

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
4831 WEST LANE, LLC : Case No. G-954
LOCAL MAP AMENDMENT G-954 : DPA 13-01
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A hearing in the above-entitled matter was held on
May 13, 2013, commencing at 10:00 a.m., at the Stella B.
Werner Council Office Building, 100 Maryland Avenue, Second
Floor, Rockville, Maryland 20850 before:

Lynn A. Robeson
Hearing Examiner

A P P E A R A N C E S

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P R O C E E D I N G S

1
2 MS. ROBESON: This is a continuation of the public
3 hearing in the matter of Local Map Amendment No. G-954,
4 filed by 4831 West Lane, LLC, which requests rezoning from
5 the R-60 to the TR-R zone, a property known as 4901
6 Montgomery Lane. It's also a continuation of the hearing in
7 Development Plan Amendment No. DPA 13-01 filed by the same
8 applicant which requests an amendment to the Development
9 Plan approved by the District Council on July 10, 2007, in
10 zoning application G-843. Yes, Mr. Knopf?
11 MR. KNOFF: I believe you read a wrong number.
12 MS. ROBESON: I did?
13 MR. KNOFF: I heard 4901.
14 MS. ROBESON: That's for the rezoning, which is a
15 smaller -- oh, and the West Lane right-of-way associated
16 with lots 24, 25 and 26 Edgemoor subdivision.
17 MR. KNOFF: It's 4901?
18 MS. ROBESON: I will check.
19 MR. KNOFF: I thought 4901 was the, is the
20 property at the corner of --
21 MR. ABRAMS: Hampden Lane.
22 MS. ROBESON: That's 4901 --
23 MR. KNOFF: Oh, Hampden Lane?
24 MS. ROBESON: Yes.
25 MR. KNOFF: I'm sorry. I'm sorry. I got the

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Chris Kabatt				
By Ms. Harris	11			
By Mr. Abrams			13	
By Mr. Knopf			14	
Morris Radulescu				
By Ms. Harris	16			77
By Mr. Abrams		34		87
By Mr. Knopf		59		93
Charles Irish				
By Ms. Harris	95			
By Mr. Abrams			121	
By Mr. Knopf			125	
Ashley Wiltshire				
By Ms. Harris	143			185
By Mr. Abrams			168	
By Mr. Knopf			179	

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E X H I B I T S

Exhibit No.		Marked/Received
124	Revised Development Plan May 10, 2013	108
125	Delivery truck stops on Montgomery Lane	162

1 wrong 4901.
2 MS. ROBESON: All right. I believe -- is there
3 any other preliminary matters?
4 MS. HARRIS: I have two --
5 MS. ROBESON: Yes?
6 MS. HARRIS: -- preliminary matters.
7 MS. ROBESON: Yes?
8 MS. HARRIS: One was we had submitted a letter
9 last week regarding additional binding elements.
10 MS. ROBESON: Yes. I saw that.
11 MS. HARRIS: And what I'd like to do is introduce
12 the new Development Plan that reflects those binding
13 elements.
14 MS. ROBESON: Okay. Well, we can do that as part
15 of your rebuttal case.
16 MS. HARRIS: Okay. That's fine.
17 MS. ROBESON: All right?
18 MS. HARRIS: And then the second preliminary
19 matter was I understand that a representative, actually the
20 president of the association of the Villages of Bethesda,
21 after learning of the testimony of opponent's case two weeks
22 ago, would like to testify as well and so they want to --
23 they would like to testify and we're fine with them doing
24 that before our rebuttal testimony.
25 MS. ROBESON: The only thing is, is he

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1 representing the Villages of Bethesda?
2 MS. HARRIS: Yes.
3 MS. ROBESON: The only thing is that they have to
4 give 10 days' notice of, if you testify on behalf of an
5 organization. He could testify as an individual.
6 MS. HARRIS: As an individual? And then he can --
7 MS. ROBESON: But he can't represent that he
8 speaks for the association or, you know, I could leave the
9 record open for 10 days and allow you the opportunity to
10 respond. Opposing --
11 MR. KNOPF: I thought this hearing was reserved
12 for rebuttal? I thought everything was on rebuttal?
13 MS. ROBESON: Well, it was --
14 MR. KNOPF: If he wasn't a party, is, he wasn't an
15 interested party. Did they --
16 MS. HARRIS: No, and I believe his testimony will
17 explain the reason why they hadn't and it was only after
18 learning of opponent's case that they decided that they
19 needed to have their voice heard as well.
20 MS. ROBESON: I'm going to let him testify. The
21 only issue is whether you would prefer to keep the record
22 open. We usually keep the record open 10 days. Whether you
23 wish to allow him to testify on behalf of the Villages or
24 whether you, whether he should testify as an individual.
25 MR. ABRAMS: Well, we obviously don't have the

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1 opportunity to have considered what his testimony would be.
2 If they want to submit a letter and we have an opportunity
3 to respond to that letter, I guess I don't --
4 MS. ROBESON: So you would prefer to keep the
5 record open for a, for him to submit something in writing
6 and give you the opportunity to respond?
7 MS. HARRIS: But, I mean Mr. Abrams's comment
8 about not knowing what he was going to say, similarly, we,
9 we didn't know what the individuals of the Highrise Edgemoor
10 or the City Homes or their association representatives were
11 going to say until they said it.
12 MR. ABRAMS: But this is rebuttal.
13 MS. ROBESON: No. This -- they filed a prehearing
14 statement on behalf of the homeowner's associations.
15 They're the entity. And the question here is whether he can
16 speak on behalf of the association. He can speak as an
17 individual, but I hesitate to do that because, you know,
18 it's very difficult when somebody comes on behalf of an
19 association and has to change everything to I at the last
20 minute. Is -- do you have an objection if he submits, if
21 the association submits something in writing while the
22 record is open and allows the other parties an opportunity
23 to respond?
24 MS. HARRIS: I would prefer for him to be able to
25 testify to what, to it. He submitted -- and, in fact, he

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1 did submit a letter into the record early on. I mean the
2 letter from -- and I don't --
3 MS. ROBESON: No, I remember the letter.
4 MS. HARRIS: Okay.
5 MS. ROBESON: But he hasn't been a party at the
6 public hearing.
7 MS. HARRIS: Well, how about if I then call him as
8 my, one of my rebuttal witnesses as an individual?
9 MS. ROBESON: This --
10 MR. ABRAMS: She identified who her rebuttal
11 witnesses were supposed to be at the end of the last
12 hearing.
13 MS. HARRIS: No, I think you said do you have --
14 MR. ABRAMS: Mr. Irish --
15 MS. HARRIS: -- no.
16 MR. ABRAMS: -- and Mr. Kabatt.
17 MS. ROBESON: Let's do -- what I'd like to do is
18 this. I'd like to hear from citizens, but it is a critical
19 issue in the case and if -- I would prefer to hear from the
20 associate, the official position of the association rather
21 than him as an individual because I think that carries more
22 weight. So what I'll do is leave the record open and allow
23 for a certain period of time and allow Mr. -- the --
24 MS. HARRIS: Blocher?
25 MS. ROBESON: Yes, thank you, the representative

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1 to submit something in writing on behalf of the association.
2 And then I'll allow opposition an opportunity to respond and
3 then if you wish to have additional opportunity to respond
4 to their response, you know, we can do it that way.
5 MS. HARRIS: Okay. May I just suggest one
6 variation of that --
7 MS. ROBESON: Okay.
8 MS. HARRIS: -- and that is hold the record open
9 and then hold one last hearing date --
10 MR. ABRAMS: No.
11 MS. HARRIS: -- in 10 days to allow Mr. Blocher to
12 testify and then we can take care of it at that moment?
13 MS. ROBESON: Why -- I don't see why that would be
14 necessary unless Mr. Abrams wants cross-examination.
15 MR. ABRAMS: No, I don't want any cross-
16 examination, plus the fact that I'm going to be out of the
17 country starting May 25th. And if we have a letter
18 resubmitted, that would give me an opportunity if they
19 submit it within, you know, five days or seven days or
20 whatever to respond and cut it off at that period of time.
21 MS. ROBESON: Okay. We would do that, sorry. I
22 would prefer to hear from the association and if there's no
23 need for cross-examination, then I would prefer to hear in
24 writing and it can be detailed. It's not that I want to
25 shut anybody down from testifying, it's simply that it's

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1 cleaner and better if I hear from the association itself,
2 okay?
3 MS. HARRIS: And so, just to be clear, once Mr.
4 Blocher submits his letter on behalf of the association,
5 then opponents will have how many days to respond? I just
6 want to make sure we're all aware of what the schedule would
7 be.
8 MS. ROBESON: Well, let's hold off on that until
9 we get through this hearing --
10 MS. HARRIS: Okay.
11 MS. ROBESON: -- just to make sure that there's
12 nothing else that -- once in a while there's some things
13 that need to be cleaned up.
14 MS. HARRIS: Okay. Certainly.
15 MS. ROBESON: So let's hear, let's hear from at
16 the end of the hearing -- I'm going to make a note. Okay.
17 So with that, if you could launch your rebuttal?
18 MS. HARRIS: Proceed with our rebuttal? Yes.
19 Okay so our first rebuttal witness is going to be Mr. Chris
20 Kabatt and we will be calling Mr. Kabatt, Mr. Irish, Mr.
21 Radulescu and Ms. Wiltshire as our rebuttal witnesses this
22 morning.
23 MS. ROBESON: Okay. Thank you.
24 MS. HARRIS: And hopefully the imperative word is
25 this morning.

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1 MS. ROBESON: Mr. Kabatt, you're still under oath.
2 MS. HARRIS: Thank you.
3 DIRECT EXAMINATION
4 BY MS. HARRIS:
5 Q Mr. Kabatt, you previously testified as to the
6 peak hour trips that the proposed building will generate.
7 Can you please remind the Hearing Examiner of what those
8 were?
9 A Yes. The 120 units proposed would generate 36
10 a.m. peak hour trips and 36 p.m. peak hour trips. I will
11 remind you that the existing uses on this site generate 16
12 a.m. peak hour trips and 11 p.m. peak hour trips. So that
13 is an increase of 20 trips in the a.m. and 25 trips in the
14 p.m. peak hour.
15 Q And if the proposed project were reduced to 100
16 units, how would these numbers change?
17 A Well, 100 dwelling units would generate 30, excuse
18 me, 30 a.m. peak hour trips and 30 p.m. peak hour trips.
19 Using those same existing numbers, the additional trips
20 would be 14 trips during the a.m. peak hour and 19 trips
21 during the p.m. peak hour.
22 MS. ROBESON: I'm sorry, the gross new trips, what
23 was your p.m. peak hour, not net of the existing trips?
24 THE WITNESS: For the 100?
25 MS. ROBESON: Yes.

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1 THE WITNESS: For 100 dwelling units, it's 30 p.m.
2 peak hour trips.
3 MS. ROBESON: Oh, and how many a.m.'s?
4 THE WITNESS: 30.
5 MS. ROBESON: Oh.
6 THE WITNESS: The rate is the same for a.m. and
7 p.m.
8 MS. ROBESON: I thought I missed -- and then net
9 of the existing trips is 14 a.m.'s and how many p.m. trips?
10 THE WITNESS: 19.
11 MS. ROBESON: 19? Okay.
12 BY MS. HARRIS:
13 Q And in your professional opinion, is this a
14 significant change between 120 units and 100 units?
15 A No, the -- just as a reminder, the number of trips
16 that would be generated by the 120 units is insignificant
17 and that, the 120 units as talked about in my previous
18 testimony equates to about one car every 2 1/2 minutes on
19 Montgomery Lane. And any reduction in the number of units
20 would obviously reduce this number further. But, again,
21 it's already a very low number on the street that has a
22 limited capacity for traffic.
23 Q So just to be clear, the existing, the proposed
24 would generate 2 1/2, one trip every 2 1/2 minutes, correct?
25 A Yes.

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1 MS. ROBESON: During the peak hour?
2 THE WITNESS: During the peak hour.
3 BY MS. HARRIS:
4 Q And then if you were to reduce the number of
5 units, does that 2 1/2 minute span where an additional new
6 car goes by, does that increase?
7 A Yes.
8 Q Okay. Do you have any -- and your opinion about
9 that new car every 2 1/2 minutes is what?
10 A It's insignificant.
11 Q Thank you.
12 MS. HARRIS: That's, those are our only questions
13 for Mr. Kabatt.
14 MS. ROBESON: All right. Any questions, Mr.
15 Abrams?
16 MR. ABRAMS: Yes.
17 CROSS-EXAMINATION
18 BY MR. ABRAMS:
19 Q Mr. Kabatt, was one of the critical intersections
20 that you examined, but it was studied, Montgomery Lane and
21 Arlington Road?
22 MS. HARRIS: Objection. He just testified to the
23 number of new trips on Montgomery Lane. He didn't get --
24 MS. ROBESON: Sustained, unless you can tie it
25 into the trip generations.

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1 MR. ABRAMS: Well, I think it is tied in. He has
2 to determine the number of trips going through critical
3 intersections and what he's done is to determine on two
4 levels what that would be. My question is was one of the
5 intersections that he's talking about, this traffic going
6 through, Arlington Road and Montgomery Lane?
7 MS. HARRIS: But that's not what he testified to.
8 MS. ROBESON: No, he -- I agree. So I'm going to
9 sustain. Do you have other questions?
10 MR. ABRAMS: No.
11 MS. ROBESON: Mr. Knopf?
12 BY MR. KNOPF:
13 Q What -- how do you arrive at the figures that you
14 arrived at as to how many new trips would be generated?
15 A The trip generation rates are -- we used the rates
16 that are published in the local area transportation review
17 guidelines. It's for this use -- in Bethesda it's CBD.
18 It's .3 trips per unit.
19 Q And you said --
20 A And that's for the -- so that's what we used for
21 the estimate of the 120 units and the 100 units and then the
22 existing trips were based on driveway counts.
23 Q And is the .3 units, is there a separate figure
24 for whether it's rental as compared to condo?
25 A No.

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1 Q Or is it the -- it's the same?
2 A It's the same.
3 Q Would you agree with me that on rentals in a high-
4 price rental area it's not uncommon that people, unrelated
5 people share an apartment to pay the rent and each has a
6 car?
7 A I would not agree with that.
8 Q You wouldn't? Do the point, does the .3 figure,
9 is that based on people living in the unit driving alone or
10 does that include deliveries?
11 A It includes all trips using the driveway.
12 Q In the driveway?
13 A Well, it includes all trips coming to and from the
14 site. I -- there were several sites that the Commission had
15 used and gathered data over years to come up with these
16 rates.
17 Q And do you know if it limits deliveries of,
18 whether moving goods or food delivery or cleaners or what
19 have you, it's, or it's based on the number of trips a
20 person living in the apartment is apt to make?
21 A It's all trips coming to and from the site.
22 Q And are there different trip generation needs
23 depending on the location of the building, are you talking
24 about in Montgomery County like if it's in the CDD, if it's
25 a Metro, if it's not near a Metro and so on?

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1 A The guidelines, the LATR guidelines, they have
2 rates for the general County, they're called county-wide
3 rates and then they have specific trip rates for the
4 Bethesda CBD, Friendship Heights CBD and Silver Spring CBD.
5 Q And which trip did you use the CBD from?
6 A The Bethesda --
7 Q Bethesda CBD --
8 A -- CBD rates.
9 Q And this is for -- there's no distinction -- let
10 me make clear, no distinction between rental and condo?
11 A Correct.
12 Q Just one moment. Excuse me. Is this property
13 located within the CBD?
14 A Yes.
15 MR. KNOPF: I have no further questions.
16 MS. ROBESON: All right. Any redirect?
17 MS. HARRIS: No, thank you.
18 MS. ROBESON: All right.
19 MS. HARRIS: You're good to go. Thank you. Our
20 next witness is Mr. Morris Radulescu.
21 MS. ROBESON: Mr. Radulescu, you're still under
22 oath.
23 DIRECT EXAMINATION
24 BY MS. HARRIS:
25 Q Mr. Radulescu, there's been extensive discussion

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1 on the tenting concept. Based on your review of the Sector
2 Plan and the surrounding existing approved projects, can you
3 please state in your opinion what the intent of the tenting
4 concept is?
5 A First of all, tenting is referred to, a general
6 term meaning that there is a concentration of height, in our
7 case close to the Metro or around Wisconsin Avenue and the
8 general transition to a lower height on Arlington Road. The
9 tenting is not a physical tent that needs to span to points,
10 but is a general idea that the overall skyline needs to
11 gradually move down from the higher edge from Wisconsin or
12 on a business, on the business core towards Arlington Road.
13 Q In your opinion, if there are variations within
14 that tent, so you may have one building that's higher than
15 another on either side of it, architecturally what's your
16 opinion about that kind of situation?
17 A I think that the tenting has to be tied up to the
18 overall guidelines in which the desire is to form a variety
19 of skyline in order uniform reading and we just need to look
20 at what has been approved on Hampden Lane in which, yes,
21 there is a general tenting, but there is not a little tent
22 actually that unifies all these roofs and you can see how on
23 the east side of Arlington, of Hampden Lane, there's a
24 building of 71 feet or something like that. And then there
25 are buildings which are lower than the 4901 Hampden Lane.

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1 It's high and then it goes low again. But there is an
2 overall skyline that generates this gradual transition from
3 high to low.
4 Q And just to confirm one thing, you just mentioned
5 4901. Were you, in fact, referring to the building that's
6 been referred to as Hampden Lane at the corner of Hampden
7 and Arlington?
8 A Yes. Yes, on the --
9 Q That's the one that steps down?
10 A -- northwest corner of Arlington and Hampden Lane.
11 Q Thank you. And just to be clear, on the Exhibit
12 106(f), can you just point to the one you were just
13 referring to?
14 A Yes. I'm referring to -- this is 4901 Hampden
15 Lane.
16 MS. ROBESON: Well --
17 THE WITNESS: The building --
18 MS. ROBESON: -- in the southwest corner, I think
19 that's just Hampden Lane. I think 4901 is the building --
20 THE WITNESS: Oh, yes, Hampden Lane, yes. I was
21 referring to the building --
22 MS. ROBESON: So that's what we --
23 THE WITNESS: -- on Hampden Lane --
24 MS. ROBESON: Yes.
25 THE WITNESS: -- and Arlington Road.

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1 MS. ROBESON: So you're -- okay.
2 THE WITNESS: So I'm referring how this overall,
3 these are transitioned from high on Wisconsin on a business
4 core to Arlington Road, but there is a variation in height
5 and I think that that's the goal of the Sector Plan.
6 BY MS. HARRIS:
7 Q Thank you. There's been many suggestions from
8 opponents of how the zoning could simply be set back here
9 and shortened there. I think it's important to explain the
10 practical considerations behind how the design of the
11 building, or any building for that matter, is achieved. Can
12 you please explain the various parameters that mandate how
13 you derive a design, how you derive the design of the
14 building?
15 A First of all, our building is not an empty shell.
16 It's not like an office building or even, let's say a shell
17 of a mall or retail. There is a precise program that you
18 need to respond. There's a precise code, a precise
19 regulations and then also a need to respond to the market
20 rates. So when you put all these things into consideration,
21 let's say the size of a bathroom that you need a wheelchair
22 to go in and out of, the clearance is -- a kitchen and so on
23 and so forth. So when you build all this stuff up, you end
24 up with a pretty much an optimal dimension for the building.
25 So it's not, it's just moving here and compensating there is

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1 going to generate a building. It's not really -- I mean
2 there are flexibilities but, again, it's generated by pure
3 functional and code and market issues.
4 Q And can you explain what was the effect of the
5 increase of the step-back from nine feet to 12 feet?
6 A Yes. First of all, we, that increase accomplished
7 one thing, is it made that nine foot step-back a more
8 functional terrace if you have 12 feet. But then it pinches
9 the units up to a point that you can no longer functionally
10 develop them into something that you can rent or meet the
11 code or -- so there are also considerations coming from
12 inside the building towards the outside. There's forces
13 outside, a lot of them actually, trying to push the building
14 in. So that was a blend, an optimal, again an optimal
15 solution to meet the criteria.
16 Q And is there an actual linear dimension in terms
17 of what that ideal modular may be?
18 A Well, the linear meaning on the facade on, the
19 linear optimal dimension is about 24 foot along the facade.
20 That's an optimal. And then there's an optimal depth. Of
21 course, you can pinch a few inches, but it's not that you
22 can actually shove the building in. That optimal dimension
23 would be 65 feet, around that number.
24 MS. ROBESON: Wait, which dimension is 65?
25 THE WITNESS: Well, I would just explain on the

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1 exhibit 106(f).
2 MS. ROBESON: Okay.
3 THE WITNESS: So let's say along the street there
4 is a ring of units and the dimension of the unit is about 24
5 feet for a 1-bedroom.
6 MS. ROBESON: Oh, I see what you're saying.
7 THE WITNESS: And then the depth of the building,
8 so, is one or cut the building --
9 MS. ROBESON: Right.
10 THE WITNESS: -- that dimension will be, depending
11 on what's inside, but there are just two units in the
12 corridor, that would be around 65 feet. So as you know, the
13 building, you have to find other ways and there only that
14 many things you can -- again, if you think of a, the
15 elements that you cannot really change is the bathroom and
16 the kitchen and it's only that many stuff that you can do
17 and then you end up with a unit. So you can look most of
18 the buildings are that initial for a reason, it's not that
19 we don't want to change them.
20 BY MS. HARRIS:
21 Q Mr. Irish noted that the footprint of the building
22 decreased by 87 feet and there was some interest, including
23 from the Hearing Examiner, in terms of how did that
24 reduction in the footprint translate in terms of FAR. Can
25 you please explain that?

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1 A Yes, I remember actually, yes, the questioning
2 about the discrepancy of a 87 square foot. I just want to
3 point out for comparison that 87 square feet is the size of
4 a walk-in closet or the size of a bathroom. So if you
5 distribute that over the overall 120 units, that's -- that's
6 a minute detail. Now there are a lot of things that
7 contribute to how we calculate the FAR, the GSF, the gross
8 square footage of the building. And, but I want to say that
9 there is a starting point, sorry, and the starting point
10 that we have a maximum FAR and that one is fixed. Then we
11 have various setbacks. So we have, in effect, in a fixed
12 angle or a fixed volume in which you can put this building.
13 Now 87 square foot, just to give an example, the
14 perimeter of the building is around 450, maybe 470 square
15 feet. So if I change from metal to brick, the building
16 moves in, I don't know, an inch. So that, an inch is what,
17 .8 of a foot, multiplied by the perimeter, you end up with
18 40-something feet by two floors. That's 80 feet. So there
19 are these minute things that at the end, they end up with
20 the number, but then 87 foot over the overall size of a
21 building is just -- so that's the difference. That's why we
22 have a difference and we're not going to know the precise
23 number until we finish detailing the building. But, again,
24 we have a fixed sample. We have a limited height. We have
25 a limited FAR that generates your limited gross square

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1 footage and we have various setbacks. So that's the part
2 I'm making the opinion toward.
3 Q Thank you. Another subject that received a lot of
4 attention was the architectural compatibility. As you know,
5 the TSR zone requires site plan approval. What level of
6 architecture does the Planning Board review at site plan?
7 A Well, generally at this level we, it's not the
8 detail of architecture is not the intent of the site plan,
9 it's just to get the general zoning issues which are the
10 density, the height, the setbacks in compared to what has
11 built around. So it's not really minute details of
12 architecture.
13 Q And at the time of site plan, does the, do you
14 know whether the site plan requires schematic level design
15 for architecture at site plan?
16 A I think it's the level that we already presented,
17 so it's --
18 Q Okay.
19 A -- the level of --
20 Q At this point, do you have a general level of
21 what -- do you have a general sense of the schematic design
22 of the building?
23 A Yes. It's the level that we already presented.
24 When we look in the context of the surrounding area and we
25 saw a variety of styles, a variety of languages, but there

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1 is some unifying feel which is probably, let's say, there's
2 the brick overall in the residential feel and we designed
3 the building in that context. We, as I probably mentioned
4 already in my previous testimony, is that we designed the
5 building to be a contemporary interpretation of traditional
6 composition which is the middle, is a base, a middle and a
7 top and there are different elements into that, but there's
8 a residential feel to it, the fenestrations, the color of
9 the brick, the texture, they all contribute to this unifying
10 element.
11 Q Can you explain the top two floors of the building
12 and why you chose to treat them differently than the base or
13 the middle of the building?
14 A Yes. We wanted the building, the top of the
15 building to feel a little lighter and I think that the
16 change of material was a best way to do it. Why? Because
17 the brick has, I mean not only the physical weight to it,
18 but it has a texture, it has a -- it doesn't reflect light.
19 So it makes for a heavier, a heavier reading, while the top
20 being metal, it will reflect to some extent the color of the
21 sky. If you have a cloudy day, the metal looks different
22 than on a sunny day. Sunsets and sunrise and, so the
23 building will appear different. It will appear lighter. So
24 that was the reason for adding or for designing the top
25 differently than the middle.

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1 Q And can you please explain in your opinion would a
2 setback along Montgomery Lane, I'm sorry, along West Lane,
3 and a step-back, what, in your opinion what, if anything,
4 would that achieve? And I'm referring to Exhibit 75.
5 MS. ROBESON: Can you refresh my memory and what
6 aspect, what are we looking at in 75?
7 THE WITNESS: This is the West Lane elevation.
8 MS. ROBESON: Okay.
9 THE WITNESS: So is the east elevation of the
10 view. Montgomery Lane would be --
11 MS. ROBESON: Okay.
12 THE WITNESS: -- on the left-hand side of the
13 right-hand side image.
14 MS. ROBESON: All right. Thank you.
15 THE WITNESS: And on the left-hand side image of
16 the exhibit is a detail of, a blown-up detail of the West
17 Lane facade. So this one has the base which shows the
18 justification of the, a middle portion which has a vapor
19 ejection and the top that is here.
20 Now we talk about Montgomery Lane and why what we
21 have is enough in terms of architecture reading. If you
22 just look at the context, the building across the street has
23 the same reading. The windows, of course, have been --
24 MS. HARRIS: When you say --
25 THE WITNESS: -- I forgot the name of the

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1 building --
2 MS. ROBESON: 4825 West Lane?
3 THE WITNESS: Yes.
4 BY MS. HARRIS:
5 Q Well, why don't you point to it on Exhibit 106?
6 A Yes, it's this.
7 MS. ROBESON: Oh, 4825 Montgomery Lane?
8 MS. HARRIS: Yes. It's the two-week gap in the
9 hearing.
10 MS. ROBESON: That's right.
11 THE WITNESS: So that building, again, has a base,
12 a garage base, a middle and a top, but it's just an
13 extrusion. So they built this building of different
14 elements but, again, the building goes straight up. We
15 actually have indentation, our facade is not flat. In fact,
16 for more than half of it is different. We have a start
17 point or the intersection of Montgomery Lane and West Lane
18 where the building carves in. Then we have the middle
19 portion would have this three-bay projections so the, again,
20 the facade is not just a straight line.
21 And then as you go towards the end of the property
22 on the north end, there's also a projection that starts
23 about four foot on the south side and then the northeast
24 corner is about eight foot. So you have all these
25 indentations in the building to give you the residential or

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1 a scaled-down facade. Doing anything else would be -- I
2 mean it will not achieve anything else that the building
3 doesn't achieve already.
4 MS. HARRIS: Can, in, can you --
5 MS. ROBESON: What do you mean a scaled-down
6 facade?
7 THE WITNESS: Well, instead of having a continuous
8 wall, we have a wall that -- and if I can point to Exhibit
9 106(b), you can see how the facade on West Lane is not a
10 straight line. It has a zigzagging indentation so there are
11 years that as you walk down the street or up the street, and
12 if you look on an oblique, you see these over-sized
13 townhouse buildings. So that was the elements --
14 MS. ROBESON: How far does that project?
15 THE WITNESS: The projection is a foot.
16 MS. ROBESON: Okay.
17 THE WITNESS: And also, and this reading is
18 different than, than the spacing between in which we have
19 this, again, a bay-like, a bay projection, but the bay
20 reading with French balconies. So it's not monotonous.
21 It's a series of paths.
22 BY MS. HARRIS:
23 Q And -- go ahead.
24 A Yes?
25 Q Well, you indicated that it projects a foot and

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1 then can you, all the way on the northern side, what's --
2 can you see what that projection is?
3 A On the northern side, because the, we have a, an
4 element, the projection here on the north end is about four
5 foot on the south side of this projection and on the north
6 end is about eight feet. So again, with a curve and with
7 the zigzagging, this is not a straight facade. So it does a
8 lot.
9 MS. ROBESON: Now what is -- I'm sorry, I'm not
10 recollecting the Montgomery Lane facade. Does that have the
11 same kind of projections or not?
12 THE WITNESS: The Montgomery Lane has other
13 elements. First of all, for --
14 MS. ROBESON: Do you have an elevation of
15 Montgomery Lane?
16 THE WITNESS: Yes. That would be Exhibit --
17 MS. HARRIS: That's, no, that's not it.
18 THE WITNESS: Oh, that's not --
19 MS. HARRIS: It's the one before that one, I
20 think.
21 THE WITNESS: That's Exhibit 73.
22 BY MS. HARRIS:
23 Q On which side of it is Exhibit 73?
24 MS. ROBESON: On the left.
25 THE WITNESS: The left. Yes.

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1 MS. ROBESON: It's hard. It's --
2 THE WITNESS: So the left-hand side has the
3 Montgomery Lane facade. And I'm pointing to this bay
4 reading, so we have the same higher window with finished
5 balcony's reading and then French windows. So we have the
6 same reading. And then for two-thirds of the facade we have
7 this curve corner element. So in a small linear footage,
8 again, we try to make, to introduce architectural element to
9 make the facade as interesting as possible.
10 MS. HARRIS: Now --
11 MS. ROBESON: Can I ask one question? I don't
12 know if you were here for -- I can't remember the name of
13 the woman, I think she lived in Edgemoor who was --
14 MS. HARRIS: Linda Skalett?
15 MR. KNOPF: Skalett, Linda Skalett?
16 MS. ROBESON: Yes. And she noted that the exhibit
17 you had with all the different, you had different buildings,
18 areas. She noted that the other, the elevations that you
19 showed of those buildings didn't front on Montgomery Lane
20 and, therefore, perhaps shouldn't be given as much weight
21 architecturally as -- do you know --
22 MS. HARRIS: Yes. Can we get the exhibit?
23 MS. ROBESON: Yes.
24 MS. HARRIS: It's the one.
25 MS. ROBESON: It's this one.

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1 MS. HARRIS: Very good.
2 MS. ROBESON: That's the one. Okay. Her point
3 was that I think the one in the lower right is 4901
4 Arlington and the one in the lower left is what we've been
5 referring to as the Hampden Lane project. And I think what
6 she was saying is that those, using those as part of the
7 area isn't as persuasive because they don't front onto
8 Montgomery Lane. Which -- what is your response to that?
9 THE WITNESS: Well, the case is, you know, there
10 is some persuasion, but not as persuasive as probably one
11 would desire. Now currently this building is, doesn't face
12 at all Montgomery Lane, but this one does. In fact, when
13 you turn the corner, and I'm referring to 4901.
14 MS. ROBESON: 01. Well, her position was, and I'm
15 really just asking because I want to know, her position was
16 that the corner facing Montgomery Lane has a different
17 architecture than that, it's more traditional.
18 THE WITNESS: Yes, as far as I know, this really
19 has a consistent reading throughout. It doesn't -- I'm sure
20 it doesn't have a statue on the corner or a Greek capital --
21 THE WITNESS: Well, she, she said that that design
22 has changed, that that is no longer the current design of
23 that building.
24 THE WITNESS: But even leaving this aside --
25 MS. ROBESON: Yes.

