

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
MONTGOMERY COUNTY, MARYLAND

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	:	
PETITION OF	:	Case No. G-910
TOWNE CREST APARTMNTS, LLC	:	
	:	
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A hearing in the above-entitled matter was held on  
February 15, 2013, commencing at 9:30 a.m., at the Office of  
Zoning and Administrative Hearings, 100 Maryland Avenue,  
Rita Davidson Memorial Hearing Room, Rockville, Maryland  
20850 before:

Lynn A. Robeson  
Hearing Examiner

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A P P E A R A N C E S

On Behalf of the Petitioner:

Stephen Z. Kaufman, Esq.  
Erin E. Girard, Esq.  
Linowes and Blocher, LLP  
7200 Wisconsin Avenue, Suite 800  
Bethesda, Maryland 20814-4842

On Behalf of the Opponent:

David W. Brown, Esq.  
Knopf & Brown  
401 East Jefferson St., Suite 206  
Rockville, MD 20850

Opening Statements:

Stephen Z. Kaufman, Esq.

David W. Brown, Esq.

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Witnesses:

Stacy Hornstein	18	60	--	--
Charlene Deloatch	66	68	70	--
Dave Ager	72/147	79	82	136
Barbara Goldberg-Goldman	128	133	--	--
Wilson Mancilla	151/156	--	--	--
Trini Rodriguez	157	184	197	--
Ronald Seiboth	198	222	--	--

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P R O C E E D I N G S

1MS. ROBESON: I'm going to call the case of Local

2Map Amendment Application No. G-910, which is the

3application of Towne Crest Apartments, LLC, requesting

4rezoning from the R-30 and R-T 12.5 zones to the PD-35 zone

5on property located at 17500 Towne Crest Drive,

6Gaithersburg, Maryland, and further described as Towne Crest

7Parcel A.

8My name is Lynn Robeson. I am the hearing

9examiner. I will be taking testimony and evidence in this

10case. I will write a report and recommendation to the

11County Council who will make a final decision based on the

12evidence taken here today. So whatever you want to say in

13the case, you should say it during these hearings.

14Now we do have a sign language interpreter here today, two

15sign language interpreters. And what I would like to do

16now, if both of you could stand. Well, you're standing, but

17if -- I'm going to ask you some questions and then have you

18take an oath.

19MR. MCCLEARY: Okay.

20MS. ROBESON: Okay? Could each of you state your

21name and business address for the record?

22MR. MCCLEARY: My name is Joseph McCleary and I

23work for a company called PCS out of Rockville, Maryland. I

24can't think of the address off the top of my head --

25

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A P P E A R A N C E S (continued)

Exhibits

Marked/Entered

1-102

Premarked

10319

10422

10556

10657

10776

10877

10977

11078

11178

11279

113190

114207

115211

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1MS. ROBESON: That's -- yes.

2MS. YOKUM: My name is Jessica Yokum, and I also

3work for PCS Associates in Rockville.

4MS. ROBESON: Okay. And can you please describe

5your qualifications?

6MR. MCCLEARY: I have a national certification

7through the Registry of Interpreters for the Deaf and I've

8been a working sign language interpreter for nine years.

9MS. ROBESON: Okay. And Ms. Yokum?

10MS. YOKUM: I also have a national certification

11through the Registry of Interpreters for the Deaf and I've

12been working for the past three years as a professional sign

13language interpreter.

14MS. ROBESON: Thank you. And do you, do either of

15you have any personal or professional affiliation, to your

16knowledge, with the applicant, those opposing the

17application, or with the property?

18MR. MCCLEARY: I do not.

19MS. YOKUM: I do not, as well.

20MS. ROBESON: Okay. Please raise your right

21hands. Well, do you want to do this one at a time?

22MR. MCCLEARY: We can do it at that the same time.

23That's fine.

24(Interpreters sworn.)

25MS. ROBESON: Thank you very much.

<p style="text-align: right;">Page 6</p> <p>1 MR. MCCLEARY: Can I say something? I'm the 2 person who they're working with. We also have a student 3 from Gallaudet University who is with our interpreters, as 4 well.</p> <p>5 MS. ROBESON: Thank you. Just a word about these 6 proceedings. They are informal, but they do have certain 7 formalities. All testimony is under oath and subject to 8 cross-examination. There is an order to the hearing: the 9 opening arguments, beginning with the applicant; the 10 applicant's case; the opposition's case; the applicant's 11 rebuttal; and closing statements.</p> <p>12 For those of you, there is, there are standards 13 for evidence here and testimony. I have the option of 14 excluding repetitive testimony or testimony that is 15 irrelevant to the case. This case is governed by the legal 16 standards set forth in the zoning ordinance and they're 17 summarized in the staff report. Your testimony -- those 18 standards and that's, that determination's relevance will be 19 based on whether or not it's relevant to meeting those 20 standards. Is there anyone here that opposes the 21 application that is not represented by counsel?</p> <p>22 (No response.)</p> <p>23 MS. ROBESON: All right. Is there anyone in 24 support of the application that is not represented by 25 counsel? One person. Okay.</p>	<p style="text-align: right;">Page 8</p> <p>1 who may elect to appear from the town either in favor or in 2 opposition --</p> <p>3 MS. ROBESON: All right.</p> <p>4 MR. BROWN: -- to this matter.</p> <p>5 MS. ROBESON: All right. Thank you for that 6 clarification. Now out of an abundance of caution, I am 7 going to let everyone know that I was an associate with the 8 law firm that is representing the applicants, the applicant 9 today, Linowes and Blocher, and at the risk of revealing my 10 true age, I had to calculate this out, but I left in 1994. 11 So I'm not going to calculate it out for you, but it has 12 been quite a period of time. If anyone has an objection to 13 that, I'm disclosing it for the record. I have worked for 14 both Government and private sector for whatever amount of 15 time since then.</p> <p>16 All right. Are there any other preliminary 17 matters?</p> <p>18 MR. KAUFMAN: We do have the affidavit of posting.</p> <p>19 MS. ROBESON: Well, let's do that when we get to 20 your, to, until I get to a sworn, somebody sworn, okay? All 21 right. Opening statements?</p> <p>22 MR. KAUFMAN: Yes, I have an opening statement.</p> <p>23 Forgive me for standing, but that's what I'm used to doing.</p> <p>24 MS. ROBESON: You're making me uncomfortable.</p> <p>25 MR. KAUFMAN: Well, first of all, let me just say</p>
<p style="text-align: right;">Page 7</p> <p>1 Will the parties please identify themselves for 2 the record? You don't have to stand.</p> <p>3 I'm used to that in the courtroom, so good 4 morning, Madam Examiner. My name is Steve Kaufman. I'm a 5 partner at the law firm of Linowes and Blocher. Appearing 6 with me is Erin Girard, another partner in our firm. We 7 will be sharing duties in both questioning and presentation 8 during this proceeding. And, you know, I'll let you know or 9 we'll let you know who is going to do each witness's 10 questioning.</p> <p>11 With me to the right is our client, a 12 representative of our client, Mr. Stacy Hornstein. Mr. 13 Hornstein is, excuse me for just a second, he is looking for 14 his qualifications. Mr. Hornstein is the senior vice 15 president and director of acquisitions and development for 16 the applicant.</p> <p>17 MS. ROBESON: Okay.</p> <p>18 MR. KAUFMAN: And he will be my, he will be my 19 first witness.</p> <p>20 MS. ROBESON: Okay. Mr. Brown?</p> <p>21 MR. BROWN: Good morning. It's David Brown of 22 Knopf &amp; Brown. I represent the town of Washington Grove in 23 this matter. We will have as witnesses that I will, that 24 the town will be sponsoring certain individuals within the 25 town, but beyond that I am not representing any individuals</p>	<p style="text-align: right;">Page 9</p> <p>1 that we're pleased to represent this applicant and that this 2 case, as you will see, has quite bit of support, although it 3 does have significant opposition. This is an application 4 for PD-35, 229 units. The current property is on 11, 8.11 5 acres and has approximately 107 units on it.</p> <p>6 I think that what I'd like to have you focus on, 7 and as you will see from the testimony, this is really a 8 tale of two communities, a tale of two neighborhoods. The 9 primary opposition to this is people from the town of 10 Washington Grove. And as you will see from their testimony, 11 they believe that this is their, the community is in fine 12 shape and they like the atmosphere that they have, and they 13 feel that this application, if it is approved, will have a 14 detrimental impact on their community and on the, what they 15 refer to as the West Woods, which is a tree, a stand of 16 trees immediately to the west of the subject property.</p> <p>17 Now I'd like to read very quickly from one of 18 their letters which was written by Reverend Joseph M. Clark, 19 which pretty well describes their position. And this is 20 what he says in part, and this is Exhibit 90D. "Currently 21 the neighborhood around Towne Crest is stable. The proposed 22 redevelopment will destabilize and harm our community." 23 That's pretty well the position of the opposition and the 24 residents of the town of Washington Grove.</p> <p>25 Contrary to that, you have the position of the</p>

<p style="text-align: right;">Page 10</p> <p>1 people who primarily support this application, which are in  2 the communities immediately to the east of the subject  3 property if you look at the exhibit and you can see the  4 subject property. Immediately to the east are two townhouse  5 communities --  6 MS. ROBESON: Exhibit No. 10?  7 MR. KAUFMAN: Which is, which are Wedgewood 1 and  8 Wedgewood 2. And contrary to the position of the town of  9 Washington Grove, they feel that the situation is dire and,  10 in fact, that this application is needed and will help them  11 revitalize their community and provide amenities and other  12 things that will put this community onto a path of a much  13 better environment.  14 And I would like to read to you portions of two  15 letters that you received from them. The first one is from  16 the board of the Wedgewood 2 community and is written and  17 signed by all the board members, one of which is present  18 today and that is Shirley Deloatch, I'm not sure I'm  19 pronouncing it right, D-E-L-O-A-T-C-H, and she's in the  20 audience today and she is the lady that raised her hand that  21 was in support. And this is, in part, from their letter  22 which was Exhibit 96.  23 The signatures of this letter are the duly elected  24 and legal representatives of the 83 members of the Wedgewood  25 Court Townhouse Community, Association No. 2. This letter</p>	<p style="text-align: right;">Page 12</p> <p>1 MS. ROBESON: Two?  2 MR. KAUFMAN: I mean Wedgewood 2. Then there's  3 also a letter that I'd like to read from which is Exhibit  4 98C. And this is a resident of the community of the  5 Wedgewood community. And I want to apologize up front  6 because it's often in broken English. This obviously is a  7 person who has come to our shores, a hard-working person.  8 "I am a resident of the Wedgewood Court community  9 since 1992 and I also belong to the board member, Wedgewood  10 2, but this moment I want to give individual opinion about  11 the redevelopment of the Towne Crest apartment. For me, do  12 I come to this country looking for better opportunity and  13 better place to live and I did found the perfect place right  14 here. I want to see, like my neighbors, attractive place  15 where children have the opportunity to grow up in decent and  16 better environment and not to grow up," I'm sorry, "And not  17 to grow up seeing how Towne Crest apartment felt down in  18 place because of years in making damage on it and make it  19 look, the rest of the adjacent neighborhood, poor place to  20 live.  21 I have the dream to see my house, like my  22 neighbor's house, re-value in the market, not de-value.  23 I am sure this new redevelopment will bring better benefit,  24 better environment to everyone. I understand that across  25 the street don't want to see our community improve, but with</p>
<p style="text-align: right;">Page 11</p> <p>1 was written in part in support and in part to address one of  2 their residents who is opposed, and indicating that that  3 particular person doesn't speak for the community, but the  4 board does. And what this letter says in part, "Our  5 community is truly a diverse community, including Hispanic,  6 black African and North African, Caucasian and Asian,  7 including Chinese, Japanese and Koreans. We are a community  8 of hard-working families.  9 While Washington Grove is a very idealistic place  10 to live, within 100 feet of its borders is a whole area of  11 depressed housing and high crime. While we understand  12 Washington Grove's desire to maintain its beaucolic setting  13 and trees, we support the effort to maintain as many trees  14 as possible. We do believe that it should not be solely at  15 our expense. Besides the numerous meetings with our  16 association, we understand that the developer has met with  17 our adjoining association, Wedgewood 1, who we also  18 understand supports the project. The developer has received  19 unanimous support in the form of a resolution from the city  20 of Gaithersburg.  21 As you can tell from the tone of this letter, we  22 are upset and we would like the record to be clear.  23 Wedgewood 2 supports the rezoning application No. G-910.  24 And please do not be swayed by one person who does not speak  25 for our community." That's from Wedgewood 1.</p>	<p style="text-align: right;">Page 13</p> <p>1 respect I want them to know let us decide what is good or  2 bad for us. My decision to support Towne Crest apartment  3 new development is now for us and on behalf of our  4 children's future."  5 So the reason I read these letters, and if you'll  6 excuse me as I clear my throat a little bit, the reason I  7 read these letters, as you can see, you really have a vision  8 of two communities very different. And, of course,  9 Washington Grove is immediately to the west and they have  10 this stand of trees which does in many ways buffer and  11 protect them. But the people who are most directly  12 affected, the people to the east, feel that not only is this  13 a good application, but that it's needed to revitalize their  14 community. So you will see a lot of this throughout the  15 testimony.  16 Then there are the other usual issues in this  17 zoning case. There are the issues of is there enough green  18 area? Is the traffic going to be a problem? And I think  19 you'll find from the testimony that of all the issues, the  20 lease troubling is traffic in this particular, which is  21 usually a very big issue.  22 All right. You also, you'll also be treated, I  23 guess is the right word, to discussion of a master plan  24 which is now the second oldest master plan in Montgomery  25 County, originally approved in 1971 and modified in 1985.</p>

<p style="text-align: right;">Page 14</p> <p>1 The recommendation for this property, however, was made in  2 1971. And it's important to note that the existing  3 subdivision was built just before the master plan came out.  4 And so there really is no recommendation in this master  5 plan. The master plan is 28 years old, but the  6 recommendation is over 40 years old for anything other than  7 what's there built today.</p> <p>8 But one of the interesting things that you're  9 going to find when you hear testimony about this master plan  10 is that the approach was not on individual properties. It  11 was in areas. This particular area, which is area 2, was  12 recommended at that time for what was considered multi-  13 family and the highest densities in the County, which today  14 would be considered single family densities of mid-range.  15 This is a very important issue because it's one that  16 controlled the Planning Board's recommendation of denial.</p> <p>17 I'm sure you've read the record and the record  18 indicates that the planning staff was very much in support  19 of this and felt that the master plan should be given little  20 weight because it was so old. However, in front of the  21 Planning Board, I mean in front of the Planning Board, the  22 chairperson focused in on just the master plan  23 recommendation. And all there is, there is a lot of  24 testimony in the record from other members of the Board  25 basically said we can't approve this not because we don't</p>	<p style="text-align: right;">Page 16</p> <p>1 will be affordable, affordable based upon the incomes of  2 what are MPDU and work force housing median incomes are in  3 the County. So that will stop and we'll present our case.  4 Thank you very much.</p> <p>5 MS. ROBESON: Mr. Brown.  6 MR. BROWN: I'll try to be very brief, Ms.  7 Robeson. The town, Washington Grove, kept an open mind and  8 worked closely with the applicant in reviewing various plans  9 as this project moved down in density from PD-60 to PD-44,  10 and now to PD-35. And I have to say that my client is one  11 that is not a NIMBY sort of client. They are a public body  12 and they understand how, that things can change. And, in  13 fact, you will find in our presentation in this case that we  14 will be presenting testimony not that this property should  15 stay as it is or not be redeveloped, but that it should be  16 redeveloped at a lesser density, something in the range of  17 200 units rather than 329 units.</p> <p>18 So one of the questions I think you ought to focus  19 on from the point-of-view of hearing the testimony about the  20 proposed benefits of this redevelopment is whether or not  21 those benefits are achievable at a lesser density than 329.  22 And the reason I stress the importance of that is because  23 the very first sentence of Section 59C7.11, the purposes of  24 the plan development zone says the following, quote: "It is  25 the purpose of this zone to implement the general plan for</p>
<p style="text-align: right;">Page 15</p> <p>1 like it, but because it's not in agreement with the master  2 plan. And I would just point out, as I'm sure you know,  3 master plans are statement of policy to begin with. They're  4 not statutes. They're one of many things to be considered.  5 So this is something that I think throughout that you will,  6 you will find an interesting debate.</p> <p>7 Other areas in terms of required setbacks and  8 green areas, all those things are issues that have been  9 raised by the opposition and will be addressed by our  10 witnesses. And then the last thing I'd like to point out,  11 and it's very timely and this will be presented as part of  12 our testimony, the Capital of Governments recently came out  13 with an analysis of what the area, the regional need in the  14 way of housing in the next 10 to 15 years. And  15 interestingly enough, with regard to Montgomery County,  16 their estimate is that there's a shortage, excuse me, of  17 85,000 housing units in the next 10 to 15 years. And one of  18 the biggest deficits is in affordable housing.</p> <p>19 And this application is not just an application to  20 renew and regenerate a project, a multi-family project which  21 is now functionally obsolete, but it's also to maintain a  22 stock of affordable housing. Not only will there be a  23 maximum number of MPD used in this project, which will be 15  24 percent, which by the way the applicant is not looking to  25 use the bonus in terms of propensity, but the entire project</p>	<p style="text-align: right;">Page 17</p> <p>1 the Maryland-Washington regional district and the area  2 master plans by permitting unified development consistent  3 with densities proposed by master plans." Density is the  4 very first consideration under the purpose of the zone.</p> <p>5 And what did the Planning Board find in this case?  6 I couldn't summarize our position any better than the  7 Planning Board did at page 2 of its report where they said,  8 "The Board finds that the proposed re-zoning and development  9 plan are so starkly inconsistent with the densities  10 enumerated in the master plan which specifically recommends  11 eight to 15 units per acre, that they should not be approved  12 as submitted. Although the Planning Board recognizes that  13 the applicable master plan is 27 years old and that the  14 condition of the existing aging development would make  15 redevelopment of the site at an appropriate density very  16 appealing, the Board is not persuaded by the applicant's  17 reasoning that the age of the plan and relative proximity to  18 transit justify a density approximately three times what the  19 master plan recommended."</p> <p>20 We will amplify on that recommendation with our  21 testimony both from our land use planning expert, Joe Davis,  22 as well as the various citizens that I will be, asked to  23 testify in opposition to the project. And notwithstanding  24 Mr. Kaufman's efforts to characterize the position of the  25 town through a letter from a citizen that I do not</p>

<p style="text-align: right;">Page 18</p> <p>1 represent, we are, we have very appropriate and constructive  2 concerns that we are not trying to stop a project from going  3 forward, but we just want a project to go forward that is  4 consistent with the various requirements for the PD zone  5 density just being the first of many. Thank you very much.  6 MS. ROBESON: Thank you. Mr. Kaufman or Ms.  7 Girard, please call your first witness.  8 MR. KAUFMAN: Yes. Our first witness will be Mr.  9 Stacy Hornstein.  10 MS. ROBESON: Mr. Hornstein, please raise your  11 right hand.  12 (Witness sworn.)  13 DIRECT EXAMINATION  14 BY MR. KAUFMAN:  15 Q Mr. Hornstein, please state your full name and  16 address.  17 A Stacy Hornstein. Business address is 1280  18 Maryland Avenue, Washington, D.C.  19 Q And what is your occupation and how long have you  20 been engaged in it?  21 A I am a real estate developer and have been doing  22 real estate development my entire career.  23 Q All right.  24 A Over 40 years.  25 MR. KAUFMAN: We're going to give you, Madam</p>	<p style="text-align: right;">Page 20</p> <p>1 your past experience in this field?  2 A I initially started my career as a public official  3 in Dade County, Florida. I had primarily responsibility for  4 development of public projects, parks, fire stations, police  5 stations and so on and handled over 200 zoning cases. I did  6 that for 13 years of my life. I moved to Washington, D.C.  7 and engaged with a real estate development firm that  8 specialized in mixed use projects and retail. We did things  9 as creative as Potomac Mills where I was development  10 director, on to housing on Pennsylvania Avenue at Market  11 Square and I've been doing, working with them on and off for  12 about the last 30 years.  13 Q And what is your role with the Towne Crest  14 Apartments, LLC?  15 A Towne Crest is a family-owned property owned by  16 the Kramer family. Melvin and Lillian Kramer developed this  17 property in the '60's and Mr. Kramer has passed away and  18 Mrs. Kramer has now moved to Boca Raton and has basically  19 turned the property over to their children. And the  20 children have engaged our company to help redevelop this  21 property and bring it to contemporary standards.  22 Q And could you give us a little bit of the history  23 of the Towne Crest Apartments? I believe it was built in  24 the late '60's?  25 A It was built in the late '60's. Mr. Kramer, who</p>
<p style="text-align: right;">Page 19</p> <p>1 Examiner, his resume.  2 MS. ROBESON: Well, are you qualifying him as an  3 expert?  4 MR. KAUFMAN: Yes, I am going to try to qualify  5 Mr. Hornstein as an expert in development and real estate  6 development.  7 MS. ROBESON: Okay. I generally do not qualify  8 someone who has a conflict of interest, you know, who has a  9 personal interest in the case. That's not really what an  10 expert for the purposes of a hearing, a quasi-judicial  11 hearing does. You can submit your, the resume. I don't  12 have a problem submitting the resume if you want to bolster  13 the credibility of his testimony.  14 MR. KAUFMAN: That's fine.  15 MS. ROBESON: Okay. So I'm going mark this as --  16 do you have an objection, Mr. Brown?  17 MR. BROWN: I think your approach is eminently  18 appropriate, Ms. Robeson. Thank you.  19 MS. ROBESON: Resume, 103, resume of Stacy  20 Hornstein. All right.  21 (Exhibit 103 was marked  22 for identification.)  23 BY MR. KAUFMAN:  24 Q All right. Well, with that, Mr. Hornstein, would  25 you give us a little bit of history of your background and</p>	<p style="text-align: right;">Page 21</p> <p>1 was a developer himself, actually purchased the property and  2 subdivided it into the three communities that are there  3 today; the Towne Crest community, Wedgewood 2 and the  4 Wedgewood 1. In recent years, he recently passed away. It  5 is fallen in a little bit of lack of attention just given  6 the age of the family. But Mr. Kramer's son, Richard, who  7 is the primary force of our development company and our  8 development company is owned by Mr. Kramer, has started to  9 pay more attention to this property now that he's been given  10 control of it by his mother.  11 Q I see. And can you, using Exhibit 10, which I  12 believe is up on the -- can you identify the property, the  13 existing conditions and the surrounding area?  14 A This is the property here, 841 Acres, the  15 Wedgewood 1 and the Wedgewood 2 communities over here. We  16 have the stand of trees in Washington Grove which is  17 identified. We have the MARC station approximately .6 miles  18 away from the site. We have the ICC. We have Mid-County  19 Highway and Washington Grove Lane.  20 MS. ROBESON: Now the ICC is marked 200 on that  21 exhibit?  22 MR. HORNSTEIN: Yes.  23 MS. ROBESON: That building?  24 MR. HORNSTEIN: That's correct. And it ties in up  25 on Shady Grove Road. But the MARC station, we have the town</p>

<p style="text-align: right;">Page 22</p> <p>1 of Gaithersburg, which is to the north, and the Saybrooke</p> <p>2 community homeowners which is immediately to the left.</p> <p>3 BY MR. KAUFMAN:</p> <p>4 Q Okay. And I'd like you to take a look at these</p> <p>5 pictures and tell me if you can identify them?</p> <p>6 MS. ROBESON: Are these in the record?</p> <p>7 MR. KAUFMAN: Yes.</p> <p>8 MR. HORNSTEIN: These are images of --</p> <p>9 MS. ROBESON: Just a second. I'm going to mark</p> <p>10 these as Exhibit 104, 104A through D.</p> <p>11 (Exhibit 104 was marked</p> <p>12 for identification.)</p> <p>13 MS. ROBESON: Now can you, Mr. Brown, do you have</p> <p>14 any objections to these coming in at this point?</p> <p>15 MR. BROWN: No, obviously they're, they could have</p> <p>16 been submitted earlier, but I'm not going to, I'm not going</p> <p>17 to try and interpose technical objections like that today.</p> <p>18 Thank you.</p> <p>19 MS. ROBESON: Thank you. All right.</p> <p>20 MR. KAUFMAN: Well, can you --</p> <p>21 MS. ROBESON: Go ahead, Mr. Hornstein.</p> <p>22 BY MR. KAUFMAN:</p> <p>23 Q -- identify the pictures that you were, first of</p> <p>24 all, were these pictures taken at your request?</p> <p>25 A They were. Actually --</p>	<p style="text-align: right;">Page 24</p> <p>1 MR. HORNSTEIN: This week.</p> <p>2 MS. ROBESON: Okay. Go ahead.</p> <p>3 MR. KAUFMAN: These are just images taken. This</p> <p>4 first image is taken from Towne Crest, right?</p> <p>5 MS. ROBESON: Now the first image, is that 104A,</p> <p>6 this?</p> <p>7 MR. HORNSTEIN: Yes. Yes, ma'am.</p> <p>8 MS. ROBESON: -- image here?</p> <p>9 MR. HORNSTEIN: 104A is that. The next one where</p> <p>10 it shows the streetscape is B. The third one is a picture</p> <p>11 of one of the buildings and the fourth one was a picture,</p> <p>12 104D is a picture showing the relationship to the Westwoods</p> <p>13 and the existing structures.</p> <p>14 MS. ROBESON: Okay. Well, let's have you describe</p> <p>15 them. I just wanted to make sure for the record that they</p> <p>16 know what exhibit we're talking about.</p> <p>17 MR. HORNSTEIN: This first image is from Towne</p> <p>18 Crest Drive looking at this building right here.</p> <p>19 MS. ROBESON: Now this building you have to talk</p> <p>20 like a transcript will talk. It's hard.</p> <p>21 MR. HORNSTEIN: It's the southernmost building on</p> <p>22 the apartment zone property.</p> <p>23 MS. ROBESON: Okay. Good answer.</p> <p>24 MR. HORNSTEIN: Yes, ma'am. The second image is</p> <p>25 taken from the northernmost point on the site on Towne Crest</p>
<p style="text-align: right;">Page 23</p> <p>1 Q And what do they represent?</p> <p>2 A This is, these four images --</p> <p>3 MS. ROBESON: Did you take these pictures?</p> <p>4 MR. HORNSTEIN: I did.</p> <p>5 MS. ROBESON: You what?</p> <p>6 MR. HORNSTEIN: I did.</p> <p>7 MS. ROBESON: You did?</p> <p>8 MR. HORNSTEIN: I did. I took these. These are</p> <p>9 just four examples of what this property looks like today.</p> <p>10 The first one is --</p> <p>11 MS. ROBESON: Well, just before you get there,</p> <p>12 when did you take these?</p> <p>13 MR. HORNSTEIN: Within the last couple months.</p> <p>14 MS. ROBESON: And do they fairly and accurately</p> <p>15 depict the property aside from possible seasonal changes?</p> <p>16 It looks like the leaves are on the trees. Do they fairly</p> <p>17 and accurately depict the property as it is today?</p> <p>18 MR. HORNSTEIN: They absolutely do.</p> <p>19 MS. ROBESON: Or as of the time you took the</p> <p>20 picture?</p> <p>21 MR. HORNSTEIN: There's been no material change to</p> <p>22 the infrastructure or these buildings since these pictures</p> <p>23 were taken.</p> <p>24 MS. ROBESON: And have you been out there since</p> <p>25 you took the pictures?</p>	<p style="text-align: right;">Page 25</p> <p>1 Drive looking south.</p> <p>2 MS. ROBESON: And that is 104B?</p> <p>3 MR. HORNSTEIN: And that's --</p> <p>4 MS. ROBESON: And this, this --</p> <p>5 MR. HORNSTEIN: That's correct.</p> <p>6 MS. ROBESON: -- a streetscape picture of it?</p> <p>7 MR. HORNSTEIN: Or lack of a streetscape. As you</p> <p>8 can see, there are no trees, no curb, no gutter. There's</p> <p>9 only a sidewalk on this. That's the existing condition</p> <p>10 thereto. The third image is taken at one of the buildings</p> <p>11 on the south side of the property, again from Towne Crest.</p> <p>12 What it shows --</p> <p>13 MS. ROBESON: And that's 104C?</p> <p>14 MR. HORNSTEIN: 104C, thank you. And basically we</p> <p>15 can see from this building, this image that these buildings</p> <p>16 are basically obsolete. They have passed their life.</p> <p>17 There's little you can do to improve the aging of these</p> <p>18 buildings. The last which is, I guess, B --</p> <p>19 MS. ROBESON: Yes.</p> <p>20 MR. HORNSTEIN: -- is looking from about midpoint</p> <p>21 in the site and looking south along the edge of our</p> <p>22 buildings that the stand of trees behind them. I think the</p> <p>23 most striking part of this is, of this image is you can also</p> <p>24 see on the aerial that these buildings are within 20 feet of</p> <p>25 the property line. And in some cases, not shown on this</p>

<p style="text-align: right;">Page 26</p> <p>1 aerial, you can see that actually that building is within 17 2 feet. That's the northernmost building is within 17 feet of 3 the property line. These were all built according to code 4 at the time and they are the existing condition. 5 BY MR. KAUFMAN: 6 Q Now I want to ask one other question. There are, 7 referring to Exhibit 10, there are some single family houses 8 along Daylily Drive toward the southern end of the 9 Westwoods? 10 A There are four single family homes that are on a 11 dead-end street called Daylily that comes in off of 12 Washington Grove Lane. 13 Q Right. Now was the subject development built 14 before or after those homes came? 15 A Towne Crest was built years before those homes 16 were. 17 Q So they came in after and -- 18 A They were built, yes. 19 Q -- they were placed within 20 feet of your 20 existing buildings? 21 A The property lines were within 20 feet. The 22 buildings were probably closer to 30 feet. 23 Q Thank you. Now, Mr. Hornstein, are you familiar 24 with this application 910? I know you are, but I need to 25 ask that question.</p>	<p style="text-align: right;">Page 28</p> <p>1 development plan. It called for 469 units, using a PD-44 2 zoning category. It included four buildings. It had, it 3 maintained the four access points from Towne Crest Drive, 4 that currently serve, currently serves the property. They 5 were, two of the buildings were 5-story and the other two 6 buildings were, I believe one was four and one was three. 7 It improved the streetscape and that street, curbs, gutters 8 and trees along the edge and provided most importantly from 9 an amenity perspective structured parking. 10 Today, the existing property has its parking at 11 surface and what we had proposed here was a development that 12 wrapped the residential units around the parking garages. 13 This is a major benefit and it's one that is very 14 contemporary in terms of competition. When building a new 15 apartment, you want to be able to compete with the other 16 properties. 17 BY MR. KAUFMAN: 18 Q So all of your parking then will be in parking 19 structures and not surface parking, except for some visitor 20 parking? 21 A Well, that was the original plan. 22 Q All right. Is that not the plan in all the 23 iterations? 24 A Yes, it is. 25 Q All right. So it's still --</p>
<p style="text-align: right;">Page 27</p> <p>1 A Yes, sir. 2 Q And the plans and reports submitted in connection 3 with the application? 4 A I am. 5 Q And could you give us a little bit of the history 6 of this PD application? I understand it's had a number of 7 amendments and would you go through those and would you also 8 explain why the plan was amended and where it is today? 9 A We started this project recognizing that we are a 10 fixture in the community and have been there many years. So 11 we started discussing with our consultants about, and our 12 team about how to redevelop this property and what is its 13 best use. We originally came up with an original 14 application which -- 15 MS. ROBESON: Is that in the record? 16 MR. HORNSTEIN: Yes. Could you -- the exhibit 17 number is on it. 18 MS. ROBESON: I see it, 46. 19 MS. GIRARD: It's Noland's 26. 20 MR. HORNSTEIN: This one is 26. 21 MS. ROBESON: And what's the big one? 22 MS. GIRARD: 46. 23 MR. KAUFMAN: Yes, it's 46B. 24 MS. ROBESON: Okay. 25 MR. HORNSTEIN: 26 is our original, our original</p>	<p style="text-align: right;">Page 29</p> <p>1 A Yes. 2 Q -- a main feature of your current application? 3 A That's correct. That structured parking is very 4 expensive and we went through the evaluation methodology as 5 its benefits and this plan included many other benefits that 6 aren't there today for a residence, including pools and 7 Internet café and exercise facilities, libraries, a space 8 for children to do their homework, all as, packed together 9 into what we thought was a well-designed building. 10 Q And there came a time when you sought to amend the 11 application to a lower PD. Can you explain the 12 circumstances at what brought you to do that? 13 A Well, we started contacting the community, 14 Wedgewood 1, Wedgewood 2, Saybrooke to the north, the town 15 of Washington Grove and we got feedback from the community 16 that they would like to see something a little less dense. 17 The community, particularly Wedgewood 2, came up with what 18 we thought was an outstanding idea because we had these 5- 19 story buildings and they wanted to see something in their 20 community that was more compatible with their development. 21 And we came up with a solution that ultimately came into our 22 next phase which was when we lowered the density to 356 23 under our PD-35 zone, a plan that lowered the project from 24 five stories to four in the rear and along the Towne Crest 25 edge that faces these communities, we lowered the density to</p>



<p style="text-align: right;">Page 30</p> <p>1 three stories and had a design that would blend in with the  2 townhouse community.  3 Q So you had a step-down feature from the west to  4 the east?  5 A That's what --  6 Q -- to address the most, the closest neighbor?  7 A From the stand of trees in the back, it would be  8 four stories, and then three stories along the entire Towne  9 Crest edge.  10 MS. ROBESON: Is 46 the PD-35 or the PD-44?  11 MS. GIRARD: 44.  12 MR. HORNSTEIN: 44.  13 MS. ROBESON: Okay. So 26 was the PD-66?  14 MS. GIRARD: 60, PD-60.  15 MS. ROBESON: 60? Okay. I thought -- okay.  16 That's fine. Go ahead. Sorry.  17 MR. HORNSTEIN: We also as part of the plan  18 created some townhouses on the south end of the property --  19 MR. KAUFMAN: Right.  20 MR. HORNSTEIN: -- and we, based on what we heard  21 from the community, we reduced the number of axis points  22 into the site. At all time we maintained all the amenities  23 that we had originally conceived.  24 BY MR. KAUFMAN:  25 Q All right. And that was, the density for the PD-</p>	<p style="text-align: right;">Page 32</p> <p>1 front of whom?  2 UNIDENTIFIED SPEAKER: Can I stand closer to the  3 board?  4 MS. ROBESON: One second before you continue. Do  5 we need to angle the photos?  6 UNIDENTIFIED SPEAKER: No, I'm fine. Thank you so  7 much.  8 MS. ROBESON: Okay. I'm going to ask you, is  9 there somewhere else you can stand closer because I can't  10 see it? That's good. That works. Thank you. Okay,  11 continue, Mr. Hornstein.  12 MR. HORNSTEIN: I've just put up Exhibit 73B,  13 which is a current development plan.  14 MS. ROBESON: Okay.  15 MR. HORNSTEIN: This, what we did is in an effort  16 to try to deal with the issue of the setback of the four  17 homes along this area, we moved the actual buildings to now  18 100 feet from the rear property line. We've also scaled  19 back the, this is a building which is the building to the  20 north --  21 MS. ROBESON: So the rear property lines of the  22 homes along Daylily?  23 MR. HORNSTEIN: Daylily on that --  24 MS. ROBESON: I'm just doing that for the record.  25 MR. HORNSTEIN: Thank you. A building, B building</p>
<p style="text-align: right;">Page 31</p> <p>1 44 dropped down from 469 to what?  2 A To 356 units. It was a major reduction of over  3 100 units in the property.  4 Q And then there came a time when you decided to  5 amend further and what were the circumstances of that and  6 explain how you changed the plan.  7 A Well, we recently felt that there is still some  8 concern, or was some concern that the 356 units, so we  9 decided, thought it would be very helpful to our plan and to  10 the project to get down to what really is the bare minimum  11 of a development that would support the amount of amenities  12 in this project and we subsequently reduced it now to PD-35  13 at 329 units.  14 Q And were there some issues with regard to the  15 proximity of the townhouses in the PD-44 to the houses along  16 Daylily Road?  17 A There were. We thought we were doing a good job  18 of changing that density or remember in the higher density  19 we actually had buildings down here, but we felt from a  20 design perspective that we create something along the edge  21 of Washington Grove that would be complimentary to the other  22 homes that were in Washington Grove and elsewhere and --  23 MS. ROBESON: Can you hold on one second?  24 MR. HORNSTEIN: Yes, ma'am.  25 MS. ROBESON: He needs to be able to see. Walk in</p>	<p style="text-align: right;">Page 33</p> <p>1 townhouses now, A building being the building to the north,  2 B building being the building in the middle and the  3 townhouses to the south. We created a vista through here,  4 through the area between the townhouses and the building B  5 and we eliminated the size of the wing on building B by,  6 they're moving a whole bay of units and that reduction  7 created the site plan that we see today.  8 MS. ROBESON: Okay.  9 BY MR. KAUFMAN:  10 Q All right. Now I understand also that the number  11 of parking spaces has always exceeded those required, but  12 that there have been some reductions of that for the  13 current?  14 A Yes.  15 Q Could you explain that?  16 A Sure. The, these are wrapped parking. It is  17 proposed that the building A on the north side have three  18 floors of parking, three decks of parking. Building G would  19 have three decks of parking also, 80 parks per deck and A,  20 70 parks in building B. As we have reduced our plan in  21 density, we no longer need the amount of parking that was  22 originally designed for a larger project. So we have now  23 reduced the parking to two decks in building B and  24 keeping -- and the main reason, as I mentioned, we reduced  25 the density in building B as part of the plan.</p>

<p style="text-align: right;">Page 34</p> <p>1 Q Now and the height of building A and B are now at 2 what height? 3 A We're going to need to talk to the architect about 4 that, but they're about 10 feet taller, I believe, than what 5 they are today. 6 Q No, I'm talking about number of stories. 7 A Number of stories? Four stories on building A 8 with three on the edge, four stories on building B with 9 three stories on the edge and the townhouses are two 10 stories. 11 Q And we, you're familiar with the PD-35 zone? 12 A Yes, sir. 13 Q And are you familiar with the requirement there 14 that normally 50 percent of the buildings need to be taller 15 than four stories? 16 A It does require that, yes. 17 Q And are you aware of the opportunity to seek a 18 waiver of that? 19 A Yes, and I believe we have done so. 20 Q And you have done that? 21 A Yes. 22 Q And I believe, Madam Examiner, that is in the 23 record. Do you know the exhibit number? It's Exhibit -- 24 MS. GIRARD: 73. 25 MR. KAUFMAN: -- 73. And that's both a, it's a</p>	<p style="text-align: right;">Page 36</p> <p>1 the Shady Grove Alliance. 2 We also put up a web page and we did mailings to 3 over 1,200 people on a couple of occasions. The postcards 4 suggesting the folks go to our web page and get information 5 about the project and get updates on the project was very 6 successful in terms of number of people coming to the web 7 page. 8 Q And did you meet with the Planning Commission of 9 the town of Washington Grove? 10 A We -- 11 Q I'm sorry, Gaithersburg? 12 A We did. We did make a presentation to number of 13 stuff and then we did make a presentation to the Planning 14 Commission in Gaithersburg. It was very, a wonderful 15 meeting for us because we got unanimous, a unanimous vote by 16 the Planning Commission which is something we understand 17 rarely happened in Gaithersburg in support of our project. 18 And I think the thing that as a developer, the thing that 19 was most gratifying for me in all the years I've been doing 20 this, which is all my adult life, the chairman of the 21 Planning Commission said something that will, that was very, 22 very, made me feel very well. 23 Q What was that? 24 A He said, this was in reference to density and he 25 said it's not the density, it's how you use it. And he said</p>
<p style="text-align: right;">Page 35</p> <p>1 waiver for height and -- 2 MS. GIRARD: No, it's just -- that's just the 3 waiver from height. 4 MR. KAUFMAN: Oh, just for the height, okay. 5 Okay. 6 BY MR. KAUFMAN: 7 Q Now during this entire period of time which is 8 quite a period of time when you made these amendments, would 9 you describe the efforts that were made to reach out to the 10 surrounding communities and your representatives? 11 A Yes. We had a number of meetings with the folks 12 in Wedgewood 2 and Wedgewood 1. We made a couple 13 presentations to the folks at Seabrook, Saybrooke, I'm 14 sorry. 15 Q Yes. 16 A We have written letters to all the four homeowners 17 on Daylily. We actually got a response ultimately from two 18 of them. We met with them. We actually walked the 19 neighborhood when we didn't get response from our letters 20 and knocked on the door. We talked to Mrs. Goode in the 21 second house from Washington Grove Lane, I think that's 22 Daylily 3. We walked in the home in Wedgewood 2. We walked 23 most of the homes in Wedgewood 1. We met with other 24 community groups that were registered with Park and Planning 25 as having an interest. We made a couple of presentations to</p>	<p style="text-align: right;">Page 37</p> <p>1 in this project you're using it the right way. 2 Q And I understand that they put a letter in this 3 record. Are you familiar with that? 4 A Yes. 5 Q We are looking, Madame Examiner, for the exhibit 6 number. 7 MS. ROBESON: I know it's in the record. I read 8 it. 9 MR. KAUFMAN: Okay. Okay. 10 MS. ROBESON: I believed you. 11 MR. KAUFMAN: Thank you. It's nice to know that 12 I've got some credibility there. 13 BY MR. KAUFMAN: 14 Q Now you engaged in a dialogue with Wedgewood 2 15 community and its board. Can you explain that? And I also 16 understand that you have an agreement with them? 17 A We do. 18 Q And could you tell us what that is and -- 19 A Sure. 20 Q -- how that came about? 21 A Wedgewood 2 has a very active home owner's 22 association. We had the privilege of first bringing our 23 project to them. They had concerns, as I mentioned, on the 24 height of the building which was one of the most others. 25 And we listened to what they suggested and made amendments</p>

<p style="text-align: right;">Page 38</p> <p>1 to our plan.</p> <p>2 We entered into an agreement with them because,</p> <p>3 and it's really kind of a cooperation agreement, for how</p> <p>4 we're going to interact together as neighbors. Over the</p> <p>5 years, as I mentioned, as Mr. Kramer, Sr., Melvin, fell into</p> <p>6 ill, he really wasn't paying attention to this property and</p> <p>7 there was a lack of communication and there was some</p> <p>8 outreach from Wedgewood 2 to the ownership and it was not,</p> <p>9 it was not really addressed. And immediately, the</p> <p>10 community, they wanted to make sure that as we went forward</p> <p>11 together that we would be cooperating for many years</p> <p>12 together on our issues of mutual concern.</p> <p>13 In addition, we felt it would be helpful at the</p> <p>14 time we're redeveloping to help them with some of their</p> <p>15 issues that they neither have the resources to address or</p> <p>16 the expertise. And the thing that we, I'm most pleased that</p> <p>17 we're able to help them with is right now Towne Crest Drive</p> <p>18 is a dead end. What I didn't show you along this edge of</p> <p>19 the Saybrooke in Gaithersburg, there's actually a 14 --</p> <p>20 MS. ROBESON: Okay. Just a second. You have</p> <p>21 to --</p> <p>22 MR. HORNSTEIN: Sure. I'm sorry.</p> <p>23 MS. ROBESON: -- what edge it is.</p> <p>24 MR. HORNSTEIN: I guess that's why I'm not --</p> <p>25 MS. ROBESON: Is it the eastern edge or I don't</p>	<p style="text-align: right;">Page 40</p> <p>1 agreements from them that it would be a good idea to close a</p> <p>2 portion of the road. That would be the portion from</p> <p>3 Larchmont Terrace to the northern property line. Right now</p> <p>4 it just dead ends. Larchmont Terrace is actually a loop</p> <p>5 road, it goes around, so it makes sense that there won't</p> <p>6 even need to be a cul-de-sac here because there's a loop</p> <p>7 road.</p> <p>8 So we worked with the town and we said with the,</p> <p>9 with the homeowner's association, we can help you with your</p> <p>10 parking. They wanted help with the parking and we came up</p> <p>11 with this idea where we would close the road. They came up</p> <p>12 with the idea that we would close the road, that we would --</p> <p>13 MS. ROBESON: Close the road at the --</p> <p>14 MR. HORNSTEIN: From Larchmont Terrace to --</p> <p>15 MS. ROBESON: -- northernmost loop of --</p> <p>16 MR. HORNSTEIN: The dead end portion.</p> <p>17 MS. ROBESON: Yes.</p> <p>18 BY MR. KAUFMAN:</p> <p>19 Q Such as to close it, but also abandon it?</p> <p>20 A To close and abandon it subject to our rezoning,</p> <p>21 obviously, we wouldn't be doing this beforehand, but we</p> <p>22 would put it as part of our redevelopment efforts. Then we</p> <p>23 would get our half of the property back of the abandoned</p> <p>24 road and the homeowner's association would get their piece.</p> <p>25 What we then would do is we would take ours and</p>
<p style="text-align: right;">Page 39</p> <p>1 know where north is.</p> <p>2 MR. HORNSTEIN: I guess that's why I'm not an</p> <p>3 expert. The northern edge of the property along the border</p> <p>4 with Gaithersburg --</p> <p>5 MS. ROBESON: They --</p> <p>6 MR. HORNSTEIN: -- has a 14-foot board on board</p> <p>7 wooden fence. So this road, which is Towne Crest Drive on</p> <p>8 the north side, will never move into that community. This</p> <p>9 is just a dead end. The community in Wedgewood 2 has a</p> <p>10 shortage of parking. And while we heard from the town that</p> <p>11 Towne Crest created that parking, Wedgewood 2 will tell you</p> <p>12 that the problems, they have two spaces for each of their</p> <p>13 units. A number of their folks don't, they have more than</p> <p>14 two cars and they have a parking problem.</p> <p>15 They do, their developer was, recognized that, I</p> <p>16 guess, and created a little overflow lot which the community</p> <p>17 uses and permits for their folks.</p> <p>18 MS. ROBESON: Okay. So that overflow lot on</p> <p>19 Exhibit, no, 73B is directly east of building A?</p> <p>20 MR. HORNSTEIN: Absolutely. Correct.</p> <p>21 MS. ROBESON: Okay. Across Towne Crest Drive?</p> <p>22 MR. HORNSTEIN: Across from Towne Crest Drive. So</p> <p>23 we, in an effort to try to help them with their parking, we</p> <p>24 came up with a solution. We went down to Montgomery County</p> <p>25 and the professionals did and got some preliminary</p>	<p style="text-align: right;">Page 41</p> <p>1 treat it as green space, we'll add to our green space which</p> <p>2 we would get our half and we would take our half on the</p> <p>3 backside and on the side closest to the homeowners</p> <p>4 association we would build a little overflow parking lot.</p> <p>5 We would build it on their property and they would maintain</p> <p>6 it, they would be responsible for its administration and</p> <p>7 using it going forward.</p> <p>8 MS. ROBESON: Who owns that property now?</p> <p>9 MR. HORNSTEIN: It's the right-of-way, so when the</p> <p>10 right-of-way is --</p> <p>11 MS. ROBESON: All of that is the right-of-way?</p> <p>12 MR. HORNSTEIN: All of that is the right-of-way.</p> <p>13 MS. ROBESON: Oh, okay.</p> <p>14 MR. HORNSTEIN: So when it's close, we both get</p> <p>15 our halves.</p> <p>16 MS. ROBESON: Yes. Okay.</p> <p>17 MR. HORNSTEIN: Actually it's a little more</p> <p>18 complex because we get this half and they get that half and</p> <p>19 we worked out an arrangement where simultaneously our half</p> <p>20 would be this half to the north.</p> <p>21 MS. ROBESON: Right.</p> <p>22 MR. HORNSTEIN: When you get the half to the</p> <p>23 south, then that's where their parking would be and that</p> <p>24 would add some, a real community benefit for them because</p> <p>25 they have a parking problem.</p>

<p style="text-align: right;">Page 42</p> <p>1 MS. ROBESON: Right.</p> <p>2 MR. HORNSTEIN: Towne Crest has never had a</p> <p>3 problem, a parking problem. We have plenty of surface</p> <p>4 parking existing and under our redevelopment program we're</p> <p>5 going to provide actually more than the code requires in our</p> <p>6 structured parking.</p> <p>7 BY MR. KAUFMAN:</p> <p>8 Q And there were some other things. Could you tell</p> <p>9 us a little bit about the security things that you agreed</p> <p>10 to?</p> <p>11 A The security was probably the most important</p> <p>12 issue, even more important than parking. The homeowners</p> <p>13 have taxed themselves, this association has taxed themselves</p> <p>14 with off-duty police officers because of the problems in the</p> <p>15 neighborhood. And they pay over \$10,000 a year to off-duty</p> <p>16 officers to patrol the neighborhood. We recognize the, that</p> <p>17 that is an issue with them and we have agreed to contribute</p> <p>18 to those, the police officer for a number of years to</p> <p>19 increase the amount of security along our mutual project.</p> <p>20 And we have a further provision under that agreement that</p> <p>21 we'll all look at it at a future date and see if we need to</p> <p>22 do it some more and if we do, we'll continue to fund it. We</p> <p>23 have this long-term relationship with them.</p> <p>24 In addition, there are two monument signs that</p> <p>25 announce Lakewood community. A, they are both in disrepair</p>	<p style="text-align: right;">Page 44</p> <p>1 Grove. And could you explain the history of that</p> <p>2 involvement and discussion with the town leaders?</p> <p>3 A Well, I'm not an expert, but I've been doing this,</p> <p>4 zonings all my life and projects. I probably had the most</p> <p>5 frustrating experience with Washington Grove that I've ever</p> <p>6 had. I think I've been, I've done a good job, our company</p> <p>7 has done a good job in meeting with all the neighbors and</p> <p>8 trying to address their issues wherever we can and I think</p> <p>9 we've been successful in doing that.</p> <p>10 The Town of Washington Grove we came first in</p> <p>11 April of 2012 and made a presentation to the board and a</p> <p>12 number of citizens. Following the discussion, I mean there</p> <p>13 were a number of issues that were raised. They had our</p> <p>14 plans in advance. They heard our presentation and they</p> <p>15 expressed they were concerned about parking which was</p> <p>16 surprising to us because we don't have a parking problem.</p> <p>17 Wedgewood 2 has a parking problem. We don't have a parking</p> <p>18 problem.</p> <p>19 Westwood was, the tree stand behind was a major</p> <p>20 issue. They were concerned with lights on the westward,</p> <p>21 coming to the Westwoods, the damage that we would be doing</p> <p>22 to the Westwoods and that was, that very hurtful for me</p> <p>23 because we see that as a phenomenal resource and we do want</p> <p>24 to protect it in the best way we can. As a matter of fact,</p> <p>25 I didn't mention when we were reviewing our plans one of the</p>
<p style="text-align: right;">Page 43</p> <p>1 and we felt that it would be in our mutual best interest</p> <p>2 that the community as we try to uplift ourselves and try to</p> <p>3 uplift our neighbors that a couple of improvements to those</p> <p>4 signs. We would just landscape them and fix them. The</p> <p>5 letters are falling off today. But just try to improve.</p> <p>6 Q And there's going to be testimony from your</p> <p>7 experts in terms of land planning and urban design, but</p> <p>8 could you briefly describe at this point how the streetscape</p> <p>9 along Towne Crest Drive will be treated as well?</p> <p>10 A Well, as you saw in the images referenced A, B,</p> <p>11 B --</p> <p>12 MS. ROBESON: 104B.</p> <p>13 MR. HORNSTEIN: 104B, thank you, it's pretty</p> <p>14 barren out there today. And what we've proposed to do is to</p> <p>15 put curbs, gutters, to add trees along the entire edge of</p> <p>16 the property, even coming around onto, on the south side on</p> <p>17 Washington Grove Lane, to put sidewalks where there are no</p> <p>18 sidewalks also on Washington Grove Lane. They would connect</p> <p>19 all the way through our property and all the way around the</p> <p>20 project.</p> <p>21 MR. KAUFMAN: Okay.</p> <p>22 BY MR. KAUFMAN:</p> <p>23 Q And then while you were engaging the various</p> <p>24 neighbors and community, I know that you, and you've already</p> <p>25 indicated that you did engage with the town of Washington</p>	<p style="text-align: right;">Page 45</p> <p>1 things we did when we went from the PD --</p> <p>2 Q 60.</p> <p>3 A -- 60 plan down to the PD 44. We eliminated --</p> <p>4 I'll show you a picture.</p> <p>5 Q Refer to the exhibit number.</p> <p>6 A Exhibit 26.</p> <p>7 MS. ROBESON: Mr. Kaufman, I'm just wondering what</p> <p>8 does this have to do with the criteria for approval, the</p> <p>9 relationship with Washington Grove?</p> <p>10 MR. KAUFMAN: Well, it has a lot to do with the</p> <p>11 issue of the compatibility issue and the impacts that are</p> <p>12 being claimed by the opposition.</p> <p>13 MS. ROBESON: I just was wondering when he said it</p> <p>14 was the most frustrating variance of his life, if he wants</p> <p>15 to stick to the substance, that's fine, just --</p> <p>16 MR. KAUFMAN: I understand.</p> <p>17 MS. ROBESON: -- it's not my job to rule on how</p> <p>18 frustrating --</p> <p>19 MR. KAUFMAN: I understand.</p> <p>20 MS. ROBESON: -- and perceptions and those things.</p> <p>21 MR. KAUFMAN: If you would do that, if you would</p> <p>22 stick to the --</p> <p>23 MR. HORNSTEIN: I'm sorry. I only shared that</p> <p>24 with you because I was putting context --</p> <p>25 MS. ROBESON: That's fine.</p>

<p style="text-align: right;">Page 46</p> <p>1 MR. HORNSTEIN: -- things I'm about to share with 2 you. 3 MS. ROBESON: That's -- you don't have to say 4 anything else. 5 MR. HORNSTEIN: On the Exhibit 26, you will see we 6 had along the edge of the tree stand a -- 7 MS. ROBESON: Okay. Just, I'm sorry to interrupt 8 again. I think the interpreter needs to move closer to the 9 exhibit again. 10 THE INTERPRETER: I just didn't want to block your 11 view. 12 MS. ROBESON: No. If you could stand up toward 13 the table and I can move over. No, up toward that table. 14 There you go. Okay. I'm fine. 15 MR. HORNSTEIN: Along the western edge of the 16 property we had a drive-out and parking for the townhouses 17 behind those woods. And the reason we did that was to 18 provide for circulation and fire protection, do all those 19 good things. The town was concerned about and expressed 20 their concerns about that drive-out being along that edge. 21 One of the major issues of this project from an 22 environment prospective this far has been the way storm 23 water has been handled. In the '60's, life was different, 24 codes were different. Primarily the storm water from 25 Wedgewood 1 and Wedgewood 2 and Towne Crest all come across</p>	<p style="text-align: right;">Page 48</p> <p>1 with the Saybrooke folks and for the town. In our 2 discussions with the town, there didn't seem to be a 3 consensus whether they wanted a chain link fence, a wooden 4 fence or some wrought iron fence, something you could see 5 through. There was a lot of discussion about that. 6 So at that, after that meeting on April 3rd, we 7 went back and tried to redevelop our plan and redesign our 8 plan and ultimately we did come up with a lower density plan 9 that we thought addressed many of the issues that the town 10 had. 11 BY MR. KAUFMAN: 12 Q PD-44? 13 A PD-44 plan. 14 Q All right. 15 A Which was our second. 16 Q Then you met with them again in May of 2012 and 17 explain that. 18 A At our meeting on the, I believe the town, what 19 they, they took our application and directed it to their 20 planning commission for a, so we had a meeting with the, on 21 May 16th with the Planning Commission. We made a 22 presentation, but we were there mostly to hear. We did 23 address how we handled the overflow parking and that issue 24 we shared with them when we introduced our density. We 25 changed the drive aisles in the rear. We reduced the height</p>
<p style="text-align: right;">Page 47</p> <p>1 the property and outflow into two pipes, one in the very 2 center of the property between the A and the B building and 3 one on the south end between Daylily 3 and Daylily 5. 4 Basically the water daylights -- 5 MS. ROBESON: When you say 3 and 5, that's lots 3 6 and 5? 7 MR. HORNSTEIN: I think that's their addresses. 8 MS. ROBESON: Oh, okay. 9 MR. HORNSTEIN: I believe. It's between the 10 middle of the two homes, the four homes that are out there, 11 it's between the two of them. 12 MS. ROBESON: Okay. 13 MR. HORNSTEIN: Essentially what's happened is 14 that this water, storm water was collected from all these 15 neighborhoods as well as Towne Crest is currently being 16 untreated and the big pipe, which is the one in the center 17 which picks up the majority of the water, outflows into the 18 Westwoods in a very concentrated way. And what it has done 19 is provided some erosion within the Westwoods and some trees 20 have damage as a result of that. That's the way it was 21 designed way back in the '60's and the town was concerned 22 about how storm water was going to be handled going forward 23 under this development. 24 Lastly, the town had expressed some concerns to us 25 about fencing and fencing has been an issue particularly</p>	<p style="text-align: right;">Page 49</p> <p>1 of the buildings along Towne Crest Drive, all the things 2 we've talked about. We committed to how lighting would be 3 handled on the siding using light fixtures that are directed 4 down that wouldn't spill over into the neighborhood and 5 minimize what I thought were all the issues of, that they 6 had raised. 7 Q And you submitted these plans to the town and to 8 the chairman of their planning commissioner, Charlie 9 Challstrom? 10 A Yes, we did. 11 Q Okay. Then something happened on June 6th at the 12 planning commission meeting. Would you explain that? 13 A The, we attended the meeting. We weren't invited, 14 but it was a public meeting, so we, our counsel and I 15 attended the Planning Commission meeting. And the Planning 16 Commission at that time was reviewing either a memorandum or 17 a resolution that they were going to send to their full 18 counsel, that, who would deny the project, the 19 recommendation for denial. 20 Q And did Mr. Challstrom appear at that meeting -- 21 A Yes. 22 Q -- do you recall? Do you recall -- 23 MS. ROBESON: What's the relevance of this? I 24 really, you know, this case is going to stand on its merits 25 under the code, so I don't want to get into personalities or</p>

<p style="text-align: right;">Page 50</p> <p>1 bad feelings. Are you saying that there is some improper 2 motive that the Planning Commission had or an unfair 3 procedure that biased their opinion or what? 4 MR. HORNSTEIN: Well, some things occurred at 5 that meeting where there was a denial by a representative of 6 the town that they had received any of these plans and that 7 they had been presented to them. And I -- 8 MS. ROBESON: That they had not received any of 9 the plans? 10 MR. HORNSTEIN: Right. That's correct. I think 11 that's relevant because it does go to the motive of the 12 opposition. 13 MS. ROBESON: Well, let me ask you something, Mr. 14 Hornstein. I have something in the record dated February 15 2013, February 5, 2013, from the town saying they still 16 stand by their resolution. Have they seen these plans since 17 then? 18 MR. HORNSTEIN: I believe they were forwarded to 19 them, yes. I believe -- 20 MS. ROBESON: And, so -- 21 MR. HORNSTEIN: -- they were given to them. I 22 don't know if they looked at them. 23 MS. ROBESON: Just to shortcut this, I, you know, 24 whether they saw the plans at the time or not, there is some 25 exhibit which I don't have off the top of my head in the</p>	<p style="text-align: right;">Page 52</p> <p>1 statement, the relationships between this community and how 2 they deal with their neighbors is significant. It's 3 significant in this case because you're dealing with a 4 master plan that basically is not functional anymore. And 5 the question is compatibility, okay? 6 MS. ROBESON: Well, how does the tale of two 7 neighborhoods, that's what you called it, how does that 8 relate to compatibility? I didn't understand that when you 9 said it. 10 MR. KAUFMAN: Well, I think, I think the, what one 11 neighborhood feels is compatible and what another 12 neighborhood feels is compatible is a very subjective thing. 13 MS. ROBESON: Well, is it, is it the 14 neighborhood's perception of compatibility because zoning is 15 not a plebiscite. 16 MR. KAUFMAN: That's correct. And that's -- 17 MS. ROBESON: Or -- see you've trained me too 18 well. 19 MR. KAUFMAN: Well, you've made the point -- 20 MS. ROBESON: No, I really -- 21 MR. KAUFMAN: -- you're -- 22 MS. ROBESON: I really am concerned about this. 23 MR. KAUFMAN: All right. I understand and I will 24 take your direction very much in -- but you made your own 25 point, or the point of this line of discussion which is this</p>
<p style="text-align: right;">Page 51</p> <p>1 record dated February 5th, I believe, saying that they stand 2 by their resolution. 3 MR. HORNSTEIN: Yes, I just, I just think that the 4 course of dealing is very important here. 5 MS. ROBESON: And you need to tell me why, because 6 you need to tell me what the legal relevance of the course 7 of dealing is. 8 MR. HORNSTEIN: Well, the course of dealing has 9 actually been denied, anything that comes anywhere close to 10 the town. 11 MS. ROBESON: Well, that's not what I look at. 12 MR. HORNSTEIN: Yes, I understand. 13 MS. ROBESON: What, I mean what criteria is that? 14 MR. HORNSTEIN: Well, I think -- 15 MS. ROBESON: They're trying to prove they're 16 NIMBY's, right, essentially? 17 MR. HORNSTEIN: I don't like the use of that term. 18 MS. ROBESON: Well, whatever term -- 19 MR. HORNSTEIN: Yeah. 20 MS. ROBESON: -- you want to call it. I really am 21 not going to decide the case based on, you know, portraying 22 one side or the other and their different perceptions. I'm 23 going to decide the case on the criteria, I really am. 24 MR. KAUFMAN: I understand that, Madam Examiner. 25 I do think, however, the, as I said in the opening</p>	<p style="text-align: right;">Page 53</p> <p>1 is not a plebiscite. This is not a plebiscite. This is a 2 correct, this is a case based upon the actual facts and what 3 the zoning ordinance requires and what you can rely on and 4 what you can't. And what you can't rely on, what you 5 yourself has said is a plebiscite and I believe there's 6 aspects of that in this case and there should not be. 7 MS. ROBESON: Well, there's no aspects of zoning 8 based on a -- oh, you're saying the Planning Commission's 9 recommendation is a plebiscite. 10 MR. KAUFMAN: Well, the Planning Commission's 11 recommendation is a whole different story. The Planning 12 Commission -- 13 MS. ROBESON: I mean not Montgomery County. 14 You're saying the town of Washington Grove? 15 MR. KAUFMAN: Right. 16 MS. ROBESON: Well, I'll do this. Let's stick 17 with Washington Grove right now and you can just ask if 18 rather than cut through I was surprised that they've never 19 seen the plans, just ask him had they ever seen the plans 20 when they made their recommendation, how is that? 21 MR. KAUFMAN: I think that's terrific. 22 MS. ROBESON: Okay. So ask him that. 23 MR. KAUFMAN: Well, we just asked him that, so we 24 don't -- 25 MS. ROBESON: Okay. But if you could just keep</p>

<p style="text-align: right;">Page 54</p> <p>1 your answer, it can be a descriptive answer, but if you</p> <p>2 could keep the personal feelings out of it, that would be</p> <p>3 good.</p> <p>4 MR. KAUFMAN: Yes, ma'am. Can you answer the</p> <p>5 question?</p> <p>6 MR. HORNSTEIN: We delivered the plan, so I don't</p> <p>7 know if they looked at them or not.</p> <p>8 MS. ROBESON: Okay.</p> <p>9 BY MR. KAUFMAN:</p> <p>10 Q Why don't we move on here? Mr. Hornstein, are you</p> <p>11 familiar with the applicant's obligations to abide by the</p> <p>12 requirements of the proposed zoning reclassification of PD-</p> <p>13 35 and specifically the binding elements?</p> <p>14 A I do.</p> <p>15 Q And will you, you know, what is the intention of</p> <p>16 your company regarding that?</p> <p>17 A We still strictly follow the requirements as</p> <p>18 provided.</p> <p>19 Q Now there are a couple of other things. You have</p> <p>20 existing tenants?</p> <p>21 A Yes.</p> <p>22 Q And you're going to phase this property, this</p> <p>23 redevelopment I understand and how we would do that.</p> <p>24 A I don't know how to say this, but I'm very pleased</p> <p>25 with, the tenants are happy with our plans. Our plans are</p>	<p style="text-align: right;">Page 56</p> <p>1 demarcation line. So move the existing tenants over here on</p> <p>2 the north to the south buildings, demolish the south</p> <p>3 project, I'm sorry, the north project, build it, take the</p> <p>4 folks that are living on the south side, those that have</p> <p>5 been relocated there and those that have been living there</p> <p>6 for years and move them to the north side and then build the</p> <p>7 second phase.</p> <p>8 Q Now just lastly, you're familiar that the property</p> <p>9 was posted?</p> <p>10 A Yes.</p> <p>11 Q All right. And I'll show you this exhibit.</p> <p>12 A Yes.</p> <p>13 MS. ROBESON: And that will be 105, affidavit of</p> <p>14 posting?</p> <p>15 MR. KAUFMAN: Right.</p> <p>16 MS. ROBESON: Thank you.</p> <p>17 (Exhibit 105 was marked</p> <p>18 for identification.)</p> <p>19 MR. KAUFMAN: Yes, ma'am. Now, Mr. Hornstein, is</p> <p>20 there anything else --</p> <p>21 MS. ROBESON: Mailing too.</p> <p>22 MR. KAUFMAN: There's also an affidavit --</p> <p>23 MS. ROBESON: Just one second. Does someone have</p> <p>24 a cell phone on, because that interferes with the recording</p> <p>25 mic. Thank you. Go ahead.</p>
<p style="text-align: right;">Page 55</p> <p>1 to develop the property in two phases. This is in an effort</p> <p>2 to try to keep our good tenants. We have tenants -- one of</p> <p>3 them has been there over 20 years. A lot of the county</p> <p>4 code requires how they are to be dealt with local and way</p> <p>5 beyond that and we made this commitment to go way beyond.</p> <p>6 We have two groups of buildings on our site on the</p> <p>7 north side and the south side. Our plan is to develop in</p> <p>8 two phases. About a year out, if we're approved, we will</p> <p>9 through attrition not refill the spaces on the south side.</p> <p>10 Prior to construction at our expense, we plan on moving a</p> <p>11 residence that will like to stay on the project and those</p> <p>12 who want to take advantage of the county code we'll provide</p> <p>13 that to them also. But those that want to stay with us,</p> <p>14 we're going to move them to the vacant community on the</p> <p>15 south side. We will develop the north side into its</p> <p>16 buildings.</p> <p>17 Once they're up and ready to go, we'll relocate</p> <p>18 the folks that are now living on the south side to units on</p> <p>19 the north side and then do the demolition on the south side</p> <p>20 and build the rest of the building B and the townhouses.</p> <p>21 Q So just quickly again, go over how the project</p> <p>22 would be phased in terms of development.</p> <p>23 A Two phases. Phase 1 on the north side, Phase 2 is</p> <p>24 the south side. This is where the storm water pipe is right</p> <p>25 here and that's an easement, so that's kind of like our</p>	<p style="text-align: right;">Page 57</p> <p>1 MR. KAUFMAN: There's a second affidavit, Madam</p> <p>2 Examiner, the zoning affidavit of mailing.</p> <p>3 MS. ROBESON: Okay.</p> <p>4 MR. KAUFMAN: And I'm handing that to Mr.</p> <p>5 Hornstein.</p> <p>6 MR. HORNSTEIN: Yes.</p> <p>7 MS. ROBESON: Thank you, Mr. Hornstein.</p> <p>8 MR. KAUFMAN: And that would be Exhibit --</p> <p>9 MS. ROBESON: 106. All right.</p> <p>10 (Exhibit 106 was marked</p> <p>11 for identification.)</p> <p>12 BY MR. KAUFMAN:</p> <p>13 Q My last question, Mr. Hornstein, on direct, is</p> <p>14 there anything else that you would like to bring to the</p> <p>15 Hearing Examiner's attention regarding the application, the</p> <p>16 company or how you want to proceed if this is approved?</p> <p>17 A Our company, Madame Hearing Examiner, has a</p> <p>18 reputation of developing quality products. We've come up</p> <p>19 here, I believe, a design that is quality that will, you've</p> <p>20 got nothing but good, good feedback on.</p> <p>21 MS. ROBESON: Okay. I had a question before I</p> <p>22 turned it over to Mr. Brown. I didn't mean to cut you off,</p> <p>23 you know, whether or not the Washington Grove Planning</p> <p>24 Commission looked at the plans, I think, could go to the</p> <p>25 credibility of their initial recommendation. So was there</p>

<p style="text-align: right;">Page 58</p> <p>1 something that you felt was not proper or biased about their 2 presentation? I'll ask it that way.</p> <p>3 MR. HORNSTEIN: Well, one of the issues and there, 4 yes, there is. And there are a number of things, but I'm 5 only going to focus on one for you.</p> <p>6 MS. ROBESON: Okay. Well, first of all, did they 7 or did they not to your knowledge see the plans?</p> <p>8 MR. HORNSTEIN: When I attended the meetings, 9 there were plans on the wall, our plans were on the wall.</p> <p>10 MS. ROBESON: Okay.</p> <p>11 MR. HORNSTEIN: So, yes I believe they did get 12 them.</p> <p>13 MS. ROBESON: Okay.</p> <p>14 MR. HORNSTEIN: They did receive them ultimately.</p> <p>15 MS. ROBESON: All right.</p> <p>16 MR. HORNSTEIN: One of the issues has been how the 17 western edge of our property and their property work 18 together.</p> <p>19 MS. ROBESON: Is the western edge the forest?</p> <p>20 MR. HORNSTEIN: That's the stand, those stand of 21 trees, yes.</p> <p>22 MS. ROBESON: Yes, okay.</p> <p>23 MR. HORNSTEIN: The, there are a number of 24 alternatives in how that could be handled, each one having a 25 different cost element to it, each having benefits and</p>	<p style="text-align: right;">Page 60</p> <p>1 second day. So I wondered, let's do the cross-examination 2 and then I wondered if anyone would have an objection to 3 letting Ms. Deloatch testify out of order?</p> <p>4 MR. BROWN: Not at all.</p> <p>5 MR. KAUFMAN: No, we don't either. In fact, we 6 appreciate the courtesy for her or any other of these 7 witnesses who may show.</p> <p>8 MS. ROBESON: Okay. Well, there's only one to my 9 knowledge, so --</p> <p>10 MR. KAUFMAN: Today.</p> <p>11 MS. ROBESON: -- because it's only one, I'll go 12 out of order. Mr. Brown, why don't you continue with your 13 cross-examination and then we'll hear from Ms. Deloatch.</p> <p style="text-align: center;">14 CROSS-EXAMINATION</p> <p>15 BY MR. BROWN:</p> <p>16 Q Mr. Hornstein, let's start with your dealings with 17 Wedgewood. Do I understand correctly that you have an 18 agreement with Wedgewood, I'm not sure if it's 1 or 2 or 19 both?</p> <p>20 A I believe you put it in the record.</p> <p>21 Q Yes, but I want to understand your understanding 22 of it. Is it your understanding that you will pursue a road 23 abandonment request with the County Council at some future 24 date?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 59</p> <p>1 demerits to it. The three solutions we offered to give to 2 the town, we had our engineers design them. Some had more 3 trees that went, that had to be taken out. Some had less. 4 Some required that the town give us an easement for grading, 5 others didn't. So we promised to give them a series, 6 offered to give them a number of studies which they said 7 they would consider. And on June 11th, I believe, we 8 delivered those plans on that day prior to the time we 9 delivered them. They had already issued their denial of our 10 request of that.</p> <p>11 MS. ROBESON: I see. So they didn't give you the 12 opportunity to --</p> <p>13 MR. HORNSTEIN: A lot of money, time and expense 14 and a lot of thought went into this.</p> <p>15 MS. ROBESON: Okay. I understand. All right. 16 That's helpful then. All right. Before I turn it over for 17 cross-examination, I see, is that, is it Mrs. Deloatch?</p> <p>18 MS. DELOATCH: Deloatch, yes.</p> <p>19 MS. ROBESON: Mr. Brown, I don't want to -- I was, 20 let's finish the cross-examination and then I wonder that 21 the parties would have an objection to allowing Ms. Deloatch 22 to testify out of order so that she doesn't have to -- I see 23 a long day --</p> <p>24 MR. BROWN: Right.</p> <p>25 MS. ROBESON: -- in front of us and possibly a</p>	<p style="text-align: right;">Page 61</p> <p>1 Q And is that date tied to approval of the project 2 or what?</p> <p>3 A Do you have a copy of the agreement?</p> <p>4 MS. ROBESON: Well, do you know the answer?</p> <p>5 MR. HORNSTEIN: I don't recall. I'd like to see 6 the agreement. I'll be glad to answer. The agreement 7 speaks for itself.</p> <p>8 MS. ROBESON: It is -- I think that it's 88 9 something. 88l.</p> <p>10 MR. HORNSTEIN: Could you ask the question again, 11 please?</p> <p>12 BY MR. BROWN:</p> <p>13 Q The question is that the timing on request for the 14 road abandonment.</p> <p>15 A Now, I don't see in here where the timing is in 16 here.</p> <p>17 Q I didn't either and I'm just wondering what your 18 expectation is in that regard.</p> <p>19 A My expectation is sometime prior to the start of 20 construction I think I would, from a timing perspective 21 because really as to create that parking lot is to be built 22 at the same time we build our parking lot and our pavement, 23 so there's a cost benefit of doing that. So it will, based 24 on our results it will tell us the time it will take to 25 perfect that closing, we'll start that at that time. My</p>



<p style="text-align: right;">Page 62</p> <p>1 guess is it could be a year out before we start this.</p> <p>2 Q At present, neither the petition of the road</p> <p>3 abandonment nor the success of the petition are binding</p> <p>4 elements to this development plan, are they?</p> <p>5 A I'm sorry, which are not binding elements?</p> <p>6 Q Neither the petition for road abandonment nor the</p> <p>7 success of that petition are binding elements to this</p> <p>8 development plan, are they?</p> <p>9 A The petition is not a binding element. I don't</p> <p>10 know what you mean by success.</p> <p>11 MS. ROBESON: I think what he's saying is approval</p> <p>12 of the road abandonment --</p> <p>13 MR. BROWN: Yes.</p> <p>14 MS. ROBESON: -- is not a binding element.</p> <p>15 MR. HORNSTEIN: That's correct. If I had a</p> <p>16 contractual obligation, there was.</p> <p>17 BY MR. BROWN:</p> <p>18 Q So essentially the agreement with Wedgewood is</p> <p>19 that at some unspecified future date you agree to pursue a</p> <p>20 road abandonment, but there is no assurance that that road</p> <p>21 abandonment will actually take place, is that correct?</p> <p>22 A I have a contractual obligation to prosecute it</p> <p>23 and because of the decision making of that abandonment is</p> <p>24 the function of the County Council, I can't obviously commit</p> <p>25 that they will do that.</p>	<p style="text-align: right;">Page 64</p> <p>1 asking a question about the economics required to redevelop</p> <p>2 this property, I don't object to that.</p> <p>3 MS. ROBESON: Okay. He did -- he raised, you</p> <p>4 raised in your testimony the economics of 329 units. So I</p> <p>5 do think that cross-examination on that issue is relevant.</p> <p>6 MR. KAUFMAN: Right. And I do not object.</p> <p>7 MR. HORNSTEIN: Restate the question, please.</p> <p>8 BY MR. BROWN:</p> <p>9 Q Why, I don't understand why you are talking about</p> <p>10 project economics when you are not the owner and as I</p> <p>11 understand it from your testimony, you're simply acting as</p> <p>12 an agent, a building agent for the owner of the property.</p> <p>13 Aren't the economics within the control of the owner of the</p> <p>14 property?</p> <p>15 A We have been -- in answer to your question, yes.</p> <p>16 Q All right. What information is there in the</p> <p>17 record that the owner of the property regards 329 units as</p> <p>18 the bare minimum necessary to support redevelopment of this</p> <p>19 property?</p> <p>20 A No, the owner has engaged a development company to</p> <p>21 prosecute the redevelopment of the property and based on the</p> <p>22 development company's analysis and based on the owner's</p> <p>23 review, this is, that is the bare minimum that they can,</p> <p>24 that are needed in order to finance and build this project.</p> <p>25 Q And I take it that you would ask this hearing</p>
<p style="text-align: right;">Page 63</p> <p>1 Q I believe you used the following language with</p> <p>2 respect to the current PD-35 plan and its, and the fact that</p> <p>3 it has 329 units, that this is the number of units that's</p> <p>4 the bare minimum to support the amenities. Did I get that</p> <p>5 down correctly?</p> <p>6 A You did.</p> <p>7 Q That's an economic judgment, isn't it?</p> <p>8 A It is.</p> <p>9 Q What information is there in the application about</p> <p>10 project economics?</p> <p>11 A I don't recall any of it is in there. I don't</p> <p>12 know.</p> <p>13 Q Well, let me ask this question because it goes</p> <p>14 back to this. Are the Kramers still the fee simple owners</p> <p>15 of this property?</p> <p>16 A They are.</p> <p>17 Q Will they be the fee simple owners of the property</p> <p>18 after it's developed as you, according to your request?</p> <p>19 A That's their intent. That is their intent as they</p> <p>20 stated to me.</p> <p>21 Q So what is your economic relationship with them</p> <p>22 and how does that figure into your conclusion about the</p> <p>23 economics of 329 units?</p> <p>24 MR. KAUFMAN: I object to the question of what his</p> <p>25 economic relationship is with this employer, but if he's</p>	<p style="text-align: right;">Page 65</p> <p>1 examiner to simply accept that information or that</p> <p>2 conclusion as a bare conclusion rather than demonstrate the</p> <p>3 economics of the project, is that your, is that your</p> <p>4 position?</p> <p>5 A Could you ask that again, it's a long question?</p> <p>6 Q Could you read the question?</p> <p>7 COURT REPORTER: That's fine.</p> <p>8 MS. ROBESON: Okay. We're back on, so you can</p> <p>9 continue.</p> <p>10 MR. HORNSTEIN: We are an established development</p> <p>11 company with a track record and that is our opinion and the</p> <p>12 owner's opinion.</p> <p>13 MR. BROWN: I have nothing further.</p> <p>14 MS. ROBESON: Okay. I will say for the record I</p> <p>15 did allow you to ask that because he raised it.</p> <p>16 Unfortunately the other thing we can't take into account are</p> <p>17 the economics of the project. All right. Is there anyone</p> <p>18 else that has questions of Mr. Hornstein?</p> <p>19 Ms. Deloatch, how long do you -- well, let's do</p> <p>20 this. Let's take a 10-minute break and then we will come</p> <p>21 back on with Ms. Deloatch and then the application can</p> <p>22 continue with his case.</p> <p>23 MR. BROWN: Thank you.</p> <p>24 MS. ROBESON: All right?</p> <p>25 MR. BROWN: That's fine.</p>

<p style="text-align: right;">Page 66</p> <p>1 (Recess)</p> <p>2 MR. BROWN: I thought to stand up, but I did.</p> <p>3 MS. ROBESON: Thank you. Okay. Is everyone</p> <p>4 ready? Are the interpreters ready?</p> <p>5 THE INTERPRETER: Yes, we are.</p> <p>6 MS. ROBESON: Cathy, are you ready? All right.</p> <p>7 We're back on the record and Ms. Deloatch --</p> <p>8 MS. DELOATCH: Uh-huh.</p> <p>9 MS. ROBESON: -- why don't you come up and have a</p> <p>10 seat? Please raise your right hand.</p> <p>11 (Witness sworn.)</p> <p>12 MS. ROBESON: Please state your name and address</p> <p>13 for the record.</p> <p>14 MS. DELOATCH: Charlene Louise Deloatch, 17765</p> <p>15 Larchmont Terrace, Gaithersburg, Maryland 20877.</p> <p>16 MS. ROBESON: Okay. And what would you like to</p> <p>17 say?</p> <p>18 MS. DELOATCH: I'm here today on vacation, this is</p> <p>19 a vacation day for me.</p> <p>20 MS. ROBESON: Okay. This is a sad day then.</p> <p>21 MS. DELOATCH: No, it's because I'm passionate</p> <p>22 about my community that I chose to ask and I'm here because</p> <p>23 I need to see my community look like that.</p> <p>24 MS. ROBESON: Okay.</p> <p>25 MS. DELOATCH: I've been in my community for 21</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. BROWN: Just a couple.</p> <p>2 CROSS-EXAMINATION</p> <p>3 BY MR. BROWN:</p> <p>4 Q Ms. Deloatch --</p> <p>5 A Yes?</p> <p>6 Q -- you saw the, we were talking about an agreement</p> <p>7 that I believe you signed with the developer --</p> <p>8 A Yes.</p> <p>9 Q -- in, I don't have a date on this particular</p> <p>10 version, but you did sign an agreement where you worked out</p> <p>11 some arrangements with them.</p> <p>12 A Yes, I did.</p> <p>13 Q Looking at the first page of that agreement, it</p> <p>14 seems to me that you signed this agreement at a time when it</p> <p>15 was still, that the applicant was still pursuing PD-44</p> <p>16 zoning --</p> <p>17 A Okay.</p> <p>18 Q -- do you recall that?</p> <p>19 A I know we signed -- I don't know all these</p> <p>20 technical terms. I'm not a lawyer. I'm not a doctor. I'm</p> <p>21 just a resident of Towne Crest.</p> <p>22 Q I understand.</p> <p>23 A I don't understand what you're saying, PD-44, PD-</p> <p>24 35. They came to us. We discussed what they wanted to do.</p> <p>25 We discussed the film, how we wanted it done and we came to</p>
<p style="text-align: right;">Page 67</p> <p>1 years. When my husband retired from the military, this is</p> <p>2 where we chose to live and this is where we're choosing to</p> <p>3 retire.</p> <p>4 MS. ROBESON: Okay.</p> <p>5 MS. DELOATCH: I've raised my daughter here. She</p> <p>6 still lives here. She enjoys living here. Some of her</p> <p>7 friends are still here. Some of them have moved out of the</p> <p>8 neighborhood, but we need to see that happen.</p> <p>9 MS. ROBESON: Okay. Anything else you'd like to</p> <p>10 say?</p> <p>11 MS. DELOATCH: That's basically it. I'm very</p> <p>12 passionate about this.</p> <p>13 MS. ROBESON: Okay.</p> <p>14 MS. DELOATCH: My community is depressed. It's</p> <p>15 very depressed. Every time I leave my house and I walk by</p> <p>16 that, drive by that, that's not good. That's not good.</p> <p>17 It's not good for the people who live there in those</p> <p>18 apartments and it's not good for the community around that</p> <p>19 apartment. And I feel that once this gets done, then the</p> <p>20 whole community will look a whole lot better.</p> <p>21 MS. ROBESON: All right. Is that everything you'd</p> <p>22 like to say?</p> <p>23 MS. DELOATCH: Uh-huh.</p> <p>24 MS. ROBESON: Mr. Brown, do you have any</p> <p>25 questions?</p>	<p style="text-align: right;">Page 69</p> <p>1 an agreement.</p> <p>2 Q And that agreement was at a time when there was</p> <p>3 about 358 or nine units in the proposal --</p> <p>4 A Yes. Uh-huh.</p> <p>5 Q -- do you recall that?</p> <p>6 A Yeah, it was.</p> <p>7 Q Now did you hear Mr. Hornstein talk about how they</p> <p>8 reduced the number to 329?</p> <p>9 A Yes, I did.</p> <p>10 Q Are you still supportive of the proposal and</p> <p>11 comfortable with the agreement when they've reduced the</p> <p>12 number from down to 329?</p> <p>13 A Yes, I am.</p> <p>14 Q What if they reduced it further, would you still</p> <p>15 be supportive of the project?</p> <p>16 A For me, I don't want to see any of my neighbors</p> <p>17 leave, any of my neighbors leave. As you said, someone has</p> <p>18 lived there 20 years. If 329 keeps all those people that</p> <p>19 are there, 329. 200, then somebody has got to go.</p> <p>20 Q Well --</p> <p>21 A Who should it be?</p> <p>22 Q Well, there are 107 units over there now, aren't</p> <p>23 there?</p> <p>24 A Then that way bring in some more good people.</p> <p>25 Q You just want to make sure that all the people are</p>

<p style="text-align: right;">Page 70</p> <p>1 able to stay?</p> <p>2 A People are able to stay, people who are homeless</p> <p>3 can find a place to live, people who don't live in a nice</p> <p>4 place like this can come here and live. I'm all for people</p> <p>5 having a place to live.</p> <p>6 Q Thank you for that clarification.</p> <p>7 MS. ROBESON: Anything else? Oh, yes, I'm sorry.</p> <p>8 Yes, go ahead.</p> <p>9 MR. KAUFMAN: Thank you.</p> <p>10 REDIRECT EXAMINATION</p> <p>11 BY MR. KAUFMAN:</p> <p>12 Q Just one question, Ms. Deloatch. By the way, I</p> <p>13 apologize for not being able to pronounce your name.</p> <p>14 A That's okay.</p> <p>15 Q I'm not too good at that.</p> <p>16 MS. ROBESON: I knew how to do it.</p> <p>17 BY MR. KAUFMAN:</p> <p>18 Q I'm not really a good speller either. My question</p> <p>19 is, I mean if this is built, do you and your neighbors feel</p> <p>20 that this development and as it steps down to you from four</p> <p>21 to three stories will be compatible with your community?</p> <p>22 A Yes, it would be. It would be.</p> <p>23 Q And do you feel that the, you know, how do you</p> <p>24 feel about the amenities and other things that are proposed?</p> <p>25 How will that impact your community?</p>	<p style="text-align: right;">Page 72</p> <p>1 MR. AGER: Thank you.</p> <p>2 MS. ROBESON: Now you can raise your right hand.</p> <p>3 (Witness sworn.)</p> <p>4 MR. AGER: I have an opening statement too. It's</p> <p>5 a dark day for me. Today is my wife's birthday.</p> <p>6 MS. ROBESON: Hopefully she won't be too mad about</p> <p>7 it.</p> <p>8 MR. AGER: No, she's passionate also.</p> <p>9 MS. GIRARD: Okay, Mr. Ager -- Mr. Ager's resume</p> <p>10 is Exhibit No. 73N in the record.</p> <p>11 DIRECT EXAMINATION</p> <p>12 BY MS. GIRARD:</p> <p>13 Q Can you please state your name and business</p> <p>14 address?</p> <p>15 A My name is David Scott Ager. Business address is</p> <p>16 630 Daybreak Circle, Suite 8150 in Clarksville, Maryland</p> <p>17 21029.</p> <p>18 Q And what is your occupation?</p> <p>19 A I'm a landscape architect and I'm also a certified</p> <p>20 planner.</p> <p>21 Q How long have you been engaged in this occupation?</p> <p>22 A For approximately 30 plus years.</p> <p>23 MS. ROBESON: Okay. Mr. Brown, do you have any</p> <p>24 objections to qualifying Mr. Ager as a land use planner?</p> <p>25 MR. BROWN: None. None.</p>
<p style="text-align: right;">Page 71</p> <p>1 A One, the kids will have someplace to go. I think</p> <p>2 it's wonderful.</p> <p>3 Q Okay.</p> <p>4 A And I'm just, I'm just really excited about the</p> <p>5 whole thing. I'm just really excited that, you know, this</p> <p>6 is being built, this is going to build my community and it's</p> <p>7 going to make my community a better place to live.</p> <p>8 Q Thank you. All right. Thank you. That's all the</p> <p>9 questions I have. Thank you for being here today.</p> <p>10 MS. ROBESON: Okay. About of an abundance of</p> <p>11 caution, do you have any questions based on Mr. Kaufman's</p> <p>12 questions?</p> <p>13 MR. BROWN: No questions.</p> <p>14 MS. ROBESON: All right. Thank you, Ms. Deloatch.</p> <p>15 You can take the rest of the day, I hope, off.</p> <p>16 MS. DELOATCH: Well, I got a little sick, so I</p> <p>17 guess I'll have to go home and get in bed now.</p> <p>18 MS. ROBESON: All right.</p> <p>19 MS. DELOATCH: Thank you.</p> <p>20 MS. ROBESON: I hope you -- thank you. Mr.</p> <p>21 Kaufman?</p> <p>22 MR. KAUFMAN: Yes. Our next witness is Mr. Dave</p> <p>23 Baker and Ms. Girard will direct his questioning.</p> <p>24 MS. ROBESON: I won't ask you to raise your right</p> <p>25 hand yet.</p>	<p style="text-align: right;">Page 73</p> <p>1 MS. ROBESON: Okay. Is that what you were</p> <p>2 qualifying him as?</p> <p>3 MS. GIRARD: Yes, cut it right off, yes.</p> <p>4 MS. ROBESON: Okay. But have you testified as an</p> <p>5 expert before this body or elsewhere in Maryland?</p> <p>6 MR. AGER: Yes. Currently I'm working on a</p> <p>7 planned unit development in Frederick County, property zoned</p> <p>8 at 50 acres. It's ongoing at this time.</p> <p>9 MS. ROBESON: Have you testified as an expert</p> <p>10 though?</p> <p>11 MR. AGER: Yes, I have an I have testified before</p> <p>12 the Frederick County, Montgomery County, the hearing</p> <p>13 examiners here --</p> <p>14 MS. ROBESON: Okay.</p> <p>15 MR. AGER: -- and other places I could --</p> <p>16 MS. ROBESON: Okay.</p> <p>17 MR. AGER: -- you know.</p> <p>18 MS. ROBESON: And are you licensed in Maryland?</p> <p>19 MR. AGER: I am licensed as a landscape architect</p> <p>20 in Maryland, Virginia and Delaware.</p> <p>21 MS. ROBESON: Okay. And I will accept you as an</p> <p>22 expert in land use planning.</p> <p>23 MR. KAUFMAN: Thank you.</p> <p>24 BY MS. GIRARD:</p> <p>25 Q Are you familiar with rezoning application G-910?</p>

<p style="text-align: right;">Page 74</p> <p>1 A Yes, I am.</p> <p>2 Q Are you familiar with the property that's the</p> <p>3 subject of the application?</p> <p>4 A Yes, I am.</p> <p>5 Q And the surrounding area?</p> <p>6 A Yes, I am.</p> <p>7 Q Okay. Are you familiar with the approved and</p> <p>8 adopted Gaithersburg master plan and its recommendations</p> <p>9 with respect to the subject property and surrounding area?</p> <p>10 A Yes.</p> <p>11 Q Are you familiar with the PD-35 zoning</p> <p>12 classification and the requirements of the zoning ordinance</p> <p>13 with respect to the rezoning requested?</p> <p>14 A Yes.</p> <p>15 Q Have you analyzed the suitability of the subject</p> <p>16 property for the proposed rezoning classification from a</p> <p>17 land planning standpoint?</p> <p>18 A Yes, I have.</p> <p>19 Q And is your report in the record as Exhibit 74A?</p> <p>20 A Yes.</p> <p>21 Q Can you walk us through the findings of your land</p> <p>22 planning analysis?</p> <p>23 A Absolutely. I have some exhibits for</p> <p>24 clarification that aren't in the record. So I was going to</p> <p>25 bring those out. There's some blow-ups of some of the</p>	<p style="text-align: right;">Page 76</p> <p>1 plans so that we have a graphic to go along with testimony.</p> <p>2 That's why I brought them along if that's helpful.</p> <p>3 MS. ROBESON: That's fine. I'm going to mark them</p> <p>4 because they are slightly different. I'm going to mark them</p> <p>5 as new exhibits and they're subject to objection from Mr.</p> <p>6 Brown.</p> <p>7 MR. AGER: And while I'm --</p> <p>8 MR. BROWN: Can we mark them all just so we</p> <p>9 could --</p> <p>10 MS. ROBESON: Yes, let's do that.</p> <p>11 MR. BROWN: Yes. Okay.</p> <p>12 MS. ROBESON: Now can you write on those?</p> <p>13 MR. AGER: I will try. Unfortunately --</p> <p>14 MS. ROBESON: Or at least have a sticky, do we</p> <p>15 have stickies here?</p> <p>16 MS. GIRARD: I have a sharpie.</p> <p>17 MR. AGER: Thank you. I do have a sharpie also,</p> <p>18 but --</p> <p>19 MR. BROWN: I also have stickies.</p> <p>20 MS. GIRARD: A sharpie should do it. Okay.</p> <p>21 MS. ROBESON: Whatever does it. So this would be,</p> <p>22 so 107 would be the land use plan from the, the 19, the</p> <p>23 approved land use plan 1985, Gaithersburg vicinity map</p> <p>24 master plan.</p> <p>25 (Exhibit 107 was marked</p>
<p style="text-align: right;">Page 75</p> <p>1 master plans as I talk through it --</p> <p>2 Q All right.</p> <p>3 A -- if that's okay?</p> <p>4 MS. ROBESON: Well, you can introduce them and</p> <p>5 they're subject to objection from Mr. Brown.</p> <p>6 MR. AGER: Okay.</p> <p>7 MS. ROBESON: Are they actually reproductions of</p> <p>8 the master plan?</p> <p>9 MR. AGER: Yes, ma'am.</p> <p>10 MS. ROBESON: Why don't we -- have you provided</p> <p>11 copies to Mr. Brown?</p> <p>12 MR. AGER: In the planning report there are page-</p> <p>13 size versions of portions of them.</p> <p>14 MS. ROBESON: And these are exact duplicates?</p> <p>15 MR. AGER: They're exact duplicates with the</p> <p>16 portion in question blown up on the same -- if I could, I</p> <p>17 could show you an example.</p> <p>18 MS. ROBESON: Why don't you do that?</p> <p>19 MR. AGER: As an example, I'm referring to a</p> <p>20 reproduction of the 1985 land use map signed and adopted.</p> <p>21 This exhibit has on the left-hand side the entire map with</p> <p>22 the signature block fully shown and on the right-hand side</p> <p>23 it shows a blow-up within a boxed area on that map of the</p> <p>24 subject property and the general surroundings in that master</p> <p>25 plan context. I have that exhibit also for previous master</p>	<p style="text-align: right;">Page 77</p> <p>1 (Exhibit 108 was marked for identification.)</p> <p>2 MR. AGER: 107.</p> <p>3 MS. GIRARD: Yes.</p> <p>4 MS. ROBESON: Is that working?</p> <p>5 MR. AGER: Yes, it is.</p> <p>6 MR. KAUFMAN: I'm sorry, over here, okay?</p> <p>7 MS. ROBESON: Okay. And the next one?</p> <p>8 MR. AGER: I have an excerpt from the 1961 master</p> <p>9 plan.</p> <p>10 MS. ROBESON: And that's the land use plan from</p> <p>11 the 1961 Gaithersburg master plan?</p> <p>12 MR. AGER: Yes. I'd like to just clarify that</p> <p>13 this is the generalized land use plan found in the text</p> <p>14 within my research at Park and Planning. They were unable</p> <p>15 to provide me with the actual maps, so this is a blow-up</p> <p>16 from the text. I have the full text with me --</p> <p>17 MS. ROBESON: From the text?</p> <p>18 MR. AGER: -- as well.</p> <p>19 (Exhibit 108 was marked for identification.)</p> <p>20 MS. ROBESON: Okay. And do you have others?</p> <p>21 MR. AGER: I do.</p> <p>22 MS. ROBESON: This will be 109.</p> <p>23 (Exhibit 109 was marked for identification.)</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 78</p> <p>1 MS. ROBESON: Did you mark the one --</p> <p>2 MR. AGER: Yes, I did, 108.</p> <p>3 MS. ROBESON: Okay. Yes. 109 is the zoning and</p> <p>4 highway plan from the 1971 Gaithersburg master plan. Okay.</p> <p>5 And which is this, 110?</p> <p>6 MR. AGER: 1985 Gaithersburg highway and zoning</p> <p>7 plan.</p> <p>8 MS. ROBESON: Okay.</p> <p>9 MR. KAUFMAN: That's 110, I believe.</p> <p>10 MS. ROBESON: Yes, it's next, 110.</p> <p>11 (Exhibit 110 was marked</p> <p>12 for identification.)</p> <p>13 MS. ROBESON: And this is 111?</p> <p>14 MR. AGER: Yes.</p> <p>15 MS. ROBESON: And this is the 1971, zoning and</p> <p>16 highway plan 1971, Gaithersburg master plan?</p> <p>17 MR. AGER: Right. And this, the differentiation</p> <p>18 is the land use. It's on the back side.</p> <p>19 MS. ROBESON: Okay. So it's zoning and highway</p> <p>20 plan land use?</p> <p>21 (Exhibit 111 was marked</p> <p>22 for identification.)</p> <p>23 MR. AGER: And I have one final exhibit I'll refer</p> <p>24 to later in the discussion. And what this exhibit is is an</p> <p>25 aerial photograph of the subject property and the general</p>	<p style="text-align: right;">Page 80</p> <p>1 A I'll have, I was fumbling with the paper, so I'll</p> <p>2 have to ask you to repeat that. And if you could assist</p> <p>3 me --</p> <p>4 Q I understand. Let's start with 107. Does that</p> <p>5 correspond to pages 23 and 24?</p> <p>6 A Yes, it does.</p> <p>7 Q 108, does that correspond to page 20?</p> <p>8 A Yes, it does.</p> <p>9 Q 111, does that correspond to page 21?</p> <p>10 A Yes, it does.</p> <p>11 Q Does page 22 correspond to anything?</p> <p>12 A Yes.</p> <p>13 MS. ROBESON: That's a close-up.</p> <p>14 MR. BROWN? What?</p> <p>15 MR. AGER: It's a detail of the same Exhibit 11.</p> <p>16 We did a lay hand version of 111.</p> <p>17 BY MR. BROWN:</p> <p>18 Q Okay. Exhibits 109 and 110, what do they</p> <p>19 correspond to in your report?</p> <p>20 A You know, there's discussion in the report about</p> <p>21 any zoning or highway or density, generally Exhibit 109</p> <p>22 refers to that discussion for the 1971 Gaithersburg vicinity</p> <p>23 master plan.</p> <p>24 Q That's 109?</p> <p>25 A 109, 109 refers to the 1971 plan.</p>
<p style="text-align: right;">Page 79</p> <p>1 surroundings with analysis area 2 from the 1985 approved</p> <p>2 master plan for Gaithersburg and vicinity. And within there</p> <p>3 it delineates the existing number of units and outlines the</p> <p>4 subject property and the balance of the analysis area.</p> <p>5 MS. ROBESON: Okay. I'm just going to call that</p> <p>6 aerial photograph of analysis area 2.</p> <p>7 MR. KAUFMAN: I think that would be the right, the</p> <p>8 right label.</p> <p>9 MS. ROBESON: 112?</p> <p>10 MR. KAUFMAN: Oops.</p> <p>11 MS. GIRARD: There we go.</p> <p>12 MR. AGER: Okay.</p> <p>13 (Exhibit 112 was marked</p> <p>14 for identification.)</p> <p>15 MS. ROBESON: Mr. Brown, do you have any</p> <p>16 objections at this point to admitting these?</p> <p>17 MR. BROWN: I just have a couple of questions.</p> <p>18 MS. ROBESON: Okay.</p> <p>19 CROSS-EXAMINATION</p> <p>20 BY MR. BROWN:</p> <p>21 Q If I could clarify this, with reference to pages</p> <p>22 23, 24 of the Towne Crest supplemental land use report, I</p> <p>23 believe that Exhibit 108 was largely found on page 20,</p> <p>24 Exhibit 111 is found on page 21 and 107 is found on pages 23</p> <p>25 and 24, is that correct?</p>	<p style="text-align: right;">Page 81</p> <p>1 Q What is the difference between 109 and 111?</p> <p>2 A There is limited differences in that master plan.</p> <p>3 The same base was applied. They used zoning in highways on</p> <p>4 this plan and on the other plan they used highways and land</p> <p>5 use.</p> <p>6 Q And 110?</p> <p>7 A 110 is the approved zoning and highway plan for</p> <p>8 the 1985 plan.</p> <p>9 Q So that's just an excerpt from the current master</p> <p>10 plan?</p> <p>11 A Yes, if you take out the approval plan, the land</p> <p>12 use plan on the reverse side of that thing, which I have a</p> <p>13 copy of, this is what's on the back of that. This is part</p> <p>14 of the fold-out map.</p> <p>15 Q Is that the same plan that's been marked in</p> <p>16 Exhibit 12A or 12B in the record?</p> <p>17 A I'm not sure. I'd have to check.</p> <p>18 MS. ROBESON: Is that -- do you have a --</p> <p>19 MR. KAUFMAN: 12A or 12B. It's excerpts from the</p> <p>20 Gaithersburg and vicinity, not part of the July 1998</p> <p>21 approved and adopted Gaithersburg vicinity master plan map.</p> <p>22 MR. BROWN: Well, I'm going to have to do a little</p> <p>23 more checking, but --</p> <p>24 MS. ROBESON: All right.</p> <p>25 MR. BROWN: -- but I believe that subject to</p>

<p style="text-align: right;">Page 82</p> <p>1 checking on 109 and 110 I don't have any objections to the  2 admission of all of these exhibits, but I definitely have no  3 objection to 107, 108, 111 and 112.  4 MR. KAUFMAN: We could certainly reserve his right  5 to object.  6 MS. ROBESON: Okay.  7 MR. AGER: And I'll try to reserve my comments to  8 those four that you just mentioned.  9 MR. KAUFMAN: Well, you can comment on them  10 subject to --  11 MR. AGER: Okay. That's fine.  12 MS. ROBESON: Now does the interpreter need these?  13 He's going to be referring to these. Do you need to come  14 over here?  15 THE INTERPRETER: Well, the person we're working  16 with said that actually this is less important for him to be  17 able to see.  18 MS. ROBESON: Okay. That's fine.  19 MR. KAUFMAN: Okay. Are you ready to proceed with  20 him?  21 MS. ROBESON: I am.  22 REDIRECT EXAMINATION  23 BY MS. GIRARD:  24 Q When you're ready, Mr. Ager, you can proceed with  25 walking us through your lien claim and analysis.</p>	<p style="text-align: right;">Page 84</p> <p>1 years since its adoption relative to its recommendations for  2 this particular property in this particular case. It's  3 functionally obsolete because of that and I will go through  4 certain points to describe that in more detail.  5 Secondly, I want to just -- and I'm, for the  6 record really, if nothing else, and if I'm getting into too  7 much detail, you let me know, but there is an important  8 distinction here that master plans are policy statements and  9 not regulations and there's been some comments that there  10 are specific requirements and the finding is substantial  11 compliance. So I want to talk about that a little bit and  12 what that means in this particular case.  13 I'm going to make reference to other cases, one of  14 which is in the report, Case G-873, and how they handled a  15 very old master plan, the Westpark plan, and how they  16 looked, how the, I'm sorry, the district council looked at  17 that particular plan. I'm also, since the report was  18 submitted, I have identified two other cases that have a  19 similar circumstance and have district council approval and  20 comment on older master plans and how to deal with them.  21 Those cases are not in my report. They are Case G-909 and  22 Case G-840.  23 The, in those cases, as well as 873, which I did  24 make reference to, district council took a more flexible  25 approach to the way they interpreted the density and land</p>
<p style="text-align: right;">Page 83</p> <p>1 A Okay. Madam Examiner, there's a, I was called in  2 on this property after the Planning Board hearing and I  3 specifically requested to comment on master plans and their  4 relevancy to this particular case and the age of this master  5 plan particularly. Now I've tried to summarize my findings  6 and my research in this report.  7 MS. ROBESON: Okay.  8 MR. AGER: The report outlines not only the  9 general background which will be, has been described and  10 will be described by other, other witnesses, but it does  11 talk about in more specifics the master plan and the  12 findings required by a PD zone for a master plan and that's  13 kind of the focus of this whole testimony. I may touch on  14 things relative to compatibility or other findings, but the  15 purpose of this testimony is for the master plan relevancy.  16 MS. ROBESON: All right.  17 MR. AGER: So I'm going to go through some  18 background information, some analysis, and then the summary  19 findings.  20 MS. ROBESON: Okay.  21 MR. AGER: There's five -- before I do that, I'd  22 just like to kind of highlight five points that will be kind  23 of the broad points that we're going to talk about. Number  24 one, the master plan of record is the 1985 Gaithersburg  25 vicinity master plan and it has an age of approximately 28</p>	<p style="text-align: right;">Page 85</p> <p>1 use recommendations of the master plan looking at the  2 general situation with the particular property and less on  3 the specifics.  4 MS. ROBESON: G-909, was that Glen Alden?  5 MR. AGER: Glen Alden in, off, just west --  6 MS. ROBESON: No, I know where. I was the hearing  7 examiner for that.  8 MR. AGER: Yes.  9 MS. ROBESON: And then what is G-840?  10 MR. AGER: That's referred to by folks as the  11 Nayheart (phonetic sp.) property. And if I could go to the  12 map, it is --  13 MS. ROBESON: Which map? What's the exhibit  14 number?  15 MR. AGER: Thank you. I'll put it up. I'm  16 referring to Exhibit 112.  17 MR. KAUFMAN: That's lesson one, by the way.  18 What's the exhibit number?  19 MR. AGER: I, see if I can pay attention. I'm  20 referring to the aerial photo, Exhibit No. 112. In the  21 upper right-hand corner of that exhibit, which is an aerial  22 photograph taken in 2013, obtained by me through Google Maps  23 Pro, and the Nayheart property is at the corner of mid-  24 county, of the northwest corner of Mid-County Highway and  25 Washington Grove Lane. It's currently under construction in</p>

<p style="text-align: right;">Page 86</p> <p>1 the map. The aerial photo reflects that.</p> <p>2 MS. ROBESON: And that's the, it looks like it's a</p> <p>3 graded area?</p> <p>4 MR. AGER: That's correct. It's brown in texture,</p> <p>5 in color on the map.</p> <p>6 MS. ROBESON: Okay. I'm sorry to interrupt. Go</p> <p>7 ahead.</p> <p>8 MR. AGER: No, that's fine. That's fine.</p> <p>9 BY MS. GIRARD:</p> <p>10 Q And, Mr. Ager, is that property within the same</p> <p>11 master plan that we're discussing?</p> <p>12 A Yes. Thank you. That master, that property is in</p> <p>13 the same master plan, but in a different analysis area</p> <p>14 within the master plan. And as mentioned, excuse me, as</p> <p>15 mentioned earlier, as mentioned earlier, the subject</p> <p>16 application is 8.11 acres and the number of units proposed</p> <p>17 by Binding Element is 329 and that's important. The second</p> <p>18 point is --</p> <p>19 MR. KAUFMAN: Give us a second if you would?</p> <p>20 MR. AGER: And as described earlier, the property,</p> <p>21 which I'll go into more detail as we go through this, but</p> <p>22 the property was constructed with a combination of garden</p> <p>23 apartments and townhouses in the mid-1960's and as will be</p> <p>24 described in more detail by the zoning expert, and what's in</p> <p>25 the record currently, the planning neighborhood, it's</p>	<p style="text-align: right;">Page 88</p> <p>1 they covered broad, broad geographical areas. It is</p> <p>2 referenced also in the report, the functional life as</p> <p>3 described by Park and Planning for a master plan is 10 to 15</p> <p>4 years. And there's a big difference between the general</p> <p>5 plan, master plan, sector plans and functional plans. So</p> <p>6 we're referring to a master plan here, not a sector plan and</p> <p>7 not a plan of high specifics.</p> <p>8 The master plans, again, generally are flexible</p> <p>9 guidance to be interpreted and used accordingly. They are</p> <p>10 not regulations. They are not statutes, but they do have</p> <p>11 certain guidance that is important for development and the</p> <p>12 PD zone is dependent on it because there is a relationship</p> <p>13 between the PD zone approval and the master plan.</p> <p>14 Briefly, a very important issue I think, this is</p> <p>15 my personal feeling on this, when I was asked to do this</p> <p>16 research, I went back to the state enabling legislation,</p> <p>17 which has just recently been updated, so I had a little bit</p> <p>18 of searching to do actually --</p> <p>19 MS. ROBESON: The Land Use Article?</p> <p>20 MR. AGER: The Land Use Article. Thank you. And</p> <p>21 so I re-read it just to make sure it hadn't changed</p> <p>22 substantially. But the point, I guess the point I want to</p> <p>23 make is that in Maryland by statute everybody, every</p> <p>24 jurisdiction is required to at least look at their master</p> <p>25 plan every six years. Now there are a couple of exceptions</p>
<p style="text-align: right;">Page 87</p> <p>1 described on the north by the right-of-way for Mid-County</p> <p>2 Highway, on the south by the southerly limits of Washington</p> <p>3 Grove and I'm going to pronounce this name wrong, I believe</p> <p>4 it's Ponton Drive on the south by Washington Grove, on the</p> <p>5 west by the woods that were referred to earlier in</p> <p>6 Washington Grove and on the north is the jurisdictional</p> <p>7 boundary between Washington Grove, this property, other</p> <p>8 properties within Montgomery County and the city of</p> <p>9 Gaithersburg. The subject property is within that area in</p> <p>10 the north central area. The analysis area, which I'll refer</p> <p>11 to later within which this property is located is also</p> <p>12 within that planning area. And I will be referring to</p> <p>13 Exhibit 112 in the future when we talk about this.</p> <p>14 Now the Gaithersburg master plan is approximately</p> <p>15 30 square miles of area that was most recently approved in</p> <p>16 1985 and it was updated, limited updates in 1988 and 1990.</p> <p>17 The analysis area is 21 acres and it's located within the</p> <p>18 mid-county district of the air park study area. So it's a</p> <p>19 portion of a much larger study area. I apologize for the</p> <p>20 delay.</p> <p>21 The, just to repeat what's in the report, the,</p> <p>22 again, the nature of the master plan is general. It's a</p> <p>23 statement of policy, a series of goals and in this</p> <p>24 particular era they were actually referred to as area master</p> <p>25 plans rather than master plans for sector points because</p>	<p style="text-align: right;">Page 89</p> <p>1 to that. There's Prince George's and Montgomery County.</p> <p>2 But the professional opinion of the people at the state and</p> <p>3 the people in the profession is that it's reasonable,</p> <p>4 customary and appropriate to look at master plans every six</p> <p>5 years.</p> <p>6 In Prince George's County, they update their area</p> <p>7 master plans every six years, at least that's their policy,</p> <p>8 and they look at their general plan every 10 years. In</p> <p>9 Montgomery County, in Montgomery County there's the unique</p> <p>10 carve-out so to speak in the state legislation that says</p> <p>11 that Montgomery County looks at their master plans based</p> <p>12 upon their work program and their budget and there's no</p> <p>13 relationship to time. And what's also interesting is when</p> <p>14 you look at the master plans within Montgomery County,</p> <p>15 there's many that have been updated at least once and</p> <p>16 multiples times over the period of time that we're talking</p> <p>17 about that this master plan occurred back in 1985. In fact,</p> <p>18 there's only three master plans in Montgomery County and</p> <p>19 only two that are this old and two that are just slightly</p> <p>20 older than Capital View and Westbard, which is a sector</p> <p>21 plan. And so you could say that this is probably one of the</p> <p>22 oldest master plans in the state itself.</p> <p>23 MS. ROBESON: If everyone followed the state</p> <p>24 schedule?</p> <p>25 MR. AGER: That's, well, even if they don't follow</p>

