216 Va. 49
CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
MAY 14 1974
RICHMOND, VIRGINIA

RECORD NO.
730996

IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

THE BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA et al

Appellant,

v.

THOMAS R. WILLIAMS, et al

Appellees.

APPENDIX TO THE BRIEF

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

VOLUME II

VOLUME II

TABLE OF CONTENTS

Transcript of Trial, Vol. II,
July 16, 1973 pp. 300-557

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

THOMAS R. WILLIAMS and JAMES L. McILVAINE, Plaintiffs,	
vs.	AT LAW NO. 26399
THE BOARD OF COUNTY SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, Defendant.	
A. G. VAN METRE ASSOCIATES, INC. Plaintiff,	
vs.	IN CHANCERY NO. 39437
THE BOARD OF COUNTY SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, Defendant.	

Fairfax, Virginia

Monday, July 16, 1973

The above-entitled matter came on to be heard at 10:00 o'clock, a.m.

BEFORE:

HONORABLE WILLIAM G. PLUMMER, Judge

APPEARANCES:

JOHN T. HAZEL, JR., ESQUIRE
For the Plaintiffs

GEORGE A. SYMANSKI, ESQUIRE
For the Defendant

I N D E X

WITNESSES

For the Plaintiff	Direct	Cross	Redirect	Recross
THOMAS C. WHITWORTH	301	332	361	366
JAMES D. PAMMEL	371	429	440	452
J. EUGENE WILLS	453	463	465	-
EDWARD FUEHER	467	468	-	-
THOMAS R. WILLIAMS	468	481	-	-
For the Defendant				
SHIVA PANT	486	498	504	-
CAMILLE CLEVELAND	505	520	554	-

EXHIBITS

Stipulation	For Identification	In Evidence
No. 20, memo 6/8/73	349	349
No. 21, minutes 9/10/69	370	370
No. 22, minutes 10/15/69	370	370
No. 23, Pohick plan 2/66	371	376
No. 24, map	371	376
No. 25, Pohick Restudy	399	399
No. 26, Senate Bill	401	401
No. 27, letter 4/3/71	429	429
No. 28, Pohick map	483	[illegible]
No. 29, Court order	484	484

THE COURT: All right, sir.

MR. HAZEL: Good morning, Your Honor.

I'd like to call Mr. Whitworth first. I think Mr. Whitworth was sworn yesterday.

THE COURT: Thursday.

MR. HAZEL: Yes, sir.

Whereupon,

THOMAS C. WHITWORTH

having been duly sworn, was examined and testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. HAZEL:

Q. Would you state your name, please, sir?

A. Thomas C. Whitworth.

Q. And your place of employment?

A. Fairfax County Public Schools.

Q. What is your position with the school department?

A. I'm the planning analyst for the school department.

Q. How long have you been employed in that capacity by the School Board?

A. Six years this coming October; it's been

six years.

Q. Mr. Whitworth, does your scope of work involve the planning and projected requirements for Fairfax County schools, generally?

A. Yes.

Q. That is either done by you or under your direction, is it?

A. Yes.

Q. Mr. Whitworth, in terms of general background information, how many students are there in the Fairfax County system?

A. 136,000, approximately, this year.

Q. And how many were there the year before this, the last year?

A. Approximately the same membership, within a couple of hundred.

Q. How many students do you expect next year, according to your present projection?

A. We're looking for a membership this coming September for practically--exactly the same we had last September, and for September '74, we're looking for an increase of within a couple of hundred.

THE COURT: A couple of hundred, did you say?

THE WITNESS: Yes, sir.

BY MR. HAZEL:

Q. Does this mean, if I understand correctly, that the school system has been almost on a straight-line plateau now, for several years, at approximately 136,000 students?

A. That's correct; since 1971, it's leveled off in total membership.

Q. Now, I imagine that there are certain bulges in the system by grades; is that correct?

A. That's correct. The phenomena -- although we're keeping a total membership that's even, we're getting a tremendous change in membership within the three sub-elements of the school system, grade-wise. The elementary system, kindergarten through sixth, is actually diminishing in enrollment county-wide.

The intermediate, seventh and eighth, is about standing still; and high school grades, nine through twelve, are growing rather rapidly. We've got a phenomena of a larger group of children in the middle-age group that are now approaching the ninth grade, sir. That is the largest single grade we've got in the public school system.

For example, the last year's kindergarten was about 7,500. The last year's ninth grade was about 11,000, maybe 11,200 children; and the senior grade is around 9,500.

So while we're staying even, when we graduate 9,500 and only take in 7,500, we're really gaining 2,000 new people just to stay even on a year-to-year basis, because we're pumping out 2,000 more than we're pumping in.

Q. Now, would this lead to a conclusion that when that ninth-grade class passes on through the system and leaves the twelfth grade, that there will be substantially less total enrollment in the system?

A. Under the given conditions that have existed for the last three years; but this is a short type of spectrum to base a long-time phenomena on. In other words, based on the last three years, yes; but a change in economic conditions, or a change in the birth rate, either --

Q. Could shift --

A. -- could shift this thing very rapidly, as it did in the 60's.

Q. But, at this time, the school system is

looking for some several years of less pressures for students; is that correct?

A. On an overall county-wide basis. And you're keeping this on an overall county-wide basis at this point?

Q. Right. Now, what is the operating budget for the school system, Mr. Whitworth?

A. $160 million, probably, operating budget; $180 million, if you count the debt service, in that ball park, a million a year.

Q. Has the operating budget expanded considerably in each of the last several years despite the general straight-line level of students?

A. Yes.

Q. And for what purpose -- why has this expanded, other than, I assume, some inflationary --

A. It's been inflation. I guess primarily inflation; and some improvement in the standards or levels of educational programs that Fairfax County has begun to take on in its school system over the last five to six years.

Q. Now, in this county-wide system in the last three years, how many elementary schools have been opened?

A. In the last three years, I believe, new schools, only three have been opened. We opened a replacement school last year in 1972, the Fall of '72, we opened one new school; but it was a replacement. And the preceding fall, we opened two, one at Greenbriar and one, I believe, at Reston, Forest Edge School in Reston. And the 1970 opening was only one school at Laurel Ridge.

Q. Now, does that contrast rather dramatically with the middle-60's,as a period of time,as far as the opening of schools?

A. Yes. On an average, although the schools might not have been as large as some of these we've built. on an average it was five or six schools in the middle-60's. In 1968, for example, we built eight elementary schools; and 1969, even, we opened five and were still running behind the increased enrollment.

Q. You opened eight schools in 1968, and you still didn't meet the requirements?

A. That's right.

Q. Now, why is there a change in the period between the '65, '68 and the '70, to date time frame?

A. Well, I'm not an expert, but the deduction

that we have made -- and I say, "we," I mean the local, all of the local school systems have run into this same thing. It's concluded that it's two prong; one is economics, and one is birth rate. We weren't early enough in Fairfax County, or in these drawing counties, to see that this diminishing birth rate was going to have the kind of impact that it did.

In '65, when we should have looked at the birth rate and seen that it was going to affect us because of the high degree of transients incoming into Fairfax County, we ignored that birth rate to some degree. The first part of it is birth rate that caused it to drop off.

Q. When you say birth rate, I assume you mean that because of the changes in the birth rate, you really don't need to build schools as fast?

A. Yes. Part of this diminishing incoming grade every year is birth rate. Now, the other part of it, in my opinion and in the opinion of people in other counties similar to ours, is economics. We deduct that from the fact that we are not getting our fair share, if you would like to call it, of the five-year-olds and six-year-olds in the school system, in comparison

for instance, with Prince William County or Loudoun County. A larger percentage of the total Loudoun County school system and the Prince William school system is the first-grade child.

Prince William, for example, has ten percent of its children in the first grade, ten percent of all the children in the school. We have something around six. Six percent of our total enrollment is in the lowest grade. Younger people go to another county.

Q. I see. When you say "economic," what you mean is the economics of the individual who might be using the school?

A. Correct. The economics of the higher-cost place to live in the closer-in area, yes.

Q. Now, do I conclude that you mean that the Fairfax area is a higher-cost place to live, and therefore, the younger couples are not settling in Fairfax?

A. Well, that's the conclusion we've come to, yes.

Q. And consequently, it is showing up in the number of preschool, kindergarten, elementary school children you're looking at now?

A. Yes, in both the new developments in Fairfax County, and even more critically in the more urbanized or older, stabilized area of Fairfax County where the input of children is getting severely smaller each year, that is, the houses that are being turned over, the houses built 10 or 15 years or better.

In most communities it's almost prohibative for, you might say, a working family with young children to come in, as evidenced by the fact that we're not getting any, as versus Prince William County and Loudoun County and the Manassas area that are still getting a large number of younger children.

Q. So it is the economics of the individual family that you refer to when you say, economics as well as birth rate have reduced the school problem in Fairfax?

A. Yes, that's my -- or that's the weighted opinion on the thing.

Q. All right, sir. Now, are there schools in the Fairfax system which are considerably under their designed capacity?

A. Yes.

Q. And generally, where are these schools

situated, Mr. Whitworth?

A. Well, generally, they are in the urbanized part of the county which would probably best be described as east of the Beltway from the Potomac River down to where the Beltway hits, let's say, Route 95. And from that point, east of 95 and south of the Beltway, the Mt. Vernon District, the Mason District, the inner parts of the Providence District and the Annandale District.

Q. Now, Mr. Whitworth, with reference to Exhibit 12, which is a County map, I show you the Capital Beltway running through the eastern one-third of the county. Is it your testimony that east of the Capital Beltway is where the vacancy areas are beginning to occur?

A. If you use a single barrier to describe it, a single geographical break to describe it, that is the best; and some areas just west of the Beltway.

Q. And what areas just west of the Beltway are beginning to become vacant?

A. Generally, the McLean area down to Route 50, say, it's beginning to free up, yes.

Q. And how about the area west of the Beltway

in the Ravensworth-Springfield area?

A. Downtown- Springfield area, yes. Let's say, the first row of subdivisions west of the Beltway from Route 236 down to 95 are beginning to show the same phenomena that is more critical in the older schools east of the Beltway.

Q. Now, has that phenomena extended out as far as the Rolling Road-Keene Mill Road intersection, sort of the West Springfield area?

A. No, really not.

Q. It's just beginning to move that far west?

A. It's just beginning to move in that direction, yes.

Q. Now, Mr. Whitworth, I show you on Exhibit 18 the Beltway in the vicinity of Annandale.

A. Yes.

Q. Now, that's on the northeast corner of Exhibit 18, and it is in this area of Annandale that you are beginning to see some vacancies show up?

A. That's correct, yes.

Q. Now, Mr. Whitworth, would you come up to this map, which I'm sure you recognize is a tax map assembly, and locate on there the four high schools

that are shown? Would you take this orange marker and write in large letters the capacity of those high schools?

A. The first one up here is Annandale High School, which is right here. It has a capacity of 2,000.

Q. What is the present population there?

A. It's going to be 2,100, 2,200, say, in September; between 2,100 and 2,200.

Q. Here's West Springfield. I'll put the capacity beside it here, 2,000. It's going to run about 2,550 next year. It has been at that enrollment or higher for some years.

Q. How high has the enrollment been at Annandale? Does the 2,100 there represent a particularly high enrollment figure?

A. No. It's been a couple of hundred higher than that at its peak, and it is going higher than that in the next three or four years because of some transition in the high school boundaries we've made. We're pumping people -- in other words, we're moving people from this area into the Annandale High School to force it up by 100 a year for the next several years.

Q. There is no reason that you know of that

the operation of the school at several hundred over its designed capacity is not feasible?

A. No; that's correct, depending on what you call several. But, 200 or 300 in a high school of that size is not an unusual situation in Fairfax County, nor is it a limitation on education in a high school.

Q. All right. Now, you've got 2,000 in the West Springfield School. Your other existing high school is Robinson, is it not?

A. That has 2,500.

Q. And that has 2,500. Now, is there a new high school that will service the area?

A. Yes, the Lake Braddock High School which will be open in September, and the high school part of that plan is, like Robinson, 2,500.

Q. Now, of those schools, the four that you have mentioned, three of the high schools are in the Pohick; is that correct?

A. That's correct, yes.

Q. And the new Braddock School with 2,500 capacity serves the Pohick, does it not?

A. Yes.

Q. All right, sir. Now, with reference to

the same exhibit, could you show us where the intermediate schools are?

A. Yes. Irving is right here, Irving Intermediate. Do you want capacities on here?

Q. Yes.

A. Irving is a 1,400 capacity intermediate school right ~~here on Keene~~ Mill Road.

Q. All right, sir.

A. Now, the intermediate for Lake Braddock is on the same lot, and likewise is 1,400. And the same way with Robinson. It's a dual complex with 1,400.

Q. All right. Are there any other intermediate or high schools serving the Pohick?

A. Yes. I would guess Frost and Woodson that sit up here, just about off the map, up here on 236, probably have a service area that gets into the Pohick slightly, but not a major part of it.

Q. You may return to the stand.

What do you foresee in your projections as the problem of handling intermediate and high school students in the Pohick in the next five years?

A. Let's take the intermediate first. The intermediate capacity, as you can see there, is out of

proportion. The schools are builty proportionately higher than the high schools, and therefore, for that reason, partly, and because of the decrease in grades going to hit intermediate first, we see no problem in overcrowding in the intermediate schools in that area.

We've got a better space ratio of children in the grades and intermediate than we have in the high schools, as you can see.

Q. Now, what do you foresee in high schools?

A. Well, the high schools, if we take the schools we're talking about, those schools -- you didn't ask me the membership -- but closing this year, the membership of those schools were way above its capacity. And even opening in September with this new one coming into the system, the membership of all those schools, if we could divide the children up evenly, we'd still have as many or maybe a few more children than we've got seats in those schools. In other words, we'd be just about at capacity.

THE COURT: When you say, more seats available, do you mean more than the 2,500 figure?

THE WITNESS: Yes, sir.

THE COURT: Not more than you can physically

handle and educate, but your figure, that's planned for the building?

THE WITNESS: That's right. We expect to have an opening membership that's very close to the capacity of the four schools, including the new one that's coming in.

THE COURT: I think the question was posed over the next five years, not just September.

THE WITNESS: Well, in the next five years, with this grade structure going up each year, it's very likely that we would have the demand for, I would expect, with just what's being built, and we know is being built and zoned, and under operation now, under construction now, we could well exceed the capacity of these schools by, at least, three-quarters of another high school, 1,500, 2,000 students, if we keep the population strictly to this area that we're talking about. In other words, don't exceed any, don't stretch in any direction.

BY MR. HAZEL:

Q. Now, assuming that the -- as I understand it, in the next five years, you don't anticipate a problem in the intermediate schools?

A. No, I think not.

Q. All right. Assuming that the high school population exceeds the three schools in the area and the Annandale School, would that create a crisis in the education of the children that are generated in this area?

A. No. If we divided the, say, 2,000 surplus students up amongst those four high schools, and maybe with a little judgement, pulled in a couple more high schools, it probably would stay within this comfortable ten percent overenrollment on an area-wide basis.

Q. So, if I understand you correctly, the County school system can comfortably accomodate not only intermediate, but high school, children that would come out of the Pohick through any projections you may have made?

A. From what's been zoned, and what we know is under construction and to be constructed.

Q. With reference to the case which is the subject of today's court action, a consolidation of the Williams-Van Metre tract, which I show you on Exhibit 10, some 418 acres, if that property were developed at

single-family densities of somewhere between two and three units per acre, over the next five to seven years' span, would that, in your opinion, create any undue burden on the intermediate and high school system?

A. No. I think this could be absorbed in the system. We don't have a new secondary planned, intermediate or high school planned, for the next five or six years, and I think if we don't limit it to just the four schools we've put there, but if we could spread this thing, we could accommodate, high school and intermediate-wise, this parcel, or the results of this parcel.

Q. Now, Mr. Whitworth, the kindergarten through sixth grade student is handled through a concept of neighborhood schools in Fairfax; is that correct?

A. That's the School Board's stated policy, to attempt to accommodate elementary children in a neighborhood type of school, i.e., a school that ideally is within a mile of where the child lives and ideally has safe walking conditions to the school.

Q. Now, is that ideal situation usually accomplished in Fairfax County in the newly developing areas?

A. No. It's not usually accomplished initially anyway; maybe over a period of time after an area is fully saturated with houses, it becomes a fact, but during the developing stage, obviously not.

Q. The neighborhood school is usually built on a site which is dedicated to the County in connection with the development of the neighborhood, is it not?

A. Most of the elementary schools in the last seven or eight years have been on dedicated sites that are dedicated by the developers of that area, and usually so located to meet this neighborhood ideal. If all other conditions of soil and everything else prevail, you would put the school in the ideal neighborhood locale of that area. But frequently, soil and other things dictate that it be put in the wrong place.

Q. Are those sites normally made available prior to the zoning and development of the neighborhood?

A. I would think as a part of the zoning process. Usually the site dedication is identified as a condition of the zoning, is that not --

Q. That's been the experience generally?

A. Yes, that's the way it works.

Q. Now, under the Pohick Master Plan, there is a school site planned for the Neighborhood 12-13 complex, which the Williams-Van Metre tract is located in; is that correct?

A. Yes. There's an elementary site in there, yes.

Q. And that elementary site has no site at this time, does it?

A. Hasn't been specifically identified, no, sir.

Q. Do you know whether or not the School Board has asked the Williams-Van Metre areas for the dedication of a site?

A. I believe this record says that we do request a dedication of a site on Case 169, yes.

Q. And that site would then be the location of the neighborhood school that would essentially serve this property, would it not?

A. Correct, yes.

Q. Now, if this property starts to develop before that school is built, where would those children be served?

A. Under today's conditions, since we know that all of the schools, elementary schools, in this

area are at their capacity or pretty heavily overcrowded, we would make an assumption today, if this subdivision started in the immediate future, we would plan to bus these children to available spaces that we have generally east of this area. They would be schools that are in the Springfield area, as you pointed out, just west of the Beltway. And, as we fill those up, we would go even further, all the way to Route 1 down Telegraph Road, to schools that have got more space available.

Q. And they would be bused to the nearest school that had a capacity until such time as the County was able to build a school or the demand arose for a school; is that correct?

A. That's correct. But, I would have to point out here that we have, on other pieces of land that have been zoned, have used this same proposed philosophy, and if all these things did happen and, you know, maturated at one time -- I'm talking about maybe using the same schools for two of these subdivisions -- but if you take each one of them individually on its own and forget all the others, we've got plenty of space.

Q. Of course, none of these tracts are occupied the day after zoning, are they?

A. That's correct, yes.

Q. So that it takes a number of years, the experience indicates, before an area of, say, 400 acres that might be zoned now is developed; is that correct?

A. In the more recent years, it has, yes.

Q. And during that period of time, you can adjust your elementary school situation?

A. Yes. And all of the indications are that this maturation, this low birth rate, as I've pointed out, will begin to work itself westward to some of the neighborhoods five or six years from now will be the matured neighborhood.

Q. Now, in the immediate vicinity and, in fact, in the Middle Run section -- you're familiar with the distinction between Middle Run and the total Pohick, are you not?

A. Yes. I'm not sure where the south boundary of the Middle Run is --

Q. The south boundary of the Pohick is down, of course, south, but we have shown here in the dotted brown, the Middle Run, and then the solid brown up on

north side, the Main Run.

A. Yes.

Q. The School Board is now planning to construct a Caldwell Elementary School, which is close to the subject property, is it not?

A. Yes. And those plans were very firm until action -- litigation was started against the School Board to stop the expenditure of the public bond issue, which has just been passed.

THE COURT: These cases intertwine so much, I'm presently hearing that case, too.

THE WITNESS: As of today, we're not really in the active process of going ahead with the construction of that school.

BY MR. HAZEL:

Q. Well, Mr. Whitworth, the bond approach to financing elementary schools is only one of the possibilities available to the County, is it not?

A. That's correct, yes, sir.

Q. The County could simply finance it out of its general revenues at any current time, could it not?

A. If the County Board of Supervisors saw fit to budget in that direction, yes.

Q. How much does an elementary school of the Caldwell type require in cost?

A. In round figures, a million and a half, starting from scratch. But, in this case, we've got probably a part of the plans done. So we're talking about a million and a half or less.

Q. How much is the capital-construction portion of the School Board's budget this year? You said the operating budget, I believe, was $160 million.

A. The remainder of it I was putting into debt service and capital outlay. The capital outlay is fairly minimal this time, and the bulk of it is debt service of the $20 million --

Q. All right. There's no prohibition that you know of that would prohibit the School Board from financing the construction of this school out of current funds, is there?

A. Out of a current fund, yes. Out of this year's funds there is a prohibition because this year's funds have been budgeted and approved by the Board of Supervisors for a set of functions that add up to X dollars, and it doesn't have a million and a half in there for it.

Q. If the Caldwell school funding should prove unavailable through bonds, then next-year's budget, they could spend a million dollars out of their funds, could they not?

A. I'd say that, or even a supplemental budget at this time.

Q. Fine. Now, just northeast of the subject property, I point to a site sort of behind Burke, and ask if that is a school site which the School Board now has available?

A. Yes, we do.

Q. Now, that is a site which has been dedicated as the neighborhood north of the subject property developed; is that correct?

A. Yes, generally the Rolling Valley West, Bent Tree, that community in there, yes, sir.

Q. What are the County's plan to build an elementary school on that site?

A. We haven't put that site with a year date yet. We haven't begun to put a year date on that site. We're on one-year bonding. We are planning elementary schools now not more than four years ahead, and as I say, this one hasn't come up to the four years. We've

got four years before we get to that one, at least, on today's -- what we know today.

Q. Today's bonding and requirements for schools?

A. Yes, correct.

THE COURT: Let me interrupt here, just a second. Putting aside the litigation pending on the bond issue, when was Caldwell planned to open?

THE WITNESS: Originally this September, sir, and the bond issue of '72 failed. Now, with the bond issue of '73, our plan is to open it in September of '74.

THE COURT: And what area would it service?

THE WITNESS: It would service generally the Orange Hunt Estates, which lie directly across Sydenstricker Road from it, and that would be the west half of the present Hunt Valley attendance area, and it would serve what portion of that in the yellow that's built, and there's not as much built as appears there. We've got about 200 houses in the Levitt property that will probably be occupied.

THE COURT: Would that fill the elementary school to capacity?

THE WITNESS: My projection that was given to the School Board, for September '74, just two weeks ago, visualizes this school opening with 660 or more children in it. We're building it for 660. The plan right now is for 660.

THE COURT: You mean is that the capacity, or is that what you expect?

THE WITNESS: With that capacity, yes, sir.

THE COURT: And how many people do you expect to put in it?

THE WITNESS: My projection shows that if we bring the two adjacent schools to it, down to where they can operate at somewhere near that capacity, we'll have 660 children on the day that school opens up, with just what's under construction now.

THE COURT: And you said the area that's dedicated to be a school, north of this property, is thought of for '76, '77, somewhere around there?

THE WITNESS: Yes, sir. The elementaries that would come ahead of that are down in the Saratoga District, which is further south.

THE COURT: Is it contemplated that the one just north of the property will replace the old

school or would it be an addition?

THE WITNESS: No, sir. That's a replacement for the Burke School, which is an antiquated building, not on a sewer, can't be sewered.

THE COURT: Go ahead, sir.

BY MR. HAZEL:

Q. Now, the Burke School is presently in use, is it not?

A. Yes.

Q. Burke Elementary School is the closest to the subject property, is it not?

A. Correct.

Q. It's just a little over a mile from the northwest corner of the subject property, isn't it?

A. If that much, yes, sir.

Q. And that school is to some day be replaced by the new school to be built in Rolling Valley West?

A. Yes.

Q. Now, if I understand your testimony correctly, when you build the Caldwell School, the elementary school requirements in the vicinity of the subject property would be substantially in balance, as far as you're concerned; is that correct?

A. I said that the day the school opens, yes, sir.

Q. Right. And that even the projected growth in the next year or two would be substantially accommodated at that time in this area?

A. I believe -- I can't answer that question because we've got a sewer moratorium that is affecting the Levitt property. If the sewer moratorium continues to exist, I would answer "yes" to your question.

Q. Now, Mr. Whitworth, assuming the Williams-Van Metre property was zoned today and within two years a site was made available for a school, when, in your opinion, would the school actually be needed to serve Neighborhood 12 and 13?

A. Well, that depends, I think, entirely on the rate that the subdivision were developed in terms of the relative rate of the subdivisions around the school on the north side, that you pointed out, were developed.

As you know, all the land north of that is already zoned, and it is not being developed -- plot-planned, most of it -- and is not being developed simply because of the sewer limitations.

Q. Well, assume that the sewer opens up in '76, as the County plans indicate, and that the Williams-Van Metre tract commences developing in '76 at the historical rate of absorption, and that these things remain in balance, when do you anticipate a school would actually be needed to serve the Williams-Van Metre neighborhood?

A. To serve that neighborhood, per se, probably not less than three years after the first occupancy. That kind of subdivision, and I'm not predetermining his rate of construction, but normally 200 to 250 houses a year would be a rate that that kind of place would build on, and therefore, three to four years after construction starts, or three years after your first people move in, you can expect to have 600 children walking to that school.

Q. In other words, by the late 70's, '79 or even '80, would be about the right time to have an elementary school to service that neighborhood?

