

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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: CLARKSBURG MEWS, LLC : Case No. G-957
: :
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A hearing in the above-entitled matter was held on July 17, 2015, commencing at 9:40 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Martin L. Grossman
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Applicant:

Jody S. Kline, Esq.

Miller, Miller & Canby

200-B Monroe Street

Rockville, Maryland 20850

E X H I B I T S

Exhibit No.		Marked/Received
54	Blow-up of Surrounding Area Map	
	Page 7 of Staff Report	79/166
55	Aerial Photo of the Neighborhood	91/166
56	Resume of Stephen Crum	112/166
57	Partial Grading Exhibit	129/166
58	Impervious Surface Exhibit	135/166
59	Resume of Carl Wilson	152/166

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Michael Fisher By Mr. Kline:		16		
David Ager By Mr. Kline:		28		
Stephen E. Crum By Mr. Kline:		110		
Carl Wilson By Mr. Kline:		151		

E X H I B I T S

Exhibit No.		Marked/Received
1 - 46	Previously Identified	-/166
47-A	Maryland SDAT form for parcel N780	9/166
47-B	Maryland SDAT form for parcel N888	9/166
48	Affidavit of Posting	9/166
49	Rendered Land Use Plan 40-B	23/166
50	Resume of David Ager	30/166
51	Pages 41 and 43 of Master Plan and Surrounding Neighborhood	37/166
52	Dedications and Reservations with Roberts Tavern Drive	39/166
53	Stream Valley Buffer	69/166

P R O C E E D I N G S

1
2 MR. GROSSMAN: This is a public hearing on the
3 application of Clarksburg Mews, LLC, LMA No. G-957, for
4 local map amendment to the Zoning Ordinance requesting
5 reclassification of a 24.37 acre parcel of land in the R-200
6 Zone to the PD-4 Zone. The property was owned by Sang and
7 B.N. Choi at filing, which was September 2, 2013, but now
8 appears to be owned by the applicant. The property is known
9 as Gankirk Farms, Lots P-21 and 22, Parcels N-780 and N-888
10 of tax map EW31. It's located on the west side of Maryland
11 Route 355 1300 feet north of its intersection with Shawnee
12 Lane in Clarksburg, Maryland. The applicant is proposing a
13 105-unit residential development, originally, it was 140
14 units, including 84 townhouses and 21 detached single-family
15 homes and 14 MPDUs. The project is to be known as Dowden's
16 Station. The site is entirely within the Clarksburg special
17 protection area and is subject to the 1994 Clarksburg Master
18 Plan.
19 My name is Martin Grossman. I'm the hearing
20 examiner which means I will take evidence here and the
21 Montgomery County Council, sitting as District Council, will
22 make the decision in this case. Will the parties identify
23 themselves, please?
24 MR. KLINE: Good morning, Mr. Grossman. For the
25 record, my name is Jody Kline. I'm an attorney for the law

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1 firm Miller, Miller & Canby with offices at 200-B Monroe
2 Street here in Rockville, and I'm representing the applicant
3 in this case. We plan on calling four witnesses today, Mr.
4 Michael Fisher, F-I-S-H-E-R; Mr. David Ager, A-G-E-R; Mr.
5 Steve Crum, C-R-U-M; and Mr. Carl Wilson, W-I-L-S-O-N. And
6 I would estimate that our presentation would be in a range
7 of three to four hours.

8 MR. GROSSMAN: All right. I see that there are
9 four gentlemen in the audience. Is there anybody else who
10 is here who is not to be called as a witness by the
11 applicant? Sir?

12 MR. LERNER: Well, the traffic engineer is not
13 here, Carl.

14 MR. GROSSMAN: I see. Well, are you, sir, are you
15 wishing to testify in this case?

16 MR. LERNER: No.

17 MR. GROSSMAN: All right. And I was essentially
18 asking does anybody from the community here who wishes to be
19 heard in the case, and I hear no answers to that. Okay.
20 I'll tell you what. If I could -- I don't know if they're
21 monitoring back in -- could I ask somebody to check in my
22 office and ask them to lower the temperature in here,
23 please? Thank you.

24 Okay. Let me just begin as I usually do,
25 explaining a little bit about the nature of these

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1 proceedings. We are a formal process with some
2 informalities. We're formal in the sense that all witnesses
3 are sworn in. They're subject to cross-examination,
4 although it doesn't seem like you have a large cross-
5 examination problem today. Everything is taken down by a
6 court reporter, and the transcript will be on our website.
7 We operate pretty much the way a courtroom operates. We're
8 less formal than a courtroom but generally following those
9 procedures.

10 Let's turn to some preliminary matters. I would
11 like electronic copies of any final plans if they are not
12 already filed. I would note that there's a change to the
13 exhibit list, I noticed when I was going over it last night,
14 and so I'd ask you to substitute this page for the fourth
15 page on the exhibit list, Mr. Kline.

16 MR. KLINE: Thank you.

17 MR. GROSSMAN: Okay. And essentially, the change
18 is that the Planning Board letter of July 14 became Exhibit
19 46. Exhibit 45 now is the technical staff report
20 recommending approval as corrected on July 9. There were
21 some corrections in the Technical Staff, to the technical
22 staff report suggested by the Planning Board letter, Exhibit
23 46. The cover page misstated the identity of one of the
24 parcels and also misstated the, on table, page 33, the
25 amount of parking which was being suggested. It had read

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1 257. It should read 295 according to what is in the
2 Planning Board letter. Although the Planning Board also, as
3 you know, I think you, I presume you have a copy of Exhibit
4 46, the Planning Board letter?

5 MR. KLINE: Yes, sir

6 MR. GROSSMAN: Okay. They also suggested a
7 reduction in the parking, but we will get into that. Okay.
8 Also, as I think I noted earlier, there has been, I think, a
9 change to the ownership of the parcels. When I checked the
10 Maryland property tax records, I see that now these lots are
11 listed as being owned by Clarksburg Mews, LLC. Is that
12 correct, Mr. Kline?

13 MR. KLINE: That was confirmed for me yesterday.
14 That is correct.

15 MR. GROSSMAN: Okay. And so I've made copies of
16 the Maryland tax records so that we can put them in the
17 file. And so we'll make Exhibit 47-A will be --

18 MR. KLINE: Are these what we call the State
19 Department of Assessments and Taxation forms that -- yeah.

20 MR. GROSSMAN: Yes, SDAT.

21 MR. KLINE: Yeah. SDAT information form, right.

22 MR. GROSSMAN: SDAT forms, yes, will be -- 47-A is
23 the Maryland SDAT form for parcel N780 which is lot 21. And
24 47-B will be the Maryland SDAT for parcel N888 which is lot
25 22.

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1 (Exhibit Nos. 47A and B were
2 marked for identification.)

3 MR. GROSSMAN: I just wanted to make sure that the
4 record indicated the correct ownership of the --

5 MR. KLINE: Right.

6 MR. GROSSMAN: -- of the property. All right.
7 Now, I also notice that you have an Affidavit of Posting
8 here indicating that the property has been properly posted,
9 and we'll make that Exhibit 48.

10 (Exhibit No. 48 was marked for
11 identification.)

12 MR. GROSSMAN: I don't recall. Is there an
13 Affidavit of Mailing already in the file?

14 MR. KLINE: Yes, sir. It's Exhibit No. 27.

15 MR. GROSSMAN: Okay. All right. Now another
16 matter. I'm sure you will, but I would ask that you have
17 witnesses address the alternative plans which were suggested
18 in the record and of course, the application of the
19 Clarksburg Master Plan to these potential alternatives. I
20 might note that the application of the master plan to a
21 floating zone became an issue in the last matter I had
22 before the Council so that certainly should be addressed
23 thoroughly in your case.

24 MR. KLINE: And the alternatives, the
25 transportation alternatives or the sewer service

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1 alternative? We have lots of alternatives in this case.
2 MR. GROSSMAN: Yes. Well, the alignment
3 alternatives and as they are reflected in how transportation
4 will be affected and anything else. I think that we ought
5 to know that in the record.
6 MR. KLINE: We're glad to hear you're interested
7 because it can be a laborious subject so --
8 MR. GROSSMAN: Well, I trust you will make it
9 exciting for me. All right. And that's another question.
10 Will a new traffic study be required depending on which
11 alternative is going to be --
12 MR. KLINE: The traffic study basically covered
13 all the various assumptions.
14 MR. GROSSMAN: Okay. All right.
15 MR. KLINE: All the alternatives rather.
16 MR. GROSSMAN: All right. So obviously, I'd want
17 your traffic expert to explain how that's going to be
18 handled.
19 MR. KLINE: I'll make sure Mr. Wilson addresses
20 that.
21 MR. GROSSMAN: Okay. Have there been any concerns
22 expressed by the community in this case?
23 MR. KLINE: My first witness will address that for
24 you.
25 MR. GROSSMAN: Okay.

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1 MR. KLINE: I can answer it.
2 MR. GROSSMAN: I'll let you handle it through your
3 witnesses.
4 MR. KLINE: Sure.
5 MR. GROSSMAN: Any other preliminary matters that
6 you have?
7 MR. KLINE: The only thing I was going to say, Mr.
8 Grossman, was that I had been waiting to get the Planning
9 Board's resolution on the water quality plan and the forest
10 conservation plan because there were, their letter
11 references some changes they were going to make --
12 MR. GROSSMAN: Right.
13 MR. KLINE: -- dealing with the impervious numbers
14 and I, maybe you, I know, I believe you have seen drafts.
15 MR. GROSSMAN: Yes.
16 MR. KLINE: But I don't think you probably have
17 seen the final version yet either.
18 MR. GROSSMAN: I have not.
19 MR. KLINE: Nor have I so --
20 MR. GROSSMAN: I did ask. Since I knew that they
21 were going to be handling it yesterday, I did ask that they
22 send me drafts in advance so I can get a general idea of
23 what we're talking about.
24 MR. KLINE: I understand. Well --
25 MR. GROSSMAN: And I'm happy to share that. I

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1 just --
2 MR. KLINE: No. It's not --
3 MR. GROSSMAN: Okay.
4 MR. KLINE: It's not that. The bottom line is our
5 development plan still is what we showed to the Planning
6 Board.
7 MR. GROSSMAN: Yes.
8 MR. KLINE: And so it does need to be tweaked a
9 bit to come up with the right impervious numbers and
10 anything else when we finally see what is in that water
11 quality plan. So I'd like to ask that the record be left
12 open --
13 MR. GROSSMAN: Sure.
14 MR. KLINE: -- to allow us to submit an amended
15 development plan consistent with what is in the water
16 quality plan.
17 MR. GROSSMAN: So how much time do you want the
18 record to be left open?
19 MR. KLINE: Oh, I don't think it's going to take
20 us very long. I hadn't seen a lot of correspondence between
21 you and staff so I don't think you probably thought there
22 needed to be a lot of changes, so I don't think we need to
23 do much. I also realize though for two weeks, it's going to
24 be kind of sitting there also while other things are going
25 on in your life. So I'd say if you said, you know, by next

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1 Friday. What -- you would normally need how long to get the
2 transcript?
3 MR. GROSSMAN: Ten days.
4 MR. KLINE: Ten days.
5 MR. GROSSMAN: So we would ordinarily leave it
6 open for ten days.
7 MR. KLINE: I would say that would be --
8 MR. GROSSMAN: Ten days?
9 MR. KLINE: -- more than adequate for us also.
10 MR. GROSSMAN: Okay. All right. So we will leave
11 it open until July 27th. As you know, that's never written
12 in stone. If you need more time --
13 MR. KLINE: Yeah.
14 MR. GROSSMAN: You could ask. I'd prefer to find
15 out now so we don't have to issue an order so.
16 MR. KLINE: Well, before you arrived, I told
17 everybody that anything we put in today, and we will have
18 some new exhibits today, we'll need to get electronic
19 copies, so those will all be taken care of by early next
20 week.
21 MR. GROSSMAN: Okay. Do you have an opening
22 statement you wish to make?
23 MR. KLINE: No, sir. I know that you've been
24 studying this file studiously, so I don't think I need to
25 make one. I would say I did bring a copy of the zoning

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1 vicinity map, and this is actually the original Exhibit 15.
2 You asked me to get you an updated one at a later point in
3 time. And I only, I thought it would be actually a good
4 larger scale reference because one of the interesting
5 subjects is the transportation network.
6 MR. GROSSMAN: Right.
7 MR. KLINE: So you see the subject property
8 highlighted on Exhibit 15 in the center of the site with
9 Route 355 on the northeast side of the property, and then
10 the property also fronts on basically Observation Drive for
11 which you can see where it's been dedicated in certain
12 places northwest of the property, part of the property will
13 dedicate more Observation Drive. And you can see the
14 alignment continuing on down through the cross-hatched area
15 all the way down through the lower, the lower part of the
16 drawing. I wanted to have it up here because you'll see it
17 on later on exhibits the PD-11, what's called Gankirk Farms
18 immediately to our south, the development was, other
19 developments around it under PDR densities, so it's frankly
20 why I recommended that we apply for a PD-5 because I thought
21 the context justified more density but Staff convinced us
22 that they thought probably we ought to just go with what the
23 master plan recognizes.
24 MR. GROSSMAN: Right. I was going to say that.
25 The master plan does say density of 4 so, 2 to 4, so I think

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1 you're better off sticking with that.
2 MR. KLINE: Yes. But as I say, Exhibit 15 is up
3 here more for a reference to larger issues in the future
4 like where is so and so. We're basically directly south of
5 the historic district of Clarksburg and have spent a lot of
6 time working on this. If you notice, this is two years
7 since this was filed, and it had a lot of interesting and
8 challenging issues which fortunately, we think we've finally
9 been able to resolve, at least at this stage anyway.
10 MR. GROSSMAN: Right. Actually, I'm glad you
11 mentioned something. The staff report refers to the filing
12 date as July 16, 2013. Actually, it wasn't accepted for
13 filing because there were some things missing until
14 September 3 of 2013.
15 MR. KLINE: Okay.
16 MR. GROSSMAN: So that's actually the correct --
17 MR. KLINE: Yeah.
18 MR. GROSSMAN: -- filing date.
19 MR. KLINE: Yes. I see that on the exhibit list.
20 MR. GROSSMAN: Right.
21 MR. KLINE: Okay.
22 MR. GROSSMAN: All right. You may proceed.
23 MR. KLINE: Unless you have anything else, I'll
24 call our first witness.
25 MR. GROSSMAN: All right, sir.

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1 MR. KLINE: Mr. Fisher, could you please state and
2 spell your name and give us your address?
3 MR. FISHER: Michael Fisher. M-I-C-H-A-E-L F-I-S-
4 H-E-R. My address is 10911 Larkmeade Lane, spelled L-A-R-K-
5 M-E-A-D-E, Lane, Potomac, Maryland 20854.
6 MR. GROSSMAN: Would you raise your right hand,
7 please?
8 (Witness sworn.)
9 MR. GROSSMAN: You may proceed.
10 DIRECT EXAMINATION
11 MR. KLINE: Mr. Fisher, could you please confirm
12 for the Hearing Examiner that Clarksburg -- well, first of
13 all, you are a principal of Clarksburg Mews, LLC?
14 MR. FISHER: That is correct.
15 MR. KLINE: And I was correct in confirming that
16 you now are a fee simple owner of the property?
17 MR. FISHER: We've owned the property for almost
18 two years.
19 MR. KLINE: That long?
20 MR. FISHER: Uh-huh.
21 MR. KLINE: Thank you. Just explain your role in
22 the application entity.
23 MR. FISHER: I'm a partner of the, of Clarksburg
24 Mews, LLC.
25 MR. KLINE: I'd like you to give a little flavor

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1 for the Hearing Examiner, kind of what your vision was, what
2 you and Mr. Lerner, the gentleman who spoke up earlier as an
3 attendee here today, kind of envision what should happen on
4 this property.
5 MR. FISHER: Um, this property is, we consider it
6 infill property and in the master plan of Clarksburg, it's
7 in a transit corridor. We saw that there was an opportunity
8 for us and also, we like putting, filling the hole in the
9 doughnut. This property was really not taken into account
10 in the master plan, kind of an oversight. With the adjacent
11 property to the north, which is Gateway Commons, they have a
12 PD-7, and to the west, Gankirk Farms is a PD-11, 355 is to
13 the east, partial completed Roberts Tavern is to the north
14 and Observation Drive to the south.
15 It was a, it's a, I don't want to say a difficult
16 property but it was a difficult property in that there's
17 many issues. Um, we take pride in that we work with, we
18 like to solve, or we bring a solution to a property and work
19 with the citizens and make it work for the community.
20 MR. GROSSMAN: I'm not sure I understand. Why do
21 you say it was overlooked by the master plan?
22 MR. FISHER: Because the reason why I say it was
23 overlooked is the master plan reflects properties adjacent
24 to it, almost like the owners of those properties brought
25 those properties forward at the time of the master plan and

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1 it appears that this property, the owner did not bring it
2 forward at that time and no solution was covered in the
3 master plan, more or less just a zoning density on that
4 property. So we felt that this property was zoned R-200,
5 was being, that density did not really fit on this property.
6 Originally, our submission for a rezoning was for a PD-5.
7 MR. GROSSMAN: Right.
8 MR. FISHER: And we did meet two years ago, over
9 two years ago, we met with Park and Planning staff and
10 presented that, and our initial submittal was for a PD-5.
11 We did meet with the citizens several times. The first
12 meeting was in October of 2013 and we presented a 140-unit
13 plan with the PD-5, and we did get their comments in regards
14 to that. Their comments were the master plan recommended
15 two to four units, and they said that PD-5 was greater than
16 that and that they saw that and four units would be, PD-4
17 would make more sense. After looking at it and the
18 property, we resubmitted or we amended the plan to PD-4.
19 MR. KLINE: Before you leave that why don't you
20 play out your later discussions with the community and
21 addressing Mr. Grossman's question about any comments
22 recently.
23 MR. FISHER: Um, well, there were three comments
24 that they, that came up at, with the citizens. One was the
25 density, and the other items were the master plan called for

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1 maintaining a single-family appearance along 355, and we
2 maintained single-families in our plan on that appearance,
3 on 355. And also, the citizens wanted to know about the
4 access to the future CCT station which was going to be
5 located at the corner of Observation and Shawnee and as far
6 as I know it's still planned to be there. They want to
7 know, as far as the access, if we were going to provide
8 something and we, all along, have --
9 MR. GROSSMAN: What do you mean provide something?
10 What does that mean?
11 MR. FISHER: Provide access. I'm sorry.
12 MR. GROSSMAN: All right.
13 MR. FISHER: Convenient access for them.
14 MR. GROSSMAN: And for the record, what is the
15 CCT?
16 MR. FISHER: The CCT is the Corridor City
17 Transitway.
18 MR. GROSSMAN: All right. And you say, you refer
19 to the citizens. Who are we talking about?
20 MR. FISHER: Um, it would be the Clarksburg
21 Alliance.
22 MR. GROSSMAN: Is that an association, a civic
23 association or -- you say Clarksburg Alliance.
24 MR. FISHER: At the, at the initial time -- let's
25 see. Kathy Hulley was president, is president as far as I

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1 know or was president at the time. Kathy Hulley.
2 MR. GROSSMAN: How do you spell Hulley.
3 MR. FISHER: H-U-L-L-E-Y. I have an attendance
4 sheet from both meetings.
5 MR. GROSSMAN: What is the Clarksburg Alliance?
6 MR. FISHER: It is, as far as I know, it's the
7 most active community group in the Clarksburg area.
8 MR. GROSSMAN: All right. So it's a general
9 citizen's association?
10 MR. FISHER: It's a citizen's association, yes.
11 MR. GROSSMAN: Okay.
12 MR. FISHER: And it's, and it was attended by some
13 Planning Board, Planning staff attended the meetings also.
14 MR. KLINE: This is a meeting that you organized
15 to make a presentation to the community?
16 MR. FISHER: Um, I coordinated a meeting with
17 them. They have regular -- I believe monthly or every two
18 months they meet, and they were able to put me on their
19 schedule.
20 MR. GROSSMAN: And when did this take place?
21 MR. FISHER: This was October 28th, 2013.
22 MR. KLINE: And this was your first meeting?
23 MR. FISHER: The first meeting.
24 MR. KLINE: And you had a subsequent meeting?
25 MR. FISHER: The second meeting was September

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1 29th, 2014.
2 MR. KLINE: And your most recent communication was
3 more recent than that, and you sent a copy of the plan and
4 explanation of what you've done to change the plan, is that
5 correct?
6 MR. FISHER: Yeah. the most recent was to inform
7 them that we will be meeting with Park and Planning or the
8 Planning Board and the Hearing Examiner and County Council.
9 MR. GROSSMAN: All right.
10 MR. KLINE: And did you receive any responses to
11 the plan you sent them and the information?
12 MR. FISHER: No, I did not.
13 MR. GROSSMAN: When did you send that plan, and
14 which plan are we talking about?
15 MR. FISHER: I sent it in June, and it's the
16 current plan.
17 MR. GROSSMAN: June of 2014 or '15?
18 MR. FISHER: Um, '15.
19 MR. GROSSMAN: All right. June of 2000 --
20 MR. FISHER: Last month.
21 MR. GROSSMAN: Okay.
22 MR. FISHER: And it's the current plan that is
23 before you.
24 MR. GROSSMAN: Did you have a cover letter or
25 something when you sent that plan?

