

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND

- - - - -X
:
Petition of Thompson Butz, et al.:
Applicant :
: Local Map Amendment G-881
21901 Ridge Road, Germantown :
:
- - - - -X

A hearing in the above-entitled matter was held on

January 14, 2013, commencing at 9:34 a.m. at the Office of

Zoning and Administrative Hearings, 100 Maryland Avenue,

Rita Davidson Memorial Hearing Room, Rockville, Maryland

20850 before:

Martin L. Grossman

Hearing Examiner

A P P E A R A N C E S

For the Applicant:

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Jennifer Russel, Expert, Master Planning
Frank G. Bossong, IV, P.E., Expert
Kathryn Kubit, Elm Street Development

For the Opposition:

Mary Jane Goodrick
Robert Goldberg, Greater Goshen Civic Association
Ron Wills, Individual
William Hancock, Individual

C O N T E N T S

WITNESSES	DIRECT	CROSS	REDIRECT
For the Applicant:			
Thompson Butz	16		
By Mr. Hancock		59	
By Mr. Wills		61	
By Mr. Goldberg		66	

For the Applicant (cont.):	DIRECT	CROSS	REDIRECT
Gary Unterberg	68		183
By Mr. Hancock		162	
By Ms. Goodrick		167	
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For the Opposition:			
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E X H I B I T S

Exhibit No.	Marked/Received
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60	5/18/12 Letter of D. Flanagan 35
61	American University Article 44
62	1/8/13 Approved Water Quality Plan 83
63	1/8/13 Approved Forest Conservation Plan 84
64	Amended Surrounding Area 103
65	Aerial of Amended Surrounding Area 103
66	Recreation Guidelines 125
67	Clarksburg Master Plan, Excerpts 205
68	7/12 Current Development Pipeline 222
69	Affidavit of Posting 299
70	Deed 299
71	Council Resolution 14-393 299
72	CD of Current Hearing Exhibits 299

P R O C E E D I N G S

1 MR. GROSSMAN: This is a public hearing on the
2 application of Theodore H. Butz, et al., LMA number G-881
3 for a local map amendment to the zoning ordinance requesting
4 reclassification of 54.349 acres of land from the RE-2 zone
5 to the PRC zone, that's planned retirement community zone.
6

7 The property is owned by the applicants and is
8 known as parcel P-429 on Maryland tax map FV-122. It's also
9 known as the Butz property or the water tank farm property
10 located at 21901 Ridge Road in Germantown, Maryland.
11 Applicants are proposing up to 140 age-restricted single-
12 family homes and a community center.

13 My name is Martin Grossman. I'm the hearing
14 examiner, which means I will take evidence in this case and
15 write a report and recommendation to the Council sitting as
16 District Council. And the Council will make the final
17 decision in the case. Will the parties identify themselves
18 for the record, please.

19 MR. KLINE: Good morning. For the record, my name
20 is Jody Kline, attorney with the law firm of Miller, Miller,
21 and Canby, with offices at 200-B Monroe Street, here in
22 Rockville. We will be calling today, Mr. Grossman, five
23 witnesses. I would be glad to give you those names, but
24 they are the same as the resumes that have been submitted as
25 Exhibit number 55.

1 My estimate is that, I'm not quite sure about the
2 cross-examination side of it, but I anticipate we will
3 probably completed mid to late afternoon today. I know you
4 have another date set for the 18th. I'm hoping we don't
5 need it, but we'll have to see.

6 MR. GROSSMAN: We'll keep that hope in mind.

7 MR. KLINE: Yes, sir.

8 MR. GROSSMAN: And also, I see there are a number
9 of people in the audience, beyond those that are your
10 witnesses. So I ask, are there people in the audience who
11 wish to be heard today? Raise your hands please? All
12 right. Let's start with the gentleman in the back row. You
13 are, sir?

14 MR. WILLS: My name is Ron Wills, and I'm a
15 resident of Brink Meadows, which abuts the property.

16 MR. GROSSMAN: Okay. And do you want to be heard
17 in support, in opposition, or neutrally or just commentary?

18 MR. WILLS: Opposition.

19 MR. GROSSMAN: Okay. All right. Sir.

20 MR. HANCOCK: William Hancock. I live in the
21 subdivision, Brink Meadows, adjoining the Butz property; and
22 I want to be heard in opposition.

23 MR. GROSSMAN: All right. Mr. Hancock, you said
24 you wanted to be heard in opposition, did you say?

25 MR. HANCOCK: Yes, sir.

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1 MR. GROSSMAN: Okay. Yes, sir.
2 MR. GOLDBERG: My name is Robert Goldberg. I'm an
3 officer of the Greater Goshen Civic Association. Our
4 Association is tangent to the proposed development, and I'd
5 like to speak in opposition to the proposed development.
6 MR. GROSSMAN: Yes. I saw your letter, and I saw
7 Mr. Hancock's letter, and also one additional letter which
8 indicated that either Ron or Sandy Wills would testify. So
9 I saw all of those letters in the file. Okay. We have
10 enough chairs here, so gentlemen, why don't you come forward
11 and have a seat at counsel table.
12 MR. WILLS: Yes. May I ask a question?
13 MR. GROSSMAN: Yes, sir.
14 MR. WILLS: How does the schedule shape up for
15 today? I do have other things that people have to do.
16 MR. GROSSMAN: Okay. What we can do, with Mr.
17 Kline's consent, is take your testimony out of order if you
18 wish. Would that be all right, Mr. Kline?
19 MR. KLINE: I hadn't had a chance to think about
20 it. I guess, since I haven't heard much in the past, I
21 guess I'd like to hear what they have to say. Let me just
22 hear the explanation first.
23 MR. GROSSMAN: He said --
24 MR. KLINE: If he has not a compelling reason, I
25 probably would like them to probably hear some of our

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1 application.
2 MR. GROSSMAN: Okay. I mean, the advantage to,
3 obviously, usually the procedure is that the applicant goes
4 first, makes an opening statement if they wish, and then
5 presents their witnesses prior to the opposition presenting
6 their case. We usually make allowances for people who have
7 other scheduled things, so is that the issue you have?
8 MR. WILLS: Well, it's a question of time. If the
9 presentation by Mr. Kline will take one or two hours, that's
10 okay with me. If it's going to take four or six hours, that
11 a big problem.
12 MR. GROSSMAN: All right. Well, usually you can
13 take estimates of attorneys and double them. That's the
14 usual rule of thumb.
15 MR. KLINE: I would estimate that we will not
16 complete our presentation until mid-afternoon.
17 MR. GROSSMAN: All right. Why don't we do this.
18 Why don't we start out with the applicant's case, and then
19 we'll, after our morning break, let's say in a couple of
20 hours, give you an opportunity. Would that work out for
21 you?
22 MR. WILLS: That would be fine.
23 MR. GROSSMAN: How about you other gentlemen? Do
24 you have time problems? I couldn't hear you. You have to
25 speak up so the court reporter can --

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1 MR. HANCOCK: That's fine.
2 MR. GROSSMAN: Okay.
3 MR. WILLS: I'll try. I mean, I've got a job to
4 do, but I'll be here as long as I need to be.
5 MR. GROSSMAN: All right. Okay. And I take it
6 that you gentlemen are testifying yourselves. You're not
7 calling any additional witnesses. Is that correct? You
8 have to answer yes or no because --
9 MR. HANCOCK: No.
10 MR. WILLS: No.
11 MR. GROSSMAN: The court reporter can only take it
12 down when you orally express it. Okay. Let me explain a
13 little bit about the nature of these proceedings. We are
14 formal in the sense that it proceeds pretty much the way a
15 courtroom proceeds, that is, all witnesses are sworn in.
16 They are subject to cross-examination.
17 When Mr. Kline calls a witness, as you will see,
18 you will be given the opportunity to ask cross-examination
19 questions, which have to be within the general scope of the
20 direct, but you will be given the opportunity to cross-
21 examine.
22 The parties are entitled to make opening and
23 closing statements. Very often in the case of, in this kind
24 of situation, the opening statements amount to, very similar
25 to the testimony of the individual witnesses in opposition.

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1 So you can make your own assessment of that.
2 We are a little bit less formal than a courtroom
3 in that we do allow certain types of evidence, certain types
4 of hearsay, if it's otherwise reliable and probative,
5 according to the usual administrative hearing rules. We do
6 have a court reporter who takes everything down. There will
7 be a transcript of the proceedings, which you can consult.
8 All right. No other evidence will be considered
9 by the Council other than the evidence that is developed
10 here, although at the conclusion of the case, within 10 days
11 after you receive, or I shouldn't say after you receive, but
12 within 10 days after I issue my report, you have the
13 opportunity to request oral argument before the Council,
14 either side, or any aggrieved party can request oral
15 argument before the Council, and the Council can either
16 grant or not grant that request.
17 Usually after we complete our report, we send out
18 a notice letter to the participating parties, and that has a
19 link on it by which you can see the entire report that I
20 submit to the Council. Okay.
21 I should mention one other thing. Nobody is
22 permitted to directly contact Council members regarding a
23 pending zoning application, because it's considered a quasi-
24 judicial proceeding. Anything you have to say has to come
25 through the record as produced here, or through oral

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1 argument on the evidence. All right. A couple of
2 preliminary matters. If there are any additional plans or
3 reports, Mr. Kline, I'd like electronic copies, of course,
4 of anything that's updated that you haven't submitted
5 already.
6 I noticed that technical staff referred to the
7 owners as Theodore H. Butz, et al., and Windridge Farm, LLC.
8 What is Windridge Farm, LLC? They're not listed, I don't
9 think, on the application as an owner.
10 MR. KLINE: I will ask our first witness to answer
11 that question for you. I'm not sure why that's in there,
12 because they don't, they would be an operating entity, but
13 we'll answer that question.
14 MR. GROSSMAN: Okay. But they're not an owner or
15 an applicant here, is that correct?
16 MR. KLINE: I'll have Mr. Butz verify that for me
17 for the record.
18 MR. GROSSMAN: All right. All right. Is there,
19 the other question in that regard is, is there any evidence
20 of ownership in the record of this case so far? Have you
21 filed a copy of the deed here? I haven't seen that. Or
22 some ownership evidence?
23 MR. KLINE: I have not.
24 MR. GROSSMAN: Okay.
25 MR. KLINE: I would not normally do that. I gave

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1 you the affidavits of the disclosure or the campaign
2 contributions of all the owner entities. If you need a
3 deed, we can get you that.
4 MR. GROSSMAN: Okay. Yes, we would like a copy of
5 the deed for the record. Okay. I would ask that you please
6 have your witnesses address the issues raised both by the
7 opposition and by technical staff in this case. My reading
8 of the -- I realize you responded to technical staff in a
9 letter to the Planning Board, but I think it's better to
10 have direct evidence, sworn evidence regarding that.
11 MR. KLINE: We agree.
12 MR. GROSSMAN: Okay. As I read the opposition
13 submissions, the issues raised, not consistent with the
14 recommendation of the master plan; potential noise, dust,
15 loss of pastoral scenery; potential breeding of mosquitoes
16 and other pests; potential increased traffic along Brink
17 Road which will exacerbate traffic problems on the roadway;
18 potential for light pollution.
19 There was also a mention in the Greater Goshen
20 Civic Association's letter of effect on property values, and
21 it mentioned specifically of the added density issue. There
22 were concerns raised in the Clarksburg Civic Association
23 letter about, concerns about access to Route 27, and
24 compatibility with the Ag reserve, the way they phrased it.
25 And in the letter from Mr. Hancock, it indicates

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1 lack of on-site recreational facility, as an addition; and
2 inadequate screening. I think that covers the general run
3 of all of the points raised by the opposition.
4 Okay. And also, by the same token, I would ask
5 that opposition witnesses address, when this is up to you, I
6 would like to see somebody addressing the points raised in
7 the Planning Board letter. Have you seen a copy of the
8 Planning Board letter? Not the technical staff report, but
9 after the Planning Board met, they produced a letter that's
10 always part of the record.
11 MR. GOLDBERG: No, we haven't.
12 MR. HANCOCK: No, we haven't.
13 MR. GROSSMAN: You haven't seen that. Okay. Let
14 me have copies made for you, and I'm going to recess. It's
15 only two pages, so it will take you just a few minutes to
16 read. I'll have copies made for you, and then you can read
17 that so you can address the points that they raised. Okay.
18 It's nothing new, they just addressed their position on what
19 technical staff said. But you should have an opportunity to
20 see that.
21 All right. Why don't we take a five-minute break
22 here, and I'll have copies made of the technical staff
23 letter, I mean of the Planning Board letter for you three
24 gentlemen, and then we can proceed after that. We'll come
25 back at five to 11:00.

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1 (Whereupon, at 9:47 a.m., a brief recess was
2 taken.)
3 MR. GROSSMAN: All right. Mr. Wills, Mr. Hancock,
4 Mr. Goldberg, you've had an opportunity to read over the
5 Planning Board letter that's Exhibit --
6 MR. HANCOCK: Yes.
7 MR. GROSSMAN: -- 54.
8 MR. WILLS: Yes.
9 MR. GOLDBERG: Yes.
10 MR. GROSSMAN: Okay. You're not required to
11 address it, the points raised by the Planning Board, but it
12 would be helpful if you wish to. All right. Any other
13 preliminary matters, Mr. Kline?
14 MR. KLINE: Mr. Grossman, I did pick up this
15 morning and affidavit of posting from your office. We had
16 filed one previously as Exhibit No. 22 when we posted the
17 signs. I just need to verify, well, I need to have it
18 signed in front of a notary verifying that the signs remain
19 posted on the property.
20 MR. GROSSMAN: Okay.
21 MR. KLINE: And I'll have that done over the lunch
22 hour at my office, where it can be notarized.
23 MR. GROSSMAN: All right.
24 MR. KLINE: And I will submit it to you this
25 afternoon. If you would like to make it an exhibit now, I

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1 know I'll be bringing it back.
2 MR. GROSSMAN: Well, let's wait until it's
3 notarized.
4 MR. KLINE: That will be fine. Sure.
5 MR. GROSSMAN: And what about, that's an affidavit
6 that applicants are required to file to indicate that they
7 have had the area posted as required by the zoning ordinance
8 for the required period of time. What about the affidavit
9 of mailing?
10 MR. KLINE: That was submitted as Exhibit No. 22
11 at the --
12 MR. GROSSMAN: Okay.
13 MR. KLINE: -- time of the mailing and the filing
14 of the application in 2009.
15 MR. GROSSMAN: Okay. That's an affidavit which
16 indicates that the appropriate informational letters have
17 been sent out to the adjoining and confronting land owners.
18 We also send out notice ourselves of the hearing, and we
19 publish notice of these proceedings in two newspapers.
20 Okay. Any other preliminary matters?
21 MR. KLINE: No, sir.
22 MR. GROSSMAN: Any of you gentlemen on the
23 opposition have any preliminary matters you wish to raise
24 before we proceed to Mr. Kline's opening statement?
25 MR. HANCOCK: No.

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1 MR. GOLDBERG: No.
2 MR. WILLS: No.
3 MR. GROSSMAN: Mr. Kline, do you have an opening
4 statement?
5 MR. KLINE: As you surmised, I will waive it
6 simple because the case has got a lot of material in it, and
7 we're going to be here a long time, and everybody will have
8 a chance to hear it.
9 MR. GROSSMAN: All right.
10 MR. KLINE: So I think there is no advantage of me
11 having a statement again.
12 MR. GROSSMAN: All right. Any members of the
13 opposition wish to make an opening statement as
14 distinguished from just giving your testimony?
15 MR. HANCOCK: No.
16 MR. GROSSMAN: All right. I have three no's.
17 Okay, Mr. Kline, would you proceed with your first witness,
18 please?
19 MR. KLINE: I'd like to call our first witness,
20 Mr. Tom Butz.
21 MR. GROSSMAN: Okay. Mr. Butz.
22 MR. KLINE: Mr. Grossman, as you noticed, we have
23 not submitted a resume for Mr. Butz. He is not being called
24 as an expert witness.
25 MR. GROSSMAN: Right. He is the property owner.

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1 All right, Mr. Butz, would you raise your right hand,
2 please?
3 (Witness sworn.)
4 MR. GROSSMAN: All right. You may proceed, Mr.
5 Kline.
6 DIRECT EXAMINATION
7 BY MR. KLINE:
8 Q Mr. Butz, let's start by answering the hearing
9 examiner's question about it. What is Windridge Farm
10 relative to the ownership entity of the property and the
11 applicants in this zoning case?
12 A The ownership of the property is a tenant in
13 common ownership. The four owners are, myself, Thompson
14 Butz, Theodore Butz, Robert Butz, and Jeremy Butz. We own
15 the property in equal share.
16 MR. GROSSMAN: The others are the et al. portion
17 of the name?
18 THE WITNESS: Yes. They're the et al.'s.
19 Somebody has got to stay out there and run the farm.
20 Windridge Farm, LLC, is basically our operating company.
21 It's the name we use for all our Ag operations, which are
22 scattered about Montgomery and Frederick Counties.
23 MR. GROSSMAN: All right. But I take it that
24 Windridge Farm, LLC, is not an applicant here and is not an
25 owner?

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1 THE WITNESS: Correct.
2 MR. GROSSMAN: Okay. All right. It was just, the
3 reason I raised the question was, I saw it in the technical
4 staff report. The first, the front page of it says,
5 "Applicant, Theodore H. Butz, et al./Windridge Farm, LLC."
6 THE WITNESS: I see.
7 MR. GROSSMAN: That's incorrect. Okay.
8 THE WITNESS: On the deed it would be the four of
9 us. How is that?
10 MR. GROSSMAN: Okay. Very good. All right.
11 BY MR. KLINE:
12 Q Well, maybe I should have started with this and
13 asked you your name and address, and leading up to your sort
14 of affiliation with the applicant and your familiarity with
15 the property?
16 A Well, the name is Thompson Butz, Tom. Address,
17 P.O. Box 149, Adamstown, Maryland 21710. And one of the
18 owners. As far as Mr. Kline's question about our history
19 with the property, we've owned the property since the
20 1970's. We're second generation Montgomery County farmers,
21 and had it in continuous agricultural operations since we
22 purchased it, or since it was purchased.
23 As far as some of the history, as you can imagine,
24 a lot has changed in the 40 years since we've held this
25 property. When we were initially farming the property,

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1 everything in the area was Ag. And this is clearly not the
2 case now. The area is dominated by thousands of rooftops,
3 traffic, retail, and other specs that are the hallmarks of a
4 growing and evolving area. We're pretty much become the
5 last man standing, traditional row crop farming in the area.
6 and the area's growth has made traditional commodity farming
7 operations no longer viable.

8 This is further challenged by the imminent
9 intrusions of the roads. Route 27 is being widened to six
10 lanes, with 100 percent of the land being taken from our
11 farm. A-305 is a four-lane arterial road that will bisect
12 the farm.

13 Although people like farms, they kind of evoke an
14 emotional harkening to simpler times, and working with the
15 land. The reality is, the practical aspects of farming are
16 very challenging. Farming is a business, not necessarily
17 there for pastoral viewing pleasure. We have to make money,
18 and it has to be viable. And frankly, it no longer is.

19 Moving agricultural equipment at 18 to 20 miles an
20 hour from Clarksburg to Frederick has become increasingly
21 challenging with the traffic. I can tell you that people
22 like to look at the farm, but when we're holding up traffic
23 throughout the day, trying to do our business, we're not
24 spoken of in very flattering terms.

25 MR. GROSSMAN: Yes, I don't want to stop you from

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1 saying what you want to say, but you have to realize that
2 your business concerns, per se, are not an issue before me.

3 THE WITNESS: I understand.

4 MR. GROSSMAN: The questions before me are
5 strictly the land use questions that revolve around County
6 policy as set forth in the zoning ordinance.

7 THE WITNESS: Absolutely.

8 MR. GROSSMAN: And the master plan. That's what
9 guides me, not whether or not you have financial
10 difficulties in farming.

11 THE WITNESS: I understand that.

12 MR. GROSSMAN: So I'd like you to address yourself
13 to that.

14 THE WITNESS: But faced with opposition, that we
15 are somehow diminishing pastoral views, when for us, to
16 maintain those pastoral views is no longer viable or cost-
17 effective, I think addresses some of the issues of
18 opposition that we are being faced with.

19 MR. GROSSMAN: Well, except that the question of
20 the view shed is an issue, is a kind of master plan and
21 planning issue. So, but financial viability is not an area
22 that I am empowered to consider in my review.

23 THE WITNESS: Understood.

24 MR. GROSSMAN: Okay. So it's not really a
25 response to questions about pastoral view --

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1 THE WITNESS: Okay.

2 MR. GROSSMAN: -- as far as I can interpret the
3 zoning ordinance.

4 THE WITNESS: Absolutely.

5 MR. GROSSMAN: Okay.

6 THE WITNESS: With regard to that, one of the
7 items that was brought up in your short list prior was the
8 Ag reserve. This property is not zoned agriculture. It is
9 a residential zone. It is not abutting any agricultural
10 property. The property across the street is, has the two
11 large water towers, is the WSSC property, and is a cemetery.
12 So with regard to that, I just wanted to bring that point
13 out.

14 MR. KLINE: Let me just --

15 MR. GROSSMAN: When you say my short list, do you
16 mean my listing of the opposition concerns?

17 THE WITNESS: Yes, sir. Yes, sir.

18 MR. GROSSMAN: Okay.

19 BY MR. KLINE:

20 Q Mr. Butz, we put up your Exhibit No. 7, which is
21 the zoning vicinity map in the record of the case. The
22 subject property is highlighted in yellow, and what I'm
23 going to do is, I'm just going to go ahead and -- okay.
24 Mr. Grossman, apparently we have submitted a second time
25 because it's 34(f) as well as the original number 7. So

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1 take your pick.

2 MR. GROSSMAN: I'll let you take your pick. How
3 is that?

4 MR. KLINE: Well, we'll use the most current one.

5 MR. GROSSMAN: So 34(f)?

6 BY MR. KLINE:

7 Q What I would to do is --

8 MR. GROSSMAN: Okay.

9 BY MR. KLINE:

10 Q -- looking at Exhibit 34(f), can you highlight
11 again for me the features you just described, and I will
12 point them out on here?

13 A Well, on the subject property, the opposition
14 mentioned Ag reserve. The RTD land across the street has
15 been sold to the Catholic church and is now going to be used
16 as a cemetery.

17 MR. GROSSMAN: All right. So this is on this map?

18 THE WITNESS: Yes, sir.

19 MR. GROSSMAN: The property labeled zoning
20 vicinity map. And there's property labeled RDT to the east
21 of you? I take it that north is on the top of the map?

22 THE WITNESS: Yes, sir.

23 MR. GROSSMAN: And the area of the subject site is
24 indicated in yellow, is that correct, sir?

25 THE WITNESS: Yes.

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1 MR. GROSSMAN: Okay. So you're in the RE-2 zone
2 presently, and that's that yellow area that's demarcated on
3 the plan. And to the east of you directly is the RDT zone.
4 And that's what Mr. Kline is pointing to. That's the church
5 land that you're talking about?
6 BY MR. KLINE:
7 Q Partly. Do you have a second feature you can
8 point to?
9 A Right. The RDT land, yes, sir, is the church land
10 which is being used as a cemetery, as a Catholic. Then
11 there are four, the part where Jody is pointing right now,
12 Mr. Kline, that is WSSC property, and where the two large
13 water tanks are.
14 MR. GROSSMAN: Okay. So immediately to the east
15 of you on the southern end of your property is the WSSC
16 property.
17 THE WITNESS: Correct.
18 MR. GROSSMAN: And then immediately north of that
19 and still to the east of your property, is the church land
20 which then extends around to the east of the WSSC property,
21 is that correct?
22 THE WITNESS: Correct.
23 MR. GROSSMAN: All right. The reason I explain it
24 this way is that the record should show exactly what we're
25 talking about. If you just point to it, the record won't

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1 indicate it. So that's why I explain it that way.
2 THE WITNESS: Absolutely.
3 MR. KLINE: And Mr. Grossman, the zoning maps
4 don't show it, but the cemetery exists by special exception
5 granted by the County Council.
6 MR. GROSSMAN: Okay. When was that?
7 MR. KLINE: I can get you the date on that. I'd
8 say for the last 10 years, though.
9 THE WITNESS: Uh-huh.
10 MR. GROSSMAN: Okay. You have a special exception
11 number printed on there?
12 MR. KLINE: I don't, but I can get it for you.
13 MR. GROSSMAN: Often, it's printed right on the --
14 MR. KLINE: Well, yes, that was back when the
15 zoning maps were more updated. There is a hearing examiner
16 number on here, but I don't believe that's what that is.
17 MR. GROSSMAN: Okay.
18 MR. KLINE: I'll get that case for you.
19 MR. GROSSMAN: All right. Thank you.
20 BY MR. KLINE:
21 Q I'm sorry, Mr. Butz. We took you away for a bit.
22 A I was done with that section.
23 Q Well, maybe let me lead you to what I think, to
24 where Mr. Grossman was talking a moment ago about, how is it
25 that this proposal starts to begin to address County plans

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1 and policies, and the work you've done to identify what
2 those plans and goals are for this planning area?
3 A Okay. Let me take this out of order. We were
4 contact by Elm Street about 11 or so years ago saying that
5 they were going to put A-305 through the property.
6 Q What is Elm Street, for the record?
7 A Elm Street Development is the developer who is
8 responsible for the construction and widening of Route 27,
9 and the construction of A-305, and is the lead developer in
10 Clarksburg Village.
11 Q Can we just kind of orient everybody. This is
12 Exhibit number 44(l) titled, Clarksburg Community Parks.
13 Mr. Unterberg is going to identify your property, first of
14 all, and then you were alluding to Clarksburg Village and A-
15 305. Can you tell him or you go ahead and testify and --
16 A Clarksburg Village is northwest of the property,
17 as Mr. Unterberg is highlighting. A-305 is a four-lane
18 divided arterial road, which will bisect the property and
19 connect to Route 27, which is being widened to six lanes
20 from I-270 to the intersection of A-305 and Route 27. After
21 that intersection, it starts to narrow down as Route 27
22 heads north.
23 MR. GROSSMAN: All right. Now, is Clarksburg
24 Village on that map? It's a little hard for me to read, but
25 what about the community immediately to the north of you?

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1 Is that, what is that designated?
2 THE WITNESS: That's where, where Mr. Unterberg
3 is, right there?
4 MR. GROSSMAN: No, right north of there, right
5 north of that?
6 THE WITNESS: That's part of Clarksburg Village.
7 MR. GROSSMAN: All right. So that's all part of
8 Clarksburg Village?
9 THE WITNESS: Yes, sir.
10 MR. GROSSMAN: And so it's to the north and the
11 northwest of your property?
12 THE WITNESS: Correct.
13 MR. GROSSMAN: All right.
14 BY MR. KLINE:
15 Q So going back to when I interrupted you, you were
16 saying, Mr. Flanagan, of Elm Street, who is the developer of
17 Clarksburg Village, contacted you?
18 A Correct. And reminded me that per the master plan
19 that A-305 was going to be constructed and bisect the
20 property. This started us down a plan --
21 MR. GROSSMAN: When you say, the property, it was
22 going to bisect which property?
23 THE WITNESS: The Butz property.
24 MR. GROSSMAN: Okay.
25 THE WITNESS: Our farm.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: Leaving a --
3 MR. KLINE: This is the alignment of the road
4 going through the property.
5 MR. GROSSMAN: All right.
6 MR. KLINE: Looking at 34(f), it's showing up even
7 better here, it sort of separates the property.
8 MR. GROSSMAN: All right. So it's going to divide
9 your property and the northern third of your property is
10 going to be divided by A-305. Is that what you are saying?
11 THE WITNESS: Yes.
12 MR. GROSSMAN: Okay. If I understood that
13 correctly, Mr. Kline? Is that the road --
14 MR. KLINE: Yes, sir.
15 MR. GROSSMAN: Okay.
16 MR. KLINE: I think the only hesitation was to
17 quantify the amount of land to the north and the land to the
18 south.
19 MR. GROSSMAN: Oh, I was just, there were three
20 horizontal lines on that map. I just took the portion to
21 the north of that as being the top third, the northern
22 third. That's all. It's not exactly a third. I agree with
23 that.
24 MR. KLINE: Exactly.
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: After being contacted by Mr.
2 Flanagan, we started to look at the existing zone, master
3 plan, land use, appropriateness, policies, smart growth,
4 things like that. And with a six-lane arterial road
5 connecting a four-lane arterial road a mile from, less than
6 a mile from Milestone Shopping Center, we have major retail
7 activities.
8 And a mile from I-270, where you have tremendous
9 transportation infrastructure, two-acre single-family well
10 and septic construction does not make sense. It simply is
11 not smart growth. It did not impress me as something that
12 is appropriate there when considering the significant
13 infrastructure available and proximity to amenities.
14 MR. GROSSMAN: Well, let me interrupt you for a
15 second.
16 THE WITNESS: Yes, sir.
17 MR. GROSSMAN: You haven't qualified this witness
18 as an expert.
19 THE WITNESS: No.
20 MR. GROSSMAN: Well, I'm addressing this to Mr.
21 Kline.
22 THE WITNESS: I'm sorry.
23 MR. KLINE: We have not offered him as an expert.
24 MR. GROSSMAN: All right. But now he is
25 essentially offering an opinion on that. So I'll allow him

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1 to say it, but as a lay opinion on the subject.
2 MR. KLINE: I'd be glad to let Mr. Butz give you
3 some of his bona fides as a sustainable user of land, but I
4 don't think that's what you're looking for.
5 MR. GROSSMAN: Right. You're not qualifying him
6 and offering him as an expert.
7 MR. KLINE: No, sir. Right.
8 MR. GROSSMAN: I just wanted to note that.
9 THE WITNESS: We started looking for a more
10 appropriate land use options. And we, at that point we were
11 meeting with experts, engineers, attorneys and the like, and
12 were introduced to the planned retirement community zone.
13 And given the background of the aging baby boomer
14 population, and the need in the County, this zone started to
15 make a lot of sense to us. I had a parent that qualified to
16 live in the community. And it was something that truly was
17 in dire need in the County.
18 As far as, I'm just going to jump to, you were
19 asking for more information about how it works within the
20 master plan and things.
21 MR. GROSSMAN: Well, I'm not telling what area --
22 Mr. Kline will --
23 THE WITNESS: Well, that was the --
24 MR. GROSSMAN: -- perhaps ask you questions that
25 will direct how you approach it. What I said to you before

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1 was that your financial --
2 THE WITNESS: Right.
3 MR. GROSSMAN: -- issues are something I can't
4 consider. That's not a piece of evidence that I am entitled
5 to consider in evaluating this application. That's what I
6 said before.
7 THE WITNESS: Absolutely. We believe that the
8 planned retirement community is a great fit for this
9 property for a lot of reasons. First off, the master plan
10 on page nine specifically highlights the need to quote,
11 "Encourage and maintain a wide choice of housing types and
12 neighborhoods for people of all incomes, ages, lifestyles,
13 and physical capabilities at appropriate densities and
14 locations."
15 MR. GROSSMAN: I'm sorry, what are you reading
16 from now?
17 THE WITNESS: That is from page nine of the master
18 plan. That said, the Clarksburg master plan has no PRC's in
19 it. The reason it has no PRC's in it is because when the
20 plan was adopted, it couldn't. The PRC zone was limited to
21 properties of 750 acres or greater.
22 It wasn't until 2007 that the Council voted to
23 change the language of the master plan. And Ms. Russel will
24 go into much more detail as an expert on master plan issues.
25 But this is one of the many things we take into

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1 consideration as the property owner as we were looking at
2 alternative land use.
3 Further, this is supported by the May 2011, the
4 housing element and general plan was adopted. On page eight
5 it specifically identifies seniors as a greatest need
6 category for housing in Montgomery County. It goes on to
7 say that we need to, quote, "Look inward rather than outward
8 to accommodate the housing needs." The property sits
9 between two housing districts with tremendous infrastructure
10 around it, which I consider very much inward. But that is
11 just my opinion.
12 The housing element and general plan also states
13 that higher densities and smaller units are preferable. As
14 we were zoned two-acre residential, that's pretty much the
15 recipe for McMansions. And in our opinion, the last thing
16 this County needed was more McMansion unaffordable housing.
17 Virtually all the documents, the housing general
18 plan and the master plan highlight the need for affordable
19 housing to meet the needs of the County residents at every
20 stage. 2.15 of the objectives of the housing element and
21 general plan --
22 BY MR. KLINE:
23 Q Can I interrupt for a second?
24 A Sure.
25 MR. KLINE: Mr. Grossman, there is an exhibit in

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1 the record titled 34(b) which is described as the technical
2 appendix --
3 MR. GROSSMAN: Yes.
4 MR. KLINE: -- for G-881. And there is an entire
5 section in there titled, SR, or SR with a lot of attachments
6 that Mr. Butz has and will be referring to. And it is all
7 the paperwork that he is referring to the document. It's
8 actually the bigger of the two volumes. You've got the land
9 use report, and it's the larger one.
10 And the SR section dealing with senior housing
11 issues is maybe two thirds of the way, or maybe 50 percent
12 of the way through the bundle. So I just want to say, in
13 the record are the housing element issues, and the other
14 reports that he is going to be alluding to.
15 MR. GROSSMAN: Let's make sure I have what you're
16 talking about.
17 MR. KLINE: It's so big it would be hard to miss
18 it.
19 MR. GROSSMAN: It's apparently so big that it
20 didn't wander in here.
21 MR. KLINE: It's 34(b) and I can give you my copy.
22 MR. GROSSMAN: I don't --
23 MR. KLINE: Here is the page. We'll make sure
24 that when you go to look at it, unless you want it right
25 now, when you go to look at it, you'll have a copy.

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1 MR. GROSSMAN: Yes, we want to make sure that --
2 MR. KLINE: But the land use report that you just
3 had in your hand is 34(a). This technical appendix is
4 34(b).
5 MR. GROSSMAN: Okay.
6 THE WITNESS: Of this housing element and general
7 plan, reading directly from the objective to diverse housing
8 and neighborhood section, page 15, item 2.15 of this
9 objective is, "To promote full inclusion of all ages, stages
10 of life, and physical abilities by encouraging design and
11 construction that incorporate visit-ability and livability
12 features in new construction and major renovations."
13 This type of theme is very common in pretty much
14 all the new housing efforts we read coming from the County.
15 I have yet to see a document come out of the County that
16 said, we need more McMansions, because we don't.
17 The concept of visit-ability and livability are
18 also very much applicable and prominent in, say in
19 retirement communities. Livability is first and foremost.
20 And one of the things that we have a unique opportunity to
21 create is to create lifestyle for a small portion of the
22 County's population for which there hasn't been a product
23 build since the 1960's, which was Leisure World.
24 MR. GROSSMAN: You used a term a product build,
25 what does that mean?

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1 THE WITNESS: Planned retirement community housing
2 are very specific houses. They are first floor living. The
3 amenity package within the community is probably larger than
4 most other neighborhoods. For example --
5 MR. GROSSMAN: Well, what does the term, product
6 build, mean?
7 THE WITNESS: The product that is built for that
8 age group.
9 MR. GROSSMAN: I see.
10 THE WITNESS: For example, a single-family home
11 for a family with kids would typically have a number of
12 bedrooms and other amenities to accommodate that type of
13 housing. For the planned retirement community, which is
14 age-restricted, and typically has the downsizing empty-
15 nester, you wouldn't have all the extra bedrooms and things
16 like that. You would try to eliminate steps and have all
17 your living on one level.
18 So it's a product that is specifically designed
19 for the 50 and older, 55 and older, which ever category of
20 resident. And it's also going back to some of the goals
21 within the master plan and other documents, is to create
22 communities with a diversity of housing types and styles to
23 meet the residents at every lifestyle stage.
24 There are no single-family age-restricted
25 communities that are part of Clarksburg Village. That is

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1 why when we have within this document, there is a letter
2 from Elm Street Development welcoming us as another housing
3 type within Clarksburg Village.
4 MR. GROSSMAN: You said there is a letter. Where
5 is that letter? Are you talking about the letter that was
6 sent by --
7 THE WITNESS: It's a letter of support.
8 MR. GROSSMAN: -- by Elm Street?
9 THE WITNESS: Yes, sir.
10 MR. GROSSMAN: I know I saw it in the file. Let's
11 just make sure, we're talking about it, by exhibit number.
12 MR. KLINE: We'll find the page, and for the
13 benefit of these gentlemen who don't have a copy, I'll give
14 you a copy of that as well, Mr. Grossman.
15 MR. GROSSMAN: Let me take a look at the file
16 here.
17 MR. KLINE: While we find it, to give you a proper
18 page reference, and Exhibit 34(b), I'll offer this letter
19 dated May 18th, 2012, from Mr. Flanagan of Elm Street
20 Village, into evidence.
21 MR. GROSSMAN: All right. Well, let's mark it as a
22 new exhibit because I can't recall where I saw it before.
23 All right. So this will be Exhibit No. 60. And that's May
24 18, 2012, letter of David Flanagan.
25 (Exhibit No. 60 was marked

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1 for identification.)
2 MR. KLINE: And Mr. Grossman, it's found in
3 Exhibit 32(b) --
4 MR. GROSSMAN: Okay.
5 MR. KLINE: -- as what's called CV-1, which is
6 about a tenth of a way into the technical appendix.
7 MR. GROSSMAN: On behalf of Elm Street Development
8 in support of the rezoning. Okay. That's Exhibit No. 60.
9 All right. You may proceed.
10 THE WITNESS: Yes, sir.
11 BY MR. KLINE:
12 Q And I'm not sure where you were going next, but
13 why don't we talk, just for a second, about what this letter
14 does in terms of the future integration of the two
15 communities?
16 A Sure. As part of, I've been working closely with
17 David Flanagan at Elm Street to accommodate the widening of
18 Route 27 and A-305 going through the property, just to make
19 sure that we're on the same page, and he gets the land he
20 needs, and we can work together.
21 As part of that, we started thinking, he really
22 likes the idea of a planned retirement community, and what
23 it adds to the overall Clarksburg Village as another housing
24 type.
25 MR. GROSSMAN: Well, I'm going to, I mean, that's

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1 hearsay. He's written his letter in support, so I'll take
2 the letter for what that's worth. I think it's not a good
3 idea, even though we do allow a limited amount of hearsay
4 here, to have a witness say what another witness likes,
5 beyond what they've submitted.
6 THE WITNESS: Well, as a practical matter, what we
7 have done in our agreement, and the details of which we have
8 not completely ironed out because we didn't have the zoning,
9 was that the Butz' option, our community will be annexed
10 into Clarksburg Village. So it will not just be a satellite
11 community. It will be part of the Greater Clarksburg
12 Village.
13 And I think that is important in that it allows
14 that presence of being part of a greater community, allows
15 the residents of this community access to the amenities of
16 Clarksburg Village, the trails and other aspects in
17 Clarksburg Village, and adds a new housing style for
18 Clarksburg Village.
19 MR. GROSSMAN: When you say annexed, are you using
20 that as a term of art here? Are we talking about a formal
21 annexation,
22 Mr. Kline? Or what are we talking about here? You said
23 it's going to be annexed to Clarksburg Village. What does
24 that mean?
25 MR. KLINE: The option exists for Clarksburg

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1 Village to expand the scope of its area so that its HOA
2 documents, as they exist today or as they may be amended, to
3 incorporate this community completely or selectively,
4 depending on the services of each one from the other one.
5 MR. GROSSMAN: Okay. So it becomes subject to the
6 whatever homeowners association runs Clarksburg Village? Is
7 that what we're talking about?
8 MR. KLINE: Probably some kind of a joint
9 operation, yes, because it's not going to be a perfect fit.
10 So the details have not been ironed out. If I can kind of
11 read this sentence, we would like to incorporate, which is,
12 I believe that means annex, the future Butz farm housing
13 into the Clarksburg Village Homeowners Association and have
14 addressed that possibility within our HOA documents.
15 MR. GROSSMAN: Okay. So you're reading directly
16 from Exhibit No. 60.
17 MR. KLINE: The first sentence, third paragraph of
18 Exhibit No. 60.
19 MR. GROSSMAN: Right. Okay. And would that
20 affect, one of the required findings by the Council in
21 reviewing a case such as this where there were development
22 plans required, is that there's a demonstration of perpetual
23 maintenance of the property. Is part of your evidence here
24 going to deal with Clarksburg Village providing that
25 perpetual maintenance? How is that --

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1 MR. KLINE: We, in the record is a set of
2 homeowners association documents that we submitted at the
3 time of the rezoning application, that I would have been
4 able to testify would adequately protect the public areas
5 and have an assessment scheme adequate to protect that.
6 Obviously, Clarksburg Village already exists, and
7 has those documents. So whether we work with theirs, ours,
8 or a combination of both, I'm confident that you would
9 protect the interest that those HOA documents are supposed
10 to protect.
11 MR. GROSSMAN: All right. Well, are you planning
12 to have a witness to indicate that there will be perpetual
13 maintenance of this property?
14 MR. KLINE: As the person who prepared those
15 documents, I would be the person to do that, and because
16 they are the documents I've used in other PD zoning cases
17 before, and I tailored them for this application.
18 MR. GROSSMAN: Well, it's I don't want to say
19 improper, but it's unusual to have an attorney testify in
20 his own case. So perhaps you could have Mr. Butz testify as
21 to what the intention is regarding perpetual maintenance of
22 the property, or one of your other witnesses, based on
23 whatever documents you have filed.
24 We often have an affidavit submitted to establish
25 and to meet that criterion, which is not clearly worded in

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1 the code. But I take it their intent is that there be a
2 showing of the intention, perpetual maintenance of the
3 common areas.
4 MR. KLINE: I was actually going to get the actual
5 language.
6 BY MR. KLINE:
7 Q Mr. Butz, at the time you instructed my office to
8 assemble the documents for the zoning application, was it
9 your intention to include documents showing the ownership
10 and method of assuring perpetual maintenance of any areas
11 intended to be used for recreational or other common or
12 quasi-public purposes? And is it your understanding that
13 those were accomplished and are part of the record? And
14 that if implemented, the documents would basically achieve
15 that goal?
16 A Yes.
17 MR. KLINE: That's a little bit too much of a
18 leading question.
19 MR. GROSSMAN: It's a very leading question.
20 Nobody objected, however.
21 MR. KLINE: Well, that's probably because it was
22 so long I lost them. The documents that are in the record
23 from Mr. Butz were intended to satisfy the requirements of
24 59D-1.6(d)(e), I'm sorry.
25 MR. GROSSMAN: Right.

