

DISTRICT OF COLUMBIA
HISTORIC PRESERVATION REVIEW BOARD

HEARING

 IN THE MATTER OF: :
 :
 Applications 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 :

Monday,
September 11, 2017

The meeting of the District of
Columbia Historic Preservation Review Board
convened in Room 220 South of 441 4th Street, NW,
Washington, DC 20001, pursuant to notice, at 9:00
a.m., Peter Byrne, Hearing Officer, presiding.

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1 P-R-O-C-E-E-D-I-N-G-S

2 9:04 a.m.

3 MR. BYRNE: Well, good morning
4 everybody. Welcome back once again. My name is
5 Peter Byrne. I am the designated Mayor's Agent
6 Hearing Officer for this matter, which addresses
7 a remand from the Court of Appeals on
8 applications to demolish underground cells and
9 application to subdivide at the McMillan sand
10 filtration site at 2501 1st Street, NW for
11 construction of a mixed use project.

12 Today, we are continuing the hearing
13 from July 14th. These applications are assigned
14 Historic Preservation Act Nos. 14-393 and 15-135.
15 On January 11th, the Mayor's Agent issued orders
16 setting the issues to be addressed in the remand.
17 There are four issues:

18 (1) Do the proposed project's
19 historic preservation benefits taken as a whole
20 outweigh its historic preservation parts, and in
21 addressing this question, the parties are
22 requested to provide legal analysis as to how

1 such an inquiry should be conducted consistent
2 with the Act.

3 (2) What are the specific
4 architectural land planning or community benefits
5 that individually or collectively may make this
6 project of special merit within the meaning of
7 D.C. Code 6-1102.

8 (3) Is the proposed demolition or
9 subdivision necessary to obtain the special
10 benefit, special merit benefits identified.

11 (4) Are there reasonable alternatives
12 that would achieve the same special merit
13 benefits, but would avoid or reduce the need for
14 demolition or subdivision.

15 A reminder that everything entered
16 into the record in the prior cases remains in the
17 record, and I ask the parties to please try to
18 avoid duplication. As part -- at the last
19 hearing, I promised to put into the record a copy
20 of a contract that I have as a hearing officer
21 with the District of Columbia, and that has -- I
22 have now done that, and the parties should have

1 copies of it.

2 On July 14th, we received a
3 presentation of the applicant's case, and we had
4 cross-examination by Ms. Ferster on behalf of
5 Friends of McMillan Park. Today, we're scheduled
6 to begin with cross-examination by Mr. Otten for
7 D.C. for Reasonable Development.

8 After that, we'll have presentation by
9 the parties in opposition to the applications of
10 their case, and after that we have time for brief
11 statements by other persons, either in support of
12 or in opposition to the application within the
13 terms of the remand.

14 Then we'll hear rebuttal by the
15 applicant and surrebuttal by the parties in
16 opposition to the application, and when we're
17 clear when this hearing process will end, we'll
18 give the parties 30 days to submit proposed
19 findings of fact and conclusions of law.

20 So with that, we can begin. Mr.
21 Otten, clear? All right. Mr. Otten, you're on.

22 MS. FERSTER: Good morning.

1 MR. BYRNE: Good morning.

2 MS. FERSTER: I have a preliminary
3 matter.

4 MR. BYRNE: We do, okay.

5 MS. FERSTER: I think it's the
6 appropriate time to raise it.

7 MR. BYRNE: Sure.

8 MS. FERSTER: For the record, I'm
9 Andrea Ferster, counsel for Friends of McMillan
10 Park. Certainly after this hearing was
11 scheduled, which I believe was sometime in
12 August, I sent a message to the Historic
13 Preservation Office asking that this proceeding
14 be webcast using the technology available in this
15 room so there could be simultaneous webcast of
16 these proceedings.

17 That is something that is very
18 important for opponents such as Friends of
19 McMillan Park, and I imagine others, as well as
20 persons who wish to testify on this matter,
21 because unlike Applicants, most I think everybody
22 has a regular job or responsibilities that keep

1 them from attending the full hearings for today.
2 And the webcast really allows both our witnesses
3 as well as members of the public to monitor the
4 proceedings, so they know approximately when
5 persons who are appearing, persons who are from
6 the public have an opportunity to appear, when
7 their time will come so that they don't have to
8 spend a day in this proceeding.

9 That's particularly important here,
10 because I think there's certainly a possibility
11 that these proceedings may carry over to another
12 day. So that telecast would really be helpful to
13 the public. On Wednesday, you know, many weeks
14 after I'd sent my request, I received a fairly
15 summary response from the Historic Preservation
16 Office, that these proceedings would not be
17 webcast.

18 So I am asking you, by mention here
19 today, to exercise your discretion to direct that
20 these proceedings be telecast, so that our
21 witnesses who are not present immediately are
22 able to monitor this proceeding as well as

1 members of the public, and then I have another
2 preliminary matter after you address this one.

3 MS. BROWN: Good morning, Mr. Byrne.

4 MR. BYRNE: Good morning, Ms. Brown.

5 MS. BROWN: Carolyn Brown from the law
6 firm of Donohoe and Stearns on behalf of the
7 Applicant, Vision McMillan Partners. I think we
8 don't care one way or the other, other than if
9 it's going to delay this proceeding in any regard
10 in trying to get that set up, I think that we're
11 perfectly fine proceeding without it.

12 You know, it's just luck that we have
13 this room and in other Mayor's Agent proceedings
14 we don't have that advantage, and there's no
15 requirement for live webcasts, so I'd leave it
16 your discretion.

17 MR. BYRNE: Mr. Callcott, you want to
18 -- I think that on behalf of the office, would
19 you like to make a statement?

20 MR. CALLCOTT: Yes, good morning. The
21 Office of Planning contracts for Historic
22 Preservation Reserve Board meetings to be

1 livecast and those archived for the public to
2 view. We've never done that for a Mayor's Agent
3 hearing process review process before. Instead,
4 we provide a written transcription as that's
5 often needed in the cases of an appeal. So we
6 provide a public record of the proceedings
7 through the transcript.

8 MR. BYRNE: All right. Well, I think
9 Ms. Ferster, I think there are ample alternative
10 means for you to let your witnesses know when to
11 come. I mean you have cell phones, they have
12 cell phones, and if they're at work they can't be
13 sitting around watching video.

14 MS. FERSTER: If that's a question,
15 the answer is no. Many of them are able to sit
16 at work and other places, watch their children,
17 whatever with the live webcasts on behind them.
18 I've done myself any number of times and no, cell
19 phones are not an alternative for the members of
20 the public, many of whom I do not know, have no
21 way of reaching them.

22 MR. BYRNE: Okay. Well, if you don't

1 know who they are then I can't be too -- no. So
2 this has never had -- the Mayor's Agent hearings
3 are adjudicative hearings. They have never been
4 webcast live, and I don't think -- I don't think
5 that's a good precedent.

6 They have a -- these are -- we try to
7 decide these cases based upon evidence according
8 to the Act, and while it's valuable to have
9 public input and hear the views of concerned
10 citizens, I don't want to turn this into a quasi-
11 political event. So I'm going to deny that
12 motion.

13 MS. FERSTER: An objection should be
14 noted for the record. And then the second
15 preliminary matter I wanted to raise was at the
16 close of the hearing. There are a number of
17 items that have been identified that would be
18 provided to Friends of McMillan Park and other
19 parties in advance of this hearing, presumably in
20 advance who would appreciate now having received
21 the contract that had been promised by you, we
22 have received that today.

1 But we have not received anything from
2 the applicant, and that's particularly
3 problematic for us because one of the -- and I'll
4 just identify one of the items is that we had
5 specifically queried the applicant on the number
6 of units of housing that would be available for
7 families, particularly the breakdown between one,
8 two and three bedroom apartments, and the
9 breakdown as between the affordable housing
10 component and the market rate housing component.

11 We have not received any of that
12 information as of yet, and that has impaired my
13 experts' and my witnesses' ability to prepare for
14 this hearing. So I would ask that that
15 information be provided immediately.

16 MR. BYRNE: Ms. Brown.

17 MS. BROWN: Carolyn Brown again for
18 Vision McMillan Partners. We're fully prepared
19 to submit that to the record. We do not have it
20 prepared to submit this moment in advance of the
21 applicant's or the opposition's case, and there
22 was no requirement that we give that to anyone

1 prior to the start of the opposition's case. It
2 will be supplied for the record. We'll be
3 prepared to testify to it in our rebuttal.

4 MS. FERSTER: Well, that makes it very
5 difficult for us to present our opposition
6 testimony. So I think Mr. Otten is prepared to
7 cross-examine the witnesses on that point, so
8 that we can have it available so our witnesses
9 can hear it, and I hope the witnesses will be
10 prepared to answer those cross-examination
11 questions now, because we really are impaired by
12 not having that information. And then I would
13 simply add that I don't think it's enough to wait
14 for your rebuttal. I think you should provide it
15 immediately.

16 MR. OTTEN: Mr. Byrne, I would happen
17 to agree with Ms. Ferster on this. We also
18 received an email from you last week. At the end
19 of the hearing in July, we were -- it was told to
20 us that we would get the 200 pages that was
21 handed to us the day of July 14th electronically,
22 so that we could analyze it and have it on our

1 computers and share it with our experts.

