

BEFORE THE BOARD OF SUPERVISORS  
WALLACE TOWNSHIP  
CHESTER COUNTY, PENNSYLVANIA  
VOLUME XIII

Conditional Use Hearing held by the  
Wallace Township Board of Supervisors for the  
application of Valhalla Brandywine Partners, LP.  
Said hearing held at the Wallace Township  
Building, 1250 Creek Road, Glenmoore,  
Pennsylvania, on March 31, 2009, beginning at  
7:30 p.m.

BEFORE:

Bryan McDonough, Chairman  
Rob Jones, Vice Chairman  
Bill Moore, Member

ALSO PRESENT:

Stephen V. Siana, Esquire  
Michael Crotty, Esquire  
Solicitors for Wallace Township

Denise Yarnoff, Esquire  
Counsel for the Applicant

Jordan Yeager, Esquire  
Counsel for Guardians of the Brandywine

Jennifer M. Guy  
Official Court Reporter

2 MR. JONES: welcome to the conditional  
3 use hearing for Valhalla Brandywine. I believe  
4 we're going to have direct of Mr. Thomas Comitta  
5 again tonight.

6 Do you have any announcements,  
7 counsel, to make?

8 MR. SIANA: Thank you. And for the  
9 record, Mr. McDonough is absent and is expected  
10 to be here but will be a little bit late.

11 Good evening. This is the 13th  
12 hearing night on the conditional use application  
13 filed by Valhalla Brandywine Partners for a  
14 planned country club community. The last hearing  
15 was held on March 24th, 2009 and is being carried  
16 over until this evening for the continued direct  
17 examination of Mr. Comitta.

18 To recap the status of the exhibits,  
19 the Township presented Exhibits T-1 through T-10;  
20 the applicant presented Exhibits A-1 through  
21 A-28; and Mr. Yeager submitted Exhibits G-1  
22 through G-6.

23 With regard to the witnesses, the  
24 Township's understanding is that the direct and

3

1 cross-examination of Mr. Comitta will continue  
2 this evening. Mr. Haberstock is expected to  
3 testify at the next hearing on April 14th with  
4 his cross-examination to be held on April 21st.  
5 The Township understands that the Township  
6 engineer and the Township's environmental  
7 consultant, NLT, have been working with the  
8 Township Planning Commission, which will be  
9 submitting comments at the conclusion of the  
10 expert witnesses in this matter.

11 I recently received correspondence  
Page 2

12 from Ms. Yarnoff with regard to scheduling where  
13 she suggested that Craig Kalogie be presented  
14 after the direct or cross-examination of  
15 Mr. Haberstock. At this time, the Township has  
16 not made a determination as to whether  
17 Mr. Kalogie or any of its other consultants will  
18 testify in this matter. We will advise the  
19 parties once a determination has been made.

20 with regard to scheduling, I would ask  
21 that any of the other parties who wish to present  
22 evidence or witnesses advise the Township of the  
23 same.

24 Upcoming hearings in this matter have

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1 been scheduled April 14, April 21st, May 5th, and  
2 May 19th, 2009, unless the presentation of the  
3 evidence concludes prior to those hearings.

4 I understand from correspondence  
5 received from counsel for the applicant that the  
6 cross-examination of Mr. Comitta may not conclude  
7 at tonight's hearing. If this is the case, we  
8 can discuss scheduling to bring Mr. Comitta back  
9 at the end of the hearing this evening. I would  
10 note that Mr. Haberstock is coming in from out of  
11 state and we would expect that the scheduling of  
12 any further cross-examination of Mr. Comitta  
13 would not interfere with Mr. Haberstock's  
14 schedule.

15 Regarding party status, if anyone  
16 wishes to become a party to this matter, please  
17 raise your hand. Seeing no hands, we'll move on.

18 To explain again the procedure for  
19 tonight, each hearing will begin at 7:30 and  
20 continue to 10:30 p.m. The Board will then allow  
21 one-half hour of public comment pertaining to the  
22 discussion at that hearing.

23 At the conclusion, it is my  
24 understanding that the parties will wish to

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1 present proposed findings of fact and conclusions  
2 of law.

3 There's a court reporter present who  
4 is taking down a transcript. Therefore, please  
5 wait to speak until you're called upon and do not  
6 shout out. If you're called upon and wish to  
7 make comment or if you're a party and wish to  
8 question a witness, please raise your hand and  
9 identify yourself for the record.

10 Lastly, I note Mr. Yeager made a  
11 comment at the last hearing as to the order of  
12 witnesses that was presented with Don Jacobs  
13 being presented first followed by Mr. Comitta.  
14 It's not the Township's desire to dictate the  
15 order of witnesses. The Board expects that the  
16 parties will make available a sufficient number  
17 of witnesses to fill the scheduled time. At the  
18 March 10th hearing, Mr. Yeager noted that only  
19 Mr. Comitta would be attending to testify at the  
20 hearing on March 24th. Mr. Yeager was unable to  
21 provide an estimate as to how long he would need  
22 for direct, and the applicant, not having been  
23 provided an advanced copy of his report, could

24 not commit as to the need or length of any

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1 cross-examination.

2           Therefore, Mr. Jacobs was brought in  
3 to present his report. The parties were advised  
4 of the same prior to the hearing, and the  
5 Township provided his report to anyone in advance  
6 who requested it. Mr. Jacobs was presented first  
7 given that Mr. Yeager previously noted that  
8 Mr. Comitta was available the 31st. The schedule  
9 was done in an effort to utilize the scheduled  
10 time and was in no way intending to slight or  
11 prejudice the witnesses. We do note that  
12 Mr. Comitta was here and patiently sat through  
13 Mr. Jacob's testimony, and we appreciate that.

14           In moving forward, I would reiterate  
15 that the Board expects that the full time  
16 allotted be utilized. The Township, the members  
17 of the public, the parties and all the respective  
18 consultants have all set these times aside for  
19 the purpose of participating in this application.  
20 We think it appropriate and fair for all involved  
21 that we make the best use of everyone's time in  
22 conducting these hearings. We do not expect that  
23 you will be cognizant in terms of how long it  
24 will take to complete a witness. Instead, the

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1 Township asked that you have witnesses in the  
2 queue and prepared to testify.

3           As to the hearings, on April 14th,

4 Mr. Yeager has stated that he will be bringing in  
5 Allen Haberstock. In order to facilitate  
6 scheduling, Mr. Yeager, do you have an estimate  
7 of how much time you think you will need for his  
8 direct?

9 MR. YEAGER: No.

10 MR. CROTTY: I'm sure Ms. Yarnoff will  
11 not be able to give us an estimate of how much  
12 time, therefore, she will need to cross-examine.

13 MR. YEAGER: well, she'd previously  
14 identified on the record repeatedly that she may  
15 not conduct any cross-examination and that any  
16 cross-examination that she would conduct, and  
17 this related to Mr. Comitta, as well, would be  
18 less than half a night.

19 MS. YARNOFF: And at that time,  
20 obviously we did not have Mr. Comitta's report  
21 and had not heard any of his testimony. And  
22 based on the report and based on what we've heard  
23 thus far, we now know that we will need to do  
24 extensive cross-examination of him. And at this

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1 point, I can't comment on Mr. Haberstock until we  
2 see his report and hear his testimony.

3 MR. SIANA: Okay. Therefore, what I  
4 would ask is that to the extent that you have  
5 party witnesses that you intend to put on, that  
6 you at least have one or two prepared for that  
7 evening in the event that Ms. Yarnoff elects not  
8 to cross-examine Mr. Haberstock.

9 MS. YARNOFF: I can say right now that

10 we would most likely not cross-examine him the  
11 same night as the direct since we won't have had  
12 an opportunity to review his report, unless I  
13 suppose if we receive the report in advance. But  
14 if not, then he will be very difficult to  
15 cross-examine that same night.

16 MR. SIANA: I think you both get the  
17 thrust that we would like to keep the proceedings  
18 moving and use the time efficiently.

19 MR. YEAGER: I understand that, and  
20 we've done our best to do that, which is part of  
21 why we suggested in advance of the last hearing  
22 that Mr. Jacobs, that we check with Mr. Jacob's  
23 schedule rather than putting him on at the  
24 beginning of, prior to Mr. Comitta's testimony,

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1 that he be available at the end of Mr. Comitta's  
2 testimony or at the end of Mr. Haberstock's  
3 testimony so that we could fully utilize the  
4 time.

5 And I must note that counsel for the  
6 applicant has previously repeatedly stated that  
7 based on her desire to have these proceedings  
8 wrap up as quickly as possible, that she would be  
9 prepared to move directly into cross-examination  
10 of these witnesses. Now, I recognize that people  
11 are allowed to change their mind, but to do that  
12 after we set the schedule based on that  
13 representation I think is unfortunate.

14 MS. YARNOFF: Based upon the schedule  
15 that we set, we set a date for direct of each of

16 your witnesses and a date for cross of each of  
17 your witnesses.

18 MR. YEAGER: And then expressed an  
19 intent to move directly to cross.

20 MS. YARNOFF: Can I just -- excuse me.  
21 I don't understand why you keep bringing the same  
22 issue up over and over again. I said that, and  
23 since then I've seen the report, I've heard the  
24 testimony, and we've decided that we want to do

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1 cross-examination. I don't understand the point  
2 of what you keep saying what I've said over and  
3 over. We set aside dates for direct and cross  
4 and those haven't changed for the last month,  
5 month-and-a-half, two months even.

6 MR. YEAGER: The applicant's decision  
7 about what its desired preference for the  
8 schedule keeps coming back to requiring the  
9 parties that I represent to adjust our schedule  
10 and who is coming in when.

11 I'd like to get moving with the  
12 testimony of Mr. Comitta so that we can try to  
13 get him wrapped up, and so that we don't keep on  
14 being at the whim of the applicant in terms of  
15 the order of witnesses they want to do or whether  
16 they're doing cross one night or not. Those  
17 changes keep coming back to impact us. So I just  
18 hope that we can keep moving and keep to the  
19 representations that we make about --

20 MR. SIANA: I think what we're asking  
21 is that you communicate as soon as you become

22 aware of what your intentions are. And to the  
23 extent that you're not prepared to conduct a  
24 cross-examination that evening, we'd like to see

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1 the time utilized since we've all dedicated the  
2 evening, and are looking for some flexibility in  
3 that regard. That's simply what we did with  
4 Mr. Jacobs, attempt to make sure that we had a  
5 full evening.

6 I think the hearing with  
7 cross-examination of Bodie lasted an entire 45  
8 minutes with nothing else in the queue, and we'd  
9 like to avoid that going forward. So we're just  
10 asking for your cooperation.

11 That being said, I think Mr. Yeager,  
12 it's --

13 MR. YEAGER: All right, thank you.

14 Members of the Board will recall that  
15 at the last hearing, we had marked as G-5  
16 Mr. Comitta's C.V. with a number of different  
17 parts to it. And I don't know what the Board's  
18 preference is, but as we indicated, based on the  
19 voir dire, we're supplementing that. It's fine  
20 with me if we simply add these materials to the  
21 end of G-5 rather than mark another set of  
22 exhibits. Whatever the Board would like.

23 MR. JONES: That's fine with me.

24 MR. MOORE: That's fine with me.

12

1 MR. YEAGER: So I'll be handing out a  
2 park and recreation open space planning and  
Page 9

3 design qualifications and experience set, and a  
4 chart documenting the same. And this will be  
5 attached to the back of G-5.

6 - - -

7 THOMAS J. COMMITTA,  
8 having been previously sworn as a witness,  
9 was resumed on examination and testified  
10 further as follows:

11 - - -

12 CONTINUED DIRECT EXAMINATION

13 - - -

14 BY MR. YEAGER:

15 Q. All right, if I may, Mr. Comitta, can  
16 you just briefly identify what these two  
17 supplements to G-5 are?

18 A. Yes. The 8-and-a-half by 11  
19 supplement is a five-page document dated October  
20 2008 and is titled Park, Recreation and Open  
21 Space Planning and Design Qualifications and  
22 Experience. And what it does is it lists all of  
23 the various parks, recreational areas, and open  
24 space areas for which I have prepared either a

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1 master plan or a location plan, a park  
2 development plan and construction, an open space  
3 plan, a comprehensive plan, a recreational  
4 assessment, or otherwise.

5 The 11-by-17 supplement is a one-page  
6 document dated March of 2009. It's titled Parks  
7 and Recreational Facilities Planned and Designed  
8 By TCA, and that stands for Thomas Comitta

9 Associates, Inc. Since 1973, as a landscape  
10 architect, I've prepared a number of park master  
11 plans. And since 1991 as a licensed landscape  
12 architect for the Commonwealth, I have prepared  
13 construction documents for parks. And the  
14 11-by-17 is just a quick reference to say of  
15 those parks what the facility types are.

16 And I had mentioned last time that I  
17 hadn't thought about adding this to what's been  
18 marked G-5, but there was some question as to my  
19 ability to both plan and design some features  
20 similar to the Valhalla Brandywine proposal. I  
21 thought this would be helpful to the Board to  
22 understand the depth of both my planning and  
23 design experience.

24 MR. YEAGER: All right. And the Board

14

1 will also recall that we marked as G-6 the report  
2 of Mr. Comitta, and attached to that was Appendix  
3 A-1. And we have a further revision of that that  
4 we'd like to offer.

5 BY MR. YEAGER:

6 Q. All right, Mr. Comitta, can you  
7 explain then what this revision to A-1 reflects?

8 A. Yes. G-6 first dated March 24, '09  
9 had A-1 bearing the same date. This supplement  
10 was dated revised today's date, March 31, 2009,  
11 and it differs in two respects. One is that the  
12 source of the data of the exceptional natural  
13 areas was previously only listed as Brandywine  
14 Conservancy with the date of June 14 of 2007.

15 That turned out to be an issue date of the map.  
16 The actual specific date of that natural areas  
17 work was February 12th of 2007. So in the center  
18 middle bottom of this supplementary exhibit  
19 clarificational date appears.

20 Q. Okay.

21 A. The other noteworthy refinement is  
22 that a yellow circle appears in the legend and  
23 it's labeled as exceptional natural area on both  
24 versions. In the version dated today, the

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1 configuration of the area that would be if you  
2 liken this to a clock, at about 5:00, closest to  
3 Canyon Lake is slightly modified based on that  
4 preceding source data from the Brandywine  
5 Conservancy of February 12th of '07.

