

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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4831 WEST LANE, LLC : Case No. G-954
LOCAL MAP AMENDMENT G-954 : DPA 13-01
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A hearing in the above-entitled matter was held on April 19, 2013, commencing at 9:45 a.m., at the Stella B. Werner Council Office Building, 100 Maryland Avenue, Second Floor, Rockville, Maryland 20850 before:

Lynn A. Robeson
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:

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P R O C E E D I N G S

1 MS. ROBESON: This is a continuation of the public
2 hearing in the matter of Local Map Amendment No. G-954,
3 filed by 4831 West Lane, LLC, which requests rezoning from
4 the R-60 zone to the TS-R zone of property located at 4901
5 Montgomery Lane in Bethesda. It's also a continuation of
6 the public hearing in, I'm sorry, Development Plan Amendment
7 No. DPA 13-01 filed by 4831 West Lane, LLC, which requests
8 and amendment to the development plan approved by the
9 District Council on July 10, 2007, in Zoning Application G-
10 843.

11 All right. We have all the parties here and I
12 understand there's at least one preliminary matter.

13 MR. ABRAMS: Two.

14 MS. ROBESON: Two? Okay. Mr. Knopf, you got in
15 there first.

16 MR. KNOPF: Madam Hearing Examiner, as you know,
17 we represented that we would be -- that I represent three
18 individuals, plus the association and our witnesses will be
19 those three individuals, plus the Hearing Examiner. Someone
20 else who lives in the building that I don't represent wants
21 to testify and is here this morning and this is the only
22 time they can testify. They have a serious health situation
23 in the family and I was wondering if we could be kind enough
24 to let her go first and then we continue with --
25

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Linda Skalet		28		--
By Mr. Abrams:	23		48	
By Mr. Knopf:	11		49	
Susan Trunbull		52		154
By Mr. Abrams:	7		132	
By Mr. Knopf:	--		147	
Daniel Joseph		184		--
By Mr. Abrams:	169		--	
By Mr. Knopf:	--		203	
Richard Lawch		--		--
By Mr. Abrams:	210		--	
By Mr. Knopf:	--		--	
Louis Pohoryles		285		--
By Mr. Abrams:	283		--	
By Mr. Knopf:	264		--	

1 MS. ROBESON: Any objections? We do try to
2 accommodate individuals. Okay. That's fine. Mr. Abrams?

3 MR. ABRAMS: Yes. Yesterday you wanted a copy
4 of -- I tried to get into the technical appendix to the
5 sector plan.

6 MS. ROBESON: Okay.

7 MR. ABRAMS: This is not the entire technical
8 appendix.

9 MS. ROBESON: Yes.

10 MR. ABRAMS: This is only the cover sheet, plus
11 the page which refers to the TS-R district. So it's not the
12 complete technical appendix.

13 MS. ROBESON: Well, let me do this. Can anybody
14 obtain the -- can you obtain the technical appendix?

15 MR. ABRAMS: A 1994 sector plan? I don't know.

16 MS. ROBESON: Okay. Let me ask this. We have, I
17 have the, I believe we have the technical appendix in our
18 library. I can take official notice of that document.

19 MR. ABRAMS: That's fine. I just wanted to point
20 out that we were representing --

21 MS. ROBESON: We can put this in the record and
22 then I'll take official notice of the entire -- oh, I think
23 I have it right here.

24 MR. ABRAMS: Well, that's, I just handed -- that's
25 what I wanted to make an exhibit today.

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1 MS. ROBESON: Okay. That's fine. It's, we can do
2 this as an exhibit so the parties can use it and then if
3 anyone --
4 MR. ABRAMS: I have not given copies to counsel.
5 MS. ROBESON: Yes. That's fine.
6 MR. ABRAMS: Is this Exhibit 119 or --
7 MS. ROBESON: Yes. So 119 is excerpt of technical
8 appendix to the Bethesda CBD sector plan.
9 MR. ABRAMS: Actually it's page 8, but the whole
10 appendix.
11 MS. ROBESON: Okay.
12 MR. ABRAMS: The second point is before I release
13 Ms. Turnbull to cross-examination, I did not have with me
14 the large exhibits which were referenced and submitted as
15 page-size exhibits.
16 MS. ROBESON: Right.
17 MR. ABRAMS: And I'd like her just to identify
18 those for admission purposes and --
19 MS. ROBESON: These are duplicates of this?
20 MR. ABRAMS: These are duplicates --
21 MS. ROBESON: But --
22 MR. ABRAMS: -- I think from the prehearing
23 submission as well as the submission, I call it rebuttal
24 submission.
25 MS. ROBESON: Right. That's fine.

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1 MR. ABRAMS: Okay.
2 MS. ROBESON: We can -- let's do this. Okay. So
3 these are large versions of what --
4 MR. ABRAMS: That are photographs in --
5 MS. ROBESON: Yes, I recognize them.
6 MR. ABRAMS: -- in Exhibit 40. There's two
7 boards. Are you --
8 MS. TURNBULL: I'm over here.
9 MR. ABRAMS: Where are you?
10 MS. TURNBULL: Okay.
11 MS. ROBESON: You can come forward.
12 MS. TURNBULL: Probably just come forward.
13 MS. ROBESON: You can sit in his chair.
14 MS. TURNBULL: Yes.
15 MS. ROBESON: And you're still under oath. Can
16 you see?
17 MR. ABRAMS: I think you look like Susan Turnbull.
18 DIRECT EXAMINATION
19 BY MR. ABRAMS:
20 Q Did you take these photographs?
21 A Yes.
22 Q Approximately or precisely when?
23 A Okay.
24 MS. ROBESON: Let me mark, can you mark those
25 because I'm just going to put them, I hate to do this --

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1 MR. ABRAMS: Do you want this as a separate
2 exhibit --
3 MS. ROBESON: Yes.
4 MR. ABRAMS: -- because I just put Exhibit 40,
5 which is a duplicate of what's in -- I can mark it
6 separately.
7 MS. ROBESON: All right. That's fine. We'll do
8 that.
9 MR. ABRAMS: Okay.
10 MS. TURNBULL: Okay. Those two photographs were
11 taken in the fall. They were taken approximately the end of
12 November and I have the duplicates of them on my cell phone,
13 so I could, I can date them that way, but right now looking
14 at them those were taken in the fall because the, our house
15 delivery truck was a delivery truck coming to my house.
16 MS. ROBESON: Okay.
17 MS. TURNBULL: Not their house, our house.
18 BY MR. ABRAMS:
19 Q And the second board, was that taken at the same
20 time?
21 A No, those were taken on December 1st in the
22 morning at 10:00 a.m. It was a Saturday morning.
23 MS. ROBESON: Okay. Hold on one second. The
24 second board is, what is that marked? Is that the same --
25 MR. ABRAMS: It's marked parked cars on Montgomery

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1 Lane. The first board is marked traffic jam on Montgomery
2 Lane.
3 MS. ROBESON: And these are all part of the same
4 exhibit?
5 MR. ABRAMS: Yes.
6 MS. TURNBULL: Right.
7 MS. ROBESON: Okay. Go ahead.
8 MS. TURNBULL: The first ones were on a weekday
9 afternoon. The second ones were on a Saturday morning at
10 approximately quarter to 10:00, 9:45 a.m. on December 1st.
11 MS. ROBESON: Okay.
12 MR. ABRAMS: Okay.
13 BY MR. ABRAMS:
14 Q Do these accurately reflect the divisions on the
15 street at the time you took these photos?
16 A Yes, they do.
17 Q Okay. Now there are two other boards and this is
18 part of Exhibit 110 which is the sector plan exhibit pages
19 from that and basically is that what you did in terms of
20 reproducing these on the boards, just take the sector plan
21 pages?
22 A That's what they are.
23 Q That's what they are?
24 A They were a production of the sector plan.
25 Q And these are part of, again, prehearing

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1 submission Exhibit 40(a) and 40(b)?
2 A Uh-huh.
3 Q Which is part of our prehearing submission. And
4 these show the massing diagram of the Holladay project and
5 this is --
6 A It's the original --
7 Q The original building, correct.
8 A Original plan submitted by West Lane.
9 Q Yes.
10 A Their rendering of the original.
11 MS. ROBESON: The applicant's?
12 MS. TURNBULL: The applicant's.
13 MR. ABRAMS: Okay. That's all.
14 MS. ROBESON: Any objection to admitting these?
15 MS. HARRIS: No objection.
16 MS. ROBESON: All right. They will be in the
17 record as large duplicates of the pre-existing exhibits.
18 Thank you. Anything else? All right. Please raise your
19 right hand.
20 (Witness sworn.)
21 MS. ROBESON: All right. Please state your name
22 and address for the record.
23 MS. SKALET: Is the mic on or --
24 MS. ROBESON: The, yes, it is. The mic is a
25 recording mike.

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1 MS. SKALET: My name is Linda Skalet and I reside
2 at 4821 Montgomery Lane.
3 MS. ROBESON: And can you spell Skalet?
4 MS. SKALET: S-K-A-L-E-T.
5 MS. ROBESON: Okay.
6 DIRECT EXAMINATION
7 BY MR. KNOPF:
8 Q Can you identify which building 4821 Montgomery
9 Lane?
10 A Yes. No, I'll say that --
11 Q Okay.
12 A -- the Edgemoor condominium. And I really
13 appreciate you taking me out of order. It's unusual. I
14 have some images. Should I hand a copy of them to you so
15 you can see while I speak?
16 MS. ROBESON: I --
17 MS. HARRIS: Objection given the rule of evidence.
18 Is it in?
19 MS. ROBESON: Well, that applies -- you aren't
20 here as --
21 MS. SKALET: Yeah.
22 MS. ROBESON: Okay. That --
23 MS. SKALET: And as I speak, you can decide to
24 look at them.
25 MS. HARRIS: Are there copies for everyone else so

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1 that I can evaluate as well please?
2 MS. SKALET: Well, I'll give you a copy at the
3 end. Yeah.
4 MS. HARRIS: No.
5 MS. SKALET: I just --
6 MS. HARRIS: Well --
7 MS. SKALET: I have two full sets at the moment.
8 MR. KNOPF: Let her look at them.
9 MS. SKALET: Okay. Sure.
10 MS. ROBESON: Let her have a set. And then let me
11 mark that and then I'll give it back to you as long as --
12 MS. SKALET: Okay.
13 MS. ROBESON: -- one time I gave it back to
14 somebody and they lost it during the hearing, so --
15 MS. SKALET: Okay. All right. I --
16 MS. ROBESON: I'll give it back to you as long as
17 you can keep track of it.
18 MS. SKALET: Okay. It would just help me to know
19 the numbers. I have to think a moment.
20 MS. ROBESON: Okay. Well, what I'm going to do is
21 mark this as Exhibit 120 and then each page I'm going to
22 number. So 120(a) has 2004 design, 4901 Hampden. 120(b) is
23 elevations of 2006 revision, 4901 Hampden. 120(c) is 2006
24 4901 Hampden/Woodmont Avenue facade. 120(d) is 2012 design,
25 4901 Woodmont facade, Hampden facade. And 120(e) is north,

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1 2012 design, 4901 Montgomery Lane facade. Okay. So if you
2 need this, I'm going to -- if you can give me a moment.
3 MS. SKALET: It's okay. Pat is going to let me
4 look at the copy that --
5 MS. ROBESON: Okay.
6 MS. SKALET: -- I passed to her.
7 MS. HARRIS: Excellent.
8 MS. SKALET: We can get along.
9 MS. HARRIS: We share.
10 MS. ROBESON: Okay. Go ahead.
11 MS. SKALET: Okay. My name is Linda Skalet and as
12 I said I live at the Edgemoor condominium on Montgomery
13 Lane. My husband and I are original owners and have lived
14 in the building for nearly 10 years. In addition to my
15 experience as a resident of Montgomery Lane, I bring to the
16 issue at hand some professional expertise on the subject of
17 urban design and city planning. I have a Ph.D. in art
18 history from Johns Hopkins University and I've taught
19 numerous courses on architectural history.
20 Most pertinent to today's discussion, a course at
21 Johns Hopkins entitled, "The Architecture of the City, Urban
22 Environments from Antiquity to the Present." One of the
23 major points of the course is that great cities don't just
24 happen. They are the result of careful planning both at
25 their inception and as they expand. You have to start with

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1 a good plan that allows for growth and then you have to
 2 adhere to it.

3 Our sector plan for the CBD is such a plan. It
 4 provides rules and limitations for the height and density
 5 and specifies areas with differing urban characteristics.
 6 Montgomery Lane is one of those areas very clearly
 7 described, a 20-foot wide mixed street in the urban village
 8 designed for residential buildings no higher than 65 feet
 9 with picturesque architectural details, bays, gables,
 10 turrets, balconies, et cetera.

11 It was envisioned as a pedestrian route from Metro
 12 to the library and other facilities, businesses and
 13 neighborhoods along Arlington Road. The proposed building
 14 that we're talking about today on Montgomery Lane at West
 15 Lane is in no way in conformity with the sector plan or with
 16 the character of the street as it was first set by the
 17 traditional brick and masonry architectural style of the
 18 City Homes and continued in the design of the Edgemoor and
 19 the Edgemoor at Arlington. That traditional style will also
 20 be evident in the structures at 4825 Montgomery Lane, the
 21 Sandy Spring project, and 4901 Hampden, whose north facade
 22 is on Montgomery Lane.

23 The history of the current design of 4901 is
 24 especially pertinent to today's discussion and I would like
 25 to summarize it briefly for you. It was originally proposed

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1 in 2004 as a 100-foot high, minimalist glass tower and
 2 that's my number one. This is the original --

3 MS. ROBESON: It's 120(a) of, it's marked as
 4 120(a).

5 MS. SKALET: 120(a), okay. It's, there are views
 6 that were actually taken to be shown to the residents of the
 7 Edgemoor, so that's why one says view from the 8th floor and
 8 one says view from the 4th floor, but you can put it all
 9 together and see that it is --

10 MS. ROBESON: Right.

11 MS. SKALET: -- sort of a U, a monolithic mass
 12 that goes up with lots of glass. I was one of a group of
 13 homeowners in the CBD who organized to oppose this design
 14 because it was inconsistent with the character of the street
 15 called forth in the sector plan. In short, it was too tall
 16 and it looked like an office building. The County Council
 17 agreed and rejected the design for its lack of residential
 18 character and its excessive height, thus, reversing the
 19 Planning Board's decision.

20 Triumph Corporation, the developer, redesigned it.
 21 Those are 120(b) and (c), I guess, the next image is (b), is
 22 that correct in your --

23 MS. ROBESON: Okay.

24 MS. SKALET: Okay. And what you see is an image
 25 you haven't seen before because the one that keeps being

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1 introduced is the facade of Woodmont Avenue. But what
 2 you're looking at here, the upper portion of the page --

3 MS. ROBESON: On 120(b), the upper part --

4 MS. SKALET: The upper part. It says view from --

5 MS. ROBESON: I see it, Montgomery Lane.

6 MS. SKALET: You see it? You're looking down
 7 Woodmont and you see that sort of wall of glass that's the
 8 Woodmont part of it.

9 MS. ROBESON: Right. And then --

10 MS. SKALET: This is --

11 MS. ROBESON: Let me stop you one second --

12 MS. SKALET: Sure.

13 MS. ROBESON: -- for the record. This is 120(b).
 14 Is this what you're referring to?

15 MS. SKALET: Yes.

16 MS. ROBESON: Okay.

17 BY MR. KNOPF:

18 Q May I just interrupt for a second? You said
 19 traditional view. I'm showing you --

20 A Yes.

21 Q -- I'm showing you what's Exhibit 106(g).

22 A Right. And it's my 120(c) actually but, yes.

23 Q You were saying that what's been shown to the
 24 Hearing Examiner, was that --

25 A Uh-huh.

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1 Q -- referring to 4901 Hampden Lane and 106 --

2 A Uh-huh. Uh-huh.

3 Q And this is the portion that faces Hampden Lane,
 4 is that it?

5 A No.

6 Q I'm sorry.

7 A The glass is Woodmont.

8 Q Woodmont, I meant Woodmont.

9 MS. ROBESON: Okay.

10 MS. SKALET: Where it turns the corner and becomes
 11 brick is Hampden. But what I want you to see is what they
 12 did for Montgomery Lane. And in the upper image on this
 13 page you see the facade as it faces Montgomery Lane and it
 14 includes very little glass, projecting bays and setbacks and
 15 balconies and a varied residential appearance in terms of
 16 its detailing. And, yes, the lower ones -- this is just a
 17 view on the left of a roof terrace, but that roof terrace is
 18 visible from the Edgemoor, from 4821. And then the lower
 19 view to the right -- oh, this is significant too. This is
 20 Montgomery Lane and then the west facade of 4901 as it is
 21 visible to the City Homes.

22 MS. ROBESON: Okay.

23 MS. SKALET: Okay? So --

24 MR. KNOPF: Excuse me.

25 MS. SKALET: Yes.

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1 BY MR. KNOPF:
2 Q You talked about, are you going to be addressing
3 height or is this a good time to ask?
4 A I'm going to be talking about it.
5 MS. ROBESON: Well --
6 MR. KNOPF: Never mind. Never mind. Go ahead.
7 MS. SKALET: I'm going --
8 MR. KNOPF: Okay. Go on.
9 MS. ROBESON: So she needs to just do her own
10 thing.
11 MR. KNOPF: Continue.
12 MS. ROBESON: Yes. I have faith --
13 MR. KNOPF: I apologize.
14 MS. ROBESON: -- that you can do it.
15 MS. SKALET: Yes. Okay. So the, I said that, you
16 know, the County Council rejected the design and, you know,
17 reversed the Planning Board's decision. Triumph went back
18 and redesigned it, so that's what we were just looking at.
19 The revised building approved by the County Council in 2006
20 varies in height from 70 to 60 feet on Montgomery Lane,
21 started at 100 with the first design and was brought down to
22 70 and then, you know, diminishing in height as it goes
23 westward down the lane.
24 And it reads like a residential building with
25 balconies and projecting and receding bays enlivening its

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1 brick and masonry facade. Triumph ultimately did not build
2 it, but a new developer got the Council's approval in
3 December of 2012 to go forward with the design. The point
4 of this story is that the sector plan is still being upheld
5 by the Council. The nine to nothing 2004 ruling by the
6 Council still stands and the building will be built in
7 accordance with it and the sector plan.
8 MS. ROBESON: Are you saying this is 120(b), which
9 is the Montgomery Lane views?
10 MS. SKALET: Uh-huh.
11 MS. ROBESON: Are you saying that the current
12 developer is developing in accordance with these?
13 MS. SKALET: What, well, I'll show you. You have
14 the picture of Montgomery Lane which, unfortunately, he
15 doesn't have in color for us yet. But so that would be
16 120(e), the 2012 design 4901 Montgomery Lane --
17 MS. ROBESON: Oh, I see.
18 MS. SKALET: -- facade.
19 MS. ROBESON: Okay.
20 MS. SKALET: Okay? So is it exactly the same?
21 Well, it is in terms of its massing. You can't really see
22 the projections and recesses very well because it's black
23 and white, but if you look, you know, you start at the
24 Woodmont Avenue side and then the building, you know,
25 there's a little setback there. It steps forward. It steps

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1 back again, you know, with this kind of interplay of
2 projections and bays. And then we have balconies on that
3 last portion to the west which is what really, you know, it
4 faces the Edgemoor, right? The buildings overlap for, I
5 don't know what the dimension exactly is, but perhaps 10
6 feet, 12 feet, so very respectful of the residential
7 neighbors across the street. And as I've said, if this were
8 colored in, you know, with brick and green trees, it would
9 look very like 120(b), the upper part of the design. So,
10 you know, it is following that guideline.
11 Okay. There is, however, one more very important
12 fact in the architectural history, and that's what I do, of
13 4901 as it pertains to the proposal we are discussing today.
14 In addition to approving the new developer's proposal for a
15 building with the same height, massing and basic design as
16 the 2006 Triumph provision, the Council approved a reduction
17 in the number of units from an original 50 to 70 units
18 approved in 2006 to 40 to 50 units approved in 2012. Along
19 with this reduction in the total number of units, a
20 proportional reduction in the number of MPDU's was also
21 approved.
22 This reduction was found to be in compliance with
23 the sector plan. The current applicant, intents of the
24 sector plan, says that he must maximize the number of
25 dwelling units so as to be able to maximize the number of

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1 MPDUs. That was not the Council's interpretation of the
2 sector plan as it pertains to Montgomery Lane just four
3 months ago.
4 We are now confronted with an even more
5 dramatically inappropriate building, a massive, commercial-
6 looking structure on the west end of Montgomery Lane where
7 according to the tenting set forth in the sector plan,
8 buildings should not be as tall oh, I'm sorry, on the west
9 end they shouldn't be as tall as they are on the east end.
10 The sector plan specifies that buildings on Montgomery Lane
11 should decrease in height from Woodmont Avenue moving
12 westward to Arlington Road starting at six stories and going
13 down to three stories on Arlington Road.
14 On the south side of Montgomery Lane, that is just
15 what they do. The currently approved design for 4901 begins
16 on Woodmont at 70 feet in height and declines to 60 as it
17 goes down Montgomery Lane. The City Homes vary in height
18 from 48 feet to 52 feet at the peak of their roofs. The
19 Edgemoor at Arlington is 48 feet high on its eastern end on
20 Montgomery Lane and declines to 35 feet on Arlington Road.
21 On the north side of the street, buildings begin at a height
22 of 100 feet with the Edgemoor condominium. A number that
23 was approved and this is very important, with the pro viso
24 that it not be presidential, precedential, precedential, C.
25 MS. ROBESON: Not presidential.

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1 MS. SKALET: Precedential for future development
2 on the street. That is a very important fact. Next to the
3 Edgemoor is the Sandy Spring project which is going forward,
4 approved at 60 feet with a 4-foot parapet and at the end of
5 the street the approved design at the corner of Montgomery
6 Lane and Arlington, which like the Edgemoor at Arlington
7 across Montgomery Lane from it starts at 48 feet on
8 Montgomery Lane and declines to 35 feet on Arlington Road.
9 The applicant wants to put a massive 70-foot building
10 without residential detailing between these last two, so
11 between the Sandy Spring project and, you know, the one that
12 will be built at some point up in the corner of Arlington
13 and Montgomery Lane.
14 It is totally out of character with the rest of
15 the street and will loom aggressively over the streetscape
16 of Montgomery Lane and the properties adjacent to it on the
17 east and west. It will dominate the streetscape with an
18 entry feature that is commercial in appearance and its
19 excessive use of glass. And it's, in fact, reminiscent of
20 the first design for 4901 that was rejected because it was
21 too glassy. I mean that sort of glass wall doesn't given
22 privacy, you know, it reflects light and heat and it simply
23 doesn't belong on a street that was designed to be
24 specifically residential and have this very special
25 character.

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1 Vast expanses of glass belong on Woodmont Avenue,
2 but not on Montgomery Lane. This project needs to be
3 redesigned. It should be less tall, less massive and more
4 residential in appearance. And it should contain fewer
5 units of the quality of life on our 20-foot lane is to
6 conform to the concept of the urban village as set forth in
7 the sector plan. This can be done and has been done on the
8 east end of the lane, and as I have already said, determined
9 by the Council just months ago to be in compliance with the
10 requirements of the sector plan, which the building as
11 currently designed is not.
12 We, and, or I, and I'm really referring to myself
13 and my husband and our neighbors, look forward to working
14 together with the developer as we've done before with the
15 4901 project to produce a building that is appropriate to
16 the urban village design. Thank you. Respectfully
17 submitted.
18 MS. ROBESON: Thank you. Any questions, Mr. --
19 I'm going to take them and then --
20 MS. HARRIS: That's fine.
21 MS. ROBESON: -- I'll come back to you. Mr.
22 Abrams, do you have any questions?
23 DIRECT EXAMINATION
24 BY MR. ABRAMS:
25 Q Yes. Just one question, Ms. Skalet.

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1 A Uh-huh.
2 Q In terms of your background and your experience,
3 if a building is out of character with the street for the
4 reasons that you've suggested in your testimony or is
5 incompatible with existing development in the surrounding
6 neighborhood, should that condition be subordinate or
7 subordinated to another public purpose such as the provision
8 of MPDUs?
9 A I think that there are rules about percentages of
10 MPDUs that are supposed to be built in buildings today and
11 that it's consistent, you know, to follow those rules and
12 guidelines. My understanding is that 4901 is supposed to
13 have 15 percent of its units as MPDUs and, you know, the
14 first design had that, the second design had that and now
15 this third application has it too.
16 Q Are you aware of the provision in the zoning
17 ordinance enacted after the sector plan which indicates that
18 the height recommendations and the density recommendations
19 in a sector plan tend to exceed it with the provisions --
20 A Yeah.
21 Q -- of MPDUs?
22 A I am aware of that, but I go back to my original
23 point, which is that you've got to plan a city and you've
24 got to do that with wisdom and vision and once you have a
25 plan, then as I said, Montgomery Lane is a very specific

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1 street with constraints and also with recommendations. You
2 can't just change it because something else is at the moment
3 seemingly more important. I think there are other places
4 that density could be achieved where taller buildings
5 already exist and I think Montgomery Lane is just the wrong
6 place to try and achieve that goal.
7 MR. ABRAMS: That's all the questions I have.
8 MS. ROBESON: Thank you. Mr. Knopf.
9 MR. KNOPF: I just have two.
10 BY MR. KNOPF:
11 Q In your testimony, you indicated that the Sandy
12 Spring building had, it was your understanding it had a
13 height of 60 feet plus a 4-foot parapet?
14 A Yeah.
15 Q If, there seems to be come confusion in the
16 record. Just assume it has a 65, it was approved at a 65-
17 foot height --
18 A Uh-huh.
19 Q -- with 4-foot parapet. Would that change in any
20 way your testimony?
21 A It was approved, so we have the wrong numbers?
22 Q No, I believe, I believe there was an approval up
23 to 65-feet --
24 A Uh-huh.
25 Q -- plus 4-foot parapet, but the actual development

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1 is going to be, as you said, 60 feet further.
2 A Oh.
3 Q And I'm wondering whether that five feet would
4 make, would lead you to a different conclusion in your
5 testimony?
6 A No.
7 Q Okay. That's what I wanted to know. Thank you.
8 And just one other question, you indicated that there should
9 be less units. Did I understand you to say --
10 A Yes.
11 Q -- fewer units, yes. Was that apart from
12 architectural features that other considerations --
13 A Yeah. Yeah.
14 Q You could explain that a little bit?
15 A Yeah, I think there should be fewer units, you
16 know, because I think there's already been testimony about,
17 you know, how unsuited Montgomery Lane is to lots of trucks
18 and repair vehicles. We frequently have the gas company,
19 Verizon, Comcast sometimes digging holes. We have move-ins
20 and move-outs. Unfortunately, the Edgemoor at 4821 was not
21 designed with enough pull-in bays for service trucks.
22 MS. ROBESON: When you say Edgemoor, that's your
23 building --
24 MS. SKALET: That's my building.
25 MS. ROBESON: -- the high rise?

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1 MS. SKALET: Yes.
2 MS. ROBESON: Okay.
3 MS. SKALET: But we, that's, we've got that, you
4 know?
5 MS. ROBESON: Yes.
6 MS. SKALET: There's nothing we can do with that.
7 And I have been on the street when, you know, it was
8 congested. There were several days in the past few weeks
9 when you had to come the wrong way down the street to get
10 into the Edgemoor because there was work being done and also
11 a move going in. So I can only imagine what it would be
12 like when we have, what, 120 units or whatever exact number
13 the proposal is, particularly if it's a rental building and
14 people are frequently moving in and moving out. I don't
15 know what the average is in a rental building with smallish
16 units, but I would think the frequency of move-ins and move-
17 outs is far in excess of what it is in a building like the
18 Edgemoor.
19 And in addition to that, if it's not a
20 condominium, it means that there will be more private
21 contractors coming in, you know, to do plumbing, to do
22 repairs, to, you know. I see it as a potential disaster and
23 totally destroying this so-called, you know, mixed use
24 street.
25 MS. ROBESON: Okay.

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1 MR. KNOPF: I have no further questions.
2 MS. ROBESON: Okay. Ms. Harris.
3 MS. HARRIS: Thank you.
4 CROSS-EXAMINATION
5 BY MS. HARRIS:
6 Q Now, you indicated that you've lived in the
7 Highrise Edgemoor since it's --
8 A Uh-huh.
9 Q -- construction?
10 A Uh-huh.
11 Q Could you identify Exhibit 106(g) where your unit
12 is --
13 A Yes.
14 Q -- approximately?
15 A Do you want me to go point?
16 Q Yes, please.
17 A I am up here on the ninth floor.
18 Q Okay. And the approximate size of your unit?
19 MS. ROBESON: I'm sorry. When you say up here --
20 MS. HARRIS: Okay.
21 MS. SKALET: Well --
22 MS. ROBESON: You're on the 9th floor. How
23 many --
24 MS. SKALET: At the corner.
25 MS. ROBESON: -- units -- at the corner? Okay.

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1 MS. SKALET: Yes.
2 MS. ROBESON: Okay. All right.
3 BY MS. HARRIS:
4 Q Approximate size? Are you on the top floor or the
5 one below, the --
6 A Yes, on the one below.
7 Q The ninth? Okay. Approximate size of the unit?
8 A Approximate size, 3,000 square feet.
9 Q Okay. And do you many neighbors in your building?
10 A Of course, I know all the neighbors in my
11 building.
12 Q You do? Oh, okay. That's nice --
13 A It's a small building.
14 Q -- it's a nice neighborhood. And so --
15 A And I know my neighbors across the street and, you
16 know, it's a neighborhood.
17 Q That's the way my street is. Do you -- so then
18 you're familiar or you're aware of -- you know the neighbors
19 that live on the southern facade of the Edgemoor Highrise?
20 A Yeah.
21 Q Okay. And so are you -- are you aware of the
22 distance between recently approved Sandy Spring building
23 and --
24 A I don't recall the exact dimension.
25 Q The composite plan which was based on the

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1 development plan that was recently approved shows a distance
2 of 23 feet.
3 A Uh-huh.
4 Q And did your neighbors -- it looks like you have
5 the advantage of your window not being blocked by that
6 building, but your neighbors that are below that obviously,
7 that building goes to 65 feet.
8 A Uh-huh.
9 Q Did they find that building to be compatible with
10 the surrounding neighborhood?
11 A They would have preferred that the building be
12 lower still and farther away, but they understood when they
13 bought, I think, that, you know, that lot would be developed
14 one day.
15 Q And that there could potentially be a setback of
16 approximately 23 feet?
17 A I don't know if they were aware of that, you know,
18 I would not say that they were aware of that.
19 Q But they were aware that --
20 A But I don't --
21 Q -- there was a single-family home next door and
22 that obviously --
23 A Absolutely.
24 Q -- that could be developed and --
25 A Absolutely.

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1 Q -- to the height of 65 feet?
2 A Absolutely. Yes. And, no, not up to 65 feet,
3 no.
4 Q No, the sector plan says --
5 A Correct.
6 Q -- 65 feet.
7 A Well, the sector plan doesn't. I mean it
8 describes Montgomery Lane as starting at six stories and
9 declining to three and according to the tenting, then each
10 building going from east to west should decline in height
11 relative to the one --
12 Q Well, I'm going to refer to page 39 --
13 A -- east of that.
14 Q -- of the sector plan, which I know we have a
15 blow-up of that, but hold on. The old sacred page 39.
16 A Well, I don't know that's --
17 Q Okay. Well, page 39 of the sector plan. Can you
18 identify the height that's identified on page 39 as
19 recommended for this area of --
20 A Good Lord.
21 Q If I could assist you? This is the TS-R district.
22 A Yes.
23 Q And it extends over here. So the --
24 MS. ROBESON: Let her --
25 MS. HARRIS: Okay.

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1 MS. SKALET: I --
2 MS. ROBESON: Take a moment and you can assimilate
3 it.
4 MS. SKALET: I see a number that says 65 toward
5 the center of it.
6 BY MS. HARRIS:
7 Q Okay.
8 A Now that may be true, but it is also true that the
9 way that the street was supposed to be designed was with
10 buildings of declining height.
11 Q Do you see in other areas of page 39 here they
12 have other suggested heights that in very small areas which
13 jump from, we'll go over here to the east side of
14 Connecticut Avenue and go --
15 A Connecticut?
16 Q I'm sorry, Wisconsin Avenue --
17 A Yeah.
18 Q -- that go, for instance, from 35 to 45 to 97 and
19 very, with small lot areas.
20 A And we are at Wisconsin and what?
21 Q Montgomery Lane, south of Montgomery Lane now.
22 A Well, that is not a, you know, that's --
23 Q The town of Chevy Chase isn't residential?
24 A No, but along Montgomery Lane, you know, we have a
25 lot of very tall buildings that were built long ago.

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1 Q But my point is on other, in other areas on page
2 39, certainly the planners found that they had the ability
3 to indicate very small areas of identified height. So if,
4 in fact --
5 A And they're not --
6 Q -- they --
7 A -- 25 streets.
8 Q Can I ask my question? If, in fact, they wanted
9 Montgomery, the 65-foot zone of the TS-R --
10 MS. ROBESON: Let her ask -- I'm sorry.
11 BY MS. HARRIS:
12 Q -- district to have varying heights, why wouldn't
13 they have done just what they did on other areas of page 39
14 and put the height of 65, a height of 50, a height of 42 --
15 A Uh-huh.
16 Q -- a height of 35, all of which are heights that
17 appear on page 39?
18 A Yeah. I don't know why they did it there, so --
19 Q Okay. So --
20 A -- I can't, I can't talk to that.
21 Q -- but you will agree that that shows --
22 A But --
23 MS. ROBESON: No, just let --
24 MS. SKALET: Yes.
25 MS. ROBESON: This is your time --

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1 MS. SKALET: Sorry.
2 MS. ROBESON: -- to answer questions.
3 MS. SKALET: Sorry.
4 MS. ROBESON: You're going to get another
5 chance --
6 MS. SKALET: Sorry.
7 MS. ROBESON: -- based on what she's asking you --
8 MS. SKALET: Okay.
9 MS. ROBESON: -- to make any additional points you
10 want to make. Go ahead, Ms. Harris.
11 BY MS. HARRIS:
12 Q Okay. But just to clarify, the area in question
13 of the, where the subject property is located, it indicates
14 that the height is 65 --
15 A Uh-huh.
16 Q -- is that correct? Are you aware that 4901
17 Hampden Lane has not yet received site plan approval?
18 A It has received some form of approval, at least
19 when a developer came to talk to us, Larry Godwin came and
20 spoke to residents of the Edgemoor --
21 Q Okay.
22 A -- with, I understood and there are others here
23 who were at that meeting, to, yeah, I understood that he
24 indicated, District Council --
25 MS. ROBESON: Okay. There's no --

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1 MS. SKALET: -- District Council.
2 MS. ROBESON: -- prompting from the audience.
3 MS. HARRIS: Right. Okay.
4 BY MS. HARRIS:
5 Q And if you understand the distinction between the
6 zoning approval, which is what we are in --
7 A Yeah.
8 Q -- though it's not necessarily as representative
9 of a zoning hearing, but the difference between a zoning
10 hearing and a site plan hearing in terms of what gets
11 determined at site plan?
12 A Well, I'm undoubtedly not as aware of the details
13 of that as you are.
14 Q Would it surprise you to learn that from the time
15 of zoning approval to the time of site plan approval much
16 can change in the architectural style of the building?
17 A It doesn't surprise me.
18 Q Okay. And are you aware that the image shown on
19 Exhibit 106(g) was obtained from the developer in 2008
20 subsequent to the zoning approval?
21 A I am aware of that.
22 Q Okay. Thank you. That was the only question I
23 had on that. You indicated that 4901 has a variation in
24 height of 70 feet to 60 feet, is that correct?
25 A Huh-huh.

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1 Q And is that 60 feet as what we've calling it for
2 the benefit of having been here for the last --
3 A Yeah.
4 Q Week and five days?
5 A Yes.
6 Q But are you aware -- is that 60-foot portion a
7 step back which is set back consistently on Montgomery Lane?
8 A It's steps down as it comes down Montgomery Lane
9 and, you know, it shows on -- well, here, I think you'll
10 want to see.
11 Q Uh-huh.
12 A You see, it goes like this.
13 Q Okay. Are you referring to 120(b), which I'm
14 holding in my hand?
15 A I am referring to 120(b) at the top where you can
16 see about two-thirds, about three-fifths of the way in, down
17 Montgomery Lane. It steps down to 60 feet.
18 Q And that portion where it steps down, it looks
19 like the building also jets out further onto Montgomery
20 Lane?
21 A No, it doesn't.
22 Q No?
23 A There is a bay that does and then this comes back.
24 Q Yes.
25 A That's not, that's the corner of --

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1 Q No, that's --
2 A Oh, no, this? Yes. This is, this is the west
3 facade, so that is this and this --
4 MS. ROBESON: Wait.
5 MS. SKALET: I'm sorry.
6 MS. ROBESON: It's okay.
7 MS. SKALET: I'm trying to tell half.
8 MS. ROBESON: No. I know with the -- we have a
9 transcript that --
10 MS. SKALET: Yes.
11 MS. ROBESON: -- the County Council sees --
12 MS. SKALET: Okay.
13 MS. ROBESON: -- and they don't know where this
14 is.
15 MS. SKALET: All right. So what do you want?
16 Point to the --
17 MS. ROBESON: So --
18 MS. SKALET: -- compass and the --
19 MS. ROBESON: No, if you could just tell us what
20 picture.
21 MS. SKALET: 120(b).
22 MS. ROBESON: B?
23 MS. HARRIS: And that was the bottom right?
24 MS. SKALET: The lower right, the bottom right
25 image --

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1 MS. ROBESON: Yes.
2 MS. SKALET: -- shows in the corner portion where
3 there is, you know, a lot of windows that is the portion
4 that has stepped down to 60 feet and the rest of that facade
5 that you are looking at is what the City Homes look at
6 across their driveway.
7 BY MS. HARRIS:
8 Q But the question was is that portion where the 65-
9 foot --
10 A Yes.
11 Q -- step down, that's, that projects out further to
12 the north than the rest of the facade, would you agree with
13 that?
14 A I think it goes out and it comes back in a little.
15 Q Okay.
16 A Yes.
17 Q And would it surprise you that I think that Mr.
18 Irish, the other --
19 A Yes, I --
20 Q -- that he testified and admitted that --
21 A Just let her finish.
22 Q -- that that portion of the building is only three
23 feet from the property line?
24 MS. ROBESON: Was it three feet from the property
25 line or three feet --

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1 MS. HARRIS: It was three feet, I'm sorry, three
2 feet from --
3 MS. ROBESON: -- you say --
4 MS. HARRIS: Yes, because it was three feet from
5 the back of the sidewalk.
6 MS. ROBESON: Okay. So it's three feet just in
7 colloquial terms, it's three -- three feet from the back --
8 MS. SKALET: From the property line --
9 MS. HARRIS: From the property line.
10 MS. SKALET: on --
11 MS. HARRIS: Montgomery Lane.
12 MS. SKALET: -- on Montgomery Lane.
13 MS. ROBESON: To the closest edge of the sidewalk.
14 MS. SKALET: Uh-huh. Would it surprise me? I
15 don't know.
16 BY MS. HARRIS:
17 Q The Planning Board, you noted that 4901 recently
18 came in and was approved by the District Council for
19 reduction in its number of units?
20 A Yes.
21 Q Were you aware that the acting chair of the
22 Planning Board when considering this case expressed concern
23 over the fact that the number of units were being reduced
24 because of the sector plan recommendation for trees and
25 density at the Metro station?

