: Well, where is this, behind the</p> | <p style="text-align: right;">Page 165</p> <p>1 and Associates. 2 MS. ROBESON: Mr. Workosky, please raise your 3 right hand. 4 (Witness sworn.) 5 MS. ROBESON: Go ahead, Ms. Leatham. 6 MS. LEATHAM: Okay. Please state your name, 7 address, business address, and occupation? 8 MR. WORKOSKY: I'm Mike Workosky, I'm a registered 9 transportation, professional transportation planner, I'm 10 with Wells and Associates, our address is 1420 Spring Hill 11 Road, Suite 610, Tysons, Virginia 22102. 12 MS. ROBESON: Okay. 13 MS. LEATHAM: Have you been admitted before as an 14 expert in transportation planning before the Montgomery 15 County Office of Zoning and Administrative Hearings? 16 MR. WORKOSKY: Yes, I have, for a few cases, the 17 last case I could think of was, I think it was the 18 McDonald's case on Bel Pre Road, which may have been a year 19 or so ago. 20 MS. ROBESON: A little more, yes. 21 MR. WORKOSKY: A little more than that. 22 MS. ROBESON: But okay, he has qualified as an 23 expert before us in transportation planning, Mr. Lechner, do 24 you have any objections? 25 MR. LECHNER: No, none at all.</p> |

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| <p style="text-align: right;">Page 166</p> <p>1 MS. ROBESON: All right. You're qualified. 2 MS. LEATHAM: Okay. Did there come a time when 3 you were employed by the Petitioner with regard to the 4 proposed DPA? 5 MR. WORKOSKY: Yes, we were contacted in probably 6 mid-2013 to provide traffic engineering and planning 7 services. 8 MS. LEATHAM: And are you familiar with the 9 property and the surrounding area? 10 MR. WORKOSKY: I am, I'm familiar with the 11 property, I've driven around the site many times through the 12 intersections, roadways, and such. 13 MS. LEATHAM: And are you familiar with the 14 Montgomery County Local Area Transportation Review 15 Standards, and the Subdivision Staging Policy? 16 MR. WORKOSKY: I am familiar with them. 17 MS. LEATHAM: Okay. Thank you. Can you describe 18 the vehicular circulation patterns in the proposed DPA? 19 MR. WORKOSKY: As was mentioned earlier, there are 20 three basic access points to the site, the northernmost 21 opposite Meadowcroft Lane, one to the south of Duffer Way 22 that's right-in/right-out, and the one to the east on 23 Arrowhead Road that's opposite Rothbury. And also, the 24 internal roadway is designed to have curbside parking and 25 such so that it helps create some side friction that helps</p> | <p style="text-align: right;">Page 168</p> <p>1 signalized or significantly unsignalized intersection in 2 each direction from the access points, the driveways serving 3 the site. So, that encompassed seven intersections 4 basically from Arrowhead on the north on Montgomery Village 5 Avenue down to Country Club Road, the intersection to the 6 south. And then over to the east -- I'm sorry, Club House 7 Road to the south. And then over to the east going to the 8 east of Rothbury over to Goshen Road, those are the 9 intersections that were included in the study, including the 10 site driveways. 11 We evaluated the existing traffic conditions, we 12 collected traffic counts that were in October of 2014, so we 13 analyzed existing conditions; then we looked at background 14 conditions with, that includes other pipeline development, 15 it also included adjustments for the Watkins Mill Road 16 interchange, which is a fully funded improvement, and per 17 the, the guidelines allow us to take that into account. 18 MS. ROBESON: If it's funded within the -- 19 MR. WORKOSKY: A six-year plan. 20 MS. ROBESON: Funded for what -- 21 MR. WORKOSKY: For construction. 22 MS. ROBESON: -- in a six-year plan? For 23 construction? 24 MR. WORKOSKY: Uh-huh. So, we included that in 25 the --</p> |
| <p style="text-align: right;">Page 167</p> <p>1 reduce the speed along that road and give it the character 2 of a residential street and not a through route. 3 MS. LEATHAM: Were the external access points 4 designed to connect to existing access points? 5 MR. WORKOSKY: Yes. Basically, two of the 6 driveways align opposite existing intersections so that they 7 don't introduce more than necessary curb cuts, so they work 8 with the road network as it's currently designed. 9 MS. LEATHAM: Did you analyze the impact of the 10 traffic from the proposed 86 homes on the existing 11 infrastructure? 12 MR. WORKOSKY: We did. We prepared a local area 13 transportation review that was dated November 17, 2014 that 14 would identify the impacts of the -- 15 MS. LEATHAM: That's Exhibit 12. 16 MR. WORKOSKY: I'm sorry, Exhibit 12. In that 17 study we assumed 84 units at the time, we didn't realize 18 there would be 86, that had come afterwards, but the 19 differential in those peak hour trips is one or two vehicle 20 trips, so it wouldn't have any impact on the result. 21 We went through the typical process, which is 22 meeting with Park and Planning Staff, identifying the study 23 intersections based on the number of new trips generated by 24 the site, so 84 townhouses generates 40 a.m. peak hour 25 trips, and 70 p.m. peak hour trips, so that equates to one</p> | <p style="text-align: right;">Page 169</p> <p>1 MS. LEATHAM: And is it funded for construction? 2 MR. WORKOSKY: It is funded for construction. And 3 so that would be, that was part of our analysis under 4 background conditions where we adjusted the traffic volumes 5 to account for that along Montgomery Village Avenue. Then 6 we added the traffic that would be generated by the 84 7 townhouses, we applied them to the road network, and we also 8 reduced the traffic generated by the existing golf course 9 because it was in operation when we collected our traffic 10 counts, so it was permanently closed after the date we 11 collected the traffic counts, so we removed that traffic 12 from the network. It's a small number of trips, but we -- 13 MS. ROBESON: Okay. 14 MR. WORKOSKY: -- took them off. We looked at 15 each of the intersections, we evaluated the critical lane 16 volumes for the Montgomery Village and Airpark policy area, 17 which has a critical lane volume threshold of 1,425, and all 18 of the intersections under existing background conditions 19 without the redevelopment, and future conditions with the 20 redevelopment were all well below the 1,425. The highest 21 was just under 1,000 in critical lane volume. We also 22 prepared a pedestrian statement, and looked at the transit 23 facilities, crosswalks, and what have you, and I should 24 mention, we did count bicycles, pedestrians, and such at all 25 the intersections when we did our analysis.</p> |

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| <p style="text-align: right;">Page 170</p> <p>1 We did look at the driveways specifically at all 2 the intersections, we did recommend that a southbound left 3 turn lane be provided on southbound Montgomery Village 4 Avenue at the Meadowcroft intersection, the northernmost 5 access point, and we did not recommend right turn lanes 6 going northbound on Montgomery Village Avenue at either the 7 right-in/right-out driveway, or at the Meadowcroft 8 intersection.</p> <p>9 MS. ROBESON: You did not recommend?</p> <p>10 MR. WORKOSKY: We did not recommend right turn 11 lanes there. The right turn volume is pretty low at both of 12 those locations, and it's in character with the rest of 13 Montgomery Village Avenue that does not have multiple turn 14 lanes at other intersections.</p> <p>15 MS. ROBESON: What peak hour volumes were at the 16 northern leg?</p> <p>17 MR. WORKOSKY: For the --</p> <p>18 MS. ROBESON: I'm just looking in the --</p> <p>19 MR. WORKOSKY: -- right turn?</p> <p>20 MS. ROBESON: -- the Staff Report, I can't put my 21 hands on the trip generation numbers.</p> <p>22 MR. WORKOSKY: Well, the volume itself there, we 23 had nine right turns.</p> <p>24 MS. ROBESON: Projected volume. Projected volume.</p> <p>25 MR. WORKOSKY: This is the forecasted with --</p> | <p style="text-align: right;">Page 172</p> <p>1 get the warrant?</p> <p>2 MR. WORKOSKY: You need quite a few, you need 3 quite a bit of volume on the side street. It's really a 4 function of the side street volume, the main line there's 5 like a bottom line threshold, but you need, you know, in 6 the, close to the hundreds for more than just one hour, and 7 we have 20 peak hour trips or so on the side street. So, I 8 don't think we would meet the warrant there for a traffic 9 signal, there wouldn't be much delay there, the CLV wouldn't 10 suggest that you have a capacity issue.</p> <p>11 MS. ROBESON: And the CLV, I'm reading upside 12 down, for Montgomery Village and, is --</p> <p>13 MR. WORKOSKY: Which, what intersection?</p> <p>14 MS. ROBESON: Arrowhead.</p> <p>15 MR. WORKOSKY: Meadowcroft?</p> <p>16 MS. LEATHAM: For the area.</p> <p>17 MS. ROBESON: No, no.</p> <p>18 MR. WORKOSKY: The threshold?</p> <p>19 MS. ROBESON: Yes.</p> <p>20 MR. WORKOSKY: Is 1,425.</p> <p>21 MS. ROBESON: No, I know that. I'm trying to look 22 at the northern access. Okay, that's 484, correct?</p> <p>23 MR. WORKOSKY: Correct. It's four -- correct.</p> <p>24 There's 484.</p> <p>25 MS. ROBESON: Now, how is the traffic -- so the</p> |
| <p style="text-align: right;">Page 171</p> <p>1 MS. ROBESON: Yes.</p> <p>2 MR. WORKOSKY: -- the build out, and we had nine 3 right turns in the evening, so that's the highest, because 4 in the morning it's only one. So, that was at the 5 northernmost intersection, at the southernmost intersection 6 the right-in/right-out we had 16 right turns there in the 7 p.m. So, fewer than --</p> <p>8 MS. ROBESON: Okay.</p> <p>9 MR. WORKOSKY: -- 20 rights, and again, Park and 10 Planning Staff also agreed with our assessment there to not 11 have, you know, deceleration lanes and acceleration lanes.</p> <p>12 MS. LEATHAM: While we're talking about the 13 Technical Staff Report, page 10 of Exhibit 55, Staff makes 14 several recommendations, can you just respond to each of 15 those?</p> <p>16 MR. WORKOSKY: Yes. So, there were three 17 recommendations, the first one was a submission of a traffic 18 signal warrant study at the intersection of Montgomery 19 Village Avenue and Meadowcroft Lane at the proposed 20 northernmost access, if a signal is warranted fund and 21 install the traffic signal. We, I mean, given the low 22 volumes that are there, and what we've forecasted with the 23 build out we don't think we would meet any of the signal 24 warrants there at that location.</p> <p>25 MS. ROBESON: Well, how much do you need for, to</p> | <p style="text-align: right;">Page 173</p> <p>1 sight distance isn't impacted by the driveway into Duffer, 2 well, it's not a, I don't know if it's a driveway or not, 3 into Duffer Way. Wait a minute. Okay, I see what you're 4 saying. All right. Did you look at the impact on Duffer 5 Way at all? Was that --</p> <p>6 MR. WORKOSKY: You mean --</p> <p>7 MS. ROBESON: -- one of --</p> <p>8 MR. WORKOSKY: Yes, that was one of the 9 intersections we studied. The CLV there was 520 in the 10 morning, and 497 in the evening.</p> <p>11 MS. ROBESON: Okay.</p> <p>12 MR. WORKOSKY: So, it's --</p> <p>13 MS. ROBESON: And you don't think it needs any 14 operational, is there going to be a stop sign there, or no?</p> <p>15 MR. WORKOSKY: The side street would be stopped.</p> <p>16 MS. ROBESON: Which side street?</p> <p>17 MR. WORKOSKY: Coming out of the site onto 18 Montgomery Village Avenue at both of the intersections to 19 the site.</p> <p>20 MS. ROBESON: Okay.</p> <p>21 MR. WORKOSKY: So, they would both be controlled 22 by stop signs.</p> <p>23 MS. ROBESON: Okay.</p> <p>24 MR. WORKOSKY: And this --</p> <p>25 MS. ROBESON: And that would be the gap for the</p> |

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| <p style="text-align: right;">Page 174</p> <p>1 Duffer Way people, the four-way stop? 2 MR. WORKOSKY: They're just stopped on the side 3 streets, as well, on Montgomery Village Avenue. Not all 4 ways, they're just on the side streets -- 5 MS. ROBESON: Right. 6 MR. WORKOSKY: -- of Duffer. 7 MS. ROBESON: Okay. 8 MR. WORKOSKY: So, it would operate similar to 9 that where they have a stop sign, they find a gap in through 10 traffic on Montgomery Village Avenue, come out. 11 MS. ROBESON: Okay. 12 MR. WORKOSKY: That was the -- 13 MS. LEATHAM: Can you just repeat the number of 14 trips this generates? 15 MR. WORKOSKY: So, 84 townhouses generates 40 a.m. 16 peak hour trips, seven in the morning, 33 out; in the 17 evening during the p.m. peak hour it's 70 peak hour trips, 18 47 in, and 23 out. 19 MS. LEATHAM: And the addition of the other two 20 units would add -- 21 MR. WORKOSKY: It's one or two additional peak 22 hour trips, so not significantly impact the result. 23 MS. ROBESON: Okay. 24 MR. WORKOSKY: There were two other items that 25 Staff mentioned, that was the, the first items was the</p> | <p style="text-align: right;">Page 176</p> <p>1 nominal numbers that are coming out, you know, 20 peak hour 2 trips, so, you know, the real operation is the median is 3 wide there, some parts of that median allow storage for one 4 or two cars, some motorists will have a large enough gap 5 that they can drive directly out through the median and then 6 other stops sometimes in that median, that's how it works. 7 MS. ROBESON: Is there, is it -- it's not a 8 landscaped median, is it? 9 MR. WORKOSKY: It is. 10 MS. ROBESON: It is? 11 MR. WORKOSKY: It is, it's grass. 12 MS. ROBESON: Is there a cut now for Duffer Way to 13 make a left turn? 14 MR. WORKOSKY: There is. They have full movement. 15 MS. ROBESON: But not at the southern access? 16 MR. WORKOSKY: Correct, it's -- 17 MS. ROBESON: You're not proposing that? 18 MR. WORKOSKY: -- it's too close, it's too close 19 to do that. 20 MS. ROBESON: Okay. 21 MS. LEATHAM: Okay. In your expert opinion does 22 the DPA meet the transportation elements of the Adequate 23 Public Facilities ordinance? 24 MR. WORKOSKY: It does. We've satisfied the 25 elements of the LATR for capacity, pedestrian access, and</p> |
| <p style="text-align: right;">Page 175</p> <p>1 traffic signal warrant study, the second was shifting the 2 right-in/right-out driveway south of Duffer as far south as 3 possible so that it would increase the distance, it would 4 maximize the distance between there and Duffer Way, which 5 the plan does that, there's a, you know, the angle at which 6 you can come into the intersection, the alignment there 7 tries to push that as far south as possible. And then Item 8 C, which is whether deceleration or acceleration lanes and a 9 left turn storage lane are necessary on Montgomery Village 10 Avenue at the two proposed curb cuts. So, as I mentioned 11 previously, we recommended a southbound left turn lane on 12 Montgomery Village Avenue at the northernmost opposite 13 Meadowcroft, but we did not recommend right turn lanes at 14 either one of the driveways. 15 MS. ROBESON: Okay. 16 MS. LEATHAM: Are there any queuing or loading 17 requirements for this kind of development? 18 MR. WORKOSKY: There are not. 19 MS. LEATHAM: Okay. 20 MS. ROBESON: Is there going to be a lot of 21 queuing and loading? 22 MR. WORKOSKY: Well -- 23 MS. ROBESON: Well, not loading, but queuing? 24 MR. WORKOSKY: -- I mean, there will be some delay 25 for left turning traffic, but again, these are fairly</p> | <p style="text-align: right;">Page 177</p> <p>1 such. 2 MS. LEATHAM: And are the proposed internal, 3 vehicular, and pedestrian circulation systems safe, 4 adequate, and efficient? 5 MR. WORKOSKY: They are. They have adequate 6 capacity at all the entrances, and as was testified earlier, 7 they'll be designed to have elements that meet sight 8 distance requirements and such that make them safe. 9 MS. LEATHAM: And so, you actually answered my 10 other question, too, are the external access points safe, 11 adequate, and efficient? 12 MR. WORKOSKY: They are, yes. 13 MS. LEATHAM: And that's the end of our direct. 14 MS. ROBESON: Did you address TPAR, or is this not 15 subject? Is there -- 16 MR. WORKOSKY: It is. It is subject to, it's 25 17 percent of the impact tax. 18 MS. ROBESON: Okay. 19 MR. WORKOSKY: I'm sorry, I should have mentioned 20 that in my -- 21 MS. ROBESON: Okay. Mr. Lechner, do you have any 22 questions? 23 MR. LECHNER: Just a couple. What's the ratio 24 that you assume for a development like this, demographics or 25 market as far as cars per unit?</p> |

