

## CERTIFICATION

I, ROBIN REGNER, official transcriber for the Board of Appeals for Howard County, do hereby certify that I transcribed two (2) hearings for BA 05-046C, Robert B. Williams, et al, which hearings were held on July 11, 2006 and July 25, 2006.

I FURTHER CERTIFY that the attached pages, numbering from 1 through 156, constitute the official transcript of the two hearings as transcribed by me from the recordings of these Board of Appeals hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name on the 1st day of June, 2007.

A handwritten signature in cursive script that reads "Robin Regner". The signature is written in black ink and is positioned above a horizontal line.

ROBIN REGNER  
Administrative Assistant

## CERTIFICATION

I, ANN NICHOLSON, official transcriber for the Howard County Board of Appeals, do hereby certify that I transcribed the hearings in the matter of BA05-046C, which were held on August 22, 2006, September 21, 2006 and October 11, 2006 in the George Howard Building, Ellicott City, Maryland 21043.

I FURTHER CERTIFY that the pages 157 – 387 constitute the official transcript, as transcribed by me, from the recording of those hearing.

IN WITNESS WHEREOF, I have subscribed my name on the 1st day of June, 2007.

A handwritten signature in black ink, appearing to read "Ann M. Nicholson". The signature is fluid and cursive, with a large initial "A" and "N".

ANN M. NICHOLSON, Transcriber

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1 BOB SHARPS: Board of Appeals is in session to hear case  
2 BA-05-046C, Robert B. Williams, et al. Mr. Sanders, would you  
3 drive us in?

4 BARRY SANDERS: Thank you Mr. Chairman, the Board, the  
5 petition of Board of Appeals case number 05-046C is filed under  
6 section 131 in subsection 1 of the Howard County Zoning  
7 Regulations for conditional use for age restricted adult  
8 housing in an RR-DEO Zoning District, on that land belonging to  
9 the petitioners, located in the fifth election district on the  
10 east side of Greenberry Lane, northeast of Linden Church Road,  
11 east Maryland Route 32 in Clarksville, Howard County, Maryland.  
12 All is shown on the petition and plat filed in this case. Ms.  
13 Secretary, has the advertisements and posting been supplied?

14 ROBIN REGNER: Yeah.

15 BARRY SANDERS: Okay. The petitioner had provided  
16 certification that the notice of hearing has been advertised,  
17 and certified that the property has been posted as required  
18 under the Howard County Zoning Regulations. For the record,  
19 would each board member present please indicate if you have had  
20 an opportunity to visit the subject property as required by  
21 zoning regulations? Mr. Pfefferkorn?

22 JAMES PFEFFERKORN: Yes.

23 BARRY SANDERS: Mr. Patterson?

24 PAT PATTERSON: Yes.

25 BARRY SANDERS: Mr. Hayes?

1 AL HAYES: Yes.

2 BARRY SANDERS: Mr. Simpkins?

3 MAURICE SIMPKINS: Yes.

4 BARRY SANDERS: And Chairman Sharps?

5 BOB SHARPS: Yes.

6 BARRY SANDERS: Thank you. For purposes of this hearing,  
7 the following are incorporated into the record by reference:  
8 the appropriate provisions of the Howard County Charter, the  
9 appropriate provisions of the Howard County Code, the Howard  
10 County Zoning Regulations, the various technical staff reports,  
11 recommendation of approval in the Department of Planning and  
12 Zoning dated February 22<sup>nd</sup>, 2006, the General Plan of Howard  
13 County, the General Plan of Highways, the petition and plat  
14 submitted. I note for the record the petitioner is represented  
15 by counsel, Howard Alderman. And I also note for the record  
16 that we have several individuals who have signed up in  
17 opposition. They are not represented at this time; it is my  
18 understanding Mr. Chairman. Are there any preliminary matters  
19 other than that Mr. Chairman? I don't know if you want to have  
20 a spokesman?

21 BOB SHARPS: No, just a couple of administrative matters  
22 I'd like to bring up. One is, for those individuals who came  
23 in late, if you do wish to testify in this case in opposition,  
24 please put your name on the appropriate sheet for that, and if  
25 you hear a petition and you wish to testify for the petitioner,

1 then of course put your name on that one. Can I just get a  
2 quick show of hands of how many people are here in opposition?  
3 Okay. And I understand is...you are not being represented by  
4 counsel? Okay, so that we can assist this case, sort of go  
5 without having each individual ask questions, I would like you  
6 to, at this time, either appoint a spokesperson, because as the  
7 procedure is such, the petitioner will give, will present their  
8 case and while the petitioner is presenting their case, they  
9 will call a witness. There will be questions after the  
10 witness, after the witness is asked their questions by the  
11 petitioner's counsel, opposition at that time normally would be  
12 a counsel would ask questions. But rather than have each and  
13 every one of you, as I see a show of hands, ask a question, I'd  
14 like you to get your questions together if you have, so they  
15 would not be repetitious, and appoint a spokesperson so that  
16 they may ask questions. Should you have questions of the  
17 petitioner's witness during their questioning, please exercise  
18 your questions in a manner that, it must pertain to the  
19 questions asked. You will all. If you want to have an  
20 opportunity to present your own testimony, individually, in  
21 writing, however you want it. If there is something or a  
22 matter than you want the Board to take into account during the  
23 case. But only the questions that will be asked during the  
24 questions, during the petitioner's questioning of the witness  
25 would have to pertain to the questions. But it's times when we

1 have this many people you always have something that you want  
2 to bring out, and you'll have that opportunity during  
3 testimony, during your personal testimony that you will be able  
4 to give. So if you would, try to pick someone who can be the  
5 spokesperson. Have you identified one?

6 UNKNOWN WOMAN: This gentleman is an attorney.

7 BOB SHARPS: You don't have to be an attorney. Excuse me?

8 UNKNOWN MALE: Mark Jordan will be glad...

9 BOB SHARPS: Mark Jordan will be the spokesperson? Is  
10 that Mark Jordon sir? Oh I'm sorry, Marc? Jordan. Okay Mr.  
11 Jordan you'll be the spokesperson, and if those individuals,  
12 please you can have a seat there, and those individuals who may  
13 have a question, in opposition for Mr. Jordan to ask of the  
14 petitioner's witness, please pass it up to him during the  
15 period of time. Remember, this is being recorded. We do have  
16 to maintain a certain amount of silence so that this  
17 information does not get distorted as it is being recorded in  
18 the record. It's, the microphones that you see here, are for  
19 recording persons, not for amplification. We'll try to speak  
20 as loud as we can so that each individual could hear the  
21 testimony as being presented during the case. With that, I  
22 have...are there any administrative matters from any...Mr. Sanders  
23 do you have any administrative matters?

24 BARRY SANDERS: No sir, we have a full complement of the  
25 Board.

1           HOWARD ALDERMAN: Mr. Chairman I just have, we have three  
2 sheets, which would be the plat, which would be introduced into  
3 evidence this evening. I have a duplicate copy that I have  
4 already marked as petitioner's exhibit, and I have copies for  
5 the Board Members and I have a couple extra copies for the  
6 community.

7           BOB SHARPS: Is that separate Mr. Alderman in what we  
8 already have in our?

9           HOWARD ALDERMAN: Yes sir. Yes, it has additional sheets.  
10 It has an additional sheet attached to it, yes sir.

11          BOB SHARPS: Is this an amendment to what we...?

12          HOWARD ALDERMAN: It's a clarification. That's all it is,  
13 merely a clarification.

14          BOB SHARPS: Fine, well why don't we just start with you  
15 sir and you have an opening statement you would like give at  
16 this time?

17          HOWARD ALDERMAN: Just very briefly, we're here this  
18 evening for a proposal of 50 age-restricted units which would  
19 be a condominium regime. This is not a subdivision - it would  
20 be one lot. It would be subject to a decoration of condominium  
21 regime as approved by the state, the Secretary of State of  
22 Maryland. The, all the common areas, all the roads, all the  
23 trash, the testimony will show the well and septic, everything  
24 will be administered by the condominium association, with the  
25 individual unit owners having responsibility for the inside of

1 their units. The testimony we plan to present this evening is  
2 that the proposal that you will see here this evening complies  
3 with the optical sections of the Howard County Zoning  
4 Regulations and it will then be subject to further approval as  
5 we go forward in terms of final septic approval, final  
6 (inaudible) approval, and certain (inaudible). I have three  
7 technical witnesses to call this evening, and then perhaps one  
8 or two citizens.

9 BOB SHARPS: Okay.

10 UNKNOWN MALE: Could we have the copy of these...

11 BOB SHARPS: When he introduces them, yes. Until they  
12 introduce, we don't have them either. So until testimony is  
13 given and copies are introduced into the record or the  
14 petitioner has anything to put into the record at that time  
15 you'll get a copy, or, I don't expect him to have copies for  
16 everyone of you. He will have one for the spokesperson, and  
17 the spokesperson obviously can share with you or whoever wants  
18 to come up and see it. With that in mind, Mr. Alderman, do you  
19 have your first witness to call?

20 HOWARD ALDERMAN: Yes, thank you Mr. Chairman I call Jacob  
21 Hikmat.

22 BOB SHARPS: Mr. Hikmat, let me go ahead and swear you in  
23 before you start your testimony. Raise your right hand. Do  
24 you promise to speak truthfully in the testimony you are about  
25 to give this Board?

1 JACOB HIKMAT: I do.

2 BOB SHARPS: State your name and address for the record  
3 please.

4 JACOB HIKMAT: My name is Jacob Hemet, 5072 Dorsey Hall  
5 Dr, Suite 202, Ellicott City, Maryland, 21042.

6 HOWARD ALDERMAN: Mr. Hikmat, do you hold any professional  
7 certifications or licenses in the State of Maryland, and if so,  
8 please describe them for the members of the Board.

9 JACOB HIKMAT: Yes, I'm a professional civil engineer for  
10 the State of Maryland.

11 HOWARD ALDERMAN: And by whom are currently employed?

12 JACOB HIKMAT: By Mildenberg, Boender and Associates.

13 HOWARD ALDERMAN: And describe for the Board and those  
14 present your current duties and responsibilities with that  
15 firm.

16 JACOB HIKMAT: I'm the Vice President there and my duties  
17 are to review and design the subdivision and land development  
18 projects in Howard County mostly, but other counties as well.

19 HOWARD ALDERMAN: Do your duties and responsibilities at  
20 Mildenberg and Bonder require you to be familiar with the  
21 Howard County Zoning Regulations and the Howard County General  
22 Plan?

23 JACOB HIKMAT: Yes it does.

24 HOWARD ALDERMAN: Would you describe very briefly for the  
25 Board your professional experience in zoning and development

1 matters in Howard County, and other jurisdictions, whether you  
2 work primarily in residential, commercial - just a complete  
3 overview.

4 JACOB HIKMAT: Yes, I have been involved in the land  
5 development and planning projects, mainly working for the  
6 private sector, a lot of subdivisions and site development  
7 plans, including age-restricted projects, and just basically  
8 just anything that has to do with land development in Howard  
9 County.

10 HOWARD ALDERMAN: And was the firm of Mildenberg, Boender  
11 and Associates retained by the contract purchasers to prepare  
12 the plat which would be presented, well certainly a (inaudible)  
13 will also be presented here this evening?

14 JACOB HIKMAT: Yes it was.

15 HOWARD ALDERMAN: And was the plat which you just said you  
16 were retained to prepare, was that prepared under your  
17 direction, direct supervision and control, or was it prepared  
18 by you, or how was it prepared?

19 JACOB HIKMAT: It was prepared under my supervision.

20 HOWARD ALDERMAN: And are you generally familiar with the  
21 area of the subject property?

22 JACOB HIKMAT: Yes.

23 HOWARD ALDERMAN: And if you would reiterate for the  
24 record the zoning classification of the subject property?

25 JACOB HIKMAT: The property is zoned part R, which is

1 rural/residential zoning.

2 HOWARD ALDERMAN: And does it have any district overlay?

3 JACOB HIKMAT: Yes, density exchange option, when you can  
4 actually import density.

5 HOWARD ALDERMAN: And if you would, for the members of the  
6 Board, describe the location, shape - wait a minute, strike  
7 that. Mr. Hikmat, you have color rendered numerous copies of  
8 the plan, which we plan to introduce into evidence here this  
9 evening. Is that correct?

10 JACOB HIKMAT: Yes I have.

11 HOWARD ALDERMAN: Mr. Hikmat, you provided those copies to  
12 me, is that correct?

13 JACOB HIKMAT: That is correct.

14 HOWARD ALDERMAN: And it's comprised of three sheets, is  
15 that correct?

16 JACOB HIKMAT: That is correct.

17 HOWARD ALDERMAN: And that would be sheet one of three,  
18 sheet two of three, and sheet three of three, correct?

19 JACOB HIKMAT: That is correct.

20 HOWARD ALDERMAN: And that was the plan which was prepared  
21 under your direction and control, is that correct?

22 JACOB HIKMAT: Yes.

23 HOWARD ALDERMAN: And does that plan present a fair and  
24 accurate representation of what the basis of your testimony  
25 will be this evening as well as the proposal presented to the

1 Board for approval?

2 JACOB HIKMAT: Yes it does. And this is also the same plan  
3 that we had with minor modifications to it.

4 HOWARD ALDERMAN: For clarification is that correct?

5 JACOB HIKMAT: For clarification issues.

6 HOWARD ALDERMAN: Now is that same plan affixed to the  
7 foam boards to my left, the Board's right?

8 JACOB HIKMAT: Yes it is.

9 HOWARD ALDERMAN: For purposes of identification, Mr.  
10 Sharps, at this time I distribute these so that everyone can  
11 have them while Mr. Hikmat is testifying, if that is acceptable  
12 to the Board.

13 BOB SHARPS: And that's going to be petitioner's exhibit  
14 one?

15 HOWARD ALDERMAN: Yes sir.

16 BOB SHARPS: And the nomenclature of that will be a three  
17 page...?

18 HOWARD ALDERMAN: It's the Conditional Use plan.

19 BOB SHARPS: Conditional Use?

20 HOWARD ALDERMAN: Consisting of three sheets.

21 BOB SHARPS: Okay, conditional Use Plan. And it's...?

22 HOWARD ALDERMAN: It's entitled Greenberry, Conditional  
23 Use exhibit.

24 BOB SHARPS: Without objection from opposition?

25 UNKNOWN MALE: No objection.

1           HOWARD ALDERMAN: Thanks. And I'll give Mrs. Regner one  
2 that I have already pre-marked.

3           BOB SHARPS: And if you would, give one to representative  
4 of the opposition.

5           HOWARD ALDERMAN: I have one right here for him. Thanks.  
6 Alright, Mr. Hikmat for the benefit of the Board and those  
7 present, if you would, describe the location, shape and size of  
8 the area proposed for operation of the proposed conditional use  
9 for age-restricted homes.

10          JACOB HIKMAT: The property consists of 127 acres total,  
11 and the Conditional Use part of it, which would we refer to as  
12 the property, is fifty acres out of the whole side.

13          HOWARD ALDERMAN: Fifty?

14          JACOB HIKMAT: Fifty, net acres. This property is located  
15 on the north side of Linden Church Road, and east of Greenberry  
16 Lane. Greenberry Lane and Route 32 are almost the same, so  
17 east of Route 32, and to, to the west of it is the Twelve Hill  
18 subdivision. It's a subdivision consisting of three acre lots.  
19 To the south of it is two existing parcels with five acres  
20 each. On the north of it is the remainder of the property  
21 which is about 77 acres, which is not part of the Conditional  
22 Use.

23          HOWARD ALDERMAN: Now the fifty acres of which you  
24 identified as a Conditional Use area, that is shown as proposed  
25 lot one, on what has been marked for identification as

1 petitioner's one, is that correct?

2 JACOB HIKMAT: That is correct.

3 HOWARD ALDERMAN: And the balance of it is shown as lot  
4 two, is that correct? Now, you're making reference, Mr.  
5 Hikmat, to sheet two of three of petitioner's exhibit 1.

6 JACOB HIKMAT: Yes, sheet two of three of the Conditional  
7 Use shows the entire property that actually does show the  
8 overall location. That was just to give you an idea, and the  
9 relationship between the fifty acres and the remainder of the  
10 property.

11 HOWARD ALDERMAN: So the colorized, for lack of a better  
12 term area, the green and brown and white and grey, that is  
13 proposed lot one and the area to the north is proposed lot two,  
14 is that correct?

15 JACOB HIKMAT: That is correct.

16 HOWARD ALDERMAN: And it's only lot one that's proposed  
17 for Conditional Use here tonight, is that correct?

18 JACOB HIKMAT: That is correct.

19 HOWARD ALDERMAN: Now.....

20 JACOB HIKMAT: There's also, just for the record, there's  
21 a gas utility easement, that's diagonally throughout the fifty  
22 acres. And the fifty acres are not improved.

23 HOWARD ALDERMAN: And that gas utility easement runs in a  
24 roughly southwest, northeast direction through the property, is  
25 that correct?

1 JACOB HIKMAT: That is correct.

2 HOWARD ALDERMAN: Did you attend the community hearing,  
3 meeting required by the Howard County Zoning Regulations?

4 JACOB HIKMAT: Yes I did.

5 HOWARD ALDERMAN: And as a result of that community  
6 meeting, what changes, if any, were made to your proposed plan  
7 of development?

8 JACOB HIKMAT: Initially we had to...when we were at that  
9 community meeting, the access was across the road from  
10 Broadwater.

11 HOWARD ALDERMAN: Is that down here in the southwest  
12 corner sir?

13 JACOB HIKMAT: Yes. That is correct.

14 HOWARD ALDERMAN: Broadwater?

15 JACOB HIKMAT: Yes, that is correct. And that is where the  
16 access was to the property. And also, from the entrance from  
17 the community we moved the access to Greenberry Lane.

18 HOWARD ALDERMAN: So you moved it in a northwesterly  
19 direction, is that correct?

20 JACOB HIKMAT: That is correct, and the posting of the  
21 property was in both access points, just so people would know,  
22 but there would be one access point on Greenberry Lane. We  
23 also widened the buffer again, just from the community's input  
24 that I could get at the time. And we had a storm water  
25 management that was located on the east side of the property.

1 We had two storm water management ponds. We removed one - that  
2 was in the...we only have one storm management pond now.

3 BOB SHARPS: Excuse me Mr. Hikmat, did I hear you say that  
4 there is only one access to this?

5 JACOB HIKMAT: There is one access.

6 BOB SHARPS: Only one.

7 JACOB HIKMAT: That is correct. And, the posting was on  
8 the two access points, so I guess if somebody was at the  
9 community meeting they would know something is going on.

10 HOWARD ALDERMAN: You mean it was posted both on  
11 Greenberry and on Linden Church near Broadwater, is that  
12 correct?

13 JACOB HIKMAT: That is correct. Yes.

14 HOWARD ALDERMAN: So it was posted in two places.

15 JACOB HIKMAT: Yes, the sign itself, so the people in the  
16 community meeting understand that it's coming.

17 HOWARD ALDERMAN: Now, Mr. Hikmat, the proposed access  
18 that the Chairman asked you about then splits into two interior  
19 lineal roads that terminate in cal-de-sac, is that correct?

20 JACOB HIKMAT: That is correct.

21 HOWARD ALDERMAN: Now, this plan was originally presented  
22 to the Hearing Examiner. Have any modifications for  
23 clarification been made since that, since the Hearing Examiner  
24 first looked at it?

25 JACOB HIKMAT: Yes, we had few modifications, basically to

1 clarify what we did. When the...the first thing we did, is we  
2 widened the buffer on...based on my meeting with Mr. Chi, which  
3 is lot 22 on Twelve Hills subdivision, we've moved the house  
4 slightly and we widened his buffer by another like, fifty feet  
5 or so.

6 HOWARD ALDERMAN: Now the width of that buffer as now  
7 configured as consistent with the other buffer area, as far as  
8 conservation buffer...

9 JACOB HIKMAT: That is correct.

10 HOWARD ALDERMAN: And, what about the visible frontage  
11 along Linden Church and Greenberry, what was done there?

12 JACOB HIKMAT: Another thing we did, we decided to, in the  
13 initial proposal we had forest conservation going across the  
14 frontage of the property on the public road. And we decided to  
15 change that to landscaping, just for aesthetic purposes, and  
16 you know, input from other people.

17 HOWARD ALDERMAN: Well now Mr. Hikmat, I see on sheet one  
18 of three of what has been marked for identification as  
19 petitioner's 1, it says landscape offer and then there's a C  
20 after it. Does that C have any import of designation to it?

21 JACOB HIKMAT: Yes, in Howard County Landscape Manual  
22 there are designations of A,B,C, and E. The C designation is  
23 the most dense - it has the most number of trees. A is the  
24 least, and then E is not actually, it's actually just a  
25 (inaudible), which doesn't apply here. So we chose to put the

1 most dense landscaping that's recommended as a minimum.

2 BOB SHARPS: Is this also a modification based on what you  
3 have presented to the Hearing Examiner?

4 JACOB HIKMAT: Yes.

5 BOB SHARPS: Well how much increase in landscaping and/or  
6 buffering is included in this modification than was presented  
7 to the Hearing Examiner?

8 JACOB HIKMAT: Actually it's a change from forest  
9 conservation to landscaping, so it's, because if you have  
10 forest conservation, you're not allowed to do grading, you're  
11 not allowed to maintain it basically. So a landscaping, you're  
12 allowed to maintain it and cut the grass and things like that,  
13 so that's basically the change.

14 BOB SHARPS: So you've added landscaping versus the...

15 JACOB HIKMAT: Forest conservation.

16 BOB SHARPS: Forest conservation.

17 JACOB HIKMAT: And that would be in the light green area  
18 that's shown on this plan, on sheet one of three.

19 HOWARD ALDERMAN: Now was there also a clarification to  
20 the notes regarding increased setbacks beyond the minimum  
21 required?

22 JACOB HIKMAT: Yes, we had notes, 2D. Basically the note  
23 2D talks about the, in the previous exhibit I just stated, we  
24 just stated that the, all the setbacks need or exceed Howard  
25 County requirements, and in the modified note, I provided

1 actually the, I provided what is required and what we've  
2 provided. What's required is 60 feet, and we're providing 150  
3 feet of setback. And also setback from the road frontage,  
4 what's required is 60, and we're providing 100. So basically  
5 that specifies how much more than the minimum we are providing  
6 in setbacks.

7 BOB SHARPS: No variance is being requested in this  
8 petition?

9 JACOB HIKMAT: No variances are being requested  
10 whatsoever.

11 BARRY SANDERS: You said note 2D?

12 HOWARD ALDERMAN: 2D as in David.

13 BARRY SANDERS: Thank you.

14 HOWARD ALDERMAN: Now then, also for clarification there  
15 was a third sheet beyond what was considered by the Hearing  
16 Examiner, is that correct?

17 JACOB HIKMAT: That's correct.

18 HOWARD ALDERMAN: And this is sheet three of three, of  
19 what has been marked for identification as petitioner's exhibit  
20 1, is that correct?

21 JACOB HIKMAT: Yes, basically what we did..basically what...  
22 one of the issues that seem to be critical is the size of the  
23 houses, and how many bedrooms we have, and whether we have more  
24 than enough houses I guess that was one of the issues. So what  
25 we've done, we've provided 4 footprints of potential homes that

1 would meet that requirement, and their range in size is between  
2 1,800 square feet to about 55 roughly. And we provided 2 of  
3 them with the ranchers and 2 would be like two-story. When we  
4 added these, the house types, and also we've provided detailed  
5 landscaping (inaudible) for a section of the road. So you  
6 know, when you look at it you see, this is type C, what was  
7 shown on sheet three of three is type C landscaping for a  
8 section of the road just so you know, people have an idea what  
9 it is.

10 HOWARD ALDERMAN: So it's for illustrative purposes, is  
11 that correct?

12 JACOB HIKMAT: That is correct.

13 HOWARD ALDERMAN: Does it comply with the Howard County  
14 Code?

15 JACOB HIKMAT: It complies with the Howard County Code.

16 HOWARD ALDERMAN: Now, you also provided a potential  
17 street view, is that correct?

18 JACOB HIKMAT: That is correct.

19 HOWARD ALDERMAN: And describe that for the Board.

20 JACOB HIKMAT: Well, the street view, if you look at it  
21 from the road, from the inside of the property you look at it  
22 and that gives you potential house types that shows you that, I  
23 guess potential profile of the houses, the front of the houses.

24 BOB SHARPS: And is that what we're looking at is the  
25 illustration on the bottom there?

1 JACOB HIKMAT: That is correct, if you look at the road,  
2 there is two arrows with a line. It is as if you're looking at  
3 it southwards.

4 HOWARD ALDERMAN: Alright, let's do it this way Mr.  
5 Hikmat. On sheet three of three in the top left there is a  
6 square about two feet square that shows the enlargement of the  
7 enhanced information, is that correct?

8 JACOB HIKMAT: That is correct.

9 HOWARD ALDERMAN: And you indicate there are two arrows on  
10 the section of the proposed roadway shown there, is that  
11 correct?

12 JACOB HIKMAT: That is correct.

13 HOWARD ALDERMAN: And then correspond that, the road  
14 section between those two arrows with the bottom.

15 JACOB HIKMAT: That is correct.

16 HOWARD ALDERMAN: Well, the bottom detail is what you  
17 would expect to see between those two arrows?

18 JACOB HIKMAT: That is correct.

19 HOWARD ALDERMAN: And that's assuming those types of  
20 houses were built there.

21 JACOB HIKMAT: That is correct. And, you know, people  
22 will have a choice between the four or similar houses, so  
23 that's potentially what would be there.

24 BOB SHARPS: So if someone would stand on a street and  
25 look either left or right, they would see that façade?

1 JACOB HIKMAT: Yes. Actually, the inside street Mr.  
2 Sharps. I didn't do it from the road, because from the road  
3 you would see all trees. So you wouldn't really see much of  
4 the houses.

5 BOB SHARPS: From the inside, okay.

6 AL HAYES: Are you saying the customers can select which  
7 type of house they want?

8 JACOB HIKMAT: We are going to provide with four tides  
9 that are going to be similar to this. I mean, the builder  
10 eventually will decide, but this is going to be the guidelines  
11 they are going to have between the maximum and the minimum and  
12 we want to make sure they're going to have at least two a month  
13 that would be rancher.

14 HOWARD ALDERMAN: Two models are the ranchers but how many  
15 ranchers would we place in that...out of the fifty?

16 JACOB HIKMAT: We don't, we're not trying to have a  
17 restriction on the number. That would be determined by the  
18 marketer if they wanted, you know.

19 HOWARD ALDERMAN: Now, you've described some  
20 clarifications Mr. Hikmat that were made to the plan presented  
21 to the Hearing Examiner, do any of those clarifications  
22 significantly alter the density, the configuration, or location  
23 of opposed improvements or any other material modifications?

24 JACOB HIKMAT: No they do not, it's just that it's  
25 explaining or elaborating on some of the issues that we had.

1           HOWARD ALDERMAN: Now, drawing your attention—

2           JACOB HIKMAT: Ah, I'm sorry one more thing. The houses  
3 that are shown on the sheet one of three, are actually shown as  
4 the genetic plots. We picked the biggest house that would fit  
5 and we put the big box, so there just, each one of these houses  
6 will fit inside the box.

7           HOWARD ALDERMAN: Well those are merely rooflines of the  
8 maximum that you would expect, correct?

9           JACOB HIKMAT: That is correct.

10          HOWARD ALDERMAN: So if the maximum house will fit there,  
11 the smaller houses will fit as well, correct?

12          JACOB HIKMAT: That is correct.

13          AL HAYES: Just a minute, along that line are you  
14 suggesting that each of the lots, each of the houses is a, all  
15 these lots are uniform? The same size?

16          JACOB HIKMAT: Actually we're not going to have lots,  
17 we're going to have, it's a condominium regime. There would be  
18 no lots, but the distance between houses, we're going to have a  
19 minimum 20 feet. So they're not big actually lots. You own  
20 the house and the land is owned by the community.

21          HOWARD ALDERMAN: And that's a concept of the condominium  
22 regime, correct Mr. Hikmat?

23          JACOB HIKMAT: Yes.

24          HOWARD ALDERMAN: And we describe the forest conservation  
25 easement area you've described those to be heavy buffer C

1 landscape area, and you describe generally the four types of  
2 housing units that would be growing, that would be available,  
3 what about recreational amenities required by the Zoning  
4 Regulations, describe those for the Board please.

5 JACOB HIKMAT: The Zoning Regulations require to have a  
6 community center that's 20 feet per unit, which is a minimum of  
7 1,000. So we're proposing a minimum 1,000 square foot  
8 community center. It would be more but that's the minimum.  
9 We're also proposing a swimming pool there and a tennis court,  
10 plus an exercise trail that would basically loop around the  
11 projects with connections throughout the trail. That there is  
12 going to be about a mile long.

13 BOB SHARPS: The swimming pool and tennis court, is that  
14 interior or exterior?

15 JACOB HIKMAT: It's exterior.

16 BOB SHARPS: Exterior?

17 JACOB HIKMAT: Yeah. It may be interior, I doubt that,  
18 you know, it's exterior.

19 HOWARD ALDERMAN: Mr. Hikmat you've been involved with  
20 other condominium projects before, correct?

21 JACOB HIKMAT: Yes I have.

22 HOWARD ALDERMAN: So if this project is approved as a  
23 condominium, or is approved and developed in the condominium  
24 regime, it would have to be registered with and approved by the  
25 Maryland Secretary of State, correct?

1 JACOB HIKMAT: Yes. And in this case, also Howard County.

2 HOWARD ALDERMAN: And the condominium declaration will  
3 impose the required age restrictions and limit the number of  
4 bedrooms in each dwelling based on Health Department approvals,  
5 correct?

6 JACOB HIKMAT: That is correct, yeah.

7 HOWARD ALDERMAN: And have you reviewed the current Howard  
8 County requirements pertaining to age restrictions that are to  
9 be included in a condominium declaration?

10 JACOB HIKMAT: Yes I have.

11 HOWARD ALDERMAN: And, let me show to you a copy, a  
12 representative copy as well, I'm going to show you Mr. Hikmat a  
13 copy of a Howard County form of age qualified restrictions for  
14 inclusion in condominium declaration, current as of July 1<sup>st</sup>,  
15 2006, and ask if you're familiar with that--

16 BOB SHARPS: You're submitting this as exhibit two Mr.?

17 HOWARD ALDERMAN: Yes sir as soon as he's done.

18 BOB SHARPS: Alright.

19 JACOB HIKMAT: Yes, yes I am familiar with it.

20 HOWARD ALDERMAN: And this is the type of the restrictions  
21 or this is the form of the restriction that would be included  
22 in a condominium declaration to be applicable to this land and  
23 all units constructed thereon, correct?

24 JACOB HIKMAT: Yes, that is correct.

25 HOWARD ALDERMAN: I would offer, the Howard County form of

1 age qualified restrictions for employees to make condominium  
2 declaration as of July 1<sup>st</sup>, 2006 that's petitioner's two.

3 BOB SHARPS: An objection?

4 MARC JORDAN: No, I haven't had a chance to compare this  
5 with the actual regulations but assuming that that's accurate  
6 then you know, no objection to it, no.

7 BOB SHARPS: Okay, and if there is you'll have an  
8 opportunity to bring that up. Submit it.

9 HOWARD ALDERMAN: Now, who will own and have responsible  
10 for the community buildings, swimming pools, roadways, open  
11 space, landscaping, and the community water and sewer systems?

12 JACOB HIKMAT: The subject condominium association.

13 HOWARD ALDERMAN: And that's made up of the council of  
14 unit owners, which is the residents, correct?

15 JACOB HIKMAT: Correct.

16 HOWARD ALDERMAN: Now, is the subject property inside or  
17 outside of the planned service area in Howard County.

18 JACOB HIKMAT: The subject property is outside the planned  
19 service area.

20 HOWARD ALDERMAN: So it's not to be served by public water  
21 and sewer?

22 JACOB HIKMAT: No, it's going to be served by private well  
23 and septic.

24 HOWARD ALDERMAN: Alright, and how will the septic or the  
25 sewage be handled as proposed Mr. Hikmat?

1 JACOB HIKMAT: The sewage will be handled, we have a  
2 community sewage disposal area that would be to the west of the  
3 property, which is really also west of the ridge, because we  
4 have a ridge that runs approximately with a gas easement, so  
5 that's going to be to the west of that, draining towards Route  
6 32.

7 HOWARD ALDERMAN: And that is shown shaded and cross-  
8 hatched as septic easement approximately 4.5 acres on sheet one  
9 of three, or what's been marked for identification as  
10 petitioner's one.

11 JACOB HIKMAT: Yes it is. It's going to be approximately  
12 four and a half subject to Health Department's final approval.

13 HOWARD ALDERMAN: And the individual homes will then be  
14 connected to that septic reserve area, correct?

15 JACOB HIKMAT: That is correct.

16 HOWARD ALDERMAN: And it will be maintained by the  
17 homeowner's association and not by the individual owners,  
18 correct?

19 JACOB HIKMAT: That is correct.

20 HOWARD ALDERMAN: Now, regarding open space. There's a  
21 statutory requirement for open space and does, where is the  
22 open space provided and does it meet the, at least the minimum  
23 of the Howard County Zoning Regulations.

24 JACOB HIKMAT: Yes, the minimum open space required is  
25 fifty feet, I'm sorry, fifty percent, and what we've provided

1 is close to seventy, we're providing 68%. And that's basically  
2 the area that's owned by the community association outside of  
3 the home and the immediate vicinity of the houses.

4 HOWARD ALDERMAN: Now, there are additional buffer areas  
5 beyond the minimum requirements, correct?

6 JACOB HIKMAT: Yes.

7 HOWARD ALDERMAN: And who determines the type of  
8 vegetation that's going to be in those buffer areas?

9 JACOB HIKMAT: The forest conservation is predetermined by  
10 the County. Howard County has guidelines on what you can put  
11 there, and that's what's going to be the determining-

12 HOWARD ALDERMAN: That's in the landscape manual?

13 JACOB HIKMAT: That's landscape manual, and forest  
14 conservation manual.

15 HOWARD ALDERMAN: Now you talked about the, what you  
16 describe as the paved exercise trail, and that circles, or  
17 encircles for all on the interior of the subject lot, it  
18 encircles all of the homes, correct?

19 JACOB HIKMAT: That is correct.

20 HOWARD ALDERMAN: And I believe you said that it's about a  
21 mile long?

22 JACOB HIKMAT: It's about a mile long.

23 HOWARD ALDERMAN: And are there any connections to that,  
24 or does someone have to use the public road?

25 JACOB HIKMAT: No, there is no use of the public road. We

1 have different connections throughout the project to allow  
2 people to actually use the trail, the path, and also to walk to  
3 the community center, even though it is not that far but still,  
4 some people, we want people to walk and exercise.

5 HOWARD ALDERMAN: And those are labeled as pathways  
6 connected to that perimeter pathway, correct?

7 JACOB HIKMAT: Yes. Yes, thank you.

8 HOWARD ALDERMAN: Now, you talked about the homes ranging  
9 in luminary as size from what I believe you said 18, 15 or  
10 1,800 square foot-

11 JACOB HIKMAT: 1,800 to roughly 5,500.

12 HOWARD ALDERMAN: And, why the range?

13 JACOB HIKMAT: Well the range is to allow people to choose  
14 what type of home they want to be there, and ideally some  
15 communities they have minimums or they basically force people  
16 to have a larger home, so this allows people diversity in  
17 picking the size of the home they want, that's the, I mean,  
18 reason we did it. And to address other concerns that the  
19 Department of Planning and Zoning had that concern that the  
20 houses were too large.

21 HOWARD ALDERMAN: In your opinion, are you working towards  
22 providing a project that will permit persons aged 55 or greater  
23 to age in place in their own homogenous community?

24 JACOB HIKMAT: That is correct.

25 HOWARD ALDERMAN: And how about bedrooms, how many

1 bedrooms will the units have?

2 JACOB HIKMAT: Each house is going to have two to four  
3 bedrooms. We don't expect anybody to have more than four, and  
4 nobody is going to be less than two.

5 HOWARD ALDERMAN: And that would be ultimately, the total  
6 number of bedrooms be determined by the evaluation of the  
7 septic reserve, correct?

8 JACOB HIKMAT: That is correct, there would be a maximum  
9 that the Health Department would allow with...on the septic and  
10 the water.

11 HOWARD ALDERMAN: Mr. Hikmat, do you know what the height  
12 limitation for principal dwellings is in the RR zone pursuant  
13 to the Howard County Zoning Regulations?

14 JACOB HIKMAT: It's 34 feet.

15 HOWARD ALDERMAN: And what's the approximate height of the  
16 highest proposed dwelling in this community?

17 JACOB HIKMAT: We're going to be less than 30 feet high.

18 HOWARD ALDERMAN: Now, will the range of house sizes and  
19 types that you've described here permit a range of features  
20 designed to address what some people age 55 and older have, in  
21 terms of increasing physical limitations and/or health  
22 considerations?

23 JACOB HIKMAT: Yes, we have, we put some required on sheet  
24 three, we put that required options that we want, the required  
25 features that each house must have as far as having the

1 bedroom, and that's like note number two I believe.

2           HOWARD ALDERMAN: That's on the bottom right hand corner  
3 of sheet three of three of what's been marked as petitioner's,  
4 for identification, as petitioner's one, correct?

5           JACOB HIKMAT: Yes, we have required features that we want  
6 every house to have regardless, and then we have optional. And  
7 basically just want to make sure that it has large hallways,  
8 more spacious, and we would like them to be set up so if for  
9 some reason you need like a lift from one story to the other,  
10 it's wide enough for these kinds of things.

11          BOB SHARPS: You are saying it will have a lift?

12          JACOB HIKMAT: It will be, this is one of the recommended  
13 features, that it would be wide enough and have structural  
14 study, that you could actually add a lift if you want to. The  
15 idea is to, not to have all these things, but to make sure that  
16 if someone wants to add them they would be there. I mean, it  
17 would not be a major-

18          BOB SHARPS: Structural design will offer options if they  
19 want it?

20          JACOB HIKMAT: Yes. So, if you need it, you can do it, at  
21 a less cost than if you have like a design that doesn't  
22 accommodate it.

23          HOWARD ALDERMAN: Mr. Hikmat, based on your familiarity of  
24 Howard County and housing in Howard County specifically age  
25 restricted housing, are you aware of any previously approved

1 single family detached age restricted housing projects in  
2 Howard County that is limited to a single story home?

3 JACOB HIKMAT: I'm actually not aware of any project that  
4 actually have single story, single family age restricted homes,  
5 or even townhouses. I mean, you know, they all seem to be two  
6 stories.

7 HOWARD ALDERMAN: At this point in the approval process,  
8 Mr. Hikmat, are the proposed homes or the concept now that the  
9 proposed homes will be constructed and sold by a single  
10 builder?

11 JACOB HIKMAT: Yes that's the idea.

12 RENEE CHRISTINE: Excuse me I need to object to this whole  
13 testimony. This is an appeal based upon evidence that has  
14 already been submitted. Now the original homes were designed  
15 at 6,000 square feet and now we're talking 1,800 to 6,000  
16 square feet ranchers. Ranchers were not in the original  
17 proposal. Two-story homes were in the original proposal, 6,000  
18 square feet. He has now come back with an entirely different  
19 proposal than was originally submitted. If he would like to do  
20 that, then I would say that he needs to start this whole  
21 process all over again. But, we have not until this point  
22 heard about rancher style homes or 1,800 foot square homes.  
23 This is the end run around the whole process.

24 BOB SHARPS: Your name ma'am?

25 RENEE CHRISTINE: Renee Christine.

1 BOB SHARPS: You want to respond to that?

2 HOWARD ALDERMAN: I would sir, thank you. First of all,  
3 we're in a de novo proceeding here this evening, meaning that  
4 the evidence presented here is presented for the first time,  
5 under the laws of Howard County and the State of Maryland.  
6 Secondly, the testimony evidence presented to the Hearing  
7 Examiner of Howard County, I happened to represent the  
8 petitioners in that case as well, with a maximum of 6,000  
9 square foot homes, that was the maximum. Today, that has been  
10 reduced to a maximum of 5,600 square foot homes. The  
11 Department of Planning and Zoning and the technical staff  
12 report drew the assumption that based on the boxes, or the  
13 boxes that Mr. Hikmat has described, the boxes proposed nothing  
14 but 6,000 square foot homes, but as you've heard Mr. Hikmat  
15 just say here this evening, that's to show that if they work,  
16 everybody that's 55 and older wanted to move in, and all put up  
17 the 5,600 square foot home, they'd all fit. It does not  
18 prohibit, nor did we say that there was anything less than  
19 5,600, that there would be nothing less than 5,600 or 6,000  
20 square feet presented below. It was always presented as a  
21 maximum. To address the apparent misconception reached by the  
22 Hearing Examiner, we prepared sheet three of three, showing a  
23 range of homes that will be offered in this project with the  
24 maximum still not exceeding what was presented to the Hearing  
25 Examiner. So it's not a material modification - it's just that

1 we've further clarified the types of homes.

2 BOB SHARPS: Okay, I understand. Based on the objection  
3 though, the, was the single-family, was the ranch style and the  
4 minimum of 1,500 or 1,800 square feet to 6,000 square feet, was  
5 that presented to the Hearing Examiner, or was it presented-

6 RENEE CHRISTINE: No, No!

7 BOB SHARPS: Excuse me I can't have, I will have to excuse  
8 you from the room. We're going to have to follow procedure in  
9 order for this to go on the record properly. Based on the  
10 objection, was that information presented to the Hearing  
11 Examiner as well, that there will be a range between 1,800  
12 square feet and 6,000? But I know we said 55 now with the  
13 modifications, was that presented in the previous hearing?

14 HOWARD ALDERMAN: No sir, we presented everything as  
15 maximum.

16 BOB SHARPS: You presented it as a maximum so you did not  
17 disallow...

18 HOWARD ALDERMAN: That's correct.

19 BOB SHARPS: ...that there was a minimum?

20 HOWARD ALDERMAN: That is correct.

21 BOB SHARPS: Was that understood by the Hearing Examiner.  
22 Obviously not if you had to give us sheet number 3.

23 HOWARD ALDERMAN: I can't speak for the Hearing Examiner  
24 Mr. Sharps. I mean his opinion speaks for itself, and we're  
25 appealing here this evening. That's why we attempted to

1 clarify. Maybe we didn't do such a good job, but we presented  
2 it as a maximum recognizing that, in approving a project, you  
3 have to know the maximum amount of building, the maximum amount  
4 of disturbance that a project will encompass. Therefore, we  
5 showed it as it's shown on sheet one of three. They are still  
6 shown in the maximum sizes.

7 BOB SHARPS: And that was shown, and that sheet was not  
8 with the modifications that you presented to the Board this  
9 afternoon or this evening. That was shown and presented to the  
10 Hearing Examiner as well? As part of the...

11 HOWARD ALDERMAN: And submitted as evidence, yes sir.

12 BOB SHARPS: Okay. There is a question that I do have at  
13 this time that does present a, a need for the Board to  
14 determine whether or not that with your modifications as you  
15 call them, does that constitute an amendment to your plan that  
16 you're presenting to us that say its substantive or not, and we  
17 need to take that into matter. You mentioned four things as I  
18 wrote them down at the very beginning. You moved lot 22 I  
19 believe, slightly moved lot 22, and you widened the buffer-

20 HOWARD ALDERMAN: Well the buffer, the buffer next to....  
21 lot 22 is actually in the Twelve Hills subdivision. We moved,  
22 we widened this buffer, which is consistent with the other  
23 portions.

24 BOB SHARPS: Okay, that you widened the buffer that's one.  
25 Landscape was added versus the using the forest conservation,

1 that's number two.

2 HOWARD ALDERMAN: On a public road, yes sir.

3 BOB SHARPS: I understand, and then you, the setbacks  
4 obviously you mentioned that it exceeds the requirements which  
5 is not a modification. There was another third one-

6 HOWARD ALDERMAN: We had sheet three.

7 BOB SHARPS: And sheet number three which is to  
8 clarification of the facade and how the houses will appear from  
9 interior of the road.

10 HOWARD ALDERMAN: That is correct. The sheet one of  
11 three, of them would be note 2D and the change of the forest  
12 conservation easement area and slight (inaudible) of the houses  
13 near there, that's the plan that was presented to the Hearing  
14 Examiner. That's the plan.

15 BOB SHARPS: Without the modifications that you just-

16 HOWARD ALDERMAN: Without the modifications.

17 BOB SHARPS: Okay, fine. Let's stop right there. With  
18 those modifications, do you have a question sir?

19 UNKNOWN MALE: I just wanted to mention, it goes along  
20 with this point, it seems to me that the page three of three,  
21 especially considering how much talk in testimony there is  
22 about it, qualifies as documentary evidence, and it seems that  
23 that should have been pre-submitted. I know I checked the file  
24 for this hearing just to see whether there had been any new  
25 submissions and they're weren't, so-

1 BOB SHARPS: Okay. Okay, the Board will take this into  
2 consideration. Mr. Jordan you had a question also?

3 MARC JORDAN: Well Mr. Chairman, my intention was, I  
4 believe this is a material change, but my intention was to ask  
5 for an adjournment after Mr. Hikmat presented his testimony  
6 today because I think, you know, I think we'd all like an  
7 opportunity to study what he's proposed here and maybe even  
8 compare it even further with the testimony at the Hearing  
9 Examiner. There's a lot of people here that have expertise in  
10 some of these areas that didn't show up tonight based on their  
11 expectation that there wouldn't be major changes. So-

12 BOB SHARPS: Well before we discuss whether they're major  
13 changes or not, let me go ahead and introduce to the Board on  
14 whether or not they will consider these modifications major and  
15 substantive to the plan as an amendment, and at that time there  
16 is a procedure that the Board would have to make at that-

17 MARC JORDAN: Well my point is there may be more things  
18 that we might bring up if we had a chance to study this.

19 BOB SHARPS: I understand, let me take this into  
20 consideration and I will entertain your motion if that's what  
21 you want to.

22 MARC JORDAN: Alright, Motion to Adjourn, yeah.

23 AL HAYES: Mr. Chairman?

24 BOB SHARPS: Yes?

25 AL HAYES: Before you go to that step, perhaps it'd be

1 better if Mr. Hikmat or Mr. Alderman would enumerate  
2 specifically and clearly the changes that were made. I've  
3 written some down, but I am not sure that I have touched base.

4 HOWARD ALDERMAN: May I proffer that?

5 BOB SHARPS: Absolutely, please do.

6 HOWARD ALDERMAN: Thank you.

7 BOB SHARPS: Again, would you give it to us in number  
8 format so that we have them so that when we take, tell us which  
9 it is.

10 HOWARD ALDERMAN: Yes sir, I'll be happy to do that. Yes  
11 sir, and if I get out a number hopefully somebody will correct  
12 me.

13 BOB SHARPS: It doesn't matter, all I want to know is you  
14 identify them individual. I didn't mean number individually  
15 identify it.

16 HOWARD ALDERMAN: Number one, on what has been marked as  
17 sheet one of three, I'll take the easy one first. Note 2D was  
18 modified to show what the minimum setback required by the  
19 Howard County Zoning Regulations is, and what the minimum  
20 setback to be provided is. As testified to by Mr. Hikmat, a  
21 setback from residential lots is 60, provide 150, these are all  
22 sight lines. And setback from public road is 60 provided is  
23 100. That is modification number one.

24 BARRY SANDERS: Mr. Alderman, the modifications you're  
25 just delineating the figures, correct?

1           HOWARD ALDERMAN: Excuse me?

2           BOB SHARPS: He's just delineating-

3           BARRY SANDERS: You're just showing the figures that's  
4 all?

5           BOB SHARPS: ...the figures. All we want to know is what  
6 the modification is. The modification is the setbacks, that's  
7 one.

8           BARRY SANDERS: Are shown?

9           BOB SHARPS: Are shown, that's one. Let's go to the next  
10 one.

11          HOWARD ALDERMAN: That's number one. Number two, with  
12 respect to the lot 22 which is an adjoining lot on the eastern  
13 side of the property currently owned by Shee, and I'm going to...  
14 Ms. Jianfei and Weiss. The area of forest conservation on the  
15 subject property which is west of the common property line, at  
16 the request of those owners, was widened to be consistent with  
17 the width of the forest conservation area along the western  
18 border. As a result of that, a couple of the units proposed on  
19 the easternmost spur road into the interior development, was  
20 shifted further to the west. So the widening of the buffer  
21 pushed the homes further to the west.

22          BOB SHARPS: Okay, so there was a widening of the buffer  
23 for lot 22. Go ahead.

24          HOWARD ALDERMAN: Okay, number three. The areas of forest  
25 conservation easement as presented to the Hearing Examiner

1 included areas that came down along the eastern border, came  
2 around the southern border along Linden Church Road and came  
3 back up in a northwest or a northern direction parallel to  
4 Greenberry. As Mr. Hikmat's (inaudible). Those areas have  
5 been changed now to be landscape buffer type C, under the  
6 Howard County requirements, which is a heavy landscape buffer,  
7 as defined. That's the three changes.

8 AL HAYES: What were they designated before?

9 HOWARD ALDERMAN: Forest conservation area just like this  
10 sir. Forest conservation is allowed to grow in its natural  
11 state. This is to be a maintained landscape planned buffer.

12 BOB SHARPS: That's three?

13 HOWARD ALDERMAN: That's three, yes sir. Four is sheet  
14 three of three. This sheet was not, this sheet was not  
15 presented to the Hearing Examiner, and there are a number of  
16 things shown on this sheet. First, I'll do the easements  
17 first, is the enlargement of a portion of the proposed  
18 development area to show for that area that used to be forest  
19 conservation easement is now proposed for landscape buffer type  
20 C, there's a schematic landscape plan showing the type of  
21 landscaping that would be required to meet a type C buffer.

22 BOB SHARPS: So let me be clear. So what you're saying  
23 is, with three, you exchanged the forest conservation for  
24 landscaping, and then this three, I'm talking about your third  
25 modification, and with this modification four you added sheet

1 three of three to show the expansion or an enlargement of that  
2 area that you have exchanged forest conservation to that  
3 landscaping?

4 HOWARD ALDERMAN: Yes sir, going back to point three,  
5 which is the landscape area, landscape buffer, you will notice  
6 that there are no typical plants, planting shown.

7 BOB SHARPS: And you're showing that on this?

8 HOWARD ALDERMAN: This is the illustrative for purposes of  
9 the Board to show the type of typical plants that would occur  
10 within that landscape buffer area. The, Mr. Hikmat also  
11 testified that referring again to the top left hand corner,  
12 with the proposed road section as shown with boxes of the  
13 maximum sized homes that would be allowed, down the center line  
14 of that road section, is a dark line and two arrows. The road  
15 section between those two arrows and a detail of what one might  
16 see if one were walking down that road is provided as the  
17 potential view on the bottom of sheet three of three. This is  
18 nothing more than to add some type of visual cue with respect  
19 to what the Board, or any member of the public might see if  
20 this project were proposed, and these types of houses were  
21 selected along that road section. So it is a, it's an  
22 illustrative concept of what could occur between the two points  
23 with the four types, or among the four types of housing. We  
24 don't know, as Mr. Hikmat testified, what type of unit the  
25 purchaser of that particular unit would want, but if they did,

1 this is what if they, take for instance a single story unit,  
2 that's what it would schematically look like. Further, on  
3 sheet three, the, as I believe it was petitioner's exhibit  
4 number three before the Hearing Examiner, we added, or we, you  
5 know, we added additional options that would be available to  
6 purchasers of age restricted homes. That was presented to the  
7 Hearing Examiner, Mr. Carbo, as a separate sheet, and I was  
8 about to present it, another copy of it here this evening, but  
9 for purposes of memorialization, we took that sheet and  
10 included it in the bottom right hand corner of sheet three of  
11 three. If we went forward with our case tonight, you'll get a  
12 separate sheet, a separate exhibit, with that same information  
13 on it. These are the options that would be available. Under  
14 note 17, on sheet one of one, these are the minimum age  
15 restricted amenities that will be added, or will be included,  
16 on sheet three of three, we have reprinted exhibit three from  
17 below showing the optional, the options that could also be  
18 added to any unit. So that was already in evidence in a, as a  
19 separate exhibit, already done and reprinted here on sheet  
20 three of three. And then finally, to add additional  
21 clarification that we presented last time before the Hearing  
22 Examiner, that the units would be a maximum of 6,000 square  
23 feet. If you had an opportunity to read Mr. Carbo's opinion,  
24 he got stuck on that 6,000 and interpreted it, I'm sorry I'm  
25 not going to speak for him, it speaks for itself, but

1 interpreted it as if they were already 6,000, and we in turn  
2 added, for purposes of clarification, the four types of housing  
3 units that are being proposed for approval on this project,  
4 which is model A, at 5,480, roughly 5,500; model B, 3,300;  
5 model C, at 1,800; and model D, at 2,600. So you have the  
6 three modifications to sheet one of three, and then you have as  
7 the fourth enumerated item, Mr. Sharps, we have sheet three of  
8 three with a portion of it in evidence before.

9 BOB SHARPS: With the illustrative model as ...

10 HOWARD ALDERMAN: With other illustrations yes sir.

11 BOB SHARPS: Okay, are you clear on that Mr. Hayes, that  
12 we can go forward? With that, let me, Mr. Sanders I need you  
13 at this point to poll the Board to see whether these  
14 modifications has been, depicted by both the counsel and the  
15 witness is considered substantive in nature and doesn't need  
16 to, or we consider it not substantive.

17 BARRY SANDERS: Yes sir. Do you want to vote to discuss  
18 it, or just?

19 BOB SHARPS: Yeah, poll the Board to discuss if they want  
20 to discuss it.

21 BARRY SANDERS: Are you ready to discuss this issue about  
22 the amendments to the petition and their nature, Mr.  
23 Pfefferkorn? This just for discussion?

24 JAMES PFEFFERKORNE: Yes.

25 BARRY SANDERS: Mr. Patterson?

1 PAT PATTERSON: Yes.

2 BARRY SANDERS: Mr. Hayes?

3 AL HAYES: I think it's appropriate.

4 BARRY SANDERS: Mr. Simpkins?

5 MAURICE SIMPKINS: Yes.

6 BARRY SANDERS: And Chairman Sharps?

7 BOB SHARPS: Yes, for discussion gentlemen?

8 JAMES PFEFFERKORN: Yeah well it says it's a de novo  
9 hearing.

10 BOB SHARPS: Yes, and de novo means that we, but the de  
11 novo does not mean that they can come in with amendments that  
12 are substantive to the case that was presented. It means de  
13 novo means that they will present the entire case before us.  
14 It can't be a new case, it has to be a case that was in its  
15 totality, or in the substantive, and that it was presented to  
16 the Hearing Examiner or prior to coming to the Board of Appeal.

17 PAT PATTERSON: Well I guess the thing I have, 6,000  
18 square feet is all I read in the original.

19 BOB SHARPS: And two stories.

20 PAT PATTERSON: And two-stories, that's all I read but,  
21 two things, or one thing I guess. There's nothing in the Regs.  
22 that I see that they can't have something this big. And if  
23 they want to make it smaller, I'm not sure I consider that a  
24 substantive change. Now whether they mentioned that in the  
25 first one or whether that's the right nomenclature, I think

1 they should have maybe made it a little clearer, would have  
2 been maybe the best was to go, but, that being said..

3 BOB SHARPS: Well I agree with you, clarity with the  
4 Hearing Examiner hearing would have probably been a lot, we  
5 wouldn't be going through this right now.

6 AL HAYES: You know, it appears to me that, well Mr.  
7 Carbo, in reading his Decision and Order, that was the major  
8 point because he, he's thinking in terms of the size of these  
9 properties and he says specifically 6,000 square feet, I see no  
10 mention of any variation on that or any range, and he speaks  
11 specifically with regard to those properties as affecting the  
12 issues of harmony in the community, and intensity of use. So  
13 that's significant. I'm sure if you had discussed early with  
14 him, or argued that there was a diversity in terms of  
15 architecture, and that given some suggestion or indication as  
16 to which, the allotment for the various sizes, I think that  
17 would have, I think you may have gotten a different decision  
18 from him. So to me, that appears that, he didn't have a chance  
19 to assimilate this and make a decision based on how it impacts  
20 the other criteria for this Conditional Use.

21 MAURICE SIMPKINS: To me, it is different. The  
22 circumstances appear differently than I had perceived them to  
23 be before this.

24 BOB SHARPS: Well you know I agree in some parts, and  
25 disagree in others, but in the parts that I do agree, as I read

1 through the technical staff report, I assumed that each one of  
2 these houses is going to be two-stories, maximum 6,000 square  
3 feet, and I think, based on what was probably going to be asked  
4 as a motion for, for adjournment so that the rest of the  
5 audience can now assimilate what it is they're here for versus  
6 what they were before, I think, I'm not sure it's a substantive  
7 change as more as it is a modification, or an unclarity, not  
8 because, it doesn't say you can't have 6,000, it doesn't say  
9 you have to have 1,500, but the clarity was certainly not  
10 there. Because I wasn't clear until I've heard most of the  
11 testimony from Mr. Hikmat, and the description, and we have two  
12 other pages in order to do that, so for someone to have to come  
13 in to give us two additional sheets to clarify what you were  
14 discussing, wow, maybe this would have been a whole new case  
15 had this been done at the Hearing Examiner's level. As far as  
16 substantive, you know substantive means that it needs to go  
17 back to the Planning Board...right. I don't think it's that  
18 substantive in nature to do that as much as I feel that there's  
19 some clarity that probably needs to be digested by the folks  
20 who are here in opposition because they're hearing a different  
21 case too. I would think that the substantiveness is not there  
22 but there is some modification clarity that was not available  
23 to the previous examiner than it is to us.

24 JAMES PFEFFERKORN: But do you have any guarantee that  
25 they won't sell all of it?

1           BOB SHARPS: No you don't, and then even if you do I mean,  
2 I mean we're not here to guarantee anything. We're here to  
3 make sure that they fall within, that the compliance is met.  
4 We get no guarantees. Our guarantees are only submitted if  
5 there is a granting of a petition that puts it in the  
6 conditions that we set forth. Those, if you want to consider  
7 guarantees are guarantees, but other than that, if they fall  
8 within the compliance of their own irregularities, we're not  
9 here to determine whether they use all or none or some of what  
10 is available to them.

11           JAMES PFEFFERKORN: That is correct.

12           AL HAYES: But I think its substantive because, and again  
13 I'm reading from the Hearing Examiners page 8, he says 'because  
14 the genus are more akin to a large family home, it impacts it  
15 with regard to noise, traffic, odors, these are significant  
16 things and these are critical to, to the review of this, of a  
17 Conditional Use, particularly under the circumstances here. We  
18 have all adjacent areas there that are three acre lots. This  
19 is going to be a rather dense and intense development here and  
20 I don't want to get into this, but then there's the lot 2 above  
21 which is not spoken for at the given moment.

22           BOB SHARPS: Yeah but that's not, I don't think we can use  
23 that as part of our-

24           AL HAYES: I know, it's just not relevant, and I'm not  
25 going to argue that, as simply that, I think it's significant,

1 because I wouldn't have been, if I would have to hear this  
2 earlier, I would have objected and denied this development on  
3 the basis of what I can see that, what I believe or presume  
4 that the Hearing Examiner interpreted from what he heard, and  
5 that's a refutable presumption but I think it's safe to.

6 BOB SHARPS: Yeah, the other thing too, is by declaring it  
7 substantive changes that means we need to send this back to  
8 the, not the Hearing Examiner, but it goes back to the Howard  
9 County Department of Planning and Zoning. DPZ at that time  
10 will do what with it that's different than what they've already  
11 done. I'm not sure I'm following the need for remand, because  
12 that's, if we just decide it's substantive change, if there's a  
13 vote that say that it is substantive change, it needs to be  
14 remanded back to the DPZ, not to the Hearing Examiner.

15 MAURICE SIMPKINS: DPZ has the technical staff report. I  
16 want to say... I want to preview this when they wrote what they  
17 did in the technical report.

18 JIM PFEFFERKORN: Well, page 5B, they evaluated it, and  
19 they talk about floor plans should be submitted.

20 BOB SHARPS: As a matter of fact, in their graphs, the  
21 five recommendations that they had, they had five conditional,  
22 conditions or recommendations based on their granting it in  
23 opposition to...

24 MAURICE SIMPKINS: My question was did they have...

25 BOB SHARPS: The information that we're getting.

1 MAURICE SIMPKINS: Yeah that we're getting.

2 BOB SHARPS: Obviously not because this was presented  
3 based on...after the Hearing Examiner (inaudible).

4 PAT PATTERSON: But I think, you know, we haven't even  
5 gotten to that part where, I mean we may get to that part and  
6 say well, they don't have enough information here, but I think  
7 at this point just send it back to DPZ. I can't see any  
8 validity to that. I have no problem letting the protestants...

9 BOB SHARPS: Absorb it.

10 PAT PATTERSON: Absorb it and get time and to meet again,  
11 but to send it back to DPZ...

12 BOB SHARPS: Well, you're on my sheet of paper, yeah.

13 PAT PATTERSON: For substantive changes, I don't see that.

14 BOB SHARPS: But I've got to go with the majority of the  
15 Board.

16 PAT PATTERSON: Right, I'm just putting out my two cents.

17 BARRY SANDERS: One thing I got to remind you, this is  
18 completely de novo. What happened at the Hearing Examiner is  
19 really...