2 We've never gotten that. I've
3 inquired with Ms. Brown about that, and it was
4 largely dead air, and it has impaired us. It has
5 impaired us by not having this stuff that should
6 be on the record certainly electronically as the
7 applicant presented it electronically from a
8 laptop. We don't understand why that wasn't --

9 MR. BYRNE: Okay. So Ms. Brown, did
10 you promise to give him material electronically?

11 MS. BROWN: I just want to make sure.
12 Are we finished with Ms. Ferster, before we go
13 into to Mr. Otten's.

14 MR. BYRNE: Oh yes fine. Thank you.

15 MR. OTTEN: It's very similar. It's
16 similar points.

17 MR. BYRNE: Please, please. Proceed
18 as you wish.

19 MS. BROWN: So number one, I think
20 it's your prerogative to conduct the hearing the
21 way you choose to conduct it, and not at the
22 direction of Ms. Ferster and what she wants when

1 she wants it. Secondly, with respect to the
2 request for the electronic files and the slides,
3 number one, Mr. Otten was presented -- given a
4 copy of the printout of the slides on July 14th.
5 He hasn't prepared for his hearing.

6 Secondly, we have them here today so
7 he can cross-examine our witnesses, so we have
8 them available.

9 MR. BYRNE: Which, the electronic ones
10 or --

11 MS. BROWN: We have the slides today.

12 MR. BYRNE: That's fine.

13 MS. BROWN: -- which you see on the
14 screen here, so that he can properly cross
15 examine as we go through them. There's no
16 requirement that we provide an electronic copy of
17 them. Number four, he was supposed to be doing
18 his cross examination on July 14th, so he still
19 would not have had a copy of the electronic
20 version.

21 So we've completely fulfilled our
22 legal requirement to give him the required copy.

1 MR. BYRNE: Just to recall, thank you.
2 Just to recall, you did not represent to Mr.
3 Otten that you would give him the electronic
4 copy?

5 MS. BROWN: Absolutely not. They're
6 proprietary information of the architects, and we
7 gave him a hard copy. But we want to make sure
8 that they do not get altered in any manner.

9 MS. FERSTER: Just for the record, she
10 did specifically promise that she would provide
11 this information that we requested, and you now,
12 I'm sorry that I took her at face value, that
13 that would be provided in a timely manner.

14 (Simultaneous speaking.)

15 MS. BROWN: That's a complete
16 mischaracterization. We clearly said that we
17 would provide the information. We did not say
18 that it would be provided for her benefit at the
19 beginning of this hearing or prior to it. So I'm
20 quite aghast that she believes that, but it will
21 provided to the record as required.

22 MR. BYRNE: Okay. So Ms. Ferster, the

1 information that you're interested -- the
2 information that you wish to have for cross
3 examination has to do with the why. It has to --
4 you mentioned the number of units that were
5 available for families?

6 MS. FERSTER: That's correct. That
7 was a cross examination question that we are that
8 -- information that our witnesses need in order
9 for them to testify in our opposition case, and
10 it's just not sufficient to -- for them to
11 provide that as rebuttal. It's not rebuttal.
12 We're not rebutting. We can't provide
13 information that there are insufficient units for
14 families, for example, when we don't know that
15 information.

16 So it's not appropriate as rebuttal.
17 It is -- the time frame is now, so that our
18 witnesses can have that information to prepare
19 our case, not later.

20 MS. BROWN: If I may, Ms. Ferster has
21 copies of the drawings and her witnesses could go
22 through and do a unit count themselves. So

1 they're not impaired in any regard about what is
2 in the record.

3 MR. BYRNE: Do the drawings indicate
4 the size of the units?

5 MS. BROWN: I believe they do.
6 There's a -- I believe there's a chart that shows
7 the number of units.

8 MR. BYRNE: Not a chart that shows the
9 number of units; the number of units of different
10 sizes?

11 MS. BROWN: But not the number of
12 bedrooms in a unit.

13 MR. BYRNE: Not the number of
14 bedrooms? So it's the number of rooms, but not
15 the number of bedrooms? Is that what you're
16 saying?

17 MS. BROWN: I don't even know that it
18 shows the number of rooms. It just shows the
19 number of units. We have the printouts that
20 we're going to be supplying today for the record
21 of the number of units, and I'm sorry if that
22 impairs their ability to present their case, but

1 we are providing the information that was
2 requested, and frankly we don't have to provide
3 it.

4 MS. FERSTER: And if you are providing
5 it, we would appreciate that if you would provide
6 it now, and if you're not willing to provide it
7 now, we would ask the Mayor's Agent to direct the
8 applicant to provide the information that they
9 have apparently have and are holding up until
10 some subsequent month, to provide it to us now.
11 That information is necessary for our case and
12 for our experts to see.

13 MR. BYRNE: So I think in general, it
14 is good to share the data and information so that
15 people can talk about real things. So this is
16 not -- there's not a discovery process here in
17 the Mayor's Agent hearings. I understand that
18 you want to allege, Ms. Ferster, that there are
19 inadequate provisions for families as a way to
20 criticize the project and I think you can do
21 that.

22 But I don't see -- it doesn't strike

1 me as that crucial to your case I must say. I
2 can see where it adds something to it, but I take
3 it you want to allege that there are inadequate
4 units for families, and you can do that. But it
5 would be better to know.

6 So I would ask that Ms. Brown, if you
7 can produce the information about the -- about
8 the size of the units, the bedrooms for the
9 units, that that would take away an issue that we
10 don't really need to argue about I think, and we
11 can proceed with the hearing.

12 MS. BROWN: I'll see if we can get it
13 printed out. It's in electronic form right.

14 MR. BYRNE: Okay.

15 MS. BROWN: But I'd note for the
16 record that it's not typical for an applicant to
17 produce evidence for the opponent.

18 MR. BYRNE: I understand. I
19 appreciate that.

20 MS. FERSTER: Except when they say
21 they will.

22 MR. BYRNE: Well, okay. I'd really

1 like to turn down the snarkiness. Here, it's
2 going to be a long day in any event and Mr.
3 Otten, your motion is denied. The electronic
4 -- I don't have the electronic version. I think
5 what you have is adequate for what you need to
6 do.

7 MR. OTTEN: Mr. Byrne, I just want to
8 put on the record, there's nothing in the printed
9 version that's proprietary. This is a public
10 site about a public disposition of public land.

11 MR. BYRNE: I understand, but that's
12 not the basis for --

13 MR. OTTEN: That's what I just heard
14 she argued.

15 MR. BYRNE: That's what she argued,
16 but it's not the basis of my ruling. So let's
17 proceed.

18 MR. OTTEN: Okay.

19 MR. BYRNE: All right. So when we
20 have -- so Ms. Brown, you'll let us know when you
21 have the information. I appreciate your
22 cooperation.

1 MS. BROWN: Yes.

2 MR. BYRNE: Okay. All right, Mr.
3 Otten. It's time for you to have -- to do some
4 cross-examination, and I hope you can remain the
5 terms of the remand.

6 (Pause.)

7 MS. BROWN: Mr. Byrne, would it be
8 appropriate for the record for the witnesses to
9 introduce themselves now for the record? Okay.

10 MR. THAKKAR: My name is Aakash
11 Thakkar. I'm with EYA, part of the development
12 team.

13 MS. EIG: Emily Hotaling Eig with the
14 EHT Traceries, Historic Preservation Consultant.

15 MR. DETTMAN: Shane Dettman with
16 Holland and Knight, Director of Planning
17 Services.

18 MR. WEERS: Adam Weers with Trammell
19 Crow Company.

20 MR. BELL: Matthew Bell with Perkins
21 Eastman D.C.

22 MR. BOGORAD: Leonard Bogorad, Real

1 Estate Research Corporation.

2 MR. RUIZ: Chris Ruiz with DMPED.

3 MR. OTTEN: Mr. Byrne, I didn't hear
4 anybody from DMPED, the co-applicant.

5 MS. BROWN: Mr. Byrne, they have --
6 they testified last time. Mr. Kenner testified,
7 and he was cross-examined. He has not returned
8 for any cross-examination.

9 MR. OTTEN: Wait. Mr. Kenner said he
10 would be sending somebody to this hearing for
11 cross-examination, for the details that he
12 couldn't answer because he was the director.

13 MS. BROWN: Actually, if you go to the
14 transcript, it does not say that he would be
15 sending anyone. It said if there was a question
16 that was appropriate for the deputy mayor, that
17 we would figure out a way to get it answered.

18 But reminding everyone that cross-
19 examination can only go to the four corners of
20 what he testified to, and Mr. Otten and Ms.
21 Ferster both had an opportunity to cross-examine
22 him on that. I don't believe that there is going

1 to be any information that will be required from
2 him. But again if there is, we'll figure it out.

3 MR. BYRNE: Thank you. What is it
4 that you want to ask about that's within the
5 scope of Mr. Kenner's testimony that these
6 witnesses can't answer?

7 MR. OTTEN: Well DMPED is the co-
8 applicant. DMPED is representing the public side
9 of this project, and I asked several questions to
10 Mr. Kenner that he couldn't answer, and that my
11 understanding was as DMPED is the co-applicant,
12 they would be here for cross-examination, for
13 further detail of the public aspects of the
14 southern part of the project, which is the public
15 side, which has the park and it's part of the
16 special benefits that they're claiming.

17 So I wanted to inquire about that and
18 the public D.C. WASA tunnel and parts of that is
19 part of the park, and you know, I thought I would
20 be granted due process for that.

21 MR. BYRNE: So I think probably there
22 are people here who can respond about the nature

1 of the park, and so let's see. So I think that
2 is right, that what -- what was said was that we
3 would -- that the questions you had, we would
4 find people who had the expertise to provide an
5 answer, and you know, it may be unfortunate that
6 there's not somebody here from DMPED because of
7 -- But I don't think -- I think let's see what
8 the questions are and whether we can answer them
9 adequately.

