OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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PETITION OF GLENWOOD GLEN ALDON,   :
LLC; GLENMONT APARTMENTS, LLC;     :  Case No. G-909

GLENBROOK, LLC                     :
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A hearing in the above-entitled matter was held on April 27, 2012, commencing at 9:37 a.m., at the Council Office Building, 100 Maryland Avenue, Room 200, Rockville, Maryland 20850 before:

Lynn A. Robeson, Hearing Examiner

A P P E A R A N C E S

ON BEHALF OF THE APPLICANT:

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WITNESSES: Page:

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A P P E A R A N C E S (Continued)

ALSO PRESENT: Page:

Jim Humphrey 96/177/232/284
Opposition
Chairman, Montgomery County Civic
Federation Land Use and Planning

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1 P R O C E E D I N G S
2 MS. ROBESON: We're on the record. Calling the
3 case of local map amendment application G-909, Glenwood Glen
4 Aldon, LLC; Glenmont Apartments, LLC; and Glenbrook, LLC, to
5 rezone from the R10/TDR zone to the TD 100 zone or
6 alternatively to the PD-88 zone, properties located at 4857,
7 4858, and 4900 Battery Lane in Bethesda consisting of 5.25
8 acres in the Seventh Election District.
9 My name is Lynn Robeson. I'm the hearing
10 examiner, and I'm going to be taking evidence and testimony
11 today. On behalf of the council, I'll write a report and
12 recommendation and the council will make the final decision
13 in the case.
14 Is there anyone that wants to speak in, that is
15 not represented by the applicant? I see all the heads turn
16 this way. Yes, sir. Can you come forward? Yes. Please.
17 And before we get further, let me just have all the parties
18 identify themselves for the record. Okay?
19 MS. REGELIN: Nancy Regelin, land use counsel for
20 the applicant from Shulman Rogers.
21 MS. ROBESON: Okay.
22 MR. FALCONE: Anthony Falcone. I'm the CEO, chief
23 executive officer, of Aldon Management, applicant.
24 MS. ROBESON: Okay.
25 MR. GILL: I'm John Gill. I'm the managing member

1 of the 4918, 4938 Battery Lane, LLC, which is the property
2 that is adjacent to building site B of the exchange.
3 MS. ROBESON: All right. All right. Just for
4 everyone's benefit, these proceedings are informal but they
5 do have certain formalities, and testimony's under oath and
6 subject to cross-examination. You have the ability to
7 question the applicants' witnesses on what they testify to,
8 and they have the ability to cross-examine you on your
9 testimony. So, I just want to make that clear. And the
10 order of presentation is you have opening, you're allowed to
11 have opening arguments. You don't have to but you may, and
12 then the applicant will put on their case. You'll have a
13 chance to testify and then the applicant can address any
14 concerns on rebuttal that you've raised and then you have
15 the opportunity for closing statements.
16 Are there any preliminary matters?
17 MS. REGELIN: Yes. I spoke to Mr. Gill before the
18 hearing started, and we have a number of witnesses, and I
19 have offered to him if, at any point in time, he needs to
20 leave that we will interrupt between witnesses and allow him
21 to insert if the hearing examiner concurs.
22 MS. ROBESON: All right. That's fine. Okay.
23 Anything else?
24 MS. REGELIN: No.
25 MS. ROBESON: Okay. Do you have an opening

1 statement?
2 MS. REGELIN: I do. I have a very brief one.
3 MS. ROBESON: Okay.
4 MS. REGELIN: All right. This is Nancy Regelin,
5 counsel for the applicant. What I want to do today is give
6 you basically three things, an overview, very briefly, of
7 the case, introduce our witnesses and experts, and then
8 highlight some special points of the case that are going to
9 be discussed in the testimony of our witnesses.
10 The first is an overview. To my right is a
11 neighborhood perspective, Battery Lane District and
12 Surrounds exhibit which will be introduced later by one of
13 the witnesses. But, what it shows is to give you an
14 overview of the Battery Lane District which runs from
15 Woodmont Avenue. This is Battery Lane as it runs down to
16 Old Georgetown Road on the edge of Bethesda CBD, and here
17 you see the beginnings of the NIH campus. You see Wisconsin
18 Avenue heading south towards D.C., and the rest of the CBD.
19 MS. ROBESON: So, south is at the top of that
20 drawing.
21 MS. REGELIN: Correct. South is at the top of the
22 drawing and north is heading towards Rockville.
23 MS. ROBESON: Okay.
24 MS. REGELIN: All right? And what you see is the
25 massing of existing buildings and the reason that we've done

1 that on an aerial diagram, sort of Google Earth, and pull up
2 the massing of the building is because we want you to be
3 able to see how the project sets within the massing of the
4 buildings, especially going down Battery Lane. A lot of
5 people drive through Bethesda and they know exactly where
6 Woodmont Avenue and Battery Lane is but not that many
7 actually drive down and actually pay attention to what's on
8 Battery Lane and to head down toward to where the Fire and
9 Rescue is down here at Old Georgetown Road. So, we wanted
10 to give you a sense of the variety of the heights and
11 massing and types of buildings that are down Battery Lane.
12 MS. ROBESON: Can you just point out for me which
13 is Mr. Gill's building?
14 MS. REGELIN: These two lines of buildings --
15 MS. ROBESON: Okay.
16 MS. REGELIN: -- are Mr. Gills. He's immediately
17 adjacent to the Bethesda Urban Park and then immediately
18 adjacent to our building A.
19 MS. ROBESON: Okay. Thank you.
20 MS. REGELIN: And then I've also put up here right
21 now, this is our illustrative site plan. It shows the
22 development plan so that quickly you can identify when we
23 talk about building A, B, I mean sorry, B and C, which is A
24 is to the north. B is to the west on Battery Lane on the
25 south side, and C is on the east of Battery Lane on the

1 south side. So that you can see how our convention is for
2 labeling and identifying the documents. In fact, what
3 you'll find is that when we're talking about the existing
4 property which has four apartment buildings on it, we will
5 be identifying those by address because there are four
6 buildings that we are going to, under the development plan,
7 redevelop into three buildings, and so existing buildings
8 are identified by their addresses and the proposed
9 development is A, B, and C. All right? To distinguish the
10 two.
11 So, as you indicated, this is an application under
12 the Planned Development zone. It is in the alternative for
13 PD-100 or in the alternative for PD-88. It is a floating
14 zone, and so there are purposes under the PD zone and
15 special criteria that you have to meet, and so actually,
16 when we get to our planner, he's going to laboriously go
17 through each of those.
18 The PD-100 is what we believe is appropriate zone
19 and density for this site. The majority of this site is
20 R10/TDR which is 100 dwelling units per acre, and so that's
21 the PD-100. We have provided as the alternative PD-88 which
22 is more closely approximates the master plan recommended
23 density for the property.
24 The master plan in this area is from 1994 and is
25 now 18 years and where master plans should be looked at

1 every 10 years, we're heading on 20 years, and so there are
2 a lot of changes that have happened since the '94 plan and
3 so we think the PD-100 is appropriate density. And in fact,
4 the planning technical staff found that both the PD-88 and
5 the PD-100 met all the criteria and was in substantial
6 conformity with the use and density under the master plan
7 and the Planning Board agreed with them, and in fact, they
8 supported both PD-88 and PD-100. But, on battle lands, they
9 recommend PD-100.
10 MS. ROBESON: You know, let me just -- I have a
11 couple of questions. So, I'll tell you early so maybe your
12 witnesses can address it.
13 MS. REGELIN: Can be prepared.
14 MS. ROBESON: And I'm sorry to interrupt on
15 opening statement --
16 MS. REGELIN: Yes.
17 MS. ROBESON: But, I find it easier and quicker to
18 get through the hearing. You know, the PD zone specifically
19 ties in master plan compliance and so, yes. The master plan
20 is old. But, part of the public interest is that, you know,
21 the requirement is that I find it consistent with the master
22 plan.
23 MS. REGELIN: Correct.
24 MS. ROBESON: The second issue, and I have not had
25 a huge amount of time to assimilate the Planning Board

1 recommendation. The second issue is the 20 year restriction
2 on the, do you say it as VAHU's or VAHU's?
3 MS. REGELIN: That's actually what they call it.
4 It's VAHU's at the Planning Board.
5 MS. ROBESON: The other part of the public
6 interest -- what we usually determined, the criteria for
7 public interest is consistency with adopted county plans and
8 policies, and that includes the growth factor. It includes
9 the master plan. It includes the, you know, legislatively
10 adopted policies. So, my question is how does the 20 year
11 restriction fit into that? All right? You don't have to
12 answer now. I'm just giving you a heads up for your
13 witnesses.
14 MS. REGELIN: Absolutely.
15 MS. ROBESON: And I thought that the additional
16 density that you get from the provision of -- you're getting
17 additional density. Why doesn't that compensate? I'm not
18 100 percent sure I agree with the Planning Board's analysis
19 that just because the initial public, the initial cost
20 investment is more than that equates over time to the public
21 interest. You see what I'm saying?
22 MS. REGELIN: No. I recognize that that was the
23 comment that was put into their -- because there was a
24 discussion --
25 MS. ROBESON: Other than that, I really didn't

1 understand, you know, their rational for why it benefits the
2 public interest. So, those are just, you know, some of my
3 issues after reviewing the file that jumped out at me. So,
4 if your witnesses could address that, I think that would be
5 very helpful to me.
6 MS. REGELIN: No problem.
7 MS. ROBESON: And I apologize for interrupting
8 your opening argument.
9 MS. REGELIN: That's all right. So, as I said,
10 the Planning Board supported both, PD-88 and PD-100. But,
11 they actually recommended PD-100 because they had to balance
12 some competing goals in the master plan.
13 One is the preservation and the increase of
14 affordable housing in Bethesda, and the second is the
15 agricultural preservation.
16 MS. ROBESON: Yes.
17 MS. REGELIN: And so when they balanced those, I
18 think they recognized that the Ag Preservation Program has
19 been extremely successful over the years having preserved
20 50,000 of the, you know, 90,000 or 70,000 acres out of the
21 90,000 of farm land that is up county. Whereas the
22 affordable housing component has not been that successful
23 and that the voluntary Workforce Housing Program was so
24 unsuccessful that when it was mandatory, the council
25 actually took action to make it voluntary because in the

1 CBDs, it was not cost effective to do it. So, the voluntary
2 Workforce Housing Program is voluntary, and so we are going
3 to talk a little bit about our voluntary affordable housing
4 unit which we created as a different, slightly different
5 entity to make a proffer for some affordable housing but in
6 a way that's feasible to actually do in Bethesda. So, we
7 will be discussing that.
8 I want to point out, too, that the PD-100 was
9 actually recommended also by the Department of Housing and
10 Community Affairs who is responsible for both the MPD
11 program and the Workforce Housing Program, and so they, in
12 fact, got behind the voluntary affordable housing units in
13 this project and supported the PD-100.
14 MS. ROBESON: Yes. I saw that.
15 MS. REGELIN: All right. So, this application is
16 in the nature of a special exception in that while it is a
17 floating zone and that it can go anywhere in which it fits
18 the criteria, there is another layer in that a development
19 plan is required with binding elements so the council can
20 actually evaluate a specific plan at the time that they're
21 doing the rezoning. So, we will be going through our
22 development plan, and so the PD zone requires both a
23 development plan at the time of zoning as well as going
24 through site plan and preliminary plan of subdivision.
25 Our witnesses today are representative of the

1 applicant, Anthony Falcone, who is the CEO of Aldon
2 Management who is their management company.
3 MS. ROBESON: For all the properties?
4 MS. REGELIN: Yes. For all the properties, and
5 we'll discuss the fact that all of these properties are
6 owned by a private family in their various owner entities,
7 and Aldon Management is their privately owned management
8 company. So, it's all a family or entity company,
9 interrelated in any case.
10 We have Doug Wrenn from Rodgers Consulting. He's
11 here as a planner. As I said, he has the lion's share of
12 going through the very long purpose and regulations and
13 standards of the PD zone. So, please bear with us and then
14 Frank Bossong who is the civil engineer from Rodgers who
15 then will come back after we do Doug. That gives you a
16 broad over. Frank will go through the technical details of
17 the identification of the property, the square footages, the
18 dedications, all those kinds of things we'll put onto the
19 record, and then I'm going to bring in David Kitchens from
20 Cooper Carry who's an architect because one of the elements
21 of the PD zone is compatibility, and so we're going to have
22 him come in and discuss that. And then --
23 MS. ROBESON: Now, is he going to address the step
24 back or the issue Mr. Gill brought up about?
25 MS. REGELIN: Yes. Mr. Kitchens is going to

1 address both the upper level step back from the sector plans
2 as well as Mr. Gills adjoining property. Okay?
3 And then finally, we have Ed Papazian who's our
4 traffic consultant.
5 MS. ROBESON: I see you back there.
6 MS. REGELIN: And actually, in the staff report,
7 surprisingly, it was listed as a secondary issue and there's
8 quite a bit of discussion. First, we have his entire
9 traffic report in the record. We have a memo from Park and
10 Planning's transportation staff and then the staff report
11 also goes into the traffic report. So, when we get to that
12 point, we will be asking you if we just want to put on the
13 record his findings rather than going through a duplication
14 of everything that's already in the record through his
15 report. The staff, transportation staff memo and then the
16 planning staff report.
17 MS. ROBESON: Okay.
18 MS. REGELIN: So, we'll address that at that point
19 in time because quite honestly, through all of these, the
20 process, traffic has not been an issue. The conclusions
21 basically are that it satisfies all of the current
22 standards.
23 All right. So, special -- oh. And assisting me
24 today is David Freishstat from Shulman Rodgers.
25 MS. ROBESON: I see him back there, too.

1 MR. FREISHSTAT: I'm the scripter.
2 MS. REGELIN: And so, and also Jennifer Russell
3 from Rodgers Consulting is here. Special points of
4 interest. Obviously we talked about we have alternate
5 applications. So, wherever a expert is giving an opinion, I
6 would like to say up front he's giving that opinion with
7 respect to both development plans unless he makes a specific
8 point that it's as to one or the other. And that there are
9 competing goals under the sector plans that are applicable.
10 And that this case is a lot about balancing those competing
11 goals. And then there is TDRs at issue in this case. The
12 PD zone does not require TDRs but there is a sector plan as
13 notation that these are receiving areas and some part of the
14 problem is R10/TDR and so we will actually be discussing how
15 we calculated TDRs and how those will balance for the
16 provision of them in order to give certain bonuses or to
17 balance them against certain additional affordable housing.
18 So, that's a critical piece that's not in most cases.
19 MS. ROBESON: Right.
20 MS. REGELIN: But, in this case it is. And then
21 finally, voluntary affordable housing units. We're going to
22 explain what those are, why they were created, what their
23 basis is, and the support for those, and so those are the
24 main unusual special, you know, items that are in this case
25 that probably aren't in most cases.

1 MS. ROBESON: I also have a question. The zoning
2 history was not in the staff report. But, I was speaking
3 with the other hearing examiner, and he mentioned our notice
4 says that it's being rezoned from the R10/TDR zone but is
5 this the same property that's already been rezoned?
6 MS. REGELIN: No. This property has multiple
7 zones and that's what was on the original application is
8 R10, R10/TDR. Those are the two zones that are on the five
9 acres.
10 MS. ROBESON: Not PD 75?
11 MS. REGELIN: In the sector plan, building A on
12 the north side is recommended for PD 75 and immediately
13 adjacent to it, between building A and Woodmont Avenue, is
14 Woodmont View. Woodmont View and building A is identified
15 as site 1 in the sector plan and the part that is owned by
16 Aldon is noted as the Aldon property and the part that is
17 next to Woodmont Avenue is noted as the Trunell property,
18 and it recommends in the sector plan that they be assembled
19 and rezoned to PD 75, and, in fact, they are separately
20 owned and so Mr. Litnick who owned Woodmont View at the
21 time, moved that through the PD 75 process and has been
22 rezoned to PD 75.
23 MS. ROBESON: Right.
24 MS. REGELIN: In fact, the hearing examiner's
25 office --

1 MS. ROBESON: Is that the strip between --
2 MS. REGELIN: Between Woodmont Avenue --
3 MS. ROBESON: -- the building A and Woodmont
4 Avenue?
5 MS. REGELIN: Right.
6 MS. ROBESON: Okay.
7 MS. REGELIN: So, for example, if you were driving
8 up there, the first thing you would see is the Children's
9 Inn.
10 MS. ROBESON: Right.
11 MS. REGELIN: That was the first house that was,
12 townhouse, that was built on that property. Since then,
13 that application has been in several times and has modified
14 their --
15 MS. ROBESON: Right.
16 MS. REGELIN: -- development plan. And currently,
17 has a nine story, 90 foot multi-family building approved for
18 the remainder of the site with a restaurant on the first
19 floor.
20 MS. ROBESON: Okay. I just wanted to make sure
21 that -- usually, they put the zoning history in the staff
22 report. But, it wasn't in there. So, I just wanted to make
23 sure we weren't also talking about this property in the
24 zoning.
25 MS. REGELIN: That one has moved forward through

1 the process already.
2 MS. ROBESON: Okay.
3 MS. REGELIN: And now it's our turn.
4 MS. ROBESON: Okay.
5 MS. REGELIN: All right? And then finally, we
6 would, we're going to ask at the end that the record be kept
7 open. The Planning Board letter noted that although they
8 had completed the work and had a memo on the forest
9 conservation plan, they didn't notice it as part of their
10 notice and therefore, they had to notice that and could not
11 address it at our April --
12 MS. ROBESON: 19th.
13 MS. REGELIN: -- 19th meeting last week. And so,
14 it is scheduled for May 3rd. So, they will have their
15 hearing about the forest conservation plan on May 3rd and we
16 ask that you keep the record open --
17 MS. ROBESON: All right.
18 MS. REGELIN: -- so that we could get the results
19 of that. And then just one point that we'd ask for
20 instruction from the hearing examiner. At the time that we
21 filed the application, the hearing examiner accepted an
22 outline of our perpetual maintenance that would,
23 declarations that would --
24 MS. ROBESON: Right.
25 MS. REGELIN: -- go on for each of these

1 properties. And if this hearing examiner, if that's not
2 acceptable and you want actual declarations of covenants
3 drafted, then we would ask that you leave the record open
4 and we'll take those terms and we'll actually draft
5 covenants.
6 MS. ROBESON: Okay. Typically, we do have the
7 actual covenants in the record. But, let's proceed and
8 we'll talk about that at the end of the hearing.
9 MS. REGELIN: And that would be find if that's
10 what we wanted to have in the record.
11 MS. ROBESON: Right.
12 MS. REGELIN: That's not a problem because they
13 would be, there are very limited common areas and quasi-
14 public --
15 MS. ROBESON: Well, that's why I prefer to hear
16 the record first before we make the determination of whether
17 or not to do that.
18 MS. REGELIN: Okay. Because, what's you're going
19 to hear is this property's been privately owned for 60 years
20 and intends to be privately for the next 60 years. They're
21 rental properties, and so you have a private land owner as a
22 rental.
23 MS. ROBESON: I understand.
24 MS. REGELIN: Instead of what would be normally
25 anticipated for a condominium or a homeowner's association

1 that you would have, you know, common areas.
2 MS. ROBESON: Okay. Now, I have one question.
3 Mr. Gill, how long are you available to stay?
4 MR. GILL: I don't know. Is this going to be an
5 all-day affair?
6 MS. ROBESON: Possibly.
7 MR. GILL: I do have to leave sort of close to
8 lunch time.
9 MS. ROBESON: Well, I guess what I'm wondering,
10 Ms. Regelin, no. Not to take his testimony. But, if you
11 could start, I wondered if it's better to start your
12 presentation with the witness that's going to address his
13 concerns so that he has the opportunity to respond. And I
14 know that's out of order of your presentation but perhaps
15 that would be a better way to go so he can leave.
16 MS. REGELIN: Well, I know one of the things that
17 Mr. Gill said to me was that he wanted to get more
18 information about our application. Perhaps I put on Doug
19 Wrenn, our planner, who will give the overview. Because, he
20 will also be discussing compatibility.
21 MS. ROBESON: Okay.
22 MS. REGELIN: And then if I need to move Mr.
23 Kitchens --
24 MS. ROBESON: That's what I was wondering. Okay.
25 MS. REGELIN: And then we can do that and that

1 way, then, we can get Mr. Gill in and out.
2 MS. ROBESON: Let's do that.
3 MR. GILL: Thank you.
4 MS. REGELIN: Okay? All right. So, if I may call
5 my first witness if there is no other --
6 MS. ROBESON: Absolutely.
7 MS. REGELIN: Great. All right. I call Anthony
8 Falcone.
9 MR. FALCONE: Did you plea the affidavit?
10 MS. REGELIN: No. I'm about to do that in a
11 second. So --
12 MR. FALCONE: Okay.
13 MS. ROBESON: Mr. Falcone, can you please raise
14 your right hand. Do you solemnly affirm under penalties of
15 perjury that the statements you're about to make are the
16 truth, the whole truth, and nothing but the truth?
17 MR. FALCONE: I do.
18 MS. ROBESON: Thank you.
19 MS. REGELIN: Mr. Falcone, would you please state
20 your name, work address, and the company by whom you are
21 employed and your position there?
22 MR. FALCONE: Anthony Falcone, Chief Executive
23 Officer of Aldon Management, 7900 Wisconsin Avenue,
24 Bethesda, Maryland 20814.
25 MS. REGELIN: And what is the relationship between

1 Aldon Management and the applicants?
2 MR. FALCONE: I'm here as the authorized
3 representative of the applicants. Aldon Management is the
4 management company of the Brown family from the various
5 owner entities who are the applicant.
6 MS. REGELIN: And did you cause the official
7 notice signs regarding the application to be posted on the
8 property and have you caused them to be maintained there to
9 the present?
10 MR. FALCONE: Yes. We have signed the affidavit
11 of posting to that effect.
12 MS. ROBESON: And it's what is marked as Exhibit
13 41?
14 MS. REGELIN: That's just handed in as 41, and we
15 would move that admission.
16 (Exhibit No. 41 was marked for
17 identification and moved into
18 the record.)
19 MS. ROBESON: Okay. Mr. Gill, you get to object
20 to that the sign has not been there or they're lying.
21 MR. GILL: Let me just say that I came here to say
22 my peace.
23 MS. ROBESON: Oh.
24 MR. GILL: And I didn't think I was actually going
25 to be some quasi --

1 MS. REGELIN: You're not going to be an attorney
2 today?.
3 MR. GILL: -- adversarial relationship here.
4 MS. ROBESON: You don't want to be a Perry Mason?
5 MR. GILL: I object. No.
6 MS. ROBESON: Actually, I just dated myself, I
7 guess, that I know Perry Mason. That's all right.
8 MR. GILL: It is highly unlikely that I'm going to
9 object to anything.
10 MS. ROBESON: All right. Well, you just yell if
11 you do. Okay? And we'll proceed that you don't.
12 MR. GILL: Thanks.
13 MS. REGELIN: All right. Can you provide us with
14 a brief historical context of the relationship between the
15 Brown family, who are the applicants, basically, and the
16 subject property?
17 MR. FALCONE: Just to preface, I'm reading from
18 notes just because I don't come up here very often and do
19 this kind of thing. Four apartment buildings which make up
20 the property were originally owned by Alvin and Donald
21 Brown, and have been owned and managed by the surviving
22 Brown family members through a management company and other
23 entities to the current time. These four apartment
24 buildings are a small part of all of the apartments the
25 family owns in Bethesda. In all, over 900 units in

1 Bethesda. There are seven apartment buildings owned by the
2 Brown family on Battery Lane, just on Battery Lane. Only
3 the four closest to Woodmont Avenue are the subject of this
4 rezoning application.
5 MS. REGELIN: All right. And why are these four
6 apartment buildings the subject of a rezoning application?
7 MR. FALCONE: These four buildings are the oldest
8 in the portfolio at 50 to 60 years old, having been
9 constructed in the 50s and through the early 60s. While we
10 keep them well maintained, so much of their physical plans
11 is getting to the end of its life cycle. The buildings are
12 very energy inefficient so that the buildings will require
13 either a major down to the structure renovation or a
14 redevelopment.
15 The remainder of Battery Lane buildings owned by
16 the family are not as old but the most recent having been
17 built in the 70s, and each of those have been renovated and
18 are not proposed for redevelopment. These four buildings
19 are in an exceptional location immediately adjacent to a
20 surge of jobs because of BRAC at NIH and Bethesda Naval,
21 walkable to both the Bethesda Medical and the Bethesda CBD
22 Metro stations and next to the Woodmont Triangle and the
23 Bethesda CBD. The applicant's need to plan for the next 50
24 years for these buildings and it makes sense that this is
25 the appropriate location for more housing. There are only

1 260 total existing units in these four garden apartment
2 buildings.
3 The applicants participated in the Woodmont
4 Triangle sector plan amendment but the council decided that
5 the Battery Lane District should have its own focused
6 neighborhood plan. The Battery Lane District was on the
7 master plan work program for Park and Planning after 2006
8 but kept getting moved back in priority until it finally was
9 delayed so long that it no longer was shown on the work
10 program. At that point, community planning staff at Park
11 and Planning suggested that we file for a rezoning since
12 there was no master plan or sector plan amendment in the
13 foreseeable future.
14 MS. REGELIN: So, are you familiar with the
15 labeling of the Battery Lane District as an affordable
16 housing resource area in the sector plans?
17 MR. FALCONE: Yes. We are aware that our
18 apartments are labeled affordable housing in the sector
19 plan. That is because the applicant has quietly and
20 consistently for over 50 years voluntarily endeavored to
21 have the most reasonable rents in the best location in
22 Bethesda. But, to be clear, reasonable rents don't mean
23 MPDU level rents. It just means reasonable as compared to
24 the rest of Bethesda.
25 MS. ROBESON: What are your, in a range of rents,

1 are you in the, it is VAHU or VAHU?
2 MS. REGELIN: VAHU.
3 MS. ROBESON: VAHU.
4 MS. REGELIN: Yahoo. VAHU.
5 MS. ROBESON: I'll get this. That's, okay. In
6 the range of rents, I mean, where are you rents and are they
7 within the VAHU range of rents or --
8 MS. REGELIN: You're slightly above.
9 MR. FALCONE: Slightly above.
10 MS. ROBESON: Slightly above the VAHU rents. And
11 so you have 260 units now, if I'm reading correctly.
12 MS. REGELIN: Yes.
13 MR. FALCONE: It's four. In the four buildings.
14 MS. ROBESON: In the four buildings at slightly
15 above VAHU rents. Okay. And what is that range of rents?
16 MS. REGELIN: Yes. I actually brought them.
17 We'll look for those.
18 MS. ROBESON: Okay.
19 MS. REGELIN: He gave me a schedule, and we'll --
20 MS. ROBESON: Okay. That's fine.
21 MS. REGELIN: -- bring it out before he ends his
22 testimony.
23 MR. FALCONE: This strategy has appeared to keep
24 the occupancy full with the type of apartments that we have.
25 MS. ROBESON: Right.

1 MS. REGELIN: So, are the apartments on the
2 subject property all privately owned, market rate units?
3 MR. FALCONE: Yes. They're privately owned by the
4 applicant. No restrictions on the rental rates. The
5 applicant can change the rental rates at any time.
6 MS. REGELIN: And are there any MPDUs, which are
7 moderately priced dwelling units, or any other type of
8 regulated units on the subject property?
9 MR. FALCONE: No. There are no regulated units on
10 our property. As a matter of fact, there are no regulated
11 units on Battery Lane. The applicants' buildings which are
12 the subject of this rezoning and the others on the remainder
13 of Battery Lane, were built prior to the adoption of either
14 the MPDU or Workforce Housing.
15 MS. REGELIN: So, does the applicant restrict
16 their apartments on the subject property to tenants that are
17 at or below a certain income level?
18 MR. FALCONE: No. That's the disconnect between
19 being labeled an affordable housing resource and whether
20 those units are leased to the incomes and populations that
21 are regulated affordable housing which is limited, too.
22 These are units are managed by a private landlord and
23 generally the most credit worth applicants are accepted as
24 tenants. For example, many of our apartments are rented to
25 doctors and scientists from NIH because of its close

1 proximity, and so they can walk to work. Credit worthiness
2 of prospective tenants, not low income, is what the private
3 landlord considers. The reality is that higher income
4 tenants are attracted to these buildings and are willing to
5 accept the age of these buildings and the lack of the
6 amenities that one finds in new developments like pools,
7 party rooms, stainless steel kitchens, and all the things we
8 don't have in exchange for an exceptional location in
9 Bethesda.
10 MS. REGELIN: So, what is it that the applicants
11 want to accomplish with this application?
12 MR. FALCONE: The applicants want to get the
13 property rezoned and a development plan approved which is
14 feasible to construct in places over time. We evaluated the
15 cost to redevelop and balanced with the applicants' strategy
16 to continue to have the most reasonable rents in the best
17 location in Bethesda.
18 As a result, we propose two development plans.
19 PD-100 and for PD-88. We balanced the cost to purchase to
20 TDR's with providing regulated affordable housing, regulated
21 affordable housing. The PD-88 development plan includes 15
22 percent MPDUs and the purchase of TDRs. The PD-100, which
23 has slightly more density, the development plan includes 15
24 percent MPDUs, slightly less TDRs that includes 10 voluntary
25 affordable housing units, VAHU's, regulated for 20 years at

1 Workforce income levels. The additional market units and
2 the slightly fewer TDRs under PD-100 to make it possible to
3 offer the only voluntary affordable housing units for
4 Workforce levels on this side of Bethesda.
5 MS. REGELIN: Why a 20 year covenant period for
6 the voluntary Workforce housing units?
7 MR. FALCONE: It's the longest covenant period
8 that makes it financially feasible for this project. Under
9 a standard Workforce Housing Program, because our units are
10 rental, the covenant period would have been 99 years.
11 Considering that we are now working on redeveloping these
12 buildings after 60 years, we do not understand how a 99 year
13 covenant could be feasible, and either could any of our
14 lenders.
15 So, we created the voluntary affordable housing
16 unit which has the Workforce income eligibility but is for a
17 20 year covenant period. The voluntary affordable housing
18 units were proffered because they fit with who the Brown
19 family is and what our values are and what we want to give
20 back to the community. But, in the end, the project has to
21 be economically feasible and the binding elements of the
22 alternative development plan that reflect that.
23 MS. ROBESON: Well, let me ask you something about
24 the economic feasibility. I guess what you're doing is
25 getting, you're getting a short term, I mean, you're getting

1 a short term financial difficulty but a long term gain, and
2 so I don't know what you're internal rate of return on the
3 project is but why doesn't the additional density, I mean,
4 what you're doing is putting a temporary restriction that's
5 going to cost you money in the short term but in the long
6 term, you're going to have 10 probably very nice rental
7 market unit rates, and so I guess my question is how does
8 that equate?
9 MR. FALCONE: In just pure dollars and cents, the
10 average cots to put a unit in place is somewhere between
11 $300,000 and $400,000. If you take that value and you look
12 at it over the 20 year period and look at the what would
13 then have to be redevelopment on that unit because it
14 certainly could not stay in place for that long without any
15 type of additional --
16 MS. ROBESON: But, the additional market rate
17 units you get with PD-100? It seems to me, okay. The
18 additional market rate units you get with the PD-100. That
19 doesn't off set -- I guess the issue I'm having is the
20 Planning Board looked at up front costs but having done tax
21 increment financing, I have -- I don't think the intent of
22 the program was to provide a long term windfall for
23 developers because you are getting a) additional market rate
24 units. Correct?
25 MR. FALCONE: That's correct.

1 MS. ROBESON: So, long term, you very well may
2 make more money with a 20 year restriction versus a 99 year
3 restriction.
4 MR. FALCONE: If I may?
5 MS. ROBESON: I'm just asking.
6 MR. FALCONE: The philosophy --
7 MS. ROBESON: You're bringing it up as an economic
8 justification and it seems -- I thought the intent of the
9 program was that the additional bonus units were there in
10 part to cover the cost of the VAHUs.
11 MR. FALCONE: The philosophy of the family is to
12 continue with the most reasonable rents in Bethesda. That
13 makes a project of this size and type, depending on the
14 height and the type of building, without the amenities that
15 would attract a much higher market rent, very much, you
16 know, makes it a very risky opportunity for the family. The
17 family right now has adjoined properties that have been in
18 place for many years and the cash flow that comes with it
19 to --
20 MS. ROBESON: Without debt.
21 MR. FALCONE: There is debt but it's not
22 significant debt. To finance a property of this size, any
23 one of these categories, A, B, or C, would -- the rents that
24 we would like to continue which would be reasonable rents --
25 MS. ROBESON: But, you're not going to restrict

1 the other market. You're not going to restrict the market
2 rate rents.
3 MR. FALCONE: But, without amenities, competitors
4 -- numerous units coming into Bethesda with all facets of
5 amenities which will then have market rates that will be
6 very attractive. As a result of those amenities, we don't
7 anticipate golden units of that type. So, that is going to
8 restrict our market ability at those units.
9 MS. ROBESON: I see. So, what kind of amenities
10 are you not providing in comparison with other units, other
11 developments?
12 MR. FALCONE: Probably significant upgrades,
13 significant common rental amenities, the ability, probably
14 the ability to attract services at the front desk, just a
15 whole array of benefits. It's simply a living unit. It's
16 not sort of a whole holistic unit where you kind of live and
17 breathe, all your dry cleaning, all your things of that
18 nature. And upgrades? I don't anticipate many upgrades to
19 the units as well.
20 MS. REGELIN: So, is it the family's philosophy to
21 do party rooms and electronic cafes and --
22 MR. FALCONE: Workout rooms, exercise rooms not
23 under the current plan?
24 MS. REGELIN: And that's in part to --
25 MS. ROBESON: Where do you anticipate your market

1 rents to be, market rate unit rents to be in comparison with
2 other rental developments in Bethesda?
3 MS. REGELIN: Maybe if I can rephrase that? Like
4 how, instead of where do you anticipate them to be, where is
5 it that you're targeting them to be given the family's
6 philosophy and business strategy?
7 MR. FALCONE: We haven't done a full cash flow
8 analysis at this point because we're still trying to
9 understand how this application will work its way through.
10 But, in effect, it has to produce a certain amount of return
11 to the family. That will dictate the rents.
12 MS. ROBESON: I understand that. But, you're
13 telling me that you can't afford to do more than 20 years.
14 So, and what I'm asking you is what's your justification for
15 that?
16 MS. REGELIN: So, if I can ask a question. If
17 there were a Workforce Housing unit that was restricted for
18 99 years, how do you anticipate a lender would actually
19 value that in the original construction or any refinancing
20 that might happen during the 99 years?
21 MR. FALCONE: It would put pressure on the cost of
22 the entire building because they put no value on it at all,
23 on that unit. Unless it was designed as a tax credit
24 opportunity.
25 MS. ROBESON: But, the bonus density doesn't --

1 you're getting additional -- you're offering 10 VAHUs, so
2 from a lender's perspective, right? You're losing 10 units.
3 But, you're getting 50 market rate units. So, I guess my
4 question is how does that equate?
5 MS. REGELIN: Well, I guess if I can ask the
6 question which is the --
7 MS. ROBESON: Well, let me ask the question. So,
8 what I'm saying to you, so can you answer that question?
9 Because you're getting an additional 50 market rates -- say,
10 that lender counts your VAHUs at zero. You're getting an
11 additional 50 market rate units or so, I think that's what
12 it is.
13 MR. FALCONE: But, you're looking at, if I may?
14 But, you're looking at 50 additional units as a revenue of
15 enhancer as opposed to what could be a very difficult cost
16 structure in terms of how we have to build these units.
17 Buildings have certain cost elements to them and as soon as
18 you start adding density to them, it adds a whole new
19 component of costs, which drives a whole new cash flow
20 stream. So, it's, I guess, I'm having difficulty
21 understanding why what seems to be the 50 that you're
22 looking at versus the 20 that appears we're receiving as --
23 MS. ROBESON: Well, what I'm saying is that you're
24 saying you can't afford to restrict the units for the full
25 99 years. Okay? That's what your justification is for only

1 offering 20 years. But, the way VAHUs were supposed to work
2 is or the way your application is working is you're saying
3 to offset the cost of those VAHUs, I need additional
4 density, and my question is, why doesn't --
5 MS. REGELIN: Go ahead. I'm sorry.
6 MS. ROBESON: No. He can answer.
7 MR. FALCONE: The additional density comes -- the
8 VAHUs don't provide --
9 MS. ROBESON: Why can't you do PD-88 with 10 VAHUs
10 and fewer TDRs? Ten 99 year VAHUs and fewer TDR's. Because
11 what I have to do is say why this is in the public interest,
12 and the public interest is adopted county plans and
13 policies. Now, what you're calling a VAHU isn't really a
14 VAHU because it's only restricted for 20 years.
15 MS. REGELIN: No. Actually, if we can make it
16 clear and we'll actually have Doug Wrenn also discuss this
17 as well, which is the voluntary affordable housing unit is a
18 proffer over and above everything else. Mr. Wrenn is going
19 to discuss how PD-100 actually is in substantial conformance
20 with the master plan as far as density. So, it isn't
21 working like an MPDU or a Workforce Housing unit where
22 you're using that to trigger a density bonus.
23 MS. ROBESON: But that's your justification. Why
24 don't I just approve PD-88?
25 MS. REGELIN: No. We're saying that in fact the

1 fact that there's -- within the additional density, and we
2 actually have an exhibit that we'll hand to you so it'll be
3 part of the record is that of the 48 additional units which
4 is the delta between PD-88 and PD-100. So, 48 units.
5 Fifteen percent of those are MPDUs because we've committed
6 to MPDUs at 15 percent.
7 MS. ROBESON: Right.
8 MS. REGELIN: And then 10 of them are voluntary
9 affordable housing units which have just been proffered as,
10 because this family believes in it and wanted to proffer
11 something that was on the Workforce Housing level. And so
12 out of the additional 48, 35 percent of those are regulated
13 units. So, there is a much smaller component that are
14 market rate units and the testimony will still be that
15 that's part of the market rate.
16 MS. ROBESON: Why, I thought the staff report said
17 only seven percent?
18 MS. REGELIN: I'm sorry?
19 MS. ROBESON: It's only a seven percent. The
20 staff report recommended the lower density.
21 MS. REGELIN: Yes.
22 MS. ROBESON: Because it was more consistent, and
23 my questions are getting at why can't you do the lower
24 density and the VAHUs?
25 MS. REGELIN: Well, the staff report indicates

1 that the technical staff supported PD-88 not because the
2 density was closer to master plan, you know, to the master
3 plan.
4 MS. ROBESON: That's what I read.
5 MS. REGELIN: No. They actually indicated that
6 they felt the TDR requirement was of a stronger, to balance
7 them, that the TDR requirement was higher compared to a 20
8 year voluntary affordable housing unit and the additional,
9 the greater public benefit that would be gained from that.
10 In fact, the Planning Board said the opposite. They said --
11 MS. ROBESON: I understand that. Why don't we
12 just let him finish. But, I guess I'm saying that
13 underneath this is that you're saying I'm only going to do
14 VAHUs if I get the 100 density. Right?
15 MS. REGELIN: Correct.
16 MS. ROBESON: And I'm assuming that that's because
17 you need the extra density. I have an issue with whether
18 your VAHUs are really VAHUs under the program.
19 MS. REGELIN: They are not under the program.
20 MS. ROBESON: No. I know they're not under the --
21 MS. REGELIN: So, let's make it clear.
22 MS. ROBESON: Well, then we shouldn't call them
23 VAHUs.
24 MS. REGELIN: No. The program is Workforce
25 Housing. So, that is why these are called voluntary

1 affordable housing units. They are a completely different
2 animal.
3 MS. ROBESON: But that's legislatively defined at
4 99 years.
5 MS. REGELIN: No. A Workforce Housing unit is
6 legislatively defined at 99 years and at certain income
7 levels. We are not doing the voluntary Workforce Housing
8 Program.
9 MS. ROBESON: Then the question still remains why
10 should I give PD-100?
11 MS. REGELIN: Because PD-100, as there'll be
12 testimony, is in substantial conformance with the use and
13 density of the master plan.
14 MS. ROBESON: Okay. All right.
15 MS. REGELIN: And actually, there is a greater
16 benefit that is being provided because this applicant has
17 actually voluntarily agreed to provide some regulated
18 affordable housing but within constraints that they've
19 proffered.
20 MS. ROBESON: Okay. All right. This is getting
21 into a closing argument. But, I still have the question. I
22 mean, to me, the underlying issue still is if you give me
23 the PD-100, I'll give you the whatever you call the
24 affordable units which is, according to Mr. Falcone, a
25 financial consideration.

1 MS. REGELIN: No. The limitation of 20 years is a
2 financial --
3 MS. ROBESON: I don't want to argue now. Well,
4 the limitation of 20 years. Yes. Okay. So, that is my
5 question, and my question remains but you have rebuttal and
6 we can hear the rest of the issues. Sorry about that.
7 MS. REGELIN: All right. So, let's see. Have you
8 discussed the voluntary affordable housing units with the
9 Department of Housing and Community Affairs?
10 MR. FALCONE: Yes. We received letter from, a
11 letter from DCDHCA supporting. There was the PD-100 and the
12 PD-88 development plans stating a preference for the PD-100
13 application with the voluntary affordable housing units as
14 proposed for 20 years.
15 MS. REGELIN: Okay. So, we are marking a copy of
16 the letter from DHCA. They actually wrote it to the
17 Planning Board.
18 MS. ROBESON: I thought it was in the staff report
19 already.
20 MS. REGELIN: It was.
21 MS. ROBESON: So, can we go with what the -- well,
22 I'll add it in. That's fine.
23 MR. FREISHSTAT: 43?
24 MS. ROBESON: Yes. No.
25 MS. REGELIN: 42?

