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IN THE COURT OF COMMON PLEAS IN AND FOR
THE COUNTY OF MONTGOMERY, PENNSYLVANIA
ORPHANS' COURT DIVISION

IN RE: : NO. 58,788
THE BARNES FOUNDATION, :
a corporation :

PETITION TO AMEND CHARTER AND BYLAWS

Courtroom A
Tuesday, September 21, 2004
Commencing at 9:40 a.m.

MORNING SESSION

Pamela M. Moran
Registered Professional Reporter
Montgomery County Courthouse
Norristown, Pennsylvania

20

BEFORE: THE HONORABLE STANLEY R. OTT, JUDGE

21

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1

COUNSEL APPEARED AS FOLLOWS:

2

RALPH G. WELLINGTON, ESQUIRE
THE HONORABLE ARLIN M. ADAMS
CARL A. SOLANO, ESQUIRE and
BRUCE P. MERENSTEIN, ESQUIRE
for the Petitioner, The Barnes
Foundation

5

6

JERRY PAPPERT, ESQUIRE
Attorney General

7

and

LAWRENCE BARTH, ESQUIRE
Deputy Attorney General
for the Commonwealth of Pennsylvania
as parens patriae for charities

8

9

10

TERRANCE A. KLINE, ESQUIRE

HOWARD MASON CYR, III, ESQUIRE

11

PAUL M. QUINONES, ESQUIRE

for the Intervenor, the Students of
The Barnes Foundation

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PETITIONER'S

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66 Appraisal by Masterson
Gurr Johns, Inc. 95

20

21

22

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1 THE COURT: Preliminarily, what
2 I'd like to do is remind the audience -- and I believe
3 there are signs outside, but I like to say this. If
4 you've got a cell phone, turn them off. If they go off,
5 we're going to take them. That ought to be incentive
6 enough to do that. I would appreciate that very much.

7 Counsel, preliminarily, today's
8 hearing has, of course, been scheduled to address the
9 issues which I indicated in my opinion dated January 29,
10 2004 still need to be addressed.

11 And we've had, obviously, a number
12 of in camera discussions. I believe everybody knows
13 where we're going, so I'm not going to belabor the point.

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14 I do want to give the parties an
15 opportunity to address an opening statement, and so I
16 turn to the Foundation and ask if they'd like to do that.

17 MR. ADAMS: Thank you, Your Honor.
18 With submission to the Court, it's always an honor to
19 appear before you and your colleagues.

20 In the second amended petition,
21 which the Barnes Foundation filed in October of 2002 to
22 amend its charter, it sought two fundamental changes to
23 the Indenture and bylaws: First, to increase the size of
24 the Board from 5 to 15 trustees together with certain

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1 administrative clarifications; and, second, to relocate
2 the Foundation's principal gallery from Merion to the
3 Benjamin Franklin Parkway.

4 The Court, as you know, held four
5 days of hearings in December of 2003, and in January of
6 this year issued its initial decision.

7 The Court concluded that the
8 Foundation had met its burden of establishing under the
9 doctrine of deviation that Barnes could not have foreseen
10 the complicated, competitive and sophisticated world in
11 which nonprofits now operate, nor the range of expertise
12 and influence that the members of the governing boards
13 must now possess. You, therefore, concluded that the
14 expansion of the Board of Trustees was not only
15 appropriate but necessary.

16 Second, the decision of the second
17 major issue, relocation of the gallery to the Parkway,
18 was not to be decided at that time. But you concluded,

23 the Foundation?

24 And, in that regard, you asked

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1 specific sub-questions:

2 A, could fifty million dollars or
3 more be raised for the Foundation's endowment through the
4 sale of non-gallery artwork or the Ker-Feal property in
5 Chester County.

6 You asked if adequate capital
7 could be raised by selling non-gallery assets or
8 deaccessioning, which is the language of the art world,
9 or do the general principles that cause museums to avoid
10 that practice apply to educational institutions like the
11 Barnes, and, if so, should those principles have to yield
12 to the reality of the Barnes' need for funding.

13 You also asked for assurance that
14 if it, ultimately, did approve the relocation of the
15 gallery, whether the proposed hundred million dollars for
16 gallery construction would be sufficient to accomplish
17 that goal and that a Barnes Foundation that included this
18 new facility would be financially viable.

19 My colleague, Ralph Wellington,
20 will be leading the presentation of the evidence that
21 responds to the Court's questions.

22 Before I yield to him, I would
23 just like to say one word, if I may. Coming up this
24 morning, I asked myself the question that any good

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5 MR. WELLINGTON: Your Honor, good
6 morning. If I may, I want to pick up with Judge Adams'
7 voice and address the evidence that we hope to present to
8 Your Honor, the evidence that we think Your Honor will
9 hear on the questions that Judge Adams has phrased.

10 We will first present testimony at
11 this hearing as to whether this Foundation can raise
12 sufficient funds for an endowment by selling its
13 non-gallery assets, in essence, all of the assets that it
14 owns other than the works of art that hang permanently in
15 the gallery.

16 In response to that question of
17 the Court, we retained an internationally recognized
18 appraisal firm, Masterson Gurr Johns. Masterson
19 appraised over 4,500 non-gallery art objects in the
20 Barnes' collection. The only part of the collection it
21 didn't appraise were the paintings that permanently hang
22 in the gallery.

23 The president of that firm,
24 Elizabeth von Habsburg, and one of its painting

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1 specialists, Nancy Harrison, will be testifying
2 concerning their evaluation.

3 As Your Honor knows, the amici are
4 also going to present testimony on this issue. They
5 appraised 19 paintings of the non-gallery collection.
6 And, as the Court is aware, we will address in certain
7 other evidence in this case, when the amici petitioned
8 for the right to participate in these proceedings, one of
9 the two grounds they cited was the need to protect the

10 Foundation from selling the art. They told the Court at
11 that time that such a sale would violate the Indenture's
12 clear mandate and would have a deleterious effect on the
13 Foundation's art education program. Apparently, they now
14 contend to the contrary, that all that art should be
15 sold.

16 Without stating the specific
17 appraisal numbers presently, the appraisals of all of
18 these experts, amici's experts, the Foundation's experts
19 have come in far below the fifty-million dollars
20 identified as a minimum amount of endowment if the
21 Foundation is not permitted to move the gallery.

22 Next, Your Honor, you asked the
23 question about how much money could be raised from
24 selling the property at Ker-Feal.

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1 We retained two independent,
2 certified Chester County real estate appraisers, Glenn
3 Perry of Glenn Associates and William Wood of William
4 Wood Company. Both of them will testify. They appraised
5 selling the entire property and, also, looking at the
6 property in two sections, Your Honor, which segregated
7 out the buildings which have been certified as a national
8 historic site by the National Historic Registry and 12
9 acres around those buildings, and then, also, appraising
10 the remaining parcel of a-hundred-and-twenty-five-some
11 acres.

12 The amici have also done an
13 appraisal. You will hear from their individual. You

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23 outcry and legal opposition, and that was, ultimately,
24 withdrawn.

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1 The Board of the Barnes Foundation
2 believes that was the correct result then and a correct
3 result now.

4 And because we know that ethical
5 precepts can't be considered in a vacuum, they must be
6 assessed in the light of the wishes of Dr. Barnes. We
7 will, therefore, present testimony by Barbara Beaucar,
8 one of the Foundation's archivists; and she will
9 summarize the results of her archival research, Your
10 Honor, into the wishes of Dr. Barnes with respect to some
11 of these issues.

12 And with respect to Ker-Feal, we
13 shall also present testimony by the Foundation's Director
14 of Education, Robin McCllea, about how that facility fits
15 into the Foundation's mission.

16 And, finally, Your Honor, then to
17 the future. The Court asked us whether a new gallery
18 could in fact be built in Philadelphia or the money that
19 has been testified as being pledged and whether the
20 Foundation could survive if such a gallery was
21 constructed and was operated with a three-campus model,
22 given that it's had enormous financial difficulties in
23 recent years.

24 Ms. Camp, the Foundation's

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1 Executive Director, will explain the Foundation's --
2 explain what it envisions for the new facility, so it's
3 not just a hard concept of the new building, how it fits
4 into the Dr. Barnes' educational mission as she believes
5 it needs to be realized. And we'll reaffirm that this
6 gallery would recreate or cocoon the present gallery
7 collection while keeping the ensembles and room
8 relationships intact. It would have a program for adults
9 and children that focuses on the Barnes and Dewey
10 objective-based aesthetics, psychology and education;
11 program space that include changing exhibit galleries for
12 visiting scholars and curators; educational programs for
13 K through 12 through graduate level study that take place
14 in the galleries and the adjacent classrooms. There
15 would be classroom for digital technology, a visitor's
16 schedule that allows greater access without reducing any
17 of the devoted time to the galleries while classes are
18 being held or reducing the intimacy of the collection
19 during those education moments. There would be
20 introductory exhibits through which visitors are given
21 tools to appreciate Dr. Barnes' vision and to make their
22 visit an educational experience.

23 To determine whether or not such a
24 gallery could be constructed for a hundred million

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1 dollars on the Parkway, Perks Reutter Associates was
2 retained. Harry Perks, who has overseen construction of
3 some of this region's most significant buildings, will
4 testify how he has determined that one hundred million

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10 accordance with this vision, Your Honor, following
11 construction of a gallery on the Parkway, Deloitte &
12 Touche did a careful analysis and will present a
13 going-forward three-campus model. Matt Schwendermann, a
14 partner at Deloitte, will explain this analysis that
15 shows the Foundation will be viable, indeed.

16 One component of the Deloitte &
17 Touche analysis relates to the fund-raising potential of
18 the Barnes after a new gallery opens, and we shall
19 present testimony by John Callahan, a development expert,
20 on that question.

21 So, in summary, Your Honor, the
22 Foundation continues to believe the relief sought in the
23 petition is the best for the Foundation, is the least
24 drastic means of solving the Foundation's problems and

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1 realizing its mission. We shall present testimony by
2 Dr. Watson, the president of the Board, Mr. Harmelin, one
3 of the trustees, who will explain to the Court why they
4 continue to believe, in the exercise of their fiduciary
5 duties to the Foundation that Dr. Barnes established,
6 this petition should be granted.

7 Thank you.

8 THE COURT: Thank you, Mr.
9 Wellington.

10 Mr. Pappert, the Court is honored
11 to have the Attorney General in the courtroom.

12 MR. PAPPERT: Thank you very much,
13 Your Honor. It's an honor to be here, and I appreciate

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14 the opportunity to make some opening remarks on behalf of
15 the Commonwealth here this morning.

16 As the Court is aware, one of my
17 most important responsibilities, as Attorney General, is
18 to act as *parens patriae* in all proceedings in the
19 Orphans' Courts involving charities.

20 Consequently, my office has been
21 involved with the Barnes Foundation for many years with
22 many appearances in this Court, in general, and with the
23 current proceeding, in particular. My office was
24 consulted before the petition was filed; and my

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1 predecessor and I, as well as many members of our staff,
2 met several times with Foundation trustees and
3 representatives, representatives of Lincoln University
4 and the funding foundations. Those meetings, as well as
5 our familiarity with the Barnes Foundation and its
6 issues, led us to insist upon changes to the petition so
7 as to honor the wishes of Dr. Barnes by preserving all
8 terms of his Indenture which were compatible with the
9 Foundation's survival.

