

DISTRICT OF COLUMBIA
HISTORIC PRESERVATION REVIEW BOARD

HEARING

 IN THE MATTER OF: :
 :
 Application of Vision McMillan : HPA 14-393
 Partners, LLC, and the District : HPA 15-133
 of Columbia Office of the :
 Deputy Mayor for Planning and :
 Economic Development :

Friday,
July 14, 2017

The meeting of the District of
Columbia Historic Preservation Review Board
convened in Room 220 South at 441 4th Street, NW,
Washington, DC 20001, pursuant to notice, at
10:00 a.m., Peter Byrne, presiding.

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2 10:03 a.m.

3 DR. BYRNE: Good morning, ladies and
4 gentlemen. My name is Peter Byrne and I am the
5 designated Mayor's agent hearing officer for this
6 matter which addresses a remand from the Court of
7 Appeals on applications to demolish underground
8 cells and an application to subdivide at the
9 McMillan sand filtration site at 2501 First
10 Street, NW, for the construction of a mixed-use
11 project.

12 These applications are assigned
13 Historic Preservation Act numbers 14-393 and 15-
14 135.

15 The case is being heard under the
16 authority of D.C. law 2-144 the Historic Landmark
17 and Historic District Protection Act of 1978.

18 This law requires the Mayor or her
19 agent to review proposed subdivisions and permit
20 applications for demolition, alteration, and new
21 construction on the site of historic landmarks or
22 within historic districts.

1 Previously the Mayor's agent cleared
2 permits for the demolition of cells on April 13,
3 2015 and for the subdivision on August 14, 2015.

4 On December 8, 2016 the D.C. Court of
5 Appeals vacated those decisions and remanded the
6 cases for more specific findings under corrective
7 legal standards.

8 On January 11, 2017 the Mayor's agent
9 issued an order setting the issues to be
10 addressed on this remand.

11 In that order it was said that the
12 issues were four.

13 Number one, do the proposed projects
14 Historic Preservation Act as taken as a whole
15 outweigh its historic preservation harms.

16 In addressing this question the
17 parties are requested to provide legal analysis
18 as to how such an inquiry should be conducted
19 consistent with the act.

20 Number two, what are the specific
21 architectural land planning and/or community
22 benefits that individually or collectively may

1 make this a project with special merit within the
2 meaning of D.C. Code 6-110211.

3 Three, is the proposed demolition and
4 subdivision necessary to obtain the special merit
5 benefits identified. Could an economically
6 viable mixed use development meeting the goals of
7 the comprehensive plan be constructed on the site
8 with less demolition and no subdivision.

9 Let me note there that although it
10 says no subdivision I understand the point being
11 as raised by Ms. Ferster in her brief less
12 subdivision is also relevant.

13 Number four, are there reasonable
14 alternatives that would achieve the same special
15 merit benefits that would avoid or reduce the
16 need for demolition or subdivision.

17 So the parties in this proceeding may
18 present testimony and evidence supplementary to
19 the existing record and legal argument, and in
20 doing so are enjoined to coordinate presentations
21 and to remain within the scope of the issues
22 stated in that order.

1 Everything that has been entered into
2 the record in the prior cases remains in the
3 record. And I ask the parties to please try to
4 avoid duplication.

5 This hearing will be conducted in
6 conformance with the D.C. Administrative
7 Procedure Act and Title 10C of the District of
8 Columbia Municipal Regulations which contain the
9 rules of procedure for the Mayor's agent pursuant
10 to the preservation law.

11 They don't specifically address
12 process on remand so these must be set by the
13 Mayor's agent.

14 The order of proceeding and
15 presentation of evidence shall be as follows.
16 We'll have the consideration of pending motions
17 and other procedural matters.

18 We'll move to a presentation of the
19 applicant's case. We'll have any reports or
20 statements by public agency representatives.

21 We'll have presentation by the parties
22 in opposition to the applications. We'll have

1 time for brief statements by other persons either
2 in support of or in opposition to the application
3 within the terms of the remand.

4 Six will be rebuttal by the applicant
5 and seven will be sur rebuttal by the parties in
6 opposition to the application.

7 And the parties will have until
8 September 8, 2017 to submit proposed findings of
9 fact and conclusions of law.

10 So, there is a motion that is before
11 the Mayor's Agent to disqualify the current
12 Mayor's Agent as the director of the Office of
13 Planning and also to disqualify the Mayor's Agent
14 hearing officer based upon an argument that the
15 structural relationship of those parties to one
16 of the applicants makes proceeding by us
17 inconsistent with due process or the ECE
18 Administrative Procedure Act.

19 It's based essentially on structural
20 matters.

21 The director of the Office of Planning
22 is essentially a subordinate of the Deputy Mayor

1 for Planning and Economic Development which was
2 an applicant in this case.

3 The director of the Office of Planning
4 as the Mayor's Agent has to sign off on all
5 Mayor's Agent substantive decisions, final
6 decisions.

7 The argument continues that any
8 independence by the Mayor's Agent hearing officer
9 doesn't cure this problem because the director of
10 the Office of Planning as the Mayor's Agent must
11 confirm decisions even if the hearing officer has
12 prepared proposed findings of fact and
13 conclusions of law.

14 There's no claim of personal bias or
15 personal interest in the matter. The issues are
16 addressed as structural.

17 And I'm going to deny this motion and
18 I'm going to give brief reasons now and we'll
19 supplement them when the time comes to write
20 proposed findings of fact and conclusions of law.

21 Now, the structure here provides that
22 these cases involving demolition of a subdivision

1 are handled by the Mayor, and the Mayor has
2 always delegated this to a variety of Mayor's
3 Agents over the years.

4 It has been the director of the Office
5 of Planning now for a number of years pretty much
6 since the Historic Preservation Office went into
7 the Office of Planning.

8 Initially after that the director of
9 the Office of Planning herself at the time was
10 Harriet Tregoning adjudicated a number of these
11 cases personally.

12 And this was found to be awkward,
13 time-consuming and the director of the Office of
14 Planning is not a lawyer which is a disadvantage
15 in this case.

16 But the director -- so at that point
17 the Historic Preservation Office had the idea of
18 enlisting essentially a neutral party, and their
19 idea was a law professor who had written about
20 and taught Historic Preservations Act as the
21 Mayor's Agent.

22 I am not an employee of the District

1 of Columbia. I am a contractor paid a modest
2 honorarium to do these cases and I prepare draft
3 findings of fact and conclusions of law that the
4 Mayor's Agent must confirm.

5 And if you look at the orders that's
6 the way it's styled, confirms the proposed
7 findings of fact and conclusions of law.

8 Under the Mayor's delegation to the
9 director of the Office of Planning he must remain
10 free to make his own decision to accept or reject
11 my proposal.

12 However, under my contract I did not
13 sign any changes that the director of the Office
14 of Planning may make and can in fact resign if in
15 my sole judgment the Office of Planning has lost
16 confidence in my performance.

17 So, turning to the specific reasons
18 for rejecting the motion, number one, under the
19 existing precedents the director of the Office of
20 Planning should not be disqualified.

21 The leading precedent here for short
22 is the Rhodes Tavern case decided by our court of

1 appeals in 1981.

2 And in that case it was a private
3 development of the property now known as
4 Metropolitan Square which involved the demolition
5 of the Rhodes Tavern which had been the first
6 city hall in Washington, D.C. It was a very
7 controversial case.

8 The Mayor Marion Barry had made very
9 strong statements in support of demolition of
10 Rhodes Tavern in order for the project to go
11 forward.

12 The opponents of the demolition argued
13 that the Mayor's Agent could not fairly
14 adjudicate the case because they were a D.C.
15 employee who were subservient to the Mayor.

16 However, in the case the D.C. Court of
17 Appeals rejected that view finding no merit in
18 the claim.

19 They said that the issue was not the
20 structural relationship among the parties between
21 the decision-maker and the Mayor, but that the
22 issue really turned on whether the decision-maker

1 had been the recipient of ex parte communications
2 from an advocate of one of the parties who had a
3 personal interest or bias on the part of the
4 decision-maker.

5 In the absence of either of these
6 circumstances we cannot conclude the petitioner
7 was denied due process.

8 And the court looked at the record in
9 the case and found that it had been decided based
10 upon reasonable findings of fact and conclusions
11 of law.

12 Subsequently in the Third Church of
13 Christ Scientist case is a Mayor's Agent matter
14 where the director of the Office of Planning in
15 fact acted as the Mayor's Agent, hearing officer
16 and Mayor's Agent just herself.

17 The parties argued that she should be
18 disqualified and she rejected that based upon the
19 Rhodes Tavern case.

20 And I note that in the case that is
21 colloquially referred to as the Big K case which
22 involved properties on Martin Luther King, Jr.,

1 Avenue in Southeast Washington the Deputy Mayor
2 of Planning and Economic Development was an
3 applicant in the case before me as the Mayor's
4 Agent.

5 And that was in my decision in favor
6 of altering the historic properties was confirmed
7 by the director of the Office of Planning.

8 So this is something which has
9 existed. So that this is the pattern that the
10 law lays down and has been followed over time.

11 The distinction drawn by Friends of
12 McMillan Park here is that when deputy is an
13 applicant the situation is different.

14 The argument in some sense is that the
15 Deputy Mayor of Planning and Economic Development
16 has an economic stake in granting the permit.

17 And they point to statements in the
18 applicant's brief about the economic benefits
19 that can come from the project.

20 And here they seem to be linking up
21 with the statements by the court of appeals that
22 the case is different if there is an individual

1 interest in the outcome of the case.

2 But these benefits are in no way
3 personal to the Deputy Mayor, or to the Office of
4 Planning, or to the Mayor for that matter.

5 The economic benefits alleged are the
6 fruits of a development that benefit the District
7 of Columbia as a whole through the typical
8 benefits of -- the economic benefits that come
9 from any development.

10 It is alleged and we are going to talk
11 further about the fact that there are other
12 benefits here which are not monetary.

13 But those benefits are the same as
14 would exist in a project like Metropolitan Square
15 which would generate jobs, employment, and tax,
16 real estate tax, tax benefits.

17 The interest of the Deputy Mayor is in
18 the implementation of policy initiatives believed
19 rightly or wrongly to benefit the District of
20 Columbia as a whole. As such it's no different
21 from the Rhodes Tavern case.

22 The second and independent point, that

1 even if I am wrong in my analysis of the
2 application of Rhodes Tavern the fair process is
3 provided here by the participation of the Mayor's
4 Agent and the hearing officer.

5 I have no stake at all in the outcome
6 of this case except for my reputation as a
7 scholar, as an expert in historic preservation.

8 And any indication that my decision
9 was other than on the merits would be frankly
10 disastrous to my professional reputation.

11 I can walk away from this job at any
12 moment and it probably would improve my economic
13 position.

14 If the Friends of McMillan Park say
15 that this doesn't avoid the problem because the
16 Mayor's Agent who is the director of the Office
17 of Planning must sign all the substantive orders.

18 But I sign also and I would not, nor
19 would my interest be served by signing any order
20 that I thought was inconsistent with my
21 professional opinion and my contract preserves my
22 right to do that.

1 So in my view this check provides an
2 independent structural assurance that the
3 decision-making process in this case is
4 consistent with the rights of everyone provided
5 by the District of Columbia Administrative
6 Procedure Act.

7 Are there any other motions or
8 procedural matters to take up before we move to
9 the applicant's case? Ms. Brown?

10 MS. BROWN: Good morning, Mr. Byrne.
11 I did have one clarification question about
12 whether or not our request to amend the
13 application to include the consistency test was
14 specifically granted or if that will be held till
15 the order is issued.

16 DR. BYRNE: No, that is granted. I
17 should have been more explicit in the order that
18 I issued.

19 MS. BROWN: Thank you.

20 MS. FERSTER: Good morning, Professor
21 Byrne. Andrea Ferster for Friends of McMillan
22 Park. I have two preliminary questions really.

1 One is that in your order basically
2 allowing the applicants to -- granting the
3 applicant's motion to address issue number one in
4 our view it essentially opens up -- takes the
5 position that the applicant is free to re-
6 litigate issues that had already been addressed
7 or resolved during the prior hearing that were
8 not subject to appeal.

9 And in that case the Friends of
10 McMillan Park wish to also introduce evidence
11 through a witness on the issue of the condition
12 of the cells which was an issue as you know that
13 we did project evidence on before the Mayor's
14 Agent but we did not appeal that issue before the
15 D.C. Court of Appeals.

16 So in light of the opportunity now to
17 revisit issues that were previously resolved we
18 would ask at this point if you would entertain a
19 motion in limine to allow our structural engineer
20 Susan Burmeister to return to testify on the
21 issue of the cells in order to supplement the
22 testimony that she had previously issued.

1 Because this issue has come up quite
2 late because we think that prior to when you
3 issued your decision on the 12th we -- or 13th I
4 think it was. Anyway, we did not understand that
5 we would have that opportunity.

6 So we contacted Susan Burmeister and
7 very fortunately she is available to testify
8 today. But she is on standby.

9 And so what I would like to do if you
10 are willing to entertain the testimony of Susan
11 Burmeister as our expert witness to supplement
12 her original testimony on the issue of the
13 structural condition of the cells and the ability
14 to adaptively reuse them and stabilize them then
15 we would immediately let her know so that she
16 could be made available during the appropriate
17 time of our testimony.

18 That's my first issue which would be
19 essentially in the form of a motion for you to
20 rule on the admissibility of that evidence.

21 DR. BYRNE: Would you say that this
22 goes to any of the before issues specified.

1 MS. FERSTER: It definitely goes to
2 the issue of alternatives. Because of course one
3 of the alternatives that we have presented during
4 the demolition proceeding were the alternative
5 adaptively reusing the cells.

6 But then again since we had not
7 appealed that issue to the court of appeals and
8 the court of appeals didn't address it we had
9 been assuming previously that we would not be
10 permitted to reopen that issue.

11 But at this point it seems that that
12 opportunity now exists.

13 MS. BROWN: I don't have an objection
14 to it.

15 MS. FERSTER: And I have one other
16 request and that is in light of the careful
17 decision, bench decision that you've just
18 rendered on our motion to disqualify, in light of
19 the fact that part of the evidentiary basis for
20 your decision was your contract with the Office
21 of Planning I would ask that you make that
22 contract part of the record, of course redacting

1 any personal information that you think is
2 inappropriate.

3 DR. BYRNE: Sure. I have no problem
4 with that.

5 Okay, good. I think then we're ready
6 for -- Mr. Otten.

7 MR. OTTEN: Good morning, Mr. Byrne.
8 I just wanted to check in. Chris Otten
9 representing D.C. for Reasonable Development here
10 to present our case today.

11 DR. BYRNE: Okay, thank you.

12 MS. MERRITT: Following up on Chris's
13 introduction I'm Elizabeth Merritt representing
14 the National Trust which is also a party in
15 opposition. Thank you.

16 DR. BYRNE: Okay. I'm wondering to
17 what extent the opponents have had an opportunity
18 to coordinate their presentations as I had
19 requested in my order of January 11.

20 Well, let's leave that as a rhetorical
21 question.

22 MS. BROWN: I'll get my witnesses up

1 here at the table and we'll get started.

2 Good morning again. For the record my
3 name is Carolyn Brown with the law firm of
4 Donohue and Stearns on behalf of the applicant
5 Vision McMillan Partners.

6 To my left is the attorney
7 representing the Office of the Deputy Mayor for
8 Planning and Economic Development. He will make
9 a brief statement but I am here to present the
10 case on behalf of both parties that are the
11 applicant.

12 MR. LANE: Hello, my name is Matthew
13 Lane. I'm with the Public Interest Division of
14 the Office of the Attorney General. As Ms. Brown
15 said representing the Deputy Mayor's Office.

16 And I just wanted to confirm that
17 there have been questions raised as to whether
18 previous filings were filed properly on behalf of
19 both parties.

20 And I do want to confirm that the
21 Deputy Mayor's Office is in support of the
22 previously filed documents and we are ready to

1 move forward at this point.

2 DR. BYRNE: Thank you, Mr. Lane.

3 MS. BROWN: Thank you for the
4 opportunity for us to be here today. We have
5 eight witnesses that are going to address the
6 four remand issues that you identified in your
7 January 11 scheduling order.

8 In order to establish the foundation
9 for some of these remand issues we may present
10 some testimony that is somewhat repetitive but
11 we're trying to limit it as much as possible.

12 But we believe it's important to make
13 sense of our arguments, and certainly for some of
14 the people in the room that haven't been here
15 before.

16 But again we're going to try to keep
17 it to a minimum.

18 With respect to remand issue number
19 one we believe the court of appeals clearly told
20 us that the balancing of the net preservation
21 benefits against the net preservation harms does
22 have to be considered under the consistent test.

1 And I believe that is a clear holding
2 of the case as opposed to dicta.

3 If a future applicant pursued
4 demolition under the special merit test and
5 claimed the balancing test between harms and
6 benefits of the preservation features I think it
7 would have to be thrown out under the decision
8 that the court rendered.

9 So our evidence today will show that
10 the net preservation gains far exceed the
11 preservation losses particularly in light of the
12 deteriorated and unstable condition of the
13 underground features to be demolished and their
14 ubiquitous and inaccessible qualities.

15 With respect to remand issue number
16 two, the special merit features of the project
17 our witnesses will explain what we believe are
18 the special merit features of the project.

19 For your convenience we have prepared
20 a list which I'll hand out in a moment which
21 succinctly lists what we think those special
22 merit features are.

1 We have also expanded on the economic
2 and positive fiscal impacts that the court
3 indicated could contribute to special merit.

4 I know you had a ruling in your
5 footnote saying that you didn't want to consider
6 that, but I think particularly as it pertains to
7 the healthcare facility that the court asked for
8 clarification on that I think it's relevant.

9 Finally, our witnesses will address
10 the necessity of demolition and the alternatives
11 explored under remand issue number three and
12 four.

13 With that I would like to turn to our
14 first witness Mr. Brian Kenner, the Deputy Mayor
15 for Planning and Economic Development.

16 DR. BYRNE: Good morning, Mr. Kenner.

17 MR. KENNER: Good morning.

18 DR. BYRNE: So, as the Mayor's Agent
19 here because it's a contested case we ask the
20 witnesses to swear to tell the truth.

21 So could I at this point then ask all
22 of the applicant's witnesses if you'll please

1 cooperate with me here and just -- you don't have
2 to come up, but if you just raise your hand
3 please.

4 (Whereupon, the witnesses were sworn
5 in.)

6 DR. BYRNE: Thank you all. Please
7 proceed, Mr. Kenner.

8 MR. KENNER: Good morning, Mr. Byrne.
9 My name is Brian Kenner. I am the Deputy Mayor
10 for Planning and Economic Development.

11 On behalf of the Bowser Administration
12 I am privileged to be here today to voice our
13 continued and unwavering support for the McMillan
14 development project.

15 Thank you for conducting this hearing
16 to address the decision from the D.C. Court of
17 Appeals.

18 My testimony this morning will focus
19 on issue two with relation to the specific land
20 planning elements that make this project of
21 special merit.

22 The mixed use development of McMillan

1 is a high priority for the city. It provides
2 significant benefits to the District of Columbia
3 and to the community by virtue of its exemplary
4 architecture, specific features of land planning,
5 and social or other benefits having a high
6 priority for community services.

7 After more than 30 years of planning
8 McMillan will fulfill the city's long-term goal
9 for the site through numerous administrations.

10 The McMillan master plan memorializes
11 these important goals that include a nine-story
12 healthcare facilities, mixed income and varying
13 types of housing which include market rate,
14 moderate, and low-income townhomes, market rate
15 senior and affordable rental units.

16 It is also important to mention that
17 the 20 percent affordable McMillan set-aside
18 exceeds the 10 percent set-aside as required by
19 law at the time of our inclusionary zoning.

20 A full service grocery store,
21 community serving retail along the north service
22 court, community center with swimming pool, park

1 and plaza that include a playground for kids all
2 ages, gathering spaces for people and families,
3 and active and passive recreation areas.

4 In addition, activation of McMillan's
5 historic significance is also unique, including
6 programming of historic structures within both
7 the north and south service courts through arts,
8 retail and public uses, establishment of a new
9 Olmstead Walk, creation of a development wide
10 walking museum.

11 Extensive community input from
12 hundreds of community meetings over the past 30
13 years and approvals from the subject advisory
14 neighborhood commission, the National Capital
15 Planning Commission, the Historic Preservation
16 Review Board, the U.S. Commission on Fine Arts,
17 and the D.C. Council inform what the district's
18 priorities for community services should be which
19 include a full service grocery store, housing
20 including senior and affordable housing, public
21 purposes including a community center with pool,
22 public plaza, playground, recreational spaces,

1 and activation of both service courts,
2 beautification projects in the immediate vicinity
3 in coordination with specific community groups,
4 jobs from construction activity and permanent
5 uses anchored by commercial uses particularly for
6 Ward 5 residents, and more than \$1 billion in
7 positive fiscal and economic impacts.

8 When these high priorities of the
9 executive branch were endorsed by the legislative
10 proposal -- when these high priorities of the
11 executive branch were endorsed by the legislative
12 branch the Committee on Economic Development
13 provided the following in their report, and I
14 quote.

15 "We recommend approval of the
16 disposition because they represent a thorough and
17 balanced development that is the culmination of
18 years of planning, community engagement and
19 execution by the district government, Vision
20 McMillan Partners, and many affected ANCs,
21 community groups and stakeholders.

22 "While no development will make every

1 person involved happy the proposed McMillan
2 development provides economic development,
3 cultural, commercial and recreational opportunity
4 to an area that has seen this site vacant and
5 fenced off for decades.

6 "Development would produce thousands
7 of jobs and millions of dollars in revenue.
8 Hundreds of housing units, 20 percent of which
9 will be affordable would be created along the
10 acres of new park and open spaces.

11 "This development would work to
12 reactivate an area that has lain dormant for many
13 years permitting a new community and destination
14 for the city," end quote.

15 Other features of special merit that
16 will be addressed by other witnesses include
17 exemplary architecture through thoughtful
18 integrated design and cohesive architectural
19 treatment of individual parts, specific features
20 of land planning through integration of site with
21 community, healthcare facility, creation of a
22 medical district, internal circulation patterns

1 to preserve views, transportation benefits, and
2 environmental benefits, and other benefits having
3 a high priority for community services including
4 a public art master plan as well as certified
5 business entity and first source employment
6 agreements.

7 In conclusion, we respectfully request
8 that you clear the pending demolition permit to
9 allow the city's specific goals for reuse of the
10 McMillan site to continue.

11 Thank you for the opportunity to
12 testify before you as a part of this limited
13 scope hearing. Our team will be pleased to
14 answer any questions you may have.

15 DR. BYRNE: Very good. So, I think
16 one question we have is do you want to ask them
17 any questions? We should have cross examination.
18 I'm wondering how physically you'd do it in this
19 room.

20 So do you want to ask any questions to
21 clarify anything he said?

22 MS. BROWN: I do have just one very

1 quick question, Mr. Deputy Mayor. You listed a
2 number of public benefits, amenities that have
3 high priority for community services.

4 Do you feel that those features are
5 common to all projects in the city?

6 MR. KENNER: I feel that many of them
7 are. I mean each project is probably unique but
8 I think that many of them are.

9 MS. BROWN: Common to all projects or
10 to this project? I mean a special feature for
11 this project.

12 MR. KENNER: I think there are some
13 special features for this project.

14 MS. BROWN: Thank you.

15 DR. BYRNE: Okay. All right. Well,
16 Ms. Ferster, do you want to ask any questions of
17 the Deputy Mayor?

18 MS. FERSTER: The Deputy Mayor did
19 indicate that a number of the points that he
20 touched on in his testimony would also be
21 elaborated on by other witnesses, so perhaps for
22 efficiency's sake we would hear all their

1 testimony.

2 And then what I've done in the past is
3 pose my questions to the team and they pick who
4 the most appropriate person is to answer,
5 although I will of course have some specific
6 questions for specific witnesses.

7 DR. BYRNE: I like that. That sounds
8 good.

9 MS. BROWN: No objection.

10 DR. BYRNE: That sounds great.

11 MR. LANE: We would just like --
12 because the Deputy Mayor has a busy schedule we
13 would prefer to allow him to be dismissed once
14 he's finished. So if we could move that along at
15 this point rather than at the end of the
16 proceedings that would be very beneficial at this
17 point.

18 DR. BYRNE: Thoughts.

19 MS. FERSTER: What often happens in
20 this context and this is what I'm trying to avoid
21 is that I have a number of questions that are
22 appropriate for many witnesses.

1 And what happens is if I ask the short
2 version, the specific question to the Deputy
3 Mayor then I ask questions to the other team and
4 they say well actually the Deputy Mayor is the
5 appropriate person to answer that. He's gone.
6 That's my issue.

7 MS. BROWN: I think it's perfectly
8 reasonable to allow the Deputy Mayor for Planning
9 and Economic Development to have his cross
10 examination questions now.

11 He can only answer what is in the four
12 corners of his testimony today so if she has
13 questions on the testimony that he just presented
14 then I think that's appropriate right now.

15 DR. BYRNE: Well, I do want to
16 accommodate the schedule of an important city
17 employee.

18 So maybe what we could do is if Ms.
19 Ferster has questions and then as if the
20 situation arises where she has a question where
21 the other witnesses say you have to ask the
22 Deputy Mayor then we can figure out how to manage

1 that at that point.

2 Is that okay, Ms. Ferster?

3 MS. FERSTER: That's fine depending --

4 DR. BYRNE: Depending on the
5 questions.

6 MS. FERSTER: Yes, and it may require
7 calling him back as a witness. If that's an
8 option that's acceptable to me.

9 And then I apologize because I would
10 probably have a much lengthier cross examination
11 than I would have otherwise because I suspect
12 that some of the questions he will defer to other
13 witnesses for. But I need to go through that
14 anyway.

15 DR. BYRNE: Okay, I appreciate that.
16 Thank you.

17 MS. FERSTER: Good morning.

18 MR. KENNER: Good morning.

19 MS. FERSTER: Let's talk about first
20 the issue of the fiscal and employment benefits
21 of this project.

22 You have testified in response to a

1 question from Ms. Brown that some of the benefits
2 that you elaborated on in your testimony were
3 special and somewhat common to all projects.

4 In terms of the fiscal, the tax
5 revenues and the employment gains from this
6 project are these -- would you view these fiscal
7 and employment benefit from this project to be
8 comparable to other I would say similarly sized
9 projects in terms of your land area or gross
10 square feet?

11 MR. KENNER: I think in terms of just
12 the parameters of tax revenue as an example which
13 are primarily derived from in this case
14 residential, office as well as retail property
15 taxes, sales tax compared to other projects that
16 have equal square footage as an example of
17 office, and retail, and residential that I think
18 eventually changes a little bit, but generally
19 the tax valuations would be similar for projects
20 that have similar percentages of utilization.

21 I think that one of the unique things
22 about this is that you rarely get such diverse

1 uses in a project that's on city-owned land.

2 MS. FERSTER: Thank you. And then I'm
3 just sort of curious about the issue of
4 affordable housing.

5 A number of development projects that
6 are public-private development projects
7 incorporate affordable housing into them.

8 Does that affect the tax revenue that
9 the District of Columbia gains? I mean, would
10 that lower the revenue if you include affordable
11 housing for low and very low-income households?

12 MR. KENNER: That's probably a better
13 question for the Office of Tax and Revenue to
14 answer. I'm not exactly sure how they do all
15 taxation for all affordable units in the city.

16 MS. FERSTER: Okay, well let me just
17 follow up briefly on that. Would that be a
18 factor in your decision? For example, if when
19 the projected fiscal benefit from a project were
20 presented to you would you factor in the fact
21 that there might be lower fiscal benefits if
22 there were more affordable housing, or do you

1 simply look at whether or not there were
2 significant fiscal benefits in terms of the
3 objective number.

4 MR. KENNER: I'm sorry, can you say
5 that question again?

6 MS. FERSTER: Yes. The brief version
7 of that question is that if a project has a lower
8 fiscal benefit to public-private partnership
9 projects such as this one has lower fiscal
10 benefits because it includes more affordable
11 housing for low and very low-income individuals
12 when you make a decision about the type of
13 project would that be a factor, the level of
14 fiscal benefits?

15 MR. LANE: I'd object on this is
16 outside the scope of the testimony.

17 MS. BROWN: I can follow up on that.
18 I think that deliberately or unintentionally I
19 think she restated what she thought his testimony
20 was about this having lower value because of the
21 affordable housing component. And I don't think
22 that was his testimony.

1 MS. FERSTER: No, I didn't. That
2 wasn't my reading of his testimony.

3 DR. BYRNE: I'm sorry, would you state
4 the question again? Just try to do it in a way
5 that's within his testimony.

6 MS. FERSTER: Well, you did testify
7 that one of the special benefits of this project
8 is the fact that it's affordable housing. But in
9 fact the affordable housing that's in this
10 project does not include any affordable housing
11 for very low and low-income individuals, that is
12 correct. Isn't it?

13 MR. KENNER: I don't know how you
14 define very low. HUD has definitions for income
15 so are you referring to those definitions?

16 MS. FERSTER: Yes, I am.

17 MR. KENNER: Okay.

18 MS. FERSTER: So this project does not
19 include any --

20 MR. KENNER: This project has
21 affordable housing units for people that are at
22 below 50 percent of AMI as well as below 60

1 percent of AMI.

2 MS. FERSTER: Below, okay. I did not
3 know that. How many units of housing are for
4 households earning below 50 percent AMI?

5 MR. KENNER: We've got I think in
6 total for the project 85 units that are at or
7 below 60 percent of AMI and 11 units that are at
8 or below 50 percent of AMI.

9 MS. FERSTER: Okay. So my question
10 actually was below 50 percent AMI, not at or
11 below.

12 MR. KENNER: I'm sorry, I'm using the
13 HUD definition which is at or below.

14 MS. FERSTER: Okay, well my question
15 has to do with below 50 percent.

16 MR. KENNER: There is --

17 DR. BYRNE: I don't want to quibble
18 about at or below. I think he's answered the
19 question.

20 MS. FERSTER: Okay. So given that,
21 that there is no affordable housing in this
22 project for individuals below 50 percent of the

1 AMI --

2 MR. KENNER: So that's not the HUD
3 definition.

4 MS. FERSTER: Understood. Understood.
5 (Simultaneous speaking)

6 MR. KENNER: -- at or below 50 percent
7 of AMI. At or below 60 percent of AMI, and at or
8 below of 80 percent of AMI.

9 MS. FERSTER: Understood.
10 Understanding that there's no affordable housing
11 in this project for individuals below 50 percent
12 of the AMI.

13 MR. KENNER: Again, the HUD definition
14 is at or below 50 percent of AMI.

15 DR. BYRNE: Is your point that there's
16 not a band that's reserved for people for example
17 at 30 percent or lower, is that your point?

18 He said at or below 50 percent, so if
19 you're below 50 percent you could have 20 percent
20 of AMI.

21 MS. FERSTER: And I'm really not
22 asking him about HUD definitions. I'm asking

1 about the fiscal benefits. And the question, I
2 was trying to restate the question.

3 DR. BYRNE: I'm sorry.

4 MS. FERSTER: And the question about
5 fiscal benefits is given the fact that there's no
6 affordable housing for people below 50 percent in
7 the project wouldn't that naturally make that
8 project more attractive to your agency in terms
9 of its fiscal revenue because there would be
10 lower tax revenue from a project that included
11 more very low and low-income affordable housing?

12 MR. LANE: Objection to the
13 characterization and the confusing nature of the
14 question.

15 DR. BYRNE: Yes, it strikes me as
16 rhetorical.

17 MS. FERSTER: Okay. You have
18 testified about the component of the project
19 which is a healthcare facility. And so, and in
20 your written testimony meaning you identify that
21 as a specific feature of land planning.

22 So as a healthcare facility do you

1 believe that that healthcare facility requires a
2 certificate of need from the District of Columbia
3 government in order to be developed?

4 MR. LANE: Objection, scope.

5 DR. BYRNE: Do you want to explain why
6 you think it's within the scope?

7 MS. FERSTER: He did testify that the
8 healthcare facility is a component of the
9 project, is a special merit benefit and the issue
10 that we wonder about is if it's a healthcare
11 facility and therefore requires a certificate of
12 need that -- and receives a certificate of need
13 that would be in our view a stronger indication
14 that this healthcare facility is special.

15 DR. BYRNE: But I don't know that he
16 knows what the rules are and I certainly know
17 what the rules are.

18 MS. FERSTER: Right, so do you know
19 whether or not the applicant intends to apply for
20 a certificate of need. That's simply the
21 question.

22 DR. BYRNE: Could we just answer the

1 question?

2 MR. KENNER: Yes, I have no idea.

3 DR. BYRNE: That's fine.

4 MS. FERSTER: You did not testify in
5 any way about alternative designs for the
6 project. So if I were to pose a series of
7 questions about alternative designs would you
8 view that as outside the scope of this testimony?

9 MR. LANE: I would object in that by
10 definition it would be outside the scope.

11 MS. FERSTER: So if my question were
12 did the Deputy Mayor's Office ever consider
13 alternative designs that would have reduced the
14 impacts on historic properties in this project
15 would you object to that question?

16 MR. LANE: I would object as outside
17 the scope.

18 DR. BYRNE: I think that's right. I
19 think that's a legitimate question, but it's not
20 a legitimate question on cross examination.

21 MS. FERSTER: That's fine. Then the
22 record will reflect that, that there was no

1 testimony on that point.

2 Okay, you did testify about the
3 stormwater management features of the project
4 that you view as special merit as well as the
5 project's LEED silver certification. So I had a
6 couple of questions about that.

7 In your experience with other -- and
8 this goes to the question of whether it's
9 special, of other development projects that come
10 within the purview of your office do you ensure
11 that those developments also achieve a LEED
12 silver certification?

13 MR. LANE: I'm going to object on
14 relevance. The Mayor's Agent has held in prior
15 hearings in this matter that the public benefits
16 for non-historic projects are not relevant to the
17 issues in this matter.

18 MS. FERSTER: Unless you're arguing
19 that these are special.

20 DR. BYRNE: I'm going to let him
21 answer.

22 MR. KENNER: Sorry, can you restate

1 the question.

2 MS. FERSTER: In other public-private
3 development projects that have come within the
4 purview of your office has LEED silver
5 certification been something that has been part
6 of those projects?

7 MR. KENNER: I think it probably
8 depends on the project. So, I mean we deal with
9 a lot of different projects so I'd have to -- I'm
10 not familiar with whether we've achieved LEED
11 silver on projects in the last 2 and a half
12 years, or projects over the last 10 years. I'd
13 have to probably get that information.

14 MS. FERSTER: And are you familiar at
15 all with the green construction code or its
16 applicability to District of Columbia financed
17 projects?

18 MR. LANE: Objection, scope.

19 DR. BYRNE: I'm going to allow it.

20 MR. KENNER: Not specifically because
21 I don't have those regs in front of me.

22 MS. FERSTER: Okay, generally are you

1 aware that the green construction code does apply
2 to publicly financed District of Columbia
3 projects?

4 MR. LANE: Same objection.

5 MR. KENNER: Yes.

6 MS. FERSTER: It does.

7 MR. KENNER: As much as I understand
8 about it, yes.

9 MS. FERSTER: Okay. I have some
10 questions about the phasing of the project. Do
11 you view these issues within the scope of this
12 witness's testimony?

13 MR. LANE: The witness did not testify
14 as to phasing.

15 MS. FERSTER: I'd still like to ask
16 some questions about phasing. Do you object?

17 DR. BYRNE: I don't think he said
18 anything about phasing.

19 MS. FERSTER: I would like to still
20 request permission to ask questions on phasing.

21 DR. BYRNE: I sustained the objection.

22 MS. FERSTER: Thank you. Okay, how

1 about permits, specifically the raze permit and
2 the subdivision permit. I have some specific
3 questions about the raze and subdivision permits
4 that were applied for and in fact one was
5 received by the Mayor's Office.

6 I would like to ask some questions
7 about your receipt of the demolition permit back
8 in December of 2016.

9 MR. LANE: That was not included in
10 the testimony. I would object to that.

11 DR. BYRNE: Sustained.

12 MS. FERSTER: Okay. You testified
13 about exemplary architecture, that you believe
14 the project is one of exemplary architecture.

15 Do you have any elaboration on the
16 basis for that belief in terms of the
17 architectural features or the standards by which
18 you made that judgment?

19 MR. LANE: Object to that
20 characterization. The testimony specifically
21 said that other witnesses would be testifying as
22 to architecture.

1 MS. FERSTER: So you made no specific
2 determination by yourself that this is exemplary
3 architecture.

4 MR. LANE: Objection to
5 characterization.

6 DR. BYRNE: Sustained. The record of
7 his testimony is what it is.

8 MS. FERSTER: Okay. So I'm going to
9 ask the witness again do you have any personal
10 opinion on whether or not this architecture is
11 exemplary architecture.

12 MR. LANE: Same objection.

13 DR. BYRNE: I think he can answer
14 that.

15 MR. KENNER: Sorry, can you restate
16 the question again?

17 MS. FERSTER: Have you formed a
18 personal opinion about whether the architecture
19 in this project was exemplary architecture?

20 MR. KENNER: I think I've testified
21 that there are a number of elements of special
22 merit including elements of exemplary

1 architecture and that we'll have some other
2 witnesses also outline that.

3 So I think that my testimony speaks
4 for itself.

5 MS. FERSTER: Okay, thank you. Are
6 you aware of allegations made to law enforcement
7 officers that ANC commissioners have received
8 things of value in return for their past support
9 of this development project?

10 MR. LANE: Objection, relevance.

11 DR. BYRNE: Sustained. Really Ms.
12 Ferster, please.

13 MS. FERSTER: I'm making a record,
14 Your Honor.

15 DR. BYRNE: Making a record of asking
16 questions that are plainly outside the scope of
17 his testimony.

18 MS. FERSTER: In our view it's
19 relevant.

20 Okay, that's it for now. If it's
21 possible then I may ask to call you back if some
22 of the questions that you were not able to answer

1 are -- that other witnesses defer to you for
2 that.

3 MS. BROWN: I think that we cannot
4 recall our witness. If she has a witness that
5 she wants to bring up. I don't know that it's
6 going to be the Deputy Mayor.

7 DR. BYRNE: What we've said is that if
8 she has questions that other witnesses attest
9 that only the Deputy Mayor could answer that are
10 within the scope of his cross examination we
11 would develop a means by which to conveniently
12 get some answer.

13 And it may not be -- I'll have to
14 think about what that is at the time. But we'll
15 try to avoid having him personally come back.

16 MS. BROWN: And I do have two quick
17 redirect questions.

18 DR. BYRNE: Okay.

19 MS. BROWN: I can wait.

20 DR. BYRNE: Would you prefer to wait?
21 Let's do that. That sounds fine. All right, Mr.
22 Otten, your turn.

1 Just a reminder that what we're
2 dealing with here is cross examination so the
3 questions have to address things that are within
4 the scope of the witness's direct testimony.

5 MR. OTTEN: I understand. And I want
6 to make sure we're clear on the record in this
7 case. The record is the continuation of the
8 prior cases that the record in total includes all
9 of the prior hearings and submitted written --

10 DR. BYRNE: That was stated at the
11 beginning of the hearing.

12 MR. OTTEN: And so therefore anything
13 that Mr. Kenner has submitted in the past in the
14 prior hearings is on the record.

15 DR. BYRNE: If it's in the record it
16 stays in the record.

17 MR. OTTEN: Okay. Mr. Kenner, you're
18 the director of DMPED?

19 MR. KENNER: I'm the Deputy Mayor for
20 Planning and Economic Development.

21 MR. OTTEN: And what's your address?
22 Where do you work at?

1 MR. KENNER: The Wilson Building and
2 the address I believe is 1350 Pennsylvania
3 Avenue, NW.

4 MR. OTTEN: What's your role as the
5 Deputy Mayor?

6 MR. KENNER: To execute the Mayor's
7 vision around economic development for the city.

8 MR. OTTEN: And by economic
9 development can you elaborate on that?

10 MR. KENNER: A variety of different
11 features that include the general economic health
12 of the District of Columbia.

13 MR. OTTEN: What goes into economic
14 health? What does that mean?

15 MR. KENNER: It means --

16 MR. LANE: Objection on the scope and
17 relevance.

18 DR. BYRNE: I'll let this one go but
19 try to get to the issues of the case.

20 MR. KENNER: It can mean a variety of
21 things and so I think economic health has to do
22 with the vibrancy as well as the -- just general

1 features of economic development.

2 MR. OTTEN: Does economic health
3 include people? The vibrancy of the people?

4 MR. LANE: Objection on relevance.

5 MR. OTTEN: This is directly relevant
6 because the economic health is being evaluated
7 here as part of the special merit of this case.

8 MR. LANE: Objection on scope.

9 MR. OTTEN: Scope is in the written
10 testimony right now. I'm looking at it right in
11 front of me. The economic health of this project
12 in terms of the tax generation and the influence
13 on the surrounding community.

14 DR. BYRNE: He's testified that that
15 is included.

16 MR. OTTEN: And that's part of the
17 economic health.

18 DR. BYRNE: I think that's what I
19 heard him say.

20 MR. OTTEN: So, in terms of the
21 economic health specific to this project can you
22 revisit that for me just now so I can understand

1 what you understand is involved here in terms of
2 the economic impact or the benefits?

3 MR. KENNER: My testimony was I
4 thought fairly clear around many of the important
5 goals that would be potential components of
6 economic health that are included in this
7 project.

8 MR. OTTEN: Can you elaborate a few of
9 those for me?

10 MR. LANE: Objection.

11 DR. BYRNE: I think he's given his
12 testimony on that. I'm not sure what you're
13 trying to get at.

14 MR. OTTEN: Well, he's qualifying this
15 as a special benefit. I need to understand what
16 the lead director of -- the Deputy Mayor of
17 economic planning is saying about this project.

18 DR. BYRNE: Well, I need to understand
19 what he means by it, but whether I have to
20 guarantee that you'll understand it. I
21 understand what he means.

22 MR. OTTEN: Did you understand?

1 DR. BYRNE: I have a scope and I'm
2 looking forward to hearing more testimony.

3 MR. OTTEN: Okay. So in your position
4 as the DMPED, as Deputy Mayor, are you -- how are
5 you involved in reviewing these applications such
6 as the one that went before HPRB and now before
7 the Mayor's Agent?

8 MR. LANE: Objection on scope.

9 MR. OTTEN: What is your role in that
10 review?

11 MR. LANE: Same objection.

12 DR. BYRNE: Would you say more about
13 your objection, please?

14 MR. LANE: It's unrelated to the
15 actual testimony given on direct.

16 MR. OTTEN: Absolutely related. He is
17 the central planning official in the District of
18 Columbia. I need to understand what he's
19 planning and how he's envisioning this special
20 project.

21 DR. BYRNE: I think it goes outside
22 the scope of what he testified to. He is who he

1 is.

2 MR. OTTEN: So then how do you relate
3 to the Office of Planning?

4 MR. LANE: Objection on scope.

5 DR. BYRNE: Yes, sustained.

6 MR. OTTEN: Hasn't the Office of
7 Planning weighed in on this project?

8 MR. LANE: Objection on scope.

9 DR. BYRNE: It's in the record already
10 that the Office of Planning has weighed in.

11 MR. OTTEN: Okay, so I'm asking him
12 what his role is with the Office of Planning.

13 DR. BYRNE: I know, but that's not
14 what he testified to.

15 MR. OTTEN: He's Deputy Mayor. I want
16 to understand what he views as his role vis-a-vis
17 the Office of Planning.

18 DR. BYRNE: This is not a civics
19 seminar. This is a hearing on this case. And
20 going into his relation with the Office of
21 Planning is not what's at stake in this case.

22 MR. OTTEN: Absolutely it is.

1 DR. BYRNE: I understand that you
2 believe that, but I'm saying it's not.

3 MR. OTTEN: Mr. Byrne, you don't
4 understand and the relationship between the
5 Office of Planning, the Historic Preservation
6 Office and DMPED.

7 DR. BYRNE: I understand it better
8 than you do.

9 MR. OTTEN: You do? Okay. Well then
10 you would allow him to answer that question.

11 DR. BYRNE: No, because it's outside
12 the scope. I want to get on to the merits of
13 this project and not have just a forum on your
14 concerns about the District of Columbia
15 government.

16 MR. OTTEN: Okay, so as DMPED, as the
17 Deputy Mayor, are you involved in planning of
18 projects here in the District of Columbia?

19 MR. LANE: Objection on scope.

20 DR. BYRNE: Sustained.

21 MR. OTTEN: How is it not relevant?
22 I don't understand.

1 DR. BYRNE: It's not a question of
2 relevance. It's a question of you can ask him
3 questions that are within the scope of what he
4 testified to.

5 He testified about this project and
6 about the benefits of this project to the
7 District of Columbia.

8 MR. OTTEN: So in reviewing the
9 benefits of this project to the District of
10 Columbia what planning protocols or policies did
11 you review to come to your conclusions?

12 DR. BYRNE: I'll allow that.

13 MR. KENNER: Sorry, could you state
14 the question again?

15 MR. OTTEN: What planning protocols or
16 policies did you review to make your conclusions.

17 DR. BYRNE: That this was a project
18 that was of substantial benefit to the District
19 of Columbia.

20 MR. KENNER: So, again in my testimony
21 I state numerous things around residential,
22 affordable housing, community serving benefits

1 that all go into the public benefits. And those
2 are just examples of some few that go into public
3 benefits for this project.

4 MR. OTTEN: Isn't it the case that
5 this public plan will be privatized as part of
6 this project?

7 MR. LANE: Objection.

8 DR. BYRNE: Sustained.

9 MR. OTTEN: Mr. Byrne, in prior
10 hearings it became clear that one of the historic
11 characteristics of this project is its public
12 nature.

13 DR. BYRNE: Right, but he didn't
14 testify on that.

15 MR. OTTEN: He just testified just now
16 that there are public benefits to this project.

17 DR. BYRNE: Right, but you can't ask
18 him about every detriment that you see to the
19 project because that's just not what he testified
20 to.

21 MR. OTTEN: I'm asking him directly to
22 his testimony there are public benefits.

1 DR. BYRNE: You're asking him for --
2 so you know --

3 MR. OTTEN: Okay, let me ask it this
4 way. Is there a public benefit to the
5 privatization of this park?

6 MR. LANE: Objection on scope.

7 DR. BYRNE: I'll let him answer that.

8 MR. KENNER: Say the question one more
9 time.

10 MR. OTTEN: Is there a benefit to the
11 privatization of this public park?

12 MR. KENNER: I don't understand your
13 characterization of privatization and I don't
14 understand your characterization of park.

15 What I testified to is that we believe
16 that this project having gone through a number of
17 different community as well as advisory
18 neighborhood commission, National Capital
19 Planning Commission, Historic Preservation
20 Review, U.S. Commission on Fine Arts, legislative
21 process in the D.C. Council has a number of
22 different community serving benefits that are

1 specific to this project which make it a project
2 of significance for us and a reason why we are
3 very happy to be here to be in support of it.

