



Transcript of Administrative Hearing

Date: November 14, 2016

Case: Application of Arden Courts of Germantown, MD, LLC,
In Re:

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FOR MONTGOMERY COUNTY

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APPLICATION OF ARDEN COURTS :
OF GERMANTOWN, MD, LLC : CASE NO. CU 17-02
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HEARING
BEFORE HEARING EXAMINER LYNN ROBESON
19115 LIBERTY MILL ROAD
GERMANTOWN, MARYLAND 20874
NOVEMBER 14, 2016
9:46 a.m.

JOB NO. 128138

Pages: 1 through 254

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1 P R O C E E D I N G S

2 MS. ROBESON: I'm calling the case of CU
3 17-02, application of Arden Courts of Germantown,
4 requesting a conditional use for a residential care
5 facility for over 16 persons on property located at
6 19115 Liberty Mill Road in Germantown, Maryland.

7 My name is Lynn Robeson. I'm the hearing
8 examiner. I'm going to be taking all the evidence and
9 testimony in the case, and I'll be issuing a decision.
10 You have the right to request -- if you disagree with
11 my decision, you have the right to request oral
12 argument before the Board of Appeals within ten days of
13 the date of the decision, but the Board of Appeals will
14 not take additional evidence. So whatever anyone has
15 to say, you should say it in this hearing. All right?

16 Are -- can the parties identify themselves
17 for the record?

18 MS. DLHOPOLSKY: Yes, certainly. Good
19 morning, Ms. Robeson. Heather Dlhopsky of Linowes
20 and Blocher. I'm here representing the applicant in
21 the case. And it may be even quicker -- I'll just go
22 around the room and introduce our team, if that works.

23 MS. ROBESON: Well, let me just -- let me
24 just see, is there anyone hear that wishes to testify
25 that is not being called by the applicant that may be

1 in opposition or wants to say something that is not
2 going to be called as a witness by the applicant?

3 Yes, sir?

4 MR. SHUKLA: Yes, we are property owners
5 directly behind this proposed facility, and I don't
6 think we received any communication about testifying or
7 anything like that. So, you know, we have been working
8 with them to try and have adjustments made --

9 MS. ROBESON: Okay.

10 MR. SHUKLA: So we may be speaking based
11 on --

12 MS. ROBESON: Okay. That's fine. Then the
13 way -- the way the order of the proceeding is that the
14 applicant can put on its testimony first, then you get
15 to say whatever you want to say. The hearing is
16 informal but we do have certain formalities. The
17 testimony is under oath and subject to
18 cross-examination, which means, when the developer's
19 experts testify, you can ask questions of them. It's
20 not your time to testify, but you can ask questions.
21 And then you will get the opportunity to testify later
22 in the case.

23 You also have the right, if you want, to make
24 an opening statement. You don't have to. You can wait
25 to see what the applicant has to say. So that's up to

1 you.

2 You're also welcome to come sit in the chair
3 here if you would like to participate in the hearing,
4 the chair at the long table here. All right?

5 All right. Any other procedural matters?

6 MS. DLHOPOLSKY: I guess maybe just two quick
7 things. So I know we have the sign posting affidavit
8 and then the planning board's recommendation letters.
9 Were those yet formally entered as exhibits?

10 MS. ROBESON: No, they -- well, let me see if
11 she -- affidavit of posting maybe. Do you have the
12 original?

13 MS. DLHOPOLSKY: I turned it in to Ms. Forbes
14 this morning.

15 MS. ROBESON: Okay. It is in the record as
16 Exhibit 48.

17 MS. DLHOPOLSKY: Okay. So 48 is the
18 affidavit of posting.

19 MS. ROBESON: What's not in the record is the
20 planning board recommendation then. If anyone in the
21 audience -- I didn't get it until 7:00 the night before
22 Veterans Day. So if -- if anyone wants to read it, we
23 can get copies for you. It recommends approval subject
24 to the conditions recommended by staff.

25 So this is going to be Exhibit 51.

1 MS. DLHOPOLSKY: And what were 49 and 50
2 then?

3 MS. ROBESON: 49, response to questions --
4 oh, that's Mr. Nel- -- staff's responses to my
5 questions. And then an e-mail to Mr. Nelson -- oh,
6 that's a response to me saying I received it. But they
7 didn't copy anybody else except me, and I didn't
8 realize that until this morning so...

9 MS. DLHOPOLSKY: Okay. Yeah, Ms. Forbes had
10 given us copies of it a few minutes ago, so we were
11 able to review it.

12 MS. ROBESON: Okay. All right. So do you
13 have an opening statement?

14 MS. DLHOPOLSKY: Yes. I'll just be very
15 brief.

16 Good morning, Heather Dlhopsky --

17 MS. ROBESON: That's good.

18 No, take your time.

19 MS. DLHOPOLSKY: We have plenty of -- plenty
20 of testimony today to offer, so I think the opening
21 statement can be brief, and in particular, given we are
22 in full agreement with the staff report and with the
23 planning board recommendation letters that came over,
24 so I don't really have too much to say, but I did want
25 to just briefly introduce our team.

1 So I mentioned myself already. My associate
2 Matt Gordon is to my left. He'll be assisting with me
3 today. To my right is Bryan Palmer, senior project
4 manager of HCR ManorCare, who is here testifying on
5 behalf of the applicant, as well as Anita Irvin, who
6 will be testifying after Mr. Palmer. She is the
7 executive director of the Arden Courts, a Fair Oaks,
8 Virginia, facility.

9 Thereafter, we have Brian Donnelly,
10 registered landscape architect and an expert in site
11 planning, with Macris, Hendricks & Glascock.

12 Thereafter, Steve Crum and/or Ken Jones. We
13 may use this opportunity to try to have Mr. Jones
14 recognized as an expert in civil engineering. They are
15 both registered civil engineers with --

16 MS. ROBESON: Who is the second one?

17 MS. DLHOPOLSKY: So Steve Crum is --

18 MS. ROBESON: I saw Steve Crum on your
19 opening statement or on your --

20 MS. DLHOPOLSKY: Prehearing.

21 MS. ROBESON: -- prehearing.

22 MS. DLHOPOLSKY: Right.

23 MS. ROBESON: But did you say there was
24 somebody else?

25 MS. DLHOPOLSKY: Ken Jones is also with

1 Macris, Hendricks & Glascock. He has been helping us
2 with this application all along. He's a registered
3 civil engineer but has not yet been in a hearing
4 setting to be recognized as an expert. So depending on
5 the timing, we're thinking maybe we'd try to take this
6 as an opportunity to give him the formal expert
7 recognition, if you're able to do that based on his
8 responses.

9 MS. ROBESON: Well, I don't know if I can --
10 we'll get to that.

11 MS. DLHOPOLSKY: Yeah.

12 MS. ROBESON: I don't know if I can do it
13 because he wasn't on the prehearing statement.

14 MS. DLHOPOLSKY: Okay. All right. Then
15 that's fine.

16 After that, Dan Dokken, registered architect
17 with LK Architecture, and then Nancy Randall, expert in
18 transportation planning and engineering with Wells &
19 Associates.

20 And finally, then, Stuart Smith --

21 MS. ROBESON: I thought she was just a
22 transportation planner and not an engineer.

23 MS. RANDALL: That's correct.

24 MS. DLHOPOLSKY: Okay. Yes, then that is --
25 expert in transportation planning.

1 And, thereafter -- and I believe that this
2 was not -- I don't think that this was on our
3 prehearing submission because the report was completed
4 relatively recently, but Stuart Smith, who is a
5 licensed certified appraiser with Stuart I. Smith
6 Realty Advisors, LLC. He has prepared an economic
7 analysis. It was completed after the prehearing
8 submission went into the record so we do have him
9 coming a little bit later today and a report that he
10 had prepared, but I do recognize, obviously, this is
11 new material coming in today, and so we'd have to hold
12 any record open.

13 MS. ROBESON: Okay. I have to look at our
14 rules because the point of the prehearing submission is
15 to put everybody on notice of what to prepare for.

16 MS. DLHOPOLSKY: Right, right.

17 MS. ROBESON: And it gets complicated letting
18 new information in that nobody's prepared for at the
19 hearing. Because then I have to leave the record open
20 and, you know, I have to allow people to comment, and
21 if they want to present their own expert testimony,
22 then I have to, you know, hold another hearing.

23 So we'll get to that.

24 MS. DLHOPOLSKY: Okay.

25 MS. ROBESON: Just proffer what his testimony

1 is.

2 MS. DLHOPOLSKY: Essentially that the
3 proposed use and approval of the application wouldn't
4 result in any diminutive effect on any property values;
5 that is, I think it's kind of one component of one of
6 the findings that needs to be made. You know, the
7 planning staff, I don't think, had any concern with
8 this, but I do know our -- our neighbors who are here
9 had been asking Mr. Palmer some questions about it when
10 he was meeting with them prior to the hearing. So we
11 just thought it would be helpful information to have.

12 MS. ROBESON: Well, it's helpful but your
13 neighbors haven't had a chance to prepare for it.

14 MS. DLHOPOLSKY: Right, right. And we did
15 give them copies of it this morning, but, obviously,
16 you know, they can't read it in five minutes, so...

17 MS. ROBESON: Well, we'll get to that.

18 MS. DLHOPOLSKY: Yeah.

19 MS. ROBESON: Okay.

20 MS. DLHOPOLSKY: Okay. So, as I mentioned,
21 we are very pleased to be here. We began outreach to
22 Park and Planning staff back in March of this year, and
23 we had a number of meetings with the community. As you
24 know, for conditional use applications, you're not
25 actually required to hold presubmission community

1 meetings, but frankly, we thought that that is the
2 right thing to do.

3 So we had the formal meeting where we had
4 sent out notice to all of the parties that are
5 typically required for these cases and for Park and
6 Planning cases back in May.

7 And then we had some more targeted outreach
8 as well. We met with, as I said, the community, and
9 then we met with the principal of the Germantown
10 Elementary School across the street, met with staff of
11 the Montgomery County Public Schools real estate team,
12 just to talk with them about our proposal. Also met
13 with the Germantown Alliance, and then Mr. Palmer had
14 had communication with our neighbors who are here in
15 the room today.

16 I think Park and Planning staff has pretty
17 enthusiastically supported the project by other staff
18 report, and it was also well received at the planning
19 board. Park and Planning staff along the way had some
20 minor review comments that we worked very hard to
21 accommodate, and in addition, Mr. Palmer was in contact
22 with our neighbors, and they did request some
23 landscaping changes, putting in some taller and larger
24 species to begin with, as opposed to smaller ones,
25 which we have worked to accommodate all those requests

1 as well.

2 So as I mentioned, we are pleased to say that
3 we're in agreement with the planning staff report as
4 well as the planning board letter recommendation that
5 was transmitted to you. We believe that the plans,
6 reports, and materials that are submitted thus far
7 demonstrates satisfaction of the burden for approval of
8 this application, but we are prepared by our
9 approximately seven witnesses, who will be either here
10 or coming a little bit later today, to provide further
11 detail, answer any questions that folks may have, and
12 just be ready to respond to any concerns.

13 So, with that, that's just my opening. As I
14 mentioned, very brief, and we are ready to go into our
15 first witness.

16 MS. ROBESON: Thank you. Okay. And you can
17 call your -- is Mr. Palmer your first witness?

18 MS. DLHOPOLSKY: Yes, Mr. Palmer.

19 MS. ROBESON: Mr. Palmer, please raise your
20 right hand.

21 BRYAN PALMER,
22 the witness, after having been duly sworn, was examined
23 and testified to as follows:

24 MS. ROBESON: Go ahead.

25 MS. DLHOPOLSKY: Thank you.

1 DIRECT EXAMINATION

2 BY MS. DLHOPOLSKY:

3 Q. Mr. Palmer, for your record -- for the
4 record, can you please state your name and business
5 address.

6 A. Bryan Palmer. I work for HCR ManorCare. Our
7 offices are located at 7361 Calhoun Place, Suite 300,
8 in Rockville.

9 Q. Okay. And just briefly describe your
10 professional and educational background.

11 A. I earned an engineering degree from the
12 University of Maryland. I spent six years doing
13 construction management for local general contractors.
14 And for the past 23 years, have been with HCR ManorCare
15 doing management and development of projects -- senior
16 living facility projects throughout the country.

17 Q. Great.

18 MS. DLHOPOLSKY: And I did just want to just
19 mention for purposes of the record that Mr. Palmer's
20 resume is in as Exhibit 10-A already.

21 BY MS. DLHOPOLSKY:

22 Q. Can you just please describe your experience
23 with --

24 MS. ROBESON: Well, before you get into this,
25 are you going to be qualifying him as an expert?

1 MS. DLHOPOLSKY: No, no. He's just -- he's
2 testifying on behalf of the applicant in terms of the
3 project.

4 MS. ROBESON: Okay. So I'm just thinking
5 about getting through this hearing. I have his resume.
6 I did look at it. Is there anything you want to add to
7 your resume?

8 THE WITNESS: No, ma'am.

9 MS. ROBESON: Okay. And I'm not trying to
10 say your qualifications should be abbreviated. I just
11 am thinking of getting through this hearing.

12 MS. DLHOPOLSKY: Yeah, before close of
13 business.

14 MS. ROBESON: Yes.

15 MS. DLHOPOLSKY: Understood. We appreciate
16 that.

17 BY MS. DLHOPOLSKY:

18 Q. And so in that vein, if you could just
19 briefly describe your experience with the design and
20 development of residential care facilities, including
21 facilities like this for Alzheimer's care and memory
22 care patients.

23 A. Sure. Throughout my time with HCR ManorCare,
24 I have overseen development of ten of these memory care
25 facilities that we operate as Arden Courts. Also, many

1 more skilled nursing facilities and additions to those
2 facilities throughout the country.

3 My responsibilities include selection and
4 coordination of consultants, the property development,
5 going into engineering and architectural design,
6 overseeing that process, as well as construction
7 management all the way through the licensing and
8 eventual operation of our facilities.

9 Q. Okay. And in that vein, can you describe how
10 you chose the proposed location for this residential
11 care facility, and using the exhibits that we have up
12 here, describe your specific plans for the property.

13 MS. ROBESON: Okay. What exhibits do we have
14 up there?

15 MS. DLHOPOLSKY: So we have the conditional
16 use site plan, which is, I believe, previously in the
17 record as Exhibit 37-E.

18 MS. ROBESON: Okay.

19 MS. DLHOPOLSKY: And, also, the floor plan to
20 the right of that, which I believe is previously in the
21 record most recently as Exhibit 11.

22 MS. ROBESON: Okay.

23 MR. GORDON: (Indiscernible).

24 MS. ROBESON: Certainly, go ahead.

25 Let me know if you can't see it because

1 sometimes it's angled. Can you see it now?

2 MR. GORDON: Yeah.

3 MS. ROBESON: Okay.

4 MS. DLHOPOLSKY: If one of you want to sit up
5 here, you can --

6 MS. ROBESON: All right. So which one are
7 you going to testify to first? The 37-E? I'm just
8 doing this for the record --

9 MS. DLHOPOLSKY: Oh, yeah, yeah.

10 MS. ROBESON: -- so we know what he's talking
11 about.

12 THE WITNESS: As this exhibit illustrates --

13 MS. ROBESON: And this exhibit is 37-E.

14 THE WITNESS: 37-E. It's a typical setting
15 for one of our memory care facilities, given the fact
16 that our 64 folks actually reside in our facility.
17 It's a very typical location for us, either within or
18 adjacent to residential neighborhoods. Just like in
19 the case of Montgomery County, our other three
20 facilities are in Potomac, Silver Spring, and
21 Kensington.

22 Our health planning department determined
23 that there's a significant need for memory care beds,
24 particularly in this portion of Montgomery County. And
25 so our real estate folks identified this property and

1 were able to secure as one of our preferred settings,
2 you know, being in a residential neighborhood and also
3 were able to discover that, with the county's master
4 plan, it addresses an objective to have senior services
5 in this area.

6 By placing our residential care facility for
7 memory care in this area, it centrally locates us
8 within the targeted area of highest need, and
9 therefore, gives the family and friends who would
10 otherwise be traveling elsewhere in the county to find
11 facilities, you know, time that they're spending on the
12 roads that they could, you know, be better served and
13 less frustration, being able to get to the one closest
14 to this area if they're from this part of the county,
15 which is so significantly underserved.

16 As you can tell, it's surrounded by townhomes
17 to the east, single-family homes to the south. The
18 existing single-family home in the northwest quadrant.
19 And then across the street is Germantown Elementary
20 School.

21 BY MS. DLHOPOLSKY:

22 Q. And can you please identify -- and feel free,
23 I think --

24 MS. DLHOPOLSKY: Is it okay for him to go up
25 to the exhibit and point to various places?

1 MS. ROBESON: Yeah, sure.

2 BY MS. DLHOPOLSKY:

3 Q. Please identify and review the site plan,
4 Exhibit 37-E, as it relates to the exterior design of
5 the proposed residential care facility and just
6 generally the patient care that is provided there.

7 A. Given the fact that our residents are
8 Alzheimer's or other -- some form of dementia is
9 what -- we're providing care for them, they tend to
10 want to circulate throughout unencumbered.

11 So the -- we -- our objective in our design
12 of our facilities pretty typically are to allow them to
13 finally have access throughout the building,
14 unencumbered, but to provide a secure courtyard. In
15 this case, it surrounds the building on three sides,
16 and there are doors that exit from within the building,
17 multiple points to in each of the four wings or houses
18 as well as four exits to the courtyard, access points
19 from within the center of the building and activity
20 areas at the back of the building.

21 Throughout that courtyard, there are multiple
22 patios, porches with seating arrangements, areas along
23 the path, the sidewalk that have benches for them to be
24 able to sit and enjoy nature, visit with family, that
25 type of thing.

1 Q. And I don't think you mentioned it, can you
2 just identify -- I believe is there a security fence
3 that surrounds the patient areas outside?

4 A. Yes, there is. The fence is a six-foot-six,
5 maximum height allowed in the county, PVC fence. The
6 two gates at the front two corners of the building,
7 they're secured with electronic locks, your digital key
8 code to access those.

9 Q. And the purpose of that is to ensure the
10 patients' security and that they're not able to --

11 A. Yes, as to, you know, allowing them free roam
12 but not to leave the property.

13 Q. And I believe probably you want to utilize
14 Exhibit 11 for this as well, but can you please
15 identify the specific floor plan exhibit for the
16 project as it relates to the interior design and the
17 patient care provided there.

18 A. Of course. For the facility, we have a main
19 access point --

20 MS. ROBESON: Do you mind moving -- no, no --
21 or yeah, put that one -- put 11 in front of -- or,
22 that's good. Yeah, that's more helpful. Thank you.

23 And now we're speaking of -- is it Exhibit
24 11?

25 THE WITNESS: This is the floor plan.

1 A. The main entry is located in this area. It
2 also is controlled electronically by locking system.
3 Visitors will use code to access. Anyone who is
4 arriving for the first time will ring the doorbell and
5 be buzzed into by the staff in the front office area.

6 The only other access point used is the
7 service entrance on this side. Directly off the
8 loading dock or loading area in our parking stream,
9 back deliveries and food service deliveries will occur.

10 Once inside, there's another -- after you get
11 into the administrative area, there's another secured
12 door at the back of the administrative area that
13 separates the living area from the administrative and
14 central services area in the front of the building.

15 Once in there, we have an area we call in the
16 center -- the very center of the building the commons.
17 It's an area where there are activity rooms in the
18 back, the north side. A community center and studio or
19 artwork, recreation. The health center, basically a
20 doctor's office is there for the residents to have
21 access to.

22 And then we have throughout the whole area
23 specific scenes or sets of personal engagement for the
24 residents, which are decorated equipped to simulate --
25 we have flower shop, post office, corner store, a park

1 area, and a beach, all decorated with wall covering.
2 They're essentially pictures or murals that set the
3 scene, and there are objects and equipment there for
4 them to occupy themselves and investigate as they see
5 fit.

6 They can circulate this area out of each of
7 the four houses and any of the service areas within
8 that core area, as well as on the front, any door
9 leading to those are locked and are painted out to
10 blend in with the wall finishes so they're not
11 attracted to the residents. Any of those areas that
12 they are able to go to safely enter are particularly
13 hued for them to recognize what -- you know, bright
14 colors in the settings that we're establishing.

15 The houses contain 16 private rooms. The
16 bedrooms are simply a bed area, closet and a half bath.
17 There's no showers. There's no kitchen in the
18 bedrooms. They're all private rooms. Within each of
19 the four houses, we have -- the core area is going to
20 be the pantry where the staff is situated, the
21 caregivers. Food comes from the central kitchen in the
22 core area, delivered to the pantry, and the residents
23 in each house will then use their own individual dining
24 room for their meal service and served out of the
25 central pantry in their house.

1 We also have a waiting room, which is
2 effectively a living room for their gathering and
3 entertainment, TV watching.

4 The dining rooms are also used a lot of times
5 for visitation and other small activities for the folks
6 in any given house.

7 And then central, the bathing occurs in two
8 assisted bathing shower bathrooms that are located in
9 the middle of each -- each core of each house.

10 Q. And can you talk a little bit about hours of
11 operation and just general staffing? We'll get into
12 more specifics with regard to staffing and how the
13 phasing works with our next speaker, but generally,
14 hours, operation, and staffing.

15 A. Given that these folks reside in this
16 facility, we're a 24-hour-a-day, seven-day-a-week
17 operation. Our staffing occurs on -- I guess typical
18 three-shift scenario: 7 a.m. to 3 p.m., 3 p.m. to 11
19 p.m., 11 p.m. back to 7 a.m.

20 With 20 people, 20 employees during the first
21 shift, ten through the second shift, and five during
22 the third shift. The -- I guess the overlap of the
23 second shift arriving and the first shift departing at
24 3:00 is our greatest demand for having parking
25 available in our parking lot. Given that there's no

1 street parking available for this facility --

2 MS. ROBESON: And you're referring to 37-E.

3 THE WITNESS: Correct.

4 A. So with our proximity here, Dawson Farm and
5 Liberty Mill Road, there's no on-street parking. So
6 based on the operation of the 51 other facilities we
7 have in the country in a similar scenario and that
8 shift overlap of 30 people, plus any visitors that may
9 be on the property at that time, we target a mid 40s
10 parking capacity. In this case, we're able to fit 44
11 parking spaces to address that.

12 BY MS. DLHOPOLSKY:

13 Q. Okay. Thank you.

14 MS. DLHOPOLSKY: And Ms. Robeson, just as I
15 mentioned, our next speaker will actually speak in more
16 detail to the operations.

17 MS. ROBESON: Okay. Because I have a lot
18 of -- I'm confused.

19 MS. DLHOPOLSKY: Okay.

20 MS. ROBESON: Because -- well, I haven't had
21 a huge amount of time to read staff's response to my
22 questions, but I'm missing some employees in the
23 shifts. So there's more employees coming somewhere
24 that -- above and beyond the shifts. And I -- I
25 can't -- you know, as I said, I didn't get some of this

1 until late Thursday night. So, you know, I'll -- I
2 haven't had a chance to fully absorb it, but I -- I
3 just am very confused.

4 MS. DLHOPOLSKY: Okay.

5 MS. ROBESON: I have one more question of
6 Mr. Palmer.

7 THE WITNESS: Sure.

8 MS. ROBESON: Pardon me. The signage, where
9 are the signs on this? Can you refer to 37-E?

10 THE WITNESS: Mm-hmm.

11 MS. ROBESON: Can you show me where the signs
12 are?

13 THE WITNESS: There's actually only one
14 two-sided sign that will be in this position.

15 MS. ROBESON: Okay.

16 THE WITNESS: There's no signage along Dawson
17 Farm Road.

18 MS. ROBESON: Okay.

19 THE WITNESS: So we're just designating the
20 actual entrance area.

21 MS. ROBESON: So you're asking for the extra
22 area because it's -- well, I'll have somebody address
23 it. I know what they said in Brandywine, but I'm not
24 100 percent convinced that it's -- deserves the -- it
25 legally qualifies for the extra area.

1 How big is your sign?

2 Am I asking the wrong person? It's all
3 right. It's all right.

4 THE WITNESS: I was --

5 MS. ROBESON: No, no, no, and don't answer it
6 now. I'll get to it because -- don't worry. It's all
7 good. I'll get the answers --

8 THE WITNESS: I can certainly get you to
9 where it's located.

10 MS. ROBESON: Yeah, right, and you did.

11 THE WITNESS: I can't speak to the code.

12 MS. ROBESON: That's excellent. Thank you.

13 THE WITNESS: You're welcome.

14 MS. DLHOPOLSKY: And just -- I'll let you
15 know now, rather than hold you in suspense, under our
16 justification statement and on the plans as well, which
17 our plan planner, Mr. Donnelly, can be prepared to
18 speak to, we are requesting an approximately 29 square
19 foot sign at this time. But we can speak to more
20 details of that on our next speakers.

21 BY MS. DLHOPOLSKY:

22 Q. All right. And Mr. Palmer, can you just let
23 us know, is this plan to be constructed all in one
24 phase?

25 A. Yes. We'll construct all in one phase,

1 depending on the time of year the construction starts.
2 It should take 10 to 13 months based on what we have
3 seen on other projects that are similar.

4 MS. DLHOPOLSKY: Okay. And I guess,
5 Ms. Robeson, let me ask you, we do have some kind of
6 just general burden of proof questions for Mr. Palmer
7 that I plan to ask. Would it be helpful to have
8 Ms. Anita Irvin speak in more detail to the proposed
9 operations before I come back to Mr. Palmer?

10 MS. ROBESON: No.

11 MS. DLHOPOLSKY: No? Okay. So I will have
12 him -- we will finish up with Mr. Palmer and then go
13 to --

14 MS. ROBESON: You'll have to forgive me. I'm
15 not trying to abbreviate your presentation. I'm just
16 trying to manage the hearing.

17 MS. DLHOPOLSKY: Absolutely.

18 MS. ROBESON: So, no, let's go forward with
19 him.

20 MS. DLHOPOLSKY: Okay.

21 MS. ROBESON: And then we'll take your
22 witnesses in order.

23 MS. DLHOPOLSKY: Okay. We appreciate that.

24 BY MS. DLHOPOLSKY:

25 Q. So, Mr. Palmer, I did very briefly touch on

1 it in my opening, but can you just mention, again, the
2 community outreach, the efforts that you undertook with
3 regard to this application?

4 A. Of course. We held a voluntary community
5 meeting before we submitted anything for this project
6 with the members of the community, very well-intended.
7 We held it at the elementary school immediately across
8 the street.

9 And during that meeting, some folks and
10 tenants actually acknowledged the benefits of what we
11 proposed and expressed their preference for our use
12 over some other possible uses that they raised -- that
13 our -- I guess our staff was -- or our team was able to
14 suggest was allowed by code.

15 From that meeting, we learned a key concern
16 was whether or not we would have any overlap with our
17 traffic with the elementary school's arrival and
18 departure times. So immediately upon, you know,
19 recognizing that, we scheduled a follow-up meeting with
20 the principal of Germantown Elementary School to get
21 the exact flow of -- and timing of their departure and
22 arrivals. That was very beneficial.

23 From that, we were able to determine that we
24 actually don't overlap, and if we do, it's very, very
25 minor. And so we came away from that meeting where she

1 felt very comfortable what we were doing, had no
2 objections to our project.

3 We then followed up with MCPS and the real
4 estate division. Got the same kind of reception and
5 reaction, that they were comfortable with what we
6 proposed and the way we had analyzed.

7 And even though we had found that it was
8 probably -- you know, we were fine, we wanted to be
9 certain, we also looked at the interaction with Wells &
10 Associates to further build comfort with what we were
11 determining.

12 Subsequently, we held a meeting with
13 Gaithersburg-Germantown Alliance. They're comprised of
14 private citizens, homeowner associations, businesses,
15 and some representatives of some local officials were
16 also in attendance at that presentation.

17 As we discussed earlier -- and our neighbors
18 are here today from the two closest houses -- and I'll
19 point back to this exhibit --

20 Q. 37-E.

21 A. -- 37-E. The Shuklas and the Jacobs reside
22 in these two houses --

23 MS. ROBESON: Okay. When you say "these two
24 houses," it's the houses --

25 THE WITNESS: That back up closest to our

1 southern property line.

2 MS. ROBESON: So they're in the southeastern
3 edge of your property line.

4 THE WITNESS: Yes.

5 MS. ROBESON: I'm just saying that for the
6 record.

7 A. They graciously accepted my invitation to get
8 together, and at that point, we then had a more
9 developed site plan that we could go over and have them
10 see what we had found to the planning board and address
11 any issues, concerns that they may have, which they had
12 some. They actually had some things they wanted us to
13 change, which we did, leaves a fence in a section that
14 they would prefer. I provided them subsequent
15 materials. They had questions about lighting,
16 generators, and provided all that information for their
17 review.

18 And then the biggest effort was to address
19 the landscaping between their view from their back deck
20 area of the front of the building. We came up with a
21 situation where we could get a version of evergreen
22 trees that we could put in that are taller to begin
23 with, rearrange them so, rather than being in a soldier
24 line, we stagger them and place them on the uphill
25 slope to give the best immediate and effective

1 screening from their perspective of the facility.

2 Q. Great. Thank you.

3 And are you familiar with the --

4 MS. ROBESON: Where are the generators
5 located?

6 THE WITNESS: There's only one. It's in a
7 fenced-in compound --

8 MS. ROBESON: Where the dumpster is?

9 THE WITNESS: With the dumpsters, yes. You
10 have two dumpsters at the top of the parking area and
11 the driveway access here, all enclosed with a similar
12 fence -- six-foot fence -- six-foot six-inch fence.

13 We have come, over the years, to realize, if
14 you separate the tank from the generator itself, you
15 can then set the generator lower on the ground, it's
16 contained more within the enclosure, it's got a muffler
17 on it. And one of the things we talked about was the
18 sound attenuation. I committed to the families that we
19 would get the, you know, most effective sound
20 attenuation enclosure for that generator that's
21 available.

22 MS. ROBESON: Now, I notice that the --
23 the -- I'm sorry -- the noise study didn't seem to
24 address the noise from the generator. It addressed the
25 road noise, but not the noise from the generator.

1 THE WITNESS: The planning board or planning
2 staff requested that our -- to do the study mainly
3 because the proximity to the trains, the MARC train
4 line, which is north -- generally north/northeast of
5 the (indiscernible) and that also involved looking at
6 the traffic that we would be subjected to given the
7 proximity and where this facility would be.

8 MS. ROBESON: So it doesn't account for the
9 noise from the generator.

10 THE WITNESS: It does not. But I provided
11 information to the neighbors, as requested, on what the
12 sound ratings were, given distance, as requested by
13 Mr. Jacob.

14 MS. ROBESON: Is that in the record?

15 MS. DLHOPOLSKY: No. That was information --

16 THE WITNESS: No.

17 MS. DLHOPOLSKY: -- that we provided to the
18 neighbor. We would be happy to supplement the record
19 with that if you would like.

20 MS. ROBESON: I think that would be helpful.

21 MS. DLHOPOLSKY: Yep, absolutely.

22 And just to clarify, so you would like
23 supplemental information in regard to generator noise
24 as opposed to just in general noise generation on the
25 site?

1 MS. ROBESON: No, just --

2 MS. DLHOPOLSKY: Just the generator?

3 MS. ROBESON: I guess what I didn't see,
4 usually when we get -- especially when they're dealing
5 with interior noise, you know, your proof on the
6 interior noise, you're at the top of the range, and
7 there's a question whether, you know, the architecture
8 can attenuate that or not to the required levels.

9 And so, I guess my question is what impact
10 does the generator have? Because that was not taken
11 into account so...

12 MS. DLHOPOLSKY: Okay.

13 MS. ROBESON: I didn't -- I just didn't see
14 it addressed at all in the noise study.

15 MS. DLHOPOLSKY: Right.

16 BY MS. DLHOPOLSKY:

17 Q. And I guess, actually just a real quick
18 question, Mr. Palmer. Is the generator, is it only --
19 does it run -- I guess it doesn't run all the time,
20 does it?

21 A. Obviously, whenever there's an outage it will
22 run.

23 Q. Okay. Or, I guess, test runs.

24 A. It has a regular, you know, I think it's
25 weekly --

1 Q. Test run.

2 A. -- weekly exercise for, like, 20 minutes.

3 And then it's idle and sitting there waiting.

4 MS. DLHOPOLSKY: Okay. But we will
5 supplement the record with that.

6 MS. ROBESON: Okay.

7 MS. DLHOPOLSKY: Thank you.

8 Okay. I was just going to go to burden of
9 proof questions. Any more specific questions for
10 Mr. Palmer at this time?