10 MS. BROWN: If I may interrupt just
11 for one moment, we do have a printout of the
12 number of family units that was requested.

13 MR. BYRNE: Oh, thank you.

14 MS. BROWN: It's not identified as the
15 applicant's exhibit, but I think we can recognize
16 it for the record. It says "Summary of McMillan
17 Redevelopment Residential Program," and it is
18 submitted by the applicant, and I will hand them
19 out to the parties.

20 MR. BYRNE: Okay. So should we begin
21 again with -- and number the exhibits starting
22 with one for today. I think we should. So we'll

1 -- that will be Exhibit 1 for today. Thank you.
2 Okay Mr. Otten, go ahead.

3 (Whereupon, the above-referred to
4 document was marked as Exhibit No. 1 for
5 identification.)

6 MR. OTTEN: Okay. Good morning
7 everybody. My name is Chris Otten, for the
8 record, D.C. for Reasonable Development. Glad
9 everybody could be here except for DMPED.
10 Looking through the July 14th book that was
11 presented by the applicant, I noticed -- I just
12 want to make sure if we look at page 140, I just
13 want to make sure that -- yeah, I just want to
14 make sure the multi-disciplinary team, basically
15 everybody up on the dais is represented here on
16 this page.

17 MS. BROWN: I have an objection to the
18 question. I think that we just introduced all
19 the witnesses, so he knows who's at the table.

20 MR. BYRNE: Yeah. I don't -- I mean
21 that's not questions being directed to any of the
22 witnesses, and I don't -- you're here to cross-

1 examine the witnesses.

2 MR. OTTEN: Right.

3 MR. BYRNE: About their testimony. So
4 why don't you do that?

5 MR. OTTEN: Okay. I guess what I'm
6 going to do, since there's such a large group of
7 folks here, I'd like to ask kind of reflexive
8 questions, where if anybody disagrees, please
9 speak up, because anybody can disagree with what
10 I'm asking.

11 MR. BYRNE: I don't understand.
12 Explain what you're going to do?

13 MR. OTTEN: Since there's a large
14 panel here --

15 MR. BYRNE: Right.

16 MR. OTTEN: I would like to start off
17 with more general questions. I don't know who
18 exactly could answer it, and if there's a
19 disagreement with the posit, then I would like
20 for them to speak up.

21 MR. BYRNE: So you're going to make a
22 statement and then if they object, you're going

1 to ask them to explain why? Is that what it is?

2 MR. OTTEN: Correct.

3 MR. BYRNE: No, no, no. That's not
4 appropriate. You have to ask them questions
5 about their testimony.

6 MR. OTTEN: Right. Their testimony is
7 both from July 14th. So that's what I wanted to
8 ask about. No, I know, I know. Okay. Well,
9 like I said, anybody can pipe up if they disagree
10 or have any comments on these questions. It
11 looks like on page 82 of the testimony, it looks
12 like this project is going to include a
13 restoration of the classic Olmstead Walk and
14 retain some of the open green space of the
15 existing site; correct?

16 MR. BYRNE: Mr. Bell, would you answer
17 that please?

18 MR. BELL: The Olmstead Walk is part
19 of the design to put it back, yes.

20 MR. OTTEN: And retain some of the
21 open green space of the existing site?

22 MR. BELL: The project will be

1 creating usable park space, as we noted in our
2 presentation.

3 MR. OTTEN: And there seems to be
4 extensive adaptive reuse of the historic assets
5 at the site, right here on pages 39, 91 and 93?

6 MR. BELL: As we have testified, we
7 are proposing extensive adaptive reuse of certain
8 parts of the landmark.

9 MR. OTTEN: So like on page 91, I see
10 reuse of the sand bins it looks like, and on 93
11 it looks like the regulator houses are going to
12 become a coffee shop or a taco shop?

13 MR. BELL: These are drawings to show
14 the feasibility of such program elements.

15 MR. OTTEN: And so it's fair to say
16 for everybody here that what is underway right
17 now is planning for an important rehabilitation
18 project at this historic site?

19 MR. BELL: Every project I do is
20 important, Mr. Otten. This is perhaps one of the
21 most important.

22 MR. OTTEN: Right on, and it looks

1 like on page 142 we're at a stage right now in
2 the work on this rehabilitation project, that is
3 figuring out the final plans and getting
4 administrative approvals.

5 MR. BELL: I didn't hear a question.

6 MR. OTTEN: I said it's fair to say
7 we're at a stage right now in this rehabilitation
8 project that the team's getting -- figuring out
9 final plans and getting administrative approvals
10 before moving forward.

11 MR. BELL: That's sort of obvious,
12 beyond response, right? I mean that's why we're
13 here.

14 MR. OTTEN: Well I'm just verifying
15 what's in this book that we didn't receive
16 electronically. I just want to make sure. It
17 looks like that's what they're doing right now.

18 MR. BELL: It's plain what they're
19 doing right now. They're here to try to get a
20 permit to build the project.

21 MR. OTTEN: Like the subdivision,
22 parceling it up and seeking approval for new

1 uses?

2 MS. BROWN: Mr. Byrne, we're happy to
3 answer questions that relate directly to the
4 testimony. But for us to repeat everything that
5 we said on July 14th probably is not a wise use
6 of time. So I'm hoping that the --

7 MR. BYRNE: I appreciate that. I
8 appreciate that, and I'm hoping that we can get
9 to something that's a little bit more
10 substantive.

11 MR. OTTEN: So if I had an electronic
12 copy and I could share it with people, to help me
13 to get to these questions, it would have been
14 better. So let me go down identifying parts of
15 the project. It seems like there's going to be a
16 grocery store. So who on here -- who on the
17 panel will be handling that?

18 MR. BELL: You want to ask questions
19 about the grocery store?

20 MR. OTTEN: Yeah. That's one of the
21 special benefits I think of the project being
22 claimed.

1 MR. BYRNE: So who would be a good
2 person to respond to that?

3 (Off-microphone comments.)

4 MR. BYRNE: Okay. Go ahead, Mr.
5 Otten.

6 MR. OTTEN: Okay, and I guess since
7 everybody -- the rec center is DMPED, I guess,
8 the multi-family housing. Who's handling that?

9 (No audible response.)

10 MR. OTTEN: Okay. So that's Mr.
11 Takash for the record?

12 MR. THAKKAR: My name is Aakash
13 Thakkar, which I said at the beginning of the
14 hearing.

15 MR. OTTEN: And you're with EYA?

16 MR. THAKKAR: I am.

17 MR. OTTEN: Okay, and so are you also
18 doing the senior housing?

19 MR. THAKKAR: I'm speaking on a number
20 of components on behalf of the team. Jerry Lynch
21 Real Estate is actually developing the grocery
22 store and the multi-family housing.

1 MR. OTTEN: Okay, and that includes
2 the senior housing?

3 MR. THAKKAR: It does.

4 MR. OTTEN: Okay, and Mr. Weers,
5 you're working on the hospital complex?

6 MR. WEERS: I am working on the health
7 care component, yes sir.

8 MR. OTTEN: Okay, and I guess I wanted
9 to figure out who's handling the -- on page 101
10 and 102, who's handling the invisible building?
11 What is that?

12 MR. BELL: You may be referring to
13 Phase 3 of the health care component. It is in
14 the renderings represented as a future phase. So
15 it doesn't have architecture. Of course, it
16 would have to come to the Historic Preservation
17 Review Board for approval, but it was not part of
18 the consolidated PUD application at this time.
19 That's why we drew it in the way we did, because
20 we didn't have a design for it as yet.

21 MR. OTTEN: So that will have to go
22 back to HPRB?

1 MR. BELL: Yes sir.

2 MR. OTTEN: And that's a medical,
3 another addition?

4 MR. BELL: That will be a building
5 with retail on the ground floor and health care
6 uses above.

7 MR. OTTEN: And that's planned at a
8 future date, I guess. Is there any sense of when
9 that might proceed?

10 MR. RUIZ: No sir.

11 MR. OTTEN: Okay. In the applicant's
12 June 23rd testimony, the prehearing brief on page
13 30, it says that "The Council disposed of
14 McMillan in conformance with the current
15 development plan"; correct? Does that say that
16 on page 30?

17 MR. BELL: I don't think -- so we
18 would prefer you to ask the question.

19 MR. OTTEN: I guess the question is --
20 okay. Presuming that's correct --

21 MS. BROWN: Well, if I could just
22 interject, that no one testified to this. It is

1 part of the record, but we don't have any direct
2 testimony on it.

3 MR. OTTEN: Ms. Brown, you know as
4 well as I do that anything submitted to the
5 record is part of your testimony that I can cross
6 examine on.

7 MR. BYRNE: That's not true actually.
8 It's legal argument. It's not -- legal argument.
9 I mean it's not evidence. It's not necessarily
10 evidence, but I don't -- tell me again what it is
11 you want to ask about?

12 MR. OTTEN: I guess I wanted to
13 clarify if the Council disposed -- if the
14 applicant is claiming the Council disposed of the
15 McMillan site according to the current
16 development plan, are they saying that the
17 Council is okay with this invisible building when
18 disposing of the land?

19 MR. THAKKAR: To be clear, there was
20 a unit count included in the Council package for
21 the building that Mr. Otten's referring to. So
22 the Council was fully aware of the general nature

1 of the size of the project, the number of units,
2 the number of affordable housing units, the park
3 space, etcetera, and that is what the Council
4 approved.

5 MR. OTTEN: So the unit size of the
6 invisible building, the medical building for the
7 future has already been determined? Is that what
8 you're saying?