20 JIM PFEFFERKORN: Yeah irrelevant.

21 BARRY SANDERS: ...irrelevant at this stage of the hearing.

22 BOB SHARPS: Yeah, but not what happened, not what the  
23 Planning Board got, that's not irrelevant.

24 BARRY SANDERS: No, the staff report does...well I'm looking  
25 at the staff report. It does mention on page six that, the

1 first paragraph, there's two full stories as depicted, in this  
2 schematic footprint and elevation plan. These units might  
3 contain 6,000 square feet of floor area. So, I think you got  
4 to get back to focus whether or not, I'll call them four  
5 changes: clarification, modifications, amendments, does the  
6 Board feel they are substantive in nature or not. That's what  
7 you've got to focus on.

8 BOB SHARPS: Okay, and that's exactly what I...I would like  
9 to get out of this discussion. Any more comments on that  
10 though before I ask for a vote? Mr. Hayes?

11 AL HAYES: No I have none.

12 BOB SHARPS: Mr. Sanders, would you poll the Board for a  
13 vote on whether or not they feel that the changes or the  
14 modifications that have been described are either substantive  
15 or non-substantive or should be remanded back?

16 BARRY SANDERS: Yes, do you find these amendments have  
17 been, or are substantive in nature or not, Mr. Pfefferkorn?

18 JAMES PFEFFERKORN: Are not.

19 BARRY SANDERS: Mr. Patterson?

20 PAT PATTERSON: Not.

21 BARRY SANDERS: Mr. Hayes?

22 AL HAYES: The ones enumerated were not. I asked if maybe  
23 one, there is some doubt in my mind, but because of the  
24 majority of them are not substantive, I'll say they're not.

25 BARRY SANDERS: Mr. Simpkins?

1 MAURICE SIMPKINS: Not.

2 BARRY SANDERS: And Chairman Sharps.

3 BOB SHARPS: Not substantive. Okay with that the decision  
4 is that the modifications that's been explained are not  
5 substantive, does not need to be remanded back. Now at this  
6 time, did you have the motion that you wanted to...

7 MARC JORDAN: Mr. Chairman, I'd actually like to make a  
8 motion that at the conclusion on Mr. Hikmat's testimony so that  
9 we know everything that he is going to present and then we have  
10 a chance to just to...in accordance with the Board's schedule.  
11 But, I think it would be appropriate to adjourn, to make a  
12 motion after the conclusion of his testimony.

13 BOB SHARPS: You don't feel you'd be able to appropriately  
14 ask any questions based on his testimony...

15 MARC JORDAN: I don't know what he's going to...

16 BOB SHARPS: ...without adjourning and absorbing the new  
17 information that was enumerated to us?

18 MARC JORDAN: No, and again you know, there's a lot of,  
19 I'm not representative to (inaudible), I mean I'm just a  
20 landowner out there and the people, a lot of people might want  
21 to have their...

22 BOB SHARPS: I appreciate that. Can I get a show of hands  
23 of opposition to feel the same way as your counsel, not counsel  
24 but as your spokesperson? Yeah, I don't need to count that.  
25 Alright, with that, why don't we allow full testimony of Mr.

1 Hikmat, and then I will entertain adjourning for the opposition  
2 to, is there anything else you want to present that's going to  
3 be new for any other witnesses, Mr. Alderman, that can preclude  
4 this from happening if and when we reconvene?

5 HOWARD ALDERMAN: There are some, there's some testimony  
6 about how the line, we'll move on sheet one of one. This was  
7 on the Hearing Examiner's...

8 BOB SHARPS: I'm talking about something that's different.

9 HOWARD ALDERMAN: No, no, but if I might, the dashed line  
10 is the 65 db line, for road noise. I was going to ask Mr.  
11 Hikmat how that line was developed.

12 BOB SHARPS: That was already asked.

13 HOWARD ALDERMAN: Right, that was asked, but, we're just  
14 merely, what figures did you use, that's all?

15 BOB SHARPS: Well that can be...

16 BARRY SANDERS: No, that's not an amendment.

17 JAMES PFEFFERKORN: Can I make a suggestion>

18 BOB SHARPS: Yes, Mr. Pfefferkorn:

19 JAMES PFEFFERKORN: I don't think we're going to conclude  
20 this case tonight.

21 BOB SHARPS: I know, but I don't want to get into three  
22 witnesses and then you know...

23 JAMES PFEFFERKORN: I think the opposition will have ample  
24 time to study everything, because I don't think the opposition  
25 is going to have an opportunity due to time constraints.

1 BOB SHARPS: Oh, yeah I agree with you.

2 JAMES PFEFFERKORN: They will have plenty of time to study  
3 all of these papers and come back with lots of questions at the  
4 next hearing.

5 BOB SHARPS: After we've finished with Mr. Hikmat you're  
6 talking about?

7 JAMES PFEFFERKORN: For this total.

8 BOB SHARPS: Well, remember once we let Mr. Hikmat go, I  
9 mean if they have no questions they can recall I mean, but I'll  
10 give them an opportunity for recall but the procedure is that  
11 they would, before the next witness, before he's excused he may  
12 not be here the next time.

13 BARRY SANDERS: Is Mr. Hikmat, he's the one who's  
14 testifying as to the amendments, correct?

15 BOB SHARPS: Is this a major testimony based on the  
16 modifications?

17 HOWARD ALDERMAN: I will proffer to the Board that my  
18 examination of Mr. Hikmat will not be different other than that  
19 line as to what was presented to the Hearing Examiner. We have  
20 gotten in all of the additional or modified testimony.

21 BOB SHARPS: Okay, well with that and, how much more  
22 testimony do you have?

23 HOWARD ALDERMAN: Probably another half an hour.

24 BOB SHARPS: Another half an hour?

25 HOWARD ALDERMAN: Yes sir.

1           BOB SHARPS: Well I'd rather get all of that in if you  
2 don't mind Mr. Pfefferkorn, and then I don't mind at that point  
3 adjourning. And then give... because if he's got that much more  
4 testimony, they've got about an hour and a half worth of  
5 digesting to get before they can, he will have to be recalled  
6 as your first witness when we reconvene, so that opposition  
7 would have opportunity for their questions.

8           BARRY SANDERS: Cross

9           JAMES PFEFFERKORN: Couldn't you cross Mr. Hikmat?

10          BOB SHARPS: To cross. Okay, proceed.

11          HOWARD ALDERMAN: Mr. Hikmat, what's the minimum setback  
12 of single family detached dwellings from side of space to side  
13 face and what's being provided?

14          JACOB HIKMAT: It's 15 feet is what's required, and we're  
15 providing a minimum of 20.

16          HOWARD ALDERMAN: And you talked about the minimum  
17 setbacks of single family detached dwellings from rear to rear,  
18 and that is sixty feet correct?

19          JACOB HIKMAT: Yes, that is correct, what is required is  
20 60, but we're providing 150.

21          HOWARD ALDERMAN: And you testified about the public road,  
22 what is the minimum distance shown on the plan between existing  
23 off-site homes, and the closest proposed dwelling on the  
24 subject property?

25          JACOB HIKMAT: We have different minimum distances but if

1 you look at parts in 162 which is the lower, it's in the middle  
2 of the property of the east side, which is the Hill Property.  
3 The closest house to that existing house is 250 feet, and then  
4 you go up to lot 23, the closest house to the, the existing  
5 house is 350, and goes up all the way to existing lot 20, which  
6 is the Marc Jordan property. The closest house to that house  
7 is 580 feet. So we have significant distances from the  
8 existing houses on Twelve Hill Subdivision.

9 HOWARD ALDERMAN: Mr. Hikmat, does the proposed plan of  
10 development here this evening meet the text... the current zoning  
11 requirements of the Howard County Zoning Regulations for the  
12 Conditional Use of age-restricted houses?

13 JACOB HIKMAT: Yes it does.

14 HOWARD ALDERMAN: Each of the homes will have how many  
15 cars associated with it, or a maximum of how many cars. How  
16 many parking spaces will it be?

17 JACOB HIKMAT: Each home is going to have a minimum of a  
18 two car garage so you have the two cars in the garage and then  
19 the two cars in the driveway, so they'd have four parking  
20 spaces.

21 BOB SHARPS: Is that regardless of whether they ask for  
22 the model A, or whatever one that was associated with 1,800  
23 square feet in size?

24 JACOB HIKMAT: Each house would, yeah; it's a requirement  
25 that each house should have a two-car garage at least.

1 BOB SHARPS: And two parking spaces?

2 JACOB HIKMAT: Well the driveway itself becomes a parking  
3 space because the garage has to be 20 feet in.

4 HOWARD ALDERMAN: And is there any additional parking  
5 provided near the community building, or swimming pool?

6 JACOB HIKMAT: Yes, the community building we've provided  
7 I believe 23 parking spaces.

8 HOWARD ALDERMAN: With regard to Route 32, you use State  
9 projections to evaluate the potential road noise from Maryland  
10 Route 32, is that correct?

11 JACOB HIKMAT: Yes, we retained the Mars Group which is a  
12 traffic...I know it's a traffic engineering company and they did  
13 actually, they did determine that line.

14 HOWARD ALDERMAN: And what year did you use? What year?

15 JACOB HIKMAT: It was based on the year 2020.

16 HOWARD ALDERMAN: 2020?

17 JACOB HIKMAT: 2020 yeah.

18 HOWARD ALDERMAN: And that 65 decibel line based on the  
19 2020 figures is reflected accurately on sheet one of three, is  
20 that correct?

21 JACOB HIKMAT: That is correct.

22 HOWARD ALDERMAN: And has that line changed since the plan  
23 presented to the Hearing Examiner?

24 JACOB HIKMAT: It has not.

25 HOWARD ALDERMAN: Does the proposed access to the

1 community accommodate the State's probable future realignment  
2 of Maryland Route 32?

3 JACOB HIKMAT: Yes, the way we've located the access point  
4 is actually active in the current Greenberry Lane, and then  
5 based on a preliminary sketch I got from State Highway, if they  
6 decide to relocate Greenberry Lane, it would also accommodate  
7 that. So, it will accommodate current...

8 BOB SHARPS: Run that back...State Highway...

9 JACOB HIKMAT: The State Highway has plans to modify this  
10 intersection of Linden Church Road and Route 32. And the  
11 current existing Greenberry Lane is closer to Route 32. And in  
12 their plan for the interchange, they may push it east.

13 HOWARD ALDERMAN: Push what east?

14 JACOB HIKMAT: Push Greenberry Lane east.

15 HOWARD ALDERMAN: Is Greenberry Lane Route 32?

16 JACOB HIKMAT: No no, Route 32 is on Greenberry Lane, then  
17 the property.

18 HOWARD ALDERMAN: They are parallel is that correct?

19 JACOB HIKMAT: They are parallel. And State Highway has  
20 conceptual plans for the intersection that includes relocating  
21 Greenberry Lane east.

22 HOWARD ALDERMAN: Further to the east?

23 JACOB HIKMAT: Further to the east, and the way we  
24 relocated our access to the project, it will accommodate that  
25 relocation in case it happens.

1 ALBERT HAYES: Not just the relocation, does the State  
2 have plans to widen Route 32?

3 JACOB HIKMAT: They have plans for an interchange there.  
4 I think they want to widen it, but they already took the right-  
5 of-way, so they already took whatever right-of-way they needed  
6 from this property. So this design will not encroach on any  
7 need for their right-of-way.

8 BOB SHARPS: Would that conceptual plan that the State  
9 Highway Administration has, will that also change the ingress  
10 and egress to the proposed property as you testified to  
11 earlier?

12 JACOB HIKMAT: It will. I'm going to point at it. I  
13 guarantee it comes to the existing Greenberry Lane. The  
14 proposed Greenberry Lane is going to be about 100 feet east of  
15 that, and they're going to be parallel, so there would be minor  
16 adjustments to (inaudible) but it's the exact location.

17 BOB SHARPS: So the physical location won't change, the  
18 adjustment on whether or not they push it further east to..

19 JACOB HIKMAT: That's correct, I accommodate, we  
20 accommodated for that in case it happens.

21 HOWARD ALDERMAN: So are you saying that with respect to  
22 the grade entranceway, leading from Greenberry to the interior  
23 site, is it of a certain length now running west to east, it  
24 may be shorter if the State relocates Greenberry Road closer to  
25 the east, further to the east, correct?

1 JACOB HIKMAT: That is correct.

2 HOWARD ALDERMAN: Don't go anywhere. Storm water  
3 management. You said there's only one storm water management  
4 system proposed?

5 JACOB HIKMAT: There's one storm water management pond  
6 located on the west side of the property.

7 HOWARD ALDERMAN: And in final design before construction  
8 that, the whole storm water management system is going to have  
9 to meet applicable State and County requirements in both  
10 quality and quantity?

11 JACOB HIKMAT: That is correct.

12 HOWARD ALDERMAN: And how would you characterize, that's  
13 enough Mr. Hikmat, you can go back to your podium there. How  
14 would you characterize this proposed development?

15 JACOB HIKMAT: Well, it's a low intensity age-restricted  
16 development that it's basically in harmony with the General  
17 Plan and the neighborhood.

18 HOWARD ALDERMAN: Before I forget, Mr. Hikmat, in your  
19 professional opinion, do sheets one of three, two of three,  
20 three of three, which have been previously marked for  
21 identification, does the information reflected on each of those  
22 sheets reflect fairly and accurately the requirements of the  
23 Howard County Zoning Regulations, existing improvements,  
24 proposed improvements, existing property ownership, under the  
25 State Department of Assessment of Taxation public records, and

1 all of the features proposed for the Conditional Use request?

2 JACOB HIKMAT: Yes they do.

3 HOWARD ALDERMAN: I would offer sheet one of three, two of  
4 three, and three of three as petitioner's exhibit number one.

5 BOB SHARPS: Without objection, without objection.

6 MARC JORDAN: No objections.

7 HOWARD ALDERMAN: Thank you. A housekeeping item I didn't  
8 want to forget. Mr. Hikmat, going back to the General Plan,  
9 how is the subject property shown on the adopted land use  
10 policies map of the General Plan.

11 JACOB HIKMAT: The subject property is shown at RR, which  
12 is Rural Residential with Density Exchange Option.

13 HOWARD ALDERMAN: And is the proposed development in  
14 relative harmony with that designation?

15 JACOB HIKMAT: Yes it is.

16 HOWARD ALDERMAN: And does the proposed use address  
17 housing for an aging population which is a stated policy of the  
18 General Plan?

19 JACOB HIKMAT: Yes it does.

20 HOWARD ALDERMAN: And does the proposed development  
21 accommodate the active senior population rather than forcing  
22 them as the General Plan states into congregate, independent,  
23 or assisted living facilities?

24 JACOB HIKMAT: Yes it does.

25 HOWARD ALDERMAN: In your opinion, will the proposed

1 Conditional Use as presented here this evening be within the  
2 spirit intent and in harmony with the policies of the General  
3 Plan for the RR-DEO district?

4 JACOB HIKMAT: Yes, yes it is.

5 HOWARD ALDERMAN: Does the subject property meet the  
6 minimum size requirement of the Zoning Regulations for the  
7 proposed use?

8 JACOB HIKMAT: Yes it does.

9 HOWARD ALDERMAN: In your opinion, will the proposed  
10 Conditional Use as presented here this evening and depicted on  
11 what's now been accepted into evidence as petitioner's exhibit  
12 one, including the community features, hinder or discourage  
13 future development of adjoining lands to a greater extent than  
14 if the use were located elsewhere on, in the RR zone along 32?

15 JACOB HIKMAT: No it will not.

16 HOWARD ALDERMAN: In your opinion, will there be any  
17 adverse effects on vicinal properties beyond those ordinarily  
18 associated with age-restricted single family detached homes  
19 because of noise, dust or fumes?

20 JACOB HIKMAT: No they will not.

21 HOWARD ALDERMAN: Are there any extraordinary odors or  
22 vibrations anticipated because of this project in this location  
23 with this layout?

24 JACOB HIKMAT: No there will not be such for single family  
25 homes.

1           HOWARD ALDERMAN: Are there any physical conditions of  
2 this property that make it less desirable for use, the uses  
3 proposed?

4           JACOB HIKMAT: No there are not.

5           HOWARD ALDERMAN: Is there any extraordinary lighting that  
6 would have an impact here than if located elsewhere in the RR  
7 district along Route 32?

8           JACOB HIKMAT: No, it will not, again it's a single family  
9 development.

10          HOWARD ALDERMAN: In your opinion as a professional  
11 engineer, is there safe access and adequate sight distance to  
12 provide appropriate ingress and egress to the subject property?

13          JACOB HIKMAT: Yes there is.

14          HOWARD ALDERMAN: Will the proposed Conditional Use, if  
15 approved, result in an intensity of development that is  
16 contrary to the General Plan?

17          JACOB HIKMAT: No it will not.

18          HOWARD ALDERMAN: Will it fail to protect or otherwise  
19 damage any sensitive environmental area?

20          JACOB HIKMAT: No actually, the location of this portion  
21 of the property was picked because it has no environmental  
22 features, you know, it basically does not have any sensitive  
23 areas.

24          HOWARD ALDERMAN: And all the sensitive areas have been  
25 included in the forest conservation easement areas, more or

1 less, correct?

2 JACOB HIKMAT: The forest conservation area itself becomes  
3 sensitive.

4 HOWARD ALDERMAN: Is there a change in zoning proposed  
5 here, or a change in the allowable density?

6 JACOB HIKMAT: No there is not.

7 HOWARD ALDERMAN: In your opinion is there a difference  
8 between the policies of the intent of the RR zone and the RC  
9 zone?

10 JACOB HIKMAT: Yes there is. The RR zone, which we are,  
11 Rural Residential, is really intended for...I'm just going to  
12 read from the zoning book. The Rural Residential district is  
13 established to allow low density residential development within  
14 a rural environment. So it's intended for residential use.  
15 While the RC, which is Rural Conservation, again I'm going to  
16 read from the zoning book. It says the Rural Conservation  
17 district is established to conserve farmland and to encourage  
18 agricultural activity. So, the RR was established for low  
19 intensity residential use, versus the RC, which was established  
20 for agricultural use.

21 HOWARD ALDERMAN: Mr. Hikmat, if the proposed Conditional  
22 Use is approved as requested here this evening, you've  
23 described the proposed forest conservation easement and  
24 landscape buffer and that is on the periphery of the site with  
25 all of the proposed development into the interior, correct?

1 JACOB HIKMAT: That is correct.

2 HOWARD ALDERMAN: And will the forest conservation areas  
3 be potentially used for any aforestation?

4 JACOB HIKMAT: Yes, there will be aforestation because  
5 currently most of the sites will not have any forest.

6 HOWARD ALDERMAN: Will the dwellings on the, closest to  
7 the perimeter of the Conditional Use dwellings, be comparable  
8 in scale and character with the dwellings in the vicinity as  
9 you have observed them?

10 JACOB HIKMAT: Yes they will be.

11 HOWARD ALDERMAN: Will the project be constructed in one  
12 of more phases, or one phase or multiple phases?

13 JACOB HIKMAT: The project is intended to be in one phase,  
14 unless the Adequate Public Facility Ordinance, you know, with  
15 allocations, things like that, may break it into two. However,  
16 if it's broken into more than one section, all the amenities  
17 would be provided with the first phase.

18 HOWARD ALDERMAN: All the recreational amenities?

19 JACOB HIKMAT: All the recreational amenities.

20 HOWARD ALDERMAN: And that's required by the Code,  
21 correct?

22 JACOB HIKMAT: That is required by the Code.

23 HOWARD ALDERMAN: And how will refuse be handled?

24 JACOB HIKMAT: It's going to be by private company, you  
25 know, with household containers. The private company will

1 collect the refuse.

2 HOWARD ALDERMAN: Private contractor, correct?

3 JACOB HIKMAT: Yes, private contractor.

4 BOB SHARPS: Individual homeowners will be responsible for  
5 their own refuse?

6 JACOB HIKMAT: They will just put it in the front, and the  
7 private contractors...

8 BOB SHARPS: So it won't be a refuse container...?

9 JACOB HIKMAT: There would not be container's no, it will  
10 be individual.

11 HOWARD ALDERMAN: Individual, I hate to say it, but trash  
12 cans, right?

13 JACOB HIKMAT: Yes.

14 HOWARD ALDERMAN: And the private contractor will be one  
15 of the things that the condominium association will retain,  
16 correct?

17 JACOB HIKMAT: The only difference between this and a  
18 house outside of the development is that it's going to be a  
19 private contractor, so there's no other difference.

20 HOWARD ALDERMAN: Are there any loading or storage areas  
21 proposed?

22 JACOB HIKMAT: No there is not.

23 HOWARD ALDERMAN: In your opinion Mr. Hikmat, will the  
24 proposed use with the majority of the construction on the  
25 interior of the proposed lot one, adversely affect vicinal

1 properties?

2 JACOB HIKMAT: No it will not.

3 HOWARD ALDERMAN: And I think you testified earlier,  
4 although I am not sure in response to a question I believe from  
5 Chairman Sharps, are there any variances necessary for approval  
6 of this proposed plan of development?

7 JACOB HIKMAT: No there are no variances.

8 HOWARD ALDERMAN: How will moderate income housing  
9 requirement be met?

10 JACOB HIKMAT: It's going to be met in the course with  
11 Howard County zoning requirements. It could be met, you know,  
12 as required by the County. We don't have a choice of how to do  
13 it. We have to provide 10% moderate income housing.

14 HOWARD ALDERMAN: And have you reviewed the staff report  
15 prepared by the Department of Planning and Zoning?

16 JACOB HIKMAT: Yes I did.

17 HOWARD ALDERMAN: And based on your review, what was the  
18 recommendation of the Department of Planning and Zoning?

19 JACOB HIKMAT: They recommended approval subject to  
20 conditions.

21 HOWARD ALDERMAN: What conditions exactly?

22 JACOB HIKMAT: Recommended conditions. The first  
23 condition was the number of bedrooms. They wanted to make sure  
24 it was restricted to the Health Department requirements, which  
25 we addressed that. Again, the main issue was really the size

1 of the houses. They believed that the size of the houses were  
2 too large.

3 HOWARD ALDERMAN: And I believe that the Planning  
4 Department also requested in a technical staff report, a  
5 condition that the, any units, the conversion of rooms were  
6 space into additional bedrooms correct?

7 JACOB HIKMAT: That is correct, and that would be  
8 controlled by the condominium association. You're going to  
9 have to have, you know, the Health Department has to approve it  
10 and the condominium association has to approve it, so it will  
11 not happen.

12 HOWARD ALDERMAN: And they also requested inclusion of  
13 additional materials which demonstrate the proposed dwellings  
14 will be appropriate for age restricted persons, correct?

15 JACOB HIKMAT: That is correct, and I do provide in the  
16 Hearing Examiner, we have a list of the required features  
17 within each house, and also the recommended...are optional  
18 features, and that was shown on sheet three of three.

19 HOWARD ALDERMAN: And, let me show you a sheet entitled  
20 Greenberry/Williams Property Age-restricted Community Features  
21 and options, and ask you if you can identify that?

22 JACOB HIKMAT: Yes I do.

23 HOWARD ALDERMAN: And is that a copy of the same sheet  
24 that was presented to the Hearing Examiner at the time of the  
25 prior hearing?

1 JACOB HIKMAT: Yes it is.

2 HOWARD ALDERMAN: And these are, in addition to note 17,  
3 these are included features that will be included in each home  
4 constructed as well as additional optional features if a  
5 particular homeowner so desires, correct?

6 JACOB HIKMAT: Yes, we incorporated these requirements and  
7 this recommendation again within the plans.

8 HOWARD ALDERMAN: I offer the Greenberry/Williams Property  
9 age-restricted features and options requested by the Department  
10 of Planning and Zoning and provided previously as petitioner's  
11 exhibit three, and I've provided copies to everyone.

12 BOB SHARPS: Without objection?

13 HOWARD ALDERMAN: Thank you sir. Finally Mr. Hikmat, with  
14 respect to the technical staff report, on page six, the  
15 technical staff report requested that the petitioner present  
16 detailed building plans and floor plans to prove the dwelling  
17 units qualify as age-restricted adult housing based on building  
18 design, correct?

19 JACOB HIKMAT: Yes.

20 HOWARD ALDERMAN: And you received this technical staff  
21 report approximately how many hours before the hearing was held  
22 before the Hearing Examiner?

23 JACOB HIKMAT: It was hours, but I don't remember.

24 HOWARD ALDERMAN: It was less than 48 hours, wasn't it?

25 JACOB HIKMAT: It was less than 48 hours.

1           HOWARD ALDERMAN: After we received the decision of the  
2 hearing officer, Hearing Examiner, excuse me, it was then that  
3 the detailed floor or elevations and also house sizes were  
4 developed, is that correct?

5           JACOB HIKMAT: When we received this, we addressed it  
6 because it allows you to address it either with plans or other  
7 means, and we addressed it verbally by the requirement that has  
8 to be in the houses. And that's what we did with the Hearing  
9 Examiner. For this hearing, we've provided more details to  
10 allow, you know, different sizes of the house.

11          HOWARD ALDERMAN: But there was no indication that only  
12 6,000 houses would be--only 6,000 square foot houses would be  
13 built, is that correct?

14          JACOB HIKMAT: That never was intended and it was always  
15 specified that was the minimum, and I did testify myself that  
16 that is the maximum size of the house that may be there.

17          HOWARD ALDERMAN: Mr. Hikmat thank you. I have eliminated  
18 a lot of repetitive testimony, well not repetitive but  
19 redundant testimony in the interest of time. And that will be  
20 all I have for Mr. Hikmat this evening.

21          BOB SHARPS: Okay, before I allow cross-examination of Mr.  
22 Hikmat, I'm going to adjourn and allow the opposition, as they  
23 so clearly showed by their show of hands, that they would like  
24 to digest your testimony before they can appropriately ask  
25 questions through their spokesperson. What I would like to do

1 for those individuals who know of anyone who is not here this  
2 evening, that planned on being here, we will not address  
3 anything...that they will not be repetitious in any way to bring  
4 them up to date. So if you'd like to do that for their own  
5 edification, I recommend that you do that. I do have one  
6 questions for you before I adjourn and before I adjourn we will  
7 go into recess because I need to give you a date. I need to  
8 check with the other Board Members on what dates will be  
9 appropriate. I have a few here that we can entertain. But Mr.  
10 Hikmat, I've been on this Board now for more years than I care  
11 to remember, and in many of the cases that you have presented  
12 before us, you have always presented detailed information  
13 before, before there was a Hearing Examiner. What made you do  
14 something so much different this time that brought us to this  
15 amount of opposition?

16 JACOB HIKMAT: Historically I've done for myself, I've  
17 done two age-restricted communities.

18 BOB SHARPS: I could have thought you did more than that  
19 since I've been sitting here.

20 JACOB HIKMAT: I did more as an engineer, and it's never  
21 been more detailed than this. I believe, it's just very  
22 difficult to provide floor plans before you even get a concept  
23 approved. It's, the concern has always been from Planning and  
24 Zoning or from this Board is, you know, what's the maximum  
25 impact on the community? And the maximum impact on the

1 community is really related more to the buffers from the  
2 community, and you want to give them the biggest thing you can  
3 because that saves the maximum impact. I had to come with a,  
4 you know, 1,500 square foot house, and then come back a year  
5 later and say wow, you know, we need 5,000. It's better always  
6 to present worst case scenario then go back.

7 BOB SHARPS: I didn't mean to put you on the spot, I just...

8 JACOB HIKMAT: It's okay.

9 BOB SHARPS: It just threw me that we are at this juncture  
10 and normally this could have been avoided had that information  
11 been presented. As such, you gave the information before the  
12 Hearing Examiner that you gave before us. Let me go ahead and  
13 recess, five minutes, and then we'll reconvene for the purpose  
14 of adjourning with a date positive for the next hearing. Okay,  
15 the Board is in recess.

16 R E C E S S

17 BOB SHARPS: The Board of Appeals back in session. Okay,  
18 for purpose of the date for the adjournment, the Board will  
19 adjourn this case until July 25<sup>th</sup>, at 6 p.m. At such time, we  
20 will have cross examination of Mr. Hikmat by opposition, and/or  
21 it's spokesperson, and as I said, for those members who are not  
22 here and you know they're going to be here, please bring them  
23 up to date because we're not going to accept questions that was  
24 already been asked and answered and to prolong any repetitious  
25 of the petitioner's witnesses's testimony. Looking at the size

1 of this, and I hate to see people have to sit and stand up,  
2 we're going to try to get the next room for that date if the  
3 crowd seems to be at least this size. That way it will be a  
4 little bit more comfortable if we can do that, okay? So if  
5 it's available, we'll certainly try to get that room for you to  
6 make it a little more comfortable. Sir?

7       MARC JORDAN: Several questions. Copies of I guess, the  
8 whole plan, the new three sheets, if we call the County, will  
9 that be mailed to us?

10       BOB SHARPS: I doubt that very seriously. I think what  
11 will happen is, you have a copy to the spokesperson here... As  
12 far as...

13       HOWARD ALDERMAN: I gave them 2 copies.

14       BOB SHARPS: Yeah, they're not required to give every  
15 single, they're only required to give a copy to opposition,  
16 copy to the Board Members, and one for the record. Now they  
17 gave two, so if you want to call the County and ask Mrs.  
18 Regner, I'm sure there may be a charge, if any additional  
19 copies if they have to make them for every member of  
20 opposition. Oh well...

21       AL HAYES: He's got two.

22       BOB SHARPS: He's got two. Hey make him an offer he can't  
23 refuse.

24       MARC JORDAN: Will there be new signs posted saying the  
25 continuation of this is on the 25<sup>th</sup>?

1 BARRY SANDERS: No.

2 BOB SHARPS: I just told you sir. Whoever's supposed to  
3 have been here, knows that. If not, they'll look on the, it  
4 goes on the website too.

5 MARC JORDAN: But those signs that are posted on the  
6 actual property can catch a lot of the community member's  
7 attention, so I was hoping there would be new signs.

8 BARRY SANDERS: There's not going to be new signs.

9 BOB SHARPS: No, no, no. That's not required. The  
10 requirement for the initial is there and then when you come,  
11 you get to know. That's why I didn't let you leave before I  
12 told you.

13 MARC JORDAN: Has the petitioner given us all documents?  
14 That's the only other question we would have.

15 BOB SHARPS: Yes. Well the only ones that you should have  
16 is the three that we have just accepted. We accepted three  
17 petitioner's exhibits - one was copies of one, two and three of  
18 the modifications, the plan; number two was the Howard County  
19 form and age-restriction; and number three was age-restricted  
20 community features and options. So you should have three,  
21 three of the petitioner's. I'm sorry, did I answer your  
22 question?

23 AL HAYES: Are you asking if you have heard all of the  
24 testimony from the petitioner?

25 MARK JORDAN: No, I want to make sure as we as a community

1 are sitting here, that we have now seen new evidence tonight,  
2 new to this committee, and new to the zoning, have we seen it  
3 all? That's what we would like to walk away with tonight,  
4 making sure there's no new news that has not been presented to  
5 this community today.

6 HOWARD ALDERMAN: There are no additional exhibits being  
7 produced.

8 MARC JORDAN: This is all new. This is all new tonight.

9 BARRY SANDERS: Okay, calm down.

10 BOB SHARPS: Okay, sir, what you have now is what we have,  
11 and that's what we're going to be continuing this case on.

12 HOWARD ALDERMAN: I have additional testimony to offer.  
13 There are other witnesses.

14 BOB SHARPS: Okay, and at that time, we'll determine  
15 whether or not that information requires any type of order.

16 MARC JORDAN: Can we get a list of your witnesses? Would  
17 that be okay?

18 BOB SHARPS: That's up to him, excuse me. At this point  
19 we're done. You guys can do side bar if you want.

20 MARC JORAN: Okay.

21 BOB SHARPS: As far as I'm concerned, I have no other  
22 administrative matters. This Board is adjourned until July  
23 25<sup>th</sup>, at 6PM. Thank you.

24

1           **BA CASE NO. 05-046C, ROBERT WILLIAMS - JULY 26, 2006**

2           ROBERT SHARPS: Okay, we all ready? We ready Mrs. Regner?

3           ROBIN REGNER: Yes.

4           ROBERT SHARPS: Board of Appeals is in sessions for  
5 continuation of case BA 05-046, Robert B Williams, et al.

6 Ladies and gentlemen, before we get started, let me just remind

7 you, no you can stay up there because you ought to be up there

8 Mr. Hikmat. Before we adjourned last time, we asked that you

9 get all the information you needed based on the testimony that

10 was given by Mr. Hikmat, the petitioner's first witness, so

11 that you can establish a spokesperson and I see you've brought

12 in spokespersons, so you obviously have gotten, organized

13 yourself since the last time. Hopefully we can have this

14 smoothly by the cross-examination being by one of the, or two

15 of the spokespersons, but maintaining that we relate the

16 questions to the testimony that was given. Each and every one

17 of you, which I hope you don't take me up on this, will have an

18 opportunity to testify when it goes over to the opposition.

19 You can testify verbally or you can submit a written testimony,

20 but you will have the opportunity to. Now if I ask for a raise

21 of hands and I see fifty people raise their hands and say

22 they're going to testify, what I'm going to do is limit it to

23 so many minutes, and that's so that we give deference to other

24 people who may want to speak and I'm sure testimony will be

25 repetitious when you have that many people talking against one

1 subject matter. So with that in mind, if we can get started,  
2 we will have cross examination at this time Mr. Alderman. The  
3 testimony that was given by Mr. Hikmat, which has been  
4 concluded at the last session.

5 HOWARD ALDERMAN: Yes sir.

6 ROBERT SHARPS: And I believe you concluded your witness's  
7 direct examination. Cross examination at this time, who will  
8 start sir for the examination?

9 MARC JORDAN: If it's okay Mr. Chairman I would like to do  
10 that.

11 ROBERT SHARPS: And that was, and you're Mr. Jordan?

12 MARC JORDAN: Marc Jordan.

13 ROBERT SHARPS: Yes Mr. Jordan.

14 **(NOTE: MR. JORDAN DOES NOT HAVE A MICROPHONE THAT WORKS--VERY**  
15 **DIFFICULT TO UNDERSTAND)**

16 MARC JORDAN: At this time I want to remind people to turn  
17 off their phones including myself.

18 ROBERT SHARPS: Thank you very much for that. I don't  
19 mind the buzz but the ringing will definitely disturb the  
20 tapes. This is recorded, the session is being recorded and  
21 this is the only document we're going to have of, for a further  
22 documentation.

23 MARC JORDAN: I understand. Thank you Mr. Chairman and  
24 members of the Board. It's good to see you again. Mr.  
25 (inaudible), I noticed on the petition that was filed, you

1 didn't sign that petition, right?

2 JACOB HIKMAT: I believe that's correct.

3 MARC JORDAN: You reviewed it, I guess you were involved  
4 in preparing it?

5 JACOB HIKMAT: Yes.

6 MARC JORDAN: And you're clear what's in it, correct?

7 JACOB HIKMAT: Yes.

8 MARC JORDAN: Hey can I ask you, the notice in section  
9 six...?

10 JACOB HIKMAT: Can I get a copy of that, I don't have a  
11 copy. Maybe Howard has one.

12 MARC JORDAN: I looked at section six under conditional  
13 use plan requirements and under section Q it says the plan  
14 must, the ownership of a (inaudible) road, right-of-way width  
15 and I guess the pavement width?

16 JACOB HIKMAT: Yes.

17 MARC JORDAN: Could you show me on, because I couldn't  
18 find it, could you show me on your map you submitted where that  
19 requirement is, is placed?

20 JACOB HIKMAT: On the south side of the property, at  
21 Linden Church Road, local road public, that's the ownership,  
22 that's what they said.

23 ROBERT SHARPS: Excuse me, Mr. Hikmat? We're going to  
24 have that as testimony. I'm not sure your microphone is  
25 transmitting for recording. It's not for amplification

1 obviously - it's for recording purposes.

2 JACOB HIKMAT: Alright then, on the south side of the  
3 property we have Linden Church Road, and the ownership is  
4 public. Greenberry Road, the ownership is public. And ah...I  
5 mean this is Linden Church because the road keeps going and  
6 it's the same situation.

7 MARC JORDAN: Does it show the right-of-way width?

8 JACOB HIKMAT: Yes it does. On the Linden Church Road it  
9 shows the future right-of-way. It shows the location for that,  
10 and it's graphically put there.

11 MARC JORDAN: I'm sorry where was that?

12 JACOB HIKMAT: It is graphically there. It shows the  
13 right-of-way.

14 MARC JORDAN: to ?

15 JACOB HIKMAT: If you look at, we're showing the location  
16 from the property for the right-of-way. The entire Linden  
17 Church Road, I mean half of Linden Church Road actually is in  
18 our property on the south, and then on the east side,  
19 practically that entire Linden Church Road is in our property,  
20 so we're giving dedication for that.

21 MARC JORDAN: Is there something on there say right-of-way  
22 width so I can incorporate that?

23 JACOB HIKMAT: No it does not.

24 MARC JORDAN: Keeping with the petition Mr. Hikmat, I  
25 noticed on section, I guess it is eight, E, if you're with me,

1 it says... these is a question, it says will the conditional use  
2 generate any physical conditions such as noise, dust, fumes,  
3 lowers lighting or vibrations which would be discernable from  
4 abutting and vicinal properties? And the answer there is no.  
5 The answer is there is no lighting discernable from this  
6 project?

7 JACOB HIKMAT: That is correct. There's no lighting other  
8 than what you'd think a family in a regular neighborhood would  
9 generate, so there's no public lighting, there's no light.

10 MARC JORDAN: Well correct me if I'm wrong because I'm  
11 just trying to read through the language here, but what I can  
12 say, it didn't ask for lighting that's different from the other  
13 uses, it just asks if there's any physical conditions that are  
14 being generated?

15 JACOB HIKMAT: I mean yeah, the answer is no.

16 MARC JORDAN: Are you saying there's no lighting on the  
17 property?

18 JACOB HIKMAT: There's no lighting that's going to be  
19 discernable from abutting and vicinal properties. We have  
20 provided a lot of buffer.

21 MARC JORDAN: Okay, but you agree with me, that's not what  
22 the question asks, do you agree with me?

23 JACOB HIKMAT: I don't agree with you.

24 MARC JORDAN: Well you told the (inaudible) of the  
25 Department of Planning and Zoning that there's no...in response

1 to their question, will the conditional use generate any  
2 physical conditions such as lighting. You answered no.

3 JACOB HIKMAT: Continue, could you continue with your  
4 reading? That would be discernable from abutting properties..  
5 It has to be, it has some impact on adjacent properties, and it  
6 does not.

7 MARC JORDAN: Okay well I understand that's your  
8 interpretation. But my interpretation is that, you would  
9 explain here what kind of lighting proposed to the Department  
10 of Planning and Zoning...

11 ROBERT SHARPS: Excuse me, what are you looking for Mr.  
12 Jordan? What answer are you looking for? He said, I can read  
13 and we all read the same thing. What are seeing that's  
14 different that we need to see. Rather than playing tennis with  
15 him, why don't you...?

16 MARC JORDAN: Well I think, we'd like to know what kind of  
17 lighting is going to go on the project because this area,  
18 you're going to hear testimony later from our side, but there's  
19 no public lighting out there and it's a nice part of the  
20 character and the harmony of the neighborhood, and it's very...

21 ROBERT SHARPS: Are asking him what kind of lighting is  
22 going to go on the property?

23 MARC JORDAN: I guess that's my next question.

24 ROBERT SHARPS: Let's be more direct, okay because right  
25 now, you're not getting anywhere. He's disagreeing with your

1 interpretation and you with him. Let's go to a direct  
2 question.

3 MARC JORDAN: Well I will, I just wanted to make the  
4 record clear-

5 ROBERT SHARPS: Sure, what I'm trying to do is, I don't  
6 want to turn this into a tennis match. When I hear things  
7 going back and forth, I need to interject so that we can all  
8 get back on subject.

9 HOWARD ALDERMAN: Mr. Chairman, for the record, I will  
10 note that Mr. Hikmat was asked no questions with respect to the  
11 petition itself.

12 ROBERT SHARPS: Which is a point that-

13 HOWARD ALDERMAN: And therefore any such question is  
14 outside the scope of direct examination.

15 ROBERT SHARPS: Are you objecting to the questioning at  
16 this time?

17 HOWARD ALDERMAN: Yes sir. His answers as to lighting..

18 ROBERT SHARPS: His cross-examination, Mr. Alderman, may  
19 not be but his question is a legitimate question. Probably not  
20 at the appropriate time, outside the scope at this time, and  
21 I'll agree with you.

22 MARC JORDAN: He does have the petition before the Board  
23 tonight and (inaudible). Anyway, Mr. Hikmat, what kind of  
24 lighting is going to be out there?

25 JACOB HIKMAT: There's not going to be any lighting other

1 than what's associated with the single-family houses.

2       MARC JORDAN: No street lighting is going to be in the  
3 project?

4       JACOB HIKMAT: There may be street lighting. When you do  
5 a single-family development, there's certain requirements for  
6 street lighting that the County would require us to do. And  
7 we're not doing anything beyond that.

8       MARC JORDAN: Have you been out to the neighborhood  
9 already?

10       JACOB HIKMAT: Yes I have.

11       MARC JORDAN: Have you seen street lighting out there now?

12       JACOB HIKMAT: I don't remember. I went during the  
13 daytime.

14       MARC JORDAN: So your testimony said that you have no plan  
15 as of today that you are going to the Board about the lighting  
16 out there, is that correct?

17       JACOB HIKMAT: There's no lighting other than what is  
18 associated with single-family developments.

19       MARC JORDAN: Can you tell us what is associated with  
20 single-family developments then?

21       JACOB HIKMAT: It's the lighting in your own house,  
22 probably the lighting next to the driveway, and the street  
23 lights as required by the County as needed.

24       MARC JORDAN: Well what about, you are going to have a  
25 community center there, aren't they?

1 JACOB HIKMAT: We have a community center, that is  
2 correct.

3 MARC JORDAN: Well that's going to have lights on, aren't  
4 you?

5 JACOB HIKMAT: It's just going to be like a house. I  
6 mean, we're not going to have 14-foot high lights or anything  
7 of that nature - it's just a regular single family development.

8 MARC JORDAN: And with the community, you're having a  
9 separate structure is what I understand it, maybe I'm wrong..

10 JACOB HIKMAT: Yes, we do have separate structure for the  
11 community.

12 MARC JORDAN: And how big is that structure?

13 JACOB HIKMAT: It's where we're required to have it 1,000  
14 square feet, so we're putting a minimum of 1,000. We're going  
15 to leave that up to, you know, once the community is  
16 established. Then we will decide, it will be more than 1,000,  
17 square feet.

18 MARC JORDAN: Is that going to have any special lighting  
19 there to make sure it's safe or anything like that?

20 JACOB HIKMAT: They may have lighting in the parking lot,  
21 it's a 13 car parking lot and we located the community center  
22 on the other side of the hill so nobody would see it. It's not  
23 going to affect any neighbors.

24 MARC JORDAN: Well what about, didn't they say you were  
25 going to put tennis courts in there maybe?

1 JACOB HIKMAT: Yes we are going to put tennis courts.

2 MARC JORDAN: Are they going to be lighted?

3 JACOB HIKMAT: At this stage, I don't know.

4 MARC JORDAN: What about, you said there is going to be a  
5 pool?

6 JACOB HIKMAT: There would be a pool that's correct.

7 MARC JORDAN: Is that going to be lighted?

8 JACOB HIKMAT: It may be. It's all on the other side of  
9 the hill where nobody could see it.

10 MARC JORDAN: What are you saying people won't see the  
11 lights. If they have lights on, nobody can see them?

12 JACOB HIKMAT: My understanding of the requirements  
13 regarding the lighting is you're not supposed to have lighting,  
14 or any lighting that you propose should not adversely impact  
15 adjacent properties, and they, a swimming pool, I'd say, is  
16 close to 800-900 feet away from the nearest property and is  
17 separated by houses, landscaping, forest buffer, and a hill, so  
18 chances are nobody's going to see it.

19 MARC JORDAN: No, my understanding is the same as yours.  
20 But I know you can't tell until it's constructed, until we  
21 know what's going to be there, but let me move on.

22 JACOB HIKMAT: Okay.

23 MARC JORDAN: I noticed in section 7 of the petition, it  
24 talks about additional requirements, and its asking for  
25 information regarding noise, dust fumes, lighting, you see that

1 in section 7, 7-A?

2 JACOB HIKMAT: Uh-huh.

3 MARC JORDAN: And your response to that section of the  
4 petition, was anything else included?

5 JACOB HIKMAT: We submitted everything we have on the  
6 plan. It's on the plan, there's no, again, there's no special  
7 lighting other than what's associated with single-family  
8 developments and the community center that goes with it.

9 MARC JORDAN: Okay. Mr. Hikmat I'd like to turn to the  
10 Department of Planning and Zoning technical staff report. At a  
11 point I want to refer first to my copy of page 2.

12 ROBERT SHARPS: It better be the same copy as all of us.

13 MARC JORDAN: Yeah.

14 ROBERT SHARPS: Page 2.

15 MARC JORDAN: On one page 2, numeral 1. And, the first  
16 thing I'd like to ask you about is the Department describes the  
17 proposal and said it's for a 52 story, single-family detached  
18 dwellings, you see that?

19 JACOB HIKMAT: Yes I do, now let me see...where are you  
20 reading, I'm sorry?

21 MARC JORDAN: I think it's the third paragraph.

22 JACOB HIKMAT: Okay, yes.

23 MARC JORDAN: And, correct me if I'm wrong but last week,  
24 you brought in some new plans, or I'm sorry, two weeks ago, a  
25 couple of those plans were not for two-story structures, is

1 that correct?

2 JACOB HIKMAT: That is correct.

3 MARC JORDAN: So you'd agree with me that the proposal  
4 that the Department looked at isn't necessarily the one that  
5 you're going on board with, isn't that true?

6 JACOB HIKMAT: That's true. There's no requirement in the  
7 regulations what type of house to put there other than the  
8 requirement to make it age-restricted, for age-restricted. One  
9 of the concerns that the Department had is the houses are too  
10 large and they are two-stories, so we decided to give them more  
11 variety of houses, but there is no requirement to specify,  
12 that's what's shown as the maximum house size.

13 MARC JORDAN: When they said it was in their report they  
14 said that your project was they thought in harmony, that was  
15 just because they were looking at only two-story houses, would  
16 you agree with me?

17 JACOB HIKMAT: I don't know what they were thinking.

18 MARC JORDAN: Well, you read the report though right,  
19 where they said that the proposals, was there something else  
20 you think they put there?

21 JACOB HIKMAT: They're describing the proposal.

22 MARC JORDAN: Now they also have a section in their  
23 report, section V. I think, where-

24 JACOB HIKMAT: Which page is that?

25 MARC JORDAN: That would be on page 7.

1 JACOB HIKMAT: Okay.

2 MARC JORDAN: Under the...under section V., captioned  
3 Recommendation.

4 JACOB HIKMAT: Okay.

5 MARC JORDAN: And I think in V.1, I'm sorry, V.2 it says  
6 the petitioners will present more detailed building plans and  
7 floor plans. Have you presented anything else in your  
8 testimony that addressed that issue?

9 JACOB HIKMAT: We presented four types of houses that we  
10 suspect may be there, that would give a variety of houses. We  
11 provided information on the requirement to have the...age-  
12 restricted. The regulations ask for plans or other information  
13 and w0e provided sufficient information to do that.

14 MARC JORDAN: And what, can you just tell me-(inaudible)

15 JACOB HIKMAT: And specifically the number of bedrooms was  
16 a very important issue for the Department of Planning and  
17 Zoning and we specified 3 to 4 bedrooms per house.

18 MARC JORDAN: And you're talking about the plans you  
19 submitted last time you were here, that are up on the board  
20 there?

21 JACOB HIKMAT: Sure, yeah.

22 MARC JORDAN: And can you show me up there where, what you  
23 call the floor plan you're talking about?

24 JACOB HIKMAT: Now the requirement is to provide floor  
25 plans or other information to guarantee that the houses will

1 be, will satisfy the age-restricted needs. And we've provided  
2 the overall footprint, and then we provide the information that  
3 actually must be in the houses.

4 MARC JORDAN: So your position is, because just looking  
5 down at the recommendation 5.4, it says the petition **shall**  
6 include floor plans, and just so I'm clear, your testimony is  
7 that design up there is what you're...is that your intention that  
8 it will satisfy that requirement?

9 HOWARD ALDERMAN: Objection - asked an answered. Mr.  
10 Jordan is reading a recommendation, a recommendation only. It  
11 is not binding on anybody including this Board. The fact that  
12 Planning says it shall do something - it's up to this Board to  
13 decide what is necessary.

14 ROBERT SHARPS: And I'm sure Mr. Jordan knows that too.  
15 I'm going to give him a certain amount of limit until he gets  
16 to the point.

17 HOWARD ALDERMAN: Okay.

18 MARC JORDAN: And so can he answer the question?

19 ROBERT SHARPS: He answered it as...the objection was it was  
20 asked and answered.

21 MARC JORDAN: So I'm just saying, the floor plans are  
22 what's on the board there?

23 ROBERT SHARPS: That's exactly what he said, and he gave  
24 it to you both and its overall the pictures and of course the  
25 information that provides the design of each one of those floor

1 plans.

2 MARC JORDAN: I apologize Mr. Chairman. I didn't see any  
3 floor plan on that. I know he got up to speed and had a design  
4 and talked about its structure.

5 ROBERT SHARPS: Yeah, normally a floor plan, you want to  
6 see a kitchen with steps and a toilet seat and that kind of  
7 stuff?

8 MARC JORDAN: Well I just thought that's what the...

9 ROBERT SHARPS: I'm used to that too, but like it, but the  
10 objection was that we are not bound by this recommendation.  
11 You are reading from a recommendation, so this is not the  
12 petition, this is a recommendation based on the technical staff  
13 report.

14 MARC JORDAN: No I understand.

15 ROBERT SHARPS: Okay.

16 MARC JORDAN: I think the other recommendation was that  
17 that the petitioner provide further explanation about how five  
18 of the proposed dwelling units will be provided as moderate  
19 income housing units. Have you supplied anything else on that  
20 one Mr. Hikmat?

21 JACOB HIKMAT: We provided in the petition and in the  
22 drawing that we would meet the zoning requirements and the  
23 zoning requirements does change from time to time but it's  
24 going to be provided on-site or if an alternative is provided  
25 by the zoning, so yes we did.

1           ROBERT SHARPS: So the answer is yes you did or yes you  
2 will?

3           JACOB HIKMAT: Yes, yes we did. I mean it's required to  
4 have ten percent and we addressed it by we will it do whatever  
5 the zoning allows us to do.

6           MARC JORDAN: Mr. Hikmat, why did you decide to, why do  
7 you propose the age-restrictive housing on that particular  
8 parcel as opposed to single family or some other type of plans?

9           JACOB HIKMAT: It's a location that leads itself to that,  
10 the proximity to Route 32, the need in the area for single-  
11 family detached for age-restricted..that we don't have enough  
12 supply of that.

13          MARC JORDAN: Did you do a study?

14          JACOB HIKMAT: No I did not other than my own knowledge of  
15 what Howard County, what's going on in Howard County.

16          MARC JORDAN: But I'm asking you if that, you know, spot  
17 right there on 32 and Church Lane, what things did you  
18 consider? What kind of factual basis, if you had to think that  
19 age-restricted would be good there?

20          JACOB HIKMAT: The proximity to Route 32, the topography,  
21 the location, the demography in the area and the need..

22          MARC JORDAN: Yeah- go ahead.

23          JACOB HIKMAT: And the need.

24          UNKNOWN MALEE: Can I interrupt for a minute? We can't  
25 hear.

1           ROBERT SHARPS: You can't hear him sir? Would you like to  
2 step up a little further?

3           UNKNOWN MALE: Doesn't he have a microphone?

4           ROBERT SHARPS: We don't have mics sir. We only have  
5 recording things here. Someone's offering you a seat up front  
6 here sir.

7           ROBERT SHARPS: You're speaking loud enough for us to hear  
8 but if you can embellish a little bit more, maybe, well not  
9 embellish, but to get them vocal chords up a little more maybe  
10 we can get some volume in the back. Is that your questions?

11          MARC JORDAN: Do you want me to proceed at this point?

12          ROBERT SHARPS: Yes, proceed, please.

13          MARC JORDAN: Do you know whether there's a public  
14 transportation that (inaudible) out by that location?

15          JACOB HIKMAT: I know there's not, but this is for age-  
16 restricted active adults. So public transportation is not a  
17 component of that. That requirement is not needed.

18          MARC JORDAN: Well, so everyone out there is going to be  
19 driving, is that your understanding?

20          JACOB HIKMAT: I think so, yeah.

21          MARC JORDAN: And what about other amenities for seniors  
22 out there? Are you, your testimony is that it's a, they have  
23 access to other amenities or positions or things like that, is  
24 that part of your basis for coming up with that plan?

25          JACOB HIKMAT: Again, this is an active, you know, age-

1 restricted active adults. What's required, again, by the  
2 zoning and the regulations, it's just a community center for a  
3 minimum area of 1,000 square feet. We provide the community  
4 center, we're providing an exercise trail, we provided tennis  
5 courts and we're providing swimming pool. So I think we've far  
6 exceeded what's required by the regulations.

7       MARC JORDAN: Well, you would agree that it's legitimate  
8 for people who live out to be concerned that the project is  
9 going to succeed and that people are going to want to buy it,  
10 right. So I think, you'd agree that it's legitimate for others  
11 to inquire to that, wouldn't you?

12       JACOB HIKMAT: I don't know that question.

13       MARC JORDAN: Well, what about... originally you said we  
14 were going to have up to 6,000 square foot houses, and now, I  
15 guess last time we got, I guess there's four models you are  
16 thinking of putting in, is that correct?

17       JACOB HIKMAT: The models are just a concept to provide  
18 the range and the size of houses that we expect to be there.  
19 Ultimately, when a builder comes, he's going to decide the size  
20 that is going to be confined within the range, but these are  
21 not the exact specific houses.

22       MARC JORDAN: Okay, and you're asking, but the size for  
23 example, I mean you put in the map, one of the models is a  
24 1,800 square foot model, is that correct?

25       JACOB HIKMAT: That's correct, yes.

1           MARC JORDAN: Let me ask you something. Is your project  
2 feasible if everybody buys a 1,800 square foot house out there,  
3 is this project going to...

4           JACOB HIKMAT: If everybody buys it? Then that's what  
5 they want, I mean, then that's what they're going to buy.

6           MARC JORDAN: And when you were in front of the Hearing  
7 Examiner, and you said that the houses were 6,000 square foot  
8 houses were compatible with the surrounding area. let me ask  
9 you today.

10          HOWARD ALDERMAN: Objection.

11          ROBERT SHARPS: Hold on, what's your objection?

12          HOWARD ALDERMAN: Outside the scope of his direct  
13 examination before this Board.

14          ROBERT SHARPS: Yes, you are, Mr. Jordan, I have given you  
15 a lot of latitude here and as I think I made a caution prior to  
16 the cross examination that you must pertain those questions to  
17 the petitioner's or to the examination that was prior to this  
18 session.

19          MARC JORDAN: I understand, I'm talking about the map that  
20 he put in--

21          ROBERT SHARPS: Well, well let me just say something just  
22 so we have, just so we can go forward too. We also had this  
23 discussion last time and I also asked for the Board to say  
24 whether or not what was presented to the Hearing Examiner and  
25 what the technical staff report referred to, was a little

1 different then what we were seeing. The Board already  
2 concluded and has decided that is not substantive in change.  
3 There are modifications - we have five of them. We all agreed  
4 that they're not substantive enough for it to be remanded back  
5 so we're going to listen to the case before us which had those  
6 modifications. So to say he's had 6,000 and now its 18 to  
7 1,500, we agreed that's a change and we will listen to it, and  
8 we will hear the case with those modifications.

9 MARC JORDAN: Can we ask him about the model?

10 ROBERT SHARPS: Can you ask him about what?

11 MARC JORDAN: My question was, he said his development  
12 was, if they were all 1,800 square feet models, which he says  
13 there may be, whether that's still going to be compatible with  
14 the general, with the harmony of the community.

15 ROBERT SHARPS: I'll allow the question.

16 MARC JORDAN: Mr. Hikmat?

17 JACOB HIKMAT: The reason we give the range because, in  
18 the first hearing if you remember, the concern was the houses  
19 were too large, and why would active adults want to live in a  
20 5,000 square foot house, so we decided to give the range,  
21 between roughly 2,000 to 5,500, so the market forces will  
22 determine what that, what the people are going to buy, and  
23 chances are, I mean, they will be competitive because, the type  
24 of people that are going to be living there are going to be the  
25 same type of people that are living there now, so my guess is

1 that there will be a range, and there will be more, it is going  
2 to be a market force that determines that.

3       MARC JORDAN: Mr. Hikmat I'm taking the Chairman's  
4 comments seriously and I'm not going to beat you to death in  
5 this court but that wasn't my question, my question was, if  
6 everybody buys the 1,800 square foot house, is that compatible,  
7 is that compatible with the harmony of the neighborhood?

8       JACOB HIKMAT: If everybody buys the 1,800 square feet  
9 house, it will not be compatible with the neighborhood. I am  
10 willing to put a condition that no more than 25% of the houses  
11 could be 1,800, if that's a condition the Board will allow me  
12 to do, I will be more than happy to do that.

13       MARC JORDAN: Well, what if-

14       ROBERT SHARPS: Wait a minute, now, now I'm not going to  
15 allow that to continue anymore. That question was asked,  
16 answered, and I'm not going to hear, let's play what kind of  
17 house we're going to have. Let's move onto another question  
18 sir.

19       MARC JORDAN: Alright well, he just came up with a new  
20 plan of half and half.

21       ROBERT SHARPS: We, we know what the plan is, and I  
22 understand where you are going with this, but a loud deference  
23 of getting into other matters besides what type of house and  
24 where the floor plan is going to be.

25       MARC JORDAN: Mr. Hikmat, when your project is fully

1 developed, what's the volume of traffic going to be at the  
2 intersection neat Route 32?

3 JACOB HIKMAT: I have not done a traffic study myself, but  
4 the traffic consultant will address that.

5 MARC JORDAN: Well did you talk to him?

6 HOWARD ALDERMAN: Objection.

7 ROBERT SHARPS: He just said..Mr. Jordan he just said that  
8 there's probably going to be a traffic consultant that's going  
9 to be, have testimony. I think that question would be...he's not  
10 a traffic consultant. And anything he says, nothing in his  
11 expert witness says that he has any, that he has that in his,  
12 and whether it did or not we wouldn't consider it.

13 MARC JORDAN: Well I took my only shot at Mr. Hikmat.

14 ROBERT SHARPS: Well go for it, but I want to keep it,  
15 let's keep it in the scope of what the petition is before us,  
16 and I know there are other concerns besides that, but I have to  
17 allow it to stay within what we are controlled with.

18 MARC JORDAN: Alright, so I can't ask anything about  
19 traffic, no?

20 ROBERT SHARPS: I didn't even hear anything asked about  
21 traffic in, from the examination, from the initial one. This  
22 is cross examination. You're one of the attorneys, excuse me  
23 right?

24 MARC JORDAN: Yeah (inaudible) Did you do a roads test?

25 JACOB HIKMAT: What?

1           MARC JORDAN: Did you do a roads test?

2           JACOB HIKMAT: I don't know what that is.

3           ROBERT SHARPS: Tell me what a roads test is.

4           MARC JORDAN: What?

5           ROBERT SHARPS: Tell me, what is a roads test?

6           MARC JORDAN: I believe it's a term that the County uses

7 with the APFO.

8           ROBERT SHARPS: Oh, adequate public.

9           JACOB HIKMAT: Oh okay, adequate public facility, that is

10 required with the initial submission to the County. It is not

11 required at this stage, and if that doesn't pass, the project

12 doesn't go through.

13           MARC JORDAN: Okay, but I'm just asking have you done it?

14           JACOB HIKMAT: No I have not done it.

15           ROBERT SHARPS: Whether he did it or not means nothing

16 because if he don't pass it like he said, we just wasted a

17 whole lot of time here.

18           MARC JORDAN: I'd like to know what's out there is all.

19 So you don't know - do you know what the service level is going

20 to be when the project is complete?

21           JACOB HIKMAT: I do not know, but it has to pass the

22 County requirements.

23           MARC JORDAN: Okay, alright the answers no, I understand

24 that's fine, I'm not going to beat you, that answers no. Okay,

25 I noticed on your plan there's an easement for Columbia gas

1 right through the middle of the road project, am I correct?

2 JACOB HIKMAT: That is correct.

3 MARC JORDAN: Is that going to play on in terms of how you  
4 design this project, with turning any controversy to that, that  
5 would impact the project?

6 JACOB HIKMAT: Yes it does.

7 MARC JORDAN: And how is that?

8 JACOB HIKMAT: It's, you're required, you're supposed to  
9 minimize the crossing to that easement to the minimum possible,  
10 so we had only one crossing.

11 MARC JORDAN: Where is that crossing?

12 JACOB HIKMAT: Well it's the only crossing that crosses  
13 it. The crossing is at that south end of the project as soon  
14 as you come in with the U.

15 MARC JORDAN: Okay, what about...I know the houses seem to  
16 be clustered right around the pipeline, did you consider if  
17 that creates any safety problems?

18 JACOB HIKMAT: I know it does not, because Howard County  
19 has a regulation that requires the houses to be 30 feet, from  
20 the, a minimum 30 feet from the easement, and we are providing  
21 30 feet plus. And so there's no hazard. And again the gas  
22 company will review this.

23 MARC JORDAN: So somebody will review it?

24 JACOB HIKMAT: Yes they will.

25 MARC JORDAN: Have they reviewed it yet?

1 JACOB HIKMAT: They looked at the concept, yes, they had  
2 no issues with it.

3 MARC JORDAN: Okay. With respect to the septic that you  
4 will be putting in, are you planning to put any kind of  
5 treatment plan in?