6 And just to the southeast of Canyon  
7 Lake, there is another outline for an exceptional  
8 natural area which doesn't really encompass any  
9 of the proposed Valhalla Brandywine development,  
10 but to be complete, in using that source  
11 document, we added the area that appears in the  
12 bottom right corner of the exhibit. Otherwise,  
13 the exhibit is identical in all respects.

14 Q. Okay. And as you note, this bears a  
15 revision date of March 31st, so that's how we'll  
16 distinguish it between the original A-1.

17 All right. Now, turning your  
18 attention to your report, the first section with  
19 Roman Numerals II and III, could you just explain  
20 for the Board what that represents as part of the

21 whole?

22 A. Somewhat of an executive summary. It  
23 is titled major problems with the conditional use  
24 application. And on those two pages, it

16

1 summarizes 12 items. There's a cross reference  
2 on the bottom of each one to a page in the report  
3 to which the comment relates.

4 Q. Okay. why don't we then turn to the  
5 numbered pages starting with Page 1.1.

6 A. Very well.

7 Q. And I had previously asked you about  
8 whether the report reflected your conclusions to  
9 a reasonable degree of professional certainty  
10 based on your review of the materials that have  
11 been available to you. Could you explain for the  
12 Board what your conclusions were in summary form  
13 with regard to steep slope impacts and  
14 encroachments?

15 A. Yes. In Exhibit G-6 on Page 1.1 and  
16 then continuing onto 1.2, there are five major  
17 paragraphs that address adverse steep slope  
18 impacts. In Comment 1.1, there's a reference to  
19 Section 1213.C.1 of the Wallace Township -- of  
20 the Township Zoning Ordinance that talks about no  
21 structures being located on slopes exceeding 20  
22 percent. And Section 1213.C.2 talk about no  
23 disturbance except for driveways that access a  
24 lot permitted on steep slopes.

17

1                   It goes on to say then as shown in  
2 Exhibit A-1, Appendix A, that there are 13  
3 incursions into the slopes that are the slopes  
4 exceeding 20 percent gradient, and they comprise  
5 3.10 acres, the largest of which is about .8  
6 acres, which is on the fairway of hole number 10.

7                   And then it goes on to say in the FRR  
8 district, if you are going to disturb slopes in  
9 excess of 20 percent, that you would have to  
10 obtain a variance, and there's no variance  
11 request. However, in 1.3, it basically says that  
12 according to the PCCC amendment section -- well,  
13 the PCCC Ordinance, that Section 1323.E.4.f gives  
14 the Board an opportunity during a proceeding like  
15 this conditional use hearing to weigh in on the  
16 various steep slope issues.

17                Q.     And is that with regard to the I  
18 district, with regard to the industrial district?

19                A.     Yes. Yes. And it goes on to say on  
20 the bottom of 1.1 in the I district.

21                   On the top of Page 1.2, it says of the  
22 total of 13 total incursions in the I district, 9  
23 are in the I district and they comprise of 2.02  
24 acres. So the concluding comment, the top of

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1 Page 1.2, is the conditional use submission is  
2 not complete because of the lack of disclosure of  
3 the impacts on the steep slopes.

4                   And it goes on to say that in our  
5 opinion, the I district portion of the tract  
6 could be reasonably used without incursions onto

7 the steep slopes. Obviously you'd have to  
8 redesign those areas, but it's my feeling that  
9 the applicant does not meet the fundamental  
10 standard for approval of the conditional use  
11 because of the testimony so far presented.

12 And then the last two comments talk  
13 about slopes that have the lesser gradient where  
14 Section 1213.B of the Zoning Ordinance addresses  
15 15 to 20 percent slopes. And there are 35 cases  
16 where it is an incursion into those slopes, which  
17 represent 6.55 acres, the largest of which is .72  
18 acres. And the applicant has not addressed  
19 those, why they are necessary to implement a  
20 viable plan.

21 The last point is that there was  
22 testimony about the distinction between natural  
23 and man-made slopes, but the Ordinances do not  
24 differentiate. And it goes on to say that those

19

1 man-made slopes have been with us for many, many  
2 years.

3 Q. All right. The map at A-1 also  
4 addresses sensitive soils and adverse impacts to  
5 those sensitive soils.

6 A. Yes.

7 Q. And those are described in Section 2  
8 of your report. Can you summarize for the Board  
9 what your conclusions were with regard to the  
10 adverse impacts on sensitive soils?

11 A. Yes. On Page 2.1, there are three  
12 major paragraphs, the first of which talks about

13 the seasonal high water table soils which the  
14 Comprehensive Plan describes. And they actually  
15 underlie the proposed Hillside and Manor House  
16 Neighborhoods and the tee area of hole 14. The  
17 Comprehensive Plan goes on to talk about treading  
18 lightly on such soils. My words; I'm summarizing  
19 what the Comprehensive Plan says.

20 In 2.2, there is reference to hydric  
21 soils, and those soils are shown on the Exhibit  
22 A-1. And there are two places where incursions  
23 of hydric soils have been identified totaling .5  
24 acres. The larger is .43 acres, which is the

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1 fairway to hole 7, and the other one is .07  
2 acres, which is an area near the Manor House.  
3 And also talks about how the Comprehensive Plan  
4 makes reference to conserving prime agricultural  
5 soils, and Exhibit A-1 shows the extent of that.  
6 Later, Mr. Yeager and Board, we're going to talk  
7 about the prime ag soils and its relevance to  
8 LEED certification, but we'll wait until we get  
9 there.

10 Q. And I think this is where you had  
11 pointed out to the Board that on the mapping at  
12 A-1, that the prime ag soils showed up as a kind  
13 of a shade of brown over the plan.

14 A. Yes.

15 Q. Is that accurate?

16 A. Yeah. The underlying image to A-1 is  
17 the plan for Valhalla Brandywine, and the overlay  
18 features, the environmental constraints are atop

19 those proposed layout features. And a brown tone  
20 appears on various areas, let's just say, for  
21 reference, if we liken the plan to a clock over  
22 the Manor House neighborhood in large part on  
23 both ends of the Hillside neighborhood. And  
24 another distinct area, if you liken the plan to a

21

1 clock, at 9:00, the prime ag soils appear in many  
2 places where the proposed golf course is located.

3 Q. All right. Now, turning to Section 3  
4 of your report, can you summarize for the Board  
5 what your conclusions are with regard to adverse  
6 buffer impacts/encroachments?

7 A. Regarding adverse buffer impacts, the  
8 report addresses these on Pages 3.1 and 3.2 and  
9 in five major paragraphs. In Paragraph 3.1, it  
10 talks about section 1323.E.3.C, and it talks  
11 about how vegetative screening shall be provided  
12 as per Section 1211 of the Zoning Ordinance.  
13 Specifically 1211.B requires that screens located  
14 so that building structures, parking areas and so  
15 forth, would not be highly visible year round.

16 Having driven around the site several  
17 times, the note at the end of Paragraph 3.1 says  
18 existing plant material has been relied upon for  
19 the screening needs. However, much of it is  
20 deciduous, not evergreen. There are some  
21 evergreen trees, but primarily deciduous. And in  
22 order to accomplish the screening, there would  
23 have to be new evergreen trees.

24 In some cases, the proposed buffer was

1 rather narrow and unable to really accommodate  
2 any plantings. But the report says unable to  
3 accommodate evergreen plantings. So the  
4 applicant would have to address those as to how  
5 to increase the buffers and to increase the  
6 proposed evergreen tree plantings.

7 In Paragraph 3.2, it talks about the  
8 Township Open Space Recreation and Environmental  
9 Resource Plan which addresses in part buffer  
10 widths. And it talks about how buffer widths  
11 should be based on analyzing the lay of the land,  
12 specific stream segments, and specific  
13 development proposals as opposed to a specific,  
14 like, numerical dimension.

15 However, in Section 626.E.1 of the  
16 wallace Township Subdivision and Land Development  
17 Ordinance, it clearly states that buffer areas  
18 shall be 50 feet in width. Now, we found two  
19 places where the required 50-foot buffers are  
20 encroached upon, both along the Brandywine Creek  
21 tributary west of the Manor House Neighborhood.  
22 And if you look at Appendix A-1 it will identify  
23 where that occurs. It basically says that the  
24 plan appears to show additional improvements

1 within the riparian buffer including the golf  
2 cart parking area.

3 In Paragraphs 3.3, it indicates that  
4 on the record, the applicant has stated that  
5 additional buffers would be created wider than

6 those which the Township Ordinances require. And  
7 their buffers are depicted in the Natural  
8 Resources Management Plan.

9 Q. Is that the Audubon document?

10 A. Yes, that Mr. Bodie had worked on. We  
11 also show proposed buffers on Exhibit A-9. We  
12 found five places where there's encroachment into  
13 the buffers with an aggregate of, there's a  
14 little typo here on the fifth line, it should be  
15 area, it says aggregate are of .5 acres, it  
16 should say area of. The largest is .3 acres  
17 adjacent to the Manor House property where a golf  
18 cart parking area is proposed.

19 In Comment 3.4, the PCCC Ordinance  
20 Section 1323 does not include any additional  
21 buffer requirements. If you look at the  
22 definitions in the Zoning Ordinance, you talk  
23 about, and it defines what a buffer is, it  
24 explains its function as a barrier, the

24

1 visibility, noise, glare, and also makes  
2 reference to possibly including earthen or  
3 vegetative material.

4 Q. Now, does the Township's Ordinance  
5 identify what can be done with airborne chemical  
6 applications within the 50-foot buffer?

7 A. Basically talks about -- yes. And  
8 what we basically say on Page 3.2 is that while  
9 the Natural Resource Management Plan that the  
10 applicant offered has a special management zone,  
11 it would permit foliar applied materials and

12 create airborne particles within the buffer. And  
13 proposals are in conflict with the Ordinance  
14 since the use of any airborne chemical  
15 application within the required 50-foot buffer is  
16 in conflict with the Zoning Ordinance definition.  
17 And that's stated in Paragraph 3.4.

18 And then finally in 3.5, the  
19 Township-adopted Open Space Recreation and  
20 Environmental Resource Plan makes reference to  
21 the Department of Environmental Protection  
22 classifying East Branch of the Brandywine as  
23 quality waters requiring special protection.  
24 That plan talks about 150-foot-width buffer.

25

1 Another group talked about a 250-foot buffer for  
2 high quality waters, reference that as the  
3 Campaign For Clean Water. Those members include  
4 Audubon Pennsylvania and Pennsylvania Trout  
5 Unlimited.

6 However, the last sentence, last  
7 paragraph says buffer width of 100 feet has been  
8 proposed adjacent to the tributary of the east  
9 branch, it runs parallel roughly to Marshall  
10 Road. We recommend a buffer of 200 feet for  
11 first order streams such as this. So there are  
12 different numbers.

13 Q. What's that in reliance on?

14 A. Pretty much the high quality water  
15 requiring special protection.

16 Q. All right. Turning to Section 4, can  
17 you just give an overview of what's reflected in

18 section 4 before we start going through?

19 A. Section 4, there's a little bit of  
20 overlap. It talks about slope encroachment, it  
21 talks about encroachment in 50-foot buffers, it  
22 talks about vegetative screening, it talks about  
23 trail lighting, and it talks about sound levels  
24 and it talks about building materials. And

26

1 specific sections of the PCCC Ordinance are  
2 identified and in some respects, in other topical  
3 sections, we addressed the slope encroachment and  
4 the buffering encroachment in paragraphs 4.1.A  
5 and 4.1.B. We also had addressed vegetative  
6 screening that's described in paragraph 4.1.C.

7 4.1.D is a new item. There was  
8 testimony about the trail lighting. To some  
9 extent that there need not be trail lighting  
10 because of the golf cart use at night would not  
11 be needing trail lighting. And there was also  
12 testimony that there would be trail lighting.  
13 And so our feeling was that in order to make the  
14 conditional use application complete, that if  
15 there is going to be trail lighting, there should  
16 be, in fairness to the conditional use standards  
17 and criteria and the Board's determination, that  
18 the applicant would need to put on information  
19 regarding trail lighting and describe why the  
20 lighting was necessary to serve the interest of  
21 the project and in keeping with public health,  
22 safety, and welfare.

23 So that item is sort of out there as

24 an uncertainty because of the lack of clarity of

27

1 what's been presented on the record thus far.

2 Q. And there were a number of points in  
3 your report where you are identifying items that  
4 are missing from the application. From your  
5 experience and expertise in plan review, what's  
6 the result when you have items that you've  
7 identified from a professional standpoint as  
8 necessary to make a conditional use judgment?  
9 what's the result when those items are missing?

10 A. well, the applicant usually goes  
11 whoops, must have missed that one, then they go  
12 and put on witnesses after other people to fill  
13 the gaps. But another way to answer your  
14 question is that often a board will impose a  
15 condition to say this can only be approved if  
16 such and such is addressed on trail lighting to  
17 address certain thresholds, or the plan is  
18 deficient because of that item, and that would be  
19 one of the reasons why the plan could be denied.

20 Q. Now, moving to Section 4.1.E, you  
21 addressed the sound issues under the ordinance.  
22 Can you summarize what your conclusions were  
23 there?

24 A. In the PCCC Ordinance, there's a

28

1 Section 1323.E.4.i.7, it says that sound levels  
2 from any source proposed as a component shall  
3 comply with the requirements set forth in the

4 parent ordinance and the zoning in 1209.B.6. And  
5 in order to really determine compliance on this,  
6 there needs to be additional information, because  
7 the record is very incomplete on sound levels.  
8 And when we get back to Section 14, I'll go into  
9 a little bit more detail.

10 Q. Why don't we turn to that section as  
11 it relates to sound now.

12 A. Sure.

13 Q. Page 14.1, Section 14.6.

14 A. Yes. Yes. That states a more  
15 thorough sound propagation test with the  
16 following source locations will be needed.  
17 Lead-in paragraph up top says are needed. And so  
18 our feeling is it would have to be at the site of  
19 the proposed dining pavilion; the proposed horse  
20 barn; the proposed golf clubhouse; the proposed  
21 water treatment facility.

22 And the other point would be the  
23 submission should include analysis of post  
24 construction during the winter rather than during

29

1 the summer when there's fully vegetated  
2 conditions.

3 Q. And it may be obvious, but why is  
4 that?

5 A. Because of the sound absorption  
6 characteristics of vegetation.

7 Q. And recognizing that you're not an  
8 expert in sound propagation per se, as part of  
9 your background in planning and plan review, do

10 you address sound propagation issues?

11 A. My first two years at Weston, I did  
12 environmental impact statements all over the  
13 country, and I had to do like sections on sound.  
14 But I'm not going to hold myself as a sound  
15 expert. It's just that there's nothing of any  
16 substance to look at where the Board could make  
17 an informed decision on sound. It's incomplete.

