

OFFICE OF THE ZONING HEARING EXAMINER
FOR PRINCE GEORGE'S COUNTY

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DAY LAND INVESTMENT, LLC : Case No. ZMA-2025-003
(MELWOOD ESTATES) :
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A hearing in the above-entitled matter was held on February 4, 2026, at the Prince George's County Office of Zoning, County Administration Building, Room 2174, Upper Marlboro, Maryland 20772 before:

Maurene McNeil
Hearing Examiner



A P P E A R A N C E S

On Behalf of the Applicant:

Matthew C. Tedesco, Esq.

On Behalf of People's Zoning:

Stan Brown, Esq.

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	<u>Page</u>
Testimony of	
Lashauna Tillmon	11
Robert Yates Clagett, Jr.	18
Jenny Lynn Day	22
Ralph Day	22
Olumuyiwa Sobo	32
Dan Schlegel	45
Mike Lenhart	51
Mark Ferguson	68

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P R O C E E D I N G S

1
2 MS. MCNEIL: Good morning, everyone. I'm Maurene
3 McNeil. I'll be the Zoning Hearing Examiner today. It's
4 February 4, 2026. We're here on a Zoning Map Amendment
5 Application 2025003. Applicant is Day Land Investment, LLC,
6 and it's colloquially known as Melwood Estates. It's
7 located at 4816 Melwood Road, approximately 27.54 acres.
8 And it's a request to rezone from the AR Zone, formerly the
9 RA zone, to the RSF-A Zone, single-family attached
10 residential.

11 If Applicant counsel will identify themselves for
12 the record?

13 MR. TEDESCO: Good morning, Madam Examiner. For
14 the record, Matthew Tedesco of the law firm of McNamee Hosea
15 in Greenbelt here on behalf of Day Land Investment LLC, who
16 is the contract purchaser of the property and Applicant in
17 this matter.

18 MS. MCNEIL: Good morning.

19 MR. TEDESCO: Good morning.

20 MS. MCNEIL: What about People Zoning counsel? We
21 have --

22 UNIDENTIFIED SPEAKER: I don't think he joined
23 yet.

24 MS. MCNEIL: Okay. He may be coming on shortly.
25 Do you want to wait, or would you like to proceed?



1 MR. TEDESCO: I think we're ready to proceed.
2 I've got a brief opening, and then we, I do see a handful of
3 residents in the attendance who are, I'm, I presume, in
4 support. I know the ones I recognize. I'm, I'd like,
5 probably give them the opportunity after my opening to let
6 them say what they need to say, and then give them the
7 option to stay or go, if that's okay, Madam Examiner?

8 MS. MCNEIL: Okay. Well, you reminded me of
9 something. Is there anyone here opposed to this request?
10 If so you need to come on camera, show me your hand. And
11 staff is also looking in the chat, et cetera, to see if
12 anyone is opposed. And I don't see anyone. Okay. Go
13 ahead, sir.

14 MR. TEDESCO: Thank you, Madam Examiner. And for
15 those on the Applicant team, if you guys are free to keep
16 your cameras off until you're called? I just would ask that
17 everybody please stay muted. And then when, when you're
18 called, you can queue up and turn your camera on if you
19 would like.

20 So, Madam Examiner, I do have an opening, if you
21 would indulge me, so I can go through that. I'll try to be
22 brief, but there's a little bit of a foundational opening
23 that I'd like to present; and then give, I see Ms. Tillmon
24 and Mr. Yates, and maybe one or two other folks in the
25 audience who, give them an opportunity to speak before we

1 call our first witness so they have the option to stay or
2 go, if that's okay?

3 As I mentioned earlier, we're here on behalf of
4 Day Land Investment, LLC, who is the contract purchaser of
5 the property known as Melwood Estates, otherwise known as
6 the Day Property. It's located on the east side of Melwood
7 Road, immediately adjacent to the Westphalia Town Center
8 edge. It's to the east of Melwood Road, and the Westphalia
9 Town Center edges to the west.

10 This case seeks a Zoning Map Amendment to rezone
11 approximately 27.5 acres from the AR Zone to the RSF-A Zone,
12 with binding conditions limiting the development to single-
13 family, detached homes only, and a maximum density of 3.5
14 dwelling units per acre.

15 At its core, this case is not about increasing
16 density beyond what the County has planned. It is about
17 aligning zoning with adopted planning policies and
18 correcting a mistake in the 2007 Westphalia Sector Plan
19 Sectional Map amendment.

20 The 2007 Westphalia Sector Plan expressly
21 recommends the subject property for low-density residential
22 land use. While the Sector Plan did not define density at
23 that time, subsequent County policies, including Plan 2035,
24 clearly defines residential low as up to 3.5 dwelling units
25 per acre, primarily single-family detached units. That is



1 exactly what the Applicant proposes in this case, and
2 nothing more.

3 The subject property lies immediately adjacent to
4 the Town Center's edge in what the Sector Plan describes as
5 the surrounding residential areas, which are intended to
6 provide orderly transition from higher density, mixed-use
7 development to lower density residential neighborhoods. As
8 you know, under Section 27-3601(e) (3) of the Zoning
9 Ordinance, a Zoning Map Amendment may be approved where
10 there was a mistake in the current Sectional Map Amendment.
11 Maryland law is also clear. A mistake exists where the
12 zoning authority failed to consider then existing,
13 reasonably foreseeable facts, or relied on incomplete or
14 inaccurate factual predicates at the time of rezoning.
15 Here, the evidence will show that during the 2007 SMA, the
16 District Council retained what was then the RA, but now the
17 AR zoning, on the subject property, despite its adjacency to
18 the Town Center edge for Westphalia, despite the
19 contemporaneous rezoning of similarly situated properties to
20 higher density residential and mixed use zones, despite the
21 Sector Plan's express direction that this area function as a
22 residential transition zone, Despite the property's
23 proximity to public water and sewer infrastructure, and
24 despite the property not being agriculturally taxed,
25 assessed.

1 The failure to evaluate the subject property for a
2 comparable residential zoning classification, while rezoning
3 adjacent nearby properties under the same planning
4 framework, constitutes a mistake, not a mere difference of
5 opinion. The Technical Staff Report, which recommends
6 denial of this application, it bases it on the grounds that
7 the District Council made a deliberate legislative choice
8 during the 2007 Sectional Map Amendment that no mistake
9 occurred. This conclusion misapplies the legal standard
10 governing mistake in the Sectional Map Amendment context.
11 As the Examiner knows, the Applicant is not required to show
12 that the Council lacked information, acted arbitrarily, or
13 exercised poor judgment. Instead, the question before the
14 Examiner is whether the zoning retained in 2007 was based on
15 an accurate and complete factual understanding of the
16 property and its planning context at that time.

17 Here, the evidence will demonstrate that the
18 Council failed meaningfully, failed to meaningfully consider
19 then existing, reasonably foreseeable facts, and instead
20 relied on an incomplete factual predicate, including the
21 subject property's immediate adjacency to the Westphalia
22 Town Center edge, which was expressly planned for higher
23 density residential and mixed use development, the
24 contemporaneous rezoning of similarly situated nearby
25 properties, including properties serving the same

1 transitional function to residential and mixed-use zones
2 during the same SMA process. The Sector Plan's express
3 recommendation that this area function as part of the
4 surrounding residential areas intended to provide an orderly
5 transition from the Town Center to lower density
6 neighborhoods; the existence and planning of public water
7 and sewer infrastructure, including trunk sewer
8 availability, which is fundamentally inconsistent with long-
9 term agricultural preservation zoning; and the owner, the
10 owner's own testimony at the SMA process, which put the
11 Council on notice that residential development of this
12 property was foreseeable, anticipated, and aligned with the
13 adopted planning framework.

14 Instead of evaluating these facts and determining
15 an appropriate residential zoning classification to
16 implement the Sector Plan, the Council instead retained the
17 agricultural residential zoning by default, treating the
18 property as rural, despite its location, infrastructure
19 context and planning designation. That is not simply a
20 difference in planning judgment. It is a failure to
21 reconcile zoning with then existing adopted policy and
22 foreseeable development patterns, which the Maryland courts
23 recognize as a classic form of mistake.

24 Staff's recommendation effectively reframes the
25 legal standard as whether the Council could have chosen to

1 retain the AR zoning, but the correct inquiry is whether the
2 zoning accurately implemented the factual and planning
3 context that existed at that time. The evidence will show
4 that it did, it did not.

5 The Applicant's request does not undo the Sector
6 Plan. It actually implements it. By applying a zoning
7 classification, the RSF-A Zone, with binding conditions that
8 reflect the Sector Plan's residential vision, Plan 2035's
9 definition of residential low, and the transitional role
10 this property was always intended to serve. Consequently,
11 Staff's recommendation of denial does not withstand scrutiny
12 under the applicable mistake standard, and the evidence will
13 support approval of this application.

14 At the conclusion of this hearing, Madam Examiner,
15 the evidence will show that XMA-2025-003 satisfies the legal
16 standard for mistake. It implements the County's adopted
17 plans and corrects the zoning classification that no longer
18 reflects, nor did it fully reflect at that time, the role
19 this property was intended to play in Westphalia. For those
20 reasons, the Applicant will be respectfully requesting that
21 you recommend approval of the requested rezoning, subject to
22 the proffered conditions.

23 Thank you for that, Madam Examiner. I see Mr.
24 Brown has joined us. I didn't know if you wanted to
25 recognize him.

1 MS. MCNEIL: I guess I will. Mr. Brown, welcome.
2 Identify yourself for the record.

3 MR. BROWN: Good morning, Stan Brown, People's
4 Zoning Counsel.

5 MS. MCNEIL: Welcome.

6 UNIDENTIFIED SPEAKER: Good morning, Mr. Brown.

7 MS. MCNEIL: And, again, is there anyone opposed
8 to this request? This will be my second time asking.

9 (No affirmative response.)

10 MS. MCNEIL: Okay. Mr. Tedesco, Sarah, can you
11 pull up Exhibit 3 and the ethics affidavits? I just wanted
12 you to be able to talk to Ms., I don't want to say her name
13 incorrectly. It's a, it's an individual one, Ms., I can't
14 even read it. Wait a minute. Anyway, this, this exhibit,
15 nothing is signed. Nothing is filled out. And so, we do
16 need to have that filled out before we can move the record.
17 So, if you could just handle that for us --

18 MR. TEDESCO: Oh, I see.

19 MS. MCNEIL: -- at some point?

20 MR. TEDESCO: Yeah, it's signed, but they didn't
21 check no.

22 MS. MCNEIL: Right. So, I think the clerk will
23 just send it back to me. And if they send it back to me, I
24 have to hold the record. So, I'm just pointing it out. If
25 we could get one before this record closes?

1 MR. TEDESCO: Sure. Yeah, I, my apologies for
2 that omission.

3 MS. MCNEIL: No problem.

4 MR. TEDESCO: I didn't recognize that. Yeah. And
5 then you should have the two other business affidavits for
6 the entity, for the trust to the owner.

7 MS. MCNEIL: Yes.

8 MR. TEDESCO: Okay.

9 MS. MCNEIL: Yes.

10 MR. TEDESCO: Yeah, we'll, we'll make sure to take
11 care of that.

12 MS. MCNEIL: Okay. And so, you may proceed.

13 MR. TEDESCO: At this time, I would like to give
14 those who are here in attendance in support, I believe that
15 is Ms. Tillmon, Mr. Yates, I don't know if there's anybody
16 else, an opportunity just to be heard before we call our
17 first witnesses; because, you know, once I get rolling, we
18 get rolling, so --

19 MS. MCNEIL: Sure. Ms. Tillmon, I see your name
20 first. Would you like to testify?

21 MS. TILLMON: Yes, ma'am. Good morning, and thank
22 you so very much.

23 MS. MCNEIL: Sure. You just have to come on
24 camera for me.

25 MS. TILLMON: And my computer --



1 MS. MCNEIL: There you are.

2 MS. TILLMON: Oh, okay.

3 MS. MCNEIL: So, Ms. Tillmon, do you swear or
4 affirm under the penalties of perjury that the testimony you
5 shall give will be the truth and nothing but the truth?

6 MS. TILLMON: Yes, ma'am.

7 MS. MCNEIL: Okay. So, state your address and
8 tell us what you want to tell us about this application.

9 MS. TILLMON: Yes. So again, my name is Lashauna
10 Tillmon. My address is 3709 Fox Meadow Way, Upper Marlboro,
11 Maryland, 20772, located in Parkside at Westphalia. And,
12 and I am speaking today because I am a resident of
13 Westphalia, and I am in support of this project. I bring
14 both lived experience as a Westphalia resident, and a
15 professional experienced in community operations, housing
16 and long-term planning. My perspective is shaped by years
17 of hands-on involvement with community needs, infrastructure
18 considerations, and the realities of what it takes to
19 support sustainable growth.

20 As a resident, I see firsthand the gap between our
21 community, what our community continues to ask for in terms
22 of quality retail services and amenities, and the practical
23 conditions required to attract and sustain those within the
24 Westphalia Town Center, that is soon coming to realization.
25 So again, I am, with this additional project, it brings the



1 residential rooftops that are a critical factor in creating
2 the customer base necessary to support the economic growth
3 of our area and our long-anticipated town center.

4 So for those reasons, I support the application as
5 a reasonable step towards aligning housing development with
6 long-term economic vitality and community expectations.

7 Thank you so very much.

8 MS. MCNEIL: Thank you. Any, any questions, Mr.
9 Brown?

10 MR. BROWN: Good morning, Ms. Tillmon. How are
11 you?

12 MS. TILLMON: I'm super fantastic. And yourself?

13 MR. BROWN: I'm doing great. A couple of quick
14 questions. First of all, you're testifying on behalf of
15 yourself, not on behalf of any organization in Westphalia,
16 is that correct?

17 MS. TILLMON: I'm testifying on behalf of myself
18 as a resident.

19 MR. BROWN: And you do not have any interest in,
20 financial interests, that is, in Day Land Investment, LLC,
21 is that correct?

22 MS. TILLMON: No, sir, I do not.

23 MR. BROWN: And you are not a trustee or a
24 beneficiary of Day Family Trust, are you?

25 MS. TILLMON: No, sir, I am not.



1 MR. BROWN: Have you read the Staff Report in this
2 case?

3 MS. TILLMON: I have briefly read the Staff Report
4 to its completion.

5 MR. BROWN: All right. No other questions. Thank
6 you.

7 MS. TILLMON: Thank you.

8 MS. MCNEIL: Thank you. Mr. Tedesco?

9 MR. TEDESCO: No questions. I just want to thank
10 Ms. Tillmon for her testimony and her support.

11 MS. MCNEIL: Thank you, Ms. Tillmon.

12 MS. TILLMON: Thank you. Who else is, wants to
13 speak in favor of the request?

14 MR. TEDESCO: I believe, Mr. Clagett, Mr. Yates
15 Clagett is on the line.

16 MR. CLAGETT: Yeah, I'm here, and I apologize. I
17 don't have a camera on my computer, so I don't know whether
18 that disqualifies me or not, but --

19 MS. MCNEIL: You got a cell phone with a camera?

20 MR. CLAGETT: I do, but I'm on my work computer.

21 MS. MCNEIL: Okay.

22 MR. CLAGETT: I don't know how to do that. I'm,
23 I'm not technically savvy. I don't know how to get to my
24 cell phone Zoom thing --

25 MS. MCNEIL: For, 'm going to let People's Zoning



1 Counsel ask you a question. But before he does, Mr.
2 Tedesco, do you recognize that as his voice?

3 MR. TEDESCO: I do, and I would just note that Mr.
4 Clagett also has a letter, Exhibit 22 in the record.

5 MS. MCNEIL: Right.

6 MR. TEDESCO: So, I don't know if, you know, if
7 you feel more comfortable with him submitting on that, but
8 yes.

9 MS. MCNEIL: No, I'm actually glad, glad you
10 mentioned that. I think Ms. Tillmon had one as well. So,
11 these letters probably would not have come in if they
12 weren't here to be subject to cross-examination. So, these
13 exhibits will, because they are here today.

14 MR. TEDESCO: Yes.

15 MS. MCNEIL: So, Mr. Brown, do you have any
16 objection?

17 MR. BROWN: well, that's highly unusual. Mr.
18 Clagett, you're on a work computer that does not have a
19 camera?

20 MR. CLAGETT: That is correct.

21 MR. BROWN: I'm really befuddled by that.

22 MR. CLAGETT: Why are you befuddled by that? I
23 don't, I don't have a camera hooked up to my computer. I've
24 got three screens here. I'm working in a company, and I
25 don't usually do a lot of these Zoom calls.



1 MR. BROWN: All right. But do you have a cell
2 phone with you?

3 MR. CLAGETT: I do have a cell phone, but I don't
4 have Zoom on it. I don't --

5 MR. BROWN: Well, that, that, that may be
6 unnecessary to have the Zoom on it. Do you, can you go to
7 the link that the Examiner sent to you on your telephone to
8 sign in, and let's just try it real quickly?