<p style="text-align: right;">Page 90</p> <p>1 the state schedule, every jurisdiction is required to update  2 their land use element every six years except for these two  3 jurisdictions and Montgomery has that unique situation. So  4 what, my point is -- there's kind of two points. One is  5 this master plan as it relates to this property is 28 years  6 old. In fact, the land use, we'll talk a little later,  7 really goes back to the 1971 plan. What's, and so you have  8 that. Then you have Montgomery County saying it's useful  9 life of a master plan in their own words is 10 to 15 years.  10 And then you have --  11 MS. ROBESON: And where do they say that?  12 MR. AGER: They say it in their -- it's  13 referenced, it's footnoted in the report and I'll try and  14 find that.  15 MS. ROBESON: Okay, don't. You don't have to.  16 MR. AGER: But it's --  17 MS. ROBESON: It's in the report.  18 MR. AGER: -- it's in, it's in a document dated  19 September 1997, the master plan process, Montgomery County,  20 Maryland.  21 MS. ROBESON: Okay.  22 MR. AGER: And so, and so it seems reasonable that  23 a master plan would be looked at somewhere in the  24 neighborhood of six to 10 years, you know, it would at least  25 be reviewed. But we're in a different situation than this</p>	<p style="text-align: right;">Page 92</p> <p>1 Interstate 270 corridor, and the Park and Planning created a  2 study called the preliminary master plan for residential  3 land use. That, in combination with the mass transportation  4 survey report in 1959 and the policies planned for the year  5 2000, was basically the groundwork for the 1964 wedges and  6 corridors plan. And I'll just jump a little ahead in  7 history a little bit, a 1969 update to that plan was a  8 result of the underestimation population growth in the 1964  9 plan and that was the primary reason in 1969 that that plan  10 was updated.  11 So historically that plan was looking at  12 population projections in the late 1950's and then  13 developing some policy statements that eventually became the  14 1964 plan and then that plan had to be updated in 1969. And  15 what's important about that is that this property was in  16 that context, in that era, and was developed in about the  17 1965, 1966 range and the developer could probably give you a  18 more specific date. My understanding from the record is  19 it's about 1966. So it's the recommendations, the land use  20 strategies, the whole concepts that were in place at the  21 master plan level at this time were really from the 1950's  22 and by the, on the record in 1969 they were, in fact,  23 underestimated.  24 Now I'm going to jump back to the master plan now  25 and we'll come back to the general plan in a minute. The</p>
<p style="text-align: right;">Page 91</p> <p>1 one because this one in particular as it relates to this  2 property is 28 years old and when you look at the history,  3 which I'll go through in a minute, the land use  4 recommendation really goes further back than that and that's  5 primarily due to the relationship of the master plan timing  6 and the construction of the property which I'm going to go  7 through a chronology and I have a, I have a handout if  8 that's helpful of the dates.  9 MS. ROBESON: No, that's fine.  10 MR. AGER: Okay. So that's pretty much the  11 framework, the big picture framework from the state and how  12 this is unique statewide. Now on the history of this  13 property, when Park and Planning was first established it  14 was a, roughly a 300-square mile area that was around the  15 capital, around the District of Columbia, and it covered  16 parts of Prince George's and Montgomery County.  17 Gaithersburg was not within that area.  18 So in the early, so let's say from 1930's to the  19 1950's, planning was primarily, in fact, we would call it  20 down counting, not in this subject area. In 1932, they  21 adopted, you know, a highway plan for the Maryland  22 Washington regional district, which is what that 300-square  23 mile area was referred to.  24 In 1957, there was the beginnings of development  25 pressure in the old 70 south corridor, which is now the</p>	<p style="text-align: right;">Page 93</p> <p>1 master plans in this area took place in 1961, 1971, 1985.  2 And the plan that's up on the right-hand easel is an  3 excerpt --  4 BY MS. GIRARD:  5 Q Exhibit 108?  6 A I'm sorry, Exhibit 108. I already failed the  7 test. Exhibit 108 on the right-hand easel is an excerpt  8 from the 1961 Gaithersburg vicinity master plan. And as you  9 -- chronologically it predates the general plan because it  10 was one of the first plans to be looked at because it was  11 development pressure in the area. So they wanted to get a,  12 they want sporadic sprawl development of, so there was this  13 plan that jumpstarted planning in this area. What that plan  14 says is that Gaithersburg in particular, well, it says a  15 couple things. One, it says that Gaithersburg, Rockville  16 and a couple of other master plans which are adopted in 1961  17 became a part of this, are a part of this plan. And what  18 this plan says is that the subject property is within a high  19 density mixed use area that surrounds the downtown of, which  20 was planned at the corner of Summit and where the current  21 train station is. And let me just refer to that generalized  22 land use plan.  23 This is essentially the Emory Grove Road --  24 MS. ROBESON: Is that labeled or --  25 MR. AGER: Oh, I'm sorry.</p>



<p style="text-align: right;">Page 94</p> <p>1 MS. ROBESON: Describe this.</p> <p>2 MR. AGER: Thank you. I'm sorry. On this plan,</p> <p>3 which is Exhibit 108, there is a demarcation between what's</p> <p>4 high density and what's low density.</p> <p>5 MS. ROBESON: Okay.</p> <p>6 MR. AGER: There is a road described there that</p> <p>7 pretty much creates that demarcation.</p> <p>8 MS. ROBESON: Okay.</p> <p>9 MR. AGER: And that road is essentially the Mid-</p> <p>10 County Highway, Emory Grove alignment, which was called the</p> <p>11 eastern arterial in that day. The other delineating element</p> <p>12 for the high density portion of this satellite town is the</p> <p>13 70 south right-of-way, which is also referred to as a line.</p> <p>14 And so north of that is the high-density area. The rail</p> <p>15 line is actually shown on the plan running roughly through</p> <p>16 the center of that area. And below that it's referred to as</p> <p>17 medium density. North of that is referred to as medium</p> <p>18 density and low density and then --</p> <p>19 MS. ROBESON: Wait. What's --</p> <p>20 MR. AGER: Of those road alignments.</p> <p>21 MS. ROBESON: Is there a key on the -- yes?</p> <p>22 MR. AGER: Yes, there is.</p> <p>23 MS. ROBESON: Okay. All right. Go ahead.</p> <p>24 MR. AGER: And in the text there's also more</p> <p>25 information.</p>	<p style="text-align: right;">Page 96</p> <p>1 thus, wedges and corridors. And it's not low density, it's</p> <p>2 not suburban, it's high density and it's clear in both plans</p> <p>3 that that's what the general land use guidance is.</p> <p>4 Now soon after that 1969 update, there was a 1971</p> <p>5 plan which is shown on Exhibit 111 and that was adopted in</p> <p>6 1971, but the work was being done in the 1968, '69 time</p> <p>7 frame, 1970 time frame. That plan shows this property</p> <p>8 recommended for high-density residential and it actually</p> <p>9 shows zoning on the ground that is more than what exists</p> <p>10 today. And the reason for that, I believe, and I, it's my</p> <p>11 opinion, is that in 1966 the Towne Crest project was</p> <p>12 constructed and the zoning on the ground reflected that</p> <p>13 construction.</p> <p>14 MS. ROBESON: And what was the zoning?</p> <p>15 MR. AGER: R-30 on the north and RG-12 1/2 --</p> <p>16 MS. ROBESON: Oh.</p> <p>17 MR. AGER: -- on the south.</p> <p>18 MS. ROBESON: Oh, the -- okay.</p> <p>19 MR. AGER: As it exists today. It hasn't changed.</p> <p>20 MS. ROBESON: Okay.</p> <p>21 MR. AGER: Well, what's interesting and, again,</p> <p>22 I'm referring to analysis area to Exhibit 111 is that it</p> <p>23 actually envisioned more multi-family than what is referred</p> <p>24 to --</p> <p>25 MS. GIRARD: Wedgewood 2 is northern.</p>
<p style="text-align: right;">Page 95</p> <p>1 MS. ROBESON: Yes.</p> <p>2 MR. AGER: I have a copy of the text is you need</p> <p>3 it. So based upon those road alignments and the third road</p> <p>4 alignment I like to describe as the original road alignment</p> <p>5 for Shady Grove Road and it actually shows that the southern</p> <p>6 demarcation for this satellite town is the industrial</p> <p>7 portion or what's known as the industrial district that</p> <p>8 separates Gaithersburg from Rockville on this plan which is</p> <p>9 now the Shady Grove Road aerial. So I've identified a rough</p> <p>10 location for the subject property and analysis area to, on</p> <p>11 this map and it's on Exhibit 108.</p> <p>12 MS. ROBESON: Okay.</p> <p>13 MR. AGER: And it falls within that higher density</p> <p>14 area. So that predated the construction of the subject</p> <p>15 property as it exists today, which is 1966 roughly. Then in</p> <p>16 1969, as I mentioned previously, there was an update to the</p> <p>17 Montgomery County wedges and corridors plan and in reading</p> <p>18 that text it's clear that the original 1964 plan, one of the</p> <p>19 key issues was that it was, it grossly underestimated the</p> <p>20 population in this area, well, in general, but in this area</p> <p>21 in specific as well. Gaithersburg was planned on Exhibit</p> <p>22 108 roughly as 35,000 persons.</p> <p>23 So that's the 1969 plan. And in both of those</p> <p>24 general plans there was this understanding that development</p> <p>25 would be focused along the transportation corridor. That's,</p>	<p style="text-align: right;">Page 97</p> <p>1 MR. AGER: Wedgewood 2, thank you. In the area</p> <p>2 that's commonly referred to as Wedgewood 2. And the reason</p> <p>3 for that, I believe, is that this marked area was</p> <p>4 constructed and Wedgewood 2 was yet to be constructed in</p> <p>5 1971. So there was a plan for more multi-family in this</p> <p>6 area, but the developer and the property owner built</p> <p>7 townhouses in the intervening years and then later on the</p> <p>8 zoning caught up with the construction and essentially we</p> <p>9 have, it's now R-30 portion of the ground today. But the</p> <p>10 point I want to make is that even back in 1971 there was an</p> <p>11 area within that analysis area greater than what is today</p> <p>12 that was shown for multi-family and the general plan here</p> <p>13 was for multi-family. And the reason for that is if you go</p> <p>14 to the text of the 1971 plan, it refers to a series of</p> <p>15 neighborhoods with community centers and it's actually a</p> <p>16 typo in the text. If you read it, this is referred to as</p> <p>17 the northwest area, but it's not, it's the northeast area.</p> <p>18 And it has a symbol on it that shows a community center</p> <p>19 which was for, you know, local services and that sort of</p> <p>20 thing planned in the general vicinity of Emory Grove Road</p> <p>21 and the future Mid-County Highway.</p> <p>22 MS. ROBESON: Is this the 1971 plan?</p> <p>23 MR. AGER: 1971 plan.</p> <p>24 MS. ROBESON: Okay.</p> <p>25 MR. AGER: And I have the text with me. I can --</p>

<p style="text-align: right;">Page 98</p> <p>1 MS. ROBESON: No, this one?</p> <p>2 MR. AGER: The point I want to make there is even</p> <p>3 in the 1971 plan you can see there's a substantial amount of</p> <p>4 townhouse multi-family zoning and land use recommendations</p> <p>5 because it anticipated its future community center. So it</p> <p>6 has a focused density in this general area, part of which is</p> <p>7 inside our analysis area and part of which is outside of our</p> <p>8 analysis area. So the point, the point is that, and this</p> <p>9 occurred throughout the 1971 plan. It's kind of like the</p> <p>10 Columbia plan, the local neighborhood.</p> <p>11 And that takes us to the 1985 plan, which is the</p> <p>12 approved plan on Exhibit 107 and that's the reference, the,</p> <p>13 I'm sorry, the master plan record for this application.</p> <p>14 What I've delineated on this plan on the left-hand side</p> <p>15 again is a signed copy, an authorized copy of this plan</p> <p>16 which I have a paper copy that came from Park and Planning.</p> <p>17 I've blown up the area surrounding the subject property.</p> <p>18 I've outlined analysis area 2, again, that's 21 acres. We</p> <p>19 are 8.11 acres over 21 and that 21 acres comes from the text</p> <p>20 of the master plan. It's not something I measured. It's</p> <p>21 the actual measurement that Park and Planning did.</p> <p>22 And the map clearly shows that this property is</p> <p>23 recommended for high-density residential. And on this map</p> <p>24 it refers to high-density residential as 8 to 15 along each</p> <p>25 breaker. In the text there's a footnote that says NPD use</p>	<p style="text-align: right;">Page 100</p> <p>1 Today they have incredible specificity. This master plan</p> <p>2 does not. In fact, on this property, it really doesn't say</p> <p>3 much about anything. It says, it says it's multi-family, it</p> <p>4 gives a density, it actually says it's multi-family for the</p> <p>5 entire analysis area, I should clarify, and then gives the</p> <p>6 density for that area, but it doesn't say anything other</p> <p>7 than -- and it would be appropriate for floating zones such</p> <p>8 as the PD zone.</p> <p>9 There's other references in the master plan.</p> <p>10 There's a Table 3 that refers to optional, base and optional</p> <p>11 densities. I will get into that a little later on. I</p> <p>12 believe that's, that table is not consistent and is</p> <p>13 specifically not consistent for this particular property.</p> <p>14 In the text, and I want to, on page 9 --</p> <p>15 MS. ROBESON: At which point on the '85?</p> <p>16 MR. AGER: Of the 1985 --</p> <p>17 MS. ROBESON: Okay.</p> <p>18 MR. AGER: -- adopted master plan --</p> <p>19 MS. ROBESON: All right.</p> <p>20 MR. AGER: -- there's language that specifically</p> <p>21 talks about future development and utilizing optional</p> <p>22 method. Floating zones PD is one of the number of zones</p> <p>23 that is specifically listed and I think, I believe it's</p> <p>24 Table 1 if I'm not mistaken, and I can double-check that if</p> <p>25 you need it. And then in Table 3 there was this reference</p>
<p style="text-align: right;">Page 99</p> <p>1 in the density print would be added to that. So it's</p> <p>2 actually 18.3 on the high side, 18.3 along each breaker.</p> <p>3 In addition to that, it shows that multi-family</p> <p>4 not just for the subject property or a portion of it, it</p> <p>5 doesn't reflect the buildings on the ground, it reflects</p> <p>6 future development and it shows that high-density</p> <p>7 residential for the entire analysis area and that's unique</p> <p>8 to that analysis area. You can start to see that other</p> <p>9 areas have zoning that reflects build conditions and that</p> <p>10 sort of thing, but this is actually a recommendation that's</p> <p>11 higher than existing development, and rightfully so. It's a</p> <p>12 master plan. It's supposed to envision something 20 years</p> <p>13 in the future, 15 to 20 years in the future.</p> <p>14 In 1988 to 1990, this master plan was amended, but</p> <p>15 made no reference to this particular property or the</p> <p>16 analysis area. It was silent on it. The other important</p> <p>17 point about this master plan and, is that the -- it was,</p> <p>18 again, what was referred to in that area, and I'm talking</p> <p>19 eras because we're in a different era now, as an area master</p> <p>20 plan. It is similar to the way other large jurisdictions</p> <p>21 handled their zoning with a broad brush application of an</p> <p>22 average lands use with the expectation that a detailed</p> <p>23 development will occur during the zonings or, you know,</p> <p>24 preliminary plans or site plans and those details will be</p> <p>25 fine now. That's not how master plans are done today.</p>	<p style="text-align: right;">Page 101</p> <p>1 to this property and several other properties within the air</p> <p>2 park study area and it broke it down into three districts.</p> <p>3 The one we're in is the mid-county district. And within</p> <p>4 there it's broken down into analysis areas that are not</p> <p>5 necessarily, that sometimes follow property lines and</p> <p>6 sometimes do not. These analysis areas were used to give</p> <p>7 average densities across the board and they were, there was</p> <p>8 very little discussion about it.</p> <p>9 While I was doing my research and since I wrote</p> <p>10 the report and was handed in this record for this hearing, I</p> <p>11 actually contacted the person who was the chief planner for</p> <p>12 this master plan and I got some interesting information I</p> <p>13 wasn't aware of because he has institutional mileage that I</p> <p>14 don't have.</p> <p>15 MS. ROBESON: And who is that?</p> <p>16 MR. AGER: His name is Kerry Berman. He was, if</p> <p>17 you go to the master plan where the list of planners --</p> <p>18 MS. ROBESON: Yes.</p> <p>19 MR. AGER: -- are, he's the chief planner. He was</p> <p>20 the person on staff responsible for this master plan.</p> <p>21 MR. BROWN: If Mr. Ager is about to tell us what</p> <p>22 Mr. Berman said, I object.</p> <p>23 MS. ROBESON: I was kind of going down that road</p> <p>24 myself. I think it's better because it is -- hearsay is</p> <p>25 admissible, but I'm reluctant in this instance to let it in.</p>

<p style="text-align: right;">Page 102</p> <p>1 MR. AGER: Okay. If I, if I had it in writing,  2 would that make a difference? I have his opinion in  3 writing.  4 MR. KAUFMAN: Well, we also would make Mr. Berman  5 available for cross-examination.  6 MS. ROBESON: Okay. Why don't we do that. Is he  7 -- what do you have in writing? Is it in the record?  8 MR. KAUFMAN: No.  9 MR. AGER: It is not in the record. This is  10 conversations I had with him subsequent to the submission of  11 the report and it actually came about because when I was  12 reviewing the opposition's testimony, they have an expert  13 witness, his name is Joe Davis, who was actually in --  14 MS. ROBESON: Yes.  15 MR. AGER: -- well, as part of this plan. So I  16 thought I would try and reach out and find Mr. Berman, ask  17 him questions about the plan, what he recollected about the  18 plan.  19 MS. ROBESON: I would prefer on that critical  20 issue if he could come in and testify on his own and be  21 subject to cross-examination.  22 MR. AGER: Okay.  23 MS. ROBESON: And I'm not saying, it's not because  24 I don't trust what you said, it's just --  25 MR. AGER: That's fine.</p>	<p style="text-align: right;">Page 104</p> <p>1 MR. AGER: Okay. Well, one other point about the  2 general master plan is that there was an amendment in 1993  3 to the general plan. So that post-dates the 1985 adopted  4 master plan.  5 MS. ROBESON: I'm sorry, when was the amendment?  6 MR. AGER: 1993.  7 MS. ROBESON: Okay. Go ahead.  8 MR. AGER: So it would seem reasonable that when  9 the general plan is updated that the master plan should be  10 updated soon after or briefly thereafter, after that time  11 period. In this case, the subject master plan is out of  12 sequence with the general plan. So it, the general plan's  13 guidance about affordable housing, about patterns of  14 development that haven't been described in this master plan  15 because it hasn't been reviewed and that sort of thing. So,  16 but it's out of sequence.  17 MS. ROBESON: Okay. In the course of your  18 research, did you find anything indicating why Montgomery  19 County exempted, well, the state exempted Montgomery County  20 out of the 6-year requirement? Did you see?  21 MR. AGER: I did not see any particular evidence.  22 The only thing I know is that that was the practice of  23 Montgomery County to use the work programs to describe how  24 they're going to do the master plans.  25 MS. ROBESON: Okay.</p>
<p style="text-align: right;">Page 103</p> <p>1 MS. ROBESON: -- it's a critical issue --  2 MR. AGER: Sure.  3 MS. ROBESON: -- and I would prefer to hear it  4 from the witness.  5 MR. KAUFMAN: Yes, that's fine. And we --  6 MR. AGER: And I completely understanding and I  7 have no problem obviously with that. I think that there's  8 certain, there's enough information in the record as well  9 from my --  10 MS. ROBESON: Okay. That's fine.  11 MR. KAUFMAN: Just on that, Mr. Berman has not  12 been employed by our client, has not been paid any  13 compensation for these comments or for the letter he wrote.  14 MR. AGER: That's correct.  15 MR. KAUFMAN: However, when we bring him in as a  16 witness, since he is a professional, he would probably have,  17 be compensated for his testimony. So --  18 MS. ROBESON: That's fine. I mean I'm sure all of  19 the experts here are --  20 MR. KAUFMAN: I just wanted the record to be clear  21 that --  22 MS. ROBESON: No, I understand.  23 MR. KAUFMAN: -- he has not been retained and he  24 had volunteered this information and also the letter.  25 MS. ROBESON: Okay, Mr. Ager.</p>	<p style="text-align: right;">Page 105</p> <p>1 MR. AGER: But beyond that I don't know.  2 MS. ROBESON: Okay. I'm sorry to interrupt.  3 MR. AGER: Well, that's okay. That's fine. So  4 that's the general context, the general history of the  5 master plan. A lot of -- what I tried to do in my report is  6 footnote this information. If I missed something in my  7 testimony --  8 MS. ROBESON: No, that's fine.  9 MR. AGER: Yeah.  10 MS. ROBESON: It was very thorough.  11 MR. AGER: So I've got in my notes here, it looks  12 like if I said it, I'm repeating myself, I apologize, but  13 there are count -- the master plan findings are not only  14 just specific to master plan language and density, but to  15 county policies in general. And if a master plan is this  16 old, how many county policies are there that have occurred  17 in 28 years that are not being recognized or considered in  18 the context of this master plan?  19 So the important thing about that is essentially  20 with its age it has the, you know, the general guidance.  21 It's reasonable and probably valid, but the specifics are  22 probably not. And I'll give you a great example. I had the  23 opportunity to work on the Kentlands project in the city of  24 Gaithersburg from day one and in 1986 Joe Alfandre worked  25 with the mayor, Ed Bohrer, mayor of Gaithersburg at the time</p>

<p style="text-align: right;">Page 106</p> <p>1 and that project started a revolution of land use  2 considerations in this country and internationally. That  3 was 1986. This master plan was 1985. This master plan  4 doesn't even envision the possibility of, as an example,  5 that's just one of them.  6 Another example, Governor Glendening and the  7 additions that were in 1992, the smart, what we refer to  8 generally as smart growth, that's 1992. Now the general  9 guidance in the master plan is for concentrated growth and  10 dense patterns of development, but it pre-dates the smart  11 growth. So there's several things and I can go through many  12 others, but it happened since then that aren't even in this  13 master plan or even considered. So it's not only just the  14 time elapsed for this master plan, but all of the things  15 that have occurred since then, the state of the art so to  16 speak for land development, architecture, landscape  17 architecture, storm water management, green infrastructure.  18 MS. ROBESON: Well, I guess, I mean I  19 understand --  20 MR. AGER: And some of those are outside the  21 context of the findings that --  22 MS. ROBESON: Right. Well, I guess my conundrum  23 is the zone requirements are that it comply with the master  24 plans. Now you've given me a lot of reasons why I should  25 ignore the master plan, but I, you know, the same can be</p>	<p style="text-align: right;">Page 108</p> <p>1 MS. ROBESON: Because I do have this  2 recommendation from the Planning Board that I think needs to  3 be addressed. And so you and I can say I have someone come  4 in here and say, well, under the building code, high density  5 residential is, you know, whatever, but that's a different  6 context. That's for occupancy rating.  7 MR. AGER: Uh-huh.  8 MS. ROBESON: And so what you're kind of -- I need  9 to get to a point where I can say the master plan is a  10 legislative act. One could argue that they didn't change  11 the master plan because it didn't need fixing, especially  12 when, especially when it's done by a work program.  13 MR. AGER: Uh-huh.  14 MS. ROBESON: -- instead, no, just listen. I'm  15 just making the argument. I'm not deciding.  16 MR. KAUFMAN: No, I know. I just want to say  17 something when you're done.  18 MS. ROBESON: Okay. That's fine. So I guess if  19 you could tell me where your context of high-density  20 residential at 329, from eight to 15 units in a total of  21 18.3 units to -- I'm blanking out on what this density is  22 per acre, but you know how do I get from there to here  23 consistent with the master plan and what did you want to  24 say, Mr. Kaufman?  25 MR. KAUFMAN: You're right, is an action of the</p>
<p style="text-align: right;">Page 107</p> <p>1 said about many, many master plans, that they pre-dated the  2 storm water, they predated a lot of the more recent housing  3 policies and so I guess, but I have, my criteria for  4 approval is to say, in the PD zone, is to say that it's  5 consistent. So I guess my question to you is in what ways,  6 not why I should ignore it, but in what ways is this  7 consistent with the master plan?  8 MR. AGER: Very good. Thank you. Thank you.  9 I'll focus on that. What I'd like to do then is maybe jump  10 to some calculations I did in my report --  11 MS. ROBESON: Okay.  12 MR. AGER: -- and talk about that. In direct  13 response to what you just asked, one is the master plan  14 recommends high density residential. It has a -- so we're  15 consistent with that. It has a land use recommendation for  16 multi-family and we're consistent with that. It --  17 MS. ROBESON: Well, how do you define high-density  18 residential?  19 MR. AGER: Well, today it's not what it was in  20 1985. In 1985, and I can tell you --  21 MS. ROBESON: Can I just --  22 MR. AGER: Yes, sure.  23 MS. ROBESON: -- tell you what I'm struggling  24 with?  25 MR. AGER: Yes.</p>	<p style="text-align: right;">Page 109</p> <p>1 County Council. It's non-statute. It's strictly a  2 statement of policy and I think that distinction is very  3 important. I'm sure you're familiar with the Court of  4 Appeals decision for master plans. There are one criteria  5 that one might consider. With all due respect to the  6 Planning Board, I think they treated it as if it was a  7 statute.  8 And I think that the fact that they adopted does  9 not make it rise to the level of enforceable law. And in  10 the case of this master plan as the witness has indicated  11 before, the standard is substantial compliance, not strict  12 compliance.  13 MS. ROBESON: Okay.  14 MR. KAUFMAN: And I do believe something, I'll  15 make a closing argument, that the Planning Board did not  16 focus on that.  17 MS. ROBESON: Okay.  18 MR. KAUFMAN: Okay.  19 MS. ROBESON: So, Mr. Ager --  20 MR. AGER: Yes, ma'am?  21 MS. ROBESON: So you're going to tell us what this  22 substantially complied?  23 MR. AGER: Yes.  24 MS. ROBESON: Okay.  25 MR. AGER: There's a very important --</p>

<p style="text-align: right;">Page 110</p> <p>1 MS. GIRARD: You can proceed. I think now would 2 be a good time to go into your analysis about the specific 3 property in this area. 4 MR. KAUFMAN: In Area 2, right. 5 MR. AGER: Again, there's an important distinction 6 and that's the concept of analysis there is with what Park 7 and Planning established in this master plan. So because 8 it's old and because it's, doesn't have a detailed 9 recommendation for each property like you see in more 10 current master plans, it's clear that the master plan was 11 developed on an area-wide basis. You use the term area, you 12 know, analysis areas. 13 MS. ROBESON: Uh-huh. 14 MR. AGER: There's examples. I can show you 15 examples where analysis areas have multiple properties like 16 ours. We have 125 property owners within our analysis area. 17 I can show you other areas where there's a single property 18 owner. But they, what seems to be the common element with 19 these analysis areas is that they were grouped geographical 20 areas with common circumstances that they want to apply a 21 very generalized density to. And you can look at the master 22 plan map and you can see that and you can look at it in more 23 detail with references to the TDR's and that sort of thing 24 where the lowest density was to the north of the air park 25 study area. It recommended roughly three units per acre,</p>	<p style="text-align: right;">Page 112</p> <p>1 discussion, well, let me go through the numbers. Again, the 2 analysis area is 21 acres within which this property is 3 located. It's 8.11 acres. The entire analysis area is 4 recommended in the plan for multi-family and densities 5 between eight and 15 units and I can talk to that number 6 specifically later. I'll run, just go through the 7 calculation first. 8 MS. ROBESON: Yes. 9 MR. AGER: When you do a simple calculation for 10 the analysis area and you include the MPDU, which is an 11 apples to apples comparison between the application plus 12 residential homes that will remain, and the master plan 13 density, you'll -- what you do is you come out with 800 and, 14 I'm sorry, 384 dwelling units for analysis area 2 to take 15 that, to take the generalized elements and turn it into a 16 unit number, it's 384, roughly 18.3 dwelling units per acre 17 and that's 21 acres times 15 times 22 percent for 1.22 for 18 the MPDU's. 19 Now the density within, if this application was 20 approved as submitted, 329, and I'm referring to aerial 21 photo Exhibit 112, it would be 329 units within the 22 application area and the remaining 124 units. And that 23 simple addition is 453 units. So the difference between 24 453, the proposal on an analysis area basis, and the master 25 plan recommendation on analysis area basis is that the</p>
<p style="text-align: right;">Page 111</p> <p>1 plus a very broad area. And then that they graded down to 2 four, five, six and eight to 15 and for us. And we're not 3 the only property with that recommendation. When you look 4 at the plan, you can see that the preponderance of those 5 higher density uses are closest to where the plan's compact 6 development is, along the rail line, along the highway 7 infrastructure and where the water and sewer were proposed 8 and essentially feathering of density up to the road. 9 So that's, this master plan general context. Now 10 that tells you that it is very appropriate to analyze 11 density on an analysis area basis and that's what I did in 12 my report. So we have 21 acres and in the report I'll go 13 through the -- 14 MS. ROBESON: You're saying the master plan took 15 the broad brush approach, is that what you're saying -- 16 MR. AGER: That's exactly what I'm saying and it 17 was consistent with master plans of that era. Again, we're 18 talking about three decades ago. And there are, you know, 19 the Germantown plan, we're going back to that date? 20 MS. GIRARD: Let's say -- 21 MS. ROBESON: Yes, let's -- 22 MR. AGER: Yes. 23 MS. GIRARD: Let's stay on this analysis area. 24 MS. ROBESON: -- stay on master plan compliance. 25 MR. AGER: All right. Sorry. So there's been</p>	<p style="text-align: right;">Page 113</p> <p>1 density within the analysis area would be 18 percent greater 2 than what's proposed here on the master plan. So that's the 3 simplest way to explain all that number crunching. 4 MS. ROBESON: Right. 5 MR. AGER: And if I was unclear -- 6 MS. ROBESON: You spread the density out -- I see 7 what you're doing. Rather than doing it density per acre, 8 you're taking total number of units and dividing it by -- 9 MR. AGER: What I'm doing is I'm following the 10 master plan. The master -- 11 MS. ROBESON: Well -- 12 MR. AGER: Yeah. 13 MS. ROBESON: -- I'm just trying to figure out -- 14 MR. AGER: Yeah. 15 MS. ROBESON: -- how you're -- 16 MR. AGER: Yeah. 17 MS. ROBESON: -- following the master plan. 18 MR. AGER: Well, let me, let me, let me try again. 19 MS. ROBESON: You're not doing it by units, 20 well -- 21 MR. AGER: I am doing it by units per acre. Let 22 me go through it again for clarity. 23 MS. ROBESON: You're taking total units. 24 MR. AGER: I'm comparing -- let me back up. I 25 obviously wasn't clear and I apologize.</p>

<p style="text-align: right;">Page 114</p> <p>1 MS. ROBESON: No, no, it's -- I think it's me.</p> <p>2 MR. AGER: The master plan, when you take the very</p> <p>3 general plan --</p> <p>4 MS. ROBESON: Yes.</p> <p>5 MR. AGER: -- and you take what information you</p> <p>6 have between the map and the document --</p> <p>7 MS. ROBESON: Yes.</p> <p>8 MR. AGER: -- you have a master plan that broke a</p> <p>9 30-square mile area into a series of analysis areas.</p> <p>10 MS. ROBESON: Right.</p> <p>11 BY MS. GIRARD:</p> <p>12 Q Maybe we, can we like perhaps walk you through?</p> <p>13 So isn't it, this analysis area is 21 acres, correct?</p> <p>14 A Yes, that's correct.</p> <p>15 Q And you're multiplying that by the high end of the</p> <p>16 range, which is eight to 15, so times 15.</p> <p>17 MS. ROBESON: So 18.3.</p> <p>18 BY MS. GIRARD:</p> <p>19 Q So 21 acres times 15 and then you add the 22</p> <p>20 percent density bonus, correct?</p> <p>21 A Right, which is written into the master plan.</p> <p>22 Q And that's how you got to your original number?</p> <p>23 MS. ROBESON: So you're spreading the -- okay. I</p> <p>24 got you.</p> <p>25 MR. AGER: I'm giving you a number to reflect that</p>	<p style="text-align: right;">Page 116</p> <p>1 lines, you would have it in the record. You don't. The,</p> <p>2 this, these homes are supported by essentially the</p> <p>3 clustering concept and if this was brought in, you know, as</p> <p>4 one product, you would see it that way and so you have</p> <p>5 100 -- the second point, and it's more speculation, but I</p> <p>6 wanted to say that in my experience getting three property</p> <p>7 owners to agree to a redevelopment in an up-zoning and get</p> <p>8 their neighbors to agree to it is an extremely difficult</p> <p>9 proposition. To get 124 individual property owners to agree</p> <p>10 on something is highly improbable. I can't say never, but I</p> <p>11 can't imagine when that would occur.</p> <p>12 The advantage you have here is you have one</p> <p>13 property owner who has essentially maintained ownership of</p> <p>14 this property and he has the ability to make these sorts of</p> <p>15 improvements. So that's -- so that's my comment to that.</p> <p>16 MS. ROBESON: Okay.</p> <p>17 BY MS. GIRARD:</p> <p>18 Q So using this analysis, you've concluded that with</p> <p>19 the 329 acres, 329 units proposed, that would be an 18</p> <p>20 percent increase over the master plan density?</p> <p>21 A That's correct.</p> <p>22 Q And have you done -- is that consistent with other</p> <p>23 cases in the County where the master plan density has been</p> <p>24 exceeded?</p> <p>25 A Yes, that is consistent. It's actually lower than</p>
<p style="text-align: right;">Page 115</p> <p>1 approved plan.</p> <p>2 BY MS. GIRARD:</p> <p>3 Q And it's your opinion that it was common in this</p> <p>4 master plan and in master plans at the time to spread the</p> <p>5 density out over an analysis area?</p> <p>6 A Yes, and there was going to be some areas within</p> <p>7 the analysis area that have densities lower than the average</p> <p>8 and areas within the analysis area that have higher</p> <p>9 densities within the average. And a good example is Flower</p> <p>10 Hill, just up the road. It's in this master plan. It has</p> <p>11 an average density, but some areas have single family homes</p> <p>12 and townhouses that are lower than the average and some</p> <p>13 portions of that project final approval has --</p> <p>14 MS. ROBESON: But if you develop at this density,</p> <p>15 there's no more capacity in Area 2, right?</p> <p>16 MR. AGER: That's, that's correct. And can I make</p> <p>17 a comment to that?</p> <p>18 MS. ROBESON: Sure.</p> <p>19 MR. AGER: Two points. One is the support for this</p> <p>20 project is inside analysis Area 2. The opposition is</p> <p>21 occurring outside.</p> <p>22 MS. ROBESON: Okay.</p> <p>23 MR. AGER: If there was anything in the record</p> <p>24 that would suggest a property owner wanted to object because</p> <p>25 we were stealing their density or something along those</p>	<p style="text-align: right;">Page 117</p> <p>1 some that we referenced.</p> <p>2 Q Do you have some specific examples that you can</p> <p>3 briefly point to, at least the case numbers?</p> <p>4 A Yeah. In the report I made reference to Case 873,</p> <p>5 G-873, and that was the Westbard plan. And the key point</p> <p>6 there is that that plan was adopted in 1984. So in that, on</p> <p>7 that particular property, the District Council determined</p> <p>8 that it was reasonable to have a slightly higher density</p> <p>9 than what was, the number, the number in the master plan by</p> <p>10 about 33 percent. I'm not saying that that's perfectly</p> <p>11 analogous, but what I am saying is that that particular plan</p> <p>12 is very much on point because of the age of the master plan</p> <p>13 and the, and the issue of being outdated. And, in fact,</p> <p>14 when you look at the reference that I have in my master, in</p> <p>15 my report I filed here, they make specific comment in that</p> <p>16 District Council opinion that it's appropriate to look at</p> <p>17 the broad policy objective of the plan, but clearly the</p> <p>18 specific details over that period of time would be outdated</p> <p>19 and they use the word outdated in their opinion. So that's</p> <p>20 why I'm referencing them.</p> <p>21 Q And, Mr. Ager, the case that you referenced</p> <p>22 earlier, this G-909, did that similarly exceed?</p> <p>23 A Yes, it has some similarities. It's in Bethesda,</p> <p>24 but it's the higher density. But similarities are it's a</p> <p>25 1950, '60 era garden apartment project, lower income end of</p>

<p style="text-align: right;">Page 118</p> <p>1 the scale. It had a single owner. It was very helpful to  2 provide affordable housing in that area. It had a base zone  3 of, I believe, of R-10. It may have been varied. So it had  4 a Euclidean base zone and that application was recommending  5 for PD-88 and PD-100 and the District Council concluded that  6 the PD-100 was two variations on the PD-100, that the PD-100  7 was appropriate which was, in fact, higher than the numbers  8 recommended in the master, the density in the sector plan.  9 Q Do you know approximately how much higher  10 percentage wise?  11 A It depends on how you calculate it.  12 MS. ROBESON: 15 percent.  13 MR. AGER: How much was it?  14 MS. ROBESON: 15.  15 MR. AGER: 15 percent?  16 MS. ROBESON: I guess the only thing on that is  17 there was a legislative indication that the council wanted  18 more density in that Battery Lane district which, you know,  19 I don't know if that's here or not. So --  20 MR. AGER: Right. There was a couple of other  21 things, I believe, and correct me if I'm wrong. There was a  22 desire for affordable housing in that general area of the  23 master plan. There was a big deficit in affordable housing  24 in Bethesda in general and this was an opportunity to  25 provide some of that.</p>	<p style="text-align: right;">Page 120</p> <p>1 what, what type of increases of density they would find to  2 be in compliance with the master plan?  3 A Yeah, I'm going to paraphrase. And different  4 members of the Planning Board had different opinions, but  5 one mentioned 18 percent and one mentioned 20 percent at the  6 end of the testimony.  7 MS. ROBESON: But were they referring to -- they  8 were referring to just the 8.11 acres?  9 MS. GIRARD: Correct. They didn't have the  10 benefit --  11 MS. ROBESON: Not the whole --  12 MS. GIRARD: -- of Mr. Ager's analysis of, about  13 an analysis area --  14 MS. ROBESON: Right. What they were saying --  15 MS. GIRARD: -- rather than an individual  16 property.  17 MS. ROBESON: They were saying 18, no, they were,  18 if your -- I wasn't there.  19 MR. AGER: Well, I wasn't there.  20 MS. ROBESON: So it's not --  21 MR. AGER: I wasn't there either. I viewed it, I  22 viewed the hearing online after the fact because I wasn't  23 involved in the case.  24 MS. ROBESON: No, that's fine. I'm not  25 questioning what you said.</p>
<p style="text-align: right;">Page 119</p> <p>1 MS. ROBESON: Is there a deficit in affordable  2 housing in the Gaithersburg area?  3 MR. AGER: In the analysis area you have two.  4 MS. ROBESON: No, no, I'm talking about in the,  5 oh --  6 MR. AGER: The analysis Area 2, the, my --  7 MS. GIRARD: I believe there's letters in the  8 record that speak to that specifically.  9 MS. ROBESON: Okay.  10 MR. AGER: And we have no MPDU's and the property  11 owner, applicant is proposing 50 MPDU's. And that is above  12 what was the required, I believe she just did the  13 calculation for MPDU's, for providing more than the density,  14 provide additional for the units basically. So he's  15 providing voluntarily more MPDU's, and he's meeting the, the  16 County in general, the need for affordable housing on this  17 property. So that's an important point.  18 BY MS. GIRARD:  19 Q And, Mr. Ager, we, just to back up. So you  20 started this analysis and provided some analysis to the  21 hearing examiner, but the Planning Board did not have it in  22 front of it during their discussion of master plan density,  23 correct?  24 A That's correct.  25 Q And in their conversation, did they talk about</p>	<p style="text-align: right;">Page 121</p> <p>1 MR. AGER: There was two, yeah, there was two  2 things that they said. There were comments that they liked  3 the plan, but they were hung up on this whole question of  4 the master plan.  5 MS. ROBESON: Right.  6 MR. AGER: And the density didn't bother them as  7 much. Some did, some didn't. There were comments about  8 compatibility of a 4-story building as to a 1-story  9 building.  10 MS. ROBESON: Right.  11 MR. AGER: But they were struggling with it  12 clearly and they did make comments of 18 to 20 percent and  13 you may be right that it was only 8.11. I'm not, you know,  14 yeah.  15 MS. ROBESON: Okay. Go ahead.  16 MR. AGER: Ms. -- okay. Have you concluded your  17 analysis as far as the density and how -- and it's your  18 opinion that the 18 percent increase in density over the  19 analysis area would be in substantial compliance with the  20 master plan?  21 MR. AGER: Yes, I do.  22 BY MS. GIRARD:  23 Q And just to reiterate what you -- and it's your  24 conclusion on that that as a master plan ages, the general  25 guidance should be given precedence over specific numbers --</p>

<p style="text-align: right;">Page 122</p> <p>1 A Absolutely.</p> <p>2 Q -- isn't that part of that analysis?</p> <p>3 MS. ROBESON: And how do you define high-density?</p> <p>4 MR. AGER: High-density for me is 40 to 60 units</p> <p>5 per acre.</p> <p>6 MS. ROBESON: And why is it that for you?</p> <p>7 MR. AGER: Well, because -- well, there's several</p> <p>8 ways to look at it. If you look at what was the state-of-</p> <p>9 the-art in 1971 to '85, what was, what were people building,</p> <p>10 what could they invent? It was garden apartments with</p> <p>11 surface parking.</p> <p>12 MS. ROBESON: Okay.</p> <p>13 MR. AGER: The very big change in the way multi-</p> <p>14 family is constructed today is that there's a way to provide</p> <p>15 very compatible multi-family housing by stacking parking.</p> <p>16 The number one generator for density is parking, not units.</p> <p>17 And it's clear that this plan with its back parking is a</p> <p>18 significant benefit and improvement and the density is not</p> <p>19 the issue, it's really a question of compatibility. And so</p> <p>20 if this plan was written today and the master plan</p> <p>21 recommended this property for high-density residential, it</p> <p>22 could be consistent with all the plans back to 1961 --</p> <p>23 MS. ROBESON: Okay.</p> <p>24 MR. AGER: -- I am very confident that it would be</p> <p>25 much higher with 15 units to the acre because they -- in</p>	<p style="text-align: right;">Page 124</p> <p>1 them in the report and I have some concluding comments in</p> <p>2 the report that, again, if necessary for the record, I'd</p> <p>3 like to read them, you know, verbatim, but they're in the</p> <p>4 report.</p> <p>5 MS. ROBESON: Well, if they're in the report, just</p> <p>6 in the interest of time --</p> <p>7 MR. AGER: That's fine. I just want to be --</p> <p>8 MS. ROBESON: -- I will --</p> <p>9 MR. AGER: I just want to be sure.</p> <p>10 MS. ROBESON: -- I have read your report and I</p> <p>11 know that I will be re-reading it again. So that's fine.</p> <p>12 BY MS. GIRARD:</p> <p>13 Q Oh, actually, I'm sorry, there was one more</p> <p>14 question. Mr. Ager, do you know if the master plan is</p> <p>15 scheduled to be updated in the near term?</p> <p>16 A The, I saw a copy of the spring 2013 work program.</p> <p>17 I believe it's scheduled for adoption in 2015.</p> <p>18 Q And has it been continuously delayed up to this</p> <p>19 point?</p> <p>20 A Yes, it has.</p> <p>21 Q I believe that's all we have.</p> <p>22 MS. ROBESON: Thank you. And, Mr. Kaufman, did</p> <p>23 you?</p> <p>24 MR. KAUFMAN: Well, you're at quarter to 1:00. I</p> <p>25 don't know if you want to break or you want to just go</p>
<p style="text-align: right;">Page 123</p> <p>1 1985, there was no such thing as wrapped parking or stacked</p> <p>2 parking. It wasn't even on people's radar screens at that</p> <p>3 time. That was something that happened in the late 1990's</p> <p>4 and early 2000's.</p> <p>5 MS. ROBESON: Okay.</p> <p>6 MR. AGER: So it's a very different, it's a very</p> <p>7 different number today and it can be completely compatible.</p> <p>8 BY MS. GIRARD:</p> <p>9 Q And, Mr. Ager, is it your opinion that aside from</p> <p>10 the simple density issue, that this project is compatible</p> <p>11 with the master plan and its guiding principles and other</p> <p>12 recommendations?</p> <p>13 A Yes.</p> <p>14 Q One more question that I had, just to make it</p> <p>15 crystal clear, all right, I think it might have been clear,</p> <p>16 but the -- so the Planning Board did not look at the</p> <p>17 analysis area, but it's your opinion that they should have?</p> <p>18 A They absolutely should have. And the staff was,</p> <p>19 didn't direct them to do that during the discussion is my</p> <p>20 recollection from viewing the video.</p> <p>21 Q Okay. Mr. Ager, did you have any other conclusion</p> <p>22 that you would like to get on the record?</p> <p>23 A Well, in the report I made a general comment, you</p> <p>24 asked me the question and I commented back. There have been</p> <p>25 tremendous changes in the state-of-the-art and I've listed</p>	<p style="text-align: right;">Page 125</p> <p>1 ahead. I think that Mr. Brown may have a lot of questions.</p> <p>2 MS. ROBESON: Yes. I was going to say can you --</p> <p>3 I would like to break and take a lunch break now. Now one</p> <p>4 thing I'm going to ask the parties to think about, I'm</p> <p>5 getting a very strong feeling that this is going to go into</p> <p>6 another day. I did out of an abundance of caution, I did</p> <p>7 get two additional potential hearing dates. So if the</p> <p>8 parties could check with their witnesses and I have one that</p> <p>9 will be on Monday, February 25th at 9:30. I have a second</p> <p>10 that would be Monday, March 4th at 9:30. So, yes?</p> <p>11 MR. KAUFMAN: You may need both I think.</p> <p>12 MS. ROBESON: Well, that's what I'm wondering.</p> <p>13 MR. KAUFMAN: Yes.</p> <p>14 MS. ROBESON: So --</p> <p>15 MR. KAUFMAN: We have several more witnesses. I'm</p> <p>16 sure there will be some more citizens. I'm sure Mr. Brown</p> <p>17 will want to present a number of witnesses.</p> <p>18 MS. ROBESON: Well, then why don't each of the</p> <p>19 parties check and let me know their availability for those</p> <p>20 dates and if we need a different date, you know, we can</p> <p>21 arrange that too. I just need one date to be able to</p> <p>22 continue -- today I just need one date to be able to</p> <p>23 continue the case to. So --</p> <p>24 MR. KAUFMAN: Okay. For me, just for Mr. Kaufman,</p> <p>25 both of those dates would work, although on the, I'm sorry,</p>



<p style="text-align: right;">Page 126</p> <p>1 the 25th, I do, I'm the chairman of the board of trustees of  2 Montgomery College and I do have to be at the college by  3 about 5:30, okay?  4 MS. ROBESON: Oh, I think we can --  5 MR. KAUFMAN: Okay.  6 MS. ROBESON: -- handle that. Or Ms. Girard  7 can --  8 MS. GIRARD: Soldier on without you.  9 MR. KAUFMAN: I'm imminent, I'm imminent --  10 MS. ROBESON: Just for a brief period.  11 MR. KAUFMAN: Well, no, no. I've reached a point  12 in my life where I know I'm imminently replaceable, so --  13 MS. ROBESON: Oh, no. Anyway, I know you'll need  14 to check with your witnesses too.  15 MR. KAUFMAN: Yes, we will.  16 MS. GIRARD: We'll do that.  17 MS. ROBESON: So thank you for that. And we'll be  18 back at quarter to, quarter until 2:00.  19 MR. KAUFMAN: Thank you.  20 MS. ROBESON: All right. Thank you. Is everyone  21 ready?  22 MR. KAUFMAN: Well, we do have one -- we have  23 someone who wants to testify. It's Barbara Goldberg,  24 Goldman.  25 MS. ROBESON: Let me go back on the record.</p>	<p style="text-align: right;">Page 128</p> <p>1 identify yourself and your role with the Affordable Housing  2 Conference?  3 A Absolutely.  4 MS. ROBESON: Well, I need a name and address at  5 minimum, okay?  6 MS. GOLDMAN: Barbara Goldberg-Goldman. I'm the  7 co-chair of the Affordable Housing Conference of Montgomery  8 County, Maryland. We're located in Rockville, Maryland, at  9 133 Rolands Avenue.  10 MS. ROBESON: Okay.  11 MR. KAUFMAN: Okay. Do you need a private address  12 or just --  13 MS. ROBESON: No, no, no.  14 MR. KAUFMAN: Okay.  15 MS. ROBESON: An address.  16 MR. KAUFMAN: Let me ask you this, first off, I  17 appreciate your being here today.  18 MS. ROBESON: Is she your witness?  19 MR. KAUFMAN: Yes.  20 MS. ROBESON: Okay.  21 BY MR. KAUFMAN:  22 Q Okay. Appreciate you being here today and I'd  23 like to ask you has the Affordable Housing Conference had a  24 chance to familiarize itself with this proposal?  25 A Yes, we have.</p>
<p style="text-align: right;">Page 127</p> <p>1 MR. KAUFMAN: Okay.  2 MS. ROBESON: Are we back on the record, Cathy?  3 Okay.  4 MR. KAUFMAN: All right. With your indulgence,  5 Madame Hearing Examiner, the co-chair of the Affordable  6 Housing Conference of Montgomery County --  7 MS. ROBESON: Yes.  8 MR. KAUFMAN: -- is here to testify. She has a  9 very short window of time and I was wondering if she, we,  10 she might just make her statement and then go on.  11 MS. ROBESON: Do you have any objection, Mr.  12 Brown?  13 MR. BROWN: No objection.  14 MR. KAUFMAN: Okay.  15 MS. ROBESON: That's fine. Can she come forward?  16 MR. KAUFMAN: Yes. Dave, you'll have to sort  17 of --  18 MS. GOLDMAN: Thank you very much for  19 accommodating me.  20 MR. KAUFMAN: You do have to take an oath.  21 MS. ROBESON: Yes. Please raise your right hand.  22 (Witness sworn.)  23 DIRECT EXAMINATION  24 BY MR. KAUFMAN:  25 Q All right, Ms. Goldman, would you just sort of</p>	<p style="text-align: right;">Page 129</p> <p>1 MR. KAUFMAN: All right. And do you, did you take  2 a position on it and would you explain it?  3 Q Yes, we did take a position on it. The Affordable  4 Housing Conference, for those who are not familiar with us,  5 has been in existence for 22 years. We bring elected  6 officials, housing and community development leaders,  7 business professionals, activists, developers, realtors,  8 anyone who has even a remote interest in the affordable  9 housing arena together on a number of levels and --  10 MS. ROBESON: Oh, I'm sorry, I don't have  11 interpreters.  12 MR. KAUFMAN: Oh.  13 MS. ROBESON: Is the gentleman here, just for the  14 record, is the gentleman here that needed the interpreters?  15 Is he present?  16 MS. ROBESON: Okay. I just realized that there  17 was something missing over to the side here. All right.  18 I'm sorry to stop you.  19 MS. GOLDMAN: That's okay.  20 MS. ROBESON: Go ahead.  21 MR. KAUFMAN: Maybe we ought to just clarify that  22 the interpreters were for the hearing impaired and that they  23 were here this morning.  24 MS. ROBESON: Yes.  25 MR. KAUFMAN: Okay. Not language interpreter.</p>

<p style="text-align: right;">Page 130</p> <p>1 MS. ROBESON: Yes. Thank you. Go ahead.</p> <p>2 MS. GOLDMAN: Thank you. And we bring people,</p> <p>3 these people from all walks of life who have interest in the</p> <p>4 affordable housing and economic development arenas together</p> <p>5 on a number of levels. We advocate for affordable housing</p> <p>6 components in all developments. We also advocate for</p> <p>7 redevelopment of communities so that they improve the</p> <p>8 quality of life for the neighborhoods surrounding them. We</p> <p>9 also hold events during the course of the year that</p> <p>10 culminate into one summit, which this year will take place</p> <p>11 on May 10th.</p> <p>12 So we are very pleased to be able to speak in</p> <p>13 favor of this particular development and I'm prepared to go</p> <p>14 through my testimony if that's okay with you --</p> <p>15 MR. KAUFMAN: Sure. Please.</p> <p>16 MS. GOLDMAN: -- or would you like to just --</p> <p>17 BY MR. KAUFMAN:</p> <p>18 Q Proceed.</p> <p>19 A Okay. You understand the mission of the</p> <p>20 Affordable Housing Conference, so advocating for private</p> <p>21 initiatives such as the Towne Crest apartments come as</p> <p>22 second nature to us. There are very few opportunities now</p> <p>23 that exist that create and maintain affordable housing here</p> <p>24 in Montgomery County. We have a waiting list over 1,000</p> <p>25 families. Unfortunately, public funds are nowhere</p>	<p style="text-align: right;">Page 132</p> <p>1 Gaithersburg Planning Commission also recommended in favor,</p> <p>2 as did the professional staff of the Planning Board.</p> <p>3 Neighbors and observers have weighed in urging</p> <p>4 county officials to change the downward course of this</p> <p>5 property and to permit its redevelopment. Well, we share</p> <p>6 the view. These plans present an outstanding opportunity to</p> <p>7 the much-needed affordable housing where it is clearly</p> <p>8 needed.</p> <p>9 The community today, as I mentioned houses, the</p> <p>10 engine that drives this county. This population is rich in</p> <p>11 diversity and ethnic origins. The current residence, I</p> <p>12 understand, will be invited to return to live in the new</p> <p>13 apartments at a comparable rent rate once they, the units</p> <p>14 have been completed and they can move back in. I also</p> <p>15 understand that they are being relocated to other units in</p> <p>16 that same community.</p> <p>17 So we strongly encourage you to recognize the</p> <p>18 opportunity before you. Your positive decision on this</p> <p>19 application will reflect the reasoned, careful opinions of</p> <p>20 housing professionals, as well as ours. Montgomery County</p> <p>21 has done very well to recognize the shortage of affordable</p> <p>22 housing, but the need greatly surpasses the supply. Your</p> <p>23 support of this application will enable a private developer</p> <p>24 to completely redevelop a deteriorated property. This will</p> <p>25 contribute to the quality of life for those families that</p>
<p style="text-align: right;">Page 131</p> <p>1 sufficient to meet those needs of those people who</p> <p>2 oftentimes, believe it or not, can be living on the side of</p> <p>3 the road in a vehicle. We have seen it. We know it exists.</p> <p>4 And while Montgomery County is often thought of the most</p> <p>5 enlightened community in the nation and one of the most</p> <p>6 affluent, we still have the same problems that besiege many</p> <p>7 large, urban areas that surround the United States.</p> <p>8 So when a private sector proposes to, a member of</p> <p>9 the private sector proposes to invest and redevelop aging</p> <p>10 apartments as new, modern and affordable, it should be</p> <p>11 vigorously encouraged. That's if we're truly serious about</p> <p>12 meeting this desperate need. And while we are seeing some</p> <p>13 light at the end of the tunnel, there is a population, our</p> <p>14 working -- I don't want to use the term working class, but</p> <p>15 those people that provide the engine to our lives here in</p> <p>16 Montgomery County, our wait staff, service industry on all</p> <p>17 levels, our nurses, our bus drivers, our school teachers, we</p> <p>18 get very encouraged and we feel that we want to do</p> <p>19 everything we can to make sure that these kinds of</p> <p>20 communities are developed.</p> <p>21 The two neighborhoods closest to Towne Crest had</p> <p>22 seen over the course of many years the deterioration of this</p> <p>23 particular property and they have experienced crime problems</p> <p>24 in their neighborhoods. They've spoken firmly in support of</p> <p>25 this redevelopment. I understand that the city of</p>	<p style="text-align: right;">Page 133</p> <p>1 will live in there and enhance the overall community. I</p> <p>2 thank you very, very much for allowing me to be here today</p> <p>3 and for accommodating our schedule.</p> <p>4 MS. ROBESON: Thank you. Any other questions?</p> <p>5 MR. KAUFMAN: Just one.</p> <p>6 BY MR. KAUFMAN:</p> <p>7 Q First of all, thank you very much, Ms. Goldman,</p> <p>8 for being here. I just want to be clear on the record. My</p> <p>9 understanding is this is the position of the leadership of</p> <p>10 the Affordable Housing Conference, correct?</p> <p>11 A That's correct.</p> <p>12 Q Okay. Thank you. I have no other questions.</p> <p>13 MS. ROBESON: All right. Mr. Brown, do you have</p> <p>14 any questions?</p> <p>15 MR. BROWN: Yes, I'll be brief. Ms. Goldman,</p> <p>16 Goldman, Goldberg-Goldman, is that right?</p> <p>17 MS. GOLDMAN: It is.</p> <p>18 CROSS-EXAMINATION</p> <p>19 BY MR. BROWN:</p> <p>20 Q Do you happen to know how many MPDU's are being</p> <p>21 proposed for this project?</p> <p>22 A Well, I assume it's the, I would assume it's</p> <p>23 somewhere around 12 1/2 percent, is that correct?</p> <p>24 MR. KAUFMAN: It's actually larger.</p> <p>25 MR. BROWN: Actually it's 15 --</p>

<p style="text-align: right;">Page 134</p> <p>1 MS. ROBESON: Let her answer.</p> <p>2 BY MR. BROWN:</p> <p>3 Q Just subject to correction from Mr. Kaufman, my</p> <p>4 understanding is it's 15 percent and 50, 5-0 units?</p> <p>5 A That makes me feel even better because any plan</p> <p>6 that exceeds the minimum requirement is absolutely doing</p> <p>7 exactly what it should be doing.</p> <p>8 Q Would you be even happier then, I take it, if</p> <p>9 there were 59 units?</p> <p>10 A Would I be happier?</p> <p>11 Q Yes.</p> <p>12 A Well, I would be happy to increase on every single</p> <p>13 development as many affordable units as possible. I don't</p> <p>14 know the numbers and I don't know if it would work, if 59</p> <p>15 would be a deal breaker in getting this off the ground, then</p> <p>16 I couldn't. But if -- and, again, I'm coming at this</p> <p>17 without knowledge of how the numbers have been worked up so</p> <p>18 that if 59 units become problematic for enabling this to</p> <p>19 move forward, then no I wouldn't. If they do not impact the</p> <p>20 numbers, then I would say absolutely, the more you can</p> <p>21 achieve, the better it would be.</p> <p>22 Q All right. In fact, the 59 was their original</p> <p>23 proposal, did you know that?</p> <p>24 A I did not know that.</p> <p>25 Q I have nothing further.</p>	<p style="text-align: right;">Page 136</p> <p>1 MS. GOLDMAN: Absolutely.</p> <p>2 MR. KAUFMAN: Yes. And that would be fine and we</p> <p>3 can ask --</p> <p>4 MS. ROBESON: And do you have a question?</p> <p>5 MR. KAUFMAN: No, I do not.</p> <p>6 MS. ROBESON: Okay.</p> <p>7 MR. KAUFMAN: That's it.</p> <p>8 MS. ROBESON: Okay.</p> <p>9 MR. KAUFMAN: Okay.</p> <p>10 MS. ROBESON: All right. Thank you. You may be</p> <p>11 excused.</p> <p>12 MS. GOLDMAN: Thank you very much.</p> <p>13 MR. KAUFMAN: Thank you.</p> <p>14 MS. ROBESON: All right. Mr. Ager is back in the</p> <p>15 hot seat. He came back from lunch. Mr. Brown, I think it's</p> <p>16 your chance for cross-examination.</p> <p>17 MR. BROWN: Thank you. Good afternoon, Mr. Ager,</p> <p>18 how are you?</p> <p>19 MR. AGER: Very well, thank you.</p> <p>20 RE CROSS EXAMINATION</p> <p>21 BY MR. BROWN:</p> <p>22 Q I'm looking at my notes on your testimony. You</p> <p>23 made reference to the fact that in other parts of the state</p> <p>24 master plans have to be looked at every six years, remember</p> <p>25 that testimony?</p>
<p style="text-align: right;">Page 135</p> <p>1 MS. ROBESON: Anything else?</p> <p>2 MR. KAUFMAN: I'm sorry. Excuse me. Yes. Since</p> <p>3 you don't know the numbers, I think it's important for you</p> <p>4 to understand the --</p> <p>5 MR. BROWN: Objection. Is there a question?</p> <p>6 MS. ROBESON: I was getting there. Let me ask you</p> <p>7 something. Was she on your witness list, because she's</p> <p>8 representing an organization?</p> <p>9 MR. KAUFMAN: No, they came forward to make this</p> <p>10 presentation themselves. They're not on my expert witness</p> <p>11 list, no.</p> <p>12 MS. ROBESON: Okay. But anyone representing an</p> <p>13 organization is required to file a statement stating their</p> <p>14 position 10 days in advance of the hearing to give the</p> <p>15 opposing side --</p> <p>16 MS. GOLDMAN: I only know that we learned of this,</p> <p>17 and I'm not even sure how we learned of this particular</p> <p>18 development, but we were very solicitous in wanting to come</p> <p>19 and speak in favor of it.</p> <p>20 MS. ROBESON: That's fine. What I would do is, if</p> <p>21 it is acceptable to you, is leave the record open and we're</p> <p>22 going to have another time for hearing in at least 10 days</p> <p>23 so that the applicants have a, I mean the opposition has the</p> <p>24 opportunity to digest your testimony and comment on it,</p> <p>25 okay?</p>	<p style="text-align: right;">Page 137</p> <p>1 A Yes, I do.</p> <p>2 Q In fact, what the statute is, what you were</p> <p>3 referencing as the statute there requires each county to</p> <p>4 take a look at its comprehensive plan for the entire county</p> <p>5 every six years, isn't that right?</p> <p>6 A It's a, yes, a comprehensive plan.</p> <p>7 Q And, in fact, there are a number of counties that</p> <p>8 don't have anywhere near the number of sub-plans, what do</p> <p>9 you call them master plans or sector plans or whatever, that</p> <p>10 break out the comprehensive plan into exhaustive detail,</p> <p>11 isn't that so?</p> <p>12 A Could you repeat the question just to make sure I</p> <p>13 understand?</p> <p>14 Q The question is whether or not there are a number</p> <p>15 of counties, especially the lower population counties in</p> <p>16 Maryland, that do not have a large number of these sub-plans</p> <p>17 that break out the comprehensive plan in greater detail in</p> <p>18 sub-areas of the county?</p> <p>19 A Yes, that would be true.</p> <p>20 Q Now you also mentioned that the 1985 Gaithersburg</p> <p>21 plan is functionally obsolete. Do you recall that</p> <p>22 testimony?</p> <p>23 A Yes, I do.</p> <p>24 Q And I think there was a fairly long list of</p> <p>25 reasons that you gave for why that plan is functionally</p>

<p style="text-align: right;">Page 138</p> <p>1 obsolete, correct?</p> <p>2 A Yes, there is.</p> <p>3 Q One of them was that it's out of sequence with the</p> <p>4 1993 general plan amendment and another one was that it pre-</p> <p>5 dates the advent of a smart growth plan, correct?</p> <p>6 A Smart growth as defined specifically.</p> <p>7 Q Yes.</p> <p>8 A Yeah.</p> <p>9 Q I want to ask you about one of the plans that's</p> <p>10 mentioned in your report that is much more recent in the</p> <p>11 vicinity of this plan and that is the Shady Grove sector</p> <p>12 plan. That was, that was finalized in 2006, was it not?</p> <p>13 A I believe so, yes.</p> <p>14 Q Does that plan suffer from any of the infirmities</p> <p>15 that you, that you charge to the Gaithersburg master plan?</p> <p>16 A Infirmities defined as?</p> <p>17 Q Whatever your criticisms were of the Gaithersburg,</p> <p>18 the 1985 Gaithersburg plan, does the Shady Grove sector plan</p> <p>19 suffer from any of them?</p> <p>20 A My criticism of the Gaithersburg plan is that is</p> <p>21 it extremely old and the area of the Gaithersburg sector</p> <p>22 plan that is specific to this property is very old. And I</p> <p>23 believe my testimony was that that land use goes way back</p> <p>24 into time, but it doesn't reflect anything since 1985.</p> <p>25 That's basically --</p>	<p style="text-align: right;">Page 140</p> <p>1 were current to 2006. So I'm sorry if I'm not understanding</p> <p>2 the question, but I think there's a difference, yes, but it</p> <p>3 has, it reflects thinking in 2006. I'm not sure if I'm</p> <p>4 answering your question directly enough for you.</p> <p>5 MS. ROBESON: Well, I'll let Mr. Brown follow-up</p> <p>6 on my question.</p> <p>7 BY MR. BROWN:</p> <p>8 Q Well, let's just focus on one element of that</p> <p>9 thinking. Does -- are you at all familiar with the Shady</p> <p>10 Grove sector plan?</p> <p>11 A Yes, I am, somewhat.</p> <p>12 Q Do you believe that it reflects smart growth</p> <p>13 principles as they were understood in 2006?</p> <p>14 A Yes, because it focused density at the Metro</p> <p>15 Center, yes. Yes.</p> <p>16 Q Now I'd like to turn your attention to the</p> <p>17 Wedgewood area. Is it your understanding that the, that the</p> <p>18 homes in Wedgewood 1 and Wedgewood 2 are more or less</p> <p>19 individually owned by homeowners?</p> <p>20 A Yes, that's my understanding, yes.</p> <p>21 Q I think you have a calculator there, Mr. Ager, is</p> <p>22 that right?</p> <p>23 A Yes.</p> <p>24 Q I'd like you to run through a few numbers with me</p> <p>25 if you would please because I don't see these in your</p>
<p style="text-align: right;">Page 139</p> <p>1 Q Mr. Ager, I'm not asking you to repeat your</p> <p>2 testimony. I'm asking you to answer my question. Would you</p> <p>3 like me to repeat it?</p> <p>4 A Yes, I would please.</p> <p>5 Q My question is whether or not the Shady Grove</p> <p>6 sector plan suffers from any of the infirmities that you</p> <p>7 claim exist with regard to the 1985 Gaithersburg master</p> <p>8 plan?</p> <p>9 MS. GIRARD: I'd like to object to that. Mr. Ager</p> <p>10 did not speak to the Shady Grove sector plan and how can he</p> <p>11 possibly be expected to have done an analysis of that plan</p> <p>12 and its potential infirmities?</p> <p>13 MS. ROBESON: I think what Mr. Brown is saying is</p> <p>14 you listed this as being obsolete because it didn't comply</p> <p>15 with current storm water management and there was a whole</p> <p>16 list of things. And I think that's what he's getting at.</p> <p>17 Was your question particular to the Shady Grove --</p> <p>18 MR. BROWN: Yes, it is.</p> <p>19 MS. ROBESON: If you know, does the Shady --</p> <p>20 MR. AGER: Yes.</p> <p>21 MS. ROBESON: -- Grove sector plan share those</p> <p>22 infirmities that you listed with respect to the</p> <p>23 Gaithersburg, I mean, yeah, the Gaithersburg master plan?</p> <p>24 MR. AGER: Not necessarily, because it was adopted</p> <p>25 in 2006, so there were certain things that it reflected that</p>	<p style="text-align: right;">Page 141</p> <p>1 report. But some of these numbers are derived from the</p> <p>2 numbers that are in your report and I'm referring</p> <p>3 particularly to page 12.</p> <p>4 MR. KAUFMAN: Page 12 of the report?</p> <p>5 MR. BROWN: Okay?</p> <p>6 MR. AGER: Okay.</p> <p>7 BY MR. BROWN:</p> <p>8 Q You calculate the master plan density recommended</p> <p>9 in the 1985 plan for the entire analysis area 2 at averaging</p> <p>10 18.28 dwelling units per acre, right?</p> <p>11 A Yes.</p> <p>12 Q And that includes the, that includes adding bonus</p> <p>13 density for affordable housing, right?</p> <p>14 A That is correct.</p> <p>15 Q Now if you were to multiply 18.28 times 8.11, the</p> <p>16 acreage of the property in question here, what number do you</p> <p>17 get?</p> <p>18 A I get 148, plus .25.</p> <p>19 Q That matches my calculation. So if, that would be</p> <p>20 the number of units according to the recommended density for</p> <p>21 the area if the only amount of the density that is unused</p> <p>22 was, that went to your project was that associated with your</p> <p>23 portion of the acreage, correct?</p> <p>24 A Yes. I mean let me just clarify if I could. If</p> <p>25 we measured our property times the master plan calculation</p>

<p style="text-align: right;">Page 142</p> <p>1 we used earlier, just by 8.118, it would be 148 units, is</p> <p>2 that the question?</p> <p>3 Q Yes, that's the question.</p> <p>4 A Okay.</p> <p>5 Q But now let's do one more, an even simpler</p> <p>6 calculation. You have a total number of existing</p> <p>7 development for analysis area 2 at 231 units and you have</p> <p>8 the master plan recommended density at 384. What's the</p> <p>9 difference between those two numbers?</p> <p>10 A 231 represents the number of units that are built</p> <p>11 and exist on the ground today. 384 is a calculation of the</p> <p>12 land use map recommendation, plus the MPDU bonus.</p> <p>13 Q Yes. I'm sorry I wasn't clear in my question.</p> <p>14 I'm asking you to do the subtraction.</p> <p>15 A Oh, I'm sorry. Well, I believe it's 153 units.</p> <p>16 Q Okay. Now that's -- we'll call that the, I think</p> <p>17 we can call that the unused density for analysis area 2, is</p> <p>18 that a fair summary, that number?</p> <p>19 A Sure.</p> <p>20 Q Now there are currently 107 units on the Towne</p> <p>21 Crest property, right?</p> <p>22 A That is correct.</p> <p>23 Q If we add all 153 unused density units to the</p> <p>24 Towne Crest property, how many units do we get?</p> <p>25 A 260 units.</p>	<p style="text-align: right;">Page 144</p> <p>1 MR. BROWN: We have -- in the number 32.05, we</p> <p>2 have placed all of the unused density on the Towne Crest</p> <p>3 property, correct?</p> <p>4 MR. AGER: Yes.</p> <p>5 MR. BROWN: In the 18.28 dwelling unit per acre</p> <p>6 where we come up with 148 units, we are placing on the Towne</p> <p>7 Crest property only that portion of the unused density that</p> <p>8 is proportionate to the amount of acreage, right?</p> <p>9 MR. AGER: Yes, I believe that's correct.</p> <p>10 MR. BROWN: Okay.</p> <p>11 MR. AGER: I'm trying, I believe, yes, I believe</p> <p>12 that's correct.</p> <p>13 MR. BROWN: All right. So the increase in the</p> <p>14 density from 18.28 dwelling units per acre to 32.05 dwelling</p> <p>15 units per acre in these two calculations is what percent</p> <p>16 increase?</p> <p>17 MR. AGER: An increase over what?</p> <p>18 MR. BROWN: Over 18.28.</p> <p>19 MR. AGER: Well, it's roughly 75 percent higher.</p> <p>20 MR. BROWN: Actually I got 64 percent, but maybe</p> <p>21 you're right, but --</p> <p>22 MR. AGER: Maybe I'm wrong.</p> <p>23 MR. BROWN: Maybe you're wrong. At any rate, let</p> <p>24 me move on to the next calculation. You are -- you are</p> <p>25 attempting to justify 329 units on 8.11 acres, correct?</p>
<p style="text-align: right;">Page 143</p> <p>1 Q 260, right? Is that what you said?</p> <p>2 A Yes, that is correct.</p> <p>3 Q Okay. And if you divide that number by the</p> <p>4 acreage for Towne Crest of 8.11, what would be the average</p> <p>5 dwelling units per acre for the Towne Crest property with</p> <p>6 all of that density added to Towne Crest?</p> <p>7 A I believe it's 32 units, 32 dwellings to the acre.</p> <p>8 Q 32 dwelling units per acre, correct?</p> <p>9 A That's correct. Yes, I'm --</p> <p>10 Q All right.</p> <p>11 A Yeah.</p> <p>12 Q And what percentage increase would that be over</p> <p>13 the expected density with just giving the Towne Crest</p> <p>14 property only the density that would be associated, the</p> <p>15 unused density that would be associated with their acreage?</p> <p>16 A Well, I think you have an error in your</p> <p>17 calculation. You're asking me questions that have a</p> <p>18 fundamental error in them.</p> <p>19 Q Hold that thought.</p> <p>20 A Do you want me to --</p> <p>21 Q Let me restate the question.</p> <p>22 A -- continue in error or do you want me to fix it?</p> <p>23 MS. ROBESON: No, just let him --</p> <p>24 MR. BROWN: Let me restate the question.</p> <p>25 MS. ROBESON: -- ask the question.</p>	<p style="text-align: right;">Page 145</p> <p>1 MR. AGER: No, I'm not. What I'm justifying, or</p> <p>2 my testimony -- I mean what my testimony reflects is the</p> <p>3 calculation that should be considered when considering</p> <p>4 master plan density. The justification for 320 units on the</p> <p>5 property is part and parcel of the compatibility and the</p> <p>6 nature of the PD zone that's been applied. And, again, at</p> <p>7 some point I'd like to fix the error in your calculation,</p> <p>8 but --</p> <p>9 MS. ROBESON: Well, your attorney will have a</p> <p>10 chance to ask you more questions.</p> <p>11 MR. AGER: Okay.</p> <p>12 BY MR. BROWN:</p> <p>13 Q Well, let's just do the math, if you would, Mr.</p> <p>14 Ager. What is 329, the number of proposed dwelling units on</p> <p>15 this project, divided by 8.11 acres work out to as the</p> <p>16 number of dwelling units per acre?</p> <p>17 A 40.56.</p> <p>18 Q Yes, and what percentage is that of 18.28?</p> <p>19 A It's approximately, it's a little over two times</p> <p>20 the --</p> <p>21 Q Yes, about 221 percent increase, right?</p> <p>22 A 221 percent, that's correct.</p> <p>23 Q That's all I have.</p> <p>24 MS. ROBESON: I'm trying to get your report, just.</p> <p>25 I think in your report, but correct me if I'm wrong, I think</p>

<p style="text-align: right;">Page 146</p> <p>1 in your report you have a total envelope of density  2 permitted by the master plan for area, analysis area 2, is  3 that correct? I'm trying to find it in here.  4 MR. KAUFMAN: It's page 12 of the report.  5 MR. AGER: Page 12.  6 MS. ROBESON: Thank you. So you had a total --  7 okay, so of the total units of density allowed in analysis  8 area 2, what percentage would your 329 units be?  9 MR. AGER: 72.6 percent.  10 MS. ROBESON: Okay. All right. So the -- okay.  11 Now, okay. Do you have any questions or, Ms. Girard, do you  12 have questions on redirect?  13 MS. GIRARD: I do. I'm going to relieve the  14 pressure over here and ask him what the error in Mr. Brown's  15 analysis was.  16 MS. ROBESON: No pressure. No pressure.  17 MS. GIRARD: No, I mean pressure building up. He  18 couldn't wait to --  19 MS. ROBESON: No, I --  20 MS. GIRARD: -- get it out.  21 MR. AGER: No, it's -- the 107 units is what  22 exists on the property. It doesn't necessarily mean what  23 the zoning is or what the master plan is. So comparing 107  24 units and some percentage number to it, doubling the  25 density, tripling the density, comments like that, is</p>	<p style="text-align: right;">Page 148</p> <p>1 Grove sector plan, have you examined the density in that  2 plan and compared it to what current best practices would be  3 for smart growth around Metro?  4 A No, I have not.  5 Q So when you say that you're familiar in, it  6 reflects the practice --  7 A In general.  8 Q -- in 2006 --  9 A In general.  10 Q -- you haven't done that analysis as to the  11 appropriateness --  12 A That's correct.  13 Q -- of the density and what may have occurred since  14 2006?  15 A That's correct.  16 Q Okay. One second, I'm sorry. Okay. So just in  17 conclusion to bring it all back to, we had a number of  18 percentages flying around, looking at -- it's your opinion  19 that you look at the analysis area, that's the appropriate  20 way to look at it, the master plan density for that area and  21 when you do that, in fact, during this proposal what  22 percentage increase are we talking?  23 A 18 percent increase. And I'd like to, if I could,  24 expand on it just to repeat for purposes of clarity that  25 this is the way the master plan was written by analysis</p>
<p style="text-align: right;">Page 147</p> <p>1 immaterial to the comment or the calculation that we need to  2 do on the master plan basis. If we had five units on this  3 property, we would have an enormous percentage increase from  4 existing to master, to proposed, but that doesn't -- has  5 nothing to do with the master plan. So the seed of the  6 comment that Mr. Brown started with is existing units on the  7 ground and that's what I believe is, it's not characteristic  8 to what we should be counting.  9 MS. ROBESON: Were -- okay. If these were --  10 you're saying, I understand what you're saying. You're  11 saying the starting point is the master plan density?  12 MR. AGER: That's correct.  13 MS. ROBESON: The density recommended in the  14 master plan and so it's not a good comparison increase above  15 the existing units?  16 MR. AGER: It's a fundamentally flawed comparison  17 because if we had vacant land or one or two houses, it would  18 be a ridiculous comparison.  19 MS. ROBESON: Nevertheless, this is going to --  20 all right. I understand that different things, I think the  21 compatibility issue relates to the -- well, go ahead, Ms.  22 Girard, finish your questions.  23 FURTHER DIRECT EXAMINATION  24 BY MS. GIRARD:  25 Q Okay. Getting back to the comments on the Shady</p>	<p style="text-align: right;">Page 149</p> <p>1 area. There are not specific property-by-property  2 recommendations. Second, this is a developed area with  3 multiple properties on the balance that are in support of  4 this application. The master plan makes recommendations for  5 clustering. The master plan on page 1 is strongly  6 supportive of --  7 MS. ROBESON: How is this clustering? You mean  8 it's not single-family homes?  9 MR. AGER: Yes, within the context of an analysis  10 area.  11 MS. ROBESON: Okay. That's not really what I  12 think of when --  13 MR. AGER: Right.  14 MS. ROBESON: I think of clustering as a planning  15 technique where you -- but, anyway, go ahead.  16 MR. AGER: The last thing is, on page 1, one of  17 the fundamental objectives of this plan is the affordable  18 housing component and the increase in the housing stock.  19 And, again, that's a very important public purpose.  20 MS. ROBESON: It is.  21 MR. AGER: -- that's in the --  22 MS. ROBESON: But I guess the question is wouldn't  23 any redevelopment of this site meet that goal?  24 MR. AGER: That, it would, but this particular  25 proposal exceeds the minimum requirement and that's the</p>

<p style="text-align: right;">Page 150</p> <p>1 point. They're actually providing more MPDU's than would be 2 required under the calculation. 3 MS. ROBESON: So 15 percent? 4 MR. AGER: Yeah. And by actually capping their 5 units, they're actually taking away market rate units in 6 order to accommodate additional, affordable units, and 7 there's a difference of three units, three additional MPDU's 8 that wouldn't be required if we went with a straight 9 calculation based upon a density. 10 MS. ROBESON: Okay. 11 MS. GIRARD: That's all we have. 12 MS. ROBESON: All right. 13 MR. KAUFMAN: We now have been joined by Mr. 14 Wilson Mancilla, who is a resident of Wedgewood 2, I 15 believe, and he is the gentleman from which I read one, from 16 Exhibit 98C, I read some excerpts from his letter. He's 17 here. He'd like to make a statement if that's permitted 18 before I move on. 19 MS. ROBESON: Is, okay. Mrs. Deloatch, was she 20 also from Wedgewood 2? 21 MR. KAUFMAN: She was, yes, she was, but she was 22 speaking for the board and also personally. He makes a 23 personal statement. 24 MS. ROBESON: Do you have an objection, Mr. Brown? 25 MR. BROWN: No objection.</p>	<p style="text-align: right;">Page 152</p> <p>1 improve my life, improve my life, my family's life and I 2 believe it's, my neighbors have the same dreams. 3 I'm not a lawyer. I'm not engineering. I'm a 4 normal human being. I try to give my opinion, what I want, 5 what I want to see my neighborhood growing up and I believe 6 we have the right to dream. We have to dream for us, for 7 our family, but especially for the children in our 8 neighborhood. And I would like to see children growing up 9 in better environment. I want to see my neighborhood be 10 happy to live in better environment, improve their life. 11 Our house, you know, is poor for many of us. It's 12 the support for the future, the future of the children. Our 13 house is, the backup we have for that time and we need to 14 negotiate our house to get some lawn, and send our kid to 15 the school. 16 What I'm seeing right now is the idea is 17 evaluating according what you see, the Towne Crest apartment 18 is getting older, are already older. And every year they 19 already look very poor. Who is going to be interested to 20 come back and live in that area? This is not in our favor. 21 It's against us. So my idea is why don't let us to have our 22 dream and see our neighborhood improve, improve because 23 those apartments is coming down in pieces. And I believe in 24 a few more years it's not going to be even secure for the 25 residents.</p>
<p style="text-align: right;">Page 151</p> <p>1 MS. ROBESON: Okay. That's fine. 2 MR. KAUFMAN: Ask Mr. Wilson Mancilla to come 3 forward. 4 MS. ROBESON: Come up here so the microphone can 5 pick your voice up and please raise your right hand. 6 (Witness sworn.) 7 MS. ROBESON: Thank you. And please state your, 8 is he your, no? 9 MR. KAUFMAN: No, he's just going to make a 10 statement. 11 MS. ROBESON: Please state your name and address 12 for the record. 13 MR. MANCILLA: My name is Wilson Mancilla. I'm 14 living in 17637 Larchmont Terrace and I'm living in that 15 address for, since 1992. The reason I came over here is 16 just to give my personal, you know, testimony based on what 17 I see in this 21 year living on Larchmont. 18 This is a wonderful place to live. And if you 19 notice, I'm not a native American. I'm immigrant. But the 20 reason I came down here is to improve my life, improve my 21 style of life, and I believe this sector in this country 22 gave me the opportunity to take it. 23 I'm a hard worker like many others neighborhood in 24 the area. I know most of them. I talk to them, most of 25 them every single day and I have a dream. My dream is to</p>	<p style="text-align: right;">Page 153</p> <p>1 Like I say, I'm not, I'm not engineering, I'm not, 2 who knows on the situation, but you can see when you driving 3 or walk to along the area, you see part of the roof, big 4 damage, walls and damage. So all this testimony is on my 5 behalf, on my family's behalf and then my neighborhood's 6 behalf and the children, the future of the children. I 7 would like to see the children, the neighborhood running 8 happy, seeing, you know, the new environment. I know that 9 this renovation involves many things. So many people don't 10 like to see another people growing up have better life maybe 11 because they don't have a dream already. They're already 12 set up. They're already -- did everything. But we are not 13 in that situation. We are in the situation we have to 14 continue we're in. 15 This country gave me opportunity to become a 16 citizen. I feel so proud to be a citizen, become a citizen. 17 I'm not native, like I said, but I feel like I'm native. 18 And I believe we need what we deserve to live in better 19 environment and I really appreciate it, you listen to me, I 20 really appreciate it if everybody listened to me, what I 21 think is our future, you know? I'm seeing old town 22 Gaithersburg, this historic place, beautiful place, I love 23 it. One of the reasons I live around there for 21 years. 24 But it's not the same anymore. 25 They tore down so many houses, beautiful houses</p>

<p style="text-align: right;">Page 154</p> <p>1 and they have to bring the new development for residents.  2 It's improved the lives. On the corner of Washington Grove  3 and Mid-County, they develop new buildings, beautiful  4 buildings. That improve all our neighborhood. Include us.  5 We are in between those.  6 Our houses will be re-evaluated. That we want.  7 Our house going up in price and no de-evaluating. If people  8 don't let us or don't let that re-development on the Towne  9 Crest change, it's going to make big damage to us. You're  10 going to make big damage to me. In Washington Grove  11 courtyard, they did change us. Nobody asked us if we want  12 those changes, minor development, not huge. It's not huge,  13 minor. But still trees took down, plants took down, two  14 beautiful houses, beautiful. Another house make a big deck,  15 beautiful. That big houses don't let the other house in the  16 back to see the courtyard, but nobody cared.  17 What we care is good for them. We feel happy for  18 them because they want to improve their life. It's the same  19 feeling we have for us. Last year they finish their  20 pedestrian sidewalk all along the Washington Grove. That is  21 improve of the neighborhood. It improved us too. Who  22 complain about that? Nobody, because they improved, the  23 world has changed. Prosperity is changing. Since those  24 houses was built, Washington Grove doesn't look the same  25 anymore.</p>	<p style="text-align: right;">Page 156</p> <p>1 MR. MANCILLA: Okay. I'm sorry.  2 DIRECT EXAMINATION  3 BY MR. KAUFMAN:  4 Q So from your testimony, am I correct in asking you  5 do you support the approval of this project?  6 A I've always supported since it's on my behalf and  7 my neighborhood behalf.  8 Q Then one last question. If it's built in the way,  9 what's currently proposed, do you feel that it will be  10 compatible with you and your neighbors?  11 A They are very happy and I believe the change would  12 be for better, you know? Maybe some trees will come down,  13 but better environment will be on the side because I believe  14 those trees will be replaced by others. So what we have,  15 we'll have will be much better than we have already.  16 Q Thank you very much.  17 A Thank you.  18 MS. ROBESON: Just a second, Mr. Mancilla.  19 MR. BROWN: I'm sorry. No questions.  20 MS. ROBESON: Mr. Brown, no questions? Okay. You  21 may be excused.  22 MR. MANCILLA: Thank you very much.  23 MR. KAUFMAN: Thank you for being here.  24 MS. GIRARD: Thank you for coming.  25 MR. MANCILLA: And I'm sorry if I missed</p>
<p style="text-align: right;">Page 155</p> <p>1 Old Town Gaithersburg doesn't look the same  2 anymore. Washington Grove and Mid-County doesn't look the  3 same anymore. It's because it's changed. We have to be  4 open for the change. We have to be open for the prosperity  5 and that is my dream, to see all my neighborhood prosper. I  6 want to see all my neighbors feel happy where they live. I  7 don't want to see people come in, don't like the  8 neighborhood because they already look poor and run away. I  9 want to see everybody feel happy.  10 That is my testimony, my humble testimony, 100  11 percent myself. I belong to the board member and I have to  12 give something to this country. This country give me a lot  13 and I've got to give something back working with the  14 community. And I've been doing that for around 10 years,  15 giving my free time to help my neighbors. And I believe  16 according to my conversation with a majority in the  17 neighborhood they are very happy to see this new change. I  18 appreciate your time.  19 MS. ROBESON: Thank you, Mr. Mancilla.  20 MR. KAUFMAN: Can I ask him a question?  21 MS. ROBESON: Yes.  22 MR. KAUFMAN: Thank you.  23 MS. ROBESON: Well, were you finished?  24 MR. MANCILLA: Yes.  25 MR. KAUFMAN: I just wanted to ask you --</p>	<p style="text-align: right;">Page 157</p> <p>1 something.  2 MR. KAUFMAN: You didn't. Thank you. All right.  3 MR. MANCILLA: I've got to leave.  4 MR. KAUFMAN: You did fine. Okay. If you're  5 ready to proceed, our next witness is Ms. Trini Rodriguez.  6 And I believe -- is her resume in that --  7 MS. GIRARD: It is. It's Exhibit 13C.  8 MS. ROBESON: All right. Raise your right hand.  9 (Witness sworn.)  10 DIRECT EXAMINATION  11 BY MR. KAUFMAN:  12 Q Ms. Rodriguez, would you please state your full  13 name and your business address?  14 A My name is Trini Rodriguez. I work for Rodriguez,  15 Inc., and our address is 101 North Union Street, Alexandria,  16 Virginia.  17 Q And what is your area of expertise and occupation?  18 A I'm a landscape architect and a planner and have  19 worked in the field, oh, since 1985. Initially worked --  20 MS. ROBESON: What are you seeking to qualify Ms.,  21 I assume she's an expert witness?  22 MR. KAUFMAN: Yes.  23 MS. ROBESON: In what area?  24 MR. KAUFMAN: In the area of land planning, zoning  25 and urban design.</p>



<p style="text-align: right;">Page 158</p> <p>1 MS. ROBESON: Land planning, zoning and urban 2 design. Go ahead. Mr. Brown, do you have any objection? 3 MR. BROWN: Was that land planning and zoning? 4 MS. ROBESON: Yes, and urban design. 5 MR. BROWN: No objection. No objection. 6 MS. ROBESON: Okay. Are you licensed in Maryland? 7 MS. RODRIGUEZ: Yeah. 8 MS. ROBESON: And then have you ever testified as 9 an expert witness in a court or administrative proceeding? 10 MS. RODRIGUEZ: Yes, I have, several jurisdictions 11 and here at this board. 12 MS. ROBESON: Okay. I'll accept her in those 13 areas. 14 MR. KAUFMAN: All right. I'd still like to ask 15 her a little about her education and background if that's 16 permissible. Okay. 17 BY MR. KAUFMAN: 18 Q So would you please give us a little bit of 19 understanding about your professional education and 20 background and what professional associations that you 21 belong to. 22 A So I'm a registered landscape architect and 23 registered planner, AICP. And then member of the Urban Land 24 Institute and I participate in a lot of their sessions. I 25 have --</p>	<p style="text-align: right;">Page 160</p> <p>1 to accommodate growth because growth is a tough issue for 2 all of us. We, you know, change is difficult and how do you 3 accommodate change in a way that you're sensitive to the 4 surroundings and address compatibility and there's a lot of, 5 you know, some subjectivity to some of those issues. I have 6 worked on large master plans, as well as smaller and there 7 are, you know, certain things that you apply to these 8 different scales. 9 Q All right. So to move on because -- 10 A Yes. 11 Q -- I think that's more than sufficient -- 12 A Yes. 13 Q -- Ms. Rodriguez, are you and did you become 14 familiar with application G-910 -- 15 A Yes. 16 Q -- the PD application? And are you also familiar 17 with the property that is the subject of the application? 18 A Yes, I visited the site. 19 Q Have you visited the site? 20 A Yeah, I visited the site and the area. 21 Q Are you also familiar with the area surrounding 22 the property? 23 A Yes. 24 Q And what we call the zoning or land use 25 neighborhood?</p>
<p style="text-align: right;">Page 159</p> <p>1 MS. ROBESON: Well, wait a minute. I'm trying to 2 shorten the hearing. Is there something you want to elicit 3 from -- 4 MR. KAUFMAN: Well -- 5 MS. ROBESON: Her resume is in the record. 6 MR. KAUFMAN: Okay. 7 MS. RODRIGUEZ: Right. 8 MS. ROBESON: -- right? 9 BY MR. KAUFMAN: 10 Q The only other thing is that I wanted to establish 11 that she's done a lot of work in Montgomery County and 12 generally in this area, so -- 13 A The one thing that I should probably just, you 14 know, briefly kind of summarize is that as a planner and as 15 a planner, landscape architecture, we are very active in the 16 area nationally and somewhat internationally. And one of 17 the things that I wanted to sort of suggest is that 18 throughout the years that we've been practicing, we're 19 seeing a huge change in topologies of buildings and designs 20 that actually are kind of relevant to how master plans have 21 evolved and kind of take into consideration this kind of 22 ways of accommodating density. 23 As part of my work in looking, and I did a study 24 for Prince William County, but it was awhile back, I mean 25 probably about 15 years ago, on the issues of growth and how</p>	<p style="text-align: right;">Page 161</p> <p>1 A Yes, I'm very familiar and I think I probably 2 won't go back to define the neighborhood because I think Mr. 3 Ager did a good job, but I should probably just point out -- 4 Q Okay. Why don't we put that exhibit up? 5 A Yes. I'm going to get to it. 6 MS. ROBESON: And what exhibit is that again? 7 MR. KAUFMAN: It's the exhibit that shows the 8 zoning there. 9 MS. ROBESON: I know. I'm just looking for the 10 number. 11 MS. RODRIGUEZ: It is, it is -- 12 MS. GIRARD: It is the last page of Exhibit 14, 13 which was your initial land planning -- 14 MS. ROBESON: Yes, it's a reprint of Exhibit 15 14. Okay. 16 MS. RODRIGUEZ: And, you know, this is the entire 17 area and specifically what we define as a neighborhood, a 18 zoning neighborhood. I should say that I did talk to many 19 of the residents of the area and in a lot of cases a lot of 20 the neighbors voiced some concerns about the conditions in 21 terms of crime and deterioration and voiced the needs of -- 22 BY MR. KAUFMAN: 23 Q Well, let's just establish the boundaries of the 24 neighborhood on this. 25 A Yes, let me establish the boundaries again.</p>

<p style="text-align: right;">Page 162</p> <p>1 MS. ROBESON: Because where did you talk to the  2 residents? Which residents did you talk to?  3 MS. RODRIGUEZ: We talked to the residents in this  4 area.  5 MS. ROBESON: Okay.  6 MS. RODRIGUEZ: What I should do is maybe just  7 establish the boundaries very briefly.  8 MS. ROBESON: I don't -- just go through the land  9 use issue.  10 MS. RODRIGUEZ: Right. And, well, within this  11 boundary what I wanted to highlight is Washington Grove  12 Lane, which is a main roadway, actually splits the area in  13 just sort of two zones and then there is this woodland that  14 actually happened to kind of also create a zone of its own.  15 To the south, we have the town of Washington Grove which I  16 have to admit is an absolute jewel. It's a wonderful  17 neighborhood, it's always admired and I think all planners  18 do.  19 To the north of the area is, it's a collage of  20 sort of sub-neighborhoods and communities that actually have  21 shown a lot more deterioration. They're planning a  22 different, in a different manner. We think this area, as  23 you can see, is the Towne Crest and --  24 MS. ROBESON: Now which area you say is  25 deteriorating?</p>	<p style="text-align: right;">Page 164</p> <p>1 A I did.  2 Q All right. And were you also involved in the  3 urban design of the current report?  4 A Yes.  5 Q All right. And you prepared that?  6 A Yes.  7 Q All three versions?  8 A Yes.  9 Q Okay. Could you --  10 A In collaboration with the architects.  11 Q In cooperation with, right. Could you describe  12 the proposal and how it relates to the surrounding  13 communities from a point-of-view of compatibility, et  14 cetera? I think we ought to use the most recent PD-35.  15 A I think you have, everybody has heard sort of the,  16 a bit of the history of the evolution.  17 Q Well, if you would take us through and explain the  18 elements of the buildings and the urban --  19 A Right.  20 Q -- design, that would be very helpful.  21 MS. ROBESON: And that's Exhibit 73B?  22 MS. RODRIGUEZ: 73B, correct. I think you've all  23 heard of the evolution of the project as it is, you know, to  24 the point that we are here today. Exhibit 73B shows the  25 latest plan, which is a PD-35. One thing that should be</p>
<p style="text-align: right;">Page 163</p> <p>1 MS. RODRIGUEZ: To the north.  2 MS. ROBESON: So --  3 MS. RODRIGUEZ: This area has -- it's to the  4 north.  5 MS. ROBESON: You're saying Wedgewood 1 and  6 Wedgewood 2 --  7 MS. RODRIGUEZ: Wedgewood 2.  8 MS. ROBESON: -- and how about south of that  9 Washington -- I can't see, Washington Square Park?  10 MS. RODRIGUEZ: It --  11 MS. ROBESON: That area as well?  12 MS. RODRIGUEZ: There is a little bit, but I mean  13 the apartments are aging in there. I have to admit that we  14 concentrated our research of the immediate surroundings of  15 the site. I should also point out that Washington Grove  16 actually is sort of a divider and these areas -- it's a very  17 discreet area because it's only access is by Towne Crest  18 Drive and it's very internal. The other thing that I should  19 point out, should be pointed out is that the Washington  20 Grove neighborhood is a very cohesive neighborhood, very  21 internal oriented and it has very defined edges which are  22 quite distinct from this area to the north.  23 BY MR. KAUFMAN:  24 Q All right. So as part of your analysis, I assume  25 you did a report, is that correct?</p>	<p style="text-align: right;">Page 165</p> <p>1 pointed out from the very beginning is that side has, is  2 very long and very narrow, which presents its own  3 constraints. The plan in front of you has, you know, it's  4 being designed to actually address issues of compatibility  5 and we do think that design and urban design can maybe get a  6 lot of those, a lot of those issues and it has  7 compatibility. One of the things that this plan does  8 immediately is, in terms of mass and it's creating a step up  9 in massing not only in the number of units and density, but  10 also in height and size of buildings.  11 To the south are the townhouses which are located  12 in two smaller buildings fronting Towne Crest Drive and it  13 has a front to Washington Grove. One of the goals of this  14 plan had always been to create sort of a new gateway into  15 the southern area where Washington Grove is. So the  16 building has been set back and we're proposing a park at the  17 front as a gesture and a gateway into that lower area.  18 As you come into the community, the buildings have  19 been set back 25 feet and so you can see created a  20 continuous streetscape where there is nothing today. I  21 think you saw the pictures that have been shown in the past.  22 There is no curbs, no trees, a very, very narrow sidewalk  23 that is not even continued. So continuous sidewalks,  24 continued treatment of street, trees, continuous planting  25 strip. Now this sidewalk, which I will take you that a</p>

<p style="text-align: right;">Page 166</p> <p>1 little later, actually becomes sort of, you know, a loop and  2 a lake, so the other amenities within the site.  3 To these townhouses, you access at one point and  4 all the access to the townhouses are in the rear. These  5 townhouses have been set back about 100 feet from the back  6 property line and in the rear there is extensive landscaping  7 that has been added to provide buffering.  8 As we move northward, we have Building B, which  9 you can see also the massing has been undulated and set  10 back. The minimum set back from the front is also 25 feet  11 and creates a series of courtyards in the front that are  12 used as amenity features.  13 The buildings themselves are stepping from three  14 feet, three stories to four stories and this is something  15 that has been sort of part of the evolution of the plan to  16 enhance its compatibility. Within this building, the  17 parking is in the rear and as we move further north, we have  18 Building A, which is the largest of the buildings. The  19 Building A and Building B are separated by a new internal  20 street that has been created with, you know, sidewalks and  21 street trees. It functions as a normal street, part of the  22 fabric, and from there we gain access to the two buildings.  23 The parking is all in the rear and it's accessed, you know,  24 through the back.  25 One of the things that we should point out about</p>	<p style="text-align: right;">Page 168</p> <p>1 internal to the buildings.  2 Very briefly, I'll just describe the amenities.  3 Package, these, you know, the current project has no  4 amenities and what this project is proposing is a very  5 completely package of amenities that includes, you know, two  6 tot lots that are located geographically to serve the  7 different areas of the project, there is a series of  8 corridors and sitting areas. There are grooming areas.  9 There is a pool which is internal, an internal courtyard  10 fenced in. And then to the north we have a large amenity  11 area which was put in the area where we set back the  12 building 100 feet from the north.  13 On the edge that backs onto the Westwoods, we've  14 proposed additional planting. And I think you can see in  15 here one of the things that we've been working with is the  16 engineers to integrate a storm water management system that  17 is really part of the fabric and is not sort of an  18 afterthought.  19 Q A couple of other questions. Where the townhouses  20 are, what is the setback there from the edge of the property  21 line?  22 A From here?  23 Q Yes.  24 A 100 feet, yes, I think I mentioned that.  25 Q Okay. And then also could you just briefly</p>
<p style="text-align: right;">Page 167</p> <p>1 this topology, these are some of the new topology that have  2 been developed in the last, you know, 10 to 15 years. I  3 mean actually this is even more recent, this sort of  4 particular topology.  5 BY MR. KAUFMAN:  6 Q When you say topology, are you talking about the  7 wrap building?  8 A The wrap-around buildings, I was just about to  9 describe this, where you have the parking in parking  10 structures. These are actually quite costly structures  11 which is one of the reasons why one needs sort of an  12 increased density in order to provide a viable product of  13 this type. It, they're very well-received in the market and  14 create a wonderful sense of community because they really  15 are not exposed parking, nor exposed structures of any kind.  16 The buildings are accessed internally. The units are  17 accessed internally.  18 The Building A, as you can see, well, it looks  19 like a larger building, it's going to be perceived as a  20 series of sort of smaller buildings. We've created wings  21 that protrude out that actually we laid in scale to sort of  22 the surrounding buildings with corridors, as I mentioned,  23 and then through, in the middle of these wings there are a  24 series of corridors which are all amenity areas. Services  25 for these buildings are internal, trash and loading are</p>	<p style="text-align: right;">Page 169</p> <p>1 describe how the streetscape along Towne Crest Drive needs  2 to be changed?  3 A Right. The, and I think I mentioned that those,  4 there is currently no streetscape, so we have a continuous  5 sidewalk, trees, streets and a continuous planting strip.  6 It's a very, very green edge.  7 Q And then you mentioned the wrap concept where the  8 parking is all contained in the structured parking. To your  9 knowledge did that even exist even as late as 1985 version  10 of this plan, if you know?  11 A You know, I don't know exactly the dates. It's a  12 typology that has been evolving. I mean we do a lot of work  13 in urban and fill. This is, even still is sort of a Class A  14 suburban typology. It's not, this is not the urban  15 typologies that we're, you know, doing in Bethesda or Silver  16 Spring or anything. Just it's --  17 Q Does it replace the concept of the garden  18 apartment?  19 A This replaces the concept of garden apartments. I  20 mean I think some of the densities that we've been talking  21 about and even in the master plan, eight to 15, those are  22 literally townhouse densities today, I mean the low  23 townhouse densities. We do townhouses now in the densities  24 of, you know, 30 to the acre. So --  25 Q So what's the range of densities today using this</p>

<p style="text-align: right;">Page 170</p> <p>1 particular architectural product?</p> <p>2 A You know, I am going to decline to respond to that</p> <p>3 because I think the architects have a better handle in</p> <p>4 densities than I do. I mean I, I can tell you what the</p> <p>5 ranges are, but I don't do all the unit subdivisions, so I</p> <p>6 think the architect will be better prepared.</p> <p>7 Q Okay. Now, Ms. Rodriguez, are you familiar with</p> <p>8 the PD zone?</p> <p>9 A Yes.</p> <p>10 Q And are you familiar with the purpose clause of</p> <p>11 the zone?</p> <p>12 A Uh-huh.</p> <p>13 Q And are you familiar with the specific</p> <p>14 requirements of the zone?</p> <p>15 A I am.</p> <p>16 Q All right. In your own words, can you tell us how</p> <p>17 the current proposal comports to the specifics and the</p> <p>18 purpose clause of the zone?</p> <p>19 A Yeah. I mean in general, you know, obviously we</p> <p>20 need to be consistent with the essences of the proposed</p> <p>21 master plan as it's being, you know, argued here before. We</p> <p>22 strongly believe that the master plan and the age of the</p> <p>23 master plan renders, you know, this more as a guide. The</p> <p>24 higher densities at that time were very different from what</p> <p>25 we consider high densities today. So with that, I believe</p>	<p style="text-align: right;">Page 172</p> <p>1 yeah.</p> <p>2 MS. ROBESON: But legally are they open or are</p> <p>3 they dedicated to public use, do you know, or not? I</p> <p>4 just --</p> <p>5 MS. RODRIGUEZ: No, they're not dedicated to</p> <p>6 public use.</p> <p>7 MS. ROBESON: I'm just trying to figure out which</p> <p>8 community.</p> <p>9 MS. RODRIGUEZ: No, they're not.</p> <p>10 MS. ROBESON: Okay. All right.</p> <p>11 BY MR. KAUFMAN:</p> <p>12 Q I mean that's a question you could ask the</p> <p>13 developer, I mean, right?</p> <p>14 A Yes.</p> <p>15 Q Continuing on, what about the balance and</p> <p>16 coordinated mixture of residential uses?</p> <p>17 A Right. We are providing a variety of unit types</p> <p>18 and affordability. I also believe that this brings to the</p> <p>19 areas a typology that is not present. I mean when you</p> <p>20 analyze, when you look at the larger area, the apartments</p> <p>21 there are mostly, you know, the units there are mostly</p> <p>22 townhouses or single family. This brings a new typology</p> <p>23 that is not present. There is a, you know, a broad range of</p> <p>24 housing types as I mentioned.</p> <p>25 The other point is to preserve to the greatest</p>
<p style="text-align: right;">Page 171</p> <p>1 that all the other clauses, you know, in terms of achieving</p> <p>2 flexibility in design and integrating the uses as we've done</p> <p>3 is, it's a key purpose of achieving, you know, greater</p> <p>4 efficiency I think through careful, skilled building,</p> <p>5 massing and sensitive architectural design which you'll hear</p> <p>6 pretty soon.</p> <p>7 We can reduce, you know, we can be compatible and</p> <p>8 we can also reduce the negative visceral impacts of the</p> <p>9 automobile by having parking which is something that even in</p> <p>10 the current proposal is not present in the current project,</p> <p>11 excuse me, is not present. Another purpose is to encourage</p> <p>12 maximum social interaction and community interaction and we</p> <p>13 believe that this plan does that not only for the residents,</p> <p>14 the existing residents, but future residents. We strongly</p> <p>15 believe, and I think this is being voiced by many of the</p> <p>16 immediate neighbors, that this area need a catalyst for</p> <p>17 revitalization and this will definitely do that.</p> <p>18 We have created a number of spaces that provide</p> <p>19 social interaction not only internally, but externally.</p> <p>20 Even the playgrounds are open for the use of the community</p> <p>21 as you can see.</p> <p>22 MS. ROBESON: The community of Towne Crest or the</p> <p>23 community of Wedgewood 2?</p> <p>24 MS. RODRIGUEZ: It's actually open. I mean they're</p> <p>25 strategically located and nothing they'd be able to use,</p>	<p style="text-align: right;">Page 173</p> <p>1 extent possible and take advantage of the trees. One of the</p> <p>2 things about this particular site, I think you saw many of</p> <p>3 the pictures, there are very few trees within the site per</p> <p>4 se. We are now preserving one of the larger trees and the</p> <p>5 revised plan actually moved the location of a tot lot away</p> <p>6 so we could preserve that.</p> <p>7 MS. ROBESON: The tot lot on the northern --</p> <p>8 MS. RODRIGUEZ: On the northern side, correct.</p> <p>9 Excuse me. There are very few trees on this side. There</p> <p>10 are a few pine trees and mulberry, which is really an</p> <p>11 invasive. Two of the existing trees have actually been cut</p> <p>12 down and we believe that it was Pepco after a storm, but I'm</p> <p>13 not entirely sure, so I -- but one thing to that particular</p> <p>14 purpose is as you can see in this exhibit, we are planting</p> <p>15 an incredible amount of trees. You can see just on the</p> <p>16 street trees there is a huge amount, but we are planting all</p> <p>17 along the perimeter, in the amenity areas and these will</p> <p>18 result in a much greater canopy cover, but by a large factor</p> <p>19 than what we have there today.</p> <p>20 BY MR. KAUFMAN:</p> <p>21 Q What about pedestrian circulation networks, you</p> <p>22 know --</p> <p>23 A Correct.</p> <p>24 Q -- separate from the vehicle roadways?</p> <p>25 A Correct. We have, as you can see, a system of</p>