10 The Barnes Foundation then amended
11 its petition to address our concerns. My staff, both
12 lawyers and accountants, carefully reviewed the averments
13 of the amended petition, as well as thousands of pages of
14 documents which pertain to the relief requested by the
15 Foundation. After this review, we came to the conclusion
16 communicated to the trustees, as well as to this Court,
17 that we were satisfied that if the averments of the
18 amended petition were proven and supported by competent

19 and credible evidence presented at these hearings, that
20 we were prepared to offer our support and recommend that
21 the relief requested be granted.

22 The language of the amended
23 petition, the meetings we have held with the involved
24 parties, the documents and material that we have

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1 reviewed, as well as the evidence presented up to this
2 point, have in my view lent support to the necessity of
3 the deviation requested. We understand that the amended
4 petition seeks to vitiate some of the elements of the
5 Foundation as it currently exists and would contravene
6 some of the express wishes of Dr. Barnes.

7 Nevertheless, the petition, as
8 amended to meet the demands of my office, honors and
9 promotes the vast majority of Dr. Barnes' ancillary
10 wishes. Most importantly, the amended petition promotes
11 and protects his primary wish that a foundation bearing
12 his name continues to exist to promote the advancement of
13 education and the appreciation of fine arts. Indeed, our
14 review to this point leads us to believe that relocation
15 of the Foundation's gallery will enhance its educational
16 programs.

17 As *parens patriae*, our primary
18 responsibility is to protect the interests of the general
19 public, whom we serve. In our efforts to do so, we are
20 also mindful of our interest in advocating and
21 protecting, as much as possible, the wishes and
22 intentions of donors so as to promote philanthropy and

23 serve the public thereby. To this point, we remain of
24 the mind that the Barnes Foundation's proposal, rather

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1 than run counter to Dr. Barnes' intent and purposes,
2 strongly supports, advocates and promotes well into the
3 future the central essence of his design.

4 Should the amended petition be
5 granted, the Foundation will continue to exist. Its
6 educational mission will remain primary and will likely
7 expand. Its collection will remain intact. Its art will
8 be displayed exactly in the manner as Dr. Barnes wished,
9 albeit, in Philadelphia. Its arboretum and
10 horticultural program will be unaffected; and its
11 prospects through a new building, endowment and expanded
12 fund-raising opportunities will be immeasurably improved.

13 If the averments of the amended
14 petition are proven and the relief requested is granted,
15 we will very likely resolve definitively the Foundation's
16 chronic financial concerns and ensure not just the
17 Foundation's long-term survival, but its prosperity.

18 If the averments are correct and
19 the relief is denied, the Foundation will undoubtedly be
20 forced to change, may not survive, and, certainly, will
21 cease to serve Pennsylvanians and those who come here to
22 visit the Foundation in the manner it previously has.

23 If the facts averred in the
24 amended petition are established, we believe that the law

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1 and the doctrine of deviation permit this Court to grant
2 the relief requested.

3 As the Court is well aware, my
4 office and the Orphans' Courts are often presented with
5 petitions for deviation for charitable trusts, perhaps,
6 less well known or prized, but, otherwise, similar to the
7 one presented here. Petitions for relaxation of
8 investment restrictions, geographical, racial or gender
9 restrictions, as well as deviation from other limitations
10 that threaten the existence of the charitable purpose,
11 are received fairly routinely. As in this case, we seek
12 to reconcile the wishes of the donor, to protect the
13 interest of the public and to ensure the continued
14 existence of the charitable purpose or mission.

15 Our analysis of the Barnes
16 Foundation convinces us that compliance with all of the
17 terms of the Indenture, particularly, remaining in
18 Merion, is now clearly impractical, if not impossible,
19 because of circumstances unanticipated by Dr. Barnes,
20 such as the depletion of the endowment, zoning
21 limitations and other factors. The essential purpose of
22 his trust promoting the advancement of education and the
23 appreciation of fine arts is almost certain to be
24 defeated through insolvency unless deviation is

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1 permitted.

2 Your Honor, we anticipate that the
3 facts presented by the Foundation will continue to
4 support the relief requested. We will file a

5 post-hearing memorandum where we will reflect on the
6 evidence and the appropriateness of the deviation
7 requested; and at that time we will set forth our final
8 position as to whether the relief requested is supported,
9 warranted and should be granted.

10 Thank you again for the
11 opportunity to address the Court this morning.

12 THE COURT: Thank you, Attorney
13 General Pappert.

14 (Attorney General Pappert leaves
15 the courtroom.)

16 THE COURT: Mr. Kline?

17 MR. KLINE: Good morning, Judge
18 Ott.

19 You directed the trustees to
20 produce evidence showing the value of non-gallery assets
21 and the feasibility of the move to Philadelphia so that
22 you could determine whether their plan would stabilize
23 the Foundation and do the least damage to Dr. Barnes'
24 mission.

Page 23

1 Expert reports were produced by
2 the trustees. We have had an opportunity to review those
3 reports, and we have retained independent experts to do
4 the same.

5 I am here this week, together with
6 my co-counsel, Howard Cyr and Paul Quiñones, at the
7 pleasure of this Court, to test the trustees' conclusions
8 and offer our own opinions as amicus curiae about how the
9 trustees' conclusions and, ultimately, their plan will

10 impact the art education programs at the Barnes
11 Foundation.

12 Our experts have determined that
13 moving the Barnes to the Parkway is fraught with
14 financial pitfalls. The margin of error and the
15 trustees' projections is extremely tight, raising grave
16 concerns about whether the Foundation's three-campus
17 model can't be financially viable.

18 We will show that staying in
19 Merion with one campus, with the focus on one mission is
20 the best way and may be the only way to stabilize the
21 Foundation's future.

22 You may hear this week about
23 possible alternative access roads, increased attendance
24 and parking at the Barnes in Merion and Lower Merion

1 Township's willingness to work with the Barnes to
2 implement reasonable changes.

3 On the issue of deaccessioning, we
4 know from this Court's order in 2001 that the non-gallery
5 art is not subject to restrictions in the Indenture which
6 prevent its sale. Ker-Feal has never been subject to
7 those restrictions. This week we will reaffirm there is
8 no legal impediment to selling these things, and we will
9 show that deaccessioning guidelines from museums pose no
10 ethical obstacles to the sale of non-gallery art and that
11 the sale of such art to create an endowment is well
12 within the mission of the Barnes Foundation.

13 Based upon our expert analyses, we

14 believe that the sale of assets could produce an
15 endowment approaching fifty million dollars. We will
16 show that when other sources of revenue are considered
17 such as increased admission fees and enhanced
18 fund-raising, the stability of the Barnes in Merion, one
19 campus, one mission, will be assured and, in any event,
20 more viable than the trustees' risky alternative.

21 Thank you.

22 THE COURT: Thank you, Mr. Kline.

23 Mr. Wellington, at your pleasure.

24 MR. WELLINGTON: Thank you, Your

Page 25

1 Honor.

2

3

PETITIONER'S EVIDENCE

4

... WILLIAM S. WOOD, II, having

5 been duly sworn, was examined and testified as follows:

6

DIRECT EXAMINATION ON VOIR DIRE

7 BY MR. WELLINGTON:

8 Q. Mr. Wood, good morning.

9 A. Good morning.

10 Q. What is your professional employment, sir?

11 A. I am a general appraiser licensed by the State of
12 Pennsylvania. I'm the owner of the William Wood Company,
13 which is located in West Chester, Pennsylvania.

14 Q. How long have you been doing real estate appraisals,
15 Mr. Wood?

16 A. I've been doing them since 1968, but it has been my
17 full-time occupation since 1979.

18 Q. Are you a certified general appraiser in the

19 Commonwealth of Pennsylvania?

20 A. I am, indeed.

21 Q. What does that mean for those of us who might not
22 know?

23 A. Well, the State -- after the so-called savings and
24 loan crash, the Federal government kind of set up

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1 regulations or requested the State to set up criteria by
2 which appraisers can receive designations. They set up
3 two levels at a residential designation, which permitted
4 practitioners to appraise only residential properties;
5 and then they set up a second designation, which they
6 call the general appraiser, and general appraisers were
7 permitted to appraise all types of property. They set up
8 educational criteria and experience criteria, the level
9 of which I can't recall right now, other than to say that
10 the general was harder to get than the residential.

11 Q. Do you have any idea how many real estate appraisals
12 you've completed in your career?

13 A. Well, I really do not. I couldn't. I probably do a
14 minimum of 50 a year, and I have other appraisers working
15 with me, and I assist on those.

16 Q. What's your educational background, sir?

17 A. I'm a graduate of Colgate University and the other
18 education I received through Penn State extension courses
19 and courses offered by the appraisal community.

20 Q. Are you a member of any professional associations
21 that relate to real estate?

22 A. I'm a member of the Southeastern Appraisal Chapter.

Page 24

23 I'm a member of the National Association of Real Estate
24 Boards and the local Chester County Real Estate Board.

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1 Q. Have you been qualified to testify as an expert in
2 any court on the subject of real estate appraisals?

3 A. Yes, I have. I've testified many times in the court
4 of Common Pleas of Chester County, and I've testified in
5 bankruptcy court in Reading and in Philadelphia.

6 Q. And my colleague, Mr. Merenstein, he put a copy of
7 your resume -- it's three pages, I think. Does a copy of
8 your resume appear at the back of your report, which has
9 been marked Exhibit 68?

10 A. Yes, it does.

11 Q. Is this the first page of that?

12 A. Yes, it is.

13 Q. On the third page, I see a number of institutions.

14 Are these some of the clients who have retained you to do
15 real estate appraisals?

16 A. Yes, they are.

17 MR. WELLINGTON: One second,
18 please, Your Honor.

19 (Pause)

20 MR. WELLINGTON: Your Honor, we
21 hadn't distributed our exhibits. I want to get a copy to
22 counsel and to the Court as well.

23 THE COURT: Very good.

24 MR. WELLINGTON: Your Honor, this

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1 would be the Court's copy.

2 THE COURT: All right.

3 (Appraisal Report of William

4 S. Wood, II premarked by counsel as Exhibit

5 No. 68.)

6 BY MR. WELLINGTON:

7 Q. Mr. Wood, I hand you a document marked as Exhibit
8 68, which has been unbound so that you can refer to it,
9 but I ask you whether or not that represents a copy of
10 the report that you submitted in this case.

11 A. Yes, sir.

12 Q. Just for clarification, you submitted it in three
13 separate binders, did you not?

14 A. That's correct.

15 Q. We just unbound it so it might assist you in
16 referring to some of the pages as we go along.

17 MR. WELLINGTON: Your Honor, at
18 this time I would submit Mr. Wood to the Court as an
19 expert in real estate appraisals.

20 THE COURT: Questions on
21 qualifications, Mr. Barth?

22 MR. BARTH: None, Your Honor.

23 THE COURT: On qualifications, Mr.
24 Kline?

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1 MR. KLINE: We'll reserve
2 questions until general cross-examination.