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1 A Was I aware specifically?
2 Q You didn't intend to follow --
3 A I didn't follow, no --
4 Q -- follow that proceeding?
5 A No.
6 Q And do you have any reason to think that if the
7 applicant of 4901 actually had decided to come in to
8 increase the number of units that the County Council
9 wouldn't approve that as well?
10 A I'm sorry, phrase that again.
11 Q Do you have any reason to believe that if the
12 applicant of 4901 had decided to increase the number of
13 units consistent with what the sector plan recommendation is
14 as opposed to decreasing the number of units, that the
15 County Council would have done any -- that the County
16 Council would not have approved that application?
17 A I don't know what they would have done.
18 MR. ABRAMS: Objection. I think it's speculation.
19 MS. ROBESON: Yes.
20 MS. SKALET: Yes.
21 MS. ROBESON: Yes, that is and she's not an --
22 she, at least hasn't been --
23 MS. SKALET: I only know what they do.
24 MS. ROBESON: -- technically qualified as an
25 expert.

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1 MR. KNOPF: I think the Hearing Examiner can take
2 judicial notice that no one can predict what the County
3 Council is going to do.
4 MS. ROBESON: Yes. Right. Well, okay. Go ahead,
5 Ms. Harris.
6 BY MS. HARRIS:
7 Q You, in connection with the Highrise Edgemoor, you
8 noted that the, I believe it was in the resolution as
9 opposed to the ZHE report, but in any event notes that it
10 should not be used as precedent, is that correct?
11 A Uh-huh.
12 Q And what's your definition of precedent?
13 A The fact that it did not decline from --
14 Q No, no, no.
15 A Okay. The --
16 Q Just generally if you were to look up precedent in
17 the dictionary, what would it say?
18 A It should not be used as a reason to go against
19 the guidelines of the plan in the future.
20 Q That's what the definition of sector, precedent
21 would say in the dictionary?
22 A Well, it should be, not be used as an argument.
23 Q Or as a model to do, to --
24 A Yeah.
25 Q -- replicate something?

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1 A Yeah.
2 Q Okay.
3 A A model.
4 Q Right. That, Webster's would approve of that
5 definition. If you look at Exhibit 112, can you tell me the
6 length of the Highrise Edgemoor?
7 A It's 172 feet.
8 Q Plus or minus that size?
9 A Oh, I -- yes --
10 Q Okay.
11 A -- by percentage, yes.
12 Q And then can you please tell me along the front
13 edge of Montgomery Lane the length of the subject building?
14 A 78 feet.
15 Q Yes. And so in your mind would 78, would be,
16 would 172 be setting a precedent for a 78-foot width,
17 length? In other words, is 78 precedential, similar to 172?
18 A I don't think so. I mean I don't --
19 Q I mean --
20 A -- I don't think anything. I don't really know
21 what, you know --
22 Q Okay.
23 A -- we have different size lots. I don't know.
24 MS. ROBESON: I'm going to give you leeway, but
25 she really didn't testify as to widths.

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1 MS. HARRIS: No, but she did, she did testify that
2 Highrise Edgemoor should not be used as precedent.
3 MS. ROBESON: That's true.
4 BY MS. HARRIS:
5 Q So, what does that mean?
6 A Well --
7 Q In connection --
8 A -- I think --
9 Q -- with our building? So I think it's important
10 to establish that, in fact, the subject building --
11 A I was talking about height.
12 Q Oh, okay. So what percentage is 70 of 100
13 approximately?
14 A Well, I think it's 70 percent.
15 Q Okay. And 70 percent -- is 70 percent, if you
16 have the 70 percent approval rating versus 100 percent
17 approval rating, are those similar?
18 A I don't know what you're talking about. I'm
19 sorry.
20 Q Is 70, in the realm of zero to 100 --
21 A Yeah.
22 Q -- think of it on a scale --
23 A Yeah.
24 Q -- is 70 similar to 100?
25 A No, 70 isn't similar to --

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1 Q Right. I didn't think so.
2 A -- 100.
3 Q And is 70 similar to 50, which is actually the
4 setback along Montgomery Lane? 50 is what of 100?
5 A I don't know where you're going.
6 Q I know.
7 A I don't know what you're saying, I really --
8 Q I'm sorry.
9 MS. ROBESON: I'm not sure where you're --
10 MS. SKALET: 50 is out of 100.
11 MS. ROBESON: -- going.
12 BY MS. HARRIS:
13 Q The fact is, that a height of 50 feet --
14 A Yeah.
15 Q -- along Montgomery Lane --
16 MS. ROBESON: A height? Okay.
17 MS. HARRIS: -- 50 feet is half of what the height
18 of Highrise Edgemoor is along Montgomery Lane.
19 MS. ROBESON: Okay.
20 MS. HARRIS: Therefore, I would argue --
21 MS. ROBESON: Okay. Well, you don't have to argue
22 now. I just wanted to know where you're going.
23 MS. HARRIS: This is not following --
24 MS. ROBESON: Yes, don't argue
25 MS. HARRIS: -- relying on --

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1 MS. ROBESON: Please.
2 MS. HARRIS: Okay. Sorry. West Lane --
3 MS. ROBESON: Don't argue.
4 MS. HARRIS: Okay.
5 MS. ROBESON: Just ask --
6 MS. HARRIS: Okay. That's fine.
7 MS. ROBESON: Ask her questions.
8 MS. HARRIS: That's fine.
9 MS. ROBESON: And you will argue at the end or
10 during.
11 MS. HARRIS: Okay.
12 BY MS. HARRIS:
13 Q One last question regarding the issue of
14 precedent. The Highrise Edgemoor when taken, this is a
15 density of approximately 6.05 FAR?
16 A Uh-huh.
17 Q And the density of West Lane is 3.05.
18 A Uh-huh.
19 Q Again, I, is that precedential?
20 A It's not supposed to be precedential.
21 Q Okay.
22 A If it's too tall, then it shouldn't have been
23 built --
24 Q Thank you.
25 A -- the way it was built.

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1 MS. ROBESON: I think what she's getting at is --
2 MS. SKALET: It's too close to the Chase, by the
3 way. I mean --
4 MS. ROBESON: No, no, no, no.
5 MS. SKALET: It's --
6 MS. ROBESON: Just a second.
7 MS. SKALET: Now --
8 MS. ROBESON: Just a second.
9 MS. SKALET: No, I --
10 MS. ROBESON: No, just stop talking. Just stop
11 for a minute.
12 MS. SKALET: Okay.
13 MS. ROBESON: Is what you're -- I think what she's
14 asking is is the height of this building really following
15 the precedent of Edgemoor?
16 MS. SKALET: In not being --
17 MS. ROBESON: Is that what you're asking?
18 MS. SKALET: -- in compliance with the sector
19 plan, yes, it is.
20 MS. ROBESON: Okay. Ms. Harris, you can, if --
21 MS. HARRIS: I won't go there.
22 MS. ROBESON: I did get your point.
23 MS. HARRIS: Okay. Thank you. I thought you did.
24 MS. ROBESON: I did get your point.
25 MS. HARRIS: Okay. And I think that concludes my

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1 questions. Thank you.
2 MS. ROBESON: Okay. Now based on her questions,
3 is there anything that you would like to clarify, expand on,
4 any other points you'd like to make?
5 MS. SKALET: Well, just, you know, I guess Pat was
6 asking about setbacks that, you know, and I think that the
7 design ultimately of 4901 was compromised, you know? They
8 may have taken a little more of the frontage, but they
9 reduced the height and they tried to make things more
10 aesthetically pleasing and to work for the community and
11 there's some give and take. That's what you have to do.
12 It's a process of compromising.
13 MS. ROBESON: And what about this project? How
14 does what you're saying about 4901, how does that --
15 MS. SKALET: I mean I think there's --
16 MS. ROBESON: -- what you just said with --
17 MS. SKALET: -- a long way to go. I think we have
18 a lot of things that other people will talk about later and
19 ask for, you know? I was confining myself to this one sort
20 of history because I was a part of that and my experience on
21 the street, which is that more residents with their daily
22 needs are going to wreck havoc on the quality of life.
23 MS. ROBESON: Okay.
24 MS. SKALET: And --
25 MS. ROBESON: Any recross? Yes, Mr. Abrams?

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1 MR. ABRAMS: Okay.
2 REDIRECT EXAMINATION
3 BY MR. ABRAMS:
4 Q You were shown a Bethesda soon-to-be sector plan,
5 page 39, an area which indicated a 65-foot height, correct?
6 A I was shown that, correct.
7 Q Okay. Now within the sector plan, there are urban
8 design guidelines for the transit station --
9 A And --
10 Q -- residential district?
11 A Uh-huh.
12 Q Okay. I want you to read on page 85, urban design
13 guideline No. 3.
14 A Maintain low-rise building heights which step down
15 to three floors along Arlington Road. Heights up to six
16 floors are preferred near Woodmont Avenue to achieve the
17 desired urban form.
18 Q Now the six floors, does that represent 65 feet
19 normally?
20 A It's -- well, maybe with, with -- yeah, I would
21 say with, you know, mechanical things and stuff, yeah.
22 Q Okay. With reference to the subject property, is
23 it located closer to Woodmont Avenue or is located closer to
24 Arlington Road?
25 A Arlington Road.

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1 MR. ABRAMS: I have no further questions.
2 MR. KNOPF: I just have a couple clarification.
3 Excuse me.
4 REDIRECT EXAMINATION
5 BY MR. KNOPF:
6 Q Ms. Harris asked you questions about buildings
7 along Montgomery and I think we had, you, she or you
8 referred to Montgomery on both sides of Woodmont. Am I
9 correct that when you cross Woodmont, Montgomery is not
10 Montgomery Lane, but Montgomery Avenue?
11 A Exactly.
12 MS. ROBESON: Okay.
13 MS. SKALET: Yes. And I think that's an important
14 point. It's called a lane for just that one block.
15 MS. ROBESON: Okay.
16 MR. KNOPF: Okay. Thank you.
17 BY MR. KNOPF:
18 Q And this is my last question. She had mentioned
19 the possibility of site plan review for 4901 could result in
20 architectural changes.
21 A Uh-huh.
22 Q Now that you know that fact, does that change your
23 opinion as to what the County Council found acceptable when
24 it approved --
25 A No.

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1 Q -- this plan?
2 A No.
3 Q Thank you.
4 MS. ROBESON: Okay. And any recross?
5 MS. HARRIS: No, thank you.
6 MS. ROBESON: Okay. Well, thank you very much,
7 Ms. Skalet. I appreciate your coming in and your
8 information and you may be excused.
9 MS. SKALET: Okay. Do you want this other --
10 MR. KNOPF: I want that. She has one.
11 MS. ROBESON: Yes, I have yours and it was very
12 illustrative, thank you.
13 MS. SKALET: Okay. Thanks.
14 MR. KNOPF: Thank you very much.
15 MR. ABRAMS: Can we --
16 MS. ROBESON: We can proceed now with Ms. Turnbull
17 now that we have big pictures to look at.
18 MS. HARRIS: Actually, can we take a 2-minute
19 break?
20 MS. ROBESON: Absolutely.
21 MS. HARRIS: Thank you.
22 MS. ROBESON: Actually, five -- I don't like to
23 leave two minutes, but five minutes is okay because --
24 (Recess)
25 MS. ROBESON: Okay. We're back on the record.

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1 Mr. Abrams, just before the cross-examination starts, which
2 exhibit was the exhibit with the elevations that you
3 submitted that she testified to just so I can -- I think it
4 was 101-something.
5 MS. TURNBULL: Oh, no, that's not what you're
6 talking --
7 MS. ROBESON: No, it's a chart.
8 MS. TURNBULL: Is it a chart?
9 MS. ROBESON: It's a --
10 MS. TURNBULL: Yeah. It's 101(i)
11 MS. ROBESON: Okay. If you can just let me find
12 that.
13 MR. ABRAMS: I'm looking for the large exhibit.
14 MS. TURNBULL: We don't have it in a large
15 exhibit. We just have paper.
16 MS. ROBESON: Yes, that wasn't one of the large
17 exhibits. I just want to find it in --
18 MR. ABRAMS: Well --
19 MS. ROBESON: -- my file before cross-examination.
20 (Off record discussion.)
21 MS. ROBESON: And, Ms. Turnbull, I think I already
22 reminded you, but you're still under oath.
23 MS. TURNBULL: Yes, thank you.
24 MS. HARRIS: Okay. Can we proceed or --
25 MS. ROBESON: Yes.

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1 MS. HARRIS: Okay. Thank you.
2 MS. ROBESON: Thank you.
3 CROSS-EXAMINATION
4 BY MS. HARRIS:
5 Q Ms. Turnbull, Exhibit No. 40 --
6 A Uh-huh.
7 Q -- can you identify whether there are any cars
8 parked on that, shown in that photo that are parked
9 illegally?
10 A Yes. There are two cars parked illegally. There
11 is the --
12 MS. ROBESON: And the photo is the photo to the
13 left as you're facing the large Exhibit 40?
14 MS. HARRIS: Correct.
15 MS. TURNBULL: The, on the left-hand photo, the
16 mail truck is parked illegally. There is a truck, a pick-up
17 truck.
18 MS. ROBESON: A white pick-up truck?
19 MS. TURNBULL: Yeah, a white pick-up truck that is
20 parked illegally. Those are the two cars that --
21 MS. ROBESON: Okay.
22 MS. TURNBULL: -- parked illegally.
23 BY MS. HARRIS:
24 Q And then on the right-hand picture?
25 A There is a Federal Express truck that doesn't fit

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1 into the way by --
2 Q Okay.
3 A -- so it's parked illegally.
4 Q And then on your left-hand side?
5 A There's probably a -- no, I think the other ones
6 are illegal because I don't see the sign, so there's nothing
7 to tell me that they're not illegal.
8 Q You're not familiar with the fact that along the
9 east, once you get past on the east side, I'm sorry, on the
10 south side of Montgomery Lane, there's no parking signs?
11 A No, there are, there are three spaces.
12 Q Right. Okay.
13 A And what I'm seeing are three cars.
14 Q Okay. Do you, were you aware that in the Highrise
15 Edgemoor case, one of the neighbors in that case, there was
16 discussion about the, about some of the traffic situations
17 and the person testifying from the Highrise Edgemoor
18 indicated and acknowledged that there's an enforcement
19 issue, a lack of enforcement issue?
20 A I don't which -- what case are you talking about?
21 Q The, I'm sorry, the Sandy Spring Builders case.
22 A I'm --
23 Q 4825, but they --
24 A I am not aware.
25 Q -- acknowledged that there is an enforcement issue

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1 that occurred on Montgomery Lane.
2 A I am not aware.
3 Q Okay.
4 A I'm not -- I'm saying I'm not aware of someone
5 testifying that in the case.
6 Q Then I want to move to Exhibit 40(a). And I also
7 want to reference a prior exhibit that was submitted -- it's
8 going to be hard to find this exhibit -- but it's --
9 MS. ROBESON: Who submitted that?
10 MS. HARRIS: The applicant did. It's a previous
11 one, never mind. It's -- I'm not --
12 MS. ROBESON: Okay.
13 MS. HARRIS: I'm not going to submit this as an
14 exhibit; I just want to use it for reference. Can you
15 indicate the relative shape of the architect's logo on the
16 bottom, right-hand corner of that, that exhibit?
17 MS. ROBESON: Wait.
18 MR. ABRAMS: Yes, she's referring to something
19 which is not an exhibit.
20 MS. ROBESON: Is it --
21 MR. ABRAMS: Don't we have an exhibit that
22 shows --
23 MS. ROBESON: Is it in the record? I think, I
24 think there is an exhibit like that in the record.
25 MR. ABRAMS: Yes, you've got a couple of them.

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1 MS. HARRIS: That show the logo?
2 MS. TURNBULL: Are we talking about the designer's
3 logo?
4 MS. HARRIS: Yes, the designer's logo.
5 MS. ROBESON: Not the aerial photo? Does 106(f)
6 help you where you want to go?
7 MS. HARRIS: No. Okay. We'll come back to that
8 question.
9 MS. ROBESON: Okay.
10 BY MS. HARRIS:
11 Q During your testimony, you noted that the, upon
12 the construction of the Hampden Lane project, that your
13 light and air will dramatically change, I think you noted
14 something to that effect?
15 A Yes.
16 Q And then you also noted that you, that nonetheless
17 that because of the, I think they're identified as
18 courtyards on 106(g), that I think you may have referred to
19 them as courtyards or light wells, that the Hampden Lane
20 applicant had been immediately responsive to the concerns of
21 the City Homes, is that correct?
22 A Yes.
23 Q If Hampden Lane had been immediately responsive to
24 the concerns of the City Homes, why then did the City Homes
25 appeal the District Council approval of the Hampden Lane

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1 project and noting such things as the, that the building was
2 completely incompatible with the surrounding development,
3 that the maximum height of the building in the middle of the
4 box should be substantially less than six stories and that
5 there was a total disregard for the step down from Woodmont
6 Avenue?
7 A I have no idea. I was not a resident of City
8 Homes at that time and my information is garnered from the
9 public record.
10 Q So are you testifying this afternoon, this morning
11 as an individual or as a representative of City Homes?
12 A Oh, well, I was not part of City Homes --
13 Q Okay.
14 A -- at that point.
15 Q Okay. I --
16 A I can't give you the history of a discussion from
17 that point.
18 Q I will reserve that question for Mr. Walsh. Now I
19 want to refer to the page 82 of the sector plan.
20 MS. ROBESON: No, you have to wait for her
21 question.
22 MS. HARRIS: Hold on.
23 BY MS. HARRIS:
24 Q Actually, I have an exhibit that we're looking
25 for. But can you please read the highlighted portions of

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1 page 82 of the sector plan?
2 A One possible resource for publicly oriented open
3 space within the TS-R district is the area in front of the
4 new apartment structures along Montgomery Lane. Streetscape
5 and special seating areas could be provided in the setback
6 from the sidewalk to the building face, creating an outdoor
7 community space.
8 Q Referring to Exhibit 76, the applicant is, in
9 fact, including this as part of a public open -- the plaza
10 in front of the building as part of their public open space,
11 correct?
12 A Yes.
13 Q MS. HARRIS: And this is a potentially new
14 building whether apartment or condo on the one building,
15 correct?
16 A Yes.
17 Q And are there seating areas along Exhibit 76?
18 A Actually, there are no seating areas along
19 Montgomery Lane. The seating areas --
20 Q Oh, they're setback from the building?
21 A They're set back from Montgomery Lane. There are
22 no seating areas on the 78-foot length --
23 Q And is this a bench?
24 A -- with setbacks, which is what this is saying.
25 On the opposite side of the street there was discussion

Page 58

1 about the stairwells. Next to the stairwells --

2 Q We're not talking about the stairwells. We're

3 focusing on the public use space in front of the building.

4 MS. ROBESON: Well, okay. This is -- okay. You

5 can respond to her question. Mr. Abrams, you can bring up

6 what any additional points you want to bring up on redirect,

7 okay?

8 MS. TURNBULL: So in response --

9 BY MS. HARRIS:

10 Q Okay. I'm sorry, let me read this again. Special

11 seating areas, pick out the word special for a moment,

12 seating areas could be provided in the setback from the

13 site. Is that setback from, is the seating areas that you

14 see in Exhibit 76 set back from the sidewalk?

15 A No. That's not --

16 Q That's not set back from --

17 A -- set back from the side, well, not on Montgomery

18 Lane. That setback, that seating area is from the sidewalk

19 adjacent to West Lane.

20 Q And how -- if you're saying, and you're facing

21 Montgomery Lane, that's not a set back from Montgomery Lane?

22 A The seating area location is set back from West

23 Lane. If there was a seating area setback from Montgomery

24 Lane, it would be the steps in my opinion.

25 Q Okay. Well --

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1 MS. ROBESON: And that she's, she's given her

2 opinion.

3 MS. HARRIS: Right. I was moving on.

4 MS. ROBESON: Okay.

5 BY MS. HARRIS:

6 Q So the, you may recall, I believe, as a landscape

7 architect you identified the steps, and I think you may have

8 referred to them as stadium seating along the frontage of

9 Montgomery Lane. Are those oriented toward Montgomery Lane?

10 A Even if there are steps or they, for access or

11 they are seats, they can't, they can't be, first of all,

12 they can't be both and if they are just seats, then there

13 are no, then there's no access into the building.

14 Q That's not the question. The question is is there

15 seating oriented toward Montgomery Lane in the setback?

16 A No, I see steps.

17 Q Do you see a difference in the height of the

18 risers to the right of the railing versus to the left of the

19 railing?

20 A Actually that was described to me as just a

21 possibility of what it looked like.

22 Q No, I believe one of the experts testified that

23 they were designed specifically --

24 A Okay.

25 Q -- like that --

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1 A I do --

2 Q -- to provide seating.

3 A Yes, I do see it.

4 Q Thank you. And then there's, moving further down,

5 there's benches along Montgomery Lane, correct?

6 A Yes.

7 Q And are those set back from the property line?

8 A Yes.

9 Q Thank you. And, finally, does that -- this is an

10 outdoor space, would you agree with that comment?

11 A Yes.

12 Q Thank you. Exhibit 7, which is the public use

13 space -- I know, sorry, this is all --

14 MS. ROBESON: You can move the upper ones, you can

15 move them, fold them in so it rests on the lower one --

16 MS. HARRIS: Thank you.

17 MS. ROBESON: -- if you want it that way.

18 MS. HARRIS: I think that makes sense. Okay.

19 BY MS. HARRIS:

20 Q Can you please, are you aware of, that the

21 Highrise Edgemoor is providing 10 percent public use space?

22 A Yes.

23 Q And are you aware that 4901 is providing 10

24 percent public use space?

25 A Yes.

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1 Q And are you aware that that Hampden Lane is

2 providing --

3 A Yes.

4 Q -- 10 percent? And are you also aware that City

5 Homes has provided 10 percent public use space?

6 A Yes.

7 Q And are you aware that applicant is proposing 10

8 percent public use space?

9 A Yes.

10 Q Thank you. In assessing impacts of light and air,

11 some jurisdictions actually require shadow studies. Do you

12 have any idea why this could be, why this would be?

13 A Because it would, just to demonstrate where the

14 sun would be hitting the building and actually there was a

15 shadow study done on, on the Hampden Lane building.

16 Q Okay. And to assess how the buildings may cast

17 shadows because that may have some relevant impact --

18 A Sure.

19 Q -- on other buildings? I'd like to show you the

20 shadow study from the staff report from the Hampden Lane

21 Associates preliminary plan and I request that judicial

22 notice be taken of this, which is a matter of public record.

23 MR. ABRAMS: Well, was it offered?

24 MS. HARRIS: No, and I believe we've taken

25 judicial notice of other things that are in the public

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1 record.

2 MS. ROBESON: We, no, because I don't think we

3 have because I think, Mr. Knopf, you objected to Mr. Knopf

4 trying to introduce a picture from a staff report and he

5 found it in the resolution that was already in the -- so I'm

6 going to exclude it.

7 MS. HARRIS: But I believe I, I believe before he

8 found it he said, well, it's in the public record and we

9 would accept it and he said, oh, here it is.

10 MS. ROBESON: Well, I don't recall --

11 MS. HARRIS: I think that's --

12 MS. ROBESON: -- exactly and I haven't read the

13 transcript, but they haven't had the opportunity to look

14 at --

15 MS. HARRIS: Well, can I distribute these and show

16 them and it doesn't need to be exhibited, it does not need

17 to be submitted to the record?

18 MS. ROBESON: No, if you're going to refer to it,

19 it has to be in the record. So, can you ask the question

20 without using that?

21 BY MS. HARRIS:

22 Q Given the, well, first of all, the sun is oriented

23 in what portion of the sky? Some people don't know that.

24 A Okay.

25 MS. ROBESON: Well, I didn't until I heard.

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1 MS. TURNBULL: It tends --

2 MS. HARRIS: Right. Exactly.

3 MS. ROBESON: So go ahead.

4 MS. TURNBULL: It depends upon the time of day --

5 BY MS. HARRIS:

6 Q Right.

7 A -- and it's going from the east to the west.

8 Q Okay. And so you would agree with me that --

9 A Yes.

10 Q -- east is here, west is here?

11 A Yeah.

12 Q And given, given that we live in North America in

13 the Mid-Atlantic, would you agree that as an orientation in

14 the southern sky?

15 A Oh, yes.

16 Q Okay.

17 A Yes, I would.

18 Q So on December 21st when the sun is at its lowest

19 point in that sky, would you agree that the shadows cast

20 from the City Homes would be approximately due north?

21 A Yes.

22 MS. ROBESON: Okay.

23 BY MS. HARRIS:

24 Q And then would you also agree that in, during the

25 fall and spring solstice, March 21st and September 21st,

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1 that the, when the sun is higher up in the sky that, in

2 fact, and you probably know this just from living in the

3 City Homes, that the City Homes cast shadows on one another?

4 A True, and I can short-circuit this. I am not

5 saying that West Lane is casting a shadow --

6 Q Right. I understand.

7 A -- on City Homes.

8 Q Right. But I did ask what was the reason when

9 jurisdictions are evaluating light and air that they make

10 you do shadow studies because it's a good relative indicator

11 of light and air --

12 A It was one --

13 Q -- impact?

14 A I believe it's one indicator.

15 Q Okay. And will your, will City Homes be casting

16 any shadows, I'm sorry, will the subject property be casting

17 any shadows on City Homes?

18 A I do not believe it will be casting a shadow on

19 City Homes.

20 Q You testified that you were at the Board of

21 Appeals for how many years?

22 A Four.

23 Q And so when you, would you agree with this

24 statement that the County holds the neighborhoods,

25 especially the single-family neighborhoods in Montgomery

Page 65

1 County, in fairly high regard, an area to be protected,

2 would you agree with that general statement?

3 A Yes, I would.

4 Q Okay. And you're familiar with the County

5 generally I assume? You've been here --

6 A Yes, I --

7 Q -- for a number of years. And --

8 A I've lived in the County since 1979.

9 Q Okay. And would you agree with me that in some

10 areas of the County there's fairly steep topography in

11 places?

12 A Yes.

13 Q Okay. And in some of those places are actually

14 single-family neighborhoods, known R-60 or R-90, is that

15 correct?

16 A Possibly, yes.

17 Q Well, like Banner Grove for instance?

18 A Okay.

19 Q Okay. That's --

20 A Banner Grove I'm familiar with.

21 Q Okay. I thought you were. Okay. And the height

22 limit in the zones of R-60 and R-90 are generally 35 to 40

23 feet, generally 35 feet in height sometimes with exception

24 to 40 feet in height, is that correct?

25 A Yes.

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1 Q Okay. And is there any differentiation in the
2 zoning ordinance for the height of a house in those steeply
3 sloped areas or does the height guideline of a 35 foot max
4 control?
5 A The 35 foot max controls, however --
6 Q That was all I wanted to know.
7 A I want to finish my sentence if I can.
8 MS. ROBESON: Well, you have an attorney --
9 MS. TURNBULL: Okay.
10 MS. ROBESON: -- that will -- Mr. Abrams, are you
11 taking notes on this?
12 MR. ABRAMS: I will on this.
13 MS. TURNBULL: It sounded like a prompt.
14 MS. ROBESON: Go ahead.
15 BY MS. HARRIS:
16 Q So that, in fact, on a hill you could have one,
17 one house that's higher than the house immediately next to
18 it, is that correct?
19 A It's totally dependent on the measurement and the
20 way the measurement was, at least in variance cases and I --
21 Q I know I wasn't talking about height variance
22 cases, I'm just talking about --
23 A No, but that's my, that's where my knowledge base
24 is coming from and height, and --
25 Q Does Montgomery County have a height variance

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1 provisions?
2 A There were provisions having to deal with sheds,
3 having to do with fences.
4 Q No, but is there --
5 A Dealing with, and with additions to houses when we
6 were looking at that, we were putting it in the context of
7 the street.
8 Q Okay. Thank you.
9 A And I did that in a case in Kensington.
10 Q Thank you. And would you agree that given that
11 there's consistent height regulation that applies to an
12 entire area, that you would end up and, in fact, you could
13 just look out the window and determine this, you end up with
14 a varied height? That if you look at any residential
15 neighborhood --
16 A Yes.
17 Q -- it is the, skyline is not flat like a pancake,
18 there is height variations?
19 A Right.
20 Q Thank you. Okay. I want to go back to the
21 composite plan. Did you find the exhibit? Okay. I want to
22 walk through for a moment, there was a lot of testimony
23 yesterday about one, what one could see from the various
24 vantage points within City Homes, though I think we all
25 acknowledge that there's no requirement in the zoning

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1 ordinance, no preclusion in viewing other buildings, that's
2 not a sign of compatibility, the fact that you can see
3 another building.
4 MS. ROBESON: Is there a question there?
5 MS. HARRIS: Yes.
6 BY MS. HARRIS:
7 Q On the eastern sticks of the City Homes --
8 A I'm sorry, the eastern sticks?
9 Q We're moving, we're on Exhibit 106(b) and we're
10 reviewing the -- we're discussing the vantage points from
11 the eastern sticks of the City Homes.
12 A Uh-huh.
13 Q Do, is it your opinion that most of the units in
14 this eastern stick have a view of the Highrise Edgemoor?
15 A Yes.
16 Q And that that situation has existed since both the
17 Highrise Edgemoor and the City Homes have been constructed,
18 correct?
19 A Yes, they were constructed simultaneously.
20 Q And in approving those, did that relationship, did
21 the County Council have to make a finding of compatibility
22 that the Highrise Edgemoor was, in fact, compatible with the
23 City Homes?
24 A It was one project, City Homes and Edgemoor were
25 put, what was one case.

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1 Q Correct, but is there a finding of compatibility?
2 A You don't have a compatibility within the -- it's
3 the same case, so one does not have to be compatible with
4 the other because they're the same thing.
5 Q The Highrise Edgemoor is the same thing as the
6 City Homes?
7 A It was the same case.
8 Q Okay. I agree it was the same case.
9 A And if, so it's the same -- well, okay, it's --
10 Q And so there's significant views from this eastern
11 road to the Highrise Edgemoor and then the City Homes, the
12 most eastern row, they have windows along their eastern
13 facade, is that correct?
14 A Yes.
15 Q And we previously, Mr. Irish previously identified
16 that the distance between those buildings is 48 feet,
17 correct?
18 A Yes.
19 Q And would you also agree that if you're looking
20 out your window that you, what you're most and, in fact, I
21 think you testified to this, that the most obvious vantage
22 point or the most visible thing is what's directly across
23 from you?
24 A No, I didn't, I did not testify to that.
25 Q I think you did.

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1 A Mr. Irish testified to that.
2 Q Okay. I thought when you were explaining your
3 views, you said when I look out my window straight, what I
4 see is the stick beyond my house --
5 A I didn't --
6 Q -- with --
7 MS. ROBESON: No, I have to say I think what she
8 testified to is that she doesn't normally look straight out
9 the window, she looks to the, at -- yeah.
10 MS. HARRIS: You look at an angle every time
11 you're looking out?
12 MS. ROBESON: Well, I remember that.
13 MS. TURNBULL: Yes, and I, and I said --
14 BY MS. HARRIS:
15 Q That's interesting.
16 A -- well, first of all, I said that in light of the
17 fact that most of the windows in my house are bay windows
18 and so furniture placement inside a house directs you to the
19 sides --
20 MS. ROBESON: That's what I --
21 MS. TURNBULL: -- of the windows.
22 BY MS. HARRIS:
23 Q So that under that theory then, in fact, the fact
24 that the two City Homes units which are closest to the
25 subject property who have a direct view won't be so impacted

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1 because they'll be looking sideways?
2 A Actually --
3 Q Is this --
4 A -- the one directly in front of it, the one
5 directly in front of it will have windows that will, at a
6 bay in the front that do look at the building and they will
7 not be looking -- well, they'll have two choices. They will
8 have the choice of looking towards West Lane, the, the West
9 Lane building or they will be looking at the 78-foot portion
10 of the building. If they're standing, if they're standing,
11 looking or sitting, looking out a bay window in the front
12 and I, I will have to say in that instance I can't testify
13 to if they have a bay window even on the front. But the
14 house -- and you're also going to be hearing testimony from
15 someone who lives in one of the end units, so he could talk
16 about the view across the street.
17 Q So we may hear that people that live in the units
18 that are perpendicular to Montgomery Lane have a tendency to
19 look sideways out their windows, but we may also hear that
20 the people that live in the end units, their behavioral
21 pattern is totally different and they look straight out
22 their window?
23 A No, there's different windows and it's a different
24 orientation. I mean it's -- some of them have, some of the
25 people have bay windows and when you're looking at a bay

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1 window, you're looking in a different direction. Some of
2 the people don't have bay windows and are facing a
3 different. There's a difference, also there's a difference
4 between whether you're going to look out your window and
5 look at a mews or you're going to look out your window and
6 look at a driveway. So people are -- and what those windows
7 represent.
8 Q And, again, there is no requirement within the
9 zone about whether you see another building, a proposed
10 building or not see another building, correct?
11 A No.
12 Q And just one last -- the distance between these
13 two buildings is 48, between the eastern row of the City
14 Homes and 4901 is 45 feet, correct?
15 A Uh-huh.
16 Q The distance between the City Homes and the
17 subject, the minimum distance is 73, although it is, it's 73
18 to the face of the building and it's, excuse me, and with
19 the additional 12-foot setback is 84 feet, I'm sorry, 85
20 feet from the City Homes up where the first, at the sixth
21 and seventh floor intervals?
22 A I don't, I'd have to see the map to say that
23 it's --
24 Q Okay. I'll let you see it. The place of the
25 building of the City Homes, the face of the building --

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1 MS. ROBESON: Okay. Can you --
2 MS. HARRIS: -- west --
3 MS. ROBESON: Just, I'm sorry, Ms. Harris. Can
4 you not pass notes to the witness while she's testifying?
5 Okay. Go ahead, Ms. Harris.
6 MS. TURNBULL: Okay. Sorry.
7 BY MS. HARRIS:
8 Q The distance between the face of City Homes to the
9 face of West Lane, Mr. Irish testified that it is 73 feet
10 for the first five floors. We established and, in fact,
11 there is a binding element that says that four, six and
12 seven are going to be set back an additional 12 feet.
13 A Right.
14 Q So 73 plus 12 is 85, correct?
15 A Yes.
16 Q Okay. So there's an 85-foot setback along the
17 upper floors versus as 45 setback that we --
18 A But it's also at a different height at the, on the
19 Hampden Lane place versus where that step down and step back
20 is.
21 Q But, okay, now --
22 A 85 -- 85 has to compare to the 85. The 48 --
23 Q Okay. Well, let's compare the 48 --
24 A Uh-huh.
25 Q -- to the 73. Is 73 greater than 48?

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1 A Yes.
2 Q Absolutely. Thank you. Would you agree with
3 Exhibit 113 --
4 Q Uh-huh.
5 MS. ROBESON: You have to put --
6 MS. HARRIS: I know, the thing --
7 MS. ROBESON: Fold the top ones down.
8 MS. HARRIS: -- this is --
9 MS. TURNBULL: Or you can put it on the top one.
10 MS. ROBESON: They give us the most modern
11 equipment, so --
12 BY MS. HARRIS:
13 Q Would you agree looking at Exhibit 113 that the
14 Chase probably isn't as relevant in determining the
15 surrounding capability --
16 A No.
17 Q -- from the project?
18 A No, I wouldn't agree and the reason I wouldn't
19 agree is because in all of the exhibits that we've seen so
20 far, it has only been, it's only been used for height. When
21 I think it, if it's going to be used for height, it should,
22 therefore, also be used for unit size or numbers of units,
23 numbers of MPDU's. So the relevance, I mean either it's got
24 to be, it's either relevant or not relevant.
25 Q Except that I, would you agree that the Chase was

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1 constructed before the adoption of the 1994 sector plan?
2 A Yes.
3 Q So that if you're evaluating projects in
4 accordance with the 1994 sector plan, that could exclude the
5 Chase when you're discussing relevancy --
6 A Oh.
7 Q -- with the sector plan?
8 A With the sector plan, but relevancy with the
9 sector plan, yes, except, well, but one has to keep the
10 Chase into consideration as it applies to what the impact is
11 on the sector plan.
12 Q Okay. That's -- but I also think you stated
13 yesterday that in assessing compatibility, the properties
14 closest to the subject property are the most relevant, is
15 that correct?
16 A Absolutely. Absolutely.
17 Q So, therefore, I'm surprised that you said that
18 the Chase is also relevant with respect to that, but --
19 A But not --
20 Q -- well except --
21 A -- not the most relevant.
22 Q Okay.
23 A The most relevant are the properties --
24 Q Are the -- closest?
25 A -- the closest.