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1 MR. KLINE: Thank you.
2 MR. GROSSMAN: And what's just, I don't recall if
3 you said it in your long question, your long leading
4 question, whether or not, what the exhibit number was that
5 you were referencing?
6 MR. KLINE: Bear with me. It's Exhibit No. 13.
7 Articles of incorporation, bylaws, and 13(c) is the actual
8 declaration of covenants, conditions and restrictions for
9 what in those days we called the Orchard Run Homeowners
10 Association.
11 MR. GROSSMAN: Okay. All right.
12 BY MR. KLINE:
13 Q I think I interrupted you a while back. Maybe you
14 ought to go back to where you were
15 A Where was I? Oh, I was discussing the community,
16 why it's appropriate in accordance with the needs --
17 MR. GROSSMAN: Right.
18 THE WITNESS: -- and guidelines and guidances that
19 we have seen coming from the County. And we were discussing
20 the planned retirement community, and how it's unique style
21 of housing is in need and lacking. In our application book,
22 we have a document that is called, "The beyond 50.05 report
23 on livable communities."
24 MR. GROSSMAN: What are you reading from now?
25 MR. KLINE: It would be in Exhibit 34(b). It's

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1 item SR-7, which is a publication of the AARP, titled,
2 "Beyond 50.5, a report to the nation on livable communities,
3 creating environments for successful aging."
4 MR. GROSSMAN: Okay.
5 THE WITNESS: In this document, the graph on page
6 49 indicates that 71 percent of the 50-plus population live
7 in single-family detached homes. This is further supported
8 by a 2005 Park and Planning undertook the 55-plus housing
9 preference survey.
10 MR. GROSSMAN: Is that survey in the record also?
11 What's that? Is that in 34(b) also?
12 THE WITNESS: No. I'm sorry.
13 MR. KLINE: It's SR-5 in 34(b).
14 MR. GROSSMAN: And that's our Park and Planning
15 Department?
16 THE WITNESS: Yes, sir.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: As seen on page three, the graph, as
19 seen on page three in the graph, overwhelmingly the
20 preference is for, that they did a study within their survey
21 group, of what type of house they wanted. And
22 overwhelmingly, the preference was for single-family
23 housing.
24 MR. GROSSMAN: Who's the they? Who is the
25 antecedent of the they?

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1 THE WITNESS: They are the people who comprised
2 the survey group. The respondents.
3 MR. KLINE: May I just interject?
4 MR. GROSSMAN: Yes.
5 MR. KLINE: Basically, the language says, County
6 residents of 55 years of age or older --
7 MR. GROSSMAN: Okay.
8 MR. KLINE: -- who plan to move from existing
9 residence. A number of approximately 71,600 residents were
10 poled to come up with that.
11 MR. GROSSMAN: Okay. So in that survey group of
12 the 55 and older, you said what percentage preferred single-
13 family residence?
14 THE WITNESS: In this one it's 34 percent want to
15 buy single-family homes in that survey.
16 MR. GROSSMAN: Okay.
17 THE WITNESS: But if, you can also add to that
18 another five percent that have a desire to rent a single-
19 family home, showing that of this group of people, their
20 preference is overwhelming between both of these studies,
21 for single-family housing, not condo or apartments.
22 MR. GROSSMAN: Well, how is it overwhelming if
23 it's 34 percent and five percent?
24 THE WITNESS: Because it's the largest of --
25 MR. GROSSMAN: It's the largest plurality of it?

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1 It's the plurality of it?
2 THE WITNESS: Yes. To buy a condo is 19 percent.
3 Don't know is 13. Private home/apartment with services, so
4 it's still again a private home but with some additional
5 services is another 11 percent. Rent an apartment at seven
6 percent. Buy in to life care facility with entrance fee was
7 six. Rent a single-family home was five. Move to senior
8 subsidized housing was four. And move to a group home was
9 one point five.
10 MR. GROSSMAN: Okay.
11 THE WITNESS: Looking at the type of housing that
12 is desired by the people that make up this demographic,
13 single-family housing is a preference, with this active
14 adult community.
15 MR. GROSSMAN: Okay. According to this survey.
16 THE WITNESS: According to these two surveys. The
17 other aspect that was important to consider in looking for
18 need in this is the fact that the demographic of Montgomery
19 County has changed in the 20 years since the master plan was
20 adopted.
21 In the 2010, this is not in there. I will give it
22 to you if that's appropriate. In 2010, the new census
23 status --
24 MR. GROSSMAN: If you're reading from something
25 that's not in the record?

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1 MR. KLINE: I don't see it in our SR section.
2 MR. GROSSMAN: Well, let's mark it as an exhibit
3 so we all have access to it.
4 THE WITNESS: Okay.
5 MR. KLINE: All right. This is a publication of --
6 THE WITNESS: American University.
7 MR. KLINE: -- American University titled,
8 "Montgomery County's aging population is growing rapidly,"
9 dated June 2nd, 2011.
10 MR. GROSSMAN: All right.
11 MR. KLINE: I would ask that this be made an
12 exhibit in the record.
13 MR. GROSSMAN: This will be Exhibit 61. And it
14 appears to be a printout from a website, is that correct?
15 (Exhibit No. 61 was marked
16 for identification.)
17 THE WITNESS: Correct.
18 MR. GROSSMAN: All right. All right. Printed out
19 on January 13, 2013. I'm not sure what the date of it is.
20 MR. KLINE: It's right up here on the top. I saw
21 it.
22 MR. GROSSMAN: Yes, June 2, 2011. Website
23 printout. So I'm not sure. Is this printout just, this is
24 quoting Rollin Stanley, the former director of the County's
25 Planning Department.

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1 MR. KLINE: Right.
2 MR. GROSSMAN: So that's what it's being
3 introduced for is a quote from Mr. Stanley?
4 THE WITNESS: Yes, sir.
5 MR. GROSSMAN: Okay.
6 MR. JACKSON: And the quote is that, "We expect
7 85,000 new seniors in the next 20 years. That's a 73
8 percent increase."
9 MR. GROSSMAN: I mean, it's a little bit
10 problematic because it doesn't say where this is quoted
11 from. I mean, it says it's Mr. Stanley, but it doesn't say
12 where he said that. I mean, this is another one of those
13 hearsay issues, because it is, hearsay is a statement
14 outside of the hearing room offered to prove the truth of
15 what's asserted in the statement.
16 And so this is a statement by Rollin Stanley,
17 director of the County -- former director. It just says
18 director, and at the time he was, but of the County's
19 Planning Department saying, "We expect about 85,000 new
20 seniors in the next 20 years. That's a 75 percent
21 increase."
22 And the problem is that Mr. Stanley is not
23 available here to be cross-examined on the accuracy of that
24 statement. And so that's the problem with this kind of
25 survey. So I mention that because you have a right to

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1 object to that if you wish to, gentlemen. I'm inclined to
2 admit it for what it's worth. And that is, it has that
3 questionable value, because it's very difficult when the
4 witness is not here to be cross-examined.
5 Will any of your witnesses be able to testify on
6 this issue, that is, the expected growth of the senior
7 population in the County?
8 MR. KLINE: My follow-up question to that is to
9 ask Mr. Butz if what is labeled SR-2, Montgomery County
10 snapshots, County districts by the numbers, which is a
11 substantial publication by Park and Planning, whether that
12 same information or some numbers doesn't exist somewhere in
13 our Exhibit 34(b) already.
14 MR. GROSSMAN: I'm also a little bit more
15 uncomfortable, because this is the first time, and these
16 gentlemen haven't seen it. I'm going to show it to you in a
17 second.
18 MR. KLINE: Yes. I'll hand it to you.
19 MR. GROSSMAN: Yes, sir. And once again, identify
20 yourself for the record.
21 MR. HANCOCK: William Hancock.
22 MR. GROSSMAN: Okay, Mr. Hancock.
23 MR. HANCOCK: Does it, does anything in that
24 article or that statement, Jody, say what percentage of
25 those 85 people, the 85 percent, are going to remain in

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1 Montgomery County once they are retired? I know we're going
2 to have a big increase in growth, but --
3 MR. KLINE: Let me just say, if you want to ask
4 Mr. Butz, he's got an answer on that.
5 THE WITNESS: Actually, if --
6 MR. GROSSMAN: Well, let me, let's reserve that
7 kind of question, I think, for cross-examination. I think
8 that makes sense. But I'm going to let you look at this.
9 That's Exhibit No. 61. And then the opposition witnesses
10 have an opportunity to look at it before we go further.
11 And I'll call it, website printout of Rollin
12 Stanley quote re growth, re expected growth of senior
13 population in the County.
14 THE WITNESS: Sir, if I may?
15 MR. GROSSMAN: Yes.
16 THE WITNESS: I'll start to address Mr. Hancock's
17 question. Referring back to the 55-plus housing preference
18 survey conducted by the Park and Planning, page one,
19 "Retirement plans, where to retire. When asked where they
20 will be living in the next 10 years" --
21 MR. GROSSMAN: Hold on. Once second. One second.
22 Where are you reading from again, sir?
23 THE WITNESS: I'm reading from the 55-plus housing
24 preference survey conducted by Park and Planning, page one.
25 MR. GROSSMAN: Okay. All right.

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1 THE WITNESS: "Retirement plans, where to retire.
2 When asked where they will be living in the next 10 years,
3 approximately 58 percent, more than 98,400 residents, think
4 that they will live in their current residence. Of those
5 who plan to move, the next, within the next 10 years, over
6 11 percent, or about 19,400 residents plan to move to
7 another residence within Montgomery County. Neither half of
8 those who plan to move outside the County, plan to move to
9 another state within the South Atlantic region."
10 MR. GROSSMAN: All right. That's actually an
11 aside in terms of --
12 THE WITNESS: Basically, it's saying that there is
13 a significant portion, in this case, almost 20,000
14 residents, that plan to move from an existing residence to
15 another residence within Montgomery County. If I may
16 continue, "Many of the 19,000" --
17 MR. GROSSMAN: Why don't you, hold on, before you
18 continue. Let's deal with Exhibit No. 61, first, because
19 that's what's really before me right now.
20 THE WITNESS: Yes, sir.
21 MR. GROSSMAN: Gentlemen, have you had an
22 opportunity to look at the document?
23 MR. HANCOCK: Uh-huh.
24 MR. GROSSMAN: You have to answer yes or no so
25 that the --

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1 MR. HANCOCK: Yes.
2 MR. GROSSMAN: Okay. And do you have any concerns
3 about the authenticity of that document, that is, that it
4 accurately reflects a statement by Mr. Stanley?
5 MR. HANCOCK: No.
6 MR. GROSSMAN: Okay. All right. Given that, I'm
7 going to allow Exhibit No. 61 to be admitted. I'm always a
8 little bit concerned about, obviously, hearsay statements
9 about what somebody else thinks. On the other hand, part of
10 that issue is ameliorated by the fact that something is in
11 the record and filed, giving people an opportunity to look
12 at it. This document was seen for the first time at this
13 hearing, which makes me a little bit more leery about it.
14 Yes, sir.
15 (Exhibit No. 61 was admitted
16 into evidence.)
17 MR. WILLS: Mr. Grossman, there's no question this
18 is Rollin Stanley's statement. However, there's no basis
19 given by Mr. Stanley in the article for his statement.
20 MR. GROSSMAN: It appears not in the website
21 printout, that's true. So I would give it the kind of
22 weight it deserves under those circumstances. All right.
23 If you wouldn't mind returning that to me, because now it's
24 officially an exhibit here.
25 MR. KLINE: Yes.

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1 THE WITNESS: To further address the issue of the
 2 question about where the aging or the retirees, whatever you
 3 want to call them, are moving, the 55 and older housing
 4 preference survey says, "Many of the 19,400 people age 55 or
 5 older who plan to move from a current residence to another
 6 residence in Montgomery County, are looking at Bethesda,
 7 Silver Spring, and the I-270 corridor. The younger seniors
 8 55 to 64, expressed a preference for the I-270 corridor."
 9 MR. GROSSMAN: All right. That was an additional
 10 quote from SR-5 in Exhibit 34(b).
 11 MR. KLINE: Yes, sir. That's correct.
 12 THE WITNESS: Yes, sir.
 13 MR. GROSSMAN: Okay.
 14 THE WITNESS: So, what I take this to mean is,
 15 there is a demand for this type of housing within the I-270
 16 corridor.
 17 MR. GROSSMAN: Okay.
 18 THE WITNESS: Those are my remarks on that.
 19 (Discussion off the record.)
 20 THE WITNESS: Okay. To continue. These are all
 21 things we looked at as a property owner, the fact that there
 22 is substantial statistical data to support a need in this
 23 area for a planned retirement community, whether it be a
 24 preference survey, whether it be age and demographics,
 25 whether it be change in County demographics.

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1 There's also issues of, in our opinion, what
 2 constitutes smart land use. Two-acre residential million
 3 dollar homes on a six lane arterial road, on a property
 4 that's bisected by a four lane arterial road did not impress
 5 us as smart land use, and started us down the road for --
 6 but other things have changed other than --
 7 MR. GROSSMAN: Started us down the road?
 8 THE WITNESS: Of looking at alternate land uses.
 9 Other things have changed, not only with regard to
 10 statistical data that have made us have to gravitate towards
 11 another use of the property. Most recently, at the end of
 12 2012, I don't have the exact date, the County Council voted
 13 on the sustainable growth and agricultural preservation act.
 14 The sustainable growth and agricultural
 15 preservation act places our property in a tier two category.
 16 In a tier two category, septic use is prohibited. So when
 17 we look at the underlying zone, we can no longer develop
 18 under that zone at all. It is two-acre well and septic.
 19 The property is now recommended for water and sewer
 20 connection.
 21 MR. GROSSMAN: It's now recommended by whom?
 22 THE WITNESS: By the sustainable growth and
 23 agricultural preservation act.
 24 MR. GROSSMAN: Okay.
 25 MR. KLINE: There will be further testimony on

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1 that subject, Mr. Grossman.
 2 MR. GROSSMAN: Okay.
 3 THE WITNESS: There again, when we evaluated the
 4 infrastructure around this property, not only the vehicular
 5 infrastructure of a six lane road and a four lane road, its
 6 proximity to areas like Milestone, within the three-mile
 7 radius is the Germantown Town Center.
 8 When we evaluated other amenities, for example,
 9 that water and sewer are available at the site, we have
 10 worked with WSSC to come up with a connection plan for the
 11 site, that we have water and sewer, the roads, the
 12 amenities. When we look at the need and consider it in
 13 context with creating lifestyle, which, we've been around
 14 this County our whole lives, and it's important for us to
 15 have a legacy on properties that we have.
 16 When we look at the opportunity to create
 17 lifestyle for the active adult, and for them to be able to
 18 take advantage of the amenities of Clarksburg Village, the
 19 amenities within Milestone, the amenities within Germantown
 20 Town Center, there is everything from performing art centers
 21 to libraries, medical, I think three or four grocery stores,
 22 book stores. Milestone is a short walk or bike ride from
 23 the property. Right across the street from this property is
 24 a recreational park.
 25 BY MR. KLINE:

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1 Q Before you leave that, let's maybe kind of put
 2 this into geographical context. This Exhibit 34(I), an
 3 aerial photograph of the subject property identified as
 4 number 6 in the center. Let me just pick up some of the,
 5 you mentioned Milestone. You mean the shopping center to
 6 the south?
 7 A Correct.
 8 Q All right. Just tell us what's there?
 9 A Milestone has the Suburban Fitness Center, which
 10 is basically a gym, but it also is where you can go get
 11 therapeutic services. The new Wegmans is going to be at
 12 Milestone. There's a Home Depot, a Border's, a Wal-Mart, a
 13 Best Buy, another shopping center. I think there's at least
 14 three or four, maybe more, restaurants, AT&T store. I mean,
 15 there is all kinds of stuff.
 16 MR. GROSSMAN: What's the distance from your
 17 property to Milestone?
 18 MR. KLINE: Basically, the loops on here are
 19 shown.
 20 THE WITNESS: That's a one-mile loop, I believe.
 21 (Discussion off the record.)
 22 MR. KLINE: We're saying this shows a half mile
 23 from the subject property.
 24 MR. GROSSMAN: Okay.
 25 BY MR. KLINE:

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1 Q And when I interrupted you, I think you were
2 talking about a park --
3 A Oh yes.
4 Q -- south of the property?
5 A Right across the street is the Ridge Road
6 Recreational Park.
7 Q Which on 34(l) is identified as number 7, Mr.
8 Grossman.
9 A Which is much more than a passive park. There are
10 activity opportunities there, from tennis to ball fields to
11 dog walks. It's a great amenity for these residents.
12 MR. GROSSMAN: Can you point to that park on the
13 map?
14 MR. KLINE: Yes. It's labeled number 7,
15 immediately south of Brink Road, which is immediately south
16 of the subject property.
17 MR. GROSSMAN: Okay. South, southwest of the
18 property.
19 MR. KLINE: Right. Ridge Road Recreational Park.
20 MR. GROSSMAN: Okay. All right.
21 THE WITNESS: So we took all that into
22 consideration. The incredible amenities around the property
23 and infrastructure and the need. And that is what's been
24 very much a driving force in the planned retirement
25 community zone.

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1 We believe that it really is in the public
2 interest to provide a housing type to this under-served
3 segment of the Montgomery County population, that have
4 expressed a desire for this type of product, and to live in
5 this area, and what to stay in Montgomery County, but have
6 not been accommodated.
7 And that is really what has been, started this
8 process 10 years ago when we filed initial documents, and
9 had kept us going ever since is, the need is there. And it
10 is smart growth. It is smart to put right size housing,
11 more affordable housing. The clients asked for smaller
12 right fit housing in areas where they are appropriate. And
13 we believe it is very appropriate here. Any other
14 questions?
15 MR. GROSSMAN: Do you have any additional
16 questions?
17 BY MR. KLINE:
18 Q Let me sort of ask you a wrap up question, and
19 that is, all this section SR-1 through 8 in Exhibit 34(b)
20 which addresses senior housing issues, is your effort to
21 demonstrate that this proposal satisfies other County plans
22 and policies for this kind of housing, well, to provide
23 housing for all, basically a full life cycle community?
24 A Absolutely. And I believe it really is important
25 within the County. This is a community I would gravitate

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1 towards, and I'm pretty close to qualifying. And I think it
2 really, we have, there have been a number of letters sent in
3 support of this, and most notably, some are from realtors.
4 And the realtors are, very much want this type of a product,
5 because they are forced now to sell empty nesting downsizing
6 couples a house that they don't want, for them to stay in
7 the County, because most parents want to live near their
8 kids to be near their grandkids. And there is simply a lack
9 of product in this County.
10 And as we all well know, the County's master plan
11 is largely developed. It is largely built out. And
12 project, opportunities like this simply don't exist in the
13 County, where you have this level of amenity, and this level
14 of infrastructure adjacent to an open 54-acre parcel of
15 land.
16 MR. GROSSMAN: Okay.
17 BY MR. KLINE:
18 Q Mr. Butz, remembering the hearing examiner's
19 comment at the beginning, let's try and address some of the
20 objections that were raised by other folks. Mr. Hancock was
21 quoted by Mr. Grossman as saying, he was concerned about the
22 lack of recreational facilities on the property.
23 Understanding Mr. Unterberg is going to go into
24 greater detail about that, but in your discussions with Elm
25 Street in terms of cooperation in the future, what kind of

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1 programming opportunities were discussed for the community
2 center that would provide recreational activities in this
3 community itself?
4 MR. GROSSMAN: This is the planned community
5 center for the subject site?
6 MR. KLINE: Yes, sir.
7 THE WITNESS: We do have a planned community
8 center for the subject site. Their, first off, and I won't
9 have the exact page number, because it's a very long
10 document. Within the --
11 MR. GROSSMAN: You don't have to reference that.
12 THE WITNESS: No, was just looking for the title
13 of it. It was the AARP beyond 50.05 document.
14 MR. GROSSMAN: This is the SR-7 document?
15 MR. KLINE: That sounds right, sir.
16 MR. GROSSMAN: That's the one you were referring
17 to before? That was SR-7.
18 MR. KLINE: 34(b).
19 MR. GROSSMAN: Okay. Well, the question calls for
20 you to describe the amenities --
21 THE WITNESS: Yes, sir.
22 MR. GROSSMAN: -- that are going to be offered at
23 the planned community center on site. You don't have to
24 look at what AARP said to answer that.
25 THE WITNESS: I understand. One of the great

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1 advantages that we have at the site is the integration of
2 trail systems, within our site, Clarksburg Village, we have
3 sidewalks to the park, sidewalks to Milestone.
4 Within this document it indicated on page 62 that
5 having walking and biking trails is the number one
6 preferable activity option of people within this age
7 demographic. So we are well-integrated with our trail and
8 biking system. And that is very important.
9 Secondly, we do have a community center. And the
10 community center is a resident directed center, and it can
11 be used for a myriad of operations. For example, I have a
12 friend who is a financial planner. He would welcome the
13 opportunity to set up shop there and do coaching sessions.
14 It can be used for everything from activity classes to
15 educational to cooking to, or just to plain getting together
16 as a community on site.
17 And as will be testified to later, under, we, for
18 this age demographic, we provide, there's a point system. I
19 don't know where the point system came from.
20 BY MR. KLINE:
21 Q Go ahead. You're --
22 A There's a point system that will be highlighted
23 later. And basically, for this age demographic, you have to
24 have a certain number of recreational points. We
25 significantly exceed the required recreational points on

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1 site. When you add to this the recreational park directly
2 across the street, it is very significant.
3 MR. GROSSMAN: Is there going to be a restaurant
4 in this community center?
5 THE WITNESS: No, sir. The community center is
6 basically, you can think of it more like flex space.
7 MR. GROSSMAN: Okay. All right. Mr. Kline.
8 BY MR. KLINE:
9 Q Mr. Butz, I don't have any more questions for you.
10 Is there anything I failed to ask you that you want to
11 comment on?
12 A I don't believe so.
13 MR. KLINE: Okay. Then I have no further
14 questions of Mr. Butz.
15 MR. GROSSMAN: All right. Cross-examination. Mr.
16 Hancock, do you have any questions of Mr. Butz?
17 MR. HANCOCK: Just a couple.
18 CROSS-EXAMINATION
19 BY MR. HANCOCK:
20 Q What's the size of the community center, Mr. Butz?
21 (Discussion off the record.)
22 MR. GROSSMAN: No, you can't ask for help from the
23 audience.
24 THE WITNESS: I don't know the exact square
25 footage of it. It will be highlighted in another --

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1 MR. HANCOCK: Can I comment on that?
2 MR. GROSSMAN: You can't comment, but you can ask
3 questions about it. If he can't answer it, he's answered,
4 he doesn't know. There will be other witnesses, apparently,
5 that will testify.
6 THE WITNESS: You can cross-examine them on the
7 exact square footage.
8 MR. HANCOCK: My understanding was, it has 400
9 square feet.
10 MR. KLINE: Objection.
11 MR. GROSSMAN: You can't, you really can't --
12 you'll have an opportunity to testify when they are, at the
13 appropriate time, either when they are completed or earlier,
14 depending on circumstances. But right now is your
15 opportunity to ask questions related to his direct
16 examination.
17 MR. HANCOCK: Okay. One of the statements that
18 Mr. Butz made was that there was bike paths and sidewalks
19 leading to this off-site recreational facilities.
20 MR. GROSSMAN: Right.
21 BY MR. HANCOCK:
22 Q How do we get across the four and six-lane high
23 ways? Do you have a tunnel planned or an overpass or what?
24 MR. GROSSMAN: All right. Mr. Butz?
25 THE WITNESS: There are crosswalks on those roads

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1 existing.
2 BY MR. HANCOCK:
3 Q So we're going to have crosswalks for kids on
4 these four and six lane highways?
5 A Well, it's an age-restricted community, age 50 and
6 older.
7 Q That doesn't mean anything. I guarantee --
8 MR. GROSSMAN: Well, no, you can't argue with him
9 about it. You can only ask him, you can ask him a question,
10 and he answered the question. You asked him, how are you
11 going to get across these roads, and he answered,
12 crosswalks.
13 MR. HANCOCK: I think that's all I have.
14 MR. GROSSMAN: All right. Mr. Wills.
15 CROSS-EXAMINATION
16 BY MR. WILLS:
17 Q This A-305, M-83, this is the Mid-County Highway?
18 Is that what --
19 A Yes.
20 Q Okay. And it will have four lanes going through
21 this property?
22 A Correct.
23 Q And what will, you know, for a highway the speed
24 limit is 45-50 miles an hour with --
25 A I do not know what the planned speed limit is for

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1 this road.
2 Q But it's two, it's four-lane highway. It's
3 called, Mid-County Highway, so it's going to be a relatively
4 fast speed limit through the middle of the property?
5 A I have no idea what the speed limit is on this
6 road.
7 Q Okay. You had talked about, I just want to
8 follow-up on what Mr. Hancock had said about access to
9 trails and green space at Clarksburg Village. These trails
10 will lead from this community to the village, or do I drive
11 to the village to get the amenities?
12 A There's an integrated sidewalk.
13 Q And in your testimony, you talked about detached
14 homes that 34 percent of 55 and older preferred detached
15 homes. Was that the number I wrote down when you were
16 talking about it. Did I get that number correct?
17 A The 55 and older housing preference, sir, has a
18 number within the graph in that survey, has, indicates a
19 preference of what the people in that demographic, and that
20 survey group, what their preference was for housing.
21 Q And was that 34 percent?
22 MR. GROSSMAN: 34 percent, according to what the
23 witness indicated before. 34 percent indicated they
24 preferred to own single-family home. Five percent indicated
25 that they would prefer to rent a single-family home. And

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1 then there were other percentages for other --
2 MR. WILLIS: And I think this was used as
3 justification for having these additional single-family
4 homes. I happen to be in that age group, unfortunately, and
5 I guess I could say I prefer a single-family home.
6 MR. GROSSMAN: Well, you can't really testify now,
7 but you can make a list of all your --
8 MR. WILLIS: Got you. Got you.
9 MR. GROSSMAN: -- ideas that you want to present,
10 and you will be given the opportunity to testify.
11 MR. WILLIS: But it was 34 percent.
12 MR. GROSSMAN: Right.
13 MR. WILLIS: Okay.
14 MR. GROSSMAN: Of that survey group.
15 MR. WILLIS: Just give me one minute.
16 MR. GROSSMAN: Sure. Take your time.
17 BY MR. WILLIS:
18 Q You had made a statement that there's no product
19 like this built since the 1960's.
20 A There's been no planned retirement community
21 approved since the 1960's, and that was Leisure World.
22 Q And that was Leisure World. And again, if you
23 could just, you had talked about the amenity package for
24 this property. Could you just real quickly give me the list
25 of amenities that this property possesses?

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1 A I believe there will be an exhibit presented that
2 shows the integrated bike and pedestrian movement in and
3 around the community. But the other amenity item is the on-
4 site community center, which will be a citizen directed
5 community center as to activities and other events.
6 Q Okay. And then you were using this park, which is
7 on, gosh, the south, southern portion --
8 MR. GROSSMAN: Southwest.
9 BY MR. WILLIS:
10 Q -- southwest portion. Will there be any overpass
11 over Brink Road to get to this park, anything different than
12 was currently now in place on Brink Road?
13 A More than likely there will be a crosswalk,
14 actually, to the park.
15 Q But you don't know?
16 A I don't know what the future of Brink Road is.
17 Brink Road is currently, at that point, a single lane
18 unmarked road.
19 Q Right.
20 A It's master planned to be different.
21 MR. GROSSMAN: Well, I guess, part of the question
22 would be, is there anything in your proposed plan which
23 would call for ways of getting over Brink Road?
24 THE WITNESS: No.
25 MR. WILLIS: Okay.

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1 MR. HANCOCK: That would also include the Snowden
2 Parkway?
3 MR. GROSSMAN: Well, hold on. Hold on one second.
4 Let's finish with Mr. Willis.
5 MR. WILLIS: I've concluded my questions.
6 MR. GROSSMAN: Okay. Before we get to you, Mr.
7 Goldberg, did you have, Mr. Hancock, did you have another
8 question?
9 MR. HANCOCK: The question about Brink Road
10 actually applies to Snowden Road, both ways, because the
11 pool is supposed to be north.
12 MR. KLINE: We probably need to let the hearing
13 examiner catch up with what is Snowden Parkway.
14 MR. HANCOCK: I'm sorry, Jody, I didn't hear you.
15 MR. KLINE: Okay. When you're referencing Snowden
16 Parkway --
17 MR. HANCOCK: Yes.
18 MR. KLINE: -- and it's the first time it's come
19 up. And Mr. Grossman doesn't know what that is or where it
20 is.
21 MR. HANCOCK: Okay.
22 MR. KLINE: So do you want to describe it and I'll
23 show him where it is on here?
24 MR. HANCOCK: Well, my understanding was that the
25 pool to serve this area was over, located up in the R-200

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1 area, north of the property, and you had to go off-site to
2 use the pool. And I'm wondering how we're going to cross
3 the road that Elm Street is going to put in.
4 MR. GROSSMAN: Is there going to be another
5 witness on that subject --
6 MR. KLINE: Yes.
7 MR. GROSSMAN: -- of road crossings, sir?
8 MR. KLINE: Yes.
9 MR. HANCOCK: Okay.
10 MR. GROSSMAN: Perhaps we'll wait for that, and
11 that may be able to clarify it. Okay. Mr. Goldberg, your
12 turn to cross-examination.
13 MR. GOLDBERG: I have just a couple of quick
14 questions for you.
15 CROSS-EXAMINATION
16 BY MR. GOLDBERG:
17 Q What guarantees are in place to keep this a PRC
18 community, and so the houses could not be sold later as
19 regular houses?
20 A Well, the zone is a PRC zone. The deeds for these
21 houses are restricted. Very much the same way that Leisure
22 World has managed to maintain an age-restricted community
23 for decades, the same underlying methodology is incorporated
24 within the zone itself. And the restriction is on the deed.
25 Q And what kind of buffer is there between your

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1 proposed development and the homes on Brink Meadow Court?
2 MR. KLINE: I object to the question. It goes
3 beyond the scope of his examination, and will be addressed
4 by other witnesses.
5 MR. GROSSMAN: Is Mr. Butz going to be remaining
6 here this afternoon?
7 THE WITNESS: Yes.
8 MR. GROSSMAN: All right.
9 MR. KLINE: He wouldn't miss it.
10 MR. GROSSMAN: If it's not addressed by other
11 witnesses, then we could recall him to ask that question.
12 MR. KLINE: Yes. Sure.
13 MR. GROSSMAN: Does that satisfy you for that, for
14 the time being, Mr. Goldberg? You have to answer yes or no.
15 MR. GOLDBERG: Yes. Yes.
16 MR. GROSSMAN: All right. Then we'll sustain the
17 objection for the time being. Any other questions?
18 MR. GOLDBERG: No.
19 MR. GROSSMAN: Any redirect as a result of those
20 questions?
21 MR. KLINE: No, sir.
22 MR. GROSSMAN: All right. Thank you, Mr. Butz.
23 MR. BUTZ: Thank you, sir.
24 MR. GROSSMAN: Your next witness?
25 MR. KLINE: Go ahead and keep going?

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1 MR. GROSSMAN: Sure. Why not?
2 MR. KLINE: Sure.
3 MR. GROSSMAN: Unless anybody, if anybody needs me
4 to take a break, any of the participants, I will do so now.
5 Or the court reporter, I will do so now. But if not, we'll
6 get another witness in.
7 MR. KLINE: We'll call our next witness, Mr. Gary
8 Unterberg.
9 MR. GROSSMAN: Okay.
10 (Discussion off the record.)
11 MR. GROSSMAN: All right. Mr. Unterberg, would you
12 raise your right hand, please?
13 (Witness sworn.)
14 MR. GROSSMAN: All right. You may proceed.
15 DIRECT EXAMINATION
16 BY MR. KLINE:
17 Q Mr. Unterberg, would you please state and spell
18 your name, and give us your business address?
19 A Gary Unterberg. It's spelled U-N-T-E-R-B-E-R-G,
20 with Rodgers Consulting, 19847 Century Boulevard, Suite 200,
21 Germantown, Maryland 20874.
22 MR. GROSSMAN: I'm glad you spelled it because I
23 had it as Underberg. So it's U-N-T-E-R-B-E-R-G?
24 THE WITNESS: There's a T in there, yes.
25 MR. GROSSMAN: Okay. Thank you.

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1 MR. KLINE: Mr. Grossman, I have submitted
2 Mr. Unterberg's resume is Exhibit 55(a). You will note on
3 there that he has previously qualified as an expert in land
4 use planning, and I am offering him as an expert. Since I
5 didn't bring resumes, I am glad to go through a little voir
6 dire, if the gentlemen have any questions about his
7 qualifications. But I don't know if he's, have you
8 qualified before Mr. Grossman?
9 THE WITNESS: I have not.
10 MR. GROSSMAN: I don't believe so. You said you
11 didn't bring a resume.
12 MR. KLINE: I just didn't.
13 MR. GROSSMAN: You have a statement of
14 qualifications in here, 55(a). Is that what you're talking
15 about? You didn't --
16 MR. KLINE: His resume is in there.
17 MR. GROSSMAN: Right. Okay. You mean you didn't
18 bring copies of it.
19 MR. KLINE: I didn't bring copies for these
20 gentlemen, right.
21 MR. GROSSMAN: Okay. Right. I think, yes, I
22 think in view of that, and gentlemen, we can let you also
23 take a look at his resume from the file. I'm sure that Mr.
24 Kline is going to be offering this witness as an expert in
25 land planning, so there is his resume.

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1 And what we do when an expert is offered as a
2 witness, we have an opportunity for him to be questioned on
3 his qualifications by the parties. And that's called a voir
4 dire. And that process of questioning occurs prior to him
5 being accepted as an expert in the field. And so we look to
6 his qualifications or any objections anybody might have to
7 his qualifications before he's accepted as an expert.
8 One of the issues that comes up is whether or not
9 he's been previously certified as an expert in any case at
10 all, and especially any cases in Montgomery County. So
11 while you are looking at the resume there, we'll let Mr.
12 Kline proceed to question the witness regarding his
13 qualifications.
14 BY MR. KLINE:
15 Q Well, and why don't we kind of do it in reverse
16 order. Can you advise the folks that are here, Mr.
17 Grossman, when you have qualified as an expert in land use
18 planning, and the nature of the cases, whether they were
19 contested cases or not?
20 A Yes. Most recently, the City of Gaithersburg. I
21 have been qualified in Montgomery County. The relevant
22 Clarksburg case is back in 2002, case 806, G-806. Ms.
23 Carrier was the hearing examiner. And I qualified or
24 testified for Cabin Branch for the MXPD zoning, and under
25 land planning, site planning, and landscape architecture.

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1 MR. GROSSMAN: Ms. Carrier, who was the --
2 THE WITNESS: Was the hearing examiner.
3 MR. GROSSMAN: -- director of the Office of Zoning
4 and Administrative Hearings, and the hearing examiner, and
5 is now the chair of the Planning Board. And she accepted
6 you as an expert in land planning?
7 THE WITNESS: Yes.
8 MR. GROSSMAN: Okay. Any other testimony?
9 BY MR. KLINE:
10 Q Just real quickly, without getting into all your
11 academic credentials, for how long have you been doing what
12 it is you're going to be talking about today?
13 A Well, come this fall, I graduated the University
14 of Illinois 1983, so this May will be 30 years. And in
15 Montgomery County specifically, the last 25 years. And
16 prior to testifying with Cabin Branch in Clarksburg, I've
17 testified on a number of cases, including Montgomery Village
18 and a number of the town sector development plan amendments
19 that --
20 MR. GROSSMAN: Testified as an expert?
21 THE WITNESS: As an expert, yes. I've also
22 testified more recently, about 2004-2005, City of
23 Gaithersburg, a wide range of projects from the Crown
24 property zoning and annexation, the Watkins Mill Town Center
25 zoning; also Kentlands and Lakelands zoning.

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1 MR. GROSSMAN: All right. Mr. Kline, would you
2 mind returning the exhibit to me?
3 MR. KLINE: I would like to so offer Mr. Unterberg
4 as an expert in land use planning, based on his academic
5 credentials, his time and experience, and his previous
6 qualifications.
7 MR. GROSSMAN: All right. Do any members of the
8 opposition wish to question the witness regarding his
9 qualifications?
10 MR. HANCOCK: No.
11 MR. WILLS: No.
12 MR. GOLDBERG: No.
13 MR. GROSSMAN: All right. Based on this witness'
14 qualifications indicated in his resume, Exhibit 55(a), and
15 as he's testified to here now, and based on his prior
16 acceptance as an expert before this body in land use
17 planning, I accept him as an expert as such.
18 MR. KLINE: Thank you.
19 BY MR. KLINE:
20 Q I think this works better, since you've got a raft
21 of boards over there, for you to select the boards and just
22 let you kind of walk through the presentation in the order
23 you think works best.
24 A With that, I will move over to the boards. And
25 I'm going to start with 34(l) which we've previously been

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1 discussing, and talk a little about Clarksburg, Germantown,
2 the big picture in the area. I will then go to an exhibit
3 showing you the Brink Road neighborhood, and then will third
4 go specifically to the site.
5 On this 34(l), Clarksburg Community Park open
6 space green link exhibit, the subject site is roughly 54
7 acres located east of Route 27 and north of Brink Road.
8 BY MR. KLINE:
9 Q You said east of Route 27?
10 A Sorry, west of 27, east of the subject site. The
11 subject site is west of 27. Thank you. With that said, to
12 the south, Route 27 continues, intersections with Frederick
13 Road or Route 355, which also is this way. 27 also
14 continues on to 270 at the bottom of the page.
15 MR. GROSSMAN: It continues on south, southwest,
16 right?
17 THE WITNESS: Southwest, yes. The area to the
18 south of Brink Road is Germantown, the Germantown master
19 plan planning area. The properties are generally
20 residential, southwest and to the south. The zoning ranges,
21 but it's predominant R-200 TDR and the densities range from
22 five to seven units per acre.
23 Approximately a half mile from the Brink Road
24 boundary to the south is the Milestone Shopping Center. So
25 from Brink Road to the corner of Milestone is a half acre,

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1 or a half mile.
2 BY MR. KLINE:
3 Q And before you leave that, Mr. Unterberg, because
4 I missed it earlier, in the upper right-hand corner of
5 Exhibit 34(l), you actually have a code showing that each of
6 these parable of circles are --
7 A The bulls eye. There are two blue. The first one
8 is a five-minute walk, which is one-quarter mile, and that's
9 measured from the center of the site. So everything in this
10 first circle is one-quarter mile, a five-minute walk. The
11 second is a 10-minute walk, which is a half mile. And
12 that's this second blue circle. So from the center, that's
13 a half mile, 10-minute walk.
14 MR. GROSSMAN: When you say that --
15 BY MR. KLINE:
16 Q To the southern boundary --
17 A From the center --
18 Q -- to the second circle.
19 A -- to the southern boundary and/or the second
20 circle is a 10-minute walk. The third circle, which is now
21 in an orange color, is a five-minute bike ride, which is
22 deemed to be three-quarters of a mile. So again, from the
23 center of the property to the third circle, in this case I'm
24 pointing south, is a five-minute bike ride. And then the
25 last circle, which is the largest one, is a 10-minute bike

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1 ride, and that's one and a half miles. And that's the
2 largest circle on this exhibit.
3 MR. GROSSMAN: Okay.
4 THE WITNESS: In particular, we have five to seven
5 units per acre density to the south, in Germantown. Also
6 part of the Germantown master plan is the Germantown
7 greenway which constitutes Seneca Crossing Park, which is
8 black circle number 9. Also Ridge Road Regional Park, a
9 recreational park, which is black circle number 7. And a
10 stream valley which continues west which separates
11 Germantown from Clarksburg.
12 MR. GROSSMAN: Now, I see on the right, there
13 seems to be a legend on the right hand side of the exhibit.
14 Those numbers, those places you indicated, are they
15 indicated next to the numbers?
16 THE WITNESS: Yes, yes. And I will be revisiting
17 this exhibit, talking about Clarksburg Village and the
18 recreation and how the Clarksburg Village and the subject
19 site are integrated.
20 MR. GROSSMAN: Okay. You have some things in
21 black circles underneath. Are those the places you just
22 identified?
23 THE WITNESS: Yes. The yellow circles are areas
24 in Clarksburg Village. The black circles are primarily
25 County facilities, either parks or schools.

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1 MR. GROSSMAN: All right.
2 THE WITNESS: And in this case, 9 is Seneca
3 Crossing Park, and 7 is Ridge Road Park.
4 MR. GROSSMAN: All right.
5 THE WITNESS: What I'd like to go to is Exhibit
6 34(q) which is the land use report.
7 BY MR. KLINE:
8 Q Which is entitled what?
9 A This is entitled the Brink Road transition area
10 exhibit. In the master plan, the subject site, which again
11 is west of 27, north of Brink Road, is in Brink Road
12 transition area neighborhood.
13 The legend, we show the Brink Road neighborhood
14 boundary is in blue, which to the south is primarily Brink
15 Road, where it, Brink Road joins 355. It continues over
16 along the Germantown greenway to the west, and then it comes
17 north. And then also travels a stream valley buffer to the
18 north.
19 And this boundary is from the master plan, the
20 Clarksburg master plan. It then comes down 27. And then it
21 comes along the future M-83, which is the eastern boundary
22 around the cemetery as previously mentioned.
23 Also on this we're showing the southern property
24 line to the subject site. It is the contiguous property to
25 the Germantown planning area, which is in the green dots,

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1 which again, the Germantown greenway, which includes Ridge
2 Road regional park, and is adjacent to the southern
3 boundary.
4 Also the orange dots are the Clarksburg master
5 plan boundary area. And you can see that the Brink Road
6 neighborhood southern boundary, the Clarksburg southern
7 boundary, and in this case, the Germantown master plan
8 northern boundary are all in the same line. Graphically
9 they are split apart.
10 One thing you'll hear further testimony on from
11 Ms. Russel later on is, this denotes the neighborhood. On
12 page 40 of the master plan, there is a density allocation or
13 cap of 1,000 units.
14 MR. GROSSMAN: You said this describes the
15 neighborhood. What's the antecedent for this? What's the
16 this that describes the neighborhood?
17 THE WITNESS: Well, the blue boundary is from the
18 master plan. And page 40 notes that the Brink Road
19 neighborhood --
20 MR. GROSSMAN: Okay.
21 THE WITNESS: -- has a maximum of 1,000 units.
22 MR. GROSSMAN: Okay. You're not talking about, I
23 thought you were referring to the defined surrounding area
24 for the subject site.
25 THE WITNESS: No.

