



**MOORE COUNTY BOARD OF COMMISSIONERS
SPECIAL MEETING
MONDAY, JULY 18, 2022, 4:00 P.M.**

The Moore County Board of Commissioners convened for a Special Meeting at 4:00pm, Monday, July 18, 2022, in the Commissioners' Meeting Room of the Historic Courthouse, 1 Courthouse Sq., Carthage, NC.

Commissioners Present:

Vice Chair Catherine Graham, Jerry Daeke, Otis Ritter, Nick Picerno

Commissioners Absent:

Chairman Frank Quis

Vice Chair Graham called the meeting to order. The purpose of the meeting was to continue a quasi-judicial hearing regarding a request by Tri South Builders, Inc. for a Special Use Permit for a Major Conservation Subdivision Preliminary Plat approval for 53 lots on 73.77 acres, ParID 00034394, located on Union Church Road, Carthage, owned by James and Carolyn Ring, per Deed Book 2368, Page 240. The hearing was originally opened on May 16, 2022, and was continued to June 2, 2022, June 23, 2022, and then to this day, July 18, 2022. Vice Chair Graham gave the floor to County Attorney Misty Leland to continue the proceedings. Witnesses were sworn by the Clerk.

The hearing lasted approximately six hours and it was concluded that it should be continued to another day. Upon motion made by Commissioner Ritter, seconded by Commissioner Picerno, the Board voted 4-0 to continue the hearing to Monday, August 1, 2022, at 4:00pm.

Vice Chair Graham stated for the record that attorneys Michael Parker and Nick Robinson had agreed to Chairman Frank Quis' participation in the hearing and eventual vote. She noted that he could review the records for this meeting from which he was absent with the Clerk.

A transcript of the hearing is hereby incorporated as a part of these minutes by attachment as Appendix A, and documents for the record and the recording are hereby incorporated by reference.

There being no further business, upon motion made by Commissioner Daeke, seconded by Commissioner Ritter, the Board voted 4-0 to adjourn the July 18, 2022, Special Meeting of the Moore County Board of Commissioners at 10:12pm.


Francis R. Quis, Jr., Chair




Laura M. Williams, Clerk to the Board

Appendix A
07/18/2022

BEFORE THE

MOORE COUNTY BOARD OF COMMISSIONERS

July 18, 2022

TRANSCRIPT OF QUASI-JUDICIAL HEARING/PLANNING

SPECIAL USE PERMIT REQUEST

MAJOR CONSERVATION SUBDIVISION PRELIMINARY PLAT APPROVAL

(UNION CHURCH ROAD)

Catherine Graham, Vice Chair

Otis Ritter, Commissioner

Jerry Daeke, Commissioner

Nick Picerno, Commissioner

Debra Ensminger, Planning Director

Misty R. Leland, County Attorney

Nicolas P. Robinson, Attorney at Law

Michael Parker, Attorney at Law

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P R O C E E D I N G S

MS. GRAHAM: Okay. We do have audio, no video. All right. Ms. Leland?

MS. LELAND: Sorry. For those who want to testify today will need to see the clerk and be sworn in. If you've been sworn previously, please be sworn in again.

(Oath administered by the clerk to prospective witnesses.)

MS. LELAND: Okay. Mr. Parker, where did we leave off with your witnesses?

MR. PARKER: I have basically three left that -- oh, yeah, I probably should. Thank you. Oh, yeah, it is -- it's on.

I believe I have three left. I do have a question, though. I've never done one of these hearings before, and so I know that -- I don't know how the absence of a council, I mean, of a commissioner affects it. If we finish today do the four who are here vote? How does that work? I just don't know.

MS. LELAND: If -- well, I know none of the board is going to vote today, even if you finish.

MS. GRAHAM: I discussed that with -- oh, oh, sorry. I discussed that with Laura, and also with Mr. Quis, and he will be watching -- he won't be watching the video, but he will be listening to the recording as soon as he's able to,

1 and he will review Laura's notes, even if he has to come up
2 and talk with her about those. So I was going to ask the
3 board to approve delaying our vote until our August meeting,
4 August the 2nd.

5 MR. PARKER: Well, I -- that -- that is not a -- I
6 don't object to that. I did not expect the board to actually
7 vote on it today, even if we finish, simply because I believe
8 there's a lot of exhibits that are in evidence. There's
9 several reports and stuff that I hope that the board would
10 take time to review prior to their doing that, and I want
11 them to be fully satisfied of their -- of the evidence and
12 the facts, even though they have heard the arguments and
13 things like that.

14 MS. GRAHAM: Yes, sir. And I was going to ask the
15 board for that, also. And you're exactly correct. There's a
16 lot for us to remember, so we will be reviewing also.

17 But hearing no objections, Mr. Quis would like to be
18 able to vote.

19 MR. PARKER: Well, yeah, I don't have a problem with
20 that. My only concern is, I know today there's going to be
21 like several Power Point -- there may be some Power Point
22 things that our experts are using, and if it's not on video I
23 guess I'll need to mark those Power Points as exhibits and
24 introduce them? I don't know how much trouble he's going to
25 have of trying to compare the testimony he hears on a tape

1 with what he actually -- what you've seen, what you will be
2 seeing here in the room. I'm really disappointed we're not
3 able to record it, and but I understand technology
4 limitations, you can't, and I certainly don't want to delay
5 it longer than it is.

6 Those are just my concerns. I just like to make
7 sure that Mr. Quis, if he votes, he has the full opportunity
8 to review all of the evidence from both our side and
9 Mr. Robinson's side. I know he wants him to be able to hear
10 and see everything.

11 MS. GRAHAM: Uh-huh.

12 MR. PARKER: And that's what the community wants as
13 well. So.

14 MS. GRAHAM: So are you saying that he will be able
15 to mark those so that he will be able to look at the video?

16 MR. PARKER: I know that Mr. -- Mr. Harbeck has a
17 Power Point that has like his credentials and some maps that
18 he wanted to use from the land use plan. I had not planned
19 to mark those as exhibits, but I -- I think we can put them
20 on a Power -- on a flash drive, and if I can mark them, I may
21 not be able to get it to you today. If Mr. Robinson doesn't
22 object, once I get it done I can provide it to you at a later
23 time this week if that's agreeable. I did not anticipate
24 offering it as an exhibit.

25 MS. GRAHAM: Neither did we. We just found out this

1 morning; is that correct?

2 MR. ROBINSON: Yeah, I'm perfectly amenable to
3 submitting paper copies of Power Point presentations so
4 Chairman Quis can see those. And I think, you know, even if
5 we were on video he wouldn't be able to see the Power Point
6 screen anyway; right?

7 MS. LELAND: He would not.

8 MR. ROBINSON: Yeah, so that's absolutely fine with
9 me. And since the vote will be delayed until August 2nd
10 anyway, I'm perfectly satisfied with that approach.

11 MS. GRAHAM: Okay. Are we ready to proceed them?

12 MR. PARKER: Yes, ma'am.

13 MS. GRAHAM: All right. Ms. Leland?

14 MR. PARKER: Okay.

15 MS. LELAND: Go ahead, Mr. Parker.

16 MR. PARKER: Okay. We will call Carol Parker back
17 to the stand.

18 As you will recall, Ms. Parker started her
19 testimony, did a direct examination, and then we asked to
20 postpone the remainder of it due to it being traffic matters
21 until after the traffic engineer. That's why she's back up
22 here.

23 At this point in time I have no further questions
24 for her, so I -- Mr. Robinson may have questions.

25 MR. ROBINSON: I do. Just a couple. Madam Chair,

1 I've got a little packet here with ten exhibits which are the
2 ones I intend to introduce tonight into evidence, and I'll
3 give this to Mr. Parker, too, and of course to the clerk, but
4 I just wanted to tell you why I was handing these up to you
5 now. Hopefully this will make it move more efficiently and
6 more conveniently as we go through the evening.

7 May I approach?

8 MS. LELAND: Yes.

9 MR. ROBINSON: May I approach the witness? I'm just
10 going to hand her -- great. Thank you.

11 **CROSS-EXAMINATION OF CAROL PARKER BY MR. ROBINSON:**

12 Q Good evening, Ms. Parker. My name is Nick Robinson,
13 and I'm here on behalf of Tri South Builders, Inc. And it's
14 been a long time since you testified and be hard to remember
15 everything that you testified to, but I was just going to ask
16 you a few questions.

17 First thing, on the -- there was a lot of testimony,
18 if I recall correctly, about concern that your family has
19 with respect to garbage and litter that you found on your
20 property?

21 A Uh-huh, yes.

22 Q It is true, is it not, that you do not have the
23 slightest idea who deposited any particular piece of trash on
24 your property; is that correct?

25 A No, I don't.

1 Q Okay. Thank you. If you could turn your attention
2 to the packet that I have there, to the first tab, which is
3 entitled, "Lots Smaller Than One Acre Subdivided from Parker
4 Land."

5 Do you see that there? It's a two-page exhibit
6 front and back?

7 A Yes.

8 Q Do you recognize that plat?

9 A Yes, I do.

10 Q And is that a plat of some of the land that your
11 family now owns as part of the farm?

12 A That is correct.

13 Q And you can see that it's highlighted on that plat,
14 are four parcels, one in green, one in blue, one in pink and
15 one in yellow.

16 Are you familiar with those subdivided parcels?

17 A Yes, I am.

18 Q And is each one of those a subdivided parcel off of
19 the Parker land that is smaller than an acre?

20 A It's off of the A.B. Parker land, but not part of
21 our land.

22 Q Okay. And so is that -- how is that related to your
23 farm?

24 A Okay. A.B. Parker's mother and father purchased the
25 land in -- back in 1926, and it was basically 50 acres.

1 Q Uh-huh. And is this -- is the remainder of the land
2 that's not colored in on this exhibit part of your farm?

3 A Yes. I own what you see as the white, the
4 perimeter, the E, F, and then what borders Union Church
5 Road, and also the tract that is in yellow. And then we own
6 now the green and the small half-acre tract --

7 Q Okay.

8 A -- that's in the corner up in the upper left corner.

9 Q Uh-huh.

10 A That was cut off a long time ago.

11 Q Okay. So but every one of those is a parcel that
12 was formerly part of the family land?

13 A Yes.

14 Q And it was subdivided off in this smaller than an
15 acre?

16 A Uh-huh.

17 Q Okay. Thank you. If you could turn your attention
18 to exhibit -- behind tab number 2, which is "Lots Adjoining
19 or Near the Parker Farm That Are Less Than an Acre"?

20 A Uh-huh.

21 Q I've highlighted those in light blue. Does that
22 look to be correct to you?

23 A Okay. Let me look. Tell me what I'm looking at.
24 I'm sorry.

25 Q Yeah. So what is highlighted in pink or red is the

1 Parker farm, or the Terrace Ridge Farm property, according to
2 the GIS, and then each of those parcels that's highlighted in
3 light blue is an adjoining or nearby lot that is less than an
4 acre?

5 A Yes.

6 Q Is that correct?

7 A All those were done prior to zoning in Moore County.

8 Q Okay. And then you can see the proximity of your
9 land to the proposed subdivision which is in yellow on the
10 left; is that correct?

11 A That's correct.

12 Q Yeah. Okay. Great, I don't have any further
13 questions.

14 MR. PARKER: All right. May I redirect?

15 MS. LELAND: Yes.

16 MR. PARKER: Okay.

17 **REDIRECT EXAMINATION OF CAROL PARKER BY MR. PARKER:**

18 Q Now, Ms. Parker, the one that's in green?

19 A Yes.

20 Q Do you remember why that was subdivided off?

21 A Yes. It -- the lot that's above it, the tiny in
22 white was deeded off many years ago to a worker of A.B.
23 Parker, and that property's well went dry, and when Michael
24 and I -- A.B. had a stroke and his mother got lung cancer the
25 same year, and we had to take over the farm to keep

1 everything going, and that same time period the well went dry
2 and we deeded off that green section to allow them to have a
3 free and clear title with a well on it.

4 Q Do you remember what we were paid for that?

5 A We gave it to them.

6 Q All right. The yellow one, do you remember why that
7 was deeded off?

8 A Yes. A.B. deeded that off to his niece because she
9 had no where to live, and he deeded that off and gave it to
10 her, and also gave her a mobile home to put on it.

11 Q Is that mobile home still there?

12 A Yes, it is.

13 Q Do you know what year it is?

14 A It's a 19, what, 70?

15 Q Do you know if it's worth \$300,000?

16 A No, it's not.

17 Q All right. Now, there's also another one over here.
18 Now, these blue and purple ones --

19 A Yes.

20 Q -- those are my sister's?

21 A That's correct.

22 Q All right.

23 A And that was transferred in 2000. We haven't had
24 anything to do with it in years.

25 Q Now, there's also on the second one --

1 A Uh-huh, yes.

2 Q All right. There's a little blue one here with
3 .38 acres?

4 A Yes.

5 Q Do you know what that is?

6 A We don't have anything to do with that piece of
7 property. That -- or the .38 --

8 Q Do you remember the farm Matthew bought?

9 A Yes. That one is a mobile home lot that went with
10 the prior tract that was Lee Thomas' property, and I don't
11 even know when -- that one, when I came to Moore County about
12 40 years ago that one was already there.

13 Q Okay. All right. And now, in fairness and candor,
14 there is, if you go to ours --

15 A Uh-huh.

16 Q -- to the second one right here --

17 A Yes.

18 Q -- with the purple --

19 A Yes.

20 Q -- there's purple across the road.

21 A That's correct.

22 Q What is that?

23 A That's a 10-acre tract that we own.

24 Q Now, has that actually been subdivided?

25 A It -- on paper it has been.

1 Q And is that a minor subdivision that we had done
2 that has four lots?

3 A Yes, we did it by the restrictions of four, no more
4 than four lots. It had the -- there was -- we actually had a
5 single-wide mobile home that Michael and I lived in when we
6 got married and moved here. That was on that piece of
7 property, and then we went ahead and subdivided it into the
8 four tracts with the one tract being ours, and then the other
9 three. So we did it by the zoning restrictions.

10 Q Okay. All right. Thank you. That's all.

11 MR. ROBINSON: If I may, Madam Chairman, I'd like to
12 go ahead and mark -- and I do have a couple more questions,
13 but I'd like to go ahead and mark what's behind tab 1 as
14 Exhibit 102, and then what is behind tab 2 as Exhibit 103.

15 (Exhibits No. 102 and 103 identified.)

16 MR. PARKER: Are you planning on introducing them?

17 MR. ROBINSON: Yeah, I'll go ahead and move to admit
18 them now.

19 (Exhibits No. 102 and 103 offered.)

20 MR. PARKER: I don't -- I know it's out of order,
21 but since -- I don't object to that if you want to go ahead
22 and put them in there.

23 MR. ROBINSON: Appreciate it. Yeah. It's a matter
24 of record. Thank you.

25 So those have been admitted as 102 and 103.

1 **RECROSS-EXAMINATION OF CAROL PARKER BY MR. ROBINSON:**

2 Q Ms. Parker, just to follow up on those, I mean, I'm
3 sure you know part of the obvious point of this is that you
4 are here tonight testifying in front of this board that
5 somebody else who owns land should not be allowed to
6 subdivide their land, and yet you and your family have for
7 years subdivided your land as it convened you; is that not
8 true?

9 A No, I did, I agree. I spoke with Philip Picerno on
10 two occasions, and I made it clear the first time was at the
11 planning subcommittee hearing which none of the neighbors had
12 been notified about. And somebody from the county actually
13 notified me that there was a meeting, and I was told that I
14 could not speak at the meeting, and but we could go and
15 listen.