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1 Q Is the Villages of Bethesda closer to the subject
2 site than the City Homes?
3 A Yes, but there's no direct access.
4 Q Yes or no?
5 A Okay.
6 Q Yes?
7 A Yes.
8 Q And is Randy Rothstein's property closer to the
9 subject site?
10 MS. ROBESON: Okay. That's the edge of
11 Arlington --
12 MS. HARRIS: I'm sorry.
13 MS. ROBESON: -- Boulevard?
14 MS. TURNBULL: Edgemoor at Arlington North, yes.
15 BY MS. HARRIS:
16 Q And is 4825 closer to the subject property than
17 the City Homes?
18 A Yes.
19 Q And is Mr. Chipouras, which is 4828 West Lane,
20 closer to the property?
21 A Actually I'm not -- it may not be. I'm not sure
22 how far is that, is their property line.
23 Q Their property?
24 MS. ROBESON: Well, if you don't know, you just
25 say --

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1 MS. TURNBULL: I don't know.
2 MS. ROBESON: -- you don't know.
3 MS. TURNBULL: I don't know.
4 BY MS. HARRIS:
5 Q Okay. Have you ever visited the Villages of
6 Bethesda?
7 A Yes.
8 Q And you've been inside some of their units?
9 A No, I have not been inside a unit.
10 Q Well, have you been there since the, besides the
11 walking tour, have you had an opportunity to visit the
12 Villages of Bethesda?
13 A Yes.
14 Q Okay. And from your, from your unit, are you able
15 to see the northern facade of the proposed building?
16 A No.
17 Q Will you, say if you wandered out onto on the
18 street and you're walking along Montgomery Lane, would you
19 be able to see the northern facade of the proposed building?
20 A No.
21 Q But, nonetheless, in your testimony you're really
22 concerned about that northern facade of the proposed
23 building, correct. and that the minor setback of six feet
24 that was proposed during the Holladay case has been
25 eliminated, I believe you testified to that?

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1 A I testified, yes, I did testify to that and that
2 was for the purpose of varying heights.
3 Q I see. Okay.
4 A So that the top of the building would not appear
5 to be a square, that there would be up and down in the
6 building.
7 Q Okay. So, again, with a minor six foot setback
8 would you have been able to see that from your home in City
9 Homes?
10 A I would not be able to see the northern elevation.
11 Q Given the proximity of the City Homes to the
12 subject property, would you agree that several residents of
13 Villages of Bethesda likely will have more of a direct view
14 of the subject property than the City Homes --
15 A No.
16 Q -- given that it's closer?
17 A It may be closer, except the southern -- yes, the
18 southern elevation of that has no windows.
19 Q And are you familiar with the fact that these are
20 bay windows?
21 A Oh, those, yes.
22 Q And so given our earlier discussion --
23 A Yes, some of those --
24 Q -- about people's tendencies to look out bay
25 windows --

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1 A Right.
2 Q -- wouldn't you suggest that they will be able to
3 see the southern facade?
4 A Yes, they will see the northern facade.
5 Q Thank you. We're all friendly here. And the
6 distance from -- and if you move over to this cluster from
7 the most western cluster, the Villages of Bethesda, would
8 you agree that they have a vantage point of the building as
9 well?
10 A Yes.
11 Q Okay. And I assume you're aware, and if nothing
12 else based on this Exhibit 106(d), that Villages of Bethesda
13 is, in fact, supportive of the project?
14 A I can't speak for Villages of Bethesda.
15 Q So you're not familiar with the --
16 A But I am aware of the -- I have seen, yes, I am
17 aware that that is the case, however, I can't speak for
18 their community.
19 Q Okay. Then you're aware that they've written a
20 letter of support and it's part of the record, I don't know
21 the exhibit number off hand?
22 A Yes.
23 Q Okay. But given the proximity, would you agree
24 that that 15-foot setback that is a binding element is
25 probably reasonable and important to the residents of the

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1 Villages of Bethesda given their proximity and the fact that
2 they can see our project?
3 A I can't comment on what they think.
4 Q Are you aware that their letter states that
5 they're supportive of the project if, in fact, there's a 15-
6 foot setback, that that's maintained?
7 A I am aware of that, but the reasoning for that I
8 can't comment.
9 Q I'm just having a hard time understanding why,
10 what is it about the City Homes that merits a set back
11 greater than 73 feet and that there's been suggestion that
12 the setback in distance between Villages of Bethesda and the
13 subject should be less than 15 feet and also given, as we
14 went through our sun orientation previously, that the West
15 Lane project, the subject property is located to the north
16 of the City Homes and the Villages of Bethesda is located
17 north of the West Lane project?
18 A Well, it's sort of interesting. I don't think
19 that -- there's a couple things. First of all, I don't
20 think that the -- I don't know what the conversations were
21 with the Villages of Bethesda, but if there was a step down
22 on the northern exposure, it would change their shadowing on
23 the Villages of Bethesda because it, because your, it would
24 be back.
25 Q True, but --

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1 A But, so that's -- I'm just saying that having seen
2 that.
3 Q Would you agree that --
4 A The difference --
5 Q -- obviously if that were of import to the
6 Villages of Bethesda, they probably would have included such
7 a requirement in their letter of support?
8 A Well, there's a couple of things. One is the -- I
9 don't know what they would have put in their letter of
10 support, so I can't speak to their letter of support. But I
11 think the, in answer to your original question which is the
12 difference, that's the rear of the property. There is no
13 access behind the property. What we're talking about is
14 setback for is both visual setback, but also because
15 Montgomery Lane is a unique mixed use street and it is
16 having to do with the mixed use street that I'm, that at
17 least my point is of the reasoning for the setback.
18 Q Oh, so that the people walking down the street,
19 while the consistent sidewalk and setback which is narrower
20 along the Villages of Bethesda at 4825 and Edgemoor at
21 Arlington North, that's acceptable, but for some reason when
22 the pedestrians walk along West Lane, they should be, allow
23 for --
24 A And that actually --
25 Q -- a wider setback?

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1 A Actually it is not acceptable and I think there's
2 been a lot of discussion about feeling that what is at the,
3 the svelte over the high rise is too tight and that what
4 we're saying is that you don't continue a mistake and that
5 this, and there is also a difference between a 46-foot area
6 and a 78-foot area expanse.
7 Q This project was approved in approximately 2000, I
8 believe, is that correct?
9 MS. ROBESON: When you say, I --
10 MS. HARRIS: I'm sorry, the Highrise Edgemoor --
11 MS. ROBESON: All right.
12 MS. HARRIS: -- was approved in approximately
13 2000?
14 MS. TURNBULL: I believe before that.
15 BY MS. HARRIS:
16 Q Okay, so before -- it was somewhere around 2000?
17 A Oh, no, Highrise Edgemoor?
18 Q The Highrise Edgemoor.
19 A It had to be before that. I think it was before
20 that, but I don't know.
21 Q Okay. And you're familiar with the fact that this
22 was just approved in 2012?
23 A Yep.
24 Q And so you're suggesting that the County Council
25 made a mistake in 2000 or whenever the Highrise Edgemoor was

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1 approved and then just recently in December 2012 they made
2 another mistake, the same exact mistake?
3 A I think that, I think that Highrise Edgemoor was a
4 mistake, that the continuation of a, of the building line
5 would be a mistake on the other side of West Lane.
6 Q And when, the Edgemoor at Arlington North came in,
7 and I believe that was 2008, that was, continued to be
8 another mistake in terms of the setback of the street?
9 A I think it's -- what I'm saying or what I believe
10 is, and I may not be explaining it right, is that I think
11 that Highrise Edgemoor is a mistake and I think that it's a,
12 it's a false argument to say that it is more important to
13 hold the building line than it is to provide a greater
14 setback because of what has occurred on that street and
15 because of the added benefit to pedestrians and to City
16 Homes.
17 Q And I respect your opinion about that, but the
18 Planning Board, which is charged at site plan with
19 determining setbacks, has determined not just in this case,
20 but in 4825 and Edgemoor at Arlington North further
21 recommendations of the sector plan that a continuous
22 building line is important. But you're just saying in your
23 personal opinion the Planning Board and their theories on
24 urban design is wrong?
25 Q No, I'm -- this is the instance and, in fact, the

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1 Planning Board in this case did state that additional
2 setbacks on Montgomery Lane, additional public space on
3 Montgomery Lane was a plus.
4 A Absolutely. And that's why the pocket park was
5 provided and I believe --
6 MS. ROBESON: Okay.
7 MR. ABRAMS: Objection.
8 MS. ROBESON: Is there a question here?
9 MS. HARRIS: Yes.
10 BY MS. HARRIS:
11 Q Didn't the staff acknowledge the fact that the
12 public use space that is provided actually somewhat
13 admitting this word, innovated publicly, but creatively
14 addressed the requirement for providing the public use space
15 on the front at the same time respecting the sector plan
16 recommendation approving the building line?
17 A The planning staff has wanted to maintain the
18 building line.
19 Q And did the Planning Board approve the project
20 with the setback as it, as is established?
21 A Yes.
22 Q Thank you. I'm going to --
23 MR. ABRAMS: Can we have the same instruction on
24 the other side as you gave previously --
25 MS. HARRIS: Well, except that I would note that

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1 during cross-examination of my witness for this entire
2 hearing, notes were going back and forth.
3 MR. ABRAMS: Well, and she explained don't do
4 that.
5 MS. HARRIS: No, I think, I think it was a little
6 different.
7 MS. TURNBULL: Wait. Wait. I didn't see that
8 note.
9 MS. HARRIS: My client was handing me something
10 and just gave me an exhibit that I had asked for her to look
11 at, look for during the break and she finally found it.
12 MS. ROBESON: Okay. It's notes to the witness
13 that is the issue, not notes --
14 MS. HARRIS: I know the rule. I think Mr. Abrams
15 was confused.
16 MS. ROBESON: I wasn't saying anybody didn't know
17 the rule, but it's notes, prompting of the witness that's
18 problematic.
19 MS. HARRIS: Okay.
20 BY MS. HARRIS:
21 Q So we now have found that exhibit, let me just
22 briefly turn to Exhibit 40.
23 A Is it 40(b)?
24 Q 40(b), (a) and (b) it says.
25 A Uh-huh.

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1 Q And then also, and all I can tell you is this is
2 in the record, but I'm not going to be able to tell you what
3 exhibit. It is exhibit, it's Mr. Abrams's December 12th
4 letter submission and it, there's an Exhibit D.
5 MS. ROBESON: Okay. Wait a minute. For the
6 record, the -- let me just take a minute. It must be 101 --
7 is it, oh, December 12th letter submission.
8 MS. TURNBULL: It is --
9 MR. ABRAMS: My prehearing submission is dated
10 December 27th. Is that my --
11 MS. HARRIS: It's a letter to Francoise Carrier,
12 which is then attached to your, it was either that letter or
13 one of your submissions.
14 MS. ROBESON: Okay. I don't see December 12th.
15 Okay, 40, Exhibit 40.
16 MR. ABRAMS: No, it's not Exhibit 40.
17 MS. ROBESON: 40(b)? Is it a design comparison?
18 MS. HARRIS: No, it is -- it just says Exhibit F
19 and then it says Exhibit B in the bottom, right-hand corner.
20 MS. ROBESON: I have 40 as a 12/12/12 letter from
21 Abrams to Francoise Carrier --
22 MS. HARRIS: Yes.
23 MR. ABRAMS: Before it --
24 MS. ROBESON: -- with attachments. And I'm
25 looking at G-954.

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1 MS. HARRIS: Okay.
2 MR. ABRAMS: And that's exhibit what?
3 MS. HARRIS: It's, there's, in the bottom, right-
4 hand corner it says Exhibit D in large letters.
5 MR. ABRAMS: No, but what is that? I'm not
6 questioning that I sent a copy to the Hearing Examiner's
7 office, I just want to know what exhibit number was placed
8 there.
9 MS. HARRIS: That's what it looks like --
10 MR. ABRAMS: That's my exhibit.
11 MS. ROBESON: Hold on. Let me see if I can find
12 it. Okay.
13 MR. ABRAMS: Is that 56?
14 MS. ROBESON: Can I see what you're trying to --
15 referring to?
16 MR. ABRAMS: Yeah. Exhibit 56(a).
17 MS. ROBESON: I have it as 40(d).
18 MR. ABRAMS: Well --
19 MS. ROBESON: It may be two places.
20 MR. ABRAMS: It is.
21 MS. ROBESON: Okay.
22 MR. ABRAMS: 56(a) says copy of his, meaning me,
23 letter dated 12/12 with attachments, parens, "See Exhibit
24 No. 40," closed parens.
25 MS. ROBESON: Okay. Well, it's both 40(d) and 56.

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1 MS. HARRIS: Okay.
2 MS. ROBESON: So now that we've identified it --
3 BY MS. HARRIS:
4 Q That's a lot of scrambling for the point we're
5 about to make, which is can you please go back to your 4th
6 grade geometry and identify the shape of the SK9 logo on the
7 bottom, right-hand corner?
8 A The rectangle.
9 Q A rectangle?
10 A Uh-huh.
11 MS. ROBESON: Okay.
12 MS. TURNBULL: A rectangle.
13 BY MS. HARRIS:
14 Q Okay. Let's get a little more precise.
15 A Okay.
16 MS. ROBESON: It's either a rectangle or --
17 MS. TURNBULL: Or a square.
18 MS. ROBESON: -- or a square.
19 MS. TURNBULL: And I believe that this particular
20 one --
21 MS. ROBESON: Without a scale --
22 MS. HARRIS:
23 BY MS. HARRIS:
24 Q Okay. Why don't you scale it off, and if you need
25 a real scale, we can provide you one and then you can

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1 pinpoint whether it's a rectangle --
2 A Okay. I have --
3 Q -- or a square.
4 A I have -- okay, I will look at it. Okay. Yes,
5 it's a rectangle.
6 MS. ROBESON: There may --
7 MS. TURNBULL: Okay. Let me --
8 MS. ROBESON: Is there another way to get at this?
9 BY MS. HARRIS:
10 Q I, can you compare, just simply compare the logo
11 on Exhibit D to the logo on Exhibit E and explain to me the
12 difference in the shape of the square of the logo?
13 A Okay. There are -- that is a rectangle that is,
14 looks more like a square than the other one, than the other
15 rectangle.
16 MS. ROBESON: So what you're saying is --
17 MS. TURNBULL: They're both rectangles.
18 MS. ROBESON: -- it's more elongated than the one
19 on --
20 MS. TURNBULL: Right. Yeah.
21 MS. ROBESON: -- 40(d)?
22 MS. TURNBULL: Right.
23 BY MS. HARRIS:
24 Q And if the logo on 40(a) is elongated, in the
25 Hearing Examiner's words that means stretched --

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1 A Uh-huh.
2 Q -- from top to bottom, wouldn't you believe that
3 that could actually reflect a distortion in this image which
4 I would note is reproduced?
5 MS. ROBESON: The image on --
6 MS. HARRIS: On 40(a).
7 MS. ROBESON: -- the upper-right image?
8 BY MS. HARRIS:
9 Q The upper-right image?
10 A No, I would not say that because I'm, I actually
11 am familiar with many organizations, offices that have
12 multiple logos. So some of them are rectangular and some of
13 them are squares and some of them might be circles. It's
14 dependent on what piece of material it is attached to.
15 Q Well, let the record reflect that this is a
16 distortion --
17 MS. ROBESON: No, no, no, you can't say that.
18 MS. HARRIS: Let me just note that the logo --
19 MS. ROBESON: On one is more --
20 MS. HARRIS: Elongated than the other.
21 MS. ROBESON: Yeah.
22 BY MS. HARRIS:
23 Q And you can draw your own conclusions. Okay.
24 We've -- I think everyone has established that there is no
25 requirement about not, about concluding being able to see

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1 another building and you have stated, in fact, that the
2 residence of City Homes will be able to see the subject
3 building, correct?
4 A Yes.
5 Q And then you also testified that in response to
6 the Hearing Examiner's question that one reason that the
7 residence did not oppose 4825, that is, that was approved
8 with the height of 65 feet at the street is because it's
9 across from a parking meter, correct?
10 A Well, there are a couple of things.
11 Q No, I'm just concerned about the relation of the
12 parking mews to the building. Is there parking mews across
13 from 4825?
14 A Right, except that you said that the building was
15 65 feet. The building isn't 65 feet, so --
16 Q Excuse me. At the beginning of your question
17 is --
18 A Okay.
19 Q -- at the time of zoning, the application was --
20 A It was approved --
21 Q For?
22 A It was approved for 65 feet.
23 Q And at the time of a determination of whether the
24 City Homes was going to object or in any way oppose 4825,
25 what was the proposed height?

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1 A 65.
2 Q Thank you. And what is immediately across the
3 street, across Montgomery Lane to the south from --
4 A The driveway.
5 Q The driveway? And --
6 MS. ROBESON: From 4825?
7 MS. HARRIS: From 4825.
8 MS. TURNBULL: 4825, a driveway.
9 BY MS. HARRIS:
10 Q And what is immediately across the street, there
11 are two, we established there are two sticks of City Homes
12 and then there's also a parking mews across from West Lane,
13 from the subject property, correct?
14 A Yes, there is someone, yes.
15 Q Okay. And if I could refer to Exhibit 61? It is
16 an old exhibit which is a photo taken of the parking mews
17 across from 4825 Can you identify for me the number of
18 these? Which of those units have bays and which ones do not
19 have bays?
20 A One, two, three, four, five, six have bays and
21 eight have bays.
22 Q Okay. And I think in your testimony you said,
23 well, one of the reasons we didn't object to the Sandy
24 Spring Bank, Sandy Spring, 4825 was because it was across
25 the street from the parking mews, but would you not agree

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1 that those bays would provide views of 4825 given that, as
2 we discussed before --
3 A Right. They --
4 Q -- with bays, you're looking out sideways?
5 A They would provide views.
6 Q Okay. Well, let's move over to 48, to the parking
7 mews across the street from the subject building.
8 A Uh-huh.
9 Q And I believe yesterday you testified that, I mean
10 the City Homes there's a variation of design that only one
11 of the units on either side of this parking mews has a bay,
12 is that correct? And we have an exhibit to show that if you
13 need your memory refreshed.
14 A I would need to see the exhibit.
15 Q Well, here's a photo, but in the meantime I'll
16 give it to you as a separate exhibit.
17 A One has a bay. They all have balconies.
18 Q Right. Okay. But I think the discussion has been
19 about views from inside the house. The discussion this
20 morning --
21 A The discussion has been --
22 Q -- and the testimony --
23 A -- about from inside of the house.
24 Q Correct.
25 A But it, I also did have testimony of standing at

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1 my front door.
2 Q Correct, but this is, well, this is a front view.
3 A Standing at my front door is outside my house.
4 These balconies --
5 Q Correct.
6 A -- are --
7 Q Oh, it's non-disputable that if you're on the
8 balcony you'll be on the stairs. I don't think we're
9 arguing, we're not discussing that it's the views from
10 inside the house.
11 A Okay.
12 Q So given that there's -- so given the fact that
13 there are bays across the street from the Sandy Spring
14 Builders project and there is only one bay across the street
15 from the subject property. Which row of units would you, do
16 you think have a more visible view of the buildings?
17 A Well, the difference is that the only view from
18 the, from those two, from the second and third units, sticks
19 from the east of the building is the rear view. That's the
20 only view. And from the other buildings, there is a
21 combination of rear and front views.
22 Q Okay. So moving along to the furthest stick to
23 the west, looking out their front windows, they have views
24 of the building?
25 A No, they don't.

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1 Q Okay. And moving to the second from the west,
2 looking out their front windows, do they have views of the
3 building?
4 A Just the end units in both of those actually.
5 Q And, in fact, what do they see primarily, the
6 pocket park which is set back 28 feet, correct?
7 A No, I don't think that's correct because the two
8 units in the front, the unit in the front is facing, is
9 facing the whole building. It's -- you're not just going to
10 look out at the parking, at the pocket park, you see the
11 whole, you can --
12 Q So this unit, the second row in looking --
13 A No, I'm not talking about the second --
14 Q When you views east, they have, they can --
15 A What are you talking about? I'll show you. This
16 unit --
17 MS. ROBESON: This unit --
18 MR. ABRAMS: Describe what this is?
19 BY MS. HARRIS:
20 Q This unit which is the third building, no, it's
21 the second building --
22 A Oh, I'm sorry, the second building --
23 MS. ROBESON: From the west.
24 MS. TURNBULL: -- from the west has a view out,
25 from their front door --

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1 BY MS. HARRIS:
2 Q Okay.
3 A -- and the windows adjacent, they can see the
4 building --
5 Q Okay.
6 A -- and --
7 Q Right, of course, they can.
8 A -- the same building. That's the first unit --
9 Q Okay.
10 A -- in each one.
11 MR. KNOPF: Let the record reflect she's pointing
12 toward the entire width of the building.
13 MS. TURNBULL: The first unit in this building
14 also looks at the building --
15 MS. HARRIS: Right.
16 MS. TURNBULL: -- from the front, their primary
17 view. From the third stick, every --
18 MS. ROBESON: From the west?
19 MS. TURNBULL: -- from the, basically the middle
20 stick, this building, this, the first house has a view of
21 West Lane this way.
22 BY MS. HARRIS:
23 Q Right, but they also have a view of Sandy Spring,
24 correct?
25 A They do have a view of Sandy Spring.

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1 Q And what's the height of that -- how, what was the
2 height when that building was approved at zoning?
3 A Sixty-five.
4 Q And what's the height of this building at the
5 street line?
6 A At the street line it's 50, I believe.
7 Q Right. Okay. So they can see that building at 65
8 and they can see that building at the street line, it's 50
9 and then it steps back to its maximum height of 70?
10 A Correct.
11 Q Okay.
12 A And that's assuming that the height, right, the --
13 and for these purposes we're talking about the heights as
14 the building height, not the actual viewing height.
15 Q Can you repeat what you just said please?
16 A Yes. Because City Homes is lower than the other
17 side of the street, when you say 50, 50 is not 50, 50 is 50
18 plus.
19 Q Right, 50 --
20 A And the same thing goes for the 70 is the 70 plus.
21 Q And --
22 A So the, and, in fact --
23 Q Right. So an elevation difference of three feet
24 viewed 70, from a distance of 73 feet is apparent to
25 anyone's eye?

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1 recommends and what's illustrated by this higher line on
2 Exhibit 79?
3 A We do not and I note --
4 MS. ROBESON: Well, you've got to ask a question.
5 MS. HARRIS: Okay.
6 MS. ROBESON: I'm not sure --
7 BY MS. HARRIS:
8 Q If a building, the height of the Sandy Spring
9 building were constructed at approximately the location of
10 where the pocket park is on the subject property, would you
11 not, would you agree that that falls within the line of that
12 tent?
13 A Well, it's how you have drawn this down.
14 Q Okay. Let's stay conservative and draw the tent
15 from the Highrise Edgemoor, but again the tent, would you
16 not, you just --
17 A Right.
18 Q -- let me back up.
19 A Okay. But basically --
20 MS. ROBESON: No, stop.
21 MS. TURNBULL: Okay.
22 MS. ROBESON: There's too much cross-talking. You
23 let, have to let her --
24 MS. TURNBULL: Okay. I'll have to let --
25 MS. ROBESON: -- finish and then you can answer.

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1 MS. HARRIS: Okay.
2 MS. ROBESON: Okay? Go, Ms. Harris.
3 BY MS. HARRIS:
4 Q I'm going to back-up for a moment. We previously
5 established, and you agree, and I think the number of people
6 have said tenting is provide tenting from the urban, from
7 the Metro core is the term to the edges of the sector plan
8 area, correct?
9 A Yes.
10 Q Okay. So that would suggest that you start your
11 tent, you start from the Metro core and that is illustrated
12 by this top line on Exhibit 79?
13 A But --
14 Q The question is --
15 A Okay.
16 Q -- if one were to construct a similarly a building
17 with a similar height as 4825 and across to the west of West
18 Lane, would it not fall within that tent line, that's the
19 question?
20 A I actually believe it would not fall in within
21 that tent because I do not believe that that line is
22 starting at the proper place in the urban core because you
23 can see a building in front of it which is really the
24 building on Montgomery Lane. That building that you're
25 showing is not on Montgomery Lane.

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1 Q No, in fact, and I can understand your confusion,
2 but just like using differential in colors or what's inside
3 of these other buildings, that's the facade illustration of
4 the building that sits at the corner of Montgomery Lane and
5 Woodmont.
6 A Okay. So the building that sits at the facade
7 location on Montgomery Lane is the lower level, is that what
8 you're saying to me? That's my question.
9 MS. ROBESON: No, wait. Okay. Back up.
10 MR. KNOPF: Yes.
11 MS. ROBESON: There, I think that there are too
12 many assumptions in your question and it's yielding --
13 MS. HARRIS: Well, I've tried not to do it --
14 MS. ROBESON: -- argument. I do, but you can
15 simply say does it fall within those two lines and then you
16 can argue that those are the applicable endpoint and start
17 points of the lines. I'm not --
18 MS. HARRIS: Does it say anything --
19 MR. KNOPF: Excuse me, I have an objection. I
20 believe the, Ms. Harris is inadvertently mistaking something
21 and I think the record needs to reflect that. You keep
22 referring to that large building as being on Montgomery
23 Lane. I think we established --
24 MS. HARRIS: Oh, Montgomery Avenue, excuse me.
25 MR. KNOPF: -- it's Avenue. And it's very

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1 important.
2 MS. HARRIS: I think that's a distinction without
3 a difference, but duly noted.
4 MR. ABRAMS: It's a four lane wide road.
5 MS. ROBESON: Well, okay.
6 MS. HARRIS: Montgomery Avenue and Woodmont
7 Avenue.
8 MS. ROBESON: Right. What you're referring to,
9 what Exhibit is that?
10 MS. HARRIS: Exhibit 79.
11 MS. ROBESON: Is -- you're pointing to a line from
12 the white building on the furthest right down to Arlington
13 Road --
14 MS. HARRIS: Correct.
15 MS. ROBESON: -- Woodmont Avenue and Montgomery
16 Avenue. Okay. So --
17 MS. HARRIS: I'll simply the question.
18 MS. ROBESON: Yes, I think there, it's --
19 BY MS. HARRIS:
20 Q Do you agree that the Sandy Spring, 4825 is lower
21 than either red line established on Exhibit 79?
22 A Yes.
23 Q And if one were to duplicate 4825 on the west side
24 of West Lane, so essentially put another building with a
25 similar height on the other side of 4825 where my finger is

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1 indicated, is that below both red lines on Exhibit 79?
2 A At 65 feet, it is below both lines.
3 Q Thank you. Thank you. The Edgemoor at Arlington
4 North -- the Edgemoor at Arlington North and the Edgemoor at
5 Arlington as shown on Exhibit 106(c) are recommended, as we
6 noted, the purpose of this exhibit is to reflect where these
7 zoning height recommendation line is in the sector plan.
8 These, the two buildings I referenced are in what, in what
9 height --
10 A 35.
11 Q -- recommended then? And if I refer to Exhibit
12 106(b), well, actually we can keep the same exhibits because
13 the information is the same. If you refer to this exhibit,
14 the indicated heights of those two buildings -- you may want
15 to come up here to read this. The height at, the maximum
16 height at Edgemoor at Arlington North is --
17 A The max is the maximum height --
18 Q Right.
19 A -- not the only height.
20 Q No, that's correct.
21 A And the maximum height, not the only height, is
22 46.
23 Q Similarly, the maximum height of this building is
24 78, but it's not the only height, would you agree with that?
25 A Uh-huh.

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1 Q Okay. And are you familiar with the, and I'm
2 going to refer to the Edgemoor at Arlington North because we
3 have the benefit of the plans for that site, but are you
4 familiar with the step back of that, of that appears at
5 Edgemoor at Arlington North along Arlington Road --
6 A Actually --
7 Q -- the depth of it?
8 A Actually I'm not familiar.
9 Q Would you be surprised to hear that it's 10 feet?
10 MR. ABRAMS: Objection. She said she's not
11 familiar with it.
12 MS. TURNBULL: I'm not familiar with it.
13 MS. ROBESON: Okay. All right. She can ask would
14 you be surprised to hear, but --
15 BY MS. HARRIS:
16 Q Okay. Were you aware that the step down along
17 Montgomery Lane is a depth of 15 feet?
18 A The step down, because I --
19 Q You were not aware of that?
20 A I didn't concentrate on those facts.
21 Q And what is the step back of the proposed?
22 A 12.
23 Q 12? Thank you. How would you describe the FAR?
24 A How would I --
25 Q Are you familiar with the term FAR, floor area

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1 ratio?
2 A Full area ratio. It is the, it is a mathematical
3 computation of the plan what, at plan and then elongated
4 into the -- it's what the building density is. It's a
5 building density compilation.
6 Q Okay. And it's -- would you agree that it's the
7 relative square footage within a building as it relates to
8 the size of the lot I want you to --
9 A Yes.
10 Q -- locate?
11 A I --
12 Q So it is the measure of density in the County, is
13 that correct?
14 A Yes.
15 Q Okay. And what is the FAR, proposed FAR 4901
16 Hampden Lane?
17 A 3.05.
18 Q Correct. And is the proposed density of Hampden
19 Lane 3.05?
20 A Yes.
21 Q And the, similar to at least two projects, oh, and
22 is the -- and the density within the Highrise Edgemoor is --
23 A Significantly more --
24 Q Okay.
25 A -- but the, it --

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1 Q All I'm worried about is building mass and FAR.
2 A Okay. But the FAR with --
3 Q Right. We all know it was a combined application.
4 A It was a combined application and so --
5 Q Absolutely.
6 A -- was the total, the FAR --
7 Q Yes.
8 A -- the whole project.
9 Q And the FAR of the West Lane building proposed --
10 A Your proposal --
11 Q -- is 3.05?
12 A -- is 3.05.
13 Q So really the proposed density is no different
14 than 4901 or Hampden Lane, is that correct, they're all 3.05
15 comparable density? Or I should say exact same identical
16 density?
17 A They are for buildings not entering on Montgomery
18 Lane.
19 Q Though, then, and does 4901 have frontage on
20 Montgomery Lane?
21 A It does not have an entrance on Montgomery.
22 Q It has frontage?
23 A It has frontage.
24 Q Thank you. And all those projects, another
25 similarity in addition to the density is the fact that

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1 they're all proposing to provide 15 percent MPDU's, correct?
2 A Yes.
3 Q I want to go back just for one second about the
4 setbacks. So just to -- so you were not aware of the
5 distance, the depth of the setback for the Edgemoor at
6 Arlington North. Are you, were you familiar with the step
7 back at Edgemoor at Arlington?
8 A I don't know the exact measurement, but I'm
9 familiar from walking it.
10 Q And do you think when there's a building that's 48
11 feet in height versus a building that is 50 feet in height,
12 that you would be able walking down the street to note that
13 one has a step back of 12 feet versus a step back of 15
14 feet?
15 A Walking down the street? No, I probably would
16 not.
17 Q Okay. You noted, and we touched on this, but I
18 just want to go back for a moment. You noted yesterday, and
19 you said it again today, that the Highrise Edgemoor was
20 probably a mistake, correct?
21 A Uh-huh.
22 Q A big mistake.
23 A A big mistake.
24 Q And so was it a mistake --
25 A No offense to my neighbors, of course.

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1 Q Was it a mistake that the County Council approved
2 4825 which sits just 23 feet from the 100-foot high
3 Edgemoor?
4 A I think it's very different from the sampling of
5 the, to build on 4825 Montgomery Lane there are very few
6 options and I think that they did what they could on that
7 lot.
8 Q Okay. And was it a mistake when the County
9 Council approved 4901 and then reapproved it in, 4901
10 Montgomery Lane and then reapproved it just several months
11 ago and it sits back 48 feet from the City Homes?
12 A I think you have to look at it in context of the
13 whole, the whole design and the whole element.
14 Q And, similarly, is it a mistake that there's zero
15 setback between the City Homes and the Hampden Lane project?
16 A Do I think that's a mistake? Yes, I do think
17 that's a mistake. And actually the Hearing Examiner thought
18 it was a mistake and it's in his recommendation --
19 Q Okay. Right.
20 A -- to the --
21 Q And did the District Council think it was a
22 mistake?
23 A The District Council was acting in 2006. Today
24 we're sitting in 2013.
25 Q Okay. Did the Circuit Court think it was a

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1 mistake?
2 A I guess not.
3 Q And did the Court of Special Appeals think it was
4 a mistake?
5 A I guess it didn't.
6 Q Okay. If, in fact, this were a mistake, then
7 why --
8 MS. ROBESON: This is --
9 BY MS. HARRIS:
10 Q I'm sorry, the Highrise Edgemoor in that it, I
11 guess in assuming, in noting that it's a mistake, I guess I
12 would suggest that it may be not compatible, it may be
13 offensive to some, would you agree with that?
14 A I don't think it would be.
15 Q Well --
16 A No, I wouldn't agree with that.
17 Q So what makes it a --
18 A I would --
19 Q -- mistake?
20 A That the first, that what is a mistake to me, it,
21 because it was a built, it was a planned decision to do that
22 and I think if they would have looked at it again, they may
23 have not allowed that building to be as big.
24 Q Because it goes to compatibility?
25 A Because it, because it goes to compatibility from

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1 the, only from the standpoint of the, as far as I'm
2 concerned the setback.
3 Q From --
4 A Yeah.
5 Q -- the street?
6 A Yes, from the street and the number of units
7 because the street is clogged by the constant movement of
8 all of these units.
9 Q Were you -- the 52 units that are in there today,
10 correct?
11 A The combination of 52 --
12 Q Okay.
13 A -- plus 29 right now is a lot of units.
14 Q Okay. That's interesting, because I assume you're
15 aware that the Highrise Edgemoor was actually approved for
16 149 units? Were you aware of that?
17 A Actually, and I think that would have been even a
18 bigger mistake.
19 Q Apparently the County Council didn't think so.
20 A I think they're making a huge mistake.
21 Q So if this were a mistake, why do, why are homes
22 in, that are for sale in City Homes continuously sell for --
23 MR. ABRAMS: Objection.
24 MS. ROBESON: Yes, that is beyond the scope of
25 what she's testified to.

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1 MS. HARRIS: Okay.
 2 BY MS. HARRIS:
 3 Q Were you aware that, actually you mentioned this
 4 and I'm sure you're aware of this, that the City Homes
 5 application was actually amended to include the Highrise
 6 Edgemoor?
 7 A Uh-huh.
 8 Q So it was an amendment of an existing application
 9 that had more land area? Okay. And the Edgemoor at
 10 Arlington North, were you aware that that actually was an
 11 amendment to add more land area?
 12 A Yes.
 13 Q Can you please read number on page 85 of the
 14 sector plan, recommendation No. 1?
 15 A Okay. "Permit projects with a minimum lot size of
 16 18,000 square feet to encourage smaller scale projects.
 17 Projects should not leave isolated parcels."
 18 Q Absolutely perfect. Okay. And you testified
 19 yesterday that people along the street have an expectation
 20 of what's going to happen, had an expectation about what was
 21 going to happen on the subject property, correct?
 22 A Uh-huh.
 23 Q And yet we just acknowledged the fact that we were
 24 aware, and you moved in fairly recently, correct, and you
 25 are even aware that this had an amendment to add more land

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1 area and that the Edgemoor at Arlington North had land area
 2 to, amended its application to include more land area?
 3 A No, I, well, no. And actually I wasn't --
 4 Q You discussed a bunch of that.
 5 A You just -- I wasn't, I am aware now. I wasn't
 6 aware when I purchased the property.
 7 Q No, of course.
 8 A But you just asked me if, when you --
 9 Q How long have you lived in your house?
 10 A I've lived in my house a year, approximately
 11 almost a year.
 12 Q A year? So if someone has lived in their house a
 13 year knows that information, presumably people that have
 14 lived here and longer probably also know that.
 15 A Right, but the information that I also knew was
 16 that --
 17 MR. KNOPF: That's --
 18 MS. ROBESON: That's calling for speculation.
 19 MS. HARRIS: Okay. Okay.
 20 MR. ABRAMS: Yes.
 21 MS. ROBESON: Save that for argument.
 22 MS. HARRIS: Okay.
 23 MS. TURNBULL: She -- okay.
 24 MS. HARRIS: Okay. So --
 25 MS. ROBESON: Just don't answer.

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1 BY MS. HARRIS:
 2 Q Given the layout of the Holladay project, which we
 3 all acknowledge left the isolated Wolf project --
 4 A Uh-huh.
 5 Q -- and --
 6 MS. ROBESON: Is this Lot 26?
 7 MS. HARRIS: Lot 26, sorry.
 8 MS. ROBESON: That's okay.
 9 BY MS. HARRIS:
 10 Q Lot 26, and if one were to have read the sector
 11 plan, wouldn't one have a reasonable expectation given what
 12 else has happened on this street to assume that perhaps the
 13 Holladay approval could be amended to include that isolated
 14 project?
 15 A I don't know. I don't know if one would have the
 16 reasonable expectation that it would be because actually the
 17 opposite. One would, I would think one would look at it,
 18 and I did certainly, thinking, okay, these people at the Lot
 19 26 probably could have been going into the other project and
 20 when the other parcels were combined --
 21 MS. ROBESON: What other project?
 22 MS. TURNBULL: The Holladay project.
 23 MS. ROBESON: Oh.
 24 MS. TURNBULL: It could have been part of that
 25 then and chose not to. They may had, they could have had a

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1 living trust saying that they couldn't do it. They could
 2 have had a decision that they wanted to keep the parcel for
 3 historic purposes. I mean I --
 4 BY MS. HARRIS:
 5 Q How many years were you on the board of appeals?
 6 A Four years.
 7 Q And you've lived in Montgomery how long,
 8 Montgomery County how long?
 9 A Well, because --
 10 Q Wait. How long have you --
 11 MS. ROBESON: Just --
 12 BY MS. HARRIS:
 13 Q -- lived in Montgomery County?
 14 A Since 1979.
 15 Q And so you're telling me that one would have
 16 driven down that street and looked at the Wolf house and
 17 think that it would have been registered, that it had
 18 potential for historic designation?
 19 A No, I'm not saying historic designation. I'm
 20 saying for a family, historic viewpoint. I mean I --
 21 Q It's used for an office, correct?
 22 A It is used for an office, but regardless you don't
 23 know what kept it from the assemblage in the first place.
 24 And so you, you don't, you can't speculate on what, what's
 25 going to come.

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1 Q No, but I think it's safe to --
2 MS. ROBESON: Well, it's not about what you think.
3 MS. HARRIS: Okay.
4 MS. TURNBULL: No.
5 BY MS. HARRIS:
6 Q Okay. Okay. Okay. Even if one, even if one were
7 to think, no, that it potentially may be, it wouldn't be
8 amended to include that, don't you think that there would be
9 a reasonable expectation that that property could be
10 redeveloped just as the Sandy Spring 4825 had been
11 redeveloped?
12 A No, because the other property, the Holladay
13 property, which was the approved property had been approved
14 with a plan where the entrance to the building was farther
15 back and so it would have been unlikely that a building the
16 size of Sandy Spring would be in front of it.
17 Q That's interesting.
18 A But it's --
19 Q That's your opinion. I understand that.
20 A Okay. Okay.
21 Q What, and do you recall --
22 A I have to say I haven't thought about that before,
23 but you, you raised the question and that's my answer.
24 Q What is the -- you testified yesterday as to the
25 Hampden Lane right-of-way, do you recall Hampden Lane?

