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IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

THE BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA

Appellant,

v.

ROY G. ALLMAN, ET AL.

Appellees.

APPENDIX TO THE BRIEF

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

VOLUME II

VOLUME II

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VOL. I

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED
SEP 12 1973
W. [illegible] KLIN GOODING
Clerk of the Circuit Court
of Fairfax County, Va.

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ROY G. ALLMAN, Trustee, et al.,:

Complainants, :

vs. : In Chancery No. 36905

THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, :

Defendant. :

- - - - - - - - - - - - - - - - - -:

Fairfax, Virginia

Wednesday, April 25, 1973

The above-entitled matter came on for hearing at 10:00 o'clock a.m.

BEFORE:

HONORABLE PERCY THORNTON, Judge

APPEARANCES:

JOHN T. HAZEL, ESQUIRE
For the Complainants

GEORGE A. SYMANSKI, ESQUIRE
Assistant County Attorney
For the Defendant

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
C. S. Coleman	27	29		
Jack Liedl	30	39	40	
Oscar S. Hendrickson	43	58	68	75
Harry Bicksler	77	82	84	87
Thomas Whitworth	89	93	104, 112	110

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(The Court Reporter was sworn.)

THE COURT: This is the case of Roy G. Allman, trustee, and others, versus the Board of Supervisors of Fairfax County. Are counsel ready to proceed?

MR. HAZEL: Yes, Your Honor.

MR. SYMANSKI: Yes, Your Honor.

THE COURT: Swear all witnesses who will testify in this matter that are present.

(Witnesses were sworn.)

THE COURT: Is there to be a rule on witnesses?

MR. HAZEL: Yes, sir.

THE COURT: Witnesses remain outside the hearing of the Court until you are called up to testify, please.

(Witnesses were excluded.)

MR. HAZEL: If Your Honor please, Mr. Pammel was in a case a couple of weeks ago and has again been requested by the County Attorney that he be present. I have agreed that he could be present subject to Your Honor's approval.

THE COURT: I have no objection if counsel has no objection.

MR. HAZEL: Except during the testimony of Mr. Payne. Apparently he is important to the County's case as an advisor to Mr. Symanski. I do ask that he not be present and I think

County has agreed.

MR. SYMANSKI: I think he is allowed to be present. We have agreed he will leave during Mr. Payne's testimony.

THE COURT: That will be fine.

MR. HAZEL: Your Honor, we have a number of exhibits which we stipulate to. Would Your Honor like to put them in first?

THE COURT: All right, sir.

MR. SYMANSKI: Verbatim transcript from the zoning hearing.

THE COURT: We will mark as No. 1.

(The document referred to was marked Stipulation Exhibit No. 1 and received.)

MR. SYMANSKI: Staff report on C-222.

THE COURT: No. 2.

(The document referred to was marked Stipulation Exhibit No. 2 and received.)

MR. SYMANSKI: The Upper Potomac Comprehensive Plan.

THE COURT: That will be No. 3.

You agree on putting that in all at one time?

MR. SYMANSKI: Yes.

(The document referred to was marked Stipulation Exhibit No. 3 and received.)

MR. SYMANSKI: Part of the minutes of October, 1971.

THE COURT: That will be No. 4.

(The document referred to was marked Stipulation Exhibit No. 4 and received.)

MR. SYMANSKI: I have a Memorandum of Understanding on the Washington Metropolitan Regional Water Pollution Control Plan.

THE COURT: No. 5.

(The document referred to was marked Stipulation Exhibit No. 5 and received.)

MR. HAZEL: Tax map assemblage on the back, Your Honor.

THE COURT: That will be No. 6.

(The document referred to was marked Stipulation Exhibit No. 6 and received.)

MR. HAZEL: We have another tax map assemblage, a little larger than that. It covers more area. Could we call

that the Herndon Tax Map?

THE COURT: That will be fine. Herndon Tax Map, No. 6.

(The document referred to was marked Stipulation Exhibit No. 6 and received.)

MR. SYMANSKI: Then we have a development plan submitted by the applicant.

THE COURT: No. 7.

MR. HAZEL: If Your Honor please, in connection with that exhibit, that is the similar black and white of the color exhibit on the blackboard.

THE COURT: I will call this one 7 and call that one 7-A.

MR. HAZEL: We would like to not actually introduce this, just use it. They would like the colored part out of the record. We don't want to get that in the record where it becomes part of the record. We are going to use that for purposes of testimony and use the black and white as the record.

THE COURT: Is that agreeable to counsel?

MR. SYMANSKI: Yes.

THE COURT: All right, sir. The development plan will be No. 7 then.

(The document referred to was marked Stipulation Exhibit No. 7 and received.)

MR. HAZEL: If Your Honor please, I have a Fairfax County Grid Map on the wall which is the tax map.

THE COURT: Any objection to that?

MR. HAZEL: I want to use that to show the location of what I have called the Reston Assemblage; next to it, the tax map assemblage on yellow up there is the location of the larger map.

THE COURT: All right. That will be referred to as No. 8.

(The document referred to was marked Stipulation Exhibit No. 8 and received.)

MR. HAZEL: The tax map assemblage here is No. 9.

THE COURT: All right.

MR. HAZEL: We call that the Reston map.

THE COURT: That will be fine.

(The document referred to was marked Stipulation Exhibit No. 9 and received.)

MR. HAZEL: We have an aerial photograph here with

an overlay.

THE COURT: All right, sir. That will be No. 10

(The photograph referred to was marked Stipulation Exhibit No. 10 and received.)

MR. HAZEL: I have a County watershed map just showing the watershed in Fairfax County.

THE COURT: No. 11.

(The document referred to was marked Stipulation Exhibit No. 11 and received.)

MR. HAZEL: I have the preliminary plat from the County file for the subdivision of Hidden Brook. The County record plats for Section One and Two that I would offer as a package, perhaps 12-A and 12-B.

MR. SYMANSKI: What are the dates on these?

MR. HAZEL: This was filed in September and these files --

THE COURT: That is called the Hidden Brook?

MR. HAZEL: Yes, sir.

THE COURT: It is 12, 12-A and B. A is Section One and B is Section Two.

(The documents referred to were marked Stipulation Exhibits No. 12, 12-A & 12-B and received.)

THE COURT: I suggest 13-A and B from Loudoun County water and sewer line next.

We will call it 13 and 13-A.

(The documents referred to were marked Stipulation Exhibits No. 13 and 13-A and received.)

MR. HAZEL: I have a tax map assemblage from Loudoun County prepared by Mr. Payne.

THE COURT: That will be 14.

(The document referred to was marked Stipulation Exhibit No. 14 and received.)

MR. HAZEL: If Your Honor please, the Fairfax County Budget for Fiscal 1972, the approved budget.

THE COURT: All right, sir. No. 15.

(The document referred to was marked Stipulation Exhibit No. 15 and received.)

MR. HAZEL: The Planning Commission minutes of October 15 and 18, 1972, in the subject case, the 12th and 18th.

THE COURT: No. 16.

(The document referred to was marked Stipulation Exhibit No. 16 and received.)

MR. HAZEL: The County zoning resolutions in Case No. 1583, Board of Supervisors Resolution, Rezoning 1583.

THE COURT: No. 17.

(The document referred to was marked Stipulation Exhibit No. 17 and received.)

MR. HAZEL: Board of Supervisors Resolution Rezoning B-445 with staff's report attached.

THE COURT: No. 18.

(The document referred to was marked Stipulation Exhibit No. 18 and received.)

MR. HAZEL: Staff report and the resolution in Case A-960.

THE COURT: No. 19.

(The document referred to was marked Stipulation Exhibit No. 19 and received.)

MR. HAZEL: Transcript of June 16, '71; July 21, '71; June 30, '71 before the Board of Supervisors that led to the adoption of the low-moderate housing income case.

MR. SYMANSKI: The dates again?

MR. HAZEL: June 16, '71; July 21, '71; June 30, '71.

THE COURT: No. 20.

(The documents referred to were marked Stipulation Exhibit No. 20 and received.)

MR. HAZEL: The opinion of, an order of, Judge Plummer in this Court in the low-moderate income case.

THE COURT: No. 21.

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

MR. HAZEL: Contracts of sale on the subject property between Horne and Allman, the owners, and the subject purchases.

THE COURT: No. 22.

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

MR. HAZEL: Staff report in Board of Supervisors minutes for September 22 and December 15, 1971, in the Clinch case.

THE COURT: No. 23.

(The document referred to was marked Stipulation Exhibit No. 23 and received.)

MR. HAZEL: The opinion of this Court in the Clinch case, Law No. 26803, together with the answer and the complaint.

THE COURT: No. 24.

(The document referred to was marked Stipulation Exhibit No. 24 and received.)

MR. HAZEL: The adopted Reston Master Plan.

THE COURT: No. 25.

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

MR. HAZEL: The adopted Herndon Master Plan.

THE COURT: No. 26.

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

MR. HAZEL: A document of maybe ten or 12 pages, titled, Crestbrook, and being a part of the subject zoning application 222.

THE COURT: It will be marked 27.

(The document referred to was marked Stipulation Exhibit No. 27 and received.)

MR. HAZEL: If Your Honor please, I have four plats here in a package which are development plat, water distribution, sanitary distribution, and construction phasing plans for the subject application.

THE COURT: We will mark those 28, A, B, C -- one 28, 28-A, 28-B, 28-C on those.

(The documents referred to were marked Stipulation Exhibits No. 28, 28-A, 28-B and 28-C and received.)

MR. HAZEL: If Your Honor please, that is all of the exhibits.

We have also agreed, I think, that we would ask that the Fairfax County Code be included as part of the record in this case.

MR. SYMANSKI: Number of lots?

MR. HAZEL: We have also stipulated that under existing zoning the lot yield on the subject property would be 273 lots.

MR. SYMANSKI: Approximately.

MR. HAZEL: That the development cost, including a sanitary sewer section, would be $8,500 per lot for the construction of lot improvements only.

THE COURT: All right, sir.

MR. HAZEL: That seems like quite enough.

I think that concludes the stipulated exhibits.

THE COURT: All right, sir. You may make your statement.

MR. HAZEL: If Your Honor please, I suppose the Court by now feels quite familiar with the zoning processes of Fairfax County. I will try to make a very brief opening statement, merely to introduce the structure for what we intend to present.

C-222, which is the subject application, is outlined in orange on the tax map assemblage on the board, on the wall. It is between the Town of Herndon and the intersection of Route 228, a State primary route, and Route 7, another State primary route, and the intersection has been called for years Herndon Junction. It is about six-tenths of a mile from Herndon Junction on the way to Herndon. It is bounded on the south by developing R-12.5 zoning. It is bounded on the west by the Loudoun County line and the subject property, as demonstrated on the photograph, also has 100 acres which is, of course, not a part of this hearing which is in Loudoun County.

The two property owners involved own all of the property outlined in yellow on the overlay. The part on the extreme west area is about 100 acres that is in Loudoun County.

That part of the subject property abuts the development of Sterling Park.

Perhaps if we move the overlay over, we can see on the aerial photograph exactly where we are.

Here is the development area of Sterling Park abutting the property on that side.

Developing area in Fairfax County of Hidden Brook is on the south. The Town of Herndon and the Reston are over on this area.

Most of the area between the developed apartment and the open space here is in actually Reston ownership.

This is very near to the subject property, an outlined in yellow on the tax map, an assemblage here that I am pointing to, the Clinch property that was heard by the Board of Supervisors on September 22, 1971. Decision was deferred until December, and on that date the 12-5 zoning was granted on Clinch but in the intervening period the 12-5 density was denied on the subject tract.

Now, this property, and this case is structured on several premises -- I think the most important part of the case is discrimination, discrimination of the grossest, most hypocritical kind against the landowner individually and against the public good.

The application is for a PDH-3. PDH is Planned Development Housing Ordinance of Fairfax County which is based on a density and which, over the past four or five years the County has encouraged landowners and developers to utilize in order to bring to the County flexible housing types in order to assist the County with its sometime-announced goal that they would like lower-cost housing and in order to bring a better quality of development.

Now, we do not ask, and I make it clear we do not ask, this Court to zone this property today to either the R-12-5 category or the PDH category. We will demonstrate, I think to the Court's satisfaction, that PDH-3 is in effect the outgrowth of the R-12-5 category.

The Master Plan recognized this site for density. The PDH zoning process anticipates a hearing on the development plan and a hearing on the zoning and a grant of the zoning to the PDH-3 category with the then grant of the development plan.

Now, what happened in this case, which is clear from the record, we are exactly in accord with the Master Plan density. We filed, as the Master Plan requested, and as the staff and the Board requested under the PDH, to accommodate the County's purposes.

The development plan was not a major factor in this

case. The Board instead determined in its very cursory documentation or conversation -- not documentation -- there was absolutely no documentation -- but in its cursory opinion the Board said that development here, although called for in the Master Plan, and although the PDH-3 development plan was probably a good idea, that this area was "premature for development" and there would be adverse impact on public facilities and therefore the case was denied with no more investigation or in-depth study than that. It was denied between the time the Clinch case was heard and the Clinch case was granted for identical zoning.

Now, the other phase of this case which we will endeavor to show the Court by the evidence already introduced in the form of the low-moderate ordinance, the low-moderate income housing hearings, and evidence that we will produce today is that there is in Fairfax County and there was in October, '71 a terrific shortage of land available for housing to serve the housing needs of Fairfax County.

We will pattern this case, and we will talk a great deal in the argument of this case and in the evidence about the very facts that 20 years ago came up in the Carper case.

In the Carper case, there are findings in the Court, and the Court of Appeals sustained, as of course you realize

and know, the fact that the County was zoned generally for large lots in the west and small lots in the east and that there was an effort, and this is almost a replay of history -- I guess history really does repeat itself -- here we are, 1959 to 1973, 24 years later, and we have the same issue all over again.

The holding in the Carper case is that one and two-acre lots held as an alleged financial benefit to the existing taxpayers of the County is improper because the County must provide for all types of housing and they cannot by zoning force people into areas where larger lots will require higher-priced housing.

The Court in this case affirmed the trial judge who said that one of the purposes of zoning was to provide for development of the several areas in a manner consistent for the uses which they are suited, and the regulation should be designed to serve the district they affect, and the welfare of those who may occupy the houses.

The economic effect can be considered but as more or less incidental.

Now, the County's entire posture in this case, in a nutshell, and they will talk, I am sure, a lot about PDH and what they can do as far as discretion in a PDH -- but when you cut through all the dirt and all the dust and the smoke and

smog, and a great deal of the hypocrisy, the simple fact here is that the 2.5 Master Plan recognized PDH development, exactly what the County wanted for its land use, and its reduction of housing costs. Yet when it came to the Board of Supervisors, perhaps coincidentally during an election campaign in which opposing candidates testified -- when it came to the Board of Supervisors with the back of the hand it was dismissed as "premature" although fully recognized in the plans.

Despite that, they sandwiched this case, denial was sandwiched in between the grant of the Clinch case in which all of the same factors applied except Clinch was in an area where it had no zoning around it of any kind. It had no 12-5. It was not on primary highway; it was in a bad road situation. It had the same sewer situation, the same school situation, the same water situation, except worse, and yet Clinch at the same time was granted in a sandwich effect between the hearings and this case.

Your Honor, we think that we can sustain in this case along the lines pioneered and staked out by Carper, that this is the grossest sort of economic discrimination against this landowner, and it is the grossest sort of discrimination against the public generally because it is a zoning for the manipulation and reward of the few against the desires and the

needs of the public generally.

That in a nutshell is our case.

THE COURT: All right, sir.

Mr. Symanski.

MR. SYMANSKI: Your Honor, this case is different from the usual case in that it is under the PDH zoning ordinance. The PDH ordinance is an optional category. It is not one that the developer or applicant has to choose. It allows leeway. It allows innovations. It allows other differences from the regular zoning categories.

I repeat, it is not one that the applicant has to choose. He can go conventional.

It also allows bonus densities for various reasons -- for open space, allows them density above the conventional zoning category.

At that time, the low and moderate housing allowed bonuses in densities and also in innovation of design. It allows bonus densities.

Now, in exchange for this leeway, this freedom that PDH ordinance allows, it also has its own set of standards and regulations.

I would like to refer the Court to Section 30-15 of our zoning ordinance which is entitled, Planned Developments.

It applies to PDH or PDC districts.

Now, I would like to point the Court to two particular provisions, among others, in that 30-15 section:

One. Principal vehicular access to planned development shall be from streets and roads capable of supporting existing traffic, and the traffic that will be generated by the planned development.

Public facilities. The planned development shall be located in an area for which police and fire protection and public facilities are available and adequate for the uses proposed provided, however, that the applicant may provide such facilities which are not presently available and written assurances that such provision shall be included as a part of the development plan.

As I say, the PDH allows density bonuses; it allows higher density of development than the regular category but, on the other hand, it also requires that 30-15, specifically written for this category, be met.

It is our position in this case, Your Honor, that these standards and regulations were not met.

First of all, the development plan itself, the development plan is important in a PDH application. It is what the Board considers. It is what the Board approves or

disapproves.

The plan itself here, we will show, was lacking in many ways but with regards to the comprehensive plan, although it may have met the density requirements of the comprehensive plan, it didn't meet all the requirements of the comprehensive plan or the policies.

The development plan was also lacking possibly in some quality aspects that the staff report showed that there were many things lacking in this development plan which were required by the ordinance.

As to public facilities which the ordinance says shall be presently available or the applicant will show, make written assurance of how he is going to provide them.

The road system. The comprehensive plan shows, says, that the road system is minimal out here and we will show that it is minimal, substandard, and it is dangerous, minimal from the safety point of view and efficiency point of view.

The water supply, we will refer to the Board verbatim.

Mr. Babson expressed a desire of Herndon to supply water, a hope that water would be supplied, but he didn't show that water would be supplied. It was a big question mark.

Schools. Staff report shows the schools were overcrowded then. There was a planned school opening in the near

future. We will show that even with those planned school openings this application would have kept the schools at their overcrowded, in their overcrowded, situation such that the planned improvements would have done nothing to alleviate the situation.

Fire protection. We will show that from a national standard and from a Fairfax County standard, fire protection for this property was not adequate.

Police and library. The staff report says that this development would tax the County's ability to provide these services.

Now, as I said before, the PDH ordinance and 30-15 is important. This is optional category. The applicant came in, requested his bonuses, got his freedom. But now he doesn't feel that he should abide by the requirements involved.

We will show Your Honor that a comprehensive plan, although the density requirements may have been met here, is a plan for the future. It is not a rezoning of the property. It is not something where an applicant can say, the density is there on the plan; therefore, immediately, I deserve my zoning.

The comprehensive plan is for orderly provision of convenience and harmonious community and environment.

I would like to read the one sentence from 15.1-427 which, along with 15.1-498 and 15.1-490 of the State Code are very important to this case.

This chapter is intended to encourage local governments to improve public health, safety, convenience or welfare, and to plan for the future development of new communities to the end that transportation systems be carefully planned; that new community centers be developed with adequate housing, with utility, health, education, recreational -- and it goes on.

I think the key word in here, Your Honor, is "to improve." This is telling local governments, and it is saying that the zoning process, the planning process, is to improve. Let's not say that if we got crowded roads elsewhere, we deserve zoning because we come up here to your crowded standards here.

Let's improve it. Let's not say, well, the schools are crowded elsewhere; we have handled it by putting in tempos, putting the kids in a language lab where they are not designed to be -- let's improve that situation.

The Carper case. I think it is stretching the imagination to compare this to the Carper case or the western two-thirds of the County which were zoned for large lots. I think the key in this whole line of exclusionary zoning cases, which of course we will touch on later in closing, is that there

was an intent, the Court found an intent to exclude people, not the fact that the Board or the zoning body wanted to provide services in an orderly manner.

I would like to quote National Land versus Kohn, 215 Atlantic (2nd) 597, a 1966 case:

"Zoning ordinance which has as its primary purpose the prevention of entrance of newcomers in order to avoid future burdens, economic and otherwise, upon administration of public services and facilities is not valid."

Of course, we do not mean to imply that a governmental body may not utilize its zoning power in order to assure that municipal services which the community requires are provided in an orderly and rational manner.

Your Honor, I think this exclusionary purpose is going to be very hard to show because I don't think it exists.

Also, I think we all know what the standards are in a zoning case.

The applicant has, the petitioner has, a very heavy burden of proof. He must show clearly that the Board was arbitrary, capricious, unreasonable as it relates to health, safety and welfare. It is fairly debatable the Board's decision will stand.

We think, Your Honor, that the Board's action here

was clear under the statutes of Virginia, and if not clear if is at least fairly debatable.

THE COURT: Let me inquire at this point: Was the R-12-5 acceptable to the applicant and proposed to the Board?

MR. HAZEL: Yes, it was acceptable to the applicant but it was never even suggested that that would be acceptable to the Board. The testimony will be that the staff report would have been the same had it been 12-5 instead of PDH-3.

THE COURT: Of course, I don't want to preclude the evidence. I am just trying to move the case along.

Is there any evidence to the effect that the Board would suggest that certain standards be met, particularly regarding the police department and firefighting equipment or fire protection be provided by the applicant?

MR. SYMANSKI: It is right in the statute that these were deficient. That staff report went to the Board, which they, I assume, read before they made their decision.

Also, all of the standards are right in the State Code.

MR. HAZEL: I would differ. It is not in the staff report. It merely says that those matters would be taxed. There will be some testimony about the absolute lack of study or basis for that.

THE COURT: All right. Call your first witness.

MR. HAZEL: Now, if Your Honor please, we have some of the County department heads here. I would like to explain this so that the record won't seem disordered. There are some of the technical people that I would like to call. They would essentially be out of order. Normally, I would put on one of my clients to explain the proposal, then put on these technical witnesses later. But I think there are four technical people we could get out of the way and back to work very quickly.

With that explanation I would like to put them on in that order.

THE COURT: You may proceed.

MR. HAZEL: Mr. Coleman, please.

Whereupon,

C. S. COLEMAN,

was called as a witness and, having been previously 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 C. S. Coleman.

Q Your employment?

A I am employed by the County of Fairfax.

Q How long have you been employed by the County?

A Sixteen years.

Q What is your capacity with the County?

A I work as a soil consultant for the County.

MR. SYMANSKI: I will stipulate --

MR. HAZEL: I would tender Mr. Coleman as an expert. He has testified in many cases.

BY MR. HAZEL:

Q At my request, did you prepare a document which shows the various types of soils on the subject property?

A Yes, I did.

Q Do you have that here in your hand?

A Yes.

Q Are those colorings yours?

A Right.

Q Would you describe to His Honor what the colorings show?

A The red color indicates the area is rated good for septic fields; the yellow areas, marginal. Some of them bad, some of them not. Other areas are those that are either too shallow rock or have high water table in the wet season that would not be suitable.

MR. HAZEL: I would like to introduce this in evidence.

THE COURT: Any objection?

We will call that Petitioner's Exhibit A, I suspect.

(The document referred to was marked Complainant's Exhibit A and received.)

BY MR. HAZEL:

Q Mr. Coleman, did you have any opinion as to whether or not this property could be feasibly developed for either one acre under its present zoning or any smaller lot category with septic tanks?

A The areas of good soil are too widely scattered. There are too many areas of high water table or shallow rock to make it possible to develop it on a septic field for this tract.

Q To develop it feasibly you would require public sanitary sewer?

A That is the only way I can see it.

MR. HAZEL: I have no further questions.

CROSS EXAMINATION

BY MR. SYMANSKI:

Q Is it your testimony that none of the areas on the subject tract could support a septic system?

A No, there are areas which would support a septic field.

Q The areas in red could support septic fields?

A Right.

MR. SYMANSKI: No further questions.

MR. HAZEL: I would like to ask that Mr. Coleman be excused.

THE COURT: You are excused.

(Witness excused.)

THE COURT: Call your next witness.

MR. HAZEL: Mr. Liedl, please.

Whereupon,

JACK LIEDL,

was called as a witness and, having been previously 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 Jack Liedl.

Q Your employment?

A I am Acting Director of the Department of Public Works, Fairfax County.

Q How long have you been employed by Fairfax County, Mr. Liedl?

A Off and on since 1951, the last time for about 15

years.

Q During the past five years or thereabouts, has the administration of the sanitary sewer system of the County been essentially your business?

A It has.

Q Now, Mr. Liedl, are you familiar with the application C-222 which is the subject of today's case? By that I mean, so far as it relates to location and watershed?

A I am.

Q I show you Stipulated Exhibit No. 11 which has been identified as a watershed map. Are you familiar with that map?