9 MR. CLAGETT: I got it via email.

10 MR. BROWN: Oh, yeah. Go to that email on your
11 phone.

12 MR. CLAGETT: On my phone? Okay.

13 MR. BROWN: The email was dated --

14 MR. CLAGETT: Yeah.

15 MR. BROWN: -- was on February --

16 MR. CLAGETT: The join, join instructions, is
17 that, no.

18 MR. BROWN: Yes, join instructions.

19 MR. CLAGETT: Open on one, one tap mobile. Is
20 that, okay.

21 MR. BROWN: You see where it says join Zoom
22 meeting?

23 MR. CLAGETT: Yeah. Sign in?

24 MR. BROWN: Click on that.

25 MR. CLAGETT: Okay. I apologize, I just, sorry.



1 MR. BROWN: It's all right. Not a problem. Not a
2 problem.

3 MR. CLAGETT: It says, please enter your name and
4 meeting passcode.

5 MR. BROWN: All right. The, the passcode is
6 098178.

7 MR. CLAGETT: Okay. I see myself.

8 MR. BROWN: All right, great. Now, click on the,
9 click on the video at the bottom left-hand screen.

10 UNIDENTIFIED SPEAKER: You've just been admitted.

11 MS. MCNEIL: Thank you, Mr. Brown.

12 MR. TEDESCO: Yates, you're going to have to sign
13 off on your computer now so we don't get --

14 MR. BROWN: All right. All right. Click, click
15 on the microphone. Click on the microphone.

16 MR. CLAGETT: There we go.

17 MS. MCNEIL: There you are.

18 MR. BROWN: All right.

19 MS. MCNEIL: Oops. Okay. He's still on the
20 computer.

21 MR. BROWN: You turn your computer off.

22 MR. CLAGETT: I'm getting there.

23 MS. MCNEIL: Okay.

24 MR. CLAGETT: Okay. Okay. There we go.

25 MS. MCNEIL: There you go. So, do you --



1 MR. CLAGETT: I'm so sorry.

2 MS. MCNEIL: Oh, no.

3 MR. CLAGETT: I'm so sorry.

4 MS. MCNEIL: Look, we all learned this, well, I
5 did because of COVID, so I just had to do it more than
6 you've had to.

7 MR. CLAGETT: Well, I'm in the construction
8 industry, so we don't, you know, we were working the whole
9 time. So, yeah.

10 MS. MCNEIL: Okay.

11 MR. CLAGETT: Anyway --

12 MS. MCNEIL: So, do you swear or affirm under the
13 penalties of perjury that the testimony you shall give will
14 be the truth and nothing but the truth?

15 MR. CLAGETT: Yes, ma'am.

16 MS. MCNEIL: Okay. So, just state your name and
17 address, and what you want to tell me about this request.

18 MR. CLAGETT: My name is Robert Yates Clagette,
19 Jr. My home address, my residential address is 17011 River
20 Airport Road in Brandywine. We own a large property on
21 William Beanes Road located at 12511 William Beanes Road.
22 It's a 250-acre farm on both sides of Route 4, 43 acres of
23 which is on the Old Marlboro Pike side on the, would be the
24 north side, I guess, of Route 4, which is close to the, to
25 the development in question.



1 I'm a real estate agent in the County, in the
2 state. I've been born and raised here since I, you know,
3 1970. I've seen a lot of changes in the County. And what,
4 one of the things I, I like to see is, is, is this type of
5 development. I've seen a lot of unwanted townhomes and, et
6 cetera, in the County; but single-family, single-family
7 homes are what we need to, to, to, you know, boost this
8 County's tax base and everything else. So, I'm in support
9 of this type of development.

10 MS. MCNEIL: Thank you. Mr. Brown?

11 MR. BROWN: Mr. Clagett, you executed the
12 statement of justification, correct?

13 MR. CLAGETT: Yes, sir.

14 MR. BROWN: So, are you a member or owner with a
15 financial interest, excuse me?

16 MR. TEDESCO: Excuse me, Mr. Brown, he didn't sign
17 the statement of justification.

18 MR. BROWN: Yes, he did.

19 MR. CLAGETT: I signed something for, for Mr. --

20 MR. BROWN: That's your statement of
21 justification. The last, maybe it was collated incorrectly.
22 It's the page after your signature, Mr. Tedesco, and Mr.
23 Lockhart's signature.

24 MR. TEDESCO: No, what, what Staff did is in our,
25 just in this, in that section, they included all the back-up



1 material from, that was submitted into the record to the
2 Planning Board. So, it's got all the support letters, it's
3 got the referrals. It wasn't part of our justification
4 statement.

5 MR. BROWN: All right. So, I see what they did.
6 So, they included your signature page, Mr. Clagett --

7 MR. CLAGETT: Okay.

8 MR. BROWN: -- after the justification statement,
9 and only the signature page. So, since there was nothing
10 between the justification statement and your signature page,
11 it appears as though yours is the third signature on the
12 justification statement, which led me to believe, in
13 confusion, whether you were --

14 MR. CLAGETT: Yeah.

15 MR. BROWN: -- a supporter.

16 MR. CLAGETT: No.

17 MR. TEDESCO: That was, that's an error. Mr.
18 Clagett, Mr. Clagett was not part of the SRJ. They, they
19 collated everything. It's a little confusing, because if
20 you look at exhibit, even --

21 MR. BROWN: Yeah, I see, I see what they did now.
22 That's right. They, they collated it incorrectly.

23 MR. TEDESCO: Yeah. So, just, just to be clear,
24 he's, he's not part of, but you can ask your, you can voir
25 dire, but he's not --

1 MR. BROWN: No. I was about to beat up on him,
2 but --

3 MR. CLAGETT: No, I, no, I, yeah. No, I'm, I
4 don't own anything. I don't, I'm not a part of this thing.
5 I just own some land next door.

6 MR. BROWN: All right. No other questions. Thank
7 you, sir.

8 MR. TEDESCO: I just have one question, Mr.
9 Clagett. You did, Exhibit 22, you did execute a letter of
10 support in this case that was filed with the Park and
11 Planning Commission, are you aware of that?

12 MR. CLAGETT: Yeah.

13 MR. TEDESCO: And you further incorporate as your
14 testimony that letter?

15 MR. CLAGETT: Yes, sir.

16 MR. TEDESCO: No further questions.

17 MS. MCNEIL: Thank you. And the next person?

18 MR. TEDESCO: You'd have to ask. I don't see
19 anybody else, but I don't want to be --

20 MS. MCNEIL: Does anybody else want to testify --

21 MR. TEDESCO: -- before we get into our case-in-
22 chief, you know?

23 MS. MCNEIL: -- that's not being called as a
24 witness by the Applicant? I don't see any hands.

25 MR. TEDESCO: Okay. Well, thank you for that



1 indulgence, Madam Examiner. Thank you, Mr. Brown, for
2 making sure our record stays clean.

3 Our first witness will be, we would call Ms. Jenny
4 Lynn Day.

5 MS. MCNEIL: Ms. Day?

6 MS. DAY: Hello --

7 MS. MCNEIL: Good morning.

8 MS. DAY: -- Madam Examiner.

9 MS. MCNEIL: Is there any way you can, there you
10 go. Good morning. Do you swear or affirm under the
11 penalties of perjury that the testimony you shall give will
12 be the truth and nothing but the truth?

13 MS. DAY: Yes.

14 MS. MCNEIL: Okay.

15 MR. TEDESCO: Good morning, Ms. Day.

16 MS. DAY: Good morning.

17 MR. TEDESCO: Could you just state your name and
18 address for the record, please?

19 MS. DAY: Jenny Lynn Day, 4816 Melwood Road, Upper
20 Marlboro, Maryland, 20772.

21 MR. TEDESCO: And you're familiar with the
22 property that's located on Melwood Road that's the subject
23 of this application?

24 MS. DAY: I am, indeed.

25 And you've actually owned, or the trust that



1 you're a member of, or A trustee of, has owned the property
2 since the mid-2000s, is that correct?

3 MS. DAY: That is correct, 40 years.

4 MR. TEDESCO: And how is the property titled
5 today?

6 MS. DAY: It's titled Under the Day Family Trust,
7 of which I'm a trustee.

8 MR. TEDESCO: And how long have you and your
9 husband resided on the property?

10 MS. DAY: Yes. My husband and I have resided for
11 40 years here.

12 MR. TEDESCO: And taking you back to 2006 and 2007
13 timeframe, were you aware of County planning efforts at that
14 time related to the Westphalia area?

15 MS. DAY: Yes.

16 MR. TEDESCO: And in what way did you participate
17 or follow the public planning process leading up to the
18 adoption of that Sector Plan, if you recall?

19 MS. DAY: During that timeframe, I was aware of
20 the County's efforts related to preparing a new Sector Plan
21 for Westphalia area, which I took note and actively
22 participated in, in that process.

23 MR. TEDESCO: And were you represented by counsel,
24 or did you receive any professional advice during that time?

25 MS. DAY: No, I was representing myself and had no

1 professional assistance in making my requests.

2 MR. TEDESCO: And during the Sector Plan and
3 Sectional Map Amendment process, or SMA process, do you
4 recall what your testimony was, or what your request was
5 regarding your property and its rezoning?

6 MS. DAY: Yes. During the Sector Plan and the SMA
7 process, I asked the County to recognize that with the
8 proposed development of both the Smith and the Moore
9 properties, our property would be difficult to sell as a
10 horse farm; and that the property was more appropriately
11 suited for future higher residential development than
12 continued agricultural zoning. Specifically, I requested
13 that the property be designated to allow for higher density
14 residential zoning, RM Zone; and in the future, consistent
15 with the zoning of the property in the immediate area. But,
16 but I also requested that the existing zoning remain in
17 place while the property continued in the current use, but
18 upon sale or transfer, the zoning reflects its planned
19 higher residential role in the development of the Westphalia
20 community.

21 MR. TEDESCO: And, Madam Examiner, Ms. Days'
22 testimony from May 23, 2006, is Exhibit 21, although in the
23 exhibit list it's dated May 23, 2025, which prompted me to
24 refile it as a supplemental exhibit which became Exhibit 38.
25 But upon inspection of all the exhibits, I realized that

1 Exhibit 21 and Exhibit 38 are actually the same exhibit.
2 Saving the date on Exhibit 21 in the exhibit list is, says
3 2025. It should be 2020. It should be 2006. So, I don't
4 know if you want to strike one, or consolidate or, but just
5 for clarification.

6 MS. MCNEIL: Since we are talking about them and
7 they've been out there, we'll just clarify on the exhibit
8 list that Exhibit 21, we'll change the date and just say
9 they're copies of the same thing.

10 MR. TEDESCO: Okay. Perfect. Thank you.

11 MS. MCNEIL: Thank you.

12 MR. TEDESCO: Sorry about that, Ms. Day. I just
13 want to make sure that we, we have that taken care of. So,
14 if I understand your testimony correctly, you requested that
15 the subject property, which is your residence and your
16 property that you own today, or the trust owns today, and is
17 the subject of this application, you've requested that this
18 property be rezoned in 2006 to allow for residential
19 development at a higher density than the current then
20 existing zone; but you did so conditionally on that zone
21 being implemented once you sold the property, am I
22 understanding that correctly?

23 MS. DAY: That is, yes.

24 MR. TEDESCO: And do you believe at that time that
25 the property was appropriate for higher residential

1 development, consistent with what was planned in the area?

2 MS. DAY: We understood the future planning goals
3 and policies in the area were inconsistent with the
4 equestrian facility, and understood this property was
5 appropriate transition from the planned Westphalia Town
6 Center.

7 MR. TEDESCO: And was it your intent to allow the
8 property to function as it had historically until you sold
9 or redevelopment became feasible?

10 MS. DAY: Yes, exactly.

11 MR. TEDESCO: And what was the outcome of your
12 request in 2006, if you recall?

13 MS. DAY: The property was not rezoned as we
14 requested.

15 MR. TEDESCO: Madam Examiner, that's all the
16 questions I have for Ms. Day.

17 MR. BROWN: Good morning, Ms. Day.

18 MS. MCNEIL: Thank you. Mr. Brown, I'm sorry, go
19 ahead.

20 MR. BROWN: Good morning. How are you, Ms. Day?

21 MS. DAY: Fine, Thank you.

22 MR. BROWN: Good. Just a couple of clarifying
23 questions. You were testifying as to the property, but you
24 don't own the entire property that is the subject of this
25 application, do you?



1 MS. DAY: That is true.

2 MR. BROWN: The other owner is Tiana Renee
3 Woolard, formerly Tiana Dempsey, is that correct?

4 MS. DAY: That is correct. Yes, sir.

5 MR. BROWN: And I'm looking at the tax information
6 on SDAT for each one of the approximately seven parcels.
7 And Ms. Woolard owns, excuse me, .4 acres, part of lot 11;
8 and then she owns an additional 2.18 acres, which also is
9 part of lot 11; and then you, as the trustee, and I assume
10 beneficiary of Day, of Day Family Trust, own the remaining
11 lots that comprise this subject property, correct?

12 MS. DAY: Yes.

13 MR. BROWN: All right. And in looking at the tax
14 ID accounts, and excuse me if I keep clearing my throat, I
15 have a cold. I apologize. In looking at the SDAT
16 information, you've owned the property, as you indicated,
17 since at least 2000, I mean, for at least 40 years, either
18 individually with your husband, or as a member of the trust,
19 correct?

20 MS. DAY: Yes. He is.

21 MR. BROWN: And, and in 2007, you appeared in the
22 proceeding on the Sectional Map Amendment, and you
23 testified, correct?

24 MS. DAY: Yes, sir.

25 MR. BROWN: And when the Council failed to give

1 you what you requested in that SMA, you did not file a
2 revisory petition, did you?

3 MS. DAY: No.

4 MR. BROWN: Okay. Why not?

5 MS. DAY: I didn't know to do that.

6 MR. BROWN: Well, I understand --

7 MS. DAY: And I was representing myself.

8 MR. BROWN: I understand. That was in 2007.

9 We're now in 2025. Is there any particular reason why you
10 waited until this point in time to file an application to
11 change the zoning based upon mistake?

12 MS. DAY: I'm not sure what the question actually
13 is, sir.

14 MR. BROWN: My question is, why have you waited
15 from 2007 until the current point in time to file an
16 application to rezone the property?

17 MS. DAY: I didn't have an opportunity to.

18 MR. BROWN: What do you mean when you say you
19 didn't have an opportunity?

20 MR. DAY: Say it again?

21 MR. BROWN: Is that your husband that you're
22 talking to?

23 MR. DAY: Yes, sir. This is Ralph Day.

24 MR. BROWN: Mr. Day, if you could just also
25 identify yourself for the record so we have both of you



1 under oath?

2 MR. DAY: This is Ralph Day. I'm the husband of
3 Jenny Day.

4 MR. BROWN: Okay.

5 MS. MCNEIL: Mr. Day, do you swear or affirm under
6 the penalties of perjury that the testimony you shall give
7 will be the truth and nothing but the truth?

8 MR. DAY: Yes, ma'am.

9 MS. MCNEIL: Thank you.

10 MR. BROWN: And so, Mr. Day, you adopt your wife's
11 testimony that she gave earlier, correct?

12 MR. DAY: Yes, sir.

13 MR. BROWN: There's one other question I had put
14 in my notes. One second. All right. I guess that's all.
15 Thank you very much.

16 MR. TEDESCO: May I ask just a couple redirect?

17 MS. MCNEIL: Or direct? Which, which one do you
18 want?

19 MR. TEDESCO: Well, since --

20 MS. MCNEIL: Yes, you may do either.

21 MR. TEDESCO: I was going to say, since they're
22 both sworn, I'll say either one. Just real, real quick.
23 Mr. and Mrs. Day, or your testimony was that you, when you
24 requested the rezoning in 2006, you did so conditionally
25 based upon future development and/or sale of the property,



1 is that correct?

2 MR. DAY: Correct.

3 MR. TEDESCO: And you did that because this is
4 your primary, this is your primary residence, right?

5 MR. DAY: Absolutely.

6 MR. TEDESCO: And with respect to Mr. Brown's
7 question about why, why did we wait so long, or why did you
8 wait so long to now execute on this application, is it true
9 to, is it fair to say that there was no opportunity
10 previously with respect to a contract purchaser and future
11 redevelopment?

12 MR. DAY: That is true. That is a true fact.

13 MR. TEDESCO: And one final question. The
14 equestrian, you reviewed the Staff Report in this case that
15 Park and Planning prepared?

16 MR. DAY: I have not seen the Staff Report.

17 MR. TEDESCO: Okay. You're aware, though,
18 however, as far as the, how have you used the property other
19 than residential?

20 MR. DAY: Well, it's our horse farm.

21 MR. TEDESCO: And is your horse farm a commercial
22 horse farm or is it personal?

23 MR. DAY: No, it's, it's a hobby farm.

24 MR. TEDESCO: Okay.

25 MR. DAY: No personal use. We've, we've never



1 boarded any horses or anything like that.

2 MS. DAY: Or received any compensation.

3 MR. DAY: No, none at all.

4 MS. DAY: Not asked for it.

5 MR. TEDESCO: Thank you. No, No further
6 questions, Madam Examiner. Thank you, Mr. and Mrs. Day.
7 You're free to stay on the line. Appreciate you -- oh,
8 sorry.

9 MS. MCNEIL: I had one question based on what you
10 said. And, of course, I won't find it now, but I thought
11 someone had a business in one of the buildings on the site
12 from something in the Staff Report. Is that true?

13 MR. DAY: I have no idea how that could possibly
14 be, because there have been no business here.

15 MS. MCNEIL: Okay.

16 MR. TEDESCO: That's precisely why I asked if they
17 had reviewed the Staff Report, Madam Examiner, because we,
18 we do not know of that factual predicate being correct.