3 THE COURT: Very well. You may
4 continue then, Mr. Wellington.

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DIRECT EXAMINATION

5

6 BY MR. WELLINGTON:

7 Q. Were you asked to prepare a market value of property
8 in West Pikel and Township, Chester County?

9 A. I was.

10 Q. Does Exhibit 68 reflect that appraisal?

11 A. Yes, it does.

12 Q. Do you know Mr. Glenn Perry?

13 A. I do.

14 Q. Are you aware that he too was asked to provide an
15 appraisal of the Ker-Feal property?

16 A. I am now. I was not at the time I did the
17 appraisal.

18 Q. Did you coordinate or communicate at all with Mr.
19 Perry regarding the valuation or appraisal that he
20 prepared?

21 A. I did not.

22 Q. Have you ever seen Mr. Perry's appraisal of
23 Ker-Feal?

24 A. I have not.

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1 Q. Was there anything that you were asked to do, sir,
2 in performing the appraisal that you believe was outside
3 of your area of expertise?

4 A. No, sir. There were, actually, three appraisals
5 involved; and I felt fully competent to do all three.

6 Q. Were you told anything regarding the outcome that
7 the Barnes Foundation desired, such as a high appraisal
8 or low appraisal?

9 A. No.

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10 Q. Are you experienced, sir, with conservation
11 easements?

12 A. Yes, I am.

13 Q. What is a conservation easement?

14 A. Conservation easement is a mechanism by which land
15 is preserved by putting an easement on the property,
16 which restricts its future use. It can restrict it
17 greatly or there can be clauses in it that would reduce
18 the restrictions. But the intent is -- it's also called
19 a scenic easement. The intent is to preserve the land in
20 some fashion from, in most cases, residential
21 subdivision.

22 Q. You mentioned, I think, that you had done three
23 different appraisals. Can you just tell us what those
24 three appraisals were, not the values at the moment, but

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1 what do you mean by the three appraisals?

2 A. There were three appraisals requested. One was of
3 the house and other buildings on 12 acres. There were a
4 hundred and thirty-seven acres all told. And then the
5 second was of the hundred and twenty-five acres for
6 development purposes, and the third was to analyze the
7 effect of a conservation easement which would restrict
8 all construction on the hundred and twenty-five acres.

9 Q. Taking those one at a time, Mr. Wood, what did you
10 determine to be the current fair market value of the
11 property, the 12-acre parcel with the property and the
12 buildings, developed buildings and the property?

13 If this would help you, sir, I

19 Q. In my non-real-estate-expert understanding, does
20 that mean the value that someone might give you a check
21 for if you sold it?

22 A. That's correct.

23 Q. Then you talked about the conservation easement.
24 What is the thinking about -- strike that. The

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1 conservation easement value, I think you said, was how
2 much?

3 A. Well, I didn't say what the conservation --

4 Q. How much was the conservation easement value? And
5 here's that report.

6 A. The value of a conservation easement, I should say,
7 is the difference in value of a property before the
8 easement is placed on it and the value of the property
9 after the easement is placed on it. It's the difference
10 that you're trying to get at.

11 In this case, it was our opinion
12 that the value of the property before the easement was
13 placed on it was five million three hundred thousand.
14 The value of the property after the easement would be two
15 million eight hundred and twenty-five thousand. And the
16 difference in value would be two million four hundred
17 seventy-five thousand. That would be the value of the
18 easement.

19 Q. So, again, if I can understand those numbers -- and
20 the purpose of having conservation easement is to have
21 some land trust or someone pay to not have the property
22 developed; is that correct?

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1 Ker-Feal, which had three major buildings on it, on
2 something less than 12 acres, the whole sense of an
3 estate would be lost. It would just be another house
4 surrounded by other large houses. So I think it needs 12
5 acres to protect the value of the -- for instance,
6 there's a stable with an apartment over top. I don't
7 know that you need a live-in fellow for 5 acres; but 12
8 acres, I think the apartment would have some value. So
9 it just seemed to me that for it to be a legitimate
10 estate-type property and protect the value of the
11 improvements that are there, you need 12 acres to support
12 it.

13 Q. We've now, I think, located -- is that the originals
14 of your report?

15 A. It would appear to be. Those are my bindings, yes,
16 sir.

17 Q. Better than using my copies. Thank you.

18 A. Okay.

19 Q. Could you just tell the Court, Mr. Wood, the
20 methodology that you used in reaching the appraisals?

21 A. Well, the market data approach is dependent on going
22 into the market and trying to find similar properties
23 that have sold; and since all real estate is unique in
24 one fashion or another, you make adjustments for the

1 dissimilarities and, hopefully, come up with a range of
2 value for the property and, within that range of value,
3 make your determination of the value you're going to put
4 on the property.

5 Q. If you could turn to Page 19 of your appraisal book
6 for the large tract, the one-hundred-and-twenty-five-acre
7 tract --

8 A. Yes, sir.

9 Q. And I think it's been put up there on the board. Do
10 we have the same page?

11 A. Yes, we do.

12 Q. Is this one of the pages that shows comparable
13 properties that you looked at to help arrive at your
14 market data?

15 A. That's referred to as an analysis grid. And what
16 you try to do is quantify the differences between the
17 comparable properties, the comparable sale properties,
18 and the subject property. And after you make those
19 adjustments, as I say, you, hopefully, come up with a
20 range of value for the property; and then you make your
21 determination within that range, depending on your own
22 judgment.

23 Q. Did you do a similar process for the other property
24 as well of comparables?

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1 A. I did.

2 Q. Has this property been approved for development?

3 A. It has not.

4 Q. Can you, from your real estate expertise, Mr. Wood,
5 explain to us what that means?

6 A. Well, there's a continuum of value from raw land to
7 what we call approved and improved. "Raw land" is
8 property that's just what it is. It sits there, and it's
9 used for farming or open space or some other use. It's

10 open for development, but there has been no plan formed.
11 There's no feasibility study. There's no engineering
12 work that's been done on it.

13 You move from there through those
14 steps that I just mentioned, engineering, soil studies,
15 and so forth, and prepare a plan which you're going to
16 submit to the Township and the County authorities --
17 Chester County where I come from -- and receive their
18 approvals. That's a long process, although it could be a
19 short process. But it can be six months to -- I've known
20 ones that have gone for three or four years.

21 The public can get involved in it.
22 They come to the Planning Commission meetings, and they
23 have their input. The Planning Commission, which is a
24 township organization, has their input, if there are

1 things about the plans they don't like. And that all
2 takes time. And there are many hearings.

3 A property this size, there would
4 be many, many hearings, many hearings, legal fees,
5 engineering fees, and so forth, until, finally, everybody
6 has agreed that within the limits of the law, this is the
7 plan that everybody can live with, at which point it's
8 approved by the township supervisors. That's the
9 approved stage.

10 From that point forward, what's
11 left is the building of the infrastructure, stormwater
12 management, roads, utilities, curbs, all the hard costs
13 in making the property then ready for a builder to come

14 in; and he walks in, and he can start building a house on
15 the lots that have been created by the plan. That's the
16 approved improved stage.

17 Q. In doing an appraisal, as you've done, in accordance
18 with appraisal standards, do you take into account the
19 risk the developer might have from getting from the raw
20 stage to the approved stage in assessing the fair market
21 value?

22 A. You do. There's risks, there's profit involved
23 getting from the raw to the approved stage. There's
24 expense, legal fees, engineering fees. There's the

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1 passage of time. All those things should be considered
2 in arriving at the value of a property.

3 A. In your experience in Chester County, would the
4 subdivision development into large homes of Ker-Feal
5 likely run into any opposition in West Pikeland?

6 A. I would think it would. West Pikeland is very
7 conservation oriented. There are prominent people that
8 live in that immediate area, who are very interested in
9 conservation and history, and so forth; and I would think
10 that they would all at least express some opposition at
11 hearings that sought to develop Ker-Feal to its fullest
12 extent.

13 Q. Please assume for me, Mr. Wood, that the Foundation
14 did have all the necessary approvals that you just talked
15 about for developing this land and had them now. How
16 much would that increase the value of the Ker-Feal
17 property, in your view, above the 5.3 million that you
18 have appraised it at?

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19 A. That's very difficult to say except to give you a
20 rule of thumb, which, usually, we figure the property
21 doubles between raw -- the value of the property will
22 double between raw and approved.

23 Q. But would a buyer be willing to pay this amount
24 today without those approvals?

Page 40

1 A. Which amount?

2 Q. That doubled amount.

3 A. No, no; no. What has happened -- and it recently is
4 that many of the builders will make an offer based on
5 approvals, and, in fact, will pay for the obtaining the
6 approvals. But, nevertheless, the money is not paid
7 until the approvals are obtained, and so you create a
8 situation where the property owner is sharing the risk
9 with the builder and, in fact, there have been cases
10 where it just hasn't worked out and the builders walk.

11 Q. Mr. Wood, did I provide you with a copy of the
12 report from a Kenneth Barrow that was submitted by amici
13 for you to review?

14 A. Yes, you did. I have my copy.

15 Q. You have a copy there, sir?

16 A. Yes.

17 Q. In your review of the appraisal by Mr. Barrow, did
18 he appraise it as raw property?

19 A. No. He appraised it as approved.

20 Q. So do you believe that Mr. Barrow's analysis
21 accurately estimates the current fair market value of the
22 Ker-Feal property?

Page 36

23 A. No, it does not. He stated in here that the highest
24 price -- it would obtain the highest price offered for

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1 sale subject to subdivision, and that's the situation
2 that I was talking about there where the owner would have
3 to wait until the approvals were obtained.

4 Q. Mr. Barrow's report also assumes that the property
5 could, roughly, be -- the hundred and thirty acres could,
6 roughly, be divided into, I think it's 59 lots of two
7 acres. Is that your recollection?

8 A. That's correct.

9 Q. Do you have any views or opinions about whether
10 that's a reasonable assumption?

11 A. Well, in my own appraisal, I thought it was probable
12 40 lots could be obtained. I think that's a very, very
13 optimistic view. For one thing, the configuration of the
14 Ker-Feal property is narrow. It wanders all over the
15 place. There are soil types. You lose an awful lot when
16 you're engineering out lots, especially lots as small as
17 two acres. You know, you have roads turning. You have
18 stormwater retention basins. You have a lot of
19 requirements, not to mention soil types; and this
20 appraisal does depend on on-site sewage, so that I'm much
21 more comfortable with my 40-lot projection than a 60-lot
22 projection.

23 BY THE COURT:

24 Q. When you say "on-site sewage," you're talking about

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1 septic systems?

2 A. Septic and drain field, yes, sir.

3 Q. I think Mr. Barrow's rough number was around ten
4 million dollars; is that correct?

5 A. That's correct.

6 Q. And that assumes fifty -- let me put this page up
7 here. It may assist. Up here, he's referring to 60
8 lots, and he's, roughly, averaged them at two hundred and
9 forty per lot developed; correct?

10 A. That's correct.

11 Q. And here's his indicated net land value down here.
12 What happens to that value even if just the one
13 assumption that only 40 lots can get developed instead of
14 50?