11 MS. ROBESON: No.

12 MS. DLHOPOLSKY: Okay.

13 BY MS. DLHOPOLSKY:

14 Q. So, Mr. Palmer, are you familiar with the
15 conditions of approval recommended by the planning
16 board in its review of the application?

17 A. I am.

18 Q. And are you willing to accept these
19 conditions of approval and operate in accordance with
20 them should the hearing --

21 A. Yes.

22 Q. -- examiner rule in that manner?

23 And just very quickly for summary, based upon
24 your testimony and familiarity with the plans and
25 expert reports submitted for this proposed residential

1 care facility, do you believe the conditional use will
2 be in harmony with the character of the surrounding
3 neighborhood?

4 A. Yes, especially, as I have stated before, you
5 know, this is a typical arrangement in a desired
6 location for us to be within or adjacent to residential
7 neighborhoods.

8 Q. Thank you.

9 And in your opinion, do you believe that the
10 proposed residential care facility will have any
11 adverse effects on the health, safety, or welfare of
12 neighboring residents, visitors, or employees?

13 A. No.

14 Q. And in your opinion, do you believe that the
15 proposed conditional use would cause any undo harm to
16 the peaceful enjoyment, economic value, or development
17 potential of abutting or confronting properties for the
18 general neighborhood?

19 A. No.

20 Q. And, lastly -- I already asked you this but
21 we'll ask it again for good measure. If the board
22 grants approval of the application, it is your
23 intention to operate the improvements in full
24 accordance with the conditions and full compliance with
25 the plans and specifications that have been submitted?

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1 A. Yes, we will.

2 Q. Great. Thank you.

3 MS. DLHOPOLSKY: I have no further questions
4 for Mr. Palmer, unless Ms. Robeson needs it.

5 MS. ROBESON: No. Thank you.

6 Do you have any questions? And if you do,
7 please come up and state your name and address. Don't
8 be scared.

9 MR. SHUKLA: No, no, no, I'm anything but
10 scared.

11 MS. ROBESON: Okay. Please state your name
12 and address -- no, you're not testifying.

13 MR. SHUKLA: No, this --

14 MS. ROBESON: This is just your time for
15 questions, but I do need your name and address so the
16 transcript has it.

17 MR. SHUKLA: Yeah, my first name is Punkaj,
18 last name is Shukla, and my address is 18923
19 Porterfield Way. It's a property --

20 MS. ROBESON: Can you point your house out --

21 MR. SHUKLA: Sure.

22 MS. ROBESON: -- on 37-E?

23 MR. SHUKLA: It is lot 360.

24 MS. ROBESON: Okay.

25 MR. SHUKLA: This is our house.

1 MS. ROBESON: Is that marked on the site
2 plan, Lot 360?

3 MR. SHUKLA: Yes. There is a --

4 MS. ROBESON: Okay. Great. Perfect.

5 MR. SHUKLA: And my neighbor, Mathew Jacob is
6 here. He's in Lot 361.

7 MS. ROBESON: Okay. Well, let's hear your
8 questions for Mr. Palmer.

9 MR. SHUKLA: So before I ask the questions, I
10 have, actually, two observations if I could make.

11 MS. ROBESON: No, no, this is only time to --
12 you're going to make your observation -- you will get a
13 chance to --

14 MR. SHUKLA: Okay.

15 MS. ROBESON: That's why I'm kind of trying
16 to make this as efficient as possible so we can get to
17 your testimony. At the present, it's just your time
18 for questions.

19 MR. SHUKLA: Okay. So, first of all, I
20 think, at the beginning, Mr. Palmer had described that
21 we had discussed some fencing and the fencing is
22 arranged six-feet high. I do not believe the fencing
23 covers the entire length of the property.

24 THE WITNESS: That's correct.

25 MR. SHUKLA: So we'd like to understand what

1 exactly is the fencing and how we will have, you know,
2 separation in that sense both from security point of
3 view, from daily traffic, and any lights and other
4 effects, the cars approaching.

5 THE WITNESS: Of course. The six-foot
6 six-inch fence is through this section that runs along
7 the southern edge, along the landscaping in front of
8 the parking spaces on the southern edge --

9 MS. ROBESON: Okay. You have to find a way
10 to -- when the transcript, if this gets -- it doesn't
11 under "this edge." So you have to find a way to define
12 that edge.

13 THE WITNESS: All right. From the southwest
14 corner along the front of the parking spaces along the
15 side south of the parking lot, the six-foot fence is
16 positioned. At the point that the slope falls off,
17 down to their properties --

18 MS. ROBESON: To?

19 THE WITNESS: -- to the adjacent
20 properties --

21 MS. ROBESON: Okay.

22 THE WITNESS: -- Lot 360 and 361, there is a
23 substantial grade difference to where, at which point,
24 we replace that fence, which no longer would be
25 effective down at that position. And, actually,

1 there's a section of existing fence that they have
2 asked to be -- to remain that runs in that section down
3 through here, if I'm not mistaken.

4 MS. ROBESON: Well, who -- on whose property
5 is the existing?

6 THE WITNESS: It is on the existing property
7 that we --

8 MS. ROBESON: And your property?

9 THE WITNESS: That would be ours, yes.

10 MS. ROBESON: And what is that -- how big is
11 that fence?

12 MR. SHUKLA: So that fence is actually
13 practically nonexistent right now. It is something
14 simple as some barbed wires. And they were originally
15 going to remove it.

16 MS. ROBESON: Okay, wait. We're getting into
17 testimony.

18 THE WITNESS: I can -- I can state that --

19 MS. ROBESON: Do you know what the fence is?

20 THE WITNESS: I have not been --

21 MS. ROBESON: Okay. So we'll leave that for
22 another time, but we'll get back to it. Okay?

23 THE WITNESS: The fact that if there were a
24 six-foot six-inch fence in that area, it would be so
25 low it would not be effective with the grade change up

1 to where the driveway --

2 MS. ROBESON: Do you know what the grade
3 change is?

4 THE WITNESS: Reading grades here --

5 MS. ROBESON: I see lots of little lines.

6 THE WITNESS: Yeah. There are two-foot
7 intervals and so it's about an eight-foot grade change
8 up to. So it's already above what a six-foot six-inch
9 fence would be if you continued it down through that
10 section.

11 We have -- what I returned to the families to
12 review is a modified landscape plan that put the
13 evergreen trees clustered in those areas. Why don't we
14 pull the landscape plan up.

15 MS. ROBESON: No, that's okay. We're going
16 to get to that.

17 THE WITNESS: So pick up that -- that change
18 of grade and be more effective in that section, and
19 then leave the fence that they have asked, even though
20 it's nonexistent, apparently, for the most part.
21 Just -- they had requested that just so anybody
22 wouldn't cross through there. It would not provide a
23 barrier.

24 MS. ROBESON: Okay. Any other questions?
25 Just questions.

1 MR. SHUKLA: The second question we had, I do
2 not believe in his description so far he's explained
3 about the stormwater management.

4 MS. ROBESON: Do you have another expert
5 that's going to --

6 MS. DLHOPOLSKY: Yes, we --

7 MS. ROBESON: That's really usually a civil
8 engineer issue.

9 MR. SHUKLA: Okay.

10 MS. ROBESON: We are going to get through
11 everyone.

12 MR. SHUKLA: Okay.

13 MS. ROBESON: So if you can be patient --

14 MR. SHUKLA: Okay, sure.

15 MS. ROBESON: -- I would appreciate it.

16 MR. SHUKLA: Okay.

17 MS. ROBESON: Okay. Any follow-up questions?
18 Is that the end of your questions?

19 MR. SHUKLA: For the time being, yes.

20 MS. ROBESON: Okay. We have one more.
21 Please come forward and just state your name and
22 address for the record. Again, don't -- this is not
23 your time to --

24 MR. JACOB: I know. Mathew Jacob. I live in
25 18921 Porterfield Way, Lot 361.

1 MS. ROBESON: Okay. That's helpful. Thank
2 you.

3 MR. JACOB: My question is mainly about -- I
4 know we talked about the generator. The operating
5 times of the generator.

6 MS. ROBESON: Okay. Go ahead.

7 MR. JACOB: I was going to ask him the
8 operating times of the generator. When do they --
9 because I know every week they will have to start and
10 stop to keep it operational.

11 THE WITNESS: As yet has to be determined.
12 We certainly -- you know, midday would probably be the
13 best for everybody. You know, we can do it any time.
14 We prefer not to do it in the middle of the night.

15 MR. JACOB: No, I know. I mean, during early
16 morning hours or late night or --

17 MS. ROBESON: That's your question.

18 THE WITNESS: It can be programmed to be at
19 any -- any time during the day.

20 MR. JACOB: How do we know when you're going
21 to? Because you'll be gone after awhile to some other
22 facility.

23 MS. ROBESON: Okay, okay, just how -- how are
24 they going to know when you're going to do it? No --
25 if you're not the person to ask --

1 THE WITNESS: That's something that's
2 determined -- I mean, we can establish when that should
3 be or when maybe that should be and we can comply with
4 that.

5 MS. ROBESON: Okay.

6 THE WITNESS: But I can't state at this time
7 a specific time.

8 MS. ROBESON: Okay.

9 MS. DLHOPOLSKY: I think we would be willing
10 to accept a -- you know, some sort of condition with a
11 window --

12 MS. ROBESON: Right.

13 MS. DLHOPOLSKY: -- you know, a weekday in a
14 certain stretch of -- you know, between 10 to 2 p.m.
15 I'm just giving examples.

16 THE WITNESS: And understanding that that's
17 important to us because of our residents as well, so...

18 I assume what we would do would also be in
19 your best interest.

20 MR. JACOB: Yes, I wasn't looking for a
21 specific time, only a window, yes, so that we know when
22 that's going to happen.

23 THE WITNESS: Very good. We can do that.

24 MS. ROBESON: Okay. We'll -- let's -- we're
25 just keeping it to questions right now. So we're

1 getting there.

2 Okay. Anything -- any other questions?

3 MR. JACOB: I guess you may have another
4 person talking about the lighting, right? So I'll
5 reserve the question for that.

6 THE WITNESS: Yes.

7 MR. JACOB: That's all.

8 MS. ROBESON: Okay.

9 MR. JACOB: Thank you.

10 MS. DLHOPOLSKY: No further questions for
11 this witness.

12 MS. ROBESON: All right. You may be excused
13 for the time being.

14 MS. DLHOPOLSKY: Thank you, Mr. Palmer.

15 And I would like to call our next witness,
16 Ms. Anita Irvin, executive director -- well, I'm going
17 to say this.

18 MS. ROBESON: Please raise your right hand.

19 ANITA IRVIN,
20 the witness, after having been duly sworn, was examined
21 and testified to as follows:

22 MS. ROBESON: Please state your name and
23 address for the record.

24 THE WITNESS: Anita Irvin. My home address
25 or work address?

1 MS. ROBESON: Business address is fine.

2 THE WITNESS: 12469 Lee Jackson Memorial
3 Highway, Fairfax, Virginia, 22033.

4 MS. ROBESON: Okay. Go ahead.

5 MS. DLHOPOLSKY: Great. Thank you.

6 DIRECT EXAMINATION

7 BY MS. DLHOPOLSKY:

8 Q. And, again, this is not being proffered as
9 expert witness testimony, simply operational testimony
10 on behalf of the applicants. So if you could just
11 briefly describe your professional educational
12 background that leads into your experience operating
13 residential care facilities such as this.

14 A. So I have a degree from Virginia Wesleyan
15 College in recreation/leisure services. I have been
16 with HCR ManorCare 23 years. I have been an executive
17 director for ten years within the company.

18 Q. Great. And can you briefly describe the
19 types of patients, so the typical residents who are at
20 the facility such as this.

21 A. So, we have obviously the traditional, if you
22 will, dementia/Alzheimer's folks, but we're starting to
23 see more earlier onset, early 50s, Lewy Body Dementia,
24 Frontotemporal Dementia, early onset Alzheimer's, and
25 so all these needs -- people are living longer in these

1 type of communities.

2 Q. Okay. And Mr. Palmer touched on it but
3 obviously Mr. Palmer is more on the project design end
4 of things and you are in the operational aspect once a
5 facility is up and running. So can you please identify
6 and review the floor plan for the project, which I
7 believe is Exhibit 11 up on the right there, and talk
8 more specifically about the programming and the
9 activities that occur at this facility.

10 A. So, as we have developed the product, we have
11 had to realize that people's needs are changing and
12 that the people that were moving into our communities
13 are very different. So we developed a number of
14 programs that typically happen within the community
15 center but they also happen on the living room or the
16 waiting rooms on each of the houses.

17 And those -- we do engagement therapy
18 treatment, which is a higher functioning program where
19 we still -- residents to write and use those skills
20 because we feel like that's a benefit to them. We have
21 our namaste program, which is for our lower functioning
22 residents or our hospice care, which is more of a
23 sensory stem, massage type of therapy, aromatherapy
24 program.

25 We do a lot of intergenerational programs.

1 We do social activities, physical activities, what have
2 you. We also have, in the core or in the common -- I
3 think it's located on Exhibit 11 -- that there is
4 engagement stations throughout that core, so as people
5 are wandering, there are things to engage them in
6 individual pursuits as well, as well as outside in the
7 courtyard.

8 MS. ROBESON: And the core, is that centrally
9 on the floor plan --

10 THE WITNESS: The common area.

11 MS. ROBESON: Exhibit E -- 11, I mean. 11.
12 Is the centrally located --

13 THE WITNESS: Correct.

14 MS. ROBESON: Okay.

15 THE WITNESS: So there's a hobby shop and
16 there's the beach, which we have found useful for our
17 wanderers who get tired throughout the day. We find
18 that they will stop and sit and listen to the ocean
19 waves and it calms them for a period of time.

20 We have the health center where the medical
21 records are kept and where our nurses make doctors
22 calls. And we also have things throughout the
23 community that they can do. So there's programs even
24 in the waiting rooms that they can do puzzles and what
25 have you in the houses as well.

1 BY MS. DLHOPOLSKY:

2 Q. Great. Thank you.

3 And I think that kind of covered the
4 programming with respect to the residents. Can you
5 talk about the proposed operations at the residential
6 care facility, more things like back-of-house
7 deliveries, food service, visitation, logistical-type
8 things?

9 A. So we have a food delivery one time a week.
10 It's typically in the morning. Trash picks up twice a
11 week. Visiting hours, we say 9 in the morning, 10 at
12 night. Those are flexible, obviously. We typically
13 move two to three residents in a month on an aggressive
14 month. Most of our residents move in, our typical
15 length of stay is between two to three years within our
16 folks. And when they move in, they're moving into a
17 studio-like apartment, so we're not seeing a lot of
18 furniture being brought in or big trucks or anything
19 like that. We're talking -- we normally educate our
20 families to make it very simplistic and just homey for
21 them in that setting.

22 Q. And I know, obviously, you were operating in
23 the Virginia facility, but if you could just speak
24 briefly -- because one of the things that we have to
25 demonstrate is that all of the federal, state, and

1 county certificate and licensure requirements will be
2 satisfied.

3 So are you able to state what -- that this
4 facility will satisfy all those licensing requirements?

5 A. Yes. Yes, I actually operated two facilities
6 in Maryland, and our policies are typically higher than
7 the state policies.

8 Q. Okay. So you would be pursuing all those
9 requirements?

10 A. Yes.

11 MS. ROBESON: What time are the deliveries?

12 THE WITNESS: That is set up individually
13 based on the -- on the -- on the community. Ours at
14 Fair Oaks, our food deliveries are between 8 and 9 in
15 the morning.

16 MS. ROBESON: What about trash?

17 THE WITNESS: Typically 10 a.m. And that's
18 in my community, but those can be set up specifically
19 to whatever works within each community. So if there's
20 a concern, obviously we would work with the community
21 to make sure it's a win-win on both sides.

22 MS. ROBESON: What do you think would be the
23 most protected time for trash deliveries of -- you
24 know, because they make noise and they --

25 THE WITNESS: I would say late morning.

1 MS. ROBESON: Okay. And be more specific.
2 10 to 12?

3 THE WITNESS: Between 10 to 12, yeah. And
4 that's typically when ours are within our community.

5 BY MS. DLHOPOLSKY:

6 Q. And maybe I'll just note for the record, this
7 is not Ms. Irvin's specialty but certainly I think we
8 would think that, given that the school drop-off, it
9 would be after school drop-off is complete for the
10 morning.

11 MS. ROBESON: Remind me when school drop --
12 it's 9:30-something?

13 MS. DLHOPOLSKY: Well, we'll be getting into
14 that more with our traffic expert testifying.

15 MS. ROBESON: Okay.

16 MS. DLHOPOLSKY: So more specifics, but I
17 guess we'd just generally state now that certainly
18 after the school drop-off is done for the day, I think,
19 would be the best time for the neighborhood anyway.

20 MS. ROBESON: Okay. I'm sorry. Go ahead.

21 MS. DLHOPOLSKY: That was really all of my
22 questions for Ms. Irvin at this time. Obviously, a lot
23 of the things that she touched on, we'll get into more
24 specifics with our future witnesses.

25 MS. ROBESON: Well, I have a question on the

1 staffing here. If you can't answer it, just tell me.
2 But tell me exactly -- you have three shifts. I get
3 that. But there's more employees than the shifts
4 account for. So somewhere -- somewhere -- somewhere
5 there's -- something's not adding up.

6 THE WITNESS: So it would start with we have
7 a cook that comes in at 6:30 in the morning. We have
8 eight caregivers and one nurse that come in from 7 a.m.
9 to 3 p.m.

10 MS. ROBESON: Wait. Eight. Okay.

11 THE WITNESS: Eight caregivers, one nurse.

12 MS. ROBESON: Okay.

13 THE WITNESS: Then we have your management
14 team that comes in on the weekdays, and that's 9 to 5,
15 and you have six people there.

16 MS. ROBESON: And when do they come in?
17 Nine?

18 THE WITNESS: Nine.

19 MS. ROBESON: Six managers. And when do they
20 leave? 5:00?

21 THE WITNESS: 5ish, yeah.

22 MS. ROBESON: So the eight caregivers plus
23 one nurse, they're on the 7 to 3 shift, correct?

24 THE WITNESS: Yes, ma'am.

25 MS. ROBESON: Okay. All right. Keep going.

1 THE WITNESS: And then for your 3 to 11
2 shift, you have five caregivers for 3 to 11, one nurse.

3 MS. ROBESON: Okay.

4 THE WITNESS: From 11 to 7, you have four
5 caregivers.

6 MS. ROBESON: I thought you had five on the
7 11 to 7.

8 THE WITNESS: And one nurse.

9 MS. ROBESON: Oh, okay.

10 Now, normally -- normally, we have very
11 specific staffing arrival times because of the traffic.
12 Is there any issue with making this a condition of
13 approval, what you just outlined?

14 THE WITNESS: I can tell you that I have
15 operated another facility where the times were 6:30 to
16 2:30, 2:30 to 10:30, what have you, that we had to work
17 with, different times. I think as long as our staffing
18 ratios are where they needed to be to ensure that our
19 residents got the care, I think there could be a little
20 bit of flexibility there.

21 MS. ROBESON: What kind of -- what do you
22 mean?

23 THE WITNESS: As far as the time -- the
24 shifts. Is that what you're asking me?

25 MS. ROBESON: Yeah.

1 THE WITNESS: Yeah. So, you know, we could
2 do, like, a 6:30 to 2:30, a 2:30 to 10:30, a 10:30 to
3 6:30.

4 MS. ROBESON: No, I'm saying you -- you --
5 there was a recommendation somewhere that you stagger
6 the trip so you don't -- make sure you don't have too
7 many trips during the peak hour. So I guess what I'm
8 saying is -- I'm adding something. Please forgive me.

9 MS. DLHOPOLSKY: And I think we might have
10 missed a few.

11 MS. ROBESON: Yeah, because it's not adding
12 up.

13 MS. DLHOPOLSKY: That's why we were
14 whispering back here, because we're trying to figure
15 out what part was missing. So it may be helpful if you
16 just review again.

17 And if I might just say, too, the planning
18 board recommendation of approval was that it was a
19 Condition No. 5, employee arrival and departure times
20 must be staggered so that fewer than 30 employees
21 arrive and depart the site within any one hour. And
22 that's certainly something that we're agreeable to
23 stagger.

24 MS. ROBESON: Yeah. I guess my concern is
25 monitor --

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1 MS. DLHOPOLSKY: Right. How do you track it.

2 MS. ROBESON: How do you track that. So --
3 so I'm still missing employees.

4 MS. DLHOPOLSKY: Would it be helpful if we --

5 MS. ROBESON: I am -- I am slow.

6 THE WITNESS: No, I missed people. It wasn't
7 you.

8 MS. ROBESON: I'm just trying to get this --

9 THE WITNESS: No, it wasn't you. Okay.

10 So -- because the departments that I missed were
11 housekeepers.

12 MS. ROBESON: Okay. Okay. So when they do
13 they get there?

14 THE WITNESS: They're 7 to 3. There's two of
15 them.

16 MS. ROBESON: 7 to 3. So two housekeepers.
17 Okay.

18 THE WITNESS: And activity assistant.

19 MS. ROBESON: Is that on the 7 to 3?

20 THE WITNESS: No, ma'am. They come in 9:30
21 to 1:30.

22 MS. ROBESON: Wait a minute. Two activity --

23 THE WITNESS: Just one.

24 MS. ROBESON: Just one. I'm sorry.

25 THE WITNESS: That's okay.

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1 MS. ROBESON: 9:30 to 2 -- what?

2 THE WITNESS: 9:30 to 1:30. And then the
3 other activity assistant comes in from 1 to 7:30.

4 MS. ROBESON: Well, I'll trust you that
5 that's -- I won't try to add it up.

6 THE WITNESS: That's all the departments.

7 MS. ROBESON: Because I'm moving slow but...

8 MS. DLHOPOLSKY: And Ms. Robeson --

9 MS. ROBESON: Does that equal 35?

10 MS. DLHOPOLSKY: I'm not sure. If I could
11 ask where the 35 number is coming from.

12 MS. ROBESON: Your -- the staff report.

13 MS. DLHOPOLSKY: Right, right. So it's the
14 -- 20 is the employees on the shift one and then the
15 10 --

16 MS. ROBESON: Well, you've actually got --
17 you have actually not got three shifts. You have got
18 multiple shifts.

19 MS. DLHOPOLSKY: It's kind of --

20 UNIDENTIFIED MALE SPEAKER: Staggered.

21 MS. DLHOPOLSKY: -- bunched but -- yeah,
22 staggered within that, yes.

23 MS. ROBESON: So I'm trying to get to the
24 bottom of when people are coming in and going out.

25 THE WITNESS: So the three major shifts for

1 the nursing department and then they're staggered
2 shifts for the other departments, is what it comes
3 into.

4 MS. DLHOPOLSKY: And if it would be
5 helpful --

6 MS. ROBESON: Does that equal 35? Well,
7 you -- okay, I'm not making you go through the
8 exercise. I'm going to assume for the time being that
9 it equals 35.

10 MS. DLHOPOLSKY: Yeah, in total, we are -- in
11 total, it would be 35 employees working on this site.

12 MS. ROBESON: Because I couldn't figure out
13 in the staff report why they were saying that 31 people
14 are going to be at the highest shift, because, you
15 know, I'm looking at --

16 THE WITNESS: I've never heard that before.

17 MS. ROBESON: -- it just says three shifts,
18 and I'm thinking --

19 THE WITNESS: The highest number is always no
20 more than 25 people in the building at a time.

21 MS. ROBESON: No more than 25 staff.

22 THE WITNESS: Yes, ma'am.

23 MS. ROBESON: And if I went through this
24 schedule -- you can't -- you can't do that. You can't.
25 You can't do that.

1 MS. DLHOPOLSKY: Yeah, and I think what we --

2 MS. ROBESON: If you don't know, we'll come
3 back. And when I say you can't do that, I mean the
4 witnesses can't be talking to other people while
5 they're on the stand.

6 All right. So you really have staggered
7 shifts. You don't really have three shifts.

8 THE WITNESS: Correct.

9 MS. ROBESON: Okay.

10 MS. DLHOPOLSKY: And I think we had indicated
11 that there could be -- because of the shift one being
12 the 20 employees and the shift two being the ten
13 employees that, in theory, they could -- you know, they
14 could completely overlap, and so, you know, 30 people
15 might be on-site at any given time just because of the
16 overlap in the shift one and the shift two, which is
17 why we had to use the 30 number.

18 THE WITNESS: Which is maybe a 10-minute,
19 15-minute max.

20 MS. ROBESON: All right. So --

21 MS. DLHOPOLSKY: And if I might, too, you
22 know, our traffic generation is so low, I know
23 certainly in cases where the traffic generation is high
24 and we're worried about --

25 MS. ROBESON: Well, that's the ITE rate,

1 which is low. We have had a number --

2 MS. DLHOPOLSKY: Right.

3 MS. ROBESON: Please forgive me. We have had
4 a number of assisted care facilities because of the
5 need. So it is -- that is the ITE rate.

6 Let me ask you one more thing. Just humor me
7 on this. Just humor me. Because I just need -- at
8 this point, I just want to -- the staff report, I just
9 want to understand what is going on on the ground here.
10 Okay?

11 Let's talk for a moment about Mother's Day,
12 because as I said, we have had a number of assisted
13 living facilities. What is your plan for, you know,
14 the large visitor turnout?

15 THE WITNESS: We have found, through my years
16 as being executive director, when I first started ten
17 years ago, that we would see a much higher visitation
18 during those holidays than I do now. Typically when we
19 have a family event, you know, it's in the middle of
20 the day on the weekends typically.

21 MS. ROBESON: But you don't restrict visitor
22 hours.

23 THE WITNESS: We do not.

24 MS. ROBESON: Okay.

25 THE WITNESS: But, again, a lot of families,

1 because it can be very overwhelming to take their loved
2 one out because it can be too overstimulating, what
3 have you, it can be too confusing, a lot of families or
4 sons, daughters will come in, spend 20 or 30 minutes
5 and leave. If we have a program, it's typically an
6 hour, hour and a half max is all that they can --

7 MS. ROBESON: So how many visitors, in your
8 experience, will come in on the big visiting days?

9 THE WITNESS: Maybe a quarter. Maybe.

10 MS. ROBESON: On your big visiting days, do
11 you have enough parking? Because we have had other
12 assisted care or memory care facilities say they use
13 shuttles and things like that.

14 THE WITNESS: When we have had bigger events,
15 we typically will have our staff park -- in my
16 community, it would be at the grocery store across the
17 street, and then we would shuttle our staff over to
18 accommodate the visitors.

19 MS. ROBESON: And where would they do that
20 here?

21 THE WITNESS: I don't have that answer.

22 MS. ROBESON: Okay.

23 THE WITNESS: Maybe the school if it's a
24 weekend.

25 MS. ROBESON: Well, just -- okay. That --

1 okay. You do need to get permission from the school to
2 do that.

3 THE WITNESS: Agreed.

4 MS. ROBESON: I'm just -- all I'm trying to
5 do is -- you know, the staff report just left me
6 confused in some areas, so I'm just trying to figure
7 out exactly what's going on.

8 So -- all right. I don't have any other
9 questions. Does anyone else have any other questions?

10 MR. SHUKLA: I don't know if Ms. Irvin is the
11 right expert to --

12 MS. ROBESON: Okay.

13 MR. SHUKLA: -- ask this question but what we
14 talked about is just the regular traffic, even if it's
15 like a Mother's Day or something like that, still
16 regular traffic. What about other emergency service
17 providers or other, you know, health caregivers,
18 hospital ambulances? What is the usual expectation
19 that we should have of how frequently such vehicles
20 will --

21 MS. ROBESON: You mean emergent -- like
22 ambulances?

23 MR. SHUKLA: Ambulances or any other -- you
24 know, to take people away to a hospital for any --

25 MS. ROBESON: Okay.

1 MR. SHUKLA: -- diagnosis of treatment?

2 THE WITNESS: I think that's very hard to
3 even come up with -- I mean, I can -- I can tell you,
4 in my community, maybe once or twice a month, maybe.
5 But I think that as people age and they go through the
6 dementia process, I think it's very hard to come up
7 with any type of numbers for that.

8 MR. SHUKLA: But as a guidance, some typical
9 number is what?

10 THE WITNESS: We don't see a lot, so in the
11 Arden Courts product -- the difference between the
12 Arden Courts product and a skilled nursing facility is
13 we are truly a psychosocial model. So we don't do IVs,
14 we don't do wounds, we don't do the clinical piece of
15 it. You're dealing with people who are still most --
16 for the most part ambulatory, can help with their ADLs,
17 can have a three-minute conversation in some regards.
18 And so they are very healthy for the most part, so you
19 don't see the clinical piece.

20 I think you're concerned with seeing a lot of
21 that. I don't think you would see a lot of it. I
22 think you would see more of it if you were dealing
23 with, like, a skilled nursing facility that had the
24 medical model.

25 MS. ROBESON: Okay. Like more of a

1 traditional assisted living.

2 THE WITNESS: Or a skilled nursing facility,
3 yeah, absolutely.

4 MS. ROBESON: So the ambulances turn their --
5 do they come in with lights and siren?

6 THE WITNESS: They do. If it's a 9-1-1 call,
7 they do.

8 MS. ROBESON: Okay. Any other questions?

9 MR. SHUKLA: That was actually going to be my
10 follow-up question.

11 MS. ROBESON: Ms. Dlhopsky?

12 MS. DLHOPOLSKY: Yes, just one follow-up
13 question.

14 REDIRECT EXAMINATION

15 BY MS. DLHOPOLSKY:

16 Q. Ms. Irvin, are families ever called to take
17 their loved ones or patients to appointments that they
18 may have out of the office?

19 A. They are. So we have some families who will
20 come and take them to a specialist or what have you, so
21 you won't see the ambulance or the transportation
22 companies. And we have some families that, if it's
23 truly not a 9-1-1 but it's a change of condition and
24 they want to sit with their loved one in the ER because
25 it's less traumatic or what have you, they will say,

1 I'll come take my loved one and take them to the ER.

2 So you have that aspect as well.

3 MS. DLHOPOLSKY: Thank you.

4 MS. ROBESON: Okay. Anything else?

5 MS. DLHOPOLSKY: That's all I have for
6 Ms. Irvin at this time.

7 MS. ROBESON: You may be excused.

8 THE WITNESS: Thank you.

9 MS. ROBESON: She's probably saying yay.

10 MS. DLHOPOLSKY: Actually, maybe, if I could
11 ask a question: If we don't think we would have any
12 more questions for Ms. Irvin, she does run the Fair
13 Oaks facility in Virginia so if --

14 MS. ROBESON: Oh, no.

15 MS. DLHOPOLSKY: -- you are amenable to it,
16 we'd love to let her get back to --

17 MS. ROBESON: That's a long way.

18 THE WITNESS: Oh, it was long this morning.

19 MS. ROBESON: Okay. Do you have any
20 objection if --

21 MR. SHUKLA: No.

22 MS. ROBESON: You may be finally excused.

23 THE WITNESS: Thank you.

24 MS. DLHOPOLSKY: Thank you very much.

25 THE WITNESS: You're welcome.

1 MS. DLHOPOLSKY: Very briefly -- very
2 briefly, if it might be helpful, I wanted to bring
3 Mr. Palmer back just to speak about --

4 MS. ROBESON: No.

5 MS. DLHOPOLSKY: No. Got it. Okay. No
6 problem.

7 MS. ROBESON: We're going to stay in order.

8 MS. DLHOPOLSKY: Okay.

9 MS. ROBESON: Let's move.

10 MS. DLHOPOLSKY: All right. I was just going
11 to touch on --

12 MS. ROBESON: We got rebuttal.

13 MS. DLHOPOLSKY: Okay. All right. That's
14 fine. Sorry. Let me just make a quick note.

15 Okay. I would like to call our next witness,
16 Mr. Brian Donnelly.

17 MS. ROBESON: Please raise your right hand.

18 BRIAN DONNELLY,
19 the witness, after having been duly sworn, was examined
20 and testified to as follows:

21 MS. ROBESON: Please state your name and
22 business address for the record.

23 THE WITNESS: Brian Donnelly at Macris,
24 Hendricks & Glascock, 9220 Wightman Road, Montgomery
25 Village, Maryland.

1 MS. ROBESON: Okay. Thank you.

2 Go ahead.

3 DIRECT EXAMINATION

4 BY MS. DLHOPOLSKY:

5 Q. Okay. Thank you, Mr. Donnelly.

6 Mr. Donnelly, have you been accepted as an
7 expert before in front of the hearing examiner? If so,
8 can you just mention the expertise it's in?