19 MS. MCNEIL: Okay. But you did read it as well?
20 Okay. Thank you.

21 MR. TEDESCO: I read it, that's why I asked him if
22 it was ever used commercially, because it hasn't.

23 MS. MCNEIL: Okay.

24 MR. TEDESCO: And we wanted to make sure that was
25 clarified.

1 MS. MCNEIL: Thank you.

2 MR. TEDESCO: Sure. Thank you again, Mr. and Mrs.
3 Day. We would next call Mark Sobo.

4 MS. MCNEIL: Mr. Sobo, do you swear or affirm
5 under the penalties of perjury that the testimony you shall
6 give will be the truth and nothing but the truth?

7 MR. SOBO: I do. Good morning.

8 MS. MCNEIL: Thank you.

9 MR. TEDESCO: Mr. Sobo, could you just please
10 state your name and address for the record?

11 MR. SOBO: My name is Olumuyiwa Sobo. Let me
12 spell that for you. It's O-L-U-M-U-Y-I-W-A, last name is
13 Sobo, S-O-B-O. I'm also known as Mark O. Sobo, Esquire,
14 professionally. My address is 7607 Georgian Drive, Upper
15 Marlboro, MD, 20772.

16 MR. TEDESCO: Do you own the property that's the
17 subject of this application?

18 MR. SOBO: No, I'm not the owner of the property.
19 I'm a member of the Day Land Investment, LLC, and we are the
20 contract purchaser of the property and the Applicant for the
21 ZMA-2025-003.

22 MR. TEDESCO: And what is your role or title with
23 the LLC?

24 MR. SOBO: I'm a member of the LLC.

25 MR. TEDESCO: And as a member, you're authorized



1 to testify on its behalf?

2 MR. SOBO: Yes.

3 MR. TEDESCO: In addition to that, did you obtain
4 a limited power of attorney for your testimony this morning
5 on behalf of the LLC?

6 MR. SOBO: Yes.

7 MR. TEDESCO: And, Madam Examiner, that's the,
8 entered in the record as Exhibit 40, signed by the managing
9 member of the LLC authorizing Mr. Sobo to further testify,
10 although he has that authority under the, as a member of the
11 LLC; but we wanted to provide that documentation as well.
12 We would ask for that to be admitted into the record.

13 MS. MCNEIL: It is part of the record, and unless
14 Mr. Brown objects at some point, all of the previously filed
15 exhibits are part of the record.

16 MR. TEDESCO: Thank you.

17 MR. BROWN: No objection.

18 MR. TEDESCO: Thank you, Mr. Brown. Do you know,
19 Mr., may I call you Mark?

20 MR. SOBO: Yeah, you can call me Mark, and call me
21 by --

22 MR. TEDESCO: We're all, we're all friends here.
23 Mark, do you know if Day Land Investment, LLC, is in good
24 standing with the State Department of Assessment and
25 Taxation?



1 MR. SOBO: Yes, I do.

2 MR. TEDESCO: And, Madam Examiner, that's Exhibit
3 33, the certificate of good standing. How long have you
4 been involved with this property? Strike that. How long
5 have you been involved with Day Land Investment, LLC?

6 MR. SOBO: That's about, about a year or so when
7 we, when we first incorporated the, the entity.

8 MR. TEDESCO: And how long have you been involved
9 with this particular property?

10 MR. SOBO: That's about, about the same time,
11 about one year or more. But I, I live close to the
12 property, approximately about two miles from the, from the,
13 from the property to the east of Woodyard Road. On a good
14 day, you can find me jogging along that road. And so, I'm
15 quite familiar with that, with that property from that
16 perspective.

17 MR. TEDESCO: And are you familiar with the Zoning
18 Map Amendment request that's before the Examiner this
19 morning?

20 MR. SOBO: Oh, yes, I am.

21 MR. TEDESCO: And have you reviewed the statement
22 of justification, Exhibit 4?

23 MR. SOBO: Yes, I have.

24 MR. TEDESCO: And do you incorporate and adopt as
25 your additional testimony that statement of justification?



1 MR. SOBO: Yes, I do.

2 MR. TEDESCO: And how would you describe the
3 surrounding nearby development?

4 MR. SOBO: Well, I mean, from, from my personal
5 perspective, the surrounding area is now predominantly
6 residential. You have various degrees of density there from
7 high to low. And I am, over the years since I lived around
8 there, observed that the area has experienced some
9 significant, significant plant growth over time. To the
10 west and south, you have the emerging, emergency, I mean,
11 emerging residential communities.

12 MR. TEDESCO: And Let me, let me pause you there,
13 Mark. If, Madam Examiner, forgive me. I don't know who is
14 running the exhibits, but if we could, if Sarah or --

15 MS. MCNEIL: I think it's Sarah.

16 MS. SARAH: Yes, it's me.

17 MR. TEDESCO: Okay. Maybe Exhibit 16 on the
18 screen would be helpful just to give some context. Go
19 ahead, Mark, I don't mean to interrupt.

20 MR. SOBO: Yes, yes. What I, what I was saying is
21 that if you, if you look at that area, you can actually
22 discern the, the growth around there. And from my
23 perspective and experience of living around there, I, I'm,
24 I'm familiar with the, those residential communities
25 associated, especially with the Westphalia area. I do have

1 friends and family living in the Westphalia area where you
2 have the single-family homes and the detached homes at
3 higher densities. And, of course, you still have the, the,
4 the, the, the parkland and open space. And so, the overall
5 character of that area will reflect some sort of a
6 transition or suburban community rather than a rural one.
7 To the east, of course, you have the Westphalia Town Center
8 edge, and the planned, mixed-use, commercial and retail
9 uses. I was a part of the, I took part in, in, in when,
10 when the retailers, the, the proposed retailers and
11 commercial entities came to Westphalia, I actually was there
12 to listen to their presentation.

13 MR. TEDESCO: And would you agree that the area
14 surrounding this property really is no longer predominantly
15 rural in character?

16 MR. SOBO: Yes, of course. The, it just, from
17 looking at it, it's, you cannot, I think perhaps they are
18 still some, some areas that you can consider agricultural;
19 but generally speaking, the, the area is of residential and
20 mixed-use zoning, especially closer to Westphalia Town
21 Center.

22 MR. TEDESCO: And could you explain to the
23 Examiner and Mr. Brown why you and your partners decided to
24 pursue a Zoning Map Amendment for this property?

25 MR. SOBO: Well, the, the, the reason there is



1 that, as I have explained, the, over time, the surrounding
2 areas have shifted from the larger lot style development to
3 more compact residential neighborhood. And so, we believe
4 that the prior zoning decision was a mistake because the
5 District Council failed to account for the then existing,
6 perhaps existing then, or reasonable foreseeable facts or
7 trend resulting in retention of current zoning. So, that is
8 why we are pursuing this; because we, we are looking at it
9 that there was a mistake in that zone, in the zone in that
10 time because of the failure to actually account for the
11 trend and the foreseeable trend around the property.

12 MR. TEDESCO: And what is the specific zoning
13 change that you, that the Applicant is requesting,
14 requesting today?

15 MR. SOBO: We are actually requesting the zoning
16 for agricultural residential zone to residential single-
17 family attached as a zone, of course, with condition for
18 density stipulation. And which are, which I think will be
19 consistent with the residential land use designations.

20 MR. TEDESCO: And so, what is your future intended
21 use of the property if this application is approved.

22 MR. SOBO: We, we --

23 MR. TEDESCO: And, Sarah, if you could pull up
24 Exhibit 12? Go ahead, Mark. I'm sorry.

25 MR. SOBO: Yeah. We are looking at residential

1 low land use recommendations, about 3.5 units per acre; and
2 that is what we, we intended to do with it, dwelling units,
3 3.5 dwelling units per acre, to ensure consistency with the
4 adopted future land use recommendations of the County.

5 MR. TEDESCO: Would you proffer to this Hearing
6 Examiner to condition this approval on limiting the
7 development to single-family, detached at 3.5 units to the
8 acre?

9 MR. SOBO: Definitely.

10 MR. TEDESCO: And does the Applicant intend to
11 develop townhouses or multi-family buildings on the
12 property?

13 MR. SOBO: No townhouses.

14 MR. TEDESCO: What about multi-family?

15 MR. SOBO: No multi-family, just single-family
16 residential.

17 MR. TEDESCO: And would you agree to, strike that.
18 No, those are all the questions I have, Madam Examiner.

19 MS. MCNEIL: Thanks. Is this Exhibit 12?

20 MR. TEDESCO: No, that's still 16. Twelve was the
21 rendered Concept Plan that just, which reflects the concept
22 plan of single-family, detached only at a density of less,
23 less than 3.5 units to the acre, or no more than 3.5 units
24 to the acre, I should say.

25 While this is up, this would help me a lot. It's

1 not really a question for the witness, but do you remember
2 the, I was going to ask Mr. Ferguson, but the orphan home --

3 MR. TEDESCO: Mr. Ferguson is going to put that in
4 --

5 MS. MCNEIL: Okay.

6 MR. TEDESCO: -- detail.

7 MS. MCNEIL: But on this picture, well, well,
8 bring the picture back up. I'm just trying to figure out
9 where everything is in relation to that. But he'll tell me?

10 MR. TEDESCO: He'll, yeah.

11 MS. MCNEIL: Okay.

12 MR. TEDESCO: We've got that covered.

13 MS. MCNEIL: Oh, okay. Mr. Brown, do you have
14 questions?

15 MR. BROWN: Oh, yes. Good morning, Mr. Sobo.

16 MR. SOBO: Good morning.

17 MR. BROWN: A couple of clarifying questions. You
18 said that you are Esquire professionally? Are you, are you
19 an attorney?

20 MR. SOBO: Yes, I am.

21 MR. BROWN: And are you admitted to practice in
22 Maryland?

23 MR. SOBO: Yes, I am.

24 MR. BROWN: And are you testifying in your
25 capacity as a lawyer, or are you testifying as a layperson,



1 contract purchaser?

2 MR. SOBO: Layperson in contract purchasing.

3 MR. BROWN: All right. You also said you are a
4 member of Day Land Investment LLC, correct?

5 MR. SOBO: Yes, I am.

6 MR. BROWN: And looking at SDAT, that LLC was
7 created approximately one year ago, correct?

8 MR. SOBO: Yes.

9 MR. BROWN: Are you the managing member of that
10 LLC?

11 MR. SOBO: I'm not the managing member. I'm just
12 a member.

13 MR. BROWN: All right. Who is the managing
14 member?

15 MR. SOBO: That, the, just excuse me a second.
16 Generally, I generally you can say I am the managing member,
17 generally speaking, but we don't --

18 MR. BROWN: Generally speaking? We, we can't have
19 that. An LLC is required to have a managing member, and
20 then the other partners, quote, unquote, "Are members," the
21 manager --

22 MR. SOBO: You can just say, I mean, I'm the
23 managing member for this purpose.

24 MR. BROWN: But again, I need to clarify it so
25 that you can correct the record and put a document in the



1 record later.

2 MR. SOBO: Yes.

3 MR. BROWN: You need to look at your operating
4 agreement and determine who the managing member is, and put
5 in the record who the managing member is Because even though
6 you have put in a document that says you're authorized to
7 speak on behalf of this LLC, only the managing member can
8 authorize someone to speak on its behalf. And so, we need
9 to know that. In addition, the, the finance affidavit that
10 was placed in was signed by yourself. And again --

11 MR. SOBO: Uh-huh.

12 MR. BROWN: -- it did not identify you as managing
13 member. So, my question, follow-up would be, what is the
14 percentage of ownership of yourself? And what is the
15 percentage of ownership of the other members, and how many
16 other members are they? if there is more than one member,
17 clearly they are, because you said you're one, and you
18 signed the affidavit of financial contributions. And if you
19 own more than five percent, or any of the other members own
20 more than five percent, then those members need to sign an
21 affidavit as well. So, I'm not going to object to your
22 testimony today, but before this record closes you need to
23 place in this record who the actual managing member of Day
24 Land Investment, LLC, is, if that is you. So, identify it,
25 and what is the percentage of ownership of the various



1 members? We don't need to have the percentage of ownership
2 of any entity or person that owns less than five percent,
3 but everyone who owns five percent or more must be
4 identified. Do you understand that?

5 MR. SOBO: I understand that. And of course, I
6 will submit that for the record. Definitely.

7 MR. TEDESCO: Can I be heard on that real quick,
8 though, just for --

9 MR. BROWN: Yes. Yes.

10 MR. TEDESCO: And, Mr. Brown, I certainly
11 appreciate it. We'll provide that; but I want to make clear
12 that, as you know, an LLC does not have directors, officers
13 or stockholders. With respect to part B of the affidavit,
14 it specifically identifies those individuals having more
15 than five percent. So, an LLC has always historically been
16 treated with the state ethics affidavit requirement and
17 filing disclosure requirements. Understanding, however,
18 what is being asked for completion of the record, we're
19 happy to provide it. But typically speaking, LLCs do not
20 individually file member affidavits. They simply file the
21 affidavit on behalf of the LLC, acknowledging that all the
22 members have been notified; and if any had reported any
23 contributions, it would have been listed on the affidavit.
24 But if the request is that the members file, I don't think
25 that's legally required under the state ethics affidavit

1 filing requirements, but we're happy to provide it.

2 MR. BROWN: Yeah, it's not technically legally
3 required under the state ethics affidavit, but I'm helping
4 you out here. The Maryland courts have changed their
5 requirements for filing appeals from administrative hearings
6 of entities that can do that. And there's a conflict
7 between the state ethics affidavits requirements of
8 requiring persons or entity with five percent or more, and
9 the court requirement, which includes LLCs as corporations
10 for filing appeal purposes. And so, you may run into an
11 issue if you have not identified in this record who the
12 members are of the LLC with five percent or more of
13 ownership. And so, since you're willing to provide it, I
14 think you should, or before the record closes.

15 MR. TEDESCO: Yeah, I appreciate that
16 clarification.

17 MR. BROWN: And, Mr. Sobo --

18 MR. SOBO: Yes, please?

19 MR. BROWN: -- just so the record is clear, your
20 entity, Day Land Investment, LLC, is also the contract
21 purchaser for both the Day Family Trust property, as well as
22 the Tiana Renee Woolard property, is that correct?

23 MR. SOBO: I believe so.

24 MR. BROWN: I'm sorry?

25 MR. SOBO: Yes, Day Land property.



1 MR. BROWN: For both properties, you're the
2 contract purchaser?

3 MR. SOBO: Yes.

4 MR. BROWN: All right. Okay. No other questions
5 at this time. Thank you.

6 MR. SOBO: Thank you.

7 MR. BROWN: Oh, wait a minute. Actually, I do
8 have one follow-up question before I forget. And this
9 question will be asked of Mark Ferguson at a later point in
10 time as well. And that is, you testified a moment ago that
11 there was a mistake in the 2007 SMA, and that's the basis of
12 this application?

13 MR. SOBO: And yes.

14 MR. BROWN: It begs the question that you guys are
15 arguing, and if I misstate it, tell me, but you're arguing
16 that the German Orphan property was rezoned from one zone to
17 MXT in 2007, and adoption of the 2022 Zoning Map, it's now,
18 I believe, an attack zone, or something of that effect. And
19 that part of your mistake argument is that property was up-
20 zoned and the subject Day property was not. And that, to
21 me, begs the question that could it not be argued that, in
22 fact, the German Orphan property was incorrectly up-zoned to
23 MXT, and then adopted in 2002 to attack zone, and that was
24 the mistake in 2007 that was made by the District Council,
25 and that the retention of this subject property in the



1 agricultural zone, I'm just going to use that term globally,
2 was, in fact, not a mistake? That's what was intended? So,
3 I know you probably can't answer that right now, but the
4 question on the table for Mr. Ferguson to address when he
5 comes up, all right?

6 MR. TEDESCO: Yeah, I was going to say that's a,
7 that's an excellent question, and I would hate to have
8 objected to it, but I appreciate you holding it until Mr.
9 Ferguson.

10 MR. BROWN: No other questions. Thank you.

11 MR. TEDESCO: Thank you.

12 MR. SOBO: Thank you.

13 MS. MCNEIL: Thank you.

14 MR. TEDESCO: Thank you, Madam Examiner. I have
15 no further questions for Mr. Sobo; and we would move on to
16 Mr. Dan Scheleagl.

17 MS. MCNEIL: Okay. Yes, Scheleagl. Mr.
18 Scheleagl, do you swear or affirm under the penalties of
19 perjury that the testimony you will give will be the truth
20 and nothing but the truth?

21 MR. SCHLEGEL: Yes, I do. Good morning.

22 MS. MCNEIL: Good morning.

23 MR. TEDESCO: Dan, good morning. Could you please
24 just state your name for the record and address? Sorry.

25 MR. SCHLEGEL: Daniel Schlegel, 4601 Forbes

1 Boulevard, Suite 300, Lanham, Maryland, 20706.

2 MR. TEDESCO: And by whom are you employed, and
3 what's your title?

4 MR. SCHLEGEL: I am employed by Dewberry
5 Engineers. I work out of our Lanham office, and I am the
6 Planning Department Manager for our Maryland offices.

