

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND

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4831 WEST LANE, LLC : Case No. G-954
Local Map Amendment No. G-954 : DPA 13-01
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A hearing in the above-entitled matter was held on
April 29, 2013, commencing at 9:42 a.m. in the Rita
Davidson Memorial Hearing Room, 100 Maryland Avenue,
Rockville, Maryland.

Lynn Robeson

Hearing Examiner

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C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Ken Doggett				
By Mr. Knopf:	28			136
By Mr. Abrams:	80			148
By Ms. Harris:		86		149
Richard Lawch				
By Mr. Abrams:				203
By Mr. Knopf:				207
By Ms. Harris:		154		214
Jon Weintraub				
By Mr. Knopf:	220			
By Mr. Abrams:			234	
By Ms. Harris:			236	
Andrew Niebler				
By Mr. Knopf:	244			290, 308
By Mr. Abrams:		291		--
By Ms. Harris:		294		--

E X H I B I T S

Exhibit No.		Marked/Received
121	Color Copy of 102(a)	263

P R O C E E D I N G S

1
2 MS. ROBESON: This is a continuation of the public
3 hearing in the matter of Local Map Amendment No. G-954 filed
4 by 4831 West Lane, LLC, requesting rezoning from the R-60 to
5 the TS-R zone of property known as 4901 Montgomery Lane, Lot
6 26, Block 13, in the West Lane right-of-way associated with
7 Lots 24, 25 and 26 Edgemoor subdivision, Bethesda. It's
8 also a continuation of the public hearing in Development
9 Plan Amendment No. DPA 13-01 filed by 4831 West Lane, LLC,
10 which requests an amendment to the development plan approved
11 by the District Council on July 10, 2007, in Zoning
12 Application No. G-843.
13 Other than the temperature, are there any
14 preliminary matters? I understand we have Mr. Doggett
15 that's going to testify this morning because Mr. Lawch had a
16 funeral to attend and I appreciate everybody working
17 together to get through as much as we can today. Anything
18 else before we start?
19 (No response.)
20 MS. ROBESON: All right. Yes, sir?
21 MR. KNOPF: Before we -- Norm Knopf for the
22 Edgemoor Condominiums.
23 MS. ROBESON: Yes?
24 MR. KNOPF: I was giving thought to how we could
25 shorten the testimony. I'm sure everybody would agree with

1 that.
2 MS. ROBESON: Yes.
3 MR. KNOPF: And before Mr. Doggett testifies, I
4 would like to flag exhibits in the record so then he doesn't
5 have -- some information that's in the record by exhibits,
6 namely the counsel decisions and the Hearing Examiner
7 decisions, I want to flag certain portions that --
8 MS. ROBESON: Oh, okay. I see what you're saying.
9 MR. KNOPF: And then he can testify. It's
10 something that we all have in mind, he has in mind when he
11 testifies and I think in fairness both the Hearing Examiner
12 and the other side, rather than having huge documents in the
13 record, I want to flag what we thought was most relevant.
14 MS. ROBESON: Okay. That's fine.
15 MR. KNOPF: So, if we do that, then we would
16 follow with his testimony and then I, assuming by that time
17 after cross-examination and so on Mr. Lawch will be back.
18 And if he finishes so there's more time, we do have our last
19 two witnesses that are --
20 MS. ROBESON: Okay.
21 MR. KNOPF: -- for later this afternoon or if they
22 have to, they can be on the 13th.
23 MS. ROBESON: Okay. Fine. All right. So what
24 did you want to flag?
25 MR. KNOPF: Well, I, yes, I can just, I just want

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1 to read a few sections of the various exhibits. I'm
 2 referring not to Exhibit 102(f), which is the Edgemoor
 3 building and City Place Hearing Examiner report recommending
 4 approval in 1998 of Edgemoor and City Place.
 5 MS. ROBESON: Okay.
 6 MR. KNOPF: I don't know -- people can follow
 7 along or I'm just going to read it, whatever.
 8 MS. ROBESON: Go ahead.
 9 MR. KNOPF: Okay.
 10 MS. ROBESON: Just read it. I'm just going to
 11 find it.
 12 MR. KNOPF: Sure. They're all, all that I'm
 13 reading is in 102. That was my submission.
 14 MS. ROBESON: That's fine.
 15 MR. KNOPF: There all Exhibit 102 right down --
 16 MS. ROBESON: Perfect.
 17 MR. KNOPF: -- each exhibit.
 18 MS. ROBESON: Thank you.
 19 MR. KNOPF: Page 1 of the report states,
 20 "These properties are subject to common
 21 ownership in a single, comprehensive development
 22 plan which seeks to merge all four properties into
 23 an integrated development project under the TS-R
 24 zone."
 25 That's on page 1.

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1 MS. ROBESON: Wait, which, I'm sorry, which --
 2 MR. KNOPF: 102(f).
 3 MS. ROBESON: (f)? Okay. And that was rezoning
 4 case what?
 5 MR. KNOPF: That is the Edgemoor building and City
 6 Place combined.
 7 MS. ROBESON: Okay.
 8 MR. KNOPF: It's G-763, which is Edgemoor, and G-
 9 769, which was City Place.
 10 MS. ROBESON: Okay. Great. Thank you.
 11 MR. KNOPF: Right. Now on page 3 and 4, it
 12 explains what was merged. One was the Edgemoor Highrise,
 13 the other was the City Place townhouses, and the third was
 14 Hampden Lane property, which I believe the record then shows
 15 that's where HOC units went. But these were the properties
 16 that were the subject of that rezoning.
 17 On page 4, footnote 1, it states that the
 18 townhouse development achieved a density of 27 dwelling
 19 units per acre. On page 4, it continues that, quote,
 20 "The approved TS-R zone properties do not
 21 achieve the minimum density level recommended by
 22 the Sector Plan."
 23 They're referring to the townhouses.
 24 MS. ROBESON: Right.
 25 MR. KNOPF: "The DPA seeks to transfer the unused

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1 density to the G-763 application." That is the Edgemoor
 2 Highrise.
 3 MS. ROBESON: Highrise.
 4 MR. KNOPF: Page 8,
 5 "The overall proposal for the entire site,
 6 including the MPDU's, is for a density of 98.26
 7 dwelling units per acre for market rate units and
 8 110.6 dwelling units when the MPDU's are
 9 included."
 10 Now on pages 5 and 6,
 11 "Located to the north of the subject
 12 property,"
 13 that's the Edgemoor Highrise that's being referred to here,
 14 "Are the Chase residential high rise
 15 apartment buildings. The Chase comprises about
 16 340 apartments located in two buildings which
 17 extend about 90 and 120 feet in height and were
 18 developed under the TS-R zone. Located further
 19 north is the Christopher Condominium, a high rise
 20 residential complex which contains 200 units. The
 21 Christopher extends about 122 feet in height and
 22 also developed under the TS-R zone."
 23 Page 7,
 24 "The area located along the east side of
 25 Woodmont Avenue contains several high rise office

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1 buildings developed under the CBD zones, including
 2 a 17-story Newlands (phonetic sp.) office building
 3 currently under construction at the corner of
 4 Woodmont and Montgomery Lane, and a 12-story
 5 Hampden Square office building."
 6 They're obviously describing the area --
 7 MS. ROBESON: No, no. You can read, just don't --
 8 MR. KNOPF: Okay. Sorry. Okay. Page 12 and 13,
 9 pages 12 and 13.
 10 "The 1976 Sector Plan encouraged high rise
 11 buildings along Woodmont Avenue at a building
 12 height 12 stories, or 143 feet. Under this plan,
 13 three existing high rises were developed,
 14 including the Christopher and the Chase I and
 15 Chase II buildings. The plan recommended that
 16 buildings located closer to Arlington Road be
 17 limited to five stories or 55 feet. However, the
 18 1994 Sector Plan provisions replaced the higher
 19 building heights for this area with a concept for
 20 a lower rise urban village with urban heights
 21 ranging from three to six stories with structured
 22 parking. Within the area where the subject
 23 property is located, the recommended maximum
 24 building height is 65 feet."
 25 And the page is 13 and 14 there.

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1 "The subject property is located at the
 2 northeastern edge of the 65-foot height limit
 3 adjacent to areas where the building heights are
 4 much greater. The proposed high rise will be
 5 located in the same block with a taller building
 6 and will confront much taller buildings across
 7 Woodmont Avenue. The site is uniquely situated so
 8 that it will not constitute a precedent for
 9 deviation from the height limits as it can be
 10 easily distinguished from other locations."
 11 Page 8,
 12 "The high rise, is,"
 13 excuse me,
 14 "The high rise is proposed as a signature
 15 building patterned," excuse me, by high rise I
 16 meant Edgemoor Highrise, that's -- "The high rise
 17 proposed is a signature building patterned after
 18 the prominent Dakota apartment building located in
 19 New York City's upper west side and the Saratoga
 20 apartment building located on Connecticut Avenue
 21 in Washington, D.C. The building will contain a
 22 classical division in its facade with a 2-story
 23 base, main body and shaped roof. A cornice line
 24 is proposed at the 8th floor. The building will
 25 include three pavilions on the front facade and

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1 archways at the ground level."
 2 That completes the discussion of 102(f).
 3 MS. ROBESON: Okay.
 4 MR. KNOPF: And I shouldn't say discussion, the
 5 reading.
 6 MS. ROBESON: The reading.
 7 MR. KNOPF: All right. And that's the longest one
 8 that we have.
 9 MS. ROBESON: Okay.
 10 MR. KNOPF: Going now to Exhibit 102(h), which G-
 11 908, the 4825 Montgomery Lane Council approval in December
 12 of 2012. I believe we've been referring to that as the
 13 Sandy Spring development or --
 14 MS. ROBESON: Yes.
 15 MR. KNOPF: -- 4825. This is from the Council
 16 approval just within the year. Actually it was within a
 17 half a year. I'm reading from page 5, quote,
 18 "The building is designed primarily in a more
 19 traditional residential style because that is
 20 typical of the neighborhood. It will have double-
 21 hung windows, a porch on the corner and covered
 22 porches which is a very residential feature,
 23 typical of a lot of older, smaller apartment
 24 buildings. The building will be articulated with
 25 a base, a middle and a top, which is a traditional

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1 way of detailing a residential building."
 2 Page 5 continued, quote,
 3 "Technical staff agreed that the design of
 4 the building successfully communicates a, quote,
 5 "Residential character,"
 6 unquote, including features similar to those of residential
 7 townhouses directly across Montgomery Lane.
 8 Page 6, quote, "Staff noted that the proposed
 9 height provided a transition between the taller TS-R
 10 development abutting to the east and that of townhouses to
 11 the west along Arlington Road and it is consistent with,
 12 quote, "Step down building heights," unquote, "Illustrated
 13 on page 42 of the plan." End of quote. Page 6, it's the
 14 last quote for this one. Quote,
 15 "Although the proposed building fails to
 16 achieve the density of at least 45 dwelling units
 17 per acre recommended in the Sector Plan, technical
 18 staff found the density of 27 dwelling units per
 19 acre proposed here to be acceptable because the
 20 building will be consistent with the nearby
 21 residential uses of comparable heights less than
 22 45 -- less than 45 feet that have been developed
 23 with densities between 24 to 36 dwelling units per
 24 acre."
 25 That is the last of those quotes.

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1 MS. ROBESON: Now what was the last -- where were
 2 you reading from --
 3 MR. KNOPF: Page 6.
 4 MS. ROBESON: Okay. I have it. Okay. Thank you.
 5 MR. KNOPF: Sorry. I can read faster than anybody
 6 can find anything.
 7 MS. ROBESON: No, no, that's fine.
 8 MR. KNOPF: Okay. I now want to read from Exhibit
 9 102(g) which we've been referring to as 4901 Hampden Lane.
 10 MS. ROBESON: All right.
 11 MR. KNOPF: But it's not so referred to in that
 12 exhibit. I think it's G-819.
 13 MS. ROBESON: Okay.
 14 MR. KNOPF: This is the amendment to the Triumph,
 15 which is 49 -- that's the predecessor name of 4901. It's
 16 the building opposite the high rise.
 17 MS. ROBESON: Okay. All right. You can read it
 18 then.
 19 MR. KNOPF: Okay. Sorry. This is from the July
 20 25, 2006 Council decision.
 21 MS. ROBESON: All right.
 22 MR. KNOPF: There are multiple decisions, so it's
 23 important to keep that in mind. At page 2, quote,
 24 "The Hearing Examiner recommended approval of
 25 the original application as did the Montgomery

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1 County Planning Board. The Planning Board's
 2 technical staff recommended denial of the
 3 application on the grounds that it would not be
 4 consistent with the recommendations of the 1994
 5 Bethesda CBD Sector Plan."
 6 Page 2 continues.
 7 "On April 25, 2005, the district,"
 8 -- and that's the year before this decision that we're
 9 talking about,
 10 "On April 12, 2005, the District Council
 11 voted 9 to 0 to deny the application, finding that
 12 the application was inconsistent with the
 13 recommendations of the Sector Plan due to the 100-
 14 foot height proposed for the building and would
 15 not be compatible with surrounding development."
 16 And I call the Hearing Examiner's attention to Exhibit
 17 120(a), which is the photograph, remember Ms. Skalet gave a
 18 photograph of --
 19 MS. ROBESON: Okay.
 20 MR. KNOPF: -- the original building. I just --
 21 MS. ROBESON: I just need you to read.
 22 MR. KNOPF: Okay. Well, I just wanted --
 23 MS. ROBESON: I know, but --
 24 MR. KNOPF: Okay. Well --
 25 MS. ROBESON: -- it's not argument yet.

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1 MR. KNOPF: No.
 2 MS. ROBESON: So --
 3 MR. KNOPF: Well, I'm just saying in the record at
 4 120(a), there's a --
 5 MS. ROBESON: Okay. But I don't want you to --
 6 MR. KNOPF: That's --
 7 MS. ROBESON: -- say that.
 8 MR. KNOPF: Oh, I'm sorry. Okay. Pages 2-3. I
 9 mean if I made an opening, I could --
 10 MS. ROBESON: What?
 11 MR. KNOPF: If I made an opening, I could get
 12 that, I just --
 13 MS. ROBESON: Yes, but --
 14 MR. KNOPF: Okay. I'll just keep reading.
 15 MS. ROBESON: We're giving you leeway --
 16 MR. KNOPF: Okay.
 17 MS. ROBESON: -- to point out in advance of
 18 your --
 19 MR. KNOPF: Okay. Thank you.
 20 MS. ROBESON: -- your expert.
 21 MR. KNOPF: Okay. Pages 2 and 3, quote,
 22 "Following the counsel's remand to the
 23 Hearing Examiner, the applicant submitted revised
 24 plans that proposed a maximum building height of
 25 70 feet. Technical staff recommended approval of

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1 the revised application, finding that it was much
 2 closer to the Sector Plan recommendations and in
 3 light of the Planning Board's earlier
 4 recommendation of approval, would be appropriate
 5 for the site."
 6 And skipping a little bit and going on,
 7 "The Planning Board concurred with this
 8 finding and recommended that the proposed
 9 development be approved with a maximum height of
 10 70 feet. Following a public hearing, the Hearing
 11 Examiner recommended approval of the application
 12 on grounds that it satisfies the requirements of
 13 the zone, it would be compatible with land uses in
 14 the surrounding area and would serve the public
 15 interest. The District Council agrees with the
 16 Hearing Examiner's conclusions."
 17 Okay. Page 9, "The subject," quote, sorry, I'm
 18 always quoting in case I forget to say that.
 19 "The subject property is located in an area
 20 identified in the Sector Plan as the TS-R
 21 district. The Sector Plan's basic vision for the
 22 TS-R district is set forth below." Quote, "The
 23 plan recommends creation of a high-density, low-
 24 rise, urban village that steps down in height from
 25 six floors along Woodmont Avenue to three floors

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1 along Arlington Road and provides from 45 to up to
 2 100 dwelling units per acre. The plan retains and
 3 revises the TS-R zone to achieve this vision."
 4 Now continuing with the quote on the same page.
 5 "The urban village concept was described in detail
 6 with written objectives, extensive written
 7 recommendations, urban design guidelines and
 8 several maps and drawings. These elements taken
 9 together are clearly designed to carry out the
 10 high-density, low rise, "urban village," concept.
 11 The District Council agrees with the Hearing
 12 Examiner and the technical staff that the Sector
 13 Plan recommends a development of the subject
 14 property for multi-family, residential use under
 15 the TS-R zone. Thus, the development proposed
 16 here is consistent with the use recommended in the
 17 Sector Plan."
 18 Page 9, quote,
 19 "With regard to the residential density, the
 20 Sector Plan recommends a minimum of 45 dwelling
 21 units per acre everywhere in the TS-R zone except
 22 on lots facing Arlington Road and states that
 23 higher densities with 2.5 FAR,"
 24 and quote, "About 100 units per acre," unquote,
 25 "Would be allowed elsewhere in the district.

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1 See Sector Plan at 82. The range of 50 to 70
 2 units proposed in this application would not
 3 necessarily produce a unit density approaching 100
 4 units per acre. However, the proposed development
 5 would produce between 70 and 99 units per acre in
 6 the top half of the range the Sector Plan
 7 recommends. Moreover, the present proposal would
 8 provide for the maximum floor area, FAR,
 9 recommended in the Sector Plan which is another
 10 important measure of density. For all these
 11 reasons, the District Council finds the proposed
 12 rezoning substantially complies with the density
 13 recommended in the Sector Plan."
 14 Pages 9 and 10. This is the last quote for this
 15 one.
 16 "Turning to the Sector Plan's goal of
 17 achieving a," quote, "Low-rise, high-density,
 18 urban village," unquote, "For development in the
 19 area of the subject site, the District Council
 20 agrees with the Hearing Examiner that the proposed
 21 development would support this goal. The building
 22 is proposed with seven stories rather than six
 23 recommended in the Sector Plan, but the maximum
 24 height of the building would be 70 feet, just five
 25 less, just five feet (less than 10 percent) above

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1 the height limit recommended in the Sector Plan.
 2 In addition, one corner of the building would drop
 3 to 60 feet, reducing the overall mass of the
 4 building and its impact on adjacent properties.
 5 Moreover, the 70 foot height limit requested is
 6 consistent with the Sector Plan's scheme of
 7 greater heights along Woodmont Avenue and would
 8 provide a significant step down in height from
 9 adjacent high rises to the north and the east as
 10 called for in the Sector Plan. For all of the
 11 above reasons, the Council concludes the proposed
 12 development would substantially comply with the
 13 Sector Plan."
 14 Okay. Now I'm getting near the end of the
 15 document.
 16 MS. ROBESON: Okay.
 17 MR. KNOPF: I'm now going on to Exhibit -- one
 18 second. I just -- I guess that's what I did. I -- in my
 19 haste, I just want to mention something because in my effort
 20 to cut back, I think I cut back too much. We have -- I just
 21 want to note for the record, in the record and also
 22 submitted by me is the follow-up to what I just read. There
 23 is another --
 24 MS. ROBESON: Okay. There's, I know.
 25 MR. KNOPF: Another 4901 where it was reduced, the

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1 units were reduced further.
 2 MS. ROBESON: That's -- I'm, it's a DPA amendment.
 3 MR. KNOPF: Right.
 4 MS. ROBESON: Yes.
 5 MR. KNOPF: And Ms. Skalet testified about that
 6 and I thought I, I didn't want to repeat.
 7 MS. ROBESON: That's fine.
 8 MR. KNOPF: Oh, maybe I didn't hold them there.
 9 MS. ROBESON: Okay.
 10 MR. KNOPF: No, I take it back. I do have the
 11 next page with me.
 12 MS. ROBESON: Okay.
 13 MR. KNOPF: For Exhibit 102(k), which is the 4901
 14 Hampden Lane DPA 12-02, the --
 15 MS. ROBESON: Yes.
 16 MR. KNOPF: -- November 13, 2012 Council approval.
 17 And I just briefly, at page 1, this is the 2012. At page 1,
 18 "The LMA G-819 permitted a multi-family
 19 residential building with a minimum of 50 and
 20 maximum of 70 dwelling units. This DPA seeks to
 21 reduce the minimum number of dwelling units from
 22 50 to 40 dwelling units and clarify that at least
 23 15 percent of the dwelling units will be MPDU's.
 24 The lower minimum number of dwelling units reduces
 25 the potential of MPDU's from eight to six."

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1 Now page 2, quote,
 2 "The Sector Plan designates the subject
 3 property as part of the transit station
 4 residential district and recommends a density
 5 between 45 and 100 dwelling units. This DPA
 6 proposes densities between 56 to 99 dwelling units
 7 per acre. Technical staff also concluded that the
 8 application meets the requirements of the TS-R
 9 zone."
 10 I'm skipping sections.
 11 "Technical staff concluded that the reduced
 12 number of dwelling units proposed in this
 13 amendment continues to fulfill the purpose, this
 14 purpose, as it is within the density recommended
 15 by the Sector Plan. At its regularly scheduled
 16 meeting on September 27, 2012, the Planning Board
 17 voted four to zero to recommend approval of the
 18 DPA as submitted."
 19 So I guess what I left out was the Council did
 20 approve this. I left it out, the bottom part. Going on to,
 21 let's see what I've left off -- I just have Exhibit 102
 22 because I left off the number, the G-865, it's the Rothstein
 23 development. G-865 and DPA 073 and I can --
 24 MS. ROBESON: By the way --
 25 MR. KNOPF: I think it's J. I think it's J.

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1 MS. ROBESON: -- we will have an updated exhibit
2 list. Our servers are down. So we couldn't print, but we
3 expect them some day to come back up. So --
4 MR. KNOPF: I believe it's 102(j).
5 MS. ROBESON: Okay.
6 MR. KNOPF: 102(j). Okay. It's just one quote on
7 page 5.
8 MS. ROBESON: Okay.
9 MR. KNOPF: "The applicant proposes to
10 construct a single building on the combined
11 subject site, a multi-family building with
12 approximately 68,000 square feet, a maximum of 31
13 dwelling units, underground parking and a rooftop
14 terrace. This building would have three stories
15 and a maximum height of 35 feet in its height
16 along the Arlington Road facade, stepping up to
17 four stories and a maximum height of 48 feet, 10
18 feet back from the facade. The fourth story would
19 be stepped back five feet farther on the north and
20 south sides of the building, providing a cascading
21 effect at the top floor. The maximum FAR would be
22 2.0, although the current design calls for an FAR
23 of 1.8." End quote.
24 Now the last quote. This is Exhibit 102(i) in G-
25 843. This is the original Holladay approval --

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1 MS. ROBESON: Okay.
2 MR. KNOPF: -- of July 10, 2007 --
3 MS. ROBESON: Right.
4 MR. KNOPF: -- by the Council. Just -- okay. At
5 page 3, quote, "The site," this is the Holladay site, the
6 original Holladay site.
7 "The site rises to a high point at the
8 northeast corner at 338 feet above sea level.
9 From this point, the property slopes downward in a
10 southwest direction about four to five percent to
11 a low point of 328 feet above sea level."
12 MS. ROBESON: Wait. Where did we find that?
13 Where --
14 MR. KNOPF: Page 3.
15 MS. ROBESON: We're at 102(i) what page?
16 MR. KNOPF: Three. Let me see if I can find the
17 original.
18 MS. ROBESON: It is in the --
19 MR. KNOPF: No, I'm sorry, I see here it's on page
20 2. I apologize.
21 MS. ROBESON: Okay.
22 MR. KNOPF: Page 2.
23 MS. ROBESON: I see it. Okay. I'm with you. Go
24 ahead.
25 MR. KNOPF: Let me make sure I've got the next

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1 quote right. Yes. The next quote is on page 3, sorry.
2 MS. ROBESON: That's okay.
3 MR. KNOPF: "The land use and zoning pattern of
4 this area reflects a predominantly residential
5 character. Although high rise office uses are
6 located in the eastern portion of the area and
7 retail services located at the southern end. The
8 area is comprised of a number of multi-family and
9 townhouse projects approved under the TS-R zone
10 after the adoption of the 1994 Sector Plan."
11 Pages 3-4.
12 "Located northwest of the site are 22
13 townhouses built to a 3-story height with below-
14 grade parking. This project was developed under
15 the TS-R zone as the Villages of Bethesda approved
16 under LMAG-720 on October 10, 1995. The Chase
17 high rise is located east of the site along
18 Woodmont Avenue and is developed under the TS-R
19 zone in two buildings, 90 and 120 feet in height,
20 with a density of 340 dwelling units. Located
21 further north along Woodmont is another TS-R
22 zoning project known as the Christopher which is
23 developed to a height of 122 feet with 200
24 dwelling units."
25 Now page 5. "The proposed building," again I'm

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1 back to Holladay,
2 "The proposed building will be composed of a
3 4-story and 6-story wings. The 4-story wing will
4 extend along the southern and western portions of
5 the site. The 6-story wing will extend along the
6 northern end of the site. The building mass
7 projects the 4-story height to Montgomery Lane and
8 will be made up of townhouses. The building
9 height is consistent with development across the
10 street which reflects townhouses and low-rise
11 structures."
12 Page 6. Quote,
13 "Testimony indicated that the southern end of
14 the building will contain a townhouse type facade
15 that will be compatible with development along
16 Montgomery Lane."
17 Page 7.
18 "The density proposed is at a 2.5 FAR, which
19 is the maximum standard. The proposed density is
20 well below the maximum of 150 dwelling units per
21 acre in the zone."
22 Page 7.
23 "The project," quote, "Will contribute to
24 a range of densities in the area," unquote.
25 And you will not allow me to tell you where

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1 exactly in terms of the DU's, but okay.
2 MS. ROBESON: I will tell you, though, for some
3 reason I don't have a page 7 --
4 MR. KNOFF: Oh.
5 MS. ROBESON: -- in our official record. So you
6 may want to, you know, it's a zoning decision, so I'm not --
7 you may want to just submit that at some point.
8 MR. KNOFF: Absolutely. I --
9 MS. ROBESON: Whenever we can update our exhibit
10 list.
11 MR. KNOFF: Let me see if I have -- I think, well,
12 we're consistent. I don't have one in mine either, so that
13 explains why you didn't get it.
14 MS. ROBESON: Okay.
15 MR. KNOFF: But, obviously --
16 MS. ROBESON: I'm just saying --
17 MR. KNOFF: -- I'll get the whole thing.
18 MS. ROBESON: -- just when you get the
19 opportunity.
20 MR. KNOFF: Okay. Sorry. Thank you.
21 MS. ROBESON: That's all right.
22 MR. KNOFF: Okay. I just thought -- that
23 completes what I wanted to do.
24 MS. ROBESON: All right.
25 MR. KNOFF: I just thought that would be helpful

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1 rather than saving it for summation at the end.
2 MS. ROBESON: Well, I agree with you.
3 MR. KNOFF: And Mr. Doggett will have these things
4 in mind, so it will --
5 MS. ROBESON: I --
6 MR. KNOFF: -- be helpful.
7 MS. ROBESON: I understand. Enough. That's fine.
8 Okay.
9 MR. KNOFF: Okay. Thank you.
10 MS. ROBESON: That's not a projecting mike. Mr.
11 Doggett, please raise your right hand.
12 (Witness sworn.)
13 MS. ROBESON: Mr. Knopf.
14 MR. KNOFF: Okay. If you'd give me a minute
15 because I have to find -- okay. I would point out that Mr.
16 Doggett's resume is in the record as Exhibit 50.
17 MS. ROBESON: And are you, what is the expertise?
18 Are you qualifying him as an architect or a --
19 MR. KNOFF: No, as a land planner, urban designer.
20 MS. ROBESON: Oh, an expert in what?
21 MR. KNOFF: Land planning and urban design.
22 MS. ROBESON: Okay. Does anyone have an objection
23 to admitting Mr. --
24 MS. HARRIS: No.
25 MR. ABRAMS: No.

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1 MS. ROBESON: No?
2 MR. ABRAMS: No.
3 MS. ROBESON: Okay. Then I'm going to qualify him
4 as an expert in land planning and urban design.
5 MR. KNOFF: I guess I have the right to brag a
6 little bit.
7 MS. ROBESON: Well, we do have his resume in the
8 file and --
9 MR. KNOFF: Right.
10 MS. ROBESON: -- he has testified here numerous
11 times as an expert and, okay.
12 MR. KNOFF: But I would like to just ask him one
13 question along those lines.
14 MS. ROBESON: That's fine. Go ahead.
15 DIRECT EXAMINATION
16 BY MR. KNOFF:
17 Q Does land planning and urban design involve a
18 consideration of location and design of buildings?
19 A Yes.
20 Q And do you have any training that might not
21 normally be associated with land planning design regarding
22 design of buildings?
23 A Yes. I went to a school of architecture and got a
24 master's in urban planning and urban design, worked for the
25 dean for several years as an architect, a registered

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1 architect. I came to the States, and as you know from my
2 resume, I lectured in urban design at Virginia Tech. And
3 I've done several buildings for the British Parliament.
4 These are big land owners there. You don't have liens on
5 that property. That is a relationship. I do, I am in
6 partnership with Tom Camster (phonetic sp.) who is a
7 registered American architect. We've been for 30 odd years
8 together. But usually the buildings I do now are almost
9 entirely are for British Parliament.
10 They include Lachin Douglas (phonetic sp.) and
11 Washington Bullfinch and McKinley in New York, those kind of
12 things.
13 MS. ROBESON: Okay.
14 THE WITNESS: Robin Leady (phonetic sp.) colonials
15 got hold of the good builders.
16 MR. KNOFF: Okay.
17 MS. ROBESON: Luckily, we, hopefully we put that
18 behind us.
19 THE WITNESS: I hope so.
20 BY MR. KNOFF:
21 Q Mr. Doggett, for, in preparation for your
22 testimony today, you reviewed the application and exhibits
23 associated with this application?
24 A Yes.
25 Q And have you sat in on various hearings before

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1 this Hearing Examiner on this application?
2 A Yes.
3 Q Did you attend one of the Planning Board hearings
4 on this application?
5 A Yes, the second one, yes.
6 Q Are you familiar with the Bethesda Sector Plan
7 provisions relating to this application?
8 A Yes.
9 Q And are you familiar with the TS-R zone and other
10 County zoning requirements?
11 A Yes. Uh-huh.
12 Q And have you visited the Montgomery Lane and the
13 site of this property at all?
14 A Yes. Yes.
15 Q On a number of occasions?
16 A Yes.
17 Q And did you have a prior matter that dealt with
18 development on Montgomery Lane that made you more familiar
19 with this area?
20 A Oh, yes, the original, the Highrise Edgemoor as an
21 expert witness.
22 Q Across the street?
23 A Yes, across the street. Oh, and we, it was, that
24 was the client. It was for what we call the Triumph
25 building then, the 4900 block.

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1 MS. ROBESON: So were you the --
2 THE WITNESS: I was the expert witness against
3 that, yes.
4 MS. ROBESON: Against it? Okay. All right.
5 MR. KNOPF: Thank you.
6 BY MR. KNOPF:
7 Q Okay, Mr. Doggett, I'm going to ask you a number
8 of questions which I would characterize as bottom line and
9 then you will get a chance to explain your bottom line.
10 A Yes.
11 Q But when I started out, I thought -- in your
12 opinion does the proposed project comply with the Sector
13 Plan provisions applicable to Montgomery Lane regarding the
14 urban village concept?
15 A It doesn't conform, no.
16 Q It is, in your opinion does the proposed project
17 comply with the Sector Plan provisions applicable to
18 Montgomery Lane regarding the mixed street concept?
19 A No.
20 Q Is it -- I'll shorten this if I may -- is it
21 applicable, in your opinion does the proposed project comply
22 with the Sector Plan provisions application to Montgomery
23 Lane regarding building height?
24 A No.
25 Q Regarding the number of stories?

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1 A No.
2 Q Regarding the number of dwelling units?
3 A No.
4 Q Okay. In your opinion, does the proposed project
5 comply with the Sector Plan provisions applicable to
6 Montgomery Lane regarding density?
7 A No.
8 Q In your opinion, does the proposed project comply
9 with Sector Plan provisions applicable to Montgomery Lane
10 regarding the character of the buildings called for on this?
11 A No, they're not in character.
12 Q In your opinion, does the proposed project comply
13 with the Sector Plan provisions applicable to Montgomery
14 Lane regarding the design and design elements of the
15 buildings on Montgomery Lane?
16 A No.
17 Q Now I want to ask you a question as to whether the
18 proposed development meets the following statutory
19 requirements. Section 59B 1.61(b) provides that the Council
20 needs to find that the proposed development, quote, "Would
21 be compatible with adjacent development," unquote. In your
22 opinion, is this proposed project compatible --
23 A No.
24 Q -- with adjacent development? Okay. And my final
25 question, in your opinion, does the proposal comply with the

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1 purposes of the TS-R zone? And I'm going to advise you that
2 the purpose set forth in 59C 8.22(i) provides that one of
3 the purposes of the TS-R zone is, quote, "To prevent
4 detrimental effects to the use or development of adjacent
5 properties or the surrounding neighborhood," unquote.
6 A No, it is not compatible as a negative impact.
7 Q Okay. Thank you. Now I will now ask whether --
8 you stated that you're familiar with the Sector Plan?
9 A Yes.
10 Q Would you explain your understanding of what the
11 Sector Plan provisions provide for development at this site
12 and along Montgomery Lane?
13 A The Sector Plan as far as this building is
14 concerned, the Montgomery Lane recommendations and the
15 association recommendations with that lane, it -- Montgomery
16 Lane is a unique road. It's the only road in the entire
17 that favors pedestrian and it gives a break from the, among
18 the office buildings along around by the Metro. That's a
19 personal opinion. But the, it gives, it should give a
20 pleasant walk from the higher buildings associated with the
21 Metro down Montgomery Lane to the library, the very nice
22 park and even the school. People actually in the high rise
23 will actually use, their kids use that for that particular
24 walk.
25 This is, this, when you have something that's as

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1 specific as this in planning, all right, and I suppose 40
2 years of planning, you have your general goals which are
3 quoted a little further up and then you have the specifics.
4 The specific is something you take care of. First of all,
5 you don't, it's a nice thing to do, you try and get the
6 goals to fit in and to absorb that, but you do not ignore
7 that. That is the binding element, but you, as the perils
8 of the over planner.
9 In general terms, I would like to make a couple
10 general comments before going onto the items in the plan,
11 the Sector Plan. It's been said that it's rather oldish
12 plan. It's not an oldish plan, first in 20 years. 20 years
13 is not a long time. 20 years is the maximum. You can have
14 10-year plan if you want, an outer term plan amendment, plus
15 I assume you could have. There has been no action as far as
16 I can see to do any change to the strong recommendations of
17 the Montgomery Lane Sector Plan, the Sector Plan that deals
18 with Montgomery Lane.
19 The other thing that came out I think in the,
20 somebody said -- referring to some of the details I
21 recommended as being rather outdated, that is not the actual
22 traditional appearances, that they are very contemporary,
23 traditional appearances. And I don't want to be a
24 professorial, but before this report was recommended for,
25 you had a movement. Phillip Johnson and people like that,

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1 Robert Stone, the dean of Yale, in terms of bringing the
2 traditional forms back into buildings, you had Seaside, and
3 then -- which was the development that started general
4 thing. You had Kentlands from that, which is the show piece
5 development.
6 To me, City Place is the perfect example of that.
7 The architects, the other side probably --
8 MS. ROBESON: Wait, City Place or City Homes?
9 THE WITNESS: City Homes. Oh, I keep getting it
10 mixed up.
11 MS. ROBESON: No, that's okay.
12 THE WITNESS: Yes, City Homes is a perfect
13 example, I think, of that in terms of scale, and I'll go
14 into that in a few minutes. But those are two points that I
15 would, have been brought up that I really felt had to be
16 rectified.
17 The plan itself calls for a pleasant pedestrian
18 walk with landscaping, textured sidewalks and buildings of a
19 human scale starting at six floors on Woodmont and
20 Montgomery, not in Woodmont at that particular point, going
21 to three stories at Arlington and most of the buildings that
22 are being built or approved, apart from the original
23 building Edgemoor which was, I believe, the District said
24 that this was not to be taken as an example. It was there.
25 It was the first one and it was near the Metro.

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1 But since then, most of those buildings, they
2 build them at six to three story system. You can measure
3 two foot here and one foot here, but, well, fuck a duck, in
4 fact, it's a duck. And it's a three story, plus a setback
5 at the end and it's the old Triumph building, the one
6 opposite -- it is basically, you know, six stories. I, the
7 idea of the setback is not, to use the setback necessarily
8 to justify the help with things, consistent to bring it
9 down, it is one of many features.
10 The adopted plan does not do it. It's a 7-story
11 building to begin with. Two-thirds of the way down from
12 Woodmore, it's a 7-story building --
13 BY MR. KNOPF:
14 Q Excuse me. By adopted plan, you meant the
15 proposed plan?
16 A Yes, the proposed plan. Sorry, I meant the
17 proposed plan here is seven stories, five at the front and
18 on the high, one of the high parts of the Montgomery Lane
19 and I think the drawing, the prospective there shows --
20 MS. ROBESON: And that's Exhibit --
21 THE WITNESS: 72, I think.
22 MS. ROBESON: Okay.
23 THE WITNESS: Shows the bulk, the massing of it,
24 the intruding bulk, I think, of the building. And the 12-
25 foot was not really justified, putting another two stories

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1 on, plus you have a --
2 BY MR. KNOPF:
3 Q By 12 feet, you're referring to the 12-foot --
4 A The 12-foot setback, yes.
5 MS. ROBESON: The -- I think we're calling it step
6 back --
7 THE WITNESS: Step back, okay.
8 MS. ROBESON: -- just for consistency.
9 THE WITNESS: And then, of course, on top of that
10 you have the utility roof, mechanical penthouses, and I
11 think the bulk is just too high. The key paragraph that
12 really I, jumped to my mind -- if I can find them in my
13 notes here -- is on page 82 of the, of the plan. It talks
14 about the kind of housing, the urban village housing and
15 things like that. It should be low-rise, high-density,
16 urban village housing, okay, urban village. And it says the
17 type of housing should appear to be townhouses, okay, a new
18 urbanization if you want, but actually the three to six
19 buildings with apartments at each level.
20 This form of, would create a high-quality
21 environment in a market currently being set in Bethesda.
22 Having looked to that, I then -- this is looking halfway up.
23 MS. ROBESON: What is?
24 THE WITNESS: This building here, the former here.
25 MS. ROBESON: What exhibit is that?

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1 THE WITNESS: That's 76. What you see there is a
2 commendable effort to cut it out. It's a 600 feet starter.
3 It looks like a 2,000 from sidewalk to sidewalk and you have
4 the ramp going up. There's only one minimum, one in 12 ramp
5 going up to the entrance and then the steps coming down, the
6 steps, some of the steps you use for seats. But, anyway, it
7 is normally usual, well, you wouldn't go up a ramp and then
8 steps. But it gives at least some kind of feature, but the
9 island here is one way, the very thing it hopes to do, and
10 you have 80 feet coming one way, 20 where the scallop is.
11 BY MR. KNOPF:
12 Q Now, wait, excuse me. For the record, 80 feet,
13 when you say one way --
14 A All right.
15 Q -- it may be clear to you, but they --
16 A I believe it's 80 feet on the flat front. I
17 think --
18 MS. ROBESON: On the Montgomery Lane --
19 THE WITNESS: Yes. Yes.
20 MS. ROBESON: -- frontage?
21 THE WITNESS: And then I think it's 28 feet or
22 something like that going into the --
23 MS. ROBESON: Okay.
24 THE WITNESS: -- it's roughly that. But the point
25 is once you see that and you look at that and it's only

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1 halfway up, but it's glass fronted and it's, it emphasizes
2 the mass and the bulk in this. It's certainly not the type
3 of housing program that should appear to be townhouses, but
4 actually a three to six floor building with apartments.
5 It's not meeting the most important element of that plan,
6 which is produce that kind of low-level entry scale that we
7 wanted and which they did so successfully in City Homes.
8 City Homes is -- it varies people say from 48 to 53. It's
9 48 feet. If you walk down on the lane and you look up, you
10 will see -- and I have photographs --
11 MR. KNOPF: Let me get the photographs.
12 MS. ROBESON: Are these in the record already?
13 MR. KNOPF: Yes, they are. They are in --
14 THE WITNESS: These are, yes.
15 MR. KNOPF: Well, they're in 102. Everything
16 is --
17 THE WITNESS: Yes.
18 MS. ROBESON: Okay.
19 MR. KNOPF: It will be 102(d) as in dog.
20 MS. ROBESON: Okay.
21 THE WITNESS: The one I'm looking at is the one
22 looking inside the courtyard. Oh, I see.
23 MR. KNOPF: I believe, I could --
24 MS. HARRIS: Excuse me.
25 MR. KNOPF: Yes, they all, they all have them.