16 And so I went. Debra Ensminger headed the
17 subcommittee hearing, and I went to the hearing, Shine
18 Hall -- Hall, Jerry Shine Hall, who was also an adjoining
19 neighbor, John Stinnett and Ernie Legg also showed up, and
20 none of us had been notified that this would go into a
21 subcommittee hearing. We hadn't even received any notices
22 that this was taking place.

23 And so I went, and during the hearing, during the
24 meeting, Ms. Ensminger said that we would be able to speak to
25 anybody that was on the subcommittee after the subcommittee

1 meeting.

2 And so Philip Picerno looked behind him and asked me
3 if I would like to speak to him. And so I pulled my chair up
4 with him and I told him at that time that I was part of a
5 group that was opposed to a high-density subdivision. I said
6 we're -- we don't want to hurt -- at that time we didn't know
7 that Dennis was part of it, but I said we knew that Frankie
8 was, and that we did not want to limit Frankie being able to
9 sell the property and to develop it, but that we did not want
10 to see a development go in that would damage the integrity of
11 the community.

12 And I said at that time that five to 10 acres is
13 what we are wishing that they would consider redesigning it
14 to so that it would protect the wetlands, and also to reduce
15 the traffic problem, because I told him that if you dump that
16 many cars out into that blind curve that there would be a
17 problem.

18 And so I was very honest with him, and we talked
19 nicely about it, and I asked him if he would go to Wes
20 Caddell. I said I don't know him, but would you go to Wes
21 Caddell and speak to him about it. And I said we know that
22 you can put in a regular subdivision, I said, but we're just
23 definitely opposed to a high-density.

24 And so I was speaking on behalf of a group, but I
25 told him if he wanted to meet the group he could come to, you

1 know, my house, or we could meet somewhere else. And we set
2 up a second meeting, and a handful of neighbors, I think it
3 was probably about a dozen neighbors came, and at that time
4 we all voiced our opinions.

5 We had professionals in county government that had
6 some opinions about it, and I know I can't speak about what
7 they said, but, again, I reiterated, and at that time I had
8 gone to the land use summit that was put on by the Moore
9 County Ag building, Deborah McGiffin had sponsored that, and
10 Debra Ensminger was there, and so was Gary Briggs.

11 And Gary Briggs spoke about present use value, and
12 he laid it out for us so that we understood clearly how many
13 acres, and I had normally -- I had formerly said five to
14 10 acres, but after Gary spoke we learned that six to 11 is
15 the sort of sweet spot, so that you can have a five-acre farm
16 development and have a homestead on it of an acre, and that's
17 where we came up with that.

18 MR. ROBINSON: I'm going to object. Please. I
19 asked a yes or no question, and I let this go for a long
20 time, but I really just want an answer to my yes or no
21 question.

22 BY MR. ROBINSON:

23 Q So my question is, are you opposed to this
24 subdivision that my client has proposed?

25 A Proposed, yes.

1 Q And isn't it also true that you and your family have
2 subdivided your land as it convened you over the years? Yes
3 or no.

4 A When you say my family, if you say my family
5 history --

6 Q Yes.

7 A -- yes, it goes back to heirs, yes, they did.

8 Q Okay. Very good. Thank you.

9 REDIRECT EXAMINATION OF CAROL PARKER BY MR. PARKER:

10 Q Ms. Parker, one question. Any of the land that
11 we've cut off or that were cut off, did any of those require
12 a special use permit to do?

13 A No. And we didn't get any money for any of them.

14 Q All right.

15 MR. PARKER: That's all.

16 MR. ROBINSON: That's it for me.

17 MS. LELAND: Okay. Mr. Parker?

18 MR. PARKER: (Indiscernible.) I hate this thing.
19 I'm having trouble.

20 Next witness, we call Glenn Harbeck to the stand.

21 May I proceed? Are you ready?

22 THE WITNESS: Yes.

23 MR. PARKER: Okay. Ms. Leland? May I proceed?

24 MS. LELAND: Yes.

25 MR. PARKER: All right. Thank you.

1 GLENN HARBECK,
2 being first duly sworn, testified as follows on DIRECT
3 EXAMINATION BY MR. PARKER:

4 Q Sir, would you state your name and occupation for
5 the commissioners, please?

6 A First let me thank the board for allowing me to
7 speak today. Been to Moore County many times, and it's
8 always fun to get back here. I don't know if this is fun or
9 not, but I'm very pleased to be back in Moore County.

10 My name's Glenn Harbeck, and I'm a professional city
11 and regional and county planner for the last 43 years.

12 Q Okay. And Mr. Harbeck, can you give me a little of
13 your prior education that prepared you for that career, and
14 your training in it?

15 A Well, I have a bachelor's degree in environmental
16 studies landscape architecture from the College of
17 Environmental Science and Forestry at Syracuse University.
18 And I have a master's degree in regional planning from the
19 University of North Carolina at Chapel Hill. Both several
20 years ago.

21 Q Okay. And so what -- and in your education and your
22 master's and your bachelor's, what were your -- what were
23 your specialties in?

24 A At Carolina I had a specialty in land use planning.

25 Q Okay. And so you were trained as a planner and

1 land -- and a -- and in land use?

2 A Yes.

3 Q Okay.

4 A And I specifically chose a local government tract at
5 that time because I felt like that was where the rubber hit
6 the road. A lot of my colleagues went on to work for, you
7 know, HUD in Washington, and EPA and Atlanta Regional
8 Commission and places like that. I wanted to work in local
9 government.

10 Q Okay.

11 A So that's why I wound up working all these years
12 with cities and towns and counties.

13 Q Okay. And where did you spend your career? Can you
14 tell me about your experience, where you worked and for whom
15 you worked for?

16 A Well, my first job out of grad school was for the
17 then joint Wilmington/New Hanover planning department. They
18 since split and now they have a separate city and county
19 department, but I worked for that joint department for about,
20 oh, five or six years.

21 And then I went to work for a nationally recognized
22 land planning and development company, so it was actually
23 private sector, for about five years.

24 And then in 19 -- around 1990 I opened up my own
25 consulting practice, and I was a consulting planner for 22

1 years all over North America, really in Canada and the United
2 States. But as -- as air travel got not so fun and I felt
3 like I'd done everything I could on a large scale basis, I
4 cut my practice back to mostly North and South Carolina, and
5 I mostly drove to many, many, many cities, towns and counties
6 in the Carolinas.

7 Q As a consultant for land use planners and
8 municipalities, that's what you did; right?

9 A Yes.

10 Q What did you do for them as a consultant?

11 A I generally would take on projects that they did not
12 have the staff capacity to do in-house.

13 Q Okay.

14 A So in the case of -- of Moore County, for example, I
15 was hired by Nancy Roy, Nancy Roy Fiorella I think was her
16 eventual married name, and she moved on to Cumberland County,
17 and then I think she became mayor of Pinehurst. But Nancy
18 hired me to do a study of urban fringe growth issues back in
19 1998.

20 Q Really?

21 A And so that was, you know, she just wanted some
22 outside expertise and some objectivity, and so I had an
23 opportunity to work with Nancy and her staff.

24 Q Now, when you say you studied urban fringe growth
25 issues in Moore County in '98 --

1 A Yeah.

2 Q -- what does that mean?

3 A Well, it's what we're talking about here today. I
4 was really struck. I went back and found that study and I
5 was reading through the -- the materials, and I was actually
6 kind of pleased to see that a lot of the recommendations that
7 I -- contained in that report back in 1998 were incorporated
8 into the 1999 Moore County Land Use Plan, and then subsequent
9 to that they were carried forward in the 2013 land use plan,
10 and some of them are also reflected in the, I think it was --
11 was it 2000 -- was -- I can't give the exact date when the
12 most recent version of the UDO was really overhauled.

13 Q Uh-huh.

14 A But it was sometime after the 2013 plan, I think
15 within a couple years, if I'm not mistaken.

16 Q So you actually consulted in Moore County prior to
17 the 1990 -- the first land -- zoning that went in here?

18 A Yeah. I mean, I -- over the years I had to go back
19 and look at my -- my own resume, if you will. I know that I,
20 one time I counted over a hundred local governments that I
21 had worked with nationally and in North America.

22 In North Carolina the ones I can remember for sure
23 that I have files on I worked with Alamance County -- I won't
24 say county every time -- Brunswick, Carteret, Columbus,
25 Craven, Currituck, Dare, Davidson, Forsyth, Halifax, Moore,

1 New Hanover, Onslow, Pender, Pitt, Rockingham, Wake, and
2 Wilson. Those are the ones I can recall.

3 Q So you basically dedicated your entire career to --
4 to municipal local government zoning and planning?

5 A I did. That's where I really felt like I could make
6 a difference.

7 Q Do you hold any certifications or anything like
8 that, or are there certifications in your field?

9 A Yes. Back in 1980 or so one of my first mentors was
10 Bill Farris who was the director of that joint agency, and he
11 encouraged me to study and sit for the exam, the
12 certification exam for the American Institute of Certified
13 Planners, and at that time he said, Glenn, he said, remember,
14 you don't take the exam so much for yourself as you take it
15 for the profession.

16 Q Uh-huh.

17 A To instill a certain level of common knowledge
18 throughout the profession, and that's what the AICP exam
19 really does.

20 Q Okay. And did you obtain that certification?

21 A In 1982.

22 Q Have you maintained it?

23 A Yes, all -- all 41 years.

24 Q Forty-one years?

25 A And it's not cheap.

1 Q It wasn't cheap?

2 A You have to pay annual dues, and they tack more on
3 when you're AICP certified.

4 Q Okay. And do you have a copy of your -- of your
5 background and your experience and counties you worked for;
6 is that in your report?

7 A Yes, it's the last page in the report that I believe
8 was distributed at the last meeting.

9 Q Okay. And have you ever testified as an expert in
10 planning and land use before?

11 A I have. I -- I was an expert witness actually in a
12 case involving Andy Griffith.

13 Q Okay.

14 A And the friends of Roanoke Islands and Dare County
15 because I had prepared the Dare County Land Use Plan, and the
16 county had actually approved of a zoning action that the
17 friends of Roanoke Island did not like.

18 Q Okay.

19 A So I was actually an expert witness on behalf of
20 Dare County at that time.

21 Q Okay.

22 A And Andy Griffith sat there in the front row just
23 staring at me the whole time --

24 Q Uh-huh.

25 A -- in opposition to my testimony.

1 Q All right. But you didn't change your testimony for
2 Andy Griffith; did you?

3 A No, I did not.

4 Q You told the truth?

5 A Told the truth, and the county came out as they
6 should have, they came out on the correct side, that their
7 action was -- was the right thing to do.

8 Q Okay.

9 MR. PARKER: And so at this time I would tender
10 Mr. Harbeck to the commissioners as an expert in planning and
11 land use.

12 MR. ROBINSON: No objection.

13 MS. LELAND: Okay.

14 MR. PARKER: Okay. Thank you.

15 BY MR. PARKER:

16 Q Mr. Harbeck, now, this is a special use permit
17 hearing, quasi-judicial hearing. As a planner, what does
18 that mean to you?

19 A Well, it means a lot. Cut to the chase, most
20 subdivisions in the state of North Carolina, and I'll say
21 most, are approved administratively. They're approved as a
22 checklist.

23 Q Uh-huh.

24 A They don't go before a, not often anyway, they don't
25 have to go through a planning board. They certainly don't

1 have to go through an elected body. They can be approved by
2 a technical review committee or a subdivision review board,
3 which is sometimes made up of local staff. You could have a
4 staff planner, maybe a county engineer, somebody with a soil
5 conservation service, maybe, somebody -- you know, you could
6 have a kind of a mixture of staff that would look at whether
7 a subdivision meets the technical standards of the ordinance,
8 and if they do, if they check all the boxes, you get
9 approved.

10 Q Okay.

11 A But in this case, Moore County, the powers that be,
12 and I wasn't present at the meetings when the UDO was -- was
13 crafted, but when I see in an ordinance that the county
14 requires an SUP, and that's special use permit, in order to
15 get a major subdivision approved, that tells me that the
16 powers that be just don't want major subdivisions to be
17 anywhere.

18 Q Okay.

19 A They want them to be thoroughly vetted as far as
20 where a major subdivision should be approved in Moore County.
21 That is significant in this case.

22 Q Okay. Now, and for them to make those decisions,
23 what do they -- particularly have you reviewed documents here
24 in Moore County?

25 A I have reviewed several, and I can mention them.

1 I of course reviewed the county planning staff's
2 report to the board of commissioners that was dated
3 April 13th. I've also reviewed the Moore County UDO,
4 particularly Chapters 12 and 18 related to CUPs and
5 subdivisions. CUPs was the prior term used in the ordinance
6 before it was a special use permit under the new legislation.

7 I reviewed certainly the Moore County Land Use Plan
8 adopted in 2013; the Moore County Volunteer Farm Land
9 Protection Ordinance; Moore County Working Lands Protection
10 Plan, 2012; the Green Growth Tool Box, which is really more
11 of an advisory group that travels around the state offering
12 guidance to local governments on sort of green development
13 and environmentally conscious development.

14 And then I reviewed Mr. LaSala's memorandum where he
15 had gone into at length the various policies, recommendations
16 and actions, and had provided some observations --

17 Q Okay.

18 A -- in his report. And then in addition to that,
19 just from my own, I don't know, I'm always keeping up, I
20 guess, I went back and reviewed the Coates' Canons on the
21 relationship of the new 160D legislation relative to
22 comprehensive plans.

23 Q Now, what did -- just before you go on, what is
24 Coats' Canons, for the -- I don't know that the board --

25 A Okay.

1 Q -- the board may know -- they -- I know some of them
2 are.

3 A Yeah.

4 Q But for the listeners, what is that?

5 A We're fortunate in this state to have a school of
6 government at the University of North Carolina at Chapel Hill
7 with a law department, or a legal, several people with a
8 legal background. They are attorneys, and they issue
9 informational memorandums on various subject matters.

10 And so as a planner it pays you to read those canons
11 because they provide insights into what's happening at the
12 general assembly level, what's happening around the state
13 relative to particular land use issues.

14 Q Okay.

15 A So there was -- there was a Coates' Canons that came
16 out on comprehensive plans and land use plan consistency as
17 emphasized by the relatively new 160D legislation.

18 Q Okay. All right. And what else did you review? I
19 think I interrupted you.

20 A Well, I went back and looked at my original report
21 for Moore County, because I wanted to see whether any of that
22 stuff still held true.

23 Q Uh-huh.

24 A I -- I went and looked back at the latest thinking
25 and definitions on infill development and mixed-use

1 development. I kind of know what that is, but I felt like to
2 prepare to be an expert witness I wanted to make sure I had
3 adequate references.

4 Q Okay.

5 A So I went back and looked at some literature on that
6 as well.

7 Q All right. Now, there are five questions that the
8 board must find in order to grant a special use permit; is
9 that right?

10 A That's correct.

11 Q Under our -- under our UDO?

12 A The four points -- five points in Moore County.

13 Q Okay. Now, as a planner, did you look at all of
14 those, or, for this part, or did you select two -- some --
15 which ones were you focused on?

16 A My experience with special use permits is that the
17 first three points are oftentimes kind of matter of fact, so
18 I focused on points four and five.

19 Q And what are they?

20 A Point four is really about, is the proposed
21 development in harmony with its location and surrounding
22 properties.

23 Point five is, is the proposal in general
24 conformity, general conformity with the local land use plan
25 or comprehensive plan. Some counties call them land use

1 plans, some counties call this comprehensive plans. In the
2 case of Moore County it's a land use plan.

3 Q Okay. Now, you reviewed our land use plan; right?

4 A I certainly did.

5 Q As a planner, what does the term "general
6 conformity" mean to you?

7 A Well, in the planning world comprehensive is the
8 most important word. When you serve as a local government
9 planner, first and most you are a comprehensive planner.
10 That is -- when you study for the exam and when you prepare
11 anything, you are always to look at things comprehensively,
12 and in our code of ethics we're told that we must look at all
13 of the components of a project or a proposal or a policy
14 comprehensively.