7 MR. TEDESCO: And was Dewberry hired by the
8 Applicant to perform certain services related to this
9 application?

10 MR. SCHLEGEL: Yes. We were.

11 MR. TEDESCO: And what were they?

12 MR. SCHLEGEL: We have performed a boundary survey
13 work on the property. Our teams have done the environmental
14 work and reviewed the existing conditions on site. We've
15 prepared an NRI for the property that was submitted and
16 approved on December 5, 2025. We've done the land planning
17 work on the property to determine how to best meet the, how
18 to best prepare a layout and meet the, the density for the
19 property. We've done some preliminary engineering services
20 to determine road grades and potential stormwater management
21 areas. And we've also done preliminary calculations on the
22 Type 1 Tree Conservation Plan, so we may know what our
23 forest conservation requirements would be moving forward
24 with the development.

25 MR. TEDESCO: Is it fair to say that you and your



1 team are familiar with the site that's the subject of this
2 application?

3 MR. SCHLEGEL: Yes.

4 MR. TEDESCO: And you mentioned a bunch of
5 different items that Dewberry has undertaken, but did you or
6 someone under your direct supervision prepare, prepare the
7 rendered Site Plan submitted with this application, which is
8 Exhibit 12?

9 MR. SCHLEGEL: Yes.

10 MR. TEDESCO: And is this rendered plan a Final
11 Engineered Construction Plan, or is it just a Conceptual
12 Plan prepared to show how the property could be developed?

13 MR. SCHLEGEL: At this time, it's definitely still
14 in a conceptual stage.

15 MR. TEDESCO: And can you generally describe what
16 is shown on that Conceptual Plan, Exhibit 12? We can have
17 Sarah pull it up, too.

18 MR. SCHLEGEL: Yes. Generally, there's, there's
19 one access into the property off of Melwood Road. The road
20 system is primarily a loop around the outer edge of the
21 property with one street also going through the middle of
22 the property to keep everything connected. The lots on the
23 property are shown at a size of 60 by 100 feet, all single-
24 family, detached houses. There are some storm water
25 management areas shown on the property in concept, and also



1 some other open space areas shown on the concept.

2 MR. TEDESCO: So, this plan conceptually shows
3 internal roads or circulation areas, is that correct?

4 MR. SCHLEGEL: Yes.

5 MR. TEDESCO: And it conceptually shows areas
6 designated for residential lots?

7 MR. SCHLEGEL: Yes.

8 MR. TEDESCO: And do you know what density yield
9 that reflects?

10 MR. SCHLEGEL: Yes. We're right at 3.5 DUs per
11 acre, 90, 96 lots on the property.

12 MR. TEDESCO: And the Conceptual Plan shows open
13 space and areas for conservation?

14 MR. SCHLEGEL: Yes.

15 MR. TEDESCO: And does it depict how access to
16 Melwood Road would occur?

17 MR. SCHLEGEL: It does.

18 MR. TEDESCO: And does the plan illustrate how
19 development could be organized across the site?

20 MR. SCHLEGEL: Yes, it does.

21 MR. TEDESCO: And does the Site Plan take into
22 account the surrounding development?

23 MR. SCHLEGEL: Yes. When we did the layout, we
24 definitely looked at what the landscape buffers would be to
25 the adjacent properties. And taken that into consideration,



1 Melwood Road is, is designated historic. So, we've also
2 incorporated the appropriate buffer along that road as well
3 at the entrance.

4 MR. TEDESCO: And do you know what water and sewer
5 category the property is in?

6 MR. SCHLEGEL: Yes. It's both W4 and S4.

7 MR. TEDESCO: And no further questions, Madam
8 Examiner.

9 MS. MCNEIL: Mr. Schlegel, if I were to pull this,
10 this Exhibit 12 up, is that Pennsylvania Avenue on the
11 bottom? Where is it?

12 MR. SCHLEGEL: It's a little further --

13 MR. TEDESCO: Actually, if you, if, Madam
14 Examiner, if, I don't mean to interject; but if you would go
15 to, perhaps, Exhibit 16, that probably gives you a better --
16 actually, strike that. Go to --

17 MR. SCHLEGEL: The context map, right?

18 MR. TEDESCO: Yeah, the context map, which was
19 Exhibit 14, Exhibit 14. I apologize. Yeah.

20 MR. SCHLEGEL: Yeah. So, you can see the site is
21 just north of Pennsylvania Avenue. And with the interchange
22 work that's happened there with Melwood Road and Woodyard
23 Road, you know, Woodyard Road parallels Route 4 in the, more
24 of an east-west fashion; and is, at current, the main
25 entrance into the Westphalia development. And then the Day

1 property is accessed off of Melwood Road and off to the east
2 of Melwood. So, there's one, there's interchange work, and
3 then Melwood Park there between Pennsylvania Avenue and the
4 Day property.

5 MS. MCNEIL: Okay. Thank you. That's a good --
6 so, never mind. I'm going to wait for Mr. Ferguson. That's
7 what he's going to tell me to do, but I could ask you. All
8 the properties touching you, let me see, you got it in the
9 Staff Report. So, everybody around is a higher, is, is a,
10 is at a more dense zone than yours, or no?

11 MR. SCHLEGEL: Well, that's a question for me?

12 MR. TEDESCO: Yeah. I think we'll wait for Mr.
13 Ferguson, if that's okay, Madam Examiner? Because he's
14 going to testify --

15 MS. MCNEIL: Unless they want me to ask it? Okay,
16 Mr. Schlegel.

17 MR. TEDESCO: I want you to ask it. I --

18 MS. MCNEIL: Oh, you're fine.

19 MR. TEDESCO: -- just want you to ask --

20 MS. MCNEIL: Are you doing well? This is my
21 question for Mr. Schlegel. You're doing okay, Mr. Schlegel?

22 MR. SCHLEGEL: Yes, absolutely.

23 MS. MCNEIL: Okay. Great. So, Mr. Brown may have
24 another question. Mr. Brown.

25 MR. SCHLEGEL: Okay.

1 MR. BROWN: Well, I don't. No questions. Thank
2 you.

3 MS. MCNEIL: Oh, okay. Thanks, Mr. Schlegel.

4 MR. SCHLEGEL: You're welcome, Madam Examiner.
5 Thank you very much.

6 MR. TEDESCO: Thank you. Madam Examiner, we have
7 two more witnesses. The final two are probably the more
8 lengthy testimony.

9 MS. MCNEIL: Okay.

10 MR. TEDESCO: I don't know if you want to --

11 MR. MCNEIL: Do you want to take a break?

12 MR. TEDESCO: -- take a quick break? Yeah.

13 MS. MCNEIL: Okay. Let's say, let's say 10:45.

14 MR. TEDESCO: We'll be back. I was just ask to
15 make sure everybody is muted and, and when you're, that way,
16 when you're talking complimentary of everybody, we, we don't
17 hear it. So, thank you.

18 (Recess)

19 MS. MCNEIL: Okay. Are you ready for your next
20 witness? Is Mr. Brown back? Yes.

21 MR. TEDESCO: I am ready if, I know we started the
22 recording. So, we would call Mike Lenhart. Mike Lenhart?

23 MS. MCNEIL: Where are your headphones? He didn't
24 hear me. Don't you usually have on headphones, Mr. Lenhart?

25 MR. TEDESCO: He's reaching for them.

1 MS. MCNEIL: Oh, okay. That's funny. I almost
2 didn't recognize him without them.

3 MR. LENHART: I can't have you not recognizing me.

4 MS. MCNEIL: There you go. Good morning.

5 MR. LENHART: All right. Good morning.

6 MS. MCNEIL: Do you swear or affirm under the
7 penalties of perjury that the testimony you shall give will
8 be the truth and nothing but the truth?

9 MR. LENHART: I do.

10 MS. MCNEIL: Thank you.

11 MR. TEDESCO: Good morning, Ms. Lenhart.

12 MR. LENHART: Good morning.

13 MR. TEDESCO: Please state your name, and address,
14 and occupation for the record.

15 MR. LENHART: Certainly. Michael Lenhart, 231
16 Najoles Road, Suite 250, Millersville, Maryland. And I'm a
17 traffic engineer and transportation planner with Lenhart
18 Traffic Consulting.

19 MR. TEDESCO: And Madam Examiner, we've submitted
20 Mr. Lenhart's CV as Exhibit 35. He has previously been
21 qualified as an expert in transportation planning
22 engineering. I always forget the proper nomenclature you
23 like to use for, for him and Mark, but I would ask that he
24 be accepted in this matter as an expert.

25 MS. MCNEIL: In these later years, we've accepted



1 him as an expert in traffic engineering and transportation
2 planning, and he will be so accepted today.

3 MR. LENHART: Thank you.

4 MS. MCNEIL: Mr. Brown, you didn't have any
5 questions, did you?

6 MR. BROWN: No, no objection.

7 MS. MCNEIL: Okay.

8 MR. TEDESCO: I write that down every time, and
9 every time we start, I'm like, forget to write the, anyway.
10 Thank you for that. Mr. Lenhart, where you retained to
11 analyze traffic impacts associated with this proposed
12 rezoning application?

13 MR. LENHART: Yes.

14 MR. TEDESCO: And did you prepare or supervise the
15 preparation of a traffic impact analysis or study submitted
16 with this application?

17 MR. LENHART: Yes, I did. I believe it's Exhibit
18 10 of the record, which is a July 8, 2025, traffic analysis.
19 I believe Exhibit 20 was a traffic memo dated May 21 of '25;
20 and Exhibit 25 was a traffic analysis dated September 29,
21 2025.

22 MR. TEDESCO: And what materials did you review in
23 preparing that, those analyses?

24 MR. LENHART: We reviewed the Transportation
25 Review Guidelines, the Master Plan of Transportation Zoning



1 Ordinance requirements and the materials associated with
2 this CMA application.

3 MR. TEDESCO: And you've reviewed all the
4 materials submitted with this application?

5 MR. LENART: Yes.

6 MR. TEDESCO: And you've reviewed existing traffic
7 volumes and roadway classifications in the area?

8 MR. LENHART: Yes, we have. We collected existing
9 volumes as part of the traffic study, and reviewed road
10 classifications as well.

11 MR. TEDESCO: And you're familiar with the
12 applicable county standards and guidelines, is that correct?

13 MR. LENHART: Yes, I'm familiar with the zoning
14 ordinance, subdivision regulations and associated traffic
15 impact study guidelines for rezoning, and for, and other
16 entitlements.

17 MR. TEDESCO: And have you reviewed Exhibit 29,
18 the Technical Staff Report and its recommendation?

19 MR. LENHART: Yes.

20 MR. TEDESCO: And did you review, or are you
21 familiar with, the prior approvals of roadway conditions
22 associated with the Westphalia Town Center and surrounding
23 developments?

24 MR. LENHART: Yes.

25 MR. TEDESCO: And are the opinions you will offer



1 here today based on accepted traffic engineering principles
2 and methodologies?

3 MR. LENHART: Yes.

4 MR. TEDESCO: And could you describe, and if
5 there's a particular exhibit, I know, I believe Exhibit 16
6 is an overall, I don't know if that would help, but could
7 you describe the transportation network surrounding the
8 property? Maybe we can pull up Exhibit 16, Sarah? I mean,
9 I'm sorry, what is Exhibit 14? I'll get them straight
10 before the end of the hearing. I apologize. Thank you.

11 MR. LENHART: That's perfect. So, the site on
12 Exhibit 14 is denoted by the star. The site has access to
13 Melwood Road. Right-of-way for Melwood Road will be
14 determined at the time of Preliminary Plan of Subdivision.
15 Melwood Road connects to, southerly to the Route 4 at
16 Woodyard Road interchange; and this site is located
17 approximately one-third mile from the interchange. The
18 Maryland Route 4 is designated a freeway F6. Melwood Road
19 itself is not a master planned roadway, however, it is
20 designated a historic road in the Master Plan.

21 MR. TEDESCO: The subject property is located near
22 major regional roadways such as Maryland 4, is that correct?

23 MR. LENHART: That's correct. The site access,
24 again, would be located about a quarter mile north of
25 Woodyard Road on Old Marlboro Pike, where that comes in A66,



1 which is parallel to and just north of Route 4. There are
2 no other properties located between the interchange at Route
3 4 and this property. Yes.

4 MR. TEDESCO: On the, on the east side?

5 MR. LENHART: On the east side. On the west side,
6 Westphalia Town Center exists, which is, you know, a much
7 higher density property.

8 MR. TEDESCO: And from a traffic perspective, is
9 the property isolated or integrated into an existing roadway
10 network?

11 MR. LENHART: The property is not isolated. It is
12 integrated into an existing roadway network. It fits, you
13 know, this exhibit here shows that it fits fairly nicely
14 between existing subdivisions. The, and again, as noted, it
15 is, the access is one quarter mile roughly from Route 4, and
16 traffic generated to and from this site on Melwood Road from
17 Route 4 would not impact any other properties along Melwood
18 Road.

19 MR. TEDESCO: And how would you characterize the
20 existing traffic conditions in the area?

21 MR. LENHART: Traffic on Melwood Road is very
22 light. It can easily accommodate the traffic generated by
23 this property if the ZMA is approved. The interchange at
24 Route 4 and Woodyard Road, we have studied many times, many
25 projects. It has the capacity to accommodate this

1 development, if approved; and would not add a substantial
2 amount of traffic to the overall road network.

3 MR. TEDESCO: What was the purpose of conducting a
4 Traffic Impact Study and Analysis in connection with this
5 application?

6 MR. LENHART: A Traffic Impact Study is not
7 typically required for a ZMA. There are certain uses that
8 require a TIA. This is not one of those uses that require
9 it. ZMA typically requires a study of the road network,
10 assuming the existing zoning of the property as compared to
11 the traffic generated by the property if rezoned. That was,
12 one of the, the May 21, 2025, traffic memo that we prepared
13 was that analysis; and then the other two traffic studies
14 that we prepared were both Traffic Impact Studies. The
15 Traffic Impact Study, again, while not required, is
16 beneficial in evaluating the impact of the project on the
17 road network. One of the, the Staff Report, or the
18 Transportation Planning Staff, acknowledged that this will
19 not have a negative impact on the road network. And they,
20 they requested a condition that would require a Traffic
21 Impact Study at the time of Preliminary Plan. That, that
22 condition is really not necessary because a Traffic Impact
23 Study will be required at the time of Preliminary Plan.
24 That's when it's typically conducted and adequate public
25 facilities is applied. But the purpose of it, with this

1 application, was to show that adequacy can be met if this is
2 approved and moves forward.

3 MR. TEDESCO: What development assumptions did you
4 make or use in preparing your study?

5 MR. LENHART: We included 16 background
6 developments, including Westphalia Town Center; and it was
7 based on an approved scoping agreement with Park and
8 Planning, which included identification of all of the
9 approved but unbuilt developments in the area.

10 MR. TEDESCO: And did the study assume development
11 at or near the maximum density contemplated for the
12 property?

13 MR. LENHART: Near the maximum density. The study
14 assumed 87 dwelling units, and that was based on, as the,
15 the materials were prepared, there were various Concept
16 Plans that were prepared; and one of them that, at the time
17 of our preparation, assumed 87 dwelling units in the Concept
18 Plan. The Statement of Justification and the, the CMA
19 requests a density of up to 96 units. That doesn't, if, if
20 approved, it doesn't mean that 96 units will be built. It
21 means as we go through the entitlement process and plans are
22 refined, it would be a maximum of 96. Again, we studied 87.
23 The, the difference between 87 and 96 is negligible in terms
24 of the results of the study. The, the adequacy findings
25 would continue to be met even if this was 96 units.

1 MR. TEDESCO: How did you go about calculating the
2 projected traffic generation for the proposed development?

3 MR. LENHART: We utilized, the Institute for
4 Transportation Engineers has a trip generation manual that,
5 and, and the, we also use the Transportation Review
6 Guidelines, which has specific rates for different uses.
7 And actually in this case for residential, the
8 Transportation Review Guidelines takes precedent over ITE;
9 and actually the Transportation Review Guidelines, their
10 trip generation rates have not been updated in decades.
11 They're using rates that are the same that they were 20, 25,
12 30 years ago. The ITE rates are continually updated with
13 the release of new editions, and it's based on more modern
14 data. The ITE would indicate this generates less traffic
15 than what was in our study, but we used the rates required
16 from the TRG to be conservative and meet the guidelines.

17 MR. TEDESCO: And from a traffic perspective, how
18 does the proposed development compare to what could be
19 developed under the current zoning?

20 MR. LENHART: The existing zoning could support
21 roughly 12 dwelling units based on a half a dwelling unit
22 per acre. That would generate 112 trips per day. The
23 proposed ZMA would generate 783 trips per day. And while
24 that sounds like a large increase, it's important to
25 remember that those are spread out over a 24-hour period.



1 And the actual peak hour trips, and even off-peak hour
2 trips, are, are not that substantial. And I would reiterate
3 as well, the site access is roughly a quarter to a third of
4 a mile from the interchange, and impacts no other properties
5 between the site and the interchange. So, it is, it can
6 easily accommodate the trips.

7 MR. TEDESCO: Did the analysis that you conducted
8 identify any failing intersections attributable solely to
9 the proposed development?

10 MR. LENHART: No. All of the intersections passed
11 the required standards.

12 MR. TEDESCO: Were any impacts identified that
13 could not be mitigated?

14 MR. LENHART: No. Again, all the intersections
15 passed the required standards, so there's no mitigation
16 required.

17 MR. TEDESCO: And you're familiar with the
18 County's adequate public facilities requirements?

19 MR. LENHART: Yes.

20 MR. TEDESCO: Does the ZMA application approval
21 itself authorize development?

22 MR. LENHART: No, it does not. Future
23 entitlements are required. Preliminary Plan of Subdivision
24 generates the need for a certificate of adequacy, and that
25 Certificate of Adequacy and the Preliminary Plan establish



1 the entitlement that vests the, the traffic associated with
2 the site.