<p style="text-align: right;">Page 174</p> <p>1 pedestrian networks that ties into different courtyards and  2 amenity and they create loops that you can actually take  3 throughout the community. They're basically all integrated  4 and actually you can even come through the rear. So it's --  5 I haven't done a calculation, but it's, you know, it's very,  6 very extensive in terms of its length and connectivity.  7 Q Are you familiar with within the PD-35 category  8 the requirements for minimum setbacks, minimum grade and the  9 parking requirements, are you familiar with those?  10 A Yes.  11 Q All right. And can you address those please?  12 A The, in terms of the minimum setbacks, we have,  13 let's see --  14 Q Take your time.  15 A Yeah. We talked about the setbacks to the north,  16 setback 100 feet. We have setback 100 feet from this area.  17 Then I would believe this setback really doesn't apply and  18 the reason for that was that, as you can see in this land  19 use plan, the area which is Exhibit --  20 MS. GIRARD: 107.  21 MS. RODRIGUEZ: -- 107, the area behind the woods,  22 behind this property is shown as open space and that's the  23 certified plan, the master --  24 BY MR. KAUFMAN:  25 Q That's in the county's master plan?</p>	<p style="text-align: right;">Page 176</p> <p>1 MS. ROBESON: You can't. I know. And you're  2 lucky.  3 MS. RODIGUEZ: Yes.  4 MS. GIRARD: Very lucky.  5 MS. RODRIGUEZ: I would not do well on that.  6 BY MR. KAUFMAN:  7 Q But, nonetheless, you are set back from the  8 property line on the south side from the Daylily community  9 100 feet?  10 A 100 feet, right.  11 Q What about the green space calculation, can you --  12 A Yeah, the green space calculation, we meet the 50  13 percent and I'm going to let the engineer who did the  14 calculation sort of take you through that, but --  15 MS. ROBESON: Okay. Can I ask one question?  16 MS. RODRIGUEZ: Uh-huh.  17 MS. ROBESON: I thought when I read through the  18 record that there, just pretend there is 100-foot set back.  19 There is still, I thought there was some from No. 7 Daylily  20 Lane --  21 MS. RODRIGUEZ: Yes.  22 MS. ROBESON: -- that it does not meet the  23 setback?  24 MS. RODRIGUEZ: That's correct. This corner here  25 does not meet the setback.</p>
<p style="text-align: right;">Page 175</p> <p>1 A On the county, and the Gaithersburg vicinity  2 master plan.  3 MS. ROBESON: All right. I don't understand that.  4 You're saying you only have to set back 100 feet if it's --  5 MS. RODRIGUEZ: From an area that is designated  6 single family.  7 MR. KAUFMAN: In a county --  8 MS. RODRIGUEZ: Single family.  9 MR. KAUFMAN: -- master plan, in the area --  10 MS. RODRIGUEZ: In the county.  11 MR. KAUFMAN: -- master plan for the county?  12 MS. ROBESON: Well, all right. Okay. I  13 understand what you're saying.  14 MR. KAUFMAN: Well, if I could just -- our  15 position --  16 MS. ROBESON: No. No.  17 MR. KAUFMAN: But not interfering with her.  18 MS. ROBESON: Let's --  19 MR. KAUFMAN: Legally we've presented you an  20 argument on that and we'll do so further in --  21 MS. ROBESON: Okay.  22 MS. RODRIGUEZ: Yes.  23 MS. ROBESON: That's fine.  24 MS. RODRIGUEZ: Yes, I cannot argue on the legal  25 aspects of it.</p>	<p style="text-align: right;">Page 177</p> <p>1 MS. ROBESON: Okay. Where would the setback run  2 if you met the whole 100 feet?  3 MS. RODRIGUEZ: It would take that corner.  4 MS. ROBESON: Okay. All right. They don't --  5 yes.  6 MR. KAUFMAN: And there will be testimony on that  7 from the architect --  8 MS. ROBESON: Oh, there is?  9 MR. KAUFMAN: -- for that issue and how to address  10 that issue.  11 MS. ROBESON: Okay. All right. Then I won't go  12 into it further.  13 BY MR. KAUFMAN:  14 Q Okay. So to continue on, so, Ms. Rodriguez, are  15 you familiar with the technical staff's analysis of the  16 application and also the recommendations of the Planning  17 Board?  18 A I am and I mean I read the letter from the  19 Planning Board to you and, obviously, she feels very  20 strongly about the master plan issues and density issues  21 with, in reference to the master plan, but I wanted to  22 highlight that in that letter the one thing that didn't  23 convey was the amount of discussion from Board members and  24 the fact that this was a good design that they believed that  25 this needed revitalization, that this would be a good --</p>

<p style="text-align: right;">Page 178</p> <p>1 MS. ROBESON: Okay. All right. My problem is I</p> <p>2 don't have that discussion in the record.</p> <p>3 MS. RODRIGUEZ: Correct.</p> <p>4 BY MR. KAUFMAN:</p> <p>5 Q You have some in the letter that was sent where</p> <p>6 she refers to one of the Board members and that position --</p> <p>7 A Right. Yeah.</p> <p>8 Q -- in the original letter.</p> <p>9 MS. ROBESON: In the original recommendation?</p> <p>10 MS. RODRIGUEZ: Yes.</p> <p>11 MS. ROBESON: Okay.</p> <p>12 MR. KAUFMAN: Yes. And we can, and we'll also</p> <p>13 submit the transcript of that hearing.</p> <p>14 MS. ROBESON: If you wish. I --</p> <p>15 MR. KAUFMAN: Yes.</p> <p>16 MS. ROBESON: I'm just concerned about</p> <p>17 representing what the Planning Board did or what the</p> <p>18 Planning Board's motives are when I don't have that in the</p> <p>19 record.</p> <p>20 MR. KAUFMAN: Well, what we will do is we'll</p> <p>21 submit the transcript and we'll bring your attention to</p> <p>22 those comments so you can see them for yourself.</p> <p>23 MS. ROBESON: All right.</p> <p>24 BY MR. KAUFMAN:</p> <p>25 Q Hang on just a second here. So you've read the</p>	<p style="text-align: right;">Page 180</p> <p>1 objectives of that master plan have been met through this</p> <p>2 and I don't think they gave enough weight to that, to that</p> <p>3 other aspect of the master plan.</p> <p>4 MS. ROBESON: Did you agree with the technical</p> <p>5 staff analysis on the PD-44 zone?</p> <p>6 MS. RODRIGUEZ: PD-44?</p> <p>7 MS. ROBESON: Technical staff would be in the</p> <p>8 technical staff report.</p> <p>9 MS. RODRIGUEZ: Right. Right. Yes.</p> <p>10 MS. ROBESON: You did?</p> <p>11 MS. RODRIGUEZ: Uh-huh.</p> <p>12 MS. ROBESON: Okay.</p> <p>13 BY MR. KAUFMAN:</p> <p>14 Q Okay. So to answer your specific questions, in</p> <p>15 your expert opinion would a proposed zoning reclassification</p> <p>16 of PD-35 satisfy the requirements of the purpose clause of</p> <p>17 the PD zone?</p> <p>18 A I do.</p> <p>19 Q Also in your opinion, would the proposed zoning</p> <p>20 reclassification be compatible with existing and plant lane</p> <p>21 uses in the surrounding area?</p> <p>22 A I do. I think all the massing, stepping and</p> <p>23 articulation and provision of open space does that.</p> <p>24 Q From your area of expertise, do you see this</p> <p>25 application for PD-35 causing any adverse effects on the</p>
<p style="text-align: right;">Page 179</p> <p>1 letter, the letter is in the record. So in your expert</p> <p>2 opinion do you agree with the position taken by the</p> <p>3 plaintiff?</p> <p>4 A Planning?</p> <p>5 Q Planning Board.</p> <p>6 A No.</p> <p>7 Q And what's your position with regard to the</p> <p>8 staff's report?</p> <p>9 A Well, my position is that I think, you know, we</p> <p>10 should look at the master plan in the manner that Mr. Ager</p> <p>11 has described. I really do think it's a guidance. I mean I</p> <p>12 think it's -- even the opening word of that, of that master</p> <p>13 plan says that it's dynamic guidance, dynamic, I'm sorry, am</p> <p>14 I to quote it --</p> <p>15 Q Take your time.</p> <p>16 A Yes, I think I have it somewhere and I thought</p> <p>17 that an interesting, what they put in it. I don't know what</p> <p>18 I did with it.</p> <p>19 Q Here.</p> <p>20 A All right. It says, "Manages and directs a</p> <p>21 dynamic growth potential of the Gaithersburg vicinity master</p> <p>22 planning area." It really tells it all. Growth is so</p> <p>23 dynamic and, you know, plans that you have not looked at for</p> <p>24 28 years are obviously, you know, they're not doing justice</p> <p>25 to that. But I do believe that a lot of the other goals and</p>	<p style="text-align: right;">Page 181</p> <p>1 health, safety, security and morals on everybody else?</p> <p>2 A No, I actually believe this will be, you know, a</p> <p>3 catalyst for revitalization of the area and I think it will</p> <p>4 increase safety.</p> <p>5 MS. ROBESON: What area?</p> <p>6 MR. KAUFMAN: Which area?</p> <p>7 MS. RODRIGUEZ: Oh, the general area, but I think,</p> <p>8 you know, especially the immediate surroundings, you know,</p> <p>9 the immediate vicinity.</p> <p>10 MS. ROBESON: If you go forward, they can't</p> <p>11 redevelop.</p> <p>12 MS. RODRIGUEZ: Excuse me?</p> <p>13 MR. KAUFMAN: I think what you're -- if I could --</p> <p>14 MS. RODRIGUEZ: Revitalization is really, I mean I</p> <p>15 think all this houses, you know, for one, they keep losing</p> <p>16 value. You know, once the area --</p> <p>17 MS. ROBESON: So property values will go up?</p> <p>18 MS. RODRIGUEZ: Property values and when people,</p> <p>19 when their values go up, they take care of their houses, you</p> <p>20 know, people move in.</p> <p>21 MS. ROBESON: I was just curious.</p> <p>22 MS. RODRIGUEZ: Okay.</p> <p>23 MR. KAUFMAN: Well, if I could just expand on</p> <p>24 that?</p> <p>25 BY MR. KAUFMAN:</p>

<p style="text-align: right;">Page 182</p> <p>1 Q I think your question, and I don't want to put 2 words in your mouth, is that under the current master plan, 3 if this went forward, that would prohibit any further 4 development within the area 2 because of the proposal. But 5 my question to you, Ms. Rodriguez, is do you anticipate that 6 this master plan will be redone any time in the foreseeable 7 future?</p> <p>8 A Well, knowing how long it has taken to do any of 9 this and it's not going to be any time soon, and when they 10 do, I mean it takes about five years to go through one.</p> <p>11 Q So if it were redone, what would you think the, 12 you know, the proposals for this area would -- how would 13 they change?</p> <p>14 A I, you know, my gut feeling is they will be 15 looking at the rationales. Pretty much Mr. Ager has 16 described, you know, this is within the wedges and 17 corridors. There is an increased densification, especially 18 in these areas. I mean I do think there is an article very 19 recently from COG on, I think this has been in the news and 20 I know they claim that the growth in our area is phenomenal. 21 It goes to, I don't know, 7 point some million and 22 increasing. Montgomery County is quite large and I think 23 the city of Gaithersburg was No. 5 on the list of growth. 24 So once, you know, once there is an area that can 25 be densified, I think if you do it in the right way, that's,</p>	<p style="text-align: right;">Page 184</p> <p>1 MS. ROBESON: Mr. Brown. 2 CROSS-EXAMINATION 3 BY MR. BROWN: 4 Q Ms. Rodriguez, good afternoon. I really don't 5 have too much to go over with you. I wonder if you might 6 first turn to page 6 of your report? This is Exhibit 73C, 7 your latest version of the report. 8 A Yes. 9 Q You seemed quite leery in your direct examination 10 to get into the legal aspects of the setback requirements, 11 yet as I read page 6, it's almost entirely devoted to a 12 legal analysis of the setback requirements. Why is this in 13 your report? 14 A That's a good question. I mean we did put it 15 because it was part of our discussion and it is part of our 16 report, but I don't feel that I can actually argue 17 extensively that it's -- 18 Q I noticed from your resume you don't seem to have 19 a legal background. 20 A I -- 21 Q So this is not your work, is it? 22 A This particular section is something that is 23 routinely discussed and put part of the master plan and it 24 is in my report, but I don't feel like I can, this goes 25 beyond what's in here.</p>
<p style="text-align: right;">Page 183</p> <p>1 you know, that's what you want to do. So my gut feeling is 2 that they would be looking at these opportunities for 3 densification and, you know, assume that that's -- 4 Q So it's not density per se, it's how you do it? 5 A It's how you do it. 6 Q All right. 7 A All right. 8 Q All right. I have two, just two last questions. 9 Again, in your opinion, will the public facilities and 10 services be adequate if this project is approved and built? 11 A I know the analysis for the school was done. The 12 elementary school is the only one that is over capacity, but 13 we would have to pay a facilities fee. And both the police 14 and the fire are within close proximity to and four miles 15 from the site. 16 Q And then, lastly, do you feel -- what is your 17 opinion concerning the proposed zoning reclassification 18 being suitable and compatible with the surrounding 19 neighborhood? 20 A I think it is. 21 MR. KAUFMAN: Okay. That's my direct. Thank you. 22 MS. RODRIGUEZ: Thank you. 23 MS. ROBESON: Okay. Thank you. 24 MR. KAUFMAN: I tried to take a hint from you and 25 move it along.</p>	<p style="text-align: right;">Page 185</p> <p>1 Q I understand. Thank you. Now you said that you 2 agree with the technical staff report when it was a, when 3 its focus was on the project at a PD-44 zone, right? 4 A Uh-huh. 5 Q Have you seen Ms. Carrier's letter, it's Exhibit 6 91, dated February 5th? 7 A Yes, I do. 8 Q Let her get a copy of it. 9 A Yes. 10 Q Do you have that handy? 11 A Yes. 12 Q I just want to highlight from that letter the 13 second paragraph where Ms. Carrier advises Ms. Robeson, 14 "Your letter requested a recommendation from technical staff 15 on the revised development plan. In consideration of 16 staff's previous analysis and recommendations of approval of 17 the original LMA requested, PD-44, which is more intensive 18 than the current PD-35 rezoning request. The proposed 19 reduction in units in mind are building modifications do not 20 significantly impact staff's previous analysis or 21 conclusions." Would you agree with that observation? Do 22 you understand my question? 23 A Yes, I do. 24 MS. GIRARD: She didn't have the right document in 25 front of her. Right here.</p>

<p style="text-align: right;">Page 186</p> <p>1 MS. RODRIGUEZ: Oh, okay. I thought that was the  2 second one I got.  3 BY MR. BROWN:  4 Q I'm asking you if you agree with the observations  5 that --  6 A Right.  7 Q -- that Chair Carrier made in the first sentence,  8 second paragraph.  9 MS. GIRARD: She's just reading. She has it now.  10 MS. RODRIGUEZ: Wait a minute. I was --  11 MS. GIRARD: She was --  12 MR. BROWN: I understand.  13 MS. RODRIGUEZ: I was looking for something.  14 MR. BROWN: All right.  15 MS. RODRIGUEZ: Yes.  16 MR. BROWN: First sentence, second paragraph.  17 MS. RODRIGUEZ: Yeah.  18 MR. BROWN: And the second sentence.  19 MS. RODRIGUEZ: Yes, I agree.  20 BY MR. BROWN:  21 Q So essentially what she's saying and what I think  22 you would be saying is that since the staff found approval,  23 would recommend approval of this project at PD-44, surely  24 they would still recommend approval at PD-35, right?  25 A Yes.</p>	<p style="text-align: right;">Page 188</p> <p>1 copy of that? It's Exhibit 60.  2 A I don't know if I do.  3 MR. KAUFMAN: Give us a minute.  4 MS. RODRIGUEZ: Yeah.  5 MS. GIRARD: She has it.  6 MR. BROWN: Do you have it?  7 MS. RODRIGUEZ: Yeah.  8 BY MR. BROWN:  9 Q Would you turn to page 14 and 15 please?  10 A Sure.  11 Q And 16?  12 A Uh-huh.  13 Q This is where the technical staff analyzes the  14 purposes of the PD zone, right?  15 A Uh-huh.  16 Q Are you familiar with this analysis?  17 A Yes, I probably, if you ask me a specific  18 question, I'd probably have to re-read some of --  19 Q MR. BROWN: I understand.  20 A MS. RODRIGUEZ: -- it again.  21 Q MR. BROWN: At the time that the staff prepared  22 this, which version of your land use planning report was  23 available to the staff?  24 A I believe the previous version, the --  25 Q Would that be Exhibit 46C?</p>
<p style="text-align: right;">Page 187</p> <p>1 Q And what would be your advice to Ms. Robeson in  2 terms of trying to, in terms of where she should put the  3 weight of her -- how she should weigh the conflicting advice  4 as between the Planning Board and the Planning Board staff?  5 Do you believe she should place more weight on the technical  6 staff and on the Planning Board's recommendation?  7 A Well, I -- you know, I believe that she should  8 weigh on the staff's analysis. I don't know if I should say  9 this. I know Ms. Carrier, she's a very intelligent woman  10 and her charge is to really, you know, sort of, she's always  11 gone by the book and she does very much so. I know that she  12 feels very strongly about making sure that it does conform  13 with the master plan and I believe that her staff is sort of  14 thinking outside of the box and, you know, looking at other  15 components of that like we have. Like it's age and the fact  16 that there are tools within our arsenal of planning and  17 design that actually help mitigate some of these issues and  18 actually set aside some, you know, all the other purposes of  19 the, not only of the master plan, but of the zone.  20 Q Well, I take it from your answer then that you  21 would urge Ms. Robeson to find the technical staff analysis  22 more persuasive than the Planning Board's recommendation?  23 A Yes.  24 Q Are you familiar with the -- I wonder if you could  25 take out the technical staff's analysis? Have you got a</p>	<p style="text-align: right;">Page 189</p> <p>1 A I would think so.  2 MR. KAUFMAN: I don't know. That's technical.  3 The exhibit list.  4 MR. BROWN: Dated 6/8/12.  5 MS. RODRIGUEZ: Yes, 53D, I think.  6 MR. KAUFMAN: 53D is revised land use support  7 dated July 31, 2012. Do we have that?  8 MS. GIRARD: Yeah.  9 MR. KAUFMAN: Can we have a few minutes to find  10 it?  11 MS. ROBESON: Certainly, because I'm looking for  12 it as well. So why don't we take a 5-minute break because  13 that may be conducive to moving along more smoothly. I'm  14 sorry, before we go off the record, what page are you  15 looking for in this report, Mr. Brown, or was it 46 --  16 MR. BROWN: Well, I wasn't sure whether there had  17 been an update from 46 to, by the time Mr., Mr. Gilbert did  18 his analysis, but I gather 53 would be the correct one.  19 MR. KAUFMAN: 53D.  20 MS. ROBESON: Okay. Well, let's take -- let's let  21 her refresh her memory. We'll take a 5-minute break and  22 we'll be back at 3:21.  23 (Recess)  24 MS. ROBESON: That would be great. We're not on  25 the record yet.</p>



<p style="text-align: right;">Page 190</p> <p>1 MR. BROWN: What's our next exhibit number, 107?</p> <p>2 MR. KAUFMAN: No. The next one is 111, I think,</p> <p>3 or 112 --</p> <p>4 MS. ROBESON: No.</p> <p>5 MR. KAUFMAN: No, wait a minute. No, the next is,</p> <p>6 our next would be 113.</p> <p>7 MS. ROBESON: 113.</p> <p>8 (Exhibit 113 was marked</p> <p>9 for identification.)</p> <p>10 MR. BROWN: Okay. I'm behind the times. That's</p> <p>11 right, you've got all of these.</p> <p>12 MR. KAUFMAN: Will we ever get electronics in this</p> <p>13 room?</p> <p>14 MS. ROBESON: You can talk to the Council or talk</p> <p>15 to the budget people. Some are saying will we ever get a</p> <p>16 new council office building, so you can put in your two</p> <p>17 cents.</p> <p>18 MR. KAUFMAN: They certainly ask me for more than</p> <p>19 two cents.</p> <p>20 MS. ROBESON: Are we ready to go? Oh, you're</p> <p>21 still handing these out. Okay.</p> <p>22 MS. GIRARD: Sorry.</p> <p>23 MS. ROBESON: One moment.</p> <p>24 MR. KAUFMAN: Was there a second thing I thought</p> <p>25 you said, a date?</p>	<p style="text-align: right;">Page 192</p> <p>1 we use the March 4th date maybe to give Mr. Brown a little</p> <p>2 bit of time, maybe start right after lunch or, you know, I</p> <p>3 don't -- whatever he desires.</p> <p>4 MS. ROBESON: Well, how about 11:00 and just give</p> <p>5 you --</p> <p>6 MR. BROWN: Okay.</p> <p>7 MS. ROBESON: -- a little traffic leeway.</p> <p>8 MR. BROWN: Thank you.</p> <p>9 MS. ROBESON: And, all right. We'll do that.</p> <p>10 MR. KAUFMAN: And then I'm assuming on the 25th</p> <p>11 you would start at a normal time, 9:30?</p> <p>12 MS. ROBESON: 9:30? I will announce that at the</p> <p>13 end of the hearing.</p> <p>14 MR. KAUFMAN: And just for the record, all of the</p> <p>15 applicant's consultants are available for those days.</p> <p>16 MS. ROBESON: That's great. Did you check with</p> <p>17 your consultants, Mr. Brown, or --</p> <p>18 MR. BROWN: Yes.</p> <p>19 MS. ROBESON: Okay. All right. We are continuing</p> <p>20 with Mr. Brown's questioning of Ms. Rodriguez. Why don't</p> <p>21 you continue, Mr. Brown?</p> <p>22 MR. BROWN: All right. Ms. Rodriguez, you have</p> <p>23 both versions of your prior, prior versions of your report</p> <p>24 available?</p> <p>25 MS. RODRIGUEZ: Yeah, I have --</p>
<p style="text-align: right;">Page 191</p> <p>1 MS. GIRARD: Oh, if you wanted to talk about</p> <p>2 dates, all of our consultants are available on the two dates</p> <p>3 that you offered.</p> <p>4 MS. ROBESON: Okay. Mr. Brown, have you -- well,</p> <p>5 I have to go back on the record for that, so are we, are the</p> <p>6 parties ready?</p> <p>7 MR. KAUFMAN: Yes, we are.</p> <p>8 THE COURT REPORTER: Madam, we're back on.</p> <p>9 MS. ROBESON: We're back on the record. Have you</p> <p>10 had a chance to look at dates?</p> <p>11 MR. BROWN: I have, Ms. Robeson. I'm wide open</p> <p>12 for February 25h. On March 4th, I have a hard to reschedule</p> <p>13 appointment with my cardiologist in Alexandria at 8:30 in</p> <p>14 the morning. I could --</p> <p>15 MS. ROBESON: Oh.</p> <p>16 MR. BROWN: -- I could be here at 10:30 I'm pretty</p> <p>17 sure.</p> <p>18 MS. ROBESON: You're pretty sure?</p> <p>19 MR. BROWN: Yes.</p> <p>20 MS. ROBESON: Do you have an issue with that, Mr.</p> <p>21 Kaufman?</p> <p>22 MR. KAUFMAN: No, I don't.</p> <p>23 MS. ROBESON: Because it's more important -- this</p> <p>24 is important, but it's also important.</p> <p>25 MR. KAUFMAN: Well, I thought maybe on March, if</p>	<p style="text-align: right;">Page 193</p> <p>1 MS. ROBESON: And that would be Exhibit --</p> <p>2 MS. RODRIGUEZ: -- July.</p> <p>3 MS. ROBESON: -- 53D?</p> <p>4 MR. KAUFMAN: 53D and 46C.</p> <p>5 MS. ROBESON: Okay.</p> <p>6 MR. KAUFMAN: So we're up to 113?</p> <p>7 MS. ROBESON: Yes.</p> <p>8 MR. KAUFMAN: What is 113?</p> <p>9 MS. ROBESON: No, we're up to 112. The next</p> <p>10 exhibit would be 113. 112 is the aerial photo of analysis</p> <p>11 area 2.</p> <p>12 MR. KAUFMAN: All right.</p> <p>13 BY MR. BROWN:</p> <p>14 Q I'd like you to look at what I'm going to ask to</p> <p>15 be marked as 113.</p> <p>16 A Okay.</p> <p>17 Q Let me just tell me what it is first, Ms.</p> <p>18 Rodriguez.</p> <p>19 A Uh-huh.</p> <p>20 Q I've taken pages 14 and 15 and 16 of the staff</p> <p>21 report and I've highlighted portions of them. These</p> <p>22 highlightings come from, the wording comes from Exhibit 46C,</p> <p>23 which upon inspection seems to me to be pretty close to the</p> <p>24 same as Exhibit 53D. And the impression I get is that in</p> <p>25 large part the staff adopted word for word your analysis of</p>

<p style="text-align: right;">Page 194</p> <p>1 why the application conforms to the PD zone. Do you have a  2 different impression than I do based upon comparing the  3 staff report with your recommendation?  4 MS. ROBESON: What page is her recommendation on  5 in 53D?  6 MR. BROWN: Well, those, those are primarily --  7 MS. ROBESON: Oh, I see what you're saying. Okay.  8 MR. BROWN: I think primarily it's drawn from  9 pages 11 and 12, thereabouts, maybe --  10 MS. ROBESON: Oh, I see --  11 MR. BROWN: -- a few --  12 MS. ROBESON: -- what you're, I --  13 MR. BROWN: -- in a few other places.  14 MS. ROBESON: Yes, I see what you're saying.  15 MS. RODRIGUEZ: To be honest with you, you're more  16 perceptive than I am, but I didn't analyze it this way,  17 but --  18 MR. BROWN: Well, I mean the question was if you  19 can answer it. I don't know if you can or not, so --  20 MS. ROBESON: Well, why doesn't Mr. Brown repeat  21 his question?  22 MR. BROWN: I'm just asking whether she agrees  23 with my perception that the staff analysis of the compliance  24 or the PD zone seems to be drawn in a very large part from  25 your analysis of compliance with the PD zone?</p>	<p style="text-align: right;">Page 196</p> <p>1 some of the language, but I don't know that that in  2 conclusion, you know, that that says that their utilizing my  3 rationale.  4 MS. ROBESON: Okay.  5 MR. KAUFMAN: Just for the record, I object to the  6 relevance of this questioning because I mean part of the  7 process is you submit to staff all of your analysis or  8 reports and who knows.  9 MS. ROBESON: I don't think Mr. Brown's point is  10 that you did anything wrong. Go ahead, Mr. Brown.  11 MR. BROWN: I'm actually done.  12 MS. ROBESON: Okay.  13 MR. KAUFMAN: Okay.  14 MS. ROBESON: Is there any objection to admitting  15 this?  16 MR. KAUFMAN: No, I don't --  17 MS. ROBESON: 113?  18 MR. KAUFMAN: I think it's actually already  19 admitted in some way as part of the staff report, so --  20 MR. BROWN: Well, not the, not the highlighted.  21 MS. ROBESON: Not the highlighted.  22 MR. KAUFMAN: Yes. Okay. I don't have an  23 objection. I do have a little bit left.  24 MS. ROBESON: Redirect?  25 MR. KAUFMAN: Just a tad.</p>
<p style="text-align: right;">Page 195</p> <p>1 MS. RODRIGUEZ: Well, this is all pretty factual,  2 so I guess I just borrowed some of the language.  3 MR. BROWN: You don't disagree with my perception?  4 MR. KAUFMAN: I think she answered the question.  5 MS. ROBESON: Well, I didn't understand.  6 MR. BROWN: I think she didn't.  7 MS. ROBESON: I --  8 MS. RODRIGUEZ: Uh-huh.  9 MS. ROBESON: I didn't understand what you meant.  10 What do you mean it's all pretty factual? Is that a yes or  11 a no?  12 MS. RODRIGUEZ: Please repeat the question so I  13 know what I'm answering. Sorry. Sorry.  14 MR. BROWN: My question is that the staff's  15 analysis of compliance with the PD zone is drawn in large  16 part from your analysis of compliance with the PD zone, do  17 you agree with that perception?  18 MS. ROBESON: If it helps your answer, I think  19 what Mr. Brown has done is highlight those areas of the  20 staff report that are identical to page 8, page 7 and 8 of  21 your report.  22 MS. RODRIGUEZ: Yeah, I --  23 BY MR. BROWN:  24 Q Or other pages.  25 A Right, I said that it appears that they borrowed</p>	<p style="text-align: right;">Page 197</p> <p>1 MS. ROBESON: Okay.  2 REDIRECT EXAMINATION  3 BY MR. KAUFMAN:  4 Q I just want to be clear, Ms. Rodriguez. The work  5 in your report, is that all your work? No one else  6 instructed you what to do, did they?  7 A No.  8 MS. ROBESON: Well, wait. Did you say the legal  9 argument on the waiver --  10 MS. RODRIGUEZ: Right. And --  11 MS. ROBESON: -- was not necessarily yours?  12 MS. RODRIGUEZ: What I'm saying is, you know,  13 usually a report summarizes your work as a team, you know?  14 There is a lot of people at work and this kind of project is  15 not just individually, so in summarizing in here a number of  16 findings, you know, and work that we've done as a team and  17 this was part of that work and those findings. I just  18 cannot argue for that because I'm not a lawyer and I just  19 can't -- I'm having hard time doing that.  20 MR. KAUFMAN: Well, my point was and is, since she  21 answered the question, no one instructed her to put anything  22 in the report other than her own work.  23 MS. ROBESON: Oh, okay. Yes.  24 MR. KAUFMAN: No, that's it. I don't have  25 anything else.</p>

<p style="text-align: right;">Page 198</p> <p>1 MS. ROBESON: Okay. How about our next witness --</p> <p>2 how many more witnesses do you have, Mr. Kaufman?</p> <p>3 MR. KAUFMAN: If you'd give me a second? I have</p> <p>4 one, two, three, four, five more. No, four more, four more.</p> <p>5 The next witness that I would call today, which may, whether</p> <p>6 we'll get through or not I don't know, is the architect.</p> <p>7 MS. ROBESON: Okay. We can do that.</p> <p>8 MR. KAUFMAN: Is there a particular time you want</p> <p>9 to stop or something?</p> <p>10 MS. ROBESON: Well, I would like to stop at 4:45</p> <p>11 just so we can get everything on the record. But if it goes</p> <p>12 over that, if it's, if we're getting to the close, we'll</p> <p>13 finish, we'll finish with this witness, okay?</p> <p>14 MR. KAUFMAN: All right. If you desire to break</p> <p>15 it up, you know, the direct and then cross at another time,</p> <p>16 we can do that too.</p> <p>17 MS. ROBESON: Okay. Thank you. Please raise your</p> <p>18 right hand.</p> <p>19 (Witness sworn.)</p> <p>20 MR. KAUFMAN: Just give me a moment, please.</p> <p>21 Okay.</p> <p>22 DIRECT EXAMINATION</p> <p>23 BY MR. KAUFMAN:</p> <p>24 Q Mr. Seiboth, would you state your full name and</p> <p>25 business address?</p>	<p style="text-align: right;">Page 200</p> <p>1 multi-family. Have you ever testified as an expert?</p> <p>2 MR. SEIBOTH: In Anne Arundel County for Waugh</p> <p>3 Chapel, which is in Crofton; Annapolis Town Center, which is</p> <p>4 in Parole; and South River Colony. They're all in Anne</p> <p>5 Arundel County.</p> <p>6 MS. ROBESON: Yes, I know. All right. Let's --</p> <p>7 I'll accept him as an expert in architecture. If you want</p> <p>8 to go through the multi-family specialty, you can do that.</p> <p>9 BY MR. KAUFMAN:</p> <p>10 Q I'd like to do that for just a moment or two.</p> <p>11 Okay. Well, first, can you give us the full name of your</p> <p>12 professional organization, your firm?</p> <p>13 A The firm name is the Martin Architectural Group.</p> <p>14 Q All right. And does that group specialize in a</p> <p>15 particular type of architecture?</p> <p>16 A We over the past 50 years have specialized in</p> <p>17 multi-family architecture. We work for most of the large,</p> <p>18 multi-family national corporations like Pulte, Toll</p> <p>19 Brothers, Bazzuto and we help them with their multi-family</p> <p>20 projects.</p> <p>21 MS. ROBESON: Okay.</p> <p>22 BY MR. KAUFMAN:</p> <p>23 Q And approximately how many multi-family projects</p> <p>24 have you personally worked on over the last 10 years and</p> <p>25 where were those general locations?</p>
<p style="text-align: right;">Page 199</p> <p>1 A My name is Ronald Seiboth, spelled S-E-I-B-O-T-H.</p> <p>2 My address is 240 North 22nd Street, Philadelphia,</p> <p>3 Pennsylvania.</p> <p>4 Q And what is your occupation?</p> <p>5 A I am an architect.</p> <p>6 Q And how long have you been engaged in this</p> <p>7 profession?</p> <p>8 A I've been registered for 40 years.</p> <p>9 Q And what jurisdictions are you registered?</p> <p>10 A New York, New Jersey, Pennsylvania, Maryland and</p> <p>11 Virginia.</p> <p>12 Q And are you a member of a professional society?</p> <p>13 A American Institute of Architects.</p> <p>14 MR. KAUFMAN: Now his resume is in the record.</p> <p>15 MS. ROBESON: Yes. Are you -- do you seek to</p> <p>16 qualify him as an expert in architecture?</p> <p>17 MR. KAUFMAN: I do, and especially in this type of</p> <p>18 multi-family residential architecture.</p> <p>19 MS. ROBESON: Mr. Brown?</p> <p>20 MR. BROWN: I'm certainly willing to stipulate to</p> <p>21 this expertise as an architect. Beyond that, I think it</p> <p>22 should, I think his testimony should speak for itself.</p> <p>23 MR. KAUFMAN: I mean I can qualify him if you</p> <p>24 want.</p> <p>25 MS. ROBESON: No. Why don't we just focus on the</p>	<p style="text-align: right;">Page 201</p> <p>1 A Well, I'm the director of design for our firm, so</p> <p>2 I touch every project that goes through the office and we've</p> <p>3 probably been involved in hundreds of thousands of units</p> <p>4 between New York and Florida.</p> <p>5 MS. ROBESON: Okay.</p> <p>6 MR. KAUFMAN: I would think that that would</p> <p>7 qualify him not only as an architect, but as an expert in</p> <p>8 this particular type of architecture and I would submit it</p> <p>9 as such.</p> <p>10 MS. ROBESON: All right. I'll qualify him then.</p> <p>11 BY MR. KAUFMAN:</p> <p>12 Q Mr. Seiboth, are you familiar with this particular</p> <p>13 application?</p> <p>14 A Yes, I am.</p> <p>15 Q And are you familiar with the subject property?</p> <p>16 A Yes, I am.</p> <p>17 Q Can you describe the property and its shape and</p> <p>18 how you would address it from your area of expertise?</p> <p>19 A It's an irregular-shaped property which is the</p> <p>20 most unusual aspect of it. It's wide at the north end and</p> <p>21 it's narrow at the south end, which offers, you know, an</p> <p>22 interesting need for the kind of, you know, the kind of</p> <p>23 building that you place on the site and also the shape of</p> <p>24 the site in relationship to the stand of trees to the west</p> <p>25 end of the particular roads that are on the east and south.</p>

<p style="text-align: right;">Page 202</p> <p>1 A I note that you're currently looking at Exhibit  2 73B, is it?  3 MS. GIRARD: Yes.  4 MR. KAUFMAN: Yes.  5 MR. SEIBOTH: 73B.  6 MR. KAUFMAN: Right.  7 MR. SEIBOTH: Yes.  8 BY MR. KAUFMAN:  9 Q Now also are you familiar with the surrounding  10 area in terms of, you know, its land use and the type of  11 units that are there?  12 A Yes, I've driven through the areas extensively.  13 Q All right. Now did there come a time where you  14 were asked to determine what type of architecture might be  15 used on this property to best lend itself to redevelopment  16 and that would also be compatible to the surrounding area?  17 A Yes, we were commissioned to design a high-quality  18 project with numerous amenities and, you know, based on the  19 shape of the site and the fact that security was an issue on  20 this particular site, the wrap building seemed to be a very  21 appropriate solution for design to the site.  22 Q Can you give me a little bit of history of this  23 particular type of architecture when it came about and what  24 are its attributes compared to what preceded it, which I  25 understand was primarily garden apartments?</p>	<p style="text-align: right;">Page 204</p> <p>1 the cost of construction is obviously much more and  2 proportionately than it was 10 years ago even.  3 Q Well, for example, in the county today do all  4 structures have to at least certify as LEED's qualified?  5 A It's a county by county requirement and most  6 counties, I would expect by the time this is built it would  7 have to be, it would have to conform to some kind of a LEED  8 certification. Even if it's not certified, it would have to  9 live up to the requirements.  10 Q Now you're familiar with the PD-35 and its --  11 A Yes.  12 Q -- requirements, not just its permit requirements,  13 but its development standard?  14 A Yes.  15 Q Okay. And do you believe that this particular  16 type of architecture will meet those requirements?  17 A Yes, I do.  18 Q All right. Now I'd like you to kind of go through  19 a little bit of the, of the type of project and I want to  20 refer you to some of the exhibits that are in the record.  21 You already have 73D up there, I believe. Did we, is  22 that --  23 A No, that's B.  24 Q Okay. The ones I want to do first are 46N and  25 73D. Those are floor plans and elevations. Would this</p>
<p style="text-align: right;">Page 203</p> <p>1 A Yeah. The, it's, the wrap building is predicated  2 upon a precast parking structure in a center of, surrounded  3 by units. Now it was developed in order to appease  4 communities in terms of what a project looks like from the  5 street, especially garden apartment jobs and higher density  6 residential jobs, you see a lot of parking associated with a  7 garden apartment because there's a lot of units in each  8 building. So by hiding, by putting the parking in the  9 center of the building, you really drive by a project, by  10 the community and you don't see any cars which, you know,  11 once you've seen one of these jobs that's up, it's very  12 appealing because you're seeing a lot of architecture and a  13 lot of living units and it allows for a much more open space  14 because the parking is stacked. And that gives the  15 impression as you're driving by that it's a much lower  16 density than it actually is.  17 If I can elaborate a little bit on the need for  18 density? The building code changes every three years and  19 every time there's a national disaster, they add things to  20 the code that require additional structure, the additional  21 fire protection, accessibility because of handicap  22 requirements and, of course, there's energy requirements  23 that we're trying to live up to in today's world. And  24 because of those kinds of constraints, the need to increase  25 the capacity on a particular site are much greater because</p>	<p style="text-align: right;">Page 205</p> <p>1 help? Is that your pointer?  2 A No, I'll just describe it generally.  3 Q Well, let's --  4 A While she's getting the exhibits --  5 Q Yes.  6 A -- I can explain that when I look at a project  7 with a client, we generally have square footages of single  8 families average about 1,800 square feet. And for  9 townhouses, they would average about 1,400 square feet. Now  10 this particular project is probably averaging closer to  11 1,000 square feet per unit. So the units --  12 Q Sorry, we're having a little trouble. Did you --  13 MS. GIRARD: Did you bring --  14 MR. SEIBOTH: Yes, I did.  15 MS. GIRARD: Okay.  16 MR. SEIBOTH: It's --  17 MS. GIRARD: Are they clipped together?  18 MR. KAUFMAN: I think you may have to clip them.  19 Excuse the light. Okay. So the first ones are 46N and 73D.  20 MR. SEIBOTH: I don't have them. I just have the  21 elevation.  22 BY MR. KAUFMAN:  23 Q Why don't you continue with what you were  24 saying --  25 A Yes. The units here are, range from 38 percent</p>

<p style="text-align: right;">Page 206</p> <p>1 one-bedrooms, 55 percent two bedrooms and 7 percent three 2 bedrooms. So it's -- 3 MS. ROBESON: I'm sorry, I missed that. How many 4 one bedrooms? 5 MR. SEIBOTH: 38 percent, 55 percent twos and 7 6 percent ones. 7 MR. KAUFMAN: You mean threes? 8 MR. SEIBOTH: Threes I mean. I'm sorry. 9 MR. KAUFMAN: I understand that's about 25 units, 10 27 units? 11 MR. SEIBOTH: Yeah. 12 MS. ROBESON: And what did you say the square 13 footage of the average unit is? 14 MR. SEIBOTH: About 1,000. 15 BY MR. KAUFMAN: 16 Q What about the 3-bedroom? 17 A The 3-bedroom itself is closer to 1,200. And 18 within that mix there are one dens, two dens and there are 19 efficiencies. So it's a, it's because of the three bedrooms 20 we're oriented a little more family-oriented than most of, 21 of the projects in this density are. 22 Q So it's really, it's not oriented more towards 23 singles and empty-nesters, more towards families? 24 A Yes. 25 Q Okay. So which one is that?</p>	<p style="text-align: right;">Page 208</p> <p>1 for identification.) 2 MS. ROBESON: Okay. Go ahead. 3 BY MR. KAUFMAN: Okay. 4 Q So why don't you use that exhibit, you know, walk 5 us through it and explain, you know, what it represents. 6 A What we've done is, as everybody said, as we, as 7 the building gets closest to Towne Crest Drive, it's three 8 stories and then it steps back against the parking deck 9 that's four stories tall. We've also put in hip roofs which 10 soften the edges of the building as you, as, in a taller 11 building. We've used a stone base to the building and it's 12 going to be a hardy plank or cement board siding to maintain 13 a residential feel. We used an architecture that was more 14 traditional so it would fit in with the surrounding 15 architecture. 16 Q Okay. Then we have a couple of other new 17 exhibits. We have one that talks about the structured 18 parking. Do you have that with you? 19 MS. GIRARD: What are you referring to? 20 MR. KAUFMAN: The colored exhibits. 21 MS. GIRARD: That's what you just -- 22 MR. KAUFMAN: Oh. 23 MS. GIRARD: No. No, no. 24 MR. KAUFMAN: I'm sorry. 25 MS. GIRARD: That bullet point ends this. This is</p>
<p style="text-align: right;">Page 207</p> <p>1 MS. GIRARD: This is new. This is just a colored 2 version of 73. 3 MR. KAUFMAN: This is 73B? 4 MS. ROBESON: Well, that's just -- 5 MS. GIRARD: 73D. It's a colored version of that. 6 I made extras. 7 MR. KAUFMAN: Can we give one to Mr. Brown? 8 MS. ROBESON: Yes. 9 MS. GIRARD: Mr. Brown, do you want it folded? 10 MS. ROBESON: He has the used copies. 11 MR. KAUFMAN: We have some reduced copies. Here's 12 a reduced copy and maybe also for the Hearing Examiner. 13 MS. ROBESON: So this is 114 and how would you 14 describe this? I'm going to add it as a separate exhibit. 15 It's a wren bird something. 16 MR. SEIBOTH: Elevation. 17 MS. ROBESON: Thank you. 18 MR. SEIBOTH: It's the view of the building's arch 19 from Towne Crest Drive. So they would be what you would see 20 as you're driving down Towne Crest. 21 MS. ROBESON: It would be an east elevation then 22 generally? 23 MR. SEIBOTH: Yes. 24 MS. ROBESON: So 114 will be east elevation. 25 (Exhibit 114 was marked</p>	<p style="text-align: right;">Page 209</p> <p>1 just the things to talk about. 2 BY MR. KAUFMAN: 3 Q Oh, okay. So -- well, why don't you describe the 4 structured parking. I understand there's been somewhat of a 5 change from the PD-44 to the PD-35. 6 A Yes. The Building A, which is the northernmost 7 building, has a 4-story deck and they're generally -- we try 8 to accommodate all the units within the parking deck that's 9 associated with the units around it. The nice thing about 10 this configuration is a person can drive into the parking 11 deck and essentially drive up to their floor and then walk 12 into their floor level. So there isn't as much stress on 13 stairways and elevators in the building as a traditional 14 building. 15 The other aspect is that each, Building A and B 16 have elevators in them which make all the units able to be 17 accessible for the handicapped. A lot of garden or walk-up 18 apartments you don't have enough units to accommodate, or 19 the height to accommodate the need for an elevator. 20 Q Okay. I'm sorry, did you describe the building 21 materials? 22 A Yes, I did. 23 Q Okay. And can you go over the, from an 24 architectural perspective the different situation with 25 regard to a sloped hip roof versus slat roofs and how does</p>

<p style="text-align: right;">Page 210</p> <p>1 that interact with the compatibility of the existing  2 neighborhood?  3 A Well, most of the houses in the general area are  4 traditional, sort of a builder's traditional design and they  5 have, they all have sloped roofs. So we were keeping our  6 building in keeping with that. And by the ends sticking out  7 and the width of the building is in disproportionate, the  8 width of the building you're looking at is not  9 disproportionate to the size of the structures in the  10 surrounding community.  11 Q And the relationship of the building mass in  12 articulation from a compatibility point-of-view to the  13 community's Wedgewood 1 and 2 to the east?  14 A Yeah, that's, that's kind of what I just said.  15 The --  16 Q I'm sorry. Please say it again for me because I  17 missed it.  18 A Oh, okay. The ends of the buildings are, by  19 stepping down and hipping the roofs and presenting a narrow  20 width to the community gives it a more proportional feel to  21 the existing structures that are in the neighborhood.  22 Q Okay. And then there was then discussion about  23 the setbacks that are required by the PD zone in  24 relationship to, when is next to a single family recommended  25 zone, are you familiar with that?</p>	<p style="text-align: right;">Page 212</p> <p>1 BY MR. KAUFMAN:  2 Q Before you actually describe the exhibit and walk  3 through it, can you explain what you did in terms of how you  4 came about studying this and suggesting this solution?  5 A Yes. The, I'm pointing to the last lot on Daylily  6 and this is called lot 4. In the corner of the property is  7 approximately there and this represents the 100-foot setback  8 line behind the townhouse.  9 Q This meaning the red dotted --  10 A The red dotted line --  11 Q Right.  12 A -- is the arch going through the B building from  13 that corner, which is 100 feet in diameter, in radius.  14 Q All right. And so you suggested a solution. Can  15 you describe it and why do you feel it will work?  16 A What we did was we removed the units that  17 encroached on the 100-foot setback and we placed them on top  18 of the parking deck on Building B, so there will be two  19 levels of units above the parking deck. The parking deck is  20 two levels and there will be two levels of units. So there  21 will still be a 4-story building in the back.  22 Q So there was originally three levels of parking,  23 is that correct?  24 A That's correct.  25 Q That is under the PD-44 plan?</p>
<p style="text-align: right;">Page 211</p> <p>1 A Yes.  2 Q All right. And can you describe the situation  3 that you understand exists under the current PD development  4 plan?  5 A The townhouses were set back 100 feet. The, there  6 is a 100-foot setback perpendicular from the last house on  7 the lot on --  8 MS. GIRARD: Daylily.  9 MR. SEIBOTH: -- Daylily Drive. The corner of the  10 B building does encroach on the 100-foot setback.  11 BY MR. KAUFMAN:  12 Q If you use an arch, is that how you --  13 A That's, yeah, I have that diagram.  14 Q Have you looked at that situation and looked at  15 whether there is a solution for it?  16 A Yes.  17 Q All right. And have you prepared something that  18 addresses that?  19 A Yes, I have.  20 Q Okay. I'd like to have this exhibit marked as --  21 MS. ROBESON: Well, this would be 115, which is,  22 can you describe that?  23 (Exhibit 115 was marked  24 for identification.)  25 MR. KAUFMAN: I was about to ask him to do that.</p>	<p style="text-align: right;">Page 213</p> <p>1 A Right. And --  2 Q So --  3 A -- by reducing the number of units, we also  4 reduced the number of parking spaces. We're still within  5 the code range.  6 MS. ROBESON: The code range for what?  7 MR. SEIBOTH: For parking, the number of cars per  8 dwelling unit.  9 MS. ROBESON: I see. Okay.  10 MR. SEIBOTH: And by being able to reduce the  11 levels of parking in Building B, which has fewer units  12 anyhow, we were able to accommodate the units that  13 encroached on the setback on top of the parking desk without  14 increasing the height of the building.  15 BY MR. KAUFMAN:  16 Q Okay. And what, is there a change in unit numbers  17 or is it the same?  18 A It's the same number of units.  19 Q 329 under this alternative plan?  20 A Yes, that's correct.  21 Q Okay.  22 MS. ROBESON: You'll have to say it because the  23 tape, the transcript won't know if you don't say it. Some  24 people just nod. Did you give this back to the, when you  25 submitted this to the Planning Board or the planning staff,</p>

<p style="text-align: right;">Page 214</p> <p>1 do you know if the Board had the opportunity to take this 2 into account? 3 MR. SEIBOTH: As far as I know, they didn't. 4 MS. ROBESON: Okay. 5 MR. KAUFMAN: As you know, just to reflect on 6 that, as you know our position is that you didn't need it. 7 So -- 8 MS. ROBESON: You didn't need what? 9 MR. KAUFMAN: We didn't need to have -- 10 MS. ROBESON: The setback? 11 MR. KAUFMAN: -- 100 foot setback. 12 MS. ROBESON: Okay. 13 MR. KAUFMAN: You know, so that was our argument. 14 It didn't seem to be the main issue or what the issue was 15 with the master plan. So, but we do feel that it is a 16 legitimate issue that has been raised and it needs to be 17 addressed and, obviously, the purpose of this is to show 18 that there is absolutely a solution to it if you feel it's 19 significant. 20 MS. ROBESON: Well, I can't condition it, so you 21 have to amend your plan. 22 MR. KAUFMAN: Right. 23 MS. ROBESON: What, how much did the original PD- 24 35 lay out -- what's the, how much did that encroach into 25 the 100 feet, the original PD-35?</p>	<p style="text-align: right;">Page 216</p> <p>1 MS. ROBESON: No. The building, it's 35 feet from 2 7 Daylily Lane to the corner of the original PD-35 layout, 3 which is a 65-foot -- 4 MR. KAUFMAN: 65 foot, right. 5 MR. SEIBOTH: -- encroachment. 6 MR. KAUFMAN: Right. I understand. 7 BY MR. KAUFMAN: 8 Q Then also are you familiar with the waiver of 9 provisions of the PD-35 and the zoning ordinance from the 4- 10 story, I mean from the 5-story 50 percent requirement? 11 A Yes. 12 Q And are you familiar with the fact that there's 13 been a waiver requirement requested? 14 A Yes, I am. 15 Q Okay. Excuse me just a moment. Lastly, just you 16 indicated that there are parking changes that have occurred 17 from the PD-44 to the PD-35. Can you just kind of go over 18 what is required from a per unit basis and what is currently 19 proposed and how much, if any, it's over code requirements? 20 A Yes. The current plan has 329 units and it's, the 21 zoning requires a breakdown of cars based on the number of 22 bedrooms. So breaking out the percentages, the requirement 23 is 1.43 cars per unit. We have on the site 500 units which 24 is 500, we have 329 units and we have 500 parking spaces. 25 MS. ROBESON: For a minute I was like that's</p>
<p style="text-align: right;">Page 215</p> <p>1 MR. KAUFMAN: Well, we have, if someone has a 2 scale, we can tell you. I want to be clear just for the 3 record. We're not conceding the point, but we are showing 4 that if it's something that it is addressing. 5 MR. BROWN: This is 115? 6 MR. KAUFMAN: This is Exhibit -- 7 MS. GIRARD: Yes. 8 MR. KAUFMAN: -- 115. 9 MS. ROBESON: So this isn't a binding element? 10 MR. KAUFMAN: At the moment it is not, no. But 11 fortunately in this type of case, unless you, you can change 12 your development plan right up to the time that it is or is 13 not adopted. So -- 14 MR. SEIBOTH: It was 35 feet from corner to 15 building. 16 MS. ROBESON: Okay. So it was 65 feet into the 17 100-foot setback -- 18 MR. KAUFMAN: Yes. 19 MS. ROBESON: -- of the building? Okay. 20 MR. KAUFMAN: I'm sorry. You're asking with the 21 wing that exists on the current development plan proposal 22 how far back it was from the -- 23 MS. ROBESON: Yes. 24 MR. KAUFMAN: -- property line? That was 65 feet, 25 not a setback. Okay.</p>	<p style="text-align: right;">Page 217</p> <p>1 really more than the -- no, go ahead. 2 MR. SEIBOTH: So that's 1.52 cars per dwelling 3 unit. So we're still slightly over. We're about 32 cars 4 over the requirement. 5 BY MR. KAUFMAN: 6 Q Based upon the number of units, bedrooms, et 7 cetera? 8 A It's -- yeah. 9 MS. ROBESON: Is there any guess parking or 10 visitor parking I'm missing? 11 MR. SEIBOTH: The parking requirement in the 12 zoning ordinance requires so many cars per bedroom -- 13 MS. ROBESON: Right. 14 MR. SEIBOTH: -- and that takes into account guest 15 spaces. 16 MS. ROBESON: Okay. And, Mr. Kaufman, were you 17 going to ask him whether the labor, whether this meets the 18 labor standards or not? 19 MR. KAUFMAN: I thought I did, but since you put 20 it so succinctly -- 21 MS. ROBESON: Oh, well, maybe I missed it. 22 MR. KAUFMAN: Okay. 23 BY MR. KAUFMAN: 24 Q So why don't you answer the Hearing Examiner's 25 question. Does it meet the labor requirements for the 5-</p>

<p style="text-align: right;">Page 218</p> <p>1 story versus 4-story?</p> <p>2 A The waiver is for a reduction of five to four</p> <p>3 stories, correct?</p> <p>4 Q Yes.</p> <p>5 A Yes, it does meet it.</p> <p>6 MS. ROBESON: And why?</p> <p>7 MR. SEIBOTH: Because all the buildings are no</p> <p>8 taller than four stories.</p> <p>9 MS. ROBESON: Okay. I thought he said you could</p> <p>10 get a waiver from the setback?</p> <p>11 MR. KAUFMAN: No.</p> <p>12 MS. ROBESON: The 100-foot setback.</p> <p>13 MR. KAUFMAN: There is a provision for that. Hang</p> <p>14 on just a minute.</p> <p>15 MS. ROBESON: I'm back on the setback.</p> <p>16 MR. KAUFMAN: Yes. We've been down this road.</p> <p>17 MS. ROBESON: I know the setback issue is old hat</p> <p>18 to you guys, but not so much to me. So --</p> <p>19 MR. KAUFMAN: Apparently our January --</p> <p>20 MS. GIRARD: 11th.</p> <p>21 MR. KAUFMAN: -- 11th cover letter provides,</p> <p>22 covered this and the provision is as follows. This is</p> <p>23 Section 59C-7.1 and it states as follows: "The district</p> <p>24 councilman waived the percentage requirements for one family</p> <p>25 in multi-family dwelling unit in terms of the setback if it</p>	<p style="text-align: right;">Page 220</p> <p>1 Q -- if you meet the waiver requirements.</p> <p>2 A Yeah.</p> <p>3 Q One of them is it's more desire from an</p> <p>4 environmental point-of-view and, of course, you know, we</p> <p>5 have this issue with the Westwoods to the west of us and the</p> <p>6 other is, B, that it achieves the goals and policies which</p> <p>7 has been discussed here earlier by other testimony or</p> <p>8 recommendations stated in an approved and adopted master</p> <p>9 plan. So I guess my first question is as to A, to be</p> <p>10 specific, do you feel it would meet the better and more</p> <p>11 desirable environmental situation if it's this lower</p> <p>12 building rather than a higher building?</p> <p>13 A Well, yes, the neighbors expressed concern about</p> <p>14 the height of the building, so I take that as being an</p> <p>15 environmental concern.</p> <p>16 Q All right. And then as to B, you've heard the</p> <p>17 testimony before from Mr. Ager and Ms. Rodriguez concerning</p> <p>18 the master plan. Do you feel in your expertise that it</p> <p>19 would meet those, that requirement?</p> <p>20 A Yes, I do.</p> <p>21 MR. KAUFMAN: I'm sorry for the confusion.</p> <p>22 MS. ROBESON: No, it's, it could be me.</p> <p>23 MR. KAUFMAN: Well, it's a lot, it's a very</p> <p>24 complex set of issues here, so --</p> <p>25 MS. ROBESON: Yes.</p>
<p style="text-align: right;">Page 219</p> <p>1 finds a proposed development is more desirable for stated</p> <p>2 environmental reasons than a development in accordance with</p> <p>3 these limits." Or, B, if I have B here, do you want to read</p> <p>4 the rest of that thing?</p> <p>5 MS. GIRARD: No, you should have it. B, it's --</p> <p>6 MR. KAUFMAN: Where is B?</p> <p>7 MS. GIRARD: Right here.</p> <p>8 MR. KAUFMAN: Oh, okay. Or, B, "Achieves goals,</p> <p>9 policies or recommendations stated in an approved and</p> <p>10 adopted master plan or sector plan," but it's more.</p> <p>11 MS. ROBESON: Okay. So, Mr. Seiboth, is it both</p> <p>12 or both?</p> <p>13 MR. SEIBOTH: Both.</p> <p>14 MS. ROBESON: Seiboth, does it meet that -- I</p> <p>15 assume it would be Standard B. If you developed the</p> <p>16 original plan, does it meet that waiver standard?</p> <p>17 MR. SEIBOTH: Yes.</p> <p>18 MS. ROBESON: Why?</p> <p>19 MR. SEIBOTH: Well, all the buildings will be four</p> <p>20 stories. Well --</p> <p>21 BY MR. KAUFMAN:</p> <p>22 Q I'm not sure you understand. In other words,</p> <p>23 there are two reasons why you can have less than five</p> <p>24 stories --</p> <p>25 A Uh-huh.</p>	<p style="text-align: right;">Page 221</p> <p>1 BY MR. KAUFMAN:</p> <p>2 Q Okay. So let's kind of move along here. So in</p> <p>3 your expert opinion as an architect, there's a proposed</p> <p>4 zoning reclassification PD-35 suitable for the site and</p> <p>5 compatible with the surrounding neighborhood?</p> <p>6 A Yes, I do. I think it provides an excellent</p> <p>7 opportunity for a different housing type for the</p> <p>8 neighborhood.</p> <p>9 Q And do you see it, again, from your expertise and</p> <p>10 using this particular type of architecture, do you see where</p> <p>11 it would in any way be detrimental to the use, peaceful</p> <p>12 enjoyment, value, as well it was indicated by a previous</p> <p>13 speaker or development of surrounding properties or the</p> <p>14 general neighborhood including the Washington Grove plan?</p> <p>15 A No, I don't think it would be detrimental.</p> <p>16 Q Okay. And then, lastly, this is a question we</p> <p>17 have to ask all the witnesses, it's peculiar to Montgomery</p> <p>18 County, do you think the proposed zoning classification is</p> <p>19 anyway adverse to the health, safety, security, moral or</p> <p>20 general welfare of the residents, visitors or workers in</p> <p>21 this area?</p> <p>22 A No, it's not.</p> <p>23 Q Okay. And that would be our direct.</p> <p>24 MS. ROBESON: Okay. Mr. Brown, any questions?</p> <p>25 MR. BROWN: Just a few.</p>



<p style="text-align: right;">Page 222</p> <p>1 CROSS-EXAMINATION</p> <p>2 BY MR. BROWN:</p> <p>3 Q Mr. Seiboth, I was a little taken aback by the</p> <p>4 effort to qualify you in multi-family, so I went back to</p> <p>5 look at your resume, Exhibit 13E. I know that Ms. Robeson</p> <p>6 has qualified you, but I nonetheless can feel it's fair to</p> <p>7 ask you about the strength of your qualifications in this</p> <p>8 area. You have listed three projects here as project</p> <p>9 profile. What was the purpose of listing them in your</p> <p>10 resume?</p> <p>11 A Because they were in Maryland. I was being</p> <p>12 specific to the state of Maryland.</p> <p>13 Q I see. They're not all multi-family projects, are</p> <p>14 they?</p> <p>15 A They all have multi-family components within them.</p> <p>16 They're mixed use approximately.</p> <p>17 Q In fact, a multi-family component of Central Park</p> <p>18 never got built, did it?</p> <p>19 A Central Park?</p> <p>20 Q Central Park at Victoria Falls? No, I take that</p> <p>21 back. You're right. That did have multi-family components.</p> <p>22 I'm sorry. I wanted to ask you about the building on your</p> <p>23 expertise on multi-family. If you had a site that was not</p> <p>24 constrained because of the size or the shape as we have in</p> <p>25 this situation, what would you consider to be desirable</p>	<p style="text-align: right;">Page 224</p> <p>1 way line. So the separation between buildings is a little</p> <p>2 more important or a little less important, but it really has</p> <p>3 a lot to do, a lot more to do with the environment it's in</p> <p>4 than anything specific.</p> <p>5 Q Okay. This particular diagram does not show that</p> <p>6 feature except as between these two, these two sticks of</p> <p>7 townhomes, correct?</p> <p>8 A Correct.</p> <p>9 Q This is to scale, this spacing?</p> <p>10 A That's to scale from the site, yes.</p> <p>11 Q Now to really get a picture of the entire</p> <p>12 streetscape along Towne Crest, we would have to essentially</p> <p>13 slice this picture, this exhibit into three strips and</p> <p>14 attach them out into one, long strip, right?</p> <p>15 A That's correct. That's correct.</p> <p>16 Q My question to you is in your professional expert</p> <p>17 opinion, do you think that the proportion of open space</p> <p>18 between these units if we set it up that way is appropriate?</p> <p>19 A Yes, I do.</p> <p>20 Q And why is that?</p> <p>21 A Well, the distance between Building B, which is</p> <p>22 the center building, and the townhouses is probably over 100</p> <p>23 feet. The separation between the A and B, which has a</p> <p>24 street, sidewalks between it is probably about 60 feet</p> <p>25 apart.</p>
<p style="text-align: right;">Page 223</p> <p>1 spacing between multi-family buildings along a street,</p> <p>2 especially when there is townhouses across the street?</p> <p>3 A When you say spacing, do you mean setback from a</p> <p>4 right-of-way?</p> <p>5 Q No, I'm talking about spacing between the</p> <p>6 buildings along the street.</p> <p>7 A Oh.</p> <p>8 Q Streetscape spacing of the multi-family buildings.</p> <p>9 A I would say 40 feet is a reasonable separation.</p> <p>10 Q Does it depend at all upon the length of the</p> <p>11 building?</p> <p>12 A Well, that's a different question. The length of</p> <p>13 the building, in most areas what you try to do is break up</p> <p>14 the façade so that it doesn't -- where there are two long</p> <p>15 buildings or 40 feet apart or 1,000 feet apart is of little</p> <p>16 relevance. It's how you break up the architecture along the</p> <p>17 street that's important.</p> <p>18 Q Is there sort of a percentage goal then that you</p> <p>19 would want to achieve as a ratio of open space between</p> <p>20 buildings to the total length of buildings?</p> <p>21 A In some, in some areas you might, but in most</p> <p>22 cases it depends on, you know, it depends on the</p> <p>23 architecture and it depends on, you know, what the setback</p> <p>24 is off the street. When we do a building in an urban area</p> <p>25 we're basically within, within a few feet of the right-of-</p>	<p style="text-align: right;">Page 225</p> <p>1 Q The distance between the townhouses in Building B</p> <p>2 used to be a lot less than it is today, didn't it, when it</p> <p>3 was first designed?</p> <p>4 MR. KAUFMAN: Under which plan?</p> <p>5 BY MR. BROWN:</p> <p>6 Q Let's go back to the original development plan.</p> <p>7 Did you have a hand in --</p> <p>8 A Yes.</p> <p>9 Q -- in developing that original development plan?</p> <p>10 MS. ROBESON: Was that the PD-60?</p> <p>11 MR. KAUFMAN: Yes.</p> <p>12 MR. SEIBOTH: Well, the PD-60 had a 3-story</p> <p>13 component.</p> <p>14 MR. KAUFMAN: A 3-story building, I believe.</p> <p>15 MS. ROBESON: Well, I need the witness to answer</p> <p>16 if he can.</p> <p>17 MR. SEIBOTH: Yes. There was about an 80-foot</p> <p>18 separation between the townhouses and the next building</p> <p>19 over, which is a 3-story building.</p> <p>20 BY MR. BROWN:</p> <p>21 Q I believe you said, for the record give the</p> <p>22 exhibit number.</p> <p>23 A The exhibit number is 26.</p> <p>24 Q Now I just want to show you Exhibit 16 to make</p> <p>25 sure we're on the same page literally.</p>

1 MR. KAUFMAN: Hang on a minute.  
 2 BY MR. BROWN:  
 3 Q This is your, this is the development plan for the  
 4 original project at PD-60. You see here the gaps between  
 5 Building A to B and between Building B to C and between  
 6 Building C to D?  
 7 A Right. Between B and -- A and B, the distance has  
 8 not changed. Between B and the C Building, which is the  
 9 next one over, was 50 feet. And between C and the  
 10 townhouses was 80 feet.  
 11 Q All right. And it's your testimony that this,  
 12 this is an appropriate streetscape for this particular block  
 13 with townhouses across the way?  
 14 A Yes.  
 15 Q And, therefore, almost as sort of an aperture,  
 16 even greater amount of space, which you, which is now shown  
 17 as even better --  
 18 A Yes.  
 19 Q -- is that right?  
 20 A Yes.  
 21 MR. BROWN: I have nothing further.  
 22 MS. ROBESON: All right.  
 23 MR. KAUFMAN: We don't have any redirect. You've  
 24 got quarter after 4:00. Our next witness is the civil  
 25 engineer. I think it's going to take awhile for that

1 testimony. So I don't know whether you want to start?  
 2 MS. ROBESON: Okay. In that case --  
 3 MR. KAUFMAN: And Ms. Girard will handle that  
 4 questioning.  
 5 MS. ROBESON: So what I'm going to do is we'll end  
 6 for today. I am going to -- we will reconvene on Monday,  
 7 February 25th. I'm sorry, Mr. Brown, which day did you need  
 8 to be here at 11:00?  
 9 MR. BROWN: The 4th.  
 10 MS. ROBESON: The 4th? Okay. We will reconvene  
 11 on Monday the 25th at 9:30. Thank you.  
 12 MR. KAUFMAN: Thank you.  
 13 MS. GIRARD: Thank you.  
 14 (Whereupon, at 4:14 p.m., the hearing was  
 15 concluded.)  
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## C E R T I F I C A T E

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

LOCAL MAP AMENDMENT G-910  
 R-30 AND RT 12.5 ZONES TO PD-60  
 TOWNE CREST APARTMENTS, LLC.

By:

\_\_\_\_\_  
 Tracy Hahn, Transcriber

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**Towne Crest Apartments, LLC**

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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY

-----X  
:  
:  
LOCAL MAP AMENDMENT G-910 : Case No. G-910  
R-30 AND RT 12.5 ZONES TO PD-60 :  
TOWNE CREST APARTMENTS, LLC. :  
:  
-----X

A hearing in the above-entitled matter was held on  
February 25, 2013, commencing at 9:30 a.m., at the Office of  
Zoning and Administrative Hearings, 100 Maryland Avenue,  
Rita Davidson Memorial Hearing Room, Rockville, Maryland  
20850 before:

Lynn A. Robeson  
Hearing Examiner

<div>Page 2</div> <div>A P P E A R A N C E S</div> <div>On Behalf of the Petitioner:</div> <div>Stephen Z. Kaufman, Esq. Erin E. Girard, Esq. Linowes and Blocher, LLP 7200 Wisconsin Avenue, Suite 800 Bethesda, Maryland 20814-4842</div> <div>Witnesses: Direct</div> <div>Perry Berman 6, 31, 40 Tim Longfellow 45, 68, 87 Kevin Foster 94, 118 Nancy Randall 123, 142, 146 Rick Floyd 147, 149, 150 Carla Weinberg 153, 156 Joe Davis 157, 160, 199, 222 Robert Booher 235, 250 * * * * *</div>	<div>Page 4</div> <div>PROCEEDINGS</div> <div>MS. ROBESON: I call the case of Local Map Amendment G-910, Towne Crest Apartments, LLC, applicant requesting rezoning from the R-30 and R-T12.5 zones to the PD-35 zone of property known as the Towne Crest parcel located at 17500 Towne Crest Drive in Gaithersburg, Maryland.</div> <div>Just as, just one housekeeping matter. We did, we had a little hiccup in the exhibit list as Ms. Girard pointed out. Thank you. While we were holding the hearing last time, a letter came in and that was, we were numbering exhibits here and then when our office got the letter, they moved up all the numbering. So what we've done, we wanted the hearing exhibits to correspond with what's in the transcript. So we took the letter that came in while the hearing was going on and put that at the end of the exhibit list. So if anyone has any questions, that's what happened.</div> <div>So with that, are there any preliminary issues?</div> <div>MR. KAUFMAN: We have just one, Madame Examiner. When Mr. Hornstein was testifying, he testified to an Exhibit 26 which is actually Exhibit 15.</div> <div>MS. ROBESON: Okay.</div> <div>MR. KAUFMAN: And this is the, it's an illustration of the current proposed development plan.</div> <div>MS. GIRARD: Not current, the original, PD-60.</div>
<div>Page 3</div> <div>EXHIBIT NO. MARKED FOR IDENTIFICATION</div> <div>121 11 122 27 123 -- 124 48 125 56 126 57 127 66 128 --</div>	<div>Page 5</div> <div>MR. KAUFMAN: No, the PD-60, I'm sorry, that's right. It's the exhibit that shows illustration of the PD-60 layout.</div> <div>MS. ROBESON: I see. Okay. That's fine.</div> <div>MR. KAUFMAN: So it's actually Exhibit 15, not Exhibit 26.</div> <div>MS. ROBESON: Okay.</div> <div>MR. KAUFMAN: That's our only preliminary. I don't know if Ms. Girard has any.</div> <div>MS. ROBESON: Wow, that's pretty good. One other thing, I did look at the, re-look at the Gaithersburg Vicinity Master Plan in light of Mr. Ager's testimony because I just wanted to re-review it. I had one question, but you don't have to answer it now, you know, you can answer it later through a witness, but page 46, I think, yes, page 46 is analysis area 2. It says existing development, 171 townhouses, 60 garden apartments, which is 231 DU's. So I guess my question is it looks like that they were authorizing what already existed?</div> <div>MR. KAUFMAN: That's right.</div> <div>MS. ROBESON: So, you know, you don't have to address it now, I just was -- when I was going through piecing together your, my notes from your testimony, if you could just address that, that would be fine.</div> <div>MR. KAUFMAN: I believe our witness will probably</div>

<p style="text-align: right;">Page 6</p> <p>1 be addressing that.</p> <p>2 MS. ROBESON: Okay. And I just realized that I do</p> <p>3 not have a copy of the updated exhibit list here.</p> <p>4 MR. KAUFMAN: Oh.</p> <p>5 MS. ROBESON: So I am going to go off the record</p> <p>6 for one second. I apologize, but it's not up here. So let</p> <p>7 me go get that --</p> <p>8 MR. KAUFMAN: That's fine.</p> <p>9 MS. ROBESON: -- because I don't want any more</p> <p>10 mix-ups in the exhibits. We're going to go off the record</p> <p>11 for 2 minutes.</p> <p>12 (Recess)</p> <p>13 MS. ROBESON: I apologize for that. A moment. So</p> <p>14 I believe, oh, the other thing is I'm going to take official</p> <p>15 notice of the entire Gaithersburg Vicinity Master Plan so we</p> <p>16 don't have to put the entire booklet in the record. Also</p> <p>17 I'd like to take official notice of the Shady Grove Sector</p> <p>18 Plan. I was just reviewing that to see how that treated the</p> <p>19 PD-35 zoning. Unless there's objections, that's what I'm</p> <p>20 going to do.</p> <p>21 MR. KAUFMAN: No objection from us.</p> <p>22 MR. BROWN: No objection.</p> <p>23 MS. ROBESON: Okay. Now that that's done, Mr.</p> <p>24 Kaufman, I think it's you, either your witness or Ms.</p> <p>25 Girard's witness.</p>	<p style="text-align: right;">Page 8</p> <p>1 MR. BERMAN: My name is Perry Berman. My business</p> <p>2 address, I have two of them, I apologize, 7910 Briarglen</p> <p>3 Drive, Elkridge, Maryland 21075, and Scheer Partners at 9201</p> <p>4 Corporate Boulevard, Suite 410, Rockville, Maryland 20850.</p> <p>5 MR. KAUFMAN: And, Mr. Berman, what is your</p> <p>6 occupation?</p> <p>7 MR. BERMAN: Well, my occupation is city planner.</p> <p>8 I have two aspects of that. I'm, I have a planning</p> <p>9 consultant business that I run and that's who I'm speaking</p> <p>10 on behalf of and I'm also a commercial real estate agent</p> <p>11 with Scheer Partners.</p> <p>12 MR. KAUFMAN: And what is your professional</p> <p>13 background?</p> <p>14 MR. BERMAN: Well, I have a master's degree in</p> <p>15 public administration with a concentration in planning from</p> <p>16 NYU and I have an undergraduate degree in, from Queens</p> <p>17 College in history and political science.</p> <p>18 MR. KAUFMAN: And how long have you practiced the</p> <p>19 profession as a land planner?</p> <p>20 MR. BERMAN: A long time, about, I've been a</p> <p>21 planner in Montgomery County since the early '70's, so I'd</p> <p>22 rather not give you the exact number, but since the early</p> <p>23 '70's.</p> <p>24 MR. KAUFMAN: And from some period of time were</p> <p>25 you in the employ of the Planning Commission?</p>
<p style="text-align: right;">Page 7</p> <p>1 MR. KAUFMAN: All right. Our first witness is Mr.</p> <p>2 Perry Berman.</p> <p>3 MS. ROBESON: Please raise your right hand.</p> <p>4 (Witness sworn.)</p> <p>5 MS. ROBESON: Thank you.</p> <p>6 MR. KAUFMAN: We're going to have his resume</p> <p>7 marked.</p> <p>8 MS. ROBESON: This is his --</p> <p>9 MR. KAUFMAN: Yes, that's his background. His</p> <p>10 resume is --</p> <p>11 MS. ROBESON: Is he on the witness list?</p> <p>12 MR. KAUFMAN: No, he's not on the witness list,</p> <p>13 but if you recall, we had some, we had a correspondence from</p> <p>14 him which we wanted to put in the record.</p> <p>15 MS. ROBESON: Oh, that's right. That's right.</p> <p>16 You're correct.</p> <p>17 MR. KAUFMAN: And we're bringing him in to testify</p> <p>18 today.</p> <p>19 MS. ROBESON: Okay. So 121 will Perry Berman</p> <p>20 resume.</p> <p>21 (Exhibit No. 121 was marked</p> <p>22 for identification.)</p> <p>23 MR. KAUFMAN: Excuse me. Just a minute. Okay,</p> <p>24 Mr. Berman, would you please state your name and business</p> <p>25 address?</p>	<p style="text-align: right;">Page 9</p> <p>1 MR. BERMAN: Yes, I was hired in the early '70's</p> <p>2 and I worked my way up through the ranks there and for many</p> <p>3 years I was chief of community planning and I was</p> <p>4 responsible for the preparation of almost all the County's</p> <p>5 master plans during a 20-year period and I have -- so I'm</p> <p>6 familiar with, I like to tell people when they get stuck in</p> <p>7 traffic congestion that I'm part of the problem in</p> <p>8 Montgomery County, that I was involved with those kinds of</p> <p>9 issues but, yes, I worked for the Park and Planning</p> <p>10 Commission for a long time. I retired about 15 years ago</p> <p>11 and set up my own planning work and to work as a commercial</p> <p>12 real estate agent.</p> <p>13 MR. KAUFMAN: So since you left the public employ,</p> <p>14 you've continued your profession as a professional planner?</p> <p>15 MR. BERMAN: That's right. Right now I'm</p> <p>16 currently employed. One of my clients I work with, HOC,</p> <p>17 where I assist them in reviewing master plans and partake as</p> <p>18 their expert to advance their properties during the master</p> <p>19 planning process.</p> <p>20 MS. ROBESON: Now are you seeking to qualify him</p> <p>21 as an expert in land use --</p> <p>22 MR. KAUFMAN: Yes.</p> <p>23 MS. ROBESON: -- planning?</p> <p>24 MR. KAUFMAN: In land use planning and as a land</p> <p>25 use planner and in master planning, yes.</p>

<p style="text-align: right;">Page 10</p> <p>1 MS. ROBESON: And you've, I see from your resume,  2 resumes, excuse me, that you've testified as an expert?  3 MR. BERMAN: Yes, I have. Four cases that I've  4 been certified before this Board of Appeals --  5 MS. ROBESON: Mr. Brown, do you have an objection?  6 MR. BERMAN: -- hearing examiner.  7 MR. BROWN: No objection.  8 MS. ROBESON: All right. I'll qualify him as an  9 expert in land use planning.  10 MR. KAUFMAN: And master plans. That's the --  11 MS. ROBESON: Well, land use, I don't know of an  12 expertise in master plans.  13 MR. KAUFMAN: Well, I guess it's a subset of the  14 land use.  15 MS. ROBESON: You can make that argument, but I'll  16 qualify him as an expert in land use planning.  17 MR. KAUFMAN: I was about to ask him, as you did,  18 what his previous history in testimony was. So, Mr. Berman,  19 have you become familiar with the rezoning application here  20 today, G-910?  21 MR. BERMAN: Yes, but only just recently.  22 MR. KAUFMAN: Okay.  23 MR. BERMAN: Please let us know how you became  24 involved, and as you said just recently?  25 MR. BERMAN: I used to have a friend named Dave</p>	<p style="text-align: right;">Page 12</p> <p>1 participate in establishing the basic plan objectives and  2 land use strategy?  3 MR. BERMAN: Yes, I've done, I did that for all  4 the plans. That was my major role was to, as I said, to  5 take a look at the big picture issue and make all the plans  6 consistent with each other as best I can, make sure no  7 errors got out of the plan and I was the senior person  8 supervising all the master plans.  9 MR. KAUFMAN: And after you met with Mr. Ager and  10 went over the background of the plan, did you prepare a  11 letter summarizing your recollection and thoughts about the  12 relationship between the Master Plan and in this case the  13 subject property?  14 MR. BERMAN: Yes, yeah.  15 MR. KAUFMAN: All right. I'll show you a  16 document.  17 MR. BERMAN: Uh-huh.  18 MR. KAUFMAN: Can you identify this document?  19 MS. ROBESON: Just let me mark it. I'm marking it  20 as Exhibit 122.  21 (Exhibit No. 122 was marked  22 for identification.)  23 MR. BERMAN: Yes, this is my letter.  24 MR. KAUFMAN: Exhibit 122.  25 MS. ROBESON: And that will be February 14th</p>
<p style="text-align: right;">Page 11</p> <p>1 Ager who called me and asked me to help him out with some  2 background on a case that he was involved with. And so he  3 called me and we had lunch and chatted about it and I gave  4 him my recollections of what happened and what we were  5 trying to accomplish during that plan.  6 MR KAUFMAN: Were you in some way involved with  7 that master plan, the original Gaithersburg --  8 MR. BERMAN: Yes, I was Chief of the Community  9 Plan North Division at that time and I supervised the plan  10 and attended all the work sessions and attended all the  11 meetings with the Council. My job then was to really be the  12 interface between the Council and the planning staff and to  13 make sure all the planning recommendations were consistent  14 and to get involved in the major re-policy issues. But --  15 and we had a lot of master plans going on at that time.  16 MR. KAUFMAN: To be clear now, you were Chief of  17 Community Planning at the time?  18 MR. BERMAN: Yes, sir.  19 MR. KAUFMAN: And you list a master plan, which is  20 the subject of these proceedings?  21 MR. BERMAN: Yes, I did.  22 MR. KAUFMAN: Well, was that done under your  23 supervision?  24 MR. BERMAN: Yes, they were.  25 MR. KAUFMAN: Okay. And within the plan, did you</p>	<p style="text-align: right;">Page 13</p> <p>1 letter from Mr. Berman to Dave Ager.  2 MR. BERMAN: Right.  3 MR. KAUFMAN: And, again, what brought you to  4 write such a letter?  5 MR. BERMAN: Well, I thought, I'm a public planner  6 and that's my career and my history and David was explaining  7 to me the one where that was occurring during these  8 proceedings and I thought I could add some information that  9 might make it easier for everybody to understand why we did  10 what we did.  11 MR. KAUFMAN: And at the time you wrote this  12 letter, were you involved with this case?  13 MR. BERMAN: No.  14 MR. KAUFMAN: And were you in any way compensated  15 for drafting this letter?  16 MR. BERMAN: Nope, just helping out a friend.  17 MR. KAUFMAN: I understand that you had lunch.  18 Did you pay for the lunch?  19 MR. BERMAN: He paid for lunch. It was an  20 inexpensive lunch and he's going to pay for that.  21 MR. KAUFMAN: Could you go over your letter and  22 what you said, you know, what were your comments, what were  23 your conclusions?  24 MR. BERMAN: Yes. Let me set a little  25 bit -- at that time, again, this is an old plan and</p>

<p style="text-align: right;">Page 14</p> <p>1 everybody has talked about that and I've seen that as I've  2 looked at the materials. So there was a plan written in  3 1985. I was, frankly, surprised how much I remembered about  4 this plan, but I do have gaps and I'll share with you what I  5 remember and what exactly I remember and what I sort of  6 remember, but the this was a very big plan. It covered a  7 whole area of the County, a big area of the County, and we  8 had two major issues that we wanted to deal with at the  9 time, the Montgomery County Airpark, whether that should, in  10 fact, continue, whether the County really needed an airpark  11 and what was the trade-off between that and housing, the  12 housing growth around there.</p> <p>13 The second issue we had was the Intercounty  14 Connector. Actually the city of Gaithersburg was issuing  15 building permits in the right-of-way and we were trying to  16 get that resolved and we had to, we were concerned about the  17 interchange and I-270.</p> <p>18 The principle goal of the plan was that we had to  19 coordinate, there were a variety of goals and we'll get into  20 that later, but the principle goal was Gaithersburg was a  21 corridor city and there were only four corridor cities in  22 the County and Gaithersburg was the biggest of those. And  23 we, and it was unyielding. It did not, it's not -- it's a  24 little more spaghetti than it is a whole plan, but we were  25 trying to make it more of a whole plan and we tried to make</p>	<p style="text-align: right;">Page 16</p> <p>1 MR. BERMAN: We did that by area and there's  2 examples of that in the plan where you can see where we  3 actually discarded some of the property maps. In this map  4 you could see on, in the large scale map there was no  5 property line shown.</p> <p>6 MR. KAUFMAN: So when you say this --</p> <p>7 MR. BERMAN: There's a street, but there's no --</p> <p>8 MR. KAUFMAN: -- you're referring to Exhibit 112?</p> <p>9 MR. BERMAN: -- property line shown.</p> <p>10 MR. KAUFMAN: You're referring to Exhibit 112?</p> <p>11 MR. BERMAN: Yeah.</p> <p>12 MR. KAUFMAN: It's an area exhibit?</p> <p>13 MS. ROBESON: It's exhibit -- okay.</p> <p>14 MR. KAUFMAN: Yes. That's area 2 there?</p> <p>15 MR. BERMAN: Yeah, area 2. That on the large  16 maps and the maps in the plan you could see a street going  17 through the middle of it and you can see an outline of the  18 street pattern on the other side. There's no property line  19 and there was no intention to deviate or to split the  20 properties up. It was a district.</p> <p>21 MR. KAUFMAN: All right. So I want to be clear.  22 So you looked at them by areas or districts and not by  23 individual property?</p> <p>24 MR. BERMAN: That's correct.</p> <p>25 MR. KAUFMAN: Okay. Please continue your --</p>
<p style="text-align: right;">Page 15</p> <p>1 it focused, to look at development and we had to coordinate  2 with the three cities. It was quite challenging.</p> <p>3 We, one of the things that we really wanted to do  4 was accomplish more housing in Gaithersburg. That was --  5 when reviewing the goals of the plan, that's a big goal.  6 That was a big goal then and it continues to be a big goal.  7 The County continues to have, my estimation, a housing  8 shortage and will continue to have a housing shortage and we  9 wanted to do what we could to provide more housing.</p> <p>10 We, as typical, we took the plan and in my letter  11 we took the plan and we divided it into districts,  12 neighborhoods and then districts and we looked at why  13 district, the information. But, again, this was 1985. So  14 the maps weren't as good as we have them now, the -- we were  15 just lucky to get all the streets on the maps. We didn't  16 have GIS. We just had, took different things and spliced  17 them together. We looked at each -- we looked at the  18 density that we thought we could get based upon the historic  19 average of the densities that we were experiencing and we  20 projected forward. You can see that some of that in our  21 tables and the report and the analysis.</p> <p>22 MR. KAUFMAN: On the density, let me just stop you  23 for a second. How did you do that? Did you do that  24 property by property or did you do that by areas or  25 districts?</p>	<p style="text-align: right;">Page 17</p> <p>1 MR. BERMAN: We then, we tried to -- let's go  2 back. Let's go right to the heart of the matter which is  3 this table 46, 46 on table 3.</p> <p>4 MR. KAUFMAN: Of the Master Plan?</p> <p>5 MR. BERMAN: Of the Master Plan. We prepared --  6 you can see the level of undetail, there's a word, or lack  7 of clarity or lack of detail in this plan. We put together  8 a table and that is the recommendations of each, for each  9 property. It's, it's actually, in looking back at it, this  10 is, some of these districts are 21 acres. In this case,  11 there's others, 80 acres. That's a pretty gross tract that  12 we were looking at. And so this was a broad view of the  13 world, 259 acres. That's a lot of acreage in one district.</p> <p>14 And I'm sure we had a master plan scheduled to  15 meet that that made us have to keep going quickly. So we  16 put together this chart which now in hindsight is incorrect.</p> <p>17 MR. KAUFMAN: Explain that if you would.</p> <p>18 MR. BERMAN: Well, where it shows on line 5 --</p> <p>19 MR. KAUFMAN: This is as to District 2, I would  20 take it?</p> <p>21 MR. BERMAN: District 2 and I take District 2, 21  22 acres. I wouldn't swear that 21 acres is the actual number,  23 but at the time that's as close as we could get. We used it  24 preliminarily, which is in my letter. We traced the outline  25 of it. And then we put existing development, which appears</p>

<p style="text-align: right;">Page 18</p> <p>1 to be correct. We put the zoning, which appears to be  2 correct. And then we put 231 units potential and  3 recommended optional, which appears to be incorrect.  4 MR. KAUFMAN: Explain that.  5 MR. BERMAN: Well, it appears to me that it is the  6 actual sum of what was there at the time rather than a  7 forecast of what could happen. And that gets back to the  8 question of what we thought. So and at the same time we  9 recommended this area for high-density residential. So it  10 could be a conflict in that. So I apologize for that. I  11 apologize for creating all the confusion in the room.  12 MR. KAUFMAN: It's a little late, 28 years later,  13 but that's --  14 MS. ROBESON: So you're saying what, that you  15 intended to have additional density there?  16 MR. BERMAN: What I'm saying -- yes. I'm saying  17 is that the, on page 11 of the plan --  18 MS. ROBESON: Okay. I don't --  19 MR. BERMAN: Yes. Okay.  20 MS. ROBESON: Hold on.  21 MR. BERMAN: I'm sorry, page 10 of the plan.  22 MS. ROBESON: All right. I'm there.  23 MR. BERMAN: Okay. On the top it says the  24 recommended base density is that zone which represents the  25 base, the best use of land if no increase optional method is</p>	<p style="text-align: right;">Page 20</p> <p>1 MR. KAUFMAN: Well, but I want to be clear. But  2 is it your testimony that it was not your intent to limit  3 this district to the existing zone?  4 MR. BERMAN: That's the point I would say. There  5 certainly would never have been a plan where we would  6 discourage redevelopment. No, if we don't imply  7 redevelopment, you could argue that one way or the other.  8 But we certainly would, we would not say this area should  9 never redevelop. I don't know that we've ever said that  10 other than an R, not a residential area with lots, houses  11 already in a community. So the intention is -- I'd go  12 back -- I like, what I still like about the plan is the  13 fundamental plan highlights the recommendations. I go back  14 to that.  15 MR. KAUFMAN: This is --  16 MS. ROBESON: Hold on.  17 MR. BERMAN: Where is that?  18 MS. ROBESON: Is that chapter 1?  19 MR. BERMAN: Yeah, that's chapter 1.  20 MR. KAUFMAN: We have copies of that.  21 MR. BERMAN: I got it. I have it, unless Mr.  22 Brown needs one. Okay.  23 MR. KAUFMAN: Hang on just a second. Let me give  24 Mr. Brown a copy.  25 MS. ROBESON: What page are you on in that?</p>
<p style="text-align: right;">Page 19</p> <p>1 desired or sought by the owner. We wanted to really  2 recommend floating zones and use floating zones because at  3 the time we weren't getting site plan review of the, of  4 zones like R-20 and R-30 and we felt that we could through a  5 process similar to what you're going through today make  6 those kind of fine-grain decisions, compatibility, open  7 space and that, and that floating zone process was better  8 than we could get through a Euclidian zone.  9 MR. KAUFMAN: So let me stop you for a second. So  10 at that time you were just starting to use the concept of  11 floating zones or overload zones?  12 MR. BERMAN: Yeah. Yeah, that's correct. That's  13 correct. I wouldn't say starting, but we were, we were  14 attempting to encourage --  15 MS. ROBESON: Yes, I was going to say --  16 MR. BERMAN: -- we were attempting to encourage.  17 MS. ROBESON: But optional method, I mean that's  18 different from a floating zone. Optional method, you have  19 some TDR optional method in here.  20 MR. BERMAN: That's correct and why this was, why  21 this area was not zoned for TDR, I don't know. I know that,  22 as I said, I'll apologize again a couple times, I don't know  23 why we didn't recommend TDR. I don't know why we didn't  24 have a slash, a PD zone next to that other, on that chart on  25 the other side. I don't know why we didn't do that.</p>	<p style="text-align: right;">Page 21</p> <p>1 MR. KAUFMAN: This is page 1 of the Plan. I'll  2 give this to you as well.  3 MR. BERMAN: Maybe we could have this marked as a  4 separate exhibit?  5 MS. ROBESON: Do you have any objection, Mr.  6 Brown?  7 MR. BROWN: No, it's part of the Plan.  8 MS. ROBESON: I just need --  9 MR. KAUFMAN: Just hold on, Mr. Berman, a minute.  10 MS. ROBESON: I apologize. I am looking for my  11 exhibit list, here it is, among all these chapters of the  12 Plan. Okay.  13 MR. KAUFMAN: This would be 123, I believe.  14 MS. ROBESON: Yes. And that's page 1?  15 MR. KAUFMAN: Right. So you were about to refer  16 to page 1 and what's the significance of this, Mr. Berman?  17 MR. BERMAN: Well, these are the -- to me I, this  18 is the key element that we're trying to accomplish in the  19 Plan. We set forth the principle, major things that we were  20 trying to accomplish. We were providing for employment  21 opportunities, a sense of community and in today's  22 discussion increase, the word increase is important, that  23 County's total housing stock and provide for appropriate mix  24 of affordable housing. That was a significant mission that  25 we had for this area and which the counsel agreed with when</p>

<p style="text-align: right;">Page 22</p> <p>1 they adopted this Plan.</p> <p>2 MR. KAUFMAN: So now the zoning that you had on</p> <p>3 the subject property, if I recall, was multi-family, a</p> <p>4 mixture of multi-family and townhouses?</p> <p>5 MR. BERMAN: That's correct.</p> <p>6 MR. KAUFMAN: And at the time that was considered</p> <p>7 high-density?</p> <p>8 MR. BERMAN: Yeah. Again, this is 1985 and we</p> <p>9 were, if you, you know, the -- certainly at the time</p> <p>10 Gaithersburg was developing, but the unit density was much</p> <p>11 lower than it is today. But we wanted to have medium</p> <p>12 density, all right density there or medium residential</p> <p>13 density there. And we thought in our terminology eight to</p> <p>14 15 was that, was that, the correct level.</p> <p>15 MR. KAUFMAN: And at that time were you</p> <p>16 considering MPDU's?</p> <p>17 MR. BERMAN: MPDU's was on top of that density.</p> <p>18 It's always, it should be always treated as -- it's always</p> <p>19 an override on top of the density recommended.</p> <p>20 MR. KAUFMAN: All right. And so in your opinion</p> <p>21 then today if you would find that what would the range of</p> <p>22 density be?</p> <p>23 MR. BERMAN: Probably in the twenties.</p> <p>24 MR. KAUFMAN: And then an MPDU on top of that?</p> <p>25 MR. BERMAN: That's right.</p>	<p style="text-align: right;">Page 24</p> <p>1 MR. BERMAN: That's correct. We would have</p> <p>2 supported -- we do support cluster. We will always support</p> <p>3 cluster. Cluster was a big concept then and it continues to</p> <p>4 be. And you see more of the County going that way in other</p> <p>5 kinds of treatments in other areas. The property lines are</p> <p>6 becoming less important. More important is the district</p> <p>7 density.</p> <p>8 MR. KAUFMAN: Excuse me just a second.</p> <p>9 MS. ROBESON: Yes.</p> <p>10 MR. KAUFMAN: So aside from the specific density</p> <p>11 recommendations for planning areas for districts, could you</p> <p>12 please review for us the general goals of the Master Plan</p> <p>13 and how you believe the subject application may achieve that</p> <p>14 today.</p> <p>15 MR. BERMAN: Well, as I said, the principle goal</p> <p>16 of this Plan was, one of the principle goals of the Plan was</p> <p>17 to increase the housing stock. The and, in fact, the goal</p> <p>18 was so important that we came up with a plan that said it is</p> <p>19 better to close the Montgomery County Airpark if you had to</p> <p>20 than not have housing. We had the --</p> <p>21 MS. ROBESON: Where does it say that?</p> <p>22 MR. BERMAN: Well, it doesn't, it doesn't quite</p> <p>23 say that, but the, and the, that was the issue. The issue</p> <p>24 was on page, I'll turn to page, let's see, the airpark</p> <p>25 section.</p>
<p style="text-align: right;">Page 23</p> <p>1 MR. KAUFMAN: Okay. In the plans that are using</p> <p>2 now, that the planning staff are coming up with using the CR</p> <p>3 zone and the CRT zone, 20 units is a reasonable density and,</p> <p>4 again, it requires structured parking. You know, in this</p> <p>5 time no one thought we could do structured parking, no one,</p> <p>6 it was just not, it was just not part of the understanding</p> <p>7 of, we just didn't have that kind of dream that one day you</p> <p>8 could do these kinds of new types of buildings.</p> <p>9 MR. KAUFMAN: So the type of architecture then</p> <p>10 that you were looking at was garden apartments for multi-</p> <p>11 family?</p> <p>12 MR. BERMAN: Yes, right. That's correct.</p> <p>13 MR. KAUFMAN: And you, what we call now the wrap</p> <p>14 type of architecture around the structured garage --</p> <p>15 MR. BERMAN: Well, that's correct.</p> <p>16 MR. KAUFMAN: Hang on just a moment.</p> <p>17 MR. BERMAN: You had indicated earlier that you</p> <p>18 looked at the land use and density allocations in this</p> <p>19 Master Plan in terms of areas rather than individual</p> <p>20 properties. So within the context of that did you,</p> <p>21 therefore, anticipate that there would be the use of</p> <p>22 clustering, in other words where certain parts of the area</p> <p>23 would have more density than let's say 20 units to the acre,</p> <p>24 15 units to the acre than, and other areas would have less,</p> <p>25 is that correct?</p>	<p style="text-align: right;">Page 25</p> <p>1 MS. ROBESON: Because I thought the plan --</p> <p>2 MR. BERMAN: And you saw the, that was really the</p> <p>3 big, the biggest issue in the plan at that time was what,</p> <p>4 did Montgomery County need an airpark and all would it be</p> <p>5 better to have housing in that area. And we had several</p> <p>6 proposals to do, build housing underneath the flight path of</p> <p>7 the airpark. And a more bigger -- it's on page 40 of the</p> <p>8 plan.</p> <p>9 MS. ROBESON: Okay. Just one second. Okay.</p> <p>10 MR. BERMAN: You see the aircraft light</p> <p>11 operations?</p> <p>12 MS. ROBESON: I do.</p> <p>13 MR. BERMAN: Okay. Well, that -- we had a study</p> <p>14 that, pretty hard as to what the flight paths were around</p> <p>15 the airpark, what the noise levels were going to be and what</p> <p>16 the safety issues were and should we permit housing</p> <p>17 underneath those flight paths and flight patterns. And the</p> <p>18 airpark was, flights were unregulated, which I think they</p> <p>19 still are. There's no active, no tower there, but they, but</p> <p>20 we really -- so there was a good deal of concern that</p> <p>21 whether the airpark should continue or whether we should</p> <p>22 have housing.</p> <p>23 At the end of the day, we recommended housing. We</p> <p>24 put people on notice that they, if they bought a house</p> <p>25 underneath the flight path, they would have to be notified</p>

<p style="text-align: right;">Page 26</p> <p>1 that they were buying a house under the flight path. But,  2 nevertheless, we felt compelled to have more -- we could  3 not, more important for the County to have housing in this  4 area than the airport. If we had to close it, that was,  5 that was what would have to happen.  6 MR. KAUFMAN: All right. Mr. Berman, I want to  7 kind of take you through what, based upon your testimony,  8 which is that you looked at this as districts and the fact  9 that there were certain density recommendations at the time  10 and how that would equate to the difference between what is,  11 what was permitted there and what you would have for total  12 area to, under that -- so let's sort of start with that. So  13 the subject property is split zoned between R-30 and RT-  14 12.5?  15 MR. BERMAN: That's correct.  16 MR. KAUFMAN: All right. And my understanding is  17 based on that and based on the densities in the Master Plan  18 at the time, and not 107 units would have been permitted  19 there, but 134, is that right?  20 MR. BERMAN: That's right.  21 MR. KAUFMAN: All right. And then the total for  22 the analogous area 2, including the rights-of-way under that  23 scenario would have allowed for not what is there today, not  24 the 231, but 331 units, is that correct?  25 MR. BERMAN: That's correct.</p>	<p style="text-align: right;">Page 28</p> <p>1 MR. KAUFMAN: Take your time.  2 MR. BERMAN: Okay. I think that's about it.  3 MR. KAUFMAN: All right. So I would submit the  4 letter, of course, now as Exhibit 123 into the record, I'm  5 sorry, 122.  6 MS. ROBESON: Yes.  7 MR. KAUFMAN: And page 1 of the Master Plan as  8 123. Then, lastly, let me ask you --  9 MS. ROBESON: I think, Mr. Brown, you didn't have  10 any objections, correct?  11 MR. BROWN: I question its relevance, but I don't  12 see, I don't see any reason why you shouldn't consider  13 whether it's relevant or not, therefore, I think it should  14 be part of the record.  15 MS. ROBESON: All right. Thank you. Go ahead.  16 MR. KAUFMAN: Based upon your expertise, Mr.  17 Brown, I mean Mr. Berman, if this Plan was to come up today,  18 it's the, I believe, second oldest plan in the County, 28  19 years old. And you were looking at it for housing as you  20 indicated and multi-family. What do you believe would be  21 the type of recommendations that would be made for this  22 property today and the type of densities that would be  23 considered today?  24 MR. BERMAN: Well, I sort of thought the  25 application actually was pretty good. I thought the</p>
<p style="text-align: right;">Page 27</p> <p>1 MR. KAUFMAN: All right. So there's a difference  2 there of approximately 100 units, is that right?  3 MR. BERMAN: That's right.  4 MR. KAUFMAN: All right. And then if you added  5 the, today's MPDU requirements at 22 percent density bonus,  6 my understanding is you would equate, that would equate to  7 approximately 384 units or 18.3 dwelling units per acre --  8 MR. BERMAN: Uh-huh.  9 MR. KAUFMAN: -- is that correct?  10 MR. BERMAN: That's correct.  11 MR. KAUFMAN: Okay. Excuse me just a second. Now  12 take a look at your letter if you would. I know you moved  13 it around. Is there anything else within the context of  14 your letter that you'd like to bring to the attention of the  15 Hearing Examiner?  16 MR. BERMAN: Well, one of the things I said was  17 that we had no, not too many people show up at the hearing.  18 It was kind of poor. We had no one show up at the hearing.  19 So having a hearing with a lot of people coming and  20 testifying is a good way of cleaning up the Plan and we just  21 didn't have that here. We just didn't have a lot of people  22 saying, oh, this is confusing, why did you say this, why did  23 you do that? So we couldn't, in this case we couldn't clean  24 it up after the hearings because no one came. That's one,  25 one way of apologizing.</p>	<p style="text-align: right;">Page 29</p> <p>1 application taking the density off the entire property and  2 clustering it, I thought that made sense. I thought the  3 idea of looking at structured parking in an area like this  4 and getting, allowing it to get to the density is, I  5 thought, that made a lot of sense. And I'm hearing the  6 testimony and the issues of compatibility and buffering and  7 I think that, that's an issue that I think we would take a  8 look at. So I think, fundamentally I think this would  9 probably be in keeping with what I would come up with in a  10 new area, an area like this.  11 MR. KAUFMAN: If you were to redo this plan?  12 MR. BERMAN: Yes, if we would do this, right, I  13 would probably be meeting with property owners and talking  14 to people and community and seeing what, what would be  15 reasonable. Certainly that's the trend county-wide. The  16 County has a program that's in the Park and Planning  17 Commission's budget to look at all garden apartments that  18 are built on this type and see whether we could redevelop  19 those. They tend to be obsolete. They tend to be  20 problematic.  21 I, one of the issues I go back into is that we  22 want housing diversity in every area of the County and I  23 think this area in the, actually when we were doing this  24 Plan it was a problematic area. There was a lot of housing  25 that got away from us that were not, that were causing</p>



<p style="text-align: right;">Page 30</p> <p>1 problems in a variety of different ways and we wanted to 2 stabilize this community by having newer housing come into 3 it. 4 MR. KAUFMAN: Now you say that. Now you were the 5 principle planner responsible for this Master Plan? 6 MR. BERMAN: That's correct. 7 MR. KAUFMAN: And then your opinion as to what 8 might or should be there today is, with that in mind, that 9 you were the original principle planner of this? 10 MR. BERMAN: That's right. I mean we would 11 balance that with traffic numbers and school numbers and, 12 you know, we would do an analysis, but that would be the, 13 that would be my direction to accomplish. One thing 14 fascinating going back is looking at this Plan and how we 15 did this in 1980's, to look at the assumptions we used in 16 that to come up with a recommendation, for example, a trip 17 rates and school yields. I mean they're different than they 18 were. 19 MR. KAUFMAN: Trip rates are much lower than ours? 20 MR. BERMAN: I mean we thought schools was the big 21 issue, so when we were using .9 kids per dwelling unit and 22 probably not getting anything near that kind of density. So 23 when you look at the holding pass, your traffic rates, all 24 the various things that you look at, that was 80, you know, 25 even the level of congestion level you would assume. The</p>	<p style="text-align: right;">Page 32</p> <p>1 map and the circle and it's colored in orange and it says 2 high-density residential, eight to five units, eight to 15 3 units per acre. 4 MS. ROBESON: Now can you point that out on the -- 5 MR. BERMAN: Sure. Sure can. 6 MS. ROBESON: Is it on 107 there? 7 MR. BERMAN: Yes. Let me show you. It's -- can I 8 approach? 9 MS. ROBESON: I can see it. 10 MR. BERMAN: Oh, you can see it? Okay. 11 MS. ROBESON: So the red? 12 MR. BERMAN: Yes. It's, that's an orange. 13 MS. ROBESON: An orange? 14 MR. BERMAN: It's an orange. 15 MR. KAUFMAN: Red is usually retail. 16 MR. BERMAN: I would call that orange. 17 MR. KAUFMAN: Right. 18 MS. ROBESON: Well, I understand. Okay. 19 MR. KAUFMAN: That was high-density as a common 20 use? 21 MR. BERMAN: That's, yes, yeah. 22 MR. BROWN: Mr. Berman, I direct your attention to 23 page 1, the plan highlights. 24 MR. BERMAN: Yes. 25 MR. BROWN: The very first paragraph talks about</p>
<p style="text-align: right;">Page 31</p> <p>1 standard is different because we now accept a higher level 2 of congestion than we did in 1985. 3 MR. KAUFMAN: Okay. That's our questioning for 4 now. 5 MS. ROBESON: Okay. Mr. Brown. 6 MR. KAUFMAN: Thank you, Mr. Berman. 7 MR. BROWN: Mr. Berman, could you point out for me 8 first of all where the term high-density is used in relation 9 to analysis area 2? 10 MR. BERMAN: Well, let's go back to page, let's go 11 back to the map on page 46. I guess it's 46. I'm sorry, 12 not 46. Hold on just -- 43. The zip tone pattern there or 13 the coloring -- it says multi-family there on that plan, on 14 that level. On the big colored map -- 15 MS. ROBESON: Okay. Is that in the record, the 16 colored map? 17 MR. KAUFMAN: Yes, it is. 18 MS. GIRARD: Yes. 19 MS. ROBESON: I think Mr. Ager had an exhibit 20 for -- can you just give me the exhibit number please? 21 MR. AGER: 107. 107. 22 MS. ROBESON: Go ahead. 23 MR. BROWN: Okay. 24 MS. ROBESON: Can you use 107 if you don't mind? 25 MR. BERMAN: We have a series of circles on that</p>	<p style="text-align: right;">Page 33</p> <p>1 the planning areas, remaining supply of vacant and 2 uncommitted land. 3 MR. BERMAN: Sir, Mr. Brown, I'm sorry, my hearing 4 is really bad, so I'm going to -- I'm going to ask, I have a 5 receiver here that's a microphone if you don't mind. I 6 just, that forecasts to my ear. 7 MR. BROWN: All right. 8 MR. BERMAN: Thank you. 9 MR. BROWN: You see the reference to vacant and 10 uncommitted land in the very first couple of sentences of 11 this page, page 1? 12 MR. BERMAN: Yes. 13 MR. BROWN: And then down in the paragraph belong, 14 it identifies three significant areas still remain vacant 15 and uncommitted -- 16 MR. BERMAN: That's correct. 17 MR. BROWN: -- providing substantial opportunities 18 to meet county-wide development goals, right? 19 MR. BERMAN: Yes. 20 MR. BROWN: And one of those areas is the airport 21 study area? 22 MR. BERMAN: Right. 23 MR. BROWN: All right. In the airport study area, 24 there is vacant and uncommitted land and there is developed 25 land, correct --</p>

<p style="text-align: right;">Page 34</p> <p>1 MR. BERMAN: Yes.</p> <p>2 MR. BROWN: -- at this time?</p> <p>3 MR. BERMAN: Yes, sir.</p> <p>4 MR. BROWN: Is that correct?</p> <p>5 MR. BERMAN: Yes, sir.</p> <p>6 MR. BROWN: And what was vacant or uncommitted</p> <p>7 about analysis area No. 2 at the time this plan was drawn</p> <p>8 up?</p> <p>9 MR. BERMAN: I don't think anything was vacant or</p> <p>10 unvacant.</p> <p>11 MR. BROWN: I'd like you to -- I'll refer you to</p> <p>12 page 9, if you would please. Do you see the middle</p> <p>13 paragraph on page 9 talking -- this is under about land use</p> <p>14 and density recommendations?</p> <p>15 MR. BERMAN: Yes, sir.</p> <p>16 MR. BROWN: The first sentence says on the second</p> <p>17 paragraph,</p> <p>18 "The optional zones and density shown on</p> <p>19 the land use plan are those which may be obtained</p> <p>20 either by approval of a floating zone for a</p> <p>21 property or by the use of transferable development</p> <p>22 rights,"</p> <p>23 is that correct?</p> <p>24 MR. BERMAN: That's correct.</p> <p>25 MR. BROWN: And you see on page 11 that all zoning</p>	<p style="text-align: right;">Page 36</p> <p>1 MR. BROWN: As we go through the table, we find</p> <p>2 that there are at least 17 particular areas out of the 43</p> <p>3 for which the optional amount of density is greater than the</p> <p>4 base density, correct?</p> <p>5 MR. BERMAN: That's correct and they appear to be</p> <p>6 all TDR's. There's only a couple PN zones there. There's</p> <p>7 no PD zones in any of those information. There's none --</p> <p>8 none of the recommended zonings list a PD I could find, so</p> <p>9 that, under that there would be no PD's at all.</p> <p>10 MR. BROWN: And you today are characterizing that</p> <p>11 as an error?</p> <p>12 MR. BERMAN: Yeah.</p> <p>13 MR. BROWN: As I recall from your resume -- and by</p> <p>14 the way, this plan was approved in 1985?</p> <p>15 MR. BERMAN: That's right.</p> <p>16 MR. BROWN: As I recall from your resume, you</p> <p>17 stayed with the Planning Board for at least an additional 11</p> <p>18 years after this plan was promulgated, correct?</p> <p>19 MR. BERMAN: That's correct. I left in 1997.</p> <p>20 MR. BROWN: And when did you discover this error?</p> <p>21 MR. BERMAN: This last week, last week when I was</p> <p>22 looking at it.</p> <p>23 MR. BROWN: It never came up in the 11 years that</p> <p>24 you were there that there was a mistake in the plan?</p> <p>25 MR. BERMAN: I -- no one, no. I, this -- no. I</p>
<p style="text-align: right;">Page 35</p> <p>1 is basically divided into two parts. We have base or</p> <p>2 Euclidian zones and then we have optional or floating zones</p> <p>3 as a single category, correct?</p> <p>4 MR. BERMAN: That's correct.</p> <p>5 MR. BROWN: So at that time you were thinking in</p> <p>6 terms of increased density that optional and floating zones</p> <p>7 were functionally achieving the same end, increased density,</p> <p>8 right?</p> <p>9 MR. BERMAN: Yes, sir.</p> <p>10 MR. BROWN: And then the table in Table 3 on page</p> <p>11 46 and 47 has a recommendation for both base and optional</p> <p>12 density for each of the 43 areas, right? Is that correct?</p> <p>13 MR. BERMAN: It's -- one more time, sir?</p> <p>14 MR. BROWN: The table on page 46 --</p> <p>15 MR. BERMAN: 46.</p> <p>16 MR. BROWN: -- and 47 --</p> <p>17 MR. BERMAN: Yes.</p> <p>18 MR. BROWN: -- Table 3 has recommended density</p> <p>19 limits for both base and optional, optional development,</p> <p>20 correct?</p> <p>21 MR. BERMAN: That's right.</p> <p>22 MR. BROWN: And isn't it fair in light of what we</p> <p>23 just looked at to conclude that the word optional here</p> <p>24 includes both TDR reception and floating zone possibilities?</p> <p>25 MR. BERMAN: That's right.</p>	<p style="text-align: right;">Page 37</p> <p>1 found other mistakes that I had made over the years that,</p> <p>2 but, while I was there. You know, why would I -- yeah. So</p> <p>3 it's a mistake. I mean if the plan recommended floating</p> <p>4 zones, it should have then taken the -- and it talks about</p> <p>5 floating zones option, it should have throughout the chart</p> <p>6 said more floating zones, but your reading is that it</p> <p>7 implies that there is no floating zones at all in the</p> <p>8 Gaithersburg area.</p> <p>9 MR. BROWN: Mr. Berman, you are familiar with the</p> <p>10 procedure in land transfer situations in Montgomery County,</p> <p>11 aren't you, where the actual contracts for sale must make</p> <p>12 reference to the fact that the buyer has had opportunity to</p> <p>13 examine the Master Plan affecting the area?</p> <p>14 MR. BERMAN: That's correct.</p> <p>15 MR. BROWN: Why is that, why is that provision in</p> <p>16 the law? What is the importance of the Master Plan in</p> <p>17 relation to land transfers?</p> <p>18 MR. BERMAN: It's important when people, as you</p> <p>19 probably remember the famous stories about people bought a</p> <p>20 house and didn't realize that they were backing up to the</p> <p>21 Rockville facility or the major highway being proposed. And</p> <p>22 real estate agents were selling houses to folks without</p> <p>23 telling them that there were information about what was</p> <p>24 going to occur within their area. And so the County said</p> <p>25 that prior to transactions -- any home being bought in the</p>