18 Q. And are those the types of materials  
19 that you would generally review as part of a plan  
20 review?

21 A. Occasionally, if the ordinance  
22 requires it, and it does in this case, yes.

23 Q. All right. Going back to Section 4.1  
24 on Page 4.2 of your report.

30

1 A. Yeah, the final paragraph, which is  
2 Paragraph 4.1.F, the PCCC Ordinance in Section  
3 1323.E.4.j.1 requires that the applicant submit  
4 information regarding building materials,  
5 architectural details, and lighting as part of  
6 the conditional use approval process to assess  
7 the impact on the proposal on the surrounding  
8 community and to weigh that information in the  
9 conditional use decision. And it's our feeling  
10 that since that required information has not been  
11 provided, that the submission is incomplete.

12 Q. All right. Turning to Section 5 of  
13 your report. You have an assessment here of  
14 residential density and whether it's  
15 proportionate or not?

16 A. Yes.  
17 Q. why did you conduct such a review?  
18 A. After observing all of the  
19 encroachments into the slope and the hydric soils  
20 and the other features, the buffer and other  
21 features that are shown on A-1, I had an  
22 impression that the development density and  
23 intensity was too great for the site. And so  
24 therefore, I was curious to see here in wallace

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1 Township where, let's say the most aged cluster  
2 development that I'm aware of in the community is  
3 Glenmoore Village. If I were to do what I'll  
4 call a core sample in Glenmoore village, either  
5 as a function of the historic district as  
6 previously defined by Jane Davidson and  
7 memorialized in the historic atlas of the  
8 Township, or just by driving around the village  
9 and observing where the more compact neighborhood  
10 ends, that I could measure the area, I could  
11 determine how many dwelling units were in that  
12 area, and come up with a dwelling unit per acre  
13 concept. And then I was curious to see if I took  
14 out the golf course and some of the buffer areas  
15 and be looked at a similar development program on  
16 a nearby site, namely valhalla Brandywine, how it  
17 compared.

18 Q. Before you get to your conclusions  
19 about that, in making a determination about  
20 whether the plan is consistent with the  
21 Township's Comprehensive Plan, was this part of

22 your consideration?

23 A. It was, because the Comprehensive Plan  
24 in essence says respect mother nature and pursue

32

1 compactness, I mean, there are many pages, I'm  
2 going to give a broad summary.

3 At the end of my testimony last time I  
4 mentioned the aged nature of the Comprehensive  
5 Plan. I realize that in order to be eligible for  
6 the Vision Partnership Program, each of the 73  
7 Chester County municipalities must be consistent  
8 with the County's Vision Partnership Program. So  
9 therefore, in order to get the grant, the  
10 Township did for the Open Space Recreation and  
11 Environmental Resource Plan, Wallace Township had  
12 to be evaluated by the county. And in that  
13 evaluation letter that the County sent to the  
14 Township saying congratulations, you're awarded  
15 the grant, there had to be some nexus between the  
16 county landscapes plan and the general land use  
17 pattern of the Township.

18 when you look at the County Landscapes  
19 Plan, Glenmoore Village is the only pocket of  
20 compact development which that shows. And while  
21 the '86 plan admittedly is aged, I was then  
22 inclined to look at the County Comprehensive Plan  
23 and to see how it expressed a vision for the  
24 Township. That affirmed and confirmed in my mind

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1 that it was worth the archeological dig of  
2 looking at a core sample or two in Glenmoore

3 village and making a comparison to see to what  
4 extent there was a relationship between this  
5 proposal and anything close to it.

6           There's nothing else close to it  
7 except Glenmoore Village in terms of compactness,  
8 proximity of buildings, intensity and so forth.  
9 And it was for those reasons.

10           MS. YARNOFF: Excuse me one moment. I  
11 just wanted to, I know you haven't gotten into  
12 the testimony yet on the Comprehensive Plan, but  
13 I just wanted to note an objection to any  
14 testimony by Mr. Comitta regarding the  
15 Comprehensive Plan. And I have a case that I can  
16 hand up, too.

17           But the case of 41 Bally Associates  
18 vs. Board of Supervisors of London Grove  
19 Township, the Court found that testimony with  
20 regard to consistency to a comprehensive plan is  
21 actually legal testimony and not testimony in the  
22 form of an expert.

23           So as I said, I know you were getting  
24 to it, but since he started to touch on it right

34

1 now, I wanted to place an objection out there.  
2 And like I said, I can give you a copy of the  
3 case at the appropriate time.

4           MR. YEAGER: The applicant didn't just  
5 open the door, the applicant took the door off  
6 the hinges, opened up all the windows, and took  
7 the roof off the building to allow testimony as  
8 to consistency or inconsistency with the

9 Comprehensive Plan. And if you look at the  
10 applicant's reports and review the testimony of  
11 the applicant's witnesses, it is littered with  
12 their opinions that what they're proposing to do  
13 is consistent with the Comprehensive Plan. If  
14 they're allowed to present testimony that what  
15 they're doing is consistent with the  
16 Comprehensive Plan, then we're certainly allowed  
17 to present testimony that answers that.

18 MS. YARNOFF: And I would say that our  
19 testimony that was presented was in the form of  
20 factual explanation as to what was being proposed  
21 in order to ultimately make the legal conclusion  
22 that it is consistent with the Comprehensive Plan  
23 and not expert testimony.

24 MR. SIANA: All right, well, we

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1 haven't quite gotten there yet, and I think we  
2 would like a copy of the case that you're  
3 referring to. We don't need to act on it at this  
4 juncture.

5 BY MR. YEAGER:

6 Q. All right. Mr. Comitta, you have an  
7 exhibit then that helps document what your  
8 conclusions are with regard to this  
9 disproportionate density study that you did?

10 A. Yes. On Pages 5.1 and 5.2 of the  
11 report, there are nine paragraphs that address  
12 this matter. There is also an Appendix B. And  
13 the first exhibit of Appendix B is B-1, and it is  
14 titled Glenmoore Village Density Study A:

15 Historic District. And there's an asterisk that  
16 is referenced to of the source document.

17           Simply stated, the exhibit shows in  
18 the color yellow an outline of one of the  
19 historic district boundaries that is shown in a  
20 document that you can just buy at the counter  
21 here at the Township, which I did. And it shows  
22 in the color red dots that are representative of  
23 the dwelling unit. The area in yellow is 87.81  
24 acres in which there are 82 dwelling units for a

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1 dwelling unit per acre of 0.93.

2           Then the next part of the analysis is  
3 expressed in Appendix B for what's called  
4 Glenmoore Village Density Study B and called  
5 Current Populated Core. This area is much larger  
6 in scope. It is 229.17 acres within which is  
7 shown with the red dots there are 192 dwelling  
8 units for a dwelling unit per acre of 0.84.

9           And Board and Mr. Yeager, the map was  
10 created and I drove around the village to observe  
11 the relative lot sizes and the proximity of  
12 villas to one another, similar in certain  
13 respects to the valhalla Brandywine proposal.  
14 What I had observed by looking at Density Study B  
15 is that outside of the area shown in yellow, it's  
16 typically a farm and not with homes on it or a  
17 store or what have you.

18           And then the third exhibit, it's  
19 Appendix B, is called Density Study C. And for  
20 this area, I subtracted out the golf course, I

21 subtracted out tributary and woodland land, and  
22 subtracted out the I district. So the yellow  
23 area as shown represents 205.69 acres where there  
24 are 296 dwelling units, which is 1.44 dwelling

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1 units per acre. So therefore, the difference is  
2 1.44 versus .84 dwelling units per acre if looked  
3 at the so-called populated core, or the other,  
4 going back to the first page, it is .93 dwelling  
5 units per acre.

6 And in the report, Paragraphs 5.1.A,  
7 B, C, and D talk about the items that are shown  
8 on study sheets A, B, and C.

9 On to Page 5.2 of the report, based on  
10 that study, Valhalla Brandywine plan proposes a  
11 residential density that's 55 percent greater  
12 than a density of the Glenmoore Village historic  
13 district, and 71 percent greater than the  
14 populated core.

15 If there were an equivalent density to  
16 the historic district, instead of 296 units,  
17 there would be 191. And if it was compared to  
18 the populated core, it would be 173.

19 And then again just in terms of  
20 gauging density, the most familiar place to me  
21 after I study the Valhalla Brandywine proposal  
22 that I had visited was Palmetto Bluff in  
23 Bluffton, South Carolina. And that compared  
24 where Palmetto Bluff has a density of .35 based

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1 on all the adjusted tract area as compared to .72  
2 for Valhalla Brandywine. So it's more than twice  
3 that of Palmetto Bluff.

4 And the overall point here is in the  
5 absence of Section 5 of the report, no one really  
6 knows or would know how the Valhalla Brandywine  
7 proposal actually compares to something that is  
8 reasonably comparable. So I thought it was  
9 important to bring these to the attention of the  
10 Board.

11 Q. You have some exhibits attached, you  
12 have some appendix pages attached that relate to  
13 Palmetto Bluff for comparison.

14 A. Yes.

15 Q. Is this an appropriate time for you to  
16 explain what those reflect?

17 A. Yes. Denise had asked me in voir dire  
18 about my familiarity with some of these places  
19 that might be comparable to Valhalla Brandywine.  
20 And several years ago, I visited Palmetto Bluff,  
21 I've been there a couple of times now. And it  
22 really felt to me like a destination, like a  
23 resort, and it has a great spa.

24 And so in Appendix C titled Example of

1 Destination Resort TND, I include photographs  
2 that I had taken on my various visits and talked  
3 about its characteristics of cluster and open  
4 space, landscaping, historic resource protection.  
5 And then some of the streetscape characteristics,  
6 building lot and architectural characteristics

7 and building material characteristics and  
8 included a site plan and some of the details.  
9 And then finally, the comparable acreage.

10 I would say overall, I spent about an  
11 hour putting together Appendix C of all the  
12 things that I've done. And one of the reasons,  
13 and we'll talk about it in a minute about the  
14 applicant's submission, is that I'm not the  
15 applicant. These exhibits express the quality of  
16 the proposed environment of a place that I feel  
17 is comparable to Valhalla Brandywine. And it was  
18 a great surprise to me that there was nothing  
19 like this that I've seen thus far in the record  
20 that talked about this proposal.

21 When I first visited the Township  
22 building, I found a pamphlet out in the lobby  
23 that had some images of the site, but I didn't  
24 find anything comparable or even expanded in the

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1 application. And it made reference to cottage  
2 environment and talked about campus, carriage  
3 houses, country-style residences, English  
4 cottages, English villages, manor homes, and the  
5 attributes of the spa characteristics.

6 And it was my feeling that if I were  
7 the applicant trying to play to the Board on the  
8 merits of the Valhalla concept, I surely would  
9 have offered more compelling images to express  
10 the proposed character.

11 The only reason I say that is several  
12 years ago, I was working on a project in Berks

13 County where the developer was proposing a,  
14 quote, English village. And if you go up to  
15 Caernarvon Township in Berks County, there is one  
16 of the ugliest townhome developments I've ever  
17 seen, I think it's called Brittany Estates, and  
18 all the houses are garage front loaded. They  
19 just have a little bit of Tudor architecture to  
20 them. And so all the exuberance of the English  
21 village gave to a suburban environment.

22 I would just feel much more  
23 comfortable if we're going to get Valhalla  
24 Brandywine, that it have some very important

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1 quality control measures hard wired into this  
2 conditional use application.

3 Q. Going back to the environmental impact  
4 elements of this, can you explain for the Board  
5 what your conclusions were from your study of the  
6 plans as it related to groundwater?

7 A. Just a simple item on 6.1. It appears  
8 from the testimony presented that at least three  
9 wells would be drilled to provide adequate  
10 amounts of potable water. However, only two  
11 potential well sites have been identified with  
12 yields that appear to be adequate to serve the  
13 project and a third site has not been found.

14 And I feel anyway that the groundwater  
15 testing should anticipate the need for water  
16 that's not potable such as for swimming pools,  
17 for low water levels in the ponds, especially  
18 during late July and August, if you have to wash

19 equipment, sprinkle lawns, irrigate gardens, do  
20 supplemental irrigation of the golf course if  
21 it's during a drought.

22 It's my feeling that if the applicant  
23 cannot demonstrate that an adequate,  
24 replenishable supply of water can be obtained

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1 without having any adverse effects, that the  
2 proposal should be reduced in scope.

3 Q. And similarly, with regard to  
4 wastewater, what did you find or what didn't you  
5 find in reviewing the applicant's submittal?

6 A. On Page 7.1, there are three major  
7 paragraphs. 7.1 talks about certain activities  
8 that are specifically prohibited in the flood  
9 hazard district and wet soils district, which  
10 according to Section 808 of the Zoning Ordinance  
11 shall not be eligible for variance or special  
12 exception. And in 808.E of the Zoning Ordinance,  
13 it talks about installation or maintenance of  
14 sewage disposal systems or wells. A sewage  
15 disposal system is proposed to irrigate the golf  
16 course, portions of which are in the flood plan  
17 and wet soils. And we shaded those in -- I'm  
18 sorry. We have noticed that shaded in the  
19 Comprehensive Plan Map 10-2, you have a  
20 delineation where those features are.

21 In 7.2, it makes reference to verbiage  
22 in the Comprehensive Plan that talks about a  
23 site's suitability to support on-site systems and  
24 the needed documentation. And it appears that

1 since the proposed system could not fully  
2 disseminate the treated wastewater, that other  
3 options would be needed.

4 In the record it states that  
5 additional disposal will be provided to dispose  
6 of treated wastewater when the golf course does  
7 not require irrigation. It's our feeling that  
8 other alternative disposal methods would need to  
9 be proposed.

10 MS. YARNOFF: Excuse me. I'm trying  
11 not to interrupt you when you're in the middle,  
12 but on the Comp Plan, the same issue, the  
13 objection to any testimony with regard to  
14 consistency with the Comprehensive Plan. And as  
15 I said, I can hand up the case if you're  
16 interested since I think it seems like it's going  
17 to be continuously coming up.

18 MR. JONES: We can take a look at that  
19 during our break.

20 MR. YEAGER: I would encourage the  
21 Board also to take a look at the report prepared  
22 and submitted by Mr. Evans, the land planner  
23 report submitted by the applicant, specifically  
24 at Pages 6 and 7 as examples of where the

1 applicant's land planner opined that the  
2 application is consistent with the Comprehensive  
3 Plan and testified to that.