1 MS. ROBESON: 42. Okay. So, 42 will be letter
2 dated 3-30-12 from Richard Nelson.
3 MS. ROBESON: And just while we're -- a
4 housekeeping matter. There's a letter from Mr. Gill that
5 will be Exhibit 40.
6 MS. REGELIN: Yes.
7 (Exhibit Nos. 40 and 42 were marked for identification.)
8 MS. REGELIN: All right. Have you received any
9 letters from any other neighbors or community members?
10 MR. FALCONE: Yes. We've received a letter of
11 support from the Children's Inn which owns the property
12 immediately adjacent to 4857. We've kept all the other
13 surrounding property owners informed. Presentations were
14 made to the Bethesda/Chevy Chase chamber and the Woodmont
15 Triangle Action Committee which is made up of both
16 residential and commercial interests in the Woodmont
17 Triangle. In both cases, the project was well received.
18 Mr. Gill, who is here today, has conveyed to us his specific
19 concerns but I will let him articulate that himself.
20 In addition, over the last five years, we have
21 made five presentations to our existing tenants about the
22 rezoning application, and it has been well received. We
23 have received no letters of oppositions from our tenants.
24 MS. REGELIN: Okay. Do you have plans for dealing
25 with the tenants that are affected by this, any

1 redevelopment under this plan?
2 MR. FALCONE: Yes. First and foremost, we have
3 promised to keep them informed throughout the process. To
4 that effect, we have a link on our Aldon Management website
5 and copies in our management offices where I can tenants can
6 look at everything we have filed in this case as well
7 notices and articles about the rezoning. We promised we
8 would continue this through the preliminary plan and
9 subdivision site plan and permit process so they would know
10 where any particular affected building was in the process
11 and could gauge how many more years of process before the
12 building was redeveloped. At a minimum, we have agreed to
13 give tenants six months' notice of termination.
14 Secondly, we will work with each of our tenants in
15 buildings slated for redevelopment to relocate to other
16 Alson units on a priority basis. We are in the unique
17 position of owning so many other units both on Battery Lane
18 and throughout Bethesda that in the normal turnover of
19 units, we will be able to handle the relocation of affected
20 tenants.
21 Thirdly, we have been advised by DHCA that
22 regulated units that are built on, that are rental have
23 waiting lists that are controlled by the landlord and that
24 priority can be given to income eligible tenants in our
25 affected buildings. We will give priority to tenants from

1 impacted buildings based on priority to residents in a
2 building slated for demolition and then by the number of
3 years as one of our tenants.
4 MS. REGELIN: And if I can ask a follow-up
5 question which is was consideration of existing tenants part
6 of the thought process of coming up with these voluntary
7 affordable housing units?
8 MR. FALCONE: Yes.
9 MS. REGELIN: Okay. And how do you anticipate
10 using those for some of your existing tenants?
11 MR. FALCONE: Just by the process that's regulated
12 for them, to put them in place.
13 MS. REGELIN: Okay. And is that because the
14 income levels are different than the MPDUs?
15 MR. FALCONE: Slightly.
16 MS. REGELIN: Okay. All right. Is there a
17 phasing plan for the proposed development?
18 MR. FALCONE: We do not expect to redevelop all
19 four buildings at once. These are operating apartment
20 buildings occupied by residents. We do not have a binding
21 phasing in plan but anticipate that it will be done most
22 likely in three phases. The most likely building to
23 redevelop first because it is the oldest and smallest is
24 4857.
25 MS. REGELIN: Which is building A.

1 MR. FALCONE: Building A --
2 MS. ROBESON: Okay.
3 MR. FALCONE: -- on the development plan and then
4 most likely building --
5 MR. FREISHSTAT: Can I mark this first before he
6 continues.
7 MS. ROBESON: Yes. Let's get it in as an exhibit.
8 I have that as 43. Can you describe what that is?
9 MR. FREISHSTAT: It's different from what the --
10 MS. REGELIN: It's called the illustrative plan.
11 It's not in the record. The illustrative plan of the
12 development plan.
13 MR. FREISHSTAT: So, it'll be 44?
14 MS. REGELIN: 43.
15 MR. FREISHSTAT: 43.
16 (Exhibit No. 43 was marked for identification.)
17 MR. FALCONE: Then most likely building B
18 MS. ROBESON: Okay.
19 MR. FALCONE: Then building C. How the
20 redevelopment phases will be dependent upon many factors
21 including physical condition of each of the buildings, costs
22 and feasibility of the proposed building.
23 MS. REGELIN: So, the PD zone requires that open
24 space, green space amenities, be maintained under a recorded
25 declaration, and are you familiar with the outline of the

1 terms of the declaration for maintenance submitted in this
2 case?
3 MR. FALCONE: Yes. Each of the entities which own
4 the proposed site of each of the three new buildings will
5 record a covenant for perpetual maintenance on the submitted
6 terms.
7 MS. REGELIN: Okay. I have no further questions
8 for this witness at this time.
9 MS. ROBESON: Okay. Mr. Gill, do you want to ask
10 any questions?
11 MR. GILL: I have no questions.
12 MS. ROBESON: Okay. Thank you, Mr. Falcone.
13 MR. FALCONE: Thank you.
14 MS. ROBESON: I'm sorry to grill you.
15 MR. FALCONE: No. That's okay.
16 MS. REGELIN: All right. I'd like to call Doug
17 Wrenn.
18 MS. ROBESON: Mr. Wrenn, please raise your right
19 hand. Do you solemnly affirm under penalties of perjury
20 that the statements you're about to make are the truth, the
21 whole truth, and nothing but the truth?
22 MR. WRENN: I do.
23 MS. ROBESON: Thank you.
24 MS. REGELIN: I have Mr. Wrenn's resume.
25 MS. ROBESON: Okay. Are you proffering him as an

1 expert in land planning?
2 MS. REGELIN: Yes. In land planning, and I
3 believe he can explain that he has appeared and qualified as
4 a witness before in both this body and then before other
5 bodies.
6 MS. ROBESON: Why don't you just go over -- I have
7 your CV. Why don't you go over where you have already been
8 qualified as an expert?
9 MR. WRENN: Sure. I was previously qualified as
10 an expert witness in the field of land planning before the
11 hearing examiner in Montgomery County, first in 2000 for the
12 rezoning of Good Council High School in Wheaton, then in the
13 rezoning of lot 31 and 31A in Bethesda in 2006, and then
14 recently Suburban Hospital special exception in 2009 and
15 2012.
16 MS. ROBESON: Well then you have plenty of
17 experience. Unless there's a objection, I'll qualify you as
18 an expert in land use planning, and Exhibit 44 will be your
19 resume.
20 (Exhibit No. 44 was marked for
21 identification.)
22 MS. REGELIN: Thank you.
23 MR. FREISHSTAT: Tell me what you're going to use
24 so I can mark them now so that we can go smoothly.
25 MR. WRENN: I don't know how smoothly it will be

1 but we'll start with this.
2 MS. ROBESON: Okay. So, 45 will be existing
3 conditions --
4 MS. REGELIN: Yes.
5 MS. ROBESON: -- plan.
6 MS. REGELIN: I believe, actually, this might
7 already be an exhibit. It is Exhibit 17, actually.
8 MS. ROBESON: All right. Strike the 45 and just
9 mark it Exhibit 17. Thanks. Can you write duplicate? Do
10 you mind? Thanks. Just so I have --
11 MS. REGELIN: And then Mr. Wrenn's going to talk
12 about the surrounding area map which is actually already
13 Exhibit 18 in the file.
14 MS. ROBESON: Okay.
15 MR. FREISHSTAT: This one here done?
16 MS. REGELIN: No. No. No. Yes. It's right
17 there. The colored one. So, that's Exhibit 18 duplicate.
18 All right. That will --
19 MR. FREISHSTAT: Is that it?
20 MS. REGELIN: Yes. We have a neighborhood plan.
21 That will be a new plan because it's an amendment or an
22 enhancement to the neighborhood plan that's already in the
23 record.
24 MR. FREISHSTAT: And so that will be exhibit --
25 MS. REGELIN: This is 45.

(Exhibit No. 45 was marked for
1 identification.)
2 MS. REGELIN: Okay. Mr. Wrenn, are you familiar
3 with the Glen Aldon local map amendment application, G-909.
4 MR. WRENN: Yes. I am.
5 MS. REGELIN: Are you familiar with the property
6 and surrounding area?
7 MR. WRENN: Yes.
8 MS. REGELIN: And did Rodgers Consulting provide
9 professional land planning services with respect to
10 application G-909?
11 MR. WRENN: Yes. We did.
12 MS. REGELIN: And would you briefly explain your
13 role on the application for the Glen Aldon project?
14 MR. WRENN: Sure. As the land planner, we were
15 engaged initially to evaluate the site characteristics and
16 the context of this site, and we prepared numerous planning
17 studies looking at possible redevelopment options and then
18 ultimately prepared the development plan before you today.
19 MS. REGELIN: Okay. And were those plans prepared
20 by you or under your supervision?
21 MR. WRENN: Yes.
22 MS. REGELIN: And did Rodgers Consulting prepare a
23 land use and engineering report for this application?
24 MR. WRENN: Yes. We did.
25 MS. REGELIN: All right. And Exhibit 31C in the

1 record is the land use and engineering report dated March
2 2012. Are you familiar with this report?
3 MR. WRENN: Yes. I am.
4 MS. REGELIN: And was it prepared by you or under
5 your supervision:
6 MR. WRENN: Yes.
7 MS. REGELIN: Okay. So, now I'm showing you
8 Exhibit 17. If we can pull that out.
9 MR. WRENN: This is Exhibit 17, titled existing
10 conditions.
11 MS. REGELIN: Okay.
12 MR. WRENN: I'm going to take a moment to just
13 kind of orient you. So, this may be a little repetitive
14 because in the previous statements there were some reference
15 to this. What we're talking about are the properties on
16 Battery Lane. One about an acre in size on north side of
17 Battery Lane. We're looking at Woodmont Avenue, of course,
18 Battery Lane. North and NIH is here. The CBD and
19 Bethesda's to the south.
20 MS. ROBESON: When you say here, immediately north
21 of --
22 MR. WRENN: Immediately north.
23 MS. ROBESON: Yes.
24 MR. WRENN: Yes. Pardon me. The land area that
25 includes previous dedications totals five point two nine

1 acres gross site area, I mean, sorry, five point six nine
2 acres is the gross tract. Then without that dedication,
3 it's five point two nine acres.
4 MS. ROBESON: 2-9 or 2-5?
5 MS. REGELIN: 2-9.
6 MS. ROBESON: Oh. Okay.
7 MR. WRENN: I believe 2-9. Yes. Existing
8 improvements. We already mentioned the four Garden
9 Apartments, 260 dwelling units, all market grade. That's
10 been mentioned. They're regulated units in these buildings.
11 The one building on one acre on the north side of Battery
12 Lane, three buildings as shown on the south side on
13 approximately four point two acres.
14 The addresses. 4857 is the building on the north
15 side of Battery Lane and then we have 4858, first building
16 at the corner of Woodmont and Battery. 4890 is the next
17 building to the west and then the final building to the west
18 is 4900 on Battery Lane.
19 Now, in the development plan, it's already been
20 referenced. These are replaced with buildings that are A,
21 B, and C.
22 MS. ROBESON: Right.
23 MR. WRENN: So, a different nomenclature. Just to
24 keep that in mind. They're located within the Battery Lane
25 District as identified in the CBD Sector Plan, also included

1 in the Woodmont Triangle sector amendment study area, and
2 they're in the Bethesda CBD planning area. They're within
3 the Bethesda CBD Policy Area and within the Bethesda CBD
4 Metro Station Policy Area. They're not, however, in the,
5 technically in the CBD itself, the CBD line, and I'll show
6 that on another exhibit.
7 MS. ROBESON: Okay.
8 MR. WRENN: It excludes these properties.
9 MS. ROBESON: Is that why they don't have CBD
10 zoning.
11 MR. WRENN: I would guess that's correct.
12 MS. ROBESON: All right.
13 MR. WRENN: That's why they're not treated that
14 way. And they're also not in the parking district, the
15 parking district --
16 MS. ROBESON: Now, I saw that in the staff report.
17 They're not in the parking district.
18 MR. WRENN: They are not.
19 MS. ROBESON: But, they are providing the required
20 number of parking spaces. Correct? Depending on the mix of
21 units.
22 MR. WRENN: The proposed development plan, yes.
23 The existing units, I would say are under parked by the
24 standards for required parking in those zones.
25 MS. ROBESON: Okay. I understand.

1 MR. WRENN: All right. Anything else regarding
2 the existing conditions? And I would point out again the
3 public parking garage which is adjacent is where the CBD and
4 parking district align. It separates the property at that
5 point.
6 MS. ROBESON: I see. Okay. And is this public
7 parking garage, is that metered? I mean is that --
8 MR. WRENN: Yes.
9 MS. ROBESON: That's not one of the free parking.
10 That's metered parking.
11 MR. WRENN: Correct.
12 MS. ROBESON: Okay.
13 MS. REGELIN: All right. So, let's move to
14 Exhibit 18 which is the surrounding areas map. If you could
15 identify the zoning of the property and describe the
16 surrounding area please?
17 MR. WRENN: Sure. I'm looking at Exhibit 18.
18 Again, the subject property, and again I'll use the
19 development plan, nomenclature building A on the north side
20 of Battery Lane, building C and B on the south side and the
21 CBD line, just to indicate that is shown in gray patch
22 marks. So, it actually comes across. It includes a
23 development plan that's been approved. It's called the
24 Trillium where a hotel used to be, and then come south on
25 Woodmont Avenue, past where our property is at the corner of

1 Battery and Woodmont and then extends across to include the
2 public parking garage to the corner of where our building C
3 and B exist, and then it goes south again and then comes
4 across behind us but includes the properties that front on
5 Rugby. It comes down and then heads south as shown on this
6 exhibit near where Glenbrook Road and Norfolk intersect.
7 So, consequently, you have CBDs zoning, CBD R1
8 where the garage is. CBD 1 along Rugby, CBD 1 north of our
9 site on Oakmont between Wisconsin and Woodmont. Our sites,
10 most of it, I mean, the Battery Lane corridor is probably
11 R10.
12 MS. ROBESON: Is it R10/TDR or just R10.
13 MR. WRENN: R10.
14 MS. ROBESON: Okay.
15 MR. WRENN: The TDR designation applies to our
16 site, and I'll show the boundary of that is in this dark
17 black line that intersects building B so that that portion
18 of the site, and where building C is is R10/TDR.
19 MS. ROBESON: Okay.
20 MR. WRENN: The remainder of our property is just
21 R10 as is the rest of Battery Lane.
22 MS. ROBESON: Okay.
23 MR. WRENN: So, you'll see when we get to the TDR
24 calculations why that's significant because it's calculated
25 just on the portion that is designated TDR.

1 MS. ROBESON: I wonder why they drew that line
2 there but -- go ahead.
3 MR. WRENN: All right. It's already been
4 mentioned, the approved plan for the redevelopment at the
5 corner of Woodmont and Battery Lane. That will be mixed use
6 building. I believe there's a retail or restaurant on the
7 first floor. The NIH institutional house is located to the
8 north and then the remainder will be residential approved
9 for nine stories or 90 feet in height. This is, again, an
10 approved optional method development under the CBD zone, and
11 it's going to be nine stories, residential. And what's
12 noted in the colors are the residential in yellow,
13 commercial uses in the salmon color which dominate Rugby and
14 Woodmont and then mixed use is shown in the purple use as
15 well. A mix of heights. I called out some of them. This
16 is a nine story assisted living facility.
17 MS. ROBESON: Now, is that labeled on the plan
18 just so the record knows what you're pointing to when you
19 say this? Is it labeled as assisted living or --
20 MR. WRENN: It's labeled as residential. They're
21 all labeled just by use.
22 MS. ROBESON: What you're looking at is the
23 building immediately above where the plan calls Battery
24 Lane.
25 MR. WRENN: Correct.

1 MS. ROBESON: Okay.
2 MS. REGELIN: And does it have a lot number, Mr.
3 Wrenn?
4 MR. WRENN: Lot 58.
5 MS. ROBESON: Okay. That's helpful.
6 MR. WRENN: Yes. So, there's four stories on lot
7 24.
8 MR. FREISHSTAT: Shall I mark it with a different
9 color pen?
10 MS. ROBESON: Well then --
11 MS. REGELIN: No.
12 MS. ROBESON: No. No. That's fine. As long as
13 he's got the lot numbers there just so the transcript knows
14 which property he's talking about.
15 MR. FREISHSTAT: I brought many color pens with
16 me.
17 MS. ROBESON: You are an excellent assistant.
18 I've seen you here before with all the pens and, okay.
19 MR. FREISHSTAT: Yes.
20 MS. ROBESON: Go ahead.
21 MR. WRENN: The point I'm trying to make is that
22 there's a range of heights.
23 MS. ROBESON: What are the heights on the
24 intervening three developments between the assisted living
25 and --

1 MR. WRENN: Yeah.
2 MS. ROBESON: Yes. Do you know those?
3 MR. WRENN: Yes. Those are labeled and are close
4 to where a large R10 is --
5 MS. ROBESON: Appears on the plan.
6 MR. WRENN: -- on the plan. Three stories and
7 four stories.
8 MS. ROBESON: Okay. So, they're what you might
9 call garden type --
10 MR. WRENN: Yes.
11 MS. ROBESON: -- with the three stories.
12 MR. WRENN: I think that's correct. And then as
13 you might expect as you move to the south towards the simple
14 business district, you find greater heights. There's 15
15 stories where it's labeled CBD R2 at Auburn and Rugby. Some
16 are only 14 stories at the corner of Del Ray and Rugby, and
17 I have an exhibit that will show you those height
18 relationships --
19 MS. ROBESON: Okay.
20 MR. WRENN: -- that we'll get to in a minute. The
21 other thing I want to point out is the Battery Lane local
22 park. It's an important connection to Norfolk and the
23 commercial activity in the Woodmont Triangle to the housing
24 along Battery Lane as it is, of course, Woodmont.
25 MS. REGELIN: All right. Now, so Mr. Wrenn, could

1 you describe the neighborhood as that has been described in
2 the boundaries and the uses therein?
3 MR. WRENN: Sure.
4 MS. REGELIN: So, did we mark this exhibit as
5 Exhibit 45?
6 MR. WRENN: It's Exhibit 45, Glen Aldon
7 neighborhood map, and as in all these rezoning cases, it's
8 important to define what the neighborhood is. We did this
9 in collaboration with the planning staff, and it was great
10 that the neighborhood -- for the purposes of understanding
11 the relationship of our proposed development to what's
12 around it and, again, all the subject sites are highlighted
13 in red as shown. And I'll start -- it really, it typically
14 follows the Battery Lane Corridor as is identified in the
15 sector plan with a few little adjustments. But, you start
16 at the corner where NIH meets the back of the properties
17 along Battery Lane, and we came across --
18 MS. ROBESON: You came --
19 MR. WRENN: -- from, from --
20 MS. ROBESON: -- west.
21 MR. WRENN: Yes.
22 MS. ROBESON: From that corner.
23 MR. WRENN: From the corner at --
24 MS. ROBESON: Woodmont and --
25 MR. WRENN: -- Woodmont and we went west until we

1 found, got to the back of where Battery Lane curves to the
2 southwest and we curved as well to follow the properties
3 that front onto Battery Lane.
4 MS. ROBESON: Okay.
5 MR. WRENN: So, we capture the entire corridor of
6 Battery Lane.
7 MS. ROBESON: I see.
8 MR. WRENN: We then intersect Old Georgetown and
9 head south until we, again, encompass the properties that
10 front onto Battery Lane and then we head east and swing up
11 to Norfolk. You go down Norfolk, all the way down to, I
12 think it's Cheltenham.
13 MS. REGELIN: Cheltenham. Yes.
14 MR. FREISHSTAT: Cheltenham.
15 MR. WRENN: Cheltenham. Okay.
16 MS. ROBESON: Okay. Are you an expert in -- can
17 you say VAHU? Can you pronounce that? No. Go ahead. I'm
18 sorry.
19 MR. WRENN: So, right at Woodmont and Cheltenham,
20 we proceed to the east until we intersect Wisconsin and then
21 we stay on the west side of Wisconsin and head north all the
22 way up until we come back the way we started at the property
23 with NIH.
24 MS. REGELIN: All right. So, you can tell us
25 what's the importance of a defined neighborhood in a zoning

case?
MR. WRENN: I will. But, I want to add a few things about this before I answer that question.
MS. ROBESON: All right.
MR. WRENN: It's important that the neighborhood share a similar pattern of uses and heights in the mix, and so we think we've done that in this delineation. It also needs to be sort of walkable distances within that neighborhood, and I think that accomplishes that.
MS. ROBESON: What are the shared uses? Why did you, in what way, how did you relate the uses on the site?
MR. WRENN: When you think about a neighborhood that has residential, commercial services, amenities --
MS. ROBESON: Yes.
MR. WRENN: -- restaurants, all of those things that you would expect to support living in this location.
MS. ROBESON: Okay.
MR. WRENN: That's what drew us to this. Those things exist within this area of the Woodmont Triangle --
MS. ROBESON: Okay.
MR. WRENN: -- and along Battery Lane.
MS. ROBESON: Okay.
MR. WRENN: Some of them, just as another thing to think about, some of the other important amenities that are listed on this exhibit, theatres and cultural attractions,

library, things like that, we try to share those relationships as well. Some of them are right outside the neighborhood --
MS. ROBESON: I see.
MR. WRENN: -- but they're important, too. So --
MS. ROBESON: That's what the numbers are, the key is.
MR. WRENN: Right.
MS. ROBESON: Okay.
MR. WRENN: The other important thing is the location of the two Metros. It's a very unusual condition to have two Metro stops in Montgomery County both walkable from a --
MS. ROBESON: How far are the Metro stops from the properties, approximately?
MR. WRENN: Approximately a quarter mile. Actually, I believe this one is a little bit closer. I mean, the one at the Naval Med's a little bit closer than the one in the or the CBD but they're both easily walkable. Again, a unique circumstance in Montgomery County. Okay.
MS. ROBESON: All right. So, what is the importance of defining a neighborhood in a zoning case?
MR. WRENN: Because that's the limits in which you need to make a finding of compatibility.
MS. ROBESON: Okay. And Park and Planning has

concurred with the defined neighborhood.
MR. WRENN: Yes.
MS. ROBESON: Okay. So, can you describe the uses and physical improvements within the neighborhood?
MR. WRENN: Yes. And some of that I've already mentioned. I'll just highlight them quickly. The two Metros that are accessible from neighborhood. Battery Lane Urban Park important resource located just to the west of us, of our properties. In the Woodmont Triangle plan, they identified Norfolk as kind of the new main street for this part of Bethesda. That would be the concentration of retail, restaurants and those types of services, and so we want to take advantage of that and connect to them.
MS. ROBESON: Okay. Can you describe the various physical improvements in heights and massings that are within the neighborhood, and perhaps we can pull up the neighborhood perspective?
MR. WRENN: Yes.
MS. REGELIN: So --
MS. ROBESON: Now, is this in the record? This neighborhood --
MS. REGELIN: No. This is a slightly different version of this. This is called the contextual -- Doug, if you can help me out with the title of this one is?
MR. WRENN: Contextual 46.

MS. ROBESON: 46. Yes.
MR. WRENN: Illustrative building heights.
MS. REGELIN: So, if you could describe how this exhibit was created and then go into the improvements, the heights, the massings, the improved developments, the existing developments?
MR. WRENN: Okay. What we're showing here is a illustrative sketch of our proposed development plan. I'll point out building A.
MS. ROBESON: Can you orient? Okay. So --
MR. WRENN: Yeah.
MS. ROBESON: -- north is to the lower left of the site and south is to the upper right.
MR. WRENN: That's correct.
MS. ROBESON: Okay.
MR. WRENN: Let me just start with that. So, what you're looking at Woodmont Avenue as you proceed from the north and then heading to my right to the south, you see the 20 story NIH building --
MS. ROBESON: Yes.
MR. WRENN: -- in the foreground and then you see the green space of NIH. You'll recall the neighborhood boundary that we delineated is the start of the properties that front onto Battery Lane. Here is building A. A perspective sketch of what that might look like. It's

1 illustrative. Five to seven stories. Maximum height of 79
2 feet. This is the approved plan. What's shown in yellow on
3 this diagram is what's approved. What's shown in white or
4 gray is what exists in the development. So, what you see
5 are the improved Trillium property between Woodmont and
6 Wisconsin just north of Battery Lane. You see the improved,
7 I think it's Donohoe. It's nine story project that fronts
8 onto Wisconsin Avenue.
9 MS. ROBESON: Is it labeled as something on that
10 plan?
11 MR. WRENN: It's just labeled as nine stories. It
12 doesn't advise specifically.
13 MS. ROBESON: Okay. So, the first one you
14 referenced, is it the, I keep thinking north is up, but it's
15 at the southwest corner of Battery Lane and Wisconsin. The
16 second one you referenced is at the, no. It's on the
17 northwest corner of
18 MR. WRENN: Northwest --
19 MS. ROBESON: Northeast. Northeast corner of
20 Battery Lane and Wisconsin. The second one you mentioned is
21 at the southeast quadrant of the intersection of Battery
22 Lane and Wisconsin.
23 MR. WRENN: I think you're right except it's west.
24 MS. REGELIN: Mr. Wrenn, maybe what we should do
25 is we should put an N on the left side of the plan, put an E

1 on the north side of the plan, on the top side of this plan,
2 and, you know, west on the bottom.
3 MS. ROBESON: I understand what you're doing.
4 You're showing the transitions. In this perspective, I just
5 have to have it, when I go to read the transcript, I don't
6 know where this is. So --
7 MS. REGELIN: Now, actually, east is on the top.
8 Right?
9 MR. WRENN: Yeah. If that were to follow.
10 MS. ROBESON: There we go. That's how far -- I
11 appreciate -- I must be directionally challenged but that's
12 helpful to me.
13 MS. REGELIN: Okay.
14 MS. ROBESON: Thank you. So, the second building
15 you referred to is nine stories and that's on the southeast
16 quadrant of the intersection of Woodmont and Battery Lane.
17 MS. REGELIN: Wisconsin.
18 MS. ROBESON: Wisconsin and Battery Lane.
19 MR. WRENN: I think so.
20 MS. ROBESON: Yes. Okay. Keep going.
21 MR. WRENN: All right.
22 MS. ROBESON: And then you have the project
23 directly adjacent to the east. Right? To building A.
24 MR. WRENN: Yes. Just to the, yes. This is where
25 the NIH house is and then the mixed use project I described

1 just to the east of our property between Woodmont and our
2 site is approved for a nine story residential building --
3 MS. ROBESON: Okay.
4 MR. WRENN: -- above some, I think one level of
5 retail. Then we get to Battery Lane. We talked about, as
6 you move to the west, some lower rise existing buildings.
7 As you continue to the west, you find a nine story
8 residential building. I think it's an assisted living
9 facility. Across from those properties on Battery Lane is
10 our proposed building C which will be 11 stories or up to
11 110 feet, a high rise building shown in this illustration.
12 Next to that is our proposed building B. Again, more of a
13 midrise or lower rise building of, as depicted here, is five
14 stories or a total -- it could be higher depending on how
15 the site plans are generated.
16 MS. ROBESON: And what is Mr. Gill's property
17 zone? Is that R10?
18 MR. WRENN: Yes. They're right here. These two
19 series of buildings.
20 MS. ROBESON: Okay.
21 MR. WRENN: That's shown here as well.
22 MS. ROBESON: Okay.
23 MR. WRENN: Adjacent to the park.
24 MS. ROBESON: Right.
25 MR. WRENN: R10. So, then we can see the park and

1 its important connection to Norfolk as shown on the edge on
2 the right hand side of the diagram, and its going south
3 towards the CBD. All right?
4 MS. REGELIN: All right. I would like to move
5 admission of the neighborhood perspective into the record.
6 MS. ROBESON: It is admitted.
7 MS. REGELIN: Okay. So, if we could move to the
8 development plans. And I'll preface this that there are
9 original development plans including revised ones at 31A and
10 31B. But we actually are going to provide two new --
11 MS. ROBESON: Okay.
12 MS. REGELIN: -- development plans today. And as
13 Mr. Wrenn will describe, we've incorporated the recommended
14 changes to the binding elements that came out of the
15 Planning Board on these new exhibits.
16 MS. ROBESON: Okay. Now, all right. So, 47.
17 What is that that Mr. Freishstat is artistically marking.
18 MS. REGELIN: Is that the PD-100 or the PD --
19 MR. WRENN: Land use plan for the development of
20 plan, Development PD-100.
21 MS. ROBESON: Okay. So, it's the PD-100
22 development plan.
23 MR. WRENN: PD 48 is the land use plan for PD-88.
24 MS. ROBESON: Okay.
25 (Exhibit Nos. 47 and 48 were

1 marked for identification.)
2 MS. REGELIN: Okay. Mr. Wrenn, do we want to put
3 the comparison chart in at this time as well or do you want
4 to work through the development plan first?
5 MS. ROBESON: Why don't we put it in as well and
6 then you can just testify.
7 MR. WRENN: Sure.
8 MS. REGELIN: So, David, we have another exhibit,
9 please?
10 MR. FREISHSTAT: I didn't think I'd be working
11 this hard.
12 MS. ROBESON: Have you had the opportunity -- is
13 the only change in these plans the binding elements?
14 MS. REGELIN: Yes. And the only change to the
15 binding elements are those that have been requested by the
16 Planning Board.
17 MS. ROBESON: Okay. Now, Mr. Gill, there were
18 some binding elements that they changed that were relating
19 to the step back, the tiering of the property back from the
20 road. So, you may want to look at that.
21 MR. GILL: Oh. Okay. What was published on the
22 Aldon site, the committee's recommendation. That was on
23 there. Correct?
24 MS. REGELIN: Yes. It was.
25 MR. GILL: They talked about the stepping back

1 from Battery Lane.
2 MS. REGELIN: There is an exhibit which has the
3 final language that the Planning Board approved. It's
4 slightly different than the staff report.
5 MR. GILL: Right.
6 MS. REGELIN: That was online.
7 MR. GILL: Yeah.
8 MS. ROBESON: Do you have a copy of the Planning
9 Board recommendation?
10 MR. GILL: I have the 50 page report.
11 MS. ROBESON: Staff report.
12 MR. GILL: The staff report.
13 MS. ROBESON: Well, guess what? There's a two
14 pager that you can take a look at it while -- this is my
15 copy so you can just look at it. It's not the record copy.
16 But, this has the same, I assume that this has the same
17 binding elements that the Planning Board recommended. These
18 exhibits.
19 MS. REGELIN: Yes. The only change to the list
20 set of development plans is we've incorporated the binding
21 elements from the Planning Boards approval to these plans.
22 MS. ROBESON: Now, do you mind just describing
23 again, I missed what Exhibit 49 is.
24 MS. REGELIN: It's the comparison chart.
25 MR. WRENN: The sheet.

1 MS. REGELIN: Did we hand it in?
2 MR. FREISHSTAT: I already handed it in. Yes.
3 MS. ROBESON: Oh. I see it.
4 (Exhibit No. 49 was marked for identification.)
5 MS. ROBESON: Now, is that Mr. Humphrey that just
6 came in?
7 MR. FREISHSTAT: Yes.
8 MS. ROBESON: Mr. Humphrey, are you planning to
9 testify?
10 MR. HUMPHREY: Yes. I am.
11 MS. ROBESON: Okay. The times not yet but you
12 know that you have the right to cross examine and all that.
13 MS. REGELIN: Actually, if you could pass this
14 back to Mr. Humphrey, please?
15 MR. HUMPHREY: Yeah. And I have a question to ask
16 the current witness when we get to that.
17 MS. ROBESON: Okay. Okay.
18 MR. HUMPHREY: Thank you.
19 MS. ROBESON: All right. I apologize. Go ahead.
20 MR. WRENN: All right. So --
21 MS. REGELIN: So, if you could basically describe
22 the re-zoning application, the zones requested, the density
23 alternatives, et cetera?
24 MR. WRENN: Sure. I'm going to walk through the
25 PD-100 development plan. And what's shown here are three

1 proposed buildings labeled building A on the north side of
2 Battery Lane. Across from it on the south side at the
3 corner of Woodmont and Battery is building C and then
4 building B immediately to the west of building C. That's on
5 Battery Lane. And what's proposed on the development plan
6 is building A could be five to seven stories but up to 79
7 feet. We'll have residential units, 90 to 100 dwelling
8 units, and will not have any commercial use at all.
9 Building B describes next. Again, five to eleven stories,
10 up to 110 feet, 250 to 350 dwelling units, and again, no
11 commercial uses are proposed. Building C is a high rise
12 building proposed up to 110 feet, 250 to 350 dwelling units,
13 and again, no commercial uses proposed in building C as
14 well.
15 Now, the binding elements associated with this
16 development plan, I'm going to walk through.
17 MS. REGELIN: And this is the PD-100.
18 MR. WRENN: The PD-100 development plan. The
19 maximum number of dwelling units contained in the plan shall
20 not exceed 692 units. That includes 20 transferable
21 development rights or TDRs must be acquired through the
22 increase in density. Again, the building north of Battery
23 Lane will have a maximum height of 79 feet, 65 feet as
24 recommended in the master plan or sector plan. The 79 feet
25 to accommodate the MPDUs for the dwelling units and that

1 will be measured from the center line of the pavement of
2 Battery Lane.
3 No setbacks are required in the PD zone. We are
4 showing a ten foot setback to the rear of the property
5 adjacent to NIH, and there will be a green area as shown on
6 the development plan, PD-100, between the building and NIH.
7 MS. ROBESON: I'm sorry. You have a zero setback
8 where?
9 MR. WRENN: Requirement. I said in the PD zones,
10 there aren't setbacks required --
11 MS. ROBESON: Right.
12 MR. WRENN: -- but we're providing a 10 foot
13 setback.
14 MS. ROBESON: Is that in the binding elements?
15 MR. WRENN: I believe it is.
16 MS. REGELIN: Perhaps if we went through the, all
17 the binding elements. We're going to get to it because it
18 is on the site --
19 MS. ROBESON: Okay. Well, if you're going to get
20 to it, you don't have to do that right now.
21 MR. WRENN: All right. All right. I'll just keep
22 moving along. I talked about, okay. The building south of
23 Battery Lane, C and B, will have a maximum height of 110
24 feet and the building fronting on Woodmont and Battery Lane,
25 building C, will be measured from the center line of

1 Woodmont Avenue for height and the building B will be
2 measured from the midpoint on Battery Lane to determine that
3 height.
4 The development plan shall provide 15 percent from
5 the final unit count as moderately priced dwelling units per
6 Chapter 25A, and MPDUs may be distributed within the
7 development and offsite within the Battery Lane District.
8 MS. ROBESON: So, some of them may be at other
9 Brown properties?
10 MR. WRENN: In the Battery Lane District.
11 Correct.
12 MS. ROBESON: Okay.
13 MR. WRENN: And that'll have to be approved, of
14 course, by the Department of Housing and Community Affairs.
15 So, all right. The development plan shall provide 10 units
16 as voluntary affordable housing units or VAHUs for the
17 controlled period of 20 years pursuant to a reported
18 covenant satisfaction to the Department of Housing and
19 Community Affairs. An income eligiblity consistent with
20 Chapter 25B except as modified by DHCA, and provided it
21 shall be distributed within the development and offsite
22 within the planning area. May be approved by the Department
23 of Housing and Community Affairs.
24 The development shall provide no less than 30
25 percent of the gross site area as green area onsite and that

1 will be variably distributed throughout the development plan
2 area, and the final green area per building site will be
3 finalized at site plan.
4 Required building setbacks along Woodmont Avenue
5 right-of-way shall be zero per the zoning ordinance.
6 Setbacks shall be no less than 24 feet from the Battery Lane
7 right-of-way for buildings B and C and not less than 26 feet
8 from Battery Lane right-of-way for building A. Twenty-six
9 feet for A. Twenty-four feet for the right-of-way for B and
10 C.
11 And the final parking counts and layouts will be
12 determined at site plan.
13 MS. ROBESON: But, the parking provided, is that
14 the amount required under the zoning ordinance, the 800, and
15 I think it's 42?
16 MR. WRENN: Yes.
17 MS. ROBESON: I'm assuming you don't know the mix
18 of, the exact mix of units yet.
19 MR. WRENN: Correct. We do not, and that's why
20 we're qualifying that the way it's communicated.
21 MS. REGELIN: Mr. Wrenn, perhaps you could point
22 out the note on the plan that indicates that there's a
23 change in the--
24 MR. WRENN: Yes. Under general notes, Note 17,
25 states the final number of dwelling units up to the maximum

1 approved. Unit mix by number of bedrooms, type, and
2 location and number of parking spaces will be determined at
3 site plan. So, that's when those determinations will be
4 made.
5 At least one point of vehicular access for the
6 building north of Battery Lane, building A, shall be
7 provided by the common driveway per the common driveway
8 agreement recorded at Liber 26425 and folio 122, and that's
9 located just to the east of building A. It's a shared
10 driveway with the development plan that was approved for the
11 property at Battery Lane and --
12 MS. REGELIN: The PD 75 --
13 MR. WRENN: The PD 75.
14 MS. REGELIN: -- piece.
15 MR. WRENN: Correct. All right. I have two more
16 I'll get to. 11. A development program is intended to be
17 developed in multiple phases. Development of onsite
18 amenities associated with each building site will occur
19 concurrently with the occupancy of the residential units in
20 such building, and will be completed prior to the occupancy
21 of 75 percent of the units in such building subject to
22 possible deferral of landscaping to the appropriate planting
23 of seeds.
24 And the final binding elements, 12, any structure
25 of parking that is not below grade must be aligned with the

1 unit so that the parking is not visible from the street and
2 aligned with units that are architectural screening from
3 courtyards and adjacent residential properties. Details to
4 be reviewed for the site plan for each building.
5 MS. ROBESON: Now, where would you accommodate
6 that parking on the development plan?
7 MS. REGELIN: I'm sorry?
8 MS. ROBESON: Where would you accommodate
9 everything that can't be accommodated underground?
10 MR. WRENN: All of the parking will be provided
11 within the footprints of these buildings.
12 MS. ROBESON: Within the footprint. So,
13 underground?
14 MR. WRENN: Yes. Either underground or above
15 ground but then fronted either by units or architecturally
16 screened.
17 MS. ROBESON: Oh. I see.
18 MR. WRENN: So, it'll be structured some below,
19 some above is what's --
20 MS. ROBESON: And does that affect your green area
21 that you're showing?
22 MR. WRENN: No. Because all of that green area is
23 exterior to the --
24 MS. ROBESON: I see.
25 MR. WRENN: -- areas of the parking.

1 MS. ROBESON: Okay.
2 MR. WRENN: There's one thing that I somehow lost
3 and I should go back to because it's important in the
4 Planning Board approval of this, and that's, I believe
5 it's --
6 MS. REGELIN: Number 3.
7 MR. WRENN: Yes. Number 3. The building north of
8 Battery Lane will have a maximum height of 79 feet, 65 plus
9 the additional height for MPDUs. It's measured from the
10 center line. I stated all of that. Continue on it says
11 although no specific building setback was recommended in the
12 sector plan, staff will evaluate any step backs and building
13 setbacks at the time of site plan review with the purpose to
14 avoid a canyon affect along Battery Lane consistent with the
15 goals and objections of the sector plan. The language that
16 the Planning Board --
17 MS. ROBESON: Right.
18 MR. WRENN: -- amended with binding elements.
19 MS. ROBESON: If you were to do a setback, I think
20 there is a specific setback recommendation for Norfolk.
21 Right? Norfolk Lane in the sector plan.
22 MR. WRENN: There is as a retail street. I don't
23 recall the exact dimensions but I do believe in the Woodmont
24 Triangle when they looked at Norfolk, they wanted to try to
25 create or accent the retail uses that front the street and

1 those would be right on the right-of-way close in --
2 MS. ROBESON: Right.
3 MR. WRENN: -- and then a step back and then
4 height above that.
5 MS. ROBESON: Okay.
6 MR. WRENN: I think I recall that exception.
7 MS. ROBESON: Is it premature to ask, because I do
8 think the sector plan mentions in a couple of places step
9 backs. Have you had the opportunity to look at what types
10 of step backs you might be able to provide?
11 MR. WRENN: Yes. We've discussed this quite a bit
12 and Mr. Kitchens will elaborate on this.
13 MS. ROBESON: Okay.
14 MR. WRENN: But an important distinction that you
15 should appreciate is that in many other places in the
16 Woodmont Triangle plan they want the buildings to be right
17 up to the right-of-way, right up to the sidewalk, right up
18 to where the pedestrian is.
19 MS. ROBESON: Yeah.
20 MR. WRENN: In this case, we are setting back
21 significantly. I talked about the 26 feet and 24 feet that
22 we are setting back from the right-of-way. So,
23 consequently, it's a different -- it's a little more of a
24 residential environment and a feel, not any commercial
25 retail type of character, and so instead of having out

1 buildings right up at the right-of-way line, we are
2 significantly set back 24 and 26 feet and there's greening
3 and landscaping in that area. So, I'd contrast that with
4 Norfolk that has more of a commercial character than retail
5 character with a building that's right up to the right-of-
6 way. And so then, as you go up they anticipate it would be
7 appropriate to have a step back.
8 MS. ROBESON: What about Mister, well, I'll let
9 the architect address that. Go ahead.
10 MR. WRENN: I think that --
11 MS. REGELIN: Okay. I think that's an overview.
12 MR. WRENN: -- pretty much summarizes our develop
13 plan for PD-100. Alternatively, we have the PD-88
14 development plan.
15 MS. REGELIN: And so you're putting up Exhibit 48.
16 That's been marked as 48.
17 MR. WRENN: Yes.
18 MS. REGELIN: Which is the PD-88 development plan.
19 MR. WRENN: Right. And the arrangement of
20 buildings on the site A, C, B, in the same location, same
21 basic footprint. Most of the binding elements are
22 identical. There are a couple of distinctions I should
23 mention. Of course, one is the maximum number of multi
24 family dwelling units will not exceed 644 in the PD-88.
25 Again, we have the note that the number of and units and

1 heights will all be determined ultimately at site plan.
2 Binding element 2 is different. It's PD-88 with a
3 10 percent bonus density per Section 59-C-7.14(e). Thirty-
4 one transferrable development rights, TDRs, must be acquired
5 through the increase in density. So, a different number of
6 TDRs in the PD-88 plan.
7 And then what has been deleted is the note 6, the
8 voluntary affordable housing units would not be included in
9 the PD-88. So, that element is deleted. Then, again, 30
10 percent green space. That's the same that will be provided
11 as was in the PD-100.
12 MS. REGELIN: And so the two development units are
13 basically identical except for the change in total number of
14 units and the difference of the 10 voluntary affordable
15 housing units are not.
16 MR. WRENN: Correct.
17 MS. REGELIN: Okay. Ready for --
18 MR. WRENN: Sure.
19 MS. REGELIN: All right. Voluntary affordable
20 housing units. Can you describe what a voluntary affordable
21 housing unit is?
22 MS. ROBESON: He's taking a drink before -- that's
23 only water there.
24 MS. REGELIN: First of all, can you answer the
25 question is there a voluntary affordable housing unit that

1 matches our unit that is described in any statute in the
2 county?
3 MR. WRENN: No. There's not. This is a new
4 concept that the applicants came up with as an alternative
5 to what's been described and regulated as both moderately
6 priced volume units and Workforce housing.
7 Similar in many ways to the Workforce housing, it
8 would conform to the income eligibility requirements of
9 Workforce housing but it would not conform to the 99 year
10 validity requirement. Instead, it proposes a 20 year
11 covenant period. And, personally, I think this is an
12 exciting opportunity for the county. Much debate has gone
13 on for years about how do we provide affordable housing in
14 Montgomery County and programs have been developed to do
15 that.
16 The Moderately Priced Dwelling Unit Program which
17 you get a incident bonus in return for the provision of
18 those units, has been in existence for some time and has
19 produced an increment of affordable housing and the
20 Workforce housing idea came along later, has not been as
21 successful in implementation and is now a voluntary program.
22 I don't know of any Workforce housing units that have been
23 developed under the voluntary program to date. I think in,
24 I mentioned lot 31 and 31A in Bethesda, I think, they will
25 have some when that ultimately is built.

1 MS. ROBESON: Are they 99 years?
2 MR. WRENN: I think they conform to the 99 year
3 requirement.
4 MS. ROBESON: And so why not here?
5 MR. WRENN: Well, because there, that's a publicly
6 owned parking, surface parking garage, I mean, surface
7 parking facility that the county entered into a development
8 agreement with a private developer to redevelop that site
9 and in doing so, the county was able to provide a deal that
10 allowed for affordable units to be built there.
11 MS. ROBESON: Shared parking, you mean.
12 MR. WRENN: Well, just the value of the land they
13 put down. Not just shared parking but in the provision of
14 public parking that will replace the surface parking and the
15 infrastructure requirements that both the county and the
16 private developer have to provide there. It created
17 flexibility in that arrangement.
18 MS. ROBESON: You mean, is the county bearing the
19 costs of the parking? Is that what you're saying?
20 MR. WRENN: Partly. Sure. They are because
21 they're building public parking to replace and actually
22 expand the public parking in that location.
23 MS. ROBESON: And are the residents going to have
24 some kind of access to that public parking? Is that the
25 deal?