9 MR. BELL: That's not a residential
10 building.

11 MR. OTTEN: Okay, okay. This same
12 submitted evidence dated June 23rd, on page 24 it
13 says "The site will be a transit hub via all
14 modes of transit." Did the Council adopt
15 legislation that says -- didn't the Council adopt
16 legislation that says in disposing of public land
17 along major transit routes, at least 30 percent
18 of the project shall be considered affordable
19 housing, shall require affordable housing?

20 MS. BROWN: Objection. No one
21 testified to that on direct. So it's beyond the
22 scope of the witnesses' testimony.

1 MR. BYRNE: It's a question. It's a
2 legal question that you could ascertain. It's
3 not a question of evidence.

4 MR. OTTEN: So okay. Going back to
5 the July 14th evidence submitted and testified
6 to, we're just getting the bedroom sizes now.
7 How many -- I don't see any four bedrooms or five
8 bedrooms, is that right, in this matrix?

9 MR. WEERS: I'll answer that, since I
10 prepared the spreadsheet. No, the spreadsheet
11 doesn't show any four and five bedroom units.

12 MR. OTTEN: Okay, and the family units
13 that are three bedrooms, it lists Parcel 5 at
14 124, right? Am I reading that right?

15 MR. WEERS: They're 124 market rate
16 townhomes on Parcel 5. There are 22 affordable
17 townhomes on Parcel 5, of which 9 are devoted to
18 households earning no more than 50 percent AMI,
19 and the remaining 13 of the 22 will be devoted to
20 households earning no more than 80 percent AMI.

21 MR. OTTEN: So if I'm doing the math
22 right, out of 655 total units, 35 of them will be

1 -- I'm sorry, 22 of them will be three bedrooms
2 for affordable families, for families that -- are
3 considered affordable for families?

4 MR. WEERS: Of the 655 units yes, 22
5 of them. Twenty-two of them will be devoted as
6 affordable units consisting of three bedrooms.

7 MR. OTTEN: And are any of these
8 bedrooms committed to 30 percent AMI levels?

9 MR. WEERS: I'm sorry. Repeat your
10 question.

11 MR. OTTEN: Are any of the 22
12 affordable family units dedicated or committed to
13 families making 30 percent or less?

14 MR. WEERS: No. Per the spreadsheet,
15 you can see that there are 22 three bedroom units
16 that will be affordable on Parcel 5, split
17 between 80 percent and 50 percent AMI.

18 MR. OTTEN: Okay, and how many -- how
19 many of the overall units will be condos versus
20 rentals. Do you have that ratio?

21 MS. BROWN: Relevance.

22 MR. BYRNE: Yeah. Why is it relevant?

1 MR. OTTEN: It has to do with
2 affordability, whether or not families will be
3 able to purchase a condo is a much different bar
4 than whether they can rent affordably.

5 MR. BYRNE: Sustained.

6 MR. OTTEN: Isn't it the case that the
7 affordability covenants on some or all of the
8 affordable units, including the senior units,
9 expire in 30 to 40 years?

10 MS. BROWN: Objection. There's no
11 testimony as to the term of the affordability.

12 MR. OTTEN: That's why I'm asking.

13 MR. BYRNE: But you have to do that on
14 your own case. This is not just grilling them
15 about the project. This is cross-examination
16 based upon the testimony that they gave on July
17 14th.

18 MR. OTTEN: Right, and the testimony
19 is that they have affordable units. I'm asking
20 if those affordable units expire. That speaks to
21 this area for the life of the project.

22 MR. BYRNE: Well, I understand that.

1 Isn't that in the record somewhere already. I
2 mean --

3 MS. BROWN: I believe it is.

4 MR. BYRNE: I believe it's in the
5 record. I think the termination is in the
6 record. Ma'am, be quiet please.

7 MS. BROWN: I'm happy to answer.

8 MR. BYRNE: Why don't you just answer
9 the question?

10 MR. THAKKAR: So Mr. Otten was
11 incorrect, I just want to state for the record.
12 The Zoning Commission, per the Zoning Commission
13 order it is the life of the project. The
14 affordability runs the life of the project, which
15 will likely be longer than three or four years.

16 MR. OTTEN: Thank you, and that's for
17 all the units?

18 MR. THAKKAR: All of the affordable
19 units.

20 MR. OTTEN: Okay, and that includes
21 the senior housing as well? Is that -- I just
22 want to be clear for the record.

1 MR. THAKKAR: I said all of the
2 affordable units, which does include the senior
3 housing.

4 MR. OTTEN: Okay. So for a typical
5 senior, what would they be -- what is the
6 affordable rent for a typical senior unit?

7 MR. BYRNE: Sustained. This is not a
8 political meeting, Mr. Otten.

9 MR. OTTEN: This has nothing to do
10 with politics. It has to do with whether or not
11 this project is special or not.

12 MR. BYRNE: Well, they've testified
13 about the affordability units. There's evidence
14 in the record, and if you want to argue it's not
15 affordable you can do that in your case-in-chief.
16 But I really would like to focus on your
17 opportunity to cross-examine them about their
18 testimony.

19 MR. OTTEN: I thought that's what I'm
20 doing.

21 MR. BYRNE: Well okay.

22 MR. OTTEN: I'll try better. So Mr.

1 Thakkar, on page 141 of the testimony submitted
2 on July 14th, it discusses community support or
3 community involvement; correct, in this project?

4 MS. BROWN: I'm not sure that Mr.
5 Thakkar is the correct person to answer that
6 question. I'm not sure if you have -- did you
7 testify? Yes.

8 MR. OTTEN: Isn't it the case that
9 throughout your submissions you claim to have a
10 lot of community support for this project?

11 MS. EIG: I believe that was my
12 testimony and yes, we had many community meetings
13 over the course of many years.

14 MR. OTTEN: Okay, and I see the -- one
15 of the photos you included includes a tabling by
16 the Creed-McMillan Park are part of the
17 community?

18 MS. EIG: Yes. I attempted to show
19 not just there was support, but there was
20 opposition, as I stated in my testimony.

21 MR. OTTEN: And that group, isn't that
22 the group that was funded by Fontaine and

1 Company?

2 MS. EIG: I didn't testify to that,
3 and I do not know the answer to that.

4 MR. OTTEN: Okay. Mr. Bell, did you
5 render the image on pages 48 and 70? I'll start
6 with 48. I guess it's -- I think it's the same.
7 48 and 70 are the same image of the site, from
8 basically viewing it from North Cap, looking from
9 --

10 MR. BELL: Yes, that's our drawing.

11 MR. OTTEN: Looking from the south,
12 okay. How about on page 145, 144?

13 MR. BELL: Is this the drawing you're
14 referring to?

15 MR. OTTEN: Yes.

16 MR. BELL: That's our drawing.

17 MR. OTTEN: Okay. So on this drawing,
18 it says "D.C. Water Access" with an arrow
19 pointing to this gray walkway kind of coming into
20 the park, does it not?

21 MR. BELL: Yep.

22 MR. OTTEN: What does that mean? What

1 is that access point into the park?

2 MR. BELL: It's part of the D.C. WASA
3 project for 1st Street. They need an access to
4 get equipment. There's just a little left of
5 that ramp is the lightly shaded area, a green
6 box. That's an access into their tunnel, which
7 they required in order to do the flood mitigation
8 project down 1st Street, and that ramp is there
9 so that they can get equipment in and out of the
10 site.

11 MR. OTTEN: Okay, and so this is the
12 tunnel, the 1st Street tunnel project. Are you
13 familiar with that project, or is it just --

14 MR. BELL: I know of it, sure.

15 MR. OTTEN: Okay, and so that's the
16 same tunnel that's depicted on page 73?

17 (Pause.)

18 MR. BELL: Could you clarify? I don't
19 --

20 MR. OTTEN: So it looks like there's
21 a large hole in --

22 MR. BELL: Yeah. That aerial photo

1 shows the D.C. Water project construction staging
2 area.

3 MR. OTTEN: And that round hole there,
4 that's the start of the tunnel?

5 MR. BELL: As far as I know.

6 MR. OTTEN: Okay, and have you been in
7 touch with D.C. Water to understand the -- what
8 are not -- there will be large venting grates
9 around that tunnel entrance?

10 MR. BELL: I didn't testify to that
11 sir.

12 MR. OTTEN: You just said you
13 mentioned something about an access point? What
14 is it? Is it the access to that tunnel?

15 MS. BROWN: Objection. I think that
16 he's testified to just about everything he knows
17 about the D.C. Water and it wasn't on his --

18 MR. BYRNE: So I heard him, Mr. Bell
19 say that it was an access point for them to
20 service the tunnel that was shown on the other --

21 MR. BELL: When we were designing the
22 plan, we were asked to provide for access for

1 them. So in explaining the plan, that's what we
2 did, provide an access.

3 MR. BYRNE: Right.

4 MR. OTTEN: And how come the -- I
5 guess the cap on this tunnel isn't depicted in
6 the renderings that are on the prior pages, like
7 on page 145?

8 MR. BELL: At the time we made the
9 rendering, the tunnel project wasn't completed.
10 We showed a place where there would be the access
11 point.

12 MR. OTTEN: And won't D.C. Water want
13 to protect the area around the sewer cap from
14 public intrusion? Or will kids be running over
15 the sewer cap and grates?

16 MS. BROWN: Objection. He's not going
17 to be able to testify to what D.C. Water's
18 intention on that --

19 MR. BELL: So well I think, if I can
20 try. The question, as I understand it, was
21 whether the grassy area that's shown on I guess
22 page 144 is going to be a smooth and safe surface

1 for children to play on. That was what we agreed
2 to with D.C. Water, that it would be continuous
3 as it was before they started construction,
4 usable by the public.