<p style="text-align: right;">Page 38</p> <p>1 County, they, people should be presented with a master plan  2 so they can see what is the future of their County and areas  3 around it.  4 MR. BROWN: One last thing, Mr. Berman. The  5 master plan recommends that this property, that analysis  6 area 2 be developed at, in the range of eight to 15 dwelling  7 units per acre, correct?  8 MR. BERMAN: That's correct, sir.  9 MR. BROWN: And, in fact, the existing development  10 on the property today is within that range, is it not?  11 MR. BERMAN: Yes, sir.  12 MR. BROWN: It's not at the top end of that range,  13 is it?  14 MR. BERMAN: No.  15 MR. BROWN: It's not at the bottom end of that  16 range, is it?  17 MR. BERMAN: No.  18 MR. BROWN: It's somewhere in the middle?  19 MR. BERMAN: Right.  20 MR. BROWN: About 11 units per acre?  21 MR. BERMAN: That's correct.  22 MR. BROWN: I have nothing further.  23 MS. ROBESON: I have one question. I notice on  24 page 49, can you hear me?  25 MR. BERMAN: Here. Hang on a minute.</p>	<p style="text-align: right;">Page 40</p> <p>1 Euclidian zone.  2 MS. ROBESON: I understand. Okay. I'm going to  3 let Mr. Brown have, do you have any questions based on my  4 questions and then, Mr. Kaufman, you can redirect on  5 everything, okay?  6 MR. BROWN: Thank you. Mr. Berman, this project  7 orders the town of Washington Grove on the west side,  8 doesn't it?  9 MR. BERMAN: Yes, that's correct.  10 MR. BROWN: And orders the town, the city of  11 Gaithersburg on the north side, does it not?  12 MR. BERMAN: That's correct.  13 MR. BROWN: And on the east side it borders other  14 property that is covered by this Master Plan, correct?  15 MR. BERMAN: That's correct, sir.  16 MR. BROWN: And within the purview of the County  17 Master Plan, right?  18 MR. BERMAN: Uh-huh.  19 MR. BROWN: Do you want me to put that over here?  20 MR. BERMAN: Yeah, I got it. Yeah, I got it.  21 Thanks.  22 MR. BROWN: Looking at the statement that Hearing  23 Examiner Robeson read to you, is it your testimony that the  24 density recommendations for analysis area 2 and the airport  25 study area do not, or do take into account the concern about</p>
<p style="text-align: right;">Page 39</p> <p>1 MS. ROBESON: Can you hear her okay?  2 MR. BERMAN: I got you again, thank you.  3 MS. ROBESON: You got me in loud.  4 MR. BERMAN: I got you. Thank you.  5 MS. ROBESON: Somebody told me once I spoke  6 loudly, so anyway, on page 49 it says another -- in the  7 first paragraph it says another characteristic of this area  8 is its proximity to the city of Gaithersburg and the town of  9 Washington Grove, do you see that?  10 MR. BERMAN: Yes, I see that.  11 MS. ROBESON: How -- I'd like you, and I'm going  12 to let Mr. Brown cross on my question and then you can  13 redirect on both of us, okay? Everything else in that  14 planning area, or not in the planning area, but if you look  15 at that map, well, how does this recommend appropriate  16 residential densities with buffering?  17 MR. BERMAN: Well, let's talk about the buffering  18 for a second. Certainly through a PD application you get a  19 better opportunity to look at that issue and I'm not here to  20 talk about their plan in terms of how that does or does not  21 proffer with the community. I haven't looked at that.  22 MS. ROBESON: Okay.  23 MR. BERMAN: But that's what the application of a  24 PD application is about, is about allowing you to make  25 diatonic judgment in a better way than you can with the</p>	<p style="text-align: right;">Page 41</p> <p>1 buffering next to the city of Gaithersburg and the town of  2 Washington Grove?  3 MR. BERMAN: I don't understand your question.  4 Could you just give it one more time or put it another way?  5 I'm sorry.  6 MR. BROWN: Sure. A density of 11 dwelling units  7 per acre for analysis area 2, which is essentially what the  8 recommendation is, you agree with that, don't you? Does  9 that recommendation take into account the concern expressed  10 on page 49 about buffering in areas adjacent to the town of  11 Washington Grove and the city of Gaithersburg?  12 MR. BERMAN: Well, clearly from that map we show  13 the town of Washington Grove boundaries, so and we show, and  14 the land use is there. That's pretty clear. So it's  15 definitely, the counsel by taking its action assumed that  16 those things were compatible with each other because they  17 are part of the same map and they show it abutting that  18 property. And you can see on the other side of the woods is  19 a similar kind of density, same similar kind of density,  20 same similar kind of coloring. The fine grain compatibility  21 issue, what I will call site planning issue, is left to you  22 to decide during these proceedings or the planning board  23 during its proceedings. But from a macro point-of-view,  24 that's compatible and they did look at that issue.  25 MR. BROWN: Thank you.</p>

<p style="text-align: right;">Page 42</p> <p>1 MS. ROBESON: Mr. Kaufman.</p> <p>2 MR. KAUFMAN: Got just a few things. Mr. Berman,</p> <p>3 you did testify a few moments ago that in your opinion the</p> <p>4 proposed PD-35 is an appropriate land use for this property</p> <p>5 today, is that correct?</p> <p>6 MR. BERMAN: I did.</p> <p>7 MR. KAUFMAN: All right. And let's go back to</p> <p>8 this issue of buffering. You just said a moment ago that</p> <p>9 the, what the, what the plan sort of indicates is that what</p> <p>10 Washington Grove refers to, it's stand of trees there as the</p> <p>11 Westwood was an adequate buffer?</p> <p>12 MR. BERMAN: That's correct.</p> <p>13 MR. KAUFMAN: And would you consider it, given</p> <p>14 your testimony concerning a PD-35, as still being today an</p> <p>15 adequate buffer?</p> <p>16 MR. BERMAN: Yes.</p> <p>17 MR. KAUFMAN: In fact, it's quite large and the</p> <p>18 closest homes, other than the ones on Daylily, are quite a</p> <p>19 distance away from the subject property?</p> <p>20 MR. BERMAN: That's right. That's right.</p> <p>21 MR. KAUFMAN: And then, lastly, Mr. Berman, in</p> <p>22 your expertise, would you consider master plans to be</p> <p>23 essentially sort of living documents that evolve?</p> <p>24 MR. BERMAN: That's -- I certainly think that</p> <p>25 reading them as the Bible as we do in Montgomery County is</p>	<p style="text-align: right;">Page 44</p> <p>1 examiner process to go through the kind of weight it is.</p> <p>2 There's no -- each part of the County, each recommendation</p> <p>3 gets looked at individually. I give it less weight than I</p> <p>4 would one that was done five or 10 years ago for sure. I</p> <p>5 think somebody in the testimony said less luster, the plan</p> <p>6 has less luster. I thought that was artfully said.</p> <p>7 Certainly, it's something that we can't throw out. On the</p> <p>8 other side, we can't say it's not, you know, it's not there.</p> <p>9 It does, it is a little, it is policy of the County Council.</p> <p>10 It is important. They haven't changed it.</p> <p>11 But we should remember that it was done in the</p> <p>12 '80's, before a lot of, well, before things have changed and</p> <p>13 evolved. That's why we redo a plan every 10 years, 10 to 15</p> <p>14 years. This --</p> <p>15 MR. KAUFMAN: Some say --</p> <p>16 MR. BERMAN: -- was in the work program and it got</p> <p>17 dropped.</p> <p>18 MR. KAUFMAN: So there have been an awful lot of</p> <p>19 evolutions in the area of planning and land use since?</p> <p>20 MR. BERMAN: Right. And you can see that other</p> <p>21 sections of the Gaithersburg vicinity plan have been changed</p> <p>22 completely. I mean this plan is, every other page has been</p> <p>23 X'd out because it's been taken out and re-looked at and</p> <p>24 thought about. This area hasn't been done that way.</p> <p>25 MR. KAUFMAN: And as recently as the adoption of</p>
<p style="text-align: right;">Page 43</p> <p>1 probably a mistake.</p> <p>2 MR. KAUFMAN: I see.</p> <p>3 MR. BERMAN: And at every word, these are, every</p> <p>4 comma and every period is not what I would -- no wonder I</p> <p>5 had headaches every night when I left while with the</p> <p>6 Planning Commission, but --</p> <p>7 MR. KAUFMAN: They're not scripture?</p> <p>8 MR. BERMAN: It's not scripture.</p> <p>9 MR. KAUFMAN: And, in fact, technically master</p> <p>10 plans are statement of policy --</p> <p>11 MR. BERMAN: It's a --</p> <p>12 MR. KAUFMAN: -- on a given time?</p> <p>13 MR. BERMAN: It's a guide. And we've been</p> <p>14 wrestling with that, that dilemma since the early '70's,</p> <p>15 since I got here.</p> <p>16 MR. KAUFMAN: And then when you have a Master Plan</p> <p>17 as old as this one, which is at least 28 years old, and the</p> <p>18 recommendation for the subject area is almost 40 years old</p> <p>19 if you go back to the 1971 plan, that has not changed, you</p> <p>20 as a professional planner, what sort of weight would you</p> <p>21 give a Master Plan that --</p> <p>22 MR. BERMAN: Well, I think you're, I think the</p> <p>23 weight of the plan, you're going through that evaluation</p> <p>24 during this process. I think that's the good part of</p> <p>25 Montgomery County. It has a very good process, a hearing</p>	<p style="text-align: right;">Page 45</p> <p>1 the Shady Grove plan and the White Flint master plans,</p> <p>2 there's quite a bit of difference between those two plans</p> <p>3 just within the few years?</p> <p>4 MR. BERMAN: Right. We are, I think, we're now</p> <p>5 into planning that's basically a transformational planning.</p> <p>6 I think you will see the plans that are coming out now are</p> <p>7 really, are much more transformational in -- for a while</p> <p>8 there we were, excuse the expression, adopting the aerial</p> <p>9 photograph, taking a look at an area and saying that's just</p> <p>10 about it is. Now planning, coming up with plans that are</p> <p>11 saying is this the best we can do and looking at, and re-</p> <p>12 looking at that. And it's very exciting, very exciting.</p> <p>13 MS. ROBESON: But those are done comprehensively?</p> <p>14 MR. BERMAN: And they should be and that's why</p> <p>15 they're done comprehensively.</p> <p>16 MR. KAUFMAN: Okay. Excuse me a second. That</p> <p>17 will conclude redirect.</p> <p>18 MS. ROBESON: Thank you. Thank you, Mr. Berman.</p> <p>19 MR. BERMAN: I hope that was helpful.</p> <p>20 MS. ROBESON: It was. Thank you.</p> <p>21 MR. KAUFMAN: Ms. Girard will do our next witness.</p> <p>22 MS. ROBESON: While we're switching witnesses,</p> <p>23 sorry, we can, but I did want to mention one other thing I</p> <p>24 had a question on that doesn't have to be addressed now, but</p> <p>25 on the waiver provision of the 100-foot setback, which is in</p>

<p style="text-align: right;">Page 46</p> <p>1 7.15(b) or (c) --</p> <p>2 MR. KAUFMAN: Yes.</p> <p>3 MS. ROBESON: Well, if you look at (d), it permits</p> <p>4 a waiver if certain (d)(3) says the maximum building height</p> <p>5 under this waiver must not exceed 50 feet and I just didn't</p> <p>6 know -- I haven't gone through this with a fine-tooth comb,</p> <p>7 but if you can address it at some point, I'm not sure that</p> <p>8 (d), well, if you could address that issue at some point,</p> <p>9 that would be helpful.</p> <p>10 MR. BERMAN: Isn't it or there? I'm not, I can't</p> <p>11 remember. Give us a second just to look at it.</p> <p>12 MS. ROBESON: Well, I don't want, you don't</p> <p>13 need --</p> <p>14 MR. KAUFMAN: Okay.</p> <p>15 MS. ROBESON: -- to address it right now. If we</p> <p>16 could do one more witness and then we'll take a break.</p> <p>17 MR. KAUFMAN: Okay. That's great.</p> <p>18 MS. ROBESON: Please raise your right hand.</p> <p>19 (Witness sworn.)</p> <p>20 MS. ROBESON: Thank you.</p> <p>21 MS. GIRARD: Mr. Longfellow's resume is in the</p> <p>22 exhibit list, Exhibit No. 59C.</p> <p>23 MS. ROBESON: Okay.</p> <p>24 MS. GIRARD: Mr. Longfellow, can you state your</p> <p>25 name and business address?</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. LONGFELLOW: In Baltimore and Anne Arundel,</p> <p>2 I'm sorry, Baltimore and Howard I have been qualified as an</p> <p>3 expert.</p> <p>4 MS. ROBESON: Okay. And are you licensed in</p> <p>5 Maryland?</p> <p>6 MR. LONGFELLOW: Yes, I am.</p> <p>7 MS. ROBESON: Okay. I am going to accept him as</p> <p>8 an expert. His credentials are in the file. I'm going to</p> <p>9 accept him as an expert in civil engineering. Go ahead, Ms.</p> <p>10 Girard.</p> <p>11 MS. GIRARD: Okay. Mr. Longfellow, are you</p> <p>12 familiar with zoning application of a G-910?</p> <p>13 MR. LONGFELLOW: Yes, I am.</p> <p>14 MS. GIRARD: And are you familiar with the</p> <p>15 property that's the subject of the application?</p> <p>16 MR. LONGFELLOW: Yes, I am.</p> <p>17 MS. GIRARD: And are you familiar with the</p> <p>18 surrounding area?</p> <p>19 MR. LONGFELLOW: Yes, I am.</p> <p>20 MS. GIRARD: Are you also familiar with the PD-35</p> <p>21 zoning classification and requirements of the zone?</p> <p>22 MR. LONGFELLOW: I am, yes.</p> <p>23 MS. GIRARD: And was the schematic development</p> <p>24 plan the current one prepared under your supervision?</p> <p>25 MR. LONGFELLOW: Yes, it was.</p>
<p style="text-align: right;">Page 47</p> <p>1 MR. LONGFELLOW: Yes. My name is Tim Longfellow.</p> <p>2 I'm at 3909 National Drive, Suite 250, in Burtonsville,</p> <p>3 Maryland 20866.</p> <p>4 MS. GIRARD: And what's your occupation?</p> <p>5 MR. LONGFELLOW: I'm a civil engineer.</p> <p>6 MS. GIRARD: And long have you been engaged in</p> <p>7 this occupation?</p> <p>8 MR. LONGFELLOW: For about 19 years.</p> <p>9 MS. GIRARD: Can you review for us your</p> <p>10 professional and educational background?</p> <p>11 MR. LONGFELLOW: Sure.</p> <p>12 MS. ROBESON: Just to, I don't mean to detract</p> <p>13 from your weighty background, but I do have your resume in</p> <p>14 the file. Mr. Brown, do you have any objections to</p> <p>15 qualifying him as an expert in civil engineering?</p> <p>16 MR. BROWN: No objection.</p> <p>17 MS. ROBESON: Mr. Longfellow, have you testified</p> <p>18 as an expert before in any courts or administrative</p> <p>19 proceedings?</p> <p>20 MR. LONGFELLOW: Sure, not in front of this</p> <p>21 office, but I have in Anne Arundel County and I have in</p> <p>22 Baltimore County, and I testified in front of other planning</p> <p>23 commissions in various counties throughout Maryland.</p> <p>24 MS. ROBESON: Okay. But, and have you been</p> <p>25 qualified as an expert in those proceedings?</p>	<p style="text-align: right;">Page 49</p> <p>1 MS. GIRARD: And that's the current schematic</p> <p>2 development plan in the record is 73A, Exhibit 73A. Now</p> <p>3 when Mr. Hornstein testified last week, he mentioned that</p> <p>4 the parking numbers had decreased, that when the plan</p> <p>5 changed there was a decrease in the parking numbers that</p> <p>6 wasn't reflected on that schematic development plan, is that</p> <p>7 true?</p> <p>8 MR. LONGFELLOW: That's correct.</p> <p>9 MS. GIRARD: And do we have a revised plan that</p> <p>10 shows that the new parking numbers?</p> <p>11 MR. LONGFELLOW: Yes, we do.</p> <p>12 MS. GIRARD: Okay. Can you pull that up?</p> <p>13 MR. LONGFELLOW: Sure.</p> <p>14 MS. GIRARD: We're waiting on copies to come in to</p> <p>15 (indiscernible).</p> <p>16 MS. ROBESON: Okay. Can I ask you is it just a</p> <p>17 tabulation sort of change?</p> <p>18 MS. GIRARD: It's just in the tabulation.</p> <p>19 MS. ROBESON: Okay. And let's mark that as</p> <p>20 Exhibit 123.</p> <p>21 MR. KAUFMAN: That would be 124.</p> <p>22 MS. ROBESON: Oh, yes, 124, Revised Development</p> <p>23 Plan Correcting Parking Tabulations.</p> <p>24 (Exhibit No. 124 was marked</p> <p>25 for identification.)</p>

<p style="text-align: right;">Page 50</p> <p>1 MS. ROBESON: I'm sorry, did you mark -- okay, I 2 see it. 3 MR. KAUFMAN: Yes, ma'am. 4 MS. ROBESON: Okay. I see it. Thank you. You 5 have to be your own -- we don't have clerks here. 6 MR. KAUFMAN: I understand. 7 MS. GIRARD: And as shown on this SDP, does the 8 proposed development currently meet the development 9 standards of the PD-35 zone? 10 MR. LONGFELLOW: Yes, it does. 11 MS. GIRARD: Can you review those standards and 12 the proposed finding elements and indicate how the plan 13 complies with requirements of the zone? 14 MR. LONGFELLOW: Sure. As shown on the land use 15 summary table in Exhibit 124, we go through and define the 16 net tract area, which is the area of the application, the 17 8.11 acres. We go through the, in that table and set forth 18 both the required and provided density. In this case, the 19 provided density is 329 units. We continue to go through to 20 set the MPDU value which for the application, 12.5 percent 21 was what was required. The applicant is, our client is 22 providing 15 percent for a total of 50 units in this case. 23 And then we go through and define the green area provided 24 and required and also discuss the building heights, you 25 know, as for buildings A and B at four stories and three</p>	<p style="text-align: right;">Page 52</p> <p>1 MS. GIRARD: Thank you. 2 MR. LONGFELLOW: That may answer your question. 3 MS. ROBESON: Yes, it does. I just -- thank you. 4 MR. LONGFELLOW: Okay. 5 MS. ROBESON: I read too much. Okay. Go ahead. 6 MS. GIRARD: And, Mr. Longfellow, you mentioned 7 the green space calculation. Now that was, has been a 8 contentious issue. It was raised at Planning Board. Can 9 you take a minute and walk through with us how you 10 calculated green area? 11 MR. LONGFELLOW: Sure. And the green area, you 12 know, with every project is a big deal. So, you know, 13 literally every project I get, I go to the zoning ordinance. 14 I copy out the green area definition and, you know, we 15 examine the features of the plan that are going to be 16 counted or discounted as green area. In this case, the 17 first items that are obviously to this counter are the 18 buildings, the structured parking, any vehicular surfaces 19 which, you know, are shown on Exhibit 124. We have the 20 driveway that runs between buildings A and B and in east and 21 west direction. And then we have the driveways that run 22 along the western property line which provide the access 23 into the parking structures. 24 Additionally, we have, for the townhouse units, we 25 have the other access point and then the rear driveway and</p>
<p style="text-align: right;">Page 51</p> <p>1 stories and then for the townhouses we set the height at two 2 stories. 3 We further get into in the binding elements some 4 of the specifics where we limit the types of uses for the 5 application as multi-family and townhouse units. We also 6 set the maximum dwelling units at 329 and basically agree 7 that we're going to provide the 50 percent MPDU's. We limit 8 the access points for the project to two. We define the 9 green area requirements and add that as a binding element. 10 And we also, again, reiterate the height that we're 11 providing as a binding element as well. 12 MS. ROBESON: And what is the height you're 13 providing? 14 MR. LONGFELLOW: For buildings A and B, they're 15 both three and four-story buildings and for the townhouse 16 units, they were two-story buildings. 17 MS. ROBESON: Do you know the actual feet? 18 MR. LONGFELLOW: We, at this point I would defer 19 to the architect for the actual number, but what was said is 20 that for buildings A and B, that they wouldn't exceed 50 21 feet and for the townhouses that they wouldn't exceed 35 22 feet in height. 23 MS. GIRARD: And did you arrive at those numbers 24 in consultation with the architect? 25 MR. LONGFELLOW: Absolutely, yes.</p>	<p style="text-align: right;">Page 53</p> <p>1 then the driveways for vehicles to park behind the 2 townhouses. As allowed for in the definition of the green 3 area, you know, we then count all the lawn areas, the rec 4 facility areas, sidewalks, lead walks, things of that nature 5 and, you know, at the end of that we arrive at what we're 6 allowed to treat as green area. 7 MS. GIRARD: And in this case when we, the 8 application was submitted, you were calculating green area 9 based on the 8.11 acres, is that correct? 10 MR. LONGFELLOW: That's correct. 11 MS. GIRARD: And why was that? 12 MR. LONGFELLOW: Well, the 8.11 acres was the area 13 of the development plan. It was the gross area of the 14 development plan on the application that was filed. So when 15 we looked in the PD zone, it said, you know, green area, 50 16 percent required based on the gross area. So that's what we 17 initially did the calculations based on. 18 MS. ROBESON: Okay. Is that the gross tract area? 19 MR. LONGFELLOW: It says gross area in the zoning 20 code. So when we look at the definition of green area, and 21 if I can read from the definition -- 22 MS. ROBESON: Sure. 23 MR. LONGFELLOW: -- it says -- 24 MS. ROBESON: Please. 25 MR. LONGFELLOW:</p>

<p style="text-align: right;">Page 54</p> <p>1 "An area of land associated with and located  2 on the same tract of land as a major building or  3 group of buildings or a prescribed portion of the  4 land area encompassed by a development plan."  5 So in this case the prescribed area encompassed by the  6 development plan is the 8.11 acres which in this case the  7 confusion I think is that becomes, that's the actual -- if  8 you're speaking in terms of tract area, it's the net tract  9 area. It's not the gross tract area --  10 MS. ROBESON: Right.  11 MR. LONGFELLOW: -- which would have included  12 portions of the right-of-way --  13 MS. ROBESON: Right.  14 MR. LONGFELLOW: -- that were previously  15 dedicated.  16 MS. ROBESON: Okay.  17 MR. LONGFELLOW: So in this case, we initially  18 started with a net tract area, made our submission and  19 through the review process it was then questioned and hence,  20 you know, we started down the path of being asked to provide  21 the calculations based on the gross tract area, which we  22 were happy to oblige and in this case, you know, we still  23 were able to meet the green area requirements based on the  24 gross tract area.  25 MS. ROBESON: Which is larger, the gross tract</p>	<p style="text-align: right;">Page 56</p> <p>1 looked at the net tract area or the gross area requested by  2 staff that the 50 percent green space is met in either case?  3 MR. LONGFELLOW: That's correct.  4 MS. GIRARD: And in this, because it was requested  5 by staff, is part of this application being, both the growth  6 and the net were provided --  7 MR. LONGFELLOW: Uh-huh.  8 MS. GIRARD: -- and all submissions except for the  9 one in January, is that correct, in only the gross area  10 submitted in January?  11 MR. LONGFELLOW: I believe that's correct. You  12 know, initially we only submitted the net or the gross area  13 of the application with the PD-60 application and then  14 subsequently we were providing both, but we're still  15 reflecting the desires of staff on the land use summary  16 table, which was, you know, the gross analysis.  17 MS. GIRARD: But in your professional opinion, the  18 correct way to calculate it would be on the 8.11 acres --  19 MR. LONGFELLOW: That's --  20 MS. GIRARD: -- listed in the application?  21 MR. LONGFELLOW: That's correct. That's -- yes.  22 MS. GIRARD: Okay. One of the other issues that  23 has been raised in this case is the setback from the houses  24 along Daylily Lane which the Hearing Examiner just recently  25 referenced. Were you here at the last hearing when the</p>
<p style="text-align: right;">Page 55</p> <p>1 area or the 8.11?  2 MR. LONGFELLOW: The gross tract area is larger,  3 but because it includes portions of Towne Crest Drive and  4 portions of Washington Grove Lane that were previously  5 dedicated when the property was subdivided.  6 MS. ROBESON: Right. Right. Okay. I, all right.  7 I understand.  8 MS. GIRARD: And how large is the gross tract  9 area, just for the record?  10 MR. LONGFELLOW: We have it as 9.415 acres on the  11 land use summary table.  12 MS. GIRARD: So during the review process of Park  13 and Planning, you were asked to provide the calculations  14 using the gross area, which you did, to staff, is that  15 correct?  16 MR. LONGFELLOW: That's correct.  17 MS. ROBESON: The gross tract area?  18 MS. GIRARD: The gross tract area. And although  19 those calculations were provided, the gross tract area was  20 otherwise not used for purposes of this application as far  21 as pulling density off that area or anything like that?  22 MR. LONGFELLOW: No, we were always using the 8.11  23 acres until we were asked to provide it. So that's how that  24 all got started.  25 MS. GIRARD: And is it true that whether you</p>	<p style="text-align: right;">Page 57</p> <p>1 architect presented a plan, an alternative plan that adhered  2 to that 100-foot setback should a waiver not be granted?  3 MR. LONGFELLOW: Yes, I was.  4 MS. GIRARD: And have you since that time been  5 able to convert that sketch into an alternative, formal  6 alternative development plan?  7 MR. LONGFELLOW: Yes, I have.  8 MS. GIRARD: Okay.  9 MS. ROBESON: So this is 125? This would be  10 alternative, I'm going to give it a letter, alternative B,  11 and 124 will be alternative A.  12 MR. KAUFMAN: This is 125?  13 (Exhibit No. 125 was marked  14 for identification.)  15 MS. ROBESON: Yes.  16 MR. KAUFMAN: Okay.  17 MS. ROBESON: Does this have the correct parking  18 tabulations or does that need to be changed on this one as  19 well?  20 MR. LONGFELLOW: We updated the parking tabulation  21 based on the revision of the plan.  22 MS. ROBESON: Okay. So this doesn't need a future  23 amendment on parking?  24 MR. LONGFELLOW: No. This one should be --  25 MS. ROBESON: Okay. I was just checking.</p>

<p style="text-align: right;">Page 58</p> <p>1 MR. LONGFELLOW: Okay.</p> <p>2 MS. ROBESON: Sometimes we get so many versions,</p> <p>3 I, it's hard to keep track. Okay. Thank you.</p> <p>4 MS. GIRARD: And to close the loop, did you also</p> <p>5 prepare a revised green area exhibit using the 8.11 acres</p> <p>6 with the 100-foot setback for the alternative fee, is that</p> <p>7 what we are calling it?</p> <p>8 MR. LONGFELLOW: Yes, I did.</p> <p>9 MS. ROBESON: Okay. So this is the alternative</p> <p>10 fee green space?</p> <p>11 MS. GIRARD: Correct.</p> <p>12 MS. ROBESON: And that's 126? Mr. Brown, do you</p> <p>13 have any objections or do you need a minute? Has Mr. Brown</p> <p>14 seen these?</p> <p>15 MS. GIRARD: No. They're hot off the press this</p> <p>16 week.</p> <p>17 MR. BROWN: I've never been given this.</p> <p>18 MS. GIRARD: 126.</p> <p>19 MS. ROBESON: I'm giving the alternative B green</p> <p>20 space is 126 and the alternative B development plan is 125.</p> <p>21 (Exhibit No. 126 was marked</p> <p>22 for identification.)</p> <p>23 MS. ROBESON: Let's do this. Let's take a 10-</p> <p>24 minute break and we'll give Mr. Brown a moment to look at</p> <p>25 these.</p>	<p style="text-align: right;">Page 60</p> <p>1 We'll go off the record for 10 minutes.</p> <p>2 (Recess)</p> <p>3 MS. ROBESON: Ready to go back on the record.</p> <p>4 Okay. We're on the record. Mr. Longfellow, or Ms. Girard,</p> <p>5 if you want to continue?</p> <p>6 MS. GIRARD: Yes.</p> <p>7 MS. ROBESON: We have 125 and 126, which are</p> <p>8 alternative B's site plan and green space.</p> <p>9 MS. GIRARD: Mr. Longfellow, have you analyzed the</p> <p>10 suitability of the subject property for the proposed</p> <p>11 rezoning classification from a civil engineering standpoint?</p> <p>12 MR. LONGFELLOW: Yes, I have.</p> <p>13 MS. GIRARD: And can you review for us the</p> <p>14 findings of your analysis?</p> <p>15 MR. LONGFELLOW: Sure. As we went through the</p> <p>16 property and looking at the surrounding property, we, I</p> <p>17 guess, looked at a bunch of things from an engineering</p> <p>18 standpoint that included roads and utilities so, you know,</p> <p>19 the first thing that we saw is that the site is accessed off</p> <p>20 of Towne Crest Drive. You know, in the existing condition</p> <p>21 it had, I believe it was four access points and it had</p> <p>22 various water connections as shown on Exhibit 125 that are</p> <p>23 along Towne Crest Drive to serve the various buildings that</p> <p>24 it has. We then looked at the existing water and sewer</p> <p>25 that's in Towne Crest Drive. There's a 12-inch water line</p>
<p style="text-align: right;">Page 59</p> <p>1 MS. GIRARD: Okay.</p> <p>2 MR. KAUFMAN: Okay.</p> <p>3 MS. ROBESON: I apologize for interrupting your</p> <p>4 testimony, but --</p> <p>5 MR. KAUFMAN: I would just for the record, when</p> <p>6 the architect testified what constitutes alternative A is</p> <p>7 already in the record in that testimony. Remember, he had a</p> <p>8 sketch with, he showed you where the --</p> <p>9 MS. ROBESON: That was alternative --</p> <p>10 MS. GIRARD: B.</p> <p>11 MS. ROBESON: -- B, right?</p> <p>12 MS. GIRARD: B. Yes.</p> <p>13 MR. KAUFMAN: Yes. Correct.</p> <p>14 MS. ROBESON: Okay.</p> <p>15 MR. KAUFMAN: I just wanted the record to reflect</p> <p>16 that you have a version --</p> <p>17 MS. ROBESON: Right. Right. This is just --</p> <p>18 MR. KAUFMAN: Right.</p> <p>19 MS. ROBESON: That was a sketch and this is --</p> <p>20 MR. KAUFMAN: Right.</p> <p>21 MS. ROBESON: -- the real thing.</p> <p>22 MR. KAUFMAN: Right.</p> <p>23 MS. ROBESON: Okay.</p> <p>24 MR. KAUFMAN: Thank you.</p> <p>25 MS. ROBESON: But I understand your point. Okay.</p>	<p style="text-align: right;">Page 61</p> <p>1 that runs through Towne Crest Drive that serves this</p> <p>2 property. There's also public sewer that serves the larger</p> <p>3 area and then also runs through our property between where</p> <p>4 buildings A and B are currently placed within a sewer</p> <p>5 easement and then also runs along the western property line</p> <p>6 and then out into Washington Grove Lane.</p> <p>7 Those water and sewers in service categories W3</p> <p>8 and S3, we have done sewer capacity modeling studies with</p> <p>9 WSSC and everything is adequate capacity. We then moved our</p> <p>10 attention onto the existing storm drain systems and there is</p> <p>11 public storm drain that runs in Towne Crest Drive and also</p> <p>12 runs through our property in an east-west direction between</p> <p>13 where buildings A and B are within a public storm drain</p> <p>14 easement and outflows into the Westwoods area in this</p> <p>15 location and then also at the southern end of the property</p> <p>16 there's a public storm drain system that runs through our</p> <p>17 property, again, and outflows between Lots 2 and 3,</p> <p>18 specially into Lot 3 along Daylily Lane there.</p> <p>19 MS. ROBESON: I'm sorry, can you point that out</p> <p>20 again? Where is it on the subject property?</p> <p>21 MR. LONGFELLOW: So the one at the northern end --</p> <p>22 MS. ROBESON: I have that one.</p> <p>23 MR. LONGFELLOW: You've got that one? So down</p> <p>24 here, the existing storm drain system starts on the east</p> <p>25 side of Towne Crest Drive. There's a little inlet along the</p>



<p style="text-align: right;">Page 62</p> <p>1 roadside there. Then comes --</p> <p>2 MS. ROBESON: I see it. Okay.</p> <p>3 MR. LONGFELLOW: -- as an angle, and then as it</p> <p>4 comes into the site, you'll see the line and the easement</p> <p>5 that's associated with it --</p> <p>6 MS. ROBESON: Okay.</p> <p>7 MR. LONGFELLOW: -- that then comes over and then</p> <p>8 outfalls there.</p> <p>9 MS. ROBESON: Okay. I see it.</p> <p>10 MR. LONGFELLOW: Those systems were built some</p> <p>11 time ago. They're functioning now. Everything, you know,</p> <p>12 other than, you know, the typical getting things cleaned out</p> <p>13 along the, you know, some other portions of the facility,</p> <p>14 they outfall. This one outfalls into a rip-rap channel,</p> <p>15 the, at the northern end of the site. At the southern end</p> <p>16 of the site, you have the, you have a concrete apron and</p> <p>17 then it slows through a brass swale in lot 3 there.</p> <p>18 In addition, you've got all the other utilities,</p> <p>19 gas, electric, telephone, cable all run, you know, within</p> <p>20 Towne Crest Drive currently, currently serving this whole</p> <p>21 community and we would replace or reuse those utilities as</p> <p>22 we can.</p> <p>23 MS. ROBESON: And are you proposing, is that a</p> <p>24 bulb there? It says underground storm water management?</p> <p>25 MR. LONGFELLOW: That's correct. With -- I guess</p>	<p style="text-align: right;">Page 64</p> <p>1 MS. ROBESON: Is that --</p> <p>2 MR. LONGFELLOW: That's an existing building</p> <p>3 footprint.</p> <p>4 MS. ROBESON: Oh, okay.</p> <p>5 MR. LONGFELLOW: So the proposed building is, has</p> <p>6 a thin, but darker black line and then it has the gray hatch</p> <p>7 right here --</p> <p>8 MS. ROBESON: Right. Right.</p> <p>9 MR. LONGFELLOW: -- that outlines the footprint of</p> <p>10 the new building.</p> <p>11 MS. ROBESON: But is that, is that indent -- okay.</p> <p>12 Is that where it was moved back to be out of the setback?</p> <p>13 MR. LONGFELLOW: That's correct, to meet --</p> <p>14 MS. ROBESON: Okay.</p> <p>15 MR. LONGFELLOW: -- the 100-foot setback from the</p> <p>16 intersection of Lot 4 with our western property.</p> <p>17 MS. ROBESON: Okay. That's, that was my question.</p> <p>18 MS. GIRARD: Now I'm confused.</p> <p>19 MS. ROBESON: Sorry.</p> <p>20 MS. GIRARD: Just, no, no, I just want to make</p> <p>21 sure that this plan, which is Exhibit --</p> <p>22 MR. LONGFELLOW: This was the, this was the</p> <p>23 alternate plan.</p> <p>24 MS. GIRARD: -- 125, it's the alternate plan, but</p> <p>25 it doesn't have the previous plan under it, does it?</p>
<p style="text-align: right;">Page 63</p> <p>1 we had looked at a couple of different options and, you</p> <p>2 know, and the current plan right now we are providing for</p> <p>3 10-year quantity control for storm water management, in</p> <p>4 addition to also fulfilling the full lit ESD, or</p> <p>5 Environmental Site Design requirements, that are now the --</p> <p>6 MS. ROBESON: Right.</p> <p>7 MR. LONGFELLOW: -- law in Maryland. Currently</p> <p>8 the site doesn't have any storm water management at all,</p> <p>9 just drains. Either the sheet flows off or gets into the</p> <p>10 storm drain system and drains out. But at the time that's</p> <p>11 what --</p> <p>12 MS. ROBESON: It's okay.</p> <p>13 MR. LONGFELLOW: -- was, you know, it was all by</p> <p>14 law legal, you know, approved through the County. So --</p> <p>15 MS. ROBESON: And can I ask you one more question?</p> <p>16 MR. LONGFELLOW: Sure.</p> <p>17 MS. ROBESON: Is there, on the, let's see, that</p> <p>18 would be the west, the southwest corridor of building B,</p> <p>19 there's a little bracket. Is that the outline of the old --</p> <p>20 I'm trying to figure out where it was --</p> <p>21 MR. LONGFELLOW: It's --</p> <p>22 MS. ROBESON: -- moved back?</p> <p>23 MR. LONGFELLOW: This little gray dash --</p> <p>24 MS. ROBESON: Yes.</p> <p>25 MR. LONGFELLOW: -- here?</p>	<p style="text-align: right;">Page 65</p> <p>1 MR. LONGFELLOW: No.</p> <p>2 MS. GIRARD: Isn't that existing conditions as</p> <p>3 they appear on site now?</p> <p>4 MS. ROBESON: Okay. All right.</p> <p>5 MR. LONGFELLOW: Right. That's what I said.</p> <p>6 That's the existing building --</p> <p>7 MS. ROBESON: Building.</p> <p>8 MR. LONGFELLOW: -- footprint that's there today</p> <p>9 that's --</p> <p>10 MS. ROBESON: Okay.</p> <p>11 MS. GIRARD: Right. So the only --</p> <p>12 MR. LONGFELLOW: Right.</p> <p>13 MS. GIRARD: -- place to compare where the</p> <p>14 buildings move for the setback purposes would be the</p> <p>15 architectural --</p> <p>16 MS. ROBESON: The original --</p> <p>17 MS. GIRARD: -- I think the architectural --</p> <p>18 MS. ROBESON: Oh, the sketch?</p> <p>19 MS. GIRARD: -- sketch.</p> <p>20 MR. LONGFELLOW: Oh --</p> <p>21 MS. ROBESON: Okay. That's fine. I understand.</p> <p>22 MS. GIRARD: Okay.</p> <p>23 MR. LONGFELLOW: Yes.</p> <p>24 MS. GIRARD: And are the conclusions, or in, as</p> <p>25 part of this case did you prepare an engineering report that</p>

<p style="text-align: right;">Page 66</p> <p>1 basically outlines what you just testified to?</p> <p>2 MR. LONGFELLOW: I did.</p> <p>3 MS. GIRARD: And that's Exhibit 73F in the record.</p> <p>4 MS. ROBESON: Okay.</p> <p>5 MS. GIRARD: So as part of the storm water</p> <p>6 management, you mentioned that there's none today. In the</p> <p>7 letters of record there's concern that this development will</p> <p>8 increase the run-off from this property, is that your</p> <p>9 conclusion?</p> <p>10 MR. LONGFELLOW: The runoff, anytime you redevelop</p> <p>11 a site and you go from, you know, in this case the existing</p> <p>12 conditions, you know, of I guess a little bit less</p> <p>13 impervious to a plan like this where you have more</p> <p>14 impervious, there is additional runoff in the term, in the</p> <p>15 engineering terms of runoff. But in the terms of the</p> <p>16 discharge at the two storm drain outfalls, there will be no</p> <p>17 increase at all at those discharge points because of the</p> <p>18 fact that we're providing the quantity control measures</p> <p>19 onsite. So -- and in terms of the ESD's as well.</p> <p>20 The ESD requirements basically replace quality and</p> <p>21 quantity control and combine them all into one now. So for</p> <p>22 purposes of this plan, we're taking a project that has no</p> <p>23 storm water management at all right now, we provided full</p> <p>24 ESD treatment. In addition, we've provided some, another</p> <p>25 quality control device here that will be -- I'll show it on</p>	<p style="text-align: right;">Page 68</p> <p>1 identified areas that were providing ESD features, for</p> <p>2 instance, micro-bioretenion of rainwater harvesting. We</p> <p>3 also ID in the tan on Exhibit 127 the areas where providing</p> <p>4 the 10-year quantity control and then in the kind of pink</p> <p>5 will show another quality control device in the form of a</p> <p>6 structural measure, which is a storm filter. But, again,</p> <p>7 the plan was approved by Montgomery County's Department of</p> <p>8 Permitting Services, their Water Resources Section</p> <p>9 conceptually and, again, we're providing the ESD's. We're</p> <p>10 also providing a structural water quality facility and we're</p> <p>11 providing 10-year quantity control. So looking at the</p> <p>12 discharge points, you know, in the central location on the</p> <p>13 property and then at the southern end, the water will be</p> <p>14 controlled such that there is no increased discharge at</p> <p>15 those points.</p> <p>16 MS. GIRARD: Okay. So, Mr. Longfellow, based on</p> <p>17 your testimony, is it in your expert opinion that the host</p> <p>18 zoning classification as a PD-35 zone be served by adequate</p> <p>19 public facilities and services, including water, sanitary</p> <p>20 sewer, storm drainage and other public improvements?</p> <p>21 MR. LONGFELLOW: Yes, it will.</p> <p>22 MS. GIRARD: And in your opinion will the proposed</p> <p>23 zoning classification, the PD-35 zone, cause any adverse</p> <p>24 effects on the environment on the health, safety, security,</p> <p>25 morals or welfare of the residents, visitors or workers in</p>
<p style="text-align: right;">Page 67</p> <p>1 -- I don't think this is in the record yet.</p> <p>2 MS. GIRARD: No.</p> <p>3 MR. LONGFELLOW: But if I could --</p> <p>4 MS. ROBESON: Okay. Let's mark it as 127. And</p> <p>5 can you describe what that is?</p> <p>6 MR. LONGFELLOW: Sure. It is a illustrative plan</p> <p>7 of the conceptual storm drain and storm water management</p> <p>8 layout.</p> <p>9 MS. ROBESON: Okay. How about illustrative storm</p> <p>10 water management layout?</p> <p>11 MR. LONGFELLOW: That will work.</p> <p>12 (Exhibit 127 was marked</p> <p>13 for identification.)</p> <p>14 MR. KAUFMAN: And what number did you want?</p> <p>15 MS. ROBESON: 127.</p> <p>16 MR. KAUFMAN: 127. We have a small one for you.</p> <p>17 MS. ROBESON: Okay. Do you have one for -- no, I</p> <p>18 see.</p> <p>19 MS. GIRARD: And can you describe what this</p> <p>20 exhibit is showing us?</p> <p>21 MR. LONGFELLOW: Sure. So what we did is we took</p> <p>22 the conceptual storm drain and storm water management plan</p> <p>23 that was part of the original application and we just</p> <p>24 basically color-coded it for clarify for purposes of our</p> <p>25 discussions today. So in the different colored items, we</p>	<p style="text-align: right;">Page 69</p> <p>1 the area?</p> <p>2 MR. LONGFELLOW: No. In fact, I think it's going</p> <p>3 to make it better. You're taking a site right now that's</p> <p>4 not providing any storm water management. You know, I don't</p> <p>5 think anybody disputes the fact that there is some existing</p> <p>6 erosion that's taking place in the Westwoods and, you know,</p> <p>7 this plan is not going to do anything to add to that</p> <p>8 problem. It's going to maintain the quantity control</p> <p>9 onsite. It's going to provide, you know, extensive quality</p> <p>10 control throughout the project. So it's really going to</p> <p>11 improve the quality of the water, you know, that's running</p> <p>12 off of this property and, you know, while not increasing the</p> <p>13 amount of water that's going to get to the Westwoods.</p> <p>14 MS. GIRARD: And in your expert opinion as a civil</p> <p>15 engineer, is the proposed zoning classification to the PD-35</p> <p>16 zone suitable for the site and compatible to the surrounding</p> <p>17 neighborhood?</p> <p>18 MR. LONGFELLOW: Yes, it is.</p> <p>19 MS. GIRARD: That's all we have.</p> <p>20 MS. ROBESON: Okay. No other questions?</p> <p>21 MS. GIRARD: That's it.</p> <p>22 MS. ROBESON: Mr. Brown.</p> <p>23 MR. BROWN: Mr. Longfellow, I'm looking at Exhibit</p> <p>24 127. It doesn't have your certification seal on it. Is</p> <p>25 this -- and it also is listed as option 1. Could you please</p>

<p style="text-align: right;">Page 70</p> <p>1 explain, is this intended to replace an earlier exhibit as  2 the, as a final version of your proposed storm drain and  3 storm water management plan?  4 MR. LONGFELLOW: It's not proposed to replace any  5 version, it was merely prepared to use color for the  6 purposes of demonstration for these proceedings.  7 MR. BROWN: Is there anything different about this  8 plan other than the fact that certain parts of it are in  9 color as compared to some other exhibit?  10 MR. LONGFELLOW: I do not believe there is  11 anything different. When you say -- what would you like me  12 to compare it to?  13 MR. BROWN: You tell me. Which exhibit is this?  14 It's simply an illustration of --  15 MR. LONGFELLOW: It is an illustrative of the  16 resubmitted conceptual storm drain and storm water  17 management plan that accompanied the revised development  18 plan for the --  19 MS. ROBESON: So that would be 73 --  20 MS. GIRARD: I believe it's 53F because it was  21 approved prior to the January report, so it's part of the  22 PD-44.  23 MR. BROWN: So 53F?  24 MS. GIRARD: Yes, 53F.  25 MR. BROWN: So 53F is the current storm drain and</p>	<p style="text-align: right;">Page 72</p> <p>1 the Department of Permitting Services because it would  2 reflect the proposed development as is to be approved in  3 this proceeding, so that plan would demonstrate what we  4 were, what we were going to, you know, send into DPS and we  5 would seek permit approvals on.  6 MR. BROWN: Well, one change I see, for example,  7 is the reorientation of the townhouse units. That has an  8 impact on your plans, doesn't it?  9 MR. LONGFELLOW: Yes, it does.  10 MR. BROWN: And isn't another potential area of  11 impact the possibility that the building B will be shortened  12 on the south side according to Exhibit 125?  13 MR. LONGFELLOW: Yes.  14 MR. BROWN: So all these things would have to be  15 taken into account in revising this plan?  16 MR. LONGFELLOW: Yes, sir.  17 MR. BROWN: All right. I put up on here Exhibit  18 73K. Mr. Longfellow, you're familiar with this, right?  19 MR. LONGFELLOW: Yes, I am.  20 MR. BROWN: This is, as I understand it, your  21 latest green area calculation without the shortening of  22 building B, but using the gross tract area, correct?  23 MR. LONGFELLOW: Yes, sir.  24 MR. BROWN: Now my question for you is how would  25 the numbers change on this diagram if you omitted from the</p>
<p style="text-align: right;">Page 71</p> <p>1 storm water management plan proposal?  2 MR. KAUFMAN: Did you hear the question?  3 MR. LONGFELLOW: The current proposal is  4 illustrated, is illustrated here. This is --  5 MS. ROBESON: When you're saying here, you're  6 saying 120 --  7 MR. LONGFELLOW: On Exhibit 127. Again, as the  8 plans have developed with these alternates, we've also tried  9 to update the storm water management plan to illustrate, you  10 know, how each step would continue to, you know, work with  11 the plan so that it's a complete document.  12 MR. BROWN: Mr. Longfellow, there's a difference  13 between updating and illustrating. I'm trying to understand  14 what the current version of the plan is. Is it Exhibit 53F  15 or isn't it?  16 MR. LONGFELLOW: Do you have 53F so I can look at  17 it?  18 MR. KAUFMAN: Give us a minute. Give him a minute  19 to look at it.  20 MS. ROBESON: Sure.  21 MR. LONGFELLOW: The two plans are different.  22 MR. BROWN: All right. So Exhibit 127, is it  23 intended to replace Exhibit 53F or isn't it?  24 MR. LONGFELLOW: Ultimately it would replace that  25 exhibit, you know, as we -- would begin to file things with</p>	<p style="text-align: right;">Page 73</p> <p>1 green area calculation any green area that's in the  2 dedicated right-of-way?  3 MR. LONGFELLOW: It would change to reflect the  4 analysis that we provided as the green area for the net  5 tract area and we would still be compliant with the 50  6 percent green area requirement.  7 MR. BROWN: I'm asking about a number, Mr.  8 Longfellow. How many square feet of land in this particular  9 diagram indicated as green area are in the right-of-way?  10 MR. LONGFELLOW: I could do the calculation for  11 you.  12 MR. KAUFMAN: I would just like the record to  13 reflect that he's going to need to calculate that number.  14 MS. ROBESON: He said that's fine. You can't do  15 it in your head?  16 MS. GIRARD: That would be handy.  17 MS. ROBESON: Take your time, Mr. Longfellow.  18 MR. LONGFELLOW: The difference would be 32,409  19 square feet between the gross tract area, green area  20 calculation and the net tract area green area calculation.  21 MR. BROWN: Looking at this Exhibit No. 126, I  22 understand that you have based this exhibit on the net tract  23 area, but you had earlier done one on the gross tract area.  24 I guess my question would be what would the numbers look  25 like on Exhibit 73K if the building, building B were shorter</p>

<p style="text-align: right;">Page 74</p> <p>1 as shown on Exhibit 126?</p> <p>2 MR. LONGFELLOW: Could you restate that just so</p> <p>3 I'm clear?</p> <p>4 MR. BROWN: Well, you would have more green area</p> <p>5 if you made building B smaller on Exhibit 73K?</p> <p>6 MR. LONGFELLOW: Absolutely.</p> <p>7 MR. BROWN: How much more green area would you</p> <p>8 get?</p> <p>9 MR. LONGFELLOW: Okay. Hang on. I believe the</p> <p>10 number is 7,595, but please let me check that. It's</p> <p>11 approximately 7,600 square feet --</p> <p>12 MR. BROWN: Okay.</p> <p>13 MR. LONGFELLOW: -- if that's close, close enough,</p> <p>14 within a few square feet.</p> <p>15 MR. BROWN: So here we show 209,065.</p> <p>16 MS. ROBESON: What are you pointing to? Is that -</p> <p>17 -</p> <p>18 MR. BROWN: This is the green area shown on</p> <p>19 Exhibit 73K.</p> <p>20 MS. ROBESON: Okay.</p> <p>21 MR. BROWN: All right?</p> <p>22 MS. ROBESON: Yes.</p> <p>23 MR. BROWN: Now if you add 7,600 to that, what do</p> <p>24 we get, or 7,595?</p> <p>25 MR. LONGFELLOW: 216,665.</p>	<p style="text-align: right;">Page 76</p> <p>1 encompasses the 8.11 acres of the application and the</p> <p>2 additional right-of-way areas that we had added in to make</p> <p>3 our gross tract area based on previous dedications and</p> <p>4 things of that nature. So with respect to the gross tract</p> <p>5 area and calculating the areas based on the green area</p> <p>6 definition, the green area calculations are satisfied for</p> <p>7 the gross tract area. When you also look at the net tract</p> <p>8 area or the area of the application, the 8.11 acres, we</p> <p>9 would at that point -- if you, for instance, looked at</p> <p>10 Exhibit 126, in comparison to Exhibit 73K, you'll see that</p> <p>11 we don't include any areas outside of the 8.11 acres and at</p> <p>12 that point we use the net tract area, the 8.11 acres and the</p> <p>13 green area that's within the net tract area which is also</p> <p>14 synonymous with the gross area of our application. So we've</p> <p>15 got to be careful when we're looking at this that we look at</p> <p>16 this as an entity and that as an entity. We can't look at a</p> <p>17 requirement that's based on the gross tract area encompasses</p> <p>18 this larger area, the 9.4 acres, and then compare it to a</p> <p>19 green area requirement based on the net tract area, the 8.11</p> <p>20 acres. It's, you know, it's -- they're just apples and</p> <p>21 oranges. They just -- it doesn't get you there.</p> <p>22 MR. BROWN: Mr. Longfellow, when you submit this</p> <p>23 application, you have to list the gross tract area of the</p> <p>24 property, right?</p> <p>25 MR. LONGFELLOW: Yes, and I think we do.</p>
<p style="text-align: right;">Page 75</p> <p>1 MR. BROWN: About 216,665?</p> <p>2 MR. LONGFELLOW: Yes.</p> <p>3 MR. BROWN: Now you said that this diagram was</p> <p>4 inclusive of about 32,409 square feet of green area in the</p> <p>5 right-of-way?</p> <p>6 MR. LONGFELLOW: Yes, sir.</p> <p>7 MR. BROWN: If we subtract that green area from</p> <p>8 this diagram after adding in the 7,600, what do we get?</p> <p>9 MR. LONGFELLOW: I have 184,256.</p> <p>10 MR. BROWN: And that's less than 50 percent of the</p> <p>11 gross tract area, right?</p> <p>12 MR. LONGFELLOW: Less than 50 percent of the gross</p> <p>13 tract area, of the gross tract area? Yes.</p> <p>14 MR. BROWN: But is more than 50 percent of the net</p> <p>15 tract area?</p> <p>16 MR. LONGFELLOW: Yes, it is.</p> <p>17 MR. BROWN: So it's fair to say that whether or</p> <p>18 not you count green area in the right-of-way, whichever</p> <p>19 version of the plan you use, whether or not you count green</p> <p>20 area in the right-of-way is decisive as to whether or not</p> <p>21 this plan is compliant with the green area requirement?</p> <p>22 MR. LONGFELLOW: I don't agree with that. In</p> <p>23 both, in both conditions, in both conditions when we look</p> <p>24 at -- we've got to be careful with the nomenclature. The</p> <p>25 gross tract area is what we're showing on Exhibit 73K that</p>	<p style="text-align: right;">Page 77</p> <p>1 MR. BROWN: And that has a very precise legal</p> <p>2 definition, doesn't it?</p> <p>3 MR. LONGFELLOW: Yes, it does.</p> <p>4 MR. BROWN: And it includes areas dedicated to the</p> <p>5 public?</p> <p>6 MR. LONGFELLOW: That's correct.</p> <p>7 MR. BROWN: And, in fact, sometimes there's a</p> <p>8 fight about whether or not the area has been dedicated as to</p> <p>9 whether or not it should be included in the gross tract</p> <p>10 area?</p> <p>11 MR. LONGFELLOW: I have not been involved in any</p> <p>12 of those fights but, yes, I understand those discussions.</p> <p>13 MR. BROWN: You've heard them, right?</p> <p>14 MR. LONGFELLOW: Sure.</p> <p>15 MR. BROWN: Now I understand that you are claiming</p> <p>16 less density in this project than would be allowed for the</p> <p>17 project considering the gross tract area, correct?</p> <p>18 MR. LONGFELLOW: That's correct. We've stated</p> <p>19 we're not, we're not taking our density calculations based</p> <p>20 on the gross tract area. We're only using the net tract</p> <p>21 area with the 8.1 area.</p> <p>22 MR. BROWN: I'm sorry, Mr. Longfellow, the statute</p> <p>23 talks about density in terms of the gross tract area,</p> <p>24 doesn't it? Isn't that what the requirement is?</p> <p>25 MR. LONGFELLOW: The -- you're allowed to take for</p>

<p style="text-align: right;">Page 78</p> <p>1 your maximum density calculation the gross tract area, but  2 you're not required to provide the maximum density based on  3 the gross tract area if you desire to not have that much  4 density.  5 MR. BROWN: Yes and, in fact, you might desire  6 less density because it might be considered too dense for  7 the area where the project is being built. Maximum density  8 is not by right, is it?  9 MR. LONGFELLOW: That's outside of my --  10 MR. BROWN: Outside of your job description?  11 MR. LONGFELLOW: Well, it's outside of my  12 expertise.  13 MR. BROWN: Okay. The point is that the  14 calculation of compliance with the density requirement is  15 compliance with the maximum density requirement, not  16 entitlement to the maximum density, isn't that correct?  17 MR. LONGFELLOW: Could you restate that?  18 MR. BROWN: You said that this is compliant with  19 the code, the PV-35 zone, right?  20 MR. LONGFELLOW: Yes.  21 MR. BROWN: That zone has a maximum density  22 requirement, correct?  23 MR. LONGFELLOW: It has a maximum density ceiling?  24 MR. BROWN: Yes. And that ceiling is based upon  25 the gross tract area, correct?</p>	<p style="text-align: right;">Page 80</p> <p>1 MR. BROWN: I guess my question, Mr. Longfellow,  2 looking at Section 59C-7.14, which is density of residential  3 development in the PV zone, have you ever known that those  4 densities were ever calculated on anything other than gross  5 tract area?  6 MR. LONGFELLOW: We would calculate the maximum  7 density allowed based on the first tract area.  8 MR. BROWN: Thank you. And the fact that you were  9 claiming less than the maximum density doesn't mean that  10 you're calculating the density on some other standard other  11 than gross tract area, does it?  12 MR. LONGFELLOW: I'm sorry, I didn't get that  13 question. I wonder if you could repeat it?  14 MS. ROBESON: Can you repeat it, Mr. Brown?  15 MR. BROWN: The fact that you have to, that you  16 calculate maximum density on gross tract area doesn't give  17 you the option to calculate the density on some other  18 standard, does it, Mr. Longfellow?  19 MR. LONGFELLOW: No, I don't, again, for the  20 maximum density you would calculate it based on the gross  21 tract area to allow the maximum density that you're allowed  22 to propose prior to any bonuses or --  23 MR. BROWN: I gather also it's your testimony that  24 in preparing this Exhibit 73K that you consider it  25 appropriate for green area to be within the right-of-way,</p>
<p style="text-align: right;">Page 79</p> <p>1 MR. LONGFELLOW: Okay. Yes.  2 MR. BROWN: And that's why you have to show the  3 gross tract area on your development plan, right?  4 MR. LONGFELLOW: I'm not sure if it's exactly why  5 it has to be shown but, yes, I would, I would, we'd show it  6 and then in instances where the density is being calculated  7 on that gross tract area then, yes, the --  8 MR. BROWN: I'm sorry, Mr. Longfellow, there's  9 nothing in the statute that talks about an option between  10 choosing between which, which area of the property you  11 calculate your density on. The statute says gross tract  12 area, doesn't it?  13 MR. LONGFELLOW: I believe it does.  14 MR. BROWN: And one who needs to be reassured that  15 the density requirement has been met doesn't look at the net  16 tract area, they look at the gross tract area and they see  17 whether or not the number of units per acre has been met for  18 that gross tract area, correct?  19 MR. LONGFELLOW: I believe the -- can I check it?  20 I believe it's gross area, which in this case the gross area  21 is the 8.11 acres, which is the area defined in our  22 development plan application.  23 MR. KAUFMAN: I'm not quite sure what the question  24 is. I wonder if we could ask the court reporter to repeat  25 the last question?</p>	<p style="text-align: right;">Page 81</p> <p>1 within the dedicated right-of-way?  2 MR. LONGFELLOW: Yes, I do.  3 MR. BROWN: Is that just so long as the street has  4 not built in the green area?  5 MR. LONGFELLOW: We would, again, we would  6 reference the green area definition which says that we can't  7 count vehicular surfaces which are the areas on 73K that are  8 shown in gray. So we don't count those areas, we only count  9 the areas that would meet the definition of green area.  10 MR. BROWN: Let's take Washington Grove Lane, for  11 example.  12 MR. LONGFELLOW: Sure.  13 MR. BROWN: The right-of-way for Washington Grove  14 Lane as shown on Exhibit 73K is, I don't know, somewhere  15 like 20 or 30 feet north of, north of the existing roadway,  16 correct?  17 MR. LONGFELLOW: Yes.  18 MR. BROWN: All right. Now this area shown as  19 green area on this diagram, 73K, adjacent to Washington  20 Grove Lane could be converted to roadway through a widening  21 project for Washington Grove Lane, correct, at some future  22 date?  23 MR. LONGFELLOW: Sure.  24 MR. BROWN: In other words, you would have no  25 control over whether or not that did or did not happen?</p>

<p style="text-align: right;">Page 82</p> <p>1 MR. LONGFELLOW: That's correct.</p> <p>2 MR. BROWN: And if it did happen, it would no</p> <p>3 longer count as green area, would it?</p> <p>4 MR. LONGFELLOW: That's correct. Although, again,</p> <p>5 if I may, the, you know, our belief is that based on the</p> <p>6 8.11 acres of the application that equates to the gross area</p> <p>7 of the development plan which is what we need to base it on,</p> <p>8 which is in this case the 8.11 acres and we need the 50</p> <p>9 percent green area based on that analysis.</p> <p>10 MR. BROWN: You use the word gross area of the</p> <p>11 development plan.</p> <p>12 MR. LONGFELLOW: It's the gross area.</p> <p>13 MR. BROWN: Is there some other area of the</p> <p>14 development plan other than gross area?</p> <p>15 MR. LONGFELLOW: Well, not -- they're one in the</p> <p>16 same and in this case the gross area is the area that was on</p> <p>17 the application as the 8.11 acres. So, again, we initially</p> <p>18 filed the green area calculations based on the gross area of</p> <p>19 the development plan which to keep the nomenclature straight</p> <p>20 is also the net tract area and we demonstrated that we</p> <p>21 complied with the 50 percent green area. We only went down</p> <p>22 this rabbit hole when, with the gross calculations when we</p> <p>23 were asked to by staff to go down that. Just because we're</p> <p>24 asked to do something doesn't mean that we agree that it's</p> <p>25 right, but our client has asked us to try to comply with</p>	<p style="text-align: right;">Page 84</p> <p>1 of this year?</p> <p>2 MR. BROWN: Yes.</p> <p>3 MS. GIRARD: So you can just label it 73A on the</p> <p>4 top corner somewhere.</p> <p>5 MR. LONGFELLOW: 73A.</p> <p>6 MS. ROBESON: Just say 73A, duplicate.</p> <p>7 MR. LONGFELLOW: Okay. Okay. Could you repeat</p> <p>8 the question just so I --</p> <p>9 MR. BROWN: I want, I'm trying to understand what</p> <p>10 differences there are between 73A and 125.</p> <p>11 MR. LONGFELLOW: Sure. So Exhibit 125 was</p> <p>12 developed, I guess, after Mr. Seiboth's testimony, I guess</p> <p>13 he presented an exhibit where he showed the 100-foot arc</p> <p>14 setback from the interception or the, you know, the</p> <p>15 intersection of lot 4 on our western property line. So he,</p> <p>16 I guess, demonstrated in that exhibit that this is what</p> <p>17 would need to occur to provide that 100-foot setback from</p> <p>18 that lot. So this plan, building B was modified to provide</p> <p>19 that setback. In addition, we had to update the unit</p> <p>20 breakdowns for the unit mix on the parking schedule was, you</p> <p>21 know, updated accordingly and we've also re-calculated based</p> <p>22 on the new plan, you know, what our new green area would be</p> <p>23 based on that plan showing the already discussed increase in</p> <p>24 that. And I believe that covers most of the highlights. We</p> <p>25 also updated the parking required table appropriately.</p>
<p style="text-align: right;">Page 83</p> <p>1 every request that we can. That was one of those requests.</p> <p>2 So we, I still contend that that's not the right</p> <p>3 calculation, that the calculation is based on the 8.11 acres</p> <p>4 and the green area provided within that area which is the</p> <p>5 gross area of the development plan for the net tract.</p> <p>6 MR. BROWN: I appreciate your reference to Lewis</p> <p>7 Carroll, Mr. Longfellow. We'll make additional reference to</p> <p>8 him in the closing argument.</p> <p>9 MS. ROBESON: All right.</p> <p>10 MR. BROWN: Let me finally ask you about Exhibit</p> <p>11 125. As compared to Exhibit 73A, I guess it is, the</p> <p>12 difference here is the shortening of building B, correct?</p> <p>13 MR. LONGFELLOW: That's the principle difference.</p> <p>14 We have 73A.</p> <p>15 MR. BROWN: This is the development plan you</p> <p>16 certified in January.</p> <p>17 MR. LONGFELLOW: Okay.</p> <p>18 MR. KAUFMAN: What exhibit is that?</p> <p>19 MS. GIRARD: 73A.</p> <p>20 MR. LONGFELLOW: This board is not marked, but I</p> <p>21 can mark it.</p> <p>22 MS. GIRARD: It's the same exhibit.</p> <p>23 MR. BROWN: I believe it's 73A.</p> <p>24 MS. GIRARD: With the same dates?</p> <p>25 MR. LONGFELLOW: 73A? I certified it January 10</p>	<p style="text-align: right;">Page 85</p> <p>1 MR. BROWN: I guess the question I have and I</p> <p>2 would think the Hearing Examiner as well would want to</p> <p>3 understand which of these two plans you wish to be</p> <p>4 considered the development plan for purposes of the</p> <p>5 application? Do you know the answer to that question?</p> <p>6 MR. LONGFELLOW: I believe we would appreciate the</p> <p>7 original plan being considered with the previous version of</p> <p>8 building B, but I guess I would defer specifically to my</p> <p>9 client to see if he has a preference, if he likes one better</p> <p>10 than the other. I think they, we've demonstrated, I</p> <p>11 believe, that each of the plans, you know, can meet the</p> <p>12 requirements of the zone.</p> <p>13 MR. BROWN: Well, I guess it comes down to your,</p> <p>14 your interpretation of the setback requirement for the</p> <p>15 house, the last house on Daylily Lane. Is it your belief</p> <p>16 that either plan complies with the setback requirement?</p> <p>17 MR. LONGFELLOW: It has been our position that</p> <p>18 the, 100-foot setback, quote, unquote, is not something that</p> <p>19 we felt we were required to satisfy. In areas where we</p> <p>20 could provide greater separation, we have provided that and</p> <p>21 this alternate on Exhibit 125 goes the next step and shows</p> <p>22 what the 100-foot setback from lot 4 would look like.</p> <p>23 MR. BROWN: But it's not the, it's not the</p> <p>24 applicant's proposal at this point, is that correct?</p> <p>25 MR. KAUFMAN: I don't think this witness has the</p>

<p style="text-align: right;">Page 86</p> <p>1 authority to answer that.</p> <p>2 MS. ROBESON: Well, if you don't know, just say</p> <p>3 you don't know.</p> <p>4 MR. LONGFELLOW: I don't know.</p> <p>5 MR. BROWN: Okay. I take it you also don't know</p> <p>6 whether or not the applicant is going to be taking the</p> <p>7 position as shown in the land use summary table on both</p> <p>8 Exhibit 73A and 125 that has the minimum green area</p> <p>9 calculated as a percentage of the gross tract area?</p> <p>10 MS. ROBESON: Which exhibit are you asking him on,</p> <p>11 Exhibit 125?</p> <p>12 MR. BROWN: I'm asking him about both Exhibit 73A</p> <p>13 and 125.</p> <p>14 MS. ROBESON: Okay.</p> <p>15 MR. BROWN: Isn't it correct, Mr. Longfellow, that</p> <p>16 both of those land use summary tables calculate the green</p> <p>17 area based upon those tract area?</p> <p>18 MR. LONGFELLOW: That's correct.</p> <p>19 MR. BROWN: All right. I have nothing further.</p> <p>20 MS. ROBESON: I just have one question. Does your</p> <p>21 rezoning application, does that cover the gross tract area</p> <p>22 or the 8.11?</p> <p>23 MR. LONGFELLOW: To my understanding, that it</p> <p>24 covers the 8.11 acres and that that is what we were to</p> <p>25 consider as the gross area of the application, not to be</p>	<p style="text-align: right;">Page 88</p> <p>1 MS. GIRARD: -- to take the density off it.</p> <p>2 MS. ROBESON: Okay.</p> <p>3 MS. GIRARD: But in this case we're not including</p> <p>4 those rights-of-way for any density.</p> <p>5 MR. KAUFMAN: But the other point is that the</p> <p>6 County treats the right-of-way adjacent to zoning and takes</p> <p>7 on the zoning of the adjacent property.</p> <p>8 MS. ROBESON: Right.</p> <p>9 MS. GIRARD: The lesser.</p> <p>10 MR. KAUFMAN: Yes. All right.</p> <p>11 MS. ROBESON: To the middle of the street?</p> <p>12 MR. KAUFMAN: Right.</p> <p>13 MS. ROBESON: Right.</p> <p>14 MR. KAUFMAN: So even, I mean, you know, depending</p> <p>15 on where we had dug, if you --</p> <p>16 MS. ROBESON: Yes.</p> <p>17 MR. KAUFMAN: -- if the PD was approved, it would</p> <p>18 have extended to the right-of-way, to the middle of the</p> <p>19 street.</p> <p>20 MS. ROBESON: Okay. All right.</p> <p>21 MS. GIRARD: Did you have any additional questions</p> <p>22 before we go forward?</p> <p>23 MS. ROBESON: No. No. You can redirect.</p> <p>24 MS. GIRARD: Mr. Longfellow, just to start</p> <p>25 somewhat at the beginning with going back to storm water</p>
<p style="text-align: right;">Page 87</p> <p>1 confused with the gross tract area.</p> <p>2 MS. ROBESON: Well, the only reason I ask is that</p> <p>3 we just had a case in Bethesda where they had to come back</p> <p>4 for an amendment because they didn't rezone the right-of-</p> <p>5 way. I'm just saying. You know, I haven't looked into</p> <p>6 this. I just know that they came in and had to rezone the</p> <p>7 gross tract area.</p> <p>8 MS. GIRARD: I believe that, was that the Glen,</p> <p>9 was it Glen Alden case?</p> <p>10 MS. ROBESON: No.</p> <p>11 MS. GIRARD: It wasn't?</p> <p>12 MS. ROBESON: No. I can't remember off the top of</p> <p>13 my head.</p> <p>14 MR. KAUFMAN: The --</p> <p>15 MS. GIRARD: Do you know if they were taking</p> <p>16 density off that?</p> <p>17 MS. ROBESON: Oh, you're saying --</p> <p>18 MS. GIRARD: Most likely they were.</p> <p>19 MS. ROBESON: -- that was just to get the extra</p> <p>20 density --</p> <p>21 MS. GIRARD: Right.</p> <p>22 MS. ROBESON: -- that you're not required to</p> <p>23 rezone --</p> <p>24 MS. GIRARD: Because it had to be rezoned --</p> <p>25 MS. ROBESON: -- the right-of-way?</p>	<p style="text-align: right;">Page 89</p> <p>1 management, we discussed 127 and 53. Was Exhibit 53F, which</p> <p>2 is the current Storm Water Management Concept Plan in the</p> <p>3 record, that was approved by DPS?</p> <p>4 MR. LONGFELLOW: Yes, it was.</p> <p>5 MS. GIRARD: And is that Exhibit 53A, the Storm</p> <p>6 Water Management Concept approval?</p> <p>7 MR. LONGFELLOW: I believe it was. Yes. Yes, it</p> <p>8 was.</p> <p>9 MS. GIRARD: And we mentioned that, the color --</p> <p>10 MR. KAUFMAN: Exhibit 127.</p> <p>11 MS. GIRARD: Yes. 127 shows some additional</p> <p>12 measures beyond that that was approved in 53?</p> <p>13 MR. LONGFELLOW: We --</p> <p>14 MS. GIRARD: Is that fair?</p> <p>15 MR. LONGFELLOW: We used the same, you know, storm</p> <p>16 water management strategy, but as the buildings were</p> <p>17 revised, we had to revise the location of the facilities.</p> <p>18 It's the same practice scheme approach to providing storm</p> <p>19 water management, so --</p> <p>20 MS. GIRARD: And at what point would you typically</p> <p>21 get that recertified by DPS?</p> <p>22 MR. LONGFELLOW: Following these proceedings</p> <p>23 because we would want to get that reconfirmed as we move</p> <p>24 forward with the site plan.</p> <p>25 MS. GIRARD: And in your opinion it's more</p>

<p style="text-align: right;">Page 90</p> <p>1 reconfirmation?</p> <p>2 MR. LONGFELLOW: That's correct. That's correct.</p> <p>3 MS. GIRARD: So you don't see any problem with</p> <p>4 getting that approved?</p> <p>5 MR. LONGFELLOW: No, I don't see any problem at</p> <p>6 all with providing everything that they would want to see</p> <p>7 and a bit more.</p> <p>8 MS. GIRARD: Okay. Switching to the green area</p> <p>9 calculations, looking at Section 59C-7.16, which I believe</p> <p>10 we referenced earlier --</p> <p>11 MR. LONGFELLOW: Uh-huh.</p> <p>12 MS. GIRARD: This is the section relating to green</p> <p>13 area. Can you tell me how it says you need to calculate</p> <p>14 that green area?</p> <p>15 MR. LONGFELLOW: All right. It says based on</p> <p>16 percent of gross area.</p> <p>17 MS. GIRARD: And it was your testimony, was it</p> <p>18 not, that the gross area in this case was the 8.11 acres?</p> <p>19 MR. LONGFELLOW: That's correct.</p> <p>20 MS. GIRARD: Do you -- Mr. Brown had indicated the</p> <p>21 density was also, was based in the zone on gross tract area.</p> <p>22 Do you know is there a provision in 59C-7 that calls for</p> <p>23 density to be calculated on gross tract area instead of</p> <p>24 gross area?</p> <p>25 MR. LONGFELLOW: I do not believe so.</p>	<p style="text-align: right;">Page 92</p> <p>1 MS. GIRARD: All right. And to reiterate one more</p> <p>2 time, the reason it's showing up in the development plan is</p> <p>3 the calculation off gross tract area is a result of comments</p> <p>4 from technical staff at Park and Planning?</p> <p>5 MR. LONGFELLOW: That's correct.</p> <p>6 MS. GIRARD: And it was more responsive to their</p> <p>7 request for how to calculate that rather than your</p> <p>8 professional opinion as to how it should be calculated?</p> <p>9 MR. LONGFELLOW: Absolutely.</p> <p>10 MS. GIRARD: Have you ever, are you aware of any</p> <p>11 cases where an applicant has, in a PD zone has been required</p> <p>12 to calculate the gross tract, or calculate green area from</p> <p>13 the gross tract area, but was only allowed to provide it on</p> <p>14 a net tract area?</p> <p>15 MR. LONGFELLOW: I'm not aware of any cases of</p> <p>16 that manner, no.</p> <p>17 MS. GIRARD: And it was your opinion and you</p> <p>18 mentioned that that would be apples to oranges?</p> <p>19 MR. LONGFELLOW: Right. Yes.</p> <p>20 MS. GIRARD: And are you aware of any cases that</p> <p>21 did include, did base their, for right or for wrong --</p> <p>22 MR. LONGFELLOW: Uh-huh.</p> <p>23 MS. GIRARD: -- calculated green area off gross</p> <p>24 tract area, but also included some of the green areas within</p> <p>25 the right-of-way in the provided green area?</p>
<p style="text-align: right;">Page 91</p> <p>1 MS. GIRARD: And have we in this case been</p> <p>2 calculating density off the gross tract area?</p> <p>3 MR. LONGFELLOW: We have not been calculating</p> <p>4 density based on the gross tract area.</p> <p>5 MS. GIRARD: It's just a line in the development</p> <p>6 table, is that correct?</p> <p>7 MR. LONGFELLOW: That's correct. That's correct.</p> <p>8 MS. GIRARD: And to your knowledge there's no</p> <p>9 requirement in this section that requires us to calculate</p> <p>10 density off the gross tract area?</p> <p>11 MR. LONGFELLOW: Not to my knowledge.</p> <p>12 MS. GIRARD: And looking at the definition of</p> <p>13 green area in the zoning area, 59A-2.1, can you just review</p> <p>14 for us one more time how, how you're calculating that and</p> <p>15 why you believe gross area in this case as noted under 59C-7</p> <p>16 of the zoning ordinance, when it talks about gross area for</p> <p>17 calculating green area, it would be the 8.11 acres in this</p> <p>18 case?</p> <p>19 MR. LONGFELLOW: Yes. You know, as I read</p> <p>20 earlier, the first two lines are so of the definition, at</p> <p>21 least on my version that I printed out says that it's, you</p> <p>22 know, when -- it's an area of land, I'll paraphrase, or a</p> <p>23 prescribed portion of the land area encompassed by a</p> <p>24 development plan, in this case the gross area is the area</p> <p>25 encompassed by a development plan which is the 8.11 acres.</p>	<p style="text-align: right;">Page 93</p> <p>1 MR. LONGFELLOW: Yes, I am aware of a case.</p> <p>2 MS. GIRARD: Do you happen to know the name of</p> <p>3 that case?</p> <p>4 MR. LONGFELLOW: I do. That was Case G-808.</p> <p>5 MS. GIRARD: Was that a case that your firm worked</p> <p>6 on?</p> <p>7 MR. LONGFELLOW: Yes, it was.</p> <p>8 MS. GIRARD: One final question. On -- I keep</p> <p>9 making, changing the sentence. The current development plan</p> <p>10 or the one with the 100-foot setback, I'm sorry --</p> <p>11 MR. LONGFELLOW: Oh.</p> <p>12 MS. GIRARD: -- so that would be 126?</p> <p>13 MS. ROBESON: I think it's 125.</p> <p>14 MR. LONGFELLOW: 125.</p> <p>15 MS. GIRARD: 125?</p> <p>16 MR. LONGFELLOW: Yes.</p> <p>17 MS. GIRARD: Sorry. Just to reiterate what we</p> <p>18 discussed earlier, in this plan the existing buildings are</p> <p>19 shown and the proposed building is shown. Do you know</p> <p>20 approximately how much more that proposed building is set</p> <p>21 back from the existing building in relation to the northern</p> <p>22 Daylily lot?</p> <p>23 MR. LONGFELLOW: I could verify. I believe it's</p> <p>24 about an additional 60 to 65 feet, but we could confirm</p> <p>25 that. The proposed building B is, no, 100 feet and the</p>



<p style="text-align: right;">Page 94</p> <p>1 existing building that you're referring to earlier is about  2 70 feet, so we had to move it about another 30 feet or so in  3 that one.  4 MS. ROBESON: Now much taller is building B than  5 the garden that's there?  6 MR. LONGFELLOW: I do not know that answer.  7 MS. GIRARD: That's all I have.  8 MS. ROBESON: Okay. Thank you, Mr. Longfellow.  9 MR. LONGFELLOW: Thank you.  10 MS. ROBESON: That was long.  11 MR. LONGFELLOW: Yes.  12 MR. KAUFMAN: Madame Examiner, on all these  13 witnesses, of course, we reserve the right to bring them  14 back as rebuttal.  15 MS. ROBESON: Oh, certainly. All right. It is  16 noon. How many more witnesses do you have, Mr. Kaufman?  17 MR. KAUFMAN: We have two more I believe.  18 MS. GIRARD: Two more, yes.  19 MS. ROBESON: Okay. And how many do you have?  20 MR. BROWN: I think plenty to take up the  21 afternoon.  22 MS. ROBESON: Okay. I'm just checking. We  23 will -- let's take a 45 minute lunch and we'll come back at  24 12:45. If we can all do that in the cafeteria, that would  25 be good and see if we can get as many people in as possible.</p>	<p style="text-align: right;">Page 96</p> <p>1 MS. ROBESON: And have you testified before any  2 administrative bodies before or courts?  3 MR. FOSTER: Multiple times in front of the  4 Hearing Examiner's Office and also I've been qualified as an  5 expert in Prince George's County as well.  6 MS. ROBESON: All right. I'll qualify him as an  7 expert in landscape architecture.  8 MS. GIRARD: Mr. Foster, are you familiar with  9 rezoning application No. G-93?  10 MR. FOSTER: Yes, I am.  11 MS. GIRARD: And are you familiar with the  12 property that's the subject of the rezoning application?  13 MR. FOSTER: Yes, I am.  14 MS. GIRARD: And are you familiar with the  15 surrounding area?  16 MR. FOSTER: Yes, and I'd like to describe that a  17 little bit. I'm referring to a copy of Exhibit 24 I think  18 it is, which is the approved Natural Resources Inventory and  19 Forest Stand Delineation --  20 MS. ROBESON: Okay.  21 MR. FOSTER: -- that was approved by Maryland  22 National Park and Planning back in 2011. Just describing  23 the general area as it relates to the subject property to  24 the north is the single-family detached neighborhood. It  25 was in Gaithersburg. To the west, excuse me, to the east is</p>
<p style="text-align: right;">Page 95</p> <p>1 Thank you.  2 (Recess)  3 MS. ROBESON: All right. I believe you're about  4 to call your next witness.  5 MS. GIRARD: I'd like to call Kevin Foster.  6 MS. ROBESON: Please raise your right hand.  7 (Witness sworn.)  8 MS. GIRARD: Mr. Foster, can you please state your  9 name and business address?  10 MR. FOSTER: Kevin A. Foster, 3909 National Drive,  11 Suite 250, Burtonsville, Maryland 20866.  12 MS. GIRARD: And Mr. Foster's resume is in the  13 record as Exhibit No. 59B.  14 MS. ROBESON: Okay.  15 MS. GIRARD: I can go through the questions or --  16 MS. ROBESON: Well, are --  17 MS. GIRARD: -- would you seek to --  18 MS. ROBESON: -- are you qualifying him as an  19 expert?  20 MS. GIRARD: As an expert in landscape  21 architecture.  22 MS. ROBESON: Any objections, Mr. Brown?  23 MR. BROWN: No.  24 MS. ROBESON: Are you licensed in Maryland?  25 MR. FOSTER: Yes, I am.</p>	<p style="text-align: right;">Page 97</p> <p>1 Wedgewood 1 and 2 townhouse subdivisions. To the south,  2 several single-family detached houses on the opposite side  3 of Washington Grove Lane within the town of Washington Grove  4 and on the west side there are four single-family homes  5 along Daylily Drive and then there is a larger tree stand  6 area that's called the Westwoods. That tree stand area, my  7 understanding of the history of this area was logged  8 sometime after World War II and is now developed into the  9 tree stand we see today there which is more of a mono-  10 cultural stand of fairly mature poplars with a very tight  11 over-story canopy, very little under-story, pretty heavy,  12 invasive ground cover or under-story within that area.  13 That's basically the surrounding area.  14 MS. GIRARD: And when you were developing this NRI  15 in just your preparation for this hearing and your  16 assessment of existing conditions, have you been working  17 with a certified arborist?  18 MR. FOSTER: Yes, we've been working with Mr.  19 Keith Pitchford.  20 MS. GIRARD: And did he, has he examined your  21 conclusions regarding the health and status of the  22 Westwoods?  23 MR. FOSTER: Yes, he, yes, he has and he pretty  24 much confirms the same analysis for the condition of the  25 Westwoods and really the quality of the stand and what's</p>

<p style="text-align: right;">Page 98</p> <p>1 there today.</p> <p>2 MS. GIRARD: Okay. Do you have photographs of</p> <p>3 existing conditions you wanted to use?</p> <p>4 MR. FOSTER: Yes, I'd like to use Exhibit 24, but</p> <p>5 also I'd like to introduce into the record just some</p> <p>6 photographs that I personally took probably two weeks ago</p> <p>7 and I've put them on a couple of boards just to give</p> <p>8 everyone a better, a clearer understanding of what's out</p> <p>9 there when we're talking about trees because it's --</p> <p>10 MR. FOSTER: Okay.</p> <p>11 MS. GIRARD: -- easy to look on a map and not</p> <p>12 really understand really what's out there, so --</p> <p>13 MS. ROBESON: So I'm going to mark, if you would</p> <p>14 kindly mark that as Exhibit 128? And how would you describe</p> <p>15 that, photos of existing, these are existing trees?</p> <p>16 MR. FOSTER: Yes, this is a photo inventory of</p> <p>17 existing trees.</p> <p>18 MS. ROBESON: Okay. And there's actually two</p> <p>19 sheets with --</p> <p>20 MS. ROBESON: Two sheets?</p> <p>21 MR. FOSTER: Yes.</p> <p>22 MS. ROBESON: Well, this will be A then, if you</p> <p>23 can add an A?</p> <p>24 MR. FOSTER: And 128B.</p> <p>25 MS. ROBESON: And what are the A trees on --</p>	<p style="text-align: right;">Page 100</p> <p>1 community, but it's mostly grassland. There's not a lot of</p> <p>2 landscaping associated with the buildings or the grounds</p> <p>3 themselves. There are basically 14 trees on site that</p> <p>4 qualify as specimen trees under Park and Planning's</p> <p>5 categories.</p> <p>6 Trees in Montgomery County are considered specimen</p> <p>7 trees when they're over 24 inches in diameter and then</p> <p>8 there's another qualifier on that is there are specimen</p> <p>9 trees that are over 30 inches which take special concern.</p> <p>10 So in this case there are, on site there are 14 trees that</p> <p>11 are at least over 24 inches in diameter and this inventory</p> <p>12 of the first four pictures show the major specimen trees</p> <p>13 along Towne Crest Drive, although I did want to point out in</p> <p>14 the original natural resource inventory, trees 3 and 4,</p> <p>15 which were 26-inch white pines that were along Towne Crest</p> <p>16 Drive roughly in the middle of the site, sometime last fall</p> <p>17 were removed by Pepco because of -- from what I understand</p> <p>18 from the superintendent, it was part of their upgrading of</p> <p>19 trying to provide better quality electric service and they</p> <p>20 were concerned about these two trees hanging over the wire.</p> <p>21 So they just ended up disappearing. It was a little bit out</p> <p>22 of our control I think.</p> <p>23 So getting back into the photographs, the first</p> <p>24 four there's a mulberry along Towne Crest Drive, a poplar</p> <p>25 which is picture 3 along Towne Crest Drive, and 4 are some</p>
<p style="text-align: right;">Page 99</p> <p>1 MR. FOSTER: Well --</p> <p>2 MS. ROBESON: -- on Exhibit A, what are these</p> <p>3 trees?</p> <p>4 MR. FOSTER: 128A is two things. On the top of</p> <p>5 128A is a planned view of the subject property and located</p> <p>6 around the subject property there are small circles and</p> <p>7 arrows. All of the circles correspond to the photographs</p> <p>8 that are on A and --</p> <p>9 MS. ROBESON: Okay.</p> <p>10 MR. FOSTER: -- and B. And there's also an arrow</p> <p>11 associated with each circle that gives you the direction</p> <p>12 that the photograph was taken.</p> <p>13 MS. ROBESON: Okay.</p> <p>14 MR. FOSTER: So when you're looking at the</p> <p>15 photographs, you can orient yourself and see where they were</p> <p>16 taken, okay? And I'm going to start in the northern end of</p> <p>17 the subject property, along Towne Crest Drive up by the edge</p> <p>18 of Saybrooke community by the town of Gaithersburg. And</p> <p>19 photograph 1, wish is the lower left-hand corner of 128A is</p> <p>20 specimen tree 1, which is a red maple.</p> <p>21 Now to describe the whole property itself, I think</p> <p>22 there's been other experts or other testimony about what the</p> <p>23 property is from the buildings and parking lots, but nobody</p> <p>24 has really described it from a, more of a landscape point-</p> <p>25 of-view. There are, obviously this is a bit of an aged</p>	<p style="text-align: right;">Page 101</p> <p>1 white pines right along Washington Grove Lane. And then</p> <p>2 when we get into 128B, these are -- once we're starting</p> <p>3 photograph 5, you're standing on Washington Grove Lane</p> <p>4 looking --</p> <p>5 MS. ROBESON: So that's 5 through what?</p> <p>6 MR. FOSTER: Five through 15.</p> <p>7 MS. ROBESON: Okay. So that will be photo</p> <p>8 inventory --</p> <p>9 MR. FOSTER: Right.</p> <p>10 MS. ROBESON: -- of existing trees 5 through 15?</p> <p>11 MR. FOSTER: Through 15. And 128B, these</p> <p>12 photographs basically comprise the property, the western</p> <p>13 property line along the town of Washington Grove.</p> <p>14 Photograph 5 starts at Washington Grove Lane. This, the</p> <p>15 house that you see in photograph 5 is the first house on</p> <p>16 Daylily. You can see there's a single row of trees along</p> <p>17 the property line and those trees are all on the subject</p> <p>18 property and there's a fence behind it that is directly on</p> <p>19 the property line.</p> <p>20 Now all of these individual trees are not located</p> <p>21 on the forest stand lineation. They're shown was a general</p> <p>22 treed area, but the requirements for Park and Planning is</p> <p>23 not to locate every tree, it's to locate the specimen trees</p> <p>24 or the trees of critical concern. But you do see the</p> <p>25 condition in photographs 5, 6, 7 and 8 of the four houses</p>

<p style="text-align: right;">Page 102</p> <p>1 basically along Daylily, but there's pretty much a single  2 row of trees running along the fence line. So there's not a  3 very broad buffer in that area, just an existing stand of,  4 not really a stand, it's a line of trees that have kind of  5 grown up on their own. It's a mix of mulberries and poplars  6 and red maples. So it's not, it's obviously not a line of  7 trees that were planted. It's typically not trees that  8 would be used that way.  9 Further into the photographs 10, 11, 12, you see  10 more of basically moving up toward the Westwoods itself  11 which is, if we're going back and looking at Exhibit 128A,  12 it's roughly a third of the way up the western property line  13 we get to the Westwoods. And as you can take a look at the  14 Westwoods and you can see there are very large, fairly  15 mature poplars, but if you look at the photographs very  16 closely, you will also see there's a fence, a chain link  17 fence along the Westwoods and that fence is basically on the  18 property line and there are a number of trees along that  19 edge that are on the subject property. So not all of the  20 trees that you see in these photographs are all the  21 Westwoods. Some of these trees that are on the subject  22 property are going to be removed as part of the, part of the  23 development.  24 And in the natural resources inventory, the trees  25 that are with the larger circles, I am now pointing to 128A,</p>	<p style="text-align: right;">Page 104</p> <p>1 copy from Park and Planning and they didn't have one, so  2 they had to sign one. So that didn't occur until it looks  3 like the end of January.  4 MS. ROBESON: All right.  5 MR. FOSTER: But this, this is the plan.  6 MS. ROBESON: Well, we'll put it in as a new  7 exhibit.  8 MR. FOSTER: Right.  9 MS. ROBESON: Final Planning Board approved  10 forest, Preliminary Forest Conservation Plan.  11 MR. FOSTER: This will be 129?  12 MS. ROBESON: Yes.  13 (Exhibit No. 129 was marked  14 for identification.)  15 MR. FOSTER: That's actually a three-sheet set, so  16 there will be an A, B and a C. Okay. First --  17 MS. ROBESON: Is this sheet A?  18 MR. FOSTER: This is sheet A, Exhibit 129A.  19 MS. ROBESON: And what's that called?  20 MR. FOSTER: Preliminary Forest Conservation Plan.  21 MS. ROBESON: Oh.  22 MR. FOSTER: Okay.  23 MS. ROBESON: I'll just call it sheet 1.  24 MR. FOSTER: Okay.  25 MS. ROBESON: Or what is it? Yes, sheet 1.</p>
<p style="text-align: right;">Page 103</p> <p>1 the trees, the circles, the trees with the circles on them  2 are specimen trees and those circles represent the critical  3 root zones. That's the root zone that has to be evaluated  4 when you're looking at the impacts to those trees. And as  5 part of our analysis, Park and Planning requires us to  6 locate all of those trees basically within 100 feet of the  7 subject property.  8 MS. GIRARD: And can you review for us the  9 compliance of the rezoning application for the forest  10 conservation laws?  11 MR. FOSTER: Certainly. Let's see here. Now I  12 was looking back through the record, this, this is the  13 signed forest conservation plan from Park and Planning and  14 I'm not sure this is actually in the record.  15 MS. ROBESON: Okay.  16 MR. FOSTER: Because I was looking at the plans  17 that were submitted --  18 MS. ROBESON: So this is 129 and the final  19 approved?  20 MR. FOSTER: The final, signed, approved plan. It  21 wasn't signed until 1/29. It was until later that we had  22 realized --  23 MS. ROBESON: I don't -- your latest submission, I  24 think, was 73?  25 MR. FOSTER: Right. We had requested a signed</p>	<p style="text-align: right;">Page 105</p> <p>1 MR. FOSTER: This is sheet 1 of 3.  2 MS. ROBESON: Okay.  3 MR. FOSTER: Now Exhibit 129A is the planned view  4 and charts as part of the Preliminary Forest Conservation  5 Plan. As part of the requirements, we're required to  6 analyze the impacts of the proposed development on the  7 existing trees on site and any other impacts that this  8 proposed development would have. We're also required to  9 meet a minimum forest threshold on any site. For this site,  10 the minimum threshold is 15 percent. Based on the analysis  11 done with the NRIFST, there is no existing forest on site  12 today. So one of the things that we have to do as part of  13 the forest conservation plan is bring the site up to the  14 minimum threshold and we'll go into that with the later  15 sheets.  16 But the purpose really of sheet 1 of the  17 Preliminary Forest Conservation Plan was to identify all  18 the, since there's no forest, is really identify the impacts  19 to specimen trees, those are trees 24 to 30 inch and then  20 any special specimen trees I guess you would call them over  21 30 inches in diameter that require a variance from the  22 Planning Board. And on Exhibit 129A, the critical root  23 zones of any of the specimen trees over 30 inches in  24 diameter that were being impacted are shown in blue on the  25 plan view. Their critical root zones are shown in blue and</p>

<p style="text-align: right;">Page 106</p> <p>1 then they're also highlighted on the chart so that it's easy 2 to depict which trees are being impacted. 3       There are, I guess, 14 specimen trees on site over 4 30 inches, excuse me, 14 specimen trees on site that are 24 5 and greater, four of which were 30 inches and greater that 6 will be impacted on site. Three of those were being removed 7 and one was a maple tree on the north end of the site was to 8 remain. 9       There were, I think, 14 trees along the edge of 10 the property that were actually located in part of the 11 Westwoods that were being impacted. You can see all of the 12 critical root zones of a lot of these trees along the edge 13 and as part of the Preliminary Forest Conservation Plan, we 14 were planning, we had proposed to do significant progressive 15 tree pruning, crown cleaning, implementation of root growth 16 regulator on these trees to try to minimize the impacts of 17 these trees. So all of the trees that you see in blue, we 18 were confident we could construct the buildings, install the 19 utilities, impact the trees, but provide the work necessary 20 to try to save as many of the trees along that edge as 21 possible. 22       And as part of the approval from Park and Planning 23 in the resolution, there were also specific requirements put 24 on the applicant as far as the Forest Conservation Plan goes 25 that we have to at the time of the site plan, if this gets</p>	<p style="text-align: right;">Page 108</p> <p>1 in here somewhere, is a specimen tree mitigation plan. As 2 part of the request for a variance to impact tree of 30-inch 3 caliper were larger. We also were providing mitigation for 4 impacting those trees and the current plan has removal on 5 site of four trees and Park and Planning's policy now is 6 that for every four inches in diameter of tree that is 7 removed, you have to replace that with one inch of new trees 8 planted at a minimum three inches in size. So the plan 9 shows the mitigation that would be required for the 10 placement of the four onsite trees that were going to be 11 removed. It's a combination of, it looks like sour wood and 12 black gum that we are planting, which are native species 13 that we are going to be planting as part of the 14 redevelopment. 15       MS. GIRARD: And you mentioned variances were 16 necessary for the removal of trees on site. Were those 17 granted by the Planning Board? 18       MR. FOSTER: Yes, they were. 19       MS. GIRARD: Letters in the record from residents 20 of the town expressed concern over the loss of the trees in 21 the Westwoods. Do you believe there will be significant 22 loss of trees in the Westwoods as a result of the proposed 23 redevelopment? 24       MR. FOSTER: No, I don't. I think, I think in 25 combination with our arborist have taken a look at it and</p>
<p style="text-align: right;">Page 107</p> <p>1 rezoned and this moves forward to site plan, we have to 2 provide a tree safe plan as a component of final site plan 3 that would address all the impacts of trees along the 4 Washington Grove municipal boundary and that we have to work 5 with, work with the town on any of these off site trees and 6 any possible mitigation. But that was a requirement of the 7 resolution which I think is the exhibit in the record. 8       MS. GIRARD: 73L. 9       MR. FOSTER: Okay. Exhibit 73L. The second and 10 third sheet of the Forest Conservation Plan, the page 2 is 11 the tree canopy coverage. As part of the forest 12 conservation plan requirements, as I mentioned earlier, we 13 have to bring the site up to the minimum threshold because 14 this is considered a redevelopment of an existing site, 15 Prince George's, Montgomery County regulations allow us to 16 use tree cover to meet the minimum requirements in 17 redevelopment sites and sites that have higher densities. 18 Sheet 2, which is 129B, is used to demonstrate conceptual 19 landscape plan which shows all of the proposed trees planted 20 around the proposed buildings and the credit that we're 21 going to be getting for those trees to create that tree 22 canopy to bring the site up to the 15 percent minimum. So 23 that's, that's really the purpose of this sheet is to 24 demonstrate that tree coverage. 25       And then sheet 3 of the set, which is 129C, it's</p>	<p style="text-align: right;">Page 109</p> <p>1 we're proposing some -- really what they are today is state- 2 of-the-art actions to try to mitigate and help protect these 3 trees using progressive root burning, which is -- you 4 usually start two or three years out in front of the 5 development and the first year out you would prune a third 6 of the impact and the next year you would prune another 7 third of the impact. So by the time you get ready to 8 construct the buildings you've really created a situation in 9 the ground where the trees are much better at being able to 10 deal with that root loss. So it's a combination of that, of 11 crown cleaning, trying to reduce the overhead canopy area of 12 the trees, put, and putting growth regulator on the trees to 13 reduce the amount of leaf growth and water required while 14 you're doing construction so that it's putting that much 15 less stress on the trees while you're building. So I think 16 with all of those things that we're proposing, we're going 17 to, we're really trying hard not to impact the trees in the 18 Westwoods. 19       MS. GIRARD: And in your collaboration with the 20 arborist on the Westwoods, did he supply you with a letter 21 regarding his thoughts on the Westwoods? 22       MR. FOSTER: Yes. He did provide a letter to my 23 client describing his thoughts about the Westwoods. This 24 will -- 25       MS. GIRARD: This is 15?</p>

<p style="text-align: right;">Page 110</p> <p>1 MR. FOSTER: Yes, it is.</p> <p>2 MS. ROBESON: Well, is this -- are you introducing</p> <p>3 this as a new exhibit?</p> <p>4 MS. GIRARD: Yes.</p> <p>5 MS. ROBESON: Exhibit 130, letter -- thank you,</p> <p>6 letter dated February 22, 2013, from Keith Pitchford.</p> <p>7 (Exhibit No. 130 marked</p> <p>8 for identification.)</p> <p>9 MS. ROBESON: Okay. Go ahead. Mr. Brown, do you</p> <p>10 have any objections?</p> <p>11 MR. BROWN: This is not a -- I thought I was going</p> <p>12 to read a letter from Mr. Pitchford about the efficacy of</p> <p>13 the progressive root growing process. This is a, this is a</p> <p>14 critique of the Westwoods. I don't see what relevance it</p> <p>15 has to this proceeding.</p> <p>16 MS. ROBESON: Do you want to proffer the</p> <p>17 relevance, Ms. Girard?</p> <p>18 MR. BROWN: Yes, the relevance or proffer.</p> <p>19 MS. ROBESON: Oh, well, yes, go ahead.</p> <p>20 MS. GIRARD: I'll let Mr. Kaufman speak.</p> <p>21 MR. KAUFMAN: Do you want to do it?</p> <p>22 MS. GIRARD: No, you can.</p> <p>23 MR. KAUFMAN: It's very significant because</p> <p>24 Westwoods is not a sustainable stand of trees. And if</p> <p>25 nothing happened, these trees will disappear because they</p>	<p style="text-align: right;">Page 112</p> <p>1 a number of things to this community which they have</p> <p>2 rejected to help save these woods. And so on the one hand I</p> <p>3 don't see how you can argue that you're destroyed our woods</p> <p>4 when you know that as a matter of fact you have a stand of</p> <p>5 trees which is not healthy and on the other hand say, well,</p> <p>6 we're not going to accept anything that you would do to help</p> <p>7 us because we don't want you to redevelop your property.</p> <p>8 MS. ROBESON: Well, you know, I see how that in</p> <p>9 the negotiation aspect of this that may be relevant. I</p> <p>10 really don't see the relevance as to, as to this application</p> <p>11 under the standards. I mean --</p> <p>12 MR. FOSTER: Well, you have an expert here who is</p> <p>13 basically telling you what the condition of the tree stand</p> <p>14 is.</p> <p>15 MS. ROBESON: Yeah.</p> <p>16 MR. FOSTER: We have an issue in this case which</p> <p>17 is we want to protect our woods and so, you know, the two</p> <p>18 are intertwined with each other. I mean you can't just say</p> <p>19 put your head in the sand and say, okay, we've got a problem</p> <p>20 here, but we're just going to ignore it. We have an</p> <p>21 application here that has proposed forest mitigation and has</p> <p>22 proposed, you know, a number of techniques, best practices</p> <p>23 to preserve. You know, in other words, you know, you can't,</p> <p>24 you can't on the one hand say you're destroying my woods and</p> <p>25 on the other hand say, you know, the quality is pristine.</p>
<p style="text-align: right;">Page 111</p> <p>1 are not sustainable. It's not what is known as a climax</p> <p>2 forest. And so, you know, the issue of what you do to</p> <p>3 protect the trees that are there, yes, that's significant.</p> <p>4 What's also very significant, and we'll be glad to bring in</p> <p>5 this arborist if you want to hear from him, is that these</p> <p>6 trees are in very bad condition and they are long-term, not</p> <p>7 a healthy stand of woods.</p> <p>8 MS. ROBESON: Well, I guess I don't know of any</p> <p>9 Montgomery County policy or reforest conservation or any</p> <p>10 type of policy that says this forest is going to disappear</p> <p>11 in the near future, so, you know, we can herd. I'm not --</p> <p>12 MR. FOSTER: Well, we're not suggesting that.</p> <p>13 What we are suggesting --</p> <p>14 MS. ROBESON: I know, but I guess I don't -- this</p> <p>15 to me is counter to most of the policies that I have seen</p> <p>16 Montgomery County adopt, so I guess I don't know the</p> <p>17 relevance of it. I mean the best I can say is you're saying</p> <p>18 it doesn't matter what we do to the -- or it doesn't matter</p> <p>19 that much what we do to the woods because they're going to</p> <p>20 disappear?</p> <p>21 MR. FOSTER: No, we're not saying that. We're not</p> <p>22 saying it doesn't matter what happens to these woods. It</p> <p>23 does matter very much what happens to these woods.</p> <p>24 MS. ROBESON: Then why do you have this in here?</p> <p>25 MR. FOSTER: Well, because my client has proposed</p>	<p style="text-align: right;">Page 113</p> <p>1 MS. ROBESON: Well, I guess I haven't heard what</p> <p>2 they're going to say yet.</p> <p>3 MR. FOSTER: No. Well --</p> <p>4 MS. ROBESON: You know, maybe that's the</p> <p>5 disconnect that I'm having because --</p> <p>6 MR. FOSTER: Right.</p> <p>7 MS. ROBESON: -- I've never had an application</p> <p>8 let's, what I'm going to do is exclude it at this time and</p> <p>9 then --</p> <p>10 MR. FOSTER: We can bring it then, sure.</p> <p>11 MS. ROBESON: Yeah. So that is not 130.</p> <p>12 MS. GIRARD: Okay. Just picking back up, but your</p> <p>13 answer -- let me just ask the question again. As currently</p> <p>14 proposed, however, you do not believe there will be</p> <p>15 significant tree loss in the Westwoods as a result of this</p> <p>16 application?</p> <p>17 MR. FOSTER: No, I do not.</p> <p>18 MS. ROBESON: Define significant.</p> <p>19 MR. FOSTER: Well, what we're proposing today we</p> <p>20 think gives all of those trees a good chance of survival.</p> <p>21 MS. ROBESON: Percentage wise, what would the</p> <p>22 chances be?</p> <p>23 MR. FOSTER: Well, I think even on the approved</p> <p>24 forest conservation plan --</p> <p>25 MS. ROBESON: Okay.</p>

<p style="text-align: right;">Page 114</p> <p>1 MR. FOSTER: -- which is, that's not it, I think  2 that issue was brought up on the reforest conservation plan.  3 So Exhibit 129A. You look in the list, there were, of all  4 of the I think 14 trees that are basically along the edge of  5 the Westwoods, there were four that are noted due to the  6 degree of critical root zone impact, these trees, to these  7 trees, the potential exists that they may not ultimately  8 survive. However, vigorous tree save measures will be taken  9 to attempt to save each of these trees, including pervasive  10 root printing over a number of years in advance of  11 construction, application of tree growth regulator and crown  12 cleaning. So when we were looking at that, we figured there  13 were four trees that, out of the 14 that there posed some  14 risk to. Is that a 50/50 or 60/40? It's hard to tell. It  15 depends on the, you know, the trees themselves.  16 MS. ROBESON: Yes.  17 MR. FOSTER: But --  18 MS. ROBESON: Maybe I'll do it this way. What is  19 your plan for saving the Westwoods, any impact on Westwood  20 trees?  21 MR. FOSTER: Those are the trees we're talking  22 about.  23 MS. ROBESON: Oh, it is?  24 MR. FOSTER: Yes.  25 MS. ROBESON: Oh, okay. I'm sorry. I'm --</p>	<p style="text-align: right;">Page 116</p> <p>1 is really a single row of trees right along the edge of the  2 property and you can see these trees are relatively tall.  3 MS. ROBESON: Which numbers, just so when I go  4 back and read the --  5 MR. FOSTER: Okay.  6 MS. ROBESON: -- read the transcript, which  7 numbers show the Daylily transition?  8 MR. FOSTER: The Daylily lots are shown on photos  9 5 through 10.  10 MS. ROBESON: Okay.  11 MR. FOSTER: Okay? It's basically everywhere you  12 see a solid wood fence.  13 MS. ROBESON: Okay.  14 MR. FOSTER: Once you get past the solid wood  15 fence and you get to the Westwoods, that's a chain link  16 fence.  17 MS. ROBESON: Okay.  18 MR. FOSTER: So it's pretty clear in the, you  19 know, you can see the fence behind the trees that are on the  20 subject property and any of the trees that were on the  21 subject property, yes, they are proposed --  22 MS. ROBESON: Okay.  23 MR. FOSTER: -- to be removed, but we're not  24 proposing to remove any trees on any of the Daylily lots.  25 MS. ROBESON: Okay.</p>
<p style="text-align: right;">Page 115</p> <p>1 MR. FOSTER: Yes. Yes, those trees that I was  2 talking about were just those.  3 MS. ROBESON: Okay.  4 MR. FOSTER: Yeah.  5 MS. ROBESON: All right. That's helpful.  6 MR. FOSTER: Okay.  7 MS. GIRARD: Was there more you wanted to say on  8 that or was that --  9 MR. FOSTER: No, that was it.  10 MS. GIRARD: Okay.  11 MS. ROBESON: Okay.  12 MS. GIRARD: There are also letters in the record  13 and you hit on this a little bit in your pictures, but  14 there's letters in the record, including one from, I  15 believe, an arborist associated with Washington Grove  16 suggesting an existing wooded buffer between the subject  17 property and the Daylily lots and some letters suggest maybe  18 even trees on the Daylily lots themselves would be removed  19 as part of the redevelopment. Can you review that for us?  20 MR. FOSTER: Sure.  21 MS. ROBESON: Going back to 128?  22 MR. FOSTER: 8B. Again, I think photographs 5  23 through 8, probably 5 through 9 and including 10, 5 through  24 10 on Exhibit 128B show that there's, I think in the letter  25 it talked about a 35-foot wide buffer when, in fact, there</p>	<p style="text-align: right;">Page 117</p> <p>1 MS. GIRARD: And in your opinion, in the future  2 condition, will the tree canopy and landscaping on the  3 property be greater than what exists there today?  4 MR. FOSTER: We're proposing a, I think there's  5 proposed a pretty extensive landscape buffer along that back  6 edge is what's being anticipated. So I would say that there  7 will be a pretty significant buffer along that edge.  8 MS. GIRARD: And what about on the rest of the  9 property, will it be greener than it is today or --  10 MR. FOSTER: Oh, there will be a significant,  11 well, current conditions today is very limited tree cover on  12 the existing property, so the plan that is shown on Exhibit  13 28B, excuse me, 129B, 129B, which is the conceptual  14 landscape plan, that plan in itself meets the minimum  15 requirements of bringing the site up to 15 percent forest  16 cover and that's significantly better than what's there  17 today. That plan itself doesn't even take into  18 consideration, you know, the typical other landscaping  19 that's involved which isn't out there either.  20 MS. ROBESON: What is the distance between the  21 property line and the drive aisle in the rear of all the new  22 buildings?  23 MR. FOSTER: The drive aisle is, you know, a  24 pretty limited area where they're just coming into the --  25 now we're referring to 73A, a duplicate of 73A. And --</p>