1 MR. WRENN: The parking requirements, they're in
2 the parking district so the parking requirements for the
3 private uses will be less or can be less --
4 MS. ROBESON: Okay.
5 MR. WRENN: -- then they would be here.
6 MS. ROBESON: Okay.
7 MR. WRENN: So, what I'm just trying to say
8 there's greater flexibility in that location that I think
9 allows for the accommodation for the Workforce housing.
10 MS. REGELIN: And, Mr. Wrenn, because the property
11 was publicly owned by the county, is that part of the
12 contribution of Montgomery County to the public part of the
13 public/private partnership under the development agreement
14 by which they're actually building the building?
15 MR. WRENN: I haven't personally reviewed the
16 development agreement. But, my expectation would be yes.
17 That that again, that offers flexibility to achieve some
18 public purposes in that redevelopment that would be
19 difficult to achieve otherwise.
20 MS. REGELIN: Okay. Mr. Falcone --
21 MS. ROBESON: Wait. Okay. Back up with what the
22 other people are doing. Why is it that you're not providing
23 the 99 years here? Because what I just heard is some of
24 these MPDUs are going to be offsite, could be offsite.
25 MR. WRENN: Could be. Right.

1 MS. ROBESON: So, they're not a zero on the
2 financing. So, what's the justification at this site?
3 MR. WRENN: Well, I'm probably less qualified to
4 talk about the justification economically as much as in
5 terms of the, I think the merits of the plan.
6 MS. ROBESON: Okay.
7 MR. WRENN: In achieving the goals that are
8 expressed in the CBD plan and the Woodmont amendment as well
9 as generally the policies of the county regarding trying to
10 provide affordable housing.
11 MS. ROBESON: Yeah. And how do I balance, I mean,
12 what I'm struggling with is I'm stuck -- the Planning
13 Board's given me a rational just that there's more upfront
14 cost to construct in the VAHUs but that isn't, you know,
15 there's a lot of analysis you could do that wouldn't, you
16 know, may or may not, that may or may not be the case
17 because it's an upfront cost, and I guess my question to you
18 is why should I choose an adopted program, the TDR program,
19 why should I sacrifice the TDR program for 20 year VAHUs?
20 That's really my question that I think has to be answered.
21 What's the public interest in that? And public interest is
22 defined as being in adopted county plans and policies.
23 MR. WRENN: Yes.
24 MS. ROBESON: So, why should I choose something
25 that isn't an adopted county plan and policy over the TDR

1 program?
2 MR. WRENN: In my opinion, the value of providing
3 additional affordable units under the PD-100, both
4 additional moderately priced dwelling units as well as
5 voluntary affordable housing units in a location in which
6 demand for housing is increasing particularly affordable
7 housing as was mentioned the growth and employment in this
8 area, the access to Metro. As has been expressed, the best
9 location in Bethesda for housing. In providing --
10 MS. ROBESON: It was expressed where?
11 MR. WRENN: Earlier in these proceedings. One of
12 the witnesses --
13 MS. ROBESON: Oh. Okay.
14 MR. WRENN: -- called about the Battery Lane
15 corridor was--
16 MS. ROBESON: Okay.
17 MR. WRENN: -- best housing location. To provide
18 additional affordable housing in this location, given an
19 expressed desire of the county and --
20 MS. ROBESON: And where is that expressed, the
21 expressed desire of the county? Where is that expressed?
22 MR. WRENN: In their housing policy, it talks
23 about the acute need for additional affordable housing. It
24 doesn't identify Battery Lane per se but it talks about
25 having affordable housing in these locations that have

1 access to the transportation, the amenities, the service,
2 all of the schools, all of the things that it --
3 MS. ROBESON: But there's also a plan that says
4 let's preserve the agricultural world, agricultural areas.
5 So, how do I choose? See, I'm not a policy maker.
6 MR. WRENN: Right.
7 MS. ROBESON: And I've got to find that this is in
8 the public interest.
9 MR. WRENN: Right.
10 MS. ROBESON: So, what do you tell me as far as
11 why I should favor one policy over the other?
12 MR. WRENN: I think it's a balance, and that's why
13 we are proposing utilizing the TDRs as well as providing for
14 the affordable units, and I think, in my opinion, we're
15 striking the appropriate balance given the --
16 MS. ROBESON: So, what you're saying is in this
17 plan, you can serve both policies?
18 MR. WRENN: Yes.
19 MS. ROBESON: At least to some extent.
20 MR. WRENN: To a great extent.
21 MS. ROBESON: Okay.
22 MR. WRENN: I mean, it's unusual to have a TDR
23 receiving area in a central business district. They just,
24 the Planning Board just went through the Wheaton CBD plan
25 and nowhere did they designate TDR receiving area as part of

1 the properties of re-zoning.
2 MS. ROBESON: But they did here. So --
3 MR. WRENN: Exactly. And then so it's appropriate
4 to provide them. I agree with that. I'm not disputing
5 that. But, I'm just saying that in a -- if you look at sort
6 of a broader policy and limitation, the use of TDRs and
7 providing affordable, we're doing both to a great extent,
8 and I think that is the balance which you --
9 MS. ROBESON: But, you're also exceeding the
10 master plan recommended density by a significant amount. If
11 I read the staff report, it would have been 585 and you're
12 talking about 700, close to 700. So, you know, I've got --
13 MR. WRENN: Yeah.
14 MS. ROBESON: I understand the practical
15 difficulty of updating master plans. I do understand that.
16 MR. WRENN: Yes.
17 MS. ROBESON: But, I've got a master plan -- when
18 we look at public interest, we look at the master plan. We
19 look at adopting county policy. So, you're in excess of the
20 master plan. You're not providing quite the number of TDRs
21 that the master plan calls for and you're not providing
22 quite the level of these Workforce housing units. So,
23 you're not quite in the range of any of them. So, what do
24 you say to that?
25 MR. WRENN: I would state that I think we are

1 within the range, well within the range, of the master plan
2 recommendations. And we all appreciate that the length of
3 time that elapses between the approval of the master plan
4 and circumstances like we have today can certainly, things
5 do change, and I think the changes are significant, and that
6 the deviation between the master plan recommendation and
7 what we are proposing is much less significant in response
8 to those demands. So, I feel very comfortable in defending
9 the conformance with the master plan, the intent of the
10 master plan, the objectives of the master plan. Perhaps the
11 density as a numerical calculation isn't exactly the same
12 but the job growth has, maybe, far exceeded what was
13 anticipated.
14 The transportation demands and the need to utilize
15 mass transit has become much greater. Those types of
16 general conditions and circumstances, I think, have changed
17 significantly in response to that, and it's in the public
18 interest for housing slightly beyond what the master plan
19 calculation would be to be provided in the Battery Lane
20 corridor.
21 MS. ROBESON: Do you have any, aside from what the
22 Planning Board said, because I have their recommendation but
23 there's nothing that they submitted to me that the --
24 basically, what your counsel repeated to me was that the Ag
25 Pres program doesn't need as much help as affordable

1 housing. Do you have any direct evidence of that
2 proposition? If you don't, you don't. I'm just asking.
3 MR. WRENN: Yeah. My opinion about that is that
4 there are numerous receiving areas in the county. There are
5 numerous opportunities to continue to implement and achieve
6 the goal of the Ag Preservation Policy.
7 MS. ROBESON: Well, is it the same truth for
8 affordable housing? We've got Wheaton. We've got Silver
9 Spring.
10 MR. WRENN: That's not the case. Increasingly,
11 it's more difficult to provide for the affordable housing
12 and the number of available redevelopment opportunities,
13 certainly, that are five acres in size do not exist in those
14 other business districts. So, I do think this is unusual
15 and provides a special opportunity that doesn't exist in
16 those other locations for meeting the affordable housing
17 need.
18 MS. ROBESON: Okay.
19 MR. FREISHSTAT: I have a copy of the housing
20 element to the general plan to submit into the record.
21 MS. ROBESON: Okay. And that would be --
22 MR. FREISHSTAT: 50. My zero looked like a six so
23 I had to write it again.
24 MS. REGELIN: Okay.
25 MS. ROBESON: 50 will be the housing element of

1 the general plan.
2 MR. FREISHSTAT: Yes.
3 (Exhibits No. 50 was marked
4 for identification.)
5 MS. REGELIN: All right. Mr. Wrenn, can you
6 describe in more detail any density bonuses that were
7 applied in the two development plans?
8 MR. WRENN: Yes. There are two. One is the MP,
9 moderately priced dwelling unit, 22 percent bonus, density
10 bonus provision on 15 percent MPDUs per Chapter 25A and the
11 second under the PD-88 plan is the PD zone. So, you're
12 allowed 10 percent density bonus for provision of
13 transferrable development rights or TDRs.
14 MS. REGELIN: So, are TDRs a requirement in the PD
15 zone?
16 MR. WRENN: No. They're not. In fact, just to
17 the contrary. They're not identified as a requirement.
18 MS. ROBESON: But, the TDRs are -- but part of the
19 PD zone requires master plan compliance. Correct?
20 MR. WRENN: Absolutely correct.
21 MS. ROBESON: And so wouldn't you say that because
22 the master plan recommended TDR zoning here that part of
23 your master plan compliance is --
24 MR. WRENN: Yes. And when we get to the master
25 plan compliance, I'll make that point --

1 MS. ROBESON: Okay.
2 MR. WRENN: -- that you're exactly right that is -
3 -
4 MS. REGELIN: Perhaps we could look at 59-C-
5 7.14(e) which is out of the PD zone, and I'll give it to
6 you. And perhaps, if we could go look at that section which
7 is the density bonus.
8 MS. ROBESON: Which cite is that? 59 --
9 MS. REGELIN: 59-C-7.14(e).
10 MS. ROBESON: Okay.
11 MS. REGELIN: And I just wanted to put it in front
12 of Mr. Wrenn. It's 140. I think it would be helpful to put
13 that -- read it for the record.
14 MR. WRENN: All right. I'm reading from the
15 Montgomery County Code Zoning Ordinance, Chapter 59. This
16 is 59-C-7.14(e). The district council may approve a bonus,
17 excuse me. The district council may approve a density bonus
18 of up to 10 percent above the maximum density specified in
19 the approved and adopted master plan for the provision of
20 TDRs if the use of TDRs is recommended for the site.
21 MS. REGELIN: And is that line bridge mandatory?
22 I mean, does it indicate that the provision of TDRs is
23 mandatory?
24 MR. WRENN: No.
25 MS. REGELIN: And does it indicate a specific

1 number of TDRs?
2 MR. WRENN: No.
3 MS. REGELIN: Okay.
4 MS. ROBESON: Well, let me get your chart here or
5 let me get the staff report. What are your bonus densities
6 here? Just MPDU bonus density or are you --
7 MR. WRENN: The PD-100 includes a bonus density
8 for MPDUs.
9 MS. ROBESON: For what? MPDUs.
10 MR. WRENN: Yes.
11 MS. ROBESON: But not for TDRs.
12 MR. WRENN: Correct.
13 MS. ROBESON: Okay.
14 MS. REGELIN: All right. Is there a calculation -
15 - do you concur with the TDR calculation that's set forth in
16 the staff report at page 23 and 24?
17 MR. WRENN: Yes. I do. Do you want me to go
18 through that or --
19 MS. REGELIN: Yes. Let's just generally identify
20 why certain ones have TDR calculations --
21 MR. WRENN: Right.
22 MS. REGELIN: -- and other parts of the site do
23 not.
24 MR. WRENN: Yes. I'm looking on the staff report,
25 page 23, at the bottom of the page, site A, the north side

1 of Battery Lane. It's zoned R10. It's approximately an
2 acre in size and it's recommended for PD 75. The staff went
3 through that analysis and as is indicated at the bottom, it
4 says no TDRs required because it's just --
5 MS. ROBESON: -- Because it was recommended for PD
6 75.
7 MR. WRENN: -- Correct.
8 MS. ROBESON: Yes.
9 MR. WRENN: And R10. Then on the next page, 24,
10 site B, south side of Battery Lane and west of building C is
11 R10 zone. It's lot 8. Again, about an acre in size. They
12 do the calculation. The density under R10, 43.5 units per
13 acre times one is 43 dwelling units. And again, no TDRs
14 required for that area because it's currently zoned R10.
15 It's not designated for TDRs.
16 Then the next component of site B is the R10/TDR
17 portion, lots 39 to 42. That is approximately two acres in
18 size. So, again, that density of 43.5 times two. You get a
19 density of 87 units, and then two times the 100 units per
20 acre which would be the TDR density yields 200 units. You
21 have 200 units as the TDR density. You subtract the 87 base
22 density and that equals 113 units and then you subtract out
23 the MPDUs to get 83.
24 MS. REGELIN: So, MPDUs do not require TDRs for
25 density?

1 MR. WRENN: That's correct. Yes. Yes. That's
2 right. So then moving along with the staff calculation, it
3 shows at a three to one ratio, the 83 units equals 28 TDRs
4 and then at the two-thirds requirement which is we have to
5 have acquired two-thirds of the TDRs by the time you get to
6 preliminary plan approval.
7 MS. REGELIN: And is that also the minimum number
8 you have to utilize under the TDR program?
9 MR. WRENN: It is. The minimum number. That's
10 right. So, that is 19. So they conclude that 19 TDRs would
11 be required for that portion of site B.
12 Then site C, again, is in the R10/TDR zone and
13 those lots are about one point two eight acres. They go
14 through the similar math of 43.5 times one point two eight.
15 You get 55 dwelling units as the base density. Then under
16 the TDR density, multiplied by 100 to get 128, 128 TDR
17 density. Subtract the base density and then you subtract
18 out the MPDUs. That leaves you with 53 units. The 53 at
19 the three to one ratio that's required in this location is
20 18. And, again, the two-third requirement you must have at
21 preliminary or the minimum required is 12. So, that's 12
22 TDRs. So, at 19 and 22, it's a total TDR requirement is 31
23 TDRs at the maximum density. Total MPDU requirement at 50
24 percent, 63 MPDUs.
25 MS. REGELIN: All right. So, if I could clarify,

1 Mr. Wrenn. When you say the TDRs required is that if you
2 were developing under R10/TDR? Because I believe that your
3 testimony was that no TDRs are required for PD zoning.
4 MR. WRENN: Yes. That's right.
5 MS. ROBESON: But the master plan compliance --
6 MR. WRENN: Yes. The master plan --
7 MS. ROBESON: -- which suggests that you have to
8 provide TDRs.
9 MR. WRENN: It would, and that's why we are
10 providing --
11 MS. ROBESON: I have one question. Look down at -
12 - right below those calculations. It says without 15
13 percent MPDU density bonus, R-O-W, or Workforce housing.
14 What's R-O-W?
15 MR. WRENN: The right-of-way. That's the
16 density --
17 MS. ROBESON: The net versus the gross --
18 MR. WRENN: Yes.
19 MS. ROBESON: -- tract area?
20 MR. WRENN: Right. The density that we're
21 extracting from previously dedicated right-of-way --
22 MS. ROBESON: Okay.
23 MR. WRENN: -- is that that refers to.
24 MS. ROBESON: Don't you normally get to calculate
25 density using the previously --

MR. WRENN: Yes. And we are.
MS. ROBESON: Why would he have this calculation in there?
MR. WRENN: I don't know. If nothing more than just to help the Planning Board understand all of it.
MS. ROBESON: Okay. I understand.
MR. WRENN: They built the case up to the number.
MS. ROBESON: I was just curious.
MR. WRENN: Yeah.
MS. ROBESON: Okay. Go ahead.
MS. REGELIN: Okay. There was a question at the Planning Board about whether the property was in a Metro Station Policy Area which provides for the three dwelling units for TDRs. Do you have any information related to that?
MR. WRENN: Yes. I do. Somewhere in this pile of stuff there's a couple --
MS. ROBESON: Is this a new exhibit?
MR. FREISHSTAT: Uh-huh.
MS. ROBESON: Okay.
MR. FREISHSTAT: 51.
MR. WRENN: Here we go.
MS. REGELIN: Do you have one for them, too?
MS. ROBESON: An how would you describe this, Mr. Wrenn? No. Not -- the witness.

MR. WRENN: Yes.
MS. ROBESON: How would you describe this?
MS. REGELIN: This is what it's marked.
MR. WRENN: Yes. This is the Bethesda CBD Policy Area that is being introduced.
MS. ROBESON: Thank you.
(Exhibit No. 51 was marked for identification.)
MR. WRENN: It's referenced in the Local area Transportation Review and Policy Area Mobility Review Guidelines that were published. That's the document, and it identifies all of the various policy areas that relate to the annual road policy, and this is a blow up of that part of Bethesda area.
MS. REGELIN: And can we look at this map 3 and could you identify where Battery Lane and the subject property is on this map?
MR. WRENN: I will attempt to do that. I'm looking at this map at the north end of the delineated area. The number is 663. Just north of that is Battery Lane. Just to the east of it is Woodmont, and the line that delineates this to the north coincides with the NIH property line.
MS. ROBESON: Okay. So, building A would be south of -- it's within 663.

MR. WRENN: Yes.
MS. ROBESON: All three of the properties are within 663.
MR. WRENN: That's correct. They are. Battery Lane isn't identified but you can see that above where the numbers are is where the Battery Lane curves around from Old Georgetown --
MS. ROBESON: Yes.
MR. WRENN: -- then goes to Woodmont to the east.
MS. REGELIN: So, we'll move admission of our exhibits through 51. I don't know where we might have stopped.
(Exhibit Nos. 47 through 51 were admitted into the record.)
MS. ROBESON: If I don't hear -- Mr. Humphrey, you came in late. But, if I don't hear an objection, I'm going to admit these unless.
MR. HUMPHREY: I have a question --
MS. ROBESON: All right.
MR. HUMPHREY: -- concerning exhibit -- for the record, I'm Jim Humphrey with Montgomery County Civic Federation --
MS. ROBESON: Yes.
MR. HUMPHREY: -- Chairman of the Planning and

Land Use Committee. The document, again, that you just entered in. What's the title on that?
MS. ROBESON: This document here?
MR. HUMPHREY: No. I'm sorry. The guidelines that he's referring to.
MR. WRENN: Right.
MR. HUMPHREY: One thing under them, too. It's 51?
MR. WRENN: This is titled Local Area Transportation Review and Policy Area Mobility Review Guidelines. Guidelines of the Montgomery County Planning Board for administration of the adequate public facilities ordinance.
MS. ROBESON: Wait. I have --
MR. HUMPHREY: And the date on that?
MR. WRENN: October 2008.
MS. ROBESON: I have it so that 50 is the housing elements plan portion of the amendment to the general plans, and I have 51 as this map.
MR. HUMPHREY: Oh. 51 is the map. I'm sorry. He was referring to the LATR/PAMR guidelines. That's what I was asking.
MS. ROBESON: I don't have that as a specific exhibit.
MR. HUMPHREY: Okay.

MS. ROBESON: I assume 51 is the map from the LATR/PAMR guidelines. Right?
MR. WRENN: Well, the map that is in this document is at a, shows the entire county. So, it does show the Bethesda area. This is --
MS. ROBESON: When you say this document, do you mean the LATR/PAMR guidelines.
MR. WRENN: Yes. That's correct.
MR. HUMPHREY: And what's the title on the map on that map that you are showing?
MR. WRENN: Montgomery County Maryland Annual Growth Policy Areas.
MR. HUMPHREY: Growth Policy Areas.
MR. WRENN: Yes. So, this coincides with the delineation on that map.
MS. ROBESON: And where is this from? Exhibit 51. What document is that from? The sector plan?
MR. WRENN: I don't believe it's from the sector plan.
MS. ROBESON: Okay.
MR. HUMPHREY: And the guidelines are a document. The guidelines that you are referring to are in here. The PAMR guidelines were adopted in October '08 by the Planning Board?
MR. WRENN: That's what the document is dated.

MR. HUMPHREY: But you didn't answer my question. Did the Planning Board adopt those guidelines?
MS. REGELIN: If you could give Mr. Wrenn back the --
MR. WRENN: Yeah. I can find that in the --
MS. REGELIN: Along with that submission so you have the entirety of the document surely.
MR. WRENN: The only thing I see on here is that it just says Planning Board update October 2, 2008. Guidelines to be used for preparation and review of transportation and tax studies for development in Montgomery County and then lists Montgomery Park and Planning as the source of copies.
MS. REGELIN: And Mr. Wrenn, you used this report to locate the map, the area of the Bethesda Metro Station Policy Area.
MR. WRENN: Correct.
MR. HUMPHREY: Well, I don't know that I ask the question now or not. It's in part of my testimony that are you aware of the definition of Metro Station Policy Area from the 2003 growth policy which stated it was the Bethesda CBD boundary?
MR. WRENN: I don't have the 2003 growth policy in front of me. So, I'd have to verify that.
MR. HUMPHREY: Okay. Well, we use the

guidelines--
MS. ROBESON: Okay. We'll submit it into the record. These are the 2008.
MS. REGELIN: So, what we've given --
MS. ROBESON: Well, they're two different things.
MS. REGELIN: Yes.
MS. ROBESON: This is the Planning Board LATR and PAMR guidelines, and that's different from the growth policy. That's what, okay. So, I'm going to admit this as 52 which is the 2008 L -- you can stay there, Mr. Humphrey.
MR. HUMPHREY: Oh. Well, there's nothing to do.
MS. ROBESON: Okay. So that will be 52.
(Exhibit No. 52 was marked for identification.)
MS. ROBESON: Do you need this to testify, Mr. Wrenn, right now?
MR. WRENN: I believe so.
MS. ROBESON: Okay. Go ahead.
MS. REGELIN: Okay. So, let's move on to the PD zone.
MR. WRENN: Okay.
MS. REGELIN: So, can you generally describe the PD zone and the criteria for applying the PD zone?
MR. WRENN: Sure. And the purpose clause is quite lengthy of the PD zone --

MS. ROBESON: Yes.
MR. WRENN: -- and what I'd like to do is just really try to recite how we respond --
MS. ROBESON: Thank you.
MR. WRENN: -- to each of those items. If you want to work through or you just want me to read through what they are?
MS. REGELIN: I would just go ahead and read through what they are. I think it almost would be faster just read it and then respond.
MS. ROBESON: Okay.
MR. WRENN: Okay. The PD purpose clause.
MS. ROBESON: Well, actually, I can really read it. I've read it.
MS. REGELIN: So, maybe if he starts to describe which section of the code --
MS. ROBESON: Can you just go through paragraph by paragraph or I would prefer if you would just go through your points and summarize your points rather than actually reading the code.
MR. WRENN: All right.
MS. REGELIN: I think what they did at the staff report is they called out paragraph numbers. The first paragraph --
MS. ROBESON: Okay. That's fine.

1 MS. REGELIN: -- of the zone relating to X and
2 just had a title and then --
3 MS. ROBESON: We can do that then. Just call out
4 the very first paragraph of 59-C-71.11. How does it comply
5 with that paragraph?
6 MR. WRENN: Okay. The first paragraph has to do
7 with -- general plan and consistency with densities proposed
8 by the master plans, an optimum of planning for greater
9 efficiency, convenience and amenities.
10 The application will assist in implementing a
11 primary purpose above the Bethesda CBD Sector Plan and the
12 Woodmont Triangle sector plan and then by increasing housing
13 opportunities to serve a range of income levels, provide
14 housing to support commercial uses in the Woodmont Triangle
15 and provide additional transit related housing units within
16 walking distance of two Metros.
17 I mean, we talked about how the sector plan itself
18 is getting a little -- the shelf life, if you will, is
19 starting to wear a little bit. They recognized that when
20 they came back and did the Woodmont Plan. They said wait,
21 you know, times have changed.
22 MS. ROBESON: But that's only four, six years ago.
23 MR. WRENN: That's the point I'm making. And in
24 doing that Woodmont Plan, it caught my attention when I
25 participated in the preparation of the Woodmont Plan, that

1 this amendment, and I'm reading from page 10 of the Woodmont
2 Triangle study area general recommendations. This amendment
3 will capitalize on the development and revitalization
4 potential of the study area as a transit oriented urban
5 neighborhood and it specifically says later in that
6 paragraph. Residents of the Battery Lane District and
7 surrounding neighborhoods shop in the Woodmont Triangle, and
8 they take advantage of its location between two Metro
9 stations. In addition, the Woodmont Triangle hosts many
10 public events as part of the Bethesda CBD arts and
11 entertainment district program.
12 And so again, I think they amended that plan to
13 try to encourage more housing that would support the
14 Woodmont Triangle to help with its continued viability --
15 MS. ROBESON: Uh-huh.
16 MR. WRENN: -- and vitality.
17 MS. ROBESON: Uh-huh.
18 MR. WRENN: And that's what this proposal is
19 attempting to do. Just that. Another important benefit is
20 the environmental benefit. That under this redevelopment,
21 we will be able to implement best practices that relate to
22 the storm water management on the site that currently offers
23 no storm water treatment. So, instead, we'll have the bio-
24 detention areas and other sustainable technologies that will
25 provide much improved water quality from the site.

1 We'll provide new buildings that --
2 MS. ROBESON: But that could be the same under the
3 PD-88 or the PD-100. Right?
4 MR. WRENN: It could be.
5 MS. ROBESON: Yes.
6 MR. WRENN: Certainly in the way the development
7 plans proposed, it would have a similar type of treatment.
8 MS. ROBESON: Okay.
9 MR. WRENN: So, you're right. It would occur
10 under both options. I would also provide the PD-100 with
11 additional affordable units which those occupants would
12 benefit from the proximity to Metro and the Woodmont
13 Triangle and the other things that I've mentioned before.
14 Okay. The second paragraph talks about the
15 purpose of this zone that the development be so designed and
16 constructed as to facilitate and encourage a maximum of
17 social and community interaction and activity among those
18 that live and work within the area to encourage the creation
19 of distinctive visual character and identity for each
20 development.
21 Let me utilize the illustrative plan on the
22 development plan to talk about that a little bit.
23 MR. FREISHSTAT: What is your number on that?
24 MR. WRENN: Exhibit 43.
25 MS. ROBESON: Okay. Thank you.

1 MR. WRENN: All right. So, again, it just shows a
2 little more of the character that's being proposed and a few
3 things I want to make you aware of. In addition to the
4 affordable housing and other benefits that I mentioned
5 before. The way the plan is organized it affords for
6 additional access on a drive they made into a walkway that
7 connects to a public access into garage 35.
8 So, we purposely organized these buildings so that
9 there would be the ability to not only circulate around them
10 and between them but have additional opportunities to access
11 Rugby and onto Norfolk and connect to the Woodmont Triangle.
12 MS. ROBESON: Is that garage access, does that
13 have a pedestrian connection or --
14 MR. WRENN: There's a sidewalk that exists --
15 MS. ROBESON: Okay.
16 MR. WRENN: -- along the side of it. And
17 currently, it's used in that manner now. Although, all of
18 the surface parking are not particularly attractive.
19 MS. ROBESON: Okay.
20 MR. WRENN: Again, creating this setback that
21 allows for landscaping and green area significantly wide to
22 create that, again, residential character as opposed to the
23 Norfolk commercial character to be introduced on Battery
24 Lane provide for I think improved streetscape connections
25 that would ultimately fit your Battery Lane Park and access

1 to that green space and pedestrian connections. So, again,
2 I think we made the purpose as described in that section.
3 MS. ROBESON: Is any of the green area public
4 access or like we've had applications that have additional
5 dedicated sidewalk areas, things like that. Is it public
6 access or private or going to be privately owned.
7 MR. WRENN: It'll be privately owned except I
8 would point out that the streetscape and all of that would
9 certainly be publicly accessed.
10 MS. ROBESON: Public.
11 MR. WRENN: It would be a vast improvement to what
12 exists now with a minimum four foot sidewalk that's right on
13 the curb and has utility poles in the middle and --
14 MS. ROBESON: Right. I saw the pictures.
15 MR. WRENN: Yes. So, this would be a significant
16 upgrade in that regard.
17 MS. ROBESON: Yeah.
18 MR. WRENN: Okay. Then the next paragraph. It is
19 further the purpose of this to provide and encourage a broad
20 range of housing types comprising of owner and rental
21 occupancy units and one family, multiple family, and other
22 structural types. The application that has been discussed
23 comprises both midrise and high rise buildings to permit a
24 range of unit sizes and types to be determined at site plan
25 but certainly the intent is to have a range of unit sizes

1 and types. The introduction of the MPDUs and voluntary
2 affordable housing units to the Battery Lane District where
3 most projects were developed prior to the adoption of MPDU
4 regulations. We'll expand the range of housing types and
5 options available in the Battery Lane District and provide a
6 significant stock of affordable housing in this location.
7 Next paragraph. Additionally, it is the purpose
8 of the zone to preserve and take the greatest possible
9 aesthetic advantage of trees and in order to do so minimize
10 the amount of grading necessary from construction. There's
11 very few trees that exist today and --
12 MS. ROBESON: I saw that.
13 MR. WRENN: -- unfortunately, the ones that do are
14 stressed from their urban condition. That is showing the
15 illustrative. The idea is that we replace surface parking
16 in existing buildings with structured parking, new
17 buildings, and green space. Consequently, there's minimal
18 grading required, certainly some, but to the extent
19 possible, we will have to meet the existing grades of
20 Battery Lane and Woodmont. So, I think that we meet that
21 requirement of minimal grading.
22 We'll be introducing street trees and landscaping
23 as shown on this illustrative that will far exceed certainly
24 what exists now in terms of quantity and quality.
25 Okay. Next is further the purpose of this zone to

1 encourage and provide for open space not only for use as
2 setbacks and yards surrounding structures and related
3 walkways but also conveniently located with respect to
4 points of residential and commercial concentration as the
5 function for general benefit. I think, I believe that you
6 can see that with building A we are having additional
7 setback and green space that surrounds this building
8 visually connected to the only space at NIH. I've talked
9 about the additional setback and landscaped areas in front
10 of Battery Lane. Courtyards are shown around and between
11 wings of building B that, again, would provide for those
12 places to or the residents to enjoy the outdoor space and
13 then connections around the perimeter of the building, that
14 again, provide for green space.
15 Okay. Tell me if I skip one of these. So, it is
16 the purpose of the zone to encourage and provide for the
17 development of comprehensive pedestrian circulation, network
18 separated from vehicular roadways which constitute a system
19 of linkages among residential areas, open spaces,
20 recreational areas, commercial employment areas, and public
21 facilities thereby minimize reliance on the automobile. I
22 talked about the streetscape, the sidewalks, the courtyards,
23 the location of Metro. There's a circulator bus in the
24 Bethesda CBD that could be accessed. All of those things, I
25 think, are consistent with and meet the purpose of that

1 paragraph.
2 Next one. Since many of the purposes of the zone
3 can best be realized with developments of a large scale in
4 terms of area of land and numbers of dwelling units which
5 offer opportunities for a wider range of related
6 residential/nonresidential uses. It's the purpose of this
7 zone to encourage development on such a scale. I mentioned
8 that this is a very unusual, very large site, over five
9 acres right in Bethesda. Fits this district. Next to NIH,
10 and it's a gateway to CBD. Land area owned by the same
11 family for over 50 years. It just make possible for the
12 provision of affordable housing and a range of units that
13 probably would not be possible under other circumstances.
14 So, I think it meets that purpose of large scale
15 particularly for this urban location.
16 It is further the purpose of this zone to achieve
17 a maximum safety convenience and amenity for both the
18 residents of each development and the residents of
19 neighboring areas and furthermore to ensure compatibility in
20 coordination of each development.
21 The application's designed to locate additional
22 housing and to support the employment centers as mentioned,
23 the BRAC expansion at Naval Med and the Bethesda CBD as well
24 as the commercial centers of the Woodmont Triangle District
25 and the Bethesda CBD in general. So, the development will

1 enhance and strengthen the Battery Lane residential district
2 and the existing condominium and rental communities within
3 the Battery Lane District and compliments what's there.
4 MS. ROBESON: And this is going to continue to be
5 rental. Correct or not correct?
6 MR. WRENN: That's correct.
7 MS. ROBESON: Okay.
8 MR. WRENN: Continue to be rental.
9 MS. ROBESON: Okay. Now, how many -- are rental
10 properties, are there a significant amount of rental
11 properties in this CBD?
12 MR. WRENN: Well, significant is kind of a
13 relative term. I mean, there are many rental properties.
14 Many of them are, the newer ones, are high rise properties
15 that command higher rents. They also have a number of
16 condominium projects. But the older ones, there's some here
17 in the Battery Lane corridor as well as others in the CBD.
18 MS. ROBESON: Okay.
19 MR. WRENN: I don't know the exact mix of condo
20 versus rental.
21 MS. ROBESON: I just wondered if that was another
22 policy that it was furthering because they're rental versus
23 condo units. But, go ahead.
24 MR. WRENN: Yeah. I know I think that's an
25 interesting observation that that could be a policy, a

1 positive policy issue.
2 Okay. The zone is the nature of a special
3 exception shall be approved or disapproved upon findings
4 that the application is or is not proper for the
5 comprehensive and systematic development of the county. The
6 Board is not capable of accomplishing the purposes of this
7 zone and is or is not in substantial compliance with the
8 dually approved and adopted general plan and master plans.
9 In order for the council to evaluate the accomplishment of
10 the purposes set forth herein, a special set of plans is
11 required for each planned development and the district
12 council and the Planning Board are emplowered to approve
13 such plans if they find them to be capable of accomplishing
14 the above purposes in compliance with the requirements of
15 this zone.
16 I feel, it's my opinion, that the application
17 supports the purposes and requirements of the PD zone and
18 it's in substantial conformance with the master, with the
19 sector plan and the sector plan amendment for the Woodmont
20 Triangle.
21 So, we've prepared the development plan
22 accordingly and submitted it.
23 MS. REGELIN: Okay. So, do you concur that the
24 finding of both Park and Planning technical staff and the
25 Planning Board that both of the proposed outlined plans

1 satisfy the purposes of the PD zone?
2 MR. WRENN: Yes.
3 MS. REGELIN: Okay. Let's go back and talk about
4 master plan density. 23.
5 MR. WRENN: Okay.
6 MS. ROBESON: I'm sorry. About what?
7 MS. REGELIN: Master plan density.
8 MS. ROBESON: Oh. I'm sorry. Okay.
9 MS. REGELIN: So, can a density that's greater
10 than the master plan density be approved by the council?
11 MR. WRENN: Yes. It can. And it's an
12 interesting, if I may, just go back and talk a little bit
13 about how the densities are, exist on the site. Where would
14 be the best place to do that?
15 MS. REGELIN: Maybe the surrounding area plan with
16 those --
17 MR. WRENN: Yeah. That's what I'm trying to look
18 for. All right. I'm looking or I'm going to reference
19 Exhibit 18, the surrounding area map. It highlights the
20 zoning for the subject properties and as was already
21 explained, it's R10 for a portion of the site that fronts on
22 Battery Lane farthest to the west of Woodmont, there's a
23 line that extends from Battery Lane to the CBD line at the
24 property line to the south. It's the delineation between
25 R10 and R10/TDR.

1 So, under the R10, the density is 43.5 units per
2 acre. With the R10/TDR designation, the TDR designation,
3 you're allowed to go up to 100 units per acre. The site of
4 A on the north side of Battery Lane, R10 with a
5 recommendation for PD 75. So in 1994, the plan was approved
6 really probably when the planning work was being done was
7 more like 1990. If you understand --
8 MS. ROBESON: I get that it's out of date. Your
9 position is it's out of date.
10 MR. WRENN: But, clearly, the thought was that, as
11 you know, in this location 75 units per acre.
12 MS. ROBESON: The PD 75 zone.
13 MR. WRENN: The PD 75 site was an appropriate
14 model of density at that time. As you go south on Battery
15 Lane at the corner of Woodmont and Battery and even to the
16 west, 100 units per acre seemed reasonable to achieve the
17 goals of the plan and then as you move to the west, they
18 retain the density of R10, the 43.5. So, it's mixed and I
19 think that it's important that there's an acknowledgement
20 that 100 units per acre is reasonable and desirable. I
21 would say, too, that northeast --
22 MS. ROBESON: And that would be for the area where
23 part of C, I mean, all of C and part of B is, the 100 units
24 per acre?
25 MR. WRENN: Yes.

1 MS. ROBESON: And that's with the R10/TDR permit?
2 MR. WRENN: Yes.
3 MS. ROBESON: 100 units. Okay.
4 MR. WRENN: So, there was some recognition of
5 that. I would also point out that to the northeast of the
6 other side of Woodmont and Battery Lane where the CBD won,
7 under optional method, you're allowed 125 units per acre and
8 the development plan for that project was accepted at that
9 level of density. So, in my opinion, if you were to convene
10 again and look at the appropriate densities that the
11 R10/TDR, 100 units per acre could be applied more broadly to
12 this area. In fact, I think that's what the Planning Board
13 recognized as well, the overarching interest, public
14 interest, policy really should have been and be desirable to
15 apply the 100 units per acre in this location. And I think
16 that even this program since the early 90s with the R10/TDRs
17 there is some recognition of that as well.
18 MS. REGELIN: So, Mr. Wrenn, I'm going to direct
19 your attention to 59-C-7.14 of the PD zone and in particular
20 (b)(8).
21 MR. WRENN: Yes.
22 MS. REGELIN: Is the district council bound and
23 limited at the master plan or sector plan density?
24 MR. WRENN: No. They're not. There are several
25 things that they take into count. In B, I'll just recite

1 this so you know what I'm saying. The district council must
2 determine whether the density category applied for is
3 appropriate taking into consideration and being guided by
4 the general plan, the area, master, or sector plan, capital
5 improvements program, the purposes of the plan, development
6 zone, the requirement to provide moderately priced dwelling
7 units in accordance with Chapter 25A of this code as amended
8 and such other information as may be relevant. Where two or
9 more parts of the proposed plan development are indicated
10 for different densities on a master plan, the density
11 category may be granted which would put to use the same
12 total number of dwelling units as would the several parts
13 calculated individually at the density indicated for each
14 respective party and the total together for the entire plan
15 development.
16 MS. REGELIN: And does the district council
17 provide density bonuses as well over the master plan
18 density?
19 MR. WRENN: Yes. They did.
20 MS. REGELIN: Okay. Which I think you described
21 before --
22 MR. WRENN: Right.
23 MS. REGELIN: -- in a prior question.
24 MR. WRENN: Right.
25 MS. REGELIN: Okay. So, perhaps what we can do is

1 go back and sort of explain master plan density so we can
2 see what the basis is of this application's calculations and
3 I think we have some exhibits there. Mr. Freishstat.
4 MR. FREISHSTAT: Oh. I'm sorry.
5 MS. REGELIN: Okay. So, we're providing -- this
6 is the same thing as his 7.
7 MR. WRENN: Yes. It is.
8 MS. REGELIN: One hundred. Okay. All right. So,
9 we've marked something. What title do we want to give it?
10 It's the density calculation chart?
11 MS. ROBESON: That's fine.
12 MS. REGELIN: So, we do Exhibit 53?
13 MS. ROBESON: Yes.
14 MS. REGELIN: So, the density calculation chart.
15 Okay.
16 (Exhibit No. 53 was marked for
17 identification.)
18 MS. REGELIN: So, perhaps what we can do is sort
19 of step by step talk about the -- you sort of gave us just a
20 minute what the various zones are on the property and then
21 tell us what the densities are required and then talk about
22 the recommendations in the master plan, how we calculated
23 the bonuses, et cetera.
24 MR. WRENN: Okay. I'm looking at the PD-100
25 density calculation chart, and what's listed on the left of

1 the page are the properties by their address. It gives the
2 gross square footage next to them and it indicates the zone
3 as I described, R10, R10/TDR, R10/TDR, and R10 and then the
4 PD 75 which is what's recommended in the master plan for the
5 4857 property.
6 The base density is then listed to the immediate
7 right of the zone. Again, the 43.5 units per acre in the
8 R10, the 100 units that's allowed in the R10/TDR, and the 75
9 that would be the density in the PD 75. And given the gross
10 square footage and the base density, you arrive at a base
11 yield that's listed to the immediate right in the categories
12 accordingly. And that then shows you, in relationship to
13 the PD-100 calculation just to the right.
14 MS. REGELIN: So, the base master plan density is
15 this 480 number for the gross site area, gross tract area?
16 MR. WRENN: Right. And that includes, I should
17 have called out under the right-of-way A. That's the ROW is
18 right-of-way, the gross square footage that is dedicated,
19 and then it shows under each zoning category and as you move
20 to the right which you've yield for the base density and the
21 PD-100 density. So, that gets you to the 480 units. Under
22 the PD-100, 567.87 units. Then we apply the 15 percent
23 MPDUs that allow a 22 percent bonus density and that is
24 indicated in both the base number and the PD-100 number and
25 you get to 585 units under the base, and under the PD-100,

692 units. Fifteen percent MPDUs, 88 and then then it goes 104 under the PD-100. So then the market rate unit's 497 versus 578 for the PD-100 and the additional voluntary affordable housing units, zero with the base and then 10 that are being proffered to this part of the PD-100 development plan. So, the total units 585 in the base. Under the PD-100, 692. Total regulated affordable units, 88 under the base yield. One hundred fourteen with the PD-100 density.

MS. REGELIN: So, Mr. Wrenn, the 10 additional affordable voluntary affordable housing units, those are being taken out of the market rate units. They're not being added on to the 692.

MR. WRENN: Right.

MS. REGELIN: That's correct?

MR. WRENN: Yes.

MS. REGELIN: Okay.

MR. WRENN: That's exactly right.

MS. REGELIN: So, it's actually conversion of market rate units to voluntary affordable housing units.

MR. WRENN: You're right.

MS. REGELIN: Okay. And so the total regulated affordable units under PD-100?

MR. WRENN: One hundred fourteen.

MS. REGELIN: Okay. Do you want to go on?

MS. ROBESON: I have a question. On the staff, I just checked again. The staff report has a similar comparison only they say the comparison is 104. Now, I just lost it and you keep, you say 114.

MS. REGELIN: So, 104 relates to the MPDUs.

MR. WRENN: MPDUs.

MS. REGELIN: Correct?

MR. WRENN: Yes.

MS. ROBESON: Oh. But not counting the --

MR. WRENN: Right.

MS. ROBESON: Oh. I see what you're saying.

MR. WRENN: And that's important to recognize. The 692 is the total and of the 692, 104 MPDUs, 578 market, 10 voluntary affordable to get back to the 692, shows the breakdown.

MS. ROBESON: For the 20 years?

MS. REGELIN: Yes.

MR. WRENN: For the 20 years. Correct.

MS. REGELIN: Okay. Do we want to move on to PD-88?

MR. WRENN: Yes. It's a similar process. I'm now looking at another chart. I don't know if it's the same --

MS. ROBESON: Page 2 of --

MR. WRENN: Page 2.

MS. ROBESON: -- Exhibit 53?

MR. WRENN: Okay. Same exhibit.

MS. REGELIN: Same exhibit.