15 A. Well, the gross would drop by four million eight
16 hundred thousand, just for openers. The lot sales up top
17 there would drop by 20 lots at 240,000, which is four
18 million eight hundred thousand.

19 Q. Mr. Barrow's report also assumes, does it not, Mr.
20 Wood, that all 59 or 60 of these lots could be sold in a
21 very short period of time?

22 A. He projected a three-year sellout. When you have
23 \$240,000 lots, you're usually projecting million-dollar
24 homes or greater than million-dollar homes. It's sort of

1 a ratio relationship between lot value and improved
2 value.

3 Q. So you'd be looking at 59 or 60 million-dollar
4 homes, would you not, to be sold in a relatively short

5 period of time?

6 A. Sold over a three-year period. I don't think that
7 that could be absorbed. I did go to our multiple listing
8 system and went to the Great Valley and Downingtown
9 School District, which seems to be the general area; and,
10 at least in the multiple listing system, I only found 30
11 homes in excess of a million dollars on two-acre lots
12 that sold over a three-year period. That leads me to
13 believe that he was a little optimistic in his
14 projections there.

15 Q. Do you have an opinion, Mr. Wood, as to whether a
16 buyer today or in the next two or three months would hand
17 a check to the Barnes Foundation for nine million one or
18 ten million three, as he suggests?

19 A. I don't believe that would occur, sir.

20 MR. WELLINGTON: Thank you very
21 much, Mr. Wood.

22 THE COURT: Mr. Barth, questions?

23 MR. BARTH: Yes, Your Honor.

24 Thank you.

1 CROSS-EXAMINATION

2 BY MR. BARTH:

3 Q. Mr. Wood, you spoke about conservation easement and
4 that reduces the value --

5 (Short interruption)

6 MR. BARTH: I'll start again, Mr.
7 Wood.

8 BY MR. BARTH:

9 Q. You testified regarding a conservation easement

10 which affects this land at Ker-Feal. Who created that
11 easement?

12 A. Oh, there is no easement. I was asked what the
13 easement -- if an easement was placed on it, what the
14 value might be. The easement would -- the terms of the
15 easement were, basically -- the important terms of the
16 easement were that there would be no further construction
17 on the hundred and twenty-five acres.

18 Q. Is there currently an easement on the property?

19 A. There's no easement on the property that I'm aware
20 of, no, sir.

21 Q. If an easement were to be placed on the property,
22 who would place it?

23 A. The owners of the property would. There would be no
24 point in the owners of the property donating an easement

1 because of the nonprofit, unless they just wanted to do
2 it to protect it forever. But if they were going to put
3 an easement on it, I suspect they would sell it to raise
4 money; and I assume that's why I was asked to put a
5 number on the easement.

6 Q. So if I understand you correctly, what is -- a
7 normal reason why a person would put an easement on the
8 property would be to gain a tax advantage?

9 A. Yes. But there has to be more to it than that
10 because the tax advantages will never equal the value of
11 the gift, which is the loss in value caused by the
12 easement.

13 Q. I think what I gained from what your most recent

14 statement was is that it's possible for an owner of the
15 property to sell an easement, in other words, to place an
16 easement on the property and get money from a third-party
17 for doing that to the property?

18 A. Exactly and still retain the property.

19 Q. And still retain the property. Do you know whether
20 or not the Barnes Foundation has been offered that
21 opportunity?

22 A. I do not.

23 Q. You testified at some length regarding the approval
24 status of land. Has this land in fact been approved for

1 anything?

2 A. No, it has not.

3 Q. You also indicated that it was your view that such
4 approval would be difficult in obtaining because of the
5 nature of the township and its residents?

6 A. Well, I think I stated that approval of 60 lots
7 would be difficult, and that the approval process would
8 be lengthy, in any case. But, no, certainly, if they
9 wanted to develop it, they could certainly develop it, as
10 long as they met all the zoning laws and were able to get
11 through the approval process.

12 Q. So the property is currently zoned -- it's current
13 zoning would permit development?

14 A. Oh, yes; yes, sir.

15 Q. But not in any particular density?

16 A. I believe the minimum lot size is two acres, but
17 there's no density. It's the minimum lot size of two
18 acres, and the density is determined by the number of

19 lots, two-acre lots you could fit comfortably within the
20 hundred-and-twenty-five acres.

21 Q. So the current hundred-and-twenty-five dollars and a
22 minimum lot size of two acres doesn't mean you can
23 automatically get 62-and-a-half lots in?

24 A. No, it does not.

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1 Q. That is subject to the approval process through the
2 township?

3 A. That's correct.

4 Q. That's the process by which the neighbors can voice
5 their opposition and be taken into account by the Zoning?

6 A. That's correct.

7 Q. Approximately, how large are the lots that surround
8 Ker-Feal, if you know?

9 A. I think there's the subdivision that's across the
10 road. I'm not sure. Across Bodine Road, I think,
11 they're one-and-a-half, two acres, somewhere in that
12 range.

13 Q. One-and-a-half because it's zoned differently than
14 Ker-Feal?

15 A. No. I'm not exactly sure why they're that size. I
16 didn't look into that.

17 Q. What is the value of the house that surrounds
18 Ker-Feal?

19 A. I think the ones over there are about 500,000.

20 MR. BARTH: I have nothing else.

21 Thank you.

22 THE COURT: Mr. Cyr or Mr. Kline?

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23 BY MR. KLINE:

24 Q. Mr. Wood, good morning.

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1 A. Good morning.

2 Q. How did you obtain this appraisal assignment?

3 A. I was contacted by Mr. Harry Perks of Perks Reutter.

4 Q. Who paid you to prepare this appraisal?

5 A. I, frankly, don't know whether the check came from
6 him or from the Barnes Foundation.

7 Q. Do you remember how much you were paid to prepare
8 this appraisal?

9 A. I believe it was \$2500.

10 Q. Did you, Mr. Wood, speak with anyone connected in
11 any manner with the Barnes Foundation or their attorneys
12 or consultants about this appraisal assignment before,
13 during or after you submitted the report?

14 A. I spoke to Mr. Perks, and I spoke to a gentleman who
15 met us from the Barnes Foundation, gave us the tour of
16 the property, and I don't recall his name. It seems to
17 me it was Willis. But the only conversations I had
18 really about the appraisal were with Mr. Perks, and that
19 was to explain to Mr. Perks -- he wasn't clear on
20 conservation easements, and I kind of gave him the same
21 rundown I gave you here.

22 Q. Thank you, Mr. Wood. What directions were you given
23 for the preparation of this report?

24 A. I wasn't given any preparation -- I wasn't given any

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1 direction.

2 Q. When you applied or prepared an appraisal to the
3 value of conservation easement, who instructed you to do
4 that?

5 A. Oh, Mr. Perks did that. I'm sorry. I thought you
6 meant how it was prepared. No. I was asked to appraise
7 the property as a whole, which, of course, that was
8 involved in the conservation easement appraisal, and it's
9 the five million three. I was asked to appraise it as a
10 12-acre property, and that's where the 12 acres came
11 from. I was asked to appraise a-hundred-and-twenty-five
12 acres of vacant land. Those were the three appraisals.

13 Q. Thank you. Mr. Wood, did anyone ask you to value
14 this property in any manner other than fair market value?

15 A. No.

16 Q. If I may clarify something, the question I have for
17 you is, did you value this land as raw land or as land
18 available for development?

19 A. As far as I was concerned, they're both the same.

20 Q. If you look at Page 12 of your report that values
21 the hundred-and-twenty-five acres -- I'm sorry. Page 11,
22 if you'd look at Page 11.

23 A. Yes, sir.

24 Q. Now, on this page, the very bottom, would you read

Page 50

1 the first sentence of the last paragraph?

2 A. "The appraiser valued the property on an as-is
3 basis."

4 Q. Is the "as-is basis" the highest and best use for

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5 this property?

6 A. Yes. At that point I'm not saying -- the highest
7 and best use is future subdivision, but future
8 subdivision or the planning process hadn't even begun. I
9 appraised it at the beginning of the process as-is.

10 Q. That's not the question I asked. Mr. Wood, when you
11 valued this as raw land, is that the highest and best use
12 of that hundred-and-twenty-five acres?

13 A. No, sir. The highest and best use is residential
14 subdivision.

15 Q. Would Ker-Feal have had a higher market value if it
16 were sold as land available for development?

17 A. If it was in a raw state, no. It would have been my
18 appraised value.

19 Q. Could you repeat that? I'm sorry. I couldn't hear
20 you.

21 A. I said, if it were in a raw state, if it were sold
22 with no contingencies, no "I'll pay you this if I can get
23 so many lots" or "bear with me until I get all the
24 approvals and then I'll pay you," if it were sold where

1 is, as-is, within three to six months, cash on the barrel
2 head, the number that I put on it is the number that it
3 was worth.

4 Q. Is that your understanding of how land is sold,
5 available for development, at highest and best use?

6 A. Any other approach involves risk and doesn't meet
7 the criteria market value because you don't get paid
8 until certain things occur. It has nothing to do with
9 the land.

10 Q. Mr. Wood --

11 MR. WELLINGTON: Excuse me. Mr.

12 Kline keeps interrupting Mr. Wood.

13 THE COURT: I don't think he keeps

14 interrupting, but that last -- you did begin your next

15 question before he finished. So I just caution, you've

16 got to be in control of that, Mr. Kline.

17 Had you finished your answer, Mr.

18 Wood?

19 THE WITNESS: Yes, I have.

20 THE COURT: All right. Next

21 question.

22 BY MR. KLINE:

23 Q. It was unclear whether you were advised to value the

24 12 acres that surround the buildings or whether you

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1 thought that it would be better to sort of segregate
2 those 12 acres to accompany those four or five structures
3 that are there?

4 A. No. The 12 acres was on a little plan that was
5 provided to me by Mr. Perks. But I did determine, as I
6 said, I thought 12 acres was reasonable. I'm not sure
7 where it would be in the configuration that shows in the
8 appraisals that I did, but I did think that 10 or 12
9 acres was plenty to go with, was necessary to support the
10 buildings.

11 Q. Mr. Wood, you said that the houses that would be
12 constructed there would be on minimum two-acre lots; is
13 that correct?

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14 A. That's correct.

15 Q. Is there a possibility of some leeway from the
16 township to allow a greater density on one-acre lots or
17 even less, depending upon the development plan?

18 A. I doubt if there would be -- are you saying would
19 they permit smaller lots?

20 Q. Yes.

21 A. Only, I suppose, if it were involved with a creation
22 of open space.

23 Q. Mr. Wood, do the values of the homes around Ker-Feal
24 impact on value, your value?

1 A. Well, sure, the neighborhood.

2 Q. They do. And you testified earlier that there are
3 in fact valuable homes in this neighborhood?

4 A. Yes. There's a subdivision across the road. The
5 other homes are mainly estate homes that I'm aware of.

6 Q. And you provide some comparables in your report for
7 the immediate neighborhood?

8 A. I did not.

9 Q. So you do not include comparables?

10 A. Not of homes in that area.

11 Q. In the immediate neighborhood?

12 A. Yeah. I mentioned the neighborhood price range.

13 But Ker-Feal, if it was developed into two-acre lots,
14 would not be the norm for the neighborhood, so I didn't
15 think it was worth it to do it. And Ker-Feal was large
16 enough to create its own neighborhood.