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1 MR. FISHER: I did.
2 MR. GROSSMAN: Do you have that, a copy with you
3 we can have in the record?
4 MR. FISHER: I could check and see if I do.
5 MR. GROSSMAN: All right. That would be helpful
6 to have in the record.
7 MR. KLINE: I may have brought it with me, Mr.
8 Grossman.
9 MR. GROSSMAN: All right.
10 MR. KLINE: Go ahead, Mr. Fisher.
11 MR. FISHER: Okay. So those were the comments
12 that the citizens had. Well, getting back to the CCT or
13 access to the CCT which is what we, we would consider access
14 to Observation Drive. We had planned sewer, a combination
15 and we're quite, we think it is a very creative solution and
16 we've looked into all aspects of the solution. And we will
17 be, our planners will be talking in more detail as far as
18 that crossing which doubles as, it's a sewer crossing or
19 sewer connection, it's a pedestrian crossing and it becomes
20 an amenity to the community.
21 MR. GROSSMAN: All right.
22 MR. FISHER: And it is --
23 MR. GROSSMAN: You're pointing to something. What
24 are you pointing to?
25 MR. KLINE: All right. Before you start there,

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1 this is a copy, this is a rendered copy of the development
2 plan that's in the file.
3 MR. GROSSMAN: Is the rendered copy in the file
4 yet?
5 MR. KLINE: No, sir.
6 MR. GROSSMAN: No? All right. Let's mark it.
7 MR. KLINE: And I'm just trying to find out what
8 plan it is. It must be 40, the updated land-use plan.
9 MR. FISHER: 40-B?
10 MR. KLINE: Yes. Well, don't do that yet because
11 40-B is the black and white version. This is a rendered
12 version so I'd ask that it be made a new exhibit in the
13 record.
14 MR. GROSSMAN: Okay. So this will be Exhibit 49,
15 and it's rendered land-use plan 40-B.
16 (Exhibit No. 49 was marked for
17 identification.)
18 MR. KLINE: I'm sorry, Mr. Fisher. So drawing
19 your attention to what has been marked as Exhibit 40-B, you
20 were highlighting what area on this exhibit? So just tell
21 us what you were pointing to.
22 MR. FISHER: I'm going to orient the plan. To the
23 east side is 355, to the west side is Observation Drive. I
24 was referring to a, it's a pedestrian walkway, stream
25 crossing and sewer access which is on the west side of the

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1 property. And what this does, it provides the most direct
2 route, not just for our community but for the adjacent
3 community, to Observation Drive from the east side of the
4 property.
5 MR. GROSSMAN: So just so the record is clear,
6 you're pointing to what appears to be a yellow, east-west
7 pathway connecting the property to Observation Drive.
8 MR. FISHER: That's correct.
9 MR. GROSSMAN: Okay.
10 MR. FISHER: Yellow or orange-ish, yes.
11 MR. GROSSMAN: All right.
12 MR. FISHER: Uh-huh.
13 MR. KLINE: Mr. Fisher, you're kind of getting to
14 the end of where you're going but while I've got you up
15 there, let me ask you this. Under certain selection,
16 ultimate selections of roadway improvements, there may be
17 surplus land that is not needed to satisfy the
18 transportation requirements and you would like the record to
19 reflect what you might want to do with that and why you've
20 asked that it be held in reservation. Can you elaborate on
21 that, pointing to what area I'm talking about here?
22 MR. FISHER: Right. Um, the master plan for 355
23 on the east side of the property, this is the master plan
24 alignment.
25 MR. KLINE: Right. And --

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1 MR. GROSSMAN: This being?
2 MR. FISHER: And the property extends beyond that.
3 MR. GROSSMAN: Well, hold on one second. Just so
4 we, I just want the record to be clear to what you're
5 saying. You say this is the master plan alignment. What
6 are you talking about?
7 MR. FISHER: There's a 120-foot right-of-way on
8 the east side of the, it's a 355 bypass.
9 MR. GROSSMAN: Okay.
10 MR. KLINE: Just explain how it's highlighted on
11 the drawing so the record would be able to pick it up. So
12 it's the --
13 MR. FISHER: It's highlighted in light yellow.
14 MR. GROSSMAN: Okay.
15 MR. KLINE: Okay.
16 MR. GROSSMAN: And it's, well, it's the path of
17 355 essentially is what you're saying.
18 MR. FISHER: Right.
19 MR. GROSSMAN: Okay.
20 MR. FISHER: And it's, it's -- the bypass is a
21 historic district bypass. It was to tie into Observation
22 Drive.
23 MR. GROSSMAN: Okay.
24 MR. FISHER: Okay. And that's in the master plan.
25 Um, we worked with State Highway, Montgomery Transportation

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1 and at this time, they're not sure what the alignment is.
2 Roberts Tavern, which is north of the property, is
3 constructed partially to the property adjacent to us to the
4 north which is called, which is owned by Mr. McCord. It's
5 constructed up to Mr. McCord's property.
6 MR. KLINE: Mike, let me try to do it this way.
7 MR. FISHER: Yeah.
8 MR. KLINE: I see something that's either gray or
9 brown on the right-hand side of the development plan. That
10 would be surplus land if the state decided to implement the
11 355 master plan alignment?
12 MR. FISHER: That's correct.
13 MR. KLINE: Okay. And in which case, you're
14 showing this land in reservation rather than dedication?
15 MR. FISHER: That's correct.
16 MR. KLINE: And you'd like to keep it in
17 reservation so that if the state does the Route 355 master
18 plan alignment, then you would like to reserve the right to
19 return to ask for a development plan amendment to put some
20 potential development on that property since it will now be
21 returned to be available to you for re-use?
22 MR. FISHER: That's correct.
23 MR. GROSSMAN: All right. This is the dark gray
24 area that's almost a triangle on the far east of the site.
25 MR. FISHER: Yeah. The northeast corner of the

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1 property.
2 MR. GROSSMAN: Okay.
3 MR. KLINE: And this is just your -- you'd like
4 the record to reflect a possibility of what might happen in
5 the future depending on what happens to the road system.
6 MR. FISHER: That's correct.
7 MR. GROSSMAN: And that's the reservation area
8 that's referred to in the --
9 MR. KLINE: Yes, sir.
10 MR. GROSSMAN: -- technical staff report.
11 MR. KLINE: And the next witness is going to
12 elaborate on that.
13 MR. GROSSMAN: Okay.
14 MR. KLINE: And we'll see an exhibit below that on
15 the floor, Mr. Grossman, that shows the various areas of
16 dedication and reservation.
17 MR. GROSSMAN: Okay.
18 MR. KLINE: Mr. Fisher, I think I interrupted you
19 in your presentation. Go ahead and finish up on whatever
20 else you'd like to say.
21 MR. FISHER: Um, I think that pretty much covers
22 what I have to say unless you have any further questions.
23 MR. GROSSMAN: I do not at this moment.
24 MR. KLINE: I have no further questions of Mr.
25 Fisher either.

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1 MR. GROSSMAN: Okay.
2 MR. FISHER: Okay. Thank you.
3 MR. KLINE: I'll call our next witness. Mr. Ager.
4 Mr. Ager, could you please state and spell your name and
5 give us your business address?
6 MR. AGER: My name is David, excuse me, my name is
7 David Ager, last name spelled A-G-E-R. I'm with a company
8 called Townscape Design and we're located at 6030 Daybreak
9 Circle, Suite A-150 in Clarksville, Maryland.
10 MR. GROSSMAN: Would you raise your right-hand,
11 please?
12 (Witness sworn.)
13 MR. GROSSMAN: All right. You may proceed.
14 DIRECT EXAMINATION
15 MR. KLINE: Mr. Ager, what is your profession,
16 please?
17 MR. AGER: I'm a certified planner and a landscape
18 architect, and I'm also a LEED AP, accredited professional
19 in neighborhood design.
20 MR. KLINE: You'd better spell that for the
21 transcriber.
22 MR. AGER: We use the initials L-E-E-D A-P-N-D.
23 MR. KLINE: Mr. Ager, have you ever qualified as
24 an expert in the field of land planning before the Hearing
25 Examiner or in some, some similar forum?

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1 MR. AGER: Yes. Yes, I have.
2 MR. KLINE: Could you be specific about what cases
3 those are and when they occurred?
4 MR. AGER: Sure. In Montgomery County most
5 recently, I was for Hearing Examiner Robeson on Case D-2878
6 which was a special exception case for the Greencourt, LLC.
7 That was about a month ago, month-and-a-half ago. Prior to
8 that, also before Hearing Examiner Robeson, I had a, I was,
9 testified on behalf of Towne Crest, LLC in Case G-910.
10 MR. KLINE: Which is a rezoning application?
11 MR. AGER: Which is a, yes, rezoning application.
12 MR. KLINE: Have you appeared before Mr. Grossman
13 before?
14 MR. AGER: Yes, actually, but it's been awhile.
15 2004.
16 MR. GROSSMAN: That is awhile. What case was
17 that?
18 MR. AGER: It was Case G-817.
19 MR. KLINE: And though I know his memory is
20 comprehensive --
21 MR. AGER: Noyes Lane, LLC was the case.
22 MR. KLINE: Mr. Grossman, I provided a copy of Mr.
23 Ager's resume and based on his professional qualifications
24 stated in the resume and his previous qualification here as
25 an expert in the field of land planning, I would like to so

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1 offer him, so offer him in that field, please.
2 MR. GROSSMAN: All right. And his resume has been
3 marked as Exhibit 50 and based on that resume and his prior
4 testimony as an expert in this jurisdiction in land
5 planning, I accept him as an expert in land planning.
6 (Exhibit No. 50 was marked for
7 identification.)
8 MR. KLINE: Mr. Ager, we've got a lot of boards
9 here with us today, so you select the boards you want to use
10 and you go ahead and go through your presentation. Let's
11 just start with the kind of physical features of the
12 property. What's unique about the Choi property?
13 MR. AGER: Okay. Um, I can refer to the approved
14 natural resource inventory to talk in detail about
15 topography and vegetation or we would refer to, we can refer
16 to board no. 49, Exhibit No. 49 to talk more generalities,
17 so it's completely up to you.
18 MR. GROSSMAN: I'll let you and Mr. Kline --
19 MR. KLINE: Well, since I was having you start
20 with sort of existing conditions, yes, why don't you go
21 ahead and pull up the NRI. I assume this is just a black
22 and white version or --
23 MR. AGER: Black and white version. I believe
24 it's in the exhibit list.
25 MR. KLINE: Okay. It looks to me like it's

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1 Exhibit No. 13, Mr. Grossman.
2 MR. GROSSMAN: Okay.
3 MR. AGER: That's on two boards. Let me just get
4 -- it up on two separate boards. And what I wanted to point
5 out -- it's at a slightly, it's to the left of Exhibit 49
6 which is the rendered development plan. What I wanted to
7 point out, the property is generally vegetated, about 100
8 percent wooded. It has seven different forest stand types
9 within the property boundary but generally, it falls into
10 two general categories and it relates to the topography of
11 the site. So very generally, there's two, two valleys, one
12 -- and I'm going to be referring to Exhibit 49 working from
13 left to right across the board.
14 MR. GROSSMAN: All right.
15 MR. AGER: When you look at Observation Drive, the
16 proposed Observation Drive, there's a valley that runs
17 generally north-south paralleling Observation Drive. Then
18 there is a ridge immediately to the east of that valley
19 where a proposed development is shown. Then there's a
20 smaller valley that comes up into the site to the east of
21 that ridge, and then the property comes up to existing 355
22 which is on the right-hand side of the exhibit.
23 What's important about this is the older
24 vegetation is in the valleys and the newer vegetation is on
25 the ridges essentially because the property, probably 30

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1 years ago or more, was farmed so that gives you different
2 features, gives different characteristics in the maturity of
3 the forest. So the mature forest with sycamores and red
4 maples are in the valleys, and the newer forest is up on the
5 ridges.
6 MR. GROSSMAN: I take it the entire property is in
7 a special protection area.
8 MR. AGER: Yes, it is.
9 MR. GROSSMAN: Okay.
10 MR. AGER: That is correct. Um, so the key point
11 here is that on the development, the approved NRI, they're
12 within an established stream valley buffer, an area of
13 protection, and that has been honored in the development
14 plan application and I'll go into that in a little more
15 detail. I just wanted to kind of just touch on them a
16 little bit. I think I, unless you have questions on that,
17 there is a lot of information on the Natural Resource
18 Inventory I can go into but I think it's --
19 MR. GROSSMAN: I'll leave the presentation to you
20 and I'll ask questions if I have them.
21 MR. AGER: Okay. Very good. I'll leave it at
22 that then.
23 MR. KLINE: Okay. So give us the size, the shape.
24 It's fairly obvious but --
25 MR. AGER: Yeah. The property is 24.37 acres.

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1 It's actually two lots as was previously described by the
2 Hearing Examiner at the beginning of the hearing. It's
3 somewhat rectangular with a portion of the larger rectangle
4 to the east and northeast of the property not included in
5 the area which is the McCord property which was mentioned by
6 Mr. Fisher earlier.
7 MR. KLINE: Did you highlight where the McCord
8 property is located?
9 MR. AGER: Generally to the northeast of, north or
10 northeast of the property, depending on how you --
11 MR. KLINE: So the notch in Exhibit 49 in the
12 upper right-hand corner is all, or most of the back half of
13 it is the McCord property, is that right?
14 MR. AGER: Yes. That is correct.
15 MR. KLINE: And then you've got some single-family
16 detached fronting on --
17 MR. AGER: Yes. There's three fronting on
18 existing 355. Also, on the development plan exhibit, as
19 mentioned earlier, there are two master plan right-of-ways
20 on the left-hand side of the exhibit. On the west side is
21 Observation Drive, right-of-way.
22 MR. GROSSMAN: I can't exactly see. Can you move
23 that other diagram over so I can see the left-hand side?
24 MR. AGER: Absolutely. My apologies there.
25 MR. GROSSMAN: All right. So now what were you

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1 saying about the --
2 MR. AGER: I was saying --
3 MR. GROSSMAN: -- western side?
4 MR. AGER: Yes, sir. There is a master plan
5 right-of-way for Observation Drive. In the, to the
6 extremities of the property in, before the court right now,
7 the Observation Drive right-of-way has been platted. So it
8 exists in platted form up to the northern property line of
9 the subject property, the western property line of the
10 subject property and the southern property line. So this
11 property, once it moves forward into subdivision, will
12 complete the Observation Drive right-of-way. This is,
13 again, on the western side or left-hand side of the exhibit.
14 MR. KLINE: And because that's known, the
15 applicant has no problem with dedicating that right-of-way.
16 MR. AGER: That's right. It's very much known.
17 This is -- the point that I was trying to make and clarify
18 is that that right-of-way and that alignment has been
19 established and this applicant will complete that
20 dedication.
21 MR. GROSSMAN: So right now, Observation Drive is
22 discontinuous. It stops at your property on the northwest
23 side and takes up again just to the south of it?
24 MR. AGER: That's correct. As a platted right-of-
25 way, it is constructed, and maybe we should go to the

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1 surrounding neighborhood but just for the purposes of this
2 discussion, it is constructed further north of the property,
3 so there's a platted right-of-way that's not constructed.
4 MR. GROSSMAN: I see. Okay.
5 MR. AGER: Yes. And then again, the same is the
6 case on the south and west sides.
7 MR. GROSSMAN: All right.
8 MR. AGER: The second master plan right-of-way --
9 MR. GROSSMAN: Now, you say you're going to
10 dedicate that. Are you going to be actually building that?
11 MR. AGER: No, sir.
12 MR. GROSSMAN: All right. So you were just
13 dedicating it to the future road development as it's been
14 suggested.
15 MR. AGER: That is correct. We're going to
16 dedicate the full right-of-way as required by the master
17 plan which is 150 feet. That is a wider road --
18 MR. GROSSMAN: 150 feet of width of the road.
19 MR. AGER: Of total width.
20 MR. GROSSMAN: Right.
21 MR. AGER: Not -- a portion of it has already been
22 dedicated.
23 MR. GROSSMAN: Okay.
24 MR. AGER: But that right-of-way is wider because
25 it allows for the inclusion of the corridor's city

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1 transitway --
2 MR. GROSSMAN: All right.
3 MR. AGER: -- to run down the middle of the right-
4 of-way within the median. So what normally would have been
5 a 110 or a 120-foot right-of-way is 150-foot.
6 MR. GROSSMAN: Okay.
7 MR. AGER: So the point again there is that the
8 future CCT will actually traverse this property in the
9 future when constructed.
10 MR. KLINE: So how about on the other side? It
11 doesn't sound quite as simple on the other side.
12 MR. AGER: I think it is simple, but we'll go
13 through it point-by-point and keep it as simple as possible.
14 On the other side, and I'm going to maybe bring up the
15 master plan exhibit if it's not already in there, the
16 exhibit list. This was, I prepared this for this hearing.
17 MR. KLINE: All right. It's a -- it would not be
18 in the record so we'd make, so we --
19 MR. GROSSMAN: All right.
20 MR. KLINE: And you'll need to give Mr. Grossman a
21 name for what that exhibit is.
22 MR. AGER: It's a, it's an exhibit that has three
23 points of information. There's two documents from the
24 master plan, a reproduction of page 41, a reproduction of
25 page 43, and the surrounding neighborhood, figure 2, from

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1 the Staff report. So these are reproductions basically.
2 MR. GROSSMAN: Do you accept the surrounding
3 neighborhood --
4 MR. AGER: Yes, I do.
5 MR. GROSSMAN: -- definition contained on page 7
6 of the technical staff report?
7 MR. AGER: Yes, I do, sir.
8 MR. GROSSMAN: Okay. All right. So this will be
9 Exhibit 51. Would you mark it?
10 MR. AGER: Certainly.
11 MR. GROSSMAN: And I'm just saying it's the master
12 plan, pages 41 and 43, and surrounding neighborhood.
13 (Exhibit No. 51 was marked for
14 identification.)
15 MR. AGER: In the center of the exhibit is page 43
16 which includes both the right-of-way general alignments for
17 Observation Drive. And we just basically discuss the future
18 transitway, which is shown as a parallel line on the
19 exhibit, the future transit stop, which is shown as a circle
20 with a T in the center, and then the property, general
21 location of the property is shown with a yellow highlighted
22 circle. It's not actually the property line itself.
23 But what I wanted to bring up is that this master
24 plan alignment, this is the 1994 master plan, showed a
25 sweeping curve through this property and then continuing

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1 south of the historic district and running north and re-
2 associating with 355 north of the historic district. So
3 that was the plan in 1994.
4 MR. GROSSMAN: Right.
5 MR. AGER: Since 1994, it's been a slight change
6 in that alignment. There's a new road called Rob -- and if
7 I could, let me just back up a second. So that -- I'm
8 referring to the development plan, Exhibit 49, that master
9 plan. The interpretation of that 1994 plan would have had a
10 sweeping alignment that is consistent with the alignment on
11 the master plan but then would have continued north towards
12 the center of the exhibit.
13 What's different today is there's a new road
14 called Roberts Tavern Drive. It takes that right-of-way,
15 continues it through the property as the master plan
16 alignment but stops at Observation Drive at a T
17 intersection. That alignment for Roberts Tavern Drive was
18 approved through the context of a project just to the north
19 of the subject property called gateway crossing.
20 MR. KLINE: It says Gateway Commons on the --
21 MR. AGER: Gateway Commons. Thank you. Which is
22 zoned R-200 TDR-7 and was developed at about 8.51 units to
23 the acre. The, again, Mr. McCord's property just to the
24 south has not been developed, but the alignment for this
25 road would continue through the McCord property and then

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1 through our property.
2 MR. GROSSMAN: So if I understand you correctly,
3 the, both the new alignment proposed and the original one
4 proposed in the master plan would be the same at the area of
5 your property. The only difference is north, it looks like
6 northwest of your property if you, if north were
7 verticalized there, so that's the only difference. So
8 actually, the only difference is northwest of your property
9 where the present alignment would stop at a T intersection
10 with Observation Drive. Previously, it would continue on.
11 MR. AGER: That is correct.
12 MR. GROSSMAN: Okay.
13 MR. AGER: That is correct. Um, and then
14 subsequent to that timeframe, and I guess it was, I believe
15 it was somewhat coincidental with the Gateway Commons
16 project approval, there was a study done by the county
17 Department of Transportation analyzing the need for the
18 sweeping roadway and it was concluded that -- and I'll let
19 the transportation expert talk about the details of that
20 study and just talk about the generalities. Perhaps we'd
21 like to refer to another exhibit if I could.
22 MR. GROSSMAN: All right. This will be Exhibit
23 52.
24 (Exhibit No. 52 was marked for
25 identification.)

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1 MR. GROSSMAN: Don't forget to get me electronic
2 copies of these exhibits, please.
3 MR. KLINE: Yes, sir.
4 MR. GROSSMAN: All right.
5 MR. KLINE: And what are you calling this exhibit,
6 Mr. Ager?
7 MR. AGER: Dedication and reservations to the
8 Roberts Tavern alignment.
9 MR. KLINE: Okay.
10 MR. GROSSMAN: Dedication and reservations for
11 Roberts Tavern alignment.
12 MR. AGER: And let me just correct Mr. Grossman.
13 I apologize if I said it before. Roberts Tavern is, the
14 title is with Roberts Tavern.
15 MR. GROSSMAN: All right. Dedication and
16 reservations with Roberts Tavern alignment.
17 MR. AGER: Yes, sir. What this, what this exhibit
18 is is a simplified version, a boiled down version of all the
19 information that's on these other exhibits. On the left-
20 hand -- and the orientation of the property is similar to
21 the development plan with north slightly canted to the east.
22 MR. GROSSMAN: Okay.
23 MR. AGER: It shows the area of dedication on the
24 left-hand side or western side of the property for
25 Observation Drive. There's really not a point there. On

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1 the right-hand side, it shows the triangular area of
2 reservation in orange with a dotted black line that shows
3 the potential T intersection of Roberts Tavern Drive with
4 Maryland Route 355. That's the alternative that was studied
5 by the county, the alternative to the master plan alignment.
6 So to make a long story short, without getting
7 into all the technical issues, our reservation accommodates
8 what we'll call the Roberts Tavern Drive alignment and the
9 master plan alignment. So the county, the state, they
10 determine which alignment they prefer to do, to pursue at a
11 future date, and either one is contained within the
12 reservation that we have proposed. It didn't --
13 MR. GROSSMAN: Let me stop you for a minute and
14 ask you.
15 MR. AGER: Sure.
16 MR. GROSSMAN: I've never had a case in which
17 there was a, quote, reservation. What exactly is a
18 reservation in your mind and legally?
19 MR. AGER: Um, my understanding, it's an area that
20 will be set aside until a future point. It will be
21 determined by, by the, you know, the legal parameters of the
22 case in agreement with the county, that we'll set aside that
23 land for limited use. We are showing a temporary entrance
24 through that area. Other than that, we are not using the
25 alignment for anything. And then our, once a final

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1 alignment is determined, that the area of the alignment be
2 dedicated and any residual area be returned to the property
3 owner or released to the property I should say.
4 MR. GROSSMAN: I'm just trying to find what is
5 the, what's the --
6 MR. KLINE: Can I supplement the answer?
7 MR. GROSSMAN: Yes.
8 MR. KLINE: The deed background of the phrase, if
9 you take a look in the subdivision regulations, Section 50-,
10 there is a provision in the subdivision regulations dealing
11 with reservation.
12 MR. GROSSMAN: Okay.
13 MR. KLINE: And what it was intended to do
14 initially was when government doesn't want your subdivision,
15 your subdivision to go forward because it will preempt them
16 being able to acquire a piece of land, they are allowed to
17 put the land in the reservation, that you must hold it with
18 no taxes for up to three years to give the government an
19 opportunity to get organized to acquire the land. At the
20 end of three years, then if they haven't bought it, you're
21 allowed to move forward.
22 MR. GROSSMAN: Okay.
23 MR. KLINE: It's evolved from that into a practice
24 of when we don't quite know what's going to happen, we put
25 it in reservation. It takes it off the tax rolls, preserves

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1 it for the public acquisition, and the reservation is for a
2 three-year period. You just basically go back and renew it
3 until such time the state and the county finally decide what
4 they're going to do here. So our, the record of our case at
5 the time of subdivision will say we will continue to hold
6 this land in abeyance until you decide what you're going to
7 do and then we decide, if there's any surplus land left, it
8 will revert to or not revert to us. It will continue to
9 have ownership.
10 MR. GROSSMAN: And you said it's evolved. Has it
11 evolved in terms of statutory changes or has it just evolved
12 in terms of the way the practice is applied?
13 MR. KLINE: I would say it's more the policy of
14 practice. For instance, if I, by way of example, the record
15 plat that we recorded about two years ago for Bullis School
16 shows the realignment of Falls Road so it's actually much
17 straighter. It would lock off a little bit of the golf
18 course on one side and the softball field off the front of
19 the Bullis campus. And we have a note on there that just
20 says we will hold this property and not develop it until you
21 decide you're ready to implement your improvements to Falls
22 Road at which time, then we have to dedicate the property.
23 So there it's confirmed on the face of the record plat which
24 may happen here as well.
25 MR. GROSSMAN: All right. Okay. I think that

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1 gives me an idea of what I'm asking because I hadn't had a
2 case in which a reservation was involved before so I wanted
3 to make sure I have a clear understanding of what it is.
4 MR. KLINE: Well, and this one takes it to a
5 little bit of a different dimension because that dotted
6 black line shows you that we still need to use the property
7 to get access so we have some road improvements within the
8 reservation area, and I'll let --
9 MR. AGER: Temporary.
10 MR. KLINE: Yes. I'll let Mr. Ager go back to
11 that.
12 MR. GROSSMAN: How close are we to knowing what
13 the county and state are going to do regarding this road
14 alignment?
15 MR. AGER: One of the, one of the delays in this
16 project, the reason we took this long to get before you was
17 this very issue, and we met multiple times. I don't recall
18 how many but we've had meetings at Park and Planning with
19 all three agencies in the same room and they couldn't agree
20 on what should be done, and so I can't answer the question
21 specifically. What our goal here is to give them the
22 flexibility to make that determination in a timeframe that
23 suits them and allows the property to go forward as well.
24 So that was our goal in the reservation.
25 MR. GROSSMAN: What happens if it's never

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1 resolved? Does your project, is your project able to go
2 forward --
3 MR. AGER: Yes.
4 MR. GROSSMAN: -- if they don't resolve it?
5 MR. AGER: Yes. Yes. What we proposed, if I
6 could refer to Exhibit 49, the development plan, we, the
7 property, the road line that's been in the property start at
8 355. There's an entrance on northern corner, near the
9 northern corner of 355 and the property. There's a
10 temporary entrance built to public road standards to be
11 removed in the future at the developer's cost, and then it
12 enters into the property. There is a greenspace to the
13 immediate right as you enter. A left-hand turn, the road
14 is, the entrance road is referred to as Dowden's Station
15 Way. Then the, there is a public road in the lighter orange
16 which is referred to as Dowden's Green Way which connects
17 this property on a generally northwest to southeast
18 configuration to properties to the southeast and to the
19 McCord property to the north, northwest of the property.
20 MR. GROSSMAN: And that roadway does not exist at
21 the present time.
22 MR. AGER: That is correct.
23 MR. GROSSMAN: Okay.
24 MR. AGER: That is part, it's within the
25 development plan area.