A. Yes. But, I've got to stress we are not living on this neighborhood concept yet, and something right across the street that might have been zoned last week might have 9,000 children coming out of there

before we get a single one out of this place; and we would have built two schools across the road before this one ever gets started. What I'm saying, you can't take these things out of context or one at a time.

Q. The neighborhood concept is ideal, but you haven't quite gotten to that luxury yet?

A. Yes, sir. I just wanted to point that out.

Q. Now, do you see a crisis in the education of the children that would be generated by Williams-Van Metre if that property were zoned?

A. No, sir. On the basis that we are working today and have been working for several years, that you can reasonably move children in new subdivisions to subdivisions seven to ten miles away that have existing first-class facilities with available space. It has no critical limitation to education, assuming that those conditions are still acceptable three or four years from now. They're using them today.

Q. Do you see any reason why they won't be used three or four years from now?

A. I see no reason why they won't, no, sir.

Q. I believe you just answered this a couple of answers ago. The neighborhood concept doesn't really

get going in a neighborhood until it's matured four or five years after construction has started, is what you say, isn't it?

A. Yes, sir. And by that time, it's usually too late, and the school starts getting smaller, and then we begin busing children in, and we've lost the neighborhood concept.

Q. You begin busing them in from some other neighborhood?

A. That's right.

Q. Do you know of any instance in your experience in Fairfax County where a tract, similar to Williams-Van Metre neighborhood, was equipped with a neighborhood school before any development occurred in the neighborhood?

A. No.

Q. Do you believe it realistic to assume that would ever occur?

A. No, sir. I may be wrong. I just don't know of one.

MR. HAZEL: I have no further questions.

CROSS EXAMINATION

BY MR. SYMANSKI:

Q. Mr. Whitworth, what school administrative area is the subject property in?

A. This is area 4.

Q. Are you familiar with the factors that were used in the Staff Reports for these two properties?

A. Yes, sir.

Q. As of October '72, were the figures used by the School Board higher or lower than the figures used in these Staff Reports?

A. The figures used in the Staff Reports were slightly lower than the latest ratio that we are using for this area of the county, very slightly lower.

Q. So the new figures, as of October '72, actually would show more children generated?

A. Yes, a very small number more.

Q. Now, the Staff Reports for both of these properties do show that the schools that would serve this site are all overcapacity; is that correct?

A. Are or were at the time the Staff Report was made?

Q. Were and are at the time of these Staff Reports.

A. Yes, at the time the Staff Reports were

made, they were all overcapacity, and I believe in this year we just finished, they were all overcapacity. And then the year that we plan to open up now, which wouldn't have shown in this Staff Report, would be September '73, they will not be overcapacity; but we have some extra-capacity intermediate, I believe.

Q. Did you prepare these parts of the Staff Report dealing with the schools?

A. Yes.

Q. On the second page of each of those school reports, the first line says: "Ratio per dwelling unit for 2.2 DU per approved comprehensive plan." And then you have the net difference under No. 5?

A. Yes.

Q. Now, what does that show? Does that show that, in your opinion, the proposals of the plaintiffs were in excess of the comprehensive plan?

A. Yes; if you build 2.5 or 2.9 houses to an acre, instead of 2. or 2.2 houses to an acre, we would expect to get more children, yes.

Q. Well, their proposal, in your opinion, was in excess of what the comprehensive plan called for?

A. Yes, that's correct.

Q. Now, as to the Burke Elementary School that was discussed earlier, you did say that that was an older school, did you not?

A. Yes.

Q. Can that be expanded?

A. It can't economically be expanded because it's not on a sewer, and it has other restrictions.

Q. What are the long-range plans for this school? Did you say that it was to be phased out?

A. As an operating elementary school. It will probably be used for some special education function or maybe some administrative function.

Q. Now, the Caldwell School that has been talked about, at the time of these zoning cases, that is, the decision was November, December of 1972, was there any certainty that Caldwell would be funded and built?

A. No; not at that time, no, sir.

Q. Why not?

A. The bond issue had just failed in June of '72.

Q. What had to occur for that Caldwell School --

A. At that time, the Board had taken no action to incorporate this money to build the school into the

operating budget for this year. So we had not counted on having it for September '73.

Q. Okay. So, as of today, with the bond issue that was passed, the Caldwell School will open when, you hope?

A. It will open in '74.

Q. That's a pretty certain date?

A. Yes, sir; that's a comfortable date.

Q. What is the next closest elementary after Caldwell?

A. Hunt Valley.

Q. Where is that?

A. It is the next green spot. That's Hunt Valley, yes.

Q. What is the situation in Hunt Valley with regards to crowding, overcrowding, undercapacity or overcapacity?

A. It wouldn't be able to relieve this area because it's overcapacity; even a couple of years from now, it will still be overcapacity, assuming Caldwell has opened up and given its full share of the children.

Q. With regards to the new Caldwell School, did you say that the day that opened you felt, in your

projections, that there would be kids there to fill it up?

A. Yes. Now, this is on the assumption that it's built for 660. It's planned to be a 660 school. That's a 20-room school, with two kindergarten rooms. We have drawn -- the architect has designed the school to be built either as a 660 or 990.

The School Board, in its last decision some months ago, decided to make it a 660 to get with this neighborhood school ideal, that is, so everybody could walk to it.

It may be that the imminence of having it filled the day it's opened, and particularly with the delay that's caused by this litigation, the School Board might want to take another look and say: let's see if we want to make this 990. Then I would have some vacant spaces.

Q. Well, under the funding now existing?

A. Yes; it's planned for 660, and therefore would be full or essentially full when it opened.

Q. So it's your projection, in effect, that the ongoing development, already zoned and underway down there, will fill up that school at the time it's

opened, Caldwell?

A. Yes, sir.

Q. Now, in these two Staff Reports, the projection for the amount of students in the elementary schools that would be generated by these two developments, admittedly over a period of years, how many students did you project would be generated by this development?

A. You want it as it was done with the lower figures a couple of years ago?

Q. Yes.

A. Okay. We then were talking about if it were zoned 12.5, instead of 2.2 units to the acre, it would get you 281 elementary students, 80 intermediate students and 140 secondary students. That's for one piece of it. That's for 301, I'm sorry. I'll have to give it to you in two parcels.

Q. Does 848 sound about right?

A. Yes, that is the total. It's 347 for the other. 848 elementaries altogether.

Q. Is the Burke School overcapacity now?

A. It's overcapacity; and I should point out in fairness that it hasn't got any capability of

handling any more than capacity, even if we wanted to put temporary classrooms there. The school has got a limitation because of the sump field. We can't put but 300 and some-odd children in the school. That's it, period. We can go over capacity only very slightly.

Q. Well, in the Staff Report for C-301, the projection for 1973 is actually 100 over the programmed capacity for the school, is it not?

A. And we have accommodated that by moving the kindgergarten on down to Hunt Valley and further increasing the overcapacity of that school, which is on a sewer line and can afford the overcapacity.

Q. Well, if Burke is 100 overcapacity in 1973, Hunt Valley is overcapacity and I believe you said it will be for the next two or three years as far as you can see.

A. Yes.

Q. Caldwell, there are enough children being generated to fill that the day it opens. Isn't it a fact the more development down here over and above the development you've already contemplated that will fill Caldwell, will, in effect, put all these schools right back in a situation of being overcrowded?

A. If we accommodate the children in those schools, right.

Q. Even with Caldwell?

A. Yes; if we stick to those schools.

Q. Does that mean that you could bus them out of the neighborhood?

A. Yes; very obviously we would attempt to bus them out to the eastern area.

Q. Generally, there is overcrowding. What are the steps in order of preference that you take to relieve this overcrowding?

A. When it's obvious that we've got more children than we've got a place to seat them in an elementary school, the first step would probably be to look at the feasibility of putting temporary classrooms beside the school. The number of those you can put depends on the size plant. In other words, a school with 30 classrooms, a large number of toilets, large halls and cafeteria, you could add up to six or eight, maybe ten of them. So that would accommodate an overenrollment of 250 to 300 children.

If it's obvious that that's just a stop-gap solution, or the trailers are only going to hold

them for one year, the next thing would be look around in the whole general area and try to adjust boundaries, even moving, if necessary, by a domino effect, children from one school eastward to another until we generated 200 or 300 spaces.

And the third option would be, and this is the one that we've used most frequently in this Pohick area, is rather than domino, just take the new subdivision and move them to the schools generally eastward from seven to ten miles that have got the space there and leave the bulk of the people who are in without being disrupted.

Q. That is busing?

A. Busing, transporting.

Q. Therefore, is busing the most drastic step in order of preference?

A. It's the third way we look at it, and because the nature of the thing is generally temporary we use that, rather than this domino or shifting many, many schools to accommodate children.

Q. Is there busing taking place in this general area now?

A. Yes.

Q. Would you be able to tell us where the busing occurs?

A. Yes, I think I can point out almost the schools from and where, if you'd like.

Q. I wish you would.

A. Right at Burke School there are two subdivisions being built. Just around the corner from Burke School, there's a townhouse subdivision being built, and we have been busing those children to Keene Mill School, which is right here on the west end of Irving. Generally, right down Keene Mill Road; come out of these subdivisions, get on Keene Mill Road and straight down Keene Mill Road to this school. This Keene Mill Road is losing children. In other words, the ratio is dropping down so that the impact of these new ones coming in really hasn't changed its membership much.

THE COURT: Is Keene Mill School about the borderline as far as the attrition is concerned?

THE WITNESS: Yes, sir. It's about the second school west of the Beltway coming this way, and the attrition just started in it a year or two ago.

BY MR. SYMANSKI:

Q. Is there any other busing in the Pohick?

A. We have got some vacant spaces in this West Springfield School that we're planning to bus some children from some of these subdivisions in to the West Springfield Elementary School here, which it is not so much an attrition in school, it's just got an attendance area that is small.

THE COURT: Excuse me. The children that are near the old Burke School, that you just mentioned earlier, going to Keene Mill, is that distance around three, three and a half miles?

THE WITNESS: No, sir. That's probably closer to six miles, would be my guess.

THE COURT: I can't determine a scale on that map.

THE WITNESS: Just to point out the intersection of Sydenstricker and Old Keene Mill is here, and then you've got to come in on Keene Mill to Rolling Road, which is here, and from there you've got about a mile. I would guess this is three-quarters or a mile here.

MR. HAZEL: Perhaps Mr. Whitworth could take his scale, and maybe he could determine that.

(Discussion off the record.)

THE WITNESS: I'd say five miles or five and a half. Air line is about three miles, and it's probably a good five or five and a half miles.

THE COURT: All right, sir.

Go ahead.

BY MR. SYMANSKI:

Q. Now, is there any other busing in the Pohick, including all grades?

A. Yes. I say, we're beginning to bus children to West Springfield. We have been busing some intermediate children from the Lake Braddock School down to Irving and Frost while this school is being built. We are busing the elementary children in this community to both Kings Park and Oak View.

Q. Any in the lower end down here?

A. Yes. The Saratoga, Chancellor Farms, Newington Station subdivisions, down here, I guess broke the ice on this busing and are going to three schools in downtown Springfield, Forestdale, Glenbrook and Crestwood.

Q. What route do they take?

A. Generally, they go across Alban Road west

up Backlick Road to the intersection of Old Keene Mill, and the school is within a mile of that intersection, all three of them.

It could be that they go up Rolling Road to Keene Mill and in that way. I mean, we haven't set a prohibition on using Rolling Road, except going across Alban up Backlick is a better route. I know some of them do use that route. Now we are talking about, again, six or seven miles.

Q. Is there a conscious policy of avoiding Rolling Road in your busing?

A. It's just not as good an access as Backlick, that's correct.

Q. What do you mean by it isn't as good an access?

A. It isn't as good a road as the Backlick Road that covers that same territory.

Q. Is it unsafe, in your opinion?

A. No. I wouldn't say that, because we haven't had a bused accident on it in 25 years, I guess. It's not a good road, though.

Q. Is busing disruptive, in your opinion, and the position of the School Board?

MR. HAZEL: Pardon me. Disruptive of what? I don't understand the question.

MR. SYMANSKI: Disruptive of the educational process.

THE WITNESS: In a county where we bus way more than half of our children in school, I think I couldn't say that. I'd say, no, it's not.

THE COURT: How many school buses does Fairfax County own?

THE WITNESS: Between 650 and probably 620 of them on the road everyday, and we've got many kinds of education where the whole education of that child is completely dependent on busing long distances; the physically handicapped, the mentally handicapped, we only have two or three centers in the county. Way more than 50 percent of the whole student body gets on a bus every morning.

BY MR. SYMANSKI:

Q. Now, you discussed the School Board's neighborhood-school policy. Isn't it the position of the School Board, in fact, the neighborhood-school policy is an integral feature of the Fairfax County public schools?

A. It's a policy of the Fairfax County public schools, yes, sir, to have neighborhood elementary schools.

Q. Hasn't it been represented by the School Board to be a long and integral feature of the Fairfax County public schools?

A. Yes; that's an expression I've seen somewhere, yes. Yes, I've seen that. It has always been the policy to build the school nearest the people it's going to serve. I'm sure of that statement.

Q. Do you recognize this piece of paper?

A. Yes, yes.

Q. What is it?

A. This is a memorandum dated June 8, 1973 to the parents of students in Fairfax County public schools. The subject is school bond referendum.

MR. SYMANSKI: I would like to introduce this into evidence.

MR. HAZEL: I have no objections, Your Honor.

THE COURT: That will be Defendant's Exhibit -- all right. We'll just call it a stipulation if there's no objection. It will be Stipulation No. 20.

(The document referred to was marked Stipulation No. 20 and was received in evidence."

BY MR. SYMANSKI:

Q. Mr. Whitworth, showing you Exhibit No. 20, the latter part of the first page there is a list there of, shall we say, beliefs of the School Board if the bond issue is rejected. For example: "Indefinite postponement of bringing all schools up to present-day standards. Alternate means of housing students in growth areas to alleviate severe overcrowding."

At that point, is the Pohick considered by the School Board to be one of the "growth areas"?

A. Yes.

Q. Is it considered to be one of the growth areas where there is "severe overcrowding" at this point?

A. No, sir; not at this point in the elementary, and not at this point in the secondary after we open this high school in September.

Q. Well, at the time --

A. Well, at the time of the zoning yes. For the secondary part of the system, yes.

Q. "Severe overcrowding"?

A. Secondary; not the elementary.

Q. It says: "These would include some or all of the following: extensive use of temporary buildings, split or double sessions, year-round programs and long-range busing. The latter would necessitate a departure from the neighborhood-school concept, long an integral feature of the Fairfax County public schools."

Now, comparing the failure of a bond issue to the crowding that exists, these factors, are they not, are the same factors that result from overcrowding, and the bond issue was to relieve to some extent the overcrowding; is that correct?

A. Except I didn't itemize one that they pulled out of here. That is the double shifting. And I didn't, because in the recent history we haven't gone to that still more extreme step than the tempos, changing boundaries and busing, of double shifting. Then you could place twice as many children in schools.

Q. All right. "Continued inability to provide adequate facilities for current programs, such as vocational training, art , science, physical educat' and music." What does that mean?

A. What that statement has reference to is the fact that a major portion of this $24 million-bond fund is for the modernization of older schools, and a relatively minor portion is for building new schools.

And the programs that you're talking about putting into the old schools are just those that you were talking about, vocational, music -- fixing the school so it can accommodate the same grade of education that you could get in the new school that we've just built. So it's going back and putting in those fixtures that would allow that school to give an equal education to the student.

Q. Isn't it a fact, though, that when you have overcrowding, some of these programs that I've listed, training or science, are not, in fact, available because the overcrowding requires those spaces that would be used for those programs to be used for regular classes?

A. Yes; that's correct. In the older school, it's highly possible we would take the classroom that normally we'd want to use for music or you'd want to use it for phys. ed., rather than not take children and educate them, you put them in this classroom; and then you would have to improvise your music room by

having it in the cafeteria or hall or whatever; that's correct.

Q. Is it a fact that if the school is somewhat undercapacity and you bus kids in to put it up to its capacity, not the programmed capacity, is it a fact that some of these programs might not be given because --

A. If we -- yes; but the School Board policy has been not to do that. We haven't imported into a school the number of children that would put it very much over its programmed capacity. When you've got other schools empty, nearby, you don't have to do that.

Q. "Indefinite postponement of bringing all schools up to present-day standards." What does that mean?

A. That means that if this bond issue weren't passed, it would stop the program of updating these old elementary schools and old high schools. One, for example, is the Forestdale School that we are busing the children from Newington Station in. It doesn't have a gymnasium. So we have to accommodate that program with using a couple of classrooms. I think you're saying, if that school gets filled up with children, we would have to improvise with our gymnasium,

and that would be the case.

Q. So the facilities would not be up to what you would like them to be?

A. That's correct, yes.

Q. "Indefinite postponement of construction of special education facilities for programs long needed, and now mandated by law." Are we behind, below par, below what it should be in special education facilities?

MR. HAZEL: If Your Honor please, before the question is answered, it's a matter that is confusing to me in the way the questions are going, and that is, are we talking about the schools that serve the area of the subject property, or are we talking about schools generally in the county? I'm not objecting to the question. I'd just like to know to which area we're directing the questions.

MR. SYMANSKI: I believe we're talking about both, Your Honor. I'm trying to show the School Board's position if the bond issue was not passed. I'm trying to show that some of these same considerations occur when there is overcrowding.

THE COURT: I'd like to know, really, about

this particular area and the reasonable area around it. If they're having problems, say, in the Lorton area concerning special education and gymnasiums and such, that would not have any bearing on this area. I would like to have this directed more to this area and the area of potential busing around it, say, seven miles, eight miles, around it.

BY MR. SYMANSKI:

Q. Mr. Whitworth, can you generally relate these considerations to this area?

A. Yes. I think in general we can foresee, say, three or four or five years of this continued busing, if that school weren't built, and we continued to bus these children further east. In general, we wouldn't have to exceed the programmed capacity of the schools that we bus to, and would therefore leave enough space to conduct the program ideally. We wouldn't have to use the gymnasium by continuing to go on to the next school.

Q. That's without any consideration for the rezoning for the growth rate? In other words, if all applications -- are you saying that that's with the growth rate that exists now? Or that any growth rate --

A. Yes; I think we could extend it to anything as long as there is no limitation on the distance that we're going to bus. I'd like to point out we are busing--just the normal child who lives way out in the country and is going to a country school frequently buses seven to ten miles to school. In fact, the normal bus run to Herndon High School for years was from 17 to 20 miles down to below Clifton. If we would use that as an outside range, we could almost go on indefinitely taking these children back further from their neighborhood.

Q. But that is against the neighborhood-school policy?

A. That's against the neighborhood-school policy and isn't as ideal as having the school where the child is.

Q. With regards to the intermediate and the high schools, I believe you testified that Lake Braddock will provide relief for the present situation reported in the Staff Report of overcrowding?

A. Yes.

Q. Now, with the students that are in the pipe line in your projections in this area, zonings and

projects underway, what would be the effect on Lake Braddock when it's opened? Will it be undercapacity, or what are your projections for Lake Braddock as far as capacity?

A. I think I stated this generally. This September, when Lake Braddock opens, if you could take all of the high school children in the four high schools we're talking about there, Annandale, West Springfield, Lake Braddock and Robinson, and divide them up equally, we would be full or right at capacity.

The reason I answered it that way, we're not going to open Lake Braddock up anywhere near capacity because we're putting it in a smaller neighborhood than it will ultimately have to serve because there is building going on right at the school. We kind of made the line around the school smaller than normal.

Secondly, we're only putting two high school grades in there, the ninth and tenth, to avoid disrupting the eleventh and twelfth-grade children at West Springfield, Robinson and the other schools around there. We let them continue their education at those schools. This doesn't give a true picture of what the best distribution of students is when you stick to this

policy of not moving juniors and seniors.

Q. As far as what's in the pipeline already zoned and underway, there are no students coming out of there to fill the school?

A. Yes. I pointed that out that they would be full this year if we could equally distribute them, and the following year there would be several hundred too many, and the following year several hundred too many, and we saw in four or five years we'd have up to 2,000 too many.

Q. That's without consideration --

A. We've just considered those four schools and don't consider going in any direction for relief.

Q. Isn't it true that under the present RE-1 zoning, if it were developed, that the impact or the number of students coming out would be approximately a third or less?

A. I don't think I understood your question. You say if it were zoned --

Q. If it developed RE-1, would not the impact be approximately one-third,than if it was developed at the 12.5 cluster?

A. Just one house per acre?

Q. Yes.

A. Yes, it would be, yes. 2.9 versus one to an acre, yes.

MR. SYMANSKI: May I have a moment, Your Honor?

THE COURT: Yes.

BY MR. SYMANSKI:

Q. You made a statement that considering each application, or possibly this application on its own, things could be accommodated. If rezoning in this area caused rezonings -- strike that. Let me put it this way: considering this application on its own, you said that it could be accommodated.

Considering other applications, the overall picture, could you foresee a problem occurring in schools down there, a crisis situation under a rapid rate of growth?

A. Yes. If there were an unlimited rate of growth in the large amount of land that is undeveloped there, and there were no restrictions, and there were no economic limitations, that is in building and selling we could get swamped very quickly. Like in the 60's, we got swamped very quickly by subdivisions like

Ravensworth, North Springfield, when they built and sold houses at an unbelievable rate.

It takes roughly a year to decide to build, and build, and occupy a house. It takes three years at a minimum to decide to build a school, if you have the money. So you could easily get swamped.

MR. SYMANSKI: Thank you.

No further questions.

THE COURT: Getting back to this Caldwell School that is planned, you said that it could be either 660 or 990?

THE WITNESS: Yes, sir.

THE COURT: You mentioned a cost of approximately one and a half million for a 660 school. What is the difference for a 990?

THE WITNESS: It's considerably less than a half more, sir. That's the only way I can say. I can give you an example of one that I know that we did this way, where the last ten rooms only cost us $9,000 a room. This was four years ago. We got the extra part for about $90,000. That was 1969.

THE COURT: But if it's a million and a half for 660 --

THE WITNESS: It would probably be $2 million or even less than $2 million.

THE COURT: Maybe a $500,000 differential to increase it by that capacity?

THE WITNESS: Because we built the cafeteria, the central features, the gymnasium and everything to accommodate 990. What you're really doing is leaving off one part, of ten rooms, which is probably the cheapest part of the building.

THE COURT: When these are designed, can you build them 660 and then, later, add the --

THE WITNESS: Yes, sir. The pipes, the electricity, everything is built with a core for 990.

THE COURT: All right. Now, if the County Board should decide to make funds available or the bond issue will be all right, and the County School Board decide to make this a 990 school, what effect would that have if these two parcels were rezoned to a higher density, and assuming that they would start building in 1976?

THE WITNESS: In a four-year period, I don't really think it would make that much difference. As I recall, we've got several zoning cases as close to

this school as this one is, across the road there, that if they started building right away, we would have the school full, anyway.

THE COURT: You would have the school full at the rate of 660. But, I'm saying if it were increased to 990?

THE WITNESS: We would probably get one more year of execution, let's say. I say that 200 or 250 is not an unusual rate for this kind of subdivision. Give us another year, say.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. HAZEL:

Q. With reference to the Caldwell School, let me show you the Staff Report in the Van Metre case that I gather you prepared. That indicates that the programmed capacity for the school was 990; is that correct?

A. That's correct; and it was at the time --

Q. Why was it reduced to 660?

A. Partly because of this emphasis of the School Board to have the walking school. This was thought to be a place where, geographically, we could

set up a walking school where everybody in there was walking to school. And the fact that we owned sites adjacent to it and had other sites adjacent to it to be dedicated.

In the last couple of years, during this planning period, we haven't gotten the production of children out of houses or the number of houses that we anticipated in this particular area, both because of the moratorium and because of the lower birth rate, or the lower number of children for a family.

Q. The fact that this zoning case was not granted was not in any way involved in the decision to reduce it to 660, was it?

A. No, no.

Q. Well, if I understand you correctly, it was an elective decision by the School Board not to build the programmed capacity; is that correct?

A. That's correct; and that's a frequent decision, yes.

Q. And the reason you did that was again an elective decision, that you had another school site, which is less than a mile or approximately a mile from the site, where you anticipated you could build a school

when you needed it; is that right?

A. I think that went into the process, yes, sir.

Q. And in your answer to His Honor's question about the year, if you had another 300 students here, at the Caldwell School, if I understood correctly, it would delay the requirement for building the Rolling Valley West School for a year. Is that what you meant?

A. In theory, yes; but let me add here that, actually, when you build a school, it's like drawing flies. You then encourage development that might have been dormant right next to the school, is what I'm trying to say, and this is the case. You build a school, and it makes that piece of property that's vacant more developable.

Q. In other words, by not building the additional 300, that can be used as an excuse by government not to allow people in this area?

A. It certainly would make it less attractive, yes, whether you want to call it an excuse or not; but if it opens up full, it would be less attractive for a builder to go in and open up some property right next to it when it's already full.

Q. Let me see if I understand this. The

immediate neighborhood-school situation -- now, first about Burke, are you certain that cannot be sewered? Is that the sole reason --

A. It can be sewered, but it can't be sewered in that building. In other words, the combination of the condition of the building and the distance to the sewer write it off, economically. It would be bad money after good.