5 MR. OTTEN: Do you recall the 2015
6 hearings before Mr. Byrne, where Ms. Corbett
7 testified to grates around the access, the tunnel
8 access?

9 MS. BROWN: Objection.

10 MR. OTTEN: It's on the record.

11 MR. BYRNE: Yeah, but he doesn't -- he
12 doesn't --

13 MR. OTTEN: I'm asking if he recalls
14 that.

15 MR. BYRNE: But he doesn't need to.
16 I mean that's not part -- he has not testified on
17 that question, and if you want to say that
18 there's a conflict in the record, you can make
19 that part of your case.

20 MR. OTTEN: Okay. Let's look at the
21 alternatives that were presented. It looks like
22 on pages 57 and 64, page 64 is showing all the

1 alternatives it looks like, or its claim to be
2 alternatives, is that right?

3 (Pause.)

4 MR. BELL: What's the question?

5 MR. OTTEN: Do you know when and where
6 these alternatives were shown to the public?

7 MR. BELL: These are the ones that
8 were -- I didn't testify as to exactly when I
9 gave the general date of what the dates were when
10 those plans were presented. So for example 2009
11 there was plan; 2006 there was a plan; 2008. So
12 we did show in general the approximate times the
13 plans were shown to the public.

14 MR. OTTEN: And so these were all --
15 you're saying though that these were all shown to
16 the public at some point?

17 MR. BELL: Yes sir.

18 MR. OTTEN: None of them were internal
19 documents?

20 MR. BELL: No.

21 MR. OTTEN: And looking at them, there
22 doesn't seem to be much change in the density of

1 the project, is that right?

2 MS. BROWN: I think he testified
3 already what the change in the density was for
4 the project.

5 MR. BYRNE: Yes. I don't recall that.
6 If you recall Mr. Bell, what you had to say about
7 the density, how the density changed.

8 MR. BELL: I talked about how the
9 program changed.

10 MR. BYRNE: Yes. That I recall.

11 MR. OTTEN: Okay. Are you at all
12 aware of how the 2006 plan, the initial plan in
13 this list came from the 2002 planning process?

14 MS. BROWN: Relevance.

15 MR. BYRNE: Relevance.

16 MR. OTTEN: Well the 2002 planning
17 process shows a much lower dense project that was
18 accepted by the community at that time. I just
19 don't -- I'm trying to figure out how it jumped
20 to 2006.

21 MR. BYRNE: I don't believe he
22 testified about 2002 at all. So you can make a

1 case that there was a plan in 2002 that had less
2 density. That would be up to you.

3 MR. OTTEN: Okay. Looking at the
4 exemplary architecture as claimed. On pages 102
5 to 105, I guess these are some renditions of the
6 exemplary architecture; correct?

7 MR. BELL: They're renderings of the
8 project as proposed.

9 MR. OTTEN: Okay, and what are these
10 buildings made out of? What materials?

11 MR. BELL: These buildings will be
12 made out of brick, they'll be made out of pre-
13 cast concrete, they'll be made out of stone.
14 There will be metal, there will be wood. I think
15 we've shown the pallet of these buildings. The
16 material's designed to last a long time.

17 MR. OTTEN: That's what I wanted to
18 ask. What's the projected life of let's say the
19 townhouses on 105?

20 MR. BELL: Yeah. I don't think I
21 testified to what the projected life is.

22 MR. OTTEN: Right. But you just said

1 that -- you just testified that they're for a
2 long time. Is there --

3 MR. BELL: For a long time, that's
4 projected life.

5 MR. OTTEN: I'm not an expert in
6 architecture. What is a long time in the expert
7 --

8 MR. BELL: Past our lifetimes, well
9 past it.

10 MR. OTTEN: So 80 years? 50 years?

11 MR. BYRNE: You made your point.

12 MR. OTTEN: Has the building types and
13 materials been measured against climate change
14 modeling, for example, to withstand increasing
15 hurricane gusts?

16 MR. BELL: I don't believe I testified
17 to that.

18 MR. OTTEN: How about for flooding?

19 MR. BELL: I don't believe I testified
20 to that.

21 MR. OTTEN: Are you aware that the
22 site is smack dab in the center of an internal

1 D.C. flood plain?

2 MR. BELL: I don't think I testified
3 to that.

4 MR. OTTEN: Do you know how many
5 vehicle trips your project will generate on a
6 daily basis to and from the site?

7 MR. BELL: That was not in my
8 testimony.

9 MR. OTTEN: Okay. Let me ask, can
10 anybody on the panel tell me what this proposed
11 project will generate in terms of daily vehicular
12 trips and from the rehabilitated McMillan Park
13 site project?

14 MS. BROWN: Objection. There was no
15 direct testimony on the number of trips that
16 would be generated.

17 MR. BYRNE: Right. There was
18 testimony about the transportation part of the
19 package.

20 MS. BROWN: Correct.

21 MR. BYRNE: And what was included,
22 what was included in that, and was that you sir?

1 Yeah. So if you know the answer to that, I'm
2 going to let him ask that question. Do you know
3 about the number of trips?

4 MR. WEERS: I don't know the number of
5 trips that are going to be generated.

6 MR. BYRNE: Okay.

7 MR. OTTEN: But you believe it's on
8 the record?

9 MR. WEERS: I believe at the last
10 hearing, Ms. Ferster asked me if I would agree or
11 could I confirm that the project was going to
12 generate additional trips, and I confirmed that.
13 But as to the exact number of trips in and out
14 AM/PM, I don't know those exact numbers.

15 MS. BROWN: And if I may, I believe it
16 might be in the 2014-2013 Mayor's Agent record,
17 but it's not in the -- what we testified to
18 today.

19 MR. BYRNE: It's probably in the
20 Zoning Commission record. The Zoning Commission
21 should actually have it.

22 MR. OTTEN: Okay. EHT Traceries,

1 that's Ms. Eig? You've written several reports
2 now for the record, right?

3 MS. EIG: Yes, two.

4 MR. OTTEN: And the latest being the
5 EHT Traceries report dated May 2016?

6 MS. EIG: The Historic Preservation
7 Plan? Yes.

8 MR. OTTEN: And that's -- that was
9 submitted as part of the applicant's testimony
10 dated June 23rd, 2017?

11 MS. EIG: Yes.

12 MR. OTTEN: And so per your testimony,
13 your report talks about the McMillan
14 Rehabilitation Project, for example, of the
15 regulated houses, right?

16 MS. EIG: Yes.

17 MR. OTTEN: And on page 66, you state
18 "Further assessment should be conducted to select
19 which regulator houses would be most appropriate
20 for adaptive reuse," right?

21 (Pause.)

22 MS. EIG: I'm sorry, I don't know

1 where -- oh here. Further assessment to select
2 which would be most appropriate for type of
3 adaptive reuse. Yes, it is here.

4 MR. OTTEN: Thank you. Do you -- has
5 that assessment been made? Are you aware of that
6 assessment being made, and for which regulator
7 houses maybe were chosen for adaptive reuse?

8 MS. EIG: It is my understanding that
9 it has been selected, and it was assessment of
10 condition as well as location to ensure that the
11 regulator house would have the most accessibility
12 to the public.

13 MR. OTTEN: Could you -- do you know
14 which ones those are?

15 MS. EIG: Yes. It's on those -- well,
16 I should say the restoration of one house is
17 being proposed, and that is on the south court on
18 the west side, so it is closest to the park. The
19 others would be used as adaptive reuse. Their
20 actual uses have not been determined yet.

21 MR. OTTEN: And that assessment was
22 made. Is that anywhere on the record, or is that

1 something -- you're just reporting it. But you
2 said assessment, an assessment should be made to
3 that decision. Is that on the record? Who did
4 that assessment?

5 MS. EIG: I believe that it was
6 completed Perkins Eastman as part of the drawings
7 set that went from the project to the next stage
8 of development.

9 MR. OTTEN: Okay, and for the
10 building, for the regulator houses that are being
11 rehabilitated to accommodate new uses, are you
12 aware of the uses that have been determined? Do
13 you know --

14 MS. EIG: No uses have been determined
15 to my understanding.

16 MR. OTTEN: Okay. In your report on
17 page six, you stated that -- you acknowledge that
18 the McMillan site is listed in the D.C. Inventory
19 of Historic Sites and listed in the National
20 Register of Historic Places, right?

21 MS. EIG: Correct.

22 MR. OTTEN: And in referencing this,

1 you call upon David Maloney's, who's the State
2 Historic Preservation Officer, you call upon his
3 application for the National Register of Historic
4 Places dated January 4, 2013, right?

5 MS. BROWN: Could you clarify the
6 question? I'm not sure it's clear what is being
7 asked.

8 MR. OTTEN: I'm asking, do you
9 reference David Maloney's application for this
10 site to be put on the National Register of
11 Historic Places?

12 MS. EIG: I stated that it was listed
13 in the National Register of Historic Places a
14 historic district in 2013.

15 MR. OTTEN: Okay, and but you are
16 aware that Mr. Maloney submitted the application
17 for that registration?

18 MS. BROWN: She's testified to that.
19 If we could move on to the next question.

20 MR. BYRNE: She said -- yeah. I think
21 she said yes.

22 MS. EIG: Mr. Maloney is the State

1 Historic Preservation Officer and he must --

2 MR. BYRNE: He submits these.

3 MS. EIG: --sign and submit the
4 documents to the National Register, yes.

5 MR. OTTEN: Okay, and his application
6 highlights some of the key defining
7 characteristics of the site, right, that you're
8 aware of?

9 MS. EIG: Yes.

10 MR. OTTEN: And some, two of those are
11 the open space and the vistas, right? He
12 mentions how a defining characteristic is the
13 open space and the vistas?