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1 THE WITNESS: They all have it. Thank you.
2 MR. KNOPF: But I believe that the way they were
3 filed, there is no subpart C.
4 THE WITNESS: Yes.
5 MS. ROBESON: Yes. So can you show me --
6 THE WITNESS: Yes.
7 MS. ROBESON: -- which one you --
8 THE WITNESS: There are two or three like that and
9 it may --
10 MS. ROBESON: Okay.
11 THE WITNESS: -- maybe any of those would be it.
12 MS. ROBESON: If the parties could go to 10D?
13 MR. ABRAMS: 102.
14 MS. ROBESON: I'm going to -- 102(d). I'm going
15 mark them in our record in chronologic, or in numerical
16 order. So it would be 102(d)(1).
17 MR. KNOPF: Can you just hold it?
18 MS. ROBESON: It's the order that's in the record.
19 MR. KNOPF: Yes, I'm getting him to arrange his in
20 that --
21 MS. ROBESON: Yes, that's fine.
22 MR. KNOPF: Yes, he didn't have them necessarily
23 in that order.
24 MS. HARRIS: Are we starting with --
25 MS. ROBESON: Let me, I can show them to you if

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1 that makes this simpler. This I have as 102(d)(1). Do I
2 have that right?
3 THE WITNESS: Yes, that's right, yes.
4 MS. ROBESON: Okay. Then this one I have as
5 102(d)(2). And I guess I'll call that courtyards of City
6 Homes?
7 THE WITNESS: Yes.
8 MS. ROBESON: Okay. Then this one I have as
9 102(d)(3).
10 MR. KNOPF: Right.
11 MS. ROBESON: I don't know what, how to describe
12 this except another --
13 THE WITNESS: It's the, it's, no, no, yes. Well,
14 it's the, I think the first one was on top of the, this one,
15 and --
16 MS. ROBESON: Well, we'll just mark it and I'll
17 say --
18 THE WITNESS: Yeah.
19 MS. ROBESON: -- different view --
20 THE WITNESS: Yes.
21 MS. ROBESON: -- courtyards of City Homes.
22 THE WITNESS: Yes. It shows the road and the
23 sidewalk types of things.
24 MS. ROBESON: Okay.
25 THE WITNESS: Yes.

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1 MS. ROBESON: Okay. And then I have this one --
2 THE WITNESS: Showing both sides, yes. Uh-huh.
3 MS. ROBESON: -- 102(d)(3).
4 MR. KNOPF: It's (4), isn't it?
5 MS. ROBESON: Yes, I'm sorry, (4). And that's
6 this one here showing both rows of town homes of City Homes.
7 MS. HARRIS: Can you show that one again please?
8 MS. ROBESON: Sure. Okay. Then I have 102(d)(5)
9 and this shows, is looking north from City Homes toward, I
10 mean east from City Homes toward Woodmont, correct?
11 THE WITNESS: Yes. Uh-huh.
12 MS. ROBESON: So (5) is view from City Homes
13 looking east.
14 MR. KNOPF: And which one is that?
15 THE WITNESS: Do I still have it?
16 MS. ROBESON: 102(d)(5).
17 MR. KNOPF: Yes, (5), right. Yes, you just did
18 that. Okay. I --
19 MS. ROBESON: Just checking.
20 MR. KNOPF: -- think we're on the next one, right?
21 MS. ROBESON: And then 102(d)(6) will be -- this
22 looks like the view of Montgomery Lane looking west toward
23 the library, is that correct?
24 THE WITNESS: Yes. Yes. Yes.
25 MS. ROBESON: Okay. And then 102(d)(7) is view

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1 looking west from City Homes?
2 THE WITNESS: Yes. Yes.
3 MS. ROBESON: Okay. Okay, 102(d)(8), that is, am
4 I correct that that is a view of the, a view of an existing
5 view of the Edgemoor Highrise?
6 THE WITNESS: No, this part.
7 MR. KNOPF: Which one are you looking at?
8 MS. ROBESON: (d)(8).
9 THE WITNESS: This one, I don't know why this --
10 okay.
11 MS. ROBESON: Is that a view of Edgemoor Highrise?
12 THE WITNESS: Yes, it is, yeah. Uh-huh.
13 MS. ROBESON: And then 102(d)(9) is, you'll have
14 to tell me what this one is.
15 THE WITNESS: The pocket park at Woodmont and
16 Montgomery Lane.
17 MS. ROBESON: Okay. Pocket park --
18 THE WITNESS: Just outside the Edgemoor.
19 MS. ROBESON: Woodmont and Montgomery Lane. Okay.
20 Okay, yes, it's hard to get a chance to talk in here.
21 THE WITNESS: Okay.
22 MS. ROBESON: Go ahead.
23 THE WITNESS: Okay. I think the, No. 1 of the
24 photographs shows --
25 MS. ROBESON: And that's 102(d)(1)?

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1 THE WITNESS: Yeah, 102 -- as I go, I'll just say
2 photograph 1, 2, shall I?
3 MS. ROBESON: Okay. That's fine.
4 THE WITNESS: Yeah. Shows the landscaping, shows
5 the height, the 48 feet height. Shows the major rooms
6 looking at one another, I gather, from the ladies, people
7 that work there, the lady that worked there whose name I
8 can't remember now said that, you know, her main rooms were
9 the living room, master bedroom and family room. It should
10 be noted most of the units, and even the last unit going
11 towards Woodmont, which has a small strip of landscaping, is
12 based on the fact that your main rooms look at a landscaped
13 pedestrian area and your back rooms look at the accessory
14 parking that might be in the mews. And those rooms seem to
15 be with most people the kitchen, the bathroom and the spare
16 room, using that kind of thing.
17 They all have balconies that go and one, and the
18 last set of exhibits, I think, show the balconies project
19 out about six feet from the right back. So when you're
20 above, you visually do not see what happens below. But the,
21 as a purely interesting feature, it's called the mews, I
22 mean the mews is the road and that's not the building. It's
23 where the carriages used to go, so --
24 MS. ROBESON: Oh, it's -- so the courtyards are
25 not the mews?

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1 THE WITNESS: No, it's really the --
2 MS. ROBESON: The alleys?
3 THE WITNESS: Yes, the alley. Exactly, but I
4 don't think they're alleys. Are they expensive? In London
5 they maybe go for about \$20 million.
6 MS. ROBESON: Okay.
7 THE WITNESS: But they, the idea is basically that
8 you drive in, you use the access there and the other side of
9 that building traditionally is where you looked at the
10 garden of a big house. You had the big house, the orchard
11 house, the garden, and the mews where the carriages and the
12 cars would be. So actually it's an extremely thoughtful
13 design.
14 The other one, No. 2, is pretty much the same, but
15 it shows the edge of the road and it shows the connection on
16 the road. Again, the landscaping there is, you see the
17 grass buds, the pedestrian walk. Again, it's the four
18 stories -- the 53 comes from a base shallow roof that goes
19 back. It makes no impact at all.
20 It has very articulated structure. It has stone
21 at the bottom. It has brick. It has, as you walk down on
22 that side of the street, it has a very strong cornice that
23 comes out of the three stories, which means you don't see
24 actually much of the courtyard at all. What it does, it
25 breaks the level down. The windows are what I could call

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1 Q You're referring to five?
2 A To No. 5 still. And as I say, you're not talking
3 about a setback there, you're talking about a setback for a
4 portion of the building, then you're going into the garden,
5 to the much greater setback. The, No. 6 is really just for
6 my own memory when I earlier was looking at the library and
7 the public space and the school there. Traditionally, it's
8 a rather nice street to walk from before those buildings go.
9 And then No. 7 is showing how the buildings, the
10 end building is ending after essentially a 3-story building
11 with a setback going 48 feet. And that setback goes around
12 Arlington Road to the balcony, the wrought iron balcony.
13 Q I believe for the record, I think we're referring
14 to the, refer to the little Edgemoor.
15 A The little Edgemoor, the other one is Arlington
16 North. The little Edgemoor?
17 MS. ROBESON: This is Edgemoor at Arlington.
18 THE WITNESS: Yeah, Edgemoor at Arlington.
19 MR. KNOPF: Sorry.
20 THE WITNESS: But materials and the bricks are the
21 same and I think the heights and the density are very
22 comparable. But I think this shows how looking at that, the
23 setback actually does create a sense of going down to three
24 stories. The last, oh, the No. 8, I could have a better
25 photo. It shows the details to the Baroque and the strips

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1 of stone, the articulation of the projecting balconies. And
2 as you go, as you go up those, you know, as you walk down,
3 you probably remember they had gables and pictures giving
4 that --
5 BY MR. KNOPF:
6 Q Let me ask you at this point, can you tell me -- I
7 don't mean to break up where you're coming from.
8 A Yes.
9 Q We do have a photo which I can put an exhibit
10 in --
11 A Yes.
12 Q -- which shows the entire building --
13 A Yes.
14 Q -- with the architectural features. Would this be
15 a good time to discuss that or would you like to do it at
16 another point?
17 A I, if you're knowledgeable about it, it's okay
18 with me.
19 Q Let me know -- let me find, let me find --
20 A Okay.
21 Q -- that because you had mentioned that the Sector
22 Plan --
23 A Yes.
24 Q -- referred to various architectural treatments?
25 A Yes, yes, okay, yes, all right.

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1 Q And does the Edgemoor --
2 A Yes.
3 Q -- embody those?
4 A Yes. Yes.
5 Q If you could just give me a minute and I'll -- I
6 believe it's 106. You have --
7 A Yes.
8 Q -- photos.
9 MR. KNOPF: Will this one do? It --
10 MS. ROBESON: Oh, the comparative architecture?
11 MS. HARRIS: Or --
12 MR. WILTSHIRE: Yes, I think they go down there to
13 the left.
14 THE WITNESS: It's the long way, you have the
15 aerial of the whole group.
16 MR. KNOPF: Isn't it in there?
17 MS. WILTSHIRE: This one?
18 THE WITNESS: Yes, I think it's the Sandy Spring.
19 I have some there over Sandy Springs. Oh, that's the one,
20 yes.
21 MS. HARRIS: I think that's the only other one.
22 THE WITNESS: Yes, that's the one.
23 MS. ROBESON: 106(g), is that what it is?
24 MS. HARRIS: Yes.
25 MS. WILTSHIRE: Yes.

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1 MS. ROBESON: Okay.
2 MR. KNOPF: This one is 106(g) and it's back here
3 also.
4 MS. ROBESON: Oh, no, I'm fine.
5 BY MR. KNOPF:
6 Q Mr. Doggett, I don't know if you want to come up
7 here and talk about it or whatever is more convenient for
8 you. There's two, several different pictures. The -- let
9 me just, just one second here. I want to, if you just give
10 me a chance --
11 MS. ROBESON: You can move that back if it helps
12 you.
13 MR. KNOPF: Just one minute here while I find it.
14 BY MR. KNOPF:
15 Q Okay. I want to just read something because I
16 think that you mentioned the Sector Plan has some design
17 criteria for buildings?
18 A Yes.
19 Q I'm reading from page 40. Among the things that
20 they mention here are, let's see, scale, it says,
21 "Achieve compatibility with nearby residential
22 areas through techniques such as step down height,
23 articulate the buildings, facade treatments and
24 other architectural treatments."
25 I believe they also call for, let's see, I'm

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1 trying to find it. Do they not call for turrets and peak
2 roofs and --
3 A Yes, I --
4 Q -- all those kind --
5 A You're talking about -- I think that, it comes out
6 and also they gave me five or something, the urban design.
7 Q Let's look at that. I'm trying to find it.
8 A But you're reading from urban form and the zoning
9 design.
10 Q Yes, here it is.
11 "Design rooftops to achieve residential
12 images by using hip roofs, gables, turrets and
13 other type pitch uses. This varied roof line is
14 desirable to improve character and reduce the
15 sense of both."
16 I just make that, raise that because I want you, if you
17 could, to talk about the Edgemoor and whether it
18 incorporated any of those features as contrasted with the
19 proposed project?
20 A Yes. They, but back to the new urban, it's trying
21 to produce on the street, which is an intimately scaled open
22 scale and the way you do it is to use far side articulation
23 you saw in City Homes, windows and doors defined, rather
24 than the large sort of scale facade of the proposed
25 building. I'm not saying it's a bad building. I'm saying

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1 that it is not the specification recommendation, that nobody
2 receives a lump of change, but it takes up a lot of the
3 Sector Plan language, the drawings and words.
4 In this case, you see the gables. You see the
5 projecting balconies, canopies at the top, the residential
6 style windows of various forms, stone, the articulated
7 entrances at this particular level, stone along here with
8 the open space in the cut out for the parking, which is
9 allowed there in the referenced way it's done. It's not
10 recommended as a hallway. There's a street. It's quite
11 narrow and I'm not, I wasn't -- I'm not a traffic
12 specialist, but it seemed to me that the street, once you
13 double park, you're having problems there and I did an
14 illegal drive in, this is -- and I showed my handicap
15 sticker right away, but --
16 Q Mr. Doggett, you may want to use this other
17 exhibit here, which is duplicate 106(f) --
18 A Okay.
19 Q -- talking about the roof features. I think that
20 shows a little bit better than --
21 A Okay.
22 Q -- this one. Do you want to stand on this side --
23 A Yes, sure.
24 Q -- so you can see?
25 A Well, I think the point is made you get the cable,

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1 the bay windows, you've got the high-pitched roofs, the
2 cornices, the balconies, the residential scale wall units
3 there and I think that was one of the things that they do
4 request and that is part and parcel, one of the dominant,
5 one of the dominant themes, the three to six stories and
6 details of those to break it down and the landscaping that
7 might be associated with it. These are the things that make
8 the urban design and that is what they seem to want.
9 If you don't get the maximum of that affordable
10 housing, then it can be done elsewhere, but you don't
11 destroy the plan. You're still going to get affordable
12 housing but, you know, we're recommending here at City
13 Homes, they actually are town homes, they're recommended to
14 look like that, but with apartments on each floor. You're
15 getting the same visual effect is what they want, I think.
16 The setbacks are being handled, I think, quite
17 nicely here and here.
18 Q By here, you're --
19 A -- and even, even this --
20 MS. ROBESON: Is he referring to Edgemoor at
21 Arlington North and --
22 THE WITNESS: Edgemoor North, Edgemoor, little
23 Edgemoor --
24 MS. ROBESON: -- Edgemoor at Arlington?
25 THE WITNESS: -- Edgemoor. Sandy Springs goes up

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1 one floor, then --
2 MS. ROBESON: 4825.
3 THE WITNESS: -- and then goes at five feet and I,
4 so those are quite nicely done. The -- I'll go back to this
5 one now.
6 MR. MELEHY: Meaning Exhibit --
7 THE WITNESS: Exhibit --
8 MS. ROBESON: 106(g).
9 THE WITNESS: Yes. Okay. And here, we already
10 pointed out there, you'll see the characteristics here which
11 I think Sandy Springs is, it's not a bulky building. It's
12 only four stories. Again, it's residential. It's got a
13 residential scale and all articulated. The cornice
14 articulate there. There are one, two, three, four types of
15 residential windows going at one, two, three, four, to the
16 heavy corners, again, in the fifth floor there. And I will
17 point out that is about halfway down Montgomery Lane. And
18 that's 60 to 64 feet. I was never quite sure which, there
19 it goes up, but certainly this project should not shoot up
20 to 70 feet. My own feeling is that 12 feet is totally
21 inadequate for a building of that height.
22 MR. KNOPF: Well, 12 feet --
23 THE WITNESS: 12-foot setback.
24 MS. ROBESON: Setback?
25 MR. KNOPF: Setback?

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1 THE WITNESS: I think the Planning Commission
2 chairman recognized that, but when I -- I suggested a
3 minimum of 30 feet. I'm not designing it. I don't think I,
4 I've done enough architecture to know that elevators are
5 very important to a particular plan. They don't dictate a
6 project. Some people, though I think the drawing I looked
7 at they were set back about 30 feet. But the point is when
8 you come into a building, some buildings have elevators at
9 the entrance.

10 I was in one on Lincoln Square in New York and the
11 only thing -- you'd go back about 50 feet for the, 100 feet
12 to get to the elevator, but normally I'd say most of the
13 elevators are set back beyond the reception area. That
14 seems to be -- and that's your third way into the apartment
15 building. You come in, you have a reception and then you go
16 to the elevator. But you shouldn't be dictated by that
17 comment. It was made, I think, about only four.

18 MR. KNOPF: Mr. Doggett --

19 THE WITNESS: So there is nothing sacred about 30
20 feet, but you have to make an impact if more than one is
21 being made.

22 BY MR. KNOPF:

23 Q When you said you didn't think that 12 feet was
24 sufficient, could you explain? Are you talking about
25 aesthetically? What --

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1 A Aesthetically I think it's -- the main thing, my
2 main objection with the proposal again is when I looked at
3 what the plan is asking for is the bulk. It's very bulky
4 and intrudes and on a pedestrian walk you want human scale;
5 you don't want that. My only feeling is at that particular
6 stage, and I did a picture of it, would be something like
7 four stories high, City Homes, with possible two stories set
8 back. The original project, I believe it was set back
9 something like 100 -- I mean it was set back, but you're in
10 an area of not seven story buildings. And it --

11 Q The --

12 A Wait.

13 Q Let me just ask you --

14 A They --

15 Q -- would set backs of 30 feet be consistent with
16 the Sector Plan recommendations of having some setbacks?

17 A Yes, I think so, yes.

18 Q Does the Sector Plan also call for possible
19 rooftop terraces for people?

20 A Yes. Yeah.

21 Q Are these consistent with --

22 A Yeah, something like 30 feet you could make a
23 usable rooftop, you know, people could use it and feel
24 comfortable out there. That's my own feeling of buildings
25 I've worked on. The Triumph building, as I recall it --

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1 MS. ROBESON: And that's Edgemoor Highrise?
2 THE WITNESS: No, the 4900 block.
3 MS. ROBESON: Oh, no, that's --
4 MS. HARRIS: 4901.
5 MR. KNOPF: 4901?
6 THE WITNESS: Yeah. Is, this is shown, I believe,
7 on the Woodmont side. Apparently the elevations have been
8 revised and most are residential. And Mr. Knopf sort of
9 mentioned, you know, the Planning Commission recommended 100
10 feet and was sent down to 70 feet, which is about six
11 stories, going down to 60 feet on one side and the density
12 was much less in numbers. There was not the cliffhanging
13 thing with that building.

14 BY MR. KNOPF:

15 Q Mr. Doggett, when you're referring to 4901, are
16 you referring to Exhibit 120(b)?

17 A Yeah, uh-huh.

18 Q This is the --

19 A Yes.

20 Q -- scalloped, this is the --

21 A Yes. Yes.

22 Q -- top?

23 A Yes, that is the one.

24 MS. ROBESON: Okay. So you're pointing to the
25 image, elevation in the lower --

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1 THE WITNESS: Yes.
2 MS. ROBESON: -- left, or lower right --
3 THE WITNESS: Lower right side, yes.
4 MS. ROBESON: Okay.
5 BY MR. KNOPF:

6 Q Is that where it's a 60-foot height?
7 MS. ROBESON: Can you show Ms. Harris?
8 MS. HARRIS: Yes. And I was going to note
9 actually, Norman, I thought you were going to distribute
10 those?

11 MR. KNOPF: I did submit it to you by email. Did
12 you -- I sent it to Mr. Abrams. Did you get it? I sent --

13 MR. ABRAMS: Let me see what you're talking about.
14 MR. KNOPF: Yes, I did send it. I sent it last
15 week.

16 MS. HARRIS: I could have missed it. I'll double-
17 check. I don't recall that.

18 MR. ABRAMS: Yes, I saw it.

19 THE WITNESS: Yes, so --

20 MR. KNOPF: You're on the same thing?
21 THE WITNESS: Fine. I'll just move quite a bit
22 along. Take a moment, I'm running late. Woodmont or even
23 the street behind that, the -- it's Montgomery Lane, is
24 dictating this design. Okay. If --

25 BY MR. KNOPF:

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1 Q Now that I've disrupted your train of thought, you
2 can find where you left off. I wanted to deviate slightly,
3 but this -- you heard the testimony by some of the
4 applicant's witnesses that the Sector Plan, in their view
5 the Sector Plan goal was to maximize the number of units
6 because that would also maximize the number of MPDU's --
7 A Yes.
8 Q -- you heard that testimony?
9 A Yes.
10 Q And did you also hear the testimony, and I just
11 read some things, that the 1976 Sector Plan, the previous
12 Sector Plan, permitted higher heights --
13 A Yes.
14 Q -- in this area in the Chase and the Christopher
15 with development?
16 A Christopher building, uh-huh.
17 Q So am I correct, one couldn't build buildings of
18 that height, that many units under the 1994 Sector Plan
19 along Montgomery Lane?
20 A No. No.
21 Q So is that consistent or inconsistent in your
22 opinion with the statement that the County's policy was to
23 maximize the number of units along Montgomery Lane?
24 A No, not the building, no, no, no.
25 Q It's not consistent? Okay. And did I hear you

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1 say, I want to get clear, that any of the provisions in the
2 Sector Plan such as the maximum --
3 A If I can --
4 Q Please.
5 A I think that the second, so many planners and
6 architects, the second land planner --
7 Q Mr. Berman, I think.
8 A Yes, I think, did admit, saying that the plan
9 should not, that the changed plans should still be carried
10 through in spite of trying to get most number of units --
11 Q Right. So, in other words, if the Sector Plan on
12 Montgomery Lane called for six to three, three to six
13 stories --
14 A Yeah.
15 Q -- that's inconsistent with the idea of trying to
16 get as many dwelling units --
17 A Yes.
18 Q -- as possible?
19 A You don't ignore the plan, no.
20 Q And the Sector Plan provisions, I want to have you
21 clarify something, the Sector Plan provisions call for an
22 average of 100 dwelling units in the, 50, 45 minimum --
23 A 45 to 100, yes.
24 Q To 100, yes. They were referring, were they not,
25 there to the entire TS-R?

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1 A Yes. Yes. Uh-huh.
2 Q But when it got down to Montgomery Lane, you're
3 saying the specifics of Montgomery Lane were to govern than
4 the general?
5 A Sorry, yes, that was the point I made, right.
6 Q Thank you. And in terms of the density which
7 talks about a 2.50 density FAR --
8 A Right.
9 Q -- that, again, is referring to the entire TS-R
10 area --
11 A Yes. Yes.
12 Q -- is it not? And in your opinion, again, with
13 the Sector Plan by having a, this urban village concept,
14 mixed street concept and certain height and story limits,
15 would those criteria govern the density so one has to be
16 compatible with those criteria --
17 A No.
18 Q -- when they're doing density?
19 A Yes, they, the height, the bulk, the setbacks,
20 these things would cover how many number of units.
21 Q Would cover the minimum number of units?
22 A Yes.
23 Q And the density? So you're again saying that
24 specific for Montgomery Lane would control or should
25 regularly govern --

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1 A Absolutely. Yes.
2 Q -- over the generic --
3 A Yes.
4 Q -- for all the TS-R zone?
5 A Yes.
6 Q Okay. Thank you. Now let me --
7 MS. ROBESON: Do you need a minute, Mr. Doggett?
8 I can see that --
9 MR. KNOPF: Can we --
10 THE WITNESS: Yes.
11 MS. ROBESON: Let's take a 5-minute break.
12 THE WITNESS: Okay.
13 MS. ROBESON: Okay? And you can -- I can see you
14 trying to, struggling to --
15 THE WITNESS: Trying to get rid of that --
16 MS. ROBESON: -- keep it down.
17 MR. KNOPF: And I keep asking questions to choke
18 him, but --
19 MS. ROBESON: It's okay.
20 (Recess)
21 MS. ROBESON: Are you ready, Liz? We're ready to
22 go back on the record. I did check during the break to see
23 if our shared drive was up and it's still not, so we will
24 produce an exhibit list as soon as we are able. All right.
25 MR. KNOPF: Okay. Let me ask some questions here.

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1 MS. ROBESON: We're continuing with Mr. Doggett.
2 BY MR. KNOPF:
3 Q Now, Mr. Doggett, you spend a lot of time talking
4 about the townhouses on Montgomery Lane. Does the site
5 occupied by those townhouses, the amount, the size of the
6 site occupied, does that play a role in setting the tone --
7 A Yeah, aesthetically.
8 Q -- and character of the street?
9 A Yes, aesthetically that does set the character of
10 the street.
11 MS. ROBESON: The City Homes?
12 THE WITNESS: City Homes, yes. It's, it fills the
13 plan requirements and in terms of the sheer size of the area
14 that it covers, yes.
15 MR. KNOPF: So in --
16 THE WITNESS: I --
17 BY MR. KNOPF:
18 Q I just want to, come out here. Am I correct that
19 the City Homes covers the entire south side of the street --
20 A Yes.
21 Q -- the corner, the corners at Arlington and
22 Woodmont?
23 A Yes. Yes.
24 Q And can you --
25 A Yes.

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1 Q And you testified regarding the residential
2 character of the building at the corner of --
3 A Yes.
4 Q -- Arlington and Montgomery --
5 A Yes.
6 Q -- and also the Triumph at 4901?
7 A Those buildings in scale, yes.
8 Q Right.
9 A And actually the Triumph, as we call it, has
10 actually modified that design a bit.
11 Q So is that supporting your view that the tone of
12 the street as developed under the current Sector Plan --
13 A Yes.
14 Q -- is, sets a residential character?
15 A I think it set a residential character with that
16 and --
17 Q And, similarly, the north side of the street, the,
18 you mentioned the Sandy Spring --
19 A I think that's in character. It also -- Sandy
20 Spring, it's not bulky, but it's not a heavy building. When
21 I articulated, I said it's residential. It's five stories
22 from the Edgemoor going down to what I would say to be four
23 stories, ideally set back to six stories like the original
24 plan, the original proposal by Holladay had, I believe, some
25 of that. But if you go on the tent there, you know, you

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1 come down to --
2 Q Excuse me, by tent theory you mean?
3 A Yes, from high, high, there are two tent theories
4 here. One is from when the plan was done from the Metro
5 buildings coming down towards Arlington. It's a sweep. The
6 second one is the tent theory or the angled theory if you
7 want -- I don't use the word tent -- means that it steps
8 down from six stories to three stories, in essence, and --
9 MS. ROBESON: So there's one -- you're saying
10 there's one tent from the Metro --
11 THE WITNESS: Yeah.
12 MS. ROBESON: -- and there's another tent --
13 THE WITNESS: Yes.
14 MS. ROBESON: -- from Montgomery Lane?
15 THE WITNESS: They mention it in the, in the --
16 MS. ROBESON: Colloquially.
17 THE WITNESS: -- in my report plan about being a
18 tenting kind of --
19 MS. ROBESON: Yes.
20 THE WITNESS: -- somewhere it comes down I
21 mentioned, but the main one that we're impacted by is, I
22 think, the one from Woodmont down to Arlington. And you
23 come down. You have the high building at the little
24 Edgemoor. You have Sandy Springs. And then if you build
25 according to proposal, you don't go down as you should be,

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1 you go up, you go up beyond the height of that with, next to
2 the very residentially articulated Sandy Springs, so you've
3 got large, curved glass of the entryway which, yes, I think
4 the small amount, the 600 square feet you get cut out of the
5 building print does certainly not justify the -- you lose
6 more than you gain, believe it or not. It really does not
7 in any way give you a residential feeling.
8 The -- I rather, and I didn't mean to be sarcastic
9 when I first, when I said it at the Planning Commission,
10 that reminded me of a Barnes and Nobel up by Columbia
11 University. But, no, the point I'm trying to say, it can be
12 a nice building. It is not what is asked for.
13 MS. ROBESON: Well, may I ask a question --
14 THE WITNESS: Yes.
15 MS. ROBESON: -- just for a moment? I guess one
16 of the struggles I have is, say what you like about the
17 plan, you know, one could argue -- okay, I'm sorry. I'm
18 still on the weekend. City Homes, to say, one could argue
19 in a sense that City Homes is not consistent with the plan
20 because if the plan had been implemented in its purest
21 form --
22 THE WITNESS: Uh-huh.
23 MS. ROBESON: -- all right, City Homes would have,
24 might have been bigger --
25 THE WITNESS: Yes.

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1 MS. ROBESON: -- and it was only this trade-off
2 with the Highrise Edgemoor that justified the density of the
3 City Homes. So if this had truly to a tee been implementing
4 the plan, City Homes may have been larger. And so is it, is
5 it proper to have City Homes kind of be the tail wagging the
6 dog --
7 THE WITNESS: I --
8 MS. ROBESON: -- so to speak?
9 THE WITNESS: -- think it's a reasonable argument
10 to say that I came in late on the project and I immediately
11 said, I don't know, I could see it in the air, but I could
12 see what was really said. I saw the six to three and I
13 thought it was very hard. It could have been, the so-called
14 Triumph, the 2900 building, is being reduced to 1760 feet
15 from the hundred.
16 MS. ROBESON: Oh, 4901?
17 THE WITNESS: 4901.
18 MS. ROBESON: Yes. Okay.
19 THE WITNESS: So that was a move there. You know.
20 And so we have a 6-story building. We have towards
21 Arlington, you get on both sides, and they're all
22 essentially a 3-story building with a setback down to 48.
23 So that is being --
24 MS. ROBESON: Oh, I see what you're saying.
25 THE WITNESS: -- stubborn, but I see nothing wrong

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1 with that, the scale that I think is excellent.
2 MS. ROBESON: All right. I understand.
3 THE WITNESS: Yeah.
4 BY MR. KNOPF:
5 Q Well, that -- I'm sorry, Hearing Examiner.
6 MS. ROBESON: I -- that was my question.
7 BY MR. KNOPF:
8 Q Let me follow-up on the question. Is it your
9 understanding that if the zoning code requires a
10 consideration of compatibility of the project and that that
11 compatibility you have to weigh what's already existing --
12 A Yes.
13 Q -- to see if it's compatible with what's on the
14 ground so to speak?
15 A Yes. I don't think the plan is compatible.
16 Q With what's there?
17 A The bulk and the height, no.
18 Q Well, let me ask a couple of questions --
19 A And no --
20 Q -- in no particular order. You mentioned the
21 elevator 30, didn't have to be 30 feet?
22 A No.
23 Q If the, would one of the -- was it your
24 understanding that the rooftop structure is close to, is
25 located where it is because that would contain the elevator?

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1 So if the elevator were moved, the rooftop structure
2 containing the elevator would move back also?
3 A Yes. Yes.
4 Q And from, as a --
5 A Yeah.
6 Q -- would that, would that help to reduce the bulk
7 of the building to move that back?
8 A I think so, yes. Yes.
9 Q Okay. The -- you referred to the mixed street is
10 supposed to be a pleasant walking environment --
11 A Yes.
12 Q -- and you mentioned the character of the proposed
13 building. One thing you didn't mention, do you have a view
14 on at night when one would be walking down the street, what
15 the light effect would be of the curved entrance?
16 A It would be a very highly-lit light. It would not
17 be required pedestrian street.
18 Q Would that appear to be more of a commercial or
19 residential character?
20 A It could well be more of a commercial, commercial.
21 It would be more intrusive, let's put it that way.
22 Q And now --
23 A The mixed street is a unique street. A
24 residential, mixed street is the only one where the other
25 one is commercial, this is -- and it has that tremendous

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1 walk, it would be a pleasant walk from the higher to the
2 communities, of the library and parks.
3 Q Well, speaking of the unique feature of this mixed
4 street, the applicant spent a lot of time reviewing
5 buildings that were on this street, particularly those on
6 Hampden Lane --
7 A Yeah.
8 Q -- in terms of height and what they looked like
9 and so on. In your opinion in determining compatibility of
10 this project, is it appropriate or important to look at
11 what's on other streets?
12 A It's not really, no. I think the commercial
13 buildings are on them. It does not address that sector
14 recommendation and I am, that's why I am holding onto that
15 recommendation.
16 Q On Montgomery Lane?
17 A It would be nice to -- I mean I think what is done
18 on Hampden Lane is not particularly attractive
19 unnecessarily. I think it would be nice to sort of quote
20 the Villages of Bethesda, but I haven't done that. I
21 haven't done that, deliberately have not done that --
22 Q So --
23 A -- because it's outside the parameter and --
24 Q The Montgomery Lane. So you're looking at
25 Montgomery Lane --

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1 A Yeah.

2 Q -- the Sector Plan of Montgomery Lane provisions

3 and what's on the --

4 A Yeah.

5 Q -- what's built --

6 A Yeah.

7 Q -- already --

8 A Yeah.

9 Q -- and/or approved on the street?

10 A It's essential, it is a pedestrian street and as

11 you walk down it, what do you see? How does it affect you?

12 Q All right.

13 A Is it a pleasant street? Is it overbearing?

14 Q Well, along those lines, what recommendations do

15 you have -- expand on what you already said --

16 A Uh-huh.

17 Q -- but maybe go back over what you said also, as

18 to how you think this building could be made more

19 compatible, the proposed building could be made more

20 compatible with existing development and approved

21 development?

22 A Well, I --

23 Q You mentioned already --

24 A Yeah.

25 Q -- a 30-foot setback?

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1 A Yeah. I was trying to, I could probably give you

2 an idea, but I don't like getting in the role of criticizing

3 other architects. No, I'm just saying it's -- I'm looking

4 at the plan, you know. The plan would have a more modest

5 height, I would say a 4-story. The flexibility would be

6 coming and giving an additional two stories, set back at a

7 reasonable height so that you would not be, have an

8 intruding fifth and sixth floor. You could have a usable

9 public open space where people could use it. You could have

10 like they have at the Marriott in Arlington where you have

11 sort of planters coming over the edge, reducing a heavy

12 relationship down below. You could have --

13 Q Well, let me just pause you a minute. You say

14 setback a reasonable amount. Is that, is the setback for

15 the purpose of when you walk along the street that you

16 wouldn't see --

17 A You would not see, no --

18 Q -- see the 4th, the 5th --

19 A No.

20 Q -- and 6th floors, is that it?

21 A The railing --

22 Q And in your opinion at 15 feet by 12 feet wouldn't

23 push that back?

24 A I don't. I think, no, I think the, that sample

25 showed that coming looking from Arlington and --

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1 Q Right.

2 A -- coming from the other side. Yes, you do see

3 that. I've looked up and down just to measure that. And

4 the penthouse is not out right away.

5 Q So let me mention also, you would push the

6 penthouse back?

7 A I would, though, yes. Yes.

8 Q Okay.

9 A It's interesting that Sandy Springs, the penthouse

10 is pretty near the back of the building --

11 Q Now --

12 A -- away from Montgomery Lane.

13 Q Now just, sorry to interrupt, but as things occur

14 to me, I don't want to forget them. We've had testimony

15 from the applicant that they had faux bay windows --

16 A Yes.

17 Q -- and that they couldn't have real bay windows

18 because that would stick out beyond the building line since

19 the building, they were close to the building, to the

20 property line. What's your thought and recommendations on

21 having features in the building to make it residential that

22 might require the building to step back a little bit?

23 A Well, if you had a projecting balcony such as the

24 faux -- if you had balconies, you have that space at the

25 back where you have the two feet to play with. You don't

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1 have to go all the way to the back. You could probably do

2 enough to project out.

3 Q The balconies or bay windows create a more

4 residential appearance?

5 A Yes, I think so. I think the bay windows in City

6 Homes look very nice and you could have quite a, even a

7 small balcony or a couple feet coming out. You know, but,

8 you know, a barbeque place or something like that. But that

9 could be done because I really think it's --

10 MS. ROBESON: Would that require --

11 THE WITNESS: It's a waste of --

12 MS. ROBESON: -- moving the, reducing the setback

13 on the north side?

14 THE WITNESS: Yeah, in the --

15 MS. ROBESON: On the north side?

16 THE WITNESS: Yes.

17 MS. ROBESON: Okay.

18 THE WITNESS: Your Honor, I realize, as I said, I

19 don't know what kind of activity, nighttime activity you

20 expect back there, but it's not very endearing.

21 BY MR. KNOPF:

22 Q Let me ask something that's sort of obvious, but I

23 keep overlooking. In lieu of moving the building back from

24 the rear, one could shrink the building a little bit --

25 A You could do it. You could do it.

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1 Q -- and move it back in the provide the same --
2 A You could do that, yeah.
3 Q -- amenities, balconies and windows.
4 A Yes. Yes.
5 Q Bay windows. All right.
6 A Yes. I don't know about the building going
7 towards Arlington from the proposed building, but I think a
8 setback would certainly maybe help light lying into that
9 other building too. That would be, you know, you have the
10 15 and it goes to 12 and then setback a little bit more. It
11 would be more of a -- it would be a courtesy anyway.
12 Q Mr. Doggett, you've heard much testimony by the
13 application, I believe you heard, that these, there are
14 going to be a lot of units up through, they're asking for an
15 equivalent of, up to 135 dwelling units per acre.
16 A Uh-huh.
17 Q They are going to rental and they're going to be,
18 so it provides a diversity and there's going to be the
19 MPDU's that are based on the total number of units.
20 A Uh-huh.
21 Q And, therefore, they're saying this building
22 fulfills the Sector Plan and meets the County's policies of
23 having MPDU's and more dwelling units. As a planner, what
24 is your recommendation as to whether the Hearing Examiner
25 should rely on that because none of these have been made

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1 binding elements?
2 A Well, it's true enough. I don't think you can
3 rely on the recreation of a number of units. I, my
4 experience at Fairfax, people that have moderate income
5 units have children too. They like to go to the movie
6 houses, they like to go to the park and they like to have a
7 nearby school. It's not just another, of single
8 professionals that come in. They're a big demand. There
9 was also a lack of demand and the plan mentions twice the
10 Board is being recommended from the two to three townhouse
11 is, and there are not many, there are not many units like
12 that that you can get in any buildings like that in
13 Bethesda.
14 Q But the, in terms of meeting the goals of the
15 Sector Plan, would you agree with me that because these are
16 not -- they're purported goals of the County policy?
17 A Yeah.
18 Q One cannot rely on this because they're not
19 binding elements. They could convert this to condo or
20 larger units --
21 A They could go to condos. Yes, I don't know, condo
22 rental.
23 Q Right.
24 A They could be smaller, larger, yes.
25 Q Okay. Thank you. Just one minute please, okay?

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1 I keep forgetting, toward the end, is there something more
2 you would like to say? I'll give you an open-ended
3 question.
4 A No, I think we go back to my earlier statement of,
5 well, what the goals go towards some of them in terms of
6 housing. They're not, me and you remove the recommendations
7 of this, we meet the recommendations. It's a unique street
8 and the reason is unclear behind it. It's a pleasant way to
9 walk and I don't think the bulk of the proposal, the detail
10 of the proposal answers that. All the numbered units,
11 clearly, which would increase the density along the street
12 are an answer to that. I'm not a transportation, I'm not
13 transit person for that.
14 MS. ROBESON: All right.
15 THE WITNESS: Okay.
16 MR. KNOPF: Thank you. Thank you very much.
17 MS. ROBESON: Mr. Abrams, do you have any
18 questions?
19 MR. ABRAMS: Just a couple.
20 BY MR. ABRAMS:
21 Q Mr. Doggett, would extending the step down along
22 West Lane be in your opinion a recommended design element to
23 mitigate the mass and bulk of this building?
24 A Absolutely.
25 Q And would providing more depth of public open

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1 space in a green variety -- this is natural plantings as
2 opposed to --
3 A Uh-huh.
4 Q -- hardscape --
5 MS. HARRIS: Objection. I don't think Mr. Doggett
6 said anything about the public use space.
7 MR. ABRAMS: Yes, he did.
8 MS. ROBESON: Yes, he did. Yes, he testified --
9 MR. ABRAMS: Yes.
10 MS. ROBESON: -- about not having it all
11 necessarily aligned. He testified about that open arc and
12 he testified --
13 MS. HARRIS: Okay.
14 MS. ROBESON: Go ahead.
15 MR. ABRAMS: Okay. Let me repeat this.
16 BY MR. ABRAMS:
17 Q Would providing more depth of public open space of
18 a green variety along Montgomery Lane in accord with the
19 Sector Plan recommendations?
20 A I think so. You have the mini park right at the
21 end of -- which really starts that open space going in with
22 the, yes, it would be an improvement.
23 Q In terms of hardscape usage such as recommended
24 here along the corner of the building, the street frontage,
25 is hardscape usage such as combined with entry elements more

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1 prevalent along busier streets and roads than may be
2 prevalent along a mixed street?
3 A It's scandalous, but yes.
4 Q Okay. Is that --
5 A The amount of traffic going to the buildings --
6 Q All right.
7 A -- yes.
8 Q And is that not a common element in areas such as
9 along Wisconsin Avenue?
10 A Yes.
11 Q Along what is to be known as Fairmont Avenue --
12 A Yes.
13 Q -- redevelopment?
14 MS. ROBESON: Was that a question? I'm sorry.
15 MR. ABRAMS: Yes.
16 THE WITNESS: Yes.
17 MR. ABRAMS: And I think he answered.
18 MS. ROBESON: I'm sorry.
19 THE WITNESS: Yes. I said it was common -- yeah.
20 MS. ROBESON: Okay.
21 THE WITNESS: Yes.
22 MS. ROBESON: Sometimes I can't --
23 THE WITNESS: Yes.
24 MS. ROBESON: -- quite hear whether you said --
25 THE WITNESS: Okay. Yes.