Q. You made a decision that with a new site in the vicinity, you'd rather abandon the Burke School?

A. Yes.

Q. Sort of the order of events is that you intend to build Caldwell at the reduced capacity of 660 because that's all you really need now?

A. I wouldn't say because that's all we really need. I'd say we intend to build it at 660 at this stage. That's the School Board's decision.

Q. That's a reduction of 330 in the programmed site?

A. 330, yes.

Q. You next would look in this immediate vicinity at the Rolling Valley West School as a possible site?

A. Yes, if we got overcrowded, yes, sir.

Q. When you need it, when the Van Metre-Williams neighborhoods develop, you would request a site in that area which sometime in the early 1980's would probably be the site of a new building?

MR. SYMANSKI: Objection, Your Honor; they're talking about pure speculation.

THE WITNESS: I can't agree to the time phase, because I don't know; but, yes, we would have already requested it and then when everything else is full, that would probably be the next place to --

THE COURT: Do you want me to rule on your objection?

MR. SYMANSKI: No, thank you.

BY MR. HAZEL:

Q. Now, there's nothing about the Williams' zoning application that would even raise the specter of double shifts at this point, is there?

A. No. As I stated, I didn't list those as one of the latitudes of operation you have because that's more critical than we visualize in this area.

Q. I see. Now, put this in perspective: how many elementary schools are there in the system?

A. 126.

Q. And how many high schools?

A. It will be 23 this September. We've got the 21 that operated last year.

Q. And how many intermediate?

A. The same number, 23.

MR. HAZEL: I have no further questions, Your Honor.

THE COURT: Any further questions?

MR. SYMANSKI: Yes, Your Honor.

RECROSS EXAMINATION

BY MR. SYMANSKI:

Q. As far as the Pohick area, what is the most critical area as far as crowding now?

A. Which area within the Pohick?

Q. Yes.

A. Right adjacent to this land we're talking about. Right at the Caldwell site would be the most critical.

Q. That is with what's there now?

A. It bears out the fact that we've looked to that point to build the school, so it would be the most critical.

Q. What about the area of Saratoga? What's the situation there?

A. Saratoga, down there on the corner of the map; as I said, we are busing children from there a relatively long distance, six or seven miles into downtown Springfield. But, again, we haven't got anything like the need here demonstrated for an elementary school. We've got a site there, but we haven't got the generation of people that would warrant a school.

THE COURT: That's purely from an economical standpoint, is it not?

THE WITNESS: That's right.

THE COURT: You wouldn't build a school and have it half-occupied?

THE WITNESS: Right; that's right.

BY MR. SYMANSKI:

Q. What is the situation here with regards to active development?

A. There's much going on there, yes. Saratoga has got, I believe I've seen a Master Plan with as many as 800 houses, 800 units; some townhouses, some single family. Newington Station has got almost as

many acres, and most of that is townhouses, and we can expect a tremendous generation out of that.

And just north of Saratoga, is one called Chancellor Farms with a subsection of that sold out to somebody else under the name Timbers, I believe, and that has 200 or 300 units which we can expect to give us a lot of children.

But, a good portion of these have been built, and we haven't gotten the share of children that we normally expected. We haven't gotten the county average or the area average out of Saratoga.

In other words, the first 250 houses, which is a pretty good slice, hasn't given us that ratio of children that we expected. Newington Station, with the townhouses there, even less in proportion to what we expected. So the school is in our plan. It would probably come up on the next bond issue if the place keeps going, but it isn't so critical yet.

Q. As far as the zoned land and the development prospects, is the need , what's already in the pipeline as far as plans?

A. Yes, it's very active; that's right, sir. And if we would get the right ratio of children down

there, it would be critical very soon, probably before this school back up here, the Caldwell site.

Q. As far as priorities, though, what's in the pipeline, already zoned, already planned, what would be the priorities with regards to this area and this area?

A. This lower area would come ahead of it, because we know already that these people are not only zoned, but they're active, and it would probably happen first. Therefore, this is in our plan to come on the next year's bond issue, the Saratoga School, and we'd get it built a couple of years after that.

MR. SYMANSKI: No further questions.

MR. HAZEL: I have no further questions.

May I ask that this witness be excused, Your Honor?

THE COURT: You're free to go, sir.

Let's take a recess.

(Witness excused.)

(Short recess.)

MR. HAZEL: If Your Honor please, I'd like to call Mr. James Pammel, and I would also like to introduce, at this time, several further stipulated exhibits. The first being the minutes of the Board of

Supervisors of September 10, 1969.

THE COURT: Stipulation No. 21.

(The document referred to was marked Stipulation No. 21 and was received in evidence.)

MR. HAZEL: Minutes of the Board of Supervisors of October 15, 1969.

THE COURT: Stipulation No. 22.

(The document referred to was marked Stipulation No. 22 and was received in evidence.)

MR. HAZEL: Pohick Watershed Study adopted in 1967 with an overlay that was part of the adoption, perhaps would make a good A .

THE COURT: All right. The Study, itself, will be No. 23,and the overlay will be No. 24.

MR. SYMANSKI: Excuse me. Is No. 23 the old Master Plan?

THE COURT: Yes, it is.

MR. SYMANSKI: I'll stipulate as to authenticity,but not to relevancy.

THE COURT: All right. It's not received in evidence at this point,nor will 24 be.

(The documents referred to were marked Stipulations Nos. 23 & 24 for identification.)

Whereupon,

JAMES D. PAMMEL

having been duly sworn, was examined and testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. HAZEL:

Q. Mr. Pammel, would you state your name, please, sir?

A. James D. Pammel.

Q. And your place of employment?

A. With the Fairfax County Division of Zoning Administration, and under the department of County Development.

Q. How long have you been so employed?

A. Approximately, a little over six years; six and a half years in my present capacity or related activities.

Q. Now, Mr. Pammel, under your auspices, the Staff Reports for the zoning cases are prepared, and most of the zoning presentations and activity at the

Board of Supervisors level takes place; is that correct?

A. That's correct.

Q. You are familiar with Staff Reports and are generally involved in the preparation and presentation of Staff Reports on zoning cases?

A. Yes, I'm either involved in the preparation or am responsible for the preparation of the reports.

Q. Mr. Pammel, I show you Exhibits 23 and 24 for identification and ask if you recognize these exhibits as the Pohick Plan of 1967?

A. Yes, I am -- the plan, anyway; and the overlay.

Q. Now, Mr. Pammel, these were the plans that were adopted in 1967, which were the first urban density plans in the Pohick Watershed, were they not?

A. Well, you mean the first ones insofar as plans developed by a public agency and adopted by the County Board of Supervisors?

Q. Yes, sir.

A. For that purpose, yes. They were not the first plans developed.

Q. Well, I understand that; but these were the first that the County developed following the advent

of the trunk sewer and the Pohick sewer program, were they not?

A. Well, I'd say the plans actually came about -- more or less coincided with the advent. The plans were in the mill to extend the sewer, to build the treatment plant, and this plan was done during that same period of time.

Q. And it was done to anticipate the advent of sanitary sewer in the Pohick, was it not?

A. Yes, sir.

Q. And it was that plan that was the immediate predecessor of the so-called Pohick Restudy two years later, was it not?

A. That's correct.

MR. HAZEL: If Your Honor please, I would like to introduce the two exhibits which comprise that plan as the historical progression of planning in the Pohick in the immediate past, that is, since the advent of sanitary sewer. I think there are items in that plan which were interrelated with the plan of 1969 that was the outgrowth of that plan.

THE COURT: Does the plan of '69 abolish the plan of '67?

THE WITNESS: Yes, Your Honor; supersedes it.

MR. HAZEL: I think supersedes, but it also supplements it in some ways. It's the same facts and the same data base, was it not, Mr. Pammel?

THE WITNESS: Well, I can say that some of the facts that were in this report were used in the preparation of the '69 report, or the '69 restudy. But, basically, the '69 restudy is an entirely different plan.

MR. HAZEL: As far as some of its conclusions and recommendations. But, in terms of fact and data base, the '69 plan was predicated on much of what was in the '67 plan, was it not?

THE WITNESS: I think to the extent that if you take sewer as a given and a designed capacity of so much population, there was generally a close parallel of the two. But, beyond that, that ends the similarity. There is an entirely different concept of development and urban planning that is involved in that document as opposed to this one.

MR. HAZEL: Same watershed?

THE WITNESS: Same watershed.

MR. HAZEL: Same sewer system?

THE WITNESS: Same sewer system.

MR. HAZEL: Same public facilities problems?

THE WITNESS: I would have to say that the public facilities were addressed in more depth in the restudy of '69.

MR. HAZEL: But, they were addressed in the '67 plan?

THE WITNESS: To an extent.

MR. HAZEL: If Your Honor please, I think you have to have the '67 plan to understand a progression into the '69 plan. I don't think that as a planning document and as a data base in the County's historical situation it would be really a total picture to just pick up one of the facts basis without the other facts basis.

We're not saying that the '67 plan is the Master Plan that's now in effect. We're using it for analytical comparison and a data base.

MR. SYMANSKI: The objection is on relevancy, Your Honor. They allege in their pleadings, I believe, that the 1969 plan is the comprehensive plan for the area, and that's what we're here arguing about. It's been adopted by -- approved by the Planning Commission

and the Board of Supervisors. It is the plan we're considering here. As to relevance of the old plan, as Mr. Pammel said, it has been superseded. I just don't see the relevance of the old plan.

THE COURT: I'll let it in, sir. It will be received as No. 23 and the map with it, No. 24. Last Thursday, we were talking a great deal about the historical development in the county and what happened after this. So I think it's relevant for that purpose.

(The documents referred to were received in evidence as Stipulations Nos. 23 & 24.)

BY MR. HAZEL:

Q. Now, Mr. Pammel, I show you the section of that plan on sanitary sewers and ask that you read the last paragraph regarding capacity.

A. "Capacity. The capacity of the overall system was designed to accept a maximum effluent from the service area, assuming an overall density of ten persons per acre in planned single-family areas (lots of a maximum size of 12,500 square feet) and 60 persons per acre in apartment areas (minimum of 20 dwelling units per acre)."

Q. Now, Mr. Pammel, ten persons per acre is an R-12.5 density, is it not?

A. That's correct.

Q. So that the sewer plan for the Williams-Van Metre tract at the time of planning was for an R-12.5 density, was it not?

A. Would you repeat the question?

Q. Well, assuming ten persons per acre as the plan for the Pohick, the Williams-Van Metre property was in that area they're talking about for residential density that was planned for ten persons an acre, wasn't it?

A. At that point in time, yes, it was included in that area.

Q. And the sewer trunks and collectors had been extended based on that plan, have they not?

A. Yes, they have.

Q. There has been no change in the sanitary sewer plans, since the 1967 document, in this area, has there?

A. With respect only to the trunks, the line sizes; not the treatment capability. That has changed dramatically.

Q. I understand; but the trunks and the line sizes that were planned in '67 were for ten persons an acre?

A. That's correct.

Q. And they did anticipate ten persons per acre on the subject property?

A. Ultimately, eventually. But, you can draw the same comparison in the Vienna Master Plan for the so-called Wolf Trap - Amanda area, Dunn Loring-Idylwood, which is developed at very low density but was planned for the long, long, long run for ten.

Q. I understand. I'm sure your explanation is appropriate, but I just wanted to be sure that we were talking about the right sewer system.

Now, Mr. Pammel, I show you Exhibit 24 and ask if this is--I believe you've already testified that this is the overlay that made the revisions adopted by the Board in Exhibit 23; is that correct?

A. Yes.

Q. Now, you have circled an area on that plan, which I will show His Honor. That's your circle on Exhibit 24, is that not?

A. That's correct.

Q. And that is the area of the subject property, is it not?

A. That's correct.

Q. Would you read items 1 and 2 in the adopted plan of 1967?

A. "The overall residential density in the watershed area of the Main Branch and Pohick Creek is not to exceed 2.5 dwelling units per acre, provided that there will be circumstances, for example, where an impoundment is to be established, pursuant to the Public Law 566 program, where a higher density than that which would produce 2.5 dwelling units per acre will be justified.

"Item 2. That the same provision for the residential density adopted for the Main Branch also apply for the Middle Branch watershed area."

Q. So that under the 1967 plan, there was no question that the proposal would be R-12.5 density on the subject property?

A. Well, a density of two and a half dwelling units per acre, subject to those qualifications stated

there. In other words, there could be a variety of development, as long as the density did not exceed two and a half. In fact, we encouraged in many instances development to utilize planned-unit concepts or utilize, say, the townhouse zoning districts in order to concentrate or cluster development to preserve large open areas.

Q. Now, Mr. Pammel, the current Master Plan, called the Pohick Restudy, anticipates two units on the subject property, does it not?

A. That's correct.

Q. Now, did the reduction in the map designation from two and a half units to two units anticipate any fewer number of people in the watershed itself?

A. With the absence of having the figure right at my disposal as in the '69 document, I can't say for sure.

Q. Well, essentially, the two plans were to give some neighborhood density available for higher density dwelling around the center, was it not?

A. Well, there are several factors involved here. There was higher density programmed around the community centers, community-village centers, I guess

you'd call them, a little higher density around the neighborhood centers. Then, two features that were included in the '69 restudy that were not in the '67 plan was the Burke cluster, which is a high density area, which is shown on Exhibit No. 18 by the purple X in the lower left-hand corner. That is the Burke cluster which does, as I indicated, have a very substantial amount of density planned for that immediate area.

Then, the other cluster, which is not shown on this map, is the so-called Lorton cluster. Neither one of those clusters calling for high density development were included in the '67 plan.

Q. Now, Mr. Pammel, let me ask another question about that. The fact that the subject property was shown on one plan at 2.5 units, which is the R-12.5, and on the other plan at the R-17 density of two, does not necessarily mean that there was to be any fewer people in that neighborhood or, in fact, in this area, does it?

A. I don't quite follow your question.

Q. Well, wasn't there a reduction in the map designation so that there would be some population available for the neighborhood-community centers around

the center?

A. Yes. There's some population, but that population is included in the total population projection for the neighborhood. That's already built into the table.

Q. That assumes, for example, these five-acre lots in this vicinity or the lots up at the top of the neighborhood would all have to develop at R-17 to generate the people involved; is that correct?

A. Generally speaking, they would have to develop at R-17 along with the subject properties, assuming that the whole area, plus just around the neighborhood, would be a little higher density. If it would develop along those lines, you would come up with a population shown in the tables.

But, there are exceptions to this case as there are in many of the neighborhoods. Some neighborhoods, as an example, in the Pohick will never develop to maximum intensity. There are other situations where the neighborhoods will develop over, and there's a very good reason for that.

During the development of this plan, one thing that was overlooked by the planners in making

these projections was -- or let's say they took an assumption that the large expanse of green area that is found in the Pohick, the Pohick Stream Valley, would be acquired by the County on a fee basis, purchase basis. And, therefore, density allocation was not given to these large expanses of green area.

Now, what has happened is that the County has, in fact, not purchased these grounds, but has relied upon the developers to dedicate and to take a density credit. And where we have then been giving density credits, we have found in several neighborhoods, like Neighborhood 10 where we have gotten a substantial amount of dedication, that we're well over the projected population.

So, implementing this plan, we have to look at that factor, and we're going to have to make adjustments as we go along down the line. So not every neighborhood is going to get to its maximum and probably should not get to its maximum in view of this fact.

Q. And there's no guarantee in Neighborhood 12 and that portion of 13 involving the Van Metre tract that if it developed at 12.5, it would exceed the 5,000 persons in that neighborhood, is there?

A. No. There's no guarantee. But if this other property remained undeveloped -- well, we don't know whether there's going to be a neighborhood center there or not. But, just say the rest of it didn't develop, it probably would not exceed. I say, probably; I can't say for sure.

Q. In other words, the two tracts that are the subject of today's case could well develop at R-17, 2.5 density, and 25 years from now, the neighborhood as a whole could have the same number of people or less than you are suggesting in that neighborhood, some 5,000 people; isn't that a fact?

A. Well, that could well be a fact, and it might be a very desirable end result in view of some of the deficiencies in other areas.

Q. Right. So that there's really nothing in that plan, in those numbers, that says that it would bring the world to a halt and bring Fairfax County to a disaster if these two tracts were zoned R-12.5 as opposed to R-17?

A. If they were zoned R-12.5 and assuming that that neighborhood reached its designed projections, I don't foresee any great problem other than the fact

that eventually we're going to have some difficulty trying to find areas which we can use as a compensating factor for some of those other neighborhoods that are over. Eventually, we're going to end up, if we develop each and every neighborhood throughout the Pohick at its designed figure and include those ones that are presently over, we're going to end up with more population than the watershed was originally designed for.

Q. I see. Now, Mr. Pammel, there's one thing that's crystal clear in both the '67 plan and the '69 plan, and that is that under neither of those plans was this land anticipated to remain zoned RE-1, was it?

A. That's correct; in the long run, for future planning.

Q. Now, Mr. Pammel, were you familiar with the hearings that went on in September and October of 1969 at which the Pohick Restudy was adopted and in which several zoning cases in the vicinity were zoned?

A. Well, I would have to say that within that period of time, my memory probably isn't all that sharp. I can remember some of the details.

Q. You were present at some of these events, were you not?

A. I'm sure I probably was.

Q. Now, Mr. Pammel, when those events occurred in the Fall of 1969, there were several rezoning cases pending in the Main Stem just north of the Middle Run area, and there were two zoning cases pending in the Middle Run at the locations pointed out east of the Levitt tract, those cases being B-848 and B-919; is that correct?

A. That's correct.

Q. Now, Mr. Pammel, is it correct to state that the purpose of the County's Middle Run policy was to channel the population growth into the Main Run rather than into the Middle Run?

A. At the outset, yes.

Q. And this was to minimize or perhaps improve the County's economic involvement in the development of the Middle Run, was it not?

A. It was to provide an orderly guide for growth so that the County at the same time the growth was occurring could plan with some definition for public facilities to serve that population.

Q. Now, what you were really trying to do, as I understand it, was prevent the development of the

Middle Run in the time frame that we're talking about. So that the economies of government might be better for the County in the Main Stem; is that correct?

A. I wouldn't say prevent. I would say, like everything else, there's a logical sequence of development, phases of development. Let's use the word "retard." Not to prevent. The issue clearly was to retard development.

Q. Well, how could a development, Mr. Pammel, as a practical matter, if you were planning for two or 2.5 units in the subject area of Middle Run, how could it possibly develop if it hadn't been zoned for that density?

A. It cannot develop unless it's developed what it's presently zoned for which is --

Q. Well, if it developed for the one-unit density, it would, in effect, preclude those properties from carrying the type of population that the County has planned for; is that correct?

A. I think what we're saying, and trying to, and I think it's a proper function, legislative function, of the Board, trying to say: look, you have an area There is a limit, a financial capability supported by

the people in Richmond who underwrite our bonds and handle this, that you should grow at a reasonable rate. You should plan your growth, and you should provide your public facilities accordingly.

Now, the Board simply was trying to develop the proper sequence of development here, and, in effect, said: look, this area should be open for development at the densities that are determined to be reasonable by our plan, two to the acre, post-1975; but, if you desire to develop prior to that time, then you obviously can develop on the one-acre ground. That does cause the County some problem because we don't have public facilities, but the problem is somewhat less.

Q. So you were trying to retard development on the subject properties to channel growth elsewhere that the County thought might be more economical; is that correct?

A. Not economical. I don't think it's that. It's where the Board determined by the road network, and other factors that relate to development, that if public facilities should be provided in that area and concentrated within that area initially --

Q. Well, it's all a matter of dollars, isn't

it? You can build public facilities in ample quantities if you had all the money in the world that you needed, couldn't you?

A. Well, I would agree that you probably could do that, but it's not an efficient way of utilizing your resources.

Q. So it's inefficiency, not economics, that is underlying the County's policy?

A. Well, I think you have to look at the whole spectrum of land development to determine whether you're getting efficient utilization of your resources or not. I would say in this question, obviously, the most efficient utilization of resources is land for development purposes, with the Main Branch first; that the Board determine that by their policy, then your Middle Run.

Q. All right, sir. Now, what was the time frame on the Middle Run? I believe you mentioned 1975?

A. Well, generally, the plan reflected '75, but then there was a qualifying statement in there that there would be a review of the Middle Run policies on an annual basis to determine if the land absorption was at a rate that would then justify the inclusion of

certain neighborhoods within the Middle Run into the active inventory of development of land.

Q. Did those reviews occur, in fact, on an annual basis?

A. No, they did not.

Q. Now, Mr. Pammel, if I understand it correctly, the original plan, that was talked about in discussions of the Board and the plan adopted in '69, anticipated that after 1975 the subject property would then be available for development without any restrictions as far as the Board; is that correct?

A. Well -- I think the original plan -- and there's just so much you can project ahead with a crystal ball -- in 1969, I think the original plan did envision that, but was not aware that there would be sewer problems.

Q. Well, the sewer problems have, in effect, just helped the purpose of the Board in that they are now delaying development until '76 and after, isn't that correct?

A. Well, the problem --

Q. No. You explain anything you want, but just try to answer the question.

A. Well, I can't answer that one without stating the reason -- you say, '76 or later for this tract. But, you have to keep in mind that we're talking about the Main Branch which is in the same dilemma.

Q. Mr. Pammel, let's follow the line. In 1969, a landowner, like Mr. Williams, who owned the property here, or Mr. Van Metre who was anticipating buying the property, was advised that in 1975 and after these properties would be ripe for development, was he not?

A. That's correct.

Q. All right. Now, since 1969, there have not been the annual reviews you speak of of that policy?

A. Not on an annual basis. There has been a review.

Q. When was that?

A. The review was, I believe, timing-wise, it was accomplished by the Division of Planning, sometime in 1972. The Planning Commission held a public hearing, made a recommendation, but action was not taken by the Board until this past month.

Q. Two weeks ago?

A. Right.

Q. Did the Board have a public hearing when they took that action?

A. On the --

Q. On the Middle Run review, two weeks ago.

A. Frankly, it was an agenda item. I think it was a public session.

Q. Now, the sewer situation. Forget all the other problems that you must have in mind, you alluded to them. The fact is that nothing can develop on this property until 1976, because of sanitary sewer problems; isn't that correct?

A. That's correct.

Q. So that the property has already been delayed beyond the implementation of development that was anticipated in 1969, has it not?

A. That's correct.

Q. Now, Mr. Pammel, what the Board was really trying to do was implement a holding zone, wasn't it?

MR. SYMANSKI: Objection, Your Honor, as to what the Board intended to do.

THE COURT: Sustained.

BY MR. HAZEL:

Q. Mr. Pammel, you were present at these Board

Q. Did the Board have a public hearing when they took that action?

A. On the --

Q. On the Middle Run review, two weeks ago.

A. Frankly, it was an agenda item. I think it was a public session.

Q. Now, the sewer situation. Forget all the other problems that you must have in mind, you alluded to them. The fact is that nothing can develop on this property until 1976, because of sanitary sewer problems; isn't that correct?

A. That's correct.

Q. So that the property has already been delayed beyond the implementation of development that was anticipated in 1969, has it not?

A. That's correct.

Q. Now, Mr. Pammel, what the Board was really trying to do was implement a holding zone, wasn't it?

MR. SYMANSKI: Objection, Your Honor, as to what the Board intended to do.

THE COURT: Sustained.

BY MR. HAZEL:

Q. Mr. Pammel, you were present at these Board

Q. Did the Board have a public hearing when they took that action?

A. On the --

Q. On the Middle Run review, two weeks ago.

A. Frankly, it was an agenda item. I think it was a public session.

Q. Now, the sewer situation. Forget all the other problems that you must have in mind, you alluded to them. The fact is that nothing can develop on this property until 1976, because of sanitary sewer problems; isn't that correct?

A. That's correct.

Q. So that the property has already been delayed beyond the implementation of development that was anticipated in 1969, has it not?

A. That's correct.

Q. Now, Mr. Pammel, what the Board was really trying to do was implement a holding zone, wasn't it?

MR. SYMANSKI: Objection, Your Honor, as to what the Board intended to do.

THE COURT: Sustained.

BY MR. HAZEL:

Q. Mr. Pammel, you were present at these Board

meetings, were you not?

A. I was at some of them, and others, I was not.

Q. All right. I show you the minutes of the meeting. Would you read paragraph, the first full paragraph on page 410 of the minutes of October 15th of 1969?

A. "Supervisor Bowman said he wanted to reiterate again a statement he made earlier, namely, that the holding-zone concept that had been proposed by the Zoning Procedures Study Committee and which was originally proposed by the Planning Staff in the Pohick Restudy is a particular technique to achieve the objective of managing some kind of time control over where development takes place in the county, and that he, for one, did not take issue to the question that the use of that particular technique, at the moment, without further enabling legislation, is beyond the realm of authority of this Board. But, he would make the point once again, as the County Attorney did in his memorandum to

"the Planning Commission on this very same question, that there are other techniques available now within existing statutory language that can permit this Board the same objectives.. As members may recall on September 10th, during the discussion of the Pohick Restudy, he tried desperately to get Mr. Riutort of the Planning Staff off of the use of this term "holding zone," because it was clear that holding zone, as a label for specific technique, rests with our ability to get enabling legislation in General Assembly. And he might also add that he was not completely persuaded that the use of that particular technique is a wise move for this County. But, in any event, the term holding zone is a label for a particular technique to accomplish a general objective, but there are many other ways to accomplish this same objective."