3 MR. TEDESCO: And I think you hit on this, but
4 let's just clarify it. You did review the Staff Report,
5 Exhibit 29?

6 MR. LENHART: Yes, I did.

7 MR. TEDESCO: You're aware that it recommended
8 disapproval of this application?

9 MR. LENHART: Yes.

10 MR. TEDESCO: And did staff, to your knowledge,
11 based upon your review of that report, did, does Staff
12 identify traffic impacts as the basis for denying the ZMA?

13 MR. LENHART: No, they do not.

14 MR. TEDESCO: Does Staff conclude that traffic
15 impacts are unmitigable in this case?

16 MR. LENHART: No, they do not. In fact, the
17 Transportation Planning Staff memo states that, and I will
18 quote, "The rezoning of the property will not impair the
19 ability to make transportation-related recommendations that
20 are supported by an approved Master Plan or Function Plan,
21 or included in the Zoning Ordinance or subdivision
22 regulations."

23 MR. TEDESCO: Does Melwood Road currently serve
24 residential traffic?

25 MR. LENHART: It does, yes.



1 MR. TEDESCO: Is the proposed development
2 consistent with the roadways function?

3 MR. LENHART: It is, yes; and the, particularly
4 given the proximity to the interchange, and the fact that
5 traffic between the property and the interchange impacts no
6 other residential properties.

7 MR. TEDESCO: Would the proposed residential
8 traffic be compatible with the surrounding land uses, in
9 your opinion?

10 MR. LENHART: Yes.

11 MR. TEDESCO: Are there operational improvements
12 that could be implemented if required?

13 MR. LENHART: Yes. There are substantial right-
14 of-ways available at Route 4 and Woodyard Road interchange
15 for improvements, if necessary. However, again, the traffic
16 study shows that adequacy will be met; and not only for this
17 project, but we've studied that interchange many times, and
18 it's been shown to meet.

19 MR. TEDESCO: From a traffic perspective, how does
20 the development of this property under the RSF-A Zone that's
21 limited to single-family, detached units only at a density
22 of residential low being no more than 3.5 units to the acre
23 compare to development potential under the AR zoning from a
24 traffic perspective?

25 MR. LENHART: The RSF-A would allow a higher



1 density than the AR, which would generate an increased
2 volume of traffic from the property. However, even with the
3 approval of the ZMA, this property will not generate a
4 substantial amount of traffic. And again, the intersections
5 would still be adequate with excellent access to the
6 arterial and freeway system.

7 MR. TEDESCO: So, both zones allow for residential
8 development?

9 MR. LENHART: Correct.

10 MR. TEDESCO: And is the proposed development
11 consistent with traffic assumptions made for the Westphalia
12 area in the adopted plans, if you know?

13 MR. LENHART: Yes. Well, the, the traffic study
14 was based on an approved scoping agreement with Park and
15 Planning. The development itself, I mean, obviously the,
16 the existing zoning, AR, wouldn't support the density
17 proposed; but I believe that it would be consistent with the
18 overall area given, again, a look at what is near it and its
19 access to, its excellent access to the freeway system.

20 MR. TEDESCO: Did your analysis consider traffic
21 safety at all?

22 MR. LENHART: Traffic safety is, it's inherently
23 considered in the adequacy test and, but because as things
24 get more congested, as intersections get more congested,
25 there's more failures. Oftentimes, drivers will become a

1 little more aggressive which, in turn, can have some impacts
2 on traffic safety. And so, the, the theory is if everything
3 passes the adequacy test, and if intersections are designed
4 to meet the required design standards, particularly
5 intersection site distance, stopping site distance, those
6 types of things, then safety is determined to be met or, you
7 know, adequate.

8 MR. TEDESCO: Does the proposed development, in
9 your opinion, raise any unique safety concerns?

10 MR. LENHART: No, it does not.

11 MR. TEDESCO: Are access points designed to meet,
12 or strike that. Will access points, once engineered, be
13 designed to meet County safety standards?

14 MR. LENHART: Yes. We'll have to go through all
15 the permitting requirements and meet the design
16 requirements.

17 MR. TEDESCO: From a traffic engineering
18 standpoint, does the proposed rezoning pose a risk to public
19 safety, in your opinion?

20 MR. LENHART: No, it does not.

21 MR. TEDESCO: Do you have an opinion to a
22 reasonable degree of professional engineering certainty in
23 planning, and transportation planning, whether the proposed
24 rezoning can be adequately served by the existing planned
25 transportation network?

1 MR. LENHART: Yes, for all the reasons testified.

2 MR. TEDESCO: And does the Traffic Impact Study
3 support approval of the ZMA from a transportation
4 standpoint?

5 MR. LENHART: Yes. Again, for all reasons
6 testified.

7 MR. TEDESCO: Are any identified traffic impacts
8 manageable through the standard County review process?

9 MR. LENHART: Yes. The Traffic Study shows that
10 all standards are met at this time. It will be retested at
11 time of Preliminary Plan, but there's no reason to, to
12 believe that they won't be met again.

13 MR. TEDESCO: And do you have a recommendation
14 based upon your analysis and review of this case, in light
15 of all the applicable requirements and regulations, whether
16 or not this application should be approved from a
17 transportation standpoint?

18 MR. LENHART: From a transportation perspective, I
19 believe this should be approved. Actually, I believe that
20 this is the right, it's a good location for this type of
21 development, again, proximity to arterial and freeway
22 network, the proximity to the Town Center without impacting
23 other developments, other properties that adjoin the road
24 between the property and the freeway. I believe it is a
25 good location and makes sense to be rezoned.



1 MR. TEDESCO: Mr. Lenhart, that's, those are all
2 the questions I have. Thank you so much. I'll turn you
3 over to Mr. Brown and Madam Examiner.

4 MS. MCNEIL: I just have a quick one. I don't
5 know who moved this exhibit, but can we get it back on the
6 property with the star for a second? So, you all are, I
7 want to see the star. Okay. So, you are the star. And now
8 can you raise it up some so we see Pennsylvania Avenue? The
9 other way.

10 MR. TEDESCO: I can see it on my end.

11 MS. MCNEIL: Oops.

12 MR. LENHART: I wonder if you have your screen
13 zoomed in, Madam Examiner?

14 MS. MCNEIL: Oh, you think I'm the problem?
15 You're right.

16 MR. TEDESCO: No, we, we see, we see the whole
17 network on our screens.

18 MS. MCNEIL: Make sure you tell Mr. Clagett it
19 wasn't just him. Okay. So, now I don't, I still don't see
20 the star, though. It's huge now. But anyway, I, I'm, there
21 it is. So, Melwood Park is not a development, that's the
22 Parking and Planning land?

23 MR. TEDESCO: No, Melwood Park is a development.

24 MS. MCNEIL: So, but you're the star. So, you're
25 saying you have good access because of that area to the, I

1 don't know where the north Arrow is --

2 MR. TEDESCO: North would be up.

3 MS. MCNEIL: Okay.

4 MR. TEDESCO: Plan view, plan view --

5 MS. MCNEIL: So, to the west?

6 MR. TEDESCO: No, so --

7 MS. MCNEIL: No, to the east? So, you're talking
8 because you're, you got that property, nothing but trees
9 between you all, and to the east and the interchange?

10 MR. LENHART: Yes.

11 MS. MCNEIL: So, you're not impact, so I mean, to
12 me, Melwood Park is sort of between you and the interchange,
13 but maybe not all of it. I thought you said earlier there
14 was nothing between you and the interchange?

15 MR. LENHART: Well, Melwood Park has access off of
16 Old Marlboro Pike. They don't access Melwood Road. And,
17 and so there is no, no conflict between the traffic from
18 Melwood Park, and on Melwood Road with the proposed
19 rezoning. And also, there's a big, pretty large buffer area
20 in there between Melwood Park and Melwood Road.

21 MS. MCNEIL: Okay. Thank you. Mr. Brown.

22 MR. BROWN: That was going to be my only question
23 as well, Mr. Lenhart, when you testified there was no
24 development on the east side of Melwood Park between the
25 subject property and Route 4, and you just clarified there

1 is a property, and it's Melwood Park; but Melwood Park, in
2 your assumption, was, does not have a network traffic link
3 to Melwood road, correct?

4 MR. LENHART: That's correct.

5 MR. BROWN: All right. No other questions. Thank
6 you.

7 MR. TEDESCO: Madam Examiner, our last witness of
8 the morning would be Mr. Ferguson.

9 MS. MCNEIL: Of the morning? Are there some in
10 the afternoon, or this is the last witness?

11 MR. TEDESCO: No, we're trying to get, we're
12 trying to get done before the afternoon.

13 MS. MCNEIL: Okay. So, Mr., there you are, Mr.
14 Ferguson. Do you swear or affirm under the penalties of
15 perjury that the testimony you shall give will be the truth
16 and nothing but the truth?

17 MR. FERGUSON: Yes, I do.

18 MS. MCNEIL: Okay. Thank you.

19 MR. TEDESCO: Mr. Ferguson --

20 MR. FERGUSON: Good morning, Madam Examiner. Good
21 morning, Mr. Tedesco.

22 MR. TEDESCO: Good morning, sir. Could you please
23 state your name and address for the record?

24 MR. FERGUSON: My name is Mark Ferguson. My
25 business address is 5407 Water Street, Suite 206, in

1 historic downtown Upper Marlboro, Upper Marlboro, Maryland.

2 MR. TEDESCO: And your CV has been entered as
3 Exhibit 34, Madam Examiner; and Mr. Ferguson has been
4 previously accepted as an expert land planner before you and
5 many others, and I would ask that his qualification be
6 accepted and retained as such in this case.

7 MS. MCNEIL: Assuming no objection from Mr. Brown,
8 you will be accepted as an expert in the area of land use
9 planning.

10 MR. FERGUSON: Thank you, Madam Examiner.

11 MR. TEDESCO: Mr. Ferguson, were you asked to
12 provide professional land use planning opinions regarding
13 this rezoning?

14 MR. FERGUSON: Yes, I was.

15 MR. TEDESCO: And did you prepare a written
16 testimony and do a Land Planning Report in this matter?

17 MR. FERGUSON: I did.

18 MR. TEDESCO: Madam Examiner, that's Exhibit 36
19 for your reference. And you're familiar with the applicable
20 Sector Plan for this area of the --

21 MR. FERGUSON: I am, and I would, I would add to,
22 to go back to your previous question, I also contributed,
23 did not sign, but did contribute to the preparation of the
24 statement of justification as well.

25 MR. TEDESCO: And you have no financial interest

1 in the outcome of this case, is that correct?

2 MR. FERGUSON: I do not.

3 MR. TEDESCO: Other than your reputation, I guess?

4 MR. FERGUSON: That's, financial, no, just, just
5 reputation.

6 MR. TEDESCO: Forgive me, Madam Examiner. Did you
7 review the, excuse me, strike that. You are familiar with
8 the applicable Master Plan or Sector Plan for this area?

9 MR. FERGUSON: Yes, I very much am.

10 MR. TEDESCO: And what is that?

11 MR. FERGUSON: The 2007 Westphalia Sector Plan and
12 Sectional Map Amendment.

13 MR. TEDESCO: And you reviewed that document in
14 regard to this case?

15 MR. FERGUSON: I certainly did.

16 MR. TEDESCO: And you're familiar with Planning
17 Prince George's 2020 and 2035, known as Plan 2035, is that
18 correct?

19 MR. FERGUSON: Yes, I am.

20 MR. TEDESCO: And you reviewed that as well?

21 MR. FERGUSON: I did.

22 MR. TEDESCO: And did you review Exhibit 29, the
23 Technical Staff Report, in this case?

24 MR. FERGUSON: I did.

25 MR. TEDESCO: And did you review all the zoning

1 maps, aerial imagery, context exhibits, numbers 12, 16, 19,
2 and the survey, Exhibit 37?

3 MR. FERGUSON: Thirty-seven, 37, I actually
4 prepared myself.

5 MR. TEDESCO: And did you conduct site visits or
6 field inspections of the property?

7 MR. FERGUSON: I did.

8 MR. TEDESCO: Could you describe the subject
9 property? If you would like a particular exhibit, please
10 let us know, but could you describe the subject property
11 from a planning perspective?

12 MR. FERGUSON: I will, and actually I would ask
13 that Exhibit 37 be brought up. And, Madam Examiner, I would
14 ask if you are able to see the entirety of that exhibit?

15 MS. MCNEIL: Yes.

16 MR. FERGUSON: Okay. Going all the way up to a
17 green line in Cabin Branch where the cursor is floating
18 around now, and going all the way south to Pennsylvania
19 Avenue and the red stripes near the bottom where the cursor
20 is. Okay. All right. Super. So, what, what we have is,
21 is an excerpt from WSSC's system map. It shows sewer lines
22 in green, water lines in blue, and then there's other labels
23 that I have added to it that are, that are my own work. So,
24 the subject property is outlined in red. As you've heard,
25 that's on the east side of Melwood Road, which runs north-

1 south right in the middle of the exhibit. And towards the
2 end of Melwood Road, up its northern end, it takes a wiggle
3 to the left and to the right as it loops around the corner
4 of a property which has been outlined in orange. So, Madam
5 Examiner, you were asking earlier about the German Orphan
6 home. That is, that's it. What you see within the limits
7 of that orange are platted lots. Those plats have been
8 recorded. The, the Enclave development is, is currently
9 awaiting the extension of infrastructure from the Parkside,
10 or Smith Home farm development, which is working its way
11 through some complications, and then, and then eastward.
12 That, the, the water and sewer, if you would look very
13 closely at that exhibit, to the north of the German orphan
14 home is mostly dashed. So, the water lines are in red, you
15 don't need to zoom in, indicating they haven't built yet.
16 The sewer lines that are around those dashed red water lines
17 are a finer green dash. They haven't been built yet. To
18 the north, there is a green line in a larger green area.
19 That's a trunk sewer that is in the Stream Valley of Cabin
20 Branch and that does, in fact, exist. All right. So, what,
21 what you go back to, to our property in red, on the east
22 side of Melwood Road, a designated historic road. To the
23 east of our subject property is a Pepco transmission line.
24 And then it is, it is surrounded by development, either
25 planned or existing, on, on all four sides. So, if we start

1 from the south, we have Melwood Park, which is a
2 Comprehensive Design Zone developed property from the mid-
3 1990s that's on both sides of the Pepco right-of-way. That,
4 as Mr. Lenhart testified, gets its access either directly
5 from old Marlboro Pike to the south, just off the bottom of
6 this exhibit; or now from the interchange of Woodyard Road,
7 Melwood Road and, and Route 4. And so, it's really now you
8 get into the western part of Melwood Park from the off-ramp
9 of, of westbound Route 4 onto, onto Woodyard Road. In
10 between the dwellings of Melwood Park and the subject
11 property, there's a strip of darker green. That's land that
12 was dedicated to Park and Planning, and conveyed to Park and
13 Planning as a part of the Melwood Park development. That is
14 the Stream Valley of Back Branch. You can see there are
15 green lines in that, and that is the constructed trunk sewer
16 in Back Branch which, sort of working up from the right side
17 of the exhibit, was built in the 70s to serve Roblee Acres,
18 North Roblee Acres, Melwood Manor, was extended up Back
19 Branch in the mid-1990s to serve Melwood Park; and then was
20 further extended, the authorization in 2007, and the
21 construction in the mid 20 teens. It was final in 2018,
22 through the remainder of the, the southern edge of the
23 property through the, through the Park and Planning
24 property. That Park and Planning property is zoned ROS. It
25 was originally in the RS zone, but when the County created

1 the ROS zone, subsequently, they did a County-Wide Map
2 Amendment and conveyed, or reclassified County and Park and
3 Planning owned properties above a certain size into the ROS
4 Zone. And so, the Back Branch Stream Valley Park was
5 rezoned from the RS Zone to the ROS Zone at that time in
6 1998. So, then you go to the north. You have the subject
7 property. The subject property is part of a subdivision
8 from the early 1980s called Melwood Estates. Melwood
9 Estates lies in between Melwood Park and the former German
10 orphan home, or Enclave, to the south and the north; Melwood
11 Road to the west; and the, the Pepco right-of-way to the
12 east, with Melwood Manor and the extension of Roblee Acres
13 across the, across the Pepco right-of-way. This was
14 subdivided before sewer was extended all the way down that
15 branch, and all of these properties were developed on
16 individual well and septic systems. It's worth mentioning
17 that the, the 1980 Sectional Map Amendment, as discussed by
18 Staff, seems to have had discussion indicating that the
19 property was in S4 all the way back then. I don't have a
20 copy of that SNA to verify Staff's correlation of that, that
21 property with the subject. It does seem that they made an
22 error in other courts, in other discussion of that property
23 in the, in the 1980 SMA. So, I'm not a hundred percent
24 certain, but I can say that certainly the property was in S4
25 at the time of the comprehensive 2001 update of the County's

1 Ten Year Water and Sewer Plan. And I do have submitted into
2 the record Exhibit 39. That was an exhibit from an early
3 application of Smith Home Farm for their category change.
4 And you can see on Exhibit 39 that the subject property was
5 at that time in, in 2004 classified S4. I looked at all of
6 the reclassifications before the 2000, or after the 2011
7 comprehensive adoption, or the comprehensive update of that,
8 of the Water and Sewer Plan; and there were no changes
9 affecting the subject property. Before that time, the
10 individual maps aren't available. So, that was as far back
11 as, as I was able to go. So, Melwood Estates, approximately
12 half of which is taken up by the, the subject property, is
13 in the AR Zone. It is developed with single-family
14 dwellings on, on large lots that were built in the mid-
15 1980s. So, you can see on the 1988 aerial imagery that,
16 essentially, all of the houses in the neighborhood were
17 built. As you go further up the neighborhood, excuse me,
18 further up Melwood Road, you get to Twin Knolls on the
19 exhibit. You can see that's a collection of a half dozen
20 lots, also in the AR zone, contemporarily subdivided and
21 constructed within a few years as Melwood Estates, also all
22 on private water and sewer. Now, one of the weird things to
23 me as a planner about this sort of donut hole, if you will,
24 the whole of, of AR zoning that's surrounded by a donut of
25 the denser development that you see that's either

1 constructed or planned, platted and under, you know,
2 construction, is that, number one, it's all served by
3 Melwood Road; but Melwood Road sort of weaves between the
4 houses in Melwood Estates and Twin Knolls, and the denser
5 development on the other side. So, as you come down Melwood
6 Road from Pennsylvania Avenue on the left, in that large
7 blank area to the, to the west of Melwood Park, you have an
8 area that is part of the town center, that is designated as
9 fringe and has been planned for the commercial and office
10 component that we hope will all arrive at, at the Westphalia
11 Town Center. Then as you proceed north, again, on the, on
12 the west side of Melwood Road, you have a large stormwater
13 management pond that serves the east side of, of Westwood,
14 Westphalia Town Center. That's immediately across Melwood
15 Road from the subject property. Then as you go north, you
16 have the rear of a number of, of single-family, detached on
17 smaller lots in Melwood Center that sort of loop around in
18 that arc that you can see. Those are very visible from the,
19 from the subject property. And then you get past those
20 lots. As you, as you get to the, the, the gentle bend in
21 Melwood Road, it starts to drop, topographically, fairly
22 substantially down to Twin Knolls; and, and then the lots
23 in, in Westphalia Town Center are really as much as 50 feet
24 above the grade of, of Melwood Road in front of Twin Knolls.
25 So, they really, the backs of those houses are, are visibly,

1 you know, looming over the development.