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| <p style="text-align: right;">Page 178</p> <p>1 MR. WORKOSKY: It's not a ratio, it's a rate that 2 has been developed and published by Montgomery County 3 specific for this type of land use.</p> <p>4 MR. LECHNER: And how many cars would it be for 84 5 townhouses?</p> <p>6 MR. WORKOSKY: Well, as I mentioned it's 40 a.m. 7 peak hour trips, so that's the in and out.</p> <p>8 MR. LECHNER: How many parked cars?</p> <p>9 MR. WORKOSKY: Parked cars?</p> <p>10 MR. LECHNER: Yes.</p> <p>11 MR. WORKOSKY: Parking is different than traffic 12 generation, so --</p> <p>13 MR. LECHNER: Correct, is that your area of 14 expertise?</p> <p>15 MR. WORKOSKY: Well, I didn't do the parking, I 16 think the parking was testified earlier that it meets the 17 Code requirement for parking, which I believe is two per 18 unit.</p> <p>19 MR. LECHNER: Okay. But you talked about the 20 number of cars being on the road, parking there.</p> <p>21 MR. WORKOSKY: Correct, not --</p> <p>22 MR. LECHNER: That's why I --</p> <p>23 MR. WORKOSKY: -- not, not parking.</p> <p>24 MS. ROBESON: What is -- how is the trip 25 generation rate calculated? The County's trip generation</p> | <p style="text-align: right;">Page 180</p> <p>1 MS. ROBESON: -- answer your question, that's how 2 they get, that's how they project the number of trips.</p> <p>3 MR. LECHNER: Right. I was actually not asking 4 for the number of trips, I'm asking about the number of cars 5 that would be parked on the street there behind the 6 neighborhood.</p> <p>7 MS. ROBESON: Okay.</p> <p>8 MR. LECHNER: Because he talked about the parking 9 on the, designed to have parking on the street, do these 10 townhouses have garages? They do?</p> <p>11 MS. ROBESON: Well, who can --</p> <p>12 MS. LEATHAM: Well, Mr. Brady already testified 13 that they do have two-car garages, plus tandem spaces behind 14 each garage.</p> <p>15 MR. LECHNER: Okay. Okay. That's very helpful, 16 thank you so much.</p> <p>17 MS. LEATHAM: And the driveway.</p> <p>18 MR. LECHNER: I was worried about 160 cars on the 19 street.</p> <p>20 MS. ROBESON: Oh, I didn't hear the tandem spaces. 21 They have two --</p> <p>22 MS. LEATHAM: Would you like, we can bring him 23 back?</p> <p>24 MS. ROBESON: Yes.</p> <p>25 MS. LEATHAM: Okay.</p> |
| <p style="text-align: right;">Page 179</p> <p>1 rate per unit?</p> <p>2 MR. WORKOSKY: It's based on similar development 3 types.</p> <p>4 MS. ROBESON: Right, and what's the number? How 5 many trips per dwelling unit?</p> <p>6 MR. WORKOSKY: Well, it's a formula, so it's not a 7 straight line rate, because it's based on a number of 8 studies that are plotted so that you develop a rate that is 9 not a linear formula.</p> <p>10 MS. ROBESON: Well, what did you use?</p> <p>11 MR. WORKOSKY: I used that.</p> <p>12 MS. ROBESON: I know, but --</p> <p>13 MS. LEATHAM: Are you asking for the equation?</p> <p>14 MS. ROBESON: -- just tell me how you got the --</p> <p>15 MR. WORKOSKY: I can tell you --</p> <p>16 MS. ROBESON: Just tell me how you got to this is 17 only going to generate 40 peak hour trips.</p> <p>18 MR. WORKOSKY: There are rates that are published 19 in the LATR --</p> <p>20 MS. ROBESON: And what's the rate for this type of 21 use?</p> <p>22 MR. WORKOSKY: For townhouses under 100 units, 23 it's .48 trips per unit.</p> <p>24 MS. ROBESON: Right. So, to --</p> <p>25 MR. WORKOSKY: And --</p> | <p style="text-align: right;">Page 181</p> <p>1 MS. ROBESON: Are you --</p> <p>2 MS. LEATHAM: Actually, we're going to, yes, we'll 3 bring him back.</p> <p>4 MS. ROBESON: Okay.</p> <p>5 MR. LECHNER: That was all question-wise I had, 6 thank you.</p> <p>7 MS. ROBESON: All right. Ms. Leatham? You may be 8 excused.</p> <p>9 MS. LEATHAM: Do you want to bring Mr. Brady back 10 just --</p> <p>11 MS. ROBESON: Sure.</p> <p>12 MS. LEATHAM: -- to speak to parking?</p> <p>13 MS. ROBESON: And then how many more witnesses?</p> <p>14 MS. LEATHAM: Just one, and it will be very short.</p> <p>15 MS. ROBESON: Okay.</p> <p>16 MS. LEATHAM: All right. Identify yourself for 17 the record.</p> <p>18 MR. BRADY: Laurence J. Brady.</p> <p>19 MS. ROBESON: Mr. Brady, you're still under oath.</p> <p>20 MR. BRADY: Yes, I understand.</p> <p>21 MS. LEATHAM: Can you describe the parking plan 22 for the DPA?</p> <p>23 MR. BRADY: Do you want me to walk through a 24 diagram or just explain it?</p> <p>25 MS. LEATHAM: You just --</p> |

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| <p style="text-align: right;">Page 182</p> <p>1 MR. BRADY: Okay. Each unit is typically either, 2 the majority of units are parked in the rear with access via 3 a lane that runs behind the units. Each unit will have 4 integral parking, meaning there's a garage built into the 5 unit, behind the garage is an apron that meets the 18-foot 6 requirement for parking, so those are the tandem spaces, so 7 each unit in theory could park four cars on its lot. We're 8 only required to park two per unit. We've also provided 9 approximately 35 additional parking spaces on the street as 10 parallel spaces, partially as a traffic calming feature, it 11 was also described, and also to provide easy access for 12 visitor parking, it doesn't require searching out the tandem 13 spaces behind.</p> <p>14 MS. ROBESON: I have one question while you're up 15 here.</p> <p>16 MR. BRADY: Sure.</p> <p>17 MS. ROBESON: I should have, well, I guess it 18 would be you. Are you proposing a binding element as to 19 height of these?</p> <p>20 MS. LEATHAM: We are not proposing any binding 21 elements.</p> <p>22 MR. BRADY: The architecture has not really been 23 designed at this stage in the process, we are just proposing 24 a general massing.</p> <p>25 MS. ROBESON: I understand. But a lot of times on</p> | <p style="text-align: right;">Page 184</p> <p>1 MS. LEATHAM: -- our final witness, Bob Hydorn. 2 MS. ROBESON: Please raise your right hand. 3 (Witness sworn.) 4 MS. ROBESON: Okay, go ahead, Ms. Leatham. 5 MS. LEATHAM: Okay. Can you state your name and 6 address for the record?</p> <p>7 MR. HYDORN: Robert Hydorn, and actually, I have 8 two addresses, 1376 Rhododendron Drive, Terra Alta, West 9 Virginia --</p> <p>10 MS. ROBESON: Terra Alta?</p> <p>11 MR. HYDORN: Yes, Alpine Lake Resort.</p> <p>12 MS. ROBESON: I grew up on Deep Creek. Okay, well 13 we'll stop this --</p> <p>14 MR. HYDORN: Oh, next door. We're the calm lake. 15 MS. ROBESON: Yes.</p> <p>16 MR. HYDORN: We're not the motorboat lake. 17 MS. ROBESON: I know.</p> <p>18 MR. HYDORN: We'll chat later.</p> <p>19 MS. ROBESON: Yes. Obviously. Go ahead.</p> <p>20 MR. HYDORN: And 90 -- what?</p> <p>21 MS. ROBESON: Can you spell your name, sir?</p> <p>22 MR. HYDORN: H-Y-D-O-R-N. And also 9401 Chatteroy 23 Place, Montgomery Village.</p> <p>24 MS. ROBESON: Okay.</p> <p>25 MS. LEATHAM: Okay. How long have you lived in</p> |
| <p style="text-align: right;">Page 183</p> <p>1 development plans people will come through and put a height 2 limit, so for compatibility purposes.</p> <p>3 MS. LEATHAM: The Petitioner is willing to propose 4 a binding element on the height.</p> <p>5 MS. ROBESON: Okay. All right.</p> <p>6 MS. LEATHAM: The --</p> <p>7 MS. ROBESON: Well --</p> <p>8 MS. LEATHAM: Okay.</p> <p>9 MS. ROBESON: -- do you need Mr. Brady to do it? 10 Keep that thought, and --</p> <p>11 MS. LEATHAM: Okay.</p> <p>12 MS. ROBESON: -- should I excuse him as a witness?</p> <p>13 MS. LEATHAM: Yes.</p> <p>14 MS. ROBESON: Okay. Thank you.</p> <p>15 MS. LEATHAM: We can, I was planning to recall a 16 couple of witnesses, we can deal with the binding element 17 then, or we can do it --</p> <p>18 MS. ROBESON: Why don't we do it then, because 19 I'd --</p> <p>20 MS. LEATHAM: Okay.</p> <p>21 MS. ROBESON: -- like to get through --</p> <p>22 MS. LEATHAM: Yes.</p> <p>23 MS. ROBESON: -- Mr. Lechner --</p> <p>24 MS. LEATHAM: Okay. So, let me call --</p> <p>25 MS. ROBESON: -- here.</p> | <p style="text-align: right;">Page 185</p> <p>1 Montgomery Village, and what has been your role in the 2 community?</p> <p>3 MR. HYDORN: Thirty years as a resident of 4 Montgomery Village. I have been very active in the 5 community from the PTA structures, cluster coordinator, 6 Montgomery Village Foundation Board of Directors, of which 7 my term, ninth year ended this last March, of which seven of 8 those nine years I served as President of the Village.</p> <p>9 MS. ROBESON: Okay.</p> <p>10 MS. LEATHAM: Are you familiar with the proposed 11 DPA?</p> <p>12 MR. HYDORN: Yes, very. In fact, watching it 13 through the entire process the openness of the process from 14 the, the Applicant has, Monument has gone through this last 15 several years now, getting the input, I was very concerned, 16 my home is right, is the closest to the ingress/egress going 17 onto Arrowhead Road, and I'm very supportive of this 18 project. Once the golf course closed we don't need in my 19 mind another situation like there is over in Prince George's 20 County of a golf course that closed and it's just boarded up 21 in a very high end neighborhood.</p> <p>22 MS. LEATHAM: So, you heard testimony already 23 about some of the other development plan amendments, and the 24 master plan in vision 2030, how do you relate all those 25 together, and how does this DPA relate to those?</p> |

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| <p style="text-align: right;">Page 186</p> <p>1 MR. HYDORN: As I look at the 2030 plan of the 2 Village, which has started under my presidency, my term on 3 the Foundation Board, the residents when it came down to the 4 idea that possibly the golf course would close, and it 5 seemed rather inevitable that it was going to, you know, you 6 can only lose money so long, it needed to be developed, that 7 would be the next phase in our community is to have the golf 8 course built on.</p> <p>9 MS. LEATHAM: And what is your sense of the rest 10 of the community's opinion about this?</p> <p>11 MS. ROBESON: Well --</p> <p>12 MR. HYDORN: My sense --</p> <p>13 MS. ROBESON: -- you know, I don't want to go 14 there.</p> <p>15 MS. LEATHAM: Okay.</p> <p>16 MR. HYDORN: Okay.</p> <p>17 MS. ROBESON: I've got a lot either way in the 18 file. I don't want hearsay evidence about his sense of it. 19 Please. Why don't you ask your next question?</p> <p>20 MS. LEATHAM: Okay. This is the last, our last 21 question.</p> <p>22 MS. ROBESON: Okay.</p> <p>23 MS. LEATHAM: You already explained how involved 24 you've been in the community --</p> <p>25 MR. HYDORN: Yes.</p> | <p style="text-align: right;">Page 188</p> <p>1 MR. HYDORN: The community including Park and 2 Planning seemed very upset, because it was just being, that 3 previous one was just being dumped on us without input, very 4 little input if there was any, and that not only disturbed 5 us, but in the same meetings the people from Park and 6 Planning who were sitting at the same table next to me were 7 as, seemed as I don't want to say irritated, as upset in the 8 lack of care and concern of the community.</p> <p>9 MS. ROBESON: Okay.</p> <p>10 MS. LEATHAM: Okay.</p> <p>11 MS. ROBESON: For what it's worth.</p> <p>12 MS. LEATHAM: For what it's worth.</p> <p>13 MR. HYDORN: For what it's worth.</p> <p>14 MS. LEATHAM: End of direct.</p> <p>15 MS. ROBESON: Okay. Mr. Lechner?</p> <p>16 MR. LECHNER: Bob, could you tell us a little bit, 17 say before 2005, going back 10, 15 years ago, comparing the 18 condition of the golf course property and the inside, I 19 mean, there were some meetings there occasionally, if I 20 recall, the Board would do a Christmas party or things 21 there, did the facilities seem to be in better healthier 22 shape 10, 15 years ago?</p> <p>23 MS. LEATHAM: I don't think -- I object for 24 relevance. He hasn't testified with respect to the golf 25 course at all.</p> |
| <p style="text-align: right;">Page 187</p> <p>1 MS. LEATHAM: -- and with the, have you been also, 2 have you also been engaged with the planners and the County 3 government as Montgomery Village has evolved?</p> <p>4 MR. HYDORN: Yes. Especially several years ago 5 when there was another proposal for this golf course, a 6 senior living, that the developer came in and really --</p> <p>7 MS. LEATHAM: Well --</p> <p>8 MR. HYDORN: You don't want --</p> <p>9 MS. LEATHAM: -- that doesn't matter. But how, 10 when you were speaking to the government planners about that 11 particular redevelopment plan what did they say about the 12 Master Plan?</p> <p>13 MR. HYDORN: Of course, the biggest --</p> <p>14 MS. ROBESON: Well, wait. Okay. Do you really 15 need this, because it's all hearsay.</p> <p>16 MS. LEATHAM: He was involved, so he can tell you 17 how they were interpreting it at the time.</p> <p>18 MS. ROBESON: You can let it in, but I'm not, I'll 19 be honest with you, I've heard many -- I'm not saying you're 20 wrong, or you didn't hear it, I'm just saying I heard many 21 government officials quoted in absentia, but go ahead and 22 you can testify to it.</p> <p>23 MS. LEATHAM: Let me rephrase the question. How 24 was that development plan -- hold on, give me a minute. How 25 did various parties respond to that proposal?</p> | <p style="text-align: right;">Page 189</p> <p>1 MS. ROBESON: Yes, I do --</p> <p>2 MR. LECHNER: Okay.</p> <p>3 MS. ROBESON: -- agree.</p> <p>4 MR. LECHNER: Okay, that's fine. Did the, did Mr. 5 Doser ever complain about the business position of the golf 6 course over the last 10 years?</p> <p>7 MS. LEATHAM: I don't know that -- I object, I 8 don't think he, Mr. Hydorn testified to anything.</p> <p>9 MS. ROBESON: Where are you going --</p> <p>10 MR. LECHNER: Okay.</p> <p>11 MS. ROBESON: -- with this?</p> <p>12 MR. LECHNER: Well, Bob, I know Bob as the 13 President of the Foundation had close interactions at least 14 on occasion with Mr. Doser, Mr. Doser brought in discussions 15 now that is part of the vision 2030 process, he testified at 16 one point in front of the Board about the health and 17 condition of the golf course, things he wanted to do with 18 it, and the issues they were having from a business 19 perspective over the last 10 years.</p> <p>20 MS. ROBESON: Well, if you know of them from your 21 personal knowledge then you can testify to that when your 22 time comes. He didn't -- well, I stopped him from 23 testifying as far as prior ownership and proposals --</p> <p>24 MR. LECHNER: Okay.</p> <p>25 MS. ROBESON: -- so --</p> |