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1 THE WITNESS: -- in fact, at the top of the
2 exhibits we are using --
3 MS. ROBESON: Okay.
4 THE WITNESS: -- the buildings that are facing, so
5 in a way I can point to several elements, especially,
6 probably in a larger scale that we have the same type of
7 readings with this, or this outline I'm pointing to, the
8 Edgemoor.
9 MS. ROBESON: Okay.
10 THE WITNESS: And, in fact --
11 BY MS. HARRIS:
12 Q Can you explain that a little bit more for those
13 that --
14 A So --
15 Q -- pretend we don't know anything about
16 architecture.
17 A So --
18 MS. ROBESON: Yes, please.
19 THE WITNESS: -- what, what --
20 MS. ROBESON: You don't have to pretend.
21 THE WITNESS: So what the building does, I mean it
22 has a brick wall, but you do some detailing on how you lay
23 out the brick, you know, you set it out such that the brick
24 wall has more texture in here and, therefore, it grounds the
25 building. So it forms a base. So this is, we are doing the

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1 same thing. Then here's a series of stacked, large windows
2 with balconies and then you have French windows with pretty
3 much the, we have the same type of reading.
4 If you look at the other two exhibits, other two
5 images and one is City Homes and the other one is --
6 MS. ROBESON: 4825 Montgomery Lane.
7 THE WITNESS: Yes. That building. Again, they
8 are doing base, middle and top, base, middle and top, same
9 French windows, same spec, larger element. The overall is
10 brick at least in these images. So we are within the
11 same -- we are not trying to reproduce them by design. I'm
12 not trying to reproduce any of these buildings. Our market
13 is different.
14 MS. ROBESON: Yes.
15 THE WITNESS: But I think that very, what we did
16 very well blends in with overall residential character of
17 the street.
18 BY MS. HARRIS
19 Q Do you happen to know whether the building, 4901,
20 whether that has site plan approval?
21 A I think it does, site plan, but I'm not sure.
22 Q Okay.
23 THE WITNESS: Wait --
24 THE WITNESS: Maybe I --
25 MS. ROBESON: -- 4901 is the one, at the lower

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1 right?
2 THE WITNESS: Oh, this one? I was --
3 MS. HARRIS: No.
4 THE WITNESS: This one I don't know. I was --
5 MS. HARRIS: Okay. Okay.
6 BY MS. HARRIS:
7 Q Are you also aware in terms of the, well, I think
8 you touched on this, but is there anything else you want to
9 explain in terms of the building design and in terms of its
10 compatibility with the surrounding area?
11 A Yes. Again, maybe we should go to the definition
12 of compatibility. Compatibility doesn't mean sameness, it
13 means that it has, overall its size, scale, function goes
14 into this dialogue with the neighborhood and obviously this
15 building does, I mean our design.
16 Q Thank you. And then, finally, can you please read
17 the highlighted portion of Exhibit 106(j) which is the
18 transcription from the Planning Board hearing?
19 A Okay.
20 MR. ABRAMS: Objection. I mean it's in the
21 record.
22 MS. ROBESON: Yes.
23 MR. ABRAMS: Why do have to waste more page space?
24 MS. ROBESON: He doesn't have to read it. I
25 mean --

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1 MS. HARRIS: Okay.
2 BY MS. HARRIS:
3 Q Do you have anything else to add in terms of the
4 architecture of the building?
5 A It's, I'm just, again, looking at the building
6 that we designed and I think that the fact that we
7 incorporate a lot of residential elements into it, I mean
8 not, we incorporated residential because it has to function
9 as residential, not necessarily because we have a laundry
10 list. We did it because we feel that that's the right thing
11 to do because of scaling in front of its proximity to a
12 Metro station and its location on a residential street, on a
13 small scale residential street, I think that we incorporated
14 all the elements necessary for the building to be
15 successful.
16 Q Thank you.
17 MS. HARRIS: No further questions.
18 MS. ROBESON: Okay. Cross-examination, Mr.
19 Abrams.
20 CROSS-EXAMINATION
21 BY MR. ABRAMS:
22 Q Let's start with your last statement, you
23 incorporated a lot of residential elements into the
24 building. Why did you eliminate or why did the applicant
25 eliminate bay windows on the front?

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1 A We have a bay reading on the front. The fact that
2 you have a physical element or not, the idea is to
3 incorporate elements that will blend into the overall
4 architecture. How we did it, in fact, we project, we don't
5 project, we can go back to that exhibit and look at it. It
6 has what it takes to read as that. We have French
7 balconies. We have stacked windows. We have larger
8 windows. We have out in-between large windows and bunched
9 windows, so it achieves what the bay window needs to
10 achieve.
11 Q But it's not a bay window?
12 A No.
13 Q In fact, wasn't a bay window a binding element of
14 one of the earlier designs?
15 A I don't know.
16 Q Didn't you make, didn't you design this project?
17 A Designing and binding elements are different
18 things. In other words, we, as we start designing, the
19 building evolves. So I don't know if the first sketch we
20 did had the binding element or not.
21 Q Now would the, would the bay windows be an element
22 more associated with a residential design than an office
23 building or commercial design?
24 A I think that the architecture has to be judged in
25 its totality. You cannot say that a gutter or a gargoyle or

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1 a fireplace makes the building residential or not
2 residential. I think the building has to be judged as a
3 whole.
4 Q Do you know of any office buildings or commercial
5 buildings that you did bay windows in Bethesda?
6 A There are very few buildings in Bethesda to make
7 an overall description of that overall direction of
8 architecture, but I can point to several buildings within
9 the Beltway that have them for different reasons.
10 Q Okay. At the beginning of your testimony, you
11 discussed the tenting concept. In terms of the TSR
12 district, doesn't the Sector Plan really address the tenting
13 concept from Woodmont Avenue down to Arlington Road?
14 A We have, but then we have from Wisconsin Avenue to
15 Arlington Road.
16 Q No, I'm, I asked you about the TSR zone or the TRS
17 districted as it's described in the Sector Plan.
18 A Right. And I believe it's --
19 Q Doesn't it describe the higher densities, higher
20 heights along Woodmont Avenue transitioning down to 35 feet
21 along Arlington Road?
22 A I do not recall the exact --
23 Q You don't recall?
24 A -- language.
25 Q Thank you. In terms of the tenting concept

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1 overall, you have the higher buildings closer to the core of
2 Metro, correct?
3 A Yes.
4 Q And how high are those buildings?
5 A I do not -- probably we have an exhibit. I do not
6 know numbers or anything.
7 Q Well, how can you testify as to tenting if you
8 don't know how high the buildings are?
9 A Because we have an exhibit that incorporates the
10 height of the building and I can --
11 Q Well, why don't you address the exhibit and we can
12 testify to that?
13 A One second. I have to find it. It's a 79.
14 Q Is that from the Metro core?
15 A This is through Montgomery Lane.
16 Q Well --
17 A So the Metro core will be --
18 Q Okay.
19 A -- on the right-hand side of the page.
20 Q Now the Metro core has higher buildings than what
21 was associated along Montgomery Lane between Woodmont Avenue
22 and Arlington Road, is that correct?
23 A I don't know. I can refer to this exhibit.
24 Q Okay. The building to the right --
25 A Yes.

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1 Q -- all the way to the right, that's higher than
2 any building in the TSR district, is that correct?
3 A It's higher on this exhibit, yes. I don't know --
4 in fact, the building, it refers to only this building. So
5 what we did, we took an exhibit through Montgomery Lane
6 because this is where we want to design the building, so --
7 Q When you come down from that higher building on
8 the other side of Woodmont Avenue that you showed on the
9 right-hand side of that exhibit --
10 A Okay.
11 Q -- you come down to, as shown on that exhibit, the
12 big Edgemoor, is that correct?
13 A This is the Edgemoor, yes.
14 Q Okay. Then you come down to what, what's the next
15 highest building?
16 A Sandy Spring.
17 Q Okay. And that's lower, is it not, than the
18 subject property?
19 A Yes, theoretically, yes.
20 Q Okay. So in terms of a tenting concept in a
21 layman's terms, it really is not a straight, diagonal-type
22 line, it's sort of a high, low, high line?
23 A Right.
24 Q Okay.
25 A And I testified how that is beneficial to the

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1 overall skyline.
2 Q Now you also testified as to the Hampden Lane
3 building being the building down on Hampden Lane and
4 Arlington Road, correct, in terms of this overall tenting
5 concept?
6 A Yes.
7 Q Now that building has several heights receding
8 from the west going eastward, does it not?
9 A Yes, it does.
10 Q Okay. And the highest one I think you said was 71
11 feet?
12 A Around that number, I don't know.
13 Q And are you aware that there's approximately a 12-
14 foot height differential between Hampden Lane and Montgomery
15 Lane?
16 A Well, what I'm aware of is that the portion of
17 this building --
18 Q Well, can you answer yes or no?
19 A What is the question?
20 Q The question is, are you aware of the approximate
21 12-foot height differential between Montgomery Lane and
22 Hampden Lane?
23 A 12-foot difference between what and what, I'm
24 sorry?
25 Q Between Montgomery Lane's elevation and Hampden

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1 Lane's elevation?
2 MS. HARRIS: Objection.
3 MS. ROBESON: I think he's referring to the ground
4 elevation.
5 MR. ABRAMS: Ground elevation.
6 MS. HARRIS: He --
7 THE WITNESS: Probably somebody who did the site
8 plan is qualified to talk about it.
9 MS. ROBESON: Well, you can answer if you're aware
10 of it.
11 THE WITNESS: I am aware of a height. I don't
12 know the number.
13 MS. ROBESON: Okay.
14 BY MR. ABRAM:
15 Q Okay. If you took the difference between -- and
16 let's just use these numbers as an example, if you took the
17 elevation of Hampden Lane and that was 12 feet lower than
18 the ground elevation of Montgomery Lane on the same parallel
19 Plane, wouldn't that effectively reduce the effect of the
20 height of Hampden Lane to 71 minus 12, 59 feet?
21 A Well, it's difficult to answer. Why? Because
22 you're asking me about a project that we didn't design. So
23 I understand you throwing numbers at me and wanting me to
24 respond, but it is beyond what I prepared for, they are not,
25 you know --

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1 Q Well, you testified as to the overall concept, the
2 skyline, what that would be in terms of the tenting concept?
3 A Yes.
4 Q Okay. If you look down from Woodmont Avenue and
5 you're standing on Woodmont and Montgomery Lane --
6 MS. ROBESON: If it helps, why don't you put that
7 exhibit on the -- what exhibit is that?
8 THE WITNESS: That's Exhibit 106(f).
9 BY MR. ABRAMS:
10 Q If you're standing on Woodmont Avenue and
11 Montgomery Lane, and you want to get the overall view of how
12 this tenting concept works in the TSR district and you're
13 focusing on the Hampden Lane building on Hampden Lane and
14 Arlington Road, and this street, Hampden Lane, is
15 approximately 12 feet below this street, which is Montgomery
16 Lane, okay, in terms of the elevation of those streets. Now
17 when you look down in that direction, doesn't the building
18 appear lower than 71 feet, first of all?
19 A 71 feet will be measured from a point relevant to
20 the site of this building. So if you, just to give an
21 example, if you sit on Mount Everest, yes, the building
22 would be lower. So, of course, if you sit on a higher
23 ground or a lower ground, the building would be lower. But
24 I just want to point out that if you are sitting where the
25 intersection of Montgomery Lane and Woodmont, your view will

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1 be blocked, so the building will be irrelevant for this
2 particular intersection.
3 Q Okay. Move down so that this building doesn't
4 block you, move down westward on Montgomery Lane.
5 A Yes.
6 Q Doesn't the appearance of this building lower than
7 71 feet?
8 A Well, again, the building is on a different block.
9 Let's concentrate on this block.
10 Q But we're talking about the TSR district?
11 A Right.
12 Q And the TSR district Sector Plan recommendations
13 has a tenting concept for the entire street?
14 A Okay. The tenting -- let's point to the tenting
15 that's on West Lane.
16 MS. ROBESON: Okay. Okay. You need to answer his
17 question.
18 THE WITNESS: Yes, but the questions are not --
19 MS. ROBESON: Just --
20 THE WITNESS: Okay. The --
21 MS. ROBESON: I know your pain, but --
22 THE WITNESS: I hear fine, believe me, but --
23 MS. ROBESON: No, I know you hear fine, but what
24 I'm telling you is this is not the time to argue with Mr.
25 Abrams. You have to answer his question which is if you

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1 were standing slightly west from the intersection of
2 Montgomery Lane and Woodmont and that building, 4901, was
3 not blocking your view, isn't effectively the Hampden Lane
4 project, which is in the southwest corner, isn't it
5 effectively lower than 71 feet because of the --
6 THE WITNESS: No.
7 MS. ROBESON: -- elevation difference?
8 THE WITNESS: Because 71 feet is not measured from
9 an absolute point on the earth. It's measured from the
10 point --
11 MS. ROBESON: I understand, but what he's saying
12 is if you had a 71-foot building located at 4901 --
13 THE WITNESS: Yes.
14 MS. ROBESON: -- all right, and you had a 70-foot
15 building locate at Arlington and Hampden and they're both 71
16 feet, wouldn't the one at Arlington and Hampden appear
17 lower?
18 THE WITNESS: If one would be able to see, which
19 it would be not.
20 MS. ROBESON: And why wouldn't you be able to see
21 it --
22 THE WITNESS: Because, because from Montgomery
23 Lane your view --
24 MS. ROBESON: No, well, first just answer the
25 question. Assume there's nothing there. I really --

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1 THE WITNESS: Yes, but the question has no answer.
2 MS. ROBESON: I really --
3 THE WITNESS: Yes, but the question has no answer.
4 That's what I'm trying --
5 MS. ROBESON: No, it does have an answer, it does
6 because I think the answer is, yes, if you, if you can see
7 the building. So --
8 THE WITNESS: I'm sorry, but I'm dealing in
9 reality, not in this --
10 MS. ROBESON: No, I -- well, he can ask you
11 hypotheticals and he's talking about the tenting effect in
12 the district and he's trying to get to the fact that the
13 ground elevation is going to render from a tenting
14 standpoint, a 70-foot building at Woodmont Avenue is going
15 to be higher than a 70-foot building at Arlington and
16 Hampden.
17 THE WITNESS: Then it seems that there is already
18 an answer for you.
19 MS. ROBESON: No, there isn't. I'm just -- I
20 don't want to deal with -- you can deal with it later, but
21 first I just want the answer to his question.
22 THE WITNESS: Right, but as I said, there's
23 already a pre-made answer.
24 MS. ROBESON: What's the pre-made answer?
25 THE WITNESS: The pre-made answer is probably the

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1 answer that Mr. Abrams wants to hear.
2 MS. ROBESON: Well, then give it to him.
3 THE WITNESS: But is it my answer or his answer?
4 I mean --
5 MS. ROBESON: It's your answer.
6 THE WITNESS: And my answer cannot be answered the
7 way he asked the question.
8 MS. ROBESON: No. No.
9 THE WITNESS: It is my answer.
10 MS. ROBESON: You don't understand --
11 THE WITNESS: Maybe I don't.
12 MS. ROBESON: -- how cross-examination works and
13 maybe you shouldn't and hopefully maybe you never have to.
14 But when he asks you a question like that, you need to
15 answer his question even if it looks bad, you have to answer
16 truthfully even if it looks bad for your, if you think it
17 looks bad for your case. Your attorney is going to let you
18 put in all the qualifications to your answer, but right now
19 you just need to answer his question.
20 THE WITNESS: That, honestly, I don't understand
21 what answer you, I mean --
22 MS. ROBESON: You don't understand what I just
23 explained?
24 THE WITNESS: No, I understand. No, I understand
25 the procedure now, but the question itself that one, if

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1 we're standing here this building will be lower --
2 MS. ROBESON: Well, let me ask. Then let me ask
3 the --
4 THE WITNESS: -- yes or no lower.
5 MS. ROBESON: -- question. Let me ask the
6 question. Say nothing else is there, okay, nothing is on
7 the ground and you have a 70-foot building located at
8 Woodmont and Montgomery Lane and you have a 70-foot building
9 located at Arlington Road and Hampden Lane. From a tenting
10 standpoint, would the building at Montgomery, Woodmont and
11 Montgomery be higher than the building at Arlington and
12 Hampden?
13 THE WITNESS: If those two buildings are the same,
14 say measuring 71 foot --
15 MS. ROBESON: No, no, no. In, if you're viewing
16 it, if you're viewing the two buildings, I already know
17 based on the zoning ordinance definition that they're the
18 same height, okay? So we know based on the zoning
19 ordinance, but if you were viewing those two buildings,
20 wouldn't the one on Arlington be lower?
21 THE WITNESS: It will appear lower, yes.
22 MS. ROBESON: All right. I know you're doing --
23 don't worry, it's just you really do --
24 THE WITNESS: No, I won't.
25 MS. ROBESON: Okay. Keep going.

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1 MR. ABRAMS: Okay.
2 BY MR. ABRAMS:
3 Q Let's go to the big Edgemoor. If we confine the
4 tenting concept just to the TSR district, okay, Woodmont
5 Avenue on one side and Arlington Road on the other side, the
6 tallest building within that district is the big Edgemoor,
7 is that correct?
8 A Yes.
9 Q Okay. And in terms of the tenting concept, and in
10 terms of the Sector Plan, aren't the tallest buildings
11 supposed to be closest to Woodmont Avenue?
12 A Yes.
13 Q Okay. And in terms of the tenting concept as it
14 relates to the Sector Plan for the TSR district, doesn't
15 this building, the big Edgemoor, basically raise the pole
16 area, or this area of the tenting concept, going down to
17 Arlington Road?
18 MS. HARRIS: Can you move back a little bit
19 please? Thank you.
20 BY MR. ABRAMS:
21 Q Isn't that what that line on Exhibit 79 shows?
22 Isn't that what that line on Exhibit 79 shows?
23 MS. ROBESON: The lower line.
24 THE WITNESS: Right, the lower line --
25 MR. ABRAMS: The lower line.

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1 THE WITNESS: -- yeah, the lower line is a line
2 that we made just to see where we are in terms of tenting.
3 BY MR. ABRAMS:
4 Q Okay. In terms of the tenting concept, as we
5 speak of it in the Sector Plan, the highest buildings are
6 supposed to be where the pole is, isn't that correct?
7 A Yes.
8 Q Okay.
9 A It should be this many or in this case that --
10 Q Now in the case of the broader tenting concept of
11 the Sector Plan where you go back, or where you went back to
12 the Metro area, the Metro Center area, the fact that big
13 Edgemoor is, it's existing height, doesn't that also mean
14 that the big Edgemoor is part of the tenting concept and in
15 accordance with the Sector Plan?
16 A The big Edgemoor, yes, is part of the overall
17 existing fabric of the --
18 Q But it's part of the tenting concept, correct,
19 when you have the tallest buildings --
20 A Yes.
21 Q -- at the Metro core, the pole area is the Metro
22 core and you're extending out in this direction toward
23 Arlington Road. Isn't the big Edgemoor part of that tent
24 that is described in the Sector Plan?
25 A If this is the tent, all the buildings are part of

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1 the tent or under the tent. Is that the question?
2 Q The tenting concept goes from a transition point,
3 a high point, down to a low point?
4 A Right. Right.
5 Q Okay. Is this part of that transition?
6 A Yes, it's part of the transition --
7 Q Okay.
8 A -- as the exhibit shows.
9 Q Now in terms of your testimony as to how you come
10 up with the building design, you basically start off with a
11 blank sheet, don't you?
12 A Yes.
13 Q And I think you testified to the effect that the
14 first step was to create, let's see, the number one aim of
15 design was to maximize the FAR and the number of units when
16 you're doing multi-family residential?
17 A The corner, the design is to respond to the
18 program.
19 Q Well, in this case the program was to maximize the
20 FAR and the number of units for this site, is that correct?
21 A We had the program. In other words, we had the
22 target given by the site and by the program itself.
23 Q Okay. To maximize those two elements, that's what
24 you were looking at to begin with?
25 A I can't -- I don't think that, if I start with a

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1 blank piece of paper, the word maximize is part of it, but
2 it's a program. In other words, we have a program that we
3 can respond to. Whether the word maximize is in that --
4 MS. ROBESON: What's the program?
5 THE WITNESS: The program is --
6 MS. ROBESON: Is it number of units?
7 THE WITNESS: It's, well, a number of units would
8 be that. The zoning is part of the program, what you're
9 allowed to do, what the code says, what the market -- is
10 this going to be a school or a residential? Is it going to
11 be a certain age group? Or there's a lot of --
12 MS. ROBESON: Okay.
13 THE WITNESS: But the word --
14 BY MR. ABRAMS:
15 Q To try to achieve the largest number of units?
16 A We are trying not to be wasteful of it. I think
17 that would be an accurate transition, but is it to achieve
18 the maximum? There is no -- maximum has to work, in other
19 words, 200 units, let's say even if we can put 200, would
20 anybody want to live there? So it's not just numbers for
21 the sake of numbers.
22 Q Didn't you create basically a footprint for this
23 property based on FAR and not the unit sizes?
24 A The FAR is obviously a component of how to design
25 the building. The footprint is more than just an FAR, it's

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1 the setback, access, slopes, entrance, visibilities.
2 Q Based on all those development standards, again,
3 the question is didn't you create a footprint taken into a
4 setback and all those other standards based on FAR and not
5 on unit size?
6 A The FAR is integral part of how we design the
7 building, yes.
8 Q So what FAR did you start with?
9 A I believe it's the 3.05.
10 Q You started with 3.05? Now could you have
11 designed a building less than 3.05, but say 2.5 FAR which
12 was an attractive building, fit into the community and met
13 the program that was provided to you?
14 A We can design any building that is attractive and
15 fits into the neighborhood, that's -- I have no doubt about
16 it. In terms of meeting the program requirements, probably
17 not because the program requirement was to design a building
18 within that 3 FAR.
19 Q If you had a 2.5 FAR, could you not design a
20 building with the same number of units that you had at 3.05
21 FAR?
22 A Oh, that's, .5 FAR is quite a lot actually. If
23 you design, theoretically, only studios, yes, but then that
24 won't be a building that in my opinion that will function
25 well. I mean it will --

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1 Q You're saying that that building would have to be
2 composed solely of studios?
3 A Well, what I'm saying is that if you take .5 FAR
4 from a building and you want to squeeze more units,
5 obviously you have to design what is called today actually
6 micro-units, you know, the one you see perhaps in Manhattan
7 or you start to see them downtown D.C. So, yes, you can
8 make tiny, tiny units, but to what extent that is going to
9 be a successful project, what kind of -- who is going to
10 live there, you know? I mean it's --
11 Q Is that what would have to happen on this
12 property?
13 A Well, just theoretically if you take .5 FAR and
14 you keep the same amount of units, it's just math. It's
15 not, it has nothing to do with architecture. It's just
16 dividing the set square footage into more elements. So you
17 end up with smaller elements. To that extent, the question
18 is to that extent that is feasibly resolved, who is going to
19 live there, you know, what type of program are you going to
20 meet? That's all.
21 Q Well, you can reduce also the number of units that
22 you have to create the mix that you want?
23 A The first part is correct, I can. It is a number
24 of units. The second part to do whatever mix you want, that
25 doesn't, that doesn't work because the mix is actually what,

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1 is part of the program. So if you want smaller units, the
2 mix is gone. So that means that you start with, you have to
3 trash it basically.
4 Q And you spoke about the Planning Board, normally a
5 site plan review takes them to question more of a design
6 elements of a project than occurs now at this --
7 A No, I think that I was saying that what we have
8 right now is, in terms of historical detail is the site
9 doesn't need more detailing because of architecture than
10 what we already show.
11 Q So when you go to site planning, you're saying
12 that you don't believe that there's going to be any changes
13 in the design of this building?
14 A Not that I can think of any.
15 Q And most of the elements in terms of the design
16 were illustrative in prior plans, is that correct?
17 A Illustrative, but based on reality. In other
18 words, they are not just -- I mean the windows are, where
19 the windows need to be is not going to be a closet or a
20 bathroom behind a large window. You know, the entrance is
21 where the entrance needs to be. So it's not just a drawing
22 for the sake of drawing.
23 Q Well, as an architect, what do you think the
24 Planning Board is going to do when a site plan is presented
25 to them? I mean --

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1 A Well, I just can speak of the elements that we
2 usually bring to the site plan which is, in terms of the
3 detailing and the number of exhibits and how much thought
4 was put into the building. What we have right now is, in my
5 opinion, what is needed. It's, we don't get into more
6 details than that.
7 Q So you think that the building that has been
8 presented to the hearing examiner today is the building that
9 will be presented to the Planning Board at site plan?
10 A It could be. I mean I don't know. I mean I
11 cannot be 100 percent sure.
12 Q And is this one of the reasons why the applicant,
13 if you know, has offered to have many of the elements as
14 binding elements in this Plan, or did you know that at all?
15 A I know there are binding elements.
16 Q Did you know that the latest change in the last
17 Plan has more binding elements than any of the previous
18 Plans?
19 A I'm aware that we have a new set of binding
20 elements.
21 Q And are those binding elements, are you aware of
22 any changes in terms of the design functions that you had
23 overseen?
24 A At this time, no, I don't know.
25 Q Now in terms of the semi-circular curve at West

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1 Lane and Montgomery Lane, was that your idea in terms of the
2 use of open space?
3 A It was the team idea.
4 Q The team?
5 A Yes.
6 Q The architectural team?
7 A The architectural team, yes.
8 Q Okay. But you're part of that team, correct?
9 A I am part of that team, yes.
10 Q Now in terms of the design of this building,
11 aren't there going to be spaces allocated to active and
12 passive recreation?
13 MS. HARRIS: Objection. The witness did not
14 testify in terms of the active and passive recreational
15 space, nor the public use space.
16 MS. ROBESON: Where are you going with this, Mr.
17 Abrams?
18 MR. ABRAMS: Well, based on --
19 MS. ROBESON: She's correct, he did not. He
20 testified primarily as to the architecture.
21 MR. ABRAMS: Well, I'm trying to get whether they
22 are Planning green space on the roof and that's part of the
23 architecture --
24 MS. ROBESON: Well, that's --
25 MR. ABRAMS: -- of this building.

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1 MS. ROBESON: Well, he didn't testify to it.
2 Perhaps another witness is going to.
3 BY MR. ABRAMS:
4 Q Do you know where the penthouse is located on the
5 Hampden Lane building?
6 MS. HARRIS: Objection.
7 MR. ABRAMS: Where it's to be located?
8 MS. HARRIS: He didn't testify about penthouses
9 either.
10 MS. ROBESON: Well, I want to see where --
11 MR. ABRAMS: He testified about the building
12 height.
13 MS. ROBESON: Yes, exactly.
14 MS. HARRIS: Okay.
15 MS. ROBESON: So I'm going to let it in.
16 BY MR. ABRAMS:
17 Q Do you know where the penthouse is going to be
18 located in that building?
19 A On which one, 4901?
20 Q No, Hampden Lane down at Arlington and Hampden.
21 A No, I don't know.
22 MR. ABRAMS: Your indulgence for a second.
23 BY MR. ABRAMS:
24 Q The Hampden Lane building, are you aware that
25 there are cut-outs in that building on the area facing City

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1 Homes --
2 A Yes.
3 Q -- properties?
4 A Yes, I am.
5 Q Do you know how large those cut-outs are?
6 A The precise dimension, no, but I have a vague
7 idea.
8 Q You have a what?
9 A A vague idea. In other words, I had seen the
10 documents that everybody have seen, so based on that.
11 Q In terms of the Hampden Lane building, the top
12 floor, the element that's 71 feet, isn't that half the size
13 of the floors below, the top floor?
14 A The area that is 71 feet is half the size of this?
15 Actually based on this exhibit, it's probably 60, 40
16 percent.
17 MR. ABRAMS: That's all the questions I have.
18 MS. ROBESON: All right. Mr. Knopf?
19 MR. KNOPF: Yes, I do. I'd like to have a few
20 exhibits here. I need just one minute --
21 MS. ROBESON: Okay.
22 MR. KNOPF: -- to see we can -- you had one before
23 where you talked about the Edgemoor, it was down on your
24 left-hand --
25 MR. ABRAMS: This one?

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1 MR. KNOPF: No.
2 MR. ABRAMS: Oh --
3 MR. KNOPF: Yes, it was down in the left-hand
4 corner. And then --
5 MR. ABRAMS: Do you know the number?
6 MS. ROBESON: Which exhibit are you looking for?
7 MR. ABRAMS: This one?
8 MR. KNOPF: This one. Yes.
9 MR. ABRAMS: Okay.
10 MS. ROBESON: That is?
11 MR. KNOPF: 81.
12 MS. ROBESON: Okay.
13 MR. KNOPF: And also do you have one, I don't know
14 the exhibit number, which shows the rendering of your
15 building with the pocket park and the curved glass?
16 MS. HARRIS: I think it's --
17 MR. KNOPF: You have a big --
18 MS. HARRIS: -- 76 or something on that, but I'm
19 not sure. I mean it's back a couple pages. Is that what
20 you're looking for?
21 MR. KNOPF: Well, I guess I was looking for one
22 where you could see the, from top to bottom.
23 MS. HARRIS: I think it's right --
24 MR. ABRAMS: This one?
25 MR. KNOPF: No. You're looking right at it when

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1 you're walking west on Montgomery Lane.
2 MR. ABRAMS: This is walking west.
3 MR. KNOPF: But you're looking into --
4 MR. ABRAMS: This is off the record, I assume?
5 MS. ROBESON: No, it's not.
6 MR. ABRAMS: It's not? Well, then you have to
7 keep your voice up.
8 MR. KNOPF: Oh. Sorry.
9 MS. ROBESON: Okay. Do you need five minutes to
10 find the exhibits that you want to rely on?
11 MR. KNOPF: Well, we'll use this one, okay?
12 MS. ROBESON: Okay.
13 MR. KNOPF: Now we've lost it. Did you put that
14 under your -- here we are.
15 BY MR. KNOPF:
16 Q All right, 77, I'm going to guess on that. 75,
17 76, 77. Well, let me just ask a question on this. You had
18 talked about the design, including the height and rooftop
19 structure. I just want to ask does this, Exhibit 75,
20 accurately reflect the location of the rooftop structure as
21 presented in the latest binding elements where it listed a
22 certain setback and I was wondering if that is the same
23 setback as you've been showing us all along or has that set-
24 back been moved?
25 A I think it is fairly accurate. There is like two

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1 meters left and right, but this was done by hand.
2 MS. ROBESON: Wait, I think what he's asking,
3 because I have the same question, is the 25 feet set-back
4 that's in the most recent, is it, I think it was --
5 MR. KNOPF: I think it was 30, I think it was 30
6 feet?
7 MS. ROBESON: No, I --
8 MS. HARRIS: It's 25.
9 MR. KNOPF: 25, sorry.
10 MS. ROBESON: -- think it's 25. Is that what's
11 shown on that drawing --
12 MR. KNOPF: That's --
13 MS. ROBESON: -- a 25-foot setback from Montgomery
14 Lane?
15 THE WITNESS: I would assume it is fairly close.
16 I mean I cannot tell because this was done, I mean the
17 latest drawing probably was done after this one. But I
18 think that when we did the latest drawing, we just showed
19 dimensions. We didn't push anything. So without having the
20 files with me --
21 MS. ROBESON: Right.
22 THE WITNESS: -- it --
23 MS. ROBESON: I understand.
24 THE WITNESS: -- visually looks the same.
25 BY MR. KNOPF:

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1 Q So the proposed binding element that was recently
2 submitted was not purported to be some changes to what was
3 previously presented to us in terms of a location?
4 A I think that package is consistent.
5 Q It just was not clear to me. Thank you. All
6 right. Now looking at both of them, looking at 81 where
7 you, I believe, I don't want to put words in your mouth, you
8 said that the big Edgemoor, the design of your building sort
9 of read the same. Could you explain how looking at this
10 glass and maybe on Exhibit 76 --
11 MS. ROBESON: On?
12 MR. KNOPF: -- and I'm also looking at duplicate
13 106(f), which the Hearing Examiner now can't see, but I --
14 MS. ROBESON: I know it well.
15 MR. KNOPF: Yes.
16 BY MR. KNOPF:
17 Q Could you explain, I'm looking at the glass, the
18 curved glass facade and this glass --
19 A First of all, I --
20 Q -- could you explain how that reads, like the
21 Edgemoor?
22 A Before, before I answer that, I think that we went
23 into what compatibility means and I think that I said that
24 compatibility doesn't say same. When I compared the various
25 buildings with what we are designing, what I said, I think,

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1 was that we are incorporating elements. We are not, we
2 never tried, we never had the objective of copying any of
3 the existing buildings.
4 MS. ROBESON: Okay. Now answer his question which
5 was --
6 THE WITNESS: So, so now I'll draw the parallel.
7 MR. KNOPF: Well, his question was does the glass
8 area --
9 THE WITNESS: There is glass.
10 MS. ROBESON: -- can you either read it back or?
11 THE WITNESS: It's the curved --
12 BY MR. KNOPF:
13 Q Would you explain how the curved glass area going
14 from the ground floor up to the top, it reads the same as
15 the Edgemoor windows and the facade?
16 A The glass curved area, as I pointed out, well, I
17 didn't point to the glass area. The glass curved area was
18 not intended to mirror any of the existing buildings. It
19 was a response of, to the creation of a public space and to
20 enhance the appearance of the building and it has its
21 presence on the street.
22 MS. ROBESON: So the question is does it relate to
23 the Edgemoor? How does it relate -- or what was your
24 question again?
25 THE WITNESS: The -- actually the first question

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1 was --
2 MR. KNOPF: I think he said --
3 MS. ROBESON: No, I --
4 MR. KNOPF: -- he said he read the same, I believe
5 your testimony was the Edgemoor and his building read the
6 same as you, if you looked at the buildings.
7 MS. ROBESON: Okay.
8 MR. KNOPF: And I was asking him to explain how
9 the glass facade there reads the same as the Edgemoor
10 facade.
11 THE WITNESS: We don't have a picture of both, so
12 that, ours doesn't relate to Edgemoor. It's not, as I said,
13 was not an intention to copy any of the stuff. It's an
14 overall feel of a residential grounded more in a, design in
15 a more traditional way.
16 MS. ROBESON: Just, all right. Okay. Let him ask
17 the questions now and, Ms. Harris, you can have him explain
18 on redirect.
19 BY MR. KNOPF:
20 Q Would you agree with me, you said traditional way,
21 that the Edgemoor windows are a more traditional,
22 residential window than the glass facade windows on the
23 corner of Montgomery Lane and West Lane?
24 A So the question is, let me just understand, that
25 the windows on Edgemoor are more residential than these

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1 windows?
2 Q The traditional, aren't they, would it be fair to
3 say they are traditional, residential windows in terms of
4 style?
5 A Will it be fair to say that? Overall, Edgemoor is
6 a traditional building.
7 Q A traditional, residential building?
8 A Well, traditional architecture. Let's call it
9 that. All of them are residential, so --
10 Q And would it be fair to say that the glass curved
11 area is not a traditional, residential window treatment?
12 A It is a residential treatment. It was not our
13 intention to be traditional.
14 Q I see. Would it also be fair to say that solid
15 glass curvature is something that is commonly associated
16 with commercial office buildings?
17 A No, that would be a mistake to say that.
18 Q It would be a mistake?
19 A Yes.
20 Q Now you mentioned there are certain designs, as
21 Ms. Harris said before, I am architecturally challenged, so
22 bear with me I guess.
23 MS. HARRIS: I didn't say that.
24 MR. KNOPF: You said we were, did not have
25 knowledge or something like that.