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1 A Yes.
2 Q What's the right-of-way on Hampden Lane?
3 A What? What is it?
4 Q Yes, the main one.
5 A I said that it, it is four lanes at a certain
6 point, portion in front of the parking lane.
7 Q And then I think you gave a dimension, do you
8 recall?
9 A I never gave any dimension.
10 Q Can you review your notes?
11 A I never gave a dimension.
12 MS. ROBESON: I don't have the transcript.
13 MS. TURNBULL: I said four lanes. I did not give
14 a dimension.
15 MS. HARRIS: I believe --
16 MS. ROBESON: Well, it's no --
17 BY MS. HARRIS:
18 Q Do you recall stating that the Hampden Lane right-
19 of-way was approximately 70 feet?
20 A No, I did not say that. I said --
21 MS. ROBESON: I don't, I don't --
22 MS. HARRIS: Okay.
23 MS. ROBESON: -- recall it, but --
24 BY MS. HARRIS:
25 Q Are you familiar with the sector plan that

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1 recommends a 60-foot right-of-way for Hampden Lane?
2 A Yes.
3 Q Okay. And I also believe that you testified that
4 across the street there would never be any residential area,
5 is that correct?
6 A I testified that across the street there is
7 commercial. I did not testify that across the street would
8 never be residential.
9 Q Are you familiar with the fact that the zoning
10 ordinance would, in fact, permit residential across the
11 street?
12 A Sure.
13 Q You are familiar with that?
14 A But what is existing --
15 Q Right.
16 A -- across the street.
17 Q What's existing, but --
18 A And --
19 Q -- the --
20 A But what is existing is exclusively commercial,
21 so --
22 MS. ROBESON: Okay.
23 MS. HARRIS: Okay.
24 MS. ROBESON: She --
25 BY MS. HARRIS:

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1 Q I want to refer to the Hampden Lane elevation.
2 Are you aware of the fact that the penthouse for Hampden
3 Lane is located right along the street front?
4 A Yes, I am.
5 Q And are you aware that it's a 15-foot penthouse?
6 A Yes.
7 Q And the building, are you aware of what the
8 building height was approved for?
9 A Yes.
10 Q And that was?
11 A That was 71, but in the testimony of the --
12 Q No, I think that's all I wanted to know, that it
13 was approved for 71 feet. And the penthouse is 15 feet?
14 A Yes.
15 Q So the total building frontage along Hampden Lane
16 is what, 71 plus 15?
17 A No. It's 71.
18 Q No, plus the height, the approved height for the
19 Hampden Lane building is 71 feet? There's additional
20 information in the record that indicates that the penthouse
21 is an additional 15 feet.
22 MS. ROBESON: Oh, you said frontage.
23 MR. ABRAMS: You said frontage.
24 MS. ROBESON: You mean height.
25 MS. TURNBULL: You said frontage.

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1 MS. HARRIS: I'm sorry.
 2 MS. TURNBULL: Yeah.
 3 MS. HARRIS: My --
 4 MS. ROBESON: So the actual --
 5 MS. HARRIS: Height.
 6 MS. ROBESON: -- what you're getting at is the
 7 actual height?
 8 BY MS. HARRIS:
 9 Q Height is 86 feet at the building line?
 10 A At the building line.
 11 Q Correct. And what is the height of the subject
 12 building at the building line?
 13 A 70 --
 14 Q At the building line?
 15 A At the building line?
 16 Q The applicant's project --
 17 A Uh-huh.
 18 Q -- at the building line is what height?
 19 A 70 feet.
 20 Q No, I'm sorry, at the building line. Standing at
 21 the --
 22 MS. ROBESON: What is the building line? The
 23 building measuring point?
 24 MS. TURNBULL: Oh, oh, you're talking at the
 25 street?

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1 MS. HARRIS: At the street line. If you're
 2 standing, where the building line intersects with the ground
 3 and you go straight up --
 4 MS. ROBESON: On Montgomery Road.
 5 MS. HARRIS: -- on Montgomery Lane and --
 6 MS. TURNBULL: Montgomery Lane is 50.
 7 BY MS. HARRIS:
 8 Q Is 50? And what did we say that was, 86? At
 9 the --
 10 A We, is --
 11 Q Is it correct that we just established --
 12 A Well --
 13 Q -- that the height --
 14 A Actually --
 15 Q -- of Hampden Lane to the top of the penthouse is
 16 86 feet?
 17 A If the penthouse is at the building line. Is the
 18 penthouse --
 19 Q Yes, it is.
 20 A -- at the building line?
 21 Q Yes. And the --
 22 A It doesn't look that --
 23 Q -- record reflects it and there's information in
 24 the record.
 25 MS. ROBESON: Well, okay, but this is your time to

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1 ask questions --
 2 MS. HARRIS: Okay.
 3 MS. ROBESON: -- not --
 4 MS. TURNBULL: I, okay. And basically looking at
 5 that drawing, I do not believe that it is 86.
 6 MS. HARRIS: If you give me a moment, it would be
 7 helpful to refer to the sections in the record that state
 8 that.
 9 MS. ROBESON: I mean if you need to --
 10 MS. HARRIS: I can provide that later for --
 11 MS. ROBESON: Yes.
 12 MS. HARRIS: -- efficiency purposes.
 13 MS. ROBESON: I mean --
 14 MS. HARRIS: That's fine.
 15 BY MS. HARRIS:
 16 Q Do you have one of the, do you have the largest
 17 home in the City Homes?
 18 A I have one of the two largest homes, yes.
 19 Q And you live at 48 --
 20 A 38.
 21 Q And can you please identify for me on the --
 22 what's the approximate square footage of your house, your
 23 home?
 24 A 3,000.
 25 Q And you noted that there was one other in the City

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1 Homes that is also 3,000?
 2 A Right.
 3 Q Would it surprise you to hear that the state
 4 records indicate that approximately, that 14 of the 29 units
 5 in City Homes are 2,400 --
 6 MR. ABRAMS: Objection. There was no testimony
 7 relating to that issue.
 8 MS. ROBESON: What is the relevance of your line
 9 of questioning to her direct testimony?
 10 MS. HARRIS: It has to go to the issue of non-
 11 conformance with the sector plan, which I think we heard
 12 lots of testimony on that, that the subject property, the
 13 subject application was not consistent with recommendations
 14 of the sector plan.
 15 MS. ROBESON: In what way? I mean I don't recall
 16 size of units.
 17 MR. ABRAMS: Yes, I don't --
 18 MS. HARRIS: No, no, I think I heard in terms of
 19 diversity. That's a recommendation of the sector plan.
 20 MS. ROBESON: Was that her testimony? I don't
 21 recall --
 22 MR. ABRAMS: Not her testimony.
 23 MS. ROBESON: -- her testifying. There was
 24 testimony, I do recall that, but I don't recall it being her
 25 testimony.

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1 MS. HARRIS: Okay.
2 BY MS. HARRIS:
3 Q I want to show you a number of images from
4 applicant's original filing and note whether, and you can
5 answer yes or no to these. And actually I'd like to refer
6 to the anticipating three of them, I would like to refer to
7 the May, the original filing in this case which was in May
8 of this year and then their applications had to be refiled.
9 MS. ROBESON: You mean to the prior application --
10 MS. HARRIS: Yes.
11 MS. ROBESON: -- G-912? Okay.
12 MR. ABRAMS: I don't know. What relevance does
13 that have? This is a new application.
14 MS. ROBESON: That's my question as well.
15 MS. HARRIS: Because it goes to the fact of the
16 number -- there was testimony that the applicant has not
17 been responsive to the community. And when this process
18 started back in April, and probably before that, I want to
19 identify the proposal as it existed when the application
20 process started versus how it has transformed and evolved in
21 the course of almost 10 months, or 12 months.
22 MS. ROBESON: Okay. Can, before we go there, I
23 know there's been testimony on that, but the responsive, the
24 responsiveness of the applicant to the community concerns is
25 not going to influence my decision. My decision is going to

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1 be based on the criteria in the code. And even though we
2 have some testimony, I mean normally I let it in because,
3 you know, once in awhile it happens for impeachment
4 purposes, but I don't want to get into an extensive cross-
5 examination on it. I don't think it's relevant.
6 I can see how the design has changed from, you
7 know, the original application to here. Whether it's as the
8 result of the community or the Planning Board, my concern is
9 does it meet the master plan.
10 MS. HARRIS: My concern is that there were
11 suggestions throughout the testimony that the applicant, in
12 fact, has not been cooperating with the community.
13 MS. ROBESON: I heard those.
14 MS. HARRIS: Exactly.
15 MS. ROBESON: But it's --
16 MS. HARRIS: That's my concern.
17 MS. ROBESON: What?
18 MS. HARRIS: That's my concern, that I wanted to
19 introduce evidence to indicate how, in fact, the applicant
20 has been responsive to the community.
21 MS. ROBESON: But you would do that, if you want
22 to do that, you can do that affirmatively on rebuttal. Do
23 you need to do it on cross, because I don't want to spend a
24 lot of time -- I'm not trying to shut you down --
25 MS. HARRIS: Okay.

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1 MS. ROBESON: -- from your case. I just am trying
2 to figure out where to get the most bang for the buck given
3 that, you know --
4 MS. HARRIS: I understand.
5 MS. ROBESON: -- we only have one more day of
6 hearing. So, and I --
7 MS. HARRIS: Actually, we may have --
8 MS. ROBESON: -- will tell --
9 MS. HARRIS: Go ahead.
10 MS. ROBESON: Two more, right. And I want to get
11 through this case.
12 MS. HARRIS: I understand. I can agree with that.
13 MS. ROBESON: And if, you know, sometimes it does
14 influence me as far as -- but this is not one of those times
15 that it's going to influence me a lot so far.
16 MS. HARRIS: So can I, then I'll summarize -- I'll
17 ask one summary question.
18 MS. ROBESON: Well, as long as you're not
19 testifying, because I just --
20 MS. HARRIS: No, it's a summary question.
21 BY MS. HARRIS:
22 Q Could you please review Exhibits 13 through 20 of
23 the binding elements on the current sector, on the current
24 development --
25 MR. ABRAMS: Do you have a copy?

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1 MS. HARRIS: -- plan?
2 MS. ROBESON: Here, you can use mine. Mine is
3 106(a).
4 MS. TURNBULL: I actually went through these one
5 by one.
6 BY MS. HARRIS:
7 Q Right. You can -- are you, let me just ask. Are
8 you aware that binding elements 13 through 20 were proffered
9 by the applicant only in response to communications,
10 concerns and discussions with surrounding neighbors or
11 concerns expressed by the Planning Board?
12 A One or the other, or both --
13 Q Correct.
14 A -- is what you're saying? I believe it is one or
15 the other or both.
16 Q Thank you. Okay. That's fine.
17 MS. ROBESON: Okay.
18 MS. HARRIS: And then I will ask --
19 MS. ROBESON: If I could just get that back, that
20 original please?
21 MS. HARRIS: We're almost --
22 MS. ROBESON: Thank you.
23 MS. HARRIS: The only other final question I have,
24 if I could confer with my client --
25 MS. ROBESON: Sure.

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1 MS. HARRIS: -- just briefly, but after this
2 question. Let me get my notes.
3 BY MS. HARRIS:
4 Q On Exhibit 110, which shows a picture of the
5 sector plan, the before and after view, can you please,
6 starting at the northwest corner of Woodmont Avenue and
7 Montgomery Lane, can you please describe the building, the
8 first building that we see?
9 A I see a one, two, three, four-story building with
10 multiple penetrations and unusual fenestration.
11 Q Okay. And what four story? And do you know how
12 many stories the Highrise Edgemoor has?
13 A I believe it's 10.
14 Q Okay. So in your mind is the image shown up in
15 the right-hand corner, 110, with respect to that corner
16 unit?
17 A But this isn't that number. That building would
18 be located at this corner and right now there's a small
19 park, so the building would be here. It wouldn't be here.
20 Q Okay. Well, then let me refer, that's -- can you
21 please refer to Exhibit 106(b)?
22 MS. ROBESON: And which building are you at? I --
23 MS. HARRIS: We're at the Highrise Edgemoor.
24 MS. ROBESON: Okay.
25 MS. TURNBULL: Oh.

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1 BY MS. HARRIS:
2 Q So there's a park.
3 A Okay, there is a park.
4 Q Wouldn't you agree that the park shown is --
5 A Okay.
6 Q -- comparable in that space?
7 A And that looks --
8 Q Yes.
9 A -- comparable. I, from looking at this --
10 Q Okay.
11 A -- it looked like, well, there's a difference.
12 This is a plan drawing and this is a prospective drawing.
13 And a prospective drawing, this corner would appear closer.
14 Q Would you agree that what is built there now, the
15 10-story Highrise Edgemoor, is not --
16 A There is no 10-story shown here.
17 Q Not yet. And then how many stories does the
18 approved 4901 have or what's the height of 4901?
19 A The height is, well, there's --
20 Q The maximum height and --
21 A The maximum building height, I know it's not the
22 height, is 70 feet.
23 Q And how many stories on this line?
24 A This is showing the stories.
25 Q Right. And this -- can you read what it says

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1 after --
2 A After.
3 Q Can you read the --
4 A After proposed low-rise, high-density housing on a
5 mixed street.
6 Q So would you agree that the after view of what the
7 sector plan envisions this street to look like isn't really
8 representative of what exists there now?
9 A Yes.
10 MS. HARRIS: Okay. Thank you. Excuse me one
11 moment. That concludes my cross of this --
12 MS. ROBESON: All right. Redirect, Mr. Abrams.
13 REDIRECT EXAMINATION
14 BY MR. ABRAMS:
15 Q Do you have any further comment on your testimony
16 relating to the comparative building height of the building
17 on Hampden Lane versus the building height of the proposed
18 building?
19 A Yes. I want to --
20 MS. HARRIS: Can you, I'm sorry, can you please
21 repeat the question?
22 BY MR. ABRAMS:
23 Q Can she elaborate on her testimony comparing the
24 building height of the building at Hampden Lane versus the
25 building height of the subject building?

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1 A Sure. The, according to testimony that is
2 referenced in the, on page 60 and 61 of the, of -- let me
3 find it. I'll tell you what it is, which I believe is in
4 the public record, well, was definitely in the public record
5 and I believe may be in as an exhibit, but I'm not sure,
6 which is the --
7 MS. HARRIS: Was that an exhibit that we, that was
8 presented during cross-examination that you're referring to?
9 MS. TURNBULL: It may be. I mean what this is --
10 MS. ROBESON: Wait. Let --
11 MS. TURNBULL: -- is, this is the County Council
12 sitting as the -- it's the opinion for that.
13 MS. ROBESON: For what?
14 MS. TURNBULL: For Hampden Lane.
15 MS. ROBESON: Okay. That is in the record.
16 MS. TURNBULL: Yes.
17 MS. ROBESON: Okay.
18 MS. TURNBULL: It's the opinion and on page 59 of
19 that opinion I read what is, what --
20 BY MR. ABRAMS:
21 Q Well, you're talking about the Hearing Examiner's
22 report or the Council opinion?
23 A This is the Council opinion. The Council opinion.
24 And what the Council opinion, the Council opinion draws on
25 the testimony and the testimony is from Guyman Martin

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1 (phonetic sp.), who testified as an expert in architecture.
2 And I'll just read, read --
3 MS. HARRIS: That's irrelevant what the architect
4 in the case testified to on a case --
5 MS. ROBESON: Well, I --
6 MS. HARRIS: -- of, on the Hampden Lane case.
7 MR. ABRAMS: Well, it goes to the Hampden Lane
8 case.
9 MS. HARRIS: No, I referred to the height, I
10 didn't refer to --
11 MS. TURNBULL: Okay. This is --
12 MS. ROBESON: Just a second.
13 MS. TURNBULL: All of that --
14 MS. ROBESON: Stop. I can't have three people
15 stopping, starting at once. Okay. Mr. Abrams, what your
16 question is, what are you trying to get at?
17 MR. ABRAMS: The comparative variances or
18 differences or commonality between the questioning that was
19 asked of her of the building height of the Hampden Lane
20 building versus the building height of the subject proposal.
21 MS. ROBESON: And how does the architecture impact
22 that?
23 MR. ABRAMS: Well, the height limit for each, she
24 previously testified that there was a height differential,
25 an elevation differential --

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1 MS. ROBESON: Correct.
2 MR. ABRAMS: -- on Hampden Lane.
3 MS. ROBESON: Right.
4 MR. ABRAMS: So I want her to elaborate on what
5 other differences there are with respect to building height
6 on Hampden Lane vis-à-vis the building height of the subject
7 property.
8 MS. ROBESON: Okay. Yes. What were you going to
9 say?
10 MS. HARRIS: It's been established that the
11 building height of Hampden Lane is 71 feet, the building
12 height of the subject is 70 and we heard extensive testimony
13 regarding the various heights of the buildings in the
14 surrounding area on Ms. Turnbull's direct testimony.
15 MS. ROBESON: But you did cross-examine on height.
16 So if you have anything to say about height, but not
17 necessarily architecture --
18 MS. TURNBULL: Okay. This -- he was the architect
19 and he's talking about the height. I'm only going to talk
20 about height.
21 MS. ROBESON: Okay.
22 MS. TURNBULL: Okay. And I'll read this. "The
23 proposed building at the point where you actually would
24 enter the building relative to the grade at that point is 65
25 feet tall, but for the purposes of measurement it's 71 feet

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1 tall. At the peak height, the area from the peak height of
2 the structure to the ground that's immediately below that
3 point would be about 68 feet. At no point can you stand
4 next to that building and take a tape and measure 71 feet
5 from grade to the roof."
6 So my, what I'm saying there is that you can say
7 this is going to be 70 and this is going to be 70, but this
8 building according to the building architect is not 71
9 anywhere at the, he is saying --
10 MS. ROBESON: On the frontage you mean?
11 MS. TURNBULL: -- on the frontage it's 68. That's
12 number one. As opposed to in contrast because of the
13 selected point of the building where the building --
14 MS. ROBESON: Height measurement?
15 MS. TURNBULL: -- height measurement on West Lane,
16 the compare should, comparison of that is that that building
17 height is 78 feet --
18 MS. ROBESON: I understand.
19 MS. TURNBULL: -- approximately at a 12-foot
20 higher elevation than this --
21 BY MR. ABRAMS:
22 Q This being Hampden?
23 A This, than the Hampden Lane building which really
24 isn't even 71, it's 71 minus they're saying three because of
25 where they selected that building measurement point.

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1 MS. ROBESON: Okay.
2 BY MR. ABRAMS:
3 Q Now my next question is relating to the inquiry
4 dealing with incorporating Lot 26 into the Holladay project.
5 Do you recall --
6 A I do.
7 Q -- that testimony?
8 A I'm sorry?
9 Q Lot 26 was excluded from the Holladay plan. I
10 think you were asked questions regarding incorporating Lot
11 26 into the Holladay project?
12 A Uh-huh.
13 Q I think it was proposed at that time. I want you
14 to read -- and that was application G-843. Can you read
15 that section of the zoning ordinance?
16 A Sure. This is --
17 Q That's Section --
18 A -- Section 5H 2.24 of the County Zoning Ordinance
19 states, "After acceptance for filing, an application for a
20 map amendment shall not be modified or amended so as to
21 increase the area proposed to be --
22 MS. HARRIS: Objection. This goes to the whole
23 issue of Mr. Abrams's motion that the Hearing Examiner
24 already ruled on.
25 MS. ROBESON: No, I think he's, it goes to your

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1 question about what did she expect to happen in the area. I
2 think that's -- am I incorrect on that?
3 MR. ABRAMS: No, that's good.
4 MS. HARRIS: But it's based on Mr. Abrams's,
5 according to the Hearing Examiner's ruling,
6 misinterpretation of that section.
7 MS. ROBESON: I know what the section --
8 MS. HARRIS: Okay.
9 MS. ROBESON: I -- she can read it.
10 MS. HARRIS: Okay.
11 MS. TURNBULL: Okay. "After acceptance for
12 filing, an application for a map amendment shall not be
13 modified or amended so as to increase the area proposed to
14 be reclassified as to the class of zone requested."
15 BY MR. ABRAMS:
16 Q If Lot 26 were incorporated into the Holladay
17 Corporation project under application G-843, would it
18 increase the area of that application?
19 A Yes.
20 Q And under that section as you read it, would that
21 be permitted?
22 A No.
23 Q Now can you go up to the, I guess it was tenting
24 line of site flooring?
25 A Uh-huh.

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1 Q And that is Exhibit 79?
2 MS. ROBESON: What exhibit number?
3 MR. ABRAMS: Is that 79? Okay.
4 BY MR. ABRAMS:
5 Q If you take and start the line from the high rise
6 building directly to the east and you come down to this
7 building here --
8 MR. KNOPF: This building being?
9 MR. ABRAMS: This building being --
10 MS. ROBESON: 48 --
11 MR. ABRAMS: -- 4825.
12 BY MR. ABRAMS:
13 Q Doesn't that create a, rather than a straight line
14 image, an image of somewhat of a jagged line between that
15 building and the subject property?
16 A Yes. The West Lane building is higher than the
17 Sandy Spring building, changing the tent. If one goes to,
18 includes the Sandy Spring building in the tent, the tent has
19 to go back up.
20 Q Okay. And if you did that from the big Edgemoor
21 building, does the same --
22 A Yes.
23 Q -- response call it?
24 A Yes.
25 Q If you can come back? At the beginning of your

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1 cross-examination, there were certain examples of a 35-foot
2 height limit in the R-60 and R-90 zone and the building
3 heights that you wanted to elaborate at that time in
4 comparison to, you know, what is being proposed here. Do
5 you recall what you wanted to elaborate before you were cut-
6 off --
7 A The --
8 Q -- with a yes or no answer?
9 MS. HARRIS: Objection. That's -- there's no
10 question there. It's somewhat of an open question.
11 MR. ABRAMS: Yes.
12 MS. ROBESON: Well, that's good. It says he's not
13 leading the witness and he can ask that.
14 MS. HARRIS: Okay.
15 MS. ROBESON: I think it's where I said make a
16 note.
17 MR. ABRAMS: Right.
18 MS. TURNBULL: Let me see if I made a note. Well,
19 I know I wanted to present the, yes, I'll give you one more
20 piece on the heights. Again, drawing from all of this, the,
21 that, the Hampden Lane application also stated that --
22 MS. HARRIS: Objection. She can't -- Mr. Abrams
23 asked about heights in the residential zones.
24 MR. ABRAMS: Yes.
25 MS. TURNBULL: Oh, okay.

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1 BY MR. ABRAMS:
2 Q Let me try to jog your memory. When there's
3 discussion about height limit at 35-foot height limit in the
4 R-60 and the R-90 zone, was there not several years ago a
5 contest as to how you measure height, particularly down
6 Chevy Chase and areas such as that?
7 A Oh.
8 Q There's R-60 and R-90.
9 A Right. The, actually there's a famous Edgemoor
10 case where the determination was really where it was in the
11 -- there were two --
12 MS. ROBESON: Where what was?
13 MS. TURNBULL: Where, what was at 35 feet high
14 that the determinate that it went for, it was, it preceded
15 me on the Board of Appeals as a decision of the Board of
16 Appeals and then only came back to me once, but it, but
17 height was not the determination at that point. The case
18 was, the case in Montgomery County was, was, was where
19 is 35 feet and do you measure it from your house or your
20 next door neighbor's house and what is the ultimate height?
21 I did rule on a case of that sort in Kensington where a
22 house was being built on a, on a street that had an incline
23 and, again, the question was where along the face of the
24 street are you determining the, determining the height
25 because it could not go above the 35.

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1 BY MR. ABRAMS:
2 Q Okay. And does that relate to how measurements
3 are being done in this case with this project?
4 A Absolutely, because comparisons of height are very
5 different. As Exhibit 101(i) shows, we vary from Edgemoor
6 at Arlington North, which is built at, or Edgemoor at
7 Arlington which is at 325.5 to West Lane, which is well at
8 335.8, which is approximately 10 feet. It's 9.2 feet, 9.8
9 feet difference, which is 9.8 feet. If a table is three
10 feet, nine feet is taller than this room.
11 Q Now can a building that is at the height limit as
12 measured by Montgomery County Zoning Ordinance standards, be
13 incompatible and detrimental to adjoining properties?
14 A Absolutely. That's why it is called a limit, not
15 necessarily a right. One of the things that has been clear
16 is that through all of this that each project has to be
17 considered on a case-by-case basis to determine
18 compatibility.
19 Q Okay. In special exception and in zoning cases,
20 is compatibility measured internally or is it evaluated
21 against surrounding properties and communities?
22 A It's evaluated against surrounding communities and
23 surrounding properties and which makes it most relevant in
24 this case because this case is a street where there have
25 been approval, that there is existing and there is a

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1 significant amount of approved properties that are going to
2 be as built. So the decision on compatibility is based on
3 what's there and what is approved going to be there.
4 Q Now there was certain questions asked of you
5 dealing with the property directly to the west of the
6 subject property which was described as the Rothstein
7 property --
8 A Yes.
9 Q -- as well as the Villages of Bethesda?
10 A Yes.
11 Q And I think you were asked whether they were
12 closer to the subject property than the subject property is
13 to City Homes. And when you attempted to explain or
14 elaborate, you were cut off. Is there any elaboration you
15 wish to give at this point?
16 A Yes. There's a big difference. There's -- in the
17 same token as -- this building on Hampden Lane is facing, is
18 closer to City Homes than West Lane. The Hampden Lane
19 building unit number and the operational aspects of this
20 building will have, won't have the same kind of impact as
21 the West Lane building does to City Homes because of
22 Montgomery Lane and West Lane. In addition, the contrast to
23 the Village of Bethesda and Edgemoor at Arlington, the
24 Edgemoor at Arlington actually will be adding an already --
25 we haven't discussed this much but, in fact, the Edgemoor at

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1 Arlington has a driveway between Edgemoor at Arlington
2 North, that I really need to say, and West Lane which will,
3 again, where it hasn't been discussed will be bringing more
4 traffic onto Montgomery Lane. And so there --
5 MS. HARRIS: Objection. Nothing in the cross-
6 examination had -- there were no questions relevant to
7 traffic on Montgomery Lane.
8 MR. ABRAMS: She introduced photographs that
9 showed parking and traffic conditions.
10 MS. HARRIS: Not on cross --
11 MS. ROBESON: But this is redirect, so she's
12 correct.
13 MS. TURNBULL: Okay. So I want --
14 MR. ABRAMS: Okay.
15 MS. TURNBULL: So in answer to the question of the
16 difference between Villages of Bethesda and Edgemoor North
17 and West Lane, first of all, there are no residents in
18 Edgemoor at Arlington North currently, so why Edgemoor at
19 Arlington North would be agreeing to the West Lane property
20 is a subjective question as opposed to the real people who
21 live in City Homes and Edgemoor, the real neighbors and
22 people who are living it and experience. But the biggest
23 difference, I think, is really that the entrance of West
24 Lane building is on, is on Montgomery Lane --
25 MR. ABRAMS: Okay.

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1 MS. TURNBULL: -- next to the street.
2 BY MR. ABRAMS:
3 Q Let me just follow-up in this last set of
4 questions. There was questions directed to you as to what
5 merits a larger setback or the, for the City Homes than
6 would merit for the Villages of Bethesda. Now let me
7 continue that. That's a foundation. In comparing the two
8 surrounding projects, City Homes, Villages of Bethesda, is
9 there any proposed traffic that's going by --
10 MS. HARRIS: Objection. You just ruled that
11 traffic was not raised on --
12 MS. ROBESON: Where are you going with --
13 MS. HARRIS: -- cross.
14 MR. ABRAMS: No, she's, I'm asking her to respond
15 to what merits a larger setback --
16 MS. ROBESON: Yes, it was why the setback --
17 MR. ABRAMS: Right.
18 MS. ROBESON: -- didn't matter.
19 MR. ABRAMS: And now I'm trying to elicit as to
20 are there elements which justify a larger setback from City
21 Homes than has been --
22 MS. ROBESON: I think that's a fair question.
23 MS. HARRIS: Thank you.
24 MR. ABRAMS: Okay.
25 MS. TURNBULL: And the answer is partially of what

1 I just said, this is the entry to the building versus the
2 rear of the building. This building -- in addition, this
3 area here is, right here, is a wall, an elevated wall. This
4 building is sitting below this elevated wall. You cannot
5 see -- you basically can't see this space from this vantage
6 point and you can barely see it from this vantage point.
7 That's number one.

8 The second thing is there is testimony, and
9 there's been a lot of testimony, that all about Montgomery
10 Lane is the use for pedestrians. Pedestrians are never
11 going to be using this, this property here. There could be
12 as much conversation about how this could be a walkway to
13 the transformers, which is at the end of the property, but
14 it's illogical to assume that that will be ever used because
15 there's also a brick wall at the end of West Lane and brick
16 walls in every direction to get to the subway. Many
17 pedestrians walking, and there are plenty, will walk on
18 Montgomery Lane. And what we're talking about is making
19 this an even more pedestrian-friendly area which is by
20 adding more space in the front.

21 BY MR. ABRAMS:

22 Q Would there be any parking in that 15-foot setback
23 between the subject building and the Villages of Bethesda?

24 A Would there be any parking?

25 Q Yes.

1 A Well, there wouldn't -- no. There's no parking.

2 Q Okay. Would there be any parking between the
3 Villages of Bethesda and the Edgemoor at Arlington North,
4 other than that driveway you previously described?

5 A No.

6 Q Okay. Now so we have traffic activity, physical
7 activity in the form of pedestrian walking, parking
8 conditions, are they the major differences between the
9 merits of a larger setback for City Homes than would be
10 applicable to the Villages of Bethesda for the project to
11 the west?

12 A Absolutely, yes.

13 Q Okay.

14 MR ABRAMS: That's all I have.

15 MS. ROBESON: Okay.

16 MR. KNOPF: Very, I'll be very brief.

17 MS. ROBESON: Okay.

18 REDIRECT EXAMINATION

19 BY MR. KNOPF:

20 Q Would you just stand there? There's some
21 confusion. Montgomery Lane and Montgomery Avenue, can you
22 point out on the chart there as where, where is Montgomery
23 Avenue?

24 A Montgomery Avenue is to the east of Woodmont
25 Avenue.

1 Q And could you describe how that avenue has
2 improved, differs from Montgomery Lane --

3 A There --

4 Q -- it's the same narrowness or --

5 A No, this varies. It has a rapid turn lane at,
6 from Woodmont, which is, it has -- I don't know what the
7 speed limit is, but --

8 Q In terms of width --

9 A And then this, that while Montgomery Lane is two
10 lanes. This portion of Montgomery Avenue that is not
11 evident, Montgomery Avenue beyond Woodmont begins at four
12 lanes and continues and at one point is five lanes.

13 Q Thank you. There was some confusion about the
14 testimony you, by Ms. Harris about who was seeing what from
15 the townhouse windows. And I believe you can clarify some
16 of that. When you were referring to what views were from
17 some windows, am I correct that some townhouses have views
18 that look from one stick to the other so to speak and that's
19 where the windows are, but some townhouses at the end have
20 windows that look out onto Montgomery Lane?

21 A Oh, yes. There are -- all of the end units face
22 Montgomery Lane and, so there will be one unit facing
23 Montgomery Lane and five units facing the opposing strip in
24 the orientation of this structure.

25 Q Now you --

1 A And all of, all of the windows of the units, well,
2 not all of, the majority of the windows of the units are
3 facing Montgomery Lane on those documents.

4 Q Now you were asked questions about the differing
5 visual impact -- I'll use that term -- of the 4825 structure
6 which is, let's assume 65 feet in height, and the proposed
7 project here which is 70 feet in height and I want to ask
8 you in terms of the visual impact, is it your opinion or
9 comment as to the impact of say even identical height
10 buildings where one is much narrower than the other?

11 A Okay. Well, there's a couple of things. Even
12 comparing the buildings, even if you would call this 65,
13 this is 65 with no visible mechanical above the building,
14 above the parapet. So even if you're saying it's 69, this
15 is 70 feet with a very visible projections of it and there
16 hasn't been clarity, but it could be at least 10 feet or
17 around 10 feet. So you're comparing to the top of the
18 parapet, 59, versus to the top of the parapet, 80. So
19 that's 11 feet. Plus, in addition to that, again, because
20 of the siding, this building is -- I don't have the chart in
21 front of me, but this building is sited at a high point back
22 here as opposed to this building on Montgomery Lane. So
23 that's one thing.

24 The second thing is there is visual difference.
25 As I testified the other day, a vantage point of, from

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1 walking down the street or being in any place or being in
 2 your courtyard or anything else, on your porch, you're
 3 seeing -- this is a 78-foot length as opposed to what is --
 4 MS. ROBESON: What is this? What is --
 5 MS. TURNBULL: Oh, the frontage on Montgomery
 6 Lane --
 7 MS. ROBESON: Okay.
 8 MS. TURNBULL: -- of the West Lane building is 78
 9 feet.
 10 MS. ROBESON: Of the subject building?
 11 MS. TURNBULL: Of the subject property.
 12 BY MR. KNOFF:
 13 Q And do you know the frontage from the number of
 14 feet from where you stopped measuring at 78 to West Lane?
 15 A It's at least another 28 feet, is that correct,
 16 because the radius is 28 feet, so --
 17 Q Thank you.
 18 A -- so it's 28 feet. So the max of this is 78 plus
 19 28, okay, which is 106, I guess.
 20 MS. ROBESON: Well, you don't have to add.
 21 MS. TURNBULL: So, but, so, but it's 106 feet of
 22 building, of building mass as opposed to less than half of
 23 that for City Homes broken up by 30 feet minimal air space
 24 and no air space between the properties directly across.
 25 BY MR. KNOFF:

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1 Q And you, excuse me, you mentioned the width of the
 2 mass of the City Homes. Do you know what the width of the
 3 mass is of 4825 is compared to the 100 some feet you
 4 mentioned on the project?
 5 A I think we had seen --
 6 Q Would you agree with me it's considerably less
 7 than the 100?
 8 A Yeah, it's approximately half.
 9 Q Okay. Thank you. You mentioned, excuse me, you
 10 were asked a question regarding the R-60, R-90 single-family
 11 homes and the fact that their elevation differences may
 12 result in the homes not being of a uniform height that could
 13 pop up and down, do you recall that question?
 14 A Yes.
 15 Q To your knowledge, does the zoning code provide
 16 requirements of compatibility in order to get a building for
 17 an R-60 and R-90 home?
 18 A Yes.
 19 Q It has to be compatible?
 20 A Oh, no, for 60 there is no compatibility --
 21 Q different --
 22 A -- which is actually what became the case in
 23 Edgemoor because it was really, was more based on
 24 compatibility.
 25 Q Okay. Thank you. You had had some discussion

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1 when you had mentioned with Chase --
 2 A Uh-huh.
 3 Q You can sit down if you want.
 4 A Okay.
 5 Q In Chase and the Christopher buildings, you were
 6 asked if there was any relevance to those in terms of the
 7 current sector plan, there was some discussion, do you
 8 recall that?
 9 A Yes.
 10 Q You had said they were relevant? Excuse me.
 11 Would you agree that the, the sector plan calls for in the
 12 TS-R zone a certain number of dwelling units in the average
 13 FAR, do you recall that?
 14 A Yes.
 15 Q Yes. Does, and the Chase and the Chases I should
 16 say, I understand there's a Chase 1 and Chase 2, and
 17 Christopher, they were built, I think you agree, prior to
 18 the current sector plan?
 19 A Yes.
 20 Q And they are taller and much larger than what
 21 would be allowed under the current sector plan?
 22 A Yes.
 23 Q They have lots of units, do they not?
 24 A Yes, they do.
 25 Q And they're in the TS-R zone, are they not?

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1 A Yes, they are.
 2 Q Do you believe that, therefore, that is something
 3 to consider when one is considering the average number of
 4 units in the TS-R zone --
 5 A Yes, I do.
 6 Q -- to take those into --
 7 A I do.
 8 Q Thank you. My last question is --
 9 A Can I answer further?
 10 MS. ROBESON: Yes.
 11 MS. TURNBULL: Okay. In addition, it is the case
 12 that there are other buildings in the vicinity. There's the
 13 Edgemont, I believe, which is on the other side of the
 14 street of, on Edgemoor, which is also a large building.
 15 BY MR. KNOFF:
 16 Q Okay. Thank you. That -- my last question is I'm
 17 trying to get somebody to clarify, you spent a great deal of
 18 time answering questions with Ms. Harris about what I would
 19 say your objection, I guess, or criticism regarding bulk and
 20 height and mass in this building. I want to make clear, was
 21 that your only concern or did you have concerns regarding
 22 design of the building?
 23 MS. HARRIS: Objection.
 24 MS. ROBESON: Yes, that wasn't the subject of
 25 cross-examination. That's sustained.

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1 MR. KNOPF: Yes, I have no further questions.
2 Thank you.
3 MS. ROBESON: Okay. Recross?
4 MS. HARRIS: Very briefly.
5 RECROSS EXAMINATION
6 BY MS. HARRIS:
7 Q You noted in response to Mr. Abrams's questions
8 about the possible, the possible incorporation of Lot 26
9 into the Holladay project, that based on the zoning
10 ordinance provision that he read that one, one would have
11 read that and thought, no, that can't occur, correct?
12 A Yes.
13 Q So then along with the other mistakes that we've
14 identified, I put that in quotation marks, that the County
15 Council obviously have made throughout this neighborhood,
16 are you also suggesting that when the County Council
17 approved the amendment of the City Homes application to
18 include the Highrise Edgemoor that that was a mistake?
19 A I don't know if that provision existed in that
20 zoning ordinance at that point.
21 Q And, similarly, the Highrise Edgemoor North, which
22 just was amended in 2008 when that provision did exist, was
23 that a mistake?
24 A I believe that the Edgemoor North property is
25 compatible.