9 A. Yeah, I have done numerous testimonies on
10 conditional uses and special exceptions, some zoning
11 issues as well as variances.

12 Q. And your expertise is in --

13 A. Site planning, site engineering, landscape
14 architecture.

15 Q. And you are a registered landscape architect?

16 A. Yes.

17 MS. ROBESON: But not land planning?

18 THE WITNESS: I'm not a -- I'm not a
19 certified planner, no, ma'am. But I am an expert in
20 site planning.

21 MS. ROBESON: Site planning. Okay. So what
22 are the three things that we're -- state again your
23 three things, your three areas of expertise.

24 THE WITNESS: Landscape architecture.

25 MS. ROBESON: Okay.

1 THE WITNESS: Site planning.

2 MS. ROBESON: Okay.

3 THE WITNESS: Site engineering.

4 BY MS. DLHOPOLSKY:

5 Q. And you have been recognized before the
6 hearing examiner as an expert in those fields recently?

7 A. Yes.

8 MS. ROBESON: Okay. I have his resume in the
9 record. Unless you -- are you licensed in Maryland?

10 THE WITNESS: Yes. Licensed in Maryland and
11 Virginia.

12 MS. ROBESON: Okay. I have his resume in the
13 record, and he has qualified as an expert before. Do
14 you have any reason to believe that he should not be an
15 expert in those fields?

16 MR. SHUKLA: No.

17 MS. ROBESON: Okay. I will qualify him as an
18 expert in landscape architecture, site engineering, and
19 site design.

20 MS. DLHOPOLSKY: All right. Thank you.

21 BY MS. DLHOPOLSKY:

22 Q. Mr. Donnelly, are you familiar with the
23 subject conditional use application?

24 A. Yes.

25 Q. And are you familiar with and have you

1 visited the property that is the subject of the
2 application?

3 A. Yes.

4 Q. As well as familiar with and visited the area
5 surrounding the subject application?

6 A. Yes.

7 Q. And are you familiar with the 1989 Germantown
8 Master Plan?

9 A. Yes.

10 Q. And are you familiar with the R-200 zoning
11 classification of the subject property in both the
12 general and specific requirements of the zoning
13 ordinance with respect to (indiscernible) care facility
14 as a conditional use in an R-200 zone?

15 A. Yes.

16 Q. And have you and your firm been employed by
17 the applicant to provide certain services? And if so,
18 can you please describe them?

19 A. We were under contract to prepare the
20 original -- the original feasibility study, detailed
21 topographic survey, boundary/land use report,
22 conditional use, site plan, landscape plan, sediment
23 and erosion control, stormwater management, and site
24 access requirements.

25 Q. Okay. And have you analyzed the suitability

1 of the subject property for the proposed conditional
2 use from a site planning landscape architecture and
3 site engineering perspective?

4 A. Yes.

5 Q. And has your report been submitted to the
6 hearing examiner?

7 A. It has.

8 MS. DLHOPOLSKY: And it is in the record as
9 Exhibit 8 just for reference.

10 MS. ROBESON: It is.

11 BY MS. DLHOPOLSKY:

12 Q. And can you please review for the hearing
13 examiner the findings and conclusions of your land use
14 report?

15 MS. DLHOPOLSKY: And if it's okay with you,
16 I'm just going to let Mr. Donnelly kind of go with his
17 narrative --

18 MS. ROBESON: Great.

19 MS. DLHOPOLSKY: Yep, as opposed to me
20 directing questions. We'll make sure he covers
21 everything.

22 A. The exhibit I put up is Exhibit 13-B. It's
23 the existing conditions plan. The natural resource
24 inventory has also been submitted and approved by Park
25 and Planning.

1 The existing conditions plan shows, you know,
2 to the north at the intersection is Liberty Mill Road
3 and Dawson Farm Road. To the east is Dawson Farm.
4 It's a 120-foot right-of-way with a four-lane divided
5 median, two lanes in each direction, two lanes going
6 east and west.

7 To the north is Liberty Mill Road, which is a
8 varying-width right-of-way that was part of the 118
9 relocation back in 1996. The State Highway
10 Administration came through and acquired the necessary
11 right-of-way in order to improve Liberty Mill and
12 reconstruct Route 118. And at that time, they acquired
13 all the necessary right-of-way to satisfy the master
14 plan requirements.

15 The site is -- slopes from the north to the
16 south at about an average grade of 4 percent. The
17 total grade differential is about 24 feet, 23 feet from
18 the northern end to the southern end. In the southern
19 corner of the property is a stream valley buffer that
20 was --

21 MS. ROBESON: Which southern corner?

22 THE WITNESS: The south -- the southernmost
23 boundary in the property corner that borders the
24 homeowner's association and the townhouses.

25 BY MS. DLHOPOLSKY:

1 Q. Is that the southeast?

2 A. At the south -- southeast corner.

3 Q. Okay.

4 A. That stream valley buffer was confirmed and
5 recognized as part of the natural resource inventory
6 and approved by Park and Planning.

7 So there's a small section of stream valley
8 buffer that we'll be preserving as part of the site
9 planning. There are no wetlands, seeps, unusual soil
10 conditions or environmental conditions that would
11 preclude development.

12 As part of the Park and Planning forest
13 conservation plenary -- forest conservation plan, there
14 are three specimen trees that were identified, two of
15 which are -- or all three of which are to remain on the
16 residential parcel as part of the subdivision process.
17 Two of the trees are actually being impacted by our
18 development due to grading, so we did have to get a
19 tree variance from Park and Planning.

20 MS. ROBESON: You mean it's within -- it
21 affects the critical root zone?

22 THE WITNESS: The grading, it does
23 (indiscernible) critical root zone, yes, ma'am.

24 And just to note, in the staff report, they
25 mentioned a 38-inch silver maple, but in reality, it

1 was a 33-inch red dawn redwood, which was corrected
2 during the staff presentation.

3 MS. ROBESON: Okay. Thank you.

4 THE WITNESS: As I mentioned, there is no
5 existing forest on the property. To the southwest,
6 bordering the post office and the residential
7 properties is a mixture of ailanthus, mulberry, black
8 cherries, wild cherries, and mixed maples. A number of
9 these trees will be removed as part of the development;
10 however, because of the locations of the ailanthus and
11 the mulberries, they're considered invasive materials
12 and were requested to be removed as part of the Park
13 and Planning review.

14 To the southeast, bordering the townhouses,
15 there was a cluster of bamboo that's also going to
16 be -- being removed as an invasive species.

17 MS. ROBESON: Yay. No offense.

18 THE WITNESS: The property --

19 MS. ROBESON: That's a personal -- I would
20 never base a decision on eliminating bamboo. My
21 neighbor loves it.

22 THE WITNESS: Liberty Mill Road is a
23 three-lane road. It has a dedicated left turn lane
24 with travel through lanes going north and south. The
25 existing property is currently served by two

1 residential driveways that kind of loop inside
2 themselves that serve the residential property on a
3 number of outbuildings scattered around the vicinity of
4 the property.

5 The existing garage and main residence will
6 be retained and the existing garage will be relocated
7 or rebuilt as part of the sales agreement with the
8 current property owner.

9 This is Exhibit --

10 BY MS. DLHOPOLSKY:

11 Q. Is that the neighborhood exhibit here?

12 A. This is the neighborhood exhibit, yeah.

13 MS. DLHOPOLSKY: And I guess I would just
14 mention for the record, the neighborhood map was
15 included in the land planning report, which is Exhibit
16 8 but it was small scale, and so this is a large-scale
17 neighborhood map that we have put up because we needed
18 something large for folks to see at the hearing.

19 That's a repeat of the exhibit that's in Exhibit 8.

20 THE WITNESS: So the neighborhood that was
21 established as part of this analysis was reviewed and
22 accepted by Park and Planning within your staff report.
23 The overall subject property is 3.09 acres of core
24 zoned R-200. Along the southern property line, there
25 is a large 30-inch sewer main and a -- associated with

1 a 40-foot WSSC easement.

2 I guess what this property -- what this
3 exhibit generally shows is the -- all the surrounding
4 areas are zoned R-200. This exhibit shows that
5 townhouses to the southeast and the school to the
6 north, resident properties are separated by the stream
7 valley buffer and then the current or previous post
8 office immediately to the -- to the west.

9 What this helps show is that the property is
10 very suited for this type of use based on the size and
11 scale of the property and the transitional massing of
12 the buildings and the neighborhood.

13 It's probably easier to see if I go straight
14 to the rendering.

15 MS. ROBESON: And that is exhibit --

16 THE WITNESS: Exhibit 37-K.

17 MS. ROBESON: Do you have these memorized?

18 THE WITNESS: I'd like to think I do. I'd
19 like to think I do but...

20 MS. ROBESON: I was like, wow, you're good.
21 Okay. Go ahead.

22 THE WITNESS: All right. The proposed
23 development will be eliminating one of the two
24 residential driveways maintaining the southernmost
25 driveway in its current condition. A new commercial

1 driveway will be added for the -- to the southwest.
2 The entrance location has been reviewed preliminarily
3 by Department of Transportation. We have got a letter
4 in the file and there will be subsequent testimony
5 about the entrance location relative to spacing. But
6 it does meet all the sight/distance requirements that
7 DOT imposes.

8 The site interior space was designed in order
9 to facilitate large fire truck vehicles if necessary.
10 That plan has also been reviewed and approved by the
11 fire marshal to show the required circulation, access
12 to the front door --

13 MS. ROBESON: Do they use that turn-around
14 there?

15 THE WITNESS: They actually come up to the
16 head of the turn-around and back into the trash area --

17 MS. ROBESON: The dumpster area.

18 THE WITNESS: The dumpster area to the north
19 and then back around. And I have got an exhibit if
20 you'd like to see that.

21 MS. ROBESON: That's okay for now.

22 THE WITNESS: Okay. The building, as was
23 mentioned, is a large H-shape with the core -- central
24 core, 16 units on each of the four wings. The main
25 entrance is the center of the core. On the southwest

1 face of the building where there's a drop-off area for
2 visitors and guests.

3 That large turn-around area also functions as
4 the back-in and turn-around area for the service --
5 it's immediately located to the north of the entrance.

6 MS. ROBESON: Which turn-around area are you
7 talking about?

8 THE WITNESS: The main drop-off area where
9 the three trees are in the center of the -- kind of a
10 cul-de-sac.

11 MS. ROBESON: The loop kind of --

12 THE WITNESS: Exactly. The loop. The loop
13 drop-off. And that was large enough in order to get
14 a -- a WB-30, your typical single-panel vehicle backed
15 up into the loading space --

16 MS. ROBESON: And that's where the food --

17 THE WITNESS: -- and then back out.

18 Food delivery, uh-huh. That's right.

19 There's the required number of handicap
20 spaces located immediately off the main loop, main
21 drop-off area. There's a number of small
22 residential-type mechanical units that are located
23 around the perimeter of the building that are screened
24 with a small fence, but they're residential size and
25 styled as a residential facility.

1 The site has a series of pedestrian
2 connections into the main loop where it was previously
3 discussed, the main courtyard area. The main courtyard
4 area is located in the central portion between the
5 wings. Multiple access points to give residents
6 multiple points of entry and exit. The courtyards were
7 designed to provide tables and chairs, a number of
8 benches, and fairly heavily landscape in order to
9 provide, you know, textural and different seasonal
10 coloration.

11 We did provide a five-foot access wall
12 connection to the public right-of-way. The public
13 right-of-way currently has a five-foot sidewalk on both
14 sides of Liberty Mill Road as well as an eight-foot
15 hiker/biker trail along the south side of Dawson Farm
16 Road.

17 Dawson Farm Road also has dedicated bike
18 lanes on both sides, going east and west. So the site
19 is very conducive to pedestrian and vehicular access.

20 There is a public bus stop at the southeast
21 quadrant of Liberty Mill and Dawson Farm located about
22 maybe 30 feet off the main intersection to the east
23 where there's a Ride On and a county bus.

24 MS. ROBESON: Okay.

25 THE WITNESS: The parking counts are based on

1 the peak number of employees anticipated at the peak
2 shift as well as enough room for visitors during your
3 typical -- typical day. That number was provided as
4 from historical data from the owner, given their other
5 facilities they operate. We are within the zoning
6 ordinance requirements within the code, so we meet --

7 MS. ROBESON: For -- for minimum parking?

8 THE WITNESS: We meet the minimum number of
9 parking spaces, correct. Correct.

10 In addition, we have provided bicycle spaces
11 at the main entrance, just to the east side of the main
12 entrance as you come off the --

13 MS. ROBESON: Do they meet the design
14 requirements in Article 6?

15 THE WITNESS: Actually --

16 MS. ROBESON: I'm just asking because it's
17 one of the things I -- I have to find.

18 THE WITNESS: Yeah.

19 MS. ROBESON: And staff didn't address it.

20 THE WITNESS: Looking at the zoning
21 ordinance, it -- it describes dwelling units, which
22 this really doesn't fit into the dwelling unit
23 category.

24 MS. ROBESON: No, it doesn't have --

25 THE WITNESS: So by code, we don't believe we

1 have a parking or bicycle parking requirement.

2 MS. ROBESON: Okay. But the fact is you're
3 providing it.

4 THE WITNESS: We did.

5 MS. ROBESON: So my question is, Do the ones
6 provided meet the design standards?

7 THE WITNESS: Yes, yes. And we discussed the
8 numbers with staff and kind of agreed that four bicycle
9 spaces was an appropriate number for the number of
10 employees and visitors we expect. But they will meet
11 the size and requirements in the zoning ordinance.

12 I guess he had mentioned -- the stormwater
13 management has been reviewed and approved by the
14 Department of Permitting Services. It meets current
15 state standards and requirements for ESD, which is
16 Environmental Site Design. It's got multiple small
17 fire retention areas that are broken up into small
18 quadrants and receiving the pre and post development
19 flows and meets the water quality and quantity control
20 requirements for the county.

21 BY MS. DLHOPOLSKY:

22 Q. And is that stormwater management approval
23 from the county in the record?

24 A. Yes.

25 Q. And that's Exhibit 18, is the approval plan?

1 A. 18, right.

2 MS. ROBESON: I have two questions -- well,
3 why don't you finish and then I'll ask my questions.

4 THE WITNESS: Let me move to the site plan.
5 It's a little bit easier to see the utilities.

6 MS. ROBESON: Well, before you get into that,
7 as an expert in landscape architecture, what's your
8 opinion on that -- how effective a fence would be
9 bordering west -- is it 361 and --

10 MR. SHUKLA: 362.

11 MS. DLHOPOLSKY: 360 and 361.

12 MS. ROBESON: -- 360 and 361?

13 THE WITNESS: This just shows a grade change
14 to the site. That's why I wanted to bring this up.

15 MS. ROBESON: Okay. That's great.

16 THE WITNESS: As you enter the site from
17 the --

18 MS. ROBESON: And this is 37-E.

19 THE WITNESS: 37-E, correct.

20 As you enter the site from the north, we will
21 arrange the parking so that the parking is far away
22 from the residential properties as we could. And then
23 the building and massing is located as far away from
24 the residential properties as we would as well, with
25 Dawson Farm giving a little bit of street presence and

1 maximizing the separation between the residential unit
2 and the proposed building and the proposed parking.

3 We have actually stopped the parking about
4 even with the rear property line of the post -- the
5 former post office. So the parking is really located
6 more on the northern quadrant of the site to minimize
7 any light spillage or any kind of noise associated with
8 the parking itself.

9 As you come from the north going to the rear
10 of the property to the south, or from the main entrance
11 to the main drop-off area, the grade begins to fall
12 from the north to the south. So as you're entering
13 toward the rear of the property or toward the main
14 entrance, the grade differential between adjoining lots
15 and the proposed development increases.

16 So there's a grade change of about 10 feet --
17 8 to 10 feet through the area where the adjoining
18 property owner to the south of the residential
19 properties, lot 360 and 361, are abutting the property.
20 BY MS. DLHOPOLSKY:

21 Q. Mr. Donnelly, I don't mean to interrupt, but
22 I think that we have a cross-section exhibit as 37-D,
23 which illustrates the grade change and may be helpful
24 for you to reference as we speak.

25 A. Exhibit 37-D, in the cross section on the top

1 of the exhibit shows a cross section cut west to east.
2 You know, kind of -- what's the best way to make this?
3 Side by side.

4 So the lower cross section is really what
5 best demonstrates the relationship between the
6 adjoining property owners to the west and the proposed
7 development --

8 MS. ROBESON: To the west? To the southeast?

9 THE WITNESS: Southwest. Southwest,
10 actually.

11 MS. ROBESON: So the ones over by the parking
12 lot.

13 THE WITNESS: Correct. It could be the
14 section that's cut right about through lot 360 --

15 MS. DLHOPOLSKY: It's unfortunate the sites
16 (indiscernible).

17 THE WITNESS: 360. Between 360 and 361 is
18 about where the cross section is cut.

19 MS. ROBESON: Okay.

20 THE WITNESS: I think this -- this -- this
21 house is 360 -- check with the map -- 360 -- 361 would
22 be this one.

23 MS. ROBESON: So when you say "this house,"
24 you're pointing to the lower --

25 THE WITNESS: I'm sorry. The lower

1 exhibit --

2 MS. ROBESON: To the left-hand side.

3 THE WITNESS: Residential, yeah. Showing you
4 the residential property on the left-hand side, 361.

5 MS. ROBESON: Okay.

6 THE WITNESS: So you can see by the cross
7 section, there's a fair grade -- a pretty significant
8 grade differential between the rear lot of the
9 adjoining house and the front entranceway to the
10 proposed facility. So to put in a six-foot-six fence
11 at the bottom of that hill on the property wouldn't
12 really be that effective because the top of the fence
13 would still be about the -- the two-thirds point up the
14 slope of the hill. So the fencing along that side of
15 the property wouldn't really be that effective.

16 So what we have done instead of that is we
17 have increased the planting density, you know,
18 immediately behind lots 360 and 361 to include
19 evergreen plantings for year-round spring, understorage
20 shrubs, and larger shade trees.

21 MS. ROBESON: What are the larger shade
22 trees?

23 THE WITNESS: What type of tree?

24 MS. ROBESON: Yeah.

25 THE WITNESS: Let me check.

1 MR. GORDON: Turn that around.

2 MS. DLHOPOLSKY: The one that's on -- the
3 ceiling is going to go before the end of this hearing.

4 MS. ROBESON: And this is the landscape plan?

5 THE WITNESS: This is the landscape plan,
6 sheet C-4.1, Exhibit 42-A.

7 MS. DLHOPOLSKY: A-3-i.

8 THE WITNESS: It's an elm tree. There's a
9 number of elm trees and -- and some hackberries. There
10 are trees that are planted two -- two-and-a-half to
11 three-inch caliper trees so they do provide a shade and
12 a screen about 40 to 50 feet at maturity, 10-year
13 growth.

14 MS. ROBESON: So you have got understory,
15 evergreens, and then the larger -- you're screening the
16 three levels.

17 THE WITNESS: Exactly, the three levels. And
18 then the evergreens are more for the year-round that
19 give kind of the base and then the mid-height
20 screening. We have pushed the trees as far up the
21 slope as we could to maximize the -- you know, the
22 effectiveness of the screen. Based on the discussions
23 with the adjoining property owners, we have increased
24 the density of the plantings and actually upsized the
25 material going in to get a little bit more of a -- an

1 initial effect from the screening.

2 MS. ROBESON: Okay.

3 BY MS. DLHOPOLSKY:

4 Q. Mr. Donnelly, just while you're on the
5 subject of adjoining property line, my understanding
6 from Park and Planning staff is that there was maybe a
7 portion of the fence that was in stream valley buffer
8 that staff required that had we remove and they didn't
9 want to see any additional fencing there; is that
10 correct?

11 A. Yeah, there was actually a -- like a
12 barb-wire or a three-wire fence that runs along, you
13 know, this southern property line.

14 Q. On the eastern end?

15 A. On the east -- yeah, on the eastern end of
16 the southern property line. Originally, we were going
17 to have -- remove all the fencing in its entirety
18 because Park and Planning had initially said we had to
19 take the fencing out of the stream valley buffer, so we
20 thought it would be prudent just to take it all out in
21 its entirety. The adjoining property owners asked that
22 we allow that fence to remain.

23 And so the portion outside the stream valley
24 buffer is -- is going to either be remaining or they'll
25 be replaced in kind if the (indiscernible).

1 MS. ROBESON: Now, he -- Mr. Palmer said
2 there was a fence that's going to go around the
3 facility, and I thought he said it was -- not
4 plastic --

5 MS. DLHOPOLSKY: PVC, I believe is what he --

6 MS. ROBESON: PVC. What's that going to look
7 like?

8 THE WITNESS: Well, there's an existing
9 chain-link fence that runs along the property to the
10 southwest along the previous post office. The proposed
11 fencing along the property is limited to the perimeter
12 fencing around the courtyard. And then the
13 courtyard -- the enclosure for the dumpster.

14 MS. ROBESON: Okay. How big is that fence?

15 THE WITNESS: The rest of the stuff
16 (indiscernible) met with planting material.

17 MS. ROBESON: Six-foot six inches?

18 THE WITNESS: Six-foot six inches, yeah.

19 MS. ROBESON: But it's not solid.

20 THE WITNESS: It is solid. The solid fencing
21 is limited to the area around the courtyard.

22 MS. ROBESON: Well, you mean the -- I thought
23 he said it went around the walkway. No?

24 THE WITNESS: I think what you're referring
25 to is the walkway that is part of the circular

1 courtyard. So the fencing is going to come out from
2 the corner of the building on the north -- northern
3 side around the entire -- you know, working
4 clockwise -- or count -- yeah, clockwise around the
5 building, working from the northwest corner of the
6 property and goes all the way around to the south,
7 eastern corner.

8 MS. ROBESON: Oh, but not in the southern
9 side. I see.

10 THE WITNESS: But not on the southern side.

11 MS. ROBESON: Okay.

12 THE WITNESS: This is limited to the --

13 MS. ROBESON: That was my question.

14 THE WITNESS: -- area that encloses the
15 residents -- grade separated between the residents and
16 the adjoining property.

17 MS. ROBESON: Okay.

18 THE WITNESS: And that's a six-foot-six solid
19 vinyl fencing, PVC fencing.

20 Referring back to Exhibit 37-E, which is the
21 detailed site plan, in order to describe the utility
22 connections, the property currently has water -- public
23 water and sewer on both Liberty Mill Road and Dawson
24 Farm Road. We're going to be providing an 8-inch fire
25 and domestic service connecting into Liberty Mill Road,

1 extending into the site and then with a reducer coming
2 into this building to provide the domestic service.

3 The fire hydrant locations were coordinated
4 with the fire marshal as well in order to maintain
5 coverage and access to the site.

6 Currently, there's an existing 30-inch sewer
7 main that runs along the southwest portion of the
8 property bordering the residential facility --
9 residential single-family houses and the post office.
10 We have got confirmation -- verbal confirmation from
11 WSSC, not an official ruling yet, that -- that the
12 grade and excavation over that line is going to be
13 adequate. There's not going to be any structural
14 compromise by any kind of grading or construction
15 activity over WSSC.

16 The existing water and sewer are adequate and
17 meet public -- adequate public facilities requirements
18 for the site.

19 BY MS. DLHOPOLSKY:

20 Q. Actually, I wanted to just circle back very
21 quickly in just a little bit more detail on a few
22 things that I had listed. So you had mentioned
23 ingress, egress, and I believe we had submitted a
24 request to MCDOT for a design exception in order to
25 allow, I guess, the co-location of our proposed

1 driveway. And did we receive a response from DOT on
2 that?

3 A. Yes. Yeah, we submitted a package with WSSC
4 and with Department of Permitting Services, DOT
5 relative to driveway locations. There's a required
6 separation between driveways --

7 MS. ROBESON: Including the tangents of --

8 MS. DLHOPOLSKY: Right.

9 THE WITNESS: Exactly. So there's a
10 requirement of 100-foot tangent between property
11 line -- between curb returns. And because of the
12 locations in the existing driveways for the school and
13 the current driveway for the residential property, they
14 asked us to submit a design exception, which we have
15 and it has gotten approved.

16 MS. DLHOPOLSKY: And our request for DOT is
17 in the record as 42-A-i but I wanted to go ahead and
18 just enter into the record the DOT response.

19 MS. ROBESON: Okay. Do you have any
20 objections to the -- entering the DOT response?

21 MR. SHUKLA: We haven't seen it so I don't
22 know whether --

23 MS. DLHOPOLSKY: Here you go.

24 MS. ROBESON: While he's looking at that, I'm
25 still only counting 33 employees. Now, my math could

1 be wrong, but I'd just like to know, you know, maybe
2 you could submit a list of employees and when their
3 shift -- when their scheduled shifts are.

4 MS. DLHOPOLSKY: Right. Absolutely. Yeah,
5 we can, because I know we're going to supplement the
6 record with the information on the noise and the
7 generator, so we can do a letter explaining that as
8 well.

9 MS. ROBESON: Okay. Any objections?

10 MR. SHUKLA: Can I ask Mr. Donnelly a
11 question just to be clear about what this exception is?

12 MS. ROBESON: Yes.

13 MR. SHUKLA: Is that affecting the top
14 leftmost corner of the property, this exception? The
15 four parking access referred are two at Germantown
16 Elementary School north and south entrance, and the
17 other two are, one for the former post office and then
18 the single-family residents.

19 Can you point out the single-family residents
20 that is highlighted here?

21 THE WITNESS: With the exception, it is
22 describing it as the existing driveway for the post
23 office. The requirement is to be 100 feet from the
24 closest radius. So it would be 100 feet to the north.
25 They're also measuring the two elementary school

1 driveways, both from the connection point to the
2 driveway going north toward Dawson Farm Road as well as
3 100-foot separation from the northernmost driveway
4 going southwest.

5 It would also pertain to both sides of the
6 driveway on the southernmost driveway for the
7 residential or for the elementary school, as well as
8 the existing residential driveway and the proposed
9 driveway. So there's 100-foot radiuses going in all
10 directions of those connection points to the driveway.
11 And the requirement is to have 100 feet from the
12 connection point, which is the tangency, to the
13 tangency that's -- the requirement is to have 100 feet
14 between those two tangent points. Because of the
15 existing driveways that are being retained, we couldn't
16 meet that 100-foot requirement and still get access to
17 the site. The access would force us onto Dawson Farm
18 Road, which we felt was a lot more hazardous based on
19 the turning movements onto Dawson Farm Road as well as
20 with a portion of the building to be moved further
21 south toward the residential properties.

22 So the access was really focused on that
23 northern boundary because of the grade changes in
24 relationship between the building and the residential
25 properties.

1 MR. SHUKLA: So what would have been the
2 ultimate arrangement if this was not achievable?

3 THE WITNESS: We -- it probably would have
4 forced us to get access from Dawson Farm Road, which is
5 a, like I said, four-lane divided roadway. You'd have
6 to cross a bike lane and a hiker/biker trail on that
7 northern side.

8 The entrance would probably have been, due to
9 grade, located as far to the north as we could.
10 There's also a driveway separation off -- the larger
11 the road, the greater the separation because of the
12 design scheme. So we would have had to come probably
13 close to the midpoint of the building, which would have
14 pushed the building closer to the south and then the
15 parking would have been more relative, you know, to the
16 townhouses and probably would have wrapped on the two
17 sides between the single-family residential and the
18 townhouses in order to get the building to fit.
19 Because the building is really kind of -- it's longer
20 than it is wide, so based on the shape of the property,
21 it pretty much has to be in this kind of configuration,
22 at least going north/south in this general geometry.

23 MS. ROBESON: Okay. Let me just say that the
24 question on whether to admit an exhibit is whether you
25 think it's inaccurate or somehow skewed. You can ask

1 those questions on cross-examination.

2 Do you have any reason to believe that this
3 is not MCDOT's position?

4 MR. SHUKLA: No, I think this is an MCDOT
5 directive.

6 MS. ROBESON: So I'm going to admit it as
7 Exhibit 52, MCDOT approval of design waiver.

8 (MCDOT Approval of Design Waiver was marked
9 and received in evidence as Exhibit No. 52.)

10 MS. ROBESON: All right. If you still have
11 questions, you can ask them when Mr. Donnelly finishes
12 his testimony.

13 All right.

14 THE WITNESS: Briefly talk about the forest
15 conservation requirements, too; I don't know if I hit
16 on that. At the site, we'll be planting .07 acres of
17 new forest within the stream valley buffer. The bounds
18 of the requirement is 0.49 acres will be satisfied
19 either through off-site forest bank or through a
20 (indiscernible) looping.

21 Based on the widths of the buffer area, it
22 just wasn't feasible to establish a forest area and
23 encumber the property on it, on either one of the
24 sides.

25 BY MS. DLHOPOLSKY:

1 Q. If I can -- I just have two more
2 clean-up-type things. I don't think you mentioned
3 lighting. I do believe our architect will be speaking
4 in more detail to it, but if you could just briefly --
5 just briefly describe the lighting.

6 A. Let me bring the exhibit up. You'll want to
7 see that anyway.

8 The exhibit I'm putting on the board is
9 Exhibit 37-I, which is the site lighting analysis plan,
10 schedule and details. We have limited the pole heights
11 to 16 feet for the standard arm fixed base. We have
12 located those street lights or the small
13 residential-type lights along the parking perimeter.
14 The remaining lights are just small bottled (ph) lights
15 that are three or four feet tall and located in the
16 courtyard area.

17 Based on the analysis and the photometrics,
18 we have added shield lights and cut-off fixtures in
19 order to maintain --

20 MS. ROBESON: To all of them?

21 THE WITNESS: To the 16-foot pole heights in
22 order to maintain a .1-foot (indiscernible) to the
23 property line in order to meet code.

24 BY MS. DLHOPOLSKY:

25 Q. And I just wanted to touch on signage kind

1 of. Ms. Robeson did have a question about that.

2 I believe our sheet, C-2.2, which is in the
3 record as -- I believe it's in the record as 37-F, has
4 a signage schematic on it and so I just wanted you to
5 review it for us briefly.

6 A. We're proposing a mound -- a ground monument
7 sign at the northwest side of the intersection as you
8 come into this main driveway. It's got a masonry base
9 with address and then the logo for the facility, Arden
10 Courts. It's six-feet wide by three -- by four feet,
11 it looks like. It's lit with an uplight from -- just
12 from a small spot and then it will be illuminated from
13 the interior, just be a small spot.

14 The sign will have to go through the code
15 requirements and have permitted separately so that they
16 will require a detailed submission and a signed permit
17 issued by the county.

18 MS. ROBESON: I guess my question was really
19 a legal one. And my question was, it's -- this is
20 not -- these do not have dwelling units, as you know.

21 MS. DLHOPOLSKY: Right.

22 MS. ROBESON: And the criteria for extra
23 signs, you can always get a variance and we can make
24 that a conditional -- a condition of approval, but the
25 criteria for extra signage is multi-unit living. So

1 that would apply to, you know, apartment buildings but
2 not necessarily to an assisted-living facility.

3 So my question is really more a legal one,
4 because the only reference in the code to multi-unit
5 living doesn't apply to an assisted living facility.
6 And you don't have to answer that now, but that was my
7 question.

8 MS. DLHOPOLSKY: Right, right. Yeah, and,
9 obviously, I believe that staff had stated in their
10 response to you that, you know, I think we all were
11 looking at prior recent cases, and for example, the
12 Brandywine case where -- but I understand your question
13 certainly.

14 MS. ROBESON: There were so many things going
15 on in Brandywine that --

16 MS. DLHOPOLSKY: Yes, we are happy we're not
17 them.

18 We would be happy to -- I mean, obviously, we
19 will be submitting a letter into the record with some
20 supplemental information so I'd be happy to address
21 that.

22 MS. ROBESON: Okay. If you could address
23 that as well.

24 MS. DLHOPOLSKY: Absolutely.

25 THE WITNESS: I guess the last couple items I

1 guess I want to go over is the -- how the site meets
2 the required development standards and the requirement
3 of the conditional use zone.

4 There is a summary in the staff report --

5 MS. ROBESON: Do you agree with that summary?

6 THE WITNESS: I do, yeah.

7 MS. ROBESON: Can we leave it there or --

8 THE WITNESS: I was going to say, that would
9 probably be the easiest way to do it.

10 MS. ROBESON: Okay.

11 MS. DLHOPOLSKY: That's fine with us.

12 MS. ROBESON: Unless you want to go
13 through --

14 THE WITNESS: I guess I will say that, also
15 in the staff report, is there recommendations that came
16 out of our land use report that does describe the
17 compliance with the master plan. There's a number
18 specific -- pieces of language that describe within the
19 master plan, that this particular property lies within
20 the Clopper (ph) analysis zone, which --

21 MS. ROBESON: Yes, I saw that.

22 THE WITNESS: It's only a seven-acre piece
23 within the study area that specifically recommended
24 conditional or (indiscernible) exception uses similar
25 to the one we're proposing.