6 JACOB HIKMAT: We have an expert on the septic issues, but  
7 this is going to be a community...he'll address these issue.

8 MARC JORDAN: Can't you just tell me yes or no if you're  
9 going to put one in?

10 JACOB HIKMAT: I'd rather him tell you that.

11 MARC JORDAN: Okay. Do you have any allocations under the  
12 County's Road Management System?

13 JACOB HIKMAT: I believe this year there is no allocation.

14 MARC JORDAN: And what about for your project, did you  
15 talk to the County about getting allocations?

16 JACOB HIKMAT: You only get allocations after your  
17 submission, after your plan that's submitted to the County is  
18 approved, then you get allocation. So that's not an issue  
19 until you go before the County.

20 MARC JORDAN: Right, we don't have anything further. And  
21 Mr. Hikmat, thank you.

22 JACOB HIKMAT: Thank you.

23 MARC JORDAN: And Mr. Chairman I would just like to  
24 reserve the right if something comes up, if they have other  
25 witnesses they bring up that somehow relates to Mr. Hikmat's

1 testimony too the project I have the right to call him to. He  
2 punted a lot of these questions, I'm not saying that I will,  
3 but I'm just, I guess my question at this point is to keep an  
4 open mind?

5 ROBERT SHARPS: We will take that into consideration.

6 MARC JORDAN: Thank you sir.

7 ROBERT SHARPS: Is that all the opposition has for  
8 questioning?

9 MARC JORDAN: That's all we have for questioning.

10 ROBERT SHARPS: Wait a minute, yeah he can have a recross.

11 HOWARD ALDERMAN: Just a couple, Mr. Hikmat, you're  
12 familiar with the requirements for conditional use approval of  
13 age-restricted houses in Howard County, is that correct?

14 JACOB HIKMAT: Yes I am.

15 HOWARD ALDERMAN: And are you familiar with Section  
16 131.N.1.m that requires that the petition includes either floor  
17 plans or other material, demonstrating that the dwellings would  
18 be appropriate for age-restricted populations.

19 JACOB HIKMAT: Yes I am.

20 HOWARD ALDERMAN: And is that the material that you've  
21 testified to here, well last time and then again here this  
22 evening?

23 JACOB HIKMAT: Yes.

24 HOWARD ALDERMAN: And that's also consistent with  
25 petitioner's exhibits 2 and 3, correct?

1 JACOB HIKMAT: Yes, that is correct

2 HOWARD ALDERMAN: The moderate income housing, are you, is  
3 a petitioner required at this stage to identify specifically  
4 which of the units proposed will be available for moderate  
5 income housing?

6 JACOB HIKMAT: No we're not.

7 HOWARD ALDERMAN: You indicated a builder will be  
8 determining the various floor plans and options available, all  
9 of those floor plans, specific floor plans and options must be  
10 in accordance with any conditional use approval, and the rules  
11 and regulations of Howard County, is that correct?

12 JACOB HIKMAT: Yes they have to be.

13 HOWARD ALDERMAN: Nothing further.

14 ROBERT SHARPS: Thank you Mr. Hikmat. Your next, wait a  
15 minute, I'm sorry you got me all confused there. The Board may  
16 have questions for you.

17 HOWARD ALDERMAN: I jumped ahead - I apologize.

18 ROBERT SHARPS: I'm sorry, they're controlling it from  
19 there, and normally it's supposed to be from here. Any other  
20 questions from the Board?

21 PAT PATTERSON: Not from me.

22 ROBERT SHARPS: Mr. Hayes?

23 ALBERT HAYES: Mr. Hikmat, with regards to the layout of  
24 the property as shown there, you mentioned that the lighting  
25 would be just that kind of lighting associated with individual

1 properties, but you also mentioned that there would be some  
2 type of public lighting utilities. Now, tell me specifically,  
3 what type would go into a development such as that?

4 JACOB HIKMAT: Usually when you submit a plan to the  
5 County, the County will come back and tell you to put a light  
6 here, put a street light here, there. They determine where it  
7 is, and it usually has to do with safety situations. I'm not  
8 sure what they're going to ask for, but you know, my guess is  
9 there probably would be one at the intersection. That's  
10 usually a place where they ask for. But it's not always  
11 consistent. I mean, I'm not sure what the rationale they go by  
12 is but we always do what they require because it's a safety  
13 issue.

14 ALBERT HAYES: Okay, now you've done a lot of developments  
15 of this nature?

16 JACOB HIKMAT: Yes.

17 ALBERT HAYES: What type of lighting do you usually see  
18 going into these types of developments?

19 JACOB HIKMAT: The truth is, I don't recall. It doesn't  
20 look any different than any other place when I go. It just  
21 seems to be...there's nothing that catches my attention so I  
22 don't know.

23 ALBERT HAYES: That's all I have.

24 JACOB HIKMAT: Thank you.

25 ROBERT SHARPS: Any other questions from Board members?

1 Thank you Mr. Hikmat

2 HOWARD ALDERMAN: Mr. Chairman, I jumped the gun and I do  
3 apologize, but I need to follow up on a question with Mr.  
4 Hikmat based on something Mr. Hayes asked, if that's  
5 appropriate?

6 ROBERT SHARPS: It is.

7 HOWARD ALDERMAN: Mr. Hikmat, if this were not age  
8 restricted housing, if this were just a single family  
9 development house, are the public lighting requirements any  
10 different for age restricted housing than it is for normal  
11 single family non age restricted housing?

12 JACOB HIKMAT: No it's not.

13 HOWARD ALDERMAN: So the same type of street lighting, if  
14 any, is required, would be required regardless of whether it  
15 was age-restricted or not, correct?

16 JACOB HIKMAT: That is correct.

17 HOWARD ALDERMAN: Thank you.

18 ROBERT SHARPS: Well let me follow, and the County you  
19 says determine the lighting requirements for all developments  
20 such as this, and whether it be age restricting or just single  
21 family residential housing?

22 JACOB HIKMAT: That is correct. I mean, when we send in  
23 the plans they come back and they have specifics locations.

24 ROBERT SHARPS: That's during the plan review stage?

25 JACOB HIKMAT: During the plan review process.

1           MARC JORDAN: Sir if I could just please follow up on that  
2 as well?

3           ROBERT SHARPS: Sure, go ahead, everybody get a shot at  
4 this.

5           MARC JORDAN: Mr. Hikmat, in terms of the lighting, if  
6 there were single-family houses on three acres there would your  
7 project have more or less lighting than that, than (inaudible)?

8           JACOB HIKMAT: It's probably going to have the same,  
9 because three acre lots...actually it may even have more.  
10 Because three-acre lots will have more land, would require more  
11 street to put the houses.

12          MARC JORDAN: So more lighting?

13          JACOB HIKMAT: Well I mean, again, it's going to be just  
14 street lighting that's every so, it depends on the length of  
15 the street.

16          MARC JORDAN: But it would have houses, you are talking  
17 about, it should only be, actually that's fine...thank you very  
18 much.

19          JACOB HIKMAT: Thank you.

20          ROBERT SHARPS: Thank you Mr. Hikmat.

21          JACOB HIKMAT: Thank you.

22          ROBERT SHARPS: Next witness Mr. Alderman?

23          HOWARD ALDERMAN: Thank you Mr. Sharps, I call Mr. Robert  
24 Sheesley.

25          ROBERT SHARPS: And ladies and gentlemen I do apologize.

1 I didn't really tell a fib last time. I thought I'd get a  
2 bigger room, but someone you can see how important we are,  
3 someone else got that over us, so don't give the level of  
4 importance above and beyond what you think we have on this side  
5 of the table here.

6 UNKNOWN: But we did mention we were going to come back!

7 ROBERT SHARPS: And I appreciate it. I'm just as happy to  
8 see every single one of you.

9 UNKNOWN: I got your letter, thank you very much.

10 ROBERT SHARPS: I'm not responsible for sending out  
11 letters. Let me swear you in there Mr. Sheesley. Do you  
12 promise to speak truthfully in the testimony you are about to  
13 give this evening?

14 ROBERT SHEESLEY: I do.

15 ROBERT SHARPS: State your name and address for the record  
16 please.

17 ROBERT SHEESLEY: Robert W. Sheesley, 8354 Chestnut Farm  
18 Lane, Ellicott City, 21043.

19 ROBERT SHARPS: Spell your last name for the record  
20 please.

21 ROBERT SHEESLEY: Sheesley.

22 ROBERT SHARPS: Your witness Mr. Alderman.

23 HOWARD ALDERMAN: Thank you Mr. Sharps, Mr. Sheesley would  
24 you describe very briefly for the Board and the members of the  
25 public present your educational background?

1           ROBERT SHEESLEY: I have a Bachelor's of Science degree  
2 from Towson State University in Health Sciences and Biology, a  
3 Master's in Environmental Sciences from the School of Public  
4 Health at Johns Hopkins, and a Master's in Administrative  
5 Science from Johns Hopkins.

6           HOWARD ALDERMAN: And where are you presently employed Mr.  
7 Sheesley?

8           ROBERT SHEESLEY: I have an environmental consulting  
9 business, Eco-Sense, Inc., in Ellicott City.

10          HOWARD ALDERMAN: And if you would describe briefly your  
11 current duties and responsibilities with Eco-Sense?

12          ROBERT SHEESLEY: I handle a variety of environmental  
13 consulting issues ranging from private water supplies, private  
14 sewage disposal systems of all sizes, site characterization and  
15 environmental site assessments to determine the nature of the  
16 site, the natural resources on the site, the liability of a  
17 site to be able to maintain water supplies, private water  
18 supplies and sewage disposal systems, and also phase, one phase  
19 two site assessments for the clean-up of sites for a variety of  
20 hazards and environmental issues related to environmental  
21 damage, water quality, problems, and public health issues.

22          HOWARD ALDERMAN: Mr. Sheesley do your duties and  
23 responsibilities require you to be familiar with the State and  
24 County regulations which pertain to on-site septic disposal,  
25 on-site water supply, and related issues as proposed and what's

1 been marked as Petitioners exhibit 1?

2 ROBERT SHEESLEY: Yes it does.

3 HOWARD ALDERMAN: Have you ever worked for Howard County,  
4 and if so, in which capacity?

5 ROBERT SHEESLEY: Yes I was the Environmental Health  
6 Director for the Department of Health in Howard County in the  
7 mid-1980s.

8 HOWARD ALDERMAN: And have you worked for any other  
9 counties besides Howard County?

10 ROBERT SHEESLEY: Yes.

11 HOWARD ALDERMAN: And in what capacity?

12 ROBERT SHEESLEY: I worked as a Sanitarian, which is the  
13 professional designation in the Bureau of Environmental  
14 Services in Baltimore County for 14 years, came to Howard  
15 County as Director of the Bureau of Environmental Health and  
16 then went back to Baltimore County and put together the  
17 Department of Environmental Protection and Resource Management  
18 as a first director.

19 HOWARD ALDERMAN: And are you one of four or so people  
20 that have been certified by Howard County, Maryland, as a  
21 privatized percolation test applicant?

22 ROBERT SHEESLEY: Well I don't know if it's four, but yes  
23 I am one.

24 HOWARD ALDERMAN: And what does that certification mean  
25 Mr. Sheesley?

1           ROBERT SHEESLEY: It just means that I can conduct the  
2 same duties as a member of the Bureau of Environmental  
3 Services, who handles soil evaluations with respect to on-site  
4 private sewage disposal systems and can provide reports  
5 necessary to gain approval for those.

6           HOWARD ALDERMAN: And are you familiar with the subject  
7 property and the general area in which it's located?

8           ROBERT SHEESLEY: Yes I am.

9           HOWARD ALDERMAN: And are you familiar with State and  
10 County requirements for water and sewage facilities proposed  
11 for this project?

12          ROBERT SHEESLEY: Yes I am.

13          HOWARD ALDERMAN: With respect to the proposed water  
14 supply, in addition to any County level review, will it have to  
15 be evaluated and obtain a water appropriation permit from the  
16 Maryland Department of the Environment?

17          ROBERT SHEESLEY: Extensively yes.

18          HOWARD ALDERMAN: Will the proposed subject reserve area  
19 as shown on Petitioner's 1, have to be reviewed and approved by  
20 Howard County in accordance with both State, applicable State  
21 and County requirements?

22          ROBERT SHEESLEY: Yes it will.

23          HOWARD ALDERMAN: Based on your extensive experience, will  
24 the approval of the design of the septic reserve area by Howard  
25 County and the associated septic system be utilized to govern

1 the number of bedrooms that would be developed in this subject  
2 property?

3 ROBERT SHEESLEY: Yes and I might add that in this  
4 particular case of these type facilities where you have either  
5 shared facilities or multi-use systems such as this, the larger  
6 type systems, the governing body is the Maryland Department of  
7 the Environment, and their staff will review that as part of a  
8 groundwater permit, with groundwater discharge from the process  
9 which is a very extensive process with significant studies of  
10 the air.

11 HOWARD ALDERMAN: Mr. Sheesley are you familiar with the  
12 concept of groundwater recharge?

13 ROBERT SHEESLEY: Yes.

14 HOWARD ALDERMAN: And in your professional opinion is  
15 there sufficient groundwater recharge area of the property to  
16 support the fifty age restricted homes proposed here this  
17 evening?

18 ROBERT SHEESLEY: We have done a preliminary study in  
19 preparing our water appropriation permit application which  
20 requires an extensive study of the site that demonstrates with  
21 a water balance and the water balance as defined would be  
22 taking in all the physical conditions including climatic  
23 conditions where rainfall would fall on the site, the site soil  
24 characteristics, the infiltration capabilities of the soils,  
25 run off characteristics during storm events, impervious surface

1 created by building roads and so on, and determine what the  
2 balance would be between the amount of rainfall we receive in  
3 this region, which is approximately 43 inches per year average,  
4 and subtracting from that percentages that would demonstrate  
5 how much of that infiltrates, how much of it will run off in  
6 the pre condition before development, and how much would run  
7 off after impervious surfaces were defined and calculated since  
8 you will not get infiltration from the impervious surfaces. So  
9 once you take into consideration all the physical issues  
10 related to the pre-conditions, and apply the development to it,  
11 and you subtract out the impact that the development would have  
12 on that, then you can calculate and determine what the amount  
13 of water is taken out and what is left for use in the area, the  
14 ground-water system.

15 HOWARD ALDERMAN: And in your professional opinion, is  
16 there a sufficient recharge area, or sufficient recharge to  
17 support these fifty proposed homes?

18 ROBERT SHEESLEY: Based on the water balance yes. We  
19 still have some additional studies such as putting wells in,  
20 and conducting 72-hour pump tests which stresses the aquifer,  
21 which is the water-bearing zone underneath, which people draw  
22 their water supplies from this area, and during that period  
23 when that test is done, we will be evaluating impacts on wells  
24 on-site and if people ask off-site, that we would evaluate  
25 those also during that pump test, to see if there was any

1 impact from wells that were going to be used on-site to the  
2 off-site properties.

3 HOWARD ALDERMAN: And those are required tests under the  
4 state and County regulations, correct?

5 ROBERT SHEESLEY: Yes in order to get the water  
6 appropriation permit.

7 HOWARD ALDERMAN: And that's regarding, that doesn't have  
8 anything to do with the project being age-restricted correct,  
9 that's...

10 ROBERT SHEESLEY: That's correct.

11 HOWARD ALDERMAN: Can residential dwelling building  
12 permits be obtained before approvals have been obtained for  
13 water supply and sewage disposal?

14 ROBERT SHEESLEY: No.

15 HOWARD ALDERMAN: Now, drawing your attention to  
16 Petitioner's exhibit 1, the proposed septic reserve area or  
17 septic easement is in the, near the top left hand corner of  
18 near the northwest corner. In your professional opinion, is  
19 that area located far enough away from the proposed water  
20 supply on the subject property and from septic reserve areas  
21 and water supplies on other properties which adjoin this  
22 property?

23 ROBERT SHEESLEY: Yes, before we can do a site  
24 characterization evaluating the soils under the site and the  
25 rate of infiltration, a data point that's required to determine

1 how fast sewage would renovate as it goes through the sewer  
2 profile, we have to submit a plan which is called a percolation  
3 test application plan and get it approved by the County, and it  
4 has to have specific information and data of which all of the  
5 wells within 100 feet of a proposed area and significant other  
6 information of wells located within a quarter mile and wells,  
7 water wells in the area that might be downhill, so that we  
8 cannot, in a project this, or any other type of project,  
9 including just an individual subdivision, individual lot  
10 subdivision, cannot locate these type of systems or any septic  
11 system uphill of water wells and within an influence that there  
12 could be a point of contamination from the sewage source.

13       HOWARD ALDERMAN: Mr. Sheesley, based on your knowledge  
14 certainly of the subject property and the surrounding area and  
15 your knowledge generally of Howard County and beyond, are you,  
16 can you think of any adverse impacts that would occur at this  
17 location with this development because of its soil profile than  
18 would occur elsewhere along Route 32 on a similarly zoned  
19 property with the same soil profile. Is there anything unique  
20 about this soil profile?

21       ROBERT SHEESLEY: The only thing unique about it is that  
22 the testing that we have done so far demonstrates that the soil  
23 profiles are excellent for this type of use. As far as  
24 answering the question exactly, we're not finished with the  
25 overall study. We still have several more categories of study

1 for obtaining the groundwater discharge permit. On the site,  
2 we have groundwater monitoring wells out there, completely  
3 surrounding the site. The groundwater monitoring wells are  
4 there to establish what the water, ground water level is during  
5 the course of the year, and especially during the period  
6 between January and May which is referred to as wet weather  
7 season because it's the wettest period during the year, to find  
8 the highest extent of the ground water table and then to do  
9 through a mathematical model, a determination of what impact  
10 the concentrated flow of sewage would create to this, to the  
11 groundwater system underneath of that area where sewage is  
12 being disposed of. This is all requirement for the overall  
13 study to get a groundwater discharge permit. Once we've  
14 established the last portion of this, again the soils in and of  
15 themselves are excellent and over a large area, but then we  
16 still have to take a look at futuristic type things of what  
17 would happen when X amount of sewage in gallons per day would  
18 be discharged into that area, and what impact it would have,  
19 and we are just into the study period on that.

20 HOWARD ALDERMAN: And those studies follow a general  
21 progression not just with age restricted but with any  
22 development, is that correct?

23 ROBERT SHEESLEY: Yes and specifically to areas where you  
24 have concentrated flow as opposed to on-site developments.

25 HOWARD ALDERMAN: And those studies can't be finalized for

1 approval until you know what the actual use is that's approved  
2 by conditional use, is that correct? So I mean if fifty homes  
3 are proposed and are finally approved, then you can finalize  
4 those reports, correct? In terms of sewage flow, etc.?

5 ROBERT SHEESLEY: Well yes, yes you can do it that way but  
6 by the same token, it really works the other way also, which  
7 is, you define what you have available, how good it is, and  
8 what you can have from a development standpoint as a result of  
9 the approval process. In other words, it works both ways. You  
10 assess it from what the original proposal is, but you also look  
11 at what you have in reality and what reality is, is what you  
12 get, and that will determine the number of bedrooms, the number  
13 of units, etc., etc.

14 HOWARD ALDERMAN: But those tests come further down in the  
15 process, correct?

16 ROBERT SHEESLEY: That is correct.

17 HOWARD ALDERMAN: Thank you, nothing further Mr. Sheesley  
18 at this time.

19 ROBERT SHARPS: Cross-examination Mr. Alderman, Mr. Jordan  
20 I'm sorry.

21 MARC JORDAN: Thank you, Mr. Sheesley, in comparing the  
22 preliminary study and in some of the opinions you've expressed  
23 here today, which is that you don't see any adverse impact at  
24 this time, how many bedrooms were you assuming were going to be  
25 in that project?

1           ROBERT SHEESLEY: I haven't made any assumptions at this  
2 point of how many bedrooms or units because the conditions  
3 based on the evaluations that will take place will dictate what  
4 those numbers would be.

5           MARC JORDAN: (inaudible) at some point, there could be a  
6 number of bedrooms in there that would not support a  
7 subdivision there?

8           ROBERT SHEESLEY: No, in reverse. That the septic system  
9 would not support the bedrooms, or the housing units or that in  
10 fact, it would be suitable to do what the original proposal is,  
11 it can't be greater than the original proposal because that's  
12 what the zoning calls for, or land use control calls for, but  
13 it can be less or the same, or it could be mixes. It could be  
14 two bedrooms, three bedrooms, four bedrooms, two bedrooms, it  
15 could be a combination of things depending on how the developer  
16 chooses to take the data that was provided.

17          MARC JORDAN: When we talk about the original proposal,  
18 (inaudible)...?

19          ROBERT SHEESLEY: The 50 units.

20          MARC JORDAN: Fifty units per thousand square feet?

21          HOWARD ALDERMAN: Objection, asked and answered.

22          ROBERT SHEESLEY: I don't have a response to that.

23          MARC JORDAN: Well you don't know what you meant when you  
24 said the original...

25          ROBERT SHARPS: Wait, wait, wait, wait, wait, I was trying

1 not to entertain the objection.

2 MARC JORDAN: Okay. That's fine. Mr. Sheesley, for the  
3 opinions expressed here today and for the purposes of your  
4 preliminary studies, what is the capacity of (inaudible)...

5 ROBERT SHEESLEY: It is not defined yet.

6 MARC JORDAN: No capacity?

7 ROBERT SHEESLEY: No, that's not what I said. I said it's  
8 not defined yet.

9 MARC JORDAN: Okay, I'm not an engineer, but saying that  
10 it is not defined yet, you don't know what it is?

11 ROBERT SHEESLEY: I just testified that additional study  
12 has to be done to finalize all of the information before a  
13 groundwater discharge permit can be issued, so we are not  
14 completed yet.

15 MARC JORDAN: That wasn't my question, let me just try  
16 this one more time. Any capacity that you work with.  
17 (inaudible)?

18 ROBERT SHEESLEY: Say again?

19 MARC JORDAN: In any capacity you work with you're, doing  
20 a complete study?

21 ROBERT SHEESLEY: The site character, the answer to the  
22 question is, when we do or are asked to do a site  
23 characterization to see what the property can bear, it starts  
24 at the bottom with what the soils are, what the nature of those  
25 soils are, in terms of infiltration rates, texture, depth,

1 depth to groundwater, if there's any rock or other extenuating  
2 or other extenuating issues, we then determine whether or not  
3 we have something to work with, and once we determine what we  
4 have in terms of acreage, of good soil, then we know pretty  
5 much from here on out, it will either play out appropriately in  
6 terms of a gallonage that is almost equivalent to, equivalent  
7 to what the original proposal is for the development. If it  
8 doesn't work out that way because of further study then it has  
9 to be adjusted accordingly. So the evaluation is an extremely  
10 extensive evaluation and it's not something you can just say,  
11 well this is the discharge and this is what we think it is. It  
12 doesn't work that way.

13       MARC JORDAN: Mr. Sheesley, did you have a chance to look  
14 at the technical staff report of the Department Planning and  
15 Zoning.

16       ROBERT SHEESLEY: No, I looked at the Health Department  
17 and other responses.

18       MARC JORDAN: Well the Health Department had concerns,  
19 didn't they?

20       ROBERT SHARPS: Are you referring to the statement in the  
21 technical staff report - he said he didn't have a chance to  
22 look at it, so why don't you direct him to a question in there?

23       MARC JORDAN: Yeah I never said there was a recommendation  
24 from the Department-

25       ROBERT SHARPS: Give me a page in the-

1           MARC JORDAN: Yes I'm sorry, page 7, at B.2.?

2           ROBERT SHARPS: B.2? 5.2?

3           MARC JORDAN: 5.2, I'm sorry. Mr. Sheesley, the  
4 Department said that the dwellings should have specifically a  
5 limited number of bedrooms to meet the Health Department's  
6 concerns. Mr. Sheesley, you don't know what they're talking  
7 about there?

8           ROBERT SHEESLEY: Oh I know exactly what they're talking  
9 about there.

10          MARC JORDAN: Okay, what are they talking about?

11          ROBERT SHEESLEY: The Department is in a position where a  
12 proposal is made, and this is to Howard County Health  
13 Department. When a proposal is made, there is, based on  
14 density and what theoretically you can have under the Code,  
15 for... the County Code, and if it's 50 units is the density  
16 that's allowed, it doesn't say 50 units at this number of  
17 bedrooms, or that number of bedrooms, and the County Health  
18 Department and the State calculates sewage discharge by the  
19 amount of sewage that is theoretically attached to each bedroom  
20 in the house, which goes back to how many people are in per  
21 bedroom, and the effort, the estimates based on the references  
22 that are used by the State and County are 75 gallons per  
23 person, 150 gallons per bedroom, and 600 gallons for a four-  
24 bedroom house, 750 gallons for a five-bedroom house, 300  
25 gallons for a two-bedroom house, and what I testified earlier

1 to about the mix of bedrooms and the understanding about how  
2 the bedroom issue plays out into actual discharge of sewage, it  
3 works out that you can't predict exactly how many bedrooms  
4 you're going to have in the end, and you can't predict what  
5 you're going to wind up in terms of units, and what the County  
6 Health Department is trying to do is to get an understanding  
7 from the developer what is your intention with respect to the  
8 number of units and the number of bedrooms in that unit so they  
9 can get a handle internally on discharge.

10 MARC JORDAN: And when you said you can't predict, I  
11 could...certainly if someone told tell me they are going to build  
12 50 houses with a maximum four bedrooms, that's 200, you know...

13 ROBERT SHEESLEY: You can say that you're going to build  
14 50 units with thirty bedrooms in them and it doesn't mean  
15 anything until this is done, until this process is complete.

16 MARC JORDAN: Mr. Sheesley, are you familiar with the  
17 County (inaudible)?

18 ROBERT SHEESLEY: Extremely well.

19 MARC JORDAN: As you recommended, does this project have a  
20 treatment aspect of it?

21 ROBERT SHEESLEY: This facility will probably have a  
22 treatment system associated with it as a condition of the  
23 permit because of this reason. As of about a month ago, after  
24 a three or four years worth of study by the Department of  
25 Natural Resources, and the Department of Environment on

1 tributary strategies, on tributary impacts, throughout the  
2 State, they were trying to determined what amount of nitrogen  
3 loading existed in the tributaries throughout the State and  
4 what that impact in terms of pounds for nitrogen, total  
5 nitrogen, is getting into the Chesapeake Bay. Because as  
6 you've probably read in a lot of the press and a lot of things  
7 relate to the Bay, we are now down to trying to take nutrients  
8 out of the water that discharges into the Bay, and that means  
9 nitrogen compound, from either runoff from farms, from septic  
10 systems, from treatment plants, sewage treatment plants, or  
11 whatever possible source, atmospheric nitrogen, and all this  
12 adds up to pounds of nitrogen. And unless they can get the  
13 pounds of nitrogen by some process out of the Bay, we will  
14 continue to have algae blooms, a depletion of oxygen in the  
15 water columns in the Bay, and other significant impacts of the  
16 resources of the Bay. The reason that I said it that way is  
17 because as you get backed up into the watersheds and individual  
18 projects, the State now is taking the position that through  
19 their study, the degraded water body of concern is the Bay  
20 first. If a tributary system in some portion of the State  
21 doesn't have a big problem with nitrogen, they might have a  
22 land use policy that could allow different types of uses that  
23 theoretically could increase it at some time, because there's a  
24 budget. There's always a budget in nature. Other ones can't  
25 have anything because the systems are already degraded. What

1 the State has said a month ago in their final policy, is that  
2 the Bay will be used as the body of water that you have to  
3 protect in terms of nitrogen. And the standard that they are  
4 applying now as of a month ago, is, and I'll give you these  
5 terms for the record, 30 millograms of BOD which is Biochemical  
6 Oxygen Demand, and essentially what that means as the organics,  
7 the organics in the sewage, and it's the strength of the  
8 sewage. So when you treat, you have to take that out of the  
9 sewage before you can get to the nitrogen compounds and  
10 eliminate the nitrogen compounds. Then there's suspended  
11 solids, which also is 30 milligrams per liter, and they are the  
12 portion of the sewage that is so small particle-wise that they  
13 stay suspended but they still have a value in terms of having  
14 to degrade it to take it out. And it's all biochemical. The  
15 bottom line is that before you can get nitrogen out, total  
16 nitrogen, you have to take care of the other two. So, before  
17 anything can discharge from these units into that field, it  
18 will have to meet at the point of discharge from a treatment  
19 system, advanced treatment system, of 30 milligrams per liter  
20 BOD, 30 milligrams per liter suspended solids, and 8 milligrams  
21 per liter of total nitrogen. The reason that they selected 8  
22 milligrams, which requires this level of treatment that you  
23 asked about, is because, the only best available technologies  
24 that exists today can treat down to that level. It's not that  
25 you can't do better, there's nothing out there that can treat

1 better. There will be one day, but what I've found and I'm  
2 heavily involved in the waste water industry in that regard, is  
3 that these systems that are out there now that treat can  
4 actually get down to 2, 3, 4, 5 milligrams per liter and as  
5 substantial treatment of the waste to the point that it's 99.9%  
6 clean. So you are winding up now requiring treatment to treat  
7 the waste before it goes into the field, the disposal field, as  
8 opposed to under the, like what many of the people who have a  
9 standard septic system, where you have a septic tank, and a  
10 drain field or tile system where the waste goes into the septic  
11 tank which does not treat waste of any consequence, it settles  
12 solids, and then discharges into the soil system in the  
13 trenches, where the treatment takes place. So if you can see  
14 my point, the standards for the permit for this to go forward  
15 has to meet a significant test in order to treat the waste  
16 before it even goes into the field. And that's where we stand  
17 now as of the last month and over the last four years with  
18 regard to treatment. So yes, all facilities such as this in  
19 the State of Maryland will have to require this, be required to  
20 have the same treatment.

21 MARC JORDAN: ...[inaudible]. Thank you very much. Mr.  
22 Chairman, if it's okay with you and the Board, Mr. Sheesley  
23 testified about the septic and well, if it's okay, I'd like to  
24 proceed to ask questions about the well? He's not going to  
25 repeat anything that's already been asked.

1           ROBERT SHARPS: No, I'll make sure he doesn't.

2           MARC JORDAN: Okay. Thank you very much.

3           ROBERT SHARPS: And, go ahead.

4           MARC JORDAN: Has any of the information that you've  
5 mentioned been provided to the Howard County Health Department?

6           ROBERT SHEESLEY: No, the water prop...regarding water? Or  
7 everything?

8           MARC JORDAN: Regarding the septic and the wells.

9           ROBERT SHEESLEY: Oh yes. Well, with regard to the  
10 septic, and I'll go over to the board if you don't mind..

11          ROBERT SHARPS: Grab your mic with you please.

12          ROBERT SHEESLEY: As I said earlier in the process, when  
13 you start with this, you get a piece of property and a  
14 proposal. You go out and see where the best areas are to  
15 provide the sewage disposal. And you have a general  
16 understanding of what the client wants to do with the project,  
17 a general understanding of what that means in terms of  
18 gallonage that would be discharged, and you go characterize the  
19 site and determine what the soils are, as I said, the  
20 groundwater locations and various other characteristics. You  
21 submit an application with the plan, a plan like this, and you  
22 determine areas in a grid system throughout this potential  
23 sewage reserve area where test pits will be dug to look at the  
24 soil profiles, to look for groundwater rock, rock percentages,  
25 and to determine if the profiles are suitable to handle the

1 discharge of sewage. But don't forget, that's sewage without  
2 treatment because the soil can treat the sewage too. In this  
3 particular case, we had this entire area selected, which  
4 includes parcel A, and what's referred to on the plan as the  
5 septic easement, 4.5 acres plus or minus. We tested the entire  
6 area in the 4.5 acres of the sewage easement. There were 50  
7 holes dug all across in a grid system, and all 50 passed. The  
8 soil conditions here are impeccable. We did not test this area  
9 over here because I preferred not to go into this area at this  
10 time. If they want to look at it in the future, that's fine.  
11 If they want to look at it after we do the evaluation of this  
12 that's fine. But right now we concentrated on this section,  
13 and what that meant is that once we passed all these tests,  
14 that percolation certification plat was approved by the County.  
15 So we have a signed percolation certification plat by the  
16 County that this is suitable for sewage disposal as part of  
17 this development. In other words, this area does not affix a  
18 discharge to it, does not affix anything other than that this area  
19 is useable for sewage disposal.

20       MARC JORDAN: And the percolation tests you are talking  
21 about, is that the percolation test that's on file right now  
22 with the Howard County Health Department?

23       ROBERT SHEESLEY: Well yes it should be. I can't tell you  
24 if it's still there or what, but it's there, that's what was  
25 done.

1           MARC JORDAN: As part of your study did you review the  
2 preliminary application to the Maryland Department of Health  
3 for water use permit?

4           ROBERT SHEESLEY: You mean the water appropriation permit  
5 to the Maryland Department of Environment?

6           MARC JORDAN: Yes.

7           ROBERT SHEESLEY: Yes, I've been involved with this,  
8 exactly. It hasn't been submitted yet. I put it in for  
9 submittal, I don't know if it's cleared the Department yet or  
10 not. The application has been submitted.

11          MARC JORDAN: And then you'll give information that you've  
12 discussed about recharge will be provided for public review at  
13 this point in time?

14          ROBERT SHEESLEY: No, it was preliminary for our own  
15 information; however, the same information that I've provided  
16 will be provided with that, with the report that goes with the  
17 water appropriation permit. So everything as I said under  
18 testimony will be in a study, a booklet, hydrogeological study,  
19 that will accompany the water appropriation permit. So you  
20 will get a chance to review that.

21          MARC JORDAN: My last question then. Have any of the  
22 adjacent property owners been informed yet about the  
23 application for the groundwater use permit?

24          ROBERT SHEESLEY: As soon as the application reaches the  
25 Maryland Department of the Environment and it's processed,

1 letters will go out to all the surrounding property owners as  
2 part of that process.

3 MARC JORDAN: Okay. Thank you very much.

4 ROBERT SHARPS: Any other cross-examination? The Board  
5 may have questions. Any questions?

6 AL HAYES: I have one. This area that you have set up for  
7 the septic system, percolation, your tests already have shown  
8 that it will support without advanced treatment, the maximum  
9 use for that development?

10 ROBERT SHEESLEY: No, because it would not say that. It  
11 would indicate that the soils are suitable for on-site sewage  
12 disposal, discharge, and everything else that I testified to of  
13 the upcoming portions of the study will demonstrate, or not,  
14 whether that area can support exactly what is proposed or  
15 something less. I'm halfway there - I'm not all the way there.

16 ROBERT SHARPS: Mr. Sheesley, when you talked about the  
17 balance checks, and I'm not going to go into all of the  
18 iterations that you mentioned.

19 ROBERT SHEESLEY: Water balance?

20 ROBERT SHARPS: The water balance test. When you did that  
21 water balance...or you are in the process I understand, it's not  
22 completed yet.

23 ROBERT SHEESLEY: Well, I have preliminary information  
24 that will be published in that book, in the report.

25 ROBERT SHARPS: Okay sir, I might have slept a little bit

1 there and my eyes was opened up. Is that water balance test  
2 based on the maximum use of this particular proposal that they  
3 are putting before us? For instance, could it be if they came  
4 up with 85%, they are going to be within the 5,500 square feet  
5 and the balance is going to be below 2,500 square feet, would  
6 that water balance test meet those requirements?

7 ROBERT SHEESLEY: Based on the preliminary information,  
8 yes it will meet the use of, and I'll read this to you-

9 ROBERT SHARPS: I'll trust you. I just need to know, will  
10 it meet that requirement? The scenario I just gave you.

11 ROBERT SHEESLEY: For each unit, for each unit, up to  
12 usage of 213 gallons per unit. day in day out, average flow,  
13 average use-

14 ROBERT SHARPS: And that average flow would meet the req...

15 ROBERT SHEESLEY: No, that's average use.

16 ROBERT SHARPS: Average use would meet the requirements I  
17 just stated, of 5,500 square foot, 85% of those dwellings and  
18 the other balance being below that?

19 ROBERT SHEESLEY: I don't, I can't make that determination  
20 yet because we're not done with the pump test. A pump test is  
21 a critical issue now. I'm saying the water balance, the water  
22 balance tells you how much water is generated in this region on  
23 this site. You take the acreage of the site. You take run off  
24 values in every storm event, a certain amount runs off, a  
25 certain amount infiltrates.

1           ROBERT SHARPS: And you take that from the 43 inches per  
2 year annual? That is...

3           ROBERT SHEESLEY: That's correct, and then you say okay,  
4 well, we're going to have fifty units at 213 gallons each per  
5 unit, and this is what we're applying for in the permit, this  
6 many gallons. And then there's a month of maximum use, like in  
7 the summertime, you have to have an escalated value for really  
8 heavy peak conditions. But the average is 213 times the 50,  
9 and it's not about bedrooms or anything else - it's about the  
10 overall use.

11          ROBERT SHARPS: Well, I didn't use bedrooms as you  
12 noticed. I gave you a square footage, and I did that  
13 intentionally because...

14          ROBERT SHEESLEY: You can't determine the square footage  
15 of a house...

16          ROBERT SHARPS: ...for water usage.

17          ROBERT SHEESLEY: ...for water usage, that's correct. Let  
18 me put it this way, in all candor, I've dealt with this problem  
19 recently where the Health Department was concerned that in a  
20 given development, it was going to be a 5,000 square foot unit.  
21 And the design for the overall property was two bedrooms per  
22 unit. And if they chose to build a 400, 200, or 5,000 square  
23 foot house, there isn't anything in the...the Health Department  
24 was concerned that hey, that's a big house, they can build all  
25 the bedrooms they want in there. Well unfortunately, in the

1 Code of Maryland Regulations and in the local statutes, there  
2 isn't any rule that says if you have a 5-bedroom house you can  
3 only have, you have to have more than two bedrooms. What we're  
4 saying is, the design was for 2 bedrooms for these units. In  
5 this case, it could be 2, 3 or 4, but the combination of those  
6 and the number of overall units that are generated has to be  
7 able to meet the amount of what can be discharged into that  
8 sewage system.

9 ROBERT SHARPS: Okay, now that goes to my simple question.  
10 What comes first in this case, whether the chicken or the egg,  
11 do your test comes and says okay, this is the capacity that  
12 this or the available capacity for discharge, this is the  
13 available usage, and then they say okay, this is what I have to  
14 work with, and then they say how those houses and how those  
15 dwellings are going to be retrofitted into that, into that  
16 formula?

17 ROBERT SHEESLEY: That's the character, the correct  
18 characterization.

19 ROBERT SHARPS: Okay, so that means if they come up with  
20 55 or 5,500 square foot square units and you come up and say,  
21 you don't have the capacity for that, they have to stop it?

22 ROBERT SHEESLEY: They have to go rethink the plan.

23 ROBERT SHARPS: And why are we here and you don't have  
24 that answer for us and we gotta make a decision. (*clapping*)  
25 Please, this is not entertainment, believe me. We're trying to

1 get to facts that we need to come decisions on. Why do we get  
2 to this point then and we have to make a decision, and you  
3 don't have that information for us?

4 ROBERT SHEESLEY: I'm here to give the information in the  
5 manner that I did.

6 ROBERT SHARPS: I'm not putting you on the spot, that  
7 question is bothering me. I've been on this Board 8 years, and  
8 I've not come to this point where that question is probably  
9 relative to a lot of what's going on here, capacity and usage,  
10 and what's available. Will that information be available, or  
11 do you, what is your best guess analysis and that's all you can  
12 give at this point since you haven't finished yet, to say that  
13 this development can be completed on the maximum use that they  
14 have submitted to the Department of Planning and Zoning.

15 ROBERT SHEESLEY: Probably within the next two to three  
16 months.

17 ROBERT SHARPS: You'll know that. So if we are granted  
18 and you come back and say they can't do it because of that  
19 water then, we just, it's just a waste of time but won't be  
20 done?

21 ROBERT SHEESLEY: I can't answer that. I can only say,  
22 your characterization, your characterization was--

23 ROBERT SHARPS: That's not a fair question to you - I'm  
24 sorry, I apologize. I have no further questions.

25 PAT PATTERSON: Mr. Sheesley, just one question. If by

1 some chance there was error in calculation on your figures,  
2 what type of backup, this is vital to any project, is there a  
3 backup system within the County, the State, how are these, I  
4 mean are these figures taken at fact review, just the figures  
5 you give or is there somebody else looking over your shoulder  
6 at the same time, doing this septic?

7 ROBERT SHEESLEY: I have a lot of people looking over my  
8 shoulder, yes.

9 PAT PATTERSON: Okay, so there is checks, and  
10 counterchecks and balances?

11 ROBERT SHEESLEY: That's correct.

12 ROBERT SHARPS: I would hope there's a complex formula  
13 that you use to get this--

14 ROBERT SHEESLEY: At least two, two levels of government,  
15 yes.

16 PAT PATTERSON: BecauseM you know, errors are made, right?

17 ROBERT SHEESLEY: That's correct.

18 PAT PATTERSON: Okay well thank you. You've answered my  
19 question, thank you very much.

20 ROBERT SHARPS: Any other questions Board Members? Mr.  
21 Pfefferkorn?

22 JIM PFEFFERKORN: Mr. Sheesley good evening. Do you have  
23 any systems that are similar to this in operation in the  
24 County?

25 ROBERT SHEESLEY: That are similar to what probably will

1 be?

2 JIM PFEFFERKORN: What will probably be?

3 ROBERT SHEESLEY: Yes, yes I do. Yes there are - there  
4 are several out there.

5 JAMES PFEFFERKORN: Several. Of what magnitude of homes  
6 are they, or if you know?

7 ROBERT SHEESLEY: Well in terms of homes, they range from  
8 probably 76 to 250 or so. I mean, that's the smallest and the  
9 largest, inbetween, on projects of concentrated flow, not  
10 individual lots. Like on shared facilities, which are  
11 comparable, but a different category. The County has probably  
12 18 to 25 of those units and they could arrange from 5 units to  
13 118 on a system like we're talking about. And with  
14 concentrated flows. So there's a real diversity in numbers of  
15 units, type of developments, that are not utilizing this based  
16 on Howard County's land use policy. Howard County's land use  
17 policy has dictated how that plays out.

18 JAMES PFEFFERKORN: Now to carry Mr. Sharps' question one  
19 step further, if it would come in that this particular project  
20 could only support 30 buildings, there wouldn't be any  
21 buildings built when they knew this, would there? This would  
22 be early on in the, in the review procedure?

23 ROBERT SHEESLEY: You mean, find out after you've built  
24 them? You can't get a building permit until this is all  
25 resolved.

1 JAMES PFEFFERKORN: Thank you I have no further questions.

2 ROBERT SHARPS: Mr. Simpkins? Redirect, I'm sorry.

3 HOWARD ALDERMAN: One or two, yes. Mr. Sheesley, as shown  
4 on Petitioner's exhibit 1, that's the maximum proposal that is  
5 being considered, is that correct?

6 ROBERT SHEESLEY: That's correct.

7 HOWARD ALDERMAN: And the other projects that you've  
8 talked about in Howard County, did they follow the normal  
9 course of approval obtaining developmental approval first and  
10 then whether sewers analyzed and the water appropriation permit  
11 issued?

12 ROBERT SHEESLEY: Yes.

13 HOWARD ALDERMAN: And that's the same course that this  
14 project will go through if it's approved at this preliminary  
15 level, correct?

16 ROBERT SHEESLEY: Correct.

17 HOWARD ALDERMAN: Nothing further Mr. Sheesley, thank you.

18 MARC JORDAN: Mr. Chairman, is it appropriate if I just  
19 throw in one more question?

20 ROBERT SHARPS: Please.

21 MARC JORDAN: And my question is simply, what are these  
22 projects Mr. Sheesley, can you identify them for us?

23 ROBERT SHEESLEY: The names of projects?

24 MARC JORDAN: (inaudible)

25 ROBERT SHEESLEY: One is Ellicott Meadows, I think it's

1 Walnut Grove, the Pedicord Property, Willow Pond, Pickett Farm  
2 - I mean that's a cross-section that I...right off the top of my  
3 head give you. I don't have all of them. Fortunately or  
4 unfortunately, I don't have all of them. But there are some  
5 that have gone through a very similar process in one way or  
6 another. Some the same process - less extensive, the same  
7 process, more extensive. It's a range depending on the amount  
8 of discharge.

9 MARC JORDAN: And how long, when was the first one of these  
10 projects (inaudible), approximately?

11 ROBERT SHEESLEY: Well, let's just say five, five, six  
12 years ago.

13 MARC JORDAN: Has there been problems with any of them  
14 since (inaudible)?

15 ROBERT SHEESLEY: Only one project has had a problem, and  
16 that was with respect to meeting a permit condition, and they  
17 have moved to fix that by redoing a portion of the treatment  
18 process by adding, I'm going to use the term reactors, the  
19 treatment process, we'll say. They are increasing the size of  
20 the treatment process and once that's done, it will be fine and  
21 be able to meet the laws.

22 MARC JORDAN: That project name?

23 ROBERT SHEESLEY: Villas of Cattail Creek. And once  
24 that's completed, probably very shortly, the equipments on its  
25 way, and that should be fine after that.

1           MARC JORDAN: That's all I have Mr. Chairman, thank you.

2           ROBERT SHARPS: Thank you Mr. Sheesley. Before you call  
3 your next witness, let me take a short break so people can  
4 stretch and take care of any needs they need to. Ten minutes  
5 and we will recess.           **B R E A K**           Just an administrative  
6 announcement before we get started, for those of you who have  
7 not been in last week and you didn't have an opportunity to  
8 sign in if you are in opposition, or in testimony for the  
9 petitioner, please make sure you do today. You will get a  
10 chance to do it at the end of the session this evening before  
11 we adjourn. Mr. Alderman, how many witnesses do you have  
12 total?

13           HOWARD ALDERMAN: I have Mr. Callajero, and then I may  
14 have Mr. Williams, a representative of the family, I'm still  
15 debating whether or not to call him in direct or possibly in  
16 rebuttal.

17           ROBERT SHARPS: How much time do you think you will be  
18 spending on this witness here?

19           HOWARD ALDERMAN: On direct? Twenty minutes.

20           ROBERT SHARPS: Okay. Let's play it by ear. Just for the  
21 record, so for those of you who have something on the stove at  
22 home and don't want it to burn, I don't plan to go past 9  
23 o'clock this evening. We'll adjourn. There's no way we are  
24 going to finish, so no way trying to draw the sun any more  
25 light out of than we can get. So, we'll adjourn by 9 o'clock

1 this evening. It also helps us. We got a 10 o'clock tomorrow  
2 morning on another case.

3 UNKNOWN: Will there be another meeting?

4 ROBERT SHARPS: Excuse me, let me hear that question I  
5 heard back...

6 UNKNOWN: Are you holding another meeting?

7 ROBERT SHARPS: Oh we will. When adjourn means we will go  
8 to the next session, and I'm sure it's going to take probably  
9 another one after that. We'll play it by ear.

10 UNKNOWN: Can I ask you for any reason, if things wrap up  
11 a little before 9, if you are going to just break for another  
12 meeting anyway, could we just break at the point before the  
13 opposition gives the opening statement and you know, we might  
14 as well save that and our witnesses all for one cohesive...?

15 ROBERT SHARPS: Oh absolutely, absolutely.

16 JAMES PFEFFERKORN: If he gets that far.

17 ROBERT SHARPS: I love optimism. But why did you take him  
18 off his perch. I love optimism but there was no way, and I do  
19 that for you for sure. But I'm sure we probably won't get to  
20 that this evening. Mr. Alderman, please, your next witness?

21 HOWARD ALDERMAN: I'll call Joseph Caloggero please.

22 ROBERT SHARPS: Mr. Caloggero, let me swear you in. Do  
23 you promise to speak truthfully in the testimony you are about  
24 to give this Board this evening?

25 JOSEPH CALOGERO: Yes I do.

1           ROBERT SHARPS: State your name and address for the record  
2 please.

3           JOSEPH CALOGGERO: Joseph J. Caloggero. I work for The  
4 Traffic Group, 9900 Franklin Square Drive, Suite H, Baltimore,  
5 21236.

6           ROBERT SHARPS: Spell your last name please for the  
7 record.

8           JOSEPH CALOGGERO: Caloggero.

9           ROBERT SHARPS: And it's Caloggero?

10          JOSEPH CALOGGERO: Yes, you can call me Joe all night if  
11 you wish.

12          ROBERT SHARPS: No sir, I'll call you Mr. Caloggero. Mr.  
13 Alderman, it's your witness.

14          HOWARD ALDERMAN: Thank you sir. Mr. Caloggero, you say  
15 you're employed by The Traffic Group. Would you describe your  
16 educational background for the Board and the members of the  
17 public present?

18          JOSEPH CALOGGERO: Sure, I have a Bachelors of Science in  
19 Civil Engineering. I have 30 credit hours towards a Master's  
20 of Science and Civil Engineering with respect to  
21 transportation.

22          HOWARD ALDERMAN: And do you hold any professional  
23 certifications or licenses recognized in this State or the  
24 United States?

25          JOSEPH CALOGGERO: Yes I'm a registered professional

1 engineer in the State of Maryland, as well as a professional  
2 traffic operations engineer which is an international  
3 recognition by the Institute of Transportation Engineers.

4 HOWARD ALDERMAN: And if you would, please describe  
5 briefly your current duties and responsibilities with The  
6 Traffic Group.

7 JOSEPH CALOGGERO: I'm a senior project manager for The  
8 Traffic Group, and the majority of my work is working with  
9 development projects, following them through from the traffic  
10 impact study phase to the final plan stage, to testifying here  
11 in front of you. States of Maryland, Delaware, Virginia, are  
12 my main territories.

13 HOWARD ALDERMAN: If you could please describe your  
14 professional experience in rendering traffic opinions regarding  
15 development matters in Howard County and other jurisdictions?

16 JOSEPH CALOGGERO: Since 2000, I've been employed by The  
17 Traffic Group, and I've testified in numerous jurisdictions  
18 over 3 or 4 states rendering different opinions with respect to  
19 traffic impact studies.

20 HOWARD ALDERMAN: And have you reviewed the conditional  
21 use exhibit which has been marked as Petitioner's exhibit 1,  
22 and the age restricted housing proposal which is pending before  
23 this Board here this evening?

24 JOSEPH CALOGGERO: Yes I have.

25 HOWARD ALDERMAN: And do you have any experience with The

1 Traffic Group or any other prior employment in evaluating any  
2 traffic impacts that may be associated with senior housing or  
3 age-restricted housing?

4 JOSEPH CALOGGERO: Yes I do.

5 HOWARD ALDERMAN: And have you visited the subject  
6 property?

7 JOSEPH CALOGGERO: Yes I have.

8 HOWARD ALDERMAN: And have you reviewed the access to and  
9 from the subject property?

10 JOSEPH CALOGGERO: Yes I have. I'm familiar with the  
11 access along Greenberry Lane, access width, width which has  
12 access to Linden Church Road, and then has access to the  
13 signalized intersection with Route 32. I did do just a drive-  
14 through of the site. I'm familiar with the area. I've worked  
15 here for quite awhile, in the State of Maryland, so I'm  
16 familiar with Route 32 and its operations.

17 HOWARD ALDERMAN: And have you reviewed any potential  
18 future State modifications to Maryland Route 32 in the vicinity  
19 of Greenberry Lane and the subject property?

20 JOSEPH CALOGGERO: Yes I have. It is my understanding  
21 that the State Highway Administration has a, an interchange  
22 project set for this intersection in which the new road will  
23 come in a little bit to the east side of the site. The access  
24 will still remain the same. Our access will not change. I'll  
25 call it for lack of a better term, the access road, will be

1 pushed forward into the site a little bit. So yes I am  
2 familiar.

3 HOWARD ALDERMAN: Now you indicated you had familiarized  
4 yourself with Petitioner's 1 and the proposed units are shown  
5 thereon, would you describe for the Board and the members of  
6 the public present the traffic generation expected from this  
7 type of development?

8 JOSEPH CALOGGERO: Sure. As mentioned before, I have  
9 worked on numerous active adult communities and we have done  
10 studies and I have reviewed studies with respect to trip  
11 generation for these developments. What we did was we utilized  
12 the Institute of Transportation Engineers trip generation  
13 report to review the trips that were to be expected to be  
14 generated by this development - 50 detached elderly single  
15 family homes. Of this, it is expected that there will be 15  
16 morning total peak hour trips, that's in and out, and 30  
17 evening peak hour trips which is in and out. Now when I say  
18 morning and evening peak hour, that's one hour that's typically  
19 between 7 and 9 in the morning. One hour tip between 4 and 6  
20 in the afternoon. Now the general characteristics of these  
21 types of facilities are that the majority, there are people who  
22 are still working, so there will be trips that are generated in  
23 the morning, but typically, the higher volumes can be found  
24 after your typical peak hours that are on the road today.

25 HOWARD ALDERMAN: In your opinion, is it possible to

1 develop any residential community, age-restricted or not, that  
2 would not have some level of traffic associated with it?

3 JOSEPH CALOGGERO: Well yes of course. There's going to  
4 be, whether it's 50 active adult units, or from what we heard  
5 in previous testimony, potential of 25 regular, I'll call it  
6 residential, yes, both are going to generate trips to and from  
7 this site.

8 HOWARD ALDERMAN: Now are you familiar with what is called  
9 APFO, or the Adequate Public Facilities Ordinance, in Howard  
10 County?

11 JOSEPH CALOGGERO: Yes I am.

12 HOWARD ALDERMAN: And prior to the issuance of building  
13 permits, assuming approval is obtained here, and approval for  
14 well and septic is obtained and approval for the building  
15 permits are obtained, prior to the issuance rather of the  
16 building permits, does the project have to meet all APFO  
17 requirements including those related to roads and  
18 transportation?

19 JOSEPH CALOGGERO: Yes they most certainly do. Once we  
20 get to, or hopefully once we get to the next stage, we will  
21 conduct a traffic impact analysis in accordance with Howard  
22 County and the Maryland State Highway Administration  
23 guidelines. Now, before we can, with these guidelines it  
24 establishes a scope of the intersections that we will need to  
25 study based on the development where we're located. Once that

1 scope is established, we will conduct studies, we will do  
2 intersection turning movement counts, again in accordance with  
3 State and County guidelines, prepare traffic studies for all  
4 the agencies to review. We will need to pass the specific  
5 tests for both the Maryland State Highway Administration here  
6 in Howard County, to be able to move forward in the process -  
7 whether that is pass with or without potential mitigation.

8 HOWARD ALDERMAN: And in your experience working with  
9 development projects in Howard County, is that the normal  
10 course of development processing once the development has been  
11 approved as some level as it goes forward, then it has to meet  
12 the APFO test, is that correct?

13 JOSEPH CALOGGERO: That is correct.

14 HOWARD ALDERMAN: Given your familiarity of the subject  
15 property and its environs, and being experienced in age  
16 restricted or active adult communities, and your familiarity  
17 with Howard County, in your opinion, will this proposed age-  
18 restricted conditional use community at this location have  
19 traffic impacts above and beyond those associated with such use  
20 or located elsewhere along Route 32 in Howard County?

21 JOSEPH CALOGGERO: No the impact should be the same.

22 HOWARD ALDERMAN: And all of those, regardless of where it  
23 might be located on Route 32 in Howard County, it would still  
24 have to meet the same APFO standards, correct?

25 JOSEPH CALOGGERO: That is absolutely correct.

1           HOWARD ALDERMAN: Not different APFO standards for Route  
2 32 a mile up the road, correct?

3           JOSEPH CALOGGERO: That is correct. Howard County has the  
4 same standards for all locations within the County.

5           HOWARD ALDERMAN: Thank you Mr. Caloggero I have nothing  
6 further at this time.

7           ROBERT SHARPS: Cross-examination Mr. Jordan?

8           MARC JORDAN: Yes sir thank you. Mr. Caloggero, you said,  
9 you gave your opinion that this project won't impact, have a  
10 bigger impact on or another part of Route 32, what about other  
11 places in the County. Is it going to have an greater impact  
12 here than in other locations within Howard County?

13           JOSEPH CALOGGERO: It all depends on what area in the  
14 County, it is a possibility, yes.

15           MARC JORDAN: Are you familiar at all with the County  
16 zoning?

17           JOSEPH CALOGGERO: Somewhat familiar.

18           MARC JORDAN: Are you familiar with (inaudible), I'm not  
19 trying to put you on the spot, but you know what this is zoned  
20 for?

21           JOSEPH CALOGGERO: I'm not-

22           MARC JORDAN: It's RR.

23           JOSEPH CALOGGERO: Okay it's RR.

24           MARC JORDAN: I'm not trying to, you know...

25           JOSEPH CALOGGERO: Sure, no, that's fine.

1           MARC JORDAN: You're familiar, are there other areas of  
2 the County other than along Route 32 that are RR.

3           JOSEPH CALOGERO: I understand that.

4           MARC JORDAN: So your opinion is limited to the impact  
5 along Route 32, my question is, if we're not on Route 32 but  
6 somewhere else in the RR district, wouldn't you agree that it  
7 could have a greater impact?

8           JOSEPH CALOGERO: It could have a greater impact, it  
9 could have a lesser impact, it depends on the area, yes.

10          MARC JORDAN: Okay. And on Route 32, how many fatalities  
11 have there been on that stretch of Route 32 between Route 70  
12 and Route 108?

13          JOSEPH CALOGERO: I do not study that.

14          MARC JORDAN: You have no idea?

15          JOSEPH CALOGERO: No I don't.

16          MARC JORDAN: (inaudible) an accident study?

17          JOSEPH CALOGERO: I did not do a crash study along  
18 Maryland 32 from I-70 to Maryland 108. That will probably be  
19 done as records show, Howard County will probably ask for a  
20 crash study along this section of the road. But that won't be  
21 done until the Adequate Public Facilities test.

22          MARC JORDAN: Do you think (inaudible) consider all facts  
23 and give an opinion (inaudible).

24          JOSEPH CALOGERO: That is correct.

25          MARC JORDAN: And you're familiar, you said that you

1 (inaudible) that the County was going to or the State was gonna  
2 make some interchange adjustments to the intersection there?

3 JOSEPH CALOGERO: Yes.

4 MARC JORDAN: And what, in your understanding, what is  
5 (inaudible)?

6 JOSEPH CALOGERO: Right now I understand that according  
7 to the latest information I pulled, bear with me for a moment.  
8 It's my understanding that this section of road is funded at  
9 this time for right-of-way, and then beyond that, it is not  
10 determined at this time based on my records.

11 MARC JORDAN: Again, I'm not trying to trip you up.

12 JOSEPH CALOGERO: You're not throwing a trick question.

13 MARC JORDAN: And you don't know, there's no way you can  
14 tell when that project might (inaudible)

15 JOSEPH CALOGERO: That's absolutely correct.

16 MARC JORDAN: Now, you said you were familiar with Route  
17 32. Now, (inaudible) this site, (inaudible) Route 32, have you  
18 observed any unusually, the access methods along Route 32 in  
19 other new development?

20 JOSEPH CALOGERO: No I have not reviewed any of these  
21 access.

22 MARC JORDAN: Have you observed any?

23 JOSEPH CALOGERO: No I have not.

24 MARC JORDAN: Are you aware that some of the access, some  
25 of the new developments is (inaudible) to one side of the

1 highway?

2 JOSEPH CALOGGERO: I have understood that yes.

3 MARC JORDAN: And (inaudible) that the stretch of Route 32  
4 is somewhat different than other parts of the County?

5 JOSEPH CALOGGERO: It just depends on the location of the  
6 property and access.

7 MARC JORDAN: But wouldn't you agree that the region...

8 ROBERT SHARPS: Wait, wait, wait, excuse me. I'm going to  
9 object if there is ...

10 HOWARD ALDERMAN: Now I'm waiting to hear, I wanted to  
11 hear the whole question.

12 ROBERT SHARPS: Yeah well you don't need to. You don't  
13 ask for his opinion when he gave you a yes or no to an answer,  
14 I'm not going to allow that.

15 HOWARD ALDERMAN: I didn't want to interrupt, I wanted to  
16 wait for the whole question Mr. Sharps.

17 MARC JORDAN: Mr. Caloggero, you said you had studied a  
18 lot of facilities that are age-restricted in the County...

19 JOSEPH CALOGGERO: Not in the County.

20 MARC JORDAN: Not in the County?

21 JOSEPH CALOGGERO: In the State of Maryland.

22 MARC JORDAN: State of Maryland.

23 JOSEPH CALOGGERO: Excuse me, Eagle Head at Lake  
24 Linganore? That has, there's one portion that has...one or two  
25 that has quite a bit. Maybe 1,500 units in Frederick County,

1 and New Market. There is Green... I'm sorry Morovia Town Center.  
2 which is also in New Market along south, south of I-70, along  
3 Maryland 75, and that's age-restricted - that's approximately  
4 1,500 unit as well. You know, down in Virginia, in Buckier  
5 County Virginia - active adult community, probably ranging in  
6 the range of 100 to 200 units. I hope that's sufficient for  
7 now. I have numerous projects and it's hard to recall the  
8 names of all of them.

9 MARC JORDAN: Okay. Which one would you say is most  
10 similar to this one?

11 JOSEPH CALOGGERO: This is only 50. We did a small 43  
12 unit in Lake Linganore, Eagle Head at Lake Linganore in  
13 Frederick County.

14 MARC JORDAN: Mr. Caloggero, were you out there, were you  
15 out there during the time of the day when the school busses  
16 were out?

17 JOSEPH CALOGGERO: No I did not.

18 MARC JORDAN: Do you happen to know time the school busses  
19 go through there in the morning or in the afternoon?

20 JOSEPH CALOGGERO: No, that, once we go into the Adequate  
21 Public Facilities Ordinance test, we will go out and count the  
22 intersection turning movements as required by the County.