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| Page 190 | Page 192 |
| <p>1 MR. LECHNER: Okay. Okay, that's fine then. No 2 other questions.</p> <p>3 MS. ROBESON: All right. You may be excused. 4 Thank you.</p> <p>5 MR. HYDORN: Thanks.</p> <p>6 MS. ROBESON: Okay, any other witnesses, Ms. 7 Leatham?</p> <p>8 MS. LEATHAM: Not for our case-in-chief, but we'll 9 call, recall witnesses.</p> <p>10 MS. ROBESON: Well, recalling witnesses is only, 11 can be only responsive to what he says. Rebuttal is only 12 responsive to the points he makes, so if you have somebody 13 that you need to put in your case-in-chief --</p> <p>14 MS. LEATHAM: All right. Yes, then I recall Mr. 15 Hines to speak to the potential binding outline.</p> <p>16 MS. ROBESON: Okay. Mr. Hines, do you want to -- 17 you're still under oath.</p> <p>18 MR. HINES: Understood.</p> <p>19 MS. LEATHAM: Would you agree to a binding element 20 to limit the height of the future buildings?</p> <p>21 MR. HINES: Yes, we would.</p> <p>22 MS. LEATHAM: Consistent with what is in the plan 23 in 40D, which is the development plan?</p> <p>24 MR. HINES: Is that the 40-foot height?</p> <p>25 MS. LEATHAM: Forty foot overall, right.</p> | <p>1 MS. ROBESON: Let's get Mr. Lechner on then, and 2 you're welcome to stay at the table if you would like. And 3 Mr. Lechner, you have been patient.</p> <p>4 MR. LECHNER: Here is a transcript of my comments. 5 Unfortunately, I only brought enough for Ms. Leatham and 6 yourself.</p> <p>7 MS. LEATHAM: We can share.</p> <p>8 MS. ROBESON: Okay. I guess I'll mark it as an 9 exhibit, I really don't have any other way to consider 10 things.</p> <p>11 MR. LECHNER: Of course. Sure.</p> <p>12 MS. ROBESON: So, we are at, I think we're up to 13 the 120 mark, 121, and this will be a statement by David 14 Lechner.</p> <p>15 (Exhibit No. 121 was marked 16 for identification.)</p> <p>17 MS. LEATHAM: What's the attachment?</p> <p>18 MR. LECHNER: I didn't -- the attachment is the 19 pages out of here, and out of the E-848, it's the town 20 sector ordinance, the zoning ordinance, that's the one that 21 we were, you were talking about.</p> <p>22 MS. ROBESON: Wait, what is the attachment?</p> <p>23 MR. LECHNER: So, I'll talk about it in just a 24 minute.</p> <p>25 MS. ROBESON: Okay, let's do this, you start with</p> |
| Page 191 | Page 193 |
| <p>1 MR. HINES: Yes.</p> <p>2 MS. ROBESON: Okay. And you're going to -- if you 3 -- that's got to be placed on the development plan, and 4 you're going to have, it would be helpful if you can tell 5 me, I'm assuming that's 35 feet to the midpoint, and plus, 6 I'm assuming the 40 feet --</p> <p>7 MS. LEATHAM: Is the 35 --</p> <p>8 MS. ROBESON: -- to the tip?</p> <p>9 MS. LEATHAM: -- to the midpoint, yes.</p> <p>10 MS. ROBESON: Okay. Then if you would kindly, I 11 would like you to submit that. I'll keep the record open 12 for you to submit a binding element, an amended development 13 plan to include it, if you could just specify the 14 measurements that you're referring to --</p> <p>15 MS. LEATHAM: Sure.</p> <p>16 MS. ROBESON: -- all right? Thank you.</p> <p>17 MS. LEATHAM: All right. Well, I'm going to go 18 ahead and ask Mr. Hines another question since I have him 19 here, which is responsive to the testimony we've heard not 20 from Mr. Lechner, necessary, but from the other speakers.</p> <p>21 MS. ROBESON: Okay, that's rebuttal, so let's give 22 Mr. --</p> <p>23 MS. LEATHAM: Okay.</p> <p>24 MS. ROBESON: That is truly rebuttal.</p> <p>25 MS. LEATHAM: Okay. Then we'll come back.</p> | <p>1 your statement --</p> <p>2 MR. LECHNER: Uh-huh.</p> <p>3 MS. ROBESON: -- and then when you hit an 4 attachment --</p> <p>5 MR. LECHNER: Yes.</p> <p>6 MS. ROBESON: -- stop, and say you'd like to 7 introduce it as an exhibit, and then we'll talk about it, 8 okay? Whether it should be introduced or not.</p> <p>9 MR. LECHNER: Okay.</p> <p>10 MS. ROBESON: Okay. So, you go on, you start with 11 your statement.</p> <p>12 MR. LECHNER: Do I need to swear anything first?</p> <p>13 MS. ROBESON: For the record, he's raising his 14 right hand already.</p> <p>15 (Witness sworn.)</p> <p>16 MS. ROBESON: Okay.</p> <p>17 MR. LECHNER: Okay.</p> <p>18 MS. ROBESON: Please state your name, I think you 19 already gave your address, correct?</p> <p>20 MR. LECHNER: I did. David A. Lechner, L-E-C-H-N- 21 E-R. Okay. So, good afternoon at this point, and thank you 22 again. I'll try and keep my comments brief, describe my 23 rationale for providing the attached exhibits which have 24 been provided separately this morning, which I believe will 25 be of great use to the Examiner in making a ruling on this</p> |

1 application. I'm also providing only specific portions of
 2 the exhibits, as some of them were hundreds of pages long
 3 and are all easily accessed by either the Examiner or the
 4 Applicant at the microfilm archive of the Maryland National
 5 Capital Park and Planning Commission offices. I have tried
 6 to capture the full context of each section that I am
 7 providing or using so that it's not just an isolated
 8 sentence, and that's in the attachments.

9 In addition to my statement I'm including a
 10 summary of notes taken from DPA E-327 and DPA E-848, that
 11 reference the golf course and provide material relevant to
 12 my statement as backup.

13 MS. LEATHAM: I'm sorry, can I interrupt for just
 14 a minute?

15 MR. LECHNER: Sure.

16 MS. LEATHAM: The relevant Code section for the
 17 town sector zone is 59C -- now I've lost my place.

18 MR. LECHNER: Yes, that's down in the fourth or
 19 fifth paragraph.

20 MS. LEATHAM: So, what's the 104-19A?

21 MR. LECHNER: That's how it was marked in the
 22 microfilm, and in the County Council.

23 MS. ROBESON: Oh, I know what this is, this is the
 24 19 --

25 MR. LECHNER: Sixty-five.

1 proceed and explain the relevance, and then you have the
 2 right, Ms. Leatham, to renew your objection if you don't
 3 feel like he's getting there, okay? Go ahead, Mr. Lechner.

4 MR. LECHNER: Thank you. As background, I've
 5 lived in Montgomery Village for 22 years, I do not live on,
 6 directly on the property bordering the Montgomery Village
 7 Golf Club, I do drive past it every day, and sometimes walk
 8 my dogs along the borders. I greatly enjoy the scenic
 9 nature of the open space vistas it provides my community.

10 As further information just as general background,
 11 I have Bachelor of Science degrees in both electrical
 12 engineering and engineering public policy, as well as a
 13 Master of Science degrees in engineering management, Master
 14 of Science degrees in computational physics. I'm opposed to
 15 the Applicant's proposal, proposed project to develop
 16 housing on the fairway portions of the golf club for many
 17 reason, which I will discuss.

18 Although the Applicant focused on what they want
 19 to do with the property today, I have been spending time
 20 researching how the property was developed in '65 and '67
 21 because I thought it might help the Examiner, the Planning
 22 Board, and the Council realize the significance of the town
 23 sector zone, the use of covenants in the '67 to '80 time
 24 frame, and in particular Montgomery Village's development
 25 under the town sector code.

1 MS. ROBESON: Yes, I can't remember. This is the
 2 town center zone as it existed in, I'm not sure exactly what
 3 year, or --

4 MS. LEATHAM: Oh, so that's what the attachment
 5 is?

6 MR. LECHNER: Yes.

7 MS. LEATHAM: This is the old --

8 MS. ROBESON: Yes, and before we just start I'm
 9 going to mark this, because mine is separated, I'm just
 10 going to mark it as 122.

11 (Exhibit No. 122 was marked
 12 for identification.)

13 MS. ROBESON: And do you know exactly -- let's see
 14 --

15 MR. LECHNER: So --

16 MS. ROBESON: This is an amendment to the 1958
 17 Montgomery County Zoning Ordinance. No, to the 1960
 18 Montgomery County Code.

19 MR. LECHNER: Right.

20 MS. LEATHAM: I don't have any objection to
 21 letting it in, I just don't see the relevance since we're
 22 dealing with the 2004 zoning, text --

23 MS. ROBESON: Well --

24 MS. LEATHAM: -- of the zoning code.

25 MS. ROBESON: -- Mr. Lechner, I'm going to let you

1 The first enclosure I provide is a copy of the
 2 Montgomery County Code Section 104-19A, the one we were just
 3 discussing.

4 MS. ROBESON: And that is --

5 MR. LECHNER: 122.

6 MS. ROBESON: -- Exhibit 122.

7 MR. LECHNER: Exhibit 122. Yes. This was copied
 8 from a hearing file case E-848, although I actually made
 9 this copy from the actual copy of the book I had because it
 10 reproduced clearer, there's actually two or three copies of
 11 the Code in 848, though, in the backup in exhibits, and I
 12 looked at the words to the best I could, it seemed like the
 13 same Code. If anyone can say otherwise I'd be happy to look
 14 at it again, or take advisement, but --

15 MS. ROBESON: Well, I have, our office --

16 MR. LECHNER: You all have that.

17 MS. ROBESON: -- has this Code.

18 MR. LECHNER: Right.

19 MS. ROBESON: So, if there's any difference --

20 MR. LECHNER: So, you'll know it.

21 MS. ROBESON: -- I can take official notice.

22 MR. LECHNER: Document it. Yes. So, at one point
 23 it states amongst the text -- oh, this was copied, it's also
 24 included in that backup was the Maryland National Capital
 25 Park and Planning Staff markup of the draft of the text as a