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1 MR. GROSSMAN: Okay.
2 MR. KLINE: We'll get to that separately.
3 THE WITNESS: This is the neighborhood for the
4 master plan.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: Okay. What we did, we took an
7 inventory. The neighborhood is developed, primarily, except
8 for the subject site. We included the 140 proposed units
9 for the site, and then the existing homes and the
10 development of the Brink Road neighborhood; added that up.
11 That grand total is 969 units, which is less than the 1,000
12 units on page 40 of the master plan.
13 MR. GROSSMAN: Okay.
14 THE WITNESS: So we were within the master plan
15 density for the neighborhood, with the 140 units included.
16 I'm going to go through a series of exhibits for the site
17 itself. This is Exhibit 34(c), property identification
18 class. This shows --
19 BY MR. KLINE:
20 Q Mr. Unterberg, you've reoriented the exhibit so
21 that north is --
22 A Correct. I have turned this so north is up.
23 MR. GROSSMAN: Because hearing examiners are
24 usually challenged in that regard. If you don't have north
25 up, we get confused.

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1 THE WITNESS: As you can see, we've turned this
2 longitudinally, this whole page, but I will orientate the
3 drawings so that north is up, and then they will match the
4 other exhibits where north is up.
5 This shows that the site is the lower 54 acres,
6 metes and bounds, again, Ridge Road or Route 27 is, in this
7 case, on the right hand side. The site is west of Ridge
8 Road. Brink Road is to the south. You have residential to
9 the west and residential to the north.
10 There is line work on the southern third of the
11 property. There's an existing gas easement that bisects the
12 southern portion of the property. And this is the Atlantic
13 Seaboard right-of-way, the liber folio, and this is for a
14 liquid gas transmission that goes through the County. And
15 it crosses this property.
16 This is Exhibit 34(d) which is the approved
17 natural resource inventory forest stand delineation. The
18 property is orientated the same way, with Ridge Road going
19 right. The property is to the west of Ridge Road.
20 This shows the topography and the existing
21 condition. Again, the gas easement at the southern portion.
22 The property is open. It's generally rolling. The slopes
23 are four to five percent. There are some flat areas, some
24 steeper areas.
25 In general, Ridge Road is true to its name. It is

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1 a ridge line. The property falls from Ridge Road, which is
2 the high point or the high line. It falls to the west.
3 There are several ridges and several drainage ways that
4 traverse through the property.
5 In the upper or northern, western corner of the
6 property, the only forest on the site is noted. It's
7 approximately less than half an acre. Actually, it's 0.48
8 acres. I stand corrected. It's less than 0.4 acres. And
9 part of that forest, what you'll see is also, that will be
10 impacted by A-305, the master plan road that comes through
11 the site.
12 MR. GROSSMAN: Is the site in a special protection
13 area?
14 THE WITNESS: The site is in a special protection
15 area. You'll hear more testimony on that from Mr. Rood.
16 The Planning Board, on December 20th, approved the
17 preliminary water quality plan, which is also the stormwater
18 management concept. And Mr. Rood and Mr. Bossong will be
19 speaking of that.
20 MR. GROSSMAN: Okay. Mr. Kline, do we have
21 anything from the Planning Board indicating their approval
22 of the water quality plan?
23 MR. KLINE: Their resolutions have been published.
24 They can be made part of the record. Yes, sir.
25 MR. GROSSMAN: They should be.

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1 MR. KLINE: Okay.
2 THE WITNESS: I've got a copy. This is Exhibit
3 34(e), which is a site aerial photo. A little bit different
4 angle, but again, generally the top of the page is north.
5 And Ridge Road is north and south.
6 MR. GROSSMAN: Maybe you've got it reversed? Is
7 that my --
8 MR. KLINE: Angled wrong, maybe, but --
9 THE WITNESS: It's more like this, compared to the
10 previous exhibit. Does that make more sense?
11 BY MR. KLINE:
12 Q What's the big white disk?
13 A This, that won't stay like that. This is the
14 adjoining WSSC property on the east. This is the water
15 tower, and this is the main water storage tank.
16 MR. GROSSMAN: The large white disk is the main
17 water storage tank?
18 THE WITNESS: Correct. And there are two water
19 tanks on the WSSC --
20 MR. GROSSMAN: And the smaller one is?
21 THE WITNESS: This is an elevated tower.
22 MR. GROSSMAN: Elevated tower.
23 THE WITNESS: And then this is a larger, it's
24 graded up. You can see there is landscaping around it. But
25 this is a ground level storage facility.

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1 MR. GROSSMAN: I notice that the gas line easement
2 actually shows on the aerial photo. What is the marking on
3 it? Is that actually physically showing, or is that just --
4 THE WITNESS: This is property line work that we
5 added.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: And you'll see, there are some, for
8 instance, we added the proposed alignment, master plan
9 alignment for M-83 to the north, which is also east of the
10 property, that continues to go east.
11 To the south is the Brink Road. This is a glimpse
12 of part of Ridge Road Regional Park. To the west is the
13 residential neighborhood, Brink Meadows. To the north is
14 another residential neighborhood, Green Ridge Acres. You
15 can see the small, the site itself being farmed. It's an
16 open field. You can see, there is a small portion of forest
17 along the northwest corner. And there is a hedgerow that's
18 along the western property line.
19 MR. GROSSMAN: The hedgerow doesn't count as part
20 of the forest?
21 THE WITNESS: It does not, and Mr. Rood can
22 testify to that, but it does not have the number of trees
23 required to be a forest.
24 MR. GROSSMAN: It doesn't count as part of it,
25 since you already have some, something that meets the

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1 definition of forest on there that's connected to it? It
2 doesn't count as part of it?
3 THE WITNESS: Correct, but you will see, I will
4 get to, as we walk through the plan, how we propose to save
5 that hedgerow and add to it with additional forest.
6 MR. GROSSMAN: All right.
7 BY MR. KLINE:
8 Q Am I correct in saying that the hedgerow doesn't
9 have enough depth to qualify as forest? Doesn't it have to
10 be 50 feet deep or something?
11 A It's depth. It's number of trees. It's the type
12 of trees. There's a number of factors that determine that.
13 Q Okay.
14 A And that was reviewed, I believe, by Park and
15 Planning.
16 MR. KLINE: Mr. Grossman, I did have copies of
17 water quality plan resolution.
18 MR. GROSSMAN: Okay.
19 MR. KLINE: And the forest conservation plan
20 resolution of January 8, at the Planning Board. I would ask
21 that they be made exhibits in the record.
22 MR. GROSSMAN: All right. So the water quality
23 plan resolution of January 8, 2013, will be Exhibit No. 62.
24 (Exhibit No. 62 was marked
25 for identification.)

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1 THE WITNESS: And to move onto zoning history --
2 MR. GROSSMAN: Can you hold on a second? All
3 right. So Exhibit No. 62 is the Planning Board resolution
4 of January 8, 2013, approving applicant's water quality
5 plan. Excuse me, Mr. Kline. Do you have a copy of this
6 resolution for the opposition?
7 MR. KLINE: Yes, sir.
8 MR. GROSSMAN: Okay. That will be Exhibit No. 62.
9 And Exhibit No. 63 --
10 MR. KLINE: They're both attached together.
11 MR. GROSSMAN: Okay -- is the January 8, 2013,
12 resolution of the Planning Board approving applicant's
13 forest conservation plan.
14 (Exhibit No. 63 was marked
15 for identification.)
16 MR. KLINE: Let us know when you are ready, Mr.
17 Grossman.
18 MR. GROSSMAN: All right. We are ready.
19 THE WITNESS: But I was going to say, while we're
20 there, Exhibit 41(c) is a copy of the preliminary forest
21 conservation plan that was approved by the Planning Board.
22 And it primarily shows, and Mr. Rood will be testifying to
23 this later, primarily shows reforestation to the north, to
24 the west, and then also on the corner of Brink Road and
25 Route 27.

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1 MR. GROSSMAN: Is it the intent of this
2 reforestation to not only meet the requirements of the
3 forest conservation plan, but also to provide additional
4 screening for the community?
5 THE WITNESS: Yes. Yes. And I will walk through
6 the specific buffers and dimensions --
7 MR. GROSSMAN: Okay.
8 THE WITNESS: -- as we get to a few boards down
9 the road here.
10 MR. GROSSMAN: All right. Okay.
11 THE WITNESS: Is the zoning history okay?
12 MR. KLINE: It's okay.
13 THE WITNESS: Exhibit 34(f), which is the
14 certified zoning map which was mentioned previously, shows
15 the subject site in yellow. It's currently zoned RE-2. The
16 surrounding zoning to the west is RE-2. To the north there
17 is slim sliver or driveway that is zoned Country Inn, the
18 Yeager property. There's a historic house that sits back
19 here. And this actual driveway will be disconnected once A-
20 305 is brought through the property. And access for this
21 property will be from the new road, Snowden Farm Parkway, or
22 A-305.
23 MR. GROSSMAN: So will that driveway remain, and
24 will it continue to be zoned Country Inn, or will it be
25 reabsorbed into the R-200 zone to the north? How is that --

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1 THE WITNESS: It's an actual parcel, so the zoning
2 will remain.
3 MR. GROSSMAN: Okay.
4 THE WITNESS: The status, I believe the intent was
5 this portion of the driveway would be removed, as access
6 from 27 is going to be cut off.
7 MR. GROSSMAN: Okay.
8 THE WITNESS: But it is a parcel, and it is a
9 zoning designation.
10 MR. GROSSMAN: I think the access to 27 being cut
11 off was a concern raised by the community. Do you want to
12 address that now, while you're talking about access being
13 cut off?
14 THE WITNESS: To the property itself?
15 MR. GROSSMAN: No, for them accessing --
16 MR. KLINE: It isn't necessary in this site. It's
17 a further northern, north issue. We can address it through
18 the traffic engineer, or give you an introduction to the
19 subject now, if you would like.
20 MR. GROSSMAN: All right. Let's have a little
21 intro.
22 THE WITNESS: I can do an introduction, and I
23 know, Mr. Guckert with the Traffic Group will be here later
24 to talk about the specifics. The subject site and Route 27,
25 new 305 continues the northern third, continues north up

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1 into Clarksburg Village. This yellow boundary is all of
2 Clarksburg Village, which is roughly over 2,700 units, as
3 approved.
4 The properties to the north, there is an existing
5 road, Morning Star Drive, that currently exists and goes
6 through. The approvals, the mandatory referral, the master
7 plan call for 305 to come through and no access from Morning
8 Star Drive to intersect A-305.
9 BY MR. KLINE:
10 Q And you're saying the master plan recommended
11 that?
12 A Correct.
13 Q Okay.
14 A And the subsequent Planning Board approvals.
15 Q Okay.
16 A And that Morning Star Drive would come end in a
17 new cul-de-sac, and on the other side of Morning Star Drive
18 would also be a cul-de-sac, so there would be no access.
19 And I believe there's an update to that, and from talking
20 with the developer, Elm Street Development, that that's in
21 progress, and looks like there will be allowed access, right
22 in, right now. And Mr. Guckert or Elm Street Development
23 can talk to that.
24 MR. GROSSMAN: Because I thought that was one of
25 the concerns of the community.

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1 BY MR. KLINE:
2 Q Yes, there was a letter, you're familiar with, Mr.
3 Unterberg, talking about that point. Can you describe why
4 they thought that was a concern, and why we don't believe it
5 will be?
6 A Well, I believe that was from the Clarksburg Civic
7 Association, the letter that's in the file. They mention
8 that this access would be cut off, and Morning Star Drive
9 would be a cul-de-sac. And based on the current approvals,
10 that's the case.
11 It's our understanding that Elm Street Development
12 has been going, within the last year, primarily last summer
13 and last fall of 2012, been going through hearings with the
14 County and the abandonment process. And that, right now, is
15 being revised to allow a right in, right out access to
16 Morning Star Road on the east, and a right in, right out to
17 Morning Star on the west.
18 MR. GROSSMAN: Of 27?
19 THE WITNESS: Of 305.
20 MR. GROSSMAN: 305. Now I'm confused, because I
21 thought that the letter talked about access to 27. Let me
22 see. Yes. It says, "Concerns about access," and it was the
23 Clarksburg Civic Association, Exhibit No. 51, "Concerns
24 about access to Route 27."
25 THE WITNESS: Which, and I'll go into further

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1 detail when I have the exhibit up here, but there were, at
2 the subject site, there is no access along 27. We have an
3 access point north and south for our site, from the new A-
4 305. And there is an access point off Brink Road. There is
5 no, for the new proposed 140 lots, there is no access off of
6 27.
7 MR. GROSSMAN: But do you know what the Clarksburg
8 Civic Association is referring to as an issue?
9 THE WITNESS: That I do not, particularly with
10 Route 27.
11 MR. GROSSMAN: Let me pull out that exhibit.
12 Okay. Traffic -- I'm reading from the second or third
13 paragraph of Exhibit No. 51. "Traffic from the subdivision
14 would enter Snowden Farm Parkway, a road which is designed
15 to connect Clarksburg to Shady Grove Road as M-83. Last
16 year there was a hearing to deny access to Route 27 and
17 Snowden Farm Parkway to the neighboring houses in Green
18 Ridge Acres (between the proposed Orchard Run and Clarksburg
19 Village which presently directly access Route 27)."
20 "This would mean that these residents would have a
21 long detour to get to Damascus, via a left turn onto Route
22 355, then Brink Road." And then a bolded sentence. "The
23 reason for this proposal was that Snowden Farm Parkway/M-83
24 should have limited access."
25 And then it says, "We have not yet heard the

1 results of this hearing. We do not think that the Planning
2 Board took this inconsistency into consideration." I'm not
3 sure how this plays into your proposal, but that's what I'm
4 raising, the question I'm raising.

5 THE WITNESS: Well, hopefully I can clarify a
6 little bit. Green Ridge Acres is the site to the north.
7 This shows Morning Star Drive. It goes through, and that's
8 the existing condition.

9 MR. GROSSMAN: That's east-west, an east-west
10 running road. Okay.

11 THE WITNESS: East-west, yes, with access to 27.

12 MR. GROSSMAN: Okay.

13 THE WITNESS: And I believe in that paragraph when
14 they talk about, between Orchard Run and Clarksburg Village,
15 they are talking about Morning Star Drive and the Green
16 Ridge Acres area.

17 MR. KLINE: They specifically mention Green Ridge
18 Acres.

19 THE WITNESS: So this is Morning Star Drive, which
20 particularly for one, two, three, four, five, six homes,
21 this road would be cut off and cul-de-sac'd with no access
22 to 305. And these existing home, their only alternative for
23 access would be out to 27.

24 MR. GROSSMAN: But my question is, is that part
25 and parcel in any of this proposed application? Or is it a

1 separate consideration?

2 THE WITNESS: It's a separate consideration and
3 not part of this application.

4 MR. KLINE: Right. Let me suggest that the bolded
5 language was, the reason for this proposal was, Snowden Farm
6 Parkway should have limited access, may have been to suggest
7 that we wouldn't be able to get driveways connecting with A-
8 305 within the property.

9 And given that it's been through the review
10 process and no transportation planning agency had any
11 objections to it, we don't think that whatever happened in
12 Green Ridge Acres is applicable to restrict access for us to
13 A-305, which we are providing the land for in the first
14 place.

15 MR. GROSSMAN: I think I understand that point,
16 but I'm just, let me go back to my point. Are you saying
17 that, you're explaining why you think that language was
18 bolded on the Exhibit 51 letter. But I still want an answer
19 to, in my mind, the central question is, does this objection
20 that is raised in the letter that I just read, have any
21 bearing on the application that's before me? Or is that a
22 separate issue completely?

23 THE WITNESS: In my opinion, it's a separate
24 issue. It's off-site and it's property to the north of the
25 application.

1 MR. GROSSMAN: Okay. Mr. Kline, do I have any
2 authority whatever to look into that question, or is that
3 something that's not before me at all?

4 MR. KLINE: Ultimately, my question to Mr.
5 Unterberg was, has there been any indication that we cannot
6 access A-305, Snowden Farm Parkway, in the review process
7 we've gone through so far.

8 MR. GROSSMAN: All right. Is there?

9 THE WITNESS: And there has been not, or no
10 indication. And we've shown which, I'll head to the
11 illustrative plan. This is Exhibit 34(g), to the north
12 again, Ridge Road, proposed A-305. We have a proposed
13 access point with a median break on 305. That accesses the
14 site north and south of A-305. And this has been reviewed
15 by Park and Planning and meets the County criteria for a
16 median break and access point.

17 MR. GROSSMAN: Well, Mr. Kline, do we know why it
18 is that the Clarksburg Civic Association seems to feel that
19 somehow their access to the north of your site is somehow
20 connected to this application?

21 MR. KLINE: Let me just ask someone who may be
22 saying something about that. No. We do not know why that
23 sentence is in there.

24 MR. GROSSMAN: They're not here to clarify this.
25 As far as I can tell from the evidence presented to me by

1 Mr. Unterberg, this is a completely different application
2 with a completely different set of issues, not part of this
3 application. So unless I hear something to the contrary,
4 that's not going to be part of what I will look at. All
5 right. You may proceed, Mr. Unterberg. Or perhaps it is a
6 time for us to take a little break here. So let's break
7 until, for another five minutes or so until 10 to 12:00.

8 MR. KLINE: Yes, sir. Thank you.
9 (Whereupon, at 11:44 a.m., a brief recess was
10 taken.)

11 MR. GROSSMAN: All right, gentlemen, let's resume.

12 MR. KLINE: Before we begin, Mr. Goldberg had a
13 request.

14 MR. GROSSMAN: Yes. Mr. Goldberg.

15 MR. GOLDBERG: Mr. Grossman, I have some things I
16 have to do this afternoon --

17 MR. GROSSMAN: Okay.

18 MR. GOLDBERG: -- whether I like it or not. And
19 I'd like to excuse myself. But Mary Jane Goodrick, who is a
20 member of the board of directors of the Greater Goshen Civic
21 Association, would like to take my place.

22 MR. GROSSMAN: That would be fine. The question I
23 have is whether you have anything you want to say before you
24 have to leave? And if you do, then I would swear you in and
25 let you say it.

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1 MR. GOLDBERG: Not right now.
2 MR. GROSSMAN: Okay.
3 MR. GOLDBERG: I had written out what I wanted to
4 say, and that will be presented by Mary Jane Goodrick later.
5 MR. GROSSMAN: Okay.
6 MR. GOLDBERG: And by my colleagues.
7 MR. GROSSMAN: All right.
8 MR. GOLDBERG: Thank you very much.
9 MR. GROSSMAN: Thank you very much for
10 participating. I appreciate your --
11 MR. GOLDBERG: Thank you.
12 MR. GROSSMAN: -- taking your time to come down
13 here.
14 MR. GOLDBERG: May Mary Jane take my seat?
15 MR. GROSSMAN: Absolutely. You warmed it up for
16 her, right?
17 (Discussion off the record.)
18 MR. GROSSMAN: All right, ma'am. If you would be
19 so kind as to state your full name?
20 MS. GOODRICK: Mary Jane Goodrick.
21 MR. GROSSMAN: Okay. And that's spelled G-O-O-D-
22 R-I-C-H, or --
23 MS. GOODRICK: K.
24 MR. GROSSMAN: R-I-K, all right. R-I-K or R-I-C-
25 K?

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1 MS. GOODRICK: R-I-C-K.
2 MR. GROSSMAN: Okay. And you're appearing on
3 behalf of the Greater Goshen Civic Association?
4 MS. GOODRICK: Yes.
5 MR. GROSSMAN: Okay. All right. Were you here
6 earlier? Did you understand the ground rules here?
7 MS. GOODRICK: Yes, I do.
8 MR. GROSSMAN: Okay. And you will be permitted to
9 cross-examine the witnesses for the application or your
10 fellow opponents, and you will be permitted to give a
11 statement on behalf, or testify on behalf of yourself and on
12 behalf of the Greater Goshen Civic Association. Okay.
13 MS. GOODRICK: Okay.
14 MR. GROSSMAN: All right. Shall we proceed then?
15 BY MR. KLINE:
16 Q Mr. Unterberg, why don't I just let you just
17 resume your testimony wherever we left off?
18 A I think we left off with Exhibit 34(f), which is
19 the certified zoning map, and walk through the surrounding
20 and existing zoning. What I'd like to do, before we go to
21 the site, which the question was raised about the site and
22 surrounding area for the zoning.
23 MR. GROSSMAN: Yes.
24 THE WITNESS: This is 34(o), which is the land use
25 report. There is also another version, which is an aerial

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1 photo of the same area. This is, and this was also written
2 up in the land use report, which is part of Exhibit 34, and
3 that's 34(a). And it shows the subject site with the
4 proposed housing, Ridge Road. It also shows the proposed A-
5 305, that goes to the north and to the west. Proposed M-83
6 that goes to the east.
7 And then it shows the surrounding areas,
8 Clarksburg Village to the north, the residential to the
9 north and the west in yellow. It shows the park to the
10 south, south of Brink Road, which is Ridge Road Park, also
11 Seneca Crossing Park, and then the water tower of the WSSC
12 property is a darker gray to the east. And the cemetery is
13 in a lighter gray to the east also.
14 MR. GROSSMAN: And, well first of all, I can't
15 recall, did technical staff agree to that definition of the
16 surrounding area?
17 MR. KLINE: Mr. Grossman, I believe that the staff
18 report is silent on identifying a surrounding area.
19 MR. GROSSMAN: Which is unusual.
20 MR. KLINE: We submitted as part of our prehearing
21 statement and everything, and nobody ever said yes or no or
22 good or bad. So we just had our direction.
23 MR. GROSSMAN: And so you said that was 34(o)?
24 THE WITNESS: Yes.
25 MR. GROSSMAN: And so that's your concept of the

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1 appropriate surrounding area?
2 THE WITNESS: Correct. And there is also an
3 Exhibit 34N, which is an aerial photograph which also has
4 that same surrounding boundary on it.
5 MR. GROSSMAN: Let me explain to the audience here
6 why we have a surrounding area. In order to, in these kinds
7 of cases, where there is an effort made to rezone a
8 property, the area that is most likely to be affected, or
9 will be most affected by the rezoning is generally
10 denominated as the surrounding area, in order that the
11 Council can better assess which properties will be most
12 affected by the zone, by the rezoning.
13 It's somewhat of an artificial construct, but
14 that's the idea. In special exceptions they call it the
15 general neighborhood. In rezoning cases they call it the
16 surrounding area.
17 And I notice in this particular definition that
18 the area to the northeast does not appear to be included in
19 your surrounding area. Why is that?
20 THE WITNESS: You're speaking of this area?
21 MR. GROSSMAN: Yes.
22 THE WITNESS: That actually is outside of the
23 Clarksburg planning area. The Clarksburg boundary comes
24 down Ridge Road, and then comes down along the future M-83.
25 MR. GROSSMAN: Yes.

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1 THE WITNESS: So we mirrored the Clarksburg
2 planning boundary area. The area to the east is primarily
3 RDT for the rural density transfer zone which is shown on
4 the certified zoning map.
5 MR. GROSSMAN: Why not include it? I mean, it's
6 part of a confronting property directly across the highway
7 from your site? That's why I'm surprised that you would not
8 have at least that portion included in the surrounding area.
9 THE WITNESS: And I'll go to the aerial. Again,
10 the northern portion of site along Ridge Road, speaking of
11 this, there are a few houses, four to be exact, along Ridge
12 Road.
13 MR. GROSSMAN: Right.
14 THE WITNESS: And then the rest is, well, you get
15 up into this area is Butler's Orchard, and get into
16 agricultural uses.
17 MR. GROSSMAN: Well, what's the justification for,
18 especially if there are four houses along Ridge Road
19 confronting your property, what would be the reason not on
20 include them as part of the surrounding area?
21 THE WITNESS: This, again, we set the surrounding
22 area for the Clarksburg master plan, with that boundary.
23 MR. GROSSMAN: Okay. But wouldn't the logic,
24 aside from that logic, wouldn't it logically, the way
25 surrounding area in land planning is generally, what it's

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1 generally taken to mean is those areas that are going to be
2 most affected. Is that not correct?
3 THE WITNESS: Yes. You could include these
4 residential units in that area.
5 MR. GROSSMAN: Well, I'm going to move past could.
6 Shouldn't you include those, that area immediately to the
7 east of your property, and perhaps going back a little
8 further than just those four houses, in the surrounding
9 area?
10 THE WITNESS: I'll agree with that. And then as
11 you'll see, in later testimony, how we worked with the
12 setbacks and the compatibility. I'll include those in my
13 testimony.
14 MR. GROSSMAN: All right. But can you put the
15 other map back up -- oh, because it's too hard for you to
16 see the boundary. My only, my question is, it's clear to me
17 that those homes should be included. But it seems to me
18 that you would have to go further back than that.
19 Is there any reason not to go, other than the
20 logic you've enunciated as far as the boundary, what would
21 be the reason for not going a little bit further to the east
22 to include that RDT zoned portion, which is directly across?
23 And maybe, if you're going to produce an amount of traffic
24 that's going to run up Ridge Road to the north, wouldn't the
25 property owners to the east of Ridge Road be affected by

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1 this development?
2 THE WITNESS: Well, again, this was, this mirrors
3 the Clarksburg master plan area. I agree with including
4 these homes that are contiguous or adjacent to, across the
5 street from the subject property. I will let Wes Guckert,
6 who is going to speak to the traffic, discuss the impact of
7 traffic to the north on 27.
8 MR. GROSSMAN: Well, I'm asking you from a land
9 planning standpoint. As a land planner, wouldn't you
10 consider that to be a significantly affected area, and that
11 should be included? At least up to, I see some breakdowns
12 on it looks like property lines, I guess.
13 THE WITNESS: Yes. There are four lots here.
14 There's a break. There's a couple of lots.
15 MR. GROSSMAN: Right. And to the east of that,
16 there's another break, a north-south break. What is that
17 break there? Not that one, just that one, yes.
18 THE WITNESS: This actually, these are some
19 driveways, I believe, which on the aerial, you can see how
20 there's a series of driveways.
21 MR. GROSSMAN: Okay.
22 THE WITNESS: And this is all farm field,
23 agricultural. And this house also is part of that
24 agricultural use. I would agree that these homes that front
25 and abut the subject site should be included. But the

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1 agricultural use, I would not agree with, primarily because
2 the Clarksburg master plan has identified Ridge Road north
3 of M-83 as a planning boundary, and everything west is in
4 Clarksburg. Everything east is not.
5 MR. GROSSMAN: I understand that distinction, but
6 to me, from the standpoint of what surrounding area is
7 supposed to mean, the planning boundary is not as
8 significant as the impacts of what you're about to do on
9 surrounding property.
10 So I'd ask you to address, you can assume that I'm
11 going to want to define the surrounding area as broader to
12 the east than you have it. And assume that it's going to,
13 if you would put up 34(o) again for me, please, because I
14 can see it better. That the surrounding area would extent
15 at least to that driveway, that's right. And then north-
16 south and immediately there.
17 So it would include at least the effects on those
18 properties to the northeast of the site. And I would go all
19 the way up to the northern extent. I see there are some, it
20 looks like homes up there in the far northern extent. Are
21 there homes on that, east of Brink Road, of Ridge Road,
22 rather?
23 THE WITNESS: Yes. You can see the homes in this
24 neighborhood.
25 MR. GROSSMAN: All right. And wouldn't they also

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1 be impacted, because we're talking about traffic impacts?
2 THE WITNESS: With your assumption on the other
3 side of the road you would come to the north, and then come
4 down.
5 MR. GROSSMAN: That's correct. All right. Yes.
6 So you can assume that those homes, and everything as far
7 east as they extend, and then coming south, on a direct line
8 south from that, would be included in the surrounding area
9 definition that I think would be appropriate. And yes,
10 perhaps you could mark it right on your version. And we're
11 going to call that another -- right, another green line.
12 THE WITNESS: And something --
13 MR. GROSSMAN: Right. We'll call it amended
14 surrounding area, and make that a new exhibit.
15 MR. HANCOCK: Mr. Grossman, I don't know if it's
16 appropriate, but the area that you're talking about right
17 now, all of those individual homes have signed the petition
18 in opposition to this, they feel they are included.
19 MR. GROSSMAN: Okay. I wasn't aware of that, but
20 I think that that is another reason why it makes sense to
21 have them in the surrounding area. All right.
22 MR. KLINE: Mr. Unterberg, can you put up (o)
23 again, or whatever is the one on the bottom.
24 MR. GROSSMAN: Before you do that, let's mark
25 that. Would you mark that as Exhibit 64, and make sure that

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1 exhibit stays with us. And we'll call that amended
2 surrounding area exhibit. Okay. So now, when you testify
3 about the surrounding area, please include that area in it.
4 (Exhibit No. 64 was marked
5 for identification.)
6 THE WITNESS: Okay.
7 MR. GROSSMAN: Okay.
8 THE WITNESS: Should we amend this exhibit also?
9 MR. KLINE: Probably.
10 THE WITNESS: Or is this clear?
11 MR. GROSSMAN: It might be helpful for clarity
12 purposes if that's the other one. So this will be Exhibit
13 65. It's an aerial of amended surrounding area exhibit,
14 aerial photo. Okay. Thank you, sir.
15 (Exhibit No. 65 was marked
16 for identification.)
17 BY MR. KLINE:
18 Q Mr. Unterberg, before you put that down, you were
19 alluding -- well, the land north of M-83 that isn't fronting
20 on 27, it looks like it's substantially dedicated to farming
21 activities?
22 A Yes.
23 Q And I think I heard you say that some of that was
24 controlled by the Butler family.
25 A Right.

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1 Q So was one of your rationale for, it wouldn't be
2 influenced was that it's not only in agricultural use, but
3 it's dedicated, it's in the hands or control of a family
4 that's not likely to be changing it? It's not RDT waiting
5 to be redeveloped?
6 A Well, that whole theory that everything west of,
7 or east of, to the right hand side of 27, that's zoned RDT
8 and will not be changing.
9 Q Will not be changing --
10 A And particularly the farming was the assumption.
11 Q Can you tell us what the Butler family owns? Can
12 you --
13 MR. GROSSMAN: Well, wait a minute. Mr. Kline, I
14 don't know that that's relevant. I mean, I don't think you
15 make these land use decisions based on who owns the
16 property, because that's subject to change. It's based on
17 the fact that physically it's confronting the subject site,
18 and adjacent to the main roadway access to the subject site.
19 So to me, that's the issue, not who owns the property.
20 MR. KLINE: Well, the point I was trying to make
21 is, that the likelihood that it will be redeveloped to have
22 residential structures on it, which seems to have a
23 legitimate concern, is less for the Butler family, which has
24 an ongoing financial enterprise that's agriculturally
25 oriented, and isn't likely to change; and therefore they

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1 would be less influenced or affected by the redevelopment.
2 We can work with the neighborhood.
3 MR. GROSSMAN: Let's, all right. We don't have to
4 debate it.
5 MR. KLINE: Okay. Enough said.
6 BY MR. KLINE:
7 Q Go ahead, Mr. Unterberg.
8 A Well, that summarizes what we've established and
9 amended as the surrounding area. I will speak while we go
10 through the PRC zone requirements, and setbacks and
11 compatibility standards, I will use this area within the
12 perimeter.
13 MR. GROSSMAN: Thank you. I think the record
14 should reflect that my administrative staff was able to fix
15 my laser pointer, so --
16 MR. KLINE: I just saw something over here. I was
17 wondered what happened.
18 MR. GROSSMAN: It was not functioning before, so
19 now I'm particularly dangerous.
20 MR. KLINE: As long as you don't use it to make a
21 point.
22 MR. GROSSMAN: Our former people's counsel here
23 used to have one that was so bright that I couldn't even
24 look at the reflection. I have more, a more controlled one.
25 (Discussion off the record.)

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1 THE WITNESS: Okay. Now that we've reshuffled
2 exhibits, let's talk about the site of the proposal, and
3 what we are showing and go from there. This first Exhibit
4 is 34(g), which is the illustrative concept plan, which is a
5 color rendering of the development in the proposal. The
6 second proposed, or the second Exhibit if 41(b), which is
7 the amended development plan, land use element for G-881.
8 MR. GROSSMAN: And is that the final version of
9 the development plan, 41(b)?
10 MR. KLINE: Yes, sir. Yes, sir.
11 MR. GROSSMAN: Okay.
12 MR. KLINE: And I might add, at the conclusion of
13 the hearing today, we will give you a disk that has all of
14 the plans that yes, you already have, but that we're showing
15 you today. So you'll have another version of it, except for
16 the one we've just amended, which is the zoning
17 neighborhood.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: We'll start with 34(g). And one of
20 the things we looked at when we were laying this out, Mr.
21 Butz talked to it specifically, that there's a need for
22 single-family restricted, age-restricted housing. So the
23 proposal is for 140 single-family lots.
24 We took specific care in looking at the edges and
25 the relationship to the Germantown greenway to the south,

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1 south of Brink Road. We took some time adding roughly a
2 little over two acres to the corner, which is going to be
3 reforested, that complements Ridge Road; a part to the
4 south, also establishing a green edge, and a transition
5 along Ridge Road to the north.
6 You'll see the proposed A-305 that cuts through
7 the site. Then we also took a look at the edges and
8 setbacks along the north and the west to the residential
9 properties.
10 MR. GROSSMAN: I take it that all of this
11 additional greenery is something that will be looked at
12 again at site plan review?
13 THE WITNESS: We do. We did add a binding
14 element, which is binding element number three, that the
15 impervious area is to be up to 28 percent, based on net
16 acreage of 49.4 acres. So there is, with the water quality
17 plan approval, and with the binding element that was
18 proposed with Park and Planning, we are capping our
19 impervious area.
20 MR. GROSSMAN: Okay.
21 THE WITNESS: Which subsequently, all these
22 details are subject to site plan review, and will get
23 massaged a little bit. But they need to be in substantial
24 compliance with the submitted plan.
25 MR. GROSSMAN: Right. More than substantial.

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1 They have to be in compliance.
2 BY MR. KLINE:
3 Q Mr. Unterberg, let me digress for a second. I
4 sense that Mr. Hancock is skeptical that there won't be any
5 kids living here. And I think I heard the question asked
6 earlier, how to do we enforce this age-restricted housing?
7 If I mischaracterized you, I apologize. But what is the
8 enforcement mechanism to ensure that only people over 50
9 years old live here?
10 MR. HANCOCK: There is none.
11 MR. KLINE: Well, he gets to answer it first, then
12 you can cross-examine.
13 THE WITNESS: I'm going to go to the zone, which
14 speaks to that. The property will be zoned PRC, planned
15 retirement community. Aged residents and residential
16 densities, a planned retirement community of less than 750
17 acres must be restricted to permanent residents 50 years of
18 age or over.
19 MR. GROSSMAN: Would you read the section you're
20 reading from?
21 THE WITNESS: This is 57C-7.44.
22 MR. GROSSMAN: All right. So that's in the zoning
23 ordinance. He's asking, I guess, how will that be enforced.
24 Do your homeowner association rules specify that?
25 THE WITNESS: There can be. I don't think there

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1 is specific enforcement yet, but that's something we can
2 definitely add. Through the zoning ordinance and the County
3 itself, it will be enforced if someone is not complying or
4 younger than the age specified.
5 MR. GROSSMAN: I'm not sure exactly how that
6 mechanism works, because I know, I mean, with special
7 exceptions you have every year, theoretically, at least the
8 Department of Permitting Services goes out and does an
9 inspection to make sure the special exception is in
10 compliance with the conditions that have been approved.
11 I think once you've rezoned the property, if you
12 don't have it specifically in your bylaws of the homeowners
13 association or something, I'm not sure how it ends up being
14 enforced by the County. What about that?
15 THE WITNESS: I could see us adding that to the
16 HOA document to enforce it.
17 MR. GROSSMAN: I mean, perhaps they're -- I don't
18 recall what your binding elements, how many binding elements
19 do you have on your, textual binding elements do you have on
20 your development plan?
21 THE WITNESS: Textual, we have four, and then the
22 charts related to the, regarding the densities.
23 MR. GROSSMAN: And what are those binding
24 elements?
25 THE WITNESS: The first one is, development plan

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1 depicts the overall concept of the orderly and staged
2 development of the Courts. And it goes on, two, densities
3 use and mix of housing types as specified in the appropriate
4 tables, A and B, tables A and B. And it goes on. And three
5 is, impervious area to be up to 28 percent, based on that
6 acreage of 49.4 acres.

7 MR. GROSSMAN: And you said there was a fourth
8 one?

9 THE WITNESS: The fourth is the two tables.

10 MR. GROSSMAN: Okay. So if it's not on there
11 already, do you think it's advisable or inadvisable, Mr.
12 Kline, to have a binding element that specifies that housing
13 will be restricted to --

14 MR. KLINE: It's a zoning ordinance requirement.
15 I don't have any problem with doing that, as long as the
16 ordinance doesn't change, and we would have to amend the
17 development plan. That would be kind of silly. So I would
18 say maybe language, we just bind it to whatever is the
19 applicable language of the zoning ordinance.

20 MR. GROSSMAN: And that the, that the, whatever,
21 the homeowners association or governing body's rules would
22 limit it.

23 MR. KLINE: Yes.

24 MR. GROSSMAN: So phrase it in that way so that
25 when somebody applies to live there, and/or after they are

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1 living there, it's enforceable by the homeowners association
2 as opposed to some more general -- I think that might solve
3 the problem Mr. Hancock is referencing. Is that, do you
4 think so, Mr. Hancock?

5 MR. HANCOCK: No, I don't.

6 MR. GROSSMAN: Why not, sir?

7 MR. HANCOCK: I've been a real estate broker in
8 Montgomery County for 45 years, and a builder for about 40.
9 And a homeowners association is not going to enforce,
10 they're not going to put a regulation in or enforce it
11 saying, you can't have children.

12 And besides that, the regulations for Montgomery
13 County are that only one person has to be 50. You don't
14 have to be 50 to buy in this restricted community. And I
15 don't believe, I mean, I've never seen it where the
16 homeowners association ever has come up with something, you
17 can't have children live with you.

18 It just won't work. The people, what will happen
19 is, is what did happen, and I can't remember the name of the
20 subdivision, they couldn't sell the houses with this
21 limitation on it for age --

22 MR. GROSSMAN: Since we're having this --

23 MR. HANCOCK: -- and they converted them to
24 regular standard units. That's one of the things we're
25 concerned with.

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1 MR. GROSSMAN: Let me swear you in, since we are,
2 in effect, getting evidence here. So would you raise your
3 right hand, please?

4 MR. HANCOCK: I'm sorry.

5 MR. GROSSMAN: Would you raise your right hand,
6 please?

7 (Witness sworn.)

8 MR. GROSSMAN: All right. Do you adopt what you
9 have now already said as testimony under oath?

10 MR. HANCOCK: I'm sorry, sir, I can't hear you.

11 MR. GROSSMAN: Do you adopt what you have already
12 just stated as part of your testimony under oath?

13 MR. HANCOCK: Yes.

14 MR. GROSSMAN: Okay. All right. So now you're
15 saying that it's not, as a practical matter, it's not
16 enforceable. And you were about to give me an example of
17 where this has happened before?

18 MR. HANCOCK: I can't, I'm sorry, I'm 79 years
19 old, and I can't remember the name of the subdivision. It
20 was up north. They didn't take, they weren't able to do it.
21 I can probably look it up. And they ended up converting the
22 houses from the age restriction to no restrictions at all.

23 MR. GROSSMAN: Well, there is a -- I mean, the
24 zone language has a restriction in it. Now, I'm not sure
25 how it's worked, for example, in Leisure World, where I

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1 guess the same restriction exists.

2 MR. KLINE: Are you looking for the language of
3 the PRC or the definition of elderly?

4 MR. GROSSMAN: I'm looking at the PRC zone
5 definition.

6 MR. KLINE: Yes, C-7.44.

7 MR. GROSSMAN: Yes. You can have, it says here,
8 "A planned retirement community of less than 750 acres, must
9 be restricted to permanent residents, 50 years of age or
10 over, except that as a disabled relative may reside with a
11 permanent reside."

12 MR. HANCOCK: I'm sorry, sir. I didn't hear that
13 last part.

14 MR. GROSSMAN: "Except that a disabled relative
15 may reside with a permanent resident. In addition, residents
16 must be regulated in accordance with the provisions of the
17 fair housing amendments act of 1988, as may be subsequently
18 amended."

19 Now, it does have an exception. If you have a
20 planned retirement community of 750 acres or more, they may
21 include a section which has no age restriction. And maybe
22 that's what happened in your case that you were mentioning.
23 I don't know.

24 MR. HANCOCK: Maybe.

25 MR. GROSSMAN: Yes. I don't know, I mean, I

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1 understand the rationale for wanting something that makes it
2 more enforceable. I don't want to create more of a problem
3 by creating a binding element here. What do you think about
4 that, Mr. Kline? I mean, are we going to create a problem
5 here by a binding element that has some restriction that
6 essentially links it to whatever the language is in the
7 zoning ordinance?
8 MR. KLINE: Well, as I said, I just don't want to
9 have to come, if the law changed --
10 MR. GROSSMAN: Right.
11 MR. KLINE: -- to become more liberal for some
12 reason, I don't want to have to come and amend the
13 development plan.
14 MR. GROSSMAN: Right.
15 MR. KLINE: So I would come up with language that
16 tracks whatever the zoning ordinance is. Frankly, before
17 the afternoon is over, I'm going to have somebody call
18 Leisure World and find out how the heck they do it, and
19 basically suggest that as the way of doing it. Because it's
20 certainly the model of the successful venture in that
21 regard.
22 MR. GROSSMAN: The only model, if I understand the
23 earlier testimony, in this County.
24 MR. KLINE: Yes. Yes, it is more than 750 acres,
25 so it does have the unrestricted sections.