1 MS. ROBESON: Yes, they said elder care -- I
2 mean, elderly day care, I think, and this is -- you're
3 saying this is similar.

4 THE WITNESS: It's consistent with the --
5 it's consistent with the master plan as far as the use
6 and intended function for the zone.

7 MS. ROBESON: Okay.

8 MS. DLHOPOLSKY: And I was making a note to
9 myself about additional information to submit, so I
10 just wanted to confirm that we agreed that we agree
11 with the conformance with the zoning ordinance section.

12 And did we touch on whether this is
13 harmonious with the surrounding neighborhood, or are we
14 agreeing with staff?

15 THE WITNESS: We're agreeing with staff, but
16 this is my opinion as well.

17 MS. ROBESON: Okay.

18 MS. DLHOPOLSKY: So in the interest of time,
19 unless --

20 MS. ROBESON: No, I just -- I would like you
21 to just be -- did staff simply adopt your land planning
22 report? Is that --

23 THE WITNESS: A lot of the language was
24 plucked out of the land planning report.

25 MS. ROBESON: I had the feeling.

1 MS. DLHOPOLSKY: And the justification
2 statement.

3 THE WITNESS: The justification statement,
4 yeah.

5 MS. ROBESON: Okay. Do you have anything to
6 add to that?

7 THE WITNESS: The only thing that I didn't
8 really see in the staff report is that -- that I
9 believe, it's a really strong use because it's a
10 transitional use between the multi-family detached
11 dwellings to the south that the residents to the -- to
12 the south, west, and then the school to the north as
13 far as it's --

14 MS. ROBESON: Can you pull up the surrounding
15 area map there for one second? And can you just
16 highlight what those --

17 THE WITNESS: The zone -- yeah.

18 MS. ROBESON: Some day we'll have a fancier,
19 maybe like the planning board, and then you just click.

20 MS. DLHOPOLSKY: Save a lot of paper.

21 MS. ROBESON: Yeah, we're like --

22 Show me where the multi-family is, please.

23 THE WITNESS: It's the -- it's single-family
24 detached -- attached. It's the townhouses.

25 MS. ROBESON: Attached. Oh, okay. I just

1 wanted to make sure I understood because I didn't think
2 I saw that.

3 THE WITNESS: Yeah, it's the southern
4 boundary.

5 MS. ROBESON: Okay. All right. Thank you.

6 And what's below it? Are those single --
7 that neighborhood there, it looks like one subdivision
8 south. Is that single-family or detached?

9 THE WITNESS: This is single-family detached.

10 MS. ROBESON: Oh, okay. Are there any plans
11 for the post office?

12 THE WITNESS: Not to my knowledge. You know,
13 it's currently vacant. It is zoned R-200 so...

14 MS. ROBESON: Okay.

15 MS. DLHOPOLSKY: And I believe it is actually
16 owned by a private property owner.

17 THE WITNESS: Private property owner that had
18 a long-term lease with the post office.

19 MS. ROBESON: Okay. Thanks.

20 MS. DLHOPOLSKY: All right. I'm going to
21 move to further (ph) proof conclusions. I didn't have
22 any more specific questions for Mr. Donnelly at this
23 time.

24 BY MS. DLHOPOLSKY:

25 Q. So Mr. Donnelly, based on your testimony and

1 all the materials that have been submitted in your
2 expert report, does the conditional use comply with the
3 standards and requirements set for the use and zoning
4 in Article 59.4, 59.3, and 59.6 of the zoning
5 ordinance?

6 A. Yes.

7 Q. And in your opinion, will the conditional use
8 substantially conform with the 1989 Germantown master
9 plan?

10 A. Yes.

11 Q. Great. And in your opinion, will the
12 conditional use be harmonious with and not alter the
13 character of the surrounding neighborhood in a manner
14 and consistent with the plan?

15 A. Yes, that's good.

16 Q. And in your opinion, will the conditional
17 use, when evaluated in conjunction with existing and
18 approved conditional uses and any neighboring
19 residential detached zone, increase the number,
20 intensity, or scope of conditional uses sufficiently to
21 affect the area adversely or alter the predominantly
22 residential nature of the area?

23 A. No.

24 Q. And I think actually this may have been one
25 section where we might have just very briefly glossed

1 over it, but can you just mention if there are any
2 improved conditional uses in the area?

3 A. There is no current open conditional uses on
4 the record. There was one that was previously granted
5 that was -- that expired.

6 MS. ROBESON: Okay.

7 BY MS. DLHOPOLSKY:

8 Q. And in your opinion, will the conditional use
9 be served by adequate public services and facilities
10 including schools -- well, I guess schools is not
11 applicable -- but police and fire protection, water,
12 sanitary, sewer, public roads, storm drainage, and
13 other public facilities?

14 A. Yes.

15 Q. And in your opinion, will the conditional use
16 cause undue harm to the neighborhood as a result of a
17 noninherent adverse effect alone or is the combination
18 of an inherent and noninherent adverse effect in any of
19 the following categories: The use, peaceful enjoyment,
20 economic value, or development potential of abutting
21 and confronting properties or the general neighborhood;
22 traffic, noise, odors, dust, illumination, or a lack of
23 parking; or the health, safety, or welfare of
24 neighboring residents, visitors, or employees?

25 A. No.

1 Q. And are you with staff's findings with regard
2 to these matters?

3 A. Yes.

4 Q. And in your expert opinion, is the
5 conditional use and development suitable for this site
6 and compatible with the neighborhood?

7 A. Yes.

8 MS. DLHOPOLSKY: Great. Thank you,
9 Mr. Donnelly.

10 MS. ROBESON: Thank you. Do you have any
11 questions for Mr. Donnelly?

12 MR. SHUKLA: Several, actually.

13 CROSS-EXAMINATION

14 BY MR. SHUKLA:

15 Q. See if we can start with -- the first
16 question is about light poles.

17 A. The what? I didn't hear you.

18 Q. Light -- light poles. What we reviewed with
19 Mr. Palmer was the reduction from 20 feet to 16 feet,
20 which you mentioned. But last week when we were here
21 to review the plans, it still showed 20 feet high for
22 the poles. Is that -- the plan is out of date compared
23 to what we're discussing today?

24 A. The current set of plans on file are 16 feet.

25 Q. Okay.

1 A. So the plan of record is 16 feet.

2 Q. The plan of record is 16 feet, okay.

3 The second thing we had requested was to see
4 if these lights can be equipped with sensors so they're
5 not at full illumination all the time, delumination
6 when they're not needed and maybe with proximity
7 sensors when there's motion or anything like that, it
8 turns on.

9 And I have not seen any information to see
10 that is supportable.

11 A. I mean, I can only testify for the evaluation
12 on the plan. It was actually done by the architect.
13 He's here and he'll be testifying immediately after me.

14 MS. ROBESON: Okay.

15 THE WITNESS: As far as the -- what I have
16 testified to is the light levels based on the plan
17 meeting code and the fact that we'll have the cut-off
18 light, which is a shield on the backside of the fixture
19 in order to minimize the -- the spread to the backside
20 of the light.

21 BY MR. SHUKLA:

22 Q. Okay. Because of the change in grade,
23 what -- you know, despite whatever the shrubs, etc.,
24 you put, our bedrooms will have direct overview of this
25 facility and lights. So for us, it is important to

1 minimize any light pollution. Summer months we have
2 to --

3 MS. ROBESON: Okay, okay. We'll get there.
4 We'll get there.

5 BY MR. SHUKLA:

6 Q. So can you -- can we request the sensors?

7 MS. ROBESON: You can request. If you're not
8 the person, you may have to ask the architect, who I
9 think is Mr. Dokken.

10 UNIDENTIFIED MALE SPEAKER: Dokken, yeah.

11 MS. ROBESON: Dokken.

12 -- about that.

13 MR. SHUKLA: Okay.

14 MS. ROBESON: He's the expert in there.

15 MR. SHUKLA: Sorry. I'm not exactly in tune
16 with --

17 MS. ROBESON: No, it's okay.

18 MR. SHUKLA: -- what's going on.

19 MS. DLHOPOLSKY: It's a lot to --

20 MS. ROBESON: You're actually doing quite
21 well, I'll have to say. I don't know what you do for a
22 living but you may have missed your calling.

23 MS. DLHOPOLSKY: You may not want to do it
24 after sitting through a hearing like this, though.

25 BY MR. SHUKLA:

1 Q. I can answer that but the second question --
2 second question about the storm management. So before
3 I go on --

4 A. Actually -- one more --

5 MS. ROBESON: The --

6 THE WITNESS: The witness after me is the --

7 MS. ROBESON: I'm going to recommend that you
8 wait for the civil, because he is the expert in the
9 stormwater management.

10 MR. SHUKLA: All right.

11 BY MR. SHUKLA:

12 Q. Did you mention site planning and site
13 engineering, currently with no occupants in the
14 property, we don't care about the lack of fencing
15 thereof or, you know, whatever the condition it is.
16 But we would actually request proper fencing because,
17 you know, there is -- it's not just residents. It's
18 visitors and all kinds of other people who will access
19 this facility?

20 MS. ROBESON: Okay. I need a question in
21 there. I guess the question is, Is fencing for
22 security -- you have answered -- am I getting this
23 right? You have answered the question that a fence at
24 the property line wouldn't be -- wouldn't do much. Is
25 fencing for security purposes a possibility?

1 I note that they do have to -- you do have to
2 stay out of the buffer. So if you can't answer that at
3 this moment, you know, you don't have to. You can come
4 back -- after they hear your testimony, they can come
5 back on rebuttal, and that may give them time to sort
6 of moll some of these things through.

7 MR. SHUKLA: Okay.

8 MS. ROBESON: But is your question at this
9 point for about security?

10 MR. SHUKLA: Both security as well as both
11 light and noise pollution. Because if I can ask you to
12 look at the Exhibit 37-K --

13 MS. ROBESON: Are you sure you're not a
14 lawyer?

15 MR. SHUKLA: No. If I can --

16 MS. ROBESON: Yeah.

17 MR. SHUKLA: You know, the parking is limited
18 off property here in this area. There will be
19 continuous traffic going through this loop.

20 MS. ROBESON: And your question is what?

21 MR. SHUKLA: And -- and -- as the cars come
22 in, we'll see lights and noise.

23 MS. ROBESON: So your question is, Are you
24 going to -- what are you going to see from headlights
25 and traffic?

1 MR. SHUKLA: Headlights and noise and what
2 can be done to --

3 MS. ROBESON: Can you answer that,
4 Mr. Donnelly?

5 THE WITNESS: I mean, my initial reaction is
6 that drop-off area isn't going to see a lot of traffic
7 in the evenings, except maybe during the winter months
8 when it gets dark early. I think that loop is mainly
9 to facilitate deliveries and facilitate drop-off for
10 maybe an elderly person or the FedEx truck or something
11 like that. But the majority of the people are going to
12 park in the parking lot closer to the -- to Liberty
13 Mill Road, park their car and walk to the front door.

14 BY MR. SHUKLA:

15 Q. Could I ask you to show me the cross-section
16 that you had so I can explain my concern?

17 A. Yeah. So we're referring back to Exhibit
18 37-D.

19 Q. Correct.

20 You were saying the original fence at this
21 height because of the drop; is that correct?

22 A. Correct.

23 Q. So this is the basement, this is our living
24 room where we most -- spend most of the evenings, and
25 in the bedrooms. I see any light or any noise for that

1 matter to be unblocked by any evergreens or any shrubs
2 or anything else you put up. So to be -- there would
3 be no shield?

4 MS. ROBESON: Or will there be. In the form
5 of a question.

6 A. The cross-section really demonstrates the
7 differential in grade. It doesn't really know the
8 landscaping that's being proposed. This exhibit is
9 really just kind of showing the grade differential
10 between the meshing of the two properties and the grade
11 differential between your backyard and the property.
12 So that the landscaping is really -- they have been
13 omitted from this cross-section just so it's a little
14 clearer how the grade relationship works and the
15 difference in massing of the building between those
16 buildings and the adjoining residential properties.

17 So this is somewhat of an illustrative
18 cross-section. It doesn't depict the landscaping as
19 being proposed on Exhibit 37-K.

20 Q. Okay. I was fooled a little bit by those --

21 A. Yeah, that's kind of just to give a
22 foreground. It's not really a true cross-section.
23 It's really an exhibit that shows differential in
24 grades and massing.

25 Q. So did you -- when you're planning for this,

1 did you take into consideration any means to reduce
2 light and noise flooding into our --

3 A. Yeah, we have located the -- the planting
4 masses as high on that slope as we could in order to
5 maximize the height being proposed and the ultimate
6 mature height relative to --

7 MS. ROBESON: Maybe it would be helpful to
8 show him on the cross-section where the larger trees
9 are going to be. Do you see what I'm saying?

10 THE WITNESS: Mm-hmm, mm-hmm.

11 Yeah, the cross-section is talking about the
12 center of this cul-de-sac, the center of the drop-off
13 area. So as you're coming through this portion of the
14 site, the property line is right about here. It's
15 about midway between the two structures. See this
16 small black figurine here, that's a person that's about
17 six-feet high. So the fence will be about equivalent
18 to that height.

19 So you can see, as a six-foot fence at
20 this -- bottom of this slope wouldn't really be
21 effective to the cars or the structure itself because
22 the top of the fence would essentially be even with the
23 curb line or maybe even a little bit lower.

24 So we put the planting material closer to the
25 top of the slope in this area in order to maintain the

1 maximum separation between --

2 MS. ROBESON: And can you estimate for him
3 how high at maturity the larger plantings are going to
4 be?

5 THE WITNESS: Yeah, the evergreens will be
6 about 20-feet tall and then the shade trees will be
7 between 30 and 40.

8 MS. ROBESON: Okay. So can you just give a
9 rough guesstimate on the cross-section as to how high
10 they're going to be? Rough.

11 THE WITNESS: I was going to draw on here.

12 MS. ROBESON: Well, you can draw -- we can
13 make that an exhibit, if you want to draw on it.

14 THE WITNESS: I'll just use, say, the top of
15 my pen and as the height of the approximate tree.

16 MS. ROBESON: Okay. But then we have got to
17 describe where that lands. So go ahead and...

18 THE WITNESS: All right. Let me figure this
19 out then.

20 I'd say the shrubs or the evergreen trees and
21 the shade trees will be above the peak of the roof.

22 MS. ROBESON: Okay.

23 THE WITNESS: And then the shrubs will be
24 varying heights between four and eight feet at mature
25 height. We located the shrubs at this -- close to the

1 curb line as we can to maximize the separation between
2 the car and the vehicles.

3 BY MR. SHUKLA:

4 Q. Mr. Donnelly, how many years will it be
5 before the evergreens and the shrubs are at a height
6 that will prevent --

7 A. Mature height is typically eight to ten
8 years, is when they -- when they were expected to be
9 fully mature. At the initial planting, there -- the
10 trees will be -- they call it three-and-a-half-inch
11 caliper, which is the diameter of the trunk, and that
12 will be about 14 to 18 feet tall at installation. 14
13 to 16 feet high in installation.

14 The evergreens are -- (indiscernible) how
15 large the evergreens are. I want to say it's 8 feet.
16 Initial height at 8 feet, but let me verify that.

17 Yes, 7 to 8 feet in height at the original --
18 at the initial planting. So that's 7 or 8 feet on that
19 slope should screen the curbing and the cars during the
20 initial installation of the plant material. It will
21 fill in around the perimeter, but there will be, you
22 know, gaps until the entire base of the shrub -- the
23 massing fills in.

24 BY MR. SHUKLA:

25 Q. And that, you expect to be eight to ten

1 years?

2 A. For the evergreens, it's probably going to be
3 sooner than that. We chose, you know, faster-growing
4 material. That's probably going to be more like three
5 to five. You'll see a complete continuous screen as
6 opposed to small gaps between the openings.

7 Q. So given that -- and I understand your
8 comment about the fence issue due to grading -- would
9 it not be possible -- did you consider putting the
10 fence around that loop so that it's at the same level
11 and then that six-foot six-inch loop -- six-feet
12 six-inch height will surely protect from the light and,
13 to a certain extent, noise pollution from the cars, any
14 vehicle going through that?

15 A. We did -- we did talk about it internally,
16 and I -- the reason why we didn't propose it is at
17 that -- this entire area is within a WSSC easement.
18 It's about as wide as from the property line to about
19 three-quarters of the way up the slope, is an easement
20 that's held by the Washington Sanitary Suburban
21 Commission for the sewer easement -- sewer piping.

22 So they have -- we'd have to ask permission
23 from them to put it in there, in their space.

24 MS. ROBESON: Well, is the loop -- the loop
25 is what I keep calling it -- is that in the -- that's

1 not in the WSSC easement, is it?

2 THE WITNESS: It's not. It's not. It's
3 right to the edge.

4 MS. ROBESON: I didn't think they'd let you
5 put --

6 So I guess the question is, Can you put it
7 around the loop? I'm just asking. I'm not --

8 THE WITNESS: We could. We would just have
9 to get permission from WSSC to put a structure in their
10 right-of-way.

11 MS. ROBESON: So if you made it border the
12 loop, it would be in their right-of-way?

13 THE WITNESS: The easement --

14 MS. ROBESON: Now you're looking at 37-E.

15 THE WITNESS: 37-E, correct. Exhibit 37-E.
16 In the 40-foot easement runs along the -- about the
17 backs of the parking spaces on the southeast side of
18 the property, and it touches the back end of the center
19 of the cul-de-sac, the southern end of the drop-off
20 cul-de-sac area.

21 MS. ROBESON: So the cul-de-sac is in the
22 WSSC easement?

23 THE WITNESS: Yes.

24 MS. ROBESON: And do you have permission for
25 that?

1 THE WITNESS: We do. We're getting
2 permission now. But that's not considered --

3 MS. ROBESON: So can you add a fence to that
4 permission?

5 THE WITNESS: Well, the parking is not
6 considered a structure. The fence is. Since it's over
7 a nominal height, it's considered structure.

8 MS. ROBESON: So what does that mean?

9 THE WITNESS: Routinely, you can get -- you
10 can put almost anything over top of a WSSC easement.
11 You see paving over top of WSSC easements all the time
12 in the public right-of-way and everywhere else. They
13 just don't want a structure, which is something with a
14 foundation or a footer, is typically how they define
15 it.

16 So they do allow it. We just have to get
17 their permission to do it. And it's not -- it's not a
18 guaranteed --

19 MS. ROBESON: Right. You can't promise it.

20 THE WITNESS: We can't promise that, no.

21 MS. ROBESON: Right. I understand.

22 BY MR. SHUKLA:

23 Q. Will you at least make an attempt to
24 (indiscernible) current existing pending approval?

25 A. That would be up to --

1 MS. ROBESON: That may be a question -- that
2 may be a question for -- I'm thinking on -- if you want
3 to recall Mr. Palmer on rebuttal, and that will give
4 you guys time to talk it over and, you know, say what
5 you want to say.

6 It's clearly not -- it wouldn't be guaranteed
7 because it would be up to WSSC, and they can be a
8 little -- a little difficult sometimes.

9 Okay. Any other questions?

10 BY MR. SHUKLA:

11 Q. I think the last question was about the
12 existing plan for the shrubs and the trees. How will
13 they be maintained if there is a fall-off or any
14 problems with the tree?

15 A. I mean, that would probably be something for
16 the owner, as far as the maintenance and their program
17 maintenance would go. The first year of installation
18 is usually guaranteed by the contractor and then it's
19 the owner's responsibility to take on maintenance.

20 But their facilities have always been
21 well-maintained. They have always got --

22 MS. ROBESON: We can always place maintenance
23 because I'm assuming that it would occur anyway as a
24 condition of approval. If that -- you know, I'll let
25 you address it.

1 MS. DLHOPOLSKY: When we call Mr. Palmer
2 back, we can address it, but yes, I think we would be
3 fine with that as a condition.

4 MS. ROBESON: Anything else?

5 MR. SHUKLA: No, I think I have covered what
6 I wanted. Anything else?

7 MS. ROBESON: Any -- do you have any
8 redirect?

9 MS. DLHOPOLSKY: I just -- very quick
10 clarification.

11 REDIRECT EXAMINATION

12 BY MS. DLHOPOLSKY:

13 Q. Mr. Donnelly, I believe you mentioned that
14 the spruce trees were proposed to be planted at 7 to 8
15 feet height at installation, but in the applicant
16 submission dated October 14th, which is Exhibit 42, our
17 letter -- I believe we stated that the spruces would be
18 proposed to be planted at 9 to 10 feet in height. And
19 so I just wanted to see if you agree with that
20 clarification.

21 A. I don't know if you can get that material
22 readily available in that size, so we provided a -- the
23 smaller size on the -- on the actual plan. The plan is
24 currently showing 7 to 8. I just don't know if you can
25 get that size material and guarantee that size material

1 for delivery.

2 Q. Okay. So 7 to 8?

3 A. I'm thinking 7 to 8 feet is probably more
4 practical.

5 Q. Okay.

6 MS. DLHOPOLSKY: And that's all my questions
7 for Mr. Donnelly. We'll call Mr. Palmer back to speak
8 briefly about this.

9 MS. ROBESON: Okay. Thank you, Mr. Donnelly.
10 Let me do this: Who are you calling for your
11 next witness?

12 MS. DLHOPOLSKY: We plan to call Mr. Steve
13 Crum, who is our registered civil engineer. Our list
14 of questions for him is relatively brief because it
15 pertains to storm drainage and stormwater management,
16 sight distance.

17 MS. ROBESON: Okay. It's a little after noon
18 now. Do you have -- if we break for lunch for a
19 minute, do you have the option to stay?

20 MR. SHUKLA: I'm prepared to stay, yeah.

21 MS. ROBESON: Okay. So what we're going to
22 do is break for an hour for lunch, so that will be
23 1:10. Please be prompt returning.

24 And we'll continue with Mr. Crum. All right?

25 So for now, we're off the record. We'll be

1 back at 1:10. Thank you.

2 (A brief recess was taken.)

3 MS. ROBESON: I apologize. I'll make it
4 1:15. I won't short you on your lunch hour.

5 I had a couple of things that we have
6 follow-up information on, and some issues. We have
7 talked about some potential conditions. Before we
8 break for lunch, because this is your opportunity to
9 speak with your client, I -- I would like a list, but
10 if you can't do it today, that's fine -- of the -- the
11 staff -- all the individual staff shifts and whether
12 you would accept that as a condition of approval.

13 The outstanding information, just going
14 through my notes, is the position on signage, noise
15 generator information. And I would like you, at some
16 point -- and maybe not today because we're already
17 keeping the record open -- if you can provide some kind
18 of plan for overflow visitor parking, that would be
19 helpful as well.

20 So that's where I am. I just wanted to say
21 that before we broke for lunch. There are some issues
22 brought up about what could or should be done on the
23 landscaping, so you may want to think about that, too,
24 as far as -- all right. That's all I had. I just --
25 if I have missed something -- oh, and maybe providing a

1 good time for trash pick up.

2 And I do have a question for the civil
3 engineer, and it is going to be -- staff didn't really
4 comment on some of the things that I have to find, like
5 the safety of that -- the loading facility. They just
6 didn't put it in their report, but I have to -- let me
7 get what they didn't find. But I have to make a
8 finding. So the loading design standards, which
9 include safety and turnaround, they didn't say anything
10 about that.

11 I had some questions -- okay. We already had
12 the landscape architect. They didn't -- oh, they
13 didn't really address a lot of the parking space design
14 issues either. So I don't know how much you want to go
15 into it. I assume it's been designed in accordance
16 with article 6 but I need -- I need somebody to say.
17 Staff didn't, so I need somebody to say that
18 everybody's hunky-dory in that regard.

19 Okay. So now I'm saying, okay, 1:15. All
20 right?

21 MS. DLHOPOLSKY: Thank you.

22 MS. ROBESON: We're off the record.

23 (A lunch recess was taken.)

24 MS. ROBESON: Okay. We are back on the
25 record. It's 1:15.

1 Does the applicant want to call its next
2 witness?

3 MS. DLHOPOLSKY: Yes. And just what I wanted
4 to ask your preference, Ms. Robeson, is would you like
5 us to call our next witness and then come back on just
6 the items that you had listed right before we broke at
7 the end --

8 MS. ROBESON: No. At that -- when you come
9 in on rebuttal, we can address the other stuff.

10 MS. DLHOPOLSKY: Okay. I just wanted to be
11 clear. Okay.

12 MS. ROBESON: Okay.

13 MS. DLHOPOLSKY: So we would like to call
14 Steve Crum with Macris, Hendricks and Glascock.

15 MS. ROBESON: Mr. Crum, please raise your
16 right hand.

17 STEPHEN CRUM,
18 the witness, after having been duly sworn, was examined
19 and testified to as follows:

20 MS. ROBESON: Thank you. Please state your
21 name and address for the record.

22 THE WITNESS: My name is Stephen Crum. My
23 business address is 9220 Wightman Road, Montgomery
24 Village, Maryland 20877.

25 DIRECT EXAMINATION

1 BY MS. DLHOPOLSKY:

2 Q. Thank you, Mr. Crum.

3 And can you just briefly state what your
4 profession is, what your expertise is in, and have you
5 been qualified as an expert in those fields before the
6 hearing examiner previously?

7 A. Yes. I'm a civil engineer. I have a license
8 from the State of Maryland and the District of
9 Columbia. I have been practicing civil engineering for
10 33 years, and I have qualified before the hearing
11 examiner in the past.

12 MS. ROBESON: Okay. Does anyone have an
13 objection that Mr. Crum is not an expert in civil
14 engineering? He has qualified before this body before.
15 And with that, I'm going to qualify you as an expert in
16 civil engineering.

17 THE WITNESS: Thank you.

18 MS. DLHOPOLSKY: Thank you.

19 BY MS. DLHOPOLSKY:

20 Q. And Mr. Crum, are you familiar with this
21 conditional use application?

22 A. I am.

23 Q. Are you familiar with and have you visited
24 the property that is the subject of this application?

25 A. I have.

1 Q. And have you visited and are you familiar
2 with the area surrounding the subject property?

3 A. I am.

4 Q. And are you familiar with the R-200 zoning
5 classifications and the general and specific
6 requirements of the zoning ordinance with regard to a
7 residential care facility as a conditional use in the
8 R-200 zone?

9 A. Yes, I am.

10 Q. And have you and your firm been employed by
11 the applicant to provide certain services with respect
12 to this application? And if so, please describe.

13 A. We have a number of services primarily under
14 the broad categories of civil engineering, landscape,
15 architecture design, and land surveying services.

16 Q. And I know we touched on a few of those
17 things previously, so we will be using you to
18 supplement some of that testimony.

19 So have you analyzed the suitability of the
20 subject property for the proposed conditional use from
21 a civil engineering standpoint? And if you'd just
22 mention those specific things that you'll be touching
23 on.

24 A. Certainly. Yes, I have looked at the
25 suitability of the site, and I believe that it is

1 suitable and the issues that I'm primarily interested
2 in are the infrastructure, water, sewer, storm drain,
3 and stormwater management.

4 Q. And if it works for everybody, Mr. Crum, I'll
5 let you go ahead and just narrate your -- your analysis
6 and your findings with regard to those specific items.

7 A. Sure. Returning to our favorite exhibit of
8 the day, 37-E, the project, as we mentioned in the
9 past, is located at the intersection of Liberty Mill
10 Road and Dawson Farm Road. And we have access to
11 publicly maintained water, sewer, and storm drain
12 mains. The water main that we're going to connect to
13 is --

14 MS. ROBESON: Hold on one second.

15 THE WITNESS: Sorry.

16 MS. ROBESON: That's okay. They're shorter
17 than you think, the wires.

18 Okay. For the record, the -- we just had a
19 microphone issue.

20 Okay. Go ahead, Mr. Crum.

21 A. So to provide the new facility with water
22 supply, we're going to connect to an existing main in
23 Liberty Mill Road. That connection will be made along
24 the access of our driveway. It will be a new 8-inch
25 water connection and that will serve both domestic and

1 fire protection requirements for the building.

2 Similarly, the sanitary sewer connections are
3 with some out of the building towards the south. There
4 is a WSSC-maintained sanitary sewer that crosses
5 Liberty Mill Road, runs parallel to Liberty Mill Road,
6 and then runs in an easement that has been mentioned
7 earlier along the southern boundary of the property and
8 then goes off site into the stream valley. And we will
9 be making a connection off the end of what's been
10 referred to up to this point as the loop at the end of
11 our driveway.

12 The storm drain system, similarly, there are
13 two drain systems that are immediately abutting the
14 property. There's a storm drain system that was
15 constructed with Dawson Farm Road and drains towards
16 the south in an easement behind the townhouses to the
17 east of the subject property. And there's a storm
18 drain system publicly maintained that's in Liberty Mill
19 Road, again, that crosses Liberty Mill, that runs
20 parallel to Liberty Mill north to south, and then runs
21 off site in an easement across the former postal
22 facility building and then that gets into an open
23 channel that eventually feeds into the stream channel
24 that's -- the stream valley buffer that's to the
25 southeast of the property.

1 All of our -- or most of our impervious
2 surfaces will be connected through a new storm drain
3 connection along the southern boundary and we're going
4 to make an improvement. We're going to upsize that
5 last run of pipe from an existing 24-inch pipe to a
6 36-inch pipe, and we're going to make improvements to
7 the energy dissipation, riprap at the end of that.

8 So that sort of covers water, sewer, storm
9 drain.

10 With respect to stormwater management, we are
11 providing environmental site design to the maximum
12 extent practicable. We have a --

13 MS. ROBESON: MEP.

14 THE WITNESS: MEP.

15 MS. ROBESON: ESP to the -- or no --

16 THE WITNESS: ESP to the MEP, yes.

17 MS. ROBESON: Yeah, right.

18 THE WITNESS: We have conceptual and site
19 design approval from Montgomery County Department of
20 Permitting Services. These facilities are located
21 primarily --

22 MS. ROBESON: Do you gentlemen -- I know you
23 had questions about this. Do one or both of you wish
24 to come up?

25 MR. SHUKLA: That's fine.

1 MS. ROBESON: You can see from -- okay.

2 Go ahead. I'm sorry, Mr. Crum.

3 THE WITNESS: That's okay.

4 MS. ROBESON: And you told us about the
5 facilities, where the facilities are.

6 THE WITNESS: The ESD facilities that we're
7 proposing are primarily micro bio retention facilities,
8 and we're also proposing a modest amount of pervious
9 pavement. Due to the normal drainage patterns for the
10 site, it's sort of from north to south, most of the
11 facilities are located on the southern portion of the
12 property. Again, there's a number of facilities and
13 the pervious pavement will be located in the parking
14 areas on the north side of our parking facility.

15 The underdrains from those facilities will be
16 connected either through separate outfalls or will be
17 connected to the main storm drain system.

18 MS. ROBESON: And -- okay. What type of
19 storm, just for everybody's benefit, how big a storm do
20 those facilities treat for?

21 THE WITNESS: The facilities treat for a
22 water quality storm. It's actually not a storm. It's
23 actually a -- an amount of runoff, and typically that's
24 1 inch.

25 MS. ROBESON: Right.

1 THE WITNESS: And the facilities are designed
2 and the storm drain system is designed to accommodate
3 the ten-year storm, which is what is the normal
4 practice here in Montgomery County for storm drain
5 design.

6 So the most polluted water -- excuse me --
7 enters the facility. The first inch is treated.
8 Anything above that goes into an overflow structure,
9 which is then connected to the storm drain system.

10 MS. ROBESON: Okay. Thank you.

11 THE WITNESS: Sure.

12 BY MS. DLHOPOLSKY:

13 Q. Great. Thank you, Mr. Crum.

14 And can you -- we already previously had
15 submitted into the record the MCDOT letter approving
16 the design exception. But if you could very briefly
17 speak with respect to sight distance and your findings
18 with respect to whether there's adequate sight
19 distance.

20 A. Sure. I think Mr. Donnelly talked about the
21 design exception and the Department of Transportation's
22 criteria for 100 feet between driveways, which is
23 impractical here, and we were granted the design
24 exception. We did go out and measure the actual sight
25 distances at both the proposed driveway and the

1 existing driveway to remain.

2 Q. Need some water?

3 A. I think I'll be all right.

4 Sight distance is based on a criteria that
5 primarily -- the posted speed limit, however, is the
6 street is -- has a higher functional classification
7 than what the speed limit dictates, you're required to
8 use the higher functional classification.