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1 MR. GROSSMAN: And that would be part of your
2 project.
3 MR. AGER: That is correct.
4 MR. GROSSMAN: Okay.
5 MR. AGER: In addition to that, there is a private
6 road called Dowden's Park Circle which is a semi-circular
7 road in the darker orange that's internal the property and
8 is in the general location of where the townhouses are
9 located on the property. And that, that is a private,
10 private road to service that area and make connections to
11 the public road, Dowden's Green Way.
12 So in the interim, we'll have an access point on
13 355 for the property. As properties develop to the south,
14 we will get a second access point off of Dowden's Green Way
15 as that extends and then ultimately, when Roberts Tavern
16 Drive/Frederick Road Maryland 355 is determined and built
17 through the McCord property and ultimately through the
18 subject property, the interim road connection to 355, which
19 is referred to as Dowden's Station Way, will be removed and
20 a connection will be made to Roberts Tavern Drive, and it's
21 shown through the McCord property. So that connection won't
22 occur unless the road occurs basically.
23 MR. KLINE: And so what you call Dowden's Station
24 Way -- let me rephrase that. Everything to the left of the
25 lighter yellow, Route 355 sweeping curve, we would end up

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1 having development that would have no frontage on a public
2 street to which we could get out to Route 355 unless you
3 build Dowden's Station Way to give us temporary access.
4 MR. AGER: That is correct.
5 MR. KLINE: Okay.
6 MR. GROSSMAN: Then --
7 MR. AGER: If I could add one other thing, Mr.
8 Kline. We've designed the project within the community,
9 where it's essentially blue and green in the property within
10 the development area, not in the reservation, to
11 accommodate, to be developed and accommodate either
12 alignment so we don't have to come back and revisit the
13 development plan once an alignment is determined. We're
14 simply saying this temporary connection will be removed and
15 a permanent road will be added.
16 MR. KLINE: And this is really more to probably
17 educate me. So the dotted line that is shown on Exhibit 52
18 is an alternative alignment of Route 355 that is not the
19 sweeping curve, it's basically a stubbed off street. So
20 you'd have probably a light there and you'd have to come up
21 and make a left turn, and that would get you onto Roberts
22 Tavern.
23 MR. AGER: That's right. It's a less expensive
24 alternative that's been studied by the Department of
25 Transportation, and they have not made a final determination

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1 of that or not. So bottom line summary, we're accommodating
2 both options. It doesn't change our development plan
3 internal to the property, and we only have a temporary
4 connection during the interim period and then that would go
5 away when ultimate construction occurs.
6 MR. KLINE: And the --
7 MR. GROSSMAN: The Dowden's Station Way will go
8 away regardless of whether, of which alignment. If they do
9 in fact build the new roadway one way or the other, then you
10 would, the Dowden's Station Way would be stubbed off to
11 connect with whatever that, that alignment is.
12 MR. AGER: It would go away in its entirety.
13 MR. GROSSMAN: Okay.
14 MR. AGER: And the reason for that is, and Mr.
15 Crum will probably go into this in maybe more detail later,
16 is that the alignment for the master plan road is in, is in
17 fills, it requires fill to accomplish. Another reason that,
18 and again, this is just my opinion, it hasn't been
19 determined that the alternative, the Robert Tavern Drive
20 alternative, which has been studied by DOT on Exhibit 52, is
21 less expensive and more rational because of the topography.
22 But either way, we've accommodated both of those alignments
23 but Dowden's Station Way, whichever one is determined will
24 be the final alignment will be taken away or removed and the
25 connection to that road will be the future connection which

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1 is shown just on the McCord property.
2 MR. GROSSMAN: All right. And the gray area, even
3 though you, is the reservation area, you don't have any
4 plans indicated on your development plan for that area.
5 MR. AGER: That is correct. The gray area on the
6 development plan, which is a portion, a smaller portion of
7 approximately .72 acres of the larger 2.59 acre reservation,
8 is an area that we anticipate the residual if the master
9 plan alignment is constructed. We do not have any proposed
10 development within that area at this time. We did that
11 because we wanted to keep the reservation area a clean area
12 for purposes of approval but we do anticipate once this
13 eventually is determined, there will be some residual area,
14 we'd like to come back for a development plan amendment in
15 the future but that's not before you today.
16 MR. GROSSMAN: So you might have some proposal for
17 construction no that area.
18 MR. AGER: That is correct.
19 MR. GROSSMAN: So I misunderstood earlier. That
20 gray area is only a portion of the reservation. The entire
21 reservation is what's shown on the eastern side of Exhibit
22 52 in orange, is that correct?
23 MR. AGER: Yes. And what I'd like to do to
24 clarify if I could is to draw a line on Exhibit 52 showing
25 that area. It is, it is on there. It's a little hard to

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1 see. That's the dark gray area referenced here.
2 MR. GROSSMAN: Okay.
3 MR. AGER: So it's a third of the area or
4 something like that.
5 MR. GROSSMAN: But the entire reservation area is
6 larger than that, is that correct?
7 MR. AGER: That is correct. That's correct.
8 MR. GROSSMAN: The reservation area includes a
9 portion of what may be in the bypass, whatever you want to
10 call it.
11 MR. AGER: That is, that is correct, sir.
12 MR. GROSSMAN: All right. And Dowden's Green Way,
13 I don't see anything that tells me, what exactly does that
14 connect to if you, to the south?
15 MR. AGER: To the south?
16 MR. GROSSMAN: Yes.
17 MR. AGER: Um, we --
18 MR. KLINE: Try the zoning and vicinity map that's
19 underneath there, 15. It will give you a little bit larger
20 area map.
21 MR. AGER: Yeah. We do not have an exhibit with
22 us today but we have done studies with, in collaboration or
23 discussions with Park and Planning staff that, in referring
24 to the zoning map, that road would stub out approximately at
25 parcel N-814. If you had the ability to zoom it here you'd

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1 see that there's a knoll in the middle of parcel N-970 so
2 that road would sweep and then return to Route 355 following
3 the topography along parcel N-970. So eventually once these
4 properties develop to the south, it will connect with
5 Maryland 355, existing Maryland Route 355.
6 MR. GROSSMAN: All right. And that road is
7 planned no matter what happens, that you're going to have
8 Dowden's Green Way if it's approved.
9 MR. AGER: That is correct.
10 MR. GROSSMAN: Okay.
11 MR. AGER: That will be a public road as well.
12 MR. GROSSMAN: So right now, your plans are to
13 have two general access areas to the site. Is that the
14 idea?
15 MR. AGER: That is correct.
16 MR. GROSSMAN: Okay. All right.
17 MR. KLINE: Mr. Grossman, my proposal to staff was
18 that we would have what are called phase plans or three
19 alternative development plans, depending on what road
20 improvements would occur, so that we could get approval for
21 the units if there ever was surplus land, but I guess I
22 would say Ms. Tesfaye said too many moving parts, Mr. Kline,
23 If you've got the roads, and I just don't want to have to
24 evaluate two or three different development plans depending
25 on what happens, you want more density, you come back later

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1 on and get the development plan amended. It certainly is
2 easier to explain this plan than the other three options.
3 MR. GROSSMAN: Okay.
4 MR. KLINE: So we looked into it. I think you'd
5 agree that maybe the system allows you to do that but it was
6 complicated. There's no question about it.
7 MR. GROSSMAN: Okay.
8 MR. KLINE: Thank you. Mr. Ager, keep talking.
9 MR. AGER: Um, I believe I explained the road
10 alignment question. If you have any questions of
11 clarification, I'm happy to do that. I can move on.
12 MR. GROSSMAN: I think I understand that.
13 MR. AGER: Okay.
14 MR. GROSSMAN: But I'm sure I'll be confused two
15 weeks later when I try to remember it.
16 MR. KLINE: You and everyone else. I mean, when
17 you sit in a room with the State Highway Administration and
18 the County and they kind of go we don't know.
19 MR. AGER: But the bottom line, if I could say the
20 third time, is we've accommodated all the options for them
21 so they can take their sweet time essentially in determining
22 what they want to do.
23 MR. KLINE: Well, why don't you go to all these
24 pretty colors here and everything. Just show us kind of
25 what you're, what you're depicting on here, how we would

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1 build it out with what we, we can control.
2 MR. AGER: Okay. Again, what's before you on
3 Exhibit 49 is 105 residential dwelling units, 80 percent/20
4 percent split between townhouses and single-family. We have
5 honored several master plan elements or guidelines or
6 guidance in the master plan with respect to this plan. I'll
7 go over them briefly.
8 One is that we've located single-family detached
9 homes along the future alignment or future, yes, alignment
10 of the Maryland Route 355 which is referred to A-251 in the
11 master plan. That was one of the key elements in the master
12 plan. As I stated earlier, we have honored the
13 environmental features of the property and with the most
14 recent Planning Board approval, received preliminary
15 approval of the water quality plan and preliminary forest
16 conservation plan.
17 MR. GROSSMAN: By the way, I see that your Exhibit
18 40-B is also a rendered version.
19 MR. KLINE: Oh, it was?
20 MR. GROSSMAN: Yes.
21 MR. KLINE: Oh, okay.
22 MR. GROSSMAN: Okay.
23 MR. AGER: Not to confuse.
24 MR. GROSSMAN: So essentially, 40-B and 49 are the
25 same, are identical exhibits.

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1 MR. AGER: Yes.
2 MR. KLINE: Right.
3 MR. GROSSMAN: Okay.
4 MR. AGER: So in terms of property, we have a
5 single-family presence along Maryland Route 355, a master
6 plan element. We are -- not shown on the development plan,
7 there is a grading plan that Mr. Crum will talk about later.
8 We were very sensitive to the grading of the property which
9 is one of the standards in the zone we're applying for. The
10 configuration of the townhouses, the location, configuration
11 of the singles, the alignments of the street all took into
12 account the topographical features of the property, forest
13 retention, wetlands and those sorts of elements, natural
14 environmental elements, to preserve them to the extent
15 possible and also balance that with the development of the
16 property.
17 We're at 4.31 dwelling units per acre which is
18 consistent with the master plan recommendation of two to
19 four with the understanding that MPDUs are in addition to
20 the 4.0 that's recommended in the master plan. The master
21 plan actually clarifies that in the technical appendix I
22 believe. So we're at 4.31 --
23 MR. GROSSMAN: Do you have a citation to where it
24 clarifies?
25 MR. AGER: I -- yes. Let me find that.

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1 MR. GROSSMAN: You say clarify, I take it it has
2 something that says even though four is recommended, for
3 MPDUS, an additional density is permitted.
4 MR. AGER: That's right. You can go up to 4.88
5 essentially.
6 MR. GROSSMAN: Okay.
7 MR. AGER: I believe you'll find it in the
8 technical appendix of the 1994 plan starting on what's
9 referred to on land use plan. On page 9, there's a
10 discussion of moderately priced dwelling units and how
11 they're calculated.
12 MR. GROSSMAN: Okay.
13 MR. AGER: So there's 14 total MPDUs proposed
14 within the plan. The dark, darker blue townhouse buildings
15 on the development plan are the market rate units. The
16 lighter blue are the MPDUs and the very dark blue are the
17 single-family detached homes on individual lots.
18 MR. GROSSMAN: And that includes, by the way,
19 those homes that my laser point is pointing, those are also
20 single-family units?
21 MR. AGER: Yes, sir.
22 MR. GROSSMAN: Okay.
23 MR. AGER: That is correct.
24 MR. GROSSMAN: Because they seem larger than the
25 other single-family units.

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1 MR. AGER: Yes. They are, some of the lots are
2 larger. Some of it's a function of the characteristics of
3 the property line in relationship to the road alignment.
4 MR. GROSSMAN: All right. And I was pointing to
5 the homes immediately around the Dowden's Station Way
6 interim access.
7 MR. AGER: That's right.
8 MR. GROSSMAN: Okay.
9 MR. AGER: So in addition to the general layout of
10 the property, the minimized grading to honor the
11 environmental features of the property, we have two key open
12 spaces planned within the community and they are located,
13 one is located at the intersection of Dowden's Green Way and
14 Dowden's Station Way. It is roughly rectangular. The
15 second one is further to the south more internal to the
16 property and is roughly rectangular. These are planned as
17 common open spaces that would be available for general use
18 sitting features, things of that nature.
19 And then there's additional ground available
20 adjacent to the environmental features of the property
21 located on the development plan. Where it references to the
22 very south of the property adjacent to townhouse numbers 27
23 and 26, we have a multi-age play, playground sitting area.
24 This would be incorporated within a very, an area
25 immediately adjacent to retained forest. So it would give

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1 visual access to the forest, provide an opportunity for a
2 play area for children within the community.
3 There's a pedestrian system shown within the
4 development plan, and it's a dashed line in orange on the
5 plan. It includes both sidewalks within the right-of-ways
6 of the public street, sidewalk within the interim Dowden's
7 Station Way and then sidewalks internal to the townhouse
8 community and the single-family community, and a connection
9 across from our property through the stream valley to future
10 Observation Drive. That connection to Observation Drive
11 will be constructed by this applicant but Observation Drive
12 will not be constructed by the applicant.
13 And that is, there's an illustrative detail of
14 that crossing shown on the development plan, the upper left-
15 hand corner, viewed from generally the south looking north
16 and it indicates an eight-foot wide pedestrian path on top
17 of a bottomless culvert which spans approximately 40 feet of
18 the stream valley, and it has vertical abutments on the
19 uphill, upstream and downstream side of the crossing. These
20 abutments are very important because they minimize the
21 grading of the property and as I believe Mr. Fisher
22 mentioned, this is also a way in which to provide a very
23 environmentally sensitive connection for water and sewer.
24 Water and sewer has been planned and brought up to
25 the property. Immediately to the west of the property is a

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1 that on the plan, it's labeled there's a fire turnaround
2 that goes all the way to the south.
3 MR. AGER: Right.
4 MR. GROSSMAN: To the very most southernmost
5 point.
6 MR. AGER: Well, let me --
7 MR. GROSSMAN: And then next to it is a
8 connection, future connection dotted arrow.
9 MR. AGER: Am I misspeaking? I apologize.
10 MR. CRUM: We're not connected.
11 MR. AGER: I apologize, Mr. Grossman. I misspoke.
12 MR. GROSSMAN: Okay.
13 MR. AGER: I've been corrected by Mr. Crum that we
14 are not making a physical connection to that property. My
15 apologies.
16 MR. GROSSMAN: Okay. And none appears to be shown
17 on the, on the land use plan but I do see the orange dotted
18 arrow. That's a future connection for pedestrian purposes
19 or --
20 MR. GROSSMAN: You can't testify because you're
21 not sworn yet.
22 MR. CRUM: I know. I'm just looking.
23 MR. GROSSMAN: If you don't know the answer, just
24 say you don't know and we'll let Mr. Crum.
25 MR. AGER: Yeah. I do know the answer and I was

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1 corrected during my testimony. I apologize. It's a
2 pedestrian connection only.
3 MR. GROSSMAN: Okay.
4 MR. AGER: Not a vehicular connection.
5 MR. GROSSMAN: But it's one that is not -- it just
6 says future connection. What does that mean?
7 MR. AGER: If -- we are providing the opportunity
8 for that property owner. I mean, we'll provide the
9 connection, excuse me, up to the property line and that
10 property owner would have access to it.
11 MR. GROSSMAN: You mean like a sidewalk up to it?
12 MR. AGER: Like a sidewalk.
13 MR. GROSSMAN: Okay. And also on the far north
14 right there, there's another area which says future
15 connection. It looks like it has two pedestrian, I take it
16 those orange dotted arrows are pedestrian ways, is that
17 correct?
18 MR. AGER: That is correct.
19 MR. GROSSMAN: And that says future connection but
20 it also has a roadway there.
21 MR. AGER: That is correct.
22 MR. GROSSMAN: And what's the story with that?
23 MR. AGER: The ideal, and Mr. Crum will testify to
24 this in more detail, the ideal location from a grading
25 standpoint for connection to Roberts Tavern Drive/Maryland

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1 355 is on the McCord property, so we are showing an
2 extension of Dowden's Park Circle as a public connection
3 through that property to Roberts Tavern Drive as a future
4 connection when and if that road, Roberts Tavern Drive/355,
5 is constructed.
6 MR. GROSSMAN: I see. And I think you actually
7 did cover that before. If Roberts Tavern Drive is
8 constructed, you're going to eliminate entirely Dowden's
9 Station Way, and the sole connection there would be what's
10 labeled future connection which would then, to its
11 northwest, which would then connect the property to Roberts
12 Tavern Drive, is that correct?
13 MR. AGER: That is correct.
14 MR. GROSSMAN: You wouldn't leave even that stub
15 of Dowden's Station Way to connect --
16 MR. AGER: To --
17 MR. GROSSMAN: -- to the property.
18 MR. AGER: To --
19 MR. GROSSMAN: In other words, this, you wouldn't
20 leave that.
21 MR. AGER: This connection?
22 MR. GROSSMAN: That would not be left? It would
23 just be eliminated?
24 MR. AGER: This connection right here?
25 MR. GROSSMAN: Yes.

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1 MR. AGER: No, it would not, and there's an
2 important reason for that. This road, because of the
3 vertical design requirements for this road and the nature of
4 the topography, a connection at that location would require
5 the site to be heavily graded and raised and will cause more
6 environmental detriment, so the best environmental solution
7 and the best traffic solution is to make the connection
8 where the road is more or less at grade. What happens is
9 the road along our property near outlot D would be in
10 several feet of fill. The exact number, Mr. Crum can give
11 you.
12 MR. GROSSMAN: So what happens with this property
13 here, the one that's right against the future path I guess
14 of the alignment?
15 MR. KLINE: How is it going to get its access?
16 MR. GROSSMAN: But it does not appear to have
17 access to anything.
18 MR. AGER: Well, what's the residual of Dowden's
19 Station Way within the development, not in the
20 reservation --
21 MR. GROSSMAN: Right.
22 MR. AGER: -- would be made a part of that lot so
23 that would be a panhandle lot to that, for this public road
24 would be one way to do it.
25 MR. GROSSMAN: I see. So you're saying that that

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1 road would still exist but it would not, no longer access or
2 would not access the Roberts Tavern Drive. Is that what
3 you're saying?
4 MR. AGER: That's correct.
5 MR. GROSSMAN: Okay.
6 MR. AGER: It would, it would exist to service --
7 MR. GROSSMAN: Those few houses.
8 MR. AGER: -- lot 89. It's essentially a private
9 road for a private driveway.
10 MR. GROSSMAN: All right. Okay.
11 MR. AGER: What have I missed? Do you want to
12 prompt me with a question?
13 MR. KLINE: Well, just explain real quickly how
14 the utility services will be accommodated, be incorporated
15 in the footprint. I know Mr. Crum will do it in detail but
16 just --
17 MR. AGER: Are you referring to water and sewer?
18 MR. KLINE: Yes.
19 MR. AGER: Okay.
20 MR. KLINE: Right.
21 MR. AGER: Again, water and sewer for the property
22 is under construction at this point in the right-of-way of
23 Observation Drive and will be terminated roughly --
24 MR. GROSSMAN: You've actually covered that so --
25 MR. AGER: Okay.