A I am.

Q Could you outline on that map -- perhaps we can put it up here -- the watershed that this is located in and how that relates to other watersheds in the County?

A The tract is in the Sugarland Run watershed which is part of the upper watershed for the Potomac River.

Sugarland Run runs through Fairfax County and down into Loudoun County and connects with the Potomac River.

Q Now, Mr. Liedl, are there sewer lines on the property?

A There are.

Q I show you a copy of the staff report which is an introduced exhibit in this case. Would you read paragraph two

from the sewer sanitation department's report?

A It says: The nearest available sewer to the property is a 21-inch and 36-inch line located on the property. This line is adequate for the proposed use.

Q Now, Mr. Liedl, was sanitary sewer service available to this property from Fairfax County in October of 1971?

A It was.

Q Is it available to this property today?

A Trunk sewer capacity is available. Treatment capacity is on an allocation basis on the first come-first served.

Q Now, Mr. Liedl, could you tell His Honor what the treatment plant for this particular tract is?

A The sewage from this area is treated at the D. C. Blue Plains Plant.

Q What other areas of the County are treated at that plant?

A All of the northern area of the County. That includes --

Q When you say, all of the northern area --

A That includes Horse Bend, Sugarland, Difficult Run, Scott's Run and Pimmit Run -- basically the northern one-third of the County.

Q Now, is there any difference in the treatment situation regarding the subject tract today and any other properties

located in the northern area of the County?

A No, they are all in the same predicament.

Q They are all subject to some restriction?

A That's true.

Q What is that restriction, Mr. Liedl?

A Well, the restriction is an allocation system that was developed by the Board of Supervisors in order to assure that the Blue Plains Treatment Plant was operating in a satisfactory manner between now and when it is totally enlarged, or a second regional plant becomes available. So they developed a system for a five-year period that allocates just so much capacity each year.

Q Mr. Liedl, I show you a staff report in Zoning Case C-377 which is now pending and ask you if you will read the paragraph?

MR. SYMANSKI: I am going to object that this staff report was made after the date of this trial, this zoning hearing. I think in this case we have to consider what the Board of Supervisors had before it or what the circumstances were at the time of this hearing. If the Court is going to review new testimony that was not before the Board of Supervisors, then this is in effect a new zoning hearing rather than a review of what they had to do.

THE COURT: What is your position on that?

MR. HAZEL: I think that is an artificial restriction which almost insults the Court, that the Court can't take into account things that have occurred which prove out the facts that were established or were present and the theories at the time of the Board of Supervisors' hearing.

In this particular case, I have an entirely different ground in that the County is alleging that sanitary sewer is a problem. Yet, just a few months ago, in a case for some several thousand units, Mr. Liedl's office published the staff report recommending a rezoning in Reston in the same watershed and making absolute minimal light of the sanitary problem.

So that this report is presented not to talk about the land use in totality but to talk about this sanitary situation that the County says is a problem, unless the County will on this issue stipulate or agree with their witness that sewer was available to the property on that date.

MR. SYMANSKI: Your Honor, the point is that if the Board of Supervisors had a traffic problem allegation before them, made in the staff report, if there was a Metro system right to that property today, I think it is ridiculous to say that transportation was not a problem when this case was considered.

Now, if there is a change in circumstances, the applicant can go back to the Board and say the circumstances are different. But if the Court is going to take in all the evidence, up to this date, I don't see how it can review what the Board of Supervisors' decision was with regards to arbitrary and capricious.

THE COURT: I understand that.

I think his position, though, as I understand his position, is that there was discrimination and this would endeavor to go to show that discrimination in effect resulted from a cursory review of the application.

MR. HAZEL: Exactly.

THE COURT: I am going to let it come in at this point. I will have to put some screws on it at some place along the way, though, but at this point I am going to allow this to come in.

Objection denied.

BY MR. HAZEL:

Q Would you read that paragraph from the staff report in C-377?

A Well, this is not our staff report, Public Works staff report.

Q Would you read yours?

A Our statement on C-377 application was, states, actual provisions for sewer services contingent upon the property owner obtaining tap allocation from the .74 mgd annually allocated increment.

Q Would you now read the Fairfax County staff report in this document?

A This area is served by the Blue Plains Sewage Treatment Plant for which the County has allocated 74 million gallons per day, .74 it should be, mgd. Average increment when this allocation is used up for any one year, building permits are not issued until May 1 of the next allocation period.

MR. HAZEL: I would now like to introduce this staff report as my Exhibit B.

THE COURT: I don't know about the whole, entire report. I think it is only related to these particular items, to the sewer. Maybe they can be extracted.

MR. HAZEL: I think later I will introduce this again, further. I will have other evidence to tie this in.

THE COURT: Let's hold it until that time then, until we see what the situation is.

BY MR. HAZEL:

Q Mr. Liedl, I show you Stipulated Exhibit 23 which is the staff report in the Clinch case, C-282, and I show you on

the tax assemblage outlined in yellow the area of C-282.

I ask you, is the sewer, sanitary sewer situation, today, and was it in October of 1971, identical as between these two parcels?

A It was.

Q Now, in summary, the sanitary sewer was available, as I understand your testimony, in October to the subject parcel, October of '71?

A Yes.

Q There was then no restriction on treatment, no allocation?

A No allocation situation.

Q Was then in effect.

Now, there is an allocation system based on 730,000 gallons a year for a prescribed period?

A Seven-forty.

Q Now, Mr. Liedl, looking beyond the present allocation, what is the planning for the increase of sewer capacity so that there will be no need for allocations?

A It is construction of an AWT facility by the Blue Plains people which is now underway. That is scheduled to be completed in, I believe, 1977, summer of 1977. This will free up some additional capacity for the County.

The next additional capacity will rely upon a second regional plant being built to serve primarily the Maryland portion that is being served by Blue Plains now.

When this is taken off the Blue Plains Plant, this will provide additional capacity for Fairfax County and Loudoun County. There is no scheduled date for that as yet.

Q But the next relief is in 1977?

A That's correct.

Q Now, Mr. Liedl, going back in the sanitary history of the subject area, was this not a part of Sanitary District 14?

A It was.

Q Do you recall when Sanitary District 14 was established?

A No, sir.

Q Was it in the late '60's or early '60's, rather?

A I believe it could be in the early '60's.

Q Was that established after a referendum vote of the citizens in the area?

A I am not clear on it. I don't believe that the citizens had a referendum.

Q For what purpose was it established?

A Sanitary 14 was established to provide sewer service for the area of the County and the Town of Herndon.

Q This property is located in Sanitary 14?

A This property is located in Sanitary 14.

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

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. SYMANSKI:

Q Mr. Liedl, you testified that these lines, sewage lines, went to the Blue Plains Plant, is that correct?

A That's correct.

Q Now, are you aware that there was a memorandum of understanding in approximately September of 1970?

A Yes, sir.

Q What was that memorandum of understanding about?

A Well, the memorandum of understanding was developed by all the participants that contribute to the Blue Plains Treatment Plant. It was, it recognized, that the Blue Plains Plant had problems during the interim period until it could enlarge, and how each of the contractors could aid the Blue Plains situation. This is what led up to the allocation system that the County imposed.

Q You say, recognized that Blue Plains had problems?

A That's correct.

Q What do you mean by "problems"?

A Growth on the system faster than was anticipated and delays on construction. So they couldn't meet --

Q Wasn't Blue Plains over its designed capacity in mgds, million gallons per day?

A It was recognized at that time it was, yes.

Q And you testified that there were plans for AWT, Advanced Waste Treatment?

A That's correct.

Q What is the target date for that AWT?

A The first target date was '74. The second one was '76. Now I believe it is '77.

MR. SYMANSKI: No further questions.

REDIRECT EXAMINATION

BY MR. HAZEL:

Q During the period since the memorandum of understanding in 1970, has the Board of Supervisors continued to grant zoning cases in the Blue Plains watershed?

MR. SYMANSKI: Objection.

THE COURT: If he knows.

MR. HAZEL: If he knows.

THE WITNESS: I don't follow the zoning operation that close.

BY MR. HAZEL:

Q Did you make a recommendation on a zoning called the McLean House?

A Yes, sir.

Q Where is the McLean House?

A That is in the --

MR. SYMANSKI: Same objection.

MR. HAZEL: If Your Honor please --

MR. SYMANSKI: All of that happened after the fact. Either I may note a continuing objection to new evidence --

THE COURT: I will allow him to proceed with this.

THE WITNESS: The McLean House application is located in the Pimmit Run watershed.

BY MR. HAZEL:

Q Does that go into the Blue Plains Treatment Plant?

A It does.

Q Would you point that out on the property?

A Basically up in this general area.

Q That uses the same sewer allocation?

A It is on the allocation system, yes, sir.

Q How many units did McLean House encompass?

A I believe something in the neighborhood of 400.

Q Now, in fact, that has been zoned and the sewer

commitment made to that 400 units since this zoning case came up and was denied, hasn't it?

A I believe that's correct.

Q Was there a large zoning at Tyson's Corner under the West Park project granted here in the past four or five months?

A I wouldn't have any knowledge of that.

Q You never heard of West Park zoning?

A I know where West Park is but I don't follow the zoning, when it is granted and when it is heard.

Q Are you familiar at all with the Hilton Hotel at Tyson's Corner that is being planned?

A Yes, sir.

Q When was that zoned?

A I don't know when it was zoned. See, I only get involved in it on completion of application and zoning permits so I would have no knowledge.

Q Do you know of any policy of the Board of Supervisors since 1970 that they stopped rezoning cases because of sanitary sewer problems?

A Not to my knowledge. That is out of my field.

Q I am not trying to get you out of your field. I am just asking you if you know of any halt on zonings?

THE COURT: Have you ever received any policy

instruction from the Board to this effect?

THE WITNESS: As regards zoning?

THE COURT: Yes.

THE WITNESS: No, sir, they would not come to me.

THE COURT: But has the Board ever issued you any policy in regards to you looking at availability of sewer?

THE WITNESS: No, sir.

THE COURT: All right.

MR. HAZEL: I have no further questions.

THE COURT: You are excused, sir.

Thank you.

(Witness excused.)

THE COURT: Call your next witness.

MR. HAZEL: I would like to call Mr. Oscar Hendrickson, Your Honor.

Whereupon,

OSCAR S. HENDRICKSON,

was called as a witness and, having been previously duly sworn, was examined and testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. HAZEL:

Q Please state your name, sir?

A Oscar S. Hendrickson.

Q Your employment?

A I am with the County Development, Preliminary Engineering Branch, Fairfax County.

Q Now, Mr. Hendrickson, does your particular branch, people under your charge, do they deal with incoming preliminary plans for subdivisions and pursue those through regarding specifications until the time when they are approved and recorded?

A Yes, sir.

Q Mr. Hendrickson, are you familiar with the area north of Herndon which is shown on the large tax map assemblage on the part, part of it outlined as C-222, and a large area south of that identified as R-12-5 zoning?

A Yes.

Q Mr. Hendrickson, could you go to the map and point out the area to His Honor that we are talking about that is identified as zoning R-12-5?

A All of the land down here.

THE COURT: How many acres is that, approximately, if you know?

THE WITNESS: I don't know offhand but I know there are roughly 500 units here and about 500 in the upper unit.

THE COURT: Talking about 900 units?

THE WITNESS: Yes.

THE COURT: Are they already in place?

THE WITNESS: Not all of them, no, sir.

THE COURT: All right.

BY MR. HAZEL:

Q Mr. Hendrickson, I show you Exhibit by Stipulation 12 and 12-A and B. Would you describe to His Honor what Exhibit 12 is?

A This is the Hidden Brook preliminary plan that was submitted to us for approval.

Q What date was that submitted, Mr. Hendrickson?

A Let's see.

Q In September of '71?

A I believe so. This was September '71, first submission.

Q That was pending in your office during the fall of 1971?

A Yes, sir.

Q What date was it approved by you as a preliminary plat?

A Finally was approved on February 14, 1972.

Q Now, Mr. Hendrickson, in furtherance of that plat, have record plats been submitted and construction commenced on portions of that?

A Yes, sir.

Q I show you A and B. Can you identify those exhibits?

A Section One, Hidden Brook, on Exhibit A.

Q How many lots on Section One, Hidden Brook?

A They have 103 lots.

Q Now, Mr. Hendrickson, are these the 103 lots which are platted on this tax map in that location that I am pointing to?

A Yes, sir.

Q Where are the others, the Section Two lots?

A They will follow on right on behind that grouping.

Q They have now been approved and they are of record here but they just don't show, is that correct?

A That's correct.

Q Then there are approximately 200 more lots on that preliminary plat which would consume all of that subject case?

A Yes, sir.

Q Now, Mr. Hendrickson, I show you --

THE COURT: Let me ask a question:

When was that R-12-5 to the south, I guess to the south of it, when was it zoned?

A I don't know exactly when it was zoned but the plan came in as Tidal Inn Estates. They have changed the name but

it was Tidal Inn and it was approved in '72.

MR. HAZEL: I will cover that right now.

THE COURT: I just wanted to make some notes as I go along here.

BY MR. HAZEL:

Q Mr. Hendrickson, the tax map that you referred to earlier, which I think is Exhibit 6, has numbers on it denoting zoning applications, does it not?

A Yes, sir.

Q Would you approach that map and determine which numbers there are on that?

A Are we talking about the 12-5?

Q Yes, sir.

First, you see number 1583?

A Yes, sir.

Q I show you Stipulated Exhibit 17 and ask if that is a resolution of the Board of Supervisors' zoning of that property?

A Yes, sir; it is.

Q What is the date on that resolution?

A July 20, 1960.

Q Now, Mr. Hendrickson, I show you Stipulated Exhibit 18 and ask you if you see B-445 up there?

A Yes, sir.

Q Would you look on that exhibit and see what the date is?

A This is November 30, 1966.

Q All right, sir.

Now I show you Stipulated Exhibit 19 which says, A-960. Do you see that?

A Yes, sir.

Q What is the date of the zoning on that, Mr. Hendrickson?

A April 21, 1965.

Q Now, the latter on, A-960, is actually the subdivision of Hidden Brook that is now under construction, is it not?

A Yes, sir.

Q Now, Mr. Hendrickson, while you are still at the board, where is the principal access to Hidden Brook as far as highway access?

A It comes out on the Dranesville Road. At first this was an easement. It is now dedicated.

Q Is that through the subject property?

A Hidden Brook property?

Q Yes.

A It is not.

Q Isn't the road -- does that map show and does your plat, recorded plat, show the access having actually been through a part of the subject property?

A Yes, sir.

Q So that the main access to the 400 lots in Hidden Brook, in fact the only access now available, is it not?

A Yes, sir.

Q Is through part of the subject property, is that correct?

A Yes.

Q Is that being developed at -- what density per acre?

A Hidden Brook is 12-5.

Q Can you tell from the preliminary plat what number of units that is per acre actually being developed?

A Lots per acre, they have 2.85 lots per acre.

Q Does it appear on the preliminary plat as to the total density in lots per acre?

A It should on the total preliminary.

Q Would you make reference to the preliminary plat and see if you can find the total density as far as lots per acre?

A They have 2.69 lots per acre.

Q So that the adjacent property of Hidden Brook is being developed, do I assume, under the cluster concept?

A Yes, sir; it is.

Q And it is yielding about 2.69 lots?

A Lots per acre.

Q Per acre.

Now, is school site being dedicated as part of the Hidden Brook development?

A Yes, sir.

Q Now, I point to a portion of this tax map and ask you if that is part of the school site that is being dedicated as that site developed? Would you refer to the map if you have a question?

Is that a park or school site?

A This is park up in here. The school site would be down in this area.

Q Referring to Section Two, to One and Two, are any parts of that -- refer to your preliminary plat and show His Honor where the school site is to be?

A The school site will be just in this area here.

THE COURT: All right.

BY MR. HAZEL:

Q Was that required by Fairfax County as part of the cluster development approval?

A Yes, sir.

Q And is that for an elementary school?

A It is; yes, sir, for an elementary school.

Q Now, is the highway that connects these 400 lots with Route 228 a dedicated road in the public system?

A Yes, sir; it is a primary highway.

Q Was that required as part of the development of this property, of the Hidden Brook property?

A The Hidden Brook had to construct the access to Route 228.

Q Now, Mr. Hendrickson, under the County policy, who constructs the water lines on a developer's property, on a subdivision such as 222 or the adjacent property of Hidden Brook?

A The developer.

Q Does the County pay for that?

A Not to my knowledge, no, sir.

Q Who constructs the sanitary sewer lines connecting to the trunks?

A The developer.

Q Does he pay for that?

A He pays for that himself.

Q Does the County pay for the sanitary sewer trunks?

A No, sir.

Q Who constructs the road on the property, Mr. Hendrickson?

A The developer.

Q Does the County pay for any part of the roads?

A No, sir.

Q Does the County pay for any part of the school site that is dedicated to the County under the cluster concept?

A They don't pay in cash. It is part of the density credit.

Q They get a density credit. The site is made available?

A It is dedicated, yes, sir.

Q Now, other than the inspection process which is done at a fee basis, I understand -- is that correct?

A Yes.

Q The County put money out in that development for the construction of those facilities on the site?

A No, sir; not to my knowledge.

Q Now, Mr. Hendrickson, turning to the exhibit that you have on your right which is Exhibit 7, and on your left, Exhibit 7, do you recognize that as the development plan that was filed with application C-222?

A Yes, sir.

Q Do you recognize the road serving this as Route 228?

A Yes.

Q What is the State designation of the highway?

A It will be a primary highway. It should be an R-4-D which is rural depressed median divided highway.

Q Is that part of the State preliminary system?

A It is, yes, sir.

Q Is Route 7 part of the State primary system?

A Yes.

Q Is Route 1 part of the primary system?

A Yes.

Q Now, what is the, as far as intensity of use and treatment, priority accorded highways, what position does a primary highway have in the State system? Is that the most important of the State --

A That would be the heavily traveled highways. It would be primary.

Q Would it be fair to say the primary highway of the State system is the one on which the State gives primary priority for maintenance and construction and all the rest of it?

A I can't say precisely that that is the case but I would assume that that is the case.

Q Has that been your experience in the office that you

have with the County?

A Yes.

Q Now, does the County operate the highway system?

A No, sir.

Q The highway system is operated entirely by the State of Virginia, is it not?

A In Fairfax County, yes.

Q Your office requires certain design standards for construction of roads, is that correct?

A That is correct.

Q Mr. Hendrickson, again I refer you to the map, the tax map assemblage for the highway right-of-way for 228 north of this property out to Herndon Junction, do you know how wide the State has required that to be?

A I know what the comprehensive plan called for. It is 160-foot right-of-way.

Q Has the 160 foot actually been acquired by the State? You can inspect the plat if you like, between the north end of this property and Route 7.

A It appears to be. It is a wide right-of-way. I can't tell exactly whether it is 160 foot or what.

Q Has the State, and you might continue to refer to that map, has the State recently completed improvements on 228

as it crosses Sugarland Run?

A So far as I know, yes, they have.

Q Where were those improvements, or were those improvements between the north end of this property and Herndon Junction?

A Yes, sir.

Q Now, has the State also, in connection with the Town of Herndon, completed improvements south of this property into the Town?

A Yes, sir; they have.

Q What did that consist of?

A That is a four lane undivided.

Q That runs to the Town line?

A To the Town line, yes, sir.

Q Would you point out the Town line?

A Right here, right at the high school. Actually they come up just about to the high school.

Q Fine.

Mr. Hendrickson, returning again to the development plan, Exhibit 7, what are the requirements of the County through your office for streets on that plan?

A Well, first of all, we require dedication of right-of-way to bring the --

Q Are we talking about Route 228 right-of-way?

A I am talking about Route 228. There is a right-of-way there now. We would require the developer to dedicate the right-of-way up to, to make the existing right-of-way 160 feet wide.

Q Is that what is shown on the development plan?

A Yes, sir.

Q That is in accord with your requirements?

A Yes, sir.

Q In other words, if the property had been zoned and developed pursuant to this plan you would have required dedication up to the 160 feet, the full length of the property, is that correct?

A Wherever it is faced on his property or ran through his property. The small section where he has only one side, we would ask 80 foot dedication from the center line to the property.

Q So that the development of the subject property would have provided more than half of the road right-of-way needed for the additional 228 feet widening, would it not?

A It would.

Q Now, what would you have required regarding construction, first to the primary surface and secondly to the service roads, if any?

A Okay, on his development plan it shows that he is going to build a 70-foot street. That is a four-lane undivided highway. It should match the highway that the State has constructed in Herndon.

We would require, because of additional -- on the development plan, that he construct that. The County requires also that on primary highways he construct a service road on each side of the road.

Q Is the service road shown there?

A He shows it on part of the site but not the full site.

Q You would have required it the full site?

A Yes, sir; unless, of course, he had a system of roads just inside the subdivision that would permit us to move traffic from off-site through the site.

In other words, we do have the prerogative of taking a through street within the subdivision and let that serve as a service road.

Q Now, Mr. Hendrickson, are there other streets other than 228 that are shown on this plat? Are these constructed according to your specifications?

A Well, they will be if they are constructed; they will be constructed to the County-State standards.

Q That is the only way you approve that plat, is it not?

A Yes, sir.

Q Does the County or the State bear any part of the construction cost of those streets within the development?

A No, sir.

Q In fact, does any part of the cost we have talked about this morning on that plat, does the State or County bear that?

A No, sir.

Q Mr. Hendrickson, does the improvement shown on this plat in your opinion bring Route 228 to an adequate standard for traffic?

A Yes, sir. If it is built to a four-lane undivided highway, it will bring it up to an adequate standard.

Q Do you have any traffic count on the existing road?

A No, sir; I do not.

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

CROSS EXAMINATION

BY MR. SYMANSKI:

Q Showing you Stipulated Exhibit 7, would you identify that exhibit, please?

A Yes, sir; that is the development plan that encompasses the C-222 rezoning application.

Q What is the date on that?

A It says December 10, 1971. 10-12-71.

Q Have you examined this plan with regards to the interior streets on this development plan?

A Yes, sir.

Q Would they be accepted by the Virginia Department of Highways?

A Some of the streets would; some would not.

Q Would you point out the ones that would not?

A Any of the streets that have backout parking will not be accepted by the Department of Highways. In here there is some question and that would have to be cleared by the State. The State will not take any street that has backout parking. These they may consider as driveways which would be similar to a single family.

Q What about with regard to width shown?

A The width, in measuring the width, some of the streets do not conform to the standard.

Q If the Virginia Department of Highways does not accept the street, who maintains it?

A Then the individuals and the homeowners association.

Q Who would fix potholes?

A The homeowners.

Q Who would remove snow?

A The homeowners.

Q Now, I refer you to this part of the property.

A Right.

Q The northern part, which is shown here as touching Route 604. Does that show the required improvements or the improvements that you would require or the dedications that you would require?

A No, sir; it does not. This is a case where Sugarland Run Road runs along the northern part of the property. That also is a 160-foot right-of-way. We would require that this owner dedicate at least half of that right-of-way.

Q If there is a ford on a stream, or ford crossing a road which is adjacent to this property, would you have any requirements?

A If it were adjacent to property.

Q The property was touching the road on which the stream crossed the road, there is no bridge there, do you have any requirements there?

A No.

Q None at all?

A No.

Q As to the circulation system, the road layout in this development plan, is it a good, well-designed circulation

system?

A Without further study of the plan I would not care to comment on that particular question.

The traffic to adjoining property, we would ask additional access to it, to adjacent property, if this were to come in as a preliminary plan.

Q Does this show a good number of access-egress points from the property onto the property as far as getting into this property and out?

You have no opinion as to the layout on circulation?

A I would like, not like to comment on that because I would have to know what the traffic was at each of the entrances.

He has three entrances, Dranesville Road from the top of the development; he has about five on the bottom. Of course, the lower section has fewer houses than the northern section so you would expect that there is some imbalance there.

Q You made some comment that the service road -- what was your testimony again? Do they show the amount of service road you would require here?

A No, he does not show the amount of service road we would require. We would normally require service road all the way through the site, both sides of the road. He shows service roads from this point here to this point here and, as I say,

we would, if he were to develop --

THE COURT: Let me make an inquiry at this point. I am not sure that I understand this PDH application. When he files that, don't the people who normally review plans review the plans that are submitted with it? Have you reviewed this plan previously?

THE WITNESS: This was reviewed prior to my taking the office.

THE COURT: All right.