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1 MR. ABRAMS: Well, I think you're asking her
2 for --
3 MS. HARRIS: No, the question is --
4 MR. ABRAMS: -- a legal conclusion --
5 MS. TURNBULL: I don't know. Yeah, I'm not aware.
6 MS. HARRIS: Well, I think you --
7 MR. ABRAMS: -- on projects which --
8 MS. HARRIS: I think you started it by asking
9 her --
10 MS. ROBESON: No.
11 MS. HARRIS: -- legal conclusions.
12 MS. ROBESON: Just a second. You don't need to go
13 there because I heard what she answered. It is a legal
14 question --
15 MS. HARRIS: Okay.
16 MS. ROBESON: -- except factually. She just said
17 she thought it was compatible, but we really don't need to
18 go beyond that because nothing here has changed my decision
19 on my earlier ruling, all right? That the motion, that the
20 development plan amendment can, may be an amendment.
21 MS. TURNBULL: No, I recognize that, but I think
22 the line of questioning that Mr. Abrams was pursuing went to
23 someone's expectation of what could occur on the street, not
24 the legal question and so I think there's a distinction.
25 MS. ROBESON: Okay. Then you can answer it. I

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1 understand what you're saying.
2 MS. HARRIS: Well, I think she already, she did
3 answer it --
4 MS. ROBESON: Yes.
5 MS. HARRIS: -- when she said that -- well, let me
6 ask again.
7 BY MS. HARRIS:
8 Q Did the County Council make a mistake when they,
9 in 2008 when they amended the Highrise Edgemoor, excuse me,
10 the Edgemoor at Arlington North to include additional land
11 area?
12 A I don't think I can answer that. I don't think I,
13 I don't think --
14 MS. ROBESON: Well, you're asking did they make a
15 mistake. What you're saying is relevant is did she
16 reasonably, you know, expect --
17 MS. HARRIS: Then let me, yes, let me -- if, let
18 me rephrase it.
19 BY MS. HARRIS:
20 Q Given that you were aware that there are two
21 examples in the immediately surrounding neighborhood of
22 applications being amended to include more land area, could
23 one reasonably expect, even not considering the specific
24 property, could one reasonably expect that that could occur
25 again?

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1 A I don't know. Honestly, Pat, I don't know.
2 Q That they're --
3 A That part of it was what I did know as early, as
4 late as a year ago was that the Holladay building was going
5 to be built on --
6 Q That wasn't the question.
7 A -- the property.
8 Q The question has to do with the provision, the
9 allowance of amending existing applications to include more
10 land --
11 A Well, if --
12 Q -- area and I said irrespective of this property,
13 as it's happened twice in a given area, and one is aware
14 that it's happened twice, is there anything, is there any
15 reason for one not to conclude that it could potentially
16 happen again? That's the question.
17 A That's, there's a lot of if you know A, B and C
18 and I don't think I -- I don't think there's a reasonable
19 expectation that anyone or most people would have any
20 understanding of every element of the zoning ordinance.
21 Q Not everyone, but you --
22 A Uh-huh.
23 Q -- you indicated that you --
24 MS. ROBESON: Okay. I think --
25 MS. HARRIS: -- had knowledge.

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1 MS. ROBESON: I think that there is no blood from
2 this.
3 MS. HARRIS: But she's taking lessons from Mr.
4 Irish.
5 MS. ROBESON: I'm not calling you a turret, but --
6 MS. HARRIS: Okay.
7 BY MS. HARRIS:
8 Q Were you aware, you noted a number of times that
9 part of the issue with respect to the setback of this, the,
10 your issue with the proposed setback of the building has to
11 do with the fact that the entrance is located on Montgomery
12 Lane, correct?
13 A Uh-huh.
14 Q And are you aware that one of the conditions of
15 approval for 4825 was, in fact, that staff, or the Planning
16 Board wanted the entrance of the building on Montgomery
17 Lane?
18 A I am aware of that.
19 Q And are you aware that in connection with the
20 subject building, as evidenced by the Planning Board's
21 recommendation of approval, that they wanted the entrance on
22 Montgomery Lane?
23 A I am aware of that.
24 Q Thank you. And then just one last question which
25 has to do with the Villages of Bethesda setback.

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1 A Can I just, can I --
2 Q No, that was adequate. Thank you. In terms of
3 the Villages of Bethesda setback, you testified as to the
4 ability to see the green strip, the 15-foot buffer, the
5 actual ground, correct?
6 A Uh-huh.
7 Q But don't you agree that the point of setback
8 isn't necessarily to see what is on the ground plain, but
9 could be to provide distance between two structures?
10 A Uh-huh.
11 Q And that the point of setting the building back 15
12 -- that the reason that the Villages -- one point of setting
13 the building back 15 feet from the property line was, in
14 fact, to provide that distance between the Villages of
15 Bethesda and the setback building, irrespective of whether
16 they could see the ground or not?
17 MS. ROBESON: If you know?
18 MS. HARRIS: But to provide some visual depth?
19 MR. ABRAMS: If you know?
20 MS. TURNBULL: I don't know.
21 MS. HARRIS: If you know? Okay. And then
22 actually, I do have just one last question.
23 MS. ROBESON: Okay.
24 MS. HARRIS: Only one.
25 BY MS. HARRIS:

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1 Q For sake of argument, would you agree that ceiling
2 tiles are approximately two feet long, do you know that?
3 A Two feet by two feet?
4 Q Yes.
5 A These ceiling tiles --
6 Q Yes.
7 A -- yes.
8 Q Okay. So there's 12 of them across this -- so
9 this room is approximately 24 feet? So if you were standing
10 at that wall looking at the far wall and at the depth of 24
11 feet, would that, would that depth look different to you
12 than if the wall, than if the wall was one foot away from
13 you?
14 A Absolutely.
15 Q And the depth of the scallop is a maximum of 28
16 feet, is that correct, of the setback of the building on
17 Montgomery Lane?
18 A The scallop is 28 feet.
19 Q Yes. Okay.
20 MS. HARRIS: Thank you. That's all. Thank you.
21 MS. ROBESON: Okay. Let me just say one thing
22 based on my, the public hearing that was the site visit and
23 it just came to mind through cross-examination of Ms.
24 Turnbull. The reason -- one reason that I was less
25 concerned about the northern 15-foot setback vis-à-vis the

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1 eastern-most villages of Bethesda is that they have a rare
2 privilege of overlooking a tennis court that nothing is
3 going to be built on and that -- so I don't know how much
4 it's going to influence it, but out of an abundance of
5 caution I did garner that on the site, on the public hearing
6 where we walked the neighborhood. So I'm just putting it in
7 the record for what it's worth so if anybody needs to
8 address it, they can.
9 Okay. With that, yes, Mr. Knopf?
10 MR. KNOPF: Before we adjourn, I presume we're
11 going to adjourn for lunch, I have --
12 MS. ROBESON: I am. You can stay. No, go ahead.
13 MR. KNOPF: I have my three witnesses, lay
14 witnesses that have been here all morning, I mis-estimated
15 the time this was going to take, and they're asking if,
16 should they go home or will they get on this afternoon?
17 MS. ROBESON: Well, we can put them first if you
18 would wish to. I mean -- or, Mr. Abrams, it's your case
19 right now. My inclination is to continue with Mr. Abrams's
20 case.
21 MR. KNOPF: But I'm just trying to ascertain maybe
22 these witnesses --
23 MR. ABRAMS: Well, no, my witnesses --
24 MR. KNOPF: -- there's a good chance they'll be
25 finished this afternoon?

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1 MR. ABRAMS: -- want to testify today.
2 MS. ROBESON: Today?
3 MR. ABRAMS: They have been, at least Mr. Lawch
4 has been here --
5 MS. ROBESON: Yes, I've seen him.
6 MR. ABRAMS: -- for every hearing.
7 MS. ROBESON: Yes.
8 MR. ABRAMS: And --
9 MR. KNOPF: Well, I was just asking do you
10 anticipate -- I know it's hard to anticipate -- but more
11 than an hour --
12 MS. ROBESON: Yes, I wouldn't even try --
13 MR. KNOPF: -- or two?
14 MS. ROBESON: -- to anticipate. And I'm going to
15 guess, well, I'm going to guess more than an hour or two.
16 So --
17 MR. KNOPF: Did you have in mind sometime you're
18 going to be adjourning today? Before midnight I understand,
19 right?
20 MS. ROBESON: Yes. But I did not want to go much
21 past 5:00 today. And so I think we need to stick with Mr.
22 Abrams's program and we'll continue - hopefully we'll get
23 Mr. Abrams's witnesses done today and begin your case on the
24 29th.
25 MR. KNOPF: Well, maybe -- if that would be all

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1 right, then I'll tell them, if it's all right, if they
2 finish a little early, I might not have a witness, that I'd
3 like to let them go home.
4 MS. ROBESON: Well, that's up to you. I don't
5 want to go past 5:00 tonight. I will say that. Mr. Abrams,
6 how many witnesses do you have?
7 MR. ABRAMS: Two.
8 MS. ROBESON: Two more?
9 MR. ABRAMS: Yes. One, I think, is going to be
10 relatively short, depending on cross-examination and then
11 the final witness would be Mr. Lawch and that depends upon
12 cross-examination too.
13 MS. ROBESON: So that's -- okay.
14 MR. ABRAMS: I mean basically what they're going
15 to do is submit or read statements similar to what Mrs.
16 Turnbull did.
17 MS. HARRIS: How long are the statements? That
18 can influence the timing.
19 MR. ABRAMS: Rather than question and response.
20 MS. ROBESON: Okay. Well, what I'm going to do is
21 we're going to get Mr. Abrams's case done today. If you
22 want to -- I mean I have no problem excusing your witnesses
23 as long as we have another hearing date in reserve in case
24 we can't finish your witnesses in rebuttal on the 29th. So
25 we can look at, I think that our aide -- I keep picking up

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1 the wrong calendar -- I think our aide or our administrator
2 emailed you. We have 5/13 and 5/31. Had you had a chance
3 to look at those cases?
4 MR. KNOPF: You mean those dates?
5 MS. ROBESON: I mean those dates. Yes.
6 MR. ABRAMS: I responded, I think.
7 MS. ROBESON: You did, yes, I got yours, the 13th.
8 MR. ABRAMS: 5/13 is the available date for me.
9 MS. ROBESON: Right. So if we want Mr. Abrams
10 here, which we do --
11 MR. KNOPF: Did we have, did we have, excuse me, I
12 think we had a 5/3 date, but that Mr. Doggett said he
13 couldn't continue it that --
14 MS. HARRIS: The two dates are 5/13 or 5/30?
15 MS. ROBESON: I think Ms. Wiltshire can't be
16 here --
17 MR. KNOPF: Oh, that's what it -- okay, sorry.
18 Because Mr. Doggett advised me --
19 MS. ROBESON: -- after 5/2.
20 MR. KNOPF: -- he checked his dates and it wasn't
21 the 3rd, it was the 12th, whatever that week, whatever
22 you're suggesting the 13th.
23 MS. HARRIS: Well, the applicant --
24 MS. ROBESON: Okay. Well, then the other option
25 is I have, I can schedule it on a Tuesday or a Thursday with

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1 the, you know, with the -- I don't want to have to break for
2 the County Council or the Planning Board.
3 MR. KNOPF: No, I understand, but what I'm
4 thinking is that assuming, which I think is a fair
5 assumption, Mr. Abrams will be done this afternoon, but we
6 have another date on the 29th.
7 MS. ROBESON: Yes.
8 MR. KNOPF: And I --
9 MR. ABRAMS: Of this month?
10 MR. KNOPF: Yes.
11 MR. POHORYLES: I'm not available on the 29th, but
12 I'll hang around and testify today if necessary.
13 MR. KNOPF: We could do that. And then the 29th I
14 would assume Mr. Doggett and the two remaining witnesses we
15 can get through at least and I, frankly, didn't ask for
16 other dates from Mr. Doggett because I thought for sure we
17 would be finished by the 29th.
18 MS. ROBESON: Yes.
19 MR. KNOPF: So --
20 MS. ROBESON: This is the case of cross-
21 examination. So, Mr. Abrams, so the only date right now
22 that's not conflicting with the witnesses is the 13th, but
23 you're saying Mr. Doggett cannot make it on the 13th?
24 MR. KNOPF: That's right.
25 MS. ROBESON: Well, the other --

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1 MR. KNOPF: Hopefully we'll be done on the 29th,
2 but --
3 MS. ROBESON: The other option, I know Ms. Harris
4 is in Costco, I have two Tuesdays and two Thursdays, one on
5 Thursday the 9th and one on Thursday the 16th.
6 MS. HARRIS: What was wrong with the 13th?
7 MR. KNOPF: Mr. Doggett, it turns out that's the
8 date of the daughter's graduation, not the 3rd. He --
9 whatever --
10 MS. HARRIS: Okay.
11 MR. ABRAMS: And you won't get to him on the 29th?
12 MR. KNOPF: No, I'm hoping we're going to be
13 finished with him and then we won't care.
14 MS. ROBESON: Well, if we fit -- can we do this?
15 If we finish, if we --
16 MR. ABRAMS: Why don't you put him on the --
17 MS. ROBESON: -- fit, I mean it sounds like we're
18 going to --
19 MR. KNOPF: Are you guys available on the 3rd,
20 13th? What they're suggesting is I put Mr. Doggett on first
21 and then --
22 MS. ROBESON: That's what I was just getting to.
23 MR. KNOPF: Yes.
24 MS. ROBESON: So then we could keep the 13th.
25 MR. KNOPF: Yes, that sounds --

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1 MR. POHORYLES: Can I hopefully be done by the end
2 of the day if I'm the sole witness on our side? My concern
3 is on the 29th I have a very important commitment, I'm
4 sorry, the 13th with my grandkids. I'm not --
5 MS. ROBESON: You cannot break those, absolutely.
6 We will do everything we can to accommodate your. I think
7 what Mr., what I hear Mr. Abrams saying is there's one
8 witness that you don't think there's going to be extensive
9 cross-examination on.
10 MR. ABRAMS: Correct.
11 MS. ROBESON: So I think that if you're willing to
12 stay until 5:00, we're going to, or even I have a commitment
13 tonight. So we're going to do everything we can to fit you
14 in.
15 MR. POHORYLES: Thank you.
16 MS. ROBESON: All right. So --
17 MR. ABRAMS: So the 13th?
18 MS. ROBESON: -- the reserved date will be the
19 13th.
20 MR. KNOPF: We have the 29th and 13th?
21 MS. ROBESON: Yes.
22 MS. HARRIS: And not to complicate matters
23 further --
24 MS. ROBESON: Oh, don't. Go ahead. I'm teasing
25 you.

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1 MS. HARRIS: Is it -- because one of our rebuttal
2 witnesses is not available on the 29th, so can we assume
3 that rebuttal and close will be on the 13th?
4 MS. ROBESON: I'm going to assume you have some
5 spillover of rebuttal on the 13th, but they can go, they can
6 go first.
7 MS. HARRIS: No, I mean they can't do the 29th,
8 they can do the 13th.
9 MS. ROBESON: Oh, so what we're saying, what
10 you're saying is we're definitely going to have to do the
11 13th date? Any objections?
12 MR. ABRAMS: No objection.
13 MR. KNOPF: No objection.
14 MS. ROBESON: All right. We'll do that then. All
15 right. So we have that done. So we'll come back from lunch
16 at 10 after 2:00.
17 (Recess)
18 MS. ROBESON: We're back on the record. Are you
19 ready? I'm sorry. We're back on the record. And, Mr.
20 Abrams --
21 MR. ABRAMS: Yes.
22 MS. ROBESON: -- this is your next witness?
23 MR. ABRAMS: Yes. Please state your full name.
24 MS. ROBESON: No, wait, let me just -- please
25 raise your right hand.

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1 (Witness sworn.)
2 MS. ROBESON: Thank you. Go ahead, Mr. Abrams.
3 MR. ABRAMS: Okay.
4 DIRECT EXAMINATION
5 BY MR. ABRAMS:
6 Q Please state your full name and your residence
7 address.
8 A My name is Daniel Joseph and my address is 4828
9 Montgomery Lane.
10 Q And is that within the City Homes --
11 A Yes.
12 Q -- townhouse community?
13 A Yes, it is.
14 Q And how long have you resided there?
15 A About 12 1/2 years.
16 Q If you could, just for a moment, go to Exhibit
17 106(f), which is the aerial photograph, and point out your
18 unit where you reside?
19 A My wife and I live in the unit that is at the end
20 on the street --
21 MS. ROBESON: So the second unit --
22 MR. JOSEPH: -- of the --
23 MS. ROBESON: -- from the east?
24 MR. JOSEPH: From the east, that is correct.
25 MS. ROBESON: And it's a very end unit --

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1 MR. JOSEPH: Yes.
2 MS. ROBESON: -- on Montgomery Lane?
3 MR. JOSEPH: Yes, it is.
4 MS. ROBESON: Okay.
5 BY MR. ABRAMS:
6 Q And do you have a full view of the proposed
7 project?
8 A Yes, we do, from -- and I would say from every
9 window that faces the street with the exception of one on
10 the first floor that is blocked by the masonry work for the
11 entrance.
12 Q Well, are you familiar with the 1994 sector plan
13 for the Bethesda central business district area?
14 A I have studied in particular the part about the
15 TS-R zone and I have read some of the rest of it too.
16 Q Okay. In terms of the TS-R, are you talking about
17 the TS-R district, as well as the zones?
18 A Yes.
19 Q Okay. And among the things that you review, are
20 those the objectives and guidelines which are within the
21 sector plan for the TS-R district?
22 A Yes.
23 Q Okay. And are you familiar with the subject
24 application and the project which has been proposed here?
25 A Well, I have tried to be. It's hard to stay

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1 completely up-to-date on things.
2 Q Okay. Are you familiar with the current proposal
3 which is before the Hearing Examiner?
4 A Yes, I am.
5 Q Okay. And were you familiar in, with reference to
6 the 2007 Holladay project approval on this project --
7 A I know --
8 Q -- this property?
9 A I know that the basics of the Holladay proposal
10 and I know the shape of the building and in particular the
11 design of the part or the overall design of the part that
12 fronted on Montgomery Lane.
13 Q And did you take a particular position at that
14 time with reference to the Holladay project?
15 A Well, I -- I didn't find anything objectionable
16 with respect to the Holladay design and thought as far as I
17 understood it at that point that it was a good attempt to
18 meet the requirements of the sector plan.
19 Q Okay. Now did you also analyze this particular
20 project which was before the Examiner today relative to
21 conformance with the sector plan and compatibility with
22 adjacent development?
23 A I have tried to do that, yes.
24 Q Okay. Do you have a statement to make with
25 respect to your findings and conclusions?

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1 A Yes, I do.
2 Q Would you do so?
3 A Edited from this morning, hopefully it will be
4 shorter. I think that the SJG project represents a
5 departure, a complete departure from the provisions of the
6 sector plan. It would produce a massive building that I
7 think is inconsistent with the plan and inconsistent with
8 the neighborhood. The Holladay and the SJG projects are
9 quite different. The SJG design, as you are, of course,
10 probably painfully familiar now is a seven stories on
11 Montgomery Lane whereas the Holladay design had a 4-story
12 section that fronted on Montgomery Lane with individual
13 entrances, I believe, with 30 percent more land than the
14 Holladay project had. The SJG design has doubled the number
15 of dwelling units with a 50 percent increase in off-street
16 parking.
17 But looking at the sector plan in particular, and
18 that's what I tried to do, the goal, its goal for the
19 transit station residential district, and I'm quoting here,
20 but words that I think are familiar to everybody, "To
21 achieve a low-rise, high-density urban village pattern,"
22 that's from page 80. Now I think it's very important that
23 this was not a plan to increase density. The sector plan
24 itself points out that the earlier plan from 1976 imposed
25 more generous height limits, and I'm quoting here from the

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1 current sector plan characterizing the '76 plan. Quote,
2 "From 12 floors along Woodmont Avenue to five floors along
3 Arlington Road." And that's also on page 80.
4 The current sector plan reduced the open space
5 requirement that the 1976 plan imposed, but this was done to
6 allow lower rise buildings to be economical. And I would
7 like to quote three sentences from the 1994 plan, the
8 current plan, at page 82 to describe that. It says, quote,
9 "A reduced green space requirement would allow lower
10 building heights, a more spread-out building and, therefore,
11 a less expensive structure since construction of low-rise
12 development can be less costly than high-rise. This type of
13 housing should appear to be townhouses, but actually be from
14 three to six-floor buildings with apartments at each level.
15 This form of development can create a high-quality
16 environment in a market not currently being served in
17 Bethesda." Again, that's page 82.
18 Thus, there was a deliberate trade-off in the plan
19 between building height and open space. For a reduction in
20 the open space requirement, building developers worked to
21 reduce the height of buildings to attain this urban village
22 pattern. Now I think it was, perhaps, predictable that
23 developers would be attracted by the idea of defeating this
24 trade-off by achieving greater building heights while not
25 having to provide the additional open space that was

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1 required when those greater heights were permitted under the
2 previous plan. And I think that's what's happened here.
3 And let's look at the specific height requirements
4 that are in the plan. First of all, as I quoted, building
5 heights were to be from three to six floors. Second,
6 buildings were to be stepped down from the greatest height
7 closest to Woodmont Avenue to the lowest along Arlington
8 Road where residential scale is to be maintained. And now
9 I'm again quoting from the, from page 85 of the sector plan.
10 "Heights of up to six floors are preferred near Woodmont
11 Avenue to achieve the desired urban form." The step down
12 that was to occur from those six floors near Woodmont was to
13 be gradual and to avoid dispersed high buildings, in other
14 words, to avoid situations where an individual building
15 would step above its surroundings and that is shown on, in
16 the comparative illustrations on page 42 of the plan. There
17 are sets of like, not before and after, but the good thing
18 and bad thing. And the first two rows of those show,
19 illustrate what I've just been talking about.
20 Fourth, rooftops are to be designed, and again I'm
21 quoting, "To achieve a residential image by using hip roofs,
22 gables, turrets and other kinds, other types, sorry, of
23 pitched roof lines and this, and that's the end of the
24 quote. And this is done intentionally, quote, "To improve
25 character and reduce the sense of bulk." That's page 85.

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1 Fifth, locate -- and again I'm quoting -- "Locate
2 front unit entrances along the street when residences are
3 provided on the first floor to encourage street life." Page
4 85. And there's a sketch that was displayed this morning
5 that's an exhibit, a blown-up version of it is an exhibit,
6 the after drawing from page 84 that is an approximation of
7 what they expected.
8 I think it's a fair conclusion looking at the plan
9 restrictions that the sector plan does not contemplate a
10 large apartment building taller than its immediate neighbors
11 on all sides on Montgomery Lane to the west of West Lane,
12 which is more than half of the way to Arlington Road from
13 Woodmont Avenue. It doesn't belong there. And I'll have a
14 little bit more to say about that when I discuss the
15 restrictions in the sector plan that applied on Montgomery
16 Lane itself.
17 I think that the, the SJG project would violate
18 every one of the sector plan provisions that I've listed.
19 It would be seven stories tall, higher than 6-story maximum.
20 I do think whether intentionally or not that this, that this
21 is a plan by the developer that upsets this balance that I
22 am talking about where the green space that used to be
23 required is reduced in favor of lower buildings. When you
24 have a trade-off like that, it is not in the public interest
25 to allow buildings taller to be built again, but with the

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1 reduced green space requirement.
2 Also, it's a violation of the step down
3 requirement and I would point out that, that this exhibit
4 here which is No. 709 doesn't really illustrate the step
5 down requirement because it starts with a building that is
6 on the other side, the east side of Woodmont which is not in
7 the TS-R district. They were clearly talking about stepping
8 down from six to three, not stepping down from a much, much
9 taller office building.
10 Now I'd also like to say in connection with the
11 height and the step down requirements that it appears to be
12 being argued by the developer that other buildings have
13 violated this, these requirements and gotten away with it
14 and that, therefore, this project should be able to violate
15 the 6th floor limit and the, and the step down limit. I
16 think there are two answers to that. First, other witnesses
17 have talked about and other than to identify this, I'm not
18 going to talk about it, that the comparative heights of the
19 buildings are affected by the elevation of the land that
20 they stand on. It is not my point to discuss that.
21 But I'd also like to make the point that I think
22 it's wrong to say that when some people violate the law and
23 are not stopped, that that means that others are free to
24 violate it. The sector plan still says what it says, it
25 still should be enforced. If somebody very slick robs a few

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1 banks and isn't caught or is arrested, but gets off at
2 trial, that doesn't mean that it's legal to rob a bank now
3 for somebody else. The law still applies. And in our view,
4 the sector plan still applies and should be enforced.
5 The building frontage on Montgomery Lane of this
6 SJG project most emphatically doesn't have a townhouse-like
7 appearance. The developer is saying now, I think the number
8 is, that there will be a 12-foot setback above the 5th
9 floor. Previously after, I think after Planning Board staff
10 comments, a 9-foot setback in that place was added and that
11 was criticized by the Planning Board staff as -- they used
12 the word slightly. They said it slightly changed the
13 building and I think that was an over-statement.
14 And increasing that setback from nine to 12 feet
15 is an insignificant addition to that, plus this setback
16 would occur on the 6th and 7th floors and there aren't any
17 5-story townhouses, at least in Bethesda, and it doesn't
18 make the lower five stories look like, look like townhouses.
19 The chair of the Planning Board suggested a 30-foot setback
20 at the Board's hearing, but that was rejected by the other
21 board members.
22 Now as I mentioned, the previous Holladay proposal
23 had a 4-story townhouse-like section that fronted on
24 Montgomery Lane and the taller part of the building was
25 actually set back approximately 100 feet from the street and

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1 I can say that the chief reason why I found -- I personally,
2 I'm speaking for myself, personally found the Holladay
3 project quite acceptable was that fact.
4 Fourth, the building design violates the roof
5 design requirement that is intended to reduce the building's
6 bulk and the appearance of its bulk. The mass of this
7 building is one of its most objectionable features, but
8 nothing has been done to comply with the plan requirement
9 that was aimed at this particular issue.
10 Ad, fifth, as I suggested, there aren't any front
11 entrances along Montgomery Lane in this proposal. There is
12 an entrance that most favorably stated for the developer is
13 at the corner. It's actually kind of around the corner a
14 little bit. But it doesn't improve the street life. That's
15 why I quoted that phrase about the street life that comes
16 from the sector plan because clearly they had a vision of
17 people coming in and out of townhouse-like buildings like we
18 do across the street, I do that myself, and that is, you
19 know, for a single apartment house entrance, it just
20 doesn't, it doesn't have that impact. The Board staff said
21 that there were no entrances, but said that the addition of
22 balconies would make up for that, but that's not true. The
23 Chase has been mentioned extensively. It's got a lot of
24 balconies and it doesn't look like a townhouse.
25 I want to say something finally about the legal

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1 status of Montgomery Lane under the sector plan. It's not
2 simply a narrow street. It was the special status under the
3 sector plan of being called a mixed street and it's one of
4 the -- there are only three such mixed streets in Bethesda,
5 two, one of them being these couple of blocks or block of
6 Montgomery Lane is one of the two and then there is another
7 one that is half driveway, half street that leads behind the
8 CVS drugstore off of Bradley Boulevard if you've ever been
9 over there. So there's only three.
10 Now the sector plan says that a mixed street is
11 one and, again, I'm quoting, "That emphasizes pedestrian
12 circulation while allowing limited, slow, vehicular
13 traffic." Pedestrians, and that's the end of the quote,
14 pedestrians are supposed to be able to inter-mix with
15 vehicular traffic. That's page 189 of the sector plan.
16 Now Montgomery Lane got this designation because
17 it links the Metro core to the Montgomery County Library and
18 surrounding neighborhoods and is used, they say, by
19 employees and residents alike. Now I can testify on the
20 basis of living in a house on Montgomery Lane that fronts on
21 the street that in this it is largely a success, large
22 numbers of pedestrians use it and you see that in sort of
23 two different appearances. First of all, in mornings and
24 evenings there are lot of people, myself included, who are
25 walking to and from the Metro and you, if you walk at the

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1 same time you, you know how that is, you tend to see some of
2 the same people both in, like in front of my house and then
3 I'll see them in the Metro and so I mean it is extensively
4 used for that.
5 And then at other times and, of course,
6 particularly now that spring seems finally to be here, there
7 are also many pedestrians that are just out walking. You
8 see a lot of people out walking with their families and you
9 see bicyclists and others using the street. Now when City
10 Homes residents first understood the dimensions of the SJG
11 proposal, our immediate concerns included the impact on
12 Montgomery Lane that seemed to us to be threatened. Even
13 though this wasn't discussed, I think at the Board, well, I
14 think the first problem is or the first thing to recognize
15 is that the sector plan doesn't even appear to contemplate
16 that a building of the size of the SJG project would appear
17 on that part of Montgomery Lane. I think that they thought
18 that that was close enough to Arlington Road that the
19 buildings would be a lot smaller and that demands on traffic
20 at that location would not be as great. There would be
21 extensive truck and automatic traffic generated by this
22 building. Those of us who live there now know how much is
23 generated on our -- I live on the east part, just to the
24 east of West Lane.
25 Now there the street is one way and if, or I

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1 shouldn't say if, when a lane is blocked, it's not really a
2 disaster because you can only go one direction, so you can
3 get around the parked vehicle. On the west side of West
4 Lane, Montgomery Lane is two lanes. It is two ways. And if
5 anybody parks, then that means that the traffic in that
6 direction has to cross the double line and face, and face
7 opposing traffic and this exhibit that's just been put up
8 which is No. 90 --
9 MS. HARRIS: 40.
10 MR. JOSEPH: 40.
11 MR. ABRAMS: Exhibit 40.
12 MR. JOSEPH: That shows you how good my vision is,
13 shows an example of that in the lower of the two
14 photographs, a car is --
15 MS. ROBESON: And that's the photograph passing
16 cars on Montgomery Lane?
17 MR. JOSEPH: Yes. That was taken west of West
18 Lane where the street is two-way. There is a double line
19 down the middle of the street. In the higher photograph,
20 you can see there is, I think, gardener's vehicle, plus a
21 station wagon parked on the north or eastbound side of the
22 street and a car has had to cross the double line in order
23 to get past him and is now returning to its proper lane.
24 And so our concern was that the same types of traffic
25 obstructions would occur, but that they would be much more

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1 dangerous where the street is two-way than on our side of
 2 it, on my side of it its a tremendous annoyance, but I --
 3 and it's very unsightly when it happens. But on the part of
 4 the street that is two-way, it is going to be much more
 5 dangerous, it's going to be dangerous for bicyclists and
 6 have somebody suddenly jump into the lane and so on.
 7 And there is a lot of -- one of the things that
 8 happened is that the cars and trucks start going eastbound
 9 on Montgomery Lane and get to West Lane and see the do not
 10 enter signs where it is one-way and find that they have to
 11 make a K-turn and turn around. So those aren't even people
 12 that have business there, they just come in and so this is,
 13 it is -- I think the success of the mixed street status has,
 14 is challenged by this project. Pedestrians and cars are
 15 actually to have equal access. It's a very unusual concept
 16 and, in fact, if you look at the sector plan, it says that
 17 instead of curves, there could be ballards there because
 18 people are expected to walk across the street much more than
 19 an ordinary street.
 20 So any kind of significant increase in traffic is
 21 very troublesome and I, I submit that that's, that that's an
 22 issue that the Hearing Examiner can't approve this project
 23 unless, unless you're able to find that the mixed street
 24 character of Montgomery Lane would be threatened by it.
 25 Thanks.

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1 BY MR. ABRAMS:
 2 Q Mr. Joseph, do you have an opinion as to whether
 3 the proposed development of the subject property is
 4 compatible or is not compatible with the existing and
 5 approved development in the surrounding neighborhood?
 6 A Well, I don't, I don't think it's compatible with
 7 what, with what is planned and I, with what is supposed to
 8 be possible under the plan and I don't think it's compatible
 9 with the existing buildings because it would be a step up
 10 from the Sandy Springs building that is directly across from
 11 my house, which is shorter.
 12 Q You're talking about height?
 13 A Yes. Yes. And it is also not a -- on our side of
 14 the street we're all townhouses and we have that street
 15 entrance and relatively low-rise and we have the roofs that
 16 we all paid for that were very expensive, but are very nice,
 17 architecturally are very, very nice that break even our
 18 houses up and make them much more individualized and it
 19 doesn't have those features and would be inconsistent I
 20 think with those.
 21 MR. ABRAMS: That's all the questions I have.
 22 MS. ROBESON: All right. Mr. Knopf?
 23 MR. KNOPF: I have no questions other than to
 24 thank the witness and compliment him on his testimony. I
 25 happen to know Mr. Joseph and would be very surprised if it

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1 wasn't such excellent testimony.
 2 MR. JOSEPH: Mr. Knopf and I used to work together
 3 many years ago.
 4 MS. ROBESON: Okay.
 5 MR. JOSEPH: He's an old friend.
 6 MS. ROBESON: Ms. Harris.
 7 MS. HARRIS: Thank you.
 8 CROSS-EXAMINATION
 9 BY MS. HARRIS:
 10 Q You noted that where you live you have a full view
 11 of the subject property?
 12 A Yes.
 13 Q The term that --
 14 A Yes.
 15 Q And you didn't weave into your testimony this
 16 point. Do you also have a full view of the Sandy, the 4825?
 17 A Well, it's -- as you can see from that photograph,
 18 it's almost directly across the street from --
 19 Q And do you also have a full view of the Highrise
 20 Edgemoor?
 21 A Yes, we do.
 22 Q Okay. And are you aware -- what's the height of
 23 the Sandy -- the 4825?
 24 A I don't know.
 25 Q Would you be surprised if you heard that the

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1 zoning hearing, the zoning approval was approved for 65
 2 feet?
 3 A No.
 4 Q And you sat here through the long, boring, cross-
 5 examination and so you're aware that the building, the
 6 subject building is 55 feet at the front?
 7 A Yes.
 8 Q Correct?
 9 A Yes, but -- but it is, but it is a much more
 10 massive building.
 11 MS. ROBESON: All right. You can answer her
 12 questions.
 13 MR. JOSEPH: Okay.
 14 MS. HARRIS: Okay.
 15 MR. JOSEPH: All right.
 16 MS. ROBESON: And make a note to yourself to raise
 17 that on -- you get another chance to add comments and things
 18 like that.
 19 BY MS. HARRIS:
 20 Q So and you, in fact, noted that the subject
 21 building was seven stories along Montgomery Lane, but as
 22 you --
 23 A Yes.
 24 Q -- as you're aware, there's a 12-foot setback
 25 along Montgomery -- in fact, it's only five stories along

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1 Montgomery Lane, correct?
2 A I don't agree that a 12-foot setback would even be
3 visible for somebody walking on the street. I don't
4 think -- are you talking about setback or step back?
5 Q Step back, sorry. It's my term. It's a step
6 back.
7 A That's the fact that the --
8 Q The upper-story --
9 A -- 6th and 7th floor --
10 Q -- step back is --
11 A Yeah. To me that's a minor change that does not
12 have a significant impact. And that's what the Planning
13 Board staff --
14 Q You must disagree with your neighbors who --
15 A -- too, so --
16 MR. ABRAMS: -- know that the step back, the
17 potential step back along the Edgemoor buildings and the 15-
18 foot step back was, in fact, significant and made those
19 buildings --
20 MR. JOSEPH: Well, I --
21 MS. HARRIS: -- compatible?
22 MR. JOSEPH: I don't know, I don't know what other
23 people -- I'm not familiar with their testimony. I very
24 emphatically feel that a 12-foot setback is almost invisible
25 from the street. I imagine that I will be able to see it on

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1 the fourth floor in my house.
2 BY MS. HARRIS:
3 Q Well, let me show you the prospective. I think
4 that would be helpful, because actually I don't think you
5 were here during the days when those were presented. This
6 view is taken from Arlington Road looking east.
7 A Okay.
8 Q That's not -- you can perceive the distinction in
9 the depth of the building with the high, with the step back
10 shown on Exhibit 72? And I know you noted that your eyes
11 are getting bad, so if you need to get up closer --
12 A Is this -- is this from the street level? In
13 other words, is --
14 Q It is taken from the street on the west side of
15 Arlington Road.
16 A So this is the height that a person's head would
17 be?
18 Q It is taken from approximately the vantage point
19 of a person on the west side of the building.
20 MS. ROBESON: Well, wait, do we have that in
21 evidence?
22 MS. HARRIS: I believe our architect testified to
23 that.
24 MS. ROBESON: I think he said it was from a
25 photograph, but I'm not sure he said --

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1 MS. HARRIS: But how do you take a photograph if
2 you're not on the street?
3 MR. ABRAMS: Get down on your knees.
4 MS. ROBESON: Anyway, okay.
5 MR. JOSEPH: When I, let me say this.
6 BY MS. HARRIS:
7 Q Okay.
8 A When I said it would be invisible from the street,
9 I didn't mean from this, from across Arlington Road. I
10 meant if you were walking on Montgomery Lane looking up, you
11 would not --
12 Q Exactly.
13 A -- see much.
14 Q You're right. You wouldn't. You wouldn't see
15 that. You -- that's just the point.
16 A No, it wouldn't look like --
17 Q You wouldn't see the step back --
18 A No.
19 MS. ROBESON: Is there a question there?
20 MS. HARRIS: Excuse me. Yes.
21 BY MS. HARRIS:
22 Q I believe if I could clarify what you just said,
23 if you're walking along the north side of Montgomery Lane
24 and you look up, you wouldn't see that at all?
25 A I don't think so. I think exactly the opposite.