9 Liberty Mill Road is currently signed for 30
10 miles an hour. That's primarily because of the
11 elementary school across the street, and -- but it is
12 functionally -- it functions as a primary residential.
13 So the requirement for sight distance is 250 feet in
14 each direction, looking right and left, when you're in
15 a vehicle sitting in the driveway. So we measured in
16 the field for the -- get this correct -- for the
17 proposed driveway location, which is the new driveway
18 that we would be building, the sight distance to the
19 right is 603 feet and to the left is 584 feet. And at
20 the existing driveway to remain to serve the
21 residential dwelling, it's 472 feet to the right and
22 697 feet to the left. So it clearly meets --

23 MS. ROBESON: And you submitted the SHA --

24 MS. DLHOPOLSKY: Yeah, I believe that the
25 sight distance evaluation --

1 MS. ROBESON: Yeah, the sight distance.
2 That's in the record.

3 MS. DLHOPOLSKY: It looks like it's Exhibit
4 19.

5 MS. ROBESON: Oh, okay.

6 THE WITNESS: As part of the preliminary
7 subdivision process, the Department of Transportation
8 will review this and we're pretty confident that
9 they'll approve it.

10 MS. DLHOPOLSKY: And I'm actually going to
11 hit you with two more questions, and it was things that
12 specifically Ms. Robeson had mentioned. I think it was
13 in some questions you had e-mailed over to Park and
14 Planning staff, Ms. Robeson, last week, and Planning
15 staff responded but we thought it would be helpful to
16 talk about the loading design standards and how we
17 satisfy those.

18 And I believe we had conducted, after we
19 received your questions, Ms. Robeson, a truck-turning
20 analysis and exhibit if you would like to refer to
21 that.

22 MS. ROBESON: Okay. Is that in the record?

23 MS. DLHOPOLSKY: It is not.

24 MS. ROBESON: Okay. Then let's put it in the
25 record.

1 MS. DLHOPOLSKY: Yes.

2 MS. ROBESON: So that would be 53,
3 truck-turning analysis for loading area.

4 Any objections?

5 (Truck-turning Analysis was marked and
6 received into evidence as Exhibit No. 53.)

7 MS. ROBESON: Okay. Go ahead, Mr. Crum.

8 THE WITNESS: Okay. We used an SU-30 design
9 label, which is a single-unit truck. It's not
10 articulated. It's just --

11 MS. ROBESON: Is it a dump-truck size?

12 THE WITNESS: Approximately, yes. Yes.

13 MS. ROBESON: Okay.

14 THE WITNESS: So to access the loading space,
15 which is to the east of the main entrance to the
16 proposed building, the vehicle would enter --

17 MS. ROBESON: Oh, you're talking about the
18 loading space for food deliveries and things like that.

19 THE WITNESS: Correct.

20 MS. ROBESON: But that's not where the
21 dumpster is, correct?

22 THE WITNESS: That's correct.

23 MS. ROBESON: Okay. I -- I --

24 THE WITNESS: I'll cover that.

25 MS. ROBESON: -- understand. Yeah, okay.

1 THE WITNESS: So the vehicle would enter our
2 new driveway, would traverse through the parking lot,
3 and would enter into the loop. It would stop part way
4 through the loop and it would back into the loading
5 space. And when it was leaving, it would just make a
6 turn and go back out to Liberty Mill Road.

7 MS. ROBESON: Okay. Can you mark that --
8 we're low-tech here. Can you mark that Exhibit 53?
9 Just write "53" and then we'll figure it out.

10 Thank you.

11 THE WITNESS: Sure.

12 And for the trash, similarly, we're looking
13 at a single-unit truck, and again, it would enter the
14 site from Liberty Mill Road. The site is designed to
15 accommodate a front end -- pull in so that they can use
16 the lift forks. It would remove the trash from the
17 trash enclosure, and then it would back out and then
18 exit to Liberty Mill Road.

19 MS. ROBESON: Okay. Thank you.

20 And I assume -- or is it your testimony that
21 it meets all the additional requirements in Article
22 6 --

23 THE WITNESS: Yes.

24 MS. ROBESON: -- for loading --

25 THE WITNESS: It does.

1 MS. ROBESON: Okay.

2 BY MS. DLHOPOLSKY:

3 Q. Great. Thank you, Mr. Crum.

4 MS. ROBESON: And what about parking space
5 design? Before you leave -- or were you just getting
6 rid of that exhibit?

7 THE WITNESS: I was just going to pull this
8 exhibit down.

9 MS. ROBESON: Oh, okay. I mean, I could
10 measure and go through the site plan myself, but I'd
11 rather have you do it.

12 THE WITNESS: Okay. Section 6.2.5 in the
13 zoning ordinance relates to vehicle parking design
14 standards, and we're exceeding some of those standards
15 and we're meeting others. The drive-out width in the
16 zoning ordinance for two-way perpendicular 90-degree
17 parking is 20 feet. We're providing 22 feet.

18 MS. ROBESON: Okay.

19 THE WITNESS: The space length, depth,
20 however you want to look at that, is required to be 18
21 feet. We are taking an advantage of one of the
22 provisions in the new ordinance that allows you to take
23 advantage of a two-foot overhang. So the asphalt, up
24 to the face of curb, is actually only 16 feet. And
25 then a two-foot overhang, both into the green space and

1 then a two-foot overhang on a seven-foot-wide sidewalk
2 will be allowed.

3 MS. ROBESON: Okay.

4 THE WITNESS: The spaces are -- within
5 exception of the accessible spaces -- are all
6 eight-and-a-half-feet wide.

7 MS. ROBESON: Okay. And you have the
8 requisite number of accessible spaces?

9 THE WITNESS: We're providing two. I think
10 that's probably actually one more than we need, but
11 yes, we meet the requirements.

12 MS. ROBESON: Okay.

13 MS. DLHOPOLSKY: Okay. Great.

14 MS. ROBESON: Thank you.

15 MS. DLHOPOLSKY: Thank you.

16 BY MS. DLHOPOLSKY:

17 Q. And just a few summary questions.

18 A. Yes.

19 Q. From a civil engineering perspective, will
20 the conditional use be harmonious with and not alter
21 the character of the surrounding neighborhood in a
22 manner and consistent with the master plan based on
23 your analysis?

24 A. Yes, it will.

25 Q. Okay. From a civil engineering perspective,

1 in your opinion, based on your analysis and design,
2 will the parking and loading be safe, sufficient, and
3 compliant with the requirements of the zoning
4 ordinance?

5 A. Yes, it will.

6 Q. And from a civil engineering perspective,
7 will the conditional use be served by adequate public
8 services and facilities, including water,
9 sanitary/sewer, and storm drainage?

10 A. Yes, it will.

11 Q. And stormwater management, I should say.

12 And finally, from a civil engineering
13 perspective, and based on your analysis, is the
14 conditional use and development suitable for the site
15 and compatible with the neighborhood?

16 A. It is.

17 MS. DLHOPOLSKY: Okay. I appreciate it. We
18 have no further questions for Mr. Crum at this time.

19 MS. ROBESON: Thank you. Thank you.

20 Do you gentlemen have any witness for
21 Mr. Crum? Please come forward.

22 MR. JACOB: Now, this is regarding
23 (indiscernible) state planning --

24 MS. ROBESON: Yes. These are just questions,
25 and then you get to --

CROSS-EXAMINATION

BY MR. JACOB:

Q. Regarding the stormwater management inlet, you are coming into the existing stream and putting in a 30-inch line or expanding?

A. Yeah, we're putting in a 36-inch pipe --

Q. 36-inch?

A. -- beyond our connection.

Q. Okay. Now, currently (indiscernible) a lot of water is being involved and a lot of (indiscernible) are not. And now it will be increasing. Now, (indiscernible) needs if your water management items you put in the bio -- I forgot the name of it but --

A. Bio retention facilities.

Q. Yeah, that one. What happens -- what is -- how do we take care of if there is a flood there? All the 15 years we have lived there, there was no flood there, until now. The creek can't handle the water coming from the street.

Now, this added water, is there any way you can determine that it won't cause any flood or what is our way of taking care of it if there is a problem in the future?

A. We did do an analysis of the existing stream channel. I would point out that there -- that to the

1 current outfall, there's over 20 acres of drainage that
2 comes to this storm drain system, and we're a fairly
3 small portion of that. That will be an increase. Some
4 attenuation will occur in the bio retention facilities,
5 but we have looked at the ten-year storm in the stream
6 channel and the stream channel can accommodate the
7 ten-year storm without overtopping the banks. In fact,
8 it doesn't even come close to the top of the banks. So
9 there shouldn't be any issues with -- that there would
10 be any sort of overflow of the open channel system.

11 Q. That's the first part of the question. If
12 there is a flood, what do we do? How do we take care
13 of it?

14 A. Well, if there --

15 Q. We go back to ManorCare or --

16 A. Well, you -- I think you would have to
17 demonstrate that, if there was a flood -- let's say
18 that we have a 100-year event and the stream channel is
19 overtopped, you'd have to demonstrate that ManorCare
20 caused that overtopping before you could go there.

21 MS. ROBESON: Basically we're getting into
22 legal issues about, you know, who -- who would be
23 liable. The state requirements are that they treat for
24 a ten-year storm. If it goes outside that, you -- and
25 it causes damage on your property, you would have to go

1 probably -- seek advice from an attorney about filing a
2 suit in court.

3 But the state requirements are 1 inch of
4 rainfall. Is that the current -- that was the
5 requirement.

6 THE WITNESS: 2.6. 2.6, I'm told, of runoff.
7 2.6 of --

8 MS. ROBESON: Right. So unless there's a
9 significant condition that would indicate -- on site
10 now that would indicate that there was a significant
11 condition here, you know, I have to go with what the
12 state requirements are.

13 Now, I will say that, looking in the cross
14 elevation -- is that their -- oh, no.

15 Okay. I guess I'll ask you instead of
16 speculating. The ditch that we have talked about, does
17 that make a difference as far as how much water could
18 come out of there without impacting the property
19 adjacent? Is that the creek that you're referring to?

20 THE WITNESS: It's a channel. It's not
21 really a flowing stream.

22 MS. ROBESON: Okay. So --

23 THE WITNESS: Not at this point. A favored
24 -in (ph) stream.

25 MS. ROBESON: So I guess my question is, Does

1 the grade there assist in keeping the water off lots
2 360 and 361 or does it not?

3 THE WITNESS: The channel's approximately
4 five foot deep from top of bank to invert, and when we
5 looked at the ten-year event, that was outfalling from
6 this storm drain system, the normal depth under the
7 ten-year conditions would be about two feet. So we
8 have got about three feet of free board before it
9 overflows the banks.

10 MS. ROBESON: Okay.

11 BY MR. JACOB:

12 Q. In addition to that, my other question would
13 be, if you moved that inlet to this stream valley
14 buffer, will that take care of any future problems?

15 A. The storm drain system in and of itself is
16 designed to accommodate the ten-year storm. So in the
17 event that there's a larger storm, there would be a
18 chance that these inlets -- the capacity of the inlets
19 in Liberty Mill Road would be exceeded and water would
20 spill over the curb and would come into this area,
21 would go in this area.

22 So piping it any further does not necessarily
23 protect you from events above the ten-year event.

24 Q. That answer was mainly for existing
25 gradation. I'm talking about from your property, if

1 you move the inlet from that point all the way to
2 stream valley buffer, the (indiscernible), water coming
3 from your property can be moved away from the houses,
4 correct?

5 A. That's -- that's true but it's -- it still
6 does not -- in the event of a larger -- in the event of
7 anything over the ten-year event, there would still be
8 flow at the rear of your properties. And an enclosed
9 system doesn't necessarily protect you any more than an
10 open system that has surplus capacity.

11 MS. ROBESON: Anything else?

12 MR. JACOB: No, not at this time.

13 MS. ROBESON: Any redirect based on --

14 MS. DLHOPOLSKY: I think just two quick
15 clarifying questions.

16 REDIRECT EXAMINATION

17 BY MS. DLHOPOLSKY:

18 Q. Is moving the inlet into the stream valley
19 buffer even permissible? Would the council not allow
20 an inlet within stream valley buffer?

21 A. Well, the stream valley buffer is here.
22 There's, you know, several hundred feet of open channel
23 before you get to the stream valley buffer.

24 Q. Okay. And just, again, so --

25 A. We would need to inquire -- I mean, an

1 easement would need to be acquired to continue the pipe
2 system. The county would have to decide that they
3 would accept further storm drain into their system.

4 Q. And, again, just, I guess, at the end of the
5 day, in summary, we are at least satisfying all the
6 county and state requirements with the proposed system
7 that we are -- the system that we're proposing in our
8 plans today?

9 A. Yes, we are.

10 MS. ROBESON: Do you have approval of the
11 preliminary concept plan?

12 THE WITNESS: The storm water concept, yes.

13 MS. ROBESON: Okay.

14 MS. DLHOPOLSKY: Yes, that's in the -- in the
15 record as Exhibit 18, is the letter and the approved
16 plan. Actually, that's not correct.

17 MS. ROBESON: What's the -- is that
18 truck-turning analysis, did I tell you to mark that 52
19 or 53?

20 THE WITNESS: You said fifty -- or I marked
21 53. I don't know what you said.

22 MS. ROBESON: Oh, okay. You are right.
23 That's what it should be. I just -- for some reason, I
24 thought I said 52.

25 MS. DLHOPOLSKY: Oh, and, yeah, the approved

1 storm water -- sorry -- is 37-C, is the approved plan.

2 MS. ROBESON: Okay.

3 MS. DLHOPOLSKY: I have no further questions.

4 MS. ROBESON: You may be excused. Thank you.

5 MS. DLHOPOLSKY: Thank you.

6 Okay, we'd like to call our next witness.

7 MR. DOKKEN: (Indiscernible).

8 MS. DLHOPOLSKY: Oh, okay. All right.

9 Looked like you were getting ready to run, so....

10 All right. I would like to call our next
11 witness, our next witness, Mr. Dan Dokken.

12 MS. ROBESON: Mr. Dokken, please raise your
13 right hand.

14 DAN DOKKEN,
15 the witness, after having been duly sworn, was examined
16 and testified to as follows:

17 MS. ROBESON: Go ahead.

18 DIRECT EXAMINATION

19 BY MS. DLHOPOLSKY:

20 Q. Can you please state your name, address,
21 employer, and occupation.

22 A. Dan Dokken. I work for LK Architecture in
23 Wichita, Kansas. Our address is 345 Riverview, Suite
24 200. 67203.

25 Q. Great. Thank you.

1 And can you -- have you been qualified as an
2 expert in architecture before by the hearing examiner?

3 A. Yes.

4 Q. Okay. And can you just very briefly just
5 describe, I guess, your experience and then how long
6 ago it was that you were --

7 MS. ROBESON: Well, I have his resume. I do
8 have one question.

9 Are you licensed in Maryland?

10 THE WITNESS: Yes, sir.

11 MS. ROBESON: Unless I hear an objection that
12 he's not an expert in architecture, I'm going to
13 qualify you as one.

14 THE WITNESS: Thank you.

15 MS. ROBESON: Okay. Go ahead.

16 MS. DLHOPOLSKY: Okay. Great. Thank you.

17 BY MS. DLHOPOLSKY:

18 Q. And Mr. Dokken, are you familiar with the
19 conditional use application that is before us today?

20 A. Yes.

21 Q. And are you familiar with the property that
22 is the subject of the application?

23 A. Yes.

24 Q. Great. And can you please -- well, I guess
25 just briefly what -- what analysis and what your role

1 in this application was.

2 A. Well, as the architect, I did the original
3 conceptual design for the Arden Courts product, so I
4 have kind of carried that through with the developer
5 for probably 20 years now. The main thing that I did
6 is take our concept, our prototypical concept that's --
7 you know, that's been proven over the years to be a
8 good product for caring for dementia residents and, you
9 know, assist with placement on the site and, you know,
10 making sure it fit into the neighborhood in that and
11 that we, you know, didn't depart too much from some of
12 the standards that the prototype demands.

13 Q. So in that vein, if you could please review
14 the conceptual elevations of the building that are
15 contained in the record, including the building
16 materials, the height, the scale, and the features.

17 A. Okay. Starting off, you know, actually I
18 probably would start off with this Exhibit 37-D, which
19 kind of gives the overall appearance of the building,
20 which, you know, one of the important components of
21 this type of facility is you want to create as close as
22 you can a home-like feel, you know, which -- you know,
23 these residents that are prone to -- you know, they
24 wake up in a new environment every morning, and it's
25 like, you know, why am I here? And if it's in the past

1 been kind of a nursing home environment or a medical
2 environment and they're like, When is somebody going to
3 pick me up and take me home?

4 So what we really want to do is make it feel
5 like it is their home when they wake up, and there's a
6 lot that goes into that on the interior in creating
7 these separate households in that. But it also carries
8 over into the exterior look. You know, we have -- we
9 already talked about these courtyards and walkways
10 outside of the facility and how important that is for
11 just ambulation and that, but -- but also, you know, we
12 want to make sure it looks like a home as well.

13 You know, so we would incorporate a lot of
14 residential-looking design elements, you know, lap
15 siding, shutters on windows, introduce some, you know,
16 brick and porch elements you can see at the front entry
17 to the building that, you know, try and create, you
18 know, a residential-looking front porch. And that same
19 thing happens in the back and in the other courtyard.

20 So -- so, you know, it's real important to
21 try and, you know, maintain that look for care
22 purposes, but then also, you know, what it does is, you
23 know, when we -- when we do our facilities within
24 residential environments, also fits in, you know, those
25 residential environments and, you know, it's typically

1 not felt to be like a commercial intrusion into a
2 residential area because it basically is kind of a
3 residential look.

4 The footprint is pretty big but, you know,
5 what we try to do is break up, you know, with roof
6 elements, and you can see like this is a living
7 room/dining area that extends out with a cross gable on
8 it. So it really, you know, breaks up the size of the
9 building and tries to keep it residential in
10 appearance.

11 Q. Okay. Thank you.

12 And can you please describe the site lighting
13 plan for the proposed conditional use application, and,
14 you know, specifically touch on some of the things that
15 have come up earlier in the hearing in terms of the
16 cut-off features, etc.

17 A. Okay. Then I go to -- I was going to not hit
18 anything when I was flipping this around but...

19 What we try and do is --

20 MS. DLHOPOLSKY: And let me just quickly
21 note, this is in the record as Exhibit 37-L.

22 MS. ROBESON: Okay.

23 A. And, you know, what we -- what we typically
24 do is, for one thing, try and not let any, like, you
25 know, bleed off the property. And so we do -- our

1 engineers will, you know, do these photometric
2 analysis, you know, to -- based on the fixture and
3 that.

4 And so we have -- we have, you know, done
5 that where, you know, we're doing pretty much zero at
6 property line. I think, you know, it's a little bit --

7 MS. ROBESON: Do you have what the property
8 line is next to 360 and 361?

9 THE WITNESS: Yeah.

10 MS. ROBESON: Every time I try to find --

11 THE WITNESS: We're showing .1 -- 0.1 along
12 there. I mean, that's probably -- and that's probably
13 the only area where it even hits .1. I mean, everything
14 else is zeros.

15 But what we do, I mean, we do an LED fixture
16 that has cut-off features, you know, so it doesn't --
17 doesn't project glare, and then, like, all of our
18 bollards that go around sidewalks and that, they're
19 all -- they're a screen bollard, too, which is an LED,
20 which just throws the light down on the sidewalk in
21 that.

22 And, you know, one thing that's really nice
23 about these LED fixtures is, you know, we have always
24 had to do, like, cutoff fixtures and that, you know,
25 but it's just more easily done with LEDs. You know,

1 instead of having one lamp, you know, like a metal
2 halide or a sodium bulb that needs to throw all that
3 light out. LEDs are made up of several diodes that can
4 be -- it spreads the light out a little bit more, and
5 it's less -- less intense.

6 You know, so really what I have seen is it's
7 just -- it's just like a lower intensity -- it feels
8 like a lower intensity light to get the -- the right
9 candles at the ground in that. But -- and I don't
10 know. I mean, it's becoming more and more prevalent
11 around the country, you know, this LED lighting, and
12 it's really, I think, a big improvement over what's --
13 you know, what we have lived with in the past on these
14 fixtures.

15 But I think it's -- you know, keeping the
16 pole light down, you know, really helps. You think
17 16-foot pole, you know, just twice as tall as the
18 ceiling here, you know, so it's not very -- not very
19 tall. And, you know, just pretty much evenly spaced.
20 And it's really -- you know, really mainly just in this
21 parking area and off area that you have, you know, any
22 kind of light that you're worried about where people
23 are walking to the front door and walking to their
24 cars, and that way you would want to have a little bit
25 of a level.

1 But, I guess, just overall, I think it's a
2 sensitive lighting design.

3 BY MS. DLHOPOLSKY:

4 Q. Great. I think you touched on this in your
5 past answers, but maybe if you can just sort of briefly
6 summarize how the design concept for the -- both the
7 building and the site lighting will maintain a
8 residential appearance and compatibility with the
9 surrounding neighborhood. Maybe just kind of quickly
10 summarize those points.

11 A. Yeah, I think, you know, just touching on
12 trying to have a residential look and, you know,
13 having, you know, some brick and siding, and we even
14 have some decorative shingles that will occur in some
15 of the pediments of the gables. And, you know, so it
16 has, you know, a nice residential feel.

17 And then, like I said, on the lighting, I
18 think it's -- we're pretty sensitive to not providing
19 too much light, and you know, we really don't have all
20 that much area that we have to light, you know, because
21 of our, you know, parking lots aren't, you know, real
22 big. And, you know, they're just like single
23 aisleways, so you're just kind of concentrating your
24 light, you know, on the dry paths. It's not like a,
25 you know, big parking lot that you're flooding with

1 light, so...

2 But I think it's a real sensitive solution
3 and fits well in a neighborhood environment.

4 Q. Great. And previously, the phase 1 noise
5 analysis was submitted into the record as Exhibit 40-A.
6 And I believe you reviewed that from an architectural
7 perspective to determine what you would need to do on
8 the architectural side to attenuate any -- any noise
9 within the building. Can you just very briefly
10 describe that as well?

11 A. Yeah, we just -- it didn't appear like it
12 would be anything that we'd have to do anything extra
13 that we want to do all in. And we have -- you know,
14 it's -- you know, insulated wall -- you know, wall
15 construction is, you know, enough to, you know, at
16 least, you know, handle that noise level, and we do
17 double-insulated glass windows and that that also has
18 some sound attenuating qualities.

19 So they're really -- you know, I didn't feel
20 that it affected what our normal construction materials
21 and processes would -- it wouldn't affect that, so...

22 MS. ROBESON: So it's your testimony that,
23 with normal construction materials, you can come within
24 the planning ord's noise guidelines?

25 THE WITNESS: Yes.

1 MS. ROBESON: Okay.

2 BY MS. DLHOPOLSKY:

3 Q. And while I know the noise analysis did not
4 study the noise from the generator, obviously, you
5 expressed previously that you're familiar with
6 designing facilities for Arden Courts. Do you have any
7 concern that the noise of the generator, when it test
8 runs or whatnot, would be of any concern or have any
9 adverse effect on the building or the residents there?

10 A. Yeah. I mean, you know they're -- I mean, if
11 you're outside and around it, you know it's going on,
12 but typically, you know, in an interior space, even
13 within the building, you don't -- you don't hear it. I
14 mean --

15 MS. ROBESON: Can you opine as to whether the
16 neighbors will hear it or are you not -- not --

17 THE WITNESS: Well, I would say, you know,
18 based on that experience, you know, with a neighbor's
19 house being farther away, you know, if you're indoors,
20 you're never going to hear it, I would say. If you're
21 out in your backyard and it pops on and the conditions
22 are right, you know, maybe, but, you know, it's kind
23 of -- kind of hard to say for sure.

24 MS. ROBESON: Okay.

25 THE WITNESS: But we do a good job of putting

1 it in an enclosure. We have -- actually do sound
2 reducing -- what do they call it? But, you know, an
3 actual enclosure that envelopes the machinery, you
4 know, that's --

5 MS. ROBESON: Oh, I had that -- it's like a
6 sound attenuation fencing or --

7 THE WITNESS: Yeah, it's actually like a
8 shroud almost, you'd say. It kind of, you know, goes
9 around it.

10 MS. ROBESON: Oh, like a casing.

11 THE WITNESS: Yeah. So, you know, we always
12 spend the money to do that. And then -- you know, and
13 then we put it within an enclosure, too, which will
14 deflect the noise up, too, which means, as it
15 dissipates, you're going to get, you know, lower sound
16 waves that will hit you.

17 So it really -- you know, I -- I would say
18 probably it's not going to be something you'd hear
19 unless you're really, you know, trying to listen for
20 it, and because of the time of day, you know, I think,
21 you know, you -- there's a lot of other noise, you
22 know, road noise and all that, you know, probably from
23 the -- from the road up the hill.

24 MS. ROBESON: Dawson Farm Road?

25 THE WITNESS: Yeah, yeah. I mean, just that

1 traffic -- just general traffic that, you know, what
2 you find is you're looking at an isolated sound that
3 ends up getting masked because there's -- you know, the
4 rest of the levels are just up there. It's almost
5 like -- almost like white noise, you know, where you
6 just can't hear as many specific sounds, you know,
7 because of that -- that overall level but...

8 MS. ROBESON: Okay.

9 BY MS. DLHOPOLSKY:

10 Q. I just have a few summary questions for you.

11 A. Okay.

12 Q. So in your opinion and from an architectural
13 perspective, will the proposed conditions be
14 architecturally compatible with -- and in harmony with
15 the character of the surrounding neighborhood,
16 considering design, scale, and look of the proposed
17 development?

18 A. Yes.

19 Q. And in your opinion from an architectural
20 perspective, will the proposed conditional use cause
21 any undo harm to the use of (indiscernible) or abutting
22 or confronting properties of the general neighborhood?

23 A. No. And just to add to that, you know, it
24 seems like this is -- I mean, it's such a low profile
25 use, you know, that it really does fit -- fit well in

1 neighborhoods, and we have had success doing this, you
2 know, many, many times. And it's -- we have a history
3 of it fitting in well.

4 Q. Great. And in your opinion, from an
5 architectural perspective, will the proposed
6 improvements cause any adverse effect on the health,
7 safety, or welfare of the neighboring residents,
8 visitors, or employees in the area?

9 A. No.

10 Q. Okay. And finally, in your opinion, from an
11 architectural perspective, will the proposed
12 conditional use cause any objectionable noise, odor,
13 dust, illumination, glare, or physical activity of the
14 property?

15 A. No.

16 MS. DLHOPOLSKY: Okay. Thank you.

17 I have no further questions for Mr. Dokken.

18 MS. ROBESON: Okay. Any questions?

19 Yes, sir?

20 CROSS-EXAMINATION

21 BY MR. SHUKLA:

22 Q. Mr. Dokken, will you be able to tell us what
23 kind of muffler you're going to employ on the
24 generator?

25 A. It is -- gosh, you know, just what comes with

1 the generator. You know, I guess I would say that we
2 would, you know, make sure that it is, you know, the --
3 the best muffler that's available, if there are even
4 choices. I'm not even sure on that.

5 But, you know, I would say we would look for
6 whatever, you know, did the best job and make sure it's
7 on that piece of equipment.

8 Q. Well, so a normal muffler can make a lot of
9 noise. There are two different classifications in the
10 muffler. The best ones are what we call the
11 (indiscernible) mufflers --

12 MS. ROBESON: Okay. I think he just said he
13 didn't know.

14 MR. SHUKLA: Okay.

15 MS. ROBESON: So let me do this, they are --
16 or the applicant, are you capable of getting the
17 details on the generator to us or is it too premature?

18 MS. DLHOPOLSKY: No, and Mr. Palmer, I
19 believe, had -- I believe had provided some information
20 to the neighbors, but it was information for them. We
21 hadn't submitted it as part of the record, but we can
22 certainly -- because I think we were going to provide
23 you with some additional information --

24 MS. ROBESON: Right.

25 MS. DLHOPOLSKY: -- we can do that.

1 MS. ROBESON: And I'm going to give you an
2 opportunity to comment on that after they provide it to
3 me. So we're going to get some dates when they have to
4 provide some things, and then you'll have an
5 opportunity to comment on it.

6 You can address the mufflers that you know of
7 in your -- when it's your turn to testify, which it's
8 almost there.

9 MR. SHUKLA: Okay.

10 MS. ROBESON: Okay?

11 MR. SHUKLA: Thank you.

12 MS. ROBESON: All right. Any -- yes, sir.

13 MR. SHUKLA: I do have a question.

14 BY MR. SHUKLA:

15 Q. You mention about the lighting being
16 projected downward, so there's going to be absolutely
17 no upward light --

18 A. That's right.

19 Q. Okay?

20 A. There won't be. The only thing I can -- you
21 know, the front door, you know, there will be like a
22 decorative light or something. But that's within the
23 porch and everything. So, yeah, nothing.

24 Q. And then the second question I had was, based
25 on the traffic pattern, etc., it looks like there's

1 minimal activity after 10 p.m., after the visiting
2 hours die out.

3 MS. ROBESON: Are you -- 10 p.m. did you say?

4 MR. SHUKLA: Yes.

5 MS. ROBESON: Oh, I couldn't hear you.

6 MR. SHUKLA: After visiting hours.

7 MS. ROBESON: Okay.

8 A. Yeah, yeah, that would be right.

9 BY MR. SHUKLA:

10 Q. So can you have the lights installed with
11 sensors -- motion sensors or something so that they are
12 dim otherwise or with a timer?

13 A. Well, they would -- I mean, they come with a
14 timer that we can set, you know, but the thing that you
15 would run into with the timer is, if you cut it out,
16 you know, in the middle of the night, then there's
17 safety issues, you know, as far as employees, you know,
18 getting to their car and things like that.

19 Now, I know there might be a possibility of
20 having some type of a motion sensor or something that
21 would maybe -- whether the fixture would be capable of
22 being just dimmed and then motion -- bringing it back
23 up to full strength or -- which would probably be the
24 best solution, I think.

25 But we can investigate that and see if that's

1 possible.

2 MR. SHUKLA: Thank you.

3 MS. DLHOPOLSKY: And I think that we had
4 discussed at lunch and we're prepared, since we are
5 going to be putting in a supplemental letter into the
6 record, to provide a little bit of additional
7 information as to whether that is a possibility of
8 doing some sort of sensing or motion sensor.

9 MS. ROBESON: Okay. Thank you. Any other
10 questions? Being none, you may be excused. Thank you.

11 MS. DLHOPOLSKY: And I'd like to call our
12 next witness, Nancy Randall from Wells & Associates.

13 MS. ROBESON: Please raise your right hand.

14 NANCY RANDALL,
15 the witness, after having been duly sworn, was examined
16 and testified to as follows:

17 MS. ROBESON: Okay. I'm laughing because
18 when she sat down, I had this brief flashback to this
19 very contested case. Anyway, do you -- do you have --
20 Ms. Randall has testified numerous times as an expert
21 in transportation planning before us. Do you have any
22 objection to qualifying her as an expert in
23 transportation planning?

24 Do you want to just very briefly state your
25 qualifications for the record?

1 THE WITNESS: I have been a transportation
2 planner since 1975. First starting off working for Ann
3 Arundel County Government, then the City of Annapolis,
4 and then several different engineering firms, until my
5 current position as principal with Wells & Associates.

6 MS. ROBESON: And you have testified how many
7 times?

8 THE WITNESS: Oh, hundreds.

9 MS. ROBESON: Okay.

10 THE WITNESS: I have been qualified in
11 federal court, Maryland Circuit Court or Ann Arundel
12 County Circuit Court, and Montgomery County Circuit
13 Court.

14 MS. ROBESON: So I am going to accept you as
15 an expert in transportation planning.

16 MS. DLHOPOLSKY: Okay. Great. Thank you.

17 DIRECT EXAMINATION

18 BY MS. DLHOPOLSKY:

19 Q. Ms. Randall, are you familiar with the
20 subject condition use application?

21 A. I am.

22 Q. And have you analyzed the suitability of the
23 subject property for the proposed conditional use from
24 a transportation planning standpoint?

25 A. I have.

1 Q. Has your report -- and I believe there's
2 actually two of them -- have they been submitted to the
3 hearing examiner?

4 A. They have.

5 MS. DLHOPOLSKY: Okay. And just noting that
6 the original traffic statement is Exhibit 9 in the
7 record and the supplemental analysis submitted as part
8 of the design exception request is Exhibit 42-A, little
9 2 i.