15 Q Okay.

16 A Not just focused on a few narrow things but what is
17 the big picture.

18 Q Okay.

19 A So I -- I read the Moore County Land Use Plan with
20 both a comprehensive eye and a detailed eye.

21 Q Okay.

22 A But you got to look at it comprehensively. You got
23 to look at what the people of Moore County and what this
24 board of commissioners when they adopted the 2013 plan, what
25 was their big -- what was their vision, what was their image

1 for the county?

2 Q Okay. And did you gather a sense of that from the
3 land use plan?

4 A Absolutely.

5 Q Okay. And did -- what was your sense of what they
6 were aiming for in 2013 based on your experience?

7 A They wanted to make sure that Moore County stayed
8 the same quality that it has always been, that it is -- it is
9 one of the -- it is one of the most quality driven counties
10 in the state of North Carolina in terms of the assets that
11 are here, the reputation that the county has, some of the,
12 you know, I don't need to go down the litany of things about
13 Moore County, but there was this balancing act between, yes,
14 we want economic development, and we certainly need to accept
15 the people that want to move here, but what's the best way to
16 accommodate them?

17 And the big picture that I got out of it was
18 something that -- that was identified in the couple hundred
19 people that I met with back in 1998, and that is, I think
20 they want a town and country theme.

21 Q Now, what do you mean by a town and country theme?
22 I know they used to make cars called that, never quite
23 understood it. What's that mean?

24 A Town and country means that they want all of the
25 nice things of -- that a small town can offer, meaning that

1 the sense of the small town atmosphere, knowing your
2 neighbors, having compact downtowns, if you can.

3 Q Uh-huh.

4 A Crossroads, crossroads, little uses in strategic
5 locations, and then countryside. And -- and there should be
6 a clean distinction between what is a town and what is the
7 country, and you can have both. That's what -- that's what
8 the Moore County Land Use Plan was really pushing for.

9 Q Okay.

10 A And it identified different groups of people and why
11 they wanted that town and country atmosphere, and there were
12 several different groups that wanted it for different
13 reasons.

14 Q Okay. Now, when we talked about this before you
15 discussed this in terms of themes. Themes? For the land use
16 plan? What did you mean by "themes"?

17 A Well, the theme is what you get when you look at
18 something comprehensively.

19 Q Okay.

20 A If you -- if you tally up all of the policies and
21 sentiments expressed in the plan, and in fact I was just
22 doing this this past week for another community, those --
23 those, I call them key words, when you start sorting -- when
24 people give you a lot of input and you sort all that input
25 into what I call a key words analysis --

1 Q Yeah.

2 A -- you start feeling what they're asking for. You
3 start feeling -- you start seeing what they're asking for,
4 and those -- those key words lead to a theme.

5 Q Okay. What themes did you see in our land use plan
6 here in Moore County?

7 A Well, the clearest one that kind of sums it all up
8 is I think near the end of the plan where it says, and I -- I
9 think that's important enough for me to want to read it. If
10 I can find it here. Here it is.

11 This is a direct quote from page 81 in the Moore
12 County Land Use Plan: "The plan seeks to encourage
13 developers to locate developments primarily within the
14 municipal planning jurisdictions of the community, and/or, to
15 propose viable and appropriate mixed-use developments within
16 the county's planning jurisdiction. However "-- and this is
17 the last sentence here, I won't drag on forever -- "when
18 development is proposed in the county -- county's planning
19 jurisdiction efficient use of existing and proposed
20 infrastructure and the preservation of large agricultural
21 areas and/or natural spaces are of paramount importance."

22 Q Okay.

23 A That's a theme.

24 Q Okay. And when you read that, I picked up town and
25 country, they have an interest in agricultural preservation

1 and efficient use of infrastructure. Now I want to talk with
2 you more about infrastructure in a little bit.

3 But I want to ask, why is it important to a planner
4 in evaluating -- is -- why is it important to evaluate a --
5 strike that.

6 Is it important to evaluate existing land use in
7 determining harmony in a neighborhood?

8 A Yes. Yes.

9 Q All right. Why?

10 A You -- in order to issue a special use permit it is
11 supposed to be based on objective evidence.

12 Q Uh-huh.

13 A So evidence to a planner is not just words.

14 Q Right.

15 A Evidence to a planner is objective information
16 oftentimes presented on maps.

17 Q Right.

18 A And therefore for many, many land use, most land use
19 decisions, having an existing land use map showing the
20 surrounding activity on the properties abutting that property
21 is absolutely critical to determine whether it's harmonic,
22 whether it's -- there's -- it's in harmony with that
23 development.

24 In fact, again in preparing for today's hearing, I
25 went back and looked at a -- one of the -- I think it was the

1 minutes of Moore County Planning Board, and while they're --
2 it is just a -- I didn't -- I wasn't too concerned about the
3 case. I was just looking at the format of the case summary
4 by the staff, and I noticed in that particular case they had
5 used an aerial photograph. It wasn't an -- exactly an
6 existing land use map, but they had used an aerial photograph
7 and they had labeled -- they had labeled the uses around that
8 project on the aerial photograph.

9 Q Uh-huh.

10 A So to me, that's getting at an existing land use
11 map, and it's a pretty darn good one, because when you see an
12 aerial photograph you not only get the benefit of, you know,
13 whether it's a church or a school or a retail center,
14 whatever, but you also get a picture of what it is, too. So
15 I didn't think it was a bad technique.

16 Q Now, did you evaluate an existing land use map in
17 evaluating this subdivision?

18 A I could not because there was not one.

19 Q Okay. Were you able to put together any information
20 about what surrounds this project?

21 A Well, I certainly looked at my own aerial
22 photographic investigation, and I also visited the site.

23 Q Okay. All right. And let me ask you this. Is it
24 important to use this existing land use in evaluating
25 compatibility with the land use plan?

1 A I don't know how you could evaluate compatibility
2 without it.

3 Q Okay. All right. So how about future land use? Is
4 there anything talking about that from the land use plan from
5 2013?

6 A Yes, there is. And it's, again, that's more of
7 those more lightening rod or big issues that struck me when I
8 saw the plan.

9 And was Garren here? Garren, could you pull up --
10 pull up map number three.

11 Thank you. This -- this is -- this is the Moore
12 County Land Use Plan map.

13 Q Where did you find it?

14 A Oh, it's on page -- it's on there on the corner
15 somewhere.

16 Q Was it in the land use plan?

17 A It's like in the last five pages. Because
18 understand that when you do a -- a land use plan, if you're
19 smart you put the land use plan map last.

20 Q Okay.

21 A Because land use plan maps summarize everything.
22 They tend to pull all of the policies and recommendations and
23 actions into a single image or vision of what the county
24 wants to be as it moves forward.

25 Q Okay. Now, I noticed here, I see -- I think it's on

1 page 82 of the land use plan --

2 A Thank you. Thank you. Your eyes are keener than
3 mine. Thank you.

4 Q Actually it's my wife's eyes. They're much better
5 than mine.

6 A Thank you, Carol.

7 Q So, yeah, tell me about this. What did you find
8 relevant about that in evaluating this?

9 A Well, one of the things that I recommended in my
10 1998 plan was a land classification system for the county,
11 and low and behold this plan has a land classification system
12 in it.

13 So that's -- I couldn't be happier as a planner --

14 Q What do you mean by the land -- all right. I'm an
15 old criminal lawyer. What do you mean by "land
16 classification system"?

17 A I'll summarize it this way. Land use is the summary
18 statement of what the county wants to see for itself in the
19 future.

20 Q Okay.

21 A A zoning ordinance is a tool. It's a tool designed
22 to get you to that vision.

23 Q Okay.

24 A The zoning ordinance is not policy. The zoning
25 ordinance is a -- is a -- is a tool.

1 Q Okay.

2 A The plan is what's driving the county's decision
3 making as to what it wants to become.

4 Q Okay.

5 A So you always evaluate your zoning and subdivision
6 actions based on what you want to become.

7 Q Okay.

8 A So what the maps shows me, and I'm pointing to it
9 with a red arrow, the point -- the point of that red arrow is
10 approximately the location of this major subdivision
11 proposal.

12 Q Okay.

13 A If you'll notice it is in a plain white area, and
14 the legend, you can't -- I know the board can't see this very
15 well, but the legend, if you look at the white square, and
16 again, now, this is not the zoning. This is the land
17 classification. It's a land use category. The white area is
18 called rural agricultural.

19 Q Okay.

20 A And the -- the narrative -- you have the map and
21 then you got a narrative, and the narrative is what describes
22 each classifications.

23 Q Uh-huh.

24 A So I've excerpted there in italics, that is the
25 narrative explanation directly out of the plan that describes

1 what should be happening at the location where that
2 subdivision is being proposed.

3 Q Now, you may have heard before we started, there is
4 no video tonight, so there may be people -- I know there's a
5 lot of people who listen at home because they call me about
6 it.

7 Could you read off that narrative up there for us?
8 Because they can't see it.

9 A This one's not as long as the last one.

10 Q Yeah. Thank you.

11 A "The primary use of the land," and I've inserted at
12 this location because that's -- that's the point we're
13 talking about --

14 Q Right.

15 A -- "is to support rural residential life associated
16 with agricultural uses, for example, row crops, forestry,
17 horticulture, grazing, poultry, dairy, swine operations and
18 intensive agricultural uses in certain areas and other rural
19 activities." Then the key, the buzzer here is, "Major
20 subdivisions of land are strongly discouraged."

21 Q In that area?

22 A In that area. And it does -- then there's another
23 phrase, getting back to the discussion that your wife was
24 having with Mr. Robinson, a lot of the subdivision activity
25 he was talking about was family subdivisions and lot --

1 subdivisions fewer than four.

2 Q Right.

3 A There's special provisions in the law for that sort
4 of thing.

5 Q Okay.

6 A The general assembly recognizes those kinds of
7 family subdivisions are just a way of life. They're a thing
8 that have to happen.

9 Q Right.

10 A It's not trying to get around rules or anything like
11 that. It's just what people do when they got families and
12 they're trying to distribute some land.

13 But the last phrase in there that I didn't include
14 in there is that family subdivisions and subdivisions of four
15 or fewer or less can be acceptable.

16 Q Okay.

17 A That's -- that's also part of that same description.

18 Q Okay. All right. So let me say this then. That's
19 very helpful to me in understanding where we're going.

20 Have you reviewed the staff report? You said you
21 did.

22 A I was -- yes, I did, certainly.

23 Q Okay. The staff report indicates that they've --
24 recommends finding two areas of conformity with the land use
25 plan for this subdivision. Okay?

1 A Okay.

2 Q That's what I -- is that what you saw?

3 A Yeah, there were -- there was a spot there under
4 point five where there was an opportunity to insert a
5 reference to different recommendations or actions in the land
6 use plan as to how they might influence a decision on this
7 case.

8 Q All right. And did you -- and can you go -- I want
9 to direct your attention to those right now, because I had
10 some questions about that.

11 Let's go to the first one that they had recommended,
12 which I think was something called infill.

13 Do you remember that?

14 A Yes.

15 Q Could you find -- do you have the language for it?

16 A I don't have the specific language from the staff.

17 I have -- do you have it there? Yeah. Thank you. Yes.

18 Action 1.8.5 of the staff report reads, "Support an
19 infill development that will optimize the use of existing
20 infrastructure."

21 Q All right. If you hand that back?

22 So that is -- so that is -- that is an action of
23 the -- now, let me ask this. Going back to the land use
24 plan, there are in there goals, recommendations, and actions;
25 is that correct?

1 A That's correct.

2 Q All right. And I believe there are five goals. Are
3 you familiar with those?

4 A Yeah, I --

5 Q Okay. All right.

6 A Those are the -- when you're thinking -- when you
7 look -- thinking about a plan comprehensively you start at
8 the top with the goals and you work your way down to the
9 actions.

10 Q Okay. All right. And so this is an action, and
11 what they recommend that there's infill that utilizes
12 existing infrastructure. All right.

13 Did you evaluate this request, this special use
14 permit based upon infill development and existing
15 infrastructure?

16 A I did.

17 Q Okay. Can you describe for me what is infill?
18 Okay? I'm not a planner. And I'm sure the commissioners
19 have heard about it, but for the rest of us, tell us what
20 that means to a planner.

21 A The easiest way for me to describe infill
22 development in many, many, many contexts is that you're
23 filling in an overlooked piece of property.

24 Q Okay.

25 A In other words, development has already happened all

1 around it.

2 Q Okay.

3 A And for whatever reason there's sometimes a remnant
4 piece of property. Maybe it was successful at one time. If
5 it were in a city it could be a brownfield site, or it could
6 be a former cleaning operation that went out of business and
7 the site's been sitting there empty, or a former filling
8 station, the site's been sitting there empty for forever, and
9 so somebody will come in and they will infill, they will
10 backfill a property like that in an urban area.

11 Now, in a -- in a more rural area you can still have
12 infill development, but it's when there's already a complete
13 surrounding of -- of development and there's just an
14 overlooked piece, and that piece may have been overlooked
15 over the years for who knows whatever reason. There could be
16 a variety of reasons why it might have been overlooked, maybe
17 it was in heirs and they couldn't do a title search and find
18 out who owned it.

19 Q Right.

20 A Maybe it was too wet, and so it was kind of left
21 behind over the years. People don't want to -- they rather
22 build on the dry land than on the wetlands.

23 Q Right.

24 A So there could be a variety of reasons, but it's an
25 area that's usually overlooked. And this -- this particular

1 site to me doesn't fit that at all.

2 Q Okay. Why? Why does this site not fit that?

3 A Because it's not surrounded by existing development.
4 You're not -- you're not infilling a hole in the fabric.

5 Q Okay. Do they use -- now, have you -- did you
6 review articles from the EPA about this?

7 A Yes, I did. And, again, I -- I know what infill
8 development is, but I'm coming here to help you out with your
9 case, and I --

10 Q Thank you.

11 A -- I wanted to make sure that I did my homework, so
12 I went back and I looked at the literature on infill
13 development, and just to make sure that it confirmed my
14 understanding of 42 years, or 43 years.

15 Q Right. Now, the EPA, that's the Environmental
16 Protection Agency?

17 A Yes.

18 Q Why do they have an interest in infill development?
19 Isn't that large -- I thought you said it was largely an
20 urban thing?

21 A EPA has evolved over the years. When the EPA was
22 first established the Clean Air Act was adopted in 1970, and
23 the Clean Water Act was adopted in 1972.

24 And at that time the biggest concern in pollution
25 was what they call point source pollution, meaning, that

1 discharges from factories, discharges from sewage treatment
2 systems, sewage that came out of a pipe, but over time as
3 they got a handle on these point sources of pollution, they
4 realized, that you know what? The biggest problems in our
5 streams and our lakes and our ocean is not point source
6 anymore. We got that under control. It's surface water
7 runoff. It's storm water runoff. It's -- and, frankly, it's
8 not just from driveways and -- and streets and sidewalks and
9 patios and pool decks. It also can be from farm land.

10 Q Okay. You --

11 A You can have -- you can have points -- you can have
12 runoff from farm land as well, but EPA has taken a keen
13 interest. Infill development, because it fights -- it is a
14 way of fighting sprawling development that creates a lot of
15 impervious surface that creates run off that pollutes the
16 water.

17 Q Okay.

18 A So that's why they have taken such an active
19 interest, and that was a roundabout way of getting to my
20 point, but that's it.

21 Q Okay. And so in your experience and expertise does
22 this subdivision fit with an infill justification?

23 A No.

24 Q Okay. Is -- is there -- what do you see this as?
25 Do you see this as something else other than infill?

1 A It's -- it's suburban sprawl. It's an opportunity
2 to take advantage of less expensive land outside the town or
3 the extraterrestrial jurisdiction.