<p style="text-align: right;">Page 118</p> <p>1 MS. ROBESON: Well, should you be using 125?</p> <p>2 MR. FOSTER: 125? Okay. 125, the drive aisle</p> <p>3 runs along the edge of the property for about 310 feet and</p> <p>4 it scales, it looks like about five feet from the property</p> <p>5 line.</p> <p>6 MS. ROBESON: Okay. All right.</p> <p>7 MR. FOSTER: Yes, it doesn't run the entire length</p> <p>8 of the property. It's --</p> <p>9 MS. ROBESON: Okay.</p> <p>10 MR. FOSTER: -- just right behind the center of</p> <p>11 the buildings.</p> <p>12 MS. GIRARD: Mr. Foster, in your expert opinion,</p> <p>13 will the proposed zoning request in the PD-35 zone cause any</p> <p>14 adverse effects on the health, safety, security and morals</p> <p>15 or general welfare of the residents, visitors or workers in</p> <p>16 the area?</p> <p>17 MR. FOSTER: It will not.</p> <p>18 MS. GIRARD: And in your expert opinion when the</p> <p>19 proposed zoning classification and proposed development have</p> <p>20 any adverse impact on the environment?</p> <p>21 MR. FOSTER: No, I don't think it will have an</p> <p>22 adverse impact on the environment. In fact, I think in this</p> <p>23 case it would be added tree cover and landscaping that's</p> <p>24 going to be added in the buffering. I think it's actually</p> <p>25 going to be in better condition.</p>	<p style="text-align: right;">Page 120</p> <p>1 we're really seeing here is the projected tree canopy 20</p> <p>2 years after the project begins?</p> <p>3 MR. FOSTER: Yes. Montgomery County, that's how</p> <p>4 they calculate or give you -- that's how they calculate the</p> <p>5 tree cover that you're creating is based on a future median</p> <p>6 tree growth. They use a 20-year canopy.</p> <p>7 MR. BROWN: Okay. Going back to 129A, I'd like to</p> <p>8 ask you about seven particular trees which, as I understand</p> <p>9 it correctly, they are numbered from one to 72, right?</p> <p>10 MR. FOSTER: That's correct.</p> <p>11 MR. BROWN: Okay. So if you could bring your</p> <p>12 Exhibit 129A back up on the board? Could you point out tree</p> <p>13 No. 11 and tell us about it and where it is and what its</p> <p>14 impact is going to be?</p> <p>15 MR. FOSTER: Tree No. 11, tree No. 11 is a 27 1/2</p> <p>16 inch red oak proposed to be saved. It's offsite. It's</p> <p>17 right on the corner of the fifth house on Daylily Lane right</p> <p>18 in the very corner of the property. That's typically, as we</p> <p>19 discussed, that's one of the trees that we've been providing</p> <p>20 the progressive root grooming, ground cleaning, application</p> <p>21 of the growth regulators.</p> <p>22 MR. BROWN: This is -- the chart shows something</p> <p>23 called CRZ impact percentage of 39 percent, is that right?</p> <p>24 MR. FOSTER: Yes.</p> <p>25 MR. BROWN: I'm sorry.</p>
<p style="text-align: right;">Page 119</p> <p>1 MS. GIRARD: Thank you. That's all I have.</p> <p>2 MS. ROBESON: He answered it right. Just, okay,</p> <p>3 go ahead. Go ahead. You don't have any other questions?</p> <p>4 MS. GIRARD: No.</p> <p>5 MS. ROBESON: Mr. Brown.</p> <p>6 MR. BROWN: Good afternoon, Mr. Foster.</p> <p>7 MR. FOSTER: Good afternoon.</p> <p>8 MR. BROWN: You said that the variances, the tree</p> <p>9 variances were approved by the Planning Board, correct?</p> <p>10 MR. FOSTER: Correct.</p> <p>11 MR. BROWN: Do you happen to know whether or not</p> <p>12 those approvals are final or whether they are subject to</p> <p>13 appeal in circuit court?</p> <p>14 MR. FOSTER: I do not know.</p> <p>15 MR. BROWN: Okay. I'm looking at Exhibits 53I, J</p> <p>16 and K because it's a lot easier for me to read those than to</p> <p>17 read Exhibits 129A through C. Do I understand correctly the</p> <p>18 only difference between them is that the Planning Board has</p> <p>19 signed off on the 129, is that right?</p> <p>20 MR. FOSTER: Yes, that's correct.</p> <p>21 MR. BROWN: Okay. Let's start with Exhibit 129B,</p> <p>22 the tree canopy picture, the diagram. The one I have, 53J,</p> <p>23 has the, has the trees shaded in green showing a large</p> <p>24 portion of the green area with tree canopy. Would you</p> <p>25 please let me know if my understanding is correct that what</p>	<p style="text-align: right;">Page 121</p> <p>1 MR. FOSTER: No.</p> <p>2 MR. BROWN: 37 percent, No. 11, 37 percent.</p> <p>3 MR. FOSTER: Okay. Yes, sir.</p> <p>4 MR. BROWN: Is that right?</p> <p>5 MR. FOSTER: Yes.</p> <p>6 MR. BROWN: Is there a sort of a rule of thumb,</p> <p>7 threshold beyond which one is concerned about the survival</p> <p>8 of a tree in terms of the percentage of critical root zone</p> <p>9 impact?</p> <p>10 MR. FOSTER: Well, I think if you talk to a lot</p> <p>11 of, whether it's Park and Planning or other professionals</p> <p>12 doing forest conservation plans, they usually use, you know,</p> <p>13 30 percent as the baseline of when you need to start</p> <p>14 considering, you know, other measures to provide for the</p> <p>15 adequate protection of the trees.</p> <p>16 MR. BROWN: But is there a percentage point that's</p> <p>17 sort of what we might call the point of no return for a</p> <p>18 tree?</p> <p>19 MR. FOSTER: No, I think it's all based on, you</p> <p>20 know, individual trees and that's part of what the final</p> <p>21 tree save plan is all about is, you know, once everything</p> <p>22 gets to final construction, we know exactly where the LOD's</p> <p>23 are and we can go out and individually analyze these trees.</p> <p>24 We look at the individual application that's needed to save</p> <p>25 each and every tree. So, no, there's not a specific line,</p>

<p style="text-align: right;">Page 122</p> <p>1 you know, line in the sand.</p> <p>2 MR. BROWN: Well, I'm trying to get some kind of a</p> <p>3 practical sense here. If you had a 90 percent impact, would</p> <p>4 you bother trying to go through these advanced preparation</p> <p>5 measures?</p> <p>6 MR. FOSTER: Well, I mean I guess it all comes</p> <p>7 down to what the impact is. You know, I've had a lot of</p> <p>8 situations where you have almost 100 percent impact, but</p> <p>9 impact is are you just driving a, needing to drive a truck</p> <p>10 across the critical root zone, so you mat the tree, mat, you</p> <p>11 know, you put matting down and you completely protected it,</p> <p>12 but it's technically an impact. That's what I was saying.</p> <p>13 You have to analyze each tree and what the impact is to be</p> <p>14 able to totally know what's going to happen and that's the</p> <p>15 point of the final tree save plan.</p> <p>16 MR. BROWN: Okay. Without going through all of</p> <p>17 the other additional trees, I'd like to know whether you</p> <p>18 agree with my perception. If you could jot these numbers</p> <p>19 down before you go up to the board, these additional tree</p> <p>20 numbers, in addition to No. 11. 14, 27, 34, 40, 53, 54, and</p> <p>21 72. My question with regard to all of these trees,</p> <p>22 including No. 11, is whether or not each of them meets this</p> <p>23 30 percent initial criteria for concern about damage to</p> <p>24 offsite trees.</p> <p>25 MR. FOSTER: It's about, I mean tree 40?</p>	<p style="text-align: right;">Page 124</p> <p>1 MR. BROWN: Okay. But it is your testimony that</p> <p>2 under the present plan and using the mitigation and advanced</p> <p>3 tree protection efforts that you've outlined on this plan,</p> <p>4 that each one of the trees that I've mentioned by number has</p> <p>5 a good chance for survival under this plan?</p> <p>6 MR. FOSTER: I think as shown on the approved</p> <p>7 forest conservation plan we think we have a good chance of</p> <p>8 those trees surviving, yes.</p> <p>9 MR. BROWN: Okay. Are there any, one last thing,</p> <p>10 are there any specimen trees onsite that are going to be</p> <p>11 saved other than tree No. 1?</p> <p>12 MR. FOSTER: No.</p> <p>13 MR. BROWN: I have nothing further.</p> <p>14 MS. ROBESON: Any redirect?</p> <p>15 MS. GIRARD: No.</p> <p>16 MS. ROBESON: Okay. Thank you, Mr. Foster.</p> <p>17 MR. FOSTER: Thank you.</p> <p>18 MS. GIRARD: Our next witness is Nancy Randall.</p> <p>19 MS. ROBESON: Please raise your right hand.</p> <p>20 (Witness sworn.)</p> <p>21 MS. GIRARD: Ms. Randall, can you state your name</p> <p>22 and business address?</p> <p>23 MS. RANDALL: Yes. My name is Ann N. Randall, go</p> <p>24 by Nancy. My business address is 170 Jennifer Road, Suite</p> <p>25 260, Annapolis, Maryland.</p>
<p style="text-align: right;">Page 123</p> <p>1 MR. BROWN: Yes.</p> <p>2 MR. FOSTER: Okay. They're all, you know, above</p> <p>3 33 percent, which was that point that I stated so, yes, all</p> <p>4 those trees would, you know, require special attention.</p> <p>5 MR. BROWN: And they're all on Washington Grove</p> <p>6 property?</p> <p>7 MR. FOSTER: Let me check that to make sure. Yes,</p> <p>8 it looks like they are.</p> <p>9 MR. BROWN: Okay. Now imagine if you would for a</p> <p>10 moment that building A and building B were to be, were</p> <p>11 required to be set back from the property line something</p> <p>12 like twice the distance that they are currently shown on</p> <p>13 this plan as being set back. Would that reduce the critical</p> <p>14 root zone impact of these trees that I've just talked about?</p> <p>15 MR. FOSTER: Probably not.</p> <p>16 MR. BROWN: And why not?</p> <p>17 MR. FOSTER: Because a sewer line and utilities</p> <p>18 right along that edge that I thought were also being, they</p> <p>19 were going to be impacting those trees as well, so it's just</p> <p>20 moving the buildings I didn't really think changed the</p> <p>21 impact.</p> <p>22 MR. BROWN: Is the sewer line in a position where</p> <p>23 it couldn't be moved?</p> <p>24 MR. FOSTER: That's not really my area of</p> <p>25 expertise.</p>	<p style="text-align: right;">Page 125</p> <p>1 MS. GIRARD: And Ms. Randall's resume is Exhibit</p> <p>2 No. 13D in the record. I believe she recently appeared</p> <p>3 before you --</p> <p>4 MS. ROBESON: Yes.</p> <p>5 MS. GIRARD: -- and was qualified as an expert.</p> <p>6 MS. ROBESON: Do you have any objection to</p> <p>7 qualifying her as a transportation planner?</p> <p>8 MR. BROWN: No objection.</p> <p>9 MS. ROBESON: All right.</p> <p>10 MS. GIRARD: Ms. Randall, are you familiar with</p> <p>11 rezoning application No. G-90?</p> <p>12 MS. RANDALL: I am.</p> <p>13 MS. GIRARD: And are you familiar with the</p> <p>14 property that's the subject of the application?</p> <p>15 MS. RANDALL: I am.</p> <p>16 MS. GIRARD: And are you familiar with the area</p> <p>17 surrounding the property?</p> <p>18 MS. RANDALL: Yes, I am.</p> <p>19 MS. GIRARD: Are you familiar with -- I'm sorry,</p> <p>20 hold on, I'm reading from the wrong -- they're particular</p> <p>21 about switching the order. Bear with me. Now she sent me</p> <p>22 something.</p> <p>23 MS. RANDALL: I think I've got an extra set.</p> <p>24 MS. GIRARD: I've got it. Are you familiar with</p> <p>25 Montgomery County requirements for the review of adequate</p>



<p style="text-align: right;">Page 126</p> <p>1 public facilities and local area transportation review  2 guidelines?  3 MS. RANDALL: Yes, I am.  4 MS. GIRARD: Are you familiar with the approved  5 and adopted Gaithersburg Master Plan and its transportation  6 recommendations for the road network surrounding the subject  7 property?  8 MS. RANDALL: Yes.  9 MS. GIRARD: Have you analyzed the proposed use of  10 the subject property from a transportation planning  11 standpoint?  12 MS. RANDALL: Yes, I have.  13 MS. GIRARD: Can you please describe for us the  14 area roads available, public transportation site access and  15 circulation plan?  16 MS. RANDALL: Yes. I'd like to refer to an aerial  17 exhibit to give you context if that's okay?  18 MS. ROBESON: Sure. Is it in the record?  19 MS. GIRARD: I believe it is.  20 MR. KAUFMAN: I think it's Exhibit A10.  21 MS. ROBESON: Is that marked anywhere by any  22 chance?  23 MS. GIRARD: It is, Exhibit 10.  24 MS. ROBESON: Okay. Thank you.  25 MS. RANDALL: Up in the right-hand corner.</p>	<p style="text-align: right;">Page 128</p> <p>1 points.  2 There is an existing bus stop located right at the  3 intersection with Towne Crest Drive and Washington Grove  4 Road and at that location there is a crosswalk. It's not --  5 the last time I was out there, which was about a month and a  6 half ago, was not well-marked and part of the plan for this  7 project is to restripe that and sign that, and also to  8 provide for a bus shelter which does not exist today at that  9 bus stop.  10 The, as we indicated before, the MARC station down  11 on the central southern portion of Exhibit 10 is located  12 approximately .6 miles from this site, so within --  13 MS. ROBESON: As the crow flies or as you drive?  14 MS. RANDALL: No, as the crow flies. But you can  15 walk through the town of Washington Grove to gain access to  16 that site or you can walk along the edge of Washington Grove  17 and cut over to Railroad Street. But, more importantly, is  18 the bus stop itself has direct lines to the Metro station.  19 The bus goes, there are bus routes that go directly --  20 MS. ROBESON: The Metro or the MARC?  21 MS. RANDALL: No, to the Metro station, Shady  22 Grove --  23 MS. ROBESON: The Metro?  24 MS. RANDALL: -- Metro.  25 MS. ROBESON: Okay.</p>
<p style="text-align: right;">Page 127</p> <p>1 MS. GIRARD: It was the last page of Exhibit 10.  2 MS. ROBESON: Okay. Thank you.  3 MS. RANDALL: The site is located on the center of  4 Exhibit 10 towards the top portion of the exhibit. And for  5 orientation purposes from my testimony, I'm generally going  6 to indicate direction for Washington Grove Road is generally  7 running north-south, Mid-County Highway, which is to the  8 north of the property, generally running east-west, and down  9 at the bottom of the page, the East Diamond and Railroad  10 Street, which form a Y intersection with Washington Grove,  11 are generally running east-west again.  12 MS. ROBESON: Okay.  13 MS. RANDALL: Off the site or off to the edge is  14 the interchange of 370 and the beginning of the ICC. South  15 and slightly to the east of that and, again, off the page is  16 the Metro station. There's a MARC station located down on  17 Railroad Street. And the Washington Grove Road intersection  18 with Towne Crest Drive is located here at the edge of the  19 corner of the property.  20 MS. ROBESON: That's southeast corner?  21 MS. RANDALL: Southeast corner, thank you, of the  22 property. All of the access for the site will be coming out  23 Towne Crest Drive onto Washington Grove Road. Currently the  24 site has four cuts along Towne Crest Drive. That's going to  25 be reduced to two. So we're reducing the number of access</p>	<p style="text-align: right;">Page 129</p> <p>1 MS. RANDALL: Yeah. One other clarification I did  2 see in a citizen letter, they were concerned about the speed  3 limit on Washington Grove Lane. There is a posted speed  4 limit, a legal limit of 30 miles per hour. There is an  5 advisory speed limit which is the yellow sign that you will  6 often see on the road, that is an advisory speed, not a  7 legal speed, and they're recommending going 20 miles per  8 hour over the speed humps that are in Washington Grove Road.  9 MS. GIRARD: And can you review for us the  10 findings and conclusions of your traffic impact analysis  11 which is Exhibit 21A is the original analysis in Exhibit 73E  12 was an update to that?  13 MS. RANDALL: Yes. We prepared for this zoning  14 case, we prepared a traffic impact study in accordance with  15 the LATR guidelines. We scoped out what was required.  16 Given the number of trips that would be generated by the  17 site sets the number of intersections that you're required  18 to look at. Our study intersection was Mid-County Highway  19 and Washington Grove Lane, Towne Crest Drive and Washington  20 Grove Lane and East Diamond, Railroad Street and Washington  21 Grove. Those three intersections were the required areas.  22 MS. ROBESON: Those are all signalized?  23 MS. RANDALL: They are not all signalized. The  24 intersection of Towne Crest and Washington Grove is not  25 signalized. This is a signalized intersection and so is</p>

<p style="text-align: right;">Page 130</p> <p>1 this.</p> <p>2 MS. ROBESON: Okay.</p> <p>3 MS. RANDALL: The counts were conducted. We also</p> <p>4 got information from Park and Planning with regards to</p> <p>5 background developments. We went through the analysis for</p> <p>6 the existing conditions, the background conditions of which</p> <p>7 I believe there were about five. If you can bear with me,</p> <p>8 I'll turn to the right page. There were the Jackson</p> <p>9 property, the residence at Hidden Creek, Archstone at Old</p> <p>10 Town, the Mainheart property, which in other aerial</p> <p>11 photographs is this area that you saw under construction,</p> <p>12 there are about 32 town homes there and then the Casey</p> <p>13 property. Those were the developments that staff requested</p> <p>14 that we include in our analyses.</p> <p>15 Again, we went through the analysis for background</p> <p>16 conditions. Then we added the site traffic to our analysis</p> <p>17 and the site at that time was going to consist of -- I'm</p> <p>18 going to take a step back. We're allowed to take obvious</p> <p>19 credit for the apartments and the town homes that exist on</p> <p>20 the property today. So today there are 60 apartments and 47</p> <p>21 townhomes. Those generate 49 trips in the morning and 68 in</p> <p>22 the evening peak hour.</p> <p>23 The proposed development at the time that we did</p> <p>24 this analysis was going to be 469 dwelling units. That was</p> <p>25 going to generate 191 morning peak hour trips and in the</p>	<p style="text-align: right;">Page 132</p> <p>1 In all cases, all three of the intersections for</p> <p>2 existing background and total future, all three of the</p> <p>3 intersections are below the congestion standard of 1475.</p> <p>4 The intersection that came closest to that 475 was</p> <p>5 Washington Grove and Mid-County Highway during the a.m. peak</p> <p>6 hour with a CLV of 1422.</p> <p>7 After we've gone through and done this based on</p> <p>8 the original plan with 469 dwelling units on the site, over</p> <p>9 time, as you know, through negotiations with the citizens,</p> <p>10 the development quantities have come down substantially. So</p> <p>11 I have prepared a trip generation comparison table that will</p> <p>12 show you the difference between what is being proposed now</p> <p>13 and what was proposed previously.</p> <p>14 The, excuse me, previously we had, which is Table</p> <p>15 1B.</p> <p>16 MS. ROBESON: I'm sorry, is this in the record?</p> <p>17 MS. RANDALL: Oh, no, it is not. I apologize.</p> <p>18 MS. ROBESON: So this is Exhibit 130. Is this,</p> <p>19 you have Table 1A. Is this a supplemental sheet to your --</p> <p>20 MS. RANDALL: This may be an attachment to my</p> <p>21 updated letter which I think did make it into the record.</p> <p>22 MS. ROBESON: Yes, that's in the record. I think</p> <p>23 that was 77.</p> <p>24 MS. RANDALL: Yes, that may very well be a</p> <p>25 duplicate of this. The numbers have changed, tweaked here</p>
<p style="text-align: right;">Page 131</p> <p>1 evening 221. So we would be adding in the morning the</p> <p>2 difference between the 49 and the 191 would be 142 morning</p> <p>3 peak hour trips, sorry, and in the evening we would be</p> <p>4 adding 153. So that is what the analysis was done, is that</p> <p>5 the site is open and occupied, we would be adding additional</p> <p>6 trips, 142 and 153.</p> <p>7 When we add the traffic from that part of the</p> <p>8 development into the intersections and the distribution of</p> <p>9 these trips was based on Montgomery County distribution</p> <p>10 requirements and approved and reviewed before we even start</p> <p>11 the traffic impact study, that, those trips were then</p> <p>12 distributed to the road system. We analyzed again. And</p> <p>13 when we go through all three of the intersections would meet</p> <p>14 or would be well below the congestion standard for these</p> <p>15 intersections.</p> <p>16 MS. ROBESON: What is the distribution?</p> <p>17 MS. RANDALL: The distribution for this site is 45</p> <p>18 percent of the site traffic to and from the southeast via</p> <p>19 Mid-County Highway, so coming off from the southeast, 10</p> <p>20 percent to and from the northwest via Mid-County Highway, 5</p> <p>21 percent to and from the northeast via Washington Grove Lane</p> <p>22 going north toward Howard County, 25 percent to and from the</p> <p>23 northwest via East Diamond Avenue, so they would travel</p> <p>24 south, but then head in that direction. And 15 percent to</p> <p>25 and from the southeast via Railroad Street.</p>	<p style="text-align: right;">Page 133</p> <p>1 and there, every time you turn around there's something</p> <p>2 tweaking the numbers, so --</p> <p>3 MS. GIRARD: 73A was her --</p> <p>4 MS. ROBESON: Okay.</p> <p>5 MS. GIRARD: -- updated letter.</p> <p>6 MS. ROBESON: Was this identical to 73A?</p> <p>7 MS. RANDALL: I believe it is.</p> <p>8 MR. KAUFMAN: We'll check it to make sure. Let us</p> <p>9 make sure it's identical.</p> <p>10 MS. ROBESON: Okay.</p> <p>11 MR. KAUFMAN: There might be a slight difference.</p> <p>12 MS. ROBESON: That's what I just wanted to double-</p> <p>13 check it.</p> <p>14 MR. BROWN: What's the number?</p> <p>15 MS. GIRARD: 73A. No, E, 73E, sorry.</p> <p>16 MR. KAUFMAN: Madame Examiner, while we're</p> <p>17 waiting, one of the citizens from Wedgewood 1 has come in</p> <p>18 and I'm wondering if we finish this witness, if we --</p> <p>19 MS. ROBESON: Sure.</p> <p>20 MS. RANDALL: Yes, it is the same.</p> <p>21 MS. ROBESON: Okay. So we're looking at a</p> <p>22 duplicate of 73, I'm sorry, what letter?</p> <p>23 MR. KAUFMAN: E.</p> <p>24 MS. RANDALL: In that letter, I describe a --</p> <p>25 MS. ROBESON: Oh, attached is tables 1 -- I see</p>

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1 it.

2 MS. RANDALL: Yeah. Okay.

3 MS. ROBESON: I didn't see that part.

4 MS. RANDALL: Yes.

5 MS. ROBESON: Okay.

6 MS. RANDALL: And in that table we were, we had,

7 we now had 329 dwelling units replacing the 107 that are

8 there today. So now instead of in our previous analysis

9 where we were working with 142, which is shown in Table 1B,

10 the old analysis table, 142 trips, we're now looking at 87

11 a.m. trips.

12 MS. ROBESON: Okay.

13 MS. RANDALL: And in the p.m. peak hour we're now

14 working with 92 trips versus the 153.

15 MS. ROBESON: Okay. Did you say 87?

16 MS. RANDALL: 87 a.m. peak hour trips.

17 MS. ROBESON: Oh, I see it. Okay.

18 MS. RANDALL: And 92 in the p.m. peak hour.

19 MS. ROBESON: Okay.

20 MS. RANDALL: So the impact at this project would

21 decrease obviously based on the decrease in the number of

22 trips from what we had done in this original analysis.

23 MS. GIRARD: Is there anything else you wanted to,

24 anything else?

25 MS. RANDALL: Yes. In addition to that, looking

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1 at the time in which we started this project, and just under

2 the abundance of caution, we also went out recently and

3 recounted all three of these intersections. We recounted

4 the intersection of Washington Grove and Mid-County Highway,

5 Towne Crest Drive and Washington Grove Lane, as well as East

6 Diamond and Railroad Street and Washington Grove. And all

7 three of the intersections had volumes that had been reduced

8 or equal to what we had in our previous analysis. And I do

9 have copies for the record of those three counts.

10 MS. ROBESON: All right. And that would be 130?

11 And how would you describe this, updated traffic counts?

12 MS. RANDALL: Yes. There are three separate

13 intersections and updated counts.

14 MS. ROBESON: Any objections, Mr. Brown?

15 MS. RANDALL: And then I'll give Mr. Brown a

16 complete packet as well.

17 MS. GIRARD: I just gave him one.

18 MS. RANDALL: Oh, you did? Okay. I thought

19 this --

20 MR. KAUFMAN: Is it more than one sheet or just

21 one sheet?

22 MS. GIRARD: There are three sheets.

23 MS. RANDALL: There are three separate sheets.

24 MR. KAUFMAN: Okay. So I don't know if Dave has

25 all three sheets.

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1 MS. GIRARD: If you passed them along?

2 MR. KAUFMAN: Oh, one, two --

3 MS. GIRARD: Those are --

4 MS. ROBESON: Okay.

5 MS. RANDALL: In addition to that, with the new

6 development quantities and with the new turning movement

7 counts, and I apologize, I will bring this, I'm fairly

8 certain the record will not be closing today. I did not

9 bring with me the CLV worksheets, but we did re-analyze all

10 three intersections and with the new development quantities.

11 And in this case the intersection of Washington Grove and

12 Mid-County Highway, which was previously had a CLV of, I

13 believe, 1422 if my memory serves me that --

14 MS. ROBESON: That's what you said.

15 MS. RANDALL: -- five seconds ago is now, has a CLV

16 of 1390 --

17 MS. ROBESON: Okay.

18 MS. RANDALL: -- with a reduction of trips and the

19 new count information. Well, it's just one copy.

20 MS. GIRARD: Okay.

21 MS. ROBESON: Wait. Is that in addition to what

22 you gave me as Exhibit 130, which are the updated --

23 MS. RANDALL: Just the turning movement counts.

24 And this is the results --

25 MS. ROBESON: Okay.

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1 MS. RANDALL: -- of the CLV analysis. And what I

2 did not bring with me, Madame Hearing Examiner, were the

3 actual critical lane calculation worksheets, so I will make

4 sure that the record has those.

5 MS. ROBESON: Okay. I'm just going to label this

6 as a different exhibit and this would be the --

7 MS. RANDALL: Updated CLV analysis?

8 MS. ROBESON: Right. These are the actual counts

9 and these are the --

10 MS. RANDALL: Critical lane volume analysis.

11 MR. KAUFMAN: Can we just have when these were

12 done last?

13 MS. RANDALL: Yes, at the top of each one of these

14 counts it gives the date which was in the first full week of

15 February, February 6th. I'm sorry, to make the record

16 complete, February 6th of this year.

17 MS. ROBESON: Yes.

18 MR. KAUFMAN: Madame Examiner, we can provide to

19 the record the CLV worksheets if you'd like them.

20 MS. ROBESON: The CLV worksheets?

21 MR. KAUFMAN: I mean the --

22 MS. RANDALL: Yes, this table that I gave to you

23 with the CLV Table 2A and 2B.

24 MS. ROBESON: Yes.

25 MS. RANDALL: There were calculations that go

<p style="text-align: right;">Page 138</p> <p>1 with --</p> <p>2 MS. ROBESON: Right.</p> <p>3 MS. RANDALL: -- the results. These are just</p> <p>4 reporting the results of that calculation, so --</p> <p>5 MS. ROBESON: Why don't you just bring them when</p> <p>6 you, or submit them when you have the opportunity?</p> <p>7 MS. RANDALL: Okay.</p> <p>8 MS. ROBESON: I would like them in here to --</p> <p>9 MR. KAUFMAN: That's what I was going to do.</p> <p>10 MS. RANDALL: Yes. Yes. And my apologies.</p> <p>11 MS. ROBESON: Yes, that's fine.</p> <p>12 MS. GIRARD: One point of clarification, you</p> <p>13 mentioned the proximity to the MARC station and the direct</p> <p>14 bus line to the Metro. Was any credit taken in your</p> <p>15 analysis for --</p> <p>16 MS. RANDALL: None.</p> <p>17 MS. GIRARD: Okay.</p> <p>18 MS. RANDALL: We took no reductions for the</p> <p>19 available transit adjacent to the property. Again, as a</p> <p>20 worse case, we looked at this using the straight trip</p> <p>21 generation rates as required by the local area</p> <p>22 transportation review.</p> <p>23 MS. GIRARD: And did Park and Planning staff</p> <p>24 evaluate the traffic impact analysis?</p> <p>25 MS. RANDALL: They did.</p>	<p style="text-align: right;">Page 140</p> <p>1 MS. RANDALL: Oh, okay. That does have a -- thank</p> <p>2 you.</p> <p>3 MS. ROBESON: We're only in the 130's.</p> <p>4 MR. KAUFMAN: We've got lots of numbers left.</p> <p>5 MS. ROBESON: We've had cases in the three and</p> <p>6 400's, but I appreciate it. We're back on -- which exhibit</p> <p>7 is this?</p> <p>8 MR. KAUFMAN: 10.</p> <p>9 MS. ROBESON: 10?</p> <p>10 MS. GIRARD: No.</p> <p>11 MS. ROBESON: No, it's not, because there's not as</p> <p>12 much as Washington Grove.</p> <p>13 MS. RANDALL: Don't even see a label on this one,</p> <p>14 so --</p> <p>15 MR. KAUFMAN: I don't know if that one has been</p> <p>16 introduced yet.</p> <p>17 MS. ROBESON: Okay. I'd like that in there</p> <p>18 somewhere.</p> <p>19 MS. GIRARD: No, it is 10. 10 has an A and a B.</p> <p>20 One is at 100 scale and one is at 200 scale.</p> <p>21 MS. RANDALL: Oh, okay.</p> <p>22 MS. ROBESON: So it is the 100 scale?</p> <p>23 MS. RANDALL: It seemed like --</p> <p>24 MS. GIRARD: Yes.</p> <p>25 MS. ROBESON: I just need to make sure --</p>
<p style="text-align: right;">Page 139</p> <p>1 MS. GIRARD: And what were their conclusions?</p> <p>2 MS. RANDALL: They agreed with our conclusions.</p> <p>3 MS. GIRARD: Can you --</p> <p>4 MS. ROBESON: I'm sorry, is that the updated one?</p> <p>5 MS. RANDALL: They did --</p> <p>6 MS. ROBESON: Or the original one?</p> <p>7 MS. RANDALL: The original one.</p> <p>8 MS. ROBESON: Okay.</p> <p>9 MS. RANDALL: We did not provide this. This</p> <p>10 update was just to ensure that over the period of time that</p> <p>11 things had not changed.</p> <p>12 MS. GIRARD: But it's your opinion that staff's</p> <p>13 analysis of, wouldn't change based on this?</p> <p>14 MS. RANDALL: That's correct. I do not believe</p> <p>15 that staff's analysis would change or their review or</p> <p>16 recommendations.</p> <p>17 MS. GIRARD: And can you describe for us the</p> <p>18 pedestrian circulation in and around the site?</p> <p>19 MS. RANDALL: Yes. Throughout the site, and maybe</p> <p>20 it would be better to bring up a different exhibit which, an</p> <p>21 aerial again, but a little bit closer. Again, just for</p> <p>22 orientation purposes, I'm just going to refer to Washington</p> <p>23 Grove as running south.</p> <p>24 MS. GIRARD: And rather than have to enter another</p> <p>25 exhibit, we're going to find a different exhibit.</p>	<p style="text-align: right;">Page 141</p> <p>1 MS. GIRARD: Yes.</p> <p>2 MS. RANDALL: Yes.</p> <p>3 MS. GIRARD: Yes.</p> <p>4 MS. RANDALL: Yes.</p> <p>5 MS. GIRARD: On the bottom left, it says 100</p> <p>6 scale. Yes.</p> <p>7 MS. ROBESON: So this is 10B?</p> <p>8 MS. RANDALL: 10A.</p> <p>9 MS. ROBESON: 10A?</p> <p>10 MS. GIRARD: Yes.</p> <p>11 MS. ROBESON: Do you mind --</p> <p>12 MS. RANDALL: Not at all.</p> <p>13 MS. ROBESON: -- marking it 10A duplicate?</p> <p>14 MS. RANDALL: Again, Washington Grove Lane and</p> <p>15 there is a pedestrian path that runs along the east side of</p> <p>16 Washington Grove Lane. And we will be adding, which there</p> <p>17 are no sidewalks today along our property, and we'll be</p> <p>18 adding sidewalks along our property frontage, as well as</p> <p>19 sidewalks along the entire length that the property internal</p> <p>20 along Towne Crest, as I mentioned earlier, will be enhancing</p> <p>21 the existing pedestrian crosswalk that's marked crosswalk,</p> <p>22 the fated bus stop and bus shelter. The path system</p> <p>23 continues on where you can then connect in with the various</p> <p>24 roads within the town of Washington Grove. And then there</p> <p>25 are sidewalks that come up to Mid-County Highway. Also note</p>

<p style="text-align: right;">Page 142</p> <p>1 there is bus stops up at the intersection of Mid-County  2 Highway and Washington Grove Road. There's a bus stop and  3 station at that location as well.  4 MS. GIRARD: And you mentioned the sidewalk along  5 Washington Grove Lane and our property frontage. Will that  6 sidewalk extend down Towne Crest Drive as well?  7 MS. RANDALL: It will and that's what I had  8 indicated. It runs along the entire length of the property  9 within Towne Crest Drive, sorry.  10 MS. ROBESON: Oh, okay. I have it.  11 MS. RANDALL: It will start here and then continue  12 all the way back --  13 MS. ROBESON: Right.  14 MS. RANDALL: -- through.  15 MS. ROBESON: Yes. Sorry.  16 MS. GIRARD: And we alluded to this earlier, but  17 as part of the redevelopment, will any changes, are any  18 changes proposed to that bus stop and the crosswalk?  19 MS. RANDALL: Yes, there are. As I described,  20 we're going to enhance that. The crosswalk will be  21 repainted with better, advanced signing and marking to  22 indicate the upcoming crosswalk, as well as putting in a bus  23 shelter for the bus stop that is located there today.  24 MS. GIRARD: And existing traffic and any improved  25 road improvements, in your expert opinion are nearby roads</p>	<p style="text-align: right;">Page 144</p> <p>1 MS. ROBESON: The updated CLV analysis, Table 2A?  2 MR. BROWN: Yes.  3 MS. ROBESON: Yes.  4 MR. BROWN: 131? I notice on here that the  5 critical lane volumes in the updated study are generally  6 lower, except along the morning traffic on Washington Grove  7 Lane at East Diamond Avenue. Is that, am I reading this  8 correctly?  9 MS. RANDALL: If I am -- are you comparing total  10 future or are you comparing existing? Which --  11 MR. BROWN: On all three.  12 MS. RANDALL: Okay. It went up slightly from 873  13 in the morning peak hour to 888.  14 MS. ROBESON: Wait a minute. Where are you on  15 Exhibit 131?  16 MR. BROWN: I'm in intersection 3.  17 MS. RANDALL: Comparing intersection 3 with Table  18 2A versus Table 2B?  19 MR. BROWN: And the morning, just the morning  20 traffic.  21 MS. ROBESON: Oh, I see, okay.  22 MS. RANDALL: Yes. And, yes, as I had indicated,  23 the volume had gone down, generally gone down. But when  24 you're working with critical lane volume, it is the  25 summation of different movements. So a particular movement</p>
<p style="text-align: right;">Page 143</p> <p>1 adequate to serve the proposed development?  2 MS. RANDALL: They are.  3 MS. GIRARD: And in your opinion will the proposed  4 zoning classification and development have any detrimental  5 effect on vehicular or pedestrian traffic or safety?  6 MS. RANDALL: It will not.  7 MS. GIRARD: In your opinion, based on your  8 testimony and study, will the proposed zoning classification  9 and development cause any adverse effect on the health,  10 safety, security, morals or general welfare of residents,  11 visitors or workers in the area?  12 MS. RANDALL: No, it will not. In fact, it will  13 enhance, as I indicated, with the crosswalk and the bus  14 stop. I believe it will be to a benefit.  15 MS. GIRARD: Finally in conclusion, in your expert  16 opinion from the standpoint of traffic impacts, is the  17 proposed zoning classification and development suitable for  18 the subject property and compatible with the surrounding  19 neighborhood?  20 MS. RANDALL: It is.  21 MS. GIRARD: That's all I have.  22 MS. ROBESON: Okay. Mr. Brown.  23 MR. BROWN: Good afternoon, Ms. Randall. Just a  24 few things. Looking first at this latest exhibit, is this  25 131?</p>	<p style="text-align: right;">Page 145</p> <p>1 may have gone up, but others may have gone down which is why  2 rather than just doing the turning movement count, we went  3 through the exercise of also running the CLV to be sure.  4 MR. BROWN: I was just wondering why the numbers  5 went up at intersection 3, but went down at the other two  6 intersections, whether you had any thoughts on why that  7 happened.  8 MS. RANDALL: Again, without going through and  9 looking at a specific movement, it may be that there was a  10 change in the volume on East Diamond or on East Railroad  11 that would not affect nor would turn onto Washington Grove  12 or up to Mid-County.  13 MR. BROWN: When you did your transportation  14 analysis, did you happen to evaluate what the public  15 transportation options were for the residents of Towne Crest  16 in 1985?  17 MS. RANDALL: No, and I don't know that I would  18 have a way to go back historically to find out what the  19 transportation options were in 1985.  20 MR. BROWN: Did you study the scheduled bus time  21 or the direct bus service from the bus stop at the frontage  22 of the property on Washington Grove to Shady Grove Metro?  23 MS. RANDALL: Yes. As part of the LATR  24 requirements, the bus route information is contained without  25 our LATR report with the stops and scheduled times for both</p>

<p style="text-align: right;">Page 146</p> <p>1 the Mid-County Highway, as well as other bus routes within  2 the area. We didn't look just at what's immediately  3 adjacent to site, but what's available within the area.  4 But, again, we took no reduction. We made no assumption  5 with regards to bus or transit ridership with our trip  6 generation.  7 MR. BROWN: If someone wanted to rely on public  8 transit and live in the Towne Crest development, they would,  9 as I understand it, they would either, they would either  10 take the bus to MARC or take the bus to the Shady Grove  11 Metro, is that right?  12 MS. RANDALL: Well, they could rely on bus and  13 take the route wherever the route may go. The route doesn't  14 just go to the MARC station or to the Shady Grove Metro. In  15 the case of Shady Grove Metro, they could catch other buses  16 so that they could take other locals if Metro was not of  17 their choosing. Some of the routes that are better noted  18 within the report take individuals into Gaithersburg. They  19 have several different routings. It's not just selectively  20 to the MARC station or to the Metro station.  21 MR. BROWN: And where does the MARC rail connect  22 with the Metro system?  23 MS. RANDALL: I believe that the MARC connects at  24 Shady Grove and then continues down, but I could be wrong  25 with regards to where it connects. But I know that it goes</p>	<p style="text-align: right;">Page 148</p> <p>1 Rick Floyd, is here taking time out from his busy day to --  2 he'd like to make a statement.  3 MS. ROBESON: Okay. Mr. Brown, do you have an  4 objection?  5 MR. BROWN: No.  6 MS. ROBESON: Okay. Come forward, sir. Please  7 raise your right hand.  8 (Witness sworn.)  9 MS. ROBESON: He's not one of your witnesses, he's  10 coming forward on his own?  11 MR. KAUFMAN: He's a, yes, private citizen.  12 MS. ROBESON: Okay. Please state your name and  13 address for the record.  14 MR. FLOYD: My name is Rick Floyd. I reside at  15 8421 Towne Crest Court.  16 MS. ROBESON: Okay. And what would you like to  17 say?  18 MR. FLOYD: Well, first of all, Madame Hearing  19 Examiner, I would like to say thank you for allowing me to  20 speak and as well as the audience. As a resident of  21 Wedgewood 1, I have been at that location since 1982. As  22 you might suggest, a lifelong resident. My family grew up  23 there. My daughter grew up there. From that same residence  24 I took her to Girl Scouts and sat in parking lots and waited  25 for the pow-wows to be complete. I did all those wonderful</p>
<p style="text-align: right;">Page 147</p> <p>1 through Gaithersburg. It continues on down through, I  2 believe, Rockville and does this thing. Again, because we  3 were not taking any kind of reduction for transit within our  4 analyses, I didn't follow the entire MARC route for this.  5 MR. BROWN: Okay. That's all I have.  6 MS. ROBESON: Okay. Any redirect?  7 MS. GIRARD: Ms. Randall, just one question.  8 While you didn't take any credit for proximity to MARC,  9 Metro, the bus being out in front, would you expect that  10 there would be some use of public transportation coming off  11 the property?  12 MS. RANDALL: Absolutely and, in fact, I believe  13 that Mr. Stacy Hornstein would be the better person to  14 answer this question, but it's my understanding that  15 residents that are living there today currently use the bus,  16 the MARC.  17 MS. ROBESON: Is that based on your knowledge or  18 someone else's?  19 MS. RANDALL: Conversations with Stacy Hornstein  20 and his conversations with his tenants. So, yes. No,  21 absolutely I would expect them to take, and to avail  22 themselves to the transit that's available.  23 MS. GIRARD: That's all we have.  24 MS. ROBESON: All right. Now I believe we have --  25 MR. KAUFMAN: Yes. A resident of Wedgewood 1, Mr.</p>	<p style="text-align: right;">Page 149</p> <p>1 things while living there.  2 And our community has undergone change as most  3 communities have. However, I can say that the residents of  4 Wedgewood 1 Court are truly excited about the possibility of  5 this, this project. We chat about it all the time. People  6 ask me things about it. I direct them to our, to the  7 websites. I try to get information if I can.  8 But what I can say that the people that are there  9 are looking forward to this change because we haven't had  10 this kind of change since I've been there. This is a major  11 project that will impact our community greatly, a community  12 that's in need of change, in need of new development and the  13 potential for growth.  14 And we'll do anything that we can to help this  15 along because we know the kind of impact it will have on our  16 communities at Wedgewood 1, as well as Wedgewood 2. There  17 are two townhouse developments along the corridor of Towne  18 Crest Drive., Wedgewood 1, of course, located at Towne Crest  19 Court and Wedgewood 2, located at Larchmont. And we truly  20 believe that this is one of the best things that could  21 happen to us.  22 In speaking with the representatives from the  23 public land development, everything that I've heard,  24 everything that I've experienced suggest that this is going  25 to be a turning point for our community, not just the</p>

<p style="text-align: right;">Page 150</p> <p>1 principle communities of Wedgewood 1 and Wedgewood 2, but  2 generally as a whole for that area. We believe that it will  3 bring about great things and improvements and these  4 improvements are not easy to come about. I know. I'm one  5 of those people that contact the County and work with  6 various divisions and ask for things that the County is just  7 not in the position to do. And we do believe that through  8 this project some of the major things that we believe that  9 are important, improvement of the roads, sidewalks, the  10 transportation zones, all those things will be a better  11 asset to the community that's located along Towne Crest  12 Drive.  13 MS. ROBESON: Okay.  14 MR. FLOYD: So thank you.  15 MS. ROBESON: Thank you. Mr. Brown, do you have  16 any questions?  17 MR. BROWN: Mr. Floyd --  18 MR. FLOYD: Yes.  19 MR. BROWN: -- very briefly, are you speaking  20 today to state your own personal views or those of the  21 Wedgewood Home Owners Association?  22 MR. FLOYD: These are my personal views, as well  23 as, as well as members of the home owners association.  24 MR. BROWN: In other words, other people in your  25 community share your views?</p>	<p style="text-align: right;">Page 152</p> <p>1 MS. RANDALL: I believe that it's compatible with  2 what, with what they are trying to do in that location. Of  3 course, the project that's now standing, you know, is pretty  4 much run down --  5 MS. ROBESON: Okay.  6 MR. FLOYD: -- and obviously at some point it's  7 going to need to be taken out, taken down or replaced  8 anyways. What we believe, what I believe is that this is  9 going to be, you know, once again, a very important project  10 for our community as a whole. I am, I do project myself, if  11 you look at it in those terms to find out what's going on  12 around a community, you know, what's taking place in our  13 community and from everything that I have experienced and  14 what I have discussed with various people, this is something  15 that everyone is looking forward to.  16 MS. ROBESON: Okay. Anything else?  17 MR. KAUFMAN: I don't think so.  18 MS. ROBESON: All right. You may be excused.  19 MR. KAUFMAN: Thank you very much.  20 MS. GIRARD: Thank you.  21 MR. BROWN: Thank you.  22 MS. ROBESON: Thank you for coming.  23 MR. KAUFMAN: I believe that's our case-in-chief.  24 MS. ROBESON: Okay. So, Mr. Brown, are you ready  25 to proceed with your witnesses?</p>
<p style="text-align: right;">Page 151</p> <p>1 MR. FLOYD: Yes.  2 MR. BROWN: Not everyone shares your views,  3 though, do they?  4 MR. FLOYD: The people whom I have spoken with,  5 the people that have asked me about the project has. They  6 support this.  7 MR. BROWN: Thank you.  8 MS. ROBESON: Go ahead, Mr. Kaufman.  9 MR. KAUFMAN: Mr. Floyd, first of all, thank you  10 for being here today. I appreciate your taking the time  11 from your busy schedule. In speaking with not just  12 yourself, but in speaking with the other residents that you  13 say support, have you discussed the fact that there will be  14 329 units here and have you, do you have a position as to  15 whether that would be compatible with your existing  16 community?  17 MR. FLOYD: We, well, I visited the website. I've  18 looked at the project design. And I have talked to a  19 variety of people and --  20 MS. ROBESON: I'm sorry to interrupt, but normally  21 I would let this go, but why don't you just tell me what you  22 think is, because I don't know if you're a member of the  23 board, if you're authorized to testify on behalf of other  24 people. Why don't you tell us what you think as far as  25 compatibility?</p>	<p style="text-align: right;">Page 153</p> <p>1 MR. BROWN: Well, we have, I think, a total of  2 five witnesses. I have three of them here this afternoon.  3 MS. ROBESON: Okay. Why don't we take a 15-minute  4 break and then we'll begin with your first witness, Mr.  5 Brown?  6 MR. BROWN: Okay.  7 MS. ROBESON: And then we'll go to 5 o'clock.  8 Yes, sir?  9 MR. KAUFMAN: Yes, I must stop at 5:00 because I  10 have to be at Montgomery College for a board of trustees  11 meeting at 5:30.  12 MS. ROBESON: Okay. Well, I don't want to get --  13 MR. KAUFMAN: And that's --  14 MS. ROBESON: -- in trouble with the dean, but  15 we'll try to break a little before if that helps you.  16 MR. KAUFMAN: Yes, because that's in Germantown,  17 so if you could maybe stop at --  18 MS. ROBESON: Yes. Yes. We can --  19 MR. KAUFMAN: -- quarter of, I would appreciate  20 it.  21 MS. ROBESON: Okay. I understand. All right.  22 We'll take a 15-minute break and then we'll come back with  23 Mr. Brown's first witness.  24 (Recess)  25 MS. ROBESON: Everyone ready? Okay. We're back</p>

<p style="text-align: right;">Page 154</p> <p>1 on the record.</p> <p>2 MR. BROWN: Madame Hearing Examiner, while you</p> <p>3 were getting ready, I switched places. I received a request</p> <p>4 form a resident who asked to testify today and I thought</p> <p>5 perhaps (indiscernible) gotten so far, maybe Mr. Kaufman</p> <p>6 would not have an objection to having this person testify to</p> <p>7 get started.</p> <p>8 MR. KAUFMAN: We don't have an objection.</p> <p>9 MS. ROBESON: Thank you. Why don't you have that</p> <p>10 person come up?</p> <p>11 MR. BROWN: Carla Weinberg.</p> <p>12 MS. ROBESON: Is she your witness or --</p> <p>13 MR. BROWN: She's not my witness.</p> <p>14 MS. ROBESON: Okay. Ms. Weinberg, I'll wait until</p> <p>15 you get seated. Please raise your right hand.</p> <p>16 (Witness sworn.)</p> <p>17 MS. ROBESON: Okay. Please state your name and</p> <p>18 address for the record.</p> <p>19 MS. WEINBERG: My name is Carla Weinberg. I</p> <p>20 reside at 17729 Larchmont Terrace in Gaithersburg. I'm a</p> <p>21 resident of Wedgewood No. 2 townhouses and have lived there</p> <p>22 since 1975.</p> <p>23 MS. ROBESON: Okay.</p> <p>24 MS. WEINBERG: I'm one of the original owners.</p> <p>25 MS. ROBESON: All right.</p>	<p style="text-align: right;">Page 156</p> <p>1 to the vet, so public transportation is not something that I</p> <p>2 would be using in transporting the animals.</p> <p>3 Right now I'm sitting through two changes of the</p> <p>4 traffic light at Washington Grove Lane and Mid-County</p> <p>5 Highway waiting to turn left. A new townhouse development</p> <p>6 on that corner isn't even fully populated yet and the same</p> <p>7 problem exists at the intersection of Washington Grove Lane</p> <p>8 and Railroad Street. I can't imagine how many traffic light</p> <p>9 changes will be needed to make those left turns if the Towne</p> <p>10 Crest density increase is approved, is tripled as proposed.</p> <p>11 The neighborhood streets are just not equipped to</p> <p>12 handle the proposed population density increase at Towne</p> <p>13 Crest. Triple the number of school buses and school children</p> <p>14 and cars, triple the number of double-parked trucks and</p> <p>15 visitors cars blocking Towne Crest Drive. The proposed</p> <p>16 parking garage is inadequate for the residents and their</p> <p>17 visitors regardless of what the County's standards are.</p> <p>18 Yes, I'm sure that they meet County standards, but the</p> <p>19 reality is that 1.5 parking spaces per household has proven</p> <p>20 in my neighborhood, it has been proven over decades to be</p> <p>21 inadequate and it will have a significant adverse impact on</p> <p>22 the neighborhood.</p> <p>23 My Wedgewood 2 townhouse community has two spaces</p> <p>24 per household and I haven't been able to have a party in</p> <p>25 decades because there is no visitors parking whatsoever.</p>
<p style="text-align: right;">Page 155</p> <p>1 MS. WEINBERG: I'm a little baffled by the</p> <p>2 testimony of the witness preceding me who was the resident</p> <p>3 of Wedgewood townhouses No. 1, which is a different</p> <p>4 townhouse community from ours. He mentioned that he was</p> <p>5 looking forward to improvement of the streets. I would love</p> <p>6 to see some improvement of the streets, but I have not heard</p> <p>7 any plans for any improvement of either Washington Grove</p> <p>8 Lane or Towne Crest Drive. Those are fairly narrow, one</p> <p>9 lane in each direction streets and the impact of the</p> <p>10 application for the redevelopment of the Towne Crest</p> <p>11 townhouses apartments, the impact on the traffic and the</p> <p>12 parking situation is what concerns me. I am delighted to</p> <p>13 see that they want to redevelop the apartments. They are</p> <p>14 sorely needed and would improve the whole neighborhood, but</p> <p>15 I am very concerned about the density that they are</p> <p>16 proposing.</p> <p>17 I am also a little baffled by the results of the</p> <p>18 traffic study that was just discussed. I can't cite numbers</p> <p>19 or counts, I just drive a car there and can tell you from</p> <p>20 living there and driving my car on those streets what my</p> <p>21 experience has been over the last few months. I'm retired</p> <p>22 and I travel to stores in the area, to the senior center in</p> <p>23 Gaithersburg. I volunteer at an animal shelter in Old Town</p> <p>24 Gaithersburg, so I'm traveling along East Diamond Avenue. I</p> <p>25 go to doctors, to vet appointments, I transport the animals</p>	<p style="text-align: right;">Page 157</p> <p>1 That has impacted my quality of life for the past 20 years</p> <p>2 and I've been told, well, that's too bad, why don't you</p> <p>3 move? Sure, I can move, but is that what you want to tell</p> <p>4 all the others in my development too who are now neighbors</p> <p>5 fighting neighbors over parking spaces because they only</p> <p>6 have two spaces per household and they've got three and four</p> <p>7 cars? Is that what you want to tell all the people who are</p> <p>8 moving into Towne Crest apartments, if you can't make due</p> <p>9 with 1.5 spaces per household including visitors, then move</p> <p>10 out? That's not a great solution. Neither is approving the</p> <p>11 current Towne Crest apartments' application.</p> <p>12 MS. ROBESON: Okay. Anything else you'd like to</p> <p>13 say? All right. Mr. Kaufman?</p> <p>14 MR. KAUFMAN: Yes. Ms. Weinberg, are you aware</p> <p>15 that the board and president of Wedgewood 2 has filed a</p> <p>16 letter in support of this application?</p> <p>17 MS. WEINBERG: Yes. I have a copy of a letter</p> <p>18 that the president sent to all the residents at the end of</p> <p>19 January that caused many of the flood of letters from our</p> <p>20 residence to come in in the beginning of February and she</p> <p>21 lists in this letter that was sent to every house in my</p> <p>22 community that there would be increased cooperation,</p> <p>23 improved cooperation, improved neighborhood landscaping.</p> <p>24 This was curious. She said Towne Crest residents parking</p> <p>25 will be removed from the streets. If that were so, that</p>



<p style="text-align: right;">Page 158</p> <p>1 would be lovely because then our residence would use that  2 street parking along Towne Crest Drive. But from what I can  3 see there, the apartment residence and their visitors are  4 going to be parking along Towne Crest Drive as well because  5 they're not going to have enough spaces in the garage,  6 certainly not for all their visitors and trucks.  7 Republic will build some new parking for our  8 community. She didn't say how much, so our residents, oh  9 wow, we're getting, we're getting new parking spaces and  10 they're going to build it for us. I think we're getting 10  11 spaces more. That's like a drop in the bucket.  12 It just, you know, goes on to say it will improve  13 the community. There's no mention of any possible adverse  14 effects and she asks everyone to submit a letter of support  15 to the Hearing Examiner and send individual letters for the  16 project by February 15th. So, yes, I am aware that the  17 president sent out that letter. It's all positive impact  18 that she is citing and not mentioning or bringing up any  19 possible adverse -- you know, that's, when you have a point-  20 of-view, you want to advance it and you don't want to bring  21 up any negatives. So, yeah.  22 MR. KAUFMAN: I don't have any other questions.  23 MR. BROWN: Nothing further.  24 MS. ROBESON: All right. You may be excused.  25 Thank you.</p>	<p style="text-align: right;">Page 160</p> <p>1 MS. ROBESON: Or do you want -- I'll let Mr. Brown  2 continue with his voir dire.  3 MR. KAUFMAN: Right. I think that would be best  4 and then --  5 MS. ROBESON: Okay. Go ahead.  6 MR. BROWN: All right. Would you please summarize  7 the highlights from Exhibit 88D, your CV, please?  8 MR. DAVIS: Okay. Basically I have my own  9 planning, consulting business. I established it in 2007  10 upon retiring from Montgomery County where I served as  11 redevelopment director working primarily in downtown Wheaton  12 for about three years. Prior that, I worked with the  13 Maryland National Capital Park and Planning Commission where  14 I worked for approximately 31 years, I believe it was, and  15 then retired, I retired from the Park and Planning  16 Commission.  17 My career at Park and Planning I first started in  18 Prince George's County with the commission and working in  19 comprehensive zoning and then my experience in Montgomery  20 County with the commission involved looking at zoning  21 applications, zoning legislation, preparing for the Planning  22 Board and the County Council, also assisting with master  23 plans, looking at implementation strategies for  24 recommendations contained in the master plans. And then I  25 was made, went to -- I was subdivision coordinator then for</p>
<p style="text-align: right;">Page 159</p> <p>1 MR. BROWN: Our first witness is Joe Davis.  2 MS. ROBESON: All right. Please raise your right  3 hand.  4 (Witness sworn.)  5 MR. BROWN: Would you state your name and business  6 address for the record please?  7 MR. DAVIS: Yes. My name is Joseph R. Davis. My  8 business address in Maryland is 1037 Tanley Road, Silver  9 Spring, Maryland 20904.  10 MR. BROWN: And your occupation, Mr. Davis?  11 MR. DAVIS: I'm a land planner.  12 MR. BROWN: And is your CV in the, is a matter of  13 record here, Exhibit 88D?  14 MR. DAVIS: Correct.  15 MS. ROBESON: Mr. Brown, to you have an objection,  16 are you seeking to qualify him as an expert in land  17 planning?  18 MR. BROWN: Land planning and zoning, yes.  19 MS. ROBESON: Land planning and zoning? Okay.  20 And I did look at his CV. Do you have any objection, Mr.  21 Kaufman or Ms. Girard, to --  22 MR. KAUFMAN: Ms. Girard will do the cross exam,  23 but we have some concerns here, yes.  24 MS. ROBESON: Do you want to state those?  25 MR. KAUFMAN: Well, certainly I know Mr. Davis.</p>	<p style="text-align: right;">Page 161</p> <p>1 about eight years where I worked with the Subdivision  2 Process which, as you know, is different from the zoning  3 process.  4 And then I was the Chief of the Development Review  5 Division from 1998 until I retired in 2004.  6 MS. ROBESON: Have you ever testified, qualified  7 as an expert in land planning in the court or an  8 administrative proceeding like this?  9 MR. DAVIS: Yes, I have, two cases before the  10 Circuit Court in Montgomery County qualified for. One was  11 back in about 1990 and then a second case about two years  12 ago where I qualified. That was a case that involved, it  13 was in the White Flint area. It was a condemnation case and  14 I testified as a land planner for that. I've qualified  15 before the hearing examiners beginning back in 1982 with  16 Martin Klauber (phonetic sp.), Phil Tierney (phonetic sp.),  17 most recently with Marty Grossman, qualified on a zoning  18 case in Wheaton about two years ago.  19 MS. ROBESON: Okay. Mr. Kaufman or Ms. Girard,  20 what are your concerns?  21 MR. KAUFMAN: Well, I just want to establish Mr.  22 Davis's background in terms of his education. I wonder if I  23 could ask a few questions?  24 MS. ROBESON: Yes.  25 MR. KAUFMAN: Okay. So, Mr. Davis, do you have</p>

<p style="text-align: right;">Page 162</p> <p>1 any formal education in land planning from, or degrees in 2 land planning from any institution of higher learning? 3 MR. DAVIS: My master's degree is in social 4 science. The emphasis was in public administration. 5 MR. KAUFMAN: All right. And in your time at the 6 Planning Commission, you were the head of subdivision 7 review, is that right? 8 MR. DAVIS: That's correct. 9 MR. KAUFMAN: And that reviews primarily the 10 subdivision applications to see whether they are in 11 compliance with the zoning ordinance, is that right, and the 12 subdivision -- 13 MR. DAVIS: Zoning and also with master plans. 14 MR. KAUFMAN: But you never in your time there 15 headed up any group that actually created and analyzed a 16 master plan and created a master plan, did you? 17 MR. DAVIS: No, I've never been the primary 18 planner for a master plan. 19 MR. KAUFMAN: So other than your professional 20 experience that you've just testified to and the few times 21 that you say you've qualified in Circuit Court, those, is 22 there anything else in your background that you think would 23 qualify you as an expert in land planning? 24 MR. DAVIS: In terms of master plan work, I've 25 been involved in a larger number of master plans both in</p>	<p style="text-align: right;">Page 164</p> <p>1 Toda v. Harry Leet, which I think went onto to the appeals 2 court, but I qualified as a land planner there. 3 MR. KAUFMAN: Okay. Excuse me. So with that, you 4 know, we would accept this witness with the caveat 5 concerning what we consider to be somewhat limited 6 experience and education as a land planner. 7 MS. ROBESON: Well, when they're an expert, we 8 don't usually caveat their expertise. I mean you can cross- 9 examine to that effect -- 10 MR. DAVIS: Well, I think that he's established -- 11 MS. ROBESON: -- as to -- 12 MR. KAUFMAN: -- that he's done a good bit of work 13 in the area, so -- 14 MS. ROBESON: Yes, doesn't subdivision implement 15 master plan? 16 MR. DAVIS: Correct. In fact, there are specific 17 requirements where the Planning Board must, can't approve a 18 plan that conflicts with it unless certain criteria are met. 19 MS. ROBESON: I'm going to qualify him as to, as 20 being an expert in land planning. 21 MR. BROWN: Mr. Davis, I'm going to ask you about 22 your familiarity with certain items. All I need is a sort 23 of a yes or no answer here on these. Are you familiar with 24 the G-910 application? 25 MR. DAVIS: Yes.</p>
<p style="text-align: right;">Page 163</p> <p>1 Prince George's and Montgomery Counties. I have done work 2 for a developer that was a particular case I worked for in 3 Howard County where I was providing advice to a property 4 owner and a developer on a site, so in terms of land 5 development, but -- 6 MR. KAUFMAN: This is since you've been in private 7 practice? 8 MR. DAVIS: Yes, this is since private practice. 9 Of course, when I was in Wheaton with the redevelopment 10 office, they're always working with private developers in 11 terms of looking at projects that were being considered for 12 downtown Wheaton and some of those did come to fruition. 13 MR. KAUFMAN: You were facilitating the 14 implementation of that? 15 MR. DAVIS: Correct. 16 MR. KAUFMAN: All right. When you testified in 17 circuit court, you said one was an eminent domain 18 proceeding, is that right? 19 MR. DAVIS: Yes. Uh-huh. Yes. 20 MR. KAUFMAN: And you qualified as a land planner? 21 MR. DAVIS: Yes. 22 MR. KAUFMAN: And how about the other case, what 23 was that? 24 MR. DAVIS: That was a case back in, I believe it 25 was 1991 and I remember the case. It was, I think, Sammy</p>	<p style="text-align: right;">Page 165</p> <p>1 MR. BROWN: How about the Towne Crest property in 2 particular? 3 MR. DAVIS: Yes, I have been to the site. 4 MR. BROWN: Are you familiar with the neighborhood 5 area surrounding Towne Crest? 6 MR. DAVIS: Yes. 7 MR. BROWN: Are you familiar with the Montgomery 8 County zoning ordinance? 9 MR. DAVIS: Yes. 10 MR. BROWN: Are you particularly familiar with the 11 requirements of the PD zones? 12 MR. DAVIS: Yes, I am. 13 MR. BROWN: Are you familiar with the 1985 14 Gaithersburg Master Plan? 15 MR. DAVIS: Yes, I am. 16 MR. BROWN: Are you familiar with the General 17 Plan? 18 MR. DAVIS: I am. 19 MR. BROWN: How about master plans in the 20 Rockville, Gaithersburg and Germantown area that have been 21 adopted since 1985? 22 MR. DAVIS: Yes, I am. 23 MR. BROWN: Did you prepare a report on the G-910 24 application? 25 MR. DAVIS: Yes, I did.</p>

<p style="text-align: right;">Page 166</p> <p>1 MR. BROWN: And how did it come about that you 2 prepared that report?</p> <p>3 MR. DAVIS: I was contacted by your office, as 4 well as by the town of Washington Grove and they asked me to 5 take a look at this case and the application, and they were 6 interested in engaging my services to help provide advice to 7 them and recommendations concerning the project.</p> <p>8 MR. BROWN: So how did you go about preparing your 9 report?</p> <p>10 MR. DAVIS: I reviewed application material that 11 had been provided to me, the technical staff report from 12 Park and Planning Commission. I looked at the latest plans 13 that had been submitted, in other words the PD-35 14 application. I didn't look at prior, the prior renditions 15 of the plan. I also looked at correspondence associated 16 with the application that had been sent to me and I prepared 17 a report based on that.</p> <p>18 MR. BROWN: Did you look at the Planning Board 19 staff report --</p> <p>20 MR. DAVIS: Yeah.</p> <p>21 MR. BROWN: -- technical staff report?</p> <p>22 MR. DAVIS: Yes, I did.</p> <p>23 MR. BROWN: How about the Planning Board 24 recommendation itself?</p> <p>25 MR. DAVIS: I did read that.</p>	<p style="text-align: right;">Page 168</p> <p>1 applicant to the hearing examiner in which they noted that 2 they were requesting a waiver associated with the height 3 requirement in the PD zones for buildings over -- 50 percent 4 of the buildings would need to be over five stories in 5 height. I was not aware that the waiver letter had been 6 submitted, so -- but I would note, though, that in terms of 7 the technical staff report, it was a PD-44 application, the 8 same waiver would have been necessary there, but I don't 9 recall seeing anything associated with a waiver request or 10 an analysis of the waiver request by the staff.</p> <p>11 MR. BROWN: Have you analyzed the waiver request 12 that was submitted on January 11th?</p> <p>13 MR. DAVIS: Yes, I have.</p> <p>14 MR. BROWN: What is your opinion about that waiver 15 request?</p> <p>16 MR. DAVIS: I don't believe that the waiver 17 request is justified.</p> <p>18 MR. BROWN: And why is that?</p> <p>19 MR. DAVIS: Well, first of all, I have difficulty 20 with the densities that are being asked for in light of the 21 master plan recommendations. I also have concerns about 22 the, where I believe the application does not satisfy 23 certain requirements of the planned development zones. And 24 I believe that there are certain compatibility issues with 25 the application that I think raise a serious question as to</p>
<p style="text-align: right;">Page 167</p> <p>1 MR. BROWN: And the analyses of the report by the 2 applicant's land planners, Ms. Rodriguez and Mr. Ager?</p> <p>3 MR. DAVIS: Yes, I read those reports.</p> <p>4 MR. BROWN: Did you read the evaluations of the 5 plan by the Washington Grove Planning Commission?</p> <p>6 MR. DAVIS: I don't recall seeing the Washington 7 Grove Planning Commission comments.</p> <p>8 MR. BROWN: Okay. Does your report go beyond 9 offering simply a sort of a thumbs up or a thumbs down 10 opinion on the application?</p> <p>11 MR. DAVIS: Yes, I did look at, I did, in terms of 12 reviewing the application material, then I did look at say 13 what potentially might work for the property.</p> <p>14 MR. BROWN: Were you here for the testimony of Ms. 15 Rodriguez and Mr. Ager?</p> <p>16 MR. DAVIS: Yes, I was.</p> <p>17 MR. BROWN: And I, and were you here for Mr. 18 Berman's testimony earlier today?</p> <p>19 MR. DAVIS: Yes, I was.</p> <p>20 MR. BROWN: All right. Based on that testimony 21 and other, anything else you might have heard in the earlier 22 proceedings, is there anything in your report you'd like to 23 correct or revise with your testimony here today?</p> <p>24 MR. DAVIS: The only item would be a letter -- 25 there's, I believe there's a January 11th letter from the</p>	<p style="text-align: right;">Page 169</p> <p>1 whether the application could be approved.</p> <p>2 MR. BROWN: But I'm only talking now and narrowly 3 focused on the requirements for the waiver, assuming that 4 the plan is otherwise acceptable.</p> <p>5 MR. DAVIS: Okay. Well, there are -- the terms of 6 the basis for the waiver, we'd be looking at whether or not 7 there's an environmental finding that could be made that 8 would justify it and then there's also the other finding 9 that deals with the -- I don't have the language directly in 10 front of me, but the, secondly would be it deals with, I 11 think, it's over 150 units wouldn't apply, but then if it 12 does apply, there could be a waiver, I think, if it's found 13 to be in compliance with the Master Plan.</p> <p>14 MR. BROWN: Okay. Well, I'd like to now, Mr. 15 Davis, to go through your report and summarize for the 16 Hearing Examiner your principle findings and conclusions. 17 And I'll highlight particular topics in your report and ask 18 you to sort of briefly elaborate on your findings and 19 conclusions.</p> <p>20 MR. DAVIS: Okay.</p> <p>21 MR. BROWN: How about, maybe the best place to 22 start is with your analysis of compliance with the 1985 23 Master Plan.</p> <p>24 MR. DAVIS: Okay. Well, I think that the 1985 25 Master Plan recommended what's called at that time high-</p>

<p style="text-align: right;">Page 170</p> <p>1 density residential and it was recommending a density  2 between 11 and 15 dwelling units per acre. And in examining  3 that, I do agree with the MPDU density would be on top of  4 that and looking at what would be the highest densities  5 associated with that, if 15 percent of the units would be  6 moderately priced dwelling units, there's a 22 percent  7 density bonus associated with that and so I think that there  8 could be development of the property at approximately 18.28  9 dwelling units per acre I think would be in accordance with  10 the Master Plan.  11 The applicant's proposal, however, is beyond that.  12 It's a higher density than that. There is -- Court's  13 indulgence here -- the --  14 MR. BROWN: Did you prepare a summary of your  15 analysis of the, of Mr. Ager's density calculations --  16 MR. DAVIS: I did.  17 MR. BROWN: -- and his testimony?  18 MR. DAVIS: Yes, I did.  19 MR. BROWN: And when did you prepare that?  20 MR. DAVIS: I prepared that, I believe I  21 delivered it to you on Friday.  22 MR. BROWN: Is this that document?  23 MR. DAVIS: Yes, sir.  24 MS. ROBESON: I'm marking this as Exhibit 132,  25 which would be summary of density calculation.</p>	<p style="text-align: right;">Page 172</p> <p>1 that would be a 22 percent, for the provision of 15 percent  2 moderately priced dwelling units, there would be a density  3 bonus such that it's a 22 percent increase in units.  4 So taking that into account, it would appear that  5 the maximum density for the analysis area would be, the  6 maximum density would be 18.28 dwelling units per acre for a  7 total of 384 dwelling units. The, if you look at the, then  8 look at the site in terms of the Master Plan's maximum  9 density, this would appear to allow maximum of 148 dwellings  10 on the 8.1 acre Towne Crest property. And, again, we're  11 assuming maximum MPDU potential there. The maximum number  12 of dwelling units for the Wedgewood area across the street  13 would go up to 236 dwelling units.  14 So it would appear that there's available density  15 with, in terms of 231 existing units and going up to a  16 maximum of 384. There is room for an additional 153  17 additional dwelling units within the analysis area. That  18 would break down into 41 additional units that would be  19 available for the Towne Crest property and 112 potential  20 units on the Wedgewood property.  21 And, again, I'll point out that at the total of  22 148 units would represent 15 percent moderately priced  23 dwelling units in a full 122 percent development for the  24 site.  25 MS. ROBESON: What about the applicant's argument</p>
<p style="text-align: right;">Page 171</p> <p>1 (Exhibit No. 132 was marked  2 for identification.)  3 MR. BROWN: Before we get into density --  4 MS. ROBESON: Wait. Mr. Kaufman asked for a few  5 minutes to --  6 MR. BROWN: Okay.  7 MS. ROBESON: -- to look at this. Okay, Mr.  8 Kaufman.  9 MR. KAUFMAN: Well, obviously, I was going to ask  10 him some questions about it. We may have some questions on  11 cross.  12 MS. ROBESON: Okay. Right now then it is admitted  13 as Exhibit 132, summary of density calculation.  14 MR. BROWN: I'd like you, Mr. Davis, to walk us  15 through the calculations and the reasoning underlying those  16 calculations in relation to what you heard in the testimony  17 last week.  18 MR. DAVIS: Okay. Basically we're dealing with a,  19 the area, analysis area 2, AA2 as I refer to it here,  20 consisting of 21 acres. The upper limit recommendation in  21 the master plan is 15 dwelling units per unit, excuse me, 15  22 dwelling units per acre. That would result in a total of  23 315 dwelling units for the analysis area. There is the  24 opportunity for density bonus associated with the provision  25 of a maximum number of moderately priced dwelling units and</p>	<p style="text-align: right;">Page 173</p> <p>1 that this is 30 units, also the density limitations  2 shouldn't apply?  3 MR. DAVIS: Okay. The master plan is an old  4 master plan as you compare it to other plans that exist in  5 the County. And I do think that it means that there should  6 be, you know, an additional look that's taken at it to make  7 sure where we are. And I'm not convinced that the  8 recommendations contained in the 1985 master plan are no  9 longer valid for this particular area. I would note that in  10 the course of the last 28 years there have been updates and  11 modifications made to the Gaithersburg Vicinity Master Plan  12 certainly dealing with the area over on Shady Grove West,  13 the Shady Grove West study area that was completed in 1990.  14 We've had a new master plan that was done for the Shady  15 Grove transit station area and I believe that it was 2006  16 that that plan was approved. There was also more recently  17 in 2008, there was an update to the special study area plan  18 over on the west side for the new technology corridor, the  19 Seneca Technology Corridor Plan that was done. And there  20 was significant increases in development potential for those  21 area taking into account the availability of transit and  22 those features.  23 I would note that this area is not identified in  24 the plan and has not been identified by the County  25 subsequently as being a transit development area. I think</p>

<p style="text-align: right;">Page 174</p> <p>1 that's significant. When I look back at the plan of 1985, I  2 see that there was a recognition of the development that was  3 in place there and it was the Master Plan recognized that  4 development. In effect, it did recommend the status quo for  5 the number, but as we've noted in the discussion of density,  6 there is opportunity for some density increase under the  7 existing plan that would be available for the property. So  8 I think what it boils down to is how much density, you know,  9 would be appropriate today. And I think that that's a very  10 significant policy question that's being brought before the  11 Council with this rezoning application.</p> <p>12 I think that the planned development zone, it's  13 very important to note that one of the requirements of the  14 planned development zone is that it implements the  15 recommendations of the Master Plan. So my concern is that  16 if you take away the Master Plan as being the base and then  17 what you have as the basis. So I think that that raises a  18 pretty big policy question.</p> <p>19 I'd also note that within the planned development  20 zone, the question of transferring density, because that's  21 one of the, I think, one aspect of the proposal in this  22 application is to transfer the density from Wedgewood across  23 the street to Towne Crest and I have problems with that  24 because there really isn't, it's not discussed or mentioned  25 in the Master Plan, number one. Number two, there's no</p>	<p style="text-align: right;">Page 176</p> <p>1 development that's proposed by the applicants, additional  2 development of, what is it, added to the 107 units,  3 applicants proposing 260 dwelling units fully utilizing  4 available density, so that's the transfer of density and  5 that would get the density up to about 32 dwelling units per  6 acre for this site. Then there's also --</p> <p>7 MS. ROBESON: For the site or the analysis? For  8 the site?</p> <p>9 MR. DAVIS: This would be for the site.</p> <p>10 MS. ROBESON: For the site? Okay.</p> <p>11 MR. DAVIS: And in addition to that, the  12 applicants are suggesting that there is additional density  13 that could come into the area and I believe that that was on  14 the order of 69 additional dwelling units. And that would  15 have the effect of raising the density to over 40 dwelling  16 units per acre. Now I would just note that that's sort of  17 comparable into getting into the densities that are  18 contained in the Shady Grove transit station area --</p> <p>19 MS. ROBESON: In the section plan?</p> <p>20 MR. DAVIS: -- plan. In the sector plan area.  21 And I have serious concerns about whether that's appropriate  22 or not, taking into account the location of this property,  23 the more limited availability of transit service, the MARC  24 station, which is really not a full service type station and  25 doesn't contain the sort of full movement in terms of train</p>
<p style="text-align: right;">Page 175</p> <p>1 provisions that I see within the planned development zone to  2 do that.</p> <p>3 But I would also note that within the zoning  4 ordinance there are provisions available for transferring  5 density in other zones. There's the TDR zones you're  6 familiar with, but also within the central business district  7 zones there's the ability to transfer some densities if it  8 can be done following procedures and the procedures are,  9 one, that it be in accordance with the plan; and, number  10 two, would be that there would be documentation that would  11 through the form of easements and covenants and things like  12 that that would sort of memorialize the transfer that's  13 taking place. I don't see that opportunity here. I just, I  14 see that there's a question about a master plan that maybe  15 should consider more density, but I don't see the procedure  16 that's available to do that short of amending the Master  17 Plan. So I think those are my concerns with, you know, the  18 density question, the ability to transfer the density and  19 procedures available for that. I can continue through --</p> <p>20 MR. BROWN: Now is there anything more that you'd  21 like to summarize from your density calculations?</p> <p>22 MR. DAVIS: Just that I think that it's important  23 to note in terms of sort of the amount of change that we're  24 seeing here and I discuss some of that on page 2, and first  25 of all I think that if you were to add the units, the</p>	<p style="text-align: right;">Page 177</p> <p>1 to bus that you have in other transit stations.</p> <p>2 MS. ROBESON: I don't understand what you mean by  3 that.</p> <p>4 MR. DAVIS: The MARC service here, I think in the  5 morning there's --</p> <p>6 MS. ROBESON: In the Washington Grove station?</p> <p>7 MR. DAVIS: Yes, the Washington Grove station,  8 there's about, I think in the morning, 11 trains that come  9 through there, but only I think, I think it's just six that  10 stop, okay? In the afternoon it might be 10 or 11 that will  11 come out and, again, we're looking at a situation where  12 maybe five or six of the trains stop. So that's very  13 limited service. And it doesn't, as you know, the MARC  14 trains don't stop at all of the stations through the day.</p> <p>15 MS. ROBESON: I didn't know.</p> <p>16 MR. DAVIS: And so that to me is very limited.  17 When you go to the --</p> <p>18 MS. ROBESON: Is there bus service there?</p> <p>19 MR. DAVIS: I think there's a bus that stops  20 there, but I'm not aware of the schedule associated with  21 that. But I would contrast that, though, with a, like if  22 you're at the Shady Grove or Rockville or any of the other  23 Metro stations, there's regular bus service that you have  24 that will take people to and from the station to other  25 locations. So I think we have to recognize that this is</p>

<p style="text-align: right;">Page 178</p> <p>1 really a limited service capacity or a limited service  2 transit that's available to serve the area.  3 MS. ROBESON: And how far -- but then there's  4 Shady Grove Metro station, right?  5 MR. DAVIS: Right.  6 MS. ROBESON: Now far is that from this property,  7 do you know?  8 MR. DAVIS: Well, I mean it's on the other side of  9 Shady Grove Road. I'm just trying to think. I think these  10 drawings show the --  11 MS. ROBESON: I'm sorry, only the witness can  12 answer, so maybe that's something either party can  13 provide --  14 MR. DAVIS: Could spell out, sure.  15 MS. ROBESON: -- later on.  16 MR. KAUFMAN: What was the question?  17 MR. BROWN: We will have testimony on transit  18 time.  19 MS. ROBESON: Oh, I'm sorry. Okay.  20 MR. BROWN: Mr. Davis, Mr. Ager made reference to  21 rezoning G-873 to, in reference to the additional density of  22 69 additional dwelling units, is that right?  23 MR. DAVIS: Correct.  24 MR. BROWN: What, did you look at G-873 as a  25 potential precedent for increasing the density?</p>	<p style="text-align: right;">Page 180</p> <p>1 approved with that rezoning?  2 MR. DAVIS: What I recall is around 30 percent,  3 somewhere in that neighborhood of about a third of the  4 density that, of the PD-28 density was being located on the  5 site in residential form.  6 MR. BROWN: One more thing about Table 2, I'm  7 sorry, Table 3 in the Master Plan and which is the airport  8 analysis areas.  9 MR. DAVIS: Yes.  10 MR. BROWN: Does this -- column 5 refers to  11 potential units recommended and it has two numbers, base and  12 optional. Are you familiar with that?  13 MR. DAVIS: Yes.  14 MR. BROWN: Are there instances here where  15 optional method zoning is recommended for increases in  16 density over the base?  17 MR. DAVIS: Well, in terms of the area that we're  18 discussing here, the Flower Hill district, the airport  19 district, really there's not. There's only one incident or  20 instance where I see that there's a recommendation for  21 higher density utilizing a plan development type zone and  22 that's in Flower Hill and that's for the planned  23 neighborhood zone.  24 MS. ROBESON: Is that in the Mid-County district?  25 MR. DAVIS: It's actually in the Flower Hill</p>
<p style="text-align: right;">Page 179</p> <p>1 MR. DAVIS: I did. I looked at that. That's a  2 case that's down in Westbarg and I believe it's the old,  3 maybe the old Marriott offices that are down there and that  4 was a recommendation in the Westbarg plan for, I believe it  5 was a PD-28, and there's existing offices, in fact, offices  6 have changed to a school and they are going to retain the  7 school and then there was a discussion of having some  8 residential development also on the property.  9 I did not see that as a basis or a precedent for  10 increasing density as is being requested in this case. I  11 saw that the residential component that was there, it had  12 been master planned for residential use. So I didn't see  13 that as different. And I don't think that there was really  14 a density issue with that site.  15 MS. ROBESON: Now why wasn't there a density  16 issue?  17 MR. DAVIS: Because it was a PD-28, but it was  18 being done as a mixed use and so you had a mix of uses  19 there.  20 MS. ROBESON: I see.  21 MR. DAVIS: So, you know, to say that a certain  22 amount of it would be commercial and a certain amount would  23 be residential.  24 MR. BROWN: What, do you happen to recall what  25 percentage of the allowable density for residential was</p>	<p style="text-align: right;">Page 181</p> <p>1 district.  2 MS. ROBESON: What about Mr. Berman's comment that  3 no PD is recommended?  4 MR. DAVIS: There's no PD's that are recommended  5 on the, basically on the east side of 270 in these areas  6 that were identified. The PD --  7 MS. ROBESON: Is the PD recommended elsewhere in  8 the Gaithersburg plan?  9 MR. DAVIS: Yes. In the, on the west side of 270.  10 MS. ROBESON: Okay.  11 MR. DAVIS: Certainly the MXPDP area, which I was  12 involved in the MXPDP zone being created and worked with that  13 case.  14 MS. ROBESON: For the --  15 MR. DAVIS: That's right. And, but those were  16 more developable areas where you had vacant properties and  17 the PD zones were recommended for a number of the properties  18 over on the west side.  19 MS. ROBESON: What about Mr. Berman's testimony  20 that this meets the cluster? I had down that he said that  21 this was a cluster concept. It's a good planning tool. Is  22 this a cluster concept or --  23 MR. DAVIS: Are you talking about the Plan, the  24 Master Plan?  25 MS. ROBESON: The location of the higher density</p>

<p style="text-align: right;">Page 182</p> <p>1 residential, line 1 parcel. I thought he said it was part  2 of a cluster, it's a cluster type of development.  3 MR. DAVIS: Well, I was trying to understand that  4 comment as well. I thought maybe he was referring to the  5 TDR zone recommendations that were, a number of the  6 properties on the east side in the Flower Hill and the Mid-  7 County district.  8 MS. ROBESON: Well, what's your concept of  9 cluster?  10 MR. DAVIS: Well, cluster is -- typically it would  11 be like an optional method that's available in a zone  12 whereby you can cluster development to one portion of it  13 either for an environmental protection or something like  14 that. But even --  15 MS. ROBESON: Okay. That would be like the R-60  16 optional method?  17 MR. DAVIS: Right. Another thing, another example  18 of cluster, well, not -- this probably isn't a good example,  19 in essential business district zones we have the opportunity  20 to increase development and so you have, you know, under the  21 optional method of development in the CVD zones and you can  22 get some fairly dramatic increases there in terms of density  23 but, again, those are usually spelled out in the master  24 plan. That's a Euclidian zone.  25 MS. ROBESON: Right.</p>	<p style="text-align: right;">Page 184</p> <p>1 really require compliance with the master plan. There was a  2 case cited, a court case cited in there where the position  3 was made that there are some zones, floating zones that do  4 have a stronger tie to the Master Plan because, in effect,  5 they are legislatively mandated to be in compliance with the  6 Master Plan and that's what we have with the PD zones.  7 There's a requirement of the zoning ordinance to comply with  8 the Master Plan where you didn't have that in the townhouse  9 case. So I don't think it's directly applicable as  10 supporting the rezoning.  11 And the other case was G-909, which is located  12 just north of the Bethesda central business district in the  13 Battery Lane area and there I saw the increases in density  14 being discussed were really more to accommodate more MPDU's  15 or more TDR development. And the underlying zones were R-10  16 and R-10 TDR which already gets you almost to 100 units per  17 acre. So I just saw that as more a discussion of which will  18 get us, which will net the public more either TDR's or  19 MPDU's and that was sort of a public interest argument that  20 I recalled there and I didn't see that applying here as  21 well.  22 MR. BROWN: Mr. Davis, do you believe that there  23 are any transportation-related considerations in the, that  24 have taken place since the time of the 1985 master plan that  25 would warrant the conclusion that PD-35 rezoning is</p>
<p style="text-align: right;">Page 183</p> <p>1 MR. BROWN: During Mr. Ager's testimony, he also  2 mentioned two other rezonings --  3 MR. DAVIS: Yes.  4 MR. BROWN: -- as supportive of his approach.  5 They were G-840 and G-909, do you recall that testimony?  6 MR. DAVIS: Yes, I do.  7 MR. BROWN: Did you look at those two rezoning  8 applications?  9 MR. DAVIS: Yes.  10 MR. BROWN: I'm sorry, the Hearing Examiner's  11 reports and the resolutions by the Council?  12 MR. DAVIS: Yes, I did look at those.  13 MR. BROWN: What is your opinion on their  14 relevance to this case?  15 MR. DAVIS: I don't, again, case has relevance  16 here. G-840 was a, it involved a townhouse rezoning which  17 is actually nearby here. It's at Mid-County Highway and  18 Washington Grove Lane. And, but that was going to the RT  19 zones and there I think the issues were more to the point of  20 it had been recommended for TDR development on the master  21 plan, but with certain amount of road taking that was done  22 for Mid-County, it didn't really leave enough of an  23 opportunity for TDR, so there was discussion of RT zoning.  24 But what I found interesting there was that it was noted  25 that the findings for the approval of an RT zone don't</p>	<p style="text-align: right;">Page 185</p> <p>1 appropriate for this property?  2 MR. DAVIS: No, I can't think of anything. You  3 know, specifically the Mid-County Highway, the ICC, these  4 were all roads that were shown on the master plan, the 1985  5 Master Plan. The fact that they've come to fruition doesn't  6 mean that they suddenly become, you know, a basis for adding  7 more density. I mean, in effect, the density was taken into  8 account, I believe at the, back in 1985.  9 MR. BROWN: Your report also discusses whether or  10 not the purposes of the PD zone are met in this case. Could  11 you briefly highlight your conclusions in that area?  12 MR. DAVIS: Well, the first comment I would like  13 to make is that, I mean the first statement of what the,  14 what the PD zone is intended to accomplish and notes the  15 protection of trees. That's a significant feature. That's,  16 again, that's a legislative mandate, I believe, associated  17 with the PD zone. And my concern is that where you have,  18 immediately adjacent to the subject property, you have the  19 Westwood area that's within the town of Washington Grove.  20 It would seem to me that there would be higher order of  21 protection required for those trees to be able to, in other  22 words, become like a compatibility standard. And in my  23 view, I don't see that there has been any additional fault  24 given to the protection of those trees, other than what  25 would probably be required maybe for another type of, any</p>

<p style="text-align: right;">Page 186</p> <p>1 other type of development. So that raises a concern for me.  2 Also I believe that the Master Plan did make  3 reasonable density recommendations for the property, taking  4 into account what was available to the Council and what the  5 intents and goals were of the Master Plan in 1985. I just  6 don't see that anything has changed such that you would not  7 rely on this Master Plan for consideration of a PD zone at  8 this location.  9 MS. ROBESON: So you're saying no additional  10 density?  11 MR. DAVIS: I'm saying that the Master Plan would  12 allow this site to go from 107 units to 148 units, okay,  13 based on the 18.28 dwelling units per acre. Now for it to  14 go more than that, then I would say what's the policy basis  15 for making that kind of finding given the requirements of  16 the plan development zones, that it be in accord with the  17 Master Plan.  18 MS. ROBESON: Okay.  19 MR. DAVIS: I'd also note there's a master plan  20 amendment process that the property owners could file under  21 if they wanted to take, to address this in a master plan  22 context.  23 MR. BROWN: Now one of the, the next area that I  24 would like you to discuss is your conclusions with regard to  25 compatibility with neighboring uses.</p>	<p style="text-align: right;">Page 188</p> <p>1 located on the north side of the property that would be, I  2 guess, within the city of Gaithersburg. Those are also  3 setbacks that are appropriate from those locations as well.  4 The only area that I --  5 MS. ROBESON: Are you saying now you're referring  6 to 125, Exhibit 125, which is the alternative B development  7 plan with setback?  8 MR. DAVIS: Correct, because there was a change to  9 the setback from the fourth lot --  10 MS. ROBESON: Okay. I'm just --  11 MR. DAVIS: -- on Daylily.  12 MS. ROBESON: -- making sure the record knows what  13 now is.  14 MR. DAVIS: Okay. Very good. Let me see. So the  15 only, I guess the one area that I would note concern about  16 setbacks and compatibility is I already mentioned the  17 concern about the setback from the woods area, I am  18 concerned that the, you have a 25-foot building setback,  19 you've got a 5-foot setback from the parking or the drive  20 lanes associated with the parking garages. And that seems  21 to be sort of a minimal situation I'm concerned with the  22 report in terms of the potential for trees that could be  23 damaged, but I'm not a forester or landscape architect, so  24 that's about as far as I would go with that discussion. I  25 do think it should be looked at more carefully.</p>
<p style="text-align: right;">Page 187</p> <p>1 MR. DAVIS: Okay. Well, certainly development on  2 the other side of Towne Crest Drive is consistent with the  3 townhouse, community townhouse development. I believe that  4 the existing garden apartments which are basically two, two  5 to three floors in height, I think that they're compatible.  6 The question would be would additional height potentially be  7 compatible and I certainly think that you could have some  8 four-story building height that could be done in a way that  9 could be compatible. But I would, I don't believe that it  10 would be appropriate to go above that height for  11 compatibility and I would note that the applicants are not  12 proposing any height greater than four stories for the  13 subject site.  14 In terms of other uses around the property, we do  15 have one-family detached dwellings that are located south of  16 the subject site on the opposite side of Washington Grove  17 Lane. There's also four detached homes that are located on  18 Daylily Lane which is located on the southeast corner of the  19 subject property. And as you know with the planned  20 development zones, there are 100-foot minimum setback is  21 required where a PD zone adjoins one-family detached zoning  22 if a unit other than a detached home is being proposed for  23 that area. And it appears now that they have met those  24 setback requirements in terms of the detached homes on the  25 south side, the southeast side. There's also detached homes</p>	<p style="text-align: right;">Page 189</p> <p>1 MR. BROWN: Are you, I'm trying to understand what  2 you're saying. Are you saying that one way to address that  3 would be to have a greater setback between the Washington  4 Grove, Westwoods end of the buildings?  5 MR. DAVIS: Yes. When I had looked at this from  6 my February 4th report I prepared, I suggested that probably  7 they should be thinking about something on the order of 50  8 feet as a sufficient to protect that particular wooded area.  9 MR. BROWN: Now you may have heard the testimony  10 earlier today that this exhibit, 126 I think it is, showing  11 a greater setback for building B is simply proposed and that  12 the applicant would prefer the other version which does not  13 eliminate the south, the southern end of building B on the  14 grounds that the 100-foot setback is not applicable. What  15 we have in the record is the claim that it's not applicable  16 because it's dealing with property in an adjacent  17 jurisdiction. Do you recall reading that claim?  18 MR. DAVIS: Yes, I do recall that.  19 MR. BROWN: Do you have an opinion with regard to  20 that interpretation of the zoning ordinance and what is it  21 based upon?  22 MR. DAVIS: Okay. First of all, I believe that  23 the, it is appropriate to consider the normal setback from  24 the zone from the adjacent property, even though it would be  25 in a jurisdiction, a planning jurisdiction other than the,</p>



<p style="text-align: right;">Page 190</p> <p>1 under the County zoning ordinance.</p> <p>2 MS. ROBESON: Well, what was the practice of Park</p> <p>3 and Planning? Did you run into this issue?</p> <p>4 MR. DAVIS: Well, I did dealing with Prince</p> <p>5 George's. The property was adjacent to the boundary with</p> <p>6 Prince George's County and this was --</p> <p>7 MS. ROBESON: What was the interpretation?</p> <p>8 MR. DAVIS: We met with the staff from Prince</p> <p>9 George's County, the planning staff, commission staff, and</p> <p>10 we sat down and we talked about it. And in that instance we</p> <p>11 were recommending that there should be 100-foot setback from</p> <p>12 single-family detached homes that were, zoning that was</p> <p>13 existing in Prince George's County. That was a case that</p> <p>14 goes back -- it was sometime in the mid-1980's. I don't</p> <p>15 know what ultimately it was approved for, but I remember the</p> <p>16 meetings and discussion about that.</p> <p>17 I also recall meetings where we met with staff</p> <p>18 from the City of Rockville and talked with them about, you</p> <p>19 know, issues of development along the boundaries. We always</p> <p>20 took into account what was planned and what was thought</p> <p>21 about for the adjacent properties. We never treated it as</p> <p>22 it was the end of the world and it didn't have to be looked</p> <p>23 at. In fact, I think there may be even a memorandum of</p> <p>24 understanding between Prince George's and the commission,</p> <p>25 Prince George's side of the commission and Montgomery's side</p>	<p style="text-align: right;">Page 192</p> <p>1 area and then the provision of the, again, this is the</p> <p>2 minimum green area requirements. There was a relationship</p> <p>3 in terms of the size of the tract that was being counted for</p> <p>4 density and counted for green area. And I think that, you</p> <p>5 know, that was important. The fact that the technical staff</p> <p>6 pointed out that they felt it should be based on the gross</p> <p>7 tract area, then in my mind I was concerned when I saw that</p> <p>8 there was green area being proposed within the right-of-way</p> <p>9 area. And I don't disagree that the way the definition of</p> <p>10 green area is. You can have land within a right-of-way that</p> <p>11 meets the definition of green area. My problem is to</p> <p>12 apply that, to say that it can count. For the minimum green</p> <p>13 area to me is a problem because one of the requirements of</p> <p>14 the development plan is that you've got to be able to assure</p> <p>15 long-term or perpetual maintenance of these common</p> <p>16 facilities and these green areas.</p> <p>17 So my, I believe that to show green area, minimum</p> <p>18 green area within the right-of-way is a mistake. I'm not</p> <p>19 aware -- I don't recall any case that I was involved in</p> <p>20 where it was counted and I don't recall any cases in terms</p> <p>21 of discussions I've had with some of the site plan</p> <p>22 reviewers, former site plan reviewers where they would have</p> <p>23 allowed that either. I just think it would be bad public</p> <p>24 policy because of the potential of having to widen streets</p> <p>25 or, you know, any number of things.</p>
<p style="text-align: right;">Page 191</p> <p>1 of the commission, but that would have been probably 10 or</p> <p>2 15 years ago.</p> <p>3 MS. ROBESON: Okay.</p> <p>4 MR. DAVIS: I agree with the comments that were</p> <p>5 provided by chair, Chairwoman Carrier of the Planning Board</p> <p>6 where she felt that the setbacks would also apply based on</p> <p>7 her experience.</p> <p>8 MR. BROWN: You have seen the green area</p> <p>9 exhibits --</p> <p>10 MR. DAVIS: Yes.</p> <p>11 MR. BROWN: -- Mr. Davis?</p> <p>12 MR. DAVIS: Yes.</p> <p>13 MR. BROWN: Do you believe that the applicant has</p> <p>14 been computing the green area correctly?</p> <p>15 MR. DAVIS: Well, I'm concerned that the applicant</p> <p>16 is basing, one point was basing green area, I guess, on the</p> <p>17 net area and then we're looking at it based on the gross</p> <p>18 tract area. I think the PD zones speak to gross area, gross</p> <p>19 tract area. It's in the sort of the nature of the zones. I</p> <p>20 say that because typically with PD, my experience has been</p> <p>21 you came into new properties without development on them, so</p> <p>22 you were looking at a gross situation where there would be</p> <p>23 dedication.</p> <p>24 But I would point out the relationship between</p> <p>25 density in terms of calculating density over the gross tract</p>	<p style="text-align: right;">Page 193</p> <p>1 In this particular case, I think it's important to</p> <p>2 note that the Department of Transportation has not yet</p> <p>3 reviewed Towne Crest Drive in terms of what improvements</p> <p>4 will be necessary to that road to be able to accommodate</p> <p>5 safe ingress/egress. Also, I would note that today Towne</p> <p>6 Crest Drive terminates up near the north property line. And</p> <p>7 I think when you look at the map of the surrounding area, it</p> <p>8 appears that at some point there was an intent to continue</p> <p>9 the road through to the development, into the development to</p> <p>10 the north.</p> <p>11 MS. ROBESON: Into Saybrooke?</p> <p>12 MR. DAVIS: Yes.</p> <p>13 MS. ROBESON: Or the Gaithersburg --</p> <p>14 MR. DAVIS: Yes. Now if that's not to occur, then</p> <p>15 it's part of this, this would go forward to the subdivision</p> <p>16 process. The Department of Transportation would have to</p> <p>17 look very carefully at what would be the appropriate</p> <p>18 termination of the road and normally that would be a cul-de-</p> <p>19 sac --</p> <p>20 MS. ROBESON: Right.</p> <p>21 MR. DAVIS: -- would be done. Now I understand in</p> <p>22 this situation there's discussion about potentially pursuing</p> <p>23 abandonment of a part of Towne Crest Drive such that they</p> <p>24 would not have to do a cul-de-sac. But, again, it doesn't</p> <p>25 show on here in that fashion, so who knows whether an</p>

<p style="text-align: right;">Page 194</p> <p>1 abandonment would occur, who knows whether there would be a  2 cul-de-sac, so I just see that as problematic to be counting  3 a green area within a right-of-way where you've got these  4 types of uncertainties. We don't know at the entrance if  5 they're going to have to do some sort of monumental entrance  6 because of the densities where they'd have to have a right  7 turn in and then, you know, a left turn lane coming in,  8 potentially two lanes going out and having that extend  9 possibly as far as the first street within the community.  10 So that would, again, widen, take additional space to  11 accommodate those roads.  12 I don't know if there's going to be requirements  13 for deceleration or acceleration lanes along the Washington  14 Grove Lane and that could also affect that. So I just see  15 problems with counting green area as, counting, excuse me,  16 land within the right-of-way as minimum green area. I mean  17 if you can meet the minimum green area on site, well, then  18 it's just, in effect, additional green area. It doesn't  19 create a zoning problem if you lose that. So I think that  20 that's a critical issue in this application.  21 MR. BROWN: One more thing, Mr. Davis. Putting  22 aside the issue of compliance with any other various  23 standards that we've talked about so far, and just looking  24 at this property from the perspective of a land planner and  25 looking at and considering what's around it, what's</p>	<p style="text-align: right;">Page 196</p> <p>1 MS. ROBESON: How does this compare with the  2 transit station as far as the density?  3 MR. DAVIS: I was looking at some of the densities  4 in the plan.  5 MS. ROBESON: Is PD-30, I guess my question is is  6 PD-35 here meet the same policy objectives as at the transit  7 station?  8 MR. DAVIS: I don't believe so and, again, it's  9 because of the --  10 MS. ROBESON: Planning objectives?  11 MR. DAVIS: Yes.  12 MS. ROBESON: Maybe planning objectives?  13 MR. DAVIS: Again, you wanted to, under smart  14 growth scenario, you want to put density where it can be  15 best served in terms of transit facilities and things like  16 that. Where you have the Shady Grove station, you have a  17 full service transit station with full service bus  18 capability. So I think that that fact from a smart growth  19 perspective is the area where you would want to concentrate  20 your higher densities. In looking at the kind of densities  21 that were proposed around Shady Grove, I would say that  22 they're incomparable to the densities that are being  23 proposed at this site which is 6/10 of a mile located from a  24 limited service MARC station.  25 MR. BROWN: Mr. Davis, are you referring to page</p>
<p style="text-align: right;">Page 195</p> <p>1 available and all of that, what do you see as an appropriate  2 development for this property and what would be an  3 appropriate zone for development of this property?  4 MR. DAVIS: Okay. First of all, I did look at it  5 from the standpoint of what I thought could potentially work  6 for this project here and I think that if the density were  7 brought under control in terms of what the master plan had  8 been thinking about, I mean even if the Council were of a  9 mind to say, well, we could entertain some limited amount of  10 density into it, I could see something on the order of like  11 a PD-22 zone, which I think could work well with the site.  12 Again, remember, this proposal involves a very significant  13 structured parking component.  14 I don't know whether the structured parking  15 component would still work or not but, again, that would be  16 part of a pro forma that a developer would have to put  17 together as to whether or not that type of a proposal could  18 work. But I would, I would think that we're, you're talking  19 about some type of minimal increase that could be argued in  20 terms of the logic of the passage of time. I think that  21 could tend to be logical rather than looking at a proposal  22 that, in effect, could have, change it from 15 units per  23 acre to 40 units per acre which are densities associated  24 with the transit station that was just recently planned. So  25 I just think that we have to think more --</p>	<p style="text-align: right;">Page 197</p> <p>1 119 of the Shady Grove sector plan?  2 MR. DAVIS: Yes, I am.  3 MR. BROWN: That's an attachment to our prehearing  4 statement, correct, Exhibit 88 --  5 MR. DAVIS: Yes.  6 MR. BROWN: -- A?  7 MR. DAVIS: Yes, that's correct.  8 MR. BROWN: Go ahead.  9 MR. DAVIS: I would just note that for some of the  10 properties, like the KC-6, for example, on page 119 under  11 the upper Mill Creek area, for the KC, well, let me start  12 with KC-7. That's shown as a PD-18 with a limit of 305  13 dwelling units and .3 FAR of commercial development to PD-  14 18. The KC-6 tract is identified as I-3 with a .3 FAR of  15 development with 130 dwelling unit maximum. There is a  16 residential option that's available in the I-3 zone. So  17 that, again, would be on the order of maybe 300,000 square  18 feet of commercial development with 130 dwelling units.  19 In the metro neighborhoods, the metro west  20 neighborhood, you see the TOMX-2 TDR and TOMX-2 zones.  21 There those are FAR-based zones and I'm just looking, just  22 looking quickly at 1.4 FAR with 70 percent minimum  23 residential. I'm just, you know, looking at that as  24 probably in the order of about 45 dwelling units per acre,  25 45, 48 dwelling units per acre. So the metro south sites</p>

<p style="text-align: right;">Page 198</p> <p>1 are somewhere around 40 to 45 dwelling units per acre and,  2 again, this is just a quick thumbnail type look at this.  3 Those are fairly significant densities, yet this application  4 is proposing something comparable to that. I don't think  5 it's a comparable situation at all.  6 MS. ROBESON: All right.  7 MR. BROWN: Do you know whether or not those  8 density recommendations in the Shady Grove sector plan have  9 resulted in actual construction in those neighborhoods of  10 development at anywhere, at, along those lines?  11 MR. DAVIS: No, I haven't noticed any development.  12 I mean I haven't, I didn't specifically, I haven't  13 specifically driven through that area in the last six  14 months.  15 MR. BROWN: Okay. One other thing, Mr. Davis.  16 You heard Mr. Berman's testimony this morning --  17 MR. DAVIS: Yes.  18 MR. BROWN: -- or, he mentioned a rezoning G-808  19 with respect to the green area controversy.  20 MR. DAVIS: Yes.  21 MR. BROWN: Did you have an opportunity to look at  22 the hearing examiner's executive summary of that rezoning?  23 MR. DAVIS: Yes, I looked at that when we were on  24 lunch break. G-808 was filed March 12, 2003, and looking at  25 the gross tract area and looking at the green space in terms</p>	<p style="text-align: right;">Page 200</p> <p>1 PD zonings on the west side, I think that those were all  2 carefully thought through and I'm just surprised by the  3 comment.  4 MR. BROWN: Mr. Davis, is there anything about  5 your report that you haven't highlighted for the Hearing  6 Examiner that you'd like to mention before I turn you over  7 to Mr., to Mr. Kaufman and Ms. Girard?  8 MR. DAVIS: No, I believe the comments I've made  9 have, are reflected in the report that I've provided.  10 MS. ROBESON: All right.  11 MR. BROWN: Okay.  12 MR. KAUFMAN: Ms. Girard will do the cross.  13 MS. ROBESON: Okay. Ms. Girard.  14 MS. GIRARD: Good afternoon, Mr. Davis.  15 MR. DAVIS: Good afternoon.  16 MS. GIRARD: And I'm going to apologize in advance  17 if I jump around from my notes. I'm scribbling, so we may  18 change topics and then change back, so --  19 MR. DAVIS: Okay.  20 MS. GIRARD: -- bear with me. So start with the  21 green area calculation. Are you aware of what, and I know  22 you were here this morning, but are you aware of the area  23 that's included in the application, the development area of  24 the application?  25 MR. DAVIS: The, all that I've heard mentioned of</p>
<p style="text-align: right;">Page 199</p> <p>1 of those calculations, it appears to me that the green area  2 was calculated based on gross tract area. It's described  3 here on the executive summary, acreage to be developed,  4 23,238 square feet, which includes 21,101 square feet to be  5 rezoned, plus 596 square feet of Battery Lane right-of-way  6 to be dedicated, plus 1,541 square feet of County-owned  7 Woodmont Avenue. So there that was a, based on a gross area  8 and the green area, when we calculated the green area, 30  9 percent required at 6,971 square feet, which was 30.1  10 percent of the 23,238 square feet of gross tract area.  11 MS. ROBESON: Okay.  12 MR. BROWN: Do you have any other, any other  13 comments or reactions to Mr. Berman's testimony?  14 MR. DAVIS: I was just surprised to hear Perry  15 say, you know, 28 years later that he believes it was a  16 mistake at that time in terms of higher density not being  17 planned for the site. I would just, I was surprised by  18 that. I could hear him maybe say that he felt that over  19 time more density probably is justified there and I wish I  20 knew it at the time, but I don't think that this rose to an  21 issue of a mistake at all because as I looked at the data  22 and looked at the tables again in the Master Plan, pages 46  23 and 47, I think it was very clear, you know, what was being  24 recommended and why and the TDR densities that were  25 recommended for certain of the sites on the east side, the</p>	<p style="text-align: right;">Page 201</p> <p>1 has been the 8.1 acre area that's been associated, I guess,  2 with the request for the density.  3 MS. GIRARD: And in your testimony you said  4 typically a PD application would come in and calculate  5 everything off of gross tract area?  6 MR. DAVIS: That was my experience with the PD  7 zone applications.  8 MS. GIRARD: But it is possible, is it not, that  9 an application would come in and just use what we know of,  10 and not to confuse the terms, but a net tract area, so it  11 would not include previously dedicated rights-of-way?  12 MR. DAVIS: No, I'm not -- again, the zone is not  13 based on a net lot area. There are zones that are based on  14 net lot areas in terms of what you count for development and  15 what you count for green area, but the PD zone is not one of  16 those zones. I believe that the zones are clear in terms of  17 speaking in terms of gross area, gross tract area referenced  18 two different ways in here. And I think, again, that's  19 important because a relationship oftentimes between the  20 density that's asked for and the green area. So it's built  21 into the zone for that.  22 I think here what we see is a situation where it's  23 not coming in at a maximum density request and so I don't  24 know that you just get to pick and choose in terms of  25 whether you want to come in on a net lot area or gross tract</p>

<p style="text-align: right;">Page 202</p> <p>1 area basis. I think the zone specifies how you would do 2 that.</p> <p>3 MS. GIRARD: But does it? Is -- can you point me 4 to an explicit place in the PD zone it says gross tract area 5 is what you need to use?</p> <p>6 MR. DAVIS: They used gross tract area and gross 7 area.</p> <p>8 MS. GIRARD: But you're reading into -- does it, in 9 fact, say gross tract area or does it say gross area is my 10 question?</p> <p>11 MR. DAVIS: The, under the density it talks about, 12 let me see, I don't have that specific page. Oh, here we 13 go. Thank you. Under Section 59C-7.14, which is the 14 density residential development that talks about dwelling 15 units per acre, and that's the maximum density, under -- I'm 16 looking for the green area. There we go. This is in 59C- 17 7.16. It talks about percent of gross area.</p> <p>18 I don't really see that those are in conflict with 19 each other. I think that it's generally based on a gross 20 tract area calculation. I think that if it were intended to 21 come in on a net basis, there would be language that would 22 talk about you would come in on a net basis.</p> <p>23 MS. GIRARD: But it doesn't --</p> <p>24 MR. DAVIS: -- in terms of either the area that's 25 applied for or the, or the green area density calculation.</p>	<p style="text-align: right;">Page 204</p> <p>1 green area is properly calculated on 8.11 and that's what 2 he's done. Do you disagree that if you were to calculate, 3 and I know you may not have reviewed all the plans, but do 4 you disagree that if you calculate it based on net, or the 5 8.11 acres, and look at what's provided, it would meet -- 6 and alternatively if you looked at the gross tract area and 7 the staff directed the applicant to do and compared that to 8 what's provided, it would meet it as well?</p> <p>9 MR. DAVIS: No, I don't believe that. I believe 10 that the only way you could meet it is if you were based on 11 net areas for both the calculation of the density and then 12 the calculation of the green area and I don't think that's 13 intended in the zone. I think that the zone allows you to 14 go to the gross tract area for your calculation of density 15 and then the quid pro quo would be then that your green area 16 would also be calculated on the basis of the gross tract 17 area.</p> <p>18 MS. GIRARD: So you think they're connected at the 19 hip because it's a quid pro quo of your getting density, but 20 you're also getting a higher green area requirement?</p> <p>21 MR. DAVIS: That's my belief.</p> <p>22 MS. GIRARD: Which in this case they're not taking 23 any of the density off because it's not included in the 24 green area, correct?</p> <p>25 MR. DAVIS: Say that one again.</p>
<p style="text-align: right;">Page 203</p> <p>1 MS. GIRARD: But nowhere does it explicitly say 2 that your density, the green area needs to be based on gross 3 tract area, gross tract area being a defined term in the 4 zoning ordinance.</p> <p>5 MR. DAVIS: Yes, gross tract area is defined. I 6 take gross area to be another word that's used for gross 7 tract area. Sometimes --</p> <p>8 MS. GIRARD: So you're reading in tract?</p> <p>9 MR. DAVIS: Sometimes in the zoning ordinance 10 you'll find that tract, a particular term through the 11 ordinance, is difficult. You'll find that it's used a 12 slightly different way.</p> <p>13 MS. GIRARD: Believe me, I know. I'm very 14 familiar with that. But, in fact, you're reading in the 15 word tract in your analysis?</p> <p>16 MR. DAVIS: Yes.</p> <p>17 MS. GIRARD: And do you agree that under the 18 definition of green area it does talk about an area 19 prescribed, I've got to find the actual, a prescribed 20 portion of the land area encompassed by a development plan?</p> <p>21 MR. DAVIS: Uh-huh. Yes.</p> <p>22 MS. GIRARD: And you heard the testimony of Mr. 23 Longfellow this morning --</p> <p>24 MR. DAVIS: Yes.</p> <p>25 MS. GIRARD: -- and it's his opinion that the</p>	<p style="text-align: right;">Page 205</p> <p>1 MS. GIRARD: I'll move on from that. You also 2 mentioned Exhibit G-808 and, I'm sorry, I was writing when 3 you went through the numbers, but was it your contention 4 that in that case there was green area, that green area in 5 the right-of-way was not included in the green area 6 calculation?</p> <p>7 MR. DAVIS: The green area calculation took into 8 account the gross tract area of that property which included 9 right-of-way.</p> <p>10 MS. GIRARD: Right. Was it not your testimony 11 that area within the right-of-way should not be included, 12 should not be counted toward green area --</p> <p>13 MR. DAVIS: It should not be counted towards --</p> <p>14 MS. GIRARD: -- because it could later be --</p> <p>15 MR. DAVIS: -- the minimum green area, because I 16 recognize the definition of green area and you can have area 17 within right-of-way that meets the definition of green area. 18 But I don't think it's appropriate to count it towards the 19 minimum green area requirement because you can't assure the 20 long-term maintenance or management in perpetuity that's 21 required by the development plan requirements.</p> <p>22 MS. GIRARD: This is your opinion or is this a 23 stated policy?</p> <p>24 MR. DAVIS: For now I'll say it's my opinion, but 25 I can't recall any time it was done otherwise. In fact,</p>