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1 MR. GROSSMAN: -- I understand.
2 MR. AGER: And will be extended across the
3 pedestrian crossing that's shown in the illustrative plan,
4 and then we'll gravity contour around the property, provide
5 a stub to the future McCord property, provide us a gravity
6 stub to the properties to the southeast and service our
7 property as well. So it will be a gravity sewer alignment
8 that --
9 MR. GROSSMAN: Okay.
10 MR. AGER: -- runs with the topography, and that's
11 why the alignment of the roads are as they are.
12 MR. GROSSMAN: Okay. One other future connection
13 to the southeast there, you have a future pedestrian
14 connection it looks like.
15 MR. AGER: That's right.
16 MR. GROSSMAN: And along Dowden's Green Way. Once
17 again, you say future connection. I just want to make sure
18 I understand what you're talking about. You're going to
19 have, in your present plans, not for the future, in your
20 present plans if they're approved, you're going to have a
21 pedestrian way that goes all the way to your property line
22 but not further, and the words future connection are for,
23 are not directly in the plans right now. Is that --
24 MR. AGER: Yeah. That's -- thank you for
25 clarifying that. Yes. That's -- we are going to construct

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1 to our property line.
2 MR. GROSSMAN: Right.
3 MR. AGER: Future connection is the opportunity
4 for future developers to the south of us to make that
5 extension.
6 MR. GROSSMAN: Okay.
7 MR. AGER: We're providing the pedestrian to the
8 property line.
9 MR. GROSSMAN: Okay. And I take it the same is
10 true, I suppose, for, we talked about Dowden's Green Way and
11 where does that actually end. It appears on your plan that
12 for present, it ends at the end of your property.
13 MR. AGER: That is correct.
14 MR. GROSSMAN: Although at some point, it may go
15 further south and then connect into 355, is that --
16 MR. AGER: That is correct.
17 MR. GROSSMAN: -- what I understood. Okay. All
18 right.
19 MR. KLINE: Mr. Ager, it looks like you brought a
20 new exhibit with you. Can you tell us what this is?
21 MR. AGER: This is an exhibit that's labeled
22 stream valley buffer detail, and on the left-hand side of
23 the exhibit is a blown-up version of the townhouses that are
24 roughly parallel to the westernmost stream valley. And it
25 illustrates the details, which I'll describe in more detail,

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1 of how we're accommodating that stream valley buffer and the
2 175-foot encouraged buffer in the master plan.
3 MR. GROSSMAN: All right.
4 MR. AGER: Which was the discussion at the
5 Planning Board.
6 MR. GROSSMAN: So label that Exhibit 53, please.
7 MR. KLINE: Thank you.
8 MR. GROSSMAN: And that's stream valley buffer
9 exhibit.
10 (Exhibit No. 53 was marked for
11 identification.)
12 MR. KLINE: Mr. Ager, how about let's set a
13 foundation. So referring to Exhibit 53, go back to your
14 comment about the master plan. Tell us what the
15 environmental guidelines require in terms of stream valley
16 buffers and then describe what the master plan encouraged
17 property owners to try and achieve.
18 MR. AGER: Right. Um, what we've done is we've
19 labeled this document as the approved stream valley buffer
20 which was on the NRI. That is the red dashed line and
21 labeled as approved stream valley buffer on Exhibit 53.
22 MR. KLINE: And what, as the dimension, what is
23 that? How --
24 MR. AGER: It --
25 MR. KLINE: How far is that from the center line

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1 of the stream.
2 MR. AGER: Yeah. It varies, based upon the
3 topography, between 150 and 175 feet to the stream.
4 MR. KLINE: So the red line is being computed by
5 Macris, Hendricks and Glascock based on the topo in the
6 field?
7 MR. AGER: That is correct. It has been approved
8 on the NRI. That line is what the line is on the
9 development plan. This is an excerpt from the development
10 plan. So in the northern portion, northwest portion of the
11 stream valley buffer, we have a 175-foot setback and the
12 southern portion is roughly 150-foot. The master plan in
13 the environmental section has a statement that it strongly
14 encourages a 175-foot buffer for property owners in
15 Clarksburg.
16 The staff specifically asked that we look at a
17 175-foot buffer on the western townhouse section along the
18 western stream valley buffer. And so the second line that's
19 illustrated to the right of the first line, dashed red and
20 is labeled 175-foot stream valley buffer, is that encouraged
21 master plan line. It's not required. It's like can you do
22 it, we really want you to try and do it.
23 What I want to point out on this exhibit are a
24 couple things. One is we have -- and what's shown here in
25 addition is our 15-foot BRL which was on the development

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1 plan, it's also on this exhibit. What I want to --
2 MR. GROSSMAN: BRL being?
3 MR. AGER: I'm sorry. Building restriction line.
4 MR. GROSSMAN: Okay.
5 MR. AGER: So there's several lines here. What I
6 wanted to do was indicate or clarify that the townhouses and
7 the townhouse lot are not and will not be located within the
8 175-foot buffer, so that's kind of the first point. Now,
9 when you look at the plan in detail here, lot 26
10 drastically, if I could point to lot 26, the back corner
11 drastically, there's a little bit of overlap. We'll correct
12 that in the future. We agreed at the Planning Board that
13 when we were saying with this that the lots and the
14 buildings will not be within the 175-foot buffer.
15 Based upon the grading done by Macris, Hendricks
16 and Glascock, there is two areas in light green and dark
17 green on this Exhibit 53. The dark green areas are areas of
18 additional buffer beyond 175 feet that is undisturbed and
19 will become part of the stream valley buffer, so that's
20 indicated in dark green generally to the north and more to
21 the center. Then there are two areas of a lighter green
22 color where grading will be between the approved NRI and the
23 encouraged 175-foot NRI, and those are again light green
24 here. Those areas will be a combination of just general
25 open space or some, in some locations, there will be some

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1 environmentally sensitive designed stormwater management
2 facilities in that area.
3 So what we have said to the Planning Board as part
4 of our testimony is that we will reforest those areas where
5 there are no stormwater features and landscape where we can
6 where there are stormwater features, and that's also
7 indicated on the exhibit. It says areas to be forested or
8 for stormwater. That's the light green color.
9 MR. GROSSMAN: So if I understand what you're
10 saying, none of your buildings will be within the 175-foot
11 master plan recommended stream valley buffer.
12 MR. AGER: Correct. That's --
13 MR. GROSSMAN: However, in some areas, you will
14 have stormwater management facilities located within that
15 buffer.
16 MR. AGER: That is correct.
17 MR. GROSSMAN: Okay.
18 MR. AGER: It's a temporary grading which we will
19 reforest.
20 MR. KLINE: And reconfirm that there will be no
21 private ownership of any land within the 175-foot --
22 MR. AGER: Yes. The, Mr. Grossman, the buildings
23 and the lots associated with the building will not be within
24 the 175-foot setback. It will be completely open spaces.
25 MR. KLINE: And on balance, is there more, more

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1 175 and less 175?
2 MR. AGER: It's right about even swap.
3 MR. KLINE: Okay.
4 MR. AGER: It's about even swap.
5 MR. GROSSMAN: I don't understand that question.
6 MR. KLINE: I think a better way to say it is if
7 we average, we basically came out with 175, if we average
8 the setbacks.
9 MR. AGER: If I measured, if I measure -- I guess
10 the question, let me repeat the question. I'm not sure that
11 the buffer, to include the dark green area and exclude the
12 light green area, even though it's going to be part of the
13 buffer, is equivalent in area to what would have been a
14 straight 175-foot buffer, and the answer is yes.
15 MR. GROSSMAN: If I understand correctly, none of
16 the homes or lots will be within the 175-foot buffer,
17 correct?
18 MR. AGER: That's correct.
19 MR. GROSSMAN: What you're now talking about is
20 that because you're going to have some regrading and
21 stormwater management facilities within the buffer, they
22 will be some distance away and some of them will be greater
23 than 175 feet, and you're saying if you average them, the
24 average will be 175 feet. Is that the item you're talking -
25 -

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1 MR. KLINE: I was trying to say that there will be
2 more land preserved greater than 175 than land that would be
3 encroached into the 175.
4 MR. GROSSMAN: But the -- I just want to
5 understand. The encroachment you're talking about is just
6 the stormwater management facilities and the additional
7 grading to be reforested.
8 MR. AGER: That is correct.
9 MR. KLINE: Yes.
10 MR. GROSSMAN: That's the only encroachment you're
11 talking about.
12 MR. AGER: That is correct. Yes, sir.
13 MR. GROSSMAN: All right. So now I want to
14 understand since you're making a point of this. Is there a
15 problem under the master plan with its recommended 175-foot
16 stream valley buffer with having stormwater management
17 facilities and regrading and reforesting within the 175-foot
18 buffer?
19 MR. AGER: Not per se. The language in the master
20 plan asks that the properties owners leave the area in an
21 undisturbed character, so what we're trying to say with this
22 exhibit is that we're leaving the equivalent area in an
23 undisturbed character and we're taking the additional step
24 of areas where we do penetrate the 175, we're going to be
25 reforesting or providing some stormwater facilities.

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1 MR. GROSSMAN: And what exactly are, are these
2 bioretention facilities? What are the facilities you're
3 talking about?
4 MR. AGER: Mr. Crum will go into more detail.
5 MR. GROSSMAN: Okay.
6 MR. AGER: He prepared the plans, but they are
7 environmentally sensitive design features that include
8 infiltration and bioretention.
9 MR. GROSSMAN: What I'm trying to calculate is
10 whether or not this is truly an issue or not. I mean, I
11 presume that the master plan was written before we had some
12 of the current environmental site design, stormwater
13 management facility, so I'm not sure whether it was intended
14 to apply to this sort of thing or not. Will somebody be
15 expressing an opinion regarding that?
16 MR. AGER: I can tell you there's areas within
17 Clarksburg where the 175-foot buffer has not been honored
18 and some areas where it has been, so it depends on the
19 property. We were asked to, in this part of the site --
20 MR. GROSSMAN: Right.
21 MR. AGER: -- the staff felt that this was a
22 sensitive area, and we acknowledge that.
23 MR. GROSSMAN: This part of the site being?
24 Identify for the record.
25 MR. AGER: The townhouses that back up to the

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1 westernmost stream valley buffer --
2 MR. GROSSMAN: Okay.
3 MR. AGER: -- paralleling Observation Drive. That
4 this is a sensitive area that they would like to see the
5 175-foot buffer honored, and we acknowledged that in our
6 plan. We actually, not before you, we revised the plan to
7 accommodate their concerns. That's why we have the building
8 restriction line in there.
9 MR. GROSSMAN: Right.
10 MR. AGER: There was some previous staff comment.
11 So, so we're honoring the intent of the master plan guidance
12 of 175-foot buffer. We, at Planning Board and we're trying
13 to clarify here, we're looking for a little bit of
14 flexibility. We'll give you a little more here, we need a
15 little bit here kind of thing. That's kind of what we're
16 trying to say if I'm not being clear.
17 MR. GROSSMAN: I understand now I think. And
18 apparently, Technical Staff and the Planning Board were okay
19 with that?
20 MR. AGER: Yes.
21 MR. GROSSMAN: Okay. They both have recommended
22 approval.
23 MR. AGER: Yes. And we don't have, I'll
24 paraphrase what we were told, we can talk about that as
25 well, the Planning Board basically said we'll give you

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1 flexibility where you need it, we think you have too much
2 parking on the property, we'd like to see you reduce the
3 parking.
4 MR. GROSSMAN: Right. I saw that in the Planning
5 Board letter. Since we haven't seen the final of the
6 approval of the water quality plan, forest conservation
7 plan, can you tell me what happened yesterday? Did they
8 approve everything?
9 MR. KLINE: Yes, sir.
10 MR. GROSSMAN: Okay.
11 MR. KLINE: Yes.
12 MR. GROSSMAN: Nobody has told me so.
13 MR. KLINE: Yes. No, I'm sorry. I guess I
14 thought when they sent you the draft, they kind of gave you
15 a little background that went along with it. Yes. No, I
16 mean frankly, we left the hearing quite happy in terms of
17 the resolution was worked out. We were concerned about
18 things. And the 175 discussion was not the issue. It was
19 the imperviousness was the issue. What I was, going back to
20 your question --
21 MR. GROSSMAN: Right.
22 MR. KLINE: -- nobody ever told us we couldn't
23 have those, quote, encroachments. I was, the question I
24 asked Mr. Ager was to pat ourselves in the back that in
25 places where we could, we'd provide more than 175 and it all

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1 should balance out. Nobody ever said you can't go in there,
2 we just encourage you to stay away, give us a good reason
3 why you have to do it and it will be okay.
4 MR. GROSSMAN: Okay.
5 MR. KLINE: And I think that that's picked up in
6 the water quality plan.
7 MR. GROSSMAN: Just to make sure that we get
8 copies for the record of the resolutions that were
9 apparently adopted yesterday.
10 MR. KLINE: I spoke to the general counsel last
11 night. It was approved yesterday to be signed today. My
12 guess is you'll get it by fax or e-mail today.
13 MR. GROSSMAN: Okay.
14 MR. KLINE: But I'll -- yes. I'll make sure you
15 get it.
16 MR. GROSSMAN: Okay. Thank you. All right. Why
17 don't we take a morning break.
18 MR. KLINE: Sure. Great.
19 MR. GROSSMAN: Thank you.
20 (Whereupon, at 11:20 a.m., a brief recess was
21 taken.)
22 MR. GROSSMAN: We're back on the record.
23 MR. KLINE: Mr. Ager, why don't we kind of go to
24 some of the more global issues like the master plan. You
25 brought an exhibit with you. I think it says vicinity map

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1 or something like that. That's not in the record I don't
2 think.
3 MR. AGER: It's a, this exhibit right here is a
4 blown-up version of the staff neighborhood, what's referred
5 to as figure 2 in the staff report.
6 MR. KLINE: Okay, fine.
7 MR. GROSSMAN: That's page --
8 MR. AGER: Seven?
9 MR. GROSSMAN: Seven.
10 MR. AGER: It's on page 7.
11 MR. GROSSMAN: Yes. We can label it --
12 MR. KLINE: Yes.
13 MR. GROSSMAN: -- as an exhibit since it's a nice,
14 big, flat plan. So we'll call it Exhibit 54, blow-up of
15 surrounding area map --
16 MR. KLINE: And --
17 MR. GROSSMAN: -- page 7 of the staff report.
18 (Exhibit No. 54 was marked for
19 identification.)
20 MR. GROSSMAN: Okay.
21 MR. KLINE: Why don't you go ahead and explain to
22 Mr. Grossman what you thought you wanted to clarify.
23 MR. AGER: Mr. Grossman, if we could --
24 MR. GROSSMAN: Yes.
25 MR. AGER: -- before we go into this, going back

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1 to the reservation area.
2 MR. GROSSMAN: Okay.
3 MR. AGER: There's a typo in the staff report --
4 MR. GROSSMAN: Okay.
5 MR. AGER: -- that wasn't picked up that I just
6 want to bring to your attention.
7 MR. GROSSMAN: All right.
8 MR. AGER: The staff report, on page 8 in the
9 first paragraph under development concept about halfway
10 through has a sentence that reads the applicant also
11 proposes the reservation of 1.60 acres of land at the
12 northwest corner of the property.
13 MR. GROSSMAN: Yes.
14 MR. AGER: That is 2, that number should read 2.59
15 acres. I believe the 1.6 acres refers to basically the
16 master plan right-of-way within the reservation.
17 MR. KLINE: So on your 52, Exhibit 52, we have the
18 correct numbers on that?
19 MR. AGER: Yes, we do.
20 MR. KLINE: Okay.
21 MR. GROSSMAN: Let's just make sure the other maps
22 correctly reflect that if that's the case, so let me just
23 make a note here first of all.
24 MR. KLINE: As soon as we find our missing exhibit
25 here.

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1 MR. AGER: I'm sorry.
2 MR. KLINE: It's got to be up there somewhere.
3 Yes. There we are.
4 MR. AGER: My apologies.
5 MR. GROSSMAN: Staff report page 8, 1.68 acres
6 should say 2.49.
7 MR. AGER: 2.59, sir.
8 MR. GROSSMAN: 2.59, okay. I'm sorry. I couldn't
9 read my own handwriting. What a surprise. I wrote it down
10 at least a minute ago. 2.59 acres.
11 MR. AGER: And it is correctly referenced on
12 Exhibit 52, the acreage.
13 MR. GROSSMAN: Right. You think it was referring
14 to the smaller triangle area?
15 MR. AGER: No. I think, I believe what staff may
16 have been referring to is, I'm referring to the development
17 plan, 49 --
18 MR. GROSSMAN: Yes.
19 MR. AGER: -- I believe that they may have been
20 referencing what was the master plan right-of-way --
21 MR. GROSSMAN: Oh, I see.
22 MR. AGER: -- but call it reservation.
23 MR. GROSSMAN: Okay. So I just wonder if it's
24 anywhere else misstated in the staff report.
25 MR. AGER: I don't know.

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1 MR. GROSSMAN: Maybe what I should do is make a
2 note on the staff report in the file. I take it it's
3 correctly noted on your development land use plan, is that
4 correct?
5 MR. AGER: It is not. One would have to add up
6 the acreages within the development plan to get to the
7 number.
8 MR. GROSSMAN: I see.
9 MR. AGER: Exhibit 52 summarizes that.
10 MR. GROSSMAN: Okay.
11 MR. KLINE: Should I continue or do you want to
12 still --
13 MR. GROSSMAN: Hold on one second while I --
14 MR. KLINE: Yes.
15 MR. GROSSMAN: I just want to make that notation
16 on the page 8 here. What I'm going to do on the formal copy
17 since this is not a correction by staff, I'm going to circle
18 the 1.8 acres and put a note that says applicant corrects
19 this to 2.59 acres.
20 MR. AGER: Mr. Grossman?
21 MR. GROSSMAN: Yes.
22 MR. AGER: If I could add to -- I did find one
23 other reference to it on page 33.
24 MR. GROSSMAN: Okay.
25 MR. AGER: In the findings. Second paragraph

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1 under no. 6, approximately halfway through the paragraph.
2 MR. GROSSMAN: Yes. I see that. Okay. Well, do
3 you think that they were meaning that that was just the road
4 portion of it because she does say 1.68 acres of land in
5 reservation for the planned road right-of-way alignment.
6 MR. AGER: Um, I'm not sure why they have that
7 number.
8 MR. GROSSMAN: Okay.
9 MR. AGER: It's, it's not reflective of the
10 development plan that was before them. And it is a little
11 confusing because it wasn't just simply labeled. The
12 development plan line is the dashed line here.
13 MR. GROSSMAN: Right.
14 MR. AGER: I'm sorry. The, the reservation line
15 on the development plan is the dashed line. I'm indicating
16 on the easternmost side of the image on 49.
17 MR. GROSSMAN: And where on the development plan
18 does it say what that, what those, you said there were, the
19 total number is not reflected on it. Where is --
20 MR. AGER: That's correct. It's unclear. There's
21 an acreage of 1.73 acres for the right-of-way, an acreage of
22 0.72 acres for the outlot and there's a very small amount of
23 area for outlot C, so one would have to add those acreages
24 together.
25 MR. GROSSMAN: How about in the text on the land

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1 use plan? Is there anything in the text on the land use
2 plan?
3 MR. AGER: Oh, I can see where they get this.
4 Okay. Mr. Crum will probably testify about this later. In
5 the text of the development plan is the number 1.68 acres,
6 it's on the left-hand side of no. 49, and I believe that's
7 where they got the number from. It is an incorrect number.
8 If you --
9 MR. GROSSMAN: Hold on one second. Let me --
10 MR. AGER: I'm sorry.
11 MR. GROSSMAN: Let me find it on here. Point to
12 it on there.
13 MR. KLINE: Yes. And how is it labeled? What
14 does it say?
15 MR. AGER: It's labeled 1 point -- right-of-way
16 reservation.
17 MR. GROSSMAN: I see.
18 MR. AGER: And it has square footage and then 1.68
19 acres.
20 MR. GROSSMAN: Right.
21 MR. AGER: And that's where the staff got that
22 number from.
23 MR. GROSSMAN: But they also have the square
24 footage which is approximately correct of 73, by correct I
25 mean 73,180 square feet which is about 1.68 acres.

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1 MR. AGER: That is correct.
2 MR. GROSSMAN: So where did that square footage
3 item come from in your development plan?
4 MR. AGER: I, it's a mistake. It's a typographic
5 error on the plan. If one goes to the area of the
6 development plan and looks at the image area --
7 MR. GROSSMAN: Okay.
8 MR. AGER: -- and adds the acreages, the correct
9 number is 2.59. So what's in the, what's listed in the
10 notes on the left-hand side of the development plan --
11 MR. GROSSMAN: Right.
12 MR. AGER: -- no. 49, is a typographic error.
13 MR. GROSSMAN: All right. So will you submit a
14 corrected land use plan --
15 MR. KLINE: Yes, sir.
16 MR. GROSSMAN: -- correcting that typo?
17 MR. KLINE: Right. I'll have Mr. Crum confirm all
18 those for you when we get to it, and he'll be revising the
19 plan based on when we finally get to see the water quality.
20 MR. GROSSMAN: Hard copy and electronic.
21 MR. KLINE: Yes sir.
22 MR. GROSSMAN: Okay. So let me also make a note
23 on page 33. Applicant corrected this to 2.59 acres. Okay.
24 By the way, in terms of because the Planning Board
25 recommended reduction in the number of parking spaces, when

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1 you're revising the development plan, are you going to
2 revise that down also?
3 MR. KLINE: I talked with Mr. Crum about somehow
4 annotating it so that the parking would not exceed 2.25 if
5 that was the number we came up with. I'm not sure I
6 envision he was going to be changing the parking tables
7 though.
8 MR. GROSSMAN: Well, let me ask directly. Are you
9 changing your proposed plan, however it's reflected, to
10 comply with what the Planning Board is recommending in terms
11 of parking?
12 MR. KLINE: Could I reserve that answer to that
13 question until Mr. Crum comes up to testify?
14 MR. GROSSMAN: Sure. But let's address that
15 because --
16 MR. KLINE: Sure.
17 MR. GROSSMAN: -- we want to know what, because if
18 you are, since you have to do a revised land use plan in any
19 event to correct the typo, we want to make sure that it
20 correctly reflects what you are going to be proposing as far
21 as parking as well.
22 MR. KLINE: Correct.
23 MR. GROSSMAN: Okay.
24 MR. KLINE: Yes. We had a preliminary discussion
25 but I just, we hadn't figured out how it was going to be

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1 reflected on the development plan.
2 MR. GROSSMAN: Okay.
3 MR. KLINE: Mr. Ager, let's talk about the big
4 global issues for a PD-Zone, is it in accordance with the
5 master plan. Can you basically describe, using the exhibit
6 that you brought with you that's been marked as Exhibit No.
7 54, how this development plan complies with the
8 recommendations of the master plan?
9 MR. AGER: Certainly. We may also refer to one
10 other exhibit which is an image from the master plan we
11 spoke of earlier.
12 MR. GROSSMAN: While you're getting to that, also,
13 when you do submit the corrected land use plan, make sure a
14 copy goes to Technical Staff.
15 MR. KLINE: Sure. Yes.
16 MR. GROSSMAN: So that they can respond within the
17 10-day period. Actually, I guess if you're going to -- I
18 didn't realize when we set the 10-day period for if you're
19 going to -- how long will it take you to get the revised
20 land use plan out?
21 MR. KLINE: I would say it's probably going to be
22 early Monday or Tuesday, so I can have it in Ms. Tesfaye's
23 hands by Tuesday.
24 MR. GROSSMAN: Okay. Yes. I want to make sure
25 that she has --