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1 MS. ROBESON: -- yes or no. Okay.
2 BY MR. ABRAMS:
3 Q Now in terms of the 12-foot step back, I think you
4 indicated that this is insufficient for this project. Would
5 the amount of the step back be dependent upon the height and
6 mass of the building that it's --
7 A Yes.
8 Q -- integrated into?
9 A Yes.
10 Q And so that I'm absolutely clear, what is your
11 recommendation in terms of the step back for this project in
12 terms of its mass and bulk and to make it more compatible?
13 A I have recommended, again, Ms. Carrier has sort
14 of, kind of agreed with it as being a bit bigger, 30 feet
15 middle.
16 Q I see.
17 A That's not setting a rigid line.
18 Q Is that in any way based upon the Holladay
19 project?
20 A To a degree. The Holladay project was much deeper
21 than 30 feet. It was bulking and sort of directly on a
22 height, transferring what visually, I can do that quite
23 well, what 30 feet would look like.
24 Q Now in terms of the planning over design
25 profession, in developing Sector Plans and in working on

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1 individual development projects, would you recommend
2 exceeding the density or the height limits which are
3 recommended in a Sector Plan in order to achieve more
4 public, moderate-priced dwelling units?
5 A No.
6 Q Well, would you have essentially a planning policy
7 as opposed to possibly an economic and political policy and
8 in terms of weighing those in the process of developing a
9 community, which do you believe should have more impressive?
10 A The sector, as I said the light in the sector is
11 specific than possible.
12 Q And I believe you said compatibility is evaluated
13 against the existing conditions --
14 A Yeah, uh-huh.
15 Q -- in the neighborhood? In terms of
16 compatibility, would it be your opinion that those
17 properties closest to the proposed project would be more or
18 less affected than other properties in the general TS-R
19 zone?
20 A Absolutely, yes.
21 Q Do you, sir, have an opinion as to where the
22 entrance of the building should be in terms of the step down
23 effect and the location of the elevators considering the
24 issue of compatibility?
25 A I haven't gone into that. It's not usually in

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1 urban design a good feature to have, an entry of four feet
2 up from the sidewalk and certainly there are steps going up
3 and needing a ramp. That's going to be quite a long ramp to
4 go up. Certainly, the entry, if it went down on the west
5 side rather than there, it could be, it could be, it could
6 help getting the elevator location better. There is, and
7 also with fifth and sixth story easily handle it, but that's
8 going into the --
9 Q Okay.
10 A But, yes.
11 Q And was the West Lane to be the entry point for
12 the Holladay project?
13 A Yes, uh-huh.
14 MR. ABRAMS: That's all the questions I have.
15 MS. ROBESON: Okay. Thank you. Ms. Harris?
16 MS. HARRIS: Yes, thank you.
17 MR. KNOFF: Do you want a break or are you ready
18 to -- do you want a five minute break?
19 MS. ROBESON: Can you wait --
20 THE WITNESS: Can we have a five minute break? I
21 don't --
22 MS. ROBESON: Anyone have any problems with that?
23 THE WITNESS: No. No.
24 MS. ROBESON: Okay.
25 THE WITNESS: I don't mind you going.

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1 MS. HARRIS: No, go ahead, five minutes is fine.
2 MR. KNOPF: She's probably going to be a long
3 time, so I --
4 MS. ROBESON: No, that's fine. We'll take a five
5 minute break.
6 (Recess)
7 MS. ROBESON: All right. We are back on the
8 record. Ms. Harris.
9 MS. HARRIS: Okay.
10 CROSS-EXAMINATION
11 BY MS. HARRIS:
12 Q Mr. Doggett, you made, testified to the fact that
13 the 4901 has a notched out area of 60 feet along Montgomery
14 Lane, is that correct?
15 A Your proposal?
16 Q No. 4901, that's --
17 MR. KNOPF: The Triumph.
18 THE WITNESS: The Triumph? No, I --
19 BY MS. HARRIS:
20 Q The Triumph building, that it was, I believe you
21 noted that it has --
22 A Oh, I said, no, I said the roof heights. I didn't
23 say anything about a notch.
24 Q No, I believe you made a point to note that there
25 was a step back --

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1 A Step down I said.
2 Q A step down --
3 A Yeah.
4 Q -- to 60 feet?
5 A Yes, I think I said that, yes.
6 Q Okay. And does that step down extend the entire
7 length of Montgomery Lane?
8 A No, not to my knowledge, no.
9 Q It's just a notch?
10 A Yes.
11 Q And yet a step down to 60 feet was actually, I
12 believe you said, significant in terms of reducing the mass
13 of the building on Montgomery Lane?
14 A I think actually my testimony was the reduction of
15 the design features reduced the effect of a mass.
16 Q Okay. I think you said one corner will drop to 60
17 feet --
18 A Yes. Yes.
19 Q -- and, therefore, it decreases the mass --
20 A And I also said --
21 Q -- does that sound familiar?
22 A -- 70 feet was okay, it met the condition of the
23 plan approximately.
24 Q All right. So if a 60-foot notch, and you
25 recognized it doesn't go all the way across on Montgomery

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1 Lane, extend to the length of the building --
2 A Yeah.
3 Q -- helps to decrease the mass of a building, would
4 not a 50-foot step back that extends the entire width of the
5 building also decrease the mass of the building?
6 MR. KNOPF: Excuse me, did you say 50?
7 BY MS. HARRIS:
8 Q Yes. A step back, which is located at 50 feet
9 versus a 60-foot notch, would that not go to decreasing the
10 mass of the building?
11 A Yes.
12 Q Okay. Thank you. You also noted that the 4901
13 was recently, or maybe at the moment, are you aware that
14 when 4901 recently was approved for 40 units, a maximum of
15 40, or a minimum of 40 units --
16 A Yes.
17 Q -- but there was concern expressed at the Planning
18 Board because of the issue of decreasing density near the
19 Metro station?
20 A I was, I don't --
21 Q You didn't follow the --
22 A -- I didn't follow that, no.
23 Q -- Planning Board proceedings in that? Okay. And
24 is there any reason to think that if 4901 came in and
25 actually wanted not 40 units, a minimum of 40 units, but in

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1 fact they wanted to decrease the size of their units and
2 say, make a minimum of 80 units, do we have any reason to
3 think that the Council wouldn't have granted that?
4 A I have no idea what the Council would recommend.
5 Q Would --
6 A No, I'm not being facetious. How many factors
7 would come into that?
8 Q Moving on for, you spent a long time discussing
9 the rooftops of --
10 A Yes.
11 Q -- the rooftop of the Highrise Edgemoor. When was
12 the Highrise Edgemoor constructed?
13 A I can't remember when that was.
14 Q Approximately?
15 A 10 years ago?
16 Q Early 2000's, does that sound about right?
17 A Yes, something like that, yeah.
18 Q And, similarly, when were the City Homes
19 constructed?
20 A About the same time.
21 Q And you noted that the details of the plan are not
22 outdated?
23 A Yes, uh-huh.
24 Q Are you aware when 4901 was approved?
25 A Yes.

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1 Q And how recently?
2 A Well --
3 MR. KNOPF: Wait. Excuse me. Can you clarify
4 which approval you're talking about?
5 THE WITNESS: Yes.
6 BY MS. HARRIS:
7 Q 4901, the most recent approval for, well, actually
8 go back to 2006. From 2006 until present.
9 A When it was known as the Triumph building --
10 Q Okay.
11 A -- I would say --
12 Q But the earlier approval for 4901 was 2006? Are
13 you aware of that?
14 A I don't know. I don't know. I know there were
15 strong modifications being made.
16 Q Okay. Let me make, let me ask it a different way.
17 A At that stage I ceased to be involved.
18 Q Was 4901 approved after the Highrise Edgemoor and
19 the City Homes?
20 A Yes.
21 Q And does it have a flat roof?
22 A I don't think -- I don't know about the
23 modification. I don't know.
24 Q You don't know? Okay. And how about Hampden
25 Lane? Was that approved after the Highrise Edgemoor and

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1 City Homes?
2 A Which one was that, do you know?
3 Q The one at the corner and Hampden.
4 MS. ROBESON: Can you show him on the --
5 MS. HARRIS: I'm sorry.
6 MS. ROBESON: What's that exhibit next --
7 MS. HARRIS: This one?
8 MS. ROBESON: No, that one right there.
9 MS. HARRIS: 106(b).
10 MS. ROBESON: 106(b).
11 THE WITNESS: I don't know. It was an
12 indifference to me when it was done.
13 BY MS. HARRIS:
14 Q Well, you know what, actually maybe it would be
15 better visual --
16 A Yeah. Yeah.
17 MS. ROBESON: And that --
18 MS. HARRIS: This is 106(f).
19 MS. ROBESON: 106(f). All right.
20 BY MS. HARRIS:
21 Q Okay. Does that look like it has -- does not
22 Hampden Lane building --
23 A Uh-huh.
24 Q -- look like it has a flat roof?
25 A I made the point that the --

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1 Q No, I was just curious about the flat roof.
2 MR. KNOPF: Well, excuse me. I'm going to object
3 because I don't know that that directly reflects what's on
4 the roof. We had testimony that this was some plug-in and
5 we already know that --
6 MS. HARRIS: Okay.
7 BY MS. HARRIS:
8 Q Is there a dormer on --
9 MS. ROBESON: You will have redirect on that, so
10 to your knowledge does Hampden Lane have a flat roof?
11 THE WITNESS: I don't know.
12 BY MS. HARRIS:
13 Q And does 4901 have a flat roof?
14 A On the latest plan, I don't know whether it's done
15 or not exactly.
16 Q And does the Sandy Spring Builders building --
17 A That has a flat roof.
18 Q -- have a flat roof?
19 A Yes.
20 Q And does Edgemoor at Arlington North have a flat
21 roof?
22 A It has a 3-story flat roof and a 4-story flat
23 roof.
24 Q And how about the --
25 A The other one has a 3-story --

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1 Q -- Edgemoor at Arlington?
2 A -- flat roof with a balcony and a 4-story
3 penthouse apartment.
4 MS. ROBESON: And that, and you mean the Edgemoor
5 at Arlington?
6 THE WITNESS: Edgemoor at Arlington.
7 MS. ROBESON: Okay.
8 THE WITNESS: That's what she was pointing at,
9 yes.
10 BY MS. HARRIS:
11 Q So is it correct to say that everything that's
12 been approved since the Highrise Edgemoor, one variation or
13 another, does, in fact, have a flat roof?
14 A Since the, from the Edgemoor, City Homes was
15 actually at the same time. I mentioned it because there was
16 criticism of being traditional and out-of-date and I don't
17 think it is out-of-date. The plans still in terms of bulk
18 and the density, those buildings --
19 Q Would you think the --
20 A Not the one on Hampden Lane. I'm not interested
21 in that building there.
22 Q Are you familiar with the lead requirements and
23 changes in storm water management that require --
24 A Some, yes. Some to a degree, yes.
25 Q -- green roof?

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1 A Yes, to a degree.
2 Q Would it be difficult to put a green roof on the
3 Highrise Edgemoor?
4 A No, probably not, no.
5 Q Oh, it wouldn't be difficult?
6 A No. You could probably put solar panels on it if
7 you did it again.
8 Q No, no, a green roof with sedum?
9 A No. No.
10 Q We heard that you have --
11 A Yeah, I know. I know.
12 Q And that would not be difficult?
13 A No.
14 Q That's interesting.
15 A It is, yes.
16 Q Newton's law.
17 MS. ROBESON: Is that a question? You need a
18 question.
19 MS. HARRIS: Okay. I don't think I need a
20 question.
21 THE WITNESS: If I can answer some of the --
22 MS. ROBESON: Well, your attorney will. Right now
23 you're just answering her questions.
24 BY MS. HARRIS:
25 Q You noted, you emphasized the pedestrian nature of

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1 Montgomery Lane --
2 A Yes.
3 Q -- and given that it was a mixed street?
4 A Yes.
5 Q Are you aware that 170-foot tall buildings are
6 also approved on that other mixed street --
7 A The other --
8 Q -- in Bethesda, the Fairmont Avenue?
9 A Isn't that mainly commercial buildings too,
10 commercial in mix?
11 Q It's --
12 A It --
13 Q The Sector Plan go to the point -- in the
14 discussion of mixed streets on, in the Sector Plan, does it
15 not emphasize the pedestrian environment?
16 A Yes. There's a sketch of the other plan that
17 doesn't come up, but it's in the planning report, I laid it
18 there, that shows the restaurants along the side, okay?
19 Q I know. But my point is that a mixed street,
20 according to your testimony, one of the purposes of it was
21 to promote pedestrian environment?
22 A I said a residential and mixed street.
23 Q Let me get that section of the code. Actually, I
24 think maybe you could just read the first sentence of page
25 189 under mixed street.

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1 A Okay. Thank you. "Mixed street emphasizes
2 pedestrian circulation while allowing limited, slow
3 vehicular traffic."
4 Q Thank you. Okay. So it does emphasize pedestrian
5 circulation, correct?
6 A Yes.
7 Q And are you aware that on Fairmont Avenue there
8 are heights of 170 feet, going to 170 feet?
9 A No, I've never measured, measured them on that.
10 They're not part of my--
11 Q Excuse me?
12 A No, I haven't measured -- I don't know how high
13 they are.
14 Q Well, one would assume that --
15 A They are high, but -- they are high buildings.
16 Q Okay. And yet it was mixed street with 175 feet
17 approved, here we have a mixed street with 100 feet with the
18 Highrise Edgemoor and then two buildings of 70 feet?
19 A It doesn't surprise me in the bit when you have a
20 residential mixed street which is very different. That's
21 the point I'm making.
22 Q And then also on page 180, it may be helpful to
23 read that first sentence too of the traffic movement on
24 mixed streets, the first sentence. If you could read that
25 aloud?

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1 A "Fairmont Avenue between Norfolk Avenue and Old
2 Georgetown Road, Montgomery Lane, are recommended
3 as mixed streets to accommodate the anticipated
4 higher level of pedestrian activity."
5 Q And so it doesn't --
6 A And --
7 Q Is there any differentiation in that street, I
8 mean in that sentence in the plan --
9 A No.
10 Q -- between commercial and residential?
11 A No. No. No, that's about it, close of hearing.
12 Sorry.
13 Q I want to turn to the zoning hearing, the zoning
14 report. It's 102(f) in the Highrise Edgemoor case. The
15 Highrise Edgemoor. Oh, here it is, sorry. Did you do work
16 for Montgomery County when Pat Baptise was a member of the
17 Planning Board?
18 A No.
19 Q Okay.
20 A I, Jack Carter is my old buddy from many years
21 ago. John Carter, from Star, and I met him --
22 Q John Carter?
23 MR. KNOPF: John?
24 THE WITNESS: John Carter, yes, well --
25 BY MS. HARRIS:

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1 Q Okay. But you didn't do any work for Montgomery
2 County when Pat Baptiste was on the Planning Board?
3 A No, I left -- I did a lot of work for, no, I
4 knew --
5 MR. KNOPF: You should just say yes or no.
6 THE WITNESS: No. No.
7 MS. HARRIS: Okay.
8 THE WITNESS: No.
9 BY MS. HARRIS:
10 Q Can you please read the highlighted portions of
11 page 21 and 22? This is from the zoning hearing examiner
12 report of the Highrise Edgemoor case.
13 A Okay.
14 "Patricia Baptiste is a Chevy Chase resident
15 and previously served on the Planning Board at the
16 time of the 1994 Bethesda Sector Plan was drafted.
17 She participated in discussions and ultimate
18 decisions about building height limitations
19 contained in the Sector Plan. The Planning Board
20 had two goals in providing Sector Plan design
21 guidelines. The first goal is to achieve
22 appropriate density near the CBD core and Metro.
23 The second is to protect residential neighborhoods
24 in Edgemoor from excessive heights. The urban
25 village concept contained in the sector represents

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1 a nice design that will not be achieved in this
2 area. The applicant attempted to implement the
3 urban village concept with an earlier application,
4 but it was withdrawn was economically infeasible.
5 Instead, townhouses had to be built at lower
6 level densities anticipated which required the
7 Sector Plan, the minimum density provisions to be
8 waived. With the approval of the townhouses,
9 greater densities near Metro were not achieved.
10 She concluded that the height limitation would be
11 waived in this case in order to achieve the
12 density goals of the plan.
13 The proposed development was an attractive
14 design, an existing town home with a, the Edgemoor
15 residential community, given the existing
16 development plan with such application, the Sector
17 Plan's height limit --
18 Q I'm sorry, read, you missed a word.
19 A Oh.
20 "Given the existing development pattern,
21 split application or the Sector Plan's height
22 limits will work against the objective of the
23 plan."
24 Q And so this was in connection with, thank you, the
25 zoning hearing examiner report for the Highrise Edgemoor?

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1 And are you aware that at that time that what was being
2 proposed in the Highrise Edgemoor was 147 dwelling units,
3 not, was 147 dwelling units?
4 A I know roughly about it. I -- my memory does not
5 go back that far.
6 Q And are you familiar with the --
7 A That was the, what you just quoted was the opinion
8 of one person over there.
9 Q It's the, it's in the zoning hearing examiner
10 report. Would you -- are you familiar with the residential
11 neighborhood in Edgemoor, of Edgemoor?
12 A Can --
13 Q The passage you just read --
14 A Yeah.
15 Q -- and quoted that the height, the height limit in
16 the TS-R zone were intended to protect the residential
17 neighborhood of Edgemoor?
18 A Yeah.
19 Q And so my question to you, do you, are you
20 familiar with the Edgemoor neighborhood and are you aware of
21 the fact that it's located on the west side of Arlington
22 Road?
23 A Yes, I passed it by, yes.
24 Q Okay. And as far as you know, has any member of
25 the Edgemoor Civic Association been a party to this case or

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1 entered any opposition?
2 A Any member of the --
3 Q Edgemoor Civic Association.
4 A I have mainly spoken to people, you know, lawyers,
5 clients. I don't know whether -- I don't know the --
6 Q That live in the Highrise Edgemoor?
7 A Yeah.
8 Q But they don't live in the single-family
9 neighborhoods over here that were, was the neighborhood with
10 the height limit was intended to protect?
11 MS. ROBESON: Okay. There's a question.
12 MR. KNOPF: I believe, but -- I was confused
13 because everything has been named Edgemoor.
14 MS. ROBESON: Yes.
15 MR. KNOPF: It's mixing up Edgemoor Condominiums
16 with a single-family, single, single-family --
17 MS. ROBESON: I think --
18 MR. KNOPF: -- residential neighborhood called
19 Edgemoor.
20 MS. ROBESON: I think the question is the
21 neighborhood across to the west of Arlington Road, are you
22 aware of any opposition from them?
23 THE WITNESS: I'm not aware. The opposition
24 probably will come.
25 BY MS. HARRIS:

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1 Q And did you, are you aware of the Federal Realty
 2 project further south on Arlington Road that's 65 feet
 3 called, upstairs at Bethesda Row?
 4 A I'm aware of it, but it's not factor, I think.
 5 Q No, I realize that.
 6 A Yes.
 7 Q But were you aware that the Edgemoor Civic
 8 Association did actually vehemently oppose that project?
 9 MR. ABRAMS: Objection. What relevance has that
 10 got to do with this?
 11 MS. ROBESON: Yes.
 12 MS. HARRIS: Well, it has to do with the intent of
 13 what the height, what the 65-foot height, what the intent of
 14 the height of it was.
 15 MR. ABRAMS: It's outside of the TS-R district.
 16 MS. ROBESON: Well, A, he didn't really testify as
 17 to what the neighbors did or didn't so and I think it's
 18 beyond the scope.
 19 MS. HARRIS: Okay.
 20 BY MS. HARRIS:
 21 Q I want to go back to the ZHE report on the
 22 Highrise Edgemoor.
 23 MS. ROBESON: What exhibit is that?
 24 MS. HARRIS: 102 --
 25 MS. ROBESON: 102 --

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1 MS. HARRIS: 102(f).
 2 MS. ROBESON: Okay.
 3 BY MS. HARRIS:
 4 Q Can you read please the highlighted portion on
 5 page 25 and 26, at the very bottom of 25 and 26?
 6 A "The proposed development will provide housing
 7 within easy walking distance of Metro. Moreover,
 8 the housing will include a diversity of housing
 9 types, of upscale townhouses, rental apartments
 10 and MPDU's."
 11 Q Okay. Is that report referencing the Highrise
 12 Edgemoor or is it referencing the subject property?
 13 A I'm assuming this is the Edgemoor.
 14 Q Okay.
 15 A Yeah.
 16 Q And is the Highrise Edgemoor a rental?
 17 A No.
 18 Q And are there MPDU's in the Highrise Edgemoor?
 19 A No, I think there is some arrangements to make
 20 out, in the building outside on --
 21 Q Hampden Lane?
 22 A -- Hampden Lane, yeah.
 23 Q Okay. And just one more position from this report
 24 and that is on page 29, the second full paragraph. Can you
 25 please read that?

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1 A Yeah.
 2 "The staff neglects to acknowledge the
 3 setback and open space proposals are in conformity
 4 with the design specifications of TS-R zone. Why
 5 these setbacks are not being made clear by the
 6 staff, given the fact that the entire area is
 7 recommended for TS-R but for the TS-R zone and the
 8 setbacks are from the system, the setbacks are
 9 other TS-R zone sites.
 10 Moreover, adjacent property owners who would
 11 be the most threatened by the proposed setbacks
 12 did not object. The TS-R zone does not establish
 13 specific setbacks and often carried even though
 14 they didn't create the zone."
 15 Q Are you aware that the subject property has
 16 greatest setbacks, I refer to Exhibit 106(b), at the setback
 17 of 73 feet from the City Homes to the subject property is
 18 the greatest setback in the entire TS-R zone along
 19 Montgomery Lane?
 20 A Yes, it could be. I don't know. The, as I said
 21 earlier on, to me it was a pedestrian moving or a vehicle by
 22 foot and you could see the bulkiness of the building. I can
 23 only point you to perspectives.
 24 Q And one of the things you noted toward the end of
 25 your testimony was that in evaluating compatibility, one

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1 needs to pay most attention to the buildings closet to the
 2 subject property, correct, which is why we didn't, in your
 3 opinion we shouldn't look at Hampden Lane or -- okay. Are
 4 you aware that the building immediately to the west, the
 5 Edgemoors at Arlington North, are, in fact, supportive of
 6 the proposal?
 7 A I have not approached them and, frankly, I don't
 8 know what their opinion is.
 9 Q And are you aware that the owner of 4845 is also
 10 supportive of the proposal?
 11 A He must be.
 12 Q And how about the owner of 4828 West Lane?
 13 A I don't know what -- this looks like an apartment
 14 of developers that are in support of it, yes.
 15 Q Are you familiar with Randy Rothstein that owns
 16 the Edgemoor --
 17 A No, I don't know --
 18 Q -- of Arlington North?
 19 A -- him. No.
 20 Q So you're not aware whether Mr. Rothstein is a
 21 developer or happens to be an attorney?
 22 A He's more of an attorney than a developer, yes.
 23 Q Yes. And Villages of Bethesda, are you aware that
 24 they're supportive of the project?
 25 A I said I did not go into the Village deliberately,

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1 okay?

2 Q And are the individual homeowners of the Villages
3 of Bethesda developers?

4 A I've already said I did not --

5 MS. ROBESON: Well, okay.

6 THE WITNESS: -- I did not --

7 MS. ROBESON: I'm not, he didn't, I didn't hear
8 him testify on direct as to who was in support and who was
9 against. So, you know, I'm not sure that's a fair -- it's
10 outside the scope.

11 MR. KNOPF: Or relevant.

12 MS. HARRIS: Well, I think it is relevant.

13 MS. ROBESON: Well, no arguing now. I know. No
14 comment.

15 MS. HARRIS: Okay. You're right. You're right.

16 MS. ROBESON: No editorial --

17 MS. HARRIS: Sorry.

18 MS. ROBESON: -- comments and no editorial
19 responses. You can argue this.

20 BY MS. HARRIS:

21 Q I want to go back -- you made a big deal over the
22 urban village and townhouse --

23 A Yes.

24 Q -- look. I want to go through step by step the
25 concept of the townhouse and a couple other provisions that

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1 the Sector Plan recommends. So one of the things that
2 Sector Plan recommends is that there should be, that
3 buildings should have a townhouse appearance.

4 A Yes.

5 Q Does, in your opinion, does 4901 have a townhouse
6 appearance?

7 A It's, it's more so -- I don't think that is a
8 particularly good spec. I think that's been changed a bit.

9 Q Now, in fact, well, can you note the date that's
10 on the bottom of that?

11 A May the 1st.

12 Q Wait, no, not that.

13 A Well, that's the --

14 Q May I see this?

15 A Yeah.

16 Q Can I have a copy of it?

17 MR. KNOPF: I'm handing her --

18 MS. ROBESON: What is, you, what is, what are you
19 handing --

20 MS. HARRIS: It's Exhibit --

21 MS. ROBESON: 102 something, correct?

22 MS. HARRIS: Right.

23 MR. KNOPF: No.

24 BY MS. HARRIS:

25

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1 MS. ROBESON: No, hold on. I'm sorry.

2 MS. HARRIS: I'm sorry.

3 MS. ROBESON: Hold on one minute. What is that
4 exhibit?

5 MS. HARRIS: 120.

6 MS. ROBESON: 120? Okay.

7 MR. KNOPF: This is Ms. Skalet's testimony.

8 MS. ROBESON: Okay. Thank you.

9 BY MS. HARRIS:

10 Q Are you familiar with that 120, No. 2, that the
11 images shown here which are also set forth in the most
12 recent approval of this property in the hearing examiner
13 report actually note that this is the design for 2006?

14 A I don't know.

15 Q Well, in any respect, whether it's the 2006 design
16 or the current design, does that property look like a
17 townhouse to you?

18 MS. HARRIS: Norman?

19 MR. KNOPF: I'm showing him, turning the page.

20 THE WITNESS: I'm just looking.

21 MS. ROBESON: I was looking down here. And it's
22 120(b).

23 THE WITNESS: Yes. I suppose I'm saying that the
24 elevation on Montgomery Lane is not it in terms of height,
25 number of units --

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1 BY MS. HARRIS:

2 Q No, I was asking about 4901.

3 A Well, let me --

4 Q Does 4901 look like a townhouse?

5 MS. ROBESON: Are we looking at 120(b)?

6 MS. HARRIS: We can look at 120(b) or actually
7 106(b).

8 MS. ROBESON: Okay.

9 MS. HARRIS: Norman --

10 THE WITNESS: No, it's --

11 MS. HARRIS: I'm sorry, he's coaching his witness.

12 THE WITNESS: No, he's not. We're trying to work
13 out which elevation it is now.

14 MS. ROBESON: Well, okay. Which elevation -- what
15 she is asking you about 120(b) or 106 --

16 MS. HARRIS: 106(g), let's focus on 106(g).

17 MS. ROBESON: Let's just answer the question
18 whether that looks like a townhouse?

19 THE WITNESS: No.

20 BY MS. HARRIS:

21 Q 106(g), does it look like --

22 A No.

23 Q -- a townhouse?

24 A No.

25 Q Okay. Does Hampden, 106(g), the Hampden Lane

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1 building, does that look like a townhouse?
2 MS. ROBESON: Just, just --
3 THE WITNESS: No, I'm sorry, it has a residential
4 look about it, yes.
5 BY MS. HARRIS:
6 Q Townhouse?
7 A Yeah.
8 Q But the --
9 A Not a --
10 Q Not a townhouse? And does the Sandy Spring
11 Builders' building look like a townhouse?
12 A Oh, yes.
13 Q And the Highrise Edgemoor --
14 A It's --
15 Q -- does that look like a townhouse?
16 A No, we've established that was a special exception
17 and that was not to be a guidance to the developer. The
18 Sandy Springs is, I'm very familiar with the kind of houses
19 he gets, certainly -- I grew up in Liverpool in London.
20 They mold to that character. They switch the windows. You
21 have a stone base and then you have windows above them, yes,
22 it's a townhouse appearance.
23 Q I want to refer to Exhibit 106(j), which was a
24 transcript from the Planning Board hearing. If you could
25 just read the top portion, the top paragraph please? This

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1 is from Cher Carrier.
2 A Oh. Oh, the 2013?
3 "I feel the need to comment on one of Mr.
4 Doggett's, part of Mr. Doggett's testimony which
5 was that the building proposal, it doesn't look
6 like townhouses. And while that may be true,
7 neither does the Edgemoor Condominium building,
8 neither does the building approved across the
9 street from the other corner of Montgomery Lane
10 and Arlington."
11 And then if you go beyond it, of course,
12 "You are so full of buildings that you don't
13 look anything like a town home, so you know that
14 there's been, the Sector Plan recommends largely
15 they're not followed and so I, I can't -- we
16 discussed this the last time, I don't want to
17 rehash it. We, you know it is, the densities were
18 not followed, the forms were not followed, the
19 extent which density was allowed to be transferred
20 from one to another changed the character of
21 Montgomery, the address in a different situation
22 from the Sector Plan itself, the Sector Plan
23 anticipated."
24 Q So did -- you were at the March Planning Board
25 hearing?

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1 A At the second meeting, yes.
2 Q And did you get the impression that the Planning
3 Board also agreed that there, most of the projects on
4 Montgomery Lane and the TS-R zones don't, in fact, look like
5 townhouses as indicated by that quote?
6 A I don't know that I follow all that much on that.
7 I don't necessarily have to agree with the Planning Board,
8 but to a certain extent has certain goals it wants to
9 achieve. I certainly don't agree with, you know, Sandy
10 Springs and things like that or the buildings down on, along
11 the, on Arlington.
12 Q But moving through a couple other Sector Plan
13 recommendations, the Sector Plan recommends that there be
14 parking underground or in rear decks.
15 A Yeah.
16 Q Do the City Homes have parking underground or on
17 rear decks?
18 A They could have underground, yes, or rear rather,
19 yeah.
20 Q Is there parking underground?
21 A There is at one end I thought they would use at
22 Edgemoor Arlington.
23 Q Does this look like underground to you on Exhibit
24 106(g)?
25 A No, no, no, no, that mews is parking, no, as I

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1 said at the beginning.
2 Q And are all of the unit of the City Homes facing
3 Montgomery Lane?
4 A Yes.
5 Q All the units of City Homes, the ones, you have
6 flag sticks.
7 A Yes.
8 Q And you have five sticks that face Montgomery
9 Lane, correct?
10 A Yes. Yes.
11 Q How about all of the other additional units to the
12 south of those initial cap units, do those face Montgomery
13 Lane?
14 A No, I -- I pointed out that it was an advantage,
15 it broke up the --
16 Q No, I --
17 A No, they didn't.
18 Q Okay. Thank you.
19 A Unless you're walking, of course.
20 Q And are -- as you, you noted that the Sector Plan
21 requires a minimum density of 45 dwelling units, right?
22 A Yes. Yes.
23 Q Were the City Homes brought to a recommendation of
24 45 dwelling units per acre?
25 A No. No.

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1 Q Was the Edgemoor at Arlington?
2 A No.
3 Q And the Edgemoor at Arlington North?
4 A No.
5 Q So based on things such as minimum density,
6 parking, whether it looks like a townhouse, whether it's a
7 flat roof or a gabled roof, would you agree that there's not
8 absolute consistency in terms of every project following
9 every recommendation of the Sector Plan?
10 A There's no absolute. There is a consistency is
11 what I'm saying.
12 Q And then I want to turn to page, excuse me one
13 second, sorry. Excuse me one second. Okay. So you just
14 testified that there wasn't complete consistency with those
15 various recommendations, correct?
16 A Correct.
17 Q Okay. Then could you please turn to page 86 of
18 the Sector Plan, which is the building line, Urban Design
19 Guideline.
20 MR. KNOFF: Are you sure it's --
21 THE WITNESS: 85?
22 MS. HARRIS: 86. It's a plan.
23 THE WITNESS: Oh, okay.
24 MS. HARRIS: Plan, Figure 4.16.
25 THE WITNESS: Yeah.

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1 MS. ROBESON: Is it the building title?
2 MS. HARRIS: It's, no, it's the building --
3 MS. ROBESON: Oh, okay.
4 MS. HARRIS: -- plan.
5 BY MS. HARRIS:
6 Q So I just want to take a walk around the
7 neighborhood just to determine which if any of these
8 buildings on Exhibit 106(b) don't, in fact, comply with this
9 building edge, Urban Design Guideline? So is Hampden Lane
10 built to the building edge recommended on --
11 MS. ROBESON: 4901 Hampden Lane?
12 MS. HARRIS: I'm sorry, yes, 4901?
13 THE WITNESS: They have substantial compliance.
14 The latest design show balconies at least. They scale --
15 BY MS. HARRIS:
16 Q No, I'm talking about the building, as a ground
17 plain, is it --
18 A Oh.
19 Q Does it, does the building --
20 MS. ROBESON: You're talking about the setback of
21 the building facade --
22 MS. HARRIS: Yes.
23 MS. ROBESON: -- from the curb line?
24 MS. HARRIS: Correct.
25 MS. ROBESON: Okay.

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1 BY MS. HARRIS:
2 Q And is there a consistent building setback to the
3 curb line along Hampden Lane as it faces Woodmont, taking
4 into account that there's very little indication throughout?
5 A There is little indication, yeah.
6 Q All right. Okay. And along Montgomery Lane?
7 A Yes.
8 Q And then if I were to draw, if I would hold this
9 paper up to hold the frontages of City Homes, would you
10 agree that that forms a continuous edge?
11 A Every other building calls a -- you have the
12 terrace or a mews --
13 Q No.
14 A -- in between.
15 Q No, but at the building, in its relationship to
16 the curb --
17 A Well, yes.
18 Q -- it creates a continuous edge?
19 A A ledge.
20 Q And, in fact, if I draw, if I take that and extend
21 it down, it looks like that continuous edge is almost
22 exactly --
23 A Yeah.
24 Q -- similar to our edge at Arlington North? And
25 then --

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1 MS. ROBESON: That was Edgemoor at Arlington.
2 MS. HARRIS: Edgemoor at Arlington. Sorry. Then
3 if you go to the north side of the street, you have the
4 Highrise Edgemoor and I believe we had testimony suggesting
5 that, in fact, the Sandy Spring building actually juts out a
6 little bit?
7 THE WITNESS: Yes.
8 MS. HARRIS: That it's --
9 THE WITNESS: That is about five or six feet.
10 BY MS. HARRIS:
11 Q So it narrows the pedestrian experience?
12 A Yes. Uh-huh.
13 Q And then if you look at the subject building in
14 Edgemoor at Arlington North, does that create a continuous
15 edge?
16 A Yes.
17 Q So in general would you agree that every building
18 on 106(b) actually complies with the Urban Design Guideline
19 of creating a continuous edge by placing the building line
20 as recommended by the Sector Plan?
21 A No, I don't. I -- a building line and I recommend
22 from the plan two totally different things because of the
23 spaces in between on City Homes. I, you are then permitted
24 to do that. What I am saying is that there is nothing
25 necessarily wrong with having a straight line, but there's

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1 nothing written in stone. And if you --
2 Q I didn't say it was written in stone.
3 A All right.
4
5 Q It was written in the Sector Plan, correct?
6 A No.
7 Q It's not or --
8 A No.
9 Q -- maybe I should refer you to the text?
10 A Yes, let's look at the text.
11 Q Well, for instance, refer to page 83, the bottom
12 right-hand corner, the first bullet under that image. Can
13 you do that please? The bottom, right-hand corner and it's
14 the first bullet.
15 A Yes.
16 Q What does that say?
17 A "Good relationship to the street with continuous
18 building line,"
19 but I think that's talking about an internal area too where
20 you have townhouses out of shape. And it is not a bad thing
21 usually, but it's not, it's something that you can break
22 away with if something is strong enough that you do.
23 Q But why is -- if every building in the street
24 essentially complies with that and you said that it's okay
25 to ignore that and yet all these other examples of
recommendations that you just went through and indicated

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1 that there's lots of deviation from those, why is, why do
2 those suddenly have an elevated status in terms of
3 compliance?
4 A Well, for one thing, City Homes I'm saying there
5 is a very strong justification. I'm saying that it might
6 well be economically feasible to do this. I don't know. I
7 haven't gone into that. I suspect that comes into it a bit.
8 Q Moving on. I think the discussion we just had did
9 indicate that there's a lot of deviation and variation on
10 the various buildings and area, would you agree with that?
11 A The deviation variation, but there's a substantial
12 recognition of adherence to the plan.
13 Q Can you please read page 63 of the second report
14 of the 4901 Hampden Lane and it's just scratched pink.
15 MR. KNOPF: Excuse me, could you clarify what you
16 mean by the second, when you say --
17 MS. HARRIS: Well, it says the second supplemental
18 report. It believe it says it right there at the top.
19 MS. ROBESON: What, do you --
20 MR. KNOPF: Because they're --
21 MS. ROBESON: -- have the exhibit number?
22 MR. KNOPF: Yes, because I, there were three
23 Council actions. I only put two into the record and so I'm
24 not quite sure what you mean when you say --
25 MS. HARRIS: Yes, well, we put one in. We put the

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1 one from -- I'll get it for you.
2 MR. KNOPF: Well, I just need the number. I'm not
3 sure which one you're referring to.
4 MS. ROBESON: For which building?
5 MS. HARRIS: 4901 Hampden Lane.
6 MS. ROBESON: I have one -- okay. I think that
7 was G-819.
8 MS. HARRIS: Correct.
9 MS. ROBESON: And I think 106(p) is one of them,
10 but I don't know if it's that one.
11 THE WITNESS: Yes, this one.
12 BY MS. HARRIS:
13 Q Can you read that please, 106(p)?
14 A Oh.
15 MR. KNOPF: What is it, 106(d)?
16 MS. HARRIS: P.
17 MR. KNOPF: P?
18 MS. ROBESON: P.
19 MR. KNOPF: I'm sorry.
20 MS. ROBESON: Is that the report dated 7/14/06?
21 MS. HARRIS: Hold on one moment. Yes, well, July
22 14, 2006?
23 MS. ROBESON: Yes.
24 MS. HARRIS: Yes.
25 MS. ROBESON: So it is 106(p)?

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1 MS. HARRIS: Yes.
2 BY MS. HARRIS:
3 Q So the second full paragraph that begins, a
4 hearing examiner.
5 MR. ABRAMS: What page is it?
6 MS. HARRIS: 106, oh, I'm sorry, 63.
7 THE WITNESS: The hearing examiner said,
8 "The surrounding neighborhood in this case
9 contains buildings of widely varying age, height
10 and bulk, including very small single-family
11 residential buildings."
12 MR. KNOPF: She just wants you to read it.
13 THE WITNESS: Okay.
14 "Townhouses of different sizes, multi-family
15 housing high rise and low-rise buildings, and
16 buildings both large and small contain office,
17 commercial and retail uses. In many cases,
18 completely different with respect to the
19 juxtaposed against one another, much the way the
20 City Home townhouses confront the Edgemoor
21 Condominiums and right next to the building, small
22 two or three story residential structures that
23 have not yet been really developed."
24 BY MS. HARRIS:
25 Q Wouldn't you agree that the Hearing Examiner

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1 acknowledged the fact that this is an eclectic neighborhood
2 of high and low-rise buildings with variations in the
3 designs, recommendations of the Sector Plan based on that?
4 A I do. She's talking about an area. I don't know
5 if she's talking -- I would say about single-family houses
6 it's going to be redeveloped. She's talking about other
7 retail uses. This goes beyond my looking at the Sector Plan
8 myself, Ms. Harris. You know, I'm getting page 63 and I
9 don't know really what the background was.
10 Q Okay. Just for clarification, was the Hearing
11 Examiner's report from 2006 approving 4901 Hampden Lane at
12 the height of 70 feet?
13 A I --
14 Q I want to turn now to the Edgemoor at Arlington.
15 MS. ROBESON: And that would be the --
16 MS. HARRIS: Edgemoor at Arlington North and
17 the --
18 MS. ROBESON: Okay.
19 MS. HARRIS: -- Edgemoor at Arlington. And --
20 BY MS. HARRIS:
21 Q Mr. Doggett, I think you were here when we
22 introduced originally Exhibit 106(b) and noted that the
23 line, the dotted line to the left of the page indicates the
24 35-foot height zone, recommended height zone versus the 65-
25 foot height zone you --

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1 A I don't know that I was here then, but I've seen
2 it, yeah.
3 Q And --
4 A I don't think I was here.
5 Q Are you familiar with page 39 of the Sector Plan
6 that delineates the various height zones in the area?
7 A Yes.
8 Q Okay. So would you -- in looking at that plan,
9 would you agree that the line shown on 106(b) is reflective
10 of where the 35-foot zone versus the 65-foot zone would be?
11 MR. KNOPF: I need a magnifying glass.
12 MS. HARRIS: Well, let me ask you this --
13 THE WITNESS: Well, let me --
14 BY MS. HARRIS:
15 Q Could you look at --
16 A It looks, if I had to scale it off, but it's,
17 well, it's very hard to say, but assuming it is, I don't, I
18 don't think I would agree with that.
19 Q Well, assuming that it is --
20 A Yeah.
21 Q -- you testified that maximum height of the
22 Edgemoor at Arlington North is how tall?
23 A I think it was 48 feet. The lower level was three
24 stories, 30 odd feet.
25 Q And are you aware of the fact -- so referring to

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1 106(f), the 48-foot height is this lower, the second tier,
2 if you will, on this plan 106(f), correct?
3 MR. KNOPF: If you want to go up a little closer,
4 you can.
5 BY MS. HARRIS:
6 Q That it went -- you just testified that it went 35
7 feet --
8 A Yeah.
9 Q -- the 35 feet?
10 A Yeah. I meant 48.
11 Q Right.
12 A There was an aisle on --
13 Q Right. And then how about the highest one, are
14 you aware that that's the penthouse?
15 A Yeah, about 10 feet or so.
16 Q And 48 plus 10 is 58?
17 A Yeah.
18 Q And what was the zone that this is --
19 A 35.
20 Q Right. Okay. And even forgetting the --
21 A Right.
22 Q -- ignoring the penthouse for a moment, but 48-
23 foot, would you agree that this building has a 48-foot
24 height in a 35-foot zone?
25 A Approximately.