17 Q. Are there other properties in the immediate
18 neighborhood that are currently in the subdivision

19 process that you are aware of?

20 A. I learned of only -- there's only one that I'm aware
21 of, and that is the one that was mentioned in Mr.
22 Cyr's -- or, who was that? I'm sorry. Mr. Barrow's
23 report.

24 Q. What was that?

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1 A. I think he referred to a McDougall property. I
2 don't know. It's in here. I don't know whether I have
3 it highlighted or not. If you know it, fine. He said
4 that there was one in the process of subdivision, and
5 that was the first I heard about it.

6 Q. Okay. Did you know that the pending sale of a
7 27-acre parcel on Bodine Road in West Pikel and Township
8 within a mile of this property is pending?

9 A. I am not aware of it.

10 Q. The D'Agostino Company.

11 A. I suppose that's the one that Mr. Barrow mentioned,
12 yes, sir.

13 Q. So you did not know that this is pending subdivision
14 in West Pikel and Township?

15 A. No. Well, I know it now. I didn't know at the time
16 I did the appraisal.

17 Q. Did you know that the property includes 12 lots at
18 a-hundred-and-fifty-thousand dollars per lot and that the
19 buyer will pay all costs of predevelopment and
20 subdivision?

21 A. I did not know that, but it doesn't surprise me.

22 Q. Who instructed you to value this property with or

23 without a conservation easement?

24 A. Mr. Perks.

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1 Q. What is the impact of imposing the conservation
2 easement on this property?

3 A. Impact of imposing one, it's to reduce its value.

4 Q. It lowers the market value of the property; correct?

5 A. That's correct.

6 Q. You report that it reduces the value by about
7 one-half; is that correct?

8 A. That's correct.

9 Q. Do you know whether the Foundation is in the process
10 of obtaining a conservation easement of any type?

11 A. I do not.

12 Q. What compensation is typically paid for a
13 conservation easement in Chester County?

14 A. Well, it can go all the way from a donation to full
15 market value.

16 Q. What's commonly paid in Chester County?

17 A. Probably 50 to 75 percent in cash and the balance in
18 a donation.

19 Q. Did the Barnes Foundation advise you that it had
20 received offers as high as twelve million dollars for
21 Ker-Feal?

22 A. No.

23 Q. Would that information have been relevant to your
24 appraisal?

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1 A. No. Because I would have assumed it came from
2 somebody who wanted them to wait during the approval
3 process.

4 Q. Even though it was two-and-a-half times your value?

5 A. I didn't see any money on the table, and I wouldn't
6 have advised the person offering the twelve million to do
7 it.

8 Q. To your knowledge, has this property been appraised
9 previously?

10 A. No. I mean, not to my knowledge. I didn't.

11 Q. Mr. Wood, are you familiar with a real estate
12 appraisal at Ker-Feal that was done in 1990?

13 A. I am not.

14 Q. Would it surprise you to learn that in 1990 Emlen
15 Wheeler valued this property at 6.3 million dollars on
16 behalf of the Barnes Foundation?

17 A. Would it surprise me? Yes, it would.

18 MR. KLINE: No further questions.

19 THE COURT: Will there be
20 redirect?

21 MR. WELLINGTON: Yes, just a
22 little bit.

23 REDI RECT EXAMI NATION

24 BY MR. WELLINGTON:

1 Q. Obviously, we've not heard about that before. But
2 let me ask you, do you know as a basis -- assuming there
3 is such appraisal that Mr. Kline referenced -- of course,
4 he wouldn't do that if there wasn't one -- do you know

5 whether such an appraisal was based upon developed or raw
6 value?

7 A. I have no knowledge of that.

8 Q. On the conservation value, I just want to clarify
9 something, Mr. Wood. The benefit of a conservation
10 easement to someone who owns undeveloped, natural
11 property, like the Ker-Feal exists in main part, is that
12 that property is able to be preserved in that state;
13 isn't that correct?

14 A. That's correct.

15 Q. Someone pays for the benefit of preserving the
16 property and not having it developed into another
17 subdivision?

18 A. Correct.

19 MR. WELLINGTON: I have nothing
20 further. Thank you.

21 THE COURT: Mr. Barth?

22 RECROSS-EXAMINATION

23 BY MR. BARTH:

24 Q. Along that line -- no. I'll withdraw that question.

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1 MR. BARTH: No further questions.

2 THE COURT: Very good. Thank you,
3 Mr. Wood. You may step down.

4 (Witness excused)

5 THE COURT: Let's take our
6 mid-morning break, if that works for you, Mr. Wellington.

7 MR. WELLINGTON: Yes.

8 THE COURT: All right. Very good.
9 We'll take ten minutes.

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10 (Short recess)
11 -----
12 THE COURT: Mr. Wellington?
13 MR. WELLINGTON: Thank you, Your
14 Honor.
15 Glenn Perry, I'll call to the
16 stand.
17 -----
18 ... GLENN W. PERRY, sworn.
19 -----
20 MR. WELLINGTON: May I, Your
21 Honor?
22 THE COURT: Of course.
23 -----

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1 ... GLENN W. PERRY, having been
2 duly sworn, was examined and testified as follows:
3 DIRECT EXAMINATION ON VOIR DIRE
4 BY MR. WELLINGTON:
5 Q. Good morning, Mr. Perry.
6 A. Good morning.
7 Q. Were you asked to provide appraisal of the Ker-Feal
8 property in West Pikel and Township?
9 A. Yes, I was.
10 (Appraisal Valuation Report of
11 Glenn W. Perry premarked by counsel as Exhibit No. 67.)
12 BY MR. WELLINGTON:
13 Q. Is the appraisal that you prepared Exhibit No. 67?
14 And I will ask you -- let's open this book here. We've

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15 now gotten a book of exhibits, and you can open that in
16 front of you and refer to it whenever you need. Is that
17 the appraisal that you provided, sir?

18 A. Yes, it is.

19 Q. First, I want to put your resume up on the Elmo
20 here. Is your resume included as part of the appraisal
21 in the back?

22 A. Yes, it is.

23 Q. Does your resume reflect a reasonable summary of
24 your experience, sir?

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1 A. Yes, it does.

2 Q. How long have you been in the appraisal business in
3 Chester County?

4 A. I've been appraising real estate in Chester County
5 since 1974.

6 Q. Do you own your own appraisal company?

7 A. Yes, I do.

8 Q. Do you have any idea how many real estate appraisals
9 you provide on an annual basis in Chester County?

10 A. Over a hundred. Probably a hundred and twenty-five
11 to a hundred and fifty, depends on how good a year it is
12 and how much time I can get to it.

13 Q. You mean the economy has some impact on your
14 business?

15 A. Some.

16 Q. Have you been qualified before as an expert in the
17 appraisal of real estate?

18 A. Yes, I have.

19 Q. In what courts, sir?

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20 A. Court of Common Pleas in Chester County, Superior
21 Court in the State of Delaware and the Federal Bankruptcy
22 Court.

23 Q. And you are a certified general appraiser?

24 A. Yes, I am.

1 Q. Does this page that we now have up here from your
2 resume show a Partial List of Appraisal Clientele?

3 A. Yes, it does.

4 Q. I know a number of members of the Pennsylvania Bar
5 Association. I don't see anybody from my firm. Have you
6 ever worked for my firm before that you're aware of?

7 A. No, I have not.

8 Q. I do notice William H. Lamb. Is that Justice Lamb,
9 who was a member of the Pennsylvania Supreme Court last
10 year?

11 A. Yes, it is.

12 Q. Was there anything about this appraisal, Mr. Perry,
13 that you were asked to do for Ker-Feal that you believe
14 to be outside of your experience?

15 A. No, I do not.

16 Q. In addition to doing commercial and residential
17 appraisals, do you have experience in the valuation of
18 conservation easements?

19 A. Yes, I do.

20 Q. Were you in the courtroom during Mr. Wood's
21 description of conservation easements?

22 A. Yes, I was.

23 Q. You agree with that or do you have anything to

24 supplement it or put it in your words?

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1 A. Generally, I, certainly, agree with Mr. Wood's
2 thinking and presentation as far as definition of a
3 conservation easement. Certainly, in my mind, it is a
4 difference -- conservation easement value is a difference
5 of property value between what it would be and market
6 value unencumbered and the market value of the property
7 after an easement was placed on it. There's all sorts of
8 different types of easements which can be constructed on
9 properties. So there's no general way of describing
10 conservation easements beyond that point.

11 Q. Have you done appraisal work, Mr. Perry, for the
12 West Pike Land Trust?

13 A. Yes, I have.

14 Q. Is that an entity that looks into conservation
15 easements?

16 A. Yes, it is.

17 Q. By the way, do you know Mr. Wood, who was
18 testifying?

19 A. Yes, I do.

20 Q. Were you aware at the time that you were doing your
21 real estate appraisal that Mr. Wood had been asked to do
22 a real estate appraisal of Ker-Feal?

23 A. No, I was not aware.

24 Q. Did you ever see his appraisal or consult with him?

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1 A. No, I did not.

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2 MR. WELLINGTON: Your Honor, I
3 would move to have Mr. Perry qualified as an expert
4 witness -- excuse me -- approved as an expert witness in
5 the appraisal of real estate in Chester County.

6 THE COURT: Questions on
7 qualifications, Mr. Barth?

8 MR. BARTH: No questions. No
9 objection, Your Honor.

10 THE COURT: Mr. Kline?

11 MR. KLINE: No questions, Your
12 Honor.

13 THE COURT: Very well. You may
14 proceed, Mr. Wellington.

15 DIRECT EXAMINATION

16 BY MR. WELLINGTON:

17 Q. Mr. Perry, who contacted you about doing
18 an appraisal at Ker-Feal?

19 A. Mr. Harry Perks from Perks Reutter.

20 Q. Have you ever worked with Mr. Perks before?

21 A. No, I did not.

22 Q. Had you met him before the courtroom today?

23 A. No, I have not.

24 Q. Did you speak with him over the telephone about what

Page 64

1 you were being asked to do?

2 A. Yes.

3 Q. Tell the Court what Mr. Perks asked you to do.

4 A. He asked me to appraise Ker-Feal property, as it
5 sits, with the hypothetical subdivision with 12 acres

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6 around the improvements and the balance as vacant land,
7 both as a vacant land tract available for development in
8 its as-is state and as a vacant land tract which would be
9 encumbered by a conservation easement which would
10 prohibit future development.

11 Q. Were you asked by Mr. Perks or anyone else connected
12 with the Barnes Foundation or anyone to do a low-ball or
13 conservative or any type of appraisal other than a fair
14 market appraisal?

15 A. No, I was not.

16 Q. Were you paid for the work that you did?

17 A. Yes, I was.

18 Q. How much were you paid, since I think Mr. Kline
19 might ask you?

20 A. I don't recall how much it was.

21 Q. Less than Mr. Wood?

22 A. I think I did better than Bill.

23 Q. Do you know who paid you?

24 A. I billed Mr. Perks. I can't recall who the check

Page 65

1 came from.