4 MR. OTTEN: You just testified that
5 you don't understand the term park. Can you
6 explain that?

7 MR. LANE: Objection to
8 characterization.

9 MR. OTTEN: He just testified to this.

10 DR. BYRNE: So, I would just ask the
11 witness to clarify what he meant when he said
12 that he didn't understand what the term park
13 meant.

14 MR. KENNER: Just that I see this as
15 the McMillan Sand Filtration Site. That's all.

16 MR. OTTEN: Are you saying therefore
17 then that the 25 acres of open land above the
18 sand filter water beds is not a park?

19 MR. KENNER: No, it's just you were
20 referring to the project and so it is the
21 McMillan Sand Filtration Site.

22 MR. OTTEN: Has there ever been a park

1 as part of that sand filtration site?

2 MR. KENNER: I'm not sure.

3 (Simultaneous speaking)

4 DR. BYRNE: Sustained.

5 MR. OTTEN: Are you aware that in the
6 application for and the approval of the McMillan
7 Sand Filtration Site's acceptance into the
8 National Historic Register it refers to the 25
9 acres as a park?

10 MR. LANE: Objection.

11 DR. BYRNE: Sustained.

12 MR. OTTEN: I'm sorry, what?

13 DR. BYRNE: It's in the record, Mr.
14 Otten. It's in the record as to what was said in
15 the nomination.

16 MR. OTTEN: Okay, so I'm just
17 clarifying that he knows that.

18 DR. BYRNE: But I don't think it's an
19 okay question.

20 MR. OTTEN: Okay, going back to your
21 role in looking at planning policies for the
22 District of Columbia and your analysis and

1 conclusions in this case what other policies and
2 plans here in the District of Columbia did you
3 review in making your conclusion that this is a
4 special merit project?

5 MR. LANE: Objection, vague.

6 DR. BYRNE: It's pretty vague.

7 MR. OTTEN: Okay, let me ask you this.

8 DR. BYRNE: He's testified already
9 what he viewed that he was -- he testified as to
10 his role in implementing the Mayor's vision for
11 development. He testified to the many government
12 agencies that have found merit in the project.

13 And you're asking him what else he
14 looked at, but I don't think that -- I think that
15 just goes too far.

16 MR. OTTEN: Thank you for clarifying.
17 So, the Mayor's vision for development. In
18 understanding that did you review the Mayor's
19 Climate Ready D.C. plan and resiliency in terms
20 of future projects here in the District of
21 Columbia when you reviewed this case?

22 MR. KENNER: There are a variety of

1 different things that we look at obviously making
2 sure that it complies with all District of
3 Columbia laws and regulations, ensuring that
4 obviously we've got community support and
5 ensuring that we have gone through all the other
6 regulatory and other advisory processes.

7 And so I'm sure that as a part of some
8 of the review of environmental or other
9 parameters to evaluate the comprehensive benefits
10 of this program and this project I'm sure that
11 over the course of its development I'm sure that
12 we have looked at elements of -- I'm not sure
13 about the specifics of what you're specifically
14 referring to in the climate report, but I'm sure
15 that elements of it have been considered.

16 MR. OTTEN: And this is you're
17 referring to the Climate Ready D.C. Report?

18 MR. KENNER: I think you're referring
19 to it. I'm saying that there were a variety of
20 different elements. I'm not sure which element
21 you'd be referring to in it.

22 MR. OTTEN: I'm referring to the

1 Climate Ready D.C. Report specifically.

2 DR. BYRNE: I think he's answered the
3 question.

4 MR. OTTEN: Okay. So therefore in
5 that report did you acknowledge in your
6 conclusions in any way the location of McMillan
7 on the flooding maps?

8 MR. LANE: I'm going to object on
9 scope.

10 DR. BYRNE: Sustained.

11 MR. OTTEN: Are you aware that
12 hospitals that are in flood areas are known to be
13 -- it's a problem for the city?

14 MR. LANE: Objection.

15 DR. BYRNE: Sustained.

16 MR. OTTEN: Excuse me. He quoted from
17 his testimony that the healthcare facility in
18 this project is one that makes this a special
19 merit project, did he not?

20 DR. BYRNE: He did.

21 MR. OTTEN: So I'm trying to
22 understand how he got to that conclusion.

1 DR. BYRNE: I don't think you are. I
2 think you're just arguing with him about whether
3 he considered some document that he is the head
4 of a large office in. And whether he considered
5 it or not I don't think really is relevant.

6 MR. OTTEN: I believe he had a direct
7 hand in this plan.

8 DR. BYRNE: That could well be, but
9 the question you're asking him is whether he
10 reviewed it himself for purposes of this
11 proceeding and I don't think he testified that he
12 did.

13 I think it's just not getting us where
14 we want to go in this hearing.

15 MR. OTTEN: Well, as I understand it
16 one of the special benefits here is the location
17 of the hospital facility on this site.

18 DR. BYRNE: I think that is part of
19 the applicant's case. They have not really made
20 that case yet. All Mr. Kenner has done is sketch
21 out the broad parameters of the case that the
22 other witnesses are going to provide detail on.

1 And I do think that you're better off
2 waiting until you have more technical testimony
3 and trying to tangle with those factual
4 assertions that are actually going to be made
5 than to try to push him into describing what he
6 knew when kind of a thing.

7 I just don't think that's appropriate.

8 MR. OTTEN: Okay. Let me ask this.
9 Mr. Kenner, how do you view McMillan Park in
10 terms of your portfolio of projects as far as its
11 scale and importance to the city. The Mayor's
12 vision for development.

13 MR. LANE: Objection, scope.

14 DR. BYRNE: I think he did testify
15 that it was very important.

16 MR. OTTEN: And in terms of the
17 portfolio you have how would you rank it.

18 MR. KENNER: Very important.

19 MR. OTTEN: Therefore this is public
20 land, right? That's in your portfolio. The 25
21 acres.

22 MR. KENNER: It is public land.

1 Everybody knows it's public land.

2 MR. OTTEN: And you claim that there
3 are 20 percent set-asides for affordable housing.
4 That's what makes it a special benefit because
5 the law only requires 10 percent?

6 MR. KENNER: I think I testified that
7 it's important to mention that 20 percent of the
8 affordable units set-asides exceeds the required
9 by law at the time inclusionary zoning.

10 MR. OTTEN: And are you aware that
11 inclusionary zoning is measured on gross floor
12 area, not units?

13 DR. BYRNE: Measured for what purpose?

14 MR. OTTEN: In terms of percentages of
15 total gross floor area versus total units.

16 DR. BYRNE: For what purpose?

17 MR. OTTEN: For the purpose of what he
18 just said, inclusionary zoning.

19 DR. BYRNE: He testified about the
20 percentage of units.

21 MR. OTTEN: Percentage of units. But
22 he's quoting IZ as the measure for why it's

1 special. Correct?

2 MR. KENNER: Say the question one more
3 time?

4 MR. LANE: Object on confusing.

5 DR. BYRNE: I think if you want to
6 argue that it's not special because the square
7 footage is the right measure and that that is
8 what should be looked at I think you should make
9 that argument and not try to drag it out of the
10 witness.

11 MR. OTTEN: Well, he's claiming that
12 this is a special merit project based on 20
13 percent of the units being --

14 DR. BYRNE: So he may be wrong. So
15 you have to make that argument.

16 MR. OTTEN: Did you do any analysis of
17 the gross floor area that's actually affordable?

18 MR. LANE: Objection, scope.

19 MR. OTTEN: It's directly related to
20 the special benefit that he's testified to, Mr.
21 Lane.

22 MR. LANE: This is the same approach

1 of testifying as a cross examination rather than
2 saving it for the actual presentation.

3 MR. OTTEN: This is to understand his
4 testimony.

5 DR. BYRNE: He's testified about the
6 number and percentage of units. And if you think
7 that's inadequate you can put on a case to show
8 why it's inadequate.

9 MR. OTTEN: And so you also testified
10 that the affordability units including up to 80
11 percent AMI, correct?

12 MR. KENNER: I testified that the
13 category is 80 percent of AMI are at or below.

14 MR. OTTEN: What is your definition of
15 80 percent AMI? What does AMI mean to you?

16 DR. BYRNE: Sustained. AMI -- we
17 don't really need to go through all that, do we?

18 MR. OTTEN: Isn't it the case, Mr.
19 Kenner, that the city has taken a recent position
20 that 80 percent AMI is not actually affordable?

21 MR. LANE: Objection, scope.

22 MR. OTTEN: Directly related to this

1 testimony, sir.

2 DR. BYRNE: Mr. Kenner.

3 MR. KENNER: Say the question one more
4 time.

5 MR. OTTEN: Isn't it the case that the
6 city has recently set policy that 80 percent AMI
7 is not affordable.

8 MR. LANE: Same objection for the
9 record.

10 MR. KENNER: I don't understand your
11 question in terms of the city. There is -- tell
12 me what you mean by that.

13 MR. OTTEN: The Mayor and the City
14 Council.

15 MR. KENNER: There's no policy that
16 I'm aware of that says that 80 percent of area
17 median income is no longer affordable if that's
18 your question.

19 MR. OTTEN: Hasn't it been reduced
20 from 80 percent to 60 percent as the outer
21 boundary of what is considered affordable in the
22 district?

1 MR. LANE: Objection, vague.

2 MR. OTTEN: It's very clear.

3 MR. KENNER: No, it's not clear
4 because you're talking about affordability
5 definitions which are set.

6 MR. OTTEN: By what?

7 MR. KENNER: Set by law.

8 MR. OTTEN: In the inclusionary zoning
9 law?

10 MR. KENNER: That's only one
11 definition. HUD has other definitions as an
12 example of affordability levels. So which one
13 are you referring to?

14 MR. OTTEN: So HUD is federal.
15 Correct?

16 MR. KENNER: HUD is federal, correct.

17 MR. OTTEN: And inclusionary zoning
18 law is district level.

19 MR. KENNER: There are funds that come
20 from the federal government which are primarily
21 affordable housing federal money that influences
22 affordability levels.

1 There is no such thing as just local
2 affordability. It's always included with both.

3 MR. OTTEN: So when a new development
4 goes up like this project and a developer puts in
5 IZ units are you saying that HUD subsidizes those
6 IZ units?

7 MR. LANE: Objection to
8 characterization.

9 MR. OTTEN: He testified to this.

10 MR. KENNER: It totally depends on how
11 they finance it.

12 MR. OTTEN: In this case are you aware
13 of how they're financing it?

14 MR. KENNER: I think that's probably
15 a question for --

16 DR. BYRNE: I think that's outside the
17 scope of his testimony. I think there are other
18 people who you can ask that to I expect as we go
19 forward.

20 MR. OTTEN: As DMPED have you, Mr.
21 Kenner, looked at or provided for the record any
22 analysis of healthcare facilities around the

1 District of Columbia?

2 MR. LANE: Objection, scope.

3 MR. OTTEN: It's directly related to
4 his testimony about the special benefit of the
5 healthcare facility in this project.

6 DR. BYRNE: There's going to be more
7 people who have more specific knowledge about
8 these things as we go forward. I'd really like
9 to move on to that.

10 MR. OTTEN: This is the director of
11 DMPED.

12 DR. BYRNE: He's the Deputy Mayor.

13 MR. OTTEN: He just said that this is
14 one of the most important projects in the
15 District of Columbia.

16 DR. BYRNE: He did.

17 MR. OTTEN: I would imagine given
18 that, and it's probably one of the largest
19 projects in his portfolio he would understand
20 when he testifies to the special benefit of a
21 healthcare facility at the site that he's done
22 some analysis siting healthcare facilities in the

1 District of Columbia.

2 DR. BYRNE: I'm sure he has and I'm
3 sure we're going to hear about who has done that
4 analysis that the Deputy Mayor may be relying
5 upon. He is the Deputy Mayor. He's not doing
6 all of the number crunching himself.

7 I'd like to wait until we have people
8 who actually know more about the details of the
9 proposal.

10 MR. OTTEN: In the record submitted by
11 the applicant we have the alternatives that were
12 considered as part of this project.

13 MR. LANE: Object on the scope of this
14 line of questioning.

15 DR. BYRNE: Sustained.

16 MR. OTTEN: One of the critical pieces
17 of this, Mr. Byrne, as I understand it is how
18 DMPED which is the co-applicant in this case
19 considered alternatives. They have put on the
20 record --

21 DR. BYRNE: But he didn't testify to
22 that.

1 MR. OTTEN: But this is on the record.

2 DR. BYRNE: I understand, but you can
3 now only cross examine him about the testimony
4 that he's given just now.

5 MR. OTTEN: He has testified this is
6 the only feasible alternative.

7 DR. BYRNE: He didn't testify to that
8 here.

9 MR. OTTEN: He has on the record.

10 DR. BYRNE: But that's not relevant to
11 the questions.

12 MR. OTTEN: It's in the record in this
13 case.

14 DR. BYRNE: I've ruled. It's
15 sustained.

16 MR. OTTEN: So did you refer to -- I
17 noticed in the testimony the Tregaron Estate
18 case. Are you familiar with that case?

19 MR. LANE: Objection, that was not
20 testified to.

21 DR. BYRNE: He didn't testify to that.

22 MR. OTTEN: Are you familiar with the

1 Tragana --

2 DR. BYRNE: Sustained.

3 MR. OTTEN: Is the Tragana Estate
4 public?

5 MR. LANE: Objection, scope.

6 DR. BYRNE: Sustained.

7 MR. OTTEN: This is ridiculous. I'm
8 asking the Deputy Mayor. He should know these
9 answers.

10 DR. BYRNE: It's not a question of
11 what he knows. It's a question about the legal
12 procedure that we're following.

13 MR. OTTEN: Exactly.

14 DR. BYRNE: Okay.

15 MR. OTTEN: This is really
16 unbelievable. The prejudice in this case is
17 unbelievable.

18 So, did you claim how many
19 construction jobs -- and I object to the smirking
20 by Mr. Lane that's consistently happening in this
21 case right now. Have some professional aspect,
22 Mr. Lane. The constant smirking is not

1 appreciated and it's not professional.

2 MR. LANE: Sir, you are badgering the
3 gentleman.

4 (Simultaneous speaking)

5 DR. BYRNE: Okay, let's be quiet for
6 a minute, please.

7 MR. OTTEN: I don't appreciate this --

8 DR. BYRNE: I don't appreciate the
9 fact that you are not conducting the examination
10 in a way that is professional. I am trying to
11 give you --

12 MR. OTTEN: I'm not asking questions
13 that are professional here?

14 DR. BYRNE: Correct. You're asking
15 many questions that are outside the scope of his
16 testimony.

17 MR. OTTEN: He's the Deputy Mayor for
18 the city.

19 DR. BYRNE: That is something that
20 somebody who is not a lawyer wouldn't necessarily
21 understand.

22 MR. OTTEN: So, getting back to the

1 public benefits, can you remind us of your
2 testimony because I don't recall your testimony
3 about the public benefits in this case so I can
4 understand what he testified to.

5 DR. BYRNE: Sustained. He's already
6 testified to it three times.

7 (Simultaneous speaking)

8 MR. OTTEN: Oh, we want to get on. We
9 just want to rubber stamp this thing. Okay.

10 What are the positive fiscal impacts
11 that you've testified to in this case?

12 MR. LANE: I'm going to object on
13 vague. If there's a specific question about the
14 testimony that's fine. If it's general questions
15 asking for restating the testimony.

16 DR. BYRNE: You're just asking him to
17 restate the testimony that he's already given.

18 MR. OTTEN: Okay.

19 DR. BYRNE: I don't want to spend time
20 on that. I want to get on to the issues that are
21 going to decide this case.

22 MR. OTTEN: Which is the ones he's

1 testified to.

2 DR. BYRNE: Many of them are, but only
3 in a very general way. Let them put their case
4 on and then you can engage with people who have
5 detailed knowledge about the project.

6 MR. OTTEN: So the case has started,
7 correct?

8 DR. BYRNE: Don't ask me questions
9 like that.

10 MR. OTTEN: You just said let them put
11 their case on.

12 DR. BYRNE: Yes.

13 MR. OTTEN: Mr. Kenner is their first
14 witness.

15 DR. BYRNE: I know but you're taking
16 up a great deal of time with a lot of stuff
17 that's not going to be relevant -- that is not
18 appropriate for the hearing and the decision in
19 the case.

20 And I would like you to be more
21 circumspect and to wait. If you want to examine
22 him about the scope of his testimony, but I am

1 not going to give you any more leeway to go
2 outside of what he testified to because I really
3 want to get on with this case.

4 I don't know what your agenda is, but
5 my agenda is to decide the case according to the
6 remand from the court of appeals.

7 MR. OTTEN: Mr. Kenner, are you
8 familiar the filter pits that are underneath the
9 park, 25 acres.

10 MR. LANE: Objection.

11 DR. BYRNE: Sustained. He didn't
12 testify about filter beds.

13 MR. OTTEN: Mr. Kenner, isn't this
14 case relating to the demolition of the historic
15 assets at this site.

16 MR. LANE: Objection, scope.

17 DR. BYRNE: I'll let him go with that.
18 Obviously it is about the demolition. That's
19 what the case is about. It's about the
20 demolition of the cells.

21 MR. OTTEN: I want to understand what
22 he understands.

1 DR. BYRNE: It doesn't matter what he
2 understands.

3 MR. OTTEN: He's the Deputy Mayor.

4 DR. BYRNE: But it doesn't matter.
5 For that purpose it doesn't matter. It matters
6 what the applicant's case is as presented in
7 evidence to me.

8 MR. OTTEN: He's part of the
9 applicant's case.

10 DR. BYRNE: He as a human being is not
11 part of the case. The submissions that they make
12 are the case.

13 MR. OTTEN: I'm asking about the
14 submissions.

15 DR. BYRNE: You're not asking about
16 things that he's testified to.

17 MR. OTTEN: He's supporting this case.

18 DR. BYRNE: It doesn't matter.

19 MR. OTTEN: This is ridiculous.

20 DR. BYRNE: Sir, you are really not
21 being very helpful to the elucidation of the
22 case. You're not following the procedures.

1 You're slowing everything down. We can't get to
2 the witnesses who actually can answer the
3 questions that you or your other opponents may
4 have. So I'm going to ask you to please cease
5 and desist and let's move on with the case.

6 MR. OTTEN: So, Mr. Kenner, you
7 testified to the views with regards to this plan,
8 the view sheds that are protected in this plan,
9 correct?

10 DR. BYRNE: I don't believe he did.

11 MR. OTTEN: Yes, he did. I wrote it
12 down.

13 MR. KENNER: Where in my testimony it
14 says that.

15 MR. OTTEN: You said it about 30
16 minutes ago.

17 MR. KENNER: Please refer to where in
18 my testimony I said that.

19 MR. OTTEN: I don't have your
20 testimony in front of me.

21 DR. BYRNE: I'm going to sustain the
22 objection. I didn't hear him say anything about

1 view sheds.

2 MR. OTTEN: Is that important to you
3 as the Deputy Mayor?

4 MR. LANE: Objection.

5 MR. OTTEN: Did you testify to the
6 exemplary architecture in this case?

7 MR. LANE: Objection.

8 DR. BYRNE: He's already answered that
9 question.

10 MR. OTTEN: Did you testify to the
11 traffic accessibility around this site?

12 MR. LANE: Objection, scope.

13 MR. OTTEN: It has to do with --

14 DR. BYRNE: He didn't testify --

15 MR. OTTEN: Yes, he did. He testified
16 to the integration of this site into the
17 surrounding network of roads.

18 MR. KENNER: I did not -- or please
19 tell me where in my testimony I said that.

20 MR. OTTEN: You tell me. You didn't
21 say that?

22 MR. KENNER: I testified before, sir,

1 so please tell me what question that's within the
2 scope of my testimony you're asking.

3 DR. BYRNE: Okay, Mr. Otten, you're
4 finished for now. You can come back.

5 MR. OTTEN: I object to this whole
6 case, the posture, the issues. He's stated this
7 in writing already.

8 DR. BYRNE: I know.

9 MR. OTTEN: This gentleman is the
10 Deputy Mayor. He should know all these answers.
11 The fact that he doesn't. I have just one more
12 question if I could.

13 I believe he testified to the
14 preservation covenants on this site, did he not?

15 DR. BYRNE: No.

16 MR. OTTEN: So you're not aware of
17 preservation covenants on this site?

18 DR. BYRNE: Sustained.

19 MR. OTTEN: So these are questions for
20 later witnesses is what you're saying?

21 DR. BYRNE: If they testify about
22 them. Or you could put on your own witnesses,

1 you know.

2 MR. OTTEN: Put all this record
3 already. So that's what I need to clarify. I
4 heard that this is limited to the four corners of
5 what they just said right now when that is not
6 the case.

7 You know the case law as much as I do.
8 Whatever's on the record can be cross examined.

9 DR. BYRNE: Not true.

10 MR. OTTEN: Yes, it is.

11 MS. MERRITT: I don't have any
12 questions for Mr. Kenner.

13 MS. BROWN: Mr. Deputy Mayor I just
14 have two quick redirect questions.

15 You mentioned the public-private
16 partnerships that you do through the Deputy
17 Mayor's office. All of those have high standards
18 for projects.

19 MR. KENNER: Correct.

20 MS. FERSTER: And you would not
21 typically find those high standards in a matter
22 of right project, is that correct?

1 MS. FERSTER: Leading the witness.

2 MS. BROWN: Latitude --

3 MR. KENNER: That is correct.

4 MS. BROWN: Okay, thank you.

5 DR. BYRNE: Done with Mr. Kenner?

6 Okay, Mr. Kenner. Thank you very much.

7 MS. BROWN: Thank you. Our next
8 witness will be Mr. Chris Ruiz of Silman
9 Architects.

10 In our slideshow the order of
11 presentation for your convenience are the order
12 and issues they will be addressing. And we would
13 like Mr. Ruiz to be qualified as an expert
14 witness. I have his resume here for your review.

15 DR. BYRNE: Okay.

16 MS. BROWN: As you may recall Mr. Kirk
17 Mettam from Silman was the expert that testified
18 before in the previous proceedings. He could not
19 be here with us today, so his associate Mr. Ruiz
20 is here in his place. And he has been working on
21 this project for quite some time.

22 DR. BYRNE: Okay. Any objection?

1 MS. FERSTER: Mr. Ruiz, are you
2 licensed as a professional engineer in the
3 District of Columbia?

4 MR. RUIZ: I do not hold a
5 professional engineering license in the District
6 of Columbia.

7 MS. FERSTER: Then I object.

8 DR. BYRNE: On what grounds?

9 MS. FERSTER: That he's not qualified
10 to testify on structural issues relating to a
11 project that has to qualify in the District of
12 Columbia.

13 MR. RUIZ: I have a professional
14 engineering license in the State of Florida,
15 Delaware, and a structural engineering license in
16 the State of Illinois.

17 If I did apply for licensure in the
18 District of Columbia.

19 DR. BYRNE: I'm going to overrule the
20 objection.

21 MS. BROWN: Thank you. Mr. Ruiz,
22 could you proceed with your testimony?

1 MR. RUIZ: Absolutely. Good morning,
2 Mr. Byrne.

3 DR. BYRNE: Good morning, Mr. Ruiz.

4 MR. RUIZ: Again, my name is
5 Christopher Ruiz and I am a structural engineer
6 associate at Silman, a structural engineering
7 firm in the District of Columbia.

8 As Ms. Brown mentioned, Kirk who
9 previously testified apologizes and wishes he
10 could be here but unfortunately he had a
11 scheduling conflict.

12 My presentation today is to address
13 remand issues number three and four.
14 Additionally, I'm here today to provide an update
15 since our last testimony.

16 Since 2014 additional investigations
17 and analysis were performed and conclusions
18 presented in our previous testimonies and reports
19 have not changed.

20 While you've heard this before, I
21 would like to give a brief overview of the
22 underground structures on this industrial site as

1 a refresher and for the benefit of those present
2 that were not present at previous proceedings.

3 On the lefthand side of the image on
4 the screen we see the entire site. Underlying
5 the site are three large continuous concrete
6 masses outlined in bold white lines.

7 Within these masses there is an array,
8 a 4 deep by 5 wide array of filter beds often
9 referred to as cells.

10 These unreinforced concrete structures
11 can individually retain a volume of water.

12 If you zoom into one of these cells
13 you see that there's only one way into the cell
14 which is down a ramp. Each cell is confined by
15 four walls. The walls between the cells serve as
16 party walls and act as support for both cells.

17 The walls around the perimeter of the
18 site form the berm and the plinth.

19 Within these cells there are over 200
20 columns each supporting a vault. In all there
21 are 4,000 of these vaults over 20 acres of the
22 underground cells.

1 I would like to give a quick brief
2 review of the structures and how they work. The
3 cells were constructed with unreinforced concrete
4 which means there's no reinforcing steel in the
5 concrete.

6 Additionally there is no
7 waterproofing.

8 I want to restate for the record that
9 unreinforced concrete is not permitted by code
10 today. Simply put, we don't do it. The only
11 place that we use unreinforced concrete is
12 between you and the ground which are sidewalk
13 grade or foundations.

14 Unreinforced concrete fails without
15 warning and catastrophically. In reference to
16 these cells just because a cell has not collapsed
17 doesn't -- or a collapse has not occurred does
18 not mean it will not.

19 It is important to note that the cells
20 were never intended for occupancy and the roofs
21 of the cells were never intended to support
22 additional loads or unbalanced load.

1 As previously presented the concrete
2 roof structures are vaults. Vaulted structures
3 work in compression and compression only.
4 They're very ancient forms of structure.

5 These vaults require lateral
6 restraints to remain stable and to resist the
7 thrust forces.

8 Also note that these structures are
9 over 100 years old. As I will show you these
10 structures have not fared well over their
11 lifetime and have moved and cracked due to a lack
12 of reinforcement.

13 For the benefit of those here I wanted
14 to give a brief review of the site conditions
15 prior to construction on the site.

16 This site required a significant
17 regrading due to the existing topography. The
18 white lines represent the area along the old
19 Tiber Creek that ran through the site.

20 This area had to be filled with soil
21 in order to level the site. We had seen
22 significant settlement of the fill materials

1 since they were first placed.

2 The coloring of the cells represents
3 degrees of damage to these unreinforced concrete
4 cells based on surveys on current conditions, red
5 being the worst condition ranging to green having
6 minor damage.

7 As noted previously the conditions can
8 change without warning, meaning the green cells
9 could become yellow, yellow to red, red to
10 collapse.

11 You will notice a direct correlation
12 between the location of the fill materials and
13 the observed damage.

14 There is also a correlation between
15 the lateral restraint provided at the perimeter
16 of the cells and the observed damage.

17 These structures are sensitive to both
18 settlement and lack of lateral restraint.

19 It's important to note that any
20 scenario where we subdivide these structures we
21 are going to be creating a similar condition to
22 the perimeter cells.

1 We're going to be creating an edge
2 zone which means we will compromise the adjoining
3 cells.

4 Those three green cells are
5 uncompromised today, but it's such a sensitive
6 structure that anything that we do is going to
7 compromise those to some degree later.

8 Regardless of condition any of these
9 cells would require significant stabilization
10 which I'll describe in a later slide.

11 The safety issues are obvious when you
12 get on site. There are gaping holes along North
13 Capitol Street on the high side of the berm where
14 the structure has collapsed under its own weight.

15 I have included several photos showing
16 the collapses of cells 24 and 25.

17 I can offer a brief description of why
18 this happened. Initially, cracking of the
19 concrete occurred right at the apex of the vault.

20 Once this crack forms more hinges form
21 throughout the structure. Think of a hinge on a
22 door. Ultimately when three hinges form and

1 movements reach a critical condition an
2 instability in the structure forms and the vault
3 plunges through failing catastrophically.

4 The animation on the slide provides an
5 illustration of a collapse.

6 These failures involve a sudden
7 collapse of tons of soil and concrete materials,
8 a very dangerous situation.

9 This slide illustrates three generic
10 reuse schemes that were investigated by Silman, a
11 topside use, topside interior use, and an
12 overfill scenario.

13 A topside use scenario would require
14 complete removal of the soil above the cell and
15 replacing it with a new reinforced concrete slab
16 which would be designed to stabilize the
17 structure and to support light maintenance
18 vehicles and equipment on the new soil above.

19 The new slab would also accommodate
20 waterproofing and drainage.

21 Based on our analysis the added weight
22 also requires us to reinforce the existing

1 foundations. In theory the interior would appear
2 as it does today.

3 However, it would not be accessible
4 for occupancy and temporary access would have to
5 be maintained for periodic inspection.

6 This is the way we anticipate cell 14
7 would be reinforced. D.C. Water currently
8 controls filter 14 and final determination of
9 cell 14 use cannot be made until after D.C. Water
10 vacates cell 14 and stabilization is in place.

11 The second scenario we investigated
12 was a topside interior use which would introduce
13 risk to the occupants. It would require that the
14 underside of the structure remains visible so it
15 can regularly be inspected, monitored and
16 maintained against hazards like falling concrete.

17 This solution is not a conventional
18 50-year solution but it is something that could
19 be done in theory.

20 Moreover, there are additional non-
21 structural challenges with this scenario which
22 are significant and will be discussed in detail

1 in the next slide.

2 An overflow scenario would require
3 inserting new columns in the middle of a 14 foot
4 column bay in order to limit the demolition of
5 the existing foundations and isolate new
6 structures from the historic construction.

7 Our analysis indicates that this could
8 accommodate up to two to three story light frame
9 construction. However, putting regulated space
10 columns in the middle of a 14 foot bay destroys
11 the historic value of the cells.

12 This slide lists the numerous non-
13 structural challenges for reuse. The cells do
14 not have adequate ceiling height needed for the
15 insertion of services like water, sewer, and
16 other MEP services and be code compliant.

17 Removing the sand would not solve the
18 problem because of the need to reinforce the
19 existing foundations.

20 As mentioned previously the ceilings
21 need to remain visible for inspection, further
22 challenging the placement of services and

1 utilities.

2 Any use of the interior of the cells
3 would require ADA, fire, light, safety upgrades.
4 These upgrades will have a significant impact on
5 the structural stability and integrity of the
6 historic resource.

7 There are also security challenges
8 with these structures.

9 I want to note that there are over
10 4,000 vaults over 20 acres. I make this point to
11 reiterate the amount of repetition of these
12 structures on site.

13 In summary, the existing filters are
14 purpose built industrial structures with
15 significant limitations to reuse inherent in both
16 the design and construction.

17 The existing vaults are unique in
18 their construction, but of very limited use
19 except as a relic of industrial archaeology.

20 Time has demonstrated these
21 limitations and has caused the structure to be
22 compromised, severely in some cases.

1 We could save practically any of these
2 cells with different degrees of difficulty and
3 cost. However, occupancy of the vaults is not
4 feasible except at a very small scale and at a
5 high cost.

6 Silman has assessed the conditions of
7 the cells and developed options for reuse.
8 Quickly going through the reuse scheme Silman has
9 determined that the topside use is feasible with
10 significant intervention.

11 Interior use is not practical due to
12 the numerous limitations and challenges presented
13 as well as the significant structural
14 intervention required.

15 Overbuild requires significant
16 intervention with no historic value. This scheme
17 eliminates the historic value of the cell by
18 greatly altering the historic space and
19 structure.

20 The concrete frames of the cells
21 consist of repeating structural layout for an
22 entire city block, 4,000 in all, all of which

1 have to be stabilized at a minimum just to allow
2 access to the topside.

3 Any one cell offers a complete
4 interpretive experience of the below grade
5 portion of the entire site.

6 In conclusion, the proposed master
7 plan that has developed emphasizes the unifying
8 characteristics of the site, the above grade
9 features, the site organizational features, the
10 landscape characteristic known as the plinth, as
11 well as offering a complete interpretive
12 experience of the below grade structures for the
13 preservation of cell 14.

14 In addition, the integration and
15 adaptive reuse of cell 28 into the landscape
16 design can increase public awareness of the
17 uniqueness of this site.

18 That concludes my testimony. Thank
19 you for your time.

20 MS. BROWN: I have two quick
21 questions. Mr. Ruiz, since your last report have
22 there been any innovations in structural

1 engineering that would allow you to save more
2 cells without the level of intervention as you
3 described in your testimony?

4 MR. RUIZ: No, not that I'm aware of.

5 MS. BROWN: And is there any new
6 literature or studies on the salvaging and
7 reinforcing of unreinforced concrete?

8 MR. RUIZ: No, not that I'm aware of.

9 MS. BROWN: Thank you.

10 DR. BYRNE: Okay. So we're going to
11 go through all of your witnesses. Mr. Ruiz, let
12 me ask you a question myself.

13 I am aware of Capitol Crossing
14 Project, it's right next to where I work at
15 Georgetown Law School. And they are putting a
16 slab and buildings above an interstate highway
17 which is really quite laudable.

18 So, just looking at this I was
19 wondering whether it's feasible to create new
20 supports for the surface that would be new
21 columns to support a slab surface that would
22 leave more cells intact.

1 In other words whether you can sort of
2 --

3 MR. RUIZ: Bridge it over.

4 DR. BYRNE: Bridge it over, yes.

5 Right. So I don't know, you may have touched on
6 them here, but I didn't specifically see it.

7 I see it on the overbuild one there
8 seems to be a new column added.

9 MR. RUIZ: Right, so the overbuild
10 scenario would include putting cells -- sorry,
11 putting columns through the manhole locations and
12 through the filters going completely over the
13 cells, not feasible, and maintain the plinth.

14 In theory you could build some things
15 completely over but the depth required would not
16 maintain the other features presented.

17 DR. BYRNE: It wouldn't maintain the
18 plinth.

19 MR. RUIZ: Correct, because you only
20 have 2 feet between the top of the filter and the
21 plinth elevation of 170.

22 The project you're referring to as an

1 example, don't quote me on the exact depth, but
2 I'm actually working nearby so I'm familiar with
3 the project, the plate girders that are going
4 above and bridging over the highway are in excess
5 of 5 plus feet. So we would be destroying the
6 plinth if we were to try to overbuild.

7 DR. BYRNE: I see.

8 MR. RUIZ: Not to mention this
9 structure as I said is unreinforced so putting --
10 standing over and putting that kind of loading
11 adjacent to would need to be carefully studied
12 and could have harm. Any settlement could cause
13 --

14 DR. BYRNE: Could cause the
15 significant risk of the cell columns themselves
16 collapsing because of the change in the tension
17 of the surface.

18 MR. RUIZ: A change in loading due to
19 settlement.

20 DR. BYRNE: Thank you.

21 MS. BROWN: If I can ask one quick
22 follow-up question.

1 If you were able to even achieve that
2 girding over it you wouldn't be able to get any
3 below grade parking would you? In the cells.

4 MR. RUIZ: Within the cells?

5 MS. BROWN: Right.

6 MR. RUIZ: Right. The below grade
7 parking within the cell would not be feasible
8 from just the fact that you have 14 by 14 foot
9 columns.

10 DR. BYRNE: Your testimony would be
11 that it still would be extremely dangerous to
12 allow people down there because the unreinforced
13 concrete columns could collapse.

14 MR. RUIZ: Well, as unreinforced
15 concrete columns the --

16 DR. BYRNE: If the building wasn't
17 coming down upon them it still could collapse
18 internally.

19 MR. RUIZ: Correct. And your reuse
20 scenario would require careful inspection. And
21 also introducing a vehicle into an unreinforced
22 concrete structure would be additional risk

1 because of impact.

2 DR. BYRNE: Thank you.

3 MS. BROWN: Our next witness is Emily
4 Eig, who's already been qualified as an expert in
5 historic preservation and architectural history.

6 DR. BYRNE: Welcome back, Ms. Eig.

7 MS. EIG: Good morning, thank you,
8 Judge Byrne.

9 I would like to first set a foundation
10 for our discussion today and then I'll come back
11 later in the witness rotation.

12 But I would like to start with just to
13 refresh us about the McMillan reservoir, the sand
14 filtration plant and the public recreation park.

15 This is a historic photograph
16 obviously at the time that the site was completed
17 and landscape which followed had been completed.

18 The site is a D.C. landmark. It is
19 also recently placed on the National Register as
20 a historic district.

21 However, we are operating here under
22 D.C. law so it's the qualities that are the

1 special merit go towards landmark.

2 Just to remind us all that the
3 landmark is actually 92 acres. And I think you
4 can see the black dotted line around the green,
5 the deeper colored space shows you the boundaries
6 of the landmark.

7 It includes to the south there's a
8 part that's gray that that's where the public
9 park, recreational park existed at one time.

10 And the part that is in orange is the
11 site that is approximately -- it's a little more
12 than 25 percent of the entire landmark.

13 And I should note that the sand
14 filtration plant itself, it extends over to the
15 west side of First Street. And it being
16 designated the way it was it was really a product
17 of the Olmstead landscape design where he broke
18 it into different sections.

19 This is a drawing that we located
20 actually recently and I think that we should
21 point out that the landmark application was
22 prepared before all of the Olmstead records were

1 actually available.

2 You might remember that we were very
3 fortunate just as of timing to be able to have
4 access. They finally finished indexing them in
5 Brookline where the Olmstead archives is.

6 And we learn more of history every day
7 as you might imagine.

8 DR. BYRNE: This is the Olmstead site
9 in the summer -- spring. It's really quite
10 spectacular.

11 MS. EIG: It is quite spectacular,
12 yes.

13 So this is an interesting image that
14 shows you the topography that existed at the time
15 that they defined the boundary of the entire
16 reservoir site. And the reservoir was there, but
17 the actual creation of this as a unified setting
18 with the sand filtration plant is represented in
19 this drawing.

20 At the time that the plant location
21 was identified the site that is to -- that the
22 filtration plant and the area to the west of

1 First Street exists on was actually subdivided
2 and no construction had taken place but it was
3 subdivided and record lots and streets had been
4 recorded.

5 The drawing on the upper right-hand
6 side gives you an idea of what that looked like.
7 And I think that this image that shows the
8 plinth, it's essentially the structure that
9 allowed the site to be level because for the
10 water filtration to work the site needed to be at
11 a level grade, not at the topography that was
12 quite many different grades that existed there.

13 And obviously most dramatically going
14 south where it goes down to North Capitol Street
15 towards the south.

16 It was an industrial site. It was not
17 a public park. It had a walk around it that the
18 public was invited to walk on and to observe the
19 views across what Olmstead referred to as the
20 plain.

21 He planted trees around the entire
22 walk as an effort to keep people on the walk

1 because they were not invited to the plain where
2 there were not just the cells were there, but
3 there were manhole covers throughout the entire
4 20 acres on a regular basis.

5 And the manholes, one-third at any
6 time was open when they were operating the
7 filtration -- the filtration plant was in
8 operation all the time and one-third of those
9 manhole covers were open at any one time.

10 Originally there was a lot of manual
11 labor and people have recorded seeing horse
12 buggies going across the surface courts. Those
13 were actually the horses that carried the sand
14 across the site.

15 But later it became mechanized with
16 the introduction of tractors and the like that
17 we're more familiar with today.

18 I thought it would be good to remind
19 us where the recreational park was and this
20 image, these photographs, every photograph is
21 actually on the west side of First Street and it
22 shows the park and how beautiful it was with the

1 McMillan Fountain that was put in.

2 And the circle shows you the location
3 of that fountain.

4 And we're here to talk about the site
5 --

6 DR. BYRNE: I'd like to just ask a
7 question about the fountain. I was going back
8 over your report and the pieces of the fountain
9 are still lying around. Maybe some of them have
10 been identified but not all.

11 MS. EIG: Well, we actually made --
12 after the Mayor's Agent's decision there was some
13 work that was done and we were able to identify
14 and inventory all of the stone pieces are all at
15 Fort Washington. And we were able to actually as
16 I said using the historic drawings we were able
17 to determine that we have every piece of stone
18 that was originally around the fountain. And
19 pieces of the fountain are also on the Corps of
20 Engineers site, but it's been dissembled
21 obviously.

22 But that was -- we knew that they were

1 probably out there, but actually it was
2 remarkable to say yes, we found them all.

3 DR. BYRNE: Any consideration about
4 the possibilities of putting it back together?

5 MS. EIG: That's been discussed. It's
6 a very expensive proposition to do that, and also
7 we cannot do that on the Corps of Engineers site.

8 It's been discussed, the possibility
9 of doing it on this site in a location that would
10 be closer to where -- maybe in that bottom
11 southwestern corner, that might be a good
12 location.

13 It would be very exciting if that were
14 possible.

15 DR. BYRNE: Yes, it would be a real
16 testamant.

17 MS. EIG: Yes. So to the historic
18 resources they're also there -- actually, the
19 resources are part of the landmark. They are
20 components of the landmark. If we had a single
21 building we would not be calling them resources,
22 we'd call them components.

1 In this case as a landmark it has many
2 parts.

3 Starting in 2007 and then finally
4 completing in 2014 we did an inventory of the
5 historic resources that was based on work that
6 had been done by the District of Columbia like 20
7 years previously.

8 We updated that work and we
9 photographed and made sure what was there still -
10 - and identified in that process site resources
11 such as the boundaries, the topography, views,
12 landscape resources which is the primera planting
13 on the grassy plain and built resources. So
14 these three categories were critical to us to
15 understand the site.

16 In order to further understand these
17 particular components we did a study of the
18 relative level of significance. This was done
19 before we came to you previously.

20 And it is a preservation tool that has
21 been used when you have large sites like this to
22 understand what you're dealing with because it is

1 confusing.

2 And to do that we actually used the
3 criteria that had been developed in the landmark
4 application that was prepared. And then asked
5 ourselves questions about that to understand each
6 of the different parts.

7 And we assessed each of these
8 resources.

9 Also part of this is an integrity
10 evaluation and the seven design materials,
11 workmanship, building association, setting,
12 location are part of the best practices in terms
13 of identifying the integrity that is based on the
14 National Register's approach.

15 And as you can see we used historic
16 photographs as well as current photographs. And
17 the photographs here are from 2015 of just
18 showing regulator house 5 and service court
19 number 2. Just giving you an idea of what things
20 look like.

21 There are many historical photographs.
22 I think you've seen the historic preservation

1 report. And drawings now that we did not have
2 before. That we had, but did not have when the
3 landmark was done.

4 We did a study of this to determine a
5 proposed preservation approach. The report was
6 done before there was any proposal for a specific
7 development, but rather we knew there would be
8 development on the site. And this was to be a
9 tool to help there to be a discussion of what was
10 most important about the site.

11 It was the recommendation. It
12 actually allowed for the flexibility for the
13 development to be moved around as appropriate to
14 make this work.

15 The recommendations included general
16 site recommendations, resource specific treatment
17 recommendations, and resource specific
18 mitigations, but they were generalized.

19 The scope as required by the deed was
20 to follow the Secretary of Interior's standards
21 and guidelines for the resources that were going
22 to be rehabilitated.

1 There was restoration in fact of the
2 high level resources and in some cases they were
3 rehabilitated. Stabilization, preservation. A
4 plan for maintenance and repair was recommended
5 and there was retaining reconstruction and
6 rebuilding I should say was also used as part of
7 the recommendations. And this is the chart that
8 we used.

9 Because we provided a preferred
10 treatment approach and an alternative treatment
11 approach so that if you in fact did not preserve
12 a regulator house you could rehabilitate but you
13 also needed to do mitigation if none would be
14 preserved.

15 The recommendations just very quickly
16 is the site boundaries, the service courts, the
17 one regulator house and one sand bin were
18 recommended specifically for restoration.

19 We recommended rehabilitation of most
20 of the other extant resources.

21 We recommended that the missing corner
22 stairs be reconstructed and the Olmstead Walk be

1 reconstructed. As you can see it's not what it
2 was. Reconstruction implies that it is actually
3 missing. But there was rebuilding in certain
4 cases.

5 We also suggested mitigation and
6 mitigation included incorporating components that
7 could not be reused per se as their original
8 purpose, but they could be incorporated into a
9 new development.

10 It also was more -- also suggested
11 things such as an educational program to explain
12 things, museums, public art and the like as
13 possible mitigation measures. So it was giving a
14 general idea of what could be appropriate.

15 We also included a recommendation that
16 there be an understanding and incorporation of
17 the visual expression of the site. I think this
18 is really important because when one is dealing
19 with a landmark the retention and enhancement of
20 that landmark is key. And in order to do that
21 you must understand its identity and it was
22 necessary that not just keeping the physical

1 resources, but the identity, the character, the
2 sense of place that the McMillan sand filtration
3 plant provided.

4 Following the approval of the project
5 we were authorized to proceed with a historic
6 preservation plan. This plan is not something
7 that you saw in 2014.

8 The plan repeated and sort of
9 incorporated things from the original report so
10 that it would be in one place.

11 And it actually was based on the plan
12 as it was approved. So this was no longer a
13 recommendation of a general action, this was a
14 recommendation for specific action.

15 And in each case we identified the
16 resources and we did an update inventory,
17 photographs, we included images, historic
18 drawings if they were possible. So it was a one
19 stop kind of shop for information.

20 The basic treatment that we were
21 proposing, whether it was restoration or
22 rehabilitation or if demolition had been

1 proposed, and then recommendations of how to deal
2 with that because it was obviously complicated.

3 We worked on this report, the historic
4 preservation plan with Silman as structural
5 engineer and with Conservation Solutions as the
6 conservators. And it was very much a
7 multidisciplinary effort to come up with the best
8 recommendations.

9 DR. BYRNE: Can you explain the role
10 of the conservators?

11 MS. EIG: They actually looked at the
12 material and did testing, field testing, like
13 paint analysis. They identified wood, for
14 instance, and did a further more technical
15 assessment of condition of such components as --
16 same with Silman.

17 And there is a part of the court
18 decision that I'd like to address right now which
19 had to do with the issue of the fragility of the
20 site and the ability to perhaps not preserve what
21 we hoped to preserve.

22 And I'd like to clarify that because

1 I think I was not perhaps clear.

2 But in May of 2014 D.C. Water removed
3 two cells, the two most southwestern cells.
4 These images show how they were trying to
5 stabilize what they were keeping in place.

6 And as you can see there are major
7 cracks. There's a major effort to keep the
8 retaining walls that no longer have the earth
9 against them to keep them in place.

10 Major efforts to actually keep things
11 in place. You can see the rods that are in the
12 next door, the cell 28 that was necessary to
13 stabilize that while they were doing
14 construction.

15 They were obligated to return
16 everything to the state that it was when it was
17 finished. But it did make me realize that what I
18 had tried to say was that any of these things
19 could have failed at some time.

20 And it wasn't that we weren't trying
21 to preserve it.

22 So we put into the historic

1 preservation plan procedure in the event of
2 unanticipated damage and that is what I was
3 talking about. If something happened that was
4 not planned.

5 And the emergency procedures are
6 protocol is in the plan. The plan has been
7 approved, adopted by the Historic Preservation
8 Review Board.

9 And it provides a specific procedure
10 of what happens, who calls, when does it have to
11 happen, how is it documented, how is the decision
12 made as to the action.