Q. All right, sir. Now, did he, in fact, delete the word "holding zone" in comprehensive zonings

from the Master Plan that was finally adopted? And I show you page 115 of the minutes of September the 10th.

A. Yes, sir.

Q. Now, Mr. Pammel, are you familiar with the Staff Draft of the Restudy of the Pohick that was adopted in September 1969?

A. Not that familiar with it.

Q. Well, I show you a white-covered Restudy of the Pohick Watershed, dated January 1969 and ask if you recognize that document?

A. Yes.

Q. Now, Mr. Pammel, that document is the Staff Draft of which the Board of Supervisors had under consideration and which the Board, in fact, adopted in September, is it not?

A. That's correct.

Q. The blue document that is entitled A Restudy of the Pohick, which is Exhibit 11, is the reprint of that after the Board action, is it not?

A. That's correct.

Q. All right. Mr. Pammel, I turn to the section on Implementation, page 76, under Rezoning, and I ask you to read the paragraph entitled Middle Run Area.

A. "Rezonings may be considered in the Middle Run area before 1975. However, in order to implement a holding zone, the expenditure of public monies for capital improvements, such as schools, should not occur before 1975."

Q. Now, Mr. Pammel, that language does not appear in the reprint of the restudy that is introduced as Exhibit 11, does it?

A. Not to my knowledge.

Q. Now, was that language ever deleted by any action of the Board of Supervisors in adopting the plan?

A. I really don't know. I can't say.

Q. Can you point to any action that was -- do you have reference to any action of the Board of Supervisors by which the specific statement on rezoning in the Middle Run was deleted?

A. As I said, I can't say. I don't know.

Q. Is it possible that it was never deleted by the Board, is that correct?

A. I'd say almost anything would be possible. I just really don't know.

Q. Well, the Board of Supervisors did not

adopt the document of the restudy which says, September 10, 1969 and is in the blue book at that time, did it?

A. That statement?

Q. That statement.

A. To the best of my knowledge, it's not in the blue book.

Q. What I'm talking about is the technique. The Restudy of the Pohick which was adopted in September of '69 was the white volume from which you've just read?

A. That's correct.

Q. And it was not the blue volume which is in evidence and is a reprint?

A. The blue volume, again -- perhaps the questioning on this line would be more appropriately directed to people in the Division of Planning who were responsible for this, carried it through the public hearings and then actually went and prepared this book, which was to reflect what the Board did, and that's not the function that I have responsibility for.

Q. What you're showing us is this book, the blue volume?

A. Yes.

Q. This book is the blue volume?

A. Yes.

Q. The white volume with the notes was actually the one adopted?

A. I can't say at this point because, again, it's not my responsibility.

Q. I just want to know, physically, they did not have the blue volume before them at that time?

A. This is a result of the action that they took. What was added, deleted from that, I don't know, and I don't know through what mechanisms these were done.

Q. All right, fine.

MR. HAZEL: If Your Honor please, at this time, I would like to introduce the white volume, which is the one actually adopted by the Board of Supervisors and from which the blue volume was printed.

MR. SYMANSKI: Objection, Your Honor. I don't think it's been established that that was what was adopted. Mr. Pammel just said what was adopted was something put before them with changes, and additions and deletions. So I don't think there's been any proof at all that that's what was adopted.

THE COURT: I think that could be received as what was presented to the Board as a restudy. That is established by Mr. Pammel's testimony. But, I don't think, at this point, we have evidence that that document is exactly what was adopted by the Board.

It will be received as Stipulation No. 25 as to authenticity and as the study as presented to the Board.

(The document referred to was marked Stipulation No. 25 and was received in evidence.)

BY MR. HAZEL:

Q. Now, Mr. Pammel, you have read references to the Board's comments regarding enabling legislation. Did there come a time when you assisted the Board in preparing various drafts of legislation that were submitted to the General Assembly regarding the timing of development?

A. I worked on this legislation only in a peripheral sense. Again, this was or most of it was drafted as a result of Mr. Marx's activity with the Zoning Procedures Study Committee, and as a consultant for the County, he carried it through.

Q. Mr. Pammel, I show you a document entitled Senate Bill No. 95. Did Mr. Marx draft that?

A. There were other ones --

Q. Well, I'm just asking you, Mr. Pammel, did Mr. Marx draft Senate Bill No. 95?

A. No; not on this one. This is a later version.

Q. Senate Bill 95 was, in fact, prepared in part through your efforts and activity, was it not?

A. Well, as I said, I have been involved in a position as a Staff member, I participate in a number of different things, and I was involved in this only in a peripheral sense.

Q. Senate Bill 95 was, in fact, furnished to Richmond twice by the Board of Supervisors, was it not?

A. I think that they have had several requests for this, yes.

Q. To your knowledge, has it been enacted into legislation?

A. Not to my knowledge.

MR. HAZEL: I would like to introduce that, Your Honor.

THE COURT: Any objections?

MR. SYMANSKI: Can I take a look at it, Your Honor?

THE COURT: Yes, sir; you have that right. Any objection?

MR. SYMANSKI: No, Your Honor.

THE COURT: Stipulation No. 26. Let me look at it for a minute.

MR. SYMANSKI: I'm stipulating as to authenticity.

THE COURT: All right, sir.

(The document referred to was marked Stipulation No. 26 and was received in evidence.)

BY MR. HAZEL:

Q. Now, Mr. Pammel, at the time the Pollack Restudy was adopted in September of 1969, you have stated that there were several zoning applications pending. I show you the minutes of the Board of September 10th, I believe it was, page 117, and ask if you would read the case designation of B-736, and what the rezoning requested was, and how many acres in the request?

A. B-735, in the name of Thomas A. Cary, Inc.,

rezoning for 306 acres of land generally located at the intersection --

Q. Would you step down here and put 736 on the area of that zoning with this orange pen?

Now, Mr. Pammel, read off the area designations of the request, please.

A. Do you want the acreages?

Q. Yes, I want the acreage, particularly, and what you were asking for it.

THE COURT: Did you say designation request or dedication request?

MR. HAZEL: Designations. The areas that were designated for change of zonings.

THE WITNESS: "20.79 acres to C-D."

BY MR. HAZEL:

Q. Now, Mr. Pammel, is that the 20 acres of C-D that I'm now pointing to, right under the B?

A. That's correct.

Q. All right; what's the next one?

A. "21.21 acres for RM-20."

Q. That's the apartment area right here?

A. That's correct. "Parcel 4, 9.62 acres for RT-10."

Q. Townhouses. That's the area that I'm

pointing to right under the B again, between there and the shopping center?

A. Right. Although I don't see parcel 1 here, I assume the rest of it was R-17 and R-12.5.

Q. Do you see any R-17 on the map, Mr. Pammel?

A. Wait a minute. The rezoning was from R-17. I guess there was an existing R-17.

Q. All of the zoning granted was R-12.5, was it not, other than apartment, townhouse and commercial?

A. That's correct.

THE COURT: What's the date of that action?

THE WITNESS: This was in 1969.

MR. HAZEL: September the 10th, Your Honor, I believe the minutes would reflect.

BY MR. HAZEL:

Q. Now, Mr. Pammel, that was the next action by the Board of Supervisors, the granting of that application, was it not, after the Pohick Restudy was adopted?

A. I'm trying to check the date on it just to be sure. My recollection was it was September 10th; that's correct.

Q. At the meeting of the September 10th, if

you want time to look at the minutes, was it not a fact that the Board of Supervisors adopted the Pohick Restudy and then adopted B-736 on that same day?

A. Yes. That was usually the procedure to adopt a comprehensive plan, and then to take up those cases that had been pending and awaiting a decision with respect to that.

Q. Now, Mr. Pammel, before you leave, within a short time after that, if not at the same meeting -- I point out to you a shopping-center site, B-749.

Would you put B-749 on there?

That shopping center was adopted, was it not?

A. That's correct.

Q. Now, Mr. Pammel, if I could have those minutes again, please. Also at that same meeting, a three-acre parcel, shown as C-3, was adopted, was it not, for commercial-office use, approximately 600 feet from the subject property, was it not?

A. I'm not sure of the date. Is that in the same minutes?

Q. That's the property of Rice and the Potomac District Assemblies of God, C-3, and I hand you the minutes, refreshing your recollection.

A. That's correct.

Q. All right, sir. Would you put C-3 up there?

THE COURT: Is that the little triangular area there, sir?

MR. HAZEL: Yes, sir.

BY MR. HAZEL:

Q. Now, Mr. Pammel, I ask you to read on page 124 of the minutes of September 10th all of this following in sequence after the adoption of the plan, the location of B-848, and would you put that on the map?

Would you read the last paragraph on page 124 of those minutes?

A. "Mr. Pammel said this land was in the Middle Branch of the Pohick, and a short distance to the north and west of the property is the area which was recently purchased by Levitt, which is something over 600 acres and which is already zoned for urban density; that the trunk sewer passes by the property and goes up Middle Branch to serve the Levitt tract, and it was for this reason the Staff recommended to the Board that this application

"be approved, because it is in an area, which, in the Staff opinion, was committed to development by virtue of that trunk sewer and by virtue of the fact that a short distance to the northwest there is zoning already approved by a previous Board for high density, and therefore a change of character has taken place that would impact this property and provide the justification for reclassification. And in the Staff opinion there would be a problem if the properties were not classified because he knew, himself, for having to appear in Circuit Court on previous occasions that property that has been zoned by one Board and rezoned back to its original classification by a subsequent Board has been overruled by the Courts and zoned "on the spot;"that he was saying this as a suggestion more than anything else, but when rezoned by the Courts, the Staff loses control of zoning at that point and is unable to get rights-of-way, park areas and/or school sites."

Q. Now, Mr. Pammel, was that property in the Middle Run, and is that property in the Middle Run?

A. Yes, it is.

Q. Was that property, on October the 15th, in fact, zoned to the R-12.5 category. I hand you the minutes of October the 15th if that refreshes your recollection.

A. Yes, it does.

Q. And was B-919 also zoned at the same time?

A. Yes, I believe so.

Q. Now, Mr. Pammel, in your comments to the Board and in your Staff Report, you mentioned two things: one was the sewer extention. Is that the same sewer that we're talking about that was extended through the Levitt property up and abuts or substantially abuts the subject property?

A. That's correct.

Q. Now, Mr. Pammel, when you talked about the change of character because the Levitt tract had been zoned, am I now pointing out the north end of this area, the north end of the zoned area of Middle Run? Is that the area you were talking about?

A. We were generally speaking of all of this

area, which here, in this case, is south of Sydenstricker and up to this line, which also -- although we didn't make specific reference to it -- included the fact that the Orange Hunt Estates property was also zoned.

Q. Now, Mr. Pammel, when you were recommending to the Board action on B-848 and B-919, the areas of Orange Hunt Estates and Levitt that were west of those two cases had merely been zoned. No development had occurred, had it?

A. That's correct.

Q. In fact, since the advent of those two zonings, the major portions of that tract have actually developed, have they not?

A. Well, no; you mean the major portions--

Q. Mr. Whitworth said there are 200 houses located on the lots in the vicinity of Caldwell.

A. This is a rather insignificant portion of the Levitt tract.

Q. You mean 200 lots is insignificant?

A. In terms of the 600 acres that they haven't developed, that's an insignificant amount. This represents perhaps, maybe, 40 or 50 percent of what Orange Hunt people have for development purposes.

Q. Now, Mr. Pammel, when you said a change in character had occurred 1969, in September, because of the Levitt zoning, and I would assume you would have had to include the B-736, the B-749 and the C-3 zonings; is that correct?

A. Well, pertaining to the character in the immediate area, no, we did not. We were talking about the activities in close vicinity of the subject property.

Q. Has the B-736 area substantially developed since 1969?

A. Yes, it has.

Q. All of that area of B-736 has sewer and is practically finished its development, has it not?

A. I would say that it practically has, yes.

Q. As well as 200 of the lots on the Levitt-Orange Hunt area?

A. Well, I don't know for a fact how many lots are in the Levitt --

Q. Could there be 200?

A. There are 200; maybe more than 200.

Q. All right. Now, has also not the area of B-848 and B-919, themselves, been developed?

A. Yes, they have.

Q. All of this actual development has occurred since 1969; is that correct?

A. That's correct.

Q. Does that represent any change of character in the area which would create some different circumstances on the Williams-Van Metre tract?

A. I don't think it alters our original view that development still has to proceed in a timely fashion --

Q. Well, I just asked if it represented any change of character?

A. Well, not out of character with the plan, because this was in the development stage. Sure, you can argue that any development in an area constitutes a change; but, if you're talking about one watershed as opposed to another, it's programmed here and was a position of retarding development in this area until the appropriate time.

Q. Well, the action of B-848 and B-919 didn't retard any development in the Middle Run, did it?

A. It didn't, and there was a very good reason for that.

Q. Now, Mr. Pammel, when the shopping centers

zoned in B-736 and B-749 were zoned in 1969, did the plans then provide that the owners and developers of those centers could rely on the County's Master Plan; that at the latest, in 1975, the Middle Run would be available for development?

A. I think that the owners read the document. They knew what was contained in the document. But, like anything else, there's no way that anybody, you or I, can project into the future five years or ten years and say what was proposed then is going to be a fact of life at that point in time.

Q. Mr. Pammel, would it not have been reasonable for the owners of those two parcels in 1969 to rely upon the County's plan, that the areas of the two tracts today would be developed, at least, in 1975 and after framework?

A. If you take that --

Q. Well, is it reasonable to --

A. -- as pure fact -- I mean, I think all --

Q. Let me ask you this: is it reasonable --

MR. SYMANSKI: Your Honor, may the witness finish his answer?

MR. HAZEL: I strike the question and ask another.

THE COURT: Objection sustained. Let him finish the first one.

MR. HAZEL: Go ahead, Mr. Pammel.

THE WITNESS: I think all of us, for planning for the future, have to take certain facts in mind, and we know that the future is full of questions and there's a lack of certainty as to what's going to happen. As long as you predicate your planning and what you do on that basis, fine. I think all of us do that. We don't take a written document and say: okay, this said 1975, and that's what's going to happen; because we know that it's subject to change.

BY MR. HAZEL:

Q. Mr. Pammel, is it reasonable to rely upon Fairfax County Master Plans?

A. Generally speaking, it is; of course, coincident with the County's ability, and it has an obligation to do so, to provide public facilities commensurate with the growth that has taken place.

Q. What has the County done to provide public facilities in the Middle Run area by 1975?

A. Right now, the County is squeezed in its ability to provide public facilities every place the

public facilities are in demand. It's causing rather a few problems.

Q. Mr. Pammel, have you any studies or, to your knowledge, have any studies been done since 1969 to determine the cost of providing public facilities to the Williams-Van Metre tract?

A. I don't know if there are any specific studies done in this area. I can't say there have been or haven't. To go one step further on that question, the Staff, I know, with each bond referendum proposed, have done detailed studies within these areas, and based on the projections that they have made, they have come up with a determination where schools are most needed and include that in their referendum package.

Q. Did you have any specific studies with regard to the Williams-Van Metre tract or the Middle Run in your possession at any time when you made any of the recommendations related to zoning that we have talked about today or the specific recommendations on Williams-Van Metre?

A. As far as public facilities, the information we had was that most of the facilities were not available,

and it would take a considerable time to make them available.

Q. Mr. Pammel, I ask you to read on page 404 of the minutes of the Board of Supervisors on October 15, 1969, the third paragraph.

A. "Supervisor Bowman then called attention to item 4 of page 2 of the Staff Report wherein it says --

Q. Pardon me. Would you read that just a little slower so we can hear it?

A. " -- wherein it says there is insufficient data on the comparative cost of providing public facilities in the Middle Run as opposed to elsewhere in the county, if it is assumed that some growth in population is to take place. He said he knew of no one who either assumes that no growth will take place or who argues that no growth is desirable, and his question is: does not the Staff memorandum response on this particular point miss the whole issue."

Q. Now, Mr. Pammel, in your file, do you have the file on the Williams' case with you?

A. Yes, I do.

Q. What activities and actions did the Staff take to defer or delay the hearing of the Williams' case, if any?

A. I think it was, again, as in any other case where the Board had not acted on specific policies, like in this particular area, that the Staff would suggest that the matter come up at a point in time when the Board has taken a final action on a plan or policy. In this case, the policy at Middle Run.

Q. At what point in time, just give me a year, at what point in time today or in November of 1972 was the point in time at which either the Staff or the Board of Supervisors told Mr. Williams it was appropriate for his case to come up?

A. I think that was determined --

Q. Just give me the date.

A. Well, it was approximately March of last year when the matter was taken --

Q. No, no. At what time in either the Staff's schedule or the Board of Supervisors' schedule does the County anticipate it would be time to zone the Williams-Van Metre property?

A. Oh, what do we anticipate?

Q. Right. Do you have a date?

A. We don't have a date in this case because, again, we're relying on the comprehensive plan which, in effect, says post-1975.

Q. In effect, Mr. Pammel, or, in fact, you told Mr. Williams in your Staff Report that there was no foreseeable date when his property could expect to be rezoned; isn't that a fact?

A. If that's in there, I think this simply bears out the point that I said earlier. There's no way that you can look into that crystal ball more than just a year, maybe a little bit more, in advance to determine when it would be appropriate to do something; particularly not within the factors that are in play in this particular market and in this particular area, and the other constraints that are involved in the whole field of land development. It's almost impossible to predict with any definity; and on the other hand, too, I think maybe it's the responsibility of the individual to keep abreast of activities that are going on.

Q. You can't give us anything, any date on which

the County would anticipate rezoning of this to R-12.5 or R-17?

A. Mr. Hazel, all I could say is the blue book expresses a policy. It says: post-1975. And in the absence of there being anything else, and there could well be -- next year the Board could make a change in that plan. But, right now, today, governed by the policies that are expressed in that report, I would have to say post-1975.

Q. Now, Mr. Pammel, would you look in your Williams' file and find a letter from Mr. Larsen of your Staff regarding the rezoning of the Williams case or the scheduling of the hearing on the Williams case?

Can I see that, please?

MR. HAZEL: If Your Honor please, I would like to introduce --

Is that the letter that was sent to Mr. Williams?

THE WITNESS: That's the only one that we have in our files.

MR. HAZEL: If Your Honor please, I'd like to introduce this into evidence.

THE COURT: It's the only one he has. Why

don't you make a photostatic copy of it, and we'll offer that?

MR. HAZEL: Do you want to make it before we offer it, or could we go ahead and introduce it?

THE COURT: Let me read it, and then you can make a copy later. If there's no objection, that will be Stipulation No. 27.

BY MR. HAZEL:

Q. Mr. Pammel, I show you Stipulated Exhibit 13 on case C-567 and ask if you would go to the board and mark C-567 on the map, Stipulated 18?

Now, was that granted for RTC-5 development in February of this year?

A. Yes, it was.

Q. I'd like to ask you to read the first two lines of the last paragraph of the Staff Report conclusions and findings.

A. "The problem with respect to public facilities are on their way to being solved. Within the next few years, the sewage plant, the road network and the schools serving this site are slated to be upgraded sufficiently to carry this and other developments.

"However, as discussed in the STAFF COMMENTS section of this report and as pointed out in the Staff Report on B-891, the previous rezoning case on this property, the density in order to confrom to the Pohick polices plan must be upgraded from the higher --"

THE COURT: What was the date of that, sir?

THE WITNESS: February 5th of this year.

BY MR. HAZEL:

Q. In other words, that was approximately 40 days after the turn-down by the Board of the Williams-Van Metre case; is that correct?

A. Approximately.

THE COURT: What is the density in RTC-10?

THE WITNESS: Five units to the acre.

BY MR. HAZEL:

Q. Now, Mr. Pammel, those same public facilities that serve C-567, many of them serve the subject tracts, do they not?

A. I'd say generally speaking there is an overlapping of some of the facilities.

Q. And the subject tract is at one point less than 600 feet from the C-567 case?

A. That's correct.

Q. Now, Mr. Pammel, I show you the Staff Report in evidence that is Stipulated Exhibit 15, the Staff Report in B-898, the Jeffrey Sneider case. Are you familiar with that case, Mr. Pammel?

A. Yes, I am.

Q. Now, would you go to the board, one final time, and mark on there B-898?

And when was that case granted to its density of R-12.5?

A. July 2nd of this year.

Q. Now, is that in the Middle Run, Mr. Pammel?

A. Yes, it is.

Q. And what density is R-12.5?

A. On a conventional development, 2.7; on a cluster, 2.9 dwelling units to the acre.

Q. On Master Plans you generally equate 2.5 with R-12.5, don't you?

A. Generally speaking, that's correct.

Q. Just as you equate R-17 with 2.0?

A. That's correct.

Q. Now, Mr. Pammel, was B-898 heard by the Board of Supervisors the first time in September of 1969?

I'll put it another way. When was the application filed?

A. The application was filed in 1968, July of 1968.

Q. How many acres in B-898?

A. Sixty-four and a half acres. I'm not sure when it first came up. The only dates that are on here are September 30th of last year.

Q. And that had been deferred right along until it was granted by the Board two weeks ago?

A. Wait one minute. I've got that. There was a hearing before the Planning Commission in 1969. Then a hearing set before the Board in July of '69, deferred until October the 16th of '69, and then deferred further.

THE COURT: Until '73?

THE WITNESS: Last time it came up, it came up before the Board on the 30th of September of '72. It was deferred until the 29th of May, 1973, and further deferred until the 2nd of July. It was actually a public hearing by the Board on September 30th of '72. And they deferred action for, I believe, not to exceed eight months, which would have brought it up to the May 29th hearing date.

The reason for that was the Board had anticipated taking action on the Middle Run policies. They have not taken the action. Their scheduled hearing for the Middle Run policies was July 2. They did hold the hearing on the Middle Run policies, and they subsequently took action on this case.

BY MR. HAZEL:

Q. Now, Mr. Pammel, B-898 and the Williams case were heard for public hearing on the same day, were they not?

A. Yes, I believe so.

Q. In September of '72?

A. That's correct.

Q. Williams was denied 60 days later, and B-898 some eight months later was granted; is that correct?

A. That's correct. One of these cases was heard September and, I believe, one in November, or one in October and one in November.

Q. Now, Mr. Pammel, is there adequate water service to the Van Metre-Williams tract for either R-12.5 or R-17?

A. Yes. Water offers no problem.

Q. And when the trunk sewer capacity is available, I believe you heard Mr. Liedl testify that there would be adequate treatment capacity to service these tracts; is that correct?

A. My recollection was that Mr. Liedl did make a statement something to that effect.

Q. And, Mr. Pammel, the trunk-sewer system that is abutting the eastern property line of these tracts is sufficient as a collector system to remove the effluent from these tracts under those densities; is it not?

A. Yes, the trunk-line size is.

Q. And, Mr. Pammel, the Staff Report in the Van Metre case specifically states, does it not, that adequate fire service is available to Van Metre? You can refer to it, if you would.

Refreshing your recollection, Mr. Pammel, I show you Stipulated Exhibit 1, the report of the Fire Service, dated December 12th, and ask if you would read the last line.

A. "In summary, it is the feeling of the Fire and Rescue Services that service by existing or proposed Fire and Rescue facilities

"for the subject property is adequate."

Q. Now, Mr. Pammel, the library at Kings Park is approximately three miles away, and it is a new county facility, is it not?

A. That's correct.

Q. Mr. Pammel, the largest single park in the Fairfax County system is Burke Lake Park, is it not?

A. In close proximity of the property.

Q. I show you the aerial photograph which is in evidence and which is Exhibit 16 and ask if you can identify the Burke Lake Park as the green area almost immediately across the road from the subject facility?

A. That's correct.

Q. Does that not offer major park facilities almost within walking distance of the subject properties?

A. Yes; although that segment has not developed. Ultimately, it will be.

Q. But the park is there, is it not?

A. Yes.

Q. Now, Mr. Pammel, is there any basis upon which you could suggest that there is no way the County could provide adequate police protection to the subject properties?

A. Well, I think it's,basically, probably as adequate as many other areas of the county. As the county expands, obviously with more people you have to expand your police force so that it has a better surveillance of these areas, and that would have to be done here.

Q. That would merely require the addition of some more policemen; is that correct?

A. That's correct; and eventually, perhaps, having a substation within this area of the county, maybe Kings Park or some place in that vicinity,to be responsible for this areaof the county.

Q. All right. Would the zoning of these two cases precipitate the requirement of a Kings Park substation?

A. No.

Q. Now, Mr. Pammel, with regard to roads that lead into this area of the county, since 1969, the Beltway interchange at Braddock Road and the Beltway has been improved to a four-leaf clover; is that correct?

A. Yes, it has.

Q. Braddock Road has been extended approximately three and a half miles west into the Pohick watershed

at Guinea Road, has it not?

A. It has.

Q. Rolling Road has been improved in a north-south access from Braddock to Keene Mill, is that correct?

A. Yes, it has. Well, not in the total.

Q. From Keene Mill to Braddock has not been totally improved?

A. No. Four-lane divided from the Keene Mill-Rolling intersection to the railroad, with a new bridge, and then you have basically the old line of the Rolling Road adjacent to the Kings Park West subdivision with the improvements made on one side only by the developer of the Kings Park West development.