2 Q. Does Exhibit 67 -- I think I asked you, does that
3 constitute your report?

4 A. Yes, it does.

5 Q. I'll put the front page of it up here for people to
6 see.

7 Feel free, Mr. Perry, to refer to
8 your report at any time; and I'm going to ask you
9 questions.

10 What did you determine to be the
Page 57

11 fair market value of tract number one, which was the 12
12 acres with buildings at Ker-Feal?

13 A. One million one hundred fifty thousand dollars.

14 Q. Is that right here that I've highlighted?

15 A. Yes, it is.

16 Q. What did you determine tract two to be, the
17 additional hundred-and-twenty-five acres?

18 A. Three million seven hundred and fifty thousand
19 dollars.

20 Q. And how about the value of the conservation
21 easement?

22 A. The conservation easement value was two million five
23 hundred thousand dollars.

24 Q. So the total value of selling -- excuse me. The

Page 66

1 current fair market value, in your opinion, of the two
2 tracts, one and two, total what amount, sir?

3 A. Four million nine hundred thousand dollars.

4 Q. And the conservation easement was two million five;
5 correct, sir?

6 A. Yes.

7 Q. Now, what did you do? What was your methodology,
8 sir, to determine the fair market value for tracts one
9 and two?

10 A. I utilized the direct sales comparison approach to
11 value for evaluating both tract one and tract two.

12 Q. And the comparable -- you did comparables, and are
13 they reflected in your report, sir?

14 A. Yes, they are.

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15 Q. How did you decide what comparables you would use?

16 A. I was trying to find comparable sales first for
17 tract one of large historic properties in the targeted
18 market area of northern Chester County. On lots which
19 were comparable in size, generally, I think my
20 comparables ran from five acres to close to 18 acres in
21 size with improved properties. We compared those
22 directly with the improvements at the Ker-Feal property
23 on a hypothetical 12-acre lot and made plus or minus
24 adjustments for the various amenity features, locational

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1 features and other features as detailed in the report to
2 determine a range in values that could be reasonably
3 expected for the Ker-Feal property on a 12-acre site.

4 Q. Now, your appraisal value of four million nine
5 hundred thousand for the tracts one and two compares with
6 what, I think, was five million one hundred thousand for
7 Mr. Wood or roughly that. Does it surprise you that
8 those values came in as close as they were?

9 A. Somewhat.

10 Q. And your conservation easement number was identical.
11 Any reaction to that?

12 A. That's very surprising.

13 Q. You reviewed the report of Mr. Barrow, did you not,
14 who is a real estate appraiser from Delaware County, I
15 think, that was retained by Mr. Kline?

16 A. Yes, I did.

17 Q. And did you hear Mr. Wood's -- I'm trying to short
18 cut here a little bit. Did you hear Mr. Wood's testimony
19 concerning Mr. Barrow's report about the fact that it

24 Q. Act 319, that's what's known as the Clean and Green

Page 69

1 Act?

2 A. Yes.

3 Q. As I understand it, if there's 10 acres or more,
4 there's a tax benefit?

5 A. There is a tax benefit. If there's a minimum of 10
6 acres, it can be held in open space.

7 Q. The appraisals and opinions that you have provided
8 in your report, Mr. Perry, do you give them, to a
9 reasonable degree of certainty, based upon your expertise
10 as a real estate appraiser?

11 A. Yes, I do.

12 MR. WELLINGTON: Thank you. I
13 have no further questions.

14 THE COURT: Mr. Barth,
15 cross-examination?

16 MR. BARTH: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. BARTH:

19 Q. Mr. Perry, I have one question about Act 319 and the
20 tax benefits. The tax benefit would run to the purchaser
21 of the property; correct?

22 A. Yes, it would.

23 Q. So, to the extent that there's a benefit, that would
24 augment the value of the property to that purchaser

Page 70

1 against your appraisal?

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2 A. I'm not sure I understood that question.

3 Q. Well, if you have a piece of property as it sits and
4 to that you add a tax benefit, that makes it more
5 valuable to the purchaser and more valuable when it is
6 sold by the current owner; is that correct?

7 A. I don't think you can quantify that. I think what
8 we're really looking at is, what would be a reasonable
9 amount of acreage to be included with those improvements
10 there, is there a benefit to having ten acres? I think
11 there is at least ten acres. To the extent that it might
12 sell quicker to somebody if it has a tax benefit, that
13 would be a reduction on real estate taxes, those real
14 estate taxes going forward for whoever owns the property.

15 Q. So are you saying then that the fact that there is
16 that tax benefit means that it would sell quicker, but
17 not necessarily command a higher price because of its
18 existence?

19 A. I don't think it would command necessarily a higher
20 price, but I think that that would be easier to market if
21 you had 10 to 12 acres with that.

22 MR. BARTH: All right. Thank you.
23 Nothing else.

24 THE COURT: Mr. Kline?

1 BY MR. KLINE:

2 Q. Just a few questions, Mr. Perry. Let me go back to
3 something you said, that Mr. Perks gave you the
4 instructions to prepare this report; is that correct?

5 A. Yes.

6 Q. When he gave you those instructions, he instructed
7 you to value that 12-acre set-aside, if you will, out of
8 137.7 acres; is that correct?

9 A. Yes. He provided an exhibit to demonstrate how the
10 12 acres would be around the house.

11 Q. Did you testify that Mr. Perks charged you with
12 valuing the land in an as-is condition?

13 A. He asked me to value the property, the market value
14 of the property.

15 Q. Did you prepare a market value analysis?

16 A. Yes.

17 Q. Did you value the land as raw land or as land
18 available for development?

19 A. I valued the property, as it sits today, and its
20 highest and best use, essentially, is residential
21 development.

22 Q. So the highest and best use of this land is
23 residential development?

24 A. That would bring the highest price.

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1 Q. You valued this land as land available for
2 development?

3 A. Yes, I did.

4 Q. What does "highest and best use" mean?

5 A. "Highest and best use" of the property is the use
6 which would generally -- a probable and legal use of the
7 property which would provide the greatest amount of
8 dollars in return.

9 Q. Would you turn to Page Roman Numeral IV - 1 of your
10 appraisal?

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11 A. (Witness complies with request.)

12 Q. Would you read to the Court, Mr. Perry, your
13 conclusion of highest and best use that's set forth in
14 the middle of that page in the last paragraph, the third
15 paragraph?

16 A. Do you want me to read the whole last paragraph?

17 Q. Well, just the first two lines would be fine, the
18 first two sentences.

19 A. "The concept of highest and best usage starts with a
20 theory that a site must be" --

21 Q. I'm sorry. I was asking you to turn to Page Roman
22 Numeral IV - 3. I correct myself again, if you'd go to
23 IV - 1. Then you'll see in the conclusion, if you would
24 read the sentence that begins with "In reviewing the

Page 73

1 variety of permitted uses" at the bottom of the page.

2 A. And would you like me to read those sentences?

3 Q. Yes.

4 A. "In reviewing the variety of permitted uses within
5 the CR Zoning District, it is your appraiser's opinion
6 that the maximally productive, financially feasible, and
7 legal use of the subject property, as if vacant, is a
8 minor subdivision creating a private enclave of eight to
9 ten building sites in the southerly portions along Seven
10 Oaks Road and large lot subdivision for 10-plus-acre
11 sites in the northwesterly portions in accordance with
12 the area and bulk regulations of the CR District."

13 Q. In valuing a land for development, you, typically,
14 value it by lot, do you not, Mr. Perry?

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15 A. I'm sorry. Would you please ask that question?
16 Q. You value land for development by lot or by acre?
17 A. When it's raw ground like the subject property, we
18 value it on a per-acre basis.
19 Q. Then you value this as raw land?
20 A. I value it for the market value of the property as
21 defined in the report.
22 Q. Mr. Perry, if you don't know how many lots you were
23 valuing, how can you give a professional opinion as to
24 the highest and best use?

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1 MR. WELLINGTON: Your Honor,
2 that's argumentative.

3 THE COURT: I don't think it's
4 argumentative. I think it's fair cross. I'll allow it.

5 Would you like it repeated, sir?

6 THE WITNESS: Please.

7 BY MR. KLINE:

8 Q. If you don't know how many lots you have valued, how
9 can you give a professional opinion as to the highest and
10 best use of the value of the land that you say is best
11 suited for subdivision?

12 A. When we're handed an appraisal assignment where
13 there's no engineering, there's no sketch plans, nothing
14 that would provide any idea from a professional
15 engineering point of view as to how many lots by right
16 could be developed under the zoning, we have to make some
17 certain assumptions. I made the assumptions that, in my
18 opinion, as I just read it, an enclave of eight- to
19 ten-acre-sized lots would be the highest and best use.

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20 Q. How many and how did you value those lots?

21 A. I valued it on a per-acre basis.

22 Q. So you valued the lots on a per-acre basis; is that
23 correct?

24 A. There are no lots.

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1 Q. I'm sorry?

2 A. There are no lots. There's 125.7 acres, which I
3 valued at \$30,000 an acre.

4 Q. You say that there was no engineer's plan for the
5 development of this property, so that, in your
6 estimation, it was almost impossible to determine, is
7 that correct, how many lots there would be available for
8 development?

9 A. Is it impossible? No, you can make some kind of
10 determination. The CR District says their minimum lots
11 are two acres. There's lot-averaging provisions, whether
12 you take it down to one acre; but the overall density
13 would be a maximum two acres per lot.

14 Q. You've read the report of Kenneth P. Barrow, have
15 you not?

16 A. Yes.

17 Q. I'll put this on the Elmo. This is a summary of
18 that report. And it shows the values that you ascribe to
19 the land as well as Mr. Wood. You can see that in the
20 valuation of the land at Ker-Feal, Mr. Barrow valued the
21 land at ten million three hundred thousand dollars; is
22 that correct? Is that what you read in his report?

23 A. Yes.

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24 Q. Tell me something, Mr. Wood valued the land at five

Page 76

1 million three hundred; and, again, this is without the
2 application of an easement. And you valued it at 4.9
3 million dollars. Why is there a difference, in your
4 estimation, between your appraisal and Mr. Barrow's
5 appraisal?

6 A. Mr. Barrow's assumed that the property would have a
7 market value today as approved unimproved lots.

8 Q. And you're valuing this as raw land?

9 A. I'm valuing it as 125.7 acres plus an additional 12
10 acres with existing improvements.

11 Q. Mr. Perry, do the values of the homes around
12 Ker-Feal impact on the value?

13 A. Yes.

14 Q. And there are valuable homes in this neighborhood?

15 A. Absolutely.

16 Q. Do they set the value for the land at Ker-Feal?

17 A. Generally speaking, the land values and the targeted
18 marketing area would generally dictate where you would be
19 going with land values for the Ker-Feal property.

20 Q. Did you provide any comparables in your report for
21 the immediate neighborhood?

22 A. Yes. The Chantilly Farms property in West Pikel and
23 Township.

24 Q. Would you point that out --

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2 his answer again.

3 MR. KLINE: I'm sorry, Your Honor.

4 THE COURT: My court reporter is
5 the one who is most handicapped when you do that. I'm
6 going to ask you to avoid that.