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1 Q And are you aware of how far back the step back
2 along Montgomery Lane is?
3 A I'm not, I'm not sure about the step back.
4 Q Would you be surprised if I told you it was 15
5 feet?
6 A Not from this drawing. I would be very surprised.
7 Q There, well, this drawing --
8 MS. ROBESON: Okay. Don't --
9 BY MS. HARRIS:
10 Q Are you aware that this building --
11 A Yeah.
12 Q -- that the building was derived from the zoning
13 hearing examiner report --
14 A Uh-huh.
15 Q -- approving this building?
16 A Uh-huh.
17 Q And it recommended a 35-foot --
18 A Uh-huh.
19 Q -- it showed a 35-foot step back?
20 A Uh-huh.
21 Q And what is the step back of the subject property?
22 A 12 feet.
23 Q 12 feet? And --
24 A Now I could not tell you what a step back is
25 there.

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1 Q No, I understand.
2 A It could be one foot, it could be 20 feet.
3 They're certainly not married; it's just like a band there.
4 Q And what zone is the subject building in?
5 A It's in the 65 feet.
6 Q And can you identify for me of all the other
7 properties in the 65-foot zone, which ones have continuous
8 step backs along the frontage of their buildings? Does
9 Sandy Spring?
10 A Yes, just a second.
11 Q It has a step back?
12 A Did you say --
13 Q Step back, upper-story step back.
14 A Oh, not upper, a lower story step back.
15 Q Right. But it has a setback?
16 A Yes.
17 Q But an upper story step back?
18 A It doesn't, no.
19 Q And does the Highrise Edgemoor have an upper-story
20 step back?
21 A No.
22 Q And we indicated previously that the 4901 has not
23 a continuous upper-story step back --
24 A Right.
25 Q -- but instead a --

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1 A Yes.
2 Q -- a notch?
3 A Yes.
4 Q So wouldn't you think that the subject building
5 that steps back at a height of 50 feet, 12 feet, is more
6 compatible with the other buildings on the street than these
7 other buildings that have no step back at all?
8 A No, not necessarily. This is -- the bulk, this is
9 a 4-story unit. It's residential in spec. It does not need
10 a setback. It sets back one story required -- it probably
11 fulfills its purpose.
12 Q Wait, when you say it steps back one story --
13 A One story, it goes back about five or six feet.
14 This, Sandy Spring --
15 Q Yes.
16 A -- this point goes back. There's a balcony there.
17 Q Okay. But the building edge, I grant it it has --
18 A Okay, the building edge, no, it doesn't there.
19 Going down Montgomery Lane, the answer is you've got a 48-
20 foot building. When you get to this point, you're down
21 visually to three stories. There you're going up five
22 stories.
23 Q Okay. Let me stop you for a moment. You do --
24 you're correct that you have a 35-foot --
25 A Yes.

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1 Q -- portion.
2 A Yes.
3 Q Are you familiar with the step back for that 35-
4 foot portion?
5 A No.
6 Q Would you be surprised if I told you it was 10
7 feet?
8 A Well, I would be surprised, yeah.
9 MS. ROBESON: Wait. Wait. Okay. Go ahead.
10 THE WITNESS: If I, if I let --
11 MS. ROBESON: You mean that exhibit isn't showing
12 the right setback, step back?
13 MS. HARRIS: This one?
14 MS. ROBESON: Yes.
15 MS. HARRIS: No, it does. That's only 10 feet.
16 MS. ROBESON: Well, if that's only 10 feet, then
17 something not to --
18 MS. HARRIS: But you're looking at this one head
19 on. I mean you get the section. This one you're looking at
20 face on.
21 MS. ROBESON: Okay.
22 THE WITNESS: It's this totally is unreliable.
23 This on West Lane, your building, does that look like a
24 realistic setback from the road? It looks like there's sort
25 of, it shows the leasing going up.

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1 BY MS. HARRIS:
2 Q And can you please read that note?
3 A What number am I on?
4 Q We're back to this one.
5 A Yes. Yes.
6 Q Okay.
7 A Why do I, why are you pointing out the notes?
8 Q This one.
9 A This note? Okay. We have --
10 MS. ROBESON: Now that is what?
11 MS. HARRIS: Exhibit 72.
12 THE WITNESS: 72.
13 BY MS. HARRIS:
14 Q And you, we previously agreed that this was a step
15 back of 15 feet --
16 A Okay, 15.
17 Q -- and then it rises to a height of 48 feet,
18 correct, and then it steps up and then you have the
19 penthouse. And do you think the penthouse is visible?
20 A I don't know. I was saying on --
21 Q Is it visible in this rendering?
22 A You're pointing out my argument. There's a 3-
23 story building with a setback here at the end of the road.
24 You have a 5-story with a 12-foot setback, two stories on
25 top of that and a 10 or 15-inch --

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1 Q Correct.

2 A -- on the top.

3 Q And where is that line differentiating the 35 feet

4 from the 65-foot zone?

5 A It's in the -- it's -- I don't know because your

6 Sector Plan tells me you cannot do that. It doesn't tell

7 you they're seven stories at the building there. But you're

8 saying --

9 Q You --

10 A -- that on your property you can building seven

11 stories and so read the Sector Plan. You cannot build

12 seven --

13 Q What's the height of the Hampden Lane building?

14 A I don't know.

15 Q Would you be surprised to hear that it's 71 feet?

16 A We've already --

17 MS. ROBESON: Just, just a second.

18 MR. ABRAMS: He said he didn't know.

19 THE WITNESS: I said I don't know. I said that

20 before.

21 MS. ROBESON: Okay. But you can just say you

22 don't know.

23 THE WITNESS: All right. Okay.

24 MS. ROBESON: You don't start arguing.

25 THE WITNESS: All right. I'm sorry. I beg your

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1 pardon.

2 MS. ROBESON: You can say your piece on redirect.

3 THE WITNESS: Yes. Okay. Yes. I'm agreeing with

4 you.

5 BY MS. HARRIS:

6 Q That it's 71 feet to the height, top of the

7 building, you're agreeing with me?

8 MS. ROBESON: If you know?

9 MR. KNOPF: He said --

10 THE WITNESS: I don't know. I don't know.

11 BY MS. HARRIS:

12 Q So do you, are you familiar -- do, are you aware

13 that the penthouses in the Hampden Lane building extend

14 another additional 15 feet at the street line?

15 A I don't know.

16 Q From Exhibit 106(e), does that seem readily

17 apparent given that there are no windows?

18 A Yes.

19 Q You noted that the dwelling, that the Sector Plan,

20 despite the fact that it says a minimum dwelling units of 45

21 dwelling units --

22 A Yes.

23 Q Well, let me ask you two questions with respect to

24 that. Let's go to that page 82. 82, the third paragraph.

25 A Yes.

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1 Q And you would agree that the first, even just the

2 first line of that paragraph, the plan recommends a minimum

3 of 45 dwelling units per acre. I think everyone agrees that

4 the minimum dwelling units per acre is 45, correct?

5 A Yes, uh-huh.

6 Q And then if you go further down in that section

7 where it talks about a full 2.5 FAR, but it says

8 parenthetically, about 100 dwelling units, --

9 A Yes.

10 Q -- is the about 100 dwelling units a

11 recommendation or an estimation?

12 A By, being about, it would be an estimation.

13 Q Okay. That's what I -- okay. Now going back to

14 the beginning of the sentence, you earlier testified that

15 Montgomery Lane, that the unit recommendations shouldn't

16 control what happens on Montgomery Lane because the, I think

17 you said the specific detail should control, is that

18 correct?

19 A The recommendations of -- Montgomery Lane have a

20 set of recommendations. They should be the controlling --

21 Q Okay. Well, then why -- read the first full

22 sentence of that paragraph please.

23 MS. ROBESON: Which paragraph?

24 MS. HARRIS: The plan, the third paragraph on page

25 82 that starts with, the plan recommends.

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1 THE WITNESS: "The plan recommends a minimum of 45

2 dwelling units per acre everywhere except on lots

3 facing onto the road where there would be no

4 minimum density in order to allow townhouse

5 development with lower densities. The plan" --

6 BY MS. HARRIS:

7 Q Okay. No, that's good. So it says everywhere and

8 then it specifically exempts one area, correct?

9 A Uh-huh.

10 Q It says except.

11 A Except, yeah, on lots facing Arlington Road.

12 Q So despite the fact that that sentence makes it

13 very clear of that provision that the density, the density

14 recommendation should apply to the entire except Arlington

15 Road, your argument is, but there's actually been another

16 exception, but they just didn't specify it?

17 A Repeat that again. There are exceptions --

18 MS. HARRIS: Norman.

19 THE WITNESS: Yes, okay, there's no, well, there's

20 no minimum density, yes. Okay. There's another exception.

21 BY MS. HARRIS:

22 Q So that, in fact, the recommendation of a minimum

23 of 45 dwelling units and then that estimation of 100

24 dwelling units would, in fact, control Montgomery Lane,

25 right, I mean unless it's specifically exempted, they, the

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1 drafters took the time to specifically exempt the properties
2 along Arlington Road. If they hadn't meant Montgomery Lane,
3 wouldn't they have exempted that as well?
4 A It says the plan anticipates that some projects,
5 they incorporate higher densities in the 42.5 FAR. It
6 doesn't say everything will be on that.
7 Q And the Hampden Lane --
8 A It talks about the plan, the plan, but not just
9 Montgomery. This is not just to talk about Montgomery Lane
10 I don't think. I talks about the area itself, yes.
11 Q And are you aware that the density proposed on
12 West Lane is the same density opposed at 49101 Hampden Lane
13 in the Hampden Lane project at 3.05 FAR?
14 MS. ROBESON: When you say West Lane, are you
15 referring to the --
16 THE WITNESS: Well --
17 MS. HARRIS: I know, I'm sorry --
18 MS. ROBESON: I can't see.
19 MS. HARRIS: -- because it says West Lane. That's
20 why I said that. The subject --
21 MS. ROBESON: Okay.
22 MS. HARRIS: -- property --
23 MS. ROBESON: Okay.
24 MS. HARRIS: -- is 3.05 FAR as is the approved
25 Hampden Lane project --

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1 THE WITNESS: Yes.
2 MS. HARRIS: -- and the 4901 project? Thank you.
3 BY MS. HARRIS:
4 Q You noted that you seemed to have some concern
5 about the windows along the scallop of the building and you
6 noted that the night light would, that the light would come
7 in or that it would be too much light?
8 A Actually it was a separate consideration. The
9 general thing is the bulk and the mass and the glaze of the
10 glass.
11 Q Were you here when the architect testified that,
12 in fact, actually they would be traditional windows?
13 A No, I don't --
14 Q And are you also aware that details such as the
15 exact window specification would occur during the site plan
16 process?
17 A You mean the elevation, the prospective shows a
18 completely different picture than what he anticipates?
19 Q No. Do you remember what exhibit that was?
20 A It was 76, I believe.
21 Q Okay. Thank you. The point is that were you
22 aware that these are punched windows and that, in fact,
23 these would not provide a Florida saline window that would
24 illuminate the entire area that you see, for instance, from
25 that point to that point?

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1 MR. KNOPF: Are we testifying?
2 MS. ROBESON: Okay. You -- she asked is he aware.
3 THE WITNESS: No.
4 MS. ROBESON: Okay.
5 MS. HARRIS: Then the rest -- can I confer with my
6 client just for one moment? One moment?
7 MS. ROBESON: Yes.
8 MS. HARRIS: I think it's the last question.
9 MS. ROBESON: Okay. Then absolutely. No. I mean
10 not to denigrate your cross-examination, just to move --
11 MS. HARRIS: That concludes my questions.
12 MS. ROBESON: All right. Redirect, Mr. Knopf?
13 REDIRECT EXAMINATION
14 BY MR. KNOPF:
15 Q Mr. Doggett, you were asked a number of questions
16 about, I guess what you called a straight edge or the
17 setback of the building.
18 A Yes.
19 Q And could you explain whether you believe there's
20 a straight edge or not a straight edge with regard to the
21 townhouses, the sticks of the townhouses?
22 A No, I don't think it's a straight edge. We're
23 talking about the visual of this. And when you look up
24 townhouses, as the photograph shows, you'll see -- your main
25 elevations are the imperial ones really and I think you have

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1 the landscape of the building from the sidewalk right into
2 those particular areas.
3 Q So in your view that's not a straight edge?
4 A Yeah.
5 Q Okay. Now I'm referring now to page 85 of the
6 Sector Plan. You can look at this.
7 A 85? Okay.
8 Q Yes. Look at paragraph 4.
9 A Yeah.
10 MS. HARRIS: What page are you --
11 MR. KNOPF: 85.
12 THE WITNESS: 85.
13 MR. KNOPF: 85, paragraph 4, it's under the Urban
14 Design --
15 MS. ROBESON: Guidelines?
16 MR. KNOPF: -- Guidelines. Thank you. Yes.
17 BY MR. KNOPF:
18 Q Could you read that paragraph 4?
19 A "25-foot building setbacks from the curb, 15 feet
20 from the Sector Plan right-of-way along Arlington
21 Road. Setbacks in the remaining portion of the
22 TS-R district will be decided on a case-by-case
23 basis as development proceeds through the Planning
24 Board approval process."
25 Q And is this property located in the remaining

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1 portion of the TS-R zone?
2 A Yes.
3 Q Thank you. Let's see. Oh, on the -- sorry, I
4 just lost it. You were asked questions about the mixed
5 concept of the mixed street and referred, referred to
6 Fairmont for -- you were asked questions regarding what was
7 happening --
8 A Yeah.
9 Q -- at Fairmont. On page 82 of the Sector Plan --
10 A Yeah.
11 Q -- on, yes, does it expressly state with regard to
12 Montgomery Lane that this is the street that's to provide
13 pleasant pedestrian linkages between the public library and
14 Arlington Road?
15 A The public library and park on Arlington Road and
16 the proposed urban space it would not.
17 Q Right. To your knowledge is there such language
18 with regard to the Fairmont?
19 A No. No.
20 Q No? So this is a unique characterization of
21 whether it's going to change?
22 A I think this is a, this is a unique street, you
23 know it has a very specific function.
24 Q Thank you. And is, to your knowledge is this
25 Montgomery Lane the only one in the Sector Plan that calls

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1 for the urban village concept?
2 A I think, yes, I think so, yes.
3 Q That's not located on the --
4 A No, no, no.
5 Q -- on Fairmont, is it?
6 A No, no that might be other mixed streets that have
7 different goals, but there's only one urban village street
8 which have gone condo.
9 Q Okay. Thank you. Now I'd like to show you, if I
10 can, you were asked questions about the Sandy Spring
11 development.
12 A Yes.
13 Q You were shown an exhibit where you were sort of
14 from West Lane looking --
15 A Yes. Yes.
16 Q -- toward the building? But I'm asking you to
17 look at Exhibit 106(f) duplicate --
18 A Yes.
19 Q -- the portion that fronts Montgomery Lane.
20 A Yes.
21 Q And you were explaining why in your opinion you
22 thought Sandy Spring looked, had townhouse features
23 already --
24 A Yes.
25 Q -- integrated?

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1 A Yes.
2 Q And would that Exhibit 106(f), you may want to get
3 closer to it or you may be familiar with it, if you would
4 help explain your testimony as to why it's residential in
5 appearance?
6 A It's, as we saw from the latter drawing, it's, it
7 doesn't have a mass. It's four apartments. It does have a
8 flat roof, but the penthouse, as you can see there, is set
9 back. It has, I believe balconies on the corner. There's a
10 setback with the balconies there. Windows on the corner, a
11 different type of window with coins on both corners of the
12 brick work. So you have limestone, it's, or Indiana lime
13 going -- I use that a lot in the embassy. And then you have
14 another type of window and then you have the circular window
15 with the coins around it.
16 You have a cornice and that heavy line over the
17 first -- it's residential in scale and it's -- I came from
18 Liverpool. It's a Liverpool townhouse.
19 Q Does it have indentation to or a line --
20 A Yes, it has indentation and setback, yeah, or,
21 yes, it has indentation. I have to get that word right.
22 Q Thank you. Now you -- were you at the --
23 A It also, sorry, you know, dictates the line going
24 down from the six to three. You don't want to go above
25 that. Okay.

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1 Q There was testimony -- or she had you read a
2 transcript reference from the chair of the Planning Board.
3 Is it your understanding that the chair and the
4 recommendations on this project recommended a greater
5 setback than 15 feet?
6 A Yes.
7 Q -- to 12 feet? Excuse me.
8 A Yes.
9 Q Yes? And to your knowledge did you see anything
10 where the chair changed the view?
11 A No, I remember what she said on the first one.
12 She mentioned me by name. It was at least 30 feet. And
13 also on the second one, and we're kind of mad at that stage,
14 she recommended looking at the elevations again.
15 Q Now there's been a lot of talk about questions
16 about how much setback there should be and what's
17 appropriate. And you were referred to other buildings by
18 Ms. Harris that had less of a setback than 30 feet. In your
19 opinion, does the amount of setback that you might recommend
20 depend in part on the height and bulk and massiveness of the
21 building?
22 A Yes. Yes. Yes. Uh-huh.
23 Q So on a smaller building, in a smaller setback
24 like --
25 A Yes, you have less setback. The more bulk you

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1 need, the big thing about the proposal is the bulk, the
2 heavy bulk, which I think is -- it's alien to what the
3 concept calls for.
4 Q Yes.
5 MR. KNOPF: And let the record reflect I've been
6 using the term setback, but I believe it should have been
7 step back is what we tried to refer. When I said setback --
8 A That's the roof --
9 Q -- we're talking about the roof --
10 A Yeah.
11 Q -- not footprint, but --
12 A Okay.
13 Q -- is that what your understanding when I ask
14 those questions?
15 A Yeah. Yes, it was.
16 Q Thank you.
17 MR. KNOPF: You have to read the transcript.
18 That's --
19 MS. ROBESON: I know by the number.
20 MR. KNOPF: Oh, okay. Well --
21 MS. ROBESON: 12 is the step back and go ahead.
22 BY MR. KNOPF:
23 Q Okay. Now you were asked questions about 4901
24 Hampden, which is also known as the Triumph referred to --
25 A Yes.

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1 Q -- from time to time. And you said you worked on
2 that building?
3 A Yeah. As --
4 Q I'm sorry, as --
5 A Yeah.
6 Q Opposing the original design?
7 A Yes. Yes. Yes. Right.
8 Q I'm referring to 120, Exhibit 120(a).
9 A Yes.
10 Q And is that the original design --
11 A Yes. Yes.
12 Q -- that the Council rejected?
13 A Yes.
14 Q Then we referred you to -- or you referred to
15 120(b) and, by the way, I want to reflect, if you could put
16 up on the board -- your understanding that the building that
17 was approved, approved, there was a 60-foot, you testified
18 there's a 60-foot height limit on a portion of Montgomery
19 Lane, is that correct?
20 A Yes.
21 Q And is -- does this depiction on Exhibit 106(b)
22 reflect that lowering of the --
23 A No, no, no.
24 Q No?
25 MS. HARRIS: Objection. That's a distortion of --

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1 that's a ground client plan. So it doesn't show any of the
2 step backs on any building.
3 MR. KNOPF: Well, I notice a setback, a step back
4 as you to Woodmont and it should be at the other end.
5 MS. ROBESON: No, wait. Wait. You can't --
6 MR. KNOPF: Well, I thought -- all right. Let me
7 ask --
8 MS. ROBESON: Do you want to use -- which one is
9 this, the aerial for your question or --
10 MR. KNOPF: Yes, this may be the aerial, so the, I
11 guess 106(f), does that reflect the lowering of the corner,
12 60-foot corner on the south, the northwestern corner?
13 THE WITNESS: Yes. Yes.
14 BY MR. KNOPF:
15 Q Okay. That reflects this?
16 A Yes.
17 Q What you're referring to? Okay. And you were --
18 you were asked to read a portion of, I think it was one of
19 the opinions in 4901 where it referred to an eclectic
20 neighborhood and there were townhouses for commercial things
21 referred to?
22 A Yes. Yeah.
23 Q And is your understanding that that was referring
24 to what's along Montgomery Lane or some other portion of it?
25 A That was a wider area.

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1 Q Wider area?
2 A Yeah.
3 Q And so you say your concern is with Montgomery
4 Lane, is that correct?
5 A Yes, it's my concern, yes.
6 Q Okay. Now, similarly --
7 A I think that's what the Sector Plan is concerned
8 about.
9 Q You were asked questions about the, I don't know
10 what name you gave it, the Hampden Lane building that isn't
11 4901, the one that goes toward Arlington that's --
12 MS. ROBESON: On the northeast corner of Arlington
13 and Hampden Lane, that one?
14 MR. KNOPF: Right, the northeast corner and
15 Hampden Lane.
16 BY MR. KNOPF:
17 Q You were asked questions about height and
18 appearance and so on. In your mind, is that building of
19 great relevance in terms of what's compatible along
20 Montgomery Lane?
21 A Yes, it is because at this level you're three
22 stories.
23 Q No, I'm sorry. I'm referring not to the one on
24 the corner, on this --
25 A Okay.

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1 Q -- I'm referring to the, I'm referring to the
 2 large building along Montgomery Lane --
 3 A Yes.
 4 Q -- that is not on the --
 5 A Oh.
 6 Q -- sorry, excuse me, on Hampden Lane.
 7 A Okay.
 8 Q The one on Hampden Lane, she asked you about
 9 heights and what it looked like as compared to what's called
 10 the Arlington --
 11 MS. ROBESON: Edgemoor at Arlington.
 12 MR. KNOPF: Edgemoor at Arlington. The, is the
 13 building on 106(f)?
 14 THE WITNESS: Yes.
 15 BY MR. KNOPF:
 16 Q Right. In your opinion, with the height and
 17 design of that, is that of great importance in terms of what
 18 I --
 19 A No, it's not related to the --
 20 Q It's not on Montgomery Lane, is that correct?
 21 A No. No. No.
 22 Q Okay. Thank you. Oh, on P-82 of the Sector Plan,
 23 you were asked to read the provision, that the plan
 24 recommended 45 dwelling units per acre everywhere except on
 25 lots facing Arlington Road.

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1 A Yes.
 2 Q So would it be fair to say that 45 units per acre
 3 is required in the whole TS-R plan area except on Arlington
 4 Road?
 5 A Yes, I suppose, yes.
 6 Q But it goes on to talk about 100, that 100
 7 dwelling units per acre, or 2.5 density, does that in the
 8 plan there say that every parcel or area in the old TS-R
 9 plan must have that amount?
 10 A No.
 11 Q It talks about some projects, correct?
 12 A Yes. Yes.
 13 Q And is it your testimony that Montgomery Lane is
 14 not, development on that is not appropriate to squeeze any
 15 more, shall I say?
 16 A No. No.
 17 Q Or even the reach the 100?
 18 A Because things have been told about the heights
 19 and the mass is --
 20 Q And the concept, they're seeking to --
 21 A Yes, concept, yes.
 22 Q -- they're seeking to achieve? Okay. Thank you.
 23 Just one second.
 24 MR. KNOPF: I have no further questions. Thank
 25 you.

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1 MS. ROBESON: All right. Mr. Abrams.
 2 BY MR. ABRAMS:
 3 Q Mr. Doggett, in cautions relating to the concept
 4 of mixed street, it was pointed out that there was a mixed
 5 street known as Fairmont Avenue.
 6 A Uh-huh.
 7 Q Do you recall that?
 8 A Yes.
 9 Q And Fairmont Avenue is in an area, is it not,
 10 which was subject to a later subSector Plan known as the
 11 Woodmont Triangle Sector Plan?
 12 A Yes. Yes.
 13 Q Okay. And in that area along both sides of
 14 Fairmont Avenue between Old Georgetown Road and I believe
 15 it's Norfolk Avenue, is it zoned in the CBD zones or is it
 16 zoned in the TS-R zones?
 17 A I think it's -- I'm not sure I think a business
 18 district plan is.
 19 Q Okay. And in terms of the zoning, with a zone
 20 CBD-2, CBD-2(r), is that a more intensive zone which would
 21 allow higher and higher density focus?
 22 A It would seem to be, yes.
 23 Q Okay. And does that coincide with what you
 24 understand is going to be the bulk in terms of what has been
 25 approved as site plan for some major projects along that

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1 street?
 2 A Yes. I'm not all that knowledgeable, but
 3 basically that would be --
 4 Q Okay. Are --
 5 A -- undeterminative.
 6 Q Okay. And comparing that mixed street with
 7 Montgomery Lane, is that a comparison of apples to apples or
 8 apples to watermelons?
 9 A Apples to pineapples.
 10 Q Okay. All right. Do you want to explain?
 11 A No, no, there's no comparison.
 12 Q Okay.
 13 MR. ABRAMS: That's all the questions I have.
 14 MS. ROBESON: Thank you. Ms. Harris, recross.
 15 **RE-CROSS EXAMINATION**
 16 **BY MS. HARRIS:**
 17 Q Turning to page 85, which Mr. Knopf asked you to
 18 read, point No. 4, which said that the Planning Board, that
 19 TS-R district will be decided on a case-by-case basis as a
 20 development proceeds through the Planning Board approval
 21 process.
 22 A Yes.
 23 Q So are you aware that site plan, that the site
 24 plan requires Planning Board approval?
 25 A Yes.

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1 Q So that would suggest that the setbacks are
2 determined at site plan by the Planning Board, correct?
3 A Yes.
4 Q And has the planning, did the planning staff in
5 its staff report twice indicate that the staff thought that
6 the setback was appropriate?
7 A I can't recall what they said.
8 Q And do you recall that the Planning Board in
9 approval of recommending approval of this plan approved the
10 proposed setback?
11 A Yes.
12 Q So the Planning Board has spoken twice. The staff
13 report has spoken twice, but we agree that ultimately we'll
14 have to revisit it again at a site plan?
15 A Yes, I, we --
16 Q But if they've spoken, if they've had two
17 opportunities to say that the setback was appropriate, why
18 would we think going back a third time, was it just third
19 time is a charm, would you ask the question a third time?
20 Are we going to get a different answer?
21 A They will have the evaluation at the Hearing
22 Examiner's time, maybe a little more knowledgeable input.
23 The fact that they come to one opinion doesn't mean that
24 they have agreed with it. It does not -- when it goes
25 against the specific recommendations, I oppose it. It's a

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1 disagreement we have.
2 Q At the Planning Board, you had noted, as you noted
3 here, that you thought that a setback of 30 feet would be
4 appropriate?
5 A I thought that, yes, and Ms. Carrier agreed with
6 that, too.
7 Q Well, that leads me to my next question.
8 A Okay.
9 Q If someone says I think a setback of 80 feet would
10 be appropriate and then the chair says does anyone else
11 support 80 feet, is that an indication that the chair
12 supports 80 feet?
13 A No, because --
14 MS. ROBESON: Do you --
15 THE WITNESS: -- 30 feet was a figure that at
16 least we needed. You have a Planning Board making a green
17 up and believing what was said about a elevator, making it
18 impossible, that was where my comment came from and where
19 Ms. Carrier's came from.
20 Q No, and --
21 A And I'm denying that --
22 Q What I'm asking you for is the context of what she
23 said, was anyone else supporting 30 feet, because I
24 believe --
25 A She, no, I --

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1 Q In fact, that was pretty much verbatim what she
2 said?
3 A Yes, it was actually, yes.
4 Q And is that in the context of English language
5 suggest an affirmative support for 30 feet or more just an
6 inquisition of whether anyone else agrees with the --
7 A In the previous hearing, our focus, as I have and
8 my name came up and somebody mentioned the 30 feet, she
9 said, Mr. Doggett, in English, said -- and I listen to him a
10 lot and suggested 30 feet. I don't see anything wrong with
11 word to that effect. That was in the first hearing. I did
12 not go there, but I did read it, the section gave me. So my
13 understanding, she was very sympathetic to that idea and the
14 idea of looking at the elevations again in the second one
15 which she said.
16 Q What, would you be surprised if I suggested to you
17 the context in which she posed the question 30 feet was, in
18 fact, just to see whether anyone else was fighting the 30
19 feet?
20 A I didn't get that sense of that.
21 Q I'm trusting you made --
22 A Okay.
23 MS. HARRIS: That ends my questions.
24 THE WITNESS: Okay.
25 MS. ROBESON: All right. We are going to --

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1 MR. KNOPF: We'll break lunch, but I need to know
2 the plan for this afternoon. I have, we're going to go on
3 with witnesses. I need to call them. I just don't know the
4 time sequence of whether they'll be on this afternoon.
5 MS. ROBESON: Well, I think we're going to take
6 Mr. --
7 MR. ABRAMS: Lawch.
8 MS. ROBESON: -- Lawch and then if, you know, as
9 long as we have time left --
10 MR. KNOPF: Do you have any idea of roughly how
11 long -- you won't be taking more than two hours with him?
12 MS. HARRIS: With Mr. Lawch?
13 MR. KNOPF: Yes. Oh, okay. So I'll plan Victor.
14 MS. ROBESON: All right. On that note, we're
15 going to go get food in our stomachs and --
16 MS. HARRIS: In fact, it will take, I mean maybe
17 an hour max.
18 MR. KNOPF: Yes, so there sounds like there's time
19 to get my -- we have two more witnesses that together will
20 be --
21 MS. HARRIS: Who are your other witnesses besides
22 Niebler and --
23 MS. ROBESON: Are they --
24 MR. KNOPF: Niebler -- one is here and one is on
25 call. I have to call at lunchtime to tell him he's got to

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1 come.
2 MS. ROBESON: Okay.
3 MR. KNOPF: So I think I will.
4 MS. ROBESON: Yes. Sounds good.
5 MR. KNOPF: I just wanted to know I had a plan.
6 He's been here before and he's got tired of coming and
7 waiting.
8 MS. ROBESON: I understand. All right. With
9 that, it's 1:05. We'll be back at 2:05.
10 MR. KNOPF: Thank you.
11 MS. ROBESON: Thank you.
12 (Recess)
13 MS. ROBESON: Ready?
14 MR. KNOPF: Yes.
15 MR. ABRAMS: Yes.
16 MS. ROBESON: And you're ready? This -- we're
17 back on the record in G-954 and DPA 13-01. And I believe
18 it's time for cross-examination of Mr. Lawch based on his
19 testimony at the end of the last hearing. Go ahead.
20 MS. HARRIS: Correct. Thank you.
21 CROSS-EXAMINATION
22 BY MS. HARRIS:
23 Q Mr. Lawch, you had testified to the City Homes'
24 position with respect to the prior Holladay project,
25 correct?

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1 A I think what I indicated was we were generally
2 supportive of the Holladay project.
3 Q And did you participate in any meetings that City
4 Homes had with the Holladay Corporation?
5 A No, I did not.
6 Q And are you aware that City Homes didn't transmit
7 any type of letter of support with respect to that project?
8 A Don't know yes or no.
9 Q And do you know whether they testified at the
10 Planning Board, this Planning Board or the ZHE in support of
11 that project?
12 A No, I don't.
13 Q Do you have any sense that they in any way
14 affirmatively demonstrated support for that project?
15 A No.
16 Q Would it surprise you if I told you that they
17 didn't issue a letter of support, didn't testify at a
18 hearing and did not affirmatively show any active support?
19 A No.
20 Q Assuming that that is the case, wouldn't you agree
21 that that's not really supportive, it's just that they
22 didn't actively oppose it? And I think you noted that they
23 had bigger fish to fry. That may have been one of the
24 reasons that they didn't oppose it, is that correct?
25 A No, that was in reference to 4825.

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1 Q I had understood you to say that the reason you
2 didn't oppose the Holladay project is because you had bigger
3 fish to fry --
4 A That was a reference --
5 Q -- at the time which was --
6 A -- to 4825.
7 Q Okay. Thank you for clarifying that. And you are
8 aware that the City Homes did, in fact, oppose the Hampden
9 Lane Associates's project, the district council and then
10 when the district council approved that project, then they
11 also appealed it to the Montgomery County Circuit Court?
12 A I know that at time they opposed it. I don't
13 know, you know, at what stages.
14 Q Did you live in City Homes at the time once the
15 Circuit Court came out and determined that, in fact, the
16 District Council was correct in approving that project?
17 A I don't believe so.
18 Q So you don't know when, in fact, they, who was --
19 you weren't involved then in the appeal from the Circuit
20 Court to the Court of Special Appeals as well?
21 A No, I was not.
22 Q And do you know whether the appeal of the Hampden
23 Lane project by City Homes occurred before or after they
24 appealed the 4901 approval?
25 A No, I don't.

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1 Q Would it -- based on these various concerns about
2 the projects of the neighborhood, would you agree that City
3 Homes certainly has had issue with the number of the
4 projects surrounding them?
5 A Yes.
6 Q Then I want to move into a little bit about -- you
7 testified about what the, what was approved in connection
8 with the Holladay approval. Did you, have you, did you ever
9 work for Holladay, the Holladay Corporation?
10 A No.
11 Q Were you ever hired by them as a consultant?
12 A No.
13 Q So you have no internal information regarding the
14 decisions of that company?
15 A Correct.
16 Q So would you agree that there could be a host of
17 reasons why Holladay decided not to build the project that
18 was approved?
19 A I don't think I testified as to why they did or
20 didn't.
21 Q No, I know why. I'm asking though that, I mean
22 we, you did testify that the project was approved and that,
23 and why can't this project be built and look like the
24 Holladay project, correct?
25 A I'm sorry, there was two questions there. What

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1 was the first one?
2 Q You did testify that the, you testified that the
3 Holladay project was approved, correct?
4 A I certainly wouldn't deny it.
5 Q Okay.
6 A I testified.
7 Q And then in your testimony did you not suggest
8 that why can't the subject building be similar to the
9 Holladay project?
10 A I believe I did.
11 Q Okay. So I'm trying to, so I'm -- but we all know
12 that the Holladay project was, in fact, not, did not go
13 forward and be constructive?
14 A That's correct.
15 Q And it could have been because the Holladay
16 Corporation may have decided to get out of the residential
17 market or maybe they decided that they wanted to get out of
18 the Montgomery County geographic market?
19 MR. KNOPF: I'm going to object.
20 MS. HARRIS: Correct?
21 MR. KNOPF: This is all speculation.
22 MS. ROBESON: Why don't you -- is this going --
23 where is this going?
24 MS. HARRIS: It's going to the fact -- well, let
25 me ask my next question.

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1 MS. ROBESON: Okay.
2 BY MS. HARRIS:
3 Q Could the project have been denied because it was
4 economically infeasible to construct that project?
5 MR. KNOPF: I again objection.
6 MS. ROBESON: What's the basis?
7 THE WITNESS: I can answer. I have no knowledge.
8 MR. KNOPF: She's asking him to speculate.
9 MS. HARRIS: No, but I think it's relevant if, in
10 fact, you're asking us to build something that --
11 MS. ROBESON: Just a second. I would rephrase --
12 can you rephrase the question as would one possibility --
13 MS. HARRIS: Yes.
14 MS. ROBESON: -- be?
15 BY MS. HARRIS:
16 Q Assuming for a moment that the building did not
17 get built because of economic reasons, is it not highly
18 irrelevant during proceedings on the subject application to
19 compare the subject application to the Holladay project?
20 A You've got to rephrase that one, sorry.
21 Q Assuming for a moment that Holladay did not get
22 built because of economic reasons, making it an economic
23 impossibility to construct it, is it not highly irrelevant
24 during the subject proceedings to compare the SJG project --
25 MR. ABRAMS: I would object.

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1 MS. HARRIS: -- to the Holladay project?
2 MR. ABRAMS: It calls for a legal conclusion --
3 MS. ROBESON: Yes.
4 MR. ABRAMS: -- whether it's relevant or
5 irrelevant.
6 MS. ROBESON: I know what you're getting at, but
7 I'm not sure it's -- it doesn't go to any basis that I can
8 think of of impeachment. If you want to -- or unless you
9 have one that I don't see.
10 MS. HARRIS: I'm not, well, I don't know if I'm
11 trying to impeach him. I'm trying to discredit the
12 comparisons that were made throughout his testimony of the
13 subject project to the Holladay project.
14 MS. ROBESON: I understand that, but I'm not sure
15 he's the person to ask about the economic feasibility of the
16 Holladay project because he doesn't know about it.
17 BY MS. HARRIS:
18 Q Okay. Let me ask a different question. If for
19 whatever reason, pick your reason, it was impossible to
20 construct the Holladay project, is it -- what's the, isn't
21 it irrelevant to compare the SJG project to the Holladay
22 project?
23 A I'll try and answer as best I can. The Holladay
24 project in my mind was in more in conformity with the
25 neighborhood and the Sector Plan. And the reason I pointed

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1 out was for that purpose. I didn't testify as to its
2 feasibility --
3 Q Even --
4 A -- or anything else.
5 Q Even though the building itself could have been a
6 fictional, could have been fictional because it never could
7 have been built?
8 MR. ABRAMS: Objection. Again, it's speculation
9 on his part and the question is asking him to speculate.
10 MS. ROBESON: Okay. He is a fact witness.
11 MS. HARRIS: Okay.
12 MS. ROBESON: I did have a question during your
13 testimony, Mr. Lawch, that, you know, the standard here is
14 not to go back to the Holladay project. The standard here
15 is -- I can't remember if you used the term precedent now or
16 the baseline, but it's not really the baseline and the
17 standards here are solely whether a new project would meet
18 the zoning ordinance in the Sector Plan requirements.
19 THE WITNESS: Well, for some reason, Madame
20 Examiner, I think I was trying to make one point that to lay
21 people who are, who are, you know, who have gone through a
22 process where there's been an approval, and then there was
23 an amendment to that approval, to us that, an amendment
24 means that it's a change to the previous project, but not a
25 complete change and amendment, a partial change. And I

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1 think I was indicating that the Holladay project wasn't
2 anything like the now amendment for SJG. And that was the
3 point I was --
4 MS. ROBESON: Okay.
5 THE WITNESS: -- testifying to.
6 MS. ROBESON: I understand that point, but my job
7 is to say whether this current proposal meets the Sector
8 Plan and the standards in the zoning ordinance.
9 THE WITNESS: Understand I'm not --
10 MS. ROBESON: Okay.
11 THE WITNESS: -- an expert. I'm just --
12 MS. HARRIS: Okay. I'll move on.
13 MS. ROBESON: Go ahead.
14 BY MS. HARRIS:
15 Q We had several meetings regarding this project.
16 At least one of them was held in my office, I believe, is
17 that correct or you've been in my office before, is that
18 correct?
19 A Yes.
20 Q Can you indicate --
21 MS. ROBESON: Which one is that?
22 MS. HARRIS: 106(f).
23 MS. ROBESON: Okay.
24 BY MS. HARRIS:
25 Q Would you agree that that's my office?