MR. HAZEL: That is just exactly the point. All these details are the kinds of things that are worked out at staff level. This got such cursory treatment from the staff, and such a turnaround that it was never even reviewed and when it came to the Board of Supervisors the evidence and the transcript is that we didn't think the density at this time was available. It is premature, and it is a waste of time to work on the development plan. And they denied the whole thing.

MR. SYMANSKI: I don't think Mr. Hazel has been sworn to give testimony.

THE COURT: Do your records -- I realize you may not have been occupying the office at that time -- but do your records indicate this was reviewed by whatever staff there was at that time?

THE WITNESS: It was reviewed and one of the complaints was that there wasn't enough time to review it.

THE COURT: Oh.

MR. SYMANSKI: Your Honor, the day he gave was October 12. This is their submission. The Planning Commission minutes we have in here are, I think, dated October 12 and the 18th. The Board hearing was October 20.

THE COURT: Well, I don't want to spend a lot of time, waste a lot of time. All I want to know is, it seems to me that if the staff would have a suggestion on them, they did make a suggestion and then the applicant refused to accept such suggestion, that is one thing.

MR. SYMANSKI: It is the developed plan under PDH which goes before the Board of Supervisors.

THE COURT: I understand that. But isn't it the normal practice when it goes before the Board, if they are amenable to granting the zoning, then they would work out the plan to meet the satisfaction of the County and also the developer and all the staff?

MR. SYMANSKI: If they approve the plan, they can make suggested changes which I guess the developer can agree with or not agree with. But the point, I am just trying to show that this development plan is what is submitted in a

PDH application. It was deficient.

Now, they asked for an out-of-turn hearing, I believe, here, and my point is that if they were not ready, if they weren't ready to come up with what they were supposed to come up with, it is just an element in this case.

In other words, if they asked for an out-of-turn hearing and they don't come in with what the PDH ordinance requires -- we will have specific testimony later, also -- but the point is the development plan was deficient. And they are the ones that requested out-of-turn hearing. I believe, and correct me if I am wrong on that, Mr. Hazel --

MR. HAZEL: The plan was filed about nine months before the application was filed in January and was not heard until October and for five or six of those months the staff thought it was great. Then, as it approached the hearing date, they come up with lists of deficiencies. The staff itself said, we could straighten out the development plan but it is the zoning that we think is not to be granted because it is premature. That was the minutes, the staff report, and that was the Board's position.

MR. SYMANSKI: The Board's position --

MR. HAZEL: So we never got a chance on the develo-ment plan. All these things could have been straightened out.

MR. SYMANSKI: This was submitted on October 12. If you look at the staff report, there is a huge list of deficiencies there. After this one there was also a list of deficiencies in the report and as to what the Board decided on that, I don't think each Board member sat there and gave a five-minute dissertation on why exactly he decided this case.

The point is whether the facts back up that decision.

I think the Blankenship case says that good laws can have bad motives. I don't think we have gotten into each Board member's head. The question is whether the facts back up their decision.

THE COURT: All right. I will allow you to proceed.

MR. HAZEL: I think when we get through it will be clear in the minutes that the development plan was not even a part of this issue. We were never afforded any chance to correct it.

Are you through with Mr. Hendrickson?

MR. SYMANSKI: No, I am not.

THE COURT: Go ahead.

BY MR. SYMANSKI:

Q Now, as far as the service road, what was your testimony again with regards to the adequacy of the service road and the County standards, what they show on the plan?

A They would not have met our requirement. We would have requested and expected a service road through the whole site along both sides of 228.

Q You testified that in this application here they dedicated a school site?

A They dedicated seven acres, I believe it was, to a school site.

Q Do we demand a school site or request a school site?

A When they come in with cluster, when they come in on a cluster development, we can request and expect that they will convey a school site to the County. It is a requirement that they get certain density credits for dedication of school site.

Q Do you know whether Route 228 is in the PDH ten-year plan?

A It is not, so far as I can estimate.

Q If the developer improves this section who would improve this section, assuming we don't get other developers to improve that road?

A If we don't have other developers, then we will expect PDH improvement will.

Q The testimony was that the last, most recent, zoning here was 1966, is that correct?

A That's right.

Q And what was the date the development plan or site plan, preliminary plan, came in?

A I don't know precisely on that. I can find out.

Q Was it the 1970 or soon after the rezoning? Was it the middle '60's?

A It was '71-'72.

Q So actually it was four, maybe five years from zoning to application to build?

A Yes, sir.

MR. SYMANSKI: Exhibit 27, please.

BY MR. SYMANSKI:

Q I show you Exhibit 27. Would you read for the record the date Exhibit 27, the Crestwood --

A October 12, 1971.

Q Again what is the date of this exhibit?

MR. HAZEL: This is the first time that any comment has been made about the timing on the submission of the development plan, any problem in the zoning case. It is all right, but I think it is really irrelevant to the main issue of the case.

THE COURT: I will allow him to proceed.

Go ahead.

MR. SYMANSKI: I have no further questions.

THE COURT: Do you have any further questions?

REDIRECT EXAMINATION

BY MR. HAZEL:

Q Mr. Hendrickson, is a school site being dedicated at the County's request in this case? Would it have been dedicated?

A Yes, sir; it would have.

Q I show you the County staff report in the subject case, 222, and ask if you will make reference to the letter from a Mr. Moore? Do you know who Mr. Moore is?

A Yes.

Q Would you read the date of that letter and the first paragraph?

A May 12, 1971 -- Mr. Moore is with the School Board. He is Site Acquisition Chief, Branch Chief, and this deals with the rezoning application, C-222.

This will advise that we have reviewed the subject rezoning application and note this property lies within the proposed service area for elementary school No. 273, Castleman Elementary School. We would request that consideration be given to the dedication of 13.9 acre school site should the property be rezoned as requested.

Q Is that site shown on this plan?

A Yes, sir, it is.

Q It is that area here?

A Yes.

Q Was there also discussion that was not carried to conclusion about a 24-acre intermediate site?

A That I can't comment on. I do not know.

Q Now, Mr. Hendrickson, did your office ever make any request or complaint that they had not had enough time to review this plan, to your knowledge?

A Again, I wasn't in the office when this plan was submitted. I do believe I read in a memo from Mr. Chilton that there wasn't adequate time to properly review the site.

Q When that occurs, is it not normal to defer approval of the site plan until the matters that you speak of are worked out?

A Yes, sir.

Q That is what normally happens on a site plan, is it not?

A Yes, sir.

Q In fact, sometimes it can take six months or a year to work out these problems, can it not?

A Yes, sir.

Q What is the normal time, do you have any idea what the normal time for processing site plans or subdivision plans

might be?

A On the preliminary plat we are running between 45 and about 80 days.

Q That is the kind of thing we are working out?

A Yes, sir.

Q Except on a development plan in PDH they work it out, and then the plat would go to the Board of Supervisors for approval, is that correct?

A Once the development plan is worked out and submitted and approved by the Board, it becomes law for us. Then we must make sure that the developer provides everything that he shows on the development plan.

Q In both PDH and other zones it is normal for the development plan to be some time going back to the Board for approval after the zoning, is it correct? In other words, the zoning is granted subject to approval of the site plan?

A To the development plan.

Q To the development plan?

A There are times, of course, they will approve both development plan and the zoning at the same time but there are other times when we do work with the developer attempting to obtain things that the County requires on the development plan.

Q Now, are you currently working on plans for Reston

that are shown on applications 377 and 378?

A We have been, yes, sir.

Q Are these areas, are you familiar with the applications involved?

A Not intimately familiar.

Q If I show you the applications, are those the applications, or rather the staff reports?

A Yes, sir; they are.

Q Now --

MR. SYMANSKI: I object to this. It is beyond the scope of the direct, I believe.

MR. HAZEL: I raised this problem of approval of plats and timing. I think this is a critical issue that Mr. Hendrickson can talk about out of this case. I want to rebut that inference that there was some problem in the approval of the development plan.

THE COURT: I am going to deny the objection.

You may proceed.

BY MR. HAZEL:

Q Are these staff reports, referring to the areas outlined in yellow on the bottom of that plan --

A Yes, sir.

Q Now, is an RPC a planned community under the County

ordinances?

A Yes, sir.

Q Now, do you have development plans that are constantly being reviewed, submitted, reviewed, going to the Board for approval, and the Reston RPC's?

A Yes, sir.

Q Have you approved the development plans in final on those two staff reports?

A No, I don't believe so. We are still in the process of discussing these two plans.

Q Those cases have actually already been heard by the Board of Supervisors, haven't they?

A They have, yes, sir.

Q They were deferred for the Board of Supervisors, were they not?

A Yes, sir.

Q Part of the reason was the development plans were not fully developed, wasn't it?

A I believe that is one of the reasons, yes, sir.

Q The Board deferred the case for four or five months, to work out some of those problems, didn't it?

A Yes, sir.

Q Now, these development plans, can you tell from that

staff report how many units are involved and whether they are condominium units?

A There are 2,575 units.

Q Twenty-five hundred and 75 units are being worked on in those two applications?

A Yes, sir.

Q Now, Mr. Hendrickson, you talked about the on-site plans, the roads. Other than the primary, they could be part of a condominium regime? Isn't that typical in the County?

A It could be, yes, sir.

Q And in a condominium situation, does the County require that the roads be built and accepted into the State system?

A No, sir.

Q Now, you answered the question, who would fix the potholes. Isn't it typical and are there not many many homeowners associations that have maintenance responsibility over private roads in Fairfax County developments?

A Yes, sir.

Q In fact, would it not be correct to suggest that in the townhouse and apartment categories in the past several years there have been more developments on private streets under condominium regimes than there have been on public roads?

Is that a fair statement?

A Of course, they are approved, there have been a lot of townhouses approved which are within the homeowners associations, not necessarily condominium.

Q I see.

A But there have been condominiums which again have a homeowners association and in each instance they maintain the streets so far as repair of the potholes and snow removal.

Q Is there anything unusual about the project itself maintaining its interior streets?

A No, sir.

Q That is done frequently in Fairfax County and has been for some years, has it not?

A Yes, sir.

Q In that situation, the County then requires that they be built to certain specifications?

A Yes, sir. We have them built to a standard specification which will insure long life.

Q Then it is approved, but it is anticipated it will be maintained by the homeowners?

A Yes, sir.

Q Was there anything unusual about that aspect of this proposal?

A No, sir.

Q It is typical of what is being done in many projects in the County, isn't it?

A Yes, sir.

MR. HAZEL: I have no further questions.

MR. SYMANSKI: I have some.

THE COURT: You may inquire.

RECROSS EXAMINATION

BY MR. SYMANSKI:

Q You stated that when the development plan under PDH is approved, it is more or less law to you?

A It is law to us.

Q Is that also true for the applicant who has been granted this, that he can also, can he not, refer to the development plan as what has been approved for his development?

A Yes, sir.

Q Now, has the applicant requested deferral in this case, to your knowledge?

A I do not know.

THE COURT: Does the Board ever approve PDH subject to the site plan or the development plan being approved later?

BY MR. SYMANSKI:

Q What about RPC? They approve that, don't they, but

it has to come along with a plan with later date?

A The plan comes later.

THE COURT: Is that possible under PDH?

THE WITNESS: Under PDH, until the zoning, PDH, and with the PDH application must come a development plan.

THE COURT: I understand that.

THE WITNESS: It is possible that there may be defects in the development plan which will be worked out with the staff.

THE COURT: Right?

THE WITNESS: If that does occur, then the Board will say, it is approved subject to final approval of the development plan.

THE COURT: All right.

MR. HAZEL: I have no further questions.

THE COURT: We will take about a five-minute recess.

(Short recess.)

MR. HAZEL: I would like to call Mr. Harry Bicksler, Your Honor.

Whereupon,

HARRY BICKSLER,

was called as a witness and, having been previously 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 Harry J. Bicksler, Jr.

Q Your employment?

A I am Director of the General Services Division for Fairfax County Water Authority.

Q Mr. Bicksler, under your direction is the water authority, water mains extensions and service arrangements and so on, if I understand correctly?

A No, not exactly. Mainly I get involved in it.

Q You are above them. You are in the supervisory role with the Water Authority?

A Yes, sir.

Q You are aware, somewhere down the ladder below you, of people talking about main extensions and water agreements?

A Yes, sir.

Q Mr. Bicksler, you are prepared to talk about the Water Authority's arrangements to extend water to various

subdivisions in the Herndon-Reston area?

A Yes, sir.

Q Mr. Bicksler, I show you Stipulated Exhibit 12, 12-A and 12-B, and ask you if you are familiar with Hidden Brook subdivision, Sections One and Two?

A Yes, sir.

Q Do you serve that subdivision with water?

MR. SYMANSKI: Objection, Your Honor.

You want me to state a continuing objection to any information which -- I repeat, this is information which was not available to the Board of Supervisors and whether Hidden Brook was going to be served with water after that date just was not there. So how could they base anything on that?

THE COURT: I am going to deny your objection. Just note a continuing objection for the record. We will go on with it.

BY MR. HAZEL:

Q Mr. Bicksler, do you serve that subdivision with water?

A Yes, sir.

Q Now, Mr. Bicksler, have arrangements been made for the extension of a water main through that property to the lots that are immediately adjacent to C-222?

A I am not real sure.

Q I show you Exhibit 12. These lots are of record. Are you serving all of those lots?

A Yes, sir.

Q You merely don't know where the water main is actually at that property line?

A That's right, no.

Q You don't have a water plan before you?

A No, sir.

Q But you do serve that subdivision?

A Yes, sir.

Q Were the mains that were extended in that subdivision sufficiently large to allow you to provide service to the adjacent property, C-222?

A Yes, sir.

Q Now, Mr. Bicksler, when did you change your first proposal to the developers of Hidden Brook or to Hidden Brook subdivision?

A I don't think it was known as Hidden Brook at that time but it was the property that was in October of '71.

Q September or October?

A We did work in September. The proposal actually went out in October.

Q In October of '71?

A Yes, sir.

Q Now, Mr. Bicksler, I show you a letter dated October 26, 1966 signed by Mr. M. Pugh. Is he in your employ?

A Yes, sir.

Q Would you read that letter?

A Just the body or the whole thing?

Q Just the body.

A "In accordance with our telephone conversation of October 25, 1966, pertaining to application No. B-445, the Authority would be able to provide water service to the reference property upon application by the developer for such service if financial arrangements by him for the extension of the water requirement mains and subject to the availability of funds by the Authority at the time water service is desired."

Q Mr. Bicksler, if I show you B-445 as being this property right here and that letter being written to the County staff, is that the correct location of that property? You can go to that map and locate it if you would like to confirm that location.

A Where is the number?

Q Right over there, and read it on the map.

A Yes, all right.

Q That is the property to which this letter was addressed?

A Yes, sir.

MR. HAZEL: I would like to introduce this as Exhibit --

THE COURT: Complainant's Exhibit B.

(The document referred to was marked Complainant's Exhibit B and received.)

BY MR. HAZEL:

Q Mr. Bicksler, I show you --

MR. SYMANSKI: Isn't that C?

THE COURT: It might be.

MR. HAZEL: I think we have staff report on 377 which was offered but not introduced at that time.

THE COURT: This will be B then.

BY MR. HAZEL:

Q Mr. Bicksler, I show you maps of Loudoun County and part of Fairfax, Stipulated Exhibits 13 and 13-A, with particular reference to 13. Does that show the main trunk water main from which this water service is supplied?

A Yes, sir.

Q Could you show His Honor where that is?

A Right in here.

Q The subject property is in orange?

A Yes, sir.

Q Now, Mr. Bicksler, as of October 1971, subject to the proper financial arrangements with the developer, was the Water Authority in a position to offer service to C-222 for single family or 12-5 type development?

A Yes, sir.

MR. HAZEL: I have no further questions.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. SYMANSKI:

Q In this letter it says, the last Exhibit C --

THE COURT: It will be B.

MR. SYMANSKI: B.

THE COURT: C was never introduced.

MR. SYMANSKI: Okay.

BY MR. SYMANSKI:

Q It says: And subject to the availability of funds by the Authority at the time water service is desired.

What does that mean?

A We normally participate to some extent in extension of water mains and if we had funds available at that time we would participate. If we didn't, the developer would have to

shoulder the whole thing.

Q So this is a contingency in this?

A Yes.

Q The Hidden Brook proposal, I believe, was September 1971 for $29,000?

A Actually, the proposal was dated, I think, in early October. We did the work, the engineering work, in September.

Q Were there any contingencies in that?

A Yes.

Q What were those contingencies?

A This proposal was contingent upon agreement with the Town of Herndon and Fairfax County Water Authority and also Crestwood, View Drive being a dedicated street.

Q So there are two contingencies in there?

A If you want to call this. Another one here, proposal is valid for a period of 30 days.

Q Did you ever make a proposal to the subject property for water?

A Offhand, I don't know.

Q Do you know if a proposal was requested for the subject property?

A Didn't mention that.

Q In 1971, October, in that period, what was your

nearest source of water from the Water Authority itself?

A In 1971?

Q Right. October-September?

A Well, we had mains in Reston and we had a main at the intersection of what is, you call it Centreville and West Ox Road, right there.

Q In your opinion, it would have been practical to serve the property from those mains, those headings?

A I think that it would have been a whole lot of money involved.

Q Is it a long distance?

A Yes.

Q Do you have an estimate of the distance?

A No, I don't know what the mileage is there.

Q Did you have an agreement with Loudoun at this time for water, in October of 1971?

A No.

MR. SYMANSKI: No further questions.

THE COURT: Any further questions?

REDIRECT EXAMINATION

BY MR. HAZEL:

Q Mr. Bicksler, you said that you could provide water to the subject property in October of 1971 and I presume now,

is that correct?

A Yes, sir.

Q Are there any of these contingencies, as Mr. Symanski refers to them, which are in any way other than routine and which would cause you any unreasonable concern?

A No, I would consider them just routine.

Q Your main trunk line serves Reston from the Goose Creek system of Fairfax City, is that correct?

A Yes, sir.

Q It is from that source of water that you are talking about serving this property, is that right?

A Well, I think they were saying that maybe our nearest source at that time, where we actually had pipelines in the ground, was in Reston, yes, sir; and that would be from the City's supply.

Q So it is the same water that serves Reston?

A Yes, sir.

Q And it was then and it is now?

A Yes, sir.

Q And you have no shortages of water, do you?

A No, sir.

Q You have no reason to assume any shortage of water?

A No.

Q And you have now brought your line right into Hidden Brook?

A Yes, sir.

Q Incidentally, when they finally put the line into Hidden Brook, your original proposal was $120,000-some?

A Yes.

Q How much did it finally cost the developers of Hidden Brook to bring the water in?

A It was down to, the supply main was estimated then at $24,000.

Q So it actually cost $24,000 to bring the water in instead of $125,000?

A Yes.

Q Is this negotiation that worked the price down a typical type of negotiation that occurs when the Water Authority and the developer are trying to find the best way to bring the water in?

A Yes. The reason the price came down was because it came from a closer source.

Q That is the way it very frequently happens?

A Yes, sir.

Q If you had been asked to provide water to this property, you would have worked out your closest source, I

assume, is that reasonable?

A Yes, sir.

MR. HAZEL: I have no further questions.

RECROSS EXAMINATION

BY MR. SYMANSKI:

Q Mr. Bicksler, did you testify that you would have served this property at that time from down at this area, the same program you had for Hidden Brook?

Let's strike that.

How would you have at this time attempted to serve the subject property?

A You talk about October of '71?

Q Right. Would it have been the same route?

A Probably would have made the same offer to come off the Washington-Old Dominion tracks at the time. We were unaware at that time that the Loudoun County system was that close.

Q Now, one contingency was that Herndon would agree to this setup?

A Yes, sir.

Q Is it your testimony that it is just impossible that they would have disagreed? You would not even have asked them or would you have asked them?

A We would have had to ask them.

Q But they might for some reason disagree?

A Yes, it is a possibility.

MR. SYMANSKI: No further questions.

MR. HAZEL: I have no further questions.

THE COURT: All right, sir. You are excused.

(Witness excused.)

THE COURT: Call your next witness.

MR. HAZEL: Mr. Whitworth, please.

I am not sure Mr. Bicksler was sworn.

MR. SYMANSKI: I will waive swearing if I can do that.

MR. HAZEL: We are not sure but he may have been.

THE COURT: I am not sure. There were a number of witnesses. I did not make a note of them.

MR. SYMANSKI: I will assume that he was sworn.

THE COURT: All right.

MR. HAZEL: For the record, we will stipulate he was sworn.

Whereupon,

THOMAS WHITWORTH,

was called as a witness and, having been previously 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 Whitworth.

Q Your employment?

A Fairfax County Public Schools.

Q How long have you been employed by Fairfax County School System?

A Seven years.

Q What is your particular assignment or position with the school system?

A I am the Planning Analyst for the school system.

Q In that capacity, are you the director of the area of the system that works with student population figures and general problems of that type?

A Yes, I am.

Q Mr. Whitworth, do you know what the operating budget of the school system was in Fiscal 1972?

A No, I don't. I think it was $140,000,000, roughly.

Q $148,000,000, roughly?

A Probably, I really don't know.

Q I show you a copy of the fiscal budget for 1972, Fairfax County, Stipulated Exhibit 15, and invite your attention to the operating budgets alone, not the construction budget. The figure of the approved budget is $125,630,000, is that correct?

A That's approximately right, yes.

Q How many children were in the system in 1972 school year, Mr. Whitworth?

A Approximately 136,000.

Q Now, Mr. Whitworth, what has been the curve or level as far as growth or lack of growth in the number of children in the system in the past several years in Fairfax County?

A Since about 1970, the rate of growth has materially dropped in Fairfax County and in the last year, '71-'72, we have practically stabilized in membership.

Q That means you have neither gained nor lost students?

A That's correct; yes, sir.

Q So you are running about 135,000 students?

A Yes, sir.

Q Now, Mr. Whitworth, are there schools in the Fairfax County system which have vacancies as far as pupils?

A Yes, sir. On the eastern element of the County, we have vacant classrooms. The student population is, in fact, reducing and at the same time, in the western and northwestern edge of the County we are growing, and conversely we are short of school spaces in those areas.

Q Now, Mr. Whitworth, this case today involves C-222 which is an application shown in orange on the tax map on the board, on the wall. It involved approximately 300 acres. Are you familiar with this application?

A Yes, I am.

Q I show you a copy of the staff report in C-222 which has been introduced as an exhibit and ask if you are familiar with the two pages titled, Comprehensive Planning Impact, Comprehensive Plan School Impact?

A Yes, that's correct.

Q Does that indicate that the school children that would have resulted from this application would have been approximately what the comprehensive plan for the area anticipated?

A Yes. Very close, yes.

Q In other words, no surprises as far as what the comprehensive plan anticipates?

A No, the number of children that this would have

generated would have, if they had been on normal averages, would have given us very close to what the comprehensive plan anticipates.

Q In accord with the adopted plan which is the Upper Potomac Plan?

A Yes.

Q How did the School Board plan to handle these children if produced by these homes?

A If these houses had materialized in late '71, these children would have, as far as we would have been able to, have been housed in Herndon Elementary School and Herndon Intermediate and High School. We would have probably exceeded the capacity of those schools and used temporary classrooms in any of the schools to augment the facilities there.

Past that, we would have probably looked to adjusting school boundaries to take other students that might be further away from Herndon than these in the other schools and finally we might have bussed these children to a school area where we have vacancies.

Q Through an assortment of these devices, was there any doubt in your mind that the Fairfax County system would have accommodated the school children that would have been generated from this application?

A Based on your record we would have accommodated them, yes, sir. We have always been able to accommodate children regardless of where they came in relation to space in school, yes, sir.

MR. HAZEL: I have no further questions.

CROSS EXAMINATION

BY MR. SYMANSKI:

Q Mr. Whitworth, I want to show you that same budget page which is Exhibit C-7 and ask you to compare the 1971 approved fiscal plan and 1972 approved fiscal plan with regard to transfers in which, I believe, are the money that comes from Fairfax County as opposed to Federal and State money. What is the difference in those two figures?

A Roughly, '72 is approximately $3,200,000 greater than '71.

Q So, the budget approved by the Board of Supervisors increased?

A Increased, yes, from 71 to roughly 75.

Q Is the situation in the schools that will serve this property better or worse today than it was in October '71?

A If this report were filled out today it would reflect a much more crowded situation today and the prospects for the future today than were existing in the fall of '71 and the

prospects for the future at that time.

Much development has occurred in the Herndon vicinity already, some of which wasn't even anticipated at this time, two years ago.

Q Do you serve the Herndon schools, does the Fairfax County schools --

A Yes, Herndon is a town with some autonomy but it has its own zoning and building autonomy but its children and its schools are part of the Fairfax County School System.