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1 MR. KLINE: Yes.
2 MR. GROSSMAN: -- at least a week or so to --
3 MR. KLINE: Yes.
4 MR. GROSSMAN: -- cogitate that. Maybe we should
5 give her 10, a full 10-day period so if you're going to have
6 it by Tuesday, which is what --
7 MR. KLINE: 17, 18, 19, 20, 21 I guess, 21st?
8 MR. GROSSMAN: Okay. So if you're going to have
9 it by the 21st, let's give her until --
10 MR. KLINE: Move this to the --
11 MR. GROSSMAN: -- the 31st.
12 MR. KLINE: -- 31st. Okay.
13 MR. GROSSMAN: And that's not a weekend, is it,
14 the 31st? It shouldn't be but just to make sure.
15 MR. KLINE: The 31st is Friday.
16 MR. GROSSMAN: Okay. All right. That works out
17 well then.
18 MR. KLINE: All set, Mr. Grossman? Okay?
19 MR. GROSSMAN: Yes.
20 MR. KLINE: Yes. Go ahead.
21 MR. AGER: Okay. With respect to master plan
22 conformity, I'd also refer to Exhibit 51 which is a
23 reproduction we discussed earlier of pages 43 and 41 of the
24 master plan. The property is located within the transit
25 corridor district, the Maryland 355 area of that district of

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1 the overall Clarksburg Master Plan.
2 On page 43, the land use drawing, as also
3 reflected in this land use map of the master plan,
4 designates future development of this property as two to
5 four dwelling units per acre. It also indicates a private
6 conservation area along the stream valley and indicates the
7 general alignment for Maryland 355, which is A-251, and
8 Observation Drive and the alternate future CCT alignment
9 that both traverse this property.
10 It indicates a termination of existing Maryland
11 355 as it exits the historic district from the north as a T
12 into the future alignment of Maryland 355. That's the
13 bypass. All of those elements are reflected in the
14 development plan and we are asking for PD-4 which is
15 consistent with that master plan recommendation.
16 In addition to that, there are general mentions in
17 the, in the master plan about environmental sensitivity, the
18 reflection of the special protection area within this area.
19 And as we discussed earlier, we have accommodated and worked
20 consistent with the master plan on those elements as well.
21 We talked briefly about the stream valley buffer, the
22 encouragement of a 175-foot buffer which is, comes from the
23 master plan. We've accommodated that on the development
24 plan.
25 So in summary, our development plan, in my

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1 opinion, is very much in conformity with the master plan
2 recommendations.
3 MR. GROSSMAN: All right.
4 MR. KLINE: Can I draw your attention to the
5 longwinded purpose clause? May I can just ask you some of
6 the most critical questions that you maybe haven't covered
7 so directly before. In front of the Zoning Ordinance, 59-C-
8 7.1, the purpose clause of the PD zone, it's the purpose of
9 this zone, the development be so designed and constructed to
10 facilitate and encourage a maximum of social and community
11 interaction and activity among those who live and work in
12 the area. Could you describe basically how that's been
13 achieved, social community interaction?
14 MR. AGER: Absolutely.
15 MR. KLINE: Prove this point.
16 MR. AGER: And connectivity with people who live
17 and work in the area. Um, I'd like to, while I'm talking
18 about that, I'd like to refer to a new exhibit if I could.
19 MR. KLINE: Could you describe it for Mr. Grossman
20 so we could get a description?
21 MR. AGER: It's an aerial photo of the general
22 neighborhood. It indicates the property, the general area
23 of the property, and it also indicates a development plan
24 overlay for the Gankirk Farm subdivision to the west. It
25 indicates the proposed CCT alignment in a dark, red, dashed

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1 line and proposed stations in an orange circle and walking
2 radiuses of a quarter mile, half mile in a dashed yellow
3 line. The exhibit does not have a title.
4 MR. GROSSMAN: All right. We'll call it Exhibit
5 55 and say aerial photo of the neighborhood.
6 (Exhibit No. 55 was marked for
7 identification.)
8 MR. AGER: With respect to the purpose clause, the
9 first clause that Mr. Kline mentioned, there are several
10 things that this illustrates on this exhibit. One is, as we
11 discussed earlier, the pedestrian connection to Observation
12 Drive as proposed on the development plan provides, and the
13 pedestrian system within the community, provides excellent
14 connectivity between this property, this --
15 MR. GROSSMAN: This property being?
16 MR. AGER: The subject property. I apologize.
17 The subject property, the Gankirk Farms community planned
18 and under construction to the southwest and as, gives
19 excellent pedestrian access to the future CCT station which
20 is located just north of Shawnee Lane and just east of
21 Observation Drive. And what's indicated on the exhibit is
22 that the property is within a one half mile walking radius
23 and is and is essentially transit services which is part of
24 the elements in the plan, to make the plans interconnected
25 between work, areas where people work and planning of other

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1 residential neighborhoods and provide access to public
2 facilities such as the CCT. So we've accommodated that and
3 we've illustrated it on Exhibit 55.
4 MR. GROSSMAN: All right. And what zone is the
5 Gankirk Farms development in?
6 MR. AGER: Yeah. And I'm --
7 MR. GROSSMAN: PD-11?
8 MR. AGER: PD-11. And if I could, we're going to
9 refer back to Exhibit 54 which is figure 2 from the Staff
10 report which is the surrounding neighborhood. It has
11 several items listed on it. So we'll go around the property
12 starting with Gankirk Farms to the southwest. It was
13 planned as a PD-11. It was ultimately approved at 10.5,
14 approximately, dwelling units per acre. Going in a
15 clockwise pattern around the subject property, there's a
16 small area that's just to the west which is a part of the
17 Gateway Center Industrial Complex which just touches the
18 property kind of corner to corner. To the northwest of the
19 property --
20 MR. GROSSMAN: And what is the zone in the --
21 MR. AGER: It was I-3 and it's now EOF-0.75 H-100
22 T which is also the same zoning on the Comsat property which
23 is just outside of the neighborhood, delineated
24 neighborhood.
25 MR. GROSSMAN: So it's EOF-0.75 H-100 T?

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1 MR. AGER: Yes, sir. And that is indicated on
2 Exhibit 54 which is a reproduction of figure 2 in the staff
3 report.
4 MR. GROSSMAN: And it had been I-3 before?
5 MR. AGER: If my memory serves me right, it was I-
6 3. And the zoning map in the case, yes. It was I-3.
7 MR. GROSSMAN: Okay. And --
8 MR. AGER: No. 15 indicates that.
9 MR. GROSSMAN: What is on that property you said?
10 MR. AGER: On the Gankirk Farms property?
11 MR. GROSSMAN: No. To the, the --
12 MR. AGER: Yeah. It's a, it's a -- I don't recall
13 the amount of square footage but it's several flex
14 industrial buildings.
15 MR. GROSSMAN: You had a name for it though.
16 MR. AGER: Um, light industrial.
17 MR. GROSSMAN: No. I mean for the --
18 MR. AGER: Oh, for the name of it? Gateway
19 Center.
20 MR. GROSSMAN: Gateway Center.
21 MR. AGER: I believe it's called the Gateway 270
22 Industrial Park if I recall.
23 MR. GROSSMAN: Okay.
24 MR. AGER: So moving clockwise to the northwest of
25 the subject property, we have the Gateway Commons property

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1 which is zoned R-200 TDR-7, was approved and has been
2 constructed to approximately 8.4 dwelling units per acre, so
3 they took advantage of the MPDU bonus on that property.
4 There are --
5 MR. GROSSMAN: What is that called again?
6 MR. AGER: The Gateway Commons property.
7 MR. GROSSMAN: Gateway Commons.
8 MR. AGER: Immediately adjacent to the property,
9 what we referred to as the notch previously --
10 MR. GROSSMAN: Right.
11 MR. AGER: -- the McCord property is zoned R-200.
12 There are, again, several properties zoned R-200 on both the
13 southwest and northeast sides of Frederick Road, Maryland
14 Route 355, to the north, confronting the property to the
15 northeast, and R-200 properties adjacent to the property to
16 the southeast and further to the south. There are small,
17 there is, within this neighborhood, further to the north
18 there are, there's a small property that was formerly zoned
19 RMX-2 as indicated on No. 15. It is now zoned CRT-0.75 C-
20 0.25 R-0.5 H-65 T and that's --
21 MR. GROSSMAN: Aren't you lucky that they
22 simplified everything?
23 MR. AGER: Yes. I appreciate that. I need
24 another glass of water now. Um, so that generally describes
25 the surrounding neighborhood and the properties in their

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1 current configuration and zoning within that neighborhood.
2 MR. KLINE: I'll jump ahead a little bit and ask a
3 certain summary question. That is in your opinion, is the
4 former development shown in the development plan compatible
5 with the surrounding development that you just described?
6 MR. AGER: Yes, it is. It's not only compatible
7 from the general density standpoint but we, as what's
8 guided, the guidance in the master plan, we have
9 transitioned the density on the property with our single-
10 family units to the east of the property which confront
11 single-family units and R-200 along Frederick Road and
12 increase the density more towards the center of the property
13 or towards the west closer to the Gankirk Farms property,
14 the PD-11 property and the future CCT alignment which runs
15 down Observation Drive. So we are, in fact, very much
16 compatible with the surrounding neighborhood in the design
17 of the development plan.
18 MR. KLINE: Going back to the question I asked you
19 in the beginning about community interaction and activity,
20 you kind of talked about connectivity. When you were doing
21 your presentation earlier and you were talking about the
22 topography of the land, it was sort of you came in at one
23 level, you went down, then you came up to the ridge and then
24 you went down again to the stream valley, and then I gather
25 you had to come back up again to get to the Observation

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1 Drive grade level. But for the bridge, but for the
2 pedestrian bridge, would we have been able to accomplish
3 pedestrian movement through the stream valley or at least
4 one that, would we have been able to accomplish handicap
5 access to the Observation Drive right-of-way?
6 MR. AGER: That's an interesting question. There
7 are, it would be a much longer circuitous route that would
8 have to take place. The --
9 MR. KLINE: So you would have to zig-zag it in
10 order to --
11 MR. AGER: We would have, instead of being more
12 direct, we would have to follow the topography and go down
13 30 some feet in elevation and back up 30 feet, multiply that
14 times 5 percent or less and that's the length of the impact
15 that would be necessary. The other thing that's important
16 is --
17 MR. GROSSMAN: I don't understand multiply by 5
18 percent or less. What does that mean?
19 MR. AGER: Oh, I apologize. To make it handicap
20 accessible --
21 MR. GROSSMAN: I see.
22 MR. AGER: -- we want to maintain a 5 percent
23 grade or less and provide landings.
24 MR. GROSSMAN: I see.
25 MR. AGER: What we've done with, we have

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1 essentially a near flat pedestrian experience across our
2 crossing and so that is, in fact, handicap accessible. So
3 my point, I don't have the specific numbers but my point is
4 that another alignment would have to be circuitous to come
5 back, go down the hill and back up again.
6 And the important point I think I want to make is
7 that we took great care in crossing the stream by providing
8 a bottomless culvert of the dimension that we're showing.
9 When you're down at the lower level of the stream, the
10 crossing would be much shorter and would have, you know,
11 maybe an impact on that stream that would be different than
12 what we're proposing. We're not impacting the stream at our
13 crossing.
14 MR. GROSSMAN: Will the design of that be subject
15 to a review by staff because as you indicate here, the
16 design is illustrative.
17 MR. AGER: Yes. It's --
18 MR. GROSSMAN: When will that be reviewed by staff
19 to make sure that it's scenic or whatever?
20 MR. AGER: Yeah. The -- well, the staff took,
21 you know, had noted it in their reports that it's an
22 important element not only for, you know, what we've
23 mentioned as an amenity but also, they want to make sure
24 it's done in an environmentally correct manner. They're
25 going to be looking at it, as they expressed in their

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1 testimony before the Planning Commission, in greater detail
2 at the time of preliminary planning.
3 MR. GROSSMAN: I see.
4 MR. AGER: And staff also mentioned coordination
5 of multiple agencies as a part of that. Um, so bottom line,
6 or in summary, this is a very excellent connection and I
7 believe it's, in my opinion, better connection than trying
8 to traverse the stream valley.
9 MR. KLINE: Do you feel that the development plan
10 that's proposed will, in conjunction with the natural
11 features, create a community with a distinctive visual
12 character and identity for the project?
13 MR. AGER: Yes. As I mentioned early, earlier, we
14 specifically took into account the environmental features of
15 the property, as outlined in the Natural Resource Inventory,
16 and designed the community around that so that the older
17 forests within the stream valleys are protected and
18 additional forest beyond that is protected, and that we've
19 placed our homes in an environmentally sensitive manner to
20 minimize grading, essentially, on the ridges. And those
21 ridges provide visual opportunity from the, for the folks in
22 the community to view the open space. We specifically
23 created what -- we have named the greenway Dowden's Green
24 Way so that folks who, or residents who either walk along or
25 drive along that road have visual access into the stream

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1 valley adjacent to that road, and then the pedestrian
2 connection because when it's elevated, gives a scenic
3 overlook, essentially, into the stream valley. So that is
4 in fact a visual amenity for the property and will be a
5 distinctive characteristic of the site.
6 MR. KLINE: The comments you just made and earlier
7 comments you made would presumably address the purpose
8 clause section dealing with preserve and take the greatest
9 possible aesthetic advantage of trees and minimize the
10 amount of grading necessary to construct the development.
11 MR. AGER: Yes. That's my testimony, just to
12 summarize it, is that we took great care in the development
13 of the community and we are very sensitive to the
14 environmental features. And then we took the, these aspects
15 like a pedestrian crossing and turned them into an amenity
16 to do exactly that, to meet that purpose clause element.
17 MR. KLINE: One of the purpose clause provisions
18 is encourage a range of, broad range of housing types,
19 housing types. Fortunately, you've even sort of colored the
20 units for us, so just kind of run us through again what each
21 of those show and is there any more variety beyond the dark
22 blue, light blue --
23 MR. AGER: Yes. There, generally, there's kind
24 of, there's two general classifications of units. There's
25 the townhouses or attached units and the single-family or

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1 detached units but beyond that, there is a lot of variety.
2 We have single-family units that are accessed through an
3 alley configuration. I'm referring to the several single-
4 family homes in the southeast corner of the development
5 plan.
6 There are single-family homes on larger lots that
7 are confronting and adjacent to green spaces and adjoining
8 properties to the north, general north of the property, and
9 each of these have different characters. One lives in the
10 back so to speak where the home is accessed from the front
11 from a vehicular standpoint and the living space is enjoyed
12 in the back, and these homes are generally located near the
13 open space. The earlier homes that are accessed with the
14 alley kind of live in the front and those have visual access
15 points and sit above Dowden's Green Way and have visual
16 access to the stream valley to the west.
17 The townhouses are, there's a variety of
18 townhouses here. There are MPDUs and market rate units as
19 we discussed earlier, but the market rate units are also
20 varied. There are units that are accessed through an alley
21 system and are more compact, and then where there's greatest
22 aesthetic advantage, there are units that are accessed
23 through the front and quote, unquote, live in the back, and
24 they have visual access to the open space system that's been
25 retained in the community. So there is a great variety of

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1 housing types.
2 MR. KLINE: In your opinion, the development plan
3 is in accordance with multiple recommendations of the
4 purpose clause?
5 MR. AGER: Yes. And we've met -- yes. I believe
6 we've met that very well with this design.
7 MR. KLINE: Could I ask you, you've done some
8 research into the issue of schools. It is addressed in the
9 staff report but I'd like you to basically just provide us
10 the benefit of your research --
11 MR. AGER: Sure.
12 MR. KLINE: -- on the school capacity issue as an
13 adequate public facility issue.
14 MR. AGER: Sure. The most current approved
15 subdivision aging policy for schools was adopted on June
16 30th, and it indicates that capacity is adequate for the
17 middle school that serves this site and inadequate for
18 elementary school and high school at this time requiring a
19 facility, school facilities payment but there is no --
20 MR. GROSSMAN: You said June 30, 2015?
21 MR. AGER: Um, yes. It's --
22 MR. GROSSMAN: So it's adequate for elementary you
23 said?
24 MR. AGER: It's inadequate, it's at 113.8 percent
25 for elementary school, 113.8 percent for high school so it's

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1 over the 105 percent requiring the school facilities payment
2 but it is below the 120 percent that would be a moratorium.
3 MR. GROSSMAN: Moratorium. You used the same
4 113.8 percent for both?
5 MR. AGER: It just happens to be the same for both
6 for some reason, yes.
7 MR. GROSSMAN: Okay. How about middle school?
8 MR. AGER: Middle school is adequate.
9 MR. GROSSMAN: Okay.
10 MR. AGER: It's below 105 percent. And then
11 there's a couple of things in the, in the system that are
12 occurring that are going to create capacity in the area, not
13 that, you know, we meet the capacity now, capacity
14 standards, but there is an expansion of the high school,
15 there is the new middle school that's being constructed off
16 of Maryland 27 which will open in August of 2016.
17 There is an expansion of 1,000 seats in the Seneca
18 Valley, at the Seneca Valley High School and that is
19 currently in a boundary line adjustment study, and the
20 documents that their county and School Board have prepared
21 says that that boundary line delineation will be determined
22 by November of 2015 so that what essentially, the bottom
23 line is that that capacity will be allocated, a portion of
24 that will be allocated to the Clarksburg High School to
25 relieve crowding of the Clarksburg High School.

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1 MR. GROSSMAN: Was a school capacity memo attached
2 at all to the technical staff report?
3 MR. KLINE: I believe it was.
4 MR. GROSSMAN: We probably --
5 MR. AGER: There was a reference to it.
6 MR. KLINE: Yes, sir. It's, it doesn't have -- in
7 my bundle, it's the third page from the back but, or fourth
8 page from the back.
9 MR. GROSSMAN: Let's see.
10 MR. KLINE: It's a memo dated February 12th, 2015.
11 MR. GROSSMAN: Yes. I see that. Hold on a
12 second. Let me just take a look. From Zachary Leonard. It
13 does say all three schools are projected to exceed capacity
14 within the six year CIP.
15 MR. AGER: That's the 105 percent threshold.
16 MR. GROSSMAN: Right, but he appears to be
17 including the middle school.
18 MR. AGER: The middle school --
19 MR. GROSSMAN: He just says all three schools.
20 That's why --
21 MR. AGER: Yeah. If you --
22 MR. GROSSMAN: Although he says at the bottom no
23 school facility payment is required at the middle school
24 level.
25 MR. AGER: That's right.

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1 MR. GROSSMAN: So okay.
2 MR. AGER: It -- essentially, my reading of the
3 documents from Montgomery County Public Schools is the
4 middle school is over capacity in the present year, the
5 '14/'15 year, and the opening of the new middle school has
6 been calculated in so there's that one year where it was
7 over in the six year period but the cluster, overall, is
8 under capacity because of the new middle school.
9 MR. GROSSMAN: Okay.
10 MR. AGER: That's my reading of the information.
11 MR. KLINE: Bottom line, if we were in front of
12 the Planning Board right now for an adequate public
13 facilities analysis, if the Planning Board were to prove or
14 find that there isn't adequate capacity, we would just be
15 expected to pay fees --
16 MR. AGER: At the elementary and high school
17 level.
18 MR. KLINE: And there are improvements in the
19 foreseeable future that should relieve some of that
20 capacity.
21 MR. AGER: That's correct. There's the three
22 elements that I mentioned and there's also, in theory,
23 several of the clusters adjacent to us are well below
24 capacity like Poolesville for example, so there could be
25 boundary line adjustments.

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1 MR. GROSSMAN: That would be a bit of a trip I
2 think.
3 MR. AGER: Yeah. Well, but if you think about the
4 cluster, there's the Cabin Branch neighborhood that's within
5 the overall cluster, whether or not, you know, they have an
6 elementary school planned there, but you're right. But
7 there are, all I'm saying is that there are, there are
8 several ways that they can accommodate growth --
9 MR. GROSSMAN: Okay.
10 MR. AGER: -- beyond the passing already of the,
11 of the requirement.
12 MR. KLINE: Going to the requirements of 59-D.1,
13 and you've talked a lot of about it but I guess I haven't
14 put it this way as a summary, in your professional opinion,
15 is the pedestrian vehicular circulation system safe,
16 adequate and efficient for this property?
17 MR. AGER: Yes. In my opinion, it is.
18 MR. KLINE: Okay, fine. In your professional
19 opinion, does the development plan show a comprehensive and
20 logical systematic development of this part of the, of this
21 property for this part of the county?
22 MR. AGER: Yes. It's consistent with the master
23 plan and therefore, the general plan, so it is consistent
24 with the general development of the county.
25 MR. KLINE: I have no further questions of Mr.

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1 Ager.
2 MR. GROSSMAN: Are you satisfied with the coverage
3 of the various requirements beyond the purpose clause for
4 the PD zone?
5 MR. KLINE: I was going to ask Mr. Crum to confirm
6 that we meet all the development standards of the PD zone.
7 MR. GROSSMAN: Okay.
8 MR. KLINE: Yes.
9 MR. GROSSMAN: All right. And for the other
10 findings that are required that the Council make, he's
11 addressed A, at least as far as the master plan. I don't
12 know that he directly discussed does not conflict with the
13 general plan, the Capital Improvements Program and other --
14 MR. KLINE: Sure.
15 MR. GROSSMAN: -- county plans and policies. You
16 might just want to --
17 MR. KLINE: Sure.
18 MR. GROSSMAN: -- take a look at the findings that
19 have to be made in D-1.61.
20 MR. KLINE: Mr. Ager, I really only focused on one
21 of the five requirements of 59-D-1.61 for Council to approve
22 the development plan. Following up on Mr. Grossman's
23 question, does the development plan not conflict with the
24 general plan or any county CIP program or other applicable
25 county plans and policies to the best of your knowledge?