4 Also, in the applicant's report and  
5 testimony from Mr. Dobson, if you look at Page 7,  
Page 35

6 he notes that the proposed use is consistent with  
7 the Comprehensive Plan. And again, just an  
8 example, and that was explored further in both  
9 their testimonies.

10 MR. JONES: Thank you. We'll take  
11 that under consideration.

12 BY MR. YEAGER:

13 Q. All right. Were you in the middle  
14 of --

15 A. Just the last point in Section 7 of  
16 the report in Paragraph 7.3. In a combination of  
17 drip irrigation system in looking at Section  
18 618.F.6 of the Wallace Township Subdivision and  
19 Land Development Ordinance, all sewage systems  
20 shall be setback 100 feet from the property lines  
21 of the tract, private lots, or from buildings.  
22 The limits of spray fields of spray irrigation  
23 systems shall be set back a minimum of 200 feet  
24 or the requirements, it says the DER, not DEP,

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1 whichever is greater.

2 The sewage treatment facility has not  
3 been shown to plan nor have the limits of the  
4 spray fields. And you can't determine, then, how  
5 there's compliance with the Ordinance  
6 requirements for the setbacks.

7 Q. All right. And did you also review  
8 the plan and the report and testimony offered by  
9 the applicant with regard to adverse impact on  
10 historic sites?

11 A. Yes. We looked at Mr. Wise's report

12 and exhibits, and in that regard, Section 8 of  
13 the report which has five paragraphs, the first  
14 of which 8.1 mentions that uses have not been  
15 established for several of the Mcknight farm  
16 buildings. And in spite of Denise saying that  
17 the Comprehensive Plan doesn't apply, again, the  
18 report does say something about the Comprehensive  
19 Plan in 8.1, and the Comprehensive Plan talks  
20 about compatible reuse.

21 In 8.2, the first green is proposed  
22 only 50 feet from the Heim house. And Page 32 of  
23 the Historic Resource Impact Study calls for the  
24 relocation of the first green, which has not yet

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1 been done.

2 On Pages 33 and 34 of Mr. Wise's  
3 report, he calls for the careful consideration of  
4 the architecture of the new golf clubhouse,  
5 particularly as visible from Devereux Road. To  
6 our knowledge, that has not yet been done.

7 In 8.4, it talks about the Historic  
8 Resource Impact Study not fully considering sites  
9 and structures. And we go to the points that  
10 were touched upon in the cross-examination of  
11 Mr. Wise where the landscape itself is a  
12 potentially historic element.

13 And in 8.5, we talk about historic  
14 integrity also gauged according to the National  
15 Trust For Historic Preservation on location,  
16 design, setting, materials, workmanship, feeling  
17 and association. And we feel that in some

18 respects, the proposal compromises the historic  
19 resources because of the lack of separation for  
20 visual or spacial buffers.

21 Q. And is that also then addressed as you  
22 look at the view shed impacts?

23 A. Yes.

24 Q. Generally in the next section?

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1 A. Yes. On the view shed impacts, we  
2 make reference to three items. The Comprehensive  
3 Plan, the Historic Resource Impact Study, and  
4 just straight out visibility as you drive around  
5 the perimeter of the site. With regard to  
6 Comprehensive Plan, Paragraph 9.1 talks about --

7 MS. YARNOFF: I just have a standing  
8 objection to that issue, so I won't keep  
9 interrupting.

10 MR. SIANA: We recognize that; thank  
11 you.

12 MR. COMMITTA: Talks about protecting  
13 scenic vistas in the natural areas from  
14 encroachment. In 9.2, the Historic Resource  
15 Impact Study also calls for careful consideration  
16 of the clubhouse as mentioned before, and  
17 visibility from Devereux Road, the fact that this  
18 still needs to be addressed.

19 And then 9.3 talks about how there are  
20 very narrow bands of existing vegetation that  
21 really can't accomplish the visual buffering  
22 that's required.

23 Q. All right. Turning to Section 10, the  
Page 38

24 applicant has submitted materials relating to

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1 LEED compliance. Is that something your office  
2 has looked at?

3 A. Yes.

4 Q. And what can you tell the Board about  
5 that review from your office?

6 A. Well, the incomplete LEED eligibility  
7 information as expressed on pages 10.1 and 10.2  
8 in three paragraphs. Essentially, the  
9 presentation of testimony is incomplete. It  
10 scratched the surface of what the LEED  
11 requirements are, but LEED for New Construction  
12 For Multiple Buildings and On-Campus Building  
13 Projects needs to be fully addressed, not just  
14 LEED for Homes and LEED for New Construction.

15 And the report goes on to explain how  
16 Section 1323.E.5.F of the PCCC district requires  
17 reference to these LEED certifications. And in  
18 order to become LEED certified, there are three  
19 basic aspects of eligibility. One is that under  
20 the category of LEED for New Construction for  
21 Multiple Buildings and On-Campus Building  
22 Projects is that buildings, hardscape, roads, or  
23 parking do not occur on prime farmland. And that  
24 gets you a credit in the LEED scoring system.

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1 A-1 does show the encroachment on the prime  
2 farmland.

3 Second item is that under the

4 Development Density & Community Connectivity  
5 category of LEED for New Construction for  
6 Multiple Buildings and On-Campus Projects,  
7 there's a requirement that either be constructed  
8 within a community with a minimum building  
9 density of 60,000 square feet or within a half  
10 mile of a zone of ten ache units per acre. Now,  
11 the applicant would probably love to do that, ten  
12 units per acre, but that's what it says, it's of  
13 record. Obviously the plan doesn't comply with  
14 that credit item.

15 The third item is under the Site  
16 Development to Maximize Open Space category,  
17 there's a requirement that open space within the  
18 project boundary exceed the local zoning's open  
19 space of the site by 25 percent. And the  
20 proposed greenway area is 390.08 acres, which  
21 only exceeds the greenway requirement by .42  
22 percent. So it doesn't comply with that 25  
23 percent requirement.

24 So the conclusion comment is that the

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1 conditional use plan should demonstrate that the  
2 necessary design and planning has been undertaken  
3 to ensure feasibility of certification as LEED  
4 New Construction For Multiple Buildings and On-  
5 Campus Building Projects.

6 Q. The applicant's planner testified  
7 about this being a TND, traditional neighborhood  
8 development. Can you define what a TND is?

9 A. TND stands for traditional

10 neighborhood development. In Pennsylvania in  
11 August of 2000, the Municipalities Planning Code  
12 was amended to add Article Roman Numeral VII-A  
13 called Traditional Neighborhood Development. In  
14 it, there is a Section 708.A called Manual of  
15 Written and Graphic Design Guidelines.

16 Therefore, in my experience, in either  
17 designing a TND, preparing an ordinance for a  
18 TND, or submitting an application for either  
19 conditional use approval, a special exception  
20 approval, sketch, preliminary, or final plan  
21 submission, I always include some form of a  
22 manual. Admittedly, in the beginning it's  
23 smaller, and as the project matures through the  
24 plan process, it gets more advanced.

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1 On Page 11.1 titled Incomplete TND  
2 Submission, my first comment says there is no  
3 manual that's been submitted, and therefore,  
4 matters pertaining to streetscape, public realm  
5 elements such as the open space features and  
6 pocket parks, courtyards, building materials,  
7 lighting are not yet addressed to the extent that  
8 I typically address and see them addressed in  
9 what's referred to as a TND.

10 In 11.2 I make reference to the  
11 Palmetto Bluff, the density. Also, I didn't have  
12 any trouble putting together, just scratching the  
13 surface of what one might advance using Palmetto  
14 Bluff as a little representative sample for  
15 something like a manual.

16 In 11.3, this goes perhaps,  
17 Mr. Yeager, to your question as to what is a TND.  
18 There is a specific address in the Municipalities  
19 Planning Code. The good news is the Valhalla  
20 Brandywine proposal is some form of mixed  
21 proposal so there is an overlap of the way TND is  
22 defined. There are in many cases in TND an  
23 opportunity if there was a small shop or store to  
24 acquire items that would result in less off-site

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1 vehicular trips. And I guess we'll find out  
2 later, rebuttal testimony or otherwise, whether  
3 some other part of the buildings that are  
4 proposed here will have certain amenities like a  
5 TND would have, you know, besides the spa and  
6 besides the clubhouse and so forth. That's what  
7 11.3 is about.

8 And 11.4 goes toward environmental  
9 controls and just gracefully integrating what a  
10 TND has with all of its components with issues  
11 pertaining to water quality and potable water and  
12 the whole aspect of site aspiration.

13 MR. YEAGER: This might be a good  
14 place to take a brief break, then we can wrap up  
15 and move into cross.

16 MR. JONES: We'll take a ten-minute  
17 break.

18 (Whereupon, a brief recess was taken.)

19 THE CHAIRMAN: I'd like to call the  
20 conditional use hearing back to order.

21 MR. JONES: I want to note that the

22 chairman was present at the back of the room at  
23 8:40, and that we do have a determination on the  
24 objection from the applicant.

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1 MR. SIANA: Noting the case that you  
2 provided, Ms. Yarnoff, the Board is going to  
3 overrule the objection and allow Mr. Comitta to  
4 testify relative to the Comprehensive Plan and  
5 the application's relationship to the  
6 Comprehensive Plan, noting that the Board will  
7 afford it the weight that it deems appropriate.

8 MS. YARNOFF: I have an additional  
9 objection before Mr. Comitta continues to  
10 testify, and that is an objection to the  
11 discussion on TNDs. This plan, I'm sure as this  
12 Board and the audience knows, is not a TND plan.  
13 TND use is a specific use that is permitted by  
14 the MPC that would set forth its own rules and  
15 regulations. And this is not a TND plan, and any  
16 reference to it being a TND plan is incorrect and  
17 any reference to it lacking in whatever a TND  
18 would require is irrelevant because it is not a  
19 TND plan. It is a planned country club community  
20 which has its own requirements as set forth in  
21 the Ordinance. I would object to any further  
22 testimony on it, and I would ask that the prior  
23 testimony on that issue be stricken.

24 And I would also ask the Board to

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1 strike the editorial comment that the applicant  
2 of course would like, and I don't know the exact

3 words that were use, but of course would like to  
4 see greater density. There's a plan that's  
5 before this Board, and that's the plan that this  
6 Board is considering.

7 MR. YEAGER: If I may be heard on the  
8 TND concept, I'd again direct you to the  
9 applicant's land planner report and testimony.  
10 It is, again, littered with references to TNDs  
11 and TND concepts, and refers repeatedly to this  
12 in the context of TNDs, including on Page 3 where  
13 it says "community envisions 275 new residences  
14 clustered in four residential neighborhoods using  
15 Traditional Neighborhood Design principles."  
16 Their planner says that in part of his effort to  
17 qualify himself, says that he's prepared master  
18 plans for the following mixed use traditional  
19 neighborhoods that have similar qualities to the  
20 Valhalla Brandywine community. And then he lists  
21 among them Lantern Hill in Doylestown, which the  
22 applicant's land planner, Mr. Comitta, worked on  
23 together. We go on and on through the  
24 applicant's own land planner's report, and they

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1 refer to this as utilizing a TND concept.

2 So it's interesting that they keep on  
3 wanting to backtrack from what their own experts  
4 have said, but that's what's before the Board.

5 MS. YARNOFF: That's an incorrect  
6 statement. I would not disagree that the land  
7 planner used TND as concepts and used that to  
8 describe certain things to give people an example

9 of what he is doing, but that is a separate,  
10 complete different use that the MPC recognizes  
11 and recognizes it to have its own separate  
12 regulations.

13 And if you look in the PCCC Ordinance,  
14 there is no requirement that this be a TND. The  
15 Ordinance itself anyplace else doesn't require it  
16 to be a TND, and there are many things that  
17 people use as analogy to give a description and  
18 understanding of what something is, but that  
19 doesn't mean that that's what it is.

20 And in this case again, it's not even  
21 really an issue to debate, it is not a  
22 traditional neighborhood design, it's not that  
23 use, it's a planned country club community, and  
24 the planner used examples to portray concepts,

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1 but not to say it is a TND itself.

2 MR. YEAGER: It is not a traditional  
3 neighborhood design Ms. Yarnoff tells the Board.  
4 Executive summary of the applicant's land  
5 planner's report, Number 5, "Utilize Traditional  
6 Neighborhood Design techniques to create compact  
7 and walkable neighborhoods sensitive to the rural  
8 landscape." The applicant has used this and the  
9 applicant's planner has presented this as an  
10 application that utilizes traditional  
11 neighborhood design and says that's why the Board  
12 ought to like it and consider it with the health,  
13 safety, and welfare of the Township and  
14 consistent with the use standards in the

15 Comprehensive Plan.

16 when we present alternate testimony,  
17 oh, this has nothing to do with traditional  
18 neighborhood design. That's a --

19 MS. YARNOFF: The different. What I'm  
20 saying, I would like to end with this one last  
21 comment, what we have testified are techniques of  
22 a traditional neighborhood design, concepts of  
23 it. But there's a difference between using  
24 elements of it just like there's using elements

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1 of different cluster developments as you guys are  
2 aware of. There's a difference between using  
3 elements and being a traditional neighborhood  
4 design which as I said is a separate use which an  
5 ordinance must call out specifically, and this  
6 ordinance does not call out that separate use.  
7 And that's the only point I'm making. I'm not  
8 debating it may have elements, and that we've  
9 used elements of it to describe this as we've  
10 used elements of other developments to use what  
11 we're describing.

12 MR. YEAGER: May I continue with the  
13 question?

14 MR. SIANA: Well, we've got -- she has  
15 an objection standing and I think we need to  
16 address that.

17 MR. JONES: Personally I think it's  
18 okay to make the comparison to traditional  
19 neighborhood development, but I think we should,  
20 you know, limit it obviously it is not what

21 they're proposing, but if there is comparisons  
22 that can be drawn and you feel that addresses  
23 some of their testimony, I think that's fine  
24 within that scope.

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1 MR. YEAGER: Okay.

2 MR. JONES: So sort of overruled.

3 MR. SIANA: No, I think sort of  
4 sustained. I think we do recognize that it's not  
5 a TND development, although I guess you did  
6 request that the testimony be stricken with  
7 respect to the TND comparison. I don't think  
8 that we can do that, because I think that the  
9 applicant's witnesses and consultants did the  
10 same thing.

11 To the extent, however, that I think  
12 Mr. Comitta has attempted to state that this is a  
13 TND development under the MPC, and I'm not sure  
14 that that's exactly what he did.