Q. Mr. Pammel, in 1969, the real restrictions on Rolling Road were the bridge at the Southern Railroad and the area from the railroad to Keene Mill, were they not?

A. That's correct.

Q. And they have been improved? A new bridge has been constructed at the railroad overpass, and Rolling Road has been four-laned from the railroad to Keene Mill; is that correct?

A. That's correct.

Q. The area or the road improvements north to Braddock are not a difficulty as far as traffic restriction, are they, Mr. Pammel?

A. No, there's no restriction. The major restriction now and still is the east-west movement of traffic whether it's by Keene Mill in Springfield or whether it's Braddock Road. Because both of those facilities, even though they have been expanded and improved are today, right now as of this point in time, operating at or above capacity.

Q. Many of the primary arteries of Fairfax operate at or above capacity, do they not, Mr. Pammel?

A. Yes.

Q. Mr. Pammel, Keene Mill Road east from its intersection with Rolling Road to Route 95 has been improved in the last four and a half years, has it not?

A. Yes, it has.

Q. Mr. Pammel, there is an improvement now underway on Keene Mill Road from Rolling Road out to the vicinity of the subject property at Five Forks, is there not?

A. Well, it's a two-phase program. The original, initial contract is from Rolling Road to Huntsman

Boulevard, which is one lane improved -- well, I mean it's a two-lane facility, improved facility, and then the second phase of the contract, as I understand it, is a continuation of that to Five Forks and making it four-lane divided.

Q. And that's in process now, is it not?

A. I believe it is about ready to get underway.

MR. HAZEL: I have no further questions of this witness.

THE COURT: Let's break for lunch. Please be back about 2:15, would you?

(Whereupon, the luncheon recess was taken.)

AFTERNOON SESSION

MR. HAZEL: If Your Honor please, I'd like to introduce the Xeroxed copy of the exhibit, Mr. Pammel's letter.

THE COURT: That's Stipulation No. 27. S marked.

(The document referred to was marked Stipulation No. 27 and was introduced into evidence.)

THE COURT: All right, sir.

MR. HAZEL: I had concluded with this witness.

THE COURT: All right.

CROSS EXAMINATION

BY MR. SYMANSKI:

Q. Mr. Pammel, it was mentioned that the old Pohick plan had the subject property at 2.5 units to the acre. What is the maximum density under the R-12.5 zoning category that a developer can accomplish under R-12.5?

A. 2.9,if a cluster zoning.

Q. I refer you to page 72 of the Pohick Restudy, Exhibit 11, the paragraph there under Density.

Is it true, under this paragraph, that the densities in the Pohick plan assigned to each neighborhood were not arbitrarily arrived at, but there was some study done to arrive at these figures?

A. That is correct.

Q. Now, under this paragraph, Neighborhoods 12 and 13, which we are considering here, what was one of the criteria used to assign these density figures or neighborhood populations?

A. Basically, a relief map of the entire watershed was studied, and also the soil analysis of the General County Soil Map was made, and with reference particularly to 12 and 13, it was found that there was a soil condition which related to development potential, and the topography in the area was relatively steep in a number of areas.

Therefore, based on that, and as the density statement relates the density was lowered in Neighborhoods 12, 13, 18 and 19 in recognition of these conditions.

Q. I believe it was stated in direct examination, or as a result of direct examination, that the other land in these neighborhoods, or specifically

Neighborhood 12, for example, was not developed, that the proposal here was not a result in the Neighborhood 12 exceeding the population figures assigned to it in the Pohick Restudy.

Let's reverse that. If the other areas were developed, and this property in question was developed at the proposal, R-12.5, would the neighborhood figures be exceeded?

A. Yes, in all likelihood they probably would be exceeded.

Q. With regard to the Levin case, C-567, was it the Staff's position in that case that public facilities were adequate and available at the time of the rezoning proposal?

A. No. We did not in the Staff Report say that public facilities were adequate. I think the terminology that we used was that public facilities were becoming adequate. Of course, this, like any other statement, would mean that over a period of time if all planning or programs were underway to relieve the problem, whatever it might be, then your situation would be one which the public facility in time would become adequate. And that's all we were stating in

this case, that they were becoming adequate.

I think one of the significant features with Levin was that there is a highway program which was alluded to by Mr. Hazel in his questions with respect to Keene Mill Road. Now, one of the critical factors in 567 was that a substantial amount of the necessary right-of-way to accommodate this development was being provided by the developers in the Levin tract, and also they were making a sizeable contribution for the proposed Pohick access road, I believe it's referred to now, which is the focal point or the center of that particular community center.

In fact, the Cary property, which is referred to as B-736, lies to the west of this Pohick access road, and the Levin property to the east. And so the Pohick access road runs between the two properties.

So the Levin interest in that case was making approximately one-third of their site available for these necessary public improvements. And, of course, highways are one of the factors that we have indicated in the report as a problem, or the highway access is a problem within the section of the Pohick area. With the improvement of Keene Mill Road, that

will bring the Levin tract, you might say, very good access. In other words, they will be right at the point where the improvements are being made; whereas, the parcels under consideration today are somewhat removed from these improvements. So the Levin property definitely benefits from a situation where there will be much improved road access.

That's, in part, what we were talking about when we said public facilities would, or were coming -- adequate. It will take time for all of these facilities to be adequate, and we, in no way, shape, or form indicated that everything was fine for Levin, because it isn't. There are deficiencies, and it will take time to correct some of them.

Q. That is in the Main Branch of the Pohick, is it not?

A. Yes, it is.

Q. All right. With regard to these three cases, B-898, B-848 and B-919, will you explain, just with regard to those cases, for the time being, the Staff's position or the Staff's thinking, giving the time of these zonings and basically what was the Staff's thinking on those zoning cases?

A. The Staff's thinking in this instance departed from the policies that were expressed at that point in time, which was 1969, with respect to the Pohick plans, because the Pohick plan did specifically state that the Middle Branch would be reserved for development at a later point in time, giving the priority to the Main Branch.

These cases, particularly 919 and 848, both being in the Middle Run, and not withstanding that, the Staff did recommend in favor, because we took basically the position that sewer had been brought up through this area and, in fact, actually traversed the two properties in question to the Levitt and the Orange Hunt Estates entrance. And, it appeared to us rather awkward to say: okay, Levitt and Orange Hunt, you can proceed with development and housing; but, you people downstream, and you whose property this sewer traverses, you cannot develop. It just didn't seem reasonable in the Staff's way of thinking that this should be the case.

Therefore, it was the Staff's thinking that these were, in effect, committed areas and should proceed towards development and, in fact, pretty much,

with the contract extending the sewer up there, this had been sanctioned by the Board, by the Board in office at that time.

Now, the current Board looks at this and some of these other policies with some question; but, nonetheless, it was an accepted fact.

Q. Let me interrupt you for a moment. At the time of 898 and 848 -- excuse me. B-919 and 848, these two. They were in 1969, is that correct?

A. That's correct.

Q. What was the zoning already in that area at the time of the consideration of these cases?

A. Okay. At the time of the consideration of those cases, you have basically the 600-plus acres, about 660 acres, of the Caldwell tract, which is now owned by the Levitt interest --

Q. Is that this?

A. That's generally that area extending from approximately Sydenstricker all the way through to Pohick Road. Well, just take a north-east and south-west line and run it through there, adjacent to 898 and that would be the Levitt interest.

Q. Right here?

A. No. This way a little bit.

Q. Well, maybe you should point it out.

A. The Levitt interest would begin approximately at this point. In fact, you can see a tone differentation on the map here. Everything to the south of that, extending all the way through down to Pohick Road is the 660 acres of the Caldwell tract, now owned by Levitt and being developed by Levitt.

This area that I'm now pointing to is a rather elongated strip, extending from Sydenstricker on the north, again, to Pohick Road, on the south; generally abutting an easement, the VEPCO power easement, which is on the west. That is the Orange Hunt Estates project extension.

Q. So, in fact, at the time of the consideration of these two parcels in '69, zoning had already taken -- rezoning to a higher density had already taken place, than RE-1, in a major portion of this yellow?

A. That's right. In fact, it's probably significant to note that the Orange Hunt Estates zoning took place, my recollection was in the Fall or late Summer of 1966. It immediately, almost immediately preceded the agreement that was entered into by the

County and the Caldwell-Orange Hunt interest to extend the sewer line up the Middle Run to serve their properties. So, you might say that the initial development or the initial activity in the Middle Run took place in 1966.

And this was at a time that the Board -- well, nobody, no official body of the County had given or was giving any serious consideration as to development, methods of controlling development, timing, trying to get the development into its proper perspective and proper phasing with respect to public facilities.

It was just sort of a hit-and-miss type of a operation where sewer was available or where it could be extended and it was done; and little thought other than that given to the ramifications or the implications of this growth.

This really caught up to the County in '70, '71, when the real ramifications of all of these actions in preceding years began to come home, and there was a great deal of concern as to where the County was going, and how it was going to provide public facilities.

Our bond counsel in Richmond was raising very serious questions with the rating, the financial

rating of the County.

MR. HAZEL: If Your Honor please, if there's going to be some basis of allegation that bond counsel is saying that there is a relation between a bond rating and these two zoning cases, I would think that we either ought to have some official documentation or bond counsel present, not just Mr. Pammel saying this.

THE COURT: Hearsay. Objection sustained.

BY MR. SYMANSKI:

Q. Would you proceed with what the Staff's thinking was on those two, and then the third one?

A. Well, we concluded with B-848 and 919 that it was reasonable for growth to be granted to these properties since they were downstream to where most of the activity had been approved, and we took the position, generally, that it was committed.

We do not, however, take that position upstream. We feel upstream is a situation where the Board has to sanction or approve the extension of major trunk lines to service those areas, and it's the Board's responsibility to do this within the context of having available facilities to serve that area; and also keeping in mind that its commitments in other areas of

the Pohick where it also has to provide public facilities that might and probably well are on a more urgent basis than this particular area. So, basically, that is our point of view.

Q. On B-898, which is nearer to the present -- is that correct?

A. That's correct; one just recently granted.

Q. What was the Staff's position on that, in your thinking?

A. The Staff position on that was generally, although it occurred at a later date, was generally similar to the other cases. It was in an area that was basically committed for development. Sewer also was on the periphery of this property to get to the Levitt interest, and there was a significant change in character here to approve this case.

And, of course, the Board subsequently has taken up the Middle Run policies and did agree that Neighborhood 14 should be opened and included in the inventory for developable ground within the Pohick. And, of course, all three of these cases are within that Neighborhood 14.

So, Neighborhood 14 now is a neighborhood

that's been opened for development by Board policy, and I think it reflects a situation that basically was one which many of us knew to exist some period of time ago, and that is development really has been committed there for a number of years.

Q. Well, is it fair to say that these three rezonings, at least from your thinking of the Staff's position, in effect, recognized the realities of prior zoning?

A. That's right, they did.

MR. SYMANSKI: No further questions.

REDIRECT EXAMINATION

BY MR. HAZEL:

Q. Mr. Pammel, the 660 acres that you refer to as the Caldwell-Levitt tract was zoned, in part, five-unit townhouses and, in part, R-17, was it not?

A. That's correct.

Q. The total densities zoned on 660 acres was in excess of an R-12.5 density of 2.5 units, was it not? In other words, if you take five units here and two units there, you come up with 12.5 or better, do you not?

A. My only recollection on that, Mr. Hazel, was

that when we reviewed the plan, of course, we didn't have PDH. We were talking in terms of the Master Plan designation, which at that point in time was 2.5 under the '67 Pohick plan, and that my recollection of this that I can recall now was a 2.5. They did take, as you will recognize in this case--they made a 40-acre commitment for a school, a high school on the south side of Pohick Road. They have taken density credit for that.

There is a significant amount of area, 50-plus acres, probably more than that, in the impoundment site, which is right in the center, which they gave to the County and then provided a park area of some 20 or 30 acres surrounding that.

So I think, altogether, I think it came out to be some 300 acres, give or take a few, that were committed to public use, and the balance, 300 acres, was for development purposes.

Q. And on the total 660 acres, they got R-12.5 or slightly better density.

A. They have about two and a half dwelling units to the acre.

Q. All I'm asking you is, they got R-12.5 density, didn't they?

A. I'd say, yes.

THE COURT: What's an impoundment area?

THE WITNESS: This is under the Public Law 566, where the County has built several of these facilities throughout the Pohick watershed, basically to impound water during periods of high flow.

THE COURT: Temporary damming area?

THE WITNESS: That's correct, yes, sir.

THE COURT: All right.

BY MR. HAZEL:

Q. And that's the area here, Mr. Pammel?

A. That is correct.

Q. Now, Mr. Pammel, there's about 8,000 feet along this contiguous property line between Caldwell and Orange Hunt and the subject property. And all of the area east of that is zoned to the 2.5 density, isn't it? Just answer me.

A. Well, not 2.5, because Orange Hunt Estates is R-17.

Q. When you add up the density in this area, it comes up to 2.5 density all the way down.

A. Orange Hunt Estates, which is the most contiguous property, is developed at a lower density.

Right now, their density is less than 2.5. It's very close to 2.2, overall.

Q. How about the RT-10 on 25 acres, gone up with ten units an acre?

A. The RT-10 was included in part of the area that the County -- it was a trade-off. As you will see, there's a swath of right-of-way running through that property, which is the lower link of the Pohick access road.

Their proposal to the County was that they would provide to the County, at no charge, that right-of-way, plus a 14-acre elementary school site, which is to the south in Neighborhood 13, and for that consideration, to bring them up to the density that they otherwise would have gotten with the R-17 zoning, they needed RT-10 in that location, to the north on Sydenstricker, and a piece of RT-10 along Pohick Road to the south. That particular part of the application has not been decided.

Q. And with that, this is a 2.5 area, essentially; all the yellow area is zoned, isn't it?

A. It's under 2.5 because they still -- the Orange Hunt Estates is still at a density under 2.5,

even with the RT-10.

Q. Now, Mr. Pammel, where is the procedure in the zoning code, in the Zoning Ordinances, for trade-offs for zoning?

A. Mr. Hazel, there is no procedure. These are just part of the negotiations that take place every day of the week.

Q. All right. Are there any trade-offs that Van Metre and Williams could offer the County to induce them to zone this property?

A. Well, I don't know whether there are any public facilities that are on their property like the Pohick access road; and, of course, too, we were given there with a situation that existed -- I mean, if you look at this thing in the best posture --

Q. Is it correct to infer --

MR. SYMANSKI: Can he finish the answer?

MR. HAZEL: Pardon me. I will let the answer be finished.

THE WITNESS: If you look at this thing, hopefully, in the best posture, both worlds would have been had that not been zoned. Then we wouldn't be in a problem of --

BY MR. HAZEL:

Q. Well, Mr. Pammel, under the County's present policy, if the entire Middle Run and the entire Main Stem had not been zoned, that policy would be better served, would it not?

A. Well, I sometimes think we would all be on an even keel, that we would, at least, be able to do a much better job of planning. It's awful hard sometimes to overcome the mistakes of the past, but you have to work with them the best you can.

Q. Well, Mr. Pammel, let me see if I understand. Are all these zonings that you have shown on here, as well as all this developed land in the Middle Run, inferred by you to be mistakes of the past?

A. I think some of them are the result of improper planning for the future. I think they happened and occurred without a recognition of the implications of the action. A lot of things happen that way.

Q. Mr. Pammel, do I also infer that the happenstance of an expressway and the requirement for dedication of impoundment gave these 800 acres a trade-off so they could buy some zonings, that Williams and

Van Metre did not have that potential?

A. No. I think the trade-off, Mr. Hazel, was very simple. The County was presented with an alternative of we subdivide the area that's in this right-of-way that you want for a road, or we need some zoning to compensate for it. Now, there is nothing, there is nothing that the County can do to prevent them from submitting a subdivision plat and getting it approved for that area, which is in the right-of-way, and then we've lost the prospects of that particular much-needed facility forever.

Q. Mr. Pammel, let me be sure I understand. The fact that the County apparently doesn't need any right-of-way on Williams and Van Metre deprives them of the trading stamps necessary to negotiate with the County for zoning; isn't that what you're saying?

A. The trading stamps have nothing to do with that. That is the situation where it's up to the Board to determine whether the trunk sewer should be extended into this area to allow further development before the County is able to provide a satisfactory range ~~of public facilities.~~ And the question is not only there. It's the question of the lower development

that we permit, the thinner we stretch our ability to provide the services where they're needed in the county; and some place it's all got to come to a stop to allow the County the opportunity to get itself together to get a handle on the whole process and be able then in a logical fashion to program these facilities throughout the entire county and put everybody in a proper time frame.

Q. I'm putting a purple X on the property line between the Orange Hunt Estates property and the Van Metre property. That is, in effect, the location of the sanitary sewer trunk, is it not?

A. Approximately. I'm not sure exactly where it's located.

Q. The sewer extends to that point, does it not?

A. I'm not sure exactly where it extends.

Q. It's 50 feet from the Van Metre property line, right? It was built there to service Van Metre and Williams, was it not?

A. As I say, I'm not certain where the line is. I can't answer those questions, other than it was brought --

Q. You have no question that sanitary sewer service is immediately available as far as trunk capacity to Williams and Van Metre?

A. The trunk capacity is there. It's just a matter of extending the sewer.

Q. Mr. Pammel, you made the statement that it is reasonable for growth to be granted to these properties, referring to those three zoning cases. What is the basis for your inference that there is a power in the County to grant growth to a property?

A. I'm not sure that I made --

Q. Those were your exact words, that it was reasonable for growth to be granted to these three properties.

A. Well, in effect, I think the point I was making was that those properties were committed for development. They were downstream from major decisions that had been made previously, and the trunk sewer went through the properties. Easements were actually obtained from those property owners to bring the trunk sewer there, and therefore --

Q. Mr. Pammel, is there any significance --

MR. SYMANSKI: Can he finish the answer?

BY MR. HAZEL:

Q. What is your basis for suggesting that you or Fairfax County have authority to grant growth to a property?

A. Well, I think that it would be --

Q. I just asked for the basis. Not what you think; but what is your basis?

A. The basis is, I just think it would be difficult for the County to allow zoning which results in growth to areas where the County is not able to provide the public facilities when the people are going to be there. Because the people will demand the services, and in the final analysis it's those people, the new occupants of the county, that get shortchanged. Because, they're the ones who have to live with the deficiencies and, as was said earlier today, their children might be the children that are bused seven miles to --

Q. Mr. Pammel, again I ask you, what is your basis for suggesting that you have the power to grant growth to a property?

A. We don't have the power. I mean, I as a Staff member. I think the Board of Supervisors has

the legislative right to determine areas, and certainly, which areas should grow.

Q. Can you point to the basis of the Board's power to grant growth?

A. They have the power as set forth in the Ordinance to grant or deny amendments --

Q. Zoning Ordinance. Where does it mention growth?

A. Well, doesn't zoning result in growth?

Q. I didn't ask you that. I asked you where the power to grant growth was.

Now, Mr. Pammel, what is the difference between a connection to a sewer line, at this point, and a connection to a sewer line at this point, and I'm now pointing to the southern boundary of B-898? It's the same sewer trunk we're talking about, isn't it?

A. Same sewer trunk. One is downstream. The sewer has already been brought through the properties to serve a property upstream.

Q. What you're saying is that you felt the County could defend legally somewhat better their position where the pipe was on the property, or pardon me, was off the property than it could where the pipe

might actually be on the property; is that correct?

A. I think the County definitely -- the Board has the power to grant, approve extensions of major trunk sewers.

Q. All right. Now, Mr. Pammel, was the sewer on the property when B-749 was granted?

A. 749, the shopping center?

Q. Right.

A. Is that '69?

Q. Yes.

A. I would say that it was, had been built.

Q. You mean sewer was on the property at B-749?

A. Oh, no. Wait a minute. I thought you were talking about sewer down --

Q. I'm asking you was sewer on this property?

A. No. Sewer had to be brought in to serve those properties.

Q. Sewer had to be brought in to serve B-736, didn't it?

A. That's right.

Q. Sewer had to be brought in to serve C-567?

A. That's right.

Q. Sewer had to be brought in to serve 848 and

919, didn't it?

A. Those were collectors or laterals off of the main trunk line, which was already brought up the Main Branch of the Pohick and had extended actually beyond and north of these properties.

Q. But sewer was not physically at any of those properties?

A. Well, they had to bring the laterals is all.

Q. What's the difference, Mr. Pammel, between connecting the sewer at the point on the eastern property line here and any of those cases?

A. Because that would be an extension of the trunk line.

MR. HAZEL: I have no further questions.

RECROSS EXAMINATION

BY MR. SYMANSKI:

Q. Mr. Pammel, isn't growth one of the main things that the planning and zoning process is all about? Isn't that what we're planning for? Growth?

A. That's correct.

Q. Again, what was the date of this zoning in here, approximately?

A. The Caldwell tract was rezoned in 1967.

MR. SYMANSKI: No further questions.

MR. HAZEL: No questions.

THE COURT: You may step down, sir.

(Witness steps aside.)

THE COURT: Call your next witness.

MR. HAZEL: I'd like to call Mr. Wills, please, sir.

Whereupon,

J. EUGENE WILLS

having been duly sworn, was examined and testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. HAZEL:

Q. Would you state your name, please, sir?

A. J. Eugene Wills.

Q. Mr. Wills, what is your occupation?

A. Builder-developer.

Q. And are you involved in Wills & Van Metre, a development company?

A. Yes; owner and director.

Q. Is your associate in that the Mr. Van Metre involved in Van Metre & Associates?

A. Yes, he is.

Q. Do you develop property together, Mr. Wills?

A. Yes, we do.

Q. Mr. Wills, how long have you been developing properties in Fairfax County?

A. Approximately 15 years.

Q. And what types of properties do you develop?

A. Residential, single-family, apartments, and we're involved in commercial.

Q. Now, Mr. Wills, you and your organization are involved in the development of the property described as the Van Metre property, are you not?

A. Yes.

Q. Mr. Wills, what, in your experience, is the relation, if any, between the lot size and price of housing?

A. The more land, just by sheer logic, is going to cost more, and the lots are going to be more expensive.

Q. You mean the lower density of zoning, the more expensive the house?

A. The lower density?

Q. Right.

A. The least expensive -- no. The more expensive.

Q. The lower the density, the more expensive the house?

A. Right; as a general rule of thumb, yes.

Q. What type of house, by price-range characterization, do you specialize in? And let me explain that by suggesting, do you specialize in high-price single-family, medium-price single-family or lower-price single-family?

MR. SYMANSKI: Objection; unless we know what low means and high means.

THE COURT: All right, sir. It's changing every month.

BY MR. HAZEL:

Q. Would you tell His Honor what price range you try to specialize in?

A. Historically, we try to stay in the lower-price range.

Q. As evidenced by what prices in today's market?

A. In the lower-upper 30's, lower 40's and 50's, although we do have houses that go above.

Q. Now, Mr. Wills, in today's market, is there a relation between the price of the house you

sell and the zoning category in which it's constructed?

A. Yes.

Q. And what is that relation?

A. If I may use a for-instance, if you take 100 acres, and you have a RE-1 zoning and that your highest density RE-1 zoning is 2.92, that is a theoretical possible of 92 lots; whereas, if you have R-12.5, there is a theoretical possible of 2.9, 2.7 or 2.5; on 100 acres, you're anywhere from 150 to 290 lots.

Q. And are you selling houses today in both the RE-1 and the R-12.5 area?

A. Yes, we are.

Q. And what are your R-12.5 prices?

A. We are in the 50's.

Q. And what are your RE-1 prices?

A. We go $79,000, $80,000.

Q. Now, Mr. Wills, do you anticipate the development of the 200-plus acres in the Van Metre tract on the plot 18?

A. Do I anticipate it?

Q. Yes.

A. Yes.

Q. And for what size lot development was that acquired?

A. In line with the Master Plan of 12.5 or 2.5 density, which is, under the Zoning Ordinance, a cluster.

Q. Now, Mr. Wills, have you reviewed that tract for feasibility of development?

A. Yes.

Q. And is it feasible to develop it under the 12.5 category?

A. Yes; I've gone over the topo of the tract and the utilities that are available to the tract, and there's no question.

Q. Now, Mr. Wills, you have developed other tracts in the Pohick and are developing the same now, are you not?

A. That is correct.

Q. Saratoga being one of those?

A. That is correct.

Q. Is the Saratoga topography and area similar in most every respect to the Van Metre tract?

A. The Saratoga tract actually is a little rougher from a standpoint, as even the Master Plan

recognizes, that in the lower Pohick you have more of a gorge than you do in either the Middle Run or in the upper part of the Pohick.

Q. What density is Saratoga?

A. Saratoga was 329 acres,and we will have 996 units in a breakdown of categories, plus twelve and a half acres of commercial.

Q. So you're developing at considerably more than 2.5 --

A. It's over three.

Q. Now, Mr. Wills, in connection with a tract of this size, say, 250 to 280 acres, I believe, how long would that require to complete the development once you had it zoned and could proceed with plan?

A. If it were zoned today, July, I would say it would take you in topo, planning, getting an acceptable plan, not just going out there and putting a grid on a piece of land and then slice it up into lots, to get an acceptab'e plan that you not only like, but you thought that the market, the sales market,would like, you'd say, be able to get that in five months, six months, and your house plans submitted to the County, you are a good year and a half, at least, away

from having the first section. Now I'm only talking about one section. And the most economical way to do it would be to carve off a section which had the least problems of any, you know, part of it, and had the best access from the sales standpoint and from a development standpoint, and carve out one section, and then proceed with the rest of your sections over an orderly period of years, depending upon the sales market.