MR. WRENN: And again, we list the property's address, the first square footage. I'm looking at the top of the page on the left side, the zoning that I referenced before and then the master plan densities in the PD-88, and how you would calculate those, 43.8 dwelling units for the 4900 site. Two hundred for the area zoned R10/TDR, 4890, and the R10/TDR, 4858 site; 127, 4865; and then for the R10 PD 75, 75 units per acre. Again, you need 75.1 units or 75 units. It shows the dedication just as before but under the PD-88 zoning category it shows the yield. So, we get down to 480 units, 10 percent bonus density for provision of the TDRs is 48, 528 units. The 15 percent MPDUs, you get the 22 percent bonus density which is shown then to the right. So, you're up to 644 units and 588 for the base.

So, here we go. Of the 644 then 97 MPDUs. Market rate 547. No voluntary affordable units. So a total of 644 units.

MS. REGELIN: Okay. And then do you want to just explain what the third page is which is just a comparison of the existing units and other units created?

MR. WRENN: Sure. All right. On page 3, for each of the properties that list the existing units for 4900. There are 50 units there today.

MS. ROBESON: Right.

MR. WRENN: And then it shows under PD-88 or PD-100, the proposed units. R10/TDR. It shows for 4890, 94 units. For 4858, 66 units. 4857 another 50 units. That makes up the 260 total units and then it shows the proposed total of 547 and 578 market rate units. MPDUs. Currently there's zero. There would be 97 under the 88. One hundred four under the PD-100. So you can see a little bit different voluntary. I already mentioned zero under the 88 and 10 with the PD-100.

MS. REGELIN: So, Mr. Wrenn, we have the master plans to go through, compatibility, urban design. So --

MS. ROBESON: Mr. Gill, do you want to say your peace now?

MR. GILL: I'd love to.

MS. ROBESON: Okay. Why don't you please raise your right hand. Do you solemnly affirm under penalties of perjury that the statements you're about to make are the truth, the whole truth, and nothing but the truth?

MR. GILL: I do.

MS. ROBESON: Okay. Go ahead.

MR. GILL: Okay. I submitted this letter, Exhibit 40. I'm happy to read this into the record or I can just speak.

MS. ROBESON: No. It's in the record --

1 MR. GILL: It's in the record.
2 MS. ROBESON: -- and I've read it.
3 MR. GILL: So that's fine.
4 MS. ROBESON: Just for your information, we can't
5 expand the size of the zoning case. So, you --
6 MR. GILL: I understand that.
7 MS. ROBESON: Yeah.
8 MR. GILL: I understand that this letter had a
9 fairly high level of naiveté.
10 MS. ROBESON: It was a good pitch.
11 MR. GILL: But, at the same time, I mean, let's go
12 to my two points.
13 MS. ROBESON: But, you could bring your own.
14 MR. GILL: Right. I understand.
15 MS. ROBESON: Okay. Go to your two points.
16 MR. GILL: I don't have a lot of experience with
17 respect to zoning matters. I understand that this attempt
18 to change the zoning is being done because, I guess, the
19 county isn't getting around to changing its or amend,
20 potentially amending, it's master plan. So, they're making
21 an individual effort to change it for their properties.
22 But, when we look at their beautiful diagrams and
23 maps, we see that if these proposed changes in zoning are
24 made and the buildings are built, not necessarily as they
25 have them there, they have an 11 story building on Woodmont

1 and Battery and then they have a five story building, I
2 believe. I tried to --
3 MS. ROBESON: Five to seven is what their --
4 MR. GILL: Five to seven. Oh. Right. Actually,
5 let me go back. That brings me -- I've come into this
6 rather late in the process, not because Mr. Regelin did not
7 properly notify us. Everything's been above board there.
8 But, when I first heard about this, Ms. Regelin actually
9 directed me to the Aldon website which I went to, and I
10 downloaded a few things and printed a few things out, and
11 one of the very first items was an illustrative plan of the
12 development plan and in, and this is still on their site
13 today, it had the parcel that is next to Battery Gardens
14 listed as parcel A. It's now parcel B. But it was parcel A
15 and then when I looked at one of the appendices or
16 something, one of the filings that had been made, it
17 indicated that parcel A would be slated for five to seven
18 stories and then low and behold, parcel A is now parcel B
19 which says that it's slated for five to 11 stories. It's
20 not a big deal but it was a surprise.
21 MS. ROBESON: Well, wait.
22 MR. GILL: That's kind of the reason I'm late in
23 this process.
24 MS. ROBESON: Now, you're, okay. Is it B slated
25 for five to seven or five to 11?

1 MR. WRENN: Five to 11.
2 MS. ROBESON: Five to 11. Okay.
3 MR. GILL: And I have the diagram here that shows
4 the picture of B that says A. A is what --
5 MS. ROBESON: And Battery Gardens is your
6 property. When you say --
7 MR. GILL: Battery Gardens is next door. You're
8 right. Exactly.
9 MS. ROBESON: Okay.
10 MR. GILL: Exactly. So, it was, and I called Ms.
11 Regelin this week and said whoa because I hadn't been paying
12 close attention to it. In our first conversation, Ms.
13 Regelin had said that the plan at this point was for Aldon
14 to, or the ownership to, build a five, probably a five story
15 building next to our site which seemed acceptable to us.
16 The main concern is that our properties are remarkably
17 close, the way they back to each other, and I actually have,
18 I have some photographs that maybe I would like to -- I only
19 have one copy of them, though.
20 MS. REGELIN: No. As long as you let me see them.
21 Most of them --
22 MR. GILL: If I can? I'll let you see them.
23 MS. ROBESON: No. And if we can put them in the
24 record, too?
25 MS. REGELIN: Yes.

1 MS. ROBESON: And these would be 54.
2 MR. FREISHSTAT: 54 would be the next number.
3 MS. REGELIN: So, A, B, and C?
4 MS. ROBESON: Yeah. But, let me mark the A, B,
5 and C.
6 MS. REGELIN: Is that 54?
7 MR. FREISHSTAT: Go ahead and mark it.
8 MS. ROBESON: No. I'll mark it.
9 (Exhibit No. 54 was marked for
10 identification.)
11 MS. ROBESON: Mr. Gill, do you mind coming up here
12 and describing these, please? I'm showing you what's been
13 marked as 54A. Can you just tell me what the top picture
14 shows?
15 MR. GILL: 54A is a picture of the back of one of
16 the buildings at Battery Gardens on the right hand side.
17 MS. ROBESON: Uh-huh.
18 MR. GILL: And then there's a small strip of
19 land --
20 MS. ROBESON: I see.
21 MR. GILL: -- a fence and then it goes to the
22 Aldon Property on the other side where there's a driveway
23 and then the Aldon building --
24 MS. ROBESON: Okay.
25 MR. GILL: -- which I think is 4900.

MS. ROBESON: Is that approximately, is the fence approximately the property line?
MR. GILL: I believe it is.
MS. ROBESON: Okay.
MR. GILL: There's a wall. There's a retaining wall here and then there's a fence right next to the wall.
MS. ROBESON: Okay. And what does the bottom picture show?
MR. GILL: The bottom picture is looking as though one were standing close to the sidewalk on Battery Lane.
MS. ROBESON: Okay.
MR. GILL: And facing our property which, on the right hand side says Battery Gardens.
MS. ROBESON: Okay.
MR. GILL: And then on the left hand side that is one section and to be completely truthful, it's the section that is, in fact, closest to our building. Not all of this building, which I believe is 4900, is that close to Battery Gardens.
MS. ROBESON: Okay.
MR. GILL: But some of it is.
MS. ROBESON: Okay.
MR. GILL: And as you go down to the end it gets close together. In the middle, it's not quite as close as that but it also jumps out.

MS. ROBESON: Okay.
MR. GILL: There's some little mini planks. So, as you can see from this picture, Battery Gardens is very close to that building.
MS. ROBESON: Okay.
MR. GILL: I actually measured it, and it appears that we are approximately eight feet from the property line and the Glen Aldon building is about 12 feet from the property line. So, it's a total of 20 feet.
MS. ROBESON: Twenty feet.
MR. GILL: That was my very loose measurement.
MS. ROBESON: And it looks like your -- how many stories is your building?
MR. GILL: We are a two and a half story structure all the way through.
MS. ROBESON: Okay.
MR. GILL: You can see the two stories across --
MS. ROBESON: And I see the basement.
MR. GILL: And the basement are halfway below grade.
MS. ROBESON: Okay. All right. Now, let me have you describe what I marked as 54B. Can you tell me what the top picture is?
MR. GILL: Yes. This is just another picture almost from the sidewalk again on Battery Lane. On the

right hand side you can, again, see the --
MS. ROBESON: Battery Gardens.
MR. GILL: -- Battery Gardens. So, this is looking straight down the driveway of the Glen Aldon building, and it goes in the back there.
MS. ROBESON: Okay. And what's the bottom picture.
MR. GILL: And then the bottom picture is on the Battery Gardens' property in the "backyard" which is a strip about seven feet wide before it hits the Glen Aldon property, and I'm looking down the backs of the buildings at Battery Gardens.
MS. ROBESON: Okay. You're looking at the -- so the grass strip is your property.
MR. GILL: That's correct.
MS. ROBESON: And then the paved strip is Glen Aldon's property.
MR. GILL: Correct.
MS. ROBESON: Okay. And can you describe the photo on 54C?
MR. GILL: That's actually, well, I see it might have been a little over kill on photos.
MS. ROBESON: That's okay.
MR. GILL: That's just slightly closer. I moved in from the sidewalk on Battery Lane, and I've gone closer

to the buildings on each side of Battery Gardens, on the right side and Glen Aldon on the left side and, again, it looks a little bit bigger.
MS. ROBESON: Is the indent you're talking about where the cars, the truck is --
MR. GILL: Yes.
MS. ROBESON: -- the vehicles are?
MR. GILL: Exactly.
MS. ROBESON: And then it comes back out?
MR. GILL: Yeah. You can see it comes back out. Exactly.
MS. ROBESON: Okay. So, on both north and south ends of your building is where you're saying the narrow space is?
MR. GILL: Yes.
MS. ROBESON: Okay.
MR. GILL: I believe so. I didn't go to the back and measure that part but it appeared to be about the same.
MS. ROBESON: Okay.
MR. GILL: That's what I recall.
MS. ROBESON: Okay.
MR. GILL: If I'm wrong on that, forgive me, but I think I got close.
MS. ROBESON: Okay.
MR. GILL: Okay. Okay?

1 MS. ROBESON: So, you can continue with what you
2 want to say.
3 MR. GILL: All right. I do want to say, and my
4 letter states it, that I'm not, I'm not opposed to the
5 request for this change. I think it's good for Battery
6 Lane, and I agree with practically everything that's been
7 said in terms of increasing density. You know, it's an area
8 of the, to the sort of downtown part of Bethesda that is
9 probably, you know, the most underutilized of any section of
10 Bethesda. I completely agree with all of that. But, I'm
11 really concerned about poor little Battery Gardens.
12 MS. ROBESON: Yes.
13 MR. GILL: I'm here representing the ownership of
14 Battery Gardens, and you know, I foresee potential terrible
15 scenarios for our property. The most important point is,
16 you know, what happens if the zoning is changed to 11 story
17 buildings are built and then the county council decides
18 that's enough of the tall stuff on Battery Lane, and oh. By
19 the way. There's a park on the other side of your complex,
20 Battery Gardens, Mr. Gill, and I'm afraid we don't want to
21 have any taller structures close to the park. It would make
22 it feel boxed in the park. So, that means that --
23 MS. ROBESON: Yes.
24 MR. GILL: -- we may not be able to do anything,
25 and be faced with an 11 story building --

1 MS. ROBESON: Twenty feet away.
2 MR. GILL: -- taking 50 percent of the light away
3 from our complex. Because, I mean, you can see from all the
4 pictures. We have a rather narrow strip there. It's long
5 but it's narrow.
6 MS. ROBESON: Now, you understand that even though
7 they say, right now, the way their plan is worded, they can
8 build, they may say to you our plan is only five stories.
9 MR. GILL: right.
10 MS. ROBESON: But if the zoning is approved as it
11 is right now, there's nothing that would prohibit them --
12 MR. GILL: Precisely my fear. That's it.
13 MS. ROBESON: Okay.
14 MR. GILL: That's why I'm here.
15 MS. ROBESON: I just want to make sure you
16 understand.
17 MR. GILL: No. No. I know it. And even though
18 that's my fear, I mean, this is a real cut under for us
19 because, you know, in terms of the potential for rezoning
20 for all of Battery Lane or at least to the park or whatever,
21 I mean, we'd be in favor of that. But, we would like to be
22 included, too, and of course, we haven't fought -- we're not
23 planning on building anything in the next 10 years.
24 MS. ROBESON: Uh-huh.
25 MR. GILL: And so we haven't filed any requests

1 for rezoning.
2 MS. ROBESON: But, your main concern is the impact
3 of the light and --
4 MR. GILL: That's what it is. That's what it is
5 now. If we were ultimately able to build, you know,
6 redevelop our site, well then that might be a different
7 story.
8 MS. ROBESON: Right.
9 MR. GILL: And so, I don't want to say, oh. I
10 sure hope they stick with five stories because we might want
11 to go to 11 stories someday, that is if the county allowed
12 us to do so. So, that's our problem. I mean, we're kind of
13 caught betwixt and between here in a difficult situation.
14 But, you know, I know that there's going to be another
15 opportunity whenever plans are submitted for a proposed
16 building or buildings or a building, big building, on the
17 site, and I'll be able to speak then. But, if that 11
18 stories is, you know, five to 11 stories is granted, who
19 knows what the market will be like but given the way
20 patterns are right now, if I'm a developer, I'm going to
21 want to go up as high as I can and so, I have doubts as to
22 whether a five story building, capped five or even six
23 stories would be built there, and I'm guessing that it would
24 go right up to 11 stories. And at that point, at that
25 point, then we would have to fight as much as we can fight

1 to keep that property a little farther away from our
2 property so that the sun will shine for at least a couple of
3 hours a day, and I know that sounds like an exaggeration but
4 it's not. That's how serious it is, the problem is.
5 MS. ROBESON: Did you examine the setbacks
6 between, proposed under --
7 MR. GILL: You know what? I looked at everything
8 I could find online but I saw no measurements anywhere.
9 MS. ROBESON: Okay.
10 MR. GILL: Ms. Regelin just told me that the
11 property will be setback a little, at least a little bit
12 farther back from where it is now. But, as my letter
13 states, and this is true, we have a problem renting our
14 lower level units on that back side of the building because
15 when you look out the windows, you're already looking up
16 at --
17 MS. ROBESON: Oh. I see.
18 MR. GILL: -- a four story building, and part of
19 the problem also is the elevation is approximately a half
20 story higher than ours, and so, you know, we're starting
21 looking up to begin with.
22 MS. ROBESON: Oh. It's already --
23 MR. GILL: And the elevation of Battery Gardens
24 goes down a little bit too. But, they have steps going up
25 in the front and we're flat. So, anyway, this is really

1 just about going on record. That's all. When the time
2 comes when the new building is built --
3 MS. ROBESON: Well, I mean --
4 MR. GILL: I may be back.
5 MS. ROBESON: They have the opportunity to
6 restrict, you know, height or step backs or things like
7 that--
8 MR. GILL: Yeah.
9 MS. ROBESON: -- at this state.
10 MR. GILL: I just would hope that -- they need to
11 get together and change the zoning for everybody so that
12 it's fair. I mean, this is, I mean, I give lots and lots of
13 credit to the Brown family for pushing this forward
14 individually because it's a massive job but I have empathy
15 having been involved in a couple of things years ago. Not
16 nearly this bad but at the same time to be able to, you
17 know, to change the zoning on the block next door and then
18 we may never have that opportunity. There is something
19 fundamentally unfair about that.
20 MS. ROBESON: Okay.
21 MR. GILL: I mean, wouldn't you agree?
22 MS. ROBESON: Well, I'm not going --
23 MR. GILL: We're 20 feet away. We're 20 feet away
24 and we're going to have to stick to, you know, two and a
25 half story height or whatever, four story whatever's

1 permitted.
2 MS. ROBESON: Well, that's in the future. I guess
3 the thing, well, I guess what you're saying you don't know
4 what the future, none of us know what the future plans are
5 going to be and you're concerned about the impact as it
6 stands today --
7 MR. GILL: Yeah.
8 MS. ROBESON: -- is what you're saying.
9 MR. GILL: Well, I mean, if a tall story were, an
10 11 story building or something, you know, eight, nine, 10,
11 11 story building were built somewhere approximately where
12 it's going to be built now, we, I mean, our apartments on
13 that side will be virtually unrentable. What we'd have to
14 lower the rent by a significant percentage, and it isn't
15 just that side.
16 I've done my own individual incredibly
17 unprofessional studies on this but I have to add fairness
18 and common sense and all you need to do is visualize and,
19 you know, the buildings on the other side of our parking,
20 you can see that there are two sections. I won't go there.
21 But there are two sections. There's parking in the middle.
22 They won't see the sun until 11:00 a.m. in the summer.
23 Well, maybe not in the summer but in the spring, the sun --
24 there will be this massive monstrosity, and I'm not, not in
25 favor of the monstrosity. But, darn it, we want the same

1 rights. But, we don't have any plans to build. So, there's
2 no point for us, at this point, to try to do what they --
3 MS. ROBESON: But, you are concerned how your
4 existing units are going to be --
5 MR. GILL: Well, I'm more than concerned. I'm
6 frightened. That's how bad I think it could be. Five story
7 building? Not a problem. Not that it would be great. But,
8 not a problem. But then, of course, if you build a five
9 story building and then we build an 11 one looking over you
10 all.
11 MS. ROBESON: Well, what if it was stepped back?
12 MR. GILL: Looking over you all.
13 MS. ROBESON: What if the building was stepped
14 back?
15 MR. GILL: Every inch going the other way --
16 MS. ROBESON: Sunlight.
17 MR. GILL: -- helps.
18 MS. ROBESON: Yeah.
19 MR. GILL: It's hard for me to know.
20 MS. ROBESON: Right.
21 MR. GILL: And obviously, if the building is
22 stepped back then that may change the plans a little bit,
23 too.
24 MS. ROBESON: Right.
25 MR. GILL: And it's, I mean, it's hard to know.

1 But, I foresee whenever the time comes a few years down the
2 road whenever building B is ready, you know, for plans to be
3 approved, that's probably where I'll have to make a little
4 more noise than I'm making now.
5 MS. ROBESON: Okay. Any questions for Mr. Gill?
6 MR. GILL: It is what it is. Sorry.
7 MS. ROBESON: Okay.
8 MR. GILL: To use the cliché. But it is.
9 MS. REGELIN: No.
10 MS. ROBESON: Well, thank you for your --
11 MR. GILL: I appreciate your letting me intercede
12 here with my brief testimony.
13 MS. ROBESON: No. That's fine.
14 MR. GILL: And I'm going to move on. So, I'm
15 done.
16 MS. ROBESON: Okay. Thank you.
17 MR. GILL: Thanks a lot.
18 MS. REGELIN: Thank you, Mr. Gill.
19 MS. ROBESON: All right. Oh. Mr. Gill, not I'm -
20 - did you have questions for Mr. Wrenn?
21 MR. GILL: No.
22 MS. ROBESON: Okay.
23 MR. GILL: I don't have any questions.
24 MS. ROBESON: All right.
25 MR. GILL: Thank you.

1 MS. ROBESON: Thank you. All right.
2 MS. REGELIN: Do you want us to proceed or --
3 MS. ROBESON: Well, wait. I think -- Mr.
4 Humphrey, feel free to stay there. I think we're not
5 totally -- I don't think it's cross-examination time yet.
6 Am I correct?
7 MS. REGELIN: No.
8 MS. ROBESON: Okay. Let's proceed and then, Mr.
9 Humphrey, after we'll take a 45 minute lunch break and then
10 we'll go with cross-examination. Is that okay with you?
11 MR. HUMPHREY: Sure.
12 MS. ROBESON: Yeah. All right. Go ahead, Mr.
13 Wrenn.
14 MS. REGELIN: Okay. So, we're going to move on to
15 the master plan.
16 MR. WRENN: Yes.
17 MS. REGELIN: So, can you identify the applicable
18 master plan or sector plans and describe how the development
19 plans are in substantial conformance and how they realize
20 the goals and objectives recommended in the plans?
21 MR. WRENN: I will. As was previously mentioned,
22 two plans that are relevant to this application. The 1994
23 Bethesda CBD Sector Plan and the 2006 Woodmont Triangle
24 Amendment to the Bethesda CBD Sector Plan.
25 So, when I look at master plans, I always start at

1 the sort of overarching goals and recommendations. I think
2 those have the longest shelf life, tend to guide
3 policymakers and decision makers, and then you move on to
4 specific recommendations for districts and properties.
5 So, the July 1994 CBD, Bethesda CBD Sector Plan.
6 One of these goals, these big goals we though is to realize
7 the vision of Bethesda as a diverse and lively downtown,
8 continue well-designed redevelopment. It's my opinion the
9 Glen Aldon development plan proposes an urban edge
10 environment, balances residential density with landscape
11 open areas as I've describe previously, and with the urban
12 tree canopy and gathering spaces, I think with the
13 connectivity to the Woodmont Triangle and the retail
14 restaurant services that are locate there, clearly
15 contribute and help achieve the goal of a diverse and lively
16 downtown.
17 MS. ROBESON: And this is for both plans?
18 MR. WRENN: Yes. The Woodmont just reinforced
19 that and actually said we need to make some changes in the
20 Woodmont area to help achieve that goal.
21 The second one is to encourage in field
22 development that complements the underlying physical form
23 Bethesda, enhance Bethesda's residential districts. This
24 application, it, I think, does nothing but compliment the
25 residential character of the Battery Lane corridor and is a

1 significant contribution to the overall business district in
2 terms of physical form. It's proposing a variety of
3 building massing and building heights, landscaping along the
4 Battery Lane corridor, really creating a great residential
5 environment within a urban area.
6 Third. Encourage and maintain a wide range of
7 housing types in neighborhoods in and around Bethesda for
8 people of all incomes, ages, lifestyles. Provide an
9 adequate supply of housing including affordable units to
10 reinforce Bethesda as a place to live as well as work.
11 Again, the application introduces regulated, affordable
12 units as a key component of the multi-family plan for the
13 site. We're relatively affordable but unregulated housing
14 units currently exist. You get not only additional housing
15 but deregulated affordable housing that we've described, and
16 it's a mix. It provides for that diversity of income
17 levels, unit types, really the type of thing that makes an
18 urban neighborhood a desirable place to live.
19 So, then you go to some objectives for the Battery
20 Lane District itself. One of those is to retain most of the
21 existing affordable units. It's my opinion the development
22 plan will increase the amount of affordable housing within
23 the Battery Lane District, and it doesn't affect the
24 remainder of Battery Lane which will retain its existing mix
25 of garden apartments, condominiums and senior assisted

1 living units that I referenced earlier.
2 Second objective. Allow redevelopment of certain
3 sites to increase the amount of housing near Metro and
4 further the goals of the county's Agricultural Preservation
5 Policy. Again, we find ourselves somewhat in competing
6 priorities here of trying to achieve both of these goals but
7 I think we've found the right balance. We'll increase
8 housing near not one but as I mentioned, two Metro stations,
9 and it furthers the goals of the county's Agricultural
10 Preservation Policy by utilizing, making use of the TDRs as
11 well as the existing infrastructure, reduce pressure for
12 expanding sprawl, really providing housing where there is a
13 dramatic increase in jobs to create that more, that
14 job/housing balance.
15 All right. And as I said before, it's not
16 insignificant that this additional housing resource will
17 help support the goals of the Woodmont plan by helping with
18 the vitality of that retail and restaurant district.
19 So, I think the application meets the stated goals
20 of both the original CBD Sector Plan of '94 as well as the
21 2006 Woodmont Triangle Amendment.
22 Now, interestingly enough, there's some
23 distinctions between those two as it relates to building
24 heights that probably should --
25 MS. ROBESON: Between the Woodmont Triangle and

1 the --
2 MR. WRENN: Yes.
3 MS. ROBESON: -- Bethesda. Yeah.
4 MR. WRENN: Yes.
5 MS. ROBESON: Okay.
6 MR. WRENN: In the Bethesda CBD plan, there's a
7 building height diagram specifically in the Battery Lane
8 area. It calls for 65 feet and then --
9 MS. REGELIN: Perhaps you can identify what page
10 and figure number in the Battery Lane?
11 MR. WRENN: Yes. Page 39, figure 3.2.
12 MS. ROBESON: Of the Bethesda plan?
13 MR. WRENN: Of the Bethesda '94, Bethesda CBD
14 plan.
15 MS. ROBESON: Okay.
16 MR. WRENN: So, this is a diagram that shows
17 building height limits throughout the entire CBD and on the
18 top left portion of the diagram is where the Battery Lane
19 area is, and what it shows is an area of 65 feet that
20 includes most of the property south of Battery Lane.
21 MS. REGELIN: Do you mean south or north at 65
22 feet?
23 MR. WRENN: I mean north. Pardon me. It includes
24 the area north of Battery Lane. It's 65 feet. And then
25 there's a thick, black line that delineates the 65 feet and

1 then a recommendation that it can go to 110 feet, and it's
2 just to the south of Battery Lane.
3 MS. ROBESON: Which page are you on?
4 MR. WRENN: Page 39 of --
5 MS. REGELIN: Would it be helpful? We made copies
6 of those pages and we can give those to you?
7 MS. ROBESON: No. I have --
8 MS. REGELIN: Okay.
9 MS. ROBESON: -- the plan. Is the full plan in
10 the record?
11 MS. REGELIN: No. Just the map which is what was
12 required. Perhaps that's why it would be helpful just for
13 expediency here?
14 MS. ROBESON: Well, I'm going to put the whole
15 plan in the record since -- so we can --
16 MR. WRENN: We can just --
17 MS. ROBESON: If you're agreeable, I'll print it
18 off of Park and Planning website because mine has, the one I
19 printed has highlighting in it.
20 MR. WRENN: Is that the Woodmont amendment?
21 MR. FREISHSTAT: No. That's the Bethesda plan.
22 MR. WRENN: Okay.
23 MS. ROBESON: Well, I have the Bethesda plan here,
24 the cover sheet for, I have the Woodmont elsewhere.
25 MR. WRENN: Okay.

1 MS. ROBESON: But, I'm going to put all of both
2 plans in the record and if you're agreeable, I'll take both
3 of them and print them from the website.
4 MS. REGELIN: Well, in fact, today, I brought a
5 copy of the Woodmont amended sector plan which we intended
6 to --
7 MS. ROBESON: Oh. Okay. That's fine.
8 MS. REGELIN: -- put into the record because we
9 put the map in of the Bethesda one which is what was the
10 requirement.
11 MS. ROBESON: No. I know.
12 MS. REGELIN: But we put the --
13 MS. ROBESON: It's just your arguing -- I just
14 would like both of them in. So, if you're agreeable, I
15 will, whatever exhibit we end on, I'll add the Bethesda
16 sector plan as an exhibit. Okay?
17 MR. FREISHSTAT: Do you want it marked? The
18 Woodmont plan or --
19 MS. ROBESON: Is that the Woodmont?
20 MS. REGELIN: This one's the Woodmont.
21 MR. FREISHSTAT: It's Woodmont.
22 MS. ROBESON: Yeah. We could put that in now.
23 That'll be 55.
24 MS. REGELIN: So the Woodmont Triangle Amendment
25 to the Bethesda CBD Sector Plan.

1 MS. ROBESON: Right.
2 (Exhibit No. 55 was marked for
3 identification.)
4 MR. WRENN: Should I proceed?
5 MS. REGELIN: Yes.
6 MR. WRENN: All right. So, what I think is
7 significant about this is that we have the building height
8 limits as depicted on page 39 of the Bethesda CBD Sector
9 Plan and as I described, it recommends 65 feet north of
10 Battery Lane. Then there's a line some distance, hard to
11 determine exactly what it is, south of Battery Lane that
12 goes from Woodmont to the west and then south of that line
13 is 110 feet and then wraps around the parking garage which
14 is in the CBD and excluded from this 110 foot designation.
15 So, fast forward to the Woodmont Triangle
16 Amendment, 2006, and they have similar proposed building
17 heights in the approved and adopted plan, and that is page
18 12 of the amendment. And there's been some changes made to
19 that building height recommendations for the Battery Lane
20 corridor. They still hold 65 feet north of Battery Lane as
21 proposed, as recommended in the original CBD plan but
22 they've extended the area that when your types are
23 recommended, a little farther to the west to include all
24 three buildings that are under this application south of
25 Battery Lane.

1 MS. ROBESON: Is that Battery Gardens now
2 included, too?
3 MR. WRENN: No. Battery Gardens is just to the
4 immediate left of the thick black line that separates the
5 two.
6 MS. ROBESON: Oh.
7 MR. WRENN: And then --
8 MS. ROBESON: Okay.
9 MR. WRENN: And it also the distinction between 65
10 feet and 110 feet now is that the right-of-way of Battery
11 Lane, on the south side of Battery Lane, instead of some
12 undetermined distance --
13 MS. ROBESON: I see that.
14 MR. WRENN: -- into the site. So, it's my opinion
15 in these cases where there may be some discrepancies that
16 the more recent plan is the plan that should apply in terms
17 of recommendations regarding the building heights, and we
18 responded accordingly in developing our plans to meet that.
19 MS. ROBESON: Did they already mention in the text
20 of the plan about that change or not?
21 MR. WRENN: No. There's not. In fact, the text
22 doesn't call out any of these --
23 MS. ROBESON: Property.
24 MR. WRENN: -- that were made on the building
25 height.

1 MS. ROBESON: Now, do you, I'll live this for
2 rebuttal do you have anything, you know, to address Mr.
3 Gill's concern because I can definitely but you need to wait
4 for rebuttal because I don't know if you knew what he was
5 going to say or not. So --
6 MR. WRENN: I mean, generally, I did, you know, I
7 think it's certainly an issue worth exploring and talking
8 about. I don't share his concern about the impact that he
9 thinks may occur but --
10 MS. ROBESON: Why is that?
11 MR. WRENN: It has to do with our development plan
12 actually pulls the buildings farther from his site. He has
13 a situation that his units are almost subterranean and face
14 onto an existing retaining wall. Nothing we do is going to
15 alter that cognition. In, I think Mr. Kitchens will get
16 into this in greater detail. But, if we were to build an 11
17 story building or a nine story building, the footprint would
18 undoubtedly shrink because we're going to be limited to some
19 total development units. So, what I've said to people is
20 that if this is our proposed five story building and that's
21 our proposed 11 story building, while it may be more height,
22 the length of it could be reduced and there may be more of
23 them in sun than light, we don't have enough information now
24 to make all of those judgments.
25 But, I just think that the zoning, at the time of

1 zoning, we won't have enough information and that's an
2 important site plan determination that will be reviewed and
3 considered for compatibility of our proposed development,
4 what's adjacent to --
5 MS. ROBESON: Well, does your binding element,
6 does that refer to just the step backs from the street or
7 does it say to adjoining properties?
8 MS. REGELIN: We'd have to read it exactly.
9 MS. ROBESON: Okay.
10 MS. REGELIN: Planning Board --
11 MS. ROBESON: Well, think about that.
12]MS. REGELIN: Because it only came in yesterday
13 afternoon through the process.
14 MS. ROBESON: I know. I feel your pain because I
15 was trying to get ready too.
16 MS. REGELIN: Well, let's just --
17 MS. ROBESON: Just think about that. I think it
18 talks about the streetscape but --
19 MR. WRENN: The canyon affect. Yes.
20 MS. ROBESON: The canyon affect. Exactly. So,
21 anyway, why don't you continue? I guess my question is
22 would you -- I what hear you saying is that should be
23 addressed at site plan. Would you agree to amend that
24 binding condition to also discuss, you know, that adjacent
25 property should be addressed at site plan as well. I'm not

1 asking you to make a decision now. I'm just saying.
2 MS. REGELIN: I think before we complete our case,
3 we will have had the opportunity to speak to the owner and--
4 MS. ROBESON: Yeah.
5 MS. REGELIN: -- and see if there is language that
6 would be desirable.
7 MS. ROBESON: Okay. Go on, Mr. Wrenn.
8 MR. WRENN: Okay. Where are we?
9 MS. REGELIN: Okay. So, let's just say the
10 basics. How is the property identified in the various
11 sector plans?
12 MR. WRENN: Okay. In the '94 CBD Sector Plan, the
13 property is part of site one. Then we talked about the PD
14 75 area.
15 MS. ROBESON: Right.
16 MR. WRENN: And they identify that as site 1.
17 Then site 2 and 3 are the south side of that A lane south of
18 Battery Lane that we identified in that plan.
19 MS. REGELIN: Mr. Wrenn, there's a reference to
20 the Trunell property with regard to site one. Is that part
21 of this project?
22 MR. WRENN: No. It's not. That's what was, as we
23 described --
24 MS. ROBESON: Thank you. Yeah.
25 MR. WRENN: -- that was already approved for

1 redevelopment so it become our site.
2 MS. REGELIN: Okay.
3 MR. WRENN: Then in the 2006 Woodmont amendment,
4 these are referred to as part of block 17 and 16, Battery
5 Lane District. So, slightly, slightly different.
6 MS. REGELIN: Okay. So, let's move on to
7 compatibility.
8 MR. WRENN: Right.
9 MS. REGELIN: Can you describe how the proposed
10 development plan, both of them, achieves compatibility with
11 the adjacent development in the neighborhood as that
12 neighborhood is defined?
13 MR. WRENN: Okay. Well, you look at compatibility
14 under a number of levels. I start, usually, in use and in
15 this case, it's an existing residential multi-family use.
16 We're proposing this similar multi-family residential use.
17 It's completely compatible with the Battery Lane District
18 which is predominantly residential and as I described,
19 provides for interconnections with the services and retail
20 and all of that that's in the Woodmont Triangle area and
21 along Wisconsin Avenue. So, I think the use is compatible.
22 You look at density. We've talked about the
23 levels of density. I think, again, they are completely
24 compatible with the transition that exists from a more dense
25 CBD as you move north to the Battery Lane District. If you

1 look at the various properties, you see a mix of densities,
2 a mix of building heights. We are providing the same type
3 of mix. Our massing, I think, again, is compatible with
4 what's adjacent and through adopted open space
5 configuration, landscaped look on Battery Lane, the
6 courtyards and pedestrian connection to Rugby and Woodmont.
7 I think all of that enhances the compatibility.
8 And then character. Very important. As I
9 described, it's not retail street. You don't have our uses
10 right up to the street. They're set back as appropriate for
11 an urban residential district and so I think the character
12 enhances the compatibility, our yard setbacks similarly do
13 that.
14 The connectivity should not be overlooked.
15 Accessible to transit, accessible for pedestrian circulation
16 and actually encourages it. Everybody wants walkable
17 neighborhoods. You achieve that by having destinations.
18 Those exist as was shown on the neighbor map, art's
19 facilities, public facilities, and then we have the location
20 where people live and then the walk to those places. So, it
21 creates that opportunity, a dynamic, I think from an urban
22 planning standpoint, it's, again, completely compatible with
23 the surrounding area and the neighborhood, and then not
24 unimportant the condition about screening the parking from
25 the street, making sure that the automobile is not the

1 dominant part of this development. All of that, I think,
2 enhances the compatibility of what we're proposing to do.
3 MS. REGELIN: And do you --
4 MS. ROBESON: I'm just looking at page 23 of the
5 Woodmont Triangle.
6 MR. WRENN: Yes.
7 MS. ROBESON: And it says this amendment leaves
8 unchanged the current zoning and height ordinance in the
9 Battery Lane District. So, doesn't that, I mean, that
10 doesn't say to me that they were extending the height limits
11 by virtue of this map on page 12.
12 MR. WRENN: Yeah. It's a --
13 MS. ROBESON: I mean, it says it's not changing.
14 MR. WRENN: I know but yet the map is different
15 than before, and I think it was purposely done. Why there
16 is this discrepancy is something I can't necessarily
17 explain.
18 MS. ROBESON: All right. Well --
19 MR. WRENN: And I think, I mean, I'm sure the
20 Planning Board had a similar review of this. But, I don't
21 disagree that there's discrepancy between the text and the
22 map.
23 MS. REGELIN: So, do you concur with the finding
24 of Park and Planning technical staff and the Planning Board
25 that the development plans are compatible both internally

1 and with the surrounding area?
2 MR. WRENN: Yes. I do.
3 MS. REGELIN: Okay. Can we move on to urban
4 design guidelines?
5 MR. WRENN: Sure.
6 MS. REGELIN: So, can you identify any specific
7 sector plan recommendations for the property and how the
8 development plan might be in substantial compliance with
9 those?
10 MR. WRENN: Yeah. I will. But, before I would
11 also point out that these are guidelines. Not insignificant
12 but not the same as some other master plan recommendations
13 in that regard. They're meant to provide guidance to
14 decision makers on future development of this area.
15 In the urban design guidelines in the Bethesda CBD
16 Sector Plan. I'll just go through some of those and how we
17 meet them. The first is maintain a building setback along
18 Battery Lane which is consistent with the setbacks of
19 existing buildings, and we're doing that. As I explained,
20 we have our 24 and 26 foot setback and generally align with
21 the existing location of buildings as you would move from
22 east to west along Battery Lane.
23 Two. Buoyant building entrances were feasible for
24 Battery Lane to activate the street and increase public
25 safety. Again, I think we meet that. All buildings have at

1 least one resident entrance aiming at Battery Lane.
2 Three. Provide parking in the rear or below grade
3 to minimize the impact on the pedestrian environment. As I
4 explained, we are doing that as well. All the parking for
5 the development is provided either, provided by parking
6 garages located within the building or in the rear or at or
7 below grade. So, we're accomplishing that.
8 Four. Achieve a lush landscape garden character
9 along Battery Lane consistent with the garden character
10 already established in this residential neighborhood. I
11 won't debate how established it is but certainly we will
12 enhance the quality of that landscaped character. The green
13 areas I've already described as well as the streetscape
14 improvements and other pedestrian connections.
15 MS. ROBESON: Are the courtyards paved or are they
16 going to be grass or landscaping?
17 MR. WRENN: Some combination. I don't mean to
18 avoid the question. Certainly there will be green. There
19 may be also some hardscape that allow for, you know, seeding
20 areas and other things. But, the site plan process will
21 certainly get into that in great detail.
22 Okay. Additionally, the CBD Sector Plan, let's
23 see. Guidelines for the Glen Aldon assemblage. Let me talk
24 about those. These are referenced in site two and three.
25 One. Maintain a human scale adjacent to the

1 street by providing a height no more than 65 feet along
2 Battery Lane with the building stepping up to a maximum of
3 110 feet toward the rear. The property to avoid a "canyon"
4 affect along Battery Lane. As I explained on the north side
5 of Battery Lane, we will have a maximum height of 79 feet.
6 That's, understand the 65 feet but you can go above that by
7 a guideline that if you're, without any MPDUs.
8 MS. ROBESON: Right.
9 MR. WRENN: We're not doing that. So, we propose
10 to be 79 feet. This is compatible with the Woodmont View
11 Project developed site adjacent to us, was approved for 90
12 feet in height. So, we will be 11 feet or so below that.
13 Building B on the south side of Battery Lane is
14 proposed for the five to seven stories. We've talked about
15 having some flexibility and a maximum height of 110 feet,
16 and again, I would, my opinion is that with our setbacks
17 being so generous, we are avoiding the canyon affect. That
18 is the main point of this guideline. Instead of and
19 alternatively having the buildings up to the right-of-way 65
20 feet and then creating some step back of building, we're --
21 MS. ROBESON: Okay. But, I also note on page 40
22 of the sector plan, the CBD --
23 MR. WRENN: Yes.
24 MS. ROBESON: -- the Bethesda sector plan, the
25 urban principle, number 7, is achieve compatibility with

1 nearby residential areas --
2 MR. WRENN: Yes.
3 MS. ROBESON: -- through techniques such as step
4 down heights, articulated building walls and façade
5 treatments to minimize building, bulk, and shadow impacts.
6 MR. WRENN: Yes.
7 MS. ROBESON: So, you know, I think you're going
8 to have to address that at some level on that building B.
9 MR. WRENN: Right. And --
10 MS. ROBESON: And maybe that's a question for the
11 architect. But --
12 MR. WRENN: It is. I mean, he'll be more
13 elaborate. Just for what it's worth --
14 MS. ROBESON: So, I don't know if it's enough just
15 to say the setback's greater.
16 MR. WRENN: It also has to do with orientation of
17 where west is. The south is improvement on the sun as it
18 goes from east to west on the southern side. So, really,
19 which buildings do generate shadow or not.
20 MS. ROBESON: Right. But, I guess what I'm saying
21 is you're going kind of from zero to 200 because he's R10.
22 Right? That area's R10. So, you're going from R10 to
23 PD100.
24 MR. WRENN: Yes.
25 MS. ROBESON: And so there is a compatibility

1 issue --
2 MR. WRENN: Yes.
3 MS. ROBESON: -- in that transition.
4 MR. WRENN: There is. And, like I said, I think
5 we'll have the information necessary to make judgments
6 about --
7 MS. ROBESON: Okay.
8 MR. WRENN: -- how that compatibility can be
9 achieved as we move forward.
10 MS. ROBESON: Okay.
11 MR. WRENN: And it can be addressed in many
12 different ways that Mr. Kitchens willing to elaborate on.
13 Okay. I think I have one more to reduce the
14 building mass as seen from the street by locating the bulk
15 of the building toward the rear of the site and providing
16 landscaped courtyards between the building's wings, and
17 building C is designed with 110 foot corners along Battery
18 Lane. You see the courtyards that I described.
19 I think unit 43 is helpful in understanding in how
20 he tried to create courtyards and open space is the wings.
21 MS. ROBESON: Yeah.
22 MR. WRENN: And to not overwhelm Battery Lane more
23 hopefully. I think our adjacent properties really maybe can
24 see that this intentionally isn't just one fog, massive
25 pole.

1 MS. ROBESON: Right.
2 MR. WRENN: That there are some breaks. But,
3 again, I think there's a lot that needs to be done before we
4 know how to successfully make all of this compatible.
5 MS. ROBESON: Okay.
6 MR. WRENN: But, I think we had the right concept.
7 It accomplishes and really struts in the sector plan in the
8 Woodmont plan amendment.
9 MS. REGELIN: So, is it your opinion that the
10 development plan does meet the goal of the Urban Design
11 Guidelines of this sector plan?
12 MR. WRENN: Yes. It does.
13 MS. REGELIN: And do you concur with the finding
14 of the Park and Planning Planning Board staff and the
15 Planning Board, the development plans, substantial setbacks,
16 and other alternative designs will meet the Urban Design
17 Guidelines of the sector plan?
18 MR. WRENN: Yes.
19 MS. REGELIN: And do you concur that, with the
20 Planning Board, that the most appropriate time is to review
21 those details at site plan?
22 MR. WRENN: Yes. I believe that.
23 MS. REGELIN: Okay. So, let's move to public
24 interest.
25 MR. WRENN: Let's do.