14 MS. EIG: I don't think I testified to
15 the National Register nominations content.

16 MR. BYRNE: I don't think she did.

17 MR. OTTEN: You were here during the
18 2015 Mayor Agent hearings; correct?

19 MS. EIG: Yes.

20 MR. OTTEN: And do you recall at that
21 time --

22 MS. EIG: Was that 2015 Mayor's Agent

1 or was it --

2 MR. BYRNE: I'm afraid so, yeah.

3 MS. EIG: Was that 2015?

4 MR. OTTEN: And at that time, the open
5 space and the contiguous nature of this --

6 MS. EIG: I was here for the 2014
7 hearing, not the 2015, which was the -- I did not
8 attend that hearing.

9 MR. OTTEN: Ah, okay, thank you.
10 Okay. But at both of the hearings, there was the
11 discussion around the open space and contiguous
12 nature of the site as defining characteristics of
13 the site?

14 MS. BROWN: Objection. I think there
15 were --

16 MR. BYRNE: That's a statement.
17 That's a statement, so why don't you ask the
18 question?

19 MR. OTTEN: Okay. Isn't it true that
20 during these hearings, whether 2014 or 2015 --
21 I'll just right to the question. Isn't it true
22 to that open space and contiguous nature of the

1 site has been determined to be a defining
2 characteristic of the site?

3 MS. EIG: Yes.

4 MR. OTTEN: And your prior reports
5 highlight this as well. But I noticed that the
6 May 2016 report in this hearing doesn't really
7 evaluate or acknowledge those key defining
8 aspects, the open and contiguous nature. Why is
9 that?

10 MS. EIG: The 2016 report is the
11 historic preservation plan that is directed to
12 the actual physical objects or structures that
13 are on the site, and how they will be approached
14 in terms of treatment, and it is based on the
15 drawings that were submitted to the Historic
16 Preservation Review Board.

17 So the locations of things are outside
18 of the jurisdiction or the parameters of this
19 report.

20 MR. OTTEN: So you evaluated the above
21 ground historic assets. You mentioned -- you
22 even mentioned things like the shrubbery, that

1 original Olmstead shrubbery. But you don't
2 mention the other, the contiguous aspects of the
3 site?

4 MS. EIG: No, I don't think that's
5 correct. The historic preservation plan
6 addresses the physical treatment that will take
7 place of the resources that are above ground, and
8 some below ground. It's the built resources,
9 yes, not the site --.

10 MR. OTTEN: And the subdivision of the
11 site, if I'm not mistaken, is what's inducing or
12 allowing the project to move forward?

13 MR. BYRNE: That's a statement.
14 That's not a question.

15 MR. OTTEN: As you understand it, the
16 subdivision --

17 MS. BROWN: Objection. Calls for a
18 legal conclusion.

19 MR. BYRNE: Yeah, yeah. Agreed.

20 MR. OTTEN: Well, okay. So your fifth
21 recommendation in your May 2016 reports says that
22 "The redevelopment of the McMillan site should be

1 based on planning and design principles that are
2 specific to this historic site, by reflecting the
3 landmark's unique aesthetic character." When you
4 say "aesthetic character," what are you
5 referencing there?

6 MS. EIG: The retention of sufficient
7 identity of the site.

8 MR. OTTEN: Do you consider the
9 placing of a 115-foot tall office complex on the
10 north end of the site as an exacerbation of the
11 intrusion of medical complexes on the McMillan
12 site?

13 MS. BROWN: Objection to
14 characterization of the question.

15 MR. BYRNE: I'll allow it.

16 MS. EIG: The location of that
17 building in that far corner to me is the exact
18 place where it's to be located because it is
19 removed from the residential. It is removed
20 from the park that surrounds -- the residential
21 that surrounds it, the park that's on the site,
22 the reservoir and is closer to the tall building

1 where Children's Hospital and Washington Hospital
2 Center are located.

3 MR. OTTEN: Okay. Can we -- let's
4 look at that map, if we could. So on page 143 of
5 the July 14th testimony, that's the bird's eye
6 rendition of the placing of the new buildings on
7 this historic site, right?

8 MS. EIG: Yes.

9 MR. BYRNE: Is this right, 142? Is
10 that the rendition?

11 MR. OTTEN: 143.

12 MS. EIG: It's 142 on the slide show
13 actually.

14 MR. BYRNE: Okay.

15 MR. OTTEN: In my booklet, it's
16 numbered 142.

17 MS. EIG: Yeah. You're off by one
18 page because of the printing, I assume.

19 MR. OTTEN: Okay. So that I'm looking
20 at -- okay. So we're all looking at the same
21 thing on the screen, and the title of this page
22 is "Approach Creating a Cohesive Plan Celebrating

1 the Landmark," right?

2 MS. EIG: Uh-huh.

3 MR. OTTEN: And so looking at the
4 location of the medical office complexes, you
5 said that it's the appropriate place to put it in
6 there because it's immediate to the medical
7 buildings to the north.

8 MS. EIG: And the northwest.

9 MR. OTTEN: And I'm sorry, the
10 northwest? Okay. Isn't there -- it looks like
11 there's Michigan Avenue that separates the
12 northern buildings from the other properties
13 across from Michigan Avenue?

14 MS. EIG: Yes.

15 MR. OTTEN: And then in the properties
16 across Michigan Avenue, the Veterans Hospital and
17 the Children's Hospital, there are large setbacks
18 there. Basically, it looks like the parking lots
19 between the building -- the Veterans Hospital
20 frontage and Michigan Avenue, is that right?

21 MS. EIG: Yes.

22 MR. OTTEN: And would you say -- would

1 it be fair to say that the medical complex that's
2 being proposed on McMillan Park is actually
3 closer to the eastern rowhouses, the rowhouses to
4 the east across North Capitol and actually to the
5 frontage of any of the medical complexes to the
6 north or the northwest?

7 MS. EIG: I didn't testify to that.
8 I think the answer is looking at the image.

9 MR. BYRNE: Yes. It's quite apparent
10 that that's the case on the chart.

11 MR. OTTEN: Okay. Just to be clear
12 for the record, are you -- Ms. Eig, are you
13 claiming that the area you've called the McMillan
14 site in your report, which is above, you know,
15 the land above the waterworks, was never a park
16 accessible by the public?

17 MS. EIG: The area that is this site
18 had a perimeter path that was for pedestrians
19 that was accessible. The rest of the site, the
20 entire site was an industrial site and was in
21 continuous operation as an industrial site.

22 MR. OTTEN: So turning to page 71 in

1 the printed version of the July 14th plan, the
2 page titled "McMillan Sand Filtration Site," the
3 rectangular property here before is -- that's
4 what you're identifying as the industrial site?

5 MS. FIG: The entire landmark was an
6 industrial site, with the exception of the public
7 park that was to the southwest and is no longer
8 occupied as such.

9 MR. OTTEN: And so this site on page
10 71, as bounded by the Olmstead Walk here, you're
11 claiming that was never accessible by the public,
12 was not used by the public?

13 MS. FIG: It was not to be used by the
14 public. It was an industrial site, yes.

15 MR. OTTEN: What are the -- do you
16 know what these little white paths are crisis-
17 crossing the so-called industrial site?

18 MS. FIG: I assumed that they may have
19 been paths of people walking on it, of the
20 employees and such.

21 MR. OTTEN: And significant enough to
22 leave a path, a trail?

1 MS. EIG: It was -- it's a grassy
2 surface of very shallow proportions, so yes.

3 MR. OTTEN: And you claim that the
4 space on page 16 on your report, May 2016 report,
5 that the space was considered by Olmstead as too
6 dangerous because of hundreds of open manhole
7 covers, yes? That's why it was not a part.
8 You're saying that there was hundreds of open
9 manhole covers.

10 MS. EIG: According to our research,
11 the manhole covers, approximately one-third of
12 them were open at any time during operations.

13 MR. OTTEN: You reference records
14 indicating that. Are those records on the agency
15 record?

16 MS. EIG: I can't remember
17 specifically where that information is from, but
18 I think on page 16 it does discuss Olmstead's
19 desire to avoid using a fence around the site,
20 and chose instead to use the landscape to
21 discourage people from going on this industrial
22 site.

1 MR. OTTEN: And you said they opened
2 the manhole covers to kind of air out the
3 underground waterworks, give it light? Isn't
4 that what you say on page six?

5 MS. EIG: I did not say why they
6 opened the manhole covers.

7 MR. OTTEN: Isn't it true, as was
8 determined at the last Mayor's Agent hearing,
9 that the McMillan site is publicly controlled
10 right now, and that it has been since its
11 origins?

12 MR. BYRNE: That's an obvious legal
13 point that is on the record. You don't have to
14 ask her a question about that.

15 MR. OTTEN: And well I guess I'm
16 asking, would you consider that as the historian
17 as -- would that be a key historic characteristic
18 of the site?

19 MS. EIG: The ownership? You're
20 asking if it's a key historic part of it?

21 MR. OTTEN: Yes.

22 MS. EIG: It's a fact of it.

1 MR. OTTEN: And the vast majority of
2 the site would be privatized under the
3 rehabilitation plan, right?

4 MS. EIG: I didn't testify to the
5 significance of that.

6 MR. OTTEN: Okay. You do testify to
7 the fantastic vistas in all directions, did you
8 not?

9 MS. EIG: I did not testify to the
10 fantastic vistas in all directions, no.

11 MR. OTTEN: But isn't that part of the
12 -- what got the site onto the National Register
13 of Historic Sites, part of --

14 MS. EIG: I did not testify to the
15 National Register.

16 MR. OTTEN: Okay. Well, but you -- I
17 guess I'm confused. Your reports, your prior
18 report talks about vistas.

19 MS. EIG: My initial report does
20 identify vistas, both internal and external
21 vistas.

22 MR. OTTEN: Okay, and that's due to

1 let's say looking at the July 14th testimony
2 again, looking at page 81 in the printed version,
3 Master Plan Berms.