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1 MS. ROBESON: And you're pointing --
2 MS. HARRIS: Oh, I'm sorry --
3 MS. ROBESON: -- to?
4 THE WITNESS: No, no, no, I don't think it is your
5 office.
6 MS. ROBESON: Is that 3 Metro Center?
7 THE WITNESS: Oh, is it --
8 MS. HARRIS: Yes, it's 3 Bethesda Metro Center.
9 THE WITNESS: Oh.
10 BY MS. HARRIS:
11 Q Are you aware that this is 3 Bethesda Metro
12 Center?
13 A It's 1, 2 or 3.
14 Q Okay. I'll save you. That's 2.
15 A Okay.
16 MS. ROBESON: Okay.
17 BY MS. HARRIS:
18 Q Can you please read the highlighted portion that I
19 have on page 40 of the Sector Plan, .2?
20 A "Step down building heights from the Bethesda
21 Metro Center properties to achieve desirable and
22 compatible transitions to adjacent area."
23 Q Thank you. And then using the same diagram that
24 we just pointed where the Metro Center is, the Metro Center
25 project, where, north, south, east, or west, where would you

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1 say that 4901 is from that Metro Center, from the Metro
2 Center project?
3 A It is southwest.
4 Q Okay. And then I believe in your tenting
5 analysis, however, that you suggested that, in fact, the
6 tent should be drawn not from the Metro core, but instead
7 from a point southwest of a Metro core and then, if I
8 understood you correctly because you wanted to bring in the
9 subject project, draw a line that would be going in a
10 somewhat northwest direction, is that correct?
11 A What I testified to was that since 4901 Hampden
12 Lane is one Woodmont, that it was a benchmark of sorts for
13 gauging what other distances would be used down the block,
14 that one being at 70 feet, it's hard to understand how any
15 tenting concept as you go down the street could result in a
16 building that is closer to Arlington being taller than a
17 building that is closer to Woodmont. That's basically what
18 my testimony was.
19 Q But you would agree that per the Sector Plan, the
20 pole or the fence, so to speak, is at the Metro Center
21 project per what you just read?
22 A Whatever I read was read. I'm not an expert on
23 the Sector Plan.
24 Q Would you also agree that the HOC building, again
25 I'm referring to 106(f), is shorter by however many feet

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1 than the Hampden Lane project?
2 A Sorry, try that again, I'm sorry.
3 Q Is the HOC building shorter than the approved
4 Hampden Lane project immediately to the west?
5 A Certain parts of it, yes.
6 Q And is the HOC building shorter than the two
7 buildings immediately to its east?
8 A Yes.
9 Q So even accepting for a moment your point of a
10 tent drawing this line, couldn't drawing a line from 4901,
11 how do you reconcile the fact that the Hampden Lane project
12 is taller than anything in between the 4901 and the Hampden
13 Lane project?
14 A Okay. I can attempt to do it. I think that when
15 you, I mean practically speaking, I mean look at these
16 buildings and you're deciding what's going to be put and
17 what's going to be approved on a particular lot. You look
18 at the characteristics of the particular building. So in
19 the case of Hampden Lane, the Toll Brothers project, that's
20 kind of an odd duck, but first it's not on Montgomery Lane,
21 it's on Hampden Lane which is a commercial, a more
22 commercially oriented project, not the mixed street, not the
23 20 feet wide Montgomery Lane. I believe Hampden Lane is 36
24 or 40 feet wide.
25 So it's addressing a different street and then the

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1 characteristics of the building are rather interesting also.
2 The -- I'm just looking, I had a reference to it in my --
3 the, if you don't mind --
4 MS. ROBESON: You can move that back. Go ahead
5 and move it back if it makes it easier --
6 THE WITNESS: Okay.
7 MS. ROBESON: -- to get around. Can you see, Mr.
8 Knopf?
9 MR. KNOPF: Oh, yes, that's all right.
10 THE WITNESS: So I was just trying to reconcile in
11 my mind what the County Council must have been thinking when
12 they approved this and, again, this project looks out on
13 Hampden, which is commercial in nature. Then the height of
14 this building or the elevation of this building, because
15 it's 11 or 12 feet lower than City Homes, actually its
16 height relative to City Homes is relatively modest. So --
17 BY MS. HARRIS:
18 Q When you say modest, 10, 12 feet difference?
19 A There's an 11 or 12-foot difference.
20 Q Okay. And are the, and the Hampden Lane building
21 immediately abuts the City Homes, correct?
22 A That is correct.
23 Q Okay.
24 A But getting to that is an interesting story
25 because, first of all, it has cut outs --

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1 Q Uh-huh.
2 A -- at each point and that gives, obviously, City
3 Homes more room. And then the whole building is oriented to
4 the south, meaning most of the bulk of the building is
5 pushed part to Hampden and away from City Homes. So there
6 are some, well, down below the building's footprint is
7 about, I don't know, 15 or 16,000 square feet per floor,
8 roughly similar to here. But by the --
9 MR. KNOPF: By here, you mean?
10 THE WITNESS: Well --
11 MS. ROBESON: The subject proposal?
12 THE WITNESS: The subject property. But by the
13 time it gets up to the 7th floor, it's only like 7,000 or
14 8,000 square feet.
15 BY MS. HARRIS:
16 Q I'm sorry, I was, we were talking about the
17 tenting requirement.
18 A Well, I'm getting to the, I'm mean you asked me
19 why --
20 Q No, what I asked is that whether the Hampden Lane
21 project at 71 feet, the two, three intervening shorter
22 buildings and then having the 4901 building, which is also
23 71 feet, was that complying --
24 A Sure.
25 Q -- with the tenting requirement?

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1 A Sure. I think the elevation of this building
2 being 12 feet below effectively makes this building much
3 lower than this building or the City Homes building.
4 MR. ABRAMS: Wait, when you say this building,
5 which --
6 MS. ROBESON: You mean the Hampden --
7 THE WITNESS: I'm sorry.
8 MS. ROBESON: -- oh, go ahead.
9 THE WITNESS: The 4901 Hampden.
10 MS. ROBESON: No, wait.
11 THE WITNESS: 4901 Hampden --
12 MS. ROBESON: Yes.
13 THE WITNESS: -- is at a higher elevation also for
14 determining --
15 MS. ROBESON: Oh, I see.
16 THE WITNESS: -- its maximum height. And then
17 this building is a good 11 or 12 feet lower than the back of
18 City Homes. So, you know, again, you asked me to
19 conjecture, but the County Council might have considered
20 those factors in approving the height.
21 MS. HARRIS: And --
22 THE WITNESS: Oh, and these two, I mean, you know,
23 they're likely buildings that are going to be replaced with
24 taller buildings in the future.
25 BY MS. HARRIS:

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1 Q But is that not speculative?
2 A Yeah, I -- yeah, I, you know, those are two
3 existing, underused parcels.
4 Q Okay.
5 A I assume they're going to change.
6 Q But the height of, as measured by the zoning
7 ordinance requirement, is the height of 4901 Hampden Lane
8 the same as the height as the Hampden Lane building?
9 A Again, I'm not an expert in Sector Plan. To me I
10 look at ultimate elevation. This building's elevation is
11 going to be substantially lower than this building, meaning
12 the subject property, and I believe this building as well.
13 Can I -- should I sit down?
14 Q Yes, you may sit down. I want to check one thing
15 before I go on. In terms of the FAR and density, what's the
16 FAR of 4901 that was approved?
17 A The FAR is 3.05 and the total square footage --
18 Q No, I've got, I have -- actually this is a
19 question about density, FAR. So I don't need to get into
20 the square footage of the --
21 A No.
22 Q And then what's the FAR of the Hampden Lane
23 building?
24 A Can I answer the question?
25 MS. ROBESON: No, no, let -- you did answer the

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1 question, so let her ask the next question.
2 BY MS. HARRIS:
3 Q And the FAR of the Hampden Lane building?
4 A 3.05.
5 Q And the proposed FAR of the subject building?
6 A 3.05.
7 Q And we do agree that the FAR is a relationship
8 between the square footage within the building to the lot
9 area, correct?
10 A That's correct.
11 Q So the proportion of the square footage on the
12 site to land area is actually the same for those three
13 projects, is that not correct?
14 A I don't think that I -- I think the answer to that
15 is no or what I do know is that the total square footage
16 permitted by the 3.05 ratio results in the total square
17 footage of the Hampden Lane project to be 20 percent less
18 than the subject property.
19 Q Which would then suggest that the building, the
20 lot area of the subject is 20 percent greater, correct?
21 A I don't know that to be the case. It is four
22 months.
23 Q Well, let's, okay, should we walk through this
24 mathematically? If you have a total square footage within
25 the building area and then you divide that by the size of

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1 the lot for each of these projects, would you not get 3.05
2 FAR?
3 A Yes, but I don't know how they measure the
4 different sites, the square footage, what's allowed and
5 what's not.
6 Q But would that not indicate that the mass of all
7 three buildings, and I agree with you that the three
8 buildings, some have more square footage in them than
9 another, but the FAR is identical and so, therefore, is not
10 the mass, mathematically isn't the mass the same for all
11 three buildings?
12 A To me, mass is the bulk of the building. To me
13 that's measured in square feet. And as I just testified,
14 the square footage of the Hampden Lane property is 20
15 percent less than the subject project and I believe the mass
16 on 4901 is similarly 20 to 25 percent less than the subject
17 property.
18 MS. ROBESON: I think her question is --
19 THE WITNESS: She asked me about, Madame Examiner,
20 she asked me about the square footage.
21 MS. ROBESON: You don't have to explain to me.
22 I'm just kind of rephrasing her question and I think her
23 question is building density as in the rate, the comparison,
24 the relationship between building density and lot area would
25 be the same.

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1 THE WITNESS: A ratio, I assume, again I'm not an
2 expert, that 3.05 ratio is applied to some square footage
3 number relating to the lot. I don't know how that's
4 configured, but that's certainly correct.
5 BY MS. HARRIS:
6 Q Would it surprise you if I told you that the lot
7 area is determined by the gross tract area of each of those
8 lots?
9 A I believe I've seen that expression, that term
10 used.
11 Q And you would agree that the FAR, those three
12 projects involved, is identical, correct?
13 A Identical to what?
14 Q To each other, all three are identical, 3.05?
15 A They're all 3.05.
16 Q Correct. Can you please -- I want to talk about
17 the setbacks for a moment. Referring to page 86 of the
18 Sector Plan, here's a copy, can you -- this is, again, the
19 building line exhibit. Can you please identify which
20 existing or approved project deviate from the image on page
21 86 regarding maintaining a continuous building line and we
22 can focus primarily on Montgomery Lane?
23 A I cannot, I'm sorry, I can't tell anything from
24 this thing. I'm supposed to do what? Can we use that? I
25 just --

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1 Q Would you agree that the purpose of this urban
2 design guideline and the highlighted portion says building
3 line, and that this exhibit is intended to show where a
4 building should be situated in relation to the street?
5 A Oh, I got it. Thank you.
6 Q Okay. So starting on Montgomery Lane with the
7 Highrise Edgemoor, does the Highrise Edgemoor conform to
8 this exhibit in terms of its building being situated to the
9 street?
10 MR. KNOPF: Excuse me, what is this exhibit
11 though?
12 MS. HARRIS: 106(f).
13 MR. KNOPF: Because you left off at the Sector
14 Plan.
15 THE WITNESS: I'm sorry, I might be dense here,
16 but I just don't understand what you're trying to get at.
17 BY MS. HARRIS:
18 Q Okay. Let's start at the south, let's start at
19 the northwest corner of Montgomery Lane and Woodmont Avenue,
20 with the first solid, black line that looks like a U.
21 A Yeah.
22 Q Do you see that?
23 A Uh-huh.
24 Q Does that suggest that that building should be
25 built up to a certain line along Montgomery Lane, that it

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1 should be oriented toward Monday Lane?
2 A Yes, I guess.
3 Q Okay. And then moving next to it, the Sandy
4 Spring building, is that building built pretty much in, to
5 maintain that continuous building line? Is it approved in
6 such a manner that it would maintain that continuous
7 building line?
8 A Am I referring to this or am I referring to --
9 Q Oh, I think you could refer to 86 and then take a
10 look at Exhibit 106(f) to refresh your memory in case you're
11 not clear on whether this building was built up to be
12 oriented toward Montgomery Lane.
13 A Now are we talking about distance from Montgomery
14 Lane or --
15 Q Distance.
16 A -- orientation or --
17 Q Distance from back of curb.
18 A Oh, okay. So 4825 is a little more forward than
19 the Edgemoor building. I think the testimony was five or
20 six feet.
21 Q Okay. And then moving to the west side of West
22 Lane, what does the -- page 86 of the Sector Plan suggest?
23 A Well, it looks from the Sector Plan that all these
24 black lines, well, not all of them, it does go in a little
25 bit, but there is an attempt to keep a certain line going.

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1 Q A straight line? Okay. And I'll make this easy.
2 And then if you take a look at 106(f), would you agree that
3 where my, all those buildings, in fact, maintain that
4 building line that page 86 recommends?
5 A Well, they all differ somewhat. Some by a little,
6 some by five or six feet.
7 Q But within the realm of five feet or so?
8 A I think that's, I think that's accurate.
9 Q And, in fact, if any of them differ, if any of
10 them deviate, it's the subject building which is set back
11 further than any of the others, correct?
12 A It depends on how you measure, if you measure the
13 Edgemoor --
14 Q Here, why don't we -- well, we can use this.
15 A Yes. Yes. Measure the, I think your --
16 Q This being --
17 A Excuse my
18 Q -- Exhibit 1?
19 A I think your experts testified that you with 73
20 feet back and this was 71 foot back, but your measurements
21 were taken from a projection on this building that
22 projection was about two feet. So actually this building
23 and this building are pretty much the same and this one
24 protrudes a little bit.
25 MS. ROBESON: When you say this one protrudes a

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1 little bit, which one were you referring to?
2 THE WITNESS: Oh, I'm sorry.
3 MS. ROBESON: 4825 --
4 THE WITNESS: I keep on forgetting we're trying to
5 build a record.
6 MS. ROBESON: -- Montgomery Lane?
7 THE WITNESS: 4825 was approved with a distance
8 from the curb a little less, I think.
9 BY MS. HARRIS:
10 Q Let's add up the numbers. Six plus six plus seven
11 is?
12 A Well, could we use --
13 Q That's --
14 A -- the --
15 Q I think it's good to use this because this is
16 dimension and --
17 A Well, this is also somebody else's testimony, so I
18 don't know if it's accurate or not.
19 Q The setback of the --
20 A I think we can all see that this is somewhat
21 closer to the street than these two buildings.
22 Q Right. And the relationship between the Highrise
23 Edgemoor which from the back of curb is, from the back of
24 the lay by is how much?
25 A I know that the distance from here to here --

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1 MS. ROBESON: If you know?
2 THE WITNESS: The elbow --
3 MR. ABRAMS: Just say you don't know.
4 MS. ROBESON: Yes. Don't --
5 THE WITNESS: Yes, I don't.
6 BY MS. HARRIS:
7 Q Okay. But you testified that they're somewhat
8 comparable and you did hear testimony that, in fact, the Wes
9 Lane building was set back further than any of the other
10 buildings, correct?
11 A Well, I heard my testimony --
12 Q Okay.
13 A -- but I disagree with it. What I said was I
14 think these are two, these two are set back about the same
15 distance from City Homes and that this one is closer to City
16 Homes than the -- I think that's accurate.
17 MS. ROBESON: Okay. What you just said is the two
18 you are referring to that are about the same distance are?
19 THE WITNESS: West, the subject property and the
20 Highrise Edgemoor.
21 MS. ROBESON: And the one that's slightly closer?
22 THE WITNESS: Is 4825 Montgomery Lane.
23 MS. ROBESON: Okay.
24 BY MS. HARRIS:
25 Q And as we determined this morning on page 85 of

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1 the Sector Plan, there's language that says that the
2 Planning Board will determine the setbacks. Were you here
3 during that testimony, if you look at page 85?
4 A I don't know. If you want to read it to me again
5 or show me?
6 Q No, I think we can -- and that you're familiar
7 with the fact that the staff twice has determined that the
8 setback, that the proposed setback was appropriate of the
9 subject building? Do you recall that there's language in
10 the staff report support this, the proposed setback?
11 A I think so, but I don't know so for sure.
12 Q I'm pretty sure that I would because it was --
13 MS. ROBESON: Well, you don't -- if you don't
14 know --
15 THE WITNESS: Okay. I probably should know, but
16 and I think it is --
17 MS. ROBESON: That's okay.
18 THE WITNESS: -- but --
19 BY MS. HARRIS:
20 Q And at the same time the Planning Board, because
21 we had the, we -- actually I'll refer you to page 5 of the
22 staff report. Let's pull that -- that's Exhibit --
23 MS. ROBESON: Which staff report?
24 MS. HARRIS: The planning, the staff report from
25 March, the March hearing.

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1 MS. ROBESON: Okay.
2 MS. HARRIS: Let me find my copy.
3 MS. ROBESON: I think it's attached to 105. I
4 don't have the current, most, exhibit list, but I think it's
5 105(b).
6 BY MS. HARRIS:
7 Q Okay. Well, let me, I will quote from it and you
8 can tell me if this, if you recall reading this in the staff
9 report. As previously recommended in the initial review of
10 the application, staff believes the building edge located
11 along Montgomery Lane as proposed is appropriate to maintain
12 a cohesive building edge along Montgomery Lane. Do you
13 recall that being in the staff report from the March
14 proceeding?
15 A Oh, okay. So what, I'm sorry. We're talking
16 about the distance of the footprint of the building to --
17 Q To the, yes.
18 A -- I'm thinking the set --
19 Q No.
20 A The step down.
21 Q No, we're talking --
22 A Sorry. Sorry.
23 Q That language doesn't surprise you given the
24 proceeding and that they supported the building
25 orientation --

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1 A If you tell me that from the report, I'll --
2 Q Okay. So if the Planning Board is charged with
3 determining the setbacks and they've twice indicated their
4 support for the setback and the staff certainly in this, as
5 just read, they support the setback. And, in fact, it's the
6 Planning Board's job during site planning to determine the
7 setback, why would we be further discussing what the setback
8 of the building should be? Hasn't the Planning Board
9 already opined what they thought was appropriate?
10 A Well, I think the position of City Homes is that
11 we don't agree with that conclusion and we think that the
12 building should be set back at least seven or eight more
13 feet.
14 Q So you disagree with the staff and the Planning
15 Board with respect to their planning on that?
16 A Well, when the -- it was my, it was my opinion
17 that when the Planning Board had indicated to the applicant
18 to take the public space in the north of the building and
19 move it up along Montgomery Lane, that that meant that the
20 building should be pushed back. That was my initial opinion
21 as to what the Planning Board was doing when it remanded
22 back to the applicant.
23 Q So you were somewhat surprised that the Planning
24 Board then determined that a scallop which sets back at its
25 largest point, 28 feet, was an acceptable solution?

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1 A I thought it was countered to what they, what you
2 were asked to do.
3 Q From what you understood then --
4 A Yeah.
5 Q -- to request?
6 A Correct.
7 Q You indicated that you are president of the City
8 Homes, is that correct?
9 A Yes, I did.
10 Q And that all 29 residents submitted letters of, in
11 opposition to this project?
12 A That is correct.
13 Q Can you please read the correspondence to the
14 Hearing Examiner dated December 3rd from Mabel Reynolds?
15 And you can just read the highlighted portions, including
16 the ones that are --
17 MS. ROBESON: What exhibit is this?
18 MS. HARRIS: It was an email sent on March 3rd to
19 Mr. Grossman.
20 MS. ROBESON: I don't -- what is the name in it?
21 MS. HARRIS: Reynolds, Mabel Reynolds.
22 MR. ABRAMS: I don't recall seeing it in this
23 file.
24 MS. HARRIS: I don't know that I see her name here
25 specifically, though. I was picking up on the fact that

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1 they testified that all 29 members had, in fact, written
2 letters of opposition.
3 MS. ROBESON: Well, I don't see that in the
4 record, but you can ask him if he's aware.
5 MS. HARRIS: Okay.
6 BY MS. HARRIS:
7 Q Are you aware that Ms. Mabel Reynolds on December
8 3rd sent a letter, an email correspondence to the Hearing
9 Examiner noting that the building, that to build an
10 architecturally and incompatible block of 113 rental units,
11 mostly efficiencies, it cheapens the neighborhood by
12 offering 113 tiny rentals which will house transient people
13 which have no stake in our community, are you familiar with
14 this correspondence?
15 A No.
16 Q But you are aware that all 29 members of the
17 community supposedly registered their opposition?
18 A I, when we solicited all of our members to send in
19 letters, when we got the letters, we put them in a big book
20 by address and by --
21 MR. KNOFF: I'd like the record to reflect he's
22 holding up a big book.
23 THE WITNESS: Big book, and each is done by
24 address and in each case there is a letter, or letters,
25 letter or letters in certain cases, residents wrote more

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1 than one letter, and then these letters were sent to the
2 Planning Board and to Madame Examiner and that -- I have
3 read all of the letters and that letter is --
4 BY MS. HARRIS:
5 Q Is there a letter from the resident of 4821?
6 A No, there is not 4821. It's across the street.
7 Q It's at Highrise Edgemoor. Well, my apologies.
8 My -- I'll save that question then.
9 MR. ABRAMS: Well, I'd like to hear it.
10 MS. HARRIS: Hear what?
11 MR. ABRAMS: Nothing. That's facetious.
12 THE WITNESS: It's also the position of City Homes
13 is, never mind.
14 BY MS. HARRIS:
15 Q Oh, so that's not the position of City Homes, the
16 rentals, or transients, that's not an issue for City Homes?
17 A Well, rentals are probably less, more transient
18 than condos and because the entire neighborhood is condo, it
19 would certainly be a preference that the buildings be
20 condos.
21 Q Because the entire neighborhood is condo, would
22 adding a different housing type like rental be, add to
23 diversity?
24 A Sure.
25 Q I want to go on and discuss the comparison of the

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1 subject property to other projects. You had testified that
2 the subject SJG property is using the Highrise Edgemoor to
3 justify, for, excuse me, justification to construct its
4 property, is that correct?
5 A I'm sorry --
6 Q I believe you indicated that the subject property
7 was looking to the Highrise Edgemoor and, in fact, perhaps
8 because of its height to try to justify its 70-foot height.
9 A Well --
10 Q I believe you testified to that.
11 A What I testified to is I said that the big
12 Edgemoor was not supposed to be a precedent through our huge
13 development on Montgomery Lane and that your experts
14 constantly referred to the big Edgemoor as comparing it
15 against West, I'm sorry, comparing it to the subject
16 property.
17 Q But in, okay. Then in terms of comparison, didn't
18 -- that's interesting you use the word compare versus
19 distinguish, but isn't that the Highrise Edgemoor 100 feet?
20 A 100 feet?
21 Q Tall.
22 A I believe the testimony did indicate that.
23 Q And the subject property is 70 feet, is that
24 correct, tall?
25 MR. ABRAMS: The proposed --

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1 BY MS. HARRIS:
2 Q The proposed subject property is proposed to 70
3 feet?
4 A Well, I think I testified that I think it's more
5 like 78 feet at the front of the building, but the maximum
6 according to the approval is 70 feet.
7 Q And is the width of the Highrise Edgemoor per
8 Exhibit 112 a 172 feet in width?
9 A If your experts' measurements are correct, that's
10 what the exhibit says.
11 Q And that the width of the subject at the building
12 face is 78 feet?
13 A Well, at that measurement, if you move back beyond
14 the curvature of the building, it's 108 feet, well, close to
15 that anyway.
16 Q But the building, the 108 feet, I, okay. But at
17 the face it's, does it indicate 78 feet? Even assuming for
18 a moment if you measured back beyond the building face and
19 it's 108 feet, is 108 feet distinguishable from 172 feet?
20 A It's certainly different.
21 Q Yes. And the FAR of the subject is 3.05, as you
22 previously testified, and the FAR of the Highrise Edgemoor
23 based on the lot on which it is located is 6.05, correct?
24 A I don't know that for sure.
25 Q Okay. And what's the -- and what is the height of

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1 the subject building at the building place, at the building
2 place? It -- the step back, the 12-foot step back starts at
3 50 feet, correct?
4 A Again, as you would measure it, yes.
5 Q As I would measure it, as Montgomery County DPS
6 would measure it?
7 A That is correct.
8 Q Okay. And what's the FAR of 4901?
9 A 3.05.
10 Q And its height?
11 A 60 to 70 feet.
12 Q And what's the FAR of the Hampden Lane project?
13 A 3.05.
14 Q And its height?
15 A I think we heard some testimony that it was 68,
16 but I think according to the approval, it's as much as 71.
17 Q So in terms of the height and the FAR, 4901 and
18 Hampden Lane are much more comparable to the subject
19 property, wouldn't you agree?
20 A I think I testified that I disagree.
21 Q So 3.05 is different than 3.05?
22 A You're -- 3.05 --
23 Q In terms of it, the FAR --
24 A -- is --
25 Q -- and the height is not Hampden Lane more

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1 comparable, isn't the subject property more comparable to
2 4901 and Hampden Lane than it is to the Highrise Edgemoor?
3 A Could you define, if the question is as the, do
4 they all have 3.05 FAR's, the answer to that is yes. And if
5 they all are designed to have a maximum height of 70 feet,
6 the answer to that is yes. Your other characterizations are
7 not correct.
8 Q My other -- it was height and density that you're
9 basing your comparisons on. In terms of height and FAR,
10 they're comparable?
11 A Again, the 70-foot and 3.05 designations are the
12 same. I disagree with you that the heights are the same
13 because they don't end up with the same elevations. And the
14 FAR's aren't the same because their masses are quite
15 different.
16 Q The FAR's are not the same?
17 A The total mass of the building --
18 Q Of the FAR?
19 A -- is different. The FAR --
20 Q The FAR's --
21 A -- the designated ratio is the same.
22 Q So the point, you had made the point earlier that
23 because of the subject's, because of the Highrise Edgemoor's
24 non-compliance in terms of its 100-foot height and 6.0 FAR,
25 we shouldn't rely on that to justify development, I think

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1 you would agree with that, correct?
2 A I think that's a fair statement.
3 Q Okay. And then if we could refer to Exhibit 55,
4 which is the Sector Plan comparisons? This may take a
5 little bit of digging. So on Exhibit 53, can you please
6 read the unit per acre for the low-rise Edgemoor? Can you
7 please identify what that says?
8 A 27?
9 Q And for the City Homes?
10 A 27.
11 Q And for the Sandy Spring building?
12 A 27.
13 Q Okay. And then on page 82 of the Sector Plan, and
14 we probably know this by heart now, what's the minimum
15 minutes per acre --
16 A Sorry, I --
17 Q -- that's recommended? You don't know that by
18 heart?
19 A Some things stick in my --
20 Q You've been doing it for the last --
21 A -- head and some things don't and that doesn't.
22 Q Okay. Well, if you could refer to page 82 of the
23 Sector Plan? What's the minimum density recommended?
24 A The plan recommends a minimum of 45 dwelling units
25 per acre.

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1 Q Okay. So based on the unit per acre density that
2 you just read which were coincidentally 27, 27 and 27, would
3 you agree that those don't comply with the Sector Plan
4 recommendation of 45 dwelling units per acre?
5 A Again, I'm not a, you know, an architect or a
6 civil engineer or -- if that sentence says, means that to
7 you, that's great. I just don't know.
8 MS. ROBESON: Well, her question is -- why don't
9 you, you need to answer her question if you know. So go
10 ahead and re-ask that question.
11 BY MS. HARRIS:
12 Q Based on the fact that the Sector Plan says there
13 should be a minimum density, unit per acre density of 45
14 dwelling units per acre and based on the fact that the low-
15 rise Edgemoor, the City Homes and the Sandy Spring building
16 are all 27 units per acre, wouldn't you agree that they
17 don't comply with the Sector Plan? Let's put it this way.
18 Is 27, well, let me do one -- and the Edgemoor Arlington
19 North, that says 35 units per acre, right?
20 A No, I'm not trying to quibble.
21 Q Is 27 and 35 less than 45?
22 A That I can answer.
23 Q Oh, good.
24 A Yes.
25 Q Okay.

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1 A Yes.

2 Q Okay. So you used something that Norman often

3 says, I'm confused. On the one hand it sounds like, well,

4 on the one hand you want us to follow -- you say that we

5 shouldn't be following the Highrise Edgemoor because it's

6 too high, it's 100 feet high and it's 6.05 FAR and we don't

7 dispute that that's high and we would say we're not

8 following that, but on the one hand you're saying you can't

9 use the Highrise Edgemoor to justify this building because

10 it doesn't comply with the Sector Plan and then on the other

11 hand you take other projects that also don't comply with the

12 Sector Plan and say that's what this project should be

13 doing?

14 A Well, when four or five or actually all the other

15 projects along Montgomery Lane have similar low densities,

16 at some point you have to indicate, you have to accept the

17 fact that that's an appropriate density for that street.

18 Q Okay. You -- I want to turn to Exhibit, I think

19 102(f). Just a moment. Yes. No. Yes, that one. Bear

20 with me one moment again.

21 MS. ROBESON: Which exhibit are you looking for?

22 MS. HARRIS: I'm looking for the --

23 MS. ROBESON: Because I think (f) is the aerial.

24 UNIDENTIFIED SPEAKER: 819.

25 MS. HARRIS: Oh, it's the supplemental ZHE report

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1 at 819.

2 MS. ROBESON: Okay.

3 MR. KNOPF: Which is that for?

4 MS. HARRIS: I think I have it now.

5 MS. ROBESON: 106(p)?

6 MS. HARRIS: Yes.

7 BY MS. HARRIS:

8 Q And so you just said that, if I understood you

9 correctly, well, despite what the Sector Plan says, because

10 all these buildings were built to the lower, that provides

11 some justification for why the subject building should be

12 revised, correct?

13 A I made the observation that when everything else

14 in the neighborhood is of lesser, lesser units per acre,

15 that should give one pause because, you know, building,

16 other buildings should more closely resemble that.

17 Q Okay. Could you please read page 62 of Exhibit

18 106(p)?

19 MS. ROBESON: I'm sorry, what page?

20 MS. HARRIS: Page 62 at the very bottom where

21 the -- right where it begins, the unease. And this, let me

22 put this in context for you. This is the City Homes

23 opposing the 4901 project. And so the hearing examiner goes

24 on to say --

25 THE WITNESS: "The unease felt by residents of the

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1 City Homes townhouses in the face of multiple

2 rezoning requests on three sides of their

3 community is understandable."

4 Keep reading?

5 MS. HARRIS: Yes.

6 THE WITNESS: "However, any expectation on

7 their part with the neighborhood would not change

8 over time or that all future development would

9 follow their lead in terms of height and density

10 rather than the recommendations of the Sector Plan

11 was unrealistic."

12 BY MS. HARRIS:

13 Q Thank you. So, in fact, that does suggest that

14 the Sector Plan is a guide and not what's existing on the

15 street, correct, at least the zoning hearing examiner in

16 3901, who is now the chair of the Planning Board, felt that

17 way and the District Council approving 4901 must have felt

18 similarly?

19 A I think what that says is they were referring to

20 City Homes in particular, but it does, would indicate that

21 with regard to City Homes that we should expect --

22 Q Everything, shouldn't expect?

23 A The similar density.

24 Q Thank you. I want to move on to the question of

25 compatibility. Do you ride the Metro?

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1 A Yes.

2 Q And when you ride it, how do you get there?

3 A I walk.

4 Q And then you go to the Bethesda station?

5 A I walk, yeah.

6 Q Okay. And do you think it's commonplace for some

7 of your neighbors to ride the Metro as well?

8 A Yeah.

9 Q And do you think they also walk there?

10 A I would certainly hope so.

11 Q That would have been my answer. Okay.

12 A It's only 100 yards up the road.

13 Q Right. And so we do expect residents of the

14 subject building to walk to the, to ride the Metro?

15 A Sure, if they happen, you know, where they're

16 going is on the --

17 Q Okay.

18 A -- on the line.

19 Q So you would agree that the building, that

20 building a residential project on this site, in fact,

21 promotes the use of Metro?

22 A I'm not quite sure --

23 Q Well, let me ask it a different way.

24 A Yes.

25 Q If you were to build a building --

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1 A Give me a little help there.
2 Q If you were to build a building within close
3 walking distance of the Metro, which you've just established
4 this project is, would you be, would you be utilizing the
5 Metro system? Would it be encouraging people to take --
6 A People, people --
7 Q Metro?
8 A -- will certainly use the Metro from that location
9 or should.
10 Q Okay. And, in fact, that's why the County has a
11 push to provide housing in, within walking distance of the
12 Metro, correct? In fact, I believe the Sector Plan even
13 says that.
14 A I think that's true.
15 Q And would you agree that providing both MPDU's on
16 the subject property, as well as smaller units, will
17 providing housing opportunities for people that may not be
18 able to take advantage of the housing offered by the City
19 Homes where the average size is 2,200 or 2,500 square feet?
20 MR. KNOPF: May I ask if this line of questioning
21 is a, was this covered in his main testimony? I don't
22 remember talking about --
23 MS. HARRIS: Compatibility was, in fact, covered.
24 MR. KNOPF: Well, I'm not sure --
25 MS. HARRIS: It goes to the question of

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1 compatibility.
2 MR. KNOPF: Well, I'm not hearing compatibility
3 questions. I'm hearing promote the use of Metro and the
4 number of MPDU's.
5 MS. HARRIS: Yes, I have a couple more questions
6 and you'll see that it's going straight to compatibility.
7 MS. ROBESON: Okay.
8 THE WITNESS: I was afraid -- yes, please, just
9 repeat the question.
10 BY MS. HARRIS:
11 Q Will the provision of MPDU's and smaller units at
12 the subject property provide housing opportunity, a
13 different kind of housing opportunity than what currently
14 exists on Montgomery Lane?
15 A I think I answered and, yes.
16 Q Okay. And the project will expand the range of
17 densities readily available on Montgomery Lane, is that
18 correct?
19 A Just, you mean number of units per acre, is
20 that --
21 Q Units per acre increase the capacity.
22 A Yes, the, yes.
23 Q So are you aware that all of the questions -- so
24 you'd agree that the project actually does further the
25 purpose clause of the TS-R zone, it goes to those very

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1 points?
2 MR. ABRAMS: I think I'd object to that --
3 MS. ROBESON: It calls for a legal conclusion.
4 MS. HARRIS: Okay. Okay.
5 BY MS. HARRIS:
6 Q If you could, I'd just like you to read one --
7 MS. HARRIS: This is not in the record. Can he
8 still read it?
9 MS. ROBESON: What is it?
10 MS. HARRIS: It's a page out of Mr. Abrams's
11 esteemed book.
12 MR. ABRAMS: I would object.
13 MS. HARRIS: On what basis?
14 MR. ABRAMS: It's not accurate.
15 MS. HARRIS: Let me just ask the question, how
16 about that?
17 MS. ROBESON: Yes, that's good.
18 BY MS. HARRIS:
19 Q Are you aware that the esteemed Mr. Abrams has
20 stated in his book, the fourth edition, that demonstration
21 of compliance with the purposes of the zone indicate
22 evidence of compatibility since the purpose provisions are
23 designed to ensure that the flooding zone is compatible with
24 other existing uses in the general neighborhood?
25 A I have no idea what you just said.

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1 MS. ROBESON: You can say -- I think you're
2 getting too much into the legal --
3 MR. ABRAMS: Yes.
4 MS. ROBESON: -- aspect.
5 MS. HARRIS: Okay.
6 MS. ROBESON: I think that's a great argument --
7 MS. HARRIS: To be made.
8 MS. ROBESON: -- in your closing argument.
9 MS. HARRIS: Okay. Okay.
10 MS. ROBESON: Without denigrating Mr. Abrams's --
11 MS. HARRIS: I was giving him accolades.
12 MS. ROBESON: Props, true.
13 BY MS. HARRIS:
14 Q Okay. You noted earlier in your testimony that
15 the City Homes opposed the 4901 second proposal which was
16 when they proposed the 70 feet height, correct?
17 A Again, I don't know for sure, but I assume that
18 we, I'm not exactly sure.
19 Q Well, not sure whether they appealed the City --
20 A Oh, they appealed?
21 Q Right. Right. Let me back up. That they -- at
22 the zoning hearing level, that they opposed the 4901 because
23 of, because they didn't think it was --
24 MR. ABRAMS: Which year?
25 MS. HARRIS: The second proposal, the July, the

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1 hearing that's reflected in the July 2006 hearing examiner
2 report.
3 THE WITNESS: See, I don't know. I know there are
4 a bunch of different hearings and that some of our folks
5 took different views, but I don't know when and where and
6 why.
7 BY MS. HARRIS:
8 Q Okay. Would it surprise you if I told you it was
9 because of the 70 feet height in relation to the setbacks
10 that were being proposed?
11 A I just don't know.
12 Q Okay. Previously when we were talking about the
13 build two lines, and I believe our engineer testified to
14 this, the 4901 on Exhibit 112, you would agree that just
15 even visually, without coming up here and look at the
16 numbers, that that 4901 actually is set back much less, much
17 closer to Montgomery Lane than the rest of the projects on
18 the south side of the street?
19 A I think that is correct.
20 Q And that, in fact, according to this, it's set
21 back from the back of the sidewalk just three feet?
22 A Don't know the distance.
23 Q You don't know? Okay. Can you please read the
24 highlighted portion, this is from, again, 106(p), which is a
25 hearing examiner report regarding 4901.

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1 A The highlighted one?
2 Q Yes.
3 A The applicant has revised its application by,
4 among other things, lowering the proposed maximum height
5 from 100 feet to 70 feet, producing the setbacks on the
6 street frontages to achieve a height decrease without
7 sacrificing density.
8 Q And what is that last part, without sacrificing
9 density? Okay. Then read the remaining highlighted
10 portion.
11 A I think I read it wrong.
12 "The applicant has revised its application
13 by, among other things, lowering the proposed
14 maximum height from 100 to 50, to 70 feet,
15 producing the setbacks on the street frontages to
16 achieve a height decrease without sacrificing
17 density."
18 I don't understand it, but I've read it.
19 "The Planning Board, in the alternative,
20 review may have found that the proposed
21 development would not be financially feasible with
22 MPDU's on a site within the constraints of the 65-
23 foot height limit recommended in the sector
24 plan."
25 Q So the fact that the ZHE and then the District

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1 Council determined that it was important enough to maintain
2 the original density that they sacrificed the street
3 setback, would that suggest to you that as noted in the
4 statement that it was important to preserve the 3.05 density
5 that they were seeking?
6 MR. KNOPF: Objection. I didn't hear anything
7 about sacrificing coming -- here's an awful lot written into
8 that.
9 MS. HARRIS: I'm sorry. It says, a height
10 decrease without sacrificing density.
11 THE WITNESS: I don't understand that first
12 sentence. I've read it now twice and I still don't
13 understand what it means.
14 MR. KNOPF: The question --
15 MS. ROBESON: Okay. Just a second.
16 MR. KNOPF: -- means, that's my objection.
17 MS. ROBESON: Do you have an objection?
18 MR. KNOPF: Yes.
19 MS. ROBESON: What's your objection?
20 MR. KNOPF: She's reading into the -- she's
21 interpreting what was just reads and attributing the
22 counsel's motives in that question and I don't think that
23 statement can --
24 MS. HARRIS: And, in fact, I'm not. I think I'm
25 taking the literal language. I don't think you need to

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1 interpret anything.
2 MS. ROBESON: Okay. But I think that this witness
3 isn't really qualified to say, I mean --
4 MS. HARRIS: Okay. Let me ask a different
5 question. Are you --
6 MS. ROBESON: He is a fact witness.
7 BY MS. HARRIS:
8 Q Are you aware that the fact that the 4901 was
9 reduced to 70 feet, that they were still able maintain their
10 original 3.05 FAR?
11 A I know that the plan, the site plan says 3.05, but
12 that's the only thing I know.
13 Q And are you -- you're aware of the fact that that
14 building is providing 15 percent MPDU's, correct?
15 A Yes, I think so.
16 Q And that the setback of that building from
17 Montgomery Lane certainly is much, much less than any other
18 building on the entire street on the north or south side?
19 A That I don't know, but if that's -- I mean you
20 guys can testify to that.
21 Q But this building doesn't look like it has a
22 minimum amount of setback compared to every other building
23 on the street?
24 MR. ABRAMS: Is that a question?
25 MS. HARRIS: Yes, I'm sorry.