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1 MR. GROSSMAN: Area.
2 MR. KLINE: But I'm looking just for the over 50,
3 the elderly, the age-restricted.
4 MR. GROSSMAN: Yes. I think having something in
5 there that would at least result in the homeowners
6 association rules specifying an age limit would eliminate
7 the problem, largely, or there may be isolated violations,
8 but it wouldn't be --
9 MR. KLINE: If I can add to Mr. Hancock, or
10 supplement Mr. Hancock's comment, I think the example he's
11 talking about is what was called Potomac Mews in the
12 northeast quadrant of Falls Road and River Road, which was
13 originally granted, if you go by, it's just above the
14 Potomac Library. It's basically attached units. And it was
15 approved as housing for the elderly project with a special
16 exception. It was to be eligible only for people 55 years
17 or older.
18 MR. HANCOCK: That may have been it.
19 MR. KLINE: It did not market well. It's an
20 elegant community. Unfortunately, the gentleman who dreamed
21 it up, John Westbrook, made it too nice. It did not market
22 well. It was stagnant for several years. And they
23 eventually struck a deal with the community and rezoned it
24 to the planned development zone, finished it out by building
25 single-family detached units that are adjacent to the

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1 library, and it basically lost its age-restricted status.
2 MR. GROSSMAN: I see.
3 MR. KLINE: So that, I think, is the model. There
4 your earlier comment was, well, there you at least could
5 call a County inspector under the special exception and they
6 could go site you if you were in violation. But I've always
7 thought the same thing could happen here as well. It's a
8 little bit different when it's a deed ownership. But there
9 is, there is a regulatory mechanism over and above having
10 something in the HOA documents and the binding elements.
11 MR. HANCOCK: That rings a bell.
12 MR. GROSSMAN: Yes, ma'am.
13 MS. GOODRICK: I am familiar, aware of another
14 community that had that happen which is near Prathertown on
15 Wightman Road. And it was originally, I don't know all the
16 details of it, but it was originally zoned to be for senior
17 citizens, and then it changed over in some way. So I think
18 you should understand what the ability is county-wide for
19 that change to be made. The other thing from just --
20 MR. GROSSMAN: Well, something can be rezoned.
21 Nothing here is written in stone in the sense that it can't
22 be rezoned.
23 MR. KLINE: I'm sorry. I am familiar with that.
24 it is an application I handled. It was housing for the
25 elderly, special exception. There were changes in the mix

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1 of units, but I believe it's still a housing for the elderly
2 special exception.
3 MS. GOODRICK: Well, I think it's not -- well, I
4 don't know. But I think that there were changes made that
5 the community, Prathertown, the community around there
6 didn't like. They were granted that exception for seniors.
7 I think we should look into that to understand what could
8 happen.
9 MR. GROSSMAN: Well, this is the hearing, and you
10 can present whatever evidence you have that's relevant to
11 the issue. I mean, I'm not sure that it gets very far,
12 because if you have a restriction in the zone that says,
13 it's got to be for people of this age and above, 50 years
14 and above, that's what the restriction is that would apply.
15 I mean, you can add on another feature, such as a
16 binding element that says that this age restriction,
17 whatever it is in the zone, must be applied by the
18 homeowners association. I mean, theoretically, that should
19 happen anyway. But you could have something else that adds
20 another tier to it. But I don't think you can go much
21 further than that in terms of at this stage, you're talking
22 about the rezoning stage. Yes, ma'am.
23 MS. GOODRICK: The other thing, just for listening
24 to what you read, it said, permanent residents. So does
25 that include renters?

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1 MR. GROSSMAN: Mr. Kline?
2 MR. KLINE: I would say permanent residents is
3 anybody who is living there has to meet the requirement of
4 50 years old. So whether you own or you rent won't make any
5 difference. You still have to be over 50.
6 MR. GROSSMAN: All right. Well, you can track
7 that in whatever you write as a binding element. But that
8 was a good question.
9 MS. GOODRICK: Thank you. I guess I would like to
10 go back to the question before that and that is that, you
11 know, we're citizens. You have a staff and you all are
12 experts on this. And what I'm afraid will happen is
13 something that has happened in other parts of the County,
14 which is where you did give this approval for seniors to
15 live in these homes, and then it didn't turn out that way.
16 And so I would just, I would like to be aware of,
17 you know, what can be done? You said you can change the
18 zoning. Is that correct?
19 MR. GROSSMAN: Well, yes, what I'm saying is,
20 people can apply. People who own property can apply to the
21 Council, just as these property owners in this application
22 are applying to the Council to have the zoning changed. The
23 zone here is RE-2, were you saying? And they are seeking to
24 change it to the PRC zone.
25 And it has to go through this whole process, which

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1 is not an easy process. They have to file an application.
2 It has to go to the technical staff of the Maryland National
3 Capital Park and Planning Commission to be reviewed. They
4 file, usually an extensive report that goes to the Planning
5 Board.
6 The Planning Board then has meeting, open meeting
7 on it, and comes up with a recommendation that goes to the
8 hearing examiner. The hearing examiner then conducts a full
9 due process hearing and comes up with a report and
10 recommendation that goes to the Council. The Council then
11 has a session, a public session. So it's an extensive
12 process to rezone something. It's not, they can't just snap
13 their fingers and have it rezoned.
14 MS. GOODRICK: Okay.
15 MR. GROSSMAN: And then it's subject to further
16 review, once again, on the details by the Planning Board and
17 the site plan review.
18 MS. GOODRICK: I guess I would like to understand
19 that that's what happened in these cases, that they were
20 able to make an application to rezone.
21 MR. GROSSMAN: Well, I don't know, the specific
22 cases you're talking about, I don't know anything about,
23 officially, other than what has been stated here, whatever
24 is on the record here.
25 This is the opportunity for anybody to submit

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1 evidence they have that might bear on this issue. So I'm
2 not exactly sure what you're asking me to do. This would be
3 your opportunity to present any evidence you want. I can't
4 go out and create evidence. But I give you the opportunity
5 to present evidence that you may have.
6 But this is actually, we have gone far afield
7 here. I'm going to blame Mr. Kline for that, because he
8 raised Mr. Hancock's --
9 MR. KLINE: Yes. I just said to Mr. Unterberg, I
10 wish I hadn't asked the question.
11 MR. GROSSMAN: -- concern. But usually this
12 portion of the case, that is your concern or whatever
13 testimony you wish to offer, is done after the applicant has
14 completed his presentation. So why don't we return to that,
15 and then you can express any -- first of all, you can cross-
16 examine this witness on the scope of his direct, or you can
17 present any evidence you wish to present when it is your
18 turn to present it.
19 But because we've gone rather far outside of Mr.
20 Unterberg's presentation. So shall we return to that?
21 THE WITNESS: Okay. Since we were talking about
22 binding elements, I'll walk through the development plan,
23 and the facts and figures of the layout.
24 MR. GROSSMAN: These are the textual binding
25 elements. This is a development plan case. In a

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1 development plan case, everything is binding that's not
2 specified as being illustrative. In addition, you can add
3 textual binding elements, too, that specify that certain
4 things are binding.
5 Very often, and I haven't looked for the language
6 on this one, but very often it will say on the development
7 plan that the precise location of the buildings and whatever
8 is illustrative, subject to review at site plan. Is there
9 some language to that effect on this?
10 THE WITNESS: Yes. Actually working with Park and
11 Planning we have development plan notes, binding elements,
12 which is reading sideways, is the top part of the notes.
13 And then we have a header for non-binding elements, which is
14 the rest of the notes. And a number of these deal with the
15 actual zone, and the standards in the zone.
16 MR. GROSSMAN: Right.
17 THE WITNESS: And then we do have, okay, for
18 example, property including open space will be subject to
19 site plan review, final number of lots and lot areas,
20 subject to change in the plan, at site plan and/or record
21 plat.
22 MR. GROSSMAN: Right. The reason for this
23 dichotomy is that the Council has an interest in a rezoning
24 with a development plan of specifying some broad outlines to
25 make sure that the rezoned property would be within the

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1 contours of the intention of the zone, and the master plan.
 2 But the details of where individual units are
 3 placed, how the screening is developed and so on, is usually
 4 left, if the zone is approved, if the rezoning is approved,
 5 is left to the Planning Board and its technical staff, at a
 6 site plan review, a process in which you can participate,
 7 after the rezoning, so that, because the Council can't enter
 8 into the minutia of where ever unit is going to be located.
 9 This is something that is subject to this post-
 10 rezoning review, if the rezoning is approved. And that's
 11 done at what they call site plan review. All right. Go
 12 ahead Mr. Unterberg.
 13 THE WITNESS: Okay. We read the first three
 14 binding elements. The fourth are a series of charts. A
 15 refers to area A, which is approximately the three-quarters
 16 of the southern area of the site that is south of A-305.
 17 That is approximately 38.9 acres. We are saying a height up
 18 to 35 feet. And then we propose a range of single-family
 19 detached which is 100 to 130 units. And then we associate
 20 parking with that range, the requirement of two spaces per
 21 unit.
 22 We also say that required in there is a community
 23 center. The community center is located in area A. There's
 24 an entrance off of A-305 that proceeds south, and as you
 25 come in the entrance, the community center is located in the

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1 northern third of area A, along the first road that comes in
 2 off of A-305. And I'll get to dimensions and facts and
 3 figures about that in a little bit.
 4 Area B, which is the part of the site that's north
 5 of A-305, is approximately 10 and a half acres, again,
 6 limited to a maximum of 35 feet, a range of 25 to 35 units,
 7 and the associated parking.
 8 We mentioned a net acreage of 49.4 acres, from the
 9 approximate total of 54, or rounded up to 50.4. It's
 10 approximately five acres. That five acres includes the
 11 dedication for A-305, the master plan road. It's a 120-foot
 12 right-of-way, four lanes, which provide one access point for
 13 a road to go north into h area B, and the same intersection
 14 of the road to go south into area A.
 15 That dedication also provides for additional
 16 dedication for the widening of Route 27, the length of the
 17 property, all the way down to Brink Road. So that's
 18 approximately five acres.
 19 We have a series of nonbinding, and talk about the
 20 right-of-way, the public road dedication, the note I just
 21 read about, this is subject to further site plan review,
 22 preliminary plan review, the next steps that we need to take
 23 and the subsequent detail.
 24 We do note that the size of the rec center will be
 25 determined at site plan. We are showing a building that's

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1 35 feet by 40 foot, which is 1,400 square feet. And we'll
 2 walk through the parking and I'll come back to recreation,
 3 where we meet recreation on site. With the development
 4 plan, we talk about the track area, and actually these are,
 5 in a second, these are the code requirements for the PRC
 6 zone.
 7 Let me on here segue into the recreation. This is
 8 Exhibit 34(k). Walkways and bikeways street section
 9 exhibit. This illustrates the public roads. A-305 is a
 10 public road. The local roads, which are typical tertiary
 11 roads with Montgomery County standard 2001.02, which is a
 12 residential street, are all the on-site roads. There is one
 13 road to area B, which is to the north, and then there is a
 14 series of roads that goes south from the same intersection
 15 through area A.
 16 MR. GROSSMAN: They are in blue.
 17 THE WITNESS: They're in blue. And there are a
 18 couple of courts or cul-de-sacs, and the lots are in white
 19 with the line work. And then there is another access point
 20 to Brink Road, which accesses Brink Road.
 21 The lines in orange are, one is the proposed
 22 sidewalks and walkways, which is on every road. We are
 23 proposing a trail connection at the Brink Road intersection.
 24 There is an existing trail that we're proposing to link
 25 with, with the Ridge Road Regional Park. And this will be a

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1 crosswalk at this intersection.
 2 The dashed line is the dedicated hiker-biker, or
 3 the bike trail, which will be built along A-305. There is a
 4 signalized intersection proposed at 305 and Ridge Road. And
 5 then that bike route will come down with the widening of
 6 Ridge Road to Brink Road, and continue south past Brink
 7 Road, continue on Ridge Road. This is also a signalized
 8 intersection with a crosswalk.
 9 MR. GROSSMAN: This being?
 10 THE WITNESS: This being Brink Road and Route 27.
 11 Mr. Butz eluded to some numbers regarding recreation. And
 12 this would be a new exhibit.
 13 MR. GROSSMAN: This will be Exhibit 66.
 14 (Exhibit No. 66 was marked
 15 for identification.)
 16 THE WITNESS: Recreation demand in Montgomery
 17 County, the Maryland National Capital Park and Planning
 18 Commission has a recreation guideline and booklet, manuals.
 19 It is a point system. It's based on number of lots. It's
 20 also based on the type of lots, single-family, townhouses,
 21 and so forth.
 22 We have 140 lots proposed, single-family. We are
 23 only showing demand for seniors. That says, age-restricted.
 24 There is other demand within the guidelines for teens and
 25 tots and so forth. We will not have those residents living

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1 here.

2 A on this chart is the demand. It's 13 points per

3 100 units required. And you'll see it's a point system. So

4 the demand for 140 lots is 18.2 seniors.

5 MR. GROSSMAN: Well, let me -- this is, Exhibit

6 No. 66 is recreational facilities calculations for seniors.

7 THE WITNESS: So under A our demand is 18.2

8 points. And that's what Park and Planning has set for, we

9 need to provide recreation amenities to meet or exceed that

10 number of points.

11 This will be verified at site plan, so it is

12 subject to change. But with the proposal that we have, our

13 pedestrian system, you get a series of points. With the

14 bike path system on 305 and Route 27 you get a couple of

15 points. With the natural areas and the forest conservation

16 areas being proposed, you get a little bit of credit.

17 With our clubhouse, this proposal is for three

18 meeting rooms. We have 35 by 40 foot is the dimension,

19 which is 1,400 square feet. That provides roughly enough

20 room for two small meeting rooms and a large meeting room.

21 And then those will be programmed with the HOA.

22 We are also providing, which in addition to trails

23 and bikeways being one of the larger or the most desired

24 recreation for seniors, we're also proposing a community

25 garden, which would be, the assumption right now, it would

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1 be located adjacent to the clubhouse, which is right here,

2 number 5 on the illustrative plan.

3 MR. GROSSMAN: That's a natural area? Is that

4 what that is?

5 THE WITNESS: No. The community garden would be a

6 vegetable garden. It would be an outside area that would be

7 regulated by the HOA where the --

8 MR. GROSSMAN: No, but how does it appear on this?

9 MR. KLINE: It's at the bottom of that list, B-1.

10 MR. GROSSMAN: B-1?

11 MR. KLINE: Yes.

12 MR. GROSSMAN: I see that. I'm sorry.

13 THE WITNESS: It would be pedestrian bike, natural

14 area, three meeting rooms, and then community garden.

15 MR. GROSSMAN: So if I understand this chart, the

16 demand figure of 18.2, that's what the regulations would

17 require in terms of number of points --

18 THE WITNESS: Correct.

19 MR. GROSSMAN: -- for recreational facilities for

20 seniors. And the supplied portion is what you're actually

21 providing in terms of the recognized number of points for

22 that type of recreational facility. Is that correct?

23 THE WITNESS: Correct.

24 MR. GROSSMAN: And you're, you indicate on this

25 chart that the demand side requires 18.2 points, and you are

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1 providing on-site 37.31 points. Is that correct?

2 THE WITNESS: Correct.

3 MR. GROSSMAN: And then off-site there are another

4 29 points provided?

5 THE WITNESS: Immediately off-site, adjacent, in

6 this case, is the Ridge Road Regional Park.

7 MR. GROSSMAN: Right.

8 THE WITNESS: You get partial credit, up to 35

9 percent. And we are providing a trail and pedestrian access

10 to that. So that adds more points to the equation. So with

11 this proposal, we're at, with the 35 percent credit for the

12 park, we're at over 47 points, where the demand is a little

13 over 18 points. So we are proposing to meet all recreation

14 on-site, and then in a moment, I'll take about the

15 relationship to Clarksburg Village.

16 MR. GROSSMAN: All right. And where are the

17 natural areas that you're referring to in B-1?

18 MR. KLINE: Mr. Grossman, while Mr. Unterberg is

19 getting that plan out, this is not an analysis we would

20 normally present to you as part of the zoning case. It's

21 really a site plan analysis. But because the PRC zone does

22 talk about recreational facilities, and because it's been

23 questioned about whether they are adequate, we felt

24 incumbent that we had to present this.

25 MR. GROSSMAN: Yes, I think it's a good idea. And

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1 it's actually, I've seen them on development plans before.

2 So it's not unusual to have it. But I agree with you, it

3 seems to be more of a site plan issue. But so where did you

4 say the natural area --

5 THE WITNESS: The natural areas are what will be

6 reforested.

7 MR. GROSSMAN: Okay.

8 THE WITNESS: And there are three major areas.

9 One to the north, one to the west, and then on to the south,

10 the southwest corner, actually the corner of Brink Road.

11 MR. GROSSMAN: All right. And what about the bike

12 system?

13 THE WITNESS: The bike system on-site is dedicated

14 bike path off-road along 305. And then that continues south

15 on Ridge Road which connects to an existing bike trail that

16 further continues to Germantown.

17 MR. GROSSMAN: All right.

18 THE WITNESS: While we're there, to overlap from

19 the site a little bit, that bike trail continues along A-305

20 all the way up and through Clarksburg Village.

21 MR. GROSSMAN: Okay.

22 THE WITNESS: So there is access with that bike

23 trail from the site to Clarksburg Village as well.

24 MR. GROSSMAN: All right. And what about the

25 pedestrian system, that seems to get a lot of points?

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1 THE WITNESS: The pedestrian system is the
2 sidewalks on-site.
3 MR. GROSSMAN: Okay.
4 THE WITNESS: And then they connect to the larger
5 areas as well. This is a hiker-biker trail, which is the
6 bike trail. So that allows biking and walking or
7 pedestrians.
8 MR. GROSSMAN: By this you mean --
9 THE WITNESS: The dashed line on the southern side
10 of 305, yes.
11 MR. GROSSMAN: Okay. And the red lines, are those
12 the pedestrian routes along the internal roadways?
13 THE WITNESS: Yes. This would be the sidewalk
14 with the internal roads that connect through.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: There will be a new sidewalk with
17 Brink Road with the access point on Brink Road. The
18 frontage improvements, including a sidewalk, will be
19 required on Brink Road on the property side, the northern
20 side. And that will connect to the hiker-biker trail along
21 27. Again, for crossings at this intersection, this is a
22 controlled for a signal controlled intersection.
23 MR. GROSSMAN: Okay. All right. I understand
24 now.
25 THE WITNESS: So, we believe, particularly, that

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1 we can provide more than adequate recreation on site, per
2 the County standards, that will be locked in at site plan.
3 MR. GROSSMAN: All right.
4 THE WITNESS: There was a little bit of
5 conversation earlier about the Elm Street Development letter
6 that talks about, one word was annexing, one word was
7 incorporating. We will have a separate stand-alone HOA for
8 this site, for the subject site. That will be overall
9 maintenance, items specific to the 140 age-restricted uses.
10 If we have a binding element for the age restriction itself,
11 things like that could be incorporated into that specific
12 HOA document for this site.
13 We also do want to look at the opportunity for
14 maintenance for seniors, whether it be snow plowing, lawn
15 mowing, we mentioned a garden club, that there would be
16 overall maintenance responsibilities for that HOA to support
17 140 residents.
18 With that said, and through the coordination of
19 Elm Street Development, developers have the option to join
20 the overall larger Clarksburg Village, and then share in the
21 use of their recreation amenities, and as mentioned before,
22 particularly in yellow, numbers one through six of those
23 amenities, or some of the major amenities, conditions of the
24 green space, the trail.
25 There is a future school site, which is number

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1 one, elementary school, which will have ball fields and
2 outdoor area. Two, is the existing Clarksburg Village Pool
3 and Clubhouse, which is already built. Three, is also a
4 future school site within Clarksburg Village, and the
5 associated outdoor areas and recreation opportunities.
6 Four is a second Clarksburg Village Pool and
7 Bathhouse. This has not been constructed, although this
8 whole eastern area of Clarksburg is currently under
9 construction. So that is being programmed in.
10 Five is a Clarksburg Village Green, which is a
11 large green or park area. And then six on here is the
12 Courts, which is the subject site in relationship to the
13 overall Clarksburg Village.
14 In addition to that, there is a number of
15 existing parks we've already talked about, the Germantown
16 Greenway, the Ridge Road Regional Park, and then actually,
17 the future Seneca Crossing Park, which is owned by Park and
18 Planning, they recently in the last year, they approved an
19 active program for that park which includes soccer fields.
20 It's not funded yet, but they are planning in the future to
21 have athletic fields on the Seneca Crossing Park.
22 So overall, that shows the relationship to
23 Clarksburg Village, and the opportunity that exists with the
24 option of the Courts entering an agreement with the Elm
25 Street Development.

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1 MR. GROSSMAN: All right. I'll say one thing,
2 getting back to the development plan, one thing I did
3 overlook is, we do note, there is one table that notes the
4 PRC yield. The intent is to do single-family units, single-
5 family detached. We did provide, depending on the market,
6 that the market would change or be accepting, we provided
7 the option to do up to 20 percent, or 28 units as attached
8 units. So whether they're duplexes or townhouses, some type
9 of a cash unit is planned for the future, if the market so
10 warrants. Right now the intent is to do all single-family.
11 MR. GROSSMAN: And that's under B?
12 THE WITNESS: That would be either, and it's on
13 the overall yield summary, which will total 140 units.
14 MR. GROSSMAN: And I'm sorry, is that part of the
15 binding textual elements, or is that part of your --
16 THE WITNESS: It's under the binding. A is a
17 separate chart. B is a separate chart. And then there is a
18 PRC yield summary which is part of the binding which also
19 includes the community center and then the size to be
20 determined at preliminary planning.
21 MR. GROSSMAN: Okay.
22 THE WITNESS: Did I hit everything.
23 MR. GROSSMAN: You said that was up to 20 percent?
24 THE WITNESS: Yes, or 28 units.
25 MR. GROSSMAN: Whichever is more or less?

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1 THE WITNESS: Or in this case, the same.
 2 MR. GROSSMAN: Yes.
 3 THE WITNESS: Should we go on to the PRC?
 4 MR. KLINE: I think so.
 5 (Discussion off the record.)
 6 THE WITNESS: Going through the purpose of the
 7 zone, just reading from 59C-7.41 for the purpose. The
 8 purpose of the PRC zone is to provide for the establishment
 9 of a planned retirement community type of development
 10 accessible to or providing to it with most of the day to day
 11 recreational, medical, retail, commercial and services
 12 required by the residents thereof in accordance with the
 13 comprehensive zone and the plan approved by the Planning
 14 Board.
 15 I want to talk about accessible to and what we
 16 believe is essential to the plan. We just walked through
 17 with Exhibit 34(I), which is the greenways and the parks
 18 that were accessible to the site north and south.
 19 MR. GROSSMAN: right.
 20 THE WITNESS: In addition to that, there's a
 21 number amenities, shopping opportunities, support
 22 opportunities, pharmacies and the like, which are some of
 23 the, some of what is listed in the PRC zone. Since we are
 24 less than the 750 acres, it does not have to be on-site. It
 25 has to be accessible to.

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1 Within our walking distance and our biking
 2 distance of the site, and as mentioned in the Planning
 3 Board's recommendation, within short driving distance, we
 4 have a number of facilities. We start off to the south. We
 5 previously mentioned the Milestone Shopping Center. That is
 6 within approximately, from the edge of the property to the
 7 edge, that's a half mile.
 8 You'll see with this, from the center of the
 9 property, a five minute, 10 minute walk for the two rings.
 10 And then we get into our five minute and 10 minute bike
 11 ride, within the bull's eye it is the same there on the
 12 recreation exhibit.
 13 Within a mile we have all of the Milestone
 14 Shopping Center, which includes the Giant Food Store, the
 15 pharmacy, with the Wal-Mart, Target, Home Depot, banks,
 16 restaurants, and a variety of services.
 17 Also, just beyond that on Observation Drive, which
 18 is number six, is the Shops at Seneca Meadows. And this is
 19 the Wegmans store and pharmacy that's under construction
 20 right now. So number six. To the south, in Germantown,
 21 within that mile or so, we have a number of facilities.
 22 To the north, in Clarksburg Village, which is also
 23 approximately a mile from the center of the site, a little
 24 bit shorter from the northern edge, is the future Clarksburg
 25 Village Shopping Center or Village Center. This has been

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1 announced that Harris Teeter will be building a major
 2 grocery store as the anchor to this retail center. So
 3 that's within that mile or so. So as you can see from this
 4 exhibit, there's a number of facilities that are accessible
 5 to the residents of the Courts per the PRC zone.
 6 BY MR. KLINE:
 7 Q Before you leave that, then, and looking at the
 8 purpose clause, do you feel that within the areas you
 9 defined there are adequate medical, retail, commercial and
 10 similar services to serve the residents of the community?
 11 A I do.
 12 Q Thank you.
 13 A Okay. What I would like to talk about is the
 14 master plan in conformance with the master a little bit.
 15 And Ms. Russel will be going into more detail with this, but
 16 one thing I did mention was the design itself. We looked
 17 particularly at the relationship to the Germantown Greenway
 18 and how we can complement that.
 19 The master plan talks about a gateway to
 20 Clarksburg as you travel north on Route 27. And what we
 21 did, specifically, which are a couple of graphics we did
 22 with planning staff, this in particular is Exhibit 40(b).
 23 And this shows particularly from, I will turn it to
 24 orientate it to the site just to the north, with our site as
 25 the key map here. We particularly did two sections through

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1 this which is the --
 2 MR. GROSSMAN: Southeastern corner.
 3 THE WITNESS: Southwestern.
 4 MR. GROSSMAN: Eastern, no, it's the southeastern.
 5 THE WITNESS: Of the site, of the site, okay.
 6 West of our -- true.
 7 MR. GROSSMAN: Right.
 8 THE WITNESS: And that is A and B, which we are
 9 proposing. This is a little over two acres. We're
 10 proposing that to be reforested. And that green area and
 11 forest would complement the Germantown Greenway and
 12 establish a green corner as you enter into Clarksburg.
 13 We also, which I'll go through in a little bit,
 14 established a green edge as you come up Ridge Road, and then
 15 a green perimeter. And particularly, C was to demonstrate
 16 how the green from this, I'll shift this around, C, which
 17 was a section through the site which showed Ridge Road, the
 18 buffer, the greenway, the homes, the internal streets. And
 19 now we'll get to the western boundary, the additional buffer
 20 and forestation that is being provided before you get to the
 21 existing homes.
 22 MR. GROSSMAN: Mr. Kline, were these sections
 23 included in the electronic versions you provided?
 24 MR. KLINE: Yes, sir.
 25 MR. GROSSMAN: Okay. Good.

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1 MR. KLINE: You have the exhibit. I think it's 40
2 something.
3 MR. GROSSMAN: All right.
4 THE WITNESS: 40(a) is also illustrative. I'll
5 leave this turned sideways with Ridge Road, again, focusing.
6 This was trying to look at a bird's eye perspective, and
7 also a ground perspective of Brink Road and Ridge Road from
8 the corner, particularly with what is approximately two
9 acres of reforestation, reforested to provide that green
10 entryway or gateway to Clarksburg.
11 MR. GROSSMAN: Are those trees going to be a
12 combination of evergreen and others?
13 THE WITNESS: They can be. I know Mr. Rood will
14 speak more to this a little bit later, but they will be
15 proposed, or actually, they will be incorporated into the
16 phase one conservation, or category one conservation
17 easement. That requires that the tree species be native, so
18 they are more deciduous, native varieties, but there are
19 some evergreen native varieties. We could put hollies.
20 MR. GROSSMAN: Yes, I'm not, just something to be
21 taken up at site plan review. It's not really a zoning
22 issue. It's just that it does affect the screening there,
23 effectiveness.
24 THE WITNESS: Exactly. And again, that will be,
25 those details will be assigned on that at site plan.

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1 MR. GROSSMAN: Right.
2 THE WITNESS: So with our green edges, and as we
3 mentioned before on page 40 of the Brink Road exhibit, that
4 were with, we believe were within the overall 1,000 unit cap
5 on page 40 of the master plan. We also believe on page 75
6 we're talking about the residential density should be two to
7 four units per acre. We're within that.
8 They propose the 140 residential units on the 54
9 acres, which is just under 2.6 units per acre. And again,
10 Ms. Russel will be talking about that in more detail. What
11 happened, I did here, Jody, with the maximum coordination
12 and compliance --
13 BY MR. KLINE:
14 Q Well, I guess I would ask you to comment, since
15 it's always standard in all the land development zones, how
16 you basically organized the layout and minimized the grading
17 to protect where possible existing vegetation?
18 A As previously mentioned, the site is, I'm missing
19 99 percent farm, open. There's a small piece of existing
20 forest to the northwest corner, which is north of A-305. A-
21 305 does impact some of that forest. That was accounted for
22 in a Park and Planning approval. I believe it was December
23 of 2010 for the road itself from the water quality plan and
24 forest conservation for A-305.
25 With that said, with grading, the existing grades,

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1 Ridge Road, is up a little bit higher than the site. It
2 then drops down, and it drains to the west. The grades in
3 general are four to five percent, relatively flat. We will
4 be working with those grades.
5 We also, the site itself is divided up into a
6 couple of sections. We will, to the south, to the southern
7 quarter there is the existing gas line. We need to respect
8 that and not grade over that. We will have road crossings
9 and then we have to match up to the four boundaries with the
10 property north, east, south, and west.
11 In the middle, the same thing. We have the gentle
12 slopes, and we will match up to the four sides, that
13 northern side being A-305, and then lengthwise, area B, it's
14 again a smaller area, and it's generally level, but we do
15 have to match up to the four sides to minimize grading.
16 MR. GROSSMAN: I mean, you also discussed density
17 a couple of times. And I just wonder, and I don't want to
18 change the order in which you want to present this, but it
19 does seem to me a contrast to what portions technical staff
20 overall and portions of technical staff said about density
21 in the master plan. I'm speaking specifically of the
22 attachment, attachment 8 regarding master plan compliance,
23 to the technical staff report, which is Exhibit 46 and it's
24 also Exhibit 53.
25 And they have findings regarding density saying

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1 that this is over the density recommended in the master
2 plan. And so I don't know if you want to address that now,
3 or if you have planned --
4 MR. KLINE: We do actually have a separate witness
5 who is going to target that, and very specifically.
6 MR. GROSSMAN: Okay. Then all right. I'll let
7 you do it the way you want to do it. Okay.
8 MR. HANOVER: May I ask a question, sir?
9 MR. GROSSMAN: Yes, sir.
10 MR. HANOVER: On two charts back, when you were
11 showing the west view, could you put that up for just a
12 second, please? I have a question about that. The second
13 one, the next one. No, I'm sorry, it was the one that's in
14 your left hand. Yeah. That, the bottom one, as you show
15 the arrows, that purports to be a view from Route 27, is
16 that correct?
17 THE WITNESS: Right, that's --
18 MR. HANOVER: Okay. Now, the truth of the matter
19 is that that's very misleading, because Route 27 is above
20 that.
21 MR. GROSSMAN: No, you can't, you can't -- sir.
22 Mr. Hancock. Hold on. You'll have an opportunity to -- I
23 thought you wanted some clarification about something. But
24 if you want to cross-examine on this point, you certainly
25 can. But you have to save it to cross-examination. Okay.

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1 MS. GOODRICK: Excuse me.
2 MR. GROSSMAN: Yes, ma'am.
3 MS. GOODRICK: If we just have questions about the
4 charts and things, we ask that when?
5 MR. GROSSMAN: Well, if it's something where you
6 didn't understand what you were referencing on that chart,
7 that's fine. I want to make it convenient for you to
8 understand the proceedings. But if you have questions that
9 go to the substance of what has been said, that's really a
10 cross-examination question. Okay.
11 MS. GOODRICK: Okay. So if I have questions about
12 some of the maps --
13 MR. GROSSMAN: If you want to know what you are
14 looking at on the map, sure, you can raise your hand and
15 I'll call on you.
16 MS. GOODRICK: Okay. Can we go back to the maps
17 that we had before? I mean, since I've seen all of this,
18 then I now have some questions that I wouldn't have known
19 when I saw the map.
20 MR. GROSSMAN: Well, no. If you have questions
21 that go to the substance --
22 MS. GOODRICK: No, I mean to just what's on the
23 map.
24 MR. GROSSMAN: All right. Well, all right. Let's
25 accommodate you now. What map are you talking about?

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1 MR. KLINE: We'll be glad to clarify things.
2 MR. GROSSMAN: Yes.
3 MS. GOODRICK: All right. So on the map that was
4 the aerial one that --
5 MR. GROSSMAN: With the circles on it?
6 MS. GOODRICK: No. It had what looked like
7 Snowden Parkway going down from Clarksburg. I'll go down.
8 THE WITNESS: This one?
9 MS. GOODRICK: No. I'm sorry. It's the one where
10 there's a line that goes down into Snowden Parkway. I want
11 to see from Clarksburg, can you see it?
12 THE WITNESS: We'll find it.
13 MS. GOODRICK: Okay. It's the one that would show
14 Snowden Parkway all the way down coming through this
15 property. So maybe I can just do it this way. Can I stand
16 here and talk to you?
17 MR. KLINE: Just tell us which one you're looking
18 at here.
19 MS. GOODRICK: Okay.
20 MR. KLINE: Lower right-hand corner.
21 MS. GOODRICK: 34(m). So coming from Clarksburg
22 on this, coming all the way down, is a large road which is a
23 feeder from Clarksburg, correct, of traffic, I'm talking
24 about.
25 THE WITNESS: Yes.

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1 MS. GOODRICK: Is that right? This is a
2 constructed, this is coming all the way through here. And
3 is this a part of, you have M-83 over here, close to -- is
4 this a part of any of the alternatives or the M-83 for --
5 THE WITNESS: Okay, I understand now.
6 MS. GOODRICK: Yes. Is this a part of that?
7 THE WITNESS: No, it's not.
8 MS. GOODRICK: Okay. So what you have here, and
9 this is, you said this is 120 feet?
10 THE WITNESS: 120-foot right-of-way.
11 MS. GOODRICK: Okay. This is 120 feet of traffic
12 coming from Clarksburg. So this is a large feeder road,
13 will be a large feeder road going through here.
14 THE WITNESS: Uh-huh.
15 MS. GOODRICK: Okay. So if I understand this
16 correctly, you have M-83 over here, and then this is 27, so
17 that, and this is Brink, all of the exits and even crossing
18 the property, so you have people here and people here trying
19 to get to the meeting center, would have to cross the 120
20 feet?
21 THE WITNESS: Correct.
22 MS. GOODRICK: Which is a what, four lane, six
23 lane --
24 MR. GROSSMAN: Well, ma'am, I think you're really
25 going beyond clarification here. You're trying to make a

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1 point. We'll let you make your point, any point you want to
2 make during your cross-examination, to the extent it's
3 cross-examination material, or during your testimony. So in
4 fairness, we have to let the applicant put on their case.
5 MS. GOODRICK: Right. But I needed to understand
6 whether that was a part of M-83 or not.
7 MR. GROSSMAN: All right. And I think he --
8 MS. GOODRICK: That was originally a part of it,
9 and that was going to be it.
10 THE WITNESS: The name changes. In the Clarksburg
11 master plan it's a four-lane road that is A-305. At Ridge
12 Road it changes. It goes to M-83. And all the M-83 studies
13 start at 27 or Ridge Road and then continue east and south.
14 So the whole M-83 study, et cetera, does not include any of
15 this road. This road is approved and --
16 MR. GROSSMAN: You say this road does not include?
17 THE WITNESS: This road, which is A-305, which is
18 everything west of Ridge Road, Route 27.
19 MR. GROSSMAN: Okay. All right.
20 MR. WILLS: Just a quick one. Is that then, I've
21 got so many different road numbers, but is that new road
22 that you're talking about that comes off, that I would know
23 as Mid-County Highway, that new road, it's essentially, is
24 it supposed to carry essentially the same traffic that's
25 supposed to be from 27 east? Is it the same style highway,

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1 same style road that you see on the east side will be on the
2 west side?
3 THE WITNESS: East and west of 27? Is that what
4 you --
5 MR. WILLS: Yes.
6 THE WITNESS: It's my understanding, yes. And
7 you'll hear testimony from a traffic engineer later today.
8 MR. WILLS: Okay.
9 MR. GROSSMAN: All right. You may proceed, Mr.
10 Kline.
11 BY MR. KLINE:
12 Q Mr. Unterberg, where are we now, compliance with
13 the development standards of the zone?
14 A I think so.
15 MR. GROSSMAN: All right. I'm going to break at
16 1:30 so that people have an opportunity to access the
17 cafeteria before they stop serving any food.
18 MR. KLINE: Okay. What does that mean?
19 MR. GROSSMAN: It means another 15 minutes.
20 MR. KLINE: I doubt that we'll be completed with
21 Mr. Unterberg by that time.
22 MR. GROSSMAN: Okay.
23 THE WITNESS: Let me go through a couple. These
24 are all from 59C-7 from the PRC zone. The provision for
25 land uses, we're proposing that this be single-family

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1 residential, which is a permitted use.
2 There's also a provision, 59C-7.43 that would
3 contain at least 25 acres. We're approximately a little
4 over 54 acres, so we meet that. Committed to 59C-7.47,
5 7.44, committed to residents age 50 or older. We are
6 committed to that, and we discussed a possible binding
7 element, which I have a feeling will be discussed a little
8 bit further.
9 And then we get to the compliance and development
10 standards, setbacks. PRC zone says that we have to meet the
11 setbacks of the adjoining zones for less than the
12 development, less than the 750 acres. We show the required
13 setbacks on the development plan.
14 For Ridge Road, which is adjacent to the RDT,
15 which would include the homes that we've added to the
16 surrounding area, that requirement is 50 feet. We show, and
17 we have a line on here for the 50 foot from the right-of-
18 way. And it's the new right-of-way that's pushed over to
19 accommodate the road. We exceed that in every case. We
20 have a couple pinch points which show up a little better on
21 the color version.
22 BY MR. KLINE:
23 Q And that's Exhibit number --
24 A That's 34(g). Those are at least 70 feet where
25 the requirement is 50 feet. We get to a spot in the middle

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1 where we're over 200 feet. We at least exceed the 70 feet,
2 or in the 80-foot range. And then to the north we're again
3 70 feet to a building.
4 MR. GROSSMAN: Okay.
5 THE WITNESS: So we exceed that. To the north,
6 the adjoining zone is Country Inn, which is a little bit
7 unique. That setback is 75 feet. Our lots are at the 75
8 foot, and the units themselves are approximately another 20
9 feet beyond that. So we exceed that setback.
10 MR. GROSSMAN: What's the, that's, you said it was
11 R-200 to the north of the Country Inn?
12 THE WITNESS: It's R-200.
13 MR. GROSSMAN: What's the setback call for in the
14 R-200 zone?
15 THE WITNESS: I believe their rear yard is 35
16 feet.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: Which is --
19 MR. GROSSMAN: So you're going to exceed both of
20 those?
21 THE WITNESS: Yes. Yes. And the Country Inn, 75
22 foot, is definitely more than the R-200.
23 MR. GROSSMAN: All right.
24 THE WITNESS: And part of that Country Inn, it
25 turns the corner and continues south. So there is a

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1 property line just south of A-305, along the western border.
2 And that, we continue, that is proposed all to be forest and
3 natural area.
4 When we come to the adjoining RE-2 property, we
5 have rear yards adjacent to us. The RE-2 setback, rear yard
6 setback is 35 feet. We have two dimensions. Our closest
7 property corner, which is the southern half of area A is 90
8 feet. The house itself is about another 10-15 feet setback.
9 The other closest corner to the road, which is the
10 northern part, just south of 305, to the property line, we
11 have 109-foot setback, and that's to the right-of-way line.
12 We have a 50 foot right-of-way and the houses are setback
13 further than that on the other side.
14 In the middle, where we do open up more, this is
15 over to the point, this is over 300 feet in the middle. So
16 we more than exceed the 35 foot rear adequate setback.
17 Also, to the south, which is Brink Road, we have a 40-foot
18 perimeter, which we were looking at a front yard for the
19 zoning zone, and we exceed that, particularly with the large
20 landscape and forested area, creating our gateway corner.
21 Building coverage, there is a requirement for over
22 750 acres to design with, and less than 750. Practically
23 speaking, we do have a binding element that we cannot be
24 above 28 percent impervious, which includes building and
25 roads.

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1 Green area for under 750, there is a requirement
 2 to have 50 percent green area. Again, all these are noted
 3 on the development plan itself. We are going to exceed
 4 that, again, due to that binding element with the 28 percent
 5 impervious, we are going to have at least 72 percent green
 6 space, based on that binding element.

7 Roads, all the roads, as I said on the earlier
 8 exhibits, are proposed to be public. There is a provision
 9 in that 50-foot tertiary road right-of-way, there is a
 10 provision that private roads have to at least be 22 foot in
 11 width. We do not have any private roads proposed. It's the
 12 land we will be dedicating the right-of-ways for the roads
 13 A-305, Route 27, and the internal public roads. So that
 14 takes us to development standards.

15 BY MR. KLINE:

16 Q It does. What I'd like to do is draw your
 17 attention to the standards of 59D-1 for the approval of the
 18 development plan, if that's timely to do that.

19 A Okay. Do you want to walk me through that?

20 Q Sure. Section 59D-1.61 is the findings for the
 21 approval of a development plan. Does the proposed
 22 development plan substantially comply with the use and
 23 density indicated in the master plan or sector plan, and/or
 24 does not conflict with the general plan?

25 A In my opinion, it does, and you will hear more

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1 testimony regarding, from Ms. Russel. And the Planning
 2 Board also agreed that this is, the density is in
 3 substantial compliance.

4 Primarily, again, as previously mentioned, page
 5 40, it talks about a maximum of 1,000 units for the
 6 neighborhood, the Brink Road neighborhood. And also on page
 7 75 it talks about a density of two to four units per acre
 8 for the neighborhood. And we comply with both of those.

9 Q Subparagraph B is, the proposed development will
 10 comply with the purposes, standards, and regulations of the
 11 zone, which you just all testified to.

12 A I believe it does.

13 Q And would provide for the maximum safety,
 14 convenience, and amenity of the residents to the
 15 development.

16 A I believe it does. And particularly with the
 17 roadways and access we exceed Montgomery County standards,
 18 and the regulatory standards. And that would be
 19 subsequently brought out.

20 Q And the last part of B is, and would be compatible
 21 with adjacent development, which is probably of great
 22 concern to Mr. Hancock. And going back to your description
 23 of setbacks, would you basically highlight again how you
 24 feel you have been able to keep compatibility with the
 25 surrounding development?

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1 A Well, the PRC zone does set up setbacks on
 2 compatibility based on the adjacent zone. And we exceed
 3 those on all four sides of the subject property. And
 4 particularly with the western edge requirement with 35 foot,
 5 which is the rear yard setback for RE-2, and exceeding that,
 6 well, on average, up to three times that 35 foot
 7 requirement.

8 Q And one of the questions Mr. Grossman asked at the
 9 beginning is, make sure you address the lack of screening
 10 that was raised by one of the opponents. I realize Mr. Rood
 11 is going to talk a little bit more about the quality of
 12 that, but would you just describe what you've done in those
 13 areas of buffer and setback from the property lines?

14 A Yes. Mr. Rood will address this, and also Mr.
 15 Bossong will address it, that going from south to north
 16 along the western property line we have the setback. There
 17 also is a stormwater management facility that will be
 18 landscaped. Starting north of the gas easement, we cannot
 19 plant on the gas easement, that we have a reforestation
 20 buffer.

21 That ranges from a minimum, well, from the
 22 property line to the closest corner is 90 feet, and that
 23 expands as it goes forward. That will be placed in a
 24 category one forest conservation easement, and the detailed
 25 planting for that will be at site plan.