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1 BY MR. KNOPF:
2 Q As I remember, your building had faux bay windows,
3 was that, you talked about those things?
4 A I didn't use the word faux.
5 Q Oh, I'm sorry. Well, you had bay -- what word
6 would you use to describe?
7 A We had, yes, we had bay projections on Montgomery
8 Lane and bay readings on, I'm sorry, bay projection on West
9 Lane and bay reading on Montgomery Lane.
10 Q That's what I was trying to -- what is a bay
11 reading? Does something stick out from the building?
12 A No, it's something to suggest a picture similar to
13 a bay in which you have a larger window and probably you
14 have a French balcony. So it's something that is not your
15 typical punch window reading.
16 Q And a traditional or typical bay window would
17 protrude from the facade of the building from the, from the
18 wall of the building?
19 A A bay definition is something that projects out,
20 yes.
21 Q Now pardon my English, but what is a French
22 balcony as you use that term?
23 A In this vernacular it is also referred to as a
24 Juliet, which --
25 Q Okay. That still doesn't tell me --

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1 A Okay. A French balcony is, well, it's a very
2 shallow balcony in which you can open the windows and feel
3 that you are outside, that probably you can step outside,
4 but not actually. You cannot put a table, you cannot put
5 chairs. It's a shallow projection, so you can step out, see
6 if it's raining or, you know, smoke if you smoke, whatever,
7 be outside, but not have a full balcony.
8 Q And how much of a projection is actually provided?
9 I mean are we talking about three feet, three inches?
10 A No, no, no. It's probably, because of the code,
11 it's probably 20, at most 20 inches.
12 Q Can you show us where one of those are in your
13 building?
14 A Yes. And I point to Exhibit 76. And I'm pointing
15 to --
16 MS. ROBESON: The window directly above the street
17 light that's shown, is that --
18 THE WITNESS: So every --
19 MS. ROBESON: -- a French balcony?
20 THE WITNESS: Yes. Every other window are the
21 large expanses of glass that show a railing and that railing
22 is, it goes totally over French balcony.
23 BY MR. KNOPF:
24 Q So and that would stick out at 20 inches?
25 A No, to meet the code it cannot stick out more than

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1 20 inches, so it could stick out eight inches, 12 inches,
2 but not more than 20 because after that there's a
3 difference.
4 Q I think the building was located, refresh my
5 recollection --
6 A Okay.
7 Q -- but I thought the building was built right up
8 to the line and nothing could protrude out?
9 A That, I said, is -- you ask about what the
10 difference is between a balcony and French door balcony. At
11 most the French balcony could project, and it's because of
12 the code at most 20 inches. What we intend to do is, again,
13 the French balcony, you don't have a roof or a table. You
14 just open the door. Buildings in Paris are like that.
15 That's why they're called French balconies. They probably
16 invented it. So you have, you don't have a balcony, you
17 have a ledge or a railing or some sort of thing to hold
18 things up to allow you to open the window, feel that you are
19 outside, but you don't actually have room to go outside.
20 Q So let me try again. How much of a projection, if
21 any, does the balcony stick out from, protrude from the wall
22 of the building, if that's the right terminology? Do you
23 understand my question?
24 A Well, it could be to half, from half an inch to 20
25 inches in in terms of --

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1 MS. ROBESON: You -- okay. I think what he's
2 asking is how far are the French balconies on this building
3 going to stick out?
4 THE WITNESS: Oh, these balconies? The railing --
5 MR. KNOPF: Thank you.
6 THE WITNESS: The railing is right against the
7 building, so it's probably the thickness of the railing.
8 BY MR. KNOPF:
9 Q All right. And would that be the same thing then
10 for the bay window?
11 A No, the bay window is on the Montgomery --
12 Q I'm talking about Montgomery Lane, yes.
13 A Montgomery Lane is a foot. The bay projects a
14 foot.
15 MS. ROBESON: Wait, what bay?
16 THE WITNESS: Oh, I'm sorry, on West Lane, not
17 on --
18 MS. ROBESON: Okay.
19 MR. KNOPF: On West Lane? Oh, oh, no, I'm talking
20 about Montgomery Lane.
21 THE WITNESS: Okay. On Montgomery Lane, just the
22 railings --
23 MR. KNOPF: Is it just railings?
24 THE WITNESS: -- attached to the facade.
25 BY MR. KNOPF:

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1 Q Okay. Now, just making it clear. Now I
2 understand what the French, quote, balcony looks like.
3 Where is the bay window?
4 A There is no bay window on Montgomery Lane --
5 Q Oh.
6 A -- as I --
7 Q Okay. I didn't understand. Thank you. That
8 clears that up. I was just a little confused. Now you said
9 there were one, or I may have the wrong term, articulations
10 or something, indentations of one foot on the facade. I'm
11 focusing on Montgomery Lane now. Is that, or I did not
12 understand it correctly.
13 A No, on West Lane.
14 Q On West Lane?
15 A Yes.
16 Q So the facade along Montgomery Lane does not,
17 there's not indentation?
18 A Well, on this rendering, yes, it shows a reveal.
19 I mean it has architectural element, I mean between this
20 Plane of the curve and the brick, there is a gap if you want
21 and there is a setback there.
22 MS. ROBESON: So you're saying where the brick
23 starts along Montgomery Lane, are you saying the brick
24 projects out?
25 THE WITNESS: No, the, this is one facade I say,

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1 one --
2 MS. ROBESON: Okay.
3 THE WITNESS: -- but we have an area where the
4 building steps in just for architectural, just to make it --
5 MS. ROBESON: And where is that area?
6 THE WITNESS: Well, that's right in between the
7 metal and the brick. So we have a --
8 MS. ROBESON: And how far does it, what did you
9 call it --
10 THE WITNESS: Reveal or --
11 MS. ROBESON: Yes. In other words, is there an
12 additional projection --
13 THE WITNESS: No, no, there's not. So let's say
14 this is the face of the building --
15 MS. ROBESON: Okay.
16 THE WITNESS: -- and we are pushing these windows
17 on this area just to create more interest to the facade, by
18 this --
19 MS. ROBESON: What does it mean pushing? I
20 mean --
21 THE WITNESS: How shall I explain? I mean instead
22 of these windows being flush or being at the same plane with
23 the brick, they are pushed in to create a --
24 MS. ROBESON: I --
25 THE WITNESS: -- a little gap --

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1 MS. ROBESON: Now I understand.
2 THE WITNESS: -- at little --
3 MS. ROBESON: Okay. That was --
4 THE WITNESS: So the way this door behind you is
5 set in just --
6 MS. ROBESON: Okay. I understand.
7 MR. KNOPF: So, I'm sorry. Are you finished,
8 Madame Examiner?
9 MS. ROBESON: No, I'm finished.
10 MR. KNOPF: Okay.
11 BY MR. KNOPF:
12 Q When, after that, that you just addressed there
13 where the glass and the brick meet, if we walk down toward
14 Arlington --
15 A Yes.
16 Q -- the rest of the facade of the building then
17 doesn't have any pushes or anything?
18 A No.
19 Q Okay. That's what I want to know. Thank you.
20 And how many feet is that roughly in length?
21 A Well, I think that --
22 MS. ROBESON: 68? No.
23 THE WITNESS: I can go back to --
24 MS. ROBESON: You have to take away the corner
25 there. 80.

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1 MS. HARRIS: Yes, 78.
2 THE WITNESS: 78.
3 MR. KNOPF: Thank you.
4 THE WITNESS: On Exhibit 77.
5 MS. ROBESON: Okay.
6 BY MR. KNOPF:
7 Q Just one more question.
8 MS. ROBESON: The Edgemoor in the lower left?
9 MR. KNOPF: The big Edgemoor.
10 MS. ROBESON: That's 81, I believe.
11 BY MR. KNOPF:
12 Q I'm referring now to the building on the right-
13 hand corner, on the lower right-hand corner which is 4901
14 Hampden.
15 MS. ROBESON: Hampden.
16 BY MR. KNOPF:
17 Q And you had mentioned that you were, in terms of
18 your compatibility discussion, you were mentioning that your
19 building was compatible. From hearing that, I would like
20 you to refer to Exhibit 120(b) and are you aware that this
21 gives the --
22 MS. HARRIS: Which is 120(b)?
23 MS. ROBESON: I believe it's the one that Ms.
24 Skalett may have --
25 MR. KNOPF: That's correct. And it's the 2006

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1 approved site plan for 4,000 feet.
2 MS. ROBESON: For 4901?
3 MR. KNOPF: 4901, 4901.
4 BY MR. KNOPF:
5 Q And I refer you to -- this is the Montgomery Lane
6 view. Did you have that in mind when you were talking about
7 compatibility? That's quite a difference between that and
8 what's shown on the Exhibit 81, is it not?
9 A No, but what is interesting about this exhibit,
10 the core element shows striking similarity to what you
11 proposed the first time just as a note. Before we carved
12 the building, we had almost an identical glass corner.
13 MS. ROBESON: Okay. But what is your question
14 about that exhibit?
15 BY MR. KNOPF:
16 Q My question was when you were talking about
17 compatibility of other projects on the street on Montgomery
18 Lane approved or built, did you have in mind 120(b), the
19 elevation shown from Montgomery Lane?
20 A I did not have this exhibit, although, as I said,
21 this actually reinforces what we've done.
22 Q All right. Now you had mentioned to Ms., in
23 response to Mr. Abrams's questions that the, reducing the
24 FAR would result in your having to put in micro-units, I
25 think you mentioned that?

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1 A No, it isn't the FAR that changes the building.
 2 Q Right. But you said that you'd have to end up
 3 with studios or micro --
 4 A No, it was a theoretical measuring. If you divide
 5 a smaller number by the same number of units, you end up
 6 with smaller elements. Yes.
 7 Q Well, I guess --
 8 A In other words --
 9 Q -- Mr. Abrams, he was asking whether you could
 10 have the same number of units in the building that you now
 11 are proposing either with the smaller FAR and in that
 12 respect I want to refer you to, I guess you probably know
 13 this, I'm looking at Exhibit 106(a) where there is the,
 14 there is, it's set forth in number of efficiencies, one
 15 bedroom and so on units proposed. I notice that 26 units
 16 are proposed for two bedrooms and 42 units are proposed for
 17 one bedroom and den. If you remove the den and had less 2-
 18 bedroom units, more 1-bedroom units, couldn't you pretty
 19 readily end up with the same number of units that you have
 20 here without going to micro-units or studio units?
 21 A Again, if you have an analogy of a cake or a pie,
 22 if you have a smaller pie, you cut the number of slices, the
 23 same number of slices, you end up with smaller slices.
 24 Would that be sufficient to satisfy the market? So it's not
 25 a question that can the units be, you know, like a

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1 Manhattan-size unit. The question is would that respond to
 2 the problem? That's the question to us.
 3 Q I see. So it's the market that's driving this
 4 rather than architecture?
 5 A Well, the building has to be successful in all
 6 respects, including financial success, otherwise will not
 7 build that building.
 8 Q By the way, the units that I've read, the unit
 9 breakdown, that's illustrative, isn't it, you reserve the,
 10 the applicants reserve the right to change that mix, am I
 11 correct?
 12 A I don't know.
 13 Q One other thing, what, you mentioned -- what is
 14 the, in terms of getting the number of units, a different
 15 number or the same number, what's the dimensions of this lot
 16 again, of the lot in which the project is sitting on?
 17 A I think it's in the records, no?
 18 Q No, I understand, but I mean how many -- what's
 19 the width and what's the length?
 20 A The overall --
 21 MS. HARRIS: Is the question building or lot?
 22 MR. KNOPF: Lot.
 23 THE WITNESS: Approximately 224, 234,
 24 approximately -- again, I don't have a --
 25 BY MR. KNOPF:

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1 Q I'm not trying to get exact, just a rough
 2 estimate.
 3 A Let's say the, so from Montgomery Lane to the back
 4 is probably 235 feet. The lot has sort of an L-shape, so on
 5 the Montgomery Lane is 90, 108, plus another 115, 120. And
 6 in the back is narrower by about 15 feet. So it's 105 let's
 7 say.
 8 Q I got a little confused. What do you mean in the
 9 back?
 10 A Well, the front, the lot --
 11 Q Yes.
 12 A -- is not a rectangular, hence --
 13 Q Okay.
 14 A -- you know, it has a little kink in the back.
 15 Q So would it be fair to say that on that size lot
 16 it's not, that you could build a building of say 100
 17 dwelling units of an FAR of 2.5, and no greater than that,
 18 but you could build it, but it's the market conditions which
 19 is governing in your opinion what number of units and what
 20 the building should look like?
 21 A So the question is can you the smaller building on
 22 the same lot, is that the question?
 23 Q With having the same number of units?
 24 A Well, that would, that would change the program,
 25 the unit mix and the size of the units. So whether that

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1 is --
 2 MS. ROBESON: But the -- okay.
 3 THE WITNESS: Yes.
 4 MS. ROBESON: The question is, ask the question
 5 again.
 6 BY MR. KNOPF:
 7 Q On this size lot, could you build a building
 8 containing 100 units and not exceed a 2.5 FAR?
 9 MS. ROBESON: Is it possible?
 10 THE WITNESS: It is possible.
 11 MS. ROBESON: Okay.
 12 BY MR. KNOPF:
 13 Q And do you know for a fact, well, have you in
 14 preparing a design and so on, have you ever considered or
 15 ever tried design or sketch out or use computers or whatever
 16 to determine whether you could, what such a building would
 17 look like or what size units would look like if you limit
 18 yourself to 2.5 units?
 19 A I don't think that we'd be that theoretical.
 20 Q Well, okay.
 21 MR. KNOPF: I have no further questions.
 22 MS. ROBESON: All right. Ms. Harris --
 23 MS. HARRIS: Thank you.
 24 MS. ROBESON: -- redirect?
 25 REDIRECT EXAMINATION

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1 BY MS. HARRIS:
2 Q Mr. Radulescu, on page 40 of the Sector Plan,
3 point No. 2, can you just please read that first sentence?
4 A The one with the step down?
5 Q Just the first sentence.
6 A "Step down building heights from Bethesda Metro
7 Center properties to achieve desirable and
8 compatible transition to adjacent areas."
9 Q So is that the first sentence?
10 A Yes.
11 Q And so from where does it say that the step down
12 is supposed to start?
13 A Bethesda Metro Center.
14 Q Okay. So with Mr. Abrams' question regarding
15 assuming tenting starts at the TSR, within the TSR zone, was
16 that somewhat of a hypothetical based on the Sector Plan
17 recommendation?
18 A It seems that it was.
19 Q There was -- can you explain, and I, why the
20 question having to do with the elevations of 4901 and
21 Hampden Lane and the question was if all the buildings
22 weren't there, would you be able to tell a height
23 difference? We know that the buildings are there when we
24 look at Exhibit 106(f), so can you just walk around that
25 block on which those two Hampden Lane buildings are located

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1 and explain to me where in your opinion you would ever be
2 able to have a vantage point of both buildings at the same
3 time?
4 A You can see both buildings on Hampden Lane at the
5 same time if you are somewhere on Hampden Lane.
6 Q And if you're over on Montgomery Lane?
7 A If you would be on Montgomery Lane, I don't --
8 unless you are on the roof or the top units of the Edgemoor,
9 but from the street I doubt that there's any point that you
10 can actually see at the same time.
11 Q And would anyone from the City Homes looking out
12 one of their windows be able to look at both buildings at
13 the same time?
14 A Absolutely not.
15 Q Okay. And why in your mind, why is it -- do you
16 know or do you have a sense of why the zoning ordinance
17 measures height as it does as opposed to this concept of
18 elevation?
19 A If you are to use an absolute number of elevation,
20 then it would be impossible actually to determine how to
21 measure a building. I mean you -- I just, the, I don't see
22 how you would be able to determine where your buildings are.
23 If you measure from let's say an absolute Montgomery County
24 or absolute Bethesda.
25 Q And to your knowledge that's never occurred?

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1 A I don't know any jurisdiction where you measure
2 from an absolute point. On all the jurisdictions that I
3 worked, when you measure within the lot, there are different
4 definitions for the particular lots, but they all refer to
5 where you build your building.
6 Q And is that because that's really where you
7 experience that height?
8 A It's where you experience that and physically it
9 would be impossible to compare and to have an accurate sense
10 of what the overall buildings will be at the end or what the
11 relationship would be to the other buildings.
12 Q Thank you. Within the proposed 3.05 FAR of the
13 building, how many units are we proposing?
14 A I think it said up to 120.
15 Q Okay. And physically could we have fit in more
16 units within that 3.05 FAR?
17 A It would be difficult. I mean it will be, with
18 all the geometry of the site and the fact that we have
19 restrictions in terms of setbacks.
20 Q That you couldn't have reduced the size of some of
21 the units to fit more units within there?
22 A On a theoretical aspect, what, we already went to
23 an exercise and I don't think that --
24 Q Okay.
25 A -- you can exclude.

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1 Q And are you aware of the percentage of MPDU's that
2 are being provided with the 3.05 FAR?
3 A Yes.
4 Q And what is that?
5 A I believe it's 15.
6 Q Thank you. What's the proposed unit mix?
7 A The proposed unit mix, I don't have it on hand,
8 but I think it is, off the top of my head, but we have two
9 bedrooms, one bedroom, one bedroom den and we have a few
10 studios.
11 Q And you've worked on other residential projects
12 within Montgomery County, is that right?
13 A Yes.
14 Q And how does this unit mix compare to other
15 projects that you're working on?
16 A It is, we worked on a project that has also 3-
17 bedroom, but just a few. But most of them have this type of
18 range.
19 Q So that the range of unit mix is typical of what's
20 being offered?
21 A It's typical for this area, however, it would not
22 be typical for downtown, but it would be typical for the
23 project that we are working in this area.
24 Q And do you, if you know, why is getting that
25 balance of unit mix important?

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1 A I think that this, you look at who the potential
2 customers are and where the building is located. If you are
3 located to an area that is more densely populated, more, it
4 has, it's more busy, it's like a, let's say a 24-hour
5 lifestyle, is close to a commercial area, close to Metro,
6 you create a different mix. You tend not to do three
7 bedrooms or duplexes or stuff like that. On the other hand,
8 this is not downtown, edgy area, so you don't have too many
9 studios or too many efficiencies because the market is not
10 going to be there for that.
11 Q So you would say that the unit mix being proposed
12 is reflective of --
13 A So it's reflective --
14 Q -- the customer?
15 A It's reflective of, yes, the potential, yes,
16 marketability.
17 Q Okay. Turning now to the question of some of the
18 design questions on Exhibit 113, you noted that along the
19 Montgomery Lane frontage facade of the building there are
20 not, I'm going to use the word undulations on the subject
21 building, is that correct?
22 A That's correct, yes.
23 Q Okay. And can you compare that fact with the
24 other buildings that front on Montgomery Lane in terms of
25 does the Edgemoor at Arlington North have any undulations?

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1 That's the building to the left of --
2 A Well, I don't know --
3 Q -- along Montgomery Lane?
4 A There's no, it's a flat facade. But also we look
5 at the undulations in terms of the length of the facade --
6 Q Okay.
7 A -- and we don't have a very long facade, besides
8 on one side on the east side of the facade we have this
9 public space which is a very small architectural element, so
10 we do not want to do too many.
11 Q And across the street, the Edgemoor at Arlington?
12 A Across the street is also -- it has a very flat
13 facade.
14 Q Okay. And the City Homes?
15 A City Homes, yes, is a flat facade.
16 Q And then the 4825 and Highrise Edgemoor?
17 A The 4825 has a setback where they have the
18 entrance. And the Edgemoor has on the two ends has two,
19 otherwise it's flat on its base, probably reflective in
20 these bump-outs.
21 Q And your firm designed the Highrise Edgemoor,
22 correct?
23 A Not personally.
24 Q But the --
25 A SKI has designed this and the City Homes, so

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1 Edgemoor and City Homes.
2 Q And the length of the Highrise Edgemoor facade,
3 which has mild undulations, how does that compare with the
4 subject building? The length of the Highrise Edgemoor, what
5 is it?
6 A 172 feet more or less.
7 Q And in your architectural opinion, is the fact
8 that that has undulations, does that, in any way is that
9 related to the fact of the length of that building?
10 A Well, when you have a very long facade on a
11 residential building, you try to -- how much taller is that
12 in this particular context probably was a good idea to break
13 it.
14 Q Okay. Do you know whether there's a zoning
15 ordinance requirement regarding bay windows?
16 A No.
17 Q No, you don't know or is there not one?
18 A I don't think that there is one because --
19 Q Okay.
20 A -- requesting.
21 Q And is there a Sector Plan recommendation
22 regarding bay windows?
23 A Not that I know of.
24 Q And referring to Exhibit 76, the floor to ceiling
25 windows that, the windows along the curve of the building,

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1 are those floor to ceiling windows?
2 A Yes, they are floor to ceiling windows.
3 Q And could they have -- explain what a spandrel is.
4 A A spandrel is an architectural retaining element
5 that spans the slab area. For instance, if this is a slab
6 area, anything that will cover that gap will be called a
7 spandrel. Also, a spandrel could cover a column. So it
8 goes both ways, but usually it's referred to the space
9 adjacent to the slab.
10 Q So could there be spandrels that would reduce the
11 window exposure on that, on the curve of the building?
12 A Yes, you could, but the ceiling is not that big.
13 If you don't have a -- the floors are not, not very tall
14 because of the height limit.
15 Q Okay.
16 A So it's not a lot of, a lot of waste.
17 Q Okay. And can you please compare the windows on
18 the rest of the building to the windows that appear on the
19 street, on the buildings on the street?
20 A Yes. On the rest of the building, so left and
21 right of the public space in this architectural element, we
22 have larger windows for the living room and there's a
23 similar reading of the corner of the Edgemoor. They have
24 the same, same floor to floor glass.
25 MS. ROBESON: And that's the southwest corner?

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1 THE WITNESS: That's the southwest corner.
 2 MS. ROBESON: Where the balconies are?
 3 THE WITNESS: And it will be the same --
 4 MS. ROBESON: Are they balconies on the southwest
 5 corner?
 6 THE WITNESS: Those are balconies, but I think
 7 that as you move towards the center of the building, those
 8 are shallow. I think that at that time you could go away
 9 with that dimension, that they will not be possible. And
 10 then the same floor to ceiling glass appears on the east
 11 side of the facade.
 12 MS. ROBESON: Oh, the east corner?
 13 THE WITNESS: On the east corner.
 14 MS. ROBESON: The southeast corner?
 15 THE WITNESS: The southeast corner. The building
 16 is cement and so both sides. And then the bedrooms, right,
 17 I mean I don't know, but on our side, on the bedroom side,
 18 we have punched windows, the same type of reading that
 19 everywhere. We have a different window type, but it's the
 20 same smaller window and we tried to have my ends as to the,
 21 as a smaller window.
 22 BY MS. HARRIS:
 23 Q Thank you. To your knowledge, is there any
 24 requirement in either the zoning ordinance or the Sector
 25 Plan requiring the buildings on, in a given area to look the

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1 same?
 2 A No. No, they're not really done for sameness.
 3 Q And to your knowledge are there any architectural
 4 covenants applying to Montgomery Lane similar to what you
 5 would see in a Planned community suggesting that the
 6 building should look alike?
 7 A No, not at all, not -- no.
 8 Q And in your opinion in terms of the organic
 9 development of an area, what's your opinion in terms of how
 10 buildings evolve and how they look?
 11 A What makes a city attractive, why is that? You
 12 have a variety of buildings that work together and
 13 Washington is the perfect example because of the way the
 14 city was designed. You have a certain characteristic, but
 15 the buildings are not the same. As you walk any street, I
 16 mean in Bethesda included, you don't see, in fact, even in
 17 the neighborhoods you don't see houses that are two alike.
 18 But overall there's, the overall feeling if you want, that
 19 binds it in together, but no two buildings are the same.
 20 Q Thank you.
 21 MS. HARRIS: I have no other questions.
 22 MS. ROBESON: Okay. Recross, Mr. Abrams?
 23 MR. ABRAMS: Yes.
 24 RECROSS EXAMINATION
 25 BY MR. ABRAMS:

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1 Q Yes, let's get back to the tenting concept, okay?
 2 So I think you quoted from page 40, item No. 2 --
 3 MS. ROBESON: Of the Sector Plan?
 4 MR. ABRAMS: What?
 5 MS. ROBESON: Of the Sector Plan?
 6 MR. ABRAMS: Of the Sector Plan, yes. Item No. 2,
 7 where it says step down building heights from the Bethesda
 8 Metro Center properties to achieve desired and compatible
 9 transition to adjacent areas, was that the, Pat, was that
 10 what you had cited before?
 11 MS. HARRIS: No. 2, correct.
 12 MR. ABRAMS: Yes, okay.
 13 BY MR. ABRAMS:
 14 Q Okay. That recommendation, was that a general
 15 recommendation throughout the geographic confines of the
 16 entire Sector Plan or was that a specific recommendation as
 17 it relates only to a specific area such as the transit
 18 station district?
 19 A I mean it definitely finds the starting point to
 20 the Bethesda Metro Center, at least on these two paragraphs.
 21 Q Well, it's in Chapter 3, is it not, and --
 22 A Yes, it was in Chapter 3.
 23 Q -- if you look back on page 27, that deals with
 24 certain land use objectives?
 25 A What is the question, I'm sorry?

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1 Q The question is on page 27 of the Sector Plan,
 2 does that deal with certain general land use objectives
 3 applicable throughout the Sector Plan areas?
 4 A I would have to read that page. I mean it talks
 5 about jobs actually.
 6 Q It talks about, in, on page 27, it talks about --
 7 A Yes.
 8 Q -- employment growth?
 9 A Right. Right.
 10 Q Page 28, household neighborhoods and --
 11 A Yes.
 12 Q -- goes over to retail on page 31, and it talks
 13 about certain general objectives --
 14 A Yes.
 15 Q -- throughout the Sector Plan area? It doesn't
 16 focus necessarily on the transit station district, does it?
 17 A Well, first of all, on page, the page you just
 18 went to, pointed to, I mean it's, actually there's a reason
 19 for mentioning that as a starting point.
 20 Q All right.
 21 A I forgot what it was, what page.
 22 Q You're talking about page 40?
 23 A Page 40, yes.
 24 Q And, but you're talking about that among the
 25 general objectives of the Sector Plan?

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1 A Yes.

2 Q Okay. Now on page 51, and following, that starts

3 certain, specific recommendations --

4 A Yes.

5 Q -- as to specific districts, does it not?

6 A Yes, on page 50, yes.

7 Q Okay. Now when you have a general objective and

8 when you have a specific objective, do you try to interpret

9 that so that both objectives mean something and they don't

10 conflict with one another?

11 A When we, as an approach to designing a building,

12 yes, we look at what's required, what the general, what's

13 required, I would say that, and we try, well, we have to

14 incorporate whatever the zoning guidelines, ordinances,

15 regulations are.

16 Q Okay. But you try to read them as in the context

17 of the overall objectives which apply throughout the Sector

18 Plan area, is that what you mean?

19 A Yes, we are trying to incorporate, yes, I mean I

20 suppose the answer is yes.

21 Q See, you're trying not to create a conflict

22 between a general objective and a specific objective, say in

23 the transit station district?

24 A I mean it seems more like a political question

25 than an architectural one but, yes, suppose that we are not

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1 trying to go against any of the objectives, for sure.

2 Q All right. Calling your attention to page 85

3 under section, of the Sector Plan under Section (d)(3), can

4 you read that into the record?

5 A (d)(3)?

6 Q Well, first of all, start with the portion of the

7 paragraph just below (d).

8 A "In addition to the general objectives and

9 principles of in Section 3.2, the following

10 guidelines apply to the TS-R district --

11 Q Okay.

12 A -- specifically at 4.16."

13 Q All right. Stop right there. It is not the

14 section quoted by Ms. Harris in Section 3.2?

15 A Yes.

16 Q So what is under here is in addition to the

17 general guidelines, is that how you interpret it?

18 A Yes, it's the overall collection of --

19 Q Okay.

20 A -- rules and guidelines that we need to --

21 Q Now look at 3 and read 3.

22 A "Encourage low-rise buildings to fill out the

23 parcel."

24 Q No, 3.

25 A Oh, 3, sorry.

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1 "Maintain low-rise building heights which

2 step down to three floors along Arlington Road

3 height up to six floors up before near Woodmont

4 Avenue to achieve the desirable floor."

5 Q Okay. Now there really isn't any inconsistency,

6 is there, in where the tenting concept begins under the

7 general objectives and where the tenting concept might begin

8 when you read the specific paragraph?

9 A It looks like No. 3 could work with the tenting,

10 yes.

11 Q Okay.

12 MR. ABRAMS: No further questions.

13 MR. KNOPF: I just have one thing.

14 BY MR. KNOPF:

15 Q I believe you stated in response to Ms. Harris's

16 question that there's no requirement in the Sector Plan for

17 bay windows?

18 A Yes, I don't remember seeing any.

19 Q Let me ask the question. I'm reading from the

20 Sector Plan in 40, paragraph 7. It says, quote, achieve

21 compatibility with nearby residential areas through

22 techniques such as, one, articulated building walls, facade

23 treatments and other architectural means. Would bay windows

24 be one of those treatments that you would try to achieve

25 with compatibility?

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1 A You can have any number of elements, yes,

2 including bays, any -- I mean you have a large collection of

3 elements that one can employ to achieve compatibility.

4 Q All right. This last question here on page 85 of

5 paragraph 5,

6 "An urban design guidelines, design rooftop

7 to achieve a residential image by using hip roofs,

8 gables, turrets and other types of pitched roof

9 lines. The varied roof line is desirable to

10 improve character and reduce the sense of bulk,"

11 unquote. We don't have any of those on your building, do

12 we?

13 A Yes, but -- I like this question actually. For --

14 Q Do you have pitched roofs on --

15 MS. ROBESON: Well, sir, answer the question. Do

16 you have any?

17 BY MR. KNOPF:

18 Q Do you have pitched roofs, gables, hip roofs?

19 A No, not at all.

20 Q Gables, turrets?

21 A No.

22 Q Thank you.

23 MR. KNOPF: And no further questions.

24 MS. ROBESON: All right. With that, Ms. Harris,

25 how many more questions, I mean how many more witnesses?

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1 MS. HARRIS: We have Mr. Irish and Ms. Wiltshire.
2 MS. ROBESON: Okay. How long do you think
3 their -- are they basically limiting, or are they here to
4 show the changes to the --
5 MS. HARRIS: Ms. Wiltshire is going to do that. I
6 think Mr. Irish is, of course this is dependent on the cross
7 situation, I would expect probably an hour total for Mr.
8 Irish.
9 MS. ROBESON: Okay. All right.
10 MS. HARRIS: And then --
11 MS. ROBESON: All right. Let's take -- why don't
12 we take 45 minutes for lunch so we can be back at 12:45.
13 We'll continue the case until then.
14 MR. KNOPF: Thank you.
15 MS. HARRIS: Thank you.
16 (Recess)
17 MS. ROBESON: All right. Are the parties ready?
18 MS. HARRIS: Yes.
19 MR. ABRAMS: Yes, ma'am.
20 MS. ROBESON: We are back on the record. I see
21 Mr. Irish will be the next witness?
22 MS. HARRIS: That's correct.
23 MS. ROBESON: Mr. Irish, you're still under oath.
24 MR. IRISH: Yes, ma'am.
25 MS. ROBESON: I just have one request. When Mr.