4 Q Okay. Now, the infill thing also says that you're
5 looking for -- that they are supposed to take care of
6 existing infrastructure.

7 Take -- the infill's designed to take advantage of
8 that. I mean, if you've got it then use it for that
9 overlooked piece of property; right?

10 A Correct.

11 Q Okay. Tell me about why is it important to a
12 planner to utilize existing infrastructure?

13 A Well, from this board's perspective the number one
14 issue would be taxes.

15 Q Okay.

16 A And fees.

17 Q Okay.

18 A Efficient provision of services, whether those
19 services are for picking up school children to be taken to a
20 school, or whether it's pump stations for sewage, although
21 Moore County's not in the sewage business as I understand it,
22 the municipalities are. It's -- it's maintaining water
23 lines.

24 Q Okay.

25 A The length of the water lines.

1 Q Uh-huh.

2 A The flushing of water lines, the provision of fire
3 stations, EMS stations, libraries and satellite libraries,
4 parks, and schools. Those are all the elements of
5 infrastructure.

6 You know, we think of infrastructure, there's
7 horizontal infrastructure, which is roads, water, sewer, but
8 there's also vertical infrastructure, and vertical
9 infrastructure are your schools, your parks, your fire
10 stations, your EMS, you know, those sorts of things. So
11 that's -- those are services that counties provide, and those
12 are things you want to keep your costs down for your
13 taxpayers.

14 So when a planner looks at efficient development,
15 the planner's looking at trying to encourage development to
16 occur in locations where a variety of services serve that
17 development.

18 Q Okay. So did you evaluate this -- this area of
19 property? Did you evaluate the infrastructure available for
20 it there?

21 A I did.

22 Q And what infrastructure did you find available for
23 this piece of property that the county could utilize as an
24 infill development?

25 A Union Church Road and a water line.

1 Q Well, that don't sound like much to me. Does it
2 sound like much to a planner?

3 A No.

4 Q What are you looking for when you want to utilize
5 infrastructure like that?

6 A Well, if you look at the state law, and they talk
7 about what infrastructure is, it lists all the various things
8 that I've already mentioned, and the more things that you can
9 get within walking distance, or biking distance even, of
10 other services, then the less traffic you're going to have on
11 your streets, the less maintenance you're going to have for
12 different types of horizontal infrastructure, and the better
13 use of the vertical infrastructure.

14 For -- for example, if there were a school within
15 walking distance of this property, and you could have kids
16 walking to school, that would be a great use of
17 infrastructure. However, there's no school within walking
18 distance of the property. There's no sidewalks or bikeways
19 for kids to get there anyway.

20 Q Okay.

21 A So it's not really a good relationship to schools.

22 Q Okay. How about public transportation?

23 A That's another form of -- of a service that a local
24 government or a authority of a local government can provide.

25 Q Now, you said you look at recreational facilities.

1 Did you find any of those nearby?

2 A The closest one I was aware of that was a true
3 public park would be in Vass.

4 Q Okay. About how far away was that?

5 A Over three miles.

6 Q So that's not -- would, in your opinion as a
7 planner, is that within walking distance for the kids to go
8 to the park?

9 A No, and, again, even if there were -- it were,
10 there's no -- there's no bikeway, there's no -- there's no
11 way for anybody to get to that park from this site without
12 getting in a car.

13 Q Okay.

14 A And that's what causes the traffic.

15 Q That's what caused your problem? All right. How
16 about -- and sewer, is there sewer? You didn't find any
17 sewer there?

18 A No sewer.

19 Q Fire and rescue, EMS. Do you know where -- did you
20 look at those?

21 A Vass.

22 Q Vass? Okay.

23 A Near the library and the -- I forget. It's behind
24 the library I guess or something like that.

25 Q Okay. So basically the only infrastructure other

1 than the highway you found is water. Okay?

2 Now, did you look at where Moore County gets its
3 water from?

4 A The absolute source? I did read some -- some
5 sources talk about MOWASA at one point before the East Moore
6 District came about.

7 Q Right.

8 A There's talk about different streams. I can't
9 remember whether it was the Cape Fear Basin, or -- or -- I
10 don't remember the absolute sources.

11 Q Did you -- did you find any reference to water or
12 the use of water for growth to fuel growth in the land use
13 plan?

14 A No. Just the opposite.

15 Q What did you find?

16 A There's cautionary note -- there's a cautionary note
17 in the land use plan that specifically says that the purpose
18 of the East Moore Water District is to improve the quality of
19 life, and I'm paraphrasing a little bit. I don't have to
20 paraphrase, I could read it, but it's to improve the quality
21 of the life of the residents of that area, but it is not
22 necessarily to encourage major subdivision activity.

23 Q Okay.

24 A So it's like hitting right on the -- hitting right
25 on this issue.

1 Q Now, based on your experience as a planner, have you
2 seen towns or counties, because you've worked with both, who
3 have used water as their infrastructure to drive development?

4 A It can happen, and it's unfortunate when it does.

5 Q Why?

6 A Because -- well, let me -- Garren, can I get you to
7 pull up the next -- it would be map 2. It's two maps.

8 Q Is it that one?

9 A This is just something I wanted -- and I wish the --
10 is it the chairman who's absent today?

11 Q Yeah. But we're going to give him copies of this so
12 he can review it.

13 A Okay. This is important visual information because
14 the map on the left is an approximation of a development
15 pattern when you have both water and sewer serving a
16 location.

17 Q Okay.

18 A In other words, the goal here is there are the parts
19 of Moore County, and the, mostly -- well, they are the
20 municipalities where there's sewer service in addition to
21 water service.

22 Q Okay.

23 A So when you have a combination of sewer service and
24 water service in the same location, you can get a very
25 compact well-serviced, efficient pattern of growth.

1 Q Okay.

2 A Now, the map on the right, I'm showing the same gold
3 area for water and sewer service, but then I'm adding in all
4 of the land in the Moore County water district that is within
5 300 feet of a water line.

6 Q Okay.

7 A So all of the blue area there, all of the blue area
8 there are lands that are within 300 feet of a water line.

9 Q Okay.

10 A Which is not a bad thing, but it's a terrible thing
11 if you use that as a primary driving force to approve major
12 subdivisions.

13 Q Why?

14 A Because it results in sprawl.

15 Q It results in what?

16 A Sprawl.

17 Q Sprawl.

18 A Efficient traffic driven sprawl that nobody that I
19 talked to in 1998, anyway, wanted to see in Moore County.

20 Q Okay. So, in fact, if -- have you looked at the
21 growth in Moore County since 2016?

22 A Somewhat, yes.

23 Q Okay. And, in fact, that water area, I mean, that
24 looks like where most of our growth is trying to take place
25 right now, just the water.

1 A Yeah, there certainly is a driving force there.
2 There was a book that came out in the early '70s called *Land*
3 *Use and the Pipe*.

4 Q Okay.

5 A And it talked about the -- the impacts that a pipe
6 can have on driving -- driving growth, and it's not always
7 good.

8 Q Okay. Is that, based on your reading of the land
9 use plan and your study as a planner, is that what the 2013
10 land use plan intended for the county's growth to be right
11 there?

12 A No, because if you go back to the future land use
13 map, you'll see that large areas of that blue gobbledygook is
14 white.

15 Q Right.

16 A It's rural agricultural. It's intended to stay that
17 way.

18 Q Okay.

19 A That doesn't mean that you can't have development
20 there. You can still have strategic mixed-use crossroads
21 development using that water, but you just don't spread it
22 out. In Florida they call it peanut butterization.

23 Q Explain that, peanut butterization?

24 A If you want to see what can happen to an area that
25 is sprawling based on some infrastructure availability, go to

1 Florida. My brother lives in south Florida.

2 Q Uh-huh.

3 A And they call it peanut butterization.

4 Q Okay.

5 A You go down to South Florida, it's just a nice even
6 spread across the land.

7 Q Okay.

8 A And you can have your -- your roads in two lanes,
9 four lanes, six lanes, ten lanes, 16 lanes. In Miami you get
10 20 lanes.

11 Q Right.

12 A And no matter what you do, it just keeps on --

13 Q Growing?

14 A -- more and more lanes of traffic because that's
15 what happens when you have inefficient traffic and automobile
16 dependent development, not related to a lot of urban services
17 but rather can be driven by just, you know, like using water
18 as a driver of growth.

19 Q Right. So that is -- so what your -- okay. So when
20 you're looking at that, is that type of growth you're
21 describing, is that consistent and in conformity with the
22 theme from your land use plan of the town and country --

23 A No, obviously it's not.

24 Q Okay. All right. Now, you said mixed use. Okay.
25 You used that term a time or two coming in here, okay, just

1 now.

2 And I notice that in the staff report the second
3 recommendation -- the second justification or conformity with
4 the land use plan was the recommendation -- was
5 recommendation 3.1, which is to, "Maximize accessibility
6 among living, working and shopping areas." And then
7 specifically action 3.1.1, which you said was designed to
8 carry out the recommendation, and that was, "Adopt policies
9 that encourage development of mixed land uses as appropriate
10 to provide easy access, reduce travel time, and improve
11 convenience among uses surrounding the county's established
12 towns and villages."

13 Now, that was the justification.

14 A That's -- that's straight out of the staff report,
15 correct.

16 Q Okay. What -- okay. I told you I'm an old criminal
17 lawyer. What is this mixed-use stuff?

18 A Mixed-use development is -- is really the best
19 answer that we have to our traffic congestion nationally.

20 Q Okay.

21 A And the reason why it's our best answer is because
22 we've learned the hard way since World War II that separation
23 of uses is a recipe for traffic disaster.

24 Q What do you mean, "separation of uses"? What are
25 you talking about?

1 A Meaning that in the first part of the 20th Century
2 when we had smoke belching manufacturing plants.

3 Q Right.

4 A And we had heavy, you know, coal driven trains
5 coming into cities, and we had nasty pollution going into
6 our -- our rivers from streams. Everybody wanted to get out
7 of the -- everybody wanted to get out of the urban area.
8 Everybody wanted to move out to the suburbs where it's
9 clean and there's --

10 Q Right.

11 A -- you know, and away from all that nasty city
12 stuff.

13 Well, the nasty city stuff that we don't have
14 belching coal fired industries and smoke stacks of trains
15 dropping coal ash all over our children and our clothes
16 hanging on the clothes line. So that concept of -- but the
17 concept of separation -- separating your home from your
18 services hung on and hung on for decades for no good reason.

19 Q Right.

20 A People just said, well, it must be good. I want to
21 have my Leave It to Beaver lifestyle out in the suburbs and
22 leave all that belching smoke behind.

23 Well, the belching smoke is gone, now people are
24 saying, you know what? Maybe I want to walk to the local
25 pub, or I want to walk to the coffee shop, or I want to ride

1 my bike.

2 Sounds crazy, I'm not a lunatic here, but I have
3 saddle bags on a bicycle now. Had both my hips replaced.
4 When that happened I got freedom --

5 Q Okay.

6 A -- to ride a bike, so I put some saddle bags on my
7 bicycle. I can ride my bicycle now to a grocery store.

8 Q Okay.

9 A And I get exercise, and I get groceries, and I can
10 do it all in a half hour.

11 Q So where do you live?

12 A I live in the southeastern corner of Wilmington in
13 the Masonboro area.

14 Q Do you have in your neighborhood, is it a mixed-use
15 community?

16 A No. But I can ride a bicycle to get to services
17 because we have a bike path.

18 Q Okay.

19 A But in this case there's no bike path.

20 Q Okay. Well, so one of the things you're looking for
21 is you're wanting to mix, like, I guess places to work,
22 places to buy groceries, places to go and recreate like
23 coffee houses?

24 A Right.

25 Q And put those within walking distance? Is that the

1 purpose for mixed use?

2 A There are two forms of mixed-use development.
3 There's vertical mixed use and there's horizontal mixed use.

4 Q Okay.

5 A Vertical mixed use is what you see in a typical
6 downtown. It's not from rural Moore County, but vertical
7 mixed use in a city would be ground floor retail, offices
8 above and maybe apartments above that.

9 Q Okay. All right.

10 A That's vertical mixed use.

11 Q So you've got everything you need literally right
12 there?

13 A Horizontal mixed use can be either on the same
14 property, or you might have shopping services and apartments,
15 but it could also be on abutting properties. You can have an
16 apartment here, and right across the street you can have a
17 grocery store and a pharmacy, and, you know, Lowe's Home
18 Improvement or whatever.

19 Q Right.

20 A You know, and a nice designed mixture of housing
21 and -- a residential and nonresidential uses.

22 Q Okay.

23 A All right. But they need to be within walking
24 distance. You just can't get in a car for -- if you get in
25 your car you're just going to congest the streets again.

1 Q So if you get in a car that defeats the purpose of
2 mixed use?

3 A That -- the main principle behind mixed use is to
4 cut the traffic.

5 Q Now, you -- were you here when our traffic engineer
6 said there's been like 40 percent growth in traffic from 2020
7 to 2040 -- I mean, 2022?

8 A Yes. And if you look at the statistics on
9 population growth versus traffic counts --

10 Q Yeah.

11 A -- you'll see that traffic counts nationally under
12 the separation of land uses I talked about after World War
13 II --

14 Q Right.

15 A -- the traffic counts routinely would go up twice as
16 fast as the population because of that phenomenon of
17 separating land uses.

18 Q Okay. Because it forces people to get in their car
19 to go places?

20 A For everything.

21 Q So this recommendation from the Moore County Land
22 Use Plan was designed to help reduce highway traffic and
23 congestion?

24 A Correct.

25 Q All right. Well, let me ask you this. You've

1 mentioned a time or two crossroad communities. Is that just
2 a term of art, or does that actually mean something, or is
3 that just, you know, I mean, I don't know. Explain it to me,
4 please.

5 A Oh, I think it means a lot. In rural communities --
6 well, my -- my grandfather was a dairy farmer.

7 Q Uh-huh.

8 A And there was a crossroads community about, I don't
9 know, maybe a mile and a half up the road, because he'd give
10 me part of his tractor to take down to Elmer and have him
11 weld the tractor part.

12 Q Okay.

13 A But there was a crossroads community there. There
14 was a -- there was a welder, there was a grocery store, there
15 was a -- I forget what all was there. But there were enough
16 services for -- in that little crossroads area there to serve
17 the farmers around it.

18 Q Right.

19 A But the farmers and the crossroads community got
20 along together.

21 Q Yeah.

22 A They all had equal expectation of what was going to
23 happen.

24 Q Okay. So did -- is there -- did you see any themes
25 related to growth around crossroads communities in Moore

1 County?

2 A It's in -- it's written in the plan.

3 Q What -- what is that?

4 A It's -- there's some policies in there that says
5 that they want to encourage crossroads communities and
6 protect them.

7 Q Okay.

8 A Don't let them die.

9 Q Okay. All right. So, now, you also noted in your
10 report about the voluntary ag district. You mentioned that
11 in your report, I believe, that that is relevant to this
12 development?

13 A Yes.

14 Q Why?

15 A Because the same people that are going to be
16 automobile dependent are the same people that are going to be
17 driving through the VAD to get to work, to get to school, to
18 get to grocery store, to get to whatever they're going to be
19 driving through, those same roads, and, you know, the
20 scenario is the drought and the dust, or the drought and the
21 fertilizer, or, you know, whatever -- the manure -- my
22 grandpa had a manure spreader, you know --

23 Q Did he ever drive it on the road?

24 A Oh, yeah.

25 Q Okay. Well, we --

1 A The farm was on both sides of the road.

2 Q We heard earlier that people don't drive tractors
3 and farm implements to work?

4 MR. ROBINSON: Objection. That's not true.

5 MR. PARKER: Did he say that's not true? If he did,
6 I'll take that as a stipulation and move on.

7 MR. ROBINSON: No, I said that's not what we heard.

8 MR. PARKER: Oh, okay. He was listening to someone
9 different.

10 BY MR. PARKER:

11 Q Let me ask you this. Let me go to the next one.

12 Is -- so tell me what mixed uses you found related
13 to this development from your evaluation of this special use
14 permit, because that's being used as a justification, a
15 conformity thing here.