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1 Number two, in the white circle, is a second
 2 stormwater management facility that is proposed. And again,
 3 this is where I mentioned earlier we have the 109-foot
 4 dimension from the property line to the road right-of-way,
 5 as we've given you --

6 MR. GROSSMAN: I notice that appears to be light
 7 blue. What does that signify?

8 THE WITNESS: These are graphically showing there
 9 is a change from the two stormwater ponds. You'll hear
 10 further testimony, these are dry facilities that will be
 11 landscaped.

12 MR. GROSSMAN: Well, can you point to the area
 13 that you're saying is a dry facility?

14 THE WITNESS: There's two of them. One is on the
 15 southern portion.

16 MR. GROSSMAN: Yes.

17 BY MR. KLINE:

18 Q They're labeled as?

19 A Number two, which is, well, there's a, talk about
 20 environmental concept, which also includes the stormwater
 21 management. And then there is a second one which is just
 22 south of 305, which is also a stormwater facility.

23 MR. GROSSMAN: That's seems to be a different
 24 color from the rest of, everything else on the chart.
 25 That's why.

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1 THE WITNESS: There's no reason for that. It's a
 2 graphic representation. They are similar in function and
 3 landscaping and so forth.
 4 MR. GROSSMAN: So that will be dry most of the
 5 time, but might fill up with water. Is that the idea?
 6 THE WITNESS: Correct. It's dry. When there is a
 7 storm event, it will fill up with water.
 8 MR. GROSSMAN: Okay.
 9 THE WITNESS: You will hear further testimony on
 10 that.
 11 MR. GROSSMAN: All right.
 12 MR. WILLS: Can I ask a question about that. Most
 13 of these I've seen they're just kind of, it's not a pond,
 14 because there's no water in it, but it's just a, you create
 15 a depression in the soil so that, you know, at some point if
 16 there's a lot of rain there will be run-off and it will fill
 17 up.
 18 But I'm looking at, there's a home that backs
 19 right up to that. Are they basically going to be looking at
 20 open space, other than a little buffer that may be existing
 21 buffer? But they're going to be looking at open space into
 22 this depression in the ground? This is where the blue area
 23 is on top.
 24 THE WITNESS: You're talking about here?
 25 MR. WILLS: Yes. Would that, I mean, they're

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1 going to be basically looking out at a depression in the
 2 ground, but really not much of a buffer space?
 3 THE WITNESS: Well, there is the existing
 4 hedgerow, and then this will be primarily lawn area, which
 5 is, there would be a dam and a depression. It's a dry
 6 facility for most of the time. When it does rain, it will
 7 fill up.
 8 MR. GROSSMAN: Is there --
 9 THE WITNESS: There will be landscaping,
 10 particularly on the uphill side that can be done to upgrade
 11 that.
 12 MR. GROSSMAN: Is there typically fencing that
 13 goes around that?
 14 THE WITNESS: There can be fencing, and depending
 15 on the type of facility, if all our slopes work, there would
 16 not be fencing. But that would be something we would
 17 determine as we go forward to site plan.
 18 Last but not least, as we go further north, which
 19 would get into the setback with the Country Inn, you can
 20 see, this is the Country Inn parcel, which is the northern-
 21 western corner. And then this corner is already
 22 apportioned.
 23 BY MR. KLINE:
 24 Q Subsection C says, the proposed internal
 25 circulation and pedestrian circulation systems and points of

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1 external access are safe, adequate, and efficient.
 2 MR. GROSSMAN: Well, before you address that, are
 3 you finished with the whole concept of compatibility,
 4 because you only address it in terms of setbacks, as far as
 5 I could tell, and screening. Is there anything else on
 6 compatibility that you think should be --
 7 THE WITNESS: The PRC stresses setback and the
 8 adjoining zones. So based on the PRC zone, we meet that.
 9 And actually we exceed the setbacks and are compatible.
 10 MR. GROSSMAN: All right. You have nothing else
 11 to say on the point?
 12 THE WITNESS: Correct.
 13 MR. GROSSMAN: All right.
 14 BY MR. KLINE:
 15 Q Well, I guess as the hearing examiner asked that,
 16 I guess maybe we should go back to that. The land uses are
 17 essentially similar to what's going on to the west of the
 18 property. So I guess the question is, because we've got
 19 more density, are they looking at more units, and therefore
 20 that's inherently incompatible?
 21 A Rephrase that or say that again?
 22 Q Yes. Sure. What --
 23 MR. GROSSMAN: The question is, I mean, that's
 24 essentially the question I'm getting at. Is there, is the
 25 difference in density raise issues of compatibility?

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1 Because the opposition has raised that point, as has the
 2 technical staff.
 3 THE WITNESS: I do not believe so, and a couple of
 4 reasons why. We are a like use with single-family detached,
 5 the single-family detached. We have provided the space, and
 6 exceed the space per the PRC zone.
 7 In addition, the RE-2 zone has a building coverage
 8 of a maximum of 25 percent. We're actually going to be a
 9 lot coverage for the whole site less than that, based on our
 10 binding element that we do not exceed 28 percent to be
 11 impervious. So our actually building coverage, even though
 12 there is not a PRC requirement, will be less than 25
 13 percent, because we have a number, well, that 28 percent
 14 impervious also includes the roads.
 15 Another point on compatibility in relation to the
 16 RE-2 zone, the maximum height for RE-2 is 50 feet. We are
 17 proposing the height of the PRC zone to be 35 feet. So
 18 we're at a lower height, in addition to the setbacks. And
 19 based on that, I believe we are compatible.
 20 MR. GROSSMAN: All right.
 21 BY MR. KLINE:
 22 Q And previously, we've focused on the edge issue to
 23 the west as being where we had to address it. But by virtue
 24 of changing the definition of the surrounding area, talk
 25 about how out compatibility with the houses up in that

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1 northeast corner on the east side of 27 that we've included
2 in.
3 A Yes, with the setback, which is front setback with
4 the RDT zone, the minimum is 50 feet, and our homes are at
5 70 feet or greater. So we exceed that setback. In
6 addition, there is actually, and I'll go back to the section
7 which was alluded to a little bit earlier. This did not
8 exaggerate the vertical scale that was modified.
9 Ridge Road is up high, and there will be a slope
10 that will vary possibly five to 10 feet, depending on the
11 final grade. But the homes that are setback, they will be
12 set down lower than Ridge Road. So in addition to the
13 setback and the grading or the citing, you will have less,
14 they will be less noticeable to Ridge Road than the existing
15 homes.
16 MR. WILLIS: Can I just ask one quick question?
17 MR. GROSSMAN: Let's not because I think we're
18 going to have to break here, in any event.
19 MR. WILLIS: All right.
20 MR. GROSSMAN: But I'll ask a quick question.
21 MR. WILLIS: That doesn't seem fair.
22 MR. GROSSMAN: No, it doesn't. Attachment 8 to
23 the technical staff report, page three, this is the portion
24 of technical staff that addresses master plan compliance,
25 page three, is a finding, "The proposed age-restricted

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1 housing in the PRC zone at a density of 2.576 units per acre
2 is 2.5 time the upper range of the rural residential density
3 proposed in the master plan for the subject site. It also
4 has a significantly higher density than the adjacent
5 parcels. With respect to density, this application does not
6 provide an appropriate east-west transition between the
7 specifically designated adjacent land areas." Can you
8 address that?
9 THE WITNESS: Part of it. And I know Ms. Russel
10 will also address that. We've had several conversations
11 with staff prior to that report. There is a discrepancy on
12 what the actual map shows, which reflects the existing RE-2
13 zoning and that density, versus what the text, particularly
14 on page 75 of the master plan that speaks that the
15 neighborhood with the single-family should be two to four
16 units per acre. So there is a discrepancy within the master
17 plan.
18 The finding with Planning Board in similar
19 presentation that was the finding, we are compatible based
20 on the gateway, the green edge, particularly on 27, that
21 allows us to have that transition by not having units right
22 up on the road; that we do have that green edge. And that
23 we were in substantial compliance with the master plan,
24 based on those issues. And Ms. Russel will be providing
25 more detail.

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1 MR. GROSSMAN: Well, that was the Planning Board
2 conclusion. I was just wrestling with the --
3 THE WITNESS: Staff focused on, and made mention
4 of the two to four units per acre in the technical master
5 plan. They focused on the land use that reflected the RE-2
6 zoning. And the density of RE-2 is a two-acre lot, which is
7 basically a half unit per acre. That's the density they
8 noted, which is the existing zoning, or what could be built
9 under the existing zoning.
10 MR. GROSSMAN: So you're saying they, you feel
11 that their reliance on the text --
12 MR. KLINE: It's the other way around.
13 MR. GROSSMAN: I'm sorry, reliance on the image or
14 whatever, misrepresented the intent of the master plan?
15 THE WITNESS: Correct. And it only represented
16 one part of the master plan, not the other two pages that
17 were noted, page 40 and page 75.
18 MR. GROSSMAN: Okay. So in your opinion, the
19 density, as well as these other setbacks, screening, et
20 cetera, the density is compatible with surrounding
21 densities?
22 THE WITNESS: Yes, and with the master plan.
23 MR. GROSSMAN: Okay. All right. Why don't we --
24 MR. KLINE: I can actually ask three or four quick
25 questions, just do you agree, professionally, and wrap it up

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1 for him so he is available for cross-examination.
2 MR. GROSSMAN: Fair enough. But if they don't get
3 their food you're, you're going to have to face them.
4 MR. WILLIS: What time do they close down there?
5 MR. KLINE: Actually, maybe you're right, Mr.
6 Grossman. Good idea. We probably are getting low on time.
7 MR. GROSSMAN: All right.
8 MR. KLINE: But he will be available for cross-
9 examination very quickly after our return.
10 MR. GROSSMAN: Right. You will all get your shot
11 at him, I guarantee you that. Shall we come back at 2:15,
12 then? We'll break for lunch.
13 (Whereupon, at 1:34 p.m., a luncheon recess was
14 taken.)
15 MR. GROSSMAN: All right. Shall we resume?
16 MR. KLINE: Yes. I'm sorry, Mr. Grossman.
17 MR. GROSSMAN: Okay. We're back on the record.
18 Mr. Kline.
19 MR. KLINE: We'd like to continue and wrap up our
20 testimony by Mr. Unterberg.
21 BY MR. KLINE:
22 Q By way of conclusionary (phonetic sp.) remarks,
23 Mr. Unterberg, is it your opinion, then, based on your
24 professional judgment, that the proposal set forth in G-881
25 is in substantial conformance with the master plan and the

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1 intended purposes of the master plan?
2 A Yes, it is, and it's based on the prior testimony.
3 Q And as you mentioned in the questions today, that
4 the request complies with all the dimensional and regulatory
5 standards for the PRC zone?
6 A Yes, it does.
7 Q And the purpose clause as well?
8 A Yes.
9 Q In your opinion, is the arrangement of uses
10 compatible with surrounding land uses?
11 A Yes, and particularly that were with the PRC
12 setback requirements and that were single-family to single-
13 family. We are compatible with the surrounding uses.
14 Q And in your opinion in overlooking all of that, is
15 this application in the public interest?
16 A Yes, it is.
17 MR. KLINE: No further questions of Mr. Unterberg.
18 MR. GROSSMAN: Okay, Mr. Hancock, cross-
19 examination.
20 MR. HANCOCK: I just had a couple of questions.
21 CROSS-EXAMINATION
22 BY MR. HANCOCK:
23 Q Could we put one of the charts up? I believe
24 it's, yes, the one that's in front, please, Mr. Unterberg.
25 A This one?

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1 Q No, the left side. I'm sorry.
2 A This one?
3 Q Yes, please. This purports to be a view, on the
4 bottom line, that purports to be a view looking from Route
5 27 towards the west, is that correct?
6 A Correct.
7 Q Okay. That really is not representative because
8 the height, I mean, you may not think a five percent grade
9 is much. In a building, I think a five percent grade is.
10 But that's totally erroneous.
11 MR. GROSSMAN: Well, that's not really -- that's
12 not really a question. Well, you can say, isn't that
13 erroneous because, whatever. But you have to have a
14 question. You can't make a speech.
15 BY MR. HANCOCK:
16 Q That doesn't represent a five percent grade.
17 MR. GROSSMAN: Does it?
18 BY MR. HANCOCK:
19 Q Does it?
20 A Actually, it does. It is to scale. The vertical
21 scale is not exaggerated. As you can see, Route 27 is
22 higher. It goes back down.
23 Q Is that black line Route 27?
24 A This is Route 27.
25 Q Your topo disagrees with that. You're showing

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1 houses way above Route 27, and there is actually over 25
2 feet from drop from Route 27 down. So I don't understand
3 that. That's why I wanted to --
4 A We are showing houses below.
5 Q Pardon?
6 A We're showing houses below. They are lower than
7 Route 27.
8 Q Those houses, I misunderstood you. Those houses
9 are not Brink Meadows to the left. They are the houses that
10 you propose to build?
11 A These are the proposed houses.
12 Q Proposed houses that you are going to build?
13 A These are the proposed houses and plan view.
14 Q Okay.
15 MR. KLINE: The house to the far right is the
16 existing residence in Brink Meadows?
17 THE WITNESS: The house to the far -- is the
18 existing.
19 BY MR. HANCOCK:
20 Q Okay.
21 A And to reiterate, Ridge Road is high. It drops
22 down into the site, and the houses to be built are lower
23 than Ridge Road.
24 Q But looking back the other way, it would be just
25 the reverse, right? You're looking up a hill? Looking from

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1 there towards 27 --
2 A This is low. This continues uphill, yes.
3 Q You would see all of those?
4 A Well, we have a substantial buffer in here that
5 will be planted.
6 Q Except for that top section that was in blue?
7 A This still has the distance and the buffer. And
8 at site plan, there will be a landscape plan that goes with
9 that stormwater facility.
10 Q Do I understand that that's something that we
11 would have to deal with, with Park and Planning when they
12 actually submit a plat of subdivision?
13 A Yes.
14 Q Because that line of trees now is not any kind of
15 a buffer.
16 A That all will be --
17 Q That's what I mean, that will be further down the
18 line?
19 MR. KLINE: Why don't you explain what the steps
20 are if we're successful in obtaining the rezoning.
21 THE WITNESS: Okay. Several steps. The zoning
22 has to be approved. Once the zoning is approved, then we
23 need to file for a preliminary plan of subdivision. Also,
24 and that has a whole process and approval through Park and
25 Planning.

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1 From there, there is a site plan that's required.
2 And that site plan is, that's all the specifics of what's to
3 be built. The specific trees, the specific --
4 BY MR. HANCOCK:
5 Q Does the public have a chance to comment on that?
6 A Each of these is a public hearing. There is a
7 development review committee that's a public hearing, and
8 there will be a Planning Board hearing.
9 Q Thank you.
10 A There will be a staff member assigned to it, so
11 interaction with staff, once it's submitted, the public is
12 available to review that with staff also.
13 Q Thank you.
14 MR. GROSSMAN: Staff meaning technical staff --
15 THE WITNESS: Technical staff.
16 MR. GROSSMAN: -- for the Maryland National
17 Capital Park and Planning.
18 MR. HANCOCK: I'm sorry, sir?
19 MR. GROSSMAN: Staff meaning the technical staff
20 of the Maryland National Capital Park and Planning
21 Commission. We have a very small staff here. It's
22 currently one person.
23 MR. HANCOCK: Those are the only questions I had.
24 MR. GROSSMAN: Are you finished, Mr. Hancock?
25 MR. HANCOCK: Yes.

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1 MR. GROSSMAN: Okay. Ms. Goodrick, do you want
2 to?
3 MS. GOODRICK: Yes, I do. I have a couple of
4 questions.
5 MR. GROSSMAN: Go right ahead.
6 CROSS-EXAMINATION
7 BY MS. GOODRICK:
8 Q I'll keep it to questions. Okay. This will work.
9 I --
10 MR. KLINE: You're just going to need to refer to
11 the number on the exhibit in the lower right-hand corner?
12 BY MS. GOODRICK:
13 Q Okay. All right. This is 34(m). And I just want
14 to ask about the size of the road. So the proposed M-83
15 comes down Ridge Road, right? It comes down Ridge Road and
16 turns here?
17 MR. GROSSMAN: Comes south on Ridge Road?
18 THE WITNESS: No. 27 is Ridge Road, which stands
19 alone. To the west of Ridge Road is master plan, which is
20 in the Clarksburg master plan, this Ridge Road is also the
21 master plan boundary.
22 MR. GROSSMAN: I can't see. Actually, you are
23 blocking my view.
24 THE WITNESS: I'm sorry. I don't know if you want
25 to stand back. Let's trade places.

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1 MS. GOODRICK: Can you see?
2 MR. GROSSMAN: Thank you.
3 THE WITNESS: Good job. Ridge Road is Ridge Road
4 that comes down and that stands alone, is also the planning
5 boundary which is the Clarksburg master plan limits. A-305
6 is designated in the Clarksburg master plan, which continues
7 north and west through Clarksburg Village. When you get to
8 Ridge Road, this is --
9 MR. GROSSMAN: Just for the record, A-305 is the
10 road that is going to bisect your property, the subject
11 site.
12 THE WITNESS: The subject site. Correct.
13 MR. GROSSMAN: And then towards the northern area,
14 and then it's going to head north-northwest through
15 Clarksburg Village.
16 THE WITNESS: Through Clarksburg Village. And
17 that is in the Clarksburg master plan, and it is on the
18 approved Clarksville Village plans. For all purposes, or
19 for M-83 practically starts at Ridge Road and then continues
20 east. And there are various alignments. This is the master
21 plan alignment, that continues east and south.
22 MR. GROSSMAN: So M-83 is an east-west road at the
23 point where it intersects with the subject site. And then
24 as it goes further east, it then heads south, is that
25 correct?

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1 THE WITNESS: Correct. And everything on the east
2 side, the road continues through per the master plan, but
3 everything on the east side is future M-83. Everything on
4 the west side of Ridge Road is the approved A-305.
5 BY MS. GOODRICK:
6 Q And that is not a part of any of the alternatives?
7 A Correct. Anything west of Ridge Road, this has a
8 series of approvals with the preliminary plan for Clarksburg
9 Village, and actually paving and road plans with the County
10 that are in for approval. So anything west of Ridge Road is
11 a different designation and not part of anything east of
12 Ridge Road, which is M-83.
13 Q Okay. And 27 going south, it's 120 feet, the
14 entire road? Is that what you're saying, 27?
15 A No, I was saying A-305 is 120-feet of right-of-
16 way.
17 Q What's 27?
18 A 27 varies. The master plan for our frontage calls
19 for 150-foot of right-of-way for Route 27. That actual
20 right-of-way varies, based on what's been, the widening
21 that's been previously approved in coordination with
22 Clarksburg Village.
23 MR. GROSSMAN: But the width of the road does not
24 always coincide with the size of the right-of-way, is that
25 correct?

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1 THE WITNESS: Correct. A-305 is a consistent four
2 lanes, and it crosses through the subject property. Ridge
3 Road, which currently is four lanes, south of A-305 is going
4 to be widened to six lanes. Most of that widening is coming
5 from the subject property because of the existing water
6 tower on the other side of the road.
7 North of 305 it continues as four lanes. And
8 those improvements are already programmed and part of the
9 responsibility of the Clarksburg Village approvals.
10 BY MS. GOODRICK:
11 Q It goes from four to six lanes, and then how far
12 do the six lanes continue down?
13 A The six lanes, I believe it's already six lanes at
14 355, Frederick Road. And I believe the six lanes come to a
15 portion almost to Brink Road. So that will be extended and
16 the number of lanes will be consistent.
17 Q Okay. I have a question that has to do with the
18 chart that you gave us about -- this one.
19 MR. GROSSMAN: The recreational facilities?
20 MS. GOODRICK: Yes. Okay.
21 MR. GROSSMAN: Okay. That's Exhibit 66.
22 BY MS. GOODRICK:
23 Q Okay. And that has to do with the, you are
24 getting these points, for example, the bike system. Do you
25 get points for just having a bike system? Do you get 1.82?

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1 Or does it have to do with the number of feet or miles that
2 you get that credit? How do you get credits for this?
3 A It's more general. If you have a bike system --
4 Q You get that many points.
5 A -- you get points.
6 MR. GROSSMAN: That was a good question. I like
7 that one.
8 BY MS. GOODRICK:
9 Q Thanks. Okay. So having a community garden gives
10 you 4.55 points, for example.
11 A Uh-huh.
12 Q So just, so having these things.
13 A Now, this will be proved in the appropriate, like
14 for a garden, the appropriate size when we go to site plan
15 down the road. This will be approved and reviewed by the
16 technical staff of Park and Planning that the size is
17 appropriate.
18 Q So, and then these other things, if I'm
19 understanding, so the other things that you can get credit
20 for are things that are not built, if I am understanding?
21 In other words, the Ridge Road Recreational Park, and Seneca
22 Meadows Crossing Park doesn't have these things?
23 A Actually, most of these are existing in the Ridge
24 Road Recreational Park, with the ball fields and the dog
25 park and so forth. Actually, the dog park is not even on

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1 here.
2 Q But the Seneca Meadows, that was the one, then,
3 that has not been developed. Is that correct?
4 A That is, there is a concept approved, and it's a
5 program. And this has the ball fields. And this is
6 programmed for two soccer fields in the future. Those are
7 not built yet.
8 Q Okay. When you say approved, approved by whom?
9 A Park and Planning Commission. They have a, there
10 is a concept in their capital budgets. They have approved a
11 schematic plan for this.
12 Q Okay.
13 A That went to the Planning Board.
14 Q Okay. So I think there is a difference, but I'm
15 not sure. It can be approved, but it's not authorized?
16 MR. HANCOCK: Ask if the capital budget has been
17 approved.
18 BY MS. GOODRICK:
19 Q Has the capital budget been approved?
20 A For this?
21 Q Yes.
22 A That I do not know.
23 MR. GROSSMAN: For this being the Seneca Park?
24 THE WITNESS: Seneca Crossing Park.
25 MS. GOODRICK: Yes. Right.

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1 BY MS. GOODRICK:
2 Q So it has -- I'm sorry. You didn't know. Okay.
3 I'm sorry.
4 A These are, these are definitely future uses that
5 have not been built. And the status, I do know they
6 approved the concept with that last review. More to the
7 point, for the credit and the partial credit up to 35
8 percent for existing park and existing uses adjacent to the
9 site, we've received a credit for the existing Ridge Road
10 Recreation Park with the ball fields and the uses that are
11 already there.
12 Q Okay.
13 MR. GROSSMAN: Well, are you saying that the
14 Seneca Meadows Crossing Park recreational facilities are not
15 included in this list? Because you do mention them as part
16 of your supply side.
17 THE WITNESS: They are mentioned in this. For
18 example, the football/soccer, I believe two of those were
19 the soccer fields on the Seneca Meadows.
20 MR. GROSSMAN: Anything else from this list that
21 does not exist and has not yet been formally approved as far
22 as you can testify, as far as the budget approval?
23 THE WITNESS: As far as I recall it's the two
24 soccer fields, and the rest is in Ridge Road.
25 MR. GROSSMAN: Okay. So the supply points for

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1 this may be somewhat lower, but I take it that they'll
2 still, since even the on-site amount is --
3 THE WITNESS: The on-site exceeds the demand.
4 MR. GROSSMAN: Exceeds it.
5 THE WITNESS: The adjacent park is extra, icing on
6 the cake, if you would.
7 MR. GROSSMAN: Okay.
8 BY MS. GOODRICK:
9 Q Are there other requirements that we are not aware
10 of that you need to have that, in order to get, other than
11 the ones that we have discussed. Do you have to come up
12 with lists like this of other things? Because this one is
13 somewhat confusing since not everything is on here. So, you
14 know, is there, you know, are there other things that we
15 don't know about, or that you get credit for, that don't
16 exist yet?
17 A As far as purely recreation?
18 Q Well, I'm interested in the recreation, but just
19 as a whole, you know, we were provided with this sheet, and
20 there are some questions about it. So are there other
21 things that you take credit for that have not been achieved?
22 A Not that I'm aware of.
23 Q Okay. All right. Now, there is public, you are
24 going to get public sewer and water. And where does the
25 public sewer and water come from? Are they, can you point

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1 that out?
2 A I'll address that. I know Mr. Bossong is going to
3 address that later. The water, there is water across the
4 street with the water tower and the storage facility.
5 There's water lines in Ridge Road, Route 27. There are
6 water lines in Brink Road. So water is available at the
7 site.
8 The proposed sewer outfall, the property would
9 interconnect with the system. It goes to 305, travels along
10 305. This first cul-de-sac within Clarksburg Village, they
11 are currently building sewer in this cul-de-sac. And then
12 there's a sewer outfall that continues down this stream
13 valley as it continues west of Clarksburg Village.
14 So we are extending a sewer outfall north of the
15 property along, within the 305 right-of-way to get to the
16 first western cul-de-sac in Clarksburg Village, where there
17 will be an existing sewer line to connect to.
18 MS. GOODRICK: Okay. Those are all the questions
19 I have.
20 MR. GROSSMAN: All right.
21 MR. WILLS: Those are better than my questions,
22 but I'll still ask them.
23 CROSS-EXAMINATION
24 BY MR. WILLS:
25 Q As maybe a land use expert, and if I'm wrong on

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1 that, please tell me, but of all the realistic rezonings
2 that you could have done for this property, does this PRC
3 zoning provide the highest density of anything that would be
4 realistically rezoned in this particular location?
5 A The highest density? Not necessarily. There's
6 other floating zones that you could attribute to a higher
7 density.
8 Q Well, I understand that you could have other
9 higher density, but realistic rezoning in this location, is
10 this the highest density rezoning you could have chosen?
11 A Well, previously mentioned, working with the
12 master plan, and page 40, where it talks about the Brink
13 Road neighborhood, up to 1,000 units, there's still density
14 that you could push to get to that 1,000 units.
15 Also, on page 75 it talks about a density range of
16 two to four units per acre. We're at 2.6 units per acre.
17 You could push for more density. And actually, originally
18 there was more density on the table with this proposal. And
19 then working with the staff of Park and Planning and the
20 environmental factors, the impervious cap, et cetera, we've
21 reduced the density working with staff.
22 MR. GROSSMAN: Were you asking whether or not this
23 particular proposed zone, the PRC zone, could itself have a
24 higher density? Or were you asking whether there are other
25 zones that could have been applied for that would have

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1 resulted in a higher density? Or are you asking him whether
2 it is his opinion that a higher density than this would not
3 be warranted? I'm not sure which of those three things.
4 MR. WILLS: B.
5 MR. GROSSMAN: Okay, so other zones.
6 MR. WILLS: My question was, was this ultimate
7 zone that they're requesting, rezoning --
8 MR. GROSSMAN: Right.
9 MR. WILLS: -- that they're requesting, ultimately
10 is this, this provides them the highest amount of density of
11 the other options that could have possibly been on the
12 table.
13 MR. GROSSMAN: So are there other floating zones
14 that could have been asked for here that would have resulted
15 in a higher density in this area?
16 THE WITNESS: There are, and in my opinion, there
17 are other zones that you could get higher density. But that
18 does not correspond with the vision the property had to
19 provide the age-restricted housing, particularly the single-
20 family housing that Mr. Butz alluded to earlier.
21 There are PD zones that are, it gets complicated
22 real fast as far as if they are applicable or not. But
23 there are PD zones that with higher densities that are
24 floating zones. And you get into five units per acre, 10
25 units per acre, et cetera.

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1 BY MR. WILLS:
2 Q Would those, any of those really be realistic that
3 you could --
4 MR. GROSSMAN: I'm not sure what the word
5 realistic means. Do you mean, by realistic, do you mean
6 they could be approved?
7 BY MR. WILLS:
8 Q Probable. Yes. Could they, would there be a
9 reasonable expectation of approving any of those others?
10 MR. GROSSMAN: That's a tough question to answer,
11 but I'm not sure that you're not just asking him to
12 speculate on whether or not --
13 MR. WILLS: Well, I do want to ask --
14 MR. GROSSMAN: I'll let him answer the question,
15 if he gets it.
16 THE WITNESS: I'm speculating but part of this
17 answer is, the PRC zone you can go up to 10 units per acre,
18 which is in the zone. There was a discussion with Park and
19 Planning, and this is not consistent with the vision or
20 consistent with the master plan, that why don't you just do
21 a high-rise building here for age-restricted, and have, you
22 know, a lot more units. That, arguably, you could make a
23 case for, but it's not the vision for this property with the
24 owner.
25 BY MR. WILLS:

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1 Q You had --
2 MR. GROSSMAN: And that would have been under a
3 different zone. That would have been under the PD zone. It
4 could be PD --
5 THE WITNESS: It could be PD or you could make an
6 argument that you could do a taller building and there would
7 be compatibility questions, and so --
8 MR. GROSSMAN: Still PRC. Okay.
9 THE WITNESS: -- under PRC which allows 10 units
10 per acre.
11 MR. KLINE: Or a special exception.
12 MR. GROSSMAN: We know about those.
13 BY MR. WILLS:
14 Q You talked about a number of amenities, one of
15 which was this community center at 35 by 40, roughly 1,400
16 square foot building, right, is that correct?
17 A That's correct.
18 Q And it is going to have three rooms in this
19 building?
20 A That's what we're proposing right now. And again,
21 that will be finalized at site plan.
22 Q And I don't know if you know buildings of 1,400
23 square feet, but I'm going to guess you might net maybe
24 1,000 good square feet, so three rooms in that 1,000 square
25 feet range. I'm just trying to get a sense of what's really

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1 going to be offered?
2 A Well, I was looking, if you do two smaller rooms,
3 10 by 10, that's 100 square feet each. Okay. If you do a
4 larger room, 30 by 30, that's 900 square feet. So 900 plus
5 200, that's 1,100. That leaves another 300 square feet for
6 hallways. You're going to have a bathroom, maybe closets.
7 So something like that is realistic, which would be one
8 large community room, and then two smaller rooms.
9 Q You also indicated on Brink Road access to the
10 park. Just explain to me, access to the park. I know where
11 it's going to be, down right by the street entrance to this
12 property, is that correct?
13 A Correct.
14 Q And access to the park is a crosswalk that's like
15 painted on the road?
16 A It would be a crosswalk, or some type of marked,
17 well, a crosswalk is the first choice, to at that
18 intersection you'll have the markings of the crosswalk.
19 Q Now, around that area, there's different grades on
20 both sides of that street. And right across from where you
21 would be coming out, I'm familiar with that area, it's
22 heavily wooded. Is there anything from the park side that
23 says that they will create some form of entrance on their
24 side of the park to allow, you know, in other words, this
25 crosswalk doesn't just dead end into a stand of trees,

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1 which is what it would do right now?
2 A We want to make the connection in a full -- let's
3 see if it shows up on the aerial here. Let's go back to
4 Exhibit 34(e). Well, it's hard to see with the trees here.
5 There is parking lot, ball fields. There is a trail that
6 comes around the park. There is a trail that partially
7 comes up into the trees.
8 We're anticipating that we want to connect to that
9 trail, and that we don't want a gap there that working with
10 this crosswalk, with the improvements to Brink Road, we need
11 to make that connection to that trail so it works. And
12 therefore the site distance on Brink Road and the crosswalk
13 and how that connection, that will all need to work.
14 Q I agree with you it would need to work, because
15 otherwise it kind of dumps out, as I said, in kind of a
16 stand of trees. It would be very --
17 A If we just stubbed it. We want to make that
18 connection so you can talk across, keep to the trail, and
19 then walk --
20 Q And who makes the decision on the other side? Is
21 that --
22 A Well, this is owned by the County, the Park and
23 Planning. At site plan and preliminary plan, we propose
24 this connection. So we would be working with the County to
25 facilitate that.

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1 Q And is that, do you feel that sort of amenity is
2 necessary to sort of justify the amount of amenities that
3 you need for this kind of a property? In other words, I'm
4 trying to figure out, what if you just decide to paint the
5 road and let it go like that?
6 A Well, I don't think that will be our decision.
7 Working with the County, with Permitting Services, with Park
8 and Planning, that has got to make sense and connect.
9 Independent of that, we will have our facilities on-site
10 that meet the requirements. But we feel this, so these
11 people have access to the park, you want it to work, because
12 that's to the benefit of the new residents, in addition to
13 the existing residents.
14 Q And just one more question. This, is it A-305
15 highway?
16 A Yes, the --
17 Q I asked Mr. Butz earlier what would be the speed
18 limit on this four-lane divided highway. As a land expert,
19 would you know what that would be?
20 A That I do not know. That's --
21 MR. GROSSMAN: But you can ask the transportation
22 planner when he testifies.
23 MR. WILLS: I don't know if I was asking the right
24 person.
25 THE WITNESS: I do know that the tertiary streets,

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1 which are the local streets, they'll be signed 25 miles an
2 hour. But I do not know what the speed limit for 305 is.
3 MR. WILLS: Okay. Thank you.
4 MR. GROSSMAN: Any redirect?
5 REDIRECT EXAMINATION
6 BY MR. KLINE:
7 Q Well, it's kind of a general question, that is,
8 though there are other zones available, or other processes,
9 such as special exception, but in the end, don't you end up
10 having to deal with the same issues of compatibility and
11 what the master plan says? And aren't you going to end up
12 with essentially pretty much the same form of development,
13 no matter what tool you use, what zone you use?
14 A Yes, I agree with that. We've been working on
15 this for a number of years, so it has been a give and take,
16 particularly with the park and planning staff of -- and the
17 original proposal did have more units on it. But we've made
18 the plan better, in my opinion.
19 MR. HANCOCK: But Park and Planning still voted to
20 -- Park and Planning staff still decided to deny it.
21 THE WITNESS: Staff recommended denial, but the
22 Planning Board recommended approval.
23 MR. HANCOCK: We know the staff did.
24 MR. GROSSMAN: One of the items raised by the
25 opposition had been an effect on property values. I notice

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1 you haven't addressed that. Is there anything you want to
2 say about that?
3 THE WITNESS: I don't believe I can speak to
4 property values.
5 MR. GROSSMAN: Okay.
6 MR. KLINE: And Mr. Grossman, we did not call a
7 witness on that, because it's not like a special exception
8 case where that is a defined standard.
9 MR. GROSSMAN: Okay. What about some of the other
10 assertions here of issues. Noise, dust, and loss of
11 pastoral scenery?
12 THE WITNESS: Well, I'll start with --
13 MR. KLINE: Thank you. That's one we forgot.
14 Correct.
15 THE WITNESS: In the technical appendix, under
16 environment, under the environment heading, under N-1,
17 there's the Courts at Clarksburg phase I noise analysis by
18 Phoenix Noise and Vibration, dated June 27, 2012. So there
19 is a preliminary phase I study that was done. And that
20 identifies noise impacts primarily from Ridge Road, Route
21 27, and future 305.
22 They made, which I believe is a summary. And this
23 report talks about interior noise and exterior noise.
24 MR. GROSSMAN: I'm just trying to put my fingers
25 on it. Hold on a second. I don't have any tabs on mine.

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1 THE WITNESS: Yes. In hindsight, we should have
2 included tabs.
3 MR. GROSSMAN: This is forest conservation.
4 MR. KLINE: You're in about the right area,
5 thought. That's about it.
6 MR. GROSSMAN: The next one up.
7 THE WITNESS: The summary is the environmental
8 section, and the cover sheet is N-1.
9 MR. GROSSMAN: Right.
10 THE WITNESS: And it's after the natural resource
11 inventory. And it's before the Rodgers --
12 MR. GROSSMAN: I'll tell you what, will you find
13 it for me?
14 MR. KLINE: Yes.
15 THE WITNESS: This is the summary or conclusions.
16 MR. GROSSMAN: All right.
17 THE WITNESS: Which is page 11. They do address,
18 well, the first paragraph states, "The Courts at Clarksburg
19 single-family home development will be exposed to future
20 roadway noise level above 70 dba. While this represents a
21 moderate level of noise impact, compliance with Montgomery
22 County's residential noise regulations can be achieved
23 through useful modifications to propose building plans."
24 And it talks about, the second paragraph, "Outdoor
25 areas belonging to the 39 single-family homes closest to

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1 Route 27 and Brink will be exposed to noise levels above 60
2 dba. Of the 39 lots, five are impacted by levels slightly
3 above 65 dba.”
4 MR. GROSSMAN: I think that’s actually, this
5 section you’re referring to, deals with the impact of
6 traffic noise on the potential units.
7 THE WITNESS: Correct.
8 MR. GROSSMAN: I think that the objection, the
9 opposition was raising the question of whether or not you
10 will create noise. Maybe I’m wrong, got that objection
11 wrong.
12 THE WITNESS: Okay. Well, just to wrap this up,
13 they go on to recommend a phase II study, which will be done
14 at site plan --
15 MR. GROSSMAN: Right.
16 THE WITNESS: -- can be accomplished to mitigate
17 the noise for the new units.
18 MR. GROSSMAN: Right.
19 THE WITNESS: Well, I presume noise is subjective,
20 particularly what’s happening there now, when there is farm
21 equipment out there versus when there is not. It’s probably
22 pretty quiet when there is nothing there.
23 MR. HANCOCK: But can you image 150 lawn mowers on
24 a Saturday.
25 MR. GROSSMAN: Mr. Hancock, you can’t interrupt.

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1 MR. HANCOCK: I’m sorry.
2 THE WITNESS: Well, the noise from these single-
3 family residential homes aren’t going to be dissimilar from
4 the noise from the existing single-family homes either in
5 the RE-2 or the R-200 zones west and north of the site.
6 MR. GROSSMAN: What about light pollution?
7 MR. KLINE: And before you leave that, could I
8 just ask a follow-up question on that?
9 MR. GROSSMAN: Yes.
10 MR. KLINE: I know Mr. Butz talked a lot about his
11 research on housing, but is there anything about the
12 material that’s in the appendix about the quality of that
13 housing? Why do I have this gut reaction that a community
14 of people over 50 years old gardening is going to be quieter
15 than a conventional suburban community with the same number
16 of houses?
17 THE WITNESS: That’s a good gut assumption. That,
18 well, one, you’re not going to have the basketball court
19 with the kids playing outside with the loud music. That’s
20 stereotyping, but typically this would be quieter than a
21 community that’s full of children, and with those type of
22 outdoor activities.
23 MR. GROSSMAN: All right. What about the
24 remainder of that sentence was, dust and lots of pastoral
25 scenery? How does that factor into your land use

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1 evaluation?
2 THE WITNESS: Dust and maybe Mr. Rood can speak to
3 this a little bit, but presumably we’re going to be less --
4 it is being farmed right now. It is being tilled, spring
5 and fall. So when they do plant or harvest, they make a lot
6 of dust.
7 Once the site is developed, it basically will be
8 stabilized. There will be lawns and yards where there won’t
9 be any dust.
10 MR. GROSSMAN: How about the loss of pastoral
11 scenery?
12 THE WITNESS: That to me is a little bit out there
13 because it is zoned residential. So if it was developed
14 residential, you’d still have houses there. You know, we’re
15 providing appropriate buffers to be compatible.
16 MR. GROSSMAN: Okay.
17 THE WITNESS: So even though it is a farm field
18 right now, it is not by right zoned, or well, by right it’s
19 zoned residential.
20 MR. GROSSMAN: All right. What about potential
21 breeding of mosquitoes and other pests as a result of the
22 proposed stormwater management ponds?
23 THE WITNESS: I’m going to leave that to Mr.
24 Bossong, who is going to speak to stormwater management.
25 MR. GROSSMAN: I’ve never heard an engineer

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1 testify about mosquitoes from stormwater management. Is
2 that in his area of expertise?
3 THE WITNESS: Well, maybe we can clarify that
4 question, also.
5 MR. GROSSMAN: All right. Well, I’m just raising
6 it. You can address it or not. That’s what is listed in
7 staff, by staff for, among the concerns raised by the
8 community. All right.
9 MR. KLINE: And actually, I think you asked us
10 about light, light pollution also.
11 MR. GROSSMAN: Yes. That was another issue that
12 was raised.
13 THE WITNESS: As we go forward with the site plan,
14 there will be a specific lighting plan. And that will be
15 primarily for the public street lights. And the County’s
16 ordinance, or the County’s regulations, you need to capture
17 any light on-site with cutoff fixtures so it doesn’t overlap
18 onto the surrounding properties. And again, that would be
19 detailed out at site plan.
20 MR. GROSSMAN: All right. I’m unsure whether the
21 -- well, it can’t impact residential communities. It’s a
22 question of how that particular part of the zoning ordinance
23 is phrased. But, all right. We’ll accept your answer.
24 Anything for -- I’ll come back to you in a minute, ma’am.
25 Anything further on redirect?

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1 MR. KLINE: Nothing from me, sir.

2 MR. GROSSMAN: All right. Did you have a further

3 cross-examination question? Go right ahead.

4 MS. GOLDRICK: I just have another question.

5 MR. GROSSMAN: Yes.

6 MS. GOLDRICK: And that is, from what you read it

7 said that at certain levels it has to be mitigated. So on,

8 you know, from what they are suggesting the noise level

9 would be, and I'm guessing on Ridge Road, what are, what are

10 things that you can do?

11 I see where you have the tree buffers, but it

12 looks like there's open space there. And then across from

13 it there are other houses that would --

14 THE WITNESS: Yes. There's generally two types of

15 noise mitigation. One is for interior noise, so when you

16 close all your windows that the noise inside the house is

17 not affected by the traffic, et cetera. That's usually

18 mitigated by double or triple-glazed windows, upgraded

19 building materials, such as brick. So the building itself

20 provides that mitigation.

21 For outdoor noise, it's particularly for the

22 outdoor useful area, so typically the backyard and patio

23 area. And one example of mitigation is a noise fence. So

24 there may be a six-foot fence that goes around the patio, so

25 that that fence mitigates the noise. So when you're outside

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1 barbecuing, the decibels are below that, per the code,

2 actually.

3 MS. GOODRICK: So on Ridge Road, for example, does

4 that mean that you put triple panes, or whatever, on -- in

5 other words, it seems that, is this -- it seems that --

6 MR. GROSSMAN: He's not talking about noise in

7 your home, if you're there. He's talking about noise inside

8 the community that he's planning.

9 THE WITNESS: This is noise from the road.

10 MR. GROSSMAN: Noise from the road impinging on

11 the planned community. That's the noise that he's talking

12 about that would be mitigated.

13 MS. GOODRICK: Yes, that's right. But what I

14 thought he said you put extra panes of glass on, or

15 something like that?

16 MR. GROSSMAN: You do it, in other words, what

17 would happen is, when they get to site plan, a question will

18 come up as to how do they build these homes that they are

19 planning, assuming they get through rezoning, how do they

20 build those houses that they are planning so that the noise

21 levels inside and outside will not exceed the recommended

22 noise levels for a residential community as a result of the

23 traffic. And so the technical staff has a manual on that.