23 MARC JORDAN: Now, I may now ask you things you're not  
24 here to testify about, but let me just ask you, have you  
25 testified at all to the safety affected by this project?

1           JOSEPH CALOGGERO: That will be done as part of the  
2 Adequate Public Facilities test.

3           MARC JORDAN: Alright, I don't have anything further.

4           ROBERT SHARPS: Any other questions?

5           UNKNOWN WOMAN. A couple. You referred to-

6           ROBERT SHARPS: Excuse me, I need to get you for the  
7 record.

8           REBECCA YOSHITANI: Okay, Rebecca Yoshitani.

9           ROBERT SHARPS: Okay, you're the third member we were  
10 waiting for. Hey, let's put you on the record here. Rebecca...  
11 excuse me?

12          REBECCA YOSHITANI: Yoshitani.

13          ROBERT SHARPS: Yoshitani?

14          REBECCA YOSHITANI: Yes.

15          ROBERT SHARPS: Go ahead Ms. Yoshitani.

16          REBECCA YOSHITANI: Okay, I have a question here. You  
17 referred that your data, when you talked about morning, in and  
18 out, and afternoon, in and out, is that based in a typical  
19 active adult community?

20          JOSEPH CALOGGERO: It's based on the Institute of  
21 Transportation Engineers' definition of dwelling units of  
22 elderly housing, which includes active adult communities.

23          RY: When they find that, so I can get an idea, will they  
24 have any parameters to determine the size of the housing, or  
25 the number of people that would occupy a house in a typical

1 development?

2 JOSEPH CALOGGERO: No I do not, but it's, how those  
3 studies are typically conducted, is they'll have counters at  
4 the end of the development and counting the vehicles coming in  
5 and out during the entire day. And then they come up with  
6 what's called trip generation rates based on the number of  
7 units, and the type of units, and then they apply those rates  
8 nationwide all combined.

9 REBECCA YOSHITANI: Now would this rate be the same for  
10 say if it was just a community of two bedroom houses versus a  
11 community with four bedroom houses (inaudible)?

12 JOSEPH CALOGGERO: Yes I would because the fact that it's  
13 still an active adult community with rules and regulations that  
14 you have to be over a certain age. You can't have,,,

15 REBECCA YOSHITANI: Do you know the age?

16 JOSEPH CALOGGERO: I'm assuming it's 55 or older.

17 REBECCA YOSHITANI: You can have residents down as low as  
18 18.

19 JOSEPH CALOGGERO: Okay.

20 REBECCA YOSHITANI: So given that you might have other  
21 occupants of a house who are younger, would that change the  
22 numbers that would be expected?

23 JOSEPH CALOGGERO: I'd have to look at that in more detail  
24 and again, that would come out as part of the Adequate Public  
25 Facilities test if the County deems they could ask us to use

1 different rates.

2 ROBERT SHARPS: No further questions? The Board may have  
3 questions. Mr. Pfefferkorn.

4 JIM PFEFFERKORN: I just have one or two for my review.  
5 You said 15 in and out-

6 JOSEPH CALOGGERO: Yes.

7 JIM PFEFFERKORN: Would that be 30 trips or 15 trips?

8 JOSEPH CALOGGERO: 15 trips, it would be, it's projected 5  
9 in and 10 out, and in the p.m., 18 in and 12 out, and that's  
10 for one hour.

11 JIM PFEFFERKORN: Do they do the middle of the day?

12 JOSEPH CALOGGERO: Not in ITE, but I have seen studies  
13 where the volumes are higher, yes, during the day, between...

14 JIM PFEFFERKORN: In the middle of the day?

15 JOSEPH CALOGGERO: Yes sir. But that's when the volumes  
16 along the surrounding area roadway system are typically less  
17 than the peak hours, so that's why they usually focus on the  
18 peak hour studies.

19 JIM PFEFFERKORN: Thank you.

20 JOSEPH CALOGGERO: You're welcome.

21 ROBERT SHARPS: Redirect.

22 HOWARD ALDERMAN: Yes, thank you Mr. Chairman. In  
23 response to the question Mr. Jordan asked, in your opinion  
24 would, will might there be areas of Howard County zoned RR  
25 where a project of this type might have a greater impact than

1 it would have at Route 32?

2 JOSEPH CALOGGERO: Sure I did. I mentioned that it could  
3 have a lesser or greater impact depending on the area, yes.

4 HOWARD ALDERMAN: Is there, with respect to analyzing  
5 traffic impact from any type of development, is there any  
6 difference in the way you conduct your analysis between age-  
7 restricted developments and non-age restricted developments?

8 JOSEPH CALOGGERO: The difference is, there's not a  
9 different way to analyze it, but there's just a different way  
10 to generate the trips.

11 HOWARD ALDERMAN: So it's a loading factor that's  
12 different?

13 JOSEPH CALOGGERO: That is absolutely correct. The whole  
14 methodology is the same, for example, with what we talked about  
15 earlier, with the, this could be 25 single-family residential,  
16 "regular homes." That would generate 27 trips in the morning  
17 compared to 15, so you'd have a different loading factor.

18 HOWARD ALDERMAN: And it's that loading factor that  
19 generates the higher number correct?

20 JOSEPH CALOGGERO: That is correct.

21 HOWARD ALDERMAN: Okay, and the database that you use to  
22 generate these, the database that has the loading factors that  
23 permitted you to generate the peak hour trips in and out, is  
24 that a national database that you use in your daily activities  
25 analyzing any type of building?

1           JOSEPH CALOGGERO: Yes it is. It's nationally accepted,  
2 internationally accepted, excuse me.

3           HOWARD ALDERMAN: And with respect to access, from a  
4 community, be it age-restricted or not, the critical point of  
5 access is the first access to a public road, is that correct?

6           JOSEPH CALOGGERO: That is correct, and we'll have to meet  
7 all of Howard County standards and guidelines for safety which  
8 includes sight distance, do speed studies to ensure that sight  
9 distance is appropriate, acceleration, deceleration, left turn  
10 lanes as needed.

11          HOWARD ALDERMAN: And that first public access at this  
12 particular location is Greenberry, is that correct?

13          JOSEPH CALOGGERO: That is correct.

14          HOWARD ALDERMAN: Thank you, nothing further Mr.  
15 Caloggero.

16          ROBERT SHARPS: You have a ...

17          REBECCA YOSHITANI: You mentioned that if this was not  
18 adult housing, that the hourly rate would be 27 a.m.?

19          JOSEPH CALOGGERO: Correct.

20          REBECCA YOSHITANI: What would it be in the p.m.?

21          JOSEPH CALOGGERO: Still 30.

22          REBECCA YOSHITANI: Also, what is the, what would be the  
23 total daily rate? You were talking about hourly rate.

24          JOSEPH CALOGGERO: Daily for the 25 single family homes -  
25 it's 250.

1 REBECCA YOSHITANI: 250?

2 JOSEPH CALOGGERO: For the 25 single-family homes, it's  
3 residential, it's typically 10 trips per home so that's 250.  
4 For the 50 active...

5 REBECCA YOSHITANI: (inaudible) so I would double that  
6 for....

7 JOSEPH CALOGGERO: No, that's for single family  
8 residential, not active adult. I'm getting you the active  
9 adult numbers.

10 REBECCA YOSHITANI: But we're talking 50 homes here, not  
11 25?

12 JOSEPH CALOGGERO: No, you're mixing apples and oranges.  
13 I said 25...

14 ROBERT SHARPS: But you gave her an answer that's not  
15 relevant. She asked you for this particular project, and you  
16 gave her...

17 JOSEPH CALOGGERO: Alright, I'm going to answer that  
18 then. Sorry about that. For 50 elderly units, it's 300.

19 REBECCA YOSHITANI: And if it's not elderly, if it has  
20 residents that are (inaudible)

21 JOSEPH CALOGGERO: You mean the one I just answered  
22 exactly?

23 REBECCA YOSHITANI: No, well, I'm trying to understand.  
24 Because you said for 25 homes.

25 ROBERT SHARPS: Residential but not 55 age old, age-

1 restricted.

2 JOSEPH CALOGGERO: For what can be developed on the site.

3 HOWARD ALDERMAN: Objection, objection.

4 ROBERT SHARPS: What's your objection?

5 HOWARD ALDERMAN: The objection is, you can't put 50 non-  
6 age-restricted homes on this site. This site will support...

7 REBECCA YOSHITANI: But you can't-

8 ROBERT SHARPS: Whoa, whoa, whoa, let's have decorum.

9 HOWARD ALDERMAN: Under the zoning, the site will support  
10 non-age restricted, a total of 25 units. Age-restricted, you  
11 can do a maximum of 50 units, which is why Mr. Caloggero was  
12 structuring his testimony in an attempt to answer the question  
13 posed by opposing counsel.

14 ROBERT SHARPS: But what is your objection to the question  
15 that Mrs. Yoshitani asked?

16 HOWARD ALDERMAN: She asked, would it then be double, what  
17 would it be for 25 homes...

18 ROBERT SHARPS: Oh, for fifty if it was, yeah.

19 HOWARD ALDERMAN: Yes that's correct.

20 ROBERT SHARPS: Okay, what is your question Ms. Yoshitani?

21 REBECCA YOSHITANI: I'm a little confused then because if  
22 I understand his definition of age-restricted, that's all the  
23 residents are over age 55. That's what I heard back, you said  
24 to me.

25 JOSEPH CALOGGERO: That's what the definition...I'd have to

1 look at the specific definition within ITE.

2 RY: Okay, but you're assuming it means that all the  
3 residents are over 55.

4 JOSEPH CALOGGERO: It's defined as elderly housing, and  
5 there's provisions in the definition of elderly housing for  
6 active adult communities.

7 REBECCA YOSHITANI: Okay, but the kind of zoning we're  
8 talking about here, it's only one person that has to be over 55  
9 and everybody else in the house can be younger, so the numbers  
10 might reflect...

11 JOSEPH CALOGGERO: There could be a different reflection  
12 of numbers if there's a different definition under the ITE  
13 code.

14 REBECCA YOSHITANI: Okay.

15 JOSEPH CALOGGERO: And if so, Howard County will point  
16 that out and then we can use different rates and numbers when  
17 we do our traffic impact studies.

18 REBECCA YOSHITANI: So what I want to ask, if you are  
19 using a typical kind of household, where there's ages of 18 and  
20 up, and you had 50 houses, what would that traffic rates be  
21 then?

22 JOSEPH CALOGGERO: Okay, so you're asking if I had 50  
23 single family residential homes?

24 REBECCA YOSHITANI: Correct.

25 JOSEPH CALOGGERO: 500.

1           ROBERT SHARPS: Which now does not apply to this  
2 particular...

3           JOSEPH CALOGGERO: Correct.

4           REBECCA YOSHITANI: I understand.

5           HOWARD ALDERMAN: That's the objection.

6           ROBERT SHARPS: Okay, okay.

7           JOSEPH CALOGGERO: Could I finish what the application is,  
8 is 300..

9           REBECCA YOSHITANI: Then the other question I had on the  
10 APFO, I think I heard the counsel mentioned that you would be  
11 looking at the Greenberry intersection. Would you also have to  
12 consider the intersection with Route 32 as far as...

13           JOSEPH CALOGGERO: More than likely, yes. I mean there's  
14 specific guidelines that we have to follow to study certain  
15 intersections and I'm sure it's going to be.

16           REBECCA YOSHITANI: And for example, for Rural  
17 Residential, [inaudible]

18           JOSEPH CALOGGERO: It's all based on the area you are in,  
19 but it only goes out a certain distance. So I don't know the  
20 specifics of the intersections. Again, it depends on the area  
21 you are in. It could be one mile. it could be two miles,  
22 again, it depends on the area you are in. However, we can't go  
23 away from those guidelines. Whatever they want us to study we  
24 have to study.

25           REBECCA YOSHITANI: Okay. Thank you.

1           ROBERT SHARPS: Is that all? Excuse me Board member Mr.  
2 Hayes has a question for you.

3           ALBERT HAYES: This is sort of an elaboration on what Ms.  
4 Yoshitani asked about. You said the access road from that  
5 development would be on Greenberry, and earlier you talked in  
6 terms of the exchange on 32 being enlarged. Now how will that  
7 encroach on Greenberry, and to what extent does your limited  
8 study at this point take that into account?

9           JOSEPH CALOGGERO: Well, my guess is, it's on the plans,  
10 isn't it? You can see here on the plans, this is existing on  
11 Greenberry, and you can see the access road and here's the  
12 proposed road coming in through this area. I don't have a  
13 scale. I'm not sure what the scale is. It's 100. So it looks  
14 like it would be about 100 feet in.

15          ALBERT HAYES: Have your studies to date that at least to  
16 the extent you've done studies, taken this hypothetical  
17 alteration into account?

18          JOSEPH CALOGGERO: We really haven't conducted our traffic  
19 studies with respect to Adequate Public Facilities Ordinances,  
20 but that minor change is not going to have an impact on those  
21 studies. The only impact that will have is sight distance and  
22 ensuring that there is proper accel/decel lanes.

23          ALBERT HAYES: Okay, thank you, that's all I have.

24          ROBERT SHARPS: Thank you Mr. Caloggero.

25          JOSEPH CALOGGERO: Thank you.

1           ROBERT SHARPS: You beat the clock on this one. Do you  
2 have your other witness? And that is your final witness which  
3 would?

4           HOWARD ALDERMAN: In my case in direct, I'm really  
5 believing--

6           ROBERT SHARPS: Wait, wait, what do you mean your case in  
7 direct?

8           HOWARD ALDERMAN: Well I have a rebuttal.

9           ROBERT SHARPS: Well rebuttal yeah. Okay, okay.

10          HOWARD ALDERMAN: I really believe I am going to call Mr.  
11 Williams in rebuttal, so that's going to be the Petitioners  
12 case in chief on direct this evening.

13          ROBERT SHARPS: Alright, let's do this then. While the  
14 secretary is trying to get us some dates, and I'll go off  
15 record so we don't need all of this on...let me just recess and  
16 I'll discuss this.   **R E C E S S**       The Board will adjourn  
17 until August 22<sup>nd</sup> at 6 p.m. in the Banneker Room, and such time  
18 when we have convened and opposition will present their case  
19 that time with opening statements and witnesses at their will.  
20 With that, we'll adjourn till August 22<sup>nd</sup> at 6 p.m.

21          HOWARD ALDERMAN: Thank you.

22

1 Howard County Board of Appeals

2 August 22, 2006

3

4 ROBERT SHARPS: The Board of Appeals is in session for the  
5 continuation of the case BA05-046C, Robert Williams et al.  
6 Ladies and gentlemen from our last hearing I believe Mr.  
7 Alderman, correct me if I'm wrong, your case has been completed.

8 HOWARD ALDERMAN: The petitioner's case in chief, that's  
9 correct Mr. Chairman.

10 ROBERT SHARPS: The petitioner's case in chief has been  
11 completed and now we're going over to the opposition. For the  
12 sake of this being a little bit different than we usually have,  
13 we have two representatives, Mr. Garcia and Ms. Yoshitani. I  
14 did agree last time that I'll give you twenty minutes. However  
15 you want to bifurcate that, you know, we'll agree to that as  
16 long as it's orderly and we can keep within the timeframe. And  
17 I understand you also have some handouts. If you do that in  
18 accordance with each one of your presentations for your opening  
19 statements. And I believe Mr. Alderman you've already had  
20 copies so that I can go to you once they start handing those out  
21 to see whether or not you have any discussion or if you have any  
22 opposition to them putting that into the record.

23 HOWARD ALDERMAN: That's correct Mr. Chairman. Thank you.

24 ROBERT SHARPS: At this time, and I also understand, how  
25 many witnesses will you have this evening?

1 RUY GARCIA: Three basic, three witnesses and then the  
2 personal testimony.

3 ROBERT SHARPS: Three witnesses and the personal testimony?  
4 Well personal testimony, I'll ask that. That's the audience at  
5 large. They will have an opportunity to do that if they'd like  
6 to do that themselves. Okay without further adieu why don't we  
7 start with the opening statements? Who would like to go first?  
8 Mr. Garcia?

9 RUY GARCIA: Hello members of the Board of Appeals. My  
10 name is Ruy Garcia Zamore. Thank you very much for allowing us  
11 to make an opening statement at this point in the proceedings.  
12 We appreciate your efforts to allow us to present our case and  
13 we will try to be concise and brief. As you can see there are a  
14 number of opposition members here today. In order to streamline  
15 the process, a few of the lawyers in the opposition acting as  
16 spokespeople for the members of the community that may not be  
17 testifying have prepared a coordinated presentation which sets  
18 forth the core concerns of the opposition. Our intention is to  
19 allow other opponents to focus on their unique issues and  
20 concerns during their individual presentations. Who are we as a  
21 community? Our community includes over a hundred and forty  
22 single family homes. We all ingress and egress through the same  
23 mode intersection with lot 32. We all live on about three acre  
24 lots. Many of us have children who go to school together. Our  
25 children ride the school bus together. This development, or

1 proposed development, will be the first thing that we all see  
2 when we exit Route 32 on our way home. Why is this project so  
3 opposed? To date only one other age restricted development that  
4 we're aware of has been approved in the rural zone without  
5 public water and sewer. As will be explained later, our setting  
6 is very different from what has been approved to date. As  
7 recognized by Examiner Carbo, the proposed development is not in  
8 harmony with the surrounding community. This project will have  
9 adverse impacts on our community far in excess of that normally  
10 associated with age restricted conditional use projects. We  
11 primarily focused on the point that the proposed development is  
12 not only in violation of the regulations but also the spirit and  
13 intent of the General Plan and the Howard County Senior Housing  
14 Master Plan. Currently the project has been ruled not to comply  
15 with Howard County regulations by Hearing Examiner Carbo. The  
16 petitioner is improperly using the age restricted conditional  
17 use regulations to try to obtain approval of a development that  
18 is not in the best interest of seniors and will create  
19 disproportionate damage to vicinal property. If it's okay with  
20 the Board we'd like to make our first hand out.

21 ROBERT SHARPS: Will this be opposition's exhibit number  
22 one?

23 RUY GARCIA: Yes it would be. This is just one example of  
24 how lacking in harmony the proposed development is with the  
25 current community. This house on 12960 Linden Church Road is

1 two tenths of a mile away on the same street as the proposed  
2 development. As you see on the first picture there is a large  
3 amount of yard in front of the house and on the left and right  
4 of the house you cannot see the neighbor's houses. If you turn  
5 to the second page it's another example basically showing the  
6 same. When you turn to the third page it's now a view from the  
7 front of the house looking out to the road. You will notice  
8 that not only is there a large yard but on the other side of the  
9 road is the yard of those houses so that you can't really make  
10 out the houses across the street. Turning to the next page you  
11 have a view from the left side of the house where you see a  
12 large field and a fence and then yards that belong to the  
13 neighbors and you can see the neighbor's houses, the little  
14 white specs up here showing through the trees. Those are the  
15 neighbors' yards. Now if you turn a page where you see a little  
16 swimming pool, here you can see a neighbor's house in the back  
17 however there is again a large field between the swimming pool,  
18 which is right behind the house, and that neighbor. And the  
19 last picture from the left side of the house, you'll see again  
20 there's a large side yard and significant foliage to where you  
21 can't even see the neighbor on that side. This is dramatically  
22 different than the sort of development that's shown in the  
23 petitioner's proposal.

24 HOWARD ALDERMAN: Excuse me Mr. Garcia. Mr. Chairman?

25 ROBERT SHARPS: Yes.

1           HOWARD ALDERMAN: I've got a slight problem here. I've got  
2 an attorney making an opening statement putting in exhibits.  
3 Now I can't cross examine opening statements. And if Mr. Garcia  
4 is not going to take the stand and raise his hand I have no way  
5 of cross examining him with regard to these pictures or anything  
6 else he's going to put in.

7           RUY GARCIA: I'd be more than happy to raise my right hand  
8 and then attest to the accuracy of the exhibits.

9           AL HAYES: No. In terms of the representations made, now  
10 if he's going to testify, he doesn't get to represent.

11          ROBERT SHARPS: Mr. Garcia the way we're proceeding is a  
12 little unusual. You're representing, if you're representing the  
13 opposition...

14          RUY GARCIA: Well as one of the spokesmen I'm also  
15 representing myself.

16          ROBERT SHARPS: Excuse me. I can't have you testifying as  
17 a witness unless you want to be a witness and not represent.

18          RUY GARCIA: In that case maybe you'd just be willing to  
19 accept the pictures for what they show.

20          HOWARD ALDERMAN: I'll object. I have no way of cross  
21 examining Mr. Garcia. I let him go on in opening statement and  
22 then recognized that we're getting into testimony. He's making  
23 qualitative judgments here and I have no means of cross  
24 examining him. I'm going to object to the introduction of the  
25 pictures as long as he remains a representative. If he wants to

1 step back and become a witness I'll remove the objection.

2 RUY GARCIA: I'm willing to withdraw the pictures.

3 ROBERT SHARPS: Exhibit number one withdrawn.

4 BARRY SANDERS: Are you finished with the opening?

5 ROBERT SHARPS: You're certainly willing to finish the  
6 opening statement without testimony.

7 REBECCA YOSHITANI: We're not done. At this time I'd like  
8 to...

9 ROBERT SHARPS: Okay. Wait a minute. For the record Ms.  
10 Yoshitani is giving an opening statement at this time.

11 REBECCA YOSHITANI: Right. We're, as I'd mentioned  
12 beforehand, we're doing it jointly. We'll both be addressing  
13 some issues.

14 ROBERT SHARPS: And you'll be giving an opening statement,  
15 not testifying?

16 REBECCA YOSHITANI: Correct. My name is Rebecca Yoshitani.  
17 I also live in this community as well as being an attorney and  
18 in addressing the conditional use test under Section 131; this  
19 is taken strictly from the Howard County Planning and Zoning  
20 regulation, the statement of legislative intent states... Can we  
21 pass you out a copy of that while we're at it?

22 ROBERT SHARPS: If you're handing this out as an exhibit  
23 it's got to be through testimony. Because as Mr. Alderman  
24 already stated, and both of you are attorneys if I'm not  
25 mistaken, correct?

1 REBECCA YOSHITANI: Okay. That's fine.

2 ROBERT SHARPS: But he has to have an opportunity to cross  
3 examine. He cannot cross examine an opening statement. However  
4 he can cross examine testimony.

5 REBECCA YOSHITANI: But we're just handing this out as a  
6 refresher on what the regulation is. We're not testifying.

7 BARRY SANDERS: This is a just a copy of the Zoning  
8 Regulations...

9 REBECCA YOSHITANI: Exactly.

10 BARRY SANDERS: ...which has been incorporated into the  
11 record.

12 HOWARD ALDERMAN: Mr. Chairman if it will help, I have no  
13 objection.

14 ROBERT SHARPS: Fine.

15 HOWARD ALDERMAN: ...to the introduction of what's labeled  
16 Section 131 assuming it is a current document.

17 ROBERT SHARPS: Without objection go a head and submit it.

18 BARRY SANDERS: I wouldn't make it an exhibit.

19 ROBERT SHARPS: No it's not. We're just using it.

20 REBECCA YOSHITANI: Under Section 131 under the statement  
21 of legislative intent it says that conditional uses are  
22 authorized in specific zoning districts based on the presumption  
23 that they're generally appropriate and compatible in specific  
24 districts. It also notes that conditional uses are not  
25 permitted automatically but are the subject of the regulations

1 of this section and the conditions imposed by the Board of  
2 Appeals upon approval of the proposed development. It's  
3 important to note that it's not a matter of right that the  
4 applicant automatically receive permission for conditional use  
5 even when all the standards of 131.N are met. That's under  
6 sections 131.E.1 and 3. The hearing authority may impose  
7 requirements that are more stringent than the requirements of  
8 the zoning district. The conditional use standard test is not  
9 about relying on meeting regulatory and statutory standards  
10 which are later address in the approval process such as APFO and  
11 the well septic testing. Rather the conditional use standards  
12 test is a unique set of standards that must be met now before  
13 this project can move forward as a conditional use exception to  
14 the zoning regulations for this particular zone. The  
15 petitioner's proposed development fails the two part general  
16 standards required for approval of conditional use tests. The  
17 first test notes that the proposed development is not in harmony  
18 with the land uses and policies as indicated in the Howard  
19 County General Plan for Rural Residential DEO. The nature and  
20 intensity of the proposed project...

21 HOWARD ALDERMAN: Objection.

22 REBECCA YOSHITANI: Excuse me?

23 HOWARD ALDERMAN: I've got testimony.

24 ROBERT SHARPS: Objection.

25 HOWARD ALDERMAN: I mean Mrs. Yoshitani is now testifying.

1 She is giving her opinion in terms of whether or not the general  
2 standards required for approval of a conditional use have been  
3 met.

4 ROBERT SHARPS: Okay. Mr. Alderman let me see if I can  
5 reset the stage here. I can see where there's going to be some  
6 conflict because you're conflicting between testifying and  
7 representation.

8 REBECCA YOSHITANI: Well then let me...

9 ROBERT SHARPS: Do you want to testify? You can step back  
10 and be a witness and testify.

11 REBECCA YOSHITANI: No. I'll rephrase.

12 ROBERT SHARPS: Okay.

13 REBECCA YOSHITANI: The further evidence will be, testimony  
14 will show and further witnesses will be provided to demonstrate  
15 that the proposed development is not in harmony with the land  
16 uses and policies indicated in the Howard County General Plan  
17 for Rural Residential. Testimony will also show that the nature  
18 and intensity of the proposed project is disproportionately  
19 greater than that of the district. Testimony will show that the  
20 kind of project that is being represented here will place a  
21 disproportionate number of houses on a small area of land that  
22 is totally incompatible with the current vicinal property. We  
23 have further testimony, demonstrative testimony, that will show  
24 what the effect would be of this kind of housing that's proposed  
25 that's again incompatible. We have a person who is going to be

1 representing testimony to the lack of harmony, visual, between  
2 the proposed development and the vicinal property. And we also  
3 have testimony to the effect that the increase in traffic is not  
4 in keeping with the, in harmony with the neighborhood. The  
5 proposed development will have an adverse effect on the vicinal  
6 properties, also again, looking at the second step of the two  
7 part test. And we have testimony that will be comparing the  
8 effect of the noise, the fumes, the dust the odor and the  
9 lighting, other physical conditions compared to anywhere in the  
10 rural residential and rural conservation zones which is the  
11 test. We will be addressing the effect of the water table  
12 impact through our testimony that will show that the proposed  
13 development failed to meet the burden of proof that the water  
14 table will not be greater at this site than at other rural zones  
15 within RR and RC. We will also be addressing the traffic impact  
16 under this section as well, the second section, to demonstrate  
17 that the proposed development will have an unusually greater  
18 hazardous effect on traffic due to increased traffic through a  
19 single intersection along Route 32 which is already inherently  
20 dangerous.

21 RUY GARCIA: My apologies. I think you've caught me  
22 between a rock and a hard place in that this portion of the  
23 opening statement is going to really be directed toward the  
24 senior housing master plan visa vie the development. I'm not  
25 really sure that I can make any of those points where we were

1 really just going to summarize a little bit of what's in the  
2 plan since that's already been characterized as testimony. So  
3 I'd like the opportunity to pass out a copy of the Senior  
4 Housing Master Plan anyway. I'm not really sure how to handle  
5 that. I don't know if anyone has a suggestion.

6 ROBERT SHARPS: Are you asking us to look at it as  
7 reference? We're not accepting it as an exhibit.

8 RUY GARCIA: At this point going forward..

9 ROBERT SHARPS: If you give it to us as a reference it's  
10 not going to be submitted as an exhibit and to me that would be  
11 somewhat of a...

12 RUY GARCIA: I understand it would be pointless. Would it  
13 cause a tremendous problem at this point then if I went from  
14 being a spokesperson to being a witness and I will stop any sort  
15 of spokesperson capacity and later when everyone has a chance to  
16 talk I will come up and talk. Because really I don't see any  
17 other way to make these sort of points that really should be  
18 made out of sort of a sense of fairness.

19 BARRY SANDERS: Are you finished with your opening?

20 *Inaudible.*

21 ROBERT SHARPS: I mean an opening statement should be just  
22 that.

23 RUY GARCIA: Okay. I apologize, yes. Then I guess at this  
24 point we're pretty much done with our opening statement.

25 ROBERT SHARPS: Okay and are you prepared to call the first

1 witness?

2 RUY GARCIA: Yes we are.

3 REBECCA YOSHITANI: At this time I'd like to call William  
4 Taylor.

5 ROBERT SHARPS: Mr. Taylor. Mr. Taylor would you raise  
6 your right hand? Do you promise to speak truthfully in the  
7 testimony you're about to give this Board?

8 WILLIAM TAYLOR: I do.

9 ROBERT SHARPS: State your name and address for the record  
10 please.

11 WILLIAM TAYLOR: William Taylor, 5329 Broadwater Lane,  
12 Clarksville.

13 REBECCA YOSHITANI: Mr. Taylor you live within the  
14 community that has sole access to Route 32 through the  
15 intersection of 32 and Linden Church?

16 WILLIAM TAYLOR: Yes I do.

17 REBECCA YOSHITANI: Would you describe for the Board here,  
18 what is your background and education?

19 WILLIAM TAYLOR: I have a degree from the University of  
20 Maryland but since 1984 I've been in business for myself doing  
21 data analysis work, computer data analysis or statistical data  
22 analysis. Currently I'm working for a client on a new drug  
23 study that currently is with FDA.

24 REBECCA YOSHITANI: I want it clear. You're not a traffic  
25 engineer?

1 WILLIAM TAYLOR: I'm not a traffic engineer.

2 REBECCA YOSHITANI: However, how many years to you have  
3 experience performing data analysis professionally?

4 WILLIAM TAYLOR: Oh, probably thirty plus.

5 REBECCA YOSHITANI: Have you had a chance to review the  
6 Howard County General Plan 2000 as it relates to transportation  
7 issues?

8 WILLIAM TAYLOR: Yes.

9 REBECCA YOSHITANI: And at this time we have an exhibit  
10 that we'd like to submit. It's strictly a part of the Howard  
11 County General Plan.

12 ROBERT SHARPS: This is opposition exhibit number one.  
13 What is the name of it?

14 REBECCA YOSHITANI: The Howard County General Plan 2000.

15 ROBERT SHARPS: Mr. Alderman have you had a chance to  
16 peruse it or look at it?

17 HOWARD ALDERMAN: There's only certain sections of the  
18 Howard County General Plan.

19 ROBERT SHARPS: Which was stated. I think you said  
20 excerpts if I'm not mistaken?

21 REBECCA YOSHITANI: Correct.

22 HOWARD ALDERMAN: I've looked at it very quickly, yes.

23 ROBERT SHARPS: Okay. Without objection we'll...

24 HOWARD ALDERMAN: As a public document I think it comes in  
25 regardless.

1 REBECCA YOSHITANI: Have you had a chance to review this  
2 General Plan as it relates to transportation issues Mr. Taylor?

3 WILLIAM TAYLOR: Yes.

4 REBECCA YOSHITANI: What concerns did you discover relevant  
5 to the location of the proposed project in relation to  
6 transportation issues?

7 WILLIAM TAYLOR: Well some of the reasons for this General  
8 Plan to be presented here, some of the highlights in here which  
9 I've indicated on these pages, raise some concerns about the  
10 traffic impact on this intersection and on Route 32.

11 REBECCA YOSHITANI: In particular what did you learn  
12 concerning the senior housing in the rural west?

13 WILLIAM TAYLOR: Well for example on page, well let's start  
14 with page 54. That's page two of seven if you will. On the  
15 right hand side of that page there is a description that careful  
16 and credible analysis should be undertaken on the land use and  
17 traffic implications of capacity expansion on regional  
18 facilities and other means of alleviating congestion or safety  
19 concerns. It appears that this project is not taking that into  
20 consideration.

21 REBECCA YOSHITANI: Can you describe to us what the term  
22 level of service or LOS means?

23 WILLIAM TAYLOR: Yes. If you'll turn to page five of seven  
24 or the, I believe it's on page six of seven or page 103 of the  
25 General Plan, there's a highway level of service that indicates

1 the traffic volume level, the speed and flow conditions.

2 REBECCA YOSHITANI: What is the level of service for the  
3 section of Route 32 where this project would egress?

4 WILLIAM TAYLOR: Route 32 is currently at a level F which  
5 is the worst or highest level. This is a condition of extremely  
6 heavy flow, frequent stoppage, very slow speeds. It's an  
7 unstable traffic condition under which traffic comes to a  
8 complete halt. This happens daily on 32 by the way.

9 REBECCA YOSHITANI: Is all of Route 32 at level F?

10 WILLIAM TAYLOR: Not all of...

11 HOWARD ALDERMAN: Objection, objection.

12 ROBERT SHARPS: Objection?

13 HOWARD ALDERMAN: First of all it assumes facts not in  
14 evidence. There is nothing to show that any section of Route 32  
15 is service level F. Plus he's not a traffic engineer. He's  
16 observed traffic. He can certainly testify as to his own  
17 observations but not in terms of a scientific standard, a  
18 nationally accepted standard.

19 ROBERT SHARPS: And the Board takes that under  
20 consideration Mr. Alderman and by all means you will have an  
21 opportunity to cross examine and you can attest to those points  
22 that you just made.

23 HOWARD ALDERMAN: And Mr. Sharps I understand that and I  
24 know you understand what I'm about to say. I'm making a record  
25 just like I had to object to the opening statement that was

1 taken out of context last time. I still have to raise my  
2 objections and you can overruled them which you probably will  
3 anyhow. But I have to make the record.

4 ROBERT SHARPS: Well I've overruled this one and it is on  
5 record Mr. Alderman.

6 HOWARD ALDERMAN: Thank you sir.

7 REBECCA YOSHITANI: Mr. Taylor where did you obtain  
8 information regarding the level of service standards for Howard  
9 County?

10 WILLIAM TAYLOR: There's additional information which I'll  
11 present later that does describe Route 32. There are a few  
12 areas in Howard County which are at level F. Route 32 is  
13 heavily at level F almost all the way along level F. I'll  
14 present a map that will show that. Also I learned from the  
15 State of Maryland Department of Transportation State Highway  
16 Administration that this particular area of level F of 32 is at  
17 level F. On that same page this was not at this year, also at  
18 the bottom of that same page 103 of the Howard County General  
19 Plan 2000, it talks about MDOTs decision making about regional  
20 highway improvements. It's also guided by the state's smart  
21 growth policies. For example Maryland 32 between I-70 and 108  
22 it outside the County's approved funding area. However, this  
23 highway segment connects the roads within the PFA in the  
24 interstate system. In recent years there's been a rapid  
25 increase in interstate and regional traffic creating peak hour

1 congestion and many serious accidents along this segment. These  
2 have generated heated public debate about whether improvements  
3 along the segments of 32 are consistent with smart growth  
4 policies. But in this plan there are additional descriptions of  
5 32 between the section of Route 108 and Route 70. On that page  
6 106 down in that third highlighted block, careful and credible  
7 analysis should be undertaken on the land use and traffic  
8 implications of such capacity expansions. For example, Maryland  
9 32 from Maryland 108 to I-70 and other means of alleviating  
10 congestion or safety concerns. Its stated right here in the  
11 Howard County General Plan that this is a very heavily traveled  
12 area and is of great concern even now.

13 REBECCA YOSHITANI: Did you have the opportunity to speak  
14 to a state highway representative regarding the area?

15 WILLIAM TAYLOR: Yes. Their recommendation...

16 HOWARD ALDERMAN: Objection.

17 WILLIAM TAYLOR: I learned from them...

18 ROBERT SHARPS: Objection. When there's an objection sir  
19 we have to stop and listen to what the objection is before we go  
20 forward.

21 HOWARD ALDERMAN: Hearsay. Unless we have the state  
22 official here, we can't tell this Board and make a record about  
23 something that somebody else told you.

24 ROBERT SHARPS: Objection sustained.

25 REBECCA YOSHITANI: Did you have the opportunity to speak

1 to a representative?

2 WILLIAM TAYLOR: Yes I did.

3 REBECCA YOSHITANI: And who was that representative?

4 WILLIAM TAYLOR: George Miller of highways.

5 REBECCA YOSHITANI: And did you obtain information from him  
6 in terms of reports or documents regarding conditions within  
7 Western Howard County?

8 WILLIAM TAYLOR: No reports or documents.

9 REBECCA YOSHITANI: Did you learn information from him that  
10 led you to discover further information on your own?

11 WILLIAM TAYLOR: Yes.

12 REBECCA YOSHITANI: And what kinds of information did you  
13 explore as a result of the discussion with Mr. Miller? What  
14 directions did it lead you to investigate into?

15 WILLIAM TAYLOR: One of the areas that I learned as far as  
16 the impacts on this area from the State Highway Administration  
17 is that the national trip generation rates for active adult 55  
18 plus communities as published by the Institute of Transportation  
19 Engineers is not appropriate, not appropriately supported due to  
20 the lack of data for these new types of communities. And they  
21 did not like to use that data.

22 REBECCA YOSHITANI: Did you look into, in response to the  
23 testimony given at the last hearing did you look into the  
24 standards used by the ITE for age restricted housing?

25 WILLIAM TAYLOR: I did some and also located some other

1 studies that were also unhappy with the ITE rate.

2 REBECCA YOSHITANI: And what are the ITE rates for single  
3 family housing based on? What kind of occupancy?

4 WILLIAM TAYLOR: Most of them in the ITE studies are based  
5 on, not necessarily a community like this. This community,  
6 these types of communities are fairly new in their description.  
7 Most of the communities I think the ITE rates for the national  
8 members that they have, they're usually for what they might call  
9 seniors or older people only in a house.

10 REBECCA YOSHITANI: So based on that how did you, did you  
11 develop data on your own for determining what sort of rates  
12 might be generated from this type of development in this  
13 particular neighborhood?

14 WILLIAM TAYLOR: That's correct. I found a Delaware study  
15 that was done in 2006 and they also reviewed the ITE rates and  
16 were not satisfied with those. They used the Delaware traffic  
17 monitoring system and they weren't particularly satisfied with  
18 that.

19 HOWARD ALDERMAN: Objection. I hate to keep popping up Mr.  
20 Chairman but I think the Maryland flag is still hanging here.  
21 Number two, Mr. Taylor's testimony is very interesting but he is  
22 not a traffic engineer. He's giving opinions which rise almost  
23 to, if this Board recognized expert opinions, expert opinion  
24 type testimony. If he has empirical data that he collected and  
25 he analyzed, data that he collected and he analyzed I'll sit

1 down and be quiet. But if he's going to start reviewing other  
2 studies and testifying on them I object to that.

3 REBECCA YOSHITANI: Mr. Chairman. We're merely setting the  
4 foundation for a study he did do.

5 ROBERT SHARPS: I have to give some deference to the  
6 objection though Ms. Yoshitani. The Board, first of all, does  
7 not recognize expert witnesses as a whole. However we take the  
8 evidence and we will base our decisions on the evidence that's  
9 given or the value of the evidence. To continue to allow this  
10 is an exercise in futility really unless he can give deference  
11 or reference to his particular...

12 REBECCA YOSHITANI: And that's what we were leading to.  
13 This was merely setting the foundation, explaining why he did  
14 proceed his own study.

15 ROBERT SHARPS: Well if we can just get through that and  
16 let's get to the foundation and get to his testimony.

17 REBECCA YOSHITANI: Sure. And that's what we're prepared  
18 to do at this point. So Mr. Taylor did you conduct indeed your  
19 own study based on traffic studies for this particular area?

20 WILLIAM TAYLOR: Yes I did.

21 REBECCA YOSHITANI: And how did you develop your study?

22 WILLIAM TAYLOR: Because of the confusion and the lack of  
23 data to support these published rates for a fifty condominium  
24 community I decided to do a survey of my own. What I did, I  
25 conducted a survey of residents in my community who would

1 qualify as fifty five plus households. I found that the mean  
2 number of vehicles for fifty five plus households was three and  
3 the number of trips per vehicle was found to be two trips per  
4 day. I imputed these trip generation rates that I computed for  
5 fifty condominium units. To establish the number of vehicle  
6 generated trips the following counts were made. Proposed fifty  
7 units with an average of three vehicles per household is a  
8 hundred and fifty resident vehicles in the community.  
9 Deliveries, service vehicles etcetera, in other words most trip  
10 generation rates do not include any other types of rates except  
11 the resident vehicles. However, that is not the total traffic  
12 impact. Deliveries and service vehicles, I imputed two per week  
13 per household or a hundred vehicles per week or 14.29 per day.  
14 Visitors, two vehicles per week per household which is a hundred  
15 vehicles per week, again, 14.29 per day. Trash pick-up, public  
16 utilities, postal service vehicles, twenty five vehicles per  
17 week or 3.6 per day. Total daily vehicle round trips onto Route  
18 32, assuming two times in and out per resident vehicle and one  
19 time in an out for other vehicles comes to 665 daily vehicle  
20 trips, in and out trips, per day. The weekly traffic impact at  
21 this intersection would be 4656 vehicle in and out trips per  
22 week. Average overall daily vehicle trip impact generate by  
23 these fifty condominium units would be 13.3 daily trips per  
24 household. This includes household trips plus, as again, these  
25 other service vehicle trips. In order to understand the current

1 situation...

2 REBECCA YOSHITANI: Okay. I'm going to ask you, so did you  
3 do anything to compare what the current traffic situation is  
4 without the impact?

5 WILLIAM TAYLOR: Right, we did.

6 REBECCA YOSHITANI: Okay and did you conduct any kind of  
7 traffic study on the current flow in and out of that  
8 intersection?

9 WILLIAM TAYLOR: We did.

10 REBECCA YOSHITANI: And could you expand on that please?

11 WILLIAM TAYLOR: Okay. To gain an understanding of the  
12 flow, volume and safety conditions traffic was observed and  
13 counts were taken at the intersection of Linden Church Road and  
14 Route 32 on July 19, 20 and 21 of 2006. The morning average  
15 hourly outbound vehicle volume was observed to be sixty three  
16 vehicles per hour. With the fifty condominium units the volume  
17 would increase to an estimated eighty four vehicles per hour.  
18 Evening average hourly incoming vehicle volume was observed to  
19 be seventy nine vehicles per hour. With the fifty condominium  
20 units the volume would increase to a hundred and five vehicles  
21 per hour. This would be an increase of approximately thirty  
22 three percent over current hourly volume. Higher volumes would  
23 be expected at other times of the year during school days and  
24 when families were not on vacation.

25 REBECCA YOSHITANI: What is the current signal wait time at

1 that intersection?

2 WILLIAM TAYLOR: The traffic signal wait time at the Linden  
3 Church Road intersection with Route 32 is currently three and a  
4 half minutes between green light cycles.

5 REBECCA YOSHITANI: And did you observe any particular  
6 behavior of vehicles during this light?

7 WILLIAM TAYLOR: There is congestion and, how would you  
8 describe, dissatisfaction with a three and a half minute wait.  
9 There were safety issues and violations observed at the  
10 intersection of Linden Church Road and Route 32. It is a very  
11 serious safety situation. From one to thirteen vehicles were  
12 observed waiting during each light cycle at the intersection.  
13 With an additional fifty condominium units this could be  
14 expected to increase to over seventeen vehicles per light cycle.  
15 While conducting traffic counts it was noted that many cars  
16 proceeded through a red light signal due to the congestion  
17 caused by extremely long signal light cycle time. The cycle  
18 time was observed as three and a half minutes. From zero to one  
19 hundred percent of the vehicles waiting at the light were  
20 observed entering the intersection on a red light signal to  
21 avoid the long light times. Also observed were vehicles racing  
22 to beat the light thus creating hazardous conditions. Reducing  
23 the cycle time to service the Linden Church Road traffic,  
24 although solving this problem, would place added delay on Route  
25 32 traffic.

1 REBECCA YOSHITANI: Again, what is the current condition of  
2 the intersection in terms of level of service?

3 HOWARD ALDERMAN: Objection.

4 ROBERT SHARPS: Your objection?

5 HOWARD ALDERMAN: How can he testify as to the level of  
6 service of Route 32 unless somebody told him?

7 ROBERT SHARPS: Well I thought I heard him say earlier that  
8 it was level F and that was based on the State Highway...

9 HOWARD ALDERMAN: As he interpreted the Howard County Code.

10 REBECCA YOSHITANI: I do have a map that we can at this  
11 time move to...

12 ROBERT SHARPS: Wait. Mr. Miller is this your  
13 interpretation of the memo?

14 REBECCA YOSHITANI: Mr. Taylor.

15 ROBERT SHARPS: I'm sorry. Mr. Taylor this is your  
16 interpretation of the level of service?

17 WILLIAM TAYLOR: No.

18 ROBERT SHARPS: Or is this something that you've gotten  
19 from either the Maryland Highway, State Highway Administration?

20 WILLIAM TAYLOR: Well the level of service is in the Howard  
21 County General Plan 2000, page 103, I'm sorry, page 102.

22 ROBERT SHARPS: At that particular intersection?

23 WILLIAM TAYLOR: Yes. At this particular area of Route 32.

24 ROBERT SHARPS: And what are you referring to again on page  
25 103 of, six of seven in that 2000 plan?

1 WILLIAM TAYLOR: It's on page 103.

2 REBECCA YOSHITANI: We have a map that illustrates it.

3 ROBERT SHARPS: Well we can read it too. Illustrations  
4 would be fine but where are you reading it again?

5 WILLIAM TAYLOR: This is page 102 of the Howard County  
6 General Plan 2000.

7 ROBERT SHARPS: Oh, page 102.

8 WILLIAM TAYLOR: It wasn't one of the handouts that I  
9 presented.

10 ROBERT SHARPS: It's not in this one.

11 WILLIAM TAYLOR: Correct. It was in another one.

12 ROBERT SHARPS: Is this going to be opposition's exhibit #2  
13 Ms. Yoshitani?

14 REBECCA YOSHITANI: This would be, yes, exhibit two. This  
15 is also taken straight from the Howard County General Plan 2000.

16 ROBERT SHARPS: Okay. Any objection Mr. Alderman?

17 HOWARD ALDERMAN: Can I have just a minute.

18 ROBERT SHARPS: Certainly. And I do apologize for calling  
19 you Mr. Miller, Mr. Taylor.

20 WILLIAM TAYLOR: No problem. I think I missed my  
21 appointment with him today and it's bugging me.

22 ROBERT SHARPS: Mr. Alderman if you're going to need more  
23 time I hate to keep the record open because there's going to be  
24 a long blank and I'll just tell them right now it's not a poor  
25 tape, just that you were taking some time.

1           HOWARD ALDERMAN: The only objection I'll have is any  
2 annotation added to this plan. Certainly the page out of, page  
3 102 out of the Howard County General Plan I would have no  
4 objection to that.

5           ROBERT SHARPS: We're asking to accept Ms. Yoshitani?

6           HOWARD ALDERMAN: No. This has been modified.

7           REBECCA YOSHITANI: The only modification on here, I  
8 believe...

9           ROBERT SHARPS: Is the Route 32 with the arrow?

10          REBECCA YOSHITANI: And the asterisk with the approximate  
11 proposed condo site location.

12          ROBERT SHARPS: I'll note your objection Mr. Alderman and  
13 we'll accept it as is.

14          REBECCA YOSHITANI: Do you have a copy of this in front of  
15 you at this moment Mr. Taylor?

16          WILLIAM TAYLOR: Yes.

17          REBECCA YOSHITANI: Can you explain on the map what the  
18 indications are here regarding level of service at E and F  
19 within Howard County?

20          WILLIAM TAYLOR: You want me to describe levels E and F?

21          REBECCA YOSHITANI: Right. When we look at this map what  
22 are we seeing in terms of specifying levels E and F?

23          WILLIAM TAYLOR: The scale of this map, it's easier to see  
24 actually on the Howard County General Plan in that page than  
25 this one that's a little bit smaller. This general map

1 describes level E and F for all highways in Howard County.  
2 Route 32 is at level F for most of the way. There are certain  
3 sections which are not at level F. Route 29 you can see is  
4 highlighted. Route 1 I think might have some highlights. Route  
5 70 has some highlights. But for the most part in Western Howard  
6 County it's Route 32. All of the other roads are not at level F  
7 as of this map. Now I don't know if the State Highway  
8 Administration has other level F routes at this time.

9 ROBERT SHARPS: Can I just verify? Your testimony is  
10 saying that most of Route 32 is at a level F but not all of it?  
11 Let's talk about the area that we're concerned about, Linden  
12 Church Road and Route 32.

13 WILLIAM TAYLOR: Yes.

14 ROBERT SHARPS: Are you saying that this is a reflection  
15 that it is at a level F?

16 WILLIAM TAYLOR: Yes. From 108 to 70 is at level F  
17 according to the State Highway Administration and this map.

18 ROBERT SHARPS: Okay.

19 REBECCA YOSHITANI: Now, looking at this map is Route 97  
20 within the Rural West?

21 WILLIAM TAYLOR: Yes.

22 REBECCA YOSHITANI: Is Route 97 at a level E or F?

23 WILLIAM TAYLOR: No.

24 REBECCA YOSHITANI: Is Route 94 within Rural Western Howard  
25 County?

1 WILLIAM TAYLOR: Yes.

2 REBECCA YOSHITANI: Is Route 94 at a level F?

3 WILLIAM TAYLOR: No.

4 REBECCA YOSHITANI: Route 144? Is that at a level E or F?

5 WILLIAM TAYLOR: That doesn't appear to be.

6 REBECCA YOSHITANI: The portions of Route 40 that also are  
7 within the Rural West are they at a level E or F?

8 WILLIAM TAYLOR: They don't appear to be either.

9 REBECCA YOSHITANI: Okay. Thank you. At this time I'd like  
10 to, you have several tables that you have collected of traffic  
11 calculations that the source was the Howard County Tax  
12 Information Data, correct?

13 WILLIAM TAYLOR: Yes.

14 REBECCA YOSHITANI: Actually all of them, I just want to  
15 verify, I see one that says the source is Maryland State Highway  
16 Traffic Study. Are all of these taken on the appendix to what  
17 you've given me, are all of these taken from public sources?

18 WILLIAM TAYLOR: Appendix two? No, most of the information  
19 on appendix two is really from my survey.

20 REBECCA YOSHITANI: I was just looking at...

21 WILLIAM TAYLOR: But table one, yes table one is from, the  
22 sources are usually indicated.

23 REBECCA YOSHITANI: At this time I have a document that Mr.  
24 Taylor has prepared and it's a collection book of information  
25 taken straight from state and county information and then tables

1 that he himself has compiled that I would like to submit and  
2 then ask for a review as an exhibit.

3 ROBERT SHARPS: Would you give petitioner's counsel one so  
4 that he can review it and see whether or not he has any  
5 objection? Did you get a chance to review that Mr. Alderman  
6 earlier?

7 HOWARD ALDERMAN: I'm looking at it now Mr. Chairman. I  
8 apologize Ms....

9 ROBERT SHARPS: Yoshitani?

10 HOWARD ALDERMAN: Thank you.

11 ROBERT SHARPS: I practiced that all day.

12 HOWARD ALDERMAN: I do apologize. Opposing counsel suggest  
13 that table one is based on a public document. I would note for  
14 the record that the right two columns, unless the public  
15 document somehow took into account a proposed development, I  
16 don't know how this table could be based on a public document.  
17 It says condo effect, condo effect. So I believe that fails.  
18 Table one as shown is not from a public document.

19 ROBERT SHARPS: Let me get a description before I can  
20 respond to your objection. Is this a document taken directly  
21 from a public document? Or is this a document that you have had  
22 some information that has been retrofitted into this document to  
23 account for your testimony?

24 WILLIAM TAYLOR: The shaded columns would be the effect of  
25 the condos.

1 ROBERT SHARPS: Okay so that is not public document. That  
2 is your...

3 WILLIAM TAYLOR: Correct. All the other information is  
4 public information.

5 ROBERT SHARPS: Okay, other than all the shaded areas?

6 WILLIAM TAYLOR: Correct.

7 ROBERT SHARPS: You have an objection to that Mr. Alderman?

8 HOWARD ALDERMAN: I have no objection to the unshaded  
9 areas. But again he's not a traffic expert so I'm going to  
10 object.

11 ROBERT SHARPS: We already attested to that.

12 HOWARD ALDERMAN: In terms of table two, again, the  
13 representation was that these were all taken from public  
14 sources.

15 WILLIAM TAYLOR: No, no. The sources are indicated on the  
16 table.

17 HOWARD ALDERMAN: Well there's no source indicated on table  
18 two sir.

19 WILLIAM TAYLOR: They're my traffic study.

20 HOWARD ALDERMAN: And table three?

21 WILLIAM TAYLOR: They're my traffic study.

22 HOWARD ALDERMAN: And table four?

23 WILLIAM TAYLOR: They're my traffic study.

24 HOWARD ALDERMAN: I'm going to object to tables two, three  
25 and four for the same reasons, him not being a traffic expert

1 and I suspect that table five, it says Howard County tax  
2 information data, I don't know that there's any Howard County  
3 tax information data on the fifty proposed units. Is that  
4 correct? And that's not shaded. It says fifty units.

5 WILLIAM TAYLOR: That's not shaded. You're right.

6 HOWARD ALDERMAN: I'm going to object to table five as  
7 well.

8 ROBERT SHARPS: Okay. I will take your objection under  
9 consideration but I'll overrule it and we'll also continue to  
10 get testimony and we'll give it the weight it deserves.

11 REBECCA YOSHITANI: Thank you.

12 ROBERT SHARPS: And the Board will realize that the other  
13 tables are not taken from public documents. They are Mr.  
14 Taylor's calculations.

15 WILLIAM TAYLOR: Correct.

16 HOWARD ALDERMAN: And this is protestant's three?

17 ROBERT SHARPS: That would be three.

18 HOWARD ALDERMAN: Thank you very much.

19 REBECCA YOSHITANI: So Mr. Taylor can you explain table  
20 one, what is the substance of this table?

21 WILLIAM TAYLOR: One of the most important things I think  
22 for this table is to look at the impact of the 32 growth as the  
23 years go by. And the growth is three or four percent per year  
24 in the most recent years. With these fifty condo units the  
25 amount of traffic that this will contribute will be equivalent

1 to 2.2 percent of 32's annual growth rate.

2 REBECCA YOSHITANI: Now I want to clarify, when you're  
3 making these projections this is based on the information you  
4 collected from your study, correct?

5 WILLIAM TAYLOR: Yes.

6 REBECCA YOSHITANI: Then looking at table two can you  
7 describe this? This is a summary of your testimony based on  
8 your study, correct?

9 WILLIAM TAYLOR: Right. This is just recap of the numbers  
10 that were previously read. So we have approximately a hundred  
11 and fifty vehicles in the community and other deliveries,  
12 visitors, trash pick-up, utilities, so forth. And that would  
13 arrive at the daily 665 daily vehicle in and out trips.

14 REBECCA YOSHITANI: Thank you. And in table three I  
15 believe this is also a summary of data you collected?

16 WILLIAM TAYLOR: Right. These were local residents, a  
17 number of vehicles at residents of fifty five plus years of age  
18 of nearby neighbors to give me a figure of how many vehicles  
19 these types of people have. These people would be exactly  
20 eligible to purchase into this property, this proposed property.  
21 That's were I came up with the three vehicles per household.

22 REBECCA YOSHITANI: And table four, can you explain where  
23 you arrived at this information?

24 W.T: Yeah, these were done by people in our community.  
25 These are the counts, the average vehicles per hour which were

1 actually counted by observing the traffic at the situation  
2 during these three days as the hours indicated.

3 REBECCA YOSHITANI: And table five can you explain that?

4 WILLIAM TAYLOR: Table five, from the tax records I  
5 determined that the current households in the community are  
6 about a hundred and fifty one. And the fifty units additional  
7 would be a 33.1 percent increase in the number of residents that  
8 would be using that intersection.

9 REBECCA YOSHITANI: Thank you. Can you discuss for me,  
10 what is the structure of this intersection, the intersection at  
11 32 and Linden Church?

12 WILLIAM TAYLOR: 32 is not a typical T intersection.  
13 Perhaps you've seen the map and have seen the way the T is. But  
14 this is not a typical T intersection but it's known as an  
15 unconventional arterial intersection by design or more  
16 specifically it's called a continuous green T intersection.  
17 Such intersections are rare in the state of Maryland and they're  
18 being only used in a few other states such as Florida and North  
19 and South Carolina.

20 REBECCA YOSHITANI: Can you also address based on your  
21 personal observations and your observations during your study on  
22 the three days you observed, any particular problems that you  
23 witnessed as a result of this configuration?

24 WILLIAM TAYLOR: There are some particular concerns and  
25 safety issues associated with this type of intersection. One is

1 it's just unfamiliar to Maryland Drivers and there are very  
2 unique hazards. I noticed in researching this that a continuous  
3 green T design specifications includes a median which separates  
4 the opposing lanes of traffic for the left turn arterial  
5 traffic. And the currently installed intersection design here  
6 does not have a median separating the left turn traffic from  
7 Linden Church Road from the opposing northbound Route 32  
8 traffic.

9 REBECCA YOSHITANI: Is there anything particular you  
10 observed while observing this intersection either on a day to  
11 day basis or during your particular observations where you  
12 noticed any particular behaviors that appeared unsafe due to the  
13 way drivers were handling that intersection?

14 WILLIAM TAYLOR: Well the red light situation is certainly  
15 of major concern.

16 REBECCA YOSHITANI: And is there anything particular with  
17 that merge lane that we talked about that there's nothing  
18 separating it from the traffic on the opposing side? Did you  
19 witness anything that looked particularly unsafe?

20 WILLIAM TAYLOR: I didn't witness anything personally  
21 myself but I've heard reports of...

22 ROBERT SHARPS: Uhh, uhh...

23 REBECCA YOSHITANI: I believe some other witnesses that  
24 will address that.

25 WILLIAM TAYLOR: Yes. We'll have other witnesses.

1 REBECCA YOSHITANI: On 32 what's unusual in terms of what  
2 drivers are expected to do currently on 32? In particular I  
3 believe lights are on during the day?

4 WILLIAM TAYLOR: Lights are on usually in the morning and  
5 in the evening and then they're just blinking yellow and  
6 blinking red for the majority part of the day.

7 REBECCA YOSHITANI: And with regard to drivers, is there  
8 any particular precautions they're required to have to take on  
9 Route 32 when they are driving on 32?

10 WILLIAM TAYLOR: A driver needs to cross a lane of traffic  
11 and turn into their own lane and then merge with fast moving  
12 traffic on the right side. This particular, also in other  
13 research I located, this particular type of intersection was not  
14 recommended for senior citizens because of their difficulty in  
15 navigating intersections. The Federal Highway Administration  
16 reports talked about senior citizens having greatest difficulty.  
17 In order of importance one was reading street signs in town, two  
18 was driving across an intersection and three was finding the  
19 beginning of a left turn lane at an intersection. Finding the  
20 left turn lane at this intersection is not intuitive. Unless  
21 you've been through this intersection it's very unclear as to  
22 where you should turn particularly since there's no median  
23 separating you from the opposing oncoming traffic which is  
24 coming at a high rate of speed. They talked about difficulties  
25 making left turns at intersections for senior citizens and

1 following pavement markings and responding to traffic signals as  
2 well.

3 REBECCA YOSHITANI: Okay. No further questions.

4 ROBERT SHARPS: Cross Mr. Alderman?

5 HOWARD ALDERMAN: Yes. Thank you Mr. Chairman. Good  
6 evening Mr. Taylor. Howard Alderman on behalf of the  
7 petitioner. Referring you to what has been marked as opposition  
8 or protestant's number one, the Howard County General Plan, the  
9 highlighted portions which are blocked and I presume are shaded,  
10 you added that. Is that correct?

11 WILLIAM TAYLOR: Yes I did.

12 HOWARD ALDERMAN: The level of service that you've made  
13 reference to in box, I believe it was 4.6, yes it was 4.6, is  
14 that a County rating or is that a state rating in the Howard  
15 County General Plan?

16 WILLIAM TAYLOR: I don't know. Does it say....

17 HOWARD ALDERMAN: I'm asking you if you know sir.

18 WILLIAM TAYLOR: It says highway level of service.

19 HOWARD ALDERMAN: And is that a level of service as  
20 determined by Howard County standards pursuant to it's traffic  
21 standards or is it a level of service used by the State Highway  
22 Administration?

23 WILLIAM TAYLOR: It's used by the State Highway  
24 Administration.

25 HOWARD ALDERMAN: And that is a State Highway

1 Administration level of service. Is that correct?

2 WILLIAM TAYLOR: When I talked with the State Highway  
3 Administration they used this one.

4 HOWARD ALDERMAN: No. I'm asking what you know about this  
5 box sir. Is the level of service described herein the level of  
6 service used by the State Highway Administration or used by  
7 Howard County in it's general plan?

8 WILLIAM TAYLOR: It appears to be used by both.

9 HOWARD ALDERMAN: Are you aware that there are different  
10 standards?

11 WILLIAM TAYLOR: The standards, it's certainly used by  
12 Howard County.

13 HOWARD ALDERMAN: Are you aware that there are different  
14 standards between the State Highway Administration and Howard  
15 County?

16 WILLIAM TAYLOR: No.

17 HOWARD ALDERMAN: Now you didn't conduct any of the studies  
18 referenced in the Howard County General Plan did you sir?

19 WILLIAM TAYLOR: No.

20 HOWARD ALDERMAN: Referring you to page 106 which is page  
21 seven of seven, most of this you read into the record. In  
22 particular the third box on the left hand side, your third  
23 shading, you talked about Western Howard County and, for  
24 example, Route 32 from Maryland 108 to I-70. Is that correct?