2 But then on the east of Melwood Road, you see you
3 have the, the platted lots of, of the Enclave. Those lots
4 that come right near the bend where the old entrance into
5 the German orphan home still is today, those lots really sit
6 up on a knoll. So, they're also going to really dominate
7 the landscape of these retained areas of, of single-family,
8 large lots in the, in the, in the RA Zone.
9 And then, of course, as you get all the way up to the end of
10 the cul-de-sac, or what is now the cul-de-sac in, in Melwood
11 Road, you can see that as a bubble, you really become
12 exposed to the ongoing development of Westphalia and
13 Parkside off to the, off to the west.

14 So, while you theoretically have this little
15 enclave of the land that, that time forgotten, that zoning
16 surrounded along Melwood Road, the way that Melwood Road is,
17 is, or these two developments of, of old subdivisions of
18 Melwood Estates and Twin Knolls sit is that Melwood Road
19 really abuts a general plan center to the, to the west along
20 much of its alignment. And then the more dense development
21 on the, approved for the German orphan home in the, the
22 residential areas surrounding the town center.

23 So, that, that really is, is a long discourse on
24 the neighborhood and the zoning. How would I describe it
25 from a planning perspective? As a, as a whole in the donut,

1 but an imperfect whole, because the, the road that
2 approaches it really is very, very much abutting and a part
3 of the very dense development that surrounds the donut hole.
4 Sorry to be so discursive, Mr. Tedesco.

5 MR. TEDESCO: That's okay. I have got to figure
6 out where that leaves me. Is the property located within an
7 established community's growth policy area?

8 MR. FERGUSON: It is.

9 MR. TEDESCO: And could you just describe the map
10 discussions between what's printed and what's online?

11 MR. FERGUSON: I will. So, what, what we are,
12 what that, what you're referring to is the generalized
13 Future Land Use Map. And it's, it's, you know, just sort of
14 another evidence of mistakes. So, in the printed
15 development, which is losing its cover, I have this one
16 pretty dog-eared, if you look at the generalized Future Land
17 Use Map on page 101, the donut hole of RA zoning is
18 identifiable and colored as rural and agricultural
19 recommended, or generalized future, designated generalized
20 future land use. When you look at P.G. Atlas, on the other
21 hand, it has the residential low designation that's
22 recommended in the Sector Plan.

23 If you go online to the publications list on the
24 Maryland-National Capital Park and Planning Commission's
25 website, and you download the General Plan, and you zoom in

1 really close to the generalized Future Land Use Plan on us,
2 I don't recall if it has a similar pagination, but that
3 same, that same plan, you'll see that the generalized future
4 land use has changed on the version that you see online, and
5 does conform to the residential low land use that is
6 recommended by the Sector Plan.

7 MR. TEDESCO: Does the Sector Plan define
8 residential low?

9 MR. FERGUSON: It does not. I will say that there
10 are, there are contemporary plans that were prepared by the,
11 the Park and Planning Commission, approved by the District
12 Council, which are Informative to that question, though.
13 The Westphalia Sector Plans least dense land use
14 classification is residential low. So, the question then
15 becomes, is, did they mean, therefore, that that includes
16 also what we would call residential and, and, or rural and
17 agricultural land use?

18 So, for that, I opened my Bowie and Vicinity
19 Master Plan, which was approved in 2006, and that includes a
20 land use of residential low. There it's specifically
21 described as areas intended for suburban neighborhoods with
22 single-family houses on lots ranging from 6,500 square feet
23 to one acre in size, and retirement or planned residential
24 development. That is roughly, but not exactly,
25 corresponding to the modern definition that is laid out in

1 the, in the, in the General Plan. The Bowie Sector Plan, or
2 the Bowie Master Plan does include a less-dense designation
3 of residential rural land use, which is for areas intended
4 for sparse development alongside farming, raising livestock,
5 recreation, and preservation of scenic and environmental
6 attributes. So, at that same time, in the Bowie Plan, there
7 was a less-dense land use designation, which the Park and
8 Planning Commission Staff was using in the preparation of
9 plans.

10 Similarly, in the 2006 Henson Creek Plan, they
11 have residential low density as a land use for much of that
12 planning area. But there is also a land use of residential,
13 comma, rural character, very, in parallel with the Bowie
14 Plan, which is a lower density land use, and that was
15 reserved for areas like the Broad Creek Historic District.
16 So, in the planning lexicon of that time, in contemporary
17 prepared plans, there was a designation that was part of the
18 lexicon that, that Park and Planning was using for less
19 dense development, which they did not apply here. I keep
20 getting you lost with my long answers.

21 MR. TEDESCO: That's okay. Does the proposed
22 rezoning and the conceptual density fall within those
23 adopted parameters?

24 MR. FERGUSON: Well, it, it does. So, the, the
25 general plan today describes residential low land use as,

1 and I'll turn to the description, residential areas up to
2 3.5 dwelling units per acre; primarily single-family,
3 detached dwellings; and then there is a column beside that
4 that says density per acre in residential low ranges from a
5 low of half a unit per acre up to, and not to exceed, 3 1/2
6 units per acre. Rural and residential or, excuse me, rural
7 and agricultural land use is on that density chart, less
8 than or equal to one-half acre, which would correspond to RA
9 or AR zoning.

10 MR. TEDESCO: In your professional opinion, is the
11 requested rezoning here today consistent with the Sector
12 Plan and Plan 2035 recommendations?

13 MR. FERGUSON: So, in, in my opinion, it, it very
14 much is; and I think it's, it's worth going through the, the
15 Sector Plan recommendations. And I think it will address as
16 well the question that, that Mr. Brown had, had brought up
17 during the end of Mr. Sobo's testimony. This property is
18 just outside of the town center, the General Plan Town
19 Center of, of, of Westphalia. So, the Sector Plan
20 characterizes this in its development pattern element with
21 recommendations under policy five for residential area. And
22 here it says develop for the strategy, develop approximately
23 3,500 acres of new low to medium density residential areas
24 in a manner that conserves and is integrated with
25 approximately 1,300 acres of existing residential

1 development in accordance with the overall development
2 pattern concept. I would add that the medium density
3 residential areas that it discusses are up towards the
4 Beltway off near Sansbury Road. Then you go through the
5 design principles and most particularly it says, provide a
6 variety of single-family, attached residential lot sizes in
7 and near the Westphalia Town Center. So, the idea is that
8 higher density was a very part, integral part of the Plan's
9 vision, not just within the town center, but near the town
10 center. So, the enclave would also be in keeping with the
11 Plan's vision because of, because of that recommendation.

12 So, within the town center, they talk about, about
13 smaller lots near the town center getting larger. So,
14 incorporate a, a variety of housing types. And this is,
15 again, recommendations for the residential areas surrounding
16 the town center. Incorporate a variety of housing types and
17 single-family projects. Build townhouses and small lot
18 single-family homes to add diversity to neighborhoods, or as
19 a transition between higher density units and lower density
20 single-family neighborhoods. So, this is exactly what this
21 application seeks to achieve.

22 Ordinarily, when you're trying to implement a
23 Sector Plan's vision, you don't come in with a Euclidian
24 rezoning such as what we're asking for. You come in with a
25 plan development application. However, in the Council's

1 infinite wisdom in the adoption of the new zoning ordinance,
2 they said, if you're in a rural and agricultural-based zone,
3 you can't do that. So, what we have to do is instead of
4 come in with a plan development to implement the Sector
5 Plan's vision, a plan development that would look exactly
6 like what we're proposing, we have to go and demonstrate the
7 mistakes that the Council made in leaving this property in
8 the RA, now the AR Zone. And it's for that reason that we
9 ask for RSF-A, notwithstanding the fact that we're looking
10 for a low-density development in accordance with the Sector
11 Plan's recommendation.

12 What the RSF-A does, zone does do is it allows the
13 creation of the small lot, single-family, detached
14 residential development that the Sector Plan looks for and
15 that we feel is an appropriate transition, not just between
16 Westphalia Center to the west, and Melwood Manor, Roblee
17 Acres to the, to the east; but it wouldn't be a harsh
18 transition between the townhouses in Melwood Park to the
19 south and the single-family detached lots on large lots that
20 remain in Melwood Estates and Twin Knolls.

21 MR. TEDESCO: Are you aware whether the Applicant
22 has proffered a condition to limit the development of this
23 property as part of this --

24 MR. FERGUSON: I am.

25 MR. TEDESCO: -- Zoning Map amendment to single-



1 family detached units only at a certain density range?

2 MR. FERGUSON: I am.

3 MR. TEDESCO: And what is your understanding of
4 that?

5 MR. FERGUSON: Well, I recommended those, those
6 conditions be, be proffered because what they do is ensure
7 that the RSF-A Zone is used in accordance with the, the
8 developer's actual intent; that is, to achieve a flexible
9 development that implements the vision of the Sector Plan,
10 but without going up to the 8.7 dwelling units per acre that
11 the dimension, that the intensity and dimensional standards
12 for that use in the RSF-A Zone allow; or for some of the
13 more intense uses like attached dwellings that that zone
14 also permits. So, again --

15 MR. TEDESCO: Are you --

16 MR. FERGUSON: -- an intent to be compatible to
17 listen to the Sector Plan's vision and, and implement it
18 with a Euclidean Zone, which is the only route that the
19 Council has left us for the property.

20 MR. TEDESCO: Are you familiar with the purposes
21 of the RSF-A Zone?

22 MR. FERGUSON: I am.

23 MR. TEDESCO: And does the RSF-A Zone allow
24 flexibility in lot design while maintaining compatibility
25 with the detached housing products?

1 MR. FERGUSON: It does.

2 MR. TEDESCO: And why is the RSF-A an appropriate
3 zoning tool for this site, even though the attached units
4 are not proposed?

5 MR. FERGUSON: Well, and again, that was, as I, as
6 I just testified, it allows the creation of smaller lot
7 sizes that, that allow you to get to the density that is
8 contemplated to achieve the, the environmental goals of
9 protection; to buffer the adjoining lots; and do it on the
10 lots that are smaller that will serve as a transition
11 between the denser development in the town center and the
12 abutting single-family, both detached and detached units
13 that surround the property.

14 MR. TEDESCO: And would that zone classification
15 better reflect the existing infrastructure and availability
16 of the surrounding development in your opinion?

17 MR. FERGUSON: Well, it, it will. I mean, again,
18 the, the property has been planned for public sewer service
19 for at least 20 years, and maybe 40. The, the trunk sewer
20 abutting the property has been present for 30 years. The
21 property, as Mr. Lenhart testified, is proximate to an
22 interchange. If this were five years ago, I think we would
23 be here asking for the MXT Zone. But, you know, it's 2026,
24 and here we are.

25 MR. TEDESCO: Are you familiar with the legal



1 concept of mistake in the current Sectional Map Amendment?

2 MR. FERGUSON: I am.

3 MR. TEDESCO: And from your standpoint, what
4 constitutes a mistake in zoning?

5 MR. FERGUSON: Well, there, there were, there were
6 facts that were not considered in the application of the
7 zone such that if the district council looked very
8 specifically at a complete set of facts about a property,
9 that they could have reached a different conclusion than,
10 than they would have based on what they, what they did look
11 at.

12 MR. TEDESCO: Does, in that context, does a
13 mistake require fraud or bad faith?

14 MR. FERGUSON: No, absolutely not.

15 MR. TEDESCO: And in your opinion, was the
16 retention of the AR Zone on this property during the
17 Westphalia SMA a mistake?

18 MR. FERGUSON: Well, I do believe that it was.
19 Yes.

20 MR. TEDESCO: And what existing facts or trends
21 should have been considered at that time?

22 MR. FERGUSON: Well, I go through in my, in my
23 report some commentary on the three mistakes which were put
24 forth in the, in the statement of justification. I do note
25 that there is, you know, there is certainly case law that

1 says that you can make a bad planning decision, and that's
2 not a mistake.

3 MS. MCNEIL: Okay. Excuse me one second.

4 MR. FERGUSON: Madam Examiner, yes, ma'am?

5 MS. MCNEIL: I thought Stan was going to say
6 something sooner. So, Mr. Ferguson can say almost
7 everything except start being legal. So, he could talk
8 about what was out there to be seen, right, but he can't say
9 the case law says this, or I believe it's a legal mistake,
10 can he?

11 MR. TEDESCO: Well, I'm asking him for his opinion
12 on what, what facts should have been or were relevant,
13 relatively available to be considered that weren't. So, I'm
14 --

15 MS. MCNEIL: That question is good. But before
16 that, you, you asked something else that was --

17 MR. TEDESCO: No, no, I didn't.

18 MS. MCNEIL: -- too, like, legal --

19 MR. TEDESCO: But I did not. But Mr. Ferguson,
20 you know, was just referencing what he put in his report,
21 which may have gone into that realm to justify. But the
22 question I asked was, what existing facts or trends should
23 have been considered at the time?

24 MS. MCNEIL: Yeah, right. But a minute ago,
25 honestly, there was a legal, because that's why I was

1 staring at Stan, but he didn't see me. So, let's just, you
2 know, I mean --

3 MR. BROWN: I was trying to get --

4 MS. MCNEIL: I don't stop his expertise but, oh,
5 go ahead. I'm sorry.

6 MR. FERGUSON: No, Madam Examiner, I think you're,
7 you're, you're correct; and I'm certainly not trying to make
8 your conclusion for you. You are the one who, who
9 determines these things.

10 MS. MCNEIL: That wasn't even the point. It's
11 just lawyers, so you can go ahead. I just wanted to put it
12 out there that let's watch how we're saying.

13 MR. FERGUSON: And, and I, I thank you for that.
14 You are, you are, of course, as you always are, correct.
15 The, the --

16 Come on now, you're under oath.

17 MR. FERGUSON: No, no, I was, from my experience,
18 that's, that is the truth and the whole truth. The, the,
19 the point that I was trying to draw is that staff certainly
20 opines that, well, this area is, you know, residential and
21 could fulfill all of those planning goals; and so,
22 therefore, they were, you know, just engaging in bad
23 judgment. I don't feel that they do meet all of those
24 planning goals; and had there been an examination of the
25 property, it would have been clear.

1 Now, when you look at the, the, the plan and look
2 for what did they say about, not even just the subject
3 property, but the neighborhood, what did they say about
4 Melwood Estates? What did they say about Twin Knolls?
5 Well, they put a number eight, I think, on a map in the
6 Sectional Map Amendment, and they said this is a
7 neighborhood on a map. They didn't put a boundary around
8 that neighborhood. They didn't describe the neighborhood.
9 They didn't limit the neighborhood. It was just a number on
10 the map that says, this is neighborhood eight. There's no
11 discussion of Melwood Road beyond. They want it to be a
12 trail and they want it to be buffered. So, they certainly
13 didn't look at sewer service, the proximity to sewer
14 service. They didn't look at Mrs. Day's testimony in my, in
15 my opinion. And I say that because when you look at the
16 Sectional Map Amendment, there's a map, and then two pages
17 of a table that describes all of the rezoning requests that
18 they received.