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1 Abrams and Mr. Knopf ask you a question, just answer it,
2 okay, and we'll get through this hearing --
3 MS. HARRIS: Today.
4 MS. ROBESON: -- much more quickly, all right?
5 MR. KNOPF: Understood.
6 MS. ROBESON: Thank you. Okay. Go ahead.
7 MS. HARRIS: Thank you.
8 MS. ROBESON: I'm sorry, Ms. --
9 MS. HARRIS: Okay.
10 MS. ROBESON: -- Ms. Harris.
11 DIRECT EXAMINATION
12 BY MS. HARRIS:
13 Q Mr. Irish, can you -- there's been a lot of
14 discussion regarding the measurements of heights. Can you
15 please state how height is measured pursuant to the zoning
16 ordinance?
17 A Yes. The zoning ordinance has a lengthy
18 definition of height because it accommodates various
19 conditions. But as it would relate to any of the, relate to
20 this building, for example, it states that the height is
21 defined as the vertical distance measured from the level of
22 approved street grade opposite the middle of the front of
23 the building to the highest point of the roof or a flat roof
24 to the mean height between the eaves and ridge of a gable,
25 hip, mansur or gambrel roof. On a corner lot, exceeding

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1 20,000 square feet where the height of the building may be
2 measured from either adjoining curb grade. And it's the
3 same condition for, if the lot has frontage on two streets,
4 but it isn't a corner lot. In other words, if you have one
5 frontage, you measure from the center line of the approved
6 street grade at the center of the building of the center of
7 the street. But if you have more than one street frontage,
8 you're allowed to pick any point along the curb in front of
9 your lot to use as your building height measuring point.
10 And this has been confirmed by DPS numerous times, including
11 this instance. So the selection of the measuring point that
12 we've used here, it has been confirmed as appropriate.
13 Q And based on your experience, why are, why are
14 heights calculated in this manner?
15 A You mean as opposed to elevation?
16 Q Correct.
17 A I, because it's the way, this way it makes more
18 sense. I mean to calculate height based on elevation, I
19 just don't understand. I've never seen it done that way
20 anywhere. It really doesn't seem to make any sense. Your
21 mind visualizes the height when you're close to the
22 building, not when you're far away. I think if you were to
23 have a 4-story, say a 40-foot building on the top of a hill
24 and if you were walking up from about 12 feet, an elevation
25 lower and you had a 50-foot building next to you, that 50-

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1 foot building would be, appear to be higher to you and it
2 is, but it's -- I guess what I'm saying is the image of a
3 40-foot building up on a hill, you don't get the benefit of
4 it being on a hill to seem like it's a higher building. I
5 mean you were out at the street, you were out at the site.
6 The street is relatively flat. I mean the street grade
7 along Montgomery Avenue is about 3 percent, which to put
8 that in perspective, from that wall to your door it would
9 drop about 4 1/2 inches. That's pretty flat. So you're
10 really experiencing the buildings as you come to them and
11 the fact that, you know, over the length of the street a
12 building might, the measuring point might be a few feet
13 higher than somewhere else. So is the ground around it. So
14 visually you're really, your sense of the height of the
15 building is really what it looks like in its location and
16 not trying to stand back in the distance somewhere.
17 I mean to carry that concept to the absurd, the
18 elevation, the height of the U.S. Capitol all the way to the
19 top of the Statue of Freedom, or the top of the dome, is 288
20 feet. And the ground elevation is 88. So that would say
21 that the elevation at the Statue of Freedom, at the top of
22 it is 376. That would imply that City Homes was taller,
23 which was capped -- we all know that's not the case. But,
24 you know, it's just -- the concept -- I've never seen it
25 done that way and we work in a lot of different

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1 jurisdictions.

2 Another reason it would be silly is if he said all

3 the buildings had to stop at elevation 385 or whatever. It

4 would look like a flat top. I mean then you, you know, if

5 everything was mono-elevation like that, it wouldn't look

6 right. So there's -- my feeling is there's enough variation

7 along the street that the height we're recommending is

8 easily appropriate.

9 Q Thank you. Having said all that, what is the

10 elevation difference between Hampden Lane and Montgomery

11 Lane? There's been a lot of discussion on that. I want to

12 just make sure we're clear.

13 A Well, yeah, I listened to counsel say that there

14 was 12 feet of elevation difference between Hampden and

15 Montgomery and I don't see it. The -- it varies obviously.

16 It depends on where you measure it. But if I could refer to

17 Exhibit 113, and let me know if you want to write these on

18 here, the elevation at our western edge in the middle of

19 Montgomery --

20 MS. ROBESON: Southwestern edge?

21 THE WITNESS: Yes, southwestern edge --

22 MS. ROBESON: Oh.

23 THE WITNESS: -- at the middle of Montgomery Lane

24 is approximately --

25 MS. ROBESON: Oh.

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1 THE WITNESS: -- 327. If you were to take that

2 straight down to Hampden Lane, the elevation there is about

3 320. So about a 7-foot difference. And that's where the

4 largest difference is. If you go to our southeastern

5 corner, the road elevation there is about 31 on Montgomery

6 Lane and if you continue that --

7 MS. ROBESON: Due south?

8 THE WITNESS: Due south --

9 MS. ROBESON: You're saying due south?

10 THE WITNESS: -- to Hampden, that elevation would

11 be about 23, 28, so a difference of three feet in this

12 location. And the high point of Montgomery Lane is about

13 opposite the entry to 4825. That elevation is about 32,

14 332. You carry that south, the road elevation there is

15 about 330. So, you know, it's anywhere from two to, two

16 feet to seven feet difference, not 12.

17 MS. HARRIS: Thank you.

18 MS. ROBESON: Is the 7-feet difference, is that at

19 the west, southwestern most corner or due south --

20 THE WITNESS: Yes.

21 MS. ROBESON: -- of your corner?

22 THE WITNESS: If you take our western property

23 line and extend it to the center line in the road --

24 MS. ROBESON: Due south?

25 THE WITNESS: -- south to the center of

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1 Montgomery --

2 MS. ROBESON: Okay.

3 THE WITNESS: -- and continue that due south to

4 the center of Hampden, you --

5 MS. ROBESON: Okay.

6 THE WITNESS: -- that's where you get about a 7-

7 foot clearance.

8 MS. ROBESON: Okay.

9 BY MS. HARRIS:

10 Q Thank you. Approximately how many rezoning and

11 development cases have you been involved in in Montgomery

12 County?

13 A Wow, I've been doing this since 1973, so I don't

14 have a good record.

15 Q You lost count?

16 A I lost count. But in that 40-year period, my

17 focus has really been Montgomery County. My firm has done

18 work in Fairfax, Loudon, Prince William, Prince George's and

19 so forth, but I've really been the one that has focused on

20 Montgomery County the entire time. And I would say for the

21 last 20 years or so we focused on smart growth, urban

22 development/redevelopment. So I'm very familiar with this

23 type of development. In terms of rezonings and Development

24 Plans, my resume that I believe you submitted in the record

25 includes seven relatively recent cases, 7001 Arlington Road,

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1 Metro Pike and White Flint for Holladay, and prior cases for

2 this for Holladay, West Lane, National Park, Seminary and

3 Euro Motor Cars in Germantown, the Monterey property in

4 White Flint on Old Georgetown. In my resume it's listed as

5 the Gallery at White Flint Place, White Flint station, and

6 in Sterling because it got built as three projects, Rock

7 Spring Center and Avalon Fields. So those are all the

8 zoning cases that I, you know, provided expert testimony on.

9 I've certainly been involved in others.

10 In terms of Bethesda, in terms of Bethesda, I've

11 worked on enumerable projects, some that have been built,

12 some that haven't, but we've been carried through the

13 project Plan, the preliminary Plan or site plan or rezoning

14 Plan process. They include one at the corner of Auburn and

15 Norfolk and two on Rugby Avenue, none of which have been

16 built yet, or Bethesda Metro Center which, unfortunately,

17 got denied, Bethesda Gateway, Hampden Lane Associates, 4900

18 Fairmont, 7900 Wisconsin, Pearl Street Office building where

19 the McDonalds site is, Woodmont East/7200 that we worked

20 together on, 4500 East-West Highway, the Apex building where

21 the theaters are at Elm Street, the Bethesda theater and the

22 Whitney behind it, Chase Bethesda 1 and 2, the Christopher,

23 Chevy Chase Bank.

24 MS. ROBESON: I believe you.

25 THE WITNESS: Okay.

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1 BY MS. HARRIS:
2 Q Can you -- that's quite a list. Can you explain
3 briefly what your involvement was in connection with those
4 cases?
5 A In all the cases it's, when we started the company
6 I was a principle and so in all cases I've been the
7 principle in charge of the project, but we're practicing
8 principles and to this day I'm still very hands on with all
9 our projects. I'm certainly responsible for the basic civil
10 engineering and survey, but also involved in the entitlement
11 process and making sure that the design is consistent with
12 the Sector Plan, the zoning ordinance, other regulations,
13 compatible with the surrounding area and a lot of experience
14 with staff and what their particular subjective desires
15 might be. So I factor that into the project knowing what
16 the approval process would be, certainly setbacks, heights,
17 orientation of the building, public use space and stay
18 involved during the design process to make sure that we
19 continue to meet that criteria.
20 Q Okay. Thank you. With respect to the subject
21 case, what would you say, and you've been here for a good
22 part of the hearings, what is the, what are the most
23 important components of this case?
24 A Well, there's several. I think the project
25 boundary, the street edge rhythm, the relationship to

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1 adjacent properties, height and the design of the space
2 between the sidewalk and the building are several that are
3 important to go into detail.
4 MS. ROBESON: Okay. I'm sorry. Can you -- I just
5 have not given you enough time for lunch. If you could not
6 do that because for some reason I'm having trouble hearing
7 what he's saying. Okay. I'm sorry, can you back up and
8 tell me --
9 THE WITNESS: Sure.
10 MS. ROBESON: -- what the most important aspects
11 of the project are?
12 THE WITNESS: The zoning process.
13 BY MS. HARRIS: Can you break that down a little
14 bit?
15 MS. ROBESON: Yes,
16 THE WITNESS: Several come to mind, the project
17 boundary, the street edge rhythm, relationship to adjacent
18 properties and I'll go into -- I'll just summarize it. The
19 height and the design of the space between the sidewalk and
20 the building, the public space.
21 MR. KNOPF: Excuse me, but may I ask --
22 MS. ROBESON: I know what you're going to say.
23 MR. KNOPF: Yes, I'm not quite sure what relevance
24 this is to your area of expertise.
25 MS. ROBESON: And we had this argument before and

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1 I think the ruling was that he would confine himself as a
2 civil engineer because you have had an architect, two land
3 Planners.
4 MS. HARRIS: And I think Mr. Irish's extensive
5 experience indicates that he is very, has practical
6 experience, not just educational experience, on all the
7 components that he just identified. What we didn't do is
8 bring back every one of our witnesses to emphasize some of
9 these points since he has been involved in the entire
10 process and actually his direct testimony touched on all the
11 things that he just identified. It's our intent just to
12 highlight again what those most important components are.
13 MS. ROBESON: Well, I think he needs to confine
14 himself to civil engineering --
15 MS. HARRIS: Okay.
16 MS. ROBESON: -- otherwise I would have qualified
17 him as a land Planner.
18 MS. HARRIS: Well, then I would like --
19 MS. ROBESON: And it's too late to do that now
20 because we haven't given them notice of it.
21 MS. HARRIS: Well, for the record, I want to state
22 my objection because I believe we stated our objection back
23 previously that, in fact, he should have been qualified as
24 a, I believe it was a site planner that we were trying to
25 get him the qualification.

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1 MR. ABRAMS: Yes, but if you follow the rules of
2 procedure, which we have attempted to do, he should have
3 been identified as a land Planner provided the Examiner and
4 other parties with his resume --
5 MS. HARRIS: Which were?
6 MR. ABRAMS: Which --
7 MS. ROBESON: As a civil.
8 MR. ABRAMS: As a civil, yes.
9 MS. ROBESON: As a civil engineer.
10 MR. ABRAMS: Which was not done and, you know, to
11 bring him back because, you know, there was a tactical
12 thought on the part of the applicant not to bring these
13 other witnesses back to testify and try to use him as the
14 sort of --
15 MS. HARRIS: But the components of civil
16 engineering, it's not evaluated in a sheer vacuum.
17 MS. ROBESON: Well, anyone -- can you proffer what
18 you want him to testify to?
19 MS. HARRIS: I want him to proffer in terms of the
20 importance of the street edge that we're establishing.
21 MS. ROBESON: In what sense?
22 MS. HARRIS: How our, how this project is
23 perfectly consistent with all the other properties on the
24 street and why --
25 MS. ROBESON: We --

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1 MS. HARRIS: -- it's important to maintain that
2 rhythm.
3 MR. ABRAMS: We could ask --
4 MS. ROBESON: Well, that's land Planning realm. I
5 really don't see that. I do accept that he, Mr. Irish, has
6 a lot of experience, but part of it is notice and we did not
7 accept him as a land Planner before and I want to limit him.
8 We have the exhibit that he, which was very helpful that he
9 marked up. So --
10 MR. KNOPF: If I may add, I don't think anyone is
11 challenging the calculations that he did, how far back it
12 is --
13 MS. ROBESON: What I don't --
14 MR. KNOPF: -- or how high it is. He's just
15 opining as to what the importance is in a compatibility land
16 Planning sense.
17 MS. ROBESON: That's -- I agree. So I'm going to
18 keep him to civil engineering testimony.
19 BY MS. HARRIS:
20 Q You testified previously about the distance
21 between the subject building and the City Homes. Can you --
22 and I believe distances, measurements are certainly
23 something a civil engineer would be --
24 MS. ROBESON: Yes, and we have the account -- I
25 don't, I can't remember the name. It's the one right at

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1 your feet, one --
2 THE WITNESS: 12, 112.
3 MS. ROBESON: Okay. So is there anything -- are
4 there any distances that you want to add to that?
5 MS. HARRIS: Just a moment. Let me -- actually I
6 don't know that we focused on the setbacks with regard to,
7 wait a minute, hold on.
8 MS. ROBESON: May I ask him an engineering
9 question? I saw -- are you familiar with the new binding
10 elements that have been submitted?
11 THE WITNESS: Yes.
12 MS. ROBESON: There's one distance there that --
13 MR. ABRAMS: We don't have it in as an exhibit
14 yet, do we?
15 THE WITNESS: No.
16 MS. ROBESON: No.
17 MS. HARRIS: Okay. Actually what --
18 MS. ROBESON: Who is going to introduce --
19 MS. HARRIS: It was Ms. Wiltshire, but I will
20 bring it in because Mr. Irish's firm prepared it.
21 MS. ROBESON: Okay.
22 MS. HARRIS: I'd like to enter as the next exhibit
23 the revised Development Plan which was dated May 10, 2012,
24 revised binding elements.
25 MR. ABRAMS: Is this 124?

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1 MR. KNOPF: We also have a 122 is your letter
2 summarizing it.
3 MR. ABRAMS: Yes, and did you get the latest --
4 MS. ROBESON: Yes.
5 MR. ABRAMS: Yes, we got that.
6 MR. KNOPF: Oh, no, I didn't get that. No, but
7 I'm, because that's what has an issue, I think we're both on
8 the same wavelength. There's --
9 MS. ROBESON: We, okay, this would be 124. Is
10 that what you said, Ms. Harris, 124?
11 MS. HARRIS: I actually didn't, but I think Mr.
12 Abrams said --
13 MR. ABRAMS: I did.
14 MS. ROBESON: Yes. That's -- so this will be the
15 revised Development Plan.
16 MR. ABRAMS: Now do we have copies for counsel?
17 MS. HARRIS: Yes, you do.
18 MS. ROBESON: And what date is this? I apologize.
19 MS. HARRIS: It says Revision No. 4 and it says
20 May 10, 2013.
21 MS. ROBESON: Okay. So I'll call it revised
22 Development Plan, May 10, 2013, just so nobody can be
23 confused.
24 (Exhibit No. 124 was marked for
25 identification.)

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1 THE WITNESS: Would you like a copy up there?
2 MS. ROBESON: Yes, thank you.
3 MR. ABRAMS: To save time, is there a way of sort
4 of circling the numbers that we're talking about as being
5 binding elements?
6 MS. ROBESON: Well, let me do this. Can -- is it,
7 if this is all right with you, can we have him explain the
8 changes to the -- or are the changes only in the text?
9 MS. HARRIS: Yes. Five, the binding elements text
10 were added. There was no change --
11 MS. ROBESON: To the site plan itself?
12 MS. HARRIS: Correct.
13 MS. ROBESON: Okay.
14 MS. HARRIS: But Mr. Irish can walk through those
15 if that would, if you --
16 MS. ROBESON: Is that acceptable to you?
17 MS. HARRIS: And it --
18 MR. ABRAMS: Yes, so all 26 are binding elements
19 now, is that what we said?
20 MR. KNOPF: Yes.
21 MS. ROBESON: 124?
22 MR. ABRAMS: No, 1 through 26 --
23 MR. KNOPF: Is a binding element.
24 MR. ABRAMS: -- are all binding elements.
25 MS. ROBESON: Oh, oh, oh, yeah. Okay.

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1 MR. ABRAMS: Okay.
2 MS. ROBESON: All right, Mr. Irish, if you would
3 be so kind as to take us through some of these changes?
4 THE WITNESS: Certainly. In the, in order to have
5 full disclosure, that's what you asked for the truth, the
6 whole truth? There was one change in the Plan view. I'm
7 pointing to a manhole that's at the corner of West Lane and
8 Montgomery.
9 MS. ROBESON: Yes.
10 THE WITNESS: And there's a small leader that I
11 would call artifact that, a line that goes kind of
12 southwesterly from there, about an inch long.
13 MS. ROBESON: Yes, I see it.
14 THE WITNESS: That, with CAD, that's a line that
15 was used on the concept storm water management to number
16 that structure. It's not needed here and should have been
17 frozen in the original Plan. So I furnished that before we
18 did, spotted this. Other than that, the table, the drawing,
19 the legend, everything stayed the same. The sustentative
20 changes --
21 MS. ROBESON: Yes?
22 THE WITNESS: -- were the condition, the binding
23 element No. 3 was reworded so that it made it clear that
24 it's our intent to provide 15 percent MPDU's if we get the
25 bonus density.

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1 MS. ROBESON: I see.
2 THE WITNESS: So we're not proposing to do that if
3 we just get a, if we don't achieve the bonus density. And
4 then the binding elements would be added for 41 through 26
5 which came from your letter.
6 MS. ROBESON: But then you have no binding element
7 for -- are you just relying on the zoning ordinance
8 requirement that you provide, 12.5 percent MPDU's?
9 THE WITNESS: We have to by law.
10 MS. ROBESON: Yes, that's what I was asking.
11 Okay. Go ahead. 21.
12 BY MS. HARRIS:
13 Q So do you, yes, do you --
14 A So we added binding elements 21 through 26 and
15 they, everybody has seen them before, they were in your
16 letter and we were asked to put them on the drawing. I can
17 read them if you'd like?
18 Q No. So as to 22, is that where the -- 22 is the
19 mechanical penthouse. Is that where it's been shown on,
20 roughly where it's been shown on elevations to your
21 knowledge?
22 THE WITNESS: I can only rely on what my friend,
23 Morris, the architect, said earlier. He said, yes.
24 MS. ROBESON: Oh, okay.
25 THE WITNESS: So --

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1 MR. ABRAMS: Is that 25 feet from the step-back at
2 the 6th and 7th level or 25 feet from the face of the
3 building below that?
4 THE WITNESS: 25 feet from the ground, the face of
5 the building at grade. So you have --
6 MR. ABRAMS: Okay.
7 THE WITNESS: -- 15, the step-back is 12 --
8 MS. ROBESON: 12.
9 THE WITNESS: -- and then you have an additional
10 13 to the penthouse.
11 MS. ROBESON: Okay. Now let me -- I'm sorry.
12 MR. KNOPF: One thing that I'm missed, I wanted to
13 know, maybe I remember wrong, whether there's an area. I
14 thought the original Plans, I'm looking at 25, called for a
15 36-foot setback and this says 35 feet. Was that a change or
16 I just remember things wrong?
17 THE WITNESS: I don't know where you get the 36
18 from.
19 MR. KNOPF: It was marked on the Plan that's
20 behind you, or one of the Plans that marked the street from
21 the center street to the building. I thought it said 36
22 feet. I don't want to argue, I just, it was not on
23 purpose --
24 THE WITNESS: We didn't intent to change anything.
25 MS. ROBESON: May I ask you one more question?

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1 Can you point out the center of the street, the center line
2 of the street on the Plan?
3 THE WITNESS: Which Plan?
4 MS. ROBESON: The new one. There's a line down
5 the center of Montgomery Lane that is a long dash with a
6 short dash --
7 MS. ROBESON: Right.
8 THE WITNESS: -- and another long dash.
9 MS. ROBESON: Okay.
10 THE WITNESS: It starts, well, it's -- if you were
11 to extend it, it's just below the words Montgomery Lane on
12 the left side of the drawing. There's a --
13 MS. ROBESON: Okay.
14 THE WITNESS: The dimension says it's 20-foot
15 existing paving. It goes right through the middle of the --
16 MS. ROBESON: That's what I thought. I just
17 wanted it on the record so everybody and the counsel knows
18 where we're measuring from.
19 MR. KNOPF: Not be argumentative, but just to
20 clear this up, using just what you referred to, I find the
21 building 36 feet back as shown here and yet the binding
22 element says 35 feet. I just want to know if that's
23 purposeful, it's inadvertent? I'm not trying to be
24 argumentative.
25 THE WITNESS: Well, I think they're consistent.

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1 If you have a minimum of 35, 36 would comply. It was not
2 purposeful and --
3 MR. KNOPF: It's purposeful to be 35, that's all I
4 wanted to know, it wasn't inadvertently meant to be --
5 THE WITNESS: As an absolute minimum.
6 MS. ROBESON: Okay. And, Ms. Harris, I appreciate
7 kind of taking this out of order. Do you want to --
8 MS. HARRIS: I have just several more questions --
9 MS. ROBESON: Okay.
10 MS. HARRIS: -- for Mr. Irish.
11 BY MS. HARRIS:
12 Q One is the project boundary, as part of your
13 responsibilities, you evaluated the project boundary,
14 correct?
15 A Yes.
16 Q And did you also evaluate the project boundary of
17 the prior case, the Holladay case?
18 A Yes.
19 Q And can you please tell me what went into the
20 considerations with respect to the project boundary and the
21 ultimate project that was recommended that is being
22 proposed?
23 A I could probably point to their Exhibit 24, but
24 the difference between the two applications is that the one
25 lot at the actual corner of West Lane and Montgomery, the

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1 northwest corner, was not included in the Holladay
2 application. They wanted to include it, but they were
3 unable to get that lot under contract. When we went through
4 the Plan review and everything, virtually everybody said
5 can't you get -- it would be so much better if you could get
6 that lot added to the mix, if you would. So once this
7 applicant was able to do that, it made for a better project
8 boundary.
9 Q And what would have been the -- if they hadn't
10 done, been able to obtain it and assume for a moment that
11 the Holladay project would have gotten developed, what could
12 be developed on that Wolf property?
13 A Well, I think you've got a pretty good example of
14 it, the County Council just approved 4825, so I think you
15 take a mirror image of that and there you go, that's what
16 would be in that corner. And, you know, this building,
17 4825, that corner, the southwest corner of that building is
18 only five feet from the intersection of those two lighter
19 lines. It's very, if you take the arch that we've got set-
20 back, if you intersect the two right-of-way lines, we're
21 about 33 feet back. And we created a, you know, if you
22 picture the image of the book ends of this building where
23 you're looking at -- on Exhibit 114, put your bookends of
24 this, put your bookends of the 4825 building in the upper-
25 right corner of Exhibit 114 versus at least one side of the

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1 intersection looking like Exhibit 76.
2 Q Thank you. Have you been involved in any recent
3 cases where you were required to push, to respect the
4 continuous building edge concept and if so, can you please
5 explain that?
6 A Yes.
7 MR. ABRAMS: Objection. It's a Planning
8 testimony.
9 MS. ROBESON: Sustained.
10 BY MS. HARRIS:
11 Q In the case of the Wheaton Safeway, the case that
12 I believe you are involved in, do you recall how far the
13 building was set back from the back of curb?
14 A I don't recall the distance. The applicant's
15 original Plan had a large strip of public use space along
16 the entire front of the --
17 MR. ABRAMS: Madame Examiner, this is rebuttal
18 testimony. I don't know what this is rebutting in terms of
19 the Safeway application.
20 MS. ROBESON: Do you want to proffer what it's
21 rebutting?
22 MS. HARRIS: It has to do with the distance from
23 the back of curb of the subject building to, the distance
24 from back of curb to the subject building and the
25 maintenance of that continuous building edge and experience

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1 based on other cases where that's, in fact, been determined
2 to be an important component.
3 MS. ROBESON: Well, he's here as a civil, so
4 that's getting into the land Plan.
5 MS. HARRIS: But I believe as a civil he was in
6 charge of the actual determination of the measurement.
7 MS. ROBESON: Well, he can testify to the
8 measurements, but not as --
9 MS. HARRIS: Okay.
10 MS. ROBESON: -- to the importance.
11 MS. HARRIS: Okay.
12 BY MS. HARRIS:
13 Q Mr. Irish, in the case of the Wheaton Safeway,
14 originally, as originally proposed, how far back was that
15 building located from Georgia Avenue, do you recall?
16 A I don't recall the distance. The point was that
17 the public use space was located in front of the building on
18 the original application and the Planning Board wanted the
19 building moved up closer to the street so that it would
20 get --
21 MR. ABRAMS: Objection. Relevance and --
22 MS. ROBESON: Yes.
23 MR. ABRAMS: -- Planning testimony. Everything is
24 not supposed to --
25 MR. KNOPF: It's not even relevant. This wasn't

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1 in the TS-R zone or in the Bethesda --
2 MS. ROBESON: The objection is sustained, so --
3 MS. HARRIS: Okay.
4 MS. ROBESON: -- please, please don't try to slip
5 it in through the back door.
6 MS. HARRIS: That wasn't my intent.
7 MS. ROBESON: I mean -- okay.
8 MS. HARRIS: I believe there was a letter -- the
9 ZHE received an e-mail from a Gail Kauffman. I don't know
10 if that made it into the record?
11 MS. ROBESON: Yes, it did. It's 123, I think.
12 MS. HARRIS: Okay.
13 BY MS. HARRIS:
14 Q Mr. Irish, did you review the e-mail that was
15 Exhibit 123 from Gail Kauffman dated May 7, 2013?
16 A Yes.
17 Q Can you briefly summarize or what, in your, from
18 your --
19 MS. ROBESON: Before you go there, the e-mail is
20 on -- if I recall the e-mail, but I'll double-check, I think
21 it's on compatibility.
22 MR. ABRAMS: That's what it indicates in the --
23 MS. ROBESON: Hold on one second.
24 MR. ABRAMS: -- exhibit list.
25 MS. HARRIS: No, I believe it also had to do with

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1 this.
2 MS. ROBESON: I'm sorry, I --
3 MS. HARRIS: Or it was sent electronically.
4 MS. ROBESON: I don't have the file with that e-
5 mail here. Can you keep it to distances?
6 MS. HARRIS: Certainly.
7 BY MS. HARRIS:
8 Q Mr. Irish, what's the distance of the subject
9 property from the TS-R, excuse me, from the Metro?
10 A It's, excuse me, it's less than 1,000 feet. I
11 believe it's about 940.
12 Q And are there any other projects listed on that
13 correspondence from Ms. Kauffman that are located within the
14 TS-R district?
15 A Within the TS-R district is the 4901 Hampden Lane
16 project.
17 Q And that's the only one, is that correct?
18 A I believe so.
19 Q And are --
20 A I think Lot 31 is TSM.
21 Q Correct and --
22 MS. ROBESON: Well, you're not answering.
23 MS. HARRIS: Right, I'm sorry. I didn't mean to
24 do that. My apologies.
25 BY MS. HARRIS:

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1 Q What is -- can you summarize what the distance of
2 the rest of those projects are from the Metro station?
3 A They range up to approximately 3,000 feet.
4 MS. ROBESON: The distance of which project?
5 MS. HARRIS: The projects identified in Ms.
6 Kauffman's correspondence --
7 MS. ROBESON: Okay. Okay.
8 MS. HARRIS: -- and their proximity to the Metro
9 station.
10 MS. ROBESON: All right.
11 THE WITNESS: In fact, only one of them is less
12 than 1,000 feet and that, well, I mean 4901 Hampden Lane is
13 close. It's about 700 feet, obviously closer to the Metro
14 than any of them. The Woodmont East project, which is in
15 the CBD zone, is about 950 feet. All the rest of them are,
16 let's see, the next closest were lot 31 is 1,350 feet. You
17 got several at 1,400 feet, 2,000, 2,500, 3,000, 2,900,
18 3,000, so quite a distance away from the Metro.
19 BY MS. HARRIS:
20 Q And did you -- and can you reiterate how many of
21 those are within the TSR district?
22 A Just --
23 MS. ROBESON: How many of the ones in her letter?
24 MS. HARRIS: Yes.
25 THE WITNESS: Just the, just one, the 4901 Hampden

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1 Lane project.
2 MS. HARRIS: Thank you. Hold on. Can I -- just a
3 moment. I have no other questions.
4 MS. ROBESON: All right. Cross-examination, Mr.
5 Abrams?
6 MR. ABRAMS: Yes.
7 CROSS-EXAMINATION
8 BY MR. ABRAMS:
9 Q Mr. Irish, what is the building height point on
10 West Lane for this building?
11 A The building height point?
12 Q Yes, from which you started to measure?
13 A The building height measurement point?
14 Q Yes. And what is the elevation there, that's
15 basically what I asked you?
16 A There's a point where I'm pointing with my pen.
17 It's a little target symbol which is building height
18 measuring point 2(c), 335.8.
19 Q 335?
20 A Yes, sir.
21 Q Okay. And what is the building height measurement
22 point for the Hampden apartments on Hampden Lane and
23 Arlington Road?
24 A Hampden Lane Associates?
25 Q Yes, the one that's going down on Arlington Road.

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1 A I believe it's 321.
2 Q And my pre-calculus is 14 feet difference?
3 A Yes, sir.
4 Q Okay. Now let's take the measurement. The
5 midpoint, I guess, let's say the midpoint at the
6 intersection of West Lane and Montgomery, what is the ground
7 elevation there?
8 A It's about 31, 331.
9 Q 331? And what is, so the midpoint of the highest
10 portion of the Hampden Lane apartments, the ground elevation
11 there in front of the apartment on Hampden Lane?
12 A I don't understand your question.
13 Q The 71-foot section of Hampden Lane apartments
14 faces Hampden Lane. What is the elevation there?
15 A The midpoint of the 71-foot section?
16 Q Yes.
17 A It would be approximately 324.
18 Q So that's where we have the 7-foot that I think
19 that you measured, correct?
20 A If it works out that way, yes.
21 Q All right. Now were you at the site visit with
22 the rest of --
23 A With the Hearing Examiner?
24 Q Yes.
25 A No, sir.

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1 Q You weren't? Have you ever stood in the back of
2 where they're going to construct the Hampden Lane apartments
3 and looked north toward the City Homes and toward the
4 subject property?
5 A No.
6 Q Well, will it surprise you to know, sir, that if
7 you stood at sections of that wall you have to be over seven
8 feet to see over that hill?
9 A It doesn't surprise me at all. The driveways for
10 City Homes slopes up from Montgomery Lane, so you would
11 expect those to be higher in elevation.
12 Q So you're basically comparing, are you not, ground
13 elevations which really don't give you a visual perspective?
14 A Well, I think that's what you were doing in all
15 due honesty.
16 Q Now you also talked about, and I think I got this
17 right, maybe I'm wrong, your mind visualizes height from up
18 close, does that sound right in terms of your testimony?
19 A I don't think those were the words I was using,
20 but I think --
21 Q Well, what words did you use so I can sort of --
22 A Well --
23 Q -- digest those?
24 A Let me restate it so I don't have to remember my
25 exact words.