16 A There's a small church.

17 Q There's what?

18 A There's a small church there.

19 Q Yes, that's Mr. Stinnett's, Reverend Stinnett's
20 church there. And why is that a mixed use?

21 A Because it's not residential.

22 Q So if it's residential it's not mixed use?

23 A Correct.

24 Q Okay.

25 A Because it's all about providing either places to

1 shop or places to work or the potential even for as a place
2 to work. I don't know how many people the church might
3 employ.

4 Q Okay.

5 A But that's not what you would call typically a
6 reasonable expectation of employment.

7 Q Okay. All right. So that's what your -- so did you
8 find -- well, you mentioned that.

9 Are there any industries or employment you found
10 within walking distance to this place?

11 A No.

12 Q All right. How about shopping within walking
13 distance?

14 A No.

15 Q How about restaurants within walking distance?

16 A No.

17 Q So do you have an opinion based upon your training,
18 education, experience, and to a reasonable degree of planning
19 certainty, as to whether this is a mixed-use development?

20 A It is not a mixed-use development.

21 Q Okay. What would you call it?

22 A A suburban major subdivision.

23 Q Okay. All right. So, now, you, in preparing for
24 this, you mentioned to me that you had evaluated the
25 legislation, you had reviewed -- have you reviewed the new

1 legislation?

2 A In depth.

3 Q Okay. And does it have any emphasis -- tell me
4 what -- did you notice any emphasis on it dealing with
5 harmony and compatibility in it?

6 A Yeah, there's been -- there's been a seismic shift
7 in the recognition of the relationship between land use plans
8 and land use decisions.

9 Q Say that again.

10 A There's been a big, big shift in the general
11 assembly's, at least in the law they passed, there's been a
12 big shift in -- in the degree of importance given to local
13 land use plans relative to land use decisions. When I first
14 came into the business in 1979 --

15 Q Yeah.

16 A -- so-called business, there were some parts, well
17 obviously some communities had no zoning at all. People
18 would pass a zoning ordinance with no -- no -- no notion to
19 what they wanted to become when they grew up. They would
20 just strip the road with commercial.

21 Q Right.

22 A And they reserve the areas off the road for
23 residential, and that was their zoning ordinance.

24 Q There was no plan?

25 A There was no plan.

1 Q Okay.

2 A So now there's been this huge shift in acknowledging
3 that zoning ordinances and subdivision activities need to be
4 based on some sort of plan.

5 Q Okay.

6 A And Moore County has a good one.

7 Q Okay. Now, that's based upon your 42 years of
8 experience and reviewing this one?

9 A It's based on what I -- how I've seen the state law
10 evolve over the last 40 years.

11 Q Okay.

12 A And it changed a lot two years ago.

13 Q Okay. So then consistency, I guess, is maintaining
14 decisions consistent with the plan?

15 A Correct.

16 Q Okay.

17 A You're not required to. There is an escape valve.
18 If this board would want to approve of this major subdivision
19 in opposition to their plan --

20 Q Right.

21 A -- they could, but they'd better document it. They
22 better have good reason.

23 Q Okay. Because under the new law that's -- that's a
24 basis for overturning it?

25 A Well, it -- you're the lawyer. I -- I don't -- I

1 don't want to speak to legal issues. I'm just saying when I
2 was an expert witness in Dare County, the land use plan was a
3 big deal for that judge.

4 Q Okay. All right. So let me ask you this,
5 Mr. Harbeck. Do you have an opinion based open your
6 training, education, experience, and to a reasonable degree
7 of planning certainty, as to whether or not this pro --
8 proposed conservation subdivision, whether it will be --
9 whether it is consistent with the Moore County Land Use Plan?

10 A It is not.

11 Q Okay. Do you have an opinion based upon your
12 training, education, experience, and to a reasonable degree
13 of planning certainty, as to whether or not the proposed
14 conservation subdivision would be in harmony with the
15 surrounding neighborhood and compatible with the surrounding
16 neighborhood?

17 A No.

18 Q Why?

19 A Because it's in the middle of an agriculturally
20 dominant area.

21 Q Okay. All right. Now -- okay. So you did have an
22 opinion?

23 A Yes.

24 Q Okay. All right. And that was your opinion you
25 stated?

1 A That was my opinion. I guess I have to say yes or
2 something and then --

3 Q Yeah, that's the lawyer in me coming out.

4 A I'm not the lawyer. Okay.

5 Q Now, do you see -- now, do you see areas of
6 nonconformity with this conservation subdivision plan in
7 relation to the Moore County Land Use Plan?

8 A Yes.

9 Q All right. Now, did you review Nick LaSala's
10 report?

11 A I did.

12 Q Okay. Do you dis -- do you agree or disagree with
13 his analysis of whether this use will be in general
14 conformity with the land use plan?

15 A I agree that it will not be in conformity with the
16 land use plan.

17 Q Okay. Do you have an opinion -- so here's the
18 question. Do you have an opinion based upon your training,
19 education, experience, and to a reasonable degree of planning
20 certainty, as to whether or not this proposed conservation
21 subdivision will be in general conformity with the approved
22 Moore County Land Use Plan?

23 A It --

24 Q Do you have an opinion?

25 A I have an opinion, yes.

1 Q Thank you. And what is your opinion?

2 A My opinion is it would not be in conformity with the
3 Moore County Land Use Plan.

4 Q All right. Now, Mr. Harbeck, did you prepare a
5 report indicating or reflecting your evaluation, your review
6 and your opinions?

7 A Yes, I did.

8 Q Okay. Could you find that for me? I think it's
9 number 69. I have to use the mike. We have to share. No,
10 you gotta stand right there.

11 (Exhibit No. 69 identified.)

12 Q I'm going to show you what has been marked here as
13 Exhibit Number 69, and ask you to examine that and tell me if
14 you can identify it.

15 A Yes, this is my report.

16 Q Okay. And does this report accurately reflect what
17 we've discussed in what you reviewed and what you found in
18 relation to this major subdivision?

19 A Yes.

20 MR. PARKER: I would move to introduce State --
21 Exhibit Number 69 for the board.

22 (Exhibit No. 69 offered.)

23 BY MR. PARKER:

24 Q Okay. Mr. Harbeck, let me ask you this. You've
25 given opinions about this being inconsistent, not compatible

1 with the plan. All right? Let me ask you this. There is --
2 you've described this area as rural agricultural?

3 A In the plan, yes, it is.

4 Q All right. But it's zoned RA-40, which is
5 residential and agricultural 40, meaning homes on 40,000. Is
6 that not inconsistent with your opinion?

7 A Say that last question again.

8 Q I said is that not inconsistent with your opinion
9 that it's not appropriate for here -- I mean, how does the
10 RA-40 work with the residential agricultural in the plan? Do
11 you see my question?

12 A Yeah. It does not work with the plan because RA-40
13 is neither rural nor urban.

14 Q Okay.

15 A The plan is -- is a town and country plan.

16 Q Right.

17 A So the plan really urges developers to locate their
18 developments either in municipalities or in strategic
19 locations of mixed use, possibly a crossroads, and R -- R and
20 A-40 is kind of a misnomer.

21 Q Okay.

22 A Because it's not agricultural.

23 Q Right.

24 A I don't know what they're going to grow on a
25 40000-square-foot lot. That's almost an acre, but, you know,

1 I guess they could grow some green beans.

2 Q Okay. So -- but how does that compare between the
3 two of them? I mean, the RA -- this property is zoned RA-40?

4 A Yeah.

5 Q Right? Okay. But that would allow developments of
6 one acre, or actually a little less than an acre; is that
7 right?

8 A Well, let me back up here a second. There are
9 properties all over this country that are zoned in certain
10 ways.

11 Q Right.

12 A But that doesn't mean that that zoning that they
13 have is their ability to develop it today or tomorrow or the
14 next day.

15 Q Uh-huh.

16 A All the elements need to be in place in terms of the
17 proper infrastructure, the services, the tax concerns, the
18 compatibility with the agricultural environment around it.
19 Those are all valid issues of a land use plan.

20 Q Okay. All right. So -- and -- so what you're
21 saying is the residential/agricultural and the land use plan,
22 you said that's the plan, the RA-40 is the tool to achieve
23 it?

24 A Yeah. The R -- the zoning is a tool. It's just a
25 tool. It doesn't have a brain. The land use plan has a

1 brain.

2 Q Okay.

3 A I mean, maybe that's using the wrong word, but
4 there's a -- there's a sentiment expressed, there's a
5 meaning, there's a vision, there's a -- they have captured
6 what I believe from my experience back here in '98, I believe
7 they have captured in the 2013 plan how the citizens of Moore
8 County feel about their county, and what they'd like to see
9 it look like when it goes forward in the years ahead.

10 Q Now --

11 A The zoning ordinance doesn't do that. The zoning
12 ordinance is a map with lines on it that can easily be
13 changed.

14 Q Okay. Now, let me ask you this. Does that mean
15 then based on your opinion that this tract of land could
16 never be developed based on what you said?

17 A No, it -- the expression in planning is, is it ripe
18 for development.

19 Q Is it ripe?

20 A Is it ripe, r-i-p-e.

21 Q Okay.

22 A It may -- it may some day become developed. I'll be
23 long gone, maybe, I don't know.

24 Q Okay.

25 A I don't know what might happen. Somebody might

1 approve of an extension of a sewage -- according to
2 Mr. LaSala's report, apparently not. There's no intent to
3 provide sewer --

4 Q Sewer?

5 A -- in this area, sewer, or make it part of an urban
6 services area boundary. So it's -- it's not ripe for
7 development right now given it has a water line.

8 Q Only a water line?

9 A It just has a water line.

10 Q Okay. All right. Okay. Thank you very much.

11 MR. PARKER: If I can have just a moment?

12 All right. Okay. That's all the questions I have.

13 You're not done. He may want to ask you questions.

14 MS. GRAHAM: Mr. Robinson, before you start could we
15 just take a ten-minute break, please? I'm sorry, I didn't
16 have my mike on. Could we just have a ten-minute break,
17 please?

18 MR. ROBINSON: Absolutely.

19 MS. GRAHAM: Thank you.

20 MR. ROBINSON: I appreciate it myself. Thank you.

21 (Recess.)

22 MR. ROBINSON: Okay. I need -- Mr. Harbeck, could
23 you come back up?

24 CROSS-EXAMINATION OF GLENN HARBECK BY MR. ROBINSON:

25 Q Good evening, Mr. Harbeck. My name is Nick

1 Robinson, and I'm the attorney for the applicant in this
2 matter.

3 So you're the planning director for the city of
4 Wilmington, and you've been that now for the last ten years
5 or so?

6 A Yeah. I -- I've lived in Wilmington full time since
7 1979.

8 Q Okay.

9 A But I've had my practice -- I would come home there
10 to sleep occasionally.

11 Q Uh-huh.

12 A But for the last ten years I was very pleased that
13 my hometown would invite me to come back and be their
14 planning director, so I thought what a great way to spend the
15 last ten years was planning for my own community, so
16 that's -- that's been a real joy of mine.

17 Q Good. And is it fair to say that in your role as
18 planning director for the city of Wilmington for the last
19 decade that you've been addressing mainly urban planning
20 issues rather than rural planning?

21 A No. I wouldn't say rural.

22 Q Uh-huh.

23 A But I would say issues not unlike what we're facing
24 here, which is, really, it's a combination of suburban and
25 rural, because we've had, you know, New Hanover County is a

1 very urban county.

2 Q Yeah. But are you the planning director for New
3 Hanover County?

4 A I work hand in hand, like elbow to elbow, with, you
5 know, we were once a joint -- a joint agency.

6 Q I understand. But currently you're the planning
7 director for the city of Wilmington; correct?

8 A Yes.

9 Q Yeah. Okay.

10 A I have been -- I retired from that position --

11 Q Oh.

12 A -- end of October, I guess.

13 Q Okay. All right. Well, up until October?

14 A Yes.

15 Q In the last prior ten years you were the planning
16 director for the city of Wilmington?

17 A Yes.

18 Q Okay. And are you being paid to consult with the --
19 Mr. Parker's clients?

20 A Yes, I am.

21 Q Okay. And you mentioned, which was interesting,
22 that you had been involved in Moore County back in 1998 in
23 connection with some consulting; is that correct?

24 A Correct.

25 Q For the last 24 years since 1998, have you been

1 engaged by Moore County for any particular activities,
2 purposes or consultation?

3 A Nancy may have had me come back one other time to do
4 some staff training, but that's -- that would be it.

5 Q But more than 20 years ago?

6 A Yeah, prob -- have to be, because Nancy left the
7 position in 2002.

8 Q Okay.

9 A Went to Columbus County.

10 Q So I want to turn our attention to your written
11 review of the proposed subdivision, and the copy that I have
12 is marked as Exhibit 69, but it's undated, and I'm assuming
13 it's the same one that Mr. Parker handed to me at the last
14 hearing; is that correct, Mr. Harbeck?

15 A I'm pretty darn sure that it's the same report. I
16 haven't changed it.

17 Q Okay. Very good. Thank you. And is that report
18 truthful and complete to the best of your knowledge?

19 A I hope so.

20 Q Good. And so in that report you walked through with
21 Mr. Parker that you set forth the source material that you
22 reviewed in preparing the report; is that correct?

23 A Say that one more time, about source material?

24 Q You -- you set forth a list of the source materials
25 that you reviewed in preparing the report?

1 A Yes. I did not memorize them, but I reviewed them.

2 Q Yes. Right. No, no, I didn't expect that you would
3 memorize them. And you listed seven documents that you
4 reviewed in preparation for this report?

5 A Yes.

6 Q Okay. And is that a complete list of what you
7 reviewed?

8 A I may have done some Google searches on infill
9 development and mixed-use development, again, for the same
10 reasons that I mentioned before, that I just wanted to make
11 sure I had solid references, not just my own opinion.

12 Q And on the first page of your report there's the
13 bullet points of those -- those seven items that you reviewed
14 and --

15 A Correct.

16 Q -- and you can say, yeah, you might have Googled
17 some infill development stuff --

18 A Correct.

19 Q And you looked at the Coates' Canons and Smart
20 Growth and Economic Success; right?

21 Okay. And so would you consider that with the
22 caveat that you added about the Google searches to be a
23 complete list of what you reviewed?

24 A Yeah, I guess so.

25 Q Okay. And -- and one of the points that you make in

1 your report is that you believe that review of mapping
2 information is paramount in importance in land use decision
3 making; is that correct?

4 A I said I think it's important but not necessary. I
5 said in my report, you'll read it carefully, I was -- I was
6 careful about that because I thought it was important. I
7 said that maps can make verbal opinions crystal clear.
8 Maps -- or something to that effect, that make no mistake, if
9 you want to make a point, use a map.

10 And frankly, Mr. Robinson, that's why I took the
11 time to get these maps up here because I felt like, you know
12 what, there's some things that I can say with a map that I
13 can't say verbally. So that's why I did that.

14 Q Yeah, but, I mean, you don't disagree that it's
15 important to -- to review mapping information when discussing
16 zoning decisions?

17 A Yes.

18 Q Yeah. And so can you explain to the board why it is
19 that in your list of documents that you reviewed you didn't
20 include the Moore County zoning map?

21 A Oh, I reviewed it.

22 Q Oh.

23 A I didn't put it on my list there, but that was
24 something I did -- well, I did it again. I did it again
25 yesterday. I may have looked at it once before.