13 And I think it's important to state
14 that it does involve the D.C. SHPO, the
15 structural engineer, the historic preservation
16 specialist, the owner, the contractor, and the
17 idea is that -- as well as DCRA of any code
18 issues that there would be a concurrence as to
19 what the immediate action. It's a very quick
20 emergency call.

21 The resource would follow within two
22 days according to this protocol. But the idea is

1 that work would stop immediately. People would
2 be called. They'd know what they have to do to
3 come to a quick decision to save what they could
4 save and make sure that the goal of course is
5 preservation in every effort. So I hope that
6 that clarifies that.

7 It's very similar to what happens with
8 the unanticipated archaeological discovery.
9 Because of the nature of this site, like the
10 archaeologist has shown that there is not likely
11 to be any discoveries because of the creation of
12 the plinth, but there is law that says
13 specifically to do this.

14 There is not preservation law that
15 follows that, but this is a procedure that is now
16 adopted and anticipated. We hope we don't have
17 to use it.

18 So in conclusion for this section I
19 would like to say I think that the proposed
20 McMillan plan was informed by the landmark. It
21 was designed to retain and enhance the character
22 defining features.

1 I will explain later a little bit
2 about how this all came together, but I think
3 it's important to understand that there were many
4 pressures on this site. I think that's obvious
5 as to what should happen to it.

6 And retaining the identity of the site
7 as McMillan was a key part of that. How that
8 happened is what you are looking at.

9 But the fact that that was the goal
10 through this is very important that we all
11 understand. Thank you.

12 MS. BROWN: I have one quick follow-up
13 question just to underline and put it in bold and
14 make sure everybody's clear.

15 You did clarify very well, Ms. Eig,
16 about the emergency plan. The number one goal is
17 that you are preserving cell 14 and partial
18 preservation of cell 28 end of story.

19 MS. EIG: Yes.

20 MS. BROWN: Okay. Thank you.

21 DR. BYRNE: Thank you.

22 MS. BROWN: We will return to Ms. Eig,

1 but that was the foundation for how the plan was
2 developed.

3 So we are turn now to Matt Bell who
4 will give his testimony.

5 DR. BYRNE: Very good. And Mr. Bell
6 has already been qualified.

7 MS. BROWN: Yes, he was qualified last
8 time. Thank you.

9 MR. BELL: Good morning, Professor
10 Byrne.

11 DR. BYRNE: Good morning, Mr. Bell.

12 MR. BELL: I'm Matt Bell, principal
13 with Perkins Eastman DC, and we are the lead
14 designers for the McMillan master plan.

15 The plan as illustrated consists of
16 healthcare uses, residential uses of which about
17 85 are senior uses, for sale rowhouses, 99,000
18 square feet of retail uses and 12 acres of park
19 and open space.

20 The master plan was developed between
21 2006 and 2014 with the participation and input of
22 citizen groups and city civic associations, D.C.

1 agencies, the Zoning Commission and the Historic
2 Preservation Review Board.

3 In the end the plan reflects direct
4 public input, adjustments made because of zoning
5 and preservation issues and a conceptual
6 direction that embraces the character of the 25
7 acre McMillan landmark.

8 For this presentation I will address
9 issues three and four alternatives to demolition
10 and issue two special merit features of land
11 planning and architecture.

12 I will demonstrate that the plan and
13 the program we are proposing with all the
14 benefits and constraints the proposed plan for
15 McMillan is the only feasible way to retain a
16 substantial part of the property as open space
17 and make the site usable for recreation purposes,
18 and the special merit of the plan we are
19 proposing cannot be achieved with less
20 demolition.

21 The site is located as part of the
22 overall landmark of McMillan as has been

1 explained which is 92 acres.

2 Across the street is a diverse context
3 with a reservoir to the west and civil structures
4 and filtration cells today maintained by the Army
5 Corps of Engineers but the site is varied on all
6 sides, medical to the north with the hospital
7 center and the VA, the balance of the landmark to
8 the west across First Street and east and south
9 are townhouse development.

10 The site is located as part of the
11 overall -- excuse me, sorry.

12 This slide shows the plan in context.
13 And the plan is responsive to each of the
14 different contexts of the site.

15 Healthcare uses to the north are
16 adjacent to the Washington Hospital Center.
17 Residential uses to the center towards
18 residential districts.

19 The park, a high priority of
20 residents, to the south near Bloomingdale and
21 other residential neighborhoods.

22 Retail, also a high priority of the

1 community is convenient to day workers and
2 visitors to the Washington Hospital Center and
3 the VA and also to residential neighborhoods due
4 to connectivity of the street system.

5 The community center and pool are also
6 a high priority and the park is also convenient.

7 The development program as specified
8 here is a rich and diverse development program
9 which includes healthcare buildings which will
10 have activity during the day, diverse residential
11 opportunities, retail opportunities that don't
12 currently exist in the neighborhood and of course
13 open space.

14 I will now show how the plan is
15 consistent with the character defining features
16 of the landmark.

17 I will review the design options of
18 the plan we developed over time. The challenge
19 we faced from the Historic Preservation Review
20 Board to articulate the essential characteristics
21 of the landmark, and in doing so show how those
22 defining characteristics are replaced in the

1 development of the plan.

2 It should be pointed out that
3 preservation of the McMillan site is a
4 significant aspect of the comprehensive plan as
5 well as a significant element.

6 Significant characteristics are its
7 tripartite organization, two long east-west
8 service corridors with above-ground features, the
9 plinth, most emblematic, most emphatic when
10 viewed from the neighborhood particularly to the
11 south, views across the site from First Street to
12 North Capitol Street related to the site across
13 the street, and the perimeter Olmstead Walk.

14 So the challenge from HPRB was to
15 develop a master plan approach that embraced the
16 features you have just heard outlined and to
17 align three aspects - the comprehensive plan, the
18 development program, and the characteristics of
19 the landmark.

20 Our plan does that. The tripartite
21 organization is the basis of the plan. The above
22 grade north and south service courts are

1 preserved, rehabilitated and incorporated into
2 the new plan.

3 The plinth that establishes the
4 exterior character of the landmark for the
5 community is reconstructed.

6 The Olmstead Walk is reconstructed.
7 Views across the landmark are maintained in the
8 park in the service courts.

9 Underground cells are incorporated
10 into the public experience of the master plan.
11 Cell 14 to the upper right and cell 28
12 apportioned in the park.

13 Stormwater management features are
14 incorporated throughout. Three parks, open
15 spaces are incorporated. Healing gardens above
16 cell 14 and the 6.2 acre park which includes 8
17 acres of the south service portage included to
18 the south, to the southern part of the site.

19 A new street network provides mobility
20 internally and connects to the community in
21 several new locations and enhances existing
22 locations. So it's much more accessible.

1 Program is located according to
2 adjacency. As I mentioned healthcare to the
3 north, residential to the center, community
4 center and park to the south closer to
5 residential areas, and retail frontage. Retail
6 is located where there is an intersection of
7 commercial and residential program, and closest
8 to the existing development of the VA and
9 Washington Hospital Center in the north service
10 court, and in regulator houses and sand in places
11 at the south service court.

12 The plan has evolved over the course
13 of time between 2006 and 2014 with many
14 alternatives considered and each iteration the
15 result of more citizen and regulatory input, and
16 showing less demolition as the plan developed.

17 In addition, the master plan
18 addresses, balances, and incorporates elements of
19 the city's comprehensive plan as I mentioned. It
20 is the appropriate balance of open space, mixed
21 use development, and preservation/adapt for use.

22 I will now go through the evolution of

1 the plan alternatives.

2 The 2006 plan covered much of the
3 site, had no healthcare facilities and did not
4 include much preservation. No plinth, no filter
5 beds, no complete piece of historic fabric
6 preserved. Only 4 of 20 silos preserved, 1 of 4
7 regulator houses preserved, no sand washer, no
8 Olmstead Walk, no adaptive reuse, no tripartite
9 organization. And the blocks had no clear
10 relationship to the historic pattern of the
11 resource.

12 The 2008 plan included both north and
13 south service courts but still had no clarity of
14 the tripartite organization. No plinth, no
15 filter beds, only 16 of 20 silos preserved, no
16 sand washers, no Olmstead Walk in its historic
17 location, no adaptive reuse, no community
18 facilities, no healthcare. Tripartite
19 organization is only emerging as I mentioned.
20 Lots have no clear relationship to the historic
21 pattern of the resource.

22 2009 included all of the north service

1 court except for one silo, partial south service
2 court but had no plinth, no filter beds, only 11
3 of 20 silos preserved, no sand washers, no
4 historic Olmstead Walk in its location, no
5 adaptive reuse. Again, buildings with no clear
6 relationship to the historic patterns of the
7 resource, no community facilities and no
8 healthcare. And very little underground cell
9 preservation.

10 The 2011 plan included a larger park
11 stretching from North Capitol Street and views
12 across. Cell 14 was preserved, supported views
13 into the site from North Capitol Street here
14 coming down to North Capitol into the site.

15 It had no plinth preserved so it had
16 1.5 filter beds preserved. But again, no
17 tripartite organization. The Olmstead Walk is
18 very fragmentary on the east side. And again,
19 the buildings have very little or no clear
20 relationship to historic patterns of the
21 resource.

22 However, the north and south service

1 courts were retained, healthcare uses were
2 introduced, silos and regulator houses were
3 slated for rehab and reuse, and there was a
4 community facility in the park.

5 Part of the problem here was the
6 community wanted a bigger park and we listened.
7 The Olmstead park and plinth was not continuous
8 or evident and as I mentioned the tripartite
9 organization not yet there. But it was progress
10 and more preservation.

11 In 2012 no plinth but we did have one
12 and a half filter beds preserved and we'll talk
13 more about that.

14 The tripartite organization was
15 emerging but was weak. The Olmstead Walk was in
16 fragments still. More emergent on the east side
17 but still a fragment, and again a problem with
18 the lots adjacent to the resource.

19 But does include healthcare uses, a
20 more mixed use program, retail, community uses.
21 But again, the tripartite organization and the
22 park size was thought to be a problem.

1 In 2014 we made a big leap forward.
2 All the plinth was included. One and a half
3 filter beds preserved. The clear tripartite
4 organization advocated by HPRB is very evident as
5 compared to the other ones and therefore
6 approved.

7 The above grade resources preserved,
8 rehabilitated and reused.

9 The view corridors were preserved and
10 enhanced both into the site, across the site, and
11 north-south with a small network of streets
12 allowing you to see from the north service court
13 to the south service court.

14 Included a park system and a larger
15 park. As I mentioned the north-south visual
16 connection was established and it was emerging as
17 a more integrated master plan, seamless with the
18 historic character defined features.

19 This plan was adopted by the Historic
20 Preservation Review Board.

21 We went to an updating of the plan
22 which is shown here which includes children's

1 playground in the park, revised stormwater
2 locations so new plaza details. Some detail
3 changes in the north service court and more park
4 space with a greater setback in this northwest
5 corner at the healthcare buildings.

6 But it's essentially the same concept
7 as approved by the HPRB.

8 As you can see the evolution of
9 alternatives has resulted in a design consistent
10 with the defining features of the landmark, more
11 reused preservation and rehabilitation, a unique
12 mixed use program, connectivity to the city,
13 connectivity within that highlights the landmark,
14 and access for all, increased community features.

15 It has evolved through the study of
16 alternatives into the least amount of demolition
17 we can do to achieve the special merit features
18 of the master plan.

19 So this is all the plan options. We
20 now have a plan that reflects a comp plan,
21 provides for the right balance and it got better
22 each time which is what it is supposed to do

1 through the community and regulatory input, and
2 all the alternatives that preceded the plan have
3 resulted in the coherent and approved plan
4 adopted by the HPRB that you see today.

5 DR. BYRNE: I have a question. The
6 current plan that you're showing, that's been
7 approved by the HPRB as well?

8 MR. BELL: Yes.

9 DR. BYRNE: Thank you.

10 MR. BELL: This one.

11 DR. BYRNE: Yes, thank you.

12 MR. BELL: So, just the design
13 evolution to show specifically how our
14 preservation adaptive reuse strategy went from 18
15 to 24 above grade structures and now includes
16 below grade items.

17 This is 2008. Now the January 2011.
18 And then the May 2014. And you can see the
19 evolution from 18 to 24 above grade structures,
20 the inclusion of cell 14 and a portion of cell 28
21 which is here, and the full restoration of the
22 Olmstead Walk.

1 I will now show how specifically the
2 development program strategy evolved to a more
3 refined approach reflecting the changing needs of
4 the city and the inclusion of affordable housing
5 from 2008 to 2014.

6 So the original program and then we
7 move to the inclusion of healthcare, the
8 different residential program, you see where the
9 site had a smaller community center, and then to
10 a program that includes a larger community
11 center, the healthcare program and obviously the
12 clarity of the tripartite organization and the
13 retail, and the grocery store which evolved into
14 this plan.

15 I will now show how specifically our
16 plan evolved to a more compact design, retaining
17 more of the historic character defining elements
18 and providing more community uses such as park
19 and community center.

20 So in 2008 we were building on 19
21 acres with a footprint. In 2011 16 acres was the
22 footprint. In 2013 again 16. And finally in May

1 2014 we're building on 13 acres. So we're just
2 using over 50 percent coverage on the site which
3 allows for more of the expanse of the park and
4 the elements to be experienced. So the plan has
5 evolved towards something which is more compact,
6 features more of the landmark features, provides
7 more of the community amenities and is a greater
8 synthesis for the various folks giving input to
9 the plan.

10 Let us consider for a second altering
11 the overall balance of open space development and
12 preservation in the master plan.

13 More open space -- were the plan to
14 have more open space less development would be
15 there to activate public spaces.

16 Less affordable housing. Less
17 healthcare uses. Less revenue to support public
18 amenities. Less retail because of the smaller
19 development program. Less retail for the
20 community - highly valued. Less job training and
21 job creation.

22 If we did more development we'd have

1 less open space and less preservation. And more
2 preservation, less vitality of a mixed use
3 program.

4 I will turn to this in more detail
5 shortly.

6 Let us now turn to the special merits
7 of land planning in the master plan. This is the
8 project view from the southeast. This view is a
9 good one to speak to the special merits of the
10 project.

11 First of all, the view emphasizes the
12 coordinated design whereby the street layout,
13 system of open spaces, park access, public
14 amenities, scale and location of buildings, the
15 appearance of the buildings and the integration
16 of the landscape is all brought into a seamless
17 integrated approach where the sum of all the
18 parts taken together provides a sense of place,
19 diverse public experiences of shopping, living,
20 working, and recreating.

21 An individual development or a small
22 group is not capable of such a transformative

1 impact at such a scale.

2 This is particularly special because
3 the manner in which the master plan uses the
4 basic organizational framework of the existing
5 landmark to include and highlight historic
6 features located in the development and bring
7 public access to a 25 acre site which was
8 previously a no man's land in the city cordoned
9 off.

10 The buildings provide coordinated
11 exemplary architecture both in and of themselves
12 and as they relate to each other, and as they
13 relate to the landmark.

14 So the site itself provides the
15 underlying basis for special merit because of the
16 unusual features of the site. The two service
17 courts, the plan of the plinth higher to the
18 south into the grade of the north, the
19 surrounding landscape of the Olmstead Walk as
20 Emily's gone through a lot of these aspects, the
21 character defining above grade features, silo,
22 regulator houses, sand washers.

1 And so the challenge of appropriately
2 incorporating the underground not visible
3 filtration cells is evident structurally unstable
4 as Chris Ruiz has mentioned and diffused
5 identically all over the site.

6 The challenge from weaving the project
7 into the context as well so that it adds to the
8 vitality of the community, the surrounding
9 community while needing to retain the unique
10 identity of McMillan. We have done that.

11 The master plan derives four themes
12 that have guided the development. Health. The
13 initiative by Senator McMillan was part of
14 broader initiatives in the United States and the
15 rest of the world to make cities more livable and
16 eradicate disease.

17 Water. The project brought clean,
18 safe and fresh drinking water to the city.

19 Sustainability. Good sustainable
20 design starts with strong patterns of settlement
21 and then goes into site and building performance.
22 Realizing this master plan is putting walkable

1 new development in a place where such development
2 can thrive can make place and add to the
3 livability of surrounding neighborhoods and
4 institutions.

5 Preservation. A key element of
6 McMillan is the manner in which the character
7 defining elements of the landmark are woven
8 seamlessly into the plan, featured in appropriate
9 places and adapted for new uses.

10 This is a special approach and not all
11 buildings or even master plans are guided by such
12 guiding themes.

13 One way of understanding the special
14 merit of a master plan is to understand the
15 impact it will make on the surrounding context.

16 Presently the site inhibits
17 connectivity, seals off the city some part from
18 another, and does not contribute to the vitality
19 of surrounding neighborhoods.

20 The master plan opens up the site for
21 access. From the north a garden welcomes you
22 upon arrival, particularly important to people

1 coming from the VA and the Washington Hospital
2 Center.

3 Along North Capitol Street the north
4 and south service courts are adapted for
5 pedestrian, bicycle, vehicular and service
6 access. An additional street between the two
7 provides an additional point of access. Access
8 is also provided from North Capitol Street into
9 the park.

10 Small streets within the plan provide
11 a choice of ways to move supported by a network
12 of sidewalks, bike lanes and paths including the
13 Olmstead Walk.

14 The richness of the master plan
15 program is also unique and adds to the vitality
16 and experience of McMillan.

17 Healthcare uses bring daytime activity
18 that supports retail development so desired by
19 the community.

20 Diverse housing options will bring a
21 unique and rich cross section of the community to
22 live there.

1 New open spaces are available to be
2 enjoyed by all city residents as are features
3 such as the walking museum and the community
4 center.

5 This is a unique constellation of
6 program elements not found in one-off projects
7 and in their aggregation provide for a living,
8 working, shopping, recreation experience unique
9 in the city and certainly of special merit.

10 This is illustrated and underscored in
11 the color code uses of medical. Note the manner
12 in which the simple new grid introduces
13 interconnectivity between those uses as defined
14 by the north and south service courts and
15 supports the perimeter berm and the park.

16 The non-visible features of the
17 landmark are also incorporated with the inclusion
18 of one entire cell, cell 14 and a partial one in
19 cell 28.

20 As Mr. Ruiz has explained these
21 features are structurally unstable and will
22 require significant intervention to be stabilized

1 and safe.

2 As we note as well the particular
3 challenge that they were constructed for
4 industrial use and never meant for human
5 habitation.

6 Mr. Bruce Leonard of Streetsense, a
7 retail design and development expert, testified
8 earlier about the technical and programmatic
9 challenges of adapting underground cells for
10 retail and his conclusion was that this was not
11 possible. But they are unique.

12 Nonetheless we are weaving them into
13 the unique McMillan experience as part of the
14 master plan.

15 It is important to recognize that each
16 cell is about 1 acre, is separated completely
17 from the next one, and all cells retain the same
18 features, the wall, the portal, the underground
19 columns and vaults and manhole of putting to
20 surface.

21 As such, if you experience one
22 complete cell as we are proposing in cell 14 you

1 will have a complete experience of understanding
2 the underground cellular component of the
3 landmark.

4 This is what we are proposing in cell
5 14, to stabilize, rehabilitate and preserve the
6 cell so that it can be there for future
7 generations to understand how McMillan
8 functioned.

9 Cell 14 is part of a new retail street
10 of the north service court. Public activity here
11 will be high and that location will help visitors
12 understand the history of McMillan.

13 In addition, by preserving cell 14 we
14 are able to preserve views into McMillan for
15 travelers southbound on North Capitol Street
16 looking into the site this way. And as they see
17 today the silos of the north service court.

18 Cell 28 offers a different experience
19 and participates in the experience of the park,
20 and will be adapted such that all visitors to the
21 park will be able to see into that structure.
22 And it will be stabilized such that park

1 activities can occur above.

2 The existing grounds become part of
3 the Olmstead Walk and the park system surrounding
4 the site as illustrated here in this three
5 dimensional drawing.

6 Also here showing how the perimeter
7 berms are woven into the various park experiences
8 in the site.

9 Let me now turn to special features of
10 land planning. And others will address this as
11 well.

12 Housing and affordable housing - 677
13 units of new housing articulated here with a
14 breakdown in various levels of affordability for
15 the housing for seniors and also other affordable
16 housing.

17 Community center, 25 meter pool,
18 locker and shower facilities, multipurpose
19 meeting rooms, catering kitchen, fitness studio
20 and outdoor gathering spaces open to everyone in
21 the community.

22 The healthcare facility, 860,000

1 square feet devoted to medical office and related
2 healthcare uses, 173,000 in a future phase on a
3 portion of parcel 2, formerly parcel 3.

4 Retail space on the ground floor which
5 activates the north service court, and it creates
6 a medical district joined with facilities across
7 Michigan Avenue.

8 The grocery store on parcel 4 is
9 unique, unusual, not in every master plan and is
10 part of the 99,000 square feet retail program.

11 We are also including environmentally
12 sustainable design, LEED ND standards at gold or
13 equivalent, individual project compliant with
14 LEED Silver or green community standards,
15 articulated here meets silver ratings for the
16 parcels of item 1, 2, 4, 5 and 6, and the
17 inclusion of low-impact design techniques in
18 places like sidewalks, roadways, alleys, parking
19 spaces, bioswales, tree pits, and inlets,
20 filters, grid separators, rain guardings,
21 detention walls and cisterns.

22 Transportation features include

1 transit hub features, shuttle to the Brookland
2 Metro Station, Capital Bikeshare stations, bike
3 rack and storage facilities, ample parking,
4 internal street grid, broad connectivity, safe
5 pedestrian crossing features, traffic lights to
6 reduce congestion and facilitate traffic flow,
7 three sets of corner concrete stairs that allow
8 access from the outside to be reconstructed, and
9 of course all being accessible.

10 Let me speak now about exemplary
11 architecture for McMillan. We are using
12 specially crafted design guidelines to make an
13 architecture through McMillan that is exemplary
14 in design and compatible with the landmark.

15 Compatible with the landmark and
16 exemplary design were two challenges we have met
17 from the Historic Preservation Review Board.

18 We begin by examining and
19 understanding the landmark character defining
20 features itself as articulated by Ms. Eig.

21 These images, prepared by Traceries,
22 show how the features of the architecture from

1 the silos and the regulator houses to other
2 details such as manhole covers, pavements and
3 other materials exist onsite. Here's more and
4 some detail similar to what Ms. Eig showed.

5 From that the design team developed a
6 series of diagrams that explained the DNA of
7 McMillan to help guide our thinking about
8 creation of new buildings and new architecture.

9 So this one we see the skin pattern of
10 the silos, overhanging plants, singular forms
11 which is characteristic as well of the silos, and
12 the way exit and entries are made.

13 In this one we look at the plinth as
14 a characteristic piece diagraming that,
15 vegetation, framed openings, and canted walls
16 over service courts.

17 We have also studied the existing
18 above-ground elements to see how they can be
19 adapted into contemporary use. So this is a
20 drawing of the silos and this is a drawing that
21 shows what might occur inside them. There's some
22 low -- the existing silos have very low ceilings

1 so it is a challenge to figure out how they might
2 be adapted but we are exploring that with things
3 like cafes, or small vendors, or perhaps
4 restrooms and service facilities.

5 The regulator houses are being studied
6 for things like cafes, community spaces, perhaps
7 community offices and retail.

8 We are restoring and preserving one
9 regulator house and one silo to their original
10 condition as well as part of the plan.

11 Essential to understanding the spaces
12 made -- essential to understanding the master
13 plan is also the spaces made, not just the
14 buildings themselves, the spaces made by the
15 landmark and repurpose them as well.

16 So for example, the spaces between the
17 regulator houses and the silos become repurposed
18 for things like outdoor seating for restaurants
19 and cafes.

20 Interventions that make the site and
21 the park more accessible. So this is from North
22 Capitol Street looking into the park. So this is

1 a break in the berm wall for bridges developed in
2 the language of McMillan which is concrete.

3 The canting of the berm which comes
4 along and turns the corner is in the language of
5 McMillan for the berm.

6 And the public amenity of the
7 community center, the glass building mostly
8 prismatic, similar in a simple form like the
9 design guidelines in the DNA I said earlier is in
10 contrast to the solidity of the existing things
11 like the silos and the regulator houses.

12 Also repurposing things like the sand
13 washers to become part of the public space
14 experience.

15 Adapting character defining features
16 to frame the entry into new public amenities such
17 as a portal in the south service court, existing
18 portal adapted to frame the entry into the
19 community center creating new points of
20 pedestrian access previously blocked or
21 inaccessible.

22 Our design guidelines and precedents

1 we looked at for buildings and palettes we
2 thought were compatible. We are seeking in the
3 design guidelines, our investigation included
4 looking at a unified palette will affect what
5 are compatible materials, what is the
6 fenestration and how we get buildings to relate
7 to each other in terms of fenestration,
8 advocating simple geometries in massing.

9 Things like looking at how you deal
10 with the north service court, the unified podium,
11 the setback above the podium, recalling the north
12 service court walls which we are taking out and
13 congruent store fronts, and how rowhouses are
14 composed as singular buildings.

15 So the challenge is to come up with a
16 design palette. So we have buildings of
17 different use, different architects, all very
18 good architects, but different scales. So you
19 have to unify them. HPRB said we need an idea of
20 how this still reads as McMillan as the landmark.

21 So the primary building color is
22 white. The secondary color is used for

1 fenestration and railings and things, charcoal.
2 Then the tertiary building color a wood grain
3 which is really highlighted to be used in
4 highlights.

5 This picture results as a family of
6 buildings. These of course are going to have
7 different programmatic issues and different
8 construction techniques, but they relate to each
9 other.

10 They clearly are organized around the
11 design palette. They have a hierarchy of the
12 palette. The orientation of the elements and
13 the windows and the percentage of them, the
14 facades relate to one another.

15 And so it all goes together so you
16 look at them and say they can be no place else.
17 They are unique to McMillan and as such the sum
18 of them is greater than any individual building.

19 The buildings by themselves are quite
20 good, but taken together they add something else
21 and something special, and that's special merit.

22 At the north service court we have set

1 the buildings back above the first floor. This
2 was something that was talked about and supported
3 by HPRB to give more space to the landmarks in
4 that particular area because we have buildings
5 that are a little bit taller than the landmarks.

6 So we have them set back on the
7 podium, and that podium is organized in a way
8 that recalls the service court walls.

9 However, this is a retail district so
10 they need a lot of glass as well and that's what
11 you see there.

12 Another angle. This shows cell 14 as
13 you come down North Capitol. The view of the
14 silos there. The grocery store building with
15 multifamily residential and senior living above
16 in the design palette of McMillan with the three
17 windows that are in our vocabulary discussion
18 with the three regulator -- three silos outside.

19 The view down Half Street with the
20 townhouse palette, the bay windows, and the
21 principal white walls of the townhouses relating
22 of course to the palette we've set up.

1 And then important as well, the street
2 system, things that were not really viewed on
3 access. So you see the silos sort of shifted off
4 a little bit.

5 So it allows you both to see the silo,
6 this unique view, and into the park beyond. So
7 it reveals more of the historic context. Then
8 the inclusion of paving and the parking area, and
9 ring yards on both sides of that street.

10 The townhouse design in particular is
11 unique. Typically builders want townhouses these
12 days where every building is almost different.
13 Here we are designing the townhouses in unified
14 so-called sticks of design so that they are
15 balanced and symmetrical. They look like
16 something that really has a kind of harmony per
17 street, whether they're long elevations like you
18 see here on the bottom or shorter elevations
19 above. This is something certainly of special
20 merit and not typically done in the architectural
21 design of these kinds of projects.

22 And you can see them in the south

1 service court here. South service court we are
2 repurposing the north side of the south service
3 court wall there for entries into the sidewalks
4 and engage them in a dialogue between the south
5 service court and the residential development as
6 well.

7 And we are coordinating in the
8 language of McMillan.

9 Simple forms like the community center
10 here, simple design palette with colors using
11 for example materials like the arch made out of
12 concrete as I mentioned to relate to the history
13 of the place. And also even the scoring of the
14 paving into the park areas to be a feature that
15 one could recognize as only a feature you would
16 find at McMillan.

17 So the exemplary architecture provides
18 for -- and this includes some architecture on
19 planning -- a cohesive master plan and integrated
20 building design approved by the Historic
21 Preservation Review Board that celebrates the
22 unique engineering history of the site for water

1 purification.

2 The design guidelines have been
3 approved and supported by HPRB. It provides a
4 framework for a coordinated effort among multiple
5 developers and architects which is something
6 surely of special merit that doesn't always
7 happen in one of a kind one-off building
8 projects.

9 It provides a unified design across
10 the site while allowing some individual
11 architectural expression.

12 The development is organized around
13 historic north and south service courts. The
14 activation of historic resources and service
15 courts occurs in the voids between the buildings
16 as well, and the new street grid integrates the
17 site both within itself with small blocks and
18 very walkable areas, and connecting to the
19 surrounding community.

20 The recreation of the Olmstead Walk
21 becomes a publicly accessible path obviously.
22 And new landscape and recreational park features

1 have never been associated with the park before
2 and therefore are new amenities as part of the
3 master plan, including the playground, the
4 natural amphitheater in the southeast corner, all
5 coordinated together with a walking museum.

6 So, can special merit features be
7 achieved with less demolition? My answer is no.

8 As I mentioned, more open space for
9 cell preservation provides less development to
10 activate those spaces, less affordable housing,
11 less healthcare uses, less retail for the
12 community, less job training and job creation.

13 We should have more development, less
14 open space and preservation as evidenced by the
15 alternatives we looked at earlier.

16 More preservation, less vitality of a
17 meaningful mixed use program, less development
18 revenue, and my colleagues will talk about that
19 to support preservation, and the elimination of
20 special merit features of the program and other
21 things I mentioned.

22 So just to be specific, to look at the

1 north service court walls which we are proposing
2 to take out except from cell 14. We're keeping
3 the ones from cell 14 which is part of the
4 structure of cell 14.

5 Retail, highly valued by the
6 community, supported by the Historic Preservation
7 Review Board needs visibility, it needs
8 transparency.

9 So were those walls to be retained
10 retail would fail. And retail would not work in
11 coordination with keeping the north service court
12 walls.

13 In addition, if the retail fails you
14 can't simply just put retail in the regulator
15 houses and the silos. Those are going to be
16 dependent for success upon other people coming
17 there to enjoy the other retail amenities. So
18 they're all together in the same idea.

19 South service court walls as well. We
20 are repurposing those. We have made openings in
21 them for the street system. But were you to have
22 more of that closed off you would compromise the

1 connectivity of the plan which is a special
2 feature to promote connectivity and visibility
3 north-south within the plant.

4 Let's talk about retaining more cells
5 in general. Were we to retain more of the cells
6 each additional preserved cells eliminates one
7 acre plus or minus of development.

8 Loss of one acre of development
9 eliminates the development program. And Mr.
10 Weers and Mr. Thakkar will speak to that in
11 detail.

12 A cell, a portion retained in the
13 north third eliminates the healthcare program.
14 So that program is there and to replace that --
15 Mr. Weers will speak in detail to that.

16 A cell or portion of the cell retained
17 in the middle third compromises the tripartite
18 reading supported by HPRB. It's a very clear
19 reading now. It compromises that.

20 It also, depending on where you select
21 would cause there to be less retail and could
22 eliminate the grocery store which is highly

1 valued by the community and anchors the retail
2 experience.

3 Also, were it to be facing onto the
4 north service court it would interrupt the retail
5 continuity. And as we know retail depends upon
6 continuity for success.

7 It could conceivably as well eliminate
8 market rate, senior and affordable housing or
9 material aspects of that, and eliminate as well
10 the healthcare program because part of healthcare
11 is in this location here.

12 More cells in the bottom third would
13 create less usable park land because of the
14 structural instability. We're proposing 28 as we
15 mentioned to be made structurally stable and
16 looking into that.

17 If it were to be put at cell 27 it
18 would eliminate playground space for youth and
19 families. Put here in cell 28 it would eliminate
20 the pool and the community center and plaza.

21 Going further east in cell 29 it would
22 eliminate the visibility and entry into the park,

1 and accessibility from North Capitol Street, and
2 it would make the two story feature of the
3 community center not possible.

4 Cell 28 participates in the
5 understanding of the site by how we designed it
6 to be part of the park experience as well.

7 So as you've seen the special merits
8 proposed are extraordinary and unusual. We
9 cannot demolish less and achieve the same level
10 of special merit features. No other plan in my
11 idea is possible.

12 DR. BYRNE: Thank you, Mr. Bell. A
13 couple of questions if I might, just really a
14 clarification for me.

15 The Olmstead Walk, what happens to the
16 Olmstead Walk when it reaches the service court.
17 It's at grade?

18 MR. BELL: Exactly as it did.

19 DR. BYRNE: Exactly as it did. You
20 mean in other words it historically went along
21 the service courts.

22 MS. BROWN: Could I answer? The place

1 it's discontinuous is the new entry that is south
2 of the service court.

3 The service courts remain stable and
4 the walk --

5 DR. BYRNE: Just goes across it. It
6 has to be accessible. Okay.

7 On one of the maps it showed a
8 healthcare building that is south of the service
9 court.

10 MR. BELL: Yes. That's part of the
11 healthcare program.

12 DR. BYRNE: That's part of the
13 healthcare program. Is that a healthcare office
14 building?

15 MR. BELL: That is a healthcare
16 building, yes. It will have retail on the ground
17 floor. This building here.

18 DR. BYRNE: So that means there are
19 three healthcare buildings.

20 MR. BELL: One, two, three.

21 DR. BYRNE: That's different than last
22 time.

1 MS. BROWN: It is the same but it
2 probably wasn't called out specifically. And Mr.
3 Weers will testify to that.

4 DR. BYRNE: Okay. You mentioned that
5 each of the underground cells is sealed off from
6 each other. So that means that there is
7 continuous concrete walls that surround each of
8 the cells.

9 And has there been any thought, I
10 guess maybe this is a question for Mr. Ruiz,
11 about what would be the effects of penetrating
12 those walls, or access?

13 MR. RUIZ: Penetration of a wall as a
14 door is possible, yes. But going from cell to
15 cell we have not looked at just because keeping,
16 as he said, a full cell and then another cell had
17 not been in the plan.

18 DR. BYRNE: So what structural steps
19 do you take to stabilize cell 28? And are those
20 consistent with the historic character of cell
21 28?

22 MR. RUIZ: Yes, it's similar to what

1 we showed in our presentation of putting a silo
2 on top and reinforcing the foundations, and
3 keeping the sand. So any reinforcement of the
4 foundation you would not see. And limiting
5 access underneath.

6 DR. BYRNE: So people would not be
7 able -- you would be able to look in there, but
8 not go in.

9 MR. RUIZ: That is our understanding.

10 DR. BYRNE: One of the things that you
11 mentioned were variety of the environmental
12 features of the site in terms of water retention,
13 LEED silver, et cetera.

14 Can you give me any information as to
15 whether those are above what would be required
16 for any construction on a city-owned site?

17 MR. BELL: The LEED silver for the
18 buildings is what would be required I believe.
19 For city-owned buildings LEED gold --

20 DR. BYRNE: If you're not the right
21 person to ask I can --

22 MR. BELL: Well, I think the private

1 developers can talk about their objectives there.

2 DR. BYRNE: Okay.

3 MR. BELL: But we are LEED
4 Neighborhood Development gold is not -- that is
5 something we're pursuing.

6 DR. BYRNE: That's something you're
7 pursuing. And how about fire? What type of fire
8 retention? Okay, good. Thank you.

9 MS. BROWN: I have just one or two
10 quick follow-up questions.

11 Mr. Bell, you've discussed and I think
12 you've read the court decision that says that we
13 cannot count the historic preservation benefits
14 as part of the special merit package. And you
15 had a couple of slides that talked about the
16 adaptive reuse of the regulator houses.

17 I was wondering if you could
18 distinguish that for us. I don't believe that
19 was on your list of special merit features when
20 you had your list, is that correct?

21 MR. BELL: Yes, reusing those features
22 would be something unusual for this plan.

1 Repurposing the silos and regulator houses for
2 sure.

3 MS. BROWN: You also talked about the
4 open space and the court decision also said that
5 it would be double counting if we said the open
6 space was a preservation benefit and that was
7 more appropriately discussed as consistent with
8 the purposes of the act.

9 Are there new elements being
10 introduced to the existing conditions that
11 distinguish that?

12 MR. BELL: Well, yes. The new
13 elements, the park space, usable park space, the
14 community center, playground, the healing
15 gardens, these are things that didn't exist there
16 before. And they are part of the new open space
17 program.

18 MS. BROWN: And then getting back to
19 the regulator houses adaptive reuse is a
20 preservation plan and it's part of the consistent
21 test.

22 I think you testified to the voids

1 between them as something that is a little
2 different than adaptive reuse and activating
3 them. Is that correct?

4 MR. BELL: Yes. One has to seek
5 opportunities where one can in existing
6 conditions. And one of the benefits is the space
7 between the silos and the regulator houses are
8 ample enough that they can be activated in a way
9 that brings new life to the project that
10 obviously didn't exist previously.

11 MS. BROWN: Would you say that the
12 development plan that you developed here, this
13 master plan is common to all projects? Would you
14 do this for a matter of right project?

15 MR. BELL: No. This is quite a unique
16 design. Many of the features included in the
17 approach and the coordination would typically not
18 be part of a matter of right project.

19 MS. BROWN: Thank you.

20 DR. BYRNE: Another question occurs to
21 me. To what extent is activation an established
22 concept in planning literature? In other words,

1 part of your argument as to why this park is
2 superior to what some of the residents would like
3 which is just to keep the whole thing open as a
4 park, and we talked about this last time, is the
5 idea of activation.

6 I wonder if you can cite some
7 literature to me -- I mean not off the top of
8 your head, but tell me more about what the role
9 of activation is within the master plan.

10 MR. BELL: It's very important to try
11 to I think in making public places to get a lot
12 of different uses together.

13 So this plan has a lot of things that
14 you don't typically find that I think have an
15 important role to play in activation.

16 So for example, in this part of the
17 world there aren't a lot of office buildings. So
18 the medical office buildings will bring a daytime
19 population to the site that is unique.

20 What is that daytime population going
21 to do? They're going to sit in the park spaces.
22 They're going to patronize the retail. They're

1 going to visit the site and learn about it. It's
2 going to bring people there. It's going to
3 activate the place in a way that for example if
4 it was just a residential program wouldn't be
5 nearly as good.

6 It has a diversity of housing types.
7 So we have senior housing. So seniors are going
8 to be there. They have different patterns of
9 walking around and visiting and shopping than do
10 other folks. So that activates things.

11 The community center in the park, it's
12 not just simply a grassy area, but that will
13 bring young people, teens, families, everybody to
14 the site that will activate those spaces.

15 What we have found and in my
16 professional career both teaching and practicing
17 architecture is the best public spaces are the
18 ones where that level of activation occurs over
19 the broader horizon of a day.

20 So people who are leaving for work,
21 they go to the coffee shop and retail and they
22 have coffee. People who work at the hospital

1 center or visiting people there, have business
2 there, they might come there for lunch.

3 The grocery store as a unique element
4 brings people there to activate the space.

5 And the buildings and the way they're
6 designed face onto the streets. So it is really
7 key that you have positive surveillance, whether
8 it's a multifamily or a senior building or a
9 rowhouse or a healthcare building that people can
10 see into the public spaces and see what's going
11 on.

12 And the public spaces are nearby.
13 They're easy to reach. And they have amenities
14 that people want to partake of.

15 So current planning theory I think is
16 really getting away from single use projects into
17 projects whereby if you can successfully combine
18 different uses, different populations, different
19 cohorts of age groups you have a much greater
20 chance at great place making. And that's what
21 we're doing.

22 DR. BYRNE: It's a legacy of Jane

1 Jacobs to some extent.

2 I wonder in your submission if you
3 could please cite some contemporary planning
4 literature -- this is the disadvantage of having
5 an academic as the Mayor's Agent hearing officer
6 but that would be helpful.

7 MR. BELL: Sure. Happy to.

8 DR. BYRNE: Okay.

9 MS. BROWN: Just for planning
10 purposes, I see it's 12:45. I think we probably
11 have about 25 minutes or 35 minutes.

12 DR. BYRNE: Thirty-five minutes.

13 MS. BROWN: So, if that.

14 DR. BYRNE: Okay, so we could be done
15 by 1:15, 1:20.

16 MS. BROWN: Yes.

17 DR. BYRNE: Okay. And then we could
18 take a break at that point. Okay.

19 MS. BROWN: We're going to swing back
20 to Emily Eig who's going to now evaluate
21 everything that's been put together in terms of
22 remand issue number one, consistency, and remand

1 issue number two, special merit.

2 MS. EIG: And I'm also going to
3 actually -- I'm just discussing remand issue one,
4 consistency, two, special merit, and a discussion
5 of subdivision as an aspect of this.

6 So the remand issue number one. As
7 the proposed project's preservation benefits
8 taken as a whole outweighs historic preservation
9 harms.

10 So the concept of consistent with the
11 act is what I'll be discussing right now. And I
12 would like to introduce this as that it is very
13 hard sometimes to separate what is a special
14 merit from what is consistent with the act
15 because there are benefits from being consistent
16 and merits that require being consistent.

17 So I will try to organize it. And I
18 hope that it works to explain my position here.

19 So consistent with the purposes of the
20 act with respect to historic landmark means to
21 retain and enhance historic landmarks in the
22 district and to encourage their adaptation for

1 current use as well as to encourage the
2 restoration of historic landmarks. This project
3 does both.

4 To create a project like this there
5 are many challenges. And in terms of the concept
6 of consistency it's the retention of the landmark
7 that is key. And how there's one approach to
8 that.

9 So I'm approaching this in a fashion
10 of explaining the challenge and then some ways of
11 resolving that, coming to solutions.

12 And the first is obvious. It's
13 preservation efforts. What do we do to preserve
14 the landmark itself. And I have a little
15 animation here.

16 Okay, so the preservation is the first
17 and foremost of the Secretary of Interior's
18 standards. And we can think of preservation as
19 stabilization, retaining and stabilizing.

20 The second is that we -- in terms of
21 the -- is that we are preserving the tripartite
22 organization, the boundaries, the service courts,

1 all of this is being preserved.

2 We are in rehabilitation now. That
3 rehabilitation is looking towards the above-
4 ground resources. And rehabilitation is a wide
5 range of repair and reuse and changes to
6 accommodate adaptive reuse.

7 Thirdly we are doing restoration in
8 that there are -- in fact there is one regulator
9 house and one silo or sand bed that are actually
10 being restored to their original condition which
11 in the case of the regulator house means it has
12 no floor. The regulator houses don't have
13 floors. The water was coming through pipes.

14 So that will be retained. So you'll
15 be able to walk in and there will be a glass
16 piece over it so you can see how it worked. You
17 can walk into the sand bed but it will not be
18 adaptively reused, it will actually be as it
19 looked. The idea is that we would understand
20 that.

21 The sand washer is the same thing.
22 We're retaining all of the sand washers but at

1 least one but probably more of them are going to
2 be restored and some will be adaptively reused.
3 Some will be moved. But that is part of it.

4 We're also doing reconstruction and
5 that has to do with the corner stairs that are
6 missing and the Olmstead Walk that goes around
7 the entire perimeter. Actually it's not the walk
8 itself but also the landscaping that is there.

9 There were cork trees originally.
10 We're using Washington Hawthorn but similar in
11 scale and appearance. And the idea is to give
12 that clear identity of the landmark in this
13 section of the landmark.

14 The general overview of the project as
15 proposed by this team is it retains the
16 rectangular form. It retains the plinth form.
17 It retains a berm form. The tripartite
18 organization, reciprocal relationship between the
19 service courts, the pedestrian walk, all of cell
20 14 and part of cell 28. So this is consistent.
21 It's preservation.

22 And I think that when we really talk

1 about what are we demolishing it's what's below
2 ground. It's not what's above-ground. What's
3 changing above-ground is rehabilitation and
4 adaptive reuse.

5 As I stated there will be restoration
6 as well as rehabilitation of the above-ground
7 resources. And Matt showed you that there are
8 some different plans of how they can be reused.
9 There is a variety of ways.

10 But the ones that are rehabilitated
11 you'll be able to walk into and it will no longer
12 be a hole in the floor. The equipment, perhaps
13 some of it will be there in the original form,
14 perhaps not depending on what the use is.

15 The reconstruction of the plinth, the
16 Olmstead Walk, that is obviously key to the
17 identity of this.

18 And preservation of 100 percent of a
19 cell. The cell 14 is entirely -- will be there.
20 As Mr. Ruiz said the intention is to stabilize it
21 so that you can walk on top of it. You will not
22 be able to build on top of it but you'll be able

1 to walk on top of it.

2 And there will be as necessary
3 stabilization. But it is not something that will
4 be occupiable. You can perhaps, we hope perhaps
5 we can have a tour but we definitely look in and
6 see it.

7 And because the way the cells are
8 designed you see a whole -- you can't see the
9 edges it's so large.

10 So the second in terms of consistency
11 is maintaining the identity as an industrial
12 site, not just as part of the landmark, but the
13 landmark as a whole as a reservoir. It had a
14 recreational park. It had sand filtration filter
15 beds.

16 So keeping that idea that this part of
17 it was industrial. We know that it was
18 industrial. We have photographs. We know that
19 that's how it worked. It operated until 1987 as
20 a filtration plant. And we want to keep that,
21 retain the consistency with that.

22 Maintaining the plinth is probably the

1 biggest part of that because this could not work
2 if there wasn't the plinth. That's how it
3 actually -- the level ground was required.

4 The southern plane is on the most
5 accessible part of this because the fact is that
6 we're using that southern third portion and it
7 will retain the sense of the open plain.

8 The community building is designed to
9 look almost like it's rising from the plain.
10 It's very flat roofed. It will have a green roof
11 and you'll have a sense.

12 It goes underground so that it doesn't
13 project too high. So there is a sense of
14 horizontality that will be maintained.

15 The relationship to the service court
16 will be the same. That court is there. That's
17 where the restored components will be.

18 The historic views if you walk along
19 the edges and look to the west or to the east you
20 will see the plain.

21 Now, what was there originally is not
22 what there's now. The exterior area around the

1 site was only to the southwest for any
2 construction. There were open fields -- to the
3 north was the Old Soldier's Home and there was a
4 farm to the south when this was done. So it's
5 different than what was there. The views are not
6 the same. But you'll be able to see up
7 reciprocally to the north to the north service
8 court.

9 You will definitely have a sense of
10 place and I think that's what's really important.
11 You'll be able to walk on the west side of
12 Olmstead Walk and look at the reservoir. And
13 that is going to be a very special experience
14 that has not -- no one's really been able to
15 enjoy legally for a long time. A very long time.

16 And the reconstruction of the walk
17 will allow access onto the site. These corner
18 stairs will mean that people will have easy
19 access to get in. There will not be a fence
20 around it with a lock anymore. They will be able
21 to walk around the entire site consistent the way
22 it was originally. Obviously there is

1 construction, new development on the site, but
2 the sense of its whole will be experienced.