10 MS. ROBESON: It's better than 7.2.1 --

11 MS. DLHOPOLSKY: That is very true.

12 MS. ROBESON: I'm making a joke about our new
13 zoning -- it reads like the building code.

14 THE WITNESS: Or worse.

15 MS. ROBESON: Or worse.

16 BY MS. DLHOPOLSKY:

17 Q. Okay. And Ms. Randall, I think just in the
18 interest of time, I'll just ask if you can please
19 review for the hearing examiner the findings and
20 conclusions of your traffic statement and the
21 supplemental analysis and also make sure to focus on
22 one of the questions, which is -- how that transferring
23 of the shifts and the numbers are going to work so that
24 we can clarify that?

25 A. Yes. The first thing that we did was to

1 prepare a traffic statement. It's an exemption letter
2 with regard to this LATR, which is the local area
3 transportation review guidelines. Because this
4 property will generate less than 30 peak hour trips in
5 a one-hour period, it qualified for that exemption.

6 However, when we met with the citizens -- oh,
7 and let me go back to that statement. It's based on
8 the ITE trip generation rates for assisted living.
9 Montgomery County has their own trip generation rates
10 for assisted living, which are substantially lower than
11 ITE trip generation rates, which is why staff is asking
12 us now to use ITE trip generation rates.

13 MS. ROBESON: And what's ITE?

14 THE WITNESS: Institute of Transportation
15 Engineers. And this was based on the most current
16 edition, the 9th edition of that report.

17 In addition to qualifying for that exemption,
18 we also did operation study, is probably the best way
19 to describe it, for the area based on comments that we
20 got from the citizens when we met with them as well as
21 in support of our exception with regards to
22 intersection spacing. So we prepared a document on
23 October the 5th.

24 And in that document, we looked at two
25 separate time periods, both in the morning and in the

1 afternoon, and I think that may be where some of the
2 confusion is.

3 MS. ROBESON: I just wanted to know who is
4 coming when.

5 THE WITNESS: Yeah, exactly.

6 MS. ROBESON: And when they're leaving.

7 Can you refer me to the exhibit number? I
8 read it and I can't -- for some reason, I can't pin it
9 down.

10 MS. DLHOPOLSKY: The supplemental analysis?

11 MS. ROBESON: Yeah.

12 MS. DLHOPOLSKY: 42.

13 MS. ROBESON: That had the (indiscernible) in
14 it, right?

15 THE WITNESS: It did. It did.

16 MS. DLHOPOLSKY: It was 42-A --

17 MS. ROBESON: I have got it. I have got it.

18 MS. DLHOPOLSKY: Little i 2, however you say
19 that.

20 MS. ROBESON: Okay. I have it. Thank you.

21 Okay. Go ahead.

22 THE WITNESS: Thank you. So we went through
23 and did an analysis that looked at multiple different
24 things. The first thing was to look and do a CLV
25 analyses, which is critical lane volume analysis for

1 the interaction of Liberty Mill and Dawson Farm Road,
2 to look at that intersection to see how that
3 intersection was operating using the current county
4 standard, and that intersection is operating well below
5 the policy area standard. It's operating with CLV
6 levels below a thousand vehicles.

7 MS. ROBESON: And the standard is 1450 there?

8 THE WITNESS: Yes, it is.

9 MS. ROBESON: Is okay.

10 THE WITNESS: And so --

11 MS. ROBESON: So this has been --

12 THE WITNESS: Yeah. So it's operating well
13 below, with the highest CLV of 212 as opposed to 1450
14 critical lane vehicles.

15 We also ran a highway capacity manual method
16 analyses for that intersection. We did that for two
17 reasons. One, we wanted to understand what -- how each
18 approach was operating in relation to delay because it
19 was part of the issue that the citizens brought up in
20 relation to the school, but it also went to being able
21 to calculate a queue, mathematically calculating a
22 queue at that intersection, to make sure that the
23 queues did not extend back and block either --

24 MS. ROBESON: The entrances.

25 THE WITNESS: Yeah. Either the school

1 entrance or our entrance or, you know, any other
2 driveway along the roadway. So that was another reason
3 for doing that.

4 And we tested this for two different time
5 periods. And it should be noted that the street
6 peak -- the highest volume at that intersection of
7 Liberty Mill and Dawson Farm occurred between 8:30 and
8 9:30 in the morning. And in the -- excuse me, I
9 apologize, I was reading you the school peak. It's
10 7:30 to 8:30 in the morning for the street peak, and
11 from 4:30 to 5:30 in the afternoon, again, for the
12 street peak.

13 But the school, their hours --

14 MS. ROBESON: I'm sorry, can you give me
15 the -- the evening peak again?

16 THE WITNESS: Yes, 4:30 to 5:30.

17 MS. ROBESON: Okay.

18 THE WITNESS: But the Germantown Elementary
19 School, which is directly across the street, has an
20 opening time in the morning of 9:25, and it dismisses
21 the students at 3 :50 in the afternoon.

22 MS. ROBESON: Okay.

23 THE WITNESS: So we wanted to be able to say
24 to the residents, to the school, to Montgomery County
25 Department of Transportation that this project was not

1 only not going to impact negatively the street peak but
2 also when the school was peaking, which is slightly
3 different hours.

4 So for the street peak, we used the standard
5 ITE street peak hour volume, trip generation rate.
6 It's what they call adjacent street peak hour.

7 MS. ROBESON: Right.

8 THE WITNESS: So there are numbers that they
9 have collected. That typically falls between 7 and 9
10 in the morning and 4 to 6 in the afternoon, a one-hour
11 period within that window.

12 MS. ROBESON: Oh, so you didn't do it -- you
13 don't have to do a count so you use this other --

14 Now, what was the other basis you used?

15 THE WITNESS: The other was looking at
16 another one that, in the same handbook, in the same
17 ITE, is what they call the peak of the generator. And
18 if you think about -- I want to think of a use that you
19 would -- restaurant is a good example, a peak of
20 generator versus peak of the street.

21 MS. ROBESON: Uh-huh.

22 THE WITNESS: Because restaurants typically
23 are generating the most amount of traffic to and from a
24 restaurant much later in the day, 7:00 to 9:00 at
25 night, and very little traffic, if any, first thing in

1 the morning. They don't really start to open up
2 typically, for a sit-down restaurant, until lunchtime.

3 So their peak of the generator in the morning
4 may be 10:30 or 11:00 in the morning. And in the
5 evening, it would be 7 to 8.

6 So ITE provides what they call peak of the
7 generator for assisted living and the street peak trip
8 generation rate, which is during the typical 7 to 9 and
9 4 to 6.

10 Now, the peak of the generator for assisted
11 living actually occurs much earlier in the morning. It
12 starts at 6:30 in the morning and it goes to the very
13 issue of shifts. You have got -- like a hospital, you
14 have got these shifts that are occurring, and so the
15 peak of the generator for assisted living for -- they
16 did about 200 different studies of which there are
17 multiple places that they study. So it may be as many
18 as 500 different assisted living places that have been
19 looked at. But peak of the generator has occurred
20 between 6:30 and 9. They don't specify a specific time
21 but just saying that the peak of the generator was
22 occurring during that time. And then in the afternoon,
23 it was occurring from about 3 to 5 in the afternoon.
24 So much earlier than the street peak generation.

25 So we wanted to test that highest volume that

1 this assisted facility would ever put out on to the
2 road system. We wanted to test that at the same time
3 that the school peak occurred. It's a worst case.
4 It's not likely to happen in the morning because the
5 school morning occurred so much later in the morning.
6 But, again, it was a worse case. We wanted to see what
7 would happen if our site put the most amount of traffic
8 at the same time the school was generating the most
9 amount of traffic --

10 MS. ROBESON: Okay.

11 THE WITNESS: -- so understand those queues.
12 And so that's why we have in this report several
13 different tables that go to the peak of the street as
14 well as the peak of the school peak.

15 MS. ROBESON: Okay.

16 THE WITNESS: The school peak hour and
17 testing those.

18 And so at no time did the average queues
19 along the roadway exceed one. Now, there were -- we
20 did --

21 MS. ROBESON: Exceed --

22 THE WITNESS: -- exceed one car queueing.
23 One car.

24 MS. ROBESON: Okay. How much storage is
25 there?

1 THE WITNESS: There's 100 feet. So there's
2 enough for four cars.

3 So the school driveways were not blocked.
4 And it should be noted, particularly for the school
5 peak, that's -- our traffic won't be generating during
6 that period of time. Again, we tested the worst case
7 but that's not when our shift occurs. Our time frame
8 really runs between 6 in the morning and 9 in the
9 morning, where the school opens up at 9:25.

10 So there may be a straggler employee that's
11 coming in, but it's not the bulk. The bulk of the
12 employees are coming in sometime between 6 and 7:30 in
13 the morning.

14 MS. ROBESON: Okay.

15 THE WITNESS: And I'll go through the list of
16 times so you'll get a better understanding where the
17 numbers came through -- came from in terms of
18 employees.

19 MS. ROBESON: Okay.

20 THE WITNESS: So we tested that. Again, in
21 the future conditions we, again, had 1.-whatever
22 automobiles. So the most that you would see -- you'd
23 never get a half of an automobile, so the most that you
24 would see on the average condition would be two
25 vehicles out along Liberty Mill queueing up to get out

1 onto Dawson Farm. And that queue occurs because of
2 that signalized intersection. If that were not a
3 signalized intersection and there was just a
4 through-way, there would be no queueing at all.

5 MS. ROBESON: Is there a left turn -- I can't
6 remember, is there a left turn?

7 THE WITNESS: There is. There are two
8 lanes --

9 MS. ROBESON: Is there a left turn lane at
10 that intersection?

11 THE WITNESS: There is. There is a left turn
12 lane and a shared through right lane at that location.
13 And those two lanes extend back through the residential
14 portion of this property and there's like a
15 cross-hatched area in there. So you have got a single
16 lane in both directions, but that left turn lane picks
17 up very close to the side access.

18 MS. ROBESON: Okay.

19 THE WITNESS: And the trip generation that I
20 was describing, for the site -- the street peak hours,
21 it's eight vehicles -- excuse me, nine vehicles --

22 MS. ROBESON: Where are you looking on your
23 report?

24 THE WITNESS: This is table 3-A.

25 MS. ROBESON: On Exhibit 42, the one you

1 submitted or --

2 THE WITNESS: Yeah, the larger document.

3 MS. ROBESON: Okay.

4 THE WITNESS: Yeah.

5 MS. ROBESON: Okay. I'm with you. Go ahead.

6 THE WITNESS: Okay. So in the morning peak
7 hour, it will generate nine vehicle trips. And that's
8 a total of both inbound --

9 MS. ROBESON: And that's based on ITE, right?

10 THE WITNESS: It is.

11 MS. ROBESON: Okay.

12 THE WITNESS: And remember, that's a one-hour
13 period within a two-hour window.

14 MS. ROBESON: Right.

15 THE WITNESS: And in the p.m. peak hour, it's
16 14 trips total. Again, the same thing: A one-hour
17 volume in a two-hour window. And then the street
18 peak -- excuse me, the school peak hour where we added
19 12 in the morning, that's on 3-B, table 3-B and 22 in
20 the p.m. peak hour.

21 MS. ROBESON: Okay.

22 THE WITNESS: All of the results --

23 MS. ROBESON: Based on the actual shifts,
24 though --

25 THE WITNESS: Yes.

1 MS. ROBESON: -- you say the Liberty/Dawson
2 is 7:30 a.m. to 8:30 a.m.

3 THE WITNESS: The street peak, that's
4 correct.

5 MS. ROBESON: Right. How many people are
6 coming in and leaving between 7:30 a.m. and 8:30 a.m.
7 under the schedule that --

8 THE WITNESS: I think it might be better if I
9 walk you through the schedule from beginning to end.
10 It might be easier.

11 MS. ROBESON: That would be great.

12 THE WITNESS: Okay. In shift one -- I'm
13 going to just give you the numbers off the top, and
14 then I'm going to go through the details.

15 MS. ROBESON: But we have more that we have
16 staggered shifts.

17 THE WITNESS: And I'm going to go through and
18 describe the staggered nature of shift one.

19 MS. ROBESON: Okay.

20 THE WITNESS: Okay? So shift one is a total
21 of 20 employees.

22 MS. ROBESON: Right, okay.

23 THE WITNESS: Shift two is a total of 10
24 employees. And shift three is a total of five
25 employees, but they are staggered within that shift.

1 MS. ROBESON: Okay.

2 THE WITNESS: Most specifically within shift
3 one.

4 MS. ROBESON: Hey, it adds up to 35.

5 THE WITNESS: It does.

6 MS. ROBESON: So that's good. Okay. I like
7 that. Now we're making progress.

8 THE WITNESS: Yay.

9 MS. ROBESON: Okay. So --

10 THE WITNESS: Okay. So for shift one,
11 generally the person first arrives, it's the cook, and
12 he gets in at 6:30 in the morning.

13 MS. ROBESON: And when does he leave?

14 THE WITNESS: He may leave at the very end of
15 the day.

16 MS. ROBESON: Like 5 or --

17 THE WITNESS: He could be there for 12 hours.
18 It depends. Because there is occasionally another cook
19 that will come in during the day occasionally, but
20 it -- he gets the meals prepared through the course --
21 for the morning through the rest of the day, so he may
22 not leave, depending upon special circumstance in the
23 day, he may not leave until 4 or 5:00 in the afternoon.

24 MS. ROBESON: Oh, okay.

25 THE WITNESS: So it's not a 6:30 to 2:30

1 dump.

2 MS. ROBESON: Yes, okay.

3 THE WITNESS: Okay. So the first cook
4 arrives, and some days, the second cook may come in
5 between 2:30 and 6:30.

6 MS. ROBESON: Okay.

7 THE WITNESS: All right? And that may --
8 may -- it depends on how -- how complicated I would
9 imagine the menu is more than anything else and how
10 much preparation it has to be, but he may leave but
11 that second cook comes in and he may leave at 2:30 or
12 3:00 or he may stay just a little bit longer and get
13 the evening meal prepared and that second cook doesn't
14 come in.

15 MS. ROBESON: Right, okay.

16 THE WITNESS: At 7:00 -- by 7:00 --

17 MS. ROBESON: 7 a.m.?

18 THE WITNESS: Yeah. Sorry. 7 a.m., eight
19 caregivers and one nurse start their shifts. And you
20 may recall that they described that there is an overlap
21 in shift from the night shift talking with the shift
22 that's coming on. So there's about a 10-or 15-minute
23 overlap. Somebody may get in early and that nurse
24 that's being replaced, as it were, that person may
25 leave. And so they're coming in over the course of

1 about half an hour, 15 minutes in the morning, but
2 they're there by 7:00. The shift is there by 7, and
3 one nurse that comes in.

4 And then between 7:30 and 9:00 --

5 MS. ROBESON: So between 7 and 7:30, you may
6 have overlap of nurses coming in, being briefed, and
7 then nurses leaving?

8 THE WITNESS: Well, actually, I would -- it
9 may actually occur earlier than that, because they have
10 to be on duty by 7 in the morning.

11 MS. ROBESON: Oh, okay.

12 THE WITNESS: And so the overlap may occur
13 earlier than 7:00.

14 MS. ROBESON: Got you.

15 THE WITNESS: And then between 7:30 and 9:00,
16 over a one and a half hour period, you have six
17 coordinators and four administrative staff that are
18 coming on duty. So that's a total of ten persons.

19 So that's how we get to the 20.

20 MS. ROBESON: Okay.

21 THE WITNESS: All right? The one cook, the
22 nine that are caretakers and the one nurse, which
23 equals ten, and then the six coordinators and four
24 administrative staff.

25 MS. ROBESON: Okay.

1 THE WITNESS: All right? And the
2 administrative staff --

3 MS. ROBESON: Is that exclusive of the second
4 cook? No, he's coming later.

5 THE WITNESS: Well, he may or may not come
6 later, but the second -- yes, it would either be 20 or
7 21, but it's not an everyday event.

8 MS. ROBESON: Okay.

9 THE WITNESS: All right? So from 7:30 to 9,
10 you have got six coordinators and four administrative
11 people, and they depart anywhere between 4:30 and 6
12 p.m. So, again, over a one and a half hour window. So
13 nobody everybody is departing at the exact same time --

14 MS. ROBESON: Mm-hmm.

15 THE WITNESS: -- out of this 20. They don't
16 arrive at the same time and they don't depart at the
17 same time.

18 The second shift, which is the ten employees,
19 are five caregivers and one nurse, and they're in by
20 3:00. So, again, somewhere between 2:30 and 3, there's
21 conversation going on with the shift change. Some may
22 come in earlier, some may come in later but there's,
23 you know, the potential for that 15 -- 10- to 15-minute
24 overlap that occurs in that time frame. And they
25 depart after 11 p.m.

1 And then the last shift starts at 11, and
2 that's four caregivers and one nurse.

3 MS. ROBESON: So then the largest overlap of
4 staff you have is not the morning peak but the
5 middle-of-the-day peak.

6 THE WITNESS: Yes and no. It -- it's not the
7 entire morning staff that are entering and exiting the
8 building, because remember the administrative staff are
9 staying there until 6 p.m. So --

10 MS. ROBESON: What's your biggest parking
11 demand time? Let me put it that way.

12 THE WITNESS: I would say the biggest parking
13 demand time is probably around 3:00 when that shift
14 change is occurring.

15 MS. ROBESON: Okay.

16 THE WITNESS: That's correct.

17 BY MS. DLHOPOLSKY:

18 Q. Ms. Randall, I had one quick clarifying
19 question. I think you have mentioned that for shift
20 two, which is generally the 3 p.m. to 11 p.m., you
21 mentioned the five caregivers and one nurse, but was
22 there also --

23 A. Oh, my apologies, yes. And four caregivers.
24 Three to four caregivers that work an evening from 4 to
25 8 p.m.

1 MS. ROBESON: Okay.

2 A. I apologize. That three to four come in
3 special in the evening to help out with the dinner
4 process and activities before and after. So they're
5 not coming in during that time frame either. So you
6 have -- in the morning, if you have got all 20
7 persons -- and even the cook -- let's say 21, at 3:00
8 in the afternoon, you have a demand for probably 25
9 parking spaces at that 3:00 window. And then a demand
10 for another three or four spaces between 4 and 8 p.m.
11 But some of the administrative staff are leaving
12 between 4 and 6 in the afternoon. So you have got this
13 turnover that's occurring through the course --

14 MS. ROBESON: How many administrative staff?

15 THE WITNESS: We have got six coordinators
16 and four administrative office employees, and they
17 leave between 4:30 and 6 p.m. And you have got these
18 caregivers that are coming in between 4 and 8 p.m. So
19 there is coming and going in the evening peak hour.

20 MS. ROBESON: All right.

21 THE WITNESS: Standard evening peak hour.
22 But you can't take these numbers and equate them
23 directly to trip generation, is kind of the point I'm
24 trying to make sure, which is why ITE counts the
25 driveway, not the number of employees.

1 MS. ROBESON: No, I'm just curious, why can't
2 you say, if you have a shift coming in -- I know ITE
3 where I have read -- I have had other cases where they
4 say ITE also takes into account visitors.

5 THE WITNESS: Mm-hmm.

6 MS. ROBESON: Is that your testimony, too?

7 THE WITNESS: It is.

8 MS. ROBESON: So -- okay. So why can't I
9 just, aside from visitors and everything else, do --
10 does that staff conclude, like, the beauty --
11 beautician and everything like that?

12 THE WITNESS: It -- the ITE trip generation
13 rates count every single vehicle that comes and goes
14 from the driveway. They physically put a --

15 MS. ROBESON: So they based it on -- they
16 base it on studies of other similar facilities?

17 THE WITNESS: Exactly, all over the country.
18 All over the country.

19 MS. ROBESON: Now, why can't I just add up
20 staff, besides -- besides the visitors and -- you know,
21 other trips it doesn't pick up?

22 THE WITNESS: Right. Because trip generation
23 is about how many cars are going to come and go in one
24 hour.

25 MS. ROBESON: Right.

1 THE WITNESS: And all of these individuals
2 are coming at different times. They're not all
3 arriving at the same one-hour period and they're not
4 all departing at the same one-hour period. And this
5 day, Mrs. Smith, who is the nurse, may make it in at
6 6:30 in the morning because she had paperwork left
7 over, but the next day, she may come in at 6:45 or
8 7:00. There's no -- they're required to be there at 7.

9 MS. ROBESON: Right.

10 THE WITNESS: But somebody may come 15
11 minutes early.

12 MS. ROBESON: Okay.

13 THE WITNESS: And that's why the driveway
14 count is the most accurate means in determining what's
15 likely to occur.

16 MS. ROBESON: Okay. But you do have some
17 overlap -- what's the HCM say for the 3:50 p.m. for the
18 school?

19 THE WITNESS: In relation to the level of
20 service for HCM --

21 MS. ROBESON: Yes.

22 THE WITNESS: I managed to not bring any
23 glasses up. Do you mind just a second? I'm sorry.

24 MS. ROBESON: I have been there.

25 THE WITNESS: Can't read the fine print

1 anymore.

2 MS. ROBESON: Well, I guess it's in this
3 report. I could have answered my own question. What
4 is the HCM?

5 THE WITNESS: The results of the --

6 MS. ROBESON: There it is.

7 THE WITNESS: For the record --

8 MS. ROBESON: Oh, no, that's --

9 THE WITNESS: Yeah. For the record, the HCM
10 analyses is shown on table 1. And the school peak
11 hours, which would be the worst-case condition --

12 MS. ROBESON: Right.

13 THE WITNESS: -- and it shows -- now, keep in
14 mind, the street volume is lower, but the driveway
15 volume coming and going --

16 MS. ROBESON: Is higher.

17 THE WITNESS: -- from the school is higher.

18 MS. ROBESON: Right.

19 THE WITNESS: So the street peak hour in the
20 p.m. peak in the northbound direction -- and we
21 oriented Liberty Mill as northbound. Okay?

22 MS. ROBESON: Okay.

23 THE WITNESS: And so in that particular --
24 this is the approach delay, is 40 seconds.

25 MS. ROBESON: Okay.

1 THE WITNESS: Now, that's the amount of time
2 that you have to wait for the signal to turn.

3 MS. ROBESON: Right.

4 THE WITNESS: And the same in the p.m. peak
5 hour, it's 39 seconds.

6 MS. ROBESON: Okay.

7 THE WITNESS: In the p.m. peak hour for --
8 excuse me, 40 seconds in the p.m. peak hour for street
9 peak. And then for the school peak, it was 39 and 39,
10 both a.m. and p.m.

11 MS. ROBESON: Okay. And that's an LOS A or
12 B?

13 THE WITNESS: That is probably -- for the
14 minor street, it's probably a B. For the overall
15 intersection, it's an A.

16 MS. ROBESON: Okay. I see it. Okay.

17 THE WITNESS: And, unfortunately, the way HCM
18 works, because you -- both the county and the state
19 highway administration give the majority of green time
20 to the main line, which in this case is Dawson Mill.
21 You know, whether you have got two vehicles or you have
22 got a hundred vehicles, you're going to come up with a
23 level of service that's not great for the side street
24 because they're giving it to the main line.

25 MS. ROBESON: Right.

1 THE WITNESS: So you're having to wait for
2 that signal to turn.

3 MS. ROBESON: I remember that case.

4 THE WITNESS: Yes. Thank you.

5 MS. ROBESON: And you told me that before.

6 THE WITNESS: Another one of many hours.

7 In addition to --

8 MS. ROBESON: Well, let me ask you something,
9 how do I ensure that these -- I mean, you do have some
10 stuff going on on Liberty Mill with the school. What's
11 the best way to ensure that the staggering occurs?
12 When it's broken down like this, I see the staggering.
13 How do I ensure that that happens?

14 THE WITNESS: I think the -- quite frankly,
15 the best way right now, we know what the school start
16 is, which is 9:25 in the morning. All right? And
17 their peak demand is occurring probably somewhere
18 around 7, 7:30 in the morning. So there's no overlap
19 at it relates to the highest number of vehicles
20 entering or exiting this facility during that time
21 frame.

22 And in the afternoon, the dismissal is at
23 3:50 in the afternoon, and their shift change occurs at
24 3:00 in the afternoon. And maybe the way to deal with
25 that is to talk about the shift change and making sure,

1 as the school -- suppose the school changes their
2 hours -- is that they make sure that they're not --
3 their shift changes are not occurring during the
4 opening and closing of the school.

5 MS. ROBESON: Okay.

6 THE WITNESS: Right now, they're not and
7 they're well outside of that time frame. And even if
8 they were, it's still working based on the analyses
9 that we have done, but if you need that comfort level
10 that if, for some reason, the school hours were going
11 to change that, you know, we would make that change.

12 BY MS. DLHOPOLSKY:

13 Q. And I guess I would just also note,
14 Ms. Randall, that there is the condition -- excuse
15 me -- the planning board recommendation that employee
16 arrival and departure times must be staggered so that
17 fewer than 30 employees arrive and depart the site
18 within any one hour, which --

19 A. Which goes to what I was saying.

20 MS. ROBESON: My only problem with that,
21 like, is DPS really going to send somebody out there to
22 do a traffic count? I don't think so. So I was kind
23 of trying to look for a different way to -- and I think
24 what I hear you suggesting is that the -- the peak
25 shift changes -- or the shift changes have to be

1 outside the school peak hours.

2 THE WITNESS: And they are right now. The
3 way it's proposed and the way the school is currently
4 operating, they are outside of that time frame. You
5 know, if for some reason, you know, the school --
6 instead of doing, you know, 9:25, you know, went to --
7 I don't know what the hour would be with elementary
8 school. I can't imagine them changing it that much,
9 but, you know, if the overlap got within 15 minutes, I
10 think that that's when you might -- you might have that
11 problem. I don't -- it's not even close right now.

12 MS. ROBESON: Right.

13 THE WITNESS: It's not even close for either
14 arrival or departure.

15 MS. ROBESON: Okay. All right.

16 THE WITNESS: One other thing I wanted to
17 make sure, just based on all of these others that we
18 have been dealing with, we did also check the accident
19 history. The state's website -- thank you very much
20 more than link --

21 MS. ROBESON: That's like a whole 'nother
22 story.

23 THE WITNESS: Another story, right.

24 The -- it only gives you a year and a half --

25 MS. ROBESON: Yes.

1 THE WITNESS: -- worth of data, but there
2 were no accidents on this road or at the intersection
3 of Dawson and Liberty Mill.

4 MS. ROBESON: Oh, no accidents on Liberty
5 Mill at all?

6 THE WITNESS: None.

7 MS. ROBESON: Okay.

8 THE WITNESS: None at the intersection of
9 Dawson and Liberty Mill, none on Liberty Mill, there
10 were no accidents -- no reported accidents.

11 MS. ROBESON: Okay. I guess what I was
12 really missing was how it was all going to work. That
13 was my -- I won't go into it again, but I do get it,
14 what you just said.

15 THE WITNESS: And one thing that should be
16 noted about the way the school operates, the majority
17 of the traffic to and from the school occurs at the
18 entrance closest to Dawson Farm.

19 MS. ROBESON: I thought they had an exit from
20 the southern driveway.

21 THE WITNESS: That's only during the school
22 departure and in the morning. The only thing that goes
23 out of there are the school buses. That's it. The
24 parents all come and go from that northern end, because
25 they don't want the parents driving the school buses

1 that are in front of the school. So they get them to
2 circulate and load up in that parking lot, the large
3 one off to the side.

4 MS. ROBESON: Okay.

5 THE WITNESS: And the other parking area is
6 used in the evening after school certainly, and that
7 drive-through you can use, you know, nonarrival,
8 nondeparture.

9 MS. ROBESON: Right.

10 THE WITNESS: But that's the way they
11 organize the arrival and departure, based on our
12 conversation with the principal.

13 MS. ROBESON: But you're showing a loading --
14 you're not showing -- you have sufficient storage
15 during those times --

16 THE WITNESS: Yes.

17 MS. ROBESON: -- to accommodate that.

18 THE WITNESS: Yes.

19 MS. ROBESON: Okay.

20 THE WITNESS: Yep.

21 MS. ROBESON: All right.

22 BY MS. DLHOPOLSKY:

23 Q. I just had a few very quick summary
24 questions, Ms. Randall. So in conclusion, from a
25 transportation engineering standpoint, will the

1 proposed conditional use be served by adequate public
2 facilities from a public roads and traffic perspective?

3 A. Yes, it will.

4 MS. DLHOPOLSKY: Oh, sorry. I thought --

5 MS. ROBESON: No, go ahead.

6 BY MS. DLHOPOLSKY:

7 Q. From a transportation engineering standpoint,
8 is it your opinion that the proposed improvements would
9 cause any undue harm to the use, peaceful enjoyment,
10 economic value or development potential of abutting and
11 confronting properties or the general neighborhood from
12 a transportation perspective?

13 A. No, they will not.

14 Q. And, finally, from a transportation
15 standpoint, is it your opinion that the proposed
16 conditional use will have a detrimental effect on
17 vehicular or pedestrian traffic or safety?

18 A. No, it will not.

19 MS. DLHOPOLSKY: Okay. Thank you very much.

20 I have no further questions for Ms. Randall.

21 MS. ROBESON: Okay. Any questions for

22 Ms. Randall?

23 MR. SHUKLA: Just a couple.

24 CROSS-EXAMINATION

25 BY MR. SHUKLA:

1 Q. (Indiscernible) to be transportation, so to
2 your last question about economic impact, are you
3 qualified to speak about economic impact?

4 MS. DLHOPOLSKY: I should not have actually
5 said that in my question, so...

6 MR. SHUKLA: So I just wanted to --

7 MS. ROBESON: Okay.

8 MS. DLHOPOLSKY: Yes.

9 MR. SHUKLA: Good point.

10 MS. DLHOPOLSKY: I was (indiscernible) from
11 another question.

12 MS. ROBESON: I was like, wait a minute.
13 Thank you. Anything else?

14 BY MR. SHUKLA:

15 Q. The traffic patterns that you're describing
16 are all steady state when it's fully in operation. Is
17 there any traffic (indiscernible) during the
18 construction phase, which Mr. Palmer said might last 12
19 to 14 months, 12 to 13 months?

20 A. No. Well, we -- we typically do not do that,
21 and that was certainly a question that came up. Again,
22 same type of thing with regards to construction
23 vehicles. During the question-and-answer period, it
24 was stated that they would avoid at all costs bringing
25 construction vehicles in during the start time and the

1 evening exit time for the schools, which is when that
2 road sees the most activity, when the school is coming
3 and going or arriving and departure from the school.

4 Q. Now, unlike the staff comings and going which
5 is, you know, prescribed hours, the construction
6 traffic will be (indiscernible) today?

7 A. That, I think, Mr. Palmer should -- should
8 answer the construction part of this.

9 MR. SHUKLA: That's all.

10 MS. ROBESON: Okay. Thank you.

11 Seeing no further questions, Ms. Dlhopsky
12 (sic). Say it again.

13 MS. DLHOPOLSKY: Dlhopsky, but it's still
14 open to interpretation.

15 MS. ROBESON: Do you have any other questions
16 of Ms. Randall?

17 MS. DLHOPOLSKY: No, I don't have any other
18 questions.

19 MS. ROBESON: Okay. Thank you, Ms. Randall.

20 THE WITNESS: You're welcome.

21 MS. ROBESON: You may be excused.

22 MS. DLHOPOLSKY: Okay.

23 THE WITNESS: Sorry for the wetness.

24 MS. DLHOPOLSKY: That was it for the
25 witnesses that we had listed on our prehearing

1 submission, but as I mentioned at the start of the
2 hearing, we had had an economic analysis done, which
3 came in after the 30-day deadline for the prehearing
4 submission. So we do have the witness here today,
5 Stuart Smith, who prepared that analysis, and we had
6 given a copy of the analysis -- obviously, it was just
7 a few hours ago -- but to our neighbors. So I just
8 wanted to see how you'd like to handle it. We can
9 either --

10 MS. ROBESON: Well, let me hear from the
11 neighbors. These are options. I can, under the rules,
12 exclude it entirely. The alternative is that I -- that
13 we're going to leave the record open for a little bit
14 anyway. I can let you -- I can let you look at it and
15 set a deadline for any comments you have.

16 Now, you are entitled to the right of
17 cross-examination of the expert. The other thing you
18 can do is you can ask for a hearing so you can --
19 another hearing date so you can cross-examine the
20 expert and you have the opportunity to bring in your
21 own expert if you wish.

22 So those are sort of the -- if you want to
23 hear the information, you know, we can let it in and
24 let you comment. If you want to cross-examine or bring
25 your own expert, if you feel like it's not valid, you

1 can request another hearing date.

2 So do you have -- it's obviously -- if I let
3 it in, I'm not -- I'm going to let you respond -- I'm
4 going to give you two weeks or so to respond. So
5 that's no question. So, you know, I'd like to hear
6 what your position is on it.