Q So, with regard to zoning in Herndon and the number of children coming from Herndon, Fairfax County Board of Supervisors would have no control over that?

A In the Town of Herndon, that's correct. The Town has its own authority for zoning and has all along without any reference to the Board of Supervisors. It has done its own zoning.

Q Did you prepare the staff report figures back in --

A The figures that were prepared here came, yes, from my office. It was furnished to the Board.

Q This shows the elementary school design capacity of 761 students?

A At that time, that's correct.

Q What does that elementary school have today?

A The school is around 1,030 children at this time.

MR. HAZEL: I would only call attention to the fact that I assume Mr. Symanski has now waived all his objection to the full picture coming to the Court, whether it be October of '71 or later. I have no objection to going into this, but he had a continuing objection on that issue.

MR. SYMANSKI: I object. If you want to consider all the testimony I would like a balanced approach to it.

THE COURT: All right. I am allowing you to proceed, Mr. Symanski.

BY MR. SYMANSKI:

Q Now, the intermediate and secondary schools under these figures were over capacity, is that correct?

A Yes, in the 1961 report we showed 247 more children in the intermediate school than the school was built for; 670 children in the high school than the school was built for.

Q The '71 figures?

A '71, yes, sir.

Q The comments at the end, would you read the comments and explain what you meant by that?

A Yes. In '71, when we made this report, we stated as hopefully enlightened that Herndon High and Intermediate would be temporarily relieved by the construction of Chantilly

Secondary School which was planned to be built and occupied in September '73 and that further relief was anticipated by 1976 when we hoped to open up a new high school in that area of the County with bond money that was to be passed, to be granted later.

Q At that time, October of '71, was there money in the program for Chantilly?

A Yes, the money was programmed. The school was in the design stage and has since gone into construction.

Q The other school you referred to, planned for '76, was there money programmed for that?

A No, there was no money planned for it. There is still no money planned; there is no money available for it.

Q Does that depend on a future bond issue?

A Dependent on a future bond issue which goes before the Fairfax County public on June 12 of this year.

Q The verbatim transcript, the attorney representing the applicant here, represented on page 14, I believe, that approximately 636 units, I believe about half of those or somewhere thereabouts, would be finished by September of '72 and another half of that, about 636, would be finished a year later, September of '73.

Now, if this application had been passed and if they

had in fact built 636 units by September '73, what would have been the effect on the relief you anticipated here from Chantilly?

A Yes, those 636 units would have given us, or 1200 units would have given us four or five hundred high school students, in the neighborhood of four or five hundred high school students that would have, you might say, eaten into any relief that we anticipated, perhaps.

Q Wouldn't it in fact have almost negated?

A Probably negated, yes.

Q Do you consider the conditions out there crowded or did you at that time?

A They were crowded then, yes.

Q Now, from your point of view, is that a desirable situation?

A That is not a desirable situation, no. It would be more desirable to have the school at its rated capacity, yes.

Q When schools are over their capacity, what do you do? What are your alternatives to relief at that time?

A Yes, the sequence would be, normally, to augment the school's capacity with temporary classrooms of which we have about 140 in the County. These are used as mobile schools. We pick them up and put them where we need them on an as-needed

basis.

THE COURT: Are they surplus at this time in some schools?

THE WITNESS: No, sir; they are not surplus. They are not surplus, but it has been so that each year we have been able to generate 15 or 20 from some area that is losing and move it to an area that is gaining. Also, our inventory is not a closed down item. I said we used 150 or 140 now. We have on occasions rented these things and on occasions have purchased them out of operating budget to supplement what we need.

THE COURT: All right.

THE WITNESS: That is the first step, to take the schools in the area that these children go to and augment the facilities with temporary classrooms. You can do that to a limited degree. There is a limitation on that because of the plumbing and heating and so on facilities in the building. You can't attach too many on. In this particular area, we have only got Herndon Elementary School and probably in a reasonable distance, the Little Floris Elementary School, so a number of those temporary classrooms would be limited.

The next step would be to adjust the boundary and try to take some out of Herndon and put them in a school that they

are nearly as adjacent to, and the third step would probably be to bus these children into areas of the County that we have space in.

In a case of this location, to areas of the County that we have space in, we are talking about a fairly sizable distance of busing, more busing distance than we normally do. It is about 12 or 15 miles from Herndon to Tyson's Corner. It is eastwards of Tyson's Corner that we have the vacated space or space that is not used.

BY MR. SYMANSKI:

Q Twelve to 15. Did you just say 12 to 15 was longer than the usual bus ride?

A That is longer than we have normally had to bus children.

In the Pohick and other areas of the County that are growing, we normally have got schools from five to seven miles away from these growth areas where, when we bus children, we bus that kind of distance rather than 15 miles. I am not saying we wouldn't do it, but so far we haven't been faced with it except in some exceptional cases of children, crippled children or retarded children, where we do bus them long distances.

Q So this would be from your testimony 15 miles, that

would be twice five to seven and this would be twice as far as you normally bus?

A As we have up to now, yes. We haven't been forced to up to now.

A final and, I guess, most drastic of all, adjustments would be if none of these solutions worked, if we didn't bus these children we have always got the safety valve of extending the school day or going on a double shift. By extending the school day you can put as many as 25 to 30 percent more children in the school and just run the school from 7:00 in the morning until 5:00 at night with children going in staggered shifts, what we are doing when Woodson was knocked down, double shift, two sets of children in one school in a single day. They are rather extreme measures but they have all been done in Fairfax County in the last 20 years.

Q Now, you have run through the usual measures you take when schools are overcrowded. Do you compare the usual situation with, for instance, the geographical and school site situation at this particular site -- would it be as easy here?

A No, this obviously would be, the limitation here is that we are backed up against another jurisdiction so we have only one direction to move.

Secondly, the Herndon development is more or less a

pocket that is not adjacent to other developments. So you have got this distance of no community between Herndon, you might say, and McLean, whereas, in the Pohick, normally, new growth abuts and is adjacent to others, so the distance is not as great. This having been a rural area, we are limited in schools.

Q How many schools?

A We have got Herndon Elementary that has a capacity of 900. Its next adjacent school is Little Floris, 200.

Q Is it fair to say that usually you have more schools to change boundary lines around with and more schools to divide?

A Yes, I think that is a conclusion, yes.

Q What is the School Board policy with regard to neighborhood schools?

A The School Board has a stated policy to strive towards having neighborhood schools. That has been defined as an elementary school to which as many as possible of the children can walk who live within one mile of the school. Walking distance is a mile. To that end, they have been building schools and sites with a view toward ultimately walking of the children within one mile of the school.

Q Would it be fair to say the School Board policy is designed to improve future conditions?

A Certainly, yes. Diminished transportation of children and maximize the walking.

Q There has been testimony that before October '71, I believe, some plans have been submitted with the County for the development of some of their R-12-5 land shown on the exhibit. In any of your testimony so far, or in this report, do you consider the kids, the effect on children, that might be generated from the possible development of this property?

A I don't know whether I can answer that positively or not. If that property had been zoned per se, we didn't automatically pump the input from that property into the school system until the land developer had taken positive steps to develop the land. If he had taken positive steps to start building, the minute he starts building then we pick up the possible input from there and pump it into our estimate for the following year or year after.

As I recall, that subdivision up there, Hidden Brook Acres, even though it had been zoned, I don't believe any construction had been scheduled or started on it. Therefore, they probably weren't figured in these figures back in '71.

Q So, if they had built, in fact there has been testimony that there were some plans submitted to the County, whether preliminary or not, if in fact they had built in '72-'73,

would there have been a further impact on the schools in this area?

A Yes, certainly there would be.

Q You testified that tempos or temporary buildings, I guess it is, are used when the schools are overcrowded. Can you describe exactly what a temporary building is, what the facilities are, how it compares to the regular?

A Yes, we use several types. The two major types that we use are, two components of them are, knockdown buildings that are built by the Parker Company in Virginia Beach. It is simply about a 20 by 30 building that can be taken in half and moved in two halves and put together. The movement and placement of it, in the new position, is not a major operation, probably a one or two-day job.

The other type that we use would make up the bulk of the inventory are trailers. These are not as ideally designed. Twenty by 30 is not an ideal school size, classroom size, but ten or 12 feet wide and 40 or 50 feet long, it is not as ideally designed for classrooms as a schoolroom would be but they are adequate and have been used and are used in most school systems to some degree.

Q If you could plan the school situation or circumstances the way you would like it to be, would there be any

temporary buildings used?

A No. Ideally, we wouldn't use temporary classrooms. Ideally we would like to have every child in a permanent structure with adequate space in the structure, yes, sir. That is what we are working towards.

MR. SYMANSKI: No further questions.

REDIRECT EXAMINATION

BY MR. HAZEL:

Q Mr. Whitworth, how long does it take to build an elementary school?

A It takes about 14 months to construct one and approximately another year or year and a half to plan.

Q How much do your schools cost?

A A million and a half, upwards, for elementary school is the latest figure we have got. The last we had was about a million point two for elementary school.

Q There has been ample time to build an elementary school on the site you have in the western part of the County but the School Board or the County Board has elected not to build them, is that the case?

MR. SYMANSKI: I will have to object to that, Your Honor.

MR. HAZEL: I will put it another way.

BY MR. HAZEL:

Q Has there been time to build a school since the school shortage or school census relating to shortage in the western part of the County?

A There has been time to build a school, yes. We haven't had the money to build a school.

Q Why haven't you had the money?

A The schools that have been built between 1971 and now were planned long before 1971 and were, you might say, in the mill. The last bond issue that went before the public last June which would have gotten the next batch of schools started failed. Therefore, we didn't have any capital outlay money passed, other than what was granted in 1968.

Q It could have been built from direct tax money, couldn't it?

A I know of no hindrance to doing it that way, yes, as part of the operating budget.

Q They didn't elect to build them except from bond money?

A Correct, sir.

Q What schools are in this area? I wonder if you would step down to that map. We have talked about Herndon and so on. Would you step down to this large map and take that green

pen and just write an "S" on your school sites and tell His Honor whether they are high schools and elementary schools. Let's start off with Herndon High School which is right by the property.

A Right here.

Q That is a high school?

A This is Herndon High School with a capacity of 2,000 children.

Q What are your other schools in that area?

A Here is Herndon Elementary School. It is right here coming down south of the high school, north end of town. This is a school with the capacity of 900. It is a modernized school with all of the newer facilities.

Then here in the middle of the Town of Herndon, right on the corner of Centreville Road and Eldon, we have got Herndon Intermediate School. There was an old high school and the school opened up, new high school opened up in '67. It became intermediate. It has a capacity of about 1,300 children.

Then, south of the Town of Herndon, just off of the map down here, on this Centreville Road down here, we have got Floris School. It is down south of the Dulles access road which is truly a rural school, just an eight-classroom school.

It has been serving a population from 150 to 200 children for the last 20 years. It hasn't varied more than 12 or 15 children.

Q Could that be expanded drastically?

A Probably couldn't be expanded drastically. Probably the economic thing would be to replace the school. We have got the lot, adjacent sewer. I think the School Board has studied whether to build on a large plan to that one. They would probably scrap that one because it is so small.

Q Before you leave the board, could you put a check mark on the school site that has been requested in Hidden Brook and a check mark where the school site is shown on the subject property?

A I am sorry, I can't identify the spot exactly.

Q If I show you the plat, preliminary plat with the school site, can you then identify it? The school site is right there, right there at the bottom.

A I don't know where the one in Hidden Brook is. I know there is a site in there.

Q You were identifying, I believe, the site on the other tract which is a little further up on the subject tract. I was showing you the Hidden Brook tract. There is a site. Would you put an "X" just on the Hidden Brook site where you also have a site so that you have discussed the one site being

acquired and the other site was requested as part of this zone?

A Yes.

Q Do you see the yellow on the map, while you are there, at the Clinch property?

A Yes.

Q Does the same school situation apply and did it apply in the fall of 1971 to the Clinch property?

A Yes, it certainly would have because the same complex of schools serves that and did serve that and will serve that.

Q You might return to the stand.

I show you the Clinch summary.

Looking at the summary in the Clinch case, in effect the same situation applied as pertains to the Master Plan. They were substantially exactly what the Master Plan called for, is that correct?

A Yes, the numbers still generated, yes.

Q So that Clinch and the subject had identical school problems?

A Right.

Q I show you the Upper Potomac Master Plan which is also a stipulated exhibit, and it is in the Table 14 of that plan. There are recommended capital improvements in the way of schools, intermediate and secondary schools in North Reston

and four elementary schools. Have those schools been built? Have any of them been built?

A Yes, we have got the South Reston school which has been built. The Lakin School has been built. But the Reston intermediate and high school are the ones that we refer to as being on the plan stage, subject to upcoming bond issue.

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

RECROSS EXAMINATION

BY MR. SYMANSKI:

Q Mr. Whitworth, do you have knowledge of the system of providing schools in other jurisdictions in the State of Virginia?

MR. HAZEL: I think that has an awful indirect --

THE COURT: I am not sure I understand the question, Mr. Symanski.

MR. SYMANSKI: Well, Your Honor, he was asked, could direct tax money provide schools.

I would like to show that our circumstances in Fairfax County are an unusual situation whether other jurisdictions in Virginia do the same thing or whether we are an unusual situation which I think was the implication: Why don't you provide schools?

THE COURT: I got the implication that the bond money was not available and the Board of Supervisors could always use general revenue. They use general revenue for any purpose.

MR. SYMANSKI: Do you think it's relevant?

THE COURT: I don't think so. I don't know what they do in southwest Virginia.

MR. SYMANSKI: You think it is irrelevant?

THE COURT: I think it is irrelevant, yes, sir.

MR. HAZEL: I have no further questions.

BY MR. SYMANSKI:

Q How many students are projected to be generated by Clinch?

A That property as written up here is 202 students in the area subject to rezoning, 113 of them elementary and 32 intermediate and 57 high school.

Q Two hundred two total?

A Yes.

Q What was the total students projected in the subject case?

A If the property is rezoned it would be 629 elementary, 170 intermediate and 358 high school which is in excess of a thousand, looks like about 1,200 on this 305 acres.

This one was --

Q You said approximately how many?

A Approximately 1,200 -- 629, 358 and 170.

Q It is approximately six times the Clinch?

A Yes.

Q Would it be fair to say that the effect on the schools of these children from Clinch would be much less than the effect on the schools --

MR. HAZEL: If Your Honor please, I must object to that question. That is nothing but a conclusion based on arithmetic. I think the Court can draw its own conclusions if they are relevant.

THE COURT: I think it is a conclusion somewhat, Mr. Symanski. If you want to restate your question, you may do so.

BY MR. SYMANSKI:

Q Have other schools been built in Fairfax County, in '69-'70-'71?

A Yes. Yes, we have been building schools right through this period. We have opened up a new school in this general area at Forest Edge and Reston.

In '71, we put an addition on Great Falls School which is just north of here and about '69 or '70, put an addition on the Herndon School in '69 and I suppose just before

this case came up.

I believe we have averaged probably about 20 or 25 million dollars a year in capital construction during this three-year period that you have asked about.

MR. SYMANSKI: No further questions.

THE COURT: Any further questions?

MR. HAZEL: Just one brief question.

REDIRECT EXAMINATION

BY MR. HAZEL:

Q I show you staff reports for 377 and 378. Rather than compare numbers, I ask you if those reports of school children were prepared under your auspices?

A Yes.

Q Those are the areas shown in yellow on the plat, are they not?

A Yes, they are marked out on the plat, yes.

Q How many children do those two applications generate?

A This first one I have got here, which is 377, has got about 600 children in this 377; and 378, the other one, has 1,300 children in these two yellow areas there to be generated.

Q So there are approximately 2,000 children generated in those two applications?

A Yes.

Q Do the same situations apply in that area regarding school population as they do in the subject area?

A Yes. The nearest area to these cases you have just mentioned would be the three schools in Reston, and incidentally the same high school and intermediate school that we are talking about, the three local schools in Reston, are relatively as overcrowded with, as relatively high input of children coming as the Herndon-Floris area is right now.

Q So, in effect, the two Reston applications, the Clinch case, which was zoned, and the subject case, all have the same school children problem?

A We are talking about the same area and for high and intermediate, we are talking about the same specific facilities. All these will go into Herndon Intermediate and High School on the existing plan.

MR. HAZEL: I have no further questions.

THE COURT: Let me ask you a question, Mr. Whitworth.

Do you ever take the position on any zoning application which you are required to review that under no circumstances can we take any more kids in this area?

THE WITNESS: No, sir.

THE COURT: You do not take that position?

THE WITNESS: No, sir. The School Board has, by a deliberate policy, not taken that position. It is by their deliberate doing that we don't take that position, particularly when we have surplus spaces in other places in the County. But we have not.

THE COURT: In this particular application, and I realize you are talking about Herndon Elementary School and Herndon High School and the Herndon Intermediate School as being crowded, I got the impression that if you came on to the fringe of that school district or school line, boundary, whatever you want to call it, the fringe, and moved the fringes toward Tyson's Corner, would that give you relief?

THE WITNESS: Not materially, sir, because we haven't got anything between Herndon and Reston.

THE COURT: That is what I was trying to find out.

THE WITNESS: It would almost get to be a big leap-frog all the way to Tyson's.

THE COURT: That answers my question.

You are excused.

We will take a recess for lunch at this time and we will resume the case at 2:00 o'clock.

(Whereupon, at 1:00 o'clock p.m. the luncheon recess was taken.)

THE COURT: All right, sir; call your next witness.

MR. HAZEL: Mr. Pammel, please, sir.

Whereupon,

JAMES D. PAMMEL

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

DIRECT EXAMINATION

BY MR. HAZEL:

Q State your name, please, sir.

A James Pammel.

Q And your position with Fairfax County?

A Director of the Division of Zoning Administration.

Q How long have you been employed by Fairfax County?

A Almost seven years.

Q Now, Mr. Pammel, your experience by education and background has been land use and land-planning matters, generally?

A Yes.

Q And you are a professional land planner, if I characterize that correctly?

A Yes.

Q Now, under your responsibility in the county, if I understand it, you prepare the zoning reports, you administer the zoning process of the staff reports that we have referred to

and that are in evidence here come from your division?

A That's correct.

Q And you are familiar with county land-use policies including facilities, master plans, etcetera?

A Yes, I am.

Q Mr. Pammel, does the county have a general master-plan system in which there are a dozen or so assorted districts of planning?

A That is correct.

Q How many districts are there in toto?

A I think there are 14, but I could be wrong, give or take a few either way.

Q Now, Mr. Pammel, in the county generally, let me see, with reference to this exhibit, if we can sort of focus on the Upper Potomac Planning District which is the subject case and subject district; is that correct?

A That's correct.

Q The county master-plan-zoning-and-land-use policy to date, with reference to the county map, anticipates that the area north of Route 7, to the river and west of 123, remain in relatively low density; is that correct?

A That's generally correct, yes, sir.

Q And, of course, the area east of the beltway and what

is known as the inside of the beltway has generally developed in small-lot development and multi-family and town houses; is that correct?

A That's correct.

Q And the area south of Route 236, and more particularly south of Braddock Road, known as the Pohick watershed, has in recent years been open to small-lot development; is that correct?

A That's correct.

Q And there are a number of zoning applications that have been heard in that area or are pending in that area, are there not?

A That's correct.

Q South of the Pohick valley to the Occoquan is generally planned under the county proposal for large-lot development; is that correct?

A Well, there is no plan for this area. This is one of the few areas of the county to which, basically, the 1958 plan still applies. There is not a current comprehensive plan for the Clifton area, I guess you would really refer to it, but it is currently anticipated that this would be low density because of the lack of sewer facilities.

Q In other words, south of the Pohick valley and west of 123, south of Centreville, is all planned for low density;

is that correct?

A Right. Although, not an official plan as such, but it's recognized as being a low density area.

Q Now, there is a density core planned in the Centreville area; is that correct?

A That's correct.

Q And there is a modest density core planned in the Chantilly area between the existing Greenbrier and Brookfield Subdivisions; is that correct?

A That mostly reflects development that has taken place there in over the recent years.

Q There is very little land to develop in the Brookfield-Greenbrier area; is that correct?

A Not a great deal more. There's some, but not a great deal more.

Q Before we get into the Upper Potomac planning district, the Pohick district has a limited area of sewer capacity, doesn't it?

A The Pohick area?

Q Right.

A Yes, by the constraints of the lower Potomac treatment plant as to what it will treat at the present point of time.

Q Now, the Centreville area and the Chantilly area are

part of what is known as Sanitary-12, and they sewer into the Occoquan; is that correct?

A That's through a system of small treatment plants which eventually feed into the Occoquan.

Q Development in this area has been severely restricted almost to the point of termination because of the Occoquan sewer problem; is that correct?

A Well, generally speaking, most of the plants have developed at their capacity or are approaching it. There are some that still have remaining capacity, but that capacity, you might say, has been allocated for development.

Q So that in the county scheme, as a whole, the Centreville area, some of Pohick, are the principal areas that are deliberately planned for smaller-lot developments, smaller than one acre; is that correct?

A Yes, when you say the Pohick --

Q The two, the upper -- the main stream and the middle run.

A The main stream and the middle run and certain portions of the so-called Centreville cluster.

Q So a part of this and the Centreville area, other than what is in the Upper Potomac district, are the only density areas, right?

A Well, other than infilling within the urbanized area. And there is considerable land that --

Q Some infilling in the urbanized area?

A Yes, that's right.

Q All right, sir. Now, the Upper Potomac planning district is the district in which this particular case is situated, isn't it?

A That's correct.

MR. SYMANSKI: Excuse me, one of my witnesses is in the courtroom.

MR. HAZEL: Could you ask him to leave, perhaps?

(Witness excluded.)

BY MR. HAZEL:

Q Mr. Pammel, I have shown you the Upper Potomac -- or I have placed before you stipulated Exhibit 3 which is the Upper Potomac Planning District master plan. When did the work on that master plan commence, do you recall? Was it in the mid-1960's?

A I'd say it was the latter part of the sixties, late '67, '68, probably 1968.

Q And it was adopted sometime in 1970 in essence, wasn't it?

A Yes.

Q There were several areas that were excluded or withheld from adoption for problems which are not involved in the subject case, isn't that correct?

A That's correct.

Q So that the Upper Potomac district plan is adopted and is in force for the area of 222, right?

A Yes, that's correct.

Q Mr. Pammel, again, in connection with the Upper Potomac planning district, that plan encompassed two areas of urban density, being density below one acre, did it not? One being the Reston complex, and the other one being the Herndon complex?

A That's correct.

Q And the Reston complex plan shows density moving on in and in the vicinity of the Clinch case, which is in yellow on this plat, it traverses sort of -- merges on through to the Herndon cluster, and this was a 2.5 area on the master plan; is that correct?

A That's correct. Designated for density not to exceed two-and-a-half dwelling units to the acre.

Q Now, I wonder if you could, on this master plan -- and let me put this up on the board for you, please, sir -- would you, with reference to this plan, outline for the Court

the density that is shown that refers to the subject property? First, would you take this orange pencil and put an X in the vicinity of the subject property, which I believe is in neighborhood 5, is it not?

A Yes.

Q Would you put an X in the vicinity of the subject property? Okay, now would you show the Court the 2.5 area that the master plan has outlined in that vicinity?

Now, does that mean that this area is the part that is supposed to develop at 2.5 dwelling units an acre?

A Well, the plan really says the density is not to exceed -- there are policy statements within the plan, itself, the text, that describe how the development is to take place. Internally it states that the development should be at the highest density in the area of the established clusters and then their gradation outward going into lower densities, phasing out to a one acre density at the outer edges, or one unit to the acre or similar to that. But the high density near the centers and gradation outward.

Q Right. Would you take this green pencil and outline the 2.5 areas in those neighborhoods that extend out from the Herndon cluster, not including Reston. Then, I'm going to ask you to outline Reston. You don't have to be really specific.

Just show us --

A Actually we're getting into higher densities down there.

Q Now, that's the urban density module around the Herndon cluster, right?

A Except I probably got too far over. I'm being very broad.

Q Okay, fine. Now, would you take the yellow pencil and outline the Reston cluster?

Now, Mr. Pammel, with reference to the Herndon cluster -- now, the subject property, incidentally, is part of the Herndon cluster, is it not?

A Yes, it's considered to be a part of the Herndon cluster.

Q And it was part that evolved from Sanitary District 14 established some years back, was it not?

A It was incorporated within that plan, yes.