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1 BY MS. HARRIS:
2 Q Does 4901 look like it is closer to the street
3 than any other --
4 A It looks like it's closer to the street on City
5 Homes, but I can't tell on Hampden, whatever that one is on
6 the far left side.
7 Q Based on the fact that the 3.05 FAR was
8 maintained, based on the fact that they narrowed their, they
9 decreased their setback and based on the fact that they
10 continued to provide 15 percent MPDU's, could you conclude
11 that it was important for the Council to preserve the
12 original density in order to get the additional MPDU's?
13 MR. ABRAMS: Objection.
14 MS. ROBESON: Yes, I --
15 MR. ABRAMS: There's no way of knowing that.
16 MS. ROBESON: I'm going to --
17 MS. HARRIS: Okay.
18 MS. ROBESON: -- sustain that.
19 MS. HARRIS: Okay. Just one moment if I could?
20 MS. ROBESON: Okay.
21 MS. HARRIS: I don't have any other questions.
22 MS. ROBESON: All right. Mr. Knopf, I think you
23 did not have any cross-examination questions of Mr. Lawch
24 the last time.
25 MR. KNOPF: Probably. Probably. But I do have a

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1 couple minutes if I may?
2 MS. ROBESON: Well, you can do that on --
3 MR. KNOPF: I mean, I mean on, based on her --
4 MS. ROBESON: Right, just now.
5 MR. KNOPF: Just now.
6 MS. ROBESON: Okay. Well, let me let Mr. Abrams
7 do redirect --
8 MR. KNOPF: Sure.
9 MS. ROBESON: And then you can do recross. Okay.
10 Go ahead, Mr. Abrams.
11 MR. ABRAMS: Thank you.
12 REDIRECT EXAMINATION
13 BY MR. ABRAMS:
14 Q At the beginning of your cross-examination, you
15 were discussing the tenting concept, lowering down in
16 heights from a certain point to another point. Now in terms
17 of its relevance to the TS-R district, what points were you
18 taking it from at the highest point and what points were you
19 taking it from at the lowest point?
20 A I was referencing Woodmont Avenue and 4901 as
21 being the furthest east on the tenting going down to
22 Arlington being the furthest west.
23 Q Okay. And 4901 Hampden Lane, is that closer to
24 Woodmont Avenue than the subject property?
25 A It's right, smack on Woodmont whereas the subject

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1 property is closer to Arlington.
2 Q Okay.
3 A Closer to Arlington than it is to Woodmont.
4 Q Now the building on diagram which is on page 86,
5 which you testified to, and in terms of the building line
6 along Montgomery Lane, are there not indentations? Do many
7 of the buildings on the south and some of the buildings on
8 the north so that there is not exactly a straight edge?
9 A Yes.
10 Q So this representative of one scheme which is
11 proposed in the Sector Plan to your knowledge?
12 A Yes.
13 Q Okay. Now in terms of what effects a person's
14 percentage of mass and bulk, does the siting of the building
15 affect the perception of mass and bulk in terms of say
16 setbacks?
17 A I'm sorry, give me one --
18 Q In terms of your perception, a person's perception
19 of mass and bulk, does the siting of a building affect that
20 perception of mass and bulk? One example might be the
21 setbacks.
22 A Yes.
23 Q Okay. And does architectural design also affect
24 one's perception of mass and bulk such as the step down
25 effect and the extent of that step down effect?

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1 A Yes.
2 Q Okay. Did those two elements affect City Homes's
3 perception of the mass and bulk, among others, in this case,
4 siting and architectural design?
5 A Certainly. If I can elaborate?
6 Q Go ahead.
7 A I mean, you know, discussing the quality aspects
8 of the Sector Plan are fine, but from a layman's point-of-
9 view, you know, it's like people go on safari, they say they
10 love to take five, well, I kind of look for three, maybe
11 four elements which is, you know, the height, the number of
12 units and the number of square footage, the fourth being
13 architectural. And in this case the subject property tops
14 out on those big three. And as we've testified with regard
15 to architecture, we think it's a little out of character of
16 the neighborhood.
17 Q Now in terms of your testimony about disagreeing
18 with the staff of the Board about the setbacks in this
19 proposed building, are any of these specific setbacks self-
20 imposed requirements on the development plan? In other
21 words, can -- if the Planning Board has the ultimate say,
22 can the applicant walk in to your knowledge and propose
23 something else? Are they illustrative as opposed to binding
24 elements, if you know?
25 A Well, I know there is a binding element with

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1 the -- I'm sorry, this is setback, not step down?
2 Q Right.
3 MS. ROBESON: Step back. That is a step back.
4 THE WITNESS: I assume onsite plan, they can
5 change it.
6 MR. ABRAMS: Okay.
7 MS. ROBESON: Was your, I'm sorry, was your
8 question on setbacks?
9 MR. ABRAMS: Setbacks.
10 MS. ROBESON: Okay.
11 BY MR. ABRAMS:
12 Q Now you're a resident of this affected area,
13 correct?
14 A Yes.
15 Q Okay. As a resident of this affected area, are
16 you more concerned about other projects exceeding the height
17 limits and density in the relevant Sector Plan than you
18 would be them falling below the height limits or density
19 recommended in the Sector Plan?
20 A Yes, I am more concerned with overdoing the
21 density than underdoing the density.
22 Q Okay.
23 MR. ABRAMS: That's all the questions I have.
24 MS. ROBESON: All right. Mr. Knopf?
25 MR. KNOPF: I just have a few.

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1 RE CROSS EXAMINATION
2 BY MR. KNOPF:
3 Q You testified in response to Ms. Harris's
4 questions when she asked the building height at 70 feet for
5 the proposed project and you indicated that you thought it
6 was, the way you would measure it was higher because of the
7 elevation, is that correct?
8 A Yes.
9 Q I want to read you, I don't know, were you here
10 when I read the following from Exhibit 102(i), which the
11 original Holladay decision, and quoting from page 2, quote,
12 "The site rises to a high point at its
13 northeast corner of 338 feet above sea level.
14 From this point, the property slopes downward in a
15 southwest direction about four to five percent to
16 a low point of 328 feet above sea level," unquote.
17 Is that what you were referring to in the higher
18 elevations at this location?
19 A Yes, so the important thing to recognize on the
20 subject property is the point where they start to measure
21 the 70 feet.
22 Q Okay.
23 A Is that point which the --
24 MR. ABRAMS: Which exhibit are you referring to?
25 MS. ROBESON: 112?

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1 THE WITNESS: Here I go ahead, 112. The point is
2 up here somewhere.
3 MS. ROBESON: And that's about three-quarters the
4 way --
5 THE WITNESS: Up West Lane north.
6 MS. ROBESON: Okay. North on West Lane.
7 THE WITNESS: So if, and the topography is such
8 that the lowest point is down here as --
9 MS. ROBESON: Down here as Arlington --
10 THE WITNESS: Arlington Road. I'm saying I'm
11 never going to get this.
12 MS. ROBESON: That's okay. Arlington Road and
13 Montgomery Lane.
14 THE WITNESS: And then it goes up and reaches a
15 peak somewhere in, like a, at West Lane, somewhere in the
16 middle of West Lane, I think, and then goes down, but not as
17 a dramatically towards Woodmont. Then the property also
18 goes up from south to north, is higher in the back here. So
19 by picking this point is actually a much higher elevation
20 than any of these points along here and then --
21 MR. ABRAMS: Over here being along --
22 THE WITNESS: Along Montgomery Lane.
23 MR. ABRAMS: -- Montgomery Lane?
24 THE WITNESS: So when you add that 70 feet to that
25 measurement here, you actually get a height here that --

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1 MS. ROBESON: From the front facade along the --
2 THE WITNESS: From the front side.
3 MS. ROBESON: -- Montgomery Lane?
4 THE WITNESS: So this elevation is, I'm going to
5 have to get the actual numbers.
6 MS. ROBESON: No, well, I --
7 THE WITNESS: The numbers are in the testimony.
8 MS. ROBESON: Right. But you're saying it's a
9 higher height. It appears to be a higher height from
10 Montgomery Lane.
11 THE WITNESS: Not appears, it is.
12 MS. ROBESON: It is?
13 THE WITNESS: Because a building is level and if
14 it's built out at that higher elevation, when you calculate
15 that elevation and you're standing in the street, which is
16 that, as was indicated in that statement, it's about 328
17 right here according to the top and so if you subtract those
18 two elevations, you get something like 77 or 78 feet. And
19 that's real building as you stand on the street.
20 MS. ROBESON: Okay.
21 BY MR. KNOPF:
22 Q And did you say, you can stand there. Did you say
23 as you went down toward Woodmont on Montgomery Lane the
24 elevation where 4901 is --
25 A Yes.

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1 Q -- that that would be a lower elevation than at
 2 the subject site?
 3 A Yes, and if you look at my --
 4 Q Now is the -- so would it be fair to say that a
 5 70-story, 70-foot building at 4901 in height and a 70-foot
 6 building at the subject site in height, if somebody were to
 7 observe those buildings, one would appear higher than the
 8 other, even though they were both 70-feet tall due to
 9 elevation differences?
 10 A They would not appear to be. This would be a
 11 taller building than this --
 12 Q Thank you.
 13 A -- as to elevation.
 14 Q Okay. Thank you. And --
 15 A Can I sit?
 16 Q Yes. Thank you. And just one other thing I want
 17 to make clear. You were asked -- Ms. Harris asked you a
 18 number of questions to the effect that since the FAR of
 19 buildings might be the same and the height may be the same,
 20 she asked you questions regarding weren't they then
 21 comparable or compatible with each other. And I want to ask
 22 you to develop, because I think we need to have on the
 23 record a little bit, are you saying that, and I believe you
 24 were, that there are other factors than height and FAR that
 25 determined aesthetically how they, how a person reacts to

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1 the building in terms of mass or bulk?
 2 A That is correct and I was also making another
 3 point that to a lay person or, for that matter, somebody who
 4 is looking at this building is not going to see 4901 as 70
 5 feet and the subject as 70 feet. They will appear to be
 6 quite different in height and they are, excuse me, quite
 7 different in elevation and they are.
 8 Q Yes, but assuming -- and this is just a
 9 hypothetical -- assuming two buildings of identical height,
 10 identical FAR on the identical elevation, would in your, is
 11 it your understanding that depending on how those buildings
 12 were designed, whether one had balconies, one didn't, one
 13 had bay windows, one didn't, had indentations, setbacks,
 14 step downs, whatever you want to call them, the two
 15 buildings would impact the person aesthetically different
 16 even though they were the same height and the same FAR?
 17 A That's correct. I think particularly if a
 18 building is bulkier and taller, it's more incumbent upon the
 19 architect and the designer to mitigate that height and mass.
 20 Q Okay. Now if you could read the first sentence,
 21 the third paragraph of page 82?
 22 A Third paragraph?
 23 Q Yes, it starts with the plan.
 24 A "The plan recommends a minimum of 45 dwelling
 25 units per acre everywhere except on lots facing

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1 Arlington Road where there would be no minimum
 2 density in order to allow townhouse development at
 3 lower densities."
 4 Q Now Ms. Harris asked you, and I thing you agreed,
 5 that because, I think it was the Rothstein property she
 6 referred to, had less than 27 units per acre, that that was
 7 not compatible with the Sector Plan's density requirements.
 8 Is that your testimony or --
 9 A No, that would be leading this. It does indicate
 10 an exception for properties facing Arlington and, of
 11 course --
 12 Q So we could have less than 45 and still be in
 13 accordance with the Sector Plan?
 14 A That is correct of my reading.
 15 Q Right. Okay. Now, similarly, with regard to the
 16 townhouse, townhouses along Montgomery Lane, she asked you
 17 whether -- I think you agree that that was less than 45
 18 dwelling units per acre for the townhouses and she asked you
 19 whether that was compatible, excuse me, consistent with the
 20 Sector Plan's minimum dwelling units. Are you aware that
 21 the townhouse development and the Edgemoor Highrise were
 22 part of a combined development approval that merged or
 23 melded the dwelling units for both projects?
 24 A Yes, I am.
 25 Q And do you know whether so merged, whether the

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1 development, the dwelling units exceeded 45 on the average,
 2 45 dwelling units per acre?
 3 A I don't know the answer to that.
 4 Q Okay. Thank you. If they did exceed 45, would
 5 you agree that the townhouse project then met the Sector
 6 Plan's minimum dwelling unit?
 7 A With regard to that specific --
 8 Q Yes.
 9 A -- requirement?
 10 Q Yes.
 11 A Yes.
 12 Q Right. Thank you. Okay. You were asked
 13 questions regarding the promotion of Metro and the diversity
 14 of housing by this project. Is it your understanding that
 15 the representations of diversity in terms of rental and the
 16 representations in terms of the number of dwelling units
 17 that are going to be built here, that those representations
 18 are binding elements or they're merely illustrative that can
 19 be changed?
 20 A My understanding is they're illustrative and
 21 subject to change.
 22 Q I see. Would you agree with me that any building
 23 on this site that would be inhabited by people would promote
 24 use of Metro to the extent that this building promotes the
 25 use of Metro by having occupancy?

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1 A Sure.
2 Q Okay.
3 A Everybody uses the Metro.
4 MR. KNOPF: I have no further questions.
5 MS. ROBESON: All right. Ms. Harris?
6 MS. HARRIS: Yes.
7 BY MS. HARRIS:
8 Q You indicated that because of elevation
9 differences, the subject building would be higher than the
10 4901 building, that the elevation, because of elevation
11 difference, the top of roof would be different?
12 A That is correct.
13 Q Can you, using the aerial, I guess -- well, from
14 your City Homes site or from anywhere in the City Homes, is
15 there ever a point where you can view both the 4901 project
16 and the subject property at the same time?
17 A From my side, I can't see either one of them.
18 Q And could anyone --
19 A Oh, I'm sorry. I see 4901 out of my back window.
20 Q Okay. And would anyone in the City Homes ever be
21 able to see the 4901 and the West Lane project at the same
22 time anywhere from their property?
23 A Anybody walking down the street could see it.
24 Q They could see both properties?
25 A Sure.

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1 Q And you, so where would you be that you would be
2 looking -- can you show me on this plan where you would be
3 that you could actually see both properties at the same
4 time?
5 A Anywhere along Montgomery Lane.
6 Q So if I'm in front of the second row of City Homes
7 facing west, I can see the West Lane property? Am I also at
8 that point, with 4901 in my vantage point, view?
9 A Yeah, because it's taller than City Homes.
10 MS. ROBESON: No, she's, she's, in her scenario --
11 THE WITNESS: Oh, I'm sorry.
12 MS. ROBESON: -- she's facing west.
13 BY MS. HARRIS:
14 Q I'm facing west and I'm looking at West Lane,
15 right? I'm standing right in front of the second row from
16 the east --
17 A Uh-huh.
18 Q -- and I'm looking west. I can see the subject
19 property, correct?
20 A Yes.
21 Q Can I see 4901? Right, I have to --
22 A It you turn around, yes.
23 Q -- turn around. So the fact that there is a 3-
24 foot, 5-foot, 7-foot difference in the top of roof
25 elevation, how does your mind perceive that? You see it,

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1 then you turn around and you say ding, ding, seven feet
2 taller?
3 A I walk up and down a street and I see a building
4 that's 10 feet taller than the one --
5 Q Where would you need to be at that point where you
6 would see both of them at the same time?
7 A You could walk from the library to anywhere up the
8 street you see --
9 Q Okay. Let me show --
10 A -- a building.
11 Q Let's, that's a good -- and you're walking from
12 the library and what do you see?
13 A Well, the building isn't built yet.
14 Q No, this, we already established that the subject,
15 that Exhibit 72 is an accurate depiction of what the
16 building is going to look like.
17 MS. ROBESON: Of your building?
18 MS. HARRIS: Of this, yes.
19 MS. ROBESON: Is 4901 on there?
20 MS. HARRIS: Yes. You can't see it. Why can't
21 you see it?
22 MS. ROBESON: Well, wait. You -- okay. Hold on.
23 Okay. You can't testify and so if you can answer, do you
24 know if 4901 is on there?
25 THE WITNESS: That may be it there. I'm not -- I

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1 have no idea, but --
2 BY MS. HARRIS:
3 Q And can you see the top of the roof from there?
4 MS. ROBESON: Looking at --
5 THE WITNESS: I don't even know if it's the
6 building, so --
7 MS. HARRIS: Yes.
8 MS. ROBESON: Is that 76?
9 MS. HARRIS: Two.
10 MS. ROBESON: Two?
11 BY MS. HARRIS:
12 Q So does that suggest to you that one reason that
13 the County has identified a measuring height based on the
14 definition that they do is because it's only when you're in
15 front of an actual building that you're experiencing that
16 height?
17 A No. I would think that for a normal human being
18 standing outside of the West Lane project, that that
19 building is supposed to look 70 feet is really closer to 80
20 feet.
21 MS. ROBESON: What?
22 THE WITNESS: Counting the penthouse and the fact
23 that its mass is 20 percent to 25 percent greater than
24 anything else in the neighborhood, but also tend to mean
25 that this thing is looming on Montgomery Lane. That's the

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1 objection.

2 BY MS. HARRIS:

3 Q And are you -- have you ever been anywhere in

4 Bethesda that you've been able to view the heights from this

5 vantage point which does show --

6 MS. ROBESON: When you're talking --

7 MS. HARRIS: I'm sorry.

8 MS. ROBESON: -- 106(f)?

9 MS. HARRIS: 106(f).

10 MS. ROBESON: Which is the aerial?

11 THE WITNESS: I have no idea what that sentence

12 means.

13 BY MS. HARRIS:

14 Q Wouldn't you agree that there's very, very few

15 situations, if any, that you're going to be able -- that we

16 have the advantage here of looking down on an aerial, when

17 would we ever, when would any of the residents or visitors

18 to this area ever have the vantage point that is shown in

19 106(f)?

20 A That's your vantage point. I was talking about

21 standing on the street, which is everybody's vantage point.

22 Q And from standing on the street, wouldn't you

23 agree that 72 is a depiction of that?

24 A That's your testimony, not mine.

25 Q So you're calling into question whether that is an

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1 accurate depiction?

2 A Well, we know that that's the case, but we also

3 know that if you walk up Montgomery Lane --

4 Q Okay.

5 A -- at various --

6 MS. ROBESON: Can you not have that discussion

7 back there because I'm having trouble --

8 THE WITNESS: -- at various points, you will see

9 both buildings. And even if you don't, standing right in

10 front of West Lane, you will see a building that is 80 feet

11 tall and that's not perception, that's reality.

12 BY MS. HARRIS:

13 Q I'm sorry, what's the height from the ground plan

14 to the step back?

15 A That's about 60 feet.

16 Q No, it's 50 feet.

17 MS. ROBESON: No.

18 THE WITNESS: No.

19 MS. ROBESON: You can't argue.

20 MS. HARRIS: Sorry. All right.

21 MS. ROBESON: He's going from elevation.

22 MS. HARRIS: Okay. Okay.

23 MS. ROBESON: You're going from the zoning

24 ordinance measurement.

25 MS. HARRIS: Okay. I don't have any more

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1 questions.

2 MS. ROBESON: Okay. All right.

3 MR. KNOPF: Can I clarify something?

4 MS. ROBESON: No. All right. You may be excused,

5 Mr. Lawch.

6 THE WITNESS: Thank you.

7 MS. ROBESON: Thank you. Now is that the -- those

8 are the conclusions, that's the conclusion of your

9 witnesses, correct?

10 MR. ABRAMS: Yes. Yes. Correct.

11 MS. ROBESON: Okay. Mr. Knopf?

12 MR. KNOPF: We have two witnesses and I would

13 estimate a total of a half an hour for both. Does that

14 sound -- a little more? Well, I'm not talking about

15 questions.

16 MS. ROBESON: Well, let's go take one and then

17 we'll take a break and let's then another one. Please raise

18 your right hand.

19 (Witness sworn.)

20 MS. ROBESON: Okay. Mr. Knopf.

21 DIRECT EXAMINATION

22 BY MR. KNOPF:

23 Q Okay. Would you state your name and address for

24 the record please?

25 A Yes. My name is Jon Weintraub and I live in the

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1 Edgemoor condominiums at 4821 Montgomery Lane.

2 Q Mr. Edgemoor, before I ask you any questions, do

3 you have a statement you wish to make?

4 A Yes. I live in the Edgemoor condominiums in close

5 proximity to West Lane on, or off of Montgomery Lane. My

6 wife and I moved into this mixed use street in November of

7 2003 when it first opened. So we've been a resident and

8 owner in the Edgemoor and have watched the street develop

9 into a community.

10 Since then, I've served in the past on our condo

11 board for six years and three years as president. I've also

12 served on the Bethesda Urban Partnership Board and was chair

13 of that wonderful organization. I have organized and

14 chaired the downtown Bethesda condo association whose

15 members include 11 buildings and more than 835 condos.

16 Those 11 buildings include City Homes, VOB, the Edgemoor,

17 the Chase, the Christopher, Lion's Gate and others. I'm

18 also an active member, sorry, I've been fighting a cold, I'm

19 an active member of the Bethesda Metro Task Force and I'm

20 quite aware of what's happening with Metro.

21 I also currently serve on the Woodmont Triangle

22 Action Group which was appointed by the Planning Board to

23 review development projects in the downtown and more

24 specifically in the Woodmont Triangle. I am on the board of

25 college tracks, which works with first generation young

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1 people at BCC and Wheaton High Schools and help them get
 2 into college with financial aide and I'm on the board of
 3 Bethesda Green. So I'm serving on a diverse group of
 4 Bethesda organizations.

5 I give you this background only to say that how
 6 deeply I am committed to the downtown and its success.
 7 Professionally, I'm retired. I happen to have been a
 8 professor of physical organic chemistry who was put in jail
 9 in the early '60's during the civil rights movement and
 10 switched fields down in southern Alabama and then worked in
 11 public policy all my life.

12 And I only mention -- I was staff director in the
 13 House of Representatives of the larger subcommittee and we
 14 reported, I worked on family medical leave for 13 years, the
 15 Clinton healthcare bill, so I think I know what negotiations
 16 are. It was a time in the House of Representatives when
 17 members and staff talked to each other and nothing was
 18 personal and I wish we could have that back again. It would
 19 be good for the country.

20 I'm here today to speak to the issue of lack of
 21 compatibility of this project with its surroundings. We in
 22 the Edgemoor supported the previous Holladay project with 48
 23 units with it's compatible design at the site, but we do not
 24 support this amendment and let me tell you why. One, this
 25 project adds just a small parcel, Lot 26, I believe, to the

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1 building, yet more than doubles the number of units and
 2 parking places in the building when compared to the approved
 3 Holladay project. Using the comparability scale, this
 4 project would increase the size of the project to 65 units,
 5 not the 120 or 130 requested which more than doubles the
 6 number of units in cars on the only unique mixed street, the
 7 narrow Montgomery Lane in Bethesda. It claims a necessity
 8 to grow from four stories in part to seven plus stories,
 9 except for a very small step back at the top of the
 10 building.

11 Lowering the building by a floor, as our planner
 12 suggested, in creating a real step back of 30 feet would
 13 decrease its mass and make it much more compatible with its
 14 surroundings. Number two, the frontage of the previous
 15 project mirrored the townhouses across the street. This
 16 box-like building makes no attempt to integrate itself with
 17 its surroundings. Its glass and pocket park is not really
 18 compatible with the buildings on the block or within a block
 19 of Montgomery Lane.

20 Three, there should be more public amenity space
 21 in front of the building. This could easily be achieved by
 22 moving the building north on the lot and using at least half
 23 of the 15-foot back alley behind the building. We are also
 24 concerned that this back alley, so to speak, especially if
 25 it's continued by the Edgemoor North at Arlington as a way

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1 to get all the way through would be a public hazard.
 2 Given the north end of the building faces a
 3 windowless brick wall and tennis courts, there's absolutely
 4 no reason not to improve the public space in front of the
 5 building for the majority of Bethesda citizenry who walk
 6 this block to and from the library and Metro. The green
 7 space behind the building is a wasted resource to the
 8 walking and biking public using Montgomery Lane. Moving the
 9 building back seven or eight feet would also abandon the
 10 straight edge look, making it a more pleasant walk from the
 11 library to the Metro.

12 We reject the pocket park corner entrance as an
 13 improvement to the compatibility quotient for the project.
 14 The only entrances to the building should be on West Lane
 15 with the elevator centered at the top of the building. This
 16 would encourage behavior of delivery trucks to turn onto
 17 West Lane and park in those lay bys to make their deliveries
 18 and not block traffic by double-parking on Montgomery Lane.
 19 Once these hearings are over and the project moves forward,
 20 regardless of a binding element, no one will police parking
 21 for these deliveries.

22 Watching the behavior of delivery people on the
 23 block, they believe in geometry, that is, the shortest
 24 distance between two points is a straight line. Online
 25 ordering for food, books, clothes and other products means

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1 multiple, daily visits by UPS and Fedex, in addition to the
 2 Postal Service, not envisioned in the Bethesda Master Plan.
 3 Keeping, keep the process simple with the main public
 4 entrance to this building on West Lane and have that as a
 5 binding element.

6 Five, previous Planning Board decisions, as well
 7 as the designers of Montgomery Lane, thought this lane was
 8 for walkers and bike riders heading to the library or
 9 commuting via Metro. One can't go back and say, whoops,
 10 that our predecessors made poor decisions in the design of
 11 the lane or that the Planning Board did not approve density
 12 for this lane, enough density for this lane. I assure you
 13 from my work on the Woodmont Triangle action group there is
 14 plenty of density coming to downtown Bethesda.

15 There are 3,000 plus units being added on
 16 Woodmont, between Woodmont and Wisconsin Avenue north and
 17 south of Old Georgetown Road in Bethesda and massive
 18 buildings more suitable to those locations. Excuse me.
 19 There is no doubt that the Bethesda Metro will become more
 20 utilized, albeit it's one of the most utilized stations now
 21 and more crowded as a result. We hope that Metro itself
 22 will continue to work.

23 Subtracting the, an additional 50 units that were
 24 added by my math on our narrow lane will not make a big
 25 difference to the density equation since they're already

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1 3,000 that will be added in the next two to five years.
2 However, it will make a big difference in the lives of
3 homeowners of the Edgemoor and the townhouses, the VOB and
4 the Villages of Bethesda and the Chase. We have to ask
5 ourselves why the Lauren, or 4901 Hampden, received approval
6 to lower the number of units. Could it be that there was a
7 desire for compatibility so absent in this project?
8 In addition, the Edgemoor approves and thanks you
9 for your suggestion on April 16th to eliminate the
10 possibility of a lay by and making that a binding element.
11 This lay by would have created far more problems than it
12 would have solved. We ask you not to approve the
13 application in its current form. We remain willing to work
14 cooperatively with the developer and actually negotiate to
15 achieve a better project for Montgomery Lane that everyone
16 can support.
17 I wanted to add that we, that I was involved
18 several years ago in negotiating the current agreement on
19 the Hampden Lane 4901 building. That occurred after
20 District Council removed the entrance to Hampden Lane, as
21 well as the driveway because of the perceived problems of
22 additional traffic on Montgomery Lane. Thank you.
23 MS. ROBESON: Can I ask you a question? Were you
24 to negotiate on this, what would you be asking for just out
25 of curiosity?

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1 THE WITNESS: I think I stated that in my
2 testimony, that --
3 MS. ROBESON: Well, what I hear from --
4 THE WITNESS: -- we would ask for a more
5 significant setback.
6 MS. ROBESON: Step back?
7 THE WITNESS: Step back.
8 MS. ROBESON: Wait, the rooftop step back?
9 THE WITNESS: Yes.
10 MS. ROBESON: Okay.
11 THE WITNESS: Right. We would ask to move the
12 entrance to West Lane and put the elevator in the middle so
13 that bulking and massive look of the front of the building
14 is pushed back. We would prefer a, as our planner
15 suggested, a one-story lowering of the building but, you
16 know, again, if we were to negotiate, we would work things
17 out and try to give and hopefully get something as a true
18 negotiation.
19 MS. ROBESON: So you're not saying you're holding
20 out for the Holladay project again?
21 THE WITNESS: No, this is, there was an additional
22 property added to this. As I suggested mathematically, that
23 would have increased the number of units to 65, not 120.
24 We, you know, would support something somewhere in between.
25 A good negotiator doesn't give up things before he

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1 negotiates.
2 MS. ROBESON: Okay. Mr. Knopf.
3 BY MR. KNOPF:
4 Q Okay. Let me just clarify in following up on the
5 Hearing Examiner's questions. You say you favor what the
6 planner recommended, the removal of one story?
7 A Right.
8 Q The sixth?
9 A Correct.
10 Q Do you favor the recommended on the 4th and 5th
11 stories that there be a step back --
12 A Step back.
13 Q -- step back of at least 30 feet, is that
14 something that you approve of?
15 A Yes.
16 Q Okay. He also made recommendations that the
17 building design, be made more residential in nature. Is
18 that something you also approve?
19 A That certainly goes to my compatibility statement.
20 Q Okay. Now the -- and I understand you're also
21 recommending some other things --
22 A Right.
23 Q -- the entrance and so on. Is the total number of
24 units here recommended is 120.
25 A Right.

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1 Q Do you know what that means in terms of increase
2 for the total number of units already existing on Montgomery
3 Lane in existing buildings or those that have already been
4 approved?
5 A I think I may have mentioned that in my testimony,
6 but it more than doubles the existing number of units on the
7 block or proposed for the block and more than doubles the
8 number of cars being exited onto the block.
9 Q Okay. Now you mentioned that you were part of the
10 persons who negotiated with regard to 4901 --
11 A Yes.
12 Q -- sometimes here referred to as the Triumph, and
13 I want for the record to say is it currently now referred to
14 as the Warren?
15 A Yes.
16 Q I've got to keep it straight.
17 A Everyone has their favorite names.
18 Q Now is the, you negotiated the original building
19 proposed for development on 4901. You and your condo
20 association opposed that, is that correct?
21 A We --
22 Q The original proposal.
23 A Actually at that point in time our condo building
24 did not take a position, but Bethesda Civic Coalition, which
25 was formed, which was a group of citizens both in the

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1 Edgemoor, as well as in the neighborhood, opposed it and we
2 raised our own money. We did not use condo dues to oppose
3 that property.
4 Q You were one of the people living in the Edgemoor
5 condo that joined that opposition?
6 A Yes.
7 Q Okay. And --
8 A Along with Linda Skalet, who spoke earlier.
9 Q And the Council agreed and rejected that proposal
10 in terms of specifying height and lack of compatibility?
11 A Right, by a 9-0 vote.
12 Q And is Exhibit 120(a) a rendering of what was
13 originally proposed?
14 A Yes. This super glass structure that was not at
15 all compatible with its neighbors.
16 Q And the, there were negotiations and then the
17 developer came back with a revised plan that was adopted by
18 the Council, is that correct?
19 A Correct.
20 Q And was that a 70-foot height one with a 60-foot
21 height on one corner?
22 A It was a 60-foot step down, if you will, on the
23 west most corner of the building on Montgomery Lane.
24 Q And is that Exhibit 120(b) as in boy?
25 A Yes, it's the, it's the, the visual facing

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1 Montgomery Lane is the top picture.
2 Q Mr. Weintraub, now I'm going to make it --
3 A With the step --
4 Q -- confusing.
5 A With the step down to 60 feet.
6 Q I'm going to ask you to clear up a great mystery
7 that we had throughout this case. I want to show you, if I
8 can find it, the 4101 picture with all the glass that faces
9 Woodmont.
10 MS. ROBESON: That's 120(c) and which is Exhibit
11 is that?
12 MR. KNOPF: This is 106 --
13 MS. ROBESON: (g)?
14 MR. KNOPF: -- (g), which if you can recall in the
15 lower right-hand corner says that, well, 4901 and I want
16 you, if you can reconcile that with the 102(b) and explain
17 the, well, let me ask you this. What you're holding in your
18 hand is 102(b) and what's on 106(g), at first blush, doesn't
19 look consistent, does it?
20 THE WITNESS: No, it doesn't, but --
21 MR. KNOPF: Can you explain --
22 THE WITNESS: -- from our conversations with Larry
23 Goodwin, who is the developer, what's now called the Lauren,
24 there were new renderings to come, so this is kind of a
25 floating bunch of pictures that are changing.

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1 BY MR. KNOPF:
2 Q Okay. And now 102(b), which you're holding in
3 your hand is to the -- on the upper corner does the glass
4 toward the back, toward, away from Montgomery, does that
5 reflect what's in 106(g)?
6 A It's hard to tell. It could. I mean both are
7 glass. This shows a straight-edge corner as opposed to a
8 rounded corner on Hampden Lane with the entrance on Hampden
9 Lane. It's, it's really hard to tell by these
10 characterizations.
11 Q Thank you. Oh, there was some reference by Ms.
12 Harris to the last witness reading from, I think it was
13 106(p). To the effect that the Hearing Examiner took into
14 effect not only what was compatible with existing
15 development, but it indicated that she would take into
16 consideration what future development may have and I wanted
17 to ask you, I think she was referring, you were asked to
18 quote from an earlier opinion in 4901. Recently with the
19 approval of Sandy Spring, the approval of 4901, the approval
20 of the Rothstein property, have there now, has it now become
21 a clearer as to what will be existing on this street so that
22 compatibility has to take into account those particular
23 projects?
24 A Up to a point. I mean I say that only because
25 until these buildings are built, any one of them can be

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1 flipped or sold as we've seen 4901 being sold twice since --
2 and the current buyer hasn't completed the deal yet, but
3 he's continuing to advance and change things. So it's --
4 Q Well --
5 A -- yes, maybe, is the best answer I can --
6 Q Well, that's fair enough. Well, let me ask you my
7 last question. Are you similarly concerned that what is
8 being represented here by the applicant as to what might be
9 built in terms of rental versus condo, number of units,
10 number of MPDU's, the design of the building, that may also
11 greatly change from what actually gets built because they're
12 not binding elements?
13 A Anything can happen. I mean as to the number of
14 units, until it's built, we've seen it too often, you know,
15 as someone who has given up his own time and worked on these
16 things and tried to learn. We're the average citizens as an
17 extreme disadvantage in the process, but that's my opinion.
18 Q Would you prefer what project it is such as if you
19 went through negotiations and you arrived at a satisfactory
20 project, would you prefer that the features of that
21 building, characteristics would be nailed down by a binding
22 element?
23 A Absolutely and that the building then be built
24 with the support of its neighbors.
25 MR. KNOPF: I have no further questions.

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1 MS. ROBESON: Mr. Abrams.
2 CROSS-EXAMINATION
3 BY MR. ABRAMS:
4 Q Mr. Weintraub, I think you testified about there
5 being approximately 3,000 units that are coming online --
6 A Yes.
7 Q -- in the Bethesda Sector Plan area?
8 A Right.
9 Q Okay. Are you familiar with most of these
10 projects?
11 A Yes.
12 Q And --
13 A I could have brought the diagram off my computer,
14 but I didn't.
15 Q On many of these projects, or do you know, whether
16 these projects are rental projects or condo projects and if
17 you can break it down into percentages?
18 A I would say as of now, since it could change, a
19 large, a very large majority are rental. I would project
20 maybe 2,800 of the 3,000, but don't hold me to the exact
21 number. That's a ballpark estimate.
22 Q And based upon your participation in this entire
23 process throughout the planning process for these projects,
24 approximately how many are coming online within --
25 MS. ROBESON: Just a second. You can't talk to

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1 your attorney --
2 THE WITNESS: I'm sorry.
3 MS. ROBESON: -- while you're testifying.
4 THE WITNESS: Sorry.
5 MS. ROBESON: So go ahead, Mr. --
6 THE WITNESS: I did not know.
7 MS. ROBESON: I'm sorry to interrupt, Mr. Abrams.
8 MR. ABRAMS: Okay.
9 BY MR. ABRAMS:
10 Q With respect to these projects that are coming
11 online, how many are coming online each year for the next
12 three or four years?
13 A All those that I mentioned should be coming online
14 in the next two to four years.
15 Q And are they equally split between projects which
16 are, I guess, north of Old Georgetown Road and those which
17 are south of Old Georgetown Road, or is there more in one
18 area than the other?
19 A There is far more in the larger buildings that are
20 being contemplated north of Old Georgetown.
21 Q And --
22 A When I say that, I mean 500-unit high-rise
23 buildings, or 350-unit high-rise buildings, all of which
24 will participate in using the Metro.
25 Q And is that basically a conscious effort on the

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1 part of the Planning Commission to sort of concentrate
2 residential, high-density residential north of Old
3 Georgetown Road and more on the order of retail or office
4 south of Old Georgetown Road, if you know?
5 A The simple answer would be yes, but it's also a
6 function of the fact that larger buildings can be built on
7 those sites and that it's more appropriate to combine those
8 with a nice grocery store or other items that would attract
9 the purchasing power of Montgomery County to Bethesda.
10 Q So mixed use, is that what you're talking about?
11 A Mixed use, at least on the first several levels.
12 MR. ABRAMS: That's all I have.
13 MS. ROBESON: All right. Ms. Harris.
14 MS. HARRIS: Thank you.
15 BY MS. HARRIS:
16 Q You noted that the north end of the project, this
17 is in connection with the Villages of Bethesda --
18 MS. ROBESON: And we're looking at 106(f)?
19 MS. HARRIS: At Exhibit 106(f).
20 BY MS. HARRIS:
21 Q You noted that the 15-foot distance, none of the
22 15-foot distance between the Villages of Bethesda and the
23 subject site and you noted that there's a blank wall and a
24 tennis court?
25 A Right.

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1 Q Now if, in fact, the building were pushed back as
2 you recommended, would they not be closer to the Villages of
3 Bethesda units, including the units that face, and I'm
4 pointing here, that face directly south and also face east?
5 A Certainly, but only at an angle. I mean the angle
6 is obvious in that the picture --
7 Q Uh-huh.
8 A -- that you're pointing to.
9 Q Were you here earlier in the proceedings when we
10 had lots of discussions about the angles of the vantage
11 point from the City Homes to the subject property?
12 A For some of it.
13 Q So angle matters when you're 73 feet apart, but it
14 doesn't matter when you're zero feet from the adjacent
15 property line?
16 A I'm sure that the proximity matters to the people
17 closest to your building. That's only natural.
18 Q Were you aware that the Villages of Bethesda
19 actually, in their reasonableness, supported the 15-foot
20 setback and subject to a couple of conditions. And this is
21 Exhibit 99. If you could just read, you can read the Board
22 supported and just read one and two please.
23 A "The Board support is subject to the following
24 understanding that the applicant agreed to submit
25 a binding element that the facade of the building

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1 will be a minimum of 15 feet."
2 Q The facade. Well, just --
3 MS. ROBESON: He can read it.
4 THE WITNESS: I can read it.
5 "Facade of the building will be a minimum of 15
6 feet from the northern property line. The
7 applicant agrees to submit a binding element that
8 the outdoor amenity space located on the western
9 portion will be substantially in keeping with the
10 overall size and dimensions of the development
11 plan submitted February 2013."
12 If I were Peter Locker, the president of that homeowner's, I
13 would probably say the same thing. That's in his interest.
14 It may not be in the interest of the greater population of
15 the block or of the downtown.
16 Q So the -- and the reason that it's not in the
17 greater interest is because an extra of 15 feet in the front
18 would be so much more beneficial than to the people that
19 have invested in the Villages of Bethesda and lived there as
20 their homes?
21 A A number of those people are my friends. Of
22 course, it would be, you know -- well, you know, we also
23 have to have a greater public good here and the greater
24 public good is by sharing some of the public space whether
25 it's seven feet or eight feet back and putting it in the

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1 front of the building. That was my proposal.
2 Q You talked about, one of your items on your wish
3 list so to speak was that the entrance to the West Lane.
4 A Yes.
5 Q Are you familiar or are you aware that in
6 connection with the Sandy Spring builders, they have a
7 binding element requiring the entrance to be on Montgomery
8 Lane?
9 A Requiring their --
10 Q Their entrance to be on Montgomery Lane?
11 A Yes, I think from my conversations with Sandy
12 Cress, who was the developer of that, that was a Planning
13 Board or planning staff request by someone's notion that it
14 would be better to have all the entrances on Montgomery
15 Lane. Beyond that, I don't know the specifics of the
16 reason.
17 Q Could it be that it's consistent with the Sector
18 Plan recommendation about entrances on Montgomery Lane can
19 approach street life?
20 MR. KNOPF: If he doesn't know, he doesn't know.
21 She's asking him to speculate.
22 THE WITNESS: I don't know what the Sector Plan
23 says --
24 MS. ROBESON: Well, yes.
25 THE WITNESS: -- for entrances, --

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1 MS. HARRIS: Okay.
2 MS. ROBESON: He can say that.
3 THE WITNESS: -- on Montgomery Lane.
4 MS. HARRIS: Okay.
5 BY MS. HARRIS:
6 Q You noted that, I believe if I heard you
7 correctly, you said that the parking, the number of parking
8 spaces in the subject proposal is double that of the
9 Holladay?
10 A No, I think I said double that of what was on the,
11 what is currently on the block. I can go back and look. I
12 don't --
13 Q Well, let me just ask you a different way. Are
14 you aware that the subject property is only proposing 39
15 more parking spaces than what the Holladay project was
16 approved for?
17 A And how many did the Holladay project, how many
18 were they approved for?
19 MS. HARRIS: Am I allowed to answer.
20 MS. ROBESON: No. You just have to ask, answer
21 the question.
22 THE WITNESS: All right. Then, no, not exactly,
23 but I trust your math is accurate.
24 MS. ROBESON: Okay.
25 BY MS. HARRIS:

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1 Q In terms of the additional 3,000 units, that
2 number, do you know if a number of them are in the Woodmont
3 triangle area?
4 A Yes.
5 Q And is the subject property closer to the Metro
6 than Woodmont triangle area?
7 A Yes, but the --
8 Q That's all I wanted to know. Thank you. And how
9 does increasing the density north of Old Georgetown Road
10 further the recommendation of the TS-R zone to encourage
11 high-density in the TS-R zone?
12 A To be honest, I do not know where the TS-R zone
13 begins and ends.
14 Q But you did testify that those projects were in
15 CBD, I believe?
16 A Right.
17 Q Okay. So they're not in the TS-R, correct?
18 MR. ABRAMS: Well, he testified --
19 THE WITNESS: I --
20 MS. HARRIS: Okay. He's --
21 THE WITNESS: I said they were in the central
22 business district.
23 BY MS. HARRIS:
24 Q Okay. Let me ask it a different way. Is adding
25 additional units in the CBD zone in any way going to

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1 increase the number of units and density in the TS-R zone as
2 encouraged by the Sector Plan?
3 A No, but there's also a factor of compatibility
4 with the number of units on the block.
5 Q Okay. And then, finally, there seems to be
6 amongst everyone a lot of confusion in regard to the
7 ultimate aesthetic of 4901, would you agree with that, in
8 terms of what the building is going to ultimately look like?
9 A That's true in that it has changed and may
10 continually change.
11 Q And 4901 has its zoning approved, correct?
12 A Correct.
13 Q And they still need to go to the Planning Board
14 for site plan approval, correct?
15 A Correct. They can also resell the property
16 between now and then.
17 Q All right.
18 MS. ROBESON: Okay. But just try to confine
19 yourself to what she asked.
20 BY MS. HARRIS:
21 Q And during the site plan process, the ultimate,
22 the ultimate aesthetic of the building, the potential zone
23 will be reviewed by the Planning Board, correct?
24 A Correct.
25 Q And so doesn't it strike you that maybe one reason

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1 there is a lot of discussion now about what it's ultimately
2 going to look like is because they haven't gone through site
3 plan approval and that those issues really are never
4 determined at zoning?
5 A It's true that they haven't gone through site plan
6 approval.
7 Q So to the extent that, we've heard today that
8 there's some issue about the architectural design of this
9 building because it doesn't look residential. Has the
10 building, and as we proceed through the process, certainly a
11 site plan approval and under the Planning Board's watch
12 there could be requirements to do things to make it look
13 more residential, correct?
14 A Possibly. We met with them and they spoke to 34
15 units, plus six MPDU's and looked at their design and we
16 were quite comfortable with the direction they were going.
17 Q With respect to 4901, correct? Okay.
18 A Yes, I'm sorry.
19 MS. HARRIS: I have no other questions for him.
20 Thank you.
21 MS. ROBESON: All right. Thank you.
22 THE WITNESS: Thank you.
23 MR. KNOPF: Five minute break and then start the
24 last witness?
25 MS. ROBESON: Yes.