7 MR. SHUKLA: So, Ms. Robeson, this
8 information was shared with us literally five minutes
9 before the hearing started, so we haven't had a chance
10 to digest it. We would like to hear what the -- you
11 know, how the analysis was done and then maybe schedule
12 another hearing to come and --

13 MS. ROBESON: If you feel it necessary.

14 MR. SHUKLA: Correct.

15 MS. ROBESON: Okay. All right. So can you
16 bring the witness forward?

17 MS. DLHOPOLSKY: Stuart Smith.

18 MS. ROBESON: And do I have a copy of it?

19 MS. DLHOPOLSKY: We have copies here. And
20 I'm actually going to have my associate, Matt Gordon,
21 do the questions for this witness.

22 MS. ROBESON: Okay.

23 MS. DLHOPOLSKY: We have copies of the resume
24 and the report.

25 MS. ROBESON: So this would be -- I think

1 we're on Exhibit 24, which --

2 MS. DLHOPOLSKY: 54, I think. 54.

3 MS. ROBESON: Yes. 54. So the resume will
4 be 54.

5 MR. GORDON: Did you get the report?

6 MS. ROBESON: And the report will be 55.

7 (Smith Resume was marked as Exhibit No. 54
8 for identification.)

9 (Smith Report was marked as Exhibit No. 55
10 for identification.)

11 MS. ROBESON: Thank you. So Mr. Smith's
12 resume is 54 and the valuation report is 55.

13 Okay. Mr. Smith, please raise your right
14 hand.

15 STUART SMITH,
16 the witness, after having been duly sworn, was examined
17 and testified to as follows:

18 MS. ROBESON: Okay. Please state your name
19 and your address for the record.

20 THE WITNESS: My name is Stuart, S-t-u-a-r-t,
21 middle initial I, last name Smith. 1710 Glastonberry
22 Road, Rockville, Maryland 20854.

23 MS. ROBESON: All right. Ms. --

24 MS. DLHOPOLSKY: Yeah, my associate --

25 MS. ROBESON: I'm sorry.

1 MS. DLHOPOLSKY: We're going to give him a
2 chance to do something here.

3 MR. GORDON: Matt Gordon on behalf of the
4 applicant, for the record.

5 DIRECT EXAMINATION

6 BY MR. GORDON:

7 Q. Mr. Smith, what is your occupation?

8 A. I'm a real estate appraiser.

9 Q. And for how long have you been engaged in
10 this occupation?

11 A. Since 1990.

12 Q. With what firm are you presently affiliated?

13 A. I'm self-employed.

14 Q. What is your title?

15 A. Owner.

16 Q. Principal. Okay. So for how long have you
17 been self-employed?

18 A. The genesis of this company started in 1993,
19 and it's gone through several name changes as partners
20 have come and gone.

21 Q. And what is your professional and educational
22 background and what degrees do you hold?

23 A. I have an undergraduate degree in economics.
24 I have some graduate work in economics from Georgetown
25 University. I have an MBA in corporate finance.

1 Oh, my designations. Since 1991, I have been
2 a member of the Appraisal Institute with the MAI
3 designation, and since 2009, I have been a member of
4 the Royal Institution of Chartered Surveyors, which is a
5 similar international organization for valuation.

6 Q. And is there continuing education
7 requirements --

8 A. Yes.

9 Q. -- for these? And -- go ahead.

10 A. Continuing education requirements both with
11 the MAI designation. There are continuing education
12 requirements for the MRICS member, the Royal
13 Institution of Chartered Surveyors, and there's
14 continuing education requirements from each of the
15 three jurisdictions that I'm admitted into the states
16 District of Columbia, Maryland, and Virginia.

17 Q. And is your continuing education up to date
18 for all --

19 A. Yes.

20 MS. ROBESON: Have you ever testified as an
21 expert before any administration -- any administrative
22 agency or a court?

23 THE WITNESS: Yes. Not for a long time. The
24 only recent testimony was written testimony that I
25 presented to the Surface Transportation Board.

1 MS. ROBESON: Have you ever been qualified as
2 an expert?

3 THE WITNESS: Yes.

4 MS. ROBESON: And what were you qualified as
5 an expert in?

6 THE WITNESS: In real estate valuation and
7 analysis of real estate.

8 MS. ROBESON: Okay. And your license in
9 Maryland is still current?

10 THE WITNESS: Yes.

11 MS. ROBESON: Okay.

12 THE WITNESS: Yes.

13 MS. ROBESON: Is there any objection?

14 MR. SHUKLA: No.

15 MS. ROBESON: I will qualify you as an expert
16 in real estate valuation.

17 THE WITNESS: Thank you.

18 MS. ROBESON: Go ahead, Ms. Dlhopsky.

19 BY MR. GORDON:

20 Q. Mr. Smith, are you familiar --

21 MS. ROBESON: I'm sorry, Mr. Gordon.

22 MS. DLHOPOLSKY: It's a lot easier to say
23 Gordon. You should have used him all along so you
24 don't have to keep saying Dlhopsky.

25 BY MR. GORDON:

1 Q. Are you familiar with Arden Courts' proposed
2 development of a residential care facility at the
3 subject property?

4 A. Yes.

5 Q. And did you prepare a report analyzing the
6 potential impact of the proposed facility on the
7 adjacent residential communities?

8 A. Yes.

9 Q. Can you please describe and summarize the
10 methods and findings in your report as they relate to
11 the facility that is the subject of this application?

12 A. Yes. Let me start from the back end. My
13 findings -- my opinion was that there was no
14 deleterious impact from the construction of the Arden
15 Courts facility on the adjacent residential properties.
16 In order to come to that conclusion, I looked at the
17 proposed development and recognized that it was a
18 relatively low scale development, looked at some site
19 plan data that was provided to me by the ownership, and
20 inspected the adjacent neighbors for the proximity of
21 the residential homes to the facility.

22 When that was done, I then tried to examine
23 where in the county they were comparable facilities
24 which had the same sort of height elevation, had the
25 same density, had the same kind of uses.

1 Unfortunately, there aren't any that are directly
2 comparable.

3 MS. ROBESON: There will be.

4 THE WITNESS: Well, there will be.

5 MS. ROBESON: Yep.

6 THE WITNESS: So --

7 MS. ROBESON: They just aren't built yet.
8 Okay. Go ahead.

9 THE WITNESS: So what I did was I went -- the
10 county maintains several lists of larger care
11 facilities. I went to the county records and chose
12 some of the largest ones. The rationale there was, if
13 there was no obvious impact -- deleterious impact from
14 a large facility to a neighborhood, then this facility
15 that was far more limited in scale and in number of
16 beds would -- wouldn't be any different.

17 So I chose six locations, and I'll just go
18 through it real briefly if that's okay. The six
19 locations that I looked at were Brighton Gardens of
20 Tuckerman Lane which is -- has assisted in skilled
21 nursing.

22 MS. ROBESON: Is that Bright View?

23 THE WITNESS: Brighton, I believe.

24 MS. ROBESON: Brighton, okay.

25 THE WITNESS: It's on -- it's Brighton

1 Gardens of Tuckerman Lane, on Tuckerman Lane --

2 MS. ROBESON: Okay.

3 THE WITNESS: Between Old Georgetown and
4 Rockville Pike on the south side of the street. I
5 looked at Brightview Fallsgrrove, which is on Darnestown
6 Road. It's assisted and dementia. I looked at the
7 Cohen-Rosen House, also known as the Ring House, on
8 East Jefferson Street, which is a CCRC. Then I looked
9 at Arden Courts, the larger group is called ManorCare,
10 but the group -- the facility I focused on was Arden
11 Courts. I also looked at Solana at Olney, which is
12 assisted and memory care, and the only memory care
13 facility, which is Alzheimer's and memory care.

14 And what I did was, I went through and tried
15 to identify those residences that were adjacent to a
16 care facility. And the thinking was that those would
17 be most indicative of what would occur in this
18 particular property.

19 And then I went back and I stepped back and I
20 said, Well, when did those properties sell? When was
21 the last time they sold? And I got those numbers and
22 converted them to a unit rate, dollars per square foot,
23 so you compare different size properties. And then I
24 went into the adjacent neighborhoods nearby but
25 properties that sold during a similar time frame, which

1 did not back up, did not have the same kind of
2 exposure.

3 And I tried to take different neighborhoods
4 in different parts of the county. The Brightons Garden
5 facility, again, is located in north Bethesda. I
6 looked at -- there was only one actual sale along the
7 adjacent street that had the same exposure is what
8 we're contemplating for the subject property. And I
9 compared that to sales that occurred before and after
10 and simultaneous with these transactions. I didn't
11 find any -- any real material difference in price.

12 Interestingly, the same property, the
13 property at 10547 Englishman Drive, sold in 2011 for
14 \$380,000, and then sold in 2014 for \$410,000. So
15 clearly an increase in price over a relatively short
16 period of time for the property that directly backs up
17 to the site.

18 So I also looked at the Brightview at
19 Fallsgrove. It's assisted and dementia. It's about
20 the same size, maybe a little larger than the subject
21 property. It was acquired in 2011 and developed in
22 2012. The adjacent neighborhood is mature
23 single-family residences. The most -- the properties
24 that backed up to Brightview Fallsgrove were located
25 within a segment of Glenora Lane and Glenmore Terrace.

1 And I compared again those -- the sale of those
2 properties to properties that were not proximate. And
3 again, you know, some differences in largely
4 measured -- predicated on size, with small properties
5 typically selling for a higher unit rate. But
6 generally speaking, no noted change, no noted
7 difference between properties that are adjacent and
8 nonadjacent.

9 Interestingly, the property, again, is a
10 single property sold within the same time frame, 2291
11 Glenmore Terrace, which was an adjacent property. It
12 sold in 2011 and 2014. Its price increased from 619-
13 to \$680,000, a 3 percent straight line percentage
14 increase in value over that time.

15 The other property is the Ring House, the
16 Cohen-Rosen House that was, again, a mature
17 neighborhood that was proximate to it. The -- there
18 wasn't -- there wasn't the homogeneity of property
19 sizes and such in this population sample. So I had to
20 make some calculations. But basically the finding was
21 really the same. There were no anomalies, no apparent
22 differences between properties that were adjacent and
23 nonadjacent.

24 I also looked at two more facilities. The
25 Arden Courts of Germantown, this is adjacent to the

1 ManorCare near the Potomac Tennis thing.

2 MS. ROBESON: Yeah, I know where it is.

3 THE WITNESS: And I chose that, and somebody
4 said to me, Well, why would you have chosen that? And
5 I chose that because they're really upscale properties
6 that are adjacent there. I mean, that's a million and
7 a half, two and a half, three and a half million dollar
8 properties. And it seemed to me if anyone would have
9 an objection to being proximate to a facility like
10 this, then you tend to look at people that could afford
11 to move any place that they wanted.

12 So I looked at the sales that were available
13 during that time frame. I didn't notice any -- any
14 major discrepancies in price. And so for that
15 particular one, since there weren't a lot of sales, I
16 went to the county and looked at the county's
17 assessment records, and I said, County, how are you
18 assessing the properties that are adjacent to a
19 facility and not adjacent? And on page 13 of the
20 report, you can see that there was, again, no material
21 difference. I mean, there's always some difference in
22 square footage price when the county assesses things,
23 but there was no material difference from the county's
24 perspective, at least in this particular instance.

25 MS. ROBESON: But when they assess --

1 THE WITNESS: Yes, ma'am.

2 MS. ROBESON: -- do they even go to the -- do
3 they even go to the properties anymore?

4 THE WITNESS: Well, they should.

5 MS. ROBESON: No.

6 THE WITNESS: They should. They should.

7 MS. ROBESON: That's not the question I
8 asked.

9 THE WITNESS: I don't want to speak for them.
10 I mean, my experience is that, for residential
11 properties -- the more expensive property, the more is
12 probability is that they go and look at it. But I can
13 tell you, I have lived in my house for 40 years, and no
14 one's ever come by.

15 So I don't know how to answer your question.

16 MS. ROBESON: Okay. But -- well --

17 THE WITNESS: And what the -- what this --
18 what they do, just for everyone's information, is they
19 take a -- they have a total price and they split the
20 price between the --

21 MS. ROBESON: Land and --

22 THE WITNESS: -- value of the improvements and
23 the improvements. And what I did here was try to
24 capture their sentiment as to what they thought the
25 value of the land might be, whether there were major

1 discrepancies when one side of the street and the other
2 and there weren't, and it happened to apply in a
3 neighborhood where people could afford, at \$3 million a
4 house, to move. A lot of -- a lot of options.

5 So I also looked at the Solana. It's
6 assisted living facility in Olney, Maryland.

7 MS. ROBESON: Is that the Artis? Or is that
8 the other one?

9 THE WITNESS: It's the other one, I think.

10 MS. ROBESON: Okay.

11 THE WITNESS: And here, there were some sales
12 of property. Actually, a lot of sales of property on
13 page 15 that were -- that were adjacent. One of the
14 most interesting transactions I found was 17814 Shotley
15 Bridge Place sold as a short sale -- I believe you
16 folks know what a short sale is, something less than a
17 typical market --

18 MS. ROBESON: Yeah, I -- well, do you know
19 what one is?

20 MR. SHUKLA: Yes.

21 MS. ROBESON: Okay.

22 THE WITNESS: So it sold as a short sale for
23 \$360,000 in 2011 and sold at a market rate of 406,000
24 in 2013. I included that simply to show that this is a
25 property where the -- there's some co-location of the

1 facility with the adjacency of the facility to the
2 property. And it didn't seem to me that -- and this
3 clearly showed that people were paying higher prices,
4 and in 2013, they're paying prices that were consistent
5 with the market.

6 So that's -- that seemed at me, at least,
7 to -- in addition to the other transactions -- show a
8 relative consistency of average price per square foot.

9 And the final one I looked at was the Olney
10 Memory Care, which does Alzheimer's and dementia on
11 Georgia Avenue. And there, it was a little more
12 complicated because there's a mixture of single-family
13 and townhouse, so I tried to disaggregate the single
14 family and the townhouses and do the analysis
15 separately. And both for the single family and the
16 town homes, I really didn't -- didn't observe any
17 material difference. I mean, it's always five bucks
18 here or three bucks there per square foot, but a lot of
19 that's, you know, attributable to condition of the
20 improvements or other factors.

21 So the bottom line is, half a dozen
22 properties, a variety of locations, different potential
23 purchasers, and no major observable differences in unit
24 rates.

25 MS. ROBESON: Well, I -- I had a question.

1 THE WITNESS: Yes, ma'am.

2 MS. ROBESON: I just had this issue in
3 another case, but are the -- these facilities, I have
4 difficulty seeing from the photos. Are they as close
5 to the facility as these are?

6 THE WITNESS: I would say --

7 MS. ROBESON: To your knowledge.

8 THE WITNESS: Yes. To my knowledge, they are
9 not, but they're within 100 feet, let's say, as opposed
10 to this, which may be within 40 feet.

11 MS. ROBESON: Okay.

12 THE WITNESS: Okay? The -- as I started, you
13 know, there's really nothing -- development in
14 Montgomery County is so unique and site specific that
15 there really, in my view, hasn't been anything that's
16 identical in height, scope, and proximity. I tend, in
17 those kinds of situations, try to choose a range of
18 different stuff and see how that can be applied.

19 MS. ROBESON: Okay.

20 BY MR. GORDON:

21 Q. And so based on your findings for these six
22 properties, were you able to analogize how that would
23 relate to the applicant's proposed development?

24 A. Yes.

25 Q. And what -- what was your opinion?

1 A. And I did not see any deleterious impact on
2 the adjacent residential housing from this particular
3 development at this particular site.

4 Q. And then the last question I had, which is --
5 sorry to be a little bit repetitive.

6 A. No problem.

7 Q. In your opinion, will the proposed
8 residential care facility cause undue harm to the
9 peaceful enjoyment, economic value, or development
10 potential of the abutting and confronting properties or
11 the general neighborhood?

12 A. No. The neighborhood is already largely
13 developed. It's unlikely there will be redevelopments
14 in the area, but the answer to your question is no.

15 Q. Thank you.

16 A. It's a mature neighborhood.

17 MS. ROBESON: Okay. Do you have any
18 questions?

19 MR. SHUKLA: Yeah, I have a few questions.

20 MS. ROBESON: But you'll have a chance, if
21 you want to, to ask more. But go ahead for now, all
22 right.

23 THE WITNESS: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. SHUKLA:

1 Q. So Mr. Smith, first of all, this was done on
2 a -- (indiscernible)?

3 A. I'm sorry?

4 Q. This was done on a paid basis, right?

5 A. Yes.

6 Q. And they paid you for doing this analysis?

7 A. Yes. All my -- all my assignments are paid.

8 Q. Okay. The six houses you listed here,
9 clearly you couldn't have visited them in 2011, but did
10 you visit them as part of this arrangement?

11 A. Some I did, some I didn't. I know -- I am
12 familiar with all the -- all the -- all the healthcare
13 facilities, all the assisting living facilities. I'm
14 very familiar with them. My mother happens to live in
15 one of them, so...

16 Q. Did you evaluate were there any improvements
17 done during -- in those houses during that period?

18 A. Improvements? No, I did not.

19 Q. Okay. So you don't know whether the price
20 change might have anything to do with finished basement
21 or upscaled landscaping or anything of that nature?

22 A. I do have some sense of the properties. My
23 database that I used was the multiple listing service.
24 The multiple listing service provides a physical
25 description of the property as well as terms and

1 conditions of the sale. And so most of the -- most of
2 the properties you find in a subdivision are, so a
3 large extent, homogeneous with each other. The major
4 differences, obviously, are condition, as you say, and
5 also size.

6 I made some conditions -- I made some
7 assumptions that, given the large number of
8 transactions I looked at, but any significant
9 aberrations from conditions, you know, would -- would
10 sort of wash out in the -- in the number of
11 transactions.

12 Q. Okay. Were --

13 A. By the way, let me ask, when you -- you asked
14 the question about my -- getting hired by the -- by the
15 owner of the property. All of my assignments I get
16 hired by people. I am a member of two international --
17 national and international organizations with high
18 levels of ethical standards. We are hired as
19 independent third-party -- to make independent
20 third-party issues. If people have any problems with
21 thinking that, for one reason, I wasn't independent in
22 the analysis, there are, you know, procedures and
23 standards that they can use to, you know, make
24 complaints.

25 But in the 30 years, 40 years I have been

1 doing this kind of stuff, I have never had a complaint
2 so....

3 I just wanted to respond to your question.

4 Q. No, I wasn't questioning your integrity.

5 A. Yeah.

6 Q. I just want it to be on the record as to, you
7 know, where the --

8 A. Yeah, no, that's fine. That's fine. Yeah.

9 Q. On average, you're showing those properties
10 which were resold during this three-year period to be
11 about a 3 percent gain in the property value. Did you
12 analyze it with similar properties in a similar region
13 to see whether the 3 percent was below loan, about
14 loan, or par for the course?

15 A. It was -- as you know, for the residential
16 properties, it's sort of a particularly difficult
17 period of time. There are a lot of short sales. There
18 are a lot of people with problems. There is a -- the
19 leftovers from the housing issues that we had.

20 Generally speaking as an appraiser, if
21 someone does that, you expect prices to keep roughly
22 comparable with the change in the rate of increase in
23 the CPI, and you know, 3 percent is not an unreasonable
24 anticipation.

25 Q. But --

1 A. Did I do an analysis for each one of them?
2 No, I did not.

3 Q. So this analysis doesn't really conclude, in
4 a way, that you can definitely say that these prices
5 were not deflated or did not increase or stay the same
6 because of proximity to such similar projects nearby?

7 A. In my view -- in my view, given the number
8 and the sum total of evidence, I feel that I can say
9 that there was no -- no -- no major anomalies other
10 than size, which I tried to account for or discuss.

11 Q. So, I'm sorry, I'm trying to understand. Is
12 that your view or is that your analysis?

13 A. That's my analysis and my view.

14 Q. Okay. So it's just a view?

15 A. Yes. That's what an appraisal --

16 MS. ROBESON: You have explained that. I'm
17 not cutting you off, but we need to --

18 MR. SHUKLA: Okay.

19 MS. ROBESON: I understand the difference. I
20 understand the ethical standards and I understand the
21 difference. You can ask him more questions.

22 MR. SHUKLA: I don't know if I have -- I
23 think that's about it.

24 THE WITNESS: Okay. Thank you.

25 MS. ROBESON: All right. Mr. Gordon -- I got

1 it right.

2 MR. GORDON: I think we're all set with
3 Mr. Smith.

4 MS. ROBESON: Okay. You may be excused for
5 now. You're subject to being recalled if requested.

6 All right. Now, is that your last witness
7 for your case in chief?

8 MS. DLHOPOLSKY: Yes, this is.

9 MS. ROBESON: All right. Now, we have your
10 time. You have been incredibly patient and quite
11 astute. This is your time to testify.

12 So do you wish to go first?

13 MR. SHUKLA: Yeah, I just --

14 MS. ROBESON: Well, first, raise your right
15 hand.

16 PANKAJ SHUKRA,
17 the witness, after having been duly sworn, was examined
18 and testified to as follows:

19 MS. ROBESON: Thank you. And state your -- I
20 think we already have your address.

21 MR. SHUKLA: But I don't mind stating it.

22 My name is Pankaj Shukla, and I reside at the
23 property otherwise defined as lot 360, which is 18923
24 Porterfield Way, Germantown.

25 So, first of all, thank you for allowing me

1 to be here and observe the proceedings and participate.
2 And also, I want to say thank you to Mr. Palmer for
3 inviting and having the discussions and trying to
4 address some of the feedback that we have.

5 I think my concern is an immediate property
6 right next to this building, are really few. One is,
7 first of all, the safety and security of my family and
8 my property, since on the questions related to the use
9 of this facility, the people who will come, whether
10 they are your patients or whether they're employees or
11 whether they're subcontractors, that's one issue. What
12 can be done to provide any kind of buffer or protection
13 as in a fence or something.

14 Honestly, property value would have been one
15 of the other topics, but I think, to be security
16 (indiscernible) a higher issue. Property values, I
17 think -- I have just received this, and we'll discuss
18 that as we spoke earlier.

19 I think some of the other concerns we have is
20 how will this disrupt our day-to-day life, if it would,
21 in terms of any light pollution, noise pollution, any
22 other traffic or other issues. And especially any
23 other emergency vehicles accessing and related
24 disruptions.

25 So I think these are some of the issues I

1 would like to address. And then on the -- specifically
2 about the architecturing and specifically about the
3 fence was one of the issues to try and address that to
4 a certain extent.

5 MS. ROBESON: You mean a fence on the rear of
6 the --

7 MR. SHUKLA: A fence. I think I'm also
8 referring to the loop, you know, the --

9 MS. ROBESON: That you want to try and --

10 MR. SHUKLA: Correct.

11 MS. ROBESON: Okay. And I understand that
12 you may need a WSSC permission, but it looks like the
13 rest of the parking lot does have other structures such
14 as light fixtures, which -- certainly for which you
15 would have had to apply and achieve the same approvals
16 from WSSC. So I don't necessarily see this as an
17 impediment. This would be simply an additional item
18 that could be added.

19 Lastly, and, you know, to Mr. Crum -- yeah.
20 So Mr. Crum's testimony, I think I heard him say that
21 the channel is five feet deep and the worst-case
22 scenario in the channel has been two feet, with three
23 feet of space that has been left for water to go
24 through, if I understood that comment correctly. Yes?

25 MS. ROBESON: Well, I think he said the

1 ten-year storm.

2 MR. SHUKLA: The ten-year storm, yeah.

3 MS. ROBESON: Which is --

4 MR. CRUM: Not the worst-case scenario.

5 MR. SHUKLA: Not the worst-case scenario.

6 Okay. So we -- I have lived in this property for 16
7 years. My neighbor, Mr. Mathew Jacob, has lived in his
8 property for 15 years. So I have to say that probably
9 on several occasions we have seen the channel pretty
10 close to its capacity. I would say maybe half a foot
11 at most to a foot, you know, below the channel.

12 So you know where the two-feet information
13 came from, but I wanted to make sure that, on the
14 record, I say what we have observed, as somebody who
15 will continuously be, you know, looking at this thing
16 on a day in/day out basis.

17 So I'd really like to understand that, if
18 that's a devised number, then, you know, would you --
19 would it change anything in your professional estimate?
20 You mentioned about 20 acres of water runoff being
21 diverted to this property -- to this channel, sorry,
22 but this is three additional acres. That's about 15
23 percent overage, 15 percent extra area from which the
24 water will be run off into this channel.

25 For us, the issue of flooding and having to

1 go in future, at some date, to court is real. And I'd
2 rather that we take this opportunity to just so just
3 route the storm water runoff rather than on the east of
4 my property, which is the -- sorry, west of my
5 property, which is 360 lot to the far end of the valley
6 buffer, the stream valley buffer. This will avoid the
7 discretion altogether, and I -- other than perhaps a
8 longer pipe and an additional cost at your end, I do
9 not see if there's any other objection.

10 I understand county giving approvals, but
11 engineering decisions have to be paid on that certain
12 level of (indiscernible) basis and not based on what is
13 a minimal requirement that need to be met.

14 I think, to me, that flooding scenario is a
15 real scenario, and I think that needs to be looked at
16 as part of the approval. I think that's about it, what
17 I have captured.

18 MS. ROBESON: Okay.

19 MR. SHUKLA: All the concerns. Thank you.

20 MS. ROBESON: Okay. Thank you.

21 Any questions, Ms. Dlhopsky or Mr. --

22 MS. DLHOPOLSKY: No, I don't think we have
23 any questions for Mr. Pankaj -- sorry, Shukla. I
24 apologize. I apologize for that.

25 MR. SHUKLA: No worries, no worries.

1 MS. DLHOPOLSKY: I think we will do rebuttal,
2 just some rebuttal testimony to supplement some of the
3 questions that came up earlier.

4 MS. ROBESON: That's fine.

5 MS. DLHOPOLSKY: But I don't think I have any
6 questions for Mr. Shukla.

7 MS. ROBESON: That's fine.

8 MR. SHUKLA: Okay. Thank you.

9 MS. ROBESON: Thank you.

10 Mr. -- is it --

11 MR. JACOB: Jacob.

12 MS. ROBESON: Jacob.

13 Please raise your right hand.

14 MATHEW JACOB,
15 the witness, after having been duly sworn, was examined
16 and testified to as follows:

17 MS. ROBESON: Okay. Do you want to state
18 your name --

19 MR. JACOB: Yeah, Mathew Jacob. 18921
20 Porterfield Way, Germantown, Maryland. I live at lot
21 No. 361.

22 MS. ROBESON: Okay.

23 MR. JACOB: Since Pankaj just covered most of
24 the things, I have a couple more items to add. One, we
25 talked about the generator.

1 MS. ROBESON: And what -- yeah, what -- can
2 you tell me exactly what you were --

3 MR. JACOB: I was thinking, most of the --
4 two types of noise coming from it right now.
5 Mr. Palmer shared with us some information on the
6 generator. He was not specific about the muffler part
7 of it. And like in hospitals or very close residential
8 facilities, we would like to have a critical muffler,
9 which makes the lowest noise output. So that when it
10 runs -- if it runs at nighttime for emergency, we can
11 prevent it from running. That is a function of it. So
12 it has to run at nighttime. But the impact of the
13 noise can be lessened if you go with a better quality
14 muffler.

15 So if you buy a generator standard, then it
16 comes with a standard muffler, which cannot really do
17 much. So the noise -- noise levels are much higher.

18 MS. ROBESON: Okay. Did you say it had to
19 run at night?

20 MR. JACOB: No, but as emergency generator,
21 if you --

22 MS. ROBESON: Oh, I see.

23 MR. JACOB: -- lose power, it will have to
24 come on, where it's functional.

25 MS. ROBESON: Yes. Yes, yes. I understand.

1 MR. JACOB: The second item I would like to
2 bring up to you is the --

3 MS. ROBESON: Now, do you have any
4 suggestions on a particular type of muffler or just --

5 MR. JACOB: No. There's one particular
6 muffler so -- every manufacturer has a particular
7 muffler.

8 MS. ROBESON: Okay.

9 MR. JACOB: So they can probably get it. I
10 cannot state which (indiscernible) to buy.

11 MS. ROBESON: Okay. You're looking for the
12 best noise muffler that's going to address noise
13 attenuation.

14 MR. JACOB: Correct.

15 MS. ROBESON: Okay.

16 MR. JACOB: And we already talked about the
17 exercise times to (indiscernible) a window. I guess
18 you're going to talk about it later, right?

19 MS. DLHOPOLSKY: Mm-hmm, mm-hmm.

20 MR. JACOB: Okay. The next item, I was
21 wondering is the parking area is going to be monitored
22 for security reasons or --

23 MS. ROBESON: I couldn't understand what you
24 were saying.

25 MR. JACOB: The parking lot spaces, is it

1 going to be monitored with camera, security cameras or
2 something?

3 MS. ROBESON: Oh, I don't know.

4 MR. JACOB: Because, you know, nowadays,
5 yeah, anybody can come in. It's an open -- there's no
6 gate there so...

7 Is that something you guys have considered --
8 or I don't know --

9 MS. ROBESON: Okay. Well, he can't answer at
10 the moment, but maybe on rebuttal we'll hear more.

11 MR. JACOB: And Mr. Palmer is going to also
12 talk about the construction period, traffic and all,
13 right?

14 MS. ROBESON: Okay. You know better than me,
15 clearly, so your concern is construction traffic.

16 MR. JACOB: Right. It's going to be for
17 awhile. It's not going to be a few months.

18 MS. ROBESON: Yes.

19 MR. JACOB: I understand it takes some time
20 but...

21 MS. ROBESON: Okay.

22 MR. JACOB: Thank you.

23 MS. ROBESON: Thank you.

24 Now, just a second, Ms. --

25 MS. DLHOPOLSKY: Yeah, I just had actually

1 one -- just one quick question.

2 CROSS-EXAMINATION

3 BY MS. DLHOPOLSKY:

4 Q. Mr. Palmer, I believe, had provided you
5 information with regard to the generator, and I believe
6 there is some information regarding the muffler
7 included in that. So is it your testimony that you
8 didn't think what was proposed in there is adequate?
9 Or you wanted some more information?

10 A. It doesn't really say it's a particular stage
11 muffler so I'm not sure, unless I go through the
12 categories trying to figure out what it is.

13 Q. Okay. So it sounds like you just didn't have
14 enough information to even determine --

15 A. So you may be able to find one from the same
16 manufacturer.

17 MS. ROBESON: Can you -- is there a noise
18 attenuation level or measurement that you think is
19 appropriate or no?

20 MR. JACOB: Well, the -- with that rating I
21 think comes with some noise levels.

22 MS. ROBESON: Oh, okay.

23 MR. JACOB: But I don't know what they are.

24 MS. ROBESON: So what rating is it?

25 MR. JACOB: It's got a particular muffler.

1 MS. ROBESON: Oh.

2 MR. JACOB: I think it has a particular
3 hospital grade.

4 MS. ROBESON: I see.

5 MR. JACOB: So that makes the lowest noise.

6 MS. ROBESON: Oh, okay.

7 BY MS. DLHOPOLSKY:

8 Q. So is that -- I believe if the materials we
9 gave you, that maybe the noise levels that would be
10 achieved as a result of the muffler were specified?

11 A. Yeah, it has one which talks about how far
12 the noise will be. But it doesn't say anything about
13 (indiscernible) or the muffler. We're talking about
14 the muffler, right?

15 Q. Right. And just what noise levels would be
16 achieved as a result of that.

17 A. Yeah. I mean, if you classified the
18 mufflers, then we would be able to understand what that
19 is.

20 Q. Okay. So it sounds like you --

21 A. I didn't spend time in going through the
22 manufacturer's online catalog looking for it,
23 otherwise, I would have found it.

24 MS. DLHOPOLSKY: And I think we had already
25 started at the start of --

1 MS. ROBESON: Yes.

2 MS. DLHOPOLSKY: Or I think maybe you had
3 asked that --

4 MS. ROBESON: Yes, we did.

5 MS. DLHOPOLSKY: -- you would like some
6 additional information, so we would be happy to provide
7 that in the supplemental materials we'll submit.