3 And you will understand that there's
4 something there that's special, that is different
5 from what is to the south, to the north, and to
6 the east, and you will understand the
7 relationship to the west of the reservoir and the
8 filter beds there.

9 So this slide is actually -- it's
10 missing the picture from Matt Bell of adaptive
11 reuse. Adaptive reuse is really important so
12 let's just move to the next slide.

13 Because that's the incorporation of
14 these resources into the master plan. And that's
15 where we're getting sort of it's consistent but
16 it also provides special merit in that we are
17 providing the opportunity to use, to walk into
18 these cells. The adaptive use is something that
19 is definitely a hallmark of historic preservation
20 in our country and in the world.

21 The opportunity to walk on the site
22 and to experience it is very much part of

1 consistency.

2 The adaptive reuse will allow people
3 to have access and to experience the entire site
4 that they never did. They were not supposed to
5 be walking on the plain. If they did not that
6 was not the intention and they might have fallen
7 into a manhole that provided to the industry
8 before, or been told by one of the workers to get
9 off the space.

10 So I think that there is a lot of ways
11 that this is consistent. Obviously there's loss
12 of the demolition. We're here because of the
13 demolition of the majority of the cells.

14 Some adaptive reuse means you're not
15 preserving exactly things the way they were, but
16 it is an acceptable way to move into the future.
17 Our D.C. law specifically references it.

18 And I believe that the historic
19 preservation benefits of this project taken as a
20 whole do outweigh the preservation harms because
21 there is so much opportunity to understand this
22 site.

1 When people drive by now people look
2 and say what is that. What is that. And if you
3 tell them what it is they don't understand
4 because it doesn't make sense to our modern
5 technology brains.

6 And this is an opportunity to explain
7 the water system of the city, the water system in
8 general. And I will talk about that in the
9 special merit aspects. That's what we're going
10 to be doing.

11 I would first like though just to
12 identify the comparable consistent with the act
13 projects.

14 There are many projects that have come
15 before the Mayor's Agent for consistent with the
16 act, not recently however, but in the past there
17 were, and many of them were like this one tied to
18 special merit as well as consistent with the act.

19 The Homer Building, the Bowen
20 Building, the Vigilant Firehouse and the Shoreham
21 Building are just four examples.

22 And I made a little chart here just to

1 explain that, like the Shoreham Building, the
2 proposed reconstruction encouraged adaptation for
3 current use and the alterations were done to be
4 compatible with the historic district that the
5 building was in.

6 Homer, the proposed development would
7 provide the ability to bring new life to the
8 historic landmark. It's basically unused.

9 The Bowen Building provided an
10 opportunity to visually access the facades in a
11 way that reinforced their architectural
12 character.

13 This particular is on 14th Street and
14 it was not in good condition. The city was in
15 need of activation.

16 The Vigilant Firehouse was a very
17 interesting one because the issue was one of a
18 wall that was severely deteriorated beyond repair
19 and they needed to get permission to take that
20 wall down so they could permit the retention,
21 enhancement, restoration, and adaptation of the
22 current use.

1 We see this and I'll just a couple of
2 other examples. When one might have in a
3 historic district that is unified you might have
4 buildings that interfere with the rest of the
5 project being brought back.

6 You might have a situation where there
7 is sections of the buildings that have collapsed
8 that need to be -- but that by removing them you
9 can in fact restore the rest consistent with the
10 act.

11 So now I'd like to discuss the second
12 issue which is what are the specific
13 architecture, land planning and community
14 benefits that individually or collectively make
15 this a project of special merit within the
16 meaning of D.C. Code 6-1102 Section 11.

17 So remind us what we're looking at
18 which is this project and that the definition
19 that it is a plan having significant benefits to
20 D.C. or the community by virtue of exemplary
21 architecture, specific features of land planning,
22 or social or other benefits having a high

1 priority for community services.

2 I would say that this project meets
3 this. Both it has benefits to the District of
4 Columbia and to the community of all of these
5 aspects of the special merit law.

6 DR. BYRNE: All three.

7 MS. EIG: I believe so, yes. So, one
8 of the reasons that this is a project of special
9 merit is because it is such an extraordinarily
10 challenging project. I think the evidence that
11 we are here today supports that.

12 It was many years ago people in this
13 audience worked to try to help this -- we're
14 talking 20, 25 years ago or more -- to do
15 something with this site. The district bought
16 this in 1987. It is now 2017.

17 And this is the first project that's
18 been proposed that actually is feasible.

19 So the challenges. First I'll say
20 creating exemplary architecture with exemplary
21 community benefits. Doing both is hard. It's
22 very difficult.

1 And I think the community building
2 that I have in my initial slide here tells this
3 story quite well because we are able to push it
4 down, to get underground and have this very
5 exceptional community building that is going to
6 provide a pool and amenity space for the
7 community. It does that while it will provide an
8 attractive magnet for people to come to the park
9 to walk through that southern portion of the site
10 and will be, we hope they will be inspired to
11 learn about the site because the cell, the
12 portion of cell 28 is right by it.

13 And they will have an understanding
14 that they are below the grade of the plinth. And
15 they will perhaps be inspired to walk onto the
16 other side and do things. So everything is tied
17 together with this exemplary architecture of this
18 master plan so that it makes you want to walk to
19 the next place, so that you're not just going
20 shopping, you're not just going to the park. You
21 are experiencing a full community.

22 Getting there was not easy. This

1 particular project began in 2006-2007 and in many
2 forms to today and its collaboration.

3 First and foremost there is an
4 extremely diverse and multidisciplined team, the
5 professionals that have been working on here.

6 We have four developers. The District
7 of Columbia owns this site but it is also
8 essentially a developer of the park.

9 We have private developers who do
10 medical buildings, rowhouses, grocery retail as
11 well as multiple family.

12 And we have a landscape architect. We
13 have preservation. We have consulting engineers.
14 We have structural engineers. And we have four
15 architects. Four architectural firms.

16 And I will tell you that the original
17 designs that they came up from their buildings
18 were not coordinated, did not provide exemplary
19 architecture.

20 And it took a lot of effort to get
21 everybody to work together to understand the path
22 towards exemplary architecture.

1 There was community involvement.

2 There have been more community meetings on this
3 project I think than any other project that has
4 come to the District of Columbia.

5 Years and years. There is not
6 agreement. Obviously we're here and there is a
7 group of people who are opposed to this project,
8 but there are many people who are in favor of
9 this project.

10 And it is important for us to
11 understand that this is a balancing act. I think
12 Matt has said not everyone will be happy, but
13 there is something of value to everyone in this
14 project.

15 There is also extreme regulatory
16 compliance. Because it requires demolition we're
17 at the Mayor's Agent. There is also the
18 comprehensive plan requirements, the Zoning
19 Commission. There is the Secretary of Interior
20 standards as part of the deed.

21 There was just code compliance. One
22 of the reasons that the cells are so challenging

1 is meeting code is impossible to make those
2 active spaces.

3 The requirements of making all these
4 groups happy who have different goals has been an
5 extraordinary challenge.

6 The approach has been to create a
7 cohesive plan that celebrates this landmark.
8 That is what this is all about today.

9 We have to accommodate a variety of
10 uses. There are public parks and recreation, art
11 and education, community center and services, a
12 variety of housing, a variety of retail and
13 grocery, a medical office building which actually
14 there are three medical office buildings.

15 The park itself, you can see the
16 different uses that are taking place with access
17 and there people can walk on the park, they can
18 sit and there's going to be activities on the
19 park. There will be presentations. There's a
20 community pool. There's a playground.

21 There's just sitting and enjoying it.
22 There's going to be different uses within the

1 regulator house and the sand bins. So there are
2 lots of uses just in that park alone. It is
3 activated. I think that's an understanding of
4 that word is that it is not just a grassy open
5 space. It is a destination.

6 To understand this cohesiveness we
7 need to understand the landmark. You saw this
8 slide before but it is really important. This
9 slide has been around for a long time and as I
10 keep reminding my team this is what this is
11 about. It's understanding how to make this all
12 come together so that you understand where you
13 are.

14 Matt's presentation of how the
15 architects took that to the next level with their
16 analysis of the different forms that were on the
17 space.

18 We also have the challenge of
19 connectivity. There was a suggestion early on by
20 a city official that we just turn it into the
21 city grid. Just put those original roads back
22 in.

1 I was like no, the landmark, you have
2 to retain the landmark.

3 So how do you connect and retain the
4 landmark at the same time. That's the
5 consistency and the special merit in my mind.

6 Because we didn't have to do that. We
7 could have just decided that that landmark just
8 stays there and there's no connection to the
9 city. You can walk on it, perhaps we could do
10 that, but it would not be the ability to actually
11 connect and attract people to walk onto it,
12 having pedestrian as well as vehicular access on
13 all sides of the site.

14 It's being compatible with the
15 adjacent neighborhoods. There was once a call
16 for the plinth to be removed and for rowhouses to
17 be along Channing Street that would mimic what
18 was on Channing Street's southern side.

19 But the plinth would be gone. And we
20 had rowhouses. Rowhouses were there for a long
21 time and it was very difficult to get everyone to
22 understand that the plinth was critical to

1 reading the landmark.

2 And that rowhouses -- we didn't want
3 rowhouses to be way above everyone else looking
4 down. So that moved -- it sort of forced the
5 idea, well let's move the rowhouses into the site
6 more.

7 The concept of themes that Matt talked
8 about I did not put on my slide here, but I think
9 that they were very important in the creation of
10 the design guidelines because we looked at
11 materials, we looked at colors, and we looked at
12 forms to have an understanding of once again what
13 would be compatible, what would enhance the
14 materials that are there.

15 Is it all brick? Is it all concrete?
16 It wasn't so simple as a resolution.

17 You just put D.C. street trees around
18 the edge just like every other block? No, we're
19 going to use the Olmstead Walk so we have a
20 special place.

21 The issue of exemplary architecture as
22 I alluded to earlier, it was not easy to get

1 architects to understand that they had to
2 coordinate together. In all due respect to the
3 architects who are here they have a mission to
4 present their own aesthetic, their own idea and
5 they finally got it.

6 It was a wonderful day when everyone
7 sort of realized we can be unique while we are
8 compatible with each other. And I think that's
9 what's particularly special about this.

10 This is not one architect coming in
11 and designing a whole. It is not something where
12 one building is here and then five years later
13 another building comes up, and five years later
14 another one comes.

15 This is all taking place within this
16 plan. And the idea of dealing with medical
17 office buildings, housing, multifamily housing,
18 individual family housing, parks, and dealing
19 with these adaptive reuses, very difficult but
20 accomplished. A successful exemplary effort.

21 We also have a need to educate the
22 community and visitors. That is one of our

1 approaches to that. And this slide you can see,
2 this is just one of the things that shows the
3 different types of placards that will be around
4 that provide community history, that provide sand
5 engineering history, that science and public
6 health.

7 This is part of the package that was
8 supported and approved by the Historic
9 Preservation Review Board after our last Mayor's
10 Agent hearing.

11 It includes specific historical
12 components such as a walking museum where
13 literally there will be an iPhone kind of thing,
14 smartphones that has an app that you'll be able
15 to go to certain sites and learn history that
16 way.

17 They will also be within the
18 resources. There will be informational
19 discussions, exhibits, chronology.

20 There will be passive experiences,
21 being able to walk along the Olmstead Walk and
22 look over to the reservoir will be an

1 extraordinary experience to have that happen.

2 And to continue and look over. I have
3 kidded many times I would love one of the
4 apartments so I can just look over at the
5 reservoir. I think it will be an amazing view.

6 The opportunities from a passive
7 experience. But there's also the active
8 experiences. Not just the walking museum, but
9 I'm going to particularly point out cell 28.

10 We have not talked a lot about cell 28
11 but it is perceived to be something that will be
12 -- that is part of the cell. It will be open on
13 one side and I think you can see an image on the
14 upper lefthand corner that you can actually
15 you'll be looking into the cell as you walk from
16 North Capitol Street.

17 And you can get close. And there will
18 be some kind of -- probably a glass partition.
19 But there will be exhibits that explain what
20 you're looking at. You will see historic
21 drawings there. We hope the opportunity will be
22 possible for us to have regular tours under

1 certain controls.

2 And you can see in the lower lefthand
3 side you can just enjoy it as well. There will
4 be hardscape that will allow people to gather.

5 And also when we have access to cell
6 14 which D.C. Water is supposed to return as
7 they've got it. So that is their commitment,
8 that it will be as it is so that we will be able
9 to have access into that once again under
10 controlled circumstances with a structural
11 overlay that has been described.

12 And so that this concept of museum is
13 taken to a level that is beyond just walking
14 around a gallery. This is an experiential museum
15 that we will have.

16 We will also have public art. And
17 this just shows some of the examples using the
18 sand bed, exterior light projections, applied art
19 sculpture.

20 We've also talked about using parts.
21 The manhole covers could become a sculpture. The
22 pipes and things could be used in different ways.

1 We are using the sand washers. In
2 some places they are shown just as they were, but
3 other places they can be planted with flowers.
4 In other places they might be deconstructed in
5 such a way to make a piece of art.

6 The opportunity there to have art as
7 learning of what's there. And clearly the themes
8 of water and health will be very much a part of
9 that.

10 So, do I think that these specific
11 architecture land planning and community benefits
12 make this a project of special merit?

13 Absolutely.

14 It's a comprehensive coordinated plan.
15 It has significant benefits to District of
16 Columbia as well as the community.

17 This will not just be a neighborhood.
18 This will be a destination place. People will
19 come here to see it. It will be very special.
20 The park will be very special.

21 It will have social benefits as land
22 planning. And the many benefits that I have not

1 talked about that are beyond art and
2 architecture, social, but into the kinds of
3 things like health and planning we will talk
4 about soon.

5 But I believe just on what I've shown
6 you alone this is a project of special merit.

7 I do think it's comparable. I'd like
8 to show that again. We've got the Corcoran
9 Gallery of Art, the Phillips, the NPR building,
10 the Homer building, Arena Stage.

11 And what's interesting is that in each
12 case these are all the product of a single firm
13 or person. Bing Thom did Arena Stage. His firm
14 did that.

15 The challenge of the multiple
16 architects was not there. This was very much --
17 they have an owner, one owner. We have four.

18 And they are all providing both
19 exemplary architecture as well as land planning,
20 or economic benefits, or a balance of all the
21 benefits. They're all very special projects.

22 I'd like to talk about two of them a

1 little more because I think that they help
2 elucidate the issue of when you have some parts
3 of what was the landmark and you don't have all
4 of it because you're introducing something new.

5 1111 North Capitol Street is now NPR.
6 And it was in front of you. There is a portion
7 of the building which you see in the upper right-
8 hand slide you can see the warehouse building and
9 on the lefthand side you can see it was
10 continuous columns. Every floor was the same.
11 It was just a warehouse building.

12 The lower right-hand, this is
13 approximately how much of it was removed. It's
14 actually a little more than that shows was
15 removed, and then a new addition on the upper
16 right-hand side was visible there. And it
17 actually collapsed and came around to the L
18 Street side.

19 So the North Capitol Street side was
20 intact, but the -- you can see the slide, and on
21 the bottom slide you can see how it integrated
22 the old and new came together where we have a two

1 story section with two one story sections with
2 their columns. So that when you're in the
3 building you can experience what was old and what
4 is new.

5 Arena Stage is fascinating because on
6 the left is the original landmark. It was a very
7 early designation of a building.

8 And they found that their needs had
9 changed as Arena has grown dramatically from a
10 small regional to a very significant regional
11 theater.

12 And they took the Arena Stage itself,
13 the original building which is on the lefthand
14 side, and the stage of the Krieger, not its seats
15 and not the lobby, and they wrapped it in this
16 large glass building that has this very dramatic
17 roof.

18 So you can walk into the current what
19 we call Arena Stage and see what they call the
20 Fichandler Stage which is the original part. And
21 you can go into the stage that's the Krieger and
22 you can see the original stage.

1 So it did not retain by any means, not
2 as much as we're retaining proportionally, but it
3 retained what was important and allowed this very
4 exciting building to happen which has been an
5 incredible draw for the Southwest and when the
6 wharf project is done will be part of that entire
7 experience of an area that had been long
8 unappreciated. The wharf never got to be what it
9 was intended to be. And now will be a very
10 exciting space.

11 I also was asked to speak about
12 offsite benefits. I was involved with 600
13 Massachusetts Avenue which on the lefthand side
14 upper is the Massachusetts Avenue facade of this
15 large glass building. On the right upper side is
16 the Eye Street side that includes the little
17 buildings that were preserved.

18 But on the bottom screen on the
19 lefthand side is the small church that was
20 covered in formstone. And this project provided
21 the benefit offsite to remove the formstone and
22 in the process we actually discovered that what

1 had been I think it was a Baptist church had been
2 a synagogue, but before that it had been a
3 Presbyterian church.

4 And it turned out that the
5 Presbyterian church was designed by Thomas Walter
6 when he was in Washington designing the Capitol
7 Dome and the Presbyterian congregation went to
8 him and asked him to provide a design which he
9 did. And it was not known before this effort.

10 Another is the project at 2234-2238
11 Martin Luther King Boulevard, the Big K
12 development where buildings were moved off to a
13 different site to allow this to happen, and
14 fitting them into the neighborhood so that they
15 could continue.

16 So lastly I'd like to just talk about
17 the subdivision and whether it's necessary to
18 obtain the special merit benefits identified.

19 I have participated in a few
20 subdivision cases. Subdivision is very important
21 because it changes the way our cities are
22 organized.

1 And we know that this site in 1894 was
2 subdivided. And we know nothing was ever done.
3 It was never built upon. And we know that in
4 1901 when the United States took the private land
5 over they were not required to change -- so they
6 had no subdivision requirements. They just
7 overlaid the new project on top of the existing
8 paper streets. And that has been how it has been
9 all these years.

10 So, today we could not build the
11 McMillan plant nor can we build the project of
12 special merit because we need to subdivide and
13 get rid of the old subdivision and put in a new
14 subdivision that allows the project to proceed.

15 So it's fairly simple in terms of --
16 it's very unusual that we have a situation where
17 we have subdivisions that have been ignored for
18 100 years. But this is I think pretty obvious
19 that it's necessary for the special merit project
20 to happen.

21 So, in conclusion I think that it is
22 my opinion that this project is consistent with

1 the act, that it is a project that needs the
2 subdivision to allow it to happen.

3 And most importantly that it achieves
4 special merit in all three categories of
5 exemplary architecture, land use planning, and
6 community benefits. Thank you.

7 MS. BROWN: I just have some quick
8 follow-up questions and I'm clearly very bad at
9 estimating time so I don't know if this would be
10 the good place to break after we do the
11 questions.

12 So Ms. Eig, in discussing the
13 consistent with the purposes of the act what
14 factors do you take into consideration about the
15 existing condition of the building or the
16 features? We have the unstable cells and whether
17 they're visible. How does that factor into the
18 relative preservation harms and benefits?

19 MS. EIG: Well, as I said in the early
20 part of the presentation we did a study of the
21 relative level of significance and we did that
22 based on the three criteria.

1 And as a result of that obviously
2 they're very important to the concept of water.
3 They're not as important relatively speaking to
4 the concept of the public because the public did
5 not see those cells. That is a phenomenon of
6 recent time where they collapsed and people have
7 gotten onto the site. But they were not publicly
8 -- the cells themselves were not publicly
9 accessible. And so they were given less of a
10 level of significance.

11 MS. BROWN: And so that helps. Are
12 these -- you had a slide of the level at North
13 Capitol with the interior features of the
14 columns. Do you equate the interior elements --

15 MS. EIG: Yes, I understand. As I
16 said, the warehouse had -- every floor was
17 exactly the same. There was a small office in
18 the front and that was it.

19 And so retaining all of the eight
20 rows, lots of square footage of these cells -- of
21 the -- I'm sorry, the columns in these spaces was
22 not necessary to understand the character of the

1 building.

2 And similarly, for us to understand
3 what a cell looks like it is not necessary to
4 save all 20 cells. We can see one cell and that
5 cell tells us the story. And we're going to have
6 one cell that we hope will have access, and one
7 cell that we will as part of this project early
8 on be able to look into and understand.

9 MS. BROWN: And when we talk about the
10 amount of demolition on this site do you have to
11 take into consideration the entire landmark? So
12 if you were to say in what percentage is being
13 demolished it wouldn't just be on this 25 acre
14 site.

15 MS. EIG: No. The test is the
16 landmark. It is not this chunk of the site that
17 we've pulled out.

18 MS. BROWN: And with the -- you
19 mentioned in your earlier discussion the
20 difference between the resources and it's really
21 a component.

22 And when you demolish a cell that

1 would include all four walls of it.

2 MS. EIG: And it's actually -- the
3 cell is a box and it has an opening in the box
4 that has been flipped up which is your portal,
5 and the wall creates the retaining wall for the
6 concrete ceiling.

7 So we really have more than -- a
8 component of that cell is the portal wall, but it
9 is part of the cell. And so therefore it's not
10 freestanding, it's actually a retaining wall, the
11 side of that. So it is a component.

12 MS. BROWN: And getting back to the
13 1111 North Capitol example that building was not
14 designated for its interior, was it?

15 MS. EIG: No.

16 MS. BROWN: And do you know if the
17 cells are -- the interior of the cells are
18 designated as part of the landmark?

19 MS. EIG: That is not my reading of
20 the landmark.

21 MS. BROWN: Let me see if there's
22 anything else I have. Those are all my

1 questions.

2 DR. BYRNE: Okay. All right. So,
3 time for a break. I'm wondering how long to
4 take. Forty-five minutes?

5 MS. BROWN: Yes, my witnesses
6 corrected me and they told me that I think we
7 probably have 40, 45, yes.

8 DR. BYRNE: I'm saying how long to
9 take a break.

10 MS. BROWN: Oh yes, 45 for lunch too.

11 DR. BYRNE: Is that agreeable?

12 MS. FERSTER: We're agreeable to that.

13 I do have a question though and that is that
14 during the course of these sort of speedy
15 presentations the slides go by pretty quickly.
16 Would it be possible for you to provide printed
17 copies of the slides after the break.

18 MS. BROWN: We have copies that we
19 were going to hand in after the testimony, yes.

20 MS. FERSTER: Can we have them now?

21 MS. BROWN: We were going to hand them
22 in after the testimony.

1 MS. FERSTER: It would be helpful
2 because in order to be able to ask questions I
3 can't remember what's --

4 (Simultaneous speaking)

5 MS. FERSTER: Okay. Thank you.

6 MR. OTTEN: Mr. Byrne, just a
7 procedural question in terms of our D.C. for
8 Reasonable Development submittal documents.

9 We have them on a USB stick. We were
10 going to email them but the files are big. So we
11 could submit that.

12 DR. BYRNE: So you want to just hand
13 me the stick?

14 MR. OTTEN: I could do that.

15 DR. BYRNE: I mean, I'm waiting --

16 MR. OTTEN: Yes, I could -- I mean, I
17 could email them to you but I'd prefer to just
18 give you --

19 DR. BYRNE: They really need to go to
20 everybody, all the parties.

21 MR. OTTEN: Yes, that's not a problem.

22 DR. BYRNE: So email them to all the

1 parties. That would be good. So 1:23. Be back
2 here at 10 after 2, does that sound right?

3 (Whereupon, the above-entitled matter
4 went off the record at 1:26 p.m. and resumed at
5 2:13 p.m.)

6 DR. BYRNE: Well, it's 2:10. We're
7 ready to proceed.

8 MS. BROWN: Yes, we're ready. Our
9 next witness is Mr. Adam Weers from the Trammel
10 Crow Company. He will speak on the special merit
11 of the healthcare facility and other features of
12 the project.

13 MR. WEERS: Good afternoon, Mr. Byrne.
14 My name is Adam Weers. I am a principal with
15 Trammel Crow Company. We are the developer of
16 the healthcare component at McMillan.

17 I'd like to start today by responding
18 to remand issue number two and sharing some
19 information about the special merit features of
20 the healthcare facilities individually as a
21 linchpin for our entire proposal.

22 As you are aware the court asked for

1 clarification on the finding that the healthcare
2 component only contributes to the special merit
3 of the project in connection with the adjacent
4 hospitals, and is a part of an overall medical
5 district.

6 The first part of my testimony today
7 will be focused on several attributes of the
8 healthcare facilities that are worthy of
9 consideration as special merit features by
10 themselves.

11 The healthcare component which
12 comprises half the development program at
13 McMillan provides much needed services for
14 district residents, a unique and innovative
15 workforce development program to connect district
16 residents to the 3,200 permanent jobs created and
17 provides the critical boost to the daytime
18 population of McMillan which is directly tied to
19 our project's ability to deliver the community
20 serving retail and grocery uses demanded by the
21 community.

22 Far from a typical office complex, the

1 healthcare portion of this project directly
2 addresses community and district priorities, and
3 is deserving of special merit designation as an
4 individual component of the project by itself.

5 The work that is performed inside the
6 walls of these facilities will literally save the
7 lives of people in our city, adults and children
8 alike.

9 These will not be lawyer's offices or
10 consulting shops, but outpatient facilities,
11 imaging rooms, and research labs creating
12 innovative new treatments, ideas, and cures.

13 This industry is hugely important to
14 the district both in terms of the care that is
15 delivered that all of us are in need of, but also
16 in terms of positioning our city for a future
17 less reliant upon the traditional industries that
18 have fueled our economy.

19 Simply put, healthcare is a
20 dramatically different offering from a general
21 office use and is in fact one of the most
22 impactful commercial uses that could possibly be

1 developed at McMillan.

2 The healthcare portion of McMillan is
3 also worthy of special merit consideration as it
4 is a sorely needed addition to the city's aging
5 healthcare infrastructure.

6 The district's healthcare facilities
7 are on average the second oldest in the nation
8 much of which is owed to the infrequency with
9 which new healthcare facilities are built in our
10 city.

11 Indeed the district has not seen a
12 major new healthcare development completed in 15
13 years when GW Hospital delivered in 2002.

14 While our buildings are built slowly
15 the district's population is rising rapidly with
16 some 100,000 people moving in over the same 15-
17 year period. This places even more demand on the
18 existing healthcare facilities throughout the
19 city.

20 These two factors, lack of new supply
21 and a rapidly growing population have led the
22 district to be ranked last in terms of healthcare

1 facilities per capita among all major
2 metropolitan areas in the nation.

3 Given this backdrop, having 50 percent
4 of the program devoted to healthcare uses means
5 McMillan presents a truly unique development
6 offering rarely seen in the district.

7 Aging and obsolete healthcare
8 infrastructure has serious ramifications both
9 from the delivery of care and from the cost of
10 care in our city, a significant portion of which
11 is paid for through publicly funded Medicare and
12 Medicaid programs.

13 The addition of such a significant
14 amount of new state of the art healthcare
15 facilities provides a tremendous benefit not only
16 to the direct participants in this project but to
17 the district as a whole.

18 Locating McMillan directly adjacent to
19 the Washington Hospital Center campus perfectly
20 positions us to help address these systemic
21 issues.

22 As healthcare real estate in the

1 district places high value on adjacency to
2 existing hospitals.

3 The circles on this map represent the
4 concentrations of healthcare buildings throughout
5 the city and a large yellow star represents the
6 3.5 million square feet of hospitals next to
7 McMillan.

8 This adjacency offers a unique
9 opportunity for these systems to modernize
10 significant portions of their operations by
11 expanding across the street and repurposing the
12 newly freed up space on their existing campus.

13 All four of the existing hospital
14 systems at the Washington Hospital Center campus
15 are extremely successful and often struggle with
16 demand levels that cause them to operate beyond
17 100 percent capacity of their existing buildings
18 placing an increasing burden on facilities that
19 are in some cases reaching obsolescence.

20 The need for modernization,
21 repurposing and expansion among these users is
22 pressing and immediate, and McMillan is the only

1 development parcel available adjacent to their
2 campus which can reasonably address this level of
3 space need.

4 In designing the parcel buildings our
5 team embraced forward thinking smart growth
6 principles, thereby abandoning the historic
7 formula for big healthcare which was to place
8 massive sprawling complexes on very large land
9 parcels, a phenomenon seen locally at United
10 Medical Center and Providence Hospital.

11 Modern healthcare design incorporates
12 smart growth principles like taller buildings,
13 vertical integration, smaller footprints,
14 underground parking, and mixed use environments
15 with rich amenity bases and open green public
16 spaces.

17 These features are not easy to
18 accomplish and they come with significant cost.
19 But successfully implementing them can help a
20 healthcare system deliver better care, enhance
21 the patient experience, and attract the best and
22 brightest human capital.

1 In pursuing these principles at
2 McMillan parcel one is squeezing nearly 800,000
3 square feet of density into less than 4 acres.

4 In addition, the building
5 configuration was directly influenced by the site
6 context and by community input.

7 We pushed our building back from North
8 Capitol Street as a response to the Stronghold
9 neighborhood creating a 260 foot buffer.

10 This buffer allowed an acre of new
11 park space and the preservation of cell 14.

12 We pushed our building away from the
13 north service court to more appropriately relate
14 the buildings to the historic assets preserved
15 within this key element of the plan.

16 The creation of the healing gardens
17 came directly from a community request to shrink
18 the building footprint in order to make room for
19 additional green space.

20 This move also added to our
21 preservation program and enhanced our ability to
22 reenvision the Olmstead Walk's most prominent

1 section.

2 And lastly, the parcel one buildings
3 were shortened by 15 feet and moved again to
4 maintain the historic view corridors of the
5 adjacent Armed Forces Retirement Home site.

6 The healthcare component of McMillan
7 is the economic driver of the development program
8 and is also responsible for the majority of the
9 developer contributions to the community benefits
10 agreement VMP developed with ANC 5E which totals
11 more than \$5 million of combined benefits and
12 mitigation efforts directly flowing to the
13 adjacent communities.

14 This CBA, one of the most significant
15 agreements ever incorporated into a district PUD
16 was agreed to by the ANC and the development team
17 in 2014 but has been forced to sit idle for the
18 past three years.

19 Agreeing to a CBA of this magnitude is
20 only accomplished through buy-in and consensus,
21 and at McMillan this took a tremendous amount of
22 effort.

1 The CBA was a culmination of a years
2 long community engagement process involving more
3 than 200 public meetings between the development
4 team and community members.

5 It is critical to note that this
6 project's ability to provide such a substantial
7 and comprehensive package of benefits is directly
8 tied to the level of development included in our
9 plan.

10 To remove or reduce the development at
11 McMillan would directly impact our CBA and undo
12 the agreement all parties worked so hard to
13 achieve.

14 One of the most significant components
15 of the CBA is the \$1 million in scholarships and
16 grants directed at our workforce development
17 strategy, Opportunity McMillan.

18 Through this innovative new plan VMP
19 has partnered with the community foundation, a
20 national leader in the workforce development
21 sphere to invest this \$1 million and help us
22 ensure that district residents get access to the

1 education and job training necessary to plug them
2 into the jobs McMillan creates.

3 This extensive workforce development
4 strategy was crafted to have a particular focus
5 on the thousands of permanent healthcare jobs
6 which McMillan will create which makes this one
7 of the most innovative and ambitious workforce
8 development initiatives in the country.

9 Opportunity McMillan has two main
10 pillars both of which are worthy of special merit
11 designation.

12 First, a \$1 million contribution
13 distributed as scholarships to residents and
14 grants for workforce development organizations
15 all designed to help Ward 5 and district
16 residents pursue education and career
17 opportunities related to McMillan and careers in
18 health and life sciences.

19 And second, VMP will build the
20 Washington Center for Health Careers, a permanent
21 job training center to house this initiative
22 within the parcel one healthcare facilities.

1 McMillan's workforce development
2 strategy will be based on the needs of local
3 residents and the project's future tenants, and
4 will initially focus on entry-level and middle-
5 skill opportunities.

6 By focusing on the entry-level
7 opportunities residents with limited recent
8 employment or barriers to employment can still
9 gain work experience and connect to career
10 pathways leading to family sustaining careers.

11 Middle skill opportunities by contrast
12 are jobs that require more than a high school
13 diploma but less than a four year college degree,
14 yet still provide workers with family sustaining
15 incomes and opportunities for advancement.

16 Ultimately this training is designed
17 to connect all workers to career pathways that
18 allow for continued advancement, additional
19 training, and valuable work experience.

20 The community foundation has extensive
21 experience in this arena and has implemented
22 similar programs in the past with some of the

1 employers currently located at the Washington
2 Hospital Center like Children's National Medical
3 Center and Medstar.

4 Thus our strategy is based on proven
5 models and a past record of success.

6 In summary, there are numerous reasons
7 why the healthcare component of McMillan is
8 worthy of special merit consideration on its own
9 and independent of its inclusion in a medical
10 district.

11 First, the district is significantly
12 undersupplied in terms of healthcare facilities
13 per capita. We are a growing city and an aging
14 city, and we have an existing base of healthcare
15 infrastructure that is among the oldest in the
16 country.

17 Aging and obsolete healthcare
18 infrastructure has serious ramifications for both
19 the delivery of care and for the cost of care in
20 our city, a significant portion of which is paid
21 for through the publicly funded Medicare and
22 Medicaid programs.

1 New healthcare facilities provide a
2 uniquely beneficial use that serves not only the
3 direct participants of the development project
4 but the public as a whole.

5 Second, the specific location of this
6 site and its adjacency to the largest
7 concentration of hospital users in the region
8 makes it incredibly special.

9 The users of Washington Hospital
10 Center are operating above capacity and
11 desperately need to expand.

12 From their perspective McMillan is the
13 most unique development site in the district as
14 it provides the potential for adjacent
15 development no other site can offer.

16 Third, the design of the parcel one
17 buildings themselves is a departure from
18 traditional healthcare design and represents a
19 forward thinking vertically integrated smart
20 growth approach to healthcare development.

21 This approach allows the McMillan
22 facilities to embrace and directly integrate the

1 network of open green public spaces and historic
2 assets which the master plan has thoughtfully
3 interspersed throughout the site.

4 Fourth, McMillan provides one of the
5 most substantial CBA agreements ever seen in a
6 district PUD with \$5 million in proffers and
7 mitigation efforts directly benefitting the
8 surrounding communities.

9 And fifth, there is nothing typical
10 about the \$1 million investment VMP is making in
11 scholarships and grants to local residents and
12 workforce development organizations.

13 These resources will help prepare
14 district residents for the healthcare focused
15 jobs across a wide spectrum of career
16 opportunities from entry level to middle skill to
17 advanced positions, something that truly sets
18 this strategy apart from other workforce
19 programs.

20 This initiative developed in
21 conjunction with experts like the Community
22 Foundation is truly unique and will serve as a

1 national model.

2 Next I'd like to share some thoughts
3 in response to remand issues number three and
4 four, and that the proposed demolition is
5 necessary to obtain this significant level of
6 special merit benefits that I have just
7 highlighted and that there are no reasonable
8 economically viable alternatives that would
9 reduce the need for demolition and achieve the
10 same level of special merit benefits.

11 To highlight this I point to the
12 ramifications of saving some additional
13 underground cells on parcel one.

14 This slide shows the footprint of the
15 buildings on parcel one overlaid with the
16 location of the underground cells.

17 Saving an additional cell would impact
18 the footprint of the building dramatically and
19 cause such a reduction that the proposed facility
20 could no longer be feasibly developed and the
21 entire development plan for parcel one would
22 collapse.

1 By way of example if cell number 13
2 were preserved it would impact more than half of
3 the footprint of the 8 story eastern tower of the
4 parcel one facility as well as the five level
5 underground garage.

6 The integration of this facility above
7 and below grade within this site was an
8 incredibly difficult process given the number of
9 fixed components within parcel one which must be
10 accounted for, including the location of Half
11 Street, the north service court, the Olmstead
12 Walk, and the numerous points of access and
13 circulation required to service a facility of
14 this size.

15 The removal of an additional acre of
16 land from parcel one is an adjustment so
17 significant there are no reconfiguration options
18 available that would result in a reasonably
19 designed facility on this site which could still
20 meet the circulation, parking, access, and design
21 requirements necessary to make it financible and
22 leasable.

1 Rather than reconfiguration the
2 preservation of cell number 13 would result in
3 the loss of the entire eastern tower, or
4 approximately 400,000 square feet of the current
5 parcel one density.

6 A 50 percent reduction in the parcel
7 one density from our original filing is a blow so
8 severe the healthcare program would no longer be
9 economically feasible.

10 TCC is the largest commercial
11 developer in the country today as well as the
12 largest healthcare developer in the country and
13 as such our team has significant experience and
14 expertise necessary to execute this healthcare
15 strategy at McMillan.

16 We have a strong track record of
17 completing similarly large and complex healthcare
18 developments across the country.

19 As with many of these other large
20 development projects the economic viability of
21 the healthcare program at McMillan is dependent
22 upon scale and a critical mass in order to house

1 a program with a range of different healthcare
2 uses and users as well as a balance of large
3 anchor tenants and small to mid-sized
4 organizations.

5 To lose 50 percent of the parcel one
6 density makes this user mix impossible and would
7 render the entire healthcare strategy for
8 McMillan infeasible.

9 Indeed, it would remove the commercial
10 component of McMillan from the development
11 program entirely for several reasons.

12 First, outside of our vision for a
13 large-scale healthcare campus at McMillan there
14 are no other viable healthcare development
15 options of any significant size.

16 This slide shows all off campus
17 healthcare real estate in our region. And I
18 would note that the entire off campus healthcare
19 real estate market in the District of Columbia is
20 actually quite small with only 1.3 million square
21 feet. That is the entire market of the District
22 of Columbia and the single largest off campus

1 healthcare building ever developed in this city
2 is 160,000 square feet. One hundred and sixty
3 thousand square feet.

4 The point here is if you do not pursue
5 the vision that we have laid out, one of scale
6 and critical mass, one involving a combination of
7 large anchor tenants and small to mid-size
8 organizations, the market shows us that the
9 alternative is something less than one-fifth of
10 the size of our current program.

11 Even if such a reduced program were
12 economically feasible it would clearly mean a
13 reduced level of special merit features.

14 One-fifth of the development means
15 one-fifth of the jobs and one-fifth of the
16 healthcare services, and one-fifth of the
17 economic impact that McMillan is currently poised
18 to provide.

19 Second, outside of the healthcare
20 sphere there is no viable commercial office
21 market at McMillan. The commercial office market
22 in the District of Columbia has struggled for

1 some time as illustrated in this slide which
2 highlights the building deliveries, leasing
3 absorption, and vacancy rate in the general
4 office market in the district over the past
5 decade.

6 Vacancy rates across this city have
7 risen to their highest level since the early
8 nineties creating a cutthroat environment between
9 office submarkets trying to attract tenants.

10 Outside of the healthcare universe
11 McMillan simply does not have the types of
12 amenities and advantages that office tenants
13 desire, and we could not compete or survive in
14 such a challenging general office environment.

15 And lastly, there is a direct tie
16 between the healthcare component and all other
17 components of this plan.

18 If the large-scale healthcare
19 component is removed you take away the daytime
20 population that the grocery anchor requires in
21 order to pursue this project.

22 If you lose the Harris Teeter grocery

1 you remove 50 percent of the retail program. In
2 addition, the commercial component is the
3 economic engine of this project providing two-
4 thirds of the tax revenues, land value and jobs
5 that McMillan generates.

6 This value is the fuel for the many
7 benefits included in this plan. The community
8 center, the parks, the preservation assets as
9 well as the \$5 million CBA.

10 In summary, the proposed demolition is
11 necessary to attain this significant level of
12 special merit benefits and there are no
13 reasonable alternatives that would reduce the
14 need for demolition and achieve this same level
15 of special merit benefit.

16 The preservation of additional
17 underground cells in parcel one would cause such
18 a dramatic impact to the above and below grade
19 portions of the healthcare facility that it would
20 eliminate the entire eastern tower.

21 The loss of 50 percent of the parcel
22 one density leads to a loss of the entire

1 healthcare component of the McMillan development
2 program, and a loss of the healthcare component
3 means a loss of the daytime population necessary
4 to sustain the Harris Teeter grocer anchor which
5 is 50 percent of the retail program.

6 The development program is
7 inextricably tied to the benefits in the plan and
8 removing a material portion of the development
9 makes attaining the project's other numerous
10 benefits impossible.

11 The density included in the plan,
12 especially the healthcare use, is the linchpin
13 for everything including the grocery anchor
14 retail program.

15 It is the straw that stirs the drink
16 and this fact along with the other numerous
17 benefits I have highlighted today clearly show
18 that the healthcare use is worthy of a special
19 merit designation on its own.

20 Furthermore the development of a large
21 amount of state of the art healthcare facilities
22 is of vital importance to the future of the

1 district's healthcare infrastructure and the
2 ability of our city to continue to grow and
3 thrive.

4 This concludes my testimony. I thank
5 you for your time and look forward to answering
6 any questions you have.

7 DR. BYRNE: Thank you.

8 MS. BROWN: I just have one or two
9 follow-up questions. Mr. Weers, you referred to
10 TCC as having some expertise in healthcare. TCC
11 is the Trammel Crow Company.

12 MR. WEERS: Yes, ma'am.

13 MS. BROWN: And who else in the
14 country is doing this much healthcare facility
15 development?

16 MR. WEERS: We are certainly the
17 largest healthcare developer in the country. My
18 firm Trammel Crow Company, we've been involved in
19 healthcare development since the late nineties.
20 Started doing services and providing real estate
21 expertise to hospitals and healthcare systems.

22 And most of what we do now is system-

1 based. And since that time we have developed
2 roughly \$3.5 billion worth of healthcare
3 development across the country. It's about 15
4 million square feet total.

5 In that we have built 30 hospitals, 80
6 ambulatory and outpatient facilities, and our
7 current pipeline and in process healthcare
8 development only is 4 million square feet, about
9 \$2.3 billion.

10 MS. BROWN: Those are all my further
11 questions.

12 DR. BYRNE: So I'm trying to just get
13 a better sense of the healthcare facility and
14 what kinds of services will be provided in it.

15 If this case involved the construction
16 of a hospital let's say I think it's the kind of
17 thing that might be more obviously a special
18 merit type project if there was community need.

19 But this is something different. And
20 I guess I'd ask you to tell me more about the
21 kinds of services that would be provided here and
22 why this is what you'd be doing instead of a new

1 hospital facility.

2 MR. WEERS: So, I would describe the
3 range of services that we will see inside of the
4 facilities as you could go from outpatient
5 services on one end of that to administrative on
6 the far other end and everything in between.

7 And so I would say some of the
8 specific things that you might see being done,
9 the care being delivered inside of that, even if
10 you just stick within the outpatient facilities
11 category could be clinical uses.

12 So exam rooms, therapy suites,
13 oncology, cancer. Think big like proton knife,
14 gamma knife machines. Imaging like MRIs,
15 mammography.

16 The kinds of things I think that you
17 would think about as being delivered in a quote
18 unquote "hospital building" which is actually a
19 combination of both inpatient and outpatient
20 services.

21 And so what I think we're going to see
22 primarily as the use in this building is the

1 picking up of some of the existing outpatient
2 services, the moving of them across the street to
3 McMillan to deliver the healthcare at McMillan,
4 and then the replacement of that space on campus
5 with additional inpatient facilities which are
6 probably more heavy like hospital uses.

7 So no, we are not developing a
8 hospital, but yes, the uses inside the building
9 are very much still going to be care delivery.

10 DR. BYRNE: To what extent are the
11 entities that operate on the Washington Hospital
12 Center campus going to be -- do you anticipate
13 how likely is it that they would be significant
14 tenants of the project.

15 MR. WEERS: So if I do my job right it
16 will be very likely. We have been in
17 conversations and negotiations with the folks
18 across the street literally for years, since
19 about 2009. And we are working very hard to have
20 them be the anchor tenants at McMillan.

21 It makes all the sense in the world.
22 It is a very complicated and complex transaction

1 and to be totally honest the start and stop, on
2 again off again nature of what we have been going
3 through has made our tenant negotiations
4 extremely challenging.

5 That being said I think it is a very
6 high probability that that's where our anchor
7 tenants are coming from.

8 DR. BYRNE: Thank you. Okay, good.

9 MS. BROWN: Our next witness is Mr.
10 Len Bogorad. He was previously qualified as an
11 expert in fiscal -- make sure I get it correctly
12 -- fiscal impact analysis. And I have his
13 resume, actually I have his written testimony
14 that I'll hand to you.

15 DR. BYRNE: Sir, are you with Street
16 Sense?

17 MS. BROWN: No, I'm sorry, he's with
18 RCL Co., and he's an expert in fiscal impact
19 analysis.

20 DR. BYRNE: Okay. And he got
21 qualified in the first hearing.

22 MS. BROWN: He did. And his testimony

1 was very limited because I didn't know that you
2 were not this interested in this, but we are
3 tailoring it to the big picture of how this
4 individual healthcare facility itself drives the
5 engine.

6 DR. BYRNE: I didn't know I was that
7 interested in it until the court of appeals told
8 me.

9 MR. BOGORAD: Good afternoon,
10 Professor Byrne.

11 As you just heard I won't repeat my
12 previous testimony that's already in the record
13 which regarded the economic and fiscal impact of
14 McMillan as a whole.

15 But hearing the D.C. Court of Appeals
16 stated that they thought at least more clarity
17 was needed with respect to the relevance of the
18 planned healthcare facility to the question of
19 whether the project has special merit I'm
20 addressing in 15 minutes today the connection
21 between economic and fiscal impact on the
22 healthcare facility specifically.

1 In order to analyze this I first once
2 again reviewed the analysis originally conducted
3 by Green Door Advisors and the updated
4 development program as of 2014.

5 And I conclude that over a 30-year
6 period the entire project will generate
7 exceptional benefits to the district budget,
8 \$1.183 billion in district revenues and a net
9 fiscal benefit to the district after taking
10 account of expenditures of \$874 million.

11 And I also concluded that the planned
12 development would generate approximately 3,000
13 construction jobs on an annual full-time
14 equivalent basis and approximately 4,400
15 permanent employees.

16 So I then proceeded in response to the
17 court's decision to specifically analyze the
18 economic and fiscal impact of the healthcare
19 facility and determined that 94 percent of the
20 onsite permanent jobs and 65 percent of the
21 construction jobs at McMillan will be a result of
22 that healthcare facility.

1 I also found that 65 percent of the
2 D.C. revenues from the project and 69 percent of
3 the net fiscal benefit of the project will result
4 from the healthcare facility.

5 As Mr. Weers testified the project
6 offers the exceptional opportunity to complement
7 the nearby hospitals in a way that sites
8 elsewhere in the district could not.

9 Healthcare is one of the most
10 important industries in the district and it's
11 very important to take advantage of a site that's
12 so proximate to hospitals in order to generate
13 all the benefits, but specifically in my area of
14 expertise additional economic activity.

15 As a result the project offers the
16 opportunity to generate many jobs in a wide range
17 of salaries in a non-downtown location.