<p style="text-align: right;">Page 206</p> <p>1 this was sort of the opportunity to see one and it wasn't.</p> <p>2 MS. GIRARD: And just so I'm following, so you</p> <p>3 contend that in G-808 that the green area that was included</p> <p>4 for purposes of green area calculation in the right-of-way</p> <p>5 was access above and beyond what was required by the 30</p> <p>6 percent?</p> <p>7 MR. DAVIS: It shows as 30.1 percent green area</p> <p>8 for the site and I'm not saying that any of that is located</p> <p>9 within the right-of-way. I'm just saying that the</p> <p>10 calculation of green space coincides with the gross tract</p> <p>11 area of the project. So the gross tract area and the green</p> <p>12 area were done based on gross tract area.</p> <p>13 MS. GIRARD: And have you reviewed the actual</p> <p>14 development plan?</p> <p>15 MR. DAVIS: For G-808?</p> <p>16 MS. GIRARD: For G-808?</p> <p>17 MR. DAVIS: No, I have not.</p> <p>18 MS. GIRARD: In fact, so you wouldn't know whether</p> <p>19 there was or was not area within that right-of-way that was</p> <p>20 counted --</p> <p>21 MR. DAVIS: Correct.</p> <p>22 MS. GIRARD: -- and how much that would be?</p> <p>23 MR. DAVIS: Correct.</p> <p>24 MS. GIRARD: Okay. I'm going to try to keep my</p> <p>25 thoughts together, so if you could bear with me for a second</p>	<p style="text-align: right;">Page 208</p> <p>1 MR. DAVIS: I think that it certainly does rise to</p> <p>2 the level of a legal issue.</p> <p>3 MS. GIRARD: So your testimony was more your</p> <p>4 opinion based on your experience with Prince George's County</p> <p>5 in this case and you're not making a legal --</p> <p>6 MR. DAVIS: That's correct. That was the planning</p> <p>7 process that we generally would go through, would be to</p> <p>8 coordinate with other jurisdictions and do our best to abide</p> <p>9 by --</p> <p>10 MS. ROBESON: Was that the agency's interpretation</p> <p>11 of that?</p> <p>12 MR. DAVIS: I don't think it ever rose to the</p> <p>13 level of where anybody had to get an interpretation. That</p> <p>14 was the practice.</p> <p>15 MS. GIRARD: And when you say it was a practice,</p> <p>16 was the practice based on the one example that you can</p> <p>17 recall or were there --</p> <p>18 MR. DAVIS: I'm sure that there were probably</p> <p>19 others. I mean, you know, we have the City of Rockville,</p> <p>20 the City of Gaithersburg, Washington Grove. There's any,</p> <p>21 you know, this opportunity happens wherever you butt up</p> <p>22 against another planning jurisdiction. Not so much with</p> <p>23 Howard County. We have a river.</p> <p>24 MS. GIRARD: You also mentioned that with regard to</p> <p>25 setbacks that you thought a 50-foot setback would protect</p>
<p style="text-align: right;">Page 207</p> <p>1 here? You also testified regarding the 100-foot setback</p> <p>2 from the western property line.</p> <p>3 MR. DAVIS: Correct.</p> <p>4 MS. GIRARD: And --</p> <p>5 MR. DAVIS: Actually, there's the -- I don't</p> <p>6 believe there's a 100-foot setback from the west property</p> <p>7 line. I think that, you know, there was a recognition that</p> <p>8 the zoning for the woods, the Westwoods area is under a</p> <p>9 forest resource --</p> <p>10 MS. GIRARD: Okay.</p> <p>11 MR. DAVIS: -- type zone. So I don't believe that</p> <p>12 the 100-foot setback applies there. But I think what has to</p> <p>13 be determined as part of this process is what is the</p> <p>14 appropriate setback that would satisfy the objectives of the</p> <p>15 zone and in this case I would say the objective of the zone</p> <p>16 to preserve as many trees as possible.</p> <p>17 MS. GIRARD: I was referring specifically to your</p> <p>18 recollection of dealings with Prince George's County --</p> <p>19 MR. DAVIS: Oh, okay.</p> <p>20 MS. GIRARD: -- and other areas right, master</p> <p>21 plans recommending and whether you need to, whether</p> <p>22 Montgomery County needs to abide by the zoning</p> <p>23 recommendations outside their jurisdiction. If I recall</p> <p>24 correctly, was it not your conclusion in your report that</p> <p>25 that was more of a legal issue?</p>	<p style="text-align: right;">Page 209</p> <p>1 the trees in the Westwoods more appropriately, is that</p> <p>2 correct?</p> <p>3 MR. DAVIS: Correct.</p> <p>4 MS. GIRARD: And were you here for the testimony of</p> <p>5 the landscape architect, the project landscape architect,</p> <p>6 Mr. Foster, earlier?</p> <p>7 MR. DAVIS: Yes, uh-huh.</p> <p>8 MS. GIRARD: And did you hear his conclusion that</p> <p>9 doubling the setback would not significantly impact the</p> <p>10 health of those trees?</p> <p>11 MR. DAVIS: Yes, I did.</p> <p>12 MS. GIRARD: And what is the basis for your</p> <p>13 disagreement with that?</p> <p>14 MR. DAVIS: Well, I, it's not so much that I</p> <p>15 disagree with it. I think that, I think that this gets into</p> <p>16 the area where I think you should have people who are</p> <p>17 trained obviously in doing the specific NRI's, natural</p> <p>18 resource inventory, forest stand delineation, make the call.</p> <p>19 I laid that out as a suggestion in terms of my experience</p> <p>20 where oftentimes we would try and create some type of buffer</p> <p>21 to help protect the trees. And, in fact, talking with staff</p> <p>22 at the Park and Planning Commission, they do say it's sort</p> <p>23 of a case-by-case call.</p> <p>24 I think what I would say here is that I think that</p> <p>25 there needs to be a more careful look taken by someone in</p>

<p style="text-align: right;">Page 210</p> <p>1 terms of making sure that the Westwoods area is being 2 protected as much as possible given the requirements of the 3 zone. 4 MS. GIRARD: And when you say a careful look needs 5 to be taken by someone, you're discounting the review that 6 was done by not only the project landscape architect, but 7 the Park and Planning staff and ultimately the Planning 8 Board who approved the preliminary forest conservation plan? 9 MR. DAVIS: I have concern that I'm not sure, 10 reading the staff report, I'm not sure that the 11 environmental staff looked at this from the standpoint of a 12 planned development zone application and a higher rigor or 13 procedural requirement in terms of protection of tree. I 14 think this goes to a different level of finding than you 15 would for just a typical forest delineation issue. 16 MS. GIRARD: And what are you basing that on? 17 MR. DAVIS: Again, basing it on my experience and 18 issues looking at trees. I was involved in helping develop 19 the first tree protection ordinance that was done in the 20 County back in 1988, 1989, and then I worked with Cathy 21 Conlin (phonetic sp.) when the State was, you know, going 22 about the process or the procedures for requiring forest 23 conservation and forest retention. And so I have experience 24 of the discussion of the problems and I recognize that it's 25 technical in terms of the protection of individual and</p>	<p style="text-align: right;">Page 212</p> <p>1 Department of Transportation would require with regard to 2 entrances, a potential future abandonment of the end of 3 Towne Crest Drive or whatever. How do you know that these 4 issues have not yet been vetted with DOT? 5 MR. DAVIS: I asked staff at Department of 6 Transportation if there, if they had reviewed this plan from 7 the standpoint of improvements that would be required to the 8 street and I was told that it had not yet been reviewed by 9 the Department of Transportation staff. 10 MS. GIRARD: You spoke to one person at Department 11 of Transportation about this? 12 MR. DAVIS: Yes, I did. Yes, I did. 13 MS. GIRARD: So you're not aware of whether the 14 applicant has had meetings with Department of Transportation 15 and I believe it was on the record by at least one of the 16 witnesses that there had been at least one meeting regarding 17 the potential future abandonment of Towne Crest Drive. Did 18 you hear that testimony? 19 MR. DAVIS: I did hear that testimony and the 20 individual I spoke with at Department of Transportation did 21 say that there had been discussions associated with the 22 question of abandonment, but it hadn't gone beyond, it 23 hadn't reached any level of a decision. 24 MS. GIRARD: With regard to density in the master 25 plan, are you aware, are there any plans in the County that</p>
<p style="text-align: right;">Page 211</p> <p>1 specific trees and I certainly defer to the professionals 2 who are foresters or who are trained in that regard. 3 MS. GIRARD: You defer to that, but you're at the 4 same time implicating that that analysis was not done here? 5 MR. DAVIS: I don't think Park and Planning did it 6 sufficiently for the purposes of a planned development zone 7 case. I think that, I think that the, I think that it 8 should have been more explicit in terms of the analysis that 9 was performed by the staff that this was for a planned 10 development zone application and recognition that there is a 11 higher standard, I believe, for the review of a plan 12 development case where it butts forested land. 13 MS. GIRARD: So -- 14 MR. DAVIS: That's my opinion. 15 MS. GIRARD: It's your opinion, but you recognize 16 that the preliminary forest conservation plan was reviewed 17 and approved by the Planning Board? 18 MR. DAVIS: I recognize that. 19 MS. GIRARD: As I promised to jump back and 20 forth -- 21 MR. DAVIS: Okay. 22 MS. GIRARD: -- I had one more thought on the 23 green area calculations and the right-of-way. One of the 24 other comments you made when you were reviewing that is that 25 there's no certainty as to what DOT would require,</p>	<p style="text-align: right;">Page 213</p> <p>1 are older than the Gaithersburg Vicinity Master Plan? 2 MR. DAVIS: Westburg plan is. 3 MS. GIRARD: And is your opinion that plans 4 reaching the age of almost 30 years old, is that unusual in 5 the County? 6 MR. DAVIS: Yes, I do believe that is unusual. 7 MS. GIRARD: Would you argue that it's good 8 planning practice to let plans go 30 years without updating 9 them? 10 MR. DAVIS: No, I think that they should be looked 11 at more often than once every 30 years. I think that the, 12 there would be an emphasis on trying to do it within the 13 prescribed periods in the state law. 14 MS. GIRARD: And you mentioned the master plan 15 amendment process. I think you were referring to the minor 16 amendment process? 17 MR. DAVIS: Yes. 18 MS. GIRARD: Is that what you meant? Are you 19 familiar with requirements for those and the likelihood that 20 Park and Planning and the County would take up one that 21 dealt with one or potentially two properties? 22 MR. DAVIS: Well, I understand the issue where 23 they're concerned about effects on their work program. I'm 24 just saying that that's a process that's available that the 25 County could consider, that the County Council could</p>

<p style="text-align: right;">Page 214</p> <p>1 consider in terms of trying to decide this, what I would  2 call a major policy decision. But, again, I know that  3 there's gatekeepers there and sometimes it's very difficult  4 to get things moving that otherwise should probably go  5 forward.  6 MS. GIRARD: And in your testimony you were  7 comparing the densities to the Shady Grove sector plan and I  8 just want to make sure I have the numbers correct. And I  9 know you were doing them on the fly, but under the TOMX  10 zone, it was your conclusion that some of those densities  11 near the Metro were 45 to 48 dwelling units per acre, is  12 that correct?  13 MR. DAVIS: Yes, and what I was looking at were  14 the FAR's with 70 percent minimum residential and just  15 trying to work some math off of those and the size of the  16 property.  17 MS. GIRARD: And the PD-35 that's proposed here,  18 you're calling the 10 units per acre a difference comparable  19 in your opinion?  20 MR. DAVIS: Well, first of all, I don't think the  21 situations are comparable in terms of the locations in the  22 properties, but I think that, well, in terms of what I found  23 in the density, we were looking at a potential increase of  24 over, to a density of over 40 units per acre with the 329  25 dwelling units.</p>	<p style="text-align: right;">Page 216</p> <p>1 MS. GIRARD: I'm not sure that that's how I  2 represented it.  3 MR. DAVIS: Oh.  4 MS. GIRARD: Was the County Council in that case  5 saying that you should, that the weight, the weight of the  6 specific recommendations of the plan is maintained no  7 matter how old the Master Plan is?  8 MR. DAVIS: No, I think that they felt that they  9 had flexibility where they could take into account the age  10 of the Master Plan when they were considering a rezoning for  11 an area where the Master Plan was pretty old.  12 MS. GIRARD: And we discussed the, some of the  13 specifics of the plan, but -- and that there was an increase  14 in residential units. Do you recall how much of an increase  15 over the recommendations of the plan was allowed in that  16 case?  17 MR. DAVIS: I don't remember that there were, if  18 the dwelling units were over the recommendation of the plan.  19 I believe it was a PD-28, but only about a third of the site  20 was being utilized for residential. So it was actually less  21 than the residential density recommended in the Master Plan.  22 I think the issue there was because there were other land  23 uses on the site, the private school that's located there  24 and the floor area associated with that. I was just trying  25 to look to see if this really had any bearing in terms of</p>
<p style="text-align: right;">Page 215</p> <p>1 MS. GIRARD: Right, but I was talking specifically  2 to the comparison of the two, the Shady Grove 45 to 48 and  3 proposed here is 35? It's your, you would call those  4 numbers comparable?  5 MR. DAVIS: I would say that the numbers are  6 comparable. I don't think the areas are comparable. But 10  7 units per acre would be significant, fairly significant  8 difference on a 10-acre site. It's 150 units.  9 MS. GIRARD: I'm referring to, you referenced Case  10 G-873?  11 MR. DAVIS: Yes.  12 MS. GIRARD: That's the, we'll call it Westburg  13 case, easy reference. You mentioned that there are  14 distinguishing factors in that case that make it different  15 from the instant case, but are you familiar with the  16 language in there that did speak to the age of that master  17 plan and how that age affects the weight to be given to the  18 Master Plan?  19 MR. DAVIS: Yes, I did see that language.  20 MS. GIRARD: Do you recall what it said?  21 MR. DAVIS: Well, I mean, I think in terms of what  22 you just summarized is pretty good. The idea there was that  23 the Council felt that you could give some weight to a  24 recommendation contained in a master plan that had been in  25 existence for a long time.</p>	<p style="text-align: right;">Page 217</p> <p>1 the case that we have before us today and my conclusion is I  2 didn't think it represented a precedent. I thought the  3 issues were different.  4 MS. GIRARD: So even though a 1/3 increase in the  5 residential units was permitted, you don't feel that has --  6 MR. BROWN: Objection. She's mis-stating the  7 record.  8 MS. GIRARD: Okay. Then I will pass down to Mr.  9 Davis a copy of the hearing examiner's report and  10 recommendation, G-808. If could please read the underlying  11 language?  12 MR. BROWN: At the bottom?  13 MS. GIRARD: AT the bottom.  14 MR. DAVIS: Did you say G-808 or --  15 MS. GIRARD: 873.  16 MR. DAVIS: 873? Okay. The area underlined in  17 the red?  18 MS. GIRARD: Yes.  19 MR. DAVIS: Okay.  20 MS. GIRARD: Can you please read that for the  21 record?  22 MR. DAVIS: Yes.  23 "The applicant here has proposed a maximum  24 amount of school space equivalent to the amount of  25 office space the second plan recommended and</p>

<p style="text-align: right;">Page 218</p> <p>1 slightly more than 1/3 of the number of 2 residential units. In the context of the overall 3 set of goals and recommendations described in the 4 sector plan, the District Council finds this to be 5 acceptable." 6 MS. GIRARD: Does that refresh your memory at all 7 as to whether the Council allowed the residential density in 8 that PD zone to exceed what was permitted in the master 9 Plan -- 10 MR. DAVIS: No, I don't see the word -- 11 MS. GIRARD: -- or outlined in the Master Plan? 12 MR. DAVIS: I don't see the word exceeding the 13 Master Plan. 14 MS. ROBESON: You can bring that up on rebuttal. 15 MS. GIRARD: Yes, I think we will. Thank you. 16 Also, switching topics again, the height waiver, you 17 discussed that and said you didn't feel it was justified. 18 MR. DAVIS: Yes. I, and again I'd like to clarify 19 now that I have it in front of me. I was asked the two, the 20 two, the subsection that would, gives a basis for granting 21 of the waiver. It says that District Council may waive the 22 percentage requirements for one-family and multi-family 23 dwellings if it finds that a proposed development, A, is 24 more desirable for stated environmental reasons than 25 development in accordance with these limits or, B, achieves</p>	<p style="text-align: right;">Page 220</p> <p>1 around, you have mentioned that you didn't think it was 2 appropriate to look at an analysis area and move density 3 around within that area without, and I don't want to put 4 words in your mouth, but without the consent of the other 5 property owners? 6 MR. DAVIS: I believe that at a minimum they 7 should be consulted of that issue, yeah. I think that 8 there's a couple of different issues that come into play 9 when we're talking about this type of a density transfer. I 10 think that, number one, you have to look at it is it really 11 reasonable to take the density for other properties and do 12 whatever, that would be one question, and the other question 13 would be, well, actually what's the procedure to be able to 14 do that in PD zone since it's not specified. And the master 15 plan doesn't even provide for that type of a transfer that I 16 can see. 17 MS. GIRARD: Now when we're talking about density 18 transferring, again, we're getting into the terminology of 19 the zoning ordinance. I mean density transfers certainly 20 has a certain meaning in Bethesda CVD's where you are within 21 an area moving, like the Woodmont Triangle for instance -- 22 MR. DAVIS: Right. 23 MS. GIRARD: -- where you are moving, literally 24 moving density from one property to another. 25 MR. DAVIS: Yes.</p>
<p style="text-align: right;">Page 219</p> <p>1 goals, policies or recommendations stated in an approved, 2 adopted master or sector plan. And so the two findings, one 3 is an environmental finding that this would be better and, 4 number two would be that it would be in accordance with the 5 goals, policies and recommendations stated in an approved 6 master plan. 7 MS. GIRARD: And do you believe it's a goal, 8 policy or recommendation of the Master Plan that new 9 development be compatible with adjacent development? 10 MR. DAVIS: Yes. 11 MS. GIRARD: And do you think that having 12 buildings exceeding five or five or more stories on a site 13 would be appropriate in this context? 14 MR. DAVIS: No, I mean I think that there's been a 15 number of comments made already in the record in terms of 16 the 4-story buildings being compatible, but I think I have 17 problems with the application. I don't believe it meets 18 certain requirements of the PD zone that would be necessary 19 for approval. 20 MS. GIRARD: But that's, those are your 21 disagreements with issues outside of this particular waiver 22 request? 23 MR. DAVIS: In terms of the waiver request, right. 24 MS. GIRARD: With regard to your analysis on 25 density, jumping back to that, I'm sorry about jumping</p>	<p style="text-align: right;">Page 221</p> <p>1 MS. GIRARD: But that's not what we're talking 2 about here, is it? 3 MR. DAVIS: I believe so. I believe that the 4 master plan was talking about a density per acre, which I 5 think is across, goes across all of the land within that 6 analysis area. 7 MS. GIRARD: But it's a master plan, not a 8 statutory. In density transfers in Woodmont Triangle, for 9 instance, you are taking your, the density allowed by the 10 zoning ordinance and you're moving it. 11 MR. DAVIS: Okay. 12 MS. GIRARD: This is just a recommendation of a 13 master plan, is it not? 14 MR. DAVIS: Yes. 15 MS. GIRARD: And is your conclusion that it is 16 unusual or inappropriate for density to be moved within 17 areas, analysis areas in a master plan? 18 MR. DAVIS: I think it's problematic. I think 19 that, again, I believe that there should be a procedure in 20 place that would allow that to happen or a procedure should 21 be in place if it's going to happen. 22 MS. GIRARD: And are you familiar with situations 23 such as Flower Hill which is also within this Gaithersburg 24 Master Plan that had general density recommendations that 25 when they got on the ground, some were higher and some were</p>



<p style="text-align: right;">Page 222</p> <p>1 lower, so that, move that density around?</p> <p>2 MR. DAVIS: But my recollection is that that was</p> <p>3 all contained within a plan such that all of the lands were</p> <p>4 contained within the plan. It wasn't just that part of it</p> <p>5 came in and took density from someplace else and brought it</p> <p>6 in. I don't recall that. I mean I would be more</p> <p>7 comfortable if this application encompassed a larger area</p> <p>8 and it wanted to shift the density, then I think that would</p> <p>9 be a different matter.</p> <p>10 MS. GIRARD: And you were here for Mr. Berman's</p> <p>11 testimony this morning that when they planned this area,</p> <p>12 they meant it to be an analysis area in which density could</p> <p>13 move around?</p> <p>14 MR. DAVIS: Yes, I heard that.</p> <p>15 MS. GIRARD: And you disagree with those</p> <p>16 conclusions?</p> <p>17 MR. DAVIS: Yes, I do.</p> <p>18 MS. GIRARD: And with regard to general density,</p> <p>19 do you believe that when, if and when the Master Plan is</p> <p>20 finally updated --</p> <p>21 MR. DAVIS: Uh-huh.</p> <p>22 MS. GIRARD: -- that analysis area 2, even if left</p> <p>23 alone, would be granted a higher density, that the density</p> <p>24 recommendation would be increased?</p> <p>25 MR. DAVIS: I think that if the County Council</p>	<p style="text-align: right;">Page 224</p> <p>1 just feel very uncomfortable with the level that's being</p> <p>2 proposed in this application without having any kind of a</p> <p>3 policy basis to help it move forward.</p> <p>4 MS. GIRARD: May I just have a moment? That's all</p> <p>5 we have.</p> <p>6 MS. ROBESON: Okay. Mr. Brown.</p> <p>7 MR. BROWN: Just a couple of things, Mr. Davis. I</p> <p>8 want to make clear from your own calculations, you regard</p> <p>9 the density of this property as, you look at it on a net</p> <p>10 tract area basis the way the applicant does as 329 units</p> <p>11 divided by 8.11 acres --</p> <p>12 MR. DAVIS: Yes.</p> <p>13 MR. BROWN: -- is that right?</p> <p>14 MR. DAVIS: Yes.</p> <p>15 MR. BROWN: And how many dwelling units per acre</p> <p>16 is that?</p> <p>17 MR. DAVIS: 315.</p> <p>18 MR. BROWN: No, how many dwelling units per acre?</p> <p>19 MR. DAVIS: Oh, per acre. It's --</p> <p>20 MR. BROWN: Here's a calculator if you need it.</p> <p>21 MR. DAVIS: I think there's like -- again, I'm</p> <p>22 looking at the 315?</p> <p>23 MR. BROWN: 329 units.</p> <p>24 MR. DAVIS: Oh, that was wrong. It's about 40.6</p> <p>25 dwelling units per acre.</p>
<p style="text-align: right;">Page 223</p> <p>1 from the standpoint of a master plan feels that</p> <p>2 redevelopment is appropriate, then I would think it would be</p> <p>3 normal to provide for some type of an incentive in terms of</p> <p>4 a density increase to be able to help that come about. I</p> <p>5 think that's actually the proper way to do it would be for</p> <p>6 some type of a master plan amendment or some type of a</p> <p>7 policy document that could help provide the guidance for how</p> <p>8 that would occur.</p> <p>9 MS. GIRARD: And until such time and such</p> <p>10 amendments were forthcoming, property owners should just sit</p> <p>11 and wait?</p> <p>12 MR. DAVIS: That may be. You know, I can recall a</p> <p>13 situation that we had in Wheaton where we actually went to</p> <p>14 the Council with legislation so that we could provide or</p> <p>15 create a policy basis for some change associated with the</p> <p>16 overlay zone. We didn't tell people go file applications</p> <p>17 (indiscernible) because we knew they were going to get shot</p> <p>18 down for lack of conformance with the Master Plan. But I</p> <p>19 think that's an example where you go through a public</p> <p>20 process of, in effect, addressing the policy and having the</p> <p>21 County Council establish what they feel the policy should be</p> <p>22 and they did that in Wheaton. We asked for that. So I</p> <p>23 think, you know, with redevelopment, and this really is a</p> <p>24 redevelopment opportunity, you know, I think that you have</p> <p>25 to offer some type of incentive to help it move forward. I</p>	<p style="text-align: right;">Page 225</p> <p>1 MR. BROWN: So when you want to compare the</p> <p>2 density here to the density in the Shady Grove Sector Plan,</p> <p>3 which number is more appropriate, 35 or 40?</p> <p>4 MR. DAVIS: For this subject site?</p> <p>5 MR. BROWN: Yes, to compare it to Shady Grove.</p> <p>6 MR. DAVIS: Probably the 35 to 40 units. It's</p> <p>7 kind of the range for the properties.</p> <p>8 MR. DAVIS: No, Ms. Girard kept talking about this</p> <p>9 project as having a density of 35 units and asking you to</p> <p>10 compare that to something like 45 in the Shady Grove sector</p> <p>11 plan and my question to you is whether the more appropriate</p> <p>12 comparison is 40 rather than 35 to the Shady Grove sector</p> <p>13 plan?</p> <p>14 MR. DAVIS: I believe 40 would be the more</p> <p>15 favorable comparison given.</p> <p>16 MR. BROWN: The more favorable or the more</p> <p>17 appropriate?</p> <p>18 MR. DAVIS: The more appropriate.</p> <p>19 MR. BROWN: And have you actually worked out the</p> <p>20 numbers for the Shady Grove Sector Plan in terms of what</p> <p>21 those Metro, Metro neighborhoods work out to in actual</p> <p>22 dwelling units per acre rather than FAR?</p> <p>23 MR. DAVIS: No, I haven't done that. I just --</p> <p>24 MR. BROWN: Are you familiar with any, any sector,</p> <p>25 any sector plan or updated Gaithersburg area Master Plan</p>

<p style="text-align: right;">Page 226</p> <p>1 that recommends densities, residential densities in the 2 range of 35 to 40 dwelling units per acre, any further, any, 3 any closer to the Shady Grove Metro station than this 4 particular property? 5 MR. DAVIS: No, I don't believe so. In fact, when 6 I was looking at the Casey 7 property, which is located 7 farther north moving towards the subject site, PD-18. 8 MR. BROWN: I noticed on your resume that you seem 9 to have some background in the concept of smart growth urban 10 planning, is that correct? 11 MR. DAVIS: Yes. 12 MR. BROWN: How does smart growth planning relate 13 to this question of proximity of density to the 14 transportation notes? 15 MR. DAVIS: Well, I think that under concept of 16 smart growth, you would like to begin to, you would want to 17 maximize your densities as, at locations that can be, where 18 they can be serviced by appropriate infrastructure. For 19 example, if you've got a transit station, that area would be 20 in a better position of accommodating a higher density 21 because more people would be able to benefit from the use of 22 the facility. 23 MR. BROWN: With a reduction in automobile 24 transportation? 25 MR. DAVIS: Yes, it ties into that.</p>	<p style="text-align: right;">Page 228</p> <p>1 MR. DAVIS: No. The, no, there's not. 2 MR. BROWN: Ms. Girard suggested that you had 3 agreed with her that the, in terms of the gross tract area 4 and a calculation of the green area, that the two were, I 5 think she used the phrase connected at the hip, do you 6 remember that? 7 MR. DAVIS: Yes. 8 MR. BROWN: Do you draw a distinction between 9 maximum density and appropriate density in light of other 10 possible considerations? 11 MR. DAVIS: Say that again. 12 MR. BROWN: Do you draw a distinction between 13 maximum allowed density under the zoning code and an 14 appropriate level of density in light of other 15 considerations other than the maximum that might be allowed? 16 MR. DAVIS: Yes. When examining a case that, if 17 it comes in at maximum density, but there are issues, there 18 are problems associated with it, then you would look towards 19 changes. Oftentimes it would be less density that would 20 address whatever problem there is. 21 MR. BROWN: What if the result of those 22 recommended changes were to reduce the density by, you know, 23 a significant number of units, would that still be a plan 24 that was consistent with the PD zone? 25 MR. DAVIS: No, I think there should be some</p>
<p style="text-align: right;">Page 227</p> <p>1 MR. BROWN: All right. I want to point out to you 2 a couple of passages from resolution 16-525, which Ms. 3 Girard was asking you about. This is Exhibit 1 to your 4 report, correct? This is the resolution with regard to the 5 G-873 -- 6 MR. DAVIS: Yes. 7 MR. BROWN: -- Westbarg? 8 MR. DAVIS: Yes. 9 MR. BROWN: First of all, on page, on page 11 of 10 the resolution, what does the resolution say with regard to 11 the sector plan recommended density limits for this 12 property? 13 MR. DAVIS: It says up to 353 dwelling units and 14 180,000 square feet of office space that were commensurate 15 with the PD-28 zone. 16 MR. BROWN: Did you say or or and when you read 17 that sentence? 18 MR. DAVIS: And. 19 MR. BROWN: Going back to page 6 of resolution 16- 20 525, what was the development proposal for the project in 21 terms of dwelling units and office space? 22 MR. DAVIS: It was 121 dwelling units and 175,000 23 square feet of space. 24 MR. BROWN: Is there anything about that proposal 25 that is in excess of the Master Plan recommendation?</p>	<p style="text-align: right;">Page 229</p> <p>1 relationship between the density that they ask for, the 2 density they can achieve, and the requirements of that zone. 3 The requirements of the zone are sort of based on the 4 density. So if you end up pulling the density out too much, 5 then you'll, you potentially can have a situation where the 6 density asked for doesn't really comport to the requirements 7 that you have or the requirements associated with the zone. 8 MR. BROWN: And was that the history of this 9 particular project? 10 MR. DAVIS: Well, there have been certainly 11 changes where it's gone from a PD-60 to a PD-44 and now to a 12 PD-35 with the, with reductions in density. There were 13 changes to the zone requested to be more in line with the 14 density requested. 15 MR. BROWN: But if I understand your testimony 16 correctly, none of that would justify switching from gross 17 tract area to net tract area calculations? 18 MR. DAVIS: I don't believe so. I still believe 19 that the PD zones, the practice with those zones has been to 20 utilize the gross tract area for purposes of density and 21 also for green area. And I have seen other cases that 22 didn't come in at the maximum density, but I didn't, I don't 23 recall any of those cases of them trying to switch to a net 24 lot area situation. And, again, I note there are zones and 25 there are zoning ordinance that do require that you examine</p>

<p style="text-align: right;">Page 230</p> <p>1 development and green area based on a net lot situation.  2 MR. BROWN: Lastly, with respect to this rezoning  3 G-808, you first heard about this when?  4 MR. DAVIS: Well, this morning, the testimony.  5 MR. BROWN: Have you had an opportunity to examine  6 the development plan?  7 MR. DAVIS: For G-808? No, I just looked at the  8 summary sheet.  9 MR. BROWN: Let's suppose it were to turn out when  10 you did examine the development plan that some of the, some  11 of the green area shown on that development plan was in the  12 right-of-way. Would that change your mind about the, your,  13 about the, about the general applicability of the rule that  14 you described?  15 MR. DAVIS: No, I, to me, that, to me it's bad  16 public policy to start counting minimum green area  17 requirement on land that's located in the right-of-way. I  18 just don't think that makes sense to do that.  19 MR. BROWN: Well, what if they did it in this  20 particular case?  21 MR. DAVIS: Then I would say they probably made a  22 mistake.  23 MR. BROWN: Okay. I have nothing further.  24 MS. ROBESON: I hate to ask this because I know  25 Mr. Kaufman is going to leave.</p>	<p style="text-align: right;">Page 232</p> <p>1 MS. ROBESON: And that's because?  2 MR. DAVIS: Because I believe that the basis for  3 the increased density in terms of relationship to MARC train  4 station, bus service, doesn't rise to the level of where you  5 would actually go against the, not go against, but where you  6 would allow a development at significantly higher densities.  7 I don't see this as a smart growth situation.  8 MS. ROBESON: Okay. All right. That was my  9 question and I know you're probably going to want -- do you  10 want to follow-up question on that?  11 MS. GIRARD: No.  12 MR. KAUFMAN: No.  13 MS. ROBESON: Okay. Well, there you go. What I  14 think -- who is your next witness, Mr. Brown?  15 MR. BROWN: Is Mr. Booher here?  16 MR. KAUFMAN: Yes.  17 MR. BROWN: Mr. Booher.  18 MS. ROBESON: Is he available on March 4th?  19 MR. BOOER: I could probably be available then.  20 MS. ROBESON: How long do you think his testimony  21 is going to take?  22 MR. BROWN: I don't know. We haven't rehearsed  23 it.  24 MS. ROBESON: Oh, okay. Why don't you take a 5-  25 minute break and you can talk to him and then we'll come</p>
<p style="text-align: right;">Page 231</p> <p>1 MR. KAUFMAN: Yes, I'm going to have to.  2 MS. ROBESON: Can Ms. Girard sit for an extra 10  3 minutes or do you want to -- I have --  4 MR. KAUFMAN: I don't know who his next witness  5 is, so --  6 MS. ROBESON: Well, I had a couple of questions of  7 Mr. Davis based on what he just said.  8 MR. KAUFMAN: Okay. And the other thing I was  9 going to ask first, will you take a brief recess for --  10 MS. ROBESON: Well, when do you have to leave?  11 MR. KAUFMAN: Well, I think I should leave about  12 quarter of 5:00.  13 MS. ROBESON: Okay. So Mr. Davis will be our last  14 witness essentially because that leaves me only 20 minutes  15 for the next witness.  16 MR. KAUFMAN: And you had some questions you said?  17 MS. ROBESON: Well, I just had a couple of  18 questions, but they relate -- I guess what I'm trying to,  19 and you may have said it and I just didn't get it, but are  20 you saying -- does this comport with smart growth policies  21 or not?  22 MR. DAVIS: This particular application?  23 MS. ROBESON: Yes.  24 MR. DAVIS: I believe that it does not comport  25 with smart growth policies.</p>	<p style="text-align: right;">Page 233</p> <p>1 back and I'll make a decision on, given Mr. Kaufman's  2 schedule on how far we want to go, all right? I mean  3 tonight.  4 (Recess)  5 MS. ROBESON: We are back on the record. Mr.  6 Brown, how long do you think your witness will be?  7 MR. BROWN: I think I can get through Mr. Booher  8 in about 10 to 15 minutes, depending on how long they want  9 to cross-examine after that.  10 MS. ROBESON: Would you prefer to wait so you can  11 go or --  12 MR. KAUFMAN: Well, we can do one of two things.  13 We could wait or I can let Ms. Girard, who is quite capable  14 of dealing with this without me, handle this witness.  15 Whatever you desire is fine.  16 MS. ROBESON: I would prefer to -- I don't know  17 how many hearing dates we have left because we have Costco  18 in March that's taking a lot of hearing dates, so --  19 MR. KAUFMAN: I would like to suggest that when  20 you do finish today, that we do find one extra day just in  21 case we need it because next time we come back, he has to  22 finish his case. We may have some rebuttal witnesses --  23 MS. ROBESON: Right.  24 MR. KAUFMAN: -- and then there's closing  25 argument. So just out of an abundance. I would love to</p>

<p style="text-align: right;">Page 234</p> <p>1 finish next time we're here --</p> <p>2 MS. ROBESON: Right.</p> <p>3 MR. KAUFMAN: -- but I --</p> <p>4 MS. ROBESON: No, I don't have a -- I understand</p> <p>5 what you're saying and I don't, I don't have a problem with</p> <p>6 that. So, but I can't do it now. So --</p> <p>7 MR. KAUFMAN: No, I understand that you'll, if</p> <p>8 you'll have a tentative date and Erin will check with my --</p> <p>9 MS. ROBESON: I can't get you a tentative date</p> <p>10 tonight.</p> <p>11 MR. KAUFMAN: Oh, okay. That would be --</p> <p>12 MS. ROBESON: I can, but we can work on that. I</p> <p>13 just need the fourth date to be able to continue the case to</p> <p>14 without the advertising. But after tonight, we'll work on a</p> <p>15 date and we can do that --</p> <p>16 MR. KAUFMAN: That's fine because then I'll be</p> <p>17 able to check my calendar.</p> <p>18 MS. ROBESON: Right. Right.</p> <p>19 MR. KAUFMAN: So with that, I'll say thank you and</p> <p>20 I'll take my leave.</p> <p>21 MS. ROBESON: Thank you.</p> <p>22 MR. KAUFMAN: All right.</p> <p>23 MS. ROBESON: Now before we start, I did want to</p> <p>24 say I did look up the land use article of the code because I</p> <p>25 wanted to see what it said about Montgomery County as</p>	<p style="text-align: right;">Page 236</p> <p>1 year --</p> <p>2 MS. ROBESON: I didn't look hard. I didn't see</p> <p>3 anything, no.</p> <p>4 MR. KAUFMAN: Okay.</p> <p>5 MS. ROBESON: So that's why I say you can argue</p> <p>6 the impact of it. I'm just disclosing it because I feel</p> <p>7 obliged because I found --</p> <p>8 MR. KAUFMAN: Thank you very much.</p> <p>9 MS. ROBESON: Okay.</p> <p>10 MR. KAUFMAN: Okay. Bye-bye.</p> <p>11 MS. ROBESON: All right, Mr. Brown.</p> <p>12 MR. BROWN: I'm calling Bob Booher.</p> <p>13 MS. ROBESON: Okay, Mr. Booher, please raise your</p> <p>14 right hand.</p> <p>15 (Witness sworn.)</p> <p>16 MR. BROWN: Would you state your full name for the</p> <p>17 record and spell your last name please, Mr. Booher?</p> <p>18 MR. BOOER: Robert Brian Booher. It's B-O-O-H-E-</p> <p>19 R. MR. BROWN: And where do you live, Mr. Booher?</p> <p>20 MR. BOOER: 111 Maple Avenue in Washington Grove.</p> <p>21 MR. BROWN: And how long have you lived there?</p> <p>22 MR. BOOER: About 24 years.</p> <p>23 MR. BROWN: And what positions have you served in</p> <p>24 or on behalf of the town during that time?</p> <p>25 MR. BOOER: For, the largest number of years on</p>
<p style="text-align: right;">Page 235</p> <p>1 opposed to the other jurisdictions and I did happen to find</p> <p>2 out that there are several bills in the legislature changing</p> <p>3 the, to change the six-year requirement to 10 years. So</p> <p>4 just so you know that, I'm just disclosing it. I don't know</p> <p>5 if it affects your testimony or not. There's also a couple</p> <p>6 of bills to eliminate the growth tiers. So I'll throw that</p> <p>7 out there. I did find that.</p> <p>8 MR. KAUFMAN: When you saw growth tiers, you mean</p> <p>9 the State's areas where they see expansion of your</p> <p>10 developable area and these are currently pending bills, is</p> <p>11 that what you're saying?</p> <p>12 MS. ROBESON: Yes.</p> <p>13 MR. KAUFMAN: Maybe, you know, thank you for</p> <p>14 letting us know and we'll take a look at those.</p> <p>15 MS. ROBESON: So I don't know if six years is</p> <p>16 going to be the standard or 10 years, I don't know, and</p> <p>17 there's no amendment to change Montgomery County's practice</p> <p>18 of updating by work program. Apparently, the State Planning</p> <p>19 Office, and this is via Carol Ruben, considers any amendment</p> <p>20 to a master plan an update and it does say in the Master</p> <p>21 Plan that it's an update to the general plan. So they, the</p> <p>22 Council legislatively determines the update via the work</p> <p>23 program.</p> <p>24 MR. KAUFMAN: There's nothing that you know of</p> <p>25 that goes beyond 10 years. I mean there's no 20-year or 30-</p>	<p style="text-align: right;">Page 237</p> <p>1 the Historic Preservation Commission. And I've been on</p> <p>2 various other committees and work groups, but that's my</p> <p>3 primary focus.</p> <p>4 MR. BROWN: And what education, training,</p> <p>5 experience, or other background do you bring to this task?</p> <p>6 MR. BOOER: I'm an architect and registered</p> <p>7 architect in Maryland. And I work for a firm in Washington,</p> <p>8 D.C., that does both large-scale and small-scale development</p> <p>9 work and preservation work. Half of our portfolio is doing</p> <p>10 Federal, modernization of Federal office buildings.</p> <p>11 MS. ROBESON: Okay.</p> <p>12 MR. BROWN: And your current position in the</p> <p>13 Historic, in the Washington Grove Historic Preservation</p> <p>14 Commission?</p> <p>15 MR. BOOER: I'm the chair.</p> <p>16 MR. BROWN: What has been the HPC's involvement in</p> <p>17 evaluating the Towne Crest project?</p> <p>18 MR. BOOER: We examine the initial application.</p> <p>19 As a group, we made comments and investigations as to the</p> <p>20 context and the impact of the project on Washington Grove</p> <p>21 and the surrounding areas. We debated it and then we</p> <p>22 prepared a letter which was submitted then to the Planning,</p> <p>23 the Montgomery County Planning Board. I also testified at</p> <p>24 the hearing.</p> <p>25 MR. BROWN: What -- maybe this is an aside, but</p>

<p style="text-align: right;">Page 238</p> <p>1 could you just briefly elaborate on the working relationship  2 between your Historic Preservation Commission and the County  3 Historic Preservation Commission?  4 MR. BOOER: Well, they're actually two separate  5 and parallel bodies. They provide guidance and regulatory  6 action on properties that are on their historic  7 preservation, on their historic atlas. And whereas  8 Washington Grove is on the, both the state and the national  9 register of historic places, it's not on the County atlas.  10 Therefore, we would defer to them to ascertain impacts of  11 development that would take place without our borders on  12 their historic property as we would and vice versa. I  13 don't -- there may be other, there is inter-governmental  14 courtesy between the two bodies and to respect the various  15 resources and presumably we share the same goals,  16 preservation goals. I'm not aware of a statutory  17 requirement.  18 MR. BROWN: And has the County HPC weighed in on  19 any way on this proposal?  20 MR. BOOER: They did. They had, they did at the  21 very last minute actually on pressure from us and requests  22 from us and it is pretty much just a conversation about the  23 trees.  24 MR. BROWN: Okay. Exhibit 88J is a September 4,  25 2012 letter from you to the chair of the Planning Board.</p>	<p style="text-align: right;">Page 240</p> <p>1 evaluations and conclusions compare with his?  2 MR. BOOHER: They support each other. I was  3 actually very encouraged by his interpretations and they  4 really do fit together well, I think.  5 MR. BROWN: I want to ask you to summarize where  6 you or the HPC stand on particular questions that have come  7 up. What would you regard as the impact of the application  8 if it were approved as it is presently formed on the impact  9 on historic resources within Washington Grove?  10 MR. BOOHER: Well, with such an urban project, it  11 would have a lot of, a lot of impact, in addition to the  12 change in the zoning and really the change in the  13 fundamental view, planning view of the area. And there  14 would be several parts to that. The -- it would  15 significantly alter the context of Washington Grove as an  16 historic resource. The context of Washington Grove, the  17 founding context was farms and fields, forests, really as an  18 antidote to an urban environment, Washington, D.C., that  19 subsequently has become a suburban context as clear here  20 with some diminution of the original context of the Grove,  21 with a step to an urban context which this implies that  22 would have significantly, significant impact and would  23 essentially negate the context of Washington Grove, the  24 founding context of Washington Grove.  25 It also would create a precedent at the edge, at</p>
<p style="text-align: right;">Page 239</p> <p>1 Does this summarize the HPC's position on the proposal when  2 it was a PD-44 proposal?  3 MR. BOOER: Yes, it does.  4 MR. BROWN: Exhibit 99B is a February 5th letter  5 to the Hearing Examiner. This letter is also from you?  6 MR. BOOER: Yes.  7 MR. BROWN: Is this letter an update of the HPC  8 position on the application?  9 MR. BOOER: Yes, it is. We amended that after  10 reviewing the revised application.  11 MS. ROBESON: When you say revised, the one on  12 February 5th is updated to a review of the PD-35 plan?  13 MR. BOOHER: Yes, it is.  14 MS. ROBESON: Okay.  15 MR. BROWN: Is there any significant change in the  16 views expressed by the HPC between the two letters?  17 MR. BOOHER: We didn't feel that there was a  18 substantive change from a preservation standpoint between  19 the two applications, so our views on it are substantially  20 the same.  21 MR. BROWN: Have you reviewed Mr. Davis's report?  22 MR. BOOHER: Yes.  23 MR. BROWN: Did you hear his testimony today?  24 MR. BOOHER: A part of it.  25 MR. BROWN: How do your evaluations, the HPC's</p>	<p style="text-align: right;">Page 241</p> <p>1 the very edge of Washington Grove that if that precedent  2 were followed around the perimeter, it would create a very  3 intense focus of that which is, of course, the -- would be  4 applied at the Washington Grove station, the MARC station,  5 it would have a significant impact on the Grove which is a  6 low-density development. The connectivity then between that  7 type of development and the focus of that development, which  8 would be the MARC station, would be directly through the  9 Grove. So it would have a very, potentially a cumulative  10 effect on the context and the very nature of Washington  11 Grove.  12 MR. BROWN: Do you see this as potentially  13 impacting your status on the National Historic Register?  14 MR. BOOHER: Yes, it could very well do that.  15 MS. ROBESON: Can I ask you, what's the boundary  16 of the National Historic District?  17 MR. BOOHER: It is smaller than the boundary that  18 you see there.  19 MS. ROBESON: Okay. Is it beyond the developed  20 town? Does it include some of the woods?  21 MR. BOOHER: Yes. Yes, it includes this part.  22 Well, no, actually it doesn't include either of the woods.  23 MS. ROBESON: It doesn't include the woods?  24 MR. BOOHER: No, but that boundary when it was  25 placed on the register, that was over 30 years ago and that</p>

<p style="text-align: right;">Page 242</p> <p>1 boundary and the nature of historic properties has changed  2 radically over the period of time. Now what they're doing  3 is including context as part of --  4 MS. ROBESON: Oh, I see.  5 MR. BOOHER: -- part of a natural resource. And  6 we are actually in the process of trying to update, we will  7 go through a process of updating that registration in order  8 to include contact.  9 MS. ROBESON: Okay.  10 MR. BROWN: Mr. Davis addressed compatibility  11 concerns. I'd like you to address your compatibility  12 concerns and if necessary please distinguish between your  13 concerns as the sort of the chair of the commission, the  14 Historic Preservation Commission, and your concerns as a  15 resident if you can, if they are, if they should be  16 separated, but I'd like you to talk about both if they're  17 different.  18 MR. BOOHER: Well, they would be pretty much  19 congruent. The -- we do not feel that the project is  20 compatible by any means with the context neither in terms of  21 scale or in terms of use or in terms of organization. The  22 similar scale is probably the primary measure or element of  23 compatibility and as we have heard, we, the project has  24 proposed 329 units on 8 acres, a little over 40 units per  25 acre, compared to Washington Grove which is 225 units on 200</p>	<p style="text-align: right;">Page 244</p> <p>1 There's ample recreation space which is open to all, all the  2 community. It has, it also has a small, commercial area  3 adjacent to the train. So it -- and this is all a vibrant,  4 thriving community. So it's really a very good example of  5 smart growth on a smaller scale.  6 The adjacent neighborhood of Saybrooke, which is  7 right here --  8 MS. ROBESON: Wait, I can't see where.  9 MR. BOOHER: Right here.  10 MS. ROBESON: North of Maple Lake Park woods and  11 the subject property?  12 MR. BOOHER: Yes, and this I'll refer to Exhibit  13 10A, which is this area right here. That's the Saybrooke  14 community, single-family homes. That was developed by Joe  15 Alfandre in direct relationship to Washington Grove. He  16 knew and understood Washington Grove in the context and did  17 this development as a compatible relationship to Washington  18 Grove both in scale and character.  19 He also respected the Westwoods and knowing that  20 that was an integral part of the Washington Grove community.  21 The Amity community, which is here, is indeed here --  22 MS. ROBESON: No, wait, is that -- it's southeast  23 of Washington Grove Lane?  24 MR. BOOHER: Yes.  25 MS. ROBESON: Okay.</p>
<p style="text-align: right;">Page 243</p> <p>1 acres. That's a little over one per acre.  2 The project also proposes to aggregate most of,  3 both, almost all of its units into two fairly large single  4 structures, 4-story structures, and that is immediately  5 adjacent to single-family, attached, single-family detached  6 and a forest. It's hard to actually compare those two and  7 call them compatible either in density or in actually scale  8 and massing. On a detailed level, they have, they have made  9 an attempt to variegate --  10 MS. ROBESON: And you're referring to 129?  11 MR. BOOHER: 129A, yes. To variegate the, this  12 façade, which faces the Towne Crest Drive in relationship to  13 the adjacent property, but they've essentially turned their  14 back on this part, which is adjacent to the woods. And they  15 have provided no, on a scale have provided no public  16 recreation space at all which is, it's essentially a closed,  17 insular community in and of itself. It doesn't -- it's not  18 open to the surrounding communities. It's not integrated  19 with the surrounding communities.  20 In addition, well, in contrast, Washington Grove,  21 and I'll put Exhibit 10 back up, Washington Grove is  22 actually an example of a 19th century smart growth  23 community. The houses are actually clustered, I deferred to  24 clustered before, in a clustered way in order to preserve  25 the surrounding woods. They are laid out on walking paths.</p>	<p style="text-align: right;">Page 245</p> <p>1 MR. BOOHER: The Amity community is a mixture of  2 single-family, multi-family and town homes and has  3 integrated public facilities to use, as does Washington  4 Grove, as does Saybrooke. So these communities that  5 surround this property provide that integrated, conceptual  6 basis both in terms of organization, use and density.  7 The purpose clause of the PD zone, my  8 understanding is that it's supposed to provide an increase  9 in compatibility over a normal zone and an increase in  10 public space and an increase in social interaction. That's  11 what the PD zone is supposed to encourage as opposed to  12 normal zone. It doesn't seem like this project is really  13 doing that.  14 MR. BROWN: I'd like to address in terms of your  15 knowledge either as a, on the HPC or as a long-time  16 resident, elaborate on the, on Mr. Davis's statements about  17 whether or not this is, this project exhibits the kind of  18 smart growth that promotes higher level density near transit  19 nodes considering the public transit options available in  20 your community.  21 MR. BOOHER: Yeah, the public transit options, and  22 I'll put this back down and refer to Exhibit 10 again, there  23 is bus, there are bus lines. Just like throughout the  24 County, there's bus lines. The unusual thing, of course, is  25 the MARC station. And he, through, he was trying to</p>

<p style="text-align: right;">Page 246</p> <p>1 remember how many of the trains actually stop at Washington  2 Grove and in the morning it's four and in the afternoon it's  3 five. We have been trying for years and years to increase  4 the number of trains that stop there and it's, it's,  5 actually it decreases. It's been decreasing. So it's  6 not --  7 MS. ROBESON: During what, do you know what time  8 of day, I mean is it spread out over the morning or is in  9 rush hour or do you remember?  10 MR. BOOHER: Yeah. I actually take the train.  11 MS. ROBESON: Okay.  12 MR. BOOHER: And I don't take it as regularly as I  13 would because the frequency of the trains is not  14 sufficiently frequent to meet my schedule.  15 MS. ROBESON: Okay.  16 MR. BOOHER: So I either go by train or I take the  17 bus to the Metro and go via Metro. So they are, yes, during  18 rush hour there's an early morning train and the last train  19 is actually, stops at 8:30 in the morning. Afternoon,  20 there's an early afternoon back that's about 2:00 and it  21 goes until 7:30.  22 MS. ROBESON: Okay.  23 MR. BOOHER: The last train. So, yeah, this, if  24 we compare this to the Shady Grove plan, which Mr. Davis  25 described pretty accurately, generally what, in a smart</p>	<p style="text-align: right;">Page 248</p> <p>1 I picked out of the purpose clause of the PD zone is to  2 produce a balanced and coordinated mixture of residential  3 and retail convenience uses to promote a broad range of  4 housing types where we have two, we have several small  5 townhouses and apartments and to ensure the compatibility  6 and coordination with each development and surrounding land  7 areas. This project does not do that in my opinion.  8 MR. BROWN: Do you happen to know the bus rush  9 hour transit time from Towne Crest to the Shady Grove Metro?  10 MR. BOOHER: Not from Towne Crest. The one that I  11 take is actually from here and it's pretty direct to Shady  12 Grove. This one actually travels a pretty long distance  13 around. I never take the one that would go by here because  14 it takes so long to do it.  15 MR. BROWN: Just so that we know what you're  16 pointing out, when you said this one, you're referring to  17 traveling northeast from Towne Crest?  18 MR. BOOHER: Well, yes, it goes in this direction.  19 It goes around somewhere and comes back around to --  20 MS. ROBESON: So it goes northeast and then east  21 and then comes south toward the Metro?  22 MR. BOOHER: Yeah. Yeah. And I, and, again, I,  23 it just takes too long. I would never take it.  24 MR. BROWN: And you take a bus from somewhere near  25 the MARC station?</p>
<p style="text-align: right;">Page 247</p> <p>1 growth situation you start with the highest density, right  2 at the Metro stop, you have integrated community retail, and  3 then the density tapers off until it reaches the half-mile  4 walking distance from the transit stop where it no longer  5 becomes a transit-oriented development. This is just the  6 opposite. The highest density piece that we see here is  7 being, is right at the edge of the, of Washington Grove and  8 the lowest density piece, which we intend and want to remain  9 low-density is between the high-density piece and the actual  10 transit stop.  11 In addition, this is beyond the half-mile limit  12 that the Montgomery County planning principles use as the  13 feasible walking distance to transit. And the -- we  14 participate in the Shady Grove Sector Plan both in the,  15 endorsed and the ultimate plan that came out as a proper  16 smart growth and transit-oriented development. They have  17 retail integrated with it. They have a school. They have  18 a library. They have office space. That's an integrated,  19 planned community. That's what the plan development is  20 supposed to make, not just density in one spot.  21 So if this kind of density becomes a precedent for  22 this area, including Gaithersburg over here, it has pretty,  23 pretty -- and on this side of the tracks, which is part of  24 the County, that's pretty serious consequences for the  25 nature of Washington Grove. Another, the other things that</p>	<p style="text-align: right;">Page 249</p> <p>1 MR. BOOHER: Yes, there's a stop right here and a  2 stop at the MARC station. That bus actually that goes past  3 here, then continues along this --  4 MS. ROBESON: Wait. Wait. Which bus?  5 MR. BOOHER: The bus that stops at the Towne Crest  6 property.  7 MS. ROBESON: Okay. Goes south --  8 MR. BOOHER: Which is --  9 MS. ROBESON: Goes south on Washington Grove Lane?  10 MR. BOOHER: Correct and then --  11 MS. ROBESON: And then where does it go?  12 MR. BOOHER: It goes into Gaithersburg.  13 MS. ROBESON: Oh, okay.  14 MR. BOOHER: So it travels like that.  15 MS. ROBESON: And then circles -- wait. Where  16 does it go?  17 MR. BOOHER: I can describe it.  18 MS. ROBESON: Take me the route, okay, so I can  19 understand.  20 MR. BOOHER: Okay. Beyond Gaithersburg, I don't  21 know where it goes, but it goes to downtown Gaithersburg and  22 goes, comes along, what is this, Girard, and -- is this  23 Girard?  24 MR. BROWN: Diamond.  25 MR. BOOHER: Diamond, this is Diamond, and right</p>

<p style="text-align: right;">Page 250</p> <p>1 to the corner of where Washington Grove is, it turns on  2 Washington Grove Lane, goes north past the Westwood, past --  3 MS. ROBESON: I see.  4 MR. BOOHER: -- past the Towne Crest development  5 and comes up here. I don't know whether it turns down Mid-  6 County --  7 MS. ROBESON: Okay.  8 MR. BOOHER: -- or if it continues to go to the  9 Flower Hill area.  10 MS. ROBESON: Okay. So it proceeds from --  11 MR. BOOHER: I think it does.  12 MS. ROBESON: -- Gaithersburg southeast and then  13 turns northeast on Washington Grove Lane and then at some  14 point turns east or southeast and back to Shady Grove?  15 MR. BOOHER: And I believe it goes to the Flower  16 Hill community before it goes there.  17 MR. BROWN: Does the Historic Preservation  18 Commission have any avenue or authority to address  19 compatibility concerns that might arise after the  20 development were approved?  21 MR. BOOHER: No, not really because we're not part  22 of the normal County review process, especially if it goes  23 directly to site planning. There isn't going to be much  24 opportunity to comment on that.  25 MR. BROWN: Any other items of concern you'd like</p>	<p style="text-align: right;">Page 252</p> <p>1 MR. BOOHER: No.  2 MS. GIRARD: -- or any of that? And you  3 referenced the County HPC weighing in, did I hear that  4 correctly?  5 MR. BOOHER: Yes, there was a letter that they  6 provided I seem to recall that discussed the trees.  7 MS. GIRARD: Is that in the record do we know?  8 MR. BOOHER: I don't.  9 MS. ROBESON: I, that is not familiar to me. I  10 don't -- can you check, Mr. Brown --  11 MR. BROWN: I will.  12 MS. ROBESON: -- if it's in the record and --  13 MR. BROWN: I will.  14 MS. ROBESON: -- I don't recall it being in the  15 record.  16 MS. GIRARD: And approximately when did the County  17 Historic Preservation Commission take that action? Was it  18 an action --  19 MR. BOOHER: Yes.  20 MS. GIRARD: -- or a letter?  21 MR. BOOHER: It was a letter.  22 MS. GIRARD: Okay.  23 MR. BOOHER: And it was the day before the  24 hearing.  25 MS. GIRARD: The last date, the last hearing date?</p>
<p style="text-align: right;">Page 251</p> <p>1 to note for the record?  2 MR. BOOHER: Well, yeah. My concern about the  3 master plan process and sort of the bypassing of the master  4 plan process to -- the whole process, my understanding, is  5 to avoid piecemeal development and to encourage  6 participatory comprehensive deliberation over an entire area  7 that take into consideration all of the needs of the  8 community and come up with an integrated plan that works for  9 everybody. This process, which would de facto rezone one  10 portion of it, is bypassing that whole integrative, the  11 benefit of that integrative process and if there's a  12 property that's going to rise about that normal process, it  13 should have such clear benefits to the, to the whole, the  14 surrounding community and the County in general that it,  15 there would be no question as to what the impacts were or  16 the negative aspects and I don't think that this project  17 rises to that level of being such a clear benefit.  18 MR. BROWN: Thank you. That's all I have.  19 MS. ROBESON: Ms. Girard.  20 MS. GIRARD: Mr. Booher, good afternoon.  21 MR. BOOHER: Hi.  22 MS. GIRARD: Just to be clear, you're speaking as  23 a, as the chair of the Historic Preservation Commission  24 resident, but you're not an expert in smart growth planning,  25 you weren't speaking as an expert architect --</p>	<p style="text-align: right;">Page 253</p> <p>1 MR. BOOHER: Yes.  2 MS. GIRARD: And do you know what process was  3 followed to obtain that letter? Did they have a hearing?  4 Was --  5 MR. BOOHER: No. My understanding, and this is  6 just my understanding from discussing it with the chair,  7 with the, actually what's his name, I forgot his name, was  8 that they were just asked to look at it and write a letter,  9 essentially make a comment.  10 MS. GIRARD: Okay. So --  11 MR. BOOHER: Because it was not on the County  12 atlas, there was no formal process that was, needed to be  13 followed.  14 MS. GIRARD: Right. I'm just wondering what  15 information they were looking at and whether staff did an  16 analysis or you're not sure?  17 MR. BOOHER: If it was, it was fairly quick  18 because it was the day before the hearing.  19 MS. GIRARD: And you spoke quite a bit about  20 compatibility. Do you believe the existing development  21 there today is compatible?  22 MR. BOOHER: I feel it's more compatible than  23 proposed.  24 MS. GIRARD: In terms of appearance, density?  25 MR. BOOHER: But the largest one is in terms of</p>



<p style="text-align: right;">Page 254</p> <p>1 scale and the scale, it reflects itself both in terms of  2 density and in terms of the size and massing of the  3 buildings themselves.  4 MS. GIRARD: Do you happen to recall when the 1985  5 master plan came through and even when this original project  6 was developed, did Washington Grove and/or the Planning  7 Commission weigh in on those?  8 MR. BOOHER: I was not around. You could ask one  9 of the other witnesses.  10 MS. GIRARD: Okay. You mentioned public  11 recreation space. Are you aware that 50 percent of the  12 proposed area of the site would be green space?  13 MR. BOOHER: I am aware that it's green space, but  14 it's largely landscaped green space. I think there's only  15 two tot lots and that doesn't compare even closely to what  16 is available in the communities that surround it.  17 MS. GIRARD: But do you --  18 MR. BOOHER: The tot lots, I also don't know where  19 the tot lots are available to the surrounding community.  20 You may have testified about it.  21 MS. GIRARD: And are you aware of other resident  22 amenities, including the pool and --  23 MR. BOOHER: Yes, those and my understanding of  24 those amenities are those are all within the inside the  25 property and not available to the surrounding community.</p>	<p style="text-align: right;">Page 256</p> <p>1 carefully preserved by us so that the community can remain  2 and be within nature. So the forest preserves are an  3 integral part of our historic resource, of our sort of  4 heritage, and not a buffer that was placed there to be  5 between any development and (indiscernible).  6 MS. GIRARD: So in your opinion, everything within  7 a certain distance of the perimeter of the town should be  8 low-scale residential or, and/or open space?  9 MR. BOOHER: That would be the preferred.  10 MS. GIRARD: And are you aware of the population  11 growth in the --  12 MR. BOOHER: Of course.  13 MS. GIRARD: -- County, I mean certainly over,  14 since the inception of Washington Grove and the increased,  15 including some current projections, I believe they were  16 testified to earlier by the Washington Council of  17 Governments regarding even more population growth to come  18 between now and 2040?  19 MR. BOOHER: Uh-huh.  20 MS. GIRARD: And how do you believe the County  21 should be accommodating this growth?  22 MR. BOOHER: I believe that the County has been  23 trying very hard to accommodate the growth. I don't think  24 that this is a location that particularly lends itself to  25 accommodating that kind of growth.</p>
<p style="text-align: right;">Page 255</p> <p>1 MS. GIRARD: But it's your opinion that every  2 development should have public, open space, is that what  3 you're --  4 MR. BOOHER: I think that the PD zone specifically  5 calls for a higher level of open space and integration with  6 the communities than is shown.  7 MS. GIRARD: And you're reading that to be public  8 open space?  9 MR. BOOHER: Yes. I think it literally says public  10 open space.  11 MS. GIRARD: And in your opinion the woods that  12 are long the western side of this property, they're, they  13 don't serve as a buffer, they are --  14 MR. BOOHER: No, they're not a buffer.  15 MS. GIRARD: -- they need to be buffered?  16 MR. BOOHER: That's correct.  17 MS. GIRARD: Is that your opinion?  18 MR. BOOHER: Right.  19 MS. GIRARD: Okay. Can you explain that a little  20 bit more?  21 MR. BOOHER: Yes, because, because the context of  22 Washington Grove, it was founded as, like I mentioned  23 before, as an antidote to an urban development, an urban  24 environment. People came out from Washington on the train  25 to be within nature. The context of that, this is, has been</p>	<p style="text-align: right;">Page 257</p> <p>1 MS. GIRARD: Would it be your opinion then that  2 everything north, everything between the MARC station and  3 the Shady Grove Metro -- let me explain this a little more  4 clearly. That Washington Grove should serve as kind of a  5 break point between the MARC station and Shady Grove Metro  6 so that everything north of that or on the other side of  7 that should be low-scale residential and no more intensive  8 development should occur?  9 MR. BOOHER: Well, I think, I think that that, I  10 don't have a judgment on that right now. I think that that  11 would be something that would normally take place in the  12 master plan process where those questions could be asked and  13 answered and people could weigh in on those in a proper  14 fashion.  15 MS. GIRARD: You had mentioned the ridership on  16 the MARC and that the stops aren't, the trains are not  17 stopping as frequently as perhaps some town residents would  18 like. Is that a function of ridership?  19 MR. BOOHER: Sure.  20 MS. GIRARD: Would increased ridership actually  21 increase the number of stops?  22 MR. BOOHER: It may.  23 MS. GIRARD: You also mentioned mixed use  24 development and you read the section of the PD zone that  25 talks about a mix of uses. Are you familiar with the</p>

1 requirements of the zone as to when you can introduce  
2 commercial and retail uses into a PD development?  
3 MR. BOOHER: Not specifically, no.  
4 MS. GIRARD: So it wouldn't surprise you to know  
5 that the reason none is proposed here is because it's  
6 prohibited by the actual zone?  
7 MR. BOOHER: It wouldn't surprise me, no.  
8 MS. GIRARD: And with regard to the bus route, you  
9 mentioned that your, the bus stop you take or the bus route  
10 you take is more, is direct --  
11 MR. BOOHER: Yes.  
12 MS. GIRARD: -- to the Metro? Would anything  
13 prohibit someone to figure this out at Towne Crest from  
14 walking down to your stop and taking your bus rather than a  
15 more circuitous route?  
16 MR. BOOHER: Nothing would prohibit it, no, though  
17 it's, again, over, it would be over half a mile to do so.  
18 MS. GIRARD: But half a mile is generally  
19 recognized as --  
20 MR. BOOHER: The limit.  
21 MS. GIRARD: -- a comfortable walking distance.  
22 MR. BOOHER: The limit of the walking distance.  
23 MS. GIRARD: That's all I have.  
24 MS. ROBESON: All right. Mr. Brown.  
25 MR. BROWN: Nothing further.

1 MS. ROBESON: All right. What we're going to do  
2 then is continue this case to March 4th at 11:00. How many  
3 more witnesses do you have, Mr. Brown?  
4 MR. BROWN: I have three.  
5 MS. ROBESON: More?  
6 MR. BROWN: Three more.  
7 MS. ROBESON: Okay. All right. And I will look  
8 for another day on the hearing calendar just as a safety  
9 valve since we're starting late on the 4th. A letter did  
10 just come in today, just so you all know, from Montgomery  
11 Preservation, but I, it hasn't been numbered as an exhibit  
12 yet, all right?  
13 So with that, we will adjourn until March 4th at  
14 11:00 a.m. Thank you very much.  
15 (Whereupon, at 5:05 p.m., the hearing was  
16 concluded.)  
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## C E R T I F I C A T E

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

LOCAL MAP AMENDMENT G-910  
R-30 AND RT 12.5 ZONES TO PD-60  
TOWNE CREST APARTMENTS, LLC.

By:

Tracy Hahn, Transcriber

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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY

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:  
LOCAL MAP AMENDMENT : Case No. G-910  
R-30 AND RT 12.5 ZONES TO PD-60 :  
TOWNE CREST APARTMENTS, LLC. :  
:  
-----X

A hearing in the above-entitled matter was held on  
March 4, 2013, commencing at 9:30 a.m., at the Office of  
Zoning and Administrative Hearings, 100 Maryland Avenue,  
Rita Davidson Memorial Hearing Room, Rockville, Maryland  
20850 before:

Lynn A. Robeson  
Hearing Examiner

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A P P E A R A N C E S

On Behalf of the Petitioner:

Stephen Z. Kaufman, Esq.  
Erin E. Girard, Esq.  
Linowes and Blocher, LLP  
7200 Wisconsin Avenue, Suite 800  
Bethesda, Maryland 20814-4842

Witnesses:Direct  
Stacey Umunna6, 12  
Charlie Challstrom14, 42, 66  
Georgette Cole69  
Ron Seiboth106, 115  
David Ager121, 155, 169  
Anne Randall172  
\* \* \* \* \*

EXHIBIT NO.  
140Excerpts from 1983 final draft of Gaithersburg Vicinity Master Plan25  
141District Council Resolution 15-1586 approving application G-84049

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P R O C E E D I N G S

1MS. ROBESON: I'm going to call the case of Local  
2Map Amendment Application G-910, application of Towne Crest  
3Apartments, LLC, requesting rezoning from the R-30 and R-  
4T12.5 zones to the PD-35 zone for property located at 17500  
5Towne Crest Drive, Gaithersburg, Maryland, and further  
6described as Towne Crest Parcel A. Are there any -- I think  
7we're beginning with Mr. Brown's next witness. Before we  
8begin, are there any preliminary matters?  
9MR. KAUFMAN: One preliminary matter, Madame  
10Examiner. Good morning first.  
11MS. ROBESON: Good morning, Mr. Kaufman.  
12MR. KAUFMAN: We would like to proffer to the  
13record today the transcript from the Montgomery County  
14Planning Board and the transcript from the Gaithersburg  
15Planning Board hearings. So --  
16MS. ROBESON: The Gaithersburg Planning Board?  
17MR. KAUFMAN: Yes.  
18MS. ROBESON: All right. Do you have any  
19objections, Mr. Brown? I know that the Planning Board we  
20had already spoken about. Do you have any objections to the  
21Gaithersburg, the Gaithersburg Planning Commission  
22transcript coming into the record?  
23MR. BROWN: No, to the extent that they considered  
24this application, we have no objection.

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142Housing element of the general  
plan approved and adopted in April  
of 201157  
1432009 Master Plan for the town of  
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144BCD of poster of a walk on Daylily Lane76  
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1MS. ROBESON: Okay. So the Planning Board  
2transcript will be 137.  
3MR. KAUFMAN: Hang on. That's the Park and  
4Planning, right?  
5MS. ROBESON: Yes, Montgomery Planning Board.  
6MR. KAUFMAN: No, I already have.  
7MS. ROBESON: How's that?  
8MR. KAUFMAN: I have 130.  
9MS. GIRARD: Here, I'll give you one.  
10MR. KAUFMAN: Okay. Could you hold on just a  
11minute --  
12MS. ROBESON: Sure.  
13MR. KAUFMAN: -- because I don't have the latest.  
14MS. ROBESON: Montgomery County Planning Board  
15transcript of hearing.  
16MR. KAUFMAN: It is 137?  
17MS. ROBESON: Yes. And then the Gaithersburg  
18Planning Commission transcript is 138. All right.  
19MR. KAUFMAN: I don't know if we have anything  
20else. Thank you.  
21MS. ROBESON: All right.  
22MR. KAUFMAN: Nothing further for us. Thank you.  
23MS. ROBESON: Mr. Brown, do you want to present  
24your next witness?  
25MR. BROWN: Yes, ma'am. We're calling Stacey

<p style="text-align: right;">Page 6</p> <p>1 Umunna. Would you state your full name for the record 2 please? 3 MS. UMUNNA: My name is Stacey Umunna. 4 MS. ROBESON: And can you spell it for the court 5 reporter? 6 MS. UMUNNA: Stacey is S-T-A-C-E-Y. Umunna is U- 7 M-U-N-N-A. 8 MS. ROBESON: And can you raise your right hand? 9 (Witness sworn.) 10 MS. UMUNNA: Good morning to everyone. My name -- 11 MR. BROWN: Ms. Umunna, my understanding is that 12 you would like to read your letter into the record, is that 13 right? 14 MS. UMUNNA: Yes, that's correct. 15 MR. BROWN: Okay. Does this letter identify where 16 you live? 17 MS. UMUNNA: Yes, it does. 18 MR. BROWN: Well, go right ahead. 19 MS. UMUNNA: Okay. My name is Stacey Umunna. I 20 live at 7 Daylily Lane along with my husband and three small 21 children. Our property abuts the proposed Towne Crest 22 development. We have substantial concerns about how the 23 development would negatively impact our privacy, our quality 24 of life, property value and resell potential. 25 First, we do find some appeal in the plan to</p>	<p style="text-align: right;">Page 8</p> <p>1 natural light, privacy is not a major concern. Once the 2 leaves fill in in our backyard, our kids are perfectly happy 3 to enjoy a private backyard where we currently have no fears 4 about how our children's privacy is being compromised. 5 However, this would dramatically change if the 6 developers are permitted to build a massive, 4-story 7 building only 30 feet away from our property line. Multiple 8 rows of windows and balconies, along with a nearby parking 9 garage would completely strip us of any privacy for our 10 rear-facing children's bedrooms, our living space and 11 backyard. We also have anxiety about the unacceptable 12 amount of noise that would be emanating from the apartments 13 and nearby parking garage. 14 If this plan is allowed to move forward without a 15 redesign, then our privacy, quality of life and home value 16 will suffer. In addition, the tranquility of living near 17 the Westwoods will be diminished by the noise and traffic 18 pollution associated with living so close to such a densely 19 populated development. Also, the proposed height and 20 density of the development is not only worrisome to us, but 21 is incompatible with the historic nature of the town of 22 Washington Grove which is a community that prides itself on 23 the preservation and maintenance of green space, trees and 24 wooded areas. 25 The trees contribute to the character of the</p>
<p style="text-align: right;">Page 7</p> <p>1 upgrade the condition of Towne Crest. It's long overdue and 2 the residents of Towne Crest deserve an affordable, clean, 3 safe and comfortable place to call home. Also, we're not 4 opposed to a reasonable amount of increased density to 5 advance the cause. However, we absolutely do not support 6 tripling the density as presented in the amended plan. We 7 also do not support the plan for Building B and the damage 8 it would cause to the trees on our property and in the 9 Westwoods. 10 We are requesting that the developers redesign the 11 plan in compliance with the zoning ordinance by providing at 12 least 100 feet of separation from our home. We hope this 13 can also achieve a reduction in density and eliminate the 14 need to remove trees from our property and the Westwoods. 15 The current plan partially acknowledges the 16 ordinance and now includes a setback for all of the 17 properties along Daylily Lane except ours. This decision to 18 acknowledge the zoning ordinance and then ignore it with our 19 property is disappointing because the setback of Building B 20 from our home is still inadequate and only 30 feet from our 21 property line. 22 We would like to see a redesign plan that does not 23 interfere with the peace and privacy we currently enjoy. As 24 it stands, we can only see one balcony from our children's 25 bedroom and when we open our rear-facing blinds and soak in</p>	<p style="text-align: right;">Page 9</p> <p>1 Westwoods and currently provide a privacy buffer for our 2 home. If the 100-foot setback is observed, it will not be 3 necessary to remove the trees. We welcome the redevelopment 4 of Towne Crest and hope that a thoughtfully redesigned plan 5 will reflect the concerns of their abutting neighbors and 6 the town of Washington Grove. Thank you all for your 7 consideration. 8 MS. ROBESON: Thank you. 9 MR. BROWN: Stacey, I have a few additional 10 questions for you. I'd like you to take a look at two 11 exhibits in the record. This is Exhibit 124 and it shows 12 over here lot 4, the last house on Daylily Lane. Is that 13 your house? 14 MS. UMUNNA: Yes, it is. 15 MR. BROWN: And do you see on here the Building B 16 which is relatively close to the northeast corner of the 17 property? 18 MS. UMUNNA: Yes, I do. 19 MR. BROWN: Is this the 30 feet that you are 20 talking about, the distance from the corner of the building 21 to the corner of your property? 22 MS. UMUNNA: That is the 30 feet I'm referring to. 23 MR. BROWN: All right. Now are you aware that the 24 applicant, although he's not, although the applicant is 25 not -- this is not the applicant's primary proposal, that</p>

<p style="text-align: right;">Page 10</p> <p>1 they have done an alternative proposal that pushes this  2 building further away from your lot, have you seen this  3 diagram?  4 MS. UMUNNA: Yes, I have.  5 MR. BROWN: Do you believe that the, that this  6 diagram respects the 100-foot setback?  7 MS. UMUNNA: I believe that it does.  8 MR. BROWN: Looking at this new configuration for  9 Building B, do you still have concerns about the density of  10 the project in light of this possible change in the  11 configuration of Building B?  12 MS. UMUNNA: I do. The density is still triple  13 and I will be concerned about how that would impact the  14 traffic flow, how we would exit Daylily Lane, how long we  15 would have to wait to get onto the main Washington Grove  16 Lane and the noise that would come from living so close to a  17 densely populated community.  18 MR. BROWN: Just a couple more things. The letter  19 that you just read, was this a letter that you authored?  20 MS. UMUNNA: Yes.  21 MR. BROWN: I'd like to show you another letter.  22 This one is in the record as Exhibit 88K. Can you identify  23 this for us?  24 MS. UMUNNA: Yes. This is the letter that my  25 husband and I composed and it was addressed to the</p>	<p style="text-align: right;">Page 12</p> <p>1 it's damaged, it would probably fall right onto my  2 children's bedroom where my two little boys sleep. And I'm  3 concerned about how to best preserve the trees because it  4 does, at the moment acts as a privacy buffer between my home  5 and the Towne Crest community. And besides that, they're  6 beautiful. We often see deer in our backyard roaming around  7 the Westwoods. My kids enjoy the backyard space and we just  8 don't want it to be disturbed.  9 MR. BROWN: Do you believe that this tree could be  10 saved even if the project were increased to, from 107 to 200  11 units?  12 MS. UMUNNA: I'm not an expert. I can't testify  13 to that, but it seems reasonable to expect that the tree  14 could be saved if they set back from our property because  15 there would be no need to build so close to the trees and  16 the tree's roots, so --  17 MR. BROWN: I have nothing further.  18 MS. ROBESON: Okay. Mr. Kaufman, Ms. Girard?  19 MS. GIRARD: Yes. Good afternoon, Ms. Umunna.  20 MS. UMUNNA: Hello.  21 MS. GIRARD: Just a couple questions for you. Can  22 you first tell us, when did you purchase your house and move  23 in?  24 MS. UMUNNA: We closed on our home June 29, 2012.  25 MS. GIRARD: And at the time of your purchase of</p>
<p style="text-align: right;">Page 11</p> <p>1 Montgomery County Planning Board.  2 MR. BROWN: And when did you send that letter?  3 MS. UMUNNA: It was sent approximately September  4 12th.  5 MR. BROWN: Of last year?  6 MS. UMUNNA: Of last year, yes.  7 MR. BROWN: Okay. I don't know whether you heard  8 this testimony or not, but the land planning expert retained  9 by the town, Mr. Joe Davis, has testified that he thought  10 that the property could be redeveloped from 107 to about 200  11 units. I noticed in your letter you talked about the --  12 expressing general agreement with some redevelopment of the  13 property. What is your attitude about almost doubling the  14 property from 107 to 200 units?  15 MS. UMUNNA: 200 sounds reasonable. I would have  16 no objection to doubling the community to be around 200  17 units if that also included the setback.  18 MR. BROWN: And what about the concern about  19 trees?  20 MS. UMUNNA: Well, there are trees along, on my  21 property and along the Westwoods property, the rear of my  22 property faces the Westwoods. So I am concerned about the  23 root damage that will be caused to one particular tree on my  24 property. I think it would be about 37 percent root damage  25 from what I'm reading and if that tree should fall or if</p>	<p style="text-align: right;">Page 13</p> <p>1 the house were there yellow and black signs posted on the  2 Towne Crest property indicating the rezoning application for  3 the property you had been applying for?  4 MS. UMUNNA: Yes.  5 MS. GIRARD: Did you research that application at  6 the time?  7 MS. UMUNNA: Yes.  8 MS. GIRARD: And also did you, when you were  9 purchasing your property, did you review the Gaithersburg  10 vicinity Master Plan and its recommendations for the  11 property?  12 MS. UMUNNA: No.  13 MS. GIRARD: Do you know what the current setback  14 is between your house and the closest Towne Crest building?  15 MS. UMUNNA: Anywhere from about 17 to 25 feet.  16 MS. GIRARD: Is that from the, the 17 to 25 feet  17 measuring from your property line to the building or your  18 house to the building?  19 MS. UMUNNA: I believe it's our property line.  20 MS. GIRARD: Okay. And what's the approximate  21 height even in stories of that building closest to you?  22 MS. UMUNNA: I believe it's about 50 feet.  23 MS. GIRARD: Existing?  24 MS. UMUNNA: Yes.  25 MS. GIRARD: Okay. Are you, well, you already</p>

<p style="text-align: right;">Page 14</p> <p>1 answered that question that you are familiar with the  2 alternate plan that has been submitted. You also mentioned  3 the removal of trees and your concern for the trees. I  4 don't recall -- were you in the room for the testimony of  5 the landscape architect?  6 MS. UMUNNA: No, I wasn't present.  7 MS. GIRARD: Okay. That's all I have. Thank you.  8 MR. ROBESON: Mr. Brown?  9 MR. BROWN: No follow-up.  10 MS. ROBESON: Okay. Thank you, Ms. Umunna.  11 MS. UMUNNA: Thank you.  12 MR. BROWN: My next witness is Charlie Challstrom.  13 MS. ROBESON: All right. Please raise your right  14 hand.  15 (Witness sworn.)  16 MR. BROWN: Would you state your name and address  17 for the record and spell your last name?  18 MR. CHALLSTROM: Charles William Challstrom, C-H-  19 A-L-L-S-T-R-O-M. My address is 503 McCauley Street in  20 Washington Grove.  21 MR. BROWN: How long have you lived there, Mr.  22 Challstrom?  23 MR. CHALLSTROM: 34 years, since December of 1978.  24 MR. BROWN: And what roles have you played in land  25 use matters affecting the town during that time?</p>	<p style="text-align: right;">Page 16</p> <p>1 MR. CHALLSTROM: Through a work session and then  2 discussions during our monthly meetings, the Planning  3 Commission has evaluated the earlier proposals, as well as  4 the latest proposal for redevelopment. We reviewed items in  5 our town archives from a range of years, since 1965, the  6 plat of the Towne Crest property, the files from 1981 to  7 1985 on the Gaithersburg Vicinity Master Plan, the 1987  8 neighboring annexation, information in 1994 on the dumping  9 of trash adjacent to the Towne Crest property, plus a  10 collection of forestry documents that we have on our town  11 website.  12 We consulted with County representatives,  13 including Rick Brush, William Campbell, Atiq Panjshiri. Our  14 Planning Commission members participated in meetings with  15 the Park and Planning staff and with the Towne Crest  16 representatives on several occasions to discuss the plans.  17 This began predominantly for us October 10, 2011, with a  18 town hall presentation by Towne Crest representatives. We  19 continued with activities at our December Planning  20 Commission meeting where we reviewed the issues involved and  21 a set Towne Crest process to move forward. We held our work  22 session January 11th of 2012 and then at our February  23 Planning Commission meeting we approved our first Planning  24 Commission evaluation to report to the town council.  25 March 26th, our Planning Commission meeting, we</p>
<p style="text-align: right;">Page 15</p> <p>1 MR. CHALLSTROM: During my residency there, I have  2 served 17 years as an elected official, on the Town Council  3 for 15 and the mayor for two, plus an additional 13 years as  4 an appointed official serving on the Planning Commission and  5 the Board of Zoning Appeals.  6 In terms of lead roles, I think of the projects  7 that I have spent time and energy on and include seven, I  8 had a lead role in seven annexations, establishment of our  9 railroad park, but I think most importantly I've had a major  10 role in expanding the inter-governmental involvement of town  11 representation particularly with Maryland (indiscernible)  12 and with Park and Planning, including the Gaithersburg  13 Vicinity Master Plan discussions with Park and Planning  14 staff, with other County staff and with the County  15 Executive. I also testified at the Gaithersburg Vicinity  16 Master Plan hearings and then I participated in our  17 Washington Grove Master Plan update in 1995 and I  18 facilitated the 2009 Washington Grove Master Plan update.  19 MR. BROWN: And what is your current role in the,  20 in the town?  21 MR. CHALLSTROM: I am Chairman of the town's  22 Planning Commission.  23 MR. BROWN: What has been the Planning  24 Commission's involvement in evaluating the Towne Crest  25 rezoning proposal?</p>	<p style="text-align: right;">Page 17</p> <p>1 edited the previous evaluation and approved an amended  2 Planning Commission evaluation.  3 MR. BROWN: Was this when the plan was a PD-60  4 proposal?  5 MR. CHALLSTROM: Yes.  6 MR. BROWN: Go ahead.  7 MR. CHALLSTROM: I believe it is. We continued  8 each meeting with activities that are documented by minutes  9 of all our Planning Commission meetings that are available  10 on the town website, as well as the reports that are  11 documented as part of the town council minutes also  12 available on the town's website. The next most, perhaps  13 most pertinent is June 6th we had a Planning Commission  14 meeting where we approved the amended Planning Commission  15 evaluation. I would note that that was after a May 16th, or  16 shortly before that, meeting in the Town Hall where the  17 Planning Commission members met with Towne Crest  18 representatives.  19 Continuing perhaps the next most significant,  20 September 5th at, again, at our Planning Commission meeting  21 we approved an updated Planning Commission evaluation and  22 then on September 13th at the Montgomery County Planning  23 Board meeting I testified on behalf of the Planning  24 Commission.  25 MR. BROWN: Was this on the PD-44 revised plan?</p>



<p style="text-align: right;">Page 18</p> <p>1 MR. CHALLSTROM: That's correct.</p> <p>2 MR. BROWN: Go ahead. So, I just want to refer</p> <p>3 you to Exhibit 88E. The evaluation of the revised project</p> <p>4 dated September 6, 2012, can you tell me what that is</p> <p>5 please?</p> <p>6 MR. CHALLSTROM: That was the evaluation adopted</p> <p>7 in September by our Planning Commission with 10 primary</p> <p>8 points. That was --</p> <p>9 MR. BROWN: What is the difference between that</p> <p>10 and Exhibit 88B, which is a September 10th letter to the</p> <p>11 Planning Board?</p> <p>12 MR. CHALLSTROM: The September 10th evaluation was</p> <p>13 meant to present the summary points of that evaluation, but</p> <p>14 if I might -- this September event resulted from that series</p> <p>15 of work sessions and then the monthly Planning Commission</p> <p>16 evaluations. The, each time that we had updates, these were</p> <p>17 also reported by our liaison to the Town Council meetings</p> <p>18 and also reported to the full town in the town bulletins and</p> <p>19 they were all posted on the town's website. The evaluation</p> <p>20 in September followed the evaluations posted to the website</p> <p>21 of March 26th and June 6th as well.</p> <p>22 MR. BROWN: Now these evaluations refer to the</p> <p>23 project when it was still a PD-44 project. Bear with me one</p> <p>24 second here. Can you tell me what this document is please?</p> <p>25 MR. CHALLSTROM: This document is a memorandum for</p>	<p style="text-align: right;">Page 20</p> <p>1 MR. CHALLSTROM: Challstrom.</p> <p>2 MS. ROBESON: Challstrom, thank you, Challstrom</p> <p>3 Evaluation of Amended Application.</p> <p>4 MR. KAUFMAN: We wouldn't have any objection based</p> <p>5 upon the fact that it's just Mr. Challstrom's view and he's</p> <p>6 indicated in answering to you that he did not call me, the</p> <p>7 Planning Commission nor have them in-depth look at it. This</p> <p>8 is his personal view. He did indicate that he did it as --</p> <p>9 MS. ROBESON: Well, that's -- okay. You can make</p> <p>10 that argument. Just for now I just want to know if you,</p> <p>11 you're --</p> <p>12 MR. KAUFMAN: Well, with that understanding, that</p> <p>13 it's not --</p> <p>14 MS. ROBESON: Well, I'm not going to understand.</p> <p>15 You can make that argument later if you want.</p> <p>16 MR. KAUFMAN: Well, we don't object that this is a</p> <p>17 personal response from the witness. We do object if he says</p> <p>18 it represents a decision of the Planning Commission.</p> <p>19 MS. ROBESON: I think he's saying that this is his</p> <p>20 evaluation.</p> <p>21 MR. KAUFMAN: That's the point, so thank you.</p> <p>22 MR. BROWN: Mr. Challstrom, what did you do to</p> <p>23 update your, the analysis of the project in light of the PD-</p> <p>24 35 change?</p> <p>25 MR. CHALLSTROM: I reviewed that amended</p>
<p style="text-align: right;">Page 19</p> <p>1 the record that I composed and signed on January 16, 2013.</p> <p>2 It was meant to reflect the review of the amended submission</p> <p>3 that was dated January 11, 2013, that we received from your</p> <p>4 firm of Linowes and Blocher.</p> <p>5 MS. ROBESON: Okay. I'm going to mark this as</p> <p>6 139. Mr. Kaufman, do you have any objection?</p> <p>7 MR. KAUFMAN: Give us a moment if you will?</p> <p>8 MS. ROBESON: Okay.</p> <p>9 MR. KAUFMAN: What are you calling it, Madame</p> <p>10 Examiner?</p> <p>11 MS. ROBESON: I guess Challstrom summary of --</p> <p>12 what, is this your summary of a meeting or is this your</p> <p>13 summary of -- what is this summary of?</p> <p>14 MR. CHALLSTROM: This is an update on review of</p> <p>15 the amended submission document dated January 11, 2013.</p> <p>16 MR. ROBESON: Is it your update or is it --</p> <p>17 MR. CHALLSTROM: It is my update as Chairman of</p> <p>18 the Planning Commission.</p> <p>19 MS. ROBESON: Is it representing the Planning</p> <p>20 Commission's reviews or your views or --</p> <p>21 MR. CHALLSTROM: This is in my personal evaluation</p> <p>22 as, but as in my role and with respect as Chairman of the</p> <p>23 Planning Commissioner.</p> <p>24 MS. ROBESON: Okay. So this is -- how do you</p> <p>25 say --</p>	<p style="text-align: right;">Page 21</p> <p>1 submission dated January 11th. I confirmed the density</p> <p>2 calculation presented there. I reviewed the proposed</p> <p>3 setbacks and the separation from the adjoining single-family</p> <p>4 properties. I confirmed that the conclusions cited in the</p> <p>5 Washington Grove resolution 2012-05 applied to this recently</p> <p>6 amended submission.</p> <p>7 MR. BROWN: Was your document dated January 16th</p> <p>8 presented to the Planning Commission, the town Planning</p> <p>9 Commission at a subsequent meeting?</p> <p>10 MR. CHALLSTROM: Yes, on the Planning Commission</p> <p>11 meeting of February 6th, our next regular meeting of the</p> <p>12 Planning Commission, I presented this memorandum and there</p> <p>13 were some, I believe there were some other correspondence</p> <p>14 that had come in at that point as well. But, yes, this was</p> <p>15 presented.</p> <p>16 MS. ROBESON: Which meeting was that, the</p> <p>17 January --</p> <p>18 MR. CHALLSTROM: February 6, 2012.</p> <p>19 MS. ROBESON: Oh, February. Okay.</p> <p>20 MR. CHALLSTROM: Afterwards.</p> <p>21 MR. BROWN: Did the Commission itself take any</p> <p>22 formal action with regard to your report?</p> <p>23 MR. CHALLSTROM: No.</p> <p>24 MR. BROWN: Have you, did you hear Mr. Davis's</p> <p>25 testimony and read his report?</p>

<p style="text-align: right;">Page 22</p> <p>1 MR. CHALLSTROM: Yes, I did.</p> <p>2 MR. BROWN: I wonder if you could briefly describe</p> <p>3 how the Planning Commission's evaluation and conclusions</p> <p>4 compare with his.</p> <p>5 MR. CHALLSTROM: There is significant</p> <p>6 correspondence. We also concluded that the proposed</p> <p>7 development was not consistent with the planned development</p> <p>8 requirements in the County zoning ordinance. It's not</p> <p>9 consistent with the Master Plan for the Towne Crest</p> <p>10 property. It cannot be justified by proximity of transit</p> <p>11 and it is not compatible with the adjoining property in the</p> <p>12 town of Washington Grove.</p> <p>13 With regard to the specific plan development</p> <p>14 requires of the County zoning ordinance, the Washington</p> <p>15 Grove Planning Commission also concluded the proposed</p> <p>16 development is not consistent with the plan development</p> <p>17 clause because it will not produce a balanced and</p> <p>18 coordinated mixture of residential and convenience</p> <p>19 commercial uses. There are no commercial services available</p> <p>20 on or near the Towne Crest property.</p> <p>21 It also does not change the location of the</p> <p>22 property with respect to the existing and planned commercial</p> <p>23 and employment uses. The overwhelming number of trips and</p> <p>24 the overwhelming majority of trips from Towne Crest to</p> <p>25 commercial and employment areas will still be by automobile.</p>	<p style="text-align: right;">Page 24</p> <p>1 In 1983, there was the letter, as referenced, and</p> <p>2 a joint resolution of the town council and Planning</p> <p>3 Commission to help focus attention on other programs and</p> <p>4 needs, of the problems and needs, for instance, uncontrolled</p> <p>5 storm water runoff from the Towne Crest property, vandalism,</p> <p>6 litter and the lack of adequate services to support</p> <p>7 development. We noted particularly that single-family</p> <p>8 zoning provides the effective buffering to protect our</p> <p>9 forest preserve.</p> <p>10 As a result, many of the town's concerns were</p> <p>11 addressed in the final draft, the Gaithersburg Vicinity</p> <p>12 Master Plan, dated September 1983.</p> <p>13 MR. BROWN: Did you bring copies of an excerpt</p> <p>14 from that final draft today?</p> <p>15 MR. CHALLSTROM: I did. I believe it would be</p> <p>16 appropriate to share those.</p> <p>17 MS. ROBESON: Okay. So this will be --</p> <p>18 MR. BROWN: This is from the '83 Master Plan?</p> <p>19 MR. CHALLSTROM: Yes, these are stamped copies</p> <p>20 from this document, the 1983 Master Plan.</p> <p>21 MR. BROWN: Okay.</p> <p>22 MS. ROBESON: Okay.</p> <p>23 MR. BROWN: The final draft?</p> <p>24 MS. ROBESON: So this is the Gaithersburg Master</p> <p>25 Plan. So 140 --</p>
<p style="text-align: right;">Page 23</p> <p>1 Also, the proposed development is not compatible with the</p> <p>2 existing neighboring areas and land use and particularly</p> <p>3 does not meet the separation requirements for the adjacent</p> <p>4 residential property.</p> <p>5 MR. BROWN: Based on your long involvement in land</p> <p>6 use matters for the town, do you have anything particular to</p> <p>7 add to Mr. Davis's observations in the way of, you know,</p> <p>8 supplementing, clarifying or even correcting his</p> <p>9 observations? I'd like to go over this topic by topic if I</p> <p>10 could. First of all, with respect to Exhibit 88F, this is a</p> <p>11 1983 letter from you to the Planning Board chair. Why did</p> <p>12 you want this letter brought to the attention of the Hearing</p> <p>13 Examiner?</p> <p>14 MR. CHALLSTROM: I wanted to note that the town</p> <p>15 participated in the Gaithersburg Vicinity Master Plan</p> <p>16 process with testimony of hearings, work sessions with the</p> <p>17 Planning Board and planning staff and meetings with other</p> <p>18 County staff and the County Executive, as I mentioned</p> <p>19 earlier. We also invited County representatives to walk</p> <p>20 through our forest preserve, the west and the east woods.</p> <p>21 This participation included review and testimony regarding</p> <p>22 the staff draft of the Gaithersburg Vicinity Master Plan</p> <p>23 dated November 1981. At that earliest time we were</p> <p>24 primarily focused on the Oakmont area which was then a part</p> <p>25 of that plan.</p>	<p style="text-align: right;">Page 25</p> <p>1 MR. BROWN: Final draft.</p> <p>2 MS. ROBESON: -- is excerpts from 1983 final draft</p> <p>3 of Gaithersburg Vicinity Master Plan.</p> <p>4 (Exhibit No. 140 was marked</p> <p>5 for identification.)</p> <p>6 MR. BROWN: Okay. Taking a look at Exhibit 140,</p> <p>7 Charlie, what would you like to bring to our attention from</p> <p>8 this document?</p> <p>9 MR. CHALLSTROM: In particular, I wanted to</p> <p>10 note a couple of items in the preface starting on this</p> <p>11 document and read these because I believe they're most</p> <p>12 pertinent. The plan takes into account the existing</p> <p>13 development at planned land uses with municipal boundaries.</p> <p>14 It goes on to say,</p> <p>15 "Because of these important relationships,</p> <p>16 we've engaged in considerable discourse with the</p> <p>17 municipalities. Our staff has discussed various</p> <p>18 aspects of the planning considerations with the</p> <p>19 staff of the cities. We have also been pleased to</p> <p>20 participate in and for and sponsored by</p> <p>21 Gaithersburg and Washington Grove community</p> <p>22 groups."</p> <p>23 And the plan continues with,</p> <p>24 "With regard to the Town of Washington Grove,</p> <p>25 the Planning Board has received from its</p>

<p style="text-align: right;">Page 26</p> <p>1 representatives recommendations about specific  2 parcels of land near the town. We believe we have  3 responded in a manner satisfactory to the town. If  4 there are remaining issues, we will be pleased to  5 address them in the context of the Council's work  6 session."  7 To follow that up,  8 "On behalf of the town, I testified at the  9 public hearing November 10, 1983, before the  10 Montgomery County Council to confirm support for  11 the final draft regarding single-family zoning  12 near the forest preserve to serve as a buffer in  13 addition to our other recommendations and our  14 appreciation for the cooperation. I recall there  15 were many individuals and groups represented at  16 each of the hearings I attended and participated  17 in."  18 MR. BROWN: Now you also asked to have included in  19 the submission, our prehearing submission, Exhibit 88G, a  20 letter from, a letter to you from Norman Christeller of  21 April 10, 1987. Do you recall that?  22 MR. CHALLSTROM: I do, yes.  23 MR. BROWN: Why did you want to bring that to the  24 attention of the Hearing Examiner?  25 MR. CHALLSTROM: The 1987 letter from Chairman</p>	<p style="text-align: right;">Page 28</p> <p>1 detached land use. The Washington Grove Planning Commission  2 concluded, therefore, based on the explicit provision in  3 County Code Chapter 59, the zoning ordinance, that no Towne  4 Crest building can be constructed within 100 feet of this  5 adjoining land.  6 MR. BROWN: All right. I'd like you to turn your  7 attention to the land use recommendations that actually  8 appear in the final version of the 1985 Gaithersburg and  9 Vicinity Master Plan. Would you point out for us the  10 pertinent parts of those recommendations that you would like  11 to bring to the attention of the Hearing Examiner?  12 MR. CHALLSTROM: Yes. In looking at the 1985,  13 January 1985 plan, which was also amended in May 1988, and  14 amended July 1990, page 7 states,  15 "As the cities of Gaithersburg and Rockville  16 and the town of Washington Grove have their own  17 powers of planning and zoning, this plan makes no  18 land use recommendations for this area. This  19 planning effort, however, has taken note of the  20 planning policies and development in these  21 jurisdictions and has involved the planning staffs  22 and officials of this jurisdiction. So we,  23 therefore, acknowledge and appreciate this  24 cooperation, as well as the particular attention  25 of details of concern to the town."</p>
<p style="text-align: right;">Page 27</p> <p>1 Norman Christeller reinforces the Gaithersburg Master Plan  2 adopted in 1985, that it recommends single-family  3 residential for the residential parcel along Washington  4 Grove lane between Towne Crest and the Washington Grove  5 Westwoods. This parcel is identified in this plan as  6 Analysis Area 1 in Figure 16 on page 45 of the plan and in  7 Table 3 on page 46, again, the adopted Gaithersburg Vicinity  8 Master Plan. Prior to annexation by the town in 1987, this  9 land was zoned R-90 in the County and contained a one-family  10 detached residence.  11 MR. BROWN: Let me stop you right there, Charlie,  12 and ask you are we talking now about the land that now has  13 the Daylily properties on it?  14 MR. CHALLSTROM: That's correct.  15 MR. BROWN: All right. Go ahead.  16 MR. CHALLSTROM: After annexation, this land was  17 subdivided and developed with three additional one-family  18 detached residences in the town single-family zone along  19 Daylily Lane. The letter from Chairman Christeller  20 confirmed the uses and density permitted do not differ  21 significantly before and after annexation. The Gaithersburg  22 Master Plan and the Washington Grove, the Gaithersburg  23 Vicinity Master Plan and the Washington Grove Master Plan  24 are consistent for this residential land adjoining Towne  25 Crest with respect to recommending single-family, one-family</p>	<p style="text-align: right;">Page 29</p> <p>1 On page 36 of this plan, it states,  2 "Unlike Shady Grove West, the land use  3 pattern in the airport study area is largely  4 established. Instead of proposing new plan  5 concepts for extensive amounts of vacant acreage,  6 this plan addresses land use and zoning for  7 relatively small parcels surrounded by existing  8 development."  9 We paid, we, the town of Washington Grove officials paid  10 close attention to the recommendations for specific parcels  11 and interacted with the Park and Planning staff, County  12 staff and the County Executive to reinforce our concerns for  13 appropriate zoning and buffering.  14 On page 49 of this plan it states,  15 "Another characteristic of this area --"  16 that is the Mid-County Highway district,  17 "-- is its proximity to the City of  18 Gaithersburg and the town of Washington Grove.  19 The plan reflects these borders by recommending  20 appropriate residential densities near existing or  21 planned developments and recommending buffering  22 when necessary."  23 The footnote on page 46 of this plan states,  24 "The plan recommends single-family detached  25 units at four units per acre near the town of</p>

<p style="text-align: right;">Page 30</p> <p>1 Washington Grove's forest preserve."  2 I also want to note that with regard to optional  3 densities, page 10 of this plan states,  4 "The recommended optional densities represent  5 the upper limit that appears to be appropriate for  6 the parcel, taking into account the environmental  7 considerations, overall transportation capacity  8 and relationship to adjacent properties."  9 I believe this reinforces the intention not to recommend any  10 optional densities for the Towne Crest property in the  11 context of the specific recommendations for buffering.  12 MR. BROWN: Let me stop you right there, Mr.  13 Challstrom and ask you have you heard Mr. Berman's testimony  14 on this exact same point earlier in this case? Did you hear  15 what he had to say?  16 MR. CHALLSTROM: I did hear very much what he had  17 to say, yes.  18 MR. BROWN: Based on your involvement in this  19 process with respect to these particular properties, what is  20 your reaction to his testimony about there being a mistake  21 about the omission of optional density?  22 MR. CHALLSTROM: I want to say this carefully, but  23 I believe his characterization represented, representation  24 was unfortunate and inaccurate.  25 MR. BROWN: Let me ask you about the evolution</p>	<p style="text-align: right;">Page 32</p> <p>1 detail the public transit options that are available for  2 Towne Crest and Washington Grove residents?  3 MR. CHALLSTROM: The MARC commuter station at  4 Washington Grove provides limited commuter services. There  5 are four flag stops in the morning. There are five trains  6 in the evening coming back from Washington, D.C. It is a  7 one-way service. Those five trains, the first three of  8 those five are labeled as flag stops. The other two are  9 drop-off stops only. They're not intended for picking up  10 passengers. So this is a limited one-way service and this  11 is the updated schedule for MARC rail that was effective in  12 January. So it's not full transit. The --  13 MR. BROWN: What's the distance, walking distance  14 along the streets to, from Towne Crest to the MARC station?  15 MR. CHALLSTROM: I believe it's about .7 or .8  16 miles to make that walk.  17 MR. BROWN: Okay.  18 MR. CHALLSTROM: It might -- let me correct that  19 because I do see I made a note of what I had found using  20 Google Maps of .6 miles to Towne Crest to the Washington  21 Grove MARC station.  22 MS. ROBESON: Can I ask a question before you  23 continue? When you say flag stops, is that a stop where  24 somebody has to request a train? What is a flag stop?  25 MR. CHALLSTROM: The flag stop, as explained when</p>
<p style="text-align: right;">Page 31</p> <p>1 over time since 1985 of the airpark study area. How has  2 that area changed or the area around it changed in relation  3 to what, you know, whether or not the recommendations in the  4 Master Plan have become outdated?  5 MR. CHALLSTROM: Based on my official, as well as  6 my personal experience, I find the character of the airpark  7 study area has not significantly changed since adoption of  8 the Gaithersburg Vicinity Master Plan in 1985. I've lived  9 in Washington Grove for more than 34 years. As I noted, I  10 served as a town official for 30 years. I note there are  11 more single-family detached housing that's been added along  12 Daylily Lane, Boundary Street and Silver Dollar Court and in  13 the Saybrooke community, and there are 32 townhomes now  14 being finished on the Mainhart property at the corner of  15 Washington Grove Lane and Mid-County Highway, and we have  16 the Inter-County Connector and the Mid-County Highway. But  17 with respect to Towne Crest and the airpark study area,  18 there's no added multi-family or other attached housing in  19 the immediate area. We have the same transportation  20 options, the same Ride-On bus service, the same walking  21 distance to Washington Grove MARC station and the same  22 suburban community and transportation character. I find the  23 Gaithersburg Master Plan, the Gaithersburg Vicinity Master  24 Plan is still appropriate and valid for the community.  25 MR. BROWN: Could you describe in a little more</p>	<p style="text-align: right;">Page 33</p> <p>1 I discussed this with a MARC director, Mr. Hogater (phonetic  2 sp.) recently, they have to, the engineer has to observe a  3 potential passenger on the platform --  4 MS. ROBESON: Oh.  5 MR. CHALLSTROM: -- in order to stop. Otherwise,  6 they breeze on through there without stopping.  7 MS. ROBESON: Okay.  8 MR. CHALLSTROM: It's, the adjustments were made  9 in order to accommodate tighter schedules, so they made more  10 of the stops throughout the system, flag stops where they  11 thought it was appropriate.  12 MS. ROBESON: Okay. Thank you.  13 MR. BROWN: Would you review the bus transit  14 options available to the town of Towne Crest and Washington  15 Grove?  16 MR. CHALLSTROM: The Ride-On bus service, Towne  17 Crest area of Washington Grove Lane, is served by a bus,  18 Ride-On bus route 57. Service is approximately every 30  19 minutes. The rider, the length of time to ride on that  20 route 57 from Towne Crest to Shady Grove Metro, for  21 instance, varies depending on the particular time during the  22 day and the expected number of stops along the way. It  23 ranges from 16 minutes at the very earliest hours of the  24 day. It is more typically 18 minutes throughout the day.  25 It gets up as high as a couple more than that, 22 or 23,</p>

<p style="text-align: right;">Page 34</p> <p>1 according to the, again, the most recent schedule available  2 for Ride-On route 57. I am one who uses route 57 to ride in  3 both directions, so I'm familiar with the Ride-On service  4 there.</p> <p>5 MS. ROBESON: Is that the one that leaves from the  6 middle of Washington Grove or is that the one that has the  7 stop near Towne Crest?</p> <p>8 MR. CHALLSTROM: This is the one that has the stop  9 near Towne Crest. It's proceeding from Lakeforest Mall  10 along Washington Grove Lane and then out into the Derwood  11 area before coming back to Shady Grove Metro. The other  12 Ride-On bus service does go -- there is another separate  13 route, 61, that rides along Railroad Street closer to the  14 tracks. So it is the same distance away as walking to the  15 MARC station.</p> <p>16 MS. ROBESON: Okay.</p> <p>17 MR. CHALLSTROM: It stops at the MARC station. So  18 that's another alternative if one walks the 6/10 of a mile  19 to pick up Route 61.</p> <p>20 MR. BROWN: Are there any WMATA buses that  21 traverse this area?</p> <p>22 MR. CHALLSTROM: No, there -- to my knowledge  23 there's none anywhere near. I only hesitate because I am,  24 I've never seen a WMATA bus on Mid-County Highway, but that  25 would be the only possible thing I could imagine that there,</p>	<p style="text-align: right;">Page 36</p> <p>1 there is a density distribution map that I believe is  2 pertinent to review. That provides, identifies some of the  3 areas, the neighborhoods, the Metro neighborhoods and I look  4 in particular at Metro West and Metro South, which are on  5 the westernmost side of the tracks. They have densities,  6 dwelling units per acre are identified on those diagrams.  7 The Metro West has two areas, one of which is shown as 30 to  8 40 dwelling units per acre and then another area farther  9 away from the Metro station is shown at 25 to 30 dwelling  10 units per acre. I would note that the, this area, both of  11 these areas are within an easy walking distance, less than a  12 half a mile. As I also look at Metro South, again, there is  13 a closer area, 30 to 40 dwelling units per acre, and then a  14 farther area delineated with 25 to 30 dwelling units per  15 acre.</p> <p>16 I examined the walking distance, the easiest  17 walking distance in order to understand this area, being  18 somewhat familiar with the distances and the street layout  19 is already there. The farthest point from the Metro South  20 area to the closest entrance to the Metro Station at Shady  21 Grove is a walking distance by the shortest route of just  22 about .5 miles. It might be a smidgen over that, but it's  23 within .5 miles. And, again, that's an area that goes to a  24 maximum on this diagram of 30 units, 30 dwelling units per  25 acre.</p>
<p style="text-align: right;">Page 35</p> <p>1 but I don't believe there are, no.</p> <p>2 MR. BROWN: All right. In connection with  3 preparing for this hearing, did you review the Shady Grove  4 sector plan?</p> <p>5 MR. CHALLSTROM: Yes, I did.</p> <p>6 MR. BROWN: What, are you familiar with that  7 sector plan? Did you have any involvement in it?</p> <p>8 MR. CHALLSTROM: I stayed familiar from the  9 standpoint of receiving and hearing reports from our town  10 representatives who were more active than I was during the  11 development of that plan, the refinement of that plan and  12 particularly the involvement of hearing reports at town  13 council meetings from then Mayor John Compton.</p> <p>14 MR. BROWN: Now --</p> <p>15 MR. CHALLSTROM: But otherwise I have read through  16 the plan and I have also participated in meetings of the  17 Greater Shady Grove Civic Alliance where details of that  18 plan were periodically discussed as it went through  19 refinements and the adoption process.</p> <p>20 MR. BROWN: Now the, as part of the pre-hearing  21 submission, we included pages from that sector plan, pages  22 35 and page 119, among others. Is there anything on those  23 pages that you would like to particularly point out to the  24 Hearing Examiner?</p> <p>25 MR. CHALLSTROM: Well, in particular, on page 35,</p>	<p style="text-align: right;">Page 37</p> <p>1 If I might, I recall that there are potential  2 increases to these areas because as I read the diagram and  3 the information here, it notes that residential densities  4 may be increased by such things as MPDU's and TDR's. So I  5 believe that the, in evaluating these densities per acre,  6 one also has to take into account the potential of an  7 increase of say 20 percent per TDR's for those closest  8 areas. The 1.64 area ration areas which are shown on this  9 diagram of going 30 to 40 dwelling units per acre, I  10 understand from material in the Shady Grove Sector Plan on  11 page 41 that it explains that those dwelling unit totals  12 could go 50 to 60 dwelling units per acre for the closest.  13 But, again, all of these areas are within the half mile  14 walking distance criteria that I understand is most  15 appropriate for transit-oriented development.</p> <p>16 MR. BROWN: Lastly, Mr. Challstrom, would you  17 please, based upon your familiarity with the Shady Grove  18 plan, with the Gaithersburg Vicinity Plan and the  19 circumstances of your area and your experience in dealing  20 with these matters over the past 34 years, what is your view  21 of the continued efficacy of the density recommendations for  22 Analysis Area 2 and the airpark study area of the 21 acres  23 that is, that I believe Mr. Ager said is currently built out  24 an average of, or has an allowed density of 18.28 dwelling  25 units per acre, counting all of the density bonuses?</p>