15 MR. YEAGER: I don't think it is.

16 MR. SIANA: But I think that is the  
17 objection that I'm hearing from Ms. Yarnoff.

18 MS. YARNOFF: It's that objection, and  
19 the position that certain requirements of the  
20 TND, and I'm not agreeing that there is such a  
21 requirement, but to the extent that Mr. Comitta  
22 testified that a manual was required when you  
23 propose a TND, it's important for the Board to  
24 recognize it's not a TND, and therefore, if there

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1 is such a manual required with the TND, it  
2 doesn't make anything deficient about this  
3 particular application.

4 MR. SIANA: I think the Board does  
5 understand that this is not a TND application  
6 pursuant to the MPC, and that we're not looking  
7 to turn it into that. But I do think that we  
8 will allow the testimony for comparison purposes,  
9 as I think the applicant's witnesses did, as  
10 well. So that is overruled.

11 MR. JONES: And as to the greater  
12 density comment, I think that that's a fair  
13 objection. I don't think we need comments like  
14 that. I don't think that --

15 MR. YEAGER: Oh, understood. May I  
16 proceed?

17 MR. JONES: Yes.

18 BY MR. YEAGER:

19 Q. All right, Mr. Comitta, we were up to  
20 section 12 of your report. You've testified  
21 already about the issues around the sound  
22 impacts. Is there anything on that that you need  
23 to add?

24 A. I don't think so. What I would like

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1 to do, however, on the residual effects which are  
2 described on Pages 12.1 and 12.2 is to go next to  
3 Paragraph 12.2. And my Exhibit A-1, the  
4 environmental constraints and calculations,  
5 identifies the areas that the Brandywine  
6 Conservancy had previously mapped called

7 exceptional natural areas. And there are two  
8 notable areas on the subject site.

9 One is immediately west of Canyon Lake  
10 as shown on Exhibit A-1, and the other one is,  
11 again, if you liken it to a clock, like 9:00 on  
12 the plan, as part of the golf course.

13 And the one that's next to Canyon Lake  
14 in the Brandywine Conservancy plan, they found  
15 nine plant species of exceptional natural value  
16 that were not found elsewhere in the Township.  
17 It's in that area that the proposed fitness  
18 center, spa, pool, and some parking is located.

19 And the point there is that basically,  
20 there's going to be disturbance of that area, and  
21 on the top of 12.2, it talks about it may result  
22 in the elimination of the plants based on where  
23 the buildings and paving is proposed.

24 The second exceptional natural area,

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1 the larger one, is coincident with hole 10 and 11  
2 that's proposed as part of the golf course. And  
3 woodland clearing would occur for those two holes  
4 within the exceptional natural areas. In that  
5 one, the golf course, there are two plant species  
6 that are not found elsewhere in the Township.

7 And so I was calling to the Board's  
8 attention the possible adverse impacts of losing  
9 likely scarce plant species in those areas.

10 The report goes on to talk about  
11 public safety and security needs, the possible  
12 ancillary uses that would occur in support of

13 Valhalla Brandywine. And then the implications  
14 are the development here on other large  
15 properties. And I'll let the report speak for  
16 itself in those regards.

17 Q. Okay. Turning to Section 13, and then  
18 this deals directly with the conclusions with  
19 your analysis and conclusions about the  
20 relationship between the plan and the Township's  
21 Comprehensive Plan.

22 A. Yeah, I think the most significant  
23 feature here is that in the Zoning Ordinance, I  
24 think this is really important, in the Zoning

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1 Ordinance, a conditional use in section 1812.D  
2 says that the standards established for the  
3 review of special exceptions in 1702 apply. When  
4 you go to 1702, you go to 1702.A, and it says  
5 that the applicant must submit information to  
6 convince the Board that a proposed development is  
7 consistent with the spirit, purpose, and intent  
8 of the Comprehensive Plan. There's nothing in  
9 the PCCC Ordinance that says applicant comply  
10 with the conditional use standards in all  
11 respects except ignore the Comprehensive Plan.  
12 It takes you to 1812.D which takes you to 1702.A  
13 which tells you about the Comprehensive Plan.  
14 And that's the reason that I included it in the  
15 report. It is a requirement of the Ordinance to  
16 do that very evaluation.

17 Q. And what did you find?

18 A. My findings are summarized on four

19 pages in nine areas. I will be brief. One talks  
20 about the aging of the plan and that the  
21 components of the plan particularly related to  
22 land use and circulation, sewer and water, police  
23 and fire protection, are obviously dated, as  
24 well, 23 years old. The Comprehensive Plan talks

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1 about prime ag soil protection, seasonal high  
2 waters soil protection, agricultural landscape  
3 and open space protection; talks about how sites,  
4 in Paragraph 13.5, would be analyzed in terms of  
5 their suitability for on-site systems; talks  
6 about wastewater. And my report goes on in 13.5  
7 to talk more about potable water and groundwater  
8 testing, as was previously discussed.

9 The report in Paragraph 13.6 talks  
10 about the historic resources that I mentioned  
11 previously. It then talks ever so slightly about  
12 road conditions that are quoted right out of the  
13 Comprehensive Plan. I'm going to defer to  
14 Traffic Planning and Design on this; I don't want  
15 to get into an I not qualified to read the  
16 English language.

17 So let me go on to 13.8 and talk about  
18 the Comprehensive Plan talking about protecting  
19 surface and groundwater resources and how the  
20 natural resource protection plan as mentioned  
21 earlier would allow some spraying to occur close  
22 by. And there's also reference on the top of  
23 13.4 about the importance of a watershed.

24 And the final point in 13.9 quotes the

1 Comprehensive Plan in terms of effects on  
2 adjacent land uses. The point being to consider  
3 in whatever development the compatibility with  
4 the surrounding uses. My point is that  
5 surrounding uses have not been considered in  
6 enough detail in part as evidenced by the  
7 proximity of the proposed development to the  
8 perimeter roads and the thin buffering adjoining  
9 existing residences.

10 Q. All right. Overall, did you reach a  
11 conclusion about whether the application was  
12 complete to allow a conclusion about consistency  
13 with the Comprehensive Plan, or did you reach a  
14 conclusion that it's not consistent with the  
15 Comprehensive Plan?

16 A. Well, for the reasons enumerated on  
17 Page 13, that it's not consistent.

18 Q. Already in your report you've  
19 identified some areas where the application  
20 submittal from the applicant are incomplete under  
21 the conditional use standards. And you outline  
22 those in Section 14.3. Are there any there that  
23 you need to add upon what you've already  
24 testified to?

□

1 A. Well, slopes are very important, and I  
2 talked about that earlier. Also the water supply  
3 and the wastewater treatment. Elevations of  
4 proposed buildings, there are some on the  
5 website, but I looked through all the reports and

6 I didn't see anything in the reports. Trail  
7 lighting we talked about, sound propagation we  
8 talked about.

9 On the bottom of 14.1, let's say I use  
10 the word brochure, report, term paper, study,  
11 white paper, and I didn't use the word manual.  
12 Some pieces of paper have to be submitted to  
13 address the PCCC Ordinance requirement for  
14 building materials. I didn't find that piece of  
15 paper in all the things that I looked at or  
16 brochure, term paper, white paper, compendium,  
17 call it what you will. So anyway, that's at the  
18 bottom of 14.1.

19 Q. Okay, we've reached the conclusion  
20 section of your report. Can you summarize for  
21 the Board, then, what your conclusions are based  
22 on, your study of the applicant's submittals, the  
23 information that's available, in the public  
24 record, your research, and your review of the

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1 testimony submitted by the applicant?

2 A. Yes. I included a conclusion section,  
3 which are Pages 15.1 and 15.2. Thirteen items  
4 are enumerated. And there is an introductory  
5 paragraph in the conclusion that talks about the  
6 overall overarching sensitivity of this area as  
7 has been documented in many cases with the County  
8 Landscapes Plan, with the document that I  
9 mentioned last time called the Plan and Program  
10 for the Brandywine with which I became familiar,  
11 in 1971, to the designation by DEP for high

12 quality for the east branch, Upper East Branch of  
13 the Brandywine.

14 And for all the reasons previously  
15 stated and the incompleteness of the application,  
16 I came to a conclusion that the Board of  
17 Supervisors could deny the application.

18 However, if the Supervisors choose to  
19 grant conditional use approval, I give 13 items  
20 that I strongly would recommend would be  
21 conditions. Those would include that no grading  
22 or construction be permitted on slopes in excess  
23 of 20 percent; no grading or construction be  
24 permitted on high water table soils; no grading

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1 or construction permitted within the stream  
2 buffers; to increase the stream buffers as noted;  
3 no aerosol or foliar applications within the  
4 buffer; reduced residential density, should the  
5 Board see fit to address that; to address water;  
6 adaptive reuse of historic buildings; the setback  
7 requirements for all golf course tees, greens,  
8 and cart paths; some type of ongoing oversight so  
9 that environmental resources are not degraded;  
10 some consideration toward infrastructure  
11 improvements that might be required; some  
12 consideration for the security implications; and  
13 also that the applicant would comply with the  
14 required LEED items that are mentioned in the  
15 Ordinance.

16 MR. YEAGER: All right. With that,  
17 the Guardian parties move the introduction of

18 Exhibits G-5 and G-6 and offer Mr. Comitta for  
19 cross.

20 MS. YARNOFF: And we would object to  
21 at least certain portions of the report based on  
22 the various objections that I made this evening.  
23 And I will have a more thorough objection to the  
24 specific sections at the next hearing.

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1 MR. JONES: Okay.

2 MR. YEAGER: well, the applicant has  
3 had the report and has had an opportunity to  
4 review it. I know when we raised objections to  
5 elements of the report, the Board accepted the  
6 exhibits and allowed them to be part of the  
7 record, and I think similar to the prior ruling  
8 decided to give it whatever weight that the Board  
9 deemed it was entitled. So I ask that the Board  
10 rule on that objection now so that we can move  
11 forward.

12 MS. YARNOFF: And I would ask the  
13 Board to consider just waiting until the next  
14 hearing or until we complete the  
15 cross-examination of Mr. Comitta, because at that  
16 point, I think it will become clear that certain  
17 portions of the report are not relevant and may  
18 be completely inaccurate and should not be  
19 admitted as an exhibit.

20 MR. JONES: Is there any reason you  
21 can't give the objections at this point?

22 MS. YARNOFF: I can certainly give a  
23 portion of it. From what I stated tonight, the

24 sections on the TND I don't believe should be

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1 included; the sections on the Comprehensive Plan,  
2 although I understand the Board has made a ruling  
3 on that, I would also object to these being  
4 included; the section on the village density  
5 comparison, I would object as being irrelevant;  
6 and the mapping information, as we go through  
7 cross-examination, we will be showing as  
8 inaccurate and also should not be admitted as  
9 evidence.

10 MR. SIANA: Do you see any,  
11 Mr. Yeager, do you see any prejudice to you in  
12 just waiting and allowing Ms. Yarnoff to more  
13 carefully formulate her objection and then us  
14 deferring on it until the next meeting, next  
15 hearing?

16 MR. YEAGER: Yeah. I mean, the Board,  
17 when I raised objections to the reports, there  
18 was no consideration towards putting off those  
19 rulings. I, in fact, asked to reserve some of my  
20 objections because I had not been provided the  
21 reports in advance when I was asked to make the  
22 objections, and instead, the Board ruled on them  
23 at the time, and I don't see why a different  
24 standard should apply. The applicant has had the

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1 report for a week, has obviously prepared her  
2 objections, she stated her objections when we  
3 walked through them. The Board has had an

4 opportunity to rule on those objections to those  
5 areas as they've come up.

6           There's nothing new here. If she  
7 thinks that she can undermine the impact of some  
8 of that testimony, that's going to go to the  
9 weight that the Board gives to the information  
10 that's received from Mr. Comitta. But there's no  
11 reason why we can't have a ruling now.

12           THE CHAIRMAN: I agree.

13           MR. MOORE: I think it's okay to  
14 submit the report.

15           THE CHAIRMAN: I agree.

16           MR. JONES: We'll accept the report  
17 and we'll give it the due weight.

18           MR. SIANA: So that's overruled.

19           MR. YEAGER: Thank you.

20           MS. YARNOFF: I would also say that  
21 the statement that he was given the report that  
22 evening and then asked to make a decision is  
23 inaccurate, because our reports, as you all know,  
24 were on the website in advance, as we were asked

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1 by the Board to do. And so the record is clear  
2 on that.

3           MR. YEAGER: That's not true.

4           MR. SIANA: Well, I think that the  
5 record should reflect that there has been no  
6 disparate treatment, and there were times when  
7 Ms. Yarnoff raised objections as to party status,  
8 and the Board deferred on those for several  
9 hearings. And I was not suggesting in any way

10 that the decision had to be postponed, but if she  
11 wanted an opportunity to more carefully formulate  
12 her objection, that the Board consider that.  
13 However, the Board has ruled on the admission,  
14 and let's move on.

15 MR. YEAGER: Agreed.

16 MS. YARNOFF: I do have cross. I  
17 don't know if the Board had any questions first.

18 THE CHAIRMAN: We'll wait until after  
19 cross.

20 MS. YARNOFF: Can we have five minutes  
21 before we start cross?

22 THE CHAIRMAN: Sure.

23 (Whereupon, a brief recess was taken.)

24 THE CHAIRMAN: We'll reconvene the

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1 conditional use hearing. Ms. Yarnoff?

2 - - -

3 CROSS-EXAMINATION

4 - - -

5 BY MS. YARNOFF:

6 Q. Good evening, Mr. Comitta.

7 You just testified regarding what you  
8 believe to be an inadequacy in the application in  
9 that the applicant did not present information on  
10 the materials that would be used in the project.  
11 And I'd like to ask you to look at Applicant's  
12 Exhibit A-1, which is also applicant's  
13 application. If you would look at Tab 6.

14 MR. YEAGER: Do you want to hand the  
15 witness --

16

MS. YARNOFF: Yes.

17

BY MS. YARNOFF:

18

Q. And if you could go to tab --

19

MR. YEAGER: Do you have a copy of the exhibit that you're using? You're showing the witness an exhibit. Do you have a copy for me?

22

BY MS. YARNOFF:

23

Q. Mr. Comitta, are you familiar with the applicant's application, Exhibit A-1?

24

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1

A. Yes.

2

Q. And have you reviewed this

3

application?

4

A. Yes.

5

Q. And if you could turn to Tab 6, and

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read to us Paragraph 3 of that page, which is

7

entitled Exhibit 6 of applicant's application,

8

which is also applicant Exhibit A-1.