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1 Q Yes.
2 A The point I was trying to make was that the
3 further away you are from something, the more difficult it
4 is to visualize the height of that relative to where you
5 are. So if you're right on top of something -- the closer
6 you get to the building, the more obvious the height of that
7 building is going to be to you. And primarily what I was
8 trying to dispel was the image that if the road slopes up a
9 couple feet, then the building ought to be a couple feet
10 shorter so it would appear the same height. To me that
11 building would appear lower because it would actually have a
12 lower height even though the elevation might be the same.
13 Q In terms of somebody trying to gain a perspective
14 of building mass and bulk and height, if you stood further
15 away from the building, wouldn't you get a better
16 perspective than if you're standing right up next to the
17 building?
18 A Not -- I mean the further away you get, the
19 building is going to appear smaller because as, through just
20 the distance away.
21 Q No, in terms of compatibility, you're comparing a
22 building with what's in the area around it, is that right,
23 various elements?
24 A If I can answer a compatibility question, yes.
25 MS. HARRIS: Oh, was he asked --

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1 MR. ABRAMS: He presented his testimony and
2 apparently it wasn't stricken.
3 THE WITNESS: The height should be relative to the
4 buildings immediately around it, yes.
5 MR. ABRAMS: Okay. No further questions.
6 MS. ROBESON: All right. Mr. Knopf?
7 BY MR. KNOPF:
8 Q I would like to try to clear up something which is
9 my confusion here. You did the measurements to show how far
10 back from the center of the street the building was,
11 correct?
12 A Yes, sir.
13 Q Okay. And I'm correct that we went through this
14 before on Exhibit 124 on the Plans, the revised Plans, it
15 shows 36 feet back, correct, from the center of the street?
16 A Which Plan shows 36?
17 MS. ROBESON: The one --
18 MR. ABRAMS: 126.
19 MR. KNOPF: 120 --
20 MS. ROBESON: Four.
21 MR. KNOPF: 124, the one that we just --
22 MS. ROBESON: That's what I was -- because if you
23 take 10 feet --
24 THE WITNESS: That's correct.
25 MS. ROBESON: -- it's 10 feet and then 26? No.

1 MR. KNOPF: Yes, it's 10, 26 feet, excuse me, 26
 2 feet to the center.
 3 MS. ROBESON: Oh, yes, you're right and then
 4 there's a 10-foot dimension from the, I guess it's the curb
 5 line to the building face.
 6 MR. KNOPF: Right.
 7 BY MR. KNOPF:
 8 Q So what I'm asking is, on the Exhibit 124, it says
 9 on the new binding element proposed, the building will be
 10 set back a minimum of 35 feet. So my first question is if
 11 they did do the minimum that the new binding element has,
 12 does that affect the calculations for the public space? I
 13 thought there was public space counted along Montgomery
 14 Lane.
 15 A I mean if the building were set back 35 --
 16 Q 35 feet instead of 36 feet --
 17 A -- from center, would that alter the public use
 18 space calculation?
 19 Q Yes.
 20 A Yes.
 21 Q And do we still meet the public use space
 22 requirement?
 23 A The project will meet the public use space
 24 requirement.
 25 Q We would lose, what, 70, 80 feet?

1 A We wouldn't lose anything. The project would meet
 2 the public use space requirement.
 3 Q No, but I mean if you give up one foot --
 4 A Then you put the foot somewhere else.
 5 Q -- running the whole length of --
 6 A You're trying to --
 7 Q I'm trying to just figure out what this means.
 8 A You're trying to apply a level of precision to a
 9 conceptual Development Plan that doesn't exist.
 10 Q Well, could we have the same level of precision if
 11 we said that has to be set back a minimum of 36 feet?
 12 A You could say it can be set back a minimum of 36.
 13 You could say 35, whatever you want to say. I mean the fact
 14 that we're saying a minimum of 35 and we have a dimension
 15 that shows 36, the Plan right now shows the building to be
 16 35, I'm sorry, 36 feet from the center line. The binding
 17 element says, basically says that as you go through the
 18 design process and things happen, like we all know they do,
 19 between now and building permit, at an absolute you can't
 20 move the building any more than one foot closer than is
 21 drawn right here.
 22 Q And what I'm trying to figure out what could
 23 happen. One was we would lose, assuming it was 35 feet, we
 24 would lose how many square feet of open space?
 25 A Zero.

1 Q Why? Along Montgomery Lane, along Montgomery
 2 Lane. Are you saying if we lose that amount, we have to
 3 make it up someplace else?
 4 A It would be made up somewhere else.
 5 Q Is that because we're right at the minimum that
 6 the code requires now?
 7 A The Plan as currently drawn, yes, is at 10 percent
 8 minimum requirement.
 9 Q So one of the changes is possibly we ended up with
 10 that amount of public space someplace else unknown?
 11 A Yes, I mean, the one --
 12 Q Another --
 13 A -- foot doesn't mean that that whole face would be
 14 one foot. That could mean one little projection might stick
 15 out a foot. So, you know, like I said, you're trying to
 16 apply a great deal of precision --
 17 MS. ROBESON: Well, your, but your burden of proof
 18 is to show that you're going to have, since you're at the
 19 very minimum, and I think one of the issues in this case is
 20 the open space being along the street frontage, so I guess
 21 the question is, yes, it's not precise at this stage, but
 22 are you going to be able to provide it within that
 23 Montgomery Lane frontage?
 24 THE WITNESS: We can, yes, we could provide it
 25 there. The building will be -- we can't get a Plan approved

1 without doing so. The project will --
 2 MS. ROBESON: But the question is would it be --
 3 do you have the capability of providing the additional
 4 square footage in that area?
 5 THE WITNESS: Sure you do.
 6 BY MR. KNOPF:
 7 Q Can you explain how?
 8 A This is a straight line and an arc. If you move
 9 things just a -- number one, where is that one foot? If
 10 it's a 1-foot by 1-foot projection into there for an
 11 architectural embellishment of the building, then we've got
 12 one square foot to pick up.
 13 Q But we just had testimony that there's no
 14 embellishment sticking out because they were right at the
 15 minimum line, that's what I'm trying to understand this.
 16 And that facade did not articulate after you got past the
 17 glass at the corner, so I'm just -- I have another question
 18 you can answer, the same thing, doesn't it also affect the
 19 landscape Plan? We had testimony that, how you reached the
 20 minimum width in that area in order to Plant trees and so
 21 on. So taking back a foot has major implications, does it
 22 not?
 23 A Well, it is not, as I said before, it is not our
 24 intent to take back a foot.
 25 Q Well, then wouldn't it be better if it's not your

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1 intent to change the binding elements so that you have to
2 have a minimum of 36 feet path? So if there's some wiggle
3 room, it goes back, not forward.
4 MS. ROBESON: Or to the side --
5 MR. KNOPF: Or to the side.
6 MS. ROBESON: -- in the amenity area, unless
7 you're at the active/passive -- you've got 26 percent of the
8 active/passive use.
9 THE WITNESS: To address your question in terms of
10 where could it be, I believe the Exhibit 76 shows, and the
11 architect this morning testified to a brief, a slight step-
12 back at this corner where the scallop is for the park --
13 MR. KNOPF: Yes.
14 THE WITNESS: -- but if you look at our drawing
15 for the Development Plan, it goes straight and then the arc.
16 We don't have that little probably two square foot area cut
17 out of the public, cut out of the building footprint there.
18 BY MR. KNOPF:
19 Q You're not saying that's a 70-foot indentation?
20 A What I'm saying is, you asked me how I could pick
21 up a square foot if we had a 1-foot embellishment here and
22 I'm saying you've already got a foot or two in this corner
23 that I'm not showing. I mean the --
24 MS. ROBESON: So that's, so now you're down to --
25 MR. KNOPF: 68 feet or something?

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1 MS. ROBESON: No, 72.
2 MR. KNOPF: 76? Oh.
3 MS. ROBESON: If you've got four square feet --
4 THE WITNESS: Only if you run it straight across
5 the --
6 MS. ROBESON: No, 74. Well, let me ask this and
7 maybe he's not the witness to ask, is that 35 feet set in
8 stone and maybe he's not --
9 THE WITNESS: Yes, I could answer --
10 MS. ROBESON: -- is there a reason, okay, is there
11 a reason you said 35 instead of 36?
12 THE WITNESS: It was truly a rounding. When we
13 prepare Plans, recognizing how the level of precision
14 increases as you go from where we are today to building
15 permit --
16 MS. ROBESON: Yes.
17 THE WITNESS: -- things happen whether it's code
18 comments or just design evolves or whatever.
19 MS. ROBESON: Okay.
20 THE WITNESS: Things happen, so if I were to
21 take -- unfortunately with CAD, the computers at this point,
22 you can measure to the thousandths of an inch right now
23 where a certain line is, but we're not trying to imply that
24 that, we know where that line is to the thousandth of an
25 inch. So if in a drawing it might measure 36 feet, we

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1 typically would round down and call that a minimum, not
2 intending to slide the building to that point, but so that
3 if something happens in the ultimate design, we could still
4 comply with an absolute that we have to issue at this point.
5 MS. HARRIS: May I ask for a 5-minute recess so we
6 can confer about this issue?
7 MS. ROBESON: Absolutely.
8 MS. HARRIS: Thank you.
9 MS. ROBESON: Go ahead. We'll be back. Why don't
10 you take 10 minutes?
11 MS. HARRIS: Thank you.
12 MS. ROBESON: We'll be back at 10 until 2:00.
13 (Recess)
14 MS. ROBESON: Are you read? Okay. We're back on
15 the record. It's --
16 MR. KNOPF: Oh.
17 MS. ROBESON: -- you had -- we're still at --
18 MR. KNOPF: I thought we were taking a break for
19 some purpose but, okay, I can keep going.
20 MS. ROBESON: Okay.
21 MS. HARRIS: Well, I think we were in the middle
22 of Mr. Irish trying to explain and I think he, I mean if we
23 can afford him the opportunity to explain what the decision
24 and the basis for the decision regarding the --
25 MS. ROBESON: Of the 35 feet?

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1 MS. HARRIS: Yes.
2 MS. ROBESON: Okay.
3 MR. KNOPF: Let me ask another question.
4 MS. HARRIS: Wait, I thought --
5 MS. ROBESON: Wait.
6 MS. HARRIS: Just a minute.
7 MS. ROBESON: He, you --
8 MS. HARRIS: He needs to respond.
9 MS. ROBESON: -- finish. Let's see. You had
10 finished your direct and we were on cross-examination.
11 MR. KNOPF: Right. I asked --
12 MS. ROBESON: So it's his question.
13 MR. KNOPF: Right.
14 MS. ROBESON: Do you -- so go ahead.
15 MR. KNOPF: Well, I had one. I now have, I guess
16 you conferred during the break with him, with the witness?
17 MS. HARRIS: There was a discussion about whether
18 it should be 36 or 35 feet.
19 MR. KNOPF: Right. And --
20 MS. HARRIS: And then the Hearing Examiner asked
21 questions about it and we asked whether we could take a
22 break to resolve the issue of whether it's 35 or 36. The
23 direction was, yes, I think that we should --
24 MS. ROBESON: Okay. Did you --
25 MS. HARRIS: -- hence the break.

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1 MS. ROBESON: Is it 35 or 36?
2 THE WITNESS: The binding element currently shows
3 35, but we're willing to change it to 36 --
4 MS. ROBESON: Okay.
5 THE WITNESS: -- to be consistent with the
6 dimensions on the Plan.
7 MS. ROBESON: Okay.
8 THE WITNESS: The intent was not any smoke and
9 mirrors or sleight of hand or anything, it's as I explained,
10 when you're preparing something, we're not at the level of
11 precision that, I don't know that the architect might have a
12 pilaster or two in the middle of that face of the building
13 and we end up with 35 1/2 feet.
14 MS. ROBESON: Right.
15 THE WITNESS: And in order to --
16 MS. ROBESON: But you're willing to change it to
17 36?
18 THE WITNESS: We're willing to make it 36.
19 MS. ROBESON: Okay. Mr. Knopf, do you have any
20 other questions?
21 MR. KNOPF: Excuse me, yes. I'm definitely
22 prepared.
23 MS. ROBESON: Okay.
24 BY MR. KNOPF:
25 Q It says the, and I didn't, the new binding element

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1 23, it says that the landscape Plan to be included in the
2 site plan application shall include proposed landscaping for
3 the common areas on the rooftop.
4 MS. ROBESON: Wait, what are you doing to that,
5 Mr. Irish?
6 THE WITNESS: Do you want me to change it to 36
7 instead of 35 in the binding element for --
8 MS. ROBESON: Oh, in the 136, or 124?
9 THE WITNESS: The 124, No. 25.
10 MS. ROBESON: You're going to have to submit a new
11 one --
12 MS. HARRIS: Okay.
13 MS. ROBESON: -- for the counsel because we have
14 to have the exactly what you're proposing.
15 MS. HARRIS: Okay.
16 THE WITNESS: Right.
17 MS. ROBESON: So why don't you not mark that up --
18 THE WITNESS: Okay.
19 MS. ROBESON: -- and when you can resubmit a new
20 one with the 136. I'm sorry, Mr. Knopf.
21 MR. KNOPF: No, that's quite all right. I thought
22 he was answering my question.
23 BY MR. KNOPF:
24 Q Going back to binding element 23, the new binding
25 element on Exhibit 124, the landscape Plan to include a site

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1 plan application shall include proposed landscaping for the
2 common areas on the rooftop and then I believe there is a
3 square footage for the rooftop someplace, the total square
4 footage or is there not? What I'm trying to get at is
5 where, what's on the rooftop in terms of square footage and
6 where is it?
7 MS. HARRIS: Objection. That has nothing to do
8 with the binding element regarding landscaping on the
9 rooftop.
10 MR. KNOPF: It doesn't?
11 MS. HARRIS: No.
12 MR. KNOPF: Well, I'd like to know how much it is
13 and where it is. I thought that --
14 MS. HARRIS: The witness didn't testify to that.
15 MR. KNOPF: But this is a brand new --
16 MS. HARRIS: Well, if he, he is testifying to the
17 binding element, so if he knows or if there's a set square
18 footage, just, you know, if there isn't a set square
19 footage, there isn't. So --
20 THE WITNESS: I'm not aware of a set square
21 footage. The binding, the intent of the binding element is
22 to say that that area, whatever it is, will be designed in
23 the site plan.
24 BY MR. KNOPF:
25 Q And is, just, let me just clear up, and is that,

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1 whatever it is on the roof, is that in, is that in addition
2 to and beyond what is required in terms of total square
3 footage for active/passive space?
4 MS. HARRIS: Objection. The -- the binding
5 element doesn't talk about active and passive space, it goes
6 to the fact that the rooftop will be landscaped.
7 MR. KNOPF: Well, that's what I'm trying to
8 understand. So that's not being counted as part of --
9 MS. ROBESON: Well, I guess I think it's a fair
10 question because it refers to common area and I don't
11 know -- he's trying to figure out, and I am too, to say how
12 much of the -- usually when people come in they say, well,
13 this is how much active/passive space we have and that's if
14 you, if you are saying we're guaranteeing 7,421 square feet,
15 but we're not sure where, that's, you know, that's one
16 thing. I think it's a fair question to ask.
17 So is, I guess my question is, when you say
18 landscaping and common area on the roof, is that going to be
19 in addition to the, if you know, is that going to be in
20 addition to the 7,421?
21 THE WITNESS: It could be. I mean we're not at
22 the level. The Planner that we have now, there is at least
23 7,421 square feet of active/passive space that includes
24 exterior space, basically a grade, and it also includes
25 spacing inside the building. I don't have the architectural

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1 dimensions --
2 MS. ROBESON: No --
3 THE WITNESS: -- with me to know --
4 MS. ROBESON: -- I understand.
5 THE WITNESS: -- how much, how large the community
6 room is and so forth, but there would be, there will be
7 space on the roof and there is green roof, so you can call
8 that common area. Now is it designed to be a recreation
9 area? We're not at that level of detail. I think the
10 intent of the --
11 MS. ROBESON: I guess my question is what's the
12 point of putting that binding element in here?
13 THE WITNESS: I think the point was that there are
14 a lot of questions asked about what's happening on the roof
15 and we're trying to say that we don't know at this point,
16 but we will know at site plan which, frankly, is the
17 appropriate time for it. So it's usually determined.
18 MS. HARRIS: May I respond to that?
19 MS. ROBESON: Yes.
20 MS. HARRIS: There was also a discussion, if we
21 understood it correctly, about, and I believe it came from
22 the opponents, well, was there going to be landscape up
23 there or is there not and just as one of the exhibits showed
24 some landscaping on the terrace area, it sounded like what
25 they were asking was they wanted to see landscaping on the

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1 roof, so we decided, okay, we can be responsive to that and
2 we will providing landscaping on the roof.
3 MS. ROBESON: That's what I thought it was, but I
4 wasn't sure because it doesn't say landscaping will show or,
5 you know, I -- okay. So basically --
6 BY MR. KNOPF:
7 Q Let me explain what my concern is and you can tell
8 me why I shouldn't be concerned. What I am concerned is
9 that based on the binding elements that are here, should I
10 be concerned that the building footprint such as to the west
11 might change somewhat going more to the west so there's less
12 open space there and that loss there be made up on the roof,
13 for example, by landscaping the roof?
14 A I don't think so. We need to achieve a certain
15 amount of public use space.
16 Q That's not public use space on the west side.
17 MS. ROBESON: Well, wait, aren't there setbacks in
18 the binding elements already?
19 MR. KNOPF: It's 12 feet, but as you can see as it
20 opens up, there's more than a 12-foot area.
21 MS. HARRIS: There's also other binding elements
22 with respect to that space.
23 MR. KNOPF: Is that, I didn't see that.
24 MS. HARRIS: It's like the space will be
25 substantially as shown on the Plan.

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1 MR. KNOPF: Substantially shown on the Plan, yes,
2 that's what my concern is.
3 MS. ROBESON: Okay. All right. Do you have any
4 other questions?
5 MR. KNOPF: Just one more.
6 BY MR. KNOPF:
7 Q Did you as part of your professional duties with
8 other projects or even in this project, do you measure the
9 distance of the project from the Metro station to determine
10 how far it is from the Metro station?
11 A Sure.
12 Q And why do you, why is the distance from the Metro
13 station important?
14 A Why is it important?
15 Q Yes. Are they not special features if you're
16 within a certain proximity of the Metro station, you need
17 less parking or get some other benefits in terms of your
18 building?
19 A Do I have to answer that question?
20 Q Yes. I mean --
21 MS. HARRIS: Actually, objection. Isn't that a
22 land Planning question --
23 MR. KNOPF: No, you --
24 MS. HARRIS: -- outside the realm of the expert's
25 expertise?

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1 MR. KNOPF: He testified as to existence --
2 MS. HARRIS: He measured the distance.
3 MR. KNOPF: Measured the distance, yes.
4 MS. HARRIS: And that's all he did was note the
5 measurements.
6 MS. ROBESON: Hadn't he measured the distance?
7 THE WITNESS: Yes.
8 MR. KNOPF: No, he testified on Exhibit 124 the
9 various distances.
10 MS. ROBESON: Okay.
11 MR. KNOPF: And then he made some conclusions
12 about some were too far away, some were closer.
13 MS. HARRIS: No, he didn't. He just --
14 MS. ROBESON: No, stop.
15 MR. KNOPF: That's why I'm just saying --
16 MS. ROBESON: Stop. Stop. Okay. We are going to
17 get through this case. So can you skip to the next or what
18 is your --
19 BY MR. KNOPF:
20 Q My last question is I just wanted to know are
21 there, you had mentioned some were a thousand feet, some
22 were more than a thousand feet. I believe you said this
23 project, the instant project --
24 MS. ROBESON: Oh, you're talking --
25 MR. KNOPF: -- was a thousand feet.

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1 MS. ROBESON: Okay.
2 MR. KNOPF: The distance from the Metro station.
3 MS. ROBESON: Right.
4 BY MR. KNOPF:
5 Q Do I remember correctly you said this was a
6 thousand feet from the Metro station instant project?
7 A I had measured -- there were 12 projects listed in
8 the memo and --
9 Q How many were within 1,500 feet?
10 A How many were within 1,500? One, two, three,
11 four.
12 Q Four projects?
13 A Yes.
14 Q And is the County policy in that, within 1,500
15 feet, are they deemed as being walkable to Metro? That's a
16 normal, walkable distance --
17 MS. HARRIS: Objection.
18 MR. KNOPF: -- if you know?
19 MS. HARRIS: All the witness did was measure. He
20 was under strict orders to limit his testimony --
21 MS. ROBESON: All right.
22 MS. HARRIS: -- to civil engineering.
23 MS. ROBESON: All right.
24 MR. KNOPF: No further questions.
25 MS. ROBESON: All right. So do you have redirect

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1 or is it so confused by this point that no?
2 MS. HARRIS: No.
3 MS. ROBESON: Okay. So no recross.
4 MS. HARRIS: No, thank you.
5 MS. ROBESON: Thank you, Mr. Irish.
6 THE WITNESS: I'm sorry, I was trying to be
7 cooperative.
8 MS. ROBESON: You're fine. And then, finally, we
9 have Ms. Wiltshire?
10 MS. HARRIS: Correct.
11 MR. KNOPF: We're saving the best for last.
12 MS. ROBESON: Okay, Ms. Wiltshire, you're still
13 under oath. Do you have a chair?
14 THE WITNESS: Yes, I just wanted to find one that,
15 that one exhibit, the 106(b) just in case I need to --
16 MS. HARRIS: Actually, you know what I'm going to
17 have you read --
18 THE WITNESS: Oh, the same, yeah, same purpose
19 basically. Okay.
20 MS. HARRIS: Thank you.
21 DIRECT EXAMINATION
22 BY MS. HARRIS:
23 Q Ms. Wiltshire, can you please explain the outreach
24 efforts that SJG undertook with respect to the neighbors
25 throughout this process?

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1 A Sure. I'd be happy to. We met with the neighbors
2 on many occasions. SJG actually --
3 MS. ROBESON: Why are we going here?
4 MS. HARRIS: Because it --
5 MS. ROBESON: Okay. Just go.
6 MS. HARRIS: Because I believe there was a lot of,
7 there was a lot of testimony in terms of the applicant not
8 being responsive to --
9 MS. ROBESON: Okay.
10 MS. HARRIS: -- the neighbors and --
11 MS. ROBESON: All right. There was. Go ahead.
12 THE WITNESS: We've actually done a lot of urban
13 infill projects, most of ours actually about other properties
14 in the District, so we are actually very extremely sensitive
15 to the happiness of our neighbors. We're long-term owners.
16 Most of our properties we've owned for 30-plus years, so we
17 don't build and leave, we stick around. And in this case in
18 terms of our outreach with the neighbors, I just want to
19 talk a little bit about what we've done in the process,
20 again, to address some of what we've heard here. And I
21 guess I'll start with --
22 BY MS. HARRIS:
23 Q You're referring to Exhibit 113?
24 A I'm sorry, Exhibit 113 I guess is the latest? To
25 the north of us is the Edgemoor at Arlington North, which we

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1 have discussed extensively which is owned --
2 Q To the north? Can you --
3 A I'm sorry, to the west.
4 Q I'm sorry.
5 A Which is owned and actually occupied by Randy
6 Rothstein who has offices here. We met with him on a number
7 of occasions. He expressed some concern about the public
8 space, well, actually I should say the private amenity space
9 in the rear, so we met with him, he didn't have any issues,
10 as you know, with the massing, the height, the density, but
11 his one concern had to do with the light that could be
12 generated and I guess potentially noise, also the cut of
13 curb between the properties because of the distance. So we
14 actually agreed with him that we would bind, have a binding
15 element which is binding element No. 19 on the Plan that we
16 would keep the light levels to 24 inches in that landscape
17 area. So, as you know, he supported the project which is
18 shown in blue.
19 In addition, we met with the Villages of Bethesda
20 who previously had opposed the project under Holladay. They
21 had some concerns in that along the northern property line
22 the project previously was actually 20 feet, but we are now
23 proposing 15 feet, but they were pleased with the fact that
24 the driveway and the loading was no longer along the
25 property line, but there would now be a green area that

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1 would be landscaped and we would actually have the garage
2 entrance inside the building. But they did ask us to, asked
3 us to do a number of things. One was to submit a binding
4 element that would agree that that area above grade would
5 remain 15 feet from them and, quite frankly, understandably
6 so because as you saw I believe when you were there, some of
7 these units do look out into the property and they're all
8 patios here and there actually are shadows cast given that
9 we are on the south of them. So they were very concerned
10 about keeping that distance. So we agreed to binding
11 element, I believe that one was 16 and then also No. 17 in
12 that we would keep the general dimensions and this private
13 space area would remain the same since their view shed would
14 remain open. Previously, the building was pushed much back,
15 much further back so, again, those two things were very
16 important to them.

17 And we also, they asked not to have any balconies
18 on the northern facade, which we agreed to and they had
19 asked us to, it was a binding element from the Holladay
20 project that there would be a construction agreement between
21 the two properties which is very customary for abutting
22 properties. So we agreed that that would remain as well.
23 And there's a binding element, I believe that was binding
24 element No. 7.

25 We also met with Mr. Chipouras on a number of

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1 occasions. He is at 4828 West Lane. He also had a number
2 of concerns that we addressed. There are some transformers
3 that had been proposed that are along the northern property
4 line. We agreed that we would screen those transformers.
5 That is binding element No. 14. He asked that we provide
6 him a construction agreement. That customarily in my
7 history of being in this business for 20 years, I've never
8 given a construction agreement to someone who is across the
9 street because normally it's not necessary. In this case,
10 though, because this road has to be completely torn up,
11 widened, repaved, you know, he wanted to have some certainty
12 that we would be dealing with those issues. So this is an
13 unusual circumstance, but one that we thought appropriate
14 given the work that needs to be done on the road.

15 He also requested that he would like to have us
16 put in two driveway aprons that were 20 feet in width to end
17 on his property which we have agreed to do and he asked if
18 we would consider moving the layby closer to Montgomery
19 Lane, which we also said we would talk to DOT about. We
20 have not made any commitments to it, but we would be happy
21 to consider and see if we could accommodate his concerns.
22 He, as well, has provided us a letter of support in this
23 project.

24 We met with 4825 Montgomery Lane, which is owned
25 by Sandy Spring Builders. They didn't have any requests of

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1 us, but they as well agreed to issue a letter of support.
2 So, what I'd like to notice, the most, the neighbors that
3 are most affected in our opinion abutting our property are
4 all supporting the density, the height, and are all
5 supportive of this project. I'll move on to the discussions
6 that we've had with both the City Homes and the Highrise
7 Edgemoor.

8 We met with them on numerous occasions and have
9 tried our very best to address their concerns. We've made a
10 lot of modifications. We have introduced many binding
11 elements, tried to do the best we can to ameliorate any
12 concerns that they have. The original building as we
13 proposed it did not have any step-back on the Montgomery
14 Lane facade and, quite frankly, the reason for that is
15 neither do any of the other projects that are in the 65
16 sector along Montgomery Lane. Sandy Spring Builder, 4825
17 Montgomery Lane does not have any step-backs. The Highrise
18 Edgemoor at 100 feet does not have any step-backs. 4901
19 Hampden Lane does not have any setbacks, has a very small
20 cutout which we've discussed, but in my opinion that is not
21 a step-back and it does not reduce the massing and the
22 density along the entire facade of the building. And the
23 City Homes as we know it doesn't have any step-back.

24 So we looked at the project. We added a 9-foot
25 step-back after -- I don't remember specifically at what

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1 juncture a lot of these happened. I do know, or I'm pretty
2 certain that that step-back was added to the project prior
3 to going to the Planning Board. So before we went to the
4 Planning Board for the first time, we added a 9-foot step-
5 back to try to address the concern of the massing along
6 Montgomery Lane. We later increased that step-back to 12
7 feet and the 9-foot step-back at 50 feet, as you know,
8 basically makes the two projects between the City Homes and
9 the facade of our building approximately the same height.
10 And, again, as we've discussed on many occasions, there are
11 73 feet between these buildings.

12 So we add the 9-foot step-back, we increase that
13 to 12 feet which we have added as a binding element, binding
14 element No. 18. We also had a meeting I remember
15 specifically with the Highrise Edgemoor and there was
16 discussion about whether or not we would be willing to put
17 some greenery in that step-back, some landscaping Planners,
18 whatever it may be, we have agreed that we would add
19 greenery to that landscaping.

20 MS. ROBESON: Okay. So that was the purpose of
21 that binding element then?

22 THE WITNESS: That wasn't necessarily binding. I
23 can make it binding.

24 MS. ROBESON: Oh.

25 THE WITNESS: That was really the rooftop. But

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1 the general idea is to provide, and we're happy to, and we
2 do do this, is to provide greenery, Planners, landscaping in
3 those areas. We can add it to the step-back as well, but I
4 mean that's why we showed it, quite honestly, in the
5 rendering --
6 MS. ROBESON: Okay.
7 THE WITNESS: -- because that was, we were trying
8 to address their expression of desire to see green there.
9 We listened extensively to the neighbor's concerns about the
10 loading. As I think you're aware, DOT approved the Holladay
11 project and only requires the layby in terms of loading, but
12 we wanted to address the concern, so we added, as we have
13 discussed on a number of occasions, an outgrade loading bay
14 which is large enough, as was testified to by Mr. Pavot
15 (phonetic sp.), to accommodate a 30-foot truck which U-Haul
16 claims is used to move a three to 4-bedroom house, which
17 obviously is excessively more than what we need in this
18 case.
19 We additionally agreed to add another loading area
20 in the garage that could service panel trucks and other
21 things of that nature. But, again, we have now provided
22 three times as much loading as is required in an attempt to
23 address any of the concerns that may exist. We offered to
24 go ahead and extend the layby along West Lane if that would
25 help and what we offered up in these hearings thinking it

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1 was possibly addressing some of the concerns of the
2 neighbors was that we would go ahead and offer to put a
3 layby along Montgomery Lane not because we think there's any
4 need for a layby on Montgomery Lane, but because we keep
5 hearing about deliveries and trucks and deliveries and
6 trucks. So that turned out they actually -- now we're
7 agreeing to not, to find the fact that we will not provide a
8 layby on Montgomery Lane which is also fine with us again.
9 It was an attempt to try to address the continuing concerns
10 that we have heard throughout these hearings.
11 Oh, I did want to address one thing that's been
12 discussed on a number of occasions. In terms of the
13 loading, we added binding element No. 13 that ensures,
14 discusses the deliveries, that the deliveries will occur
15 through the service quarter and through the loading, that no
16 deliveries will come through the front of the building. And
17 there's been a lot of discussion as to how that will be
18 enforced.
19 That, quite candidly, is a very, very typical
20 issue, not issue, it is very typical that both in
21 residential and office buildings that deliveries are not
22 allowed in the front lobby. People, landlords and
23 management companies don't want them coming to the front
24 lobby. You see signs up all the time that say, service,
25 deliveries must go through the service quarter. And in

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1 terms of enforcement, particularly in this case it's quite
2 simple, all the exterior doors of these buildings are
3 locked. They're monitored with cameras and intercoms.
4 In this case, there will actually be someone
5 sitting at the front desk who will actually have a line of
6 sight. But if someone comes to delivery something to the
7 front door, they can't just open the door. So if they come,
8 again, there will be someone at the desk but, in addition,
9 there are cameras, there's intercoms, there's buzzers and
10 they will be told you need to go to the service quarter, you
11 cannot deliver through the front of the building.
12 Again, this is, happens, this is a normal
13 occurrence in these type of buildings. So I don't see any
14 issue with the enforcement of not having deliveries occur
15 through the front lobby.
16 Oh, another big change that we made was the
17 curvature in the facade. We originally had a square
18 building, as I believe has been testified to, and there were
19 a number of concerns or inputs that we heard that we wanted
20 to think about how we could address. First of all, we were
21 told that the building was a box-like building in some of
22 our meetings and it was ugly. I mean we were very directly
23 told that. We heard the concerns about the public space
24 being on the northern part of the property even though,
25 quite candidly, the Planning staff supported that, but

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1 anyway, we went and we thought about how we could modify
2 this building to try to address the number of the concerns
3 we heard about the bulk and the mass. So basically we came
4 up with the idea, the entire team, that we, a way to address
5 a number of these concerns, bulk and mass, moving the public
6 space, as well as adding a feature to the facade of the
7 building and changing the box-like structure, we decided
8 that this idea, this curved facade, and adding a pocket
9 park, there was also discussion that they would like a park-
10 like setting in the front of the building. So we took a
11 number of the concerns and thought we were addressing them
12 by now setting the building back to 28 feet from the corner
13 of West Lane and Montgomery Lane, both on the Montgomery
14 Lane facade and on the West Lane facade and that served to
15 reduce the frontage along Montgomery Lane by 30 percent
16 which, again, should address the bulk and the massing,
17 create a park-like area along the corner and also change the
18 architecture of that to make it more of a feature at the
19 corner of the building. We also added, we heard the
20 concerns about benches, and I believe Ms. Lawtch testified
21 to liking wood benches, but we added benches along not only
22 in this area, but we added benches along Montgomery Lane,
23 West Lane and bike racks to try to make it more pedestrian-
24 friendly.
25 Oh, and then I think Marius testified to some of

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1 these articulating elements that we added and he talked
2 about, you know, the ins and outs and trying to create the
3 undulations along the facade. We do have balconies and just
4 that we try to add some more detail into the structure
5 themselves to try to break it up. And I think those are
6 basically the modifications that we've made along the way.
7 MS. HARRIS: Thank you. Quite extensive. If I
8 could, I want to turn to the traffic and loading, which is
9 going to be the remaining of Ms. Wiltshire's testimony. I
10 want to note that we had originally submitted videotapes
11 with which the Hearing Examiner had noted that typically you
12 don't accept videotapes, but we also did submit photos that
13 were stills of that videotape that's Exhibit 106(r). So
14 we'll be speaking to those. But in speaking of those, you
15 have to understand that they were derived from the tape. So
16 we're going to have some questioning about the tapes in
17 order that we can get to these photos.
18 MS. ROBESON: Who took the tapes?
19 MS. HARRIS: That's one of the questions.
20 MS. ROBESON: Okay. Keep going.
21 BY MS. HARRIS:
22 Q Were you responsible for having the traffic tapes
23 that were submitted on March 5th, excuse me, February 15th
24 and March 22nd which are in the record as Exhibits 93 and
25 106(s) prepared?