Q Now, Mr. Pammel, I hand you Exhibit 17, which appears to be stipulated, the Board of Resolution in zoning case 1583. Are you familiar with the location of 1583?

A Yes, I am.

Q That's part of the 12.5 area to the south, is that correct?

A That's correct.

Q Now, that resolution has no staff report attached to it, does it?

A It does not.

Q Do you have any staff report that supports that zoning?

A Yes, I do.

Q Let me merely ask for the sake of brevity, did the staff support that rezoning request?

A Yes, the staff did support the request.

Q Now I show you stipulated Exhibit No. 18, B-445.

THE COURT: What was the date of that rezoning case 1583?

MR. HAZEL: July 20, 1960.

BY MR. HAZEL:

Q Now, Mr. Pammel, I show you the staff report in B-445. Pardon me, let me show you first stipulated Exhibit 19, the rezoning resolution and staff report in A-960 and ask you if you can identify that as the staff report and related documentation for another one of the zonings-- in fact, that one, the 100 acres-plus, immediately south of the subject property?

A Yes.

Q What was the staff recommendation in that case?

A The staff recommendation in this case was likewise, favorable.

Q And what was the date of the zoning action?

A The date of the zoning action on this one was 1965, April, I believe, 1965.

Q And do you have a record indicating the Planning Commission recommendation?

A The Planning Commission recommendation was favorable on that also.

Q And the Board, of course, granted the zoning, correct?

A That's correct.

Q Incidentally, how many acres were in the A-960 application?

A A-960, 146.

Q How many acres were in 1583?

A 100.

Q So that's 246.

Now, I show you the application for B-445, 87 acres, Exhibit 18. What was the staff recommendation in that case?

A Approval.

Q And what was the Planning Commission recommendation?

A Approval.

Q I ask you to read the last paragraph of the staff comments on B-445.

A (Reading) "Because the subject tract if rezoned to the

R-12.5 district would be compatible with existing zoning patterns within Fairfax County and the town of Herndon, the staff recommends the application be granted."

Q All right, sir. Now, Mr. Pammel, I show you the staff report that is in evidence.

THE COURT: What date is that, so I can keep some continuity. What date was that approved? April '65.

MR. HAZEL: And the other one, I think, is November, 1966.

THE COURT: All right.

BY MR. HAZEL:

Q Now, Mr. Pammel, I show you the staff report in case No. C-282, the Clinch Corporation, and ask if you can identify on the map the yellow outline as being the Clinch property?

A That is correct.

Q What was the staff report in C-282?

A The staff report or recommendation was for approval.

Q All right, sir. Can I see that? Would you read the first paragraph of the staff report in C-282?

A (Reading) "The subject property is in an area the development of which will be influenced by its proximity to the town of Herndon, Route 7 and the future outer beltway.

More specifically, the property lies in neighborhood 7 of the Upper Potomac planning district, which neighborhood is proposed to become one of the urban density areas in that planning district. The zoning requested is in conformance with the density not to exceed 2.5 dwelling units an acre indicated for the neighborhood by the Upper Potomac Plan."

Q Now, Mr. Pammel, was there any actual zoning adjacent to C-282 in the 12.5 category?

A No, there was not.

Q The green line on this map denotes Reston. You are aware of that?

A That's correct.

Q And the Reston area, immediately adjacent to Clinch, had not developed yet, had it?

A That's correct.

Q The area immediately across from Clinch is planned for four-unit density in the Reston plan, is it not? In this vicinity?

A My recollection is that that is designated in the Reston plan for what they considered to be low density. Well, it would be on this plan, anyway.

Q Would you check that and be sure that that is correct? I'm talking about the area now immediately across from Clinch.

A That's medium density.

Q That's medium density on the Reston plan, which would be four units an acre, would it not?

A Well, medium density is 14 persons, I believe. 14 or 16 persons to the acre.

Q How many persons is 2.5 density?

A Ten.

Q Now, Mr. Pammel, what is the access to Clinch by way of highway?

A Stuart Road, I believe.

Q And what is the condition of Stuart Road?

A Pretty sad. That's the best way I can describe it. It's not good; it's very poor access.

Q Now, did Clinch have any water on the property, any public water service?

A No.

Q Was there any firm negotiation or any firm commitment as to where water was going to be obtained for Clinch when you recommended favorably on that?

A Well, I think that there was an indication from the Water Authority, because contact had been made that they, of course, could make water available to the area, that there would have to be the necessary agreements.

Q You did anticipate that water would become available?

A Oh, yes.

Q Mr. Pammel, was there any difference in the school situation as it pertained to Clinch than it pertained to C-222?

A No difference.

Q As between the two, what was the access, road-wise, for C-222?

A C-222 enjoys better access.

Q It fronts both sides of a state primary highway, doesn't it?

A That's correct.

Q It's six-tenths of a mile from a major state arterial highway, Route 7, isn't it?

A That's correct.

Q And the Highway Department has acquired 160-foot access from the north end of the property out to Route 7, isn't that correct?

A Well, I'm not sure how wide the access is, but they have acquired additional right-of-way.

Q They've acquired a 160-foot right-of-way.

Now, Mr. Pammel, would you refer to the facilities map of the Upper Potomac Plan -- perhaps the other one is the one I'm thinking about -- does the Upper Potomac Plan indicate any special programing on the immediacy of improvement of 228

from Herndon to Herndon Junction?

A Well, the Upper Potomac Plan -- back up, repeat your question again.

Q Isn't it true that the Upper Potomac Plan designates, as far as planning priority, that this road from Herndon, 228 from Herndon to Herndon Junction, as one of the major roads in the whole master planning district that is supposed to be expedited in its improvement?

A It designates it is a major facility.

Q That is to be expedited.

A Well, the way that the wording is here, (Reading) "Program or recommended improvements 1969 to 1975." So it would be something of an immediate priority.

Q In other words, the county indicated they would give immediate priority and the help of getting 228 improved; isn't that correct?

A That's correct.

Q Now, Mr. Pammel, what libraries were planned in the Upper Potomac Plan to service the subject area?

A There are none in the immediate vicinity of the subject property. There is one designated for Herndon, but, of course, that's the town library, and there are libraries designated for Reston.

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Q The plan anticipated that the area of 222 would be served by the Herndon and the Reston libraries, didn't it?

A Well, insofar as county residents would be concerned, it would have to be the Reston, because the town library is of course paid for by the taxpayers within that incorporated area.

Q Can I ask you to read from page 22 under libraries in the master plan, what it says about library facilities?

A (Reading)

"Two libraries presently serve the planning district -- the Carter Glass Library, which is a rented facility in the Lake Anne Center at Reston, and the Herndon private library. Additional service is provided to parts of the district with bookmobiles."

Q Now, that is, in fact, what they anticipated in the plan would service the subject area, isn't it?

A Well, they speak there specifically to the county facility, basically, which is in Reston. The plan notes specifically that the Herndon is private, and I'm sure it probably enjoys the same situation as the facility in Vienna.

Up to a few years ago, there was a private library sponsored by or supported by the residents of the town of

Vienna for their use. Now, the county subsequently came in and built the Patrick Henry branch within the town to serve the town, plus the entire county area surrounding Vienna.

I would assume that this might be the thinking here, but it doesn't say that.

Q Well, I'm asking you, under the master plan which we are asked or required by the Board to use as a guideline; in fact, the two libraries that service the planning district are the Reston and the Herndon libraries; and that's what the plan anticipated, isn't it?

A Well, I would suspect -- but I'm not going to pass judgment on the plan and the information that those people have. It states that; that's correct.

Q I'm just asking you to tell me that those are the two libraries.

A The plan does state that those are the two libraries.

Q And they are in existence, aren't they?

A That's correct.

Q Both of them. Now, Mr. Pammel, I show you a copy of the adopted budget, stipulated Exhibit 15, and ask you to look under the approved budget for libraries in 1972. Three million two hundred thousand-some dollars. Are you in agreement that that was the approved budget figure for libraries in the county on that date?

A I can't really respond to that because it's not an area that I'm particularly familiar with.

Q As far as you know, that's the correct figure?

A As far as I know.

Q Well now, Mr. Pammel, you said that libraries -- in the staff report which we are going to approach in just a few moments -- that libraries would be taxed by C-222. What basis did you have for that statement?

A I think what we were simply alluding to was that libraries was just one of the public facilities that would be essential to provide basic services to this area, that would be one taxed along with other facilities with an increased population in the area, that would be substantially in advance to, at least, what the county had in the way of providing facilities through its normal improvements program.

Q Well, did you make any study of that?

A No. We did not go into an in-depth analysis of it.

Q Was there any basis other than your surmise as a general matter that if you add people, you would add requirements to the library, did you have any study on the library?

A Well, the only study we had is empirical. That's our experience with similar situations in other areas of the county. One of particular that I was familiar with was Vienna.

Q Now, Mr. Pammel, in connection with fire stations, how far is the subject property, 222, from a fire station?

A Well, there's a station in Herndon, and I believe it's about a mile, give or take a few tenths.

Q Well, the Upper Potomac Planning District plan suggests that development be within three miles of a fire station, does it not?

A Well, I can't state that for sure.

Q I refer you to page 68 of the Upper Potomac District plan, Policy 1. Would you tell me what that says about fire stations?

A (Reading) "All single-family residential areas should be within three travel miles of a fire station."

Q All right. Now, it's your testimony that the subject property is within three travel miles of a fire station, is it not?

A Yes, that's correct.

Q Did you have any other studies or do you have any studies that the staff used in determining that fire services would be overtaxed?

A Well, of course, it's not only the fact of the proximity of the station, direct accessibility, it's also the manpower available at a station that determines whether it is adequate

or not. I would have to say in this case, though, that there is adequate fire protection within the specified distance that is set forth in the plan.

Q So there is adequate fire protection. You now change your testimony on that. Let me refer you to the approved budget for 1952. I call your attention to the item of five million three hundred-and-ninety-thousand dollars for fire service. Is that a correct item for fire service in this county?

A Again, I would say if it's in the budget, this would be a fair representation of what is allocated.

Q Now, Mr. Pammel, where are police stations in connection with this property?

A Excuse me?

Q Where are police stations?

A I believe there's a substation in Chantilly.

Q Now, the substation in Chantilly was established several years ago, was it not?

A Yes.

Q And that is to service the area of the western county from, really, Centreville through the Herndon Junction area; is that correct?

A Yes, that's correct.

Q And that services Reston, does it not?

A Yes.

Q Now, is it your testimony now that police services are not adequate for this area?

A Well, even though there is a substation within close proximity to the site in question, it is still some distance removed. It's a large area to be covered by the police department, and I would say that you are not getting in this area the optimum protection that you probably should have.

Q Well, how --

THE COURT: Did you say "optimum?"

THE WITNESS: Well, I mean desirable protection that one would -- a community in an urbanized area, if that's what we're talking about in this area.

THE COURT: Well, do we have optimal protection, let's say, in the City of Fairfax?

THE WITNESS: Well, there's no doubt in my mind that the City of Fairfax, the town of Herndon, the town of Vienna, the incorporated areas, the municipality do have, because they augment -- they have their own service, plus they get support from the county. So they do have adequate police protection.

THE COURT: Are there other areas in Fairfax County that have optimal protection?

THE WITNESS: Some areas of the county enjoy very good service; others not as good.

BY MR. HAZEL:

Q Well, Mr. Pammel, now, with reference to the subject site as it relates to Reston, and I'm now pointing to Lake Anne in the center of Reston, would the subject site and Reston not have about the same police protection as far as service?

A Oh, I'd say they would probably have the same, yes.

Q So, in other words, the center area of Reston and the subject site have about the same police protection?

A Just about.

Q Okay. Now, Mr. Pammel, I show you the budget in 1972. The police, the figure of six million seven hundred-and-eleven thousand dollars for police protection. Do you have any studies or any basis for saying that that amount of money wouldn't provide sufficient services or is there not going to be sufficient service?

A I'd have to say that the service would be a basic service. It's not going to be a minimal service. It's going to be a basic service. All I'm saying is that with this large an area to be covered that the county could allocate a little more resources in this area, and that's all I'm saying, to extend that point maybe one inch further, if this area does

-- in which we were trying to see in the staff report -- in fact undergo rapid development, urbanization. Then you're definitely going to have to upgrade the level of services within the area. More people are going to require more services.

Q You're going to have to hire some more policemen, right?

A That's very true. That's right.

Q Right.

A And the question is, is the county able and capable to do this in this area when it has other areas of the county that are also demanding a higher level of services that were available first and are existing today.

Q Oh, so the question is whether you should put the areas -- in other words, whether you should talk about putting police, additional police, in Reston instead of additional police here. Is that what you're talking about?

A Well, Reston is one example. I'm thinking also in some of the more urbanized areas of the county.

Q Did you have any studies to show that police protection would not be available to this property?

A No. Again, we assumed there was basic protection, which you would need a greater protection if it developed. And we questioned whether the county was able at this time to program

the necessary resources into this area.

Q Did you determine what those would cost? How much more money would it cost to put police protection out here?

A I don't know.

Q You didn't make any study at all of that, did you?

A Not on cost.

Q Now, Mr. Pammel, a feature of a master plan, and particularly the Upper Potomac Master Plan, was to guide development into the areas that the county designated on the plan for certain types of development, isn't it?

A That's correct.

Q And it was the expressed purpose of the Upper Potomac master plan to designate the subject area and, in fact, that green around the X, for development at urban densities, being this 2.5 units, wasn't it?

A That's correct.

Q That's exactly what the plan anticipated, isn't it?

A Without a time or scheduling of events.

Q Nowhere in the plan is there any kind of a timing schedule, is there?

A No. That's one of the major drawbacks of the plan.

Q Without the question of whether or not that would be a legal matter, there is nothing in the plan to indicate that

C-222 should not develop before any more development in Reston, is there?

A No.

Q And there is no study available to show that the services that will be needed at C-222 are going to be any more taxing to the county than the services needed in Reston, is there?

A As far as you mean a detailed analysis of the situation cost?

Q Yes.

A No.

Q Now, is there any difference in the service level per unit between the subject case and the Clinch case?

A Well, I'd have to say, again, on the basis of experience and studies that have been conducted over the past several years, there probably is, which would run in the favor of the planned-unit development as opposed to a conventional-type development.

Q Actually what you're saying is, it would be easier and preferable to develop 222 first under planned-unit development rather than had zoned Clinch. That's what you just said, isn't it?

A I think we're saying that the planned-unit development is more favorable to the county in terms of the cost-benefit

analysis than a standard, typical, conventional subdivision.

Q Now, Mr. Pammel, there is language throughout the Upper Potomac Plan to encourage planned-unit development, isn't there?

A There is.

Q In fact, that was one of the key themes of the Upper Potomac Plan, to encourage planned-unit development, wasn't it?

A That's correct.

Q Now, Mr. Pammel, in connection with the subject case, the staff report recommended denial, didn't it?

A That's correct.

Q And the staff report would have recommended that regardless of whether it was planned-unit development or R-12.5, wouldn't they?

A That's correct.

Q The fact that it was a PDH, and the fact that the development plan may be in some eyes needed some adjustment, really didn't have anything to do with the staff report and the denial, did it?

A No. I think we were pretty much in agreement throughout that a serious problem existed with respect to just timing of development within certain areas of the county, and whether the county could continue to expend limited resources to

provide public facilities in areas that perhaps were not ready, at least in our minds, to undergo development at this time.

Q And the decision was based on the density at the 2.5 plan approach and not on the development plan, wasn't it?

A I would have to say that's fair, yes.

Q And, in fact, the staff and the policy of the Board of Supervisors is to encourage PDH in preference to 12.5, isn't it?

A Did you say "is" or "was"?

THE COURT: I want to get in a point right there. I think you touched a nerve, and I wanted to find out. I don't mean to take the case away from Mr. Hazel. But, it has been the observation of this Court -- and I don't mean to put you on the spot either -- you have served under at least two different Boards, have you not?

THE WITNESS: Yes, sir, I have.

THE COURT: Do you solicit, or do you feel the pressure of different policies from different Boards when you come to analyze a zoning application?

THE WITNESS: Well, certainly -- I mean, we do or are readily familiar with what the policies are of the Board, and there's no question that the policies have changed from the previous Board to the current Board.

THE COURT: But you are dealing with land use, as I understand.

THE WITNESS: That's correct.

THE COURT: And you are affected by their policies. If their policy says that we're never going to hold a halt to growth in Fairfax County, you adhere to that policy when you look at a zoning application?

THE WITNESS: Well, the difficulty we have, Your Honor, is one of which is the question, how are these policies expressed, through what method or manner.

We have difficulty sometimes because these are policies that are discussed and not put on paper and not gone through the public hearing process and adopted.

THE COURT: I understand.

THE WITNESS: All we have to use, frankly, are these plans. These are adopted policy of the Board. Not this Board, but of a Board as a continuing body.

Our function is to look at these plans and say, does that application meet the spirit and intent of that plan as expressed by the Board as a continuing body.

THE COURT: Well, the reason I am asking this question, of course -- I come to cases 1583, case A-960 and case B-445, which apparently was under a different Board, which

the staff at the same time recommended approval.

THE WITNESS: Yes, Your Honor, that's correct.

THE COURT: You now come to a situation, using the same plan, same master plan, in effect, same concept or the initial concept, and you recommend denial.

THE WITNESS: Well, no, Your Honor, not really quite, because there is a sufficient time lapse between the last action, which was 445, and the current time. 445 occurred not with the preceding Board, but the Board preceding that.

That Board, as I think everyone is very well aware, that Board was very much oriented towards development. The Board that came in in '66, I believe, or '67, '67, took a much more conservative point of view and started wrestling with the issue of growth, how much and an almost strict adherence to comprehensive plans.

Now, in this area, we did have a comprehensive plan, 14, that was in effect, and it shows maybe the reaction of that preceding Board. That plan designated this area for one-acre density, which is what the basic zoning is today. It said the density not to exceed one dwelling unit per acre.

That Board ignored that plan, totally.

BY MR. HAZEL:

Q Well, Mr. Pammel, did the same Board that adopted the

Upper Potomac Plan deny this application?

A Well, let me try to get the chain of events to Your Honor's question.

THE COURT: All right, sir.

THE WITNESS: Then, of course, in '67, came a new Board, although there were several holdovers. But that Board was much more responsive to the comprehensive plan and what it called for and did adhere to these comprehensive plans.

That Board took no action in this area, at least in violation or contradiction of the comprehensive plan. The Clinch zoning was basically consistent with that comprehensive plan, and that Board took an action consistent with that plan that they had adopted.

THE COURT: Well, as you work with these plans, these master plans, comprehensive plans, you of course are looking at it from a land-use viewpoint. And, once they are adopted by a Board, of course, they are in essence saying then, that this is in accordance with and promotes the health, welfare, and so forth, of our area?

THE WITNESS: Yes, sir.

THE COURT: All right, sir. What baffles me somewhat is that then in your position, with the change of the Board, and the same comprehensive plan, in one case with one Board you should

recommend approval, and under another Board, you recommend denial.

MR. HAZEL: If Your Honor please, this was all under the same Board.

THE COURT: I understand that.

THE WITNESS: The Clinch case and 222 were of the same Board, and I think it would have been brought out later, although the staff did recommend favorably in the Clinch, 282, I believe it was, we recognize, and we fully admit, we have before and will today that that was an error on our part. We did not fully look into the area with respect to the facilities that were available to serve that tract. And I frankly say if we had been more thorough and looked into this a lot more carefully than we did, we would have come to the conclusion, as we did in 222 that it should not have been granted. As I indicated to Mr. Hazel's question, I think 222 is probably in a better location than the Clinch case; but frankly, we made an error in the Clinch case.

We just simply recommended something that we should not have. We should have looked at it closer.

THE COURT: Would you agree that the state of affairs in looking at the overall picture that it leaves it in a very unstable situation for a property owner?

THE WITNESS: I think, Your Honor, that the property owner, perhaps unfortunately so, is caught in the dilemma of a point in time where the governing body of the county is trying to develop policies. And I think they're critical policies as to how much growth in the county, where should this growth be and at what point in time.

Now, that goes back to the enabling legislation. And unfortunatly, the modus operandi in Fairfax County, up to the current time, has not followed what it should have done, or followed along the lines that the enabling legislation says planning should be done.

And that is, that as you develop a plan for growth -- and we have done that in a number of the planning areas. And in many of these areas, there have been capital improvement programs to go with that plan that, in effect, say: okay, this is your growth, that these are the facilities that must coincide with that growth. And unfortunately, the county has not adopted the capital improvements program.

So the whole idea or the whole plan of providing these public facilities have been left up to the individual agencies, the school board, and whatnot else, without policy guidance as to priorities.

And I think, unfortunately, that is the situation we

are now in the process of trying to make some sense out of, if you will pardon the expression, perhaps a chaotic situation, and trying to get ourselves into a posture that we can take this enabling legislation and follow it to the tee and come up with a comprehensive growth plan for the county and a capital improvement program to go with it, so that we do provide these facilities along with the areas that are going to grow.

BY MR. HAZEL:

Q Well, Mr. Pammel, there isn't any question in your mind that the use of C-222 in accord with this application is a desirable land use, is there?

A At some point in time it would fully meet the policies and the intent of the master plan.

Q Is it in complete harmony with adjacent development? Is there any problem that would impact adverse by this plan?

A I don't see right now, particularly to the south and to Herndon, there's no impact. The areas to the east, and at least immediately to the north, are in, what you would call, are still in a whirl state of development or undeveloped or in agricultural uses. Who is to say whether suburban or urban development is compatible or incompatible with agriculture?

Q You are providing this area for this kind of development under a deliberate decision of the Board of Supervisors.

Isn't that correct?

A That is the plan and the policy of this Board that this area should develop at some point in time.

Q And the sole grounds of the staff in turning it down was that it was a premature zoning. It wasn't a problem with the development.

A That is basically correct, yes.

Q And that was the grounds of the Board, wasn't it?

A Yes.

Q So that the development plan had nothing to do with it. It was this issue of prematurity?

MR. SYMANSKI: I object to that. I don't think this witness can testify, Your Honor, as to why the Board made a decision.

THE COURT: I know. He has. He's expressed a view. I don't know whether or not that represents the Board's or not.

MR. HAZEL: It will be supported in the minutes of the hearing.

BY MR. HAZEL:

Q Now, Mr. Pammel, I show you page 47, the Upper Potomac Master Plan, neighborhood No. 5. Would you give us the number of people that the Board of Supervisors, that denied 222, plans to have in this neighborhood?

A 5,500 people.

Q And at what density of persons per acre?

A Eleven.

Q And under a PDH, how many units per acre?

A 3.1.

Q And is that exactly what this plan anticipates?

A Yes, it is.

Q Now, Mr. Pammel, in recent times, recent months, recent years, there has been a discussion of low-moderate incomes in the county, hasn't there?

A Yes, there has.

Q And in 1971, the Summer of 1971, an ordinance was adopted that says that, in effect, there's not enough low-moderate-income housing; we've got to do something to force it to come, right?

A Well, your term "force" -- let's backtrack and say that the county initially started this with a program of encouraging the developers to provide low-moderate-income housing, and it ultimately wound up in ordinace form stating that within the multi-family category, you must provide; but on the other hand, with the developer providing it, he was given a bonus density. So it wasn't quite that onerous that you were forced to do it.

Q Mr. Pammel, I show you stipulated Exhibit No. 20, three volumes of testimony before the County Board, from which the PDH requirement of low-moderate housing was developed. Would you characterize that testimony as demonstrating that there was a desperate need for housing in the lower incomes in the county?

A I don't think there's any question about that.

Q Now, Mr. Pammel, do large-lot developments have anything to do with housing costs, one-acre-and-more-lot size?

A Well, I'm not quite sure what you're getting at, except the larger lot usually means a more expensive home.

Q A more expensive home. So smaller lots are going to mean some opportunity for lower-cost housing, right?

A Some opportunities and depending on how you do it and what variety of housing types you would use.

Q Now, Mr. Pammel, would you go to the development plan for the subject case, Exhibit 7. Look at the tabs, if they refresh your recollection, and tell us what has been done on that plan to accommodate low-moderate-income housing, and whether that meets the PDH ordinance since held invalid by the courts?

THE COURT: You mean the PDH or the --

MR. HAZEL: The low-moderate income provision of the PDH, Your Honor.

THE WITNESS: Under item 2, it notes: six percent of the units are low income, which is 55 units; and three percent are moderate, which are 82 units.

BY MR. HAZEL:

Q In other words, as I understand the tabs, under the PDH-3 density, 916 units would have been available, without the low-moderate?

A Without the low-moderate.