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| <p style="text-align: right;">Page 198</p> <p>1 memo that they helped author, and one page I've provided in 2 the exhibit is their internal memo saying this is being 3 routed, we've been asked to produce this text. 4 MS. ROBESON: Wait, what exhibit now? Is this a 5 different exhibit? 6 MR. LECHNER: That was in one of the, it's one of 7 these pages this morning, and this is where the lack of page 8 numbers really starts to hit us because the way the e-mail, 9 the way, apparently the way I was doing the microfilm I was 10 cutting off all the page numbers at the bottom. But it's 11 the one that's entitled memo, Planning Commission Staff, 12 June 30, 1964. 13 MS. ROBESON: Well, let's -- then I have to 14 take -- if you're going to talk about it I have to take it 15 in as a separate exhibit. 16 MR. LECHNER: I can find it as we talk and then 17 put different numbers. So -- 18 MS. ROBESON: Okay. 19 MR. LECHNER: -- this would be 123, if that's all 20 right? 21 MS. LEATHAM: I'm having a hard time following. I 22 know, I see what the page -- 23 MR. LECHNER: It will get worse. 24 MS. LEATHAM: I see the page, but I don't know 25 that the page goes with what you've said it goes to.</p> | <p style="text-align: right;">Page 200</p> <p>1 MS. ROBESON: Okay. Keep going. 2 MR. LECHNER: Okay. So, again, the first one was 3 the copy of the Montgomery County Code, Section 104-19 4 alpha, the early version I understand now of the town sector 5 zone. This was copied from the hearing file of E-848, also 6 included the Staff markup, and I'm putting that as 122 and 7 123, and I've got those both right here. 8 MS. ROBESON: Okay. I don't have the Staff 9 markup. Do you have a complete copy of the Staff markup? 10 MR. LECHNER: I do, but I was really just going to 11 submit this, the one page because it just identifies that 12 Staff wrote the text. 13 MS. ROBESON: Oh, okay. Did you -- 14 MR. LECHNER: That's all. 15 MS. ROBESON: -- show this to -- 16 MS. LEATHAM: Yes, I have it. 17 MR. LECHNER: Yes. 18 MS. ROBESON: Okay. I'll take this in as 123, 19 which is 6-30-64 memo to the Planning Commission. 20 (Exhibit No. 123 was marked 21 for identification.) 22 MS. ROBESON: Okay. Keep going, Mr. Lechner. 23 MR. LECHNER: Under paragraph two of Section 104, 24 procedures for approval of a preliminary plan states that 25 the proposed plan shall be accompanied by restrictions,</p> |
| <p style="text-align: right;">Page 199</p> <p>1 MS. ROBESON: Let's do this, can we, can you -- do 2 you think you can put this together in like five minutes, 3 the -- 4 MR. LECHNER: Like in order, which ones are which? 5 MS. ROBESON: Exactly. 6 MR. LECHNER: Uh-huh. Yes. 7 MS. ROBESON: Okay. Let's take a -- I think it 8 will go more smoothly, and I think it will be easier to 9 understand what you're saying if we can get the -- 10 MR. LECHNER: Sure. 11 MS. ROBESON: -- exhibits in order. Okay. So, 12 try that, we'll go off the record for five minutes. 13 (OFF THE RECORD.) 14 (ON THE RECORD.) 15 MS. ROBESON: Well, why don't you proceed through 16 your testimony, and we'll see how far we can get, is that 17 acceptable to you, Ms. Leatham? 18 MS. LEATHAM: There are some items in the e-mail 19 in what we received this morning that I do object to, but 20 those are not elements that are already in the record, so I 21 can object now or I can wait until it comes up. 22 MS. ROBESON: Well, let's go through them and then 23 you can tell me. Mr. Lechner, just be prepared, don't keep 24 reading when she objects, okay? 25 MR. LECHNER: I will pause. Uh-huh.</p> | <p style="text-align: right;">Page 201</p> <p>1 agreements, or other documents indicating in detail the 2 manner in which any land intended for common or quasi-public 3 use, but not proposed to be in public ownership will be 4 held, owned, and maintained in perpetuity for the intended 5 purpose. 6 MS. ROBESON: Now, you're reading from 122? 7 MR. LECHNER: From 122, yes. 8 MS. ROBESON: Okay. 9 MR. LECHNER: Paragraph two, procedures for 10 approval. 11 MS. ROBESON: Okay. 12 MR. LECHNER: It also states that the Planning 13 Board shall examine the proposed preliminary plan in order 14 to determine whether A) proposed plan is consistent with the 15 town sector plan; B) in the opinion of the Planning Board 16 the arrangements for the ownership and maintenance of the 17 common land are workable and will result in the permanent 18 preservation of such land for its intended use and free of 19 nuisances. That's paragraph A and B. 20 MS. ROBESON: Okay. 21 MR. LECHNER: Okay. The same hearing record 22 contains the following Maryland National Capital Park and 23 Planning Commission staffing recommendation regarding DPA E- 24 848, that the Commission recommends to the District Council 25 that application 848 be approved with the following</p> |

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| <p style="text-align: right;">Page 202</p> <p>1 amendments, and then there were several technical issues 2 which I don't feel were germane, but then it states in the 3 opinion of the Board the proposed rezoning is compatible 4 with the surrounding area, and therefore fulfills the 5 requirements of the town sector zone. So, my conclusion in 6 1968 after drafting a plan for staffing town sector zone 7 projects, the Park and Planning Commission certified that 8 848 was in compliance with 104-19 alpha, and thus my simple 9 conclusion was that the golf club and other open spaces in 10 the Village were at that point adequately protected in 11 perpetuity. I don't know how, I'm just drawing a 12 conclusion.</p> <p>13 MS. ROBESON: And that's the resolution approving 14 E-848, the --</p> <p>15 MR. LECHNER: Yes.</p> <p>16 MS. ROBESON: -- Council resolution?</p> <p>17 MR. LECHNER: That was the Planning Board Staff 18 recommendation to Council.</p> <p>19 MS. ROBESON: Okay.</p> <p>20 MR. LECHNER: I also reviewed at length the 21 original development plan application E-327, the original 22 proposal to develop Montgomery Village. It's clear from 23 that DPA that the golf club was a part of the 557 acres of 24 open space set aside as publicly owned or devoted to 25 community uses, because under Exhibit 23 it says that open</p> | <p style="text-align: right;">Page 204</p> <p>1 document?</p> <p>2 MR. LECHNER: The two DPAs.</p> <p>3 MS. ROBESON: I thought I had it on do not 4 disturb.</p> <p>5 MS. LEATHAM: I'm glad you can't hear mine from 6 all the way over there.</p> <p>7 MS. ROBESON: I do have it on do not disturb.</p> <p>8 MS. LEATHAM: I don't have that.</p> <p>9 MR. LECHNER: That might not have been -- okay. 10 Watch, I'll just leave that one out. We'll just use --</p> <p>11 MS. ROBESON: No, no, no. Slow down. Just slow 12 down for a moment. Let me get my phone on, it is on do not 13 disturb. I don't know.</p> <p>14 MR. LECHNER: Let's handle this one separately so 15 we can just --</p> <p>16 MS. ROBESON: Okay.</p> <p>17 MR. LECHNER: -- dispense with this one.</p> <p>18 MS. ROBESON: Slow down one second. So, I need to 19 understand what you're doing. What is this from?</p> <p>20 MR. LECHNER: Those are two pages from the 21 proposal provided to County Council July 28th, 1965.</p> <p>22 MS. LEATHAM: This was part of the application?</p> <p>23 MS. ROBESON: For which application, E-327?</p> <p>24 MR. LECHNER: 327.</p> <p>25 MS. ROBESON: Okay. What happened to 124?</p> |
| <p style="text-align: right;">Page 203</p> <p>1 space will consist of generally the following acreage and 2 quantities, Item No. 3 being golf course of standard 18-hole 3 design, 135 acres at that point in time.</p> <p>4 MS. ROBESON: And what are you reading from now?</p> <p>5 MR. LECHNER: Exhibit 22.</p> <p>6 MS. ROBESON: The Council --</p> <p>7 MR. LECHNER: This is the County Council 8 development plan. And I have that here, exhibit, I put that 9 125.</p> <p>10 MS. ROBESON: I think it's 124.</p> <p>11 MR. LECHNER: Oh, could be.</p> <p>12 MS. LEATHAM: What is this?</p> <p>13 MR. LECHNER: That was the one that has the 22 and 14 just right by the map.</p> <p>15 MS. LEATHAM: Well, what are the other pages, 16 though?</p> <p>17 MR. LECHNER: That's the map go over there.</p> <p>18 MS. LEATHAM: What's the third page?</p> <p>19 MR. LECHNER: So, the third page --</p> <p>20 MS. ROBESON: Why don't you go over and show her 21 the pages so you can --</p> <p>22 MR. LECHNER: I'm sorry. Maybe just to get them 23 straight away. This is a disaster. And this one, which was 24 the testimony by Mr. Kettler.</p> <p>25 MS. LEATHAM: Are these all from the same</p> | <p style="text-align: right;">Page 205</p> <p>1 MR. LECHNER: 124?</p> <p>2 MS. ROBESON: Is there a 124? I don't have a --</p> <p>3 MR. LECHNER: Oh.</p> <p>4 MS. LEATHAM: I don't have a 120 -- I just have 5 123 as the June 30th, '64 memo to the Planning Commission. 6 I don't have anything after that.</p> <p>7 MR. LECHNER: So, I have a page actually here for 8 124 from the earlier part that I read, but I skipped over 9 that.</p> <p>10 MS. ROBESON: Okay, don't --</p> <p>11 MR. LECHNER: This was to be --</p> <p>12 MS. ROBESON: -- don't skip, don't --</p> <p>13 MR. LECHNER: Okay.</p> <p>14 MS. ROBESON: -- don't skip. Okay. So, let's --</p> <p>15 what were you --</p> <p>16 MS. LEATHAM: Yes, I --</p> <p>17 MS. ROBESON: -- going to give us as 124?</p> <p>18 MR. LECHNER: This is a page from, back at, let's 19 see which one this was, again, 848's approval, this is, is 20 that page, it talks about the sentence that I read aloud, 21 and I can show it to Ms. Leatham.</p> <p>22 MS. ROBESON: Okay. This is what I would like you 23 to do, I'm not going to, this is a page from the Planning 24 Board's recommendation to approve, correct? I'm going to 25 take official notice if I can find the original document of</p> |

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| Page 206 | Page 208 |
| <p>1 the whole document.</p> <p>2 MR. LECHNER: Okay.</p> <p>3 MS. ROBESON: But we will let this single page in</p> <p>4 unless Ms. Leatham, make she knows --</p> <p>5 MS. LEATHAM: Can I see that? I don't know if</p> <p>6 I've seen that.</p> <p>7 MS. ROBESON: -- which page it is. And that was</p> <p>8 E-848? Or was that the -- one --</p> <p>9 MR. LECHNER: That's 848.</p> <p>10 MS. ROBESON: Okay.</p> <p>11 MS. LEATHAM: Wait a sec. I'm sorry. So, 124 is</p> <p>12 this single page?</p> <p>13 MR. LECHNER: Right.</p> <p>14 MS. ROBESON: It's excerpt from Planning Board</p> <p>15 recommendation.</p> <p>16 (Exhibit No. 124 was marked</p> <p>17 for identification.)</p> <p>18 MR. LECHNER: Again, I have like 250 pages from</p> <p>19 the microfilm and I didn't want to bring it all.</p> <p>20 MS. LEATHAM: This is E-848, right?</p> <p>21 MR. LECHNER: That's from 848.</p> <p>22 MS. ROBESON: Okay.</p> <p>23 MS. LEATHAM: Okay. Thank you.</p> <p>24 MS. ROBESON: Okay. So, then -- don't go yet.</p> <p>25 Bring that back here. Let's go to 125, what is 125? Which</p> | <p>1 MR. LECHNER: I got it from a friend of mine that</p> <p>2 worked in the Kettler Corporation for 30 years. This is</p> <p>3 Clarence Kettler's copy of the Montgomery Village plan.</p> <p>4 MS. ROBESON: Okay. All right. Well, so --</p> <p>5 MR. LECHNER: But it's all in 848.</p> <p>6 MS. ROBESON: Okay, so --</p> <p>7 MR. LECHNER: All in here in the public record.</p> <p>8 MS. ROBESON: Okay. Okay. All right.</p> <p>9 MS. LEATHAM: Wait, 848 or 327?</p> <p>10 MR. LECHNER: I'm sorry, 327.</p> <p>11 MS. LEATHAM: 327?</p> <p>12 MR. LECHNER: Now, I got me mixed up, too.</p> <p>13 MS. ROBESON: Okay. Is this from E-327 or --</p> <p>14 MR. LECHNER: Yes.</p> <p>15 MS. ROBESON: -- E-848?</p> <p>16 MR. LECHNER: 327.</p> <p>17 MS. ROBESON: So, 125 is an excerpt --</p> <p>18 MR. LECHNER: From the record of 848 -- I'm sorry,</p> <p>19 no, 125 is an excerpt from the two pages, Exhibit 22, on the</p> <p>20 plan for E-327.</p> <p>21 (Exhibit No. 125 was marked</p> <p>22 for identification.)</p> <p>23 MS. ROBESON: For Application from E --</p> <p>24 MR. LECHNER: Yes.</p> <p>25 MS. ROBESON: Okay.</p> |
| Page 207 | Page 209 |
| <p>1 is this.</p> <p>2 MR. LECHNER: Yes, those are two pages out of the</p> <p>3 development plan for 327, original, July 28th, 1965 to the</p> <p>4 County Council, and --</p> <p>5 MS. LEATHAM: This is the application, correct?</p> <p>6 MR. LECHNER: Okay. This was also in the hearing</p> <p>7 record of 848 way back in the back, but for clarity of</p> <p>8 scanning purposes I found the same text here, so I took that</p> <p>9 and I don't want to say that it was, because this text as</p> <p>10 Ms. Leatham pointed out it's a different font, it's much</p> <p>11 clearer, that's right, because I have the book, so I took</p> <p>12 the actual --</p> <p>13 MS. ROBESON: So, this is from the application for</p> <p>14 which --</p> <p>15 MS. LEATHAM: Well, I'm --</p> <p>16 MR. LECHNER: Montgomery Village.</p> <p>17 MS. LEATHAM: From, it's from that book?</p> <p>18 MR. LECHNER: Uh-huh.</p> <p>19 MS. LEATHAM: Which --</p> <p>20 MS. ROBESON: Why don't we just, can we take the</p> <p>21 book, or is that a public record?</p> <p>22 MR. LECHNER: Can I get it back?</p> <p>23 MS. ROBESON: Huh?</p> <p>24 MR. LECHNER: Can I get it back someday?</p> <p>25 MS. ROBESON: Well, where did you get the book?</p> | <p>1 MR. LECHNER: I'm sorry, you all have the right</p> <p>2 word, terminology here.</p> <p>3 MS. ROBESON: Okay. Keep going.</p> <p>4 MR. LECHNER: Okay. So, this page to quote from</p> <p>5 the text there that it states it is our plan the open space</p> <p>6 may best be developed by retaining substantial areas in</p> <p>7 private ownership, that the open space may best be developed</p> <p>8 by substantial area, oh, I'm sorry, I read that, through</p> <p>9 private clubs, one, landlords of apartments and commercial</p> <p>10 spaces, and three, now I might have mistyped that, let me</p> <p>11 just see if I have that as two, a carefully planned</p> <p>12 automatic homes association. I apologize, in my retyping I</p> <p>13 might have missed a word here. Oh, two is landlords and</p> <p>14 apartments and commercial; and then three was through a</p> <p>15 carefully planned automatic homes associations programs.</p> <p>16 This will permit the orderly scheduling and development of</p> <p>17 the two lakes, the 18-hole golf course, and other facilities</p> <p>18 as required. This is a list of the, it goes on to say a</p> <p>19 list of the recreational and cultural facilities is included</p> <p>20 in the appendix of the booklet.</p> <p>21 MS. ROBESON: Okay.</p> <p>22 MR. LECHNER: Okay.</p> <p>23 MS. ROBESON: And in the appendix what does it</p> <p>24 list?</p> <p>25 MR. LECHNER: A lot of things.</p> |