18 I also concluded this job creation
19 from the healthcare facilities particularly is
20 important in Ward 5 which has a higher
21 unemployment rate than the district as a whole.

22 Furthermore, because this location is

1 uniquely likely as Mr. Weers testified to attract
2 such a healthcare facility the tax revenues and
3 net fiscal impact that the healthcare facility
4 will generate will not be obtained anywhere else
5 in the district if it were not for this project.

6 I also wanted to briefly respond to
7 the statement of FOMP's response to applicant's
8 pre-hearing brief on remand issues that the
9 impact of McMillan is quote "entirely comparable
10 to other large development sites such as the
11 Southwest waterfront development, St. Elizabeth's
12 East, and other comparably sized sites," close
13 quote.

14 While it's undoubtedly true that some
15 other major D.C. developments have comparably
16 exceptional benefits to McMillan most of the
17 developments in the district, most of the
18 developments listed on the DMPED website linked
19 to in the FOMP response undoubtedly have much
20 less significant employment and fiscal benefits
21 than McMillan will.

22 For example, according to the DMPED

1 website the wharf will create 1,000 permanent
2 jobs and between 650 and 1,000 construction jobs
3 compared with 3,300 onsite permanent jobs, 1,100
4 indirect permanent jobs, and 3,000 construction
5 jobs at McMillan.

6 St. Elizabeth's East entertainment and
7 sports arena also listed on the website is
8 forecasted to generate 300 permanent and 600
9 construction jobs.

10 D.C. United, 600 permanent and 290
11 construction jobs.

12 And Shops at Dakota Crossing, a total
13 of 1,200 permanent and construction jobs.

14 In terms of annual revenues at
15 stabilization the DMPED website reports that D.C.
16 United would generate \$6 million in annual
17 revenues, St. Elizabeth's East entertainment and
18 sports arena \$4.5 million, Martin Luther King
19 Gateway Community \$1.4 million, and Hill East
20 District Redevelopment \$1 million compared with
21 \$34 million in annual revenue at stabilization
22 for McMillan.

1 And finally it's also worth noting I
2 think that the economic and fiscal impact
3 anticipated from the Rhodes Tavern development
4 many years ago according to the court of appeals
5 1981 decision was going to be 2,000 permanent
6 jobs versus the 4,400 at McMillan, and in excess
7 of \$2 million in annual tax revenues which is
8 equal to about \$5 million in today's dollars
9 compared with \$34 million at McMillan.

10 And the court stated that this impact
11 was a factor militating in favor of a finding of
12 special merit.

13 Thanks very much. I'll take any
14 questions.

15 DR. BYRNE: Thank you. You mentioned
16 the net benefits to the district in terms of the
17 expenditures that they are putting in.

18 Can you characterize or specify the
19 expenditures with what D.C. is putting in?

20 MR. BOGORAD: Sure. A whole range of
21 different budgetary activities. Schools, police,
22 fire --

1 DR. BYRNE: Offsite?

2 MR. BOGORAD: Well, the way this is
3 typically done in the industry and as we've done
4 and as our predecessor on this project Green Door
5 Advisors did is to essentially look at the entire
6 district budget and all the different activities
7 the city does and then allocate a share of that
8 to each job and each person who's in a given
9 project.

10 And so arguably it's more and probably
11 to be honest the impact is even less than is
12 calculated though we think that's a fair way.

13 DR. BYRNE: I see. So you're not
14 talking about value of land.

15 MR. BOGORAD: No, no, just services.

16 DR. BYRNE: Okay, thank you. Okay.

17 MS. BROWN: Our next witness is Mr.
18 Shane Dettman. And I would like to have him
19 qualified as an expert in land planning and
20 zoning. I have his resume that I'll hand in.

21 MS. FERSTER: I have an objection.

22 DR. BYRNE: Oh you do have an

1 objection.

2 MS. FERSTER: I believe I have an
3 objection. I don't object to Mr. Dettman's
4 qualifications as a planner, but the objection I
5 would like to raise has to do with his prior
6 service with the National Capitol Planning
7 Commission.

8 He was and he testified to that effect
9 before the Zoning Commission that when the
10 National Capitol Planning Commission reviewed
11 this project in its role of reviewing the zoning,
12 the prior zoning decision he was the staff
13 person.

14 He appeared before the National
15 Capitol Planning Commission. He presented
16 testimony about the impact of the McMillan
17 project on view sheds that were important to the
18 determination of both at the Zoning Commission
19 hearing and also aspects of the site that are
20 important to its historic significance.

21 And the Ethics in Government Act
22 actually has an absolute restriction on former

1 officers, employees, and elected officials of the
2 executive and legislative branches in the federal
3 and the District of Columbia government that is
4 permanent on actually appearing in a proceeding
5 which is of the same matter that the individual
6 actually represented the government for.

7 So we believe and the citation of that
8 statute is 18 U.S. Code Section 207(a) which is
9 the section that deals with the permanent
10 restriction.

11 And so we believe that that
12 restriction and the Ethics in Government Act
13 disqualifies Mr. Dettman from testifying in this
14 proceeding.

15 DR. BYRNE: So it's not a question
16 really of his expertise but it's the ethics act
17 which would prevent him from testifying even
18 without regard to being an expert witness. Do I
19 have that right?

20 MS. FERSTER: Right. That's exactly
21 right. We don't object to his qualifications as
22 a planner. And I will refer you to Committee for

1 Washington Riverfront Parks v. Carol Thompson
2 which indicated that -- the Mayor's Agent really
3 had an obligation to entertain that type of
4 disqualification motion where the expert being
5 presented is an official who is potentially
6 subject to the Ethics in Government Act
7 restrictions.

8 DR. BYRNE: That's a Mayor's Agent
9 case?

10 MS. FERSTER: It is. It's a decision,
11 a D.C. Court of Appeals review of the decision of
12 the Mayor's Agent for Washington Riverfront Park.
13 Thompson 451 A.2d 1177.

14 That case is a little different in
15 that it dealt with a different fact pattern than
16 this case in terms of the involvement of the
17 former government officials in the prior
18 decision-making.

19 And I believe the court found that
20 they were actively involved in the prior
21 decision-making in that case.

22 MS. BROWN: Yes, I'd like to have Mr.

1 Dettman respond to that.

2 DR. BYRNE: Okay.

3 MR. DETTMAN: Good afternoon, Mr.
4 Byrne.

5 Well, Ms. Ferster is correct that I
6 was with the National Capitol Planning Commission
7 until just over two years ago and I did have some
8 involvement in NCPC's advisory zoning review of
9 the McMillan project.

10 Upon finding out that I was going to
11 leave NCPC NCPC's in-house counsel did prepare a
12 memorandum regarding conflicts of interest and
13 where I was barred from participating moving
14 forward.

15 That memorandum to two sections of the
16 U.S. Code which deals with lifetime ban from
17 working on projects as well as a two-year ban.

18 Both of those provisions of the code
19 as I understand it have to do with me
20 representing a non-federal organization in front
21 of a federal agency.

22 DR. BYRNE: And you think it's D.C. or

1 federal, doesn't matter.

2 MS. FERSTER: That's my reading of the
3 statute and regulations is they don't distinguish
4 between the two.

5 DR. BYRNE: Do we have a copy of the
6 regulations, the statute?

7 MR. DETTMAN: I think I might have it
8 here.

9 MS. BROWN: And we might be able to
10 find a way to get it printed and give to you now.

11 DR. BYRNE: So, could we go on to
12 another witness while that's getting organized?
13 And then we can come back and consider that.

14 MS. BROWN: Sure. Our next witness is
15 Mr. Aakash Thakkar. Aakash, if you could proceed
16 with your testimony.

17 MR. THAKKAR: Good evening. Is it
18 Mayor's Agent Byrne or what is the appropriate
19 way to address you? Judge Byrne?

20 DR. BYRNE: Mr. Byrne.

21 MR. THAKKAR: Mr. Byrne. My name is
22 Aakash Thakkar. I'm a Senior Vice President with

1 the company EYA, and I've had the good fortune to
2 have been working on this project since its
3 fruition with the District of Columbia about
4 eight or so years ago.

5 So my goal is to sort of summarize our
6 case in its entirety, number one. Number two,
7 provide some details as it relates feasibility of
8 alternatives and particularly cost as it relates
9 to feasibility.

10 And then number three, provide a
11 perspective on this project from the standpoint
12 of the developer. And it's our job to look at
13 preservation and design and program and cost to
14 propose a project that enhances the landmark and
15 provides benefits to residents. At least that's
16 the way we saw and see our job. And so I'd like
17 to do that.

18 Before I get into my presentation
19 there's a couple of questions that have come up
20 and I'd like to just address them quickly.

21 There's some talk in some of the
22 submissions from FOMP about who is paying the

1 bills for our consulting team. And I just want
2 to put on the record Vision McMillan Partners the
3 private development team is paying its consulting
4 team and itself for any and all appeal work on
5 this project.

6 So I just know it's been noted in a
7 number of the different submissions. That isn't
8 the case. I wanted to make it clear the district
9 is not paying those bills.

10 Number two, with regard to affordable
11 housing I want to clarify the record there as
12 well.

13 In fact, at the time this case was
14 decided given the zone that we applied for at
15 McMillan the requirement for affordable housing
16 was 8 percent of the floored area of the
17 residential and 80 percent of AMI.

18 And so we have argued, and I don't
19 know if it's even an argument, it's a fact that
20 we have 20 percent of our units which is units as
21 opposed to floored area.

22 We will do a calculation. I think

1 it's important to put in the record what the
2 calculation of floored area is, but it far
3 exceeds the 8 percent that was a requirement at
4 that point in time.

5 What I'll also note is that the bulk
6 of our affordable housing is below the 80 percent
7 that was the law at that point in time. I'd say
8 it's 70 to 80 percent, or 85. Over 134 units are
9 at 60 percent of AMI and 11 are at 50 percent of
10 AMI, and 38 are at 80 percent of AMI. So again,
11 the bulk are well below what the regulations were
12 at that point in time.

13 So with that I will jump into my
14 presentation.

15 So this plan was formulated over eight
16 years. I know you've heard some of this
17 testimony but I think it is important to note
18 that we have worked with a number of groups the
19 Mayor's Agent being just one of them to get to
20 this point in time.

21 And I actually want to recognize I see
22 in the audience here the ANC that is here today.

1 And I recognize the ANC because I think it's fair
2 to say that there are many, many folks throughout
3 the community and the city who are anxious to see
4 this project move forward and the ANC is clearly
5 one.

6 As Mr. Weers noted we executed a very
7 fulsome community benefits agreement and it's
8 unfortunate we haven't been able to implement
9 that as of yet.

10 So I'll guess start with sort of our
11 approach to preservation and this notion of is
12 this project consistent with the act.

13 And I know that wasn't something we
14 talked about last time we were in front of you.

15 To summarize our case I think it would
16 be that virtually everything above grade,
17 everything that folks can see although they can't
18 experience today is in fact being preserved.

19 So when we talk about the regulator
20 houses and the silos, all 20 of them, and the
21 sand washers and the plinth and all of those
22 important elements that while they haven't been

1 experienced by the public they have been seen by
2 the public. We are preserving and enhancing all
3 of those.

4 And so I think it's always been our
5 thought, always been Carolyn's thought, always
6 been Emily Eig's thought that this project was in
7 fact consistent with the act because it's
8 enhancing the asset.

9 And in fact, given the condition of
10 the cells and the site today it's a significant
11 improvement in terms of enhancing and celebrating
12 the historic asset.

13 With regard to special merit I know
14 you've seen a lot of this before but I will note
15 that it's one thing for us and our architects and
16 our preservationists to make the case that we are
17 an exemplary architecture for example.

18 I want to note for the record that
19 over a two to three year process we appeared
20 before the HPRB numerous times and I think it's
21 important to note that there are experts in the
22 District of Columbia that opine on whether or not

1 the architecture is excellent or exemplary.

2 And we went through a process where as
3 Ms. Eig said several times as we appeared before
4 them their view was that the architecture was not
5 cohesive and that the plan did not highlight the
6 best attributes of the landmark.

7 However, by coming up with this
8 architecture and I know Mr. Bell talked about it,
9 but even this notion of sort of the life and the
10 combined architecture, the idea was to almost
11 make the buildings a backdrop for the landmark
12 and through that two plus year process we got to
13 the point where I think HPRB was not only
14 supportive but strongly supportive of this
15 refined architecture and plan that they felt
16 really did at the end of the day celebrate the
17 landmark.

18 And so I just think it's important as
19 we go through these proceedings to also recognize
20 some of the experts in the District of Columbia
21 and their view.

22 DR. BYRNE: Yes. So I wanted to just

1 note. I have not seen transcripts of the HPRB
2 meetings post the prior decisions when I assume
3 that they have been going back and reviewing the
4 architectural program.

5 And it might be quite useful to the
6 extent to which you are making a stronger pitch
7 for exemplary architecture it would be helpful
8 perhaps to see them.

9 MS. BROWN: I think there's been only
10 one proceeding since the 2014 hearings and that
11 was just to get some -- I don't want to say
12 tweaks, but some minor adjustments to the concept
13 plan. I'm happy to provide them.

14 DR. BYRNE: Yes, I should see that.
15 But I do remember the last HPRB hearing that I
16 read the last time did talk about how much they
17 thought that the cohesion of the plan had
18 improved. But I just want to make sure I'm
19 seeing everything there is to see. Excuse me.

20 MR. THAKKAR: With regard to the
21 specific features of land planning I won't
22 reiterate all of them, but I will highlight some

1 of them.

2 You had asked about LEED silver and
3 environmental benefits. So we happened to work
4 with the district on several public-private
5 partnerships. It is our understanding that has
6 been corroborated by the city through our
7 documents that LEED silver or something similar
8 is not a requirement of city projects.

9 And so when the question was is this
10 something you had to do because it was a city
11 project or a requirement of the Zoning Commission
12 it was something that was proffered to go above
13 and beyond what was asked.

14 And the project will be certified.
15 Sometimes development projects will be built to
16 certain standards whereas per the code in our
17 case the LEED silver minimum. The project will
18 be certified to that effect.

19 In terms of special merit I think
20 where I'll spend most of my time is on the social
21 or other benefits of high priority.

22 Mr. Bell and Ms. Eig and Mr. Weers all

1 covered a number of attributes of exemplary
2 architecture and land planning, and I think Mr.
3 Weers covered some of our social and other
4 benefit.

5 But I'll start with, I just wanted to
6 reiterate for the record why we think the project
7 has social and other benefits of high priority.

8 So I'll start with the affordable
9 housing requirement. As you heard me say the 20
10 percent is actually more than double what the law
11 was at the time.

12 And I pause to say that even the types
13 of housing was a very long and deep discussion
14 with the community about what types of housing
15 they wanted on this site.

16 As you may know there are a number of
17 seniors who live around the community. So this
18 idea of aging in place or having housing to move
19 to when this project is done is something that
20 was very important to that community.

21 So the housing, a good portion of it
22 is affordable senior housing. That came from the

1 community and through discussions and therefore I
2 would say has social benefit clearly for that
3 community as evidenced by ANC support of that
4 particular component of the project and overall.

5 I'll also note that the rowhome
6 component of the project has affordable housing
7 for families. And that was another part of the
8 discussion.

9 So much of the housing in the District
10 of Columbia today market rate and otherwise is
11 multifamily housing which is not necessarily fit
12 for families or larger families. Twenty-two of
13 the 146 rowhomes will be affordable at various
14 affordable levels, 80 percent and 50 percent of
15 AMI.

16 And that too was a discussion with the
17 community and a response to community desires for
18 atypical affordable housing that might not be
19 provided in other areas.

20 We've talked about the grocery store
21 and the retail stores, but from day one this
22 notion of a grocery store to provide food and

1 groceries in what is a food desert in the city
2 was something that was a high priority.

3 And as Mr. Weers said it has been
4 challenging given the fits and starts with this
5 project to maintain interest, but as I think you
6 are aware we have Harris Teeter onboard and ready
7 to be a part of this project as soon as we can
8 make it happen.

9 The community center and community
10 pool. I know that the court, my understanding
11 was that the court said that the 6.2 acre park I
12 guess couldn't be considered a special merit
13 benefit because it was a preservation benefit.

14 We are arguing that while we may not
15 agree with that decision there are a number of
16 components on the actual park which are not part
17 of preservation at all that in fact are strong
18 benefits and have special merit.

19 The first one being the community
20 center and community pool. Ms. Eig described how
21 we believe that that part of the project is
22 exemplary architecture in the way it integrates

1 itself with the cells, but as important I'm going
2 to keep coming back to what did the community
3 want throughout this eight-year process, and a
4 community center and a pool that was open to the
5 public, not just to the residents of the project,
6 was again probably one of the top five things we
7 heard.

8 And through working with the council
9 member through the area, through working with the
10 ANC, the Mayor, the City Council, funds were
11 allocated for that community center and pool and
12 the district is working on that as we speak.

13 So apart from the park, the community
14 center and pool we believe that's special merit.

15 The playground is another component
16 again not just of an open field or a park, but an
17 active playground with equipment for adults, with
18 equipment for children all with an amphitheater,
19 with a walking museum, again are all components
20 of that southern component of the project which
21 has special merit.

22 And I'll come back to this, but the

1 way that all of these in our opinion and as a
2 project developer I can say that components like
3 that are very rare for private projects because
4 they're extraordinarily expensive and don't bring
5 back any revenue.

6 They're open to the public, largely
7 free to the public or at a very low cost to the
8 public.

9 The way this whole project is
10 happening and something again I can provide some
11 more detail on is the district is selling the
12 development team some land, and the City Council
13 have allocated other monies.

14 Those monies come together to provide
15 the historic preservation and the public benefits
16 of the site.

17 And why this is such a delicate
18 balance is after eight years the City Council has
19 approved a certain amount of money and that is
20 fundable and it is fixed.

21 And the development team has agreed on
22 a certain amount of money and we have carefully

1 budgeted all of this to make sure that the public
2 benefits that we have proffered can be delivered.

3 I just want to note that all these
4 benefits come from that place and so when you
5 talk about reasonable options, and I'll get to
6 some of the options we've looked at, I think
7 reasonability can take into consideration cost,
8 and there is a cost to all these benefits, and
9 the way that the district and the private
10 developer structured the deal is to ensure that
11 we can provide those benefits.

12 If one were to reduce development and
13 enhance preservation costs that balance would be
14 thrown off and we wouldn't have a way to provide
15 all the benefits that we have proffered to you
16 and to the Zoning Commission and to others.

17 But I digress. Coming back to special
18 merit.

19 With regard to the healthcare
20 component Mr. Weers did talk at length about
21 this.

22 I will also note that again one of the

1 community's chief concerns in a project which is
2 not downtown oriented, and I do think this makes
3 our project different from a typical downtown law
4 firm and such.

5 The community said look, you're going
6 to be creating all these jobs. There has to be a
7 way in a ward that has somewhere close to double
8 or more of an unemployment rate than the rest of
9 the city, there has to be a way to connect
10 community residents to these great new jobs that
11 are being provided.

12 And clearly there will be jobs across
13 the economic spectrum. We've provided many in
14 fact could be obtained without college degrees.
15 So this notion of a significant fund, \$1 million
16 to fund job training so folks in the community
17 can work in these very buildings we think is
18 something unique and isn't offered in other
19 typical office type of projects.

20 As Mr. Weers testified in total our
21 community benefits funds roughly about \$3.25
22 million go to a variety of different uses, but

1 all of them are either spent onsite with regard
2 to training folks to take jobs, or in the
3 immediate surrounding community in order to sort
4 of unify that community and make sure they can
5 interact well with McMillan.

6 And I'll just quickly walk through
7 those. Mr. Weers talked about the \$1 million
8 workforce development fund. There's \$125,000 for
9 STEM education at district schools in the
10 surrounding area. We actually targeted with the
11 ANC five schools that needed a boost with regard
12 to STEM and earmarked those dollars.

13 Five hundred thousand to hire district
14 youth and elderly to provide tours of McMillan.
15 So we even got to the point where it wasn't --
16 but youth in the community and elderly folks in
17 the community to learn about McMillan and
18 actually give tours as part of the walking museum
19 is part of this project.

20 Seven hundred fifty thousand dollars
21 to create community art installations and
22 activate the service courts.

1 Five hundred thousand dollars to civic
2 groups for local and neighborhood beautification,
3 and \$150,000 to North Capitol Main Streets.

4 And again as a developer that has
5 worked on numerous projects in the city and
6 around the city I'm not aware of any project that
7 has even close to this level of onsite community
8 benefit which we've walked through today, whether
9 it be the healthcare buildings, or the affordable
10 housing, or the parks and the community center,
11 or this level of community benefits.

12 And again, I make the point that that
13 was negotiated and voted on with the ANC
14 supported by the City Council in the community.

15 And so when you come back to this
16 definition of special merit and one of the prongs
17 being social or other benefits of high priority I
18 guess I find it hard to find higher priorities
19 than those that the ANC and the council member of
20 the particular area Ward 5 wanted for their
21 project.

22 And we were able to shake hands and

1 deliver on those benefits so desired by the
2 community.

3 Another point I want to put on the
4 record. I know Ms. Eig did this, but from the
5 development team standpoint to the extent that
6 there was a lack of clarity on our preservation
7 of cells 14 and 28 we are proposing to preserve
8 them.

9 The court wanted us to clarify that
10 and I'm clarifying that as well.

11 With regard to the cells. So you
12 heard from Silman with regard to their analysis
13 of cell preservation and I believe the last time
14 I was before the Mayor's Agent I layered on sort
15 of the developer hat point of view with regard to
16 what you can do with these cells.

17 As we all know they are unreinforced
18 concrete. And while Silman does a great job of
19 walking us through the structural issues that is
20 only one of what I'd call probably five or six
21 key issues that in our opinion makes certainly
22 the overbuild and the interior use.

1 So the bottom two of the options
2 largely infeasible. So I'll start with topside
3 loading. As Mr. Ruiz said we are proposing to do
4 something to that extent on cell 14.

5 If you look at the interior use, and
6 I'm not the only developer in town, but the
7 amount of stabilization required and still the
8 uncertainty with being under those cells given
9 the lack of reinforced concrete, we would find it
10 very difficult. We talked to insurance
11 companies. They'd find it very difficult to
12 really make the cells while keeping their
13 structural integrity and historical integrity
14 make the minimum occupiable below grade.

15 The overbuild scenario is something we
16 looked at rather extensively. And as you can see
17 we've got to put these columns into the ground
18 just to create additional support.

19 The other thing that this doesn't take
20 into account is things like utilities. And so
21 how do you get water, and sewer, and gas, and
22 electric. And those would come through

1 essentially under the buildings and punching out
2 through the foundation.

3 And this also doesn't talk about just
4 the simple I guess I'll call it geography as you
5 see this next slide of running streets.

6 So we've got three streets through the
7 middle third of the site. Those streets we could
8 have here in different places. Actually HPRB
9 suggested that we have this sort of tripartite
10 organization such that all the blocks have sort
11 of cell-like characteristics.

12 But even to run those streets we have
13 found no way to be able to actually dig and lay
14 streets again over these cells.

15 So if you look at things like land
16 development, if you look at things like building
17 streets, if you look at laying utilities, if you
18 look at what I'll call non-structural issues they
19 make the -- any real use of these cells or any
20 building on top of these cells infeasible, not to
21 even get into the amount of destruction of the
22 historic integrity you have to do to make one of

1 these work.

2 It was one of the first things when we
3 got involved in this project that we were asked
4 to do and we took a lot of time and consideration
5 to evaluate that option.

6 So I'll next move to demolition and
7 subdivision we believe are necessary to obtain
8 special merit benefits. So we are requesting
9 demolition of the 16 cells as we did before.

10 With regard to subdivision our view is
11 that we are reducing the number of record lots
12 from 122 to 6. And the subdivision as Ms. Eig
13 testified is simply to implement this plan.

14 But I would note that any plan that we
15 might put forward that would have a series of
16 different buildings and the comprehensive plan
17 clearly says a mix of uses, what makes more
18 sense.

19 Any plan would have to have what I
20 would call very similar subdivision having worked
21 on many very similar projects. Regardless of how
22 this site was configured I think we've got six

1 record lots.

2 I can't see a situation where anything
3 particularly less than that would be necessary to
4 implement a large master planned project.

5 As I said demolition must occur
6 because any significant use, be it healthcare,
7 housing, retail, parking, community center, pool,
8 playground, streets, utilities, infrastructure,
9 really can't occur with the cells in place.

10 And if the cells are in place then
11 those special merit benefits that we are
12 suggesting on top of those cells wouldn't be in
13 place.

14 So it is one of the other. I'll point
15 to D.C. Water. I'm sure that D.C. Water was well
16 aware that these cells had historic merit. And
17 I'm sure they looked at initially how they might
18 be able to work with or around them and their
19 conclusion was that although they're doing work
20 while below the ground I think their need if I
21 understand it correctly is to get a big tunnel
22 into the ground well below those cells.

1 They couldn't save those cells and
2 realistically do the day to day work they needed
3 to do to put infrastructure into the ground. I
4 think that's an important view because it's the
5 one group that has looked at these cells to date.

6 And I think they also found it harder
7 than they expected to even demolish certain cells
8 without other cells coming down because of the
9 unreinforced nature of the concrete as evidenced
10 by some of the pictures Ms. Eig showed us.

11 So, what I'd say is consistent with
12 Mr. Bell. Less demolition equals less special
13 merit and less community benefit in our view.

14 And less demolition as I spoke to
15 earlier also equals a lack of economic
16 feasibility.

17 And I go back there to my earlier
18 point that there is a good amount of public
19 funding going into this project.

20 It would be one thing if it were a
21 private project and we were coming before you.
22 Even under that circumstance we might say look

1 this amount of funds is reasonable to build a
2 project in the city and we can spend that amount
3 of money.

4 In this case there's a significant
5 amount of public money going into the
6 preservation of the service courts and the parks
7 and community centers along with private dollars,
8 and any additional preservation I will call it
9 would make it very difficult to impossible as I
10 see it to allow the project to move forward.

11 With regard to alternatives, you know,
12 are there reasonable alternatives that achieve
13 the same special merit. So as Mr. Bell testified
14 we have reviewed not just -- I think Mr. Bell may
15 have reviewed six or seven or so alternatives.

16 I can say, and I'm sure many community
17 members would concur with me, there have probably
18 been dozens more that we have shared with the
19 community and with HPRB, and maybe hundreds more
20 that we've worked on that we haven't presented
21 because they didn't provide that balance between
22 preservation and open space and development that

1 the community was looking for.

2 DR. BYRNE: Just to clarify, you're
3 saying that you shared dozens of different
4 proposals with community groups.

5 MR. THAKKAR: Yes, I am saying that.
6 Throughout I'll call it the 8-year -- well, it's
7 2017, so actually 10-year history of me working
8 on this project there are many more iterations of
9 McMillan than simply the ones Mr. Bell have shown
10 the community.

11 I will say that all of those in our
12 minds were consistent with comprehensive plan and
13 showed a general mix of uses and open space and
14 preservation.

15 So for example, no, we didn't show one
16 that was all park. They were all various
17 development proposals because that's what we've
18 been asked to do and that's what the district
19 bought the land for.

20 So to this notion of could we preserve
21 any more cells, saving any additional cell or
22 part of the cell would increase cost. I don't

1 think there's any dispute with that notion.

2 And with no additional revenue coming
3 from that preservation we find it hard to say
4 that a plan with no preservation would be a
5 reasonable one given that there is this public-
6 private structure in place, and that the City
7 Council has both committed money to the project
8 and reviewed this project many, many times as
9 well and sort of concluded that in its opinion
10 this project matches the district priorities and
11 that it would contribute some of the money that
12 it has committed to making that happen.

13 So in conclusion we can sort of
14 literally go around the board and look at any of
15 these cells.

16 Let's say we were to say Mr. Weers
17 talked about saving cell 13. Let's say we saved
18 cell 20, for example.

19 So one might say it's only got 30 or
20 so rowhomes on it. So you'll lose some amount of
21 affordable housing and some grade housing. And
22 so I talked about family housing and that's part

1 of our family housing program.

2 But the impact to that is far more
3 than just losing that housing. It's losing the
4 revenue that the developer would pay to the city
5 which allows the city to put forth such a
6 comprehensive public benefit and preservation
7 program.

8 So it's not just loss of development
9 program, it is also an inability to pull the
10 overall sources and uses together to make the
11 project work.

12 If you look even at a cell like 29 for
13 example that has the same impact in terms of it
14 costing a lot more to preserve and build a park
15 than just to build the park.

16 But you have this issue of not being
17 able to enter the site from North Capitol Street
18 because of the plinth and how the current site
19 interacts with North Capitol Street.

20 If you look at cells 18 and 19 that's
21 where the grocery store. And sure, you can
22 potentially move the grocery store but again

1 there's affordable housing on top of that grocery
2 use.

3 So our point is that we're making the
4 case that there's significant special merit here,
5 and that each component of this project
6 individual of the others has special merit and
7 we'd argue that the combination together is that
8 much more unique.

9 But having less demolition anywhere on
10 the site does two distinct things. It reduces
11 our special merit which we don't want to do and
12 don't think is appropriate given the strength of
13 the preservation program as it is today.

14 But it also creates a huge imbalance
15 with regard to the economics of the project.

16 And with that I will conclude my
17 testimony. I appreciate your time and look
18 forward to answering any questions. Thank you.

19 DR. BYRNE: Thank you. Appreciate it.

20 MS. BROWN: I don't think I have any
21 additional direct questions for the witness, and
22 I do have answers for you on the qualifications.

1 What I will hand out to the parties
2 behind me and to you -- what I just handed out
3 was the memorandum that Mr. Shane Dettman
4 received from NCPC counsel on the conflicts of
5 interest regarding post government employment.

6 You also were handed out a copy of the
7 18 USC Section 207. And you were also handed a
8 copy of the Committee for Washington Riverfront
9 Parks case.

10 And I would direct your attention to
11 two specific provisions.

12 First, in the NCPC memo there is an
13 attachment dated February 7, 2000. If you turn
14 to page 3 of that attachment Section B there's
15 the numeral 1. Then you have a paragraph labeled
16 discussion.

17 And then the next one that starts,
18 "The restriction does not apply."

19 So, I'm going to read that paragraph.
20 The restriction does not apply unless a former
21 employee communicates to or makes an appearance
22 before the United States on behalf of some other

1 person.

2 For these purposes the United States
3 refers to an employee of any department, agency,
4 court, or court martial of the United States
5 paren, and this is the important part, but not of
6 the District of Columbia.

7 And then if you turn to 18 USC and
8 it's the second page of the handout provision 3
9 clarification of restrictions the first
10 subparagraph A talks about conflicts or
11 restrictions between U.S. government employees
12 and U.S. agencies. And B talks about district to
13 district.

14 So those are the conflicts. And
15 because NCPC is federal there is a federal bar,
16 but not federal to district.

17 DR. BYRNE: May I suggest that we take
18 a five-minute recess. I can read and Ms. Ferster
19 can think about what she wants to say. And then
20 we can proceed. So five minutes.

21 (Whereupon, the above-entitled matter
22 went off the record at 3:20 p.m. and resumed at

1 3:29 p.m.)

2 DR. BYRNE: Okay, let's take this
3 issue up.

4 The statute on its face seems to
5 clearly allow this testimony to go forward. And
6 I'm particularly looking at Section 207(a)(3)
7 which appears to be a later amendment to Section
8 1 to say that we're only talking about federal
9 officials in federal proceedings and district
10 officials in district proceedings.

11 I have -- and that's the view
12 obviously taken by the counsel for NCPC in
13 writing the memo here.

14 However, I do have -- so I do have a
15 concern though because in the D.C. Court of
16 Appeals decision cited by Ms. Ferster in 1982 the
17 court plainly views the statute as applying to a
18 former Department of Interior employee testifying
19 in a D.C. proceeding.

20 Now, it may well be that that decision
21 in 1982 came before the Section C was added. And
22 I don't have enough information though to

1 determine that.

2 MS. BROWN: We're verifying that now,
3 but I note that the court case is citing a 1978
4 provision, and this obviously is a much later
5 provision.

6 And it's a clarification section so
7 that even if the section cited in the case law
8 are verbatim the same in this clarification later
9 I think that that takes care of it.

10 DR. BYRNE: It does. My concern would
11 be if the clarification existed before I would
12 feel bound by the court of appeals.

13 I mean, they don't discuss the
14 provision.

15 Here's what I think. Why don't we do
16 this. Why don't we allow Mr. Dettman to testify
17 leaving open the possibility that the parties can
18 clarify their positions on the law about the
19 permissibility of the testifying.

20 And if it turns out -- if the argument
21 is made to me in a way that I accept I'll strike
22 his testimony and proceed without it.

1 Is that agreeable?

2 MS. BROWN: Yes. If I could have just
3 a few more seconds of time in the meantime. I
4 don't know if it's appropriate now to even try to
5 go through the applicant's hearing exhibits just
6 to make sure that we have all the ones that are
7 supposed to be in the record, or if you want us
8 to wait that's fine.

9 DR. BYRNE: Based on the book you
10 gave.

11 MS. BROWN: On what we've submitted
12 during the hearing today. And what we've
13 submitted so far.

14 And I would designate them applicant's
15 hearing exhibits. And the first is the list of
16 special merit features. The second is the Chris
17 Ruiz resume. The third is the book of slides.

18 Fourth is Mr. Len Bogorad's testimony.
19 Fifth is Mr. Dettman's resume. The sixth is the
20 NCPC memo. The seventh is the case law. And
21 eighth is the statute.

22 So I read that into the record and

1 whoever's monitoring this can perhaps help.

2 DR. BYRNE: Okay, well that goes into
3 what the court reporter is taking down.

4 MS. BROWN: Yes, right.

5 DR. BYRNE: So, that's fine. Also, I
6 want to note that Ms. Ferster requested that my
7 contract with the Office of Planning go in and
8 that will go in as well as Opponent's Exhibit 8.

9 MS. BROWN: And you also requested Mr.
10 Bell to provide the literature I believe on --
11 citations.

12 MS. FERSTER: You mentioned I think
13 Mr. Thakkar also said he would subsequently
14 provide the calculations for the gross square
15 feet of affordable housing.

16 DR. BYRNE: Thank you.

17 MS. BROWN: Okay, Mr. Dettman, do you
18 want to proceed?

19 DR. BYRNE: We'll proceed with Mr.
20 Dettman.

21 MR. DETTMAN: Good afternoon again. My
22 testimony today will focus primarily on issues

1 three and four as identified in the Mayor's Agent
2 order.

3 In response to the direction given by
4 the court the crux of my presentation will focus
5 on demonstrating how the special merit features
6 in the McMillan project directly and
7 significantly advance the policies of the
8 comprehensive plan and why those policies support
9 a conclusion of special merit.

10 It's important to note that consistent
11 with the court's order my testimony will not aim
12 to demonstrate overall consistency of the
13 McMillan project with the comprehensive plan.

14 As you know, overall consistency with
15 the comprehensive plan is a legal standard used
16 by the Zoning Commission as it prepares, adopts
17 and amends the zoning regulations and reviews
18 requests for planned unit development.

19 And as stated by the court it's not
20 something that necessarily demonstrates that a
21 project has special merit.

22 However, this does not mean the

1 comprehensive plan is without a role in
2 determining whether a project has special merit.

3 Quite the contrary. As the court has
4 stated specific provisions in the comprehensive
5 plan can play a key role in the special merit
6 inquiry and quoting an article and title of the
7 special merit provision for demolition and
8 alteration of historic properties under the
9 District of Columbia Historic Preservation Act,
10 quote, "The more an applicant can tie elements of
11 the proposed project to specific preferred land
12 uses set out in the comprehensive plan the more
13 likely it is that the Mayor's Agent will approve
14 the project under this element of special merit."

15 I think in order to better understand
16 that quote and how the McMillan project aligns
17 with the comprehensive plan and informs special
18 merit inquiry, it's important to briefly describe
19 the role of the comprehensive plan and the role
20 that it plays in guiding public policy decisions
21 in physical development in the district.

22 As you can see on the slide before you

1 the comprehensive plan is described as the
2 centerpiece of a family of plans that guide
3 public policy in the district.

4 It provides overall direction and
5 shapes all physical plans that the district
6 government adopts. In fact, it should be the
7 basis for all plans relating to the city's
8 physical development.

9 It's the guide for all district
10 planning, establishes the priorities and key
11 actions that other plans address in greater
12 detail, and provides broad direction that is
13 implemented through agency's strategic and long-
14 range plans such as the district's economic
15 development strategy, a comprehensive housing
16 strategy, the district's parks and recreation
17 master plan, and the sustainable D.C. plan.

18 Thus the greater the degree to which
19 a project directly advances the policies of the
20 comprehensive plan the more significant its
21 positive impact is on the district's ability to
22 achieve its planning and development goals for

1 the city and thus the greater benefit it has to
2 the district and the community.

3 So beginning with the land use
4 element, the element that integrates the policies
5 and objectives of all other comprehensive plan
6 elements both citywide and area.

7 Listed before you on the slide are the
8 land use only policies that are directly advanced
9 by the project.

10 In general these policies acknowledge
11 the great potential that large publicly owned
12 sites have for addressing the district's needs.

13 These policies also recognize the
14 significant opportunity large development sites
15 present for implementation of sustainable design
16 principles and the creation of preferred land
17 uses such as affordable housing, parks,
18 healthcare facilities, retail, and other
19 community facilities.

20 They promote mixed use development on
21 large sites that's comparable with adjacent uses
22 integrated with and provides benefits to the

1 surrounding neighborhoods, and protects existing
2 assets on the site.

3 Some of the specific special merit
4 features of the project that directly advance
5 these policies include a cohesive and integrated
6 master plan and integrated and unified building
7 design including the establishment of design
8 guidelines.

9 The activation, adaptive reuse, and
10 the public accessibility to historic structures.
11 The substantial amount of new housing including
12 132 new affordable housing units which will
13 comprise a range of sizes including larger family
14 sized townhomes and be converted to a range of
15 income levels.

16 A substantial amount of new parks and
17 recreation space including a new community
18 center. A full-service grocery store and
19 numerous other retailers.

20 Numerous and stable design features
21 with the master plan being designed to LEED ND
22 gold. And a \$650,000 contribution to

1 neighborhood beautification.

2 Moving to the transportation element.
3 Listed before you are a few of the transportation
4 element policies that are directly advanced by
5 the project.

6 Some of the special merit features of
7 the project that directly advance these
8 transportation policies include a robust private
9 shuttle system to increase access to Metro, new
10 Capital Bikeshare stations, improved circulation
11 through a new internal street grid, and new
12 traffic lights and several other improvements to
13 the surrounding transportation network.

14 Housing elements. As you can see on
15 the policies listed on the slide the project will
16 advance numerous housing element policies and by
17 virtue of that will greatly assist the district
18 in achieving its housing and affordable housing
19 goals as set forth in the district's
20 comprehensive housing strategy.

21 These policies generally promote new
22 housing integrated with mixed uses. High-quality

1 affordable housing. Maximizing the potential to
2 address the district's housing needs on large
3 sites, especially large publicly owned sites.

4 Providing a range of unit and tenure
5 types at varying income levels. Ensuring long-
6 term affordability and providing a variety of
7 housing types for seniors in locations that are
8 convenient and close to key services.

9 The project overwhelmingly delivers on
10 these policies through special merit features
11 such as 677 units of new housing of which 132
12 will be affordable for the life of the project
13 and which will consist of both rental and owned.

14 New low-income senior housing that's
15 also located in close proximity to key services
16 such as transportation, healthcare, retail, and
17 community recreation facilities.

18 Larger sized market rate and
19 affordable townhomes that can accommodate
20 families. Integration of housing with a wide
21 range of other supporting uses and significant
22 contributions toward implementation of workforce

1 development and education programs.

2 The environmental protection policy --
3 the environmental protection element I should
4 say.

5 Specifically, the special merit
6 features of the project that will directly
7 advance policies in the environmental protection
8 element include the master plan being designed to
9 LEED ND gold or equivalent.

10 Significant low-impact development
11 strategies including one-third acre bioretention,
12 one-third of an acre of greenland, 1.3 acres of
13 permeable paving, and over 700 new trees.

14 Currently the site has very poor
15 stormwater retention and treatment capacity.
16 These strategies will significantly improve
17 stormwater management which will result in
18 substantially less runoff flowing into the
19 district's combined sewer system which helps
20 protect the watershed.

21 Economic development. Like the
22 housing element as you can see the project will

1 directly advance a substantial number of
2 comprehensive plan policies, especially as it
3 relates to preferred land uses such as
4 healthcare, retail and grocery stores.

5 The economic development policies that
6 are advanced by the special merit features of the
7 project promote, support an expansion of the
8 district's core industries of which healthcare is
9 one of them, maximizing the economic development
10 potential of large sites, specifically publicly
11 owned sites.

12 Expanding the retail sector,
13 particularly in underserved areas, and increasing
14 job training and local hiring.

15 Special merit features of the project
16 that link directly to these policies include the
17 proposed healthcare facilities and the creation
18 of a medical hub, which is part of the district's
19 economic strategy.

20 A full-service grocery store and
21 substantial amount of additional retailers.
22 Significant tax revenue generated by the project,

1 over \$1 billion. Thousands of permanent and
2 construction-related jobs that will be created
3 with a high percentage of these jobs filled by
4 district residents.

5 The extensive job training
6 opportunities and substantial contributions to
7 workforce development programs, and millions of
8 dollars in other community benefit contributions
9 that will be put towards storefront support and
10 small business promotion.

11 Turning to the comp plan's park,
12 recreation and open space element. The project
13 will directly advance many of the policies
14 contained in this element for the approximately
15 12 acres of new parks and recreation facilities
16 that will be provided.

17 These policies call for providing a
18 diverse range of high-quality parks and
19 recreational experiences, achieving a better
20 distribution of parks, providing new parks on
21 large sites and surplus land and improving
22 recreation centers.

1 Some of the special merit features of
2 the project that relate directly to these
3 policies include a new open space system
4 consisting of several parks of various sizes and
5 programs, including a large continuous park at
6 the south and the reconstruction of Olmstead
7 Walk.

8 A new community center containing a
9 pool, multipurpose meeting space, a fitness
10 studio and outdoor gathering spaces, the
11 playground, the sprayground, and a \$750,000
12 contribution to the project association to
13 program and activate these new spaces and
14 facilities.

15 Moving on to urban design. The
16 policies that will be directly advanced by the
17 project in the design have to do with viewshed
18 protection, city gateways, integrating the
19 project into the neighborhood character and
20 identity, transitions in building intensity,
21 creating attractive facades, infill development,
22 and the list goes on and on.

1 The special merit features of the
2 project that will directly link to the urban
3 design element policies that are listed before
4 you include the cohesive master plan and
5 integrated building design.

6 The unified palette of materials
7 that's inspired by the landmark and the
8 implementation of design guidelines. The
9 retention of views and the spatial organization
10 of the site.

11 The distribution of land uses and
12 building forms on the site in relation to the
13 surrounding context.

14 The integration of the site and of the
15 surrounding context in a way that also
16 acknowledges the original subdivision of the site
17 and the organization of the landmark.

18 The quantity and quality of the parks
19 and other public gathering spaces that will be
20 provided including the recreation of Olmstead
21 Walk.

22 Moving on to historic preservation and

1 the arts and culture elements. The policies here
2 talk about preservation master plans, integrating
3 the historic review process into the development
4 of master plans for large sites.

5 Integrating large sites into the
6 surrounding context in a way that's compatible
7 not only with the surrounding context but also
8 any kind of historic assets.

9 For the arts and culture element it
10 talks about emphasizing important places with art
11 and using art to create identity.

12 We've talked today about some of the
13 special merit features that talk about art, and
14 that talk about historic preservation including
15 the public art program that will be established
16 onsite.

17 The programming that will be onsite
18 carried out by the project association that will
19 be created.

20 The walking museum. And for the first
21 time the actual interpretation and the
22 opportunity to explore the site and learn the

1 history of the site and how it relates to the
2 district and the history of the surrounding
3 neighborhood.

4 The preservation, rehabilitation and
5 adaptive reuse of historic structures and the
6 cohesive master plan using a palette inspired by
7 the landmark.

8 Community services and facilities.
9 Educational facilities and infrastructure
10 elements.

11 These policies talk about the adequacy
12 of facilities, retention of publicly owned land
13 for important uses. The location of facilities.
14 The location of healthcare facilities. And the
15 need to improve stormwater management.

16 Special merit features specific to the
17 project that will advance these policies include
18 the addition of 12 acres of new open space to the
19 mid city area, a new community center,
20 substantial upgrades in stormwater management,
21 the healthcare facility which Mr. Weers testified
22 will help address the district's outdated medical

1 facilities and the deficiencies in healthcare
2 facilities per person.

3 A \$500,000 contribution to hire high
4 school students and seniors to help interpret and
5 provide tours of the McMillan site, and a
6 \$125,000 contribution to be dedicated towards
7 STEM teacher development and training.

8 The last element, the mid-city element
9 which is the area element that's specific to this
10 site.

11 The policies in the mid-city element
12 including those that are specific to McMillan and
13 that will be directly advanced by this project
14 are listed here. It has to do with protection of
15 affordable housing, providing new parks,
16 recreation centers, looking at the open space on
17 McMillan reservoir as part of the redevelopment
18 scheme, historic preservation of the McMillan
19 reservoir as part of the redevelopment scheme.

20 In terms of the special merit features
21 specific to this project that will be directly
22 advanced by this project is the 20 percent of new

1 affordable units which will help not just protect
2 but also provide brand new affordable housing in
3 this area of the city, providing up to 12 acres,
4 almost half of the site to new parks, plazas and
5 open space.

6 The new recreation center directly
7 advancing the recreation center policy.

8 Restoration of key above grade
9 structures including the preservation of cell 14
10 and cell 28 and the interpretation of the site
11 and its cultural significance to the neighborhood
12 and the district.

13 Just to summarize the discussion about
14 the comprehensive plan the special merit features
15 of the project will directly advance over 100
16 policies and actions in all 13 citywide elements
17 and the mid-city element.

18 You've heard today from numerous
19 people about how this site presents an
20 opportunity unlike no other in the city and I
21 can't think of another body that's capable of
22 advancing the number of -- directly advancing the

1 number of policies that this project does in the
2 comprehensive plan across all applicable
3 elements.

4 The degree to which the comprehensive
5 plan policies are advanced demonstrates the
6 significant range of benefits provided by the
7 project by virtue of exemplary architecture,
8 specific land planning, and social and other
9 benefits having a high priority of community
10 services.

11 Moving briefly to the subdivision. My
12 understanding based on my review of the record
13 and the transcripts there was an overview of the
14 types of lots that are acknowledged and used with
15 respect to land regulation in the district.

16 First there's record lots. And as you
17 learned during the last proceeding under zoning a
18 record lot is required for purposes of being able
19 to get a building permit.