1 MS. REGELIN: Can you describe how the proposed
2 development plans will be in the public interest?
3 MR. WRENN: Yes. And I'm going to go through a
4 number of things and --
5 MS. ROBESON: I won't interrupt.
6 MR. WRENN: You may interrupt at any time. All
7 right. First, of course, is the affordable housing and, I
8 would say, more housing. You might say that if housing is
9 going to be affordable in Bethesda, there needs to be more
10 of it. You know, the old supply and demand idea, and
11 particularly here is a applicant who prides himself on
12 providing moderately priced end of the market units. So, we
13 have more housing in a location where housing needs to take
14 place or be built. We have the affordable housing, the
15 MPDUs, and the voluntary affordable housing units. We have
16 the Ag Preserve. The provision of TDRs. Clearly a public
17 goal and benefit. The transit accessibility I talked about.
18 I can't think of another location that has two Metro
19 stations within a comfortable walking distance in this
20 county. We want to take advantage of that infrastructure
21 and that transit.
22 The county housing element was already mentioned.
23 Again, they call for providing housing in locations where
24 infrastructure exists and particularly affordable housing.
25 The objectives and goals of the sector plan. I think we

1 meet those objectives and goals as I've explained and I
2 didn't mention it but I should, he general plan, the ledges
3 and corridors of a new development where, is exactly where
4 this should happen in the corridor.
5 And then the sustainability. The improvements of
6 energy efficient. We have new buildings that will provide
7 and be sustainable in ways that these buildings that were
8 built in the 50s and 60s cannot achieve. We have the storm
9 water management which is not insignificant in an urban
10 location, and we'll be able to implement state-of-the-art
11 storm water management. That's a clear public benefit. And
12 the urban tree canopy we're introducing in landscaped areas,
13 green areas, in the trees that, however, they do not really
14 exist today.
15 And then housing there where the jobs are going to
16 be. Expansion just to the north of us that is BRAC related,
17 Naval Med and NIH. As has already been explained, this
18 location is highly desirable by people who work there as a
19 place to live and I can see that just growing in magnitude.
20 Additional public benefit. Just to distinguish
21 the PD-100. That's the voluntary affordable units that are
22 not part of the PD-88 application. And once more, in the
23 PD-100, we get more of what we need in this location that
24 meets all of those public benefits in a larger way, and I
25 think that's what the Planning Board recognized that this is

1 the location in which we need to provide that housing
2 resource.
3 Okay. I think that's probably enough. Unless you
4 have questions about anything.
5 MS. REGELIN: Okay. You mentioned BRAC. I just
6 want to cycle back. Was the base re-alignment changes that
7 happened at Bethesda Naval and NIH anticipated in either the
8 1994 plan or the 2006 plan?
9 MR. WRENN: Not to my knowledge. I don't think
10 either plan and, again, I participated and was aware of the
11 process involved in both of those plans. It was never
12 anticipated.
13 MS. REGELIN: And is that a significant change
14 that wouldn't, you know, that wouldn't have been
15 contemplated by a plan that wouldn't address that kind of
16 change?
17 MR. WRENN: I think so. I mean, yes. It's
18 clearly a significant change and one that's going to
19 challenge the county to respond to in a number of ways, and
20 I think this is one insignificant way that the county can
21 deal with that in a positive way.
22 MS. ROBESON: So, you're saying that the jobs
23 added with BRAC are going to require more housing than was
24 contemplated in either 2006 or 1994.
25 MR. WRENN: Yes.

MS. REGELIN: Right. And, Mr. Wrenn, when you keep talking about that a plan is already 20 years, you know, 18 years old, part of that is changes in the surrounding area that might impact the findings of the or the recommendations of a plan.
MR. WRENN: Yes.
MS. REGELIN: Okay. All right. ABFL? So --
MS. ROBESON: Is that Mr. Papazian?
MS. REGELIN: No. One school test.
MS. ROBESON: Oh. A school test. Okay. All right. We have the letter from the schools in the technical staff report.
MS. REGELIN: Right. And actually the --
MS. ROBESON: Do you agree or disagree with that letter?
MR. WRENN: I agree with the letter.
MS. ROBESON: Okay.
MR. WRENN: There's no --
MS. ROBESON: Anything else?
MS. REGELIN: The only thing that we don't think is in, actually in, is the actual school test that was adopted that is the snapshot under the subdivision staging growth element, and we wanted to put a copy of that --
MS. ROBESON: Okay.
MR. WRENN: That's this guy.

MS. REGELIN: Yes.
MS. ROBESON: Let's put that in. We're on 56 according to my count.
MR. WRENN: Give them mine or do you want --
MS. REGELIN: Here. Do you want to just pull these two pages out?
MS. ROBESON: Is this the official school staging test?
MS. REGELIN: Yes. It's the subdivision staging policy for 2012.
MS. ROBESON: Mr. Wrenn, does this application meet the 2012 subdivision staging policy when it comes to -- for schools?
MR. WRENN: Yes. It does.
MR. FREISHSTAT: 56.
MS. REGELIN: 56. Yes.
(Exhibit No. 56 was marked for identification.)
MS. REGELIN: Okay. So, while you're marking it, we'll move through one last new item.
MS. ROBESON: Okay.
MS. REGELIN: Which is perpetual maintenance. Kaplan has outlined provisions of a declaration for perpetual maintenance of open space on your property. Is it your opinion that the outline of those terms are reasonable,

appropriate, and sufficient?
MR. WRENN: Yes.
MS. REGELIN: Okay. So, I'm just going to run through his opinions --
MS. ROBESON: Okay.
MS. REGELIN: -- so they're on the record. And then we should be complete. All right. In your opinion, does the proposed development of both PD88 and PD100 substantially comply with the use and density indicated by the master plans or sector plans and do not conflict with the general plan or the Capital Improvements Program or any other county policy that's applicable?
MR. WRENN: Yes.
MS. ROBESON: You need to answer yes. I'll tell you that. They'll be really mad at you if you don't.
MS. REGELIN: Hold on.
MS. ROBESON: Well, let me ask you something.
MR. WRENN: Yeah.
MS. ROBESON: If you're not comfortable with this, Mr. Wrenn, tell me but in your opinion, does this comply with all applicable county zoning standards and master plans and other policies and plans that you consider within the public interest?
MR. WRENN: Yes.
MS. ROBESON: Do you want to go through them one

by one or --
MS. REGELIN: For the record.
MS. ROBESON: Okay.
MS. REGELIN: We can talk really fast.
MS. ROBESON: Okay.
MS. REGELIN: Unless you want to do this at the end because Mr. Wrenn will stay and then we can put him back on and go through the opinion. I don't know if you're trying to do something for time.
MS. ROBESON: Yes. I am. I'm trying to do something for time. So, let's do that.
MS. REGELIN: Okay. We'll just call him back and go through --
MS. ROBESON: Yes.
MS. REGELIN: -- his opinions at the end because that is the end of his, what we have proposed for his direct.
MS. ROBESON: That's fine. And then Mr. Humphrey, we'll break for 45 minutes and then we'll begin with if you have any cross-examination for Mr. Wrenn.
MR. HUMPHREY: Oh. I thought they were going to finish the wrap up of the policies.
MS. ROBESON: No. We're not going to, okay. Go through it now. Go through it now.
MS. REGELIN: Oh, dear. There's a lot of findings

that have to be made. So, it is going to take a few minutes.
MS. ROBESON: Okay. We're not going to --
MR. HUMPHREY: Well, we can break now. But I don't want to cross-examine until they go through this.
MS. ROBESON: Okay.
MR. HUMPHREY: If that's okay.
MS. ROBESON: Let's break now and then we'll come back with that and then you can cross-examine. That's a good point. Okay.
MS. REGELIN: All right. Thank you.
MS. ROBESON: We're going to go off the record.
MR. HUMPHREY: Are you going to insert the 94 Bethesda CBD Sector Plan on the record as an exhibit number?
MS. ROBESON: Yes. That's going to be the last, well, it'll be the last exhibit and it'll be the version that's on the Planning Board website.
MR. HUMPHREY: Okay.
MS. ROBESON: Okay?
MR. HUMPHREY: Thank you.
MS. ROBESON: Okay. We'll break for 45 minutes for lunch. So, we'll be back about 1:15.
MS. REGELIN: Thank you.
MS. ROBESON: Thank you.
(Off the Record.)

(On the Record.)
MS. ROBESON: Okay. We're back on the record. I think we were finishing with the series of opinions that Mr. Wrenn was going to give us.
MS. REGELIN: Correct.
MS. ROBESON: Why don't we run through them. I notice our audience is reduced. We must not be as entertaining as we strive to be.
MS. REGELIN: Fascinating as we think. First is out.
MR. WRENN: Well, we got through the highlights.
MS. ROBESON: Okay. Go ahead.
MS. REGELIN: All right. I'm going to ask the first opinion question because it was a long one on multiple opinions and maybe if I do it separately --
MS. ROBESON: It's fine.
MS. REGELIN: -- perhaps it will be better.
MS. ROBESON: It's fine.
MS. REGELIN: The answer was yes.
MR. WRENN: Yes.
MS. REGELIN: So, in your opinion, is there a reasonable probability that available public facilities and services will be adequate to serve the proposed development under the growth policy and the subdivision staging policy standards in effect when the application was submitted?

MR. WRENN: Yes.
MS. REGELIN: In your opinion, the proposed develop would comply with the purposes, the standards, and the regulations of the PD zone, and would provide for maximum safety, convenience, and amenity of the residents and would be compatible to adjacent development?
MR. WRENN: Yes.
MS. REGELIN: In your opinion, are the proposed internal vehicular/pedestrian circulation systems and points of external access safe, adequate and sufficient?
MR. WRENN: Yes.
MS. REGELIN: In your opinion, is the proposed development so designed to facilitate and encourage social and community interaction and activity among those that live and work and encourage a creation of a development with a distinctive character?
MR. WRENN: Yes.
MS. REGELIN: In your opinion, does the proposed develop provide, encourage a broad range of housing types to serve the diversity of income levels?
MR. WRENN: yes.
MS. REGELIN: In your opinion, does the proposed development provide for open space conveniently located so as to function for the general benefit of the community and the public at large?

MR. WRENN: Yes.
MS. REGELIN: In your opinion, does the scale of the assembled properties for the proposed development realize an opportunity for a more beneficial and comprehensive development?
MR. WRENN: Yes.
MS. REGELIN: In your opinion, does the proposed develop assure compatibility and coordination of each development with existing and proposed surrounded land uses?
MR. WRENN: Yes.
MS. REGELIN: In your opinion, is the proposed development plan compatible both internally and with surrounding uses?
MR. WRENN: Yes. It is.
MS. REGELIN: In your opinion, does the proposed development meet the standards such as minimum area criteria, residential use, parking, green area, and dedication standards of the PD zone?
MR. WRENN: Yes. It does.
MS. REGELIN: In your opinion, do the documents assuring perpetual maintenance intended to be used for recreational or common quasi-public purposes adequate and sufficient?
MR. WRENN: Yes.
MS. REGELIN: In your opinion, does the proposed

1 development substantially comply with or accomplish the
2 goals of the Urban Design Guidelines and the applicable
3 sector plans?
4 MR. WRENN: Yes.
5 MS. REGELIN: In your opinion, is the density
6 category of, and first I'm going to address PD100. In your
7 opinion, is the density category of PD100 appropriate taking
8 into consideration the general plan, the Bethesda CBD Sector
9 Plan, the Woodmont Triangle sector plan, the housing element
10 to the general plan, the housing policy, the CIP, the
11 purposes of the PD zone, the requirement to provide MPDUs
12 and any other relevant county policies or any other relevant
13 information you have discussed in your testimony today?
14 MR. WRENN: Yes.
15 MS. REGELIN: Okay. In your opinion, is the
16 density category PD88 also appropriate for all of the same
17 reasons?
18 MR. WRENN: Yes. It is.
19 MS. REGELIN: Okay. In your opinion, is the
20 proposed development of both PD88 and PD100 in the public
21 interest and justify approval of the zoning requested?
22 MR. WRENN: Yes.
23 MS. REGELIN: Okay. And in your opinion, is there
24 a basis for which the PD100 provides a greater public
25 interest?

1 MR. WRENN: Yes.
2 MS. ROBESON: And that is?
3 MR. WRENN: Well, let me just summarize a couple
4 of the things. And I think it was interesting rereading
5 what the Planning Board said to you was also instructive in
6 that regard. But, it's in the public interest to provide
7 housing in the Battery Lane corridor of the Bethesda central
8 business district, and to the extent we can provide
9 additional housing beyond PD88 to a PD100 level helps to
10 address those important goals.
11 Moreover, it's the additional affordable housing,
12 MPDUs specifically that goes on as you would anticipate with
13 the additional density with a PD-100. And when you look at
14 the difference between the PD-88 and the PD-100, the
15 additional number of units that's on the exhibit, you get
16 48, there's 48 more units. Ten of those, the applicant is
17 volunteering to make affordable for 20 years and it's for
18 our population. It doesn't qualify for MPDUs but can't
19 afford to live in Bethesda, and the 10 units for 20 years --
20 MS. ROBESON: What happens after 20 years? Where
21 do they live then?
22 MR. WRENN: Well, they may not live -- rental
23 housing changes over time, and the, I think there was a
24 number cited. A significant percentage of units turn over
25 annually. So, for 20 years it wouldn't be that someone

1 necessarily would rent one of these apartments for 20 years.
2 MS. ROBESON: Right.
3 MR. WRENN: I suppose it could happen. But more
4 likely, it would be people in a transition from some level
5 of affordable to some other level.
6 MS. ROBESON: Right. I don't want to interrupt
7 you. Go ahead --
8 MR. WRENN: Yeah.
9 MS. ROBESON: -- and just finish your thoughts.
10 MR. WRENN: But, see, I'm just trying to highlight
11 the public interest here and that these voluntary units, 10
12 of them, the seven additional MPDUs, of the four units. So,
13 35 percent of that difference between PD-88 and PD-100, 35
14 percent of that increment is truly affordable above some
15 market rate. I mean below some market rate. And so, in my
16 opinion, that is a significant public benefit that the PD-
17 100 offers that the PD-88 does not.
18 MS. ROBESON: I guess I'm still struggling with
19 why should I favor one county policy at the expense of
20 another?
21 MR. WRENN: Why? Well, I don't know if you favor
22 one at the expense. It's, in all of these circumstances
23 that in my profession of urban planning and land planning,
24 competing priorities happen all of the time.
25 MS. ROBESON: So, why is it more important to have

1 affordable housing and not also support or not support the
2 Ag Pres to the maximum extent?
3 MR. WRENN: Because I think there is a stronger,
4 more important deficit in the housing policy. We're not
5 achieving that. We are, over time, achieving the TDR
6 policy.
7 MS. ROBESON: And what evidence do you have to
8 back that up? Well, let me ask you this. You're already
9 providing the bonus density of the MPDU.
10 MR. WRENN: Correct.
11 MS. ROBESON: Correct? So, we're talking about 10
12 temporary, moderately priced housing units, generically
13 speaking. All right. I'm still looking for the answer but
14 I should, and I don't want to press you but, you know. So,
15 are you --
16 MS. REGELIN: So, can I ask a question? Mr.
17 Wrenn, were the MPDU program and the Workforce Housing
18 Program always 99 years for rental?
19 MR. WRENN: No. That's been a relatively recent
20 change.
21 MS. ROBESON: Isn't there a reason that they would
22 change it to 99 years?
23 MR. WRENN: I'm sure there was reasons for
24 changes.
25 MS. ROBESON: So, why do we not abide by that

1 newer policy?
2 MR. WRENN: Because the policy has not worked. It
3 has not generated affordable --
4 MS. ROBESON: Well, when did they change it?
5 MR. WRENN: I don't recall exactly but I want to
6 say three or four years ago. It's not some substantial, you
7 know, it's been a few years ago. It's not in the last year.
8 It's been something to that magnitude. If we can find that
9 answer, I'll --
10 MS. REGELIN: Yes.
11 MR. WRENN: And I would say 20 years, while
12 certainly significantly less than 99 that's prescribed by
13 the Workforce Housing category, it equates to a generation
14 in time. Typically, if you look at your generation --
15 demographers look at 20 year increments, and within that
16 time, given the typical turnover, there could be hundreds of
17 people, families, that would make use of these units, and I
18 don't think, in my opinion, it diminishes the value of that.
19 I think the planning chair in her letter talked about that
20 balance and about, in their mind, the value of these --
21 MS. ROBESON: And I thought she just said the
22 cost, you know, the upfront cost was greater and therefore
23 it's more in the public benefit. That's kind of what I
24 read.
25 MR. WRENN: I think it's more an expression of

1 value not cost.
2 MS. ROBESON: She says the applicant is willing to
3 spend a much larger sum on VAHUs then it would spend on
4 TDRs, and I don't have any testimony as to what the larger
5 sum is. I don't have any testimony, really, on, clear
6 testimony, on the economics of it.
7 MR. WRENN: Uh-huh.
8 MS. ROBESON: Well, just go ahead and lets finish
9 your testimony.
10 MS. REGELIN: All right.
11 MS. ROBESON: Were I an investor, but I'm not, I
12 would definitely choose the VAHU option. But, go ahead.
13 MR. WRENN: Okay. So, anything else?
14 MS. ROBESON: All done. I'm going to get back to
15 you.
16 MR. WRENN: Oh. It may be in the spirit of trying
17 to address that discrepancy in the Woodmont Triangle plan
18 between the --
19 MS. ROBESON: Maps.
20 MR. WRENN: -- map and the words.
21 MS. ROBESON: Yeah.
22 MR. WRENN: This is just an observation, and your
23 right. This amendment leaves unchanged the current zoning
24 and height limits. I don't know if that means the 65 feet
25 and the 110 feet left unchanged, the height limit. It

1 doesn't exactly say the demarcation. See what I mean?
2 MS. ROBESON: Yeah.
3 MR. WRENN: So, maybe that's why the map was
4 adjusted but they left this alone because they weren't
5 changing the numerical designation.
6 MS. ROBESON: Okay. All right.
7 MR. WRENN: Might be one explanation for that.
8 MS. REGELIN: All right. In your opinion, does
9 the proposed development assist in accomplishing the goal of
10 a coordinated, comprehensive, adjusted and systematic
11 development of the regional district for the protection and
12 promotion of the health, safety, morals, comfort, and
13 welfare of the inhabitants of the regional district?
14 MR. WRENN: Yes.
15 MS. REGELIN: Okay. If there are any that we
16 haven't moved into, we need to move those exhibits into the
17 record. But, I think they may all been done.
18 MS. ROBESON: I think they're already done. Or
19 they are now. So, they're all admitted.
20 MS. REGELIN: Okay. And then I'd like to reserve
21 the right to bring Mr. Wrenn back for rebuttal since there's
22 going to be --
23 MS. ROBESON: Absolutely.
24 MS. REGELIN: Thank you.
25 MS. ROBESON: Mr. Humphrey, do you have any

1 questions of Mr. Wrenn?
2 MR. HUMPHREY: I do. Thank you. Mr. Wrenn, you
3 noted in your testimony, you said there, and if I'm
4 misquoting you, I apologize, there were numerous
5 opportunities for TDR transfer in county. Do you know how
6 numerous those are? How many TDR receiving properties are
7 still left?
8 MR. WRENN: I do not know off the top of my head
9 how many there are still available.
10 MR. HUMPHREY: Do you know how many floating TDRs
11 there are left to land on projects?
12 MR. WRENN: I don't know the precise number of
13 floating TDRs.
14 MR. HUMPHREY: And how many projects, residential
15 projects, in the Bethesda CBD Sector Plan area, residential
16 projects have had more than 20 units? How many of those
17 will provide at least 12.5 percent MPDU?
18 MR. WRENN: I'd have to research the --
19 MR. HUMPHREY: No. You know. Any project over 20
20 units, --
21 MR. WRENN: Yeah. Has to do the --
22 MR. HUMPHREY: -- it has to provide at least --
23 MR. WRENN: Right. But I don't know the number of
24 others. I know they have to provide the 12.5.
25 MR. HUMPHREY: Twelve point five. Thank you.

1 That's what I was looking for. The minimum number --
2 MR. WRENN: Yes.
3 MR. HUMPHREY: -- MPDUs they would have to provide
4 every project in downtown Bethesda. How many TDR receiving
5 properties are there in Bethesda sector plan area, if you
6 know?
7 MR. WRENN: I'm not aware of any others outside of
8 Battery Lane.
9 MR. HUMPHREY: Are you aware of the one, then
10 you're not aware of the one in east Bethesda transition
11 area?
12 MR. WRENN: No.
13 MR. HUMPHREY: Which is an R60 TDR less than an
14 acre in size, around an acre according to Rose Krasnow.
15 You're not aware of the one in the town of Chevy Chase
16 transition area. It's less than an acre in size.
17 MR. WRENN: I was not aware of that.
18 MR. HUMPHREY: Also R60 TDR. Are you aware of
19 whether there's an objective to further Agricultural
20 Preservation Policy of the county in the objectives of
21 either the east Bethesda or the town of Chevy Chase
22 transition area sections of the sector plan as there is in
23 the Battery Lane District?
24 MS. REGELIN: Yes. I guess I would question the
25 relevancy of those master plans as to a property that sits

1 in --
2 MR. HUMPHREY: No. This is the master plan for
3 Bethesda, and it's relevant because there are only three TDR
4 receiving properties in Bethesda.
5 MS. ROBESON: Yeah. I got where he was going.
6 MR. HUMPHREY: Mr. Wrenn is stating that it's
7 more --
8 MS. ROBESON: No. It's okay. You can just answer
9 the question, Mr. Wrenn or do you want to repeat the
10 question, Mr. Humphrey?
11 MR. HUMPHREY: I do. I was asking whether he was
12 aware whether the same objective as Battery Lane District --
13 MS. ROBESON: I understand.
14 MR. HUMPHREY: -- to further the Agricultural
15 Preservation Policy of the county existed in the language in
16 the sections for the east Bethesda transition area
17 MS. ROBESON: Okay.
18 MR. HUMPHREY: -- or the town of Chevy Chase
19 transition area.
20 MR. WRENN: Well, I haven't read the language but
21 my expectation would be if they're designated TDR receiving
22 areas then they would also conform to the goal.
23 MR. HUMPHREY: But, you haven't read the
24 objectives in any of those areas to find out whether it's
25 also stated.

1 MR. WRENN: That's correct.
2 MR. HUMPHREY: Would it surprise you to find out
3 it's not stated? This is the only district in which
4 furtherance of the Ag Policy, Preservation Policy is stated
5 in the Bethesda plan?
6 MR. WRENN: It wouldn't surprise me.
7 MR. HUMPHREY: As to the R10, with a possibility
8 of development under R10, not R10/TDR, if you or the staff
9 calculate 22 percent bonus density for that property, I
10 guess it's the one acre that's under R10. It's apartment
11 building B. There is a 22 percent density bonus incurred.
12 Okay. Do you have the county code there because I'd like to
13 ask Mr. Wrenn if he's aware of Section 59-C-2.241 which
14 limits R10 density to a maximum amount of MDPUs that are
15 incurred in a project? 59-C-2.241. There's a chart there
16 for R10 with the 10 MPDUs.
17 MR. WRENN: So what are we doing? 59 --
18 MR. HUMPHREY: 59-C-2.241.
19 MR. WRENN: Okay. I'm looking at 59-C-2 --
20 MR. HUMPHREY: 241. Density.
21 MR. WRENN: 241.
22 MR. HUMPHREY: Projects with MPDUs.
23 MR. WRENN: 2.241.
24 MR. HUMPHREY: In the chart, doesn't it state the
25 53.07 units, dwelling units is the maximum density allowed

1 at R10 without a project with MPDUs?
2 MR. WRENN: I think we're at a different location.
3 You said that --
4 MR. HUMPHREY: 59-C-2.241.
5 MS. REGELIN: We're looking at it.
6 MR. WRENN: It has to do with RH zone according to
7 this zoning ordinance.
8 MR. HUMPHREY: While, I looked that up, let me ask
9 another question. You inserted into the record the housing
10 element of your general plan. Was that to provide
11 justification that the housing or the general plan of the
12 county has a focus on housing, creation of housing?
13 MR. WRENN: Let me see what I can --
14 MR. HUMPHREY: I'm just asking why you inserted
15 the housing element of the general plan into the record.
16 Was that to provide justification that the general plan
17 actually focuses on the creation of housing?
18 MR. WRENN: It was to introduce, we were talking
19 about various county policies and the housing policy was one
20 that supported the additional housing in this location.
21 MR. HUMPHREY: Is there also a section of the
22 general plan that has to do with preservation of
23 agricultural land for agricultural use?
24 MR. WRENN: Yes.
25 MR. HUMPHREY: But that wasn't inserted into the

record.
MR. WRENN: How do you know? No.
MR. HUMPHREY: To the best of your knowledge, oh. Were you, I'm sorry, were you at the Planning Board hearing last week?
MR. WRENN: Yes. I was there.
MR. HUMPHREY: Was the staff, was the Board provided, did the staff provide the Board, to the best of your knowledge, with any information about the number of TDR receiving properties that are left in the county?
MR. WRENN: I don't recall that they did. I don't recall that.
MR. HUMPHREY: Did they total the number of floating and TDRs left to land on projects?
MR. WRENN: Well, they called Donita.
MR. HUMPHREY: Was there anyone there from the Agricultural Services Division or the Department of County Development to speak to the issue of extinguishing these TDRs?
MR. WRENN: I don't know that anyone was there. I don't recall that anyone spoke on that issue.
MR. HUMPHREY: You're aware that Callum Murray of planning staff did testify that he believed they could be serialized and extinguished?
MR. WRENN: I don't recall his testimony but I

know Callum did speak.
MR. HUMPHREY: But you're not aware of whether the Ag Services Division has any problem or concern about extinguishing these since they're not used for added density in this project?
MR. WRENN: I don't have any knowledge of that.
MR. HUMPHREY: Okay. The Woodmont Triangle Amendment, you say, it proposed more housing in the Battery Lane District but with the text that we're aware of. I just wanted to ask and make it clear. The map that you were referring to was not included in the council approval. It's only the resolution, the text of the resolution for the Woodmont Triangle sector plan amendment that was approved by county council and is in law. The map is not part of the law, is it?
MR. WRENN: Well, it's my opinion that the map included in the amendment would be the approved and adopted amendment to the sector plan.
MR. HUMPHREY: Well then let me ask this. Do you know if the map is included in the council resolution?
MR. WRENN: I haven't read the council resolution.
MR. HUMPHREY: It's in the back of the amendment.
MS. REGELIN: Perhaps if we pull the exhibit then you can look at it.
MR. HUMPHREY: I'm just trying to ascertain

whether the map is in law or only the text of the council resolution is in law.
MS. ROBESON: If you want to come up, Mr. Wrenn. The only thing in the text of the resolution is, that I see, is the map identifying the numbered blocks.
MR. WRENN: Blocks. Right.
MS. ROBESON: But, you can look.
MR. WRENN: Thank you.
MR. HUMPHREY: And then that refers back to no heights and no density plan changing on that availing block. That is the language in the amendments.
MS. ROBESON: Are you looking for 59-C, is it 2.441?
MR. HUMPHREY: 2.441.
MS. ROBESON: You said before 2.41, I think.
MR. HUMPHREY: I probably did.
MS. ROBESON: I'm going to go off, while he looks, I've left my copy of the master plan --
MR. WRENN: Oh. Here is it.
MS. ROBESON: -- at my desk. So, I'm going off the record for a minute, as long as it takes me.
(Off the Record.)
(On the Record.)
MS. ROBESON: Did you find it, Mr. Humphrey?
MR. HUMPHREY: 2.421. I did. And that's what

happens when you do work at late hours.
MS. ROBESON: You can continue.
MR. HUMPHREY: I just wanted to finish with the final amendment question and that was that the map simply identified block numbers.
MS. ROBESON: Okay.
MR. HUMPHREY: Isn't that true, Mr. Wrenn? And then when one refers back using the block number to the text, one sees the language that text and densities are not changed on this?
MR. WRENN: Yeah. But in the resolution, I mean, that I'm looking at, it starts with all the whereas from the planning commission. It says now therefore be it resolved that the Montgomery County Planning Board and the National, Maryland National Capital Park and Planning Commission do hereby adopt said Woodmont Triangle Amendment to the sector plan of the Bethesda Central Business District and the associated amendments to the plans noted above. So, wouldn't that include the body of the --
MS. ROBESON: Oh. He's talking about the council resolution.
MR. WRENN: Yeah. I know. I understand from the section--
MS. ROBESON: Oh. I see what you're saying. That these are only amendments to the underlying text of the

1 draft plan.
2 MR. WRENN: Right.
3 MR. HUMPHREY: Well, but isn't it true the entire
4 thing is referred to as an amendment. It's the Woodmont
5 Triangle Amendment. Aren't we splitting hairs here? I
6 withdraw that question. 2.2, I'm sorry. 421. Could you
7 read what the maximum density allowed in an R10 zone with
8 MPDUs? Isn't it 53.07, dwelling units per acre.
9 MR. WRENN: Well, that's in an R10 zone.
10 MR. HUMPHREY: Yeah. That's what I'm saying. R10
11 without TDR transfer. Maximum number of dwelling units
12 allowed in a project with MDPU use is 53.07 units per acre.
13 MS. REGELIN: Well, if I could just clarify.
14 Could you explain to us where it says with the MPDU density
15 bonus. Because, I believe that the section you pointed out
16 to us says density units per acre.
17 MS. ROBESON: Now, which section are you in?
18 MS. REGELIN: Actually, he's on page C2-3.
19 MS. ROBESON: Well, then I don't have the entire
20 section --
21 MS. REGELIN: Oh.
22 MS. ROBESON: -- of the zoning ordinance.
23 MS. REGELIN: He's pointing us to 59-C-2.421.
24 MS. ROBESON: Okay.
25 MR. WRENN: This is not the same as the copy

1 online that I just saw last night on Am Legal because it
2 says very clearly the --
3 MS. REGELIN: Yeah. Similar.
4 MR. WRENN: -- maximum development in a project
5 with MPDUs. Oh. Here it is. 2.421. Structurally
6 registered dwelling including MPDUs following option
7 standards may be used as follows. Site plan approval
8 procedures must be followed, and this is maximum density
9 development, 53.07 units.
10 MS. ROBESON: So, now I need to go back and
11 understand what your question is, Mr. Humphrey.
12 MR. HUMPHREY: Well, I was simply asking is it
13 appropriate or even lawful for an R10 property to be granted
14 a 22 percent density bonus under the MPDU law if this
15 section of the code says the maximum number of units is
16 53.07. And I just think as a, you know, land use expert, he
17 might have an opinion on that. But, I'm --
18 MS. ROBESON: So, you're saying that the yield
19 that the staff report gives, okay. I get you where you're
20 going. Okay. Go ahead.
21 MR. HUMPHREY: This has less to do with the number
22 of units that might be possible under the sector plan
23 recommendation for the R10 zoned property --
24 MS. ROBESON: Right.
25 MR. HUMPHREY: -- then it does for the R10/TDR

1 zoned property because when you allow fewer units under the
2 R10, that's more units that have to be purchased as
3 transferrable density --
4 MS. ROBESON: Right.
5 MR. HUMPHREY: -- development rights.
6 MS. ROBESON: Right.
7 MR. HUMPHREY: So, that's really a concern of mine
8 that staff has calculated the number wrong for a couple of
9 different reasons. The second one I'll get to.
10 MS. ROBESON: Well, okay. Let's do that within
11 your testimony.
12 MR. HUMPHREY: I will but I also want to ask Mr.
13 Wrenn about this map that he has shown us of the Bethesda
14 CBD Policy Area. It does not note anywhere on here that
15 this is the Metro Station Policy Area map. That specific
16 term Metro Station Policy Area.
17 MS. ROBESON: I'm just trying to get the exhibit
18 number for that.
19 MS. REGELIN: 51.
20 MR. HUMPHREY: Oh. I'm sorry. 51. Yeah. Is
21 there anywhere in the LATR PAMR guidelines where it notes
22 that these are maps of the Metro Station Policy Areas? I
23 know this is the sector plan policy area and these are the
24 three traffic zones that are in it.
25 MS. ROBESON: You mean, the Metro Station Policy

1 Area is under PAMR?
2 MR. HUMPHREY: Right.
3 MS. ROBESON: That are in the -- is that your
4 question?
5 MR. HUMPHREY: What I'm looking for is somewhere
6 on this, over in the LATR PAMR guidelines where it actually
7 says these are the boundaries for the Bethesda Metro Station
8 Policy Area.
9 MS. ROBESON: Okay.
10 MR. WRENN: And it's probably better that Mr.
11 Papazian responds to this because I know there's been
12 changes in the designation of Metro Policy area and the
13 transportation policy areas.
14 MR. HUMPHREY: So, when did that happen? Ball
15 park if you know.
16 MR. WRENN: It's part of the PAMR process and now
17 the TPAR that is going through a similar process. But, he
18 can address that, I think, in a much better way.
19 MR. HUMPHREY: Could I ask him to look at the map
20 on page 18 of this CBD Sector Plan, the big book, if you
21 would. I think there are also maps included in the staff
22 packet which shows. Page 18 there's a map it's 2.3 sector
23 plan area. The outside lines on that figure on page 18, are
24 they not the sector plan boundaries?
25 MR. WRENN: Yes.

MR. HUMPHREY: And within that area, there's a smaller central CBD boundary or Central Business District.
MR. WRENN: Yes.
MR. HUMPHREY: Oh, gosh. I forgot my page number. In the staff packet, there's actually a map and it actually may be an exhibit.
MS. ROBESON: Is it on page 18 of the --
MR. HUMPHREY: Yes. I think it is in the packet. It shows that the CBD lines, except there's this line that goes behind the properties on the south side and none of the subject properties are within the Central Business District. Would you admit that?
MR. WRENN: Yes. That's correct.
MR. HUMPHREY: So, basically, these properties are not within the Central Business District. If it was the case that the Bethesda CBD was the defining characteristic of the Metro Station Policy Area, then this would not be in the MSPA following that logic.
MR. WRENN: Well, I don't follow that logic.
MR. HUMPHREY: You don't follow that.
MR. WRENN: I left that up to the policy area of the CBD line that coincide.
MR. HUMPHREY: Okay. Do you have any explanation, textual explanation, that the boundaries of the sector plan area are the boundaries of the Bethesda Metro Station Policy

Area other than your assertion and the map.
MR. WRENN: Correct.
MR. HUMPHREY: You have no text to back it up. Okay. You noted that BRAC would have and maybe your attorney did. I can't remember. A big impact on the area. Do you know how many employees were shifted to Naval Medical Center from Walter Reed?
MR. WRENN: It was in the thousands. I don't recall the exact number.
MR. HUMPHREY: Do you know any of those employees want to relocate to Bethesda from where they live now or did, when they worked at Walter Reed almost six months ago?
MR. WRENN: No. I don't know the number.
MR. HUMPHREY: So, you actually have no evidence that BRAC is having any impact on the housing use in the Bethesda area, do you? Do you?
MR. WRENN: No.
MR. HUMPHREY: Okay. Thank you. That's all I've got. Thank you.
MS. ROBESON: Okay. Redirect.
MS. REGELIN: Mr. Wrenn, I'm trying to find our number. If we look at the Exhibit 47 and 48 which, no, no, no. I'm sorry. The density calculation chart which is Exhibit 53 which is the PD-100, PD-88 and the third page chart, see if we can find on this mess that's turned into --

Mr. Humphrey was directing your attention to 2.421 and was indicating that the maximum density to develop under the R10 zone was 53.07. When we actually calculated the master plan density, what number of units per acre was used for the land that's designated as R10?
MR. WRENN: Forty-three point five units per acre.
MS. REGELIN: Okay.
MS. ROBESON: Well, was the 43.5 was that with or without the MPDU bonus?
MR. WRENN: That was without.
MS. ROBESON: Okay.
MS. REGELIN: That's the base units per acre for R10 zone.
MR. WRENN: Right.
MS. REGELIN: Correct. Okay. And then are these properties actually going to develop under the R10 zone?
MR. WRENN: Not as proposed. We're requesting the PD zone.
MS. REGELIN: Okay. And does the TDR law require the purchase of MPDUs, the purchase of TDRs for the MPDUs or are those specifically exempt?
MR. WRENN: The MPDUs are exempt.
MS. REGELIN: Okay. And in discussing the impact of BRAC, does one only take into consideration the employees that actually transfer on day one or are those jobs going to

remain at that location for years to come?
MR. WRENN: Well, the jobs will remain in the new location for generations and I think --
MS. ROBESON: How many jobs?
MR. WRENN: I don't know the exact number. I know that it's a significant number that's transferred from Walter Reid. And not only do you have to take into consideration some people whose job has been moved and their potential desire to be closer to where they work but those jobs will be replaced by new employees who may not have settled in some place related to the previous location and would very much be willing and the desire to be closer. Now, I will say I haven't done an interview with people to try to get at what that percentage is. But, common sense tells me that there will be a higher demand based on the location of jobs for housing in this location.
MS. REGELIN: Okay. No further questions.
MS. ROBESON: Okay. Thank you. And Mr. Wren, you can get off the hot seat for a little bit. And who's your next witness?
MS. REGELIN: David Kitchens. We might as well have some more fun. Okay. Mr. Kitchens, let's find your resume.
MS. ROBESON: And this will be --
MR. FREISHSTAT: I have 56 according to my tally.

MS. ROBESON: I have 56 as the subdivision staging policies.
MR. FREISHSTAT: Okay.
MS. ROBESON: So, this would be 57. And this is, I'm sorry, the --
MS. REGELIN: This is the CV for David Kitchens.
(Exhibit No. 57 was marked for identification.)
MS. ROBESON: And is that spelled --
MS. REGELIN: The room with an S.
MS. ROBESON: Okay.
MS. REGELIN: All right.
MS. ROBESON: I couldn't think of another way to ask that.
MS. REGELIN: Mr. Kitchens, have you qualified and testified as an expert before any government body?
MR. KITCHENS: I have.
MS. REGELIN: Okay. And could you advise in your resume there what bodies that you have appeared before that you've been qualified?
MR. KITCHENS: Mostly in Maryland; in Florida, for projects in Boca Raton and West Palm Beach; in Georgia in projects related to local jurisdictions around Atlanta County, Fulton County; and in Virginia both in Norfolk and in Arlington County and in the city of Alexandria.

MS. REGELIN: And were you qualified as an expert in architecture before government bodies in those jurisdictions?
MR. KITCHENS: Yes.
MS. REGELIN: All right. And are you a registered architect in the state of Maryland?
MR. KITCHENS: Yes.
MS. REGELIN: Okay. And how many years have you been an architect?
MR. KITCHENS: Thirty-five.
MS. REGELIN: Okay.
MS. ROBESON: Well let me ask you this. Mr. Humphrey, do you have any objection to admitting him as an expert in architecture?
MR. HUMPHREY: No. None.
MS. REGELIN: Okay.
MS. ROBESON: Okay.
MR. HUMPHREY: I've participated in cases before with Mr. Kitchen.
MS. ROBESON: I think he's proven his expertise.
MS. REGELIN: Thank you.
MS. ROBESON: So, that's fine.
MS. REGELIN: All right. So, 57 is his resume. Okay. So, Mr. Kitchens, are you familiar with the Glen Aldon local map amendment application, G-909?

MR. KITCHENS: Yes. I am.
MS. REGELIN: Are you familiar with the property and the surrounding area?
MR. KITCHENS: Yes. I am, and we have worked in the Bethesda area. We were the urban designers and the architects for Bethesda Row, and I visited the property even as late as last week walking around the property just to get more familiar with the park area and the areas surrounding the proposed zoning application.
MS. REGELIN: Okay. So, would you please briefly explain your role on this application?
MR. KITCHENS: Okay. We were asked to join the initial process for preparing this application and we participated as the architects in workshops with the owner in gathering and analyzing the property and the goals of the property owner and in assisting and helping to develop a proposed, I guess you would call it, an architectural solution for both PD-100 and PD-88 densities for the property.
MS. REGELIN: Okay. And did you prepare a illustrative perspectives of the buildings --
MR. KITCHENS: Yes. We did.
MS. REGELIN: -- the Architectural solutions?
MR. KITCHENS: Yes. In fact, it was up a little while ago. Let's see. It might be up here. No. Maybe

it's back here. So, this is --
MS. ROBESON: That's Exhibit 46?
MR. FREISHSTAT: 46.
MR. KITCHENS: Correct. So, yes. On exhibit, we prepared the sketch that was inserted into the report. What, essentially, this is is a 3D computer generated modeling of the area.
MS. REGELIN: And as part of your architectural expertise in that original exercise, do you evaluate the amount of space that would be needed for the number of units that were proposed at the various densities?
MR. KITCHENS: Yeah. And you mean how it was configured and, yeah. Okay. Yes. Let me say, also, that in doing so, we look also very similar as Mr. Wrenn testified as to what the goals of the CBD plan are and the Woodmont Amendment might be and we look at various ways to look at this. And so, that can be shaped in a variety of ways. We have a certain amount of units to be placed on the site. Normally, this early, we look at about 1,000 square feet per unit and so that can get shaped in a lot of different ways, and we had basically three locations basically to put that, and so we evaluate that shaping with the goals and the desires of the CBD plan.
MS. REGELIN: And so the massing that you show in your illustrative plan is that for 692 units, the maximum

1 under the PD-100?
2 MR. KITCHENS: Yes.
3 MS. REGELIN: All right. And so the PD-88 would
4 fit within that?
5 MR. KITCHENS: That's correct.
6 MS. REGELIN: Okay.
7 MS. ROBESON: Can I ask you? How many stories is
8 building B in your illustrative?
9 MR. KITCHENS: This one?
10 MS. ROBESON: Yes.
11 MR. KITCHENS: It's five. Which is, if you, I'm
12 sorry.
13 MS. ROBESON: And then is C the 11 stories?
14 MR. KITCHENS: Yes.
15 MS. ROBESON: And what's A?
16 MR. KITCHENS: Seven.
17 MS. ROBESON: Seven. Okay.
18 MR. KITCHENS: Uh-huh. Yes.
19 MS. REGELIN: Okay. So, what did you consider in
20 developing the master plan for the application? You know,
21 the massing plan for the application.
22 MR. KITCHENS: Sure. Sure. Without going back
23 and almost verbally describing what Mr. Wrenn testified on,
24 a lot of those same issues we follow as well. But, we do it
25 from a vertical standpoint. If you really kind of look at a

1 lot of the goals of the master plan, the vertical
2 development in the buildings really begin to shape those
3 from a vertical standpoint. So, for instance, you know, how
4 do you better organize the open space that they claim is
5 somewhat disorganized in the Bethesda CBD plan of 1994.
6 While those, the different ways you shape buildings and how
7 they address the streets and the side yards and all that
8 begin to kind of help organize and form that space, and in
9 some cases, it can be taller and in some cases, it needs to
10 be shorter.
11 A case in point is one of the goals of the master
12 plan -- do it this way because you can't see it with it the
13 other way. There was a desire to create a gateway into the
14 north, from the north coming into the CBD, and, you know,
15 while not necessarily one building really forms that
16 gateway, the collection of buildings that are designed
17 really accomplishes that. So, obviously, I think we all
18 would agree that the tallest building within the
19 configuration on the property is that we have -- that
20 building needs to be building C, and especially, obviously,
21 at the corner there.
22 The other issues that come up are the maintaining
23 of a residential street on Battery Lane and Mr. Wren brought
24 up the point early on is that a lot of the massing and the
25 set back issues that are brought out in the CBD plan really

1 relate to commercial retail oriented streets where you want
2 to really tighten up the street at the street claim so that
3 the retail can be successful. There's a lot of cross
4 shopping and retail environments and that's really what we
5 did at Bethesda Row but in a residential street, you really
6 want to be, I would say, a little more relaxed in the
7 street, and so there exists today a pretty wide right-of-way
8 going down Battery Lane already. However, it is encumbered
9 and kind of messed up by a lot of curb cuts and inconsistent
10 sidewalks and inconsistent paving and those kind of things.
11 I think, really, the goal there is, and what they stated was
12 to maintain at least that same width distance and, in fact,
13 we've increased it. We've got 120 feet of width along the
14 frontage of our areas which, quite frankly, is less than a
15 one to one ratio as far as with the street, the height of
16 the building, the congress and urbanism kind of looks at
17 several ratios, one to one, one to two, and one to three,
18 meaning that we could have buildings as high as three times
19 the height of the width of the streets and building place
20 and that becomes acceptable as far as getting wide and
21 narrow down to the street.
22 So, in our case here, with the extra width, we're
23 really providing what we would believe a very lush and more
24 organized and residentially oriented area with the kinds of
25 building setbacks that we're talking about. In other words,

1 in this particular zone, we would almost rather make our big
2 moves and take our setbacks all the way at the ground plane
3 and then let the buildings rise above that rather than going
4 up 65 feet or so and then stepping back one or two or three
5 floors because we've already created the street law and so
6 what we begin to look at and what you start to see here is
7 potentially there's a lot of big move articulations of
8 buildings that are more successful in lessening the canyon
9 like affect that is talked about here.
10 So, there's a combination of how extra wide the
11 street right-of-way and articulations of buildings, and, in
12 fact, I think it's the Bethesda CBD plan says that there's a
13 lot of ways you can take a street wall of a building up
14 three or four stories and then set it back which would be
15 about 30 to 45 feet. You can set buildings perpendicular to
16 the street which is what we tried to do with, especially
17 this building here. But, this building is almost an H or an
18 I shape and so you could potentially look at a building that
19 comes closer to the street here and here and then steps back
20 for the majority of it so that you begin to get a more finer
21 grain of breaking down in scale from a big mute standpoint.
22 And being quite frankly, everything else you do on a
23 building is kind of decoration because it's really not --
24 it's a way to accentuate that kind of stuff but it really
25 doesn't affect overall massing and then furthermore, we do

that in the five story buildings as well and then while the CBD plan doesn't necessarily, I think, verbally address side yards and those kind of things, we've actually done along what, for instance, next to the Gill property.