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| <p style="text-align: right;">Page 210</p> <p>1 MS. ROBESON: Okay. Don't list them. Just does 2 it list the golf course?</p> <p>3 MR. LECHNER: It does list the golf course. It 4 lists, let me just see here, schools, active racquetball 5 club, a riding trail academy, a boat club, swimming pools, 6 tennis courts.</p> <p>7 MS. ROBESON: No, just it lists the golf course?</p> <p>8 MR. LECHNER: Golf club. Ultimately to include a 9 pool, pro shop, bar --</p> <p>10 MS. ROBESON: Okay.</p> <p>11 MR. LECHNER: -- and restaurant, one 18-hole 12 regulation course --</p> <p>13 MS. ROBESON: Okay.</p> <p>14 MR. LECHNER: -- built by Kettlers, owned by 15 Kettlers to sell to private memberships in the future, 16 maintained by the owners, open to members 100 percent. Just 17 to note, the swimming pools are also identified as open to 18 members 100 percent.</p> <p>19 MS. LEATHAM: Can this --</p> <p>20 MR. LECHNER: Same with tennis courts.</p> <p>21 MS. LEATHAM: I don't know if this document is in 22 the public record or not?</p> <p>23 MS. ROBESON: Now, that's what -- if we -- okay, 24 this is what I'll do, this needs to be in the public record.</p> <p>25 MR. LECHNER: Uh-huh.</p> | <p style="text-align: right;">Page 212</p> <p>1 that for marking purposes only. Where did you get that, Mr. 2 Lechner?</p> <p>3 MR. LECHNER: It was provided to me by Mr. George 4 Ahben (phonetic sp.), who was one of the chief engineers and 5 project managers for the Kettler Corporation.</p> <p>6 MS. ROBESON: Okay. I'm just going to mark it for 7 the time-being Count Council testimony for E-327.</p> <p>8 MS. LEATHAM: Okay.</p> <p>9 MS. ROBESON: Yes, you can take me there.</p> <p>10 MR. LECHNER: The significance --</p> <p>11 MS. ROBESON: Not yet.</p> <p>12 MR. LECHNER: Okay.</p> <p>13 MS. LEATHAM: Give me two minutes.</p> <p>14 MR. LECHNER: Sure.</p> <p>15 MS. ROBESON: Okay. How many more documents are 16 you going to refer to?</p> <p>17 MR. LECHNER: Seven.</p> <p>18 MS. ROBESON: Seven?</p> <p>19 MR. LECHNER: Hold on. Seven plus all three of 20 the DPAs that Ms. Leatham provided already as a record, so 21 02-2 --</p> <p>22 MS. ROBESON: Okay, those are already in the 23 record.</p> <p>24 MR. LECHNER: Yes.</p> <p>25 MS. ROBESON: And okay, tell me the documents.</p> |
| <p style="text-align: right;">Page 211</p> <p>1 MS. ROBESON: If you want it copied we can copy it 2 downstairs, but I think it's better to have it come in as an 3 exhibit, I'll give you the original back.</p> <p>4 MR. LECHNER: That will be fine.</p> <p>5 MS. ROBESON: And then, so instead of 125 being 6 this excerpt, what is that document called?</p> <p>7 MR. LECHNER: Montgomery Village, Gaithersburg, 8 Montgomery County, Maryland. Montgomery County Council 9 Hearing.</p> <p>10 MS. ROBESON: Let me see it. How many more of 11 these do you have?</p> <p>12 MR. LECHNER: Just one of those.</p> <p>13 MS. ROBESON: No, no, how many more exhibits?</p> <p>14 MR. LECHNER: Individual exhibits, like scattered 15 from the hearing records, there's one more section from 848 16 where there's a couple of different pages, and then one 17 other section too that talks about the economic benefits.</p> <p>18 MS. ROBESON: Okay, this is -- okay. This is his, 19 this is someone, I guess Clarence Kettler -- come here, Ms. 20 Leatham.</p> <p>21 MS. LEATHAM: Yes, if we can make things easier, 22 we'll stipulate that there is a golf course in the original 23 proceeding. We don't need --</p> <p>24 MS. ROBESON: Well, I don't know what that means. 25 There is a golf course. I tell you what, I'm going to mark</p> | <p style="text-align: right;">Page 213</p> <p>1 MR. LECHNER: Two of them are we'll say random 2 pages from the hearing record of 848.</p> <p>3 MS. ROBESON: And when you say hearing record what 4 is that?</p> <p>5 MR. LECHNER: It's the, it was on the microfilm 6 for case 848, and it's the testimony and the exhibits 7 basically that went along with that development plan --</p> <p>8 MS. ROBESON: And do you know --</p> <p>9 MR. LECHNER: -- application.</p> <p>10 MS. ROBESON: -- exactly which documents they came 11 from?</p> <p>12 MR. LECHNER: No.</p> <p>13 MS. ROBESON: Okay. And that's one, where's the 14 others?</p> <p>15 MR. LECHNER: In one case I do. The other is a 16 letter provided to the Maryland State Attorney General's 17 Office.</p> <p>18 MS. LEATHAM: I'm objecting to that as irrelevant.</p> <p>19 MS. ROBESON: And what's the relevance of that, 20 Mr. Lechner?</p> <p>21 MR. LECHNER: Not being a legal expert I asked 22 through my delegate, State Delegate if there was a way to 23 get clarity on what constitutes a real covenant in the State 24 of Maryland as far as documentation, and they provided a 25 response with a lengthy definition of terms, and clarity as</p> |

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| <p style="text-align: right;">Page 214</p> <p>1 well as to the requirements are not for recording of such 2 documents.</p> <p>3 MS. ROBESON: Is it the Applicant's position that 4 there's nothing restricting the golf course?</p> <p>5 MS. LEATHAM: Yes, the Applicant's position is, 6 and in fact we're happy to submit additional information 7 with respect to title, but there's no covenant on the golf 8 course, in fact, the Montgomery Village Foundation 9 declaration doesn't even encumber this particular property.</p> <p>10 MS. ROBESON: Then what is what I see in the 11 record saying it's going to be a golf course that I think 12 they're exhibits maybe 77.</p> <p>13 MR. LECHNER: Is that the 1980 contract?</p> <p>14 MS. ROBESON: There's a set of covenants in the 15 record, what is that from the Applicant's perspective?</p> <p>16 MS. LEATHAM: There's a sales agreement, and 17 there's the letter in 77, there's been a lot of allegations 18 that there are covenants, but there are none, and we can, 19 this is probably a legal argument, whatever the sales 20 contract says is one thing, but that contract merges into 21 the deed, and if it's not in the deed or not independently 22 recorded on a document there is no covenants. So, we can 23 look at all these documents, there may have been an intent 24 in maybe the first iteration of that particular sales 25 contract, but maybe there were amendments to that, we don't</p> | <p style="text-align: right;">Page 216</p> <p>1 it as Exhibit 126. 2 (Exhibit No. 126 was marked 3 for identification.)</p> <p>4 MS. LEATHAM: What was 125 5 MS. ROBESON: That is this two -- 6 MS. LEATHAM: Oh, right, right. I'm sorry. 7 MS. ROBESON: Now, let's see your letter from the 8 A.G. 9 MR. LECHNER: That one I didn't get a paper copy 10 of. 11 MS. ROBESON: So, you're just going to testify to 12 it? 13 MR. LECHNER: Correct. I have what I'd written 14 down. 15 MS. LEATHAM: I have a paper copy. All it says is 16 it's a law school summary of what it takes to make a real 17 covenant, it doesn't apply to this case, it's not an 18 opinion, an official A.G. opinion -- 19 MS. ROBESON: Okay. I'm not -- 20 MS. LEATHAM: -- it's just a letter. 21 MS. ROBESON: I'm not at argument yet. Just bring 22 it in. Okay. So, this is a letter, it's not technically an 23 opinion, it's a letter of advice from the Attorney General, 24 and that will be 127. 25 (Exhibit No. 127 was marked</p> |
| <p style="text-align: right;">Page 215</p> <p>1 know, all we know if that nothing was recorded to restrict 2 the use of this property.</p> <p>3 MS. ROBESON: Well, you know, if it's an issue, 4 and you're saying, what, that it is a covenant, what is the 5 covenant?</p> <p>6 MR. LECHNER: I am providing the written response 7 from the State of Maryland Attorney General's Office about 8 the, the definitions of covenants, and that they do not 9 actually have to be recorded in the deed. And whether or 10 not this particular document is a covenant or not I think 11 it's a question of viewpoint interpretation, I believe it 12 is, but I'm not a lawyer.</p> <p>13 MS. ROBESON: So, the document that you know of 14 that you contend restricts it as a golf course is this 15 sales, is Exhibit 77B in our record?</p> <p>16 MR. LECHNER: One of two documents.</p> <p>17 MS. ROBESON: Okay, what's the other document?</p> <p>18 MR. LECHNER: That's the Gaithersburg Master Plan.</p> <p>19 MS. ROBESON: Okay. All right. I'm going to let 20 his -- okay. I'm going to take this in --</p> <p>21 MS. LEATHAM: Is that number 125?</p> <p>22 MS. ROBESON: -- and we'll control the copying. 23 We'll make the copy, not today, though,</p> <p>24 MR. LECHNER: That's fine.</p> <p>25 MS. ROBESON: I'm going to take this in and mark</p> | <p style="text-align: right;">Page 217</p> <p>1 for identification.)</p> <p>2 MS. LEATHAM: Are we -- I still object to its 3 submission in that it's not relevant to the DPA at all.</p> <p>4 MS. ROBESON: I understand that, and I will let it 5 in and give it the weight it deserves. What else do you 6 have, Mr. Lechner?</p> <p>7 MR. LECHNER: There were two other items, one of 8 which was a copy of the Druid Hill legal opinion, State of 9 Maryland, about a cemetery in Baltimore, and this case was 10 about whether or not a changing economic situations and 11 conditions would allow sufficient change in status or terms 12 that would remove a real covenant, such as the decline in 13 golf courses.</p> <p>14 MS. ROBESON: Okay. Well, I -- though we're not 15 the -- whether the covenant isn't or, isn't enforceable 16 isn't really in front of me --</p> <p>17 MR. LECHNER: Okay.</p> <p>18 MS. ROBESON: -- whether it could be abrogated or 19 not isn't in front of me, that you would have to argue with 20 the Circuit --</p> <p>21 MR. LECHNER: Okay, very good.</p> <p>22 MS. ROBESON: -- to the Circuit Court.</p> <p>23 MR. LECHNER: I'd be happy to withdraw and strike 24 it from my testimony.</p> <p>25 MS. ROBESON: Okay. And what's your next one?</p> |

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| <p style="text-align: right;">Page 218</p> <p>1 MR. LECHNER: The other one was a case regarding 2 Skyline Woods Golf Course, and that one had to do with the 3 golf course that was sold in a bankruptcy proceeding, and 4 whether or not the real covenants that encumbered the 5 property were removed by the bankruptcy proceeding or not. 6 MS. ROBESON: Are these case law citations? Do 7 you have the citations? 8 MR. LECHNER: Actually, I have the whole case. 9 MS. ROBESON: I know, but you don't have to 10 introduce it as evidence, you can argue from it if you have 11 the citations. 12 MR. LECHNER: Okay. 13 MS. LEATHAM: But this last Skyline Woods case is 14 from Nebraska. 15 MS. ROBESON: Yes -- 16 MR. LECHNER: True. 17 MS. ROBESON: -- but he can still argue, I mean, I 18 can't exclude a case as, we're talking evidence now, not 19 whether the argument's a winner or not, okay? 20 MR. LECHNER: Uh-huh. 21 MS. ROBESON: It's not evidence, it's a legal 22 precedent, and you can cite to it. 23 MR. LECHNER: I did not understand that. 24 MS. ROBESON: That's okay. You don't have to give 25 me the evidence. Okay. So, you can cite to those two --</p> | <p style="text-align: right;">Page 220</p> <p>1 of the properties. 2 On page 61 of the hearing record, 848, it further 3 explains the importance of restrictive covenants in 1968 4 stating we have incorporated with the Montgomery Village 5 Foundation in various forms corporations within Montgomery 6 Village that are designed to own and maintain the open space 7 and private streets, ensuring that such open space is 8 permanently devoted to community use. Prior to recording, 9 legal documents were reviewed and approved by the County 10 Attorney's Office, and by the General Counsel of the 11 Maryland National Capital Park and Planning Commission. 12 This further shows that the Montgomery County's endorse of 13 the concept of private entity ownership and maintenance of 14 common spaces in Montgomery Village. Note that the 15 largest -- not in my written comments, but the largest 16 amount of space is owned by Montgomery Village Foundation as 17 a private entity. 18 On page 19 of the hearing record for 848 it says 19 that the golf course was opened and doing well on June 5th, 20 1968 when the Kettler Brothers proposed amending the 21 Montgomery Village Plan by DPA E-858 to add 100 -- actually, 22 it's 848, not 858, I apologize, to add 155 acres and 23 increase the Montgomery Village population density. The 24 subsequent approval of every DPA appears to indicate that 25 the Planning Board thought that the Gaithersburg East Master</p> |
| <p style="text-align: right;">Page 219</p> <p>1 MR. LECHNER: Uh-huh. 2 MS. ROBESON: -- all right? 3 MR. LECHNER: And then I have comments regarding 4 the three DPAs that Ms. Leatham had submitted, and had 5 attached a day or two ago. 6 MS. ROBESON: Now, are those comments? Those are 7 comments, though? 8 MR. LECHNER: I have comments against those, yes. 9 MS. ROBESON: Okay. So, we're back to your -- 10 MR. LECHNER: That's easier. 11 MS. ROBESON: -- statement. So, let's go back to 12 your statement. 13 MR. LECHNER: Okay. 14 MS. ROBESON: We've got what we're going to put in 15 the record, go ahead. 16 MR. LECHNER: Okay. So, let's see, where were we? 17 MS. ROBESON: I think you were at 327. 18 MR. LECHNER: Yes, back up in there. 19 MS. ROBESON: Uh-huh. 20 MR. LECHNER: So, schedule development, golf 21 course. Thus, we see that the primary motivation for the 22 developer in proposing a large town sector's own project 23 that they save the tax payer both construction and 24 maintenance funding, and the County government was quite 25 complicit in the arrangement as far as the private ownership</p> | <p style="text-align: right;">Page 221</p> <p>1 Plan was sufficient to protect the private recreation 2 conservation status of Montgomery Village golf course. And 3 actually I have to temper that because the Gaithersburg East 4 Master Plan was a 1985 document, but that was, there are 5 several DPAs that Ms. Leatham submitted after 1985 which 6 were involved with that Master Plan. 7 I believe, my feeling, that if the Maryland 8 National Capital Park and Planning Commission felt the 9 property was permanently protected for its intended use as 10 private recreation conservation in perpetuity, which seems 11 to be a strong endorsement of the 1985 Gaithersburg Master 12 Plan's map to approval of these DPAs. Indeed, almost every 13 property in Montgomery Village is covered by some sort of 14 covenant, these allow the local Montgomery Village 15 Foundation to control the architecture, setbacks of the 16 homes, other home improvements, such as the color of the 17 paint, what kind of door. Although they are agreements 18 between the buyers and, the buyers, the buyers and sellers, 19 actually, the County never signs these agreements, they are 20 all used to control land use in Montgomery Village. I am 21 not allowed to start raising livestock or chickens in my 22 backyard because of these covenants; I cannot change the 23 color of paint I use on my house. Here's an example of 24 these, a covenant of a homeowners association, and that was 25 one of the other ones that was here, not this one, but</p> |