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1 A Yes.
2 Q And then were you also responsible for having the
3 photos which were derived from those tapes prepared?
4 A Yes.
5 Q Was a camera posted to produce the tapes?
6 A Yes, actually --
7 Q Can you explain --
8 A -- three cameras were posted.
9 Q Can you explain using any of the Plans --
10 A Actually --
11 Q -- which, where the cameras were actually posted?
12 A I can. One of the cameras, two of the cameras
13 were posted on lot 26, which actually is not shown here, but
14 I can give you an approximation of --
15 MS. ROBESON: Okay. So --
16 THE WITNESS: -- where it is shown.
17 MS. ROBESON: -- you're pointing at Exhibit 113
18 and you're pointing somewhere in the semi-circle --
19 THE WITNESS: Yes, where I'm pointing --
20 MS. ROBESON: -- approximately?
21 THE WITNESS: -- to would be, and I think we have,
22 I'm just trying to see, there was two cameras posted on the
23 corner of the actual structure, oh, okay. I'm sorry. Here
24 we go. This should be better. Exhibit 124 and the building
25 that currently sits on lot 26 --

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1 MS. ROBESON: Okay.
2 THE WITNESS: -- we had two cameras posted on the
3 corners of the building in order to produce the view that
4 you see or the views that you see in exhibits --
5 MS. HARRIS: It's 106(s).
6 THE WITNESS: -- 106(s), so --
7 MS. ROBESON: So on 106, so back to --
8 THE WITNESS: 124?
9 MS. ROBESON: -- 124, was one camera on the corner
10 of the building that faced West Lane and one camera facing
11 Montgomery Lane or did you have two facing -- I didn't
12 understand that.
13 THE WITNESS: There are two cameras that were
14 facing. One is facing towards -- one just facing in
15 different directions, so one was looking --
16 MS. ROBESON: Oh.
17 THE WITNESS: -- down towards Arlington Road, so
18 that would be down to the west.
19 MS. ROBESON: Okay.
20 THE WITNESS: And then the other one was facing to
21 the east so that you have a view.
22 MS. ROBESON: Okay.
23 THE WITNESS: Both sides --
24 MS. ROBESON: I see.
25 THE WITNESS: -- of Montgomery Lane.

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1 MS. ROBESON: Okay.
2 THE WITNESS: And then additionally there was a
3 camera that was posted on 4804 Montgomery Lane. And this is
4 Exhibit 106(r). And --
5 MS. ROBESON: Can you just mark that 106(r) --
6 THE WITNESS: Sure.
7 MS. ROBESON: -- a duplicate so we know what
8 we're, and can you mark the other one --
9 THE WITNESS: 106(s)?
10 MS. ROBESON: Yes, thank you.
11 THE WITNESS: Duplicate or --
12 MS. HARRIS: I'm sorry, that's 93. That one is
13 93.
14 MS. ROBESON: Okay.
15 MS. HARRIS: I believe, hold on. Let me just
16 double-check that. No, we only, we submitted all the photos
17 at the end together, right?
18 THE WITNESS: Yes.
19 MS. HARRIS: Yes, okay. I'm sorry. It's 106(r).
20 You're right. All the pictures are 106(r).
21 THE WITNESS: So these are all 106(r)?
22 MS. HARRIS: Yes.
23 THE WITNESS: Okay.
24 MS. HARRIS: My apologies.
25 THE WITNESS: So on 4804 Montgomery Lane, there

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1 was a camera posted again, the second, basically on the
2 second story looking east so you could see, no, is that
3 right, looking west so you could see what's happening in
4 front of the Highrise Edgemoor.
5 MS. ROBESON: Okay.
6 THE WITNESS: And sort of at this corner and if
7 there was any congestion.
8 MS. ROBESON: Wait, wouldn't that be looking --
9 okay.
10 THE WITNESS: West.
11 MS. ROBESON: West? Okay.
12 BY MS. HARRIS:
13 Q It may be helpful. Can you take that --
14 A Sure.
15 Q -- Development Plan and just generally point where
16 the camera was posted?
17 A It was posted, I would say, approximately --
18 MS. ROBESON: Oh, I see. Okay.
19 THE WITNESS: -- here looking to the west.
20 MS. ROBESON: Here is --
21 THE WITNESS: This is about a third of the way --
22 MS. ROBESON: To the west of 4901?
23 THE WITNESS: A third of the way down the facade
24 of --
25 MS. ROBESON: Of 4901.

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1 THE WITNESS: -- 4901.
2 MS. ROBESON: Yes. Okay. And --
3 BY MS. HARRIS:
4 Q When were they posted?
5 A The 4901 Montgomery Lane, which is, well, they're
6 both 106(r), but that was posted on January 3rd and the
7 other on 4804 Montgomery Lane was posted on January 28th.
8 Q Okay. And for how long were the cameras running?
9 A They were running for approximately, I think,
10 eight days a piece.
11 Q And did they run continuously throughout the day?
12 A Yes, they ran from I would say approximately 8:00
13 in the morning until about 6:00 p.m. in the evening.
14 Basically the reason why we posted these cameras is we,
15 had done, seen the studies that had been done by Mr. Kabatt
16 and their firm who had looked at what was required in terms
17 of the traffic studies that showed very little traffic along
18 the street, an insignificant amount of capacity as they
19 determined. We also had them do the queuing analysis to
20 look at what occurred at the intersections which, again,
21 showed that what existed and what we were proposing would
22 still be at very limited amount of capacity on the street,
23 but in addition we did see the video, I mean the photos that
24 had come from a number of the residents in the area and we,
25 frankly, don't have any interest in exacerbating a problem

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1 that exists or building into a problem that exists. So for
2 our own clarification, what was occurring on the street, we
3 decided that it would be beneficial for us to go ahead and
4 take a look at what the occurrences were and that's why we
5 posted the cameras.
6 Q And so the photos that are 106(r), were those
7 produced from images from the tape.
8 A Yes, basically what we did was we figured no one
9 was going to want to watch 120 hours of tape, which I had
10 the luxury of doing myself, but we wanted to take a look at
11 what we determined an appropriate amount of time, which
12 would be a week's worth of tape and we basically picked ours
13 in the morning, in the mid-day and afternoon, and we
14 randomly chose 8:30, 12:30 and 4:30 and those are exactly
15 8:30, like 8:30 and zero seconds, 12:30 and zero seconds,
16 4:30 and zero seconds.
17 MS. ROBESON: But the tape ran continuously?
18 THE WITNESS: The tape ran continuously.
19 MS. ROBESON: Okay.
20 THE WITNESS: And I watched the tape continuously,
21 but we basically decided to give a snapshot of what was
22 going on every day. We just picked three times. And these
23 were a little bit, you know, they had done the traffic
24 studies at the certain hours, but we thought in addition we
25 wanted to show, again, the concerns about deliveries and

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1 congestion and everything.
2 MS. ROBESON: Daytime hours.
3 THE WITNESS: So we just picked these hours to
4 pull the photos. So we pulled the photos directly from the
5 tape and produced these pictures.
6 BY MS. HARRIS:
7 Q And before we get into the pictures because I want
8 you to walk through those, can you describe generally, and
9 what did you say, there was how many hours' worth of tape
10 that you watched?
11 A 120 hour's worth of tape.
12 Q And can you describe generally what those, what
13 the tape showed and then we'll walk through the photos?
14 A Sure. I mean I think the photos are reflective of
15 generally what the tape showed. I can -- I mean one of the
16 concerns was the deliveries, the UPS, the FedEx, so I
17 actually did pay particular attention to that. You will see
18 in one of the photos I believe there is a UPS truck.
19 Generally this is what you see. You see some cars go by.
20 You do not see -- I never saw an instance anywhere similar
21 to what was produced in Exhibit 102(a) in these photographs,
22 which I --
23 Q The photographs that Mr. Niebler and Mr. --
24 A Yes, I believe Mr. Pohoryles had submitted these
25 and I will also note that in three different places he notes

1 that these are pictures of a typical day outside the
2 Edgemoor and this is everyday life on Montgomery Lane which,
3 again, is what had us concerned if this is everyday life, we
4 need to understand what everyday life is like. But, anyway,
5 I did not witness any of that. We actually even looked, and
6 we looked specifically at the deliveries of the UPS and
7 FedEx and I have a table which I think helps explain a
8 little bit more about the delivery. Should I --

9 Q Is the table a demonstrative of the --

10 A It's what came out, it came right out of the tapes
11 that --

12 MS. ROBESON: Based on the tapes?

13 THE WITNESS: Yes.

14 MS. ROBESON: Okay.

15 THE WITNESS: Based on the tapes. So

16 MS. ROBESON: This would be 125. I'm just going
17 to say delivery truck stops on Montgomery Lane.

18 (Exhibit No. 125 was marked for
19 identification.)

20 THE WITNESS: And my objective in producing this
21 was just, again, to look at the delivery stops of the FedEx
22 and the UPS trucks. And what you'll see here is basically
23 there is an average on the street. The average amount of
24 time a UPS or FedEx truck stops is three minutes. The
25 average number of deliveries per day is 4.67 deliveries,

1 MS. ROBESON: Okay. And then the one facing the
2 Edgemoor is the one --

3 THE WITNESS: 4804, I apologize --

4 MS. ROBESON: Okay.

5 THE WITNESS: -- Montgomery Lane.

6 MS. ROBESON: Okay. Thank you.

7 THE WITNESS: And, basically, I just thought I

8 would flip through these photographs. This is January 24th
9 at 8:30. You'll see there's --

10 MS. ROBESON: And this is all 106(r)?

11 THE WITNESS: 106(r).

12 MS. ROBESON: Okay.

13 THE WITNESS: Yes. I believe all of these are
14 106(r).

15 MS ROBESON: Okay.

16 THE WITNESS: So if you look to the west, the
17 camera to the west, you'll see there's nothing happening on
18 the street.

19 MS. ROBESON: That's the January 24th photos?

20 THE WITNESS: January 24th. This is 8:30. And
21 then you see 12:30. Again, there's not much happening. And
22 then you see 4:30. Again, there's not much happening. On
23 January 25th, you have 8:30. There's not much happening;
24 12:30, not much happening; 4:30 and not much happening.
25 January 28th, 8:30, there's nothing that you can

1 which would mean if you round it to five that UPS and FedEx
2 trucks are on the street for an average of 15 minutes per
3 day.

4 BY MS. HARRIS:

5 Q And just to clarify, is that the UPS truck for 15
6 minutes and the FedEx truck for 15 minutes or is it --

7 A No, that's --

8 Q -- both of them?

9 A -- the aggregate of all of the deliveries that
10 occur is 15 minutes --

11 Q Thank you.

12 A -- a day on the street. And that's along the
13 entire street, so that includes both sides, the one-way
14 portion, as well as the two-way portion.

15 Q Thank you. Okay. Now can you go through the
16 pictures?

17 A Sure.

18 MS. ROBESON: Wait a minute, I'm sorry.

19 THE WITNESS: That's okay.

20 MS. ROBESON: What is the Wolf 2, what is Wolf?

21 THE WITNESS: I apologize. That is the view from,
22 I should have labeled it 4901 --

23 MS. ROBESON: Okay. So Wolf is --

24 THE WITNESS: -- Montgomery Lane. That's lot 26,
25 so it would be 4901 Montgomery Lane.

1 see out of the ordinary. 12:30, nothing to be seen out of
2 the ordinary. 4:30, there actually is a delivery, a mail
3 truck is here making his stops, I assume, in this instance
4 he's delivering probably to the low-rise Edgemoor or the
5 Edgemoor at Arlington, I guess, technically --

6 MS. ROBESON: Yes.

7 THE WITNESS: -- classifying it. On the 29th at
8 8:30, you will see there is not much happening. At 12:30 on
9 January 29th, there is a truck driving down the road which
10 is caught driving. And at 4:30 there is actually, and this
11 does occur a little bit on occasion, there is a truck parked
12 here that shouldn't be parked here and because I viewed the
13 video, I know a little bit about what the truck was doing.
14 It's accessing this area underneath the City Homes, I
15 assume, doing some work there, but is parked illegally.

16 Again, not blocking the road, the traffic can still get
17 through which is generally what I saw. If someone did park
18 illegally, it would be like parking illegally anywhere else
19 along the side of the road, but the congestion, there was no
20 blockage of traffic that occurred.

21 On January 30th at 8:30 in the morning you see a
22 car driving down Arlington. January 30th at 12:30, not much
23 happening. January 30th at 4:30, you actually do see, I
24 guess, the postman delivers at 4:30 because we've seen him
25 twice now at 4:30 and he is parked on the side of the road,

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1 gain, not much different than you see in any residential
2 neighborhood when the postman goes to deliver the mail.
3 January 31st, at 8:30 in the morning, there is not
4 much happening. 12:30, we don't really see anything in the
5 street. And at 4:30, you don't see anything in the street.
6 So now we will move over to the camera or the photographs
7 that were produced from the tape that was at 4804 Montgomery
8 Lane showing when those occurred.
9 MS. ROBESON: And those are the ones they have
10 three photos on it?
11 THE WITNESS: Yes, this is just all on one page.
12 MS. ROBESON: Okay.
13 THE WITNESS: Unfortunately we couldn't because we
14 had the two cameras, we couldn't get it to work that way.
15 What I will note about this, what occurs in front of the
16 Highrise Edgemoor is that you very rarely see the loading
17 dock being utilized and you also see that in almost all
18 instances this layby actually is free. So there seems that
19 there is space for people to come and utilize both the
20 loading dock and the layby, but you'll see at 8:30 on, this
21 is February 14th, the loading dock and the layby are free.
22 There's someone parked in this, I believe this is allowed
23 parking layby. At 12:30 there's actually nobody parked at
24 all. And at 4:30, there's nobody parked in any of those
25 areas.

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1 On January 15th, again, the loading and the layby
2 at 8:30 is open. At 12:30, it's opened. At 4:30, both the
3 loading dock and the layby are open. On the 18th, again,
4 you see the loading dock and the layby are opened. Actually
5 at 12:30 there is a UPS truck who is delivering who is
6 parked in the layby, the Edgemoor and per, unless he
7 probably stayed there about three minutes before he left.
8 In this case there actually is a, what appears to
9 me to be about a 30-foot moving truck who is parked in the
10 layby. And I'm not, they didn't seem to use a loading dock
11 for it, but it doesn't seem to be, there doesn't seem to be
12 anything occurring that would mean that you would have to
13 use the loading dock for that.
14 On Tuesday, the 19th of February, again, you see
15 the loading dock and the layby are free. The loading dock
16 and the layby are free at 8:30 and at 12:30 and at 4:30 the
17 loading dock and the layby are also both free. On
18 Wednesday, February 20th, you see the loading dock and the
19 layby at 8:30 are free. There actually is a car parked here
20 at 12:30.
21 BY MS. HARRIS:
22 Q When you say here --
23 A I'm sorry, in the loading dock space not actually
24 pulling into the loading dock, but just pulling into the
25 drive of the loading dock there is, the layby is completely

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1 opened and at 4:30 on the 20th the loading dock and the
2 layby are both free.
3 On the 21st, at 8:30, you have the loading dock
4 and the layby are free. At 12:30, the loading dock and the
5 layby are free. And at 4:30, the loading dock and the layby
6 are free. And that may be the end of the photos.
7 Q Thank you.
8 MS. HARRIS: That concludes our questioning of Ms.
9 Wiltshire.
10 MS. ROBESON: All right. Mr. Abrams.
11 MR. ABRAMS: Okay.
12 CROSS-EXAMINATION
13 BY MR. ABRAMS:
14 Q All of the agreements that you need with property
15 owners to the west --
16 A Uh-huh.
17 Q -- and to the north as well as, I guess it's to
18 the east --
19 A Okay.
20 Q -- that you've described --
21 A Yes.
22 Q -- okay, did any of those involve any concessions
23 which would have required you to reduce the height of your
24 building, the FAR, the density?
25 A I mean we set the building back as was requested.

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1 It depends on how you look at what would require us to
2 reduce the height and the density.
3 Q Did they request that or did City Homes request
4 that?
5 A No, they, the Villages of Bethesda asked us to
6 agree to the --
7 Q The 15-foot setback?
8 A Yes. Yes.
9 Q Okay. You had a 15-foot setback in your first
10 drawings, didn't you?
11 A I think we had approximately a 15-foot setback.
12 Q Okay. Again, the question is in terms of the
13 Villages of Bethesda, the property owners to the west, the
14 property owners to the east, was there anything that they
15 requested or that you gave as a concession which would have
16 affected your density, your height or your FAR?
17 A No, only to the City Homes, we gave, we added a
18 setback on the front of the building, but the other property
19 owners were content with, found appropriate and compatible
20 the massing that we had proposed.
21 Q Which you gave to City Homes, would that affect
22 the density, the FAR or the overall building height?
23 A Yes, in fact, the height at the front of the
24 building.
25 Q The front of the building?

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1 A Yes.

2 Q Okay. City Homes, when they met with you,

3 requested the height to be reduced from 70 feet to 65 feet,

4 did they not?

5 A They did.

6 Q They requested that twice in two meetings with

7 you?

8 A And they requested a lot of other things as well,

9 yes.

10 Q Okay. Which you did not grant?

11 A We feel like we did the best we could and we met a

12 lot of the --

13 Q Okay. And they requested --

14 A -- requests.

15 Q -- that you reduce the FAR and density to 2.5 and

16 100 dwelling units to the acre?

17 A I don't remember about the dwelling units but,

18 yes, they requested 2.5.

19 Q And they requested that because that was built,

20 was in the Sector Plan?

21 A I don't know why they requested it.

22 Q Didn't they tell you that's why they requested it?

23 A I don't recall.

24 Q Didn't they request that the, in the first meeting

25 that you had with them, that the area to the rear of the

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1 building which was then open space, public open space,

2 didn't they request that the public space be shifted to the

3 front of the building?

4 A To be quite candid, I don't remember what was

5 requested when. There have been a number of requests over

6 the time frame and I'm not sure why it's relevant when what

7 has occurred. We've done our best to address the concerns

8 and we've moved the public space, but in all honesty I don't

9 remember what was requested at what point.

10 Q And wasn't it, in fact, the comments from the

11 Planning Board and not the request from City Homes that you

12 responded to when you finally moved the public open space

13 from the back to the front?

14 A I can't agree with that. I don't know. I mean we

15 took the space. We moved it, as I testified to. We looked

16 at a number of the suggestions that were made and we came up

17 with a Plan that we thought addressed the concerns and it

18 addressed many of them. It addressed the public space, it

19 addressed the architecture and I do want to mention that we

20 actually even hired the same architect that designed the

21 City Homes and the Highrise Edgemoor to try to make sure

22 that we were providing a building that was consistent and

23 compatible and that the neighbors would find, worked with

24 the street. We hired the same firm. So, again, we took a

25 number of the complaints or suggestions and we modified the

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1 building how we felt would be effective to address as many

2 of those concerns as we have.

3 Q Didn't City Homes want you to increase the size of

4 the green portion of the open space along Montgomery Avenue

5 above the 10 feet that you originally provided?

6 A Yes, they asked for a park in the front of the

7 building is what I recollect.

8 Q They asked for more space, did they not?

9 A And we've provided it.

10 Q They provided, you provided it in the form of a

11 cutout of concrete?

12 A It's not concrete.

13 MS. ROBESON: Okay. Okay. Just --

14 THE WITNESS: We've provided it, yes.

15 BY MR. ABRAMS:

16 Q You provided a cutout of concrete, not additional

17 green space, in the front of the building?

18 A I don't agree with that.

19 Q Where is the additional green space over and above

20 the 10 feet that you originally had?

21 A It's right here. This is a landscaped area. This

22 is not, does not look to me like it's all concrete.

23 Q But you did not provide any additional green space

24 on the 80 feet outside of the circular area along Montgomery

25 Lane, did you? I mean it's not that difficult a question I

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1 ask.

2 A I don't agree with that. I mean we had a square

3 building. We took a 28 by 28 portion and cut it out and

4 added green space.

5 Q Let me rephrase. Outside of that 28 by 28 portion

6 that you converted into a circle, if you take the rest of

7 the space, approximately 78 to 80 feet according to your

8 witnesses --

9 A Okay.

10 Q -- down toward Arlington Road along the frontage,

11 you did not increase the green space in that area, did you?

12 A I don't know. Maybe there was a foot or so, but

13 it was not a significant increase in space. Whether or not

14 at the time this was going to be all pavement or actually

15 have green in it, we hadn't even determined, but we've made

16 it green.

17 Q Nonetheless, City Homes requested that that area

18 be expanded, did it not, in terms of the amount of green

19 space?

20 A I didn't know that that specific area was

21 requested. We added this area along here --

22 Q Oh.

23 A -- thinking we were addressing it.

24 Q In other words, in two meetings, plus us handing

25 you a listing of what we would like to see, you don't recall

1 that request being made?

2 A I recall a request that there be a park in the
3 front of the building which I believe that we have done our
4 best to incorporate into our Plan.

5 Q Now we further requested that you move the
6 entrance of the building around to West Lane and you haven't
7 done that, have you?

8 A No, we have not.

9 Q And we further requested that the layby space be
10 enlarged or a second one be incorporated along West Lane.
11 That hasn't been done either?

12 A We have agreed that we will be happy to pursue
13 that with DOT when we get through this portion of the zoning
14 hearing and we have discussed that and agreed and I
15 testified that we will address that with DOT. We're happy
16 to enlarge the layby and, again, we offered up the layby on
17 Montgomery Lane in an attempt, you just mentioned a second
18 layby. We are trying to address those concerns and, again,
19 we have three times as much loading as required, but we will
20 look into extending and enlarging the layby along Montgomery
21 Lane.

22 Q West Lane.

23 A West Lane, I'm sorry.

24 MS. ROBESON: Okay. Well, I knew what she was
25 talking about, but don't prompt her.

1 BY MR. ABRAMS:

2 Q The pictures that you've shown, did they cover the
3 dates of January 24th and 28th?

4 A Yes, January 24th.

5 Q You did?

6 A Yes.

7 Q Did you know that the schools were closed on
8 January 24th?

9 A No, but that's why I provided a week because I
10 wanted to be reflective as I could be and I've also provided
11 a different week in February, again, so that we covered as
12 much area as we could in looking at what happens every day
13 on Montgomery Lane.

14 Q Did you know that January 28th, the schools opened
15 two hours late?

16 A Again, that's why we've provided as much, as many
17 photographs as we have.

18 Q And, actually, how many hours were you out there
19 to view what was going on in terms of videotape?

20 A I wasn't actually out there. I viewed the
21 videotape and I actually park over there. I live a mile
22 from the site myself in Montgomery County, so I actually --
23 but I am over here on probably two or three times a week
24 parking in the lots and actually can see regularly what
25 occurs, but that is outside actually watching this tape. I

1 was not out there standing on the corner watching throughout
2 this tape what was going on.

3 Q Who was?

4 A The cameras were.

5 Q Nobody there was watching the camera?

6 A No. There is --

7 Q Nobody to testify as to whether these were actual
8 representations?

9 A It's all date-stamped. You are welcome to watch
10 it. The video goes and the cameras, it's the same -- we had
11 a security system called Krimko (phonetic sp.) who installs
12 in our sites all of our surveillance and when we have
13 incidences in our cameras around our buildings, we pull the
14 same tape and that is the same process that was used here.
15 It is all date and time-stamped down to the second.

16 Q Dealing with the public use space, originally the
17 Plans called for more public use space than the current
18 Plans called for, correct?

19 A That's -- there was more provided, but not
20 required.

21 Q Yes, that's my question, there was more provided
22 in the earlier Plan --

23 A Yes.

24 Q -- than what's provided now?

25 A Yes.

1 Q Why did you feel that it was useful and
2 advantageous to the public for you to provide the same
3 percentage of public use space with your current Plans?

4 A It is what is required by code and, additionally,
5 it is what everyone else has provided on the street and we
6 feel that the quality of the public use space now provided
7 is superior to what was provided before and is sufficient
8 and meets the code requirements.

9 Q Well, when it meets code requirement, the code
10 requirement is for a minimum, isn't it?

11 A Yes, it is.

12 Q So you're meeting the minimum code requirement?

13 A As is City Homes, the Highrise Edgemoor and
14 everybody else along the street.

15 Q In terms of the way the case has progressed to
16 this point, is there any potential that the applicant will
17 reduce the height of the building voluntarily, will reduce
18 the FAR of the building voluntarily, will provide additional
19 setback in the front where the green area is voluntarily?

20 A We feel that this building is compatible and we,
21 besides this project, we looked at what exists within this
22 neighborhood and we feel that what we have provided here is
23 compatible with what exists, again, as do our neighbors
24 surrounding us. We are providing the --

25 MS. ROBESON: Well, wait --

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1 BY MR. ABRAMS:
2 Q Wait. Can we just have a yes or no?
3 A We at this time are not considering changing the
4 height or the density.
5 Q Or the setback on the front?
6 A Or the setback on the front.
7 Q Or extending the step down along West Lane?
8 A No, we don't feel given the architecture of the
9 building and what's been testified to that that's necessary.
10 Q Okay.
11 MR. ABRAMS: No questions.
12 MS. ROBESON: Thank you. Mr. Knopf?
13 MR. KNOPF: Just one second.
14 BY MR. KNOPF:
15 Q You had mentioned that your photos, you mentioned
16 that your photos differed from those of Mr. Niebler and Mr.
17 Pohoryles in terms of the street vehicles and clogging?
18 A Yes.
19 Q Are you suggesting that Mr. Pohoryles and Mr.
20 Niebler staged those?
21 A No, I'm not proposing that at all. I'm saying
22 that that raised some concern and that is the response of
23 why we posted these cameras. In addition to having done the
24 other two studies --
25 Q No.

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1 A -- we wanted to make sure that this was not an
2 everyday occurrence on Montgomery Lane and that's why we
3 requested it.
4 Q And so you picked days on which -- don't both of
5 those photos have snow on the ground?
6 A Yes. This --
7 Q Some of them do.
8 A -- there was a couple days that do, but in this
9 photo there's no snow on the ground. We posted the cameras
10 and we posted them --
11 Q These are January and February dates, correct?
12 A Yes.
13 Q And you did not check to see if the schools were
14 closed or delayed opening on those days?
15 A No.
16 Q Did you check the temperatures outside to compare
17 whether it was walking weather or not? Do you know what the
18 temperatures were on the days that you --
19 A I do not know what the temperatures were. I could
20 find out I'm sure, but --
21 Q And would you agree with me that it certainly
22 would be a less friendly to pedestrian walkers in January
23 and February than say during the summer --
24 MS. HARRIS: Objection. She didn't testify to
25 pedestrians. It was all about, they were submitted for

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1 purposes of vehicular situation.
2 MR. KNOPF: I thought she mentioned also there
3 were no pedestrians?
4 THE WITNESS: I didn't say anything about that.
5 MR. KNOPF: I take that back. Sorry.
6 BY MR. KNOPF:
7 Q You mentioned that -- you talked about some
8 selective photos of the loading dock area for the Edgemoor.
9 A I don't --
10 Q And think you had photos of 8:30, 12:30 or 4:00.
11 A I don't know that they were, I mean they are
12 photos that exist in Exhibit 106(i)
13 Q Right. But you selected the hours to show us the
14 photos?
15 A I randomly selected the hours. I did not view, I
16 did not view these tapes before I selected the times 8:30,
17 12:30 and 4:30.
18 Q But you said that your company manages, owns many
19 buildings. Do you manage the buildings?
20 A Yes, we do.
21 Q And would it be fair to say that when it comes to
22 moving vehicles, for example --
23 A Uh-huh.
24 Q -- the movers try to avoid coming during the rush
25 hour such as 8:30?

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1 A What I -- well --
2 Q Just yes or no, ma'am.
3 A I will say that the moving vehicles are scheduled
4 on a regular occurrence, so moving vehicles don't just show
5 up and they come when they are scheduled with the management
6 company.
7 Q And aren't they, don't the moving companies
8 themselves, you try to not schedule so they have to travel
9 during rush hour, that they come mid-day?
10 A Quite candidly, I don't schedule those, so I don't
11 know. But I do know that they are scheduled on a daily
12 basis.
13 Q And don't they similarly try to leave before the
14 4:30 rush hour?
15 A I don't know.
16 Q You don't know?
17 A But I mean there are, I see moving vehicles
18 outside our properties at 4:30 for sure. So I don't know
19 that that's the case, no.
20 Q But one has to just randomly select certain times,
21 would you agree --
22 A I --
23 Q -- I mean that 8:30 is not an accurate or typical
24 time to see whether moving vehicles are there?
25 A No, it was also, but it was also to look at the

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1 FedEx and the other deliveries and we felt that, I felt that
2 8:30, 12:30 and 4:30 were representative of what happened
3 throughout the day.
4 Q Let me ask about that. I'm looking at Exhibit
5 125.
6 A Uh-huh.
7 Q And, I'm sorry, I must have missed some testimony.
8 I don't see any dates on here as to what days --
9 A Oh.
10 Q -- I see Thursday, Friday and so on, but I didn't
11 know --
12 A I think we submitted it. It's the dates reflected
13 up there, but I can certainly put the dates.
14 Q So it's the same dates that you were --
15 A It's the same dates.
16 Q Okay.
17 A And, again, I can resubmit this. I apologize. I
18 thought that the actual dates were on there.
19 Q But I notice that, is it fair to say that you,
20 this, excuse me, Exhibit 125 compiles the list as you
21 understand it of UPS and FedEx deliveries, but does not
22 include all other deliveries such as mail or groceries or
23 cleaners or repairmen or maintenance people and so on, that
24 is not captured on this exhibit?
25 A No, this actual exhibit I just looked at because

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1 that was what I kept hearing concerns about, so that's what
2 I captured on this video.
3 Q I see. Now you say you have other properties that
4 you manage. Do you have any other property where a
5 residential property --
6 A Uh-huh.
7 Q -- where the pick-up and drop-off for people using
8 that building is not at the front door and actually
9 precluded to use the front door for pick-up and drop-off?
10 A Yes.
11 Q You do?
12 A Uh-huh.
13 Q And is that in D.C. or in Maryland?
14 A In D.C.
15 Q D.C.? And --
16 A And I will note there's no loading dock there and
17 it's two blocks from the White House, so it's a lot more --
18 200 units with 11,000 square feet of retail, so it's
19 actually a lot more complicated than this project is in
20 terms of managing.
21 Q I'm not referring now to retail, there's 200
22 dwelling units?
23 A Uh-huh.
24 Q And when somebody wants to drop off someone, they,
25 you had never seen anyone being dropped off at the front

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1 door, although they're not permitted?
2 A I don't think the discussion has been a person
3 cannot be dropped off. It is that deliveries will not occur
4 through the main entrance.
5 Q Oh, I'm sorry, I didn't make myself clear. I'm
6 now switching from deliveries to actual drop-off and pick-up
7 of persons. Let me go back and re-ask that question. Do
8 you manage any buildings, any experience with buildings
9 where people to be picked up or dropped off cannot have that
10 occur at the front door, but it has to be, or in the
11 vicinity of the front door, it has to be at some other
12 location?
13 A No.
14 Q You do not?
15 A And I, can I, well, clarify that I watched drop-
16 offs occur on the street and the average amount of time it
17 takes to drop somebody off is eight to 10 seconds. That's
18 how long it takes a car to stop and a person to exit the
19 vehicle.
20 Q And you've actually timed that?
21 A Yes.
22 Q Including the elderly and the handicapped and
23 people that may live in the area that are older?
24 A I would think they would go to the layby because
25 it would be a more extensive drop-off. So my guess is that

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1 if you had to park the car, get out and help somebody out of
2 the car, that you would be in a more permanent space. You
3 wouldn't be letting them off as you went down the street.
4 Q And how many hours and what days did you stand
5 there and time this?
6 A I watched all this video, so I would say it
7 occurred probably 12 to 15 times here, people being dropped
8 off.
9 Q And they were all dropped off at the front doors
10 of these places?
11 A They were dropped off at various places along the
12 street.
13 MR. KNOPF: I have no further questions.
14 MS. ROBESON: Okay. Redirect, Ms. Harris?
15 REDIRECT EXAMINATION
16 BY MS. HARRIS:
17 Q Your chart, Exhibit 125, shows FedEx and UPS,
18 correct?
19 A Yes.
20 Q And it didn't include moving?
21 A Yes.
22 Q But your sample photos, do you recall when you
23 walked through there, and I don't want you to walk through
24 them all again, how many moving trucks you saw during that
25 period of time in those photos?