20 And what the zoning regulations say
21 and it's cited here in relevant part is that
22 essentially the rule is it's one building for one

1 record lot. And in certain situations and in
2 certain conditions you can have multiple
3 buildings on a record lot and then it's further
4 regulated through the use of theoretical lots.

5 The image you're looking at here, it's
6 been shown a little bit earlier, this is the
7 subdivision that currently exists on the site.
8 It predates the construction of the sand
9 filtration plant and it consists of about 122
10 record lots.

11 As you can see on this overlay we
12 cannot build this project of special merit with
13 the existing record lots as they exist on the
14 site today. So we need some degree of
15 subdivision.

16 And I'll say that the extent of
17 subdivision that's being proposed has been
18 minimized and through the use of theoretical lots
19 on parcels 2 and parcels 5.

20 Also, the thought occurred to me as
21 Mr. Bell was moving through the alternatives that
22 were presented.

1 The thought occurred to me that by
2 virtue of the evolution of the plan and the
3 reduction in the amount of coverage and the
4 increase in the amount of open space provided,
5 that in and of itself, the evolution of the
6 master plan actually reduced and minimized the
7 extent of subdivision that's required.

8 DR. BYRNE: I had a thought about
9 subdivision. And I'd like to see what you think
10 of it. Ms. Brown to you as well and Ms. Ferster
11 will want to comment on this at some point.

12 So if it's correct legally that the
13 current subdivision are the record lots from 1898
14 then they are not part of the historic element
15 that's protected by the combination.

16 So that if you are subdividing the lot
17 from a subdivision that is not historic, is not
18 related to the historic interests of the site
19 that the act doesn't even apply.

20 That's sort of -- you don't have to --
21 the lawyers can think about it. I just wonder
22 what your reaction to that is.

1 MR. DETTMAN: If I understand the
2 question.

3 DR. BYRNE: This may be a lawyers
4 question really.

5 In other words, the nomination of the
6 site has to do with it as it exists as the sand
7 filtration site. The subdivision that exists as
8 a matter of D.C. law actually has nothing to do
9 with the way the sand filtration site appears.
10 They're not related to each other.

11 So if we're subdividing what we're
12 doing, we're making fewer lots out of many lots
13 and it's not in that way.

14 I'm just wondering whether it's
15 actually part of the historic element that the
16 law protects.

17 MS. BROWN: I certainly like where
18 you're going with the theory but unfortunately I
19 think that we have the situation in Georgetown
20 all the time.

21 You have a mish mash of underlying
22 record lots and tax lots and houses are just

1 sitting in the middle of them.

2 In the past it has been interpreted
3 that the preservation law does indeed apply to
4 that, particularly when you're consolidating
5 them.

6 There has been an interpretation I
7 think it's in the law now that when you have a
8 tax lot and you're just doing a coterminous
9 boundary for a record lot it does not require a
10 hearing. And I think some other things have
11 changed as well.

12 But unfortunately I think that because
13 we are going to the surveyor's office to request
14 a change in the configuration of these lots I
15 think that we are bound by the law.

16 DR. BYRNE: Okay.

17 MS. FERSTER: So I too actually like
18 where you're going with that thought which
19 perhaps we heard something completely different.

20 But what I heard you say was that the
21 historic significance of the site post dates
22 subdivision. So this subdivision was plotted in

1 1893. The site was not developed until many
2 years later.

3 So the existing plat subdivision is
4 not -- it's a piece of paper, but it is not part
5 of the historic significance of the site.

6 And there is law as Ms. Brown alludes
7 to and I think we cited this law in our findings
8 of fact in the demolition case where the prior
9 Mayor's Agent basically said that if a
10 subdivision was approved prior to -- without any
11 review by the HPRB and by the Mayor's Agent, and
12 I think in one of those cases it predated some
13 subdivision rule.

14 But if the subdivision was approved
15 prior to -- without any review under the
16 Preservation Act it just doesn't count. You look
17 at the subdivision that is currently being
18 proposed.

19 So our view that legally this 1893
20 subdivision is legally irrelevant to your
21 determination.

22 DR. BYRNE: Okay. Well, I'm afraid

1 I've distracted everybody from the quoted
2 testimony. I was thinking about that and just
3 wanted to.

4 But I get the point. We are in fact
5 seeking subdivision and it will have an effect on
6 the site.

7 MS. BROWN: If the subdivision
8 regulations didn't require this we wouldn't be
9 here.

10 DR. BYRNE: Right. Okay.

11 MR. DETTMAN: With respect to
12 subdivision. The subdivision is required to
13 construct this project of special merit. Whether
14 you acknowledge the existing lots on the site or
15 you don't.

16 The extent of subdivision has been
17 minimized as I've mentioned just by virtue of the
18 evolution of how the master plan came together to
19 this point as well as through the use of
20 theoretical building sites on lots 5 and 2.

21 Further reductions in the extent of
22 subdivision would not fundamentally change what

1 ultimately would be constructed on the site.

2 And so the discussion we just had, if
3 you were to acknowledge the existing record lots
4 as they exist, the 122 lots, the extent of
5 subdivision on the site is less than what
6 currently exists.

7 And so just in conclusion, getting
8 back to the specific questions that are being
9 asked and the issues that I'm addressing the
10 demolition of subdivision are necessary in order
11 for the special merit features to directly
12 advance the significant number of comp plan
13 policies that I talked about today.

14 There's no economically viable mixed
15 use development involving less demolition and
16 less or no subdivision that would meet the goals
17 of the comprehensive plan to the extent that
18 would support a conclusion of special merit.

19 And finally, there are no reasonable
20 alternatives that would avoid or reduce the need
21 for demolition or subdivision and achieve the
22 same special merit benefits and thus advance to

1 the same extent the comprehensive plan policies.

2 DR. BYRNE: Thank you. A couple of
3 questions. And you of course were going over
4 many, many comprehensive plan provisions.

5 But could you take me back and specify
6 whether the comprehensive plan, what the
7 comprehensive plan says about healthcare
8 facilities?

9 MR. DETTMAN: There are a couple of
10 specific areas -- I'll try to get to the slide as
11 I'm talking. It's mainly the economic
12 development element. And it talks about it
13 encourages the district to continue to expand and
14 support its core industries. And the healthcare
15 industry is one of those viewed core industries.

16 It also talks about continuing to grow
17 -- it specifically talks about continuing to grow
18 the healthcare industry in the District of
19 Columbia.

20 Again, I'm trying to show you those
21 specific policies as I'm looking at exhibit C of
22 our filing.

1 So if you were to look at exhibit C
2 the name of the policy is called Core Industries.
3 Continue to support and grow the district's core
4 industries, particularly the federal government,
5 professional and technical services, membership
6 associations, education, hospitality and
7 healthcare and administrative support.

8 We think that by virtue of the million
9 square feet of healthcare facilities being
10 proposed that's not only going to help support
11 and continue to grow the healthcare core industry
12 for the district and allow it to continue to
13 diversify its core industries and its economic
14 well-being, but as Mr. Weers talked about the
15 ideal location and relationship of this project
16 in relation to the hospital across the street
17 will further strengthen the district's core
18 industry.

19 The other policy that I was looking to
20 find is towards the end --

21 DR. BYRNE: Talking about primary care
22 and emergency care.

1 MR. DETTMAN: Yes, there's one, it's
2 in the elements, community services and
3 facilities. Primary and emergency care. And it
4 says ensure that high-quality affordable primary
5 health centers are available and accessible to
6 all district residents.

7 Emergency medical facilities should be
8 geographically distributed. I think that's the
9 one that you're referring to.

10 The other economic development policy
11 is called institutional growth, support growth in
12 the higher education and healthcare sectors.

13 DR. BYRNE: Okay. Which is that
14 found?

15 MR. DETTMAN: That's in the economic
16 development element. It's policy 2.4.1.

17 DR. BYRNE: Okay, thank you. That's
18 good. I also was struck, I forgot the emphasis
19 in the historic preservation column about
20 preservation master plan. Because we certainly
21 have that in this case. I haven't connected that
22 in my mind. Okay.

1 MS. BROWN: That concludes all our
2 direct witnesses. We would like to again
3 preserve for the record the opportunity to
4 provide the additional information on the case
5 law on the disqualification and exclusion of Mr.
6 Dettman's testimony. And we are ready for cross
7 examination.

8 DR. BYRNE: Okay, let's march ahead
9 since we had a little break before. Ms. Ferster,
10 if you're ready.

11 MS. FERSTER: So one drawback of this
12 method of cross examination. Since so many
13 elements of the project were addressed by so many
14 witnesses I'm going to be skipping around quite a
15 bit. So it's not going to be coherent in terms
16 of asking everybody -- not repeating questions to
17 one witness and then getting everybody to answer
18 them.

19 What I'm going to do is just because
20 it's fresher in my mind and actually the -- start
21 with a couple of specific witnesses I'm going to
22 go backwards because it's helpful to me.

1 So I'd like to start with Mr. Dettman
2 since he was the last one.

3 Okay, so looking at your point about
4 the elements of comprehensive plan that you view
5 demonstrates special merit of this project I'm
6 just going to call out a couple of these points.

7 One are that the traffic issues here.
8 You identify under transportation improvements
9 that you believe qualify the project for special
10 merit.

11 And isn't it correct that this is a
12 project that will generate pretty substantial
13 additional traffic on the existing streets?

14 MR. DETTMAN: It will generate
15 additional traffic.

16 MS. BROWN: And I have a set objection
17 to this because I believe that the court ruled
18 that any adverse impacts generated by this
19 project are not within the scope of the Mayor's
20 Agent proceeding.

21 MS. FERSTER: Well, that's my point
22 exactly. The court specifically -- elements of

1 the plan that reduce impacts like traffic
2 mitigation it would be double counting to count
3 them as special merit.

4 For example, you indicate that there's
5 transit services that are being provided. Are
6 those transit services being provided to mitigate
7 traffic impacts?

8 MS. BROWN: I think there's an
9 objection here that needs to be ruled on.

10 DR. BYRNE: Yes. So, this is actually
11 something which maybe you all can give me more
12 advice on because I find the court a little
13 confusing about this in the sense that I do agree
14 that if the point that Ms. Ferster is making --
15 well, one of the points she's making certainly is
16 that to the extent that this project creates
17 adverse effects the mitigation of them is not a
18 special merit. It's not an issue for the Mayor's
19 Agent.

20 But on the other hand it's really hard
21 to understand that if you have all kinds of
22 community benefits and one of the ways that we

1 assess whether something is a community benefit
2 is by looking at the comprehensive plan the
3 Mayor's Agent has in many cases looked at those
4 benefits in light of the comprehensive plan it
5 just becomes kind of a wavy line as to what the
6 Mayor's Agent must consider and what the Mayor's
7 Agent can consider.

8 I do think that mitigation effects
9 probably are not -- mitigation of adverse effects
10 from the project are not my area, they're not
11 what I'm -- so if that's the point that Ms.
12 Ferster is making which I think it is then it's a
13 good point. But we don't need to have questions
14 of the witness about it.

15 MS. FERSTER: If you ruled and you are
16 objecting to that line of questioning --

17 DR. BYRNE: I don't object to the line
18 of questioning except I don't know that it's
19 necessary.

20 MS. FERSTER: The witness has
21 proffered these as special merit benefits.

22 DR. BYRNE: He did. He mentioned 100

1 comprehensive plan elements and we're not going
2 to go through all 100, right?

3 MS. FERSTER: Well, I didn't count him
4 but he went through quite a few, yes.

5 DR. BYRNE: So, I mean I think if the
6 objection is that the Mayor's Agent needs to look
7 carefully to see whether purported special merit
8 benefits are special merit benefits I agree with
9 that. I intend to do that.

10 So I don't know if that is great use
11 of your time in cross examining to sort of tick
12 through all the ones he mentioned.

13 But I'm open to persuasion on the
14 point.

15 MR. DETTMAN: Mr. Byrne, I do have a
16 comment to make about the shuttle. And I
17 understand that we're kind of running against a
18 fine line here.

19 But while the shuttle service may show
20 up in the transportation element I think we all
21 know that there's a lot of overlap, the
22 comprehensive plan specifically acknowledges the

1 overlap in the policy elements.

2 I think the shuttle actually does
3 provide a special benefit. There are other
4 policies that talk about senior housing and
5 locating senior housing in close proximity to
6 support services.

7 I could see the shuttle being very
8 valuable to the low-income seniors that live in
9 that building who want to jump on the shuttle and
10 get someplace else in the city.

11 It's right there. They could walk on
12 the Olmstead Walk. They could jump on the
13 shuttle. They can go to the Metro.

14 DR. BYRNE: Maybe you do have to ask
15 the questions.

16 MS. FERSTER: Is it your position that
17 the transportation improvements -- I hear you
18 saying that the transportation improvements will
19 serve the people on this site.

20 What I'm trying to find out is will
21 the transportation improvements provide offsite
22 benefits to other people as well that in effect

1 are greater than the impacts to existing
2 neighbors in terms of the traffic circulation, in
3 terms of traffic congestion, in terms of their
4 ability to cross North Capitol Street, in terms
5 of their ability to get to where they need to go
6 offsite.

7 MR. DETTMAN: I can answer the part of
8 the question related to the availability of
9 whatever transit services are provided by virtue
10 of this project.

11 The answer is yes, it will be
12 available to both residents, workers and visitors
13 onsite and offsite.

14 As to the second part of your question
15 about impacts I don't believe that that's
16 actually part of this proceeding.

17 MS. FERSTER: Right and that is
18 exactly my question is I understand that you're
19 not going to kick anybody off the shuttle --
20 that's a good thing -- who's not on the site, but
21 the question is is there a net transportation
22 benefit beyond the impacts of this project as a

1 result of these services that you provided.

2 I mean I can see, for example, many
3 projects, private development projects that offer
4 traffic improvements by the District of Columbia
5 as part of the mitigation. Does that suddenly
6 convert that into a special merit?

7 MR. DETTMAN: I think if you were to
8 take the totality of transportation improvements
9 that are going to be provided by this project, if
10 we were to wade through them and identify the
11 ones that are questionable, if we can set those
12 aside I think there are net transportation
13 benefits provided by this project, not only the
14 shuttle as I just described.

15 There's the additional bike
16 facilities, the brand new Capital Bikeshare
17 station, the increased access to the site, the
18 east-west and north-south access. That's
19 transportation. That's pedestrian, that's
20 vehicle and that's bike transportation
21 improvements.

22 MS. FERSTER: Okay. Well, let's go

1 into that. Are you a transportation expert?
2 Have you actually quantified what the level of
3 service would be without the transportation
4 improvements on this site?

5 MR. DETTMAN: I'm not an expert in
6 transportation but I don't need to be. I'm an
7 expert in planning and land planning and zoning.

8 And in planning school you learn about
9 what makes a good network of pedestrian,
10 vehicular, and bicycle separation. That's
11 increasing access. That's increasing
12 connections. And that's exactly what's happening
13 on this 25 acre site.

14 Right now it's fenced off. If I want
15 to go from Channing to Michigan I have to walk
16 around the site. Someday I can walk through,
17 around, across, can meander across the site.
18 That's increases in transportation.

19 MS. FERSTER: And I understand that
20 you believe that there are benefits. But the
21 question, the legal question is are those
22 benefits, do they go beyond what the impacts that

1 this project is generating.

2 And what I understand is you haven't
3 evaluated that.

4 MS. BROWN: I'm just going to again
5 object.

6 What I think Ms. Ferster is doing is
7 putting in your lap, Mr. Mayor's Agent, Mr.
8 Byrne, balancing the net benefits of the
9 transportation features against the net adverse
10 impacts, and that's exactly what the court says
11 you can't do.

12 DR. BYRNE: I appreciate that, but I
13 think she's also trying to isolate the extent to
14 which the alleged transportation benefits are
15 special merit or not, and suggesting that that
16 has to be a net inquiry rather than just looking
17 at them in and of themselves.

18 So I find myself sort of stuck in that
19 point in terms of trying to understand what the
20 court of appeals wants me to do.

21 And this was the confusion last time
22 with the healthcare facility in which what I

1 thought I said was that the fact that it was
2 large didn't detract from the project being one
3 of special merit and the court said well, you're
4 considering whether it's a good idea to have a
5 healthcare facility.

6 So, I find the line difficult to
7 manage. Okay. Enough about me.

8 How to proceed with this. I think
9 maybe can we just let it lie that the question of
10 the special merit of the transportation part at
11 least has to be understood only in net terms.

12 And I think the witness has testified
13 that in his opinion there is a net benefit. And
14 maybe we just leave it there.

15 Or I don't know, maybe you want to
16 attack that some more, but --

17 (Simultaneous speaking)

18 MS. FERSTER: I don't think he's
19 qualified to make that assessment. I will move
20 on from transportation for sure.

21 But this same issue is presenting
22 itself from innumerable comp plan elements that

1 he mentioned. Light pollution, et cetera, that -
2 - control of urban runoff, vehicle noise, all
3 these things I think can only be viewed as
4 special benefits if we have a calculation of what
5 the project -- in terms of the elements of the
6 project that would further these policies, what
7 they would be, and what the noise or the light
8 inclusion or the runoff would be without those
9 elements. And then we could determine whether or
10 not there is a net benefit beyond this,
11 mitigating the impact of this project.

12 So I think it does cross a lot of
13 these elements.

14 So the question is do you want me to
15 go through this discussion with respect to more
16 of these items that I feel are mitigation as
17 opposed to -- and ask the questions about what
18 the net benefits of it. Or can I simply pose a
19 question to Mr. Dettman of whether or not he has
20 actually calculated the net benefit to the public
21 beyond the impacts of the project from each of
22 these elements.

1 MR. DETTMAN: Is that the question?

2 MS. FERSTER: The environmental
3 protection elements because I see those as very
4 much mitigation as opposed to -- and the
5 transportation elements.

6 MR. DETTMAN: Sure. Again, as I laid
7 out in my testimony I want to make sure that it's
8 clear that I was not arguing just mere overall
9 consistency or inconsistency with the
10 comprehensive plan.

11 To the extent that we can tie directly
12 policies of the comprehensive plan to a special
13 benefit the greater the likelihood that the
14 project can be found to have special merit. So
15 that was sort of the scope and the focus of my
16 testimony.

17 Now with respect to your question you
18 had mentioned light pollution and whether or not
19 I quantified that.

20 Again, my testimony had to do with
21 tying a policy to an identified special benefit.
22 And if I could do that to a great extent I would

1 make the argument that that should give some
2 indication of the special benefit of that project
3 over 100 policies.

4 Now, light pollution, stormwater
5 management, all that, it's all quantified in the
6 master plan. With respect to light pollution,
7 with respect to stormwater management, impervious
8 surface, that's called LEED ND gold. That goes
9 above and beyond what is required under any kind
10 of district building code or regulation.

11 This entire 25 acre site has been
12 looked at holistically as a sustainable
13 environment and is going to achieve LEED ND gold.
14 Again above and beyond anything else I believe
15 that's special merit.

16 You had mentioned one other one.

17 MS. FERSTER: Noise. I mentioned
18 noise. Reduction of vehicle noise. That's one
19 of the things in the environmental protection
20 element that you identified.

21 MR. DETTMAN: I did not quantify a
22 reduction in noise.

1 MS. FERSTER: Okay. And just to
2 clarify on light pollution my question didn't go
3 are you mitigating the light pollution generated
4 by this project.

5 The question is are you going beyond
6 that and mitigating other light pollution for
7 example in the surrounding area. That would be a
8 net benefit.

9 MR. DETTMAN: The net benefit is the
10 entire project as a whole has reached a very high
11 level of LEED neighborhood development gold.
12 That takes into account a lot of environmental
13 sustainability strategies.

14 You had mentioned stormwater
15 management. That was the other one you had
16 mentioned. And it has been quantified in the
17 master plan that not only is the project going to
18 meet the district's very stringent stormwater
19 management requirements but in very technical
20 calculations in the master plan the project is
21 actually going to exceed the amount of volume of
22 water it has to retain onsite.

1 DR. BYRNE: It's interesting. I mean
2 in a sense that if one would accept for a moment
3 the fact that the project creates special merit
4 benefits say for example through affordable
5 housing the fact that it does a very
6 sophisticated job of mitigating the harms that
7 come from creating the development that generates
8 those special merit benefits, I don't know if
9 it's a special merit itself but it is a plus for
10 the project.

11 I mean, it's hard to see where the
12 Mayor's Agent can sort of get his arms around
13 that, but it is -- Ms. Ferster, you're sort of
14 comparing it to doing nothing and that's -- that
15 would be good only if there were no other special
16 merits to the project.

17 MS. FERSTER: A follow-up question
18 about stormwater management. When you said that
19 there's going to be stormwater control that is
20 improved on the site are you counting the
21 stormwater management projects undertaken by WASA
22 involving both the stormwater management site on

1 South 14th as well as the First Street Tunnel
2 project?

3 MR. DETTMAN: No. Those were not
4 retention. Those were not reuse projects. Those
5 were not environmentally sustainable stormwater
6 management projects.

7 MS. FERSTER: Including what's called
8 the stormwater retention project?

9 MR. DETTMAN: That is a big tunnel
10 down First Street in order to capture water
11 coming off of lots of sites.

12 The D.C. stormwater regulations is a
13 site by site analysis applied to a specific
14 project that requires you to retain onsite, not
15 put it in a tunnel under First Street, retain a
16 certain volume of water onsite.

17 MS. FERSTER: And how about South 14th
18 which is specifically called the WASA stormwater
19 retention project?

20 MR. DETTMAN: Right, retention in a
21 tunnel for long-term detention down to Blue
22 Plains.

1 When I say retention I'm talking about
2 holding it onsite and putting it in cisterns and
3 reusing it for landscaping. Putting it in a
4 green roof and letting it evaporate into the sky.
5 That's onsite retention.

6 MS. FERSTER: Thank you. So we talked
7 about economic development and how the healthcare
8 facility furthers economic development policies.
9 And you didn't specifically say the plan. You
10 said economic goals of the District of Columbia
11 in your verbal testimony.

12 So I'm curious about whether or not
13 you're talking about any specific plans other
14 than the comprehensive plan.

15 MR. DETTMAN: No, I mentioned the
16 district's economic development strategy.

17 MS. FERSTER: Strategy, okay. So you
18 were referring to the district's economic
19 development strategy. Which economic development
20 strategy are you referring to?

21 MR. DETTMAN: The one that was shown
22 on the slide was the economic development

1 strategy that specifically identified McMillan
2 and recommended a medical hub to be located
3 there.

4 I understand that within not too long
5 ago the administration has released another five-
6 year economic development strategy. And no
7 mention of McMillan is in that, but that does not
8 mean that the district is not interested in
9 establishing a medical hub at McMillan, seeing it
10 as an ideal opportunity.

11 As a matter of fact they said nothing
12 to roll that recommendation back, and at the time
13 of that most recent economic development strategy
14 was released the McMillan master plan was well
15 underway and it was based upon the economic
16 development strategy that was in place at the
17 time the master plan was put together.

18 MS. FERSTER: But you would agree that
19 the five-year master plan that you showed on your
20 slide is no longer the current five-year master
21 plan, isn't that correct?

22 MR. DETTMAN: I wouldn't agree with

1 that because the economic development strategy
2 I'm not sure is a cleancut document, once a new
3 one comes out the old one goes away.

4 MS. FERSTER: Okay, well perhaps we
5 could ask that question of Mr. Kenner then. I'll
6 move on.

7 Okay. You mentioned in one of your
8 slides reference to protection of affordable
9 housing in the mixed city policy 1.1.7 as a
10 policy that is furthered by this project.

11 Isn't it correct that that policy
12 refers to existing affordable housing, not
13 affordable housing that you are creating as part
14 of that project?

15 MR. DETTMAN: The actual policy says
16 strive to retain the character and density as a
17 mixed income by protecting the area's existing
18 stock of affordable housing and the plan was
19 meaning that this was not going to displace any
20 affordable housing because it's a vacant site.

21 The policy further goes on to say and
22 promoting the construction of new affordable

1 units.

2 MS. FERSTER: Okay. So have you done
3 any kind of -- so it's not your testimony that in
4 fact this project protects existing affordable
5 housing. You're not testifying to that. You're
6 focusing on the new housing.

7 MR. DETTMAN: Correct. I will follow
8 that up though and say that the policy encourages
9 the protection of existing and the construction
10 of new. And the project advances that entire
11 policy.

12 It does nothing to the existing stock
13 of affordable housing because there's nothing on
14 the site and it provides all new affordable
15 housing.

16 MS. FERSTER: Thank you. Okay, so Mr.
17 Thakkar, working backwards here. Let's see. You
18 talked -- and this can go to really also other
19 people who testified because actually a number of
20 people testified about the whole issue of LEED
21 certification of the project. So really I can
22 ask anybody this question who feels most

1 qualified.

2 Who would like to step up and I guess
3 I would particularly ask the question of whoever
4 is the most familiar with the green building
5 code.

6 MR. THAKKAR: I'm happy to step up.
7 I'm not particularly familiar with the green
8 building code, but I am familiar with LEED.

9 And as I said, it is my understanding
10 that LEED silver which is the minimum requirement
11 that we committed to with the Zoning Commission
12 exceeds district building codes.

13 And we are certifying the project --
14 you can build to LEED or build to various things.
15 We're actually going to be certifying this
16 project at LEED silver or better which to my
17 understanding exceeds building code requirements.

18 MS. FERSTER: Okay. What I wrote down
19 that you said was that you said that LEED silver
20 is not a requirement for District of Columbia
21 projects. So you didn't feel that that was a
22 requirement. And the question is the green

1 building code, is it your opinion as somebody who
2 is familiar with the green building code that the
3 green building code does not require LEED silver
4 certification?

5 MR. THAKKAR: I am not familiar with
6 the green building code. In building other
7 projects in the district I am not aware of having
8 to build to a LEED silver and certify a project
9 as such.

10 MS. FERSTER: Were you not aware that
11 the green building code has specific provisions
12 that deal with district-financed projects?

13 MR. THAKKAR: I don't know that this
14 project is district-financed.

15 MS. FERSTER: It's defined as a land
16 disposition and development agreement.

17 MS. BROWN: I think he's already
18 testified that he's not familiar with the D.C.
19 green code enough to answer those questions.

20 MS. FERSTER: Okay, so were you simply
21 speculating. Is there anybody who's very
22 familiar with the green building code who can

1 talk about whether or not this silver
2 certification is required in district-financed
3 projects as that is defined in the green building
4 code?

5 MS. BROWN: I think there was no
6 direct testimony that you've heard today on the
7 green building code with that particular
8 provision so I think it's best if you bring that
9 up in your case in chief.

10 MS. FERSTER: Sure. Okay. And I
11 think there was also some mention of LEED gold.
12 There's a component of the project that was LEED
13 gold.

14 Can you be more specific about what
15 component is LEED gold?

16 MR. BELL: That's the LEED
17 neighborhood development. LEED ND it's called.

18 MS. FERSTER: And could you describe
19 that in a little more detail in terms of the
20 buildings that are involved.

21 MR. BELL: LEED ND is about master
22 planning. It is about transportation access to

1 walkable communities, making things
2 interconnected, mix of uses, accessible public
3 open space, things like that.

4 MS. FERSTER: Okay. And so is there
5 a higher LEED certification than gold?

6 MR. BELL: I believe there is LEED
7 platinum.

8 MS. FERSTER: This project does not
9 meet LEED platinum.

10 MR. BELL: We have committed to LEED
11 gold.

12 MS. FERSTER: So the remainder of the
13 components of the project, every one of them are
14 LEED silver.

15 MR. BELL: What do you mean by the
16 remainder?

17 MS. FERSTER: You indicated that --

18 MR. BELL: There are different LEED
19 classifications. There are LEED for new
20 construction. There's all sorts of LEED
21 categories. The one I've been specifically
22 involved in is the LEED ND, LEED gold.

1 And we've gotten LEED silver
2 certification for the individual buildings.

3 MS. FERSTER: So everything other than
4 in the master planning is LEED silver. Are there
5 any buildings or components that do not meet LEED
6 certification silver below that, or is everything
7 at least silver?

8 MR. BELL: We committed to everything
9 minimally being silver.

10 MS. FERSTER: And there's a higher for
11 all those other components in addition to the
12 master planning LEED certification that would
13 also be that it allows for silver and platinum as
14 well.

15 MR. BELL: That's a standard LEED
16 classification, yes.

17 MS. FERSTER: Thank you. So, this is
18 particularly for Mr. Thakkar again. You indicated
19 -- talked about the fact that you would be
20 providing affordable housing for seniors that is
21 a benefit to the existing community. Did I
22 correctly summarize that piece of your testimony,

1 that the affordable housing for seniors on the
2 site would benefit the existing community?

3 MR. THAKKAR: I didn't say it that
4 way. What I said was that there are a number of
5 seniors within the existing community and that
6 cohort suggested strongly that we include
7 affordable senior housing on the site.

8 The reason I say that is of course due
9 to fair housing there's no guarantee that someone
10 who lives across the street could necessarily
11 live in this house versus someone who lives in
12 Georgetown for that matter.

13 MS. FERSTER: Thank you for that
14 clarification.

15 You also I think had some testimony
16 about the fact that this project provides for
17 multifamily housing which is a particularly
18 valuable component to this project.

19 MR. THAKKAR: I think what I said was
20 that it provides housing for families. What I
21 testified to is we have various different types
22 of affordable housing including housing for

1 families which is not the multifamily housing,
2 it's actually the townhouses because they are
3 larger, having more bedrooms and more square
4 footage suitable for families.

5 And that much of the affordable
6 housing being built in the city is multifamily
7 affordable housing and may not be as catered to -
8 - may not be built for families in the way the
9 townhouse might be.

10 MS. FERSTER: Thanks. So that
11 restates my question, thank you, I appreciate
12 that.

13 So in terms of the housing that's
14 being provided onsite for families, that would
15 include the townhomes that EY is building. And
16 would that also include the multifamily
17 buildings?

18 MR. THAKKAR: Certainly it could
19 include the multifamily buildings. Families can
20 of course live in multifamily housing as well.

21 MS. FERSTER: Can you quantify how
22 many of the units of the multifamily housing

1 would be -- could be occupied by families,
2 meaning they had two or more bedrooms?

3 MR. THAKKAR: I'll have to get back to
4 you with regard to that answer. What I testified
5 to was that our project includes townhouse style
6 housing which would be appropriate for families.

7 So I didn't testify to the fact that
8 the multifamily housing would or wouldn't house
9 families in particular.

10 What I did say is that unlike many
11 projects, let's take the wharf for example since
12 I know we discussed that before.

13 My understanding is that most of that
14 housing is multifamily in nature and not to say
15 that multifamily housing is not suitable for
16 families, but many families like to live in fee
17 simple detached housing.

18 This project both by size and
19 configuration provides that option.

20 MS. FERSTER: So perhaps I should ask
21 that question of Mr. Lynch.

22 MS. BROWN: He's not with us today.

1 MS. FERSTER: I'm sorry. Whoever is
2 responsible for the multifamily housing.

3 MR. THAKKAR: We can get back to you
4 with the answer to that question.

5 DR. BYRNE: We're talking about the
6 cross.

7 MS. FERSTER: Okay, so my other
8 question was going to be, and I'd appreciate you
9 getting back to me about that as well is of the
10 multifamily units that are suitable for families
11 meaning they would have two or more bedrooms I
12 would like to know how many of those are going to
13 be affordable units.

14 Can you provide that?

15 DR. BYRNE: She's asking --

16 MS. BROWN: We're waiting for a
17 question. We didn't hear the question so --

18 DR. BYRNE: Oh, I'm sorry. Go ahead
19 and ask it again.

20 MS. FERSTER: Well, the question was
21 can you also provide how many of the affordable
22 multifamily units are going to be for families

1 meaning two or more bedrooms.

2 MR. THAKKAR: I don't know that that
3 has been finalized yet. To the extent that we
4 have that information given where the project is
5 in the entitlement process we can get it to you.
6 I just don't know that that's been finalized.

7 I also want to say for the record when
8 I spoke about family housing I was referring to
9 the 146 townhouses as a unique component of the
10 project that is not part of most large projects
11 in the district.

12 MS. FERSTER: Understood. So, you
13 also talked about the creation of jobs, job
14 training, employment, et cetera. And a number of
15 witnesses did mention that there will be a number
16 of jobs that will be created.

17 And I think there was some suggestion
18 that the existing surrounding community would
19 benefit from the jobs that would be created by
20 that site.

21 I believe that was the testimony
22 perhaps of Mr. Bogorad.

1 MR. BOGORAD: As with housing you
2 can't guarantee that somebody in some other
3 neighborhood wouldn't get a job.

4 MS. FERSTER: I'm flipping from
5 housing to jobs.

6 MR. BOGORAD: I realize that, I'm just
7 saying it's a similar situation.

8 What I was saying is it will create a
9 lot of jobs at the site. There's also spinoff
10 jobs a lot of which would be near the site.

11 And having those proximate to these
12 particular neighborhoods and to an area with
13 higher unemployment increases the odds that
14 people in those neighborhoods will be able to get
15 jobs.

16 I mentioned it in this testimony but
17 it is combined with all the job training and
18 other things that other witnesses have mentioned
19 makes it particularly likely that those jobs will
20 become available for and will actually end up
21 being filled by people within the general
22 neighborhood.

1 MS. FERSTER: But you're not going to
2 provide any particular preference for people who
3 live in the neighborhood.

4 MR. BOGORAD: I'm not aware that
5 that's legal.

6 MS. BROWN: I don't think he testified
7 to that.

8 MR. BOGORAD: No, I certainly didn't
9 testify.

10 MS. FERSTER: So, just a couple of
11 questions about the subdivision here. A number
12 of witnesses testified that they believe that
13 this project, that the subdivision issue is
14 really about reducing the number of subdivisions
15 and that you didn't feel that your project could
16 be reconfigured in a way that reduced the number
17 of subdivided lots.

18 Am I summarizing the testimony? I
19 think it was Mr. Thakkar and others. That
20 subdivision. I have it written down in my notes
21 with you, that you felt that --

22 DR. BYRNE: Mr. Dettman said that.

1 MS. FERSTER: Mr. Dettman?

2 DR. BYRNE: I think Mr. Dettman said
3 that -- generally though that they couldn't
4 reduce subdivision, couldn't have fewer
5 subdivisions and have the special merit benefits
6 that the project provides. I believe that was
7 the testimony.

8 MS. FERSTER: Okay. So whoever is the
9 most appropriate person to answer this follow-up
10 question.

11 And my question is not whether or not
12 you considered reduction of a number of
13 subdivisions. My question is whether you
14 considered the same perhaps number of
15 subdivisions but different configurations that
16 would move the existing buildings into different
17 locations within the site. Did you consider
18 that? As part of the alternatives to the
19 subdivision.

20 DR. BYRNE: So I saw a lot of pictures
21 of different configurations of buildings on the
22 site. I would assume that they were doing that

1 before they were thinking about how to divide
2 lots up.

3 MS. FERSTER: I think those pictures
4 all predated the filing of this application.

5 DR. BYRNE: I think so too.

6 MS. FERSTER: So that's my question.
7 Do you want to postdate it after the filing of
8 your application in response to the D.C. Court of
9 Appeals decision.

10 Did you look at different subdivision
11 configurations. Not necessarily just reducing
12 the number of lots, but actually just
13 reconfiguring the lots so that your project would
14 be located in a different way.

15 I can give you an example if you would
16 like one example. But let me just ask you the
17 question just generally. Did you look at
18 different configurations for locating your
19 proposed buildings within the site.

20 MS. BROWN: Can I just ask a
21 clarifying question? Ms. Ferster, are you
22 suggesting that subdivisions should come first

1 and a building program second?

2 MS. FERSTER: No, I'm saying that they
3 are looking -- your witnesses testified they
4 examined alternatives that would reduce the
5 number of subdivisions and I'm simply asking did
6 you also examine alternatives that would have
7 reconfigured the subdivisions.

8 That presumably would have changed the
9 location of the buildings within the site.

10 MR. DETTMAN: I think I understand the
11 question and how it relates to my testimony so
12 let me take a shot.

13 So the one point I did make in
14 relation to subdivision was referring back to the
15 numerous alternatives that Mr. Bell reviewed.

16 If you look at those and if you were
17 to try to take each of those alternatives and
18 apply a subdivision that met zoning and met all
19 requirements the extent of the subdivision as the
20 master planning evolved got less and less because
21 there were fewer buildings, they were better
22 organized and there was more open space.

1 In terms of whether or not there were
2 other configurations of the existing master plan
3 explored in order to try to reduce the extent of
4 subdivision I think it's important to point out
5 that a record lot required a street frontage.

6 So there's only so many record lots
7 you can draw around the buildings that are
8 currently being proposed.

9 Now if you take, I don't know how many
10 buildings, I know we have 19 clusters of
11 townhomes, we have a building on parcel 1, there
12 are 20 some buildings per se.

13 So Ms. Ferster, if you're asking have
14 we taken those 20 some buildings and moved them
15 around the site in order to try to reduce the
16 amount of subdivision I think that goes to my
17 point that if you do that it doesn't really
18 change the extent to which what actually happens
19 on the site. You're just moving the lines around
20 constrained by what the requirements are for a
21 subdivision.

22 But I think at the end of the day

1 there's no differences whatsoever.

2 MS. FERSTER: Okay, so my question was
3 a little simpler than that. It was just did you
4 consider doing that.

5 MR. DETTMAN: The simple answer is no.
6 Ms. Brown's comment, we developed a building
7 program that best met the needs of the landmark,
8 the needs of the community, the needs of the
9 building program and then figured out the less
10 intrusive subdivision that we needed to build.

11 MS. FERSTER: Thank you. And let me
12 just follow up with Mr. Weers because I think
13 this was one of his slides.

14 I'm looking at the additional cell
15 preservation on parcel 1 slab which is at page
16 182 of the booklet.

17 And my question doesn't have to do
18 with cell preservation but this graphic is
19 useful.

20 So I guess one question would be as an
21 alternative that you might like to consider, did
22 you ever consider flipping the healthcare

1 facility building so that -- and perhaps this is
2 actually a better question for Mr. Thakkar
3 because he was the one that particularly talked
4 about how the healthcare facility was sited in
5 particular to allow some space between the north
6 service court.

7 MR. WEERS: That's my --

8 MS. FERSTER: That's you, okay. So
9 the question, I'm looking at this slide and it
10 looks to me like there is more space actually
11 between Michigan Avenue and the building areas
12 between the north service court and the building.

13 So, if you were interested in
14 maximizing the amount of open space in the --
15 near or around the north service court wouldn't
16 you just flip that and put the healing garden on
17 the other side of Michigan Avenue?

18 MR. WEERS: So, I'm not sure on your
19 question. Can you help me understand what are
20 you asking?

21 MS. FERSTER: The question again is
22 simple. Did you ever consider reconfiguring the

1 healthcare facility on parcel 1 so that -- you
2 know, these east -- what do you call them, the
3 east and the west --

4 MR. WEERS: Yes, I think the answer to
5 your question generally is yes. We examined a
6 lot of different options and configurations for
7 parcel 1.

8 And the building itself used to be
9 closer to Michigan Avenue. In fact, part of the
10 reason why it is where it is today is because of
11 a community meeting where we were at Big Bear
12 Cafe and people asked for it to move away from
13 Michigan Avenue, thus the healing gardens were
14 born.

15 But I think Mr. Bell probably has some
16 other thoughts that are helpful.

17 MR. BELL: In addition to what Mr.
18 Weers said we did look at flipping it. We looked
19 seriously at that. We think this is a much
20 better configuration. It handles the drive-up
21 and drop-off for the healthcare building without
22 introducing that traffic onto the north service

1 court.

2 It also provides at a lower level
3 there's a section drop. I'm demonstrating with
4 my hand here from Michigan down to the north
5 service court that's one level of section change.

6 What that allows us to do is to put a
7 level of retail at a lower level and the drop-off
8 at an upper level.

9 This is great because it allows for
10 the retail to relate to the north service court
11 which is very much where everybody wanted the
12 retail there with the grocery store.

13 And it keeps the people who are
14 dropping folks off and going into the garage for
15 the healthcare facility up to the north.

16 The healing garden softens that
17 experience. And when you wall off Michigan it
18 becomes difficult to see the entry into the site.

19 So we felt that the spatial
20 configuration of the two buildings like this with
21 the healing gardens allow for an entry, kept the
22 traffic off the north service court, gave us a

1 retail frontage on the north service court, and
2 that was the best solution.

3 MR. WEERS: And if I could I think
4 part of what that answer which I agree with
5 illuminates is that you can't just plan this site
6 and plan it and say why don't you just pick it up
7 and move it over there.

8 Every one of these decisions has a
9 significant number of factors and components
10 added into it. It is not just a question of
11 where should the open space go because the open
12 space affects the circulation. It's all tied
13 together is my point.

14 MR. BELL: And we debated this with
15 the HPRB.

16 MR. WEERS: The District of Columbia
17 Department of Transportation.

18 MR. BELL: And one of the debates that
19 came out of that was the setting back of the
20 buildings above the first floor in the north
21 service court.

22 So that was one of the ways we dealt

1 with the spatial arrangement around the existing
2 landmark and HPRB supported that solution.

3 MS. FERSTER: What was that version
4 that you say you considered that would have done
5 as I described? Was that actually presented then
6 to the HPRB?

7 MR. BELL: I can't recall honestly if
8 we made drawings of that. I know we did talk
9 about it and we did talk about it with them and
10 we debated the merits of that.

11 I will tell you that there was a
12 scheme where the buildings went straight up from
13 the north service court and then we came back and
14 were asked to push them back which is what you
15 see today.

16 MS. EIG: From a preservation point of
17 view by locating the building there the Olmstead
18 Walk which is curved at the northern end and
19 which had not been previously accommodated was
20 allowed to fulfill its original plan which was a
21 preservation benefit.

22 MR. BELL: So, like many things in the

1 plan it's not just one criteria. You're looking
2 at a wide variety of things to balance strategies
3 and outcomes. And that's one of the things about
4 this plan that was so sophisticated, that it does
5 a great deal of many of those things.

6 MS. FERSTER: So let me just follow
7 up, Ms. Eig, about her point then just to be
8 clear.

9 So the Olmstead Walk is in your 2014
10 report you indicate the Olmstead Walk is a
11 contributing feature but of supporting
12 significance.

13 So, like the below ground cells.
14 That's correct, right?

15 MS. EIG: Because of its integrity.
16 And when the decision was made that it could be
17 reconstructed it's of significance but the
18 integrity was very poor. In parts it doesn't
19 exist.

20 MS. FERSTER: I guess I'm confused
21 then because you have -- in your 2014 report you
22 have separate assessments of both integrity and

1 significance. So you had separated them in the
2 two, the way I read the report --

3 MS. EIG: They were brought back
4 together. And if you understand as I did testify
5 the preservation report was recommendations. It
6 was not based on a specific development. And it
7 took into account that there would be changes.

8 And some of my recommendations were
9 not followed as I think everyone at this table
10 would have to say that they didn't get everything
11 they wanted.

12 This is a very complex sophisticated
13 plan that optimizes the considerations.

14 MS. FERSTER: Understood. I'm just
15 still trying to wrap my brain around the idea
16 that the hierarchy of in your Appendix I of the
17 2014 report.

18 MS. EIG: That was not necessarily
19 followed. It was my recommendation.

20 MS. FERSTER: I understand that. I
21 understand that. But it seems to me that from a
22 historic preservation standpoint you do two

1 things.

2 One is you decide what is a key
3 supporting or non-contributing element to the
4 historic significance of the site, and then you
5 assess the integrity.

6 MS. EIG: No, you're at a lower level
7 than I was. I'd already determined what's
8 contributing and non-contributing. We were at a
9 relative level of significance.

10 Plus I think that the Historic
11 Preservation Office was very adamant that the
12 Olmstead Walk be included as a character defining
13 feature because of its identity.

14 And it was a very good recommendation.
15 The board completely voted with that.

16 MS. FERSTER: Right, and I'm just,
17 again, I don't want to make this more complicated
18 because it really is a very simple question.

19 Because it concerns me and it raises
20 the question of the underground cells, for
21 example, which you indicated in your report were
22 of supporting significance, not key significance.

1 And so it occurred to me that was the
2 deteriorating condition of the cells a factor to
3 the downgrading of them in terms of the
4 significance of the site.

5 MS. FIG: I think that I did testify
6 that there were three criteria that were used
7 that were based on the landmark application that
8 had been submitted 20 years ago.

9 We did not try to rethink that or
10 argue the decision. We went right by what they
11 said was the significance and that was how it was
12 landmarked.

13 And that was used as the basic
14 significance. So not every element is
15 significant in all three aspects.

16 MS. FERSTER: Right, I understand
17 that.

18 MS. FIG: So, the visibility of the
19 cells moved them to a lower position.

20 MS. FERSTER: Okay. That's what I
21 guess -- to better restate my question it would
22 be if the cells were in mint condition, none of

1 them were deteriorated, would they still be
2 supporting significant, or would they --

3 MS. EIG: Yes.

4 MS. FERSTER: And that would apply to
5 basically everything in the site including the
6 service courts. The level of deterioration
7 doesn't affect its hierarchy or relevant
8 significance.

9 MS. EIG: No. There's hierarchy and
10 then there's integrity. And then together that
11 creates the final assessment. Both pieces.

12 MS. FERSTER: I understand. Obviously
13 I'm not making my point very clearly because I'm
14 asking a very simple question.

15 You identified certain features as of
16 contributing significance and certain features as
17 of non-contributing --

18 MS. EIG: No, everything was
19 contributing.

20 MS. FERSTER: Okay. So certain
21 features as supporting.

22 MS. EIG: Correct.

1 MS. FERSTER: Supporting and key. So
2 that was your relative level of significance.

3 And I guess what I'm trying to
4 understand is the extent to which that
5 deterioration of any of those features affected
6 your determination of their relative level of
7 significance.

8 MS. EIG: Integrity does not affect
9 their relative level of significance.

10 MS. FERSTER: Thank you. That's it.
11 That's all. That was all I was asking.

12 Okay. I would like to go to cells 14
13 and 28 for a minute because there's several
14 witnesses, I think Ms. Eig and others who
15 clarified that the intention is certainly to
16 preserve cells 14 and 28 absent unanticipated
17 events, that it is your intention to preserve
18 them.

19 And so that's correct?

20 MS. EIG: The full cell 14 is proposed
21 for preservation and part of cell 28.

22 I think the testimony was that it was

1 more than just the intention, it's the definitive
2 plan. The plan includes the preservation as I
3 just stated.

4 MS. FERSTER: Okay, here's my question
5 and that is is that I have the demolition permit
6 in front of me that was issued on December 2,
7 2016. And there are no conditions associated
8 with this demolition permit.

9 MS. BROWN: Demolition, that's not
10 part of the record on direct.

11 MS. FERSTER: Well, I think that the
12 fact that you say that you intend to preserve the
13 plan and yet a demolition permit -- preserve
14 those cells and yet a demolition permit was
15 issued that it does not.