24 And there are ways in which it can be reduced.

25 One of them is glazing the windows in certain ways. And

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1 certain other soundproofing methodologies. That has nothing

2 to do with the noise that might be produced by this

3 community that might impact people outside. That is

4 something else.

5 MS. GOODRICK: Okay. For example, having more,

6 because you have these houses, you have much more traffic

7 there.

8 MR. GROSSMAN: Right.

9 MS. GOODRICK: Which makes more noise. So does

10 that reach a level, or do we think that that kind of noise

11 would be perspective noise from having that many people and

12 that many cars there? Does that need to be mitigated? Does

13 that come to that level? Or how do you determine that

14 level, that proposed level?

15 MR. GROSSMAN: We'll ask the expert. What about

16 that? If you build a community that would produce a certain

17 level of traffic which would raise the noise level for those

18 living on Ridge Road on the other side, are you required to

19 mitigate that noise level?

20 THE WITNESS: I think it's regardless, it's

21 whatever estimate traffic volumes are on this road, with the

22 existing traffic and the additional traffic from the

23 community, what's that grand total or worst case, you have

24 to mitigate that noise.

25 MR. GROSSMAN: No, but you're talking about inside

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1 your planned community. Would you have to mitigate it

2 inside somebody else's house who lives to the east?

3 THE WITNESS: Oh, you're talking about any

4 mitigation --

5 MR. GROSSMAN: Well, that's on the west. I'm

6 talking about the east, right next to the --

7 THE WITNESS: You're talking about over here?

8 MR. GROSSMAN: Yes, that's correct.

9 MS. GOODRICK: That's right. That's the question.

10 All up and down there, we can have houses. There are houses

11 over there.

12 MR. GROSSMAN: When you add 140 units, there's

13 going to be some additional amount of traffic which

14 presumptively would add some additional amount of noise.

15 And is there any study done to determine whether or not that

16 additional amount of traffic would add an additional amount

17 of noise, which has to be mitigated in some way by the

18 applicant in the home across the street? Did I fairly

19 summarize that?

20 MS. GOODRICK: Yes.

21 MR. GROSSMAN: Okay.

22 THE WITNESS: Typically, no. But let me walk

23 through the, you know, across the street. I lost my

24 pointer. But anyway, across the street from --

25 MR. GROSSMAN: You can use the laser pointer that

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1 my staff fixed.
2 THE WITNESS: It's buried on the table there
3 someplace.
4 MR. KLINE: I'll find it for you.
5 THE WITNESS: From Brink Road is traveling north,
6 this is the WSSC property which is water tower, a water
7 tank, water tower and property for any other WSSC use. So
8 there is no residential use here .
9 MR. GROSSMAN: Right.
10 THE WITNESS: This again is zoned RDT, no existing
11 units. And whether or not there will ever be units here is
12 a question.
13 MR. GROSSMAN: All right.
14 THE WITNESS: We do, as we mentioned, there is
15 one, two, three, and there is a fourth, which is not
16 actually north of our property, basically three that are
17 across from our property.
18 Right now, the road improvement plans for Ridge
19 Road, the widening, the extra two lanes comes up to A-305.
20 The areas to the north is not being widened. So the
21 widening is from 305 south to Brink, and then traffic coming
22 across.
23 And I'll let Mr. Guckert, who is doing the
24 traffic, discuss any additional trips that may be going up
25 and down. Most of the trips, I believe, and the future

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1 widening come from 305 on this side, M-83 on this side, and
2 south, where there would be no impact across the street.
3 And then I believe this is the existing condition. I'll let
4 Mr. Guckert address that.
5 MR. GROSSMAN: All right.
6 THE WITNESS: As far as additional traffic.
7 MR. GROSSMAN: Okay. Let's indulge in the
8 assumption, for a second, that it's going to produce
9 additional traffic next to those homes in the north there,
10 in the northeast. Would there be any obligation by the
11 applicant to mitigate that effect, noise effect on those
12 houses?
13 THE WITNESS: I don't believe so. I believe some
14 of that obligation, again, would -- I'm thinking of other
15 projects, would come into like as possibly a County
16 obligation, because this is a main regional road.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: We have seen, I presume you've seen
19 where fencing in the front yard to mitigate noise would have
20 to be built. But my assumption would be that would be a
21 County or in this case, this is a State road, obligation.
22 Because the volume on this road, the vast majority of it,
23 and you'll hear numbers, but it's not from this property.
24 MR. GROSSMAN: Right. I suspect it's something
25 that can be taken up with technical staff, depending on the

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1 volume of traffic that is projected from this site. If this
2 witness is correct, it's not going to be a significant
3 amount north of the projected 305.
4 MS. GOODRICK: I guess what I'm concerned about is
5 a sound barrier being, you know, a big sound barrier in
6 front of these people's houses as well. I don't know. But
7 when you talked about mitigation, I was concerned about
8 that.
9 MR. GROSSMAN: Well, his testimony is that
10 ordinarily, this would not fall on the applicant to look at.
11 It's unusual, in all the cases I've handled, I don't think
12 I've ever seen one where an applicant was required to put up
13 some kind of a traffic sound wall to protect other
14 communities from traffic that might result from their
15 project. It's an unusual thing.
16 The question comes up as to how much traffic the
17 roads will bear, and whether or not that would create either
18 too high an impact on the public facility, the road, or
19 create a non-compatible condition with the people who live
20 there.
21 I haven't seen it in connection with creating so
22 much additional traffic that there would be road noise of a
23 significant measure. And I don't know, we'll hear from the
24 traffic expert, so we'll get a better idea of that in a few
25 minutes. Hopefully in a few minutes. All right. Any

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1 further questions? Any further redirect?
2 MR. KLINE: No, sir.
3 MR. GROSSMAN: All right. Thank you, sir. I
4 appreciate it. You got off the hot seat. All right. Your
5 next witness?
6 MR. KLINE: Ms. Russel.
7 MR. GROSSMAN: Would you state your full name,
8 please?
9 MS. RUSSEL: Jennifer Russel.
10 MR. GROSSMAN: All right, Ms. Russel. Would you
11 raise your right hand, please?
12 (Witness sworn.)
13 MR. GROSSMAN: All right. You may proceed, Mr.
14 Kline.
15 DIRECT EXAMINATION
16 BY MR. KLINE:
17 Q Ms. Russel, would you please state and spell your
18 name, and give us your business address?
19 A Jennifer Russel, J-E-N-N-I-F-E-R, R-U-S-S-E-L.
20 One L. 19847 Century Boulevard, Suite 200, Germantown,
21 Maryland 20874.
22 Q Ms. Russel, I'll ask the question, have you
23 qualified as an expert in the subject of master planning
24 before this hearing examiner or any other hearing examiner
25 in Montgomery County?

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1 A No, sir.
2 MR. KLINE: Mr. Grossman, I would like to provide
3 a copy of Ms. Russel's resume, and ask her to explain what
4 she's been doing all these many years.
5 MR. GROSSMAN: I have a copy from the file.
6 MR. KLINE: Yes, sir.
7 MR. GROSSMAN: And it's 55(b). Do the other --
8 MR. KLINE: I gave copies to the other folks, yes.
9 MR. GROSSMAN: Okay. Great. Thank you. All
10 right.
11 BY MR. KLINE:
12 Q Ms. Russel, those of us who know you are surprised
13 we haven't done this before. So you need to kind of tell us
14 what you've been doing?
15 A All right. Hopefully you weren't going to
16 emphasize my age.
17 Q I consider it years of experience.
18 A Thank you very much. Wisdom. Well, I'll start
19 by talking about my role which is germane here, more recent
20 role prior to my coming to Rodgers, where I was the first
21 Clarksburg ombudsman. I was appointed by then County
22 Executive Doug Duncan in 2006 to act as a type of conduit,
23 if you will, between the development community and the
24 citizens of Clarksburg.
25 There was, many people are aware of the fact there

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1 was a discovery that there had been numerous site plan
2 violations in Clarksburg Town Center, many infringements on
3 height restrictions, setback violations, and a general lack
4 of completed amenities for the community, and a great deal
5 of dissatisfaction regarding, particularly regarding
6 delivery and completion of needed roadways for the
7 community.
8 So my role was to act as a liaison to the
9 community, to businesses, and to top government official,
10 department heads in the County Government, to kind of bridge
11 the gap and achieve for the community, the vision that they
12 had bought into, they expected, and they deserved to come.
13 I was appointed to be a problem solver, if you
14 will, and a facilitator of County services to the community.
15 And most importantly, to be the County Executive's
16 representative on the ground.
17 On the other hand, I was also instructed to try to
18 learn and understand the community, and to help the
19 community deal in negotiating with the developers on site.
20 and that was primarily due to my own negotiating background,
21 years and years in Gaithersburg, which I'll get to in a
22 moment.
23 So during the time that I was the ombudsman, I
24 believe I became quite acquainted with the community, with
25 the master plan, the nature of the vision, as well as the

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1 residents who really wanted to see the vision realized. And
2 particularly once the violations were cited, and there was
3 initial mediation of the violations, the mediated plan had
4 been mandated and concluded, and there was a revamped
5 approach to Town Center.
6 But that was only in 2006. So I had, as I kind of
7 alluded to, I've been around for a long time. And when I
8 started to think about my background, to explain it to you
9 today, I realized that 2013, the beginning of this calendar
10 year, actually marks 40 years since the start of my career
11 as a land planner. Obviously, I started as a child.
12 But during that period of time, I spent 26 years
13 at the City of Gaithersburg. For most of that time I was
14 director of planning code administration. And as you're
15 probably aware, Gaithersburg is autonomous in terms of
16 planning and zoning within Montgomery County. We had our
17 own planning review process, our own zoning ordinance,
18 building permit issuance, the like. A mini microcosm of the
19 County.
20 And during that span of time, the 26 years, I
21 actually wrote many of the master plans, the city-wide
22 master plans, neighborhood master plans. I oversaw the
23 development and the writing of transportation master plans,
24 community facility master plans, as well as the more
25 dominant land use elements.

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1 Then I moved onto Clarksburg, and was charged with
2 reconciling the variations in the planning implementation,
3 as I mentioned previously, that related to site plan
4 enforcement and trying to judge concurrence with the vision
5 that was in the 1994 master plan for what people viewed as
6 the final corridor town on the 270 network.
7 My current tender at Rodgers Consulting, which is
8 where I've been the last five and a half years, I am also,
9 I'm very much involved in the master plan process at the
10 County level. I monitor all the Planning Board's master
11 plan activities, as the master plans make their way through
12 the Planning Board, and then subsequent County Council
13 processes. I advise our clients on how to best position
14 their properties for favorable master plan alignment
15 designations for the future. And then I offer
16 interpretations of existing adopted land use plans for
17 clients, as they steer their way through the development
18 entitlement processes in the County.
19 MR. GROSSMAN: Okay.
20 BY MR. KLINE:
21 Q Ms. Russel, the resume that I've handed out talks
22 about your background. You've got a master's in planning.
23 A Yes.
24 Q Are you a member of AICP?
25 A No. At the time, AICP didn't exist. And I'm an

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1 AK member, CNU member.
2 MR. GROSSMAN: What does CNU stand for?
3 THE WITNESS: Congress for New Urbanism,
4 neotraditional --
5 MR. GROSSMAN: Say that again?
6 THE WITNESS: Congress for New Urbanism.
7 MR. GROSSMAN: All right. Thank you.
8 THE WITNESS: I was in Gaithersburg at the time
9 the Kentlands began, before, during and after. So I became
10 an expert, of sorts, on neotraditionalism, when no one knew
11 what, even how to spell it.
12 BY MR. KLINE:
13 Q So to summarize, based on your resume, since
14 probably the mid-1970's, you've been writing, interpreting,
15 and now influencing master plans. Is that correct?
16 A Yes.
17 MR. KLINE: Based on that depth of experience and
18 length of experience, I'd like to offer Ms. Russel belatedly
19 as an expert in master plan --
20 MR. GROSSMAN: She's going to hit you in a second.
21 MR. KLINE: Yes, I know. She should have been
22 approved a long time ago. I just never had the --
23 THE WITNESS: I avoided it.
24 MR. GROSSMAN: Yes.
25 MR. KLINE: As an expert in master planning, as

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1 distinct from the land use planning because of the focus of
2 the testimony we're going to ask her for today.
3 MR. GROSSMAN: All right. Anybody have any
4 questions of this witness regarding her credentials to be
5 certified as an expert in master planning?
6 MS. GOODRICK: No.
7 MR. WILLS: No.
8 MR. HANCOCK: No.
9 MR. GROSSMAN: Okay. Based on your background, as
10 you described it and on your resume, I accept you as an
11 expert in master planning.
12 THE WITNESS: Thank you.
13 MR. GROSSMAN: As, I guess, a subcategory of land
14 use planning.
15 MR. KLINE: I'm not quite, I don't think I've ever
16 done it this way before.
17 MR. GROSSMAN: Right.
18 MR. KLINE: But because the interpretation of the
19 master plan, as you point out, is so integral in this case,
20 we felt we needed that special retention.
21 MR. GROSSMAN: Right.
22 BY MR. KLINE:
23 Q And I think we're going to start by having Ms.
24 Russel try and highlight for you what the plan says and why
25 we came down one side, and the staff another, and then the

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1 Planning Board on another. Ms. Russel?
2 A Yes. Thank you. And I'm going to try to submit
3 the individual pages of the master plan that everyone has
4 been talking about, so you can really focus on those.
5 Because there is a lot, there's a variety of discrepancies.
6 And it's true that the applicant and the staff
7 were in disagreement about the language. And that's because
8 the language is somewhat confusing. And the disagreement
9 stems from conflicting language in the master plan.
10 But I believe very strongly that the development
11 proposal that we are shown here of 140 age-restricted units
12 in the PRC zone does conform to the recommendations of the
13 1994 plan, as specifically stated in that oft referred to
14 page 75 of the master plan. And 75, pages 75 through 77
15 need to be entered into the record specifically.
16 Q Okay.
17 MR. GROSSMAN: All right. You want those to be
18 pages separately as an exhibit, although the master plan
19 will be part of the record in any event.
20 MR. KLINE: Yes.
21 MR. GROSSMAN: This will be Exhibit No. 67 and
22 that's pages 75 through 77 of the, what year is the
23 Clarksburg --
24 THE WITNESS: 1994.
25 MR. GROSSMAN: -- 1994 Clarksburg plan.

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1 (Exhibit No. 67 was marked
2 for identification.)
3 MR. KLINE: And, Mr. Grossman, did you say number
4 67?
5 MR. GROSSMAN: Yes.
6 MR. KLINE: Okay. Did I get off my number then,
7 because what did we do with Ms. Russel's resume?
8 MR. GROSSMAN: It was already in the record.
9 MR. KLINE: You didn't need it. That's right.
10 Okay. Got you. All right.
11 THE WITNESS: Okay. If you go to the language on
12 75, which addresses the transition from Germantown to
13 Clarksburg, and the language reads, and I'm going to quote.
14 It's under the first bullet.
15 "To further reinforce the transition from
16 Germantown to Clarksburg, this plan proposes the entry to
17 Clarksburg be characterized by low density residential
18 development, two to four units per acre," end of quote.
19 The subject property is clearly the entry point to
20 Clarksburg, as it transitions from neighboring Germantown.
21 We indicated to you the boundary of the Clarksburg planning
22 area.
23 Page 77 of the master plan, which follows after
24 page 76, includes a land use plan. It's called, "Brink Road
25 transition areas land use plan." And it includes a land use

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1 plan that is in conflict with the language that as stated
2 above because it designates the property in a much lower
3 density range. If you take a quick look at it, you'll see
4 it is designated as rural residential, one deed per acre to
5 the range of one deed per five acres.
6 MR. GROSSMAN: First I have to find the cite on
7 the --
8 THE WITNESS: Okay. All right.
9 MR. GROSSMAN: I never found a master plan map to
10 be very easy to read.
11 THE WITNESS: They're challenging.
12 MR. GROSSMAN: So Mr. Kline is going to come --
13 THE WITNESS: And it only has a few roads in
14 there.
15 MR. KLINE: This is A-305 right here.
16 MR. GROSSMAN: Okay. Okay. So we're talking
17 right through here, right?
18 MR. KLINE: Yes, probably right down there.
19 THE WITNESS: So remember, it's two to four units
20 per acre, and then it shows it as rural residential. And
21 then to further muddle the waters, I'm going to introduce
22 another page, page 97, which we should also enter --
23 MR. GROSSMAN: Before you do that, does anybody
24 have an objection to my marking off and calling, putting an
25 arrow there and saying, the site, on this exhibit.

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1 THE WITNESS: That helps.
2 MR. GROSSMAN: It helps me.
3 THE WITNESS: In the same document, page 97, which
4 we need to enter in as an exhibit as well, shows the zoning
5 plan that accompanied the master plan, that shows the
6 property, they are difficult to fine, as RE-2.
7 MR. GROSSMAN: Okay. So why don't we do this.
8 How many more pages of the master plan do you plan to
9 produce?
10 THE WITNESS: A couple. Two more.
11 MR. GROSSMAN: Okay. So why don't we say this
12 first one we'll say was Exhibit 67(a), is pages 75 to 77.
13 And the this next on you gave me now was 67(b), and that's
14 page 38.
15 THE WITNESS: No, it's page 97. It's figure 38.
16 MR. GROSSMAN: Oh, figure 38. I'm sorry.
17 THE WITNESS: Yes.
18 MR. GROSSMAN: Page 97. Thank you for that
19 correction. And what am I looking for here?
20 THE WITNESS: You are looking for the parcel,
21 again, I'm sorry to say. It's smaller.
22 MR. KLINE: It's where the two is. You can pretty
23 well, it actually lines up.
24 MR. GROSSMAN: Okay. Yes.
25 THE WITNESS: And that just reiterates what the

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1 zoning is.
2 MR. GROSSMAN: Right. Actually.
3 THE WITNESS: So there is an obvious discrepancy.
4 MR. GROSSMAN: I'm going to put the word site,
5 once again. Okay.
6 THE WITNESS: So we have the language of two to
7 four units per acre, and we have the map that shows rural
8 residential, and we have the RE-2. And there's an obvious
9 discrepancy with respect to the land use recommendation.
10 We feel very strongly that this parcel is at the
11 entry to Clarksburg, and that the language that
12 characterizes it as low density residential, two to four
13 units per acre, should prevail.
14 MR. GROSSMAN: What is the density of the RE-2
15 zone, typically?
16 THE WITNESS: Well, there's a range. And that
17 range is shown there under rural residential. The land use
18 designation for rural residential on page 77. That's where
19 the most obvious discrepancy is.
20 BY MR. KLINE:
21 Q Well, in translating the RE-2 into a units per
22 acre, you'd end up with .5 dwelling units per acre.
23 A Yes.
24 MS. GOODRICK: Excuse me, what does DU stand for?
25 THE WITNESS: Dwelling unit.

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1 MR. KLINE: Dwelling unit.
2 MS. GOODRICK: Dwelling unit. Okay. Thank you.
3 MR. GROSSMAN: So I was just trying to understand
4 your density argument. So this, the RE-2 zone you would
5 translate into, you're saying --
6 THE WITNESS: .5.
7 MR. GROSSMAN: .5.
8 MR. KLINE: .5, right.
9 THE WITNESS: And the language on page 75 that we
10 believe prevails, suggests two to four units per acre. So
11 you might say, well, what prevailed that there's a rural,
12 rural residential designation, and that the zoning remained
13 the same?
14 And we believe that the absence of sewer, the
15 understanding that the site, at the time, in 1994, that it
16 was a strong belief that the site could not be sewerred, held
17 the parcel captive to the lower density.
18 And Mr. Bossong, I believe, is going to follow me.
19 And he's going to describe the history of the sewer on site.
20 And if you go back to page 75, in the first paragraph, it
21 alludes to the fact that there's an absence of sewer in this
22 general area. There's language that says, "The absence of
23 sewer has resulted in most of the existing subdivisions
24 being built on well and septic," and it refers to the lower
25 lot size, and ranges of lot size.

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1 So we believe that part of the discrepancy is
2 attributable to the absence of sewer, and the thought at the
3 time, in 1994, that the site could not be sewered.
4 Moving along to the Brink Road issue, which has
5 come up quite a bit, the master plan is clear on the
6 transition between Germantown and Clarksburg. And I believe
7 that is so because it gives the Brink Road area a special
8 kind of responsibility based upon its unique location.
9 And if you go back, again, bring the Brink Road
10 plan up. If you go back again to page 75, under the first
11 bullet it says, this areas, and once again it's referring to
12 this Brink Road sub-area, which is shown on Exhibit 34 --
13 BY MR. KLINE:
14 Q 34(q).
15 A -- (q), it states, "This area lies just north of
16 the Germantown green belt which forms a visual buffer
17 between Germantown and Clarksburg, and to further reinforce
18 the tradition between Germantown and, as a corridor city,
19 and Clarksburg as a corridor town," notice town.
20 It emphasizes, I believe, the unique and
21 individual nature of each of the communities. And you'll
22 see as Mr. Unterberg had shown on, let's say the
23 illustrative plan, that the development plan for the Courts
24 -- under there, yes -- kind of subtly shifts density to the
25 north. And it creates a very robust green belt and an

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1 entryway into the Clarksburg planning area, which is
2 demarked by Route 27.
3 In fact, the monumental entrance for Clarksburg
4 Village, which you've head a good bit about, is going to be
5 situated at the intersection of Route 27 and A-305. And I
6 feel that the --
7 MR. GROSSMAN: You say that will be the
8 monumental?
9 THE WITNESS: Monumental entrance to the
10 Clarksburg Village.
11 MR. GROSSMAN: So you're saying you're going to
12 have a monument up there, a monument size that says this is
13 Clarksburg Village?
14 THE WITNESS: Yes, that's going to be where the
15 entry signs are going to be. That's my understanding.
16 MR. GROSSMAN: There are going to be no other
17 entries to Clarksburg Village that will have such a
18 designation?
19 THE WITNESS: I don't know if there's going to be
20 other, I'm sure there will be other entries, but this is --
21 MR. KLINE: Well, since there's multiple points to
22 enter --
23 THE WITNESS: Yes.
24 MR. KLINE: -- Clarksburg Village, probably so.
25 We just happen to be the one on the southern end.

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1 MR. GROSSMAN: So I guess my question would be
2 then, whether or not, since there are other entries to
3 Clarksburg Village, what is the density of those other
4 entrances. I'm just trying to figure out whether or not the
5 Clarksburg plan was referring to the southern entrance that
6 your site is in, or referring to some other entrance when it
7 says it should be characterized by two to four units per
8 acre?
9 THE WITNESS: Well, this is the area where it
10 transitions most from Germantown, the Germantown planning
11 area to the Clarksburg planning area.
12 MR. GROSSMAN: That's the only area that
13 Germantown transitions to Clarksburg?
14 THE WITNESS: Well, you could say from the south
15 as well, from Brink Road.
16 MR. GROSSMAN: All right. And what --
17 MR. KLINE: Mr. Grossman, are you asking us what's
18 the density in Clarksburg Village or --
19 MR. GROSSMAN: I'm asking, what -- I mean, as I
20 understand the argument here --
21 THE WITNESS: I'm just trying to figure out this
22 language.
23 MR. GROSSMAN: -- if I understand the argument
24 that the applicant is making, it is that the text in the
25 zoning, in the master plan, on page 75, is the true intent

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1 of the framers, not these diagrams. And the text here talks
2 about a density of two to four units per acre because it's
3 an entry to Clarksburg.
4 And so I'm wondering whether the writers of the
5 text were referring to this particular entry, so I know if
6 they are talking about this, this location, or to some other
7 entry to Clarksburg where they may also be a reason for
8 existing two to four dwelling units per acre density?
9 MR. KLINE: Well, I think what Ms. Russel was
10 saying is, since we're within a section of the master plan
11 entitled, Brink Road transition area, we can only be talking
12 about an entry point that is within the transition area.
13 MR. GROSSMAN: Fair enough.
14 THE WITNESS: Yes, look at the blue area.
15 MR. GROSSMAN: Yes, I understand.
16 THE WITNESS: Yes.
17 MR. GROSSMAN: So are there any other entries to
18 Clarksburg Village from the Brink Road transition area?
19 THE WITNESS: Not really. Not from where it would
20 transition between Germantown and Clarksburg, no. That's
21 very clever though.
22 MR. GROSSMAN: Well, I don't know if I'd go all
23 the way to clever but, all right.
24 THE WITNESS: I saw one ambiguity and you saw
25 another one. Interesting. Okay. But I don't think there

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1 is one, actually.
2 I would also move again to the Exhibit 40(a) which
3 shows you, again, the transition how we are trying to deal
4 with the transition in the master plan to help reinforce
5 each community's specific identity. This exhibit, I think,
6 highlights our enhanced efforts which Mr. Unterberg
7 emphasized quite a bit at the southeast corner of the
8 property amplifies and, I think, strengthens the adjacent
9 Germantown green belt that is just south of Brink Road. And
10 I think the master plan urged us to do that as well.
11 The Planning Board also recognized that the
12 development plan we are proposing achieves the transition.
13 And in going back to their letter, the Planning Board found,
14 quote, "That the development plan provides a low density
15 transition, which coupled with the forest buffers and
16 setbacks, which have been enumerated, provides compatibility
17 with the surrounding community."
18 MR. GROSSMAN: That letter is Exhibit 54.
19 THE WITNESS: Right. Now, going back to Brink
20 Road a little bit more, in a little bit more detail, I think
21 it's clear that there are ambiguities in the master plan.
22 The language reflects and 18-year-old master plan that's
23 inconsistent, but I --
24 MR. GROSSMAN: Is there another one in process now
25 for Clarksburg?

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1 THE WITNESS: There's a limited amendment underway
2 that is looking at a small portion of the Clarksburg master
3 plan, but no, not a wholesale revision. It's not in the
4 Planning Board's current work plan.
5 MR. GROSSMAN: Does the limited amendment in any
6 way touch the area of the subject site?
7 THE WITNESS: No.
8 MR. GROSSMAN: Okay.
9 MR. KLINE: It deals only with the Cabin Branch
10 area, which means you'll see development plan amendments.
11 MR. GROSSMAN: Okay.
12 THE WITNESS: I believe, in my observation of
13 master plans, that this particular master plan took a great
14 deal of care to pay attention to the distribution of
15 dwelling units, more so than the typical master plan.
16 There was also a safe objective within the
17 planning area to provide a wide variety of housing types.
18 And I think attention to the caps and distribution of unit
19 types is not typical of other master plans. Here is page
20 40, which is the next, that's a portion of the master plan
21 that alludes to this comment.
22 MR. GROSSMAN: Okay. We'll make that 67(c).
23 Thank you.
24 BY MR. KLINE:
25 Q And Ms. Russel, this is the paperwork backing up

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1 something Mr. Unterberg had alluded to --
2 A Right.
3 Q -- when he was talking about this earlier?
4 A Uh-huh. Under the type of density guidance that is
5 indicated on page 40, the Brink Road transition area, once
6 again the area within which the subject property is located,
7 is designated to contain, I see in the charge, up to 1,000
8 dwelling units. And with the addition of the 140 units for
9 the Courts at Clarksburg, the planning area still only
10 incorporated 969 units, well below the stated cap.
11 And the Brink Road sub-area is 860 acres. It's a
12 sub-area of the master plan, and it's one of eight separate
13 analysis areas that were studied during the plan.
14 MR. GROSSMAN: Well, let me ask you this. First
15 of all, it's Exhibit 67(c) is page 40 of the master plan.
16 And given that you'd still be below the 1,000 dwelling
17 units, does that mean -- which are close at this point, that
18 there's no further room for expansion of dwelling units in
19 this transition area?
20 THE WITNESS: Well, if you take a look at the
21 Brink Road transition area, you'll see that it's pretty
22 populated by dwelling units. And those, each of the unit
23 counts that are shown there, A through J, I guess it is, are
24 the 969 are --
25 MR. GROSSMAN: Which exhibit are we looking at, by

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1 number?
2 MR. UNTERBERG: 34(q).
3 MR. GROSSMAN: Okay.
4 THE WITNESS: 34(q). So you can see that the area
5 within the blue area, which is the Brink Road area, that
6 it's very much built out, the cemetery side.
7 MR. GROSSMAN: But is it the intention, your
8 understanding of the master plan, that that should be it,
9 that essentially we're not going to have any more units, any
10 more dwelling units in this area? Is that your
11 understanding?
12 THE WITNESS: Yes.
13 MR. GROSSMAN: Okay.
14 THE WITNESS: It looks built out to me, yes.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: Can I go onto the next issue?
17 MR. KLINE: Yes.
18 THE WITNESS: Okay. Just a little bit of
19 editorial comment on the PRC zone. In terms of its role as
20 a floating zone. In order for a floating zone to be affixed
21 to the site, you know that you have to make a finding that
22 the proposed rezoning of the parcel and its development plan
23 is compatible with the surrounding land uses, and we've
24 discussed that. And it's also in accordance with the
25 express purpose clause of the zone and its requirements.

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1 One important point, historically, to take note
 2 of, is that at the time of the master plan's adoption, which
 3 was 1994, 18 years ago, the property was not and could not
 4 have been considered for the PRC zone because the zone at
 5 the time was applicable only to parcels in excess of 150
 6 acres or more.

7 However, the master plan does not have to
 8 specifically recommend for this zone to be applied to the
 9 site, as long as those findings that we've outlined have
 10 been met. Just a small technical issue. Moving onto some
 11 of the, reiterating some of the points about --

12 MR. GROSSMAN: I'm not --

13 THE WITNESS: I'm sorry.

14 MR. GROSSMAN: -- quite sure I understand the
 15 point you're making. What--

16 THE WITNESS: I just want to remind you --

17 MR. GROSSMAN: Yes.

18 THE WITNESS: -- that the PRC zone could not have
 19 been thought about in 1994 --

20 MR. GROSSMAN: Right.

21 THE WITNESS: -- for this property, because there
 22 were substantial changes in the context of the PRC zone,
 23 which I'm going to get into in a moment, that will reduce
 24 the minimum size of a parcel that could utilize the PRC
 25 zone. And in 1994, that was applicable only to parcels in

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1 excess of 750 acres.

2 MR. GROSSMAN: Right, but are you telling me that,
 3 because, to say that that's one reason why the plan would
 4 not have specifically recommended the PRC zone for this
 5 site?

6 THE WITNESS: That being said --

7 MR. GROSSMAN: Or are you saying there's some
 8 other technical --

9 THE WITNESS: No.

10 MR. GROSSMAN: I thought you said there was some
 11 technical --

12 MR. KLINE: Well, I'll -- maybe I set her up the
 13 wrong way. Here is my concern, is that we had difficulty
 14 convincing staff that they were spending too much time
 15 fixating on what we felt was a confused recommendation on
 16 the master plan when we were dealing with a floating zone
 17 that should be, for which the standard can be different in
 18 terms of how you analyze its applicability. And you don't
 19 find any floating zone reference, you don't find very many
 20 floating zone references in the staff report at all.

21 So I had wanted to ask Ms. Russel to kind of
 22 highlight the point that floating zones, particularly on a
 23 plan that's 18 years old when this zone wasn't allowed,
 24 ought to be looked at a little bit more open minded. And
 25 that's, I think, the point she was trying to make.

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1 THE WITNESS: Yes. I mean, it's really two
 2 issues. It's one is what, you know, how to you affix a
 3 floating zone. Okay. And then the other issue is, oh by
 4 the way, it wasn't available in 1994, which highlights,
 5 again, the age of the master plan, because there were --
 6 which leads me to my next point about, the age of the plan
 7 raises questions as to its relevancy to current day public
 8 policies, that I think even bring to mind and make, create
 9 even greater concern about the inconsistency of the density
 10 language.

11 We're trying to provide non-vertical age-
 12 restricted housing of a single-family nature in the upcounty
 13 area, where there is nothing of that sort. and this is in a
 14 county where the demographic data shows an increasing number
 15 of residents entering the 50 and older age group. And those
 16 are the kinds of current public policy needs that simply
 17 couldn't have been addressed or reflected in a
 18 recommendation of the 18-year-old master plan.

19 And it brings me to some of the data gathering
 20 which Mr., which the applicant and the property owner had
 21 discussed. And I want to reiterate some of those. And I
 22 have a little bit more specific information about the data.
 23 It would bring us back, again, to the larger document where
 24 the SR's are located.

25 The data gathering has been done by the county in

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1 an effort to try to address and shape future housing policy.
 2 And SR-5, which we discussed earlier, which is arguably from
 3 an exhibit, in the large appendix.

4 BY MR. KLINE:

5 Q Is that the preference survey?

6 A Yes. The Planning Department conducted a housing
 7 preference survey which we alluded to earlier. It was
 8 actually a sample of 1,200 interviews of folks who were 55
 9 and above, to take a look at housing trends. And as we
 10 indicated earlier, more than half surveyed was the
 11 preference for its buying a single-family home, which we're
 12 proposing here, or a townhouse.

13 Younger seniors, in the age group of 55 to 64,
 14 expressed a preference for the I-270 corridor, in which we
 15 are located, and 30 percent of those polled expressed
 16 interest in an active adult community, which is viewed very
 17 differently from a senior community. And I think that's an
 18 important distinction to make, that this is an age-
 19 restricted active adult community, and is not a senior
 20 community.

21 So all of these opinions that are in the housing
 22 preference survey, SR-5, underscore the need for non-
 23 vertical age-restricted housing. And I think it's
 24 particularly important, given that much of the new housing
 25 plan under construction in the County is multi-family. And

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1 I knew that you would ask me where I got that figure, after
2 listening this morning. And rather than just conjecture --
3 here is another exhibit.
4 This is not in the master plan. But this is from
5 the Montgomery County Planning Research and Technology
6 Division. And it shows current --
7 MR. GROSSMAN: Division of what?
8 THE WITNESS: Of the Planning Board staff.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: It includes all County data
11 excluding the cities of Rockville and Gaithersburg. And it
12 shows the current development pipeline dated July 2012. And
13 you'll see that what I'd like to call attention to are two
14 figures, unbuilt single-family dwellings and --
15 MR. GROSSMAN: Hold on a second.
16 THE WITNESS: I'm sorry.
17 MR. GROSSMAN: This will be Exhibit No. 68. Are
18 these two, you gave me two pages, Mr. Kline?
19 (Exhibit No. 68 was marked
20 for identification.)
21 THE WITNESS: Yes.
22 MR. KLINE: Yes, sir.
23 MR. GROSSMAN: Are these two different exhibits or
24 are these part of the one?
25 MR. KLINE: No, yes. You're good.

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1 MR. GROSSMAN: They are part of one exhibit?
2 MR. KLINE: One is just a cover page, pipeline.
3 MR. GROSSMAN: Okay. So Exhibit No. 68, and that
4 is pipeline approved development as of, when is this as of?
5 THE WITNESS: July 2012.
6 MR. GROSSMAN: As of July 2012 for --
7 THE WITNESS: Montgomery County.
8 MR. GROSSMAN: All of the County?
9 THE WITNESS: Yes. Excluding Rockville and
10 Gaithersburg, which is noted in there.
11 MR. GROSSMAN: Okay.
12 THE WITNESS: So the point is that, the point is
13 that there seems to be a desire by seniors interviewed, age
14 55 and over, to look for non-vertical age-restricted
15 housing. And much of the housing under construction planned
16 and under construction in the County now is multi-family.
17 You'll see the bottom line figures, project totals. Unbuilt
18 single-family dwellings, 8,430 versus unbuilt multi-family
19 dwellings, 21,373.
20 And much of this is transit-oriented development,
21 smart growth oriented development that is at metro stations,
22 proximate to metro states, very transit oriented.
23 MR. GROSSMAN: I'm not following.
24 THE WITNESS: Okay.
25 MR. GROSSMAN: Oh, I see it. I see the column

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1 headlines --
2 THE WITNESS: Yes.
3 MR. GROSSMAN: Unbuilt --
4 THE WITNESS: If you go to the bottom, you will
5 see --
6 MR. GROSSMAN: Which column am I looking at?
7 THE WITNESS: You'll see 8,430 at the bottom, and
8 21,000.
9 MR. GROSSMAN: Okay. 8,430. Okay.
10 THE WITNESS: So it's about two and a half times
11 the number of multi-family dwellings being built as opposed
12 to single-family. That's because most of the development
13 are proximate to transit or transit oriented. We previously
14 indicated --
15 MR. GROSSMAN: And what's the significance of
16 that?
17 THE WITNESS: The significance is that, the point
18 I'm trying to make is that many seniors, or many people on
19 the, the housing preference survey indicated that many, more
20 than half surveyed had a preference towards buying a single-
21 family home or a townhouse. And there really aren't -- and
22 if they're looking for new housing, there are not as many
23 choices, because most of the, two and a half times the
24 amount of housing that are -- two and a half times more
25 multi-family units planned and under construction in the

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1 County. There aren't as many choices from a single-family
2 perspective.
3 MR. GROSSMAN: Well, this indicates they are not
4 in the pipeline, which could indicate that there are so many
5 single-family homes already available that they are not
6 building more. They are building multi-family. I mean, you
7 can interpret this data that way, too.
8 THE WITNESS: I supposed, but there is nothing,
9 there is very little, there is no age-restricted non-
10 vertical housing under consideration in the upcounty where
11 30 percent of those polled, rather, the younger seniors
12 expressed a preference for the I-270 corridor.
13 MR. GROSSMAN: Well, getting back to the point I'm
14 making, I'm not, I don't -- I understand your other points.
15 This one, as far as what's in the pipeline, I don't know
16 that it tends to prove your case, because it could be
17 interpreted the way I suggest it, it could be interpreted as
18 well. So if it's susceptible of both of those
19 interpretations, I don't see how it helps to prove your
20 case.
21 I don't doubt, you know, the other statistics that
22 have been presented about preferences and so on. But as far
23 as that, I can't tell you.
24 THE WITNESS: All right. We had already indicated
25 previously under SR-7, the survey conducted by AARP, that 71

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1 percent of adults age 50 live in single-family homes, and
2 that there is some general racial resistance to the
3 densities that characterize multi-family units. And this
4 was discussed, and I'm not, this is just not something that
5 I'm alluding to.
6 The County Council in July of, no, excuse me,
7 March of 2012, had a briefing called, shaping our future,
8 adapting to change, our growing senior population. There
9 were a wide, there were four or five experts who testified
10 that day on the provision of services and housing for the
11 County's aging population. And these experts suggested that
12 the goal of aging residents is to stay within the community.
13 If it's not within their current home, it's within the
14 existing jurisdiction.
15 The experts also suggested that purpose built
16 senior housing is a new approach that lets the 50-year-old
17 and older citizen remain independent with enhanced
18 opportunities for socialization and recreation. And they
19 also indicated that accessibility to care and services,
20 which of course the PRC zone mandates, is important.
21 And these experts also told the County Council
22 that the alternatives to multi-family housing should be
23 examined, because there appears to be some generational
24 resistance to densities in the TOD multi-family housing.
25 And I'm just saying that the figures alone could

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1 lead you to believe that there aren't as many choices with
2 respect to single-family. And there certainly is no non-
3 vertical age-restricted housing in the upcounty area.
4 MR. GROSSMAN: Okay. These aren't so much master
5 plan arguments as public policy argument in favor of more
6 single-family housing for seniors.
7 THE WITNESS: Right.
8 MR. GROSSMAN: Okay.
9 THE WITNESS: And it also, but it also, to me, are
10 issues that could not have been considered in 1994 when the
11 master plan was developed, because of the age of the
12 document.
13 MR. GROSSMAN: I think what's not always clear to
14 everybody is that master plans, generally speaking, are not
15 binding documents. They are considered recommendations,
16 unless the statute, unless the zoning ordinance says that
17 they should be considered binding in a particular place, or
18 required.
19 THE WITNESS: It's a policy document, and it
20 offers guidance.
21 MR. GROSSMAN: And so the question, the first
22 question I have is, is there anything in this particular
23 zone that requires that master plan be followed completely?
24 THE WITNESS: Master plan be followed completely?
25 Well, I think that the zone can be affixed without the

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1 master plan designation.
2 MR. GROSSMAN: No, I understand that.
3 THE WITNESS: Yes.
4 MR. GROSSMAN: I'm just saying that some zones are
5 very particular about requiring adherence to master plans.
6 Others don't seem to make a point of it.
7 THE WITNESS: Yes. I don't believe so. I think
8 it's very focused on the accessibility of the provision of
9 services. I don't believe there's any specific language.
10 MR. GROSSMAN: So this appears not to be one of
11 those zones that requires strict adherence to the master
12 plan.
13 THE WITNESS: I don't believe so.
14 MR. GROSSMAN: And now, of course, the findings
15 that the Council is required to make, they're required to
16 make a finding under 59D-1.61(a), "That the proposed
17 development plan substantially complies with the use and
18 density indicated in a master plan or sector plan." And
19 then it goes onto other things. It also has some exceptions
20 for MPDU's and so on.
21 So the focus, I suppose, ought to be on this use
22 and density issue. So let me, we've talked about density,
23 and you've explained the ambiguity in the master plan
24 regarding density, and your interpretation of it. What
25 about use of the site? Is there anything in the master plan

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1 that would help us to understand the master plan's concept
2 of the use of the site?
3 THE WITNESS: I think so. I have something that I
4 was going to get to, but I can bring it out now. I alluded
5 to the fact that I thought that this particular master plan
6 was unusual in that it took a strong, made a strong case for
7 housing mix. And there is language in the master plan on
8 page 39, once again, and I'll wait for you to get it.
9 MR. GROSSMAN: I don't know, Mr. Kline, you ran
10 out to the end of my piece of paper here on your exhibits.
11 You know what that means. I have to turn the page.
12 MR. KLINE: I'm getting to the same place myself.
13 MR. GROSSMAN: All right. So this will be Exhibit
14 -- so, this is another page of the master plan.
15 MR. KLINE: You might make this 67(d).
16 MR. GROSSMAN: Yes, 67(d). Okay. You snuck in on
17 the same page. 67(d) is page 39 of the master plan.
18 THE WITNESS: We had a previous exhibit, Exhibit
19 67(c) that showed you each of the sub-areas by acre with
20 your dwelling units, and was very specific. And I believe
21 this demonstrated the vision for Clarksburg by planning sub-
22 areas. It was pretty specific as to dwelling units. And
23 that's the area where we're at 969 and Brink Road is at
24 1,000.
25 And if you take a look at page 39, I think I

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1 highlighted it, actually. A key objective which has guided
2 this planning process has been the need for Clarksburg to
3 provide a variety of housing types.
4 Now, the Clarksburg community has been a long time
5 coming. There have been, the development of what is known
6 as a corridor town has had some jump starts, was impacted,
7 of course, by the violations and also the economy. But it
8 has a very interesting, I think an enviable housing mix.
9 And there was a lot of attention paid to it.
10 I think that the plan takes a great deal of care
11 via of the unit caps and the density, as well as this
12 language, to develop these housing mix guidelines to oversee
13 the housing mix in a way that many master plans do not do.
14 And by adding --
15 MR. GROSSMAN: Well, do you know of any master
16 plan that does not say, have this sentence, a key objective
17 which has guided this planning process has been the need
18 for, instead of Clarksburg, any-burg to provide a variety of
19 housing types?
20 THE WITNESS: I think when you add this to the
21 chart, I think it makes a much stronger statement. I do.
22 And I think that by adding the development of age-restricted
23 housing on the site, it would help round out housing
24 choices, because clearly there are people, as has been
25 indicated by letters that we received into the record, there

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1 are people who have been looking for housing like this, and
2 want to stay in this, if you will, Brink Road sub-area, and
3 have not been able to find age-restricted housing. So I
4 think it does a better job and a strong job of doing that.
5 And also, you're probably right that the newer
6 master plans are more keyed into housing policy, because
7 that is more important and it's become more of a critical
8 issue in, I would say, the last 10 years. But for a plan of
9 this age to address it, I think was very unique.
10 MR. GROSSMAN: Is there anything in the master
11 plan which specifies an intended use for this particular
12 site? Not a zoning, not a zone, but --
13 THE WITNESS: Other than residential? Other than
14 residential?
15 MR. GROSSMAN: Right.
16 THE WITNESS: I guess so.
17 MR. GROSSMAN: There's nothing in there that
18 recommends a change to the RE-2, specifically, or a use
19 other than residential?
20 THE WITNESS: Other than residential, no.
21 MR. GROSSMAN: Okay.
22 THE WITNESS: I just think it goes above and
23 beyond what you see in a master plan of comparable age.
24 MR. GROSSMAN: Okay.
25 THE WITNESS: The other thing I wanted to talk

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1 about was the PRC zone and the changes to the PRC zone which
2 had been alluded to. But I thought I might mention them.
3 In 1994, as I indicated, the zone did not permit, did not
4 permit its use on parcels that were under 750 acres. There
5 have been three separate efforts to change that over the
6 history of the zoning text amendments.
7 In 2002, ZTA 2-05 split the property, the PRC zone
8 into two categories for properties 25 acres and properties
9 of 750 acres. In other words, it reduced the required
10 minimum lot to 25 acres from 750 acres. And for the first
11 time the zoning ordinance allowed parcels with less than 750
12 acres to wear the PRC nomenclature, once again remembering
13 that, you know, in 1994 there was no such thing.
14 The parcel couldn't have had the PRC nomenclature
15 because the existing requirement was 750 acres. However,
16 the 2002 ZTA, it did adopt the minimum lot size, but it did
17 not change any kind of requirements for services. Services
18 still had to be provided on-site for both a 25-acre PRC as
19 well as a 750-acre PRC. In 2006, moving along --
20 MR. GROSSMAN: And what was that ZTA?
21 THE WITNESS: 0205.
22 MR. GROSSMAN: Okay.
23 THE WITNESS: In 2006 there was another amendment,
24 ZTA-0618, and that was introduced to allow the necessary
25 uses and the services and the facilities to be accessible to

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1 properties that were of 25 acres, so therefore no longer
2 requiring the services to be provided on site.
3 This amendment was never adopted, and the Council
4 did not act in time, and there were a variety of issues
5 associated with it. And it just died a silent death.
6 However, in 2007, ZTA-0627 was adopted to allow
7 off-site services. And this added language to the purpose
8 clause, indicating that a smaller PRC may not have to
9 contain all the services on-site, and in fact, instead, such
10 communities could alternatively be accessible, too. And
11 that's the, those are the optimum terms, be accessible to
12 services.
13 BY MR. KLINE:
14 Q And that is the current language in the zoning
15 ordinance today?
16 A Yes, it is. And I think we've done a pretty good
17 job of demonstrating where local retail, such as Clarksburg
18 Village will be, and Milestone, as well as some of the
19 services in Germantown Town Center, where there are
20 services, including medical services, that fall within at
21 least my understanding of what accessible to means. And
22 this allowed a 25-acre site to enjoy the PRC without
23 burdening them with the provision of services that could be
24 easily accessible.
25 Okay. So that just gives you sort of a brief

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1 history of why we are where we are now, and why we couldn't
 2 be there before.
 3 MR. GROSSMAN: All right.
 4 THE WITNESS: In terms of anything else I might
 5 have to say, I guess I would go back to the whole issue of
 6 compliance with the master plan, since that's very
 7 important. And I believe that the Planning Board agrees
 8 with me that --
 9 BY MR. KLINE:
 10 Q It's nice they agree with you.
 11 A What?
 12 Q Is that how you wanted to say that, the Planning
 13 Board agrees with you?
 14 A No. I'm saying that I agree with them. Okay.
 15 MR. GROSSMAN: Well, they agree with her because
 16 she came up with her recommendation, probably testified in
 17 front of the Planning Board.
 18 THE WITNESS: I did.
 19 MR. KLINE: She did.
 20 MR. GROSSMAN: So there you go. They did agree
 21 with you.
 22 THE WITNESS: Maybe I influenced them. Yes.
 23 Thank you. I believe that the Planning Board agrees with me
 24 that the rezoning request was substantially, request
 25 substantially complies with the 1994 Clarksburg master plan.