Q And this developer and this applicant has proposed the low-moderate on that plan in how many units?

A Well, your total units would be, total low and moderate would be 55 and 82.

Q He's proposing the additional 15 percent, right?

A He's got 9 percent.

Q The difference between the 916 units and the 988 units is permissible under the policies regarding low-moderate bonus, right?

A One unit for each two in the low --

Q I want it to be perfectly clear to us all and for the record. There was no problem, there was no inconsistencies between the master-plan densities and the densities shown on this development plan, are there?

A No.

Q Whatever additional units were under county policies to encourage low-moderate-income housing.

A They were not to be included in the densities in the plan. That was over and above.

Q Now, Mr. Pammel, I show you staff reports in cases 377 and 378 in Reston. Those cases are outlined in yellow on the map.

A Yes.

Q What is your staff report recommendation in those two cases?

A Staff report recommendation in both of those cases was favorable.

Q Now, Mr. Pammel, what differences, if any, are there between those two cases and C-222 as far as any public facilities?

A The situation is basically similar with respect to public facilities.

Q There isn't any difference, is there?

A No.

Q Why did the staff recommend those two cases? How many units in those two cases?

A Well, there's 600 and some acres. From my recollection, it seems to me over 1,000.

Q Let me see if we have the numbers on that.

It's 2,400 units, approximately, is it not, Mr. Pammel?

A That's correct.

Q Does that tabulate the two applications?

A The two applications are tabulated.

Q Now, they consist in land areas of approximately 625 acres?

A That's correct.

Q And how many total units on the 625 acres?

A 2,575.

Q Now, Mr. Pammel, does the staff -- you say that the Clinch report was a mistake. Does the staff have any second thoughts about the two Reston staff reports?

A No; none, at all.

Q You'll stand behind those two?

A Yes.

Q How did they differ from Clinch?

A Well, insofar as the staff's review of this, we consider Reston to be a unique situation. It's a new town. It's completely different from any other type of development in Fairfax County. This is a program or project that's been -- well, it was first approved in 1962. So it's been going now for some ten years with the full support and endorsement of the county.

Not only our own county, but people worldwide look at the concept of new-town planning, and particularly Reston, and how it's developing. This is something that we have in Fairfax County, and we've wanted to follow it through and promote it. That's always been the position of the planning staff. That's why I said our position wouldn't change on that -- growth in this area of the county should occur in Reston where we have planned for it to be. Although admittedly we aren't keeping up with public facilities.

Q Well, didn't you plan for growth on C-222?

A We did, but what we're trying to say in this whole arena of development, that growth should take place properly within Reston. That is, it was planned for in Reston. It's a new town, and in the longer range, these other areas on the periphery of Reston and Herndon should develop.

Q Now, Mr. Pammel, let me see if we understand that. In the Upper Potomac Plan, is there any distinction between the planning for growth in the areas of Reston covered by these two reports and the area of the subject case?

A Unfortunately there's not.

Q You said that there is no difference in the public facilities?

A That's basically true.

Q We are using in 222 the preferred style of development. We may not have 2,000 acres, like Reston, or 7,000; but we've got 300 acres, and we're using the PDH approach. That's the preferred approach to the development of a 300-acre tract, isn't it?

A That is.

Q And the development plan questions had nothing to do with the denial of the plan, according to you?

A You mean the staff recommendation denial of the zoning?

Q Yes. That was not based on the plan?

A We had much comment on the plan, but we were vitally concerned with the issue of public facilities, and if it was appropriate for this area to develop at this time.

Q Okay. So that the plan, itself, the development plan, was really not the factor. It was the density.

A It more the density and the timing.

Q Is there any policy by the Board of Supervisors that says Reston should have a preferred status over planned developments in the area?

A I don't think there's an expressed policy that you can -- I mean, in writing. I think the Board has said time and time again --

Q Well, is it secret?

A No. I think the Board has said, verbally, at meetings that, yes, Reston is a model example of how development should occur, and we want to promote Reston. I think they've said that in various hearings when matters concerning Reston have been discussed; but as to exact policy, and a policy incorporated in the plan, no.

THE COURT: Let me -- I don't mean to interrupt. Are you saying, in effect, that the idea, the concept of Reston should be allowed to develop, and as it moves to the outer fringes progressively, then we will let these adjacent property owners develop?

THE WITNESS: Well, I think that, ideally, is how things should happen. They should happen in some orderly sequence of events, and this is the way the county would like to see the area develop rather than a leapfrogging or a hit-and-miss approach, development here, development there, and most of it unrelated to anything else at this point in time.

This is the problem with the county today. There has been so much of that. One parcel of development here is not related to that piece there, but yet somehow, someway, you have to provide public facilities to both of them. When they're that spread apart, it does cause problems. It does make it

difficult, and in some instances it really stretches the county's ability to provide educational facilities. You might have two widely separated parcels of ground that neither one of the two generates the need for a full elementary school. Now, where is that school going to be? It's got to be some place out there to take care of them.

Q Well, is that the case here? That you've got under-utility? I thought here you had too much facility. You don't have a situation here of leapfrogging do you?

A I think we do. I think we do have a classic situation in the county, because we have vast areas, say, between this area which was --

MR. SYMANSKI: Your Honor, can he finish answering the question?

THE COURT: I think he has answered his question. Let's proceed.

BY MR. HAZEL:

Q Mr. Pammel, I'm pointing to the dotted-green outline. That's the town of Herndon, is it not?

A Yes.

Q Now, that predated Reston, did it not?

A Yes.

Q Does Herndon have shopping facilities in it?

A Yes.

Q Does Herndon have a high school adjacent to it between Herndon town and the subject property?

A Well, Herndon -- I mean, it's --

Q I mean are there county schools?

A That's right.

Q I'm not talking about the jurisdictional line. There's a high school within walking distance to the subject property, isn't there?

A Oh, yes.

Q There's a shopping center --

A Well, walking distance -- I'll qualify that -- walking distance if somebody wants to put paths in or the sidewalks; because obviously those students aren't going to walk down that facility as it is now.

Q What is it? Is it a quarter of a mile? I'd hate to think what I got over to get to school.

A I know, but you don't walk down a primary state highway.

Q When Hiddenbrook develops, they'll be required to put some sidewalks in, and when this develops, you're putting sidewalks in, too, aren't you?

A Yes. I think that's what Mr. Hendrickson was referring

to today. These facilities would necessarily be requirements, although you have a stretch of development which falls within neither one of the two parcels between there and the high school.

Q There's a shopping center under construction that has been planned on a piece of commercial land at Herndon Junction for some time, and it's now finishing up, isn't it?

A Yes.

Q So that this subject property is between a brand-new shopping center at Herndon Junction and a shopping area in Herndon Junction and the shopping facilities in the town of Herndon, is it not?

A That's correct.

Q Well, Mr. Pammel, again, what facilities are being stretched that the county says we prefer the Reston area? Is it just because you like the development in Reston? It looks better than what might come here?

A Well, that's -- I think, again --

Q Is that part of it?

A It's not part -- there should be some priority to development. Now, Reston is established. It's a new town.

Q Reston is all owned by one entity, is it not?

A Well, there's a great deal going on for Reston, with

respect to that, but Reston --

Q Wait a minute. Reston is all owned by one entity, is it not?

A Well, other than what's been sold to the people who live there.

Q But all developed by Gulf Reston?

A It's been developed by Gulf Reston and Simon before that.

Q Did the county give any thought to how other people compete with Gulf Reston in land development?

A Well, I think certainly the county has been aware of that, because just recently the county has granted some -- I mean, other zonings that are on the periphery of Reston.

Q What did they just grant?

A C-401 was granted which is right on the periphery of Reston.

Q That's a half-acre density, right?

A Half-acre density, consistent with the comprehensive plan, I might add.

Q That was consistent with the plan?

A That's correct.

Q Did the staff recommend favorably on that?

A Yes, sir, we did.

Q Why did the staff recommend favorably on that and not on C-222?

A Again, I think we're taking the position that we feel the growth in this portion of the county should be concentrated near Reston at this point in time where we can, at least, concentrate our ability to get the facilities that are deficient in the area now, notably schools.

Q You talked about ability to get schools. You're going to have to build another school or two out here, aren't you?

A Certainly.

Q Can't you build that school just as well here as you can in Reston? What is the difference about building it here or building it at C-222? You have a site in both places.

A Well, I think, one, you do. You have an elementary school site that has been offered in 222. I think the county, however, expressed a need for two sites.

Q And you have one being dedicated here. Now, what is the difference to the county whether they build that school here, or here or in both places if the need requires it?

A Well, again, I would back up and say that we have sites also in Reston. They're already available.

Q And you have sites here. So it's the same situation, isn't it?

A And we have a bond program that, if it's approved this year, we'll allocate funds for the Reston-Dranesville High School.

Q Let's look at the other things. The same sewer treatment plant, Blue Plains, serves both of these areas, doesn't it?

A Yes.

Q In fact, the trunk lines that come through the property -- some of the very pipes that are on the subject property run on up and service some of Reston, don't they?

A That's correct.

Q So that their sewerage runs through the subject property?

A That's correct.

Q The same water system serves both of these properties, the city line, doesn't it?

A That's correct.

Q It's easier to get from C-222 to Route 7, the main arterial, than it is from the area of Reston that's being zoned now, isn't it?

A Well, it's easier to get to Route 7 from there.

Q Sure.

A Obviously, it's a lot closer.

Q It's only a half a mile from there, and it's several miles from here, isn't it?

A That's correct.

Q So that access to an arterial highway is easier from the subject property than from Reston, isn't it?

A At this point in time. However, over long-range planning, hopefully, we can get some additional access to the Airport Access Road.

Q You mean you're going to build the lanes on the Airport Road?

A That is being given some considerable thought right now.

Q But up here we have an existing arterial road, right? That's a present facility, right?

A Right.

Q And this property is on two sides of a primary highway, right?

A That's right.

Q Is there any primary highway serving Reston at all?

A Well, right now, no. The access road --

Q In the state system, the primary highway is the intensive highway, isn't it?

A Well, next or under the interstates.

Q The subject property, 222, has primary service, and the entire area of Reston has none, does it?

A At this point in time, yes.

Q It has no primary highways?

A Yes, sir; that's correct.

Q Okay. Now, the fire service, you say, is adequate for both. The police, you say, is the same; and the library that's in Reston is supposed to serve all of this area under the master plan.

Now, Mr. Pammel, just what is it about public facilities, other than the fact that Reston is an innovative idea which captures imagination, that has caused the staff to favor Reston over the subject property?

A I think Reston has been given a commitment, given a commitment 10 years ago or 11 years ago, and this commitment has been a continuing commitment that Reston will develop as a new town.

Q You mean that Gulf-Reston has been told that they are going to be allowed to develop and that county facilities are going to go in that direction, and all these landowners that have been paying taxes have not got the same commitment?

A All I can say is that the planning for that area recognized Reston long before it recognized this particular

area. There was a plan for Reston. It was approved by previous Boards, and that was carried on up, and with each subsequent revision of that plan, for the master plan for Reston, it has been repeated. So I think in terms of priority, Reston obviously has been given the endorsement of the Board since dating back to '62 before any planning was done in this area.

Q Is that anywhere a written commitment?

A I think it's written in the sense that it is in the actions of the Board which is reflected on the minutes of the Board on the numerous occasions that Reston has been discussed.

Q Mr. Pammel, has there been any reflection in the assessment of taxes that shows that C-222 is in a discriminated position as opposed to Reston?

MR. SYMANSKI: Objection, Your Honor. I don't think Mr. Pammel is qualified.

MR. HAZEL: If he doesn't know, he can say so, Your Honor.

THE COURT: He doesn't know.

THE WITNESS: I don't know.

BY MR. HAZEL:

Q You don't know of any tax break that has been given to these people?

A I really don't know that much at all about what the assessments are, or how they've been treated, or anything else.

MR. HAZEL: If Your Honor please, I would like at this time to introduce the two staff reports that have been referred to as 377 and 378 as my exhibits, I guess C and D.

THE COURT: All right, sir, they will be received. 377 and 378 as C and D.

(The documents referred to were marked Plaintiff's Exhibits C and D and received in evidence.)

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

THE COURT: Let's take about a five-minute recess at this time.

MR. SYMANSKI: Your Honor, may we approach the bench?

THE COURT: All right, sir.

(Discussion off the record.)

(Short recess.)

THE COURT: All right, you may cross examine.

CROSS EXAMINATION

BY MR. SYMANSKI:

Q Mr. Pammel, you testified that in the Clinch case the staff report was favorable. Would you explain, please, whether

you feel at this time that that was a correct report?

A No, I do not feel it was a correct report.

Q Why not?

A Well, I think one of the major considerations in that area was extremely poor access that the staff overlooked. There's obviously the same school deficiencies affecting the Clinch property that affect the property in consideration today.

And these were major factors, elements that the staff simply overlooked in their review. We took an assumption, and it was an incorrect assumption that the comprehensive plan on its face was proper, it was correct, and it was the proper time to go ahead and recommend approval of that application. When in reality we should have recognized that the area was void of even the basic facilities to accommodate growth, and we should have recommended a denial on that basis alone.

Q With regards to zoning history of this area, other than Clinch, isn't it true that for before this time, for about five years, there had been no zoning -- referring to these, I believe the last zoning was in '66, was it not?

A Yes, '66.

Q So, in effect, wasn't Clinch in this area the only aberration in the last five years up to this date?

MR. HAZEL: Pardon me. If Your Honor please, I don't

understand the question. The only "abberation" of what? I move that that question be struck --

THE COURT: Restate your question, Mr. Symanski.

BY MR. SYMANSKI:

Q With regards to the zonings existing in this area, in the five years before this abrogation, were there any other zonings by the Board of Supervisors which increased the density other than Clinch?

A Other than -- no.

Q Now, I believe you testified that within this area, the comprehensive plan shows a medium density or a 2.5 density?

A 2.5, right.

Q Were there any differences that you know of between this area which is not presently zoned and this area, this area or this area? In other words, are the same questions involved with possible applications in these areas that are involved in these two applications?

A The same questions or the same considerations?

Q The same considerations?

A Yes.

Q So, would it be your opinion that the staff position with regard to this whole area, with regards to development applications for higher density -- would it be consistent?

A Yes.

Q Mr. Pammel, is it good planning policy to attempt to correct errors you feel you've made?

A Well, certainly, because we sure don't want to compound mistakes that have been made. That's what we certainly avoid trying to do. In this case, as I indicated, we recognize that we made a mistake with Clinch, and we don't want to make another one.

Q In the Clinch application, were the standards involved with Section 30-15 applicable to Clinch?

A No.

Q Now, I believe there was testimony that 228 is a primary highway?

A Yes, 228 is a primary highway.

Q Is it a primary highway now, or is it planned to be a primary highway?

A It's a primary highway by its route number designation.

Q Are the facilities comparable with the plan with regards to road facilities -- strike that. Are the road facilities existing what they are planned to be?

A No.

Q I think there also was some testimony with regards to

the master plan for this area, policies that were set forth as to what should develop first, what public facilities should go where. Is that correct? Are there policies in this document?

A In the text, yes.

Q Is it unusual county-wide for the actual occurrences to be behind with the master plans, say, that they would like them to be?

A You mean, we're constantly playing a catch-up game?

Q That's a good way of putting it. Yes, that's the question.

A Yes.

Q If this is the case, is it good planning to --

MR. HAZEL: Well, pardon me. I don't quite understand the question. What is your question? Is this a case where you --

MR. SYMANSKI: I'm asking whether, as a general proposition, are we up to par with what the policies and what the plans, at some time in the past, have said we should be or we want to be.

MR. HAZEL: I just think that's too vague to be answered. I don't understand the question.

THE COURT: Well, I'll allow it to stand. I have

had some trouble following it, but I will allow it to stand.

MR. HAZEL: All right, sir.

BY MR. SYMANSKI:

Q If we are behind in provision of facilities, are behind what the plan says we should be, or what the plan in looking into the future says that we should be or would be, is it good planning to compensate for our failure to keep up with the plan, or should we go ahead and zone, in your opinion, with regards to the densities on the master plan?

MR. HAZEL: If Your Honor please, I don't think that that's a fair question, because there's one thing that could also be done, and I think Mr. Pammel should talk about the alternative. The county should get busy and provide some of these facilities instead of crying about they don't have them.

THE COURT: I'll let the question stand.

MR. HAZEL: All right, sir.

THE WITNESS: Well, obviously, if development is going to proceed in an area, then it should proceed on the basis that public facilities are developed to coincide with the demand as it develops.

As an example, development within a given area, if the road access is poor, extremely poor, then there should be some definitive plans to improve the accessibility of that

site so that it coincides with the need. The people should be there at approximately the same time that you have the improved accessibility. The same thing with schools.

THE COURT: But, you haven't done that for the Reston area. That's an exception to what you're saying?

THE WITNESS: We have problems in Reston right now. Though, Your Honor, within the bond referendum scheduled for this June, if you will note there are a number of facilities that are coming before the voters that are directly -- are located in the Reston area, that will serve this area, and it's one of our areas of greatest deficiencies.

If the issue is approved, the referendum, we will get busy with the task at hand, and that is overcoming the problem at Reston. But, we recognize it, and we're trying to allocate our resources there now.

THE COURT: All right, sir.

BY MR. SYMANSKI:

Q There was some testimony about the library facilities in this area. Did you have any personal knowledge of the circumstances of the libraries at this time, at the time of this zoning report, staff report?

A Well, we knew of the Reston facility, but we also knew that that facility, generally, would accommodate the growth

that's taking place in the area, and we're talking about adding more people. Therefore, we have to expand the public facilities; and that was our question, the reason we raised the issue.

Q Well, but the issue was raised as to whether it would tax the library facilities. Did you have any personal knowledge of the existing conditions?

A No; other than just the facility itself, we knew what was available; but beyond that we didn't get into any depth.

Q You did know what facilities existed?

A We knew what facilities existed and which ones were available to serve the area, which we indicated in our report. It was our considered opinion that with the population in that area, those facilities were probably barely doing the job, and to add more people without additional facilities, that's the question we raised.

Q There was also some question about the development plan, and what the recommendation of the staff was based on. Did the staff report show many deficiencies in the development plan? The staff report that went to the Board of Supervisors for this decision, did that staff report show deficiencies in the plan?

A Yes, it did.

Q Did it give an estimate of how many deficiencies? Was it only a couple?

A Oh, no. There was a significant number. And, of course, we undertook really two reviews. We undertook a review of the original plan and provided the applicants with our comments. A revised development plan was resubmitted shortly before the hearing.

We reviewed that and added an addendum to the staff report, in effect, saying they had overcome some of the problems we had raised, but there were still a substantial number of other deficiencies that should be addressed.

Q And that staff report went to the Board of Supervisors?

A Yes, it did.

Q I'd like to show you page 37 of the comprehensive plan, a list of policies there. Would you briefly summarize what those policies are, and with regard to each policy, state whether this application complied with that policy?

A The first one is to provide a suitable living environment for the present and future population of the planning district.

Q With regards to suitable living environment?

A Well, I think that the planned-unit approach does exactly that. It does provide a suitable living environment.

But, I think you have to take environment also with the factor of the services that are available, basic services, to the community. So you really don't have a suitable living environment unless you have all of the basic services there available at your disposal.

So I would have to say we were confronted with that problem and would have to say you don't have a suitable living environment unless all these facilities can be planned; and in this case, we felt that there was sufficient deficiencies to say "no." Establish a balanced community with the provision of adequate employment and service facilities -- well, of course, in this area there's limited employment in Herndon, and probably a greater degree of employment in Reston.

And after all, Reston is a new town. It does have that feature; it is balanced. It does maximize the opportunity of having people live and work in the same community, which incidentally is an expressed policy of the Board, which has been stated at least within the minutes on a number of occasions. They would like to have more employment in the county and more people living and working within Fairfax County, as opposed to the present high percentage of commuter trips from Fairfax County to Washington.

That has many advantages. It does cut down on

pollution because your automobile trips are limited. And, again, I point back to Reston. Reston will be a major work center in the future. It has an expansive employment center now with a great deal of R & D development and other facilities, and then the Geodetic Survey -- U.S. Coast & Geodetic -- anyway, they will be -- a major Federal facility will be located in the area in the future.

Q How about the service facilities part of it? The second one.

A Oh, and service facilities. Well, okay, again the service facilities, we're talking about, generally I guess, the idea of providing basic services to the community, to the residents. Not only education, police protection, fire protection, and the like, but also shopping facilities within close proximity to the residents.

As I said before, we have a basic level of services here. It could be better in terms of the police, fire, library and whatnot. Community and shopping facilities, I think, are readily available. I think there is, perhaps, in some respects more adequate here than other developments in the county.

Q Service facilities, you're saying, would include things like fire protection, police --

A Police protection, right.

MR. HAZEL: He's already testified at least once, and I think he just testified that fire protection is adequate for both places. Police is at basic level, and library is at basic level.

THE COURT: I will allow him to proceed. You called him as your witness.

MR. HAZEL: All right, sir.

BY MR. SYMANSKI:

Q Does service facilities include those things?

A Yes.

Q Okay. How about the next standard?

A Provide housing to match the varied needs and income levels of the district's present and future residents. I would say that this would probably be met with this application.

Respect conservation values, including the preservation of major stream valleys, open space areas, and the Potomac River shoreline. As this application, at least, relates to Sugarland Run, we had some problems there, and we stated that in the development plan comments; that we felt they were encroaching in certain areas into the stream valley.

So, that was one of the areas, deficiencies, in the development plan that should be overcome.

Finally, to provide for orderly development consistent

with good land use practices and the availability of public and semipublic facilities and amenities. Again, I guess this is our area of major concern. Orderly development, and that is I think a sequential development following a logical pattern that has been worked out in advance as to when, where and at what time, as opposed to an at random hit-and-miss development which the county has had in the past.

Q Now, you testified, I believe, that this was in conformance with the master plan on density?

A Yes.

Q Would it be a fair statement, after reviewing these policies, that it met some of these policies and did not meet some of these policies?

A Yes.

Q There was also testimony about provision of low-and-moderate-income housing. Did the applicants get or did they request bonuses under Fairfax County ordinance for the provision of these low-and-moderate-income units?

A Yes, they did.

Q Well, isn't it true that they did get, or at least applied for, extra units above what a normal application would have because they were going to provide low-and-moderate housing?

A Yes; of course, that tool or option was made

specifically available to any developer who undertook to provide the housing, and to date, at least to my knowledge, almost every developer has made available that additional density or has taken it.

Q At one point, I think before you were interrupted, you started to talk about this in terms of whether it was what you considered a leapfrog type of development. Would you expand upon that?

A Well, as I was starting to indicate, I think that there's a rather substantial area intervening between Reston and Tysons Corner that is basically undeveloped. It's rural and in most cases active agricultural uses. Some of it not in an active productive state; but nonetheless, not developed in an urbanized pattern.

The leapfrog approach -- and I suppose somebody could really say, well, Reston was leapfrogged, too, because Reston did leap out beyond everything else and settled into the quiet countryside of Fairfax County 10 years ago, or 11 years ago.

But, there have been other developments like Greenbrier. Greenbrier was a leapfrog. Greenbrier jumped out beyond all then-existing patterns or limits of urbanized development and sat in the middle of the rural countryside of

the county, and there we have a conventional sprawl-subdivision.

There are other examples throughout the county, but I think the whole point I'm trying to illustrate is, again, through this attempt to try to program your growth in an orderly fashion, you want to do this in such a manner as the growth takes some logical pattern and follows that pattern, or that line, rather than getting fragmented and disjointed.

Some of the development in this area, I think, reflects a sort of a leapfrogging. Perhaps that's a result of the market demand, because land being more expensive closer in, the developer would prefer to go out where land is cheaper and develop out there. But, at the same time, as I indicated earlier, it taxes the county's ability then to extend its resources to provide facilities in these newly developing areas.

Reston is the exception because we have devoted our energies to providing as best we can facilities to Reston, recognizing that it was something different and unique.

Q I believe Mr. Hazel referred to the budget. On page B-7, under column 3, fiscal year, 1971; and column 8, fiscal year, 1972, approved. Did the figures go up or down under police?

A The figures went up.

Q Can you state approximately how much?

A $5,500,000 to $6,700,000, about $1,200,000.

Q All right. Under fire, number 92; did it go up or down?

A From $4,010,000 to $5,300,000, so that's about $1,200,000 also.

Q Okay. Page C-5, under '71 and '72, total disbursements of the approved fiscal plans, under library; did they go up or down?

A They went up.