16 MS. BROWN: There is no direct
17 testimony related to that permit and if you want
18 to talk about it in your case in chief ---

19 DR. BYRNE: So I take it this in the
20 nature of impeachment.

21 MS. FERSTER: You know, it goes beyond
22 that, and perhaps I better make a proffer because

1 I anticipate lots of objections here.

2 So, let me say that one of the issues
3 that the D.C. Court of Appeals was concerned
4 about was validating to other entities the
5 preservation protections that were decided make
6 this project a project of special merit.

7 And on December 2, 2016 a demolition
8 permit was issued that is not -- doesn't appear
9 to be in any way conditioned.

10 And this has been -- and I understand
11 that the applicants are going to view anything
12 going to the demolition permit that was issued as
13 beyond the scope of anybody's testimony, but I
14 think it's important that I be allowed to delve
15 into that.

16 And the reason I think it's important
17 is that there's nobody else who can testify to
18 this, right.

19 I can't produce a witness. I don't
20 have the power unless you want to allow us to
21 subpoena somebody from DCRA or Mr. Thakkar and
22 produce him -- Mr. Kenner, ask them to be one of

1 our witnesses so that I could query them as a
2 hostile witness so that exactly what happened
3 when this demolition permit was issued, why it
4 wasn't conditioned appropriately in order to
5 allow the preservation of the things that
6 applicants said that they would preserve.

7 Why no construction permit was
8 apparently issued simultaneously with the
9 demolition permit which is contrary to the
10 Preservation Act.

11 If nobody here -- I understand
12 nobody's going to testify about that. It is
13 definitely beyond the scope of perhaps all of the
14 direct testimony, but if nobody here is going to
15 -- I have a number of concerns and questions that
16 go to what is going to happen after the Mayor's
17 Agent issues his order, your order.

18 DR. BYRNE: So is your concern that
19 they will not follow the limits of the project
20 that would be cleared for the department.

21 MS. FERSTER: I clearly think the
22 demolition permit that was previously issued

1 raises a serious question about whether or not
2 they're going to comply with the requirements of
3 this statute and the commitments that they
4 provided here.

5 So if none of the witnesses today will
6 answer my questions I would ask that I be allowed
7 to call as part of my case an appropriate D.C.
8 government employee who can answer questions
9 about this demolition permit.

10 MS. BROWN: And I would completely
11 object to this line of questioning. This permit
12 is well beyond the scope of the specific permit
13 that's before you today, the demolition for the
14 underground cells, and for the subdivision.

15 Anything outside of that is extraneous
16 and beyond the scope of this hearing and I think
17 we need a clean line dividing that.

18 DR. BYRNE: So, the concern as
19 expressed by Ms. Ferster is that the applicants
20 will not abide by law and will tear down stuff
21 that is not permitted under whatever order comes
22 down.

1 And I don't know that that really --
2 I don't know how to deal with that. It's not
3 part of the application process.

4 It seems to me to be an issue that
5 needs to be taken up independently with I guess
6 DCRA.

7 MS. BROWN: It's completely an
8 enforcement issue.

9 DR. BYRNE: So, I know nothing about
10 the permit. If it was inappropriate then it
11 never should have been issued.

12 But I don't know that it's appropriate
13 for you to then impugn what they're going to do
14 that's within the scope -- when we say this is
15 the scope of their rights that they're going to
16 go outside of that.

17 I just don't think that that's really
18 appropriate for today, for this hearing.

19 MS. FERSTER: So you're sustaining the
20 objection.

21 DR. BYRNE: I think so.

22 MS. FERSTER: Are you sure?

1 DR. BYRNE: Yes.

2 MR. OTTEN: Mr. Byrne, can I just make
3 a clarifying question? You, as I understand in
4 terms of the posture of the administrative
5 review, have to sign off on the demolition of
6 parts or all of the site if that was that
7 question, but parts of it certainly.

8 DR. BYRNE: I have to clear the permit
9 based upon a finding of special merit consistent
10 with purposes ---

11 MR. OTTEN: Right. And as Ms. Ferster
12 just pointed out this permit has been issued.
13 And I don't think you've cleared it. And I think
14 that's why this is being raised now.

15 DR. BYRNE: Well, then if the permit
16 -- so the permit, a permit could have been issued
17 before the court of appeals vacated the decision.
18 I think that's correct.

19 MS. BROWN: We don't know what it is
20 because it's not in evidence. And the reason
21 it's not in evidence, because it doesn't belong
22 in this hearing.

1 And if there is an objection to the
2 demolition permit there's a whole separate
3 process for the DCRA to appeal the issuance of a
4 permit. And that's not here.

5 DR. BYRNE: I think that makes sense.
6 I don't think that any kind of enforcement error
7 if there was one, I haven't seen the document, is
8 relevant to what we're doing here unless --

9 MS. FERSTER: Well, I would like to
10 offer this again as impeachment of the professed
11 good intentions of the applicants in this case to
12 ensure that all the elements they're promising to
13 preserve will be preserved.

14 DR. BYRNE: Okay, let's hold that for
15 later then because I think -- I have to think
16 about how to deal with that.

17 MS. FERSTER: So I have another
18 question that undoubtedly the applicants will
19 object to as well. So before I start launching
20 into it.

21 One of the issues before you is
22 whether or not there are alternatives that could

1 preserve more of the essential elements of the
2 project without -- while achieving the special
3 merit benefits.

4 And I do have some questions actually
5 about what's going on at the design phase
6 actually.

7 At what level of design are they at.
8 They're representing that this project is one of
9 special merit, represents exemplary architecture
10 and I have a series of questions about what's
11 going on in terms of level of design, phasing and
12 permitting. So I guess I would ask, I assume
13 nobody testified to that but I would like to ask
14 a series of questions about that.

15 DR. BYRNE: So there's -- we are
16 passing upon a project that has been put forward
17 as it's described in the documents.

18 And I don't know what more there is to
19 argue about that. What would be missing from
20 just passing on the application to present?

21 MS. FERSTER: Well certainly in terms
22 of the exemplary architecture.

1 DR. BYRNE: To the extent the
2 architecture is not complete.

3 MS. FERSTER: That's correct.

4 DR. BYRNE: Okay. Then that weakens
5 the case for exemplary architecture.

6 MS. FERSTER: Right. So I would like
7 to ask questions about the status of the design
8 process and drawings relating to that in terms of
9 that issue.

10 MS. BROWN: And I would object because
11 the plan before you is the master plan. It is
12 what it is. And to go down this path of trying
13 to figure out have there been more design
14 revisions to it, it doesn't matter.

15 This is the plan that's before you
16 today.

17 DR. BYRNE: And the plan does not
18 specify the final designs. We're very far from
19 the final designs.

20 MS. BROWN: The new construction
21 permit is not before you. What is before you is
22 the special merit on the demolition --

1 DR. BYRNE: Exemplary architecture is
2 part of the argument.

3 MS. BROWN: Absolutely.

4 DR. BYRNE: And what I think you're
5 saying is that I have to evaluate that on the
6 basis of what's been presented to me.

7 And insofar as it doesn't have
8 complete drawings of final buildings that's a
9 factor to be considered in assessing it.

10 But I don't know that it's --

11 MS. FERSTER: I just want to ask them
12 what the status of design is so that -- as you
13 said it is a factor.

14 DR. BYRNE: Well, that sounds like a
15 fairly harmless question.

16 MS. BROWN: It is harmless. I just
17 want to make sure I understand how these things
18 work and that one question leads to another.
19 Once we start answering it then we open the door.

20 That's why I want to make sure that we
21 answer one, we don't get six more on this
22 harmless question.

1 And I think it's pretty standard in
2 these special merit cases to have concept plans.
3 And what is before you is it.

4 And we know that it has to go back to
5 the historic preservation for -- HPRB for final
6 review. That's their job.

7 MS. FERSTER: Let me start asking and
8 then please start objecting.

9 DR. BYRNE: Go ahead and ask the
10 question.

11 MS. FERSTER: So, what level of design
12 has been completed for each of the phases of the
13 projects.

14 MR. THAKKAR: I'll take that. The
15 design as put forth in the PUD before the Zoning
16 Commission that was originally approved is the
17 level of design that has been undertaken to date.

18 I do want to note that both the HPRB
19 and the Zoning Commission spent an incredible
20 amount of time in hearings on the architecture on
21 each building, looking at townhouses and how they
22 relate to multifamily and how that relates to

1 buildings across the street.

2 So Matt, you can maybe provide more
3 detail, but that's the level of architecture that
4 was provided.

5 Everything that the Mayor's Agent is
6 seeing is where we are with design. And there's
7 been a lot of commentary and other commentary on
8 that level of design.

9 MS. FERSTER: And has the Mayor's
10 Agent been provided with the level of design you
11 provided the Zoning Commission?

12 MS. BROWN: They're the exact same
13 drawings. And I'm jumping in to answer this
14 because I think this is the door that's starting
15 to open.

16 The plans that have been submitted to
17 the Zoning Commission, they are the same plans
18 that have been submitted here.

19 And we can't change anything in the
20 Mayor's Agent drawings because it will affect the
21 Zoning Commission and vice versa. They go hand
22 in glove.

1 MS. FERSTER: That wasn't my question.
2 I guess the question is what remains to be done
3 beyond what you've submitted to the Mayor's Agent
4 and to the Zoning Commission in terms of level of
5 design.

6 I'm not an architect or a construction
7 person so I don't know that answer to that
8 question. That's why I'm asking.

9 DR. BYRNE: Can you answer it in a
10 general way?

11 MR. BELL: In a general way once
12 approval is obtained through the Mayor's Agent we
13 would have to go back and get approval from the
14 preservation office for final design.

15 MS. FERSTER: So that's the next step
16 is final design.

17 MR. BELL: Typically what you do is
18 you take the drawings probably through DD and you
19 ask for a preliminary review with the Historic
20 Preservation Office, and they make comments, and
21 then you submit them for final design.

22 And they do look back at what was

1 submitted as approved as a basis for judging
2 coherence with that.

3 So if there are changes they note them
4 and tell you about them. And you talk about
5 them. Generally there aren't changes.

6 MS. FERSTER: Generally there are.
7 And what level -- there are not.

8 MR. BELL: No. You have to basically
9 stick by what you've submitted.

10 MS. FERSTER: Okay. But you're going
11 to a finer level of design in the final plans.

12 MR. BELL: You have to make a set of
13 construction documents and that requires detailed
14 development.

15 MS. BROWN: I think that we need to
16 cut this off at this point because we've answered
17 all the design development questions that are
18 irrelevant because it's part of the proceeding.

19 (Simultaneous speaking.)

20 DR. BYRNE: -- because that seems to
21 me to be a complete answer. But I --- Ms.
22 Ferster, are you done with that line?

1 MS. FERSTER: Well, I was going to
2 follow up and say in terms of your timeline that
3 you identified if there are some deviations
4 between the approved design concepts that were
5 submitted here, the final plans, what happens.
6 How are those reconciled. And does it come back
7 to the Mayor's Agent.

8 MS. BROWN: I think that's a question
9 for her to ask her staff.

10 DR. BYRNE: That's a staff question.

11 (Simultaneous speaking.)

12 MS. FERSTER: The court of appeals
13 specifically said the Mayor's Agent cannot defer
14 to other agencies including HPO for its
15 responsibilities.

16 DR. BYRNE: Yes, but my
17 responsibilities don't go to new construction,
18 they go to demolition of a subdivision.

19 MS. FERSTER: Okay, and they go to
20 this project of special merit, and the argument
21 that it's consistent with the purposes of the
22 act.

1 DR. BYRNE: Right. So that if I
2 approve a project of special merit based on
3 exemplary architecture and then something
4 completely different goes to the -- something
5 substantially different goes to the HPRB that's
6 not -- you can't do that. They can't proceed
7 with the demolition if the basis for the approval
8 is exemplary architecture which has changed.

9 MS. FERSTER: And who makes that
10 judgment given the fact that it's possible that
11 there are changes that you might not consider
12 significant enough to warrant to bring to the
13 Mayor's Agent?

14 MS. BROWN: And I need to ask who
15 you're directing that question to. That's a
16 legal conclusion that you're asking from the
17 applicants.

18 MS. FERSTER: Excuse me?

19 DR. BYRNE: It would be a question for
20 the HPO staff to I think in the first instance.

21 MS. FERSTER: Will the HPO staff be
22 testifying today?

1 DR. BYRNE: I don't know.

2 MS. FERSTER: If they do I will ask
3 that of the HPO staff.

4 So let me continue to work backwards
5 here. Okay, Mr. Thakkar. Before you testified
6 you kind of made a point where you said that
7 Vision McMillan Partners not the District of
8 Columbia is paying for the -- and you
9 specifically said appeal work.

10 Were you referring to the D.C. Court
11 of Appeals work?

12 MR. THAKKAR: I was referring to since
13 the remand was issued for both the Zoning
14 Commission and the Mayor's Agent Vision McMillan
15 Partners has been funding the -- that's what I
16 call the appeal work.

17 MS. FERSTER: The soft costs.

18 MR. THAKKAR: Attorney's fees.

19 MS. FERSTER: Okay. And so that is
20 starting in December 2016 VMP is assuming those
21 costs?

22 MR. THAKKAR: I don't know the exact

1 date but for that body of work.

2 MS. FERSTER: And you -- and I think
3 I've written this down in my notes, Mr. Thakkar,
4 in response to your testimony that a number of
5 people did present arguments about your very
6 firmly held belief that this project should be
7 approved as being consistent with the purposes of
8 the Preservation Act which would be an
9 independent basis for approval other than the
10 special merit. Is that your argument?

11 MR. THAKKAR: That is one of our
12 arguments.

13 MS. FERSTER: Okay, so why didn't you
14 bring this really great argument previously
15 before the Mayor's Agent?

16 MS. EIG: I've done Mayor's Agent
17 hearings since I think it's 1981. The use of the
18 consistent with the purposes of the act and/or
19 special merit was fairly common.

20 However, the Victor Building case, the
21 D.C. Preservation League threatened to sue on the
22 basis that there was no possibility that

1 consistent with the purposes of the act could be
2 real.

3 And that threat was very intense --
4 I'm putting my own words on it. Subsequently
5 there were one or two, I don't know how many
6 cases that were proceeded.

7 But it became very clear that the
8 Preservation League was going to cause problems
9 in cases where they could be special merit. They
10 only needed to be one, they didn't need to be
11 both consistent and special merit.

12 That purpose started to just not be
13 used because it wasn't necessary and it was
14 painful to have to go through the appeal that
15 then would be found to be wrong, but the fact is
16 delay would happen. They would not succeed in
17 court, but the fact is that delay happened. So
18 that it stopped being used.

19 That was the way it was and then this
20 court of appeals decided that we should have been
21 using consistent with the act which does make
22 sense because it was in the act, it's in the law

1 that this is one of the possibilities of what you
2 can do and there's certainly as I said examples
3 that historically we had used to explain what was
4 consistent with the act.

5 So we were actually -- personally I
6 was very grateful that the court had made that
7 decision to clarify that issue that that was a
8 reasonable approach to seeking a Mayor's Agent
9 hearing.

10 MS. FERSTER: So you view the D.C.
11 Court of Appeals as inviting you to go and make
12 this argument.

13 MS. EIG: No, clarifying it,
14 clarifying it. And I think that they did -- I'm
15 not the lawyer here, I think Ms. Brown will have
16 to answer. I think it was clear that they said
17 that they should -- this case should be heard on
18 those grounds. I am a lay person on this.

19 MS. FERSTER: You are. I would
20 suggest that perhaps it was more in response to
21 the Mayor's Agent order that invited you then to
22 --

1 DR. BYRNE: So I've already ruled.
2 I'm clear as day that this issue is appropriate
3 for this hearing.

4 You can argue what you want to the
5 court of appeals about whether they waived it or
6 something, but I'm absolutely clear that --

7 MS. FERSTER: It's not the waiver
8 issue that I'm --

9 DR. BYRNE: Well, waiver, res
10 judicata, whatever.

11 MS. FERSTER: No, this is not a res
12 judicata. This is simply an interpretation that
13 the D.C. Court of Appeals -- with all due respect
14 I think when you presented this issue and invited
15 the applicants to make this new argument you were
16 misinterpreting what is dicta in the court of
17 appeals language as a whole.

18 DR. BYRNE: I don't think it is dicta.
19 You're not going to get anywhere arguing that.

20 MS. FERSTER: Not with you.

21 DR. BYRNE: Not with me.

22 MS. FERSTER: So I guess my question

1 would be did this idea -- one month between when
2 the Mayor's Agent issued his order and when the
3 identifying issue number one, this is to anybody,
4 and when the D.C. Court of Appeals issued this
5 decision was this language over the significance
6 of which or the precedential value of which we --
7 is disputed here.

8 The minute that decision came down did
9 you say yes, let's go and make a consistency with
10 the purposes of the act, or was this new strategy
11 formulated after the Mayor's Agent issued his
12 order?

13 MS. BROWN: I would --

14 DR. BYRNE: Sustained.

15 MS. FERSTER: Okay. Mr. Bogorad,
16 let's see. I have a couple of questions about
17 your testimony.

18 You talk about over a 30-year period
19 the project will generate over \$1 billion in net
20 fiscal benefits. And you're saying that's
21 subtracting \$874 million in expenditures.

22 MR. BOGORAD: No, you misunderstood.

1 The statement is \$1.183 billion in district
2 revenues. So that's gross. That's all the
3 revenues. And then a net fiscal benefit after
4 taking account of expenditures of \$874 million.

5 MS. FERSTER: Right. And my question
6 is what are those \$874 expenditures and whose
7 expenditures are they?

8 MR. BOGORAD: Okay, first of all
9 you're still misunderstanding my sentence. There
10 are three things. I didn't quantify it but I can
11 do it in a second.

12 So there's the gross revenue which is
13 all of the taxes and other things that would come
14 to the district as a result of this project.
15 That's \$1.183 billion.

16 Just doing it off the top of my head
17 it looks like about roughly \$300 million of
18 expenditures which to get a net impact you take
19 that out of the \$1.184 billion, this is what the
20 judge asked about earlier, and then the remainder
21 is the net impact, that's what the district gets
22 after the expenditures which were -- to the

1 project are taken into account. So that's \$874
2 net.

3 To answer the question of what are
4 those expenditures it's what I explained earlier
5 to Professor Byrne which is that these are an
6 allocation of various budget items in the
7 district budget as is done in these kinds of
8 studies when the net impact is calculated that
9 are estimated to be attributable to a particular
10 project, particular housing, some school kids,
11 those costs are allocated, employment types of
12 things.

13 It's assumed that you'd have a certain
14 share of police costs and fire costs and other
15 things of that sort that get allocated. And
16 that's what those \$300 million or so are.

17 MS. FERSTER: Okay. And so do the
18 District of Columbia revenues that are being
19 actually directly spent on the preparation of the
20 site for example, do they factor into that \$874
21 million?

22 MR. BOGORAD: No, this has nothing to

1 do with costs of the development or anything of
2 that sort.

3 MS. FERSTER: Okay. So, you had -- in
4 your testimony you talked about -- and I need to
5 pull that testimony actually out, your written
6 testimony.

7 You talked about a number of projects
8 that you believed offered both fiscal benefits in
9 terms of tax revenue and employment benefits that
10 were you say comparable to the fiscal employment,
11 the other projects.

12 And then you mentioned them and you
13 felt that the benefit that you've identified for
14 the McMillan development were in excess of those
15 projects.

16 And I wrote down the wharf project,
17 the D.C. United project, the Shops at Dakota
18 Crossing, St. Elizabeth's Hill East, and Rhodes
19 Tavern as projects that you felt were -- offered
20 lower fiscal and employment benefits than this
21 project, lower numbers.

22 MR. BOGORAD: Right. Just to clarify

1 the first part of your question though is not
2 correct. I did not say that these have
3 comparable benefits.

4 I specifically said these are some of
5 the many projects that do not have as much
6 benefit as this project. And undoubtedly some
7 others that have a lot of -- in the same range of
8 positive.

9 MS. FERSTER: So you were not offering
10 these as projects that were comparable in either
11 land area or gross square feet of development to
12 the McMillan project?

13 MR. BOGORAD: I wasn't paying any
14 attention to that. There were other projects on
15 the site that you had mentioned in your letter.
16 You had said -- you picked out a few including
17 actually some of the ones which when I looked at
18 the impact that were on that website they were
19 not nearly as positive as McMillan was.

20 MS. FERSTER: Okay. But you didn't
21 look and see whether they were comparable in
22 terms of size or gross square feet.

1 MR. BOGORAD: No, I didn't.

2 MS. FERSTER: Okay. Moving backwards.

3 Let's go to Mr. Weers. There's a particular
4 slide that I was interested in that I'm going to
5 call your attention to in your presentation.

6 And that would be slide number -- I
7 guess it's on page 184, it's called off campus
8 healthcare real estate.

9 MR. WEERS: Yes, ma'am.

10 MS. FERSTER: I'm sorry, that wasn't
11 the slide. Okay, here's the slide I'm looking
12 for. Page 175, healthcare real estate landscape.

13 And I believe you referenced this
14 slide in the context of your discussion about how
15 the District of Columbia has an aging healthcare
16 infrastructure and it hasn't been improved -- no
17 new healthcare facilities have been constructed
18 and that it therefore needs this new healthcare
19 facility that you're building qualifies as
20 special merit.

21 Is that a gross summary of the
22 context?

1 MR. WEERS: No, ma'am, it's not. That
2 claim was made with the prior slide. The point
3 related to this slide was about healthcare real
4 estate in proximity to the hospital. So off
5 campus healthcare real estate likes to be next to
6 hospitals.

7 MS. FERSTER: Oh, gotcha. Okay. So
8 let's go to the prior slide then and that's the
9 slide where you talk about -- let's stay on this
10 slide actually because in the context of your
11 point that in the District of Columbia which you
12 made in the context of the prior slide you know
13 has increased population, no increased or
14 improvements in healthcare facilities, I'm
15 looking at this slide on page 175 and it looks to
16 me like where the greatest -- there are no
17 healthcare facilities east of the river. Is that
18 correct?

19 MR. WEERS: No, that's not correct.
20 There's a lot of red dots east of the river.

21 MS. FERSTER: Okay, yes, I see that.
22 And so in terms of size though I guess -- I don't

1 know why I just blanked out on that -- in terms
2 of size these are little healthcare facilities,
3 right?

4 MR. WEERS: Yes, ma'am.

5 MS. FERSTER: Okay. So the big
6 healthcare facilities are not east of the river.

7 MR. WEERS: There are some. I would
8 point to United Medical Center is pretty big.

9 MS. FERSTER: Okay. So two?

10 MR. WEERS: Yes, ma'am.

11 MS. FERSTER: So compared to the rest
12 of the city where there are much larger
13 healthcare facilities it seems to me that there's
14 more of a need for improved healthcare facilities
15 east of the river, would you agree based on this
16 slide?

17 MR. WEERS: No, ma'am, I would not.
18 I think what you're hearing from me as a point
19 about the overall aging infrastructure of the
20 city it is citywide.

21 The healthcare infrastructure across
22 the city is old and it all needs to be upgraded I

1 think is what you're hearing me saying.

2 MS. FERSTER: Okay. So your point was
3 not that there are not enough healthcare
4 facilities for example anywhere in the District
5 of Columbia, your point was that it's aging.

6 MR. WEERS: It's both. There is not
7 enough and it is all old.

8 MS. FERSTER: Okay. In terms of our
9 project area it is both in our project area? Are
10 there not enough healthcare facilities, or are --

11 MR. WEERS: There is not enough. And
12 I think the point of there is not enough when you
13 talk about McMillan specifically is seen in the
14 day-to-day activities at the Washington Hospital
15 Center and the systems that are there.

16 There are too many people and too much
17 stuff going on inside of the boxes. They need
18 more. Which is why I think net expansion is a
19 good thing at McMillan.

20 But if I could, and I don't want to
21 jump but I think this is where you're going so I
22 might as well talk about it, right.

1 I feel like we have talked about the
2 concept of whether or not we should be
3 concentrating additional healthcare uses or
4 dispersing healthcare uses throughout the city.

5 And there's a suggestion that somehow
6 additional development at McMillan where there's
7 already a concentration of healthcare is an
8 either/or and that that would somehow take away
9 from the idea that it could be dispersed
10 throughout the city and it's simply not true.

11 So if that is your question I
12 appreciate it, and I think we should talk about
13 it because these two things are not mutually
14 exclusive.

15 MS. FERSTER: I actually have a
16 different question but thank you for that
17 thought.

18 My question was what I hear you say in
19 your response is that the Washington Hospital
20 Center as a particular healthcare provider is
21 feeling pressed by the constraints of its
22 infrastructure and its campus.

1 But that doesn't to me say anything
2 about the larger needs in this area where I see a
3 lot of other healthcare facilities in the
4 immediate area.

5 MR. WEERS: I am making statements
6 about both. I am making a statement about the
7 overall system, and then I'm drilling down to a
8 small part of the system and making a consistent
9 statement about the small part.

10 MS. FERSTER: Okay. So that's your
11 testimony in terms of the citywide issue.

12 So perhaps I should ask a different
13 question. I guess I would ask you more
14 specifically aside from the constraints that the
15 Washington Hospital Center is experiencing as a
16 result of the physical limits of its campus what
17 evidence do you have that in the larger area
18 surrounding the site that include a number of
19 other healthcare facilities that the healthcare
20 needs of that population of the city is not being
21 adequately met?

22 MR. WEERS: So, I think one example of

1 that information is on the slide right before the
2 slide you are talking about.

3 So, the level of healthcare facilities
4 per capita in Washington, D.C. is at the bottom
5 of the list.

6 The idea being we do not have enough
7 supply in the city for the population that we
8 have and thus if we are also a growing city and
9 more people are moving in and we are already
10 ranked at the bottom of the list that problem is
11 getting worse.

12 I think what I am also making the
13 point of though is not illuminated on that slide.
14 It is the facilities themselves are very old. So
15 they are old, there's not enough of them, and we
16 don't build them fast enough.

17 While we are in a growing city and we
18 are putting more demands on the facilities that
19 we have.

20 MS. FERSTER: Okay, because this slide
21 doesn't really answer my question because this
22 slide talks about the overall healthcare

1 facilities versus population ratio for the
2 entirety of the District of Columbia.

3 And I'm really particularly looking at
4 the needs of this area surrounding the McMillan
5 site.

6 Do you have evidence or data that
7 deals with the ratio of population to healthcare
8 facilities in the McMillan area?

9 MR. WEERS: No, ma'am.

10 MS. FERSTER: Thank you. Okay, so you
11 very helpfully specified a number of outpatient,
12 clinical exam room, oncology, diagnostic
13 services, MRIs, mammogram, that type of services
14 that would be offered at the healthcare facility.

15 And perhaps it would be appropriate at
16 this point to ask you all of these services, most
17 of these services are services that would require
18 certificates of need from the District of
19 Columbia.

20 Have you contemplated applying for a
21 certificate of need?

22 MR. WEERS: So, yes, some of those

1 services may require a certificate of need. And
2 if our tenants for the project decide to provide
3 services that require a certificate of need they
4 will go through that process.

5 Yes, we have contemplated it. It is
6 a part of our overall project schedule.

7 And when you're talking about parcel
8 1 healthcare facilities you're talking about
9 facilities that would be delivering at the
10 earliest in 2022. So, we see no problem with the
11 schedule.

12 MS. FERSTER: So, it's entirely
13 possible that an application for a certificate of
14 need could be denied by the District of Columbia
15 at that point and then they would not be able to
16 offer those services.

17 MR. WEERS: Yes, ma'am, that is
18 possible. What I would say as a more fulsome
19 answer is a part of the analysis that any
20 healthcare system is doing when they're making a
21 commitment of this magnitude is thinking about
22 those services, thinking about that certificate

1 of need process, and making sure that they feel
2 confident that they will get through that
3 process.

4 When you talk about the large hospital
5 operators they're pretty good at this. And so
6 they're not going to make this decision and make
7 a commitment of this magnitude if they aren't
8 sure that they're going to make it through the
9 process.

10 But in a theoretical context, sure.

11 MS. FERSTER: And so is that -- since
12 you do not have an anchor tenant for this
13 building perhaps that is one of their concerns?

14 MR. WEERS: I don't believe so. I
15 spend a lot of time talking and negotiating.

16 MS. FERSTER: Okay, so would a main
17 tenant be willing to make the commitment to move
18 into a building where they -- which was
19 specifically designed to accommodate these types
20 of services that require licensure by the
21 District of Columbia without any caveat or
22 condition about their ability to get that

1 licensure?

2 MR. WEERS: Yes, ma'am. It happens
3 all the time. It's part of the natural process
4 of how these buildings are developed.

5 MS. FERSTER: Okay. So you secure
6 your tenant and then they would -- would they
7 apply for that certificate of need after they
8 move in or before?

9 MR. WEERS: Before.

10 MS. FERSTER: And what if they're
11 denied? Would that affect your ability to retain
12 that anchor tenant?

13 MR. WEERS: So, in theory yes that
14 would be a problem. In the same way that if the
15 building fell down while we were constructing it
16 it would be a problem.

17 In the same way that if a meteor hit
18 the Earth before we finished constructing it it
19 would be a problem. There are a lot of
20 theoretical I would argue unrealistic things that
21 could happen that would be a big problem for us.

22 MS. FERSTER: And this may or may not

1 be a question for you. It could be a question
2 for Mr. Thakkar or somebody else who has had a
3 longer involvement in this project.

4 Perhaps, Mr. Thakkar, since you are
5 the -- are you the project partner who has been
6 in this project the longest? You said 10 years?

7 MR. THAKKAR: I have been involved
8 since its inception.

9 MS. FERSTER: You were part of the
10 original team.

11 MR. THAKKAR: I was.

12 MS. FERSTER: Okay. And Trammel Crow
13 was not part of the original team.

14 MR. THAKKAR: Not at the original
15 inception, no.

16 MS. FERSTER: Okay. So, originally
17 you did not have a healthcare facility that was a
18 component of this project at that point.
19 Originally.

20 MS. BROWN: Can I ask the relevance,
21 please?

22 MS. FERSTER: Well, the healthcare

1 facility is being presented here as a special
2 merit, a key need for the city and it just occurs
3 to me that the healthcare facility seems to be an
4 afterthought.

5 In that the District of Columbia
6 identified a development team that did not
7 include a healthcare facility. They picked a
8 development team that did not include a
9 healthcare facility so clearly the District of
10 Columbia at that point didn't particularly think
11 that that was a key benefit they wanted to offer.

12 MS. BROWN: And I'd say still it's
13 irrelevant because we've heard testimony from the
14 Deputy Mayor today and this team saying that it
15 is a need for the project and it's what's before
16 the Mayor's Agent.

17 DR. BYRNE: I think I agree with that.
18 I think I'm going to sustain the objection.

19 How long has the healthcare facility
20 been part of the planning process? Mr. Thakkar,
21 either one of you, but just to clarify the
22 healthcare facility has been part of the process

1 for how long?

2 MR. THAKKAR: 2009. Eight years.

3 DR. BYRNE: Okay, thank you. And the
4 first application to the Mayor's Agent was in
5 2013.

6 MS. FERSTER: Mr. Thakkar, who is
7 Terry Eakin? He's the chairman of EYA?

8 MS. BROWN: Relevance?

9 MS. FERSTER: I'm going to hand you an
10 exhibit that was submitted to the Zoning
11 Commission so you are familiar with it --

12 MS. BROWN: Again, relevance. This
13 was not part of direct testimony.

14 DR. BYRNE: Where are we going with
15 this?

16 MS. FERSTER: I believe that Mr. Weers
17 and others have testified that the healthcare
18 facility is the economic driver of this project.

19 I understand that is the position
20 going -- that has been the position since the
21 healthcare facility component was added.

22 But suddenly on remand the healthcare

1 facility becomes a special merit because of all
2 sorts of public needs. And this is a change.

3 And so I think I'm entitled to test at
4 this point was it added because it's the economic
5 driver of the project, or was it added because
6 the District of Columbia felt that there was an
7 important need to improve our aging healthcare
8 infrastructure and this would be an overriding
9 benefit of special merit.

10 MS. BROWN: And I think the premise of
11 the question is wrong in that she stated facts
12 that may not be factual.

13 And that is that it suddenly changed
14 when it came back down from the D.C. Court of
15 Appeals. And I think that the healthcare
16 facility was argued to the previous Mayor's Agent
17 as a component of special merit as well as the
18 medical district. So we have nothing new and
19 nothing to impeach.

20 MS. FERSTER: I think the Mayor's
21 Agent's decision is pretty clear that he didn't
22 see any evidence that it was a special merit

1 benefit on its own, but that it was the synergy,
2 the economic synergy that the healthcare facility
3 offered.

4 So I imagine the Mayor's Agent had in
5 reconciling inconsistent evidence he would have
6 cited it.

7 DR. BYRNE: So my sense is that the
8 court of appeals asked me to get clear and to
9 make a clear ruling on whether the healthcare
10 facility was a project of special merit.

11 And my understanding is that the
12 applicants have then focused the presentation on
13 that question to try to argue that it is.

14 And it either is or it isn't. And I
15 don't think it really matters what happened in
16 2006 in regards to the project. It either is or
17 it isn't a project of special merit, an element
18 of special merit.

19 MS. FERSTER: I mean, I think I will
20 present this email later on then because part of
21 our proof is that special merit for the
22 healthcare center is just another sort of

1 throwing things into -- an effort to retrofit
2 special merit onto a component that was never
3 intended to be special merit.

4 DR. BYRNE: I don't know if it matters
5 whether the parties intend something to be
6 special merit. It either is special merit or it
7 isn't.

8 MR. WEERS: And I'm sorry, but part of
9 the point that is being made as well is that the
10 addition of new healthcare facilities to a city
11 that does not have enough supply is a good thing.

12 Part of my testimony is that we have
13 not built a major healthcare facility in this
14 city since 2002. So the idea that somehow
15 someone is just deciding that healthcare is
16 important is not the point.

17 In 2007 we had the same level of major
18 healthcare facilities in this city as we do 10
19 years later. The existing buildings are just
20 older. So the need is greater.

21 MS. FERSTER: Okay. Well, let me see.

22 DR. BYRNE: So I'm now thinking about

1 how long this is going to go. And I'm sort of
2 torn between two poles.

3 One is I'd like to think that we
4 wouldn't have to have -- obviously we're going to
5 have to have another later hearing and everybody
6 of course is very pleased with that.

7 And it's going to be Monday at 9 a.m.
8 I would like to think that we could conclude the
9 cross examination so that all these witnesses
10 would not have to come back because they're all
11 busy people.

12 But I don't -- so there is the -- Ms.
13 Ferster is not finished. I don't know how long
14 she'll take. Mr. Otten has not had a chance to
15 cross examine the witnesses.

16 So, I'm open to suggestions. I live
17 a relatively boring life. I can stay longer but
18 shall we go on for awhile?

19 MS. BROWN: My preference is that at
20 least we could get through FOMP's cross
21 examination today.

22 DR. BYRNE: Yes, I'm not suggesting we

1 stop right now, but I'm just sort of -- we can
2 think about this a little bit more.

3 But we'll go on. Ms. Ferster, can you
4 estimate how much longer? Just I'm not going to
5 hold you to it.

6 MS. FERSTER: I have a number of
7 questions. I know that. So I mean, given Ms.
8 Brown's example of estimating I think I will try
9 not to do that.

10 DR. BYRNE: All right. Well let's
11 just go on for awhile and see till people start
12 to drop out.

13 MS. FERSTER: So, I did not have your
14 slides in front of me when you were testifying so
15 perhaps they are -- this question will be
16 answered in your slides.

17 But I understood that you said that
18 subsequent to the structural report from Silman
19 that was put in the record that Kirk Mettam
20 testified for the last year which was I guess
21 maybe the 2014 you indicated that you had done I
22 wrote down additional investigations have been

1 performed.

2 And you said your findings have not
3 changed.

4 MR. THAKKAR: That's correct.

5 MS. FERSTER: So have your additional
6 investigations resulted in any kind of written
7 report or anything that you have provided to your
8 client?

9 MR. THAKKAR: We have provided
10 internal documents as part of the design process
11 but we have not issued anything.

12 MS. FERSTER: Okay. So I can rely on
13 the 2014 Silman report then in terms of nothing
14 has changed in that report.

15 MR. THAKKAR: Correct.

16 MS. FERSTER: Okay. A couple of
17 questions about some statements you made, you in
18 particular.

19 You talked about the different
20 techniques for reinforcing the cells in order to
21 allow for either some reuse or even just -- or
22 overbuild.

1 And please correct me if I'm wrong but
2 did you say that in both of those situations that
3 those reinforcement techniques would -- and I
4 wrote down either both eliminate and destroy the
5 historic value of the cells.

6 Are you talking about only the
7 adaptive reuse without overbuild, or are you
8 talking about overbuild, or both?

9 MR. RUIZ: I'm sorry, can you repeat
10 that?

11 MS. FERSTER: Okay, so let's just talk
12 about adaptive reuse then without any overbuild.
13 Let's assume that there's nothing built over more
14 of the cells.

15 And I believe there are some cells
16 that are extant in the southern portion of the
17 site where there is no -- which will not be
18 demolished. Where the park is. Are there some
19 cells that will not be demolished that would
20 remain, or is everything going to be demolished?

21 MR. RUIZ: A portion of filter 28
22 overlay.

1 MS. BROWN: I'm sorry, could I just
2 ask a point of clarification. You use the word
3 adaptive reuse option. And I don't know that he
4 used those terms.

5 MS. FERSTER: Let me just say we do
6 have -- let's just say you talked about in order
7 to preserve those cells without building anything
8 over them was it your testimony that they would
9 require reinforcement techniques that would
10 destroy the historic value of the cells.

11 MR. RUIZ: No, what I said was in
12 order to allow any occupancy on the topside would
13 require structural intervention.

14 MS. FERSTER: And that structural
15 intervention you said would destroy the historic
16 value of the cells.

17 MR. RUIZ: Not for a topside use, no.

18 MS. FERSTER: Okay. So when you said
19 destroy the historic value of the cells you were
20 more talking about the structural interventions
21 that would be required in order to build over the
22 cells.

1 MR. RUIZ: Correct.

2 MS. FERSTER: And again when you say
3 would also destroy the plinth you mentioned that
4 the plinth would be destroyed by some of the
5 reinforcement techniques.

6 Again, were you talking about the
7 reinforcement techniques that would be necessary
8 to build over the cells, or just to render them
9 occupiable.

10 MR. RUIZ: That was in reference to a
11 question from Mr. Byrnes about whether you could
12 just build completely over. If you were to build
13 over a 150 feet stand you would destroy the
14 plinth because we do not have the depth needed.

15 MS. FERSTER: Okay. So, yes. It's
16 related to overbuild again. Okay. That was all
17 for you.

18 MR. RUIZ: Thank you.

19 MS. FERSTER: I have another question
20 for Mr. Weers and his slides.

21 Okay, so you -- this is a question
22 about the slides on page 184 of your booklet.

1 And that talks about the off campus healthcare
2 real estate vacancy rate.

3 MR. WEERS: Yes, ma'am.

4 MS. FERSTER: Perhaps I misheard it,
5 but you were -- your point in providing this
6 slide was to show that there was a need for
7 healthcare real estate since there was a vacancy.

8 MR. WEERS: No, ma'am.

9 MS. FERSTER: Okay, thank you. Help
10 me understand this.

11 MR. WEERS: The point of the slide
12 that shows the off campus healthcare real estate
13 in our region is to highlight that the entire
14 region which is shown on this slide, so from
15 Dulles and Germantown to the west and north to
16 Bowie and Brandywine to the east and south is
17 only about 12.5 million square feet in total
18 region. Big picture, big geographic area.

19 When you zero down into the District
20 of Columbia proper the total off campus
21 healthcare real estate market is only about 1.3
22 million square feet.

1 So my point is simply to highlight the
2 size of the market and to highlight that the off
3 campus healthcare real estate market in the
4 entire city is only 1.3 million square feet.

5 My further point is then to highlight
6 that the largest individual building within that
7 1.3 million square foot market in the District of
8 Columbia is 160,000 square feet.

9 The final point being the market shows
10 us that healthcare real estate when left to its
11 own devices and not being done the way that we're
12 doing it at McMillan, the largest project ever
13 build in the city is 160,000 square feet.

14 MS. FERSTER: Okay. So I was actually
15 interested in the vacancy rate that you also
16 provided, that there's a vacancy rate in this
17 healthcare real estate of 13.8 percent in
18 downtown D.C. and 17.41 percent in northwest D.C.
19 Chevy Chase.

20 I'm just curious because in the very
21 next slide you are talking about how there's
22 vacancy in general office meaning a softness in

1 the market at 12.6 percent. So it seems like
2 there's more vacancies in the healthcare real
3 estate market in the District of Columbia than
4 there are in the office market.

5 Can you explain that discrepancy and
6 why it's a weakness in the market in the general
7 office that level of vacancy, but somehow not a
8 weakness in the market in the healthcare real
9 estate?

10 MR. WEERS: It's actually a very good
11 point. I'm glad you asked it.

12 I would not suggest nor did I say that
13 the vacancy rates in the off campus healthcare
14 real estate slide that are highlighted at 13.8
15 percent and 17.4 percent are not weakness. They
16 are in fact weakness.

17 I think that this actually highlights
18 the point that if you're not doing the
19 development program that we are doing at McMillan
20 which is large scale, which is a mix of big
21 anchor tenants, small to mid-size organizations,
22 and then smaller tenants all combined together in

1 a campus that this is not a feasible idea.

2 So part of the point though it is a
3 tertiary part of the point, but part of the point
4 is if you don't do the big idea that we are doing
5 and you try to do some small building which is
6 what the population of off campus healthcare real
7 estate in the District of Columbia is it's not a
8 good time in the market.

9 The very nature of these projects are
10 very different. When you're talking about the
11 buildings that make up this population that is
12 highlighted on this slide you're talking about
13 small-scale medical office buildings.

14 What we are talking about is a big
15 campus, a mix of large anchor tenants that have a
16 whole range of services from outpatient
17 facilities to research labs to admin space mixed
18 in with mid-sized organizations, mixed in with
19 small doctor's offices. And these campuses have
20 a vibrancy all their own.

21 It's actually a general development
22 principle you can see in non-healthcare real

1 estate. You see it right now at the Shops at
2 Dakota Crossing. It happens in retail all the
3 time.

4 When you do a big large-scale project
5 and you get big anchor tenants like a Costco or a
6 grocery store or someone else they have gravity
7 all their own which is a completely different
8 thing than developing a small individual building
9 which is what is made up of the population that
10 we're talking about in this slide here.

11 MS. FERSTER: Okay. Well, it seems to
12 me that you have very eloquently explained why
13 because of the creativity of this particular mix
14 of use you are able to make a healthcare facility
15 work in this otherwise soft real estate
16 environment.

17 But what does that say about the need
18 overall in the District of Columbia for
19 healthcare real estate?

20 I mean, the fact that you've managed
21 to come up with a combination of factors that
22 makes it a profitable for this project.

1 MR. WEERS: So I think you're mixing
2 apples and oranges though there's nothing wrong
3 with mixing fruit.

4 I think that what you're looking at is
5 one tiny slice of the overall healthcare real
6 estate. This is a specific slice. It is the off
7 campus healthcare real estate which again is only
8 1.3 million square feet and it's really just a
9 collection of off campus medical office
10 buildings.

11 When we're talking about the overall
12 healthcare infrastructure of the city we're
13 talking about hospitals, we're talking about on
14 campus facilities, we're talking about a
15 significant amount of more real estate.

16 And the point of the need is that
17 these things that are doing a lot and are working
18 every day to treat people are really old and they
19 need to be upgraded and we need more of them.

20 And that is not at all refuted by a
21 13.8 percent vacancy rate in the six buildings
22 that make up this inventory in downtown D.C.

1 MS. FERSTER: Thank you.

2 MR. WEERS: You're welcome.

3 MS. FERSTER: Okay. Ms. Eig. I'm
4 going to start out by asking you a -- actually,
5 before I do that I do have other questions. I'm
6 saving the best for last.

7 So the slides actually, the slides
8 that are part of -- and this could be for Ms.
9 Eig, it could be for anybody else really, but
10 there are a number of slides that were presented
11 of alternative development plans that dated from
12 2006 to 2012.

13 And I guess I would ask Ms. Eig were
14 you involved in the development of any of those
15 plans, those alternative plans that were
16 developed between 2006 and 2012?

17 MS. BROWN: I'm sorry. Did you
18 testify to the alternatives? Because I don't
19 think she is the appropriate person to answer
20 that.

21 MS. FERSTER: No. I actually think
22 it's irrelevant and I believe she did talk about

1 alternatives so.

2 MS. BROWN:: But I think it's best to
3 direct those questions to the person who
4 presented the slides.

5 MS. FERSTER: Okay. Sure. That's
6 fine. Okay, who presented the slides?

7 DR. BYRNE: It was Mr. Bell.

8 CROSS-EXAMINATION

9 BY MS. FERSTER:

10 Q Okay, so Mr. Bell, was Ms. Eig
11 involved in the development of those plans?

12 A Which ones in particular?

13 Q 2000, the ones that were dated 2006 to
14 2012, I think it was.

15 A I entered the project in 2010.

16 Q Yes.

17 A And collaborated with her starting
18 that.

19 Q Okay, so was she involved in the,
20 let's see, how many slides are there from 2010 to
21 2011 and 2012. Did she collaborate in the review
22 of the slides that were, I guess, the 2012

1 slides?

2 A Yes.

3 Q And how about the 2012 slide, the 2012
4 plan?

5 Q I just said yes.

6 A Oh, I thought you said 2010. So then
7 all the plinths post 2010, 2010, 2011 and 2012?

8 A Yes.

9 Q And so she reviewed them and did she
10 have an opinion about that?

11 A She did.

12 Q And what was that opinion?

13 A I don't think I can testify to her
14 opinion of those plans.

15 (Off microphone discussion)

16 Q Okay, while we're talking to Mr. Bell,
17 let's just continue with him. You talked about
18 your view that the plan is consistent with the
19 character of the defining features of the
20 landmark.

21 I wrote that down as part of your
22 testimony. And what of the defining features

1 were you specifically referring to?

2 A The tripartite organization, the
3 plinth, the north and south service courts, the
4 silos, the regulator houses, the berm, the
5 Olmsted Walk. Q

6 Okay. And maybe this question is for Ms.
7 Eig, but whenever it refers to the plinth as
8 being one of the defining features in your 2014
9 report, where you identified the features of the
10 site and ranked them in terms of key or
11 significant key or supporting in terms of
12 significance. Does a plinth come in as
13 topography?

14 MS. EIG: I'm very glad you asked me
15 that question because I think you misunderstood
16 what I said earlier about the fact that I used as
17 the evaluation of significance the landmark
18 application that was written by others.

19 We went to their specific criteria, A,
20 B, and C, and that is what we used to rank the
21 relative level of significance. There are
22 questions in that report that we addressed. It

1 did not necessarily represent what I as a
2 professional would have done or evaluated as
3 significant.