9

A. "The new homes will located" -- I

10

assume it means will be located, "will located

11

within a series of English villages containing

12

shared open spaces and greenways. The villages

13

will include common areas such as town greens,

14

parks, pathways. Building materials include

15

stone, stucco, clapboard, brick, dimensional

16

shingles and trim. Home sites will vary in size,

17

type, and orientation. Homes will be located to

18

maximize open space."

19

Q. And then if you could continue with

20

the next paragraph, as well.

21

A. "The architecture of the new homes

22 will be traditional English country style  
23 complimenting existing historic buildings in  
24 massing, scale, and materials. There are six

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1 types of homes proposed for the site. Manor  
2 homes, 5,000 square feet; country homes, 3,200  
3 square feet; carriage homes, 2,800 square feet;  
4 cottage homes, 2,600 square feet; duplex, 2,400  
5 square feet; and mews, 2,400 square feet. The  
6 total square footage proposed for residential use  
7 is approximately 840,000 square feet."

8 Q. And then lastly if you could read the  
9 next paragraph.

10 A. "The spa, country club, dining, and  
11 recreational buildings will be clustered around  
12 the existing quarry lake will not exceed 35 feet  
13 in height. Exterior materials for these  
14 buildings include stone, textures siding," which  
15 I assumes means textured siding instead of S,  
16 "dimensional shingles, standing stain aluminum,  
17 and wood trim."

18 Q. Based on your reading of the  
19 applicant's application, your prior statement  
20 that the applicant did not provide any materials  
21 that would be used in its project would be  
22 incorrect?

23 A. I disagree.

24 Q. And did you just read the materials

75

1 that are proposed?

2 A. I read the three paragraphs you asked  
Page 60

3 me to read.

4 Q. And do those paragraphs state the  
5 types of building materials that will be used?

6 A. They state what I just read. But I  
7 think they're inadequate.

8 Q. But your prior statement was there was  
9 no statement of building materials.

10 MR. YEAGER: Objection. His testimony  
11 speaks for itself. I don't believe we have a  
12 question on the table. I don't believe there was  
13 a question asked. It's just counsel's statement  
14 about what the record is. There's no question.

15 BY MS. YARNOFF:

16 Q. My question is does the application  
17 state the types of materials that will be used?  
18 It's a yes or no question.

19 MR. YEAGER: Asked and answered.

20 MS. YARNOFF: I'm not sure that he  
21 answered.

22 MR. YEAGER: She asked read the  
23 application, he read the paragraphs from the  
24 application, she said is that what the

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1 application said, he said I just read what the  
2 application said. Now she's asking again is that  
3 what the application says?

4 MS. YARNOFF: No, I'm saying does  
5 it --

6 THE CHAIRMAN: would you repeat the  
7 question, please?

8 (Whereupon, the reporter read back as  
Page 61

□

9 requested.)

10 THE CHAIRMAN: I'd like to hear an  
11 answer.

12 MR. COMITTA: I said that -- I read  
13 the three paragraphs, and they do say what I  
14 read, and I find them to be inadequate.

15 BY MS. YARNOFF:

16 Q. Again, not to belabor the point, but  
17 the question is a simple yes or no question.  
18 Does the statement in the application state the  
19 materials that will be used?

20 A. Yes, inappropriately.

21 Q. Your answer was yes, it does state?  
22 Actually, someone was speaking to me at that  
23 moment.

24 MR. YEAGER: I'd ask that the

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1 applicant's counsel control her client so that  
2 she can listen to the answers.

3 MS. YARNOFF: That's inappropriate.

4 MR. MOORE: There was noise back in  
5 this side of the room, too.

6 MR. JONES: He said yes,  
7 inappropriately. That was the answer he gave.

8 BY MS. YARNOFF:

9 Q. We can go back to that later, but I'd  
10 like to move on to another issue right now. I'd  
11 like to show you the transcript from last Tuesday  
12 night's hearing, March 24th, 2009, and I'd like  
13 to mark that as Exhibit A-29.

14 MR. YEAGER: You're going to mark the  
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15 transcript from the hearing as an exhibit?

16 MS. YARNOFF: Yes.

17 MR. YEAGER: That's not proper use of  
18 a transcript. Perhaps the solicitor can address  
19 how prior testimony is to be used in  
20 cross-examining a witness.

21 MS. YARNOFF: I'd like to have the  
22 Board hear certain portions of that testimony  
23 which is very relevant to my questions that I'm  
24 going to be asking Mr. Comitta.

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1 MR. YEAGER: We have to have a  
2 question.

3 MS. YARNOFF: There will be a  
4 question, but I'm handing out the exhibit first.

5 THE CHAIRMAN: Do you believe that's a  
6 legal question? Is it appropriate?

7 MR. SIANA: She's not asking for  
8 admission of it at this point, she's asking to  
9 use it as an exhibit for reference. And I think  
10 it will be probably beneficial to those of us who  
11 have it in front of us while she's --

12 MR. YEAGER: I don't have any  
13 objection if there's a question that's asked did  
14 you say this previously. I don't have any  
15 objection to a proper question about prior  
16 testimony. That doesn't make the prior testimony  
17 itself an exhibit, and you don't just read the  
18 prior testimony without a question. There has to  
19 be a question.

20 MS. YARNOFF: I didn't get to the  
Page 63

21 question yet, Mr. Yeager. I'm giving out the  
22 testimony so that the Board can follow along and  
23 your witness can read what I'm saying.

24 MR. YEAGER: And I've stated my

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1 objection.

2 MR. SIANA: And your objection is?

3 MR. YEAGER: My objection is a  
4 transcript from testimony is not a proper  
5 exhibit. If she's got a question, she should ask  
6 the question. But a transcript of somebody's  
7 prior testimony in this proceeding is not a  
8 proper exhibit in this proceeding. It's not how  
9 you use prior testimony.

10 MR. MOORE: It's already part of the  
11 record, so let's just ask the question.

12 MS. YARNOFF: Exactly. The testimony  
13 is part of the record, but it would be helpful to  
14 have it so people can see what we're saying.

15 BY MS. YARNOFF:

16 Q. If you could turn to Page 79 of that  
17 transcript.

18 A. Yes.

19 Q. And review Lines 6 through 16.

20 A. Yes, I quote, "Mr. Yeager: well,  
21 Mr. Comitta is an expert land planner and he  
22 prepares land reviews and conducts reviews of  
23 ordinances and comprehensive plans. And he's  
24 conducted an extensive review of the application

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1 that's been submitted and of the testimony,  
2 including the testimony of the applicant's  
3 planners, and he'll be offering an opinion on the  
4 plan and its conformance with the Township's  
5 Ordinances and the Comprehensive Plan."

6 MR. YEAGER: Now, just so the record  
7 is clear, the witness has been asked to read not  
8 a portion of his prior testimony, but a portion  
9 of the argument I made in response to an  
10 objection from the applicant's counsel.

11 MS. YARNOFF: Actually, Mr. Comitta  
12 jumped ahead of me. I was planning to read it,  
13 but since he started reading it, I didn't want to  
14 interrupt him.

15 MR. COMMITTA: I'm sorry.

16 MR. SIANA: I have another minor  
17 issue, and that is there were two court reporters  
18 at the hearing, so therefore we don't have a copy  
19 of that particular transcript, so our pages don't  
20 correspond.

21 MR. YEAGER: This is not even the  
22 official transcript?

23 MR. CROTTY: I believe they're citing  
24 in the transcript prepared by Karasch &

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1 Associates.

2 MR. YEAGER: Can I get a proffer on  
3 where we're going?

4 MS. YARNOFF: I actually haven't had a  
5 chance to ask any questions. What I'd like to do  
6 is show through the prior testimony what

7 Mr. Comitta either reviewed or didn't review, and  
8 I'd like to be able to show that through the  
9 testimony. And if you'll give me an opportunity  
10 to get to the question, I think you will see  
11 where we're going. I just haven't had that  
12 opportunity yet.

13 MR. MOORE: why don't we ask the  
14 question, and then if his answer isn't one that  
15 you like and you want to refer to the previous  
16 testimony, you can do that.

17 BY MS. YARNOFF:

18 Q. Mr. Comitta, do you agree with  
19 Mr. Yeager that you conducted an extensive review  
20 of the application that was submitted by the  
21 applicant?

22 A. I hope I did.

23 Q. And do you agree with Mr. Yeager that  
24 you conducted an extensive review of all of the

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1 testimony of the applicant, including testimony  
2 from applicant's environmental engineer, Chuck  
3 Dobson, formerly of Earth Design Group?

4 A. I intended to.

5 Q. And did you conduct an extensive  
6 review of the applicant's land planner, Mark  
7 Evans of LRK?

8 A. I read what was on the website and I  
9 read the transcripts. If there is anything else,  
10 I may not have read it. But all the information  
11 I had available to me, I did review.

12 Q. And just to continue on that, to make

13 sure that we're on the same page, did you also  
14 conduct an extensive review of the testimony of  
15 applicant's architect Stuart Rosenberg?

16 A. I read Mr. Rosenberg's direct  
17 testimony, cross-examination, and read his  
18 exhibit.

19 Q. And did you conduct an extensive  
20 review of the testimony of applicant's  
21 environmental acoustic consultant, David Still of  
22 Environmental Acoustics, Inc.?

23 A. I looked at it. I may not have  
24 re-read it like I did for the ones that you

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1 mentioned earlier.

2 Q. Did you conduct an extensive review of  
3 the testimony of the applicant's traffic  
4 consultant, Chris Williams of McMahon Associates,  
5 Inc.?

6 A. I did not do an extensive survey on  
7 that. Actually, I didn't know that Traffic  
8 Planning and Design was going to testify last  
9 time. But I thought I wouldn't make any comments  
10 on Mr. Williams' testimony because I'm not a  
11 traffic engineer.

12 Q. Did you conduct a review of the  
13 historic consultant Robert Wise of Wise  
14 Preservation, of his testimony?

15 A. Yes, I looked at that carefully.

16 Q. Did you conduct a review of the  
17 testimony of environmental consultant Russ Bodie?

18 A. Yes, I did.

19 Q. If you and the Board could refer to  
20 the testimony on Page 83, Line 22 through Page  
21 84, Line 14.

22 MR. YEAGER: Which transcript are you  
23 referring to? The official transcript from the  
24 hearing?

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1 MS. YARNOFF: The transcript we marked  
2 as A-29.

3 MR. YEAGER: I object to the use of  
4 anything other than the official transcript.

5 MS. YARNOFF: This is a transcript  
6 prepared by a court reporter. In fact, it's  
7 actually the same company, Karasch & Associates.

8 MR. JONES: I don't have an issue with  
9 it.

10 THE CHAIRMAN: I don't have an issue  
11 with it, either.

12 MR. MOORE: I'm waiting for a  
13 question.

14 MR. SIANA: He has an objection.

15 MR. JONES: Overruled.

16 BY MS. YARNOFF:

17 Q. On the pages that I just mentioned,  
18 there was a question, "Now, in order to conduct a  
19 plan review, what's required? What do you need  
20 to do?"

21 "Answer: well, first you have to  
22 thoroughly review the plan, review the applicable  
23 ordinances. In a conditional use proceeding,  
24 principally the Zoning Ordinance. Visit the

1 property, look at aerial photographs, look at  
2 existing sources of information, whether it's the  
3 wallace Township Comprehensive Plan, the Open  
4 Space Recreation Environmental Resources Plan,  
5 other documents that are either referenced there  
6 either from a county or regional perspective, and  
7 gain a familiarity with the relationship between  
8 the plan, the land on which it sits, the  
9 regulations that apply, and the ordinances that  
10 apply.

11 "Question: And did you do that in  
12 this case?"

13 "Answer: Yes."

14 Did I read that correctly?"

15 A. Yes.

16 Q. Is it fair to say that you thoroughly  
17 reviewed the plan in preparation of your  
18 testimony for these proceedings?

19 A. As thoroughly as I could, yes.

20 Q. And is it also fair to say that the  
21 plan that you thoroughly reviewed was the plan  
22 that was submitted by the applicant?

23 A. That's all I had available to me.

24 Q. Again, if I could refer, Mr. Comitta

1 and the Board, to Page 110, Line 3 through Page  
2 111, Line 1. Is it true that you reviewed all  
3 the reports of the applicant's witnesses?

4 A. I'm sorry, could you take me there  
5 again?

6 Q. Page 110, Line 3 through Page 111,  
7 Line 1. The pages should be tabbed and the areas  
8 highlighted to make it easier to find.

9 A. I can see them, yes.

10 Q. Is it true that you have reviewed all  
11 the reports of the applicant's witnesses?

12 A. I didn't -- I wouldn't say it would be  
13 fair to say I read Chris Williams' report. I  
14 looked at it, but I just glanced at it. I did  
15 not study it in detail.

16 Q. Is it true that you analyzed all of  
17 the applicant's exhibits?

18 A. To the best of my ability, yes.

19 Q. If I could refer you to Page 98, Lines  
20 20 through 25.

21 A. Yes.

22 Q. I asked a question at that time, "Have  
23 you participated in a site inspection of this  
24 project?"

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1 And your answer was, "I haven't walked  
2 on the site. I've driven around the site and  
3 I've looked at aerial photographs, including the  
4 more enhanced Google Earth Pro photos that I have  
5 access to."

6 Did I read that correctly?

7 A. Yes.

8 Q. And when you testified that you, quote  
9 visited the site, end quote, is it fair to say  
10 you meant you only drove around the site but did  
11 not walk the site?

12 A. That's correct.

13 Q. As a land planner, do you consider  
14 driving around the site an adequate site  
15 inspection? And again, to use your words, to,  
16 quote, gain a greater familiarity with the  
17 relationship between the plan and the land it  
18 sits on?

19 A. Well, I didn't want to trespass, so I  
20 drove around the site, I looked at aerial  
21 photographs, I blew them up to the greatest  
22 degree without distortion. I looked at available  
23 source data from the County and from the Township  
24 to familiarize myself with the relationship of

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1 those resources to what the Ordinance  
2 requirements were.

3 MR. YEAGER: Perhaps if the applicant  
4 has an objection with the extent of Mr. Comitta's  
5 ability to do a site visit, since the applicant  
6 has indicated an intention to continue the  
7 cross-examination when we resume at a later time,  
8 the applicant will agree to provide Mr. Comitta  
9 access to the site to see whether that changes  
10 any of his conclusions.