Q Page C-7, 1971 and 1972, under transfers in, under the schools, the money from Fairfax County as opposed to, I believe, the money from State and Federal; did it go up or down?

A It went up.

Q Mr. Pammel, if a certain amount or limited amount of public facilities are built or added each year, who or what body makes the decision of where public facilities will go?

A Well, the Board of Supervisors has the direct responsibility in terms of the budget, of course, and the allocation of resources or funds to make these facilities available. But, insofar as what, when, where and how, the schools, in example, the school board develops its package and

submits it to the county, as they have in the bond issue, and indicates that this is the plan that they would like to present to the voter, the bond referendum, and then the final decision on that, of course, the referendum, is the citizens of the county.

Q Well, if there are several zoning applications, all of which, I guess we can assume, are going to put some burden or have some effect on public facilities, who makes the decision of which to grant and which to deny?

A The Board of Supervisors.

MR. SYMANSKI: No further questions.

REDIRECT EXAMINATION

BY MR. HAZEL:

Q Mr. Pammel, you said that Clinch was a mistake as far as the staff report. The staff also believes it's a mistake to leave it RE-1, doesn't it?

A Yes.

Q Why is it then not a mistake to leave the subject property RE-1? What you're really saying, is it not, that the subject property would be a mistake if it was left RE-1?

A I don't think we said that.

Q Is it a mistake to leave the subject property RE-1?

A No. I don't think it's a mistake to leave it RE-1, right now.

Q Well, Mr. Pammel, let's look at Clinch. You had a unique opportunity in Clinch, because about two weeks after the zoning application was granted in December the matter was referred back to the staff, and the staff was given an opportunity to rectify its report.

A That's correct.

Q Now, what did the staff recommend? I show you the staff report in C-399, and I would ask you to read the staff recommendation.

A The staff recommendation -- I don't have to read it -- the staff recommendation was in favor of half acre, RE-0.5.

Q The Board of Supervisors, on its own motion, asked to zone it to one acre, right?

A That's correct.

Q And the staff, under your direction, asked that that be denied. Now, at that point you, in effect, said that one acre was improper for Clinch?

A That's correct.

Q And you recommended half acre?

A That's correct.

Q Now, why would not the same reasoning apply to C-222?

A As far as our position, basically, there we felt that the Clinch property in half the density that had been granted

before, which is RE-0.5 -- it's what I would call low density, one of the low-density-residential categories, that it was located with Reston on one side and the town of Herndon, which had half-acre zoning, on the other side. It was between the two. And, we felt that the one acre, in terms of a zoning category, was not really appropriate.

Q All right, Mr. Pammel. This is located between 400 acres of R-12.5. On the west, adjacent to a part of this property, is a PDH-4 in Loudoun, Sterling Park; and on the north is a primary artery with a shopping area. What is the appropriate density for this if it's not PDH-3?

A Well, the property, itself, I don't believe abuts Sterling Park.

Q How about the 12.5 here that it abuts?

A 12.5, this is true on the south. But again, now, taking the policy plans that are in the report, it would follow, at least in logic, if development were appropriate now that there should be a phasing-down from the more intense development outward.

Q You mean you want to change the master plan that was adopted 18 months before this case was heard?

A No. That master plan says an overall density --

Q Let's correct that. Look at the population numbers

for neighborhood 5, and tell me what the number of people that are supposed to live in that neighborhood are?

A 5,500 people.

Q It doesn't say downward. It says 5,500.

A That's the total population.

Q All right. And to get the total population, 5,500, this is 12.5 zoning, isn't it?

A I would say that you could have that zoned 12.5 with the rest of the property zoned 12.5 in the area or some combination thereof, and you would reach the population that that plan says.

Q Now, Mr. Pammel, is it consistent or is it not consistent for you to come back, when you were correcting your alleged mistake, and say that this should be half acre and this still should be RE-1?

A I think there is some consistency there in that even though we've recommended half acre in that one case, which is in an area that I admit is probably, probably should not be subject to any development at this point in time, that half acre more nearly represented the zoning patterns or a compatibility with the zoning patterns that were in existence at the time or would have developed in the very near future with Reston.

MR. HAZEL: If Your Honor please, I'd like to offer C-399, which is the supplementary staff report correcting the earlier mistake.

THE COURT: All right, sir. It will be received as Plaintiff's Exhibit E.

(The document referred to was marked Plaintiff's Exhibit E and was received in evidence.)

BY MR. HAZEL:

Q Now, Mr. Pammel, you talked about deficiencies in the development plan. And, as I understand it, one series of deficiencies were corrected?

A That's correct.

Q When the development plan came to the county, was the staff represented by Mr. Knowlton?

A I believe so.

Q He represented that there were nine deficiencies still listed. Let me ask you if you would read Mr. Knowlton's comments from page 62 of the transcript from the Board hearing regarding the development plan.

A (Reading)"--that there are a total of nine things listed in the staff report which have not completely been resolved and for this reason we feel that since a PDH development

plan, once adopted, is the guiding force for the people who work with those plans, that it is not in a position at this time to be adopted and, therefore, our recommendation is that the development plan not be approved."

Q All right. That doesn't say that the whole zoning was not to be approved because of that, does it?

A No.

Q Now, Mr. Pammel, you sent the developer a list of these matters, and it contains on the date of October 18th -- would you read the development plan summary that was sent to the developer?

A (Reading) "Many of the above deficiencies can be solved with the submission of additional information which is self-explanatory. The general staff consensus is that the plan in its present state should not be approved by the Board. A residential redesign will be necessary to overcome the deficiencies noted above."

Q Mr. Pammel, in fact, you didn't have any real question, that the staff anticipated that any of the deficiencies involved would be corrected in working further with the staff. Isn't that the way it was?

A That's correct, yes.

Q So, again, this staff recommendation was not denied

because of the development plan problem, was it?

MR. SYMANSKI: Objection, Your Honor.

THE COURT: Objection denied.

MR. HAZEL: The answer was, "no."

BY MR. HAZEL:

Q Now, Mr. Pammel, we spent a couple of hours on it, and I don't mean to appear redundant, but you have now gone back in connection with the policies of the Upper Potomac Plan and talked about public facilities as a problem, and yet you say that the basic facilities, fire, police and library, are adequate. You say that the sewer problem is identical. The same sewer--in fact, the sewer that serves Reston runs through a pipe that goes through the subject property, and it's a 37-inch trunk. You heard the testimony today that sewer was adequate to service this requirement in October.

The same water main that serves Reston serves this property. And you heard testimony from the Water Authority that water service was adequate. You have been in the court all day. You heard testimony from the School Board that the same numbers problem applied to the schools in Reston as apply here.

Those are the basic services, at least, unless you want to name some more. Can you give the Court any definition

of inadequacy based on anything more than just plain sort of intuitive statement of the staff that they don't think it's adequate to serve this site?

A Well, you made the statement that I had said that certain services were adequate. I questioned myself the adequacy of libraries. I still feel that there is a question there.

I said police services are basic. They could be better. Certainly with respect to the highways --

Q Let's answer the ones I'm talking about, then we'll talk about highways.

A You're talking about services.

Q I thought your testimony was that the subject property was better served by highways than the Reston application?

A In terms of proximity to the major highway, right now, that provides service to this area, Route 7, yes; that property is in a better location because it is just a short distance to Route 7. But, I make the point that the improvements are not there today; although the right-of-way is there, the improvements are not there, nor is that facility scheduled to be improved --

Q So it's six-tenths of a mile from the north end of the property out to 7 that's your problem?

A That problem, as well as the problem of getting from the property south --

Q At this point, south has been improved into Herndon, has it not?

A That has been improved from the town limits and down for -- not all the way in, no.

Q Do you have any numbers as to carrying capacity on the road as it now stands?

A As it now stands, the carrying capacity?

Q Yes.

A I'd say that its carrying capacity is probably in the neighborhood of 600 cars per lane per hour.

Q And do you know what the traffic count was on that road?

A I have no idea what it is.

Q Now, Mr. Pammel, how do you get from these properties -- what's your access to the two properties in Reston you're talking about zoning?

A Well, there is an internal circulation system through Reston. There's Lawyers Road on the south.

Q Is Lawyers Road adequate to get anywhere else in the county?

A Well, at this point in time, Lawyers Road is a

facility that's planned for improvement, but within Reston, it's not.

Q Is there any difference in the planning up here? The planning of 228 is on an expedited basis compared to Lawyers Road, isn't it?

A That has greater priority.

Q Right. There's no present facility roads out of Reston, and the planning for roads from the subject tract is on a priority basis; the Reston is not. Is that correct?

A With one exception. Hunter Mill Road has a higher priority than 228 and will be something that will be done in the very near future.

Q And where did it get its higher priority?

A Well, it was assigned to it. Of course, the Board was quite interested in getting it done.

Q And what is Hunter Mill Road to be widened to?

A It will be a two-lane rural facility.

Q Carrying how many cars when it's improved?

A With site distance and other factors, it will probably carry somewhere in the neighborhood of 1,000 cars per lane per hour, 800 to 1,000.

Q Do you know whether any more than 600 cars per hour is necessary for the subject application?

A That, coupled with the other traffic in the area, we would have to make an analysis. I really couldn't tell you at this point.

Q So really you don't even have an analysis of that. When the staff said that is an inadequacy in the traffic, you didn't have any analysis on which to base it, did you?

A We did not take the traffic counts for the area and add the additional traffic to it.

Q Okay. So you didn't have an analysis on traffic, and the road will handle 600 vehicles an hour; the library, it is your feeling that it is an inadequacy?

A That is correct.

Q Police and fire, you believe, are adequate? For what you call basic services?

A Basic services.

Q It's the same sewer and the same water, and it's the same school situation?

A Yes.

Q Now, what other evidence do you have of deficient facilities?

A I think we've covered all of them.

Q But you offer nothing else to justify your statements, both in the staff report and a few minutes ago, that somehow

facilities are not adequate to this tract? Am I correct?

A I'm saying we have a question with facilities, and the basic question that we have, again, it's this point: if you encourage development -- and you do through the zoning process -- it is not restricted to this parcel. Other parcels will soon follow; and is the county prepared? It's not really our question. It's the question of the Board of Supervisors. Are we prepared, then, to start expending substantial sums of money in these areas for public facilities that will be needed? It's not a question of what's there today. It's the additional facilities that will be required by virtue of growth.

Q So now you introduce another element. The facilities today are okay for C-222, but what you're really worried about is if you zone that, then you may have to zone this, and you won't have those facilities?

A I'm saying that the facilities in the area today probably are adequate for what is in the area today. Now, if you add 222 with approximately 1,000 units, you have the population, then we're going to need more public facilities. That is going to generate --

Q Mr. Pammel, isn't it a function of Government to provide those facilities when they're needed by their taxpayers?

A Certainly, and I would agree it's the function of

Government to provide certain basic facilities for its population, but again we come back to the question of when and under what circumstances. You just simply can't go indefinitely trying to provide services that it's impossible to do, unless you get some organization into the program.

Q I suppose we could punch that message out every time we get to the question and are asked what services are missing, because you haven't told us any that are missing.

A No. I'm saying at this point in time the services are probably basic and serve the needs of the people, but if you start adding development, then you have to provide additional facilities and services. Now, where are we going to get the funds?

Q Is that a function of Government?

A Well, that's a function of the Government, and the Board has spoken. The Board said: we aren't ready to provide additional facilities in this area for additional population at this point in time.

Q So you keep the population out of this area, that's your conclusion?

A Again, I think what the staff said, and I think as our position, there has got to be some logical phasing or timing of development throughout the county, so we can in a

proper manner, and one which is a logical manner, provide the resources necessary to serve the people.

Q So you're going to keep people from occupying this area of the county because you don't want to provide the facilities there. Is that the problem?

MR. SYMANSKI: Objection, Your Honor, as to what he wants to provide.

THE COURT: I would have to agree with that. Sustain the objection.

BY MR. HAZEL:

Q Now, Mr. Pammel, you said, if I understand, part of the leapfrog situation was because the area between Reston and Tysons was not developed yet.

A Scattered.

Q Now, Mr. Pammel, it is a basic concept of Fairfax County policy and has been for years, and it is shown in part on this map, that the whole Difficult Run valley up to Pender remain a green space at one-and-two-unit density, is it not? The Difficult Run Valley Park.

A Not at one and two. One and two acre.

Q One and two acre, pardon me.

A One-and-two-acre density.

Q Let me be very clear so that we understand it. The

county did not run a sewer line up Difficult Run for the express purpose of keeping the Difficult valley in one-and-two-acre density, isn't that correct?

A That's correct.

Q Then I completely don't understand. Would you relate that policy of the county with your allegation that because this area is not developing, it's leapfrogging?

A What I was trying to point out is that we've had development that moved out Route 50 beyond the limits of the then developed area.

Q We'll get to Route 50 in just a minute, Mr. Pammel. What I'm asking you, is it not correct that the lack of development in the Difficult Run valley is the result of an express county policy and not the leapfrog?

A In this case, yes, definite policy.

Q So you would withdraw your statement that your allegation of leapfrogging is proven by the development not occurring in Difficult Run?

A That's one policy that obviously there's no leapfrogging involved, but there are other areas where leapfrogging has developed.

Q Let's talk about Greenbrier. Was Greenbrier zoned in accordance with the master plan?

A Frankly, I can't answer that, whether it was or wasn't.

Q In fact, Mr. Pammel, what you're saying is that anytime development moves in accord with the master plan, it's leapfrogging if it hasn't moved out from the beltway, isn't that what you're trying to say?

A Well, I guess really what I'd have to say is maybe some of our plans, because of the lack of some sort of a timing or orderly development schedule, have really encouraged leapfrogging, promoted it.

Q So in this case you're promoting leapfrogging by the Upper Potomac Plan, aren't you?

A I would have to agree with that statement.

Q That's exactly what you anticipated here was to leapfrog the urban density out to this intersection and leave this area in between Reston and Tysons as low density green space, isn't that correct?

A That simply was because of a lack of further policy clarification as to the when and where.

Q Don't tell me about the further policy clarification; the whole policy, no matter when it happens, is designed to move an urban density area out in this vicinity, rather than having everything from Vienna west developed in small lots.

A That's the policy as expressed.

Q So what is happening here in this application is exactly in accord with that policy, isn't it?

A Yes, as it's set forth in the plan.

Q And if that is leapfrogging, it was a deliberate policy to encourage leapfrogging, wasn't it?

A No. I don't think it was a deliberate policy. I think it was an oversight.

Q You mean the Difficult Run valley proposal is an oversight?

A Not that part of it; but I think the fact that the Upper Potomac Plan without any thought given to, again, the question of when they did exactly that, without realizing what they were doing they had leapfrogging.

Q I see. But, if that's what happened, it's exactly what the plan called for?

A Yes.

Q The answer is, "yes"?

A Yes, that's the truth.

Q Now, Greenbrier. Where is Greenbrier? Down on Route 50, west of Pender, right?

A Yes.

Q And you don't know whether that was zoned in accord

with the master plan or not?

A Well, I'm not sure at what point in time the master plan was developed. It was developed, again, during the mid-or-early-sixties.

Q Could that have been zoned in derogation of the master plan and not in accord with it?

A It could have been. As I say, I'm not that familiar as to when that development was approved.

Q So, really, that whole Greenbrier mentioned is irrelevant and unsubstantiated as it relates to the subject case?

A Well, it was a typical case of leapfrog. Whatever circumstances it occurred, it occurred.

Q What relation does it have to C-222.

A None; other than to illustrate that it was a leapfrog.

Q Now, the other thing that you said is Greenbrier jumped out there, and now you have conventional sprawl. Now, Mr. Pammel, the county's answer to conventional sprawl was the PDH, wasn't it?

A That's correct.

Q So that, in effect, we're in accord with the master plan, and we're trying to establish a PDH that was the county's answer to urban sprawl in the subject case. The answer is "yes,"

isn't it?

A Yes, that's correct.

Q So, again, you're saying that what this applicant has tried to do was in response to a county policy to preclude what has been referred to as urban sprawl, isn't that correct?

A That's correct.

Q Now, Mr. Pammel, with reference to this area, and putting aside the prejudice in favor of Reston between a developed community of long history, Herndon, with shopping facilities and high school, on a primary road leading out to the main artery two miles away with a shopping facility there, what is illogical about the pattern of development that would allow this property to develop now?

You said that growth needs to take a logical pattern. I'm asking you in response to that question, what is illogical about this property now developing?

A What is illogical?

Q Right.

A I just don't frankly think that this is the time that we should be -- and I think the Board has expressed that -- that growth be encouraged in some of the remote portions of the county. Although this is close to two centers, which I admit, and on a primary highway, at least until the Board has had an

opportunity to look at its whole fiscal picture --

Q Okay. That's apparently your answer, but I'm asking you as a land planner, what is illogical? Let's not talk about the Board. You said it would take a logical pattern, and I'm asking you is there anything illogical about this property now developing?

A Now?

Q Now.

A Well, again, I have grave difficulties with the issue of timing. I can't say that for sometime in the future that this form of development in this location wouldn't be appropriate; but right now -- and I have to look at this not only from the standpoint of a staff member, but myself, in taking a position, encouraging development, when I know and know full well that there is going to be a very difficult problem encountered in providing certain basic services, schools as an example, to these people.

Q Now, Mr. Pammel, in essentially every zoning case for the last two years, the staff has made the same argument except here in the Reston case, that it's premature. You've made it in 52 cases, in the Pohick; you've made it in this case. Where in this county do you think, as the head man of the staff zoning process, small-lot development should be available for the homeowner?

A Today?

Q Today. Where are you zoning it in this county today?

A Well, now wait a minute. I'm not doing it. I can tell you where we're recommending it.

Q Where are you recommending small-lot development?

A Not too long ago the staff recommended, again, another piece immediately adjacent to Reston.

Q How large was that?

A 100-some-odd acres.

Q For half-acre development, right?

A Or R-17.

Q R-17 and half acre.

And the price of the homes on that was anticipated to be $60,000 and up, wasn't it?

A I believe it was in that range, right.

Q Has the staff zoned or recommended zoning, pardon me, recommended zoning in the last 18 months for any single-family development of the 12.5 category --

A Or less, yes.

Q Or less -- no. Let's talk about single family first.

A In the Pohick --

Q 12.5, single-family development --

A I mean, when you say single-family, we consider town houses to be single-family.

Q Well, it seems to me the last five cases I've had, you said they were multi-family. Let's talk about detached-single family on 12.5 zoning.

A Okay. Let's back up. I believe that our recommendation on 313 -- and you had a companion case -- at Twinbrook and Braddock, we recommended C-D, town houses and 12.5. And I think we have recommended other 12.5 applications in the Pohick.

Q Those two cases were approximately 300 single-family detached units, weren't they?

A Well, you asked me if we had made recommendations, and we have.

Q I'm asking you -- 300 of them. Now, what other single-family-detached units can you remember the staff recommending in the last 18 months?

A In Reston, we did. Quite a few of them in Reston.

Q In Reston.

A That's right.

Q Other than in Reston, have you recommended any?

A I know we have in Pohick. I'd have to go back and look at the individual cases, but I know we have made recommendations. I mean, if we hadn't made recommendations for a number of

zonings, we might not be sitting here today. Because I know we have, and I know that's been the basic contention that the staff recommendation was in favor, and the Board rejected the proposals.

Q All right. Let me ask you the other side of it. How many zonings have been granted in the last two years for single-family-detached zoning at 12.5 and R-17 densities?

A I can say over the past year there have not been a large, significant number, although there were some.

Q Two or three?

A There was 100-acre tract, and plus, in Burke that was approved by the Board for 12.5 and town houses.

Q Would you say that 300 acres would cover it?

A No. I think it's been more than 300.

Q 400? Not over 400, right?

A I'd have to say in the range of 500 acres.

Q Now, that's approximately 1,500 homes have been zoned in the last 18 months, is it?

A 15 months.

Q 15 months. My final question will be regarding this leapfrogging. If I understand you correctly, you're saying that to the extent the subject development is leapfrogging, it is exactly what the plan suggested?

THE COURT: I believe we've been down this road before, Mr. Hazel. I hate to call your hand on it, but I think as a matter of fact you're being redundant.

MR. HAZEL: I have no further questions, and I apologize.

THE WITNESS: Might I add one thing? You asked me a question. I have since thought of two other additional tracts that the staff did recommend for substantial development. We recommended for the 400-plus-acre Larwin tract. A combination of 12.5, town houses, shopping and apartments. That was a PDH. We recommended for that.

We recommended for slightly over 100 acres on the Wills & VanMeter tract in the Pohick for R-12.5.

MR. HAZEL: At what density was the Larwin tract?

THE WITNESS: PDH-2.5.

MR. HAZEL: On how many acres?

THE WITNESS: A little over 400. 430, I believe.

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

RECROSS EXAMINATION

BY MR. SYMANSKI:

Q Mr. Pammel, 228 in generally referred to as a primary highway. Can I refer you to page 30 of the plan, and would you

read the first two sentences of the first full paragraph?

A (Reading) "A review of the facts gathered indicates that this existing network provides a reasonable level of land access based on today's needs; and, generally, carrying capacity is adequate for today's traffic volumes. However, traffic service is minimal in terms of safety and efficiency."

Q Thank you. There was testimony earlier, was there not, from Mr. Hendrickson that this road was not in the V.D.H 10-year plan?

A That's correct.

Q Now, the term "holding position," I think has been used in some of the zoning cases here. Would you give a brief definition of holding position and your opinion of whether RE-1, in the circumstances of this case, is a holding position?

A Well, first of all, this particular term has occurred in several cases, and they were situations where the Board was really constrained because of the situation that it was under or the directive it was under, and that is to hear zoning cases as expeditiously as possible because a number of them had been on file for a number of years and to take an action.

The Board was constrained to take that action in instances where it really was not prepared to take an action because it was in the process or the staff was in the process of

developing policy statements and plans for some of these areas. Those plans were probably forthcoming in the very near future. But, again, the Board was not in a position to defer an application. It had to take an action. So it took an action to deny basically on the premise that this was a holding action, that they recognized that there was some higher use to the property, but that could not be determined at that point in time.

And, of course, what follows is the preparation of the plan or bringing --

THE COURT: Does that have any application in this case?

THE WITNESS: We have several. Now, this one, we don't consider this case, this application, to be in a holding situation.

THE COURT: I don't see where it's pertinent. Let's move on. I don't see where that is pertinent to this case. Any other questions?

MR. SYMANSKI: Well, for the record, Your Honor, may I ask him --

THE COURT: You may proffer when --

MR. SYMANSKI: -- yes or no, whether he would refer to this RE-1 --

THE COURT: If you want to put something on the record after he is off the stand, you may do so. But at this time, let's move on with further questions.

BY MR. SYMANSKI:

Q These applications down in Reston, do you happen to know what the application is for? What zoning category?

A The ones in Reston are for RPC.

Q Is RPC under 30-15 requirement?

A It's proposed to be. We actually apply the 30-15 criteria, but Reston really has a separate set of standards, criteria.

Q Is it in the ordinance under 30-15?

A It's a planned development and there are criteria for the plan, but I think it is.

Q Would you read the first sentence 30-15?

MR. HARPER: You mean Reston has got another heading.

THE WITNESS: It says PDH and PDC are the only two under 30-15, and we apply separate standards for Reston.

BY MR. SYMANSKI:

Q Mr. Pammel, are there any other zoning applications in this are which are in litigation, in the process of litigation?

A There are two.

Q Do you know approximately where they are?

A Well, there's one which is on the north side of Route 7, between the Loudoun County line and Georgetown Pike on Dranesville; and the other one is generally right at that particular area of Dranesville, which is, I believe, at Reston Avenue and Route 7.

Q On the verbatim, page 33, there's a statement by Mr. Cochran that --

MR. HAZEL: Your Honor, I think all this is beyond the redirect. I don't know what this has got to do with it.

THE COURT: I'm not sure. Where is this pertinent, Mr. Symanski? I don't mean to cut you off, but you've got another witness you want to put on before 5:00 o'clock.

MR. SYMANSKI: Well, I just quickly want to show there is another application here that also places demands on the public facilities in the area. This is not an isolated case, Your Honor.

THE COURT: Well, I think the Court could almost take judicial notice that there is going to be other applications to follow this one, and this one and that one.

MR. SYMANSKI: Well, there are other applications right now according to testimony.

THE COURT: Oh, yes, I would suspect there would be

other applications that are now pending. I don't know that to be a fact, but I assume from what's been testified that there are other applications, and I assume that they are on the way up to this Court. It seems to me we've got an awful lot of these cases.

MR. SYMANSKI: Okay. No further questions.