We've actually done a lot of that idea of putting buildings perpendicular to, in this case, an adjacent property owner in order to break down that scale and to create more space and air between buildings, and we've actually doubled the distance that we are separated from those existing buildings back here. Right now, we're roughly 20 feet. We're a minimum of 40 feet away from them. For the very same reasons and the concerns that Mr. Gill had that we want to get sunlight down into that area. So, those are a lot of the things that we look at as far as we begin to shape buildings.

MS. ROBESON: Now, what if building B was 11 stories?

MR. KITCHENS: Well, if building B was 11 stories, like we said earlier, we already have only so many units and so much square feet that we can put on the site. So, as a building would get higher, we would probably put back more towards this area and maybe put it perpendicular to the street. We've got something not very pretty to look either here which is the back side of a parking garage.

MS. ROBESON: The garage.

MR. KITCHENS: And so, if our building were to get taller, we would probably pull it back into this area and not that we would do it and stack them all up. We might put a taller building here and then step and do a lower portion of a building there or something like that. But, there's a lot of different ways that we would accomplish that. We believe, and then let me say this. There's an economic consideration that comes in here as well. It is much more expensive and much harder for development to bring in a project affordable if you have to go high rise and do concrete frame. The reason these buildings are five stories is from a building --

MS. ROBESON: Six feet above, six stories above, you need a concrete --

MR. KITCHENS: That's correct.

MS. ROBESON: Right.

MR. KITCHENS: So, we're able to build this project in a much more affordable construction. Therefore, accomplishing one of the major goals of the ownership which was to build affordable housing. That doesn't mean that this is any less value or any inferior quality. It's just a more affordable construction to build and we see a lot of that occurring today because of the desire and need to build a large enough unit that will be affordable for a broader demographic.

MS. ROBESON: Are you going to subdivide these parcels separately in to A, B, and C?

MS. REGELIN: Yes.

MS. ROBESON: So, if you go up to 11 stories on B, that's not going to require you to come down on C.

MS. REGELIN: I believe what Mr. Kitchens just indicated is that you only have so much space that these units take up, and whether you stack them up like this or you lay them out like this, it's all the same amount of volume, you know, massing.

MS. ROBESON: Right.

MS. REGELIN: And so this --

MS. ROBESON: But, you're looking at your density. You're looking at your density. You're getting density from all three properties. Right?

MS. REGELIN: Correct.

MS. ROBESON: So, it seems to me that if you took the stories down in C, you'd have to go up on B.

MR. KITCHENS: Well, I think I'm understanding where we're going here. If we were to basically subdivide? Is that what we're saying? So this is a parcel. This is a parcel. This is a parcel.

MS. REGELIN: Uh-huh.

MR. KITCHENS: So, how many acres is this parcel? So, we would only be able to build as many units on this

side as we have acres. So, if it's 100 units per acre, and it's one acre, we could build 100 units on that side.

MS. REGELIN: Well, actually, Mr. Kitchens, I'm going to interrupt you --

MR. KITCHENS: All right.

MS. REGELIN: -- because this is a development plan.

MR. KITCHENS: Sure.

MS. REGELIN: And so the development plan is a comprehensive plan for all three properties.

MS. ROBESON: Right. They're saying six --

MR. KITCHENS: Okay. This is the way we evaluate it.

MS. ROBESON: They're saying 692.

MS. REGELIN: The subdivision is separate.

MR. KITCHENS: Yeah.

MS. ROBESON: The PD-100 is 692 units for all three properties.

MR. KITCHENS: That's correct.

MS. ROBESON: So, if you add stories to B --

MR. KITCHENS: Yes.

MS. ROBESON: If you just add stories to B but don't shrink the footprint, then you have to reduce C. Right?

MR. KITCHENS: No. Because I can take all of

1 these units and stack them up higher if I want to. It's
2 only if I start putting more units that we already have on
3 this site, then I have to start taking units from the other
4 two.
5 MS. ROBESON: Yeah. That was my question.
6 MR. KITCHENS: It's all in the number, it's a
7 units number thing.
8 MS. ROBESON: That was my question.
9 MR. KITCHENS: Okay. I understand where you're
10 going with that. Yeah.
11 MS. ROBESON: Okay. Go ahead.
12 MS. REGELIN: All right.
13 MS. ROBESON: But, why, okay. So, what is the
14 hesitation, and I understand that the drawings are
15 preliminary.
16 MR. KITCHENS: Uh-huh.
17 MS. ROBESON: But, why do you need to keep the
18 full 11 stories on B? I'm just asking.
19 MR. KITCHENS: Well --
20 MS. REGELIN: It is for flexibility. Yeah. And
21 actually, we'll bring Mr. Falcone back up to answer this if
22 we need to get it in there. But, the bottom line is is that
23 at rezoning, we need some flexibility.
24 MS. ROBESON: Right.
25 MS. REGELIN: These were designed, you know --

1 MS. ROBESON: I'm just reading --
2 MS. REGELIN: -- at a Charrette's, and it's a
3 massing plan, and it was --
4 MS. ROBESON: All right.
5 MS. REGELIN: -- designed to the most cost
6 effective way for this owner's program. But, there could be
7 a change in how things get designed over time because this,
8 as Mr. Falcone testified, this is the next 50 or 60 years
9 for this applicant.
10 MS. ROBESON: That's your facing program that --
11 MS. REGELIN: Right.
12 MS. ROBESON: -- it's going to be over 50 to 60
13 years. I get it. The only reason I'm asking is seven on
14 these urban form principles says achieve compatibility with
15 nearby residential areas through techniques such as step
16 down heights, articulated building walls and other
17 architectural means to minimize bulk and shadow and create a
18 gradual transition, and I read that to mean not just, you
19 would not only have to relate to the street, you also have
20 to relate to the nearby residential property. That's all
21 I'm asking.
22 MS. REGELIN: So, perhaps maybe that -- we'll jump
23 from here and let's go directly to Battery Gardens.
24 MS. ROBESON: All right.
25 MS. REGELIN: Let's just say Mr. Gill's property

1 and let's just talk about some of the elements that make
2 building B compatible with Battery Gardens.
3 MR. KITCHENS: Uh-huh.
4 MS. REGELIN: Perhaps maybe you can -- your stroke
5 is on, like what's the minimum code distance between
6 building face to building face, maybe under fire codes or
7 whatever it might be.
8 MR. KITCHENS: Right. You know, turning to
9 building codes, today if we place a building and you see a
10 property line. From a building code standpoint, we have to
11 be a minimum of 30 feet off of that property line in order
12 to create unlimited openings in a wall, and we can get
13 closer than that but it starts minimizing --
14 MS. ROBESON: Right.
15 MR. KITCHENS: -- openings in our walls. So, the
16 same thing goes between buildings as well. I mean in some
17 cases, you take and draw an imaginary property line between
18 those two buildings and you have to be 30 feet on either
19 side of that line. So, there's 60 feet --
20 MS. ROBESON: Right.
21 MR. KITCHENS: -- for total separation at that
22 point. And so, from a building code standpoint, we're
23 always having to deal with that from a life, and health, and
24 safety and welfare.
25 MS. ROBESON: Right.

1 MR. KITCHENS: So, that's the building code side
2 of it.
3 MS. REGELIN: All right. And, in this urban
4 district, is it unusual to have a taller building next to a
5 low rise building?
6 MR. KITCHENS: No. I think, you know, urban
7 districts are dynamic. At any given point in time, the
8 beauty about having or living in an urban district is you
9 have not only a variety of uses that you can benefit from,
10 you have a lot of different kinds of buildings, and you
11 know, you can look around Bethesda today and you can see one
12 and two story little buildings that are a lot older sitting
13 next to taller buildings and to me, I think that,
14 ultimately, in the discussion is that districts are built
15 over time. So, you're always going to have to be looking at
16 present influences as well as what future influences there
17 might be and, you know Mr. Gill's lot.
18 MS. ROBESON: Well, how do you address the shadow
19 impacts and the gradual transition recommendation?
20 MR. KITCHENS: Right. Well, I think that --
21 MS. REGELIN: I mean, can you describe the way the
22 sunlight would run and --
23 MR. KITCHENS: Right. Well, essentially, what you
24 would have is if this is east and that's really south and
25 this is really west, literally the sun is going to do this.

1 Okay? And so while, like Mr. Gill is correct, in the
2 morning, he would have shadows cast on his property. But,
3 probably from about noon on, he would be in sunlight for the
4 rest of the day. And, in fact, you know, he might catch
5 shadows on the first floor of our building in the afternoon.
6 You know, you can't get over the fact that at least on his
7 piece of property, that you chose to put a retaining wall up
8 and to build X amount of apartments.
9 MS. REGELIN: Right.
10 MR. KITCHENS: Which, you know, that's -- they are
11 what they are. And there's probably nothing that we could
12 do to really mediate that kind of impact. But, I do think
13 that if we were to look at present conditions and potential
14 future conditions related to this and the fact that we've
15 got a park sitting over here, it makes sense to reasonably
16 step from what we call the gateway interest into Bethesda
17 down towards the park, and that's what we look at. There's
18 not a whole lot of reason, necessarily, to step this way
19 because the density and the height is really only getting
20 lower because that is part of the CBD.
21 MS. ROBESON: Right.
22 MR. KITCHENS: And so more than likely, you know,
23 as we looked at, you know, as I think back over our
24 Charrette. This was the logical way of doing that.
25 MS. ROBESON: Whose Charrette was this?

1 MR. KITCHENS: This was an another sponsored
2 Charrette that we had --
3 MS. ROBESON: Okay.
4 MR. KITCHENS: -- that we had at Rodgers Office.
5 MS. ROBESON: I see.
6 MR. KITCHENS: It was the initial meeting, kickoff
7 meeting--
8 MS. ROBESON: I got you.
9 MR. KITCHENS: And this is where we all came
10 together and strategized.
11 MS. ROBESON: Now, would the courtyards remain if,
12 regardless of how tall the building is?
13 MR. KITCHENS: Some form of them probably would.
14 You need some form of open space, actually, would get bigger
15 quite frankly because as you stack that density up,
16 obviously, you're not taking up as much land and so, you
17 know, for instance, if we decided that like here was the
18 place where that building needed to be and let's just say
19 that you took that rectangular form and you placed it right
20 there then, realistically, all of these buildings would go
21 away and that would become open space. So, you would have
22 additional open space between our property and the next
23 property to our west. You know, I think one thing that we
24 always felt really strongly about and probably Exhibit 43,
25 if I may. It explains it the best. Is the master plan

1 talks about area connectivity.
2 MS. ROBESON: Uh-huh.
3 MR. KITCHENS: And we recognized pretty early on
4 that there were two potential places other than, obviously,
5 Woodmont Avenue and the park in here for connectivity in
6 this big block to take place. One was right through here.
7 MS. ROBESON: Uh-huh.
8 MR. KITCHENS: Which is kind of a natural path.
9 Not very pretty path but natural path, and the other one was
10 right here, and in fact, we have to have access on either
11 side of this for fire and all that --
12 MS. ROBESON: Right.
13 MR. KITCHENS: -- and emergency stuff, and so
14 that's the reason why we really chose kind of the shapes of
15 this building to go this way because it felt like that in
16 that manner, we could actually organize public accessible
17 open space that truly is publically accessible. You know, a
18 lot of times, especially in Bethesda, you got a lot of
19 buildings where they organized for public open space but
20 they put it in the middle of the development --
21 MS. ROBESON: Right.
22 MR. KITCHENS: -- and you have to climb stairs
23 through it, and you kind of walk down the block and you look
24 up there and say am I supposed to go there or not kind of
25 thing. Where we felt like yet, in fact, we were able to do

1 something like this --
2 MS. ROBESON: Is that going to be publicly
3 accessible on the two sides?
4 MS. REGELIN: Well, there'll be a pedestrian
5 circulation system. It will be privately owned. It will be
6 publically accessible.
7 MR. KITCHENS: I mean, people can walk through
8 here.
9 MS. ROBESON: I know. But, publically
10 accessible --
11 MS. REGELIN: It will not be a private, a public
12 sidewalk. No.
13 MS. ROBESON: It will not be a public sidewalk.
14 MS. REGELIN: No. And I want to make sure that
15 you point out that that's -- we haven't foreclosed the
16 ability to do a connection there even though there is a
17 development project that's proposed for that driveway on the
18 west side on Rugby Lane.
19 MR. KITCHENS: Over here?
20 MS. REGELIN: No. On the other side. That
21 driveway is publicly owned but --
22 MR. KITCHENS: Yeah. Right. Publicly owned.
23 MS. REGELIN: We just haven't foreclosed the
24 opportunity.
25 MS. ROBESON: So, right now the legally publically

1 accessible is Battery Lane and Woodmont for pedestrian
2 connectivity. Correct?
3 MS. REGELIN: The public sidewalks are Battery
4 Lane to Woodmont or Battery Lane to the --
5 MR. KITCHENS: The park.
6 MS. REGELIN: -- Bethesda Urban Park.
7 MS. ROBESON: Okay.
8 MS. REGELIN: And there is a sidewalk on the
9 driveway to the public parking.
10 MS. ROBESON: But that's not -- who owns the
11 sidewalk?
12 MS. REGELIN: It's in the public driveway.
13 MS. ROBESON: Okay. Okay.
14 MS. REGELIN: Okay. Let's talk about the focus
15 about how the decisions were made to break up the massing of
16 the building as it relates to Gill's property. Let's talk
17 about that again, quickly.
18 MS. ROBESON: Battery Gardens.
19 MS. REGELIN: Battery Gardens.
20 MR. KITCHENS: Okay. I think, you know, once
21 again, I don't recall these having as far as his statement
22 goes as far as how far his building is off the property.
23 It's quite close to the property line, maybe 15 feet or
24 something like that.
25 Today, we are about 20 feet off the property line

1 with our existing buildings. The proposed project pulls all
2 those buildings back to be no closer than 40 feet from the
3 property line. And then, obviously, the courtyards, you
4 know, extend that past 100 feet, and so, you know, a four or
5 five story building in relationship to that is, I would say,
6 beyond normal to the better in relationship of building to
7 building. You know, we're really talking about, right now,
8 is a five story building in relationship to a three story
9 building. That's a very compatible and a very pedestrian,
10 humane kind of feeling of things. So, I don't share his
11 concerns related to that.
12 MS. REGELIN: Mr. Kitchens, if you go back to your
13 neighborhood perspective?
14 MR. KITCHENS: Sure.
15 MS. REGELIN: Isn't the situation of a high rise
16 next to a low rise exactly across the street from his
17 property.
18 MR. KITCHENS: Yes. It's very interesting. IN
19 fact, I was looking at it earlier. I'm pretty sure that all
20 this property falls within the R10 zone and you have a nine
21 story building next to a three story building. I don't know
22 how close these buildings are together, but --
23 MS. REGELIN: You can actually see them.
24 MR. KITCHENS: It appears to be closer than what
25 we are proposing which is a five versus a three. So, you

1 know, that situation already exists in this building which
2 casts shadows on that property in the afternoons versus
3 where we're in the opposite position there. I mean, you
4 could probably go around Bethesda and find, you know, 10s
5 and 20s of those kind of relationships that occur.
6 MS. ROBESON: Constructed after the CBD Sector
7 Plan was adopted?
8 MR. KITCHENS: Yes. I'm sure. Yeah. I'm sur.
9 MS. REGELIN: And I would also direct your
10 attention, could you -- behind our building B is a building
11 in yellow on Rugby which would be in a similar situation.
12 It's caddy corner to his property. What's the number of
13 stories compared to --
14 MR. KITCHENS: That was is nine as well. So,
15 that's roughly 90, 90 feet.
16 MS. REGELIN: Okay. So, the same situation
17 already exists in an approved project?
18 MR. KITCHENS: Right. Right.
19 MS. REGELIN: Okay. And he showed photos of his
20 basement apartments with the wall with some high basement
21 windows. Can you talk a little bit about what the angles
22 and views are of a basement window like that.
23 MR. KITCHENS: You probably could open these --
24 MS. ROBESON: 55A through C.
25 MS. REGELIN: A through C. Correct.

1 MR. KITCHENS: You probably could open these
2 windows right here and see what that affect is because we
3 are kind of in a cellar kind of a situation in our English
4 basement. You know, usually those windows are probably four
5 to five feet off the floor as far as their seal goes and
6 they'll go up to just below the ceiling. So, they're small
7 windows. You're views out are very restricted. In fact,
8 those kinds of situations are designed not necessarily to
9 see out of but really just to get some ambient light down
10 into is and, you know, you're not really ever going to be
11 able to rely on direct sunlight because even bushes outside
12 that window can block sunlight.
13 So, you know, my belief is is that it's not what
14 you can see outside of there because you probably could not
15 see above the first floor of the building across from us.
16 But, those windows are going to be blocked just by
17 landscaping and all that. That's going to occur between the
18 two buildings.
19 MS. ROBESON: So, you're saying they're not going
20 to see five stories. They're not going to see 11 stories.
21 MR. KITCHENS: Uh-huh.
22 MS. REGELIN: Yeah.
23 MR. KITCHENS: They can be opened. They'll be
24 lucky if they see past the bushes outside the window.
25 MS. REGELIN: Okay. One of the questions of the

1 hearing examiner had was why are we trying to preserve 11
2 stories? And isn't it true that there's sort of a no man's
3 land that you either do stick built or if you're going to go
4 high rise, you have to go far enough high rise.
5 MR. KITCHENS: Yeah.
6 MS. REGELIN: Could you talk about that at little
7 bit as building massing.
8 MR. KITCHENS: We work for developers, I've worked
9 for developers all my life, and it doesn't matter whether
10 it's commercial office, hotels, or residential, there is a
11 no man's land.
12 MS. ROBESON: Right.
13 MR. KITCHENS: And you're probably aware of this
14 but, you know, but a lot of that is governed by the building
15 code. Even for going from a four story to a five story,
16 there's a calculated risk there because we get into another
17 whole type of wood construction time.
18 MS. ROBESON: Right.
19 MR. KITCHENS: It has to be fire rated, has to be
20 sprinkled, and those kinds of things. So, there's added
21 cost to add those extra few units that you're going to get
22 in that one extra floor, and so there'll be some very
23 careful penciling of those kinds of things because not only
24 does it relate to that because we're usually in a situation
25 here where we've got to provide some form of structured

1 parking and so the costs to provide those extra parking
2 spaces are in that equation.
3 So, once you get to the five levels, it's not
4 until about eight to 10 floors that you get into that extra
5 amount of density that allows you to go to that next level,
6 and so, you know, we would, you know, we would almost have
7 to suck all these units up and go to an 11 story building to
8 really make it beneficial to pay for the costs of the
9 concrete frame and the high rise constructions and those
10 kinds of stuff.
11 MS. REGELIN: But, giving ourselves the
12 flexibility that allows us to stay at the stick build or if
13 there's going to be any part of this site that would go high
14 rise, it allows us to get to the height --
15 MR. KITCHENS: That's correct.
16 MS. REGELIN: -- that would make that functional.
17 MR. KITCHENS: That's correct. And I would even
18 go so far as to, just kind of thinking forward, at the lower
19 density, we probably would never get to the point where we
20 would build anything more than that here just because of the
21 allocation of units.
22 MS. REGELIN: Okay. So, Battery Lane has got
23 quite a bit of diversity of height. Could you tell me how
24 that diversity of height relates to a residential character
25 in compatibility?

1 MR. KITCHENS: Sure. You know, a lot of this is
2 subjective. I've gone through many cases. This all
3 paraphrased in some respects. I'm a person that believes,
4 in my opinion, is that in Bethesda, even though we call
5 Bethesda urban, it is not urban like it is in downtown D.C.
6 urban. And Washington is unique because you have the
7 restricted height limitations and so you end up with a lot
8 of shoulder to shoulder buildings, and so we, in the
9 Washington area are used to seeing buildings put together
10 and that is, that highly influences our opinions out in what
11 I call the suburbs. But, what I like about the suburbs is
12 is that we there have the ability to do some diversity in
13 heights and therefore create light air and space between
14 buildings, and I find that refreshing. And that's a lot of
15 what you see in other cities where you don't have the height
16 restrictions, those kind of things.
17 So, I, for one, if I believe I could live in a
18 skyline and it might naturally be that the tent that we'd
19 set up in the CBD from the Metro station down to the edges,
20 I actually believe that that can be a collection of high and
21 short buildings that are not, kind of, in a very monotonous
22 fashion being straight forward, tinted down, that it creates
23 a lot of diversity in the light and actually ends up helping
24 the city feel more like less of a canyon. Okay? So, I can
25 have a twelve story building with a six story building

1 beside it. I can have a 10 story building with a five story
2 building beside it and that up and down variety actually
3 creates a nicer thing to look at and a nicer street to walk
4 down then one where I've got the same height of buildings
5 lined up all the way down. To me, that is more of a canyon
6 affect then it would be to have that diversity in height and
7 actually, not assuming the ground laying necessarily, but
8 actually have space between buildings as they march down the
9 street. And some buildings perpendicular in a street and
10 some buildings horizontal to the street. So, that's really
11 kind of what we were trying to achieve as we kind of looked
12 at it from a visual standpoint.
13 MS. REGELIN: And how does the rhythm and pattern
14 of the open spaces between the buildings go towards
15 compatibility between buildings? There isn't a pattern of
16 open space.
17 MR. KITCHENS: Sure. I think in some cases, and I
18 think -- let me start from the kind of negative side of
19 that. I think in some cases, you can look at what exists
20 there today and there's kind of some solid, and some voids
21 and the voids really lead to nowhere other than parking
22 lots. That's the negative side of it.
23 I think where we've tried to take it in as we
24 learn things, as we go, the ins and outs of buildings relate
25 to the big moves that I talked about earlier where at this

1 early in our investigations, is we try to get the big moves
2 right and like, for instance here, I would rather take my
3 setback or a potential setback at the base of the building,
4 at its main street wall and then step back from the base and
5 go all the way up to match the ground.
6 Or, as an alternative, maybe look at a two to
7 three or maybe a four story base and take that and then take
8 a step back and go all the way up. From that standpoint,
9 that has a bigger effect on my perception of the street and
10 the variety of the street then if I just took a 65 foot wall
11 up and didn't step back the top floor which is kind of what,
12 in this building, that's what this says we should do. If I
13 take the master plan literally is I'd go up 65 feet and I
14 got to step one floor back. Well, that doesn't give me
15 anything. I'd do a better job of just taking that 79 foot
16 tall building all the way up and put it perpendicular to the
17 street because it is a very narrow face and looking at.
18 Plus, I start with a setback already.
19 There are also so economical things that go in
20 that. It's very difficult for me, as a designer and a
21 residential project, to take a building up 65 feet and then
22 do a 10 or 15 foot setback because all the sudden, I have
23 plumbing that isn't aligned. I have structure that isn't
24 aligned. I have units that all of a sudden get narrow and
25 short and so the economics of being able to do that

1 practically hurts me as well. So, I'd almost rather have
2 that definition lower down and more effective at the street
3 level and then try it a different way. Then, as I make
4 those big moves, then as I begin to design the building and
5 think about materials and window rhythms and all that stuff,
6 that helps break the scale load. But, it doesn't
7 necessarily truly break the massing though. So, I end up
8 kind of decorating a box that I can never fit to that point.
9 MS. REGELIN: So, the Urban Design Guidelines that
10 Mr. Wrenn went through out of the Woodmont Triangle Plan
11 that talked about this upper level building step back to
12 avoid canyon affect --
13 MR. KITCHENS: Uh-huh.
14 MS. REGELIN: -- can you sort of elaborate on how
15 this plan, what elements you used to avoid canyon affect
16 just so it's clear. Because you've been talking generally.
17 MR. KITCHENS: right.
18 MS. REGELIN: So, let's talk. How have these
19 buildings been designed, this massing of this development
20 plan, to avoid canyon affect?
21 MR. KITCHENS: Well, once again, and even this
22 plan doesn't necessarily, isn't as clear. Can I draw on
23 these?
24 MS. REGELIN: All right.
25 MR. KITCHENS: Can I have you bring --

1 MS. ROBESON: Is that 43? Oh. Wait, though. Let
2 me read them.
3 MR. FREISHSTAT: It's not an exhibit. So, I think
4 we're all right.
5 MR. KITCHENS: Okay. They're not.
6 MS. ROBESON: No. We can rename it because
7 there's already a, is there already a 43?
8 MS. REGELIN: No.
9 MR. FREISHSTAT: No. No.
10 MR. KITCHENS: I'll just point. I'll just try to
11 point because I want to, I think that's a good question.
12 MR. FREISHSTAT: It's also a highlighter, David,
13 if you want.
14 MR. KITCHENS: I'll just do this real quick, and
15 if you don't understand you just let me know.
16 MS. ROBESON: Okay. Remember --
17 MR. KITCHENS: This is kind of obvious here.
18 MS. REGELIN: You're discussing for the record,
19 too. So, don't forget.
20 MR. KITCHENS: To point and --
21 MS. ROBESON: To describe.
22 MS. REGELIN: It's best to describe.
23 MS. ROBESON: Not just point. Describe.
24 MR. KITCHENS: Well, I think it's, let me start at
25 A --

1 MS. ROBESON: Okay.
2 MR. KITCHENS: Let me start at A first. So, A,
3 building A. The CBD plan gives us some key uses on how to
4 break up the scale and to articulate and one is to make
5 buildings perpendicular to the street. Well, obviously, on
6 site A, we have very little option to do other than that,
7 and so, essentially, this building is designed perpendicular
8 to the street. But, as it was pointed out earlier, we also
9 take advantage of a potential setback issue that we might be
10 required to do. We take that at the street because the
11 other goal of the master plan was to create a lush
12 residential environment all the way down and we believe by
13 doing that and creating a nice, organic kind of sidewalk
14 condition, relaxed condition, with nice fruit trees and all
15 that really helps to promote that residential street. So,
16 while even though this building, you know, goes up nine,
17 seven --
18 MS. REGELIN: Five to seven.
19 MR. KITCHENS: -- five to seven floors, up to 79
20 feet, it's perpendicular to the street. So, it doesn't have
21 a big impact on the street, and this building is 90 feet
22 tall, stepping down to 79 and then stepping down to, I think
23 that's four stories. That's a very nice progression from
24 that standpoint.
25 MS. ROBESON: I saw that in your graphic.

1 MR. KITCHENS: Yes. So, essentially, you've got
2 almost like a nice rhythm up the sides that come off of
3 here. They make a, you know, solid, void, solid, void,
4 solid void, solid, void and that feels good. I mean, it's a
5 nice fine grain pattern.
6 The other components going over to Building C
7 which is going to be our tallest building, we felt like that
8 this block does two things. One, from a building standpoint
9 at the corner of Woodmont and Battery Lane, it certainly
10 helps to contribute to what will be the northern gateway to
11 the Bethesda CBD. What we've got as an external influence
12 is a parking garage behind us, and so I've got to be at a
13 level where my building is not being negatively impacted
14 with the units from that. So, I've got to compete with that
15 parking structure. So, I start with probably a minimum of a
16 three or four story base in this thing which is really what
17 is defined by this line here. Okay?
18 MS. ROBESON: Now, when you say this line here,
19 that's the brown line on parcel C fronting --
20 MR. KITCHENS: Fronting Battery Lane.
21 MS. ROBESON: Okay.
22 MR. KITCHENS: Okay? As you can see, it's unmoved
23 from Woodmont Avenue west. I'm coming along the face of the
24 building. I'm stepping back. I'm coming back out. I'm
25 stepping back at the entryway which is the midpoint of the

1 block, coming back out, stepping back, and coming back out.
2 What I'm doing there, is I'm articulating the base to define
3 a tall tower element, a strong base that has some ins and
4 outs that's articulated, and this is probably going to be
5 masonry and then I'm defining another tower at the western
6 end of it that will probably climb the entire height of the
7 building.
8 So, what I've done is I've defined a building with
9 clear, distinct edges and a nice basin in the middle of
10 which there will be another, I'm going to call it a
11 east/west connecting tower in the middle of the building
12 that connects the rest of the floor plan together, and that
13 is actually stepped back probably 10 or 15 feet at roughly
14 one to two floors above the street level, and so, in
15 essence, what I've done is I've created a building wall here
16 that is not just monolithic along this warped façade along
17 Battery Lane but actually is articulated at multiple levels
18 and, you know, so what you're trying to do is you're trying
19 to create a nice street wall base that is not too
20 overpowering and then a middle of the building which, once
21 again, defines kind of the ins, and the edges and the ins of
22 the building as well as the middle of the building and then,
23 at some point in time, from either articulation at the top
24 through materials and penthouses and stuff like that, we'll
25 define a top. And so, in that case, we've looked at it both

1 horizontally, going east to west, as well as vertically.
2 MS. ROBESON: I think what you're -- the master
3 plan principle is achieving a fine green texture versus a
4 course green texture --
5 MR. KITCHENS: Right.
6 MS. ROBESON: -- on page 42.
7 MR. KITCHENS: Yeah. We use --
8 MS. ROBESON: You're not doing the big block.
9 You're breaking up the streetscape with --
10 MR. KITCHENS: What I've almost done, what I'm
11 almost believing that I've done is that I've, from a façade
12 standpoint, going from east to west, I've created at the
13 point of Woodmont and Battery --
14 MS. ROBESON: Battery.
15 MR. KITCHENS: -- Battery Lane, almost a façade
16 that's perpendicular to the street.
17 MS. ROBESON: Right.
18 MR. KITCHENS: And then I've set back and then
19 I've created a middle in there that accentuates the interest
20 of the building.
21 MS. ROBESON: Right.
22 MR. KITCHENS: And that's perpendicular to the
23 street. Then I was back again, and then I'm coming out of
24 the other end of the building and creating another façade,
25 and that's really what we're trying to do if we march all

1 the way down Battery Lane just to create building elements
2 that have a rhythm and not necessarily the same rhythm all
3 the time but that's perpendicular to the street. And
4 therefore, you don't really see -- you never really get a
5 chance, and these only have to be maybe five, six or seven
6 foot setbacks and you don't ever see the full length of that
7 building because of the perspective that you're looking at.
8 And so, in essence, we can almost, even in a
9 better fashion, create on the south side of the street, what
10 we've got in different buildings on the north side of the
11 street. You know, I think that varying rhythms, a lot of
12 times, is better than just a single one, not this rhythm
13 going all the way down. So, it's a preference. And quite
14 frankly, it's going to be whatever, however the loss in
15 these cases. So, those are the two, in my mind, those are
16 the two things that we really tried to emphasis here was the
17 perpendicular elements of the street and then establishing
18 that, you know, two to four story base that begins to
19 connect the ground point together.
20 MS. REGELIN: Okay. All right. So, I think we're
21 going to go -
- move in to opinions. So, I don't know if you
22 want to sit or stand through those.
23 MR. KITCHENS: I think I'll sit.
24 MS. REGELIN: So --
25 MR. KITCHENS: There is some water if you need

1 some.
2 MS. ROBESON: Yes?
3 THE REPORTER: He's not sworn in. Did you want to
4 do that?
5 MS. ROBESON: Oh.
6 MS. REGELIN: What?
7 MR. KITCHENS: Gee whiz.
8 MS. ROBESON: Yes. Thank you, Kathy.
9 MS. REGELIN: Whoops.
10 MR. KITCHENS: I'm sorry.
11 MR. FREISHSTAT: Should I get a napkin?
12 MS. ROBESON: No. That's okay.
13 MR. KITCHENS: It's okay.
14 MS. ROBESON: I don't think it's going to hurt.
15 MS. REGELIN: It's my exhibit book. Don't worry
16 about it.
17 MS. ROBESON: No. I'm just looking at the -- no
18 the equipment is okay.
19 MR. FREISHSTAT: I think you're okay.
20 MS. ROBESON: Can you raise you right hand?
21 MR. KITCHENS: I'd love to.
22 MS. ROBESON: Thank you. Do you solemnly affirm
23 under penalties of perjury that all the statements you've
24 already made and the statements you're going to make are the
25 truth, the whole truth, and nothing but the truth?

1 MR. KITCHENS: I do.
2 MS. ROBESON: Thank you.
3 MS. REGELIN: So, in your expert opinion, does the
4 proposed development comply with the purposes, standards and
5 regulations of the PD zone as set forth in the zoning
6 ordinance, and do they provide for the maximum safety,
7 convenience, amenity of the residence, and of the
8 development?
9 MR. KITCHENS: I do.
10 MS. REGELIN: And is it in your expert opinion
11 would the proposed development be compatible with adjacent
12 development?
13 MR. KITCHENS: Yes.
14 MS. REGELIN: And in your opinion, is the proposed
15 development plan also internally compatible between the
16 buildings that are proposed, the three buildings that are
17 proposed?
18 MR. KITCHENS: Yes.
19 MS. REGELIN: And in your opinion, is the proposed
20 development plan designed to facilitate and encourage social
21 and community interaction and create a distinctive visual
22 character and identity for the development?
23 MR. KITCHENS: Yes. I believe so.
24 MS. REGELIN: And in your opinion, is the proposed
25 development plan in substantial conformance with the

1 applicable sector plans?
2 MR. KITCHENS: Yes.
3 MS. REGELIN: Okay. And that's all I have for Mr.
4 Kitchens.
5 MS. ROBESON: Okay. Mr. Humphrey, do you have any
6 questions of Mr. Kitchens?
7 MR. HUMPHREY: Yes. Only one. Is it possible
8 that building B could go from the five stories you're now,
9 your team is sort of envisioning looking toward it's
10 affordable, is to go to concrete to 11 stories, 110 feet,
11 and not have the number of units in these three, A, B, C be
12 increased over 692? Is there way in which that could
13 happen? You could go from five stories to 11 on this site
14 and still keep the same total number of units for the three
15 buildings?
16 MR. KITCHENS: Yes. Yes.
17 MR. HUMPHREY: I mean, as an architect how --
18 MR. KITCHENS: You would just configure it another
19 way.
20 MR. HUMPHREY: No. But, even keeping the --
21 MR. KITCHENS: If I understand your question --
22 MR. HUMPHREY: Even keeping the same footprint?
23 What I'm saying could you increase that footprint on B to 11
24 stories and yet greatly increase the square footage in A, B,
25 and C but still keep the 692 units because you would be

1 creating mostly three bedroom luxurious units, at least
2 that's what the client wanted.
3 MR. KITCHENS: I don't think that would be a very
4 practical solution, and achieve the goals of the client. I
5 mean, the goals of the client is to provide affordable
6 housing. So, we would -- they would never let us do that.
7 MR. HUMPHREY: I understand.
8 MR. KITCHENS: Yeah.
9 MR. HUMPHREY: But, it is possible that one could
10 go to 110 feet on that and the square footage of use would
11 increase greatly but the number of units might not have to
12 because of the size of the size of the units.
13 MR. KITCHENS: Certainly because it's not
14 regulated by the size of the units. It's regulated by the
15 number of units. But that would be a ridiculous proposal to
16 do. I'd be creating an office building size apartment
17 units.
18 MR. HUMPHREY: Oh. It happens. I'm sure. Many
19 places in this part of the world but that's speculation on
20 my part.
21 MR. KITCHENS: That's speculation. Yeah. That's
22 speculation.
23 MR. HUMPHREY: But, it is possible. So, that's
24 all I just wanted to allow the possibility that this
25 building could very well increase in time and any

1 additional --
2 MS. ROBESON: And not reduce the footprint.
3 MR. HUMPHREY: Not reduce the footprint or
4 increase the number of units.
5 MS. ROBESON: Right. Right.
6 MR. HUMPHREY: Over that increase of concrete.
7 MS. REGELIN: So, Mr. Kitchens, should a building
8 be designed, will it go through site plan review at Park and
9 Planning?
10 MR. KITCHENS: Yes. It will.
11 MS. REGELIN: All right. That's all I have for
12 Mr. Kitchens.
13 MS. ROBESON: Okay. Thank you, Mr. Kitchens.
14 MS. REGELIN: So, my next witness is Frank
15 Bossong, and I have his resume.
16 MS. ROBESON: And that'll be 58.
17 (Exhibit No. 58 was marked for
18 identification.)
19 MS. REGELIN: I'll let him get set up.
20 MS. ROBESON: Thank you.
21 MR. FREISHSTAT: It looks like, Nancy, do you have
22 these exhibit numbers? I have Exhibit 10 and Exhibit 15
23 here but everything else doesn't have a number on it. I
24 don't know that it's not in the record already.
25 MS. ROBESON: Okay. Well, we'll go through as he

1 needs them.
2 MR. FREISHSTAT: Okay.
3 MS. ROBESON: But, I better not forget. Can you
4 raise your right hand? Do you solemnly affirm under
5 penalties of perjury that the statements you're about to
6 make are the truth, the whole truth, and nothing but the
7 truth?
8 MR. BOSSONG: Yes.
9 MS. ROBESON: Thank you.
10 MS. REGELIN: All right. Mr. Bossong, have you
11 qualified as an expert in engineering previously before this
12 body or other governmental body?
13 MR. BOSSONG: Yes. I have.
14 MS. REGELIN: Could you advise the hearing
15 examiner when was the last time when you had qualified?
16 MR. BOSSONG: The last time was, actually, last
17 month. I, unfortunately with Mr. Wrenn, I attended 33 of
18 the 34 Suburban hearing days.
19 MS. ROBESON: Yes.
20 MR. BOSSONG: But, you know, I go back to Bill
21 Chen, Bill Chang, I guess it was and then Jenny and Carver,
22 and so I --
23 MS. ROBESON: Yes. I recognize your name, and
24 you're still, I see you're still licensed in Maryland.
25 MR. BOSSONG: Yes.

1 MS. ROBESON: Are you a civil engineer?
2 MR. BOSSONG: Yes.
3 MS. ROBESON: Okay. And Mr. Humphrey, do you have
4 any objection qualifying him as an expert in civil
5 engineering?
6 MR. HUMPHREY: No. We've accepted him previously.
7 MS. ROBESON: Okay. All right. You're accepted.
8 You're still an expert.
9 MS. REGELIN: All right. Thank you very much.
10 All right. Did Rodgers Consulting provide surveying, civil
11 engineering, and forestry services to the applicant as part
12 of this application?
13 MR. BOSSONG: Yes. We did.
14 MS. REGELIN: And did Rodgers Consulting prepare
15 plans for this application encompassing those professional
16 services?
17 MR. BOSSONG: Yes.
18 MS. REGELIN: And were those plans prepared by you
19 or under your supervision?
20 MR. BOSSONG: Absolutely.
21 MS. REGELIN: And did Rodgers Consulting prepare a
22 land use and engineering report for this application?
23 MR. BOSSONG: Yes.
24 MS. REGELIN: And it's been identified as Exhibit
25 31C, the land use and engineering report. Are you familiar

1 with that report?
2 MR. BOSSONG: Yes. I am.
3 MS. REGELIN: And was that report prepared by you
4 or under your supervision?
5 MR. BOSSONG: Yes. It was.
6 MS. REGELIN: Okay. Are you familiar with this
7 site and could you advise us to what degree you've inspected
8 it?
9 MR. BOSSONG: Okay. As recently as Wednesday, I
10 walked the site. I'll affirm I've been in with Rodgers for
11 now 20 years. The family which owns the property is a
12 client of ours for decades. I've been out to his property
13 over the last 29 years several times and recently just
14 Wednesday of last week as well just to see if anything's
15 changed.
16 MS. REGELIN: Okay. So, let's pull out Exhibit 10
17 which is the certified identification plan for the property.
18 MR. BOSSONG: Yes.
19 MS. ROBESON: Is that what you have out? Oh.
20 It's got Exhibit 10 on it.
21 MR. FREISHSTAT: I already put it on there.
22 MS. ROBESON: Okay. You're good. Thank you.
23 MS. REGELIN: Okay. Could you, using this, could
24 you describe the subject property?
25 MR. BOSSONG: Yes. The subject property, going

1 back and I'm going to try to keep the testimony, not try to
2 repeat the part of the testimony and the chart --
3 MS. ROBESON: That's fine.
4 MR. BOSSONG: -- that goes with this if possible.
5 On the north side of Battery Lane is address 4857 Battery
6 Lane which is approximately a one acre piece of property of
7 the subject application. To the south of Battery Lane is,
8 the address is a 4858 and then 4890 and all of it which
9 comes to basically two buildings today and then you have the
10 fourth building which is the western building on the south
11 side of Battery Lane, which is address 4900. Again, that is
12 approximately a little over one acre. I mean, I can say it
13 but some of it that's already on the plans aren't exactly
14 this. So --
15 MS. REGELIN: Okay.
16 MR. BOSSONG: And then -- okay. Go ahead.
17 MS. REGELIN: So that's the property
18 identification plat. Did you also prepare a gross tract
19 area exhibit because we have a lot of our calculations on
20 Exhibit 53 that are based on rights-of-ways that were
21 previously dedicated?
22 MR. BOSSONG: Yes. And this is, I think this is a
23 new exhibit.
24 MS. REGELIN: Correct.
25 MR. FREISHSTAT: This will be 59.