1 Q You may have looked at it once before?

2 A I may have, but that was after I submitted that
3 report to Mr. Parker.

4 Q Right. So in preparing the report it never occurred
5 to you to consult the zoning map for Moore County to
6 determine what the zoning was for the property that is the
7 subject of this proceeding?

8 A I already knew what was zoning was. I already knew
9 that it was zoned for 40,000-square-foot lots, where under
10 the conservation subdivision it could be reduced to any size
11 lot, but this developer chose 20,000-square-foot lots. I
12 know that there's an adjoining 40,000-square-foot number of
13 lots close to this property in the vicinity.

14 Q Uh-huh.

15 A I checked to see if there was any commercial zoning
16 with any -- within a reasonable distance of the property,
17 because I wanted to make sure there wasn't mixed-use
18 development, or even the potential for mixed-use development.

19 So, yes, I did look at the zoning map, but I failed
20 to put it on my list of bulleted items.

21 Q Okay. And you also didn't just fail to put it in
22 your list of bulleted items, you never mentioned it a single
23 time in your six-page report; correct?

24 A I have to think about that.

25 Q Let me take that back, in your seven-page report.

1 A Yeah. I don't know if I did or not.

2 I don't see it written in the -- in the report, but
3 I -- I can tell you that the analysis certainly took into
4 consideration my knowledge of the existing zoning, both of
5 the property and the surrounding properties.

6 In fact, I had this discussion with Michael at one
7 point on the phone about that we saw a piece of property down
8 Union Church Road in one of our conversations and we were
9 trying to figure out what exactly that was, why was it zoned
10 that way. So, yes, zoning was certainly considered.

11 Q But just not mentioned?

12 A I didn't see the need for it because it's -- it was
13 apparent that it's a subdivision.

14 Q Are you familiar with the concept that it's
15 established in North Carolina law that a zoning ordinance has
16 the force of law and a land use plan is a policy document?

17 A That's correct.

18 Q Thank you. So the document that had a -- the force
19 of law in this proceeding is one that you elected not to
20 include in your report?

21 A I wish I could let you put those words in my mouth,
22 but I'm not going to let you do that.

23 Q I'm not --

24 A That's not true.

25 Q I'm deducing it from your testimony, Mr. Harbeck.

1 You didn't --

2 A I think I've said three different ways that I
3 considered zoning, and you're trying to put words in my
4 mouth.

5 Q No, you -- you did not put it in your report,
6 though, did you?

7 A That is true.

8 Q Okay. Thank you. So I want to jump -- you spent a
9 lot of time discussing the finding number five which has to
10 do with general conformity with the land use plan, and I'm
11 going to jump to that one before four.

12 But before I get to that, you mentioned the five
13 findings that are needed for approval of a special use
14 permit, but you confined your commentary in the report
15 essentially to findings four and five, and in your testimony
16 today you said that those are basically performa, or words to
17 that effect?

18 A Performa?

19 Q That they're usually just a given?

20 A Items one, two and three are usually not so much
21 policy related, and the last -- four and five are definitely
22 policy related.

23 Q Okay. So can we conclude that you agree that the
24 first three findings are likely met?

25 A I didn't look at them.

1 Q Okay. So --

2 MR. PARKER: Objection to that. I didn't have a
3 mike on, I'm sorry.

4 MR. ROBINSON: That's okay.

5 BY MR. ROBINSON:

6 Q So were you engaged only to review conformity to
7 findings numbers four and five and not one, two and three?

8 A No. I can tell you what I said. In my experience
9 of the five findings of fact, items four and five are going
10 to be the most germane to the decision as to whether a
11 conditional, quote, or parentheses, special use permit may be
12 issued to approve a major conservation subdivision currently
13 being proposed off Union Church Road; therefore, I have
14 focused my assessment on those two findings of fact.

15 Q Okay. But your testimony a couple of seconds ago
16 was that you did not review items one, two and three with
17 respect to this subdivision?

18 A I read them.

19 Q But did you make analysis and form an opinion with
20 respect to them?

21 A No, because I felt like the -- the crux of this
22 issue is about the special use permit, and the special use
23 permit rides on whether this proposal is in harmony with the
24 area around it and consistent, generally consistent with the
25 Moore County Land Use Plan.

1 Q Yeah, and I get that, and I accept that. I accept
2 that.

3 But as of today through your testimony and your
4 report, it's fair to say, isn't it, Mr. Harbeck, that you
5 have given no expert opinion with respect to compliance with
6 findings numbers one, two and three in connection with this
7 project; is that correct?

8 A No, I do not agree with that, and I'll tell you why.

9 Number one, "The use will not materially endanger
10 the public health or safety." I'm not a public safety
11 specialist.

12 Q Okay.

13 A So as an expert witness, I have no business
14 evaluating public health and safety.

15 Q Except --

16 A Number two, "The use meets all required conditions
17 and specifications." I read the staff report and the staff I
18 think did a pretty good job laying out what conditions and
19 specifications would have to be met if this were to be
20 approved as a major subdivision.

21 So yes, I considered that.

22 Q Okay.

23 A Number three, "The use will not substantially injure
24 the value of adjoining property unless the use is a public
25 necessity." I'm not a real estate appraiser.

1 Q Yeah. So --

2 A Therefore, my expert testimony on injuring the value
3 of the surrounding property would be -- would be of no
4 consequence.

5 Q Agreed. So with regard to findings one and three,
6 you're not an expert in those areas. With regard to finding
7 two, you accept the staff's opinion with respect to
8 conformity with that finding, with that --

9 MR. PARKER: Well, objection to that.

10 THE WITNESS: No, I don't.

11 BY MR. ROBINSON:

12 Q You don't?

13 A I did not -- I did not address those three because I
14 felt like my expert testimony as a planner was relevant to
15 four and five.

16 Q So as a planner you don't think conformity to the
17 specifications and conditions of the zoning ordinance are
18 relevant to your expertise?

19 A As I said, I looked at the staff report and I said I
20 thought the staff did a satisfactory job of listing the
21 standard, almost boilerplate -- I think there was something
22 in there about trees, that there was an additional
23 requirement for the -- that there be a tree every 20 feet or
24 something like that.

25 But other than that particular provision, the -- the

1 staff's assessment of the specifications and conditions was
2 very much boilerplate and I didn't see a need to dwell on
3 that.

4 It's -- I felt like my report needed to be -- I
5 always told my staff be pithy, be pithy, and they would say
6 what's pithy? I say, well, make your points in as few words
7 as possible.

8 Q Yeah, and I'm, you know, I'm not trying to put words
9 in your mouth. I'm just a lawyer for the applicant, and I
10 want to know what issues you've given an expert opinion on.
11 Have you or have you not given an expert opinion on finding
12 number two?

13 A Not in my report, no.

14 Q Okay.

15 A I'm giving it to you right now.

16 Q Which is that it's met?

17 A That -- that I'm -- I'm not --

18 MR. PARKER: Objection to that.

19 BY MR. ROBINSON:

20 Q Well, that's what I'm asking. I want your -- to
21 know whether you're giving an expert opinion on whether or
22 not finding number two is met, and that's a yes or no
23 question.

24 A I think that the -- the findings put forth by the
25 staff are probably boilerplate and in order.

1 Q Okay. Very good. Now, jumping to finding number
2 five, general conformity with the land use plan, and we
3 talked about the -- in some detail with your -- with
4 Mr. Parker.

5 So it requires a conclusion that the use will be in
6 general conformity with the approved Moore County Land Use
7 Plan; is that correct?

8 A That it will not be in conformity.

9 Q Well, the finding number five, in order for an SUP
10 to be approved requires a finding that the use will be in
11 general conformity with the approved Moore County Land Use
12 Plan?

13 A Yes, that is an important point.

14 Q Okay. Yeah. So -- so you -- you understand, and I
15 think we've mentioned this already, as a planner in North
16 Carolina for decades, that -- that the land use plan is a
17 policy document as opposed to the zoning ordinance which has
18 the force of law; is that correct?

19 A That is true. The zoning ordinance is a legislative
20 act.

21 Q Yeah. And so are you familiar with the black letter
22 law in North Carolina, and I'm referring to, as an example,
23 *American Towers vs. Town of Morrisville*, 22 N.C. App 638,
24 2012, that -- and I'm quoting, "The inclusion of a use in a
25 zoning district, even where special use district is required

1 establishes a prima facie case that the use conforms to the
2 comprehensive plan."

3 Are you familiar with that case law?

4 A Yeah, that's the harmony provision, and I'm more
5 than happy to abide by that provision in proving this
6 subdivision as being not in conformity.

7 Q All right. So you agree that from the get-go with
8 it being zoned RA-40, it begins with the presumption that it
9 is in conformity with the land use plan; is that correct?

10 A I'm in agreement that we need to have our facts
11 together to prove that it's not in harmony.

12 Q All right.

13 A And I think we've done that.

14 Q Okay. But even -- even if we didn't -- the
15 applicant did not have the enormous benefit of a prima facie
16 presumption in their favor of consistency, it still doesn't
17 mean that each proposed use has to comply with all policies
18 and objectives of the land use plan in order to be in general
19 conformity; correct?

20 A Each --

21 Q Yeah. So does this subdivision, in order to be in
22 general conformity with the land use plan, have to comply
23 with all policies and objectives of the land use plan?

24 A No, no, I'm not going to pick at nits or cherry pick
25 anything like that.

1 Q Right, because it's general conformity?

2 A But with regard -- talking about the special use
3 permit in the use table, there's an important point to be
4 made there.

5 The fact that the powers that be in Moore County
6 have required major subdivisions to -- to get a special use
7 permit, that's the huge point. That's the elephant in the
8 room. You're picking at, you know, as trivia, and I'm
9 pointing out the elephant in the room is that this county
10 feels very strongly about major subdivisions and where they
11 can be located.

12 Q Well, we'll see about that.

13 A Okay.

14 Q So some -- some land use plan objectives --

15 MR. PARKER: Well, objection to that.

16 BY MR. ROBINSON:

17 Q -- might support creation of housing neighborhoods
18 for citizens, and the same plan might support preservation of
19 farming opportunities; correct?

20 A There's always a balancing of policies, if that's
21 what you're getting at, and I would agree with that. There
22 is a balancing of policies.

23 Q Fair enough.

24 A But I'd be glad to talk to you about affordable
25 housing at length if you want to go down that stream.

1 Q No, I wasn't talking about affordable housing.

2 So is it fair to say that the use of the phrase
3 "general conformity" allows for a valid project to meet some
4 objectives of the land use plan but not all of them?

5 A Hopefully it meets the preponderance of objectives
6 sufficient to be consistent with the plan.

7 Q Okay. And as a planner of some many years of
8 experience and a AICP certification, wouldn't you agree that
9 if a land use plan sets out a rubric for decision makers to
10 determine whether a particular proposed project is consistent
11 with the land use plan, that rubric should be the paramount
12 section consulted to determine whether there is general
13 conformity with the land use plan?

14 MR. PARKER: Objection.

15 THE WITNESS: I would not use the word paramount. I
16 would use it as it is a relevant piece of information that
17 planners need to abide by. When you're processing any land
18 use decision, you want to go by the rule book.

19 BY MR. ROBINSON:

20 Q Yeah, you want to go by the rule book?

21 A I agree with you.

22 Q In -- having been engaged to help this board
23 understand whether or not the -- this project is in general
24 conformity with the land use plan, if there's a rubric for
25 decision making about whether or not it is or is not in

1 conformity with the land use plan, you should follow that in
2 your report; shouldn't you?

3 A Tell me what -- what you mean by a "rubric."

4 Q Okay.

5 A That's not a planning term that I -- I've heard
6 about rubrics, but I'd like to know more about what your
7 assessment is. What's a rubric?

8 Q So you quoted from page 81 of the land use plan when
9 you -- you pointed out that it talks about major subdivisions
10 and whether or not they're appropriate in certain locations.
11 And I think you even read from page 81 in which it said, and
12 I'll recount it now, "However, when development is proposed
13 in the county's planning jurisdiction, efficient use of
14 existing and proposed infrastructure and the preservation of
15 large agricultural areas and/or natural spaces are of
16 paramount importance."

17 Do you recall that?

18 A Yes, and that's where the plan uses the word
19 "paramount."

20 Q Yes, the plan --

21 A Yes.

22 Q -- uses the word "paramount."

23 A Yes.

24 Q And as an aside, I'm going to get to the rubric in
25 just a second, but you seem to have glossed over the portion

1 of that sentence which refers to preservation of natural
2 spaces being of paramount importance; didn't you?

3 A Did I lose sight of it?

4 Q Yeah.

5 A I don't think so.

6 Q You never mentioned it.

7 A I probably didn't mention a lot of things.

8 Q Yeah. Did your report take into account the fact
9 that this conservation subdivision preserves more than
10 50 percent of the acreage?

11 MR. PARKER: Objection.

12 BY MR. ROBINSON:

13 Q Did it?

14 A If I answer the question, yes, the --

15 Q Oh, it did?

16 A Yeah. The -- those statistics are provided in the
17 staff report. I have to -- I'm assuming, you know, the
18 planning director's job is a tough job. I don't discredit
19 the work of a planning director or the staff, whoever may
20 have prepared the report, to do the numbers crunching on what
21 percentage of the site is being left in open space and what
22 percentage is contiguous.

23 I did -- frankly, I did not go back and recrunch
24 those numbers because I'm giving credit to staff where staff
25 is due.

1 Q Okay. But it's fair to say, isn't it, that in your
2 evaluation of whether or not this proposed conservation
3 subdivision is in general conformity with the land use plan,
4 you failed to note that in that sentence that you read, and I
5 just repeated, it says, "when development is proposed in the
6 county's planning jurisdiction, large agricultural areas
7 and/or natural spaces are of paramount importance"; didn't
8 you?

9 A I failed to note it. I guess I fail a lot of things
10 every day.

11 Q Okay.

12 A But that -- I wouldn't consider it a failure. I
13 just --

14 Q But isn't it fair to say that -- that a conservation
15 subdivision that preserves more than 50 percent of the
16 acreage is conserving natural space and that therefore that's
17 a paramount consideration called for by the -- this land use
18 plan?

19 A All right. So --

20 MR. PARKER: Objection.

21 THE WITNESS: Again, getting back to this balancing
22 of interests and what's highest priority and what's lower
23 priority and trying to ferret out what the overall result is,
24 okay?

25

1 BY MR. ROBINSON:

2 Q Okay. So then here's where the rubric comes in.
3 The very next sentence says, therefore, and this is really
4 important, "Therefore, proposed developments and zoning
5 revisions will be analyzed utilizing the following questions
6 to assure consistency with the plan," and then in a yellow
7 box on page 81 they lay out four questions that one is
8 supposed to analyze to determine whether there's consistency
9 with the plan.

10 A Okay.

11 Q Do you agree this?

12 A Yeah, I'm reading it right now.

13 Q Uh-huh. But it's no where in your report; is it?

14 A No.

15 Q So you were engaged to tell this board whether or
16 not this project was consistent with the land use plan,
17 there's a paragraph in the land use plan that tells you what
18 provisions -- what questions have to be asked to determine
19 whether it's consistent with the plan, and you never
20 mentioned that in your report?

21 A No, but I appreciate your bringing it up.

22 Q Sure.

23 A Because this would be useful ammunition.

24 Q I agree. I think we'll get there.

25 So -- so -- but you never mentioned it in your

1 report?

2 A I did not. It's a one hundred and I don't know how
3 many page document.

4 Q Right. Is there any other place in the land use
5 plan that tells you exactly what questions to ask in order to
6 determine whether or not a proposed development is consistent
7 with the land use plan?