19 Mrs. Day is not on that table. Seven of her
20 neighbors are. She's not. So, I think there are a number
21 of things that suggest that this area just wasn't
22 considered.

23 MR. TEDESCO: So, let's talk about the Staff
24 Report, and maybe this will further elaborate on, on your
25 testimony you just gave with respect to my question

1 regarding existing facts and trends. You reviewed Exhibit
2 29, correct?

3 MR. FERGUSON: I'm sorry, I --

4 MR. TEDESCO: You reviewed Exhibit 29?

5 MR. FERGUSON: I reviewed, yes. I'm sorry, I
6 thought I heard you agree with Exhibit 29.

7 MR. TEDESCO: No, no, you, you reviewed it?

8 MR. FERGUSON: I have reviewed it. Yes.

9 MR. TEDESCO: And does the Staff Report
10 acknowledge that the Sector Plan recommends residential land
11 uses on the property?

12 MR. FERGUSON: It does.

13 MR. TEDESCO: And does the Staff Report dispute
14 that residential development is appropriate?

15 MR. FERGUSON: No.

16 MR. TEDESCO: In the Staff recommendation,
17 primarily based on a disagreement with regard to the mistake
18 analysis proffered, proposed in the justification statement,
19 correct?

20 MR. FERGUSON: I believe that that's the case.
21 Yes.

22 MR. TEDESCO: And turning to a handful of themes,
23 one being the agricultural character and historic use of the
24 property, Staff places emphasis on the historic equestrian
25 and agricultural use, correct?

1 MR. FERGUSON: It does.

2 MR. TEDESCO: Does the property enjoy agricultural
3 tax assessment, if you know?

4 MR. FERGUSON: I do know that it does not.

5 MR. TEDESCO: And from a planning perspective,
6 does historic agricultural use mandate continued
7 agricultural zoning?

8 MR. FERGUSON: No, it does not, certainly not.

9 MR. TEDESCO: And is agricultural zoning commonly
10 retained in areas planned for urbanizing growth?

11 MR. FERGUSON: No, it is not.

12 MR. TEDESCO: And can land transition
13 appropriately from agricultural use to residential use under
14 adopted plans?

15 MR. FERGUSON: Sure.

16 MR. TEDESCO: And how does the Sector Plan
17 envision that transition occurring in the Westphalia area?

18 MR. FERGUSON: Well, it specifically, as I
19 testified earlier, talks about diminishing intensity of both
20 attached and, and detached single-family development.

21 MR. TEDESCO: Turning to the transition and
22 compatibility section of the Staff Report, Staff suggests
23 that the AR zoning provides an appropriate transition. Do
24 you agree?

25 MR. FERGUSON: I do not.



1 MR. TEDESCO: Why not?

2 MR. FERGUSON: It, it is so divergent in intensity
3 and character that it really is, is abrupt. Those areas, if
4 they're preserved, should be really substantially buffered
5 to maintain their character.

6 MR. TEDESCO: How does the RSF-A zoning better
7 achieve the transitional compatibility, especially given the
8 guardrails of this application that limits it to single-
9 family detached and a density of residential low?

10 MR. FERGUSON: Well, as, as I, as I, as I did
11 testify, I mean, really this is, this is our effort at a
12 plan development. It gives you flexibility with smaller lot
13 sizes that are able to accommodate the Sector Plan's
14 explicit vision for these residential, these residential
15 areas, and for the residential low land use designation, and
16 at the same time protecting environmental areas, providing
17 perimeter buffers, providing historic buffers to Melwood
18 Road, all of those things that, that the plan wants.

19 MR. TEDESCO: In your opinion, would the RSF-A
20 zoning reduce that abrupt, the abrupt changes in density and
21 design as currently existing?

22 MR. FERGUSON: It will.

23 MR. TEDESCO: And does the proposed rezoning
24 promote orderly growth consistent with the Sector Plan?

25 MR. FERGUSON: It does. It would, excuse me. It



1 would.

2 MR. TEDESCO: Based upon the reasons you've
3 already given?

4 MR. FERGUSON: Based on the reasons I've already
5 given.

6 MR. TEDESCO: Turning to the public interest and
7 planning judgment provisions in this, in the Staff Report,
8 Staff states that the district council made a deliberate
9 legislative choice. Does that preclude later corrections
10 and, and would you agree with that conclusion?

11 MR. FERGUSON: Well, I don't, I don't agree with
12 the, with the conclusion. There's no evidence of deliberate
13 consideration of anything about the Melwood Estates and Twin
14 Knolls neighborhood, and the land use thereon. But, no,
15 you, can always come back and request a Zoning Map Amendment
16 to correct mistakes. That's why we're here.

17 MR. TEDESCO: From a planning standpoint, and in
18 your expert opinion, is zoning intended to be permanently
19 static?

20 MR. FERGUSON: No. I mean, certainly, you're, the
21 jurisdictions are obligated by state law to come back and
22 revisit Master Plans, revisit zoning every so often to
23 ensure that plans remain in concord with new trends that
24 happen as time passes.

25 MR. TEDESCO: Would the approval of this

1 application undermine the integrity of the planning process,
2 or would it further implement the adopted vision for
3 Westphalia in your opinion?

4 MR. FERGUSON: No. As I've testified before,
5 because of the specific recommendations of the Sector Plan
6 for this area, this, this rezoning would actively implement
7 the Sector Plan's vision.

8 MR. TEDESCO: In your opinion, would the approval
9 of this Zoning Map Amendment be detrimental to public health
10 and safety from a planning perspective?

11 MR. FERGUSON: No, not from a planning perspective
12 at all.

13 MR. TEDESCO: Would it did negatively impact
14 surrounding properties from a planning perspective?

15 MR. FERGUSON: In my opinion, no. Certainly,
16 there are stipulations in the Zoning Ordinance and the
17 Landscape Manual for buffering to provide separations. And
18 additionally, one of the things that, that's worth
19 mentioning is that the subject property is at the very
20 southern end of the, of the donut hole. It's the closest to
21 the interchange. So, to the extent that, that those folks
22 wish to remain in their little hole of land that time
23 forgot, they will, they will remain on their, on their cul-
24 de-sac. They'll be able to see the, the development that
25 they're surrounded by because of the topography and the

1 proximity of it to Melwood Road, as I testified to earlier;
2 but at least there won't be traffic dragged through their
3 neighborhood.

4 MR. TEDESCO: Is the AR Zone intended to preserve
5 agricultural activity as a dominant land use?

6 MR. FERGUSON: Not exactly, no. That really gets
7 to the AG, or former OS Zone. Two acres owns, two-acre
8 tracts of land are too small to do any productive farming.

9 MR. TEDESCO: In your opinion, does the AR zone
10 function best at the urban fringe, or in the development
11 activity center areas?

12 MR. FERGUSON: Well, suburban fringe, not the
13 urban fringe. So, so, really out in the, the rural tier,
14 when you look at the, the, the preponderance of AR zoning,
15 it's at the inner-edge of the rural tier. And then as you
16 get further out into the rural tier, you get the AG zoning
17 dominating then.

18 MR. TEDESCO: In your opinion, does the subject
19 property still function as an agricultural preservation
20 area?

21 MR. FERGUSON: I don't believe that it ever did.
22 So, the subject, the subject, the area of the subject
23 property was completely wooded and undeveloped until the
24 mid-1980s. And, and at that time it was developed with 19
25 houses. Of those 19 houses, according to Mrs. Day's

1 testimony in 2006, three of them kept horses, including her
2 and her husband. And, and I understand from conversation
3 with her the other day that they're the only folks left in
4 the neighborhood that, that have horses.

5 MR. TEDESCO: From a planning perspective, no,
6 strike that. Excuse me. Is the RSF-A Zone commonly used as
7 a transition between higher density and lower density
8 residential areas?

9 MR. FERGUSON: It is.

10 MR. TEDESCO: How does the RSF-A zoning support
11 walkable, connected neighborhoods?

12 MR. FERGUSON: Certainly for, for something to,
13 for a neighborhood to be considered walkable, you need to
14 have density around it. So, you need to be able to get to
15 other things that are, that are proximate, otherwise you
16 just get in your car and drive. The subject property does
17 abut a, an extensive, planned trail network. So, Melwood
18 Road is very much planned to be a, a trail as much as a
19 roadway serving Melwood Estates and Twin Knolls. And then
20 there is a Stream Valley Trail that's planned through Back
21 Branch as well, which the subject property abuts. So, the
22 opportunity for this to have pedestrian and bicycle
23 connections that will take people from the subject property
24 to the much more intense activity just on the other side of,
25 of Melwood Road in the town center, or further, further

1 afield down the, down the Stream Valley Trail network will
2 be really one of the, the, the wonderful features about the
3 development of this property were, were it to be approved.

4 MR. TEDESCO: And is the proposed density
5 consistent with what the RSF-A Zone, consistent with what
6 the RSF-A Zone and the adopted plans contemplate?

7 MR. FERGUSON: Ordinarily, the RSF-A Zone is, is
8 contemplated to be applied at higher plan densities, because
9 it permits much higher planned densities. It isn't sought
10 here to get to those maximum permissible densities, thus,
11 the stipulated proffered conditions. What's, what's being
12 sought here is the, the more flexible standards for single-
13 family, detached development.

14 MR. TEDESCO: Does the application include, strike
15 that. How does the effect, how does, how does the proffered
16 condition of single-family detached only, and no more than
17 3.5 units to the acre, affect the compatibility and the
18 impact of the area?

19 MR. FERGUSON: Well, the, the, the ideas I've
20 testified is for this area, the residential areas within the
21 planned boundary to be a transitional area. And so, to step
22 down from the denser attached and small lot detached units
23 in the town center, or in the enclave, to the more
24 conventional suburban development to the east, whether
25 that's in Marlborough Ridge to the northeast, Melwood Manor

1 and Roblee Acres to the east. I would note that Melwood
2 Park actually contains a mix of both single-family and
3 detached and attached dwellings, and this would be a part of
4 that same sort of transition.

5 MR. TEDESCO: Mr. Ferguson, just a few more
6 questions. Does the subject property lie within a planned
7 growth area, or does it lie within a preservation area?

8 MR. FERGUSON: No, it's in a, it's in a planned
9 growth area.

10 MR. TEDESCO: Is the requested zoning consistent
11 with the Sector Plan's residential vision?

12 MR. FERGUSON: Yes, it very much is.

13 MR. TEDESCO: In your opinion, does the RSF-A
14 zoning better implement Plan 2035 than the existing zoning?

15 MR. FERGUSON: It, it does, because what, what
16 Plan 25 seeks is concept, context-sensitive infill. And
17 given the context of the abutting town center, the abutting
18 Melwood Park, attached dwellings, the almost abutting
19 attached dwellings at the Orphan home, and the transition
20 between those and the single-family detached dwellings on
21 moderate-sized lots in Melwood Manor, Roblee Acres,
22 Marlborough Ridge, it very much is, would be, if approved,
23 context sensitive development.

24 MR. TEDESCO: Does your Land Planning Report,
25 Exhibit 36, go through the purposes of the zoning ordinance



1 in each of the zones?

2 MR. FERGUSON: It does.

3 MR. TEDESCO: And you've incorporated that as your
4 testimony?

5 MR. FERGUSON: I do.

6 MR. TEDESCO: And based on those purposes of the
7 Zoning Ordinance, do you believe the ZMA is appropriate?

8 MR. FERGUSON: I do.

9 MR. TEDESCO: Does the requested RSF-A zoning
10 advance the intent of the residential zones in this area?

11 MR. FERGUSON: Yes, it does.

12 MR. TEDESCO: And does the application satisfy
13 both the general and specific decision standards of
14 approval, in your opinion?

15 MR. FERGUSON: In my opinion, it does.

16 MR. TEDESCO: Is approval of this application
17 consistent with sound land planning principles?

18 MR. FERGUSON: Yes, I believe that, I believe that
19 it would be.

20 MR. TEDESCO: And what is your recommendation of
21 this application?

22 MR. FERGUSON: I would, I would recommend that,
23 that Madam Examiner forward a recommendation of approval to
24 the District Council.

25 MR. TEDESCO: No further questions, Madam

1 Examiner. Thank you for the time allotted for Mr.
2 Ferguson's testimony.

3 MS. MCNEIL: Of course.

4 MR. FERGUSON: And, and, Madam Examiner, I would
5 like it noted for the record that I did, in fact, finish in
6 the morning.

7 MS. MCNEIL: Yes, you did. Of course, we didn't
8 talk to Mr. Brown yet. Mr. Brown, do you have any
9 questions?

10 MR. BROWN: I do. I won't be too long, but want
11 to zero in on a couple points in Mr. Ferguson's -- so, Mr.
12 Ferguson, as I read the Staff Report and the justification
13 statement, there are three bases, if you will, for mistake
14 that I argued --

15 MR. FERGUSON: Yes, sir.

16 MR. BROWN: -- and then you add a fourth criterion
17 for approval, which is the Council failed to consider the
18 past planning for public water and sewer service abutting
19 the subject property, which would necessarily serve the
20 Westphalia Town Center.

21 MR. FERGUSON: Yes, sir.

22 MR. BROWN: To me, that is the strongest argument
23 to support a mistake and the rezoning of this, so I won't
24 belabor that point; but the other three are problematic, and
25 so I have a couple questions about that. The RSF-A Zone is

1 Euclidean, is it not?

2 MR. FERGUSON: It is.

3 MR. BROWN: And did I hear Mr. Sobo testify that
4 the Applicant was willing to condition this application by
5 limiting the development to only single-family, detached?
6 So, my question is, so the record is clear, are multi-family
7 and townhouse units permitted in the RSF-A zoning?

8 MR. FERGUSON: So, townhouse dwellings are
9 absolutely permitted in the RSF-A Zone. Ordinarily, that
10 would be the use that, that you expect. Multi-family
11 dwellings are not permitted in the RSF-A Zone. You have to
12 go into the RMF zones to get multi-families permitted. You
13 can do three-family dwellings, if anybody ever did those
14 anymore; but, but, no, you certainly can do townhouses. You
15 can do two over twos. You cannot do multi-family in the
16 RSF-A Zone by the, by the table of uses.

17 MR. BROWN: All right. So, that raises the
18 question that the law does not allow the District Council to
19 limit the uses in a Euclidean zoning if it approves the
20 Euclidean Zone. In other words, if single-family homes and
21 townhouses are permitted in the RSF-A Zone, they cannot pass
22 an ordinance that says on this property you may only build
23 single-family detached, do you understand that?

24 MR. FERGUSON: Okay.

25 MS. MCNEIL: So, well, so wait a minute. So,

1 that's legal. So, I'm not going --

2 MR. BROWN: I didn't ask him whether it was right
3 or wrong; but I said, does he understand that?

4 MS. MCNEIL: He understands you said that,
5 correct, Mr. Ferguson?

6 MR. FERGUSON: Well, I, I, I have been around
7 enough, enough legal professionals to hopefully understand
8 legal arguments, and I certainly understand that now. I
9 would, I would ask whether a private covenant would, would
10 meet the purpose of the proffered condition.

11 MR. BROWN: Well, that was my next question.
12 You're catching on. So, in this case, since there is no
13 opposition to the case, however, a young lady, Lashauna
14 Tillmon, a supporter, did testify earlier, I'm not
15 suggesting it, but if the Applicant were to enter into a
16 private covenant with a person of record where that covenant
17 prohibits the Applicant from building townhouses on this
18 site, that could be entered into the record. Of course, the
19 Examiner, nor the District Council, can condition their
20 recommendation or their approval on that covenant; but they
21 would be aware of it, and that would have some bearing, I
22 think, in their decision. So, that's something to consider.

23 The other issue I had was I asked Ms. Day whether
24 or not she filed a revisory petition in 2006, 2007 SMA. She
25 said she did not. You cannot necessarily answer it, but the

1 issue that's raised there, Mr. Tedesco, is whether she has
2 failed to exhaust administrative remedies because she asked
3 for an up-zone in 2007; and then when it was denied, she did
4 not ask for a revisory petition within 30 days. And now
5 she's asking for the same thing pursuant to a change of
6 mistake argument. So, that's something to consider. I
7 don't necessarily want to answer to it.

8 And then the other two or three points I just want
9 to raise in your report, Mr. Ferguson, on page five, last
10 paragraph, and you testified to this a moment ago, you said
11 that while ordinarily a planned development Zone Map
12 Amendment would be the best way to implement the
13 recommendations of the Sector Plan, and the way which the
14 Zoning Map Amendment proposes the location standards of the
15 ordinance restricts the RPD Zone from being applied to a
16 property classified in a rural and agricultural-based zone,
17 which category includes the AR zone in which the subject
18 property is classified. My question is, does that go
19 against your argument that there has been a mistake if, in
20 fact, you cannot accomplish what you want to do by change,
21 or rather a mistake argument under this Euclidean Zone, and
22 it's flatly prohibited under a Plan Development Zone, would
23 that not lead one to say that it's not a mistake that this
24 property was left as it was in 2007?

25 MR. FERGUSON: Well, I think the first, the first



1 counter to that argument is that the provisions of 274302A4
2 were created in 2018, you know, 12 years after the adoption
3 of the SMA. Was there a mistake in the adoption of the
4 current zoning ordinance? I would argue there are a lot of
5 them, but it's the law and here, and here, and here we are.
6 So --

7 MR. BROWN: All right. The other two questions I
8 had were, looking at my little notes on your report, which I
9 have ridiculed here, I mean, you did address the question I
10 raised at the commencement of this hearing about the German
11 orphan property being zoned MXT and SMA, and this property
12 was not. And just refresh my memory, your response to that
13 question is what?