Q. Now, once the zoning was certain, and you could proceed with a zoned property, you're saying it would be a year before the first section was recorded?

A. I would say it would probably be more than that.

Q. Pardon me. A year and a half, I think you said.

A. Yes.

Q. Now, after you had it recorded in the first year and a half, how long would it be before any homes were occupied?

A. Depending upon the time of year, I'd say an average of six months to a year. Starting in January, it would be nine months, at least.

Q. So you're talking about a zoning if it was certain today, and you had no problems that were involved in the permissiveness of the use, you would be July or thereabouts of 1975 before you could hope to have the house actually occupied; is that correct?

A. Correct.

Q. Now, after occupancy started, in your experience in the development business, how long would it take to absorb the development on a tract of this size, assuming 12.5 zoning?

A. Now, when you say 12.5?

Q. 280 acres, let's take 280 acres.

A. All right. 280 acres, which would be 560 segments at 600 and some, 700; I would say in your first year you probably wouldn't do any more than the 50 to 100. And then I would say an absorption rate of 100 to 150 a year after that, which is, say, six years.

Q. So that you're talking really eight years from the date of zoning before this project ~~of 280~~ acres would be completed, is that reasonable in your experience?

A. Figuring no sewer moratorium and a good sales market and money market, yes.

Q. Now, Mr. Wills, is it important to your organization and to the delivery of homes, the development of the tract, to have the zoning established with certainty?

A. We need a continuity of business -- a business continuity. We have a weekly payroll,and we have, you know, other reoccurring obligations that we need a cash flow, certainly.

Q. Does the failure to zone a property have any impact on it?

A. Well, not only the failure to zone it, it's whether you're ever going to be, or whether, you know, there is going to be a date certain so that you can plan. You're always out here on a limbo.

Q. Even assuming sewer is going to be '76, does the fact that that's three years or thereabouts away mean that there's any the less pressure for the rezoning now in your planning and organization?

A. Certainly not.

Q. Does that period between now and the actual delivery of sewer provide you with productive and necessary time to work on the project?

A. You mean the hiatus between zoning and the

fact that there's a sewer moratorium?

Q. Yes.

A. The time is there -- presuming the sewer in '76?

Q. Yes.

A. We would have to use that time to work on it.

Q. Do you have the current tax bill for the first half of 1973 on the subject property?

A. I have a tax bill, yes. This says: amount due by 7/28/73.

Q. And how much is that amount?

A. These bills were broken down on 300 and some --

Q. Have you extrapolated that to determine what the tax actually due in the first half of this year on the 280 acres in today's case is?

A. Mr. Fueher just handed it to me, and I take his figures --

MR. SYMANSKI: Objection, Your Honor.

THE COURT: Objection sustained.

MR. HAZEL: All right; I will call Mr. Fueher. I have no further questions.

THE COURT: Do you have any questions?

MR. SYMANSKI: Yes, sir.

CROSS EXAMINATION

BY MR. SYMANSKI:

Q. You just testified that you got a tax assessment. Have you ever applied, or your company ever applied, or the owners of this property ever applied for reconsideration of the tax assessment?

A. On this particular property?

Q. Yes.

A. It was only settled on in the last 30 days. We were in no legal position to ask for a recomputation of the taxes when we were not the owners.

Q. So you haven't applied to the Office of Assessments or to the Board of Equalization; is that correct?

A. Not in the last two weeks, no, sir.

Q. Now, you testified it would take eight years approximately for you to finish this development; is that correct?

A. I testified that that would be a reasonable time, yes.

Q. Would there be any problem with your selling off parts of this property after you got rezoning?

A. Would there be any problems?

Q. Yes, could you do it?

A. Yes, we could.

Q. So you could, could you not, hypothetically divide this property up in six pieces and sell it to six different developers who could simultaneously develop, could you not?

A. I would agree.

Q. You testified that you were doing some RE-1 building?

A. Yes, in the county.

Q. Are those houses selling? Have they reached the point where they are being sold, offered for sale?

A. Yes.

Q. Are they selling?

A. Yes.

Q. Did you submit a development plan with this rezoning proposal, C-301?

A. I did not, myself.

Q. Now, was it your testimony -- well, strike that. What would the approximate price of these houses, what would they be once you developed them, say, at the proposal of R-12.5?

A. What time frame, and based upon what market and cost factors?

Q. Let's assume under your original proposal, what was your contemplation?

A. May I assume that there is no increase in any cost?

THE COURT: Why don't we assume, for the sake of the question, that prices just stay the way they are right now. I don't know that that's reasonable.

THE WITNESS: What about the holding period?

BY MR. SYMANSKI:

Q. Well, do you have any idea?

A. If you could build a house in one second, and I could say right now, there is a house, given what costs we have today, I would say that somewhere in the high 40's or the low 50's would be a, you know, you would have a variety of different houses, and I don't necessarily mean having one price leader.

Q. Did you have a proposal or did you intend to put any low income housing in your development?

A. No.

MR. SYMANSKI: No further questions.

REDIRECT EXAMINATION

BY MR. HAZEL:

Q. Mr. Wills, just one question. You answered under the low-income housing; I assume that you were, at least by inference, adopting the County's criteria on low-income housing?

A. It's not required in single-family zoning, and I don't know how a developer could do it anyway.

Q. Well, Mr. Wills, what is the low-income price that you're speaking of?

A. As I understand it, it was something like a family, in the low 20's, and I don't know how you do it in the single-family.

Q. Any practical way that you could put the $20,000 for-sale price on any of these single-family lots?

A. With a house on it? No.

MR. HAZEL: I have no further questions

(Witness steps aside.)

MR. HAZEL: I would like to call Mr. Fueher, please.

Whereupon,

EDWARD FUEHER

having been duly sworn, was examined and testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. HAZEL:

Q. Mr. Fueher, are you employed by Wills & Van Metre?

A. Yes, sir.

Q. Mr. Fueher, did you compute the current tax bill on the 280 acres, which is the subject of this case, for the first half of 1973?

A. I ran it for the entire year. However, the parcel was purchased and it involved seven different owners, and the tax as it's broken down also included a few acres that we did not actually purchase, and it's going to have to be settled at the end of the year.

The total--we account for 327 acres for which we bought the 280, and I do have the total for that.

Q. Based on the 280 acres, what is the tax bill due for 1973 on that 280 acres?

A. The 1973?

Q. Yes.

A. For the total year, it's $17,201.74 for the entire year.

MR. HAZEL: I have no other questions.

CROSS EXAMINATION

BY MR. SYMANSKI:

Q. That was the price for the 280 or the total?

A. That's the total. That was 327 acres. It's all contiguous property.

Q. So you don't have a tax figure for the 280 acres?

A. No, sir. It hasn't been broken up. We just settled on this property about two weeks ago.

Q. Have you applied for a reassessment or a reevaluation to the Office of Assessments in the County or the Board of Equalization?

A. No, sir.

MR. SYMANSKI: No further questions.

(Witness steps aside.)

MR. HAZEL: I'd like to call Mr. Williams, please, Your Honor.

Whereupon,

THOMAS R. WILLIAMS

having been duly sworn, was examined and testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. HAZEL:

Q. Would you state your name, please, Mr. Williams?

A. Thomas R. Williams.

Q. Mr. Williams, are you one of the owners of the Williams tract which is the subject of this case?

A. I am.

Q. Mr. Williams, when did you acquire that tract?

A. I signed the contract to buy that on the day after the sewer-bond referendum was passed, on May 5, 1965; settled it October 15th of the same year.

Q. Mr. Williams, what did the sewer-bond referendum--how did that play a role?

A. Well, the sewer-bond referendum, based upon the Alexander Potter & Associates document, showed this particular property as having sewer service available to it through the trunk line, and the economic feasibility that is in that.

Q. Mr. Williams, I hand you Stipulated Exhibit 23, which is the Pohick Watershed Plan and ask if you will read the first paragraph of the sanitary sewer portion of that?

A. "Fairfax County Division of Sanitation has recently completed the design of trunk

"lines which will service parts of the Pohick watershed and the Accotink and Long Branch watersheds. This is part of a $20 million sewer system passed by public referendum on May 5, 1965. Completion of this system is expected to take at least three years. The ultimate design was based on a feasibility report compiled by the Alexander Potter & Associates, Consulting Engineers for the County."

Q. Now, I refer you to the last paragraph which pertains to density,and is that the paragraph that Mr. Pammel read earlier?

A. "The capacity of the overall system was designed to accept a maximum effluent from the service area, assuming an overall density of ten persons per acre in planned single-family areas (lots of a maximum size of 12,500 square feet) and 60 persons per acre in apartment areas."

Yes. That's the same paragraph.

Q. Now, it was the reliance upon those events

that caused you to purchase this property, was it?

A. That is correct.

Q. Mr. Williams, were you familiar with the representations of Fairfax County as to what the bonds would be used for?

A. Yes, sir. I had a copy of the report and read it thoroughly.

Q. Does the portion of the plan regarding the sewering of the Pohick at persons an acre represent the County's representations?

A. That is correct.

Q. Now, Mr. Williams, would you describe briefly your property as far as its topography and soils as it relates to other parcels in the Pohick?

A. Yes. That particular property was the subject of intense study in 1964, when it was the subject of an airport site for the county. It was one of several sites that was studied in great detail. There was a great deal of information that was available to me when I was looking at this piece of property because it had been studied by the County in great detail.

The topography of the property is the best

in the Pohick that is available so far. The only area in the whole Pohick that has a better topography is in the Burke cluster area and the Lynch property. As far as the soils condition on my particular piece of property, the soil scientist, in conjunction with the airport site and the studies at that time, said this was the best site they had. It was far superior to others for the development of builders.

Q. Now, Mr. Williams, what is your occupation?

A. I'm a builder-developer.

Q. How long have you been a builder-developer?

A. 16 years.

Q. And what kinds of development do you undertake?

A. I build all kinds, industrial, commercial, residential, all types.

Q. At the time you purchased this property, what was your plan and intent, and what is it today?

A. At the time that I purchased this property, I felt that the sewer would be available in three years, and we would be building on R-12.5 lots in 1968.

Q. Did you program your organization in that regard?

A. That is correct.

Q. Now, what problems, if any, are caused to your organization by not having this property zoned and available for construction?

MR. SYMANSKI: Your Honor, objection. I think we're wandering a little far afield here from good land-use planning. The person could borrow money at extravagant rates from the Mafia and be caused trouble because he didn't get immediate zoning, but I don't know what that has to do with whether this is the proper zoning or whether the Board was arbitrary and capricious or not with regards to the state's statutes on zoning.

MR. HAZEL: If Your Honor please, the state's statutes on zoning talk about orderly development, provision for housing, provision for development of a community, master plans and the ability to rely on master plans, and I think that all of this is evidence to indicate what happens when the plans cannot be relied upon.

MR. SYMANSKI: It's also irrelevant as to whether this is a proper land use of this property and whether the Board's action was arbitrary and capricious.

MR. HAZEL: If Your Honor please, there's apparently no position on the part of the County that any higher or any lower density than R-17 is appropriate. As far as the land use, it's conceded by the County's plans, if I understand it, that R-17 would be appropriate on this.

We may have discussion between R-17 and R-12.5 in another hearing, because our only request is RE-1, and I don't think the County has taken at any time in its entire case the position that RE-1 is really the appropriate ultimate land use.

MR. SYMANSKI: Your Honor, Mr. Hazel has not heard our testimony yet. But, I still don't know what that has to do with what we're discussing here.

THE COURT: I think it's part of the background in the case. If he bought it relying upon the then-published plans of the County and the then-statement of the County as to when there would be sewer available to this property, I think it would be part of the record as part of the history of this case. We've gone through history ever since the early 50's so far.

BY MR. HAZEL:

Q. Mr. Williams, what did the failure of this property to be in a posture zoned for development, how did that impact your business and your involvement as a county-resident business?

A. So far as my business is concerned, it's been totally disruptive. At the time, I had a construction crew of approximately 35 men working everyday. I now have a construction crew of approximately six, marking time, hoping that we won't run out of something to do before we can get started out there.

Q. Now, Mr. Williams, have you investigated other areas of the county and particularly of the Pohick to see if you could find some zoned property that was available?

A. I've looked from border-to-border in the county for buildable property at an economical basis where we could stay in business and build.

Q. Mr. Williams, I show you a map which is entitled the Pohick Watershed. It has some coloring on it. Is that coloring, was that placed on there by you?

A. It was.

Q. Mr. Williams, what does the yellow color on that map show?

A. The yellow property comprises the areas that have been rezoned and developed. Now, some of the yellow has not been developed, but it has been rezoned and is in the hands of builder-developers, and I'm sure is in their pipeline of choice spots where they will rezone.

Q. Mr. Williams, would you step to that map and point out to the Court the Main Stem, the Middle Run and the South Run?

A. The Main Stem runs basically right up through here, right to the Burke cluster. The Middle Run runs up through here, and the head waters of the Middle Run are -- the Middle Run is outlined in red. Now, the South Run is also outlined in red.

Q. Now, you've outlined a large green area in South Run. What is that?

A. That's Burke Lake Park. Incidentally, my home is right there. I built that in anticipation of working out there.

Q. Now, Mr. Williams, you have outlined on that map four properties in blue, Hirst, Hoyt, Downey and Lynch. Would you explain the significance of those outlined?

A. Yes, sir. The areas on the north and west, the Hoyt, Downey and Lynch, are basically the Burke cluster, which according to the plan are not supposed to develop until post 1980, and they are held by large-property holders. From a small-man's standpoint, you might as well forget about it. Financially, he wouldn't be able to touch it, and I'm sure when they're developed, they'll be quite dynamic.

The Hirst tract, another large tract, it's in the Main Stem also, is right over at Rolling Road and the Southern Railway, and is the site where the plan shows the future transit stop for mass transit. I think it would be a misuse of land for that to develop before the mass transit site is selected.

Q. Does the large holding that you have shown in the Hoyt, Downey, Lynch, Hirst grouping, have any effect on the Pohick watershed as far as availability of zoned land for your utilization as a home builder?

A. Yes, it does.

Q. What is that effect?

A. It comprises a large share of what's left in the Main Stem of the Pohick. It takes it off the market for effective purposes.

Q. Have any zoning applications been filed on those tracts?

A. Not to my knowledge.

Q. Are they in any way available for development in your scope?

A. Not for me, they're not.

Q. Now, Mr. Williams, your tract and the Van Metre tract are colored in in orange on that, are they not?

A. That's correct.

Q. Furthermore, you said this map showed all the development. Have you, in fact, colored in the Swansen zoning case, which was granted in this area, and I mark on here,Swansen, about a month ago?

A. No. My research did not get some of the more current ones. Also, I left out areas that probably should have been colored in. For instance, where our Chief of Police lives, in five-acre sites with $150,000 houses, the Burke Lake Hills. There are areas such as that that show up as white spots on here, but frankly, maybe I should have colored in as yellow. But, they will not be developed in my lifetime, I'm sure, or redeveloped, and they're certainly not available

for building on. But, they are five-acre tracts rather than urban density.

Q. As a result of your studies and your efforts to acquire land, do you have any opinion on the availability of land in the Pohick watershed for urban-lot development?

A. There's none available.

Q. Mr. Williams, do you find a relation between large-lot zoning, one-acre-type zoning, and the price of housing?

A. Very definitely.

Q. What is that opinion?

A. As the lot size goes up, so does the price go up. It goes up for several reasons.

Q. Now, Mr. Williams, what are the taxes in the current year on your property?

A. $11,344.48.

Q. Is that on 138 acres or the total?

A. That's on the total piece.

Q. Total piece. $11,344.48.

THE COURT: Does that include your house?

THE WITNESS: No, sir. My house is not this tract. My house actually is in South Run, just the

other side of Pohick Road. It's the dividing line.

THE COURT: I couldn't see from this distance whether you were on one side or the other.

BY MR. HAZEL:

Q. Mr. Williams, in your experience in developing in the county, from the date that zoning became a certainty to the date of the first building permit for construction start of a house, how long is that period?

A. It's approximately two years, it's been for me.

Q. And after that period of two years, in this 138 acres, how long did you anticipate your build-out requirement ~~would be~~?

A. Well, on this, I would hope that it would be six, seven years.

Q. How many houses would you anticipate to build in a ~~year~~?

A. Probably start out 40 or 50 and build out from there.

Q. Mr. Williams, do you know anywhere in Fairfax County that you could today acquire 40 or 50 lots for a year's construction for your firm?

A. No, I do not.

MR. HAZEL: I have no further questions, Your Honor.

CROSS EXAMINATION

BY MR. SYMANSKI:

Q. Mr. Williams, have you applied for a tax reassessment or reappraisal to the Board of Equalization on your tax bill?

A. No, I have not.

Q. Are you aware that you can?

A. I'm not familiar with the procedure. I know there is a procedure. I've really not thought the tax was undue. I thought the utilization of the land, the hardship on holding back the land was the only thing that was unfair.

Q. Is there any reason why you couldn't sell off parts of your land if it was rezoned?

A. No. It would be a very foolish thing to do, and I certainly feel if I were to sell it, I'd have to sell it in its entirety due to the tax loss.

Q. If it were rezoned, though, you could divide it up into four pieces and it could be developed simultaneously?

A. Oh, yes. It would be economically very foolish to do that, though.

MR. SYMANSKI: No further questions.

MR. HAZEL: I have no further questions of this witness.

THE COURT: You may step down, sir.

(Witness steps aside.)

MR. HAZEL: If Your Honor please, that concludes the complainants'or plaintiffs' case, as you might prefer in these two cases.

THE COURT: All right, sir.

Call your first witness, please. How long will the first witness be?

MR. SYMANSKI: Possibly a half hour.

THE COURT: We'll take our break now instead of afterwards.

(Short recess.)

THE COURT: I'm sorry to keep everybody waiting, but I got involved in a very complicated phone call.

MR. HAZEL: If Your Honor please, Mr. Symanski has been kind enough, with Your Honor's permission, to let me put this exhibit in which

Mr. Williams testified from. I'd like to have it marked and entered into evidence.

THE COURT: Is it all right to just mark it as a stipulation again? Stipulation No. 28.

(The document referred to was marked Stipulation No. 28 and was received in evidence.)

MR. HAZEL: I would also like to include in our case the two exhibits, I think they were the only two that were marked for identification. And as I understand it, Stipulated Exhibit No. 8 was the emergency rent control ordinance, which I think was orginally admitted, but it was marked and reserved for identification, if Mr. Symanski has no objections.

MR. SYMANSKI: No objection.

THE COURT: That is now Stipulation No. 8 in evidence.

(The document referred to as Stipulation No. 8 was received in evidence.)

MR. HAZEL: And the other is Stipulated Exhibit No. 13, the report in case C-567, from which Mr. Pammel testified, and as I understand it, there is

now no objection to that being introduced.

THE COURT: It's received as Stipulation No. 13.

(The document referred to as Stipulation No. 13 was received in evidence.)

MR. HAZEL: I think that was all --

May I inquire if the Clerk has any other exhibits marked for identification only?

THE COURT: They were the opinion of this Court on the low-to-moderate-income housing case was No. 14.

MR. HAZEL: I thought that was ultimately admitted.

THE COURT: It may be, sir.

MR. HAZEL: With Your Honor's suggestion that he would take judicial notice almost, if nothing else, of that opinion.

THE COURT: I guess I have to, I don't know.

Well, 14, 15 and 16, I did not have marked in my notes as being in evidence. They may already be.

MR. HAZEL: I think they were admitted.

(Discussion off the record.)

MR. SYMANSKI: The County's Intervention in Civil Action No. 990-73, which I believe Mr. Hazel would stipulate to.

MR. HAZEL: This, I understand, is seeking housing funds?

MR. SYMANSKI: Yes. Intervening in a suit in Washington.

THE COURT: Stipulation No. 29. Commonwealth of Pennsylvania versus Lynn, et al.

MR. HAZEL: As I understand it, that's an intervention seeking federal funds to relieve the housing crisis?

MR. SYMANSKI: Yes. I believe it was funds that were impounded.

MR. HAZEL: I would be delighted to join in showing that that's an evidence of the critical housing crisis.

THE COURT: I don't know that he intended it just for that reason alone, sir. It's now pending in the District Court, District of Columbia. All right, sir. That's No. 29.

(The document referred to was marked Stipulation No. 29 and was received in evidence.)

MR. SYMANSKI: Mr. Pant.

Whereupon,

SHIVA PANT

having been duly sworn, was examined and testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. SYMANSKI:

Q. Will you state your name and address, please?

A. My name is Shiva Pant, and the address is 14449 Cool Oak Lane, Centreville, Virginia.

Q. What is your educational background?

A. I have a Bachelor of Science in Civil Engineering, a Master of Science in Civil Engineering, and have completed doctoral course work at West Virginia University.

THE COURT: Completed doctoral --

THE WITNESS: Course work in Civil Engineering.

THE COURT: Well, have you received your doctorate?

THE WITNESS: No.

THE COURT: You're just working on it?

THE WITNESS: Just working on it.

BY MR. SYMANSKI:

Q. Will you state your work experience, please?

A. I have worked for two and a half years with Virginia Department of Highways, the Metropolitan Planning Division, as a transportation planner. I've been with the County for the last seven months.

Q. What is your position with the County?

A. I'm an associate planner, currently in charge of all transportation planning work in the office of Comprehensive Planning.

Q. Have you qualified before this court as an expert transportation planner?

A. Yes, I have.

MR. HAZEL: If Your Honor please, Mr. Symanski, I assume you're submitting his qualifications as a transportation planner?

MR. SYMANSKI: Yes, sir.

MR. HAZEL: I have no objection.

THE COURT: All right.

Go ahead.

BY MR. SYMANSKI:

Q. Mr. Pant, are you familiar with the two zoning proposals in the Staff Reports of the two cases in question?

A. Yes, I am.

Q. Did you, at my request, study, examine the road system in the Pohick area with special interest in the area of the zoning proposals?

A. Yes, I did.

Q. Would you describe the road system in the area of these two zoning proposals?

A. The subject parcels, C-169 and C-309, are basically located --

Q. That's C-301?

A. C-301 and C-169. They are located in the area bounded by portions of Old Keene Mill Road, Pohick Road and the VEPCO easement. And the Lee Chapel Road runs north-south through parcel C-301.

The VEPCO easement is just about the frontage that the parcel has on Sydenstricker Road. So that basic access to the property is provided -- to the properties is provided by Old Keene Mill Road, and Pohick Road and Lee Chapel Road.

Q. Let me interrupt you for a second. Are you describing this point on Sydenstricker Road where C-301 meets Sydenstricker Road?

A. Yes. All I'm saying is the frontage on

there is even less than the width of the VEPCO easement.

Q. In other words, the VEPCO easement comes through that small portion which touches on Sydenstricker Road?

A. Right.

Q. Go ahead, please.

A. And the Old Keene Mill Road is the basic facility that provides direct access eastwards to Interstate 95, and for travel into, say, the City of Fairfax, one would have to travel through Pohick Road or go west on Old Keene Mill Road and hit Pohick Road, and then head on northward to Fairfax.

And southward movement towards Backlick Road could be provided by Pohick Road or Hooes Road. And that describes so far as the access to the facilities are concerned.

And a description of the roads in the area. All the roads -- and I drove over the roads in the vicinity of the subject parcels, and all the roads surrounding the subject parcels consist basically of 16 to 18 foot of pavement. They are unmarked. They have no center or pavement edge, no shoulders. They have very bad geometrics in terms of horizontal and

vertical alignment.

Q. Would you explain exactly what geometrics in terms of horizontal --

A. For horizontal alignment, I'm talking about the sharp curves on the roads, especially Lee Chapel Road. And by vertical alignment, I'm referring to the site-distance problems that are associated not only in terms of the way the road goes up and down, but also the coupling of that with sharp turns.

And there is very poor drainage on either side of the roads. From a capacity standpoint, the fact that there are no shoulders, and there's immediate obstruction with a drainage ditch, if any vehicle is disabled -- and, in fact, the day I was visiting the site, there was a vehicle disabled on Pohick Road -- that basically leaves about eight or nine feet of pavement open for the rest of the traffic to pass through.

And as mentioned earlier, the subject parcels are located so the access eastward is provided by Old Keene Mill Road, and that's where the majority of the traffic at the present time is oriented from that general area.

There is no adequate system for movement westwards or northwards unless one goes through a system of similar roads that are inadequate in terms of geometrics and safety.

So far as any development plans would take place on these subject parcels, ultimately the trips would end up on four basic facilities, Old Keene Mill Road, Sydenstricker Road, Pohick Road and Lee Chapel Road.

And from parcel C-169, the trips would end up basically on Pohick Road and Old Keene Mill Road. And from parcel C-301 they would be on Lee Chapel Road or Pohick Road.

I'm not sure at the present time -- it looks a little infeasible engineering-wise -- an access could be provided through the VEPCO easement and Sydenstricker Road. I'm not aware of what constraints would exist. But, as I said, the frontage there is not even as wide as the VEPCO easement, and that runs along the eastern edge of parcel C-301.

And that pretty well describes the location of the parcels and its relationship to the facilities in the area.