8 A I guess not, no.

9 Q Okay.

10 A But I like those questions.

11 Q Well --

12 A I'm glad you pointed them out.

13 Q So the first question is the proposed -- "Is the
14 proposal consistent with the vision themes and policies
15 contained in the plan?" And I understand that it's your
16 opinion that it is not?

17 A Yeah, that's why I like the question.

18 Q Right. And then the next question, "Is the use
19 being considered specifically designated in the plan in the
20 area where its location is proposed?"

21 A Yes, it is. It's not permitted. It's strongly
22 discouraged.

23 Q And that's your testimony?

24 A No, it's written in the plan.

25 Q Just hang on. Let me ask the question.

1 A Okay.

2 Q So you get to number -- to C.

3 A Uh-huh.

4 Q "If the use is not specifically designated in the
5 plan in the area where its location is proposed," as you have
6 said with respect to item B there --

7 A And I said what now?

8 Q You said with regard to item B --

9 A Yes.

10 Q -- that the use that's being considered is not
11 specifically designated in the plan in the area where its
12 location is proposed; correct?

13 A It could be a -- let me think about this.
14 Interesting way of structuring questions. You're doing a
15 good job.

16 Q Thank you. I appreciate that.

17 A Your questions are like there's always two tails to
18 them.

19 Q Okay.

20 A So I'm trying to ferret through what the real tail
21 is.

22 Q Let me -- maybe I can strip it down simpler. So the
23 first question that the ordinance, the land use plan tells
24 you to ask --

25 A Yeah.

1 Q -- is, is the proposal consistent with the vision,
2 themes and policies, you say it is not.

3 A Right.

4 Q Then the next one it tells you to ask is, "Is the
5 use" being -- "that is being considered specifically
6 designated in the plan in the area where its location is
7 proposed?"

8 A Right.

9 Q And I understood you --

10 A It's not.

11 Q -- to say --

12 A Okay. So now get to C.

13 Q So now you get to C. And that says, "If the use is
14 not," in other words, if the answer to question B was no, "If
15 the use is not specifically designated in the plan in the
16 area where its location is proposed, is it needed to service
17 such a planned use, or, could it be established without
18 adversely altering the recommended land use and the character
19 of the area?"

20 A Hmm.

21 Q And you did not analyze that question?

22 A That's another one that would work in opposition to
23 the proposal.

24 Q I didn't ask you that question.

25 A Okay.

1 Q But you did not analyze that; did you?

2 A No, and I didn't go through all the 80 different
3 actions and recommendations that Mr. LaSala did, either, and
4 he did a good job.

5 MR. PARKER: Objection.

6 BY MR. ROBINSON:

7 Q Yeah, but those are different. Those are different.

8 A Uh-huh.

9 Q Because these are the only four questions that you
10 are invited to examine to determine the thing that you're
11 giving your expert testimony on; isn't that correct?

12 MR. PARKER: Objection.

13 BY MR. ROBINSON:

14 Q Okay. So we get to the fourth factor, or question,
15 "Will community facilities and streets be available at
16 applicable standards to serve the use proposed for the
17 property?"

18 You agree that there are community facilities and
19 streets available at applicable standards to serve the
20 proposed --

21 A There's a water line.

22 Q Yeah.

23 A Says community facilities, plural, and streets, so
24 there is a street, Union Church Road, and there is a
25 facility, a water line.

1 Q Okay. So would you agree that if it can be
2 established that this-- that this project could be
3 established without adversely altering recommended land use
4 and the character of the area, that it should be approved as
5 consistent with the land use plan?

6 A No, it's -- that's wholly inconsistent. That's
7 completely wrong.

8 Q That is exactly what item C says.

9 A Yeah, but the -- what I'm saying is item C runs
10 completely contrary to this development. The point --

11 Q No, no. Okay.

12 A All the points you're making are working against
13 you.

14 Q No, I accept your point that you disagree.

15 MR. PARKER: Objection. Let him answer the
16 question.

17 THE WITNESS: Okay.

18 BY MR. ROBINSON:

19 Q I accept your point that you disagree with that.

20 A Yeah.

21 Q But I'm asking you a different question. I'm asking
22 you a very succinct question, which is, if it is established
23 that this project can be established without adversely
24 altering the recommended land use and character of the area,
25 then it should be deemed consistent with the land use plan?

1 A So, you're positing a recommendation on my part and
2 then asking me if I agree with it?

3 Q Yes.

4 A I can't -- I can't be allowed to be twisted like
5 that.

6 Q Well, okay. We'll see.

7 MR. PARKER: Well, objection to that.

8 BY MR. ROBINSON:

9 Q Now, in your 40 years of experience can you cite a
10 single case in which a court concluded that a residential use
11 in an area zoned for such use prior to adoption of the
12 comprehensive plan was prohibited for failure to conform with
13 the comprehensive plan?

14 A Yes, sir, many.

15 Q What are they?

16 A Right now in my home county there have been several
17 residential developments proposed in the unincorporated
18 county that have been turned down by the board of
19 commissioners --

20 Q Okay. Yeah --

21 A -- because they did not conform with the county's
22 comprehensive plan.

23 Q Okay. I'll ask the question again. Can you cite a
24 single case in which a court concluded that residential use
25 in an area zoned for such use prior to the adoption of the

1 comprehensive plan was prohibited for failure to conform to
2 the --

3 MR. PARKER: I'll object to that. He's not a
4 lawyer.

5 THE WITNESS: I was going to say the same thing.

6 BY MR. ROBINSON:

7 Q So the answer is no?

8 A Yes, I'm not an attorney.

9 Q Okay. Do you think that your opinion about
10 conformity with the Moore County Land Use Plan should
11 supersede that of the professional planning staff of Moore
12 County?

13 A I think that reasonable people can have differing
14 opinions, and I have a different opinion as to whether this
15 proposal is consistent with the Moore County Land Use Plan.

16 Q Okay. With regard to --

17 A By the way, I didn't -- I didn't -- you know, one of
18 the things about special use permits, and I'll commend the
19 county staff for this, too, we planners know that we're not
20 supposed to offer an opinion about items that come before us
21 outside of an evidentiary hearing for a special use permit.

22 Q Right.

23 A So I commend the Moore County staff for writing
24 their staff report in a way that presents the option to the
25 board as to whether they approve or deny this major

1 subdivision. And that's the right thing to do. And I -- I
2 agree with the county staff that they refrained from making a
3 specific recommendation, which would have been inappropriate
4 outside an evidentiary hearing.

5 Now, add to that, however, the commentary offered
6 under point five would lead you to believe that the staff
7 supports it, which is where the disagreement occurs.

8 Q Okay. Is the -- is my little packet of exhibits
9 still up there on the witness stand? Right there in front of
10 the microphone? Very good. Thank you.

11 If I could ask you to turn to tab 4 there. And
12 members of the board, you'll have that tab as well.

13 That is a one-page aerial photograph which depicts
14 58 adjacent nearby residential homes.

15 Do you see that in the -- outlined in blue is the
16 property that is proposed for subdivision in this proceeding?
17 Do you see that?

18 A Yes, I do.

19 Q Okay. Have you ever been to the site?

20 A Yes.

21 Q Okay. When?

22 A Last time I was here.

23 Q Okay.

24 A I did not visit it today.

25 Q Did you visit it before or after you wrote your

1 report?

2 A Let me think about that. I honestly don't recall
3 whether it was before or after. I felt like I visited the
4 report [sic] because I looked at it using --

5 Q Uh-huh.

6 A -- various forms of aerial photography and zooming
7 in with aerials and like a flyover, and then certainly read
8 the staff report and looked at the wetlands. So I felt like
9 I knew the site before I visited, but I did want to take the
10 time to visit the site.

11 Q Yeah. So would you say that these 58 single-family
12 residences out here in the, basically the exact same location
13 as this proposed subdivision is urban sprawl that's contrary
14 to the land use plan?

15 A I would say that the overall outcome for Moore
16 County over an extended period of time, if a pattern like
17 that continued unabated, it would result in a very bad
18 sprawling pattern with lots of traffic.

19 Q And so do you know how many acres in Moore County
20 are dedicated to the rural agricultural category from the
21 future land use map?

22 A No, I do not.

23 Q Okay.

24 A I can look at it visually, and that's why maps are
25 so important is because you can draw conclusions maybe even

1 better than you can if you look at raw numbers.

2 Q Can I ask you to turn your attention to what -- the
3 exhibit that's behind tab 8?

4 A Okay. Have to pull out my helpers here.

5 Q Yeah, I got mine on, too.

6 A Okay.

7 Q So this is a copy of the 2013 future land use map
8 that you referred to with the difference being that there are
9 two pie charts in the bottom left that have --

10 A This is actually not the same map. This is a --
11 another map which I also looked at.

12 Q Yeah.

13 A This is the combined municipal and county future
14 land use plan. The one that I put on the screen was just the
15 county's because I felt like this is a county decision.

16 Q Okay. Yeah. But they have the same future land use
17 categories and they show the same rural agricultural area;
18 correct?

19 A Okay.

20 Q Yeah.

21 A Okay.

22 Q So if you look at the -- at the two boxes with the
23 pie charts in them, and I'm not asking you to -- to calculate
24 this, but I just want to ask you your perspective on it.

25 The top box says that -- shows that there are

1 approximately 295,000 acres in Moore County that are
2 dedicated to the RA uses allowed on the future land use map,
3 and there are approximately 355,000 acres in Moore County
4 that are not.

5 So approximately 66 percent of the county is
6 available for rural agricultural uses.

7 A Uh-huh.

8 Q And this project comprises 70 acres within what is
9 shown as the rural agricultural area?

10 A 73 acres, I guess.

11 Q In Moore County. Right. So is it your opinion that
12 approving this subdivision on this 70 acres is going to
13 render the county incapable of preserving the rural character
14 and the other balance of the 296,000 acres that are available
15 to do that?

16 MR. PARKER: Objection.

17 BY MR. ROBINSON:

18 Q Well, that's a tough question.

19 A I'll answer the question because I think it's a
20 warped question.

21 Q Well --

22 A First of all, how much land does a farmer need to
23 have a viable agricultural crop relative to how much does a
24 homeowner need to put a home on it?

25 So comparing the needs of farmers relative to the

1 needs of a typical homeowner is an odd ball comparison to
2 start with.

3 Q That's not -- that's not the question that I'm
4 asking.

5 A Right. Okay. And then one of the ethical points
6 that a planner has to abide by is we -- we are obligated to
7 pay attention to the long-range consequences of short-range
8 decisions.

9 Q Sure.

10 A So what we're talking about here is an incremental
11 decision. It's an incremental decision on a path towards
12 something that could be quite undesirable.

13 Q Yeah, I accept that. You're looking at the slippery
14 slope if you -- if you allow it in this case it might happen
15 more.

16 A We only need to look around the country, community
17 after community after community, to see the pattern that
18 happens.

19 Q Well, let's focus on Union Church Road in Moore
20 County, though.

21 Wouldn't you agree that if you were going to have to
22 choose from among the land that is shown in the residential
23 agricultural area on the future land use map where to put
24 residences, that it would make sense to put them in the
25 portion of the RA area that is already zoned for residential

1 uses like this one?

2 MR. PARKER: Objection.

3 THE WITNESS: No, I would not agree with that,
4 because, again, the zoning is -- zoning is a very temporary
5 bird. It's something that can be changed with the stroke of
6 a pen, and it's made that way on purpose because conditions
7 change.

8 BY MR. ROBINSON:

9 Q So do you know when this land was zoned RA-40?

10 A I'm not going to say specifically because I do
11 recall reading that somewhere, but I'm not going to say
12 because I don't remember specifically.

13 Q Okay.

14 A There's something else I want to say about that,
15 though.

16 The best place to put development is where there
17 are -- there's sewer or the promise of there being sewer
18 through the services boundary. That's more important -- you
19 know --

20 Q Yes.

21 A -- one of the tenets of planning is that water,
22 sewer and roads are more significant to the future growth of
23 an area than any zoning map will ever be, any zoning map or
24 subdivision regulations will ever be. Water, sewer and
25 roads, particularly sewer, sewer's the key, sewer --

1 Q So do any of those houses around this property, the
2 50 acres shown on that tab, do any of them have municipal or
3 county sewer?

4 A No.

5 Q So I guess all of those violate the land use plan?

6 A Well --

7 MR. PARKER: Objection.

8 THE WITNESS: I don't think I'm here to try to judge
9 the past.

10 BY MR. ROBINSON:

11 Q Oh, okay.

12 A I'm here to look at the future, and that's what
13 planners do.

14 Q All right. All right. So is it your position then,
15 Mr. Harbeck, that in determining whether the proposed homes
16 in this project will be in harmony with the surrounding area
17 and the surrounding neighborhood, that you want this board to
18 just ignore the other 58 houses that are nearby?

19 MR. PARKER: Objection.

20 THE WITNESS: That's -- the nature of your questions
21 are constantly, constantly putting words in my mouth.

22 BY MR. ROBINSON:

23 Q I'm just trying to figure out what you're saying.
24 You're saying that this --

25 A I'm not saying it, you're saying it.

1 Q This project -- you are -- you have opined that this
2 project does not meet the fourth finding because it is not in
3 harmony with its surrounding, and all I'm asking you are you
4 just going to ignore the 58 other single-family houses that
5 adjoin or are nearby this project and say --

6 A My report is clear that this is not infill
7 development.

8 Q I'm not asking about infill development.

9 A Well, that's what's germane to this question.

10 Q I am not asking you about infill development. I'm
11 asking you about your expert opinion recently tendered saying
12 that this project is not in harmony with its surrounding
13 neighborhood.

14 How can you say that when there are 58 other
15 single-family residences right next door?

16 A There's also a voluntary agricultural district that
17 this property is affected by, which is very significant.

18 Q So you're saying that the --

19 A It's -- you balance.

20 Q So you're saying that the other residential houses
21 all around this neighborhood are not to be considered in a
22 determination of whether or not this neighborhood is in
23 harmony with its surroundings?

24 A No, I would not say that.

25 Q They should be considered --

1 A You're saying that, but I wouldn't say that.

2 Q Okay. They should be considered?

3 A I wouldn't say that.

4 Q Well, you're saying they shouldn't be considered and
5 you're also saying that they should be considered. I don't
6 know which it is. Should they?

7 A I'm trying to figure out what point you're trying to
8 make.

9 Q I think it's pretty clear. There are 58
10 single-family residences that are very near this residential
11 subdivision.

12 A Right.

13 Q You have opined that this proposed subdivision is
14 not in harmony with its surrounding neighborhood.

15 A I have opined that, thank you.

16 Q Yes, you have.

17 A But then you can take it a step farther.

18 Q So how can you opine that it's not in harmony with
19 its surrounding, when what it's surrounded by is other
20 single-family residences?

21 A My opinion on the whether this is in harmony with
22 the surrounding area is based on many other factors other
23 than those single-family homes you're pointing out, so we
24 don't hinge a decision on one factor.

25 Q The language of the fourth finding is, "Will the use

1 be in harmony with the surrounding area and compatible with
2 the surrounding neighborhood."

3 So are you -- are you or are you not taking into
4 account whether or not this is compatible with the
5 surrounding neighborhood the fact that there are other
6 previously existing single-family residential dwellings in
7 the neighborhood?

8 A The development is not in harmony with the area in
9 which it is located, correct.

10 Q Okay. Are you aware of any reported North Carolina
11 court cases in which a residential use that conforms with the
12 density that's allowed under the zoning ordinance was found
13 not to be in harmony with the surrounding area for purposes
14 of the harmony standard?

15 MR. PARKER: Objection. I have the case right here.

16 MR. ROBINSON: I didn't ask Mr. Parker.

17 THE WITNESS: I'm not aware of that because I'm not
18 an attorney. I don't review case summaries like a land use
19 attorney might.