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1 (Recess)
2 MS. ROBESON: Is everyone ready?
3 MR. ABRAMS: Yes, ma'am.
4 MR. KNOPF: Yes.
5 MS. ROBESON: All right. We're back on the record
6 and Mr. Knopf, this is your last witness?
7 MR. KNOPF: Believe it or not.
8 MS. ROBESON: Please raise your right hand.
9 (Witness sworn.)
10 DIRECT EXAMINATION
11 BY MR. KNOPF:
12 Q Would you just state your name and address so we
13 can locate where you live?
14 A Yes. My name is Andrew Niebler. I've been a
15 resident of the Edgemoor condominiums at 4821 Montgomery
16 Lane.
17 Q Okay. I understand you have some prepared
18 remarks, but before you give those, I just want to ask you a
19 question to follow-up on what we've been listening to.
20 You've heard Ms. Harris suggest that there would no point on
21 Montgomery Lane or in the area where one would see both the
22 proposed project and the 4901 building. When you're
23 exhibits that are up, 72 and --
24 MS. ROBESON: 106(f).
25 MR. KNOPF: Thank you. Could you say whether you

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1 agree or disagree with that?
2 THE WITNESS: Yes, sure.
3 MR. KNOPF: Thank you.
4 THE WITNESS: I actually work at the Air Ranks
5 Tower, so that is way over here. So I --
6 MS. ROBESON: No. You have to tell me --
7 THE WITNESS: Sorry. Okay. Okay. So this is my
8 building here, 4821.
9 MS. ROBESON: Right.
10 THE WITNESS: This is Montgomery Lane.
11 MS. ROBESON: Going east?
12 THE WITNESS: Going east, exactly, exactly, and --
13 MS. ROBESON: Crossing Woodmont?
14 THE WITNESS: If we kept going, we would cross
15 Wisconsin and then you get to the police station.
16 MS. ROBESON: Right.
17 THE WITNESS: And then you would walk past the
18 police station to Waverly and at the corner of Waverly and
19 Montgomery Avenue is where I work, that's the Air Ranks
20 Tower.
21 MS. ROBESON: Okay.
22 THE WITNESS: So for the last seven years I've
23 walked that distance and so coming down, you would be --
24 MR. KNOPF: Like down --
25 THE WITNESS: Coming, walking west --

1 MR. KNOPF: -- heading west?
 2 THE WITNESS: -- from the corner of --
 3 MS. ROBESON: From your work?
 4 THE WITNESS: -- of my work space or work office.
 5 You would be able to walk down and you would continue on --
 6 you would see this building here.
 7 BY MR. KNOPF:
 8 Q This building is 4901?
 9 A 4901 Hampden. That's where I'm pointing. And as
 10 you continue to walk, you would be able to see the subject
 11 property and you would be able to see both at the same time
 12 if you're moving along, I don't think it makes a lot of
 13 sense to sort of pick a spot because I never stand in the
 14 street and observe a certain spot. I observe a lot.
 15 So I'm walking. And, similarly, similarly I think
 16 my children frequently use the library which is over here
 17 and they come from Bethesda Elementary, which is all the way
 18 up here.
 19 MS. ROBESON: Northwest?
 20 THE WITNESS: Northwest, right. So we frequently
 21 do this walk coming this way --
 22 MS. ROBESON: And this walk is south on Arlington?
 23 THE WITNESS: Is from, south on Arlington and then
 24 east on Montgomery Lane. And, similarly, I think at that
 25 point you would be able to see, as you turn the corner, and

1 I'll get to that picture in a second, as you turn the corner
 2 you will be able to see the subject property. And then as
 3 you walk down the street to where I live, you'd be able to
 4 see 4901 Hampden Lane.
 5 MS. ROBESON: Okay.
 6 THE WITNESS: And the interesting thing about that
 7 picture --
 8 BY MR. KNOPF:
 9 Q Now that picture is Exhibit 72 you're referring
 10 to?
 11 A Yes. And so that picture is taken sort of from
 12 the vantage point. The library is kind of here. And it's
 13 taken from a vantage point where the Edgemoor on Arlington
 14 is essentially sort of blocking out the 4901 Hampden. So if
 15 you were to move to your left in that, from the prospective
 16 of that picture, which would be this way --
 17 MS. ROBESON: Which would be north?
 18 THE WITNESS: Which would be north, is that right?
 19 MS. ROBESON: Yes.
 20 THE WITNESS: Yes? Okay. Sorry. Thank you. You
 21 would be able to see the subject property, as well as 4901
 22 Hampden Lane. So that's --
 23 BY MR. KNOPF:
 24 Q Thank you very much. Now if you have some
 25 prepared remarks, if you would state those and then you may

1 get further questions.
 2 A Sure. I have lived at the Edgemoor condominiums
 3 with my family since August 2004. I also served on the
 4 board of directors of the Cunningham and was the condominium
 5 treasurer for the first four years after the building was
 6 completed. More recently, I helped to form a citizens group
 7 that is seeking to improve pedestrian safety in the Bethesda
 8 central business district.
 9 Living in a pedestrian-friendly community is very
 10 important to my family. My wife does not drive, so she
 11 walks or takes the Metro to many of the places she needs to
 12 go and frequently walks past the lots on which the subject
 13 property is proposed to be built. My wife and I, and one or
 14 both of my children have walked past these lots on our way
 15 to Bethesda Elementary School, the Giant supermarket, the
 16 Bethesda public library and numerous other destinations
 17 within Bethesda for the past nine years.
 18 Beginning next year, my son will walk to Bethesda-
 19 Chevy Chase High School. Both of my children also
 20 frequently walk to their sports practices after school. And
 21 for the past seven years, as I just indicated, I've walked
 22 to my office which is located in the Air Rights Tower on the
 23 corner of Waverly and Montgomery Avenue.
 24 Before moving to Bethesda, we lived in Arlington,
 25 Virginia, a city that has been recognized as the gold level

1 walk friendly community by Walk Friendly Communities, which
 2 is a national recognition program developed to encourage
 3 towns and cities across the U.S. to support the
 4 establishment of safer walking environments. In Arlington,
 5 we thoroughly enjoyed walking on broad sidewalks and would
 6 regularly walk from our home in the courthouse area to
 7 Ballston, Rosalyn and Georgetown.
 8 When my family outgrew our Arlington condominium,
 9 my wife and I started thinking about schools for our young
 10 children and we were naturally attracted to Montgomery
 11 County. As we started looking at our housing options, we
 12 knew we wanted to live in a condominium located in a safe,
 13 residential and pedestrian-friendly neighborhood. When we
 14 came across the empty lot on which the Edgemoor would
 15 eventually be built and saw the pictures of the proposed
 16 building, we were immediately hooked. In fact, we bought a
 17 condominium on Montgomery Lane not once, but twice because
 18 the original condominium building was abandoned by the
 19 developer in favor of developing an apartment building and
 20 that was, in turn, abandoned in favor of developing a newly
 21 designed condominium building.
 22 Montgomery Lane was unlike anything else that we
 23 had seen. It was a quiet, residential street in an urban
 24 environment that featured housing modeled on urban village
 25 concept. The narrow street and the quirky dead-end in the

1 middle of the street prevented fast vehicular traffic. The
2 low-rise townhouses and the open areas between the
3 townhouses offered a sense of openness and spaciousness in
4 downtown Bethesda. And on top of all that, the Metro, the
5 public library and the elementary school were all within
6 walking distance. My wife and I were certain that this was
7 the place that we wanted to raise our children.

8 After my family moved into 4821 Montgomery Lane in
9 2004, it didn't take long for my wife and I to realize that
10 the narrowness of Montgomery Lane had its downsides,
11 predominantly with respect to the inability of the street to
12 accommodate the volume of the delivery vehicles, moving
13 vans, cable and phone installation vehicles, in-home health
14 care and service providers, vehicles for personnel to repair
15 refrigerators, dishwashers, washing machines, dryers,
16 televisions, flooring, carpeting, computers, printers and
17 monitors and vehicles for landscapes, window washers, trash
18 collection and repairs to the exterior of the buildings to
19 name just a few.

20 Not only do these vehicles cause congestion on
21 Montgomery Lane due to its narrowness and lack of adequate
22 parking, they add visual clutter to the street and undermine
23 the pedestrian experience, especially when they are parked
24 in such a way that the sidewalk is blocked or when traffic
25 has to navigate around illegally and double parked cars or

1 trucks or when frustrated drivers aggressively blow their
2 horns. The traffic situation on this street can best be
3 described as tense and that tension affects the pedestrians
4 on the sidewalks as well.

5 The applicant would have us believe that the vast
6 majority of its 120 parking spaces will go unused and will,
7 therefore, not adversely affect Montgomery Lane. There is
8 no way to guarantee that outcome and it does not resonate
9 with my experience living in two different condominiums
10 where there was not enough parking. While many residents in
11 the applicant's proposed building may not have two cars, it
12 seems likely that they will have at least one car. And to
13 the extent that units in the applicant's building are shared
14 among roommates, it is reasonable to expect that each
15 roommate will have a car. However, even if we accept the
16 applicant's assertion on this point, the fact is that those
17 residents without cars will simply schedule more deliveries
18 to the street as they go about living their lives whether
19 it's in the form of 120 more cars or a higher than average
20 number of deliveries per resident, Montgomery Lane will pay
21 the price in the form of increased congestion, a less
22 walkable environment and diminishment of the mixed street
23 concept.

24 Notwithstanding the inability of Montgomery Lane
25 to accommodate the daily routines of the current residents

1 living on the street, when Holladay Corporation proposed to
2 build a building on lots 24, 25 and 27, it received
3 widespread praise from the community for its balanced
4 approach to development on Montgomery Lane and to the best
5 of my knowledge there was no community opposition to that
6 building. I agreed with the County Council when in
7 Resolution 16-246 it lauded the Holladay building and
8 concluded that, quote,

9 "The development's location and density will
10 encourage effective use of Bethesda's transit
11 station development area. It will provide a
12 residential use within walking distance of the
13 Metro, will contribute to the range of densities
14 in the area, will not have detrimental effects on
15 the use or development of adjacent properties or
16 the surrounding neighborhood and will continue to
17 have to, and will contribute to housing for
18 persons of all economic levels,"
19 unquote.

20 In approving the zoning change for the Holladay
21 building, the County Council was not focused on maximizing
22 density, dwelling units or MPDU's, but instead was very
23 concerned with compatibility of a building with its
24 surrounding area and the impact that the building and its
25 residents would have on issues directly affecting the

1 pedestrian-oriented quality of life on Montgomery Lane, as
2 well as all users of the Bethesda Public Library.
3 Resolution 16-246 recognized that it is possible to balance
4 the many different competing interests that are affected by
5 development in the middle of Montgomery Lane by approving a
6 building that has only 40 percent of the number of units of
7 the applicant's proposed building. The Holladay building
8 was also preferable to the applicant's proposed building
9 because it had a more residential appearance that blended in
10 with the surrounding buildings. By contrast, the
11 applicant's building looks like it will have a lot of glass
12 that will give it a much more office-like appearance. This
13 will alter the look and feel of the pedestrian environment
14 on Montgomery Lane.

15 When SJG acquired, I'm sorry, okay. Thank you.
16 When SJG acquired the project and added Lot 26, a reasonable
17 approach similar to that taken by Holladay Corporation would
18 have sought to increase the size of the building and a
19 number of units in direct proportion to the amount of
20 additional gross tract area that was added by Lot 26. Such
21 a proportional increase would have increased the number of
22 units of the building to about 65. Unfortunately, the
23 applicant chose to take a different path, a path that seeks
24 to increase the number of units by about 135 percent, even
25 though Lot 26 increased the gross tract area by only 36

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1 percent, a path that is based on the applicant seeking to
2 maximize density and exceed allowable building heights
3 instead of seeking a balanced approach, a path that pays lip
4 service to Montgomery Lane's unique mixed street designation
5 in a TS-R zone.

6 Montgomery Lane's mixed street designation in the
7 Sector Plan, the only street with that designation in the
8 TS-R zone is really the key issue in this hearing.

9 Montgomery Lane was a deliberate and an intentional attempt
10 by urban planners to create a little oasis in the middle of
11 the TS-R zone to provide a pleasant pedestrian corridor
12 connecting the Metro and the Bethesda Public Library. In
13 order to facilitate the pedestrian character of the street,
14 the Sector Plan specified that Montgomery Lane, quote,
15 "Should be developed with 20 feet for travel
16 lanes within a 52-foot right-of-way,"
17 unquote. So in 1994 when the Sector Plan was approved, the
18 Planning Board and County Council had an opportunity to
19 widen Montgomery Lane in order to enable a street to handle
20 the demands of the higher density TS-R zone, but instead
21 they intentionally and purposefully chose not to widen the
22 street in order to enhance the quality of life for the
23 eventual residents of Montgomery Lane, as well as all the
24 users of the Bethesda Public Library.

25 Montgomery Lane was specifically created as a

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1 narrow street and we cannot now ignore this fact. It is too
2 late to widen the street and pretending that it is the same
3 width as every other street in the Bethesda central business
4 district and that it should be subject to the same rules as
5 every other street in the TS-R zone makes absolutely no
6 sense.

7 Page 84 of the Sector Plan includes a concept
8 drawing of Montgomery Lane as it was envisioned in 1994 with
9 low-rise buildings. The interesting thing about that
10 drawing is how close we have come to realizing that vision.

11 The south side of Montgomery Lane looks very similar to the
12 drawing with City Homes and Edgemoor at Arlington being low-
13 rise buildings. On the north side of Montgomery Lane, the
14 Sandy Spring building and the Edgemoor at Arlington North
15 are both approved as low or mid-rise buildings. The only
16 buildings that deviate from the concept drawing are the
17 applicant's building, 4901 Hampden Lane, and 4821 Montgomery
18 Lane.

19 4821 Montgomery Lane was built at a height of 100
20 feet to promote a linkage to the tall office buildings on
21 Woodmont Avenue, to the low and mid-rise buildings along
22 Montgomery Lane and based on the approvals for that
23 building, it is specifically not to be used as precedent for
24 other buildings on Montgomery Lane. 4901 Hampden Lane at a
25 building height of 70 feet and a penthouse height of 80

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1 feet, fills a similar role with respect to linking the
2 office buildings on Woodmont Avenue. That leaves only the
3 applicant's building as being inconsistent with the concept
4 drawing and not providing a linkage to adjacent, taller
5 buildings.

6 The applicant argues that it needs to build to
7 seven stories to get the full benefit of all of the MPDU's
8 and it is proposing to build, I'm sorry, that it is
9 proposing to build. While MPDU's are a social good and the
10 objectives of the MPDU program are laudable, rather than
11 starting from the premise of the applicant will build X or Y
12 MPDU's and then determine how massive the building needs to
13 be to accommodate that, I propose that on this street, this
14 unique, mixed street we should determine the appropriate
15 size of the building first and then work backwards to see
16 how many MPDU's that building can accommodate.

17 As it stands, the massiveness of the building will
18 not be meaningfully mitigated by the 15-foot step back of
19 the 5th floor because at that height the step back is too
20 removed from a human scale which is discussed in the fourth
21 urban design objective in the Sector Plan and will,
22 therefore, not meaningfully enhance the experience the
23 pedestrian on Montgomery Lane experiencing such a massive
24 building.

25 In addition, from a pedestrian's perspective,

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1 there's a very fine line between having a sidewalk activated
2 by a building and having a sidewalk that is oppressed by a
3 building. In my view, the massiveness of this building will
4 be more oppressive than activating unless it is
5 significantly set back from the sidewalk to provide more
6 open space and significantly reduced in height. The pocket
7 park does not meaningfully address the problems associated
8 with the massive building.

9 Although he concept drawing on page 84 of the
10 Sector Plan, identifies the buildings as high-density, over
11 the course of the last nine years the projects that have
12 been built on Montgomery Lane have provided 94 total units
13 and Sandy Spring will add another four units. Perhaps this
14 number of units has been built out of recognition, but the
15 narrowness of Montgomery Lane simply cannot handle the daily
16 demands of the people living on this street. Whatever the
17 reason, the development pattern on Montgomery Lane has
18 evolved where following the construction of the Sandy Spring
19 building, eight separate buildings will have provided a
20 total of 98 residences. That development pattern is
21 important because one of the Sector Plans' six urban design
22 objectives specifically provides that, quote,
23 "In general, new development should respect
24 established patterns of development,"
25 unquote.

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1 In this case, the applicant has proposed a
2 massive, new development that will add as many as 120 units
3 in a single building. And since much of what has been
4 presented in this hearing are not specified in binding
5 elements, we don't know what we'll wind up with. In the
6 final analysis, if the Sector Plan stands for anything, it
7 must at the very least stand for the proposition that a
8 building that might be perfectly appropriate elsewhere in
9 the TS-R zone may not be appropriate on Montgomery Lane.
10 That business as usual on the only street designed as a
11 mixed street in the TS-R zone is simply not consistent with
12 the intent or the words of the Sector Plan. Any other
13 conclusion would require Montgomery Lane's mixed street
14 designation to be simply disregarded.
15 For all the foregoing reasons, we ask you to
16 reject the applicant's proposed building in its current
17 form. We remain willing to work cooperatively with the
18 developer to achieve a reasonable project for Montgomery
19 Lane that strikes an appropriate balance between the various
20 competing interests affected by this project, one that
21 recognizes and respects the unique and limiting nature of
22 Montgomery Lane as an extremely narrow mixed street.
23 In addition, I took some photographs that were
24 entered into, as an exhibit, as 102(a). I'm perfectly happy
25 to discuss these photographs. I can flip pages or do

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1 whatever, but in the lateness of time, I just don't know how
2 best to proceed with this --
3 MS. ROBESON: No, if they're --
4 THE WITNESS: -- you know?
5 MS. ROBESON: -- in the record, we can look at
6 them --
7 THE WITNESS: Okay. Okay. It's --
8 MS. ROBESON: -- in the record.
9 THE WITNESS: It's 102(a).
10 MS. ROBESON: I have them.
11 THE WITNESS: Okay. So this was previously
12 discussed by Lou Pohoryles. He took some of these pictures
13 and I took some of them with a different Blackberry.
14 MS. ROBESON: Okay. You're the partner?
15 THE WITNESS: Right. Exactly.
16 MR. KNOPF: The other half.
17 THE WITNESS: Exactly. So all the pictures show
18 actual events. I didn't do anything unique with my
19 Blackberry, I just picked it up and pointed it and I usually
20 took more than one angle to provide some context. So I can
21 flip pages. The first one is an emergency vehicle taken
22 from Lou's unit, so looking down on the street. That's a
23 fire truck there. And then the same fire truck is taken
24 from the street vantage point on the next page. I didn't
25 take these pictures that I'm testifying to, but Lou already

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1 said how he --
2 MS. ROBESON: Right.
3 THE WITNESS: -- how he took these pictures.
4 Again, we have more of a fire truck, again, obstructing the
5 whole street here. So -- and as you can see in the second
6 picture on page 3, there's a car right to the, at the end of
7 the fire truck that's turning left out of the driveway to
8 4821 Montgomery Lane, which is the wrong direction to turn.
9 You would normally need to turn right, but the street is so
10 narrow that the car couldn't get past the fire truck in this
11 case.
12 Moving past the fire truck, we see some moving
13 trucks and a service --
14 MS. ROBESON: And is this on the bottom of page 4?
15 THE WITNESS: The bottom of page 4, yes, the blue
16 moving van.
17 MS. ROBESON: Is the same day or a different day?
18 THE WITNESS: I believe this is a different day.
19 MS. ROBESON: Okay.
20 THE WITNESS: I believe --
21 MS. ROBESON: Oh, it says taken on another day.
22 THE WITNESS: Yes. Yes.
23 MS. ROBESON: Okay.
24 THE WITNESS: So here we have two moving trucks.
25 This actually is a situation that I recall where one moving

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1 truck, the blue one, was actually waiving for the first
2 moving truck to get out of the way because it didn't make,
3 it couldn't really unload.
4 MS. ROBESON: Which one, I only have a black and
5 white. Which one is blue?
6 THE WITNESS: So the blue is the one that's bigger
7 on the side of the picture?
8 MS. ROBESON: In the forefront of the pictures?
9 THE WITNESS: Yes, exactly. So that truck was
10 waiting for the other truck to finish unloading and
11 obviously the move, it takes a little while, but where the
12 other, where the truck right in front of the building is
13 located is typically where moves get done for our building
14 because they usually can't fit in the loading dock to make
15 sure of that. So what they do is they unload from that spot
16 and then they walk materials through the loading dock and
17 then toward the elevator.
18 MS. ROBESON: Now is the one at the bottom of 4,
19 is that taken from -- can you describe the perspective, like
20 where would I be standing?
21 THE WITNESS: Yeah. You would be standing -- so
22 you have a black and white, so you can't really see, but
23 you'd essentially be standing pretty close to the northwest
24 corner of 4901 Hampden Lane. So --
25 MS. ROBESON: Okay.

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1 THE WITNESS: -- so I could go and point to that
2 if that would help?
3 MS. ROBESON: No, I understand.
4 THE WITNESS: Okay.
5 MS. ROBESON: The northwest corner. Okay. I
6 understand --
7 THE WITNESS: Yes.
8 MS. ROBESON: -- where you are.
9 THE WITNESS: Yes.
10 MR. KNOPF: Excuse me one minute.
11 THE WITNESS: Yes.
12 MR. KNOPF: I don't know how I ended up with the
13 color and you have a black and white. I would be happy to
14 place in the record my --
15 MS. ROBESON: Does anyone --
16 MR. KNOPF: -- color copy of --
17 MS. ROBESON: Does anyone have an objection if I
18 take --
19 MR. ABRAMS: No.
20 MS. ROBESON: -- the color copies into the record?
21 THE WITNESS: The color is really much more
22 useful.
23 MS. ROBESON: Okay.
24 THE WITNESS: I mean I'll give you mine if you
25 want it. Okay. Okay.

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1 MS. ROBESON: So I'm just going to -- I'll make
2 this a new exhibit. I think we're on -- our server is still
3 not working, so 121.
4 (Exhibit No. 121 was marked for
5 identification.)
6 MS. ROBESON: But I just want the pictures. So if
7 you can take that off? But I have that in this one.
8 MR. KNOPF: You can --
9 MS. ROBESON: -- in this one, yes. So 121 is
10 color versions of, color versions of 102(a), colored photos
11 of 102(a).
12 THE WITNESS: So the other thing, the other thing
13 to observe about the picture we were just discussing is the
14 service vehicle that is actually using our loading dock in
15 on that day, I can't read the writing on the car, but it has
16 ladders on it and it's providing some service in our
17 building and the interesting thing about that which, again,
18 happens from a pedestrian's perspective is that it's
19 blocking the sidewalk.
20 So moving to what I think is now page 5, flipping
21 the page, this is a picture again that Lou took. It's a
22 picture showing multiple, illegally parked cars on the south
23 side of Montgomery Lane and west of West Lane.
24 MS. ROBESON: Is that, okay, wait. Where, what
25 perspective am I looking at here?

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1 THE WITNESS: So this is, this is, you're
2 basically looking at --
3 MS. ROBESON: Where am I standing?
4 THE WITNESS: You're standing, well, you're in the
5 middle of the road --
6 MS. ROBESON: Yes.
7 THE WITNESS: -- in front of our, I'm sorry, in
8 front of 4821 essentially, yeah.
9 MS. ROBESON: The Edgemoor Highrise?
10 THE WITNESS: Yeah.
11 MS. ROBESON: And am I looking west or --
12 THE WITNESS: You're --
13 MS. ROBESON: -- west?
14 THE WITNESS: You're looking west at that point.
15 MS. ROBESON: Okay.
16 THE WITNESS: Okay. So flipping -- so now you can
17 see that that -- on that page, page 5, it says the remaining
18 pictures were taken with my Blackberry, so --
19 MS. ROBESON: Okay.
20 THE WITNESS: This is a picture just showing --
21 MS. ROBESON: And this is the picture shown on
22 page 6?
23 THE WITNESS: Page 6, exactly.
24 MS. ROBESON: Okay.
25 THE WITNESS: So, okay. So this shows, as I

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1 describe here, a typical day outside the Edgemoor. The
2 truck in the lower, right corner of the picture is a service
3 vehicle and it's parked in a no parking lay by, so we have
4 two lay bys, one that allows for 2-hour parking and one that
5 does not allow for -- it's basically the short-term
6 unloading lay by.
7 MS. ROBESON: And where were you?
8 THE WITNESS: I was standing right next to that
9 truck. I'm in the middle, I'm in the street --
10 MS. ROBESON: In front of the Edgemoor?
11 THE WITNESS: In front of the Edgemoor standing
12 next to that truck.
13 MS. ROBESON: And what way were you looking?
14 THE WITNESS: And I was facing, I was facing west
15 on --
16 MS. ROBESON: Okay.
17 THE WITNESS: -- toward the library on this
18 street.
19 MS. ROBESON: All right.
20 THE WITNESS: So, again, it shows multiple,
21 illegally parked cars. It's not unusual to have that
22 situation happen. The next page shows, again, like I said,
23 I tried to take multiple pictures just to offer a slightly
24 different vantage point. I didn't move too far here on the
25 next one. It's pretty similar. But --

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1 MR. KNOPF: Page 7?
2 THE WITNESS: Page 7, right, but I did move back.
3 So the next two, page 7 is the same situation that I just
4 described, but it's through two different vantage points.
5 MS. ROBESON: And what's the vantage point here?
6 THE WITNESS: I just moved back so the --
7 MS. ROBESON: Oh, I see. You moved east?
8 THE WITNESS: Exactly. I moved east and a little
9 into the street on the top part.
10 MS. ROBESON: And which cars are illegally parked?
11 THE WITNESS: So the silver car, I'd say, let's
12 see, on the --
13 MS. ROBESON: On the left?
14 THE WITNESS: -- on the left side of the picture,
15 right, the silver cars will be illegally parked. And one,
16 two, you can typically fit four, yeah, you can fit four cars
17 between the no parking sign, between the arrows on the south
18 side of Montgomery Lane at that point. So one, two, three,
19 four, so you see there's five cars there, so that last
20 silver car is illegally parked. And then white, if you look
21 right in the middle of the picture, if you look up the
22 street, there's a white car up there that looks like a kind
23 of a SUV type car. You can see the back of it
24 MS. ROBESON: With the spare tire on the back?
25 THE WITNESS: It does not look like a spare tire.

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1 It's right here in the middle of the street.
2 MS. ROBESON: Oh, okay. Wait. Which one are
3 those?
4 THE WITNESS: I'm on page 6.
5 MS. ROBESON: Oh, I'm sorry. Okay. I see.
6 THE WITNESS: That car is ultimately --
7 MS. ROBESON: Wait. That's not what my --
8 MS. HARRIS: I think it's the same page.
9 MS. ROBESON: -- page --
10 THE WITNESS: Sorry, that's 8? Okay. So hang on.
11 One, two, three, four, five, six. So maybe you have, did
12 you have other, some --
13 MS. ROBESON: Okay. Well, let's --
14 MS. HARRIS: That could be on the bottom.
15 MS. ROBESON: -- let's go back --
16 THE WITNESS: Okay.
17 MS. ROBESON: -- okay. I need to --
18 THE WITNESS: Okay.
19 MS. ROBESON: Hold on one second.
20 THE WITNESS: Okay.
21 MS. ROBESON: So I'm looking at this picture which
22 I have marked on page 7.
23 THE WITNESS: Page 7, okay. So that's, is that
24 this? No?
25 MR. KNOPF: No.

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1 THE WITNESS: No?
2 MS. ROBESON: No.
3 THE WITNESS: No? That's this?
4 MS. ROBESON: Yes.
5 THE WITNESS: Yes. Okay. So that's --
6 MS. ROBESON: No, no, I don't think so.
7 THE WITNESS: No? It's different writing.
8 MS. ROBESON: You go back one page.
9 THE WITNESS: Okay. So let's get this squared
10 away. Okay.
11 MS. HARRIS: I think everyone has -- my pages are
12 different than yours that are different from his.
13 MS. WILTSHIRE: Mine are the same as yours.
14 THE WITNESS: She has this one, okay, she --
15 you're looking at this one? Yes. Yes.
16 MS. WILTSHIRE: Yes.
17 THE WITNESS: Yes? Okay. What page is that?
18 MS. ROBESON: That for me is seven.
19 THE WITNESS: Seven?
20 MS. ROBESON: Now where are you standing on this
21 page?
22 THE WITNESS: On this page, again, I -- for me,
23 most of these pictures were taken right outside 4821
24 Montgomery Lane.
25 MS. ROBESON: Okay.

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1 THE WITNESS: So, but I haven't gotten to this
2 page yet, so --
3 MS. ROBESON: Okay. So we're on this page?
4 THE WITNESS: I was back on --
5 MS. ROBESON: Okay.
6 THE WITNESS: -- on here.
7 MR. KNOPF: Maybe, why don't I take this and put
8 the two together and just number them so we'll both be on
9 the same page?
10 MS. ROBESON: Well, show me the picture again
11 where you are.
12 THE WITNESS: Okay. It's -- this is a
13 distinguishing page because it has a little picture, so --
14 MS. ROBESON: Yes.
15 THE WITNESS: -- I'm on the page after this page.
16 MS. ROBESON: Okay. Now let me see picture after
17 that page. Okay. I'm not sure it's the same --
18 MS. WILTSHIRE: I think it's your page 7, because
19 I think yours is the same as mine.
20 MS. ROBESON: Seven?
21 MS. WILTSHIRE: That's right.
22 THE WITNESS: No, this has different text on it,
23 so --
24 MS. ROBESON: It's not the same page, so --
25 MS. HARRIS: Maybe we should start --

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1 MS. ROBESON: Why don't you?
2 MR. KNOPF: Just pull this apart and put it in the
3 same order?
4 MS. ROBESON: Yes.
5 MR. KNOPF: Everybody else seems to be in the same
6 order.
7 MS. ROBESON: Yes. So --
8 MR. KNOPF: May I approach you and --
9 MS. ROBESON: Sure.
10 MS. HARRIS: Well, can I come up there too --
11 MS. ROBESON: Sure.
12 MS. HARRIS: -- to make sure mine are the same?
13 MS. ROBESON: Everybody can come up.
14 MS. HARRIS: I would suggest we start at the
15 beginning of the --
16 MS. ROBESON: Wait, that's where it was different.
17 This is my five.
18 MR. KNOPF: Here it is, it's on the back. That's
19 the --
20 MS. ROBESON: We'll turn this -- this is, is this
21 what I have as five? Yes. No. Yes. This is five.
22 MS. HARRIS: This looks like this one is right
23 because that's double copies.
24 MS. ROBESON: Yes, this is --
25 MS. HARRIS: This is the order.

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1 MS. ROBESON: This is five.
2 MR. KNOPF: It's this one?
3 MS. ROBESON: Yes, that's what I'm saying. It's
4 on --
5 MR. KNOPF: This one is five and then this one
6 would be six?
7 MS. HARRIS: Yes.
8 MS. ROBESON: Okay. Now this one is seven.
9 MR. KNOPF: Seven. Well, wait a second, you have
10 seven?
11 MS. ROBESON: Seven, okay. Are you on board with
12 me?
13 MS. HARRIS: Yes.
14 MS. ROBESON: Okay. You're okay? Now do you have
15 one that I don't have?
16 MS. HARRIS: Just, there was this one, I think.
17 Actually I have a bunch more.
18 MR. KNOPF: I have a bunch more. Oh, he has a
19 bunch. Maybe I didn't put those --
20 MS. ROBESON: Hold on. Hold on. Maybe I -- this
21 is 102(a). I -- ah-hah, wait, I do -- I don't -- he didn't
22 have them in color. This is what he gave me. This is what
23 I have in the record. This is the original --
24 MR. KNOPF: The original --
25 MS. ROBESON: But my color photo versions only go

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1 up to 10 and you should, what I have in the record is one
2 more paragraph.
3 MR. KNOPF: This one house, is that the paragraph
4 you said --
5 MS. ROBESON: That's the last paragraph I have in
6 Exhibit 102. Two houses.
7 MR. KNOPF: This says one house. You have two at
8 home.
9 MS. ROBESON: I have a feeling that some of this
10 has to do with copying both sides, but -- so what do you
11 want to do? Ms. Harris, are you going to object if he
12 submits the balance of the --
13 MS. HARRIS: No, I -- not at all. I just want to
14 make sure that we all have the same numbering for them --
15 MS. ROBESON: Right.
16 MS. HARRIS: -- because it's --
17 MS. WILTSHIRE: Would it be helpful if you had my
18 copy?
19 MS. HARRIS: No, I'm good. I think it's the --
20 MR. KNOPF: Here is the last --
21 MS. ROBESON: So am I. I don't need them, no, I'm
22 teasing.
23 MS. HARRIS: Should we make black and white --
24 MS. ROBESON: These aren't these, are they?
25 MR. KNOPF: No, no. Those are different.

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1 MS. ROBESON: Okay. Let me -- why don't you give
2 me the pages that I don't have, which are --
3 MS. HARRIS: We don't have that. We don't have
4 that.
5 MS. ROBESON: No, I don't.
6 MR. KNOPF: Let's put them in the same order.
7 This one -- no.
8 MS. HARRIS: No, we finished up at 10 and everyone
9 was in agreement --
10 MS. ROBESON: We can do this.
11 MS. HARRIS: -- until page 10.
12 MS. ROBESON: Now we have a --
13 MS. HARRIS: Right.
14 MS. ROBESON: Or I have 11 as this paragraph.
15 MS. HARRIS: Yes, you know what, why don't we do
16 this. Why don't we just go make copies of the rest of this?
17 MS. ROBESON: Okay. We'll go off the record for
18 two minutes then I will make -- is this your --
19 MS. HARRIS: That's mine.
20 MS. ROBESON: Is it --
21 MS. HARRIS: Do you agree with that order --
22 MR. KNOPF: No, that --
23 MS. HARRIS: -- that we have it in?
24 MR. KNOPF: No, that, no I don't -- here, that's,
25 doesn't matter, but I just want to get this set in that

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1 order.
2 MS. HARRIS: Okay. So take that one.
3 MR. KNOPF: I'm not sure if I even have that one.
4 That's -- let's make sure we all have the same -- do you
5 have this one? Apart from all others, let's make sure we
6 have the same one.
7 MS. HARRIS: I don't think I have that.
8 MS. ROBESON: Okay. Well, then let's do --
9 MR. KNOPF: Yes, you do. She has that.
10 MS. HARRIS: All right.
11 MR. KNOPF: Do you have this one with a red truck?
12 I'm going by colors.
13 MS. HARRIS: Yes.
14 MR. KNOPF: Yes? Okay. You have this one?
15 MS. HARRIS: Wait, that one? No, I don't have
16 that one. Which one? Yes, that one we have as 10.
17 Everyone has that one.
18 MR. KNOPF: Oh, let's mark it 10. Oh, I have
19 that, no, no, I have 10 as this one.
20 MS. ROBESON: Okay.
21 MR. KNOPF: This is the one.
22 MS. ROBESON: You know what, we're going to go off
23 the record. How much more does he have?
24 MR. KNOPF: This is it.
25 MS. ROBESON: Okay. We're going to go off the

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1 record for three minutes and you can decide how to order
2 these together and then I'll make a copy of them.
3 MS. HARRIS: And we're good through 10?
4 MR. KNOPF: Yes, we're good through 10. Let's
5 just stay with the second -- this is 10?
6 MS. HARRIS: This is 10.
7 MR. KNOPF: This is 10?
8 MS. HARRIS: Yes.
9 MR. KNOPF: No.
10 MS. HARRIS: No, that's a different 10.
11 MS. ROBESON: Would it help to have Mr. Niebler
12 come up and --
13 MR. KNOPF: Yes.
14 MS. HARRIS: And then we have these that we --
15 sorry, this is 11. That is 10 and 11. Make this one 12. I
16 assume it would --
17 MR. KNOPF: No, I --
18 MS. HARRIS: Make 13 the orange truck. Make 14
19 the red truck. I'll take 15 back.
20 (Recess)
21 MS. ROBESON: So I don't have to make another
22 exhibit?
23 THE WITNESS: I'm not going to go quickly back
24 through this, so I wanted to --
25 MS. ROBESON: Okay. Now wait.