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| <p style="text-align: right;">Page 222</p> <p>1 actually, I'll just say instead that there are many examples 2 of recorded covenants for Montgomery Village Foundation that 3 control what goes on.</p> <p>4 When selling the golf club to Mr. Doser, the 5 Kettler Brothers tried to permanently protect that land in 6 perpetuity as required by the County Code 104-19 alpha by 7 creating the strong restrictive covenant, real covenant with 8 Mr. Doser in the form of a sales contract and establish the 9 terms that were, quote, unquote, binding on all heirs and 10 assigns, and this is in Exhibit 77 on the record. As the 11 Kettler Company owns the land and was selling it to Mr. 12 Doser it clearly had proper horizontal privity, the contract 13 is an example of the type of restriction or other document 14 set in place to protect open space nature of the property. 15 As such, I ask the Hearing Examiner to fully consider this 16 during the hearing. The document was provided by Mr. David 17 Humpton of the Montgomery Village Foundation via e-mail, it 18 was apparently stored in the desk cabinet of a Staff member 19 at Montgomery Village Foundation, that's where it came from. 20 I also ask, and here we go to the State Attorney 21 General's Office for clarity on what to find is a real 22 covenant in Maryland. The response was, this was via a 23 constituent service request to my State Delegate, that the 24 Court of Appeals has explained the four elements necessary 25 to create a covenant that run with the land; one, the</p> | <p style="text-align: right;">Page 224</p> <p>1 additional 155 acres to the town sector zone, and proposed 2 revisions to the eastern portion of the Village plan to 3 allow a higher density of development, that argument was 4 rejected when the Examiner of that case stating that 5 although the town sector zone allowed 15.0 people per acre 6 of population density, the actual density depended on many 7 factors, and the full allowance was not a right, that 8 decision left the area east of the golf course at a 9 population density of 2.63 persons per acre, not the 15.0 10 that is being proposed in this project. That has to do with 11 the questions I was asking about North Village, Middle 12 Village, and South Village, this is concerning the North 13 Village Section.</p> <p>14 MS. ROBESON: Well, they're asking, sorry, they're 15 asking for on this particular site as I read their 16 application they're asking for 4.9 acres, but for the whole 17 Montgomery Village, all 25 or 400 acres, the overall density 18 is 15.</p> <p>19 MR. LECHNER: 15.0. In the record of, I'll go off 20 my comments, in the record on 848 there was an extensive 21 discussion on the change of density across Montgomery 22 Village, it's as high as 17 or 18 in the portion by the 23 highway, and then down to approximately 10 or nine in the 24 area to the far eastern side. It's like a sloping, and that 25 was designed on purpose, and that is very evident in E-848.</p> |
| <p style="text-align: right;">Page 223</p> <p>1 covenant touch and concern the land; two, the original 2 covenanting parties intend the covenant to run; three, there 3 be some privity of estate; and four, the covenant be in 4 writing, and then there's a cite there County Com-something, 5 St. Charles Associates.</p> <p>6 The letter also states that although covenants 7 that run with the land may typically be recorded as part of 8 the deed of the property, it appears that as long as the 9 covenant is in writing as a part of a public record it does 10 not necessarily have to be recorded as part of the deed of 11 the property. The 1980 sales contract appears to meet the 12 requirements of a valid and real covenant, I will add, 13 pending the method of it being a public record.</p> <p>14 And I note that we asked questions earlier about 15 the 2006 attempt to develop the property. Actually, the 16 proposed project, this one, DPA 15-01, would increase the 17 population density in this portion of Montgomery Village, 18 but this issue of increased density in this portion of the 19 Village was already decided by an OZAH Hearing Examiner -- 20 (Whereupon, audio portion missing, backup audio 21 used.)</p> <p>22 MR. LECHNER: -- in a previous case, DPA E-848. 23 And I believe no substantial changes in circumstances have 24 occurred since that case was decided. In 848 the Village 25 development company, Kettler Brothers, was adding an</p> | <p style="text-align: right;">Page 225</p> <p>1 The previous decision of E-848 should preclude 2 consideration of this case as the only factor that has 3 changed, the transfer of ownership of the private 4 recreation/conservation property and the golf club to a new 5 owner. If the government allowed the same case to be 6 presented by new owners it would encourage those that lost a 7 hearing to sell the property and let the new owners try and 8 request the same change in zoning. The Maryland National 9 Capital Park and Planning Commission Planning Board has not 10 done a detailed markup for this proposal, and recommended 11 deferring it, but if it did markup a proposal I would expect 12 them to state that it sets a bad precedent to develop land 13 to previously protect in perpetuity, and that if it were 14 developed the 2.5 people per acre, and 3.0 people per 15 townhouse would indicate that the 17 acres would result in 16 only 40 townhomes.</p> <p>17 The next paragraph in my written comments I'll 18 strike.</p> <p>19 MS. ROBESON: No, you don't have to strike them, 20 you just don't have to introduce the case.</p> <p>21 MR. LECHNER: Oh, I see. Okay. So, I'm also 22 providing a copy of the, that reference, I'm also 23 referencing the Druid Hill legal opinion, legal case, in 24 that case a property owner wanted to convert a portion of a 25 cemetery in downtown Baltimore into housing, arguing that</p> |

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| <p style="text-align: right;">Page 226</p> <p>1 the intended use of a cemetery was no longer essential or 2 economically beneficial. The Court ruled against that 3 applicant stating that a change in economic conditions was 4 not sufficient grounds for removal of a restricted real 5 covenant. This is my summary description of the case, not a 6 quote. In fact, Montgomery Village Golf Course bankruptcy 7 data showed that without a substantial debt service sucking 8 the cash flow of the operation the golf course was doing 9 quite well.</p> <p>10 Just in the --</p> <p>11 MS. ROBESON: Don't laugh, please. You're an 12 attorney, not everyone is. Go ahead, Mr. --</p> <p>13 MR. LECHNER: Certainly. Just in case the issue 14 of bankruptcy proceedings is considered important to the 15 restricted, then I am also including, reciting the Skyline 16 Woods legal case that involved a golf course sold at 17 bankruptcy auction, that case held that the bankruptcy 18 proceedings do not erase or remove a set of restrictive real 19 covenants that protected the golf course property, and the 20 development of the property in that particular case do not 21 proceed.</p> <p>22 Regarding the three DPAs that the Applicant has 23 submitted as justification for the precedent of making 24 amendments to the development plan for the Village, all 25 three of these DPAs, 88-01, 02-2, and 01-4 involve a</p> | <p style="text-align: right;">Page 228</p> <p>1 Planning Board, Maryland National Capital Park and Planning 2 Commission, reference page one, DPA 88-1, and quotes nearly 3 verbatim from the text of 104-19A, it appears that the 4 Planning Commission then was certifying once again that 5 eight years after Mr. Doser had purchased the golf club the 6 protection of open space and quasi-public spaces in 7 Montgomery Village were being adequately protected in 8 perpetuity for their intended use in that particular area. 9 Not the gold course, but over here where the ball park was. 10 What the three DPAs do show, though, is that the County 11 government is willing to make changes to the development 12 plan, that change the use of the land within the town sector 13 zone in some cases. But a careful reading of 104-19A shows 14 that the phrase in perpetuity applies to land that is 15 intended for common or quasi-public use, but not proposed to 16 be in public ownership. School sites are intended for 17 public ownership when the school is constructed. I asked 18 questions about whether they were public schools, Montgomery 19 County public schools and the answer was affirmed. 20 Paragraph one, item F addresses the school sites as the 21 sites of all public schools, parks, playgrounds, and other 22 community facilities, that's in the town sector words there, 23 there's actually wording there about public schools, parks, 24 and playgrounds, should be shown in the, is that those 25 should be shown in the preliminary plan. So, it appears</p> |
| <p style="text-align: right;">Page 227</p> <p>1 conversion of school sites for other uses, namely commercial 2 offices, 02-02; apartment housing, 01-4; and a mix of 3 recreational space and residential housing, 88-01. However, 4 as noted on page two of DPA 02-2 the following, it was 5 provided in exhibit number, I don't recall here, that the 6 Gaithersburg, it says that the Gaithersburg Vicinity Master 7 Plan allows that sites designated for school use may become 8 available for other uses in the future, it actually says 9 that. As stated on page eight of DPA 01-4, quote, it is 10 important that at least a portion of each undeveloped school 11 site be transferred to the Montgomery Village Association 12 for field sport recreation if the site is not needed for 13 school construction. In that particular case, 01-4, a small 14 portion of recreational space was actually transferred, or 15 identified there. But apparently, there's no similar 16 provision for transferring private recreation/conservation 17 land to other uses in the text of the Gaithersburg Vicinity 18 East Master Plan. So, the use of these three DPAs as a 19 basis to support DPA 15-01 I believe is incomplete or 20 somewhat misleading.</p> <p>21 We note that DPA 88-01 quotes nearly verbatim from 22 the text of 104-19 alpha, that town sector zone, by stating 23 that homeowner documents will adequately assure a method of 24 perpetual maintenance of recreation, common or quasi-public 25 hearings. Given that 88-1 was approved by the, again, the</p> | <p style="text-align: right;">Page 229</p> <p>1 that sites with common use land, such as the banks of Lake 2 Whetstone, or North Creek Lake, or quasi-public space, such 3 as the Montgomery Village Gold Club, which was open to 4 anyone that could pay the membership fee, or the Montgomery 5 Village swimming pool properties which are open to residents 6 and any family in the County that can pay the \$435 per year 7 membership fee, are protected in perpetuity unless the 8 County Council wishes to modify 104-19A, or approve a 9 project that does not comply with the rules it established 10 at the time for town center projects in '67.</p> <p>11 I will go off record again and recognize this is 12 the old language that was in existence for many years, and 13 what exactly the new language is I can't quite tell. I was 14 trying, but couldn't quite tell. But the meaning to me of 15 the old language simplistically seems quite clear.</p> <p>16 Lastly, regarding the timing of this application, 17 the new Master Plan for this community is --</p> <p>18 (Return to original audio.)</p> <p>19 MR. LECHNER: -- being reviewed, and the first 20 public hearing is to be held in three weeks on September 21 10th. The County Government works very hard to obtain 22 community input in this process, and making a decision on 23 this project before the first public hearing, any final 24 public hearing, or a vote by the elected County Council to 25 approve a new plan would preclude meaningful public inputs</p> |

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| <p style="text-align: right;">Page 230</p> <p>1 and send a strong message to residents that their inputs are 2 not important. As this property is one of the main issues 3 of that, that started the process of drafting a new Master 4 Plan, quickly deciding to develop part of it in piecemeal 5 and in violation of County Codes, the old County Codes 6 written to protect its status in perpetuity is not in the 7 interest of either the County government or the residents, 8 in my opinion.</p> <p>9 In 104-19A the County Council put strong language 10 in perpetuity in place to protect residents that were 11 purchasing their homes, the largest single investment most 12 of them will ever make, and the primary component of their 13 retirements plans for many of them. This protection was 14 reasonable given that they were often getting charged a 15 premium and then paying higher taxes due to the location of 16 the home sited near a major amenity or open space, such as a 17 lake or a golf course. This was in effect a solemn pledge 18 to help protect that premium nature of that purchase. This 19 section, again 19A, 104, 104-19A, created a process where 20 real covenants replaced normal zoning regulations, and the 21 County was completely in agreement with that process, and 22 complicit in their creation at the time.</p> <p>23 For these reasons I hope the Examiner will 24 consider my apologies for this lengthy review of all of this 25 relevant material, or possibly relevant material, and make a</p> | <p style="text-align: right;">Page 232</p> <p>1 adopts the Master Plan?</p> <p>2 MR. LECHNER: I think if the issues are clear cut 3 as proposed delaying the decision does not do either the 4 Applicant or the residents any big favors. I think that 5 the, personally, we talked to a lot of residents, and I get 6 the feeling this has divided the community, not necessarily 7 evenly, but there are a large number of people that do 8 support the project, and a large number of people we talked 9 to that do not support the project, and it doesn't break 10 down by age, but it sort of does. Moving the process along 11 quickly would be beneficial to the community, however, this 12 would set a strong precedent, and I do not think moving it 13 so quickly as to be ahead of the decision process is 14 essential, actually. It's going to be fall, the property, 15 the grass is already long at this point, and once the cold 16 weather comes it will actually start to look a little better 17 when it's yellow. May be a fire hazard, but the critters 18 are out there.</p> <p>19 MS. ROBESON: Okay. All right. Any questions 20 based on my questions, Ms. Leatham?</p> <p>21 MS. LEATHAM: No.</p> <p>22 MS. ROBESON: All right, thank you, Mr. Lechner.</p> <p>23 Okay. Ms. Leatham, it's your rebuttal.</p> <p>24 MS. LEATHAM: All right. I should recall Mr. 25 Hines. I guess I want to reiterate that the existence or</p> |
| <p style="text-align: right;">Page 231</p> <p>1 recommendation to the County Council consistent with its 2 strong previous traditions of protecting the approximately 3 400 middle class homeowners that own property abutting the 4 Montgomery Village Golf Club, while affording the current 5 property owner the opportunity to bring back a project 6 proposal in the future that is consistent with the option 7 that residents identified in the MVF approved vision 2030 8 plan, which both preserves the intended purpose of the 9 property, and preserves the value of the 140 acres of 10 recreational use, while it also builds a single residential 11 building or something similar, and contains a mix of owned, 12 rented residential uses, premium office spaces, restaurant, 13 and supports a recreational use of the fairway portions of 14 the property, what I would like to see there. And that's 15 the end.</p> <p>16 The next few pages I will not read, but they were 17 notes taken from the different DPAs and that are dated, some 18 of which are, may be interesting but I felt not quite as 19 relevant to the material.</p> <p>20 MS. ROBESON: Thank you. Anyone who delves into 21 that microfiche down there is dedicated. Ms. Leatham, any 22 cross-examination?</p> <p>23 MS. LEATHAM: No.</p> <p>24 MS. ROBESON: So, is it your feeling that this 25 decision should be postponed till after the County Council</p> | <p style="text-align: right;">Page 233</p> <p>1 non-existence of any real covenants on the property --</p> <p>2 MS. ROBESON: Okay. This isn't the time for 3 arguments.</p> <p>4 MS. LEATHAM: Okay. So, I'm going to ask --</p> <p>5 MS. ROBESON: I get that.</p> <p>6 MS. LEATHAM: Okay.</p> <p>7 MS. ROBESON: I really do.</p> <p>8 MS. LEATHAM: Okay. All right. Just to put a pin 9 in it based on your attorney's evaluation of the title of 10 the property are there any covenants restricting use of this 11 property?</p> <p>12 MR. HINES: There are no covenants --</p> <p>13 MS. LEATHAM: Okay.</p> <p>14 MR. HINES: -- restricting use.</p> <p>15 MS. LEATHAM: And when you purchased the property 16 out of bankruptcy what happened?</p> <p>17 MR. HINES: So, we purchased the property pursuant 18 to a U.S. Bankruptcy Court order that sold the property only 19 limited to the exceptions listed in the purchase contract, 20 and in an exhaustive manner restricted any other claims, 21 easements, covenants of any type whatsoever, and it went on 22 and on to cover essentially any potential claim.</p> <p>23 MS. LEATHAM: When you purchased the property it 24 was still being used as a golf course, how many members were 25 there of the course, and how many lived in Montgomery</p> |