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1 MR. AGER: Yeah. To the best of my knowledge, it
2 does not conflict.
3 MR. KLINE: That the proposed development will
4 comply with the purposes, standards and regulations of the
5 zone. I've really only asked you about the purpose clause
6 but are you aware of anything about the development
7 standards in the PD zone with which this proposal would
8 conflict?
9 MR. AGER: Yes. It -- no. There's not, no
10 conflicts. As an example, there's a requirement for 40
11 percent green area. This plan exceeds that. And there are
12 several other specific elements of the PD zone that this
13 plan is in conformance with.
14 MR. GROSSMAN: Let me step back one, back to A for
15 a second on the number of MPDUs and the density bonus. Is
16 it your opinion that the proposal comports with the
17 requirements for MPDUs in Chapter 25 A of the code and that
18 your proposal would be within the density bonus permitted by
19 the number of MPDUs?
20 MR. AGER: Yes, sir.
21 MR. GROSSMAN: Okay. Then I'm jumping to B on the
22 findings. I think you've covered that except they
23 specifically say maximum safety, convenience and amenity of
24 the residents. You've covered compatibility.
25 MR. KLINE: Compatibility, yeah. Um, and just to

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1 elaborate on that, Mr. Ager, B does say would this project
2 provide for the maximum safety, convenience and amenity of
3 the residents, and you've talked about those features but
4 really haven't drawn some conclusion from it.
5 MR. AGER: Yeah.
6 MR. KLINE: Could you please answer that question?
7 MR. AGER: Yeah. We have, just to summarize
8 previous testimony, we have included several features, both
9 natural, passive and active recreation features, including a
10 pedestrian system, that provide the convenience and is in
11 conformance with the, with the code.
12 MR. GROSSMAN: Okay. And I take it that mister --
13 MR. AGER: In my opinion, it meets the purpose
14 clause.
15 MR. GROSSMAN: I take it that Mr. Wilson will
16 address the part C which is vehicular and pedestrian
17 circulation systems and points of access are safe, adequate,
18 efficient?
19 MR. KLINE: More from the vehicular point of view.
20 I did ask that question of Mr. Ager earlier in terms of the
21 pedestrian system.
22 MR. GROSSMAN: All right.
23 MR. KLINE: And then in D, I guess just to finish
24 it out, that by its design, by minimizing grading and other
25 means of proposed development would tend to prevent erosion

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1 of soil and preserve natural vegetation and other natural
2 features of the site. I know you kind of have alluded to
3 this in various ways but can you just kind of draw it all
4 together for us?
5 MR. AGER: Sure. We were very cognizant of the
6 site features and we were very careful in the way we
7 designed the site. And we minimized grading and we've taken
8 maximum advantage, visual advantage of the, of the site
9 topography for the benefit of the community and therefore, I
10 believe we're in conformance with that clause.
11 MR. KLINE: Okay. And finally, is it your
12 understanding that the HOA documents that are part of the
13 record were crafted in a way to basically ensure perpetual
14 maintenance of any areas that would be intended for
15 community use?
16 MR. AGER: Yes. That's my understanding.
17 MR. GROSSMAN: Those are Exhibits 17 and 18.
18 MR. KLINE: Thank you. Again, no further
19 questions of Mr. Ager.
20 MR. GROSSMAN: All right. I think I have
21 sufficiently badgered in the course of your presentation so
22 I have no additional questions.
23 MR. AGER: Thank you.
24 MR. KLINE: Then we'll just keep rolling then.
25 MR. GROSSMAN: Keep on rolling.

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1 MR. KLINE: Mr. Crum. Mr. Crum, could you please
2 state and spell your name and give us your professional
3 address?
4 MR. CRUM: Sure. My name is Stephen Crum, C-R-U-
5 M.
6 MR. GROSSMAN: Stephen spelled with a V I see.
7 Oh, no. P-H.
8 MR. CRUM: P-H.
9 MR. GROSSMAN: Okay.
10 MR. CRUM: Sorry.
11 MR. GROSSMAN: Somehow I had it as a V.
12 MR. CRUM: It's okay. That happens a lot. And
13 my, I'm with the, I'm a civil engineer with the firm of
14 Macris, Hendricks and Glascock. Our offices are at 9220
15 Wightman, that's spelled W-I-G-H-T-M-A-N, Road, Suite 120 in
16 Montgomery Village, Maryland.
17 MR. GROSSMAN: Would you raise your right hand,
18 please?
19 (Witness sworn.)
20 MR. GROSSMAN: All right. You may proceed.
21 DIRECT EXAMINATION
22 MR. KLINE: Mr. Crum, what is your profession?
23 MR. CRUM: I'm a civil engineer.
24 MR. KLINE: And I think you mentioned it but could
25 you confirm again, you're associated with what firm?

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1 MR. CRUM: Macris, Hendricks and Glascock.
2 MR. KLINE: Okay. Have you ever qualified as an
3 expert in the field of civil engineering in a forum of this
4 type?
5 MR. CRUM: Yes.
6 MR. KLINE: Could you give us an example?
7 MR. CRUM: Um, I don't have any specific examples,
8 but I've testified before Mr. Grossman before and Ms.
9 Robeson.
10 MR. KLINE: Okay. So you think you did qualify as
11 an --
12 MR. CRUM: Yes.
13 MR. KLINE: -- expert in those cases?
14 MR. CRUM: Yeah. I did.
15 MR. KLINE: And can you remember the most recent
16 one maybe or the most memorable one for Mr. Grossman?
17 MR. CRUM: Probably the case that you and I worked
18 on for the gas station in Germantown.
19 MR. KLINE: Germantown, right.
20 MR. GROSSMAN: The Exxon one? Are we talking
21 about the --
22 MR. CRUM: No. It was --
23 MR. KLINE: No. It was Freestate.
24 MR. GROSSMAN: Freestate.
25 MR. CRUM: Freestate.

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1 MR. GROSSMAN: Oh, the one that got truncated? Is
2 that the one that --
3 MR. KLINE: Well --
4 MR. GROSSMAN: You withdrew it?
5 MR. KLINE: -- we withdrew the application. It
6 was one where we had a car wash and we were going --
7 MR. GROSSMAN: Right.
8 MR. KLINE: -- to take the car wash down to expand
9 the gas station, and the neighbors had some concerns about
10 that.
11 MR. GROSSMAN: I recall that. I recall that.
12 MR. KLINE: Yes.
13 MR. GROSSMAN: All right.
14 MR. KLINE: Mr. Grossman, I have offered Mr.
15 Crum's resume. I'd ask that it be made an exhibit in the
16 record.
17 MR. GROSSMAN: Yes. Resume of Stephen Crum will
18 be Exhibit 56.
19 (Exhibit No. 56 was marked for
20 identification.)
21 MR. KLINE: And based on his professional
22 experiences identified in the resume, his professional
23 associations and his previous qualification as an expert in
24 the field of civil engineering, I'd like to offer him as
25 such for this case.

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1 MR. GROSSMAN: And you're currently licensed in
2 the state of Maryland, correct?
3 MR. CRUM: Yes, I am.
4 MR. GROSSMAN: Do you happen to remember the
5 number of your --
6 MR. CRUM: 16905.
7 MR. KLINE: That's impressive.
8 MR. GROSSMAN: Based on Mr. Crum's resume, his
9 licensing in Maryland and his past testimony as an expert in
10 civil engineering, I accept him as an expert in civil
11 engineering.
12 MR. KLINE: Thank you. Mr. Crum, just so I don't
13 forget them, I'm going to kind of ask you the questions
14 first of all of all the kind of little questions that came
15 up that we were kind of lobbying back to you in the back of
16 the room and we said we'll bring up Mr. Crum later on. Let
17 me just kind of run through them real quickly. Basically,
18 looking at Exhibit 49, we've got two points where there are
19 red arrows pointing to the south that I believe say future
20 connections, and would you just please explain what the plan
21 is intended to indicate of those two and identify each one
22 please? And actually I said two. I guess it appears in
23 three places so why don't you show us anywhere we have a,
24 quote, future connection what's going to happen.
25 MR. CRUM: Um, the legend on Exhibit 49 does

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1 indicate that those red arrows are pedestrian connections,
2 and the intention is that we would provide a path or a
3 sidewalk to the limits of the subject application, that any
4 development that occurs to the southeast or to the northwest
5 or the northeast would have the ability to connect to those
6 pedestrian connections. We're also showing that the
7 pedestrian access that Mr. Ager alluded to would connect to
8 a sidewalk system in the future Observation Drive that would
9 lead to the town center and to the transit station to the
10 south.
11 MR. KLINE: Okay. Going back to Mr. Ager's
12 comment about what he thought was possibly a typo about the
13 amount of land area that was being held in reservation, your
14 plan is apparently that had the 1.68 acres. Can you explain
15 it differently or should we annotate your plan and have the
16 two numbers that we're talking about, the 1.68, or what is
17 the distinction between the two numbers?
18 MR. CRUM: I believe that when we were computing
19 the area that we were intending to put in reservation, we
20 inadvertently subtracted out the interim access point and
21 maybe didn't correctly do our math, so it is a typo and we
22 will correct that.
23 MR. GROSSMAN: Okay.
24 MR. CRUM: Both in hard copy and --
25 MR. GROSSMAN: Fine.

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1 MR. CRUM: -- digital, and we'll make sure the
2 staff has a copy.
3 MR. GROSSMAN: Okay.
4 MR. KLINE: And then --
5 MR. GROSSMAN: And point that out to them just so
6 we make sure they're knowledgeable of what they're
7 reviewing.
8 MR. KLINE: Yes. Yes. And then last, we've had
9 the discussion about parking as it relates to
10 imperviousness, and we have agreed with the Planning Board
11 that we ought to limit the amount of parking. How do you,
12 how did you contemplate that would be displayed or
13 referenced or made an element on the face of the development
14 plan so that it would be sure to be caught at the time of
15 preliminary plan of subdivision and site plan?
16 MR. CRUM: There, there is a, in the development
17 standards, there's a calculation of the number of spaces
18 provided and then the number of spaces required.
19 MR. KLINE: So you're on Exhibit 49 in the columns
20 over in the right-hand side?
21 MR. CRUM: Yes. On the very bottom. And we
22 would, we would note that per the agreement or the Planning
23 Board approval, that we would limit the parking to 2.5, 2.25
24 spaces per dwelling unit, and we would do that math and come
25 up with a number.

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1 MR. KLINE: And your understanding is that 2.25 is
2 sort of like an on-site number or the parking associated
3 with individual units and not general community parking.
4 MR. CRUM: It's the number of spaces that would
5 fall either in a driveway, in a private street or in a
6 private parking area, not, not on street parking spaces that
7 are available to the general public.
8 MR. KLINE: All right. Thank you.
9 MR. GROSSMAN: Well, why don't we figure out right
10 now what the number of spaces is rather than just 2.25.
11 It's 2.25 times 105, right? So it should be simple enough
12 to do that and then we'll know what the, what your proposal
13 will say in terms of number of spaces.
14 MR. CRUM: That math works out to be 236 parking
15 spaces.
16 MR. GROSSMAN: 236?
17 MR. CRUM: Yes.
18 MR. GROSSMAN: Now, yes. So that's unusual. From
19 the Planning Board's approach, that's sort of a maximum.
20 I'm not sure whether that, it should be a minimum or a
21 maximum. What do you think about that? Mr. Kline:
22 MR. KLINE: Well, generally speaking, I was
23 concerned, because this cropped up somewhat spontaneously
24 during presentation and my clients had to make a marketing
25 judgment call on the fly as to what's the number that they

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1 thought would be appropriate for the community. I'm always
2 concerned about locking into any specific number because
3 that always seems to backfire on me when I do that. It is
4 true that 2.25 is where the Chair -- I actually thought of
5 that more as a target number than I did a specific number.
6 Let's see if we can get to there but if we could show that
7 we had needed more for some reason, that we would be able to
8 modestly exceed that.
9 MR. GROSSMAN: Well, I don't know. I mean
10 usually, in the past, we always --
11 MR. KLINE: Well --
12 MR. GROSSMAN: -- approach these things in terms
13 of minimum parking. The direction of the Planning Board in
14 recent times has been to set some maximums.
15 MR. KLINE: Yes.
16 MR. GROSSMAN: And in this case, of course, it's
17 an environmental maximum.
18 MR. KLINE: Well, and the other thing I'll add to
19 it is the parking came up, the amount of parking came up in
20 the context of imperviousness and the point the Chair made
21 was you're worried about setting your impervious level too
22 low but it seems to me your parking is pretty generous so
23 why don't we make sure we reduce your parking to help you
24 achieve the 30 percent imperviousness we're looking for. So
25 they kind of go hand-in-hand. If we came back in and we

1 only have 28 percent imperviousness, I don't think the Chair
2 will be as concerned about us being at 2.35 parking as long
3 as we were getting to the impervious level, so I kind of
4 like having some flexibility between the two.

5 MR. GROSSMAN: So how would you phrase it in here
6 if we're putting numbers in here? Let's see. Your, how do
7 you have it phrased in here. You have provided is the term
8 you use.

9 MR. KLINE: Well, I had, after the hearing the
10 other night, I had suggested to Mr. Crum that we basically
11 put an asterisk in the parking that basically would say,
12 asterisk 2.25, not sure everybody had a chance to figure out
13 exactly what to cite, I wouldn't want to say not to exceed
14 but I would try to achieve, try to achieve a 2.25.
15 Something like that. So it's a little --

16 MR. GROSSMAN: But I think that's a little, when
17 you say try to achieve, it's a little bit loosey goosey for
18 a development plan. I mean, why not say if you're going to
19 have 105 --

20 MR. KLINE: Dwelling units.

21 MR. GROSSMAN: -- dwelling units and you're not
22 going to exceed 2.25 per dwelling unit, why not just say
23 maximum of 236 assuming 105 dwelling units or something like
24 that? Is that --

25 MR. KLINE: Well, it certainly makes it specific,

1 yes.

2 MR. GROSSMAN: Well, I don't want to interfere
3 with the best planning technique here. I just want to make
4 sure that we're, that we're simultaneously giving enough
5 parking.

6 MR. KLINE: Right.

7 MR. GROSSMAN: Not too much parking for purposes
8 of the, the impervious area so what --

9 MR. KLINE: Can you give me a 30 second off record
10 conversation?

11 MR. GROSSMAN: Sure. See if there's a good way to
12 phrase it. I'm looking at the language again in the
13 Planning Board letter, Exhibit 46, and they do say the Board
14 further determined that the maximum number of 295 parking
15 spaces as they're shown on the parking schedule development
16 plan is excessive and should be amended to reflect a reduced
17 maximum of 2.25 spaces per unit. They're pretty express in
18 terms of couching in terms of a maximum.

19 MR. KLINE: Let me tell you when I turned around
20 what I was going to suggest.

21 MR. GROSSMAN: Okay.

22 MR. KLINE: With what you just read, you may not
23 accept it. What I was going to ask is that the record be
24 left open, that we would craft a condition that would
25 essentially say if you're at 30 percent, 2.25 is all you

1 get. If you're below 30 percent and there's some extra
2 imperviousness available, that we could exceed that and come
3 up. And I would come up with some language to let those two
4 float together and I would submit it to Park and Planning
5 Commission. Staff would look at it and say we believe the
6 Chairman felt adamantly 2.25 without regard to
7 imperviousness and we'd come back to you and say that would
8 not be acceptable to us.

9 MR. GROSSMAN: Well, I'm concerned that if you
10 would, I mean, this is a direct recommendation for a maximum
11 by the Planning Board. If you sent it to staff, they're not
12 going to change it without going back to the Planning Board
13 again so you may end up with a much longer delay than you
14 think.

15 MR. KLINE: Well, let me put it this way. I'm not
16 sure I agree with that because I still think that 2.25, or
17 2.25 came out of the context of the imperviousness.

18 MR. GROSSMAN: You have one of your gentlemen
19 behind you is trying to --

20 MR. FISHER: We're fine with 2.25.

21 MR. KLINE: That took care of it. We will put it,
22 which will translate we will put a prohibition in there 236
23 parking spaces.

24 MR. GROSSMAN: Okay. I mean, if it turns out at
25 site plan --

1 MR. KLINE: No. I learned my lesson. I won't do
2 that again. On Courts of Clarksburg G -- we will not cap
3 anything. By that I mean when I go back, it's not worth
4 going back to change the development plan just to get more
5 parking spaces so we're going to be stuck with 236 no matter
6 what.

7 MR. GROSSMAN: Do you think that -- well, let's
8 hear on this point. I mean, is that going to provide
9 inadequate parking in your estimation?

10 MR. KLINE: Well --

11 MR. GROSSMAN: Or let's turn to your experts.

12 MR. KLINE: Well, it's -- can I give a little bit
13 of background?

14 MR. GROSSMAN: Absolutely.

15 MR. KLINE: The resistance that the applicant had
16 at the Planning Board hearing last Thursday was because
17 staff was recommending a 30 percent imperviousness level.
18 And the processing, and you remember the case number better
19 than I do but the Courts of Clarksburg G 857 was it or --

20 MR. GROSSMAN: I don't remember.

21 MR. KLINE: Whatever it was.

22 MR. GROSSMAN: Yes.

23 MR. KLINE: There, the dialog wasn't on
24 imperviousness but the staff said we'd like you to be here
25 but we know that at the time of site plan, things come up

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1 that we just hadn't identified so we're going to give you a
2 little bit of a cushion and we basically had, whatever it
3 was, say 28 percent imperviousness there. When we sat down
4 at started negotiating, they found some roads that we had to
5 build that nobody had expected, awful lot of asphalt with
6 that, there was a lot more pedestrian circulation staff
7 wanted and they wanted more guest parking than we had
8 provided for and literally, every space was putting a unit
9 at risk.

10 The problem was because we made the imperviousness
11 a binding element, it just wasn't worth amending the
12 development plan to get that limit off so the Planning Board
13 this time said we understand that's an artificial problem,
14 we'll take the cap off so you don't have the imperviousness
15 and allow a little bit more flexibility.

16 So as long as we -- so going back to your question
17 do I think we've got enough maneuverability in terms of
18 flexibility, the answer is yes because we, we had built in
19 a, what we called an allowance when we proposed 32 percent
20 so we knew we had something to work with and I think the
21 client today feels, and the understanding we have with Park
22 and Planning Commission, that you'll see in the language of
23 the 30 percent, it is definitely a target. It is not a
24 fixed cap so we can move those a little bit.

25 MR. GROSSMAN: Right, but your answer went to

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1 something I wasn't exactly asking. Your answer went to
2 questions of imperviousness.

3 MR. KLINE: Right.

4 MR. GROSSMAN: My question went to whether or not
5 236 parking spaces, in accordance with your experts, is
6 sufficient for the 105 units of the type you have that are
7 planned.

8 MR. KLINE: And you're right. I got a little too
9 verbose. What I meant to say was we believe that 236 is
10 adequate to take care of the needs of the residents. Park
11 and Planning will ask us to include additional guest parking
12 and that will be outside of that number, and that will go
13 on, and that's why I asked Mr. Ager about what streets that
14 would likely, where that could occur.

15 MR. GROSSMAN: Okay. So then what I suggest that
16 you put on here for proposed is 236 resident spaces. If
17 you're intending to go beyond that in terms of guest spaces
18 --

19 MR. KLINE: We had used a phrase of on lot or
20 something like that but that's probably --

21 MR. GROSSMAN: Okay. I'm just --

22 MR. KLINE: -- a better formulation.

23 MR. GROSSMAN: However you formulate it, just so
24 you're not --

25 MR. KLINE: Yes.

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1 MR. GROSSMAN: -- there's no confusion. So you
2 don't want later on somebody to say well, you have to modify
3 this development plan --

4 MR. KLINE: Right. No, we don't. We absolutely
5 don't want to do that.

6 MR. GROSSMAN: -- in order to allow you to beyond
7 it. So just --

8 MR. KLINE: I think that formulation is perfect,
9 236 resident spaces.

10 MR. GROSSMAN: Okay.

11 MR. KLINE: And so we will be submitted an amended
12 development plan with that.

13 MR. GROSSMAN: Right.

14 MR. KLINE: And when we transmit that to Park and
15 Planning, I'll flag that so Ms. Tesfaye can focus on that.

16 MR. GROSSMAN: All right.

17 MR. KLINE: Mr. Crum, I want to ask you a question
18 that kind of leads to one of the purpose clause statements
19 here about the minimization of grading on the property, the
20 importance of trying to preserve the natural features and
21 trees. Just give us an overview from -- when you took the
22 client's program and vision and meshed it up with physical
23 features of the property, how did you minimize the grading
24 to try and keep as many trees and keep the topography as
25 natural as possible?

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1 MR. CRUM: Referring again to Exhibit 49, we
2 worked very closely with Mr. Ager in developing the
3 development pattern. We located the development on the, on
4 the ridges as he described previously, the essential ridge
5 of the property and then the ridge near Maryland Route 355.
6 We avoided the stream valleys to the extent possible.

7 And what establishes the grading for a site are
8 the grades of the streets so we applied the county
9 requirements for vertical curves, et cetera, for street
10 grades and then grade the lots out from there. I brought a
11 copy of the grading plan with me today.

12 MR. KLINE: Mr. Grossman, this is a, what Mr. Crum
13 is putting up is a copy of Exhibit 40-C in the record.

14 MR. GROSSMAN: Okay.

15 MR. KLINE: Updated grading plan.

16 MR. CRUM: So the street grades are developed and
17 they are based on the criteria that have been established by
18 the Department of Transportation and the Department of
19 Permitting Services and from that, we grade the lots out,
20 and there is some grading. And there were earlier
21 iterations of this plan that in order to preserve these two
22 stream valleys, the western stream valley and the central
23 stream valley, we did have retaining walls, and those were
24 introduced at suggestions from staff at Park and Planning on
25 how these roads should relate to Roberts Tavern Drive.

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1 And over a course of probably a year of going back
2 and forth with the staff, they came to the realization that
3 to minimize the grading associated with this development,
4 that eliminating these retaining walls, that some of the
5 alignments that they were requesting weren't practical, so
6 we've gone back to a grading scheme that somewhat divorces
7 this development from Roberts Tavern Drive and allows for
8 interim connection to Maryland 355 and then a future
9 connection to Roberts Tavern Drive at an elevation that
10 works with the grades that we represented. So we have, to
11 the greatest extent practical, minimized the grading
12 associated with this.

13 MR. KLINE: And when Mr. Grossman reads, I think
14 it's the water quality plan report, it still mentions that
15 there's 10 to 20 foot retaining walls.

16 MR. CRUM: Yes.

17 MR. KLINE: And that's basically an old, somebody
18 looked at an old plan or something, is that right?

19 MR. CRUM: Well, I think the statement in the
20 water quality plan report is grade change. They don't
21 necessarily say we're changing walls and --

22 MR. KLINE: You're going to probably have to --

23 MR. CRUM: This is a, this is a new exhibit.

24 MR. GROSSMAN: When you said the water quality
25 plan report, are you talking about the actual resolution or

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1 are you talking, what report are you talking about that --

2 MR. KLINE: Attached to the rezoning application
3 report authored by Ms. Tesfaye --

4 MR. GROSSMAN: Yes.

5 MR. KLINE: -- there are, there's an attachment
6 that has what is prepared by Ms. Nelson, water quality plan
7 and forest conservation plan report, and it's part of the
8 package.

9 MR. GROSSMAN: Okay. So you're saying that within
10 that, there's a reference to, in a reference to the grading,
11 there's something about retaining walls?

12 MR. KLINE: Ten to twenty, retaining walls of 10
13 to 20 feet in height.

14 MR. GROSSMAN: And you're saying that's, according
15 to Mr. Crum's testimony, those are no longer included is
16 that correct?

17 MR. KLINE: That's correct.

18 MR. GROSSMAN: Now, was the, was this difference
19 brought to the attention of staff?

20 MR. KLINE: We sent a letter to the Planning Board
21 in advance to the hearing pointing out what we considered to
22 be errors in the staff report, but it was not the subject of
23 discussion at the hearing.