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1 And in their letter they offered the opinion that the
 2 proposal, quote, "Appeared to be in concert with the master
 3 plan's objectives, despite some ambiguities and text
 4 language within the confines of an 18-year-old document."
 5 And they labored a bit through it, but I think
 6 that we have shown quite a concerted effort to adhere to the
 7 intent of the PRC zone. And the Planning Board, of course,
 8 agreed with us that the site's location within a short drive
 9 of shopping centers and other amenities, with a community
 10 center on-site and a park within walking distance, satisfied
 11 the requirement in the purpose clause for adequate access to
 12 day-to-day and recreational services.
 13 Additionally, we're providing, as Mr. Unterberg
 14 outlined, a connective trail system throughout the community
 15 which, just for informational purposes, is viewed as the
 16 most popular recreational amenity for, requested by adults
 17 of age 50 and above, which also reinforces the requirement.
 18 And I guess the only other thing I would offer is
 19 that I really think the provision of age-restricted non-
 20 vertical housing rounds out this housing mix, and will
 21 provide opportunities for a variety of folks to populate
 22 Clarksburg, which is clearly what the community is looking
 23 for.
 24 The master plan made a big statement by approving
 25 -- the Council made a huge statement, I think, in 1994, by

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1 indicating that this is a transit-oriented community. And
 2 although the transit is not there yet, transit needs density
 3 in order to survive and in order to have success. And even
 4 though it's been a long time in coming, I think that the
 5 density that would be enjoyed on this site will also help
 6 contribute to the viability of the community.
 7 MR. GROSSMAN: I don't know whether that last one
 8 is too much of a bootstrap, I think, for me to buy but --
 9 THE WITNESS: Well, I know, but that's what
 10 they've --
 11 MR. GROSSMAN: Let me go back to a different
 12 question about amenities. I mean, I'll assume that this
 13 list of amenities qualifies under the technical staff's
 14 standards for and their point counting for amenities. I'm
 15 just curious to know why the proposed community center seems
 16 to be so anemic in size.
 17 I mean, you're talking about a three room
 18 building, two of the rooms being 10 feet by 10 feet. It
 19 just struck me as a little bit curious. I don't know that
 20 it undermines your application, but perhaps you could
 21 explain that a little bit?
 22 THE WITNESS: I'm not sure that's something that
 23 you want me to explain?
 24 BY MR. KLINE:
 25 Q Well, Ms. Russel, if you can answer the question,

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1 great. If not, we'll call a later witness to supplement it.
 2 A Well, I think that's, I think that's our idea for
 3 now. And I think one of the, my understanding is that the
 4 applicant wants the community center to have a lot of
 5 flexibility to provide the kind of services that he ever
 6 moves in might want to enjoy. And right now, we're not
 7 really sure what that might be. I'm not sure that answers
 8 your question about the size.
 9 MR. GROSSMAN: Do you really think that a
 10 building, yes, that a building that size with three rooms,
 11 two of which are very small, 10 by 10 is a small room,
 12 could, does that provide the kind of flexibility you're
 13 talking about?
 14 THE WITNESS: Well, I think if you have one large
 15 meeting room. I mean, these are people who are probably
 16 still going to be working. So you're not, so there's going
 17 to be a lot of -- people are not, I don't think people are
 18 going to be there all day.
 19 I mean, I think we're going to have to try to
 20 figure out afterwards, we'll have to try to figure out what
 21 the demand is for services. I think having one meeting room
 22 is important, and I think we're flexible in terms of how it
 23 may emerge. But we don't really know what the need is going
 24 to be.
 25 MR. GROSSMAN: All right. I raise the issue of

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1 you --

2 MR. KLINE: We'll remember that for later.

3 MR. GROSSMAN: -- and you're entitled to have,

4 you're entitled to have this application in exactly its form

5 presented to the Council. You know, you have that right.

6 It just seemed to me that that would be, even though you

7 list all these amenities by point count, that that's an

8 awful small community center. It doesn't have anything but

9 empty rooms in it. It doesn't have an exercise center, for

10 example, or anything like that. I mean, I don't know, just

11 a reaction.

12 MR. KLINE: Well, it's not a binding element, so

13 it's still subject to some --

14 MR. GROSSMAN: Right.

15 THE WITNESS: And I think we want to see who lives

16 there and what they might want. Can I go back to one thing

17 that, my bootstrap thing? I just want you to know that I

18 didn't that the transit orientation of the Clarksburg master

19 plan, albeit a bone of contention with the community because

20 transit is not there, but the plan has language in it that

21 says, "The plan proposes a comprehensive transit system that

22 will reduce dependence on the automobile."

23 And even though the transit is not there yet, the

24 land use element of the plan was adopted with a, as a

25 transit-dependent community. That was one of the bulwarks

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1 of this plan.

2 MR. GROSSMAN: Right.

3 THE WITNESS: Whether it's there or not is kind of

4 beside the point.

5 MR. GROSSMAN: The bootstrap reference I was

6 talking about is, I got the idea that the sense of your

7 argument was that having this proposed development there

8 would aid in justifying or bringing about the kind of

9 transit that is suggested would be helpful to the community.

10 And I don't know that that, in terms of a rezoning, that

11 that's something, a conclusion I could reach.

12 THE WITNESS: I guess what I would like to say is

13 that I know that there are people in the community, from my

14 tenure there in Clarksburg as the ombudsman, who felt very

15 strongly that density was not a nasty word because in order,

16 throughout the County, I mean, it's a basic land use issue

17 that in order to have transit, you have to have ridership.

18 MR. GROSSMAN: Right.

19 THE WITNESS: And without ridership, without units

20 and households, you don't have ridership. So it, I think

21 that's a concern. And I think there were people, and there

22 are people in the community with whom I communicate, who

23 feel that additional ridership is important. 140 units are

24 not going to be the end all be all to bring the CCT to

25 Clarksburg.

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1 MR. GROSSMAN: Right.

2 THE WITNESS: I understand that.

3 MR. GROSSMAN: I thought that was the suggestion

4 in what you said.

5 THE WITNESS: No. But I believe that there are

6 people there who strongly feel that the community needs to

7 continue to develop to help with the future of transit,

8 because transit only happens if there is ridership.

9 MR. GROSSMAN: Okay.

10 THE WITNESS: I wouldn't mean to infer that 140

11 units is going to bring the CCT into existence.

12 MR. GROSSMAN: All right.

13 BY MR. KLINE:

14 Q One simple conclusionary question, and that was,

15 from your unique perspective as the Clarksburg ombudsman, in

16 your opinion, is this application in accordance with the

17 public interest and the ultimate benefits to Clarksburg?

18 A Yes, I do believe so, most emphatically.

19 MR. KLINE: Thank you. No further question of

20 Ms. Russel.

21 MR. GROSSMAN: All right. Cross-examination?

22 Anybody? Yes.

23 CROSS-EXAMINATION

24 BY MS. GOODRICK:

25 Q Okay. I wanted to look back again at the map.

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1 And that's the one that shows the entrance, and make sure I

2 understand something.

3 A That one?

4 Q It's the one that shows the entrance into

5 Clarksburg Village.

6 A That one?

7 Q Okay. All right. So am I correct in saying that

8 what, they say the primary entrance to Clarksburg Village is

9 going to be through here?

10 MR. GROSSMAN: Through here being?

11 BY MS. GOODRICK:

12 Q Through, down A-305, which goes into the Butz

13 property.

14 MR. GROSSMAN: Okay.

15 BY MS. GOODRICK:

16 Q Is that the primary entrance to Clarksburg

17 Village?

18 A What I said was that there will be a monumental

19 entrance feature at the intersection where you just pointed,

20 on either side of that road.

21 MR. GROSSMAN: That's Ridge Road and 305?

22 THE WITNESS: Yes. I said, there's a -- do you

23 know what, I mean a sign. Yeah, yeah.

24 BY MS. GOODRICK:

25 Q A sign. Okay.

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1 A There are other entrances to Clarksburg Village.
2 And the other point I made was that that's the area that I
3 believe the document is referring to on the two to four
4 units per acre, because that's a boundary between Germantown
5 planning area to the east and Clarksburg to the west.
6 Q But, you know, this is a road coming down this
7 way. And this --
8 MR. GROSSMAN: You can't argue with her. You can
9 only ask questions.
10 BY MS. GOODRICK:
11 Q Okay. And so this is an entrance to Clarksburg
12 Village. So what you are suggesting is that there are --
13 A Yes.
14 Q -- other entrances?
15 A Absolutely. You can see it from the roads.
16 Q Right. But this is, what you said, a monumental
17 one? I mean, the only monumental one?
18 A No, no. No, I meant the sign. The monumental
19 entrance refers to the sign. It's not an adjective.
20 MR. GROSSMAN: A monument sign. A monument sign.
21 THE WITNESS: Yes.
22 MR. GROSSMAN: I asked the same question.
23 BY MS. GOODRICK:
24 Q So, I --
25 A It's not an adjective.

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1 Q But still, okay, that's a major entrance, then. I
2 understand.
3 A I didn't mean monumental in terms of --
4 Q No, I get it now. But there's still an issue.
5 MR. GROSSMAN: In terms of magnificent and --
6 THE WITNESS: Maybe.
7 MR. GROSSMAN: I had the same question. Don't
8 worry.
9 BY MS. GOODRICK:
10 Q It's still, it's still a regular, proper view.
11 Okay. So it's the only entrance when you approach from the
12 south? Is that true, the only entrance when you approach
13 from the south, or the first entrance?
14 A It's the first. Yes.
15 Q Okay. I also just want to, I think draw a
16 distinction, if I am correct.
17 MR. GROSSMAN: You can ask the question, if you
18 can ask a question.
19 BY MS. GOODRICK:
20 Q I will. That what is being said here is --
21 MR. GROSSMAN: No, no, no. You have to ask her,
22 you'll be allowed to testify.
23 MS. GOODRICK: No, no.
24 MR. GROSSMAN: You can say, give any testimony you
25 want with what is said here, but you have to ask her a

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1 question, a cross-examination question, if that's what you
2 are --
3 MS. GOODRICK: I'm trying to get to a question.
4 MR. GROSSMAN: All right. Just start with a
5 question.
6 MS. GOODRICK: I'm trying my best.
7 MR. GROSSMAN: Start with a question. Skip the
8 preamble.
9 BY MS. GOODRICK:
10 Q Okay. What you had said here today differs from
11 the planning staff's report.
12 MR. GROSSMAN: Does what you've said here today
13 differ from the planning staff report? That's a question.
14 THE WITNESS: Portions of --
15 BY MS. GOODRICK:
16 Q That's the question.
17 A Well, it's not a yes or no answer. The planning
18 staff chose to downplay, I guess you would say, the language
19 on page 75.
20 MR. GROSSMAN: I think the plain answer in writing
21 is yes.
22 THE WITNESS: Yes.
23 MR. GROSSMAN: I mean, it does differ.
24 THE WITNESS: Yeah. Yeah.
25 MR. GROSSMAN: I mean, the planning staff found

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1 that there was too much density, because they interpreted
2 the master plan differently.
3 THE WITNESS: Absolutely.
4 MR. GROSSMAN: I'll answer it for her.
5 MS. GOODRICK: Thank you.
6 THE WITNESS: Okay.
7 MR. GROSSMAN: I probably shouldn't do that, but I
8 mean --
9 THE WITNESS: No, no, no.
10 MR. GROSSMAN: -- it's quite obvious on the
11 surface that that's the case.
12 THE WITNESS: Right.
13 MR. GROSSMAN: And the Planning Board also
14 disagreed with the planning staff.
15 THE WITNESS: Right.
16 BY MS. GOODRICK:
17 Q Okay. So does the document that the planning
18 staff wrote, is that a part of the record --
19 MR. GROSSMAN: Absolutely.
20 BY MS. GOODRICK:
21 Q -- that you have?
22 MR. GROSSMAN: It's required --
23 THE WITNESS: Absolutely.
24 MR. GROSSMAN: -- to be a part of the record, as
25 is the Planning Board letter. They are both required to be

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1 part of the record, and they are part of the record.
2 BY MS. GOODRICK:
3 Q Okay. So as a result of these discussion, can a
4 decision be made that, well, I'm not going to ask that,
5 because I think that's -- I don't think you'd answer me,
6 from what I've heard.
7 MR. GROSSMAN: One can never tell.
8 MS. GOODRICK: Okay. But I would like to say also
9 that from what has been said, that it looks like to me --
10 MR. GROSSMAN: No, no, no, you're testifying.
11 MS. GOODRICK: Okay.
12 MR. GROSSMAN: I'll swear you in later, and you
13 can testify, but let's get to the end of the applicant's
14 case, unless you have to leave now.
15 MS. GOODRICK: No.
16 MR. GROSSMAN: If that's the case, I would swear
17 you in now and take your testimony.
18 MS. GOODRICK: No. Okay. Here's the question.
19 Okay. Can I ask? Is it okay? Okay.
20 BY MS. GOODRICK:
21 Q Are the only things that you are proposing to be
22 the services that are provided on site, the building and the
23 trails?
24 MR. KLINE: I'm going to object to that question,
25 because I don't think Ms. Russel testified in that regard at

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1 all. I'll be glad to put back witnesses who did testify or
2 will, Mr. Chairman.
3 MR. GROSSMAN: That's fair. They listed their
4 amenities, and they did testify as to what they were. And
5 they list them in the exhibit. Exhibit, I think we have
6 plenty of information on it.
7 MR. KLINE: Number 66.
8 MR. GROSSMAN: 66. Okay. And they list the
9 exhibits that are on-site. Pedestrian system, under (b)(1).
10 Pedestrian system, bike system, natural areas, and three
11 indoor community spaces, and the community garden. Those
12 are the on-site amenities.
13 BY MS. GOODRICK:
14 Q Okay. Is it true that the, when you talk about
15 the bike trails, and the bike trails being hooked up to the
16 ones in Clarksburg Village or across Brink Road, that, do we
17 know that those bike trails will connect with Clarksburg
18 Village, for example?
19 A Yes. I think, yes. I think Mr. Unterberg already
20 had an exhibit.
21 Q Yes.
22 MR. GROSSMAN: You can answer that, Mr. Unterberg,
23 if you want to.
24 MR. KLINE: Do you want him to answer at this
25 time?

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1 MR. GROSSMAN: Sure. If you think that's better,
2 Mr. Kline, because he's the one who testified about it.
3 MR. KLINE: It's better than me objecting to
4 having the wrong answer.
5 MR. GROSSMAN: Right, right.
6 MR. KLINE: So we put up Exhibit No. --
7 MR. UNTERBERG: 34(k).
8 MR. KLINE: Ms. Goodrick, if it's okay, can --
9 MS. GOODRICK: Of course.
10 MR. KLINE: -- Mr. Unterberg answer the question?
11 MR. GROSSMAN: Yes.
12 MR. UNTERBERG: Speaking from 34(l), the road
13 plans for A-305 and which include the portion that goes
14 through the subject property, and the widening for Route 27,
15 they are the responsibility of Clarksburg Village. They
16 have plans pending that are going through final engineering
17 approval, that include those bikeways. Those bikeways are
18 required for their approvals.
19 So the bikeway that would be along 27 and then go
20 up 305 to the north and west are included in that approval
21 package.
22 MR. GROSSMAN: Okay.
23 MS. GOODRICK: Okay. All right. I think that's
24 it.
25 MR. GROSSMAN: All right. Mr. Wills?

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1 MR. WILLS: I have no questions.
2 MR. GROSSMAN: Okay. Any redirect?
3 MR. KLINE: No, sir.
4 MR. GROSSMAN: All right. I thank you very much
5 for your testimony, Ms. Russel.
6 MS. RUSSEL: Thank you.
7 MR. GROSSMAN: Shall we take a break here?
8 MR. KLINE: Could I just ask the indulgence of
9 these folks first?
10 MR. GROSSMAN: Right.
11 MR. KLINE: There's a young lady who has been kind
12 of in and out a couple of times today hoping to get a chance
13 to talk, and she's frankly run out of time. And I wonder if
14 I could slide her in? She would be testifying in support of
15 the application a little bit premature, but she can't hang
16 around much longer. And if I could have your indulgence --
17 MR. GROSSMAN: She's not an expert? She's a
18 member of the community?
19 MR. KLINE: Right. Right. I don't have any
20 questions to ask her. I'm not sure what she's going to say.
21 MR. WILLS: My only question is, how long can this
22 go on for today? I'd like to at least get my testimony in
23 before the end, whatever time it ends.
24 MR. GROSSMAN: We will get your testimony. How
25 long is your testimony going to take? You can estimate.

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1 MR. WILLS: Five minutes.
2 MR. GROSSMAN: We will definitely get your
3 testimony in.
4 MR. KLINE: We would be glad to defer some of our
5 witnesses to accommodate Mr. Wills.
6 MR. GROSSMAN: Right, and will do it for the
7 others of you, also, if you wish to make sure that you get
8 your testimony in today, because we did set a second day
9 here for this hearing. But I will certainly accommodate
10 anybody who needs to get it in today.
11 MR. KLINE: So I will call her.
12 MR. GROSSMAN: We generally end at 5:00. We've
13 gone on for much past that, depending on whether people can
14 do it or not, including the court reporter, and so on. But
15 since we have a second day scheduled, unless we look like
16 we're about to finish, I probably wouldn't go beyond. So if
17 there is no objection, I would accommodation --
18 MR. KLINE: And we'll do that after the break.
19 MS. KUBIT: That's fine.
20 MR. KLINE: That's fine. Thank you.
21 MR. GROSSMAN: Okay. All right. So we'll take a
22 five-minute break here and come back at 20 after 4:00.
23 (Whereupon, at 4:13 p.m., a brief recess was
24 taken.)
25 MR. GROSSMAN: All right. We're back on the

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1 record. And Mr. Kline, did you have an additional witness?
2 MR. KLINE: Thank you, again, to these folks for
3 letting us go a little bit out of order. I'm just going to
4 merely, I asked Ms. Kubit to introduce herself and let her
5 have her say.
6 MR. GROSSMAN: All right, ma'am. Would you state
7 your full name, please?
8 MS. KUBIT: Sure. My name is Kathryn Kubit, and
9 I'm with Elm Street Development.
10 MR. GROSSMAN: Okay. And how do you spell your
11 last name?
12 MS. KUBIT: K-U-B-I-T.
13 MR. GROSSMAN: Okay. And your first name with a K
14 also?
15 MS. KUBIT: Yes. K-A-T-H-R-Y-N.
16 MR. GROSSMAN: All right. With Elm Street.
17 MS. KUBIT: Uh-huh.
18 MR. GROSSMAN: Would you raise your right hand,
19 please?
20 (Witness sworn.)
21 MR. GROSSMAN: All right. You may proceed.
22 STATEMENT OF KATHRYN KUBIT
23 THE WITNESS: Thank you. First of all, thank you
24 for letting me speak in front of you today, and thank you
25 for letting me sneak in. My name, as I mentioned earlier,

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1 is Kate Kubit. And I'm a vice-president with Elm Street
2 Development.
3 Elm Street Development is the largest green field
4 developer in Montgomery County. And we're currently, we've
5 been active in Clarksburg for over 30 years, acquiring land,
6 helping with the 1994 master plan. And now we're developing
7 Clarksburg Village, which is a community adjacent to this
8 one, or nearby this one. Not quite adjacent, but nearby.
9 We're also the ones responsible for building the
10 connection of Snowden Farm Parkway from Maryland 27 to
11 Clarksburg Village.
12 We've been working in Clarksburg Village
13 developing it for 10 years. And Clarksburg Village is a
14 2,700 unit community, as I mentioned, adjacent to this one.
15 I'm here speaking to voice our support, our very strong
16 support for this particular project and the local map
17 amendment for this project.
18 Clarksburg Village, right now, is growing. We
19 have about 1,000 units built, and in the next one to two
20 years, in addition to several hundred additional units,
21 we're looking to have an elementary school built, a retail
22 area is going to be built. And many of our facilities,
23 including a large park in Clarksburg Village adjacent or
24 nearby this community, additional rec center and pool is
25 going to be built. A bunch of trails are going to be built.

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1 And finally, we're also building a for-rent
2 affordable multi-family senior housing project in Clarksburg
3 Village for 100 low-income seniors. But that project is
4 very different from this one. I wanted to make sure that's
5 clear. It's an affordable deal. It's a multi-family deal.
6 And it's a for rent. So that's a very different animal from
7 what's being proposed by Mr. Butz.
8 We are very excited to be part of this growing
9 community. However, one thing that we have noticed as we've
10 gone through the process over the past 30 years, and in the
11 past 10 years in particular, is the fact that there is no,
12 aside from what we are proposing, to build the 100 units
13 we're proposing in Clarksburg Village, there is no other
14 senior or active adult community in Clarksburg. And we fell
15 that this is a disservice to the Clarksburg community.
16 Many, I am the main interface between the
17 residents of Clarksburg Village and Elm Street Development.
18 So whenever there is an issue, people come to me. Whenever
19 there is a request, people come to me. So I'm the main
20 source on the ground of interface with Clarksburg Village.
21 And over the past, my tenure on the project, I
22 often get questions from residents about where their parents
23 can move, as they have parents that are aging. They want
24 their parents to be nearby them, and their grandchildren.
25 And they're looking for a place near Clarksburg Village that

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1 their parents can live.
2 And unfortunately, other than the affordable
3 limited income project that we're building, there is nothing
4 else in the upcounty area, which is a disappointment to a
5 lot of the residents.
6 So we were very excited to hear when Mr. Butz was
7 going to propose an active adult community for his
8 particular property. And so, and we're very much in support
9 of that. And we feel that the proposal is a fantastic
10 addition to the community, so much so that we've partnered
11 with Mr. Butz to identify synergies between our projects.
12 So far we've worked with them on infrastructure
13 building, in particular, the road, Snowden Farm Parkway, as
14 well as some utilities, utility work that we are doing. And
15 in addition to that, we've also extended the invitation to
16 Mr. Butz that after his community were to get approved, that
17 they could join our HOA if they wanted to do so, because we
18 feel so strongly that the addition of an active adult
19 community in our community overall would be a great addition
20 to the community.
21 So given all of this, we do strongly support the
22 local map amendment for the Butz property. We think that it
23 serves a badly under-addressed and growing demographic. Our
24 residents would like to see something like this nearby. And
25 we're very excited at the prospect that something like that

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1 would be in our community.
2 MR. GROSSMAN: All right. Cross-examination,
3 Mr. Hancock? Okay. Ms. Goodrick?
4 CROSS-EXAMINATION
5 BY MS. GOODRICK:
6 Q Do you have anything in writing about residents in
7 this area being members of the HOA? Have you written any
8 rules of agreement, or is there anything --
9 A We have a general agreement in writing, but it's a
10 very rough draft at this point until things are more
11 finalized in terms of approvals and things like that.
12 That's when we would start to hammer out the agreements.
13 But it is a written invitation that's been signed, at this
14 point, for them to join the HOA if they wish to do so.
15 That's their decision. If they don't wish to join, that's
16 also their, you know, that's their prerogative. But we have
17 invited them to join if they would like to.
18 Q Is the HOA an independent body from Elm Street?
19 A No, not at this point.
20 Q At some point is it going to be an independent
21 body?
22 A Yes.
23 Q And what has to occur for that to be an
24 independent body?
25 A Lots of more houses need to get built.

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1 Q Okay. So what we're supposed to glean is that --
2 MR. GROSSMAN: No, no, no. That's not a question.
3 BY MS. GOODRICK:
4 Q From what you were saying, that since there are
5 only the broad parameters of this, that there is no
6 assurance that this would happen, or there's no assurance as
7 to the way that this would happen? In other words --
8 MR. GROSSMAN: No, that's a question.
9 MS. GOODRICK: Okay.
10 MR. GROSSMAN: Is there any assurance that this
11 would work?
12 THE WITNESS: We've worked out much more
13 complicated situations other than this with respect to other
14 communities that we've worked in. So I don't think that
15 this would be problematic for the HOA at all. Right now we
16 have townhomes and single-family homes in our community.
17 And there is a different level of service for each
18 one of those unit types. And dues and services and things
19 like that, are identified by unit type. And our HOA
20 management company is very proficient. And they are able to
21 manage that right now. So I don't anticipate that the
22 addition of these 140 units would be problematic at all from
23 the management perspective.
24 MR. GROSSMAN: Ms. Goodrick's questions raised one
25 in my head, and that is, can we have a copy of this

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1 agreement regarding the HOA in the record? I think that
2 since it's been mentioned a couple of times now, we should
3 have a copy of this in the record.
4 MR. KLINE: Do we even have a signed agreement?
5 THE WITNESS: We do have a signed -- I mean, it's
6 more than just that. There are some other things in that
7 agreement. But if you, we can get you something in writing
8 that would --
9 MR. KLINE: Is there anything about it that you
10 would not want to have out in the public realm at all?
11 THE WITNESS: I would have to go back and look.
12 And worst case, if we can't get you that specific agreement,
13 we would get something in writing. But it is definitely
14 something that we are interested in having this community
15 join ours. And there has been an agreement in writing, but
16 there are other things in that agreement that we may not
17 want to be public.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: So I would have to check.
20 MR. GROSSMAN: All right. And it affects the
21 maintenance, the perpetual maintenance of the organization,
22 which is a Council area of inquiry, by statute. And it also
23 potentially affects how the community will be run. So it is
24 of interest here.
25 THE WITNESS: Right now, the document is very

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1 loose.

2 MR. GROSSMAN: Right now the document is?

3 THE WITNESS: It's very loosely written. So the

4 details of the agreement would have to, would be fleshed out

5 at a later date.

6 MR. GROSSMAN: I understand.

7 MS. GOODRICK: Okay.

8 MR. HANCOCK: Excuse me.

9 MR. GROSSMAN: Yes, Mr. Hancock.

10 MR. HANCOCK: I have a question.

11 CROSS-EXAMINATION

12 BY MR. HANCOCK:

13 Q Since the, if these went through, these people

14 really have a totally different, they're totally diverse

15 from what the rest of the community to the north is. So are

16 you envisioning that there would be two homeowners

17 associations? There would be one for this community, and

18 one for the property that Elm Street is developing north of

19 it now? Would these people then have two homeowner fees?

20 MR. GROSSMAN: Which property are you talking

21 about that Elm Street is developing?

22 MR. HANCOCK: The piece, they're saying --

23 MR. GROSSMAN: You mean the Village itself?

24 MR. HANCOCK: They're saying, yes, the larger

25 piece.

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1 MR. GROSSMAN: Clarksburg Village.

2 MR. HANCOCK: Yes, Clarksburg Village.

3 MR. GROSSMAN: I see. Okay.

4 BY MR. HANCOCK:

5 Q When that's developed, are you, is this going to

6 become a part of that same HOA, or are these people going to

7 be separate? Because they have a total different interest

8 in life than what Clarksburg does?

9 A I think that it's ultimately going to be their

10 decision whether or not they join. We've extended the

11 invitation for them to join. We think that, you know, we

12 think it would be great to integrate a different group of

13 people, if you will, into the community. And we don't think

14 that they're, I mean, yes, some of their interests may be a

15 little bit different. But ultimately, we have many things

16 we think that would interest them, the trails, the retail,

17 the community centers, and things like that. And so we've

18 extended the invitation.

19 If they do join us, again, the details on the

20 HOA's would have to be worked out, whether or not there

21 would be one or two. I would assume there would be one. I

22 would assume the fee structure might be a little bit

23 different. But again, none of those details have been

24 worked out at this point.

25 MR. GROSSMAN: Okay. You were cut off from

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1 questions.

2 MS. GOODRICK: That's okay. That's all right.

3 MR. GROSSMAN: Go ahead.

4 BY MS. GOODRICK:

5 Q So can you have for us the, whatever the agreement

6 is that you have, provided for us before we have the hearing

7 on Friday? In other words, this may be extended to Friday,

8 and this is a key issue. So can we have that as soon as

9 possible, so that we can react to that?

10 A We will try. We will get you something by Friday.

11 Q We would like it before Friday, because if we show

12 up, then there it is, it takes too long for us to react.

13 A I understand.

14 Q Okay.

15 A I understand.

16 Q So shall I say, Thursday night at 9:00 p.m. is not

17 helpful either.

18 A I understand. I got you.

19 Q Okay. So when do you think you might be able to

20 provide that for us?

21 A Before, before Friday.

22 MR. GROSSMAN: Can we --

23 MR. KLINE: I'd like to look at this document. I

24 don't even know what it says. We will share what we can as

25 quickly as possible.

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1 MR. GROSSMAN: All right.

2 MR. KLINE: Before we leave today, if I can get

3 your e-mail addresses, we will discuss it tonight, and

4 probably be able to make a decision tomorrow on it.

5 MR. GROSSMAN: Okay.

6 MR. KLINE: And get to you whatever we can.

7 MR. GROSSMAN: Yes. Let's do it by Wednesday,

8 since the document already exists. And I think that's a

9 fair question by Ms. Goodrick.

10 BY MS. GOODRICK:

11 Q So does there already --

12 MR. KLINE: Yes, yes.

13 BY MS. GOODRICK:

14 Q Does there already exist an HOA agreement with the

15 people who now live there? I mean, do you already have an

16 existing HOA agreement for those people?

17 A Well, there are documents that the HOA, with

18 respect to --

19 Q No, I'm talking about the people, in other words,

20 what you were suggesting, I believe, is that the people in

21 the Butz property area would be a part of that HOA. So it

22 would be of interest to us to see what those agreement are,

23 are right now, you know. What are those agreements?

24 A So like the covenants and the bylaws of the

25 community?

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1 Q Well, whatever --

2 MR. KLINE: Today, you must have a mechanism for

3 assessing the townhouses in the HOA. So you'd have a

4 recorded declaration of covenants to them.

5 THE WITNESS: Uh-huh.

6 MR. KLINE: And in fact, it is part of 34(b).

7 It's shown in there. I realize you don't have that.

8 MS. GOODRICK: Right.

9 MR. GROSSMAN: We do have a copy in here. You can

10 look at it.

11 MR. KLINE: So there is an existing HOA for

12 Clarksburg Village.

13 MR. GROSSMAN: Okay. So you included it in 34(b)?

14 You've got the --

15 MR. KLINE: It would be CV 2, 3 and 4.

16 MR. GROSSMAN: Okay. There you go. So you are

17 certainly welcome to take a look at it at our office.

18 BY MS. GOODRICK:

19 Q Okay. So, and are there other, I don't know the

20 terminology, other things over than the HOA agreements that

21 potentially, that potentially the people in the Butz

22 property would have to agree to, or sign onto, that exist

23 now or are proposed?

24 MR. KLINE: If you know.

25 THE WITNESS: I mean, there are some architectural

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1 guidelines.

2 BY MS. GOODRICK:

3 Q So would the Butz property have to agree to those?

4 A We would have to look at those, because I think

5 given the unique nature of the unit types here compared to

6 what we're doing in Clarksburg Village, I mean, all of that

7 stuff would have to be worked out once the decision was

8 made.

9 The Butz family hasn't even decided whether or not

10 they would like to annex the property into the Clarksburg

11 Village HOA. And once that occurs, there would be a lot of

12 discussions that would have to happen, and decisions that

13 would need to be made. But, you know, nothing is so set in

14 stone in Clarksburg Village that it's not amenable to

15 accommodate the inclusion of the 104 units if they chose to

16 annex themselves and work with the community.

17 Q But I believe that it is true, though, that you,

18 that a part of the agreement to get --

19 MR. GROSSMAN: That's not a question.

20 BY MS. GOODRICK:

21 Q Okay. You have to have services provided close by

22 in order to -- and that has to be, these services are said

23 to be provided by Clarksburg Village.

24 A I know that there are specific services provided

25 within Clarksburg Village. I don't know what's provided

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1 outside. I'm sure there's been other provisions made, but I

2 am not privy to the decisions to provide other types of

3 amenities and things like that. I know that Clarksburg

4 Village has a lot of amenities, I think, that would be of

5 interest to this demographic.

6 Q Can you provide for us whatever amenities that

7 you, that will be a part of the HOA agreement? In other

8 words, it seems to me that you already have a lot of --

9 MR. GROSSMAN: No, that's okay. They had a

10 question there.

11 MS. GOODRICK: Okay.

12 MR. GROSSMAN: Can you provide whatever other

13 amenities as part of the HOA agreement that presumably would

14 be available to the residents of this proposed community?

15 THE WITNESS: Sure.

16 MR. GROSSMAN: Okay.

17 MS. GOODRICK: But -- okay.

18 MR. GROSSMAN: You have a great instinct for

19 closing the door, better than many, many attorneys I've see.

20 I want to congratulate you.

21 MS. GOODRICK: Really?

22 MR. GROSSMAN: Yes.

23 MS. GOODRICK: Well, thank you.

24 MR. GROSSMAN: Closing the door meaning, getting

25 to the bottom of the point. So you --

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1 MS. GOODRICK: All right. Thank you.

2 MR. GROSSMAN: But you've gotten there, so --

3 BY MS. GOODRICK:

4 Q Okay. So, okay. I want to make sure, I want to

5 see, I wonder if you agree with the fact that this is a

6 statement made in the Elm Street Development letter of May

7 18th, 2012. And it says, "The primary entrance to the

8 Clarksburg Village will be through the Butz Farm along

9 future Snowden Farm Parkway."

10 "The primary entrance to Clarksburg Village will

11 be through the Butz Farm along the Future Snowden Farm

12 Parkway." So you are saying that the primary entrance to

13 Clarksburg Village is through the Butz Farm. Is that

14 correct?

15 A Yes. According to my boss, that is correct. Yes.

16 Q Your boss said that in writing.

17 A In writing, so yes.

18 Q Thank you.

19 A So I will agree with that. I mean, it's a four-

20 lane divided roadway. There are going to be two left turns.

21 I mean, it's a, that intersection is a big intersection. So

22 that will be the main entrance coming into the community.

23 Q Right. Okay. I think, I think that's it.

24 MR. GROSSMAN: All right. Mr. Wills?

25 MR. WILLS: I don't know if I can top that, but

1 I'm going to try.
 2 CROSS-EXAMINATION
 3 BY MR. WILLS:
 4 Q I'm sorry, I didn't catch your --
 5 A My name is, you can call me Kate. Kathryn.
 6 MR. GROSSMAN: Kathryn Kubit.
 7 BY MR. WILLS:
 8 Q Okay, Kate. Kathryn, are there financial
 9 agreements between, or anticipated between Clarksburg
 10 Village and the owners of the Butz property, or the
 11 developers of the Butz property?
 12 MR. KLINE: Can you be more specific, Mr. Wills.
 13 That term just sort of sounds a little loose and ominous.
 14 BY MR. WILLS:
 15 Q Well, I'm just wondering, we have testimony here
 16 that this is a great property, from this group. And I just
 17 want to know if there's other agreements, financial
 18 agreements.
 19 MR. GROSSMAN: It goes to question of bias, and
 20 it's a legitimate inquiry for any witness. So I --
 21 MR. KLINE: Are you suggesting that we paid her to
 22 show up?
 23 MR. GROSSMAN: I understand. But, I mean, it's a
 24 legitimate line of inquiry as to any witness that goes to
 25 the question of bias. So yes, you may answer that.

1 THE WITNESS: There is no major financial gain for
 2 us to be here supporting this project today. There are some
 3 agreements that there is some money exchanging hands, but it
 4 has nothing to do with the integration of this. It has to
 5 do with the road right-of-way that we are acquiring through
 6 the community. And that's a completely separate issue, and
 7 it's a completely separate issue.
 8 And if that, and we have to also compensate
 9 the other homeowner that we are getting right-of-way from.
 10 And that's all part of the road project that we have to
 11 build for the County.
 12 MR. KLINE: And that's the Country Inn owner?
 13 THE WITNESS: Yes. That's Mr. Yeager. He's the
 14 Country Inn owner. So it's no more or less than we're
 15 paying anybody else for their land to build this off-site
 16 road that we need to build for Montgomery County.
 17 BY MR. WILLS:
 18 Q This off-site road meaning this A-305 roadway?
 19 A Right.
 20 Q And no other, you know, again, partnership planned
 21 other than what we talked about here --
 22 A No.
 23 Q -- regarding maybe they'd be part of the community
 24 documents of Clarksburg Village or community?
 25 A Not to my knowledge, no.