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1 A In the ones --

2 Q Or how many, actually how many trucks or

3 deliveries other than UPS or FedEx did you see in your

4 photos?

5 A One in front of, I took this at 4804 Montgomery

6 Lane and the truck was in the layby.

7 Q Thank you. And in determining --

8 MS. HARRIS: That's it actually. No further

9 questions.

10 MS. ROBESON: Okay. Recross?

11 MR. KNOPF: No.

12 MS. ROBESON: All right. Mr. Abrams, no

13 questions?

14 MR. ABRAMS: No questions.

15 MS. ROBESON: All right. Is that your last

16 witness?

17 MS. HARRIS: Yes, it is.

18 MS. ROBESON: Okay. Are you ready to go right

19 into -- yes?

20 MS. HARRIS: Five minutes?

21 MS. ROBESON: Five minutes. Okay. That's fine.

22 (Recess)

23 MS. ROBESON: All right. Is everyone ready?

24 MS. HARRIS: Yes.

25 MR. KNOPF: Yes.

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1 MS. ROBESON: You ready? Okay. We're back on the

2 record and it is time for closing argument. Ms. Harris, you

3 get to go first.

4 MS. HARRIS: Thank you. The strategy of the

5 opponents in this case has been quite clear from the

6 beginning. They live on a street with \$1.5 million homes,

7 many homes that are 2,000 square feet or more. They do not

8 want smaller units and nor do they want what may likely be

9 rentals. And, as you know, and we've testified to, there

10 are currently no MPDU's on Montgomery Lane and the subject

11 project offers 18 MPDU's. This case has been the proverbial

12 example of throw everything, every issue possible up against

13 the wall in hopes that something will stick. And if

14 something does stick, what will the consequence be?

15 The opponents hope that the consequence will be

16 that the ultimate approval of this project will involve a

17 reduction in its size, small enough so that it no longer

18 make sense to do affordable units, that it no longer makes

19 sense to do smaller, more affordable units which will

20 provide a diversity of housing. Instead, it's the

21 opponent's hope that the property will convert to something

22 that's more familiar to them, just like 4901 Hampden, which

23 has larger units which will now sell for the several

24 millions.

25 From one, from day one, applicant has thought that

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1 they were doing the right thing in furthering the Sector

2 Plan recommendations and the important County

3 recommendations. They're introducing smaller units, an

4 opportunity for rentals and 18 MPDU's to a street which

5 currently has none of this. The conclusion that the project

6 was consistent with the area is based on a number of things.

7 First, the zoning ordinance; the Sector Plan, which

8 recommends high-density housing near Metro and which also

9 recommends promoting affordability by providing MPDU's.

10 It's also consistent with the housing element and the

11 project head-on meets the four specific housing objectives

12 which are housing and transit locations, range of units of

13 sizes and affordability, sustainability and creating

14 walkable communities.

15 The opponents have attempted to cast doubt on

16 every single component of this case. Despite nine days of

17 hearings and testimony and issues ranging from the design of

18 the public use space, including such things as will our

19 benches have backs, are the seats wide enough on the

20 benches, the provision of 10 percent public use space,

21 whether the building looks like a town home or whether the

22 Federal Express truck spends a total of 15 minutes on the

23 street will actually cause an issue.

24 Despite all of this, this is actually a simple

25 case. The issues before the Hearing Examiner are does the

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1 project meet the zoning ordinance, is the project consistent

2 with the Sector Plan and is the building compatible with the

3 existing improved development? The zoning ordinance

4 requirements for Development Plans, Section 59D 1.61(a)

5 makes it clear that what's required is substantial

6 compliance with the Sector Plan recommendations with respect

7 to only use and density. Clearly, the use is not an issue

8 here. In terms of the density, the proposed 3.05 is clearly

9 permitted as evidenced by two of the other projects in the

10 surrounding area, the Hampden Lane project and the 4901

11 Hampden Lane project, both of which an FAR of 3.05.

12 The remaining Sector Plan recommendations are

13 simply a guide and despite what opponents attempted to

14 allege, the Sector Plan is not a statute, it is a Plan that

15 is supposed to be interpreted. As the applicant through its

16 witnesses has pointed out throughout the hearing, the

17 existing and approved project on Montgomery Lane have

18 followed the Sector Plan recommendations selectively at best

19 with each building providing some of the recommendations,

20 but then really blatantly disregarding the remaining

21 recommendations.

22 For instance, you have the 10-story Edgemoor high

23 rise. That doesn't look like a townhouse. It's 100 feet in

24 a zone that suggests 65 feet. It's not a three to six story

25 building. The Edgemoor at Arlington has a single entrance

1 in the center of the property rather than multiple entrances
2 on the street. It's 46 feet in a recommended zone of 35
3 feet. It doesn't appear as a townhouse and it has a flat
4 roof, not a hip or a gable roof. Similarly, the Edgemoor at
5 Arlington North, single entrance, 46 feet, doesn't appear as
6 a townhouse. It also has a flat roof.

7 4901 Hampden Lane is 70 feet in a recommended area
8 of 65 feet. It doesn't appear as a townhouse. It's not a
9 three to six story building and, again, a flat roof. The
10 City Homes, on the other hand, they are townhouses, but they
11 don't have apartments at every level, which is what the
12 Sector Plan recommends, they are 27 dwelling units per acre
13 instead of the minimum recommendation of 45 dwelling units
14 an acre and they only have end units on the face with the
15 remaining units located within the project. It's not a
16 closed block configuration as recommended by the Sector Plan
17 and their parking is not concealed.

18 The Sandy Spring Bank building, Sandy Spring
19 Builders, 4825, it's not 45 dwelling units an acre. Their
20 parking is not concealed, it's very apparent from West Lane.
21 They don't look like townhouses and they also have a flat
22 roof. And then, finally, the Hampden Lane project is 71
23 feet in an area which is partially recommended for 35 feet,
24 so there you have an example where it exceeds the
25 recommendation by 100 percent. The remaining portion of the

1 building is 71 feet in an area that's recommended for 65
2 feet, again, not a townhouse and with a flat roof.

3 There's several lessons from this. First of all,
4 the buildings don't march in lock step down Montgomery Lane
5 in an inflexible and predetermined design. And, second of
6 all, except for the Edgemoor at Arlington and the Edgemoor
7 at Arlington North, there's no consistency at all in any of
8 these projects. The compatibility should be determined
9 based on the surrounding neighborhood, not just the property
10 which is 73 across Montgomery Lane to the south, i.e., the
11 City Homes. This is especially true because the City Homes
12 itself doesn't comply with the Sector Plan recommendations.

13 Just as in an established building line analysis,
14 you take out the non-conforming buildings. When you're
15 evaluating consistency, the analysis should not be based on
16 a project that doesn't meet the standards and
17 recommendations of the zone. The City Homes provides low-
18 density housing type not recommended by the Sector Plan,
19 i.e., the townhouses. Its orientation is a much more
20 suburban orientation with its perpendicular positioning to
21 Montgomery Lane and its design, its design is more suitable
22 for single-family townhouses that you would see in the
23 suburbs, not in the urbanized area like downtown Bethesda.
24 To base an evaluation of compatibility on the design which
25 does not comply with the Sector Plan simply invalidates the

1 analysis.

2 The Sector Plan makes it clear that high density,
3 multi-family units, not townhouses, were intended to be
4 developed in the TS-R zone within a quick walk of the Metro
5 station. In allowing townhouses, the Council did not intend
6 that they would then change the standard for all future
7 development in the area. The Council, in other words, did
8 not de facto in approving the City Homes decide to amend the
9 Sector Plan and change the threshold for evaluating
10 compatibility. And to suggest this would result in an
11 absurd result. It would to some extent have a domino effect
12 where you would be requiring all future projects to be
13 compatible with the project which in and of itself is not
14 compatible. This, at the end of the day, prevents the
15 ultimate goals of the Sector Plan from being achieved, the
16 desire for density and affordable housing in an urbanized
17 environment.

18 In evaluating the compatibility, the opponents are
19 asking the zoning hearing examiner to ignore two important
20 factors. First, all the neighbors immediately adjacent to
21 the project have indicated their support for the project.
22 This in and of itself is evidence of compatibility.
23 Secondly, the surrounding area is not just the City Homes
24 and the Highrise Edgemoor. Within the surrounding area, and
25 if you focus on the block on which the project is located

1 and the block to the south, includes two buildings that are
2 over 100 feet in height and two buildings that have been
3 approved for 70 feet in height.

4 Instead, the opponents are suggesting that they
5 themselves, that the City Homes should determine whether, in
6 fact, this project is compatible. And, in fact, it was
7 ironic that the counsel for the Highrise Edgemoor really
8 didn't focus on the compatibility relationship between the
9 Highrise Edgemoor, his client, and the subject building. He
10 focused on the City Homes and our building. There was a
11 reason for that.

12 Nonetheless, having noted this, if you look at the
13 height compatibility of the project with just the City Homes
14 at the street line, the subject property is approximately
15 the same height as the City Homes. When you move back 12
16 feet beyond the step-back, there's a 20-foot difference
17 between the subject and the City Homes. The Sector Plan
18 itself, Figure 3.2, which is page 39 of the Sector Plan, is
19 replete with examples where you have a suggested zone where
20 the difference is much more than 20 feet all along Wisconsin
21 Avenue, well, not all along, but in the northern and
22 southern portions of Wisconsin Avenue you have a recommended
23 height of 75 feet and then immediately to the east, to the
24 east of that you have a recommended zone of 35 feet. That's
25 a difference of 40 feet. Similarly, on our block alone, you

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1 have a 35-foot zone and then you have a 65-foot zone, again,
 2 a difference of 30 feet.
 3 In evaluating compatibility, it's also important
 4 to note what must be evaluated. This is not a site plan
 5 where a schematic level of design is required. It's a
 6 zoning case. So, therefore, what does compatibility mean?
 7 It means an evaluation in terms of the height, the density
 8 and the massing, not the details of the building that we got
 9 into, that we've heard much about, including window design.
 10 As our architect today testified, and as he said
 11 earlier, compatibility does not mean comparability. And
 12 just because the neighbors do not like the building, that
 13 doesn't make it non-compatible. The Council understood that
 14 in adopting the ZTA's for the MPDU's, which allow for higher
 15 densities and heights in excess of the Sector Plan to allow
 16 MPDU's, they knew that in allowing a building of 3.05 in a
 17 2.5, for properties that otherwise allowed 2.5, they knew
 18 that it was going to look different, of course they did.
 19 Similarly, when they said you could exceed the recommended
 20 height of a Sector Plan, whether it's to 70 feet or 75 feet,
 21 and by the way, there's nothing in that ordinance that says
 22 you can only exceed it by five feet, what it says is you can
 23 go above the recommendation, the Council knew that a 70 or
 24 75-foot building was going to look different than a 65-foot
 25 building.

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1 The opponent spent hours pointing out that the
 2 subject building is taller than the City Homes. We
 3 acknowledged that. We -- the applicant acknowledged that
 4 from day one that the building is higher than City Homes and
 5 higher than some of the surrounding buildings, but a simple
 6 mathematical difference doesn't make it not compatible. The
 7 only testimony that we heard that even approached how that
 8 additional height may somehow affect the opponents was from
 9 Susie Turnbull. And what we heard there was from her home,
 10 which is 160 feet away from the subject building, when she
 11 looks out of her window at a certain angle, a portion of the
 12 sky may be taken up by the additional five feet of building.
 13 Now I ask you, next time you're walking down the street, put
 14 your eye at something 160 feet down the road and imagine
 15 that it's five feet taller and try to really articulate what
 16 that impact is.
 17 In approving Hampden Lane, the Hampden Lane
 18 building at the corner of Hampden and Arlington with a
 19 maximum height of 71 feet, which also has no setbacks for
 20 its three adjoining properties, the three properties that it
 21 abuts, there are no setbacks and it also has a 15-foot
 22 penthouse right on the street. The District Council found
 23 that that was compatible. And in finding that, what they,
 24 what the District Council noted was, quote,
 25 "Although the building proposed by Hampden

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1 Lane would be taller than the adjacent
 2 developments, it would generally be compatible
 3 with uses and structures in the surrounding area."
 4 Moreover, the District Council also noted the
 5 public interest in providing MPDU's in that case by stating,
 6 quote,
 7 "The compatibility issue must, however, be
 8 considered in conjunction with the County's policy
 9 of encouraging construction of moderately provided
 10 housing."
 11 I think it's important to note that the subject property is
 12 not compromising compatibility to provide the MPDU's. It is
 13 compatible and it happens to be providing MPDU's.
 14 Finally, in terms of the compatibility issue, the
 15 project furthers the purpose clause of the TS-R zone in that
 16 it will, one, promote the effective use of transit; two, it
 17 provides residential uses within walking distance of a
 18 transit station; three, it provides a range of density to
 19 provide choice; and, four, it stimulates the harmonious and
 20 systematic development and will not be detrimental to the
 21 adjacent developed properties or surrounding neighborhood,
 22 it will expand housing choices for persons of varying
 23 economic levels.
 24 As the Maryland courts in citing *Avenel v. Louis*
 25 found, and as Mr. Abrams in his own treatise has pointed

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1 out, quote,
 2 "Demonstration of compliance with the express
 3 purposes of the zone indicates evidence of
 4 compatibility since the purposed provisions are
 5 designed to ensure that the floating zone is
 6 compatible with other existing uses in the general
 7 neighborhood."
 8 You heard a lot about tenting, probably more than you've
 9 ever heard in any other case.
 10 MS. ROBESON: I wouldn't say that, but go ahead.
 11 MS. HARRIS: You would agree? The intent of the
 12 Sector Plan is to achieve tenting in a general sense. That
 13 means that there is a consolidation of height and density at
 14 the Metro core and as you move away it decreases as you move
 15 away from the periphery of, toward the periphery of the CBD.
 16 But it implicitly allows variations in the height within the
 17 Plane of the tent. And one of the zoning hearing reports
 18 that opponents provided to the record actually had a quote
 19 in it from the former Planning Board member, Pat Baptiste,
 20 who noted that the reason for that tenting effect was to
 21 protect the people in the single-family homes in Edgemoor
 22 which was across Arlington Road. And if nothing else, I
 23 would note that there were, which is a very active
 24 community, and I would note that obviously they had no issue
 25 with this project.

1 The opponents contend that the goal of tenting is
 2 a matter of rigid triangulation instead of a guide to help
 3 develop the urban form. And they don't see that there could
 4 be some variations within the Plane of the tent. However,
 5 nowhere in the Sector Plan has the concept that opponents
 6 are putting forth that you have one building closer to the
 7 core and that each one should sequentially step down lower
 8 and lower has been achieved. And you don't have to go far
 9 to see that that has not been applied that way. You go to
 10 the block immediately to the south, you have the 71-foot
 11 building on one end at Montgomery Lane, excuse me, at
 12 Woodmont Avenue, you have a 71-foot building at the other
 13 end. So there are two bookends of 70, 71 feet and in
 14 between you have the HOC building and two other buildings of
 15 varying heights.

16 If you took a literal, if you took the opponent's
 17 interpretation literally, you would just come up with an
 18 absurd result. What it would mean is any lower building
 19 that were constructed, so if you happened to construct a 50-
 20 foot building on Woodmont Avenue for whatever reason, that
 21 it would automatically preclude any other building east,
 22 excuse me, west of Woodmont Avenue from being taller than
 23 that 50 feet.

24 That's not -- it would also, that literal
 25 interpretation, prevent two buildings from the exact same

1 height from being located next to each other. As the County
 2 attorney successfully said, argued in the City Homes appeal
 3 of the Hampden Lane case, he noted that the fact that a
 4 building further from the Metro core is, quote, taller than
 5 one closer to the core hardly constitutes a violation of the
 6 Sector Plan. This argument is a red herring and it should
 7 be ignored.

8 And then speaking of red herrings, there are a
 9 number of other ones that I just feel compelled to mention.
 10 One has to do with the traffic and loading. The LATR
 11 conclusively showed that Montgomery Lane and West Lane will
 12 operate well under capacity. The peak hour trips for the
 13 additional, for the peak hour additional trips is 25 trips.
 14 That equates to one car every 2 1/2 minutes. And I'm not
 15 going to sit here and make us wait 2 1/2 minutes simply
 16 every time a car goes by, but you can just imagine that
 17 that's an imperceptible difference.

18 Even if one, for whatever reason, doesn't think
 19 that the LATR is enough, the testimony that you heard just
 20 moments ago from Ms. Wiltshire proved, is evidence from the
 21 photos that were based on the tape. There were many hours
 22 of testimony regarding the deliveries and the loading. In
 23 the end, what was shown from the photos and is that the
 24 FedEx truck and the UPS truck spent a total of 15 minutes a
 25 day on Montgomery Lane. To the extent this is ever an

1 issue, and we don't think it is, the applicant has made sure
 2 that it's not an issue with respect to their property by
 3 providing three times the required parking. In comparison,
 4 the City Homes, excuse me, three times the amount of loading
 5 required. The City Homes has no extra loading spaces for
 6 deliveries and the Highrise Edgemoor has only one.

7 Another red herring had to do with the amount of
 8 the public use space. The opponents' counsel went on
 9 exhaustively over the fact that the public use space it had
 10 originally proposed was 14 percent and now what is being
 11 proposed is an amount comparable to every other project in
 12 the TS-R zone and the surrounding area. And I would also
 13 note that it didn't overall change the amount of green space
 14 because, as you heard, that 15-foot strip in the back of the
 15 building still remains, it's just not being counted as
 16 public use space.

17 After hours of questioning, was any justification
 18 provided as to why this project should be providing more
 19 public use space than any other project? No, because there
 20 is none. Similarly, the whole issue of the project setback
 21 along Montgomery Lane, this project provides more setback
 22 from back of curb than any other project on the north side
 23 of this street. We're providing 26 feet from back of curb
 24 free and clear. In comparison, the Highrise Edgemoor
 25 provides 16 feet and we've taken it from the back of the

1 layby free and clear.

2 The staff and the Planning Board twice has looked
 3 at this issue and twice has determined that the amount of
 4 the setback of the building is acceptable. As the Sector
 5 Plan states, the issue of setbacks is ultimately to be
 6 determined by the Planning Board at the time of site plan.
 7 And the Planning Board has made it perfectly clear not only
 8 on Montgomery Lane as can be evidenced by what's approved
 9 and what's existing, but in other areas of the County that
 10 there's an importance to providing this continuous building
 11 edge. There's just no legitimate justification for pushing
 12 this building back further than any other building on the
 13 street.

14 The Planning Staff and the Planning Board both
 15 determined the project was compatible. The Planning Board
 16 is the author of the Sector Plan and they're best able to
 17 interpret what is consistent with the Plan and to determine
 18 compatibility within the context of the Plan. There is no
 19 substantive evidence in the record suggesting that the
 20 building is incompatible. There's only concerns expressed
 21 by neighbors, who for whatever reason do not want this
 22 building built 73 feet distance from the City Homes.

23 To the extent the City Homes or the Highrise
 24 Edgemoor are burdened by other projects or, in fact, may be
 25 burdened by themselves by not providing enough loading for

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1 themselves, that is not the applicant's burden to bear. If
2 the City Homes light and air is decreased by the Hampden
3 Lane project and it is not the applicant's obligation to
4 somehow mitigate the fact that the building to the south of
5 City Homes is going to block some of their light and air.
6 Having said that, there's nothing they could do anyway to
7 try to remedy that problem. The applicant, through design
8 and numerous binding elements, has provided assurance that
9 the project will be compatible and cause no detrimental
10 impacts on surrounding properties.
11 I have to give the opponents credit, however. In
12 nine days of hearings, they have used every opportunity to
13 say how the District Council got it wrong and not wrong
14 once, but if you listen carefully to what they said, they
15 have said that the District Council got it wrong every time
16 they approved a project on Montgomery Lane, they got it --
17 or in the surrounding area. They got it wrong when they
18 approved 4901 for 3.05 FAR at 70 feet; similarly for the
19 Hampden Lane project, 3.05 at 71 feet. They got it wrong
20 when the Hampden Lane project was approved with no setbacks
21 along the three adjoining properties that it immediately
22 abuts and then just six months ago they must have gotten it
23 wrong with the Sandy Spring building when they approved a
24 setback of only 18 feet from back of curb, placing it only
25 67 feet from the City Homes property, as opposed to the 73

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1 feet that the applicant is proposing.
2 Again, they got it wrong when the Highrise
3 Edgemoor was approved for 100 feet and they got it wrong
4 when the Hampden Lane project was approved to be taller than
5 the HOC building immediately to its east. And the District
6 Council also got it wrong in approving 4901, which is set
7 back only 18 feet from Montgomery Lane and in the approval
8 for that project they noted that they had decreased the
9 setback along Montgomery Lane to make sure that they would
10 not sacrifice or compromise density that was originally
11 proposed for that project, that the 3.05 density was clearly
12 critical to the District Council.
13 Let me summarize this issue by noting that the
14 unease felt by the residents of the City Home townhouses in
15 the face of multiple rezoning requests on three sides of
16 their community is understandable. However, any expectation
17 on their part that the neighborhood would not change over
18 time or that all future development would follow their lead
19 in terms of height and density rather than the
20 recommendations of the Sector Plan is unrealistic. The
21 surrounding neighborhood in this case contains buildings of
22 widely varying age, height, and bulk, including very small,
23 single-family residential buildings, townhouses of different
24 sizes, multi-family housing and high rise and low rise
25 buildings, and buildings both large and small containing

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1 offices, commercial and retail uses. In many cases,
2 completely different types of structures are juxtaposed
3 against one another, much the same way that the City Home
4 townhouses confront the Edgemoor condominiums and right next
5 to that building small, two or three story residential
6 structures that have not yet been developed.
7 I wish I could take credit for this statement,
8 especially, again, reiterating the fact that any expectation
9 that the area would not change was unrealistic, but those
10 aren't my words, those are the words that the Hearing
11 Examiner said in 2006 in recommending approval for the 4901
12 Hampden Lane project. Thank you and I'd like to reserve the
13 right to submit any written statements -- thank you -- and
14 any written testimony in response to any closing remarks
15 that the opponents' counsel may have.
16 MS. ROBESON: Okay. Mr. Abrams.
17 MR. ABRAMS: Yes. Well, Madame Examiner, I want
18 to thank you for having the fortitude to sit up there and
19 listen to all this wind blowing in the room. I think one
20 thing that's been clear is that unlike these other projects
21 which surround this property, City Homes and Edgemoor
22 represent the only really existing projects on Montgomery
23 Lane. So that's why they're in here, having made attempts
24 to resolve certain issues with the applicant unsuccessfully,
25 but keep in mind that these are real people with real

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1 issues.
2 I find it somewhat unfortunate that counsel has to
3 refer to my clients and Mr. Knopf's clients as living in a
4 million and half dollar homes. Economic class is not an
5 issue in this case, any more than race or religion or
6 national origin is at issue in this case. Furthermore,
7 MPDU's are not an issue in this case. The number of MPDU's
8 beyond the minimum is totally up to the applicant. It's not
9 up to the opposition. And the issue is not rental versus
10 condo. So that's not an issue.
11 I think from the beginning of our opening in terms
12 of the opposition case, we told the examiner that we don't
13 oppose development of this property. In fact, we supported
14 the Holladay project in G-843. However, we are compelled to
15 oppose this project for a variety of reasons which you've
16 heard through over these seven or nine or however long days
17 of hearings.
18 First of all, the project doesn't substantially
19 conform to the Sector Plan. And I'm not merely talking
20 about one or two of the Sector Plan elements either in a
21 general, broad portions of Section 3 or in the specific
22 portions of Section 4 which relate to this specific
23 district. The first thing that we pointed out is that the
24 Sector Plan limits height in the TS-R district to 65 feet or
25 recommends a height of that. The application, as it's well-

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1 known here, opposes a building 70 feet with a 10-foot high
2 penthouse. I think the evidence also reveals that from a
3 perspective of what you really see from the street or across
4 the road is a building along Montgomery Lane of
5 approximately eight feet higher due to the differences in
6 elevation where the building height measurement was taken as
7 opposed to where people pass this building or view this
8 building.

9 And this is important because height can affect
10 the scale and bulk as it relates to the issue of
11 compatibility. So height is an important issue from the
12 standpoint of lack of conformance with the Sector Plan.
13 Another area where the application has failed to comply with
14 the Sector Plan is this much heralded tenting concept. And
15 that calls for higher buildings closer to Woodmont Avenue
16 transitioning down to 35 feet along Arlington Road. This
17 property is two-thirds of the way down Montgomery Lane from
18 Woodmont Avenue closest to Arlington Road. However, it's
19 taller than the intervening Sandy Spring building and that
20 sort of throws an unfortunate bump into this higher tenting
21 concept.

22 The big Edgemoor development is tied into the
23 approvals of both the City Homes townhouses and the HOC
24 building. However, that doesn't destroy the tenting effect
25 whether you look at it from the Metro Center as the core or

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1 whether you look at it from Woodmont Avenue as being the
2 core or the transit station district in the tent because all
3 it does is along Woodmont Avenue, as was called for in the
4 Sector Plan, it makes the peak of the tent that much higher.
5 The Hampden Lane building as we have indicated has
6 significant elevation differences, upwards to 12 feet, and
7 it faces commercial development. It's hardly even within
8 the transit station district. If anything, probably it
9 should have been due to the elevation differences and how it
10 is, faces the commercial area, probably been in another
11 district rather than a transit station.

12 It has a step down and height design and the
13 tallest segments due to the elevation differences we suggest
14 are only 59 feet above the elevation of Montgomery Lane.
15 And I get that, again, by arithmetic, 71 feet is the
16 elevation of the building, minus 12 feet elevation
17 difference between Hampden Lane and Montgomery Lane. I
18 think even when the Examiner was out there, this is one of
19 the reasons why we request that the Examiner walk behind
20 that area and view City Homes when she did it because unless
21 the Examiner is Wilt Chamberlain, you can't see over that
22 wall, okay? I can't see over that wall that separates the
23 two properties.

24 The third thing that is violated in terms of the
25 Sector Plan is the urban village and the mixed street

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1 concept. I think it's pretty clear that what the Planners
2 were looking for, what the District Council was looking for
3 was a residential appearance, a townhouse style. Well, this
4 is possible even with a multi-family building. It's been
5 done elsewhere in the County and it could have been done
6 here, but not so with the applicant.

7 In terms of the mixed street concept, this is a
8 pedestrian-oriented area with narrow streets, open public
9 use space and it's supposed to be attractive and functional.
10 Now here what we have is a narrow, 10-foot green strip along
11 the frontage with predominantly public use space in a corner
12 of a building which is hardscaped and looks very much like
13 the buildings along Wisconsin Avenue, many of which are
14 office buildings and in much higher traffic areas than this
15 area along Montgomery Lane.

16 Also, the public use space argument which we have
17 made I think shows a violation of the Sector Plan intent.
18 The original Plan called for public open space in the rear.
19 The Sector Plan called for it to be shifted around to the
20 front and it wasn't until after the Planning Board almost
21 directed that the Plan be changed to provide more space in
22 the front as public open space did that occur. It didn't
23 occur when we asked them to do it, it only occurred when the
24 Planning Board in their recommendation requested it.
25 However, in the process, approximately 600 to 680

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1 feet of public use space was lost. Well, the applicant's
2 response to that is so what, we meet the minimum
3 requirement. Well, public use space is a public benefit and
4 to take away something that they originally said that they
5 could provide and not provide it, yet expand the foot base
6 of the building to the west, this shows a total disregard
7 for trying to make this a compatible project in this
8 neighborhood.

9 The applicant is also trying to tell us that,
10 well, the 15 feet would be, which we retained in the back
11 which they had to do apparently by agreement with the
12 Villages of Bethesda, well, that can be used for public use
13 space. Well, it couldn't be used before and it can't be
14 used now because it's just not viable in terms of people
15 knowing it's there or having any accoutrements of a public
16 use area.

17 I would also notice that the applicant is not
18 suggesting that the scalloped corner for public use space is
19 superior for any environmental reasons such as less
20 impervious area or more natural green area than if they had
21 continued to put this feature further back in the 10-foot
22 along the frontage.

23 It also does not comply with the Sector Plan's
24 recommendations for density. Page 82 of the Sector Plan
25 recommends and I quote, full, end quote density of 2.5 FAR.