Q. How many trips per day, using the factors that the Planning Division of the County uses, how many total trips per day would be generated by these two developments?

A. By the two developments, under the R-12.5, approximately 11,000 trips a day would be generated by the two parcels.

Q. That's the total development?

A. That's the total, C-169 and C-301.

Q. Do you have any figures on the trips that were generated presently or in the past on those roads? In other words, do you have any traffic count?

A. Yes, I have traffic counts. The 1971 traffic count on Old Keene Mill Road between Lee Chapel Road and Sydenstricker Road, two-directional, are 1,537. And on Lee Chapel Road between Old Keene Mill Road and C-301 is 795 vehicles per day. On Pohick Road, while it adjoins the two parcels, it's 362 vehicles per day. And on Sydenstricker Road between Old Keene Mill Road and the VEPCO easement it's 1,439 vehicles per day.

And Old Keene Mill Road traffic as it moves away just north of the subject parcels, east of the

VEPCO easement, it's about 1,344, and going about half a mile further east, it becomes about 9,100 vehicles per day just before it gets to Rolling Road.

Q. Is the road system in this area what would normally be called a rural-road system?

A. Basically it's a rural-road system. Let's say it was designed at the time that the property, that area, was rural in nature.

Q. Have you formed an opinion from the point of view of geometrics and safety whether this road system is adequate or inadequate?

A. Yes, sir. I have done capacity computations and the trips that would be generated and their probable distributions from the subject parcels into the roads that surround the area, and based on that, I have determined that facilities like Old Keene Mill Road, Lee ~~Chapel~~ Road and Pohick Road, all three of them are deficient, or would be deficient if this amount of traffic was allowed to load on these facilities or the traffic that would be generated by these parcels under the question of rezoning.

Q. So from the point of view of geometrics and safety in this road system, is it tolerable,

intolerable, adequate or inadequate?

A. I would say it would be inadequate.

Q. Did you have a development plan submitted by the plaintiffs to study to determine where the roads would connect within this development with the system that exists?

A. No, I did not.

Q. What is the VDH six-year plan?

A. VDH six-year plan is a plan that indicates the improvements that will be done over the next six years on secondary roads in the state, and, of course, they are developed district-by-district and then county-by-county, and there is a six-year plan for Fairfax County.

According to it, a certain amount of funds are programmed each year, and assuming they start funding for some road, let's say, the improvement of which is a million dollars, they would send the project for contract or for bids only when 60 percent of the cost has been allocated. That is to say, over the next six years, $600,000 would have to be allocated to a project whose construction cost is a million dollars before the project would go out for bid.

Q. So construction would start sometime after the 60-percent figure is reached?

A. Right.

Q. Or bids would be let?

A. Yes, sir.

Q. What roads in this area were in the six-year plan as of 1972, and afterwards, if there was a change?

A. The only improvements proposed in there are Old Keene Mill Road, Sydenstricker Road, and those are the two facilities that are planned for improvement right around the subject parcels.

Q. Can you determine approximately when bids would be let on those two roads?

A. On Old Keene Mill Road, it would be sometime '77, '78; and Sydenstricker would be '78, '79. That's approximately when 60 percent of the funding would get allocated.

Q. Now, some of Old Keene Mill has already been approved, is that correct? Are you talking about the portion over here near the subject property, from the intersection known as Five Forks in the area of the subject property?

A. I didn't understand that.

Q. What part of Old Keene Mill Road will be started in '77, '78, I believe you said?

A. That's the one east of Sydenstricker Road.

Q. Were any other roads in this vicinity on the six-year plan?

A. Not in the immediate vicinity of the subject parcels, no.

Q. Was Hooes Road, as of December '72, on the six-year plan?

A. Yes, it is. It is on the six-year plan. I'm trying to find out where it is on this. Yes, it is on the six-year plan.

Q. As of December '72?

A. Yes; and most of the improvements that are shown at the present time on it are the bridge and approaches over Pohick Creek and realignment of Hooes Road where it intersects with Rolling Road.

Q. The actual building of the road is something beyond that?

A. It is. It is around '77.

Q. Let's assume in '79 or '80, those roads that you mentioned on the six-year plan, that are on

the six-year plan, are built and functioning. Taking the total picture of the road system in this area, given those improvements, is this still the type of road system, from the overall picture, from your point of view as a transportation planner, that would be called adequate urban density type of road system?

A. If improvements to Old Keene Mill Road are made, it would be an urban system east of the subject property and would provide for safe travel eastwards, that is for somebody going towards 95; but there are no improvements -- relating to your question as to whether it would function adequately as a system, it would not since there are no improvements to the west or the north of the subject parcels that would expedite movement to, say, somebody coming to the City of Fairfax or that general direction.

Q. So, in other words, in one direction you would have an adequate system?

A. For somebody going to 95, yes, it would be, yes.

MR. SYMANSKI: May I have a moment, Your Honor?

THE COURT: Yes, sir.

MR. SYMANSKI: No further questions.

CROSS EXAMINATION

BY MR. HAZEL:

Q. Sir, might I inquire how you spell your name?

A. The last name is Pant, P-a-n-t.

Q. Mr. Pant, do I understand that the Highway Department six-year road program is essentially based on the needs as demonstrated by the area in which the road is to be built?

A. It's supposed to be on the needs and priorities, and, of course, the Board provides input to some extent on it.

Q. But the actual expenditure of money -- which is controlled by VDH, is it not?

A. Right.

Q. -- is based on where the roads are most badly needed, is that correct?

A. Supposedly.

Q. Mr. Pant, it would not be likely that the Highway Department would spend any money in the immediate vicinity of the subject properties until that area developed, would it?

A. Well, with the existing traffic on there, there are other roads in Fairfax that have a higher priority, let's say.

Q. In other words, the existing traffic on those roads which, for example, as you told us on Pohick Road, south of the property, was only 362 vehicles a day, with that kind of existing traffic load it would be unrealistic and probably unreasonable to believe that the Highway Department would spend any money to improve that road, correct?

A. Yes, it would.

Q. It would also, on Lee Chapel Road through the properties, be unrealistic to believe they would spend any money given the other priorities in the county; is that correct?

A. Unless they could justify it on some severe safety feature, especially on Lee Chapel Road is the only one I can thing of where the current safety would become a problem, and onecould request VDH to improve the alignment on it.

Q. I see. But, absent that kind of a unique feature, none of the roads you mentioned in the subject property area would be likely to be improved by VDH

until the property developed, would it?

A. Well, I put it this way, if the subject parcels were developed to what we are talking about here in this rezoning application, it would warrant improvement of these roads.

Q. Doesn't really warrant it now, does it?

A. Under the present priorities, it does not fit into the priorities that would get funded.

Q. So that under present traffic with no development on the subject properties, these roads that you've just described would remain that way for many years, would they not?

A. I don't know if they would or not. Maybe there would be development somewhere in another area that would load traffic on, say, Keene Mill Road and Pohick Road, and that might cause it to get on the six-year plan.

Q. But there's no real impetus for improvement of a road until people are there to use it, is there?

A. That's the way the VDH has worked today, yes.

Q. Do you know any reason that they're not working that way today and will continue to work that way?

A. To me, that's not a planning system of funding improvements to go by that mechanism.

Q. But that's the way it works, isn't it?

A. That's the way they have done it to date, yes.

Q. And there's every reason to believe they're going to continue to put the money where the demand is the greatest, isn't there?

A. They would unless the County developed a comprehensive plan that would indicate that Pohick Road needs to become a four-lane facility; in such case, they would go ahead and fund it.

Q. Does the County have any such plan as that now, to your knowledge?

A. Well, it has the Pohick plan, and they haven't based a whole lot of improvements on it. Like I said, the only inclusions in the six-year plan are what I indicated earlier for Keene Mill Road and Sydenstricker Road.

Q. Now, you indicated that in 1977 and '78, I believe, that the access eastward from the subject property would be adequate for urban development?

A. Yes, sir, it would.

Q. And that north and west it would not be, correct?

A. That's right, yes, sir.

Q. Is there any difference in the access north and west from the subject property than from the developing property immediately in the vicinity? They all have the same way to get north and west, don't they?

A. You're talking about the adjacent --

Q. I'm talking about this density right in here that's shown as platted and it's all under development. You're familiar with that, correct?

A. Going north, yes.

Q. That property which is now developing and the subject property all have the same problems as far as north access and west access, don't they?

A. To a certain extent, yes.

Q. Really, there's no way to get north, direct, four-lane road; no way to get east, direct, four-lane road?

A. There is no four-lane road to go westward.

Q. The nearest facility of a primary artery nature is 123, over on the left side of Exhibit 18?

A. Yes, sir, correct.

Q. Now, is there any determined, deliberate plan to improve the western access or the northern access? To the existing development.

A. I'm not aware of any.

Q. Well, the fact is, Mr. Pant, there really isn't much demand that has been diagnosed so far for northern and western access. Most of the demand has been eastward, hasn't it?

A. Well, I have not analyzed some of the facilities that feed into 123, and maybe some of those facilities that do feed into 123 may be inadequate, so I can't qualify that none of them are.

Q. You just don't know what the story is in the western part?

A. Well, I know some of those roads, having driven on some of them, are inadequate. I wouldn't --

Q. And you don't know whether the demand on those roads justifies any improvement beyond what's there, do you?

A. No. I wouldn't know as to make a factual statement.

Q. So that the planning and construction for access to the east from the subject property is really

where the action has been all along, hasn't it? That's where the demand is, isn't it?

A. That's the way the funding has indicated, or as the way the components of the six-year plan indicate.

Q. And by 1977, you think that that access would be adequate for development on the subject property for urban-lot densities?

A. For movement eastwards.

Q. For movement eastwards?

A. Yes.

MR. HAZEL: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. SYMANSKI:

Q. Mr. Pant, the roads you listed on the six-year plan, are on the six-year plan now with no regard to the zoning proposal, are they not?

A. Yes; Old Keene Mill Road and Sydenstricker Road.

Q. Given the road system as it now exists, from a geometrical-safety point of view, is that system adequate or inadequate?

MR. HAZEL: Well, if Your Honor please,

the witness testified on direct on this part of his testimony, and I don't know that he can just now be asked to summarize his testimony as he goes through his redirect portion of his examination.

THE COURT: He has already testified on these things. So there would be no necessity of having him say them again.

MR. SYMANSKI: Okay. I'll withdraw the question.

No further questions.

THE COURT: You may step down.

(Witness steps aside.)

THE COURT: Call your next witness, please.

MR. SYMANSKI: Camille Cleveland.

Whereupon,

CAMILLE CLEVELAND

having been duly sworn, was examined and testified upon her oath as follows:

DIRECT EXAMINATION

BY MR. SYMANSKI:

Q. Would you state your name, please?

A. Yes. My name is Camille Cleveland.

Q. And your position with the County?

A. I'm an associate planner in the Office of Comprehensive Planning.

Q. With regards to the Pohick plan that we've been discussing in the trial, have you had any experience in the preparation of that plan?

A. Yes, I participated in the project team in the preparation of the plan, and I also worked for about two years as a Staff planner with the Planning Office's input for rezoning cases.

Q. And how long have you been in the Planning Office?

A. Five years.

MR. SYMANSKI: Your Honor, I'd like to offer Mrs. Cleveland as an expert planner.

MR. HAZEL: I have no objection.

THE COURT: All right, sir.

BY MR. SYMANSKI:

Q. Are you familiar with the zoning proposals under discussion today?

A. Yes.

Q. Have you visited the area of the proposals?

A. Yes, I have.

Q. Are you familiar with the Pohick Restudy of

1969, the adopted comprehensive plan?

A. Yes.

Q. For the Court, would you, please, in your opinion as an expert planner, compare the zoning proposals, C-169 and C-301, with the existing comprehensive plan and give your opinion of that comparison?

A. Okay. Essentially, there are several objectives in the Pohick Restudy. A major one was to achieve the suburban-cluster concept. Basically, this is a concept that residential density should be concentrated in areas around intensive-commercial cores, and the lower density of single family should be located in decreasing densities from these high-intensity clusters.

The Burke-regional cluster, which has been discussed, and the Lorton-residential cluster were the two major activity centers in the plan. And each of 25 neighborhoods was planned with a specific density, and most of these neighborhoods had small-neighborhood-convenience centers planned for them which would include a neighborhood shopping center and perhaps some higher-density housing surrounding the center itself.

Also, within the neighborhood center, it

was proposed that the neighborhood school be located and a neighborhood park. Each neighborhood had a specific target population specified for it, and a proposed overall density for the development outside the center.

The two proposals are located essentially in Neighborhood 12, and a portion of the Van Metre tract is within Neighborhood 13. The total population for Neighborhood 12 was 4,600, and the total population for Neighborhood 13 was 7,900, specified in the plan.

For both of these neighborhoods, the overall density, outside the centers, was planned for two units to the acre, and both of these cases were proposed for R-12.5 zoning which has a density of 2.5 to 2.9 units to the acre. So this is somewhat higher, and I feel that if these cases were -- if these properties to be developed at R-12.5 density that we would have a danger of exceeding the planned population for both of these neighborhoods, given the other parcels in the neighborhood developing at urban density, except for the scattered single-family homes which are already there.

The plan also had an objective of preserving

the stream valleys in the Pohick, and quite a bit of the plan addressed the types of land development which should occur. One of the policies was to vary the types of housing from apartments to single family, and also to cluster development to the extent that perhaps if there were steep slopes on the property which should be preserved, density credits could be obtained. A housing type other than single family might be built.

The intent of the plan was definitely to protect properties from flooding and from severe soil erosion. This was one of the reasons why it was suggested that the stream valley slopes not be built on.

Now, I have not seen a development plan for either of these properties, and it was my understanding that one was not submitted for these two at the time of rezoning, such that the Staff could not really comment as to whether these properties met these policies of the plan.

Another important factor in the plan was timing of development. At the time of plan adoption, the Staff had recommended that the Middle Run area not

be developed until a later point in time. The Staff had initially recommended after 1975 that intensive development begin, and the Board's adopted policy specified that the Middle Run area was not within the urban-services area, and the Board hoped to discourage intensive development until such time as the Board had the capacity to provide public facilities.

The major reasons for this policy, to declare the area outside the urban-services area, are that there had not been within the last ten years a substantial demonstration of market for development in the Middle Run. There was a considerable portion of land --

THE COURT: Could you repeat that last part, please?

THE WITNESS: The ten years preceding the study --

THE COURT: Which study? Do you mean '69?

THE WITNESS: The '69 study.

THE COURT: You're saying from '59 to '69 there was not an appreciable market for homes?

THE WITNESS: That's correct. I believe our actual research was 1960 through '69. There had

not been a considerable amount of building activity even though there had been land rezoned at urban density.

The Main Branch development area that was recommended consisted of some 11,000 acres, and it was felt that it would be most efficient to concentrate the development in the Main Branch and concentrate the community's facilities provision in the Main Branch.

This policy of the Boards to consider the Middle Run outside of the development area in the county was to be reviewed annually. The Staff did a review of the Middle Run in 1971, and the Planning Commission took action on this in February of 1972. The Board, however, did not take any action on the Staff's recommendation.

In 1972, the Staff did a county-wide analysis of public facility capability in the five-year plan, and this was released in August. I think that the findings of both the '71 review and '72 five-year plan showed that the facilities were not available in the Middle Run for extensive development beyond the area shown for the cross-county freeway, which is the demarcation line for Neighborhood 14, nor were they

programmed by any of the county agencies.

BY MR. SYMANSKI:

Q. Has any action by the Board been taken on the Middle Run policy?

A. Yes; action was taken several weeks ago in the early part of July to continue the policy of discouraging growth and not programming public facilities in the Middle Run other than in Neighborhood 14 which is the area where substantial development is occurring.

Q. Did you work on the two reviews, the '71 and '73 reviews of the Middle Run policy?

A. Yes, I did.

Q. What basically, if you can give the conclusions of the '71 and '73 reviews, what were the conclusions of those reviews?

A. Essentially, it was that public facility capabilities were not there to have extensive development in the Middle Run. We felt that Neighborhood 14, since it was undergoing considerable development already, should be recognized as a development in the area, and this was recommended by the Staff.

THE COURT: Did I understand, a little earlier you said that the '71 review and the '72 five-

year plan both showed that facilities were not readily available nor were they planned by county agencies?

THE WITNESS: That is correct.

THE COURT: So the reason you don't have any is the County hasn't provided them, or is not planning on providing them?

THE WITNESS: They have not at this time planned to provide these facilities. Part of this relates, I think, to the initial recommendations in the restudy, that the County should concentrate public facilities in the Main Branch until after '75.

THE COURT: Well, what recommendation was it that the Planning departments made that the Board did not adopt after your review? You said you were supposed to have annual reviews, but you didn't have one for two years.

THE WITNESS: That is correct.

THE COURT: And there was a recommendation made, and you said the Board did not adopt it.

THE WITNESS: I'm sorry. They did not take any action. They did not review the policy.

THE COURT: So, in other words, you did review after two years, but the Board didn't look at it?

THE WITNESS: We did the Staff work, but the Board did not have any public hearing or take formal action on this. This was the '71 review.

BY MR. SYMANSKI:

Q. But, did they then take action, you mentioned, in 1973?

A. That's right.

Q. Now, with regard to the population in the neighborhood figures, what effect would this proposal have on the neighborhood figures in population totals?

A. I feel that both of the neighborhood populations would be exceeded if the remainder of the neighborhood, even with the existing single family remaining in low density that --

THE COURT: On that question, if a neighborhood cluster -- I realize you looked at it just on a 12.5 basis throughout these two application areas -- but, if you put a neighborhood cluster in this combined application, if we can now call it that at this point, if there were a neighborhood cluster in there, of course, it would not exceed the density of what would be planned, would it?

THE WITNESS: That would really depend upon

the total number of units, I think. It's possible, I think, that definitely in Neighborhood 12, if this proposal included the neighborhood center, that the densities wouldn't be exceeded. Neighborhood 13 is a little more questionable.

THE COURT: But, if you had Neighborhood 12 and it did include the neighborhood cluster within this application, that, of course, would mean that the balance of the neighborhood would have to be of a lesser density, wouldn't it?

THE WITNESS: That's correct.

THE COURT: So it's just who gets it?

THE WITNESS: That's right. This was the assumption. I'm sorry if I didn't make it clear. I was allowing for the remainder of the neighborhood other than the existing single family to develop.

THE COURT: If the neighborhood cluster were not included in, say, the Williams tract or part of the Van Metre tract, that's in Neighborhood 12, if it were not included in that, would that mean it would have to be included in the balance of Neighborhood 12?

THE WITNESS: That's right.

THE COURT: But, if it were included, then

the balance would be of a lesser density?

THE WITNESS: That's right.

THE COURT: Thank you.

BY MR. SYMANSKI:

Q. What were the main reasons, in your understanding, that the Pohick Restudy was done?

A. Primarily it was because major development which had occurred had been on single-family lots. There was some fear that the stream valleys would not be protected, that the Public Law 566 program would be jeopardized by siltation, and some fear of the possibility the sewer capacity might be prematurely exceeded.

Q. Was the development that had occurred, in the Staff's opinion, what is known as suburban sprawl?

A. I think that's correct, yes.

Q. What is a definition of suburban sprawl?

A. Suburban sprawl, essentially, is a sea of lot after lot of single-family detached homes without any variety in housing types or even a lot of regard to the terrain with pleasing --

THE COURT: The first part is just aesthetics, isn't it?

THE WITNESS: Essentially esthetics, yes; although, it also relates to preservation of soil and things like that.

BY MR. SYMANSKI:

Q. Do you have an opinion on the proposals we have here with regards to the purposes of the restudy, that is, are they, in your opinion as an expert planner, contemplated under the restudy?

A. Well, as I said earlier, I did not see a development plan. It was my understanding that one was not submitted. So I really can't specifically address what the result of the development would be. Quite often, R-12.5 development is unimaginative and does not really meet what we would look for in the policies of the plan. But I can't really say categorically that it would not without seeing a development plan.

Q. And with regards to the center, generally what are the policies of the plan with regards to the location of the neighborhood center?

A. It's most preferable to see it in the interior of the neighborhood, and that the streets and sidewalks or walkway systems are designed such that almost every home in the neighborhood is easily

accessible to the neighborhood center.

Q. The neighborhood center includes commercial?

A. Yes, right.

THE COURT: Do you have that map with the neighborhood on it?

MR. HAZEL: Yes, sir. This is the same map.

THE COURT: I need one with all those little round circles on it.

MR. HAZEL: Here it is.

BY MR. SYMANSKI:

Q. To sum up --

THE COURT: Just a minute, please, sir; I would like to look at this.

I see 13 has the southernmost part of the Van Metre property.

THE WITNESS: That's right.

THE COURT: And it crosses the road and encompasses that intersection. Then 12 is all of the application on Williams andthe northern part of Van Metre, going all the way up to Old Keene Mill.

THE WITNESS: That's correct. I think it's Lee Chapel Road that is the dividing line.

MR. SYMANSKI: Would you like to point out on the map --

THE COURT: Frankly, it looks to me like it's all the way from the big interchange that is planned, that 12 runs like this.

THE WITNESS: No. I'm sorry. The white dots are the dividing line. This is 13.

THE COURT: Well, what's this 12?

THE WITNESS: Oh, that is R-12.5. The zoning on this particular property exceeds the plan. This is the neighborhood number here.

(Discussion off the record.)

THE COURT: But, it's bounded by Keene Mill, Lee Chapel and Pohick?

THE WITNESS: That is correct.

THE COURT: That is Neighborhood 12?

THE WITNESS: Yes, sir.

THE COURT: All right.

BY MR. SYMANSKI:

Q. With regard to those figures on the policy plan, R-12.5 in Neighborhood 13, why are those figures on the policies plan?

A. They show that the zoning predated the

adoption of the restudy plan.

Q. Secondly, as far as the neighborhood figures in the Pohick plan, would the zonings that existed at the time of the adoption of the plan, at the time the Staff worked on it, the neighborhood total figures, include those rezonings which predated the plan?

A. That's correct. Actually, I should state that they were adopted preceding--they were approved preceding the adoption of the plan, and they exceeded the planned density shown, such that the remainder of the neighborhood should develop at the lower density.

Q. But they were taken into account as far as total neighborhood population?

A. Yes.

MR. SYMANSKI: No further questions.

CROSS EXAMINATION

BY MR. HAZEL:

Q. Mrs. Cleveland, is there any doubt in your mind that the plans of Fairfax County, at least since 1967, have anticipated density greater than RE-1 on the Williams and Van Metre tract?

A. I think that's correct in the long run.

Q. And those plans now anticipate density greater than RE-1, do they not?

A. In the long run, ultimately.

Q. They anticipate, in fact, density either at 2 or 2.5 units or somewhere in that area, do they not?

A. Let's say an overall density of two, except with the neighborhood center.

Q. So there's no question in your mind but that the plans of Fairfax County for the last three years, five, four years, since 1969, anticipated development of Williams and Van Metre at least at the R-17 density? You can explain, but just answer yes or no, first, please.

A. I would say, yes; but, I don't think that the plan necessarily implies that these densities have to be achieved.

Q. I understand that. But, the plan shows that these areas are proposed for R-17 density at a minimum?

A. I would not again say -- a minimum is more appropriate.

Q. And there was a period between '67 and '69 when they actually showed R-12.5 density?

A. I think that's correct.

Q. And what you just told the judge about the R-12.5 on the Master Plan is the recognition of the fact that the area of the Levitt-Caldwell tract was actually zoned at 12.5 density?

A. That's correct.

Q. And what you then did was recognize that number as far as the total population, and, in effect, subtract some of that from the other areas so that you wouldn't have any more than two units recognizing that zoning? Is that what happened?

A. I'm not sure I understand you exactly.

Q. Well, you had to live with the R-12.5 density on the 660 acres, isn't that a fact?

A. That's correct.

Q. And that's what your plan shows?

A. Yes.

Q. And you endeavored to compensate for that density by showing the other areas as two units?

A. That's correct.

Q. Right?

A. But the overall density was not two units per acre.

Q. I understand. Now, did you have any study

before you -- you indicated, as I understand it, that you worked with this plan for a number of years -- did you have any studies that would indicate any cross ratios, public-facility increased cost or any other economic base for the position that two units on the Williams-Van Metre tract was to be deferred to two and a half units?

A. I'm not aware of any. I'm aware that there was Staff research done on the Middle Run in general.

Q. You're not aware of any analysis that really bears on this matter of density, I take it?

A. The analysis was part of the restudy research. I think it was primarily, the shift in density was proposed primarily because of the terrain in the Middle Run and the desire to protect the stream valleys within the Middle Run.

Q. Now, Mrs. Cleveland, are you suggesting that R-12.5 or, for that matter, R-17 density for single-family lots is inherently bad?

A. No. I'm not saying it's inherently bad.

Q. In fact, Mrs. Cleveland, most of the people that live in single-family lots in Fairfax County live in areas that the Staff would refer to as urban sprawl, do they not?

A. That's probably true.

Q. So that as long as people desire to live in single-family lots, you basically work with the same kind of single-family-lot concept that most of the county lives in; isn't that correct?

A. That's correct; but, I think it's possible to design R-12.5 and R-17 with pleasing --

Q. Fine. Now, that has been done in some cases, and I point to you Rolling Valley West, the application B-436. That is an application under the alternate density, at the 12.5 density, but it preserved stream valleys, and so forth, did it not?