14 MR. FERGUSON: Well, the, the SMA says that the,
15 the rezoning was specifically intended to implement the
16 Sector Plan's policies. And what I did do in my testimony
17 was went through the specific policies in the Sector Plan
18 that encouraged the creation of attached dwellings, such as
19 are found on the, on the Orphan home property near, not
20 necessarily only in, but near the town center within the
21 residential areas. And that is what they did.

22 MR. BROWN: Also, the mistake number two on page
23 eight of your report, where basically you are looking at the
24 argument of the characterization of the neighborhood was
25 erroneous by the Council, that they looked at it as stables

1 and horses are as much a part of the neighborhood landscape
2 as housing people, it's, to me, sort of raises the issue of,
3 and you guys didn't argue it, and I'm just wondering whether
4 there is an issue here, you did not base this application on
5 a change in the neighborhood. Could one not argue, and I'm
6 assuming here, Marlborough Ridge, I think, was not started
7 until 2007; and SMA was 2007; Westphalia may or may not have
8 been planned in 2007; is it Melwood Park, I think, existed
9 in 2007; and so my question is, is there a reasonable
10 argument to be made here that, in fact, there's been a
11 change in the neighborhood, and even though a neighborhood
12 was not identified by you, and as you indicated, it's not
13 required when you're only making a mistake argument, but is
14 there a reasonable argument here for a change in any
15 neighborhood that you might identify as a neighborhood for
16 this property?

17 MR. FERGUSON: Well, my, my understanding of the
18 law, and so I'll preface my testimony that way to, to be
19 knocked down, is that, is that changes that are planned are
20 not a basis for an argument in the change in the character
21 of the neighborhood.

22 MR. BROWN: That's correct. That's why I asked
23 the question about Marlborough Ridge and Westphalia, were
24 they planned in 2007?

25 MR. FERGUSON: Well, the, the developments, I

1 don't know how far the actual development approval of, of
2 what was then called the Clagett Farm, had proceeded as of
3 2007. Its water and sewer category had been approved, and
4 that's actually evident on that 2004 exhibit, Exhibit 39.
5 But I think from a planning perspective, the zoning was in
6 place under which all of the surrounding developments have
7 been, have been developed. So, from that perspective, and
8 we discussed this as a team, we did not believe that there
9 was a change in the planned neighborhood because the
10 development that had, that has occurred really has been what
11 was, what was planned at the time of, of that 2007 Sector
12 Plan.

13 MR. BROWN: All right. And then on the last page
14 of your report, this, this argument sort of baffles me, but
15 I'll ask it just so it's clear. In the justification
16 statement and in your report, one of the bases for the
17 mistake is that the Council failed to consider the request
18 of the property owner at the time of the joint public
19 hearing in 2006. Why would the District Council be required
20 to consider her request at all?

21 MR. FERGUSON: Well, they, they wouldn't; but the
22 point is, I think that we're making, is was it, was that a
23 fact that she made that request? And the transcript says,
24 yes, but the record of the public rezoning reflects the
25 public zoning requests doesn't reflect its existence. So,

1 maybe they would have less now because she wasn't
2 represented. She asked for a zone, which couldn't be
3 granted because it was a Comprehensive Design Zone, right,
4 and you can't grant that without a basic plan. She asked
5 for an RM, and she asked for a, a condition that it wouldn't
6 be granted until they sell the property, which you also
7 can't do.

8 So, what was their intent? And it, it seems to
9 me, to put myself in, you know, the mind of the District
10 Council and their staff, so you can take this for what it's
11 worth, is that they looked at that request; went, huh,
12 that's a weird one; don't know what to do with that, never
13 mind. But the fact is, she did ask for a rezoning, so --

14 MR. BROWN: Well --

15 MR. FERGUSON: That was, the point was, it's a
16 fact, and it was just shoved off to the side rather than
17 dealt with affirmatively.

18 MR. BROWN: Right. And so, just like we made the
19 argument that could it have been a mistake that the German
20 orphan property was zoned MXT, and this was not, could it
21 also not have been a Council mistake that the other property
22 owner, Tiana Renee Woodlard, owned the property in 2007; and
23 contrary to Ms. Day's request for rezoning in SMA, Ms.
24 Woolard did not make a request for the MA. So --

25 MR. FERGUSON: Did Ms. Woolard own the property in

1 2007? I don't --

2 MR. BROWN: She did. That provides that she owned
3 the property. All right, one piece in 2021. No, 2020, she
4 got it. And then another piece she bought in --

5 MR. FERGUSON: Yeah, I went through all of those
6 too, but I didn't --

7 MR. BROWN: You make a good point. You make a
8 good point. She didn't own it in 2007.

9 MR. FERGUSON: Yeah.

10 MR. BROWN: So, that argument makes no sense.
11 It's a good point. I like that. All right.

12 MR. FERGUSON: Yeah, I went through that same
13 exercise. I just didn't save copies of the --

14 MR. BROWN: All right. All right.

15 MR. FERGUSON: -- of each of the pages. Yeah.

16 MR. BROWN: All right. No other questions. Thank
17 you.

18 MR. FERGUSON: Thank you, Mr. Brown.

19 MS. MCNEIL: Okay. I have much fewer questions.
20 In the Staff Report, they say something, they say that
21 perhaps the Council didn't grant her request because of the
22 surrounding people requested to stay in the RA Zone. Did
23 you find that anywhere?

24 MR. FERGUSON: There are two properties in that
25 table that are in both, I believe, were in Melwood Estates.

1 I'm opening that page right now, Madam Examiner. Bear with
2 me. It's --

3 MS. MCNEIL: So, in that exhibit we were on, I
4 don't remember the numbers, if we were to pull it back up,
5 they're not, like, right next to the starred area?

6 MR. FERGUSON: So, the two properties were Request
7 16 and 17.

8 MS. MCNEIL: Okay.

9 MR. FERGUSON: Request 16 was the McCreery
10 property. The requester of the zoning was that it remain
11 RA. The requester is Melwood Civic Association, curiously;
12 and 17, the individual owners, Daley and Sandra Russell, on
13 the Russell property, also requested that their zoning
14 remain, they're close to the subject, perhaps, perhaps a
15 abutting.

16 MS. MCNEIL: Okay. I just wanted, I just wanted
17 to clarify that in my mind. But my real question for you is
18 that, can't you do everything you want to do in this zone?

19 MR. FERGUSON: In the R, in the AR zone?

20 MS. MCNEIL: No, in the RSF 65? Why did we go
21 with the A, if we didn't want to build any attached?

22 MR. FERGUSON: There is more lot size flexibility
23 in the RSF-A Zone that would allow you to get, frankly,
24 closer to the planned development density. So, for
25 comparison, in the RFS, RSF 65 base zone, the minimum lot

1 size is 6,500 square feet; and my table is not coming up.
2 Bear with me while my computer catches up. Or perhaps it's
3 the county's computer? Okay. Here it is. So, in the RSF
4 65 Zone, the minimum lot area for single-family detached
5 dwelling is 6,500 square feet; and the minimum lot width at
6 the building restriction line is 65 feet. When you step
7 down to the RSF-A Zone, and that's just one zone more
8 intense, you drop to 5,000 square feet of minimum lot area,
9 and 45 feet of lot width. And it's really that, that drop
10 in lot width, which is most meaningful for being able to be
11 flexible to get to the planned density towards that 3 1/2
12 lot per acre target; and at the same time, provide enough
13 reserved area for forest conservation and protection of
14 environmental resources, and buffers, and those sorts of
15 things. So, in that --

16 MS. MCNEIL: So, that raises, that raises one more
17 question for me.

18 MR. FERGUSON: Sure.

19 MS. MCNEIL: Aren't these the tables you can get
20 variances from?

21 MR. FERGUSON: The dimension, the dimension and
22 intensity, the intensity and dimensional standards?

23 MS. MCNEIL: Uh-huh.

24 MR. FERGUSON: They are. Madame Examiner, surely
25 you know how hostile the law is --

1 MS. MCNEIL: Yeah.

2 MR. FERGUSON: -- to the grant of variances.

3 MS. MCNEIL: I was just throwing it all out there.
4 Okay. I don't have any more. I'm sorry. Mr. Tedesco, do
5 you have any redirect?

6 MR. TEDESCO: I was just going to ask with respect
7 to whether Mr. Ferguson thought that that would be a self-
8 induced hardship, but I think we've answered that. So, I
9 don't think that's needed to be questioned.

10 MS. MCNEIL: And I was thinking, not along those
11 lines, I was thinking more, you're doing all these things
12 for other reasons, though. You know, you need all the, to
13 preserve all the environmental area and et cetera.

14 MR. TEDESCO: Well, that, yeah, I mean, that's why
15 we've settled on this zone, given its flexibility with
16 respect to single-family, detached, not, notwithstanding
17 what other uses are permitted.

18 MS. MCNEIL: If you didn't have redirect, would
19 you think about, and you could just throw anything together,
20 but I really think we need something in this record about
21 the whole issue that we cannot limit uses in a Euclidean
22 Zone.

23 MR. TEDESCO: Yeah, I think --

24 MS. MCNEIL: If you want? If you don't want or --

25 MR. TEDESCO: Yeah, yeah, no, I think, I think we



1 can provide something with that. I mean, it's certainly, I
2 think that we could, we could self-induce a covenant. If it
3 needs to be with another entity, we can solve for that. But
4 I don't see that as a deal breaker, no.

5 MS. MCNEIL: Okay. You had, did, but I'm sorry,
6 did you have other questions about --

7 MR. TEDESCO: I don't have any other questions. I
8 just have a closing argument to make.

9 MS. MCNEIL: Sure. And if you want, I don't mind
10 listening, but if we were leaving it open and you wanted a
11 written closing argument, that would be fine as well. But
12 go ahead.

13 MR. TEDESCO: Well, I've written it. I'm just
14 going to go through it --

15 MS. MCNEIL: Oh, Okay. Okay.

16 MR. TEDESCO: -- if you, if you allow me?

17 MS. MCNEIL: Well, it's being submitted later, so
18 I don't have to jot every word you're --

19 MR. TEDESCO: Yes, you don't have to jot it down.
20 I'll submit it in written form.

21 MS. MCNEIL: Okay.

22 MR. TEDESCO: Just quickly, before I get to my
23 prepared closing, I did want to just hit on one thing, Mr.
24 Brown said. And, you know, he raised an issue with
25 exhaustion. I think that's a red herring, with all due

1 respect to my, my dear friend. With, notwithstanding Ms.
2 Day's failure to ask for a revision petition associated with
3 the SMA, exhaustion really comes down to an appellate
4 review. Had she filed a petition for judicial review of the
5 adoption of the Sector Plan in SMA, perhaps somebody could
6 have made an exhaustion argument associated with the
7 revisory petition. But I know of many Sector Plans in SMAs
8 that have been appealed, sub five and sub six in particular,
9 without any revisory petitions having been filed. So, I
10 don't think that is, I don't think that's preclusive in this
11 instance with respect to this application. The mistake
12 legal theory exists precisely because it allows property
13 owners and/or Applicants to make a requested rezoning on a
14 piecemeal basis for either change or mistake, mistake based
15 upon the adoption of a comprehensive plan.

16 There is no requirement that they file a revisory
17 petition. Some jurisdictions may not even have that. So, I
18 would just caution with respect to any type of analysis
19 associated with that. I don't think that that is actionable
20 here.

21 As it relates to this case, we believe that the
22 issue before you is fairly narrow and clear. The case is
23 not about whether residential development is appropriate
24 here. Everyone agrees that it is. The question is whether
25 the current agricultural residential zoning is the result of



1 a mistake in the 2007 Sectional Map Amendment, and whether
2 the requested RSF-A zoning with binding conditions is the
3 appropriate remedy. The substantial evidence clearly shows
4 that it is.

5 As you know, under the Zoning Ordinance in
6 Maryland law, a Zoning Map Amendment may be approved where
7 the existing zoning was based on incomplete or inaccurate
8 factual predicates, or where the Council failed to
9 meaningfully consider then existing, or reasonably
10 foreseeable facts. The Applicant does not need to show bad
11 faith or hindsight disagreement. The inquiry is whether the
12 zoning accurately reflected the factual and planning context
13 at the time it was applied.

14 The uncontroverted evidence shows that in 2007,
15 the Council retained the AR zoning at that time, RA zoning
16 on this property, despite facts that existed, or were
17 plainly foreseeable at that time. Those include the
18 property lies immediately adjacent to the Westphalia Town
19 Center edge, which was planned for higher intensity
20 development. The Sector Plan expressly designated this area
21 for residential uses, intended to function as a transition
22 from the town center to lower density neighborhoods beyond.
23 Similarly situated nearby properties were rezoned to
24 residential and mixed use zones as part of the SMA. Public
25 water and sewer infrastructure was planned and available,

1 conditions inconsistent with long-term agricultural zoning,
2 and the owner testified during the SMA process, putting the
3 Council on actual notice that the residential development
4 was foreseeable and anticipated.

5 Rather than reconciling those facts with the
6 adopted plan in SMA, the Council retained the AR zoning, RA
7 zoning by default, effectively treating the property as
8 rural, despite its location and planning context. That is
9 not merely a policy choice. It is a failure to align zoning
10 with adopted plans and foreseeable development patterns,
11 which constituted a mistake under Maryland law.

12 Through expert testimony and exhibits, the
13 Applicant has demonstrated that the requested RSF-A zoning,
14 limited by proffered to single-family, detached homes, and
15 not more than 3.5 dwelling units to the acre, directly
16 implements the Westphalia Sector Plan and Plan 2035's
17 definition of residential low. The RFS-A Zone provides
18 flexibility and logical compatible transition, something
19 that the AR zoning does not accomplish in this location.

20 The expert witnesses all confirm that the site can
21 be adequately served, impacts are manageable through
22 standard County review, and that no technical constraints
23 preclude approval. No witness testified that approval would
24 harm public health or safety. No exhibits showed an
25 unmitigable impact.

1 Staff's recommendation rests primarily on the
2 notion that the Council made a deliberate legislative choice
3 in 2007. With all due respect, that misses the legal
4 standard. The question is not whether the Council could
5 retain the AR zoning, but whether the zoning accurately
6 reflected the facts and planning framework that existed at
7 that time. The evidence clearly shows that it did not.
8 Staff does not dispute the residential land use
9 recommendations, the transitional role of the property, the
10 surrounding rezonings, or the infrastructure context. It
11 simply declines to characterize that disconnect as a
12 mistake. But that disconnect is exactly what the mistake
13 doctrine is designed to correct.

14 The Applicant requests, the Applicant's request is
15 narrow and conditioned. It does not increase density beyond
16 County policies. It does not introduce townhouses or multi-
17 family, and it does not undermine the Sector Plan. It
18 actually implements it.

19 Based on the substantial evidence in the record,
20 the Applicant has demonstrated that the current zoning
21 resulted in a mistake in 2007. The requested RSF-A zoning
22 is consistent with adopted plans and zoning ordinances, and
23 approval will promote orderly growth, compatibility, and
24 sound land use planning. For all of these reasons, the
25 Applicant respectfully requests your recommendation of

1 approval of this application, understanding that you have,
2 or you'll tell me, but I understand Exhibit 3 to be updated.
3 Mr. Brown had requested documentation on the managing member
4 for the LLC, and you have requested documentation related to
5 our limitation of uses and density.

6 MS. MCNEIL: And you could just add that to that
7 closing you've already typed up and sent it in.

8 MR. TEDESCO: Yes. Yes, ma'am.

9 MS. MCNEIL: Yes, I agree with you, those are the
10 items.

11 MR. TEDESCO: Okay. Thank you.

12 MS. MCNEIL: And I thank everybody for coming
13 today.

14 MR. TEDESCO: And, Madam Examiner, just for
15 clarification, the record will be closed upon the submittal
16 of those, is that correct?

17 MS. MCNEIL: Yes. Thank you for that. Yes. The
18 record will be closed as soon as you submit them.

19 MR. TEDESCO: Okay. Thank you so much for your
20 time. I know it's been a long morning, but I appreciate
21 yours and Mr. Brown's --

22 MS. MCNEIL: Well, it really hasn't been that
23 long. When we think about it, when we were in person,
24 sometimes things went to 5:00 or 6:00. I mean, let me not
25 bring it up. Okay.



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MR. TEDESCO: Happy to conclude at --

MS. MCNEIL: Thank you all.

MR. TEDESCO: -- 12:25. Thank you so much.

MS. MCNEIL: Yes. Bye-bye.

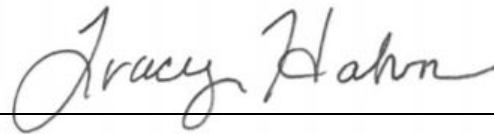
(Whereupon, the hearing was concluded.)

C E R T I F I C A T E

eScribers, hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Prince George's County Office of the Zoning Hearing Examiner in the matter of:

DAY LAND INVESTMENT, LLC
Case No. ZMA-2025-003

By:

A handwritten signature in black ink that reads "Tracy Hahn". The signature is written in a cursive style and is positioned above a horizontal line.

Tracy Hahn, Transcriber