25 WILLIAM TAYLOR: Yes.

1           HOWARD ALDERMAN: And that paragraph really pertains to  
2 highway expansion concerns, doesn't it?

3           WILLIAM TAYLOR: It's talking about careful and credible  
4 analysis should be undertaken on the land use.

5           HOWARD ALDERMAN: And traffic implications of such capacity  
6 expansions. Is that correct?

7           WILLIAM TAYLOR: I would consider this a capacity  
8 expansion.

9           HOWARD ALDERMAN: This is going to expand the capacity of  
10 Route 32 or the load on Route 32?

11          WILLIAM TAYLOR: It will increase the load on Route 32  
12 surely.

13          HOWARD ALDERMAN: Route 32, there's not going to be another  
14 lane added by my client is there?

15          WILLIAM TAYLOR: Unfortunately not.

16          HOWARD ALDERMAN: Right. So it's not increasing the  
17 capacity is it?

18          WILLIAM TAYLOR: It won't increase the capacity of Route  
19 32.

20          HOWARD ALDERMAN: And this paragraph pertains to highway  
21 capacity expansion, correct?

22          WILLIAM TAYLOR: It appears that it may apply to that.  
23 Certainly they are concerned about eh capacity of Route 32.

24          HOWARD ALDERMAN: Okay. One of the studies that you  
25 conducted, you indicated you surveyed certain residents in your

1 own community. Is that correct?

2 WILLIAM TAYLOR: That's correct.

3 HOWARD ALDERMAN: And what is your community?

4 WILLIAM TAYLOR: My community is a community of people who  
5 live in that community.

6 HOWARD ALDERMAN: I understand. But how do you define your  
7 community?

8 WILLIAM TAYLOR: Neighbors.

9 HOWARD ALDERMAN: In what geographic area?

10 WILLIAM TAYLOR: Nearby neighbors.

11 HOWARD ALDERMAN: In what limit? How many roads? How many  
12 miles?

13 WILLIAM TAYLOR: Within a half mile.

14 HOWARD ALDERMAN: And how many people live within a half  
15 mile of your home?

16 WILLIAM TAYLOR: Well there are ten residences on the road  
17 that I'm on. If you do a circle with the half mile there are  
18 probably fifteen.

19 HOWARD ALDERMAN: But that's not an age restricted  
20 community is it?

21 WILLIAM TAYLOR: It's not.

22 HOWARD ALDERMAN: Now your analysis compared uses permitted  
23 as of right as opposed to uses permitted by a conditional use.  
24 Is that correct?

25 WILLIAM TAYLOR: What do you mean?

1           HOWARD ALDERMAN: In other words the residences that you  
2 visited or the residences that you surveyed, those residences  
3 are permitted as of right. They didn't need a conditional use  
4 to put those residences in. Is that correct?

5           WILLIAM TAYLOR: That's correct.

6           HOWARD ALDERMAN: So the impact as you perceive it is based  
7 on uses permitted as of right versus the proposal which is a use  
8 permitted by conditional use. Is that correct?

9           WILLIAM TAYLOR: I just surveyed these residents.

10          HOWARD ALDERMAN: You indicated counts were taken. What  
11 time did you take the counts sir?

12          WILLIAM TAYLOR: It's stated on table four.

13          HOWARD ALDERMAN: I know it's stated there but what time  
14 were you there?

15          WILLIAM TAYLOR: I was there every morning and every  
16 evening.

17          HOWARD ALDERMAN: And did you take all of these counts?

18          WILLIAM TAYLOR: No. Other people did. I supervised the  
19 counts.

20          HOWARD ALDERMAN: And you were there for the entire time  
21 for all counts?

22          WILLIAM TAYLOR: No. No I was not there the entire time.

23          HOWARD ALDERMAN: I'm going to ask that the counts be  
24 stricken based on hearsay information. Mr. Miller was not  
25 there. He did not take the counts and therefore he cannot

1 attest to them.

2 AUDIENCE MEMBER: We can testify to them.

3 ROBERT SHARPS: Wait a minute.

4 BARRY SANDERS: You can't yell out.

5 ROBERT SHARPS: Mr. Miller. Why do I do that.

6 HOWARD ALDERMAN: Oh I did the same thing. Mr. Taylor I  
7 apologize.

8 WILLIAM TAYLOR: It's quite alright.

9 ROBERT SHARPS: To me your name is Miller. But for the  
10 record it's Taylor. Mr. Taylor what percentage of time were you  
11 available for the counts that you've given us here?

12 WILLIAM TAYLOR: I was probably there for a quarter of the  
13 time that these counts were being taken.

14 ROBERT SHARPS: A quarter of the time?

15 WILLIAM TAYLOR: Yes. They were being taken over two hour  
16 periods and I was probably there for half an hour.

17 ROBERT SHARPS: Out of the two hours from six a.m. to eight  
18 a.m. you were there for a half hour?

19 WILLIAM TAYLOR: Yes. And I observed the tic marks being  
20 put on the piece of paper.

21 ROBERT SHARPS: Objection overruled. The Board will take  
22 it into account and your objection is on record Mr. Alderman.

23 HOWARD ALDERMAN: Thank you Mr. Chairman. Mr. Taylor you  
24 indicated that you made reference to the ITE studies. Is that  
25 correct?

1 WILLIAM TAYLOR: ITE data.

2 HOWARD ALDERMAN: ITE data.

3 WILLIAM TAYLOR: Part of the ITE traffic generation rates.

4 HOWARD ALDERMAN: And you used that data to project traffic  
5 loading onto a state roadway known as Maryland Route 32?

6 WILLIAM TAYLOR: No I didn't use ITE traffic rates.

7 HOWARD ALDERMAN: Well for what purpose did you use the ITE  
8 data?

9 WILLIAM TAYLOR: Just to determine that they're really not  
10 that sound. The numbers are not backed by sufficient data to be  
11 sound numbers.

12 HOWARD ALDERMAN: And do you know how ITE data are  
13 collected with respect to different types of uses?

14 WILLIAM TAYLOR: Even the State Highway Administration  
15 admitted that the ITE rates for this type of development are not  
16 good rates.

17 HOWARD ALDERMAN: In fact the State Highway Administration  
18 does not use ITE data does it?

19 WILLIAM TAYLOR: I don't know.

20 HOWARD ALDERMAN: Do you know if they use the ASHTO data  
21 and the ASHTO standards?

22 WILLIAM TAYLOR: I don't know that.

23 HOWARD ALDERMAN: Do you know if the ITE data are based on  
24 trip generation studies?

25 WILLIAM TAYLOR: I don't know that.

1           HOWARD ALDERMAN: Why is there a three and a half minute  
2 wait at Route 32?

3           WILLIAM TAYLOR: That's the light cycle time.

4           ROBERT SHARPS: Wait a minute. Excuse me. That three and  
5 a half minute, was that Linden Church Road, the light at Linden  
6 Church Road at 32?

7           HOWARD ALDERMAN: Yes.

8           REBECCA YOSHITANI: Objection. This is outside the...

9           ROBERT SHARPS: No. He testified to it.

10          REBECCA YOSHITANI: Yes but he said why? The question was  
11 why not is there a three and a half minute delay but why.

12          HOWARD ALDERMAN: I asked him if he knew why.

13          WILLIAM TAYLOR: The State Highway Administration said it.

14          REBECCA YOSHITANI: He just said why. He didn't say do you  
15 know why. He just said why is there a wait.

16          HOWARD ALDERMAN: I'll withdraw and rephrase. Do you know  
17 why there's a three and a half minute wait at the intersection  
18 of Linden Church and Route 32?

19          WILLIAM TAYLOR: Yes.

20          HOWARD ALDERMAN: And why is that sir?

21          WILLIAM TAYLOR: Because the State Highway Administration  
22 doesn't want to make it any less than three and a half minutes.

23          HOWARD ALDERMAN: Okay. And do you know why they give  
24 priority to Route 32, the State Highway Administration?

25          WILLIAM TAYLOR: Yes.

1           HOWARD ALDERMAN: And why is that sir?

2           WILLIAM TAYLOR: Because Route 32 is at level F and they  
3 don't want to make the congestion and the back up any more than  
4 it is already.

5           HOWARD ALDERMAN: What is a road segment Mr. Taylor?

6           WILLIAM TAYLOR: I would think it would be between two  
7 other roads.

8           HOWARD ALDERMAN: Is a road segment different from an  
9 intersection?

10          WILLIAM TAYLOR: Yes.

11          HOWARD ALDERMAN: And are you aware of the standards  
12 regarding levels of service at intersections versus levels of  
13 service of road segments?

14          WILLIAM TAYLOR: No.

15          HOWARD ALDERMAN: Making reference to your protestants'  
16 two, is that based on road segment analyses or intersection  
17 analyses?

18          WILLIAM TAYLOR: Which was that reference?

19          HOWARD ALDERMAN: That was page 102 of the Howard County  
20 General Plan, a map.

21          WILLIAM TAYLOR: On the map, the plan marks the map as  
22 level F from 108 to 70.

23          HOWARD ALDERMAN: I understand. My question is, is that  
24 map based on, does that map depict a level of service F for the  
25 intersection of Maryland Route 32 and Linden Church or for a

1 road segment?

2 WILLIAM TAYLOR: It's for a road segment. I would think it  
3 would be for a road segment.

4 HOWARD ALDERMAN: And on that road segment it's  
5 characterized as heavy flow, slow speed and frequent stoppage on  
6 the road segment, correct?

7 WILLIAM TAYLOR: That's correct.

8 HOWARD ALDERMAN: Now you talked about the intersection at  
9 Linden Church and Route 32 not having a median. Do you recall  
10 that line, that testimony?

11 WILLIAM TAYLOR: It doesn't have a median in accordance  
12 with the continuous green T standard.

13 HOWARD ALDERMAN: And are there other intersections in  
14 Howard County that are configured similarly?

15 WILLIAM TAYLOR: I know of none.

16 HOWARD ALDERMAN: Are you aware of, have you sorted all the  
17 intersections intersecting a state roadway in Howard County?

18 WILLIAM TAYLOR: No.

19 HOWARD ALDERMAN: So you're not aware of any?

20 WILLIAM TAYLOR: Correct.

21 HOWARD ALDERMAN: And the data that you used, strike that.  
22 The data utilized for protestants' two, again the map, is based  
23 on 1999 data. Is that correct?

24 WILLIAM TAYLOR: From the Howard County General Plan?

25 HOWARD ALDERMAN: Yes sir.

1 WILLIAM TAYLOR: I presume it is

2 HOWARD ALDERMAN: And are you aware of the adequate public  
3 facilities ordinance requirements in Howard County?

4 WILLIAM TAYLOR: No.

5 HOWARD ALDERMAN: Are you aware that Howard County requires  
6 that before building permits can be issued that traffic counts  
7 have to be conducted within a year of submittal to analyze  
8 traffic rates and loads?

9 WILLIAM TAYLOR: Okay. I'm unaware of that.

10 HOWARD ALDERMAN: You talked a lot about safety and people  
11 running red lights and zooming to get through red lights. Is  
12 that unique to the intersection of Linden Church Road and Route  
13 32 in Howard County or have you seen it happen at other  
14 intersections?

15 WILLIAM TAYLOR: I haven't observed it at other  
16 intersections perhaps as much as I have here. But I haven't  
17 observed other intersections with as long a cycle light time.

18 HOWARD ALDERMAN: Have you ever seen it at another  
19 intersection, somebody speeding up to go through the light?

20 WILLIAM TAYLOR: Yes.

21 HOWARD ALDERMAN: The continuous green and not typical T  
22 forced intersection analyses that formed the basis of your  
23 testimony, that's not based on your personal knowledge but based  
24 on some study that you reviewed that hasn't been put into  
25 evidence. Is that correct?

1 WILLIAM TAYLOR: Well much of this is based on the Maryland  
2 State Highway Traffic Administration, the Office of Traffic and  
3 Safety.

4 HOWARD ALDERMAN: So it's a study that you consulted, not  
5 something that you did. Is that correct?

6 WILLIAM TAYLOR: That's correct.

7 HOWARD ALDERMAN: And that study is not in evidence. Is  
8 that correct?

9 WILLIAM TAYLOR: That's correct.

10 HOWARD ALDERMAN: Mr. Taylor thank you very much. Nothing  
11 further.

12 WILLIAM TAYLOR: Thank you.

13 REBECCA YOSHITANI: Redirect?

14 ROBERT SHARPS: Mr. Taylor the Board may have questions.  
15 Any questions? I just have two brief questions Mr. Taylor.  
16 I'll give you your name back. On the safety issue you mentioned  
17 that you've noted a lot of behavior that was not safe. Did you  
18 notice any safety measures that the State Highway Administration  
19 requires be utilized on that road on 32?

20 WILLIAM TAYLOR: Well the State Highway Administration has  
21 gone to extremes to improve safety on Highway 32. They've  
22 reduced the speed limit. They've put in rumble lanes. They've  
23 put in reflectors down the median strip. They require  
24 headlights to be on now. There are only a few highways in  
25 Maryland that actually require headlights all the time, daytime

1 as well.

2 ROBERT SHARPS: And Route 32, if I'm not mistaken, it's a  
3 vehicle headlight zone, mandatory zone.

4 WILLIAM TAYLOR: Yes, from Route 108 to Route 70.

5 ROBERT SHARPS: The only point that I wanted to make is  
6 that I noticed all the unsafe behaviors but there are some  
7 safety behaviors that are required by the State Highway  
8 Administration.

9 WILLIAM TAYLOR: Correct.

10 ROBERT SHARPS: One other question. Did you actually  
11 survey each of those homes that you talk about in your, I guess  
12 it's table number three?

13 WILLIAM TAYLOR: Yes.

14 ROBERT SHARPS: Okay so that's where you got these numbers  
15 from. You knocked on every door and asked them for that  
16 information?

17 WILLIAM TAYLOR: Yes. I know the people and yes.

18 ROBERT SHARPS: And may I ask you I think you said your  
19 study was done in three days, July 21<sup>st</sup>, 22<sup>nd</sup> and 23<sup>rd</sup>.

20 WILLIAM TAYLOR: The traffic counts.

21 ROBERT SHARPS: The traffic counts.

22 WILLIAM TAYLOR: The traffic counts were done in that time  
23 period.

24 ROBERT SHARPS: July 21<sup>st</sup>, 22<sup>nd</sup> and 23<sup>rd</sup> did I hear you say?

25 WILLIAM TAYLOR: They were, actually they were done July

1 19<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup> which is a Wednesday, Thursday and a Friday.

2 ROBERT SHARPS: Okay. That's what I wanted. It was a  
3 Wednesday, Thursday and Friday.

4 WILLIAM TAYLOR: Yes. And the people doing the counts, you  
5 know, they felt that they were really low, that really traffic  
6 happened to be low that period and maybe they were vacation  
7 days. This is not, school buses were not running then and  
8 things like that.

9 ROBERT SHARPS: And the purpose of doing it between six and  
10 eight and four and six in the evening was high traffic?

11 WILLIAM TAYLOR: Just trying to get peak times. Most  
12 traffic studies do a lot of peak travel rates and so we wanted  
13 to see what's the impact at the peak time.

14 ROBERT SHARPS: Thank you I have no further questions.

15 REBECCA YOSHITANI: Redirect?

16 ROBERT SHARPS: You have a redirect?

17 REBECCA YOSHITANI: Yes I do. In looking at page 102 from  
18 the General Plan which is the map?

19 WILLIAM TAYLOR: Yes.

20 REBECCA YOSHITANI: Can you read, it's pretty small down in  
21 the lower left hand corner, what the source of the information  
22 is?

23 WILLIAM TAYLOR: I don't know if I can.

24 REBECCA YOSHITANI: Where it says GIS source.

25 ROBERT SHARPS: You need a set of binoculars I understand.

1 WILLIAM TAYLOR: Can someone else read that into the  
2 record.

3 ROBERT SHARPS: I can't even read it and I'm using  
4 reflective lenses.

5 REBECCA YOSHITANI: Well. I wanted to point out that it  
6 said what the source was.

7 ROBERT SHARPS: Well why don't you tell us what it is for  
8 the record.

9 REBECCA YOSHITANI: Alright. It says the source is the  
10 Howard County Department of Planning and Zoning and the State  
11 Highway Administration. That's the source for this information,  
12 correct?

13 WILLIAM TAYLOR: Yes. Thank you.

14 REBECCA YOSHITANI: When you took your study of your  
15 community in order to determine some travel rates, did you  
16 indiscriminately choose every house or did you identify only  
17 those houses where the occupants would qualify for this kind of  
18 housing.

19 WILLIAM TAYLOR: Yes. These houses were selected to try to  
20 be a representative sample of residents that might occupy the  
21 fifty condo units so that these figures could be computed to  
22 that.

23 REBECCA YOSHITANI: So what was the occupancy of these  
24 houses?

25 WILLIAM TAYLOR: As long as one representative was fifty

1 five years of age or older.

2 REBECCA YOSHITANI: And were all the additional residents  
3 over the age of eighteen?

4 WILLIAM TAYLOR: That's correct.

5 REBECCA YOSHITANI: Okay. In your study that you took the  
6 travel study on the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup>, the intersection study.

7 WILLIAM TAYLOR: Yes.

8 REBECCA YOSHITANI: And you mentioned that other people  
9 besides yourself took the data.

10 WILLIAM TAYLOR: That's correct.

11 REBECCA YOSHITANI: Were all those other people taking data  
12 also members of this community?

13 WILLIAM TAYLOR: Yes they are.

14 REBECCA YOSHITANI: Are they people who are available to  
15 testify on their own behalf in terms of the data they took if  
16 necessary?

17 WILLIAM TAYLOR: Yes they are.

18 REBECCA YOSHITANI: Okay. In terms of the IPE data you  
19 cited, was your point for referring to it to explain why you did  
20 not use it?

21 WILLIAM TAYLOR: That's correct.

22 REBECCA YOSHITANI: So did you actually in fact use any of  
23 the IPE data?

24 WILLIAM TAYLOR: I did not.

25 REBECCA YOSHITANI: And the reason you did not use the

1 data?

2 WILLIAM TAYLOR: Because the inconsistency and the lack of  
3 competence in the numbers.

4 REBECCA YOSHITANI: And also was the IPE data for senior  
5 development, did it reflect this kind of development?

6 WILLIAM TAYLOR: It didn't seem to reflect this particular  
7 kind of development.

8 REBECCA YOSHITANI: Now when you were looking at this  
9 particular kind of intersection, and I believe you referred to  
10 it as what kind of intersection?

11 WILLIAM TAYLOR: It's a continuous green T intersection.

12 REBECCA YOSHITANI: And did you investigate if there are  
13 other intersections of this type within the state?

14 WILLIAM TAYLOR: I didn't count how many there are in the  
15 state. I understand that there are very few.

16 REBECCA YOSHITANI: Would you say less than five?

17 WILLIAM TAYLOR: I'd be guessing. I really don't know but  
18 it seems to be even State Highway Administration says they're  
19 rare.

20 REBECCA YOSHITANI: Have you ever observed personally any  
21 intersections of this type in other places within Howard County?

22 WILLIAM TAYLOR: No.

23 REBECCA YOSHITANI: And would you say based on your data  
24 that you collected in this map that you're presenting that this  
25 stretch of 32 has greater traffic condition issues than other

1 parts of Western Howard County?

2 WILLIAM TAYLOR: Absolutely.

3 REBECCA YOSHITANI: Okay. No further questions.

4 ROBERT SHARPS: Just one quick follow up. This continuous  
5 green T, I think I heard you say that you've only heard of it, I  
6 don't know if you said you'd seen it, you've heard of it in two  
7 other states, Florida and..

8 WILLIAM TAYLOR: North and South Carolina.

9 ROBERT SHARPS: North and South Carolina?

10 WILLIAM TAYLOR: That's where it's reported.

11 ROBERT SHARPS: You have observed it or you are aware of  
12 it?

13 WILLIAM TAYLOR: No. This is from the research or from the  
14 data. I've never observed another intersection like this.

15 ROBERT SHARPS: Okay.

16 BARRY SANDERS: Mr. Taylor where do you reside exactly?

17 WILLIAM TAYLOR: On Broadwater Lane in Clarksville.

18 BARRY SANDERS: Where is that in relation to the conditional  
19 use plan?

20 WILLIAM TAYLOR: It's less than a half mile from the site.

21 BARRY SANDERS: You're not adjacent to this proposed  
22 development are you?

23 WILLIAM TAYLOR: My property is not adjoining this  
24 property.

25 BARRY SANDERS: And how long have you lived in your

1 residence?

2 WILLIAM TAYLOR: Since 1974.

3 BARRY SANDERS: Thank you.

4 ROBERT SHARPS: Thank you for your time Mr. Taylor. Is  
5 your next witness here Ms. Yoshitani or Mr. Garcia? Who's  
6 calling the next witness?

7 RUY GARCIA: I am. I would like to call Murray Snyder.

8 ROBERT SHARPS: Mr. Snyder just by sort of looking at how  
9 much time it took the last witness and so we don't have people  
10 jittering in here why don't we take a quick ten minute break and  
11 we'll come back and have you testify at that time. The Board  
12 will take a ten minute recess.

13 *RECESS*

14 ROBERT SHARPS: The Board of Appeals is back in session.  
15 Sir can I get you to raise your right hand so that I can swear  
16 you in before you testify? Do you promise to speak truthfully  
17 in the testimony you are about to give this Board?

18 MURRAY SNYDER: I do.

19 ROBERT SHARPS: Please state your name and address for the  
20 record please sir.

21 MURRAY SNYDER: My name is Murray Snyder and I live at 5678  
22 Chamblis Drive, Clarksville. That's about a mile from the  
23 proposed development.

24 ROBERT SHARPS: Thank you Mr. Snyder and I promise I won't  
25 call you Mr. Miller.

1 RUY GARCIA: Mr. Snyder could you please state your  
2 educational background?

3 MURRAY SNYDER: Yes I have a bachelor of science in  
4 mechanical engineering from Duke University. I have a master of  
5 science in mechanical engineering from the University of  
6 California San Diego. I'm about three months from completing a  
7 Ph.D. in computational food dynamics at Johns Hopkins  
8 University. I'm a registered professional engineer and I teach  
9 mechanical engineering at the Naval Academy.

10 RUY GARCIA: Could you please state your current job and  
11 associated responsibilities?

12 MURRAY SNYDER: I'm a captain in the United States Navy.  
13 Currently I'm an instructor at the Naval Academy. Prior to that  
14 I was on submarines for about twenty years including when I was  
15 a training officer of a trident missile submarine for about two  
16 and a half years.

17 RUY GARCIA: Would you say that you have experience in  
18 evaluating requirements and compliance with those requirements  
19 as part of your experience of working with the Navy?

20 MURRAY SNYDER: Yes I do. I am very comfortable looking at  
21 complex technical requirements and determining whether those  
22 complex technical requirements have been satisfied.

23 RUY GARCIA: Have you researched any of the water and sewer  
24 issues in connection with the proposed development?

25 MURRAY SNYDER: Yes I have.

1 RUY GARCIA: And what did you find?

2 MURRAY SNYDER: First let me start by saying if you look at  
3 their plans out there, there's a general note four on the plan.  
4 And I'm paraphrasing here but it says that there is a water and  
5 septic plan or that there's a community well and septic plan and  
6 that there's information on file with the Howard County Health  
7 Department. And I can read the exact words if you want.

8 RUY GARCIA: Please go ahead.

9 MURRAY SNYDER: This is general note four. It says  
10 community private well and septic will be utilized. Additional  
11 information can be obtained from the Howard County Health  
12 Department at Columbia Gateway Drive in Columbia, Maryland. I  
13 entered this issue with some concern about the impact that a  
14 community well and septic system on the aquifer that supplies my  
15 house and other houses in the area. The first thing I did was I  
16 contacted the Howard County Health Department and I requested  
17 any information on file that they had for this proposed  
18 development and there's some handouts there. I submitted a  
19 public information request and the Howard County Health  
20 Department gave me all the information on file that the  
21 developer had filed with the County concerning a well or septic  
22 system.

23 RUY GARCIA: I'd like to submit this as an exhibit.

24 ROBERT SHARPS: The nomenclature of the exhibit Mr. Garcia?

25 MURRAY SNYDER: Let me answer that. There are actually

1 three items in here. The first is a letter from the Howard  
2 County Health Department that just gives all information on file  
3 from the developer for the proposed development. The second  
4 item is a handout from the Maryland Department of the  
5 Environment that is used to determine water consumption. And  
6 the third exhibit or handout is a copy of the Maryland  
7 Department of the Environment Regulation 3.07 which are water  
8 appropriation and use permit. I'll discuss each of these in  
9 turn. First if you look to exhibit one which is the letter from  
10 the County.

11 ROBERT SHARPS: Excuse me. Wait Mr. Snyder.

12 MURRAY SNYDER: Yes sir.

13 ROBERT SHARPS: We need to keep our record straight.

14 You're stating three exhibits. I need to get my administrator  
15 straight with the records here too and the exhibits. This is  
16 going to be protestants' exhibit number three, four, I'm sorry.  
17 And you're having three exhibits in here. Are we to assume that  
18 you want to do these as separate exhibits or as exhibit four A,  
19 B and C?

20 MURRAY SNYDER: I'll do them as four, five and six.

21 ROBERT SHARPS: Four, five and six. Any objection to the  
22 exhibits Mr. Alderman? We'll just see as we go along. Continue  
23 Mr. Snyder.

24 MURRAY SNYDER: Okay. Exhibit number four is a letter from  
25 the Howard County Health Department that provides all the

1 information on file that concerns septic and well for the  
2 development at Greenberry Lane. The cover letter is just how  
3 much they charged me for it. The second page is a letter from  
4 Ms. Fagel to the developer saying, we have your preliminary  
5 results however you need to supply a whole bunch of additional  
6 information to get a satisfactory percolation plan. And I'll  
7 discuss that letter separately in a second. And then the  
8 following pages, I think about seven or eight, are a copy of  
9 what's on file from the developer. And it's what I would  
10 classify as a cursory percolation report. This document, and  
11 this is the one that's all scribbled by hand and stuff like  
12 that, this document is not adequate to support a percolation  
13 plan. This is very cursory testing. Now at the last hearing  
14 Mr. Sheesley who is the expert presented by the petitioner, he  
15 said that they had a good septic plan and that they had dug  
16 fifty holes and they all passed. Well if you look at this  
17 document you'll note that not all the holes passed percolation  
18 test. Specifically hole B-22, hole B-48 and hole 1 all failed  
19 percolation testing. So, you know, the testimony of Mr.  
20 Sheesley I do not consider to be accurate because he did not  
21 bring up the fact that there were some holes that were  
22 inadequate during the testing. At this point I'd also like to  
23 reference the letter from the Howard County Health Department to  
24 Mr. Nussam and Mr. Hickmat and it says they've received the  
25 information however they need a whole bunch more to have any

1 type of percolation certification. They have to show actual  
2 locations and elevations of the test holes and they need to show  
3 locations for both buildings, wells and septic systems. They  
4 need to show location to relevant surface features such as  
5 streams and swales and a swale is a dip in the land where you  
6 might collect water. They have to show that all existing wells  
7 within a hundred feet of the proposed boundaries. They have to  
8 have a health officer's signature from Howard County and there's  
9 a bunch of other administrative stuff. My comment based upon  
10 review of the information that's available in the public record  
11 is that there is simply not enough information at this point to  
12 be able to make any valid assessment on whether they have a good  
13 plan for a septic system for this development. They've done  
14 some cursory testing. They don't have a specific location.  
15 There's nothing here really to evaluate because it's an  
16 inadequate document. I also might mention that I went and  
17 actually looked at the property without actually going on to the  
18 property. I drove up on the road. The actual proposed septic  
19 field is on a sloping area. It has a swale or a dip on one side  
20 and it has a swale at the bottom. Both of those are potentially  
21 problems because that's where water can collect during  
22 rainstorms which is why there are specific requests for that  
23 type of information and what's submitted to the County. So  
24 based upon my review of the documents there's simply not  
25 adequate information right now to make any assessment on whether

1 this is viable place for a septic field. The next issue I  
2 looked at is a well for a community of this size. Exhibit  
3 number five is a handout you can get from the Maryland  
4 Department of the Environment, their website, and actually  
5 references the last page of the handout. On the second page it  
6 says the average, this is at the bottom with the star, it says  
7 the average Maryland citizen uses about a hundred gallons per  
8 day, a hundred gallons of water per day. I did some  
9 calculations. I'm assuming 2.4 people per house and fifty  
10 homes. If you work out the math from that, fifty times 2.4  
11 times a hundred, they're going to need a well or a combination  
12 of wells that provide about 12,000 gallons a day of water to  
13 this development to satisfy the general guidelines in the MDE  
14 handout.

15 ROBERT SHARPS: How much a day? I'm sorry.

16 MURRAY SNYDER: Approximately 12,000 gallons per day. I  
17 also talked to the county person who actually calculates this.  
18 They have a thumb rule but since it's hearsay all I can say is  
19 it's equivalent to 12,000 gallons per day. They come up with  
20 the same numbers I do. The document, if you do the math, is  
21 12,000 gallons per day. The third or my next exhibit, number  
22 six, is a copy of the Maryland Department of the Environment  
23 regulation for water appropriation and use permit section 3.07  
24 and I'll read from portions of this. The permit is required for  
25 any activity that would withdraw water from a state surface or

1 underground waters unless exempted below. And there's a bunch  
2 of exemptions for fighting fire, for individual domestic use,  
3 that's individual homes, for residential subdivisions of ten or  
4 fewer lots. The proposed development doesn't meet any of these  
5 exemptions and because of that they're going to be required to  
6 have a water appropriation and use permit from the state of  
7 Maryland. Right not there's nothing on file with the County  
8 that says they have done any of the preparatory work to get such  
9 a water appropriation use permit. At the last hearing Mr.  
10 Sheesley, and I'm paraphrasing, said it would take approximately  
11 two to three months to resolve the well issues and that's in his  
12 testimony on file. I disagree with his assessment and  
13 specifically if you refer to the second page of exhibit number  
14 six it talks about standard turn around time and it says  
15 eighteen months for 10,000 gallons per day or more. And by the  
16 calculations I have shown we're clearly in the 10,000 gallons  
17 per or above requirement. So it's not something that's going to  
18 happen in two or three months, it's something that's going to  
19 happen in an extended period. Because it's such a large amount  
20 of water being drawn out of the aquifer there's a bunch of  
21 things that have to be done to prove that it won't have a  
22 significant impact on adjacent properties. And to the best I  
23 can tell none of those things have been done. There's a  
24 specific requirement, and this is item, there's a requirement  
25 that they notify adjacent property owners who might be impacted

1 by this water being pulled out.

2 ROBERT SHARPS: Where are you referencing Mr. Snyder?

3 MURRAY SNYDER: Let me find that. I have to read my  
4 writing here.

5 ROBERT SHARPS: What was the statement you made sir?

6 MURRAY SNYDER: Well I was starting to, someone here said  
7 that you have to notify adjacent homeowners that you're going to  
8 be potentially drawing water from the property and I can't find  
9 that off the top of my head. But we'll just defer that. But  
10 there's a bunch of stuff that they have to do that they haven't  
11 done. They have to do a detailed map that shows where they're  
12 going to put the wells. They have to explain the water use.  
13 They have to do an average daily calculation. They have to show  
14 what the groundwater withdrawal will be during the highest month.  
15 And they have to submit plans and specifications and any special  
16 technical evaluations. Oh here it is. In item five under the  
17 application process it says, average annual withdrawal of more  
18 than 10,000 gallons per day must include certified notification  
19 of contiguous property owners and certification of compliance  
20 with the business and occupation professions. So this is where  
21 they have to provide notification to adjacent owners. And right  
22 now none of the adjacent owners have told me that they have been  
23 notified. Let me rephrase that. At the last hearing it was  
24 specifically asked of Mr. Sheesley if any of the adjacent owners  
25 had been notified of this permit in process and he said he

1 didn't know.

2 ROBERT SHARPS: Do you accept that Mr. Alderman as his  
3 rephrasing?

4 HOWARD ALDERMAN: My objection was what he was told by...

5 ROBERT SHARPS: But he rephrased it.

6 HOWARD ALDERMAN: What Mr. Sheesley said last time was no,  
7 no property owners had been notified.

8 ROBERT SHARPS: That's what he just rephrased.

9 HOWARD ALDERMAN: No. He said Mr. Sheesley didn't know.

10 In fact Mr. Sheesley's testimony I believe was in the  
11 affirmative that at the time of the last hearing no notification  
12 had yet been given. It was an affirmative rather than an, I  
13 don't know.

14 MURRAY SNYDER: Okay. If I understand then, none of the  
15 adjacent owners have been notified that it's greater than 10,000  
16 gallons per day. I'll try to summarize my concerns. There's  
17 almost no information on file with the Howard County Health  
18 Department and it's impossible for anyone to make a technical  
19 evaluation on the viability of a septic system and a large well  
20 system without having any information on file. All that is on  
21 file is some very cursory septic percolation tests which you all  
22 have there. If you look at them you can see that they are not a  
23 valid engineering document. They don't tell location. They  
24 show that some holes failed. They don't have a whole bunch of  
25 certification. So my technical assessment is that we just don't

1 know if their septic system would work and we have absolutely no  
2 data to support whether a well system would work or whether it  
3 would have any impact on the adjacent properties. I also will  
4 mention that the developer has submitted information to the  
5 County that's been returned saying, well okay we need a whole  
6 bunch more to go ahead with the certification process.

7 RUY GARCIA: Mr. Snyder when you say that you've checked  
8 all the documents that are on file, what dates did you check on?

9 MURRAY SNYDER: I called the County on the 19<sup>th</sup> of July and  
10 I faxed in my public information permit and they had me drop by  
11 and pick up the documents they have on file. Then on the 15<sup>th</sup> of  
12 August I called the person who provided it before, Ms. Stephanie  
13 Nelson, and she told me that there's no additional information  
14 on file.

15 RUY GARCIA: If something had been filed subsequent to your  
16 check on August 15, '06 do you think that would change your  
17 conclusion that it's premature to say now whether there'd be the  
18 necessary well approval that you were discussing?

19 MURRAY SNYDER: Well if there's something else on file I'd  
20 have to take a look at it but right now my assessment is based  
21 upon the limited amount of information on file. There's a tiny  
22 bit on septic percolation. There's nothing on a septic system.  
23 And there's absolutely no information on a well on file.

24 RUY GARCIA: And do you feel that at this point in time  
25 there's enough information in the file to determine whether the

1 impact would be greater in the community than it would, or would  
2 not be greater in this community than elsewhere due to the  
3 proposed development?

4 MURRAY SNYDER: There's not enough information on file to  
5 make any determination in regard to that question. We just  
6 don't know. There's no information on file that a competent  
7 engineer could use to evaluate this development.

8 R.G. Thank you. Those are all the questions I have.

9 ROBERT SHARPS: Mr. Alderman?

10 HOWARD ALDERMAN: Mr. Snyder good evening. Howard Alderman  
11 on behalf of the petitioner sir. You indicated that you are a  
12 registered professional engineer.

13 MURRAY SNYDER: Yes sir.

14 HOWARD ALDERMAN: What state?

15 MURRAY SNYDER: California.

16 HOWARD ALDERMAN: So you're not registered in Maryland?

17 MURRAY SNYDER: No.

18 HOWARD ALDERMAN: And how many soil analyses have you  
19 conducted in your career?

20 MURRAY SNYDER: I've done zero soil analyses in my career.  
21 I've reviewed four septic plans as part of my review process  
22 before we purchased homes in Howard County though.

23 HOWARD ALDERMAN: So you've reviewed the individual perc  
24 tests for those homes that you purchased. Is that correct?

25 MURRAY SNYDER: Well we only purchased one home but we

1 looked a whole bunch of different homes. I looked at the septic  
2 plan. A plan is a lot different than a percolation test. A  
3 percolation test says whether the water you put in the test hole  
4 will actually seep into the ground. A plan shows you the entire  
5 lot, shows you the structure, shows you where the septic tank  
6 is, shows you if there's any pumping facility, shows you where  
7 the field is, shows the field in relation to the percolation  
8 tests that were performed. That's what I've looked at before.

9 HOWARD ALDERMAN: Are you familiar with the term septic  
10 preserve area?

11 MURRAY SNYDER: No I'm not.

12 HOWARD ALDERMAN: Are you familiar with the term sewage  
13 disposal area?

14 MURRAY SNYDER: No I'm not. I can make some guesses but  
15 I'm not going to say, I'm not a septic engineer.

16 HOWARD ALDERMAN: Well based on the percolation plan that  
17 you reviewed what was the land area within which sewage would be  
18 percolated through in square footage?

19 MURRAY SNYDER: There's not a plan on file.

20 HOWARD ALDERMAN: The one's you reviewed sir.

21 MURRAY SNYDER: There's some percolation test results on  
22 file. And based upon my review of the original proposal  
23 blueprint it's about four acres.

24 HOWARD ALDERMAN: Mr. Snyder based on the four percolation  
25 plans that you said you reviewed in connection with looking at

1 homes for your personal use in Howard County, what was the land  
2 area devoted to sewage disposal on each of those lots?

3 MURRAY SNYDER: It was something less than about a quarter  
4 acre.

5 HOWARD ALDERMAN: Do you know what the minimum state  
6 requirement is in terms of square footage?

7 MURRAY SNYDER: No I don't.

8 HOWARD ALDERMAN: With respect to your testimony regarding  
9 the water appropriation permit. Is that filed with the County  
10 or the State, do you know?

11 MURRAY SNYDER: It's filed with the State of Maryland.

12 HOWARD ALDERMAN: And did you check with the State of  
13 Maryland about whether or not a water appropriation permit has  
14 been filed?

15 MURRAY SNYDER: Yes I did and I have hearsay evidence if  
16 you'll let me speak to that.

17 HOWARD ALDERMAN: No. All I did was ask you if you  
18 checked.

19 MURRAY SNYDER: Yes. And they said it was inadequate and  
20 it was not acceptable and that they're holding it for additional  
21 information and if they don't get it by September they're going  
22 to send it back.

23 HOWARD ALDERMAN: I'm sorry I thought you were finished. I  
24 do apologize. Do you know what role or what information the  
25 County supplies with respect to an application for a water

1 appropriation permit from the State of Maryland?

2 MURRAY SNYDER: Well the County Health Officer has to sign  
3 off on the appropriation to say that it is an appropriate plan.  
4 In fact that was the issue that was holding up what was filed  
5 with the state. There was no County Health Officer signature on  
6 file with what the developer filed with the state.

7 HOWARD ALDERMAN: And on what do you base that last  
8 statement? The County Health Officer has to certify that it's  
9 an appropriate plan.

10 MURRAY SNYDER: There was a phone call with Mr. Gaul which  
11 you see of the Maryland Department of the Environment, he's the  
12 Howard County expert, done on the 21<sup>st</sup> of July.

13 HOWARD ALDERMAN: Is it correct that based on your  
14 understanding that the health officer has to certify that the  
15 proposed usage comports with the master water and sewer plan as  
16 adopted by Howard County?

17 MURRAY SNYDER: What Mr. Riccuti told me was that it  
18 required a Howard County Health Officer signature on the  
19 application.

20 HOWARD ALDERMAN: But you have no personal knowledge  
21 whatsoever. Is that correct?

22 MURRAY SNYDER: No. In fact I requested the permit but  
23 it's not available since it's private information.

24 HOWARD ALDERMAN: Now several times in your direct  
25 testimony. Strike that. In terms of the percolation plans that

1 you reviewed for the homes that you were considering purchasing  
2 in Howard County, how many perc tests on average were done on  
3 each one of those lots?

4 MURRAY SNYDER: I don't remember a specific number of perc  
5 tests.

6 HOWARD ALDERMAN: Two or three within the area?

7 MURRAY SNYDER: No, it was more like, I'm not sure.

8 HOWARD ALDERMAN: Do you know what the state requirements  
9 are?

10 MURRAY SNYDER: No I don't.

11 HOWARD ALDERMAN: You don't know what the state  
12 requirements are yet you characterized fifty tests on four and a  
13 half acres as a mere cursory examination?

14 MURRAY SNYDER: No. What I'm testifying to is that the  
15 Howard County Health Department sent a letter to Mr. Hickman  
16 that said you have to show actual locations and elevations of  
17 all elevated test holes, proposed buildings, wells and septic  
18 systems, locations of relevant features such as screenings,  
19 swales and existing structures. A note must be included that  
20 certifies that all distant wells and septic systems within a  
21 hundred feet of the property boundaries have been shown, a note  
22 indicating that the topography reflects field map information, a  
23 health officer's signature stating a proof of private use and  
24 private sewer systems, a NVE sewage disposal area statement, NVE  
25 minimum lot width statement and add the A number in the title

1 block. And my assessment is that what they submitted does not  
2 have any of those requirements satisfied as documented by Ms.  
3 Fagel from the Howard County Health Department. So my  
4 assessment is that there was not enough information to make an  
5 assessment.

6 HOWARD ALDERMAN: Are you aware of the standard practice of  
7 evaluating the sale for percolation testing as practiced in the  
8 State of Maryland and in Howard County specifically, the steps  
9 that are involved?

10 MURRAY SNYDER: I have a broad overview knowledge but I  
11 don't have any specific knowledge of the steps.

12 HOWARD ALDERMAN: Are you aware that the first step is to  
13 apply for a percolation test permit and then do field testing  
14 within specified areas?

15 MURRAY SNYDER: I do not know any specific information  
16 about the specific test process. All I know is what's on file  
17 is not adequate to support a percolation certification plan.

18 HOWARD ALDERMAN: Well let me refer you to protestants'  
19 four, specifically all those test results. Do you think that's  
20 the first step in the process or the last step in the process?

21 MURRAY SNYDER: Well it's obviously not the last step in  
22 the process because the County says it's inadequate. You need  
23 additional information. I mean this looks like something my  
24 five year old could draw. It doesn't show engineering  
25 locations. It doesn't show a reference point. I mean it's not

1 adequate to even review. It's just a cursory percolation test.

2 HOWARD ALDERMAN: Are you familiar with the term field  
3 notes?

4 MURRAY SNYDER: Yes I'm familiar with the term field notes.

5 HOWARD ALDERMAN: would you characterize these as more akin  
6 to the field note rather than a percolation test plan?

7 MURRAY SNYDER: I would say that they're not adequate right  
8 now to approve a percolation plan.

9 HOWARD ALDERMAN: Has a percolation plan been submitted?

10 MURRAY SNYDER: Not that I know of.

11 HOWARD ALDERMAN: Not that you know of. Do you believe or  
12 do you have any, strike that. You said that you reviewed four  
13 percolation test plan, correct?

14 MURRAY SNYDER: For individual homes, yes.

15 HOWARD ALDERMAN: And based on your engineering expertise  
16 are those percolation test plans prepared after infield testing  
17 of the soil?

18 MURRAY SNYDER: I'm sure they're prepared after testing,  
19 yes. You can't come up with a plan with specific data points  
20 unless you've done testing.

21 HOWARD ALDERMAN: And in fact opposition four is actually  
22 the infield results of the tests conducted, correct?

23 MURRAY SNYDER: Yes, some cursory, preliminary percolation  
24 test.

25 HOWARD ALDERMAN: And this data, as you indicated, would

1 then be normally utilized in the preparation of a percolation  
2 plan. Is that correct?

3 MURRAY SNYDER: I'm sure that the information may be useful  
4 but the notes right now don't even show you specific locations  
5 to a reference point. So if I were to review this how would I  
6 know where the field is. There's no grid point. There's no  
7 offsets or anything like that. This may be field notes and in my  
8 assessment they're not adequate to allow you to come up with a  
9 plan because they don't even show a grid point reference. How  
10 can you say where hole B-71 is if you don't show where the grid  
11 point is.

12 HOWARD ALDERMAN: Are you aware as to whether or not Howard  
13 County approved a percolation certification plan for the  
14 location of these particular test bits?

15 MURRAY SNYDER: As I said, as of 15 August I got what was  
16 on file with the Howard County Health Department. They had  
17 these percolation tests and they had a letter from Ms. Fagel on  
18 March 31<sup>st</sup> that said you have some satisfactory percolation  
19 results.

20 ROBERT SHARPS: Please don't read those all over again.

21 MURRAY SNYDER: Okay. All I'm telling you is what's on  
22 file with the County, okay. And the County says that you have  
23 to do the following items to have a certified percolation plan  
24 and as of a couple of days ago when I contacted the health  
25 department none of that additional information has been provided

1 to the health department.

2           HOWARD ALDERMAN: Mr. Snyder do you know if these  
3 reference, the B references and the little boxes within each of  
4 the pages of protestant's four, do you know if they correlate  
5 with a plan, a preliminary plan, that was approved by Howard  
6 County before these tests were conducted?

7           MURRAY SNYDER: If there is something else, it is not on  
8 file with the County. I can only view what is on file with the  
9 County sir. This is all that is on file with the County.  
10 Nothing more is on file.

11           HOWARD ALDERMAN: So you don't know?

12           MURRAY SNYDER: I can't review what's not there sir.

13           HOWARD ALDERMAN: Do you know what the steps are as an  
14 engineer. You said you conducted some soil analyses.

15           MURRAY SNYDER: No, I didn't say that sir. I said I have  
16 looked at completed septic plans. Even for an individual home  
17 they have a lot more information than you have here.

18           H.S.: So you're not familiar with the process of soil  
19 evaluation from start to finish in Howard County. Is that  
20 correct?

21           MURRAY SNYDER: No. I'm not familiar. I'm not a septic  
22 engineer. I don't proclaim to be a septic engineer. I've just  
23 done an assessment of what is on file with the County which is  
24 very little.

25           ROBERT SHARPS: Excuse me. Mr. Alderman can we move on to

1 another line of questioning?

2 HOWARD ALDERMAN: Yes.

3 ROBERT SHARPS: You've asked and answered the same question  
4 and rephrased it and we're getting the same answer. You're not  
5 going to change his mind.

6 HOWARD ALDERMAN: Or lack thereof.

7 MURRAY SNYDER: You can't comment on something that's not  
8 there.

9 ROBERT SHARPS: We understand Mr. Snyder. You don't need  
10 to answer unless there's a question asked.

11 MURRAY SNYDER: Yes sir.

12 HOWARD ALDERMAN: May I have just one second please?

13 ROBERT SHARPS: Sure, I'll give you five.

14 HOWARD ALDERMAN: Thank you sir.

15 ROBERT SHARPS: The Board may have questions for you Mr.  
16 Snyder. Before you redirect, just one question Mr. Snyder.  
17 Obviously you read the technical staff report. You read  
18 everything else. Did you get an opportunity to read this, from  
19 the Zoning Board?

20 MURRAY SNYDER: It's not on file with the Health Department  
21 so I don't believe I've read it.

22 ROBERT SHARPS: Well no, it's in the record. You didn't  
23 get to read the record, you just went to Howard County Health?

24 MURRAY SNYDER: Yes sir.

25 ROBERT SHARPS: Okay. Well I can't ask you whether you

1 give any credence to their evaluation and their recommendation  
2 that they put in so. Just another question, you say you're a  
3 Captain, U.S. Navy?

4 MURRAY SNYDER: Yes sir.

5 ROBERT SHARPS: Retired or active duty?

6 MURRAY SNYDER: No, I'm active duty.

7 ROBERT SHARPS: Active duty.

8 MURRAY SNYDER: I'm very uncomfortable being in front of  
9 lawyers.

10 ROBERT SHARPS: I'm not a lawyer so you don't have to have  
11 any discomfort at all. If it's any comfort to you I'm United  
12 States Air Force Retired Major so you're in good company. Mr.  
13 Garcia you have other questions?

14 RUY GARCIA: Just one redirect. Just to be clear, is there  
15 anything in the submitted record that you reviewed that you  
16 believe proves that the well and septic system necessary for  
17 this proposed development would not have an adverse impact in  
18 the community that is not greater than that would exist  
19 elsewhere?

20 MURRAY SNYDER: Well for instance if there was a public  
21 well or public water like there is on the development up on 144,  
22 that would have less impact because it's not pulling from the  
23 aquifer. I mean it's hard to compare this thing to anything  
24 because there's not much to compare. There's absolutely no  
25 information on file concerning the well, if they're going to do

1 one well, two well, a storage tank, what's the actual level of  
2 the aquifer. I mean there's nothing on file so you can't make  
3 an assessment, typically about the well, without having  
4 something to look at.

5 RUY GARCIA: Thank you.

6 ROBERT SHARPS: Recross?

7 HOWARD ALDERMAN: Very, very short.

8 ROBERT SHARPS: It would have to be. He only asked one  
9 question.

10 HOWARD ALDERMAN: Well you asked him questions as well.

11 ROBERT SHARPS: I asked him what his rank was. That has  
12 nothing to do with it.

13 HOWARD ALDERMAN: Mr. Snyder did you obtain from the Howard  
14 County Department of Health the memorandum attached to the  
15 technical staff report dated February 22, 2006 regarding this  
16 property and the proposed use of this property?

17 MURRAY SNYDER: I don't remember what that is.

18 HOWARD ALDERMAN: Well this is an enlarged version.

19 ROBERT SHARPS: Which memorandum are you referring to?

20 HOWARD ALDERMAN: That is the Health Department's  
21 attachment to the technical staff report. It's part of this  
22 file.

23 MURRAY SNYDER: No. I haven't reviewed this.

24 HOWARD ALDERMAN: If you haven't reviewed it then I can't  
25 ask you about it. Mr. Snyder are you aware with regard to

1 process again, let's take the process...

2 REBECCA YOSHITANI: He can only ask about our redirect.

3 HOWARD ALDERMAN: I'm going to cross examine him on Mr.  
4 Garcia's question. Referring now to process, are you aware as  
5 to the process as practiced in Howard County as to when in the  
6 approval of a development, of a conditional use development,  
7 when water appropriation permit data are finalized and approved  
8 by MDE and when the sewage percolation plan data are approved by  
9 Howard County?

10 MURRAY SNYDER: I'm not sure that I'm aware of the specific  
11 process. This may be a chicken and egg issue, what comes first.

12 RUY GARCIA: Objection. I think it was earlier stated that  
13 he's not aware of the process and that he is aware of is his  
14 review of what was on file. We've addressed that before and  
15 he's also said that in addition. My question had nothing to do  
16 with process. It only had to do with relative impact, if there  
17 was proof in the documents that would show the relative impact  
18 of the proposed well and septic system.

19 HOWARD ALDERMAN: Let me see if I can rephrase for you then  
20 Mr. Garcia. Mr. Snyder with respect to the question posed by  
21 opposing counsel, Mr. Garcia, with respect to that question  
22 regarding the analysis as to whether or not the well and septic  
23 proposed for this community if approved as a conditional use  
24 would have an adverse impact different than someplace else in  
25 Howard County, do you know when that determination is normally

1 made?

2 MURRAY SNYDER: Again, I'm aware of what's on file with the  
3 Health Department. That's what I looked at.

4 HOWARD ALDERMAN: Thank you. Nothing further.

5 ROBERT SHARPS: Thank you Mr. Snyder. Ms. Yoshitani or Mr.  
6 Garcia to you have the other witness available or does that  
7 conclude your witnesses?

8 REBECCA YOSHITANI: This will be relatively quick. We'd  
9 like to call Steve Murphy.

10 ROBERT SHARPS: Is it Mr. Murphy? Raise your right hand  
11 please. Do you promise to speak truthfully in the testimony you  
12 are about to give this Board?

13 STEVE MURPHY: I do.

14 ROBERT SHARPS: State your name and address for the record  
15 please.

16 STEVE MURPHY: Steve Murphy, 5561 Broadwater Lane.

17 REBECCA YOSHITANI: Mr. Murphy where do you live?

18 STEVE MURPHY: 5561 Broadwater Lane, Clarksville.

19 REBECCA YOSHITANI: And is that within, how far from this  
20 development?

21 STEVE MURPHY: About a mile from the development.

22 REBECCA YOSHITANI: How often do you pass in front of where  
23 this development is?

24 STEVE MURPHY: Every day two to four times.

25 REBECCA YOSHITANI: Do you need to pass where this

1 development is going to be in order to reach Route 32 to egress  
2 the development?

3 STEVE MURPHY: Yes. It's right at the end of my street.

4 REBECCA YOSHITANI: And I believe Mr. Murphy, we have some  
5 photographs that he too that we're going to be submitting. I  
6 just want to have him look at one of these quick and identify  
7 it. Did you, yourself take these pictures?

8 STEVE MURPHY: Yes I did.

9 REBECCA YOSHITANI: About what date did you take these  
10 pictures?

11 STEVE MURPHY: It was approximately July 1<sup>st</sup> to July 2<sup>nd</sup>.

12 REBECCA YOSHITANI: And where are these pictures taken?

13 STEVE MURPHY: These are taken all through the  
14 neighborhoods that are off of 32.

15 REBECCA YOSHITANI: Okay, so those are all vicinal,  
16 generally speaking, within the development?

17 STEVE MURPHY: Yes.

18 REBECCA YOSHITANI: We'd like to submit this.

19 ROBERT SHARPS: Protestant's exhibit seven. Thank you.  
20 What's the nomenclature of this Ms. Yoshitani?

21 REBECCA YOSHITANI: These are photographs taken of the  
22 community surrounding, the vicinal community surrounding the  
23 proposed development.

24 ROBERT SHARPS: Photos of the vicinal property?

25 REBECCA YOSHITANI: Yes. And can you proceed to describe

1 each of the pictures and their circumstances and how they  
2 represent the community?

3 STEVE MURPHY: Would you like an individual one or just a  
4 general?

5 REBECCA YOSHITANI: You can walk through them.

6 STEVE MURPHY: The first five pictures are taken from a  
7 general area, Broadwater Lane, Chamblis Drive, Chapel Chase,  
8 Foxview Court and Linden Church Road. They're all, you know  
9 coming off different roads. The next three pictures, number six  
10 through eight are of the first three houses on Twelve Hills Road  
11 which actually back up to the proposed development. That would  
12 be 13002, 13007, 13013. The next picture 13025 and 13049 are,  
13 they don't exactly back up to the proposed development but they  
14 are just a little bit further down the street. So they would  
15 actually, looking out their back, they would be able to see  
16 them. And then the last picture 13014 Twelve Trees Court is  
17 another house a little bit further down the road that would also  
18 have to pass that community.

19 REBECCA YOSHITANI: Okay. And how did you choose these  
20 pictures to take photographs of.

21 STEVE MURPHY: I actually took pictures of the entire  
22 neighborhood, everything I could see from my vehicle with the  
23 exception of a just a couple where I had to get out to maybe get  
24 around some shrubbery. These are all street side views. This  
25 particular lot was just left over. I took them for anybody who

1 was interested in maybe using their picture and these are some  
2 of the ones that were left over and it's just kind of a general  
3 representation of the overall neighborhood.

4 REBECCA YOSHITANI: And have you provided pictures to other  
5 people in the community for their own purposes?

6 STEVE MURPHY: Yes, anybody who requested them. While I  
7 was out I went ahead and did it for them.

8 ROBERT SHARPS: Ms. Yoshitani I beg your indulgence here.  
9 Can I ask you a more specific question? What do you want this  
10 Board to take as the significance of these pictures other than  
11 it shows the vicinal area, properties near the proposed  
12 development?

13 STEVE MURPHY: Well what struck me in driving around was  
14 the openness of the general area and I think if you look at  
15 these pictures you'll see that it really goes against what I'm  
16 hearing is being proposed here. There's no harmony, there's no  
17 comparison to what's being proposed versus what these pictures  
18 are showing.

19 REBECCA YOSHITANI: Would you say that these pictures  
20 represent the nature and intensity, general nature and intensity  
21 of use of the neighborhood?

22 STEVE MURPHY: Yes.

23 REBECCA YOSHITANI: No further questions.

24 ROBERT SHARPS: Cross Mr. Alderman?

25 HOWARD ALDERMAN: Mr. Murphy are you aware that the

1 proposed development is interior to the subject property and out  
2 and exposed to the road like the homes you have pictured here?

3 STEVE MURPHY: I was under the impression that the property  
4 had a road going through it.

5 HOWARD ALDERMAN: Well into it but not through it. Is that  
6 correct.

7 STEVE MURPHY: As a matter of fact every one of these  
8 houses is on a cul-de-sac of some sort. There are no through  
9 roads in this neighborhood.

10 HOWARD ALDERMAN: And as you drive down Linden Church Road  
11 are you aware that all of the development is interior, the  
12 proposed development is proposed on the interior with landscape  
13 areas and forest conservation areas around the perimeter?

14 STEVE MURPHY: No more so than any of these cul-de-sacs.

15 HOWARD ALDERMAN: Thank you Mr. Murphy. Nothing further.

16 ROBERT SHARPS: I've already asked my question. Any other  
17 Board members have questions for Mr. Murphy? Redirect?

18 REBECCA YOSHITANI: No.

19 ROBERT SHARPS: Thank you Mr. Murphy.

20 RUY GARCIA: We have a number of people who wanted to give  
21 personal testimony.

22 REBECCA YOSHITANI: But we're through.

23 ROBERT SHARPS: I think if you're through I take over at  
24 this point.

25 RUY GARCIA: There are a number of people who wanted to

1 give testimony.

2 ROBERT SHARPS: Let me ask that. If you're representing a  
3 mass then that mass should have already been spoken for. Now  
4 you want them to come up and say again what you just said?

5 RUY GARCIA: No. Only to their individual issues.

6 ROBERT SHARPS: Let me take over from here. How many  
7 people who are protestants want to give personal testimony? And  
8 every one of you have signed in since we started? How many have  
9 not signed in? Then you will not be able to give that  
10 testimony. No, if you had not signed, if you signed in today  
11 then that was too late. The petitioner's case was, case in  
12 chief ended on the last date we were here. And I believe Mr.  
13 Sanders according to our rules you had to have signed up before  
14 the petitioner's case ended?

15 BARRY SANDERS: Yes.

16 ROBERT SHARPS: So let me ask the question again. Again,  
17 how many people here have signed in prior to today and would  
18 like to give personal testimony? Okay. What I'm going to ask  
19 that you do is, you've been here long enough to hear what the  
20 Board has already heard. We don't really need to hear it over  
21 but if you have something personal that you'd like to add then  
22 we'd like to hear that. Looking at the number of people I'd  
23 like you to limit it to just a few minutes. The more you tell  
24 us, the Board has information so the testimony is only going to  
25 add credence to what we've already heard. So I saw about ten

1 people here so I'd like to keep it to a minimum. And if you  
2 have something that's already written you can certainly provide  
3 that as your testimony and the Board will put it into the record  
4 and we'll use that as part of our decision. So with that, let  
5 me start at this end. Sir I'm looking at you because I thought  
6 I saw you raise your hand if you'd like to come up. I need to  
7 swear each and every one of you in. If you're going to give  
8 testimony it has to be sworn testimony. Are you going to be  
9 giving out.. Do you promise to speak truthfully in the  
10 testimony you are about to give this Board?

11 ROBERT STEVENS: I do.

12 ROBERT SHARPS: I need you to state your name and address  
13 for the record.

14 ROBERT STEVENS: My name is Robert L. Stevens. I live at  
15 13003 Twelve Oaks Court. And this is a picture of my property

16 ROBERT SHARPS: You may enter that. That will be exhibit  
17 eight. Thank you. Go ahead with your testimony Mr. Stevens.

18 ROBERT STEVENS: My only testimony will be this. We are  
19 all stewards of the properties. We are all custodians of this  
20 land. To have anything other than the same rule would have all  
21 bought our homes under would be unfortunate and untenable for  
22 the future of this County and for what we are trying to do as  
23 homeowners. We all bought under the rule of a three acre  
24 minimum yet there is a proposal on the table which is taken to  
25 be understood at this level to be worthy of consideration for

1 alteration. I would suggest to you that fifty acres divided by  
2 three acres is not fifty homes. Fifty homes is fifty homes  
3 worth of people just like ourselves, water consumption, traffic,  
4 sewage and all of those unpeaceful events. That home you're  
5 looking at I bought where it is sitting today. I bought 3.14  
6 acres. I paid one million dollars for that property. I have  
7 since put thirty percent more into that property. It is not a  
8 matter of value to me or this committee. It is what we all had  
9 in the covenant of these lands. This land in this particular  
10 part of Howard County was deemed to be a three acre minimum.  
11 It's ironic that we're talking about fifty acres and fifty  
12 homes. I would only suggest to you that it devalues my property  
13 and all the other red shirts in this room. That's the only  
14 statement I have. I would be glad to take any cross  
15 examination.

16 ROBERT SHARPS: Mr. Alderman.

17 ROBERT STEVENS: I'm not a lawyer.

18 HOWARD ALDERMAN: Lawyers are okay, come on.

19 ROBERT SHARPS: Let's stay focused gentlemen.

20 HOWARD ALDERMAN: Mr. Stevens, Howard Alderman on behalf of  
21 the petitioner. Are you aware that zoning regulations change  
22 over time sir?

23 ROBERT STEVENS: Yes sir I am, unfortunately.

24 HOWARD ALDERMAN: And are you aware that a property owner  
25 must comply with the zoning regulations in effect at the time

1 when they propose to do something with their land?

2 ROBERT STEVENS: Yes. And I remember the governor of this  
3 state also proposing that certain parts of Howard County would  
4 never change under any proposal and that is his credence to the  
5 covenants of the land. Yet that's been changed by committees  
6 and other zoning laws and such. It's unfortunate. I bought  
7 here to protect myself and my family from exactly what you're  
8 proposing, a change in zoning laws. Put it on Trotter Road.  
9 That's a good place for this development.

10 HOWARD ALDERMAN: Thank you sir.

11 ROBERT SHARPS: Thank you Mr. Stevens. Entering exhibit  
12 number nine? Nine A and B. Alright. Would you raise your  
13 right hand sir? Do you promise to speak truthfully in the  
14 testimony you are about to give this Board?