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| <p style="text-align: right;">Page 234</p> <p>1 Village?</p> <p>2 MR. HINES: There were approximately 150 members</p> <p>3 when we purchased it, and it was less than 24, I think the</p> <p>4 number might have been 22 members that lived in Montgomery</p> <p>5 Village, which is a community of about 40,000 people.</p> <p>6 MS. LEATHAM: Okay. Based on your knowledge of</p> <p>7 the Kettler Brothers were they sophisticated developers?</p> <p>8 MR. HINES: Yes, they were.</p> <p>9 MS. LEATHAM: If they wanted to record a document</p> <p>10 against the property do you, based on the documents that</p> <p>11 were recorded do you think they would have done it, or would</p> <p>12 they have known how to do it?</p> <p>13 MR. HINES: Yes, in fact the purchase agreement</p> <p>14 that's been referenced reserved certain rights for the</p> <p>15 seller to record covenants, and they did in fact record some</p> <p>16 covenants associated with I believe it was utility easements</p> <p>17 and so forth, but they for whatever reason they elected not</p> <p>18 to record a covenant associated with the restrictive use.</p> <p>19 MS. LEATHAM: Did they know how to market?</p> <p>20 MR. HINES: Yes. I think they did.</p> <p>21 MS. ROBESON: That's --</p> <p>22 MS. LEATHAM: Well, I want to address the letter</p> <p>23 that was sent out to the residents.</p> <p>24 MS. ROBESON: I see. Okay, go ahead.</p> <p>25 MS. LEATHAM: So, how was that letter to the</p> | <p style="text-align: right;">Page 236</p> <p>1 the bankruptcy court, he clearly believed that he could</p> <p>2 develop this property.</p> <p>3 MS. LEATHAM: That's all.</p> <p>4 MS. ROBESON: Anything else you want to -- I have</p> <p>5 a question as to timing. I guess I'm a little confused as</p> <p>6 to why proceed with this local map amendment when you have a</p> <p>7 parallel process that basically is fairly clear cut, at</p> <p>8 least at this stage, why proceed through this now? Why not</p> <p>9 wait and let the Master Plan process take its course?</p> <p>10 MR. HINES: Well, first of all we'd have to sort</p> <p>11 of back up the history. We were pursuing a very specific</p> <p>12 course of action, a zoning text amendment that ultimately</p> <p>13 would lead to a DPA with the community, and after we got</p> <p>14 their positive response to our plans then the idea of doing</p> <p>15 the Master Plan was inserted and that added another 18</p> <p>16 months to the process, so we had already been delayed a</p> <p>17 significant amount of time, and frankly, while there are a</p> <p>18 number of people on staff and position of leadership who are</p> <p>19 confident in sort of the timeliness of this Master Plan, and</p> <p>20 in the outcome of it and so forth, we should probably be</p> <p>21 forgiven for being not so confident that things are going to</p> <p>22 proceed in a timely manner. For example, we have folks who</p> <p>23 are fighting tooth and nail to delay both this process and</p> <p>24 the Master Plan process, and making claims that from my</p> <p>25 standpoint are, you know, unfounded. So, I mean, you can</p> |
| <p style="text-align: right;">Page 235</p> <p>1 residents?</p> <p>2 MR. HINES: So, the 1980 letter to residents was</p> <p>3 to I think make sure that folks weren't concerned about the</p> <p>4 sale of the property. Obviously, the Kettlers were in the</p> <p>5 business of developing this community, and they intended to</p> <p>6 continue to develop homes in 1980, so they sent out this</p> <p>7 letter which was essentially a marketing letter that's been</p> <p>8 held before us since after we purchased the property it was</p> <p>9 presented to us as some sort of covenant, when in fact it's</p> <p>10 an agreement between some third party from 35 years ago that</p> <p>11 has nothing to do with our property. As I said, it's a</p> <p>12 marketing letter to make sure that the community members</p> <p>13 still believe that the Kettlers intend to develop a quality</p> <p>14 community by turning this golf course over to a third party.</p> <p>15 Mr. Doser who was the purchaser in 1980, the subject of that</p> <p>16 letter, he owned the property until he filed bankruptcy with</p> <p>17 us, and, you know, as long as 10 years ago as Mr. Lechner</p> <p>18 pointed out he had been talking about redeveloping this</p> <p>19 property, and then obviously the community worked in vision</p> <p>20 2030 on plans that included one scenario where they would</p> <p>21 have the property redeveloped, and none of these matters</p> <p>22 came up at that time in terms of the restriction, so-called</p> <p>23 restrictive covenants. So, the man who in theory had the</p> <p>24 most knowledge about this, he was the purchaser and then</p> <p>25 ultimately he wasn't the seller, he was the debtor, but, in</p> | <p style="text-align: right;">Page 237</p> <p>1 see that we have significant risk associated with this</p> <p>2 project, and since we have, we've always said we'd try to</p> <p>3 align ourselves with the community, we are aligned, and I</p> <p>4 think the community has a similar risk with the golf course</p> <p>5 being closed, we kept it open for two years and took the</p> <p>6 losses associated with that, but we closed it when the</p> <p>7 Master Plan process began because at that point we had, it</p> <p>8 was no longer something that we could identify what the</p> <p>9 schedule's going to be. So, we've been told a number of</p> <p>10 times, and it makes me feel good to hear it, that the Master</p> <p>11 Plan process is proceeding, and it's proceeding relatively</p> <p>12 on schedule, it got four months behind very quickly, but it</p> <p>13 seems to have remained four months behind, so that's</p> <p>14 encouraging, but there are any number of risks that could</p> <p>15 come up, some issue that has nothing to do with this, it</p> <p>16 could be the Village Center, for example, that there's a</p> <p>17 fight over that. So, again, I think as a prudent owner it</p> <p>18 makes sense for us to continue to pursue this, and the other</p> <p>19 reason is this is what we told the Montgomery Foundation we</p> <p>20 would do, and they're behind this, as well. So, we would</p> <p>21 essentially be continuing the position to folks who have not</p> <p>22 been supportive to us, you know, to the detriment of the</p> <p>23 people who have been supportive of us.</p> <p>24 MS. ROBESON: Okay. All right. Anything else for</p> <p>25 Mr. Hines?</p> |

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| <p style="text-align: right;">Page 238</p> <p>1 MS. LEATHAM: No. 2 MS. ROBESON: Mr. Lechner? 3 MR. LECHNER: Am I able to ask him a question or 4 two -- 5 MS. ROBESON: You can have -- 6 MR. LECHNER: -- regarding what he said? 7 MS. ROBESON: -- questions based on what I just 8 asked him. 9 MR. LECHNER: Not based on what he answered to Ms. 10 Leatham? 11 MS. ROBESON: Yes. Yes. 12 MR. LECHNER: Okay. Okay. Just a question, how 13 many employees in Monument Realty total? 14 MS. LEATHAM: I didn't ask anything about number 15 of employees. 16 MR. LECHNER: Okay. Well, the other question 17 then, is Monument Realty a sophisticated realty company? Do 18 you consider your organization to be -- 19 MR. HINES: Yes. 20 MR. LECHNER: -- Thank you. Okay. That's all. 21 Thank you. 22 MS. ROBESON: Okay. Any other witnesses? 23 MS. LEATHAM: Yes. 24 MS. ROBESON: You may be excused. 25 MR. HINES: Thank you.</p> | <p style="text-align: right;">Page 240</p> <p>1 about earlier, the population allocation has been moved 2 around in this development plan, but it did stipulate the 3 number of people that were allowed under the development 4 plan, which is, which remains the cap under which we're 5 pursuing our density. 6 MS. LEATHAM: Okay. Moving on to open space, can 7 you just reiterate for us whether the golf course was 8 counted as open space in the original DPA, or any subsequent 9 DPA? 10 MR. SLOAN: It has never been considered part of 11 the open space, we reconfirmed it was not considered part of 12 the 422 acres, it was talked about in larger numbers along 13 with dedications of highways and things like that. 14 MS. ROBESON: Do you know how big the whole golf 15 course is, acreage-wise? If you don't it's, it's, don't -- 16 MR. SLOAN: I think it's actually in the -- 17 MS. LEATHAM: It's in the chart. 18 MR. SLOAN: 600 and -- 19 MS. LEATHAM: No. No. 20 MR. SLOAN: No. Sorry. 148.4. 21 MS. ROBESON: How much? 22 MR. SLOAN: 148.4 according to the last approved 23 development plan amendment. 24 MS. ROBESON: And is that last approved one, which 25 exhibit is that?</p> |
| <p style="text-align: right;">Page 239</p> <p>1 MS. LEATHAM: I'd like to recall Mr. Sloan for 2 rebuttal. 3 MS. ROBESON: You're still under oath, Mr. Sloan. 4 MR. SLOAN: I understand. 5 MS. LEATHAM: I apologize, we might jump around a 6 little bit. Let's focus on the density approved under the 7 current development plan, can you give us the most recent 8 development plan amendment that are clearly articulated the 9 density, the total density permitted? 10 MR. SLOAN: The last development plan amendment, 11 82-1 DPA, that indicated that 15 units per, or 15 people per 12 acre was allowed per the development plan. 13 MS. ROBESON: What number was that? 14 MR. SLOAN: The DPA is 82-1. Is that in the 15 record? 16 MS. LEATHAM: It's not in the record, but I 17 think -- 18 MR. SLOAN: Okay. 19 MS. LEATHAM: -- the Hearing Examiner can take 20 administrative notice. 21 MS. ROBESON: Yes. 22 MR. SLOAN: So, that, and that was specifically 23 transferring 1,599 people, and this is the language of the 24 opinion transferring these people, they didn't exist yet 25 there, from area 1B to area 3K, which is what we had talked</p> | <p style="text-align: right;">Page 241</p> <p>1 MR. SLOAN: Exhibit 40I. 2 MS. ROBESON: And is that the 2006 one? 3 MR. SLOAN: 02-2, corrected on 4-7-2006. 4 MS. ROBESON: Okay. Okay, so you were asking him 5 about open space, and have you reviewed E-327 and E, the 6 ones referred to by Mr. Lechner? 7 MR. LECHNER: 848. 8 MR. SLOAN: I have read through them as quickly as 9 I could this morning when we received them. And last night, 10 the first one. 11 MS. ROBESON: I'm sorry, was that a, you said you 12 did read through them? 13 MR. SLOAN: Yes. 14 MS. ROBESON: Okay. Keep going, Ms. Leatham. 15 MS. LEATHAM: And again, we're jumping around a 16 little bit here. Is the private recreation use considered 17 common or quasi-public space, the golf course? 18 MR. SLOAN: Not on the development plan, no. 19 MS. ROBESON: Wait, which development plan? 20 MR. SLOAN: On the last approved development plan. 21 MS. ROBESON: 02-02? 22 MR. SLOAN: 02-02. 23 MS. LEATHAM: Is it typical based on your 24 experience with Park and Planning and in private practice 25 that if something was to be preserved in perpetuity there</p> |

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| <p style="text-align: right;">Page 242</p> <p>1 would be a binding element or a requirement to record a 2 document to effectuate that?</p> <p>3 MR. SLOAN: Anything that we, when we were looking 4 at an approval as Staff or now in private sector, if we were 5 to propose anything, require anything then, propose anything 6 now for, to maintain in perpetuity we would require 7 something to be put in the land records.</p> <p>8 MS. LEATHAM: Okay. I also want to just clarify 9 your, something Mr. Lechner had testified to based on your 10 previous testimony that the previous DPAs, the three DPAs 11 and the one site plan you discussed were inconsistent with 12 that land use plan, was that because of the underlying land 13 use recommendation, or was it because the school sites were 14 unneeded?</p> <p>15 MS. ROBESON: Wait, I can't hear you.</p> <p>16 MS. LEATHAM: I'm sorry. Just to clarify, when 17 Mr. Sloan was talking about the, was discussing the three 18 DPAs, the three most recent DPAs --</p> <p>19 MS. ROBESON: Yes.</p> <p>20 MS. LEATHAM: -- and the one site plan --</p> <p>21 MS. ROBESON: Yes.</p> <p>22 MS. LEATHAM: -- that were inconsistent with the 23 land use plan, my question was did it have anything to do 24 with the school sites, or was it based on the underlying 25 color on the land use map?</p> | <p style="text-align: right;">Page 244</p> <p>1 there is a golf course planned as a recreational amenity in 2 the original development plan, and there was, that was part 3 of the original planning, is it in your professional opinion 4 something that can change, and how would that be 5 accommodated?</p> <p>6 MR. SLOAN: It is something that can change. I 7 think what's important about the golf course because it was 8 privately owned, it was fenced off, it was not, you know, 9 unless you could or were willing to pay for access, in my 10 mind that means it was more of an issue of what kind of 11 character they were trying to develop with this entire new 12 town, and that character is the visual nature of the golf 13 course, it's open space, it has natural features that are 14 very important, and very nice, and probably will be 15 conserved at some point. This development plan amendment, 16 however, is for a very limited part of the golf course, it's 17 for about 17 of the, I can't remember what I said, 100 --</p> <p>18 MS. LEATHAM: Forty-seven.</p> <p>19 MR. SLOAN: -- 47 areas, which doesn't have those 20 characteristics, but the land use plan that's being 21 developed, or this development plan amendment takes a cue 22 from that aesthetic character that was trying to be 23 established, the homes are setback from the primary roads, 24 they're going to be working with the land use grades, on 25 Arrowhead there's a large park that'll be maintained as open</p> |
| <p style="text-align: right;">Page 243</p> <p>1 MS. ROBESON: Okay.</p> <p>2 MR. SLOAN: So, it's a fine point, but it's an 3 important point that if you even, if you take the school 4 sites off of the map, because we know the text of the Master 5 Plan deals with those specific conditions if the school site 6 is not required, X, Y, and Z happens, and that did do less, 7 greater or lesser extent in each of them. But if you take 8 those school sites off the designation on that plan was 9 different for three of those four approvals, one, or two 10 were for medium density residential, one became high density 11 residential, one became an institutional use, and then one 12 was retail commercial, which became mixed use. So, that's 13 the point that I think the precedent is telling on.</p> <p>14 MS. LEATHAM: Okay. The land, just staying with 15 the land use map, is that in your opinion a reflection of 16 the conditions at the time the Master Plan was adopted, or 17 future recommendations?</p> <p>18 MR. SLOAN: That's my understanding of the plan 19 and how I interpreted it on Staff and now.</p> <p>20 MS. ROBESON: Which one?</p> <p>21 MS. LEATHAM: Which one?</p> <p>22 MS. ROBESON: She gave you two alternatives.</p> <p>23 MR. SLOAN: That it was a reflection of the land 24 use at that time.</p> <p>25 MS. LEATHAM: Okay. I think we all agree that</p> | <p style="text-align: right;">Page 245</p> <p>1 space and actually put into, there could be access easements 2 on that that will be in the land records, so I think the 3 aesthetics of the idea, the idea of the clustered urban 4 densities around this network open space was important to 5 the aesthetic foundation of the town, and that's something 6 that should be maintained through redevelopment.</p> <p>7 MS. LEATHAM: Other than the DPAs and the site 8 plans that we talked about are you aware of any other DPAs 9 that have addressed this specific question of the Master 10 Plan, it's a little old, and the development plan might also 11 be a little old?</p> <p>12 MR. SLOAN: The development plan amendment for the 13 Wheaton project that we discussed this morning, I think it 14 was 05-something.</p> <p>15 MS. ROBESON: For which project?</p> <p>16 MS. LEATHAM: 05-02.</p> <p>17 MR. SLOAN: 05-02?</p> <p>18 MS. ROBESON: Wait, which project? I'm having 19 trouble hearing when you turn the other way.</p> <p>20 MS. LEATHAM: I'm sorry.</p> <p>21 MS. ROBESON: It's not your problem.</p> <p>22 MR. SLOAN: So --</p> <p>23 MS. LEATHAM: I lost my --</p> <p>24 MR. SLOAN: -- in development plan amendment 05-2 25 the rezoning in Wheaton, it was a development plan</p> |