24 MR. GROSSMAN: But you did send a letter telling
25 them that this is in error?

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1 MR. KLINE: Yes.

2 MR. GROSSMAN: Okay. Is that in the -- I don't
3 recall seeing that in the record.

4 MR. KLINE: Well, that one I might have with me as
5 a matter of fact.

6 MR. GROSSMAN: Yes. If it's not in our record, it
7 should be because --

8 MR. KLINE: I'm glad to submit that to you.

9 MR. GROSSMAN: Should that question come up.

10 MR. KLINE: We're both checking to find that
11 reference for you. I'll get you the letter and I'll provide
12 you the reference where in the attachment B is that
13 reference.

14 MR. GROSSMAN: Okay.

15 MR. KLINE: Mr. Crum?

16 MR. CRUM: Okay. So in the water quality report,
17 they talk about grade changes. And this is an enlargement
18 of the central stream valley in this area.

19 MR. GROSSMAN: When you say this, are you
20 referring to a plan that's already in the record?

21 MR. CRUM: The -- yes.

22 MR. GROSSMAN: I know that Exhibit 49 is.

23 MR. CRUM: This is a new exhibit. This is not --

24 MR. GROSSMAN: New exhibit. So let's mark it 57.

25 MR. KLINE: What are you going to call it, Mr.

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1 Crum?

2 MR. CRUM: Um, grading exhibit, partial grading
3 exhibit.

4 MR. GROSSMAN: Partial grading exhibit.
5 (Exhibit No. 57 was marked for
6 identification.)

7 MR. GROSSMAN: Okay.

8 MR. CRUM: On the partial grading exhibit, there's
9 an enlarged of the central stream valley that's shown on
10 Exhibit 49.

11 MR. GROSSMAN: Okay.

12 MR. CRUM: This oval shaped area is a, is the
13 wetland buffer for a seep that's located on the property and
14 it shows a portion --

15 MR. GROSSMAN: A seep?

16 MR. CRUM: Seep. Spring.

17 MR. GROSSMAN: I'm sorry, what?

18 MR. CRUM: A seep or a spring.

19 MR. GROSSMAN: I see. So --

20 MR. CRUM: Where water comes to the surface.

21 MR. GROSSMAN: A seep being a synonym for spring?
22 Is that what you're saying?

23 MR. CRUM: Yes.

24 MR. GROSSMAN: Okay.

25 MR. CRUM: Yes.

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1 MR. GROSSMAN: All right.
2 MR. CRUM: This Exhibit 57 shows a portion of
3 Dowden's Green Way and it shows how the grading of that
4 roadway ties to the existing grades around that spring.
5 MR. GROSSMAN: All right.
6 MR. CRUM: So the elevation of a road is rising,
7 there's a road on the right portion of this exhibit that
8 rises as you go northwest and the elevation of the road is,
9 that elevation is 592 and the elevation at the spring at the
10 edge of the wetland buffer is 584. That's the difference I
11 think they were referring to but we're not grading right to
12 the edge of the buffer. We're providing more buffer than
13 that so our contours are actually much further away from the
14 spring and there are no retaining walls.
15 MR. GROSSMAN: All right. I guess the operative
16 question really is the one that's posed in the required
17 findings by the Council which is that by its design, by
18 minimizing grading and by other means, the proposed
19 development would tend to prevent erosion of the soil and to
20 preserve natural vegetation and other natural features of
21 the site, and would it comply with that? Would your
22 proposed grading comply with that requirement?
23 MR. CRUM: In my professional opinion, it does.
24 MR. GROSSMAN: Okay. Is there any, does somebody
25 disagree with you on that that you've --

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1 MR. CRUM: I don't think so.
2 MR. GROSSMAN: Okay. Well, I just want to know
3 because, I mean, there are no other experts here, no other
4 civil engineers here. We can only rely, really, in terms of
5 the evidence in the record, on what you say and what
6 technical staff says. That's why I brought us to the final
7 conclusion here. They also, the rest of that provision is
8 any applicable requirement for forest conservation under
9 chapter 22A and for water resource protection under chapter
10 19 must also be satisfied. And is that provision met here?
11 MR. CRUM: Yes. Those provisions are both met,
12 yes.
13 MR. GROSSMAN: Okay. All right.
14 MR. KLINE: Early on, Mr. Grossman asked a
15 witness, I think it was Mr. Ager, if this area's in a water
16 -- sorry.
17 MR. GROSSMAN: Special protection area.
18 MR. KLINE: Special protection area, and the
19 answer was yes.
20 MR. CRUM: Yes.
21 MR. KLINE: And you're confirming that. So what
22 does that mean to us because that meaning had a lot of
23 relevance in this case.
24 MR. CRUM: There are a number of special
25 protection areas that were established by the County Council

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1 across the county. Clarksburg is one of those. And in
2 terms of stormwater management and soil erosion and sediment
3 control, in lieu of submitting a stormwater concept plan,
4 you submit a preliminary water quality plan, that plan needs
5 to address not only how you're going to conform, you're
6 going to produce stormwater management but also, how
7 sediment control is going to be addressed during the initial
8 construction of the project.
9 The third element of that is that special
10 protection areas are part of a water quality monitoring
11 program that the Department of Environmental Protection
12 runs. Originally, in the early days of special protections,
13 developers did the water monitor, water quality monitoring
14 but the county realized that the data became very disjointed
15 and now they just ask the developer to contribute money
16 towards that and they have a protocol for monitoring the
17 water quality.
18 So in special protection areas, the stormwater
19 process is two-stepped, it's a preliminary water quality
20 plan and a final water quality plan. The final water
21 quality plan is a construction level plan. The preliminary
22 water quality plan is more conceptual although it does
23 require submitting more detail than what a stormwater
24 concept does.
25 MR. GROSSMAN: In your opinion, will the

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1 stormwater management controls that you plan here result in
2 compliance with environmental site design requirements?
3 MR. CRUM: They will. And that's something that's
4 sort of an ongoing discussion within the county as to
5 whether, has environmental site design superseded the need
6 for special protection areas, are we not actually doing
7 special protection everywhere in the county by performing
8 environmental site design. Yes. This project will be
9 designed under the environmental site design guidelines and
10 the Maryland regulations for that.
11 MR. GROSSMAN: Are you able to fully achieve these
12 environmental --
13 MR. CRUM: We are able to fully achieve our
14 environmental site design per requirements.
15 MR. GROSSMAN: Okay.
16 MR. KLINE: I use the term mantra but maybe that's
17 a little unfair, but the typical mantra of Park and Planning
18 Commission is that imperviousness is the most, the most
19 productive successful way of ensuring water clarity, water
20 purity, water integrity, integrity of the streams.
21 MR. GROSSMAN: You mean pervious. You said
22 imperviousness.
23 MR. KLINE: Yes, well, okay.
24 MR. GROSSMAN: Reducing imperviousness.
25 MR. KLINE: Reducing, exactly. So I'll start off

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1 by saying in Clarksburg, what have we determined to be the
2 appropriate level of imperviousness on the development of a
3 property?
4 MR. CRUM: It varies and in the Clarksburg special
5 protection area, there is no absolute cap on imperviousness
6 so it is looked on and looked at on a case-by-case basis at
7 the time of preliminary water quality plan and again, in
8 subdivision. Imperviousness has become the metric of choice
9 so.
10 MR. KLINE: And Mr. Grossman will see in the staff
11 report that staff was advocating a 30 percent imperviousness
12 cap. Your development plan behind you there, No. 49, says
13 32. Just explain what we were talking about. What was the
14 tension between the two?
15 MR. CRUM: Basically, the tension was -- well,
16 there were two aspects of that. Staff wanted to, their 30
17 percent was based on net tracked area. Our 32 percent was
18 based on gross tract area. And the compromise that we
19 reached was that we would subtract from the gross tract area
20 the master plan highways that we were not constructing and
21 that we would have a goal of achieving a 30 percent
22 imperviousness for the site based on that tract area after
23 subtracting out the master plan roads that we're not
24 constructing.
25 MR. GROSSMAN: And is that goal of 30 percent

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1 imperviousness reflected in the development plan itself?
2 MR. CRUM: The development plan itself is actually
3 less than 30 percent. The -- this is another exhibit that's
4 not in the record, and this is the impervious surfaces.
5 MR. GROSSMAN: All right. So this will be Exhibit
6 58, impervious surface plan or is that --
7 MR. CRUM: Exhibit.
8 MR. GROSSMAN: All right.
9 (Exhibit No. 58 was marked for
10 identification.)
11 MR. GROSSMAN: And what does that show?
12 MR. CRUM: In responding to staff during these
13 discussions, they, you know, okay, show us in numbers and
14 graphically where the impervious surface is. So in the tan
15 color on this exhibit are all the impervious surfaces
16 proposed by the development plan as shown in Exhibit 49, and
17 this actually represents less than 30 percent of the net
18 tract area and imperviousness. Again, we were asking for
19 some flexibility from staff, and that's why we were
20 proposing 32 percent of the gross tract area. That gave us
21 a cushion for future requirements for other impervious
22 surfaces. Staff's tension was that's an awful lot of square
23 footage so can you come down and meet us at, at the 30
24 percent and ultimately, that, by calling that, the goal
25 amount a cap, we reached a compromise.

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1 MR. GROSSMAN: So you're saying you have, it's not
2 a cap, it's a goal.
3 MR. CRUM: It's a goal.
4 MR. GROSSMAN: And is that goal reflected on your,
5 your development land use plan?
6 MR. CRUM: Yes.
7 MR. GROSSMAN: Where is that on here?
8 MR. CRUM: There isn't an absolute number on
9 there.
10 MR. GROSSMAN: Where is the goal represented?
11 MR. CRUM: There is no --
12 MR. KLINE: Well, we have a note in No. 2.
13 MR. CRUM: There's no, there's no -- well, there's
14 a number in, note in development plan notes no. 2. It says
15 impervious areas up to 32 percent.
16 MR. GROSSMAN: Yes. So that doesn't say 30
17 percent.
18 MR. CRUM: That's correct. That's because we
19 didn't have the resolution to see in order to modify this
20 for today's hearing.
21 MR. GROSSMAN: All right. So is that another
22 thing that should be changed?
23 MR. KLINE: Yes, sir. That was the one --
24 MR. GROSSMAN: Okay.
25 MR. KLINE: That was the one I knew was going to

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1 change.
2 MR. GROSSMAN: Okay.
3 MR. KLINE: And we will use the language that was
4 agreed with staff and Steve used the word goal. Target was
5 a very clever phrase that came up by the head of the area 3
6 plan team that that will be the target.
7 MR. GROSSMAN: Okay.
8 MR. KLINE: And we'll come up with a condition
9 that says that, but it's not a binding element.
10 MR. GROSSMAN: Okay.
11 MR. KLINE: Because so much of the PD zone talks
12 about preservation of trees and the forestation issue, tell
13 us about the forest conservation plan knowing that you still
14 don't have the resolution on that one either.
15 MR. CRUM: Is this in the record?
16 MR. KLINE: Yes. I'll give you the number here in
17 a -- this is what, the actual --
18 MR. CRUM: This is the forest, the preliminary
19 forest conservation plan.
20 MR. GROSSMAN: Yes. That's in the record.
21 MR. KLINE: Yeah. It's 40-E and F, sheets 1 and
22 2.
23 MR. CRUM: Again, this shows the overall
24 development of the site. The honeycomb hatched areas are
25 areas that will be placed within a category 1 forest

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1 conservation easement. We have -- there's a worksheet on
2 the right-hand side of this sheet that is based on the
3 forest, on chapter 22A in the County Code and the last line
4 of that says whether there is reforestation or reforestation
5 is required, and the number is zero. So we've met all of
6 our forest conservation requirements on site.
7 We don't have to, you know, by these numbers, by
8 the forest conservation worksheet, we wouldn't have to plant
9 a single tree although we have made that commitment to the
10 Planning Commission that those areas that, in between the
11 approved stream valley buffer and the 175-foot buffer, that
12 we will reforest areas that we disturb and we'll landscape
13 areas that are stormwater management facilities.
14 MR. GROSSMAN: Okay. By the way, before you, now
15 that you mention the stormwater management facilities,
16 describe exactly what the bioretention facilities will look
17 like that are within 175 feet of the stream valley buffer.
18 MR. KLINE: So would this be --
19 MR. CRUM: This would be preliminary water quality
20 plan.
21 MR. KLINE: So I believe it's Exhibit 40-G and H,
22 sheets 1 and 2 respectively.
23 MR. CRUM: Okay.
24 MR. KLINE: And you have sheet 1 put up there? Is
25 that what that is?

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1 MR. CRUM: Sheet 1 is up and here is sheet 2.
2 MR. KLINE: Okay. Oh, I see. Okay.
3 MR. CRUM: So as we identified, here's the areas
4 that are --
5 MR. KLINE: Steven, can you just --
6 MR. CRUM: I'm sorry.
7 MR. KLINE: -- identify what you're talking about?
8 MR. CRUM: Yeah. The area between the approved
9 stream valley buffer and the 175-foot buffer on the west
10 side of the site, we're proposing a microbioretention
11 facility just to the --
12 MR. KLINE: Do you have a lot number or anything
13 there?
14 MR. CRUM: It's -- maybe.
15 MR. KLINE: It's probably like 22, 23.
16 MR. CRUM: Yeah. It's behind lots 17 and 18 and
17 then to the southeast of lot 26, all of which are townhouse
18 lots. These will be low, they'll be depressions in the
19 ground. They have plant material, they have a special plant
20 soil mix that goes in them. There's an underdrain system
21 underneath them, and they are planted with plant material
22 that's tolerant to periodic flooding and actually that take
23 up any pollutant or nutrients that are in the water before
24 it percolates through, reaches the underdrain system. The
25 underdrain system is connected to the storm drain system and

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1 that ultimately outfalls to the stream.
2 MR. GROSSMAN: So underneath the bioretention
3 filters would be the main area to carry away the stormwater,
4 is that correct?
5 MR. CRUM: It's a --
6 MR. GROSSMAN: And it's a filtering system.
7 MR. CRUM: It's a, it's similar, it's a filtering
8 system as well as, because there's plant material planted in
9 it, there's some absorption of the water as well as a
10 filtering.
11 MR. GROSSMAN: All right. And the plant material
12 you appear to be showing there, is that sheet 2 I'm looking
13 at?
14 MR. CRUM: This is sheet 2, yes.
15 MR. GROSSMAN: In the upper right-hand corner
16 there, is that an example of a bioretention facility?
17 MR. CRUM: This -- well, generally, yes. This
18 actually is a cross-section through the facilities that
19 we're planning to place in the public right-of-way, so
20 they're more of a linear footprint. But there's two to four
21 feet of planting media, there's a six-inch sand layer and
22 then there's the underdrain system at the very bottom which
23 generally is about 15 inches thick.
24 MR. GROSSMAN: It looks like you have a tree in
25 the middle of it there.

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1 MR. CRUM: Yes. We do have a tree in the middle
2 of it.
3 MR. GROSSMAN: Is that, is that also common in
4 your, in the other bioretention facilities on the western
5 side of the property?
6 MR. CRUM: If they're large enough, we can plant
7 trees in them and I, all three of these that are in the
8 western portion will be large enough to have trees. It
9 won't be --
10 MR. GROSSMAN: I'm not suggesting that's a good or
11 bad idea. I just wanted to know what the plan was.
12 MR. CRUM: Yeah. We will be able to plant trees.
13 They'll probably be ornamental, not oaks but --
14 MR. GROSSMAN: So from the point of view of
15 somebody looking at the area they won't notice this as any
16 different from the general vegetation in the area?
17 MR. CRUM: Um, there is a mulch that goes on the
18 top so there won't be like turf grass growing into it. It
19 will look like a landscaped area, you know, similar to what
20 would be a foundation planning except it has a depression.
21 MR. GROSSMAN: Okay. And what diameter is it?
22 MR. CRUM: They vary. The ones along the, oh --
23 they vary. I think these are probably 20 to 25 feet in
24 width and 50 feet in length.
25 MR. GROSSMAN: Okay. Somehow I envisioned

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1 something smaller but --
2 MR. CRUM: The ones, the ones in the right-of-way
3 will be narrower but the ones that we're able to place along
4 the perimeter of the property are larger.
5 MR. GROSSMAN: All right. So 20 to 50 feet in
6 length?
7 MR. CRUM: Yes.
8 MR. GROSSMAN: And what was the width again?
9 MR. CRUM: Well, 20 to 25 feet in, in width and 50
10 feet in length.
11 MR. GROSSMAN: Fifty feet in length. All right.
12 How many --
13 MR. KLINE: Mr. Grossman?
14 MR. GROSSMAN: How many of those are we talking
15 about in the, in the buffer, within 175 feet of the buffer?
16 MR. CRUM: There, there's three.
17 MR. GROSSMAN: Okay. All right. Yes, Mr. Kline?
18 MR. KLINE: I was going to say I think the Hearing
19 Examiner is saying well, that's bigger than I thought they
20 would be. How do you integrate them with the reforestation
21 that's going to be occurring?
22 MR. CRUM: Um, well, they, they can have trees
23 planted in them and there will be, you know, they will be
24 able to plant trees on either side of them to reforest the
25 area.

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1 MR. KLINE: So if I am in my backyard or if I have
2 one of these houses that might have a deck off the back, am
3 I going to be looking at something that looks like a swell
4 with water accumulating or am I going to be looking at
5 what's forest?
6 MR. CRUM: You're going to be looking at, for the,
7 except immediately after a rainstorm, it's going to look
8 like forest with mulch at the surface and understory. And,
9 you know, when it rains, it's going to, it will fill up to,
10 it won't get deeper to 12 inches. Typically, they're 6 to 8
11 inches of depth and then that water soaks into the
12 microbioretention facility.
13 MR. GROSSMAN: When it rains, it will look like
14 your basement.
15 MR. KLINE: I'd like you to talk about public
16 utilities. Do we have adequate sewer and water service for
17 the property?
18 MR. CRUM: We do.
19 MR. KLINE: And where is it going to be provided
20 from?
21 MR. CRUM: Go back to, back to Exhibit 49.
22 There's an existing water line in Maryland 355. We are
23 proposing to make a connection to that line and then it will
24 loop through the, through the project and will actually make
25 a water line connection to Observation Drive as well. So

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1 the property will be served from two directions with public
2 water. Each, each dwelling unit obviously has an individual
3 connection to that that will be metered. The sanitary
4 sewer, we will, we're going to extend the sanitary sewer all
5 the way up into this alley behind single-family dwellings
6 that are closest to Maryland 355. There will be a manhole
7 at the intersection of Dowden's Green Way and that private
8 alley that could actually extend, that could be extended in
9 the future to serve properties to the south. And then the
10 sewer system runs and connects to Observation Drive via the
11 pedestrian crossing that we're proposing.
12 MR. GROSSMAN: What are the water and sewer
13 categories?
14 MR. CRUM: Currently, we're in W-1 and S-3.
15 MR. GROSSMAN: Okay.
16 MR. CRUM: So we're in categories that would allow
17 us to make application to WSSC.
18 MR. GROSSMAN: Okay.
19 MR. KLINE: In your research, were you, did you
20 become aware of any transmission or treatment problems at
21 all? Is there any reason to think we won't have adequate
22 service when we need it?
23 MR. CRUM: We're not aware of any either pressure
24 or treatment plant prescriptions.
25 MR. KLINE: What I'd like you to do -- I'm looking

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1 for the exhibit that had the pedestrian crossing. Excuse
2 me, Mr. Grossman.
3 MR. GROSSMAN: Sure.
4 MR. KLINE: Mr. Grossman, I'm asking him questions
5 kind of unnecessary in the grand scheme of things. I'm the
6 one that gets really excited about this.
7 MR. GROSSMAN: Let's not get too excited.
8 MR. KLINE: So let's get -- yes. Brag a little
9 bit about this solution to both the connectivity and the
10 sewer service. I was thinking we had a drawing that
11 actually shows the cross-section so you could actually show
12 where the pipes are, but what I'd like you to do is, what
13 I'd like you to do is just explain to Mr. Grossman the
14 design of this so he understands how it serves, solves these
15 two issues.
16 MR. CRUM: Well, the dilemma that we had early on
17 was providing sanitary sewer for the project. That's one of
18 the elements that PD-4 requires. And as Mr. Ager went into
19 detail, there's a stream valley here. The elevation here is
20 significantly higher than the stream elevation, and the
21 Gankirk Farms project to our west is also at an elevation
22 similar to the elevation of the central ridge. And early
23 on, we started looking at ways to serve this project with
24 sanitary sewer, and the elevation of the receiving sewer is
25 at an elevation such that if we did a conventional sanitary

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1 sewer where we just buried it underneath the existing grade,
2 when we got to the bottom of the stream, we would be too low
3 to gravity flow to the receiving manhole.
4 But we started looking at the relative grades and
5 we realized that if there was a way to cross the stream
6 valley, that we could actually make gravity work this way in
7 this location, that our site was high enough that this
8 receiving manhole to the west of the property is at an
9 elevation that allows for gravity flow. We talked to WSSC
10 early on about, you know, could we build a structure similar
11 to a Roman aqueduct where the sewer was suspended, was an
12 aerial sewer is what it's called, and WSSC said we're not
13 interested in any aerial sewer. We want -- if we're going
14 to have a sanitary sewer here, it has to be conventional
15 construction where if we have to go repair it, we can take
16 the backhoe out there, excavate down through the earth and
17 repair the sewer.
18 So the solution that we came up with was to create
19 an earth embankment that would cross the stream valley and
20 would allow the sewer to be within that earth embankment and
21 still reach the elevations that we need to reach, and we're
22 happy that, you know, we've been able to get, WSSC has
23 reviewed this in a very preliminary manner and they don't
24 have any objections. And, you know, as Mr. Ager testified,
25 this provides a very direct pedestrian connection with the,

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1 what we're proposing with regard to the stream crossing.
2 We're going to have very little impact to the stream. This
3 opening will be designed so that the stream flows up to the
4 100 year event won't be impacted, so we're not going to pond
5 water. This is not going to be like a dam that would pond
6 water to the north of the crossing but those flows will pass
7 through.
8 MR. GROSSMAN: I mean, it's clearly a clever idea
9 and answers a lot of your problems in terms of pedestrian
10 pathway, which is level and the sewage connection. My only
11 concern would be the visuals of it through forested area and
12 I don't know. I mean, maybe there's a way to design it that
13 doesn't look like you have an aqueduct through.
14 MR. KLINE: What did you just put up for us here,
15 Mr. Crum?
16 MR. CRUM: This is a, this is an image of the
17 stream, of the actual what's there today with a super-
18 imposed on Photoshop what that arch is going to look like.
19 So we're -- we believe that this, and if you, that this is
20 going to be a significantly less visual impact and it will
21 actually be a vantage point for, for people that are, that
22 are walking to actually see the stream valley. The
23 elevation, it's about 25 to 26 feet above the stream valley.
24 MR. GROSSMAN: You said this will be less visual
25 impact. Less than what?