15 I do.

16 ROBERT SHARPS: State your name and address for the record  
17 please.

18 MATTHEW RODELL: Matt Rodell, 14021 Twelve Oaks Court,  
19 Clarksville

20 ROBERT SHARPS: How do you pronounce your name again?

21 MATTHEW RODELL: Matthew...

22 ROBERT SHARPS: I know the Matthew, the last name.

23 MATTHEW RODELL: R-O-D-E-L-L.

24 ROBERT SHARPS: Rodell?

25 MATTHEW RODELL: Yes.

1           ROBERT SHARPS: Thank you. You can go ahead with your  
2 testimony.

3           MATTHEW RODELL: It's very simple. This is nine A and B.  
4 The first one is from Google maps, it shows an aerial view of  
5 the area. You can see Route 32 on the left side of it. On top  
6 of that is pasted the planned development. And the point of  
7 this is just to show that this is not, this proposed development  
8 is not in harmony with the nature of the current development  
9 that's in the area. You can see the three acre zoning and you  
10 can pick out the houses along the road. It's just completely  
11 different. And the other map is very similar. It shows the  
12 actual...

13           *Break in tape*

14           MATTHEW RODELL: There's not a scale on the map.

15           HOWARD ALDERMAN: How many one acre lots are in existence  
16 within the land area shown on petitioner's nine A?

17           MATTHEW RODELL: How many one acre lots?

18           HOWARD ALDERMAN: Yes sir.

19           MATTHEW RODELL: None that I know of.

20           HOWARD ALDERMAN: Alright let me refer you to what's been  
21 marked as protestant's nine B within the land area shown there.  
22 Any one acre lots that you're aware of in that area?

23           MATTHEW RODELL: I cannot say for sure but looking at the  
24 size of the three acre lots I see here I don't see any that look  
25 like one acre.

1           HOWARD ALDERMAN: Only what you know sir. Thank you very  
2 much.

3           ROBERT SHARPS: Board? Thank you Mr. Rodell. No photos  
4 for the album?

5           ROBERT SHARPS: County exhibit ten. Photo and testimony.  
6 We'll keep it as one document. Do you promise to speak  
7 truthfully in the testimony you are about to give this Board?

8           ALAN CURRANO: I do.

9           ROBERT SHARPS: State your name and address for the record  
10 please.

11          ALAN CURRANO: My name is Alan Currano. I go by Al. 13215  
12 Linden Church Road, Clarksville, Maryland.

13          ROBERT SHARPS: Spell your last name please.

14          ALAN CURRANO: C-U-R-R-A-N-O and it's on the next page. I  
15 believe my property actually touches the development property  
16 the way the property lines are. I'm one of the closer  
17 properties to this. I'm on Linden Church Road and I believe the  
18 northwest corner of my property is probably touching the  
19 southeast corner of this property. But I did measure and it's  
20 approximately four hundred feet from my actual lawn next to the  
21 road to the corner of their property. I believe our property  
22 line included the center of the road when the original surveying  
23 was done. I've lived in Howard County for thirty three years,  
24 six years of it in Columbia. We bought this land, five acres  
25 more or less on Linden Church Road in 1975. We constructed our

1 house in 1979 and moved in January 12<sup>th</sup>, 1980. One of the main  
2 reasons we chose this particular location, although there are  
3 several I listed here, the beauty of the land, the size of lots  
4 was definitely a consideration. The fact that even at that time  
5 that three acres was the minimum zoning was definitely an  
6 important consideration for us. The fact that there were no  
7 commercial structures or sites in the neighborhood. There were  
8 no permanent street lights or building lights other than the  
9 normal house lighting that people have. Low traffic, low  
10 density etcetera. Living in our house, by the way, we would  
11 qualify for the age restricted development because I am over  
12 fifty five as my wife is. But we have actually five people  
13 living in the house all of whom are over eighteen, three of them  
14 are our children, and five cars. And we have many more trips  
15 than what you would normally associate with, quote, age  
16 restricted senior citizen type housing. I think we may be a  
17 little over what the average is that Mr. Taylor testified to but  
18 I doubt that the kind of people who are moving into these houses  
19 would be very elderly citizens with few trips. On the traffic  
20 you asked, I believe you asked, if people had, if Mr. Taylor had  
21 seen people going through other intersections speeding through  
22 it to beat the lighting. Yes, we see that all the time. What I  
23 have never seen at any other intersection, but I have seen at  
24 this one, is that very frequently people are stopping and then  
25 going through the red light after they think it might be safe.

1 I have never seen that in any other intersection where people  
2 will intentionally violate the red light and go through it.

3 ROBERT SHARPS: We need to put a camera there don't we?

4 M.R.: And it happens virtually every day that I'm at that  
5 intersection during the rush hour in the morning in particular.  
6 So we're primarily opposed to this because it will degrade, as  
7 you can see from my picture which I think is representative, it  
8 will degrade this park like beauty of the neighborhood. By the  
9 way I don't believe that one acre lots that the attorney here  
10 referred to is accurate because if I look at that diagram those  
11 houses are not on one acre lots. Yes, there is fifty acres and  
12 fifty houses but the houses are, what, thirty feet apart or so  
13 roughly. So they're on very small lots. This looks like  
14 something I've seen on Cedar Lane where you have large houses  
15 that are backing up on the road very close together. I will see  
16 this every day when I go in and out of my property. I had to  
17 re-drill my well in approximately 1990, most likely because of  
18 the development across in Twelve Hills development. It was  
19 admittedly not too deep. We went to four hundred feet. I  
20 suspect very strongly, although I can't prove it, that this  
21 additional 12,000 gallons a day or whatever is going to affect  
22 my well again and I may have to rebuild it again at many  
23 thousands of dollars of cost. I don't look forward to that.  
24 And so my request is simply that let's keep this development in  
25 accord with the existing nature of the community and not allow

1 this extremely dense development which is totally out of  
2 character for our neighborhood. Thank you.

3 HOWARD ALDERMAN: Mr. Curanno good evening, Howard Alderman  
4 on behalf of the petitioner.

5 ALAN CURRANO: Hi.

6 HOWARD ALDERMAN: Hi. You said you built your house in  
7 1980. Is that correct?

8 ALAN CURRANO: 1979. We moved in, in 1980.

9 HOWARD ALDERMAN: Pardon me. And a well was drilled in  
10 1979?

11 ALAN CURRANO: Yes.

12 HOWARD ALDERMAN: Are you aware of the major change in  
13 state regulations regarding well drilling and well yield  
14 calculations that occurred in 1984?

15 ALAN CURRANO: No I'm not.

16 HOWARD ALDERMAN: And I think you testified that there were  
17 no permanent street lights in the neighborhood. Is that  
18 correct?

19 ALAN CURRANO: I believe there are none. I've never seen  
20 any. They are not visible from my property.

21 HOWARD ALDERMAN: Do you ever come off of Route 32 and turn  
22 onto Linden Church Road?

23 ALAN CURRANO: Every day.

24 HOWARD ALDERMAN: Do you see the street light just beyond  
25 that intersection?

1 ALAN CURRANO: There are street lights on the access road  
2 from 32. I don't believe there are any on Linden Church. I'm  
3 talking about in the neighborhood, not near 32. There are about  
4 two or three streetlights right near 32, yes.

5 HOWARD ALDERMAN: I'm sorry so your neighborhood is the  
6 Twelve Hills neighborhood, is that correct?

7 ALAN CURRANO: Well not exactly. I'm across the street  
8 from that. It was put in before. Mr. Hill, the farmer who  
9 owned all that property subdivided the land on the opposite side  
10 of the road from Twelve Hills and mine is one of those.

11 HOWARD ALDERMAN: Thank you sir.

12 ROBERT SHARPS: Any members of the Board?

13 PAT PATTERSON: Mr. Curanno what parcel number, do you  
14 remember yours? Is it 189?

15 ALAN CURRANO: I honestly don't know. If you have a map I  
16 can point it out.

17 PAT PATTERSON: If you could just take a look at this for  
18 me up here if you don't mind.

19 ALAN CURRANO: This is mine, here.

20 PAT PATTERSON: Right here. So you don't quite touch,  
21 okay. Thank you very much.

22 RUY GARCIA: Excuse me. Both Becky and I would like to  
23 just give a brief personal statement without pictures just  
24 addressing some testimony that's separate from an opening  
25 statement. Would that be okay?

1           ROBERT SHARPS: I already see you. Stay on your perch  
2 there Mr. Alderman. Are you going to testify?

3           RUY GARCIA: As a witness. I would like to give personal  
4 testimony.

5           ROBERT SHARPS: Do you live in the area?

6           RUY GARCIA: Yes I do.

7           ROBERT SHARPS: You have residence in the area? You too?

8           REBECCA YOSHITANI: Yes I do.

9           ROBERT SHARPS: You guys played me now.

10          REBECCA YOSHITANI: I said so when I first...

11          ROBERT SHARPS: In the very beginning I asked you if you  
12 wanted to step back and be a witness or if you wanted to give  
13 testimony or if you were going to represent.

14          RUY GARCIA: You did say that. I absolutely do not dispute  
15 that. I guess in the preparation of the opening statement there  
16 was incorrectly also some of our personal evidence in there and  
17 you correctly said at the time, do you want to be a witness now  
18 or do you want to present the opening statement. I think it  
19 would be worthwhile to give a little bit of testimony.

20          ROBERT SHARPS: Mr. Alderman are you going to jump on me  
21 for this or what?

22          HOWARD ALDERMAN: No sir. I believe it's outside of the  
23 realm of this Board. In fact the Maryland Court of Appeals in  
24 adopting the Maryland Code of Professional Conduct says that an  
25 attorney may not testify in a proceeding as a witness in which

1 he has acted in a representative capacity. Now that's an  
2 ethical violation ladies and gentlemen.

3 ROBERT SHARPS: Okay. Mr. Alderman I need to refer to my  
4 counsel. Mr. Sanders I'm not that familiar with the law in this  
5 regard. But can we put this in some sort of context?

6 BARRY SANDERS: They were on both sides of the fence. They  
7 were, they never said they were representing anybody. They said  
8 they were spokespersons. But they are...

9 ROBERT SHARPS: Well wait a minute Mr. Sanders. I asked at  
10 the last hearing, we can go back and play the tape, are you  
11 going to be representing. And if I'm not mistaken Mr. Garcia,  
12 you said yes I am and also Ms. Yoshitani. Now if I'm wrong then  
13 I will give deference to you. But you didn't say spokesperson.  
14 You said that today. You told me you were representing at the  
15 last hearing and you also were representing Ms. Yoshitani as  
16 being a representative and you guys were going to do a Brinkley  
17 and Huntley or whatever you were going to do and I agreed to  
18 that. Because we don't normally have multiple representatives  
19 for protestants. That was unusual. Am I mistaken that you did  
20 not give me the impression that you were representing and not  
21 just a spokesperson?

22 RUY GARCIA: I do not recall. I might have said we were  
23 representing them as spokespeople and I might have just said we  
24 were representing them. I absolutely do not dispute your memory  
25 on that because I do not recall.

1           ROBERT SHARPS: Mines not that great. You know when you  
2 hit that big 6-0 everything starts to fall apart.

3           HOWARD ALDERMAN: Mr. Chairman.

4           RUY GARCIA: We withdraw the request to testify. That's  
5 fine. We'll let it go.

6           ROBERT SHARPS: I need to get a reading from my counsel.  
7 Mr. Sanders where are we with the rules on this?

8           BARRY SANDERS: Well my take was there was confusion as to  
9 what capacity they were in. Technically if they were  
10 representing we should have had a name and who they represented.  
11 They were alleging themselves as spokespersons. We allowed them  
12 to proceed in that capacity.

13          ROBERT SHARPS: Well my oversight because I should have  
14 taken the names of who they were representing at the last  
15 hearing.

16          ROBERT SHARPS: Technically yes. Well two hearings ago  
17 because as a matter of fact there's been some changes.

18          REBECCA YOSHITANI: I believe that the counsel in the first  
19 hearing was very clear that he was always a spokesperson. He  
20 used that term.

21          BARRY SANDERS: But you're the spokesperson today.

22          REBECCA YOSHITANI: But as a team he represented that we  
23 were all spokespeople.

24          RUY GARCIA: I have no wish to further agitate the Board.

25          ROBERT SHARPS: You're not agitating me but I have to, you

1 know, I mean they pay us the big bucks. My thing is that the  
2 least that we can have conflict the better it's going to be for  
3 everyone. I'm still looking for some wording from counsel.  
4 What do our rules say. Let me just ask you point blank Mr.  
5 Garcia. Did you come here with the specific intention of  
6 representing as a spokesperson or as counsel?

7 RUY GARCIA: I came with the specific intent of  
8 representing as a spokesperson. Quite simply because nobody's  
9 retained me. I'm not being paid to do this.

10 ROBERT SHARPS: Well you don't need to be retained.  
11 There's a thing called pro bono.

12 RUY GARCIA: Right.

13 ROBERT SHARPS: I'm not an attorney but I know the  
14 terminology.

15 RUY GARCIA: Like all the witnesses here we're all just  
16 doing our best to facilitate the general opposition.

17 ROBERT SHARPS: Ms. Yoshitani the same question to you.

18 REBECCA YOSHITANI: The same thing. I'm just here to  
19 represent my neighbors as a fellow neighbor and a spokesperson  
20 and to help protect their investment.

21 ROBERT SHARPS: You're using two words. You're saying  
22 represent and spokesperson. Isn't that a dichotomy there?

23 REBECCA YOSHITANI: Well no because the definition of a  
24 spokesperson is you're speaking for other people. So depending  
25 on how you want to define the word representation.

1 AL HAYES: Mr. Chairman let me just add my thinking here.  
2 I think we have quite a bit of testimony from witnesses. It's  
3 been crossed. We've been redirect. We've gotten a lot of  
4 information. We have information from individual protestants.  
5 I think any additional comments on your part would just be  
6 superfluous. I don't know that you could do any more than what  
7 your party has done.

8 REBECCA YOSHITANI: We did have two specific issues that we  
9 want to bring up that had not been addressed.

10 AL HAYES: And you couldn't bring it up with them?

11 ROBERT SHARPS: With your witnesses? Because you actually  
12 called witnesses. And when you call a witness, to me, you call  
13 a witness as representing someone to speak.

14 REBECCA YOSHITANI: No I understand.

15 BARRY SANDERS: I don't think they ever held themselves out  
16 as attorneys representing clients.

17 ROBERT SHARPS: They held themselves out as attorneys.

18 BARRY SANDERS: But not representing parties. They never  
19 said, I'm representing you know, Mr. Stevens.

20 ROBERT SHARPS: Ma'am I'm not ignoring you back there but I  
21 can't ask you for an opinion. I need opinions from counsel.  
22 We're in session so we can't take a statement without your being  
23 sworn in.

24 BARRY SANDERS: I think Mr. Chairman that we allowed them  
25 to proceed as spokespersons and we should allow them to have

1 testimony.

2 ROBERT SHARPS: Mr. Alderman.

3 HOWARD ALDERMAN: I've noted my objection for the record.  
4 They've acted in a representative capacity as counsel. They  
5 identified last time themselves as counsel and now I'm surprised  
6 to have three attorneys on the other side, one of whom happens  
7 to be sitting in the audience this evening, and saying they  
8 would be here representing the group and they would be calling  
9 witnesses and they would be calling them in certain areas, each  
10 of them sharing the responsibility. And my objection is on the  
11 record. I believe that they have acted in a representative  
12 capacity here as attorneys and I've also put the objection on  
13 the record with respect to Maryland Rules of Professional  
14 Conduct and with that I'll defer to the Board. Thanks.

15 ROBERT SHARPS: Thank you. Your objection is noted for the  
16 record. We will go ahead and accept your testimony. Who do I  
17 have sitting up there now. Oh, how many more people want to  
18 testify?

19 Oh, okay. Do you promise to speak truthfully in the testimony  
20 you are about to give?

21 WAYNE MILES: Yes.

22 ROBERT SHARPS: State your name and address for the record  
23 please.

24 WAYNE MILES: Wayne Miles, 12994 Linden Church Road.

25 ROBERT SHARPS: Go ahead with your testimony Mr. Miles.

1           WAYNE MILES: My property borders, it's right against this  
2 proposed development. My well is a concern and also water  
3 runoff. We've got partial woods there now that are, I guess,  
4 conservation. But every time it rains hard I get runoff from  
5 that field. Now with this development with all the asphalt and  
6 all coming in where's the excess water going to go? The septic  
7 is a concern as well and traffic. We moved out of here to get  
8 out of developments like this. And now you're proposing putting  
9 something in there. You've got three plus acre lots. Well  
10 our's is on two and two tenths, one of the smaller lots. But I  
11 mean this, it looks like a glorified trailer park. I mean  
12 there's no other way that I can explain it. That's all.

13           ROBERT SHARPS: Any cross Mr. Alderman?

14           HOWARD ALDERMAN: Just very quickly. Mr. Miles you  
15 indicated that you have storm water coming on from the  
16 agricultural uses.

17           WAYNE MILES: From the fields that are for the proposed  
18 development.

19           HOWARD ALDERMAN: Are you aware that any development of  
20 this property would require that storm water management be put  
21 in place?

22           WAYNE MILES: I'm sure there will be but there has been no  
23 talk or anything about that.

24           HOWARD ALDERMAN: Thank you sir. Nothing further.

25           ROBERT SHARPS: Any questions from the Board? Thank you

1 Mr. Miles.

2 Next. Yes sir. Do you promise to speak truthfully in the  
3 testimony you are about to give this Board?

4 HUGH HILL: I do.

5 ROBERT SHARPS: State your name and address for the record  
6 please.

7 HUGH HILL: My name is Hugh Hill, 1599 Homeland Drive,  
8 Eldersburg, Maryland.

9 ROBERT SHARPS: Where did you say? Eldersburg, Maryland?

10 HUGH HILL: Eldersburg. I'm here to testify on behalf of  
11 my grandson who just testified. I was born and raised on Linden  
12 Church Road and moved from Linden Church Road on June the 8<sup>th</sup> to  
13 Eldersburg. When I first started to sell portions of the farm  
14 it had to be five acre lots. Then when I sold the rest of the  
15 farm in 1986 they had to be three acre lots. I think that what  
16 they are proposing now would just change the whole atmosphere of  
17 the whole community. I'm also concerned about the well. The  
18 well where Wayne lives is only a hundred and twenty five feet.  
19 And I'm also concerned about traffic going in and out. And  
20 there's another concern I have. What are they going to do about  
21 the pipeline that's running right through that development?  
22 There's a pipeline that runs straight right through to the  
23 middle of that development. It hit the back part of the farm  
24 when I owned it and it's got a fifty foot right of way. I'm  
25 wondering what they're going to do about that fifty foot right

1 of way. To me the traffic is going to be horrendous. Mr.  
2 Taylor testified that that intersection at Linden Church Road  
3 and 32 is one of the worst intersections I've ever been through.  
4 And there's no use in me just going on any more about it. But  
5 I'm here to testify for my grandson, granddaughter and my great  
6 granddaughter. And I lived there all my life until June the 8<sup>th</sup>  
7 of this year.

8 ROBERT SHARPS: Cross Mr. Alderman?

9 HOWARD ALDERMAN: Good evening Mr. Hill. Howard Alderman  
10 on behalf of the petitioner. How are you sir?

11 HUGH HILL: Fine. Thank you.

12 HOWARD ALDERMAN: Good. So you used to farm in the area?

13 HUGH HILL: Yes sir.

14 HOWARD ALDERMAN: And then you cut up two farms and sold  
15 them off in lots. Is that correct?

16 HUGH HILL: I had forty two acres across the road from the  
17 old farmhouse and I sold that to get money to build a house  
18 where I moved from.

19 HOWARD ALDERMAN: So you sold one farm into five acre lots  
20 and one farm into three acre lots. Is that right?

21 HUGH HILL: But they had to be developed in three acres  
22 when I sold it.

23 HOWARD ALDERMAN: And with respect to the pipeline, are you  
24 aware that the proposed setback from the pipeline as shown on  
25 petitioner's exhibit number one, the site plan, that those

1 setbacks exceed the minimums required by Howard County? Are you  
2 aware of that?

3 HUGH HILL: No I'm not aware of that. I just know what  
4 right of way they had when they come through.

5 HOWARD ALDERMAN: Okay. Thank you sir.

6 ROBERT SHARPS: Thank you. No further questions.

7 RUY GARCIA: Excuse me. I just wanted to inform the Board  
8 that both Ms. Yoshitani and myself will not be making personal  
9 statements in view of the objection of Mr. Alderman and in an  
10 abundance of caution to avoid unnecessary issues for appeal.

11 ROBERT SHARPS: So taken Mr. Garcia. It might be a wise  
12 choice. Do you promise to speak truthfully in the testimony you  
13 are about to give this Board?

14 MINDY BURSTEIN: I do.

15 ROBERT SHARPS: State your name and address for the record  
16 please.

17 MINDY BURSTEIN: I'm Mindy Burstein at 6601 Fox View Court  
18 in Clarksville.

19 ROBERT SHARPS: Could you pronounce your last name again?

20 MINDY BURSTEIN: Burstein, B-U-R-S-T-E-I-N.

21 ROBERT SHARPS: Go ahead Ms. Burstein.

22 MINDY BURSTEIN: My concern is for the wells. I moved into  
23 a new house that I built in '94 and in 2001 my wells ran dry. I  
24 had twelve and a half gallons which I thought was bragging  
25 rights. But apparently not. I've lived at a house with the

1 pond and it's supposedly a spring fed pond and we thought that  
2 there was plenty of water in the area. It took over three weeks  
3 to get the drilling crew to do another well for us because they  
4 said they were so busy in Howard County, that wells were running  
5 dry and I didn't realize it was such a problem in Howard County  
6 as well as Carroll County. So I just wanted you to be aware  
7 that, you know, what they say might be good, might not be good  
8 and it's caused a lot of us a lot of grief and I think we should  
9 be a little bit conservative with our resources.

10 ROBERT SHARPS: What's your address again Ms. Burstein?

11 MINDY BURSTEIN: 5601 Fox View Court.

12 ROBERT SHARPS: It's a beautiful house.

13 MINDY BURSTEIN: Thank you very much. I hope to keep the  
14 neighborhood beautiful.

15 ROBERT SHARPS: Any questions? Thank you Ms. Burstein.  
16 This is exhibit number eleven. Why don't we do this. Since  
17 you're giving it to us separate, eleven A and B, okay. The  
18 testimony will be B. The 11-A will be the photo. Do you  
19 promise to speak truthfully in the testimony you are about to  
20 give this Board?

21 RENEE PRIPSTEIN: Yes.

22 ROBERT SHARPS: State your name and address for the record  
23 please.

24 RENEE PRIPSTEIN: Renee Pripstein, 6646 Chamblis Drive.

25 ROBERT SHARPS: Spell the last name please.

1 RENE PRIPSTEIN: P-R-I-P-S-T-E-I-N

2 ROBERT SHARPS: And that's pronounced Pripstein?

3 RENE PRIPSTEIN: Pripstein.

4 ROBERT SHARPS: Go ahead with your testimony ma'am.

5 RENE PRIPSTEIN: As I said I'm just going to hit the  
6 highlights on the areas that we have not covered since many of  
7 these have been covered. On the first page, the visual effect  
8 of the fifty homes on a small parcel of land twenty feet apart  
9 from each other is not even close to the pictures of the homes  
10 that you have seen tonight or are yet to see. To quote the  
11 initial hearing examiner's decision, this decision will create a  
12 visual wall that will stretch some 1300 feet. The lighting that  
13 is proposed for this development is not conducive to this  
14 neighborhood. Most people in our neighborhood do not leave  
15 their lights on all night and when they do have their lights  
16 turned on they are generally right at the front door or at the  
17 garage. There is a family on Broadwater that recently put  
18 lights out at the entrance to their driveway and when they have  
19 these lights turned on when they are entertaining it is a shock  
20 to see them when everything around them is dark. If these fifty  
21 homes go into this small parcel of land, into this small  
22 proposed area and they have not only individual house lights  
23 turned on but street lighting as well, it will not only be a  
24 shock but it will be an assault on the eyes. I wonder if this  
25 development is approved, will I be able to enjoy the next meteor

1 shower or will the light pollution created by the project deny  
2 the opportunity? We heard talk about the dangerous intersection  
3 at Route 32 but let's take a look at the intersection of  
4 Eastland and Church and Greenberry Lane. Currently there are  
5 only a few houses down that road and about once a month I  
6 witness those drivers or their visitors running that stop sign.  
7 Just three weeks ago I called to report a tree company vehicle  
8 that ran that sign. Lucky for me I had good breaks. Can you  
9 even imagine what that intersection will be like if the number  
10 of homes that utilize Greenberry Lane is increase that  
11 drastically? For these reasons and the other ones that I have  
12 listed that other people have already talked about, I am  
13 adamantly opposed to this development and ask you as  
14 representatives of the citizens of Howard County to uphold the  
15 initial ruling on this development and deny the petitioners.

16 ROBERT SHARPS: Board? Thank you Ms. Pripstein. This will  
17 be exhibit number twelve and we'll keep it as one since it is a  
18 set. Do you promise to speak truthfully in the testimony you  
19 are about to give this Board?

20 GENE CYPRYCH: I do.

21 ROBERT SHARPS: Please for the record state your name and  
22 your address.

23 GENE CYPRYCH: I'm Gene Cyprych, 5654 Chamblis Drive.

24 ROBERT SHARPS: Pronounce your name again.

25 GENE CYPRYCH: Cyprych, just the way it's spelled.

1           ROBERT SHARPS: You need to buy a vowel.

2           GENE CYPRYCH: I'm saving up to do that. I'm a member of  
3 the executive staff of a large computer company and I worked on  
4 numerous proposals for state and federal government. The  
5 agencies issue a request for proposals, they're also called  
6 RFPs, they require bidders to describe how they will meet the  
7 expectations of the government. The onus is on each of the  
8 contractors to submit a complete and clear set of responses to  
9 each and every requirement. Coming up short on one can be the  
10 difference between winning and losing. Commissioners, over the  
11 past few hearings questions were asked of Mr. Hickmat. More  
12 than once he replied that we would do whatever the County  
13 requires. That in my opinion does not describe what the County  
14 and the community needs to know in this process. That is his  
15 answers have not provided the minimum amount of detail required  
16 to prove that he meets the criteria specified for conditional  
17 use. For example, Mr. Hickmat discussed lighting and he said he  
18 would meet the County requirements. As I interpreted the  
19 conditional use criteria that detail must be included in this  
20 plan and it is not. While examples have been shared by others,  
21 however I feel very strongly that Mr. Hickmat incorrectly stated  
22 that streets lights are harmonious to our neighborhood. There  
23 are no streetlights in my neighborhood. My wife and I moved to  
24 Howard County two years ago. We moved here for open spaces,  
25 serenity and a rural lifestyle. You can see in the pictures of

1 our home is very rural. Every home in our community owns at  
2 least three acres and the houses are spread apart, not on top of  
3 each other. What Mr. Hickmat proposes is absolutely not in  
4 harmony with the surroundings. During a previous hearing Mr.  
5 Commissioner you asked Mr. Hickmat why he seemed to be having  
6 problems with this project as his previous projects seem to fly  
7 through the system. I think I know the answer to that. I think  
8 he's having problems because this ill conceived plan is a very  
9 ill conceived plan and he wants to build these structures in the  
10 wrong place. There are serious concerns that I have introduced  
11 and members of our community have introduced and I ask you to  
12 deny his request. Thank you for listening.

13 ROBERT SHARPS: Cross?

14 HOWARD ALDERMAN: Yes. Thank you. Mr. Cyprych good  
15 evening. Howard Alderman on behalf of the petitioner. Are you  
16 aware that there are requirements that occur throughout the  
17 development process but not all requirements come in at the  
18 beginning stage?

19 GENE CYPRYCH: Yes.

20 HOWARD ALDERMAN: And are you aware that once a development  
21 has been approved by way of conditional use and it's finally  
22 designed that the County then determines where the street lights  
23 are to be located if any are required?

24 GENE CYPRYCH: There are no street lights in our community.

25 HOWARD ALDERMAN: No, I'm talking about the proposed

1 development sir. Are you aware that in the development process  
2 that after a development has been approved as a conditional use  
3 and a site plan is submitted that the County will then dictate  
4 where those street lights have to be located?

5 GENE CYPRYCH: It was my understanding that a conditional  
6 use had to have these answers up front.

7 HOWARD ALDERMAN: But to comply with all County standards.  
8 Are you aware that that meets that requirement?

9 GENE CYPRYCH: No.

10 HOWARD ALDERMAN: And you indicated that the proposal here  
11 is houses on less than three acres. Are you aware that the  
12 County Council has changed the law since you bought your house  
13 permitting by way of conditional use this type of development at  
14 the proposed density assuming certain conditions can be met?

15 GENE CYPRYCH: Well laws change. I understand that density  
16 has changed. Does that make sense? No, it doesn't make sense.

17 HOWARD ALDERMAN: Mr. Cyprych thank you.

18 ROBERT SHARPS: Thank you. How many more individuals would  
19 like to testify? Let's make it thirteen A and B since they're  
20 separated. Thirteen A photo, thirteen B statistics. Do you  
21 promise to speak truthfully in the testimony you are about to  
22 give this Board?

23 CATHERINE MURPHY: I do.

24 ROBERT SHARPS: State your name and address for the record  
25 please.

1           CATHERINE MURPHY: My name is Catherine Murphy. My address  
2 is 5561 Broadwater Lane, Clarksville, Maryland.

3           ROBERT SHARPS: Go ahead with your testimony.

4           CATHERINE MURPHY: As you can see I have a picture of my  
5 house along with most of the others. We bought our property in  
6 1993. Part of the reason that we purchased our property was the  
7 fact that it was a rural area. My husband and I are amateur  
8 astronomers and the fact that there was no lighting in the area  
9 was part of the reason we used to purchase this particular piece  
10 of property. I'm very concerned about the development, that it  
11 is not in keeping with the County's idea for senior housing. I  
12 do not believe that this proposed development is going to help  
13 the senior housing in this area. These houses are not  
14 affordable. They are not in keeping with downsizing. So as  
15 part of that I went to the Maryland State tax records and pulled  
16 off every single house that feeds off of Linden Church with the  
17 exception of Greenberry Lane. You will see in the sheet that I  
18 have attached there that I broke it down by house. I did an  
19 analysis of the size of the properties in the area, average and  
20 median, and the size of the homes in the area. Part of my  
21 analysis is that there was 146 homes based on the tax records.  
22 The average lot size was 4.29 acres. The average house size was  
23 3468 feet. Median lot size was 3.22 acres. There are only  
24 seven houses in excess of six thousand square feet in the entire  
25 neighborhood. The proposed development is not in keeping with

1 this neighborhood. In addition rather than go through all the  
2 other points, the only other question that I have, concern that  
3 I have, has to do with the fire hazard with this. I have  
4 personally witnessed two houses in adjacent neighborhoods burn  
5 to the ground because of lack of water supply to put them out.  
6 The house directly adjacent from Linden Church, at the entrance  
7 to Linden Church Road, burnt down about four years ago because  
8 there was not adequate water supply in the neighborhood. And  
9 yet we're proposing to put in fifty houses twenty feet apart  
10 which is an additional risk that the adjacent houses would catch  
11 on fire with that. That's all I have.

12 ROBERT SHARPS: Cross Mr. Alderman.

13 HOWARD ALDERMAN: Good evening Ms. Murphy. I'm Howard  
14 Alderman representing the petitioner here this evening. With  
15 respect to the tabular study that you did marked protestant's  
16 13-B, you list averages and media sizes but you don't list each  
17 individual house and their lot size. Is that correct?

18 CATHERINE MURPHY: That's correct.

19 HOWARD ALDERMAN: With respect to the houses that you  
20 surveyed on Linden Church Road, if any, did you look at any on  
21 Linden Church Road?

22 CATHERINE MURPHY: Yes.

23 HOWARD ALDERMAN: How many were on a lot less than three  
24 acres in size?

25 CATHERINE MURPHY: Houses or lots?

1           HOWARD ALDERMAN: The houses would all be less than three  
2 acres in size so let's stick with lots.

3           CATHERINE MURPHY: Okay. It appears to be eight.

4           HOWARD ALDERMAN: And you surveyed some homes also on  
5 Broadwater Lane. Is that correct?

6           CATHERINE MURPHY: That's correct.

7           HOWARD ALDERMAN: And how many of those improved lots that  
8 are less than three acres.

9           CATHERINE MURPHY: Improved lots or lots?

10          HOWARD ALDERMAN: How many of those improved lots was the  
11 question, are less than three acres in size.

12          CATHERINE MURPHY: Oh then it's less than eight. It's only  
13 five for the previous.

14          HOWARD ALDERMAN: Are there any less than two acres in  
15 size?

16          CATHERINE MURPHY: There are four houses on Broadwater Lane  
17 that are on less than two acres.

18          HOWARD ALDERMAN: And referring you back to Linden Church  
19 one more time, are there any lots that are improved on Linden  
20 Church, are there any lots that are less than two acres in size?

21          CATHERINE MURPHY: There appears to be four.

22          HOWARD ALDERMAN: Thank you. Nothing further.

23          ROBERT SHARPS: Any questions from Board members?

24          REBECCA YOSHITANI: Can I redirect?

25          ROBERT SHARPS: Redirect? It's done. That was a good one

1    though.

2           REBECCA YOSHITANI:  It's worth asking.

3           ROBERT SHARPS:  Do you promise to speak truthfully in the  
4 testimony you're about to give?

5           I do.

6           ROBERT SHARPS:  State your name and address for the record  
7 ma'am.

8           NINA STEDMAN:  My name is Nina Stedman, S-T-E-D-M-A-N.  I  
9 live at 13021 Twelve Trees Court, Clarksville which is the  
10 Twelve Hills Community.  I'm opposed to this subdivision that's  
11 proposed.  There's too many houses.  We are in a three acre  
12 zone.  This is a conditional use and it does not have to be  
13 approved and it has already been turned down one time.  I ask  
14 that you take into consideration the feelings of all of us here  
15 who have stated that we are against this development because it  
16 is not harmonious with what is there.  The lighting will  
17 interfere with our view of the stars, the sunset, the moonrises,  
18 the moonset, the sunrises.  All of the above is why each and  
19 every one of us moved to Clarksville on three acre lots to begin  
20 with.  Not to mention that we are worried to death about our  
21 wells and also contamination from a community septic.  Now I  
22 know they said that that can't happen but never say never.  I am  
23 strictly opposed to this.  That's it.

24           ROBERT SHARPS:  Cross Mr. Alderman?

25           HOWARD ALDERMAN:  Ms. Stedman good evening.

1 NINA STEDMAN: I know who you are.

2 HOWARD ALDERMAN: Tell your friends and neighbors. No, I'm  
3 sorry. Ms. Stedman are you aware that if the Board finds that  
4 the petitioner has met it's burden for the conditional use the  
5 Board can place conditions on it's approval to address any  
6 concerns of the community that it may have heard?

7 NINA STEDMAN: Is that going to address my well when it  
8 goes dry because you dug a community well to supply your fifty  
9 homes? No. It will not address that issue. Is that going to  
10 address the issue of septic seepage into the water table when  
11 your septic system goes afoul? Never say never. I'm aware that  
12 anything is possible. This government makes sure that that  
13 happens on a daily basis. Anything is possible.

14 HOWARD ALDERMAN: I was actually talking about lighting.  
15 Are you aware that this Board can place conditions on,  
16 restrictions on lighting?

17 NINA STEDMAN: Your restrictions on lighting you say  
18 whatever the County documents. You're going to have a community  
19 pool. Your going to have a community tennis court. They will  
20 both have to have lights I do believe. Am I incorrect there?

21 HOWARD ALDERMAN: Ms. Stedman let me answer that this way.  
22 Having spent enough years in law school I get to ask the  
23 questions. You have to answer them.

24 NINA STEDMAN: You'll have lighting around your pool and  
25 your tennis courts which will interfere with my stargazing. It

1 will also interfere with my sunsets, my sunrises, my moonsets  
2 and my moon rises which out in our neighborhood are spectacular.  
3 And the traffic is atrocious now. Just wait until school  
4 starts. His traffic study was done in July when school is out.  
5 There is not as much traffic at that time of the year. Wait  
6 'til you get a full size school bus at that traffic light. It  
7 takes up four car lengths. Guess how many times you're going to  
8 sit through that traffic signal?

9 HOWARD ALDERMAN: Thank you Ms. Stedman. I'll ask that the  
10 remainder of that be stricken as non-responsive.

11 ROBERT MENDEL: I think I complete the photo album here.

12 ROBERT SHARPS: Aw shucks I have three more pages. Exhibit  
13 fourteen A, B, C and D. Ok. Three photos fourteen A, B, and C  
14 and a statement. Just exhibit fourteen. Do you promise to  
15 speak truthfully in the testimony you are about to give this  
16 Board?

17 ROBERT MENDEL: I do.

18 ROBERT SHARPS: Please state your name and address for the  
19 record please.

20 ROBERT MENDEL: I'm Robert Mendel. I live at 5333  
21 Broadwater Lane in Clarksville but you are welcome to call me  
22 Mr. Miller. I don't want to go over too many extra points that,  
23 I'll go as quick as I can. Obviously the three pictures, where  
24 I live is actually we have flag lots there so I'm actually on a  
25 little over seven acres which we can't subdivide. The first one

1 obviously that's from our right to use road that we have there.  
2 My back yard, I adjoin Mr. Taylor so that's actually a picture  
3 from his back yard which is nowhere near his house, probably a  
4 quarter mile from his house. And then if you look at the  
5 following one, it's actually way back on Mr. Taylor's back yard  
6 looking towards my house. So there is nothing out there. That  
7 whole thing was an empty field and it's still an empty field.  
8 A number of us have horses on there and that's why we moved  
9 there as everyone else said. I'm trying to move quickly here.  
10 The reason I put my degree is I have a BFMSA in electrical  
11 engineering from MIT, expertise in probability and statistics, I  
12 do data analysis, I do signal processing, I do requirements  
13 analyses and things like that. So when I listened to the  
14 testimony I tried to pull out what things don't pass the test,  
15 you know, what things are they saying that just don't jibe with  
16 me, the elephant in the room if you will. During the testimony  
17 regarding water it was said that, you know, they've done an  
18 analysis of the property and there's enough water that's going  
19 to land down there that will replenish the aquifers and  
20 everything will be great. Well clearly, one lady testified  
21 today, I'm on my second well. I know of two other people who  
22 have had their well redone. The assumption must be wrong  
23 because the conclusion is obviously wrong. So that testimony I  
24 find irrelevant and it just doesn't matter. There's not enough  
25 done there. The traffic analysis. How does the person who

1 comes to represent not tell you that 32 is F. Whether it's  
2 County, whether its state. Clearly anyone that's been on that  
3 road knows that it's absolutely horrendous. So the traffic  
4 analysis is in error. There's only one entrance to the area.  
5 If you look at the map you come up and it's actually Greenberry  
6 off of 32. You make a right onto Linden Church. Every single  
7 house on that place will drive by this development, every one.  
8 Whether the entrance is on Greenberry, it doesn't matter.  
9 They're going to feed into it. There are no streetlights  
10 anywhere other than on Greenberry which was put in recently  
11 because of the traffic. But there's no lights anywhere else in  
12 terms of streetlights. Under the criteria of conditional use  
13 that's done by the County it specifically says there's two  
14 criteria. The first one being the proposed, which it says, all  
15 conditional use requests must be conformed to in order to be  
16 approved. The two general standards are, yes there is a list of  
17 things that the developer has gone through his check list and  
18 said, you know, you must do this. And they say, we will do  
19 this. You must have buffers. We will have buffers. Without  
20 any detail and all that stuff. But it does say, will be in  
21 harmony with the land uses and policies indicated in the Howard  
22 County General Plan for the district in which it is located. In  
23 evaluating a plan under the standard and it lists what they will  
24 consider. Clearly the hearing examiner, I'm not going to repeat  
25 everything the hearing examiner said, but he stated a number of

1 points that clearly said that this is not harmonious with. The  
2 General Plan just does not go for this. This is large homes put  
3 in there specifically just to have large homes, to go around the  
4 zoning. It's not there to meet age restricted conditions. If  
5 you look at the senior housing master plan it says, specifically  
6 from the Howard County Senior Master Plan on page 26, the goal  
7 is to allow more senior housing units to be constructed,  
8 especially more affordable units. The short term recommendation  
9 was to encourage the creation of smaller units. These units are  
10 neither designed to be more affordable nor to be smaller. We're  
11 talking up to, the latest plan was up to 5400 and said that  
12 market forces will decide what the houses are. The General Plan  
13 and the Housing Plan are not designed for market forces. They  
14 are designed to meet the Smart Growth goals of this County and  
15 what we want this County to be for. It's not to build 5400  
16 square foot homes. Clearly the plan is to call for small,  
17 affordable housing. This flies in the face of this idea. This  
18 whole plan is just, it just says I have a conditional use.  
19 Let's meet the conditional use and ignore the Senior Housing  
20 Master Plan. The only other, what I'll call similar although  
21 it's not similar, senior housing that's been approved without  
22 well and septic in the County would be Cattail Creek and it's  
23 just a dramatically different one. If you look on page ten of  
24 the petitioner's report, Board of Appeals it says, one thing I  
25 just wanted to point out because of traffic, it says, because

1 new services are provided on site the proposed use is expected  
2 to generate traffic similar to any other residential  
3 development. I believe Mr. Sharps that you were part of that.  
4 I mean they said that traffic will not, they gave us this  
5 traffic study where it's a matter of Howard County has already  
6 judged on this matter and said that this type of development and  
7 age restricted housing will not have less of an impact. The  
8 data they've provided is insufficient. Their conclusions are  
9 suspect and if anything the whole plan is shoddy to say the  
10 least. So forget whether or not we can argue whether our well's  
11 going to dry and we can do a test letter. Forget whether or not  
12 it's traffic or more traffic or less traffic. Everyone will be  
13 impacted coming out of that. It doesn't fit the plan. And then  
14 will it have more of an impact here than anywhere else? Their  
15 traffic expert said, well some more some less. There's only one  
16 entrance. It's to a heavily congested area of thirty two. I  
17 cannot believe you could find one location in Howard County that  
18 fifty houses in front of everyone else is going to have more of  
19 an impact. This maxes you out. You can't be worse. Thank you  
20 for your time.

21 ROBERT SHARPS: Cross Mr. Alderman?

22 HOWARD ALDERMAN: Before I do that Mr. Chairman if I might  
23 ask, I was handed a copy of a D&O for the Villas of Cattail  
24 Creek. Are we going to do something with that?

25 ROBERT MENDEL: I was just referring to it as a statement

1 of the traffic surveys and how their experts said that the  
2 traffic studies that this was the document where it's a matter  
3 of the Howard County Board of Appeals judgment that says that  
4 this type of community will generate the same amount of traffic.

5 ROBERT SHARPS: You want to enter this as an exhibit?

6 ROBERT MENDEL: Sure let's enter it.

7 ROBERT SHARPS: Wait a minute. Any objection?

8 HOWARD ALDERMAN: I'll object because the rules object.

9 The rules have changed since this was approved.

10 ROBERT MENDEL: Don't enter it then. I don't care.

11 ROBERT SHARPS: It doesn't matter. We have to take it in  
12 consideration either way. If it doesn't apply we're not going  
13 to use it. If it does... So do you want to object to allowing it  
14 in?

15 HOWARD ALDERMAN: Only as to the fact that the rules have  
16 changed since...

17 ROBERT SHARPS: We understand that. The Board is very much  
18 aware. Matter of fact I'm the signator on this thing. This is  
19 eight years old so.

20 ROBERT MENDEL: I understand the rules have changed. I  
21 wasn't so much referring to it as an example thing. It's the,  
22 it's in the back of the community. It's significantly  
23 different. There's no other...

24 ROBERT SHARPS: The Board won't accept this but we'll take  
25 your testimony into consideration okay?

1 ROBERT MENDEL: Thank you sir.

2 HOWARD ALDERMAN: Mr. Mendel very quickly you talked about  
3 Route 32, you mentioned Route 32 and level of service. Do you  
4 recall that line?

5 ROBERT MENDEL: I did not mention level of service.

6 HOWARD ALDERMAN: You said level F. Are you aware of that  
7 level of service?

8 ROBERT MENDEL: Yes.

9 HOWARD ALDERMAN: And are you familiar with the difference  
10 between intersection and road segment?

11 ROBERT MENDEL: I am not testifying to that. I don't know  
12 the level of service. I simply know the traffic that experience  
13 on a daily basis.

14 HOWARD ALDERMAN: Okay. Did you mention, I'm looking at  
15 your key points. Did you talk about your well?

16 ROBERT MENDEL: I am on my second well. I did mention  
17 that, yes.

18 HOWARD ALDERMAN: And do you know when your first well was  
19 drilled?

20 ROBERT MENDEL: 1975.

21 HOWARD ALDERMAN: And do you know if the regulations have  
22 changed since that time?

23 ROBERT MENDEL: I'm sure they have. Pretty much everything  
24 else has.

25 HOWARD ALDERMAN: Thank you. Nothing else.

1           ROBERT SHARPS: Mr. Mentel did you get a chance to read the  
2 technical staff report that was provided by the Department of  
3 Planning and Zoning?

4           ROBERT MENDEL: I did. The last time I really read it in  
5 depth was back at the Hearing Examiner.

6           ROBERT SHARPS: Do you give any credence at all to their  
7 recommendations and their overall assessment of this property?

8           ROBERT MENDEL: I was extremely disappointed in the cursory  
9 analysis that they did. Basically all it said if I remember  
10 right, all it said in the well and septic if I remember  
11 correctly is there are rules you have to follow, please follow  
12 them and we trust that you're going to do it or we'll check it  
13 later. There wasn't really any analysis of anything to the  
14 level that Mr. Snyder was talking about in terms of, I know  
15 there's steps and that's why I didn't really want to address the  
16 fact that the adequate public facilities. I know that they're  
17 supposed to do all those steps and that yes you can approve it  
18 and move on. What my argument is, is you've got the adverse  
19 impact which clearly is, like I said, everyone in this thing  
20 will be impacted. There's only one way in. If there's an  
21 accident in Linden Church you're stopped. I've had to go,  
22 instead of going down 32, I have to go to Ten Oaks, all the way  
23 back to all the way to circle around and come back the other  
24 side. And even then I had to talk the police officer into  
25 letting me into the community because they had stopped both ways

1 because of traffic. You can't find a worse place for this  
2 thing.

3 ROBERT SHARPS: If there's only one ingress whether there's  
4 an accident whether this development is built or not...

5 ROBERT MENDEL: You've just added to it a hundred and fifty  
6 units. Now you've added thirty percent more. I'm saying since  
7 there's one entrance you can't find a place that's worse for it.  
8 If you find something with twice you have an alternate route.  
9 And that's where you're talking about the adverse impact. Yes,  
10 we understand it will have an adverse impact and understand that  
11 a conditional use stipulates that there will be an adverse  
12 impact. But it also says you must make sure that this is a  
13 place that won't have a worse impact. And because of that  
14 traffic problem I don't see how you could find anywhere worse  
15 plus the fact that 32 is so badly congested. Even if and when  
16 they change that intersection there's still going to be one way  
17 in and one way out. Their not changing that. They're just  
18 making it so you don't have to sit at that light. Well guess  
19 what? I'm still impacted by that every day, both ways and  
20 taking my kids to sports all the time.

21 ROBERT SHARPS: Last call. Anyone else? Come on down.  
22 Okay I see no other hands. Thank you for your testimony. Mr.  
23 Alderman we're going to adjourn today and I'm going to give  
24 another date certain that you can do your closing arguments.

25 HOWARD ALDERMAN: Whoa.

1 ROBERT SHARPS: Do you have a rebuttal witness?

2 HOWARD ALDERMAN: I do have rebuttal witnesses.

3 ROBERT SHARPS: Is he available?

4 HOWARD ALDERMAN: No sir.

5 ROBERT SHARPS: Well we want to hear him today.

6 HOWARD ALDERMAN: Mr. Robert Williams who happens to be in  
7 the hospital this evening. And I will also be calling other  
8 experts. But I agree due to the lateness of the hour, I would  
9 welcome an adjournment personally.

10 ROBERT SHARPS: Okay so you have one rebuttal witness?

11 HOWARD ALDERMAN: No sir. I have one rebuttal witness that  
12 is not here. I have other rebuttal witnesses that I will be  
13 calling to address points that were raised this evening. I  
14 anticipate calling a total of four witnesses.

15 ROBERT SHARPS: Do we have a calendar? Let me do a quick  
16 recess so I'm not blank on the record here so I can get a date  
17 so I can give it to everyone for the next hearing.

18 *RECESS*

19 ROBERT SHARPS: The Board is back in session. This Board  
20 will adjourn and we will reconvene on September 21<sup>st</sup>, 2006.

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1 Howard County Personnel Board

2 September 21, 2006

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4 ROBERT SHARPS: The Board of Appeals is in session for the  
5 continuation of the case BA05-046 petitioner Robert B. Williams  
6 and Joanna Benedict et al. Ladies and gentlemen I believe at  
7 the last hearing on August 22<sup>nd</sup> we concluded with the protestants  
8 providing their testimony to the Board and of course with  
9 examination of the petitioner as well. And I believe Mr.  
10 Alderman you requested some rebuttal witness or witnesses. Are  
11 you still prepared to submit those individuals?

12 HOWARD ALDERMAN: Yes Mr. Chairman we are.

13 ROBERT SHARPS: Okay. If you will you can go ahead and  
14 call your first rebuttal witness.

15 HOWARD ALDERMAN: Thank you Mr. Chairman. I would call, or  
16 recall really, Mr. Jacob Hickmat in rebuttal.

17 ROBERT SHARPS: Mr. Hickmat I remind you that you're still  
18 under oath. Okay and I see our member is here so he wont' have  
19 to listen to any tapes because all we did was call the first  
20 rebuttal witness. Welcome Mr. Hayes and I'm sure you had an  
21 opportunity to fight that traffic up there on 29. Go ahead Mr.  
22 Alderman.

23 HOWARD ALDERMAN: Thank you Mr. Chairman. Mr. Hickmat you  
24 were here last time for the testimony of the protestants. Is  
25 that correct?

1 JAKOB HICKMAT: Yes I was.

2 HOWARD ALDERMAN: Did you hear the statements made by  
3 numerous witnesses that their community consists of over a  
4 hundred and forty homes all on about three acre lots?

5 JAKOB HICKMAT: Yes I did hear that.

6 HOWARD ALDERMAN: Have you examined the tax records and/or  
7 tax maps to determine an approximate acreage size of other homes  
8 in the community that are less than three acres?

9 JAKOB HICKMAT: Yes I did. Basically there is diversity of  
10 lot sizes. There are a few lots that are under three acres and  
11 there are lots over six and seven. So it's a range. The  
12 average is more than three.

13 HOWARD ALDERMAN: Alright now, Mr. Hickmat there was a  
14 tremendous amount of testimony by the protestant's last time  
15 about processing and residential and conditional use. Would you  
16 describe your understanding of the process that a conditional  
17 use application goes through?

18 JAKOB HICKMAT: Yes. The process actually the way it will  
19 start, first you look at the zoning regulations as to whether  
20 that use is actually permitted as a conditional use or not. And  
21 then you look at the requirements that they do have in the  
22 zoning regulations. And the zoning regulations do look like the  
23 General Plan so they are actually a way to enforce the General  
24 Plan. You prepare the plan and then you, the first step is to  
25 have a community meeting. You meet with the community and you

1 devise a plan if need be or if appropriate. After the community  
2 meeting you make the submission to the Department of Planning  
3 and Zoning. The Department of Planning and Zoning will review  
4 the plan for completeness, not whether it meets the requirements  
5 but whether all the required information is provided. And if  
6 they are they will issue their report. If they're not then they  
7 ask for more information from us. Once they determine that the  
8 application is complete they send their recommendations to the  
9 Hearing Examiner or the Planning Board. And then once we come  
10 to the Hearing Examiner if the Hearing Examiner does not issue  
11 that, his decision could be appealed. Then if is appealed we  
12 are at the Board of Appeals now.

13 HOWARD ALDERMAN: Well now if a conditional use is approved  
14 either at the Hearing Examiner without appeal or with the Board  
15 without appeal does the design process start after that?

16 JAKOB HICKMAT: Sure. Like the first step up to the Board  
17 of Appeals we're talking about mostly the concept, whether the  
18 use is permitted. Once the Board of Appeals approves the use  
19 and determines that it does meet the requirements of the zoning  
20 regulations then we go to the next step which in this case it  
21 will be getting the percolation certification and getting the  
22 approval of the Health Department for the well and septic. And  
23 sometimes you have to get the state approval also. So the next  
24 step is, once it's approved, the next step is getting the well  
25 and septic issues all approved and resolved by the agencies

1 responsible for that. Once that's approved then we go to the  
2 site development plan. And the site development plan will  
3 guarantee that all the design manual issues, all the zoning  
4 issues are basically hard and concrete and that has to do with  
5 storm water management, landscaping, anything of that nature.  
6 And also a stage where the Department of Planning and Zoning  
7 will actually enforce the Decision and Order that this Board  
8 gave.

9       MARC JORDAN: I have an objection. He's testifying about  
10 what the Department of Planning and Zoning does. And I think  
11 the Department does what they're supposed to do. But what he's  
12 saying is that; don't worry about what's going on here because  
13 the Department of Planning and Zoning is going to take care of  
14 the issues enforcing the conditional use. I think it's totally  
15 out of the range of factual testimony as to what he's here to  
16 talk about today.

17       ROBERT SHARPS: What are you objecting to sir? Your  
18 objecting to the process or objecting to the fact that there's  
19 no standing in the testimony that the process as testified is  
20 not accurate?

21       MARC JORDAN: My objection is that it is incompetent to  
22 testify as to the process of the Department of Planning and  
23 Zoning and the general question as to how this process works in  
24 Howard County. Plus I would also object that it's not rebuttal  
25 testimony.

1 ROBERT SHARPS: It's not what?

2 MURRAY SNYDER: Rebuttal testimony.

3 ROBERT SHARPS: Comment Mr. Alderman?

4 HOWARD ALDERMAN: Mr. Snyder, Murray Snyder, very carefully  
5 and very explicitly attacked the process and he said you are not  
6 following the process, that all of this should be done up front.  
7 If you listen to the opening statements that were given they say  
8 all of these studies such as water and sewer should have been  
9 done up front. That is not the standard process according to  
10 Mr. Hickmat as the process proceeding in Howard County. So I'm  
11 just trying to make the record and have Mr. Hickmat testify.  
12 He's the person who was called in a professional opinion who  
13 works in this County every day and who processes conditional use  
14 plans as to how the process really does work. We have  
15 speculation by the protestants. We have a navy officer who  
16 admitted he didn't have any direct contact. We had other  
17 testimony by protestant that they thought that other studies  
18 should have been done first before we ever got here.

19 ROBERT SHARPS: And your rebuttal to this is your trying to  
20 identify how the process is taking place with Mr. Hickmat?

21 HOWARD ALDERMAN: Yes sir.

22 ROBERT SHARPS: And your objection to that Mr. Snyder? Is  
23 it Snyder?

24 MARC JORDAN: That's Mr. Snyder there. I'm mister Jordan  
25 again.

1           ROBERT SHARPS: You guys are changing horses on me every  
2 time we have one of these sessions. I got to know Mr. Garcia  
3 and I got to know Ms. Yoshitani.

4           MARC JORDAN: I was here the first time.

5           ROBERT SHARPS: Yeah. I know you were. So you're back  
6 today. Do you guys take a respite or something? And your  
7 objection sir?

8           MARC JORDAN: Again we didn't testify as to the process.  
9 Mr. Snyder testified that there wasn't enough of a record and  
10 when he looked at it he couldn't determine whether it was an  
11 adverse effect. They didn't object to him talking about the  
12 process. My objection is that Mr. Hickmat can't tell you what  
13 the County does or...

14          ROBERT SHARPS: You were here last time?

15          MARC JORDAN: I was here the whole time. And what he's  
16 trying to tell you is how to do your job is what my objection  
17 is. I mean you know how to do your job and the Departments know  
18 how to do their job.

19          ROBERT SHARPS: I like to think so. We'd like to think so  
20 and I'm going to give him some latitude. I'll overrule your  
21 objection and the Board will take it into consideration.

22          HOWARD ALDERMAN: Alright Mr. Hickmat moving along.

23          **INAUDIBLE**

24          JAKOB HICKMAT: Yes I am.

25          HOWARD ALDERMAN: Are you aware of any street lights in the

1 surrounding community?

2 JAKOB HICKMAT: Yes there are street lights as soon as you  
3 enter into the development.

4 HOWARD ALDERMAN: And I believe you testified that you're  
5 familiar with the Howard County Zoning Regulations regarding age  
6 restricted housing?

7 JAKOB HICKMAT: Yes I am.

8 HOWARD ALDERMAN: And as one of the options for approving a  
9 conditional use, and in your understanding, providing other  
10 material in terms of demonstrating if the dwellings will be  
11 appropriate for age restricted residents?

12 JAKOB HICKMAT: Yes. And we did that.

13 HOWARD ALDERMAN: And what material was provided by the  
14 petitioner?

15 JAKOB HICKMAT: We provided them the minimum requirement  
16 for the houses that they have to have, what is required by the  
17 Howard County age restricted requirements. We also provided  
18 optional, additional things in addition that would be optional  
19 and we were recommended to do.

20 HOWARD ALDERMAN: And are you aware of any other age  
21 restricted housing in Howard County where dwellings are larger  
22 than 1500 square feet and if so describe them for the Board.

23 JAKOB HICKMAT: Actually I'm not aware of any duplex type  
24 or single family that are less than 1500 square feet.

25 HOWARD ALDERMAN: But there are other attached units or

1 condominium units.

2 JAKOB HICKMAT: There may be like an apartment type unit.  
3 But I'm not aware of that. But for the type of single family  
4 detached or attached I can't think of any.

5 HOWARD ALDERMAN: And are you aware of any age restricted  
6 housing in the general neighborhood of the subject property?

7 JAKOB HICKMAT: Actually there is none in the immediate  
8 vicinity.

9 HOWARD ALDERMAN: And if you know, how has the subject  
10 property been used over the recent years?

11 JAKOB HICKMAT: It's been farmed, corn and soybeans.

12 HOWARD ALDERMAN: Based on your experience in the  
13 development industry and certainly as a professional engineer,  
14 from a storm water management perspective is the runoff greater  
15 from tilled farm fields or from residential communities designed  
16 with storm water management facilities?

17 JAKOB HICKMAT: Actually it's more from farm fields.

18 HOWARD ALDERMAN: Now it was mentioned with respect to gas  
19 pipelines, is the actual pipeline located within a wider  
20 easement area on the subject property?

21 JAKOB HICKMAT: Actually the gas line is located with a  
22 fifty foot wide easement and then again, according to the Howard  
23 County Zoning Regulations, the house has to be a minimum of  
24 thirty feet past that. So the houses are actually fifty five  
25 feet minimum away from the gas line.

1           HOWARD ALDERMAN: So the houses have been set back further  
2 than required from the gas pipeline easement?

3           JAKOB HICKMAT: From that required by the gas company.

4           HOWARD ALDERMAN: And are there certain lighting  
5 requirements in Howard County for all proposed residential  
6 communities?

7           JAKOB HICKMAT: There's actually no requirement for  
8 residential communities. There are requirements for commercial  
9 and in conditional use cases as we are, the Board could actually  
10 issue an requirement, require us to exceed the requirements.  
11 And we've already said before that we will meet all Howard  
12 County requirements for parking areas and the clubhouse.

13           HOWARD ALDERMAN: And I believe you have also indicated  
14 that the condominium declaration, this is a condominium regime,  
15 correct?

16           JAKOB HICKMAT: It's a condominium regime.

17           HOWARD ALDERMAN: I believe you testified that the  
18 condominium declaration will place additional limitations on the  
19 type of exterior lighting. Is that correct?

20           JAKOB HICKMAT: That is. We're going to make a requirement  
21 that they do meet the, there's a requirement for trespassing  
22 which means a certain amount of light can actually leave the  
23 property under Howard County regulations. We will definitely  
24 meet it and I'm sure we'll exceed it.

25           HOWARD ALDERMAN: Well we mentioned condominium Mr.

1 Hickmat, in your experience is a condominium, is that a type of  
2 ownership structure or a particular building or structure style?

3 JAKOB HICKMAT: It's a type of ownership. People confuse  
4 it with apartment type condominiums but it's a type of  
5 ownership. It could be single family or apartment type of  
6 townhouses.

7 HOWARD ALDERMAN: Mr. Hickmat in your opinion will the  
8 proposed single family detached dwellings present a walled  
9 appearance to neighbors or will the dwellings be constructed  
10 within a near enclave surrounded by vegetation?

11 JAKOB HICKMAT: Actually they will definitely be in an  
12 enclave and they will be separated above and beyond what is  
13 required with expensive vegetation. If you can see them there's  
14 still not going to be a wall because we have a different type  
15 unit and the distance between houses is again, what's required  
16 is fifteen and we're providing a minimum of twenty, most of them  
17 will be thirty or forty apart. So there will not be that  
18 appearance.

19 HOWARD ALDERMAN: Mr. Hickmat have you reviewed the Howard  
20 County Zoning maps regarding the RR zone?

21 JAKOB HICKMAT: Yes I have.

22 HOWARD ALDERMAN: And based on your independent review of  
23 the zoning maps as adopted have you been able to form any  
24 professional opinion regarding the proposed conditional use and  
25 the location of the RR zone on Maryland Route 32?

1 JAKOB HICKMAT: Yes I have. I'm going to put up the map.

2 HOWARD ALDERMAN: Yes. If you have it. And this map is  
3 identified as Howard County zoning map effective July 28<sup>th</sup>, 2006  
4 prepared by the Howard County Department of Planning and Zoning  
5 in August of 2006. Is that correct?