4 And in fact, I thought that the plinth
5 and the Olmsted Walk were critical defining
6 features and tried to convince others of that for
7 many years.

8 MS. FERSTER: Okay. Thank you. So
9 just refresh my recollection. I don't have that
10 2014 report in front of me. Was the plinth, is
11 that the same thing as what's called topography
12 in that report or is the plinth a separately
13 defined structure in that report?

14 MS. EIG: The plinth is the structure
15 that was built by the core of engineers.

16 MS. FERSTER: That's not my question.
17 I understand what you're referring to.

18 MS. EIG: And it creates a flat level
19 topography. Okay. That has a berm on the side
20 which is why that the topography of the two
21 streets changes but the berm remains level.

22 MS. FERSTER: Yes. My questions are

1 so much more simple than that and it's probably
2 because I don't have the 2014 report in front of
3 me, but my recollection of the report, that
4 report, and I understand that you might use
5 different terms and you might not necessarily,
6 you know, use the same terms, but I'm wondering
7 where that report, the plinth is in Appendix I,
8 is identified in terms of, what it's called. Is
9 it called the plinth or is it called the
10 topography?

11 MS. EIG: The site resources includes
12 topography. The plane itself is considered a
13 landscape resource. So it's much more
14 complicated than you want it to be, I'm afraid.

15 MS. FERSTER: In Appendix I, it would
16 be identified under landscape resource?

17 MS. EIG: I believe that's correct.
18 I don't have a copy of that report. I'm sorry,
19 at this moment, I cannot remember everything that
20 we did.

21 MS. FERSTER: The --

22 MS. EIG: It was under a site. It was

1 a site resource.

2 MS. FERSTER: A site resource. Oh,
3 that sheet. Okay. So does that report rank it,
4 the plinth, as a key or a supporting, this type
5 resource, that the plinth is identified in. Is
6 it considered a key or a supporting significance
7 to the site?

8 MS. EIG: It was ranked, the
9 topography was key.

10 MS. FERSTER: Okay, but the plinth,
11 you said, is a part of the landscape element not
12 --

13 MS. EIG: It's part of the topography.

14 MS. FERSTER: Okay.

15 MS. EIG: No, no, site resource. I
16 did not mean landscape. It's the grassy plain
17 but the plinth itself is part of the topography.

18 MS. FERSTER: Okay. So, perhaps it
19 would be useful if you could, from your
20 colleague, you could get that.

21 MS. EIG: I have it right here.

22 MS. FERSTER: Oh, Appendix I in front

1 of you?

2 MS. EIG: Oh, Appendix I?

3 MS. FERSTER: Yes, because that's the
4 chart of that I'm now specifically referring to,
5 is the Appendix I, the 2014 report where ---

6 MS. EIG: Should I have the right
7 Appendix, Appendix I.

8 MS. FERSTER: That's the 2014 report.

9 MS. EIG: Yes. There are many charts
10 in this book here.

11 MS. FERSTER: This one is definitely
12 Appendix I.

13 DR. BYRNE: Ms. Ferster, while she's
14 looking, can you look let us know where this is
15 going?

16 MS. EIG: Yes, I have it.

17 MS. FERSTER: Thank you very much.

18 So, you know, I mean Ms. Eig testified
19 about the fact that the project is consistent
20 with the purposes of the Act and noted
21 particularly the plinth as being, you know, a
22 really important element of preservation and I'm

1 just trying to reconcile --

2 MS. EIG: It's not identified as the
3 plinth. It's topography.

4 MS. FERSTER: Okay.

5 MS. EIG: No identification of a plinth
6 in Appendix I.

7 MS. FERSTER: Okay. The plinth is
8 nowhere but topography?

9 MS. EIG: Correct.

10 MS. FERSTER: Okay. So, because you
11 said you disagreed with that report somehow, that
12 you argued very strongly that the plinth should
13 be, you know, given more significance and that
14 the report somehow didn't.

15 MS. EIG: The report reflected the
16 landmark designation. Not my personal opinion.
17 It was as approved by the Historic Preservation
18 Review Board. I cannot always agree with the
19 Historic Preservation Review Board.

20 MS. FERSTER: But in this case you do,
21 right? Because a topography is identified in the
22 key resource, right? So in the case of the

1 topography you would agree with that, to the
2 extent that the plinth is a significance, it's
3 topographical, that ---

4 MS. EIG: With topography, yes. I'm
5 sorry, I'm not understanding your questions.

6 MS. FERSTER: Yes. I mean you agree
7 with that, that the topography is a key resource.
8 Okay.

9 MS. EIG: I think that's what it says
10 here. Let's double check because you're asking
11 questions that, but I believe it says topography
12 is a, discusses the fact McMillan site retains
13 its artificial topography. Yes.

14 MS. FERSTER: Okay, good. And so the
15 plinth, when you refer to the plinth, you know --

16 MS. EIG: Which is actually as a result
17 of the research we did on the Olmsted, with the
18 Olmsted drawings of the Olmsted report, which was
19 not included in the landmark application.

20 MS. FERSTER: Okay. Great. And that
21 report was approved by the HPRB, you said?

22 MS. EIG: No ---

1 MS. FERSTER: The 2014 report?

2 MS. EIG: -- the historic preservation
3 plan was approved by the HPRB.

4 MS. FERSTER: Oh, okay. But you said
5 the historic preservation report somehow doesn't
6 ---

7 MS. EIG: The historic preservation
8 report uses the criteria of significance that was
9 from the landmark ---

10 MS. FERSTER: Okay.

11 MS. EIG: -- designation that was
12 approved by the HPRB.

13 MS. FERSTER: Okay.

14 MS. EIG: They identified what was
15 significant and that was my interpretation of
16 what they said and you will see, if you read the
17 report, that we asked, looked at specific
18 questions that we thought would elucidate what
19 that significance was, and that is what we used
20 to identify these resources.

21 MS. FERSTER: Okay. So in terms of the
22 Olmsted Walk though, you stated your personal

1 view that it's really a greater significance,
2 that it could be that hierarchy that identifies
3 the significance of merely being supporting
4 rather than key.

5 And so I take it you disagree with
6 that characterization but ---

7 MS. EIG: Because as I said, we learned
8 a great deal more about Olmsted than was in the
9 landmark application and that raised the
10 significance, in my mind, it raised significance
11 of the walk because you get character defining
12 feature.

13 MS. FERSTER: Okay. So are you willing
14 to go to the HPRB and ask them if they agree with
15 that characterization or how are --

16 MS. EIG: This sort of happened by
17 virtue of the process that we're in. Where we
18 have brought that to their attention, and that is
19 that they found this to be an important character
20 defining feature.

21 I don't think you're happy to have the
22 people who wrote that to revise that or I don't

1 think I would decide to rewrite their landmark
2 application which is what I used that instead of
3 deciding to reevaluate it on my own.

4 MS. FERSTER: Okay. For purposes of
5 consistency with the purpose of the Act and
6 evaluating it, should we treat the Olmsted Walk
7 as supporting per the landmark application or
8 should we ---

9 MS. EIG: You have confused
10 contributing with non-contributing, supporting is
11 contributing.

12 MS. FERSTER: I understand.

13 MS. EIG: And the Historic Preservation
14 office brought it to the attention of this team,
15 which supported a position that I had held, of
16 how important the retention of the plinth and the
17 Olmsted Walk was and HPRB concurred with that.

18 MS. FERSTER: Okay. I'm sorry to be so
19 struggling with it and it's because I really am
20 just trying to find out what is the standard that
21 we're measuring, the level of significance.
22 Don't interrupt me, please. Because I really

1 want to try and explain it, my question, so that,
2 because it's really not that complicated.

3 The report which you say is based on
4 the application, the designated landmark
5 application, ranks in terms of significance
6 various supporting features in the site in terms
7 of key and supporting, and some of them, I think,
8 there's another ranking, but I don't remember
9 what that last one is.

10 But I'm really just mostly interested
11 in the key or supporting. And you have said that
12 you disagreed personally with one of the rankings
13 in that report. So the question of what does a
14 mayor's agent do, because that report is, as you
15 say, the designated landmark, right, so who does,
16 when the mayor's agent decides what he waives,
17 the value of what is preserved against what is
18 being lost.

19 Does he go by your opinion or does he
20 go by the report? I mean, in terms of what the
21 landmark needs.

22 DR. BYRNE: Well, they're both

1 evidence. Ms. Eig's professional opinion is
2 obviously evidence. The report is evidence.
3 That has to be understood correctly as to what it
4 was in my function in this area.

5 MS. FIG: And understanding also that
6 we are talking about very small degrees of
7 difference. All of the components resources of
8 the landmark, there's nothing that was identified
9 that didn't contribute to that. A manhole cover
10 contributes to it.

11 And one must make an assessment of how
12 to balance. As I said, the original report was
13 suggesting approaches that we thought. This was
14 not used as the Bible that had to then be
15 followed to create the development. It was a
16 reference for the development.

17 And the development, as you know,
18 changed in terms of its design many times as
19 things were weighed as to what was important or
20 not. In the end, the design as it's presented
21 now, was the maximum preservation that could work
22 with --

1 MS. FERSTER: I understand.

2 MS. EIG: -- what is being proposed.

3 MS. FERSTER: Right and that's a
4 different point, but I'm just trying to
5 understand how we weigh the report when you have
6 a difference of opinion.

7 (Simultaneous speaking.)

8 MS. EIG: But the HPRB overrode these
9 recommendations to call for the plinth in the
10 Olmsted Walk to be preserved as a critical
11 defining feature, more important than others.

12 MS. FERSTER: Okay. So, I guess, can
13 you point me to where the HPRB identified the
14 plinth in the Olmsted, not the plinth, sorry,
15 because we agreed that that's consistent with the
16 report, but the Olmsted Walk --

17 MS. EIG: You're being silly, you know.
18 You're being a little silly, but okay.

19 MS. FERSTER: Okay, let me talk. I
20 want to finish my sentence. It's a good thing
21 we're friends. Where in the HPRB's specific
22 findings, I guess, in their record, where they

1 said we view, because of this, you know,
2 information that's come to light, we view the
3 Olmsted Walk as a key significance to the
4 historic landmark?

5 MS. FIG: Between the 2012 plan and the
6 2014 plan, the review board made its position
7 known in its discussions and its adoption of the
8 final plan.

9 MS. FERSTER: Right. And that was an
10 element that, you know, there are other elements
11 that you would clearly, like the cells, for
12 example, and I think there are some other
13 features that you believe are of supporting
14 significance that the HPRB has also approved of
15 its preservation.

16 So at what point does the HPRB decide
17 that an element is more important than other
18 elements?

19 MS. FIG: You would have to ask the
20 HPRB that question.

21 MS. FERSTER: Okay. That's not clear
22 from their ---

1 MS. EIG: No, I think it's clear by
2 what they approved.

3 MS. FERSTER: You mean ---

4 MS. EIG: Their reasoning behind that,
5 you would have to talk to them.

6 MS. FERSTER: So everything that they
7 approve, you would say is a key resource to the
8 site?

9 MS. EIG: No. I'm making no assumption
10 of that. I'm saying that what they approved
11 represents what they think is a positive
12 preservation solution.

13 MS. FERSTER: Okay. That's helpful.
14 Thank you.

15 Okay. So, let me turn to Mr. Bell
16 briefly because you were the presenter of these
17 alternative plans. And you went up to, there's
18 a, you know, a handful of these plans, they go up
19 to 2012.

20 And so the question is, did you
21 develop any alternative plans for the project
22 after 2012?

1 MR. BELL: We approved the plan in
2 2014.

3 MS. FERSTER: Okay. So between the
4 2012 plan and the approved plans, there were no
5 other alternative designs that you considered?

6 MR. BELL: To be honest, there would
7 probably be sketches in the office, but the ones
8 that are here are the ones that had consensus on
9 our team to go forward with for presentation and,
10 you know, have the right, have the program mix we
11 were looking for.

12 MS. FERSTER: None of these sketches
13 would rise to the level of alternative designs
14 that are depicted ---

15 MR. BELL: No, ma'am.

16 MS. FERSTER: Okay. All right. So
17 let's talk about exemplary design issues,
18 exemplary architecture. Ms. Eig, I know you
19 addressed that issue. I mean, there were a
20 number of people, Mr. Bell.

21 Okay, so exemplary design, exemplary
22 architecture. And again, Mr. Bell, let's start

1 with you because I think you were the primary
2 person testifying about the degree to which this
3 project should be considered exemplary
4 architecture.

5 Let me ask you, when you use the term
6 exemplary architecture, are you using it in the
7 context of your expertise with the Historic
8 Preservation Act? Because I assume most
9 architects, such as yourself, believe that all
10 their designs are exemplary. Do you have any of
11 your designs that are not exemplary? If that
12 word is used ---

13 MR. BELL: I'm not going to answer that
14 question.

15 MS. FERSTER: I want to make sure that
16 when you say the architecture is exemplary
17 architecture, that you're really not referring
18 to, you know, you're referring to a statutory
19 term as it's defined in the preservation field.

20 MR. BELL: I didn't testify to that.

21 MS. FERSTER: Okay.

22 MR. BELL: I think what I said was

1 exemplary architecture had to do with a couple of
2 things. When the buildings are taken
3 individually, are well designed, and are unique
4 and appropriate for McMillan and had some design
5 guidelines, and that they have a family
6 relationships in a way that makes them unique to
7 McMillan which is unusual and exemplary.

8 So taking, you know, for example, I
9 mentioned the townhouses. The townhouses
10 typically, every one or two, three townhouses
11 changes its facade. We worked hard to come up
12 with a language for the townhouses that met the
13 design color palette which were supported by the
14 HPRB, but also did them in blocks that were
15 unified so that you would see a unified
16 coordination of rhythm of the facades which is
17 quite unique and in my view, quite exemplary.

18 MS. FERSTER: Okay. That's very
19 helpful. Thank you. So when you talk about this
20 is being exemplary, it's exemplary in terms of
21 its, the totality of the design, and the creation
22 of this sort of unified and cohesive coordinated

1 design that takes into account, you know, the
2 characteristics of the landmark.

3 MR. BELL: That is one aspect and I
4 think the design of the individual buildings
5 themselves are exemplary.

6 MS. FERSTER: Okay. Well, let's follow
7 up on that a little bit. So you believe that if
8 you took each of these individual buildings,
9 looked at it alone, you know, individually, the
10 at EYA townhouses, for example, that the EYA
11 townhouses would constitute exemplary
12 architecture?

13 MR. BELL: I do.

14 MS. FERSTER: Okay. How about --

15 MR. BELL: But let's remember that in
16 and of themselves also and the benefit is in
17 their aggregation with other things --

18 MS. FERSTER: Understood.

19 MR. BELL: -- in the family as well.

20 MS. FERSTER: Understood. But let's
21 just talk about the individual buildings and
22 their architecture. What particular about the

1 individual buildings, wholly apart from, you
2 know, the use of, you know, a unified palette and
3 coordinated cohesive design, et cetera.

4 What about the individual buildings in
5 the, let's say, the EYA townhouses, makes them,
6 in your opinion, exemplary architecture?

7 MR. BELL: So I would answer that in
8 the context of my buildings, not the EYA
9 townhomes, but I think the heart of what Matt
10 talked about in exemplary architecture was also
11 the integration of public spaces, historic assets
12 in the buildings themselves.

13 And so part of what we talked about
14 earlier today that I think answered your question
15 that you just asked, you can see in my building
16 on parcel one, it is a healthcare facility
17 integrated with a park, integrated with a
18 historic asset, and if you talk to the people who
19 are going to occupy that building, they find that
20 a tremendous benefit.

21 And they would compare it to the
22 building that they're in now which is surrounded

1 by a sea of parking where they don't have any
2 parks. And, in fact, they just did this big
3 celebration on top of Children's Hospital because
4 they built a park on the roof.

5 Because there's nowhere else for
6 people to go. So the design components of my
7 individual building are actually quite exemplary.

8 MS. FERSTER: Right. And I understand
9 the argument that the design components that you
10 all believe are exemplary because of the park --
11 the situation with the park and the other things
12 that you said about the building, but my question
13 is, just look at the building itself.

14 Not the fact that you have designed it
15 because of its unique location in a way, look at
16 the building itself.

17 MS. BROWN: I'm going to object to
18 this question because the exemplary architecture
19 does not need to be broken down to each
20 individual component where you get down to the
21 window.

22 MS. FERSTER: Okay. And then I would

1 move to strike Mr. Bell's testimony that he
2 believes that the individual buildings qualify as
3 exemplary.

4 MS. BROWN: It's completely separate.
5 So you could look at the building in totality,
6 but I don't want us to see, it doesn't make sense
7 to keep going down, you have to separate it from
8 its site, you have to separate it from its park,
9 you have to separate it from all the other things
10 that make up architecture.

11 MS. FERSTER: Well, I mean, Mr. Bell
12 testified looking just at the building itself, he
13 believes ---

14 MR. BELL: Ms. Ferster, you cannot
15 separate those things in a way like they're
16 totally tossed to the bottom of the pool that you
17 retrieve and examine individually. The building
18 has to have good proportions, good scale
19 elements, good relationship to the street.

20 It has to have a good relationship to
21 the facade and space that it defines. It has to
22 be of well made materials, materials that go

1 together well, and are in proportional harmony.
2 That would be true of buildings in general that
3 would be thought to be good buildings.

4 These buildings are exemplary because
5 they have that plus they are related to each
6 other in McMillan in a unique way. So separating
7 those two things, I think, is really not the
8 right way to go.

9 I think you really have to look at
10 them and say, yes. When you look at the facades
11 of the townhouses, I think they are very
12 elegantly crafted. The added benefit is that
13 they are elegantly crafted in the way that makes
14 sense for McMillan.

15 It makes sense because the way in
16 which the rhythms of the facade are unique in the
17 genre of that topology.

18 MS. FERSTER: Okay. So just to
19 clarify. I obviously misunderstood your
20 testimony because I did hear you say that you
21 felt the individual buildings were, I'm not
22 talking to you, Ms. Eig, I'm talking to Mr. Bell,

1 that the individual buildings were exemplary
2 architecture.

3 Now I understand that the exemplary
4 architecture you're ---

5 MR. BELL: It's a sophisticated
6 architecture.

7 MS. FERSTER: It's more a sophisticated
8 approach. So, you know, but I'm not an expert,
9 so I would appreciate some patience. But it
10 seems to me as a non-expert that the attributes
11 that you describe about the way these individual
12 buildings are designed in relationship to the
13 surroundings of McMillan, more go to its
14 capability with McMillan rather than it's
15 exemplary nature.

16 Can you help me distinguish between
17 what would be a compatible building, you know, as
18 in any kind of, let's say you build a building
19 in, you know, in a historic district. It has to
20 be found compatible with the character of the
21 historic district, right, Capitol Hill whatever.

22 So what would be the difference

1 between, you know, finding that a building is
2 compatible within a historic district and finding
3 that it is exemplary architecture?

4 MR. BELL: It is my contention that
5 exemplary architecture is frequently compatible
6 and the compatible architecture can frequently be
7 exemplary. So one of the things we looked at
8 very carefully with the architecture here, was to
9 make an architecture that was both really good
10 but also respectful of the landmark.

11 That is a balancing act. So the
12 architecture that you see here is both very good
13 in a sense, you know, contextual architecture,
14 but very much of the high end of that, very
15 exemplary in that regard, but also very
16 respectful of the landmark.

17 And this is how we presented it to
18 HPRB. This was part and parcel of the design
19 guidelines where what we wanted to do was to
20 bring them in coherence so that the landmark
21 would be set off, but also the buildings
22 themselves need to enjoy a high level of design

1 and craft as buildings that define public spaces,
2 make streets, and make public places.

3 So let me just do a little bit of an
4 editorial. What we weren't looking for is star
5 buildings on every block done by an architecture
6 who tried to make everything look unique. That
7 was really not the way we were going.

8 And a lot of people, those buildings
9 get a lot of attention in our society. What to
10 me is exemplary architecture can very much be a
11 row of townhouses, as much as it they could be a
12 different level.

13 So I think I have a different
14 definition and our team arrived at a different
15 definition and I hope this clarifies your
16 understanding of it because really in a way, the
17 challenge here is to make the proportions,
18 material to go together, make the elements work
19 like bay windows and the way in which the facades
20 are articulated, but also make it work with the
21 urban plan which is part and parcel of being
22 respectful of the landmark.

1 MS. FERSTER: That is very helpful. I
2 really appreciate it and I think that completes
3 my questions on that issue.

4 Okay. So, somebody should help me out
5 because I didn't, I noted that somebody noted,
6 and I'm not sure who it was, talked about what's
7 called the extreme regulatory, the words were
8 used, extreme regulatory compliance in terms of
9 the code and the zoning, et cetera, as part of
10 the special merit of the project.

11 Was it somebody, that was you, okay.
12 So, okay.

13 MS. EIG: I presented that as one of
14 the challenges that had to be met in this
15 project.

16 MS. FERSTER: Okay.

17 MS. EIG: I don't know if I used the
18 word extreme that you wrote down, but the fact
19 that there were many regulatory challenges.

20 MS. FERSTER: Challenges, okay. But
21 you're not arguing that just compliance with all
22 these potentially completing the regulation, make

1 --

2 MS. EIG: My point was that you had to
3 make all of them happy.

4 MS. FERSTER: Right. Sure. And that
5 makes a very complicated project, understood.

6 MS. EIG: Correct.

7 MR. BELL: Just to add, that also
8 makes it a project of special merit because that
9 was one of the processes we had to go through. I
10 think Emily's point was that we had to go through
11 several processes in order to move the project
12 forward, we did do all of those successfully I
13 think was her key point.

14 The Court asked us to look at some
15 particular issues and now we're back doing that.
16 So the challenge and success was going through
17 each of those successfully.

18 MS. FERSTER: Okay. So regulatory
19 compliance in your view, not in his eyes, but in
20 your view, the regulatory compliance makes this a
21 project of special merit?

22 MR. BELL: No, the mayor's agent is

1 saying it's a project of special merit, makes it
2 a project of special merit.

3 MS. FERSTER: The mayor's agent's
4 decision was vacated. So we haven't said that.

5 MR. BELL: It was remanded. But it was
6 ---

7 MS. FERSTER: It was vacated. So it's
8 not by virtue of that decision if I look at
9 special merit because it has not, and it has not
10 yet achieved regularity compliance. So, okay.
11 There's a lot of discussion about activation as,
12 and I think Ms. Eig, that was part in your
13 testimony, activation, the activation of the
14 site, Mr. Bell, you discussed activation ---

15 MS. EIG: Mr. Bell introduced it.

16 MS. FERSTER: And then you ran with it
17 a little bit. So I have a couple of questions
18 that, you know. Activation. You're basically,
19 your argument as I understood it, the activation
20 is the fact that this is a site that has
21 previously been inaccessible because of the fence
22 around it and that by developing it, you're

1 activating it. Is that it?

2 MS. EIG: No, that was not my
3 intention. My intention was taking it from a
4 situation where there are, as Mr. Bell said, you
5 could build buildings, but it doesn't mean that
6 people are going to go into them, that they're
7 going to have a daytime population.

8 These buildings are designed so that
9 there are activities that will draw people to
10 them. I could compare this not with what is at
11 McMillan, but rather the downtown Washington, DC.
12 Downtown Washington, DC, had very few people
13 whoever walked down the street in the daytime or
14 in the nighttime.

15 And that is not the case anymore. It
16 has been activated by retail, by, and now because
17 of the Verizon Center, by parks being improved.
18 By all kinds of things that made people feel more
19 comfortable being there. The museums, the Spy
20 Museum was critical to activating downtown.

21 There was a reason to be there and
22 this entire plan has been, in my estimation, is

1 designed to not just make sure there are things
2 that people want to do, but place them in a way
3 that will in fact keep them moving through the
4 site.

5 MS. FERSTER: Sure and I understand
6 that that's a goal of the project, is to make it
7 a space that people like to go to and appreciate
8 and learn from it.

9 But from a historic preservation
10 standpoint, using your example of downtown, for
11 example, the downtown before, you know, a number
12 of years ago, it was not a very active downtown.
13 But it was still historic, wasn't it.

14 MS. EIG: That would be preservation
15 consistency.

16 MS. FERSTER: Yes.

17 MS. EIG: Making it activated moves it
18 to a special merit in my mind, makes it special.

19 MS. FERSTER: Okay. So in terms of the
20 activation then is irrelevant in terms of the
21 preservation issue. It's more a benefit of a
22 project that is --

1 MS. EIG: Yes. Right now the site is
2 a historic landmark. It is not activated.

3 MS. FERSTER: Right. And many historic
4 sites are inaccessible and they continue to be
5 historically important by being inaccessible.
6 Accessibility doesn't affect its historic
7 significance. Okay. There's something that you
8 said in your testimony about the sand washer.

9 You said that they would be
10 deconstructed?

11 MS. EIG: I knew you were going to
12 catch me on that. It was just, they're 12 sand
13 washers, they're all being preserved, some of
14 them are being restored, and some of them are
15 being used, as I said for planters. They might
16 be somehow, let's remove that from my testimony.

17 It was just, there's possibilities
18 because of the interest in having components of
19 the site that are not going to be, like the
20 manhole covers making it into a piece of art.

21 I think there is an opportunity for
22 something for instance we replaced one of the

1 sand washers. It is right at Capitol Street as
2 an entrance, and it becomes a visual component,
3 not just a historic component. That was my
4 point.

5 MS. FERSTER: Okay. So you're moving
6 some of the sand washers?

7 MS. EIG: Yes. That has always been
8 the case. Some sand washers are being retained
9 in places, some are being moved. Some are in
10 place where the streets were to go. So we've
11 tried to move them as close as possible to where
12 they would be.

13 MS. FERSTER: Okay. So, refresh my
14 recollection about move the buildings. You know,
15 do they, it's the locations?

16 MS. EIG: No, sand washer is different,
17 it's moveable. It can be moved. It's not a
18 building.

19 MS. FERSTER: Okay, like the fountain?

20 MS. EIG: Well, it's much simpler than
21 the fountain, so.

22 MS. FERSTER: It seems to me that part

1 of the historic significance in terms of the
2 interpretation of the sand filtration site is
3 that they're located on the service court so and
4 you moved them off it?

5 MS. FIG: Most of them, well, the one
6 that would be placed at the, where Capitol
7 Street, will still be on the service court.
8 They're not going to moved off the service
9 courts. They're just being shifted or you know.
10 And that has always been a component of this. It
11 is part of it, because we are preserving all 12
12 of them.

13 MS. FERSTER: Okay. So one of the
14 visuals that was shown is a visual of the portal
15 and, you know, I think you explained that the
16 portals, substantial part of the portals, because
17 of their relationship with the cells would have
18 to be demolished, and because they are a
19 retaining wall.

20 So if we could turn to that visual.
21 I guess, there was a visual of one of the portals
22 that remains at, you know, after the alterations

1 have been done. And I'm wondering ---

2 MS. EIG: Can you tell me what page
3 that's on?

4 MS. FERSTER: Let me find that. It was
5 shown in somebody's testimony. I made a copy of
6 it, but we have a copy of it here but I don't
7 know what page it is. I mean, there are a lot of
8 slides here. But if I show you this picture,
9 maybe you can locate it.

10 (Off microphone discussion.)

11 MS. EIG: The one that is on this
12 screen is what you're referring to?

13 MS. FERSTER: Yes, 105. Yes, here we
14 go. That's definitely one of them. Okay. So,
15 is this is a good example of what's going to be
16 done with the portals in terms of their reuse
17 within the developments?

18 MS. EIG: In this particular location.

19 MS. FERSTER: Okay. And how about
20 other portals?

21 MS. EIG: I see them in different parts
22 of the design. They're, some of them, for

1 instance at the community center, portals and
2 entry to the community center, some other side of
3 the --

4 MS. FERSTER: Let's just stick to the
5 north service court.

6 MS. EIG: The portals in the south
7 service court.

8 MS. FERSTER: Okay. So in the north
9 service --

10 MS. EIG: Where cell 14 is?

11 MS. FERSTER: Yes. Is there no visual
12 of the other portals? I mean, maybe you can just
13 look and tell me in terms of the visuals. Is
14 this what, you know --

15 MS. EIG: On 100, that is --

16 MS. FERSTER: 105.

17 MS. EIG: It is restored in place.
18 That's on cell 14.

19 MS. FERSTER: This is cell 14, okay.
20 So that's on cell 14. And I'm trying to see in
21 this picture, because I don't see any other
22 portals on this service court. Are there other

1 portals that are being retained other than that
2 one?

3 MR. BELL: On the north service court,
4 that is the one that is being retained.

5 MS. FERSTER: Okay. And the rest of
6 them are being completely demolished. That's on
7 the south service court. Is 105 also pictured
8 the north service court or that's something
9 different?

10 MR. BELL: For the 105, I can't see
11 it.

12 MS. FERSTER: That's about one, about
13 four pages --

14 MR. BELL: There are a number of
15 portals being retained on the north side of the
16 south service court and the south side of the
17 south service court.

18 MS. FERSTER: Okay. Then what's this
19 is a picture of?

20 MR. BELL: That's a picture looking at
21 the north side of the south service court with
22 the townhouses behind it. So it will be defining

1 the south service court with the sidewalk behind
2 it.

3 MS. FERSTER: Okay. And you say a
4 number of portals will be retained. Will they
5 look like this portal?

6 MR. BELL: On the north side, yes.

7 MS. FERSTER: Okay. And how many on
8 the north side will be retained?

9 MR. BELL: Go to the plan to see. I
10 have to look at the plan to tell you the exact
11 number.

12 MS. EIG: I will just add this. I
13 stated before the portals are part of the cell
14 that's being demolished so we're actually
15 retaining a portion of the demolished component,
16 we're not demolishing all of it. Because we have
17 retaining walls and so they have to be stabilized
18 differently in order to have them survive without
19 the wall behind --- the earth behind it.

20 MS. FERSTER: Okay. So in terms of
21 what's being preserved. I'm looking at this
22 portal. Is the entirety of what is shown in this

1 portal including the spans that lead up to the
2 part of the original materials or is this ---

3 MS. EIG: Yes.

4 MS. FERSTER: -- any new construction
5 in there?

6 MS. EIG: No, it's original material.

7 MS. FERSTER: Okay. And how about the
8 doors?

9 MS. EIG: The preservation plan calls
10 for the doors to be -- the wood to be retained as
11 much as possible and to be repaired or replaced
12 as necessary in kind so that it would be a
13 typical rehabilitation treatment for the doors.

14 Because some of the wood is quite
15 deteriorated and cannot be preserved, but it
16 would be following the Secretary of Interior
17 standards.

18 MS. FERSTER: And there was something
19 said, it might have been from Mr. Bell, about the
20 walls on the service court being demolished, was
21 that you?

22 MR. BELL: What's the question?

1 MS. FERSTER: You had indicated that
2 some walls in the service court were being
3 demolished?

4 MR. BELL: The north service court, as
5 I mentioned, though the front part of cell 14,
6 which has the wall and the portal, is being
7 preserved and rehabilitated. The balance of the
8 rest of the walls and the cells in the north
9 service court are being demolished to make a
10 retail street and I think what I spoke of was the
11 fact that a retail street, highly desired by the
12 community, needs to have transparency and
13 accessibility in order for it to succeed.

14 MS. FERSTER: Right. But I'm just ---
15 the walls you are referring to are really some
16 part of the portals and part of the cells, is
17 that correct?

18 MR. BELL: Yes.

19 MS. FERSTER: Okay. And Ms. Eig, in
20 your historic preservation plan, where you
21 describe the various treatments of the resources
22 on this site, what you indicate what's, you know,

1 being demolished and what's being restored or
2 rehabilitated. Where would these walls be
3 described in this report, what's being done to
4 the walls?

5 MS. EIG: There's an index I think you
6 can look at that. You're looking at the
7 preservation plan.

8 MS. FERSTER: The preservation plan,
9 exactly. Index, yes. It doesn't say on the
10 index. Because the walls, it seems to me that
11 they could be described in the treatment for the
12 portals, they could be described as treatment
13 themselves. I am wondering where are they
14 located at? It could be described in the
15 treatment of the service courts?

16 MS. EIG: The service court walls are
17 on page 40.

18 MS. FERSTER: Okay. Thank you.

19 MS. EIG: You're welcome.

20 MS. FERSTER: They start on page 48 and
21 continues through page 44. So they're treated as
22 a separate element?

1 MS. EIG: Yes. It was following the
2 inventory. As I said, that was done by DC many
3 years before I got involved.

4 MS. FERSTER: Okay. I'm really close
5 to the end. Just let me just check my notes and
6 be sure I haven't missed something that I've
7 already talked about.

8 Okay, I think that's all I have. All
9 right. Well actually, I did ask this question in
10 one way, but I think I should ask it in a
11 different way. And I think I asked it, you know,
12 when I asked the question of whether or not any
13 studies have been done of the alternative
14 subdivisions. You know, other than reducing the
15 number of different configurations or
16 subdivisions.

17 This is a similar question but it
18 relates to that and that is, apart from the
19 studies that you've done, well, actually. I
20 think you've answered that question. But, okay,
21 so. No, this is the way I'm going to ask it.

22 So you talked particularly about the

1 healthcare facility and indicate the project
2 would not be financial viable unless the
3 healthcare facility is constructed because of,
4 you know, its role in the entirety of the
5 project.

6 And then you looked at various
7 scenarios that would reduce the healthcare
8 facility to preserve one or more of the cells and
9 decided, and explained why you do not believe
10 that the healthcare facility could be viably
11 built under that scenario, but there was one
12 alternative that I was wondering if you had
13 studied.

14 It's a different alternative and that
15 is the study of the financial viability not of
16 reducing the numbers of square feet associated
17 without the healthcare facilities that you
18 planned, but putting them, locating them in a
19 different place on the site. Had that been, you
20 know, the financial liability, it's simply a
21 matter of retaining the square footage.

22 It has nothing to do with the

1 location, is that correct? Do you object to my
2 question or --- you're nodding no, Ms. Brown.

3 MR. BELL: Can you just clarify the
4 question?

5 MS. FERSTER: Yes. You talked about
6 the financial viability of the project and how,
7 not financially viable because of the
8 alternatives that would reduce the number of
9 square feet. And my question is different, and
10 if you put the healthcare facilities, the same
11 number of square feet but in different locations,
12 perhaps broke up the buildings or did some other
13 configuration, exact same number of square feet,
14 what is it, 800 and, almost a million square
15 feet, is that it?

16 MR. BELL: 950.

17 MS. FERSTER: 950 square feet. So you
18 retain that square footage, but you just simply
19 looked at alternative designs and broke that up
20 and, you know, moved them into different parts of
21 the site. Does that effect the financial
22 viability of the project of having the healthcare

1 facility designed in a different way basically,
2 without any reduction in the number of square
3 feet?

4 MR. BELL: Yes. So I hear you asking
5 two things. Number one, have we looked at
6 alternatives that have healthcare facilities in
7 different locations on the site, and the answer
8 to that is yes.

9 And number two, I hear you asking me
10 if you just took the healthcare facilities from
11 where they are and disbursed them somehow in a bunch
12 of different places throughout the site but had
13 the same total square footage, do you get to the
14 same answer, and my answer is yes.

15 That does not work. You cannot just
16 take these big buildings that are altogether as a
17 canvas and disperse them into, say, ten different
18 pieces with the same total square footage and
19 just intersperse them throughout the site.

20 MS. FERSTER: Yes.

21 MR. BELL: That being said, we wouldn't
22 do that anyway because of a part of what we

1 discovered when we did the analysis of putting
2 the healthcare facilities in other places on the
3 site, is that they belong on Parcel 1.

4 And we've talked about this many times
5 in many contexts, but that use being next to the
6 Washington Hospital Center, the VA, Children's
7 Hospital, it's where the healthcare uses belong
8 on the site.

9 MS. FERSTER: Right and I understand
10 that part of your testimony. But, and the
11 example you provided about ten different
12 building, that's a bit of an extreme example.
13 But you do have two healthcare facilities on this
14 site, so you have broken them up between in the
15 site.

16 So I'm wondering, and you said you
17 have looked at alternative locations, but the
18 question was, you know, would changing their
19 location on the site including possibility
20 shifting more density into, you know, maybe one
21 or more buildings, would that affect the
22 financial viability of the healthcare?

1 MR. BELL: Yes, it would. In the same
2 way, and I would have the same answer for the
3 grocery store. The grocery store isn't going to
4 want to be located on the southwestern corner of
5 the site for a lot of reasons. I don't think you
6 can just pick up the density and put it anywhere
7 on the site and think that it does not affect the
8 economic viability of those uses, so yes.

9 MS. FERSTER: Okay. So are you saying
10 that the location that you have picked for the
11 healthcare facility, the locations, because there
12 are two of them, that no other location within
13 the site, same square footage, no other location,
14 no other configuration would be economically
15 viable? Nothing other than what you have picked?

16 MR. BELL: No, that's not what I'm
17 saying. What I'm saying is in my opinion, they
18 are in the optimal place.

19 MS. FERSTER: Okay. Thank you. Okay.
20 I think that is it for my questions.

21 DR. BYRNE: Okay. So it's 6:36. So,
22 I think this probably is a good place to stop.

1 Mr. Otten, I'd just ask you if there are any of
2 these folks who don't have to come back on
3 Monday? Just to sort of, the answer may be no,
4 but we can let somebody not have to come back,
5 that would be good.

6 MR. OTTEN: I was actually going to
7 ask about Mr. Kenner. If he's coming back or is
8 someone from DMPED, because I don't see DMPED
9 actually on the dais.

10 DR. BYRNE: So, I think you cross
11 examined Mr. Kenner already.

12 MR. OTTEN: But at the time --

13 DR. BYRNE: We said that if there were
14 questions that he needed to answer that were
15 relevant to the application, that we would
16 consider how to address them.

17 MR. OTTEN: Yes. I think it's less Mr.
18 Kenner because, obviously, we ran into the fact,
19 as you pointed out, you may not know the details,
20 but there is the project manager who was at the
21 prior hearings, Mr. Gilles Stucker, who's in the
22 room, I guess, you know, in preparation for

1 today, I was planning to ask him questions
2 certainly, and I don't see him up here at the
3 dais.

4 And also, timing here for Monday, I
5 know, I think all these folks here are being paid
6 to be here. DC for Reasonable Development is a
7 completely volunteer organization. I have an
8 outside job. And I took time off today to be
9 here.

10 Taking time off on Monday is pretty
11 much not feasible, plus I believe we have
12 witnesses that are also volunteers that -- it
13 just doesn't seem sustainable to be able to just
14 do this on Monday.

15 MS. FERSTER: Yes. Some of our
16 witnesses have now left, so.

17 MR. OTTEN: Well, I believe Calia
18 Barrigan (phonetic) is here and she can't be here
19 on Monday. So, I'm asking that we put this a
20 week so that people can get their calendars
21 together. Well, can we do it, because I'm
22 already committed on Monday. And so are some of

1 the witnesses.

2 MS. BROWN: I would recommend that we
3 proceed tonight then.

4 MS. FERSTER: Well, we can't. You
5 know, it's been made clear that we are not going
6 to continue beyond cross examination. I've
7 already told witnesses to go home, they're gone.

8 MS. BROWN: I don't think that was, I
9 think we were going to decide whether, how far we
10 got tonight.

11 MR. OTTEN: Well, can we do Wednesday?

12 MS. BARRIGAN: If I may say something.
13 So I am a district resident, and this is ---

14 MR. BYRNE: Come up here. Identify
15 yourself, please, your name and --

16 MS. BARRIGAN: Sure. My name is
17 Calia Barrigan. I am a district resident. I'm
18 also an expert --- an urban planning and
19 environmental policy expert. People like me,
20 specifically of my race, women of color, we're
21 not often, we don't have the opportunity to come
22 in and talk to you and participate in this

1 government processes.

2 And it's really unfair that because of
3 the time constrictions of many these agencies
4 present here, I'm not going to be able to come in
5 on Monday and actually, you know, serve my duty,
6 my citizen duty of participating in something
7 like this.

8 Again, I am a Ward 5 resident, so I
9 will be impacted by this development, so I would
10 ask for you to please consider really including
11 our time and not expand it too late further. I
12 mean, I'm here, but I have family that I need to
13 attend.

14 There are DC codes specifically human
15 right codes, that prevent this from happening,
16 this type of discrimination as far as, you know,
17 expanding something like this and not allowing
18 the public to come and participate.

19 DR. BYRNE: Well, that aside, I do
20 want to allow opportunities for people to have aa
21 chance to testify.

22 But the question is how to do it in a

1 way that's reasonably expeditious.

2 (Off microphone discussion.)

3 MS. BROWN: Could I suggest that some
4 of the witnesses that can't be here in person
5 submit written testimony. We can supply a
6 written rebuttal.

7 MS. FERSTER: Ms. Barrigan (phonetic)
8 is going to be testifying as an expert so, you
9 know, as an expert, I think it is certainly
10 important that she be able to testify in person.

11 DR. BYRNE: Well --

12 MS. BROWN: Or we can take her out of
13 order and go now?

14 (Off microphone discussion.)

15 MS. FERSTER: And I've just been
16 informed that one of my witnesses is going to be
17 out of town until the 26th. Of July.

18 DR. BYRNE: Any suggestions? The
19 problem is I'm -- I leave on Thursday, and will
20 not be back until the 15th of August. So, I --

21 MR. OTTEN: Mr. Byrne, I don't know if
22 you've checked out the zoning commission

1 transcript, but they are simultaneously
2 proceeding. They're not going to be contending -
3 --

4 (Simultaneous speaking.)

5 MR. OTTEN: --- until September, so.

6 DR. BYRNE: So I was hoping to work on
7 this over the summer because I have a job. So I
8 would like, I guess what I would like to do is,
9 does it make sense to proceed with cross
10 examination on Monday and put off their cases,
11 probably not.

12 So, I think, I guess I think under the
13 circumstances, we need to put this off and I'm
14 going to have to ask HP, the Historic
15 Preservation office to work with counsel for
16 another date. I'm sorry. But I do think it's
17 necessary to do that.

18 MS. FERSTER: I am also going to make
19 one other request here, and that is that we talk
20 about me calling as part of our case, a DC
21 government witness who can testify on direct as
22 one of our witnesses about what going on with the

1 permitting and the raze permits, et cetera.

2 So I think I would probably like to
3 call probably Mr. Callcott as part of our
4 testimony under direct.

5 MS. BROWN: I don't know how you're
6 going to arrange that since he is a, you can't
7 call him as your witness if he's a government
8 witness.

9 MS. FERSTER: Well, you called him DOE
10 employee as one of your witnesses in the zoning
11 hearing --

12 DR. BYRNE: Wanting to ask him about
13 the issue instead of the demolition practice,
14 that's the issue?

15 MS. FERSTER: Yes, and the
16 construction permits, exactly. I have a number
17 of concerns about what is going to happen, what
18 happened then, and whether it's going to happen
19 again.

20 DR. BYRNE: I don't know if that has
21 anything to do with these applications.

22 MS. FERSTER: Well, under the Historic

1 Preservation Act, the statute says that a raze
2 permit cannot be issued unless the applicants
3 have the ability to complete the project and that
4 a new construction permit is issued
5 simultaneously.

6 And obviously that didn't happen the
7 last time.

8 MS. BROWN: You're asserting facts
9 that are not in the record. We have to stick to
10 the facts of this case and not drag in some other
11 facts from a different matter, and you know
12 perfectly well that the process for appealing a
13 raze permit that you think is not properly
14 issued, is to go to the OAH.

15 MR. OTTEN: Ms. Brown, you also know
16 that Mr. Callcott has signed off, he personally
17 signed off on the HPRB reports which has gotten
18 us to where we are today including noting that
19 the demolition is to such a degree that it does
20 need to come to the mayor's agent.

21 DR. BYRNE: That doesn't have anything
22 to do with this question of permits. I don't

1 think I'm going to allow that. I think they're
2 going to have pursue the question of whether the
3 permits were issued unlawfully in another form.
4 So, the problem with calling the witness doesn't
5 arise.

6 MS. FERSTER: Well then perhaps we
7 will address this in terms of fashioning some
8 appropriate conditions for your future order in
9 the event that you approve demolition so that
10 this will not happen?

11 DR. BYRNE: I would be open to
12 discussing it, yes. All right ---

13 MS. BROWN: I just wanted to -- can we
14 not proceed with the rest of the cross
15 examination from DC for Reasonable Development
16 tonight?

17 DR. BYRNE: Tonight? Yes.

18 MR. OTTEN: I mean I have lots of
19 questions. We were handed a 200-page report
20 today. I had my questions that were based on the
21 June 23rd submission ---

22 DR. BYRNE: You mean the ---

1 MR. OTTEN: Yes.

2 DR. BYRNE: -- exhibits.

3 MS. BROWN: It's nothing new.

4 MR. OTTEN: There's plenty of new in
5 there. In fact, I had annotated it during lunch
6 and I have lots of questions.

7 DR. BYRNE: I'm sure he does. I think
8 it would be almost cruel for me to have you all
9 be here for time it's going to take and what it
10 will be like, as bad as it is to ask you to come
11 back.

12 MS. BROWN: All right. So one final
13 issue is that we have resolved the amendment to
14 the 18 USC and that the clarification provision
15 was inserted in 1990. So I'll submit that for
16 the record.

17 DR. BYRNE: All right. Okay. Well,
18 that's good. I won't take the time to look at
19 this now, but assuming that that's the case, then
20 your testimony is ---

21 MS. BROWN: I'm sorry, I don't know
22 that we've resolved the question of whether or

1 not he is admitted as an expert if you decide to
2 accept his testimony.

3 DR. BYRNE: She didn't object to it
4 from being an expert.

5 MS. BROWN: Okay. All right. Thank
6 you.

7 DR. BYRNE: Okay.

8 MS. FERSTER: And then I think that it
9 was noted there are a couple of things that we'd
10 like to be provided. I'm trying to remember what
11 they were though.

12 (Off microphone discussion.)

13 DR. BYRNE: Yes, we'll get you the
14 contract.

15 MR. OTTEN: Can I inquire as well,
16 will this be, Ms. Brown, will this be -- the
17 submission from today, will that be provided
18 electronically?

19 MS. BROWN: Some of that I don't have
20 electronically, so what you have is what you --

21 DR. BYRNE: Okay. Very well. So
22 today we're adjourned and Mr. Callcott or

1 somebody in the HPO will be in touch to set a
2 date for another hearing. Thank you all for your
3 patience.

4 MS. FERSTER: Okay, so we're not
5 meeting on Monday.

6 DR. BYRNE: Correct.

7 MS. BROWN: Thank you.

8 MS. FERSTER: Thank you.

9 MR. OTTEN: Thank you.

10 (Whereupon, the hearing in the above-
11 entitled matter was concluded at 6:51 p.m.)
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This is to certify that the foregoing transcript


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Partners, LLC and the D.C. ODMPED

Before: D.C. Historic Preservation Review Board

Date: 07-14-17

Place: Washington, DC

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