7 I'm going to ask you to repeat
8 your answer, if you remember it, Mr. Perry. You were
9 talking about the Chantilly Farm.

10 A. The Chantilly Farm subdivision was one of the
11 comparables that we utilized in our comparative sales
12 approach value.

13 Q. Could you show me where that exists in your report,
14 please?

15 A. It's Roman Numeral IV - 16.

16 Q. Is this within the -- this is in West Pikel and
17 Township?

18 A. Yes, it is.

19 Q. Are there any other properties in the immediate
20 neighborhood that are currently in the subdivision
21 process?

22 A. I'm not aware of any in West Pikel and Township in
23 the subdivision process at the current time.

24 Q. You did not know about the pending sale of the

1 27-acre parcel on Bodine Road in West Pikel and Township
2 within one mile of this Ker-Feal property?

3 A. I saw that cited in the Barrow report. I'm trying
4 to remember whether it was in West Pikel and or whether it
5 was Charlestown Township. I believe it was in

6 Charlestown. I'm not sure.

7 Q. So you did not know about the pending sale until you
8 read Mr. Barrow's report?

9 A. Correct.

10 Q. Did you know that that property includes 12 lots at
11 a-hundred-and-fifty-thousand dollars per lot and that the
12 buyer will pay all costs?

13 A. No, I do not.

14 Q. Who instructed you to value this property with and
15 without a conservation easement?

16 A. Mr. Perks.

17 Q. What's the impact of the conservation easement?

18 A. It's substantial. If there were a hundred-and-
19 twenty-five acres which was available for development, we
20 consider it would be worth more than a hundred-and-
21 twenty-five acres which was not available to develop.

22 Q. So it lowers the value of the property; correct?

23 A. Distinctly.

24 Q. You report that it reduces the value by about half;

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1 is that correct?

2 A. I didn't work the calculations. Substantial. I
3 think it's more than half.

4 Q. It's substantial, maybe more than half?

5 A. I think the conservation easement value is 66
6 percent.

7 Q. Who is the most likely buyer of this land?

8 A. I would suspect some of the larger developers in the
9 area would be likely buyers, as it sits today.

10 Q. Such as Toll Brothers?

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11 A. That would be one.

12 Q. Hovnani an, Cutler?

13 A. There's many other developers that could buy, take
14 it through the substantial costs and time involvement in
15 a land development process.

16 Q. When they buy --

17 A. In many --

18 THE COURT: Whoa, whoa, whoa.

19 MR. KLINE: I'm sorry.

20 A. (Continued) In many cases, the larger developers
21 that you cited are not interested in raw land. They're
22 interested in approved unimproved lots.

23 Q. When these organizations, like, Toll Brothers,
24 Hovnani an and Pulte Company -- when those organizations

1 seek to buy land, how do they normally do it? That is to
2 say, do they buy it raw?

3 A. In some cases, they buy it raw. In most cases, they
4 buy it with approved plans in place.

5 Q. How does that work? When you say "approved plans,"
6 give me an example how that might work.

7 A. Let's say I own a hundred acres of ground and I want
8 to sell it. I sell it to someone subject to a
9 development contingency, subject to 50 lots, let's say.
10 The land developer, whom I sold it to, takes it through
11 all the process. He advances all the monies that are
12 involved with that, which is substantial in terms of
13 engineering legal costs. Two or three years later, he
14 may have an approved plan for minimum 50 lots, is what we

15 said in our agreement of sale. He may develop it
16 himself. He may flip it to one of the larger developers.
17 That's how most of these properties are being sold today.

18 Q. The highest and best use of this property would be
19 to sell it to someone like Toll Brothers?

20 A. Someone who would be interested in doing the land
21 development.

22 Q. If you did that, the price would be substantially
23 higher than the price that you have shown in your report?

24 A. It wouldn't be substantially higher for someone if

1 they were buying it on an as-is basis. If they were
2 buying it with contingency, that's not market value; and
3 it's certainly not something that would be realized --
4 you couldn't do a land development plan there in less
5 than 18 months, and, more than likely, it would be 30
6 months. That's when you get the money.

7 Q. So it would take some time to do a land development
8 plan?

9 A. Well, 30 months.

10 Q. But you would maximize the value of the property by
11 doing so?

12 A. Perhaps. And market conditions might change. I
13 don't know what the land values are going to be 30 months
14 from now.

15 Q. Isn't it true, Mr. Perry, that the only way to
16 determine the market value of this plan is really to sell
17 it?

18 A. No question.

19 Q. Did the Barnes Foundation advise you that it had

24 about four million five hundred thousand dollars, and so

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1 that the total value of the land at Ker-Feal in 1990,
2 according to Mr. Heim, was 6.3 million dollars.

3 Now, Mr. Perry, if you had had
4 this information, would this have had an impact on your
5 appraisal?

6 A. No.

7 MR. KLINE: No further questions.

8 THE COURT: Redirect?

9 MR. WELLINGTON: Yes, Your Honor.

10 Mr. Kline, may I borrow that
11 exhibit for a moment?

12 MR. KLINE: Sure.

13 MR. WELLINGTON: Thank you.

14 REDIRECT EXAMINATION

15 BY MR. WELLINGTON:

16 Q. Mr. Perry, I don't know who this is directed to
17 really, but can you tell from -- take a look at this. It
18 talks about it looks like it's being subdivided into two
19 parcels. Can you tell from this whether or not this is
20 an estimate -- let me hand it up to you -- whether this
21 is an estimate that is done on a fair market value or on
22 approved value or what the basis is? Because it doesn't
23 seem to say.

24 A. He's using a developer's approach, I would guess.

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1 I'm reading the one sentence in here which states that

2 the current value of an unimproved lot in this area is
3 one hundred thousand dollars and this parcel, in its
4 estimate, in its entirety, is valued here at four million
5 five hundred thousand dollars.

6 Q. So he's referring to lots?

7 A. Forty-five building lots.

8 Q. Not raw land parcel in this letter; correct?

9 A. Yes.

10 Q. And lots is exactly what Mr. Barrow did, amici's
11 expert. He also, as you testified, gave an assessment
12 based upon not what someone would hand a check today;
13 correct, sir?

14 A. Correct.

15 Q. Mr. Barrow's report is what you said someone might
16 pay 30 months down the road in pieces, if they could sell
17 those parcels one by one; is that correct?

18 A. Correct.

19 Q. In fact, Mr. Barrow's report, does it not say 60
20 lots approved for standard on-site sanitary sewage? Is
21 the property at Ker-Feal approved today as Mr. Barrow
22 talks here?

23 A. No, it is not.

24 Q. Would the property today command two hundred and

1 forty thousand -- he's got per lot, so it would be a
2 hundred and twenty thousand dollars per acre multiplied
3 by the hundred or so. Would the fair market value of
4 that property today be a hundred and twenty thousand
5 dollars per acre?

6 A. No, it would not.

7 Q. If the Barnes needed or was forced to sell this
8 property in the next six months, how much money can it
9 realize for this property?

10 A. I would think that they would be able to obtain an
11 agreement of sale whereby someone would buy it with
12 development contingencies, which would be substantial in
13 price. In my opinion, if we were going to sell it and
14 settle it within six months, my opinion of value is 4.9
15 million dollars.

16 Q. If they wanted to sign a contingency where if the
17 developer got approvals --

18 A. Yes.

19 Q. -- and later was able to sell million dollar -- 60
20 of those million-dollar homes, they might realize more
21 but over time; is that correct?

22 A. Correct. But one thing, I mean, if it was an
23 approved unimproved subdivision, it would sell in its
24 entirety as an approved subdivision. It wouldn't

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1 necessarily have to wait for market absorption of all
2 those lots.

3 Q. What if the developer signs such an agreement and
4 doesn't get the approvals that it wants? Would the
5 Foundation still get the money?

6 A. It depends on the terms of the agreement of sale.
7 There might be a nonrefundable deposit up front. Many
8 times we see that. But, in most cases, they get the land
9 back with screwed-up engineering and a lot of maybes.

10 MR. WELLINGTON: Thank you.
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11 Nothing further. Appreciate it.

12 THE COURT: Recross?

13 MR. BARTH: Thank you, Your Honor.

14 RECCROSS-EXAMINATION

15 BY MR. BARTH:

16 Q. Not to beat a dead horse, Mr. Perry, but the
17 difference in value is between raw and approved, is that
18 correct, what we're talking about now?

19 A. Well, the market value is the market value of the
20 property which would sell within a reasonable marketing
21 period of time, which we estimate within three to six
22 months, six months to eight months, something that is a
23 reasonable time frame.

24 Q. It's not reasonable to assume that this property

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1 would be approved within three months?

2 A. It's not even remotely conceivable the property
3 could get land development approvals. You couldn't get
4 land development approvals for that property for a 10-lot
5 subdivision in less than 18 months, let alone 60.

6 Q. Okay. So, therefore, it's appropriate then to value
7 the raw land?

8 A. Yes.

9 Q. And, to the extent that it has value as approved
10 land, am I correct in assuming that that value as raw
11 land is augmented by the passage of time, the approval
12 process and the investment of engineering and other
13 professional efforts to gain the approved status?

14 A. Yes, it is.

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15 Q. So that value, that increased value, would be
16 reflected in the value of the property as approved versus
17 its value as raw?

18 A. Absolutely.

19 Q. And it's not appropriate to value it as approved now
20 because those studies have not been done and the passage
21 of time has not occurred?

22 A. It would only be hypothetical if you did anything
23 other than raw ground today.

24 MR. BARTH: Thank you.

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1 THE COURT: Mr. Kline?

2 MR. KLINE: Yes.

3 BY MR. KLINE:

4 Q. Mr. Perry, following up on Mr. Barth, it's true that
5 the land is either valued as raw land, land available for
6 development, or approved land; is that correct?

7 A. Yes.

8 Q. Okay, just to clarify that.

9 It's true also that many of these
10 national organizations, when they go in, give a very
11 large deposit for development purposes and then pay all
12 the costs of development themselves; is that correct?

13 A. Yes.

14 Q. Now, I'd like to turn back to the Emlen Wheeler
15 appraisal that you looked at earlier. Mr. Perry, if you
16 assumed that the --

17 A. Let me clarify one thing. I don't consider that
18 letter an appraisal.

19 Q. Thank you. If you assumed that this appraisal that

20 was done in 1990 was properly valued, the land, at 6.3
21 million dollars, is it possible that in the intervening
22 years, those 14 years that passed, that 137.7 acres of
23 real estate in Chester County could have fallen in value
24 to 4.9 million dollars?

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1 A. I think your assumption is erroneous.

2 Q. I'm asking you to assume, assume that this was
3 correct. If that is the case, is it possible that that
4 land could have fallen in value in the 14-year period
5 from 6.3 million to your value of 4.9 million?

6 A. Anything is possible. There, certainly, could be
7 environmental conditions out there which would ruin
8 market values of properties; but, generally speaking,
9 property values in Chester County have appreciated.