4 MS. EIG: I have it.

5 MR. OTTEN: That shows the berms and
6 the plant; correct, page 81?

7 MS. EIG: Yes.

8 MR. OTTEN: And would it be fair to
9 say that if you have decent eyesight, you can
10 stand at any corner or any side of this park and
11 look through to the other side for the vistas?

12 MS. EIG: That you -- is it -- could
13 you repeat the question?

14 MR. OTTEN: That standing at --
15 standing pretty much at any corner of the site,
16 you can look through the site to the other side?

17 MR. BYRNE: You mean currently.

18 MR. OTTEN: Yes, currently.

19 MS. EIG: This is not --

20 MR. BYRNE: It has nothing to do with
21 her testimony.

22 MS. EIG: Right.

1 MR. OTTEN: Well, she was talking
2 about the placing of the new structures.

3 MR. BYRNE: Yes.

4 MR. OTTEN: And so I'm just trying to
5 set a baseline here. Right now, we can see
6 through the site.

7 MR. BYRNE: Well, we know that.

8 MS. EIG: Yes, and if I might state,
9 my original report, as I said, was a
10 recommendation of findings. The Historic
11 Preservation Review Board's approval is what made
12 the determination of what and where things would
13 go on the site, while retaining its identity.

14 MR. OTTEN: And would you say that
15 their approval, by placing these structures on
16 the site the way they have, eliminates north-
17 south views on the site?

18 MS. EIG: No, it does not.

19 MR. OTTEN: Where would you have to
20 stand to be able to see north to south with the
21 proposed plan?

22 MS. EIG: The streets provide north to

1 south visibility, and the pedestrian walk around
2 the entire site provides north to south
3 visibility.

4 MR. OTTEN: So it's fair to say that
5 the north-south view is significantly shrunk from
6 where it is now?

7 MS. EIG: They are reduced from what
8 it is now, yes.

9 MR. OTTEN: And right now you can see,
10 if you were standing on Michigan Ave, you could
11 see downtown to the downtown mall, the Washington
12 Monument and the Capitol?

13 MR. BYRNE: I don't think she
14 testified to that.

15 MS. EIG: I did not testify to that.

16 MR. OTTEN: You just testified to the
17 vistas.

18 MS. EIG: I testified the internal
19 vistas.

20 MR. OTTEN: Isn't it true though that
21 you can see the downtown monuments from McMillan
22 Park now?

1 MR. BYRNE: So I think you put on a
2 witness to say that if you want to have that. I
3 mean you don't have badger her.

4 MR. OTTEN: I didn't realize I was
5 badgering her. I'm just asking questions. And
6 McMillan Park is part of what is called Emerald
7 Necklace of the City Beautiful Movement that
8 you're aware of?

9 MS. BROWN: She didn't testify to
10 that.

11 MR. OTTEN: I believe it's in your --
12 I believe it's in your May 26th testimony, page
13 -- oh, I apologize. On page 16, your report
14 highlights how Olmstead purposely designed the
15 site using smaller plantings to avoid blocking
16 views into the site, right?

17 MS. EIG: Yes.

18 MR. OTTEN: And can you help me find
19 anywhere on the record how the views into
20 McMillan Park will be affected by the proposed
21 rehabilitation project, like how the new
22 buildings may block the viewsheds?

1 MR. BYRNE: You know, that's just not
2 -- I mean it's in the record. She doesn't need
3 to help you find stuff in the record. You can --

4 MR. OTTEN: I can't find it. That's
5 why I'm asking her.

6 MR. BYRNE: Well, okay. Then you can
7 argue that it's not in the record.

8 MR. OTTEN: So on page six your report
9 demonstrates that the 1987 quit claim deed
10 between the U.S. federal government and D.C.
11 "requires" any work on the site be completed in
12 accordance with the Secretary of Interior's
13 standards, right?

14 MS. EIG: Yes.

15 MR. OTTEN: And you go on to explain
16 that plans were made to quote-unquote "ensure
17 compliance with these standards" on page 13?

18 MS. EIG: Yes.

19 MR. OTTEN: And you are familiar with
20 Steve -- who Steve Callcott is, right?

21 MS. EIG: Yes.

22 MR. OTTEN: Okay. So he's the Office

1 of Planning staff for this. Have you read his
2 2013 report on the record that notes that the
3 rehabilitation project will compromise the open
4 quality of the site and does not meet these
5 standards?

6 MS. BROWN: Objection. She didn't
7 testify to that.

8 MR. OTTEN: Okay. So then why do you
9 disagree with this report?

10 MS. EIG: Subsequent to his report,
11 Mr. Maloney provided a document that he found
12 that the proposed project did meet the Secretary
13 of Interior's standards.

14 MR. OTTEN: Did he -- in that
15 explanation, did he explain -- did he tell how it
16 met that standard suddenly?

17 MS. EIG: No.

18 MR. OTTEN: The testimony submitted to
19 the record, including the day of July 14th under
20 exemplary architecture, references the Tregaron
21 Estate case, which I believe Ms. Eig you're
22 familiar with?

1 MS. EIG: I'm sorry. I couldn't
2 understand what you said.

3 MR. OTTEN: On July 14th, the
4 applicant submitted information regarding the
5 Tregaron Estate?

6 MS. EIG: Oh, I'm sorry.

7 MR. OTTEN: I think you're familiar
8 with that case.

9 MR. BYRNE: So I don't -- did you
10 testify about the Tregaron case in this
11 proceeding?

12 MS. BROWN: I actually don't believe
13 she did.

14 MR. BYRNE: I don't think so.

15 MR. OTTEN: But somebody did, because
16 it's in writing and it was handed to me the day
17 of the hearing.

18 MR. BYRNE: Well that's just -- that's
19 just the summary sheet organizing what they have
20 to say. So what does it say about the Tregaron
21 Estate?

22 MR. OTTEN: I guess what I'm

1 wondering, being the historian on this, the
2 Tregaron Estate seems to be referenced here as a
3 comparable project with McMillan Park. Is that
4 fair to say?

5 MS. EIG: No, that's not what that
6 statement says. It just quotes from a Mayor's
7 Agent decision as to what could be defined as
8 special.

9 MR. BYRNE: Oh yes, I remember that
10 quote.

11 MS. EIG: Especially the architecture,
12 sorry.

13 MR. OTTEN: And it talks about placing
14 housing on the Tregaron Estate, that case, does
15 it not?

16 MS. EIG: That statement reference,
17 yes.

18 MR. OTTEN: And it says that part of
19 the benefit here is ensuring that the houses or
20 the structures being placed on the site will be
21 invisible from the vistas and vantage points
22 within the Estate, right?

1 MR. BYRNE: So it's a different case.
2 I recognize that. I think I discussed Tregaron
3 in my first decision here. You know, if you want
4 to argue that Tregaron doesn't -- is not a good
5 precedent for this, that's open to you.

6 MR. OTTEN: I was just asking the
7 expert historian.

8 MS. EIG: It's a different case and
9 it's based on different findings, different
10 facts.

11 MR. OTTEN: Would you say the McMillan
12 Park buildings and structures being placed on the
13 site are invisible from the most important vistas
14 and vantage points?

15 MS. EIG: There are no invisible
16 buildings on this site. The placement calls for
17 real buildings to be built on the site. Vistas
18 are not protected under the law, and in fact
19 there's been consideration of them far beyond
20 what the documentation might ask for.

21 MR. OTTEN: Okay. Finally, at least
22 I have for now, you stated -- on page 33, you say

1 the McMillan site is not an identified
2 archaeological site, right?

3 MS. EIG: That is correct.

4 MR. OTTEN: But in the July 14th
5 testimony on page 14, it shows that Tiber Creek
6 flows under this site. Are you -- you're aware
7 of that?

8 MS. EIG: Yes.

9 MR. OTTEN: Are you aware that Tiber
10 Creek dates back to the Cretaceous Period?

11 MS. EIG: Yes.

12 MR. OTTEN: And are you aware they
13 found dinosaur bones during the construction of
14 McMillan Waterworks?

15 MS. EIG: Originally in 1900?

16 MR. OTTEN: Yes, yes.

17 MS. EIG: No, I'm not aware of that.

18 MR. OTTEN: Now that you know, will
19 you be willing to check in with the
20 archaeological society to determine how likely
21 they might find any sort of archaeologically
22 important --

1 MS. EIG: This project would have
2 already been vetted, if I might use that word, by
3 the D.C. Archaeologist, and also there is an
4 understanding that if anything would be found
5 during an unexpected, just discovery would be
6 made during the course of construction, that the
7 archaeologist would be brought into the site.

8 MR. OTTEN: As of now, there's nothing
9 on the report from the archaeological -- D.C.
10 government archaeological department?

11 MS. EIG: That's it my understanding,
12 yes.

13 MR. BYRNE: There's an archaeologist
14 on the HPRB.

15 MR. OTTEN: Okay, but they said
16 nothing to --

17 MR. BYRNE: Well, they approved the
18 project.

19 MR. OTTEN: Okay, okay. Let me move
20 to Mr. Dettman again. Mr. Dettman, you produced
21 a review and a report that was submitted for this
22 hearing as regards the special benefits of the

1 project, vis-a-vis the complaint, right?