A. Yes.

Q. Now, that same mode of development could be accomplished on the Williams-Van Metre tract, could it not?

A. I think that's correct.

Q. Now, Mrs. Cleveland, you indicated that no development plan was filed. Is there any requirement in the ordinances of Fairfax County that a developer's plan be filed with a zoning application?

A. Not that I'm aware of.

Q. Now, Mrs. Cleveland, you knew that as a

stated policy, the Staff -- and I realize you may not be directly involved in Mr. Pammel's section -- but, the Staff discouraged repeatedly the scheduling, even, of the Williams-Van Metre cases, are you not?

A. I was aware that they were not scheduled for sometime.

Q. And you were aware that the Staff had indicated to the two applicants that they did not intend to recommend favorably those two cases, were you not?

A. No. I wasn't involved.

Q. Well, you certainly were aware that development was being discouraged in the Middle Run?

A. Yes.

Q. You are also aware that development plans require a good deal of expense and a lot of design data, are you not?

A. Yes.

Q. Do you believe it was reasonable that -- that it would have been reasonable under the circumstances that prevailed for these two applicants to have presented development plans?

A. Well, I think the question originally was

whether I felt that the proposals met the plan policies, and I felt that I really couldn't comment on that without having seen a development proposal.

Q. Well, let's get down to the basic issue. In fact, under the Staff and Board policy as interpreted, no proposal that proposed any rezoning on the subject case met the County policy, did it?

A. In terms of timing.

Q. In other words, it was a futile gesture for us to talk about a development plan, a neighborhood center, density around the center, because no matter what the overriding position of the County, both of the Board and Staff, was that the time was not appropriate, and thus, the zoning would be denied? Isn't that the fact?

A. I think that's probably correct.

Q. So that any kinds of plans that we might have suggested was futile, given that restriction, correct?

A. Yes. I can surmise that there might be from the developer's point of view.

Q. Now, you indicated that the County prepared a five-year program in 1972, is that correct?

A. That's right.

Q. I show you the summary of the findings and conclusions which was apparently a massive job and supported by much data. I would like to ask you to read on the last page of the findings and conclusions, the item I'm pointing out regarding high school and intermediate school costs.

A. "High school and intermediate school costs are the primary public facility capital costs associated with growth. The way standards and criteria are applied for intermediate and high schools has a significant bearing on the costs of new residential development in the county."

Q. Now, Mrs. Cleveland, there has been testimony that the high school and intermediate school situation in this particular area is not in any way critical. If that was removed from your concern, given the findings of the five-year study that you referred to regarding the principal costs being high schools and intermediate schools, what other cost problems are involved in providing public facilities to this site?

A. I think your next heaviest cost probably would be your elementary schools, and I think Mr. Whitworth indicated that there is a lack of capacity in the Pohick watershed for elementary schools. Also, I think the roads would be a critical problem.

Q. Now, are roads a county cost?

A. No. They are a state cost.

Q. Does the County have any control over the roads?

A. No; only insofar as they have yearly participation.

Q. You also heard Mr. Whitworth testify that you would not have a neighborhood school in this neighborhood until you had the development and the site for it, correct?

A. That's correct.

Q. Now, what other costs, and would you cite me the cost and the reference to the County plan are you speaking of as being unavailable or beyond the means of the County if this property was zoned?

A. Well, the library system is adequate, I believe, for this property, so that would not have been a problem. Fire services, as I understand, are within

the appropriate distance from a fire station. So, essentially the remaining costs would be a cost for provision of a park and development of park land.

Q. Well, is there any park deficiency alleged in connection with this application?

A. I don't recall what the Staff Report said. It would be my impression that there would not be adequate neighborhood-park facilities or community-park facilities; although there is a large county park in the vicinity of the site.

Q. Taking into account the 750 acres of Burke Park, almost across the street from the subject property, do you believe it's reasonable to base a denial on the fact that parks are inadequate?

A. There are other park facilities other than what are provided in the large county park.

Q. Could I ask the question again. Do you believe it reasonable to deny the subject application based on an alleged inadequacy of parks?

A. Not exclusively.

Q. Water service is available, is it not?

A. That's correct.

Q. Sewer service is under construction and

ample capacity for this project?

A. I'm not familiar with the sewer service.

Q. Now, you indicated that the Middle Run policy has been supported by a cost analysis of the County Staff in the five-year plan. Do you have the reference to that finding, or could you find it in this volume?

A. I was referring to the capital improvements program.

Q. Could you tell us in that mass of material where the finding is that says that the cost analysis indicates that the Middle Run is not available?

A. It does not specifically refer to the Middle Run. It refers to the projects which are programmed and which are recommended.

Q. I see. But it does not refer to the Middle Run, does it, Mrs. Cleveland?

A. No. It refers to the facilities county-wide, specific facilities.

Q. No specific reference to the Middle Run?

A. No.

Q. Now, Mrs. Cleveland, the whole thrust of the Middle Run policy and the County's plans in that

area, and the reason for the denial of the zoning case, is that the County is attempting to channel growth into other areas, if, in fact, there's going to be any growth in Fairfax, for purposes of efficiency and economy of government. Isn't that the basis of it?

A. I think that's correct, yes.

Q. Do you have any authority that you can give us as to a proper basis for that approach? In other words, can you give us any basis for the County approaching the zoning of this tract based on what is efficient or inefficient for the County government?

A. I think that one of the documents is the suburban cluster document.

Q. What is that?

A. This was done in 1963. It is a document which recommended planning along the lines of the regional-cluster development concentrating services in high-density areas.

Q. Isn't that what we're trying to do in this case? It's just a matter of when we get there, isn't it?

A. Yes; but, we're concentrating development

in specific areas such that we can develop them efficiently rather than, I think the planning term is, leapfrogging development, and carrying it into new areas requiring new services.

Q. Well, do you call this leapfrog development?

A. Well, I would say it's development which is beyond specifically ~~what is occurring right~~ now where the majority of the services are required, yes.

Q. Well now, Mrs. Cleveland, you indicated that there was a study in 1971 that said that no additional land needed be zoned in order to accommodate the housing demand? Is that situation still prevailing?

A. I believe the 1971 study said that within several years that more zoning would have to be approved to accommodate the housing demand.

THE COURT: Is that the one the Board did not take action on?

THE WITNESS: Right; which they eventually took action on in July of this year.

MR. HAZEL: Two weeks ago.

BY MR. HAZEL:

Q. That study, in effect, tried to adopt a ratio of zoned land to unzoned land, didn't it?

A. That's correct.

Q. What ratio did that study --

A. Three to five times the amount of vacant land as the demand is shown per year.

THE COURT: I think I've got it backwards in my mind. You mean RE-1 and two would be three to five times that which is zoned at higher density?

THE WITNESS: No. I'm sorry.

THE COURT: It's the other way around?

THE WITNESS: Yes. To avoid a monopoly situation, it's considered good planning to have available land ready for development which has been zoned three to five times the amount of demand on a yearly basis.

THE COURT: Oh, not in ratio to the unzoned?

THE WITNESS: No.

THE COURT: Is the idea behind that to hold down the cost of the land?

THE WITNESS: That's true, so there will not be a monopoly.

BY MR. HAZEL:

Q. Well, is there enough land now zoned, Mrs. Cleveland, to avoid a monopoly situation in the Pohick?

A. I don't have the figures available to me specifically. There are -- if we take last year's completion of units as a good estimate of the market demand, there were slightly over 700 units.

Q. Has there been any market analysis done by the Staff to determine whether, in fact, in the marketplace there is a shortage of zoned land?

A. Not that I'm aware of. I think one is proposed.

Q. But there has been none done today?

A. Not up to date.

Q. Now, you've been present throughout this trial, have you not, or most of the time?

A. Portions of it.

Q. Did you hear testimony in the past day and last Thursday to the effect that there is not enough zoned land available to prevent a monopoly situation and that, in fact, the restricted zoning has raised housing prices remarkably?

A. I did hear that testified.

Q. Do you have any evidence or does the County, to your knowledge, have any evidence to refute that?

A. The evidence that I can offer here is there is a total projected growth in housing units for 25,000 people -- excuse me -- for almost 15,000 people, which would be on the order of 5,000 units. These are on lots which are ready for development, have been rezoned and have sewer permit. And last year there was some 700 single-family units built.

Q. Now, the testimony was very clear and from a number of witnesses that there is not enough land zoned, on the market, to prevent a monopoly situation. You have some numbers about what land is there. But, can you give me any basis, to your knowledge, that the County has developed, to show that there is in the marketplace, in the economics of it, a sufficient supply of zoned land for urban-lot density?

THE WITNESS: Do you have those figures?

BY MR. HAZEL:

Q. I'm asking you, Mrs. Cleveland. You can concur with counsel, but I'd like you to tell me whether there is any basis to your knowledge.

THE COURT: Let me see if I understand the figures she gave just a minute ago. You're saying from the figures you have in front of you that presently

in the county there are approximately 5,000 building lots presently zoned?

THE WITNESS: I'm sorry. This is in the Pohick watershed alone. Oh, I'm sorry. I have new figures here that I found. 3,700 single-family units.

THE COURT: Now, is this on below RE-1 or does this include RE-1?

THE WITNESS: No. I'm sorry. This is for R-17, R-12.5. Anything that has a building permit or sewer permit or is anticipated by having a subdivision plat approved for it.

THE COURT: In other words, a higher density than RE-1?

THE WITNESS: Yes.

THE COURT: So, it's 3,700 now?

THE WITNESS: And as a contrast there were 700 units built last year, and this would be well over -- this would be at least three to five times as much land available.

THE COURT: How long did it take it to drop from 5,000 to 3,700?

THE WITNESS: I'm sorry. The 5,000 units include townhouses. I think I was using total population projections.

THE COURT: You're saying right now there are 3,700 R-17 or R-12.5 lots ready to be built on that have committed sewer and facilities?

THE WITNESS: It's my understanding not all of them have committed sewers.

THE COURT: They're just platted.

THE WITNESS: I think that perhaps this is what's driving the cost of lots up is the sewer availability, not so much a matter of zoning availability.

BY MR. HAZEL:

Q. Mrs. Cleveland, how many single-family dwellings are built in Fairfax County in a year?

A. Last year I believe it was only 2,500.

Q. 2,500? Are we talking about the Pohick now or the whole county?

A. No; in the county.

Q. How many people moved into Fairfax County last year?

A. Almost 30,000.

Q. How many units did it take to accommodate them?

A. At three people per unit, on the order of 10,000.

Q. 10,000 units. Now, Mrs. Cleveland, I show you a document dated August '71, Review of Development Potential in the Middle Run Area of the Pohick Watershed, and ask you to read -- well, first, that document on page 11 refers to ratios of three-to-one and five-to-one in the vacant land reserve. Where did you get the three-to-one and five-to-one numbers?

A. This is common planning knowledge, but it was specifically cited in the Zoning Procedures Study which was done for the County in 1967.

Q. Mrs. Cleveland, is this the document that you were referring to that says that was specifically cited?

A. Yes, sir.

Q. Do you know where the citation is in that document for that cite?

Would you read the paragraph that cites the three-to-five -- the one-to-three, and one-to-five ratio? I think it's at the top of the page at that paragraph.

A. "One additional point should be made about the planning-area technique. If it is to operate effectively, the amount of land

"placed in planning area two -- and planning area two is the developing land -- must be closely related by market analysis to the projected short-range market demand for new development, housing, commercial and industrial uses.

"In order to allow the private marketplace to operate effectively, planning area two must include more land, perhaps three to five times more land than the projected demand.

"If the amount of land in planning area two only equals, is less than or only slightly more than short-term demands for the next three to five years, the County will have effectively established a kind of monopoly situation."

Q. Now, is there any other reference in that document to the ratio that would be appropriate if, in fact, a planning area was valid?

A. I can't recall.

Q. Did the County through either the Board level or any Planning level ever, to your knowledge,

conduct an analysis or a study of what a proper ratio would be?

A. I'm not aware of one.

Q. In fact, there was none, was there, Mrs. Cleveland?

A. I don't know.

Q. You would have known had there been one, would you not?

A. If it were conducted within my branch, I would.

Q. You would have been involved with it, would you not?

A. I can't say that. I'm not an economist, so I may well not have been.

Q. Now, in fact, the planning-area technique was not recommended by the zoning study committee, was it?

A. I think that was because of the County's present powers.

Q. That's right. In fact, the planning area said that there was no power in the County to designate holding zones of this type; is that correct? Would you read the summary of that study right at this point to His Honor?

A. "Fairfax County should be empowered to designate undeveloped areas that are placed in planning area three, which is the most rural portion of the county, as holding zones in order to allow the County to postpone urban development in such areas in the immediate future.

"Rural - residential, houses on lots of ten acres or more, agricultural and other open-space uses would be the only uses permitted in such holding zones, until the zone is changed either on the initiative of the County, by placing a holding-zone area in planning area two, or on petition by a property owner."

Q. But, this study found that those planning techniques were not then within the enabling powers of the County, is that correct?

A. That's correct.

Q. And yet they are being relied upon by the County Staff as devices to control development, is that correct?

A. I think that they are used as a tool to estimate market needs, yes.

Q. Well, the long and the short of the use

of the tool is that the holding zone was effected as far as the subject property, isn't it, Mrs. Cleveland? You can call it what you may, but the County put that property in a holding zone, didn't it?

A. They discouraged growth in the area.

Q. No. They put it in a holding zone, didn't they?

MR. SYMANSKI: Objection, Your Honor. She has answered the question.

THE COURT: She can say yes or no to the answer.

BY MR. HAZEL:

Q. Yes. What's the difference between a holding zone and discouraging growth?

A. A holding zone is declared as an area where no development should occur other than development on ten-acre lots or larger or agricultural uses.

Q. Now, the County policy in the Williams-Van Metre case had the effect of placing that property in a holding zone, didn't it?

A. I'm not sure that's a holding zone.

Q. Just yes or no, please.

A. No.

Q. It did not?

A. No.

Q. How would it differ from a holding zone?

A. I feel that RE-1 zoning was there; it could be used.

Q. But the County said that was not the ultimate use, isn't that correct?

A. That's correct.

Q. Wasn't the holding-zone designation deliberately removed at the Board level in 1969?

A. That's correct.

Q. And it was done because the County Staff, at that time, said that it was not legal, and that there were other devices that, in effect, accomplished the purpose of the holding zone without having it on the map, isn't that correct?

A. That's correct.

Q. The Board, in fact, said when they adopted it, they could get the same job done through holding-zone techniques without saying it was a holding zone and thereby attempt to sustain the validity of the process. Isn't that exactly what happened?

A. Through the rezoning process, I believe --

Q. That's exactly what the Board did, though, deliberately, wasn't it? They took the label off and tried to accomplish the purpose some other way. Isn't that the sum and total of what they did?

A. That's correct, yes; with a long policy, addressing their intent to provide facilities in other parts of the county.

Q. I show you page 403 of the minutes of the Board of Supervisors on October 15, 1969, and ask you to read the first paragraph, the first full paragraph on that page.

A. "Supervisor Bowman said he thought the term "holding-zone concept" was an erroneous choice of terms and what they were really referring to was a holding-zone technique because the object of inhibiting or deferring or restraining development of certain densities are greater in certain areas of the county than can obviously be accomplished by other tools available to the Board right now. And although that seems to be clear, everyone seems to accept that we cannot accomplish that purpose simply by designating a holding zone as

"recommended by the Zoning Procedures Study Committee without additional legislation."

Q. You couldn't do it legally, so you attempted to do it through these other policies. That was the sum and total of what the Board did, wasn't it?

MR. SYMANSKI: Objection, Your Honor.

THE COURT: It is asking her for a legal conclusion, sir. Objection sustained.

MR. HAZEL: I withdraw the question.

BY MR. HAZEL:

Q. Now, back to the vacant land reserve study of 1971. I ask you to read the middle paragraph on page 11.

A. "Assuming that all growth in the Pohick were to occur in the Main Branch's "vacant land reserve" and no further rezonings were granted in the Main Branch, the "vacant land reserve" would be sufficient until the beginning of 1973. In that year, it is expected that the amount of vacant, rezoned land needed for the construction of new single-family and townhouse units would fall below the 3:1 ration. At this point it is

"highly likely that the competition for vacant, rezoned land would force up land prices and consequently the cost of housing."

Q. Now, I ask you to read the next two paragraphs.

A. "If a ratio of 5:1 were the parameter used to judge the sufficiency of the "vacant land reserve" in the Main Branch, then its capacity currently is not sufficient for total housing units and single-family units, and will become insufficent for town-houses at the beginning of 1972.

"Therefore, in order to maintain the sufficiency of the Main Branch's "vacant land reserve" more vacant land should be rezoned to urban density development. The alternative ratios, whether 5:1 or 3:1, merely suggest when this might be done, i.e., either immediately or before 1973."

Q. So what that report says, is it not, Mrs. Cleveland, that given the more liberal land reserve of five to one, in 1971 there was not enough land in the Main Branch for the vacant land reserve; isn't that correct?

A. At the beginning of 1972.

Q. So at the beginning of 1972, if you go to a five to one reserve, even the County's own report indicates there was not enough zoned land at that time; isn't that correct?

A. That's correct; and I believe land has been rezoned since that time, a considerable amount.

Q. Can you show me what's been rezoned for single-family use since that report in 1972?

A. I don't really recall specific dates of timing -- of granting rezonings.

Q. Well, in fact, Mrs. Cleveland, there has been no rezoning anywhere in the Pohick watershed since January of 1972, with two minor exceptions. One is 80 acres up on Braddock Road that was zoned about four months ago for Swansen, and the other is C-567 that was zoned as a result of a court action.

THE COURT: Excuse me, just a minute. Wasn't the 736 in September of '72?

MR. HAZEL: No. That was in '69. This case was in '69, the day after the plan was adopted, and B-898 was the other one.

BY MR. HAZEL:

Q. Can you point to any more cases of substance, of single family, in the Pohick watershed, Main or Middle Run, since January of '72.

A. Yes. I think that the Newington Station --

Q. How many acres was that?

A. 200 acres was approved. I don't know the date.

Q. Are you sure that Newington Station was in 1972?

A. I'm not positive, sir. I'm not sure of the date, but adjacent to Rolling Valley West development a PDH-10 was approved.

Q. How large was that?

A. I don't recall the total number of units. I think it was about 250 units of townhouses.

Q. Was it somewhere in the order of 20 or 25 acres?

A. I think it was somewhat larger than that. It included a commercial center, but I can't recall the total acreage.

Q. All right. Even assuming this, under the five to one ratio, in 1972, with those few zonings being the only ones that you can identify, would you

read the last paragraph on page 11, which shows or which refers to how much land should be zoned a year?

A. "Assuming that development proceeds at gross densities of 3 units per acre, then 600-700 acres per year should be rezoned to urban density development."

Q. And we're talking now about the County scrappling over whether it should be two or two and a half units, not three units. Under this criteria, it would require considerably more than 600 to 700 acres a year, wouldn't it?

A. Under what criteria?

Q. Under this criteria, your study of August '71, more than 600 or 700 acres a year would have to be zoned if your density was less than three units an acre, wouldn't it?

A. That is correct.

Q. Can you show me 600 acres that have been zoned since this study in August of '71?

A. I would have to do some research. I don't have the figures offhand.

Q. In fact, Mrs. Cleveland, it hasn't been zoned, has it?

A. I don't know.

Q. You're not saying it has been zoned, are you?

A. I'm not asserting it is without knowing the figures, no.

Q. Now, in addition to the study of zoned land in the Middle Run and the Main Run, has the County Staff, to your knowledge, done any analysis or study of what land is actually available to the marketplace?

A. I don't know if a detailed analysis. I believe that the Urban Development Information System has produced some information on the total number of vacant and zoned lots.

Q. Well, Mrs. Cleveland, let me inquire, for example, regarding this 600-acre tract, which is owned by Levitt, that would have presumably 1,500 units in it, would it not? 600 acres at 2.5 will give you 1,500 units?

A. That's right.

Q. Are any of those units, to your knowledge, available for any purchaser other than Levitt?

A. I'm not sure I understand what you mean.

Q. In other words, suppose Mr. Williams who

testified earlier that he can't find any land tried to buy one of these zoned lots from Levitt. Did you determine whether he, in fact, would be entertained as a purchaser?

MR. SYMANSKI: Your Honor, that's irrelevant.

MR. HAZEL: It is not irrelevant.

MR. SYMANSKI: Whether Levitt will sell their land to Mr. Williams is just irrelevant.

THE COURT: I don't see how this witness could say what Levitt Corporation would do or would not do.

MR. HAZEL: I will then ask one final question.

BY MR. HAZEL:

Q. Do you have any analysis of the ownership of the zoned land that the Staff relied on in saying that there was sufficient land zoned?

A. Not of the ownership, no.

Q. Then do you have any analysis of whether that land, in fact, is available in the marketplace?

A. It's available for development which would put the houses on the market. That's different from being available to a builder who is looking for land.

THE COURT: While you're on that point, what if you had, say, a development like Levitt and they have planned it in sections to go over many years, well all of that in the later sections is not really on the market, is it?

THE WITNESS: No; that's correct.

THE COURT: It's only what they planned to put on the market that year will be on the market, and that's only on the market to the ultimate purchaser?

THE WITNESS: That's right. That's included in the three to five time plan needed.

THE COURT: But the later sections are included?

THE WITNESS: Yes.

THE COURT: Do you have any figures on what is available in R-17 and R-12.5 for development within, say, the next 12 months? The 3,700 you gave me was for the total, I take it?

THE WITNESS: Right. I think that the Staff's estimate for this -- there are 1,600 almost 1,700 units in the Main Branch area of the Pohick that are under construction with the building permit or sewer permit, and that's assuming those would

likely be built within the next year.

THE COURT: These are in the process of actually being built. But, I mean as far as lots being available to somebody that wants to build on them? Or land zoned that way.

THE WITNESS: No. I think that the point of the ratio is that there must be enough land for units to satisfy the housing market needs.

THE COURT: What if you had, let's say, Levitt owned all 1,600 lots. Would you not then, because there is no other available, have a monopoly?

THE WITNESS: This is true, if Levitt owned all those lots.

THE COURT: Or if you had ten people that owned the 1,600 lots.

THE WITNESS: I don't know where you would draw the line.

THE COURT: I don't either.

BY MR. HAZEL:

Q. Do you have any evidence of a study to support the ratio of either three to one or five to one that is being used?

A. Not within Fairfax County, no. This is a

commonly accepted planning figure.

MR. HAZEL: I have no further questions.

REDIRECT EXAMINATION

BY MR. SYMANSKI:

Q. Let's assume a hypothetical and that is that the rest of the Pohick was rezoned R-12.5, but there was a sewer moratorium in effect so none of it could be developed right now. Wouldn't in that situation there would be again no land available? How would that show up in your figures of three or five to one?

A. That would be under the criteria of what we call vacant land reserve. That would show up. All those units that were rezoned would be considered lots which have been rezoned and could be used for development; but actually they are not available for development.

Q. Isn't the important thing whether the land is actually zoned rather than if Mr. Williams or somebody can go in and buy a piece of the land? The whole Pohick, the rest of the Pohick could, in fact, be zoned for urban densities, could it not?

A. In terms of this analysis, yes.

Q. Mrs. Cleveland, wouldn't your opinion as

the objective of the Board in the Middle Run policy -- let's assume, all labels aside, whether it's holding zone or not holding zone -- what was the objective in the Middle Run policy?

A. I believe it was to provide the best services that they could for the new residents in the Main Branch and to provide services efficiently there rather than spread the facilities thin over a larger area.

Q. Was there any feeling that you know of, at the time, that possibly the policies of the past had not been correct, that they had, in fact -- did you hear Mr. Payne yesterday, my question to him was, that the policies in the last 20 years had, in fact, resulted in some congestion and overcrowded schools? Was there any feeling on the part of the Board that they were trying to change directions from the past?

A. I think that's true.

Q. Did the policies have anything to do with trying to more closely coordinate public facilities with growth?

A. Yes, definitely; the policy specifically said -- let me see. I think I can refer you to a policy

in the Pohick plan. I think it's page 30. Excuse me. It's page 39. Policy 1 says:

"Community facilities should be provided to guide urban growth in the watershed as well as to respond to the needs generated by this growth."

THE COURT: How much longer will you be, sir?

MR. SYMANSKI: That was just it, Your Honor.

THE COURT: All right.

Do you have any other questions?

MR. HAZEL: No, sir, Your Honor.

THE COURT: May the witness be excused?

MR. HAZEL: Yes, sir.

THE COURT: You're free to go.

(Witness steps aside.)

THE COURT: How many more witnesses do you have?

MR. SYMANSKI: Mr. Pammel, and that will be fairly lengthly.

(Discussion off the record.)

THE COURT: The case is continued to Wednesday at 10:00 o'clock.

(Whereupon, at 5:20 o'clock, p.m., the hearing in the above-entitled matter recessed until 10:00 o'clock, a.m., July 18, 1973.)

CERTIFICATE OF REPORTER

I, Esther W. Farmer, stenotype reporter, hereby certify that the foregoing is a true and correct transcript of the proceedings in the above-entitled matter taken in the Fairfax County Circuit Court, July 16, 1973.

In witness whereof, I have set my hand this 6th day of July, 1973.

_____