11 MS. YARNOFF: I am not in a position  
12 to give an answer yes or no to that right now.

13 BY MS. YARNOFF:

14 Q. Going back to that question, and I  
15 heard what you did say, but my particular  
16 question was as a land planner, do you consider  
17 driving around the property and looking at Google

18 Earth to be an adequate site inspection to gain a  
19 greater familiarity with the relationship between  
20 the plan and the land it sits on?

21 MR. YEAGER: Objection. That wasn't  
22 an accurate reflection of the scope of his  
23 testimony in terms of what he did to become  
24 familiar with the site.

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1 MS. YARNOFF: Going back again to his  
2 own testimony, on Page 83, Line 22 through Page  
3 84, Line 14, he specifically said that conducting  
4 a plan review includes gaining a greater  
5 familiarity with the relationship between the  
6 plan and the land it sits on.

7 MR. YEAGER: Right, and he identified  
8 a whole host of things that you left out of your  
9 last question that he did to become more familiar  
10 with the site. You just listed two of them. But  
11 his prior testimony, which the Board has heard,  
12 included more than that. So the question as  
13 asked isn't an accurate reflection of what the  
14 record is. Perhaps if you ask him whether he  
15 believes that what he did to become familiar with  
16 the site is sufficient to conduct a plan review,  
17 it would get to what you're asking.

18 MS. YARNOFF: I'm actually asking a  
19 slightly different question, and that is whether  
20 driving around a property provides a land planner  
21 the ability to gain a familiarity with the  
22 relationship between the plan and the land it  
23 sits on.

24

MR. JONES: I think it's a fair

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1 question. Overruled.

2 MR. COMMITTA: I have been at this for  
3 more than 36 years. I do a pretty good job  
4 interpreting topographic maps. In the winter  
5 when there are no leaves, I can see through the  
6 trees to an extent. When I'm driving on roads  
7 such as Devereux Road and there's a large vista  
8 and there's no vegetation, I can see long  
9 distances. I was a passenger, not the driver, in  
10 the drive-around. I do a good job of looking at  
11 aerial photographs. I studied, for example,  
12 Mr. Wise's photographs and various maps, I  
13 studied all the other applicant's maps.

14 A number of the threshold issues that  
15 the Ordinance addresses are two-dimensional  
16 issues that pertain to the encroachment or lack  
17 thereof, the setback or lack thereof, the use or  
18 not use of a soil, a buffer, whatever. And so by  
19 looking at maps, you can determine if those, some  
20 major threshold issues, are at issue or not.

21 where respect to adverse effect on  
22 adjacent properties, if you're on an adjacent  
23 property and you're driving on a road, you can  
24 make those kinds of determinations.

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1 I didn't say anything in my testimony  
2 that I thought, for example, that a particular  
3 street in the Hillside Neighborhood had a

4 peculiar road alignment to it, or did not capture  
5 an internal site vista, or if I were designing  
6 this, I would have put the country club over here  
7 to capture let's say the ambiance of the site. I  
8 didn't go there.

9           So for the purposes of what I had to  
10 look at and using all the source data I did, I  
11 felt comfortable coming here. If I didn't, I  
12 wouldn't have walked in the room. I mean, I know  
13 that there are exhibits near me and somebody is  
14 going to show me a more detailed slope mapping  
15 than what I did. I already in my direct  
16 testimony clarified the use of the source data.

17           And so I'm a big boy, I'll go down  
18 this path, but I think for the purposes of what I  
19 had to do in the time that I had to do it  
20 principally on my own, that I felt satisfied to  
21 walk into the room and present the testimony. So  
22 we'll find out what 's happening next.

23           Q.    Mr. Comitta, you in the beginning of  
24 that narrative, you said that you were able to

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1 get a view from Devereux Road. But were you able  
2 to do the same thing along any of the other roads  
3 that surround this property to get a vista into  
4 the property, to get a better understanding and  
5 familiarity with it?

6           A.    well, I did my best. I asked the  
7 driver to go as slow as he could. I specifically  
8 came between 10:00 and 2:00 when I came so I  
9 wouldn't encounter a.m. or p.m. peak hours. I

10 had a chance to go in the dead of winter and see  
11 deciduous trees without leaves. So I did my best  
12 for what I had available.

13 Q. I would ask if you could now turn to  
14 Applicant's Exhibit A-7, Appendix 1, which is the  
15 Existing Features and Site Analysis Plan for  
16 Valhalla Brandywine.

17 A. Yes, I see a copy laying on the easel.

18 Q. You've seen and reviewed this existing  
19 site plan; is that correct?

20 A. Yes.

21 Q. And if you look in the lower-left-hand  
22 corner of the Existing Features and Site Analysis  
23 Plan, it's Exhibit A-7, you will note the  
24 following legends. "Wetland and stream

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1 delineation by Wheeler Environmental Associates.  
2 Rettew Associates performed a boundary field  
3 survey of the property in February and March of  
4 2007. Horizontal orientation is Pennsylvania  
5 State Plane (South Zone) coordinate system  
6 according to NAD-83/92 as established per GPS  
7 observations by Rettew Associates, Inc.,  
8 Lancaster, PA in February of 2007.

9 "Topography photogrammetrically  
10 compiled by Photo Science, Bowie, Maryland from  
11 aerial photography dated 2/10/2007. Elevations  
12 are NAVD-88 as established per GPS observations  
13 by Rettew Associates, Inc., Lancaster, PA in  
14 February 2007.

15 "Site bench mark: Chiseled "X" in

16 concrete southwest bridge wall, bridge over  
17 Brandywine Creek on Marshall Road. Elevation  
18 365.03. Datum: NAVD-88."

19 Did I read that correctly?

20 A. Yes, and I want to go back and say I  
21 actually did not review this in preparation for  
22 my testimony on the 24th. Mr. Yeager asked me if  
23 I had seen the Existing Features and Site  
24 Analysis Plan. For some reason, I could not find

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1 it on the website. Then what Mr. Yeager did is I  
2 said, well, the one I had looked at was Sheet 1  
3 and Sheet 2, which are the boards that are  
4 immediately behind what we're looking at as A-7,  
5 which also depicted slopes 20 percent and  
6 greater, slopes 15 to 20 percent, and other site  
7 features.

8 So I stand corrected. I did not --  
9 this is the first time that I'm actually looking  
10 at A-7 in the colored form. I couldn't find this  
11 on the website. Is it on the website?

12 Q. Did you review -- didn't you review  
13 all of the applicant's exhibits as you stated  
14 earlier?

15 A. I reviewed all of the ones that either  
16 Mr. Yeager gave me, but principally in the very  
17 beginning, I was told that all the applicant's  
18 exhibits were on the website. I'm sorry, I could  
19 not find this exhibit in color.

20 MR. YEAGER: And that was the  
21 representation of Ms. Yarnoff that all those

22 exhibits would be available on the website.

23 MS. YARNOFF: And I will state for the  
24 record, it is on the website.

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1 MR. COMMITTA: I'm sorry, I could not  
2 find it. Let's say this. I didn't look for it  
3 today, but I did look for it up until 4:00 on the  
4 24th and I couldn't find it.

5 MS. YARNOFF: I can't explain that,  
6 but it is on the website, and it certainly was  
7 part of Applicant's Exhibit A-7 to which you  
8 testified that you reviewed.

9 MR. YEAGER: I'd just ask the record  
10 be stricken as to Ms. Yarnoff's testimony about  
11 what's been posted or not. Certainly if she  
12 wants to direct us for next time of where it's  
13 located on the website so that Mr. Comitta and we  
14 can take another look to try to find it where  
15 it's there, we'd be happy to do that.

16 MS. YARNOFF: First, I was asked  
17 whether it was on the website, so I was  
18 responding to that. And two, regardless of  
19 whether it's on the website or not, it was an  
20 applicant exhibit which --

21 MR. YEAGER: And he testified that he  
22 reviewed the existing feature plan that showed  
23 the slope delineation. What he said was he  
24 didn't see the one in color.

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1 BY MS. YARNOFF:

2 Q. Based on Exhibit A-7, is it fair, and  
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3 what I just read to you, which is in the  
4 lower-left-hand corner, is it fair to say that  
5 Rettew Associates, Inc. performed a boundary and  
6 topography field survey of the valhalla  
7 Brandywine site?

8 A. That they did?

9 Q. Yes.

10 A. Yes.

11 Q. If you look on Exhibit A-7, in the  
12 lower right-hand corner, do you see a color key  
13 of the existing environmental features of the  
14 site?

15 A. I do.

16 Q. And the color key reflects that there  
17 is a building setback line suitable development  
18 area designated in purple, intermittent line; the  
19 floodplain designated in the color purple; hydric  
20 soils designated in the color of lime green;  
21 waters designated in the color dark purple;  
22 wetlands in the color aqua blue; a 50-foot  
23 riparian buffer designated also in the color  
24 blue. Did I say aqua blue for wetlands?

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1 MR. CROTTY: Yes.

2 BY MS. YARNOFF:

3 Q. Steep slopes 20 percent or greater  
4 designated in the color gray, and boundary line  
5 designated in the color red. Do you see that  
6 color code?

7 A. I do.

8 Q. Do you have any facts, information, or  
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9 documents that would reflect that the calculated  
10 areas shown on the boundary and topography field  
11 survey for each of these environmental features  
12 are inaccurate?

13 A. No.

14 MR. YEAGER: This is irrelevant. This  
15 has nothing to do with the witness's testimony on  
16 direct.

17 MS. YARNOFF: This is completely  
18 relevant, because what it will show is that  
19 Mr. Comitta's calculations of where he believes  
20 there to be encroachments are not consistent with  
21 an actual field survey that was done on this  
22 property. And it goes to the whole credibility  
23 of the report.

24 MR. JONES: I think we should overrule

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1 it. Continue.

2 MR. YEAGER: We were never provided  
3 with a binder set of the exhibits as the  
4 applicant presented its case, we were directed to  
5 the website. Does the Board have the official  
6 set of exhibits that were submitted when the  
7 applicant presented its case?

8 MR. CROTTY: They're back with the  
9 Township secretary.

10 MR. YEAGER: I'd like an opportunity  
11 to review those.

12 BY MS. YARNOFF:

13 Q. All right. Next, I would like to show  
14 you another exhibit, A-30. This is Chuck Dobson,

15 our environmental engineer for the project's  
16 testimony. And as you're waiting for that I'll  
17 ask one quick question. You had previously  
18 stated that you did review Mr. Dobson's  
19 testimony; is that correct?

20 A. That's correct.

21 MR. CROTTY: I note that this is  
22 Exhibit A-30, the transcript prepared by court  
23 reporter Jennifer Guy.

24 BY MS. YARNOFF:

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1 Q. If you could turn to Page 12, Lines 5  
2 through 12 of Mr. Dobson's testimony where he was  
3 asked, "Sir, I show you the Valhalla Brandywine  
4 conditional use application plan which was  
5 attached to the application submitted by Valhalla  
6 Brandywine Partners on August 29, 2008. It's a,"  
7 and I think there was just an incorrect wording  
8 there because it was a question, isn't the  
9 conditional use application plan attached to the  
10 application, the black and white version of  
11 Exhibit A-9?

12 MR. YEAGER: I'm going to object now  
13 to Ms. Yarnoff attempting to correct the  
14 transcript. She -- I'm not sure yet whether  
15 we've gotten to a question, but if she's simply  
16 trying to show him what the transcript says,  
17 let's stick with what the transcript actually  
18 says.

19 BY MS. YARNOFF:

20 Q. The transcript says, "It's a  
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21 conditional use application plan attached to the  
22 application, the black and white version of  
23 Exhibit A-9." Did I read that correctly?

24 A. Yes.

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1 Q. I'd like to show you Exhibit A-9 which  
2 you had actually pointed out already.

3 (Whereupon, there was an interruption  
4 in the proceedings.)

5 BY MS. YARNOFF:

6 Q. We have a number of exhibits that we  
7 are giving out to the Board and to Mr. Comitta  
8 and Mr. Yeager. Exhibit A-9, which is comprised  
9 of two sheets, they're on boards that are sitting  
10 up by the witness. Those two sheets, Sheets 1  
11 and 2 of Exhibit A-9 that were attached to the  
12 conditional use application and submitted with  
13 the application, is the black and white plan that  
14 was previously mentioned in the testimony that I  
15 read to you. And I will --

16 MR. YEAGER: Can we get a question  
17 rather than Ms. Yarnoff's own representation?

18 MS. YARNOFF: If you would let me  
19 finish my statements, I will get to a question.

20 MR. YEAGER: This is not a time to  
21 make statements, it's a time to ask questions.  
22 First you ask him does he recognize those, can  
23 you identify them.

24 MS. YARNOFF: Excuse me, Mr. Yeager, I

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1 didn't tell you how to ask your questions.

2 MR. YEAGER: I asked questions.

3 MR. JONES: Continue.

4 MS. YARNOFF: Thank you.

5 BY MS. YARNOFF:

6 Q. Is it fair to say that prior to your  
7 testimony in these proceedings, you reviewed  
8 these plans, Sheets 1 and 2 of A-9, that were  
9 part of the conditional use application?

10 A. On the first day when I went to the  
11 Valhalla Brandywine website, I printed off a  
12 version that I'm now holding up which are sort of  
13 a miniature replica of what we're looking at on  
14 the Board. So yes, I did see them. They were  
15 available on the website. A-7, I tried my best  
16 to find every exhibit, but I couldn't find  
17 Exhibit A-7 as I previously mentioned. But A-9 I  
18 found right away.

19 Q. And you understand that Exhibit A-9,  
20 as you found it right away and see that it's part  
21 of the application, is the conditional use  
22 application that's before this Board?

23 A. That is correct.

24 Q. Isn't it true that your plan entitled

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1 Environmental Constraints and Calculations which  
2 is attached to your Exhibit G-6, that is not the  
3 plan that is before this Board?

4 A. No, I testified that I took the  
5 applicant's exhibit and put the overlay features  
6 that I did on top of it. It's my plan, it's not

7 your plan. My name is on it.

8 Q. I would ask you to turn back to  
9 Exhibit A-30, Mr. Dobson's transcript, and review  
10 the testimony on Page 16, Lines 4 through 9 where  
11 it was asked, "During the investigation of the I  
12 district, how many man hours on site did you and  
13 your team spend on the industrial district?"

14 "Answer: Between field visits and  
15 site survey and recognizance to determine site  
16 features, I would have to estimate over 100 man  
17 hours."

18 Did I read that correctly?

19 A. Yes.

20 Q. Is it fair to say that prior to your  
21 testimony, you had gained knowledge from Exhibit  
22 A-9, Sheets 1 and 2, as well as through  
23 Mr. Dobson's testimony?