10 MR. KLINE: No further questions.

11 THE COURT: Thank you, Mr. Perry.

12 You may step down.

13 MR. WELLINGTON: Thank you, Mr.
14 Perry.

15 (Witness excused)

16 THE COURT: What's your pleasure,
17 Mr. Wellington?

18 MR. WELLINGTON: I'm happy to
19 begin, Your Honor.

20 THE COURT: Well, then why don't
21 we do that?

22 MR. WELLINGTON: Sure. Let's do
23 that. What's a good break time, Your Honor?

24

Volume I
THE COURT: Let's look for a spot

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1 between 12:00 and 12:15, if that works for you; okay?

2 MR. WELLINGTON: Okay. Elizabeth
3 von Habsburg.

4 -----

5 ... ELIZABETH von HABSBURG, having
6 been duly sworn, was examined and testified as follows:

7 DIRECT EXAMINATION ON VOIR DIRE

8 BY MR. WELLINGTON:

9 Q. Good morning, Ms. von Habsburg.

10 A. Good morning.

11 Q. You are the president of Masterson Gurr Johns?

12 A. Yes, I am.

13 Q. Can you please tell the Court what Masterson Gurr
14 Johns is and does?

15 A. Masterson Gurr Johns is an art consulting and
16 appraisal company. It's an international company, the
17 largest of its type in the U.S.

18 Q. How long has that company been around?

19 A. We've been around in New York since 1938 and in
20 London since 1912.

21 Q. I'm going to put up here a brief resume and just ask
22 you, if you would, to identify that this is a resume that
23 reflects the summary of your educational experience.

24 A. Yes, it does.

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1 Q. I note that that indicates that you were assistant
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2 vice president in charge of Appraisal Department at
3 Christie's in New York. Can you tell us about your
4 experience at Christie's and responsibilities there?

5 A. I was at Christie's for, approximately, seven years,
6 just over. When I joined Christie's, I went, after about
7 four months, into the Appraisal Department; and for,
8 approximately, three years, I assisted all the
9 specialists who went out every day; and after about three
10 years, I started doing general appraisals and became head
11 of the department.

12 Q. From there, you went to Habsburg Fine Art
13 Auctioneers. Can you tell us about that professional
14 experience?

15 A. I was there for, approximately, four years; and at
16 Habsburg, I was vice president and director of the
17 Estates and Appraisals Department. I was the business
18 development person there and the appraiser.

19 Q. Do you have what is considered an area of appraisal
20 expertise?

21 A. I do. I'm called a general appraiser, but I do,
22 primarily, appraisals in fine and decorative arts, in
23 European and American furniture, objects, silver,
24 porcelain and general fine arts.

1 Q. Do you have appraisal credentials or any relevant
2 boards on which you serve?

3 A. I do. I'm on the Board of the Appraisers
4 Association of America. I'm a member of ArtTable, which
5 is a professional organization for women in leadership

6 positions in the art world. I'm a fellow of the Morgan
7 Library. I'm on the Arts and Records Committee of the
8 Inland Marine Underwriters Association.

9 Q. Are there standards that are used for art
10 appraisals?

11 A. Yes. USPAP, Uniformed Standards of Professional
12 Appraisal Practices.

13 Q. When Masterson Gurr Johns does appraisals, does it
14 follow the USPAP, to use the acronym?

15 A. We do.

16 Q. As president of Masterson, are you, ultimately,
17 responsible for the appraisals that that company
18 provides?

19 A. Yes, sir.

20 Q. Approximately, how many different appraisals would
21 Masterson Gurr Johns do in an average year, let's say?

22 A. We do, approximately, 310 appraisals. That's in our
23 New York office. We also do some in London, also, our
24 Munich office and our Paris office. But New York does,

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1 approximately, 310 per year.

2 Q. How many art objects would be appraised in a range
3 in such a year?

4 A. In an average appraisal, we do, approximately, 85
5 lots. So there are something over 26,000 items that we
6 appraise each year.

7 Q. Is your company or are you personally retained by
8 the Internal Revenue Service to do appraisals?

9 A. We are on occasion, absolutely.

10 Q. Are you retained by other government agencies?

11 A. Yes; the Justice Department, the DEA and various
12 others.

13 Q. Have you been approved as an expert in court to
14 testify on art appraisals?

15 A. I have.

16 Q. Where?

17 A. In both New York and, also, in Texas by telephone.

18 MR. WELLINGTON: Your Honor, I
19 would submit Ms. von Habsburg as an expert as a senior
20 general appraiser, whose specialty is in furniture,
21 silver, porcelain, decorative and fine arts.

22 THE COURT: Questions, Mr. Barth,
23 on qualifications?

24 MR. BARTH: None, Your Honor.

1 THE COURT: Mr. Kline or Mr. Cyr,
2 on qualifications?

3 MR. CYR: Nothing at this time,
4 Your Honor.

5 THE COURT: I have one question,
6 ma'am.

7 BY THE COURT:

8 Q. You were talking about lots. How is a lot
9 determined?

10 A. Good question. A lot can be more than one item of
11 similar quality or kind. In other words --

12 Q. You're grouping by category?

13 A. That's correct. A lot of candlesticks may be a
14 pair. It may be a set of four. It may be 12.

15 Q. 200?

16 A. Or 200, exactly.

17 THE COURT: I understand. Thank
18 you.

19 Go ahead, Mr. Wellington.

20 -----

21 (Appraisal by Masterson Gurr
22 Johns, Inc. premarked by counsel as Exhibit No. 66.)

23 DIRECT EXAMINATION

24 BY MR. WELLINGTON:

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1 Q. In front of you, Ms. von Habsburg, there should be a
2 copy of your exhibit -- excuse me -- your report. I
3 would first ask if you would take a look at Exhibit 66
4 and advise us whether or not that is the Masterson Gurr
5 Johns' report and, I believe, supplemental report that
6 was submitted in this case.

7 A. Yes, it is.

8 Q. Directing your attention to the very first page, is
9 this a summary of the objects appraised by Masterson Gurr
10 Johns?

11 A. Yes, it is.

12 Q. I will represent to you that the total objects is, I
13 think, 4,532 separate. I'm not asking you to add, but
14 that was, roughly, the range?

15 A. That's correct.

16 Q. I want to first turn to page -- if you can find a
17 page, Ms. von Habsburg, that has Appraisal Terminology
18 and Definitions. Do you have that?

19 A. I do, yes.

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20 Q. Can you direct us to any significant appraisal
21 definitions that would be relevant to what you did here?

22 A. Absolutely. "Fair market value" is the appraisal
23 terminology that we used for this appraisal.

24 Q. Tell us what "fair market value" is or means in the

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1 art appraisal world.

2 A. It means the price at which a willing buyer would
3 pay to a willing seller, all relevant facts being known,
4 and not a forced sale.

5 Q. By whom were you contacted, Ms. von Habsburg, to
6 undertake the appraisal of the objects of the Barnes
7 Foundation?

8 A. We were contacted by Kimberly Camp.

9 Q. And what did Ms. Camp ask you to do and explain to
10 you needed to be done?

11 A. She asked us to present a proposal to the Barnes
12 Foundation to prepare a fair market value on,
13 approximately, 4,250 objects.

14 Q. How much time were you told you had to do this
15 appraisal of those objects?

16 A. This was rather an extraordinary circumstance, given
17 that we normally do, approximately, 75 items per person
18 per day. We were given a very short time in which to do
19 the appraisal. We were asked to prepare the appraisal
20 and present it within, approximately, 8 to 12 weeks.

21 Q. Were you asked to appraise every item of the four
22 thousand, roughly, five hundred items individually?

23 A. No. We were asked to give totals on seven different

24 categories of objects, fair market value totals.

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1 Q. So going back to this summary of page, again, for
2 example, looking down here at the bottom, Jean Renoir
3 ceramics, number of objects, 35, description, ceramics,
4 you were asked to provide a single number for that group
5 of objects?

6 A. That's correct. A single fair market value.

7 Q. Single fair market value. How did you undertake to
8 accomplish appraising more than 4,500 objects in such a
9 short period of time?

10 A. We asked if there were any prior lists or anything
11 to work from to make it go more quickly; and we were
12 provided with lists of all of the items, descriptions of
13 all of the items. And a certain amount of the items had
14 color digital images that we could work from.

15 Approximately, 26 percent of the items had color digital
16 images. And the rest, we needed to look at in person.

17 Q. If 25, 26 percent of the items had digital images --
18 and I'm not good at math, but 4500 you did, roughly, a
19 thousand you did by digital images and 4,000 by
20 inspection, something like that?

21 A. A thousand and three thousand some odd, yes.

22 Q. Looking again at the Renoir ceramics, is there a
23 section in this report -- and let's see if we can turn to
24 that. I think it may be the last one. I have it on the

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1 board. Maybe that's sufficient. If not --
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2 A. I think that's sufficient, yeah.

3 Q. And this says, Renoir ceramics, and is this an
4 appraisal verification from you regarding the value of
5 the group of objects labeled Renoir ceramics?

6 A. Yes. This is an affidavit which describes the
7 people that were involved in appraising the works.

8 Q. In the report, if we look through the report, the
9 specific people who were specialists who were involved in
10 reviewing any of the objects, are their resumes included
11 as part of that report?

12 A. They are, yes.

13 Q. At the end of the -- excuse me -- in the second page
14 of this, did you then provide a value for which you
15 believe that group of objects -- was the fair market
16 value of that group of objects?

17 A. Yes, we did.

18 Q. Is that a process that you followed with each of the
19 seven groups?

20 A. Yes, absolutely.

21 Q. Taking another -- look at the Oriental rug section,
22 which I think is -- or, I'll put it up on the board here.
23 And with Renoir ceramics, let me just ask a question, Ms.
24 von Habsburg. Were those objects that you were able to

1 appraise by digital images or do you know whether you had
2 to look at those?

3 A. I think we saw two while we were there. The rest we
4 did in digital images.

5 Q. Looking here again at Oriental rugs, similarly,

6 there's an affidavit from you; is that correct?

7 A. That's correct.

8 Q. And followed at the end by a valuation figure?

9 A. Yes.

10 Q. Are these objects that -- how about these? Did you
11 happen to look at these personally or did you have
12 digitized images?

13 A. These were looked at personally.

14 Q. Was the use of digitized images mandated here in
15 part because of the timing that you were involved in with
16 a large number of items?

17 A. Absolutely, both timing and costs.

18 MR. WELLINGTON: Your Honor, this
19 would be a decent time, if you would like, to break now.

20 THE COURT: Then why don't we do
21 that? That clock is a little slow. Why don't we plan on
22 picking up at 1:15? It's, actually, 12:05, as we speak,
23 but by that clock, it's a few minutes after. We'll use
24 that clock as the benchmark, and 1:15 we'll start. All

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1 right?

2 MR. WELLINGTON: 1:15.

3 THE COURT: Thank you.

4 (At 12:05 p.m. a lunch recess was
5 taken.)

6 -----

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1 I HEREBY CERTIFY that the
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Volume I

2 proceedings and evidence are contained fully and
3 accurately in the notes taken by me in the above cause
4 and that this is a correct transcript of the same.

5

6

PAMELA M. MORAN

7

Offi ci al Court Reporter

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Received and directed to be filed

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this _____ day of _____, 2004.

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STANLEY R. OTT, JUDGE

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