8 MS. ROBESON: Okay.

9 MS. DLHOPOLSKY: I have no further questions.

10 MS. ROBESON: Okay. Thank you.

11 MR. JACOB: Thank you.

12 MS. ROBESON: All right. Rebuttal.

13 MS. DLHOPOLSKY: Okay. I think we just
14 wanted to bring back two of our witnesses briefly. And
15 I think it may make sense to start with Mr. Brian
16 Donnelly first --

17 MS. ROBESON: I agree.

18 MS. DLHOPOLSKY: -- just to clarify a few
19 things. Sorry. What was that?

20 MS. ROBESON: I'm teasing.

21 MS. DLHOPOLSKY: I have a cold. My ears are
22 clogged; I didn't hear it. But --

23 THE WITNESS: It was meant for me.

24 MS. DLHOPOLSKY: Oh, okay.

25 BRIAN DONNELLY,

1 the witness, after having been previously duly sworn,
2 was recalled for examination and testified to as
3 follows:

4 MS. ROBESON: Okay. Mr. Donnelly, what would
5 you like to rebut?

6 THE WITNESS: I just wanted to clarify, I
7 think, in my testimony regarding the size of the plant
8 material that we're going to be installing along the
9 southern property line abutting the two --

10 MS. ROBESON: Lot 360 and 361?

11 THE WITNESS: Yes, correct. Originally we
12 did an analysis of sections 6.2.9 for the parking lot
13 landscape standards, 6.4 for the general landscape
14 standards, and then 6.5 for the landscape screening.

15 Within the landscape screening, there is a
16 number of planting options that you're allowed to
17 install in order to get certain plant credits and meet
18 a certain depth standard, and it's a function of width
19 and plant material to density. So the original plan we
20 submitted exceeded the --

21 MS. ROBESON: Was it Option A or Option B in
22 the zoning ordinance? Do you know?

23 THE WITNESS: I believe we went with Option
24 B.

25 MS. ROBESON: Okay.

1 THE WITNESS: But I'd have to look at the
2 landscape plan to double-check that.

3 MS. ROBESON: Okay. Well, keep going.

4 THE WITNESS: So when we originally had
5 submitted, we exceeded the minimum landscape
6 requirements within -- required by zone.

7 MS. ROBESON: Mm-hmm.

8 THE WITNESS: We met with the adjoining
9 neighbors and increased the plant material. In my
10 testimony, I said 6 to 7 but we're actually planting 9
11 to 10. So we did --

12 MS. DLHOPOLSKY: And is that -- that's in
13 height.

14 THE WITNESS: In height for the --

15 MS. ROBESON: Is that the evergreens?

16 THE WITNESS: For the evergreen material,
17 yes. So we are actually specifying the larger
18 material.

19 MS. ROBESON: Oh, okay.

20 THE WITNESS: And that is --

21 MS. ROBESON: And that -- is that -- that's 9
22 to 10 when it's planted?

23 THE WITNESS: Correct.

24 MS. ROBESON: Okay.

25 THE WITNESS: And it's part of Exhibit

1 42-A-3.

2 MS. ROBESON: Thank you.

3 THE WITNESS: As a result of the meetings I
4 believe with the citizens, the joint property, we did
5 not only increase the size but we reevaluated the
6 spacing in order to give it a staggering effect. So
7 instead of being at a linear strip, it was -- the plant
8 material was staggered in order to get a denser end
9 result.

10 We also changed the species in order to
11 increase the number of evergreens, and then, you know,
12 actually increased more plant material on that edge.

13 MS. ROBESON: Okay.

14 THE WITNESS: We still believe that the
15 evergreens satisfy or that the plant material satisfies
16 all the requirements of the code, and at this point, it
17 exceeds it considerably.

18 MS. ROBESON: Okay.

19 BY MS. DLHOPOLSKY:

20 Q. So Mr. Donnelly, it's your testimony that
21 the -- that the -- I believe it was Option B, was
22 already previously satisfied, but with the changes that
23 were made to stagger and make the plantings denser and
24 to increase the size at planting, that it exceeds what
25 the minimum of what the zoning ordinance requires?

1 A. Yeah, it exceeded it during the original
2 design, and it further exceeded it with the
3 enhancement.

4 MS. ROBESON: Okay. All right.

5 MS. DLHOPOLSKY: That's --

6 MS. ROBESON: Any questions?

7 REBUTTAL CROSS-EXAMINATION

8 BY MR. SHUKLA:

9 Q. I wasn't sure what Option B meant because I
10 don't have all the of the documents in exhibits that
11 are presented here.

12 A. In -- it might be easier just to show him
13 this chart.

14 MS. ROBESON: It might be -- I was --

15 THE WITNESS: Yeah, (indiscernible).

16 The differences really are that the one
17 option required a greater separation of green space.
18 The second one requires a lesser separation but more
19 plants. And so there's a credit associated with the
20 depth of the planting and the distance versus the
21 intensity of the plantings.

22 MS. ROBESON: But it's my understanding you
23 exceeded both options.

24 THE WITNESS: Correct.

25 MS. ROBESON: Okay. I just wanted to make --

1 MR. SHUKLA: Thank you.

2 MS. ROBESON: Anything else?

3 REBUTTAL CROSS-EXAMINATION

4 BY MR. JACOB:

5 Q. (Indiscernible) be part of what Mr. Palmer
6 has discussed with us? Is that what it is?

7 A. Yeah, the original intent was to make -- to
8 use Option A -- I'm sorry, Option B, and then we just
9 enhanced Option B with larger material, more plants,
10 and closer together.

11 Q. Thank you.

12 A. And they were more concentrated directly
13 behind the lots.

14 MS. ROBESON: Okay. Anything else?

15 MR. JACOB: No.

16 MS. ROBESON: Any redirect?

17 MS. DLHOPOLSKY: No further questions.

18 MS. ROBESON: Okay. Now we get Mr. Palmer.
19 You're still under oath, Mr. Palmer.

20 THE WITNESS: I understand.

21 BRYAN PALMER,
22 the witness, after having been previously duly sworn,
23 was recalled for examination and testified to as
24 follows:

25 REBUTTAL DIRECT EXAMINATION

1 BY MS. DLHOPOLSKY:

2 Q. Okay. So I think we had a few -- I guess
3 maybe just a few things that we wanted to tick off, in
4 no particular order. But I guess while we're on the
5 topic of landscaping, Mr. Palmer, something that was
6 raised in the direct testimony or I guess the
7 cross-examination by our neighbors was the notion of
8 putting a fence on what is called the loop.

9 And if you could just discuss your thoughts
10 on that in a bit more detail from a kind of design and
11 operational perspective.

12 A. Okay. We have a couple of concerns about
13 putting a fence up that close to the driveway and
14 sidewalk area. As visitors or family members approach
15 and go to use that drop-off area, mainly, from a visual
16 standpoint up at that point, it's going to really feel
17 like a confined -- kind of a, you know, very tight,
18 confined area, I guess visually, not one that we were
19 trying to, you know, convey, which is kind of an open
20 bucolic kind of setting, and to have that right by the
21 front door, I think, from an inside-out perspective
22 is -- is not an ideal setting that, you know, our
23 folks, our residents and their family members may find.

24 It provides a little -- or it would provide
25 an issue trying to deal with snow removal. You'd have

1 to have it set far enough away to accommodate the
2 ability to remove snow and push off the edges there. I
3 would venture to say if, you know, a significant amount
4 of snow that we have to deal with and it was pushed up
5 against that fence, it might actually cause it to fall
6 down that embankment as well.

7 So already, it would have to be positioned
8 down the slope, away from the edge of the curbing,
9 sidewalks, driveway so that we have workable space on
10 the upper side. Therefore, just further diminishing
11 why we would be putting it there in the first place.

12 We're -- at least in my opinion, I think the
13 solution that we came up with, talking with the two
14 families to, you know, bolster that immediate effect
15 with the evergreens, controlling the arrangement and
16 the size, placing that up closer to that area would,
17 you know, already start taller than the fence would
18 anyway, combined with the other trees and so forth, I
19 just think it would be inside-out and from their side
20 both satisfying.

21 MS. ROBESON: Okay. Would there be any
22 problem with emergency vehicles accessing that loop?

23 THE WITNESS: If there were fence right on
24 the edge?

25 MS. ROBESON: Yeah.

1 THE WITNESS: Perhaps. You know, they take a
2 wider turn. Bumpers would flair a little farther out,
3 obviously.

4 MS. ROBESON: All right.

5 THE WITNESS: And just someone getting into
6 that area and need to, you know -- sometimes, we don't
7 have some of the best drivers, perhaps, that visit, and
8 so you want to keep those type of obstacles, you know,
9 in safe range.

10 MS. ROBESON: Okay.

11 BY MS. DLHOPOLSKY:

12 Q. And again, in no particular order, just
13 hitting the clean-up items, I guess literally, so to
14 speak, one of the things that came up during earlier
15 today was whether you, as an applicant, could offer
16 some sort of a window in terms of trash pick up times.
17 And so is that something you're prepared to --

18 A. Yeah. You know, we have done that in other
19 situations. Certainly recognizing the challenges of
20 having school across the street, and at the time that
21 we negotiate our contracts with the particular service,
22 tell them, you know, restrict them to whatever those
23 hours that you find acceptable inside within -- not
24 affects the departure, the drop-off, or the arrival
25 time -- or departure time in the afternoon of the

1 school in that -- you know, in some sense across that,
2 I think we would be successful and be able to mandate
3 that with our contracts.

4 Q. Okay. So I think it had come up earlier that
5 perhaps weekdays in the mid-morning to mid-afternoon
6 hours, to steer clear of the peak times of the school
7 and ensure --

8 MS. ROBESON: So, like, 11:30 to -- I can't
9 remember the peak times.

10 THE WITNESS: I think we said starting at
11 10 --

12 MS. ROBESON: So like 11 to --

13 MS. DLHOPOLSKY: I think we had discussed
14 maybe like 10 to 2:30 to give a bigger window as
15 opposed to --

16 MS. ROBESON: I thought the school started at
17 9:50.

18 MS. DLHOPOLSKY: It begins --
19 (indiscernible). 9:15.

20 MS. ROBESON: Oh, okay. I'm sorry.

21 THE WITNESS: It's 3:50 in the afternoons.

22 MS. ROBESON: So 10 to --

23 MS. DLHOPOLSKY: We had mentioned 10 to 2:30
24 as a possible window just to -- so it's clearly not
25 infringing on the early morning or the later in the

1 afternoon hours of the school peak.

2 MS. ROBESON: Okay.

3 BY MS. DLHOPOLSKY:

4 Q. A few more items, Mr. Palmer. One thing that
5 came up earlier today was with regard to whether we
6 have any sort of overflow parking contingency plan. If
7 maybe you could speak to how often you think that that
8 might be even be needed and what -- what operations you
9 may undertake to accommodate that.

10 A. Sure. The occurrence or the rate of
11 occurrence of, say, a holiday event or something of a
12 large group gathering is very minimal throughout the
13 year. It's not something that happens monthly,
14 certainly not quarterly. Perhaps in the matter of four
15 or five times a year perhaps, you know, most of what we
16 have ever seen. Generally those will occur, you know,
17 on a weekend or mid-day, as Ms. Irvin testified to.

18 We would certainly pursue any opportunities
19 locally to set up an arrangement where we could park
20 staff off-site when we do have those limited events or
21 infrequent events, is probably the best
22 characterization of those.

23 Ideally, it would be nice if the school would
24 allow us. We can't say today that they definitely
25 would allow that, but we certainly would be prepared to

1 ask for that permission.

2 Likewise, if there are any other
3 opportunities, frequently, it's local churches, other
4 venues like that where we can park --

5 MS. ROBESON: Most of the other operators go
6 with -- I just know what their testimony is. They do
7 have these overflow contingency plans and they usually
8 have -- say they're going to make arrangements with
9 local churches. But, you know, you're the expert in
10 the field.

11 THE WITNESS: Sure. And absolutely, we're
12 certainly prepared to do that. Until this facility
13 starts, you know, being staffed with those people, then
14 that's part of their start-up operation, is to make
15 those kind of arrangements and provisions, given what's
16 available in the community.

17 BY MS. DLHOPOLSKY:

18 Q. Okay.

19 A. I would add, too, even when we have -- let's
20 say, you know, the holidays, frequently what happens is
21 folks will come but they're taking their loved ones to
22 join the rest of the family. You know, they have that
23 ability during, you know, that period of time during
24 the day to take them, have them be back with the
25 family. So not everyone is coming and staying in the

1 building and participating in one large event, per se.
2 So that's probably more common in those communities
3 where the families, you know, are local and inept to do
4 so.

5 MS. ROBESON: Okay.

6 BY MS. DLHOPOLSKY:

7 Q. Okay. Just two more questions, Mr. Palmer.
8 One, I think there was a question earlier with regard
9 to whether you have any sort of security monitoring of
10 your parking lot. Do you? And if you don't, why don't
11 you?

12 A. We don't mainly because just, you know, the
13 type of people, you know, that are coming to our
14 facility, the families, you know, friends. You know,
15 our staff -- you know, in certain situations, if
16 something would start happening and it's more of -- you
17 know, I think what they're probably concerned about is,
18 you know, vandalism or people from outside that -- yes,
19 we can't keep them from getting in there because we
20 don't have a gate. You know, in the event those types
21 of occurrences are frequent and posing a hazard to us,
22 you know, that would be something we would probably do
23 on our own once it was determined there -- a pattern is
24 established. But, you know, to start out expecting
25 that, we haven't had that -- and I would say in this

1 community, I don't think we should anticipate. That's
2 why we want to be there. We wouldn't have to deal with
3 those kind of issues. It's not like we're not going to
4 be tracking those folks that perhaps they may be
5 concerned about and up to no good that they might have
6 in mind.

7 Q. And I just had one last question for you,
8 Mr. Palmer. Mention was made of what sort of plans
9 there may be in place during the construction period
10 with regard to traffic. And you have some other
11 facilities in Montgomery County, so you're familiar
12 with their requirements. If you could speak to that a
13 little bit.

14 A. Sure. Having built quite a few of these
15 myself, been involved heavily and intimately, you know,
16 quite frankly, you know, the mass arrival and departure
17 is much like our shifts. You know, we want to start in
18 the morning before, you know, as soon as the sun is up
19 and usable, whatever county -- you know, county time
20 frame. So that's relatively early, about the same time
21 frame that we're talking for most of our staff
22 arriving. Likewise in the afternoon, you'd have that
23 same exodus that would be prior to the school when --
24 when the shift is finished.

25 The deliveries will occur throughout the day.

1 We will, per permitting process review, there will be
2 imposed upon us traffic control measures and plans that
3 the county will be able to, given this particular site
4 and where it is, the layout, the access, stipulate
5 exactly how the site and traffic control needs to be
6 done in order to comply with their expectations. And
7 we certainly would comply with that.

8 MS. ROBESON: Well, are you comfortable with
9 the condition saying they need to stay out of school
10 shift changes?

11 THE WITNESS: I think that would be a worthy
12 goal. I'm not saying I could guarantee that, you know,
13 a delivery wouldn't show up.

14 MS. ROBESON: Oh, no, I'm talking about for
15 the staff.

16 THE WITNESS: The man -- the manpower?

17 MS. ROBESON: Yes.

18 THE WITNESS: I think that's pretty much a
19 natural --

20 MS. ROBESON: But would you agree that's a
21 condition?

22 THE WITNESS: I would.

23 MS. ROBESON: Okay. Keep going.

24 You don't think -- so you don't think it's
25 necessary for the delivery trucks?

1 MS. DLHOPOLSKY: Are you talking during
2 general operations or construction period or both?

3 MS. ROBESON: Oh, I'm sorry. I was back
4 on -- with the staff changes, I was talking about
5 general --

6 MS. DLHOPOLSKY: Yeah, I think he's talking
7 construction.

8 THE WITNESS: Yeah.

9 MS. ROBESON: I'm sorry. So, okay,
10 construction. All right. Okay. Go ahead.

11 THE WITNESS: Should I change to staff now?

12 MS. ROBESON: Well, if you're finished with
13 construction.

14 THE WITNESS: Yeah, unless you have any other
15 questions.

16 MS. ROBESON: How about the -- I'm going
17 by -- I have a -- made a list of the issues, too, and I
18 thought I assume you had moved forward so...

19 How about staffing?

20 THE WITNESS: As far as staffing, I think --
21 you know, I'm fairly comfortable right now that what we
22 have exhibited or what we have found in our research is
23 that, you know, we are already beyond those critical
24 times for the elementary school and that we actually
25 dovetail quite well. I don't foresee that we need to

1 further, you know, stipulate necessarily.

2 MS. ROBESON: Well, you know --

3 THE WITNESS: Shift times, given the fact
4 that we have so -- you know, it's only part of this
5 shift and then -- you know it's kind of disbursed.

6 MS. ROBESON: Well, we have those conditions
7 in every case and we often, often create a condition
8 dealing with shift times because you have got the
9 school across the street.

10 THE WITNESS: Mm-hmm.

11 MS. ROBESON: Which you could say is not an
12 adherent, adverse -- you know, a nonadherent
13 characteristic. So it would be helpful, I think, to
14 have something either I can specify what you put down,
15 you know, when Ms. Randall went through blow-by-blow,
16 but that seems more time consuming than simply
17 saying -- doing it -- having it outside shift times.

18 I mean, if you want, you can think about it,
19 and you know, we have got a couple of -- we're going to
20 have to hold the record open, but you do have this
21 adverse condition -- non inherent adverse condition
22 that I would feel more comfortable -- if that's not the
23 way you want to craft it, can you give me something
24 else so I know that the staff changes aren't going to
25 occur at the same time the school is letting out.

1 Because sometimes people do. They meet with the
2 school. They say we're going to do this, X and Y and
3 then we get them in on a violation because they
4 weren't -- and I'm not saying you're going to violate.
5 In fact, I don't think you are. But it would give me a
6 comfort level that I can write off this as a
7 noninherent adverse effect.

8 MS. DLHOPOLSKY: And I think, since we are
9 going to be submitting a supplemental letter, providing
10 some additional information to folks, we would be
11 happy -- and I think that we can agree to, you know, to
12 some sort of condition. We just want a little bit of
13 time to think about it from an operational perspective.
14 We would be happy to propose maybe some language for
15 your consideration in our letter.

16 MS. ROBESON: That would be okay.

17 MS. DLHOPOLSKY: Okay.

18 I didn't have any further for Mr. Palmer.

19 MS. ROBESON: Okay. Let me just go down the
20 list, because I still have a few more.

21 What about the motion sensor lights that dim
22 and then, if somebody walks through there, they get
23 brighter? Do you feel that's necessary? Do you -- is
24 there a capability for that? Is that something you
25 would explore?

1 THE WITNESS: It's definitely something we
2 would explore. It has the appearance of maybe, you
3 know, if it's possible with the LED lights, you know,
4 that the engineer has selected or can select for
5 eventual use -- I guess I have it in my own mind
6 determines which is worse, seeing the up and down of
7 the lighting or consistent light level if I were living
8 next door. I don't know. I have -- I would be
9 guessing.

10 So it has the risk of maybe making the
11 situation worse. I don't know. Detecting that change
12 of light rather than just having it be directed against
13 and in a constant. I don't know. I'm guessing. I
14 might be more sensitive and pick up on the change of
15 light level rather than just, you know, acclimating to
16 what it is.

17 MS. ROBESON: Okay.

18 THE WITNESS: But we certainly are open to --
19 and I did -- when we met with the neighbors, I said
20 that is definitely something we're exploring to see if
21 it's even available.

22 MS. ROBESON: Okay.

23 THE WITNESS: But in no case, especially for
24 our folks going to and from the car late in the
25 evening, you know, for safety reasons, obviously, we

1 want them to have adequate light for safety to be able
2 navigate the parking lot.

3 MS. ROBESON: Okay. All right. Thank you.

4 Do you have any questions of Mr. Palmer?

5 MR. SHUKLA: Yes, on the last point,
6 Ms. Robeson.

7 REBUTTAL CROSS-EXAMINATION

8 BY MR. SHUKLA:

9 Q. I understand your personal preference.
10 Luckily for you, your property is not the one that is
11 getting impacted and you're not looking at all this
12 area.

13 We do have motion sensor flood lights in our
14 backyard, and so if animals -- and we do have some
15 deers and foxes and others do come by occasionally,
16 they do trigger. It actually helps us to make sure,
17 because both of us have walk-out basements. So it
18 actually helps us keep an eye if there are some
19 activity.

20 So I would rather actually have that option
21 as opposed to not have that option. If that's an
22 option, then it fits our preference.

23 A. Okay. Very good.

24 Q. And then I think your first comment about the
25 fence around the loop -- not around the loop but at

1 least on the side of our property, it doesn't obviously
2 have to be completely surrounding. It doesn't have to
3 be actually exactly hugging it to facilitate any snow
4 servicing or emergency vehicles. It can be kept at a
5 certain distance.

6 MS. ROBESON: Well, I think he's trying to
7 keep it out of the right of -- encroaching too far into
8 the right-of-way. Or am I wrong?

9 THE WITNESS: You're correct about that, but
10 also as it gets farther away or as it starts to leave
11 that curb line, it's also falling --

12 BY MR. SHUKLA:

13 Q. How far is that distance?

14 A. It's dropping almost -- you know, we can pull
15 the site plan, but the grade does slope pretty severely
16 from that edge on down to the property.

17 Q. What is the distance; do you know?

18 A. The distance until it slopes?

19 Q. From -- I think -- and go back to the 37-K or
20 anything else that --

21 MS. ROBESON: That just --

22 THE WITNESS: I don't have a scale with me
23 but it starts dropping --

24 MS. DLHOPOLSKY: Would it be helpful to have
25 Mr. Donnelly take a look quickly.

1 THE WITNESS: I need a scale.

2 MR. DONNELLY: There's usually about a two-
3 or three-foot bench off the back of curb where it
4 begins to slope.

5 UNIDENTIFIED MALE SPEAKER: (Indiscernible)
6 scale.

7 THE WITNESS: Let's use this one.

8 So that's within 6 feet.

9 MR. DONNELLY: So about a 5- or 6-foot bench
10 off the edge before it really starts slipping down.

11 MR. SHUKLA: So it can be separated by a 5 or
12 6-feet without -- and that should give plenty of buffer
13 for any emergency vehicles or snow vehicles.

14 THE WITNESS: I think I'd be reluctant to
15 only have five foot for snow removal, given some of the
16 storms we have had in this area lately, particularly
17 last year, just without causing harm to the fence.

18 And, again, I think we're somewhat putting
19 the cart before the horse, not knowing whether we can
20 even get approval necessarily from WSSC to put a fence
21 in that area.

22 BY MR. SHUKLA:

23 Q. But I think we agreed that only will go
24 through the approval process, right? So my point is
25 that, in the rest of the parking lot, for which you

1 only have an easement from or approval pending for
2 WSSC, you do have other fixed structures. You do have
3 light fixtures, which are affixed structures. So for
4 that you will have to --

5 A. I can't answer to what WSSC deems whether --
6 if you get light posts, that you can also get fencing
7 or vice versa. So I would be speculating.

8 MS. ROBESON: Okay.

9 BY MR. SHUKLA:

10 Q. But we can ask, is all I'm asking.

11 MS. ROBESON: So what you're saying is, can
12 he ask for it.

13 MR. SHUKLA: Correct, yeah.

14 MS. ROBESON: Well, I -- what I need to do is
15 balance the efficacy of what you're trying to
16 accomplish against negative things. For instance, the
17 lighting, the motion sensor lighting, you know, is it
18 better to have the full lights the whole time for
19 security or is there some product out there that can
20 guarantee security but do the, you know, keep the lower
21 light level. If anybody has, you know, information on
22 lighting, I'd be happy to consider it in the time we
23 have to submit things.

24 So I definitely understand why you're going
25 through these items, but that's my balancing test to

1 make.

2 I also have an outstanding -- okay, did you
3 have anything else?

4 MR. SHUKLA: No, I think those were the --

5 MS. ROBESON: I had an outstanding item on
6 Mr. Jacob's point, I think, of moving the storm water
7 management pipe east -- east of lots 360 and 361.

8 MR. JACOB: Correct, yeah.

9 MS. ROBESON: Now, that's probably not
10 something you're going to want to commit to today or --
11 but if you wish to -- I'm not even sure there's room --
12 I guess there's a little bit of room to do that outside
13 the stream valley. I don't know how you connect up
14 through -- you almost -- if I'm reading that right --
15 and it's far away -- you might have to go through the
16 stream valley buffer to connect up. Is that the case?

17 If you moved it further east -- come on,
18 Mr. Palmer.

19 THE WITNESS: Yes.

20 MS. ROBESON: Do you -- you're still under
21 oath.

22 Do you have to go through the stream valley
23 buffer?

24 MR. PALMER: We would have to go right up to
25 it to beyond --

1 MS. ROBESON: Is there a way to connect it
2 to -- oh, right at that -- right at the property line
3 there? Oh, right down there.

4 THE WITNESS: Right. There is no storm drain
5 beyond -- this is the sanitary sewer.

6 MS. ROBESON: Yes. Oh...

7 THE WITNESS: So there's no storm drain.
8 This is an open channel from here on. So while we
9 could go to the county and say, Can we --

10 MS. ROBESON: You could bring it east but is
11 there anything to connect to once you bring it east?

12 THE WITNESS: There's nothing to connect to.

13 MS. ROBESON: You'll just be outflowing into
14 the stream valley buffer?

15 THE WITNESS: Correct.

16 MS. ROBESON: Okay. So it's going to go
17 aboveground there.

18 THE WITNESS: Yes, it would go -- there would
19 be an outfall instead of -- where we're proposing it
20 here, there would be an outfall.

21 MS. ROBESON: Yeah.

22 THE WITNESS: It would be beyond their two
23 lots. I think this is an open space, homeowner's
24 parcel, so we would have to get permission --

25 MS. ROBESON: Permission from the

1 association.

2 THE WITNESS: -- from them as well as from the
3 county because they would have to grant the easement --
4 the storm drain easement to the county for the county
5 to maintain.

6 MS. ROBESON: Okay. All right.

7 Anything else from anyone?

8 Yes, Mr. Jacob.

9 MR. JACOB: Since we already discussed the
10 trash pick-up time, could we set a time? I thought we
11 would talk about duration -- generator exercising time.
12 Maybe a window.

13 MS. ROBESON: Oh, generator testing. Yeah, I
14 mean, when there's an emergency it's clear it goes got
15 to come on. But test -- the weekly testing correct.

16 THE WITNESS: Sure.

17 MS. ROBESON: So...

18 THE WITNESS: What's the preference?

19 MR. JACOB: Would a weekday be better because
20 nobody -- most of the people are gone so weekday --

21 MS. ROBESON: So maybe -- is it sufficient --
22 is it flexible enough for you to say the same time as
23 the delivery -- of the delivery trucks?

24 MS. DLHOPOLSKY: So weekdays, 10 to 2:30.

25 MS. ROBESON: 10 to 2:30. Okay.

1 THE WITNESS: Absolutely.

2 MR. JACOB: Set the timer on it
3 automatically.

4 THE WITNESS: Exactly, yeah. It's an
5 automatic operation.

6 MS. ROBESON: All right.

7 MR. JACOB: Thank you.

8 MS. ROBESON: Anybody else?

9 MS. DLHOPOLSKY: I think we're good.

10 MS. ROBESON: Okay. So we're waiting on a
11 couple of things from the applicant: The information
12 on the generator muffler, the legal position on the
13 sign.

14 MS. DLHOPOLSKY: Right.

15 MS. ROBESON: Is there anything else?

16 MS. DLHOPOLSKY: I had -- let me just ask, we
17 had decent amount of time from Ms. Randall regard to
18 the numbers and the shifts. Was that sufficient for
19 you?

20 MS. ROBESON: That was sufficient.

21 MS. DLHOPOLSKY: Okay. I didn't know if you
22 needed us to --

23 MS. ROBESON: She -- (indiscernible) to do
24 that.

25 MS. DLHOPOLSKY: All right. So it's the

1 supplemental information on the generator and the
2 muffler.

3 MS. ROBESON: And you may want to submit, if
4 you want, any supplemental information on whether
5 there's a light out there that is -- is dim and then
6 can, you know, gets brighter when it senses --

7 MS. DLHOPOLSKY: We will take a look at that.

8 MS. ROBESON: And what impact that would --
9 whether that's secure enough.

10 MS. DLHOPOLSKY: Right. And then the only
11 other thing was that you had asked if there was any
12 sort of condition with regard to staff time, staying
13 out of the school shift, and we had said that we would
14 talk about it a little bit and maybe propose some
15 language on -- in our letter. So I think it was those
16 three things: The sign, the generator, and then some
17 sort of condition on shifts. And then taking a look at
18 the sensors.

19 MS. ROBESON: Okay. I'm just writing.

20 All right. So that would be from the
21 applicant.

22 Now, from you, from Mr. Shukla and Mr. Jacob,
23 it would be -- I'm going to set a deadline for you to
24 comment. You can do one of two things by this
25 deadline: You can comment on the valuation report,

1 submit written comments. As I explained further, you
2 have the right to further cross-examine Mr. Smith, and
3 you have a right to present your own expert witness.

4 So what I'm going to do is this: If you
5 can -- if the applicant -- how long do you think you
6 need to get into this additional information?

7 MS. DLHOPOLSKY: I think -- we're running
8 into the Thanksgiving holiday next week, but I think we
9 probably could submit it within a week --

10 MS. ROBESON: Well, do you want to do
11 December 2nd or do you not want to take that long?

12 MS. DLHOPOLSKY: I think -- let's say -- so
13 December 2nd, I believe --

14 MS. ROBESON: Is a Friday.

15 MS. DLHOPOLSKY: And that's the --

16 MS. ROBESON: The Friday after Thanksgiving.

17 MS. DLHOPOLSKY: Oh, okay. I think we can
18 have it in much earlier than that, but if you want to
19 just put that just in case, you know, we run into, for
20 example, looking for more information on the sensors.
21 I have a feeling they will be submitted well before the
22 2nd but that -- that would give flexibility.

23 MS. ROBESON: Okay. Mr. Shukla, I'd like it
24 if you let me know -- I'm going to give you until
25 December 2nd to decide if you want to submit written

1 comments, request cross -- can be in another hearing to
2 cross-examine, or bring your own witness. So that
3 would be December 2nd. Friday, December 2nd.

4 MR. SHUKLA: And that's to submit comment or
5 that's for other --

6 MS. ROBESON: It's to -- you have to either
7 submit comments. You can request -- you know, ask to
8 cross-examine more or you can bring your own witness.

9 MR. SHUKLA: Okay.

10 MS. ROBESON: Okay. Then I'm going to set
11 one more week. By the 9th, you know, I'm going to let
12 people respond to whatever the other people submitted.
13 So if you want to -- Mr. Shukla, if you want to say
14 anything about the muffler or anything else that the
15 applicant submits, the proposed conditions, that's
16 fine. I encourage you guys -- I know you have been
17 talking a lot, and I encourage you to keep talking.

18 I understand -- you know, I don't know what
19 I'm going to do about the conditions because -- you
20 know, I'll look at the record but I don't want to
21 impose conditions that there's no evidence saying
22 they're necessary. All right?

23 So that's -- that's kind of where I stand,
24 but I will certainly consider what -- what the parties
25 submit. All right?

1 And then I will try to -- this is tough. We
2 have 30 days to write our decision. It is --
3 unfortunately, we're very busy, so I try to get it out
4 earlier than 30 days. I don't know if I'll be able to
5 do that this time.

6 MS. DLHOPOLSKY: Being the holidays.

7 MS. ROBESON: Huh?

8 MS. DLHOPOLSKY: The holidays.

9 MS. ROBESON: Well, it's not just the
10 holidays. It's the shock -- telecommunication shock
11 value.

12 So -- but I will try to get this out in 30
13 days. If anyone disagrees with my decision, you have
14 the right to request oral argument before the Board of
15 Appeals, but you will not have the ability to submit
16 new evidence. Okay?

17 With that, thank you, everybody, for your
18 patience and willing to have specific suggestions and
19 willingness to consider those suggestions, and I will
20 wait to hear from you on those deadlines. And the
21 record will close on December 9th. All right?

22 We have ten days to get the transcript -- ten
23 calendar days. Once we get it, you can post it online
24 if you need to refer to it. All right?

25 MS. DLHOPOLSKY: Okay.

1 MS. ROBESON: All right. With that, I'm
2 going to adjourn the hearing. Thank you very much.

3 MS. DLHOPOLSKY: Thank you very much. Have a
4 good afternoon.

5 (The above hearing was adjourned.)
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CERTIFICATE OF TRANSCRIBER

I, Bobbi J. Fisher, do hereby certify that the foregoing transcript is a true and accurate record of the proceedings; that said proceedings were transcribed to the best of my ability from the audio recording as provided; and that I have no interest, financial or otherwise, in this proceeding.

November 25, 2016

A handwritten signature in blue ink that reads "Bobbi Fisher". The signature is written in a cursive, flowing style.

Bobbi J. Fisher, Transcriber

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