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1 I think you would see it and you wouldn't see a setback,
2 you'd just see like a line and stuff of a different color.
3 I don't think it makes much of a difference.
4 Q I refer you to Exhibit 80. What --
5 MS. ROBESON: Which exhibit --
6 MR. ABRAMS: What, what number?
7 MS. ROBESON: -- was that, Ms. Harris?
8 MS. HARRIS: Exhibit 80.
9 MS. ROBESON: Okay.
10 BY MS. HARRIS:
11 Q This is a section showing you Montgomery Lane with
12 the subject property on the left-hand side of the page and
13 City Homes on the right. So these individuals, and this is
14 to scale, are walking around the north side of Montgomery
15 Lane. And you indicated that you, those individuals would
16 be able to see the upper story step back?
17 A Well --
18 MS. ROBESON: Please, no talking in the --
19 MR. JOSEPH: -- perhaps -- I can't, I can't tell.
20 What I would say is it doesn't make it look like a townhouse
21 and it's supposed to look like a townhouse --
22 BY MS. HARRIS:
23 Q Okay.
24 A -- number one. And, number two, the drawings of
25 City Homes are done in a way that you cannot see the roof

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1 line features that I was just talking about that have an
2 exceptionally pleasing -- they are very --
3 Q The question --
4 A -- articulated and --
5 Q Okay. That wasn't the question.
6 A -- a very pleasing view. So it's not a good --
7 MS. ROBESON: Right. But the question --
8 MR. JOSEPH: -- comparison.
9 MS. ROBESON: -- was the site line. So if you, I
10 think you answered that.
11 BY MS. HARRIS:
12 Q Okay. So you mentioned that the Holladay project
13 was approved to look like townhouses and this is an approved
14 site, certified site plan from the Planning Board which, as
15 we noted this morning, well, can you please identify on here
16 what, where the entrances are on the street?
17 MS. ROBESON: And what exhibit is this?
18 MS. HARRIS: And, I'm sorry, this is Exhibit 90.
19 MR. KNOPF: Excuse me, have we had testify about
20 this as to what --
21 MS. HARRIS: Yes.
22 MR. KNOPF: -- that is?
23 MS. HARRIS: He indicated that the Holladay
24 project, unlike this project --
25 MR. KNOPF: No, I'm talking about from this

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1 exhibit.
2 MS. HARRIS: Well, it's exhibit --
3 MR. KNOPF: I'm wondering who, if somebody
4 identified --
5 MS. HARRIS: It's in the record. It's Exhibit 90
6 in the record. It's a certified site plan.
7 BY MS. HARRIS:
8 Q But is it -- what I'm trying to get at is it a
9 report to show the streetscape --
10 A I would say --
11 MR. ABRAMS: There's no question.
12 MR. KNOPF: -- the facade?
13 MS. HARRIS: Wait.
14 MS. ROBESON: Hold on one second.
15 MR. KNOPF: And she's --
16 MS. ROBESON: What's the objection?
17 MR. KNOPF: There are lots of exhibits and
18 renderings and so on that become part of the site plan and
19 I'm trying to say have we had anybody identify this as one
20 which is to show the features of the building along
21 Montgomery Lane? I don't know what this was put in for. It
22 could be just for height purposes or something.
23 MS. ROBESON: Well, it's in the record. Is it --
24 did you say it was a certified copy?
25 MS. HARRIS: Certified site plan as you can tell

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1 from the stamp and the signature.
2 MS. ROBESON: So if you can tell from, it's a
3 certified public record, so I'm going to allow you to
4 testify from it and if you know based on examination of
5 this, you can say so. If you don't, based on your
6 examination of this, you can say that.
7 MR. JOSEPH: Well, I can't see enough detail in
8 these drawings to identify what's going on.
9 BY MS. HARRIS:
10 Q Would it surprise you --
11 A It's --
12 Q -- if I told you that there's only one entrance on
13 this property, that there are not individual entrances?
14 A Yes.
15 Q That would surprise you? And it may -- yes, okay.
16 You can have it.
17 MR. ABRAMS: He's answered.
18 MS. ROBESON: You can have that conversation
19 outside, yes.
20 BY MS. HARRIS:
21 Q And you did just note that your, that, you kind of
22 note that your, that the City Homes property looks like
23 townhouses? And I'm referring to Exhibit 106(g). And do
24 the Highrise, does the Highrise Edgemoor look like
25 townhouses?

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1 A No.
2 Q And does 4825 and Montgomery Lane look like
3 townhouses?
4 A It -- no.
5 Q Does 4901 Hampden Lane?
6 A No.
7 Q And does Hampden Lane, the other project?
8 A I don't know what project that is that you just
9 referred to.
10 Q Hampden Lane is the project that was recently
11 approved along the, in the northeast corner of Arlington
12 Road and Montgomery Lane, does that look like --
13 A You're their counsel. I wouldn't expect it to
14 look -- it doesn't look like townhouses.
15 Q Because I'm their counsel? The other thing you
16 noted is that the sector plan recommends entrances along the
17 first floor going, first floor?
18 A Yes.
19 Q How many -- can you approximate, since you live in
20 the City Homes, how many steps it takes to get to the door
21 on the cap units of the City Homes?
22 A Well, the City Homes I have to give an answer that
23 is not simply a number. City Homes were built in two phases
24 as you may know.
25 Q Yes.

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1 A There are a total of five rows.
2 Q Okay.
3 A On two of the rows, the more recent two, the one
4 that I live in is like four steps or something. And on
5 older ones you have to go up half a story.
6 Q Yes, I think I counted 15 or 16 steps --
7 A Yes.
8 Q -- which would be not at the street level, unless
9 you count the, well, well, the door to the shed.
10 A It's, it's true that that entrance is not at
11 street level, but it is on the street. And when people --
12 Q That's correct, but --
13 A -- use those entrances --
14 Q -- my question was whether --
15 A -- they come out on the street.
16 Q -- they're at street level. Thank you. You noted
17 -- were you aware, and I don't think you were -- did you
18 attend one of the first meetings the applicant had with the
19 City Homes?
20 A I attended a meeting.
21 Q It was in Mr. -- it wasn't the first one because
22 the first one was -- it was the second or third one in Mr.
23 Abrams's office.
24 A I don't remember.
25 Q Okay. So you may not -- would it be a surprise to

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1 you that that time Mr. Abrams and members of the community
2 verbally communicated to the applicant that they would like
3 flat roofs on the subject property?
4 A I don't know what was said during the -- I wasn't
5 at the meeting and I don't know what was said.
6 Q Or that it was so important that it was followed
7 up in writing by Mr. Abrams to the applicant that they
8 wanted flat roofs?
9 A Well, I'm not sure I -- I don't really understand
10 the question because --
11 Q But you --
12 MS. ROBESON: Well, just --
13 MS. HARRIS: -- testified --
14 MS. ROBESON: -- a second. Just a second. You
15 can answer if you know or just say you don't know. Ms.
16 Harris, can you clarify which meetings you're talking about
17 or --
18 MS. HARRIS: There are many. I would need to go
19 back and look at my log and I don't have it available.
20 MS. ROBESON: Okay. Well, then ask your question
21 again and -- but you can't ask her what the purpose of the
22 question is.
23 MR. JOSEPH: Well, my, my --
24 MS. HARRIS: Well, I can actually, I can set it
25 up, lay a foundation --

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1 MR. JOSEPH: Ask the question again and --
2 MS. HARRIS: -- so he can understand it.
3 MR. JOSEPH: -- and if I have the same difficulty,
4 I'll explain it.
5 MS. ROBESON: Okay.
6 BY MS. HARRIS:
7 Q You testified that the project was out of
8 compliance with one of the recommendations of the sector
9 plan because we weren't providing pitch roofs and the other
10 descriptive characteristics of the roofs, correct?
11 A Well, I did read off that, that trace, yes.
12 Q So I'm confused because in the applicant's attempt
13 to be responsive to the community, there's a flat roof as
14 was requested in writing.
15 MR. KNOFF: Just a minute. I'd like to please --
16 MS. ROBESON: Wait. Wait.
17 MR. KNOFF: -- preclude such testimony. I object.
18 MS. ROBESON: Yes, I'm not --
19 MS. HARRIS: Okay.
20 MS. ROBESON: -- going to let that --
21 BY MS. HARRIS:
22 Q Are you aware that the, that your counsel
23 submitted in writing to the applicant that they wanted to
24 see flat roofs on their property?
25 A I am not aware of that, but it doesn't change my

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1 view.
2 Q Okay. Thank you.
3 A And I would --
4 MS. ROBESON: No, just wait for her --
5 MR. JOSEPH: -- explain something.
6 MS. ROBESON: -- to ask -- you can explain, you
7 can explain in a minute.
8 BY MS. HARRIS:
9 Q I would like you to read page 7 of the sector plan
10 and actually just the portion, VII, not 7. So this sentence
11 where it says, "It should be noted." Read it out loud. I'm
12 sorry.
13 A "It should be noted that master plan
14 recommendations and guidelines are not intended to be
15 specifically binding on subsequent actions, except in
16 certain instances where an ordinance or regulation requires
17 a specifically defined linkage to be established."
18 Q And are you also familiar that in the TS-R zone
19 the ordinance requires substantial compliance with use and
20 density, and only --
21 A No.
22 Q -- use and density? So would that not suggest
23 that all of the other --
24 MR. ABRAMS: He answered the question; he's not
25 familiar.

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1 MS. ROBESON: Yes.
2 MR. ABRAMS: So how can you ask him a follow-up?
3 MS. ROBESON: Plus --
4 MS. HARRIS: For clarity.
5 MS. ROBESON: Because it's, and it's a legal issue
6 too. I don't think we need --
7 MS. HARRIS: Okay.
8 MS. ROBESON: -- to cross-examine --
9 MS. HARRIS: Okay.
10 MS. ROBESON: -- on it.
11 BY MS. HARRIS:
12 Q You testified that the planning, well, did you
13 after, I believe, did you attend the first public hearing at
14 the Planning Board in December?
15 A Yes.
16 Q And did you re-listen to the transcript of that
17 Planning Board hearing?
18 A No.
19 Q You did just testify, however, that the chair
20 recommended a 30-foot setback?
21 A I thought she did, yes.
22 Q Could you potentially be confusing that with what
23 a witness for the Highrise Edgemoor testified to?
24 A No, I, I remember a, the chair asked the other
25 board members whether they would agree to a 30-foot setback

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1 and there was, an objection may be a legal term, there was a
2 question from one of the board members, "Where did you get
3 the 30-foot number from?" And the chair said that the
4 number had come from some expert. I remember that very,
5 very well.
6 Q And so --
7 A And that was a board vote and the board out-voted
8 her.
9 Q Right.
10 A She voted for it --
11 Q Right.
12 A -- and the others voted against her.
13 Q Well, did the chair vote for it or was she
14 throwing it out there as the expert to test the waters so to
15 speak?
16 A It sure sounded to me like she was for it.
17 MS. ROBESON: We can argue this all day.
18 MS. HARRIS: We don't need to.
19 MS. ROBESON: So we don't need to cross-examine.
20 BY MS. HARRIS:
21 Q Okay. On page 188 of the sector plan is the
22 streetscape plan and you indicated that there are three
23 mixed streets on, within the Bethesda sector plan area?
24 A Right.
25 Q And I believe you mentioned one near CVS. Can you

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1 please identify that?
2 A I'm talking now --
3 Q Page 80, I'm sorry, 188.
4 A I'm talking now frankly from memory. This was a
5 mixed street that existed before the sector plan. They
6 added, as I recall, they added two, subject to being, to
7 being corrected, of course, they added two and the one that
8 sticks in my memory because it was so bizarre was on Bradley
9 Boulevard at the, near the intersection with Arlington Road
10 and nothing is shown on here, so maybe my memory is
11 incorrect, but --
12 Q Are you familiar with the only other mixed street
13 that --
14 A No.
15 Q -- that, are you familiar with the mixed street on
16 Fairmont Avenue?
17 A No. I know that it's called Fairmont Avenue, but
18 I --
19 Q Okay.
20 A -- don't know.
21 Q And are you familiar with the fact that the
22 Planning Board just approved 170-foot tall building on that
23 mixed street?
24 MR. ABRAMS: Objection.
25 MR. JOSEPH: Is it allowed to say --

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1 MS. ROBESON: Yes.
2 MR. JOSEPH: -- so what?
3 MR. ABRAMS: I apologize.
4 MS. HARRIS: Okay.
5 MS. ROBESON: That's Fairmont Avenue, which is
6 different from --
7 MS. HARRIS: But the witness was trying to make --
8 MS. ROBESON: I know. I understood. He didn't
9 know that there --
10 MS. HARRIS: Okay. One final question --
11 MS. ROBESON: -- were --
12 BY MS. HARRIS:
13 Q You noticed that the importance of the mixed
14 street, of -- in discussing mixed streets, you noted the
15 importance of pedestrian, emphasis on pedestrians?
16 A Yes.
17 Q Can you please on this Exhibit 40, can you please
18 count for me the number of pedestrians on that?
19 A Well, I don't see -- that might, is that a
20 gardener on the left? I can't see well enough from here.
21 Q Someone with a take home stuff. So --
22 A I can't --
23 Q -- pick your occupation.
24 A I don't see any.
25 Q Okay. Thank you.

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1 MS. HARRIS: That concludes my cross-examination.
2 MS. ROBESON: Okay.
3 MR. ABRAMS: No further questions.
4 MS. ROBESON: Mr. Knopf?
5 MR. KNOPF: Yes.
6 MS. ROBESON: Oh, I can say, can you, yes, you can
7 talk to him, but you had a comment about the flat roof.
8 MR. JOSEPH: Right.
9 MS. ROBESON: I wrote down explain flat roof.
10 MR. JOSEPH: Right.
11 MS. ROBESON: Okay.
12 MR. JOSEPH: My answer to that is that the list
13 of, in the sector plan of possible roof details doesn't say
14 that you have to have all of them. It says that you have to
15 work on the roofs to have turrets and things of that nature.
16 Some of those could be with a flat roof. The point is to
17 use architectural details to reduce the bulk of the
18 building. Now that can be in, on the City Homes houses.
19 The use a steeply pitched roof as one of the details and if
20 we ask for a flat roof, that would have been because we
21 didn't want the extra height, but there are still plenty of
22 roof architectural steps that could be taken to bring about
23 that goal that the sector plan is seeking. Therefore, it is
24 not inconsistent with that to say we'd like to have a flat
25 roof.

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1 MS. ROBESON: I see. I see. Mr. -- anything else
2 you'd like to say?
3 MR. JOSEPH: That's too wide open. I'll --
4 MS. ROBESON: Okay. All right.
5 MR. JOSEPH: I'm not going to --
6 MS. ROBESON: Mr. Knopf?
7 MR. KNOPF: Yes, I have a couple, just a couple
8 things.
9 REDIRECT EXAMINATION
10 BY MR. KNOPF:
11 Q Just so you don't lose any sleep tonight, refer to
12 page 189 of the sector plan. You were saying you weren't
13 sure where you got the idea of the mixed street behind CVS
14 pharmacy?
15 A Thank you very much. Yes, there is a, there are
16 four bullets near the top of the page. The bottom bullet
17 says mixed streets and the last sentence in that bullet
18 says --
19 Q You know it's nice to have a friend?
20 A , Bethesda has only one mixed street, a private
21 driveway serving the office development behind CVS pharmacy
22 on Arlington. So I did remember it is a very odd, little
23 area because there's a lot of cars that move through there,
24 but there's also a lot of stores that have like pedestrian
25 frontage and the cars and the pedestrians are mixed.

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1 MS. ROBESON: Okay.
2 MR. JOSEPH: That's where that -- there's an Apple
3 McIntosh store there, not the Apple store, but another one
4 that I used to go to and you walk among the cars to get
5 there. It's very interesting.
6 MS. ROBESON: Okay.
7 MR. KNOPF: Thank you. Just --
8 MR. JOSEPH: Thank you.
9 MR. KNOPF: -- a quick question. Okay. Could we
10 have Exhibit 72 put up there? That was the one where you
11 were asked questions about what, whether the 6th, the 7th
12 floor, the 12-foot setbacks would be meaningful to you. So
13 you had a -- that was the view from the road.
14 MR. ABRAMS: With all the little people on the
15 side.
16 MR. KNOPF: With the birds flying on top, I
17 believe.
18 MS. HARRIS: Wait, that's two different --
19 MR. KNOPF: No, I think that, oh, it's a different
20 set of --
21 MS. HARRIS: Well --
22 MR. KNOPF: I'll take both.
23 MS. HARRIS: Which one do you want?
24 MR. KNOPF: I'll take both, both. I have 72.
25 MS. HARRIS: Well, I don't have both at the same

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1 time --
2 MR. KNOPF: Whichever --
3 MS. HARRIS: -- because they're both on the same
4 one.
5 MR. KNOPF: That's --
6 MS. HARRIS: That one?
7 MR. KNOPF: Yes, let me -- that's fine.
8 MS. ROBESON: Which number is that?
9 MS. HARRIS: 72.
10 MS. ROBESON: Okay.
11 BY MR. KNOPF:
12 Q I just wanted you to explain a little bit more,
13 first of all, let me clarify something. You're unit, you
14 said, faces Montgomery Lane?
15 A Yes.
16 Q And you have windows that, from which you look out
17 on Montgomery Lane and you can see the subject building?
18 A Yes.
19 Q And are, is your window just --
20 A Not yet.
21 Q Well, is your window on just one level or do you
22 have more than one window?
23 A Well, we have -- those houses have four levels.
24 On the first level is a garage and a room and that's, and
25 that's the room that I mentioned. There's masonry on the

1 entry staircase that I think would block the view. But on
 2 the other three floors, I went around and checked one day,
 3 you could see that.
 4 Q MR. KNOFF: Okay. And when you were referring to
 5 -- you didn't think it would make a, make a difference, I'm
 6 not trying to put words in your mouth, but the setback of
 7 the 12 feet --
 8 A Right.
 9 Q -- on the six --
 10 MS. ROBESON: The step back?
 11 BY MR. KNOFF:
 12 Q Step, excuse me, step back on the 6th and 7th
 13 floors, first of all, you had some questions about
 14 equivalent step backs on buildings on Arlington. I believe
 15 she asked you some questions about that.
 16 A Well, I don't -- I think I said I don't know
 17 anything about it.
 18 Q Right. But I wanted to ask you do you have a --
 19 would you have a different view for the equivalent set back
 20 if it was on the first or second floor as compared to
 21 something on the 6th or 7th floor in terms of the impact
 22 that they have?
 23 A Oh, sure. Sure, because the angle is different
 24 and it's much closer to the human scale. The lower it gets,
 25 the closer to a human scale it is and so the lower it is,

1 the more visible it becomes, yeah.
 2 Q Now as you walk down Montgomery Lane coming from
 3 the east, walking toward the subject property, and you're
 4 facing as you approach, you're facing the building and you
 5 see it along West Way, the portion on West Way. What's your
 6 understanding of the effect that the 12-foot setback would
 7 have on that? Do you understand whether it's set back 12
 8 feet on West Way or not, West Way, Lane? Well, I think you
 9 can use the one -- you can use the one on the left that's
 10 already up. Let me just ask her to get them. Your
 11 understanding -- well, why don't you come over here? Okay.
 12 let's do that. According to the building, what's your
 13 understanding of where they're proposing to put the 12-foot
 14 setback, step back? Is it along West Way Lane or just along
 15 Montgomery Lane?
 16 A I have -- it looks like it's along both streets
 17 here, but I, but I -- my real concern has always been with
 18 Montgomery Lane because that's the street I live on and
 19 that's the one that has this mixed street designation and
 20 that's where the townhouse-like frontage is supposed to be.
 21 Q And as you walk along West Lane, along, excuse me,
 22 Montgomery Lane from the east going toward the west, is it
 23 your testimony that the 12-foot setback would not be
 24 meaningful to you as you saw --
 25 A Well, you wouldn't see it until, until you got

1 past this --
 2 Q Is that --
 3 A -- building here.
 4 Q Right.
 5 A So I don't think it would be particularly
 6 significant.
 7 Q Okay.
 8 A That's just --
 9 Q And do you have an opinion as to whether you would
 10 see the 6th and 7th floors from your windows from your
 11 townhouse?
 12 A Well, they are -- since we're, I'm thinking
 13 particularly of my wife's office on the 4th floor. I think
 14 from there it would be visible. So if I wanted to feel good
 15 about it, I could go in and go upstairs and look out of that
 16 window I guess.
 17 MR. KNOFF: I have no further questions.
 18 MS. ROBESON: Okay. Ms. Harris?
 19 MS. HARRIS: No further questions.
 20 MS. ROBESON: Okay. Thank you, Mr. Joseph.
 21 MR. JOSEPH: Thank you.
 22 MS. ROBESON: Your next witness.
 23 MR. ABRAMS: Mr. Lawch, yes.
 24 MS. HARRIS: May we take a -- your testimony is
 25 going to be fairly lengthy, correct? Can we take a two

1 minute --
 2 MR. LAWCH: Yes.
 3 MS. HARRIS: -- break?
 4 MR. LAWCH: And would it be all right --
 5 MS. ROBESON: Well, let's --
 6 MR. LAWCH: -- if I sat here because I am going to
 7 refer to --
 8 MS. ROBESON: Sure. There's a chair at the end
 9 and we'll take a 10 minute break. I'm feeling generous
 10 because it's only 10 after 3:00, but we do want to get -- I
 11 don't know the gentleman's name. So let's take a 10 minute
 12 break and then we'll try to go straight through and finish,
 13 all right?
 14 MR. ABRAMS: Good.
 15 (Recess)
 16 MS. ROBESON: Is everyone ready?
 17 MS. HARRIS: Yes.
 18 MS. ROBESON: Mr. Frankel (phonetic sp.), please
 19 raise your right hand. Do you -- oh.
 20 MR. ABRAMS: Lawch.
 21 MS. ROBESON: Lawch? I'm sorry.
 22 MR. LAWCH: That's all right.
 23 MS. ROBESON: I don't know where I got that.
 24 (Witness sworn.)
 25 MS. ROBESON: Thank you.

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1 MS. HARRIS: We --
2 MR. LAWCH: Yeah and --
3 MS. ROBESON: Oh, wait, I couldn't --
4 MR. LAWCH: A copy center --
5 MS. ROBESON: Oh.
6 MR. LAWCH: -- that prepares, you know, boards and
7 things like this and simply gave them those documents and
8 they did what they did.
9 MS. ROBESON: Okay.
10 MR. LAWCH: There was no intention to elongate
11 them. Second housekeeping matter was -- let me, let me try
12 and clarify 4825 for you because --
13 MS. ROBESON: That's 4825 West Lane?
14 MR. LAWCH: Yes, Montgomery Lane.
15 MS. ROBESON: Montgomery Lane.
16 MR. LAWCH: There's a couple of things that come
17 out of, I believe it's the Exhibits 116 through 118 and
18 that's the site plan submission of 4825 to, I guess it's the
19 Planning Board, correct? And from that document there are
20 some things that come out very clearly. Well, let me start
21 out with the penthouse. There is a, there are two
22 significant protrusions from the roof. One is a --
23 MS. HARRIS: Excuse me. Can you move a little bit
24 so I can see --
25 MR. LAWCH: Sure.

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1 MS. HARRIS: -- where you're pointing to? Thank
2 you.
3 MR. LAWCH: One is for the top of the elevators
4 and one is a hatch. And then there are some mechanical,
5 there is some mechanical equipment on the roof. But I have,
6 and we can enter into evidence, I got an email from Mimi
7 Kress, who is one of the principles of Sandy Spring, and
8 what she indicated was that the elevator protrusion would be
9 no more than three feet and you remember there's a 4-foot
10 parapet here and that there was a hatch that was literally a
11 hatch that was not more than de minimus amount above the
12 roof.
13 So the question as to whether there is a
14 penthouse, there are protrusions that are at most three feet
15 and none of them appear above the level of the parapet. The
16 second thing that is clear in the site plan is that the
17 building itself is 60 feet. The parapet is 4-foot. But I
18 think some of the confusion with regard to this building is
19 they chose to start the platform of the building at 1.7 feet
20 above what their maximum elevation, starting point is.
21 So if from that starting point there is 60 plus
22 four plus 1.7 feet, so you could say that in addition to the
23 60 and four, there's another 1.7, but that 1.7 is land. And
24 so I don't know quite how to categorize that, but I can say
25 definitively that what she plans to build there is a 60-foot

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1 building with a 4-foot parapet and then there's some
2 question as to the level that they started the building.
3 BY MR. ABRAMS:
4 Q Mr. Lawch, from Exhibit 106(g), I show you the No.
5 3 representation on that board. Is that the 4825?
6 A That is 4825.
7 Q Does this help you at all in explaining to the
8 Examiner --
9 A No, just that, that probably that 1.4 is because
10 they have to choose a maximum elevation starting point. I
11 don't know quite where that is, but they decided because of
12 the nature of the construction, they're doing it on pilings,
13 they're not going down in any way. Probably the pilings
14 lifted that building up slightly beyond the maximum point
15 which gets you the 1.7 feet.
16 MS. ROBESON: Okay. So you're saying it's 1.7
17 feet from --
18 MR. LAWCH: Above their maximum elevation --
19 MS. ROBESON: Okay.
20 MR. LAWCH: -- measuring point.
21 MS. ROBESON: All right.
22 MR. LAWCH: And then building is 60 plus four.
23 MS. ROBESON: Okay.
24 MR. LAWCH: Thank you. Okay. So as I have
25 previously testified, I am the president of the association

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1 and probably because no one else wanted the job. And in a
2 way it's a thankless job, but I took it because of all of
3 the construction activity and my feeling as a homeowner was
4 that I didn't want to let what was going on around the
5 neighborhood dictate, dictate the environment in which we
6 were going to live. So I felt it was important to take that
7 on and some of the responsibilities that we talk on were
8 things like negotiating a construction agreement with 4825.
9 We're also in the middle of working with 4901 Hampden Lane
10 on both the construction agreement and in order for them to
11 build efficiently, they need a tieback and a crane agreement
12 from us. A tieback agreement, I just learned this myself,
13 basically allows 4901 to stick rods under our property in
14 order to give their foundations more support.
15 We're willing to do that. We're willing to
16 cooperate with 4901. We think it makes a, it will help the
17 construction end quicker. It will make for a safer
18 environment for everybody on the street. We're okay doing
19 that. We didn't originally like 4901, but now that it is
20 what it is, we're cooperating with them going forward.
21 I also -- Mr. Abrams also elicited from me the
22 fact that 100 percent of the City Homes residents wrote
23 letters to both you and the Planning Board. And in the
24 Hearing Examiner's report on the Holladay application,
25 that's Exhibit 101(d) on page 5, I actually quoted from a

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1 letter submitted by Ms. Harris and I think this is, part of
2 this has been read by one of our attorneys. And what it
3 says is the applicant's responsiveness to the surrounding
4 community to assess that the project is compatible with the
5 existing development is perhaps best illustrated by the fact
6 that only three residents testified at the public hearing
7 and these individuals submitted limited comments.
8 The public hearings on West Lane, on the other
9 hand, had many participants in opposition, not just three,
10 and the hearings have been quite contentious. I think
11 you've seen some of that. You have two association groups,
12 each with separate counsel.
13 MS. HARRIS: Objection. When we tried to get this
14 information in during cross-examination, you noted that the
15 level of -- the issue of cooperation was essentially
16 irrelevant and the witness is now going on and on about that
17 very same subject.
18 MS. ROBESON: Yes. You do -- I'm going to give
19 you the opportunity to address it at length in rebuttal.
20 I'm going to let it in for the weight it deserves and I'm
21 going to allow you to cross-examine him on it definitely
22 because that's the main point of his testimony and address
23 it on rebuttal.
24 MS. HARRIS: Okay.
25 MR. LAWCH: Okay. So the applicant's

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1 responsiveness to the surrounding community, I'm sorry, so
2 we think that's a pretty good indication as to, quote, "The
3 applicant's responsiveness to the surrounding community."
4 In addition to the responsive, or the lack of responsibility
5 of the applicant, residents of City Homes were particularly
6 disturbed by SJG's supposed amendment that in reality was
7 really quite a different development plan than the Holladay
8 plan.
9 Now to people in the land use community, it's one
10 thing, but I think it goes to the state-of-mind of our
11 homeowners who find it hard to understand how a developer
12 can buy a parcel and associated development rights and then
13 completely ignore the previously approved development plan
14 and the binding elements on those parcels. Now it may or
15 may not be the law, but to our residents it's very hard to
16 comprehend and understand.
17 By the time SGJ filed its amendment, the future
18 development of land on Montgomery Lane is pretty much set --
19 this is very convenient. So what we have here is already
20 approved before SJG filed its amendment was 4825 was
21 Arlington --
22 MS. ROBESON: Edgemoor at Arlington.
23 MR. LAWCH: Edgemoor -- thank you -- at Arlington.
24 The Hampden Lane property at 4901. So we have four already
25 approved projects. Holladay, obviously, was also approved

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1 and then, so where we were just prior to the application was
2 what we thought was a completely settled arena. SJG then
3 came along and completely changed what we think is the
4 dynamics of Montgomery Lane.
5 Further comment is that with the exception of this
6 project, but Mr. Rothstein --
7 MS. ROBESON: Wait, which project is that?
8 MR. LAWCH: The --
9 MS. ROBESON: Edgemoor at Arlington North?
10 MR. LAWCH: Yes. All of these projects are hot.
11 The developers are apparently ready to go as soon as they
12 can with this development, so this is not something where
13 the developers are sort of warehousing these properties. We
14 assume to have four very active development sites around the
15 perimeter of 4810, or all of City Homes.
16 You've heard us testify before, Madam Examiner,
17 that many of our residents have purchased these units at
18 City Homes specifically relying not only on the sector
19 plan's vision of Montgomery Lane, but also on the
20 implementation of the sector plan. And, again, as we look
21 at it as lay people, and I think Daniel's testimony,
22 although he is an attorney, is pretty much, pretty much
23 reflects our constituency in that the sector plan when you
24 read it is very straightforward with regard to how
25 Montgomery Lane is supposed to be developed and the fact

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1 that it's supposed to provide townhouse communities, it's
2 three to six stories, et cetera, et cetera.
3 I'm laying out all of this background, Madam
4 Examiner, not to whine, but rather to give you a better
5 appreciation of why we are here and a better understanding
6 of how important this is to City Homes. Now when each of
7 these five projects were approved, they were all being to be
8 compatible with the sector plan and that's important because
9 as I bring in further evidence as I go forward, it's
10 important to realize that the projects that were approved
11 and proceeded the FJG project were all deemed to be in
12 compliance with the sector plan and mostly importantly they
13 were also compatible with each other.
14 So, for example, when the Holladay project was
15 approved, it specifically said, and I'm now in Exhibit
16 101(c), it specifically stated, quote, "That the Holladay
17 project was," I'm sorry, quote, "Composed of a 4-story and
18 6-story wings," unquote and the 4-story portion obviously
19 being on Montgomery Lane.
20 MR. ABRAMS: Which exhibit are you looking at?
21 MR. LAWCH: I was just looking for the Montgomery,
22 the Holladay --
23 MS. HARRIS: Do we have them?
24 MR. LAWCH: Yeah. So the Holladay project
25 started with a 4-story portion and then went back and then,

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1 quote, "Was consistent with development across the street
2 and the reference there is to City Homes which reflects
3 townhouses and low-rise structures." The Council also
4 indicated that the northern portion of the Holladay project
5 with it's 65-foot height was, quote, "Appropriate for the
6 area of Bethesda with step down and building heights toward
7 the Arlington Road corridor. Setbacks and other amenities
8 will alleviate any compatibility problems with the
9 neighbors," unquote.

10 If you track the staff and Hearing Examiner
11 reports and City, County Council resolutions on all the
12 previous projects, they all triangulate into each other and
13 show approvals referenced with compatibility to each other.

14 BY MR. ABRAMS:

15 Q Now you put up a board. Is that the board which
16 you were looking for?

17 A Well, that board -- it's not worth spending time.
18 Don't worry about it. In the past, residents of City Homes
19 have had to intervene in the development process, so this is
20 not the first time for us at these hearings. It is the
21 first time for me. But other residents have appeared before
22 the land use, the Planning Board and the Council before, but
23 on the other hand we have been supportive of the Holladay
24 project outright. We have been supportive of 4825
25 Montgomery Lane outright. And even we've been cooperating

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1 with 4901 Hampden Lane, although at times we certainly have,
2 we took part in the testimony or some of us did in helping
3 to reverse the height decision from 100 to 70 feet.

4 You had, Madam Examiner, you had asked Ms.
5 Turnbull about why we supported 4825 and if somebody could
6 find Exhibit 71? I was looking for it, but it was helpless.
7 What 71 shows is how compatible the exterior of 4825 is
8 to --

9 Q That's the streetscape?

10 A Yes, that's correct. So the only point, I'm not
11 going to get into the differences right now, but you can see
12 the masonry, you can see the light. You see how the
13 building is at least trying to fit in. Dan had indicated
14 that it doesn't look like a townhouse, no, not exactly, but
15 you can see from the masonry, the windows, the balcony work
16 that there's an attempt by the developer to fit into
17 existing uses.

18 Also, the, that project is small in scale, 2.5
19 FAR, 65 maximum in height. And I as I just explained, it's
20 really 40 plus, sorry, 60 plus four. We also had a
21 cooperative developer who signed a construction agreement
22 with us, was forthcoming with documents. It also replaces
23 a run-down eyesore in the neighborhood and the developer was
24 limited in what they could do and for them to build any sort
25 of building that would be advantageous to the neighborhood

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1 as a whole, you had to cut them some slack. And, finally,
2 we had bigger fish to fry, quite frankly and that would be
3 SJG.

4 So in addition to what I had just referenced
5 above, we have had several, what I would describe as
6 unproductive meetings where our association attended with
7 our counsel and with the applicant and its counsel. During
8 those meetings, and it is my opinion and I think you heard
9 the opinion of some of our other homeowners, that the
10 applicant had little, if any, interest in making any of our
11 suggested changes and even more disturbing had even less
12 concern for the neighborhood or its residents and I will
13 explain that by certain specific facts in a moment.

14 The association's recommended changes which are
15 similar to the ones we're advocating today were certainly
16 dismissed when we met with them and to date the only
17 concessions that SJG have made have been reluctantly made at
18 the request of the Planning Board and its staff and have
19 been willfully inadequate. There is no attempt really at
20 all whenever they decided to make any of the changes that I
21 am sure Ms. Harris will cross-examine me on, there was no
22 attempt to come back to us and say, gee, is a 9-foot setback
23 adequate or is a 12-foot setback? It was done and presented
24 to us as a fete comple. I do need Exhibit 71.

25 MS. HARRIS: It's right there.

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1 MR. LAWCH: There we go. Thank you. After, in
2 response to the Planning Board staff, the applicant had
3 originally indicated no setback. So the first plan with a,
4 submitted had, I'm sorry, no step down at the top. Then the
5 applicant first authored a 9-foot setback. And for some
6 reason, I don't know why, that nine came into a 12, I guess
7 the Planning Board pushed back and said you can't see a nine
8 at all, I can't see the 12, but you can see here and I don't
9 know if that is a 9-foot setback or 12-foot setback, but
10 this is their perspective and this is what somebody sees in
11 this building as you come up walking towards the library or
12 westward, this is what you see of that setback. Not a very
13 dramatic setback when you compare the bulk and height of
14 that building.

15 So, again, at the request of the Planning Board,
16 the applicant agreed to provide an internal bay for delivery
17 trucks which is fine, but and was one of our
18 recommendations, but again a little late, a little smaller
19 than we want because it doesn't accommodate moving vans and
20 other large trucks and, again, without any sort of
21 consolation with, conversation with us. The applicant also
22 cut out an approximate 600 square foot of semi-circular, of
23 a semi-circular portion of the building on the corner of
24 Montgomery Lane, however, even that improvement, and I do
25 think it's an improvement, came at a price. The Planning

1 Board's original instruction to the applicant were to,
2 quote, "Meet the public use space requirement for the
3 project in the front of the building along Montgomery Lane
4 and West Lane." We were excited when the Planning Board
5 gave those instructions to the applicant because we thought
6 we were going to make progress and that a major portion of
7 what is now the much aligned 15-foot strip in the back of
8 the, of the applicant's property --

9 MS. ROBESON: On the north side?

10 MR. LAWCH: -- on the north side was going to be
11 put back onto Montgomery Lane where we think the public
12 would actually use it and that City Homes might actually get
13 some relief from the building's bulk and height. Instead,
14 the applicant reduced the amount of public space and created
15 the cut-out.

16 BY MR. ABRAMS:

17 Q Let me stop you there. Put your finger where you
18 want to continue because I want to ask a couple of
19 questions. First of all, was it the association's,
20 community association's intent when the requested 15 feet
21 wanted public use space to the north of the building was
22 requested to be put in the front of the building along
23 Montgomery Lane, was it the intent of the community
24 association that that 15-foot space be reduced to any
25 smaller size or maintained at 15 feet as a separation at the

1 Q Okay. Now when you were made aware of the plan
2 with the scalloped corner and it notes on the plan that a
3 reduction in public use open space from 14 percent from the
4 old plan to 10 percent on the current plan, did you make any
5 calculations as to whether that 14 percent was somehow
6 recaptured along the front within the circular area?

7 A Well, again, we were not consulted on, gee, is
8 this an idea that you would like? We were presented with
9 this at a hearing, okay, and we scrambled to find, you know,
10 well, where did they take the square footage from? You
11 know, where did this come from? You've heard testimony that
12 it's a balloon and you squeeze it one place and it goes
13 somewhere else when we were trying to find out where it
14 went.

15 Q And how much it was?

16 A And how much it was.

17 Q Okay. Is this a copy of the computations which
18 you prepared?

19 A Yes.

20 MS. ROBESON: Wait, is this in the record?

21 MS. HARRIS: No.

22 MR. LAWCH: Yes.

23 MR. ABRAMS: This is not in the record, but it's
24 the same thing as Mr. Irish standing up there and doing his
25 own computations on a sheet of paper that he did the other

1 Villages of Bethesda?

2 A I'm not quite sure of your -- I think what we
3 wanted was certainly some sort of setback in the back. We
4 weren't demanding necessarily 15 feet, but we were
5 suggesting that something be done up front and we also felt
6 that there was no reason it had to be a win for us and a
7 lose for VOB, Villages of Bethesda. It could very well have
8 come out of the mass of the building itself or the footprint
9 of the building itself since we're arguing for a reduction
10 in mass of the building, there's no reason why they can't
11 have their 15 feet and we can have some manageable setback
12 of the building on the south side or on Montgomery Lane.

13 Q So you aren't advocating any necessary reduction
14 in the setback on the north side and possibly whatever was
15 transferred to be transferred to the park?

16 A I think to be fair we figured something would come
17 from here and perhaps something would come from the size of
18 the building.

19 Q Which would have meant either the front or one of
20 the sides of the building would be compressed slightly?

21 A Yes.

22 Q Okay. Also, before you start again --

23 A No, it didn't necessary mean the footprint, but
24 somehow the total usable square footage to build would
25 somehow be reduced.

1 day.

2 MS. ROBESON: Marking it, you mean marking the
3 exhibit?

4 MR. ABRAMS: Yeah. I mean I could put a sheet of
5 paper up on the board and he could do the same thing --

6 MR. LAWCH: I can also --

7 MR. ABRAMS: -- and take the time to do it.

8 MR. LAWCH: It's also math. I can do it if you
9 give me the numbers.

10 MS. ROBESON: Okay.

11 MR. LAWCH: I don't even need this if --

12 MS. ROBESON: Well, you can refer to it for your
13 testimony, but it doesn't come in.

14 MR. ABRAMS: Go ahead.

15 MR. LAWCH: Do you have a question outstanding?

16 MR. ABRAMS: Well, the question is --

17 MR. LAWCH: I'm happy to keep talking, but --

18 MR. LAWCH: -- did you previously consider for
19 public use space --

20 MS. ROBESON: Hold on one second.

21 MR. LAWCH: I'm very sorry. I thought I turned
22 this off. That's embarrassing.

23 MS. ROBESON: Okay. Go ahead.

24 BY MR. ABRAMS:

25 Q What was the measurement of the area, the public

1 use space in the rear?
2 A The area of the -- so it's a 15-foot strip and if
3 you are conservatively look at it, it's at least 80, but
4 it's actually longer than 80. So just for the sake of
5 being, keeping it simple, I took 80 feet, multiplied it by
6 15 feet. That total area was about 1,200 square foot. It
7 is more, but --

8 Q This was the area directly behind the back wall of
9 the building, is that correct?

10 A To the north, yes.

11 Q All right. Now in adding the area to the semi-
12 circular portion to the front of this project, how many
13 square feet did you calculate that to be?