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| <p style="text-align: right;">Page 246</p> <p>1 amendment, in that case it was recognized that the 2 development plan was quite old, and that, and the Hearing 3 Examiner in that case noted that a development plan 4 amendment should not be held to a higher standard than the 5 development plan, the original development plan, and in 6 fact, when you file a development plan amendment you have to 7 file all of the same documents, and those include a land use 8 plan stipulating where residential areas will be, commercial 9 areas, densities, major roads, open space, so the fact that 10 you have to file those kinds of things similar, well, 11 identical to a development plan in my mind means those 12 things can be changed, that's what the development plan 13 amendment does. And if they were not allowed to be changed 14 then the development plan amendment could be restricted, 15 only these kind of things should be submitted and under 16 evaluation.</p> <p>17 MS. LEATHAM: Okay.</p> <p>18 MS. ROBESON: Well, the one constant is the Master 19 Plan, because nay development, the thing that binds it all 20 together is the Master Plan.</p> <p>21 MR. SLOAN: Right.</p> <p>22 MS. ROBESON: Wouldn't you agree?</p> <p>23 MR. SLOAN: Substantial compliance with the Master 24 Plan --</p> <p>25 MS. ROBESON: Right.</p> | <p style="text-align: right;">Page 248</p> <p>1 MR. SLOAN: No. 2 MR. LECHNER: That's all my questions. 3 MS. ROBESON: Okay. Any redirect? 4 MS. LEATHAM: No. 5 MS. ROBESON: All right. You may be excused, Mr. 6 Sloan. Any other witnesses? 7 MS. LEATHAM: No. 8 MS. ROBESON: Okay. One thing I'm going to do is 9 take official notice of any of the decisions that are listed 10 on I think it's exhibit, whatever that exhibit is, 40 -- 11 MR. LECHNER: I. 12 MS. LEATHAM: I. 13 MS. ROBESON: Yes. Any of the DPAs, is that, 14 that's the one with the 19 or so amendments on it? Okay. 15 MR. SLOAN: Yes. 16 MS. LEATHAM: There's one amendment DPA that's not 17 listed on this -- 18 MS. ROBESON: That's the 11 -- 19 MS. LEATHAM: -- the 11-02. 20 MS. ROBESON: -- 02. 21 MR. SLOAN: For the two apartments? 22 MS. ROBESON: That's the two units? 23 MS. LEATHAM: Right. 24 MS. ROBESON: Yes. That, as well. Okay. Closing 25 statements?</p> |
| <p style="text-align: right;">Page 247</p> <p>1 MR. SLOAN: -- needs to be met. 2 MS. ROBESON: The land use and density, right? 3 Okay, go ahead. 4 MS. LEATHAM: Was that an issue in 05-02? 5 MR. SLOAN: In 05-02 it was an issue, and the 6 length of time that that development plan had been on the 7 ground and then is now being amended was recognized as a 8 cause for rethinking some of the planning. 9 MS. LEATHAM: The Master Plan or the development 10 plan? 11 MR. SLOAN: Sorry, it was the master plan that had 12 been quite old at that time, the Wheaton master plan. This 13 was before it had been redone. 14 MS. LEATHAM: Is there anything else you want to 15 add? 16 MR. SLOAN: Probably, but I, I mean, this is a 17 kind of very fascinating complicated case, it's very 18 interesting, but I think we've covered most of the issues. 19 MS. LEATHAM: Okay. No more questions. 20 MS. ROBESON: Okay. Mr. Lechner? 21 MR. LECHNER: Just one. Mr. Sloan, you said that 22 you felt, since your subject matter expertise in modern, or 23 current decision processes for the Planning Board process, 24 the master plans, would you consider your expertise to be 25 also a tie for the decision processes in 1965 and 1970?</p> | <p style="text-align: right;">Page 249</p> <p>1 MS. LEATHAM: Could I have five minutes to put it 2 in order? 3 MS. ROBESON: To what? 4 MS. LEATHAM: Five minutes to just put everything 5 in order. 6 MS. ROBESON: Yes. We'll try and go -- do you 7 have a closing statement, Mr. Lechner? You're welcome. 8 MR. LECHNER: I will just make one or two 9 comments. 10 MS. ROBESON: Okay. Then we'll try to cut it off 11 by 5:30, is the court reporter available till 5:30? Okay. 12 Thank you. 13 MS. LEATHAM: I promise I will not -- 14 MS. ROBESON: Okay, that's fine. 15 MS. LEATHAM: -- go till 5:30. 16 MS. ROBESON: We'll take a five-minute break, and 17 we'll be back on the record around 5:10. 18 (OFF THE RECORD.) 19 (ON THE RECORD.) 20 MS. ROBESON: Okay, we're back on the record. Ms. 21 Leatham? 22 MS. LEATHAM: All right. Given the hour I'm going 23 to keep this short. It's a -- 24 MS. ROBESON: Go wild. 25 MS. LEATHAM: Don't tempt me. This is a</p> |

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| <p style="text-align: right;">Page 250</p> <p>1 complicated case, and I thought -- let me start over. This 2 is a complicated case, the Master Plan made it slightly more 3 complicated, but Mr. Sloan provided evidence that it's the 4 land use map's utility in this case is limited, but you look 5 at the overall objectives of the Master Plan, which he 6 described, and how this met those objectives, as well as how 7 it's been applied in previous cases. We also provided 8 testimony that this meets all the other zoning requirements 9 for the DPA, Technical Staff and the Planning Board agreed.</p> <p>10 So, I would just conclude by saying that this is 11 an opportunity to provide a real benefit to the community by 12 enhancing this particular area, and I think perhaps the 13 environmental testimony was a little understated about the 14 real benefit that, that the detriment from a golf course and 15 the benefit you can get by enhancing the forest and the 16 landscaping and the plantings both aesthetically and from a 17 usability standpoint.</p> <p>18 And then the last point I wanted to make about was 19 the original intent of the development plan, which clearly 20 included a golf course, and in one of the exhibits included 21 a golf course with a pool, but a pool was never built. But 22 things change over time, but the intent of the golf course, 23 or intent of having the golf course was to provide two, I 24 think two general things, a recreation amenity for the 25 residents of Montgomery Village, and, you know, aesthetics</p> | <p style="text-align: right;">Page 252</p> <p>1 community, it is a significant aspect, it is what 2 differentiates Montgomery Village from Clarksburg, King 3 Farm, what's some of the other, the over there by Lowes, I 4 forget its name, many of these other places do not have a 5 large open green spaces, the way Montgomery Village does, we 6 were planned 20 or 30 years earlier when there was a lot 7 more land, and it differentiates us from a community, 8 provides a lot more room for the kids to get out and 9 explore, and move around. With that in mind, we feel that 10 protecting the open space nature of the property should not 11 be something that the community gives up on ever, but the 12 families are willing to, again, see something happen on the 13 property in the future, not necessarily to the, you know, 14 just to the extreme bindings of the current property owner, 15 that you've got to go to a golf course even if it loses 16 money, because, again, that's not necessarily realistic. 17 However, we feel that many different options were not 18 explored, the approach, the feedback in the meetings many 19 people asked a lot of other questions, the tweaks that were 20 made to the project were minor, and all kept in the 21 residential. The basic concept of the plan has not changed 22 significantly except for the removal of a large tower type 23 of building in one part of the project, which was the one 24 part that many of the people we talked with actually 25 supported. Other than that, though, I thank you, again, and</p> |
| <p style="text-align: right;">Page 251</p> <p>1 for lack of a better term. So, Mr. Hines testified that out 2 of 40,000 people 20 or 22 were members, so it's clearly not 3 providing that recreation benefit for the community anymore. 4 And aesthetically we think it can be, or you've heard 5 evidence that it can be enhanced considerably with 6 additional plantings and landscaping and good site design, 7 particularly along Montgomery Village Avenue, also. And I'm 8 just going to leave it at that.</p> <p>9 MS. ROBESON: Okay. Mr. Lechner?</p> <p>10 MR. LECHNER: Okay. I'd like to thank, and again, 11 apologize for the confusion of the multiple exhibits. Most 12 of the residents we talked to, especially the ones that live 13 on, bordering the property are very much against the plan as 14 proposed by the Applicant, in particular, putting this 15 particular part first, which is a very dense bunch of 16 townhouses all around those areas, but many of them have 17 made comments about the positive aspects of trying to do 18 something different in Montgomery Village, and many of them 19 cite the original vision 2030 plan's vision of something 20 that would have less of an infrastructure cost as far as 21 putting in a concentrated smart growth type of project in 22 some portion of the property, and then preserving the 23 remaining portions not necessarily as a golf course, but as 24 a recreational conservation type of use. 144 acres, and 25 once the houses are there it will never come back to the</p> | <p style="text-align: right;">Page 253</p> <p>1 we hope that this process provides clarity to help move the 2 community forward.</p> <p>3 MS. ROBESON: All right. We usually give the 4 Applicant the last word, do you have anything further to 5 say?</p> <p>6 MS. LEATHAM: I do not.</p> <p>7 MS. ROBESON: Okay. Thank you. And with that 8 what I'm going to do is I have to leave, if there are 9 changes to the development plan as we do have a binding 10 element, I have to leave the record open, and refer it back 11 to the Planning Board. I don't see why this would be an 12 issue, but --</p> <p>13 MS. LEATHAM: Does it have to go back to the 14 Planning Board or just Staff?</p> <p>15 MS. ROBESON: It can go to either Planning Staff 16 or the Planning Board, and we generally leave it to the 17 discretion of Planning Staff as to whether they think they 18 need the Board's, sorry, input on, to understand where the 19 Board was coming from. So, what I'm going to do -- I'm also 20 going to take official notice of the files on those DPAs 21 listed on the DPA, and you have 10 days to, technically you 22 have 10 days to object, if anybody wants more time to object 23 I can leave the record open a little longer, but I would 24 prefer to close it. And so, 10 days would be, well, I have 25 September 1st. I'm going to, this is what I'm going to do,</p> |

1 I'm going to leave it open, I haven't had a chance to speak
 2 with Planning Staff as far as their, how long their referral
 3 process is going to take, I'm going to leave it open till
 4 the day after Labor Day, which is September 8th. And it's
 5 only open to get, I'm going to ask Staff to provide their
 6 comments by Friday, well, by Wednesday, September 2nd, and
 7 then if any of the parties has comments on Staff comments
 8 they would be due September 8th. So, with that we will
 9 adjourn this hearing, the record's open for the purpose
 10 stated. Thank you very much. Yes, Mr. Lechner?

11 MR. LECHNER: Just one question. I was going to
 12 provide an updated copy of my testimony with just the
 13 exhibits labeled in the paragraphs, do I need to do that
 14 still, and by when just to make sure I'm timely.

15 MS. ROBESON: I don't understand what you mean,
 16 the --

17 MR. LECHNER: I thought you wanted me to send in
 18 a --

19 MS. ROBESON: Yes, if you could do that --

20 MR. LECHNER: -- a list of something.

21 MS. ROBESON: -- by also by September 2nd, and
 22 we'll have all the --

23 MR. LECHNER: Not a problem.

24 MS. ROBESON: -- all the new stuff in by September
 25 2nd, and any comments from any party will be due on the 8th.

1 MS. ROBESON: Okay, that's fine.
 2 MR. LECHNER: -- and then insert the rest. Yes.
 3 MS. ROBESON: That's fine. Okay. And then any
 4 responses to any of the things that I've left the record
 5 open are due September 8th. If that changes based on
 6 Staff's schedule I'll let you know, but for now we're going
 7 to leave it there, okay? All right. With that, this
 8 hearing is adjourned. Thank you.
 9 (Whereupon, at 5:19 p.m., the hearing was
 10 concluded.)

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1 MR. LECHNER: Okay.
 2 MS. ROBESON: All right?
 3 MS. LEATHAM: Now I have a clarification question.
 4 MS. ROBESON: Yes?
 5 MS. LEATHAM: When -- are we submitting the
 6 revised DPA sheet with the binding element to OZAH and OZAH
 7 will refer it to --
 8 MS. ROBESON: No, you provide it both to, provide
 9 it to Staff first with if you can get an electronic copy
 10 with a CC to the parties and to our office.
 11 MS. LEATHAM: Okay. Okay.
 12 MS. ROBESON: And then once, if you could submit
 13 it on the 2nd with Staff's comments and full, the hard copy
 14 in case they want anything else addressed. I doubt they
 15 will, but --
 16 MS. LEATHAM: Right. Okay. So, the DPA would go
 17 electronically to Staff, OZAH and the parties, hopefully in
 18 the next day or two, and then we'll resubmit the hard copy
 19 to your office with Staff comments by September 2nd.
 20 MS. ROBESON: Correct.
 21 MS. LEATHAM: Got it. Okay.
 22 MS. ROBESON: And then Mr. Lechner's exhibits are
 23 due on September 2nd.
 24 MR. LECHNER: Right. And I will only just re-
 25 label the things that were provided --

C E R T I F I C A T E
 DEPOSITION SERVICES, INC., hereby certifies that
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 County in the matter of:

USL2 MR Montgomery Village Business Trust
 DPA 15-01

By:

Paula Underwood, Transcriber

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| <p>\$</p> <p>\$435 (1) 229:6</p> <p>\$600,000-plus (1) 129:24</p> <p>A</p> <p>ability (1) 128:5</p> <p>able (10) 42:8,11,13;45:23; 50:8;52:14;77:8;101:2; 134:21;238:3</p> <p>above (1) 161:2</p> <p>abrogated (1) 217:18</p> <p>absentia (1) 187:21</p> <p>absolute (1) 12:8</p> <p>absolutely (3) 37:7,10;139:2</p> <p>absorb (2) 159:25;162:22</p> <p>absurd (1) 99:24</p> <p>abutted (1) 88:20</p> <p>abutting (1) 231:3</p> <p>academy (1) 210:5</p> <p>acceleration (2) 171:11;175:8</p> <p>acceptable (3) 98:17;139:14;199:17</p> <p>access (28) 18:7;45:20;21:47:4; 14,15;52:17;18;54:10; 55:11;57:12,16;160:8; 164:1;166:20;167:3,4; 168:2;170:5;171:20; 172:22;176:15,25; 177:10;182:2,11; 244:9;245:1</p> <p>accessed (1) 194:3</p> <p>accessible (4) 99:10;101:20;22; 110:20</p> <p>accommodate (3) 77:12;101:5;129:22</p> <p>accommodated (2) 77:19;244:5</p> <p>accompanied (2) 94:24;200:25</p> <p>according (1) 240:22</p> <p>account (3)</p> | <p>114:5;168:17;169:5</p> <p>achieve (2) 55:23;64:22</p> <p>achieved (1) 60:17</p> <p>acknowledging (1) 77:17</p> <p>acquire (2) 61:19,21</p> <p>acquisition (1) 18:11</p> <p>acre (19) 42:15,17,19,21; 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