1 Q At this point, then, there is no agreement for
 2 access to any of the amenities of Clarksburg Village for the
 3 Butz property?
 4 A There is an invitation for them if they choose to
 5 join the HOA.
 6 Q There's an invitation.
 7 A Yes.
 8 Q But there's no agreement at this time?
 9 A There is no agreement at this point. It's at
 10 their, it's their decision --
 11 Q Okay.
 12 A -- whether or not they'd like to be in the
 13 community.
 14 Q You had mentioned something about senior housing.
 15 And I was rapidly writing some notes which I had to do for
 16 tomorrow, or otherwise I wouldn't have a job so I can afford
 17 to pay taxes and live in the neighborhood next to this. So
 18 you had mentioned 100 units of senior housing?
 19 A Yes.
 20 Q And your comment to that, I think I caught the
 21 tail end, was that that's the only upcounty --
 22 A That we're aware of. That's the only senior
 23 housing project, especially in this area of the upcounty,
 24 that we are aware of. And so we feel that because of that,
 25 it's 100 units. It's not enough to serve the senior, the

1 population as it continues to get older.
 2 MR. GROSSMAN: The witness also had indicated that
 3 it was low income senior housing, and I think you said it
 4 was rental? It that correct?
 5 THE WITNESS: Yes. It's affordable. It's a
 6 building. It's a rental building, low income seniors who
 7 are living on a very fixed income.
 8 BY MR. WILLS:
 9 Q Right. And again, you know, I'm asking questions,
 10 but I'm aware of a couple of others, so I don't know if
 11 that's, do I just use that when I --
 12 MR. GROSSMAN: Well, you can testify about it.
 13 MR. WILLS: All right. Those are my questions.
 14 MR. GROSSMAN: Okay.
 15 MS. GOODRICK: Is it possible to ask another
 16 question, or two other questions or not?
 17 MR. GROSSMAN: Well, here's the problem. I want
 18 to make sure, I promised Mr. Wills I would get his testimony
 19 in today, and it's now quarter to 5:00. So I'm not sure
 20 what everybody's schedule is here.
 21 MR. WILLS: I can stay for some time.
 22 MR. GROSSMAN: Court reporter, can you stay over a
 23 little bit? Okay. All right. So go ahead and ask your
 24 questions.
 25 BY MS. GOODRICK:

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1 Q Okay. All right. I'm not impugning in any way,
2 but were you saying that the only financial agreement that
3 you have with Butz has to do with the right-of-way for the
4 roads? In other words, there is no other financial
5 agreement?
6 A That's my understanding. Now, that's, because
7 I've worked on that project, I'm working on this project.
8 By that's my understanding.
9 Q Okay. So how do we find out, if that's your
10 understanding, there is no other --
11 (Discussion off the record.)
12 BY MS. GOODRICK:
13 Q Excuse me. I wanted to know if there are other
14 financial agreements between Elm Street and the Butz
15 property owners other than the roads? That's what you said.
16 You were asked the question and you said --
17 MR. GROSSMAN: Well, she answered that, not that
18 she knows of. And I think that, and then you asked her, how
19 can you find out. Do you know how she could find out if
20 there are other agreements?
21 BY MS. GOODRICK:
22 Q Or can you provide that?
23 A I can look into it and find out, but, you know,
24 there would be no other public information on that.
25 MR. GROSSMAN: Well, you're not required to look

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1 into it. The question is, do you know how she could find
2 out?
3 THE WITNESS: She could ask the Butz family. She
4 could ask, I mean, there's nothing in the public record that
5 I'm aware of.
6 MS. GOODRICK: Okay.
7 MR. GROSSMAN: The public record is not the issue.
8 The question is, do you know of any, and you said no.
9 THE WITNESS: No.
10 MR. GROSSMAN: Okay.
11 MS. GOODRICK: She said, not that she knew of.
12 MR. GROSSMAN: Right. Not that she knew of.
13 Right. But it's not a question of whether it's in the
14 public record or not.
15 MS. GOODRICK: No.
16 MR. GROSSMAN: Whether it's in the private record
17 or the public record, she said she doesn't know. That's my
18 point.
19 THE WITNESS: It would not be easily accessible.
20 Let me put it to you that way. That's what I'm trying to
21 get it, not in the public record, so it's not easy.
22 MR. GROSSMAN: Okay.
23 MS. GOODRICK: Okay. All right. So I'm just
24 going to stop.
25 MR. GROSSMAN: I mean, they have certain

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1 proprietary interest and rights of privacy to some extent,
2 unless the questioning requires, unless this inquiry
3 requires that kind of information.
4 And I think that you've gone as far as is
5 reasonable to go on what amounts to a bias inquiry. Because
6 that's really the only justification for us seeking that
7 kind of information, as to whether or not there is some kind
8 of financial exchange which biases this witness. I think
9 it's a little bit, you know, going any further than this
10 would be a little bit far-fetched, I think. But in any
11 event, all right. Any redirect of this witness?
12 MR. KLINE: No redirect, but I would like to note,
13 just so I don't offend anybody, as I said, I would like to
14 look at these documents.
15 MR. GROSSMAN: All right.
16 MR. KLINE: It's entirely possible we will redact
17 some parts of it, because our response is going to be
18 consistent with the standards of 59D-1.61 to show whether it
19 ensures perpetual maintenance of any areas intended for
20 recreational public purposes. And I think that's what the
21 zoning ordinance looks at, and that's all we should be
22 providing information on.
23 MR. GROSSMAN: Well, there were two areas. There
24 was that area. There was also the question of shared
25 amenities which came up.

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1 MR. KLINE: Which has a cost implication. I
2 understand that.
3 MR. GROSSMAN: And then the third question went to
4 whether or not there is some financial arrangement --
5 MR. KLINE: Right.
6 MR. GROSSMAN: -- which biases Elm Street to
7 support this. So there are three areas that are legitimate
8 inquiries. It's not just the zoning code area. When you
9 put a witness on, the question of bias is always an area.
10 But as I say, I think it was pretty much exhausted here.
11 All right.
12 MR. KLINE: Could I ask one more question?
13 MR. GROSSMAN: It will open up further cross-
14 examination.
15 MR. KLINE: Well, you know.
16 REDIRECT EXAMINATION
17 BY MR. KLINE:
18 Q How big is your community center for Clarksburg
19 Village?
20 A The one we're building right now, or that we
21 currently have one under design, there's a pool house
22 connected to it, but the community center room itself is
23 1,300 square feet.
24 Q To serve how many residents?
25 A It's, on that side of the stream valley it's about

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1 1,300.
2 Q And why do you feel that's adequate for what you
3 want to accomplish to serve those residents?
4 A We find that community centers are used in certain
5 ways. And for the ways that our community, because we
6 already have one community center that's built. And that
7 community center is approximately the same size. And for
8 the way our community is using that center, we feel that
9 this center is the right size to serve our community.
10 MR. KLINE: Thank you.
11 MR. GROSSMAN: I'm glad you raised that, actually,
12 because that's useful to me. Any questions of this witness
13 on that particular question?
14 MS. GOODRICK: No, not from me.
15 MR. GROSSMAN: All right. All right. I thank you
16 very much, Ms. Kubit.
17 MS. KUBIT: Thank you.
18 MR. GROSSMAN: Thank you very much for coming
19 down. All right. Let's turn directly to Mr. Wills here,
20 because I promised to get him in here before closure. So
21 Mr. Wills, would you raise your right hand, please?
22 (Witness sworn.)
23 MR. GROSSMAN: All right. You may proceed with
24 your testimony.
25 STATEMENT OF RON WILLS

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1 THE WITNESS: All right. I am a resident of Brink
2 Meadows. I live on Brink Meadow Lane, where I have lived
3 for the past 23 years with my wife and three children.
4 MR. GROSSMAN: What's the specific address?
5 THE WITNESS: 21732 Brink Meadow Lane.
6 MR. GROSSMAN: Okay. And does it appear on any of
7 these maps that we've -- not quite?
8 THE WITNESS: Not quite on the map that we're
9 looking at that's visible right now. I'm in the cul-de-sac
10 area. And if you look to the west of the property on the
11 left hand --
12 MR. GROSSMAN: Well, first of all, which one are
13 you looking at there? All right.
14 THE WITNESS: Yes. That I'm about where that --
15 MR. GROSSMAN: What exhibit is this?
16 THE WITNESS: 34(q).
17 MR. GROSSMAN: Okay.
18 THE WITNESS: There is a square there. I think it
19 says 21, if my eyes serve me right. 21.
20 MR. UNTERBERG: Yes. That's right there.
21 THE WITNESS: I'm about right where that square is
22 placed.
23 MR. UNTERBERG: Right where your pointer is, that
24 house.
25 THE WITNESS: So I'm in the cul-de-sac of that.

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1 MR. GROSSMAN: Does that say 22, or what does that
2 square say?
3 MR. UNTERBERG: D 23 units.
4 MR. GROSSMAN: 23.
5 THE WITNESS: 23. It's right where the D is.
6 MR. GROSSMAN: All right. So you're due west of
7 the site, and about a block over or so.
8 THE WITNESS: Yes.
9 MR. GROSSMAN: All right. Okay.
10 THE WITNESS: My comments are, I reviewed the 19-
11 page report, plus all the attachments that were provided by
12 the staff. And I just today received the Planning Board
13 document. Again, coming into this, this is the first time
14 I've ever done this, so I'm a little naïve about what can be
15 done, what can't be done.
16 I was a little taken back reading the staff
17 recommendations, which was very, very clear cut throughout
18 this document, about the request and why they denied the
19 request.
20 MR. GROSSMAN: Why they recommended.
21 THE WITNESS: Why they recommended it. I'm sorry.
22 And again, I don't want to restate, but it seemed to say two
23 different things. One is that it wasn't compatible to the
24 master plan. And I know we've heard testimony today
25 otherwise. But I thought it had some very, very strong

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1 arguments there.
2 And then secondly, there was some issue that even
3 with the new PRC requested zoning that it also called into
4 question whether it was even compatible with that.
5 So, you know, given that there is this large
6 discrepancy, and then it seemed that the Montgomery County
7 Planning Board overturned that, or again --
8 MR. GROSSMAN: They didn't agree with the
9 recommendation.
10 THE WITNESS: They didn't agree with the
11 recommendation.
12 MR. GROSSMAN: And so they recommended approval.
13 THE WITNESS: And then they approved it.
14 MR. GROSSMAN: Well, they don't approve it. They
15 recommend approval.
16 THE WITNESS: Okay. I'm sorry, recommended
17 approval.
18 MR. GROSSMAN: It's the Council that will make the
19 decision. What I produce will also be a recommendation.
20 THE WITNESS: And then I saw, you know, looking at
21 these documents, here again, they didn't really provide
22 detail of why they recommended otherwise, from the staff, at
23 least. I didn't see the detail.
24 MR. GROSSMAN: You mean, the Planning Board did
25 not.

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1 THE WITNESS: The Planning Board did not.
2 MR. GROSSMAN: It had a few sentences, but --
3 THE WITNESS: Yeah, right. And you know, they
4 talked about, you know, a couple of reasons shopping centers
5 are -- I mean, I disagree with that. We do have plenty of
6 shopping. Within the area, they talked about a community
7 center within the facilities. There has been a bit of
8 discussion about that today.
9 A park within walking distance. I will tell you
10 this, as a resident of the Great Meadows Community, it has
11 gotten so bad on Brink Road, we do not cross Brink Road to
12 try to go to the park. And my only comment about this park
13 is, and I know it's a check off box, you know, where you've
14 got a park and you have picnic benches and so forth. But
15 this is not in any way a senior's park.
16 This is a park that is full of soccer fields.
17 It's full of baseball fields, softball fields. There is one
18 tennis court. And there are picnic benches, but it's
19 surrounding a children's area. And whether you go any day,
20 any time that you go up there, it's always kids around. So
21 it's not really an adult park in any way.
22 MR. GROSSMAN: You said you do not cross Brink
23 Road. It's become too bad. Are you talking about traffic,
24 volume, high speed? What are you talking about?
25 THE WITNESS: The traffic that's coming down

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1 there, and the speed that it's coming down there. We
2 literally stopped doing it because it gets very, very
3 dangerous. Now we get into the car if we're going to go
4 anywhere, and we actually skip that park, if we're going to
5 go to a park, and we go to another park.
6 MR. GROSSMAN: Right.
7 THE WITNESS: And this, you know, it's in walking
8 distance of my house, but it's very, very dangerous. What
9 concerned me when they talked about the access to the park,
10 and there's going to be, you know, a painted strip across
11 the road, I misinterpreted when I was reading some of the
12 documents. I thought there was actually going to be an
13 overpass, you know, a walking path to the park.
14 Where they're talking about, I'm very, very
15 familiar with it, because it does back up in the mornings.
16 But there's a fairly steep dissent from Route 27 to the
17 entryway to this Butz property. They're talking about
18 putting a buffer there. In one sense, I like the idea of
19 having a buffer there, because it's a buffer of trees and so
20 forth. But it's a very --
21 MR. GROSSMAN: Which side of the property are you
22 talking about?
23 THE WITNESS: I can show you.
24 MR. GROSSMAN: Okay. Because they've talked about
25 a variety of different buffers.

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1 MR. UNTERBERG: The other map showed it.
2 THE WITNESS: I'm sorry. I'm just so familiar
3 with this area. Here's Brink Road here.
4 MR. GROSSMAN: Yes, on the south.
5 THE WITNESS: Here is where I, you know, if we
6 were ever to cross the road, we would cross the road here to
7 get into the park area. This is all the park area over
8 here.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: Here is where they are proposing to
11 put a crosswalk into the park.
12 MR. GROSSMAN: Right.
13 THE WITNESS: The fact that you're going to have
14 this buffer zone of green, it's, you're on a decline right
15 here. In fact, this is an area where a lot of deer would
16 cross. And it's a very, very dangerous section. And the
17 cars come down here at very, very fast speeds.
18 So having this as an amenity, I understand it's a
19 check off on the Park and Planning Commission list of things
20 that you have to have. But realistically, this is not an
21 adult park. This is a park for kids and something when my
22 kids were younger, we would take them over to play baseball,
23 and the roller skating rink and so forth.
24 But it's not an adult park. It's not a park that
25 you would go -- I'm 59 years old. It's not a park I would

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1 go to sit. There's just no where to sit without being in a
2 section with a lot of young children, or being near ball
3 fields and so forth.
4 So concern about the crossway there. Concern
5 about the speed on this road. The other issue, in the
6 morning, this backs up here.
7 MR. GROSSMAN: This being Brink Road --
8 THE WITNESS: Brink Road turning onto Route 27.
9 MR. GROSSMAN: All right. So heading eastbound
10 and then to turn south.
11 THE WITNESS: Head eastbound to turn south. This
12 backs up three-quarters of the way to this entrance here,
13 and it's --
14 MR. GROSSMAN: To the park entrance?
15 THE WITNESS: To the entrance to the Butz property
16 off of Brink Road. So it's a very dangerous road. It's,
17 there will be some issues about ingress and egress on this
18 side. I understand that this could maybe alleviate that,
19 and I'm not making that my total argument. But it's a very
20 dangerous road down in here. So that's about all I can say
21 about that section.
22 Up here, you know, my concern is --
23 MR. GROSSMAN: Up here being at --
24 THE WITNESS: I'm sorry.
25 MR. GROSSMAN: -- Ridge Road intersection with

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1 305.
2 THE WITNESS: -- Ridge Road at A-305.
3 MR. GROSSMAN: Right.
4 THE WITNESS: My guess is for the Mid-County
5 Highway, it's around 40, no one testified to the speed
6 limit, but I've seen it typically around 40 miles an hour.
7 MR. GROSSMAN: There's going to be a
8 transportation expert who's going to testify.
9 THE WITNESS: Okay. But, you know, given then my
10 guess is it's going to be roughly a 40-mile an hour. This
11 is going to be very interesting and problematic, I think,
12 splitting the neighborhood in half like that. But I do
13 anticipate the fact that even the Elm Street Property letter
14 indicates this is going to be the major entrance. And it
15 makes sense it's going to be the major entrance because all
16 your traffic flow is coming down south to go to work, and
17 coming back this way to get home. So what do you do? You
18 take your first turn into your subdivision.
19 So it's just going to be an amazing amount of
20 traffic flowing across here. And then you split your
21 subdivision in half here. And you talk about walking trails
22 and so forth.
23 My concern on this, I've heard about all these
24 amenities that we talked about today. I've heard about the
25 clubhouse and so forth. And then we've been sold on these

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1 amenities that are coming north. But there's really, what
2 we've heard today in testimony, there's no real agreement to
3 any of those amenities actually being there at this point.
4 I don't see, you know, I think it's more of a
5 matter of coincidence that this park is right here, but I
6 don't see that as a major --
7 MR. GROSSMAN: You're talking about the park to
8 the south?
9 THE WITNESS: The park to the south. I don't see
10 that as a major item for an adult 50 and above community.
11 So what I'm kind of left with is this question of this
12 facility that states it's going to be a 50 and year older
13 community, and it's going to have these amenities, most of
14 which are all off-site and many of which have not even been,
15 there's no lock in to those amenities at this point.
16 It just calls into question that this ends up
17 getting approved after staff recommendation that it's not
18 even appropriate for the master plan, and that the zoning
19 they've requested here, according to staff, doesn't even
20 comply.
21 So I come into this naïve, and really just reading
22 these documents provided, and I'm a little shocked that this
23 amendment density was allowed to happen on this property,
24 given everything that I've seen so far with the lack of
25 amenities, with the conflict with the staff recommendations.

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1 And that's about it.
2 MR. GROSSMAN: Okay. You referenced that the
3 staff, we know the staff recommended against this, based, in
4 my understanding, on their failing to comply with the master
5 plan recommendations. But you said that also, that staff
6 had also found that it didn't comply with the PRC zone.
7 THE WITNESS: Uh-huh.
8 MR. GROSSMAN: What are you specifically referring
9 to in the staff report?
10 THE WITNESS: I'm going to find it.
11 MR. GROSSMAN: Okay. Sure.
12 THE WITNESS: Page nine.
13 MR. GROSSMAN: Okay. This is Exhibit 53? It is
14 also 46.
15 THE WITNESS: I don't know what exhibit number,
16 but this is the staff report, page nine, dated 12/20.
17 MR. GROSSMAN: Yes.
18 THE WITNESS: And if you look at page nine where
19 it says, "Staff response. The property does not meet the
20 purpose of the PRC zone."
21 MR. GROSSMAN: I see. Because it's not within,
22 it's not recommended with the -- it's not within the
23 recommended water and service sewer envelope.
24 THE WITNESS: That's the first paragraph.
25 MR. GROSSMAN: Right.

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1 THE WITNESS: You can go down further, it does not
2 contain the day-to-day services generally anticipated with
3 the planned development, which I, that's been the biggie,
4 one of my points. These amenities, I call them false
5 amenities. You talk about them, but they're not really part
6 of the property.
7 MR. GROSSMAN: Okay. Well, they have a listing of
8 what they contend are sufficient amenities in Exhibit 66
9 that are on site. And according to the point spread they've
10 listed, they say they satisfy what's required by technical
11 staff for amenities. That's what they rely on there. It's
12 their on-site amenities.
13 THE WITNESS: I understand.
14 MR. GROSSMAN: Okay.
15 THE WITNESS: I understand that.
16 MR. GROSSMAN: Yes. Okay. Cross-examination?
17 MR. KLINE: No cross-examination.
18 MR. GROSSMAN: Would either one of you like to
19 brutalize your neighbor?
20 MS. GOODRICK: We wouldn't do that.
21 MR. GROSSMAN: No. Okay. All right. Thank you,
22 Mr. Wills.
23 MR. WILLS: Thank you very much.
24 MR. GROSSMAN: All right, so we're obviously not
25 going to finish today. Yes, sir.

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1 MR. HANCOCK: I only need about five minutes.
2 Could I take that?
3 MR. GROSSMAN: You certainly can. But you're
4 welcome also to come back on Friday.
5 MR. HANCOCK: No, that's okay.
6 MR. GROSSMAN: You can pull yourself away from the
7 excitement?
8 MR. HANCOCK: I missed my nap.
9 MR. KLINE: She truly can't afford another day out
10 of her office.
11 MR. HANCOCK: All right. I spend most of, at this
12 time, I'm usually curled up in front of the fire with an
13 electric blanket turned on fricassee to keep the bones warm.
14 MR. GROSSMAN: And Mr. Hancock, I think I already
15 swore you in. Is that correct?
16 MR. HANCOCK: I'll be very quick on this.
17 STATEMENT OF WILLIAM HANCOCK
18 THE WITNESS: I built all these 22 houses. And I
19 have --
20 MR. GROSSMAN: By these 22 houses, you're talking
21 about the community immediately --
22 THE WITNESS: The 22, this is called Brink Meadow.
23 MR. GROSSMAN: Okay, immediately to the west of
24 the subject site.
25 THE WITNESS: Immediately to the west of this

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1 property.
2 MR. GROSSMAN: All right.
3 THE WITNESS: I built all these houses.
4 MR. GROSSMAN: What do you mean by you built them?
5 THE WITNESS: I physically designed the houses as
6 an architect, and I physically built the houses.
7 MR. GROSSMAN: Okay.
8 THE WITNESS: Okay. And when each of these
9 people, each of the individuals bought that house, they
10 signed a contract. And the contract had in it that they had
11 reviewed the master plan. As a matter of fact, the County
12 requires that they sign contracts saying that they had
13 reviewed the master plan, so they knew there wasn't going to
14 be an air field here. But it didn't say anything about this
15 kind of density. It was very plain. It was signed a number
16 of years ago.
17 The problem I have is, I think that the County has
18 a responsibility. They made a contract with these people
19 saying that there is not going to be 140 or the original
20 plan was 240 houses, but it's 140 houses now, behind you.
21 You're on two-acres, essentially at this point, million
22 dollar houses, and this is not going to be your view.
23 And I think that the County has the responsibility
24 to keep their promise. Even today, the people that are, the
25 individuals that are buying the re-sales have to sign the

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1 contract that says they've reviewed the master plan. And
2 the master plan that they are reviewing today, if they are
3 going to buy this house, doesn't show this. It doesn't show
4 any possibility of this.
5 MR. GROSSMAN: And by this you mean the proposed
6 project.
7 THE WITNESS: I'm sorry, sir?
8 MR. GROSSMAN: By this you mean the proposed
9 project?
10 THE WITNESS: That's correct.
11 MR. GROSSMAN: I'm just trying to make sure the
12 record reflects what you are saying.
13 THE WITNESS: I understand. And in my particular
14 case, I built all these homes. I live in one. And I live
15 in one that backs up to this, to the Butz property. So I
16 experience this traffic problem all the time. And I need to
17 expand that just a bit.
18 There is a walk along here, along Route 27, a
19 paved walkway, on this side, not on this side, just a little
20 way.
21 MR. GROSSMAN: I'm sorry, which side is the --
22 which side is the walkway on?
23 THE WITNESS: The walkway is on the east side.
24 MR. GROSSMAN: Okay.
25 THE WITNESS: It's a paved walkway.

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1 MR. GROSSMAN: And that's south of Brink Road on
2 27 on the eastern side of Route 27?
3 THE WITNESS: That's correct.
4 MR. GROSSMAN: Okay.
5 THE WITNESS: So occasionally, rather than walking
6 the park, there is a nice path through the park down to
7 Milestone, but there's quite a long stretch of it that's in
8 the woods, and I don't like to do that. But to walk up
9 here, there is no walk up here, but you get up here to get
10 to the sidewalk, there's a traffic light there now. It's
11 worth your life to cross, even at the traffic light. And
12 this is four lanes.
13 In the morning, now, I know there is going to be a
14 traffic expert that's going to testify that this traffic is
15 just fine and dandy, but I have to speak from experience,
16 because I stand right here and I look at Route 27 all the
17 time.
18 MR. GROSSMAN: And right here you mean just --
19 THE WITNESS: Right here is my house, the house
20 that I live in that backs up to the Butz property.
21 MR. GROSSMAN: Okay, and that is?
22 THE WITNESS: 21721 Brink Meadow Lane. And this
23 is very elevated. Route 27 is at least 30 feet above this
24 grade. So I'm looking at a hill here. I see it all the
25 time.

1 At 6:00 in the morning, the traffic is dead
2 stopped. At 6:00 in the evening, it's backed up clear to
3 355 going north. It's horrendous. When I come out, to come
4 out of here, come out of Brink Meadow Lane and get onto
5 Brink Road, we back up three or four cars in the morning
6 quite often. And getting out of there, it's damn near worth
7 your life.

8 But when you turn and you come up, Ron said that
9 this is backed up all the way. This is widened a little
10 bit, not quite showing here, but it's backed up all the way
11 down to here. And this is a hill. This is totally blind.
12 When you turn here, when you turn onto Brink Road, you're
13 blind from this point out, from the Butz property up, that's
14 going uphill. There's trees, some scraggly trees along
15 there. And you can't even see. And these cars come down
16 here at 45 and 50 miles an hour. It's unreal.

17 Now, if we just have 22 houses in here, there's
18 about 45 or so in here, and there's no traffic right there,
19 there's 30 some houses up in here, and another 50 or so
20 there, I don't see that they have a light planned there.

21 MR. GROSSMAN: Now, when you say there, you mean
22 on --

23 THE WITNESS: And this traffic coming down,
24 there's a light planned here. But this traffic and this
25 light is going to back up beyond this intersection.

1 MR. GROSSMAN: Just to clarify for the record what
2 you said, there is no traffic light planned on 305 inside
3 the site. There is one planned at Ridge Road and 305.

4 THE WITNESS: Yes.

5 MR. GROSSMAN: A-305. And you were counting the
6 number of houses at various locations that are proposed on-
7 site?

8 THE WITNESS: At least 80.

9 MR. GROSSMAN: Okay.

10 THE WITNESS: At least 80 houses. We have a
11 problem with 22. There is at least 80, and they're opposite
12 each other. They're not even offset. So you've got people
13 trying to get out here and out here. You've got them coming
14 down here at 45 miles an hour. And there is no light here.

15 MR. GROSSMAN: Well, they testified --

16 THE WITNESS: This light is going to be really
17 fun, because this will really mess up this one down here.
18 The next light above this is about two miles up. And this
19 is just solid traffic. I don't know what the average is
20 during the day, but during rush hour, it just barely -- I
21 can walk faster. I can literally walk faster.

22 MR. GROSSMAN: Well, we're going to, I mean, we're
23 going to hear about what the counts are. And I would assume
24 that this is also going to be reviewed, not under,
25 ultimately, not under PAMR, but under the new TPAR, or

1 whatever it's called, new kind of evaluation that the
2 Council has made effective beginning January 1, 2013.

3 I'm not sure how that is going to play out. I
4 would ask, I don't know if your expert has done a TPAR
5 evaluation here, because technically, we have an unusual
6 system here. We have, they measured traffic up until
7 January 1st of this year, they measured traffic in two ways
8 in the County, something called LATR, local area
9 transportation review, and something called PAMR, policy
10 area mobility review.

11 Now they are replacing PAMR with TPAR, but under,
12 as I understand the way it works, for rezoning they apply
13 the, what they used to call the growth policy. They no
14 longer call it that, which is what those traffic standards
15 are under. They apply the one that was in effect when the
16 zoning application was filed, for purposes of the rezoning.

17 For purposes of the subdivision and site plan
18 review, they will apply the new standards. Am I stating
19 that fairly --

20 MR. KLINE: I think that's correct.

21 MR. GROSSMAN: So I think it would be helpful if
22 your witness, your traffic witness is prepared to testify on
23 that as well, just so I get some idea, we have something in
24 the record as to how that other new measurement will apply
25 to this situation. It's hard for me to say anything about

1 traffic until I have heard the evidence.

2 THE WITNESS: I understand.

3 MR. GROSSMAN: Although we do have extensive
4 reports in the file.

5 THE WITNESS: I have one more comment. Again, we
6 didn't bargain for this kind of density, but what we really
7 didn't bargain for was townhouses. I am so much upset to
8 have townhouses backing up to the five-acre lots. This just
9 is not right. They should be single-family, should not be
10 townhouses in this at all. I'm sorry. It's just plain
11 greed.

12 Now, in Mr. Butz defense, if I owned this
13 property, I would be trying to do something with it, just
14 like he is. But there's got to be an end somewhere.
15 Townhouses is really where I really get upset. There just
16 is not any kind of transition from two-acre to townhouse
17 retirement project.

18 MR. GROSSMAN: Of course, they say that the
19 townhouse provision is only a possible alternative for up to
20 20 percent. The plan is to have 140 single-family units, if
21 I understand the development plan. Is that correct, Mr.
22 Kline?

23 MR. KLINE: That is correct.

24 MR. GROSSMAN: But the plan is not to have
25 townhouses. It is to have 140 single-family units, is that

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1 correct?
2 MR. KLINE: That is the preferred way of handling
3 the property, yes.
4 THE WITNESS: You say that's preferred.
5 MR. KLINE: That's what's shown on the
6 illustrations.
7 THE WITNESS: But I know the difference in a
8 townhouse lot, the cost of a townhouse lot and a single-
9 family lot in this type of thing is probable less and 10
10 percent. And if they can put townhouses in here, they're
11 going to do it, Mr. Kline. I'm sorry. It's going to be
12 done. It's greed. It's just as simple as that. And I
13 really feel very strongly about that. That's really all I
14 have. Thank you.
15 MR. GROSSMAN: All right. Cross-examination?
16 REDIRECT EXAMINATION
17 BY MR. KLINE:
18 Q Mr. Hancock, I'll give you a chance to take your
19 seat back, but you said, we didn't bargain for this kind of
20 density.
21 A No, we sure didn't.
22 Q I'll talk to you so you can hear me a little bit
23 better. But when you platted your, when you bought the
24 property, when you platted your property --
25 A Yes.

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1 Q -- your property was zoned R-200, wasn't it?
2 A Yes. Half-acre.
3 Q Correct.
4 A Yes.
5 Q And the Butz property was zoned R-200.
6 A That's correct.
7 Q So when you bought that property, and you started
8 building houses, the master plan that the people looked at,
9 recommended R-200 zoning on the Butz property --
10 A Also said, no more impermeable, no more coverage
11 of impermeable area would not exceed 16 percent, and that
12 sewer and water would not be available except to a nonprofit
13 organization.
14 Q In the master plan prior to 1994 that said that?
15 A I believe so. That's my -- I'd have to go back
16 and check it. It's been a while, Jody, but I believe that
17 that is. Yes.
18 Q I mean, I guess you are having trouble convincing
19 us that this is unexpected when in fact when your whole
20 Brink Meadows started, the density that we're proposing
21 today is not substantially different than what you could
22 have anticipated would occur up until 1994 when the County
23 changed the zoning because they thought you couldn't sewer
24 it.
25 A But those houses were already built. Brink Meadow

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1 was completely built out by 1994.
2 Q Right.
3 A And the people that bought two years ago, they are
4 still not looking at this kind of density. There's nothing
5 in the master plan. If you buy a house today, there's
6 nothing in the master plan that shows this kind of density
7 is even proposed anywhere.
8 Q Let me just say, because you've been candid. If
9 your zoning was R-200 and you could have, if you could have
10 built more lots and on basically still do it on sewer, you
11 would have built more lots if you could have, wouldn't you?
12 A I'll tell you honestly, we perked it out for one-
13 acre lots. And we said, okay, we'd like to build one acre.
14 Because we wanted to keep sort of a country type of effect.
15 And what the areas that is now park land was also zoned for
16 half-acre lots.
17 And a preliminary plan for half-acre lots. They
18 got it approved for half-acre lots, and the sold it to the
19 park. They got approved so they had basis for getting a
20 nice price from the park area. But we wanted to build one-
21 acre lots. And they said, if you do, then you will have to
22 dry line for sewer and water. And we said, well, okay.
23 When will we get sewer and water? Never. You're never
24 going to get it.
25 Well, we have water right across the street.

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1 We've got gravity sewer. We'll build our own plant. You're
2 never going to get it. Well then why do we want to spend
3 \$10,000 to dry line to put in one acre houses, because we
4 would get water. We wouldn't get sewer, but we would get
5 water, public water. Why do we want to spend that, you
6 know. So we went with two-acre lots, simply because we
7 didn't want to blow a quarter of a million dollars.
8 MR. KLINE: I have no further questions of Mr.
9 Hancock.
10 MR. GROSSMAN: Okay. Any other cross-examination
11 of Mr. Hancock?
12 MS. GOODRICK: No.
13 MR. WILLS: No.
14 MR. GROSSMAN: Do you have any redirect you want
15 to add anything on as a result of Mr. Kline's questions?
16 THE WITNESS: No, I think I'm talked out. My
17 voice is gone.
18 MR. GROSSMAN: Okay. All right. You did a good
19 job, though. Okay. So, I guess that, unless you want to be
20 heard, or do you want to be here on Friday?
21 MS. GOODRICK: I would rather come back on Friday,
22 thank you.
23 MR. GROSSMAN: You are all welcome to come back on
24 Friday. We will be happy to have you back. But in any
25 event, we will reconvene here on Friday at 9:30. How many

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1 witnesses do you have left?
2 MR. KLINE: We have three left, and my guess is
3 we'll probably have some rebuttal testimony as well.
4 MR. GROSSMAN: Okay.
5 MR. KLINE: Before you send us home, Mr. Grossman,
6 I have accumulated some of the things you've asked for
7 today.
8 MR. GROSSMAN: Okay.
9 MR. KLINE: May I clean up my desk here a little
10 bit.
11 MR. GROSSMAN: Sure.
12 MR. KLINE: I did tell you that we would bring you
13 a disk with all of the exhibits that are here today.
14 MR. GROSSMAN: Yes.
15 MR. KLINE: Okay. I did have the affidavit of
16 posting signed by Mr. Butz --
17 MR. GROSSMAN: All right.
18 MR. KLINE: -- verifying the signs are posted on
19 the property. I guess you'll just put a number on them.
20 This is the special exception opinion for the Catholic
21 Cemetery east of the subject property.
22 MR. GROSSMAN: Okay.
23 MR. KLINE: and this is a copy of the deed showing
24 the four Butz sons as the owners of the property.
25 MR. GROSSMAN: Wow. That's very impressive,

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1 Mr. Kline. All right. So let's --
2 MR. KLINE: We've been here all day. There was
3 plenty of time to get things done outside.
4 MR. GROSSMAN: All right. Let's give them exhibit
5 numbers while we're still on the record here. And that will
6 be, we'll get your affidavit of posting will be Exhibit No.
7 69. And then the deed will be Exhibit No. 70. The copy of
8 the special exception resolution or opinion would be Exhibit
9 No. 71. That's Council Resolution 14-393 dated 1/18/2000.
10 And we'll say the CD of the current new exhibits is Exhibit
11 No. 72. I'll say hearing exhibits.
12 (Exhibit Nos. 69-72 were
13 marked for identification.)
14 MR. GROSSMAN: Okay.
15 MR. KLINE: One last question, Mr. Grossman.
16 MR. GROSSMAN: Yes, sir.
17 MR. KLINE: Could we take these exhibits and put
18 them in your library off to the side rather than have to
19 cart them out and bring them back?
20 MR. GROSSMAN: Yes. I think probably the safest
21 thing to do would be to put them in the hallway between my
22 outer office and my office.
23 MR. KLINE: Okay.
24 MR. GROSSMAN: That little hallway.
25 MR. KLINE: Thank you.

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1 MR. GROSSMAN: Yes, ma'am.
2 MS. GOODRICK: Do we have access online to these
3 materials?
4 MR. GROSSMAN: You don't have them online, but if
5 you come in, especially if you call ahead it would be
6 better, but if you come in you can see the exhibits here.
7 They won't be online.
8 MS. GOODRICK: May I?
9 MR. GROSSMAN: Unless somebody puts them online,
10 they won't be online.
11 MS. GOODRICK: Okay. So the current new exhibits
12 that he has a CD of?
13 MR. GROSSMAN: Yes.
14 MS. GOODRICK: Okay. Does that include the maps?
15 MR. KLINE: It's all the exhibits that were here
16 today.
17 MR. GROSSMAN: Could you produce a copy of this CD
18 for them?
19 MS. GOODRICK: Yes. Thank you. That would be my
20 question.
21 MR. KLINE: Yes. You'll just have to give me some
22 delivery information, but we'll do that. Give me an e-mail
23 and some delivery information.
24 MS. GOODRICK: So will we get a CD? In other
25 words --

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1 MR. KLINE: I've got to talk to the people who are
2 smarter about it than I am. But we will figure out some way
3 to electronically get that information to you.
4 MS. GOODRICK: Okay.
5 MR. GROSSMAN: Mr. Wills.
6 MR. WILLS: Given the rather large difference of
7 opinion of the staff report and the Board vote, is there any
8 provision for something like this going back to staff for
9 re-review of the proposal, and seeing if additional
10 information or whatever may change their opinion, or they
11 are steadfast in their opinion? Is there any provision for
12 something like that?
13 MR. GROSSMAN: Once it goes to the, conceivably,
14 if I wanted more information from the staff, I could send it
15 back for some further staff review. Also, when I, if I send
16 up a report to the Council, and they decide they want to
17 hear more from the staff, they could send it back to me and
18 say, please send it back to the Planning Board and ask the
19 staff to give further information.
20 So in those two ways it could be, it could be
21 formally remanded back from the Council, or I could
22 informally, by informally I mean, without, before it goes up
23 to the Council, I could send it back, or not send it back,
24 but I could ask the staff whether they'd reconsider in light
25 of what the Planning Board said.

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1 I'm not sure that that would help anything. I
2 mean, I would be more inclined to ask the technical staff
3 about something they neglected to opine on, which is the
4 surrounding area. but I don't think that's going to clarify
5 much for me because I've pretty much decided that I think
6 the surrounding area ought to be the larger one which
7 includes the apartments, or the houses across Ridge Road.
8 So I don't know if that's going to help anything.
9 What do you feel would be gained by having staff
10 look at this again?
11 MR. WILLS: Well, I guess I was struck by reading
12 the staff report and then having this unanimous vote of the
13 Board, the Planning Board. And that they really, it was
14 very cursory, as far as the Planning Board reason why they
15 think it should be approved.
16 MR. GROSSMAN: Well, it may not be that what went
17 on at the Planning Board was cursory. Did you attend the
18 Planning Board meeting?
19 MR. WILLS: I did not, but I think Mr. Hancock
20 did, and it was reported to me that --
21 MR. HANCOCK: I did.
22 MR. GROSSMAN: All right.
23 MR. WILLS: -- it was a rather brief discussion at
24 the Planning Board.
25 MR. GROSSMAN: Ms. Goodrick, did you want to say

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1 something about it?
2 MS. GOODRICK: Well, what struck me as I listened
3 to this was that the Rodgers Reporting, or whatever it was,
4 said, I believe this is our interpretation. This is their
5 interpretation of what those maps said, as far as zoning
6 goes. Whereas, the Planning Department had a difference of
7 opinion. That's really crucial here to what that difference
8 is.
9 They presented what they believe is what the
10 zoning wanted to do at the time the master plan was written.
11 And they say that there are ambiguities. But I don't know
12 whether there are, the planning staff thought that there
13 were ambiguities. And that, to me, seems crucial to these
14 arguments.
15 MR. GROSSMAN: Well, before I address that, did
16 you, you say you attended the Planning Board meeting?
17 MS. GOODRICK: Yes.
18 MR. GROSSMAN: You said, and I'll hear from Mr.
19 Wills, that somebody told him it was a cursory examination,
20 or whatever of it. What was your, how much time was spent
21 on it before the Planning Board?
22 MS. GOODRICK: Well, I don't remember specifically
23 that issue.
24 MR. GROSSMAN: Not that issue, but the whole
25 session before the Planning Board?

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1 MS. GOODRICK: Well, they would say --
2 MR. GROSSMAN: That, by the way, is not part of,
3 it's not part of the record here unless somebody makes it
4 part of the record, because they're not sworn witnesses.
5 MR. HANCOCK: The Planning Board spent months
6 reviewing it.
7 MR. GROSSMAN: You mean the staff.
8 MR. HANCOCK: Yes, staff. And then they had a
9 staff individual there who had it, and they went through it
10 item by item.
11 MR. GROSSMAN: I understand. I'm talking about
12 the Planning Board meeting.
13 MR. KLINE: The whole duration. How long --
14 MR. GROSSMAN: The duration. How long was the
15 Planning Board?
16 MR. HANCOCK: For them to make up their mind, less
17 than 10 minutes.
18 MR. GROSSMAN: No, I mean, the meeting, what was
19 presented at the meeting? Mr. Kline?
20 MS. GOODRICK: These are billable hours. They
21 were not --
22 MR. KLINE: Help me out.
23 MS. RUSSEL: Two hours.
24 MR. KLINE: I thought it was over two hours.
25 MR. GROSSMAN: I don't think that's cursory. They

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1 obviously, they may have made up their mind as part of
2 listening to the presentation, but I wouldn't characterize
3 that as cursory.
4 I guess you have to ask yourself what advantage
5 there would be to anybody concerned here in my requesting
6 staff to reconsider what their boss has already decided.
7 Mr. Kline might actually like me to do that. So --
8 MR. KLINE: Well, I think their point is, they're
9 going to try to get the planning staff to change. They want
10 it to go back to the Planning Board and say, you didn't
11 listen to your staff. You ought to rethink this. They'd
12 actually have the Planning Board reconsider it.
13 MR. GROSSMAN: Well, all right, then if I'm
14 addressing that question the answer would be, no. I would
15 not send it back to the Planning Board to reconsider what
16 they've already decided, unless there was some new
17 information that they hadn't been presented that could
18 possibly change their position, because they have made their
19 evaluation unanimously based on the information they had.
20 Now, if there was some change in the information
21 that was above and beyond that was so pertinent that it
22 might change how they evaluated it, that would be different.
23 But absent that, you can't ask a body to just reconsider
24 something on no basis. In fact there's actually some case
25 law on exactly that in terms of administrative bodies.

1 An administrative body can't change, unless they
 2 have a change in the factual scenario or the law, they can't
 3 just change their opinion on something they've decided
 4 without a change in the basis for it. But in any event, so
 5 that would be the answer to your question.

6 No, I can't see a basis for sending it, based on
 7 anything I've heard thus far for sending it back either to
 8 technical staff or to the Planning Board. It is unusual to
 9 get a case in which the technical staff has recommended one
 10 way, and the Planning Board disagrees. It's not unheard of.
 11 I've had a number of them. But it is relatively unusual in
 12 the run of these things.

13 But really, the Council will make the final
 14 decision, based on the record that is presented here by all
 15 the witnesses.

16 The Planning Board doesn't get quite the same
 17 presentation obviously that you get here, because we have a
 18 full hearing with cross-examination, et cetera. So this
 19 gets to be a fuller record than the Planning Board gets to
 20 see, as you can see from what has gone on here. So there's
 21 no, we can't tell from what the Planning Board said whether
 22 or not, what the Council is going to do.

23 The Council also has its own standards that they
 24 follow as well. All right. Anything else of an
 25 administrative nature? And if not, we are adjourned until

1 9:30 on Friday morning, this coming Friday, which I believe
 2 is the 18th. Is that correct? Yes, the 18th.

3 (Whereupon, at 5:30 p.m., the hearing was
 4 adjourned.)

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. Digitally signed by Teresa S. Hinds

ELECTRONIC CERTIFICATE

DEPOSITION SERVICES, INC., hereby certifies that
 the attached pages represent an accurate transcript of the
 electronic sound recording of the proceedings before the
 Office of Zoning and Administrative Hearings in the matter
 of:

Petition of Thomas Butz, et al.
 Local Map Amendment No. G-881

By:

 Teresa S. Hinds, Transcriber

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