<p style="text-align: right;">Page 38</p> <p>1 MR. CHALLSTROM: Yes. I've looked at the, this  2 area based on my familiarity and with its compliance with  3 the Master Plan and I note that the Master Plan captures the  4 expected density of a significant portion of that area very  5 accurately. By way of doing this analysis, I evaluated in  6 particular the townhouse occupied areas, the Wedgewood area  7 apartments, Wedgewood I and Wedgewood II. I, to do this  8 analysis and evaluation, I relied on the State Department of  9 Assessments Taxation website which provides ownership,  10 assessment and occupancy information for the Analysis Area 2  11 collection of townhouses.  12 The, that website, the SDAT website, indicates  13 that 91 of the 123 homes are owned or occupied. I find that  14 a very interesting and significant statistic. With such  15 individual ownership, I conclude that the density and  16 character of this portion of Analysis Area 2 was not likely  17 to change and, therefore, I find it will remain in complete  18 compliance with the Gaithersburg Vicinity Master Plan  19 density recommendations. I believe that this reinforces the  20 validity of the evaluations by the Washington Grove Planning  21 Commission with respect to compatibility with surrounding  22 residential area. I believe it's an accurate reflection of  23 the community for the foreseeable future.  24 MR. BROWN: What is your attitude toward  25 redevelopment of the Towne Crest property and particularly</p>	<p style="text-align: right;">Page 40</p> <p>1 think? I guess my question is this. You say you wish  2 buffering, but -- and I can't remember who made this  3 argument -- but there was an argument made that isn't the  4 buffering those two large, wooded areas. Can you address  5 the argument?  6 MR. CHALLSTROM: Let me, if I might, point out,  7 for instance, that footnote, I believe it's on page 46 of  8 the Gaithersburg Vicinity Master Plan.  9 MR. ROBESON: Okay.  10 MR. CHALLSTROM: I made a specific footnote to,  11 made a reference to single-family zoning adjacent to the, in  12 fact, it says R-90 adjacent to the woods. That was  13 referring specifically to this line here.  14 MS. ROBESON: Oh, in Saybrooke?  15 MR. CHALLSTROM: This is the Saybrooke, this is  16 the Saybrooke community which had been designated in the  17 plan as receptive area TDR-6. So, but what they were doing  18 was making a careful consideration is that they were looking  19 for strict R-90 zoning adjacent to the forest preserve as a  20 way of preserving inadequate spacing and appropriate land  21 use --  22 MS. ROBESON: Okay.  23 MR. CHALLSTROM: -- by way of follow-up on when  24 this project went forward, a representative of the  25 development company called and consulted with the town and</p>
<p style="text-align: right;">Page 39</p> <p>1 your reaction to Mr. Davis's suggestion that it is a  2 candidate for redevelopment at approximately 200 dwelling  3 units as opposed to 107 presently?  4 MR. CHALLSTROM: Well, I note based on the  5 specific objections and concerns and inconsistencies with  6 the zoning ordinance that I find that it is challenging, if  7 not impossible, to imagine a development of this property  8 under the planned development provisions of the zoning  9 ordinance. However, I believe that my individual view and  10 the view of the Washington Grove Planning Commission, we are  11 not against redevelopment. Such a development as proposed  12 with that kind of numbering, in my personal view, might be  13 extremely appropriate.  14 As demonstrated by the records and actions of town  15 officials and my involvement, I believe that we're seeking  16 buffering, compatibility and compliance with the County Code  17 as this project moves forward with a redesign effort. I  18 believe it's appropriate for the property, we believe it's  19 appropriate for the community to support redevelopment done  20 correctly and in compliance.  21 MR. BROWN: Anything else you'd like to add?  22 MR. CHALLSTROM: No, not at this time.  23 MR. BROWN: Okay.  24 MS. ROBESON: Thank you. I just have one  25 question. Do we have the aerial -- it's 10A or 10B, I</p>	<p style="text-align: right;">Page 41</p> <p>1 in particular we were very pleased, and for this property to  2 specifically recommend that it be treated and looked like  3 almost an extension of those backyards. And with the  4 extension, one person who has built a little landscaping  5 into it, almost everybody along here has respected the woods  6 and treated it well. And we have had excellent, excellent  7 relationships and ongoing with that site.  8 We've also have been concerned about some other  9 properties as we got, looked at what was happening in this  10 area. Again, we were looking at property that was  11 originally proposed to be townhouses, but the Planning Board  12 made an adjustment there and went to single-family homes  13 because of its adjacency to the --  14 MS. ROBESON: To the road?  15 MR. CHALLSTROM: -- buffer. So there's been a  16 consistent effort --  17 MS. ROBESON: Okay. Just for the record --  18 MR. CHALLSTROM: -- to look at single-family.  19 MS. ROBESON: -- can you describe that's an area  20 north of Westwood Park?  21 MR. CHALLSTROM: And it's along Silver Dollar  22 Court.  23 MS. ROBESON: Okay. That's Silver Dollar Court --  24 MR. CHALLSTROM: Silver Dollar Court.  25 MS. ROBESON: -- that you referred to in your</p>

<p style="text-align: right;">Page 42</p> <p>1 testimony. All right.</p> <p>2 MR. CHALLSTROM: So, again, as a town</p> <p>3 representative, I participated in those discussions as well</p> <p>4 as the bordering discussions for Saybrooke. So that's what</p> <p>5 we are pushing and urging, that there be adequate buffering</p> <p>6 as necessary to protect and preserve the trees which will</p> <p>7 be, I expect more testimony from our mayor, Georgette Cole,</p> <p>8 regarding the trees aspect. But that's the kind of</p> <p>9 buffering we're looking at, buffering and land use that</p> <p>10 respects the trees and the Westwoods.</p> <p>11 MS. ROBESON: Okay. I'm clear. That's clear.</p> <p>12 Okay. That was my question. Mr. Kaufman?</p> <p>13 MR. KAUFMAN: Yes, thank you, Madame Examiner.</p> <p>14 Excuse me. I'm getting a cold, so my voice is not the best.</p> <p>15 MS. ROBESON: Did you get your flu shot?</p> <p>16 MR. KAUFMAN: I did have a flu shot.</p> <p>17 MS. ROBESON: Good.</p> <p>18 MR. KAUFMAN: And I did wash my hands. Mr.</p> <p>19 Challstrom, in your testimony you indicated you've been a</p> <p>20 resident of Washington Grove for 34 years, is that right?</p> <p>21 MR. CHALLSTROM: That's correct.</p> <p>22 MR. KAUFMAN: And you also indicated that you've</p> <p>23 been a member of the leadership of the town for 30 years, is</p> <p>24 that right?</p> <p>25 MR. CHALLSTROM: That's correct.</p>	<p style="text-align: right;">Page 44</p> <p>1 MR. CHALLSTROM: Let's see, that would have been</p> <p>2 2011. Well, excuse me, I was on the Planning Commission</p> <p>3 2007 to 2009, yes, after retiring, yes.</p> <p>4 MR. KAUFMAN: All right. So you were also there</p> <p>5 when the amendments to the General Plan occurred, is that</p> <p>6 right, the County's General Plan?</p> <p>7 MR. CHALLSTROM: I'm not familiar with the</p> <p>8 County's General Plan amendments.</p> <p>9 MR. KAUFMAN: Okay. Now, obviously, you have</p> <p>10 extensive experience with the town and participating in land</p> <p>11 use matters. Do you have any special or formal training as</p> <p>12 an architect of plans?</p> <p>13 MR. CHALLSTROM: No, my education is geodetic</p> <p>14 science and surveying.</p> <p>15 MR. KAUFMAN: So everything that you have become</p> <p>16 familiar with is really more through your experience and</p> <p>17 participating in the leadership of the town, is that right?</p> <p>18 MR. CHALLSTROM: I believe that's correct.</p> <p>19 MR. KAUFMAN: Now you mentioned there have been no</p> <p>20 significant changes in the area since the time of the Master</p> <p>21 Plan, is that correct? Is that your testimony?</p> <p>22 MR. CHALLSTROM: That's a summary of my transcript</p> <p>23 of my testimony, however, I was more specific in the</p> <p>24 testimony with respect to the characterizations about what</p> <p>25 aspects had not changed.</p>
<p style="text-align: right;">Page 43</p> <p>1 MR. KAUFMAN: And how, of that period of time, how</p> <p>2 long have you been part or chair of the Planning Commission?</p> <p>3 MR. CHALLSTROM: Of my, a little over 11 years on</p> <p>4 the Planning Commission. I don't know the exact number of</p> <p>5 years, but certainly more than half of that period of time</p> <p>6 I've been chair of the Planning Commission.</p> <p>7 MR. KAUFMAN: Okay. And then the other offices</p> <p>8 that you've held in the town, what were they?</p> <p>9 MR. CHALLSTROM: I was mayor from 1985 to '87. I</p> <p>10 was on the Town Council from 1980 to '85, 1987 to '94. And I</p> <p>11 was on the Town Council from 2007 to 2010.</p> <p>12 MR. KAUFMAN: So would it be safe to say during</p> <p>13 that entire period of time you were familiar either as a</p> <p>14 member of the Planning Commission or as an officer of the</p> <p>15 Town, of all the Master Plan and zoning cases that were</p> <p>16 occurring in and around the vicinity of Washington Grove?</p> <p>17 MR. CHALLSTROM: I was, I would not say all</p> <p>18 because there was an intensive period where my Federal job</p> <p>19 responsibilities caused me to have to balance away from the</p> <p>20 town, so I was not as active in the town from 1994 to 2006.</p> <p>21 I retired from the Federal Government in early 2006 so that</p> <p>22 I could return to my involvement and volunteering for the</p> <p>23 town.</p> <p>24 MR. KAUFMAN: And then you now, you're now</p> <p>25 Chairman again, so when did you resume that position?</p>	<p style="text-align: right;">Page 45</p> <p>1 MR. KAUFMAN: So then, again, you are familiar</p> <p>2 that the recommendations for this particular property and</p> <p>3 area 2 were developed actually in the 1970's?</p> <p>4 MR. CHALLSTROM: I am familiar with that. I</p> <p>5 reviewed the 1971 plan.</p> <p>6 MR. KAUFMAN: And they haven't changed since then,</p> <p>7 notwithstanding that there have been some amendments to the</p> <p>8 Gaithersburg Plan?</p> <p>9 MR. CHALLSTROM: There have been amendments,</p> <p>10 refinements and corrections to the Gaithersburg Plan. Since</p> <p>11 that time, the recommendations have not been consistent for</p> <p>12 this property in the various drafts since 1971. There were</p> <p>13 some variations noted very particularly in the 1981 Plan.</p> <p>14 MR. KAUFMAN: Was the Mid-County Highway</p> <p>15 constructed at the time of this Master Plan in 1983 to your</p> <p>16 knowledge?</p> <p>17 MR. CHALLSTROM: I don't recall the opening time</p> <p>18 of the Mid-County Highway segments. I recall that it is</p> <p>19 delineated on documents of the Master Plan. But as I recall</p> <p>20 those documents, without looking at them here now, I believe</p> <p>21 that would indicate it was not a completed project.</p> <p>22 MR. KAUFMAN: And certainly you know that the ICC</p> <p>23 was not constructed at the time of the Master Plan though,</p> <p>24 is that right?</p> <p>25 MR. CHALLSTROM: Again, I note that they were</p>

<p style="text-align: right;">Page 46</p> <p>1 listed in the Master Plan as planned fragments and I believe</p> <p>2 there is wording that indicates that the planning is based</p> <p>3 on presumption of those transportation improvements.</p> <p>4 MR. KAUFMAN: Would you agree with the statement</p> <p>5 that the population and intended need for housing increased</p> <p>6 since the time of this Master Plan based upon other county</p> <p>7 and Master Plans and policies?</p> <p>8 MR. CHALLSTROM: I totally agree with that, yes.</p> <p>9 MR. KAUFMAN: Are you aware of the recent</p> <p>10 projections regarding the future population, and</p> <p>11 specifically in the Gaithersburg area?</p> <p>12 MR. CHALLSTROM: I'm not aware of specific</p> <p>13 population projections, no.</p> <p>14 MR. KAUFMAN: So are you not familiar with the</p> <p>15 Council of Governments recent projection indicating that</p> <p>16 there's a need for 41 percent increase in housing for</p> <p>17 population in the Gaithersburg area, you're not familiar</p> <p>18 with that?</p> <p>19 MR. CHALLSTROM: I am not familiar with it,</p> <p>20 however, I have just heard a cursory report of that.</p> <p>21 MR. KAUFMAN: And are you familiar with the fact</p> <p>22 that there have been major shifts in the County policy since</p> <p>23 the time of the Master Plan, including an increased emphasis</p> <p>24 on the provision of affordable housing and locating housing</p> <p>25 in transit-serviceable and other infrastructure areas?</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. KAUFMAN: We have copies, all have copies.</p> <p>2 MS. ROBESON: All right.</p> <p>3 MS. GIRARD: No. I just ripped it out of my --</p> <p>4 MR. KAUFMAN: Okay.</p> <p>5 MS. ROBESON: Let me just make sure -- it's not in</p> <p>6 here. I don't see it. So we'll mark it as a new exhibit.</p> <p>7 Are you --</p> <p>8 MR. KAUFMAN: Yes, I'd like to.</p> <p>9 MS. ROBESON: Do you want to wait to introduce it</p> <p>10 so you're --</p> <p>11 MR. KAUFMAN: Well, I'd like to introduce it. I</p> <p>12 think the, certainly you can take notice of it. It's an</p> <p>13 official document. It's public.</p> <p>14 MS. ROBESON: Okay. So I'm going to mark it as</p> <p>15 141. This is the District Council resolution?</p> <p>16 MR. KAUFMAN: Yes, it is. It's dated August 1,</p> <p>17 2006, Resolution No. 15-1586. I believe it deals with the</p> <p>18 townhouse, if you would show the hearing page?</p> <p>19 MS. ROBESON: I'm sorry, what's the resolution</p> <p>20 number again?</p> <p>21 MR. KAUFMAN: The resolution number is 15-1586.</p> <p>22 And it deals with the --</p> <p>23 MS. ROBESON: Well, okay. We'll get to that.</p> <p>24 MR. KAUFMAN: Okay.</p> <p>25 MS. ROBESON: I'll just call it District Council</p>
<p style="text-align: right;">Page 47</p> <p>1 MR. CHALLSTROM: I am aware of many aspects of</p> <p>2 that. I am not versed in all the details of those policies,</p> <p>3 but I have certainly heard reports of those and understand</p> <p>4 the gist of them.</p> <p>5 MR. KAUFMAN: I want to show you the resolution</p> <p>6 which is in the record of Case G-840, which is the -- the</p> <p>7 name of that case again?</p> <p>8 MS. GIRARD: Mainhart.</p> <p>9 MR. KAUFMAN: Mainhart.</p> <p>10 MS. GIRARD: I'm not positive it's in the record.</p> <p>11 MR. KAUFMAN: Yes.</p> <p>12 MS. ROBESON: Yes. That's not sounding familiar</p> <p>13 to me. Let me --</p> <p>14 MR. KAUFMAN: It's been discussed -- maybe the</p> <p>15 resolution itself.</p> <p>16 MS. GIRARD: Right. It has been discussed, but</p> <p>17 I'm not sure if the resolution itself is --</p> <p>18 MS. ROBESON: Did Mr. Ager discuss it?</p> <p>19 MR. KAUFMAN: Yes. And also --</p> <p>20 MS. GIRARD: And I believe that --</p> <p>21 MR. KAUFMAN: -- Mr. Berman did.</p> <p>22 MS. GIRARD: Well, and I believe that Mr. Davis</p> <p>23 did as well.</p> <p>24 MR. KAUFMAN: Yes.</p> <p>25 MS. GIRARD: I think all three referenced it.</p>	<p style="text-align: right;">Page 49</p> <p>1 Resolution 15-1586 approving application G-840.</p> <p>2 MR. KAUFMAN: And it's exhibit, what was the</p> <p>3 exhibit number?</p> <p>4 MS. ROBESON: 141.</p> <p>5 (Exhibit No. 141 was marked</p> <p>6 for identification.)</p> <p>7 MR. KAUFMAN: 141?</p> <p>8 MS. ROBESON: Yes. Any objections, Mr. Brown?</p> <p>9 MR. BROWN: No.</p> <p>10 MR. KAUFMAN: Okay.</p> <p>11 MS. GIRARD: We're looking for copies. I'm sorry.</p> <p>12 I'm kind of scrambling here.</p> <p>13 MR. BROWN: We need four copies.</p> <p>14 MS. GIRARD: Okay.</p> <p>15 MR. KAUFMAN: Let me give one to Dave.</p> <p>16 MS. ROBESON: And these are, for the record, the</p> <p>17 copies are highlighted.</p> <p>18 MS. GIRARD: Which Mr. Ager will address when he's</p> <p>19 recalled.</p> <p>20 MS. ROBESON: Okay.</p> <p>21 MR. KAUFMAN: Now I bring your attention -- let</p> <p>22 Mr. Brown give you the document -- I bring your attention to</p> <p>23 page 10 of that resolution, the middle paragraph where the</p> <p>24 Planning Board says the following:</p> <p>25 "The Planning Board, the technical staff and</p>



<p style="text-align: right;">Page 50</p> <p>1 the Hearing Examiner all recommended approval of the</p> <p>2 application, apparently feeling the circumstances have</p> <p>3 changed significantly since the Master Plan was adopted</p> <p>4 in 1985. There is now a major roadway next to the</p> <p>5 subject site and a mix of residential land uses in the</p> <p>6 immediate area of the subject site. Thus, development</p> <p>7 since the Master Plan adoption had made the subject</p> <p>8 site much more compatible with the higher density</p> <p>9 townhouse development than it was before."</p> <p>10 MR. CHALLSTROM: What page --</p> <p>11 MR. KAUFMAN: Page 10.</p> <p>12 MS. ROBESON: Okay.</p> <p>13 MR. BROWN: What page are you reading from?</p> <p>14 MR. KAUFMAN: I'm reading from the resolution.</p> <p>15 MR. BROWN: What page?</p> <p>16 MS. ROBESON: Is that page 10?</p> <p>17 MR. KAUFMAN: Page 10.</p> <p>18 MS. ROBESON: What paragraph?</p> <p>19 MR. KAUFMAN: The middle paragraph --</p> <p>20 MS. ROBESON: Okay.</p> <p>21 MR. KAUFMAN: -- starting with the Planning Board.</p> <p>22 Do you see that?</p> <p>23 MS. ROBESON: Yes. It's not highlighted.</p> <p>24 MR. CHALLSTROM: Right.</p> <p>25 MR. KAUFMAN: When you indicated that you thought</p>	<p style="text-align: right;">Page 52</p> <p>1 obviously to protect your interest, is that correct?</p> <p>2 MR. CHALLSTROM: That's not correct. I stated</p> <p>3 that we participated in Gaithersburg Vicinity Master Plan</p> <p>4 decision and processes.</p> <p>5 MR. KAUFMAN: Well, in March of 1983 in Resolution</p> <p>6 183, as part of the Master Plan process, did not the town</p> <p>7 request the County zone areas adjacent to its borders at low</p> <p>8 density to ensure that such areas provide permanent buffer?</p> <p>9 In a letter dated March 31, 1983, didn't the town also</p> <p>10 state --</p> <p>11 MS. ROBESON: Wait. Wait. Is that in the record?</p> <p>12 I don't know where you're reading from.</p> <p>13 MR. BROWN: 88F is the exhibit number.</p> <p>14 MS. ROBESON: Okay. All right.</p> <p>15 MR. KAUFMAN: Didn't the town also state that it</p> <p>16 has suffered significant negative impacts resulting from</p> <p>17 increased residential development near the town borders?</p> <p>18 Isn't that the --</p> <p>19 MR. CHALLSTROM: Those are the words of this</p> <p>20 letter that I signed, yes, March 31, 1983. I can give</p> <p>21 specifics on that if that would help from my recollection.</p> <p>22 MR. KAUFMAN: Well, I'll just ask if that's what</p> <p>23 the town had said?</p> <p>24 MR. CHALLSTROM: That's right.</p> <p>25 MR. KAUFMAN: Isn't it also true that the town</p>
<p style="text-align: right;">Page 51</p> <p>1 there were not changes such, that warranted rezonings in the</p> <p>2 area since the adoption of the 1985 Master Plan, is that</p> <p>3 correct?</p> <p>4 MR. CHALLSTROM: No, that's not correct. I --</p> <p>5 MR. KAUFMAN: No significant changes?</p> <p>6 MR. CHALLSTROM: That's right. Is said with the</p> <p>7 specifics of noting, I was acknowledging the Mid-County</p> <p>8 Highway being completed.</p> <p>9 MR. KAUFMAN: And did your, did the city</p> <p>10 participate in this zoning phase?</p> <p>11 MR. CHALLSTROM: Not, to my knowledge, no.</p> <p>12 MR. KAUFMAN: All right. So you didn't oppose</p> <p>13 this rezoning phase?</p> <p>14 MR. CHALLSTROM: No, I recall being aware of it</p> <p>15 and noting that the property got hacked by the Mid-County,</p> <p>16 that is the property as originally labeled for R-90 in the</p> <p>17 Master Plan, noted the change of the property and felt like</p> <p>18 this was an appropriate RT-10, it seemed like an appropriate</p> <p>19 rezoning of it in my personal view.</p> <p>20 MR. KAUFMAN: But the town itself did not</p> <p>21 participate in this case?</p> <p>22 MR. CHALLSTROM: Not to my knowledge.</p> <p>23 MR. KAUFMAN: But yet you indicated that the town</p> <p>24 had participated in virtually every zoning and Master Plan</p> <p>25 during your time as a leader and also in the Planning Board</p>	<p style="text-align: right;">Page 53</p> <p>1 reviews the urbanization around it as a real threat to</p> <p>2 basically its traditional historic way of life and has</p> <p>3 participated and asked virtually in every Master Plan that</p> <p>4 densities be kept low, including the Shady Grove Master</p> <p>5 Plan, isn't that correct?</p> <p>6 MR. CHALLSTROM: I am aware of some of the</p> <p>7 testimony to that effect. I would not want to represent</p> <p>8 that I can state that it applies to all aspects of all</p> <p>9 Master Plans.</p> <p>10 MR. KAUFMAN: And didn't the town in the 1986/1987</p> <p>11 oppose the commercial development of the Girard Plaza</p> <p>12 Commercial site?</p> <p>13 MR. CHALLSTROM: I have a different recollection</p> <p>14 of the notion at the time. That development, I believe if</p> <p>15 you're talking about the discussions that led to very</p> <p>16 fruitful interactions, cooperation with David Perlmutter and</p> <p>17 the town working with the city of Gaithersburg, I believe</p> <p>18 that that's the one you're referring to, I believe we came</p> <p>19 out with an excellent community solution there. So to</p> <p>20 characterize as opposing it, I believe, would be incomplete</p> <p>21 in terms of the total picture.</p> <p>22 MR. KAUFMAN: And, in fact, in a period from 1983</p> <p>23 to 2009, hasn't the town in every single case either opposed</p> <p>24 it or asked for significant reductions in density in every</p> <p>25 case?</p>

<p style="text-align: right;">Page 54</p> <p>1 MR. CHALLSTROM: I don't, I'm not here to say that  2 that would apply in every case because I don't have the  3 details of every case.  4 MR. KAUFMAN: Okay. And didn't the town  5 vehemently oppose construction of the ICC?  6 MR. BROWN: I object to this --  7 MS. ROBESON: Yes.  8 MR. BROWN: -- continued line. I mean I don't  9 know where we're going with this.  10 MS. ROBESON: You're saying the town, the  11 town's -- it's your point that the town is a NIMBY?  12 MR. KAUFMAN: I don't like the use of that term.  13 MS. ROBESON: I know. I --  14 MR. KAUFMAN: I think it's very clear that the  15 town has done whatever is necessary to protect its borders  16 and maintain its quality of life based upon what they  17 thought was the highest and best use of its quality of life.  18 MS. ROBESON: So are you saying that --  19 MR. KAUFMAN: I'm saying there's --  20 MS. ROBESON: That they wouldn't approve any  21 development here?  22 MR. KAUFMAN: No, I'm not saying that because  23 you're heard the testimony.  24 MS. ROBESON: That's what I thought.  25 MR. KAUFMAN: As long as it's low-density, they're</p>	<p style="text-align: right;">Page 56</p> <p>1 MR. CHALLSTROM:  2 "It is intended that the zoning category be  3 utilized to implement the general plan, the area  4 Master Plans and other pertinent count and new  5 policies."  6 MR. KAUFMAN: And now given your experience with  7 the Planning Commission and as a leader in the town, you're  8 aware that, you're aware that what this section says, I'm  9 mean you're personally familiar with it, right?  10 MR. CHALLSTROM: I am, yes.  11 MR. KAUFMAN: And are you aware that it says that  12 it must consider not only the specific Master Plan, but the  13 general plan?  14 MR. CHALLSTROM: I'm aware that it says that, yes.  15 MR. KAUFMAN: And are you aware that when a  16 general plan is adopted, it automatically amends all  17 existing Master Plans?  18 MR. CHALLSTROM: I am not aware of that. That's  19 not in my area of expertise.  20 MR. KAUFMAN: And are you -- you testified before  21 that you weren't aware of the 2013, no, 2011, I believe,  22 update of the General Plan?  23 MR. CHALLSTROM: No, I am not.  24 MS. ROBESON: Is that the housing element of the  25 General Plan?</p>
<p style="text-align: right;">Page 55</p> <p>1 okay with it or they can't stop it. But that's -- I'm  2 cross-examining the witness. I think I have the right to  3 establish the town's sort of modus operandi or mentally with  4 regard to these matters. They participated in everything  5 for 30 years and it becomes very clear --  6 MS. ROBESON: Well, okay, now you're into  7 argument.  8 MR. KAUFMAN: Okay.  9 MS. ROBESON: You can make the argument later.  10 MR. KAUFMAN: All right.  11 MS. ROBESON: I'm going to let Mr. Kaufman  12 continue. How many more questions though? I do understand  13 your -- I was getting the point. So how many more questions  14 do you have in this line?  15 MR. KAUFMAN: I have a few, but I'll, you know,  16 I'll try to --  17 MS. ROBESON: Okay.  18 MR. KAUFMAN: I'll show you an excerpt from the  19 Zoning Ordinance, which is Section 59C-7.11, which is the  20 purpose clause of the PD zone. You're familiar with that,  21 right?  22 MR. CHALLSTROM: Yes.  23 MR. KAUFMAN: And I'd like you to read the area  24 I've highlighted in yellow, which is right under the purpose  25 clause in the first paragraph.</p>	<p style="text-align: right;">Page 57</p> <p>1 MR. KAUFMAN: The housing element of the General  2 Plan, right. I'd like to have this marked.  3 MS. ROBESON: You may. And that would be 142.  4 (Exhibit No. 142 was marked  5 for identification.)  6 MR. KAUFMAN: Right.  7 MS. ROBESON: Is this the entire thing or  8 excerpts?  9 MS. GIRARD: The entire thing.  10 MS. ROBESON: Okay.  11 MR. KAUFMAN: I'll give you a copy of this  12 document which is the housing element of the General Plan  13 approved and adopted in April of 2011.  14 MR. CHALLSTROM: Okay.  15 MR. KAUFMAN: Do you want to take a minute and --  16 MR. CHALLSTROM: I've never seen it before.  17 MR. KAUFMAN: You're the chairman of the Planning  18 Commission of Washington Grove and you've never --  19 MS. ROBESON: That's not -- you're on cross-exam.  20 In fact, strike that.  21 MR. KAUFMAN: I bring your attention to the first  22 page entitled, Housing Element of the General Plan, the  23 first paragraph is abstract, and I bring your attention to  24 the last paragraph starting master and sector plans. Would  25 you please read that paragraph?</p>

<p style="text-align: right;">Page 58</p> <p>1 MR. CHALLSTROM: This document states,  2 "Master and Sector Plans look ahead 20 years  3 from the date of adoption, although they are  4 intended to be revised every 10 to 15 years.  5 Moreover, circumstances when a plan is adopted  6 will change and the specifics of a plan may become  7 less relevant over time. Plans do not specify all  8 development possibilities. Their sketches are for  9 illustrative purposes only and intended to give a  10 sense of desirable future character rather than a  11 recommendation of a particular design."  12 MR. KAUFMAN: But you do acknowledge that this  13 plan, which is formally adopted by the Montgomery County  14 Council, does indicate that plans can become obsolete and  15 not functional based upon age?  16 MR. CHALLSTROM: I do not read that from here, no.  17 MR. KAUFMAN: Okay. And then I bring your  18 attention to page 17 of this document, an item marked 4.10,  19 do you see that, 4.10?  20 MR. CHALLSTROM: Yes, I do see that.  21 MR. KAUFMAN: All right. And do you note that  22 this is under the policies, do you see at the top?  23 MR. CHALLSTROM: I do.  24 MR. KAUFMAN: Okay. And would you read that into  25 the record, 4.10?</p>	<p style="text-align: right;">Page 60</p> <p>1 density as still an important issue, I agree with the  2 objectives of good design planning.  3 MR. KAUFMAN: And you did indicate, however, that  4 you were not aware that the adoption of an amendment to the  5 general plan would change automatically to be considered  6 amendments to the --  7 MS. ROBESON: He already said that.  8 MR. KAUFMAN: Okay. All right. I want to bring  9 your attention to the Town's Master Plan, the 2009 Master  10 Plan. I believe that is, isn't that in the record, I'm not  11 sure?  12 MS. ROBESON: No.  13 MR. BROWN: I don't believe so.  14 MR. KAUFMAN: Do you have an objection to the  15 Town's Master Plan being in the record, Mr. Brown?  16 MR. BROWN: No, I don't have any objection.  17 MS. ROBESON: Are you planning to -- I can take  18 official notice of it, unless you're planning to have him  19 read from it.  20 MR. KAUFMAN: I am going to have him read from it.  21 MS. GIRARD: Here, let me see.  22 MR. KAUFMAN: What is that? Is that it?  23 MS. GIRARD: No. It is, but I have highlighting  24 on one page.  25 MR. KAUFMAN: Well, that's all right. I'm sorry,</p>
<p style="text-align: right;">Page 59</p> <p>1 MR. CHALLSTROM:  2 "4.10, ensure that all Master Plan and sector  3 plan amendments address the need for housing below  4 moderate and middle-income households and promotes  5 specific strategies to meet that need, including  6 height and density incentives and flexibility."  7 MR. KAUFMAN: All right. Now you're aware,  8 through the testimony, you were here, that at the time of  9 the development of the current Towne Crest property and also  10 at the time of the adoption of the new Master Plan that the  11 type of construction proposed for this application was not  12 used in the region? This is what we call wrap construction.  13 MR. CHALLSTROM: I am aware of that. I heard that  14 testimony, yes, sir.  15 MR. KAUFMAN: Right. And there were several  16 other, shall we say, best practices enhancements that have  17 occurred since then?  18 MR. CHALLSTROM: That's correct.  19 MR. KAUFMAN: So would you say that it's a fairly  20 correct statement to state that isn't it exactly the  21 density, it's how you, what you do with it, how you deal  22 with the density that makes a development compatible or not  23 compatible with its neighbors, would you agree with that?  24 MR. CHALLSTROM: I would agree with most of the  25 sentiment of that. Without putting aside the importance of</p>	<p style="text-align: right;">Page 61</p> <p>1 can we have it marked?  2 MS. ROBESON: You may. It would be 143, or I  3 don't know the title of the -- what is the title of the  4 document?  5 MR. KAUFMAN: It's 2009 Master Plan.  6 MS. ROBESON: For the town of Washington --  7 MR. KAUFMAN: Grove.  8 MR. ROBESON: -- Grove?  9 (Exhibit No. 143 was marked  10 for identification.)  11 MR. KAUFMAN: We'll give you a copy too, Madame  12 Examiner. I apologize for not having sufficient copies  13 right away. While we're waiting for that to come up to you,  14 if I could ask you were the chairman of the Planning  15 Commission at the time that this adopted?  16 MR. CHALLSTROM: I believe I was. As I stated  17 earlier, I facilitated the development and refinement of  18 this Master Plan for the Town. I wasn't Chairman when we  19 adopted it, just to correct that.  20 MR. KAUFMAN: So --  21 MR. CHALLSTROM: John McClellan was chairman.  22 MR. KAUFMAN: Were you on the Commission at the  23 time?  24 MR. CHALLSTROM: I was on the Commission at the  25 time, yes.</p>

<p style="text-align: right;">Page 62</p> <p>1 MR. KAUFMAN: And did you become Chairman after 2 that?</p> <p>3 MR. CHALLSTROM: That's correct.</p> <p>4 MR. KAUFMAN: Okay. I'm sorry, Madame Examiner, 5 what was the number?</p> <p>6 MS. ROBESON: 143.</p> <p>7 MR. KAUFMAN: In fact, if you turn to page 2, it 8 does list you as Counsel Liaison on the Commission.</p> <p>9 MR. CHALLSTROM: That's right.</p> <p>10 MR. KAUFMAN: I want to bring your attention to 11 page 32. And in the next to last paragraph I'd like you to 12 read into the record starting mid-way in that paragraph, the 13 State Highway Administration, would you read the rest of 14 that paragraph please?</p> <p>15 MR. CHALLSTROM:</p> <p>16 "The State Highway Administration, Federal 17 Highway Administration and the Maryland Historic 18 Trust as the state Historic Preservation Officer, 19 concurred in the determination of no impact and, 20 thus, no mitigation was included in the memorandum 21 of understanding required for impacts on historic 22 resources. The town has vigorously challenged 23 this determination, it has presented evidence to 24 and held meetings with representatives of the 25 regulating authorities in order to demonstrate the</p>	<p style="text-align: right;">Page 64</p> <p>1 MS. ROBESON: Mr. Kaufman, I do understand where 2 you're going. I don't want to try the ICC case. I 3 understand -- how much further are you going down this road?</p> <p>4 MR. KAUFMAN: I just have one other area in this 5 Master Plan here. And I want to bring your attention to 6 page 41 at the bottom.</p> <p>7 MS. ROBESON: 41?</p> <p>8 MR. KAUFMAN: Page 41 of the Master Plan. Are you 9 there?</p> <p>10 MR. CHALLSTROM: I am, yes.</p> <p>11 MR. KAUFMAN: And at the bottom, would you read 12 that paragraph starting with, "Since adoption."?</p> <p>13 MR. CHALLSTROM:</p> <p>14 "Since adoption of the 1975 Master Plan --" 15 and again that's the, the Town of Washington Grove 1975 16 Master Plan,</p> <p>17 "-- additional housing has been constructed along 18 the portion of both the east and Westwoods borders. The 19 east woods are now encircled by housing, but as a result of 20 the new housing, some with lawns extending to the woods and 21 occupants who look out for and develop concern for the woods 22 has been to reduce points of entrance to the woods and some 23 of the associated impact such as trash dumping, motorized 24 vehicles and vandalism."</p> <p>25 MR. KAUFMAN: Now that statement sort or</p>
<p style="text-align: right;">Page 63</p> <p>1 basis of his objections."</p> <p>2 MR. KAUFMAN: And that dealt with your opposition 3 to the ICC, didn't it?</p> <p>4 MR. CHALLSTROM: It definitely does, yes.</p> <p>5 MR. KAUFMAN: All right. And you did indicate 6 earlier at the time that this Master Plan was adopted in 7 1983, that the ICC had not been built, right?</p> <p>8 MR. CHALLSTROM: That's correct.</p> <p>9 MR. KAUFMAN: Yet notwithstanding that all of 10 these agencies found that there was no impact that would 11 damage the town or the Westwoods, that the town vehemently 12 disagreed with that, on what basis did you disagree with 13 that?</p> <p>14 MR. CHALLSTROM: There, I have a letter in my 15 record from Jay Rodney Little that documents in his words 16 that the town would not hear the ICC. That letter has 17 always been a source of great frustration for the town 18 because it's so obviously incorrect. We have had long- 19 standing concerns about the noise evaluation, we, therefore, 20 hired our own noise consultants and we negotiated and 21 discussed follow-on noise assessments that we expect still 22 to be done.</p> <p>23 MR. KAUFMAN: Wasn't all of that submitted to the 24 State Highway Administration?</p> <p>25 MR. CHALLSTROM: It absolutely was.</p>	<p style="text-align: right;">Page 65</p> <p>1 recognizes, if I'm correct, it does recognize that if you 2 have more eyes on the woods that you wouldn't have some of 3 the vandalism and other impacts, trash dumping and so on in 4 the woods, is that correct?</p> <p>5 MR. CHALLSTROM: I believe that this refers back 6 to the same situation that I described with the Saybrooke 7 community where we have had neighboring single-family 8 housing adjacent to the woods and we have found that for 9 those portions of the woods we have not experienced trash 10 dumping or entry of motorized vehicles or vandalism. That's 11 what this is capturing as opposed to the area along the 12 Towne Crest border.</p> <p>13 MR. KAUFMAN: Well, around, on the Towne Crest 14 border you have complained, have you not, that there have 15 been a lot of dumping and other problems occurring from the 16 Towne Crest property, right?</p> <p>17 MR. CHALLSTROM: We have documented repeated 18 instances of dumping and need for attention to remove trash 19 deposited over the fence, apparently from the Towne Crest 20 property. We have documented that in information you will 21 find in our town website in a 2007 report. That's our 22 experience. This was contrasted with the Towne Crest in 23 this right up here.</p> <p>24 MR. KAUFMAN: But you've indicated that you feel 25 that a revitalization should occur and wouldn't part of that</p>

<p style="text-align: right;">Page 66</p> <p>1 be a benefit to your woods?</p> <p>2 MR. CHALLSTROM: Absolutely.</p> <p>3 MR. KAUFMAN: Excuse me. The last question. You</p> <p>4 indicated that this particular project doesn't have a mix of</p> <p>5 commercial uses as required by the PD zone, is that right?</p> <p>6 MR. CHALLSTROM: I indicated it wasn't consistent</p> <p>7 with the purpose clause with respect to the intention that</p> <p>8 development in the zone produce a balanced and coordinated</p> <p>9 mixture of residential convenience and commercial uses</p> <p>10 reading from the purpose clause of the --</p> <p>11 MR. KAUFMAN: Well, you're not saying that all</p> <p>12 PD's have to have commercial uses, are you?</p> <p>13 MR. CHALLSTROM: No, I'm not saying that. This is</p> <p>14 one of the purposes stated and it didn't assist with moving</p> <p>15 ahead in this intention.</p> <p>16 MR. KAUFMAN: That's it.</p> <p>17 MS. ROBESON: Okay. We're going to take a 10-</p> <p>18 minute break and then we'll come back for cross-examination.</p> <p>19 MR. BROWN: Redirect you mean?</p> <p>20 MS. ROBESON: Yes, I meant that, yes.</p> <p>21 (Recess)</p> <p>22 MS. ROBESON: We are back on the record. Mr.</p> <p>23 Brown.</p> <p>24 MR. BROWN: Just a couple of things, Mr.</p> <p>25 Challstrom.</p>	<p style="text-align: right;">Page 68</p> <p>1 notion of Mr. Kaufman is reluctant to use the word NIMBY,</p> <p>2 but I just want to ask you a NIMBY sort of question. You</p> <p>3 have said that the town would not be opposed to</p> <p>4 redevelopment of the property, perhaps where there's much as</p> <p>5 200 units as compared to the 107 units now. Why is the town</p> <p>6 willing to accommodate these changes if, in fact, your</p> <p>7 testimony is that the area in the vicinity, the Towne Crest</p> <p>8 project area and the vicinity around it really hasn't</p> <p>9 changed very much?</p> <p>10 MR. CHALLSTROM: The, I can reflect discussions of</p> <p>11 the Planning Commission, some of which are documented in the</p> <p>12 minutes of the Planning Commission that recognize that</p> <p>13 improvements to the property would be valuable to the larger</p> <p>14 community. In our minutes of February 1, 2012, it states</p> <p>15 that some of the features of the proposed redevelopment were</p> <p>16 particularly noted as being valuable for the larger</p> <p>17 community and the town in particular. The Planning</p> <p>18 Commission members, I believe there was no opposition among</p> <p>19 those discussions to issues such as the structured parking.</p> <p>20 We felt that the, a proposal that involved structured</p> <p>21 parking was a more efficient way of redeveloping the</p> <p>22 property with a smaller footprint.</p> <p>23 Part of the issues of that are good green</p> <p>24 planning, environmental concerns, but in particular from the</p> <p>25 town's perspective, a smaller footprint we felt would allow</p>
<p style="text-align: right;">Page 67</p> <p>1 MR. CHALLSTROM: Uh-huh.</p> <p>2 MR. BROWN: You're familiar with the table on</p> <p>3 pages --</p> <p>4 MR. KAUFMAN: I'm sorry, we --</p> <p>5 MS. GIRARD: We're on the record.</p> <p>6 MR. KAUFMAN: I know. I mean are we on the</p> <p>7 Gaithersburg Master Plan?</p> <p>8 MR. BROWN: You're familiar with Table 3 of the</p> <p>9 Gaithersburg and Vicinity 1985 Master Plan on pages 46 to</p> <p>10 48?</p> <p>11 MR. CHALLSTROM: I am, yes.</p> <p>12 MR. BROWN: Do you know whether or not that table</p> <p>13 or some substantial equivalent to it was in the 1971 Master</p> <p>14 Plan?</p> <p>15 MR. CHALLSTROM: I do now know whether there was a</p> <p>16 tabular form. I do not recall seeing it in that plan and a</p> <p>17 quick scan of the plan doesn't reveal it. I don't recall</p> <p>18 that. I thought that that tabular form first appeared in</p> <p>19 the 1983 final draft version.</p> <p>20 MR. BROWN: Of the '85 plan?</p> <p>21 MR. CHALLSTROM: Yes, of the Gaithersburg Vicinity</p> <p>22 Master Plan. I believe the 1983 final draft which led up to</p> <p>23 the '85 adopted version, I believe the '83 Plan was the</p> <p>24 first to have the tape.</p> <p>25 MR. BROWN: One other thing, getting back to this</p>	<p style="text-align: right;">Page 69</p> <p>1 more flexibility to locate the redevelopment in such a way</p> <p>2 as to lessen its impact and damage on trees within the town.</p> <p>3 MS. ROBESON: Okay.</p> <p>4 MR. BROWN: I have nothing further.</p> <p>5 MS. ROBESON: Thank you. Thank you, Mr.</p> <p>6 Challstrom. Your next witness?</p> <p>7 MR. BROWN: I have one more witness, the mayor.</p> <p>8 MS. ROBESON: That's fine.</p> <p>9 MR. BROWN: The mayor.</p> <p>10 (Witness sworn.)</p> <p>11 MR. BROWN: Would you state your name and address</p> <p>12 for the record please?</p> <p>13 MS. COLE: Georgette Cole, 217 Ridge Road,</p> <p>14 Washington Grove.</p> <p>15 MR. BROWN: Are you picking that up?</p> <p>16 MS. COLE: Uh-huh.</p> <p>17 MR. BROWN: Okay. And how long have you lived</p> <p>18 there?</p> <p>19 MS. COLE: Not quite 10 years.</p> <p>20 MR. BROWN: And what positions have you served in</p> <p>21 and on behalf of the town of Washington Grove?</p> <p>22 MS. COLE: I was a Council member for six years</p> <p>23 and I've been the mayor for about 1 1/2 years now.</p> <p>24 MR. BROWN: What has been your involvement in</p> <p>25 evaluating the Towne Crest project?</p>

<p style="text-align: right;">Page 70</p> <p>1 MS. COLE: I've been present at all of the</p> <p>2 meetings with the Towne Crest representatives and with the</p> <p>3 M-NCPPC planning staff throughout 2011 and '12.</p> <p>4 MR. BROWN: Okay. This is Exhibit 88H that's been</p> <p>5 submitted for the record. Can you tell me what your</p> <p>6 involvement was in this, in preparation of this exhibit?</p> <p>7 MS. COLE: Yes. This is the council resolution of</p> <p>8 September 10, 2012. I go to not all, but most of the</p> <p>9 Planning Commission meetings and I am the Planning</p> <p>10 Commission liaison. Both work on making sure that the</p> <p>11 Council gets all of the information coming from the Planning</p> <p>12 Commission and understands what's going on. After they</p> <p>13 evaluated the PD-44 plan, the Council decided to officially</p> <p>14 express agreement with the resolution and that's how our</p> <p>15 Council resolution came about, which is the Exhibit that Mr.</p> <p>16 Brown just mentioned. That was a unanimous vote and it was</p> <p>17 a fairly easy one because we've been getting a lot of</p> <p>18 feedback from town residents supporting it.</p> <p>19 MR. BROWN: Now this resolution is focused on the</p> <p>20 earlier version, the PD-44 proposal. Has the town updated</p> <p>21 its views in light of the change to PD-35?</p> <p>22 MS. COLE: Yes, we have. The Council has been</p> <p>23 informed of any changes to the Towne Crest plan basically at</p> <p>24 each council meeting. It's a standard item on our agenda</p> <p>25 under the mayor's updates as Towne Crest. So it's basically</p>	<p style="text-align: right;">Page 72</p> <p>1 evaluation and conclusions regarding the project compare</p> <p>2 with his?</p> <p>3 MS. COLE: I would consider them essentially the</p> <p>4 same.</p> <p>5 MR. BROWN: I wonder if you could briefly</p> <p>6 highlight for us from your perspective and that of the town</p> <p>7 council the principle concerns the town has about this</p> <p>8 project?</p> <p>9 MS. COLE: Okay. I would like to make it clear</p> <p>10 that we're not opposed to redevelopment on the property. I</p> <p>11 would say we agree that it's a great idea to improve the</p> <p>12 housing conditions both on the property for the people there</p> <p>13 and to improve the neighborhood overall. Our concerns</p> <p>14 relate to several different areas, the foremost being</p> <p>15 density, proximity to the single-family homes on Daylily</p> <p>16 Lane and impact on the existing trees.</p> <p>17 MR. BROWN: Let's talk first then about the</p> <p>18 density.</p> <p>19 MS. COLE: Yes. Can you give me some water?</p> <p>20 MR. BROWN: Do you want some water?</p> <p>21 MS. COLE: Yes, please.</p> <p>22 MR. BROWN: Here you go.</p> <p>23 MS. COLE: Thank you. Okay. The proposed density</p> <p>24 on the current plan is not consistent with the applicable</p> <p>25 Gaithersburg Airpark Vicinity Master Plan and we feel</p>
<p style="text-align: right;">Page 71</p> <p>1 touched on at each council meeting and if anybody has</p> <p>2 questions, they ask and David Young who is the Planning</p> <p>3 Commissioner is on the line to answer. Charlie's memo came</p> <p>4 out --</p> <p>5 MR. BROWN: Is that Exhibit 139?</p> <p>6 MS. COLE: Yes, sorry, Exhibit 139, the Planning</p> <p>7 Commission chair's memo on the updated Towne Crest --</p> <p>8 MR. BROWN: Yes.</p> <p>9 MS. COLE: -- selection. Yes. We've all read</p> <p>10 that and support the conclusions. And when I say we, the</p> <p>11 mayor and council read the amended conclusion and agree with</p> <p>12 it. In fact, it was on our agenda on February 11th.</p> <p>13 MR. BROWN: Have you had an opportunity to</p> <p>14 review the revised PD-35 plans and the supporting materials?</p> <p>15 MS. COLE: Yes.</p> <p>16 MR. BROWN: Do the modifications to the plan, have</p> <p>17 they caused you to change any of your views as expressed in</p> <p>18 the resolution from September regarding the ten conclusions</p> <p>19 recommending denial?</p> <p>20 MS. COLE: Not with the current PD-35 plan.</p> <p>21 MR. BROWN: You heard Mr. Davis's testimony?</p> <p>22 MS. COLE: Yes.</p> <p>23 MR. BROWN: Did you review his report?</p> <p>24 MS. COLE: Yes, I did.</p> <p>25 MR. BROWN: How does your and the council's</p>	<p style="text-align: right;">Page 73</p> <p>1 strongly that this is contrary to the purpose clause for PD</p> <p>2 zoning. The LMAG-910 asks for PD-35 designation with 329</p> <p>3 units, an almost threefold increase in density which we do</p> <p>4 not consider compatible with the surrounding single-family</p> <p>5 areas. And basically at over 40 units, sorry, 40 dwelling</p> <p>6 units per acre, it feels particularly incompatible with</p> <p>7 Washington Grove, which is at my calculation 1.08 dwelling</p> <p>8 units per acre.</p> <p>9 The proposed plan also fails to follow setback</p> <p>10 requirements of the County Zoning Code. The August 30, 2012</p> <p>11 stack report says that because the properties to the south</p> <p>12 and west are within the Town of Washington Grove and not</p> <p>13 within the zoning controls of Montgomery County, the setback</p> <p>14 provisions of Section 59C-7.15D do not apply along these</p> <p>15 borders. The town does not agree with this interpretation</p> <p>16 of the law by the staff. In fact, when we first read it, we</p> <p>17 were pretty appalled because the County has always been so</p> <p>18 good about following that in our experience.</p> <p>19 We feel that the applicant is trying really hard</p> <p>20 to fit a large development on a small property and from the</p> <p>21 first PD-60 onward they've observed the 100-foot setback on</p> <p>22 three of the four borders that they have, but because of the</p> <p>23 density that they would like to have with the structured</p> <p>24 parking, the PD-60 and the PD-44 did not allow for the 100-</p> <p>25 foot setback for the Daylily Lane homes. On the PD-35, they</p>

<p style="text-align: right;">Page 74</p> <p>1 have moved the town homes, the realigned them so that they  2 meet the 100-foot setback for the first three homes on  3 Daylily. And when I say that, I should say specifically the  4 first home on Daylily is the address on Washington Grove  5 Lane. I believe it's 565.  6 MS. ROBESON: Okay. I didn't -- okay.  7 MS. COLE: Yes, because otherwise --  8 MS. ROBESON: The southernmost house?  9 MS. COLE: Yes, the southernmost house is 565  10 Washington Grove Lane, but the next house in is No. 3  11 Daylily. So it's 3, 5 and 7.  12 MS. ROBESON: Okay.  13 MS. COLE: And my feeble brain tends to translate  14 the first house into No. 1. Anyway, the PD-35 plan, because  15 I think the Planning Board had expressed discomfort with the  16 lack of 100-foot separation, they did establish it for the  17 first three houses there, but not for No. 7. So the  18 official plan that's currently submitted doesn't have that,  19 although the modified one that I think they've, alternative  20 PD-35 plan, Exhibit 125, but only a back-up to their  21 preferred plan. On that one, they do fully honor the 100-  22 foot setback.  23 MR. BROWN: I understand you've prepared a  24 poster exhibit to illustrate compatibility issues along  25 Daylily?</p>	<p style="text-align: right;">Page 76</p> <p>1 MS. ROBESON: Okay. Poster of a walk on Daylily  2 Lane.  3 (Exhibits 144A and 144B were  4 marked for identification.  5 MR. KAUFMAN: 144 is which, Madame Examiner?  6 MS. COLE: It's the walk on Daylily and B is the  7 CD that has (indiscernible).  8 MS. ROBESON: Okay. Would you mind turning that  9 to me just a little more? I can't quite see. There, that's  10 better. Can everyone else see? All right. Thank you.  11 MS. COLE: The first photograph is from Washington  12 Grove Lane as you're about to turn left on Daylily. So this  13 565 Washington Grove Lane. As you turn and go in, and this  14 is shooting alongside of that property, so you mostly see  15 their side yard. To tell you the truth, a lot of the point  16 that I want to make with these is sort of what the area  17 feels like. The plan that's been submitted, all the plans  18 have been submitted, will basically be removing the trees  19 that are on the corridor between Towne Crest property and  20 Daylily Way, which I understand that is necessitated by, I  21 think, the work they need to have done on the sewer line  22 there. There is a WSSC easement on the back of the Towne  23 Crest property adjacent to Daylily.  24 But it does, as I recall, some gaps in it and they  25 list perhaps seven or eight trees along there that are</p>
<p style="text-align: right;">Page 75</p> <p>1 MS. COLE: Yes and I don't --  2 MR. BROWN: Could you go over that for us please?  3 MS. COLE: -- have multiple copies of the poster,  4 but I've brought CD's with basically the slides that I  5 prepared the photos from.  6 MS. ROBESON: Okay.  7 MS. COLE: So --  8 MS. ROBESON: Let's get -- is that everything --  9 MS. COLE: And you, of course, get to keep the  10 poster?  11 MS. ROBESON: What?  12 MS. COLE: You get to keep the poster.  13 MS. ROBESON: Thank you.  14 MS. COLE: And who should I give --  15 MR. BROWN: Give one to them.  16 MS. COLE: -- this to?  17 MR. BROWN: And one to me.  18 MS. ROBESON: All right. I -- so this poster  19 is --  20 MS. COLE: I need a pen.  21 MS. ROBESON: Thank you. That poster will be 144A  22 and the CD will be 144B. And how do you describe that  23 poster? What is that?  24 MS. COLE: I've been descriptive. I call it a  25 walk on Daylily Lane.</p>	<p style="text-align: right;">Page 77</p> <p>1 specifically on the forest conservation plan. But really  2 when I looked up the Montgomery County requirement for  3 forest conservation plans, they talk about listing  4 everything at least six inches (indiscernible) and greater  5 within 25 feet of the line of disturbance, which I would  6 think would be approximately the property line. So there  7 are a lot of trees there that aren't specifically on the  8 forest conservation plan and the loss of them will really  9 make a difference to this area. So say these trees here  10 will go away. This back here --  11 MS. ROBESON: Okay. You're pointing at the  12 upper --  13 MS. COLE: Yes.  14 MS. ROBESON: -- right photograph?  15 MS. COLE: Usually this is an easier one to see.  16 So the upper right-hand photograph, these trees here --  17 MS. ROBESON: They're large trees in the rear of  18 the photo?  19 MS. COLE: The large trees in the rear of the  20 photo hitch on in between No. 3 Daylily and 565 Washington  21 Grove Lane and are really definitely not on the forest  22 conservation plan. The council member for forestry and I  23 sort of did a rough measurement of DVH, so at 4 1/2 foot off  24 the ground, we just ran the tape around, got the  25 circumference and back-calculated DVH which I have written</p>

<p style="text-align: right;">Page 78</p> <p>1 down on my sheet and don't remember. I can go back there  2 for a moment. Okay. So this is two specific trees. One is  3 a twin tulip poplar that we measure at 20.7 inch and 25-inch  4 DVH and then a tree that neither of us could identify that's  5 larger at 29.3 DVH.</p> <p>6 And there are a lot of trees back there. I didn't  7 try and measure a lot of them, but there's quite, there are  8 a number that while nowhere near, you know, 30-inch of  9 specimen, but there are quite a number of threes back there  10 and they're in the 50 to 60-foot high range. And when  11 they're removed, a lot of this is going to look very, very  12 different. So these trees would vanish and those are the  13 ones on the upper right-hand photograph at the top, right-  14 hand side of the picture. As you move down to the second  15 photograph on the right-hand side, this is another one where  16 all of the trees, the tall ones that you can see back here,  17 will be removed by the proposed construction.</p> <p>18 MS. ROBESON: Are those trees, to your knowledge,  19 are you saying they're on the Daylily Lane on the  20 property --</p> <p>21 MS. COLE: No.</p> <p>22 MS. ROBESON: -- or the other person's property?</p> <p>23 MS. COLE: They are definitely on the applicant's  24 property.</p> <p>25 MS. ROBESON: Okay.</p>	<p style="text-align: right;">Page 80</p> <p>1 sure what I needed to say about it and obviously this was  2 quite a few months ago because everything is very green. So  3 most of the trees that you see here will be staying because  4 they're on the (indiscernible) property. There's just some  5 here in the back that would be, that would be leaving.</p> <p>6 Most of what is between Daylily and Towne Crest is  7 more going back from the property line and actually there's  8 one the back on their property and then several going along  9 the area right between the -- some in Towne Crest, some in  10 Westwoods. And then this was just the rear elevation of  11 building, the bottom right-hand photograph is the schematic  12 rear elevation of Building B. So this is the corner of the  13 building that would be very close to being on the list and  14 that's one of the reasons I think that they're very  15 concerned with it being pulled at least 100 feet away from  16 them.</p> <p>17 You can actually see a lot of these trees on the  18 photos that I, one of the things that you --</p> <p>19 MS. ROBESON: The applicant's photos?</p> <p>20 MS. COLE: It's Exhibit 128B. And it doesn't look  21 quite as dramatic because the photos were taken with no  22 (indiscernible), so it looks kind of squiggly in one place,  23 the forest don't look the best in white.</p> <p>24 MR. BROWN: Why don't you take a look at Exhibit  25 128B and see if there's anything on there you'd like to</p>
<p style="text-align: right;">Page 79</p> <p>1 MS. COLE: The one thing that's a little strange  2 is that behind the trees that I measured back here, I don't  3 know how many of you have been over there, but there's a  4 fence that runs along the border between Daylily Lane and  5 Towne Crest. And there's one point behind the second  6 property, No. 3, where the fence zigzags on and I am  7 speculating that it looks to me as though whoever installed  8 the fence decided that it would be easier to move the fence  9 onto the Towne Crest property than to try and wriggle it  10 through the trees. And so they look like they are in No.  11 3's backyard because of the way the fence runs, but I'm  12 pretty sure the fence is simply there because whoever  13 installed it was lazy. And I'm sure those trees are on  14 Towne Crest's property.</p> <p>15 And if they have to do something about the sewer,  16 I can understand that the trees will obviously be impacted  17 and probably have to be removed because they're right on the  18 border between the two properties, but mostly on Towne  19 Crest. But it will very much change the appearance of this  20 area and a lot of what makes it green is going to have to  21 stay on the Westwoods side, the forest side in front of them  22 and it will be very, very different behind.</p> <p>23 This is actually the No. 7 Daylily, the last  24 property, and the majority of the trees that you can see in  25 this photo because these were sort of taken when I wasn't</p>	<p style="text-align: right;">Page 81</p> <p>1 point out to the Hearing Examiner.</p> <p>2 MS. COLE: The tree, well, the trees that I'm  3 talking about are in these photographs. Let me just  4 familiarize myself a moment. Okay. You can actually see  5 the jog in the fence line that I was talking about here.  6 And all of this (indiscernible) I would say are on the Towne  7 Crest property. And --</p> <p>8 MR. BROWN: You're referring to the second photo?</p> <p>9 MS. COLE: Yes, the second photo --</p> <p>10 MS. ROBESON: The second from the left.</p> <p>11 MS. COLE: No, photo No. 6. And they're not small  12 trees. If the sewer has to be replaced, then the trees will  13 undoubtedly have to go. But it's been a very, very dramatic  14 change to the area. You can see the job in the fence more  15 clearly here and how many trees are here. I believe there  16 may be some trees down on the -- I recall trees on the  17 forest conservation plan that looked as though they were  18 sort of in between No. 3 and No. 5. I would speculate again  19 that perhaps whoever was doing the forest conservation plan  20 didn't want to, you know, like try -- it might not even have  21 been able to find somebody home to ask the people who walked  22 in what looked like their backyard to do an analysis of the  23 trees. I -- No. 5, no, No. 3, No. 3 Daylily don't answer  24 their door very readily. They have a disabled child that --  25 they're just a little leery, but I established contact</p>



<p style="text-align: right;">Page 82</p> <p>1 through e-mail and got permission to come in and do a bit of  2 measuring. So, anyway, as I said, it looks scrubby when  3 they don't have any leaves on them, but it will make a big  4 difference to the area and to the looks of the area. So I'm  5 going to go back to my nice, comfortable seat.  6 MR. KAUFMAN: We don't have any objection to that  7 being in an exhibit.  8 MR. BROWN: Mayor Cole, have you had some arborist  9 assistance in evaluating the preliminary forest conservation  10 plan?  11 MS. COLE: Yes. Okay.  12 MR. BROWN: What assistance have you gotten?  13 MS. COLE: We have been -- we worked over some  14 time with an arborist named Melissa Gildea. She has a  15 consulting firm called Lotus Design and Consulting. She's  16 an ISA certified arborist and a Virginia certified  17 horticulturist and we asked her to review the PD-44  18 proposals, forest conservation plan, and give us an  19 evaluation of its effect on the existing trees. So that  20 would be Exhibit 88B, which was her original evaluation --  21 MS. ROBESON: Okay.  22 MS. COLE: -- and that was sent to me prior to the  23 Planning Board hearing on September 13, 2012. Recently we  24 asked her to suggest forestry remedies specific to the  25 amended PD-35 plan and that's Exhibit 88L, the addendum</p>	<p style="text-align: right;">Page 84</p> <p>1 significant amount of the critical root zone is impacted  2 that it might be dangerous to her property and her home.  3 The plan also impacts 57 very large or significant trees in  4 the Westwoods. Seven of these trees, No. 11, 14, 27, 34,  5 53, 54 and 72 are labeled save with two asterisks and all of  6 these have critical root zone impacts of 30 percent or more.  7 The asterisks refer you to a footnote that says that  8 rigorous tree save measures will be used. They, but they  9 admit that due to the amount of critical root zone involved,  10 not only they ultimately survive, we are concerned that the  11 life span of a mature tree that loses a third to a half of  12 its critical root zone is going to be shortened, perhaps  13 drastically. The loss of large trees on the forest edge  14 also endangers the health of the remaining trees because  15 water flow and wind patterns change and they're not used to  16 it. The trees are then exposed.  17 Okay. Mr. Hornstein says that the town has  18 rejected his offer to join in stewardship of the Westwoods  19 and we have to date. We thought that entering into an  20 agreement that would be financial in nature would be  21 inappropriate during a time period when we were really in  22 significant disagreement about how the property should be  23 developed. So that is something that hasn't happened.  24 The town does have ongoing plans for restoration  25 and maintenance of the forest preserves. We have one that</p>
<p style="text-align: right;">Page 83</p> <p>1 dated February 5, 2013.  2 MR. BROWN: Could you --  3 MS. COLE: And that's, I would like to go back  4 just a moment.  5 MR. BROWN: I understand, that's why I was going  6 to take you back.  7 MS. COLE: Okay.  8 MR. BROWN: If you could go back to your evaluation  9 of the forest conservation plan that's in the record and  10 tell us based upon your evaluation and your consultation  11 with the arborist what you understand to be the impact on  12 trees in the, within the Town of Washington Grove?  13 MS. COLE: Okay. Other than the, the ones that  14 I've just been talking about, the PD-35 plan impacts the  15 tree on the northeast corner of No. 7 Daylily's property.  16 It is, on the forest plan, it's No. 11. It's a 27.5 EBA  17 tread oak in good condition.  18 MS. ROBESON: Is this on No. 7 or is this on Towne  19 Crest?  20 MS. COLE: It's actually on No. 7's property. I  21 believe she mentioned it when she was testifying --  22 MS. ROBESON: Yes.  23 MS. COLE: -- because --  24 MS. ROBESON: Yes, she did.  25 MS. COLE: -- she's concerned about if the</p>	<p style="text-align: right;">Page 85</p> <p>1 started in 2007 and it is actually going on quite  2 aggressively in terms of both control of non-native,  3 invasive species and to try and do what we can with the  4 erosion that's very much present because of the outfall from  5 the pipe that comes through from the Towne Crest area.  6 The loss of trees affects the integrity and  7 aesthetic value of the Westwoods as a whole and because of  8 that the town and even the larger community, because we do  9 get quite a fair number of people who walk in the woods, so  10 it's a amenity not just for the town, but also for the  11 community surrounding us. A loss of tree canopy will have a  12 deleterious effect on the already serious storm water run-  13 off problems here. This run-off is from the current Towne  14 Crest development and the development east of it from  15 Wedgewood.  16 The applicant has acknowledged a heritage  17 responsibility for the run-off problems in verbal  18 conversations with us because of the family that did the  19 original development on Wedgewood and Towne Crest and is now  20 proposing the re-development on the Towne Crest property.  21 They feel that the site plan will improve the problem  22 because they're going to have more control over all of the  23 water that comes onto the Towne Crest site.  24 Our tree consultant, Melissa Gildea, indicates  25 that she's concerned that that won't be the case and</p>

<p style="text-align: right;">Page 86</p> <p>1 certainly not in the short-term. She estimates that 1,000,  2 sorry, 143,600 square feet of canopy, and that's Exhibit  3 88B, page 1, will be eliminated and will greatly impact the  4 flow of storm water across the property. They will be  5 adding new trees, but because as is normally the case, the  6 tree canopy coverage is calculated for a 20-year plan. The  7 storm water in the short-term, which apparently has the rain  8 fall, but literally the leaves on the trees have a  9 significant impact on the amount of storm water that  10 actually reaches the ground and flows. I should have  11 written down that number, but I didn't. Okay.  12 MR. BROWN: Did Ms. Gilday recommend any  13 particular prophylactic measures to go along with  14 construction?  15 MS. COLE: She did suggest and that's in Exhibit  16 88L, that it would be far more protective for the trees and  17 less good if a tree protection fence was installed at 40  18 feet from the property line.  19 MR. BROWN: One of the purposes of the PD zone in  20 Section 59 C7.11 reads as follows.  21 "Additionally, it is the purpose of this zone  22 to preserve and take the greatest possible  23 aesthetic advantage of trees and in order to do  24 so, minimize the amount of grading necessary for  25 construction of the development."</p>	<p style="text-align: right;">Page 88</p> <p>1 that, I could show you on the --  2 MR. BROWN: I'll put it up for you.  3 MS. COLE: Okay. Okay. If you look at where  4 Towne Crest ends, the yellow area, there's a small street  5 that comes off right on the edge there. I think that's  6 McCauley. Is that --  7 MS. ROBESON: No. McCauley is labeled --  8 MR. BROWN: It's a little further.  9 MS. COLE: Oh, I'm sorry. Okay.  10 MS. ROBESON: -- further south.  11 MS. COLE: So that isn't Boundary.  12 MR. BROWN: This is Boundary.  13 MS. ROBESON: Okay. So it's to the northeast of  14 Towne Crest off of Washington Grove, Washington Grove Lane.  15 MS. COLE: Okay. So it's the last little bit  16 that's in Washington Grove.  17 MR. BROWN: Yes, the --  18 MS. COLE: I don't want to make a mistake.  19 MR. BROWN: This delineation is incorrect.  20 MS. COLE: Okay.  21 MR. BROWN: This line here.  22 MS. COLE: Okay.  23 MR. BROWN: This line on the back.  24 MS. COLE: So Boundary is the last little bit  25 that's actually in Washington Grove.</p>
<p style="text-align: right;">Page 87</p> <p>1 What is the town's position on whether or not this project  2 would fulfill that purpose?  3 MS. COLE: We think that particular purpose clause  4 for PD zoning hasn't been met.  5 MR. BROWN: Directing your attention to the -- we  6 included as part of our submission package Exhibit 88I, the  7 Wedgewood HOA, Home Owner's Association No. 2 Agreement.  8 Did you provide this for inclusion in the record?  9 MS. COLE: Yes.  10 MR. BROWN: And why, how did you obtain that  11 document?  12 MS. COLE: One of the Wedgewood 2 residents, in  13 fact, Carla Weinberg, who testified I believe in the last  14 session, she had talked to our town clerk and some of the  15 other residents at the Planning Board hearing and she came  16 to us later with the documents simply saying that she  17 thought we might be interested in it.  18 MR. BROWN: Why did you think that this should be  19 brought to the attention of the Hearing Examiner?  20 MS. COLE: One of the town's concerns does relate  21 to density and parking, and we felt that the documents  22 basically were relevant to the parking problems that they  23 have in that area.  24 Washington Grove residents, Boundary Street, we  25 have one street that's, comes off of Washington Grove Lane</p>	<p style="text-align: right;">Page 89</p> <p>1 MS. ROBESON: Wait. Are you saying that those --  2 MR. BROWN: This is incorrect.  3 MS. ROBESON: -- white dash line should include up  4 to Boundary Road?  5 MR. BROWN: Yes. It includes to the middle of  6 Boundary Road, Boundary Street.  7 MS. ROBESON: And that's part of the town?  8 MR. BROWN: That is part of the town, yes.  9 MS. ROBESON: Okay.  10 MR. BROWN: I'm very familiar with it. I live  11 right there, so I'm very familiar with it.  12 MS. COLE: So we've gotten quite a few complaints  13 from our residents there about parking. They say that  14 residents from somewhere else, usually they say from  15 Wedgewood 2 or Towne Crest, overflow and park along Boundary  16 Street. Now we do know that Wedgewood has a serious parking  17 problem. They basically allowed two parking spaces per  18 townhouse there and it's apparently woefully inadequate.  19 One of the concerns with the new Towne Crest plan,  20 they're only required to allow 1.43 units, sorry, parking  21 spaces per unit and I think that must be because for a PD  22 zoning area like this, they would expect it to be a lot  23 closer to public transportation and then a lot more people  24 would use public transportation. No? Okay. Anyway --  25 MS. ROBESON: I don't know.</p>

<p style="text-align: right;">Page 90</p> <p>1 MS. COLE: -- they require 1.43. The PD-35 has  2 allowed 1.7 parking spaces per unit. And if they use the  3 plan where they shift units so that they have 100 foot away  4 from No. 7 Daylily, they'll go from --  5 MS. ROBESON: The alternative B --  6 MS. COLE: Alternative B.  7 MS. ROBESON: -- which is, has the 100-foot  8 setback?  9 MS. COLE: Yes.  10 MS. ROBESON: That one?  11 MS. COLE: They'll go from 570 parking spaces to  12 500, which would bring them down to 1.52 spaces per dwelling  13 unit. So I'd say that that's probably legal, but inadequate  14 and because parking is something that we're concerned about,  15 I did want to say that is a big concern.  16 MR. BROWN: Any other, let me ask this question.  17 We asked Charlie about this. I wonder, I wondered what your  18 view is. You said that the town's views of the, of Mr.  19 Davis's report really aren't different. Let's talk  20 specifically about his suggestion that 200 units would be an  21 appropriate re-development. Are you -- would you be in  22 favor of re-developing the site and, if so, would you be in  23 favor of something like 200 units? How does the town feel  24 about that?  25 MS. COLE: When I say this, of course, I'm</p>	<p style="text-align: right;">Page 92</p> <p>1 to your concern about impact on the larger trees in the  2 Westwoods that are near the property border?  3 MS. COLE: I think that there's quite a good  4 chance that if the, if the redevelopment as designed to a  5 lower density, for example, they very likely wouldn't need  6 the retaining wall that's currently scheduled to go in on  7 the border between the Towne Crest property and the  8 Westwoods. I think that that's what's going to have the  9 most significant impact on the critical root zones there.  10 And if the project could be redesigned without that, it  11 would be a lot better for the health of the woods.  12 MR. BROWN: Anything else you'd like to say?  13 MS. COLE: No.  14 MR. BROWN: All right. We're done.  15 MS. ROBESON: All right. Or Ms. Girard?  16 MS. GIRARD: Sorry, I'm going to tell you the same  17 thing I told everyone else. I tend to jump around. So bear  18 with me as we go through this.  19 MS. COLE: Okay. I tend to do the same thing.  20 MS. GIRARD: All right. I guess starting first on  21 the trees, can you tell me, did you take the pictures that  22 are shown on Exhibit 144A?  23 MS. COLE: Yeah. They were taken by one of our  24 County residents, Shelley Winkler.  25 MS. GIRARD: Okay. Do you know approximately when</p>
<p style="text-align: right;">Page 91</p> <p>1 representing the sentiments that I've heard at Council and  2 from the Council members and things that were basically in  3 agreement with.  4 There's a lot of concern about trash accumulation.  5 We're coming up on our annual Arbor Day celebration which  6 usually involves a big trash clean-up, which Towne Crest has  7 been fabulous about. They, usually the kids sign up for  8 community service hours and they've been working with us for  9 years for doing this.  10 And I'd like to emphasize that I in no way want to  11 imply that the trash problems we have there are actually due  12 to Towne Crest. We have no idea where it all comes from.  13 But they have been great on working with us on the trash out  14 days and the trash is a concern. And we have continued  15 concerns about the impact of the storm water run-off. The  16 applicant has really been good about acknowledging some  17 responsibility for assisting with the storm water situation  18 and we do look forward to working with them in the future on  19 addressing that issue.  20 At this time, however, we do feel as though the  21 project would benefit from being redesigned to the level of  22 density that Mr. Davis recommends somewhere around 200  23 units. So approximately, an approximate doubling of what's  24 there, but not a tripling.  25 MR. BROWN: Is that viewpoint in any way related</p>	<p style="text-align: right;">Page 93</p> <p>1 she took those pictures?  2 MS. COLE: Yes. I would say probably in late July  3 because we were heading towards September Planning Board  4 hearing.  5 MS. GIRARD: Okay. And the trees that you  6 identified on the rear of the property, and you seem to  7 acknowledge that, see where improvements would be largely  8 disturbing them, would that be true whether or do you have  9 an opinion as to whether that would be true or whether it  10 was a PD-20 zone, PD-35?  11 MS. COLE: I don't have the expertise to say that.  12 MS. GIRARD: Okay. And the trees you identified,  13 those are mainly, along that property line, those are mainly  14 deciduous trees as it seems from --  15 MS. COLE: Yes. Yes, that's very clear from that  16 exhibit.  17 MS. GIRARD: Are you familiar with any testimony  18 or exhibits showing generally what the proposed landscaping  19 plan would be for the Towne Crest property under the current  20 proposal?  21 MS. COLE: Yes. I didn't really see, I don't  22 recall exactly what's along the property line there. I've  23 looked at both the PD-44 and the PD-35 plans and I probably  24 looked at the PD-44 more often.  25 MS. GIRARD: Okay.</p>

<p style="text-align: right;">Page 94</p> <p>1 MS. COLE: Whatever they put along there, which  2 could eventually be perfectly reasonable, probably won't be  3 incredibly tall trees because if they're going to be  4 planting them over the top of the sewer line, that actually  5 wouldn't be very prudent. But they can plant something  6 there that will actually look quite nice. I'm sure they  7 could.</p> <p>8 MS. GIRARD: And would you agree that perhaps a  9 mix of deciduous and evergreen trees might even provide  10 better screening than what exists today?</p> <p>11 MS. COLE: A sensitively done landscape plan would  12 undoubtedly provide something that would look good. I would  13 agree. You know, a landscape planners are very good at  14 that, but it takes time. Trees don't grow fast.</p> <p>15 MS. GIRARD: Yes. And, but you are agree -- were  16 you here for the testimony of the landscape architect who  17 actually opined that the tree canopy coverage post-  18 development would be more than what exists on the property  19 today?</p> <p>20 MS. COLE: I'd really like to see specific figures  21 for that. I did hear him say that.</p> <p>22 MS. GIRARD: Okay. And on the bottom right corner  23 of Exhibit 144A, that's just a flat elevation of the side of  24 the proposed building, you're not suggesting that that would  25 be the view that would be from Daylily 7 or any of the other</p>	<p style="text-align: right;">Page 96</p> <p>1 MS. GIRARD: And do you have any -- what  2 experience does Ms. Gildea have in storm water management  3 planning or engineering? Does she have any background in  4 that?</p> <p>5 MS. COLE: She's a landscape design firm, but I'm  6 pretty sure her technical expertise is trees, although tree  7 health is greatly impacted by storm water, so she would be  8 aware of it from that perspective.</p> <p>9 MS. GIRARD: She's looking at it from that, when  10 she's talking about capping discharge pipes, does she, is  11 she --</p> <p>12 MS. COLE: No, I looked at --</p> <p>13 MS. GIRARD: -- representing that she has any  14 knowledge as to whether that would even be possible?</p> <p>15 MS. COLE: You know, honestly, I have no idea and  16 when I looked at that I thought, my goodness, that would  17 really need to be evaluated by the County water people.</p> <p>18 MS. GIRARD: Right.</p> <p>19 MS. COLE: It sounds interesting, but I would say  20 that the town is not particularly recommending that  21 particular remedy --</p> <p>22 MS. GIRARD: Okay.</p> <p>23 MS. COLE: -- without a heck of a lot of an  24 evaluation.</p> <p>25 MS. GIRARD: Okay. And the parking in the PD</p>
<p style="text-align: right;">Page 95</p> <p>1 property zone?</p> <p>2 MS. COLE: I, well, it would depend on exactly  3 where Building B started. In the PD-44 plan, that building  4 actually started adjacent to the Umunna's home. But in the  5 PD-35, it is further away and in the PD-35 amended, it's  6 quite a quite further away.</p> <p>7 MS. GIRARD: All right.</p> <p>8 MS. COLE: So that it's more looking out over  9 woods than the Umunna's house.</p> <p>10 MS. GIRARD: And would you say generally that  11 what, the views from the Daylily house, particularly Daylily  12 7, are more the corner of a building and not a flat  13 elevation?</p> <p>14 MS. COLE: Oh, yes. Yes. But it's still four  15 stories high.</p> <p>16 MS. GIRARD: And you mentioned storm water  17 management and the 88L from your arborist, I believe.</p> <p>18 MS. COLE: Yes.</p> <p>19 MS. GIRARD: Can you tell me, is the main  20 difference between 88L and 88B, is it just the last page  21 that --</p> <p>22 MS. COLE: Yes.</p> <p>23 MS. GIRARD: -- that at the top says addendum,  24 that was the only change?</p> <p>25 MS. COLE: Yes.</p>	<p style="text-align: right;">Page 97</p> <p>1 zone, you mentioned that you thought it might be, the 1.43  2 spaces per unit might be because of proximity to transit?</p> <p>3 MS. COLE: I was speculating.</p> <p>4 MS. GIRARD: Okay. So it wouldn't surprise you to  5 know that parking requirements of the zoning code are  6 completely separate from the zones, that they're the same  7 whether you're close or not, whether you're in a PD or  8 residential?</p> <p>9 MS. COLE: Sure.</p> <p>10 MS. GIRARD: Okay. And you mentioned that  11 there's, is it Boundary Lane, Boundary Street?</p> <p>12 MS. COLE: Boundary Street.</p> <p>13 MS. GIRARD: There's speculation that the overflow  14 parking is coming from somewhere on Towne Crest Drive, but  15 no one has ever been able to conclude that those residents  16 who are parking on the street are coming, are in any way  17 associated with Towne Crest?</p> <p>18 MS. COLE: That's correct.</p> <p>19 MS. GIRARD: You've also stated that the town  20 would be generally supportive of a redevelopment with  21 approximately 200 units. Has the town at all looked at  22 whether, you know, when the town takes that position, do you  23 know is that based on an idea that that would also include  24 structured parking?</p> <p>25 MS. COLE: I don't think we've talked about that</p>

<p style="text-align: right;">Page 98</p> <p>1 at all.</p> <p>2 MS. GIRARD: Do you think that the town would</p> <p>3 support it if it meant all surface parking to service those</p> <p>4 units?</p> <p>5 MS. COLE: I don't know.</p> <p>6 MS. GIRARD: Okay. And you also mentioned that</p> <p>7 you felt that the 200 units would take away the</p> <p>8 necessitation for the retaining wall that's currently along</p> <p>9 the Westwoods?</p> <p>10 MS. COLE: I think what I said was that I hoped it</p> <p>11 would --</p> <p>12 MS. GIRARD: Okay.</p> <p>13 MS. COLE: -- because we really don't like the</p> <p>14 retaining wall.</p> <p>15 MS. GIRARD: Right. You don't know?</p> <p>16 MS. COLE: And that there might be some other way</p> <p>17 to do it.</p> <p>18 MS. GIRARD: Okay. That's all I have. Thank you.</p> <p>19 MR. BROWN: Nothing further.</p> <p>20 MS. ROBESON: All right. Thank you. Is that all</p> <p>21 your witnesses?</p> <p>22 MR. BROWN: That concludes the presentation by the</p> <p>23 town. If there are other witnesses who are close to the</p> <p>24 project who want to testify, they're not my witnesses.</p> <p>25 MS. ROBESON: Okay. Is there anyone else here who</p>	<p style="text-align: right;">Page 100</p> <p>1 MS. ROBESON: You're still under oath, Mr.</p> <p>2 Hornstein.</p> <p>3 MR. HORNSTEIN: Yes, ma'am.</p> <p>4 (Witness sworn.)</p> <p>5 MR. KAUFMAN: Okay. And just for the record, Mr.</p> <p>6 Hornstein, would you please state your name, address and</p> <p>7 your affiliation.</p> <p>8 MS. ROBESON: Well, you don't need to --</p> <p>9 MR. KAUFMAN: Okay. You don't need that. All</p> <p>10 right.</p> <p>11 MS. ROBESON: We can get back - we know who he is.</p> <p>12 MR. HORNSTEIN: It hadn't changed.</p> <p>13 MR. KAUFMAN: It's been awhile.</p> <p>14 MS. ROBESON: And he's been there the whole place.</p> <p>15 Go ahead.</p> <p>16 MR. KAUFMAN: So, Mr. Hornstein, you've been here</p> <p>17 the entire hearing and you've heard all the testimony from</p> <p>18 all the witnesses?</p> <p>19 MR. HORNSTEIN: I have.</p> <p>20 MR. KAUFMAN: And you're familiar with this</p> <p>21 alternative B which changed the nature of Building B in the</p> <p>22 development plan?</p> <p>23 MR. HORNSTEIN: I am.</p> <p>24 MR. KAUFMAN: And should the Hearing Examiner feel</p> <p>25 that that better serves the purpose of the Master Plan and</p>
<p style="text-align: right;">Page 99</p> <p>1 wishes to testify in opposition? All right. Seeing none,</p> <p>2 Mr. Kaufman, how many witnesses do you have?</p> <p>3 MR. KAUFMAN: We have three, maybe four rebuttal</p> <p>4 witnesses.</p> <p>5 MR. ROBESON: Okay. Well, we will take 45 minutes</p> <p>6 for lunch, so we will come back at 2:15. Thank you.</p> <p>7 (Recess)</p> <p>8 MS. ROBESON: Are the parties ready?</p> <p>9 MS. GIRARD: We're missing Steve.</p> <p>10 MS. ROBESON: I guess not.</p> <p>11 MS. GIRARD: He said he'd be right back. I'm not</p> <p>12 sure where he went.</p> <p>13 MS. ROBESON: Well, do you think we're safe in</p> <p>14 proceeding? Can you hold down the fort? My reason is --</p> <p>15 here he is.</p> <p>16 MS. GIRARD: Here he is.</p> <p>17 MS. ROBESON: I have to leave, okay, we're back on</p> <p>18 the record. I have to leave today right at 5:00. I can't</p> <p>19 go over. So --</p> <p>20 MR. KAUFMAN: Didn't, excuse me, Madame, didn't we</p> <p>21 have another date that we could use?</p> <p>22 MS. ROBESON: We do. We do. All right, Mr.</p> <p>23 Kaufman, or Ms. Girard, I believe it's your rebuttal.</p> <p>24 MR. KAUFMAN: Yes. The first witness would be Mr.</p> <p>25 Hornstein.</p>	<p style="text-align: right;">Page 101</p> <p>1 the zone, the PD-35 zone, are you and your company prepared</p> <p>2 to have that be a binding element?</p> <p>3 MR. HORNSTEIN: We are.</p> <p>4 MR. KAUFMAN: So either alternative A or B would</p> <p>5 be a binding element?</p> <p>6 MR. HORNSTEIN: Yes.</p> <p>7 MR. KAUFMAN: Excuse me a second. There was some</p> <p>8 testimony just recently about overflow parking that is</p> <p>9 coming into the neighborhood which is part of Washington</p> <p>10 Grove. Would you mind going to Exhibit, I believe this is</p> <p>11 Exhibit 10, is that what that says?</p> <p>12 MR. HORNSTEIN: 10A.</p> <p>13 MR. KAUFMAN: 10A. Again, there is an area that</p> <p>14 apparently is not in the white boundary line just I would</p> <p>15 say east or southeast of the current line on that exhibit.</p> <p>16 All right.</p> <p>17 MR. HORNSTEIN: Boundary Lane, I think it is?</p> <p>18 MR. KAUFMAN: Right. Now you heard some testimony</p> <p>19 that there's been complaints by some of the citizens who</p> <p>20 live in Washington Grove that people come and park there.</p> <p>21 To your knowledge, are any of those potentially overflow</p> <p>22 parkers coming from your project, Towne Crest?</p> <p>23 MR. HORNSTEIN: All property measurement folks say</p> <p>24 we've got plenty of parking, that we are not the cause of</p> <p>25 any parking problems.</p>

<p style="text-align: right;">Page 102</p> <p>1 MR. HORNSTEIN: And how about from Wedgewood 1 2 or 2?</p> <p>3 MR. HORNSTEIN: You know they are mostly 3 and 4 4-bedroom townhouses in here and there's only two parking 5 spaces, so there is a recognized problem which is one of the 6 reasons we entered into an agreement to provide them some 7 additional parking as part of the Towne Crest redevelopment.</p> <p>8 MR. KAUFMAN: Well, do you have an opinion as to 9 where this parking may be coming from?</p> <p>10 MR. HORNSTEIN: I do. As a matter of fact, as 11 we've previously identified that the two properties 12 immediately to the east on the south side of the Towne Crest 13 property are churches and that on occasions they do overflow 14 onto Towne Crest Drive and I would speculate that they are 15 also parking in the neighborhood too on occasion.</p> <p>16 MR. KAUFMAN: There was some testimony that, I 17 think by the mayor, but she was hoping if you reduced your 18 density you wouldn't have to provide a retaining wall, do 19 you recall that?</p> <p>20 MR. HORNSTEIN: I do.</p> <p>21 MR. KAUFMAN: Okay. Is that, in fact, correct or 22 is there some other proposal?</p> <p>23 MR. HORNSTEIN: We provided, based on the town's 24 indicating their concerns for what goes on between the edge 25 of the Towne Crest property and with the stand of trees, we</p>	<p style="text-align: right;">Page 104</p> <p>1 ability that the, that there is no trash thrown over that 2 fence. There may have been in the past and we've seen some 3 photos of that. We work very hard with our tenants now and 4 the young people to try to keep the litter down to as little 5 as possible.</p> <p>6 Also, one of the benefits of the parking garages 7 is elimination of the dumpsters that are currently on the 8 site and as a result of that, as with dumpsters, sometimes 9 people are not careful with how they use those dumpsters and 10 trash does overflow. By putting the recycling and trash 11 collection inside the buildings, inside the parking garages, 12 we expect there to be a much more attractive project as a 13 result of that.</p> <p>14 MR. KAUFMAN: So if you were fortunate enough to 15 have the plan approved and it was built, would all service 16 then be contained inside the parking garage?</p> <p>17 MR. HORNSTEIN: All services would be contained 18 inside the parking garage.</p> <p>19 MR. KAUFMAN: As well as parking for residents?</p> <p>20 MR. HORNSTEIN: That's correct. All parking will 21 be inside those buildings other than the little surface lot 22 behind the townhouses.</p> <p>23 MR. HORNSTEIN: And in addition to the parking 24 that might be provided to Wedgewood 2, will you still have 25 some excess parking?</p>
<p style="text-align: right;">Page 103</p> <p>1 gave it to our engineers and we actually came up with three 2 different solutions, one of which was the wall. One of the 3 solutions which I believe had less impact on the trees was a 4 grading plan where we needed to come into the Westwoods and 5 get an easement from the town in order to minimize the 6 impact on the trees. We need no wall as a result of that. 7 Because we have been unable to have an agreement with the 8 town, we went with a solution that allowed us to go forward 9 which is the same on our property, leave the wall in.</p> <p>10 MR. KAUFMAN: So the wall is necessitated for two 11 reasons, one, because it can all be done on your property?</p> <p>12 MR. HORNSTEIN: Correct.</p> <p>13 MR. KAUFMAN: And in order to do a grading plan 14 that would eliminate the wall, you would need the 15 cooperation of the town?</p> <p>16 MR. HORNSTEIN: That's correct.</p> <p>17 MR. KAUFMAN: Okay. And then my last question 18 deals with trash. There was testimony by various witnesses 19 from the town that they occasionally have problems with 20 trash in the Westwoods from your project.</p> <p>21 MR. HORNSTEIN: Well, first of all, I appreciate 22 the mayor bringing to light the fact that the Towne Crest 23 residents do participate in the trash clean-up of the 24 Westwoods. Our property manager does spend a lot of time 25 working with our residents to make sure to the best of her</p>	<p style="text-align: right;">Page 105</p> <p>1 MR. HORNSTEIN: We are, as proposed under both 2 alternative A and B, we have over 30 spaces in excess of the 3 code requirement. The code is based on number of bedrooms. 4 So we have provided the 30 extra spaces to be for our 5 visitors and guests in addition to that would service our 6 residence.</p> <p>7 MR. KAUFMAN: And that doesn't --</p> <p>8 MS. ROBESON: Although the bedroom count can 9 change, right, depending on the market at the time? That's 10 not a binding element, is it in your plan?</p> <p>11 MR. HORNSTEIN: It is not. The market, what we've 12 identified is historically now a balance, basically one 13 bedrooms and two bedrooms. The plan is currently envisioned 14 as 25 3-bedrooms.</p> <p>15 MR. KAUFMAN: And the reason for that?</p> <p>16 MR. HORNSTEIN: It's part of the affordable -- 17 when we met with Rick Nelson in Housing, he very encouraged 18 us that there is a shortage of 3-bedroom affordable units in 19 Montgomery County and since we were taking out some three 20 bedrooms as part of our townhouses. We agreed to put 25, 3- 21 bedrooms into the mix to be part of solving the affordable 22 housing issue.</p> <p>23 MR. KAUFMAN: And there will be an agreement with 24 DHA on the MPDU issue?</p> <p>25 MR. HORNSTEIN: Yes, and I did commit to him and</p>

<p style="text-align: right;">Page 106</p> <p>1 we will commit to him and then we will commit to him that he  2 gets some of those three bedrooms.  3 MR. KAUFMAN: I don't have any other questions of  4 this witness.  5 MS. ROBESON: Mr. Brown.  6 MR. BROWN: Mr. Hornstein, do you happen to know  7 how many parking spaces are on the site now for 107 units?  8 MR. HORNSTEIN: I don't recall off the top of my  9 head.  10 MR. BROWN: I have nothing further.  11 MS. ROBESON: Any redirect or --  12 MR. KAUFMAN: No, I'm fine.  13 MS. ROBESON: Okay. Thank you, Mr. Hornstein.  14 Your next witness?  15 MS. GIRDARD: Our next witness will be Ron  16 Seiboth, the architect.  17 (Witness sworn.)  18 MS. ROBESON: You are still under oath, Mr.  19 Seiboth.  20 MR. SIEBOTH: Yes, ma'am.  21 MS. GIRARD: Mr. Seiboth, you were present this  22 morning, were you not, for the testimony of Mrs. Umunna, who  23 lives at 7 Daylily Lane?  24 MR. SIEBOTH: Yes.  25 MS. GIRARD: And there was some back and forth</p>	<p style="text-align: right;">Page 108</p> <p>1 Westwoods and --  2 MR. SIEBOTH: Right.  3 MR. KAUFMAN: -- and Westwoods Park.  4 MR. SIEBOTH: Right.  5 MR. KAUFMAN: Sorry.  6 MS. ROBESON: No. No problem. Okay. So I'm, I'm  7 marking this as -- okay, I'm marking -- which do you want to  8 address first, the color?  9 MR. SIEBOTH: Yes, the colored plan showing the  10 distance relationships from the closet points at 7 Daylily  11 to both the existing -- and this one shows just, just the  12 scheme B, which is 100-foot setback.  13 MS. ROBESON: Okay. Let me just say that will be  14 Exhibit 145 and it will be distance relationships, Scheme B.  15 (Exhibit No. 145 was marked  16 for identification.)  17 MR. KAUFMAN: Which one is 145?  18 MS. ROBESON: I have this as being 145.  19 MR. SIEBOTH: So what this shows is the  20 relationship of 7 Daylily to the, to the, the west, from the  21 west point of the house to the existing buildings are noted  22 in the orange color. The distance as they exist today is 56  23 feet from their garage to the deck of the closest apartment  24 building. The proposal shows with a 100-foot setback to the  25 property line there would be 140-foot distance between the</p>
<p style="text-align: right;">Page 107</p> <p>1 about the relationship between the existing Towne Crest  2 buildings and proposed Towne Crest buildings to her  3 property. Have you done any studies on that that would be  4 helpful and everyone understanding?  5 MR. SIEBOTH: Yes, I have. I prepared two  6 exhibits showing the relationship between 7 Daylily where it  7 is and the existing properties and 7 Daylily with the  8 proposed properties.  9 MS. ROBESON: Which proposal?  10 MR. SIEBOTH: I did -- yeah. I actually did a  11 scheme showing both proposals. The one that I'm calling  12 Scheme B, the one that respects the 100-foot setback to the  13 property lines.  14 MS. ROBESON: And I did have a question, I  15 apologize. You don't consider Westwoods or Maple Lake  16 Park, Westwoods, you don't consider that a single-family  17 zone? Did you look at that issue?  18 MR. SIEBOTH: Which parcel is that?  19 MS. GIRARD: It is the woods.  20 MS. ROBESON: It's the one, see the --  21 MR. SIEBOTH: The woods?  22 MS. ROBESON: Yes.  23 MR. SIEBOTH: No.  24 MS. ROBESON: Okay. Go ahead.  25 MR. KAUFMAN: I believe that's Maple Lake,</p>	<p style="text-align: right;">Page 109</p> <p>1 corner of the garage, rear corner of the garage and the  2 closest building to them which is Building B.  3 The bottom figure shows the relationship in terms  4 of building height. The location of the 2-story building,  5 which is closer to her house, is in a proportion to the  6 further distance of the proposed house which proposed  7 building which is four stories high.  8 The second diagram, this part --  9 MS. GIRARD: Yes.  10 MS. ROBESON: You have to show me which, which one  11 are -- is it sight line cone of the -- oh, these are  12 stapled?  13 MR. SIEBOTH: Yes.  14 MS. ROBESON: So this will be 146? And that will  15 be site line cone of vision.  16 (Exhibit No. 146A and 146B  17 were marked for  18 identification.)  19 MR. SIEBOTH: The cone of vision --  20 MS. ROBESON: Just a second, is 146A and B.  21 MR. KAUFMAN: It goes up to two pages?  22 MS. ROBESON: Yeah.  23 MR. SIEBOTH: Is A the plan?  24 MR. KAUFMAN: A is the front page.  25 MR. SIEBOTH: A, okay, the --</p>

<p style="text-align: right;">Page 110</p> <p>1 MR. KAUFMAN: And B is the front page.</p> <p>2 MR. SIEBOTH: The B shows in plan the relationship</p> <p>3 from the center of the property line at the closest point</p> <p>4 for lot 7 to the existing building to the building that's</p> <p>5 proposed in scheme A, Building B, and the distance to</p> <p>6 Building B in scheme B. The first sheet shows that</p> <p>7 relationship from the, if a person was standing on the</p> <p>8 property line looking towards Towne Crest property, the cone</p> <p>9 of vision of existing, standing on the property line and</p> <p>10 looking directly at the building shows that the building is</p> <p>11 in a cone of vision of approximately 22 degrees. When you</p> <p>12 translate that to Scheme A, which is the closer of the two</p> <p>13 schemes, the cone of vision goes to about the top of the</p> <p>14 third floor because of the distance separation.</p> <p>15 But in scheme B where we're 100 foot off the</p> <p>16 property line, the cone of vision at 22 degrees is well-</p> <p>17 above the building. So it gives you a sort of a graphic</p> <p>18 description of the relationship on how you view the</p> <p>19 buildings from that property line.</p> <p>20 MS. GIRARD: So, Mr. Seiboth, like in more</p> <p>21 layman's terms, it would be your opinion that under the</p> <p>22 existing condition versus scheme B, you would be seeing a</p> <p>23 lot more skylight? Can you just explain?</p> <p>24 MR. SIEBOTH: Well, it gives you the opportunity,</p> <p>25 of course, being further away and because the building is</p>	<p style="text-align: right;">Page 112</p> <p>1 B, is it your opinion or can you explain to us what the</p> <p>2 difference, if there is any, do you think there is between</p> <p>3 looking at the existing condition which is more of a flat</p> <p>4 wall and the proposed conditions which is more of the corner</p> <p>5 of the building, how that would affect your perception?</p> <p>6 MR. SIEBOTH: Well, because they'd be looking at</p> <p>7 the corner in perspective and each side of the building is</p> <p>8 kind of going away from him, I think it's going to feel much</p> <p>9 more open than it does today. The fact that there's so many</p> <p>10 two-story buildings that are close to the property line I</p> <p>11 think is more obtrusive than one larger building further</p> <p>12 away. And the cone of vision kind of shows that it's a</p> <p>13 little more open.</p> <p>14 MS. GIRARD: And with regard to -- we also heard</p> <p>15 this morning some concerns about noise in the proposed</p> <p>16 development. Can you give us your thoughts on what noise</p> <p>17 increase, if any, would be expected and what the major, what</p> <p>18 you believe the major components of the noise generation</p> <p>19 would be?</p> <p>20 MR. SIEBOTH: Generally in these kind of --</p> <p>21 MS. ROBESON: Are you qualified as a noise expert</p> <p>22 or --</p> <p>23 MR. SIEBOTH: Well, we take great pains to</p> <p>24 separate our residents within our communities from</p> <p>25 disturbing each other from the noise factor. So when we</p>
<p style="text-align: right;">Page 111</p> <p>1 further away, even though it's four stories, it creates a</p> <p>2 more open feeling than it would even if it were, even the</p> <p>3 two-story existing condition does today. Of course, also</p> <p>4 the distance creates the opportunity for more screening and</p> <p>5 landscaping to appease the concerns of the residents at lot</p> <p>6 7 Daylily.</p> <p>7 MS. ROBESON: Have you submitted a revised</p> <p>8 landscape plan based on alternative B?</p> <p>9 MR. SIEBOTH: No.</p> <p>10 MR. KAUFMAN: That wouldn't be this, with this, it</p> <p>11 would be the --</p> <p>12 MS. ROBESON: Landscape architect, Mr. Foster?</p> <p>13 MR. KAUFMAN: Yes.</p> <p>14 MS. ROBESON: Okay.</p> <p>15 MS. GIRARD: So just to elaborate on that, 146A,</p> <p>16 which is showing cone of vision, in reality would it be your</p> <p>17 expectation that there would be plantings between where the</p> <p>18 person is standing and where the buildings were proposed?</p> <p>19 MR. SIEBOTH: Yes, I would.</p> <p>20 MS. GIRARD: And that this -- is it your opinion</p> <p>21 that such landscaping would likely further secure any use of</p> <p>22 the building?</p> <p>23 MR. SIEBOTH: Yes, it would.</p> <p>24 MS. GIRARD: And looking at 146B, or the existing</p> <p>25 conditions versus the proposed building Scheme A and Scheme</p>	<p style="text-align: right;">Page 113</p> <p>1 design these buildings, today especially noise is a big</p> <p>2 concern for the owners and the buyers. I think that in this</p> <p>3 case most of the outside noise would be created by an air</p> <p>4 conditioning condenser or something like that. My</p> <p>5 understanding is today that the condensers are on the roofs</p> <p>6 of the existing buildings. They're flat roofs.</p> <p>7 In our proposed buildings, we'll probably be</p> <p>8 putting the air conditioning condensers on each deck inside</p> <p>9 a room, so there will be insulation around the condenser.</p> <p>10 The ventilation for the condenser will be on the exterior</p> <p>11 wall with a screen. So we found that within the communities</p> <p>12 at least there's much less noise generation that affects the</p> <p>13 residents of the community.</p> <p>14 In terms of the parking garage, I think that an</p> <p>15 enclosed parking garage is much, there's much less noise</p> <p>16 transfer than if a car is parked out on in an open space.</p> <p>17 So I think that the garage itself will provide some</p> <p>18 insulation from noise and other aspects of the parking</p> <p>19 situation.</p> <p>20 MS. GIRARD: So in your opinion as an architect</p> <p>21 who designs buildings obviously, not a noise expert, in your</p> <p>22 opinion will the proposed development be noisier than what</p> <p>23 exists today because it's more dense?</p> <p>24 MR. SIEBOTH: No, I don't think it will be. I</p> <p>25 think it probably in most cases you'll find that it's less</p>



<p style="text-align: right;">Page 114</p> <p>1 noisy because of the higher insulation values in the 2 buildings. 3 MS. GIRARD: Hold on one second, sir. Okay. And, 4 Mr. Seiboth, you've heard testimony from Washington Grove 5 that a development more like a PD-20 something, in the 6 neighborhood of 200 units would be more desirable. Can you 7 just quickly, and I know you haven't studied this, can you 8 quickly describe for us what you think the differences would 9 be between such projects and from an architectural 10 perspective would it seem much less dense with only 200 11 units? 12 MR. SIEBOTH: Probably a 200 unit scheme on the 13 site we would, we'd probably go to a different product type. 14 My guess is it would be more smaller buildings and surface 15 parking. You know, it translates to the ground value per 16 unit would have to be increased, so you would have to 17 decrease the amount of cost you put into amenities and, you 18 know, just the nice stuff that's in the site, you know, the 19 landscaping and the paving and all the amenities. So my 20 guess is that with more smaller buildings it would look more 21 dense than it would with a fewer taller buildings. 22 MS. ROBESON: Wouldn't there be open areas between 23 the smaller buildings? 24 MR. SIEBOTH: There would, but the way we've 25 designed -- I feel very confident that the way we have</p>	<p style="text-align: right;">Page 116</p> <p>1 apartment communities that have only one or two access 2 points in multiple buildings. 3 MR. SIEBOTH: Uh-huh. 4 MS. ROBESON: So I just, I don't know if you 5 couldn't do it. Are you saying it couldn't be designed that 6 say? 7 MR. SIEBOTH: You mean at lower density design the 8 building the same way? 9 MS. ROBESON: Yes. 10 MR. SIEBOTH: Theoretically you could. 11 MS. ROBESON: I'm just -- 12 MR. SIEBOTH: But I think if you didn't have the 13 parking garage, you know, that's, your control point from -- 14 MS. ROBESON: Is the cost of the parking garage? 15 MR. SIEBOTH: I mean you'd be going from a parking 16 space out on the surface -- 17 MR. ROBESON: Right. 18 MR. SIEBOTH: -- into a building. 19 MS. ROBESON: Right. Right. 20 MR. SIEBOTH: I think that's the big difference. 21 MS. GIRARD: That's all we have. 22 MR. KAUFMAN: That's all we have. 23 MS. ROBESON: Mr. Brown. 24 MR. BROWN: Mr. Seiboth, I want to go over these 25 two exhibits very briefly. First of all, Exhibit 145 does a</p>
<p style="text-align: right;">Page 115</p> <p>1 designed this building, the way the penetrations go into 2 the courtyards along the street, that we're doing pretty 3 much the same thing. 4 MS. ROBESON: Okay. 5 MR. SIEBOTH: And we're hiding the additional 6 density that people are concerned about within the building. 7 I mean there's, you know, fewer walkways into the buildings. 8 People pretty much enter the buildings from one controlled 9 spot, so you don't have as many access points along the 10 roadway so it looks much less cluttered. 11 MS. ROBESON: Well, you could that with a PD, with 12 a 200-unit building, right? 13 MR. SIEBOTH: Well, if it was designed the same 14 way. What I'm saying is that because it's a lower density 15 on this site, we have to look at the cost of construction 16 development. 17 MS. ROBESON: Yes, I understand that, but as far 18 as access points, you could still consolidate hypothetically 19 access points? 20 MR. SIEBOTH: Yeah, but if you divided the site 21 into smaller, you know, more smaller buildings, 22 theoretically each building would have at least one access 23 point whereas this one, you know, one building has as many 24 access points as a smaller building would. 25 MS. ROBESON: Well, okay. I used to -- I've seen</p>	<p style="text-align: right;">Page 117</p> <p>1 comparison between the existing buildings and the proposed 2 alternative to the main, to the main application plan that 3 is the drawing in Exhibit 125, correct? 4 MR. SIEBOTH: Yes. 5 MR. BROWN: You didn't do one for the main plan 6 where the 100-foot setback to the corner of No. 7 Daylily is 7 preserved? 8 MR. SIEBOTH: I didn't. It's ghosted in on the 9 plan. You can kind of see that it's inside that, the cone 10 of the setback cone. 11 MR. BROWN: I'm sorry, I may have mis-spoke, but 12 we don't have on this, on Exhibit 145 a comparison between 13 the 56 feet to the existing and the distance from the corner 14 of the house to the corner of Building B if we use Exhibit 15 124, is that correct? 16 MR. SIEBOTH: Well, which one is 124? 17 MS. ROBESON: 124 is Alternative A Revised 18 Development Plan with covering part woods development 19 covering, no, Revised Development Plan covering parking 20 tabulations. I'm not sure that's the right name for it, 21 but -- 22 MR. BROWN: Yes, 124. 23 MR. SIEBOTH: Right. 24 MR. BROWN: It doesn't show the distance to this 25 corner --</p>

<p style="text-align: right;">Page 118</p> <p>1 MR. SIEBOTH: Right.</p> <p>2 MR. BROWN: -- that's here?</p> <p>3 MR. SIEBOTH: Right.</p> <p>4 MS. ROBESON: No, I didn't. I'm sorry. Can you,</p> <p>5 I'm looking for the plan. For some reason it's not up where</p> <p>6 it should be.</p> <p>7 MR. KAUFMAN: Is it over there, 24?</p> <p>8 MS. ROBESON: Well, go ahead. What is your</p> <p>9 response to the question?</p> <p>10 MR. SIEBOTH: Well, he's asking if the Exhibit 145</p> <p>11 shows a --</p> <p>12 MS. ROBESON: 145, oh, okay. I've got it.</p> <p>13 MR. SIEBOTH: -- shows the relationship between</p> <p>14 the house and the original plan where the Building B is</p> <p>15 closer and I said it didn't.</p> <p>16 MR. BROWN: Turning to Exhibit 146, the conclusion</p> <p>17 that I draw from the first page, I'd like to know if you</p> <p>18 agree with it, is that compared to the existing condition,</p> <p>19 Scheme B provides one with an apparent, an apparent</p> <p>20 perception of a building that's smaller than the existing</p> <p>21 building?</p> <p>22 MR. SIEBOTH: Yes.</p> <p>23 MR. BROWN: Is that right?</p> <p>24 MR. SIEBOTH: That's right.</p> <p>25 MR. BROWN: So using that same language, would you</p>	<p style="text-align: right;">Page 120</p> <p>1 MS. ROBESON: Yes, I did.</p> <p>2 MR. SIEBOTH: Yes.</p> <p>3 MR. BROWN: She said 50 feet. Do you agree with</p> <p>4 that number?</p> <p>5 MR. SIEBOTH: No, I don't.</p> <p>6 MR. BROWN: It's what?</p> <p>7 MR. SIEBOTH: I would say it's closer to 30 feet.</p> <p>8 But it's close, so it probably feels like 50 feet to her.</p> <p>9 MR. BROWN: Lastly, Mr. Seiboth, if I remember</p> <p>10 correctly, your firm specializes in multi-family dwellings?</p> <p>11 MR. SIEBOTH: Yes.</p> <p>12 MR. BROWN: Recognizing that all land use</p> <p>13 situations are not economically equivalent, would it be your</p> <p>14 testimony that a, that in general structured parking is</p> <p>15 simply economically infeasible for a multi-family unit or</p> <p>16 units of 200?</p> <p>17 MR. SIEBOTH: Well, yeah, it really depends on how</p> <p>18 urban it is. I mean if you're within the city limits, you</p> <p>19 obviously would, if you had 200 units you'd be doing</p> <p>20 structured parking because of the ground values closer to</p> <p>21 the urban core is. As you get further away from the urban</p> <p>22 core, you're less likely to have structured parking.</p> <p>23 MR. BROWN: Okay. Thank you. I have nothing</p> <p>24 further.</p> <p>25 MS. ROBESON: Thank you. Any redirect, Mr.</p>
<p style="text-align: right;">Page 119</p> <p>1 also agree that Scheme A in comparison to the existing</p> <p>2 condition shows a building that appears larger than the</p> <p>3 existing condition?</p> <p>4 MR. SIEBOTH: That's correct.</p> <p>5 MR. BROWN: And in comparison to Exhibit 145, on</p> <p>6 the second page of Exhibit 146, you do show the distance, at</p> <p>7 least from the center line of the property to the corner of</p> <p>8 the building if it were built according to Exhibit 124?</p> <p>9 MR. SIEBOTH: Yes.</p> <p>10 MR. BROWN: Okay.</p> <p>11 MS. ROBESON: I thought there was testimony</p> <p>12 somewhere to the extent that the existing condition or the</p> <p>13 existing building was 50 feet?</p> <p>14 MR. BROWN: Let me ask a question on that.</p> <p>15 MS. ROBESON: I'm sorry. Go ahead.</p> <p>16 MR. BROWN: The existing condition number on page</p> <p>17 2 of Exhibit 146 refers to the setback distance between the</p> <p>18 building and the property line, is that right?</p> <p>19 MR. SIEBOTH: That's right.</p> <p>20 MR. BROWN: It does not refer to the building</p> <p>21 height?</p> <p>22 MR. SIEBOTH: No, it doesn't.</p> <p>23 MS. ROBESON: Oh.</p> <p>24 MR. BROWN: Did you hear Ms. Umunna talk about the</p> <p>25 estimated building height?</p>	<p style="text-align: right;">Page 121</p> <p>1 Kaufman?</p> <p>2 MS. GIRARD: No.</p> <p>3 MS. ROBESON: No? Okay.</p> <p>4 MR. KAUFMAN: Can he be dismissed? He has to go</p> <p>5 to Philadelphia.</p> <p>6 MS. ROBESON: Yes, except I have -- if we finish</p> <p>7 today, I have a question on green space. Would he answer</p> <p>8 that or not?</p> <p>9 MS. GIRARD: It would kind of more be the engineer</p> <p>10 I think.</p> <p>11 MS. ROBESON: Okay.</p> <p>12 MR. KAUFMAN: Well, he could be the engineer for,</p> <p>13 would he, well, we might have to give you that in -- we're</p> <p>14 going to give you a memo, so --</p> <p>15 MS. ROBESON: Okay. All right. And I take it the</p> <p>16 third witness, your next rebuttal witness is Mr. Ager?</p> <p>17 MS. GIRARD: Yes.</p> <p>18 MR. KAUFMAN: So Ron Seiboth can be dismissed?</p> <p>19 MS. ROBESON: Yes.</p> <p>20 MR. KAUFMAN: Thank you very much.</p> <p>21 MR. SIEBOTH: Thank you.</p> <p>22 MS. ROBESON: Yes. You're still under oath.</p> <p>23 (Witness sworn.)</p> <p>24 MS. GIRARD: You're ready, Mr. Ager?</p> <p>25 MR. AGER: I think I'm ready.</p>