24 A. Yes.

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1 Q. And you understand that Sheets 1 and 2  
2 of A-9 were derived from the boundary and  
3 topography survey that we spoke of earlier?

4 A. Yes.

5 Q. Do you believe that a site survey and  
6 a boundary and topography survey are effectively  
7 the same, the same thing?

8 A. Well, technically they're not the same  
9 thing, but a boundary survey is the perimeter  
10 with meets and bounds, and a site survey is  
11 typically -- well, you know, in the literature,  
12 the word site survey doesn't appear. You usually

13 say topographic survey, and then you specify the  
14 contour interval, and then you specify the  
15 National Mapping Standards accuracy you request  
16 from the topographer or whoever is preparing the  
17 survey.

18 But presumably, you did everything  
19 that you could to define the property from its  
20 boundary and the contour.

21 Q. And I believe that you may have just  
22 mentioned this, but during a boundary and  
23 topography survey, is it fair to say it's typical  
24 to use photogrammetry to measure the vertical and

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1 horizontal topographic conditions of the site?

2 A. Typically. The only times that it  
3 gets tricky is when there's severe slopes or  
4 very, very dense vegetation, and that then  
5 requires more site reconnaissance.

6 Q. Isn't it fair to say that usually  
7 photogrammetry of a site is taken at below  
8 altitude?

9 A. Well, I fly a lot. Since 911, we  
10 haven't been allowed to go down as low. But you  
11 usually try to get down about 600 feet above sea  
12 level to pick up everything.

13 Q. Is it fair to say typically during a  
14 boundary and topographic survey the data from the  
15 photogrammetry is verified from multiple points  
16 measured on the ground?

17 A. Yes.

18 Q. And is it fair to say that a boundary

19 and topography survey is typically used to obtain  
20 highly accurate on-site measurements that can be  
21 used for engineering design?

22 A. Plus or minus one half the contour  
23 interval, which is the National Mapping Standards  
24 accuracy threshold.

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1 Q. Isn't it true that the Chester County  
2 GIS data is not a boundary and topography survey?

3 A. Correct. It is what it is. They have  
4 about 100 layers, and when you access their data,  
5 you tell them, you know, if you want the stream  
6 layer, the vegetation layer, the soils layer, the  
7 wetlands layer, the hydric soils layer, whatever.  
8 So it's what you ask for. But most counties have  
9 five- or ten-foot contour intervals compared to  
10 the detail that would you otherwise have.

11 Q. Would you use the Chester County GIS  
12 information, for example, to prepare preliminary  
13 or final plans?

14 A. Only for an agricultural subdivision  
15 or two-lot subdivision. Agricultural subdivision  
16 in the Municipalities Planning Code is ten or  
17 more acres. And some ordinances allow you to use  
18 USGS contours, and you could do it that way. But  
19 you wouldn't use it for a land like this.

20 Q. And I think you may have already  
21 mentioned this in another form, but is it fair to  
22 say that the measurements from an on-site  
23 boundary and topography survey meet the National  
24 Mapping Standards for accuracy for engineering

1 design?

2 A. Well, when you order the survey, you  
3 know, you specify what you want and presumably  
4 you get what you specified. So I don't know what  
5 instructions you gave who to ask for what, but I  
6 assume everybody is professional and they do what  
7 you ask them to do or your client asked them to  
8 do.

9 Q. Is it fair to say that prior to your  
10 testimony in these proceedings, you had looked at  
11 aerial photographs of the site such as GIS photos  
12 including the more enhanced Google Earth Pro  
13 photos that you had access to?

14 A. That's what I said, yes.

15 Q. And what does GIS stand for?

16 A. That's geographical information  
17 systems.

18 Q. And is it fair to say that the GIS is  
19 a commonly-used tool for large planning areas?

20 A. Yes.

21 Q. And you had mentioned earlier for  
22 agricultural type subdivisions?

23 A. Yes.

24 Q. I believe you had stated in your prior

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1 testimony, and you can tell me whether this is  
2 correct, that it is now more typical in the  
3 classroom that students use GIS for their  
4 studies?

5 A. Yes.

6 Q. If we could go back to Exhibit A-29,  
7 Page 114, Lines 18 to 24, and that's your prior  
8 testimony from last week. And I asked, "were you  
9 able to compare where the resources are that were  
10 identified in those maps with where they are in  
11 relation to the elements of the project that's  
12 before the Board?"

13 MR. YEAGER: I'm sorry, Denise, what  
14 page are you on?

15 MS. YARNOFF: Page 114, Lines 18  
16 through 24.

17 BY MS. YARNOFF:

18 Q. And your answer was, "Basically we  
19 just scanned them and brought them up to the same  
20 size of the exhibits and their excerpts." Did I  
21 read that correctly?

22 A. Yes.

23 Q. Did is it fair to say, then, that you  
24 scanned the information regarding the

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1 environmental resources from the GIS, the Chester  
2 County GIS mapping that you obtained, and put  
3 that onto a base plan?

4 A. No, I didn't do that. Let me clarify.  
5 When the GIS data comes from whatever source, we  
6 just use it. The documents that we scanned were  
7 from the Brandywine Conservancy. That was the  
8 only thing that we scanned. All the other  
9 sources on A-1, parcels, streams, ponds,  
10 wetlands, riparian buffer, floodplains, hydric  
11 soils, prime farmland soils, seasonally high

12 water table soils, came from the various digital  
13 and electronic sources, many of which came from  
14 the county, some of which came from FEMA,  
15 Department of Agriculture, and so forth.

16 And the reason that there's a  
17 difference between C-7 and any exhibit that I did  
18 like A-1 is that we looked at A-9, we checked the  
19 website and couldn't find what's been marked as  
20 what's been A-7. We noticed in A-9 that beside  
21 the gray tones were slope, there were Class A  
22 land features recited, floodplain, wet soils,  
23 waters, and 50-foot setback wetland and so forth.  
24 And so we kept checking the website to try to

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1 figure out well, where are those features?

2 We couldn't find A-7, we called  
3 Mr. Yeager and said where is that data? He said  
4 it's on the website. We checked the website, we  
5 couldn't find it. So we went to the best  
6 available data that we could get. We were trying  
7 to then determine how it fits.

8 I will concede, your data is superior  
9 to the other data for all of the reasons that you  
10 and anyone else could tell me. But in the  
11 absence of any data, we accessed available data,  
12 and at the end, we made suggestions like don't  
13 encroach on slope. Now, you're probably going to  
14 ask me is your slopes more accurate than mine?  
15 No contest, the GIS data is inferior to this  
16 other data. We didn't have it. We couldn't find  
17 it. When I get home tonight I'm going to check

18 the website again to see if A-7 shows up.

19 But realizing that we didn't have it,  
20 we went to look at what I'll call early warning  
21 system indicator species order of magnitude, the  
22 lay of the land, where do things fit, and it was  
23 on that basis that we did A-1. Let's just say if  
24 we said one part of your building touches a slope

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1 and you say it doesn't, you win. If the Board  
2 wants to have a condition that says don't  
3 encroach on slopes and you won't encroach, you  
4 won't encroach.

5 But many of the features we found,  
6 like the exceptional natural areas, it doesn't  
7 show up on your data. The agricultural soils  
8 doesn't show up on your data. And so other  
9 features that are mentioned in the Ordinance, our  
10 data is superior to yours. Other cases, yours is  
11 superior to ours.

12 Q. I just want to make sure I understand  
13 something you said earlier. Looking at your  
14 plan, which you've labeled as A-1 of also  
15 Appendix A to your report under data sources,  
16 doesn't it say parcel streams, ponds, wetlands  
17 based on Chester County GIS?

18 A. Yeah, in order to get let's say a  
19 dimensionally stable set of data to overlay other  
20 features, when you get floodplain data or when  
21 you get soils data -- well, let's take soils.  
22 Since 1959, you could buy a copy of the soils map  
23 and it shows roads. If you have parcel data from

24 the county and you have road data from soils, you  
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1 try to overlay them in computer so that they  
2 match. And so you do the best to integrate all  
3 your data sources, which is what we did.

4 Q. Did you ask the Township for a copy of  
5 the exhibits?

6 A. Not specifically, no. I just asked  
7 Mr. Yeager. I was told everything was on the  
8 website. And I really pored through it. So I  
9 mean, it's not like I --

10 MR. YEAGER: That was repeatedly the  
11 representation of the applicant.

12 BY MS. YARNOFF:

13 Q. Are you aware that the exhibits would  
14 be available at the Township should you ask the  
15 Township for them?

16 MR. YEAGER: Is Ms. Yarnoff suggesting  
17 that we should not have taken her at her word?

18 THE CHAIRMAN: I think she asked  
19 another question.

20 MS. YARNOFF: I'm asking a question  
21 that said is he aware of whether the exhibits are  
22 at the Township.

23 MR. COMITTA: You know, I came here to  
24 acquire the ordinances and start site data. I

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1 probably was three or four feet away from the  
2 boards. I didn't know they were here. I just  
3 assumed everything was on the website. I'm

4 sorry, you know, that's the direction.

5 BY MS. YARNOFF:

6 Q. Just backing in to clarify your data  
7 sources on your Appendix A, under your data  
8 sources, you list Chester County GIS, 2/18/09,  
9 and that's listed I believe a number of times  
10 throughout the data sources. Just so that we're  
11 clear, that date is the date you obtained the  
12 information?

13 A. Yes. When they give it to you, they  
14 for various reasons say up to that date, that's  
15 the best that they had available.

16 Q. But that date doesn't mean that that  
17 information was flown or determined on that date?

18 A. No. Correct. Some of it, like the  
19 hydric soils at June 14, '07, would have been a  
20 good date for the natural resources conservation  
21 service, but as you can see from the next item,  
22 we used the soils survey from 1963 for seasonal  
23 high water table soils.

24 Q. Can you point out where in the

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1 Ordinance or in the PCCC Ordinance there is a  
2 requirement to map exceptional and natural areas,  
3 seasonally high water tables, or prime farmland  
4 soils?

5 A. It's from the Comprehensive Plan, and  
6 that relationship between 1802 and/or 1812 and  
7 1702.

8 Q. But there's no specific requirement in  
9 the Ordinance that requires those particular

10 elements whereas the Ordinance is very clear on  
11 what other natural features must be mapped?

12 A. The Ordinance speaks for itself. And  
13 the specific answer is that the only reason we  
14 went there is because 1812 takes you to 1702,  
15 1702 takes you to the Comprehensive Plan, the  
16 Comprehensive Plan takes you to the seasonal high  
17 water table soils, and that's why we did it.

18 Q. But again, my question is does the  
19 Ordinance itself require any of those that I've  
20 mentioned to be shown on these plans whereas the  
21 Ordinance does require other natural features to  
22 be shown on the plans?

23 A. Yes, it does, in 1812 and 1702. The  
24 Ordinance takes you to other sections.

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1 Q. I hear what you're saying, but again,  
2 I'm asking in the sections of the Ordinance that  
3 require what must be shown on a plan, for  
4 example, to determine adjusted tract area, does  
5 it require, does the Ordinance require those  
6 natural features to be shown on the plans?

7 A. Just so the record is clear, tell me  
8 what you mean by those.

9 Q. Prime farmland soils?

10 A. No.

11 Q. These are the ones that I mentioned.

12 A. Let's take them one at a time so the  
13 record is clear.

14 Q. So you answered the first one.  
15 Seasonally high water table?

16 A. Not explicitly in the PCCC language,  
17 unless you go to 1812 and 1702.

18 Q. But that's not what I'm asking. I'm  
19 asking you in the Ordinance. Exceptional and  
20 natural areas?

21 A. Comprehensive Plan, not PCCC.

22 THE CHAIRMAN: Excuse me, Denise, how  
23 much longer do you think you're going to have,  
24 cross?

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1 MS. YARNOFF: At least a half an hour.

2 THE CHAIRMAN: When do you think a  
3 good time for you to break would be?

4 MS. YARNOFF: I'm not sure what time  
5 it is right now.

6 MR. JONES: It's 10:30. Is there a  
7 logical break for you?

8 MS. YARNOFF: This is probably a  
9 pretty good time to I think to create a break.  
10 Because my next set of questions are much more  
11 specific on the plan.

12 THE CHAIRMAN: We need to get the rest  
13 of her cross, any questions of the Board, and if  
14 anyone else would have any questions.

15 MR. JONES: And any redirect.

16 MR. COMMITTA: May I make just a  
17 scheduling request to go off the record?

18 THE CHAIRMAN: We can go off the  
19 record for scheduling purposes.

20 (Whereupon, a discussion was held off  
21 the record.)

22 THE CHAIRMAN: May 5th, Mr. Comitta  
23 will return for cross.

24 MR. YEAGER: The conclusion of his

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1 testimony.

2 MR. JONES: Right.

3 MR. SIANA: Mr. Comitta stated that's  
4 what he would prefer.

5 MR. YEAGER: It's our next open date  
6 when we otherwise don't have things scheduled.

7 MR. JONES: I'll get that up on the  
8 website. And I think we'll have to look at that  
9 19th date.

10 MR. SIANA: why don't you folks try to  
11 present a number of nights that you're available  
12 and maybe we can look at them and select.

13 MR. YEAGER: It would be helpful to  
14 know if the Township is going to be calling  
15 Mr. Kalogie and anyone else, because it's likely  
16 that would be one of the times it would be. So  
17 it would be good to know that as we're doing the  
18 next set of schedules.

19 MR. SIANA: And you've expressed a  
20 preference, the Board has expressed a preference  
21 for Tuesday evenings. So if you could focus on  
22 Tuesday, we would appreciate it.

23 MR. YEAGER: Sure.

24 MS. YARNOFF: I can state right now

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1 that as far as I know, any Tuesday evening would  
2 be acceptable to us.

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MR. SIANA: Thank you.

THE CHAIRMAN: Is there any public  
comment at this time?

(No response.)

THE CHAIRMAN: With no public comment,  
then thank you, we're adjourned.

(Hearing adjourned.)

□

1 Commonwealth of Pennsylvania)  
2 Chester County )

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CERTIFICATE OF REPORTER

7 I, Jennifer M. Guy, Official Court  
8 Reporter for the County of Chester, Pennsylvania,  
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9 do hereby certify that the foregoing record,  
10 pages 1 to 118 inclusive, is a true and accurate  
11 transcript of my stenographic notes taken on  
12 March 31, 2009, in the above-captioned matter.

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Jennifer M. Guy  
Official Court Reporter

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