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1 MR. KNOPF: This is --
2 MS. ROBESON: First, I need to know what I
3 don't -- I don't have this. Okay. Now do you want the
4 colored ones in the record or --
5 MR. KNOPF: The colored ones go in the record.
6 MS. ROBESON: Okay. We're going to stay off the
7 record and I am going to go copy these and I will be right
8 back.
9 (Recess)
10 MS. ROBESON: Back on the record.
11 MS. HARRIS: Madame Hearing Examiner, if I could
12 note, it appears in preparing the exhibit to what was
13 originally submitted --
14 MS. ROBESON: Yes.
15 MS. HARRIS: -- that pages 11 through 14, in fact,
16 were not in the original submission. So there were no -- I
17 want to note that. We don't necessarily object in them
18 adding, but I would note that these are more exhibits.
19 MS. ROBESON: Okay. All right. Thank you. And
20 so this will be Exhibit 121, which is the color photos of
21 102.
22 THE WITNESS: Okay.
23 MS. ROBESON: A, with the additional photos of 11
24 through 13. Thank you. All right. Let's go.
25 THE WITNESS: Okay. With that sorted out, having

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1 looked at this again, I believe my testimony previously
2 addressed pages 1 through 6. Actually, yes, 1 through 6 and
3 so I was going to start on page 7.
4 MS. ROBESON: Okay.
5 THE WITNESS: Okay? This picture was taken,
6 again, with me in the street looking west in front of 4821
7 Montgomery Lane. Here we have an air conditioning and
8 heating van illegally parked in the no parking lay by. We
9 have, on the left, on the right side, sorry, of the picture.
10 On the left side, we have an illegally parked blue sedan.
11 MS. ROBESON: Okay.
12 THE WITNESS: And then looking up the road past
13 the air conditioning, heating, plumbing, looking west, you
14 can see a, a van, a minivan that's parked with, half hanging
15 out in the street and that, again, is not an uncommon
16 occurrence on our street.
17 MS. ROBESON: And when you say not uncommon, can
18 you give me an idea of frequency?
19 THE WITNESS: Yes. These kinds of events happen
20 on a weekly basis, sometimes multiple times a week, but it's
21 fair to say on a weekly basis.
22 MS. ROBESON: Okay. And why, what do you mean by
23 no parking lay by? Isn't the, is the lay by for temporary
24 stopping, is that what you're saying?
25 THE WITNESS: Yes, it's the lay by that's directly

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1 in front of the door for 4821 Montgomery Lane.
2 MS. ROBESON: So that's your loading area?
3 THE WITNESS: It's, yeah, and initially the two
4 lay bys were actually, when we first moved in, both no
5 parking. So you weren't allowed to park in either one and
6 the one that is further west in the street was changed to be
7 coming, provide more parking that was changed to two hour
8 parking.
9 MS. ROBESON: Okay.
10 THE WITNESS: So there's a two-hour parking lay by
11 and then there's a sort of, taxicab pulls out, you get out,
12 whatever, you know, somebody is talking and gets out --
13 MS. ROBESON: Fedex?
14 THE WITNESS: -- runs in. I'm sorry?
15 MS. ROBESON: Fedex?
16 THE WITNESS: Fedex will sometimes use that, but
17 as we'll see in the next picture --
18 MS. ROBESON: Okay. So we're moving --
19 THE WITNESS: Yes, this picture is coming up.
20 Then you'll see where they sometimes park as well.
21 MS. ROBESON: Okay.
22 THE WITNESS: So let's go to page 8. Page 8 is,
23 what I was talking about previously, so let's just go
24 through this one more time. So I'm in the middle of the
25 street facing west in front of 4821 Montgomery Lane standing

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1 next to, again, an illegally parked service vehicle of some
2 type on the right-hand side. On the left-hand side there's
3 an illegally parked silver sedan or coupe and then if you
4 look straight in the middle of the picture, up Montgomery
5 Lane, you can see a person in a red shirt in front of a
6 white SUV type car. It's a little bit more clear in the
7 bottom picture.
8 MS. ROBESON: Right.
9 THE WITNESS: That car is also illegally parked
10 and that is probably in front of the proposed Sandy Spring
11 building I think. It might be on the other side of West
12 Lane. I can't really tell from here. So it's probably, I
13 think it's in front of the Sandy Spring building.
14 MS. ROBESON: Okay.
15 THE WITNESS: And that person in the red shirt is
16 walking towards us in the meantime. So turn to page 9 to
17 answer your question about Fedex or SUV, I'm sorry --
18 MS. ROBESON: You know what, first tell me where
19 we are --
20 THE WITNESS: Okay. Okay.
21 MS. ROBESON: -- and where we're looking?
22 THE WITNESS: Okay. So here I'm standing in the
23 entrance, yes, the entrance to, the driveway entrance to
24 4821 Montgomery Lane. So I'm further east than in the other
25 two pictures, on the sidewalk, standing more or less right

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1 in front of where the cars enter out of 4821 Montgomery Lane
2 garage.
3 MS. ROBESON: Okay.
4 THE WITNESS: Again, face --
5 MS. ROBESON: Now can you show me where that is --
6 THE WITNESS: Yes.
7 MS. ROBESON: -- in 106(f) because -- is it right
8 after that little --
9 THE WITNESS: So that picture would be taken from
10 -- this is our loading dock right here with the big door and
11 --
12 MS. ROBESON: Okay. The big, the garage door is
13 showing on --
14 THE WITNESS: Yes, there's three doors when you
15 look at 4821 Montgomery Lane. There's a big one and then
16 two little ones next to it.
17 MS. ROBESON: Okay.
18 THE WITNESS: The big one is our loading dock.
19 That's --
20 MS. ROBESON: Okay.
21 THE WITNESS: -- okay? The smaller ones are where
22 cars enter and exit. Cars enter from the one that's further
23 east --
24 MS. ROBESON: Yes.
25 THE WITNESS: -- and they exit from the one that's

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1 one, further west.
2 MS. ROBESON: Okay. All right. Thank you. So
3 this is in the entrance --
4 THE WITNESS: This is the entrance to --
5 MS. ROBESON: -- the parking garage?
6 THE WITNESS: Right. Right. Again, looking west,
7 and her again we have a service vehicle of some type with a
8 ladder on top of it blocking the sidewalk. To answer your
9 question now about Fedex and UPS, even though the lay by for
10 delivery vehicles is empty in this picture, you can -- it's
11 the first lay by past the white truck that I just referred
12 to. There's nothing there. So the UPS truck could have
13 pulled in there, but it didn't. It parked instead on the --
14 now it's shown on the left side of the picture -- in front
15 of what would be part of 4901 Hampden Lane and it's parked
16 there.
17 Now maybe, I don't know, I can't -- I don't know
18 if the lay by was full when it stopped or, you know, I just
19 don't know that. So now the interesting thing about this
20 picture is it showed so many other things which is what
21 caused me to stop and take this picture. We have the pylons
22 circling a lawn care company's trailer.
23 MS. ROBESON: You mean the orange cones?
24 THE WITNESS: The orange cones, yes.
25 MS. ROBESON: Okay.

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1 THE WITNESS: Yes. So that, by the way, is
2 illegally parked as well because that's a no parking area
3 that doesn't extend that far down. And then if you look
4 again sort of in the middle, sort of in the middle of the
5 picture up here in the distance, on the color copy you'll
6 see a blue moving van. So if you see the one-way sign,
7 right below the one-way sign --
8 MS. ROBESON: I don't see that.
9 THE WITNESS: Okay. I'm just going, a copy, show
10 it to you?
11 MS. ROBESON: Oh, I think, well, I'd like you to
12 show me --
13 THE WITNESS: Okay.
14 MS. ROBESON: -- and see if I have it right.
15 THE WITNESS: Okay. I would point you to this
16 blue moving van and that vehicle.
17 MS. ROBESON: Oh, this?
18 THE WITNESS: Yes.
19 MS. ROBESON: Okay.
20 THE WITNESS: Yes. Yes.
21 MS. ROBESON: Okay. I do see that.
22 THE WITNESS: And that's an illegally parked
23 moving van.
24 MS. ROBESON: I'm going to mark on this blue
25 moving van to show a higher, where it is.

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1 THE WITNESS: So so that's -- so we have four
2 violations in this one picture alone. Okay. So that was
3 page 9. Moving to page 10, this vantage point -- so this is
4 now across the street from 4821 Montgomery -- oh, this --
5 MS. ROBESON: No, wait. I have two No. 10's.
6 THE WITNESS: Okay. Okay. You know what --
7 MS. ROBESON: I'm just calling this 10(a).
8 THE WITNESS: Okay.
9 MS. ROBESON: The one you're about to talk
10 about --
11 THE WITNESS: Yeah.
12 MS. ROBESON: -- how I can see --
13 THE WITNESS: But the interesting thing about
14 10(a) --
15 MS. ROBESON: Let me see it. Yes, that's what I
16 have as 10(a).
17 THE WITNESS: Okay. Okay. The interesting thing
18 about 10(a) is that it's really another vantage point, this
19 is what I was trying to do, take different vantage points --
20 MS. ROBESON: Right.
21 THE WITNESS: -- of page 7. So if you look back
22 at page 7 --
23 MS. ROBESON: Okay.
24 THE WITNESS: -- you can see the same blue
25 minivan --

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1 MS. ROBESON: Yes.
2 THE WITNESS: -- parked in the same posture on the
3 street and this 10 or 10(a) that I was just talking about is
4 just across the street from 4821, whereas the initial
5 picture was taken standing next to the service vehicle.
6 MS. ROBESON: Okay.
7 THE WITNESS: Okay. So --
8 MS. ROBESON: Now we're on 10(b).
9 THE WITNESS: Okay. So now we're on 10 --
10 MR. KNOPF: 10(b)? Which one is that?
11 MS. ROBESON: I have two 10's.
12 MR. KNOPF: Oh, you did the first one as 10(a)?
13 Okay. So this is --
14 MS. ROBESON: Or, no, I don't. Never mind. I've
15 got two 10's, but they're the same picture, so -- okay.
16 THE WITNESS: Nine, okay.
17 MS. ROBESON: 11.
18 THE WITNESS: Okay. Let me just get 6 back in my
19 order here. Okay. So, no, okay. So now we're onto 11. So
20 11, actually now where I am is I've moved west towards the
21 library, so I am standing near where the Edgemoor II North
22 or the Rothstein property would be located.
23 MS. ROBESON: The Edgemoor at Arlington North?
24 THE WITNESS: Edgemoor at Arlington -- yes, at
25 Arlington North.

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1 MS. ROBESON: Okay.
2 THE WITNESS: And now I'm facing east, so the
3 Edgemoor, the currently built Edgemoor is to our right in
4 this picture --
5 MS. ROBESON: The Edgemoor at Arlington?
6 THE WITNESS: Edgemoor at Arlington, exactly.
7 MS. ROBESON: Right.
8 THE WITNESS: This shows a number of interesting
9 things going on with both vehicles in this picture being
10 illegally parked and that car with the door open, it seems
11 like maybe they were just letting someone out. That car
12 stayed there a really long time because my kids were in the
13 library and I was just hanging out. So --
14 MS. ROBESON: Okay.
15 THE WITNESS: So that didn't, it wasn't just like
16 a two second thing. The, then if you look straight in the
17 middle of the picture, you'll see a service vehicle blocking
18 the sidewalk that is east of Edgemoor at Arlington and just
19 west of the City Homes.
20 MS. ROBESON: Okay.
21 THE WITNESS: And, by the way, that same situation
22 was present when you did your walk through. That --
23 MS. ROBESON: Okay.
24 THE WITNESS: -- that same exact same set-up with
25 a truck blocking that area of the sidewalk. Okay. To

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1 the -- page 12 now, the purpose of the top picture was to
2 show an illegally parked truck. Again, this truck looks
3 like it's turning. It wasn't turning. It's parked on West
4 Lane. So here I am sort of the in the middle of Montgomery
5 Lane facing east. West Lane is where you see it off to the
6 left and that truck is parked in that spot right there. And
7 I'm pretty sure, it says two legally parked cars, vehicles,
8 so I did check it. So on the left side, so the Chevy truck
9 is illegally parked on West Lane. On the right side, a
10 white truck, and it's just on the very edge of the
11 picture --
12 MS. ROBESON: I see it.
13 THE WITNESS: -- is illegally parked outside the
14 City Homes. So I did check that at the time I took the
15 picture. I walked down there and checked where it was
16 parked.
17 The purpose of the lower picture is just to show
18 the service vehicles that are required to maintain an 11-
19 unit building because that's the driveway for Edgemoor at
20 Arlington. And it's not unusual that they have service
21 vehicles lined up in that spot. In this day they had three
22 and it's only 11 units. So it just, it takes a lot of
23 service vehicles to maintain a building.
24 Moving to page 13. We have illegally parked
25 service, so, okay, so here I am. This would be --

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1 MS. ROBESON: The top picture?
2 THE WITNESS: The top picture is between the two
3 lay bys in front of 4821 Montgomery Lane. So I'm basically
4 right between the -- the no parking lay by is off the
5 picture behind me and the 2-hour parking lay by --
6 MS. ROBESON: 2-hour --
7 THE WITNESS: -- lay by is in front of me.
8 MS. ROBESON: And you're looking west?
9 THE WITNESS: And I'm looking west, right. And so
10 the second picture, sorry, the first picture shows an
11 illegally parked service vehicle in the distance, right. So
12 the reason I took this one is the white truck sort of in the
13 center of the picture off in the distance. I was just
14 trying to give context of the other --
15 MS. ROBESON: I see.
16 THE WITNESS: -- other cars --
17 MS. ROBESON: By City Homes?
18 THE WITNESS: Right, they were on the street,
19 exactly.
20 MS. ROBESON: Okay.
21 THE WITNESS: So that's an illegally parked,
22 that's, again, a lawn care vehicle with a trailer. The
23 bottom one is a large, illegally parked delivery flatbed.
24 Again, here I am in the middle of Montgomery Lane facing
25 west and so this truck is --

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1 MS. ROBESON: And where are you?
2 THE WITNESS: I'm in front of 4821 Montgomery
3 Lane.
4 MS. ROBESON: Okay. The first, the --
5 THE WITNESS: Yes.
6 MS. ROBESON: The no parking --
7 THE WITNESS: The no parking lay by, exactly.
8 And, okay, right. And what I was trying to do here is
9 actually this, so I was, again, trying to provide two
10 different vantage points. So the bottom picture is just a
11 different vantage point of the top picture and if you look
12 in a distance, you can see again that same white vehicle --
13 MS. ROBESON: I do see it.
14 THE WITNESS: -- so on that day, you had both the
15 lawn care illegally parked vehicle outside of City Homes, as
16 well as this illegally parked delivery truck. I don't know
17 what it was delivering.
18 MS. ROBESON: I also see, isn't there, that's, is
19 that the library windows in the back?
20 THE WITNESS: Yeah, yeah, that is the library
21 windows in the back, yeah, exactly.
22 MS. ROBESON: All right.
23 THE WITNESS: Exactly.
24 MS. ROBESON: 14.
25 THE WITNESS: Okay. 14, this is now a picture

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1 of -- now to the, essentially the western-most point of 4821
2 Montgomery Lane, I believe, because that is the -- yes, that
3 is the driveway, yes, that is the driveway to where that
4 Sandy Spring building is going to be built. So that's right
5 to the right there.
6 So across the street in front of City Homes, I
7 honestly don't know what these trucks were. It looks like
8 some kind of sanitation kind of trucks, but they, they took
9 up the whole, occupied the whole street going one way, so
10 cars could obviously not get around it and obviously they
11 were there for quite awhile. They went out and put out
12 those pylons, the orange cones. Okay. And I think that
13 brings me to an end.
14 MS. ROBESON: Okay. Do you want to explain what
15 this diagram is?
16 THE WITNESS: That diagram really goes to the
17 point that I testified to about the number of different
18 buildings and the number of units that are on the street
19 essentially.
20 MS. ROBESON: Oh, I see. Okay.
21 THE WITNESS: And it doesn't show the buildings as
22 well, it just shows the developments.
23 MS. ROBESON: Yes.
24 THE WITNESS: My finer point that's not shown on
25 the diagram is that if you look at, if you actually take the

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1 number of units that are reflected on that diagram and look
2 at the number of buildings that they're spread over, they're
3 spread over eight different units, buildings, including
4 Sandy Spring.
5 MS. ROBESON: Okay.
6 BY MR. KNOPF:
7 Q I just have one clarifying question. In your main
8 testimony, you referred to Montgomery Lane as having, I
9 think you said quirky dead end?
10 A Quirky dead in the middle. That's true, yes.
11 Q Could you -- oh, in the middle of the street?
12 A In the middle of the street.
13 Q I don't know that I heard the middle of the
14 street. Can you explain what you mean?
15 A Yes. Yes. I just, I just mean basically you can
16 drive west from Woodmont all the way through to Arlington
17 because that is permitted, but if you're coming from the
18 library and driving east on Montgomery Lane, there is a --
19 it dead ends at West Lane. So --
20 MS. ROBESON: Well, there's two do not enters.
21 THE WITNESS: Right. Yes. Yes, whatever, yes.
22 Correct.
23 MS. ROBESON: If that's what you're wondering?
24 THE WITNESS: Yes, that's what I was referring to.
25 MR. KNOPF: Thank you. I have no further

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1 questions.
2 MS. ROBESON: Okay. Mr. Abrams.
3 MR. ABRAMS: Yes.
4 CROSS-EXAMINATION
5 BY MR. ABRAMS:
6 Q Yes. Is it Mr. Niebler?
7 A Niebler.
8 Q Niebler? Does your condo association have rules
9 and regulations as to control deliveries, service vehicles
10 and moving vans?
11 A I believe so.
12 Q Do you know what they are?
13 A I did at some point.
14 Q Do you have a lobby area manned by a concierge --
15 A Yes.
16 Q -- or a clerk?
17 A Yes, we do.
18 Q And does she accept the deliveries or he accept
19 the deliveries?
20 A Yes.
21 Q And service vehicles?
22 A Yes. We have a manned staff, a front desk. It's
23 a 24-hour desk that's required by our bylaws.
24 Q Okay.
25 A And when deliveries arrive, they go, they will

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1 park their vehicle, they'll take whatever they need to take
2 inside and it will be logged into a log that, and recorded
3 and it will be distributed within the building.
4 Q Now I think it's been previously testified by the
5 applicant that there would be on the proposed project
6 controls at the desk as you enter in terms of the deliveries
7 and service vehicles and things of that nature. Have you
8 basically been able to control the parking situation by
9 having somebody at a front desk controlling the deliveries
10 that are made to your building?
11 A No.
12 Q And does your condo association have a management
13 company?
14 A Yes.
15 Q And is that management company, do they staff it
16 personally?
17 A In part. We have -- our, the person who works
18 from 7:30 to 3:00 or 3:30 is an employee of the condominium
19 directly. And the people who work outside of those hours
20 are employees of a staffing agency that was hired by the
21 board of directors. So to answer your question, the
22 management company itself actually does not provide anybody
23 other than a remote management person who kind of oversees
24 the whole building.
25 Q The parking and circulation problems, in your

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1 opinion are the problems associated with a lack of
2 reasonable enforcement or are they associated with
3 inadequate street and parking infrastructure?
4 A Yes and yes. I think predominantly they are
5 associated with a, what -- the street is just really at its
6 capacity for what it was, for how it's designed, but could
7 you solve some of the problem with better enforcement? Yes.
8 Could you make it all go away? No.
9 Q Have you attempted to work things out in terms of
10 a regular police drive by to determine, you know, whether
11 there's parking enforcement problems and ticketing and
12 things like that?
13 A I have, since I walk by the Bethesda Police
14 Station, I have periodically over the course of my time
15 walking past it either stopped a policeman on the street or
16 whatever and not specifically for the parking, but because
17 many, many cars drive the wrong way past the do not enter
18 signs --
19 Q All right.
20 A -- that were described. And it's really a
21 pedestrian danger zone at that point and I've asked for
22 better enforcement of pedestrian, for pedestrian safety
23 purposes and have received little response. We, I think I
24 can recall two times in the time that I've been living here
25 that police have shown up and ticketed cars, you know, it's

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1 a noteworthy event because usually an email goes out in the
2 building, you know, everyone pay attention, you know? So --
3 MR. ABRAMS: That's all the questions I have.
4 MS. ROBESON: Ms. Harris.
5 MS. HARRIS: Thank you.
6 BY MS. HARRIS:
7 Q You noted that the concierge receives packages,
8 that's one of her jobs, correct?
9 A Yes, his.
10 Q And is it also one of her jobs, his or her job to
11 monitor the parking in the lay bys?
12 A To make life easier for residents. I don't know
13 if it's a job or not. I think he does try to do that a
14 little bit, but the level of success he has, he has other
15 things going on --
16 Q Uh-huh.
17 A -- and he's only one person, so I don't really
18 know if it's his job or not.
19 Q And given what -- I've been in your building
20 numerous times for meetings that we've had -- in fact, they
21 don't even really have a good vantage point to the street
22 from where the concierge desk is located, isn't that
23 correct?
24 A They are not looking out the door where the desk
25 is, yes.

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1 Q Okay. And did you say that they do or, I'm
2 unclear in your answer, do they manage move-ins or do they
3 not?
4 A They definitely manage move-ins because you have
5 to pay a fee for a move-in and so they know, it's on the
6 calendar, they know it's coming and it's not an ideal
7 situation in any event, so they try to make sure that, you
8 know, a parking lay by is available for another truck that's
9 supposed to arrive and they do make sure that the loading
10 dock is open so that materials can be moved in.
11 Q Mr. Pohoryles noted, and I think you did as well,
12 that in terms of the pictures, that he snapped when an event
13 occurred. I mean obviously, and you can tell from the
14 pictures, you didn't snap when there wasn't an event,
15 correct?
16 A That's true. I did not snap absence of --
17 Q So then it's really only representative of when
18 something was happening versus the majority of the time when
19 something isn't happening?
20 A It's representative of things that struck me as
21 having multiple violations around the same time.
22 Q Okay.
23 A I didn't photograph just sort of regular, every
24 day traffic on the street.
25 Q Okay. And if you look at page 5 and 7, and

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1 hopefully we have our numbers now correctly --
2 A I think.
3 Q Well, first of all, let me just -- well, if you
4 looked at pages 5 and 7, would you not agree that if, in
5 fact, the Sector Plan recommendation of no parking on the
6 south side would have been enforced that a lot of the, what
7 you see on this picture would be eliminated?
8 A No, I don't agree with that.
9 Q Because people would be continuing to park
10 illegally?
11 A You question was whether parking was eliminated on
12 the south side. The south side is one silver coupe or
13 sedan, but there are two other --
14 Q No, the entire -- on page 5? I think now we'll
15 see if our numbering -- is that what you got for page 5?
16 A Yes.
17 Q All right. How many cars -- let's start a
18 different way -- how many cars on this south side of the
19 street?
20 A There are five cars total I count on the south
21 side of the street.
22 Q Okay.
23 A And one of them is illegally parked.
24 Q No, but the Sector Plan in its recommendation of
25 no parking on the south side --

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1 A Okay.
2 Q -- how many cars would be eliminated from this
3 side? If no parking were --
4 A If there was no parking -- if no parking was
5 permitted on that street, then --
6 Q On the south side?
7 A -- on the south side --
8 Q Okay.
9 A -- of Montgomery Lane and those cars were there,
10 five would be illegally parked.
11 Q Okay. And if there was strict enforcement and, in
12 fact, then potentially none of them would be because they
13 know they'd continually get tickets, correct?
14 A Potentially.
15 Q You noted on, I think it was one of these pages,
16 page 5 or 6, that the truck was parked in the lay by because
17 there was no other place? That's one of the notes.
18 MS. ROBESON: Which truck? The white one?
19 BY MS. HARRIS:
20 Q The white one, sorry, 4.
21 A 4?
22 Q 4.
23 MS. ROBESON: Which, the blue, the bright blue or
24 the dark blue?
25 MS. HARRIS: It says the image below was taken on

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1 another day when a mover was unloading in the lay by.
2 MS. ROBESON: Oh, okay.
3 BY MS. HARRIS:
4 Q Why was the truck not in the loading dock?
5 A Because we had a service vehicle at that time as
6 you can see that that, with the ladders on top, is in our,
7 is in our loading dock at the same time.
8 Q In your -- how many loading docks do you have?
9 A One.
10 Q So if you had two or three, that may help the
11 problem?
12 A If we could rebuild the building, sure.
13 Q So if your building were like the subject
14 building, providing three times the amount of loading
15 required, it could mitigate the problem potentially?
16 A Potentially.
17 Q How many loading, well, actually let's start with
18 page 1. Can you note for me on each one of these pages how
19 many cars you actually see driving? Let's start with page
20 1.
21 A Page 1, I don't know because I didn't take the
22 picture.
23 Q Does it look like any are driving?
24 A If I had to guess, it looks like the car on the
25 far left of the picture is waiting --

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1 Q Okay.
2 A -- to pass the fire truck.
3 Q And then page 2?
4 A I see in the top picture, I don't believe any of
5 those are driving because those look like they're parked on
6 the right. On the bottom picture, I believe I see two
7 waiting to pass the fire truck.
8 Q Okay. And then on page 3?
9 A I believe I see the same two vehicles waiting to
10 pass the fire truck.
11 Q How do you know those aren't parked and that
12 they're waiting?
13 A Because they don't look like they're close to the
14 curb to me.
15 Q That doesn't look close the curb, the one in the
16 top picture?
17 A No, it doesn't actually. I'm quire sure those
18 were driving.
19 Q Okay. And then on page 4?
20 A Sorry. The last answer, by the way, should be
21 three on the bottom picture because there is one driving --
22 Q Okay.
23 A -- turning left. Page 4, there are three, I'm
24 sorry, three vehicles driving. In fact, this picture proves
25 that the other one was driving because the van now, the

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1 first truck is in a different position, it's backing up to
2 make room for the legally turning car out of our building.
3 Q So one of your own residents is making an illegal
4 turn out of the building?
5 A Yes, because the road is blocked by the fire
6 truck.
7 Q Okay. Which is a situation that could occur on
8 any street at any time, correct?
9 A It's more likely to occur on this street because
10 it's 20 feet wide.
11 Q And how many cars on the bottom picture on page 4
12 driving?
13 A I see, I believe I see one in the distance
14 probably.
15 Q And on page 5?
16 A I do not see any in this picture that I think
17 they're driving.
18 Q And 6, beside your car?
19 A That's not my car. That's Mr. Pohoryles's car.
20 Q Sorry.
21 A But I believe that would be -- I see one.
22 Q One?
23 A Well, hipped -- he's --
24 Q Hipped? Okay.
25 A I don't know if he was driving when he took the

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1 picture, but --
2 Q Okay. And then --
3 A -- I hope he wasn't for his own safety but, you
4 know --
5 Q Okay. 7 and 8, we can go through this quickly,
6 how many driving?
7 A I don't believe I see any in that one.
8 Q 8?
9 A 8, I don't believe I see any in that one.
10 Q 9?
11 A I believe, actually, there's -- in the very far
12 distance --
13 Q Yes, I see it.
14 A -- next to the blue truck I think there's --
15 Q Yes.
16 A -- I think there's one driving.
17 Q And 10?
18 A 10 is the same thing, so whatever that car was
19 driving, no, I'm sorry. 10 I think there's none on that
20 picture.
21 Q And 11?
22 A 11, like I said, you know, I'm not sure what you
23 want to call -- the one on the left is probably parked
24 because it was there for a really long time, so -- so
25 probably none driving there.

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1 Q 12?

2 A 12, I don't see any driving at that point.

3 Q 13?

4 A 13? None.

5 Q Okay. 14?

6 A 14, none. And I'm glad there weren't many because

7 I was in the middle of the street taking pictures.

8 Q Right. Well, the times I've been down there there

9 were kids playing soccer in the middle of the street. When

10 you, I mean based on that, when you say that, what, to the

11 extent you feel there's a problem going on, it's a parking

12 and loading problem, would you agree with that?

13 A Uh-huh.

14 Q And based on the few number of cars that we

15 pointed out in these pictures?

16 A No, I mean I don't entirely agree with that. I

17 think there's been previous testimony that at rush hour

18 times there's a great deal of traffic that goes out of the

19 parking garage on Woodmont and turns right onto Montgomery

20 Lane to get to Arlington and there's a steady stream of cars

21 at that point --

22 Q And --

23 A -- and --

24 Q -- just --

25 A -- they stack up at Arlington Road at the light

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1 there.

2 Q And what is your definition of rush hour?

3 A When people leave work.

4 Q No, I -- and what hours would those be

5 approximately?

6 A I don't know. When people leave work. I mean all

7 I can tell you is I come around, if I leave work at 5ish or

8 so, or 5:00 or 7:00, I guess, is probably when I --

9 Q Okay.

10 A -- most likely see those kinds of --

11 Q I don't know if I can ask this, but I'm going to

12 ask it. When I -- why, based on what you just said, why is

13 it for as long as this case has been going on every time

14 I've driven down Montgomery Lane and I go down there a lot

15 between 5:00 and 7:00, especially when I had meetings in

16 Rockville, I have never once, not once ever experienced a

17 situation her --

18 MR. ABRAMS: Objection. Objection

19 MS. ROBESON: You can't --

20 MR. ABRAMS: If she wants to testify --

21 MS. HARRIS: I can't ask that?

22 MS. ROBESON: Yes.

23 MR. ABRAMS: -- raise your right hand and you'll

24 be subject to cross-examination.

25 BY MS. HARRIS:

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1 Q How many loading spaces does the City Homes have?

2 A I have no idea. I think -- I really don't know.

3 Q And if they had -- I think that's probably

4 right -- if they had more loading spaces, do you think some

5 of the situations that you showed -- I'm assuming, would you

6 agree that some of the issues on the street were probably

7 not vehicles servicing the Highrise Edgemoor, but likely,

8 for instance, on page 9, servicing City Homes?

9 A Not necessarily. I think, actually I believe that

10 we have a common landscaper, so that landscape vehicle may

11 have been servicing both ours and theirs. I'm not sure --

12 Q So where --

13 A -- I'm not sure about that.

14 Q Where do you think, where do the City Homes's

15 service trucks and such park?

16 A I honestly don't really know --

17 Q Okay.

18 A -- where they park. I mean they park wherever

19 they can because --

20 Q Okay.

21 A -- because there is not a lot of space.

22 Q And how many parking spaces are in the Highrise

23 Edgemoor?

24 A About, around 100, I believe.

25 Q Were you aware, and you may be aware since you

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1 said you had two contracts on the property, that when it was

2 originally approved, that the property was actually approved

3 for 188 parking spaces?

4 A No, I was not aware of that.

5 Q Okay. Referring to page 8 for a moment, you noted

6 that that car in the top right-hand was parked. Is it just

7 my eyes or it looks to me like they actually have brake

8 lights on, especially in that bottom picture. Would you

9 agree with that?

10 MS. ROBESON: Which page are you on?

11 MS. HARRIS: Page 8, the one that has a person in

12 a red shirt walking on the right-hand side of the road.

13 THE WITNESS: Well, I mean, clearly the person

14 with the red shirt has walked however far he's walked and

15 the car hasn't moved, so I don't know if he happened to snap

16 the picture of the building that the person started up the

17 car and was going to drive away or whatever, but --

18 BY MS. HARRIS:

19 Q But in the bottom picture, the bottom picture is

20 taken from further away --

21 A Yes.

22 Q -- correct?

23 A Yes.

24 Q And wouldn't you agree with me that the car in

25 that picture looks closer than in the picture at the top

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1 where he's actually closer to the car?
2 A He doesn't look that much closer to me, no. I
3 mean I do agree with --
4 MS. ROBESON: What's the relevance of this?
5 MS. HARRIS: Well, he was talking about all the
6 congestion on this street and, in fact, I mean I would note
7 that, I don't, I think that car is --
8 MS. ROBESON: Oh, okay, I get it.
9 MS. HARRIS: -- just driving down the street.
10 It's not parked there. It was only relevant.
11 THE WITNESS: Well, I don't, I'm confident that at
12 the time that I took the picture that that car was parked
13 because I walked there to make sure it was parked. I'm
14 confident it was, but, as I testified, I checked out each of
15 these pictures to make sure that, in fact, what we were
16 testifying to is accurate.
17 BY MS. HARRIS:
18 Q Okay. And then on page 3, do you see the woman
19 standing there watching the fire truck?
20 A I'm sorry, which page?
21 Q Page --
22 A 3.
23 Q -- 3. And the man?
24 A Yes.
25 Q And so based on the way she's dressed, what would

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1 you say about the weather?
2 A I honestly don't know, but it looks sunny but, you
3 know --
4 Q And warm --
5 A -- and she doesn't have --
6 Q -- somewhat warm?
7 A And somewhat on the warm side, yeah, probably.
8 Q Can you do me a favor and go through all these
9 pictures and count for me how many pedestrians you see in
10 any of these pictures?
11 A Let's see, in the first picture I see one. In the
12 second picture, I don't see any, or either of those
13 pictures. I see two.
14 Q Are those pedestrians or bystanders?
15 A They look to be walking at the bottom picture of
16 these.
17 MS. ROBESON: I'm not --
18 MS. HARRIS: Okay.
19 MS. ROBESON: Let's just
20 THE WITNESS: In the next page, page 4, I see the
21 same one. By the way, that's Mabel Reynolds, in case you
22 didn't know.
23 BY MS. HARRIS:
24 Q Oh, the one that doesn't, who made the comment
25 about transients?

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1 A Yes. In page 5, I see one I guess.
2 Q You do?
3 A I see, well, yes because that person in the red
4 shirt --
5 MS. ROBESON: Who allegedly made the comment --
6 MS. HARRIS: Oh, the red shirt? Okay.
7 THE WITNESS: -- is walking.
8 MS. ROBESON: -- about transients?
9 THE WITNESS: I think there, on page 6 there's a
10 pedestrian next to the white truck, but it's hard to tell.
11 I don't see any on page 7. Page 8, I see one with a red
12 shirt.
13 BY MS. HARRIS:
14 Q The same man?
15 A Yes, it's a person. Page 9, that might actually
16 be a stroller sticking out by the benches off to the right,
17 right above the hood of the white truck, it looks like
18 there's a stroller. So I'm guessing there's a pedestrian
19 there, unless they just left their baby.
20 Q Where?
21 A Right above the hood.
22 MS. ROBESON: Okay. You know what, I -- okay. I
23 don't want to argue about the stroller.
24 MS. HARRIS: Okay.
25 THE WITNESS: Okay.

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1 MS. ROBESON: Let's move on.
2 THE WITNESS: Okay. Page 10 I don't see any
3 there. Page 11, it's hard -- these are black and white so,
4 honestly, I can't --
5 MS. HARRIS: Oh, here's one here.
6 THE WITNESS: -- I can't really tell from here.
7 MS. ROBESON: Well --
8 THE WITNESS: It doesn't look like anybody on page
9 11. Page 12, I don't see anybody. Page 13, I see one
10 person off to the very -- actually two, one to the right and
11 another person all the way on the left, I'm sorry, on the
12 left by the blue vehicle. It looks like he's walking east.
13 BY MS. HARRIS:
14 Q And, finally, that's okay.
15 A I'm sorry. Sorry. Sorry. Sorry. There might be
16 some. I can't really tell. There looks like there might be
17 a person or two behind that red truck, but --
18 Q Excuse me?
19 A Behind, on the left, there looks like there's
20 possibly a person to the side of that truck.
21 Q Okay. But, certainly -- I have no other questions
22 for the witness.
23 MS. ROBESON: Okay. Redirect, Mr. Knopf?
24 REDIRECT EXAMINATION
25 BY MR. KNOPF:

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1 Q In terms, you were asked a question in terms of
2 what the implications are for having cars parked on the
3 street regarding traffic congestion. Is -- what are the
4 implications for pedestrians in terms of a pleasant walk on
5 a local street to have cars parked or double-parked,
6 whatever your photos --
7 A Well, there's a couple different implications.
8 One is that many of the photos show that there are often
9 vehicles that are parked across the sidewalk. So
10 pedestrians walking down the sidewalk would have to navigate
11 either around them or potentially even into the street to
12 get around them as they're walking. That's one issue. The
13 other issue is all of these pictures show is the visual
14 clutter of having this, all these vehicles parked there and
15 so, you know, in terms, to the extent that this street was
16 designed as a mixed street to enhance pedestrian qualities,
17 having all these vehicles there, it certainly doesn't,
18 doesn't facilitate that objection.
19 Q Thank you. When you were taking the photos that
20 you did of the street, were you also looking for, to take
21 photos of any pedestrians walking along the street or were
22 you focused on the street?
23 A No, I was focused solely on the street and parking
24 violations. I would note that in the law school I attended
25 they told me that you can't prove a negative by taking

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1 pictures that don't show things, so --
2 Q I see.
3 MR. KNOPF: Okay. Thank you very much. I have no
4 further questions.
5 MR. ABRAMS: Nothing further.
6 MS. HARRIS: No.
7 MS. ROBESON: All right. I do have one question.
8 Is, did any of the parties submit the, either the hearing
9 examiner's report or the resolution for the, what we've been
10 calling the Hampden Lane project, not 4901, but the one at
11 the corner of, the northwest corner of Arlington and Hampden
12 Lane?
13 MS. HARRIS: I believe I did.
14 MS. ROBESON: I don't know the zoning case number.
15 MR. ABRAMS: What's the number?
16 MS. WILTSHIRE: It's 15617. It's sad that I know
17 that, but I think that's the case number.
18 MS. ROBESON: Resolution number?
19 MS. WILTSHIRE: Yes.
20 MR. KNOPF: That's impressive.
21 MS. WILTSHIRE: I've been reading too much.
22 MS. HARRIS: It is 1060. Well, are you looking
23 for the -- and the hearing examiner report or the --
24 MS. ROBESON: No, either one.
25 MS. HARRIS: -- that's the Council resolution.

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1 MS. ROBESON: Either one.
2 MS. HARRIS: The Council resolution is 1060.
3 MS. ROBESON: I see. Okay. G-842. Okay. That's
4 what I wanted to know. All right. With that, we will
5 hear -- is that your, does that conclude your case --
6 MR. KNOPF: Yes.
7 MS. ROBESON: -- Mr. Knopf?
8 MR. KNOPF: Yes, it does.
9 MS. ROBESON: Okay. So with that, we will hear
10 the applicant's rebuttal on May 13th beginning at 9:30 and
11 this case is continued to them.
12 MR. ABRAMS: May we inquire as to how many
13 witnesses and who they are in rebuttal?
14 MS. ROBESON: Yes, you may.
15 MS. HARRIS: You may, but I don't know with
16 certainty that I can tell you that likely at least two
17 witnesses, Mr. Irish and Mr. Radelescu are potentially, Mr.
18 Irish and then potentially Mr. Kabatt, but I don't want to
19 be held to that because --
20 MS. ROBESON: Mr. Kabatt was the traffic --
21 MS. HARRIS: The traffic engineer.
22 MR. KNOPF: So is it fair to say that we should be
23 finished on the 13th then?
24 MS. ROBESON: It sounds to me like we're going to
25 finish, exclusive of cross-examination.

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1 MS. HARRIS: Right.
2 MR. KNOPF: Will there be, will the Hearing
3 Examiner want closing arguments or what?
4 MS. ROBESON: I was going to see what the parties
5 wanted to do as far as what time we finished on Monday and
6 whether you prefer written or verbal oral closing
7 statements. I don't feel the need in this case that there's
8 a lot of legal issues that, well, there's legal issues, but
9 I think you framed them in the testimony pretty well. So
10 I'm not going to require closing, but if you would like to,
11 for some reason you feel like you need to do written closing
12 statements, I'll be open to hearing that.
13 MS. HARRIS: Does that mean that if -- how about
14 verbal closing statements?
15 MS. ROBESON: Yes, I would like that.
16 MS. HARRIS: Right. Okay. But you're just saying
17 the option is to also submit a written statement?
18 MS. ROBESON: Yes.
19 MS. HARRIS: Okay.
20 MS. ROBESON: And you can decide that when, you
21 know, we can make a final decision at the end of the
22 hearing.
23 MS. HARRIS: Oh, so it could be the hearing --
24 MS. ROBESON: I'm not going to require a
25 written -- okay. I'm not going to require a written closing

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1 statement at the close of the Monday the 13th hearing. So
2 the other thing is I'm not entirely sure you'll have the
3 last transcript. You will just barely have the last
4 transcript available by that hearing and some people prefer
5 to submit written closings because they have the transcript
6 to refer to.
7 MS. HARRIS: Okay.
8 MS. ROBESON: So, but I'm not going to require --
9 MS. HARRIS: But if a party requests it, you'll
10 keep the record open in order to seal that.
11 MS. ROBESON: I will.
12 MS. HARRIS: Okay.
13 MS. ROBESON: I will
14 MS. HARRIS: Okay
15 MR. ABRAMS: I just want to advise the Examiner
16 that I'm leaving the country on the 24th.
17 MR. KNOPF: And never coming back after this case?
18 MR. ABRAMS: Never coming back. So --
19 MS. ROBESON: Well, that's great.
20 MR. ABRAMS: So if you want to schedule any oral
21 argument, either do it before then or feel free.
22 MS. ROBESON: Okay. All right.
23 MR. KNOPF: Well, I presume oral argument would be
24 on the same day?
25 MS. HARRIS: Wait, oral argument? You mean your

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1 closing arguments?
2 MR. ABRAMS: Closing argument, yes.
3 MS. ROBESON: If we want to schedule, if we want
4 to have written closing arguments.
5 MS. HARRIS: No, I think his point was verbal.
6 MR. ABRAMS: Verbal.
7 MS. ROBESON: Oh, I wasn't going to have you all
8 come back simply for oral argument. I definitely --
9 MS. HARRIS: No, I --
10 MR. ABRAMS: So there will be no verbal closing
11 statements?
12 MS. HARRIS: No, they will be, but if they
13 occur --
14 MS. ROBESON: If we have --
15 MS. HARRIS: -- it will be May 13th.
16 MS. ROBESON: If we have time on the 13th --
17 MR. ABRAMS: Okay.
18 MS. ROBESON: -- we'll do that. We'll have verbal
19 closing arguments or if the parties would prefer to do
20 written statements, because, as I said, some people like to
21 have the transcript before they do their closing, it's up to
22 you. So, but I'm not going to require written closing
23 statements in this case, all right?
24 MR. ABRAMS: Okay.
25 MS. ROBESON: With that, we will adjourn until

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1 Monday, May 13th at 9:30.
2 MR. KNOPF: Thank you very much.
3 MS. HARRIS: Thank you.
4 MR. ABRAMS: Thank you.
5 (Whereupon, at 5:50 p.m., the hearing was
6 adjourned.)
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. Digitally signed by Tracy M. Hahn

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

4831 West Lane, LLC
Local Map Amendment No. G-954
4831 West Lane, LLC
Development Plan Amendment No. DPA 13-01

By:

Tracy M. Hahn, Transcriber

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