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1 MR. CRUM: Well, less than what -- what
2 traditionally would be done would be, this would be a
3 culvert that would only pass perhaps the 10 year storm,
4 would allow storms greater than that to pond up. There are
5 criteria that the Department of Transportation has for how
6 much elevation of water above a culvert is allowable before,
7 during a larger storm so we believe that this, that this
8 will ultimately will blend into the environment.
9 MR. GROSSMAN: You're saying that that concrete
10 abutment there, the concrete aqueduct, whatever you want to
11 call it, is going to blend into the environment?
12 MR. CRUM: Well, eventually, the trees and the
13 understory in the area will reestablish themselves and it
14 will be hidden. I mean, you're not going to be able to see
15 it, you know, from, basically from anywhere but standing on
16 top of it.
17 MR. GROSSMAN: Well, I'm just looking at the
18 pictures you made. You can clearly see it so.
19 MR. CRUM: Well --
20 MR. GROSSMAN: I mean, can it be designed of
21 materials that are not concrete?
22 MR. CRUM: Well, we can't, we can't -- we'll
23 probably, it will, by necessity, be concrete but there are
24 treatments we can do. We can put in form liners that look
25 like stone. I don't know if you're familiar with some of

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1 the overpasses and the retaining walls that the State
2 Highway Administration is building now but they actually go
3 in and color the different pieces of stone different colors.
4 Excuse me. So I mean, it could be, it could be much more
5 attractive than simply a stark concrete wall.
6 MR. GROSSMAN: Yes. I mean, I'm not the final
7 arbiter of view in that sense but I think it would be
8 something that you ought to think about in terms of design.
9 I don't know what, I mean, it's not so much a zoning
10 question as it is a design visibility question later on down
11 the road, but it's certainly something I would consider for
12 this kind of an area. But anyway, I'll let you continue.
13 MR. KLINE: Mr. Crum, your offices are responsible
14 for ensuring that this plan, development plan, complies with
15 all the requirements of the PD zone, is that correct?
16 MR. CRUM: Yes, it is.
17 MR. KLINE: All right. It meets all the
18 development standards in the zone?
19 MR. CRUM: It does.
20 MR. KLINE: Okay. In your professional opinion,
21 does the proposed use comply with the purpose, intent and
22 standards of the PD zone?
23 MR. CRUM: Yes, it does.
24 MR. KLINE: Does it meet all the requirements of
25 59-D.1 that we talked about earlier and in particular, from

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1 an engineering point of view, I think we'd like to hear your
2 comment about the design and the prevention of erosion which
3 you kind of alluded to already but maybe you could restate
4 it.
5 MR. CRUM: Well, as part of the water quality
6 plan, this project will be designed with redundant sediment
7 control measures so where in the convention or outside of
8 the special protection area where you might provide silt
9 fence, we would provide super silt fence or maybe actually
10 two layers of silt fence. The traps, if there are any
11 required, will be oversized over what would be conventional
12 construction outside of the special protection area, so we
13 believe that this project will be designed in complete
14 compliance with that.
15 MR. KLINE: Okay. And you mentioned the water
16 quality plan. Will compliance with the requirements of the
17 water quality plan ensure that this development's consistent
18 with the enhanced environmental scrutiny that the Clarksburg
19 SPA expects to occur?
20 MR. CRUM: Yes, it will.
21 MR. KLINE: I have no further questions of Mr.
22 Crum.
23 MR. GROSSMAN: All right. I have no questions
24 either. Thank you, Mr. Crum.
25 MR. CRUM: Thank you, sir.

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1 MR. KLINE: One last witness --
2 MR. GROSSMAN: Yes.
3 MR. KLINE: -- and probably not a long one. Mr.
4 Wilson, when you're ready, could you please state and spell
5 your name and give us your business address?
6 MR. WILSON: Sure. My name is Carl Wilson, W-I-L-
7 S-O-N. My business address is 9900 Franklin Square Drive,
8 Suite H in Baltimore, Maryland, 21236.
9 MR. GROSSMAN: Would you raise your right-hand
10 please?
11 (Witness sworn.)
12 MR. GROSSMAN: All right. You may proceed.
13 DIRECT EXAMINATION
14 MR. KLINE: Mr. Wilson, what is your profession,
15 sir?
16 MR. WILSON: I am a traffic engineer.
17 MR. KLINE: Have you ever qualified as an expert
18 in the field of traffic engineering or transportation
19 planning before in a forum like this one?
20 MR. WILSON: Yes, I have.
21 MR. KLINE: One that Mr. Grossman would recognize?
22 MR. WILSON: I've qualified before at this forum
23 before Ms. Roberson.
24 MR. KLINE: Do you happen to remember a case or
25 when this occurred?

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1 MR. WILSON: Yeah. That was for a Clarksburg
2 daycare site. Actually, directly across the street from
3 this project.
4 MR. KLINE: Okay. And you were qualified as an
5 expert in those two fields, transportation planning and
6 traffic engineering?
7 MR. WILSON: Yes.
8 MR. KLINE: Okay. I've provided a copy of Mr.
9 Wilson's resume and ask that it be made an exhibit in the
10 record of the case.
11 MR. GROSSMAN: All right. That will be Exhibit
12 59.
13 (Exhibit No. 59 was marked for
14 identification.)
15 MR. KLINE: And based on the information contained
16 in that resume and his previous qualification before this,
17 the Office of Zoning and Administrative Hearings, I'd like
18 to offer him as an expert in transportation planning and
19 traffic engineering.
20 MR. GROSSMAN: All right. I noticed you're also a
21 registered professional engineer in Maryland.
22 MR. WILSON: Yes, sir.
23 MR. GROSSMAN: License 29931?
24 MR. WILSON: That's correct.
25 MR. GROSSMAN: Based on Mr. Wilson's previous

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1 testimony as an expert and his qualifications as he has
2 testified to and in his resume, Exhibit 59, I accept him as
3 an expert in traffic engineering and transportation
4 planning.
5 MR. KLINE: Mr. Wilson, Exhibit 24 in the record
6 of this case is a local area transportation review dated
7 7/26/13 prepared by you and your office that's been put into
8 the record. And I think before you got here today, Mr.
9 Grossman, as we were talking about all this road network,
10 Mr. Grossman said the traffic study is kind of old. Does it
11 accurately capture all the things we need to know for this
12 road system we're talking about in the future?
13 MR. WILSON: Yeah. The main purpose of the LATR
14 is to study the offsite intersections and also, the site
15 access point at Maryland 355, so we're looking at the
16 critical lane volumes to determine that those are adequate
17 so the specific alignment of the roads internal to the
18 network wouldn't be part of the LATR.
19 MR. GROSSMAN: We were going to ask you about them
20 anyway so, but my question about LATR wasn't only that this
21 is old. It's that you have alternative road alignments that
22 are possibilities here. So I wanted you to address the
23 application of both the LATR standards as well as safety
24 considerations and are there any other practical
25 considerations to the alternative road alignments that are

1 possible here as well as to the internal safety of
 2 vehicular, safety of access and internal circulation.
 3 MR. WILSON: Well, with respect to LATR, we
 4 considered a single point of access for this property along
 5 Maryland 355. That access point is projected to operate at
 6 an adequate level of service for the congestion standard for
 7 the policy area.
 8 MR. GROSSMAN: And that access point I take it is
 9 the one all the way over on the extreme eastern portion
 10 there as it meets 355 and the extension of --
 11 MR. WILSON: Yes, sir. That's correct.
 12 MR. GROSSMAN: Okay.
 13 MR. WILSON: And basically, what we found is that
 14 that access point will have an acceptable critical lane
 15 volume once its developed. Of course as this proceed
 16 through preliminary plan, we're going to have to update the
 17 LATR to obtain more current counts since this was dated
 18 2013. Along those lines, State Highway Administration is
 19 going to have to approve this access point through the
 20 access management division.
 21 MR. GROSSMAN: What is the CLV standard for the
 22 intersections in this area?
 23 MR. WILSON: 1425.
 24 MR. GROSSMAN: Okay. Is that for all of the ones
 25 that are applicable here?

1 MR. WILSON: Yes, it is.
 2 MR. GROSSMAN: Okay. And in your study in Exhibit
 3 24, do all of the intersections studied meet the 1425 CLV
 4 standard?
 5 MR. WILSON: They do, yes.
 6 MR. GROSSMAN: Okay. What is it at the point that
 7 you did study, the proposed access to 355?
 8 MR. WILSON: At the proposed access point, we
 9 found in the morning that it's 763, in the afternoon it's
 10 877, and that's actually based on a slightly larger
 11 development yield for the site.
 12 MR. GROSSMAN: That's based on the original one
 13 for --
 14 MR. WILSON: That's correct, yeah.
 15 MR. GROSSMAN: And that's, I take it those are
 16 during the peak hour or the peak period?
 17 MR. WILSON: That's correct. That's for the a.m.
 18 was the one I referenced first and the p.m. was second.
 19 MR. GROSSMAN: Okay.
 20 MR. WILSON: And again, that reflects a unit count
 21 that's slightly higher than today.
 22 MR. GROSSMAN: Well, more than slightly. 140,
 23 wasn't it?
 24 MR. WILSON: Yeah, that's correct. It was 14
 25 single-family units and 126 townhomes so obviously, as that

1 is reduced to the current 105 units total, it would be
 2 decreased slightly further, the CLVs.
 3 MR. GROSSMAN: What about the, what are the
 4 projected trip counts for these? I presume all of your trip
 5 counts also are based on 140 unit?
 6 MR. WILSON: That's correct. Using the Montgomery
 7 County rates in the morning, it's 75 total trips. In the
 8 evening it was 100 trips. And again, that would be
 9 decreased as the number of units decrease.
 10 MR. GROSSMAN: Is it a linear reduction? In other
 11 words, can you divide 105 by 140 and then just apply that
 12 fraction to the 75 a.m. and 1:11 p.m. or is it not so easily
 13 done?
 14 MR. WILSON: It would take a minute or two to do
 15 the calculations because there's different rates for single-
 16 families and townhomes so.
 17 MR. GROSSMAN: Okay.
 18 MR. WILSON: Effectively, it's linear but it's
 19 different for the different units.
 20 MR. GROSSMAN: Okay. But just eyeballing it, it's
 21 somewhat in the area of two-thirds of what you have? Is
 22 that --
 23 MR. WILSON: Yes. That's fairly accurate.
 24 MR. GROSSMAN: Okay. All right.
 25 MR. KLINE: Mr. Grossman asked a question

1 regarding the issue of safety. You were asked to take a
 2 look at gaps on 355. Explain why you were asked to do that,
 3 what your findings and conclusions were.
 4 MR. WILSON: Sure. The Planning staff asked us to
 5 prepare a gap study. What the gap study is is to ensure
 6 that there's adequate availability for traffic that would be
 7 leaving the site to enter Maryland 355. So in order to do a
 8 gap study, what we do is we put tubes out on the road to
 9 measure the amount of space that occurs in between vehicles.
 10 It's actually measuring the time in between vehicles passing
 11 the site access point.
 12 MR. GROSSMAN: Don't you have to know their speed
 13 also?
 14 MR. WILSON: The gap study itself actually is not
 15 related to speed, okay? That gets into the actual site
 16 distance requirement. So for the gap study, we need to find
 17 a gap for the left turn of seven-and-a-half seconds and for
 18 the right tur, six-and-a-half seconds.
 19 MR. GROSSMAN: Okay.
 20 MR. WILSON: And we actually look at both the
 21 northbound and southbound so obviously, if you're turning
 22 right, you only need that southbound gap, you know, along
 23 Maryland 355. In the, if you're turning left out of the
 24 site, you need the same gap to be available at the same time
 25 on both northbound and southbound, so that's something that

1 is considered as part of this analysis.
 2 MR. GROSSMAN: Oh, there's not going to be a
 3 traffic light at the point where, where the access meets
 4 355?
 5 MR. WILSON: It's possible in the future if the
 6 Roberts Tavern Drive extension project moves forward that
 7 there could be a traffic signal. As part of this project,
 8 there's not a traffic signal proposed.
 9 MR. GROSSMAN: But it is proposed that you can
 10 make a left-hand turn out of your access way onto 355 and
 11 coming north on 355, you can make a left-hand turn into your
 12 access way?
 13 MR. WILSON: Yes. That's correct. Um, again,
 14 this site itself would not generate enough traffic to
 15 warrant a traffic signal.
 16 MR. GROSSMAN: Right.
 17 MR. WILSON: There's a certain -- there's criteria
 18 that's presented in the manual on uniform traffic control
 19 devices with certain minimum thresholds of traffic volumes
 20 that would need to be satisfied in order for a traffic
 21 signal to be considered. This is a relatively small project
 22 and typically, residential developments that are of this
 23 size would not generate enough traffic throughout the day to
 24 warrant the need for traffic signalization.
 25 MR. GROSSMAN: All right.

1 MR. KLINE: Mr. Grossman, I was kind of cite to
 2 the gap study that was referenced in the testimony. I don't
 3 see it in there. It may be in the rush of things, I
 4 neglected to submit it to you.
 5 MR. GROSSMAN: I saw the reference to it in the
 6 staff report.
 7 MR. KLINE: Staff report. Exactly.
 8 MR. GROSSMAN: But I don't think I've even seen
 9 the actual gap --
 10 MR. KLINE: I was going to say that I will include
 11 that in the package to you. It's certainly been reviewed by
 12 the staff but I don't think I got it over to you when it
 13 came in to me, so I'll put that in the bundle that comes
 14 over to you on Monday.
 15 MR. GROSSMAN: Okay.
 16 MR. KLINE: Mr. Wilson, could you -- have you had
 17 a chance to familiarize yourself with the circulation within
 18 the community, and I guess both the vehicular and
 19 pedestrian?
 20 MR. WILSON: Yes. I have taken a look at the site
 21 plan as proposed.
 22 MR. KLINE: And --
 23 MR. GROSSMAN: Before you get into that, the gap
 24 study. Your conclusions from the gap study.
 25 MR. WILSON: Okay, sure. The gap study showed

1 that there are adequate gaps in both traffic streams, both
 2 the northbound and southbound, for traffic to exit the site.
 3 Basically, what the gap study does --
 4 MR. GROSSMAN: And to enter the site?
 5 MR. WILSON: And to enter the site as well, yes,
 6 that's correct. What we look at at the gaps is we look at
 7 the number of gaps based on the number of seconds that the
 8 gap is. So it starts at a five to six second range since
 9 that first available requirement is for, it's for five-and-
 10 a-half seconds. Actually, that's for a left-turn from a
 11 major street is five-and-a-half seconds. So we looked at
 12 the gaps in one second intervals all the way up to greater
 13 than 28 seconds and on this portion of Maryland 355, there
 14 are, within the peak hour, there were six gaps that were
 15 greater than 28 seconds.
 16 Then we also looked at the number of possible
 17 vehicles that could utilize that gap. For example, if you
 18 have a larger gap of, you know, say 19 or 20 seconds, you
 19 could fit as many as four vehicles into that gap if they're
 20 queued up so such a large gap would allow more than one
 21 vehicle to enter the traffic stream.
 22 So basically, we applied that formula to determine
 23 the number of gaps that are available in both the northbound
 24 and southbound traffic streams and then we compared that to
 25 the traffic generated by the site and the approved

1 distribution for the site by Park and Planning and we
 2 determined that for each of the conditions for the left turn
 3 or right turn from the stop approach or for the left turn
 4 along northbound Maryland 355 into the site during both peak
 5 hours, there are adequate gaps for vehicles to enter the
 6 site or to exit the site, and that's all documented within
 7 the analysis that's been reviewed and approved by Park and
 8 Planning staff.
 9 MR. GROSSMAN: Did you take into account wives
 10 sitting next to husbands not to make that turn, there's not
 11 enough time? And I speak from experience.
 12 MR. WILSON: These gaps are conservative in
 13 nature, you know, there's a lot of time that -- this is
 14 based on standards from the American Association of State
 15 Highway Transportation officials and there's, there's
 16 actually a lot of time in those gaps.
 17 MR. GROSSMAN: Okay. Go ahead. You had a
 18 question about the internal.
 19 MR. KLINE: You can have him sit in the backseat
 20 of your car. Don't worry about it. You're okay.
 21 MR. GROSSMAN: I have a traffic expert here. It
 22 won't do any good, believe me.
 23 MR. KLINE: Again, did you believe that the
 24 vehicular and pedestrian circulation system within the
 25 proposed development is safe, adequate and efficient?

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1 MR. WILSON: I do, yes. And, you know, basically,
2 this is similar to a typical layout for a residential
3 subdivision. There appears to be adequate intersections for
4 the vehicles to enter and exit within the subdivision
5 streets and of course to Maryland 355.
6 MR. KLINE: And to end with a question with a
7 little bit of light tone to it, but it answers the question
8 Mr. Grossman asked earlier that we've all been pondering
9 about for two years, when do you believe the state and the
10 county will get their acts together to decide what roads are
11 going to get built and when and by whom?
12 MR. WILSON: Well, actually, this morning, I
13 contacted Montgomery County Department of Transportation
14 just to confirm what was going on with Roberts Tavern Drive
15 and the status hasn't changed within the past three years.
16 The project is on the shelf and they don't have any kind of
17 a timeframe right now, that the project manager has no time
18 frame as to when that might move forward. The information
19 is that once traffic demand increases in the area, then the
20 project might have more of a priority but at this time,
21 there's really no set timeframe for when Roberts Tavern
22 Drive might continue.
23 MR. GROSSMAN: Okay.
24 MR. KLINE: I have no further questions of Mr.
25 Wilson, and that was my last witness.

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1 MR. GROSSMAN: I'm just going to pose the question
2 exactly the way it's phrased in the required findings. Do
3 you, what is your opinion as to whether or not the proposed
4 internal vehicle and pedestrian circulation systems and
5 points of external access are safe, adequate and efficient?
6 MR. WILSON: I believe they are, yes.
7 MR. GROSSMAN: Okay. All right. I have no
8 further questions.
9 MR. KLINE: My client has asked if before I wrap
10 everything up if he can talk to me for five minutes.
11 MR. GROSSMAN: Sure.
12 MR. KLINE: Could we just take a break for a
13 second?
14 MR. GROSSMAN: Sure. Take a five minute break.
15 (Whereupon, at 1:37 p.m., a brief recess was
16 taken.)
17 MR. GROSSMAN: Back on the record.
18 MR. KLINE: Thank you, Mr. Grossman. I appreciate
19 the break. I just want to wrap up and say that we don't
20 have any closing remarks at all other than to say we
21 understand we have a lot of work to do still with Park and
22 Planning Commission, a lot of agencies still don't have
23 hands on this application. We feel we've established a
24 prima facie zoning case and we're looking forward to the
25 challenge of going through preliminary site plan if the

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1 Council agrees with our view of things and you agree with
2 our view as well.
3 MR. GROSSMAN: All right. You know, there is
4 something that I would like to see added on here which would
5 just be suggestive, not required. Where the caption
6 underneath the picture on your Exhibit 49, the actual
7 development land use plan, I would like to have it say,
8 right now it says this drawing is for illustrative purposes
9 only. This design is subject to refinement and revision at
10 the time of preliminary plan and site review. I would like
11 to have it say something like and will take into
12 consideration, and materials used will take into
13 consideration the forested setting.
14 MR. KLINE: You want it to look more natural and
15 fit in better.
16 MR. GROSSMAN: I think it would be better if it
17 were more natural looking, so something that would be a
18 highlight, will highlight that point on the development
19 plan.
20 MR. KLINE: Mister --
21 MR. GROSSMAN: You might conceivably, just from
22 the looks of it here, the white against the trees, you might
23 get a response from somebody on the Council regarding that
24 too so.
25 MR. KLINE: Okay. When we were having an earlier

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1 discussion, you may have seen Mr. Ager come over. He was
2 whispering in our ear tell him about all the neat things we
3 can do in terms of the palate colors and vines and
4 everything, so there are techniques that can --
5 MR. GROSSMAN: Right. I'm sure there are.
6 MR. KLINE: -- blend it in better. We understand.
7 MR. GROSSMAN: I mean, I'm a great -- I just read
8 a book on, which dealt a lot with aqueducts so I'm a great
9 admirer of aqueducts but it's, you know. Anyway.
10 MR. KLINE: We will go ahead and annotate the note
11 in the upper left-hand corner of 49 to incorporate that idea
12 of make it blend in.
13 MR. GROSSMAN: Okay. Yes. As long as the plan has
14 to be amended in any event. Okay. So I presume you wish to
15 have the exhibits which would be somewhere in here, I'll
16 find my page, 1 --
17 MR. KLINE: We're up to 60 I think.
18 MR. GROSSMAN: Yes. 1 through 59. Do we have a
19 60?
20 MR. KLINE: Mr. Wilson's resume.
21 MR. GROSSMAN: I have that as 59. Did I miss one?
22 MR. KLINE: I have one image stream crossing was
23 59.
24 MR. GROSSMAN: Which was that?
25 MR. CRUM: That was the picture that I put up. He

1 didn't ask for it.
 2 MR. KLINE: Oh, okay. Okay. I'm sorry.
 3 MR. GROSSMAN: All right. So 1 through 59 will be
 4 admitted, and the other modified exhibits that we've talked
 5 about here that you'll be submitting --
 6 MR. KLINE: Yes.
 7 MR. GROSSMAN: -- will also be admitted, plus any
 8 comments, obviously, from technical staff.
 9 MR. KLINE: Right.
 10 MR. GROSSMAN: Or conceivably from the public that
 11 could come in on any revised exhibits.
 12 (Exhibit Nos. 1 through 59
 13 were received into evidence.)
 14 MR. KLINE: My understanding is the record will
 15 now close on the 30th. My job is to get everything in
 16 quickly enough so I can get it to Ms. Tesfaye to look at it
 17 and get her comments back in before the 30th.
 18 MR. GROSSMAN: 31st I think we said.
 19 MR. KLINE: 31st.
 20 MR. GROSSMAN: So the record will close on the
 21 31st. Let's see. Anything else that we had to address
 22 here? I think that's it on my agenda. Anything else?
 23 Anything further?
 24 MR. KLINE: The applicant has nothing more to do
 25 today.

1 MR. GROSSMAN: Thank you very much.
 2 MR. KLINE: Thank you very much.
 3 MR. GROSSMAN: And we are adjourned.
 4 (Whereupon, at 1:45 p.m., the hearing was
 5 concluded.)
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1 C E R T I F I C A T E
 2 DEPOSITION SERVICES, INC., hereby certifies that
 3 the attached pages represent an accurate transcript of the
 4 electronic sound recording of the proceedings before the
 5 Office of Zoning and Administrative Hearings for Montgomery
 6 County in the matter of:
 7 Clarksburg Mews, LLC
 8 Case No. G-957
 9
 10 By:
 11
 12
 13
 14
 15
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 17 Josephine Hayes, Transcriber
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