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1 The word full has some meaning and I believe it was put in
2 there to suggest that no matter what MPDU's an applicant was
3 entitled to, this is what they wanted in terms of the FAR
4 for those particular buildings in that particular district.
5 The applicant here seeks 3.05 FAR with up to 120 dwelling
6 units. Now I think the Sector Plan limits include the
7 MPDU's, and I say this because if we look at the chairman's,
8 the Planning Board chairman's comments, excuse me, in the
9 first letter, it seems to say that Mr. Landfair's report in
10 G-843 seems to say that and in both of those cases the use
11 of the word full density intended to set a density cap
12 including MPDU's.
13 The final area where the application does not
14 comport with the Sector Plan is on page 85 where it is
15 encouraged in the Plan to have low rise buildings to fill
16 out this particular parcel. This is a step down effect with
17 six stories near Woodmont Avenue transitioning down to three
18 stories at Arlington. Well, as I just said, the property is
19 closer to Arlington Road than Woodmont Avenue. There are
20 lower rise buildings on all sides of this property. The
21 downward height transition just does not occur here because
22 you have a 70-foot intervention between 60 feet and 45 feet
23 on either side of this property. The minimal step down on
24 Montgomery Avenue frontage above the 5th floor is really
25 insignificant in terms of not only the building mass, but

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1 sight lines from the street and the surrounding area.
2 Now the second, and probably the most important,
3 reason why City Homes opposes this application deals with
4 the fact that it is not compatible with existing approved or
5 Planned development in the neighborhood. Compatibility and
6 adverse impact was more important and more pronounced with
7 immediate surrounding properties and basically lessens as
8 you proceed further from the site. This is the stone in the
9 pond, pebbles with the waves getting less and less as you
10 reach more distance.
11 Now compatibility in floating zone cases considers
12 a number of factors and this is a floating zone case, as
13 well as a Development Plan which is part of the floating
14 zone case. Use is not an issue here. I mean it's
15 residential, called for residential and the Sector Plan and
16 there's residential just all around. However, in a floating
17 zone case you not only look at the use, but you look at
18 other factors. Height, it's higher than surrounding
19 properties and this is particularly important from the
20 Montgomery Lane elevations. Density, it is higher in terms
21 of density that all of the immediate surrounding properties
22 and none of those abutting properties exceed the Sector Plan
23 density in terms of height or density. Mass and bulk, it's
24 not nearly addressed with a minimal step down effect in the
25 corner cutout of the building. What we had suggested was

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1 that perhaps it should be brought around to the West Lane
2 side to further address mass and bulk, but I'll talk about
3 that in a moment.
4 It's not compatible in terms of visual design and
5 appearance. It certainly doesn't look like the other
6 buildings on that street. It's got a massive glass facade
7 in the front which is uncharacteristic of the architectural
8 style. It has an impact, or will have an impact, on the
9 infrastructure, particularly the streets, and another
10 element that you look for in compatibility is does it
11 conform to the relevant Sector Plan which we've just been
12 through and we suggest does not. So those are elements of
13 compatibility which you would consider.
14 Then the question is compatible with what? And we
15 suggest that it has to be compatible with existing uses and
16 the existing neighborhood character and these are the most
17 important considerations that you look at. Then you look at
18 what has been approved or Planned for development in the
19 area. That's the next most important. We have ranges,
20 elevations in terms of what is most important down to the
21 least important. There is little relevance to compare this
22 to the big Edgemoor on Woodmont Avenue because the big
23 Edgemoor is on a road or street which is designed for the
24 highest and most dense areas both in the transit station
25 district, as well as those high buildings which are right

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1 across Woodmont Avenue.
2 The Hampden Lane, we've talked about the
3 orientation and the elevation difference. The point is that
4 this project outside of the big Edgemoor produces bigger
5 heights and more units than any other project along
6 Montgomery Lane and that's the key focus here. Montgomery
7 Lane is the spine to this whole community and this whole
8 district.
9 Now what is the significance of the MPDU's in
10 determining compatibility? Compatibility is a statutory
11 requirement. You can't grant this rezoning, you can't
12 approve the Development Plan amendment without demonstration
13 that it is compatible with the existing and Planned uses in
14 the surrounding area.
15 Now provisions of MPDU units are statutory up to a
16 point, in other words, you have to provide a minimal or a
17 minimum number, but beyond that when you get into density
18 bonuses, that's not a statutory requirement anymore, it is a
19 statutory allowance that is totally up to an applicant. Now
20 if achieving a bonus density creates incompatibility either
21 in terms of height or FAR, then the overall density, we
22 suggest, should be scaled back.
23 Okay. What can be done in our view to achieve
24 compatibility? This, first of all, is a function of binding
25 elements and conditions for approval. So we would ask that

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1 if the examiner has any variance in terms of the conditions
2 for approval as part of its recommendations that they also
3 be suggested as binding elements.
4 First of all, we would like to see the height of
5 the story, the height limited to six stories or 65 feet.
6 This is what the Sector Plan suggests. This is what we have
7 relied upon. We would like 2.5 FAR which would include the
8 MPDU's because this also relates to the mass scale and size
9 of this building. We would request an increased building
10 setback along Montgomery Lane by an additional 10 feet to
11 re-establish the original amount of public use space and
12 make the area more attractive and reasonable for pedestrians
13 and the neighborhood.
14 We would request that to deal with the mass and
15 bulk can make the building step down or back meaningful. It
16 should be lower to begin with and we suggest that it be
17 reduced to the 4th floor in terms of the step down and
18 increase the depth back to 20 feet from the hedge of the
19 building. This is along the frontage on Montgomery Lane.
20 We would request that you suggest that the length
21 of the layby on West Lane be expanded and more, or whether
22 in lieu of that there should be more right-of-way taken to
23 widen West Lane if the layby cannot be provided. We would
24 request that there be more building articulation to soften
25 the design and achieve a more residential appearance. We

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1 heard a lot of testimony about French balconies, fake
2 balconies, but the building essentially does not have the
3 residential appearance. The binding element that they had
4 with page numbers, that was taken out. That would have
5 increased the residential appearance, particularly along
6 Woodmont, particularly along Montgomery Lane.
7 Now another area which has been the subject of
8 discussion is the traffic and parking operations. You've
9 heard from the people that live out there. At times it is a
10 mess. We've shown you photos. We've shown you the fact
11 that it's a function of the street size, the design,
12 circulation and the restrictions in terms of how you enter
13 that street and leave that street. There really isn't going
14 to be any achieved result by higher enforcement. That's
15 just not possible to devote that kind of police enforcement
16 to that problem.
17 Trucks and cars will have and create a turnaround
18 problem. They're going to be using the driveways if they
19 can and those driveways are the Sandy Spring building,
20 Builders building, my client's driveways, anything that is
21 close enough to use in terms of a turnaround. There really
22 isn't much of a turnaround which is being provided for this
23 quite intensive project at the end of West Lane. That
24 certainly should be looked into.
25 The increase in population creates more need for

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1 an on-street parking and that creates more need for stopping
2 and standing to allow the drivers and pedestrians to
3 negotiate this area without conflicts and without safety
4 problems. Essentially what we're talking about when we're
5 talking about the parking and the traffic circulation is do
6 no harm, you know, just like a doctor, do no harm. So if
7 you have to limit density, then do so so that it doesn't do
8 harm in this area.
9 There are some just general observations that we
10 have. First of all, the applicants have the burden of
11 proof, okay? The opposition has no burden whatsoever. Many
12 of the exhibits which were submitted by the applicant we
13 believe were misleading, they were not to scale or the
14 exhibits failed to show complete information or state
15 complete set, state a fact. Let me give you a couple of
16 examples.
17 Exhibit 106(f), that's the enhanced aerial
18 photograph. Well, anybody can see that there's not the
19 amount of separation as indicated on the aerial photograph
20 between West Lane and the subject building, between West
21 Lane and the other building from Sandy Spring Builders on
22 the other side of the road. The same goes for the setbacks
23 in many of the buildings that are shown in that enhanced
24 aerial photograph. It doesn't show the cutouts of many of
25 the buildings in terms of the downward transition in height

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1 of the building.
2 Exhibit 106(h), the height and density exhibit
3 left out certain relevant buildings. Exhibit 106(i), the
4 proposed Hampden Lane building elevation which is next to
5 the City Homes is misleading in height, et cetera.
6 Exhibit 106(c), again, building heights. It
7 didn't show or describe the lower heights of some of the
8 buildings with the step down designs. Exhibit 91, building
9 heights exhibit was missing the HOC building. Exhibit 79,
10 the tenting exhibit, the tenting effect exhibit, again, left
11 out intervening buildings. Exhibit 52, the density chart
12 showing the number of units and MPDU's, it left out the HOC
13 building by some odd reason and overstated the size of the
14 City Homes units. Now one of the biggest things is the
15 Master Plan compliance chart. That is so erroneous,
16 objective and misleading that we would object to it even
17 being accepted as part of the record in this case.
18 Now the expert testimony really didn't shore up
19 anything in the applicant's case either because their
20 opinions, you know, can only be as strong as the factual
21 basis that they recite to support those opinions now
22 specific with reference to issues of compatibility and
23 conformance with the Sector Plan. So when you review the
24 hearing transcript, some of the direct testimony was
25 contradicted on cross-examination, particularly with the

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1 heights of buildings in terms of the Sandy Spring project,
2 compared to the building height of the proposed project and
3 other orientations.
4 Some responses were basically just evasive and
5 non-responsive at all. I'll leave you to decide, you know,
6 which group were of those categories, but certainly sitting
7 here it was a trying time to try to get a response whether
8 it was a yes or no or anything else. And I ask you to
9 review the transcripts very carefully. If you recommend
10 conditions for approval, as I said, that you also recommend
11 that those conditions be binding elements.
12 This is the last really significant property in
13 the TS-R district and it's going to be developed, but the
14 only thing that we can request of the Examiner and County
15 Council is let's do the best job that we can with developing
16 this area. I was going to end it there, but based on one
17 comment that was made by Ms. Harris, let me end it on this.
18 The 15-foot space in the rear which was to protect the
19 Villages of Bethesda is now private use space. Well,
20 private use space in this application exceeds the minimum
21 requirements.
22 What we would suggest that the Examiner consider
23 is that in order to give us more public use space in the
24 front, that the 12-foot setback from the west or the private
25 use space be a uniform setback all the way down the west

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1 side of the building. Take that space and as much as you
2 can to keep it within the 20 percent minimum, move it to the
3 front. Make it useful. Make it attractive. Make it an
4 asset to the community because there's a lot of area,
5 including the roof area, that can be made up in terms of
6 where that private recreational use space can go. But the
7 public use space right now is, it's really not meaningful.
8 It does not fit into the vision I think that the Sector Plan
9 had for this particular area. It's another area where you
10 should, again, do no harm, try to make this project the best
11 project you can with the appropriate conditions. I thank
12 you for your time.
13 MS. ROBESON: Thank you. All right, Mr. Knopf.
14 MR. KNOPF: I think I have the hardest job because
15 everybody is looking at the clock and saying after this,
16 we're almost finished. Let's go. And I think I can
17 shortcut an awful lot by saying I doubt that Mr. Abrams and,
18 the applicant and Mr. Abrams suggested and with that we'll
19 cut back a little bit.
20 I'm thinking that you have certainly heard enough.
21 I'm going to try to step back a little bit and do a little
22 global rather than nitty-gritty, but speaking of nitty-
23 gritty, before I forget, which I know I will, there's
24 something I heard today that I have to put on the record.
25 It's to correct it.

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1 I point out to the Hearing Examiner that the TS-R
2 zone is a zone which is not permitted in the CBD. So,
3 therefore, the testimony we heard about a traffic based on
4 CBD studies is not exactly relevant. With that, let me go
5 on. I'm trying to take us back to see if we could remember
6 the big picture when we all started out and the key thing
7 here is the Sector Plan has tried to create a unique feature
8 in downtown Bethesda that is this street. It's a mixed
9 street and it's supposed to be an urban village concept.
10 There is nothing else like that in the Plan.
11 There is nothing like that, I don't think, in the County.
12 But we are here to, we believe, to seek the implementation
13 of that. And this, the project basically undermines that
14 whole concept, if not destroys it. And the question is, is
15 this concept to be implemented, is it to be strengthened, or
16 is it to be really eliminated through this project? And I'm
17 getting into a little bit of those details.
18 But keeping in mind the unique nature of this
19 street as called for in the Sector Plan, we have to remember
20 two things. One is we're looking at this street and we're
21 looking at the provisions of the Sector Plan for this
22 street, not for all of Bethesda, not for the CBD and not for
23 anyplace there's TS-R, but what did the Sector Plan say for
24 this street? And sometimes there's traffic in it. The
25 second is when we're looking at compatibility, we believe we

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1 look at this street and all the information we had about
2 what's going on in Hampden Lane which you might not be able
3 to see from this street, it's interesting to know, but we
4 don't believe very relevant.
5 Now why do we have this, what I would consider a
6 threat, my clients would consider a threat to the concept?
7 We are told, you know, it's for the greater good. As the
8 Hearing Examiner well knows, the Council has to find
9 something is in the public interest in order to approve the
10 rezoning. And what are we told is the public interest here?
11 We are told ad nauseum, more units, more MPDU's, rental.
12 That sounds good. There is no binding element for rental,
13 gone tomorrow if the applicant decides to do it.
14 More dwelling units for MPDU's? Well, let's take
15 a look at what we're sacrificing for more MPDU's. If this
16 were a 12.5 percent MPDU, because we're using 2.50 FAR
17 rather than the bonus point, and you had 100 units, you get
18 12 1/2 MPDU's, or 13. If you had 120 units, you get 15. So
19 we're getting two more MPDU's possibly out of this by having
20 so much more, more units with circulation problems which we
21 believe are important or let's go to the 15 percent MPDU's.
22 But I just want to point out, 15 percent MPDU's at 100
23 units, which they could decide to do because the minimum is
24 100, the rest is illusory, so let's -- so maybe their wish
25 list, 15 at, 15 percent out of 100 is obviously 15 versus 13

1 at 2.50. So this whole battle, arguably, is over rental,
2 which we may not get, and we could possibly get two more
3 MPDU's.

4 Well, needless to say, my clients are not prepared
5 to sacrifice so much movement to get two more MPDU's and we
6 don't think the Council has that in mind either. Let me
7 point that out that the remarks made that it's current
8 policy to have more MPDU's and also the suggestion was,
9 well, you know, all that stuff in the Sector Plan, that's
10 gone. Kiss that goodbye. That was a long time ago. Well,
11 let's look at what's in the record. We know at 4901 Hampden
12 Lane, that was straight, we know that in 2006 the Council
13 rejected a non-residential appearing building that was 100
14 feet tall and said it doesn't fit the urban village concept
15 and they came back with one that was lower, more residential
16 in appearance and they approved it. That seems to me that
17 the Plans in terms of height, in terms of residential
18 design, is alive and well.

19 In 2012, the 4825 Sandy Spring, only four units,
20 five stories and we quote, the building is designed in a
21 more traditional, residential style because that is typical
22 of the neighborhood, unquote. I'm quoting from the 102(h)
23 exhibit. The Council is still looking at this to achieve
24 the original concept.

25 Even the staff said that it, quote, successfully

1 would have less.

2 As you know, 45 is the minimum. So we are well
3 over what the Sector Plan generally and specifically for
4 Montgomery Lane is talking about. And we have to reject --
5 we think the record reflects this -- the idea that the goal
6 of the Sector Plan and the current policy is pack them in
7 there. That's technical. We remember, and it's not
8 disputed, the prior Sector Plan gave use the Chase, the
9 Chase, the two Chases and whatever the other one is behind
10 the Chases, anyhow, much larger buildings in terms of height
11 and density than is allowed under the current Sector Plan in
12 the current zone. This to me, and I think to common sense,
13 reflects that when the Council adopted the new Sector Plan,
14 they didn't have in mind to pack it in there as much as you
15 can or they wouldn't have down zone so to speak. What was
16 previously allowed, into allowing lesser density and lesser
17 homes.

18 So the goal of the Council in the Sector Plan was
19 not to see how much you can squeeze in but, yes, to have
20 dense units, but to have it according to a certain design
21 and that design for Montgomery Lane was an urban village
22 with special concept that they were trying to develop and a
23 special street they were trying to develop.

24 And this has been implemented. Look at the Sandy
25 Spring development at 482, 488.5, 27 dwelling units per

1 communicates a residential character, unquote. The Holladay
2 project, the precursor of this, 2007, it was found, quote,
3 consistent with the development across the street which
4 reflects townhouse and low structures, unquote. We don't
5 think it's bad. In fact, it's quite alive and the Council
6 has repeatedly, as the Planning Board and the staff in other
7 cases except this one, has required residential character in
8 the way of the buildings. The urban design concept was
9 still alive and well.

10 Now addressing specifically the maximum density,
11 which is a big issue, the Sector Plan says generally for the
12 TS-R area 100, full 100 dwelling units. Now we're saying,
13 well, that's for all over the TS-R zone. That doesn't
14 necessarily mean Montgomery Lane because that's probably the
15 last street you want to put since it's a street of six
16 stories, you want to start loading it up even with what the
17 average is. But let's take the average and I'll give you
18 the average.

19 If you do an average of 100, this property is not,
20 this property is about close to 85, 90 percent of an acre.
21 So their 100 units, their low number, comes out to 111
22 dwelling units per acre and if you do 120, which is the
23 maximum we're suggesting, you come out 133 per acre which is
24 over the Sector Plan's recommendation for generally in the
25 TS-R zone, no less than Montgomery Lane which we submit they

1 acre. That's not even the 45 minimum and yet the staff and
2 the Planning Board and the Council okayed it. 4901 Hampden
3 Lane, 2012, the Council approved lowering it from 50 to 70
4 units originally authorized at 15 percent MPDU to 40 to 50.
5 It lowered, of course, the number of MPDU's, as well as
6 lowering the number of units. And guess what, everybody
7 approved it.

8 So we think it's a little bit simplistic to say,
9 oh, you've got to pack it in there and everything is driven
10 by MPDU's. Similarly, the Holladay project, 2.5 FAR with 48
11 units and six MPDU's. It was in the 70's per acre. And it
12 was said, quote, we contribute to the range of densities of
13 the area, unquote. Well, we would like to contribute to the
14 range of densities, but not quite as much they want to have
15 the range of densities.

16 So the bottom line, what I'm trying to say is,
17 there's a unique concept that was put in gear, something
18 they were trying to develop and it's not to be sacrificed so
19 you can get two more MPDU's or it should not be sacrificed
20 on the altar of you're going to have rental apartments when
21 we may not have rental apartments. In fact, we may not even
22 have 120 units. We may only get 100 units. As far as my
23 client is concerned, that's what we would like, only 100
24 units at the most.

25 In terms of the Sector Plan standards being

1 inconsistent, inconsistent with the design and we talked
2 about the townhouse design, it's inconsistent with the
3 density. It's inconsistent with the height and we'll repeat
4 all that with the tenting and so on. I think the Hearing
5 Examiner is well aware of this.

6 The height problem is made worse because of the
7 elevation differences which Mr. Abrams has addressed. It
8 also ignores the mixed street idea of safety and pedestrian
9 orientation and it ignores the architectural standards or
10 urban design guidelines which are set forth in the Sector
11 Plan ranging, you know, from the turrets to the peaked roofs
12 to so on. It's a whole laundry list of things that can make
13 something appear residential. This doesn't appear
14 residential.

15 We don't think it's compatible with the existing
16 development or the approved development. And one thing
17 perhaps we all forget, the tone of this street is set by the
18 biggest project on the street in terms of geographic area
19 and that's the City Homes. That goes on and on and on and
20 you have alleys and you have row, I should say have mews,
21 parks mews, you have low rise, you have a townhouse feel.
22 You have the urban concept which they were trying to
23 implement and that sets the tone.

24 Now the Edgemoor is taller. There is no question
25 about that. And as the opinion says, it's not to be taken

1 as a precedent because it had very unusual conditions. But
2 even the Edgemoor tried to appear residential. And what
3 we're saying is that the -- plus in terms of height, the, it
4 comes down as you go down like it's supposed to from the
5 Edgemoor down to Arlington, it comes down, and even along
6 Arlington they met the same height limit. It starts out at
7 34, 35 feet or along Arlington and goes up and goes up to
8 what, 48 feet max as it gets going toward Woodmont.

9 But they're following the Sector Plan and they're
10 trying to be compatible with it. And this is totally
11 different with a huge, non-residential appearance building
12 in terms of whether it's the windows or just all that glass.
13 It looks more like an office building. The architect can
14 see that it's not your traditional residential building and
15 maybe elsewhere in the County the Hearing Examiner can say
16 to the Council, oh, I wish we had a more traditional
17 building, but that's not for me to say. But it is for the
18 Sector Plan to say and the Sector Plan clearly spells that
19 out, that this is to be an urban village with certain three
20 to six stories and be like a townhouse.

21 So this is really a unique situation because in
22 any other situations the Sector Plan is sort of silent on
23 what they would look like. They do talk about what the
24 height should be and what the setback should be and if
25 there's some special feature, but this is different in that

1 it spells out in great detail exactly what they want.

2 I would also like to add on to the fact that the
3 rooftop structure, we don't want to forget about the rooftop
4 structure. We have that as, we were told it's 25 feet back,
5 but that means 25 feet back we were told today from the
6 footprint. So if they're going back, which they've offered
7 here, at 12 feet for the setback, that leaves only 13 feet.
8 It's really towards the edge of the roof right along
9 Montgomery. And we think that compounds the bulkiness and
10 the height on this.

11 What do we recommend? We recommend ditto, as Mr.
12 Abrams said. We were slightly different. We were willing
13 to go back 30 feet on the 5th and 6th floors after the 7th
14 floor was removed, but I think he's saying the same thing
15 because he was moving the building back 10 feet and then
16 going back 20 feet. So we're back 30 feet. We'll take it
17 either way.

18 But the important thing is we're trying, both
19 trying to break up the bulk of the building and we think
20 that could do it. We think the building cries out for
21 residential features, whether it's windows, real bay
22 windows, balconies, articulations, things that can make the
23 building look more residential and fit in with the various
24 architectural features on the street, even on the Edgemoor
25 or with the City Homes. We would like to see a 2.5 FAR and

1 no more than 100 units. This would bring the building, with
2 one, help cut back on the circulation problems, and also
3 would help on the bulk problems of the building and the
4 massiveness.

5 In terms of the circulation problems, we continue
6 to believe that notwithstanding, assuming the very best
7 efforts by the applicant or the applicant's management firm
8 or whoever is there, people will be dropped off on
9 Montgomery and picked up on Montgomery. I'm talking about
10 individuals. People are not going to go turn into West
11 Lane, go down, make a U-turn, come back, drop them off in
12 the layby and have them walk up to their front door. It's
13 human nature. It's the -- it's the straight line, the
14 shortest distance between two points. And this is going to
15 cause problems, continue to cause problems and more problems
16 on the street.

17 Similarly, we expect deliveries and the same thing
18 to happen whether it's not regularly from UPS or FedEx, but
19 the mailman, nobody can control the mailman, but what about
20 the deliveries for food and cleaners and so on? It's going
21 to cause a clogging on the street, further exacerbating the
22 situation. No, it doesn't happen every minute, but it
23 happens enough so that it destroys the very concept we're
24 trying to achieve here as a safe, pleasant environment on a
25 mixed street for people to walk up and down and not be

1 confronted with double-parked cars and people waiting to go
2 around parked cars.

3 In terms of the findings, and I don't want to
4 bring to you, counsel, and the Hearing Examiner as well,
5 where these things, but just remember that the Council must
6 find that the proposed development complies with purposes of
7 the zone and that it would provide for the maximum safety
8 and would be compatible with adjacent development. And the
9 purpose of the zone, the TS-R zone, is to prevent
10 detrimental effects to the use or development of adjacent
11 properties or surrounding neighborhood and to provide for
12 the safety of people in the area.

13 And the finding has to be that it complies with
14 the use and density. There's a question of use. We say the
15 density is much too great and does not conflict with the
16 general Plans and other County policies. County policy here
17 is spelled out so clearly in the Master Plan. They want an
18 urban village concept.

19 The final finding is that the proposal has to have
20 an internal vehicular and pedestrian circulation points,
21 circulation systems and points of external access are safe
22 and efficient. We don't think that they have met their
23 burden at all.

24 Lowering the building in terms of a number of
25 units might perhaps help. Lowering the building in terms of

1 size, massiveness and design would help make it more
2 compatible. And as I tell my clients and I am embarrassed
3 to tell the Hearing Examiner, but I do want to remind her,
4 what you see on all the wonderful illustrations is not
5 necessarily what you get unless it is nailed down by binding
6 elements and we find the binding elements few and a lot of
7 wiggle room. With those, I'll stop and thank you, Hearing
8 Examiner, again for her patience.

9 MS. ROBESON: Thank you. Ms. Harris, do you want
10 to respond?

11 MS. HARRIS: Yes.

12 MS. ROBESON: Now I'm not going to go for a
13 written response because I feel that I have to treat
14 everyone the same way, so you, you're welcome to do rebuttal
15 now.

16 MS. HARRIS: Okay. Let me -- I think I want to
17 start off with what Mr. Knopf pointed out, that the City
18 Homes in his mind controls because it's such a large project
19 that it controls the tone of the street. Reality is it's
20 built at 27 units per acre. It's not the recommended FAR.
21 It provides no MPDU's. The parking is visible. It doesn't
22 provide the continuous street edge. The buildings are
23 perpendicular to the street. Is he really suggesting that
24 what the Council had in mind is if because of the economic
25 times when the City Homes was built, and that's why it was

1 approved as townhouses, that that then should set the tone
2 and the benchmark in the standard by which all other
3 projects in the area should be judged in terms of
4 compatibility? That absolutely makes no sense.

5 In terms of Mr. Abrams, the factor that he still
6 tried to argue that the Sector Plan allows for a full FAR,
7 that the density should be a full FAR and that the 2.5 -- I
8 mean I, you know, originally we were thinking, oh, maybe we
9 need to push that point home further and then really we
10 thought, well, wait a minute, the Council approved 3.05 FAR
11 both with the Hampden Lane project and 4901. So, again, I
12 go back to my point. Is the District Council wrong when
13 they approve that, the density of 3.05? No. Clearly, the
14 Sector Plan and the subsequent MPDU legislation contemplated
15 that additional density would be permitted and would be
16 allowed to exceed the 2.5.

17 In terms of the 100 units per acre that Mr. Knopf
18 noted, again, I ask the Hearing Examiner to carefully
19 examine the way that is worded in the Sector Plan. What the
20 Sector Plan says is, one, that a minimum requirement of 45
21 dwelling units per acre and then it says a maximum which, of
22 2.5 and then parenthetically it says about 100 units per
23 acre. Last time I checked, a statement that says about 100
24 units per acre is hardly a requirement. It was merely an
25 estimation of what the maximum could potentially yield and,

1 again, that's not taking into account the allowable
2 additional density that's committed by the 3.05 FAR.

3 The fact that the Council recently approved
4 projects which are less than the 45 dwelling units per acre
5 does not suggest that in their wisdom and in their policy of
6 trying to promote density at Metro, in trying to support
7 affordable housing units, that just because they did approve
8 a reduction or a reduction in the number of the units in
9 4901 or that they approved the 4825 building with just four
10 units, that they somehow would not approve a project that
11 is, that furthers the goals that were originally established
12 in the Sector Plan. It was more merely a situation where
13 those were the projects that were before the Council at the
14 time the owner came in and said, you know, for whatever
15 reason I don't want to do 50 or 60 dwelling units at 4901, I
16 want to do 40 or 50 and the Council said okay. The fact
17 that in creating larger units, which are now selling in the
18 several millions, does that really further the goal of
19 providing more economic choices in diversity in housing? I
20 don't think so.

21 In terms of the urban village, there was a lot of
22 discussion about, just now about the discussion of urban
23 village, but the reality is if you look at every project on
24 there, I'd be hard-pressed to say what looks like an urban
25 village and as Pat Baptiste said in connection with the

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1 approval of, with the Highrise Edgemoor, and I'm going to
2 quote,
3 "The urban village concept contained in the
4 Sector Plan presented a nice design, but it will
5 not be achieved. The applicant attempted to
6 implement the urban village concept with an
7 earlier application, but it was withdrawn as
8 economically infeasible."
9 She concluded that the height limitation should be waived in
10 this case in order to achieve the density goals of the Plan.
11 And then,
12 "Given the existing development pattern,
13 strict application of the Sector Plan height
14 limits will work against the objectives of the
15 Plan."
16 That was her statement in regard to the Highrise Edgemoor.
17 Now I grant you, maybe the City Homes which,
18 again, and I went through the list of how that doesn't
19 comply with the Sector Plan, maybe that approach is the
20 concept of urban village, but if you walk around and look at
21 every other project on that street, I think it would be
22 hard-pressed to reach the conclusion that they meet that
23 amorphous concept of urban village.
24 I thought that the suggestion by opponent's
25 counsel that somehow the public, the private use space in

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1 the back of the property should be reduced in size in order
2 to provide the City Homes with more, with more, provide the
3 project a greater distance from the City Homes, that goes to
4 every other suggestion that we've heard in this case which
5 is we want more, burden someone else. We want more
6 distance. We want more than 73 feet from our, the base of
7 our building to the City Homes, to the subject property, so
8 push it back, push it against the Villages of Bethesda. We
9 want more public use space on the front, so you know what,
10 decrease the private outdoor space that you residents could
11 enjoy. I mean it baffles me, quite honestly, that, those
12 suggestions.
13 I would also note that the suggestion of Mr.
14 Kabatt's calculations in terms of the traffic calculations,
15 the reality is that staff reviewed his traffic report and
16 found it to be acceptable and the rates that were applied
17 were the exact same rates that have applied in every project
18 which is within the Sector Plan boundaries. If staff,
19 transportation staff had issue with the ITE calculations
20 that he used, I'm sure that would have been brought out in
21 connection with their review.
22 Give me a minute just to go through the rest of my
23 notes. Going back for a moment to the City Homes and the
24 fact that that should be a benchmark, imagine for a second
25 if the City Homes had, in fact, been built in accordance

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1 with what the Sector Plan recommended. So imagine that
2 there's 65, and I'm not suggesting one building along that
3 entire face, but imagine two separate buildings at 65 feet
4 in height. What we would be discussing here then is a
5 difference of, a 5-foot difference between the City Homes
6 and the subject property and we would be talking about
7 actually a difference of 65 feet with a building that at the
8 street line has a height of 50 feet. So, again, I urge you,
9 and I, and all you need to do is take a look at the other,
10 at the Hampden Lane zoning hearing examiner report and the
11 District Council report that the fact that the City Homes
12 was built below what the Sector Plan recommended should not
13 then become the benchmark by which compatibility for the
14 rest of the area should be judged.
15 In terms of Mr. Knopf's discussion about the
16 MPDU's, the reality is the project is providing 18 MPDU's
17 and while, yes, it may be more than the 15 that would be
18 permitted at 120 units, the reality is there are no MPDU's
19 currently on the street. And while we, you and I may sit
20 here and think that a second or, a first, a second or a
21 third more additional MPDU's is not meaningful, I grant you
22 that it's very meaningful for the person that wants to live
23 within walking distance of the Metro, so they don't need a
24 car, who can't afford affordable housing somewhere else in
25 the Bethesda CBD. I think that's it. Thank you.

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1 MS. ROBESON: All right.
2 MS. HARRIS: And I would like to thank you too
3 because I know this has been an unusual, enduring process.
4 MS. ROBESON: No.
5 MS. HARRIS: So thank you for your patience.
6 MR. ABRAMS: I would like to clarify one thing for
7 the record because it was misrepresented by counsel and in
8 terms of my statement. So that it's on the record and it's
9 clear to everybody and the Villages of Bethesda don't get in
10 a panic, what I suggested was that the 15 feet remain a
11 setback and private use space, that the area on the west
12 side of the building be a uniform --
13 MS. ROBESON: Right.
14 MR. ABRAMS: -- 12 feet back and that be
15 transferred to public use space and that other areas such as
16 the roof or other interior areas make up the 20 percent. So
17 I don't want it to be mis-represented in the record that we
18 are trying to reduce the 15 feet in the rear.
19 MS. ROBESON: No, I understood that.
20 MS. HARRIS: And can I just make a comment to that
21 which I had noted?
22 MS. ROBESON: Sure.
23 MS. HARRIS: That the 12, think about a 12, think
24 about the last time you were in a private garden space that
25 was 12-foot in depth and how enjoyable that was. That,

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1 essentially what Mr. Abrams is suggesting, is to eliminate
2 the private outdoor space for the residents of this
3 building.
4 MS. ROBESON: All right.
5 MS. HARRIS: Thank you. And that space was also
6 provided in order to provide VOB with its U-corridor. So I
7 mean there were two things going on, the northern setback
8 requirement and that private space on the west.
9 MS. ROBESON: Okay. It's noted.
10 MS. HARRIS: Thank you.
11 MS. ROBESON: All right. Now we still have the
12 letter from the Villages of Bethesda.
13 MS. HARRIS: Yes.
14 MS. ROBESON: So I was -- is that, is the
15 gentleman -- he's not here?
16 MS. HARRIS: He's not here.
17 MS. ROBESON: Is 10 days enough for him to get the
18 letter in?
19 MR. ABRAMS: Well, again, I'm leaving on the 25th,
20 so if --
21 MS. HARRIS: I mean I would think, and in respect
22 to Mr. Abrams's schedule, I am -- I'm assuming that he can
23 probably get it in in the next two or three days.
24 MS. ROBESON: Okay. The, I mean the 16th?
25 MS. HARRIS: What day is that?

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1 MS. ROBESON: Thursday, or the 17th. And then
2 that gives Mr. Abrams six days to respond.
3 MS. HARRIS: And then just to be clear, and then I
4 have --
5 MS. ROBESON: Let's do it a week -- if he can get
6 it in by the 16th and Mr. Abrams can respond by the 23rd.
7 MS. HARRIS: And then do I have an opportunity to
8 respond to Mr. Abrams's response?
9 MS. ROBESON: Yes. How long do you think you're
10 going to need for that?
11 MS. HARRIS: How much -- you afforded him a week,
12 is that right?
13 MS. ROBESON: Okay. That would be the 30th.
14 MR. KNOPF: Yes, I think we hit Memorial Day
15 somewhere along there.
16 MS. ROBESON: What?
17 MR. KNOPF: You may have hit the Memorial Day
18 holiday somewhere in there.
19 MS. ROBESON: No, no, the 30th is -- Memorial Day
20 is the 27th.
21 MR. KNOPF: That's what I said, you're getting
22 into the 27th, or did I hear that?
23 MS. ROBESON: Well, do you --
24 MR. KNOPF: No, I'm just saying pick a date
25 that's, you know, with mail.

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1 MS. ROBESON: Oh, there's mail on the 30th. So
2 the Villages of Bethesda letter will be here by the 16th.
3 The applicants, or the oppositions' response will be due on
4 the 23rd and then the applicant's, wait, the oppositions'
5 response on 5/23 and the applicant's response to the
6 oppositions' response would be 5/30. And the other thing I
7 need is the revised Development Plan with the 36 instead of
8 the 35.
9 MS. HARRIS: Yes. We can have that to you in two
10 days.
11 MS. ROBESON: Okay. Whenever, it's, the record is
12 going to be open until the 30th, so whenever -- as soon as
13 you can get that in.
14 MS. HARRIS: And can we also clarify, I am
15 assuming that the only things to be submitted to the record
16 are the Lockard (phonetic sp.) letter, opponents' response,
17 my reply and the --
18 MS. ROBESON: Yes, I'm not --
19 MS. HARRIS: -- Development Plan?
20 MS. ROBESON: And the transcript.
21 MS. HARRIS: Right.
22 MS. ROBESON: I'm not holding the record open for
23 additional testimony.
24 MS. HARRIS: Thank you.
25 MR. ABRAMS: Can we make sure that we get a copy

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1 on time of the Villages of Bethesda?
2 MS. HARRIS: I will make sure that, like I've done
3 thus far, I'll make sure that you get e-mailed it on the
4 day --
5 MR. ABRAMS: Okay.
6 MS. HARRIS: -- that we submit it.
7 MR. ABRAMS: Okay.
8 MS. ROBESON: All right. And with that, this
9 hearing is adjourned.
10 MS. HARRIS: Thank you.
11 MR. KNOPF: Thank you.
12 MR. ABRAMS: Thank you.
13 (Whereupon, at 4:41 p.m., the hearing was
14 concluded.)
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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Zoning and Administrative Hearings for Montgomery County in the matter of:

4831 WEST LANE, LLC
LOCAL MAP AMENDMENT G-954, DPA 13-01

By:

Tracy Hahn, Transcriber

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