<p style="text-align: right;">Page 122</p> <p>1 MS. ROBESON: You stay under oath for the rest of 2 your life after you're done.</p> <p>3 MS. GIRARD: Mr. Ager, were you present for the 4 testimony of Joe Davis and all the representatives of the 5 town of Washington Grove regarding who finds the application 6 for the PD zone in the Gaithersburg Vicinity Master Plan?</p> <p>7 MR. AGER: Yes.</p> <p>8 MS. GIRARD: Do you agree with Mr. Davis's 9 analysis regarding Master Plan compliance?</p> <p>10 MR. AGER: No.</p> <p>11 MS. GIRARD: Could you please address for us what 12 the deficiencies of his analysis are in your view?</p> <p>13 MR. AGER: Well, a couple of points. As a general 14 comment, a lot of the opposition testimony has compared 15 gross densities to net densities. It's a very important 16 distinction.</p> <p>17 MS. GIRARD: All right.</p> <p>18 MR. AGER: And I'll go through that later, but I 19 can touch on it now. It has to do with her testimony with 20 respect to Shady Grove, it has to do with respect to how 21 this, how they calculate this. The other thing is there's 22 been a lot of testimony that has to do comparing a proposed 23 density to the existing conditions. Now that is something 24 you can bring up or make a comment about, but it's not the 25 point where you make Master Plan compliance, establishing</p>	<p style="text-align: right;">Page 124</p> <p>1 certain parameters for the area, multiple property areas 2 that didn't establish who got what with respect to that. In 3 fact, a lot of the zoning lines don't follow property lines, 4 but it was the negotiation required between property owners 5 and those sorts of things. It's a very critical difference. 6 So there's this evaluation of master plans over time. And, 7 again, we're talking about 1985 Master Plan stuck in 1985.</p> <p>8 MS. ROBESON: Yes, I understand that.</p> <p>9 MR. AGER: Yes, I'm sorry, I just wanted --</p> <p>10 MS. ROBESON: I got that point.</p> <p>11 MR. AGER: I'm sorry.</p> <p>12 MS. ROBESON: It's a 30-year-old Master Plan.</p> <p>13 MR. AGER: Yes.</p> <p>14 MS. ROBESON: I've got it.</p> <p>15 MR. AGER: And it's different, but the Clarksburg 16 is like it except they provide more illustrative diagrams 17 and a little more narrative on explaining what they'd like 18 to see. So --</p> <p>19 MS. GIRARD: And Mr. Kaufman had referred to 20 language earlier in the PD zone that talks about compliance, 21 let me get the exact language.</p> <p>22 MR. KAUFMAN: I have it here.</p> <p>23 MS. GIRARD: The purpose under 59C-7.11 of the 24 Zoning Ordinance with which I'm sure you're familiar talking 25 about the zoning category being utilized to implement the</p>
<p style="text-align: right;">Page 123</p> <p>1 compliance from a density standpoint.</p> <p>2 So there's been a lot of testimony about tripling 3 the density, but that's not the Master, I mentioned that 4 earlier in testimony, that's not the Master Plan.</p> <p>5 MS. ROBESON: Well, what is -- okay. Well, go 6 ahead.</p> <p>7 MR. AGER: Well, so the zoning, the existing 8 conditions on the ground if you just look at the 9 application, it's 107 units. We've heard that in testimony 10 previously. The zoning on the ground would allow 134 units, 11 16.52 dwelling units per acre. The comments by Mr. Davis 12 using the gross tract area would be 154 units, 16.36 is my 13 estimate on that. When you look at the entire analysis 14 area, it would be 331 units or 15.7 dwelling units per acre.</p> <p>15 So that's just -- there's a difference in the 16 numbers. The second point I guess is that the Master Plan 17 is the, an older Euro Master Plan. It's a very important 18 distinction. I went through as many master plans as I could 19 since the last hearing and looked at them and the general 20 trend is they become more complicated, more detailed and 21 more specific the newer they are, the comparison of Shady 22 Grove to White Flint as an example, the comparison of 23 Gaithersburg in '85 to Clarksburg in '94. Clarksburg in 24 '94, for example, used districts. They used large areas to 25 establish density. And then within there they provided</p>	<p style="text-align: right;">Page 125</p> <p>1 general plan area Master Plans and other pertinent County 2 policies. Have you taken a look at what other policies may 3 be relevant in this analysis that have not previously been 4 mentioned?</p> <p>5 MR. AGER: Yes. Just to pick up where we left 6 off, we talked a lot about the General Plan and the --</p> <p>7 MS. ROBESON: The housing element you mean?</p> <p>8 MR. AGER: Well, yes. There's the, in the report 9 there's the '85 and then there's a '93 refinement of the 10 General Plans.</p> <p>11 MS. ROBESON: Right.</p> <p>12 MR. AGER: But since then during 2000, especially 13 2007 to 2010, there was this enormous amount of effort on 14 affordable housing and that plus the population after it 15 occurred during 8.0, well, 8.0 at COG and at the County 16 level, the housing element to the General Plan, the 17 amendment to the general plan was very specific about 18 affordable housing and housing in general and how those 19 should be accomplished. And that plan influences and 20 informs all the Master Plans throughout the County.</p> <p>21 MS. ROBESON: I know that, but I remember actually 22 it was Mr. Brown's cross-examination in another case and I 23 guess I'm really struggling with some and I'm just telling 24 you upfront so you can address some of my concerns. The 25 housing element, you know, theoretically we get everybody</p>

<p style="text-align: right;">Page 126</p> <p>1 coming in and saying this housing element we deserve X  2 amount of density because of the housing element of the  3 general plan and the need to add 75 or -- I forget how many  4 households it recommends. But, you know, but then doesn't  5 every project do this? And there's language in this plan,  6 and I can't remember exactly where, that says you need to  7 preserve existing neighborhoods.  8 MR. AGER: Uh-huh.  9 MS. ROBESON: And so as I said, why does it  10 justify PD-35 as opposed to PD whatever, a lower density is?  11 MR. AGER: It's part of the equation. It's not  12 necessarily all of it. But what's important is that this  13 Master Plan on page, give me just a second to --  14 MS. ROBESON: Which one are you on?  15 MR. AGER: I apologize, the 1985 --  16 MS. ROBESON: Oh.  17 MR. AGER: -- Gaithersburg Vicinity Master Plan on  18 page 1 and this was referenced in Case G-9, I'm sorry 840  19 this morning.  20 MS. ROBESON: Yes.  21 MS. AGER: That they used it, they saw this as an  22 important factor for recommending for that project. On page  23 1, plan highlights, and this is referenced in the District  24 Council decision, increasing the County's total housing  25 stock and currently providing an appropriate mix of</p>	<p style="text-align: right;">Page 128</p> <p>1 little bit and I have to mention that Mr. Davis said a  2 couple different things in his testimony, correct me if I'm  3 wrong. He said in his report that it would be appropriate  4 for 200 more or less units on the property. Later in oral  5 testimony he said that the property would be appropriate for  6 PD-22 and in other testimony he said that things should be  7 measured on the growth tract area, whether that's the  8 application or not. So there's kind of three different  9 numbers that he's put out there.  10 And I sat down and I tried to estimate what they  11 are and the first one is 200. That's the number in his  12 report, more or less, plus or minus. The second one, based  13 upon the 8.11 acres, is 217 units. And if we base it on the  14 gross tract area, it would be 253 units. That's my  15 interpretation of his three different numbers that he's  16 expressed in his testimony.  17 MS. ROBESON: But -- go ahead.  18 MR. AGER: I wanted to add that there's a couple  19 of unique circumstances to Analysis Area II, one of --  20 again, Mr. Davis's testimony mentioned that we should have a  21 crew cut effect, everybody get the same equal treatment  22 based on land area allocation. But, in fact, the Master  23 Plan -- so and it, that's a valid argument. But there's  24 also some information in the Master Plan that within  25 Analysis Area II, there's two important factors. One is our</p>
<p style="text-align: right;">Page 127</p> <p>1 affordable housing is one of the key six elements to this  2 Plan, the 1985 Plan.  3 MS. ROBESON: But wouldn't any increase in density  4 do that?  5 MR. AGER: Would any increase in density provide  6 an appropriate mix of affordable housing? Yes, unless there  7 was a very modest density increase, yeah.  8 MS. ROBESON: I guess what I'm really struggling  9 with and the reason is your theory that, the Master Plan,  10 it's a very odd way. If your theory is correct and all we  11 should look at is the aggregate number of dwelling units in  12 Analysis Area II, I mean that leaves you with the  13 possibility of here that you go from zero to 200 in, so to  14 speak, in terms of density. And that's not typical in  15 planning, it just isn't what you normally see. And also the  16 Master Plan expresses it in units per acre which is not a  17 typical way you would -- if it were a total density cap, you  18 wouldn't really express it in units per acre. So I guess my  19 concerns about your arguments, which are very good  20 arguments, but my concerns are it kind of leaves you with  21 this pod of relatively high density surrounded by very low  22 density.  23 MR. AGER: Can I, would you like me to --  24 MS. ROBESON: Yes, I do.  25 MR. AGER: -- comment? Yes. I have to back-up a</p>	<p style="text-align: right;">Page 129</p> <p>1 property has the higher density zoning, so you could make an  2 argument that if everything was to increase, this would be  3 proportionally more on this property. The second part or  4 second unique circumstance --  5 MS. ROBESON: But what would -- okay. Go ahead.  6 MR. AGER: And this could be argued with different  7 numbers, but the second point I think, and I tried to make  8 this earlier, is that we have a very established  9 neighborhood in Wedgewood I and II and the 1971 plan, which  10 this is a carryover from, showed multi-family zoning and  11 proposals on Wedgewood II. So there was an anticipation for  12 more density within Analysis Area II. And since '71 to '85,  13 townhouses were built. And so we have the same density  14 proposed in 1985, but less has been on the ground and it's  15 unlikely or highly unlikely to be unique to expect that that  16 single-family neighborhood essentially would redevelop, it  17 would require multiple property owners getting together to  18 look at a proposal and that sort of thing. So it's not hard  19 to --  20 MS. ROBESON: Yeah, but does that mean PD-35 is  21 appropriate next to the --  22 MR. AGER: I think, I think that the PD-35 versus  23 28 or 22 or whatever is a compatibility question, not a  24 Master Plan question. It's not the density necessarily, but  25 it's how you use it and how it's clustered and how it's not</p>

<p style="text-align: right;">Page 130</p> <p>1 clustered, if it's done well or poorly. So I think it's --</p> <p>2 the question you're asking is more of a compatibility</p> <p>3 question.</p> <p>4 MS. ROBESON: It is, but it's also a master -- I</p> <p>5 mean it's also a Master Plan question I think because it's</p> <p>6 what is the intent of the Master Plan for this area and I</p> <p>7 think once you look at an aggregate number of units, then</p> <p>8 you get these, to interpret a Master Plan giving you these</p> <p>9 kind of next to each other densities, I'm not being very</p> <p>10 clear, but that would be unusual.</p> <p>11 MR. AGER: I don't know that would be unusual and</p> <p>12 I can jump to Shady Grove Master Plan which has been brought</p> <p>13 up by the opposition and I could show you examples there and</p> <p>14 I'd be happy to do that now or later in the testimony.</p> <p>15 MS. ROBESON: Go ahead --</p> <p>16 MR. AGER: Okay.</p> <p>17 MS. ROBESON: -- whenever you want to.</p> <p>18 MR. AGER: Okay. I think it's important and I'll</p> <p>19 show that.</p> <p>20 MS. GIRARD: Why don't we --</p> <p>21 MR. AGER: Want to jump to that?</p> <p>22 MS. GIRARD: Yes, why don't we move right into</p> <p>23 that then?</p> <p>24 MR. AGER: In the Shady Grove Master Plan, earlier</p> <p>25 testimony today talked about an exhibit on page --</p>	<p style="text-align: right;">Page 132</p> <p>1 referred to in this Sector Plan Master Plan as Old Derwood.</p> <p>2 The historic area, I'm sorry, let me back up, it's an older</p> <p>3 area with historic resources and it was seen as something</p> <p>4 that wanted to be retained and honored so that transition</p> <p>5 from those properties to the properties that I just</p> <p>6 mentioned, was very important of mention, in the Master</p> <p>7 Plan. And then if you flip to page 121 of that same Master</p> <p>8 Plan, you'll see the zoning for those properties. The</p> <p>9 zoning is recommended R-90 base, PD-35. And immediately --</p> <p>10 MR. KAUFMAN: This is part of our exhibit --</p> <p>11 MS. ROBESON: I'm sorry, can you --</p> <p>12 MR. KAUFMAN: We have this --</p> <p>13 MR. AGER: I'm sorry, am I going too --</p> <p>14 MR. KAUFMAN: It's in Exhibit 88.</p> <p>15 MS. ROBESON: Oh, okay.</p> <p>16 MR. KAUFMAN: Most of these pages are part of our</p> <p>17 Exhibit 88A.</p> <p>18 MS. ROBESON: Okay. And what page --</p> <p>19 MR. KAUFMAN: He's on 121.</p> <p>20 MR. AGER: 121.</p> <p>21 MS. ROBESON: Oh, okay.</p> <p>22 MR. AGER: I'm sorry, if I'm going too fast, I</p> <p>23 apologize.</p> <p>24 MS. ROBESON: No. Okay, 121, I'm here.</p> <p>25 MR. AGER: So what I'm saying is we have property</p>
<p style="text-align: right;">Page 131</p> <p>1 MR. KAUFMAN: Take your time.</p> <p>2 MR. AGER: -- 35, I think it was. On page 35 of</p> <p>3 the Master Plan --</p> <p>4 MR. KAUFMAN: This is the Shady Grove?</p> <p>5 MS. ROBESON: On the Shady Grove?</p> <p>6 MR. AGER: I'm sorry, the 2006 Shady Grove Sector</p> <p>7 Plan, page 35.</p> <p>8 MS. GIRARD: Just take a moment.</p> <p>9 MS. ROBESON: Okay.</p> <p>10 MR. AGER: The testimony earlier was that we had</p> <p>11 these different districts which are labeled on this plan,</p> <p>12 Metro West, Metro North, East and South. I want to bring,</p> <p>13 just for the discussion about this density next to, you</p> <p>14 know, high-density versus, next to low-density, I want to</p> <p>15 draw your attention to Metro East and it's not as with all</p> <p>16 land use situations, there's, no two are exactly the same,</p> <p>17 but this has some similarities.</p> <p>18 And what I would like to also ask you to do is</p> <p>19 look at, if you flip to page 59 of that same Sector Plan,</p> <p>20 pan down, I'm looking at the Metro East, so it's bounded on</p> <p>21 the north by Redland Road and you'll see a dark brown symbol</p> <p>22 there and that's residential multi-family. Now that's the</p> <p>23 same recommendation we have in the Gaithersburg Master Plan</p> <p>24 for the application, residential multi-family. Next to</p> <p>25 that, those areas immediately to the south, are what's</p>	<p style="text-align: right;">Page 133</p> <p>1 recommended for PD-35 next to historic resources across the</p> <p>2 street. I ask you to do, go two other places and I</p> <p>3 apologize for this, but I think it's important. You have to</p> <p>4 flip back to page 49. And on page 49 in the lower left</p> <p>5 corner you'll see a Metro East and Metro North WMATA</p> <p>6 illustrative plan that was a result of an extensive process,</p> <p>7 I believe, which was a charrette and followed through and</p> <p>8 was endorsed by this Master Plan. And what it shows on</p> <p>9 those properties is the interpretation of how the PD and the</p> <p>10 adjoining RT-6 should be accomplished. And what it shows is</p> <p>11 a transition on the proposed properties with single-family</p> <p>12 and townhouses and then multi-family behind that. And in</p> <p>13 this same plan it talks about a 4-foot height limit for</p> <p>14 these properties.</p> <p>15 MR. KAUFMAN: You mean 4-story?</p> <p>16 MR. AGER: I'm sorry, 4-story, I -- thank you. I</p> <p>17 stand corrected, 4-story height limit. The last place I</p> <p>18 would like you to look is on page 119. There's a --</p> <p>19 MR. KAUFMAN: That one is in our exhibit.</p> <p>20 MS. ROBESON: Okay.</p> <p>21 MR. AGER: And on that page these same properties</p> <p>22 are listed as the VEIP property, Somerville property and the</p> <p>23 Derwood Business Condominiums, which is the RT-6. So the</p> <p>24 first two are the PD-35. And what I want to note is that</p> <p>25 they recommend the PD-35, but they don't have a unique cap</p>

<p style="text-align: right;">Page 134</p> <p>1 recommended in the Master Plan. So they're leaving it up to  2 the PD application to determine compatibility, but they  3 clearly in the Master Plan have expressed, one, that  4 townhouses and single family on the property immediately  5 across the street is a transitional compatibility element.  6 They also talked about multi-family is the balance of the  7 property and 4-story is the height limit. So there are  8 some -- this is a Master Plan that's been discussed by  9 others and it does show how a PD-35 next to single-family  10 and historic resources can accommodate the Master Plan  11 intent.  12 And on our application, we are utilizing and one  13 alternative, well, in both alternatives a setback of 100  14 feet to some of the property and we're using townhouses as a  15 transitional element and it's been expressed in many zoning  16 cases that townhouses are, in fact, by design and by type  17 are compatible single-family. So you're talking about the  18 same compatibility relationship in townhouses and single-  19 family. So it has a similarity. I think I've answered that  20 kind of basic question on the --  21 MS. ROBESON: Okay.  22 MR. AGER: -- I don't have anything else to say on  23 that.  24 MS. GIRARD: I just wanted to get back to two  25 things that we were on before we took the detour. One is</p>	<p style="text-align: right;">Page 136</p> <p>1 to the Gaithersburg Master Plan, have you prepared a time  2 line that kind of sets out the important dates that you've  3 been referencing in the previous testimony and your  4 testimony today?  5 MR. AGER: Yes, I did do that.  6 MS. GIRARD: Would you like to distribute that for  7 the record just to aide everyone in following the --  8 MS. ROBESON: When was Towne Crest built?  9 MR. AGER: 1966, approximately 1966.  10 MR. KAUFMAN: It was actually built before the  11 1970 Master Plan.  12 MS. ROBESON: Right.  13 MR. KAUFMAN: If you recall --  14 MS. ROBESON: Yes, I do. I recall it all.  15 MR. KAUFMAN: It's hard to recall everything.  16 MS. GIRARD: Well, that's why I think perhaps this  17 document will be useful for everyone.  18 MR. KAUFMAN: Excuse me.  19 MS. ROBESON: And you're proposing this as an  20 exhibit?  21 MS. GIRARD: Yes.  22 MS. ROBESON: Mr. Brown, do you have any  23 objections? Then, well, maybe I should ask did Mr. Ager  24 prepare this exhibit?  25 MR. AGER: Yes, I did. And it was an attempt to</p>
<p style="text-align: right;">Page 135</p> <p>1 you were talking about numbers and I think you had concluded  2 that under one of the methods of analysis that Mr. Davis got  3 to 253, is that correct?  4 MR. AGER: Yeah, well, again he said three  5 different things, one of which was a hard number, 200 more  6 or less, but then he also said if you measure things on the  7 gross tract area and you use the PD-22, you would get that  8 number, yes.  9 MS. GIRARD: And then as a result of 76 units from  10 what we're proposing, is that correct?  11 MR. AGER: That's correct, 76 units.  12 MS. GIRARD: And you had also mentioned the  13 General Plan and Amendments --  14 MR. AGER: Could I add one other thing to that?  15 MS. GIRARD: Sure.  16 MR. AGER: It's that -- he didn't explain how he  17 came to that number or he didn't do a plan, but he said it's  18 about right or something along those lines. But that number  19 is seven units below what I refer to as the analysis area  20 number. So he's close to that analysis area number  21 calculation that I came up with. So he didn't say it, but  22 he's kind of saying the same thing I was saying in a  23 different way. And our plan is slightly above that number.  24 MS. GIRARD: And with regard to the General Plan  25 and the amendments to the General Plan and its relationship</p>	<p style="text-align: right;">Page 137</p> <p>1 summarize many of these dates that we've discussed.  2 MR. KAUFMAN: Yes, here you go. What number was  3 it?  4 MS. GIRARD: 147.  5 MS. ROBESON: So this will be 147.  6 MR. BROWN: No objection.  7 MS. ROBESON: And this would be what, chronology  8 of local map amendment?  9 MR. AGER: I call it a General Chronology.  10 MS. ROBESON: Okay. General Chronology.  11 (Exhibit No. 147 was marked  12 for identification.)  13 MS. GIRARD: In your original testimony, you  14 referred to comments made by the plaintiff with regard to  15 the application and density and that transcript has now been  16 entered into the record as Exhibit 137. Have you gone back  17 and reviewed that transcript again and what assumptions the  18 Planning Board was operating under regarding density?  19 MR. AGER: Yes, I have.  20 MS. GIRARD: Was there anything you wanted to  21 highlight or discuss about the Planning Board's analysis and  22 how it may or may not relate to your analysis?  23 MR. AGER: Well, again, I was not at the hearing.  24 I viewed it online and I read this transcript. What I take  25 away from it are a couple of important points is that when</p>

<p style="text-align: right;">Page 138</p> <p>1 the discussion occurred towards the end of the case, the,</p> <p>2 there was a discussion between Planning Board members which</p> <p>3 more or less regards approximately on page, I've got 94,</p> <p>4 it's approximately 94 on the transcript. And there was this</p> <p>5 discussion about the Master Plan and how different members</p> <p>6 were struggling with the, at the time they were looking at</p> <p>7 the PD-44 zone application. And there wasn't any feedback</p> <p>8 from staff during this discussion and there was a</p> <p>9 conversation about this continual increase of three times</p> <p>10 the density, but that's a comparison of that PD-44 proposal</p> <p>11 to the existing units on the ground. It's not a comparison</p> <p>12 of the proposal to the Master Plan. So I think that's an</p> <p>13 important distinction.</p> <p>14 MS. ROBESON: What was the difference between a</p> <p>15 comparison between your proposal and the Master Plan,</p> <p>16 because I do agree with --</p> <p>17 MR. AGER: 69 units. If you're looking at it as a</p> <p>18 unit number --</p> <p>19 MS. ROBESON: Now, and is that based on the</p> <p>20 aggregate amount of units in the Master Plan or is that</p> <p>21 based on dwelling units per acre, or is that based on the</p> <p>22 underlying zoning?</p> <p>23 MR. AGER: I can give it to you in different ways.</p> <p>24 What I, the number I just expressed to you is a comparison</p> <p>25 of the proposal plus the remaining units in Analysis Area</p>	<p style="text-align: right;">Page 140</p> <p>1 MS. ROBESON: 154. And based -- okay, gross tract</p> <p>2 area, base zoning is 154.</p> <p>3 MR. AGER: And I could give it to you in dwelling</p> <p>4 units per acre if that's helpful.</p> <p>5 MS. ROBESON: No, no, I can -- I'm still</p> <p>6 recovering from a car accident, so -- 150, so 329 is yours,</p> <p>7 154 is under the Master Plan recommended zoning based on</p> <p>8 gross tract area --</p> <p>9 MR. AGER: That's right.</p> <p>10 MS. ROBESON: -- with MPDU bonus?</p> <p>11 MR. AGER: That's correct.</p> <p>12 MS. ROBESON: Okay. Okay. What is your density</p> <p>13 based on the gross tract area?</p> <p>14 MR. AGER: For the application?</p> <p>15 MS. ROBESON: 329, yes.</p> <p>16 MR. AGER: 329? I have that. I need a</p> <p>17 calculator.</p> <p>18 MS. ROBESON: Okay. You don't have to -- what's</p> <p>19 the gross tract area?</p> <p>20 MR. AGER: 9.41 acres. I'll give you that in a</p> <p>21 second.</p> <p>22 MR. KAUFMAN: We have a calculator. Somehow I</p> <p>23 knew we'd get in the numbers.</p> <p>24 MS. ROBESON: We get a lot of numbers here.</p> <p>25 MR. KAUFMAN: Yeah.</p>
<p style="text-align: right;">Page 139</p> <p>1 II. And, again, the Master Plan uses that --</p> <p>2 MS. ROBESON: Okay. Forget that for a moment.</p> <p>3 MR. AGER: Okay.</p> <p>4 MS. ROBESON: What's the difference between this</p> <p>5 proposal and what's developable under the underlying</p> <p>6 zoning --</p> <p>7 MR. AGER: Underlying zoning?</p> <p>8 MS. ROBESON: -- recommended in the Master Plan?</p> <p>9 MR. AGER: Okay. Give me just a second to</p> <p>10 recollect. Okay. This proposal is 329 units.</p> <p>11 MS. ROBESON: Right.</p> <p>12 MR. AGER: The underlying zoning based upon the</p> <p>13 gross tract area, if we redevelop under that proposal, would</p> <p>14 be 154 units was my estimate.</p> <p>15 MS. ROBESON: Is that with an MPDU or --</p> <p>16 MR. AGER: Zoning.</p> <p>17 MS. ROBESON: -- or just --</p> <p>18 MR. AGER: That's with MPDU.</p> <p>19 MS. ROBESON: With MPDU's?</p> <p>20 MR. AGER: And if you were to do that same</p> <p>21 analysis on area of the application that's before you, the</p> <p>22 8.11 acres, we'd be 134 units. So it would be that</p> <p>23 difference.</p> <p>24 MS. ROBESON: The gross tract area is 159.</p> <p>25 MR. AGER: 154.</p>	<p style="text-align: right;">Page 141</p> <p>1 MS. ROBESON: Many, many calculations.</p> <p>2 MR. KAUFMAN: It's a big calculator.</p> <p>3 MR. AGER: Do you want to know to the, just to</p> <p>4 make sure what the question is.</p> <p>5 MS. ROBESON: Potential density growth tract area.</p> <p>6 MR. AGER: Potential density gross tract area --</p> <p>7 MS. ROBESON: Based on the -- no, no, I'm sorry.</p> <p>8 Your 329 divided by the gross tract area.</p> <p>9 MR. AGER: It's 34.9 dwelling units per acre,</p> <p>10 roughly 35 dwelling units per acre.</p> <p>11 MS. ROBESON: So it is a PD -- okay. That's what</p> <p>12 I was wondering.</p> <p>13 MR. AGER: It's slightly less.</p> <p>14 MS. ROBESON: Yeah.</p> <p>15 MS. GIRARD: Mr. Ager, you were reviewing it. Was</p> <p>16 there anything else you wanted to talk about the cleaning</p> <p>17 discussion?</p> <p>18 MR. AGER: Yes. Starting on page 90, line 16,</p> <p>19 there's an unidentified person speaking and these are all in</p> <p>20 the context of the Planning Board members discussing the</p> <p>21 application. I believe this was Commissioner Anderson. And</p> <p>22 he --</p> <p>23 MS. ROBESON: But you don't know?</p> <p>24 MR. AGER: I, well, I'm comparing this -- it says</p> <p>25 unidentified person and I could be wrong about this.</p>

<p style="text-align: right;">Page 142</p> <p>1 MS. ROBESON: Okay.</p> <p>2 MR. AGER: But I looked at the, I looked at the --</p> <p>3 MS. ROBESON: I'm just saying --</p> <p>4 MR. AGER: I could be wrong. It's one of the</p> <p>5 Planning Board members, let's put it that way. And I'm</p> <p>6 going to read from it. In some areas on page 91, line 2, to</p> <p>7 have something like this happen, there needs to be</p> <p>8 improvement in density if it is permitted in the Master Plan</p> <p>9 or concurrent with redevelopment. Later on the same</p> <p>10 commissioner mentions, so there's a balancing act with how</p> <p>11 much density needs and they could redevelop without</p> <p>12 substantially affecting the neighborhood.</p> <p>13 And on page 92, that same conversation, same</p> <p>14 person on line 5 says,</p> <p>15 "And I think there's enough flexibility in my</p> <p>16 view in the Master Plan to be able to do something</p> <p>17 like this,"</p> <p>18 because the sense that relates, I'm sorry, because the sense</p> <p>19 that relates to what extensive is, it says high-density</p> <p>20 residential in the map and then it says 815. I don't think</p> <p>21 there's anyone who would think that eight to 15 is high-</p> <p>22 density residential in today's terminology.</p> <p>23 On page 96, another unidentified commissioner says</p> <p>24 if --</p> <p>25 MS. ROBESON: You're sure it's a -- where are you,</p>	<p style="text-align: right;">Page 144</p> <p>1 talking about a Master Plan for this area, I would</p> <p>2 not have to think very hard to recommend density at</p> <p>3 this level that would make this, it would invite you to</p> <p>4 go have you do exactly what you're proposing."</p> <p>5 And, again, this is a PD-44 plan that they were looking at.</p> <p>6 I just can't get over the deviation in the Master Plan. So</p> <p>7 there was this, you know, struggle with the process over the</p> <p>8 substance I guess is the point.</p> <p>9 MS. GIRARD: And, Mr. Ager, when you were talking</p> <p>10 about the density recommended in the Master Plan, were they,</p> <p>11 had you supplied them with any of your analysis regarding</p> <p>12 how to properly calculate the density?</p> <p>13 MR. AGER: No, I was not involved at this point.</p> <p>14 MS. GIRARD: And what assumptions were they</p> <p>15 working under when they were talking about the density</p> <p>16 allocated in the Master Plan?</p> <p>17 MR. AGER: They, there was reference to three</p> <p>18 times the density and that's it. That's all that was, you</p> <p>19 know, it was noted with any thorough analysis beyond that is</p> <p>20 my recollection of what I saw there and there was testimony</p> <p>21 from opposition that, you know, that comparing the proposed</p> <p>22 to the existing.</p> <p>23 MS. GIRARD: And they were focusing solely on the</p> <p>24 subject property? Was there any discussion about the</p> <p>25 analysis area?</p>
<p style="text-align: right;">Page 143</p> <p>1 96?</p> <p>2 MR. AGER: On page 96 of the transcript.</p> <p>3 MS. ROBESON: Are you taking the fact that it's a</p> <p>4 commissioner from the context --</p> <p>5 MR. AGER: I'm taking --</p> <p>6 MS. ROBESON: -- of the discussion?</p> <p>7 MR. AGER: I'm going from my recollection of</p> <p>8 looking at the --</p> <p>9 MS. ROBESON: The tape?</p> <p>10 MR. AGER: -- hearing on the tape and comparing it</p> <p>11 to the time frame and --</p> <p>12 MS. ROBESON: But you don't know if it's the same</p> <p>13 unidentified person?</p> <p>14 MR. AGER: No, there's a lot of unidentified</p> <p>15 persons.</p> <p>16 MS. ROBESON: Yes.</p> <p>17 MR. AGER: But I can say this much, this is the</p> <p>18 end, this is towards the end of the testimony. This is the</p> <p>19 discussion amongst the commissioners. Mr. Kaufman was in</p> <p>20 some of this.</p> <p>21 MR. KAUFMAN: I can tell you what I --</p> <p>22 MS. ROBESON: No. Sorry.</p> <p>23 MR. AGER: But it's in the, it's in there. And</p> <p>24 this unidentified commissioner says,</p> <p>25 "If this were a Master Plan, we'd be</p>	<p style="text-align: right;">Page 145</p> <p>1 MR. AGER: Not to my knowledge.</p> <p>2 MS. GIRARD: Do you believe that the Planning</p> <p>3 Board might have had a different discussion if they looked</p> <p>4 at the analysis hearing?</p> <p>5 MR. BROWN: Objection. Speculative.</p> <p>6 MS. ROBESON: Sustained.</p> <p>7 MR. AGER: I was going to agree with you. I would</p> <p>8 have to speculate.</p> <p>9 MS. ROBESON: Thank you.</p> <p>10 MS. GIRARD: Are you done with that? Okay.</p> <p>11 MR. AGER: Yeah.</p> <p>12 MS. GIRARD: You previously mentioned specific</p> <p>13 cases that supported your analysis and I believe that Mr.</p> <p>14 Davis went through a few as well. Please review those cases</p> <p>15 in more detail and explain how you think they're relevant to</p> <p>16 this application.</p> <p>17 MR. AGER: There were three cases mentioned, G-</p> <p>18 873, G-909 and G-840. And at this point I'd like to make a</p> <p>19 correction if I could to earlier testimony.</p> <p>20 MS. GIRARD: Yes.</p> <p>21 MR. AGER: Mr. Davis mentioned that I had</p> <p>22 misinterpreted the additional density in the 873 case and so</p> <p>23 I want to correct that. That is I do agree with Mr. Davis</p> <p>24 on that. But it doesn't change the fact that, and I would</p> <p>25 like to have my report reflect that that density --</p>



<p style="text-align: right;">Page 146</p> <p>1 MS. ROBESON: That's fine.</p> <p>2 MR. AGER: Yeah. But it doesn't change the fact</p> <p>3 that other cases have seen reasons to increase density of</p> <p>4 the Master Plan and Case 909 is exactly that type of case</p> <p>5 because it saw there was a public purpose benefit and there</p> <p>6 was some age to the Master Plan or some information from, in</p> <p>7 that case 2006 to 2012 that had some variance on the</p> <p>8 decision, at least that's my interpretation of working with</p> <p>9 part of the case. And then, so I think that's an important</p> <p>10 point still that even though the Master Plan may have a cap</p> <p>11 with age and with circumstance, the District Council has</p> <p>12 found that increases above that number can occur.</p> <p>13 In G-40, I'm sorry, G-840, I think the important</p> <p>14 point to take away from there is, and I don't remember the</p> <p>15 exhibit number --</p> <p>16 MS. GIRARD: MG-840. That was the District</p> <p>17 Council resolution, 15-86, which is Exhibit 141.</p> <p>18 MR. AGER: Yeah.</p> <p>19 MS. GIRARD: It was submitted earlier.</p> <p>20 MR. AGER: Right. And on page 9 on the copy that</p> <p>21 was handed, that became the exhibit, I highlighted what I</p> <p>22 believe are relevant to this case. One, Item 1 is that even</p> <p>23 though it was an RT case and it didn't have Master Plan</p> <p>24 compliance issues, it strongly referenced the general plan</p> <p>25 and what I previously mentioned is one of the principle</p>	<p style="text-align: right;">Page 148</p> <p>1 likely to become outdated."</p> <p>2 So that is, this is a similar era Master Plan and --</p> <p>3 MS. ROBESON: I guess the question is really, and</p> <p>4 the question is because I recommended approval of 909 that</p> <p>5 there is some variance based on the age, the question really</p> <p>6 is how much of a variance and what justifies the amount of</p> <p>7 variance you're requesting. That's what the issue is in my</p> <p>8 mind.</p> <p>9 MR. AGER: And in 909 there was 15 percent and in</p> <p>10 our case it was 18 percent is the variance.</p> <p>11 MS. ROBESON: Where do you get 18?</p> <p>12 MR. AGER: I'm comparing the analysis area --</p> <p>13 MS. ROBESON: The aggregate, the 231 units?</p> <p>14 MR. AGER: The aggregate -- yeah.</p> <p>15 MS. ROBESON: Okay. All right. Mr. Brown, or --</p> <p>16 MS. GIRARD: Wait --</p> <p>17 MS. ROBESON: I'm sorry.</p> <p>18 MR. KAUFMAN: We're not quite finished.</p> <p>19 MS. ROBESON: When she's quiet, I think you're</p> <p>20 done. No, I --</p> <p>21 MS. GIRARD: Sorry.</p> <p>22 MS. ROBESON: I apologize.</p> <p>23 MS. GIRARD: Sir, I wanted to finish this thought,</p> <p>24 or writing it down --</p> <p>25 MS. ROBESON: Yes.</p>
<p style="text-align: right;">Page 147</p> <p>1 goals of the plan outlined on page 1. And that's all</p> <p>2 outlined on page 9. And increasing the County's total</p> <p>3 housing stock and currently providing an appropriate mix of</p> <p>4 affordable housing was a key decision found by the District</p> <p>5 Council in that case and it's in the center of this</p> <p>6 property.</p> <p>7 The other point, the final point, I guess, on</p> <p>8 these cases that I think is important is that going back</p> <p>9 to -- even though I misinterpreted the language on page 11</p> <p>10 of G-873, the language on page 10 is still relevant and</p> <p>11 important because it's an old Master Plan. And I'll read it</p> <p>12 to you.</p> <p>13 "Under Master Plan consistency -</p> <p>14 this is towards the top of the page,</p> <p>15 "-- in the present case this is 873, the</p> <p>16 hearing examiner, Planning Board and technical staff</p> <p>17 found that the proposed development was in substantial</p> <p>18 compliance with the recommendations of the 1982</p> <p>19 approved and adopted Westbard sector plan, the sector</p> <p>20 plan. The District Council agrees, noting that because</p> <p>21 this sector plan is 26 years old, many years beyond the</p> <p>22 time frame generally anticipated for master and sector</p> <p>23 plan updates, it is appropriate to place more weight on</p> <p>24 the sector plan's general recommendation than on very</p> <p>25 specific recommendations which by their nature are more</p>	<p style="text-align: right;">Page 149</p> <p>1 MS. GIRARD: -- before I looked up again. Sorry.</p> <p>2 We are almost at the end. But, Mr. Ager, Mr. Davis, who</p> <p>3 represented the towns, have also discussed the concept of</p> <p>4 smart growth and how the Shady Grove Master Plan and its</p> <p>5 density recommendations may evidence current thinking on</p> <p>6 smart growth. Can you first give us your thoughts on what</p> <p>7 smart growth really is and also discuss it in terms of the</p> <p>8 densities or what exactly the densities are that are</p> <p>9 recommended in the Shady Grove Master Plan?</p> <p>10 MR. AGER: Well, smart growth is anti-sprawl as</p> <p>11 they put it. It's trying to get development where there's</p> <p>12 infrastructure and services, and that includes</p> <p>13 transportation. It doesn't differentiate between bus</p> <p>14 service or heavy rail, light rail, but it's a public</p> <p>15 investment and increases in growth through population where</p> <p>16 there's already services. That's the key there. It's not</p> <p>17 only if you are sitting on top of the Metro, it's other</p> <p>18 factors as well. So it's a broader definition than I think</p> <p>19 has been expressed by some others.</p> <p>20 MS. GIRARD: In recognizing that in this case the</p> <p>21 request is for a PD-35 zoning, you did review where the PD-</p> <p>22 35 zone was recommended in the Shady Grove Master Plan. But</p> <p>23 is there, are there also higher densities recommended even</p> <p>24 closer to the Metro station in that plan?</p> <p>25 MR. AGER: Yes, there is.</p>

<p style="text-align: right;">Page 150</p> <p>1 MS. GIRARD: And can you just quickly review what  2 those densities were because I think the record isn't  3 entirely clear on that?  4 MR. AGER: Yeah. The -- give me just a second.  5 On page 121 of the Sector Plan, there --  6 MS. GIRARD: This would be the Shady Grove Sector  7 Plan?  8 MR. AGER: Shady Grove Sector Plan 2006. I'm  9 referring to the land, to the proposed zoning map and it's  10 also shown on page 59 in the proposed land use map that  11 highest densities, of course, are located near the entrance  12 to the Metro station itself. And as we discussed earlier,  13 there's these four basic districts or neighborhoods around  14 the Metro, north, south, east and west. And the zone that  15 was determined to be closest, placed closest to the Metro  16 or, in other words, the highest density zone, is the TOMXTDR  17 zone. That zone has a, essentially a FAR of 1.6 and there,  18 as discussed by others earlier, there is recommendations in  19 the Master Plan for increases above that density for work  20 force housing and MPDU's.  21 When you look at that zone and you look at the  22 recommendations of the Shady Grove Sector Plan, you'll see  23 that they, there is reference to a minimum of 70 percent  24 residential. It's a mixed use zone. So there's commercial  25 and then there's residential. And it's a minimum of 70</p>	<p style="text-align: right;">Page 152</p> <p>1 higher.  2 And if you just take it, you know, on a 70/30 land  3 split, you know, would be one thing, but I'm not sure that  4 would definitely be the case. It's commercial and it may or  5 may not be a higher or lower density. So we don't have an  6 exact number. But what I do want to do for you is take you  7 through --  8 MS. ROBESON: Are there height limits?  9 MR. AGER: Not that I'm aware of. There's the  10 density limit.  11 MR. KAUFMAN: And that's --  12 MR. AGER: But the number I just gave you, the  13 48.77, that's before you add in MPDU's, TDR's, workforce  14 housing and things of that nature. So you could be as high  15 as 918 dwelling units on that same area again.  16 MS. ROBESON: Just in terms of density?  17 MR. AGER: Just in terms of density.  18 MS. ROBESON: Not bulk regulations?  19 MR. AGER: That's correct. Master Plan level  20 recommended density.  21 MS. ROBESON: How much per acre?  22 MR. AGER: I'm at 918 dwelling units and, again,  23 looking at that on the district basis, if you apply that  24 across the entire district, it would be one number, but  25 really you can't because there's the requirement that has to</p>
<p style="text-align: right;">Page 151</p> <p>1 percent if they wanted to have as many residential units  2 close to the Metro as possible.  3 And so if you take Metro West as an example, in  4 the Master Plan it says it's 14.25 acres, and you express  5 that in residential units, you would first convert the FAR  6 to square feet and then divide by a reasonable road square  7 foot number for a residential unit. If you run through that  8 calculation and you use 1,000 square feet as a gross  9 residential unit, you come up with 695 units. The reason  10 I'm doing this is to try and give you a dwelling unit per  11 acre number so you can compare apples to apples.  12 So on a gross basis, that's 695 with, divided by  13 1425 acres is about 48.77 dwelling units per acre on the  14 gross. Now that assumes there's no commercial density.  15 That assumes that, you know, it's all residential which is  16 not going to be the case. And if you go back to the  17 illustrative plan that I showed earlier, you can see that  18 the parcels have been -- I can --  19 MS. ROBESON: It's on 49. I'm looking at it.  20 MR. AGER: Yes, you can see that clearly there  21 is residential buildings and there's commercial buildings.  22 So it's undetermined at this point how much, but the point  23 is that you can't calculate those residential units on the  24 gross because some of it has to be accommodated for  25 commercial. So that actual net density is going to be much</p>	<p style="text-align: right;">Page 153</p> <p>1 be some level of commercial there, somewhere between zero  2 and 30 percent. And what that land area is is unknown. So  3 let's just say for argument sake it's a 70/30 split land  4 area wise just to run through these numbers.  5 Well, you would be at 90, almost 92 dwelling units  6 per acre. I'm still talking about the gross now. I'm not  7 talking about a lot or an individual application. I'm  8 talking about the land area within the district --  9 MS. ROBESON: Right.  10 MR. AGER: -- that --  11 MS. ROBESON: I know.  12 MR. AGER: I just want to make sure, I'm sorry,  13 I'm slowing down myself a little bit. I apologize. The  14 land area within the district on a gross basis. So when you  15 start to take individual lots, you know, when you start to  16 take out a potential road or some other improvement, you  17 could have a higher number. So you could, you're clearly  18 approaching 100 dwelling units per acre in that area.  19 Now on the other side of the Metro East, there's a  20 same zone, but the area that -- and there's a lower number  21 of dwelling units proposed. On the west side there's not a  22 cap. On the east side there is. And it's crossing a much  23 larger area, so the dwelling unit count is down in the 30,  24 let me just get that correct, about -- and it's the Metro  25 North is what I'm referring to, not -- I said east. It</p>

<p style="text-align: right;">Page 154</p> <p>1 would be, it could be as low as 25 dwelling units per acre.  2 But, clearly, it's a TOMX zone that on the net basis would  3 have a higher number. But when you express that across the  4 entire, what they call a neighborhood or district in that  5 Sector Plan, you're looking at 25 dwellings per acre. So  6 these number calculations are, you know, are -- you can  7 calculate them in different ways. I think the key here is  8 if you're going to compare the application to something  9 that's happening in Shady Grove, you should compare the, a  10 lot area to a lot area, not, you know, or the entire  11 analysis area to an analysis area, do you see what I'm  12 saying?  13 MS. ROBESON: I hear you.  14 MR. AGER: Yes. Yes.  15 MS. ROBESON: I understand what you're saying.  16 MR. AGER: Okay. So --  17 MS. ROBESON: I'm not sure I agree.  18 MR. AGER: Okay.  19 MS. ROBESON: But --  20 MR. AGER: But the point is, the point is that the  21 densities at the Metro are much higher than the densities  22 proposed on this property. You can measure it.  23 MS. ROBESON: Are potentially much higher?  24 Potentially.  25 MR. AGER: That's true. That hasn't been --</p>	<p style="text-align: right;">Page 156</p> <p>1 necessarily there, but there were some decisions during the  2 Shady Grove plan that brought the density, I don't, I can't,  3 you know, say why, but today it's done at a much higher  4 density at the Metro.  5 MS. GIRARD: That's all I have for Mr. Ager.  6 MS. ROBESON: Oh, so you're saying that they redid  7 this 2006 plan today, the density would be higher, is that  8 what you're saying?  9 MR. AGER: If they treated, if they treated Shady  10 Grove like they treated White Flint, it would be higher.  11 MS. ROBESON: Okay.  12 MR. AGER: Again, it's a very interesting issue.  13 They have a zone that wasn't contemplated in 2006.  14 MS. ROBESON: Right.  15 MR. AGER: We have multiple things that weren't  16 contemplated in 1985, the wrapped parking and --  17 MS. ROBESON: Right. Right.  18 MR. AGER: -- all the things that we've talked  19 about.  20 MS. ROBESON: Right. Ms. Girard, anything else?  21 MS. GIRARD: No, that's all we have.  22 MS. ROBESON: Mr. Brown?  23 MR. BROWN: So if I understand, Mr. Ager, you're  24 saying that because of White Flint and the way they've  25 handled the rezoning and planning of White Flint, exactly</p>
<p style="text-align: right;">Page 155</p> <p>1 MS. ROBESON: Because when they do the  2 comprehensive plan, they look at parcel by parcel and they  3 may have a more, and I'm not, I'm just saying what you're  4 saying is they have a potentially higher density. They  5 don't have a cap on the units per area as this, as this did,  6 correct?  7 MR. AGER: On the west side, that's correct.  8 MS. ROBESON: Yes.  9 MS. GIRARD: Mr. Ager, just one last thing. And  10 with regard to the Shady Grove Plan in general, and whether  11 it does or does not represent smart growth as currently  12 envisioned by the County, have you had a chance to compare  13 it to such plans as White Flint which are much more current  14 plans?  15 MR. AGER: Yes. Yes, I have.  16 MS. GIRARD: And what's your -- can you just  17 quickly run us through that comparison?  18 MR. AGER: Well, in the White Flint plan, for  19 example, there's the new zone that's been created --  20 MS. ROBESON: Right.  21 MR. AGER: -- since 2006, CR zone. At the same  22 relative location to the Metro, the FAR is 4.0. That's the,  23 as compared to 1.6 in the TOMX. And in the TOMX, and my  24 recollection is in that zone itself talks about it being the  25 transition from Metro to other -- it's not intended to be</p>	<p style="text-align: right;">Page 157</p> <p>1 the same result should obtain north of Washington Grove for  2 some undefined reason?  3 MR. AGER: No, I didn't say that.  4 MR. BROWN: So what is the relevance of what has  5 been decided on a, in a very specific site, White Flint, to  6 what should be decided in this case?  7 MR. AGER: What I was trying to do and I apologize  8 if I wasn't clear is that there's been testimony that our  9 densities at our property are higher than or like the  10 densities at the Metro. The first point I was trying to  11 clarify is there's been an apples to oranges comparison and  12 I wanted to clarify that by explaining what's happened at  13 Shady Grove and that the densities at Shady Grove are going  14 to be higher.  15 MR. BROWN: I'm not asking you about Shady Grove,  16 Mr. Ager. I will get to Shady Grove. I'm asking you about  17 White Flint right now.  18 MR. AGER: Well, you interrupted. I wasn't  19 finished.  20 MR. BROWN: Well, you weren't getting there.  21 MS. ROBESON: Just, you, just answer his question  22 about White Flint. You have an attorney that can bring  23 these things out on redirect, so just, if you could just  24 answer his --  25 MR. AGER: White Flint was developed later.</p>

<p style="text-align: right;">Page 158</p> <p>1 There's no change in policy, the direction and thoughts by  2 the County. They have new zones. They're reviewing their  3 zoning ordinance as we speak. And from the period of time  4 2006 to 2012, that particular Metro site was handled much  5 differently at a higher density.  6 MR. BROWN: So what does that tell us about what  7 should be done out at Shady Grove and out, and further out  8 from Shady Grove? Why isn't that a unique situation? Why  9 isn't Shady Grove a unique situation? Why shouldn't each  10 one be decided on its own merits?  11 MR. AGER: Well, they should, I agree with you,  12 they would be decided on their own merits. What I'm trying  13 to, the point I'm trying to make is there's information  14 available today that wasn't available in 2006 and it may  15 change the way that Shady Grove was looked at. It's, the CR  16 zone did not exist at that time and the other point is that  17 there has been a lot of discussion about the need for  18 housing and there is a shortage of 62,000 housing units per  19 the County, affordable housing units in the County.  20 MR. BROWN: Okay.  21 MR. AGER: We have to find places for them. And  22 we have a very limited amount of area within the County that  23 can be redeveloped.  24 MR. BROWN: We will get to that, the housing  25 element in a minute, but let's go to your conclusions about</p>	<p style="text-align: right;">Page 160</p> <p>1 MR. AGER: Yes, I do.  2 MR. BROWN: What's the approximate distance  3 according to this scale between the Metro and the Towne  4 Crest property just on a crow's fly basis?  5 MR. AGER: You measured from Towne Crest,  6 Washington Grove?  7 MR. BROWN: From the southern end of Towne Crest  8 on a straight line basis to the Metro station?  9 MR. AGER: 9,000 to about 10,000 feet.  10 MR. BROWN: Something in the range of two miles on  11 a straight line basis, right?  12 MR. AGER: Yes.  13 MR. BROWN: And quite a bit further if you're  14 taking, if you're in a vehicle, bus or car, right?  15 MR. AGER: That's correct.  16 MR. BROWN: Do you see any other PD-35 zone  17 property within the Shady Grove sector plan other than this  18 one that's less than half a mile away?  19 MR. AGER: No.  20 MR. BROWN: In fact, there's some R-200 and PD-2's  21 much closer to the Metro than Towne Crest, right, that is  22 within the sector plan?  23 MR. AGER: Yes.  24 MR. BROWN: Let's go back to page 119 now. You  25 talked about Metro North. There are two properties there.</p>
<p style="text-align: right;">Page 159</p> <p>1 Shady Grove to begin with. And I would like to, first of  2 all, direct your attention to page 121 which is part of our  3 Exhibit 88A, I believe. Do you have that age?  4 MR. AGER: Yes, I do.  5 MR. BROWN: Now this diagram is actually to scale,  6 isn't it?  7 MR. AGER: Yes, I believe.  8 MR. BROWN: And you see the big, black M more or  9 less in the middle of the page?  10 MR. AGER: Yes, I do.  11 MR. BROWN: That's the Metro station, right?  12 MR. AGER: Yes.  13 MR. BROWN: And approximately how far away is the  14 recommended PD-35 zone?  15 MR. AGER: I don't have a scale to determine, but  16 it's --  17 MR. BROWN: Well, you do see the scale at the  18 lower right-hand corner, don't you?  19 MR. AGER: It's, the scale, it varies. It appears  20 to vary from about 400 feet to about 1,500 feet.  21 MR. BROWN: Now you see the town of Washington  22 Grove at the top of that map?  23 MR. AGER: Yes, I do.  24 MR. BROWN: And do you see the southern end of the  25 Towne Crest property just above that?</p>	<p style="text-align: right;">Page 161</p> <p>1 One of them is 41.5 acres for WMATA and the other is 45 for  2 CSP, right?  3 MR. AGER: Uh-huh.  4 MR. BROWN: And the number of units recommended  5 for WMATA is 530 and the number of units for CSP is 960?  6 MR. AGER: That's correct.  7 MR. BROWN: Which of the two is more dense?  8 MR. AGER: I believe the CSP is.  9 MR. BROWN: Yes. And if you divide the number of  10 acres into the number of units, what do you come out with as  11 a density per acre?  12 MR. KAUFMAN: Do you know if you need big numbers?  13 MR. AGER: 21.3.  14 MR. BROWN: Let's go back now to page 35. Did you  15 hear Mr. Challstrom's testimony regarding the dwelling unit  16 per acre recommendations on this page?  17 MR. AGER: Yes, I did.  18 MR. BROWN: Let me see if you agree with my  19 interpretation. Let's take Metro West, for example, and the  20 part of Metro West that's more dense, 1.6 FAR and 30 to 40  21 dwelling units per acre.  22 MR. AGER: Right.  23 MR. BROWN: Do you see the note at the bottom of  24 the page, all residential densities may be increased by the  25 provision of MPDU's, TDR's and workforce housing where</p>

<p style="text-align: right;">Page 162</p> <p>1 applicable?</p> <p>2 MR. AGER: Yes, I do.</p> <p>3 MR. BROWN: Did you hear Mr. Challstrom say that</p> <p>4 those numbers would have to be increased because of that</p> <p>5 note at the bottom?</p> <p>6 MR. AGER: I believe he said that, yeah.</p> <p>7 MR. BROWN: I beg your pardon?</p> <p>8 MR. AGER: I said I believe he said yes.</p> <p>9 MR. BROWN: Yes?</p> <p>10 MR. AGER: Yes.</p> <p>11 MR. BROWN: Okay. Now is it not a fair conclusion</p> <p>12 that what this Master Plan shows is an approximation of the</p> <p>13 number of dwelling units before bonus increases that one</p> <p>14 would expect at 1.6 FAR development?</p> <p>15 MR. AGER: Can you repeat that question?</p> <p>16 MR. BROWN: All right. Isn't it a fair</p> <p>17 interpretation of this page in the master, in the sector</p> <p>18 plan that the 1.6 FAR in the judgment of the preparer of the</p> <p>19 plan or this page is roughly equivalent to 30 to 40 dwelling</p> <p>20 units per acre before density bonuses are added?</p> <p>21 MR. AGER: Well, measured across the entire gross</p> <p>22 area.</p> <p>23 MR. BROWN: And those are TOMX-2 zones in the</p> <p>24 Metro West and Metro South just as they are in the Metro</p> <p>25 North area, correct, looking back at page 119?</p>	<p style="text-align: right;">Page 164</p> <p>1 MR. BROWN: With respect to the three cases that</p> <p>2 you discussed one way or another in your, in your report,</p> <p>3 let's first go to Case No. 873 and you said you believe you</p> <p>4 made a mistake. What -- the mistake that you made was to</p> <p>5 put a 33 percent bonus on top of the existing density</p> <p>6 recommendation in the Master Plan, isn't that correct?</p> <p>7 MR. AGER: Yes.</p> <p>8 MR. BROWN: That was a PD zone application, right?</p> <p>9 MR. AGER: I believe so. Yes, it was PD-28.</p> <p>10 MR. BROWN: Yes. And that's worth noting isn't it</p> <p>11 because the very first sentence of the purpose of the PD</p> <p>12 zone is to implement the general plan for the Maryland</p> <p>13 Washington Regional District and the area Master Plans by</p> <p>14 permitting unified development consistent with densities</p> <p>15 proposed by Master Plans, right?</p> <p>16 MR. AGER: Uh-huh.</p> <p>17 MR. BROWN: Now were the other two cases that you</p> <p>18 mentioned, 909 and 840, were those PD zones where there was</p> <p>19 an issue about making sure that the density was consistent</p> <p>20 with the Master Plan?</p> <p>21 MR. AGER: In 840 it was not the case. In 909,</p> <p>22 there was a discussion about density and comparing the</p> <p>23 density to the Master Plan.</p> <p>24 MR. BROWN: Yes, I understand, but it was not a PD</p> <p>25 rezoning, was it?</p>
<p style="text-align: right;">Page 163</p> <p>1 MR. AGER: Well, there's a difference. Some</p> <p>2 properties are zoned TOMX and some are, have the TDR bonus.</p> <p>3 MR. BROWN: Yes. And under, in Table 3 of the</p> <p>4 airpark analysis area for the Shady, for the Gaithersburg</p> <p>5 and Vicinity Master Plan, there's no TDR bonus for area 2,</p> <p>6 is there?</p> <p>7 MR. AGER: That's correct.</p> <p>8 MR. BROWN: Although there are TDR bonuses for a</p> <p>9 large number of other areas within the airpark study area,</p> <p>10 right?</p> <p>11 MR. AGER: That's correct.</p> <p>12 MR. BROWN: Okay. Let's go to the discussion of</p> <p>13 the Master Plan density in the Planning Board's hearing. I</p> <p>14 would direct your attention to pages 65 through 67. Have</p> <p>15 you reviewed those pages? Actually 64 through 67. Have you</p> <p>16 reviewed --</p> <p>17 MR. AGER: Can I just refresh --</p> <p>18 MR. BROWN: -- those pages?</p> <p>19 MR. AGER: Yes, I'm refreshing my memory.</p> <p>20 MR. BROWN: Okay. I just have a couple of</p> <p>21 questions for you about that discussion. Isn't it the case</p> <p>22 that the, that what was going on in this particular part of</p> <p>23 the discussion was the Planning Board scrutinizing the</p> <p>24 recommendations of density for Analysis Area II in Table 3?</p> <p>25 MR. AGER: Yes.</p>	<p style="text-align: right;">Page 165</p> <p>1 MR. AGER: Are you referring to Case 909?</p> <p>2 MR. BROWN: Yes.</p> <p>3 MR. AGER: It was a PD zone, yes, it was.</p> <p>4 MR. BROWN: It was?</p> <p>5 MR. AGER: Yes.</p> <p>6 MR. BROWN: Okay. Turning to Exhibit 142, the</p> <p>7 housing element, would you turn to page 9?</p> <p>8 MR. AGER: Yes. Give me one second please. Page</p> <p>9 9?</p> <p>10 MR. BROWN: Page 9.</p> <p>11 MR. AGER: Okay.</p> <p>12 MR. BROWN: What is the first goal of the housing</p> <p>13 element?</p> <p>14 MR. AGER: Concern and care for existing</p> <p>15 neighborhoods and existing housing.</p> <p>16 MR. BROWN: Would you please read into the record</p> <p>17 the second paragraph under this goal?</p> <p>18 MR. AGER:</p> <p>19 "Older neighborhoods of modest, single-family</p> <p>20 or town homes or garden apartments are especially</p> <p>21 vulnerable to decline. If services are not</p> <p>22 adapted and maintained and housing zoning codes</p> <p>23 are not enforced, there's also, there are also</p> <p>24 susceptible --"</p> <p>25 I'm sorry, I apologize.</p>

<p style="text-align: right;">Page 166</p> <p>1 "They are also susceptible to tear down and  2 in so development because they often, they are  3 often well-located in down-County and mid-County  4 areas near employment and shopping centers,  5 services and public transit routes. These  6 neighborhoods also contain the bulk of housing  7 affordable to households with moderate and middle  8 incomes in Montgomery County over 140,000  9 affordable units in 2009. This is double the  10 number of affordable new units that can be  11 reasonable, that can reasonably be expected to be  12 added to the housing stock by 2030. Master Plans  13 in particular must devote special attention to  14 protecting existing neighborhoods."  15 MR. BROWN: Mr. Ager, would you characterize the  16 Towne Crest property as a mid-County development near  17 employment and shopping centers, services and public transit  18 routes?  19 MR. AGER: Yes, generally.  20 MR. BROWN: Would you characterize the units as  21 affordable to households with moderate and middle incomes in  22 Montgomery County?  23 MR. AGER: Yeah, I would, yes, generally.  24 MR. BROWN: Would you --  25 MR. AGER: I'd have to --</p>	<p style="text-align: right;">Page 168</p> <p>1 MR. BROWN: Isn't there, aren't there provisions  2 in the zoning ordinance that talk about achieving the  3 greater level of density if you're in a transit-oriented  4 development area?  5 MR. AGER: Greater -- could you repeat the  6 question?  7 MR. BROWN: Greater density or other, or other,  8 other incentives to build in -- in what are labeled as  9 transit-oriented areas that are designated such in Master  10 Plans?  11 MR. AGER: Well, if you start at the general plan,  12 the corridor is differentiated from the wedges by the fact  13 that it's, in fact, the place where this is supposed to  14 occur.  15 MS. ROBESON: Right. I think his question is --  16 tell me if I'm wrong -- it, I think his question is, are  17 there specific areas in Master Plans designated as transit-  18 oriented residential districts? Is that your question?  19 MR. BROWN: Yes.  20 MR. AGER: I'm sorry, some, I apologize for not  21 understanding the question. Yes, there are some Master  22 Plans that designate transit-oriented areas.  23 MR. BROWN: And this area is not within any such  24 designation, the Towne Crest area, is it?  25 MR. AGER: No.</p>
<p style="text-align: right;">Page 167</p> <p>1 MR. BROWN: Would you conclude that those units,  2 107 units, are within 140,000 affordable units in the County  3 in 2009?  4 MR. AGER: Yes.  5 MR. BROWN: Could you read the second goal please  6 of the housing element?  7 MR. AGER:  8 "The concentrated new housing and mixed use  9 transit-oriented areas."  10 MR. BROWN: Is the, is Towne Crest in what's been  11 designated as transit-oriented development area?  12 MR. AGER: It -- are you asking from a zoning  13 perspective, Master Plan --  14 MR. BROWN: Yes.  15 MR. AGER: -- perspective?  16 MR. BROWN: Yes.  17 MR. AGER: Zoning?  18 MR. BROWN: Well, I don't -- what is the  19 difference in your mind?  20 MR. AGER: Well, transit is generic. It's bus,  21 rail, and other, you know, those sorts of services. So the  22 property is, in fact, transit accessible. It is a transit-  23 oriented area because it's in the corridor. It's close to  24 services. The neighborhood in general is mixed use. The PD  25 application is mixed use, so I'm --</p>	<p style="text-align: right;">Page 169</p> <p>1 MR. BROWN: Let's go to Objection No. 1 on page  2 14. What's the name of Objection 1?  3 MR. AGER: Housing and neighborhood connectivity.  4 MR. BROWN: And the implementing main topic  5 sentence for that objective is -- could you read that aloud  6 please?  7 MR. AGER:  8 "Concentrate most new housing near public  9 transportation and provide easy, multi-modal  10 connections to jobs, schools, shopping, recreation  11 and other leisure activities."  12 MR. BROWN: All right. And would you read  13 policies 1.1 and 1.2 under Objective 1.  14 MR. AGER:  15 "1.1. Build the majority of new housing in  16 transit-oriented locations and near jobs and  17 employment centers. Policy 1.2. Increase in-fill  18 housing opportunities and suburban office parks,  19 shopping centers and other under-utilized  20 properties."  21 MR. BROWN: If I understand your testimony, you  22 would say that this, this new housing would be in a transit-  23 oriented location by virtue of the fact that there is MARC  24 rail within 6/10 of a mile and bus service both to MARC rail  25 and to Shady Grove, is that right?</p>

<p style="text-align: right;">Page 170</p> <p>1 MR. AGER: As is the case for other parts of the</p> <p>2 corridor and general area, yes.</p> <p>3 MR. BROWN: Yes? And with regard to 1.2, we're</p> <p>4 not talking about a suburban office park or a shopping</p> <p>5 center, are we?</p> <p>6 MR. AGER: No.</p> <p>7 MR. BROWN: We're just, we're basing your</p> <p>8 fulfillment of policy 1.2 on the notion that this property</p> <p>9 could handle additional density?</p> <p>10 MR. AGER: No, I'm referring to, I think it's all</p> <p>11 done in the category of under-utilized properties.</p> <p>12 MR. BROWN: Yes. That's what I'm saying.</p> <p>13 MR. AGER: It specifically -- no, I just wanted to</p> <p>14 use the language in the policy.</p> <p>15 MR. BROWN: Oh, very good.</p> <p>16 MR. AGER: In the policy.</p> <p>17 MR. BROWN: Okay. I don't have anything else.</p> <p>18 MS. ROBESON: All right. Redirect, Mr. Kaufman,</p> <p>19 or Ms. Girard, sorry?</p> <p>20 MS. GIRARD: Just a couple questions. That's</p> <p>21 fine. Going back to page 9 of the housing element, existing</p> <p>22 neighborhoods, are you familiar with the current situation</p> <p>23 at Towne Crest and the Wedgewood community?</p> <p>24 MR. AGER: Yes, well, generally yes.</p> <p>25 MS. GIRARD: And you were here, were you not, for</p>	<p style="text-align: right;">Page 172</p> <p>1 MR. KAUFMAN: Can we take a 5-minute break?</p> <p>2 MS. ROBESON: You may. How many more --</p> <p>3 MS. GIRARD: Just one more.</p> <p>4 MS. ROBESON: Is it Ms. Randall?</p> <p>5 MS. GIRARD: Yes. And she shouldn't be very long.</p> <p>6 MS. ROBESON: Okay. All right. Five minutes.</p> <p>7 (Recess)</p> <p>8 MS. ROBESON: All right. We are back on the</p> <p>9 record. Ms. Randall, you are still under oath.</p> <p>10 MS. RANDALL: Yes.</p> <p>11 (Witness sworn.)</p> <p>12 MS. GIRARD: Ms. Randall didn't want to sit next</p> <p>13 to Steve who has a cold, so I hope you don't mind.</p> <p>14 MS. ROBESON: I've been listening to him. I would</p> <p>15 offer Ibuprofen, but the mom in me says --</p> <p>16 MR. KAUFMAN: I actually have Ibuprofen.</p> <p>17 MS. ROBESON: Okay.</p> <p>18 MR. KAUFMAN: First, let me apologize to everybody</p> <p>19 in the room. Normally I wouldn't even have come to work</p> <p>20 today, but since we had a hearing --</p> <p>21 MS. ROBESON: No, I understand.</p> <p>22 MS. RANDALL: Excuse me just a moment. I want to</p> <p>23 get my reading glasses.</p> <p>24 MS. ROBESON: Okay.</p> <p>25 MS. RANDALL: It's fine print.</p>
<p style="text-align: right;">Page 171</p> <p>1 the testimony of some of the residents of Wedgewood?</p> <p>2 MR. AGER: Yes.</p> <p>3 MS. GIRARD: Would you describe that area</p> <p>4 generally as a vibrant community that should remain as it</p> <p>5 is?</p> <p>6 MR. AGER: Well, I think, I think the, there's</p> <p>7 several of the folks that testified that they call this</p> <p>8 their home, but they also had testified that they recognize</p> <p>9 that this property needs improvement.</p> <p>10 MS. GIRARD: And with regard to designation as a</p> <p>11 transit-oriented area, does the Gaithersburg Vicinity Master</p> <p>12 Plan specifically identify transit-oriented areas? You</p> <p>13 mentioned that some Master Plans do and some don't.</p> <p>14 MR. AGER: I would have to just double-check the</p> <p>15 Master Plan, but I don't believe the 85.</p> <p>16 MS. GIRARD: Well, do you generally say that a</p> <p>17 site must be officially designated as a transit-oriented</p> <p>18 area in a Master Plan to qualify as such?</p> <p>19 MR. AGER: No, of course not.</p> <p>20 MS. GIRARD: Just one second. That's all we have.</p> <p>21 MS. ROBESON: Okay. Thank you, Mr. Ager.</p> <p>22 MR. AGER: Thank you. It's been a pleasure.</p> <p>23 MS. ROBESON: That was a tough one, I know.</p> <p>24 MR. AGER: No, that's all right.</p> <p>25 MS. GIRARD: We just have one more witness.</p>	<p style="text-align: right;">Page 173</p> <p>1 MS. GIRARD: Yes.</p> <p>2 MR. KAUFMAN: She usually likes me more though.</p> <p>3 MS. GIRARD: Ready?</p> <p>4 MS. RANDALL: Yes. Thank you.</p> <p>5 MS. GIRARD: Ms. Randall, since you were here last</p> <p>6 we've heard a lot of testimony and we've had back and forth</p> <p>7 about the transit options and transportation options serving</p> <p>8 the property. When you previously testified, you referenced</p> <p>9 some information at the back of your report, but you didn't</p> <p>10 go into it in detail and I'm wondering if you could take a</p> <p>11 minute for us and explain what transportation and transit</p> <p>12 options are available to a resident of Towne Crest.</p> <p>13 MS. RANDALL: Yes. As I had indicated, there are</p> <p>14 several different options for transit in and around the</p> <p>15 site. There is a bus stop that's immediately in front of</p> <p>16 Towne Crest Drive. There are several stops along the way.</p> <p>17 There is one at McCauley. There are a few others as you go</p> <p>18 up and down the road. But bus 57 stops immediately in front</p> <p>19 of, on Washington Grove Lane and has --</p> <p>20 MS. ROBESON: And that's Ride-On?</p> <p>21 MS. RANDALL: Yeah. Uh-huh. Bus 57. And it goes</p> <p>22 to the Gaithersburg MARC station. And the Gaithersburg MARC</p> <p>23 station is a scheduled stop station and it has stops at 5:23</p> <p>24 in the morning, 5:45, 6:11, 6:35, 6:54, 7:11, 7:34, 7:51 and</p> <p>25 8:19 in the morning. It is a 5-minute bus ride to the</p>

<p style="text-align: right;">Page 174</p> <p>1 station and from that station going down to Rockville it's a  2 17-minute run. And it has the one stop which was, as I  3 understand it, noted for the Washington Grove station which  4 is a flag station, which I think was described to you  5 before. If there's somebody there, they'll stop. If  6 somebody is not -- but there is a scheduled station and a  7 bus that serves that station.</p> <p>8 In addition to that, at the top of Washington  9 Grove Lane, up at Mid-County Highway, there is a bus stop  10 there. That's bus route 60. And that route goes from, that  11 over to the Shady Grove Metro and from Shady Grove Metro,  12 obviously you can go on to Rockville as well. And Rockville  13 is a transit hub. It should be noted also that MARC, the  14 MARC station goes into the District as well.</p> <p>15 At Gaithersburg there are several other different  16 buses within the town of Gaithersburg that you could hook up  17 with and go to different locations as well, but I just  18 wanted to point out that there are a definite schedule and  19 opportunity. And I believe that there was some discussion  20 about the bus route that goes up and circulates in  21 communities. That is an option. It's a long one, but you  22 can take the bus up if you wanted to, if the weather were  23 bad, get off, get on, transfer and get on Bus 60.</p> <p>24 MS. ROBESON: And Bus 60 is the one that --  25 MS. RANDALL: The one that has the stop on Mid-</p>	<p style="text-align: right;">Page 176</p> <p>1 improvements over the years, obviously to the ICC, to 370,  2 to the entire road network and there's excellent access to  3 that road network and, obviously, the transit services. And  4 there were plenty of smart growth projects in this state  5 that have occurred that have no transit. One example that  6 comes to mind is the Annapolis Towne Center. The  7 infrastructure is there. It's in Parole and it's surrounded  8 by a great highway system. Glen Arden, Woodmore Towne  9 Center, again, the Metro station is probably two miles away  10 from it as, I don't know whether you're familiar with where  11 the Wegman's is that's there. Again, all being put out  12 there and going through the smart growth review.</p> <p>13 So it's not just about transit services, but  14 building where the infrastructure is so that you're not  15 having to expand or build additional highways to get out.  16 What they're trying to do is to push back on the urban  17 sprawl that was going and pushing out further and further  18 from the urban areas.</p> <p>19 MS. GIRARD: And just one last question just to  20 reconfirm. I know, I believe you testified to it before,  21 but regardless of these options and the accessibility of  22 transit, you took no credit for that in your  23 (indiscernible), correct?</p> <p>24 MS. RANDALL: That's correct.  25 MS. GIRARD: That's all we have for Ms. Randall.</p>
<p style="text-align: right;">Page 175</p> <p>1 County Highway.</p> <p>2 MS. ROBESON: Okay.</p> <p>3 MS. GIRARD: And just to be clear, if I were  4 taking the MARC from either Washington Grove or Gaithersburg  5 and I wanted to get to Metro, what's the easiest way to do  6 that?</p> <p>7 MS. RANDALL: If you wanted to get to Metro, the  8 easiest way if you're taking the MARC would be, and the one  9 that would be consistent would be to take the Bus 57 to the  10 Gaithersburg MARC station, take the MARC to the Rockville  11 station and switch on to the red line, Metro red line at  12 Rockville.</p> <p>13 MS. GIRARD: Is that all you had on the --  14 MS. RANDALL: It is.</p> <p>15 MS. GIRARD: -- exhibit? And also we were  16 discussing earlier what smart growth and how it's generally  17 recognized that smart growth is building near existing  18 infrastructure which would also include highways and roads.  19 Could you give us your opinion on whether this project is  20 consistent with smart growth in terms of its relationship  21 not just to the transit options you just discussed, but also  22 the highways?</p> <p>23 MS. RANDALL: Yes, it is. And the infrastructure  24 is here in the Gaithersburg area. A tremendous amount of  25 money has been put into Mid-County Highway and its</p>	<p style="text-align: right;">Page 177</p> <p>1 MS. ROBESON: Okay, Mr. Brown.  2 MR. BROWN: No questions.  3 MS. ROBESON: You may be excused.  4 MS. RANDALL: Thank you.  5 MS. ROBESON: All right.  6 MR. KAUFMAN: Not from us.  7 MS. GIRARD: No.  8 MS. ROBESON: All right. Do you have closing  9 statements?  10 MR. KAUFMAN: I do.  11 MS. ROBESON: Okay. You can go ahead. Before you  12 start, I apologize, do you have anything that is going to  13 address your theory on the legal requirements of the green  14 space as far as growth and that --  15 MR. KAUFMAN: Yes, we're going to submit, part of  16 what I'll say at the end is we're going to submit a memo or  17 we want to submit a memo of law --  18 MS. ROBESON: Okay.  19 MR. KAUFMAN: -- on several issues and that's one.  20 MS. ROBESON: Okay. I'm sorry to -- I just wasn't  21 sure you were going to address it somewhere along the line,  22 so that's fine.  23 MR. KAUFMAN: Well, first, let me again apologize  24 for my cold. I hope I don't get anyone sick here today.  25 If you recall, Madame Examiner, when I started,</p>



<p style="text-align: right;">Page 178</p> <p>1 when we started the case in my opening statement, I  2 indicated to you that I saw this as sort of a tale of two  3 communities. And I think that the testimony that you  4 received does in large part confirm the point-of-view and  5 the perspective of these two communities, one being the town  6 of Washington Grove and the other being the surrounding  7 neighbors to the east of the subject property, to the north  8 of the subject property in the city of Gaithersburg, for  9 example.</p> <p>10 I think it's significant to note that of all the  11 letters you've received from citizens, only one letter  12 outside of the town of Washington Grove was in opposition to  13 this case. Every other letter you received was in support  14 from the community at Westwood I, from the community of  15 Westwood II. You have a letter from the city of  16 Gaithersburg. We have a transcript from the city of  17 Gaithersburg which I hope to read a few parts from to you  18 before I finish.</p> <p>19 You know, several times in our hearing you, not  20 me, used the term NIMBYism. I don't believe this is a case  21 with NIMBYism. It's really a case of the prospective point-  22 of-view of the folks that live in Washington Grove to  23 preserve what they consider their way of life and their  24 environment. And I think over the years they're been very,  25 very effective in following themselves in all these various</p>	<p style="text-align: right;">Page 180</p> <p>1 allow that. I really strongly believe that it's very clear  2 that their staff did look at the, shall we say lack of  3 function of several of the proposals in the Master Plan, but  4 didn't focus on the primary premises of the Master Plan,  5 which was, as the testimony in the case has said, this is an  6 area where additional housing needs to be placed and we want  7 to preserve, we want to get as much affordable housing as  8 possible. Excuse me for one second.</p> <p>9 So the issues in the case, the issues in the case  10 are, you know, what do you do with a 28-year-old Master Plan  11 which in its premises talks about areas and not specific  12 properties, even though there's a zoning map, in today's  13 world where you have many different techniques in terms of  14 how you deal with density. I don't believe the issue here  15 is density per se. The issue is how you deal with the  16 density.</p> <p>17 Their own witness, Mr. Davis, if you look at his  18 analysis, and Mr. Ager did point out that he came at it by  19 three different ways. But he did say consistently that you  20 have to consider the gross property. The gross property in  21 this case is 9.4 acres. At 9.4 acres at a PD-22, his  22 analysis comes up just -- hold on a second -- just 74 units  23 less than what Mr. Ager and Mr. Berman talked about. That's  24 an increase of only 22 percent. Mr. Ager's increase is only  25 18 percent. It's not three times. And so there is this</p>
<p style="text-align: right;">Page 179</p> <p>1 procedures to maintain a relatively low recommendation of  2 density surrounding their properties to protect their way of  3 life. I don't view that as NIMBYism, but I do not believe  4 that gives them the right to control the density of their  5 neighbors.</p> <p>6 And the folks who are the immediate neighbors of  7 this property, they've all come and said to you, except for  8 one person who testified this morning, that they see this  9 project as a project that will help revitalize their  10 properties, that it's not a project that they don't think  11 is, would be compatible and that they feel that it's a very  12 important and they were all respective, nonetheless, of the  13 town of Washington Grove. It really comes down to, in my  14 opinion, a situation where you have procedure and policy  15 versus substance.</p> <p>16 You've got a Master Plan here that's the second  17 oldest Master Plan in the County. Certainly very few of the  18 types of techniques and so on that we're talking about here  19 in terms of Shady Grove and even the new White Flint plan  20 we're not considering. And you have a County that for  21 whatever reason has not seen fit to review this Master Plan  22 and upgrade it.</p> <p>23 And then you come to the Planning Commission and  24 the Planning Commission looks at numbers. They look at, oh,  25 this is three times the amount and the Master Plan does not</p>	<p style="text-align: right;">Page 181</p> <p>1 issue that you as the Hearing Examiner will have to deal  2 with. Do I look at just, you know, 8.11 acres and 107 units  3 or do I look at what the Master Plan itself said 28 years  4 old that said you need to look at these areas in a gross  5 way?</p> <p>6 And Mr. Berman did talk about the fact that they  7 did anticipate PD's and they did anticipate clustering. And  8 there's plenty of testimony in this record that the  9 townhouse community feels this would be appropriate and help  10 them and even Mr. Brown's witnesses testified that it's not  11 likely that the townhouses would be assembled and  12 redeveloped.</p> <p>13 And there's also testify that the 231 unit number  14 in the chart was a mistake. The very man who was in charge  15 of this Master Plan basically said himself that that was a  16 mistake and that he thought this proposal was appropriate.  17 I don't know how when you look at the overall merits and  18 substance of it you can go with procedure and process over  19 substance. All the latest plans in the County say we are  20 very, very short of housing and even shorter of affordable  21 housing.</p> <p>22 We have an opportunity here to do that and at the  23 same time protect the environment of the Washington Grove  24 community. You yourself said aren't those two stands of  25 woods a buffer? And the mayor said, I suppose even if it</p>

<p style="text-align: right;">Page 182</p> <p>1 were only 200 units, they'd still have to take the trees 2 down because of the sewer line. So in many ways this case 3 comes down to not so much what is the density, but how do 4 you treat the density?</p> <p>5 And we've had testimony from our architect and 6 from others that what is being proposed here in terms of 7 architecture compared to what was looked at in the, at the 8 time this was done, garden apartments versus what we call 9 wrap architecture, with the benefits that you get from 10 structured parking. And there's no question, there's no 11 question that in order to get structured parking, you need 12 to have sufficient density so that you can afford to build 13 it. And I believe either, though not directly, the 14 witnesses when cross-examined that Mr. Brown had admitted 15 that.</p> <p>16 So you have testimony from the community that is 17 opposing this project. Well, we're not opposed to 18 redevelopment, we think there are some benefits. We could 19 support 200 units, knowing full well that you couldn't build 20 structured parking and you would end up with another, if you 21 had it, multi-building project with surface parking. Where 22 is the benefit of that? I really ask you, where is the 23 benefit of that?</p> <p>24 And why should the County that has basically 25 ignored this area for 28 years and really since 1970, why</p>	<p style="text-align: right;">Page 184</p> <p>1 There are several other issues which have been 2 addressed. This 100-foot setback, you know, it's a 3 technical development standard issue. Our client has said 4 to you today that they will be bound by Alternative B is 5 that's what you feel is appropriate. We don't concede this 6 issue of 100 feet and what we'll give you a, you know, that 7 it's required because it's an adjacent, it's an adjacent 8 community and an adjacent Master Plan. And we will give you 9 in our memo a discussion of that.</p> <p>10 Also this issue of height compatibility where 11 there's been a waiver requested to go from five stories to 12 four, but you have to look at the history and the background 13 of that request for a waiver. The original R, PD-60 met the 14 height. We met with the city. The city said that's too 15 tall. Our client came in and said, okay, I'll reduce the 16 height to be more compatible for you. So on the one hand 17 they're saying we don't need it, but on the other hand 18 they're saying that if you come down, you know, it would be 19 helpful.</p> <p>20 Let's take 100-foot setback just in terms of the 21 history. This project was built before any of the houses on 22 Daylily were built. In their own Master Plan they call the 23 Westwoods a buffer and a forest, not a -- I mean they may 24 have it zoned as single family residential and here you have 25 existing houses on Daylily which are 20 some feet off of the</p>
<p style="text-align: right;">Page 183</p> <p>1 should they say to this community and to this applicant, 2 well, we're sorry, we haven't gotten around to your Master 3 Plan, so you're just going to have to live with it until we 4 get to it. And, you know, there was testimony by Mr. Davis, 5 well, they could seek an amendment. There is now, as you 6 are aware, a new process for what they call a minor Master 7 Plan amendment. The threshold to reach the significance of 8 that is so great that I would respectfully say it's very 9 difficult for this property to rise to that. In fact, 10 Westbarg tried to do that.</p> <p>11 MS. ROBESON: Well, wait, that's not in evidence.</p> <p>12 MR. KAUFMAN: I know.</p> <p>13 MS. ROBESON: So let's not go there, all right?</p> <p>14 MR. KAUFMAN: Excuse me for a minute.</p> <p>15 MS. ROBESON: All right.</p> <p>16 MR. KAUFMAN: There were several cases testified 17 to, G-87, G-840, G-909. And it was disputed as to whether 18 they dealt with how much of an increase in density and all. 19 But what those cases stand for and what they're really 20 important are really two things. One, an old Master Plan is 21 generally looked at with less weight given to it and if that 22 is the case and if you're looking at what are best planning 23 practices today, additional density, as long as it could be 24 compatible, is not only appropriate but needed. And you 25 yourself were the Hearing Examiner in one of those cases.</p>	<p style="text-align: right;">Page 185</p> <p>1 property line, I mean which from the property line to the 2 existing units are only 20 some feet and every iteration of 3 this plan, PD-60, PD-45 and PD-35, have moved considerably 4 back from that line. And so you have the town come in and 5 say, okay, we're going to build these houses right on the 6 property line, but anybody else that comes in, they have to 7 be back 100 feet. Even under existing zoning if you 8 redeveloped, you would have to be back 100 feet because it's 9 multi-family.</p> <p>10 Green space. The argument that I'm hearing from 11 Mr. Brown and his clients is you have to look at the gross 12 area, but you can only get the green space out as a net 13 area. That's apples to oranges. We've had testimony on 14 both sides, if you want to look at our gross, it meets the 15 definition. If you want to look at it at math, it meets the 16 definition. And if you go to Plan B, you will be more than 17 50 percent. So they can't have it both ways. You can't say 18 you have to calculate everything on the gross, but you can 19 only get your green space out of the net. It's got to be 20 one or the other and, of course, we'll address that in a 21 legal memo as well.</p> <p>22 Forest conservation plan. A lot of testimony from 23 the opposition that this will have a very detrimental impact 24 on the woods, but a Forest Conservation Plan was presented, 25 approved, well, Preliminary Forest Conservation Plan</p>

<p style="text-align: right;">Page 186</p> <p>1 approved by the Planning Board which, of course, now the  2 town has appealed. But every single expert who looked at  3 this Forest Conservation Plan, including the Planning  4 Board's own experts, said it meets the requirements and it  5 will go a long way towards saving a lot of these trees. And  6 then, of course, you have the proposal by the applicant that  7 there will be a whole lot of additional new trees. Yes,  8 sure, a lot of them will be smaller and it will take years  9 for them to mature, but they're talking about a long-term  10 quality of life that I'm sure 20 years from now the people  11 in Washington Grove will still want it to look like it does  12 today.</p> <p>13 The Planning Board, in my opinion, did not really  14 look at this Master Plan and what it said. There were  15 several on the Planning Board that said if this was under a  16 new Master Plan, it would take a nanosecond, I mean you can  17 read the transcript yourself, for us to approve it. But  18 it's, we're stuck in this Master Plan which says that it's,  19 you know, 107 units and what you're proposing is way too  20 much to exit. They didn't look behind just the strict  21 numbers. They didn't really question their staff as to why  22 staff found that it was an old Master Plan and the old  23 Master Plan should be given less weight. And it's really  24 the staff that has the expertise to determine, you know,  25 what a master plan's guts should be.</p>	<p style="text-align: right;">Page 188</p> <p>1 I think this is significant because we have a  2 neighboring jurisdiction that says you should take our  3 position into account. Well, they're not the only  4 neighboring jurisdiction. The town, the city of  5 Gaithersburg is also right on the border of this property.  6 Let's go to a couple of letters.</p> <p>7 Exhibit 19, this is the chairman, Mr. Booher.</p> <p>8 "One of the things I think we need said in a  9 lot of the plans we've reviewed in the city is  10 that density in and of itself is not good or bad.  11 It's what you do with it and I appreciate that you  12 all have backed off a little bit so that there's  13 more opportunity to do green space and more  14 opportunity to do those nice architectural  15 transitions from the big building to the little  16 building and create a better transition."</p> <p>17 Then Chairman Booher again on page 21,  18 "So you're right, so the mass of both the  19 demonstrated kind of coverage, but also that it  20 can --"  21 oh, I'm sorry.</p> <p>22 "So you're right. So the mass of both the  23 demonstrated kind of coverage, but also that it  24 can transition into something that's a scale  25 probably more compatible with the adjacent</p>
<p style="text-align: right;">Page 187</p> <p>1 The people on the Planning Board are very  2 professional and so on, but they're not the professional  3 staff. And with all due respect to the chairperson, she  4 focused on that and she pretty well closed down the hearing.  5 And all the discussion you're going to see in that  6 transcript is basically saying we can't get around the  7 Master Plan, mostly from the chairperson.</p> <p>8 Now I'd like to read you some excerpts from  9 another Planning Commission if I can find it. Oh, and by  10 the way, there is one, one resident on Daylily and they have  11 put a letter in the record, a Mr. Acheampong, I think I'm  12 saying it right. That's Exhibit 63. He strongly supports  13 this application. And I believe there probably are some  14 other people in Washington Grove that would but, of course,  15 you know, there's this issue of what has our leadership  16 said.</p> <p>17 Turning to the transcript of the proceedings  18 before the City of Gaithersburg Planning Commission on June  19 20, 2012, reading first from page 13 of that transcript,  20 this is Commissioner Winbourne:</p> <p>21 "I just want to say this is an exciting  22 redevelopment. This is a great example of taking  23 something that's old and outdated and just really  24 just turning it into something fantastic. I'm so  25 excited to see this. I wish it was in the city."</p>	<p style="text-align: right;">Page 189</p> <p>1 neighborhoods, it seems to demonstrate a good  2 fit."</p> <p>3 He was referring to Towne Crest Drive and the effort made in  4 the architecture to step down.</p> <p>5 MS. ROBESON: That's not in the record, so I've  6 got to keep you to what's in the record.</p> <p>7 MR. KAUFMAN: Okay. Page 23. This is  8 Commissioner Hopkins.</p> <p>9 "Yes, I think we understand the city, what's,  10 in the city, what some of those trade-offs are.  11 You know, some of the density is trade-off for a  12 larger and better designed pedestrian environment.  13 It's also a trade-off for structured parking,  14 which is obviously enormously expensive. Some of  15 that density is a trade-off for that. And just  16 getting people on the street here is, people on  17 the street in a pedestrian environment is what I  18 think created a community and not, you know, and  19 some sort of grand, you know, macro-management  20 way. But crime, whatever the sense of a community  21 is enhanced by actually getting people on the  22 street rather than people getting from their door  23 to their car to work, door to car to shop."  24 And then, lastly, this is Commissioner Winbourne  25 referring to the letter that he received.</p>

<p style="text-align: right;">Page 190</p> <p>1 "Well, no, I would just make sure that our 2 letter talks about, you know, the fact that this 3 is a great redevelopment. You know, I just want 4 to make sure you put that in there." 5 If you take Mr. Ager's position that you look at 6 this entire area 2, which is about 25 acres, and you take 7 Mr. Davis's position that a PD-22 would be appropriate, you 8 would come up with a 452 units of housing in this area of 21 9 acres. 385 at the 22 percent MPDU, or just 47 units below 10 the current purpose of density in the Master Plan for the 21 11 acres and what Mr. Ager said was that's just 18 percent 12 more. I know there's a lot of numbers and you'll have to 13 look at that. That's just 18 percent more than what you 14 have. 15 Of course, there's the difference between just 16 specific property and the 21 acres. But, again, even as Mr. 17 Davis said, when the 9.4, it's only 76 units and that's only 18 22 percent more. And if you look at the transcript of the 19 Planning Board, they were talking about an 18 to 20 percent 20 increase in density. Of course, they didn't consider it 21 across the entire area. 22 You know, so it really comes down to, you know, 23 how do you look at this Master Plan? How do you look at the 24 events that have occurred since the original proposal in 25 1970? And Mr. Berman did say to you we didn't propose</p>	<p style="text-align: right;">Page 192</p> <p>1 already existing on the property. I can understand from 2 their, from their parochial perspective their enthusiasm for 3 this project. 4 The town of Washington Grove, on the other hand, 5 has a very long common border with the property and they are 6 very concerned about the impact of this project on their 7 Westwoods, as well as the impact on single-family residences 8 that border it on the west side. They -- I submit to you 9 that the town of Washington Grove has given this project a 10 much more thorough and careful look than the town of 11 Gaithersburg did. 12 The other diagram that I wanted to point out is 13 this one. I'll guess we'll be getting the legal memorandum 14 from Mr. Kaufman on the issue of net versus gross tract area 15 for the green area, but you can see here that what they have 16 done in this particular calculation with the alternative 17 plan that respects the 100-foot setback is to calculate 18 green area on the basis of net tract area rather than gross 19 tract area. Now Mr. Kaufman said that they meet the test 20 either way, but the numbers I have written down here from 21 the testimony of their engineer are that the amount of, the 22 amount of space in the right-of-way that has been removed 23 from this calculation that was green area in an earlier 24 version was 31,974 square feet and the amount of footprint 25 that was reduced here is 7,595 square feet. That's in the</p>
<p style="text-align: right;">Page 191</p> <p>1 anything for this area because the project had just been 2 built. 3 Now, you know, I have a lot of respect for Joe 4 Davis, but Joe Davis is not a formally trained expert in 5 planning. His primary position at the Planning Commission 6 was subdivision review and I would respectfully suggest that 7 he approach this project as someone that looked at a 8 subdivision review, not as a Master Planner. I'm going to 9 thank you for your time and, you know, we look forward to 10 your decision. 11 MS. ROBESON: Thank you. Mr. Brown. 12 MR. BROWN: If I could just start by pointing to a 13 couple of exhibits. Let's start with this one right here. 14 MS. ROBESON: That's 10A, I think? 15 MS. RANDALL: This is Exhibit 10A. With respect 16 to the town of Gaithersburg's enthusiasm for this project, 17 there was no opposition testimony at that hearing as far as 18 I can tell. The town of Washington Grove did not 19 participate and you can see instantly from this particular 20 photograph, aerial photograph, there's a relative difference 21 in impact between the two towns. We have a very narrow 22 stretch of land at the north end of the project that is 23 impacting some single-family homes already developed in 24 Gaithersburg and the plans are for there to be a 100-foot 25 setback from those homes, which is considerably more than is</p>	<p style="text-align: right;">Page 193</p> <p>1 testimony. 2 When you think about what they've taken away from 3 the denominator and what they've taken away from the 4 numerator in the calculation, they just don't make it under 5 the, under the net tract area calculation, under the gross 6 tract area calculation, I'm sorry, if you use gross tract 7 area which we say is the correct way to go. Now they say we 8 were comparing, not comparing apples to apples, but rather 9 apples to oranges, but a proper reading of the zoning 10 ordinance is to use gross area. And Mr. Davis explained why 11 that's appropriate, because you can't depend upon, you can't 12 depend upon the availability of the -- I'm sorry -- the 13 proper calculation is to use gross tract area for the 14 denominator, but to count only green space in the numerator 15 that's in the net tract area because you cannot count on the 16 land that's in the public right-of-way being available 17 continuously. It may be a case that for a long time Towne 18 Crest Drive will continue to be in its current 19 configuration. But if any street in this area is a 20 candidate for widening, it would be Washington Grove Lane 21 and that would certainly be exactly the kind of thing that 22 we're talking about. 23 But let me -- I will concede to one thing to what 24 Mr. Kaufman said and that has to do with Mr. Davis's density 25 calculations which were submitted as an addendum to his</p>

<p style="text-align: right;">Page 194</p> <p>1 testimony. Those calculations are based upon the net tract,  2 which is the way that they've been trying to present the  3 density to you on a net tract basis. So our numbers are, in  4 Mr. Davis's testimony, based upon a net tract area.  5 So what would you have to do and how would Mr.  6 Davis's numbers be adjusted if we went to gross tract area?  7 The difference here is we've got a gross tract area of 9.415  8 acres versus a net tract area of 8.11 acres. I've just done  9 kind of a rough calculation here to see what the difference  10 would be in Mr. Davis's calculation. Mr. Davis said that  11 there would be a total of 148 dwelling units if you add in  12 all of the MPDU's and you basically allocated the unused  13 density evenly between the two properties. If you use the  14 gross tract area, I believe that that number would go up to  15 172.  16 Either way, there is still only, there is 153  17 unbuilt units between the Master Plan recommendation for the  18 property with MPDU bonus and the existing. That number is  19 undisputed. And it's also undisputed that if you pour all  20 of the extra density into the Towne Crest property, the top  21 end that you get is 260 units. And although Mr. Davis  22 characterized that as an increase in the number of dwelling  23 units from 13.2 dwelling units per acre to 32, if you do  24 that, if you do the gross calculation instead, you're going  25 from 11.36 units per acre to 27.5. It's still an increase</p>	<p style="text-align: right;">Page 196</p> <p>1 whether you talk about a difference of 69 units or a  2 difference of 74 units, there is a substantial difference  3 there and Mr. Davis also did not think that it was  4 appropriate for the, for the way the Master Plan evolved for  5 all of the extra density that was unused in Area 2 to  6 basically pour over into the Towne Crest property. He just  7 didn't see where that was justified, particularly when it is  8 then magnified by additional density that comes from  9 essentially nowhere to get up to 329 units.  10 We think that the, that the Planning Board was  11 imminently correct and feeling obliged to carefully consider  12 the density recommendation in the Master Plan because, as  13 I've said in my opening argument, I'll repeat here today,  14 the very first sentence of the purpose of the PD zone is to  15 implement the general plan for the Maryland Washington  16 Regional District and the area Master Plans. How? By  17 permitting unified development consistent with densities  18 proposed by Master Plans. That's the lead issue in the PD  19 zone. And, in fact, if you look at the PD zone, it's broken  20 up into 18 subcategories of the PD zone. And every one of  21 those subcategories the primary difference is the amount of  22 density that is proposed. Getting the right density for a  23 PD zone is the question in terms of Master Plan.  24 Mr. Davis has said 35 is too high, but something  25 in the range of 18 to 22 might not be but, of course, we</p>
<p style="text-align: right;">Page 195</p> <p>1 of nearly 2 1/2 times which is essentially what he was  2 talking about in his testimony. So whether you do it on a  3 gross or you do it on a net, you're still talking about a  4 major increase in the density. And, finally, when you add  5 the additional 69 units that the applicant proposes to go  6 from 260 to 329, again, if you do it on a gross instead of a  7 net, you get 34.8 dwelling units per acre, almost twice the  8 maximum density recommended in the Master Plan.  9 Now so you ask yourself where did the extra 69  10 units come from? They came from what we heard today from  11 Mr. Ager was a mistake. He multiplied by 133 percent of the  12 260 to get to 329 and he got that percentage, that extra 33  13 percent from a mistaken interpretation of the decision in G-  14 873. So we should never be talking about anything higher  15 than 260 even if it were fair to pour all of the extra  16 density in the Master Plan into this property. 260 would be  17 the upper limit.  18 Now Mr. Davis said that he had in mind something  19 in the neighborhood of 200. It's obvious that Mr. Davis had  20 not worked out any kind of detailed plan or analysis. He  21 was just suggesting something in the range of what he  22 thought would be appropriate for this property and it's  23 certainly not incumbent upon the opponents to the plan to  24 come up with a complete alternative plan for submission at  25 the hearing. It was just a kind of a ballpark idea. So</p>	<p style="text-align: right;">Page 197</p> <p>1 don't have such a plan here, but it is the fervent hope of  2 the folks in the town of Washington Grove that if the  3 applicant were obliged to come back at a lower density, we  4 would see greater protection for the Westwoods. And  5 ironically enough, that fits in exactly with what I've just  6 read in the transcript of the Gaithersburg Planning  7 Commissioner. I wasn't there, but they seemed to see  8 significant benefit in the fact that there would be possibly  9 reduced crime with greater community interaction in the open  10 space that is provided by this property.  11 Well, guess what? At that particular time, June  12 20, 2012, they were looking at a PD-60 and the plan, the  13 alternative plan that is before you that you see here  14 provides even more open space than that plan does. So I  15 would conclude that the people in Gaithersburg would welcome  16 reduced density to increase the amount of interaction  17 between and among the members of the Wedgewood community and  18 the Towne Crest community. In fact, among other beneficial  19 purposes, perhaps a reduction in crime that comes from this  20 notion that a neighborhood is better protected from crime if  21 people are out and interacting and watching what's going on  22 around them. So I don't see anything in that report that's  23 been cited here that wouldn't point them in the direction of  24 even more support for a less dense project.  25 That also, that factor also in my mind does a</p>

<p style="text-align: right;">Page 198</p> <p>1 pretty fair job of impeaching the staff analysis in this  2 case because the staff had no problem with the PD-60 plan  3 and they were ready to recommend approval to the Planning  4 Board of a PD-60 plan in terms of the density. But they  5 went back to the drawing board, the applicant went back to  6 the drawing board over this green space business and came up  7 with a PD-44 plan. And the staff, of course, having, had no  8 problem with the PD-60 density, had no problem with the PD-  9 44 density.</p> <p>10 Mr. Kaufman asked the question what is it to do  11 with a 28-year-old Master Plan and my answer to that  12 question is you look carefully to see whether or not in this  13 particular context, in this particular situation the  14 recommendations in the plan are outdated by virtue of  15 changes in the neighborhood or circumstances. And Mr.  16 Challstrom went through item by item why that, why there are  17 no significant changes in this neighborhood that would  18 justify that. There hasn't been a major increase in  19 development around it. There hasn't been any significant  20 change in the transit options anywhere. Everything is  21 pretty much the same.</p> <p>22 The additional density that's going in up at the  23 corner is not something that the town opposed, even though  24 it's, I suppose it's like a mile or so up the road on  25 Washington Grove Lane, but the town does not see that as a,</p>	<p style="text-align: right;">Page 200</p> <p>1 that 100-foot setback for single-family properties is  2 applicable along the Westwoods. We are claiming that an  3 appropriate setback is, should be had to the Westwoods and  4 our position is very simple there, the kind of setback that  5 should be applied is one that effectively reduces up to a  6 miniscule level, the kind of risk to the root zones of trees  7 in the woods that would come from constructing this project  8 which we think can be accomplished by moving the project  9 slightly eastward to the point where the critical root zones  10 are not impacted and we think any problems associated with  11 either storm water management or sewer lines existing on the  12 property can be mediated and dealt with in such a way that  13 these trees are protected. If the town cares enough about  14 the protection of these trees that they have asked me to  15 file a lawsuit challenging the variances that were granted  16 by the Planning Board to endanger those trees in the  17 construction process. That proceeding in circuit court is  18 ongoing and probably won't be resolved before you have to  19 make a recommendation in this case, but you should not  20 regard that, those variances as final at this point because  21 they are on appeal.</p> <p>22 And, finally, with regard to the notion that it's  23 just kind of -- it's just a tough break for the applicant  24 because they're going to have to live with the Master Plan  25 until the Council gets around to amending it. My answer to</p>
<p style="text-align: right;">Page 199</p> <p>1 as any kind of a threat to the preservation of their low-  2 density neighborhood and the town has endorsed Mr. Davis's  3 position that this project could well serve to be  4 redeveloped, but at a lesser density than is proposed  5 because of their concern about the Westwoods, their concerns  6 about possible overflow parking from that many residential  7 units and we simply do not know on this record whether or  8 not structured parking would be impossible for this property  9 at a lower density.</p> <p>10 It's possible that if the applicant were to come  11 to the town and say the absolute minimum that we could do in  12 terms of density for this project and still have structured  13 parking is X and that's higher than 200, which you proposed,  14 I think at that point the town could make an intelligent  15 decision as to whether or not the trade-off in terms of  16 getting the structured parking versus a lower density made  17 sense, but that's not the project that we have before us.  18 We have what the applicant wants to do and propose rather  19 than what, rather than something that's reasonably close to  20 the density limitations in the Master Plan, even  21 interpreting them liberally to allow this significant pour  22 over into their property.</p> <p>23 The Westwoods is not zoned single-family  24 residential, it's zoned forest in the town zoning ordinance  25 and that's not a single-family zone. We are not claiming</p>	<p style="text-align: right;">Page 201</p> <p>1 that is that I don't think it would be that difficult for  2 the Council to recommend and agree to approval of a  3 development plan that was at or near the kind of densities  4 that Mr. Davis has been proposing if we were to sit down and  5 work out with them exactly how trees would be saved at these  6 lower level densities and actually earn our support for the  7 plan going forward. Mr. Kaufman has mentioned to you that  8 the only significant opposition to this plan is coming from  9 the town and if the applicant could remove that significant  10 opposition by working with us to achieve a solution that  11 works for everyone, I think that they can overcome the  12 problem of the fact that the Master Plan doesn't give them  13 exactly the kind of density that they want. But having  14 failed to do that with us to this point, I don't think that  15 they have earned the right to go to the Council and say in  16 light of the admonition in Section 59C-7.11, development  17 consistent with the densities, they haven't earned the right  18 to go up and ask for a major increase in density of the type  19 proposed here, however you measure it, without that, over  20 our objection. Thank you very much.</p> <p>21 MS. ROBESON: Thank you. Mr. Kaufman, briefly.  22 MR. KAUFMAN: Yes, very, very briefly. First off,  23 you know, I'd like to just bring your attention to this  24 green air issue. It's at 59A-2.1. And the green area  25 definition is clear.</p>

<p style="text-align: right;">Page 202</p> <p>1 "An area of land associated with and located  2 on the same tract of land as a major building or  3 group of buildings, or a prescribed portion of the  4 land area encompassed by a development plan."  5 There's a lot of confusion over gross and net, but what was  6 filed here was a plan on 8.11 acres which is the prescribed  7 area encompassed by the development plan and that equates to  8 net.  9 Also, Mr. Davis constantly insisted that it has to  10 be on the gross tract. That's the 9.415, but yet he did all  11 his calculations based on 8.11 acres. And I just reiterate,  12 I know you're tired of all this, but our expert said if you  13 do it on Area 2, it's 15 units per acre times 22 percent  14 bonus for MPDU's. That's 18.3 units per acre or 384 units  15 for the analysis area.  16 If you take what is left from just 8.11, which is  17 153, and you take the existing housing on the tract, which  18 is 107, you get 260. If you take 329 minus 260, you get 69  19 units. Mr. Ager said that it's just 18 percent above. Even  20 what this very old Master Plan recommended, it's not 300  21 percent. The numbers are all there. I really don't envy  22 you having to look at all those numbers, but they are  23 definitely there.  24 In referring to the city of Gaithersburg, Mr.  25 Brown indicated that there's nothing here that showed that</p>	<p style="text-align: right;">Page 204</p> <p>1 much.  2 MS. ROBESON: Thank you. I take it that you want  3 to submit a -- did you say a memorandum?  4 MR. KAUFMAN: Yes. We're going to submit a  5 memorandum on the legal questions because many of them do  6 have to deal with legal aspects and not just --  7 MS. ROBESON: That's fine.  8 MR. KAUFMAN: -- testimony of experts.  9 MS. ROBESON: And when do you expect to be able to  10 do that?  11 MR. KAUFMAN: Let me consult with my --  12 MS. GIRARD: The one who will be drafting it.  13 MR. KAUFMAN: I think we need about at least two  14 weeks.  15 MS. ROBESON: Two weeks? Okay. That would be the  16 18th of March. And, Mr. Brown, when do you, do you foresee  17 being able to respond?  18 MR. BROWN: Oh, I should have something out by the  19 20th. No, I'm just kidding.  20 MS. ROBESON: All right. I take it -- let's give  21 you two weeks.  22 MR. BROWN: That's fine. Thank you.  23 MS. ROBESON: All right.  24 MR. KAUFMAN: That would be what then?  25 MS. ROBESON: That would be April Fool's Day.</p>
<p style="text-align: right;">Page 203</p> <p>1 they understood why this needed to be done, but there is  2 testimony which I read to you in here that says they  3 understood the expensive, the tremendous expense for  4 structured parking.  5 You've had testimony from our witnesses that if  6 you can't get at least sufficient density for structured  7 parking which allows you to do so many better things in  8 terms of compatibility, you have to get it to a garden  9 apartment type of structure, you have to go to surface  10 parking. And, by the way, they were not thinking, they were  11 not presented a PD-60. This was after we had modified the  12 PD-44 and now it's down to PD-35.  13 I appreciate what Mr. Brown has said about  14 negotiating with the city, but I would say respectfully my  15 client has been very respectful of the city and has tried  16 three times now to modify its plan to accommodate them. I  17 don't know what to tell you about the fact that this is an  18 old Master Plan and what to do with it, but I do know that  19 this County has been remiss in addressing this plan for a  20 heck of a long time.  21 And the County Council does have the authority  22 even though we have an old Master Plan to take current  23 conditions into account. And let's not forget Master Plans  24 are just statements of policy. They are not statutes. It's  25 the County Council that makes legislation. Thank you very</p>	<p style="text-align: right;">Page 205</p> <p>1 MR. KAUFMAN: Okay. That's good.  2 MS. ROBESON: So the applicant's memo will be due  3 April 18th --  4 MR. BROWN: March 18th.  5 MS. ROBESON: I'm sorry, yes, 18th. And Mr.  6 Brown's will be due on April 1st. Okay. And then that's  7 plenty of time for the transcript to get in the record, so  8 the record will close on April 1st.  9 MR. KAUFMAN: I apologize for keeping you here  10 since, you know --  11 MS. ROBESON: That's fine. All right. With that,  12 this hearing is closed except the record will remain open to  13 receive the two memos and we'll close on April 1st at the  14 close of business, 5:00, all right? Thank you very much.  15 MR. BROWN: You saved the day.  16 (Whereupon, at 5:17 p.m., the hearing was  17 concluded.)  18  19  20  21  22  23  24  25</p>

C E R T I F I C A T E

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

LOCAL MAP AMENDMENT  
R-30 AND RT 12.5 ZONES TO PD-60  
TOWNE CREST APARTMENTS, LLC.

By:

Tracy Hahn, Transcriber



**Local Map Amendment No. G-910  
Towne Crest**

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**Local Map Amendment No. G-910  
Towne Crest**

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