14 A So in this particular example I used 27.5 feet.
15 It may have been 27.5 feet at some point or maybe my ruler
16 was off, but it was testified to, I think, by the architect
17 that that radius is 28 feet. So if you use your old
18 geometry of pi R squared, okay, and the R is he radius, you
19 get somewhere around 2,400 square foot. In this case I had
20 2,375 because I had a radius of 27.5. That's the whole
21 circle. One quarter of that, which would be the scallop,
22 would be around 519. If you use 28 feet, round it up to
23 somewhere around 600, which is the number I used in my
24 presentation.

25 Q Okay. Did you exempt out from that the area that

1 had been previously part of the 10-foot setback in front of
2 the now circular area?

3 A I took out 28, I -- it does not, that number would
4 not include the public area and it also would have had a
5 little reduction. The old plan had this little cut-out just
6 at the edge of the property. So the -- where the north, the
7 east face of the building and the south face met, there was
8 a little something cut out and I probably reduced it by -- I
9 don't think that was more than 70 or 75 feet.

10 Q And what was the square footage that you
11 determined to be added by the applicant in this front
12 circular area over and above where it is accepting what had
13 previously been part of the public use space to begin with
14 in the original plan?

15 A Well, the whole, the net of the public space after
16 the semicircle actually went down. So the total public
17 space was 14 percent to start with, which included some of
18 the, well, it included the 15 feet in the back, became 10
19 percent after the cut-out, but excluded the 15 feet in the
20 back.

21 Q Did you come to a determination as to what we call
22 the missing space from the rear area which was transferred
23 supposedly to the front area as part of the public use
24 space?

25 A There were too many moving pieces for me because

1 at the same time there were too many -- no.

2 Q When you say moving pieces, what are you talking
3 about?

4 A Well, there were, there were changes on the edge
5 of the building. There were changes on the front of the
6 building. There was the scallop. This was taken out, that
7 was, so you've exceeded my pay grade.

8 MS. HARRIS: Objection. And I would like to note,
9 can we just stipulate that the public use space was, went
10 from 14 percent to 10 percent. I think that's been well-
11 established throughout the course of the seven days of
12 hearings.

13 MS. ROBESON: Mr. Abrams.

14 MR. ABRAMS: Well, yes, we could stipulate to
15 that. The question is what happened to the 4 percent?
16 Where did it go? Did it go inside the building?

17 MS. ROBESON: No. She's saying the 4 percent
18 isn't there any more. Is that what you're saying?

19 MS. HARRIS: I'm saying that the 4 percent, which
20 makes up the 15, the strip in the back is not classified as
21 public use space. It's the exact same thing we've been
22 saying the entire time. I just feel that, this is --

23 MS. ROBESON: Yes, I tend to agree because I mean
24 they've admitted they've reduced the public use space. I
25 think the one question that was remaining was why did GFA,

1 if the footprint is 87 square feet smaller, you know, why
2 didn't the GFA change?

3 MR. ABRAMS: Right.

4 MS. ROBESON: But I don't think we need to go into
5 the calculations of the differences between the spaces.

6 BY MR. ABRAMS:

7 Q Did you also receive notification of a hearing
8 currently on site plan for 4825 Montgomery Lane?

9 A I did.

10 Q Okay. And was a copy of the site plan submitted
11 along with that notification?

12 A Yes.

13 Q Okay. Was that the same notification and site
14 plan which has been submitted in evidence in this case?

15 A It is.

16 Q I'm sorry. Please go on with your testimony. I
17 told you to stop at a specific point, so --

18 MS. ROBESON: Well, wait a minute. I think I --
19 we, I ruled that you were not going to go into any more of
20 the measurements as far as the difference between the old
21 plan --

22 MR. LAWCH: I'm not doing any more, I'm not doing
23 any measurements.

24 MS. ROBESON: Oh, I just, I wasn't sure what --

25 MR. LAWCH: It was kind of a non sequitor, but --

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1 MS. ROBESON: Oh, well, go ahead.
2 MR. LAWCH: Okay. So I think we were talking
3 about the applicant and what it has and hasn't done and we
4 were talking about the 15-foot public setback and that's
5 where we got to the scallop, that we were hoping -- I'm like
6 I'm trying to get into this thing too now -- we were hoping
7 to get some square footage, some setback of the building.
8 Instead, we got a scallop.
9 With regard to the scallop, and how I need Exhibit
10 76, which is the streetscape and the -- it's the Audi
11 picture.
12 MS. ROBESON: The convertible?
13 MR. ABRAMS: Yes.
14 MR. LAWCH: Our team has made a lot about the
15 pocket park here and I just want to spend a quick minute on
16 it and only want to say a couple of things. One is that we
17 all in Bethesda live with these pocket parks and in many
18 cases they are failed pocket parks for a variety of reasons
19 and for example here you see a pocket park where if you come
20 in from here, you have to either climb steps or come all the
21 way around. And then let's say you -- it's a nice, sunny
22 day and you want to sit down and read a book. If you look
23 at this supposed park, look at the width of this seat which
24 is not really a seat, it's a wall. If I want to sort of sit
25 and read a book, I sure as heck don't want to sit on a hard,

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1 cold bench without any sort of back support.
2 It's a very uninviting environment for anybody
3 coming from the street. It's more ornamental and oriented
4 towards the occupants than it would ever be for people
5 walking the street. Personally, we like good, old benches.
6 And if you look at on City Homes, we have two specific
7 public areas which are not large by any means, but all have
8 benches and all have shades and are all used by the public
9 and are absolutely delightful spaces for people to use and
10 add to the streetscape environment, not detract from it.
11 The final concessions that SJG made and please,
12 Ms. Harris, I'm not saying these are -- I've been exhausted
13 of the concessions that you've made, these are illustrative
14 -- was a binding element restricting deliveries to the
15 service entrance for the rear of the building. This will
16 certainly help reduce the, what I'll consider the traffic
17 mayhem that will occur at Montgomery and West Lane. But
18 even the binding element is poorly drafted and probably
19 needs rewording to make it crystal clear that it's the
20 applicant's legal responsibility to enforce the regulations
21 and not just post regulations. If they just post
22 regulations, they will be ignored. They really needed to be
23 enforceable and the neighborhood needs to be able to hold
24 the applicant accountable, that they will indeed be
25 enforced.

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1 So the City Homes residents feel at this point
2 that every change is a battle with concessions given
3 grudgingly and often in the way that minimizes their value.
4 So if the applicant really had concern for the neighborhood
5 at all, why would they have initially put most of the useful
6 public space in the back of the project on the north side in
7 an alleyway with a brick wall? The suggestion that
8 ultimately a cut through might be created to Arlington
9 creating a useful urban feature also in my mind questions
10 their sincerity and their willingness to cooperate.
11 MS. ROBESON: Okay. Let me stop you for just a
12 second. My job is, it sounds as if there's been friction,
13 right or wrong, between the developer and you or City Homes,
14 but my job is to evaluate this based on the zoning
15 standards, the standards for approval of the rezoning. So
16 to the extent we can focus on that, that would be better.
17 Ms. Harris, let me explain also my prior ruling. You're
18 entitled to reasonable cross-examination. In my mind, the
19 conflicts between the developer and -- were tangential to
20 his testimony and the prior witness's testimony and in the
21 interest of moving on or managing the hearing and moving on,
22 I stopped you. This is clearly not the case here. So I'm
23 going to let you cross-examine.
24 But I will tell you to the extent that you can
25 focus on the standards for approval --

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1 MR. ABRAMS: I am getting there.
2 MS. ROBESON: Okay.
3 MR. ABRAMS: I am trying to patiently establish a
4 foundation.
5 MS. ROBESON: You're setting the seat?
6 MR. ABRAMS: I am.
7 MS. ROBESON: Okay.
8 MR. ABRAMS: And I also think --
9 MS. ROBESON: So when you set the scene --
10 MR. ABRAMS: -- it goes, I'm sorry.
11 MS. ROBESON: Okay. Go ahead. When you --
12 MR. ABRAMS: I think it also goes to impeachment.
13 Since you're also hearing testimony from the applicant that
14 they're going to put in all these great MPDUs and the small
15 units and are really pro-neighborhood and total affordable
16 housing, I think that impeachment is perfectly appropriate
17 under these circumstances.
18 MS. ROBESON: Well, you're not impeaching -- okay.
19 In the context of this hearing, they're going -- I have to
20 base my decision on the binding elements and what's going,
21 you know, what is binding in the application. So they will
22 be required, whatever happens, to put in the 50 percent
23 MPDU's, you know? If there's other representations relating
24 to this project that are technically binding, you know,
25 perhaps that's relevant, but I think it's far better to

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1 focus on whether you think this project meets the zoning
2 standards, okay?
3 MR. ABRAMS: Be there in a moment.
4 MS. ROBESON: Okay.
5 MR. LAWCH: Let me say one other thing about my
6 current line of testimony. If the applicant had any
7 concern, real concern for the neighborhood -- and by the
8 way, I think you mentioned one of the other reasons why I'm
9 taking this line of attack and that is I think we've got to
10 be very sure that anything that you do ultimately agree on
11 be in binding elements because what we found is it is very
12 difficult for the association to monitor the activities of
13 the applicant.
14 MS. ROBESON: I understand.
15 MR. LAWCH: Thank you. Okay. So one other thing,
16 the -- with regard to the building step down, first it was,
17 first, the applicant delivered an amendment that had no step
18 down. Then it was nine and then it was 12. Then the
19 applicant had its architect testify that the step down is
20 now a critical feature which makes the project compatible
21 with the existing uses.
22 Okay. Now let me find -- let me get rid of some
23 of the other stuff and okay. Okay. The applicant's
24 witnesses have made a big deal out of differentiating the
25 old Holladay deal from the West Lane amendment. They've

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1 argued that --
2 MS. ROBESON: Thank you. Can you keep your
3 conversations -- okay, go ahead, I'm sorry.
4 MR. LAWCH: No problem. They've argued that both
5 projects are quite different and I agree with them, both
6 projects are quite different, but I think they're different
7 in a way that is not helpful to the applicant. If I could
8 get Exhibit 85 now? And that's a comparison of Holladay and
9 West Lane. There it is.
10 Okay. So compared to the Holladay group, SJG pays
11 substantially less money than Holladay for four lots versus
12 three lots. So we obviously know that the old Holladay was
13 only three lots. That fourth lot was acquired by --
14 MS. HARRIS: I'm going to object.
15 MR. LAWCH: By SJG.
16 MS. HARRIS: I believe the Hearing Examiner early
17 on said that the financial issues are relevant in a zoning
18 case.
19 MS. ROBESON: Where are you going with this
20 testimony?
21 MR. LAWCH: I'm going to assert that the more
22 efficient rectangular shape of that lot makes it, makes it
23 easier for SJG to actually grant concessions versus Holladay
24 which had a very tight sight, but also managed to do more
25 for the neighborhood than SJG.

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1 BY MR. ABRAMS:
2 Q Mr. Lawch, why don't we continue on and as the
3 Examiner has indicated, try to get to --
4 A Okay.
5 Q What the community wants in the way, in a way that
6 the community feels this application would be compatible to
7 the --
8 A Sure. Okay.
9 Q -- association's master plan.
10 A So let's look specifically at some key elements of
11 the West Lane project and compare them to the sector plan
12 and the existing or approved projects and see why we think
13 each key element of the project fails compatibility and
14 compliance. We heard testimony during the hearing that 4901
15 Hampden Lane project was ultimately reduced in height from
16 100 feet to 70 feet. We've also heard testimony that the
17 big Edgemoor's 100-foot height and other attributes are not
18 precedent for determining future development on Montgomery
19 Lane.
20 I think most people who understand the nature of
21 Montgomery Lane would also acknowledge that under the
22 current sector plan this project would never have been
23 built, meaning the big Edgemoor. I think it's obvious from
24 the County Council's decision in 4901 Hampden Lane where
25 they said 70 was the benchmark and not 100. So the question

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1 becomes why does the applicant on so many comparisons of
2 their project to the Edgemoor, why do they compare to the
3 Edgemoor rather than some of the more comparative projects
4 that exist on Montgomery Lane. The Edgemoor is kind of a
5 dinosaur and what we're trying to avoid is to repeat the
6 mistakes of West Lane.
7 Now we have heard testimony concerning the tenant
8 requirements in the TS-R district and that Woodmont is an
9 important border. It's the eastern boundary of the TS-R
10 district or the point at which the tallest buildings and the
11 most massive buildings in the TS-R zone should be located.
12 So if the Edgemoor is not the benchmark, it shouldn't be,
13 and it shouldn't be considered precedent. And what that
14 leaves on Woodmont is 4901 Hampden Lane as an important
15 benchmark for Montgomery Lane.
16 What a reasonable person thinks of all this logic
17 is that 70 feet then becomes the benchmark and the 4901
18 Hampden Lane on Woodmont should be the tallest building on
19 Edgemoor, on Montgomery Lane, have the highest FAR and the
20 highest density. So the issue regarding 4901 Hampden Lane's
21 height was heavily contested and vetted at the Planning
22 Board, the courts and the County Council with that proposed
23 height being dramatically reduced, so it's very deliberate
24 decision that was made in the relatively recent past that 70
25 feet on Woodmont is the right height and logically the

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1 maximum height for Montgomery lane.
2 On the other hand, the West Lane project is
3 located closer to Arlington Lane than it is it to Woodmont
4 and it's supposed to be part of this transition or reduction
5 of mass and density as it moves from Montgomery to
6 Arlington.
7 MS. HARRIS: Excuse me, Richard, can you move
8 again --
9 MR. LAWCH: Sorry.
10 MS. HARRIS: -- one way or another? Thank you.
11 MR. LAWCH: Sorry. So common sense, again, would
12 tell you that if this building is 70, and by the way part of
13 the frontage of Montgomery Lane is actually 60, if this is
14 70, how can a building all the way down Montgomery Lane also
15 be 70 feet?
16 Now what's even stranger is that if the West
17 Lane's project maximum height of 70 is approved, that the
18 West Lane project will actually be taller by 9.5 feet than
19 the 4901 Hampden Lane project. So, again, we have the cups,
20 okay? We have two 70-foot --
21 MS. ROBESON: Okay. For the record, the witness
22 is showing two different paper cups that -- okay, go ahead.
23 MR. LAWCH: Okay. So if they were on level
24 ground, the 70 feet buildings would be the same height.
25 4901 is on a lower elevation and has that maximum elevation

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1 starting point lower than the elevation of the West Lane
2 property and so the comparison is like this.
3 MS. ROBESON: Okay. And the comparison is a ruler
4 on what is --
5 MR. LAWCH: On top of --
6 MS. ROBESON: -- supposed to be --
7 MR. LAWCH: Thank you.
8 MS. ROBESON: -- this project that overhangs the
9 cup that is supposed to represent 4901 Wood, Hampden Lane.
10 MR. LAWCH: And, Ms. Harris, these cups are drawn
11 to scale. One cup equals 70 feet.
12 MS. ROBESON: Yes, but the difference is how much
13 you're holding it lower. Okay. Go ahead.
14 MR. LAWCH: Okay. So as my colleague, Susie
15 Turnbull, indicated, 4901 Hampden Lane's building height
16 measurement point is 326 feet on a lower, which is a lower
17 starting point on West Lane whose starting elevation is
18 335.5. So the delta between the two, we learned what delta
19 was the other day, is the 9.5 feet. So when, if 4901 and if
20 West Lane are built at the 70 feet maximum heights, what
21 will happen is that the 4901 property that's supposed to be
22 the benchmark that is on the eastern portion of Montgomery
23 Lane will be 9.5 feet, almost 10 feet smaller than the West
24 Lane property which will be the tallest property on
25 Montgomery Lane absent the big Edgemoor.

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1 MS. ROBESON: Okay.
2 MR. LAWCH: That is an astounding finding, I
3 think, and contrary to the sector plan. Now the applicant's
4 argue that they're legally entitled to pick the most
5 advantageous maximum building height measuring point and I
6 guess they are, but the applicant has made a lot of
7 voluntary choices and when it comes down to compatibility,
8 they've got to live with the decisions they've made to date.
9 So they've chosen a property that happens to sit on one of
10 the highest elevations of Montgomery Lane. They chose to
11 request approval of maximum building height that exceeds the
12 sector plan recommendation and they're on a street where
13 many of the properties are at lower and in some case
14 considerably lower maximum elevations. The sum total of the
15 applicant's choices, however, result in a project that's
16 clearly incompatible and that is it's a violation of the
17 tenting and it's a violation of compatibility.
18 Now there's another shocker and this shocker is
19 from the perspective of the neighbors, the pedestrians, City
20 Homes, the bikers, all standing in the street, on the
21 sidewalk in front of West Lane. And if West Lane is
22 approved, West Lane will not be 70 feet tall, it will be
23 77.5 feet tall.
24 MS. ROBESON: When you say West Lane, are you
25 talking about the subject property?

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1 MR. LAWCH: The subject property.
2 MS. ROBESON: If you're standing on West Lane?
3 MR. LAWCH: If you're standing here, the elevation
4 is approximately 328 feet at about this point.
5 MR. KNOPF: Excuse me, what's -- can we identify
6 this point for the record?
7 MR. LAWCH: Well, about here.
8 MR. KNOPF: No.
9 MS. ROBESON: No. Your, when you, is it at the
10 curb or -- if you look at --
11 MR. LAWCH: If you're standing basically in the
12 street let's say or you're on the curve.
13 MS. ROBESON: Okay. All right.
14 MR. ABRAMS: Do you have the development plan?
15 MR. LAWCH: Yes.
16 MR. ABRAMS: Okay.
17 MS. ROBESON: I have a recollection suddenly that
18 I handed my development plan to somebody for review, so
19 whoever it was, can they remind me that they gave it back
20 just checking? Okay. Go ahead.
21 MR. LAWCH: So --
22 MR. ABRAMS: I gave it to Mr. Knopf to take up to
23 you.
24 MS. ROBESON: Oh, you did? Okay. I'm sorry. I'm
25 sorry. Okay. Go ahead.

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1 MR. LAWCH: Okay.
2 BY MR. ABRAMS:
3 Q This is Exhibit 108.
4 A Thank you. So if you look at the typo markings,
5 the typographical markings here, you'll see that there's a
6 326 here and I believe this is 328. So that's the actual
7 elevation and then the measuring point for the building is
8 335.8. So when you build, when you put 70 feet on top of
9 this 335.8, you get an altitude or the top of the building
10 being 405.8 versus the 326 or the 328, depending on where in
11 front of the building you're measuring.
12 And what that means is to people standing here --
13 MS. HARRIS: Wait, can you please move to one
14 side?
15 MS. ROBESON: Wait, when you say -- why don't you
16 try coming all the way over to this side of the exhibit?
17 MR. LAWCH: Okay. So --
18 MS. ROBESON: -- more there and we have to make,
19 position people here and then describe on the plan where
20 your pointing?
21 MR. LAWCH: Sure. So 320, 326 is here, 328 is
22 here and the delta between these two points and here --
23 MS. ROBESON: Okay. The delta between -- the
24 elevations 326 and 328 on West Lane?
25 MR. LAWCH: And 405.8 --

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1 MS. ROBESON: Okay. Which is --
2 MR. LAWCH: -- which is the height of the
3 building --
4 MS. ROBESON: Okay
5 MR. LAWCH: -- means that the building here is not
6 70 feet, but --
7 MS. ROBESON: Oh, on Montgomery Lane?
8 MR. LAWCH: On Montgomery Lane --
9 MS. ROBESON: Yes.
10 MR. LAWCH: -- is not 70 feet, but rather 77.5 or
11 I could be off here, or 79.5 feet.
12 MS. ROBESON: Okay. Which is what Ms. Turnbull --
13 MR. LAWCH: Precisely.
14 MS. ROBESON: -- presented the -- okay.
15 MR. LAWCH: Precisely. Okay. Besides being too
16 tall, the proposed West Lane project is also way too massive
17 and has way, and has many, too many units relative to other
18 projects in the neighborhood. As the applicant has proposed
19 the maximum height, the applicant is also proposing the
20 largest FAR and the largest number of units potentially
21 allowable. The project was obviously built with one design
22 notion in mind and that's to maximize every square foot of
23 buildable space possible. That's what a rectangular box
24 design does and that's what the rectangular parcel does.
25 Now, Madam Examiner, the height, the mass and the

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1 density is extremely important to City Homes. Other
2 neighbors like the Villages of Bethesda are certainly
3 affected, but they are caddy-corner to this project. We
4 over on City Homes face the full brunt or the full Monty, if
5 you will, and I apologize, I'm blocking your view again,
6 of --
7 MS. ROBESON: As long as it's not the real Monty.
8 Okay. Go ahead.
9 MR. LAWCH: The full Monty of the SJG property.
10 MS. ROBESON: Well, let me -- I'm sorry to stop
11 you there. It's 4:30. So the gentleman that's asked, I
12 mean we've got two choices. I can -- see, I think his
13 testimony is going to fill out until 5 o'clock. Do the
14 parties have a preference if we can get the Edgemoor witness
15 in, we'll do it, but I don't think it's going to happen by 5
16 o'clock. So I don't even think we're going to get to cross-
17 examination of Mr. --
18 MR. LAWCH: Lawch.
19 MS. ROBESON: -- Lawch, sorry about that. So --
20 MR. POHORYLES: I have no commitments this
21 evening.
22 MS. ROBESON: I do.
23 MR. POHORYLES: This afternoon, however, I have
24 unbreakable commitments on both the 29th and the 13th.
25 MS. ROBESON: Okay. Does anyone have an

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1 objection, Mr. Abrams, to allowing this gentleman to
2 testify?
3 MR. ABRAMS: Would you --
4 MR. LAWCH: Well, I, you know, I don't -- I'd like
5 to be cooperative, but I'd also like to finish my testimony.
6 I've had this thing hanging over me for --
7 MS. ROBESON: Okay.
8 MR. LAWCH: -- months.
9 MS. ROBESON: All right. Well, we're going to
10 proceed and I may have to make a quick phone call. Go
11 ahead.
12 MR. LAWCH: Okay. So the objective of the West
13 Lane property, project has been to maximize out everything
14 they can possibly do. It's also interesting that even after
15 the few concessions that we have gotten out of the
16 applicant, that the number of units have remained the same,
17 the FAR of the project has remained the same, and the
18 maximum gross floor area has not gone down. That is, the
19 applicant has not made any concessions with regard to the
20 FAR or the number of units.
21 In fact, the application is, the applicant has
22 taken the approach to the extreme in the case of something
23 like the bay windows. So when asked why the applicant was
24 using bay windows to articulate the West Lane, the east side
25 of the building, but not the front of the building, the

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1 applicant responded that it would mean that they couldn't
2 maximize the gross floor area because of the projections
3 that were created by the bay window.
4 So what that meant was over here, Madam Examiner,
5 you have bay windows, but here you do not because the bay
6 windows would have, would have effectively been a movement
7 back of the building to the extent that there were
8 projections from the bay windows. Yet to us, bay windows
9 would be one of those very important articulations on the
10 side of this building that would make West Lane a little
11 more presentable and acceptable to us at City Homes.
12 If you look at the 3.05, yes, the land use laws
13 permit when you --
14 BY MR. ABRAMS:
15 Q 3.05 FAR?
16 A Yes. Yes, the land use laws permit a bonus for
17 MDPU's, but it also requires that the project be in
18 conformity with the rest of the neighborhood. When you look
19 at the rest of the neighborhood --
20 MS. ROBESON: What exhibit is that?
21 MR. LAWCH: I'm not going to use it quite yet,
22 but --
23 MS. ROBESON: Oh, okay.
24 MR. LAWCH: -- I will in a minute. When you look
25 at the rest of the neighborhood, the City Homes, you have an

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1 FAR of 1.8. Edgemoor at Arlington North, you have 1.8. At
2 4825, you have 2.5 FAR. And I think I missed one. This
3 would be 1.8. This would be 1.9. And then we have --
4 MS. ROBESON: Okay. You have to identify the
5 building you're pointing out.
6 MR. LAWCH: Sure. Okay. So for City Homes, it's
7 1.8. For Edgemoor at Arlington North, it's 1.8. For
8 Edgemoor at Arlington, it's 1.9. And for 48.25, it's 2.5.
9 And now I also acknowledge that this is 3.05. We'll deal
10 with that in a moment.
11 The 4901 Hampden Lane project, the poster child
12 is, has the mass and density of Woodmont, on Woodmont has
13 been approved at 3.05 but, again, is located on Woodmont.
14 So you have all these projects on Montgomery Lane that are
15 substantially less than the FAR that's being sought for the
16 applicant. And then you have 3.05 here as well but, again,
17 on Woodmont, not in the middle of the block on Montgomery
18 Lane.
19 In addition, there's some interesting facts about
20 4901 and that is it's a much smaller project than this by
21 about 25 percent. I wouldn't bore you with the comparison
22 of the gross tract area, but it is about 25 percent less
23 mass than that. So, again, the side --
24 MS. ROBESON: 4901 is less mass than --
25 MR. LAWCH: Yes.

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1 MS. ROBESON: -- this development?
2 MR. LAWCH: Correct. So, again, it's supposed to
3 have the most mass compared to these other uses. Again, if
4 you're ignoring the big Edgemoor as being, as not setting
5 precedent, then if you look at the rest of Montgomery Lane,
6 this becomes more of the benchmark and although it has 3.05
7 FAR, it's also a smaller building than this and it's located
8 on Woodmont where more density and more mass is more
9 appropriate.
10 The West Lane project, if approved in its current
11 configuration, would also have the highest ratio of units
12 per acre.
13 BY MR. ABRAMS:
14 Q What exhibit is that?
15 A This is Exhibit 53. So we've established absent
16 the Edgemoor, that it's the tallest building on the block.
17 We've established that it has, it is the most massive
18 building, again, excluding the big Edgemoor. And it also
19 has the most units per acre compared to all of the other
20 properties here. Again, with a vast number of them having
21 units per acre as low as 20 and 30 units per acre.
22 Now units per acre, it's, I understand the
23 position of the applicant. Obviously, it's trying to do,
24 create smaller units, but it's, but it also has to, again,
25 it has chosen to be on Montgomery Lane and Montgomery Lane

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1 is simply not densely populated with units per acre and that
2 is an existing condition that if the applicant wants to
3 conform to the neighborhood, be compatible with the
4 neighborhood, its ratios have to be in line with the
5 neighborhood.
6 Reducing the number of units, regrettably reduces
7 the number of MPDUs, but also reduces the traffic issues,
8 helps preserve the pedestrian, bike-friendly nature of the
9 Montgomery Lane and has other very significant reduction and
10 impact that the project would have on the neighborhood. I'm
11 trying to speed up.
12 MS. ROBESON: That's okay. It's important to get
13 all your points in.
14 MR. LAWCH: One comment about traffic and I will
15 not set the foundation for my comment is that Montgomery
16 Lane is not a high-traffic street, but it's not intended to
17 be a high-traffic street. But one of the things that was
18 done on the street which was actually quite clever that DOD
19 did it and it created that two-lane, one-lane, one-way, two-
20 way situation and it helps control traffic flow and actually
21 I'm very supportive of it, but the Achilles heel of that
22 configuration is the, what I call the one vehicle rule. And
23 the one vehicle rule is if somebody does something stupid in
24 a vehicle along Montgomery Lane, it has very serious
25 consequences. Either on the east side it's going to totally

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1 block traffic or on the west side could cause a very serious
2 vehicular accident.
3 MS. ROBESON: Okay. When you say east side,
4 that's east of the do not enter signs of West Lane?
5 MR. LAWCH: Yes, correct.
6 MS. ROBESON: Okay.
7 MR. LAWCH: So here on the one --
8 MS. ROBESON: Are you okay?
9 MR. LAWCH: Yes.
10 MR. ABRAMS: That was a great dance step.
11 MR. LAWCH: Yes.
12 MS. ROBESON: 106(f)?
13 MR. LAWCH: Okay. So, okay, what -- okay. So
14 here the one-way, because of the parking --
15 MS. ROBESON: You're showing the portion east of
16 West Lane?
17 MR. LAWCH: Yes.
18 MS. ROBESON: Okay.
19 MR. LAWCH: So because of the parking on both
20 sides of the street with the lay by and the parking on the
21 south side, there's only room for one vehicle. If there's a
22 problem with that vehicle or a car is coming down the wrong
23 way on that portion of Montgomery Lane, the traffic pattern
24 is completely disrupted. I don't know if you noticed when
25 you were on your tour, when you were on the north side of

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1 Montgomery Lane right in front of the Edgemoor, you stepped
2 off the curb --
3 MS. ROBESON: Which Edgemoor?
4 MR. LAWCH: The big Edgemoor.
5 MS. ROBESON: The big one? Okay.
6 MR. LAWCH: Right about here, you stepped off the
7 edge and had to stop because the car came down the wrong way
8 right in front of you. That happens with surprising
9 regularity. And then as Dan Joseph testified, when you get
10 out here, you now have two-way traffic, but no room for
11 anybody to double park or start if they're making K turns,
12 whatever it is. Obviously it disrupts that traffic.
13 So what are the residents of City Homes asking
14 for? We understand that the development of the West Lane
15 project is inevitable. We want the development to go
16 forward. We have no problem with a development being
17 completed there, but what we want to see is a development
18 that is in balance with the neighborhood. We understand
19 that it's give and take. We understand that the principles
20 of really this kind of zone are relatively flexible and the
21 question comes down really to what, what is in the best
22 interest of all parties and how can we develop something
23 that is, in effect, reasonable growth.
24 So what we are suggesting and, again, we think
25 it's important that anything be, anything that you, Madam

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1 Examiner, are recommending be recommended as binding
2 elements are 2.5 FAR, that the number of units be limited to
3 no more than 100 units, that the building be pulled back
4 from Montgomery Lane by an additional eight feet. That will
5 restore most of the lost public space. And if you reduce
6 the FAR, obviously that balloon, you get a lot more
7 flexibility and the applicant is better able to do setbacks
8 and bay windows and what have you because they are not
9 maxxed out by the 3.05.
10 Maximum height of 65 feet, since even 65 feet is a
11 stretch in our judgment, we should still have a step down,
12 but rather than 12 feet, we think 20 feet is more
13 appropriate. If the maximum height is kept at 70, which of
14 course we don't suggest, we do, we would then suggest that
15 that step back be extended around the east side of the
16 building.
17 MS. ROBESON: Along West Lane?
18 MR. LAWCH: Along West Lane. We are concerned
19 about the penthouse height. We think it should, the
20 penthouse should be moved away from the property even away
21 from the south side of the front of Montgomery Lane and
22 further back in the property. We realize that that may
23 require the elevators to be moved back, but we think that
24 that is a pretty reasonable request given the size of the
25 building.

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1 We think that the building should have more of an
2 architectural look in keeping with the neighborhood. I
3 think we discussed some of that before. I think, again,
4 something like 4825 where there is that brick and the
5 concrete that at least tries to mimic existing compatible
6 projects would be helpful. Independent unit entrances would
7 be useful. A public area along Montgomery Lane with seating
8 and shade would be useful. Bay windows in the front would
9 go a long way so it's breaking up and not of that front and
10 a mass on the front.
11 And we think that, Madam Examiner, that all of
12 these factors are related so that it's, it would be
13 difficult if, for example, a decision came down that said,
14 okay, just take off, you know, make the maximum units 100
15 without also focusing on the FAR or the mass because, for
16 example, if the number of units were reduced, you could
17 still fill up the FAR with larger units. So that we think
18 that it's important that height, mass and density all be
19 dealt with together.
20 MS. ROBESON: Okay.
21 MR. LAWCH: We think that if our suggestions are
22 incorporated, what you really do get is a project that on
23 page 82 which describes what should be built on Montgomery
24 Lane wouldn't be everything that the sector plan
25 anticipated, but it would sure go a long way to being a

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1 project that was more in keeping with the sector plan, with
2 the mixed street of components and would be something that
3 City Homes and I'm sure the big Edgemoor and others would
4 then think would be a compliment to the neighborhood instead
5 of a detriment.
6 I think with that, I've concluded my remarks.
7 MS. ROBESON: Thank you. I am not going to do
8 cross-examination of Mr. Lawch tonight. We'll resume that
9 on April 29th. What I'd like to do -- thank you, Mr. Lawch.
10 What I'd like to do is take the gentleman, I'm sorry, I
11 don't know your name, here since you can't be here on either
12 day. Mr. Lawch is your last witness, correct --
13 MR. ABRAMS: Yes.
14 MS. ROBESON: -- Mr. Abrams?
15 MR. ABRAMS: I just had a few more questions for
16 him.
17 MS. ROBESON: Oh, I'm sorry.
18 MR. ABRAMS: But, you know, do you want to reserve
19 that for the next time?
20 MS. ROBESON: Yes, I would like to so we aren't
21 ending on cross of Mr. Lawch. We're --
22 MR. ABRAMS: It's not going to take long.
23 MS. ROBESON: Okay.
24 MR. ABRAMS: It's not. Sir --
25 MS. ROBESON: Well --

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1 MS. HARRIS: Should he just complete now or --
2 MS. ROBESON: Yes, why don't -- I was just
3 thinking why don't we -- you finish your questions and then
4 I'll know where we started, but stay up at the seat.
5 MR. LAWCH: Thank you.
6 BY MR. ABRAMS:
7 Q Mr. Lawch, the three projects that you pointed
8 out, 4901 Hampden Lane and the Hampden Lane building on
9 Hampden Lane and Arlington Road, are they on smaller size
10 lots than the subject property, if you know?
11 A So you're referencing this project? This project?
12 Q That project.
13 A Those two, yes. This one I'm not quite sure. I
14 don't think I've ever looked at the total square footage on
15 that.
16 Q What is the relationship between the West Lane
17 building and the other two buildings in terms of the size?
18 A The relationship? The West Lane building to these
19 two buildings?
20 Q Yes.
21 MS. ROBESON: Wait. Which -- I can't see where
22 you're pointing.
23 MR. ABRAMS: 4825 --
24 MS. ROBESON: There's nowhere to stand in this
25 room. 4825 to 4901 and to the subject development?

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1 MR. LAWCH: And the question is, may we have the
2 question please?
3 BY MR. ABRAMS:
4 Q The buildings that are represented on that aerial
5 photograph, do they look bigger than they actually are in
6 terms of the size comparison with the subject property and
7 the subject --
8 A Well, as I've testified, this building is 25
9 percent smaller than this building --
10 Q Correct.
11 A -- and for, then --
12 Q The subject property?
13 A -- the subject property.
14 MR. KNOFF: Compared to 4901?
15 MR. LAWCH: Compared to 4901. Compared to 4901.
16 And this building is certainly smaller than this --
17 MS. ROBESON: 4825?
18 MR. LAWCH: 4825, although I don't know the exact
19 dimensions, but I think we can all concede that fact.
20 BY MR. ABRAMS:
21 Q Is the Hampden Lane building also smaller?
22 A Yes.
23 Q By how much do you know?
24 A I think it's about 25 percent. If you give me --
25 MS. ROBESON: When you say percent, what --

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1 smaller of what measurement?
2 MR. LAWCH: Buildable square footage or what the
3 FAR ratio --
4 MS. ROBESON: The FAR?
5 MR. LAWCH: -- applied to the footprint would
6 generate.
7 MS. ROBESON: Well, the FAR is the ratio of --
8 MR. LAWCH: Right. So that's 3.05. If you apply
9 that ratio to the, what do they call it, the --
10 MS. ROBESON: The tract area?
11 MR. LAWCH: Yes, the gross tract area.
12 MS. ROBESON: Gross tract area.
13 MR. LAWCH: We create an envelope of buildings.
14 MS. ROBESON: I see.
15 MR. LAWCH: And that is, I believe 25 -- and I can
16 get the measurements in a second.
17 MS. HARRIS: And can I just ask for a
18 clarification of Mr. Abrams's last question? He said it was
19 the Hampden Lane. I'm assuming you mean 4901, correct?
20 MR. ABRAMS: No.
21 MR. LAWCH: No.
22 MS. HARRIS: Well, I think that's what Mr. --
23 MR. ABRAMS: We're not on Hampden Lane.
24 MS. HARRIS: -- Lawch was asked.
25 BY MR. ABRAMS:

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1 Q You already answered with reference to 4901 is at
2 25 percent.
3 A Yes. I do not know the square footage of this
4 building, but I do know that with regard to City Homes's
5 height, that it appears as a much more massive building than
6 it is relative to City Homes. So it appears to be taller
7 than it should be. I can't tell you about the mass. And I
8 will also note, and I know that Ms. Turnbull has testified
9 there are also cut-outs in this building, but there is
10 another exhibit that shows those cut-outs.
11 Q Now the items that you testified to the Hearing
12 Examiner that you believe should be binding elements of 2.5
13 FAR, the 100-unit limit and so forth, is that because you
14 believe that those features are the features that are
15 contained in a sector plan or for some other reason?
16 A I think those features would then make the
17 building compatible with the sector plan and compatible with
18 the existing surrounding buildings. It would still be in
19 many cases larger or more dense, but still within the range
20 of reasonableness.
21 Q And the final question I have is, do you believe
22 that City Homes would benefit from a crane swing and
23 construction agreement?
24 A I think that, you know, the expression good fences
25 make good neighbors, good construction agreements are very

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1 helpful with neighboring properties to ensure that everybody
2 knows what they're supposed to do and what their
3 responsibilities are.
4 Q In terms of crane swing, is it possible, likely,
5 that a crane could swing over --
6 A A little --
7 MS. HARRIS: Objection. That's speculative.
8 MS. ROBESON: Overruled.
9 MR. LAWCH: I'm no crane swing expert, but it's
10 certainly possible and it often occurs that the, certainly
11 the outer limits of the crane will get into the street,
12 could possibly be over City Homes's property, in which case
13 one would definitely be required.
14 BY MR. ABRAMS:
15 Q And a construction agreement would, you'd be
16 looking for provisions dealing with noise and traffic
17 control, hours of operation for construction, things of that
18 nature?
19 A And liability.
20 Q And liability.
21 A Meaning that if during the cost of construction
22 the applicant did something to our property, we would have
23 something to point to and a better basis to demand
24 compensation.
25 Q Okay.