1 MS. ROBESON: So, this will be 59.
2 MS. REGELIN: And this is the gross tract area
3 exhibit.
4 (Exhibit No. 59 was marked for
5 identification.)
6 MS. ROBESON: What is it a plan or a survey or --
7 MS. REGELIN: It's a plan.
8 MS. ROBESON: Plan showing gross tract area.
9 MS. REGELIN: So, can you describe, basically, the
10 acreage prior to dedication?
11 MR. BOSSONG: Right. Similar to Exhibit 10. What
12 this shows is the hatched line within Battery Lane was the
13 original previously part of the properties before dedication
14 of Battery Lane.
15 MS. ROBESON: Oh. Okay.
16 MR. BOSSONG: So, incorporated in this -- this
17 dashed area in here is approximately point three eight and
18 change acres. So, adding that to the acreage of Exhibit 10,
19 basically puts you up to five point six seven and change
20 acres for gross area of the property.
21 MS. REGELIN: All right. And has planning staff
22 accepted this gross tract area exhibit?
23 MR. BOSSONG: Yes. They have.
24 MS. REGELIN: Okay. So, we'll move that admission
25 of that exhibit.

1 MS. ROBESON: It was admitted.
2 (Exhibit No. 59 was admitted
3 into the record.)
4 MS. REGELIN: So, could you generally describe,
5 then, using one of the, about the topography of the property
6 and that's frontage or --
7 MR. BOSSONG: No. Not to use this exhibit,
8 basically, for that information. The topography basically
9 falls from the south to the north. Essentially, that's the
10 surface drainage as well. It's draining basically from the
11 north property line of, I mean the south property line of
12 the subject property to the north towards NIH and there's,
13 that's basically the flow of the topography falling from
14 south to north.
15 MS. REGELIN: Okay. And could you sort of give us
16 the scale of the frontage on different rights-of-way.
17 MR. BOSSONG: Right. The frontage on Woodmont
18 Avenue, which would be, it's on this. It's depicted on the
19 gross tract area exhibit or Exhibit 59, area 3. The
20 frontage along Woodmont Avenue is approximately 160 linear
21 feet of frontage along part of this and then if we go onto,
22 the rest of our frontage is along Battery Lane. The
23 frontage for what's designated here as barrier four is
24 approximately 116 feet of frontage on Battery Lane and then
25 the southern properties, the frontage along Battery Lane is

1 approximately 579 feet.
2 MS. REGELIN: Okay. Could you describe for us the
3 master plan rights-of-way for Battery Lane and, I mean, for
4 Woodmont Avenue. Let's start with that.
5 MR. BOSSONG: Okay.
6 MS. REGELIN: And then what the existing right-of-
7 way is.
8 MR. BOSSONG: Okay. The existing right-of-way,
9 let's start with Woodmont Avenue. Again, I'm going to use
10 Exhibit 59. Woodmont is shown on the right hand side of
11 this exhibit. The current right-of-way is 70 feet today.
12 The ultimate right-of-way for the master plan is 80 feet.
13 So, what we will be doing in the process of going through
14 subdivision will be a dedication of our half to make up the
15 80 feet of five feet of dedication along Woodmont Avenue.
16 MS. REGELIN: Okay. And how is Woodmont Avenue
17 classified as a street?
18 MR. BOSSONG: Woodmont is classified as an
19 arterial street in Montgomery County standards.
20 MS. REGELIN: Okay. So, let's now look at the
21 master plan right-of-way for Battery Lane and the existing
22 right-of-way.
23 MR. BOSSONG: The existing right-of-way today is
24 approximately 50 feet, and the ultimate right-of-way here
25 will be 70 feet, and depending on, and we don't follow all

1 the property from Woodmont Avenue to our most western point.
2 So, there's different levels of dedication that will go into
3 this. If I may use Exhibit 47? On the, as I mentioned
4 earlier, we will be having a five foot dedication on
5 Woodmont Avenue. That isn't going to Battery Lane. Where
6 building A is shown we are approximately a nine foot
7 dedication on the north side. On the south side of Battery
8 Lane is approximately a 11 foot dedication. So, basically,
9 20 feet. Why the reason it's a little different. Battery
10 Lane today specifically near the center line pavement splits
11 up.
12 MS. ROBESON: Right.
13 MR. BOSSONG: Battery Lane is a little bit skewed
14 in the fact that the center line of the pavement is not the
15 center line of the existing right-of-way. So, what we have
16 to do is kind of fit the best picture in there and to obtain
17 the 70 foot right-of-way and that's what we've done.
18 That'll be finalized at the subdivision as well --
19 MS. ROBESON: Right.
20 MR. BOSSONG: -- with Park and Planning.
21 MS. REGELIN: All right. Is the property
22 currently subdivided?
23 MR. BOSSONG: Yes. It is. I believe this, I'm
24 not sure --
25 MS. ROBESON: And is this a new exhibit?

1 MR. BOSSONG: I'm not sure. I think it was in the
2 original submittal.
3 MS. REGELIN: But it's not a separately
4 identified.
5 MR. BOSSONG: Correct.
6 MS. ROBESON: Okay. Well, we'll give it, if you
7 could just write that it's 60 on it and is that the current
8 record plat?
9 MS. REGELIN: There are two record plats shown
10 already.
11 MS. ROBESON: Oh. Two record plats. Current
12 record plats.
13 (Exhibit No. 60 was marked for
14 identification.)
15 MR. BOSSONG: This exhibit now is called Exhibit
16 60, basically shows the original subdivision plat dated
17 1906. Battery Lane at that time was called, well, it was
18 created Michigan Avenue. Then in --
19 MS. ROBESON: That's probably an old salesman
20 MR. BOSSONG: Then in 1910, the picture of the
21 plat that's on the right hand side of Exhibit 60 was a
22 resubdivision in 1910 of this area and the different lots.
23 Some of the lots are combined and just different things
24 happened. So, basically, this was created in 1910.
25 Subsequent to that, you had Woodmont Avenue going through

1 here which took out a couple of these lots as time
2 progressed.
3 MS. ROBESON: Right.
4 MR. BOSSONG: So, yes. It is a subdivided piece
5 of property.
6 MS. REGELIN: All right. Will the property
7 required approval of a new preliminary plan of subdivision
8 prior to redevelopment?
9 MR. BOSSONG: Yes. It will. We'll have to go
10 through the normal subdivision process and then also have
11 the APFO measures taken at that time for traffic and so
12 forth.
13 MS. REGELIN: Okay. In the record is Exhibit 13
14 and 13A related to the NRI/FSD. Can you generally describe
15 the condition of the site, and in particular, with respect
16 to the existing approved NRI/FSD?
17 MR. BOSSONG: Okay. Before I just put it on the
18 boards, it's down about the lower right --
19 MS. ROBESON: I see it.
20 MR. BOSSONG: 13A.
21 MS. ROBESON: Thank you.
22 MR. BOSSONG: This is the approved NRI that was
23 approved by the now National Capital Park and Planning
24 Commission, and it says it shows the existing features of
25 the property. As far as natural resources, you know,

1 natural resource inventory, there isn't a whole lot of
2 natural resources on the property. It's basically buildings
3 and pavement. You have a couple of trees on there but
4 essentially, it's building and pavement and then you've got
5 Battery Lane bisecting the two, you know, two sides of the
6 project and then Woodmont Avenue on the right hand side.
7 But, again, mention that the topography on here does show
8 just probably the basically, as I mentioned earlier, it's
9 going from south to north into the NIH campus as far as
10 drainage goes on topography.
11 MS. REGELIN: Okay. Let's move on to the Forest
12 Conservation Plan which is in the record as 14A through C.
13 And could you generally provide us the status of the
14 approval of the Forest Conservation Plan and a general
15 description of any waivers?
16 MR. BOSSONG: Okay. What I put on the easel is
17 Exhibit 14, it'll be 4C.
18 MS. REGELIN: Okay.
19 MR. BOSSONG: The Forest Conservation Plan. Right
20 now, as far as what's indicated in the technical staff
21 report, they're recommending approval of the preliminary
22 Forest Conservation Plan. I was hoping that this would have
23 been approved last Thursday but because of notification,
24 it's up on May 3rd now in front of the Planning Board. So,
25 right now, it is as far as my understanding, is to be

1 approved on May 3rd as far as preliminary Forest
2 Conservation.
3 Again, what this basically shows is, as Mr. Wrenn
4 explained earlier, you know we're going to be putting the
5 streetscape with the street trees. There'll be green areas,
6 other shrubberies and vegetation as part of the project. On
7 the preliminary Forest Conservation Plan, why I identified
8 four trees of significance, basically 30 inches or larger --
9 MS. ROBESON: Uh-huh.
10 MR. BOSSONG: -- which will be moved. One of them
11 is basically in the front of Battery. 4857 is the property
12 to the north on Battery Lane which will be aerial A. The
13 other three, two of them are all along the south side of
14 Battery Lane, and then the fourth one is in one of the
15 smaller courtyards within the existing building on basically
16 4900 address. We have, because they are, with the new
17 regulations of Forest Conservation, we do have to request a
18 variance in order to remove those trees. Montgomery County,
19 I believe there's a letter in the front of the planning
20 reports, that they're recommending removal. Planning staff
21 has also recommended approval.
22 Two of the trees are in very poor condition. The
23 other two trees are in fair to good condition.
24 MS. ROBESON: I was confused. The planning staff
25 knew of the variance. They just didn't include it --

1 MS. REGELIN: Include it in the notice.
2 MS. ROBESON: -- when they recommended approval,
3 they recommended approval with the variance. Right?
4 MR. BOSSONG: That's correct.
5 MS. ROBESON: They just didn't provide the notice
6 that is required.
7 MR. BOSSONG: Correct.
8 MS. ROBESON: Is that correct?
9 MR. BOSSONG: That's my understanding. Since it
10 was a separate --
11 MS. ROBESON: Right.
12 MR. BOSSONG: -- had to be a separate approval, I
13 guess you'd call it --
14 MS. ROBESON: Right.
15 MR. BOSSONG: -- from the Planning Board, that was
16 noticed separately.
17 MS. ROBESON: Okay.
18 MR. BOSSONG: So, they technically said they
19 couldn't, and then there was some confusion on whether they
20 really needed to approve it or not but it eventually came
21 down that they did say they needed approval.
22 MS. ROBESON: Yeah. Yeah. Okay.
23 MS. REGELIN: Okay. All right. Let's move to
24 Exhibit 15 which is the storm water management concept
25 application and report. So, you can give us a general

1 description of the storm water management concept plan.
2 MR. BOSSONG: Okay. I need to locate here. This
3 is Exhibit 15 which was just placed on the easel. This is
4 more detailed, what I call detailed sheet of the storm water
5 management concept plan for the site. One of the, from an
6 engineering standpoint, an environmental engineering
7 standpoint, there is not storm water management on the site
8 today and there hasn't been since day one. We now have the
9 opportunity to provide storm water management on properties
10 as they get developed. The requirements will be the latest
11 state, 2007, regulations which basically went into effect in
12 2009 which is going to be ESD, environment site design, to
13 the MEP, maximum extent practicable.
14 MS. ROBESON: Right.
15 MR. BOSSONG: The measures that we're proposing
16 here and this plan is currently under review by the
17 Department of Permitting Services, Storm Water Management
18 Division, is --
19 MS. ROBESON: Is this your preliminary concept
20 plan?
21 MR. BOSSONG: This is the preliminary concept --
22 MS. ROBESON: Okay.
23 MR. BOSSONG: -- to our management plan. And what
24 we're proposing on this is, first of all, green roofs in
25 certain locations, mostly in zoning and building B. What

1 we're going to be doing is in the common areas, the
2 courtyards which were discussed earlier, is an underneath
3 garage and we're actually going to put a green roof on top
4 in those areas of the garage and also create a storm water
5 management, part of that is going to be a storm water
6 management as well.
7 MS. ROBESON: Like a bio retention?
8 MR. BOSSONG: It's actually going to an
9 infiltration facility or it could be a lawn so it'd still be
10 used for public areas and so forth like that but we're also
11 going to provide water quality that's necessary per the
12 regulations for that. In addition to that, we will have
13 bio-retention facilities or the small planting areas.
14 MS. ROBESON: Yeah.
15 MR. BOSSONG: And then you'll also have bio-
16 filtration planter boxes and so forth like that for some of
17 the vegetations. So, we can take some of the downspouts
18 down into actual planter boxes which are designed for storm
19 water management as well.
20 And then depending on approvals and the amount of
21 Cassie available, if we do not meet the requirements of NEP
22 with those measures, then there's also, we fall back on
23 there are structural measures as well that most likely would
24 be placed in the garage areas that will have filtrations
25 facilities themselves, more mechanical than natural.

1 MS. ROBESON: Vaults or --
2 MR. BOSSONG: Basically, typical vaults. Be
3 concrete vaults with either cold stone filters, canisters
4 with filtration. Water goes through and then they're
5 cleaned out. And there's new technology coming out that the
6 state has just approved that we'll be looking into also.
7 MS. REGELIN: Okay.
8 MS. ROBESON: Do you feel confident that you can
9 keep the parking and still do the storm water vaults if you
10 have to?
11 MR. BOSSONG: Absolutely. Most of the
12 developments that we're currently working on, about 31. I
13 was working Petroleum which is across the --
14 MS. ROBESON: Right.
15 MR. BOSSONG: -- kind of across the street and
16 some of the other CBD type developments, because of, now,
17 we're very fortunate to hear that we have the open space
18 which gives me the ability to create more ESD type measures.
19 MS. ROBESON: Uh-huh.
20 MR. BOSSONG: Some of the other sites don't have
21 as much open space or green open space. So, therefore we
22 have to fall back in a redevelopment scenario to more of a
23 structured storm water management facility --
24 MS. ROBESON: Okay.
25 MR. BOSSONG: -- which we basically put in. You

1 basically take out one or two parking spaces within the
2 garage, at certain levels of the garage, direct the water
3 there and then discharge the water into a receiving storm
4 drain system.
5 MS. ROBESON: Okay.
6 MS. REGELIN: Okay. Is the subject property
7 currently served by a public water and sewer?
8 MR. BOSSONG: Yes. It is.
9 MS. REGELIN: And what water and sewer category is
10 it currently classified?
11 MR. BOSSONG: We put down the category is a W1S1
12 which basically means existing service at the property
13 today.
14 MS. REGELIN: Okay. With regard to the existing
15 infrastructure--
16 MR. BOSSONG: Uh-huh.
17 MS. REGELIN: Is it adequate for the
18 redevelopment?
19 MR. BOSSONG: From the water and sewer standpoint,
20 my preliminary analysis of the existing, it's just in water
21 and sewer are both in Battery Lane and Woodmont Avenue.
22 Obviously, currently buildings are being served by public
23 water and sewer. So, we'll be able to connect into the
24 existing facilities. Right now, the preliminary analysis is
25 that the facilities are adequate to serve even the larger

1 units, larger number of units than we have today. If, for
2 whatever reason, down to what it is we do through
3 development, you have to apply to WSSC, the mobile hydraulic
4 analysis at, later down in the process. So, if they see
5 that there is a deficiency in a line, let's say a line has
6 to be upgraded from a six inch to an eight inch let's say,
7 then that would be the responsibility of the applicant to do
8 that unless it's part of an overall CIP project that the
9 county or WSSC is undertaking. So --
10 MS. REGELIN: Okay. Is the subject property
11 currently served by other utilities?
12 MR. BOSSONG: Yes. Again, since we have a
13 redevelopment situation, you have PEPCO, Washington Gas,
14 Verizon. That's all the facilities that will be
15 accommodating the new development taking, connect into it.
16 MS. REGELIN: Okay. And are those adequate to
17 serve --
18 MR. BOSSONG: Yes.
19 MS. REGELIN: -- and available for the development
20 plan as proposed?
21 MR. BOSSONG: Yes. They are.
22 MS. REGELIN: Okay. Could you describe for us the
23 adjacency, the proximity, to fire and safety and police
24 services?
25 MR. BOSSONG: All right. I'll just explain where

1 the police department is. The closest police station is at
2 Wisconsin and East/West Highway. It's the second district
3 in Bethesda, and it's approximately point eight miles away
4 from the site. There is a disclosed CIP project that the
5 county has, it's going through right now, where that police
6 station will actually be moved to Cordell Avenue and
7 Wisconsin Avenue which is point two miles away from the
8 subject --
9 MS. ROBESON: Is that funded?
10 MR. BOSSONG: I do not believe it's -- I think
11 it's in the -- they're going through the study phase right
12 now.
13 MS. ROBESON: Oh. Okay.
14 MR. BOSSONG: And I don't think the construction
15 dollars have been allocated to go forward.
16 MS. ROBESON: Okay. Okay.
17 MR. BOSSONG: All right? But, I believe it's
18 fiscal year '16 is the intended or '17 whenever it will be
19 available. As far as Fire and Rescue, it was mentioned
20 earlier, I think Mr. Wrenn's testimony, that there's
21 actually a rescue service component at the intersection of
22 Battery Lane and Old Georgetown Road and that's 1500 feet
23 down Battery Lane to the west. Fire stations. There are
24 two fire stations which would serve this area. The first
25 one is at the intersection of Bradley Boulevard and

1 Wisconsin Avenue which is approximately one point three
2 miles away and it's to the south --
3 MS. REGELIN: South.
4 MR. BOSSONG: -- of the property. And then the
5 other one is at the intersection of Old Georgetown Road and
6 Cedar which is sort of north of, northwest of the property
7 off of Old Georgetown Road. So, those are the, basically,
8 the fire, rescue and the -- it's kind of interesting.
9 You've got a rescue service but you don't have fire.
10 Usually, they're combined but this is a little different
11 here.
12 MS. REGELIN: Okay. And are the access points in
13 the circulation plan for the development designed for safe
14 and adequate access by Fire and Rescue services?
15 MR. BOSSONG: Using Exhibit 43 which is the
16 illustrative plan of the proposed development, this was
17 shown to F and R, Fire and Rescue. We met with Fire and
18 Rescue and based on this layout, they had no objection but I
19 think there's a letter, again stating that it's technical
20 staff and Park and Planning who says they had no problem
21 with the zoning.
22 As we go through preliminary plan and as we go
23 through site plan, again, they will have another review of
24 it to make sure that what they saw today is still the
25 ability for them to properly protect from fire and rescue.

1 MS. REGELIN: Okay. Let's move to sidewalks.
2 Could you discuss existing sidewalks and connections?
3 MR. BOSSONG: I'm going to continue using Exhibit
4 43. Currently, Battery Lane has a sidewalk system on both
5 the north and south side from Glen Avenue heading towards
6 the west all the way to Old Georgetown Road and Woodmont
7 Avenue also has a sidewalk system along that. So, there is
8 current access from the current property to Battery Lane,
9 local park and all the way out to Old Georgetown Road and
10 the same thing to go down to Woodmont Triangle area where
11 the shops and restaurant and retail and commercial is. They
12 can currently come out the sidewalk to Woodmont Avenue and
13 head south. In addition to that, and this was brought up by
14 Mr. Wrenn and Mr. Kitchens, is the existing, and I'm using
15 Exhibit 43, pointing to where it says public parking.
16 The public parking garage right off, which is
17 accessed off of Woodmont Avenue. It's also accessed off of
18 Rugby Avenue to the south. They have actual entrance here
19 and then their entrances are here also and exits. There is
20 also a current sidewalk that was mentioned earlier from the
21 public garage to, the south side of the public garage out to
22 Rugby Avenue, and our development plan is intended to go
23 around this part of the development to access that sidewalk
24 and you'll have, and still leave the opportunity depending
25 on what happens all the way to the west side of our

1 property, there's not potential connection to the
2 intersection of Rugby and where Auburn Avenue is located.
3 As I mentioned, this is a private property. So, we're not
4 sure about -- we'll going to still allow that to give access
5 to that point.
6 MS. REGELIN: Are there any bike ways in the area?
7 MR. BOSSONG: Currently, Battery Lane is, has two
8 bike lanes striped. It's kind of unusual how they did it
9 but, well, I guess DOT went in and striped it, is on the
10 north, I mean north side of Battery Lane. The bike lane
11 basically hugs the northern curb line. On the south side of
12 Battery Lane, the bike lane is essentially sticks to the
13 outer edge or closest to the curb line is approximately six
14 to eight feet depending where you are along Battery Lane.
15 So, it's kind of inside the travel lane itself. It
16 disappears as you approach Woodmont Avenue. A couple
17 hundred, no, about 200 feet prior, 150 feet prior to
18 entering Woodmont Avenue, the bike lanes disappear, and they
19 also do the same thing at the other end at Old Georgetown
20 Road. They've got these bike lanes and then they just
21 disappear.
22 MS. ROBESON: So, where do the bikes go? No. I'm
23 just asking.
24 MR. BOSSONG: I guess wherever they --
25 MS. REGELIN: Like a missing sack, who knows. All

1 right. Could you give us distances to the two Metro
2 stations?
3 MR. BOSSONG: Yes. I'm going to use Exhibit 45,
4 not to contradict my colleague, Mr. Wrenn. I'm going to
5 just put a little more, I'm the engineer. We're more
6 definitive on the measurements. The distance from,
7 basically, our site which we'll call that your subject site
8 on Exhibit 45 to the Bethesda Station which is marked as a
9 little number one right at the M, is about 2900 feet walking
10 distance. So, in another words, sort of how the crow flies.
11 MS. ROBESON: Right.
12 MR. BOSSONG: I got to walk out to go through.
13 MS. ROBESON: Oh. I see.
14 MR. BOSSONG: So, it's a little bit longer than
15 what was mentioned earlier. The two medical center which is
16 basically on the NIH campus or in front of the NIH campus,
17 the National Medical Center, is approximately 1900 feet.
18 Okay. Still close enough for walking from the subject
19 property.
20 MS. REGELIN: So, do the development plans, are
21 they either dependent on or conflict with any county CIP
22 projects?
23 MR. BOSSONG: No. There are no CIP projects which
24 currently, there are no current CIP projects which would
25 affect directly the development that we're proposing.

MS. REGELIN: Okay. So, now I'll ask you opinion on that. Is it your opinion that the proposed development plans, and again, all of these are between PD-88 as well as PD-100 that they do not conflict with any CIP projects?
MR. BOSSONG: That is correct. They do not conflict.
MS. REGELIN: And they do not conflict with the APFO or the subdivision staging policy.
MR. BOSSONG: That is correct. They do not conflict.
MS. REGELIN: And is it your opinion there's a reasonable probability that adequate public facilities and services will be adequate to serve the development plan under the growth policy standards in effect?
MR. BOSSONG: That's correct.
MS. REGELIN: Okay. And are you familiar with the purposes standards and regulations of the PD zone as set forth in 59-C-7.1, et cetera?
MR. BOSSONG: Yes.
MS. REGELIN: Okay.
MR. BOSSONG: I've heard them many times.
MS. REGELIN: All right. I direct your attention to 59-C-7.121. Does the current zoning reflect a density for the subject property of at least two dwelling unit acres per acre or greater?

MR. BOSSONG: Yes. The current property again is either the R10 or the R10/TDR will propose PD 75. So, yes there are more than two units per acre.
MS. REGELIN: Okay. So, with respect to 59-C-7.122, does this subject property contain sufficient gross area to construct 50 or more dwelling units --
MR. BOSSONG: Yes.
MS. REGELIN: -- under the density category to be granted?
MR. BOSSONG: Yes. Using even the five point two nine acres, which is dropped down from the gross tract area, there's plenty of, you know, land mass to, on this development to take place.
MS. REGELIN: And is the proposed development plan a logical extension of an existing plan development?
MR. BOSSONG: It's more, I'm going to say this is more of a planning point. But, I'll point out. This is my professional opinion. With the Woodmont View project which is at 90 feet and then we're proposing 79 feet, to me, that's a logical progression of the development of residential coming across. In addition to that and I'm not sure it's pertinent to this specific question just asked but what we're also doing in combination, in cooperation with Woodmont View, we're creating a joint driveway access off of Battery Lane to the north side. I'll get into this a little

more of why they advantage to that but it's also, basically, it's the two properties coming together for joint use and joint purpose.
MS. REGELIN: Okay. Is multi-family residential permitted use in the PD-100 and PD-88 zone?
MR. BOSSONG: Yes.
MS. REGELIN: And does the development plan propose any commercial uses?
MR. BOSSONG: No. It does not.
MS. REGELIN: And is mixed use a requirement under PD-88 or PD-100?
MR. BOSSONG: It's not a requirement. It is permitted up to certain percentages but as we talked about all day here, Battery Lane is more residential. So, we're keeping it in the residential mode. So, therefore no commercial, no retail. Well, there is seven retail on the Woodmont piece, the Woodmont View, but it's very minimal also there.
MS. REGELIN: All right. And how far away are we from Woodmont Triangle Commercial District?
MR. BOSSONG: In my opinion, walking about 400 feet to the outer edges.
MS. REGELIN: Okay.
MR. BOSSONG: You could say it's even closer but I'm just going to, I'll say 400.

MS. REGELIN: Okay. Are there any other uses proposed other than residential?
MR. BOSSONG: Just residential.
MS. REGELIN: Okay. And in your opinion, are the proposed densities under both PD-100 and PD-88 appropriate based on the existing infrastructure, the adequacy of public facilities and the PD zone standards and regulations?
MR. BOSSONG: It is my opinion with the, as was mentioned earlier, the utilities, the road network, and Mr. Papazian will get into more details of intersections and roads but everything is adequate as far as the density that's being proposed, whether it's PD-100 or PD-88.
MS. REGELIN: Okay. Could you locate and describe the area of the subject property that's actually zoned R10/TDR and is designated as the TDR receiving area in the sector plan?
MR. BOSSONG: Okay. I'm going to go to Exhibit 10.
MS. REGELIN: It might be stacked up on that easel.
MR. BOSSONG: Using Exhibit 10 which is the property identification plat. The address for, the current address for 4857 Battery Lane which contains just a fraction of the one acre is currently zoned R10. That's on the north side of Battery Lane. Moving to the south side of Battery

1 Lane, the area of address 4858 and 4890 and a portion of
2 4900, which I'm going to basically starting at the, this
3 would be the northeast point of the south side of Battery
4 Lane heading to the west to the west side of what's
5 currently Lot 42, which is --
6 MS. ROBESON: Okay.
7 MR. BOSSONG: -- designated on this plan. Then we
8 go immediately south to our most southern property line and
9 then head east to our, to the next property verification.
10 We'll basically change in the property direction, and I go
11 north towards Battery Lane to the next intersection of the
12 property lines and then I go immediately to the east out to
13 Woodmont Avenue and then back north to my original starting
14 point. That area which is approximately four point two
15 acres is the R10/TDR zone. The remaining piece of property
16 which is the property basically is Lot 8 on the current
17 subdivision which is all the way to the western part on the
18 south side of Battery Lane is zoned R10.
19 MS. REGELIN: Okay.
20 MS. ROBESON: So, the R10/TDR is about four point
21 two? Is it --
22 MR. BOSSONG: Approximately four point two acres.
23 Four point two eight six two zero.
24 MS. ROBESON: Okay. And then how much is the R10
25 on the last lot? What's the acres of that?

1 MR. BOSSONG: This is one point zero zero seven
2 three seven.
3 MS. ROBESON: Okay.
4 MR. BOSSONG: Let me correct this a little bit.
5 You have lot 4858, address of 4858 is one point two seven
6 acres.
7 MS. ROBESON: Uh-huh.
8 MR. BOSSONG: And then Lot 4890 is two point zero
9 zero acres. So, that's approximately three point two seven
10 acres. The four acres that I just gave you earlier included
11 Lot 8, included this.
12 MS. ROBESON: Okay.
13 MR. BOSSONG: So, I want to make sure that that's
14 clear. That's not --
15 MS. ROBESON: Now, the R10/TDR is three point two
16 seven acres, roughly.
17 MR. BOSSONG: That's correct.
18 MS. ROBESON: Okay.
19 MS. REGELIN: Okay. Let's move to the issue of
20 compatibility which is under 59-C-7.15. Perhaps maybe the
21 surrounding area map that's Exhibit 18. It's the colored,
22 not the illustrative but the -- so marked Exhibit 18. Can
23 you describe the various setbacks in the textural binding
24 elements for the subject property?
25 MR. BOSSONG: Okay. What we're doing on the north

1 side of Battery Lane which is building A, again using
2 Exhibit 18, we are proposing a setback of 26 feet from the
3 right-of-way line. Okay. On the south side which would be
4 building C and B, we're proposing a 24 foot setback from
5 the, what I'm going to call the new property line because
6 we're going to be dedicating several feet on the south side
7 of Battery Lane. We're also --
8 MS. REGELIN: One second because I have a witness
9 that has to leave.
10 MS. ROBESON: Okay. Go ahead. Don't we all. How
11 many more -- Mr. Papazian.
12 MR. FREISHSTAT: One witness.
13 MS. REGELIN: It's just Mr. Papazian which we were
14 actually going to proffer since so much of his testimony was
15 in the record and there's a staff report in the record.
16 MS. ROBESON: Wait. What testimony? I don't have
17 any testimony.
18 MS. REGELIN: I mean, his report is in the record.
19 I'm sorry, and the staff report.
20 MS. ROBESON: Okay.
21 MS. REGELIN: So, we could do an abbreviated one -
22 -
23 MS. ROBESON: That's fine.
24 MS. REGELIN: -- and just do his conclusions and
25 opinions because it's not been a major issue in the case.

1 MS. ROBESON: Okay. Aren't his conclusions and
2 opinions in the record, too?
3 MS. REGELIN: Yes. They are. I mean, his
4 conclusion is in the report.
5 MS. ROBESON: Yeah. So, we could just have him
6 say does he stand by his record still?
7 MS. REGELIN: Yes.
8 MS. ROBESON: Okay.
9 MS. REGELIN: So, even more abbreviated than the
10 abbreviated version.
11 MS. ROBESON: How's that?
12 MS. REGELIN: Yes.
13 MS. ROBESON: Mr. Humphrey, do you want to cross-
14 examine Mr. Papazian? His traffic report?
15 MR. HUMPHREY: Oh. No. We have no questions
16 about the traffic report.
17 MS. ROBESON: Okay. Okay. So, Mr. Papazian, do
18 you mind coming forward?
19 MR. PAPAZIAN: I'm not sure if I'm still under
20 oath.
21 MS. ROBESON: Well, we'll just get this out of the
22 way. Please raise your right hand. Do you solemnly affirm
23 under penalties of perjury that the statements you're about
24 to make are the truth, the whole truth, and nothing but the
25 truth?

MR. PAPAZIAN: I do.
MS. ROBESON: And yes, I will accept, no matter if anybody objects, I'll take his resume and I'll accept him -- are you an engineer or a planner? A traffic engineer?
MR. PAPAZIAN: I'm an engineer. I'm an engineer. Professional engineer.
MS. ROBESON: I'll accept you as an expert traffic engineer.
MS. REGELIN: All right. And if we may, just put his resume in the record so it's in there.
MS. ROBESON: You may. It'll be 61.
(Exhibit No. 61 was marked for identification.)
MS. REGELIN: Okay. All right. And we'll get to Mr. Papazian.
MS. ROBESON: And then is Mr. Falcone going to stay is he just --
MS. REGELIN: No. He had to -- he left?
MR. FREISHSTAT: He left.
MS. REGELIN: He had --
MS. ROBESON: Did he want to say anything before --
MS. REGELIN: No. You had asked a question about rents and what I told him is we would proffer that we would, during the period the time was open, that we would

supplement the record with an answer to your question.
MS. ROBESON: Okay. Well, then I apologize for going out of order. I thought it was Mr. Papazian that had to leave. But, since he's up here --
MS. REGELIN: Let's just do Mr. Papazian.
MS. ROBESON: He's been a --
MR. PAPAZIAN: Trying to stay awake.
MS. ROBESON: Yes. Right. Okay. Go ahead.
MS. REGELIN: Mr. Papazian, did you prepare a traffic report for this application?
MR. PAPAZIAN: Yes. I did. I prepared a traffic report in accordance with the direction and guidance provided by the staff at the Montgomery County Planning Board. The traffic study is similar to this. It's an LATR, local area transportation review, type traffic study that is typical for preliminary plans and project plans and rezoning. We did the analysis based upon existing traffic counts forecasting for future traffic based on approved and unbuilt developments. We also estimated traffic generated by the proposed 600 -- we actually analyzed it from 695 units taking credit for the existing 260 units, assigned those trips to the area roadway network, analyzed the nearby intersections that were identified by staff for study. Those intersections are Woodmont Avenue and Battery Lane, Woodmont Avenue and Rugby Avenue, and Old Georgetown Road

and Battery Lane.
The findings of our study are that all of the area intersections will operate well within the congestion standard that's called for in the Bethesda CBD Policy Area, and we also looked at the policy area level review which, at this point, is called PAMR, policy area mobility review. It may change in the future but we looked at it under the PAMR and found that we can mitigate the impact of the trips that were, that would be directed to mitigate. By extensions, we would, I am very, I maintain that we would be able to satisfy any future policy area level review. The staff at the Planning Board provided a staff report. Transportation staff included their memorandum. They found similar to our conclusions that we would satisfy local area review, and that we would be, for the next stage, for the preliminary plan, we would have to re-analyze for local area review and for whatever policy area review that we would be subject to at that time. So, the staff agreed with our findings and provided a positive staff report.
MS. REGELIN: So, is it your opinion that the development plan application will provide adequate public facilities, will satisfy the adequate public facilities ordinance with respect to transportation?
MR. PAPAZIAN: Yes. It will.
MS. REGELIN: Okay. And you concur with the staff

finding of the same?
MR. PAPAZIAN: I concur with that --
MS. REGELIN: Okay.
MR. PAPAZIAN: -- their finding. (Indiscernible 4:28:21).
MS. ROBESON: No questions, Mr. Humphrey?
MR. HUMPHREY: No questions. Thanks.
MS. REGELIN: Oh. Oh wait. I'm sorry. Mr. Freishstat just reminded me that there was a question that Mr. Humphrey asked earlier about --
MS. ROBESON: Oh. Exhibit 50 --
MS. REGELIN: -- the Bethesda Metro policy area, Metro Station Policy Area.
MR. PAPAZIAN: Let me explain that.
MS. ROBESON: It's 51.
MR. PAPAZIAN: Right. First of all, there are different lines in this area. There is the CBD itself. But we are just outside the CBD. The property's just outside the CBD but it is within the CBD Sector Plan area and by extension, it is also within the CBD policy area. So, it's subject to the same guidance, standards as we typically see in the CBDs which is the higher critical lane volumes standard.
MS. REGELIN: Congestion. Yeah.
MS. ROBESON: Is it within a Metro Station Policy

1 Area?
2 MR. PAPAZIAN: Yes. It is within a Metro Station
3 Policy Area. The northern boundary is the connection of
4 Woodmont and Rockville Pike just north of us.
5 MS. ROBESON: Okay.
6 MR. PAPAZIAN: Yeah. The start of the NIH
7 property is outside the CBD, Metro Station Policy Area.
8 Now, they --
9 MS. ROBESON: Well, wait. I'm looking at Exhibit
10 51, and it looks like they have the boundary of the policy
11 area drawn right at the NIH property line.
12 MR. PAPAZIAN: That is correct. That's the policy
13 area.
14 MS. ROBESON: How about the Metro station?
15 MR. PAPAZIAN: Well, that is also the same thing.
16 MS. ROBESON: Okay.
17 MR. PAPAZIAN: Because we are -- the policy area,
18 the CBD policy area, has the same standards as the, and the
19 Metro Station Policy Area are one in the same.
20 MS. ROBESON: Okay.
21 MR. PAPAZIAN: Is the way I interpret it and the
22 way the staff has interpreted as well.
23 MS. ROBESON: Okay. All right.
24 MS. REGELIN: And one of the things that you said
25 I think that may have confused it. The designation of

1 Rockville Pike starts at the NIH property line going --
2 MR. PAPAZIAN: That is correct.
3 MS. ROBESON: Okay.
4 MS. REGELIN: And actually, the Woodmont Avenue
5 crosses the NIH property.
6 MR. PAPAZIAN: That's right.
7 MS. ROBESON: Okay.
8 MS. REGELIN: So. All right. I think that's all
9 the questions I'll have.
10 MR. HUMPHREY: I just wanted to make sure I heard
11 you. You said it was your opinion that the Metro Station
12 Policy Area and the sector plan policy area were one in the
13 same thing.
14 MR. PAPAZIAN: It is my opinion and also the staff
15 has identified that we are within the CBD policy area.
16 MR. HUMPHREY: CBD policy area.
17 MR. PAPAZIAN: Which is the one -- which means
18 that we are under the 1800 congestion standard.
19 MR. HUMPHREY: Correct. Staff being
20 transportation staff?
21 MR. PAPAZIAN: Transportation staff.
22 MR. HUMPHREY: Okay. Thank you.
23 MR. PAPAZIAN: And that issue, actually, we
24 discussed that briefly at the Planning Board last week.
25 MR. HUMPHREY: I'm not sure that still clears up

1 where the Metro Station Policy Area is but I think it --
2 MS. ROBESON: Well, don't Metro station areas get
3 a different, don't they get --
4 MR. PAPAZIAN: That is correct.
5 MS. ROBESON: -- additional breaks, so to speak,
6 from the mitigation. Is this in a Metro station?
7 MR. PAPAZIAN: Not mitigation but in terms of the
8 congestion standard. Yes.
9 MS. ROBESON: Okay.
10 MR. PAPAZIAN: Yeah.
11 MS. ROBESON: So, is this within a --
12 MR. PAPAZIAN: This is within the Metro Station
13 Policy Area. That's why it is subject to the 1800 --
14 MS. ROBESON: Okay.
15 MR. PAPAZIAN: -- congestion standard.
16 MS. ROBESON: Just checking. All right.
17 MS. REGELIN: No further questions.
18 MS. ROBESON: Okay.
19 MR. HUMPHREY: Except three things. I'm just
20 trying to clarify. Because, see, I heard three things.
21 It's in the a sector plan area. It's in the Metro Station
22 Policy Area. It's in the CBD policy area.
23 MR. PAPAZIAN: That is correct. But it is not
24 within the CBD.
25 MR. HUMPHREY: Wow.

1 MR. PAPAZIAN: Yeah.
2 MR. HUMPHREY: Okay. That's your opinion.
3 MS. ROBESON: All right. Thank you.
4 MR. PAPAZIAN: May I be excused?
5 MS. ROBESON: Yes. You may.
6 MR. PAPAZIAN: All right. Thank you. Can I get
7 out of the room?
8 MS. REGELIN: Thank you.
9 MS. ROBESON: I'm sorry to interrupt you, Mr.
10 Bossong.
11 MR. BOSSONG: No problem. After 34 days in the
12 other one--
13 MS. ROBESON: Yeah. This is a -- you're a
14 veteran. You're scarred for life.
15 MR. BOSSONG: I think where I was at, I was
16 talking about the setbacks --
17 MS. ROBESON: Right.
18 MR. BOSSONG: -- the planning elements or setbacks
19 and which of these setbacks are from the north side and the
20 south side of Battery Lane. We're also, in binding
21 elements, there is a 10 foot setback on the north side of
22 Building A from their property line adjacent to NIH. So,
23 those will be, I guess, called the binding element setbacks
24 at --
25 MS. REGELIN: And are there any setbacks required

1 in the PD zone?
2 MR. BOSSONG: No. There are no setbacks for the
3 PD zone.
4 MS. REGELIN: Okay. And are there any other
5 setbacks that exist in the surrounding area?
6 MR. BOSSONG: Yes. In a general way. Let's take
7 NIH. NIH is currently zoned R60, institutional use. It
8 essentially has an eight foot side yard. However, this area
9 of NIH is basically open space today. In fact, they're
10 under construction right now putting a large, I still would
11 imagine, a facility within this area just sort of outside
12 the limits. There's certainly some vegetation in this area,
13 and this is sort of just outside of that. Because there's
14 also a storm drain pipe which actually goes along with that
15 in between Building A and adjacent property on Woodmont
16 Avenue and then discharged onto the NIH campus.
17 In addition to that, the, I don't want to call
18 them real setbacks but we have actual physical features.
19 The features are their proposed building on, existing
20 building on Woodmont View has got to be 10 feet off the
21 property line today. This was discussed quite a bit today.
22 I agree with Mr. Gill. Their current building is
23 approximately eight feet off the property line, and eight
24 feet, 10 feet, and then the CBDs to the south of us are
25 basically built to the property lines today. They're on the

1 property line.
2 MS. REGELIN: Okay. How much green area is
3 required in the PD zone?
4 MR. BOSSONG: Thirty percent.
5 MS. REGELIN: And how much is the development plan
6 providing?
7 MR. BOSSONG: Per our binding element, no less
8 than 30 percent.
9 MS. REGELIN: Okay. And --
10 MR. BOSSONG: Do you need me to tell you which
11 binding elements they are?
12 MS. REGELIN: No. I think we read through them.
13 Are our dedications shown on our development plan?
14 MR. BOSSONG: Yes. They area. That was the five
15 foot on Woodmont and the 11 foot and the nine foot depending
16 which side of Battery Lane you're on.
17 MS. REGELIN: Okay. The PD zone requires off-
18 street parking in accordance with Article 59-E. Is the
19 subject property located in the Bethesda parking district
20 and is it providing on street or off street parking?
21 MR. BOSSONG: Right. First of all, we are not in
22 the parking district. That was, I think that was an error
23 in the staff report.
24 MS. ROBESON: Staff report. Right.
25 MR. BOSSONG: And then I think it was already

1 mentioned and I don't want to repeat anything, with Mr.
2 Wrenn earlier. There's a binding element regarding parking
3 to be determined depending on, at site plan stage, you know,
4 onsite parking depending on how many, you know, what type of
5 bedrooms and the mix and so forth.
6 MS. ROBESON: Yeah. I think what you have to
7 prove at this stage is that you're capable of providing
8 sufficient parking and it seems to me that you've estimated
9 unit mix of 60 some percent --
10 MS. REGELIN: Sixty-five to 35 percent.
11 MS. ROBESON: Yeah.
12 MS. REGELIN: Ones and twos which is --
13 MS. ROBESON: And that was why I asked you whether
14 you're going to sacrifice any of that parking for this storm
15 water but you said probably --
16 MR. BOSSONG: No. We would not.
17 MS. ROBESON: Not.
18 MR. BOSSONG: Not. I mean, both of them are
19 regulated.
20 MS. ROBESON: Right.
21 MR. BOSSONG: We have to provide so much parking.
22 MS. ROBESON: Right.
23 MR. BOSSONG: And on the other hand, I have to
24 provide storm water management.
25 MS. ROBESON: Right.

1 MR. BOSSONG: So, neither one can give. It has to
2 be worked out.
3 MS. ROBESON: Right.
4 MR. BOSSONG: So, and then all of our three
5 buildings, A, B, and C were providing structured parking
6 beneath, you know, beneath the building.
7 MS. ROBESON: Right.
8 MR. BOSSONG: And then there's a binding element
9 for, you know, if, in fact, there is any parking above how
10 it would be screened and buffered.
11 MS. REGELIN: Okay. Is it your opinion the
12 proposed development for both the PD-88 and the PD-100 will
13 meet the requirements and standards of the PD zone as set
14 forth in the zoning ordinance?
15 MR. BOSSONG: Yes.
16 MS. REGELIN: Is it your opinion that the proposed
17 development is compatible both internally and with adjoining
18 uses and development by providing appropriate setbacks,
19 appropriate layouts, access points, green space and land
20 area?
21 MR. BOSSONG: Yes.
22 MS. REGELIN: Is it your opinion that the proposed
23 internal vehicular and pedestrian circulation system and
24 points of access are adequate?
25 MR. BOSSONG: Yes. And I'd just go into that a

1 little bit. I talked a little bit about the pedestrian
2 access, whether the requirements of improving the sidewalks
3 on Battery Lane but there is a sidewalk pattern here.
4 Internally, there'll be a sidewalk and pedestrian path out
5 to Battery Lane so you can get to the local park, get to the
6 Woodmont Triangle and so forth like that, and the dimensions
7 and accesses out the, potentially out the south side of the
8 property as well.
9 Fire access. We talked about that. That's
10 circulation stuff up there. Comfortable with that.
11 MS. ROBESON: Where's the garage entrance, if you
12 know?
13 MR. BOSSONG: Okay. It's kind of interesting.
14 MS. REGELIN: Actually, the illustrative. It's
15 behind the neighborhood plan that's on the left easel.
16 MR. BOSSONG: Building B.
17 MS. REGELIN: Uh-huh.
18 MR. BOSSONG: I'm using Exhibit 43. There'll be
19 access all along south side of Battery Lane, on both sides
20 of Building B which will go towards the south and then
21 immediately with--
22 MS. ROBESON: I see.
23 MR. BOSSONG: -- (indiscernible 4:38:35) actually
24 goes down and then the green area is also on top.
25 MS. ROBESON: That was my question.