6 JAKOB HICKMAT: That's correct.

7 HOWARD ALDERMAN: And where did you obtain that map Mr.  
8 Hickmat?

9 JAKOB HICKMAT: From the Howard County Department of  
10 Planning and Zoning.

11 HOWARD ALDERMAN: Can you identify Route 32 on that zoning  
12 map for the Board please?

13 JAKOB HICKMAT: Yes I can. The dark colored green color.  
14 I'm sorry, Route 32. I'm just going to point at it. It comes  
15 from the north down south.

16 HOWARD ALDERMAN: And based on your examination of that  
17 zoning map what conclusion or what observation have you drawn  
18 with respect to the RR zoning classification as adopted by the  
19 Howard County Council?

20 JAKOB HICKMAT: Well the conclusion we had is if you look  
21 at, this is Route 32, I'm going to point at it. And this is the  
22 green, dark green zoning is RR DEO. And RR DEO is basically the  
23 RR zoning is overwhelmingly around Route 32. I mean I'd say  
24 more than seventy five maybe eighty percent of the RR actually  
25 has to go through Route 32. So it's a zoning that almost every

1 RR zone must use Route 32 at some time.

2 HOWARD ALDERMAN: And are most of the properties fronting  
3 on Route 32 and have access on Route 32 or are there specific  
4 spots that have alternative accesses?

5 JAKOB HICKMAT: Well there are specific spots that have  
6 alternative access of course. There are some areas that would  
7 actually use Route 97. But if you look at the roads and how  
8 they dead end they have to use Route 32 so again I'm going to  
9 say seventy five to eighty percent of the zone would have to use  
10 Route 32. HOWARD ALDERMAN: Alright. Thank you Mr. Hickmat.

11 You can have your seat. Now I believe you testified previously..

12 ROBERT SHARPS: Excuse me. Mr. Alderman are we using this  
13 map here for illustrative purposes only and not being submitted  
14 as an exhibit? I mean he just testified based on a document  
15 that I'm not sure we have in the file and Ms. Yoshitani do you  
16 have any? I don't mean to object for you but I need to keep the  
17 record straight.

18 REBECCA YOSHITANI: No. I would object to that going into  
19 evidence because I mean it's not definite at this point.

20 ROBERT SHARPS: Alright. So that testimony was based on,  
21 it was for illustrative purposes only.

22 HOWARD ALDERMAN: Well then let me do it this way. Mr.  
23 Hickmat based upon your knowledge of Howard County zoning maps  
24 as they've been adopted by the County Council does the map that  
25 you obtained from the Howard County Department of Planning and

1 Zoning represent a fair and accurate representation districts,  
2 specifically the RR zone in Howard County?

3 JAKOB HICKMAT: Yes it does.

4 HOWARD ALDERMAN: And this is a copy of a public document  
5 that you obtained from Howard County. Is that correct?

6 JAKOB HICKMAT: Yes it is.

7 HOWARD ALDERMAN: Mr. Chairman at this point in time I  
8 would offer the Howard County zoning map as not only a public  
9 document but as the next petitioner's exhibit.

10 ROBERT SHARPS: Any objection from protestants?

11 REBECCA YOSHITANI: No.

12 ROBERT SHARPS: And what exhibit is that? Four.

13 HOWARD ALDERMAN: Mr. Hickmat I believe you testified  
14 originally that your professional experience and professional  
15 job requires you to be familiar with the applicable plans and  
16 policies of Howard County. Is that correct?

17 JAKOB HICKMAT: That's correct.

18 HOWARD ALDERMAN: Mr. Hickmat in your professional opinion  
19 does the proposed use, or is the proposed use in harmony with  
20 the applicable plans and policies of Howard County?

21 JAKOB HICKMAT: I believe that the proposed use is  
22 definitely in harmony with Howard County General Plan. And I'm  
23 going to talk a little bit about that. The General Plan was  
24 enacted to promote specific policies. The zoning regulation is  
25 the way for the General Plan to be enacted. And when I look at

1 the zoning regulations I assume or it's in my opinion that they  
2 provide the means for meeting the General Plan goals. And when  
3 we look at the conditional use requirement I believe that these  
4 requirements are the mechanism for this Board and for me when I  
5 do my projects to look at them and see in general if you meet  
6 these requirements then you're really in harmony. Now there  
7 will be circumstances where that will not be. But when you meet  
8 them you are presumed to be in harmony unless proven otherwise.  
9 So I believe that if you look at the, and to me the yard stick  
10 is the conditional use, the requirements that they have there.  
11 And I have to meet them or exceed them. I believe that if we  
12 meet them then we meet the intent and we are in harmony.

13 HOWARD ALDERMAN: And how does the proposed conditional use  
14 in your opinion meet those goals and policies?

15 JAKOB HICKMAT: I believe we actually meet them and exceed  
16 them most of the time. And the, for example the conditional use  
17 for the RR zoning allows, single family detached, it allows  
18 commercial uses. We are only proposing single family detached.  
19 We are not proposing single family attached or any commercial  
20 use. So I believe we are exceeding the requirements as far as  
21 the harmony because we are much closer to single family  
22 neighborhoods than the zoning would have stipulated. The zoning  
23 regulation say that the intensity on the site is basically one  
24 unit per acre. Our site is a hundred and twenty acres, our  
25 property. And we're only putting fifty units on it. So we're

1 definitely less intense than the conditional use stipulates.

2           HOWARD ALDERMAN: Let's explore that for just a second.  
3 The conditional use area is fifty acres, correct?

4           JAKOB HICKMAT: Yes.

5           HOWARD ALDERMAN: But the overall site is a hundred and  
6 twenty plus acres. So you're talking about the relative  
7 intensity of a conditional use area compared to the whole?

8           JAKOB HICKMAT: That's right. The conditional use  
9 requirements talks about the property. You know we're doing  
10 part of the property on this. The conditional use talks about  
11 safe ingress and egress and we definitely have safe ingress and  
12 egress to the site. If you look at the site and if you go  
13 there, there are no properties between Route 32 and our access  
14 point. There are no properties. So nobody in our development  
15 is going to be driving through the neighborhood because you  
16 directly go to 32, no driveways, nothing.

17           HOWARD ALDERMAN: So that's a single point of access that  
18 you're talking about. Is that correct?

19           JAKOB HICKMAT: When you come from Route 32 you come up a  
20 ramp and the ramp would go straight into Greenberry Lane and  
21 into the project. Between our entrance and Route 32 there are  
22 no homes. There are no driveways, there's nothing. So there's  
23 absolutely no impact. Nobody from this development will be  
24 driving in the existing area. Also if you come from the  
25 development there's only one area where you may actually see the

1 development but with the vegetation that we provide it is  
2 impacted like nothing.

3 ROBERT SHARPS: Ladies and gentlemen this is being  
4 recorded. We can't have that extraneous noise or we're going to  
5 distort what has taken already longer than you probably wanted  
6 to get this record straight. So I would appreciate it if you  
7 could hold that down.

8 JAKOB HICKMAT: Another yardstick is the buffers and  
9 setbacks from existing properties and from the road. And again,  
10 we're more than double what's required. So again we exceeded  
11 that. I believe that we met and/or exceeded every single  
12 requirement.

13 HOWARD ALDERMAN: Thank you Mr. Hickmat. Nothing further  
14 Mr. Chairman.

15 ROBERT SHARPS: One of you. We're not going to do a  
16 Huntley/Brinkley here. One of you be the representative if you  
17 want to question the rebuttal witness.

18 REBECCA YOSHITANI: Yes, Mr. Hickmat. You mentioned about  
19 the, some of the lots being smaller than others in terms of the  
20 tax maps. When you looked at the tax map did you look for the  
21 number of properties that were actually two side by side lots  
22 owned by a single owner with a single house?

23 JAKOB HICKMAT: That wasn't, I did not consider that but it  
24 may have been.

25 REBECCA YOSHITANI: Are you aware that there are several

1 properties where in fact people have put together multiple lots  
2 in order to get a bigger property and they actually have a house  
3 straddling lots?

4 JAKOB HICKMAT: Then they are in zoning violation. But in  
5 Howard County if you have a lot or you have a parcel, a  
6 divisible parcel eventually it will be built or unless they  
7 remove the lot line between them.

8 REBECCA YOSHITANI: Currently is there density where every  
9 single house then is that close together or are there unused  
10 lots in between that are acting as buffers?

11 JAKOB HICKMAT: I just was looking for the diversity in the  
12 community. That's a different thing.

13 REBECCA YOSHITANI: Okay. When you looked at diversity did  
14 you look at those lots then that are undeveloped that are owned  
15 by somebody right next door?

16 JAKOB HICKMAT: I was just looking at the tax map.

17 REBECCA YOSHITANI: Okay. You were testifying as to the  
18 process of conditional use and you're familiar I'm sure with the  
19 general standards required for approval?

20 JAKOB HICKMAT: Yes I am.

21 REBECCA YOSHITANI: And to that effect you are aware that  
22 under one of the sections it discusses that, and I'll read here,  
23 the proposed use of the proposed location will not have adverse  
24 effects on vicinal properties above and beyond those ordinarily  
25 associated uses. In evaluating the plan under the standards the

1 hearing authority shall consider whether the impact adverse  
2 affects such as noise, dust, fumes, odors, lighting, vibrations,  
3 hazards, or other physical conditions will be greater at the  
4 subject site than would be generally elsewhere in the zone or  
5 applicable zones. Correct?

6 JAKOB HICKMAT: That's correct.

7 REBECCA YOSHITANI: And as I understand and if I'm correct  
8 this is about comparing this site compared to other possible  
9 places to locate a development like this within the applicable  
10 zones, correct?

11 JAKOB HICKMAT: That's correct.

12 REBECCA YOSHITANI: That's what they're asking for is a  
13 comparison test. So for example when looking at well and septic  
14 and you were mentioning that going ahead that a usual part of  
15 the process is to look at well and septic.

16 JAKOB HICKMAT: After the conditional use approval.

17 REBECCA YOSHITANI: If there was no conditional use for  
18 example you would look at this normally later in the process,  
19 correct?

20 JAKOB HICKMAT: You first look at the information that's  
21 available. It depends how much you want to invest time and  
22 material up front. But you have an intelligent guess and you  
23 assume that that's what it is and then you proceed from there.

24 REBECCA YOSHITANI: But if there was no conditional use  
25 issue there would be another point in the process where you

1 would look to well and septic and there would be a normal  
2 approval process, correct?

3 JAKOB HICKMAT: That's right.

4 REBECCA YOSHITANI: Now is it possible to pass the test by  
5 just a little bit or pass it by a lot but in either case it  
6 would be passing?

7 JAKOB HICKMAT: I don't understand the question.

8 REBECCA YOSHITANI: Well for example is it possible to pass  
9 a septic pass by a just a little bit but it doesn't matter as  
10 long as it passes, it passes, correct?

11 JAKOB HICKMAT: Oh that's correct.

12 REBECCA YOSHITANI: And you could pass it by a whole lot  
13 and it wouldn't matter. As long as it passes, it passes.

14 JAKOB HICKMAT: That is correct.

15 REBECCA YOSHITANI: However, under conditional use we're  
16 talking about the difference between a little bit and a lot  
17 aren't we?

18 JAKOB HICKMAT: Approval of the well and septic is subject  
19 to the number of... The approval of the Health Department, they  
20 don't care what we do here. They have to meet the requirement  
21 of whatever it is for the number of houses and for the use. So  
22 I'm not sure if it makes any difference.

23 REBECCA YOSHITANI: Well but bear with me a little bit.  
24 What I'm bringing out is you could have, say you have ten  
25 properties and one of them barely passed but it passed and the

1 other nine pass by a whole lot. If there was no conditional use  
2 to worry about it wouldn't matter. All ten would pass, correct?

3 JAKOB HICKMAT: Whether there is conditional use, I don't  
4 know.

5 REBECCA YOSHITANI: No but I'm just saying if there's not a  
6 conditional use we wouldn't have to do this comparative test  
7 about how much it passes by.

8 JAKOB HICKMAT: I don't believe we have to do the  
9 comparative test in relationship to the septic. I believe we  
10 have to do it in relationship to the zoning.

11 REBECCA YOSHITANI: Well that's not what it says. It says  
12 the impact of adverse effects and it includes noise, dust,  
13 fumes, vibrations, lighting, hazards or other physical  
14 conditions. Is septic well and septic not a physical condition?

15 JAKOB HICKMAT: In my opinion it's not. But well and  
16 septic is a standard, it's a process on it's own.

17 REBECCA YOSHITANI: But does it have a physical impact on  
18 the properties around it, what happens with the well and what  
19 happens with the septic?

20 JAKOB HICKMAT: Again that has to be done with the permit.  
21 I have no, it doesn't matter what happens here.

22 ROBERT SHARPS: Ms. Yoshitani I'm going to indulge you just  
23 a little longer because, the reason I say that is I see where  
24 you're going and I see where you're not getting. But the reason  
25 being is this body that sits here does not have any say in the

1 certification of that process. We can sit here all day long and  
2 say we'll grant you that and he gets to that process and it's  
3 denied because they don't meet those standards. So if we can  
4 agree that that's the way, whether Mr. Hickmat says it passes or  
5 not, he is not the test.

6 REBECCA YOSHITANI: No. I understand. But you understand  
7 where I'm going.

8 ROBERT SHARPS: I do. But I just want to indulge you not  
9 too much longer in that because it's not going to have too much  
10 bearing on the decision.

11 REBECCA YOSHITANI: Okay. But that was just an example of  
12 one factor. You mentioned the street lights. How many street  
13 lights are there?

14 JAKOB HICKMAT: Just at the entrance of the development.

15 REBECCA YOSHITANI: How many?

16 JAKOB HICKMAT: I would guess probably three or four

17 REBECCA YOSHITANI: Can you show us on the map?

18 JAKOB HICKMAT: I can show you some pictures if you want  
19 to. Do you want as proposed or existing?

20 REBECCA YOSHITANI: Existing.

21 JAKOB HICKMAT: When you come in from 32 there are three or  
22 four light posts. They are not shown on my map because the  
23 entrance... *INAUDIBLE* between Route 32 and Linden Church Road.

24 REBECCA YOSHITANI: So you would say it is on the exit ramp  
25 from 32 up to that intersection. Is that basically where it is?

1 JAKOB HICKMAT: That is correct. And that is part of the  
2 portion of the road that we would be using.

3 REBECCA YOSHITANI: And so how many lights are there?

4 JAKOB HICKMAT: I told you I don't know. I guess about  
5 three or four.

6 REBECCA YOSHITANI: Okay. And how visible is that from the  
7 rest of the properties that egress at that exit point. The  
8 hundred and forty eight or so houses we've talked about, how  
9 many of them can see that light that's there?

10 JAKOB HICKMAT: Well they can see when it's time to go on  
11 Route 32.

12 REBECCA YOSHITANI: No, but from their houses.

13 JAKOB HICKMAT: I don't know.

14 REBECCA YOSHITANI: Okay. And then what lighting do you  
15 anticipate will be in your property comparatively?

16 JAKOB HICKMAT: As I stated before. The lighting  
17 requirements, Howard County has specific lighting requirements  
18 for roads. Inside the property they are not going to interfere.  
19 I'm guessing that, and again what we do when we send in the  
20 plans they come back and say put a light here, put a light  
21 there. We don't argue a lot because it is safety issues. But  
22 in this case I'm guessing from my experience that they are  
23 probably going to have one at the entrance.

24 REBECCA YOSHITANI: Okay. How about the community?

25 JAKOB HICKMAT: The community center will have lighting.

1 And that would be in accordance with Howard County regulations  
2 for lighting.

3 REBECCA YOSHITANI: Okay. And will that be...

4 JAKOB HICKMAT: I'm just guessing at this moment that they  
5 will be around the swimming pool and maybe like a couple of  
6 lights in the parking lot.

7 REBECCA YOSHITANI: Okay. So the swimming pool will be lit  
8 at night?

9 JAKOB HICKMAT: I don't know that. I haven't decided that  
10 but the zoning regulations have standards for allowing lights to  
11 leave property and they can't, certain intensity they have to be  
12 within the property, it has to be directed inward. So the idea  
13 is that they would not be seen. And we intentionally put the  
14 clubhouse far away, as far away as possible from any of the  
15 residences in the area.

16 REBECCA YOSHITANI: Now you mentioned the, I'll give you  
17 chance to sit down. You mentioned the age restricted  
18 requirements that you looked at. Did you also look at the  
19 senior housing plan?

20 JAKOB HICKMAT: The General Plan?

21 REBECCA YOSHITANI: No. Not the General Plan, the Senior  
22 Housing Plan.

23 JAKOB HICKMAT: I don't know that there is such a thing.

24 REBECCA YOSHITANI: Yes there is.

25 JAKOB HICKMAT: There is like a plan for the guidelines for

1 the senior housing.

2 REBECCA YOSHITANI: Are you familiar with some of the  
3 guidelines that talked about the accessibility of services?

4 JAKOB HICKMAT: Yes I am familiar with that.

5 REBECCA YOSHITANI: Alright. And on that recommendation do  
6 you know what size houses they recommend for senior housing?

7 JAKOB HICKMAT: They don't recommend specific house sizes.  
8 They talk about preferring diversity but they don't have a  
9 specific requirement.

10 REBECCA YOSHITANI: Well how about the layout of the  
11 houses. What do they recommend?

12 JAKOB HICKMAT: The standard for age restricted houses is  
13 the bedroom being on the first floor, the width of the doors and  
14 things of that nature.

15 REBECCA YOSHITANI: Is it just the bedroom?

16 JAKOB HICKMAT: We have a list of them and we put them on  
17 the plan, what is required and also we add what is recommended,  
18 options we are encouraging to do. We are actually going beyond  
19 what is required by making sure houses will be set up for, you  
20 know, the chair elevator and things of that nature that are not  
21 required but we are proposing it.

22 REBECCA YOSHITANI: Do you know if there's any  
23 recommendation about only being single story?

24 JAKOB HICKMAT: No there is no, they do not have to be  
25 single story. I know that.

1 REBECCA YOSHITANI: But you don't know if there is a  
2 recommendation in the Senior Plan?

3 JAKOB HICKMAT: There may be a recommendation but almost  
4 every age restricted housing in Howard County has two stories.

5 REBECCA YOSHITANI: And are you familiar with the  
6 recommendation that there be access to facilities?

7 JAKOB HICKMAT: I know there has to be that.

8 REBECCA YOSHITANI: And how about access to transportation?

9 JAKOB HICKMAT: This used to be a requirement in the old  
10 regulations because there was no distinction between active  
11 adult and senior. Now it is not an actual requirement to  
12 provide transportation. This used to be a requirement. Again,  
13 this is age restricted active adult. So it's not a requirement.  
14 And I don't think anyone in this community would use it because  
15 the age is, senior living is different than age restricted.  
16 This is active adults is what we have here.

17 REBECCA YOSHITANI: Is the point of an active adult  
18 community so that people can age in place?

19 JAKOB HICKMAT: That's correct.

20 REBECCA YOSHITANI: So if they're fifty five now how long  
21 do you expect people to be aging in place?

22 JAKOB HICKMAT: As long as they want to.

23 REBECCA YOSHITANI: Could they possibly be aging past the  
24 point where they can drive?

25 JAKOB HICKMAT: This is going to be a condominium

1 association and they will decide. If they decide that they are  
2 going to need public transportation or they need some help then  
3 they will do it. It's not just one person living by themselves.  
4 So if that need arise then I'm sure they can do it as a  
5 community.

6 REBECCA YOSHITANI: Are you aware of any of the  
7 recommendations regarding affordability in senior housing?

8 JAKOB HICKMAT: They just talk about affordability but  
9 again, there's no specific requirements. We also have to  
10 provide ten percent moderate income housing so it's de facto  
11 part of the process to provide affordable housing.

12 REBECCA YOSHITANI: Do you have any anticipation at this  
13 point what the homeowners fees are going to be considering the  
14 amount of services that are provided?

15 JAKOB HICKMAT: I do no.

16 REBECCA YOSHITANI: Do you know if there's any typical  
17 senior housing developments out there already and what their  
18 homeowners fees can be?

19 HOWARD ALDERMAN: Mr. Chairman we're well beyond the direct  
20 at this point.

21 ROBERT SHARPS: I need to agree with you Mr. Alderman and  
22 I'll just indulge Ms. Yoshitani a little further.

23 REBECCA YOSHITANI: You made references to the vegetation  
24 that you are going to be using?

25 JAKOB HICKMAT: Yes.

1 REBECCA YOSHITANI: And I believe in your original draft  
2 you talked about landscape C which is the type you're going to  
3 use.

4 JAKOB HICKMAT: Yes.

5 REBECCA YOSHITANI: Can you describe what landscape 3 is?

6 JAKOB HICKMAT: Yes I believe we submitted..

7 ROBERT SHARPS: You were here for all of the hearing Ms.  
8 Yoshitani weren't you?

9 REBECCA YOSHITANI: But I don't remember him describing C,  
10 what it was. He just mentioned that that's the type.

11 ROBERT SHARPS: We have an exhibit.

12 JAKOB HICKMAT: C basically is the highest, is the most in  
13 Howard County landscape manual. It's the best case scenario as  
14 far as the landscape manual is concerned.

15 REBECCA YOSHITANI: Okay then tell me how far apart are the  
16 trees going to be?

17 JAKOB HICKMAT: I'm going to have to look for a second.  
18 I'm reading from the Howard County landscape manual. Size C  
19 buffer is called the heavy buffer. That's the description of  
20 it. You can have shade trees, one every forty feet and then  
21 evergreens, one every twenty feet. So that's the density of it.

22 REBECCA YOSHITANI: Okay and how tall are these, you  
23 mentioned that some of these houses are going to be two stories  
24 tall, correct?

25 JAKOB HICKMAT: Some of them will be two stories.

1 REBECCA YOSHITANI: Okay. How tall is that going to be?

2 How many feet?

3 JAKOB HICKMAT: Two story, I'm guessing a little bit over  
4 thirty feet.

5 REBECCA YOSHITANI: Okay. So these houses that are that  
6 many feet and at that point are going to be blocked completely  
7 by evergreens that are twenty feet apart?

8 JAKOB HICKMAT: First the distance of the houses from the  
9 road and the distance of the houses from other houses will  
10 provide significant buffer as it is. You add the landscaping,  
11 there's probably only about four or five houses that are going  
12 to be about a hundred feet, a hundred and fifty feet from the  
13 road that could be seen. No, the houses will be seen but  
14 they're not going to be like we were talking about the wall  
15 effect before.

16 REBECCA YOSHITANI: Right. Well I'm looking at this map.  
17 Can you tell me which four or five houses you are saying are  
18 along the road?

19 JAKOB HICKMAT: I'm looking at sheet 303 of our main  
20 exhibit. And these are the four houses. If you look at it  
21 that's the landscaping intensity of the size C buffer and it  
22 shows the houses that will be closest to the road.

23 REBECCA YOSHITANI: Well go back to the map you just had.  
24 Now I see Linden Church Road. And so I see more than four  
25 houses backing up to that. Am I missing something?

1           JAKOB HICKMAT: Maybe it's more than four but there are  
2 like four and five houses that are close to, the closest that  
3 may be seen by anybody driving on the road is about four or five  
4 houses.

5           REBECCA YOSHITANI: Okay. Now looking at the rest of the  
6 houses in the community, how far back do they tend to be from  
7 the road?

8           JAKOB HICKMAT: Excuse me?

9           REBECCA YOSHITANI: Looking at the other houses that are in  
10 the community, how far back are they going to be from the road?

11          JAKOB HICKMAT: I'm proposing a hundred and fifty feet  
12 separation between the houses and any residential lots.

13          REBECCA YOSHITANI: Okay but I'm mentioning the other  
14 houses. How far back do houses in that community tend to be  
15 from the road?

16          JAKOB HICKMAT: I did not guess them but I'm looking at  
17 some of the one's I have here like this...

18          ROBERT SHARPS: Okay. Before you continue I'm going to  
19 interrupt.

20          REBECCA YOSHITANI: Okay.

21          ROBERT SHARPS: Ms. Yoshitani I need to see where you're  
22 going with this.

23          REBECCA YOSHITANI: Well I'm trying to get an idea...

24          ROBERT SHARPS: Let me just say what I need to do. A  
25 rebuttal witness came on and he gave some testimony. Now he

1 left himself open in quite a few areas but I think you've  
2 extended that to some degree. I need you to now focus on the  
3 rebuttal witnesses testimony as such from today. I'm going to  
4 take my own liberties on some things since he's already up there  
5 but I'm not going to allow it to you.

6 REBECCA YOSHITANI: Okay. I'm going back to the statement  
7 that you made that this is going to feel like an enclave, this  
8 community.

9 JAKOB HICKMAT: Yes.

10 REBECCA YOSHITANI: And so I just wanted to verify that you  
11 said how many feet back?

12 JAKOB HICKMAT: We have the minimum of a hundred feet from  
13 Linden Church Road. This is the one again that is the four or  
14 five lots we're talking about, I mean houses. And then a  
15 hundred an and fifty feet from any adjacent residential lots.

16 REBECCA YOSHITANI: Okay and then you said and trees that  
17 are twenty feet apart, evergreens that are twenty feet apart.

18 JAKOB HICKMAT: There will be a combination of the two  
19 types of trees I mentioned.

20 REBECCA YOSHITANI: Right. Well some are forty and some  
21 are twenty. The closest the trees are going to be is twenty  
22 feet apart.

23 JAKOB HICKMAT: Right.

24 REBECCA YOSHITANI: Now going back to your map when you  
25 were talking about rural residential and the definition of it.

1 JAKOB HICKMAT: Yes.

2 REBECCA YOSHITANI: Can you define for me what is rural  
3 residential? What's the definition?

4 JAKOB HICKMAT: I'm going to read from the Zoning  
5 Regulations section 105 which says, Rural Residential district  
6 is established to allow low density of residential development  
7 within a rural environment. So that is the definition.

8 REBECCA YOSHITANI: Is it also defined by the fact that  
9 there's no well and septic?

10 JAKOB HICKMAT: Does not. But in general it is but that's  
11 not, because there are other. You could be B-2, you could be  
12 business and on well and septic so that's not the criteria for  
13 Rural Residential.

14 REBECCA YOSHITANI: Are Rural Residential properties all on  
15 well and septic?

16 JAKOB HICKMAT: Actually no. Some are on well only. There  
17 are some areas with public water.

18 REBECCA YOSHITANI: What's the density on RR?

19 JAKOB HICKMAT: The density on RR is a little bit, you have  
20 many options.

21 REBECCA YOSHITANI: Well I'm not talking about the DEO, I'm  
22 just talking straight RR. What's the RR regulation?

23 JAKOB HICKMAT: You can do RR zoning in different ways.  
24 It's very difficult to say what the density is. If you want to  
25 use, if you want to subdivide it into lots with a low density

1 you could have three acre lots.

2 REBECCA YOSHITANI: Okay and isn't it that you take the  
3 property and divide it by 1.425 to figure out how many...

4 JAKOB HICKMAT: Well if you want to use the clustering  
5 option then it's 4.25.

6 REBECCA YOSHITANI: But that's the DEO.

7 JAKOB HICKMAT: No. Cluster, okay there's clustering,  
8 there's DEO, it's many options.

9 REBECCA YOSHITANI: Okay well let me move on a little bit.  
10 So it's not defined by being along Route 32. It's defined by  
11 other criteria, correct?

12 JAKOB HICKMAT: The RR zone when I reviewed the zoning map,  
13 it's overwhelmingly on the corridor of Route 32.

14 REBECCA YOSHITANI: Do all those properties dump onto the  
15 major artery of 32?

16 JAKOB HICKMAT: No they don't. But the overwhelming..

17 REBECCA YOSHITANI: Now, how about comparing that to..

18 HOWARD ALDERMAN: Excuse me. Let the witness finish the  
19 answer please. Go ahead Mr. Hickmat if you will.

20 JAKOB HICKMAT: I'm...

21 HOWARD ALDERMAN: No you said not all of them but, then you  
22 were cut off.

23 JAKOB HICKMAT: The overwhelming majority of them are on  
24 Route 32 but there are some that are outside of Route 32  
25 influence.

1 REBECCA YOSHITANI: But my point was what percentage of  
2 them actually dump right on to 32 that they access as their  
3 primary access?

4 JAKOB HICKMAT: From looking at the map I'm going to guess  
5 seventy five to eighty percent of them.

6 REBECCA YOSHITANI: But none of them go on to other side  
7 roads?

8 JAKOB HICKMAT: Well the side roads, I reviewed the map and  
9 it looks like the RR zone is concentrated around Route 32.

10 REBECCA YOSHITANI: Okay. Looking at the RC zone by  
11 comparison, without all the other options is that also only on  
12 well and septic?

13 JAKOB HICKMAT: Again it's the same answer. RC is, yes,  
14 usually on well and septic but there are RCs with public water.

15 REBECCA YOSHITANI: Would you say that's the exception  
16 rather than the rule?

17 JAKOB HICKMAT: That is the exception rather than the rule.

18 ROBERT SHARPS: What's the exception?

19 JAKOB HICKMAT: The public water like on Route 144.

20 REBECCA YOSHITANI: And is their basic density similar to  
21 RR?

22 JAKOB HICKMAT: It's similar but it's different. In the RC  
23 zone you have to cluster so the density is four and a quarter  
24 per acre.

25 REBECCA YOSHITANI: Okay. And so they're both considered

1 rural? RR and RC are both rural.

2 JAKOB HICKMAT: RR is rural but intended for, I'm going to  
3 read again, it's established for low density residential  
4 development. The RC is established for conservation and farming  
5 and residential use is secondary to that. And I'm going to read  
6 from the zoning again, the rural conservation, which is RR,  
7 district is established to conserve farm land and to encourage  
8 agricultural activities. So that's their main goal of RC.

9 REBECCA YOSHITANI: But would an RC owner by right be able  
10 to develop the houses for that density?

11 JAKOB HICKMAT: Yes he would. But...

12 ROBERT SHEESLEY: But are we talking about an RC or are we  
13 talking about an RR?

14 REBECCA YOSHITANI: An RC. I'm trying to see how they're  
15 similar.

16 ROBERT SHARPS: Well, Ms. Yoshitani you said wait three  
17 times already. And this is, you know, I don't want to feel as  
18 though I'm lecturing you. You don't deserve that. But you're  
19 getting way off track here. And what I need you to do is to  
20 stick with the rebuttal witnesses testimony as of today.

21 REBECCA YOSHITANI: Okay.

22 ROBERT SHARPS: I'm going to take enough liberty myself.  
23 As I said, I'm not going to allow it for you. But I have some  
24 questions and I can do that. And you can go above me if you  
25 want to but I can't allow you to keep going on because I hear

1 repetitive questions and answers too.

2 REBECCA YOSHITANI: Okay.

3 ROBERT SHARPS: You're saying it differently but it's the  
4 same thing.

5 REBECCA YOSHITANI: Okay. And what I'm just getting to is  
6 again on 2.A on the general standards it mentions elsewhere in  
7 the zone or applicable other zones. So it's your testimony that  
8 RR and RC are not the same for the sake of applicable other  
9 zones?

10 JAKOB HICKMAT: For the sake of the General Plan and the  
11 goals of development the RC is intended or is encouraged to  
12 provide conservation and agricultural use. That's the main  
13 thing. And then you can have residential.

14 REBECCA YOSHITANI: Okay.

15 JAKOB HICKMAT: The RR is for residential...

16 REBECCA YOSHITANI: Okay. That's fine.

17 JAKOB HICKMAT: ...so the purpose is for residential in the  
18 RR.

19 ROBERT SHARPS: She said fine, stop talking. It's bad  
20 enough she don't allow you to finish. When she says fine stop.

21 REBECCA YOSHITANI: Is there a limit to the number of  
22 conditional age restricted properties that are approved in a  
23 given year?

24 JAKOB HICKMAT: In the...

25 REBECCA YOSHITANI: The number of units.

1 JAKOB HICKMAT: In the west there is, they're just regular  
2 units. There's no preferential treatment. In the east, like in  
3 Elkridge and parts of Ellicott City they have their own  
4 allocations. But in the west there is no distinction.

5 REBECCA YOSHITANI: Okay. No further questions.

6 ROBERT SHARPS: Thank you Ms. Yoshitani. The Board may  
7 have questions. Gentlemen?

8 AL HAYES: I have a question. I have some similar concerns  
9 as my fellow alumnus. My technical background is that I'm a  
10 chemical engineer out of Johns Hopkins also and I have a  
11 graduate environmental engineering degree from the University of  
12 Maryland. You were saying that the development itself was  
13 sufficiently removed from the gas pipeline easement?

14 JAKOB HICKMAT: Not the development itself, the houses  
15 themselves are removed.

16 AL HAYES: The houses. So what about the concern for the  
17 well and septic and water facilities that have to be provided  
18 for those houses?

19 JAKOB HICKMAT: In relationship to the gas or...

20 AL HAYES: Yes. The gas pipeline easement, yeah.

21 JAKOB HICKMAT: I have not investigated that. Between the  
22 rules of the gas company and the rules of the Health Department  
23 I'm sure they have to be sufficiently far. But the well is  
24 going to be more than a hundred feet away from any gas lines but  
25 I haven't studied that.

1 AL HAYES: I realize you're saying that your preliminary  
2 assessment doesn't have to be that extensive. It depends on how  
3 much of an investment you want to make in your preliminary  
4 assessment. But that seems like that would be sort of key.  
5 Wouldn't you be concerned about leaching from the septic system,  
6 the design of the septic system. If it gets to be too expensive  
7 then what would you do then?

8 JAKOB HICKMAT: Then the project dies Mr. Hayes. I mean  
9 you do your best judgment at the assessment stages of the  
10 process. But I have a lot of faith in the Maryland Department  
11 of the Environment, Howard County Health Department, you know  
12 the gas company that there are, you know I'm not an expert on  
13 the gas lines but I'm sure there are regulations and how far you  
14 can be from the gas line. Adjacent properties have their wells,  
15 you know, much closer to the gas lines than what we have so it  
16 has to meet whatever is needed for safety and I'm sure we're  
17 going to exceed it.

18 AL HAYES: That's all I have.

19 ROBERT SHARPS: Any other questions? I'm going to take a  
20 little bit of liberty here Mr. Hickmat and I'm going to base it  
21 on the statement that you started out with during your testimony  
22 as a rebuttal witness that you feel that this project, and I'm  
23 paraphrasing, I don't know if you used the word far exceeds, but  
24 you used that word exceeds the requirements for this particular  
25 development. And then I look at the two different assessment or

1 I should say the recommendations or the technical order from the  
2 Department of Planning and Zoning and then the decision and  
3 order from the Hearing Examiner. There's almost two dichotomies  
4 if you look. One says you just got to be crazy to put this  
5 here, and I'm using my own words. And the other one says, yea,  
6 you can do it but hey, you got a few things I need to see and I  
7 think the protestants asked for that during this entire process.  
8 Let me just address two from the technical staff report, number  
9 three and number five. Number three recommendation, and I know  
10 it's a recommendation but number three says that they will grant  
11 it but it is recommended that the petitioner provide more  
12 details on how the age restrictions will be maintained and  
13 enforced for the proposed use. I don't remember that being  
14 addressed anytime during this hearing and if it did then I  
15 apologize I probably slept through it. Can you articulate that?

16 JAKOB HICKMAT: The covenants that are going to be used two  
17 ways. First the covenants that are going to be maintained there  
18 which is again, same story, they have to maintain, Howard County  
19 will give us the restrictions and we enforce them as a  
20 condominium association. That's how they'll be enforced. And  
21 the second thing again is the construction of the buildings  
22 themselves that use the minimum requirement now and plus after  
23 that allowance for aging in place which is, we talked about  
24 landing areas between steps and making the steps wider, which is  
25 not required but we added to that to allow for having it set up

1 in case you need...

2 ROBERT SHARPS: I'm going more to the proposed use, not the  
3 construction. Maybe you need to refresh me and I don't want to  
4 be... What's the smallest unit and the largest unit again?

5 JAKOB HICKMAT: I think it's between 1500 to close to 6000.

6 ROBERT SHARPS: Alright. Let's take that close to 6000.  
7 Are there many age restricted units that are 6000, 5000 and 6000  
8 as proposed for that particular use? And I'm not being  
9 flippant. I mean I've only been in this community for twenty  
10 years. And I've served on this Board for almost nine, probably  
11 eight more than I needed to be. And I think that question was  
12 proposed, that recommendation was put there because of that  
13 particular difference in what I've seen that came before us as  
14 far as age restricted units.

15 JAKOB HICKMAT: When we started the process with the County  
16 Planning and Zoning we showed 6000 square foot houses and again  
17 my feeling was I'm going to show the biggest house and then if  
18 it gets smaller it's not going to be an issue. After the  
19 Hearing Examiner denied the petition and his concern was really  
20 the size of the houses. Then when we came to this Board we  
21 proposed a range of houses to show that there's going to be  
22 diversity. So when they looked at it they did not see 1500  
23 square foot houses. They only saw 6000 square foot house. I'm  
24 not sure I'm answering your question.

25 ROBERT SHARPS: Not really. But you're staying on the ice.

1 Your skates are kind of wobbly there though. The question was,  
2 how are you going to maintain and enforce the proposed use? The  
3 proposed use is for age restriction. 6000 square feet. Let's  
4 say it's only, how many houses are you going to have within the  
5 4-6000 square feet. Can you give me that?

6 JAKOB HICKMAT: I'm guessing Mr. Sharps that the majority  
7 will be between four to six.

8 ROBERT SHARPS: And age restricted houses, can you tell me  
9 in this community, and you've been here a lot longer than I  
10 have, how many houses do you know in an age restricted area has  
11 between four and six thousand square feet?

12 JAKOB HICKMAT: Actually most of them.

13 ROBERT SHARPS: Name a couple besides Cattail Creek.

14 JAKOB HICKMAT: Scott's Glenn, that's still being under  
15 construction now as we speak.

16 ROBERT SHARPS: Under construction, okay.

17 J.H. : I mean it's approved by this Board and it's being  
18 constructed and probably half of it's sold. I have the  
19 brochures with me here. I have the Homeland which is Harbor  
20 property, it's definitely more than 3000 square feet.

21 ROBERT SHARPS: Well you're again your skates are wobbly, I  
22 said between four and six and you're going to give me around  
23 three. I wouldn't even ask the question if it was around 3000  
24 square feet but when you get to the 4, 5 and 6000 square feet to  
25 me that doesn't somewhat gel with age restriction. Usually you

1 go for smaller than bigger.

2 J.H. Well it's a lifestyle Mr. Sharps. It's active adult  
3 and again, if everybody wants smaller houses there will be  
4 smaller houses. I mean I'm not going to, I can't put a  
5 restriction a hundred percent everything has to be 1500 or it  
6 has to be 6000.

7 ROBERT SHARPS: Let me move on too. I'll take my own  
8 advice that I give out there. Let's go to number five. It is  
9 recommended that the petitioner provide further explanation  
10 about the five of the proposed, which is the ten percent, of the  
11 proposed dwelling units of the same general size indicated on  
12 the plan will be provided for moderate income housing units.

13 JAKOB HICKMAT: Well providing the, we added notes to the  
14 plan, I'm not sure what you need to provide. Five of the units,  
15 we will be addressing the moderate income requirements that we  
16 have to do. In this case if we do them onsite they will be the  
17 smaller houses. Now after we made the submission the zoning  
18 regulations has changed where you could actually purchase off-  
19 site moderate income housing. So we have more options now than  
20 we did before. But they are part of the covenants, they are  
21 part of the restrictions.

22 ROBERT SHARPS: Okay. Let me just touch on one issue that  
23 the Hearing Examiner had too and I know they took out the  
24 transportation portion of it in the new regulation now, that you  
25 have to be required to have transportation to services. And one

1 of the reasons you have age restriction is because you want to  
2 put them in an area where they do have access to specific  
3 services. The dichotomy to me is how the heck they took out the  
4 transportation and now they're going to say, how do you get to  
5 those services. Where does that fit? They didn't take out the  
6 services that it should be located where they can have access to  
7 provided services that are normally needed by the elderly or the  
8 age restricted area. How does that do that in that area? And  
9 I'm not talking about the Columbia Village Center and that kind  
10 of stuff that would have been nice. How does that work?

11 JAKOB HICKMAT: The transportation requirement was there  
12 before in the older rules which was gone five or six years ago  
13 by the way. But the way it was addressed with most of the  
14 projects that I worked on and am familiar with is that they left  
15 it up to the community to provide if they want bus shuttles or  
16 things of that nature. Evidently, and I'm guessing now, this  
17 was not being utilized by many people and that's probably why  
18 they took it out. Also there is more of a distinction now  
19 between active adults and seniors and people who need  
20 transportation. And the idea is active adults do not really  
21 need that. But again the community will actually do it. If  
22 they need it they can do it. It's the community, the  
23 condominium community.

24 ROBERT SHARPS: Okay, any other questions gentlemen? Thank  
25 you Mr. Hickmat.

1           HOWARD ALDERMAN: Can I just ask him to clarify a couple of  
2 points?

3           ROBERT SHARPS: I went off the Board so you can if you want  
4 to.

5           HOWARD ALDERMAN: Mr. Hickmat in fact the petitioner's  
6 exhibit two is the Howard County form of age qualified  
7 restrictions for inclusion in the condominium declaration. Is  
8 that correct?

9           JAKOB HICKMAT: Yes it is.

10          HOWARD ALDERMAN: And if that's in the condominium  
11 declaration that's in addition to the Howard County requirement  
12 for annual confirmation with photo i.d. of qualifying household  
13 members. Correct?

14          JAKOB HICKMAT: Yes that's correct.

15          HOWARD ALDERMAN: Moderate income housing, that is mandated  
16 both by moderate income housing agreement as well as a  
17 declaration of covenants and restrictions by the Department of  
18 Housing and Community Development to any residential community  
19 which is required to have moderate income housing on site. Is  
20 that correct?

21          JAKOB HICKMAT: That's correct.

22          HOWARD ALDERMAN: And if it's required to be on this site  
23 it will have to be provided and those documents will have to be  
24 recorded and one with the land. Correct?

25          JAKOB HICKMAT: That is correct.

1 HOWARD ALDERMAN: Thank you.

2 ROBERT SHARPS: You're excused. Next witness. How many  
3 rebuttal witnesses do you have?

4 HOWARD ALDERMAN: I have two more technical witnesses and  
5 one more, Mr. Robert Williams who could not be at those two  
6 hearings because of illness.

7 ROBERT SHARPS: Okay. I know we sat here a little bit  
8 longer so let's take a five minute break and then we'll come  
9 back and convene. The Board's in recess.

10 RECESS

11 ROBERT SHARPS: The Board of Appeals is back in session.  
12 Mr. Alderman are you ready for your next witness? I see we have  
13 somebody already in the seat.

14 HOWARD ALDERMAN: Trying to move it along Mr. Chairman.

15 ROBERT SHARPS: Okay.

16 HOWARD ALDERMAN: Mr. Joseph Caloggero who was called in  
17 the case in chief and is being recalled in rebuttal.

18 ROBERT SHARPS: That's what I wanted to ask you. We called  
19 you in the beginning, right. I've got to look at my notes.

20 JOSEPH CALOGGERO: Yes we did.

21 ROBERT SHARPS: So you've been sworn in?

22 JOSEPH CALOGGERO: Yes.

23 ROBERT SHARPS: I'll just remind you you're still under  
24 oath.

25 JOSEPH CALOGGERO: Thank you.

1           HOWARD ALDERMAN: Mr. Calligero were you present during the  
2 presentation of the protestant's case?

3           JOSEPH CALOGGERO: Yes I was.

4           HOWARD ALDERMAN: And have you reviewed protestant's  
5 exhibit one which were selected portions of the Howard County  
6 General Plan?

7           JOSEPH CALOGGERO: Yes.

8           HOWARD ALDERMAN: Based on your review do the portions of  
9 that exhibit that were highlighted by the protestants deal with  
10 considerations applicable to any proposed capacity expansion of  
11 state roadways including Route 32?

12          JOSEPH CALOGGERO: Yes.

13          HOWARD ALDERMAN: In your professional opinion does the  
14 conditional use under consideration here this evening by the  
15 Board propose any capacity expansion to Route 32?

16          JOSEPH CALOGGERO: No.

17          HOWARD ALDERMAN: Does the fact that one or more road  
18 segments of Route 32 were identified as a level F regarding  
19 traffic flow and average speed, do either of those act as a bar  
20 to the approval of the proposed conditional use here tonight?

21          JOSEPH CALOGGERO: No it does not.

22          HOWARD ALDERMAN: In your professional opinion will the  
23 proposed conditional use be subject to the adequate public  
24 facilities ordinance road analysis before building permits can  
25 be issued?

1           JOSEPH CALOGGERO: Yes. The adequate public facilities  
2 ordinance test must be passed and conducted in accordance with  
3 Howard County and the Maryland State Highway Administration.

4           HOWARD ALDERMAN: Did you hear one of the protestants, I  
5 believe it was Mr. Taylor, testify about his informal  
6 questioning of his neighbors aged 55 or older and not living in  
7 an age restricted community and his or her neighbor's  
8 intersection tallying of traffic?

9           JOSEPH CALOGGERO: yes.

10          HOWARD ALDERMAN: Having heard that testimony have you  
11 altered your professional opinion given during your direct  
12 examination regarding traffic considerations and the proposed  
13 conditional use?

14          JOSEPH CALOGGERO: No I have not.

15          HOWARD ALDERMAN: Have you reviewed tables one through five  
16 on petitioner's exhibit three and are the shaded computations  
17 based on accepted traffic generation methods?

18          JOSEPH CALOGGERO: No they are not.

19          HOWARD ALDERMAN: Mr. Caloggero in your professional  
20 opinion, of what significance to the conditional use under  
21 consideration is the State Highway Administration mandatory  
22 headlight requirement for Route 32 in the area of the subject  
23 property?

24          JOSEPH CALOGGERO: None whatsoever.

25          HOWARD ALDERMAN: In your professional opinion does the

1 fact that a single access to the proposed development, does that  
2 fact raise any issue or concern relative to the approval of the  
3 proposed conditional use from a traffic standpoint?

4 JOSEPH CALOGGERO: No it does not.

5 HOWARD ALDERMAN: Would you characterize Route 32 as a  
6 local roadway or a regional roadway?

7 JOSEPH CALOGGERO: More of a regional roadway.

8 HOWARD ALDERMAN: And were you also present when several  
9 members of the surrounding community testified about practices  
10 they have observed by drivers at the intersection with Route 32?

11 JOSEPH CALOGGERO: Yes I was here.

12 HOWARD ALDERMAN: In your professional experience and  
13 professional opinion and as a driver is the burden on drivers to  
14 obey the signal and other traffic control devices and signs at  
15 that intersection?

16 JOSEPH CALOGGERO: Yes it is.

17 HOWARD ALDERMAN: Nothing further.

18 ROBERT SHARPS: Ms. Yoshitani can I respectfully request  
19 that you address your question based on the examination of this  
20 rebuttal witness only?

21 MARC JORDAN: IF NOT RUY< THE OTHER GUY!!! If it's okay with  
22 ya'll I'll do cross examination of this witness.

23 ROBERT SHARPS: Why are you going to take it from her? I  
24 wasn't beating her up. Go ahead sir.

25 MARC JORDAN: Mr. Calligaro you said that you heard the

1 testimony of Mr. Taylor? last time.

2 JOSEPH CALOGGERO: Yes I did.

3 MARC JORDAN: Any facts today that would dispute the  
4 testimony he gave us, his observation.

5 JOSEPH CALOGGERO: His observations?

6 MARC JORDAN: Yes he testified about the level of traffic  
7 at the intersection.

8 JOSEPH CALOGGERO: Whatever he counted is what he counted.

9 MARC JORDAN: No. But you haven't done the other county  
10 yourself?

11 JOSEPH CALOGGERO: No I did not. That's not required until  
12 the adequate public facilities ordinance test.

13 MARC JORDAN: Well did you read the examiner's report?

14 JOSEPH CALOGGERO: Yes I did. I'm sorry, which?

15 MARC JORDAN: Mr. Carbo's report.

16 HOWARD ALDERMAN: Objection. Now we're outside of the  
17 direct.

18 MARC JORDAN: I'm asking about what he just said.

19 HOWARD ALDERMAN: You're outside of the direct with your  
20 questioning. I'm objecting.

21 ROBERT SHARPS: And I'm going to sustain his objection  
22 because I've got to take control of this. Because if we do this  
23 we're going to be rehashing and going back into, I mean that has  
24 nothing to do with the questions he asked. But the question  
25 you're asking him is whether or not he read the examiner's

1 report. That's a valid question as long as you don't go outside  
2 of his answers.

3 MARC JORDAN: And I won't

4 ROBERT SHARPS: You can answer that Mr. Caloggero.

5 JOSEPH CALOGERO: I've read the technical staff report.

6 ROBERT SHARPS: No. He asked you did you read the hearing  
7 examiner's report, Mr. Carbo, his decision and order. If you  
8 can't remember you probably didn't. It was quite lengthy.

9 JOSEPH CALOGERO: If it's in the files I did and it may  
10 have been a while ago.

11 MARC JORDAN: Whether you read it or not are you aware that  
12 Mr. Carbo thought that the traffic study should have been  
13 conducted and that one of the reasons for not approving it at  
14 his level was that there was no traffic study?

15 HOWARD ALDERMAN: Objection.

16 ROBERT SHARPS: Sustained. That was not part of his  
17 rebuttal examination.

18 MARC JORDAN: Mr. Sharps he testified that he knew what the  
19 requirements are and that it wasn't required, the traffic study  
20 was not required. And that's what I'm asking about, what he  
21 just said a minute ago.

22 ROBERT SHARPS: What did you ask him? That's not what I  
23 just heard you ask him. What is your question?

24 MARC JORDAN: In response to his statement on direct  
25 examination that no traffic study was required.

1           ROBERT SHARPS:  Until the adequate public facilities  
2 ordinance, until that portion of the AFDEO.

3           MARC JORDAN:  Right.  And my question was is he aware that  
4 the Hearing Examiner disagreed with him because the Hearing  
5 Examiner said...

6           ROBERT SHARPS:  I'll allow the question.  Whether there is  
7 relevance or not is another question.

8           JOSEPH CALOGGERO:  What was the question?

9           ROBERT SHARPS:  Are you aware that the Hearing Examiner  
10 disagreed with your testimony?

11          JOSEPH CALOGGERO:  No.  I'm not aware that he disagrees.

12          MARC JORDAN:  Okay.  You also said in your opinion there  
13 weren't any safety issues with the intersection.  Is that what  
14 your testimony was?

15          HOWARD ALDERMAN:  Objection.  Mischaracterization of  
16 testimony.  The word safety never came out of my mouth.

17          ROBERT SHARPS:  I'm not going call back the tape and  
18 listen.

19          MARC JORDAN:  Well I tried to make notes as we went along  
20 here.

21          ROBERT SHARPS:  I have an objection.  Wait a minute.

22          HOWARD ALDERMAN:  I read my questions Mr. Chairman.  I can  
23 read them back.

24          ROBERT SHARPS:  Sustained.

25          MARC JORDAN:  So your evidence as to safety, that's fine.

1 You said you read Mr. Taylor's report?

2 JOSEPH CALOGGERO: Yes I did.

3 MARC JORDAN: And you heard Mr. Taylor testify?

4 JOSEPH CALOGGERO: Yes I did.

5 MARC JORDAN: And Mr. Taylor testified about safety issues.

6 Do you remember that?

7 JOSEPH CALOGGERO: Not completely.

8 MARC JORDAN: Well do you have any facts today that would

9 contradict anything that Mr. Taylor said about safety?

10 JOSEPH CALOGGERO: No I do not.

11 MARC JORDAN: You testified in response to Mr. Alderman's

12 questions about the practice of drivers at the intersection. Do

13 have any facts to support the conclusions you gave today?

14 JOSEPH CALOGGERO: What's your specific question?

15 MARC JORDAN: My question was, Mr. Alderman's question to

16 you was are you familiar with the practice of drivers at the

17 intersection.

18 JOSEPH CALOGGERO: The testimony last time if I recall

19 correctly was that a lot of people run red lights and my answer

20 to that is, no, drivers should not be running red lights and

21 it's their responsibility to take their own habits.

22 MARC JORDAN: Okay. That was the conclusion you gave in

23 response to the question. That's your opinion, right?

24 JOSEPH CALOGGERO: I hope it's everyone's opinion but yes.

25 MARC JORDAN: And my question is just do you have any facts

1 that you want to offer to support your opinion?

2 JOSEPH CALOGERO: Do I have facts that people should obey  
3 the law?

4 MARC JORDAN: Facts that there's no danger in people  
5 running the red light at the intersection.

6 JOSEPH CALOGERO: If people run a red light, yes, it's  
7 dangerous. That's why it's against the law.

8 MARC JORDAN: Okay. Thank you. You testified that the  
9 road segment on Route 32 is at a level F and it's true that  
10 there are other areas in the County that are not level F. Isn't  
11 that correct?

12 JOSEPH CALOGERO: I'm sure there is.

13 MARC JORDAN: And isn't it true that there are other roads  
14 in the district, in the RR district that are not level F?

15 JOSEPH CALOGERO: I'm sure there are.

16 MARC JORDAN: And there's other levels that are lower  
17 traffic bearing levels than the traffic on Route 32. Isn't that  
18 correct?

19 JOSEPH CALOGERO: That's probably so. There's probably  
20 some higher too.

21 MARC JORDAN: Okay. That's all I have at this point.  
22 Thank you.

23 ROBERT SHARPS: Does the Board have any questions? Thank  
24 you Mr. Caloggero.

25 HOWARD ALDERMAN: I call Mr. Robert Sheesley.

1           ROBERT SHEESLEY: Mr. Sheesley I'll remind you that you're  
2 still under oath.

3           ROBERT SHEESLEY: Yes.

4           HOWARD ALDERMAN: Mr. Sheesley you were present during the  
5 presentation of the protestant's case?

6           ROBERT SHEESLEY: Yes.

7           HOWARD ALDERMAN: And have you reviewed the technical staff  
8 report prepared by the Department of Public and Zoning and the  
9 attachments there to it?

10          ROBERT SHEESLEY: Yes.

11          HOWARD ALDERMAN: Have you had an opportunity to consider  
12 testimony evidence presented by the various protestants at the  
13 last hearing regarding environmental factors related to the  
14 proposed conditional use?

15          ROBERT SHEESLEY: Yes.

16          HOWARD ALDERMAN: And are you familiar with the memorandum  
17 from the well and septic program supervised by Michael Davis  
18 from the department of Planning and Zoning citing that the  
19 Department of Health has no objection to the proposed  
20 conditional use if among other things percolation testing is  
21 conducted and the soils are found to be adequate for the design  
22 of onsite sewage disposal system that was attached to the  
23 technical staff report?

24          ROBERT SHEESLEY: Yes.

25          HOWARD ALDERMAN: Now, using your professional training and

1 extensive experience as you previously testified Mr. Sheesely  
2 would you respond to the testimony in evidence presented by the  
3 protestants last time with respect to well, septic and  
4 environmental considerations?

5 ROBERT SHEESLEY: The initial work that was conducted on  
6 this site was extensive. We, and I heard the testimony and  
7 there was indications that there were evaluations done, there  
8 were some data in the files and that the data was hard to  
9 interpret, that there were numerous failures of evaluations and  
10 soil profiles. And I'm not clear where that came from but we  
11 did extensive analysis of the site for the potential of sewage  
12 disposal which, for sewage disposal and water supply everything  
13 else has to revolve around that on most projects but definitely  
14 on projects like this. So when someone shows me a site plan of  
15 what they propose to do I always look at it and say where is my  
16 land, so to speak, the land that the soils have to pass and the  
17 profiles have to pass for sewage disposal and that we have  
18 adequate areas to address water supply. And that's how I look  
19 at a site. When we did the original work on this the upper  
20 portion of the site, which is the part that is not containing  
21 any flowing roadways or so or not part of the actually physical  
22 development, is roughly four and a half to five acres in size.  
23 And it is the area where we did extensive testing of soils to  
24 determine whether or not sewage disposal would be acceptable in  
25 that area. A total of seventy eight tests or seventy eight

1 locations were placed on a plan which would eventually become  
2 the percolation certification plan. And of those seventy eight  
3 locations fifty in the area shown, I believe it's in white on  
4 the site just above which would be just to the north of the  
5 physical development, fifty of those test pits were dug. They  
6 were dug to a depth of between thirteen and fifteen feet deep in  
7 the ground which is essentially how deep you can go with a back  
8 hoe. And the soil profiles were evaluated from top to bottom to  
9 determine what the nature of the soil profile, what the nature  
10 of the soil structure was and do determine at what depth septic  
11 systems could work, a septic system could work. And were the  
12 soils of a texture and consistency that would permit the  
13 attenuation of any sewage effluent passing through it so it  
14 would not create any public health or water quality related  
15 issue. In other words, would it meet standard. On these types  
16 of projects it's not like an individual lot where you might have  
17 ten thousand square feet of area set aside for a four or five  
18 bedroom home for sewage disposal. It requires an extensive  
19 amount of study and numerous detailed reports and studies to  
20 determine whether or not it can actually be done because you're  
21 concentrating flow. You do not have separation between the  
22 elements of the system. So what we do is do a grid of the site  
23 within a hundred to a hundred and twenty feet apart in a grid  
24 fashion and look at the soil profiles for that depth to  
25 determine consistency of soils and depth, groundwater or rock

1 etcetera where you may have problems. In this case of the fifty  
2 test pits that were evaluated forty nine passed. Only one  
3 failure was found and that was on the northern periphery of the  
4 site which is not going to be used anyway. All the rest of the  
5 test pits were outstanding to a depth of thirteen to fifteen  
6 feet. The soils at the area where the sewage disposal system  
7 would be placed in the ground were a sand to sandy loam material  
8 which is of high quality for infiltration and treatment in the  
9 treatment zone for the sewage effluent. Now as a result of that  
10 test results were established and the data sheets were in the  
11 file at the Health Department, I have copies of the study data  
12 sheets, and all of them reflect exactly what was in my  
13 testimony. The cover letter that goes with those when it comes  
14 back from the Health Department acknowledging the results of the  
15 test is basically a standard comment sheet that requires the  
16 applicant to then take that data and that information, field  
17 locate those sites if they haven't already been field located so  
18 they're accurately depicted, prepare a plan that's called a  
19 percolation certification plan and then once that's done and it  
20 has all the appropriate notes and designations and requirements  
21 that the department has, resubmit it for final approval that  
22 would get that approval from the health office and that would be  
23 the designated area for sewage disposal based on that criteria.  
24 We have done all that work. We have even drilled wells on the  
25 site that will be used for evaluating groundwater issues as part

1 of at least a minimum of a year long study that has to determine  
2 what the highest extent of the groundwater table is in the area  
3 where sewage disposal will take place. So it's not just doing a  
4 soils evaluation, running an infiltration test or what is  
5 commonly known as a percolation test and looking at marginal  
6 conditions and saying whether or not something will just pass or  
7 will pass or will not pass. It involves an extensive study of  
8 the groundwater system underneath of that site in addition to  
9 just passing the soil evaluation. Now standard residential  
10 development using private systems only have to go the first  
11 route which is getting the soil profiles approved. But when you  
12 concentrate flow, again, you have to determine the highest  
13 extent of the water table. The wells that have been put in are  
14 being monitored on a monthly basis to determine what the water  
15 level reading is under the site during each of the four seasons  
16 of the year. And the requirement under the state Maryland  
17 Development of Environment guidelines are that you have to have  
18 at least an evaluation that includes wet weather season which is  
19 generally between late January and mid-May where you get the  
20 highest water table information. So it's a year's evaluation of  
21 the fluctuation to determine the fluctuation of that water  
22 table. Once that is determined during that period then you  
23 design the system. And when you design the system it's laid out  
24 at a certain depth based on the soil profiles and that depth is  
25 usually very consistent but also contingent upon topography. At

1 this particular location the topography is generally flat with a  
2 little bit of fall off to the sides. But generally a majority  
3 of the property is fairly flat. The evaluation will then go to  
4 the design of the system and a determination of how the system  
5 would be laid out. Then it would be evaluated against what we  
6 find in the data of the groundwater table. There is a part of  
7 the groundwater discharge permit which is required for systems  
8 like this over ten thousand gallons per day of discharge that  
9 the Maryland Department of the Environment requires these  
10 groundwater assessments. And the groundwater evaluation will  
11 include what we call a mounding study and the mounding study is  
12 a depiction of, over a twenty year period, it's a mathematical  
13 model that is accepted technology in the country, and it will  
14 determine the highest extent of the groundwater system with  
15 waste passing through the soil profile over a twenty year period  
16 in five year increments as the model works. So you will be  
17 getting an assessment of the impact of that sewage coming down  
18 through the soil profile at the limit of discharge that is  
19 required in the permit. And it will depict whether or not the  
20 groundwater will be too high and will cause potential problems  
21 of water quality problems. Now that means that if you in that  
22 analysis determine that the groundwater table is higher than you  
23 would expect because of the influence of the sewage coming  
24 through then you would subtract area from the sewage review area  
25 and not use that area because it would not meet the stronger

1 test for this type of evaluation. So before we can finalize the  
2 design and finish the project and get the permit we have to  
3 exclude all areas that can't work through this extensive test.  
4 That's just what we do...

5 ROBERT SHARPS: Mr. Sheesley I'm going to interrupt because  
6 I'm not going to remember all of this that I have to ask  
7 questions so indulge me Mr. Alderman. This process that you're  
8 going through for the benefit of us is quite valuable I'm sure.  
9 But in this process, this year's process that you're talking  
10 about that you go through this analysis at what stage are you at  
11 now?