THE COURT: You may step down, Mr. Pammel.

(Witness steps aside.)

THE COURT: Let's call your witness, Mr. Symanski.

MR. SYMANSKI: Mr. Perry.

Whereupon,

ROBERT PERRY

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

DIRECT EXAMINATION

BY MR. SYMANSKI:

Q Would you state your name and address, please?

A Robert R. Perry. 814 Villa Ridge Road, Falls Church, Virginia.

Q Would you give a brief description of your education?

A I've got a B.S. degree in Sanitary Engineering, from Penn State University and a M.S. degree in Civil Engineering, with a major in Sanitary from Purdue University.

Q Sanitary engineer with work experience and expertise

at Blue Plains?

MR. HAZEL: So stipulated.

THE COURT: All right, sir. Let's proceed.

BY MR. SYMANSKI:

Q Now, in 1970 and '71, what was the designed capacity or designed capability at Blue Plains?

MR. HAZEL: If Your Honor please, before this witness testifies at all, I would like to interpose an objection, in that the county staff member has already testified that sewer was available on the date of the zoning application and that sewer is now in the county policy available on an allocation basis with the whole rest of the north of the county.

Now, I don't see any way that this witness can either add or detract from that present state of county policy, and any effort that he makes to do that, I would object to.

THE COURT: Well, is there anything in these reports that would support your position, Mr. Symanski, as I understand it, to the effect that the sewer capacity was not available on an allocation basis?

MR. SYMANSKI: Your Honor, I think, as I stated before --

THE COURT: Is this going to be borne out by the minutes, and the records, and so forth, that was before the

Board of Supervisors?

MR. SYMANSKI: Your Honor, the staff report calls sewer into question. The PDH category has a special -- Section 30-15, which refers to public facilities. I'm not saying that this is the only thing they made their decision on.

THE COURT: Can you show that that was one of the major factors that the Board waived in considering this?

MR. SYMANSKI: Your Honor, I seriously don't think I have to.

THE COURT: I know you don't. I think this, and I'll state this for this record: it seems to me we get an awful lot of these cases up here, and I think that you as their counselor were put in an untenable position, because you've got to scrounge around and dig up technical defenses to try and put them into this record in order to support the verdict, the decisions of the Board.

What I want to know, and I think you've already had a witness testify that the main thrust for the denial of this application was what they call premature zoning, or whatever that means. I don't know what it means, either, but we'll get to that. Is his testimony going to support that basis?

MR. SYMANSKI: Premature?

THE COURT: Premature. I understood the thrust of

the denial and the position of the Board, according to Mr. Pammel, was it was premature.

MR. SYMANSKI: Certainly, it would.

THE COURT: All right, sir; let's proceed.

BY MR. SYMANSKI:

Q In 1970 and '71, what was the designed capacity or capability of the Blue Plains plant in mgd's or million gallons per day?

A Two hundred forty million gallons per day.

Q What were the actual mgd flows in August, September and October of 1971?

A May I refer to my notes?

Q Sure.

A In August of 1971, the average daily flow to the plant was two hundred eighty-seven million gallons per day. In September of 1971, the average daily flow to the plant was two hundred eighty-four million gallons per day; and in October of '71, the average daily flow was two hundred ninety one million gallons per day.

Q Now, as I see it, these flows were over the designed capacity of the plant.

A Yes, they were.

MR. HAZEL: I haven't objected to the leading questions.

but I would appreciate it if he would just ask the questions not as a leading question.

THE COURT: All right. Let's proceed, gentlemen.

BY MR. SYMANSKI:

Q Now, if the designed capacity is one level, and your flows are above that, what does it mean from a sanitary engineering point of view or from a point of view of plant operation?

A Well, when the flows are in excess of the plant design, various units of the plant become overloaded. The end result is that additional pollution is -- or additional BOD, which is a measure of pollution, is discharged into the river.

Q What is BOD?

A BOD is biochemical oxygen demand which is a standard measure of pollution or one measure of pollution, carbon pollution, primarily, which is used throughout the country, throughout the world.

Q How is BOD measurement used --

MR. HAZEL: If Your Honor please, I just plainly do not think that is relevant. This man, unless he can talk about the plant is not being afforded the acceptance of effluent from Fairfax County -- I don't see why we have to go into the design and operation of the Blue Plains chemical plant.

MR. SYMANSKI: As I stated before, Your Honor, PDH comes into 30-15. One criterion there is public facilities, and I think although we're not trying to hang our hat on sewer, I think it's one consideration which was before the Board of Supervisors. It's one of the variables which they considered in making their decision. I think it's relevant.

MR. HAZEL: If Your Honor please, Mr. Symanski has already stipulated into the record a memorandum of understanding from 1970 that commits to Fairfax County sewerage flow on which the allocation per year that Mr. Liedl talked about -

THE COURT: Let me get the heart of this thing. Do you say that in August, September and October of '71 that Fairfax County was exceeding this allocation to the Blue Plains plant?

THE WITNESS: No, I can't.

THE COURT: All right, sir. Then, that's all I want to hear, because I don't think he could add anything else to it. It could have all been coming out of Maryland to overload it. As long as it was in the allocation of Fairfax County, if he can't say it was even there, then it may be. I know there's been a lot of problems, from what I read in the newspaper, with the Blue Plains plant. But, if it's not exceeding the allocation of Fairfax County, then where is it material here?

MR. SYMANSKI: Well, Your Honor, also in the record we stipulated part of the minutes from the Board hearing, the same day and before this application was considered, and Dr. Kelly, the County Executive or assistant, whichever he was then, talked about an interim agreement, which they were working on and the conditions at the Blue Plains plant, that the memorandum of agreement had talked about lowering the pollution to the river, and the same day as this hearing, which is in the record, Dr. Kelly came to the Board and said: we've still got a problem with the Blue Plains plant.

After that discussion of that problem this application was considered. I think it's certainly relevant --

THE COURT: It would be relevant, Mr. Symanski, I think if you could show the allocation of Fairfax County was being exceeded. Then I think it would be.

MR. SYMANSKI: Well, I think it's within the discretion of the Board of Supervisors, even if they had the right to put pollution in the river, whether they want to put pollution in the river, whether they want to reduce their load.

THE COURT: Then turn right around and grant all these rezoning or the plants to Reston, and then it's not being exceeded?

MR. SYMANSKI: But, this is a PDH application under

30-15 which has a very high standard. They've gotten their bonuses. They should have to live by the standards in the Code, which they seem to want to ignore. And I think it's one of the variables involved in a Board decision.

THE COURT: If he can't testify as to whether -- you might be able to -- I'd like to adduce some other evidence on that point, but I think it would be pertinent to know at this point as to whether it was to exceed the allocation of Fairfax County. If he doesn't know, then they may be pumping 275 mgd's a day. But, it may be coming out of Maryland, not out of Fairfax County. That's not Fairfax's problem.

All right, sir. Do you have any other information on that point?

MR. SYMANSKI: May I ask him one more question?

THE COURT: All right, sir.

BY MR. SYMANSKI:

Q If there were additional flows, additional construction in Fairfax County, would this add to the load you already had at the Blue Plains plant?

A Yes.

Q Would that increase the amount of effluent going into the river?

A The amount of effluent, yes.

Q Would it increase the pollution going into the river?

A Yes.

THE COURT: If Fairfax wasn't exceeding its allocation, then who was exceeding their allocation?

THE WITNESS: I don't know.

THE COURT: They wouldn't have allocated more than their capacity, would they?

THE WITNESS: They did.

THE COURT: They did?

THE WITNESS: Yes.

THE COURT: Well, then the fault lies with someone else, doesn't it --

THE WITNESS: Yes, sir.

THE COURT:--if they allocated more than the allotment. But, you don't know what percentage above the allotment that Fairfax was exceeding this allocation, then, do you?

THE WITNESS: I don't have those figures, no, sir.

THE COURT: All right, sir.

MR. SYMANSKI: Your Honor, the point I'm trying to make is that this was before the Board, and just because the Board had the right to put stuff in the Potomac River and the Blue Plains plant, doesn't mean that they had to do it. This was a consideration.

THE COURT: Mr. Symanski, that would make logic and make sense to me if they said: all right, we are now achieving allocation and no one else will put one in there; but when you turn around and open up 5,000-some-odd-more units to put it in there doesn't make sense to me to deny one on the other hand.

MR. SYMANSKI: Okay, my only point is that it's one of the variables.

THE COURT: I agree with you. It may be a variable, but what I said, and I'll say it again for this record, what's fair for the goose is fair for the gander, and I want to put it in this record.

MR. HAZEL: If Your Honor please, there is another point, we'll have to bring evidence in, I guess, on it; the policy of Fairfax County is not to allocate sewer on zoning anyway, but to allocate it on the building permit.

THE COURT: That's my understanding. I was going to come to that.

MR. HAZEL: Can we stipulate to that, or do I have to bring Mr. Liedl back here tomorrow to say that?

MR. SYMANSKI: To tell you the truth, I don't know. My understanding was in PDH as it says, public facilities if not presently available, there may be agreements to provide them.

THE COURT: Well, at least I remember, and I know it's not evidence in this case, but it seems to me that there has been time and time again in hearing these cases that the Board's position has been that the capacity, as such, is not an issue which comes to the zoning. Let the builder take his chances with that point, because he may not be able to get the sewer tap when he gets ready to build.

MR. SYMANSKI: Is that true with PDH applications?

THE COURT: I don't know whether it's PDH, RE-1 or R-17.

MR. SYMANSKI: I just wanted to point out that PDH does have a section 30-15 which does specifically refer to public facilities.

MR. HAZEL: We'll bring Mr. Liedl back tomorrow and ask him to stipulate.

THE COURT: All right.

Do you have further questions you want to ask this witness?

MR. HAZEL: I have none, Your Honor.

THE COURT: All right, Mr. Perry, you're excused, sir. I'm sorry it was so brief, but I didn't see any necessity for going into all the operations of the Blue Plains plant.

(Short recess.)

Excerpt

MR. HAZEL: If Your Honor please, this witness, and Mr. Symanski has agreed to stipulate, has a particular expertise in the land use economies of metropolitan Washington. He has established various computer systems for the investigation of land supply, land demand and housing matters. He is a professor at American University, and I am going to place in the record his resume in lieu of stipulating.

THE COURT: All right, that will be fine.

MR. HAZEL: I would offer a copy of that for the record.

Whereupon,

MAURICE SELDIN

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 Maurice Seldin.

THE COURT: Your last name, sir?

THE WITNESS: Seldin. S-e-l-d-i-n.

BY MR. HAZEL:

Q And your address?

A 8044 Cindy Lane, Bethesda, Maryland.

Q And you are a professor at American University?

A Yes, sir.

Q And you are associated with the Homer Hoyt Institute of Land Studies?

A Yes.

Q Now, Mr. Seldin, at my request did you make a study of the land use availability in Fairfax County as it relates to housing and housing prices?

A Yes, sir, I did through the firm of Metro Metrics with which I am associated.

Q All right, sir. Do you find there to be a substantial relationship between zoning and house prices?

A Yes, sir, there is.

MR. SYMANSKI: Excuse me. Is this a study as of now or as of '71 or --

MR. HAZEL: As of both dates.

THE WITNESS: I have data which are based upon '70 census. I have current data.

THE COURT: All right.

BY MR. HAZEL:

Q So you could testify as to both?

A Yes, sir. The data will vary as of date.

Q Now, based on the data which you have accumulated

and studied, is there, in your opinion, sufficient land zoned in Fairfax County to permit a development of housing in accord with the historical price ranges of housing in Fairfax County?

A No, sir, there's not.

Q And why do you say there is not?

Well, first I would like to ask you, do lot sizes and development costs of housing have a relation?

A Yes, sir.

Q Now, with regard to the single-family market, does an one-acre-and-larger lot have a price relation so far as upward prices on housing?

A The larger the lot, generally, the higher the price.

Q And the smaller the lot, the smaller --

A The lower the price. There's less land and less cost to develop per site.

Q Now, why do you say that there is insufficent land in this county zoned for lower-priced housing at this time?

A Well, the vast majority of vacant land in the county is zoned one acre or more. The amount of vacant land in the R-12.5 and R-17 categories is small in proportion to the total vacant acreage. As a result, the subdivisions which are being developed are primarily in the higher-priced brackets.

Q Does that mean one acre and larger?

A That's correct, sir.

So there's a significant difference in the distribution of home values of what's being developed as compared to the existing inventory. The additions to stock are predominantly in the higher-priced categories as opposed to the middle ranges.

MR. SYMANSKI: Your Honor, I would like to note an objection on relevancy. I'm not sure what all this has to do with the proper zoning of this particular piece of property, and whether the proposed facilities were available, and it was the correct time.

THE COURT: I agree. What is its relevance, Mr. Hazel?

MR. HAZEL: If Your Honor please, this is introduced under the doctrines of the Carper case which established 20, 24 years ago in this county that exclusionary zoning that forced the price of housing up by one and two acre lot zoning was an illegal zoning.

The Carper case, a copy of which I have here for Your Honor, established that the larger-lot zoning --

THE COURT: I understand. I'm familiar with it.

MR. HAZEL: -- and this is introduced in direct support or supported directly by the Carper case, much of which is a rerun of what was happening 20, 25 years ago in the

county. And his testimony, and there will be additional testimony tomorrow, is to establish that the present zoning policies of Fairfax County forced development into areas where there is an insufficient supply of land, and thereby preclude people from going into this area on an economic basis. It's in exact support of the economic discrimination theory of Carper.

MR. SYMANSKI: Your Honor, I think under Carper there was a purpose there. The Court held there was an intent. I realize this witness may be out of turn, but unless there's going to be an introduction of evidence of the Board of Supervisors, I still think this is not relevant.

MR. HAZEL: I think economic discrimination if it occurs doesn't have to be intentional.

MR. SYMANSKI: But under Carper there was in that case an intentional two-thirds of the county --

THE COURT: Yes, I'm familiar with that.

MR. HAZEL: If Your Honor please, intent can be implied by the actions of the Board and their results; and I can't believe that economic discrimination, whether intended or not, is that restricted an issue.

THE COURT: Well, does this in any way have any relevance to the so-called housing policy of the county?

MR. HAZEL: Yes, it does, and it has relevance to the Upper Potomac Plan which was to provide a balanced housing.

THE COURT: All right. I'm allowing you to proceed.

MR. HAZEL: It won't take very long, I don't think.

THE COURT: All right, sir.

BY MR. HAZEL:

Q Proceed.

A To continue, the effect of the present zoning is to further increase the proportion of housing in the high-price category.

Q Now, with relation to the Upper Potomac Planning District, do you have specific percentages developed that indicate the availability of land zoned for smaller lot development in that district?

A Yes, sir, I do.

Q And what are those percentages?

A In that general area, using parcels of 20 acres or larger, which are not all parcels, but since we had to run a tally on them, that's a reasonable size to start with for development.

In the categories of zoning that run from 1.6 acres to 2.5 units per acre, the percentage of the acreage in the

undeveloped comes out to be a shade under 3 percent of the total, whereas the acreage in the density classifications of one acre or lower --

Q One acre or higher, you mean?

A One or less unit per acre.

Q All right.

A It comes out to be in the neighborhood of 95 percent of the land. The vast majority of the land is simply zoned for one-acre-or-larger lot subdivisions.

Q Now, in your opinion based on your studies, how does this translate into higher or lower housing costs?

A Well, we took a sample of the units which are being developed in Fairfax County, and the distribution of units in Fairfax County has a preponderance in the very high price level, much higher than the historical distribution for the county.

Q Now, what conclusion do you draw from the fact that over 95 percent of the land in the Upper Potomac Planning District is zoned one acre or larger?

A Well, as it is now, the vast majority of housing being built is for the higher-income brackets, and it's going to get even worse under the existing zoning conditions of the land.

Q What do you consider as a higher income bracket?

A Well, I have data here. Let me get to the table. In the for-sale housing in the county, almost half is in the $50,000 and over category.

Q Now, when you say almost half, does that include town houses as well as single-family detached?

A That's all owner-occupied. I'm not dealing with renter-occupied which isn't included here; but 48.4 percent of the for-sale housing in the county is the $50,000 and over category. To give a comparison is the 1970 census was less than 14 percent of the amount of housing in 1970 was in the $50,000 and over category.

Q In other words, in 1970, 14 percent of the housing or less was in that category; but since that time, almost 50 percent of what is being built is in that category?

A That's right. So that more and more are being added at the high end of the spectrum, and if you look at the availability of land, it's pushing even further to the high end of the spectrum.

Q Now, you are familiar with the general area of C-222 which is outlined on that board?

A Yes. We analyzed data for that area.

Q Do you have an opinion on what impact it has on

housing costs if that property is forced to remain in a RE-1 category?

A Well, the land in that part of the county is even a higher preponderance of large-lot zoning, so that in that section you get some very small percentages of land outside of that category. There is just no way a developer can afford to go in and build for anything that resembles, well not even a cross section of the county, but even something that had a distribution a little bit higher than that.

There is a substantial disparity that only the very high income are going to be able to live in that end of the county.

MR. HAZEL: I have no further questions.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. SYMANSKI:

Q In your figures for how much of the county is -- did you say 95 percent? What was your figure?

A In that particular area the --

Q I thought you said overall, 95 percent of the county was zoned RE-1 or larger. Am I mistaken on that?

A No.

THE COURT: I understood for that particular area.

MR. SYMANSKI: Oh, excuse me.

THE WITNESS: For that particular area. For the rest of the county, the figure is 84 percent.

BY MR. SYMANSKI:

Q Now, in these figures, are you just -- you're looking at every piece of land in the county. You're not just talking about new applications or any activity at all on the land, are you?

A For the county as a whole, it's all the acreage, because it's the Fairfax County tabulations for that particular area. Since we had to tabulate them on a parcel by parcel basis, it's only from the 20 acres-and-larger parcels.

Q What I'm getting at is some of this land you're using in RE-1 may have had no activity, no one may have wanted to change the category; is that correct?

A That's correct. There may be no action pending on it. It may be action pending.

Q In your analysis, do you consider public facilities at all or only economics and demand?

A The question that I have addressed here is the size and availability of land by size category. It was not cross-classified with that land which was developable in accordance with the availability of public facilities.

Q But you could classify it with regard to availability of public facilities?

A Yes, that's doable.

Q Do low-income people generally live in more urbanized areas, say, apartment developments?

A Well, I really wasn't addressing the low income. I was addressing the whole spectrum. It's not a question of low income. I think it's the middle range of income. The $35,000, $40,000, $45,000, up to $50,000 is an area that is substantially under-represented.

Q Well, if you compared apartment projects with single-family houses, would not the income from the apartments be of a much lower scale?

A Oh, I see what you mean. The comparison of the distribution for income for the county would show that the people who live in apartments were of generally lower income distribution than the people that lived in houses; but I have not made the comparison of for-sale housing with rental housing. I've only compared for-sale housing with for-sale housing.

So that I guess if you'd look at the rental situation it would probably be much worse now, but I didn't use land zoned for -- in terms of the project, didn't tally up what's available on a for-rent basis.

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

THE COURT: All right, sir.

BY MR. SYMANSKI:

Q Do your studies deal with tax increases or tax matters with regard to development or zoning?

A This particular study did not deal with taxes or costs, but I have made such studies of the county.

Q If taxes were increased to pay for a public facility building program, wouldn't those taxes hit low-income people the hardest? That's a little bit subjective, but you're an expert.

A It's a different question, but let me understand it. Say it again.

Q Well, for instance, I think there has been some testimony or either implications here that the county should embark on a public facility building program.

Now, if they did, you know, at a much higher rate than they are doing now, let's say, if theydid and taxes were increased to pay for that, would these taxes hit -- hit in the general understanding -- the low-income people the hardest?

MR. HAZEL: If Your Honor please, before he answers the question, I would like to be clear that that is an assumption,

and not a statement of premise by you. There's no evidence that taxes would have to be increased.

MR. SYMANSKI: I think I said "if taxes" -- I meant to say if taxes,

THE COURT: That's right.

THE WITNESS: Well, if you increased the public facilities, and in the increase of public facilities you increased taxes, and it depends upon the public facility that you increased, you might argue that the lowest incomes would be hit, but we did have occasion to study the cost of growth in Fairfax County.

Some facilities, such as sewer facilities, and the like, pay their own way. So that the prices that are charged for those facilities when they are put in do carry themselves. There seems to be substantial debate as to whether there is an increase in taxes as a result of the growth.

The county's five-year-development plan made an analysis which included substantially the same things that we had concluded -- perhaps a little difference in degree -- but essentially they had concluded that the less you grow, the more it cost.

But the implication of your question is to the cost of housing for the low-moderate-income family, and the

absence of provision of public facilities in the county has caused not only a scarcity of land zoned and developable for the facility, but -- I'm sorry -- there's not only a shortage of land already zoned, but the absence of adequate public facilities with the ensuing sewer moratoria has made even greater the shortage of developable land.

The result of that is the great scarcity of land has driven the prices up to such points that they are at historic increases well out of sight.

Q I don't think you're answering my question.

A Well, the trade off -- what I'm saying is that in the inflationary economy, you are probably going to have some rise in the price of housing. The lower and the moderate spectrum of the market is now being hit with price rises so far larger than could conceivably be affected by rising taxes for having paid for the facilities. That is, the failure to provide the facilities even at very high charges makes the supply of housing so restrictive that the price gets bid up, and that the family looking for a house in the $30,000, $40,000, price category is finding that he is paying substantially higher.

Even if the cost of facilities would have driven up taxes, and he had to pay the taxes, he would be better off

paying those taxes, and I don't think that the taxes really would be driven up; but even if they would, the cost differential --

Q Do you have any statistics with regard to whether the Washington area would have a higher percentage of high-income people than other areas of comparable size?

A The Washington area is a relatively high income area as compared to other areas of the country, yes.

Q If you have land which is finite, I assume, say within a certain radius of convenience around the Washington area, wouldn't that high degree of wealth and the finite amount of land eventually drive those prices up anyway?

A Well, the prices would rise, but the rate in prices now has been at historic highs and out of all proportion to those basic demand forces.

The rise in price is associated with a very severe restriction of supply. The only way that the families looking at housing in the middle-income brackets are able to afford is to keep going farther and farther out. The result is that we're getting a different pattern of land distribution because of the housing costs really going so very high.

Q If I may, did you say in that that the Washington area values would rise higher than a comparable area anyway, but

they are rising much faster because a restriction of land?

A Washington is a relatively high cost area for housing as opposed to a large number of other metropolitan areas. It is not as high a cost as, say, Los Angeles, New York, and the like. What has happened, however, is that because the availability of developable land, particularly in the moderate price ranges, has been so severely restricted that the price of that housing has gone so high, and the price of land has gone so high, that land which might have accomodated that kind of house is moving to the higher price because the developers will tend to put on as high a price house as they can afford to on the land, the economics work out better for them. So that you just won't get that kind of population in Fairfax County.

The Fairfax County population will be only those that can afford to, and those that can't will have to go farther out to Loudoun, or Prince William, or to wherever.

Q But, you did say that the Washington area is a high-income area?

A Yes, it is a high-income area.

Q Would you suggest no zoning at all to increase the supply of land so that there would just be a supply and demand working rather than no controls on it?

A There is an interesting study that had come out with the zoning. No, I have not come out as advocating a no zoning, but when I originally conceived the urban development information system that is used in Fairfax County, the concept there in the first run-through was a market information system.

That was based upon having -- that the county would have an availability of information as to the amount of land for the various kinds of uses so that it could permit a market to function.

Now, as it went through the processes we changed it from a market information system to an urban development information system. You may have what amounts to a reasonable zoning plan, a master plan. In the process you plan for some balance of housing.

You use an information system to have an assurance of that supply of land. What has happened is that apparently not enough land in the zoned categories is being provided, and not enough of it is being provided on two counts. One, in terms of the zoning, and, two, in terms of sewer availability. The compound of those makes it very difficult.

Q Well, what is your position on zoning?

A Zoning is one of several tools which may be used. It is restrictive, and as a tool by itself, it has perhaps

been as misused as any of the land use control tools that we have had. Some have argued that you might do better without it. I think appropriately used it's a worthwhile tool, but there seems to be some difficulty with the appropriate use.

MR. SYMANSKI: Okay, no further questions.

MR. HAZEL: Thank you.

I have no further questions.

THE COURT: All right, Mr. Seldin, you're excused.

We'll adjourn for the day.

(Whereupon, at 5:30 o'clock, p.m., the hearing in the above-entitled matter recessed until 10:00 o'clock, a.m., April 26, 1973.)