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1 MR. ABRAMS: That's all the questions I have.
2 MS. ROBESON: Thank you. Thank you, Mr. Lawch.
3 MR. LAWCH: Thank you.
4 MS. ROBESON: Mr. Knopf, is this your witness
5 or --
6 MR. KNOFF: Yes, it is.
7 MS. ROBESON: Okay. Please raise your right hand.
8 (Witness sworn.)
9 DIRECT EXAMINATION
10 BY MR. KNOFF:
11 Q Mr. Pohoryles, would you state your name and
12 address for the record?
13 A Excuse me. My name is Louis Pohoryles. I live at
14 the Edgemoor, 4821 Montgomery Lane in Bethesda. I am here
15 in a representative capacity. I am vice president and a
16 member of the board of directors of the Edgemoor condominium
17 association. I have been living in that building for 10
18 years now. I was on the original founding board of
19 directors serving two years. I stepped off the board and
20 just rejoined the board about a year ago and I am very
21 familiar with what goes on on Montgomery Lane as I am semi-
22 retired. I spent most of time around Montgomery Lane to the
23 extent I do any work on the retired, semi-retired lawyer and
24 I generally do it in my own den.
25 Q Okay. Just --

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1 A Our association, I'm sorry?
2 Q I just want to tell the Hearing Examiner that
3 while he's talking we can save time. He will be using
4 Exhibit 102(a).
5 A Well, there's a change in that --
6 Q Okay.
7 A -- counsel. Out of deference to the board's, your
8 time --
9 MS. ROBESON: Yes.
10 MR. POHORYLES: -- I had prepared with my
11 colleague, Andrew Niebler, who will be testifying on another
12 day, an extensive photo exhibit of traffic situations on
13 Montgomery Lane. I --
14 MS. ROBESON: Is that in the record already?
15 MS. HARRIS: Yes.
16 MR. POHORYLES: It is in the record. It's Exhibit
17 102(a).
18 MS. ROBESON: Okay.
19 MR. POHORYLES: With respect to that exhibit, I
20 prepared with Andrew the whole exhibit. I took about half
21 of the pictures and Andrew took the other half. I am
22 authenticating by this testimony my having prepared the
23 exhibit and taking those pictures --
24 MS. ROBESON: Okay.
25 MR. POHORYLES: -- and since Andrew was able to

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1 come back on another day and the exhibit may take
2 significant amount of, or some amount of time, I will defer
3 to Andrew to talk about the whole exhibit, including the
4 photos that I have prepared. But the photos are generally
5 self-explanatory.
6 MS. ROBESON: Okay. Do you have any objection --
7 MS. HARRIS: No.
8 MS. ROBESON: -- to accepting his photos as a fair
9 and accurate representation of the property?
10 MS. HARRIS: Well --
11 MR. POHORYLES: You've seen this before I think.
12 MS. HARRIS: -- I don't know the dates on which
13 they were taken.
14 MR. POHORYLES: I will testify to that right now.
15 They were taken on a random basis as I happen to have a
16 camera or a cell phone ready. In the fall of last year, we
17 prepared it -- I did not note in my camera, though it does
18 have the dates on it, I didn't bring them, I didn't think it
19 was necessary, I prepared this exhibit for the Planning
20 Board hearing and submitted it to the Planning Board. It
21 has been resubmitted to your record. They were prepared on
22 various days as occurrences happened on Montgomery Lane that
23 we thought we should photograph for the purposes of the
24 Planning Board hearing.
25 MS. ROBESON: Okay. Generally what time frame?

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1 MR. POHORYLES: They were generally prepared
2 sometime in October and early November of last year.
3 MS. ROBESON: And do they fairly and accurately
4 depict the property on the properties or depict --
5 MR. POHORYLES: The traffic situations?
6 MS. ROBESON: Yes.
7 MR. POHORYLES: They certainly do.
8 MS. ROBESON: Okay. Are you going to object if he
9 is not here to lay a foundation?
10 MS. HARRIS: I think he just noted that he took
11 pictures as occurrences happened and I accept that. So I
12 have no issue with that.
13 MS. ROBESON: Okay. Do you have any issue with
14 it, Mr. Knopf?
15 MR. KNOPF: No, I'm just trying -- I think that
16 helps to move things along. As long as --
17 MR. POHORYLES: Mr. Knopf really passed me a note
18 to be sure to leave nothing out and I'm saying Andrew and I,
19 Andrew Niebler and I have agreed previously that he's
20 equally capable of discussing these. He's very familiar
21 with them.
22 MS. ROBESON: Well, she has a question on
23 particular pictures that he can't answer. I mean I'm
24 willing to hear your testimony while you can't be here.
25 MR. POHORYLES: No, my problems are twofold. On

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1 one day I'm committed to a grandparent's day at my --
2 MS. ROBESON: Yes.
3 MR. POHORYLES: -- my grandkids'
4 MS. ROBESON: We've already agreed.
5 MR. POHORYLES: On the other day, I'm committed to
6 participate in a Holocaust remembrance day at the Holocaust
7 Memorial Museum. I am a survivor and one of the honorees.
8 MS. ROBESON: Okay. Well, your -- oh,
9 congratulations. You're welcome to proceed on this basis
10 and if counsel, you know, if you strongly feel after at some
11 point that you need cross-examination, we'll have to
12 schedule a date.
13 MS. HARRIS: Okay.
14 MR. POHORYLES: And I'm happy to pass these over
15 to you to read through.
16 MS. HARRIS: I've seen them. I've seen them.
17 MR. KNOPF: She has them already.
18 MS. ROBESON: She has them in the record.
19 MR. KNOPF: You keep your, make sure you keep your
20 copy, so --
21 MR. POHORYLES: Well, give this to Andrew. He
22 needs it.
23 MR. KNOPF: Best laid plans --
24 MR. POHORYLES: That said --
25 MS. ROBESON: Well, we're trying.

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1 MR. POHORYLES: And I'm doing this in order to --
2 MS. ROBESON: I understand totally and --
3 MR. POHORYLES: -- to help you with your time
4 commitments.
5 MS. ROBESON: -- and I really appreciate your
6 concern.
7 MR. POHORYLES: I'm also going to incorporate by
8 reference a lot of the testimony of the prior two witnesses.
9 I did not hear Mrs. Turnbull's testimony, so I can't do
10 that, but certainly our association opposes the current
11 iteration of this building for a number of reasons.
12 Essentially, we are concerned that the applicant is trying
13 to shoehorn a relatively large building onto the site. The
14 proposed building in our opinion is too tall, too deep, too
15 wide for this relatively small site.
16 The site is too narrow to accommodate all that
17 applicant wishes to do. We object to a step back of 12 feet
18 above the 5th floor. It doesn't do much to diminish the
19 bulk of the building. Again, that's been testified to. If
20 the building were to exceed four stories, it should step
21 back immediately above the fourth story, not the fifth
22 story, and for at least 30 feet.
23 We object to making it inviting for traffic,
24 principally delivery vans and food deliveries, to make, to
25 have it convenient to step into the building on that corner

1 MR. POHORYLES: And don't hear warnings by bikers
2 of the seek to pass. You know, a biker will come up behind
3 you and say to your left or to your right. Well, I'm not
4 going to hear that. We're not against development. We,
5 indeed, we are satisfied with and supported the Holladay
6 plan. We would welcome this building as an in-scale,
7 friendly neighbor on the street. We strongly oppose this
8 very large, very bulky, traffic-intensive building where
9 enough thought has not been given, we believe, to how to
10 mitigate the great need, the great pressure that the traffic
11 coming out of the building will create.

12 Also, there's been some talk that there are
13 studies within this area that only 68 percent or 62 percent
14 of the people living in rental apartments in this area will
15 have cars. Well, you know, that's okay when you take
16 buildings of more modest rental expersions than this
17 building likely has. When you have a more upscale building,
18 most of the residents will have cars. Indeed, many of the
19 units will have two cars where there are couples living and
20 commuting in two directions. Indeed, there will be others
21 that come to visit and even if everybody is single, they
22 will have, some will have overnight visitors with cars. So
23 we think there's a major fallacy in saying that the traffic,
24 the garage is 120 spaces and it's not going to be used
25 because people just don't have that many cars. Well, that's

1 a conjecture. I'm willing to conjecture on the other side.
2 I've significantly abbreviated my presentation,
3 but I think that I can safely incorporate by reference most
4 of the comments we've heard from City Homes. And with that,
5 I'll rest.

6 MS. ROBESON: Okay. Thank you.
7 MR. KNOPF: Yes, I had a few questions because I
8 think you were a little bit too abbreviated, but I'll be
9 very quick.

10 MR. POHORYLES: I know.
11 MS. ROBESON: You're too nice, in other words.
12 MR. KNOPF: Yes, that's right.

13 BY MR. KNOPF:
14 Q If I understand the Edgemoor has insufficient
15 parking spaces for visitors in the garage?
16 A That is correct. We have nine guest spaces or
17 nine Edgemoor owned spaces, two of which are used by staff,
18 that leaves seven. Four of these are used for short-term
19 parking by visitors, two of them are dedicated to longer
20 term parking if people have relatives coming and one is
21 inadequate for use in parking and we allow, those that rent
22 have motor bikes and motorcycles to use that because you
23 can't fit a car into -- all of our spaces are very modest in
24 size. They're built, other than the four handicapped
25 spaces, they're all built to minimum parking space standards

1 of Montgomery County.
2 Q And do I understand you correctly, you have, the
3 building has no in-house or in-garage facility to permit a
4 loading and unloading for moving?
5 A We have a loading dock that is adjacent to our
6 entryway in the garage and that loading dock handles both
7 moving vans and trash trucks and when we have a mover move
8 in or move out, we try to -- our staff tries to put pylons
9 in the lay by. The moving truck will pull into the lay by
10 and in order not to impede trash pick-up and the like, will,
11 the movers will carry the furniture and what have you into
12 the building, but they will not block that loading bay and I
13 think that you will see in the photo array one day when
14 there was a moving truck in the lay by and another moving
15 truck illegally parked on Montgomery Lane waiting for the
16 first one to be unloaded. Fortunately, we only have 54
17 units. Fortunately, we are condominiums with only about six
18 or eight rental units there. So there isn't as much moving
19 as I think would be experienced by a rental building such as
20 the applicant's building. And with 100 units or 130 units
21 or 90 units, every move-in and move-out is going to create a
22 major problem along West Lane in my opinion based on our
23 experience.
24 Q And based on your experience, do I understand that
25 the UPS truck or Federal Express truck, could that go into

1 your garage to make deliveries?
2 A No, they can't and they don't. In fact, they
3 don't even pull up to the curb.
4 Q And I was trying to understand what, the service
5 vans that might consent, painter, plumber, electrician --
6 A No room for them. Our headroom is too small and
7 our entries are too narrow. Indeed, when people come in
8 with large SUV's or trucks, they have to get out, retract
9 their mirrors, or if they have modern ones that they can
10 retract their mirrors automatically in order to fit through
11 the entrance into our garage. Service trucks and vans would
12 not do that.
13 Q Now you mentioned there was a nearby, a Metro
14 garage nearby. Does that Metro garage service commuters for
15 parking?
16 A Yes, it does. It's the garage on Edgemoor Lane,
17 one block north of Montgomery Avenue, that is adjacent to
18 the entrance to the Bethesda Metro.
19 Q And is it your experience -- what does your,
20 Edgemoor's experience then, when I say Edgemoor, I'm always
21 referring to the big Edgemoor, Edgemoor experience with
22 visitors that do not have a space to park in the building,
23 do, is it your experience that they commonly park in the
24 library parking area?
25 A Not really. We -- at least my wife and I

1 discourage them from doing that. We don't want our friends
2 to get tickets.

3 Q I see. So -- okay. I'm glad to hear that.

4 A What we do, though, is we use the phone an awful
5 lot and we have a listen in the building and we post
6 something in it, who has got a parking space available for
7 Monday night and generally somebody says, you know, I'll be
8 out of town or I only have one car now and I have two
9 spaces, you can borrow my space. We do that an awful lot.

10 Q And we had testimony regarding the adequacy of the
11 pick-up and drop-off at this proposed project which seemed
12 to indicate that people could, assuming there's a space at
13 lay by, just pop into the lay by, drop the person off and
14 then leave and it would be a very quick operation. Is that
15 your experience at Edgemoor with letting off people?

16 A Well, we have a real problem at Edgemoor with
17 pick-ups and drop-offs when the lay bys fall and the person
18 being dropped off is either elderly with mobility problems
19 or handicapped. We have a ramp on the side of our entrance.
20 It's beyond the lay by and it really takes time and is
21 difficult to discharge a passenger and get the passenger to
22 walk up the ramp or be wheeled up the ramp. And, of course,
23 if the caretaker or the friend who drops off that person
24 does the dropping off, you know, does he or she leave the
25 car with blinkers going, parked illegally and help the

1 person get up?

2 Generally, when we expect such people and my
3 sister-in-law is such a person, she's elderly and needs a
4 wheelchair on occasion, I'm going down and meet her so her
5 caretaker or caregiver can just pull up and go in and I'll
6 wheel her up. Well, I happen to be a senior, but I'm
7 relatively mobile. We have a lot of seniors that are less
8 mobile than I am.

9 Q Well, if the, I'm trying to understand something.
10 If the lay by is occupied by service vans and then where
11 does someone that wants to drop someone off and the rest of
12 the legal is taken, where?

13 A Illegally. Either --

14 Q They sit in a traffic lane, is that --

15 A Yeah. Yeah.

16 Q All right. I'm just trying to understand this.
17 Well, similarly, if someone is in the lay by to drop off and
18 the service van comes or UPS truck comes, does that then
19 mean that service van or truck --

20 A Well, what happens if --

21 Q -- parks?

22 A If somebody is in the drop-off and a service van
23 pulls up, they won't worry about whether there's a space or
24 not. They'll double park and him and that car, until they
25 run in, deliver their packages and come out, you know where

1 it's -- we've become a significantly more delivery-oriented
2 society. We have dozens and dozens of packages delivered
3 every day to our building for only 54 units, especially on
4 holiday time, from UPS and Fedex and sometimes twice a day.

5 Q Well --

6 A And, frankly, a lot of us are so old that we still
7 go shopping. Think of a building of young people being
8 built on West Lane where everybody is working and everybody
9 uses Amazon.

10 Q Well, I wanted to ask about that. If -- you had
11 mentioned that you heard testimony or were advised of
12 testimony that a rental building, that many people may not
13 own cars. Is that in your, to your mind, would you comment
14 on whether you think that may increase or decrease the
15 amount of deliveries to people who don't own cars?

16 A I don't think it's going to increase or decrease
17 deliveries. They're just going to be a lot. There are
18 going to be a lot of deliveries no matter what.

19 Q I see.

20 A Frankly speaking, I don't know, I'm very computer
21 conversant. My wife goes shopping. She hates computers. I
22 buy her cosmetics on Amazon.

23 Q One more thing. You mentioned that you thought
24 people in leased buildings, particularly with high rents,
25 would tend to have cars, I believe that was your testimony?

1 A That's, my conjecture, equally as good as the
2 applicant's conjecture that there will be fewer cars.

3 Q Well, of your conjecture or your actual
4 experience, are you, have familiarity with or know of where
5 a common practice in high rental units is that there may be
6 two people that share rent that may be unrelated and each
7 could have a car?

8 A Oh, we have that in our building. We have six or
9 eight renters in our building. They've got cars.

10 Q And do the, are there renters that --

11 A I don't, I really don't know their --

12 Q Okay. Living arrangements are --

13 A All I can tell you is the people that rent in our
14 building for the most part have cars --

15 Q Have cars?

16 A Single owners in our building, even senior ones
17 and even the -- I have a space right near a handicapped
18 space, there is a woman who is handicapped who walks with a
19 cane and she drives every day.

20 Q Just one second please.

21 A I tried to shorten it for you.

22 MS. ROBESON: You're doing wonderfully, thank you.

23 MR. KNOPF: I'd like the record to reflect we
24 raced through this and we --

25 MS. ROBESON: No, no.

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1 MR. KNOPF: -- have, we're finished.
2 MS. ROBESON: You need to say what you want to say
3 and not --
4 BY MR. KNOPF:
5 Q I know you had one other thing, but just, can you
6 tell me if you think Mr. Niebler is going to address this or
7 not. You talked about the congestion on the street and the
8 problems. Have you observed some problems arising from that
9 congestion in terms of emergency vehicles?
10 A Oh, absolutely. The photo display that I -- the
11 part of it that I prepared will show very clearly parked in
12 front of our building the photographs were taken by me from
13 our unit initially, a large emergency vehicle, a fire
14 department rescue vehicle parked in front of the building
15 and it totally congested the street. There are photos
16 showing a car exiting our garage which could not turn the
17 one way that is permitted to the right after she exited our
18 garage. So she exited our garage, turned left the wrong
19 way, created a traffic hazard, created an unsafe situation,
20 proceeded to the left on a one-way street and exited
21 Montgomery Lane illegally, but that was the only way she
22 could get out. I'm not going to fault her.
23 Q Okay.
24 A I would have probably done the same thing.
25 MR. KNOPF: I have no further questions.

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1 MS. ROBESON: All right. Mr. Abrams, do you have
2 any questions?
3 MR. ABRAMS: Just one question.
4 DIRECT EXAMINATION
5 BY MR. ABRAMS:
6 Q The traffic circulation and the parking problems
7 that you testified to just a few moments ago, in your
8 opinion are they caused and created by inadequate
9 enforcement of existing traffic restrictions or is it more a
10 function of the size and traffic pattern for Montgomery
11 Lane?
12 A You know what, I'll say yes and yes. The
13 parking -- certainly the parking can be cleared up by strong
14 traffic enforcement and tickets, but that will only
15 alleviate a very small portion of the congestion and
16 problems. People will get tickets and people will, other
17 people will replace them and they'll get tickets. But the
18 real problem is there is no place to put a service vehicle.
19 When I have my air conditioner serviced or when I need an
20 electrician to come by, he can't park in front of the
21 building --
22 MS. ROBESON: Okay.
23 MR. POHORYLES: -- unless he comes at 7 o'clock in
24 the morning before the five legal parking spaces have filled
25 up and grabs a space.

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1 MR. ABRAMS: That's all I have.
2 MS. ROBESON: Okay.
3 MR. KNOPF: I forgot to ask just one question.
4 MS. ROBESON: Okay.
5 BY MR. KNOPF:
6 Q There was testimony from the traffic expert of the
7 applicant that service vehicles tended not to come during
8 rush hour, but to try to come after rush hour and stay mid-
9 day and got caught up. Has your experience been the
10 service --
11 A Well, I'll tell you my experience.
12 Q May I finish the sentence?
13 A Yes.
14 Q Has your experience been that most service
15 vehicles or many come during the in between rush hours to --
16 A Absolutely not. Absolutely not. Pick any service
17 provider whether it's an electrician, a plumber, a Comcast
18 installer, a Verizon installer, they'll tell you have a
19 window from you from '91 or from one to five and these guys
20 have a list of stops they need to make and if my street is
21 convenient for them to come at 8:30, they'll come at 8:30 in
22 the morning during high traffic or if they're running late,
23 they'll come in at 5:30 and 6:00, even though I expected
24 them at 1:00. And I'm sure everybody else has the same
25 experience.

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1 MR. KNOPF: Thank you. No further questions.
2 MS. ROBESON: Okay. Ms. Harris?
3 MS. HARRIS: Thank you. I'll try to be quick in
4 light of the time.
5 MS. ROBESON: No, that's okay.
6 CROSS-EXAMINATION
7 BY MS. HARRIS:
8 Q Actually just thinking we'll start with, we'll go
9 backwards a little bit, start from the end. So you
10 indicated that the service vehicle providers do come in the
11 morning rush hour sometimes and in the evening rush hour
12 sometimes?
13 A Absolutely.
14 Q So those numbers would have, in fact, been picked
15 up on the applicant's traffic consultant's report that
16 studied the a.m. rush hour and the p.m. rush hour, correct?
17 A I don't, I don't know that to be a fact because
18 they don't come all on one day. I don't know what days you
19 did it during -- was it during the summer where there's a
20 lot less activity, people are away at the beach now? Was it
21 during -- I just can't tell you what you're --
22 MS. ROBESON: I think your answer is you don't
23 know, right?
24 MR. POHORYLES: I have no way to guess.
25 MS. HARRIS: Okay.

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1 BY MS. HARRIS:
2 Q Are you aware that traffic counts, in fact, cannot
3 be rendered in the summer for the very reason that you just
4 stated?
5 A I have, no, I'm not aware of it.
6 Q Okay. It sounds like you're somewhat frustrated
7 with your parking situation in your building. If you had
8 your druthers, would you have redesigned the building to be
9 more accommodating?
10 A Absolutely. I would set it back from that
11 Montgomery Lane a few feet.
12 Q Okay.
13 A I would make it a smaller building. I would make
14 it probability a lower building.
15 Q No, I'm talking about the -- so the, with respect
16 to the loading situation, would you have redesigned the
17 loading and summary spec?
18 A I don't know how it could be redesigned because
19 it's a relatively small site for the size of building we
20 have. That building probably should have been smaller. It
21 should have had more public space, fewer units and,
22 therefore, the parking would have been more easily able to
23 accommodate all of us.
24 Q Just smaller by say half?
25 A No, but about 25 percent I would guess.

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1 Q So taking the 6 FAR to 4.5 FAR?
2 A For that size? Taking into account the FAR that
3 was transferred to our building by City Homes, yeah, 4.5 --
4 Q Okay.
5 A -- would be better than 6.
6 Q If --
7 MS. ROBESON: Mr. Pohoryles, did you do
8 litigation?
9 MR. POHORYLES: No, ma'am, I'm a real estate
10 lawyer.
11 MS. ROBESON: Real estate lawyer?
12 MR. POHORYLES: I did this work. I represented,
13 very early in my career represented Prince George's County's
14 Board of Appeals.
15 MS. ROBESON: Okay. I'm sorry, Ms. Harris.
16 MS. HARRIS: That's okay.
17 BY MS. HARRIS:
18 Q Would you have preferred for the building to have
19 been built in such a manner that the Fedex truck could have
20 been accommodated in your loading bay?
21 A Absolutely.
22 Q Yes. And would it have made sense if there, in
23 that loading bay there was a door that would have led so the
24 Fedex truck could park in the loading bay and then going
25 through a door to come to make the deliveries?

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1 A Probably. The problem I have is not the Fedex
2 truck or the building, it's the drivers. In my experience,
3 the drivers can have a wonderful, large parking area in a
4 lay by. They'll park four feet away from the curb to the
5 lay by, into the roadway and, quote, "Run right in."
6 Q Right, but I was asking about the loading dock.
7 MS. ROBESON: Yes.
8 BY MS. HARRIS:
9 Q If there was a loading dock large enough to
10 accommodate the Fedex truck, that obviously would be a
11 desirable situation?
12 A Not -- not if the Fedex driver didn't use it.
13 Q But if there was a requirement that the Fedex
14 driver had to use it, would that be preferable?
15 A If you can enforce it, sure.
16 Q Good. Thank you. You noted that the Highrise
17 Edgemoor, that your, the Highrise Edgemoor opposes the
18 subject property for a number of reasons. You noted that it
19 was too tall, the subject property is too tall?
20 A Yes.
21 Q And how tall is the subject property?
22 A Is it, what, 75 feet?
23 Q 70 feet.
24 A Okay.
25 Q And 50 feet -- I'm not supposed to say.

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1 MS. ROBESON: No.
2 BY MS. HARRIS:
3 Q Do you know how tall it is at the building line
4 that it steps --
5 A I heard it, but it went in my one good ear and out
6 the same ear.
7 Q Does 50 feet, should I be on that side? Does 50
8 feet sound familiar?
9 A Yeah, it sounds familiar.
10 Q But you -- you're aware of the fact that the
11 Highrise Edgemoor is taller, deeper and, than the subject
12 property?
13 A It's not -- it's taller. It's not deeper. It's
14 wider, but not deeper.
15 Q Wider? I'm sorry. I did that the other day,
16 wider.
17 A Yes.
18 Q Longer. Right. Thank you. Have you ever seen a
19 -- you testified that you, that the Highrise Edgemoor, well,
20 you indicated that the Highrise Edgemoor issue isn't about
21 views, it's about the congestion on the street, but then at
22 the same time you noted that you would like to see the
23 building set back 30 feet, right?
24 A Absolutely. I'm a walker. I walk to the library,
25 I walk to the Giant, I have been forced off the sidewalk by

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1 bikes having to be on the sidewalk. I find the street is,
2 even as is and with the single-family homes where your
3 building is going to be, the streets, the sidewalks are
4 crowded. When the roadway is crowded, the bikes take to the
5 sidewalks.
6 Q Were you here when I showed the picture of and,
7 again, these are random and maybe this photo that showed
8 that there were pedestrians on the street, do those
9 sidewalks look crowded to you?
10 A That picture was, I would take not, I would guess
11 not taken when people are walking from and to Metro.
12 Q And how about at 10 o'clock on a Saturday morning
13 in October, would people be walking too and from outside,
14 not necessarily the Metro, but --
15 A I can't guess when they walk. I know when I walk.
16 I don't think, you know, I don't think a random snapshot of
17 no people on the sidewalks is representative of a street.
18 Q But our random --
19 A My living experience on the street is much more
20 representative than --
21 Q And are random snapshots of episodic traffic
22 representative of what occurs on the street?
23 A Because it occurs, yeah.
24 Q But random snapshots --
25 A Well, you're trying to prove something negative.

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1 Q -- don't necessarily --
2 A I'm trying to prove something positive.
3 MS. ROBESON: Okay.
4 MR. POHORYLES: There's a difference.
5 MS. ROBESON: Okay. You can't ask her questions.
6 If you could just answer her.
7 MR. POHORYLES: No, the answer is I can't disprove
8 something negative. I can testify to something positive.
9 The traffic occurrences that I testified to and the photo
10 display are actual occurrences that were witnessed and that
11 were photographed. As to a random photo that doesn't show a
12 lot of people walking on Montgomery Lane, I can't testify to
13 that. That's --
14 BY MS. HARRIS:
15 Q Correct. But you did testify that you snapped
16 randomly when occurrences occurred?
17 A And I happen to have a camera.
18 Q Okay. And it would seem to me if you're focusing
19 on the fact that there are cars on the street and you took
20 the picture, it would be even more representative of the
21 fact, it would show randomly whether there are, in fact,
22 pedestrians on the street as well.
23 A I can't testify to other pedestrians.
24 Q Okay.
25 A I can only testify to my own walking.

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1 Q Okay.
2 A And within my experience walking, sometimes the
3 street is empty, sometimes the street is crowded and on
4 occasion the street is, the pedestrians are challenged by
5 bicycles on the sidewalk.
6 Q Okay. Have you ever seen a building with a 30-
7 foot step back?
8 MR. ABRAMS: Setback or step back?
9 MR. POHORYLES: Step back up on top?
10 MS. HARRIS: Step back. He testified that he
11 wanted a 30-foot step back.
12 MR. ABRAMS: Same thing.
13 MR. POHORYLES: To tell the truth, I haven't, but
14 then again I was -- in suggesting this 30-foot step back, I
15 was trying to work with you and give you your 6-story
16 building, mind you not seven, six story. But if you want to
17 stick to the 4-story building, absolutely, no step back.
18 MS. ROBESON: The answer is you haven't?
19 MR. POHORYLES: I haven't.
20 MS. ROBESON: Correct.
21 MR. POHORYLES: No, I haven't.
22 MS. HARRIS: Okay. Thank you.
23 MS. ROBESON: Just, if you could just confine
24 yourself to answering the question, that would be, get us
25 through this.

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1 MS. HARRIS: And better for --
2 MR. POHORYLES: Thank you. I understand.
3 MS. ROBESON: I'm not sure you do, but --
4 MR. POHORYLES: Until the next time.
5 BY MS. HARRIS:
6 Q How many parking spaces, do you know how many
7 parking spaces there are in the Highrise Edgemoor?
8 A No, I don't know.
9 Q Do you have a --
10 A There are not enough for two spaces for every
11 apartment. That I can tell you. There are 54 apartments.
12 What the developer did was they sold two spaces to the
13 larger apartments, one space to the mid-sized apartments and
14 no spaces to the many smaller apartments.
15 Q Okay. And how many cars do you personally own?
16 A Two.
17 Q And you testified, or you questioned the Census
18 tract information with respect to the finding that if, in
19 fact, it's partly your rental, approximately 38 percent of
20 the renters would not own cars, correct?
21 A I testified to that as a good conjecture.
22 Q And your basis for that was because you questioned
23 the socio-economic group of the people that would live here
24 versus in the Census tracking area, correct?
25 A Correct.

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1 Q And, I'm sorry, you're questioning the Census
2 track data?
3 A No, I'm questioning the application of the Census
4 track data to your building.
5 Q And you're aware that Census track data is based
6 on immediate geography, correct, within the, it's within the
7 approximate geography and --
8 A Yes, but not necessarily, but, yes, but not
9 necessarily comparable, upscale buildings.
10 Q But do you have any, do you have any knowledge as
11 to what the merits of this building are going to be compared
12 to the rents of the rental properties anywhere else?
13 A I can tell you they're high. They're going to be
14 high.
15 Q And what is your basis for that?
16 A Because the developer would be foolish not to make
17 them high.
18 Q And --
19 A It's a desirable street.
20 Q And is the developer providing 18 percent MPDU?
21 A Those are all -- my guess is they're going to
22 be --
23 Q 18 MPDUs?
24 A And my guess is --
25 Q 15 percent?

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1 A 15?
2 Q Yes. A total --
3 A My guess would be that the County would extort
4 from the developer the making of those MPDUs, mostly two
5 bedrooms, and in which case there would probably be two
6 breadwinners in each family, so you're going to have a
7 significant need for parking in those MPDU's.
8 Q Are you aware of the fact that the parking
9 calculation in and of itself for MPDU's is half of the
10 general requirement because the County has determined that,
11 in fact, MPDU owners or renters typically have, their car
12 ownership is less?
13 A I understand that, but I also know that work force
14 people need cars.
15 Q Work force people that live within 800 feet of a
16 Metro station?
17 A It depends on where they work.
18 Q How often do you see enforcement, traffic
19 enforcement on the street?
20 A I'm sorry?
21 Q How often do you see traffic enforcement on the --
22 A I see tickets on windows.
23 Q Okay.
24 A Whenever, you know, or sometimes our neighbors
25 across the street in City Homes used to have a very diligent

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1 lady that owned a unit there and she would call whenever
2 somebody was parked illegally she would call. I think she's
3 moved since.
4 MS. HARRIS: Thank you. That concludes my
5 questions.
6 MS. ROBESON: Redirect, Mr. Knopf?
7 MR. KNOPF: None, thank you.
8 MS. ROBESON: Mr. Abrams?
9 MR. ABRAMS: None. No, thank you.
10 MS. ROBESON: Okay. Then --
11 MR. POHORYLES: And I really appreciate you
12 working me in. Thank you.
13 MS. ROBESON: I'm sorry. I appreciate your
14 consideration and thank you. With that, this hearing is --
15 MR. KNOPF: I just --
16 MS. ROBESON: Oh, sorry.
17 MR. KNOPF: Yes. I now have some scheduling
18 concerns.
19 MS. ROBESON: Yes.
20 MR. KNOPF: I had Mr., I thought for sure Mr.
21 Doggett would be on --
22 MS. ROBESON: That's what I keep thinking.
23 MR. KNOPF: I thought he would be on the 29th and
24 definitely finished.
25 MS. ROBESON: Okay.

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1 MR. KNOPF: I, now I'm not so sure because we have
2 cross-examination and I have three other witnesses and some
3 things that I need to present. So what I'm worried about is
4 where we go from the 29th. I want to make sure, because Mr.
5 Doggett can't do it on the 13th which we were ignoring
6 because I didn't think he would have to testify that day.
7 MS. ROBESON: Yes. I think that, you know, we
8 will --
9 MR. KNOPF: What I just mentioned is that we were
10 originally, and I forgot, maybe this was wrong, originally I
11 suggested the 3rd and he said he was not available, but he
12 is available the 3rd, so I want to know whether that's
13 probably, possibly an overflow day --
14 MS. ROBESON: I think Ms. Wiltshire is in here --
15 MS. HARRIS: Is out of town on a pre-planned
16 vacation.
17 MR. KNOPF: But she needs to be present for his
18 testimony, Mr. Doggett's?
19 MS. HARRIS: Of course.
20 MR. KNOPF: Okay. I'm just raising this now --
21 MS. ROBESON: I know. I understand. I think that
22 we have cross-examination of one, just the last of Mr.
23 Abrams's witnesses. So Mr. Doggett could go first witness
24 on the 29th.
25 MR. KNOPF: And then, okay. Now are you -- you

1 guys are available the 13th, because Doggett could well
2 take, the testimony, the cross-examination, the cross-
3 examination of Doggett might take up the whole --
4 MS. ROBESON: Yes, I understand.
5 MR. KNOPF: So I --
6 MS. ROBESON: You're right.
7 MR. KNOPF: -- just want to make sure you guys are
8 available on the 13th.
9 MS. ROBESON: This has been a hard to, hard to
10 anticipate.
11 MR. KNOPF: Thank you for letting me plan that.
12 MS. ROBESON: Okay. I do appreciate it, and the
13 hearing is continued to April 29th at 9:30.
14 (Whereupon, at 5:40 p.m., the hearing
15 was concluded.)
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C E R T I F I C A T E

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

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

By:

Tracy Hahn, Transcriber

<p style="text-align: center;">A</p>	<p>245:14,16,22;246:2; 249:1,3;250:14; 252:13;254:10;258:13, 14,15,18,22,24;259:6, 23;260:3,20;261:20,23, 25;263:14;264:1; 283:1,3,5;284:1;292:8, 12;296:8,9</p>	<p>25:6;48:16;172:21; 174:11,21</p>	<p>Ad (1) 178:10</p>	<p>164:18;280:11</p>
<p>abbreviated (2) 275:2,8</p>	<p>ability (2) 33:2;159:4</p>	<p>achieved (1) 25:4</p>	<p>add (5) 114:11,25;150:20; 185:17;235:10</p>	<p>advocating (2) 224:15;227:13</p>
<p>able (19) 20:25;77:14,19;78:8, 10;79:2;86:2;90:25; 91:2;110:12;176:14; 179:14;182:23;186:25; 189:16;235:23;256:7; 265:25;286:22</p>	<p>Abrams's (11) 86:3;137:23;138:4; 154:7;161:19;162:22, 23;163:21;194:23; 261:18;297:23</p>	<p>achieving (1) 173:24</p>	<p>added (6) 83:15;177:10;200:6, 6,7;231:11</p>	<p>aerial (4) 55:5;169:17;210:9; 260:4</p>
<p>above (13) 141:25;149:13,14; 174:15;177:8;215:11, 15,20;216:18;224:5; 231:12;269:18,21</p>	<p>absent (2) 243:25;252:15</p>	<p>Achilles (1) 253:21</p>	<p>adding (3) 143:24;146:20; 230:11</p>	<p>aesthetically (1) 47:10</p>
<p>ABRAMS (229) 4:14;5:2,3,7,10,15, 19,24;6:4,6,9,12,17,20, 22;7:1,4,6,9,17,19;8:1, 4,9,18,25;9:5,12,13; 10:13;23:22,24;25:7; 40:18;47:25;48:1,3; 49:1;50:15;51:1,13,18; 54:18,21,25;58:5; 61:23;66:10,12;84:7, 23;85:3,14;86:9,16,21, 23;87:2,5,10,13,16,18, 20,22;95:18;100:10, 14;105:4;107:10; 113:23;115:20;121:23; 125:6,17,22;126:12; 128:25;132:12,14,22; 133:20;134:7,15,17,23; 135:2,4;136:21;137:2; 138:3,15;139:3,4,9,11, 12;140:11,17,22,24; 141:1;142:1;144:8,14, 25;145:2,14,17,19,24; 146:21;147:14;155:1, 4,7,22;159:19;161:18, 23;162:1,3,6,8;163:5,7, 9,14,19;164:6,8,9; 165:5,9,21;166:11,16; 167:7,10,17;168:12,20, 21,23;169:2,3,5;170:5; 181:11;183:1,21; 186:16;188:3;189:6; 191:11;192:17;195:1, 7;197:24;198:2; 200:24;201:3;202:3; 204:14;208:23;209:14, 20;210:2,18;211:19; 212:23;213:13,23; 216:3;217:21;221:20; 222:14;226:16;228:23; 229:4,7,14,16,24; 232:13,14;233:3,6; 234:13;237:1,3,6,8,10, 12;238:3;240:1;</p>	<p>Absolutely (24) 30:23,25;31:2;50:20; 74:2;75:16,16;84:4; 109:5;114:18;142:4, 14;147:12;160:14; 167:5;235:9;282:10; 284:16,16;285:13; 286:10;287:21;289:24; 292:17</p>	<p>acknowledged (3) 53:18,25;114:23</p>	<p>addition (14) 13:14;20:14;27:19; 109:25;143:22;146:2; 149:19;153:11;177:15; 178:21;215:22;219:4; 224:4;251:19</p>	<p>affected (2) 176:19;248:3</p>
<p>accept (2) 62:9;267:11</p>	<p>acceptance (2) 137:19;138:11</p>	<p>acknowledged (3) 53:18,25;114:23</p>	<p>additions (1) 67:5</p>	<p>affirmatively (1) 127:22</p>
<p>acceptable (6) 49:23;81:21;82:1; 99:23;178:3;250:11</p>	<p>accepting (2) 231:12;266:8</p>	<p>acquired (1) 239:13</p>	<p>address (9) 10:22;161:8;169:7,8; 210:4;218:19,22; 264:12;282:6</p>	<p>affordable (2) 211:18;237:15</p>
<p>access (10) 59:10,13;76:3;81:13; 182:15;272:23,24,24; 273:3,6</p>	<p>access (10) 59:10,13;76:3;81:13; 182:15;272:23,24,24; 273:3,6</p>	<p>acre (6) 252:12,19,21,21,22; 253:1</p>	<p>additional (11) 34:9;58:6;72:19; 73:12;84:1,2;121:19, 21;156:10;173:25; 256:4</p>	<p>afternoon (7) 9:9;56:10;161:16,25; 165:5;248:23;273:14</p>
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