1 MR. BOSSONG: So, it comes in this direction and
2 then also on the most western side boundary it comes in --
3 MS. ROBESON: Okay.
4 MR. BOSSONG: -- through yard image. Same thing
5 happens with Building C. It's a shared drive aisle coming
6 in to where it's pointed to access B garage. Same thing for
7 C garage as well and then access for building A on the north
8 side of Battery Lane is using the shared driveway I talked
9 about earlier that we might be also to use and then it comes
10 into the garage.
11 Additionally, what we have done here, currently,
12 if you've been out on Battery Lane, there are numerous
13 access points or drop off points along Battery Lane for the
14 existing four buildings. Makes little U's that come off the
15 lane. That's basically two entrances, two exits if you want
16 to call it that way off Battery Lane. With this, we're to
17 improve the vehicular and the safety of this region also is
18 I'll start with building A. Right now, there are currently
19 from Woodmont Avenue to our western property line, there are
20 actually to date three access points along that stretch.
21 We're bringing that down to two. We have the shared one
22 with Woodmont View and then basically it goes on our western
23 property line. Same thing with buildings B and C.
24 Currently, there are approximately six accesses, access
25 points, along the south side of Battery Lane. We're

1 reducing that down to two accesses. So, from a vehicular
2 safety standpoint, from a pedestrian safety standpoint, much
3 better than what's existing today.
4 MS. REGELIN: All right. Will the requirements of
5 Forest Conservation under Chapter 22A be satisfied for the
6 development plan?
7 MR. BOSSONG: Yes. I mean, right now, we have
8 improved NRI/FSD. May 3rd we'll hopefully get the Forest
9 Conservation Plan approved, and then we'll have the
10 requirements of a final Forest Conservation Plan at the site
11 plan stage.
12 MS. REGELIN: Okay. And will the requirements for
13 water resource protection under Chapter 19 be satisfied for
14 the development plan?
15 MR. BOSSONG: As I mentioned earlier regarding
16 storm water management, that'll be satisfied through using
17 the ST measures to the MEP and other measures if necessary.
18 MS. REGELIN: Okay. And does the proposed
19 development plan minimize grading and tend to prevent
20 erosion of the soil?
21 MR. BOSSONG: All right. As Mr. Wrenn mentioned
22 in his testimony, the proposed grading operations on these
23 buildings basically mimics pretty close the existing grades
24 that our out there today. So, therefore, there's minimized
25 grading issues. Obviously, we're going to dig a hole. So,

1 that means that something's contained in the hole. It
2 doesn't go out. But others doing a lot of grading
3 operations that potentially for greater erosion. We won't
4 have that situation here.
5 Additionally, the plan has more green space then
6 what's existing out there today. That's another proponent
7 of less erosion in water quality management. Using storm
8 water management methods, I mean, we're going from zero
9 today to a 100 percent once the development for storm water
10 management's, you know, there's no comparison of quality
11 even though it's, you know, black and white.
12 MS. REGELIN: The public benefit of that.
13 MR. BOSSONG: Public benefit of that is --
14 MS. REGELIN: Okay.
15 MR. BOSSONG: And then with the vegetation that's
16 being proposed. You go out there there's very little
17 vegetation today. We're proposing much more vegetation
18 which increases the canopy and therefore for public benefit
19 as well right off the bat.
20 MS. REGELIN: I'm going to laugh when I say this
21 but does the proposed development plan preserve natural
22 vegetation, other natural features of the site?
23 MR. BOSSONG: Yes.
24 MS. REGELIN: All the asphalt.
25 MR. BOSSONG: I'm going to say yes to the extent

that natural vegetation and features exists. There's really, except for a couple of trees and bushes and so forth, there's not a whole lot of vegetation out there, and the vegetation that is out there today, even the larger trees is before specimen, if you want to call them specimen trees. They're planted trees. They weren't part of original forest. So, you know, the proposed development is a major enhancement from a vegetation standpoint, from a canopy standpoint, from a green space standpoint.

MS. REGELIN: Okay. Is it your opinion that the proposed development plans for both PD-88 and PD-100 substantially complies with the master plan, sector plan, and they do not conflict with the general plan, the CIP, or any other applicable plans and policies?

MR. BOSSONG: Yes. They all comply as far as my testimony from an engineering standpoint and public facilities.

MS. REGELIN: All right. Is it your opinion the proposed development plans satisfy the purpose of the PD zone?

MR. BOSSONG: Yes.

MS. REGELIN: Is it your opinion the proposed development plans achieve the maximum of safety, communities and residence of the development and residence of adjacent area?

MR. BOSSONG: Yes. And that's what I explained earlier.

MS. REGELIN: Okay. Is it your opinion the development plans provide for the development of a comprehensive pedestrian network linking residential open space recreational, commercial, institutional, public facilities to minimize auto reliance?

MR. BOSSONG: Yes.

MS. REGELIN: And is it your opinion the development plans provide for adequate open space conveniently located for residential use?

MR. BOSSONG: Yes.

MS. REGELIN: And is it your opinion the development plans will add to the systematic development of the regional district in a coordinated comprehensive method and provide for the production and the promotion of the health, safety, morals, conflict, and welfare of the residents of the regional district?

MR. BOSSONG: Yeah. From an engineering and environmental standpoint. Yes.

MS. REGELIN: All right. I have no further questions for Mr. Bossong.

MS. ROBESON: Okay. Mr. Humphrey, any questions?

MR. HUMPHREY: No questions at this --

MS. ROBESON: Very well. You may be excused.

MR. BOSSONG: Thank you.

MS. ROBESON: Thank you.

MS. REGELIN: All right. That is to the extent of our witnesses today, and given the hour, I know I have a right to a closing statement. Perhaps I can submit that in writing?

MS. ROBESON: Well, I think Mr. Humphrey --

MS. REGELIN: Oh. Yes. I'm sorry.

MS. ROBESON: -- want to testify. So, I'm going to let him do that.

MS. REGELIN: All right. Excellent. Thank you.

MR. HUMPHREY: I testify generally. Do you need to swear me in?

MS. ROBESON: Yeah.

MR. HUMPHREY: I don't, okay.

MS. ROBESON: Do you solemnly affirm under penalties of perjury that the statements you're about to make are the truth, the whole truth, and nothing but the truth?

MR. HUMPHREY: I do.

MS. ROBESON: Okay.

MR. HUMPHREY: I am Chairman of the Federations Planning and Land Use Committee. Have been for eight years or nine years, eight or nine years.

MS. ROBESON: And are you here on behalf of the

Federation?

MR. HUMPHREY: I am. The executive committee approved our participation, our testimony, in this rezoning case at their February meeting.

MS. ROBESON: Okay.

MR. HUMPHREY: We weighed in on, well, Federation has a position of record in support of adherence to master and sector plans, and it's on that basis that the executive committee sends me forth as, you know --

MS. ROBESON: Right.

MR. HUMPHREY: -- suits me up in armor and says you go.

MS. ROBESON: Okay.

MR. HUMPHREY: We believe that the PD zoning requested by the applicant violates the recommendations in the plan for the property zoned south side of -- most --

MS. ROBESON: Both the PD-88 and the PD-100?

MR. HUMPHREY: Yes.

MS. ROBESON: Alternatives?

MR. HUMPHREY: Yes. Because what we do when we take a look at rezoning requests is we immediately look at the master plan. Which, in our opinion, from our experience, must be the last thing that developers and their experts that they hire, their land use asset enhancement companies explain to them. There is a very clear

1 recommendation for property on the north side of Battery
2 Lane and that is PD 75. You can't get any clearer than the
3 master plan recommendation. So, for a group of people to
4 tell a property owner, oh. We think we can get you 88 or
5 PD-100 shows to the Federation a disregard, a callous
6 disregard for master planning.
7 Communities, including planners, both working for
8 the government and for private industry spend an average two
9 years working on master plans, and we see that one of the
10 first actions taken ordinarily after the plan is approved is
11 to throw it in the trash or claim it's too old or
12 circumstances have changed. We are continually amazed at
13 the lack of respect for master plans by the private sector
14 in this county and the developer's attorneys who make good
15 money trying to maximum profit on each property without any
16 regard for the master plan.
17 Here, we have, though, a second public policy
18 which is incredibly important to the Federation and to the
19 county, that of agricultural land preservation and the TDR
20 program. I've spoken with Jeremy Criss several times. The
21 Federation had him in to talk to us.
22 MS. ROBESON: Who is Jeremy Criss?
23 MR. HUMPHREY: He is the Agricultural Services
24 Division manager for the Department of Economic Development.
25 He's Mr. TDR --

1 MS. ROBESON: Okay.
2 MR. HUMPHREY: -- in county government.
3 MS. ROBESON: Okay.
4 MR. HUMPHREY: Now, granted the TDR sale market is
5 a private market but Jeremy is the one who knows everything,
6 you know. He knows everything you'd want to know about
7 TDRs. He was the one that sort of signaled that there was a
8 problem back in early 2007 because, as the Planning Board
9 approved projects as receiving areas for TDRs, they were
10 removing them from the total 19,000 that were available
11 originally throughout the ag reserve in the county.
12 What they found was that projects may have been
13 approved to use TDRs but when they actually got built, they
14 didn't purchase the TDRs nor did the developer build the
15 additional densities they would have gotten from being
16 approved to use a TDR. So, what they called a floating TDR
17 landed on projects but then it wasn't purchased and
18 extinguished. So, after that project was built, it floated
19 again. It turns out that there are 10,000 that are getting
20 extinguished. This I heard or found out from conversation
21 with Mr. Criss the other day. Ten thousand that are
22 extinguished. Six thousand that have landed, and another
23 3,000 that are still floating looking for receiving sites,
24 projects to land on.
25 This is one of three sites in the Bethesda area.

1 It troubles the Federation that no one on the Planning Board
2 asked the question and no staff explained how many floating
3 TDRs there were left. No one asked the question. No one on
4 staff offered the answer to how many receiving sites there
5 were left in the county. It's my understanding that there
6 are insufficient receiving sites to land this 3,000 units.
7 But I can't prove it. Jeremy Criss could have given us the
8 information or it may be in the 2007 TDR tracking report
9 that I asked a question about earlier today.
10 It seems, though, that competing, in the
11 competition of interests we have here, public policy
12 interests, it's the Federation's opinion that the housing
13 one is a slam dunk in every project, residential project, in
14 Bethesda. I think one of the questions I asked earlier sort
15 of gave that away that every residential project over 20
16 units in size in Bethesda will have at least 12.5 percent
17 MPDUs. So, we're not only getting units in 13 developments,
18 16 new buildings with several of them a multi-family
19 building, the number of projects in the pipeline in Bethesda
20 already approved but not yet built. But every one of those
21 projects will have 12.5 to 50 percent affordable houses.
22 We're getting housing, and we're getting affordable housing.
23 Controlled subsidy, you know, DHCA controlled units. What
24 we don't have are enough receiving areas for TDRs in the
25 area in the county. So, this really, to us, should be

1 weighed very heavily in favor of using this for the maximum
2 benefit that we can provide to the Ag Reserve Program which
3 is to push the developer to purchase the maximum number of
4 TDRs to get maximum density.
5 MS. ROBESON: Do you know why the TDRs haven't
6 been purchased?
7 MR. HUMPHREY: I think in large part because when
8 the program was established, there were a set number of
9 receiving areas created in the county. To my understanding,
10 as I said, that some of those TDRs the Planning Board
11 approved to be used in projects but the developers got to
12 building them said you know, we're not going to build that
13 same number of units that we've been approved for. We can
14 pull back and not purchase TDRs and make this a more
15 affordable project. So, even though the Planning Board
16 thought, ah. We've approved projects. These TDRs are going
17 to be used here. They weren't used. The developer didn't
18 build up to the full amount of density allowed, and the TDRs
19 weren't purchased. So, in 2007 it came as a huge surprise
20 because they thought there were only 18, 1,700 to 1,800
21 units left floating in the county. To find out that
22 actually there were 6,000 floating that still hadn't been
23 purchased, I mean, that had landed but had been
24 distinguished or purchased and another 3,000 still floating.
25 Everybody was surprised in the county. That's why that

1 tracking report was done.
2 MS. ROBESON: Has the Ag Board, have they weighed
3 in on the revised application?
4 MR. HUMPHREY: No.
5 MS. ROBESON: Between the PD-100 and the PD-88?
6 MR. HUMPHREY: No. And the reason that I heard
7 from Jeremy was that his people -- he thought he had to get
8 something in by Tuesday afternoon to get it into the record
9 for the hearing that week, and the Ag Advisory Board met
10 Tuesday evening of that week, and so he didn't think he
11 would have something in in time, to the Board for the
12 Thursday hearing. Now, that's all I can tell you.
13 MS. ROBESON: For the Thursday Planning Board
14 hearing.
15 MR. HUMPHREY: For the Thursday Planning Board
16 hearing. Yeah. So, I really can't speak for Mr. Criss.
17 But we have, you know, we have been involved. I didn't even
18 want to run numbers because I think planning staff actually
19 said that the 40 or the 31 number was about two-thirds of
20 what would have to be purchased under sector plan
21 recommended or applied zoning. We just think every TDR
22 possible, you know, needs to be extinguished or used on
23 receiving, for the few receiving properties that are left in
24 the county.
25 So, no. I guess that's it in general. You know,

1 we don't have a problem with the design of the project. We
2 don't have a problem with height. Even, really, with too
3 much about the density other than the fact that, you know,
4 clearly on the north side of Battery Lane PD 75 is called
5 for. And that'll get you 91.5 dwelling units an acre with
6 your bonus density, you know. There's no need to violate
7 the master plan just to push that up to 100 unless you want
8 to go to 122, you know, with your bonus density. So, we
9 just wish that the developers, the property owners in this
10 county that develop the property had a little more respect
11 for the master plan's areas in which they own properties in
12 and the recommendations of this plan.
13 MS. ROBESON: All Right. Ms. Regelin, did you
14 have any questions for Mr. Humphrey?
15 MS. REGELIN: Yeah. One of the things that you
16 kept mentioning are floating TDRs. Are those TDRs that have
17 been serialized? Meaning that they've had the farm land
18 easement placed on the properties and they've turned them
19 into a serialized TDR that's now a liquid asset that they
20 could sell? Is that what a floating TDR --
21 MR. HUMPHREY: What I can tell you is, as well as
22 I understand Jeremy's explanation to me, was that when the
23 county said what every farm, you know, the county rural
24 areas, you can't build one house for five acres. You can
25 build one house for 25. But, the other four or five acre

1 parcels that you could have built a house on now become what
2 are called excess TDRs. There were 19,000 of those
3 available in the Ag Reserve according to Jeremy. Ten
4 thousand are extinguished as I said. That's the grasp of it
5 that I got from our phone conversation the other day. Six
6 thousand have landed on property, you know, so 10,000 are
7 distinguished. Legally purchased and used on receiving
8 properties. Six thousand have landed but they have not yet
9 been purchased. They've been approved to be used in
10 projects by the Planning Board but they haven't yet to
11 purchase and extinguish, and then the 3,000 that are still
12 floating waiting for a project to land on. Now --
13 MS. REGELIN: So, depending on a change in the
14 economy and projects moving forward, then those that are
15 projects that need TDRs will have to move forward to
16 purchase them in order to implement their projects.
17 Correct?
18 MS. ROBESON: Well, not if they're rezoned so that
19 they don't use the TDRs.
20 MR. HUMPHREY: Well, you can also --
21 MS. ROBESON: I think his point is that what this
22 application is asking to rezone out the TDRs.
23 MS. REGELIN: No. I think --
24 MS. ROBESON: Although there's a proffer of TDRs.
25 MS. REGELIN: Correct. I think this application

1 says we're asking for a rezoning to PD-100 or 88 but that,
2 in fact, we acknowledge the master plan recommendation as a
3 TDR receiving area --
4 MS. ROBESON: But not to the level that otherwise
5 would be required.
6 MS. REGELIN: Because at PD-100, at PD-88 is the
7 full complement at PD-100. It's a balancing with the
8 additional affordable.
9 MR. HUMPHREY: It's not the full compliment.
10 Staff admitted in the packet that Robert admitted,
11 Kronenburg, that at the 31 level, TDR level, it was only
12 two-thirds of what would be required under the sector plan
13 zoning, the R10/TDR zoning.
14 MS. REGELIN: Correct. It's the amount that is
15 the minimum required in the TDR, R10/TDR that you must use
16 two-thirds and so that's the minimum number of TDRs.
17 MS. ROBESON: What's the minimum number?
18 MS. REGELIN: Two-thirds of the full density.
19 That's the number that you must build.
20 MS. ROBESON: Okay. So, if we were looking at an
21 R10/TDR site, how many TDRs would be required to be put on
22 this? I mean, how many, yeah. How many TDRs would you have
23 to buy?
24 MS. REGELIN: At least the two-thirds. You can't
25 get a project approved --

1 MS. ROBESON: And what is that number?
2 MS. REGELIN: The 31.
3 MS. ROBESON: Okay. And you're buying --
4 MS. REGELIN: Thirty-one for PD-88s.
5 MS. ROBESON: And?
6 MS. REGELIN: One twenty for PD-100 because we
7 were balancing it with the other goal for affordable
8 housing.
9 MS. ROBESON: And what, okay.
10 MS. REGELIN: Because PD-100 doesn't, PD does not
11 require the purchase or provision of TDRs, and if, in fact,
12 you do provide for TDRs then you get the 10 percent density
13 bonus.
14 MS. ROBESON: I guess I still have a question for
15 -- I'm really struggling with this because I'm bound by the
16 master plan and it's very difficult for me -- I don't know
17 if you have anyone from the owner here but why do 20 year
18 units which aren't legislatively recognized anywhere?
19 MS. REGELIN: Correct. So, that's why they are a
20 bonus because they're not required.
21 MS. ROBESON: But where's, okay. But, it's not up
22 to me to decide the public policy. So, I guess my question
23 is, you know, and that's why the standard is to go with
24 adopted county policies and plans, and I keep getting back
25 to whose idea was it to offer the 20 year units, 10 - 20

1 year units? Was it the applicant's or was it technical
2 staff's?
3 MS. REGELIN: It was the applicant's. The 20 year
4 covenant period was the applicant's and was based on the
5 feasibility of building this project given the input that
6 they got from their lenders on the valuation of it, the cost
7 to build those originally, the cost to hold and maintain
8 those for the period of time, and the family was only
9 proffering it as a sort of added bonus. Let's do something
10 we can do. We can't do the Workforce Housing program but we
11 can do this which is the 20 years for regulated units that
12 would meet the Workforce Housing limits.
13 MS. ROBESON: So, the family is saying we think
14 affordable housing is more important. See, I --
15 MS. REGELIN: Because they're in the housing
16 business.
17 MS. ROBESON: I know that.
18 MS. REGELIN: So, they're perspective is coming
19 from they have existing tenants and so they deal with
20 residents all the time and they know that people in Bethesda
21 have a difficult time --
22 MS. ROBESON: Okay. But they aren't here to
23 testify.
24 MS. REGELIN: Correct.
25 MS. ROBESON: And I don't have them anymore.

1 MS. REGELIN: No. And that's a fact he testified
2 a little bit with respect to that. But, it was the family's
3 values which proffered something that wasn't --
4 MS. ROBESON: So, does the family --
5 MS. REGELIN: -- otherwise defined in the county
6 statute.
7 MS. ROBESON: Does the family care, aside from
8 their personal values, do they prefer one application over
9 the other aside from feeling that it's more important to
10 encourage affordable housing? Does it matter to them one
11 way or the other whether it's --
12 MS. REGELIN: They have a preference for PD-100.
13 MS. ROBESON: And why is that? Besides affordable
14 housing.
15 MS. REGELIN: Because of the total --
16 MS. ROBESON: Well, they're not here to testify.
17 MS. REGELIN: Yes. I know. But, I do believe in
18 his testimony. He said that if we go back and look at it
19 that they have a preference for PD-100. In fact, I think
20 it's in the statement of the applicant that you could go
21 back to and see that.
22 MS. ROBESON: Why? Aside from the affordable
23 housing thing.
24 MS. REGELIN: It is the same massing as shown on
25 the development plan and has the greatest increase in units,

1 and so, of course, they want the PD-100.
2 MS. ROBESON: So, it's an economic issue.
3 MS. REGELIN: Correct. But they in, as all the
4 testimony was, they do believe that --
5 MS. ROBESON: You know it isn't bad. It doesn't
6 mean that that's a bad thing for them to look at. It's just
7 my legal requirement is the public interest.
8 MR. HUMPHREY: And I have a point I want to
9 clarify about what Ms. Regelin said. She said 31 is the
10 minimum number of TDRs that would be required under an
11 R10/TDR project on the portion, on the acreage, that is
12 zoned R10/TDR of these properties. But, in order to get the
13 density per acre on the whole development plan that we're
14 looking at, they would have to buy significantly more.
15 They'd have to buy 50 or more not 31.
16 MS. ROBESON: Oh. You mean if --
17 MR. HUMPHREY: So, in fact, they're asking for
18 100 --
19 MS. ROBESON: Wait a minute. Let me just make
20 sure what you're saying. What you're saying is that if they
21 were developed, if it was developed all. All five point two
22 nine acres under R10/T -- no.
23 MR. HUMPHREY: It couldn't be. No. If one acre
24 was under R10 and what was it? Two point two six?
25 MS. ROBESON: You're saying taking the existing

1 zoning --
2 MR. HUMPHREY: Yes. Existing zoning.
3 MS. ROBESON: -- they would be required to have 31
4 TDRs.
5 MR. HUMPHREY: That's right.
6 MS. ROBESON: Okay. But, what you're saying is if
7 they could develop the number of units --
8 MR. HUMPHREY: To get anywhere near this --
9 MS. ROBESON: -- that they're requesting here, the
10 number of TDRs would be higher. Is that what you're saying?
11 MR. HUMPHREY: I don't even think they'd get to
12 100 dwelling units an acre if they used the recommended and
13 applied zoning for the sector plan because you'd have PD 75
14 on the north side of Battery Lane. You have R10 on a
15 portion, you know, on the south side, and you'd have
16 R10/TDR. But, in order to get anywhere near -- it probably
17 run 500 and some. You know what, I'm not a math major, and
18 the planning staff and these guys can spin these numbers 85
19 ways to Sunday.
20 MS. ROBESON: Well --
21 MR. HUMPHREY: But, I can tell you that they
22 wouldn't get 600 --
23 MS. ROBESON: I don't think that's necessarily
24 true.
25 MR. HUMPHREY: They wouldn't get, well, you know,

1 come on. I don't make any money and these guys make good
2 money --
3 MS. ROBESON: Well --
4 MR. HUMPHREY: -- you know, to argue on behalf of
5 their clients.
6 MS. ROBESON: Well, moving on.
7 MR. HUMPHREY: Yeah. Moving on. They're going to
8 get 500 and some units total under the master plan applied
9 zone, the recommended zoning. R10, R10/TDR, and PD 75.
10 They're going to get close to 600 here. But that, even that
11 500 and some units would require the purchase of 50 some
12 TDRs. Here they're saying give us 100 dwelling units and
13 acre density for each one of the acres here and we'll toss
14 in 31 as a proffer. By the way, Mr. Criss isn't sure as Mr.
15 Callum Murray was on the planning department staff. Mr.
16 Criss isn't as sure about the possibility of legally
17 extinguishing these TDRs because --
18 MS. ROBESON: Well, wait a minute. Wait a minute.
19 Wait a minute. That's a whole other issue, and that's not
20 even mentioned in the staff report. Why isn't that
21 mentioned in the --
22 MR. HUMPHREY: No. It was mentioned in Mr. Criss'
23 correspondence with the Board, with Chair Carrier and he
24 said they are not used to increase the density on the
25 receiving site then I'm not sure how they can be serialized

1 and extinguished.
2 MS. ROBESON: All right.
3 MR. HUMPHREY: Because TDRs transfer development
4 rights. They transfer density.
5 MS. ROBESON: Let's do this. You --
6 MR. HUMPHREY: And similarly, the Federation has a
7 concern about the voluntary affordable housing units. These
8 will not be, as they say, controlled units, government
9 controlled units. The government has not program called the
10 VAHU programs and the Department of Housing and Community
11 Affairs can't legally administer this program. Somebody
12 will have to monitor whether this developer and this
13 management company offers these units at an affordable price
14 for 20 years. But, there ain't no such thing as the VAHU
15 program of Montgomery County.
16 MS. ROBESON: That's an enforcement issue, though,
17 and, you know, we do get into enforcement issues but I'm
18 assuming you're putting the restrictions on --
19 MS. REGELIN: There's a binding element that says
20 that it'll be a recorded covenant that's been approved by
21 DHCA.
22 MS. ROBESON: And who has the ability to enforce
23 that covenant? The HOA or does the county have the ability?
24 Does DHCA --
25 MS. REGELIN: Those covenants, just like an MPDU

1 covenant or a Workforce Housing covenant, go to the, run to
2 the benefit of Montgomery County and they're enforceable by
3 DHCA. So, we have agreed to a binding element that it will
4 be by recorded covenant.
5 MS. ROBESON: All right. Let me do this. Did you
6 want to make a closing statement?
7 MS. REGELIN: No. I would like to submit one in
8 writing because I think we both have been going too long
9 today.
10 MS. ROBESON: Yeah.
11 MS. REGELIN: And we have to pull together our
12 notes and I know that there were a number of things that
13 you've asked us about to submit and --
14 MS. ROBESON: Right.
15 MS. REGELIN: -- that we'd like to address in
16 closing arguments. You know, bring your attention to
17 certain things, published policies and things of this, of
18 the county.
19 MS. ROBESON: What I would like to do, too, is I
20 would like to -- do you have the contact information for Mr.
21 Criss? Because what I'm getting from you, not that I don't
22 trust you but it's hearsay, and if we can elicit an opinion
23 from -- what body does he represent?
24 MR. HUMPHREY: He is the Agricultural Services
25 Division manager for the Department of Economic Development.

1 MS. REGELIN: He's the staff liaison to the
2 Agricultural Advisory Committee.
3 MS. ROBESON: So, the Agricultural Advisory
4 Committee, and the only reason I --
5 MR. HUMPHREY: That's not a government body.
6 That's an advisory committee. He's an employee of the
7 county government that works for the Department of Economic
8 Development.
9 MS. ROBESON: Yeah. But, it's a --
10 MR. HUMPHREY: So, when you have a question about
11 TDR program, you go to Jeremy. Ag Advisory Board can tell
12 you their opinion but Jeremy is Mr. TDR --
13 MS. ROBESON: Well, I want the Ag Advisory Board's
14 opinion, though. That's what I --
15 MR. HUMPHREY: Oh. I'm sorry. Yes. He's their
16 liaison so, or, you know, staff board member, and you can do
17 that for yourself.
18 MS. ROBESON: And the only reason I'm asking is I
19 don't see a clearly defined public interest here.
20 MR. HUMPHREY: Right.
21 MS. ROBESON: I mean, well, it may be that housing
22 is ultimately the predominant goal but based on the record
23 here, I feel like I don't have enough to go on to determine,
24 you know, what is the public interest that's legislatively
25 expressed.

1 MR. HUMPHREY: Do you want to check this? This is
2 just Jeremy's card. All right.
3 MS. REGELIN: No. I have actually Jeremy's card,
4 too.
5 MS. ROBESON: I know that affordable housing and
6 the residential use are a very strong public interest in
7 many cases. I've also been in cases in the Ag Reserve area
8 where the Ag Reserve Board protecting the Ag Reserve is a
9 very important public interest. So, it's very difficult
10 based on the evidence I have here to say which I should
11 choose. Normally, when people come in and say we're
12 advocating for the public interest, they say because we meet
13 this standard that's in this plan and we meet this standard
14 that's in this plan but you're not really meeting --
15 MS. REGELIN: We've balanced both.
16 MS. ROBESON: Yeah. And I understand but I think
17 it's also a thing where you don't want to work, I mean, you
18 don't want a windfall, and I'm denigrating anybody but
19 there's a lot of extra density here for an "unrecognized
20 commodity" which is the 20 year voluntary Workforce units.
21 You see what I'm saying?
22 MS. REGELIN: Right. Although my closing
23 statement to advocate is that you're attributing all the
24 additional density to the voluntary affordable housing
25 units. We're saying that our testimony's been that the

1 master plan density that's recommended here is not
2 necessarily an exact numerical number that there are other
3 overarching goals which was to increase the affordable
4 housing in this, just increase the housing in this location
5 and given this outside event which was BRAC which brings a
6 surge of jobs to this area, that, in fact, that goal has
7 even increased more. That there needs to be more housing at
8 this location.
9 MS. ROBESON: So, then why even have the
10 alternative?
11 MS. REGELIN: Because we have the opportunity to
12 provide one or the other, and the PD-88 does most
13 approximately the master plan plus the PD zone density for
14 providing TDRs. So, it is a more straightforward
15 application but the testimony is that the PD-100 is the more
16 appropriate development plan.
17 MS. ROBESON: Because of BRAC.
18 MS. REGELIN: Because the master plan goals for
19 additional housing at this location which, since the master
20 plan, there has been a change of circumstances with BRAC
21 bringing, and I'm not going to testify, but a lot of jobs
22 and, to this location, and that's put pressure on this
23 particular north end of Bethesda to provide the housing, and
24 it's in the perfect location with --
25 MS. ROBESON: But, all right. You didn't have

1 numbers on the jobs.
2 MS. REGELIN: Correct. He did not have the
3 numbers at his job.
4 MS. ROBESON: I don't have any numbers on the
5 jobs. I don't have any numbers on when BRAC's happening.
6 MS. REGELIN: Right. So, what I'd like to do is
7 be able to supplement the record with additional information
8 in response to the questions that you've asked today.
9 MS. ROBESON: That's fine, and I'm going to
10 supplement it with the Ag Advisory Board.
11 MS. REGELIN: Yes. And actually, I've also spoken
12 to Mr. Criss because I asked him specifically if he could
13 get a follow up response filed in time for this hearing.
14 So --
15 MS. ROBESON: I think that would help me
16 tremendously in -- and I'm not pushing one way or the other.
17 I'm just feeling like I don't have enough information yet to
18 make a decision. That's all.
19 MR. HUMPHREY: I think additionally to balance the
20 policies, you might want to find out how many projects are
21 approved in the pipeline but not yet built and how many
22 housing units they include and how many MPDUs including
23 Bethesda.
24 MS. ROBESON: Wait. Wait.
25 MR. HUMPHREY: Well, a lot of housing comes into

1 Bethesda. It's already approved.
2 MS. ROBESON: Well, we know that they were going
3 to have MPDUs. We know that. I think the question is this
4 intermediate form of housing, intermediate income housing.
5 MR. HUMPHREY: There's a lot of housing, a lot of
6 affordable housing, already approved to be built in
7 Bethesda. There's only one TDR receivable project going
8 forward.
9 MS. REGELIN: So, one of the issues which is the
10 same thing that the Planning Board wrestled with which is
11 why they actually supported both PD-88 and PD-100, the
12 conclusion of the technical staff that both met all of the
13 criteria to be PD zone and met the density, substantially
14 conformed with the density, et cetera, and that they wrote
15 their letter in such a way to say both technically meet the
16 requirements but we have a preference for PD-100. That was
17 a policy statement, and that's why I'm not sure what the
18 hearing examiner can do. Perhaps it is indicate whether PD-
19 88 and PD-100 also meet the standards --
20 MS. ROBESON: Well, the only reason they gave me
21 is that upfront construction costs are more and that's, you
22 know, you can say we think it's in the public interest but
23 that doesn't help me in a hearing balance -- this is the
24 quasi-judicial hearing. They're the legislative hearing.
25 So, I have to go by what they say and they're rational is

1 upfront cost, and I'm not sure, you know, I'm not sure that
2 a) I don't have any testimony as to upfront cost in front of
3 me. That's one. And two, I'm not sure that's an
4 appropriate analysis. Not that I don't give them what they
5 way, you know, what weight it deserves but you also have
6 technical staff recommending the lower density.
7 MS. REGELIN: Well, they indicated --
8 MS. ROBESON: No. I know what they did.
9 MS. REGELIN: Right.
10 MS. ROBESON: But they preferred the lower density
11 because it better complied with the master plan, and the
12 TDRs.
13 MS. REGELIN: Correct. They made a policy
14 decision with respect to the difference between the
15 affordable, the VAHUs and the TDRs and chose the TDRs over
16 the VAHUs. But, the planning commission and the technical
17 staff couldn't make that policy decision but the Planning
18 Board did.
19 MS. ROBESON: Well --
20 MS. REGELIN: They weighed them and chose --
21 MS. ROBESON: Well, I don't make policy decisions.
22 MS. REGELIN: No.
23 MS. ROBESON: I have to go by what the statute
24 says and the statute says I have to see how it complies with
25 adopted county plans and policies, and I think one tension

1 part of some of the tension going on is that, you know, we
2 get a lot of applications in that say the master plan's out
3 of date and so we're going to do X, Y, and Z, and the master
4 plan should be flexible to adapt to that, kind of like the
5 Constitution. You should be able to take those goals, I
6 mean, this one's coming in with a whole new twist that's not
7 legislatively recognized at the sacrifice of another policy,
8 and so that's what I'm saying.
9 I don't feel, at this stage, that I have enough to
10 say one versus the other, and I'm not opposed to either one,
11 you know, so what we'll do is we'll leave the record open.
12 I think there was something you were going to look up, may
13 be a binding element simply relating to that the Planning
14 Board would look at the compatibility with Battery Gardens
15 and the only reason that is, you know, his basement windows,
16 I agree with you, are never going to see five stories.
17 They're never going to see 11 stories. There is an urban
18 design requirement that says it should transition down which
19 is sort of what you're doing with building A and it is what
20 you're illustrative shows with the five stories, and I'm not
21 asking you to commit to one versus, you know, five or 11.
22 I'm just saying it's an issue to be the same language that
23 you used in the other Planning Board opinions
24 MS. REGELIN: Okay. All right.
25 MS. ROBESON: Okay?

1 MS. REGELIN: Perhaps we can -- do we want to pick
2 a date for the record to remain open or --
3 MS. ROBESON: Why not? Do we have any idea how
4 often the advisory board meets? No.
5 MR. HUMPHREY: I don't. Sorry.
6 MS. ROBESON: How long do you want to keep the
7 record open? What are you suggesting for you to do your
8 work? We have to keep it open until May 3rd for the
9 Planning Board action on the preliminary Forest Conservation
10 Plan.
11 MS. REGELIN: Right. And considering it took them
12 exactly a week to get that response out, I would like to
13 give them a little bit more time.
14 MS. ROBESON: Yeah.
15 MS. REGELIN: You know, so, that's two weeks
16 already. So, the question is do we keep the record open for
17 three or four weeks? Three weeks?
18 MR. HUMPHREY: If it's similar to Tuesday of last
19 week, is that a third Tuesday in April? I'm guessing. If
20 it's their regular monthly meeting, they may meet the third
21 Tuesday of May, whatever the date is.
22 MS. REGELIN: So, that would be three weeks plus
23 whatever time to --
24 MR. HUMPHREY: Let's just see if we can --
25 MR. FREISHSTAT: 22nd.

MS. REGELIN: They meet on the third Tuesday of each month.
MR. HUMPHREY: Third Tuesday of each month.
MR. FREISHSTAT: That's the 22nd.
MS. ROBESON: Okay. I love smart phones. You are never at a loss with a smart phone. All right. So, the 22nd but then still --
MS. REGELIN: To give them an opportunity to act and put it in writing.
MS. ROBESON: Yeah.
MR. FREISHSTAT: The 29th.
MS. ROBESON: I mean, they may agree with you. I don't know. And it doesn't mean that I'm going to agree with them but at least I have both public policy entities weighing in on it.
MS. REGELIN: Okay.
MR. HUMPHREY: And again, it's second hand and you don't, you can take it for what it's worth. It's coming from a volunteer who makes nothing. Jeremy Criss said he thought it might be appropriate to ask the county attorney to weigh in on the legal ramifications of whether these could be extinguished or not on a property that didn't need them to increase density or receiving property. So, that's something you might discuss with Mr. Criss and say do you think it's appropriate to get an opinion from the county

attorney?
MS. ROBESON: Well, my thought was I'm just going to ask him his position on the application. That's what I was going to do. So, I'm not going to raise issues. I'm going to let him raise the issues. All right. So, are we at May -- where were we?
MR. FREISHSTAT: They meet May 17.
MS. REGELIN: No. May 22nd.
MR. HUMPHREY: 22nd. The evening of the 22nd.
MR. FREISHSTAT: The 22nd.
MS. REGELIN: So, that's Tuesday. Friday's the 25th. So, the end of the month of May?
MS. ROBESON: Okay. And that would be --
MS. REGELIN: Is that an actual business day of the week?
MR. FREISHSTAT: Yes.
MS. REGELIN: The last day of May?
MR. HUMPHREY: Thursday the 31st.
MR. FREISHSTAT: Because the 29th, I think, is Memorial Day.
THE REPORTER: 31st is a Thursday.
MR. HUMPHREY: Thursday is the 31st.
MS. ROBESON: Well, we can do the 30th.
MS. REGELIN: So, May 30th?
MS. ROBESON: So, the record's open until May

30th. But, what I don't want to do in the record at this stage is the only reason I'm -- I don't want to indicate that we're allowing a whole bunch of other evidence in. I'm not going to take anymore, you know, other types of testimony and the only thing that I'm holding it open for is to hear from you for closing statements --
MS. REGELIN: Uh-huh.
MS. ROBESON: -- and if you have any other amendments to the plan. We'll say your closing statement is due -- did you want to submit a response to her closing statement?
MR. HUMPHREY: I certainly want to have that opportunity.
MS. ROBESON: Well, let's do this. If they meet 5-22 because she should be able to -- you should have the benefit of their recommendation -- I didn't bring my calendar with me. What is the, oh. What's the Tuesday after Memorial Day?
MS. REGELIN: Well, the 22nd is the Tuesday then it's the 29th.
MR. FREISHSTAT: The 28th, I think, is Memorial Day.
MS. ROBESON: Well, I'm going to ask for their thing on the 29th, and do you want a few more days to be able to respond?

MS. REGELIN: Yeah. I would just need a few more days because most of it will be written just waiting for them.
MS. ROBESON: Okay. You pick.
MS. REGELIN: So that Friday.
MS. ROBESON: And that would be 6-1. Okay. We'll do that, and I apologize for the lateness of the hour. So I'm not leaving the record open for any additional citizen testimony or, just for the response from Mr. Criss and any supplemental changes you want to make to the development plan and closing arguments. Okay?
MR. HUMPHREY: So, make sure I've got it right. You want to hear from Jeremy or the advisory board by the 29th?
MS. ROBESON: Uh-huh.
MR. HUMPHREY: And applicant by the 1st.
MS. ROBESON: Uh-huh.
MR. HUMPHREY: Okay. Will I have any chance to respond?
MS. ROBESON: Well, I'd like your closing statement in also on June 1st.
MR. HUMPHREY: Oh. Okay. No. I thought I would have a chance to read what they're submitting.
MS. ROBESON: No.
MR. HUMPHREY: Okay. Well, all right.

MS. ROBESON: I've got to cut it off at some point. So --
MR. HUMPHREY: Okay.
MS. REGELIN: The only thing is one of the things that there was a number of questions about was the impact of BRAC and the number of employees that were being transferred. I'm sure there's a county case --
MS. ROBESON: How quickly can you get that in so he has a chance to respond?
MS. REGELIN: Oh. We could get that in -- today is Friday. We could get that in probably by Wednesday.
MR. FREISHSTAT: The county BRAC coordinator has all that information.
MS. ROBESON: Yeah.
MS. REGELIN: There's so much county material that's out there that it wouldn't be an opinion of one of these. It would be a factual statement coming from --
MS. ROBESON: That's no problem then.
MS. REGELIN: So, next week is -- what's the date? Next Wednesday.
MR. FREISHSTAT: If April 30th is Monday --
MS. REGELIN: Actually, can we make it May 3rd because I will not be there on May 2nd. So, on May 3rd?
MS. ROBESON: Is when you'll submit the BRAC information. Okay. All right. We'll do that then, and

with that, I'm going to go, okay. So, let me just go through this again. May 3rd, you'll submit the BRAC information.
MR. HUMPHREY: And I'll see that so that we'll have the opportunity to --
MS. ROBESON: Are you going to submit a copy to Mister --
MS. REGELIN: Oh. I certainly will.
MR. HUMPHREY: Good.
MS. REGELIN: Every person of record.
MS. ROBESON: And then 5-29, I'm going to ask the Ag Advisory Board to respond in writing by 5-29. And then closing statements for both sides will be due June 1st. June 1st. And the record's not open for anything other than that.
MS. REGELIN: Okay.
MS. ROBESON: Okay? All right. Thank you.
MR. HUMPHREY: Thank you.
MS. REGELIN: Thank you.
MR. HUMPHREY: Couldn't have been easier.
MS. REGELIN: Oh. On the record --
MS. ROBESON: We're going to go back on the record.
MS. REGELIN: We actually have a May 3rd Planning Board date where they're going to take action on the Forest

Conservation.
MS. ROBESON: Oh. Let's make it May 4th.
MS. REGELIN: So, we know they're not going to act, you know, we know they're going to act but I don't think we'll have the resolution on May 4th. So, we need a date for any further action on the Forest Conservation Plan to be another date in the room in there.
MR. FREISHSTAT: Give it a week. Because it'll take a week to get that written letter out.
MS. REGELIN: Or at least just open it that that's part of the evidence that you're going to accept.
MS. ROBESON: Yeah. Well, wait a minute. I'm going to give them a date.
MS. REGELIN: Okay.
MS. ROBESON: No offense. But, I don't want it to be May 31st and getting the letter from -- I don't want it to be a half a day before the hearing.
MS. REGELIN: All right. So, if there hearing is May 3rd and a week letter is May 10th and then so probably May 11th?
MS. ROBESON: Yes.
MS. REGELIN: That gives them a week to get the report.
MS. ROBESON: Yeah. I apologize. I mean, if it's not -- I'm going to set that now. If there's a problem,

I'll extend the date but I want to give the Planning Board a date so I know that it's not 11:45 or midnight on May 30th that I get the letter. Okay?
MS. REGELIN: All right. So, May 11th.
(Whereupon, at 5:27 p.m., the hearing was concluded.)

. Digitally signed by Dawn Bahnmiller

ELECTRONIC CERTIFICATE

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:

Petition of Glenwood Glen Aldon, LLC;
Glenmont Apartments, LLC; Glenbrook, LLC
Case No. G-909

By:

Dawn Bahnmiller, Transcriber

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