12 ROBERT SHEESLEY: Well I'm at the stage right now where  
13 through my experience in dealing with these types of projects,  
14 larger projects as well as small...

15 ROBERT SHARPS: Let's talk about this project.

16 ROBERT SHEESLEY: This project, that the soil evaluations  
17 are significantly excellent and the likelihood that we're going  
18 to have a problem overall is probably remote in the Piedmont  
19 plateau which...

20 ROBERT SHARPS: So this is analysis that you have  
21 personally already conducted based on the testing that you have  
22 done?

23 ROBERT SHEESLEY: That's correct.

24 ROBERT SHARPS: And at what point are you at for the permit  
25 to request and get a permit for this particular development?

1           ROBERT SHEESLEY: Well we put the wells in in April so  
2 we're already more than halfway through the assessment period.  
3 So we'll be finished probably in February or March with respect  
4 to the groundwater analysis.

5           ROBERT SHARPS: So in order to get this permit do you have  
6 to meet the particular standards that you are articulating to  
7 us?

8           ROBERT SHEESLEY: Yes.

9           ROBERT SHARPS: And you have met them?

10          ROBERT SHEESLEY: No. We're in the study period as I have  
11 indicated.

12          ROBERT SHARPS: That was my initial question. In what part  
13 of the study period are you? You said it takes a year,  
14 approximately a year?

15          ROBERT SHEESLEY: We are six to seven months into the study  
16 period.

17          ROBERT SHARPS: Okay. Okay. I'm not sure Mr. Alderman  
18 what you're asking Mr. Sheesley to do for the benefit of this  
19 Board and the rest of them as far as going through this  
20 extensive mathematical and articulating the process to this  
21 degree. Can we kind of get it so that it's understandable for  
22 us lay people that are not engineers such as one of my  
23 colleagues here and we can adjust this or percolate this in our  
24 minds so we can make a decision?

25          ROBERT SHEESLEY: Percolate?

1           ROBERT SHARPS: Pun intended.

2           ROBERT SHEESLEY: My purpose was to express the  
3           extensiveness of the study.

4           ROBERT SHARPS: I think you've addressed that quite  
5           accurately.

6           ROBERT SHEESLEY: At this point what we have done already  
7           from the soil evaluation standpoint gives me sufficient  
8           information to believe that we'll probably be very close to the  
9           proposed density on the site. It has significantly good soils  
10          to support that.

11          HOWARD ALDERMAN: But Mr. Sheesley going back to your  
12          previous testimony earlier this evening the second page of  
13          protestant's exhibit four which is a letter from Howard County  
14          Health Department to Mr. Hickmat on the well and septic program  
15          where they indicate that further review is contingent upon  
16          submission by a registered engineer or surveyor for percolation  
17          certification plan showing the following. And they have nine  
18          numerated items. That's what you indicated that is one of the  
19          next steps that will have to be done and that is the normal  
20          course of approval. Is that correct?

21          ROBERT SHEESLEY: Yes. That would be the next step.

22          HOWARD ALDERMAN: Alright. Mr. Sheesley has a water  
23          appropriation permit been submitted to the Maryland Department  
24          of the Environment for this proposed project?

25          ROBERT SHEESLEY: Not yet.

1           HOWARD ALDERMAN:  And when that submission is made does  
2 that go to the County Health Department or to the Maryland  
3 Department of the Environment?

4           ROBERT SHEESLEY:  It will go to the Maryland Department of  
5 the Environment for evaluation.

6           HOWARD ALDERMAN:  And does the County Health Officer have  
7 any role, review or approval of the water appropriation permit?

8           ROBERT SHEESLEY:  Only if it's in compliance with the  
9 master water source plan for Howard County.

10          HOWARD ALDERMAN:  So the County Health Officer certifies it  
11 being in compliance or not with respect to water designation in  
12 the Master Plan.  Is that correct?

13          ROBERT SHEESLEY:  That's correct.

14          HOWARD ALDERMAN:  Now, Mr. Sheesely you've talked about  
15 your extensive experience and there are some issues that came up  
16 relevant to lot sizes last time by the protestants.  Are you  
17 familiar with the County's policy and legislative change to move  
18 away from the minimum three acre lot size in this area of the  
19 County?

20          ROBERT SHEESLEY:  Yes.

21          HOWARD ALDERMAN:  What is your understanding of that policy  
22 and how does it apply if at all to the proposal under review by  
23 this Board?

24          ROBERT SHEESLEY:  Well the standard in the past was  
25 basically having three acre lots or larger.  I refer to it

1 usually as a three to twelve acre lot syndrome throughout all of  
2 the metropolitan counties in the area. And it was with the idea  
3 that you would have larger lots for, not only septic system  
4 issues, water supply and so on. But the problem is that there  
5 have been so many competing interests with respect to land use  
6 in populated areas that generally the planning and  
7 administrative groups in the government are trying to balance  
8 out all of those competing interests for agricultural land to  
9 protect sprawl into agricultural areas, the problems associated  
10 with creating open space and having sufficient open space under  
11 that regulation as well as preservation parcels and other types  
12 of formulas for how a development comes to fruition and what are  
13 parts of it. And in attempting to try and protect or at least  
14 embrace agriculture in local jurisdictions and protect those  
15 areas, the only way that they can really do it is to try and get  
16 a balance between density and protecting all the rest of the  
17 land. And you can't do that with three to twelve or fifteen  
18 acre lots like they did in the past and clustering has become a  
19 major concept in that it allows you to develop on less land that  
20 still meets standards for septic and wells and other things, but  
21 then take the rest of the parcel and use it as agricultural  
22 preservation, easements for environmental purposes, preservation  
23 or open space. And that concept tries to embrace the idea that  
24 there are competing interests for land use that could not be  
25 satisfied by the past zoning practices. And it's practice in

1 this County and some other counties have chosen to stay a  
2 little bit different but zoning has changed from that concept in  
3 most of the metropolitan counties.

4 HOWARD ALDERMAN: Thank you Mr. Sheesley.

5 ROBERT SHARPS: Opposing counsel?

6 REBECCA YOSHITANI: Mr. Sheesley are you a registered  
7 engineer?

8 ROBERT SHEESLEY: No.

9 REBECCA YOSHITANI: You mentioned that you have done  
10 extensive testing, correct?

11 ROBERT SHEESLEY: On this site?

12 REBECCA YOSHITANI: Yes.

13 ROBERT SHEESLEY: Yes.

14 REBECCA YOSHITANI: Have you obtained any local land use  
15 zoning approval to check for consistency with the County Water  
16 and Sewer Plan?

17 ROBERT SHEESLEY: Yes.

18 REBECCA YOSHITANI: You have? Okay. You mentioned that  
19 you just started the well testing, correct? Is that what I  
20 understood you to say?

21 ROBERT SHEESLEY: No. I said that we're in the sixth or  
22 seventh month of evaluating the water table.

23 REBECCA YOSHITANI: Okay. So do you have any idea right  
24 now what the water table is at?

25 ROBERT SHEESLEY: Generally consistent with this type of

1 geological formation which is between twenty two and thirty two  
2 feet below surface.

3 REBECCA YOSHITANI: Okay. And you said that the soil is  
4 doing very well in your opinion?

5 ROBERT SHEESLEY: That's correct.

6 REBECCA YOSHITANI: So would there be concerns with the  
7 septic and the water levels being close to each other?

8 ROBERT SHEESLEY: I didn't say they were close to each  
9 other.

10 REBECCA YOSHITANI: Well you said you tested down to  
11 sixteen feet and you had very good range at that point.

12 ROBERT SHEESLEY: No. Well yes, we would have but the  
13 tests that were done were percolation for infiltration and were  
14 done at basically three to five feet. So the septic system that  
15 we're talking about, the sewage treatment system would be placed  
16 in the soil profile at three to five feet below the surface.

17 REBECCA YOSHITANI: I thought you said you dug holes  
18 thirteen to fifteen feet down.

19 ROBERT SHEESLEY: I did.

20 REBECCA YOSHITANI: Okay and what did you do at the  
21 thirteen to fifteen foot level?

22 ROBERT SHEESLEY: Well you observe the entire soil profile  
23 and your purpose for digging as deep as you can is to see if you  
24 have loch or groundwater in that profile as deep as you can go.

25 REBECCA YOSHITANI: Okay and the drainage is still very

1 good at thirteen to fifteen feet?

2 ROBERT SHEESLEY: The soils were good.

3 REBECCA YOSHITANI: The soils were good. Okay so now is  
4 there anything you've gotten at this point then that you can  
5 definitively say that this area is no worse than other parts of  
6 the County in terms of what's going on between the water level  
7 and the proposed septic system?

8 ROBERT SHEESLEY: Oh, absolutely. The soil profiles and  
9 the work that we did initially shows it's an excellent site as  
10 opposed to problematic sites elsewhere in the County.

11 REBECCA YOSHITANI: From the soil standpoint. But you said  
12 you don't have the completed water level yet, complete studies  
13 on the water table, correct?

14 ROBERT SHEESLEY: Well I don't have it relative to putting  
15 a sewage disposal system in that will be of the type that this  
16 is.

17 REBECCA YOSHITANI: So you don't have complete numbers yet  
18 to be able to compare.

19 ROBERT SHEESLEY: I don't have a complete study that will  
20 allow me to get a groundwater appropriation permit.

21 REBECCA YOSHITANI: Or a complete study that will really  
22 allow you to compare yet?

23 ROBERT SHEESLEY: No. I can compare it to other projects  
24 in the same region.

25 REBECCA YOSHITANI: Okay.

1           ROBERT SHEESLEY: Soil is soil

2           REBECCA YOSHITANI: Right but you said you don't have the  
3 water level done yet. Isn't that a piece of what you need to  
4 know?

5           ROBERT SHEESLEY: The extent of what we will find during  
6 the years period is whether the water table fluctuates three to  
7 five feet usually in this zone. And that's important because we  
8 want to be as specific as we can. Not that it's going to  
9 fluctuate between fifteen and twenty feet. It doesn't happen.

10          REBECCA YOSHITANI: Okay. Now you mentioned that the  
11 property is flat?

12          ROBERT SHEESLEY: I said the area where we did the  
13 evaluation of the sewage disposal is generally flat except on  
14 the side slopes. But the majority of the four and a half to  
15 five acres is fairly flat.

16          REBECCA YOSHITANI: So what would be the potential impact  
17 of the swales that are also on this property?

18          ROBERT SHEESLEY: We are not located in any of the swales.

19          REBECCA YOSHITANI: Would you have any drainage into the  
20 swales?

21          ROBERT SHEESLEY: No. The design would preclude any  
22 location of any of the trenches or any of the sewage disposal  
23 system in or adjacent to swales.

24          REBECCA YOSHITANI: Well would it have any general effect  
25 on the water table level?

1           ROBERT SHEESLEY: What?

2           REBECCA YOSHITANI: The actually effluent coming out of  
3 your...

4           ROBERT SHEESLEY: No because we won't be allowed to have  
5 that impact based on the permit.

6           REBECCA YOSHITANI: Well what are you doing with the water  
7 that comes out of it?

8           ROBERT SHEESLEY: The effluent from the sewage?

9           REBECCA YOSHITANI: Yea.

10          ROBERT SHEESLEY: It will be filtered through the soil  
11 profile.

12          REBECCA YOSHITANI: Okay so it does go into the soil.

13          ROBERT SHEESLEY: It goes in the soil.

14          REBECCA YOSHITANI: Okay.

15          ROBERT SHEESLEY: But before it does it will be treated.  
16 It will not be like standard sewage effluent.

17          REBECCA YOSHITANI: No I understand. I was looking more to  
18 the water table level though, the amount of water you're putting  
19 back into the ground not the contaminants.

20          ROBERT SHEESLEY: Yes. It will be recharged and accounted  
21 for as recharged eventually over time.

22          REBECCA YOSHITANI: Okay. So has any data yet been  
23 provided to the Howard County Health Department for review?

24          ROBERT SHEESLEY: No. We're not finished the report yet  
25 and the analysis.

1 REBECCA YOSHITANI: Okay. Now you mentioned that you did  
2 get the permit or the request, the Maryland Department of  
3 Environment request?

4 ROBERT SHEESLEY: We have submitted the application for the  
5 water appropriation permit to them.

6 REBECCA YOSHITANI: Okay. Have they contacted your office  
7 requesting any additional information?

8 ROBERT SHEESLEY: Nothing more than sending us a standard  
9 package of the study that we have to do in order to obtain the  
10 permit which is another extensive study of the groundwater  
11 system.

12 REBECCA YOSHITANI: Okay. So you haven't provided them any  
13 information.

14 ROBERT SHEESLEY: That will be forthcoming to do that  
15 study.

16 REBECCA YOSHITANI: Have you looked at all at any of the  
17 other effects in the neighborhood like the other wells?

18 ROBERT SHEESLEY: That will be part of the study. We've  
19 already done some cursory evaluation of groundwater recharge and  
20 a water balance as part of our investigation. So we've done  
21 probably about a third of the work.

22 REBECCA YOSHITANI: So in terms of, if I understand right  
23 you're still pretty much in the early stages in terms of the  
24 actual well. You've looked into the septic situation.

25 ROBERT SHEESLEY: We only have really one part left of any

1 significance for study of the water supply issue and that is the  
2 seventy two hour pump test which is required which will include  
3 placing a well after we do a study of where to place those wells  
4 strategically to determine whether or not they will have an  
5 impact with the surrounding community and on site. And that  
6 will be done strategically in conjunction with the Department of  
7 the Environment.

8 REBECCA YOSHITANI: So you haven't done anything yet that  
9 could then compare how the site in terms of the well impact  
10 compared to other potential sites in the County.

11 ROBERT SHEESLEY: Within the County or as it relates...

12 REBECCA YOSHITANI: I'm sorry not within the County, within  
13 the Rural Residential. Within the applicable zone.

14 ROBERT SHEESLEY: We haven't completed the pump test that's  
15 going to demonstrate whether or not there's going to be an  
16 impact to the community.

17 REBECCA YOSHITANI: Okay.

18 ROBERT SHEESLEY: That's what we haven't done yet. We have  
19 done everything else we're required to do.

20 REBECCA YOSHITANI: No further questions.

21 ROBERT SHARPS: Does the Board have any questions? Mr.  
22 Pfefferkorn?

23 J.P.: Good evening Mr. Sheesley. Now if any part of this  
24 permit process fails what would you have to do? Find a solution  
25 or what?

1           ROBERT SHEESLEY: No. These projects in this particular  
2 format usually either lose density, they can't gain density  
3 obviously. So they either lose density or they pretty much  
4 succeed as they're proposed. So what happens is as you do the  
5 evaluation you either whittle away at it because you lose  
6 certain area that can't be used for sewage disposal therefore  
7 you lose a certain amount of density. With respect to the water  
8 supply, you usually get pretty good water supplies under present  
9 day standards in the Piedmont Plateau areas. This particular  
10 area is not a critical yield area. Usually when you have a  
11 problem with wells drying up in this type of area in Howard  
12 County or Baltimore County, Carroll etcetera, it's because of  
13 older wells that have not been drilled or developed by present  
14 day standards under the water well construction program. So  
15 you'll usually lose a little bit or it will stay the same based  
16 on my experience.

17           J.P.: Thank you.

18           AL HAYES: I have one question. Your test protocol  
19 requires that you conduct the study over what I think you  
20 indicated as typical seasonal period. How does the regulation  
21 define a wet period in inches of rain or some such definition?

22           ROBERT SHEESLEY: Throughout the state, each county but  
23 throughout the state there are water wells that are drilled for  
24 monitoring by the, not only the county, the state but the U.S.  
25 Geological Survey, Maryland Geological Survey to evaluate

1 groundwater fluctuations and the groundwater resources  
2 throughout the state. There is a period starting anywhere  
3 between November to January that the counties who are  
4 responsible for approving water supplies will evaluate those  
5 wells to determine if there is activities fluctuations and that  
6 the water table is rising as a result of wet weather conditions.  
7 And over forty, fifty years of analysis they pretty well know  
8 the period that it's going to happen and it's based in rainfall,  
9 infiltration and so on. But it's also the physical monitoring  
10 of water wells strategically located in jurisdictions. If there  
11 isn't any activity and they are in a condition of a drought or  
12 drier weather conditions they won't have a wet weather season  
13 and they will not do testing related to that so you would have  
14 to wait another year or until such time as conditions exist that  
15 conditions are wet. So they won't do it unless they see that it  
16 is wet conditions.

17 AL HAYES: So your study then would be delayed in some form  
18 or fashion if you did not, if there was a season where there  
19 wasn't sufficient precipitation?

20 ROBERT SHEESLEY: Oh absolutely. I have to demonstrate  
21 through this analysis, more so that you do on individual lots,  
22 that we don't have influence with groundwater symptoms.

23 AL HAYES: Okay. That's fine.

24 ROBERT SHARPS: Just a follow on to that question from Mr.  
25 Hayes. Did you find that this year you fell under those

1 conditions where we did not have a rainy season or wet season  
2 where it would influence the water table?

3 ROBERT SHEESLEY: Well actually in the last, this last  
4 part, the beginning of the year from January on, we had a wet  
5 season. But then they cut it short and in many of the counties  
6 they stopped at the end of April, beginning of May as opposed to  
7 going all the way through the month of May. So Cecil County,  
8 Howard County, numerous other counties in their monitoring  
9 stopped the testing early this passed year.

10 ROBERT SHARPS: And the reason again?

11 ROBERT SHEESLEY: Because the water levels were dropping,  
12 not rising.

13 ROBERT SHARPS: Because of the somewhat of a drought? I  
14 know my grass was brown because they don't even let me put a  
15 pitcher of water on it.

16 ROBERT SHEESLEY: Well they actually stopped the testing  
17 for any evaluations that required a wet weather season earlier  
18 than the drought that we had this summer because it was being  
19 demonstrated by evaluation that we were already in a condition  
20 where water levels were not high enough.

21 ROBERT SHARPS: Thank you.

22 PAT PATTERSON: Good evening Mr. Sheesely. It's probably a  
23 two part question here. Have you ever had a system that within  
24 a short period of time, one, two three years, go bad?

25 ROBERT SHEESLEY: May I ask what kind of system you're

1 thinking about?

2 PAT PATTERSON: Of a large nature, say, thirty or fifty  
3 units, something of this nature.

4 ROBERT SHEESLEY: I've had systems that took longer to get  
5 operational than you expect. And I can't say it went bad I can  
6 just say it never got to the point where it was acceptable. But  
7 eventually working with the vendors and various other people who  
8 provide the infrastructure you work it out and then it becomes  
9 permittable and you can move forward.

10 PAT PATTERSON: I guess my concern is with the property  
11 owners. Are they responsible for this at any particular time  
12 once they move into the area? I would assume the association or  
13 whatever.

14 ROBERT SHEESLEY: In this type of format?

15 PAT PATTERSON: In this type of format.

16 ROBERT SHEESLEY: Well actually yes. First of all the  
17 property, using the condominium concept, if you're using a  
18 sewage disposal system like the type we would be talking about  
19 here and a treatment system that goes with it, the ownership  
20 cannot turn over, the developer cannot turn over that project  
21 until it's operational and working properly and has the  
22 responsibility to foot the bill for that during that period. If  
23 it extends passed people moving in, they may be required to do  
24 things that cost them a lot of money. Only when the system is  
25 working according to permit standards can they turn it over.

1 And then once it's turned over to the condominium, the  
2 condominium requirements include how that system is going to be  
3 operated and maintained. And state condominium law is specific  
4 in the language that the systems have to be operated and  
5 maintained as part of the condominium, that it has to be funded  
6 adequately to make sure that it continually is maintained. And  
7 there has to be a financial plan established, not only through  
8 the condominium process but through the state construction  
9 permit program which is the final permit that you get to  
10 construct the system. There has to be a financial plan  
11 demonstrating the viability of the entity to be able to sustain  
12 it and to be able to pay for it on a yearly and longer basis.  
13 So there has to be sufficient funds allotted to it.

14 PAT PATTERSON: So the association would have help either  
15 from the state or local to make sure that these systems are up  
16 and operating the way they should be?

17 ROBERT SHEESLEY: I wouldn't call it help. I would call it  
18 a regulatory action.

19 PAT PATTERSON: A regulatory action.

20 ROBERT SHEESLEY: Yes.

21 PAT PATTERSON: Okay. Thank you. No further questions.

22 ROBERT SHARPS: Any other questions from the Board? Thank  
23 you Mr. Sheesley.

24 HOWARD ALDERMAN: At this point Mr. Chairman and members of  
25 the Board Mr. Robert Williams, thus the name of the property,

1 who was here the first night and who did sign in but was absent  
2 due to illness, would like to address the Board.

3 ROBERT SHARPS: Okay. I don't believe we ever swore you in  
4 Mr. Williams.

5 ROBERT WILLIAMS: I have not.

6 ROBERT SHARPS: You can sit down to do that. Do you  
7 promise to give testimony to this Board that is truthful?

8 ROBERT WILLIAMS: I do.

9 ROBERT SHARPS: State your name and address for the record  
10 please.

11 ROBERT WILLIAMS: Robert B. Williams, 13112 Greenberry  
12 Lane, Clarksville, Maryland.

13 ROBERT SHARPS: Your witness.

14 HOWARD ALDERMAN: Mr. Williams do you have a financial  
15 interest in the property which is proposed for development with  
16 the conditional use?

17 ROBERT WILLIAMS: Yes. The property is, I own an undivided  
18 one-half interest in the property. My deceased sister, Kendall  
19 Slaig's children seated behind me, own another one-half interest  
20 in the property. This property was inherited from my father who  
21 died in 1983 and my mother who died in 1996. We have owned it  
22 together for the past ten years.

23 HOWARD ALDERMAN: And with respect to the balance of your  
24 family Mr. Williams, if you could briefly describe for the Board  
25 your family background and relationship to the area proposed for

1 development?

2 ROBERT WILLIAMS: This one hundred acre, essentially one  
3 hundred and twenty two acres was a land grant called Toddy.  
4 That land grant came into my family in 1833 when Greenberry  
5 Gaither, my great-great-great grandfather purchased Toddy.  
6 Before he owned the remaining one hundred and six acres which is  
7 not part of this, which is on the other side of this farm, this  
8 farm came in two parcels, he acquired that in 1833, Greenberry  
9 Gaither built the home that I live in and enlarged it in 1833.  
10 My father purchased this farm from Will Talbot, Mr. Pfefferkorn  
11 may remember Will Talbot or Mr. Hill, they are probably the only  
12 ones in the room who have every heard of Will Talbot, who owned  
13 approximately a thousand acres. All the of the land that almost  
14 everyone in the room lives on was owned by Will Talbot at this  
15 point, except for the Hill farm. And he was my great-great-  
16 great grandfather. The house that I live in was built by him  
17 for his family and again my father purchased it in 1953. I have  
18 lived there essentially since the 1950s and have enjoyed Howard  
19 County, have seen Howard County in the 50s, 60s, 70s, 80s and  
20 today. I walked behind Mr. Hill's horses. He had horses in  
21 Twelve Hills and she would pick up rocks and I would walk behind  
22 and he would signal the horses by verbal command. It was  
23 something that I'll never forget. I've seen the whole area  
24 farmed and I've seen it also develop. Not that it was anything  
25 that I wanted at the time but that was Mr. Hill's right. Hill

1 first developed in five acre lots which was the law basically at  
2 the time of the development. Later he developed into three acre  
3 lots which was the maximum amount of acreage when he did that  
4 and then he did Twelve Hills development. The farm is two  
5 hundred and six acres. This is the fifty acres that sits on the  
6 end of it. The rest of the farm, there's absolutely no  
7 intention for further development. There's some community  
8 involvement on that. There is absolutely no plans during my  
9 lifetime for any other development. I cannot really speak for  
10 my grandchildren and great grandchildren or the like. But as I  
11 see it there's a large amount of preserved land in the back of  
12 this farm. There will be land that's preserved. The Stokes  
13 land was preserved. The Slade land is supposed to be preserved.  
14 This would probably be there major development that would be  
15 there if I had any say. I may not have a say. I have seen  
16 Route 32. My father sold land to the state. Route 32 has never  
17 had an entrance that was acceptable. Today's entrance is far  
18 superior than it was when you had to take the loop around. Mr.  
19 Hill remembers but probably few in the County realize that the  
20 road up at the stop sign at Linden Church Road was 32. It's  
21 better than it's ever been at this point. Route 32 is in  
22 failure but there's nothing we can do about that. I think with  
23 the traffic light in place now it's a far safer entrance onto 32  
24 than it's ever been, far ever been. There were far more  
25 fatalities on 32 under the old road alignment than it is in it's

1 present state at our intersection. Route 32 is a dangerous  
2 road.

3 HOWARD ALDERMAN: Thank you Mr. Williams.

4 MARC JORDAN: I just have a couple of questions if it's  
5 okay. It's been a long night.

6 ROBERT SHARPS: He just gave us a history. I'm curious as  
7 to your questions. Go ahead.

8 MARC JORDAN: Mr. Williams yeah I think everyone lives off  
9 Route 32 and I guess everybody thinks it's dangerous. I think  
10 you said it's a failure. How many fatalities have been out  
11 there in the past couple of years that you're aware of?

12 ROBERT WILLIAMS: I know of no fatalities at our  
13 intersection.

14 MARC JORDAN: What about that strip of 32...

15 ROBERT WILLIAMS: I know, I've seen, the fatalities on  
16 Route 32 that I've seen seem to be right in the middle of open  
17 space. 32 is a limited access road and fatalities, one guy  
18 coming out of Clarksville came out to look at traffic and  
19 there's a head on. That was close to Clarksville. I know of no  
20 fatalities that are at our intersection. In fact when the  
21 traffic is really flowing it's almost rather safe because it  
22 only goes about twenty miles an hour. The road is in, and it's  
23 all the State of Maryland's fault. They built Route 32. They  
24 purchased dual lane access in 1959, 1960. They never built it.  
25 And it's been a failure almost, not since it was built. There

1 was a time when Route 32 was nice. There was also a time when  
2 it dead ended in Clarksville and was a huge mess. You had to  
3 take a right on 108 or a left. That was not acceptable either.  
4 The road has always been low on our state's totem though it was  
5 federal but it changed. It was a ninety percent federally  
6 funded road.

7       MARC JORDAN: How would you compare Route 32 with, which is  
8 a failure, how would you compare with other roads in the  
9 district like Route 94?

10       ROBERT WILLIAMS: I would compare it to 29 which is  
11 probably in the same boat.

12       MARC JORDAN: What about...

13       ROBERT WILLIAMS: I don't think 94 is, Route 32 is truly a  
14 state road. It services Carroll County, Frederick County,  
15 people going up to Pennsylvania. It's not a Howard County road.  
16 It's truly a road that services the state and they've failed us  
17 in not making that road adequate. And certainly the  
18 intersection. That intersection, is, that's the craziest  
19 intersection anyone could ever, the state designed it.

20       MARC JORDAN: Do you want to sit on our side of the table?

21       ROBERT WILLIAMS: It would probably have been better if  
22 Twelve Hills didn't exist. I mean if you didn't have any  
23 traffic over there. Maybe we should have had, it's all a matter  
24 of degree. I think that though with the light, it's safe. I  
25 know of no fatalities at that intersection.

1           ROBERT SHARPS: Excuse me gentlemen but with all due  
2 respect Mr. Williams's assessment, evaluation of Route 32 and  
3 it's condition really does not play much into the evaluation  
4 that this Board has to do. I respect your opinion and the time  
5 that you've been in that area but if we could kind of get passed  
6 that.

7           MARC JORDAN: Oh that's all I was going to ask.

8           ROBERT WILLIAMS: And I think the fifty additional houses  
9 on that road is like a pea under a, it's just absolutely nothing  
10 to compare it to the flow of that road. That road is very,  
11 very, very busy. And it's going to get worse. It's not getting  
12 better.

13          MARC JORDAN: I agree with you.

14          ROBERT WILLIAMS: The only thing that's good is that the  
15 state has finally approved the interchange at Burntwoods which  
16 means that they will improve it. The interchange at Linden  
17 Church Road has been designed. It will be built in my humble  
18 opinion. It's just a matter of time.

19          ROBERT SHARPS: Thank you for your comments Mr. Williams  
20 and I'm sure you two can sidebar this later on if you want to.  
21 I certainly would. I mean anyone who's been in this area for  
22 fifty years certainly has history to go along with it. Any  
23 other questions? Board? Mr. Simpkins?

24          MAURICE SIMPKINS: When you talk about preservation are you  
25 talking about the land being in the ag preservation program or

1 is it just preservation that you personally are doing?

2 ROBERT WILLIAMS: Part of the Talbot property, my father  
3 was offered to buy four hundred and fifty acres. He elected to  
4 buy two hundred. Tom Robey purchased the remainder which is  
5 called Way Back Farm. That farm is now in preservation which is  
6 the rear portion of our farm so to speak. The property owned by  
7 Stukes, twenty acres, is in DEO preservation. He sold the DEO  
8 rights off of twenty acres so that's now in preservation which  
9 is well over a hundred acres. My brother-in-law Will Slade has  
10 confided in me that he intends to, was going to sell  
11 agricultural rights but has determined that maybe the DEO  
12 project, he makes more money. But that is also preservation.  
13 He wants to preserve his acres.

14 MAURICE SIMPKINS: My question though was is the balance of  
15 your property, are you putting that in the agricultural  
16 preservation?

17 MARC JORDAN: I would never put it in agricultural  
18 preservation. I would put it, I would certainly consider  
19 selling to DEO though. The County doesn't pay enough money.

20 ROBERT SHARPS: Thank you Mr. Williams. Mr. Hill I've  
21 allowed everybody else. Why not? As long as it's succinct.

22 HUGH HILL: What were the name of those horses?

23 ROBERT SHARPS: If it adds value to this Board certainly.

24 HUGH HILL: *No microphone - inaudible*

25 ROBERT WILLIAMS: I'm saying it's safer now than it was

1 when it was first constructed though it did have far less  
2 traffic. But remember people would come down there about a  
3 hundred miles an hour and hit the turn. There were fatalities  
4 at that point.

5 HUGH HILL: *Inaudible*

6 ROBERT WILLIAMS: You've lived there longer than I have.

7 ROBERT SHARPS: Okay. Gentlemen. That's why I was  
8 reluctant to do this. But I'll tell you what you two can  
9 sidebar this later.

10 HUGH HILL: It's more dangerous now than it's ever been.

11 ROBERT WILLIAMS: I've lived there as long as he has under  
12 the present Route 32. He lived there when it was the old 32  
13 which is now Ten Oaks Road.

14 ROBERT SHARPS: And I'm sure we'll use this in our  
15 evaluation sir but like I said, please at this point you two  
16 guys need to sidebar this.

17 ROBERT WILLIAMS: I was glad that the traffic light, it was  
18 the only thing that I thought was necessary there.

19 ROBERT SHARPS: Thank you Mr. Williams.

20 HOWARD ALDERMAN: Thank you Mr. Williams. Mr. Chairman,  
21 members of the Board that concludes the petitioner's rebuttal  
22 case.

23 ROBERT SHARPS: Okay. At this point of the hearing now  
24 I'll make a command decision. Normally I would ask for your  
25 final remarks and I'll give the same on this side. I have a

1 little concern here because we have a representation and what I  
2 would like to do is this, at this late hour I'm not going to  
3 expect you to be prepared for your final summation.

4 HOWARD ALDERMAN: We are.

5 ROBERT SHARPS: You are?

6 HOWARD ALDERMAN: Yes sir.

7 ROBERT SHARPS: And you are also?

8 MARC JORDAN: There was a lot of testimony tonight. We  
9 would appreciate the chance to...

10 ROBERT SHARPS: I'm not going to give you a lot of chance  
11 but I do want to do this for the benefit of this Board too. We  
12 have to deliberate. Why give us that and then have us wait to  
13 deliberate because after talking to the Board members one of the  
14 things that we want to do because of the amount of testimony  
15 over a period of time, not just tonight, that was presented, I  
16 think with all due respect to the number of people that I see  
17 came out here over that period of time, I think they deserve the  
18 total deliberative process that this Board offer it in making  
19 our decision. So with that I would like to ask that you give us  
20 no more than a ten page summation by next Friday, close of  
21 business. Now if you don't, that's fine. But what it will do  
22 for us, and I know you can articulate that very well by putting  
23 succinctly those salient issues that are focused on this  
24 particular petition to give us an opportunity to look at and  
25 then I'll give you an opportunity on the 11<sup>th</sup> of October to give

1 a fifteen minute oral summation and then the Board will  
2 deliberate at that time. Is that agreeable?

3 MARC JORDAN: I think that sounds very good. Thank you.

4 ROBERT SHARPS: Mr. Alderman? I see you shaking your head.  
5 I'm not going to have too much leeway in the calendar because, I  
6 mean, if you looked at our schedule lately the only reason that  
7 date came up is because I had a postponement and I had to move  
8 one. 11<sup>th</sup> of October and let me make sure because I know Ms.  
9 Regner will be calling me in the morning saying that's not the  
10 date I gave you. But that is the date and it will be at 6:00pm  
11 and we think we can get this room. That's a Wednesday. Well  
12 Tuesdays and Thursdays, I can't deal with those days any more  
13 because, and what I try to do is give a date that most people  
14 can deal with. 11<sup>th</sup> of October. A ten page summation to the  
15 Office of Robin Regner, Board of Appeals office by close of  
16 business next Friday, the 29<sup>th</sup>. Original and five copies, yes.  
17 And that way it will give us an opportunity, at least a week  
18 before, and then I'll give both sides fifteen minutes and I  
19 don't think you'll need more than that. I'm not so much a  
20 stickler for time as I am for substance.

21 MARC JORDAN: What time is that going to be?

22 ROBERT SHARPS: Six p.m. on the 11<sup>th</sup> of October. And for  
23 opponents you guys are going to have to get together. Shake  
24 hands, kiss, make up, whatever but I want one person. I'm not  
25 going to have, because you should be able to give it for the

1 entire.

2 MARC JORDAN: Yeah definitely one person.

3 ROBERT SHARPS: So one of you just decide who's going to do  
4 it and give the fifteen minutes of closing arguments if you will  
5 and we'll go ahead and deliberate after that.

6 HOWARD ALDERMAN: May I ask one clarification?

7 ROBERT SHARPS: Yes.

8 HOWARD ALDERMAN: The ten page submission on the 29<sup>th</sup>, do  
9 you want this in the form of a legal memorandum or is this a  
10 summary of testimony?

11 ROBERT SHARPS: Normally the legal memorandum because then  
12 I know you're going to use the space and the point size that is  
13 required and you're not going to give me eight point half spaces  
14 and ten pages. And what I'm looking for basically is those  
15 salient issues that were brought up during the testimony that we  
16 need, that you feel the Board needs to look at on both sides.

17 HOWARD ALDERMAN: I guess I didn't make my point clear. Do  
18 you want it supported with case law is what I'm asking in terms  
19 of the legal memorandum.

20 ROBERT SHARPS: I'll tell you what. If I do that then I  
21 know that you're going to ask for more than ten.

22 HOWARD ALDERMAN: Absolutely not.

23 ROBERT SHARPS: Good. Then give it to me that way.

24 HOWARD ALDERMAN: Okay, fine, you've got it. I just wanted  
25 to make sure what we're all doing.

1           ROBERT SHARPS: Footnotes are fine to but in the format of  
2 a legal memorandum. Any other questions? Ladies and gentlemen  
3 thank you very much. This Board is adjourned.

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1 Howard County Personnel Board

2 October 11, 2006

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4 ROBERT SHARPS: The Board of Appeal is in session for the  
5 continuation of BA05-046C, Robert B. Williams et al. Ladies and  
6 gentlemen at today's hearing before we conclude the hearing at  
7 the last, before we adjourned we asked that each member give a  
8 ten page written summation. I want to compliment both gentlemen  
9 that submitted that. They were very well written and  
10 articulated. That gave us a little bit of information that we  
11 don't have to delve through the, obviously the days that we had  
12 to attend the hearings and of course received the testimony and  
13 such. So today what I'd like to do as we expressed at the last  
14 hearing is to give each of you fifteen minutes to, you can  
15 articulate further if you'd like, highlight what you gave us in  
16 the ten pages. We all have a reading level above the sixth  
17 grade so I think we all sort of got at least the gist of what  
18 you put into that and of course all the information that we've  
19 gathered over the period of this case. So if you would I'd like  
20 you to stick to the fifteen minutes. If you feel that there's  
21 something that we need to know that's not in there, fine.  
22 Address that at that particular time. After that I will close  
23 this case and I will ask that that Board deliberate this  
24 evening. So if there's no other questions with that we will  
25 start with the petitioner's side. Mr. Alderman I'll give you

1 your fifteen minutes and then after you Mr. Garcia I understand  
2 you're going to be doing the oral summation for the protestants.

3 RUY GARCIA: Yes.

4 ROBERT SHARPS: And we'll do it at that time. Mr. Alderman  
5 your floor.

6 HOWARD ALDERMAN: Thank you Mr. Chairman, members of the  
7 Board. Good evening. I can't let this go; I have to raise one  
8 issue right up front. There is a technical violation of the  
9 Board's rules that has occurred. That would be rule 2.204.i.  
10 That rule requires that any and all submissions to the Board  
11 filed by any party also be filed and certified that they're  
12 filed on the opposing side. In fact I sent mine by certified  
13 mail. Opposing counsel never sent me their memo until Mr.  
14 Jordan faxed it to me fifty three hours ago. I would note that  
15 Mr. Sanders called me yesterday and Ms. Regner called me today  
16 all to make sure that we have it. I note the mere technical  
17 violation for the record. I'm moving on. Good evening. Thank  
18 you to the members of the Board and truthfully to all who  
19 participated. It's been interesting. It's been a very lively  
20 discussion and it's certainly better than those mundane ones  
21 where we all go to sleep. My clients are seeking approval of a  
22 conditional use. This is a de novo hearing. What happened  
23 below is not evidence in and it's not admissible in this  
24 proceeding. It never happened for purposes of these  
25 proceedings. De novo means we start all over. This is not

1 about the process of development approval. That process has  
2 been established by the County Council and by the Executive  
3 Branch of Howard County. As many of you know conditional is  
4 part of the County's overall comprehensive zoning plan. The  
5 County's General Plan, which was adopted years and years ago,  
6 contains mere recommendations. Some of those recommendations  
7 have been acted on and others have not. The County Council has  
8 had an opportunity to accept or reject those recommendations.  
9 They have adopted the law that is presently in place and it  
10 binds the law of this case. In that regard age restricted  
11 housing in the RR zone has been legislatively predetermined to  
12 be compatible, conditionally compatible with the uses permitted  
13 as of right in the RR zone and what are those conditions? Those  
14 conditions are set out, and I'm not going to repeat them. I've  
15 put a chart in our memorandum, pages five and six. Rather than  
16 recite all of them, I mean I've listed them, what the condition  
17 is, what it provided and whether or not that condition is met  
18 and they are all at least met or exceeded. The RR zone has been  
19 placed along the Route 32 corridor by the Howard County Council,  
20 not anything the petitioner's did but as Mr. Hickmat testified  
21 last time, the primary location of the RR zone is along the 32  
22 corridor and also along Route 97. I believe that was  
23 petitioner's exhibit five. Howard County as a matter of policy  
24 has deemed age restricted housing a desirable use and compatible  
25 in the RR zone. Let me highlight some of the specific tests

1 that have been met. The project has to be designed to provide a  
2 transition or adequate buffering near the periphery of the site  
3 either with open space and landscaping or by designing the  
4 buildings near the periphery to be compatible in scale and  
5 character. Both of those conditions have been satisfied. Look  
6 at the extent of buffering and look at the two story homes that  
7 are being proposed. The burden was on the petitioner to  
8 establish how age restriction would be implemented and  
9 maintained over time. Those are also in exhibits two and three  
10 and that will be monitored certainly by Howard County in their  
11 annual enforcement and also part of the condominium  
12 declarations. Again it includes floor plans or materials  
13 demonstrating that the proposed dwellings will be appropriate  
14 for age restricted housing, or age restricted residences. I  
15 believe that's petitioner's four. In terms of not only what's  
16 stated in note seventeen of the plan but also the additional  
17 features. Those are the tests that a specific age restricted  
18 adult housing would satisfy the legislative presumption. The  
19 petitioner doesn't have to show that this is going to be a  
20 benefit to the community. The County Council has already done  
21 that for them by permitting it as a conditional use. Under  
22 Shultz v. Pritz set out in our memo there is no burden to  
23 establish affirmatively of a benefit but the proposed use in  
24 this case does both. It meets the conditions and meets the  
25 goals of the General Plan for senior housing. I would refer you

1 to the technical staff report recommending that subject to those  
2 conditions listed at the end that the approval be granted. And  
3 I've addressed how each of those five conditions have been  
4 either met or will have to be met pursuant to legislative  
5 mandate. The General Plan, again , it's a guide, the appellate  
6 courts have called it an intellectual prophesy of future  
7 development, has recommendations and it says the County needs to  
8 encourage renovation and construction of housing for active  
9 seniors. It needs to, it says in order to supplement housing it  
10 recommends that single story homes be constructed and in fact  
11 single story and double story can be constructed in the RR zone.  
12 Single story homes are not mandated. Size, that's been a big  
13 issue here. In this case, to put a spin on the colloquial  
14 phrase, size doesn't matter. Mr. Hickmat, an advocate for the  
15 petitioner believes, and I believe every advocate that comes in  
16 here believes that because of this upscale age restricted  
17 community it will be most desirable for those folks who want  
18 between four and six thousand square feet. We all like to think  
19 we can get the largest house that we can afford. Whether or not  
20 that is true, that is a market decision that only the market  
21 will determine. The market will determine what those persons  
22 fifty five years of age and older want to build in western  
23 Howard County. It's not the size. What does matter is that no  
24 matter the size of the dwelling it must include those features  
25 designed for an aging population. And I guess I'd be remiss if

1 I didn't say you have to imagine if we came in here and proposed  
2 all single story structures meeting the recommendation of the  
3 master plan we probably would have had an objection that there  
4 are no single story houses in our community. Single story  
5 houses are completely incompatible; they don't meet the standard  
6 of our community. So I think the size and the height and the  
7 story objection are red herrings. The senior housing plan, the  
8 new zoning regulations recognize the lesser impacts of senior  
9 housing on a community. In fact if you look at one of the  
10 recommendations in the senior housing plan it's two dwellings  
11 per acre, not one. In this case when this petition was filed  
12 they were mandated a minimum of fifty acres. That would have  
13 been a hundred units that the petitioner could have put on there  
14 had that been adopted, and it wasn't. We're bound by the law  
15 that was adopted. Traffic. We presented the expert testimony  
16 of Joe Caloggero. This use at this site will not have traffic  
17 impact above and beyond those inherent with such a use if its  
18 located elsewhere in the RR zone especially along the Route 32  
19 corridor. Are there level E and F segments of 32 that are  
20 classified in the General Plan? Yes. What impact is that?  
21 What is a level E and F? Heavy volume, slow traffic. Mr.  
22 Williams took the stand last week to testify that that slow  
23 traffic is actually a benefit to those fifty five years of age  
24 and older in terms of making negotiated turns. Mr. Caloggero's  
25 analysis used the standard, the AASHTO standard that is accepted

1 throughout every part and certainly every legislative, or every  
2 quasi judicial body I've been in front of in Maryland. He  
3 didn't go out and make up his own study. Protestants  
4 interviewed folks who were, who live in the community and may  
5 have been fifty five years of age and older. They're not in an  
6 age restricted community so that's dissimilar. Plus we have no  
7 idea of what may have been represented or how it was represented  
8 to those answering questions or even what the questions were.  
9 It's not a standard. Mr. Callagero used a national standard.  
10 That's why standards are used. Mr. Williams acknowledged that  
11 the traffic makes turning movements easier. I covered that.  
12 Lighting. There was a concern about lighting. At the time some  
13 of these older subdivisions were approved there were no  
14 residential subdivision lighting requirements. Today there are  
15 for safety purposes. Mr. Hickmat testified that this community  
16 will meet the residential lighting requirements of Howard  
17 County. Individual dwelling lights will be restricted and  
18 enforced by the condominium association. Water and sewer  
19 issues. What did the Board hear? Mr. Sheesley testified  
20 excellent soils, excellent soil profiles. The protestants had  
21 no comment on the soils, no widespread septic failures or  
22 required replacements. Septic design. Mr. Sheesley described  
23 in detail the mandatory testing and analysis we have to go  
24 through and a final design will limit the number of dwellings  
25 and the number of bedrooms. Certainly there will not be more

1 than fifty dwellings. The water table will be studied for over  
2 a year. Protestants had fears and allegations that the sewage  
3 systems in this location would have an impact greater than if  
4 located someplace else. Those are easy words to say but there's  
5 been no evidence presented. There's been nothing to back that  
6 up. The water well. Sheesley testified that it's subject to  
7 strict analysis and a seventy two hour continuous pump test as  
8 part of the water appropriation permit. It has to meet current  
9 Maryland Department of the Environment standards. And the  
10 protestants noted that some wells in the community needed to be  
11 replaced during the drought we had several years ago. On cross  
12 examination they didn't know if those wells met the current  
13 updated MDE standards which have a much greater yield  
14 requirement and no mention of if the wells were hand dug or  
15 drilled. Will it work, will the systems work and will they be  
16 maintained? As testified to by Mr. Sheesley the developer will  
17 install and build them but he can't turn it over to the  
18 condominium association until he's established to the  
19 satisfaction of Howard County MDE that they work and that they  
20 are designed properly and there also has to be a posting of  
21 surety to ensure future maintenance and repair. The bottom  
22 line, will there be impacts? Yes. There will be impacts.  
23 Every use has impacts with them. Impacts are inherent and  
24 recognized by the County Council. The question is not if there  
25 will be impacts. The question is will the impact be greater at

1 this location than elsewhere in the RR zone? The petitioner's  
2 experts, Hickmat and Sheesely and Caloggero all testified that  
3 after analyzing the project, after listening to the protestants'  
4 case even on rebuttal, after analyzing the project, the  
5 protestant's case and the neighborhood, the proposed use will  
6 not have any greater impact at this location than elsewhere in  
7 the RR zone. The petitioner has met its burden. They have  
8 presented expert testimony that all conditions have been  
9 satisfied. Is there additional work to be done? Yes. There's  
10 additional analysis to be conducted. Those are issues that  
11 occur later in the development process. The reviewing agencies  
12 at that time have no idea what conditions this Board may put on  
13 a conditional use if any. But that could change the  
14 development. That's why those, that standard process is later  
15 than now. We have to meet the standards set out in 131.1.i.  
16 The petitioner has made its case and we would ask for approval  
17 subject to any conditions the Board feels necessary. Thank you.

18 ROBERT SHARPS: Thank you Mr. Alderman. I'm not going to  
19 entertain cross examination because that's not what this is for.  
20 But I do have a question for you and I did take notes and I'll  
21 take the privilege of asking you this now before I close the  
22 case. I did take note on pages five and six of your written  
23 summation that you did give us an applicable requirement, the  
24 table that you provided us with those applicable requirements  
25 that you felt that the petitioner had satisfied. And I took a

1 special note to your very last one because that was a question I  
2 posed to you and member that testified concerning number five  
3 and recommendations from the technical staff report which said  
4 in it's recommendations that the petitioner provide further  
5 explanation of how you were going to have the five proposed  
6 dwelling units of the same general size indicated in the plan  
7 that will be provided for the moderate income housing units.  
8 And I notice you stated in there that you did meet, you're  
9 saying that for that particular ten percent moderate income  
10 housing unit that the petitioner will execute it as required or,  
11 no you didn't say or you said unless fee in lieu pursuant to  
12 recently enacted legislation. That gives me pause that that's  
13 not kind of the answer that I heard when I asked it during the  
14 testimony, that it was going to be set aside. It appears now  
15 that with recent legislation obviously there is a way of  
16 diminishing or not using that or having that.

17         HOWARD ALDERMAN: That is correct and that is not the  
18 developer's call. That is the call of the Department of Housing  
19 and Community Development in Howard County. In other words they  
20 will determine, and we don't set the price, we don't set the  
21 standard. It is determined by the Housing and Community  
22 Development and we have to execute the covenants that run with  
23 and bind to the land as well as an agreement. Under the new  
24 legislation if they deem that those units would be better or  
25 more effective elsewhere for moderate income they can give us

1 that option. But that is the County's call. I merely put it in  
2 there to recognize the change in legislation. It is not our  
3 call.

4 ROBERT SHARPS: Thank you Mr. Alderman. I know I took  
5 privilege Board members to ask that question. If you do have  
6 any questions now would be the time before we close this case  
7 after I hear Mr. Garcia. Any questions of Mr. Alderman?

8 PAT PATTERSON: Sort of a follow-up on that. The developer  
9 is required and you bear all the costs and so forth of building  
10 five units somewhere else in the County. Is that what you're  
11 saying?

12 HOWARD ALDERMAN: Mr. Patterson whatever Housing and  
13 Community Development says, yes. In other words this is brand  
14 new legislation and I don't even think the regulations have been  
15 adopted yet. Perhaps Mr. Sanders can address that more  
16 completely. But right now let me apply the old law without that  
17 option. Yes, we are responsible for building and offering for  
18 sale five units meeting the income levels and price levels set  
19 forth by the Department of Housing and Community Development and  
20 there are covenants that bind those units. They can't be sold  
21 without the approval of Howard County Housing and Community  
22 Development. They are restricted moderate income families in  
23 perpetuity.

24 ROBERT SHARPS: Mr. Garcia.

25 RUY GARCIA: If you don't mind I'll take a seat over here.

1           ROBERT SHARPS: You can stand or take a seat over there.

2           RUY GARCIA: The protestants would like to thank the Board  
3 of Appeals for your efforts in allowing us to fully explain our  
4 case. We appreciate that you allowed the protestants to have  
5 three spokespeople each taking responsibility for various  
6 aspects of our presentation. While none of the spokespeople  
7 have prior experience before this Board you made sure to guide  
8 us through the process and help us avoid procedural mistakes.  
9 You have been patient with occasional outbursts from protestants  
10 and understanding of the passion engendered by this proposal.  
11 You have checked with us prior to scheduling upcoming meetings  
12 with the Board and provided an opportunity for us to set forth  
13 our concerns in writing. Speaking for all the protestants we  
14 appreciate the fairness and kindness with which we have been  
15 treated. We have no doubt that whatever the outcome this  
16 Board's decision will be fair. Everyone here recognizes that  
17 this is an important process. Both Mr. Ulman and Mr. Merdon  
18 have stated that development is the most important issue in the  
19 County. It is important for us, our children, all the residents  
20 of the County that we get it right. This petition should be  
21 denied. If petitioners want to bring an entirely new plan to  
22 the Department of Planning and Zoning that is well documented  
23 with enough information to properly evaluate whether the two  
24 part test set forth in section 131.b is met, they can do so.  
25 Mr. Sharps, at the beginning of this process the Board stated

1 that it felt the information the petitioner provided seemed less  
2 complete than you were used to seeing. In other words the  
3 petitioner's had not done their homework. Their testimony in  
4 this appeal has confirmed that the petitioner's have not done  
5 their part in providing the Board with enough information to  
6 approve a conditional use. In fact the petitioner did not  
7 provide any additional information in it's originally filed  
8 appeal that was not already in it's rejected application. Time  
9 and care is called for in a project of this magnitude which  
10 involves a development in the tens of millions of dollars, the  
11 property value and safety and availability of drinking water for  
12 a community of over a hundred and forty homes, adding traffic to  
13 one of the most dangerous and congested portions of Route 32,  
14 adding a thirty three percent traffic increase to a very  
15 dangerous non-standard intersection and the health and safety of  
16 downsizing seniors hoping to safely age in place. Clearly  
17 petitioners have not provided enough information for the Board  
18 to feel that it's got it right if it approves this project.  
19 Petitioner's own post hearing memorandum shows how inadequate  
20 their presentation has been. The memorandum notes that the  
21 zoning regulations require conditional use plans to provide  
22 information regarding noise, dust, fumes, odors, lighting,  
23 vibration, non-sewage solid waste hazards or other physical  
24 conditions resulting from the proposal that will adversely  
25 affect vicinal properties. This information has not been

1 provided. Petitioner's position has been, don't worry about it.  
2 Further permits and approval such as the APFO process will take  
3 care of it. But permits and approvals given in the future  
4 cannot help the Board decide today whether the project meets the  
5 conditions for conditional use. Protestants urge the Board to  
6 consider the following five important issues when evaluating the  
7 petitioner's proposal. The petitioner has in some cases failed  
8 to even address the two part test for conditional use set forth  
9 in section 131.b. Petitioner's proposal will be dangerous for  
10 seniors trying to age in place and fails to meet many of the  
11 goals set forth in the Howard County Senior Housing Master Plan.  
12 Petitioners and Mr. Alderman continue to attempt to  
13 mischaracterize protestants' substantial traffic and safety  
14 study, protestants' substantive expert testimony and  
15 protestants' substantive lay testimony directed to factual  
16 elements of vicinal properties such as lighting, experience with  
17 insufficient water supply, the traffic at the sole intersection  
18 for the proposal. Petitioner erroneously attempts to  
19 characterize protestants' substantive relevant testimony as a  
20 mere irrelevancy stemming from unsupported dislike and fear of  
21 the proposal. While petitioners attack protestants' study, the  
22 petitioner has failed to provide any study of their own even  
23 though such an omission was noted with disapproval by Hearing  
24 Examiner Carbo. Protestants have done their best to provide  
25 this Board with credible, factual evidence with which to

1 evaluate this proposal. The same cannot be said for  
2 petitioners. Petitioner is attempting to mischaracterize the RR  
3 zone by setting for the clearly erroneous proposition that the  
4 RR zone essentially follows Route 32 to imply that any potential  
5 location for the proposed development in the rural zone would  
6 require transportation on Route 32. There are many alternate  
7 roads and routes such as 40, 70, 97, 108 that allow ingress and  
8 egress from the rural zone without reliance of Route 32.  
9 Petitioner's argument is a reckless attempt to locate seniors  
10 trying to age in place along one of the most congested portions  
11 of Route 32. Granting petitioner's request for conditional use  
12 requires eviscerating the requirements of section 131.b and  
13 reducing the conditional use test down to section 131.n only.  
14 In other words petitioner and Mr. Alderman in tonight's closing  
15 urges this Board to focus only on petitioner's alleged  
16 compliance with section 131.n to prevent the Board from focusing  
17 on the requirements of section 131.b. Protestants urge the  
18 Board to resist this call to error. The parties agree that the  
19 burden of proof is on the petitioner to establish by a  
20 preponderance of the evidence that it meets the two part  
21 conditional use test. The petitioner has failed to meet its  
22 burden. In the petitioner's post hearing memorandum the  
23 petitioner discusses and presents charts regarding the specific  
24 requirements for approval based on section 131.n.1 while  
25 willfully ignoring the general requirements required for

1 approval based on section 131.b. Failure to meet the  
2 requirements of section 131.b makes it impossible to grant the  
3 conditional use. Petitioners are attempting to force the Board  
4 to rely on the reputation of state and County regulatory bodies  
5 instead of comparing and supplying information to the Board to  
6 evaluate the appropriateness of the requested conditional use.  
7 The petitioner has presented no evidence as to safety effects of  
8 increased traffic and effects of lighting and have presented  
9 limited inconclusive evidence of effects of the proposed sewage  
10 system. While the amount of information provided by petitioners  
11 was scarce some enlightenment was provided by petitioner's  
12 witnesses. That makes it clear that this petition should be  
13 denied. Jakob Hickmat, who testified for the petitioner  
14 admitted based on his professional development experience that  
15 the majority of houses are expected to be between four thousand  
16 and six thousand square feet. Contrary to Mr. Alderman's  
17 assertion tonight such large houses clearly fail to meet the  
18 Howard County Senior Housing Master Plan's goal of affordability  
19 and are unsuitable for the proposed location as noted by Hearing  
20 Examiner Carbo. Petitioner's testified that there are no  
21 transit services available at the proposed location. There will  
22 be no public transportation and seniors to attain needed  
23 services will have to drive on highway like conditions on a 55  
24 mile per hour road with one lane of traffic in each direction  
25 and with no median within opposing lanes. This will make it

1 impossible for seniors to safely age in place. Petitioner's  
2 expert witness Callagero offered the opinion that no traffic  
3 study is necessary at this time. Callagero stated that he had  
4 no evidence that the proposed plan would not adversely impact  
5 safety along Route 32. Petitioner Robert Williams who owns a  
6 one-half interest in the land to be sold for the proposed  
7 development testified that Route 32 is a complete failure with  
8 respect to traffic. Clearly there would be less of a traffic  
9 safety hazard if the proposed senior housing development were  
10 placed in a location in the district that does not require all  
11 transportation to occur along a service level F road.

12 Petitioner Robert Williams stated that the continuous green T  
13 intersection and Route 32 and Linden Church Road was one of the  
14 craziest intersections he's ever seen. Petitioners did not  
15 specify how they would accommodate moderate income residents.  
16 The affordability of homes between four thousand and six  
17 thousand square feet will be exacerbated by the significant  
18 condominium fees necessary for maintaining the development. The  
19 size of the majority of homes combined with the significant  
20 condominium fees makes the development unsuitable for seniors on  
21 a fixed income with increasing medical expenses. Petitioners  
22 have not provided evidence to the Board that the proposed  
23 development will not exacerbate or complicate repairs to the  
24 existing gas pipeline extending between the proposed houses.  
25 Clearly such adverse impacts would be lower if the proposed

1 development were in a location free of major gas pipelines. Not  
2 only did the petitioner fail to provide information to the Board  
3 needed to evaluate the petition but petitioners witnesses  
4 acknowledge the lack of any safety study that could counter the  
5 protestants study demonstrating the disproportionate safety  
6 hazards that would be created by placing the proposed  
7 development at the proposed location. Those safety concerns were  
8 confirmed by petitioner Robert Williams who unlike the developer  
9 is familiar with the area. Protestants have attempted to  
10 provide as much information as possible to the Board and tries  
11 to help the Board appreciate how unharmonious the planned  
12 development would be with the General Plan and with vicinal  
13 properties. You have seen pictures of our homes showing how the  
14 properties are spread out largely over three acres with ample  
15 landscaping. These pictures are demonstrative evidence of the  
16 low intensity of use of the vicinal properties. In contrast,  
17 due to the clustering of homes onto about fourteen acres, the  
18 proposed housing will have the appearance of lots being on less  
19 than a third of an acre or ten times smaller than the majority  
20 of the homes in the neighborhood. This is even smaller than the  
21 one half hypothetical acre referred to tonight by Mr. Alderman.  
22 We have presented a traffic and safety study along with expert  
23 testimony regarding the disproportionately increased safety and  
24 traffic problems that will be created by placing the proposed  
25 development along a portion of Route 32 designated as service

1 level F. We have presented testimony directed to lighting. In  
2 fact notwithstanding the exit ramp from Route 32 there are no  
3 street lights in this community. Our lack of existing  
4 streetlights provides the vicinal properties with remarkably  
5 clear skyline that is a value to the residents and the property  
6 values. As such the lighting testified to by Hickmat around the  
7 proposed development's parking areas, pool, tennis courts and  
8 street lights will create disproportionately greater lighting  
9 pollution in this neighborhood than in one with existing street  
10 lighting. Mr. Alderman's alleged change in lighting  
11 requirements does not remedy this disproportionate impact. We  
12 provided expert review of the publicly available well and septic  
13 document. Due to the limited information and relatively early  
14 stage of testing these documents are insufficient to evaluate  
15 the effects of the proposed disposal system to determine whether  
16 such effects would be greater at the proposed site than at other  
17 areas in the district. Here again the petitioners have failed  
18 to meet their burden. Several protestants testified that there  
19 is no public water or septic in the entire neighborhood and that  
20 the proposed common septic system would have an adverse greater  
21 and adverse effect greater than in other areas based on the  
22 amount of water used by the proposed system and that water  
23 quality would be similarly adversely affected. Petitioners have  
24 failed to do the necessary homework to provide the Board with  
25 enough information to comfortably rule in their favor with

1 regard to conditional use. Instead the petitioner seeks to  
2 transfer the responsibility for establishing the appropriateness  
3 of this project to the Board and to other state and county  
4 government organizations. Petitioner continues to argue that  
5 the project should be approved because other state and county  
6 agencies will make sure that everything is okay even though  
7 petitioners have failed to provide information necessary for  
8 approval. The petition to grant a conditional use should be  
9 denied since petitioners have failed to meet their burden under  
10 the conditional use test set forth in section 131.b. The  
11 proposed development is clearly not in harmony with the General  
12 Plan and the community and is inappropriate, unsafe and  
13 unaffordable for downsizing seniors trying to safely age in  
14 place. Thank you.

15 ROBERT SHARPS: Thank you Mr. Garcia. I'm not going to  
16 entertain any questions to you. What I'd like to do at this  
17 time is to thank both parties. I mean for the time that we had  
18 to spend on this case both from the petitioner and from  
19 representation from the protestants was outstanding as far as  
20 I'm concerned. And for you to try to say that you were not  
21 prepared or this is something that you didn't know how to do,  
22 our guidance was not necessary. I think you took advantage of  
23 what guidance you didn't think we were able to give. And I  
24 think you did very well at that. So on both sides regardless of  
25 the outcome of this when we get cases like this there's never

1 going to be a party that leaves this room that's going to be  
2 satisfied because I wouldn't have two sides. We just hope that  
3 we do the job that the Council has appointed us to do and take  
4 the information and use our best and common sense attached to  
5 the red book they give us, all that information, and come out  
6 with an outcome that is satisfactory to us. With that I thank  
7 you both and we will close the case at this time and I will ask  
8 the Board to deliberate. This case is officially closed.