20 BY MR. ROBINSON:

21 Q Okay. So your opinion, then, about whether or not
22 it's --

23 A There you go.

24 Q Yeah, your opinion about whether or not it's in
25 harmony --

1 A My opinion again.

2 Q -- cannot take into account legal requirements; is
3 that what you're saying? Because you're not a lawyer?

4 MR. PARKER: Objection.

5 THE WITNESS: I think legal requirements can always
6 have a -- have a -- have a place in decisions. That's why
7 we're here. This is a legal proceeding.

8 BY MR. ROBINSON:

9 Q But you're not a lawyer.

10 A It's quasi-judicial.

11 Q Right, but you're not a lawyer; correct?

12 A I'm not a lawyer.

13 Q Right. So in order to offer --

14 A I'll speak to what I know about.

15 Q In order to offer an effective opinion about
16 harmony, wouldn't one need to know whether or not a court
17 would actually say that it is in harmony because it's allowed
18 under the zoning ordinance?

19 A That would be nice, yeah, would be nice to know
20 that.

21 Q Thank you. With respect to this property being in a
22 zoned RA-40 district, is it your opinion that because the
23 future land use plan shows that land as being in a
24 residential agricultural district that it therefore is
25 prohibited from being used for the purposes allowed in an

1 RA-40 district?

2 A I think prohibited is an awfully strong word.

3 Q Okay.

4 A I think it's recommended against, strongly
5 discouraged, is what the word of the land use plan says.

6 Q Even though it is allowed as a use in the zoning
7 district?

8 A Like I said, there's -- there's properties, millions
9 of acres of properties all over the country that are zoned a
10 certain way that that doesn't mean that they're ripe for
11 development today or tomorrow.

12 Q But don't you agree that it is the law in North
13 Carolina that a land use plan is a policy guide and a zoning
14 designation has the force of the law?

15 MR. PARKER: Objection.

16 THE WITNESS: You can say that over and over again,
17 but it's the land use plan that is the controlling instrument
18 when you're making decisions about what proper land uses
19 ought to be going forward.

20 BY MR. ROBINSON:

21 Q I won't belabor this point much further, but you --
22 you -- when you were asked your opinion about the harmony
23 standard, you opined that it was, this project is not in
24 harmony because it was in an agriculturally dominant area?

25 A Among other reasons, yes.

1 Q But that didn't take into account all of the other
2 houses around it; did it?

3 A Yeah, I guess it did, because I was aware that those
4 houses existed, but that doesn't make this right because
5 there's already a house there, or --

6 Q Well, I'm not asking you if it makes it right. I'm
7 asking you if it's in harmony.

8 A No, it's not.

9 Q Yeah.

10 A But that's the one point you've been hitting on over
11 and over and over again.

12 Q Yeah, I agree. It's important, it's a very, very
13 important point.

14 A Yeah.

15 MR. ROBINSON: Okay. Those are my questions for
16 now. Thank you.

17 THE WITNESS: Thank you.

18 MR. PARKER: Thank you. I have a few questions to
19 follow-up on.

20 REDIRECT EXAMINATION OF GLENN HARBECK BY MR. PARKER:

21 Q Mr. -- Mr. Harbeck, you were -- he was asked you
22 about number two, the reaching specifications and stuff like
23 that, specifics?

24 A Yes.

25 Q All right. You didn't evaluate the plat that was

1 submitted with this, did you, for the --

2 A No, I did not evaluate the plat. I was aware but I
3 certainly saw where the open space areas have been outlined,
4 and general labeling of wetlands, and general layout of the
5 lots.

6 Q Okay.

7 A Location of the driveway access. But I didn't dwell
8 on it.

9 Q And you weren't aware of the errors in the labeling
10 and the notations on that?

11 MR. ROBINSON: Objection.

12 THE WITNESS: I was made aware of shortcomings in
13 the plan when Mr. Gregory gave his testimony.

14 BY MR. PARKER:

15 Q Okay. All right. Thank you. Now, let me ask this.
16 When we go back to his questions about this, in number -- did
17 you mark the one with the 58 houses?

18 MR. ROBINSON: Not yet, but I can.

19 MR. PARKER: Well, I mean, I don't care --

20 MR. ROBINSON: I mean, at the end of the night I'm
21 going to mark everything that's in this packet.

22 MR. PARKER: Okay.

23 MR. ROBINSON: But you can refer to it as --

24 BY MR. PARKER:

25 Q Going back to the 58 house ones, are you aware that

1 north of Union Church Road on this map is RA zoned land not
2 RA-40? Were you aware of that?

3 A Yes, I think it -- I was aware that the zoning
4 changed across the street.

5 Q Okay. Do you know how many of these people were kin
6 people who cut off sections of land for their families?

7 A No, I don't know that.

8 Q Have you ever met the Hendersons? There's about 20
9 of them up there who all have houses there.

10 A I -- I have not.

11 Q Okay. All right. So thank you for that.

12 All right. He asked you about -- let me ask you
13 this. Is there a difference between the density at a half
14 acres for 53 houses and the ones that are shown here? Is
15 that relevant to your consideration? In the subdivision --

16 A Whether the lot area is distributed, you know, in
17 its entirety to an individual home or whether it's set aside
18 for open space, the density overall is -- if you're looking
19 at that in terms of math, the density would be the same.

20 Q All right. Are you aware of a case called
21 *Petersilie V. Boone Board of Adjustment* that -- that allowed
22 the denial of a special use permit for an apartment house in
23 a single-family area?

24 A No, I'm not, for the same reason I would answer
25 Mr. Robinson's questions --

1 Q I got another one.

2 A -- case law.

3 Q I got another one for you like that. Are you aware
4 of *Davidson County Broadcasting vs. Iredell*, that held that
5 it was permissible to use plan consistency as a special use
6 permit standard in order to -- to guide the question of
7 harmony in the area?

8 A I would hope so.

9 Q Yeah.

10 A I was not aware of that, but that's perfectly
11 logical.

12 Q Okay. All right. Okay. That's what I wanted to
13 know about that.

14 So let me ask this. Going back to -- going back to
15 the questions of the rubric that he referred to, I actually
16 liked the rubric. I read over that this morning. I want to
17 go back to that. Do you have it right there?

18 A I do.

19 Q Let's ask these questions that the land use plan
20 says that Mr. -- I want to ask you the question, but I want
21 you to answer it, rather than me trying to put the answer for
22 you. Can you do that?

23 A Yes.

24 Q Okay. Is the proposal consistent with the vision,
25 themes and policies contained in this plan?

1 A Absolutely not, because the vision, themes and
2 policies are overwhelmingly clear.

3 Q Okay. And those themes are the ones that we've
4 discussed?

5 A Yes.

6 Q Okay. Is the use being considered specifically
7 designated in the plan in the area where its location is
8 proposed?

9 A No. There's no specific opportunity for a major
10 subdivision at this location in the plan.

11 Q Okay. It's allowed with a special use permit, or a
12 conditional use is what it was under the zoning ordinance; is
13 that right?

14 A Yes. And the permitted use table, which is an
15 entire chapter in the UDO, if you look under major
16 subdivisions, and you look down the column of districts, you
17 will find the major subdivisions have a C in that column,
18 which, under the old language of the ordinance was a
19 conditional use permit. Under the new language it's a
20 special use permit, but the C is still used in the table.

21 Q Okay. If the use is not specifically designated in
22 the plan, in the area, is it needed to service such a planned
23 use, or could it be established without adversely altering
24 the recommended land use and character of the area?

25 A No. What we're talking about here is that the use

1 does adversely alter the recommended land use and character
2 of the area.

3 Q Okay. Why do you say that?

4 A Well, again, the primary thrust would be it's an
5 area that's not served by urban services. It's got a water
6 line, but it's not served by services. It's in the middle of
7 an otherwise, as far as I can tell, a healthy agricultural
8 area. It -- it would just create conflicts between
9 activities in the area and single-family residences.

10 Q Okay.

11 A Not unlike many other rural counties.

12 Q Okay.

13 A If that were to happen.

14 Q Okay. Will community facilities and streets be
15 available at applicable standards to serve the use proposed
16 for the property?

17 A No. I would say no, because there's no -- there's
18 no consideration whatsoever given to pedestrians or
19 bicyclists. There is a -- there's a public school, I
20 understand, two miles away, I believe?

21 Q Three -- I think it's three -- yeah, maybe two.

22 A Might be the middle school, if I'm not mistaken?

23 Q That's right. You're right.

24 A That is sort of within bicycling distance. I mean,
25 parents have gotten very conservative these days. They want

1 to chauffeur their kids everywhere. But you could
2 conceivably, if you had a decent bike path, you could
3 conceivably ride a bicycle to that school. But there's no
4 intent here, there's no -- no discussion, no mention, no --

5 Q Yeah.

6 A -- no consideration for -- this is all
7 automobile-oriented development.

8 Q Right. All right. So let me ask this. Mr. --
9 Mr. Robinson asked you so what's the harm in taking this one
10 little 73 acres to the other 290,000 that we have of farm
11 land.

12 Let me ask this. When you go in and change this,
13 does it change the future look at zoning in every -- around
14 it?

15 A It is an incremental intrusion that will be
16 self-supporting. Every time you add, it creates a kind of a
17 momentum for sprawl.

18 Q Right. Have you ever heard the term "watershed
19 moment"? Do you know what that means?

20 A Yes.

21 Q What's it mean?

22 A A watershed moment is a critical point in time when
23 you have to make a choice, and the way watersheds work,
24 sometimes there's a ridge in the, either -- if the drain of
25 drop falls on this side it goes to this stream, if it drops

1 on that side it goes to that side.

2 Q Right.

3 A So a watershed moment is which way is that
4 rainfall -- which way is that drop of rain going to go.

5 Q And this decision here can totally change the
6 character of this community forever; is that a -- do you
7 agree?

8 MR. ROBINSON: Objection.

9 THE WITNESS: Houses that are built oftentimes
10 remain, yes.

11 BY MR. PARKER:

12 Q Okay.

13 A Most often. I don't know of too many that go away
14 quickly.

15 MR. PARKER: All right. That's all.

16 MR. ROBINSON: Just a quick follow-up.

17 RECROSS-EXAMINATION OF GLENN HARBECK BY MR. ROBINSON:

18 Q Mr. Harbeck, this will be the last of it. But you
19 acknowledge, don't you, that there are many goals and
20 recommendations and actions in the land use plan that are
21 entirely consistent with this proposal; don't you?

22 A Many?

23 Q Yes.

24 A There are a couple.

25 Q A couple?

1 A Yeah.

2 Q That's all?

3 A That's not unusual.

4 Q Okay. So -- thank you.

5 A Yeah.

6 MS. LELAND: Mr. Parker, who's your next witness?

7 MR. PARKER: That's what I was going to look for.

8 MS. LELAND: Okay. Chair Graham, may I run to the
9 restroom?

10 MR. PARKER: Well, before --

11 MS. LELAND: -- run to the bathroom.

12 MR. PARKER: Ms. Leland, if you could -- I know
13 you -- I want to go, too. So here is my thing. I spoke to
14 Mr. Robinson before. I think this is my last witness, but I
15 need to go through, and we need to verify all of the exhibits
16 and that they have been properly introduced. Normally in a
17 real trial I do that right before I rest.

18 Mr. Robinson is in agreement that we can do that at
19 some point in time this evening in case there's something we
20 got to argue about we can come back and do it before the
21 court, I mean, before the commissioners.

22 But I -- I'm prepared to rest if we can work out
23 something about being able to review those exhibits and make
24 sure everything that I want is in. And I can do that off the
25 record if he's agreeable to it, or if you are. So there you

1 go.

2 MR. ROBINSON: I'm --

3 MS. LELAND: So you're not going to call one more
4 witness, or you are?

5 MR. PARKER: I do not anticipate calling one more
6 witness.

7 MS. LELAND: Okay.

8 MR. PARKER: I had a couple of my clients who I've
9 been trying to get up with, and I was looking to see if I
10 could recognize them here because I just want to make sure
11 they're okay with not testifying, but I haven't seen them, so
12 that was my only concern about that.

13 I intend to offer -- because with the standing issue
14 now, I can use that later with the supplement in the record.
15 So at this point I don't intend to call anybody else.

16 Oh, wait, I do intend to call Nick LaSala.

17 MS. LELAND: I thought you did.

18 MR. PARKER: Good Lord. Oh, thank you. You --
19 thank you very much. He's over here just quiet as a mouse.
20 So --

21 MS. LELAND: All right.

22 MS. GRAHAM: Let's take a ten-minute break.

23 MS. LELAND: Okay.

24 MR. PARKER: Thank you.

25 (Recess.)

1 MR. PARKER: Next witness is Nick LaSala.

2 Okay. All right. May I proceed, Ms. Leland? Thank
3 you.

4 NICHOLAS LASALA, JR.,
5 being first duly sworn, testified as follows on DIRECT
6 EXAMINATION BY MR. PARKER:

7 Q Sir, would you state your name and occupation for
8 the commissioners, please?

9 A Nicholas LaSala, Jr. And I'm currently a farmer,
10 but I'm retired Army.

11 Q Okay. And Mr. LaSala, what did you do in the Army?

12 A So I was an infantryman, but then I was also a
13 comptroller.

14 Q What --

15 A Comptroller in the Army is somebody who deals with
16 budgets.

17 Q Okay. And what did you -- now, what type of
18 education have you had to prepare you for your career?
19 Where -- where did you go to school?

20 A So I have a bachelor's in business management, and
21 then I have two master's degrees, one in, master's in
22 business and one in public administration.

23 Q Okay. And did you have any emphasis in the public
24 administration master's program?

25 A No, no emphasis.

1 Q Okay. All right. Now, and you went into the
2 military and what did you do there as a comptroller?

3 A Well, essence of comptrollership is problem solving.
4 It's not just -- it's not crunching numbers. It's really how
5 do you -- how do you take the annual appropriations and the
6 annual National Defense Authorization Act and apply it to the
7 National Defense Strategy, which is a policy document, and
8 the army policy, or the army strategy, and then the U.S.
9 code, which are the general statutes, essentially, and the
10 local regulations. So either department of defense
11 regulations, Army regulations, and you have to manage that
12 environment to make sure that you're spending what we call
13 the right color of money and the -- the commissioners
14 probably would understand that, because you have specific
15 dollars for specific things.

16 Q Okay.

17 A So you have to make sure that all those line up.

18 Q Okay. Where did you get your master's degrees and
19 your bachelor degrees from? I don't think I asked you that.

20 A Bachelor's degree was at Norwich University in
21 Vermont. It's a military school. And then at Syracuse
22 University. It was a funded program by the Army to get two
23 master's degrees before I became a comptroller.

24 Q Okay. And so both of those came from Syr -- when
25 you said Syracuse?

1 A Yeah, both came from Syracuse University. I did
2 them in 14 months.

3 Q Okay. All right. You did two master's degrees in
4 14 months?

5 A Yes, sir.

6 Q Okay. How long did you spend in the Army as a
7 comptroller?

8 A A little over 17 years.

9 Q Okay. And as the comptroller did you do any type of
10 policy analysis or anything of that nature?

11 A Yeah. Like I mentioned earlier, you know, every
12 year a new document comes out, a new budget document, and it
13 has lots of new information in it. But then there's also the
14 national -- the National Defense Authorization Act, and you
15 have to marry those two together, and then you also have to
16 overlay, like I was saying, Army policy, Department of
17 Defense policy, and then local regulations.

18 Q Okay. And then -- and when you did that did you
19 ever make presentations on those to anyone on your findings?

20 A Yes, sir, many times. Most of the -- most of the
21 presentations were to senior ranking officers, and as I
22 progressed in rank, those officers and leaders, civilian
23 leaders in the government became more and more senior rank up
24 to the point where we had to brief -- I personally briefed
25 members of the Senate Armed Services Committee, the House