2 MR. DETTMAN: I provided a
3 Comprehensive Plan analysis, and as I said in my
4 testimony, and I think it's a very important
5 point worth reiterating, is that my role in this
6 proceeding is not to identify features of the
7 project that should warrant special merit,
8 collectively or individually. Those were the
9 responsibility --

10 MR. OTTEN: So on page one of your
11 report --

12 MR. DETTMAN: Let me answer your
13 question. That's the responsibility of my team
14 mates here.

15 MR. OTTEN: Okay.

16 MR. DETTMAN: And what I was doing
17 specifically, as I stated, is taking those
18 special merit features of the project that were
19 identified by others, and tying them to
20 Comprehensive Plan policies because per the
21 court's order, the greater the extent you could
22 do that, the more likely it is for the project to

1 be found have special merit.

2 MR. OTTEN: Connecting it to Mr.
3 Byrne's decision, okay. Did you do that as a
4 Holland and Knight employee or as an NCPC
5 employee?

6 MR. DETTMAN: Did I do what?

7 MR. OTTEN: This review. Was this
8 NCPC work or was this Holland and Knight work?

9 MR. DETTMAN: My -- the full blown
10 Comprehensive Plan analysis that's attached in
11 our prehearing statement I prepared as a Holland
12 and Knight employee.

13 MR. OTTEN: Okay, and on page one of
14 the report, so that's Exhibit C in the June 23rd,
15 you say that the project removes quote-unquote
16 "physical barriers" which have "closed off the
17 site for decades." I presume you mean taking
18 down the fence?

19 MR. DETTMAN: Taking down the fence
20 and also opening up additional access through the
21 internal street network that will be provided.

22 MR. OTTEN: Okay. Are you aware there

1 were city-sponsored and ANC and community-hosted
2 tours of this site up until a couple of years
3 ago?

4 MS. BROWN: Objection. He didn't
5 testify to that.

6 MR. OTTEN: Well, he testified that
7 the site was closed.

8 MR. BYRNE: I'll allow that question.

9 MR. OTTEN: Okay.

10 MR. BYRNE: Please answer the
11 question, sir.

12 MR. DETTMAN: I've heard that the City
13 provided tours of the site in the past.

14 MR. OTTEN: On page two of your
15 report, you say "The applicant has placed the
16 taller health care facility at the north end,
17 immediately across the street from the taller
18 Washington Hospital and Children's Medical
19 Center."

20 So like the exercise of Ms. Eig, it
21 would seem that you're claiming that they're
22 closer to the hospital centers, but isn't it true

1 that it's closer to the row houses to the east of
2 the site?

3 MR. DETTMAN: If what you just read is
4 exactly what I wrote, I'm not claiming that. I'm
5 claiming that they're immediately across the
6 street from the taller health care facility
7 buildings, which they are.

8 MR. OTTEN: And isn't there a pretty
9 significant setback from Michigan Avenue to the
10 frontage of those medical complexes?

11 MR. DETTMAN: I wouldn't necessarily
12 call it a setback, almost like, as if it was a
13 purposeful setback. There are surface parking
14 lots that are there currently, yes.

15 MR. OTTEN: And on page three, you say
16 the applicant has maintained visual north-south
17 views. Can you point to those on the record?

18 MR. DETTMAN: Those north-south views,
19 as Ms. Eig testified to, are provided on Half
20 Street, on Quarter Street and Three Quarter
21 Street that would be provided, as well as the
22 north-south connections along the east and west

1 sides of the Olmstead Walk.

2 MR. OTTEN: Will you be able to see
3 the Capitol from Michigan Avenue as you do now if
4 this project's built?

5 MS. BROWN: Objection. Assumes that
6 it can be seen now, and there's nothing in the
7 record to establish that.

8 MR. BYRNE: I think you can put on
9 what -- you can ask him about whether you can --
10 I suppose you can ask him a question as to
11 whether he knows what you'll be able to see from
12 Michigan Avenue after the project is built so --

13 MR. DETTMAN: Okay. I don't know what
14 you'll be able to see from Michigan Avenue and
15 how the current view will be changed.

16 MR. OTTEN: Are you aware of on the
17 record the Lincoln -- the staff leadership of
18 Lincoln's Cottage contesting how the project
19 destroys the view of the Capitol and other
20 downtown landmarks?

21 MS. BROWN: Objection.

22 MR. BYRNE: Sustained.

1 MR. OTTEN: Didn't you conduct some
2 kind of view analysis at some point? Isn't there
3 something that you can point to that shows your
4 analysis in saying that the views are maintained?

5 MS. BROWN: Objection. He didn't
6 testify to that.

7 MR. BYRNE: So I think he just
8 testified about the ability to see down the
9 streets and along the Olmstead Walk on both
10 sides. Is that what you're asking?

11 MR. OTTEN: I am -- but specifically
12 to the Capitol and the Monument, which is a
13 historic viewshed and something that our members
14 certainly enjoy now. With your role in this
15 project on NCPC, did you not conduct a wire
16 diagram, an analysis of this viewshed?

17 MS. BROWN: Objection. His role at
18 NCPC is separate and distinct from his role here
19 today, in the testimony that he presented.

20 MR. BYRNE: Sustained.

21 MR. OTTEN: Just for clarification,
22 the gentleman next to me, Mr. Thakkar is eating

1 and drinking. I wasn't sure we could do that in
2 this room.

3 MR. BYRNE: I would ask people
4 generally not to do that while they're at the
5 table.

6 MR. OTTEN: Okay. Thank you.
7 Otherwise, I'd go have a drink too but --

8 MR. BYRNE: If you want water or
9 something, you can have that.

10 MR. OTTEN: Okay. There is an NCPC
11 report though on the record, is there not, about
12 this project?

13 MR. DETTMAN: It is or it isn't,
14 right? There is an NCPC report in the record,
15 yes.

16 MR. OTTEN: And wasn't that report
17 penned by you, Mr. Dettman?

18 MR. BYRNE: Sustained.

19 MR. OTTEN: I just want to understand.
20 Were you working at Holland and Knight at the
21 same time as NCPC?

22 MS. BROWN: Objection. We clarified

1 this last time when Ms. Ferster objected to his
2 testimony in general. It's been resolved, and I
3 don't know why we're revisiting it again.

4 MR. BYRNE: We went through that in
5 some detail last time, and the answer is no, he
6 was not.

7 MR. OTTEN: But we can't find any
8 viewsheds on the record, okay. Looking at page
9 four of your report, you claim that the buildings
10 across the street, the new buildings being placed
11 on the site along North Capitol, across the
12 street from the existing rowhouses, step down
13 from moderate and medium height buildings, is
14 that right?

15 MR. DETTMAN: Can you point me to the
16 direct -- can you point where that exact language
17 is?

18 MR. OTTEN: Yeah, on page four. And
19 then it looks to be including the red ink as a
20 paragraph, one, two, three, the four paragraph
21 about halfway down.

22 MR. DETTMAN: Does that sentence start

1 "Aside from"?

2 MR. OTTEN: Yes.

3 MR. DETTMAN: "Aside from the frontage
4 along Parcel 1, the remainder of the North
5 Capitol Street frontage will be improved with
6 moderate to medium height buildings that step
7 down in height moving towards the proposed
8 recreation center and residential development
9 itself." Is that what you're referring to?

10 MR. OTTEN: Correct.

11 MR. DETTMAN: Okay.

12 MR. OTTEN: Do you recall how tall the
13 rowhouses are across the street on North Capitol,
14 in feet or floors?

15 MR. DETTMAN: My recollection is that
16 those are two and three story rowhomes.

17 MR. OTTEN: Okay, and when you define
18 or say "medium density improvements," what is
19 that height, feet or floors?

20 MR. DETTMAN: You know, I would put
21 those moderate to medium height says to me around
22 40 feet, consistent with 40 to 46 feet, 45 feet.

1 That's consistent with a rowhouse height, say
2 like in a RF1 zone. I don't want to be too
3 technical. Medium density goes up maybe 70 to 80
4 feet, which is consistent with what's the
5 building height on Parcel 4, and consistent with
6 the moderate density consistent with the rowhomes
7 on Parcel 5.

8 MR. OTTEN: Okay, and also on that
9 same page, it's the paragraph above that, you say
10 that loading noise will be mitigated through the
11 curbside management plan? Can you point to --
12 can you help us find any noise studies on the
13 record?

14 MR. DETTMAN: I'm not aware of any
15 noise studies that are on the record in this
16 proceeding. It might be. I'm just -- I'm not
17 aware of it.

18 MR. OTTEN: Okay. You specifically
19 focus the noise to the loading trucks. Isn't
20 there noise generated by this project besides
21 that of loading trucks?

22 MR. DETTMAN: Like any project and

1 vehicle traffic, people walking on the sidewalk
2 being loud, loading. Like any project, there
3 will be noise that will be generated that's not
4 currently on this vacant site now.

5 MR. OTTEN: Okay, right. So it's fair
6 to say there's no noise there now?

7 MR. DETTMAN: (No audible response)

8 MR. OTTEN: Okay. I take that as yes.
9 Okay, and but what about like the ambulances
10 coming to and leaving from the site? Is that --

11 MR. DETTMAN: Ambulances coming to the
12 site?

13 MR. OTTEN: Yes.

14 MR. DETTMAN: For people who are sick?

15 MR. OTTEN: For the medical offices
16 and complex.

17 MR. DETTMAN: I don't know that that's
18 knowable. It's a medical office building.
19 There's a hospital there. There are ambulances
20 going all the time. I don't understand the
21 question.

22 MR. OTTEN: I'll move on. In your

1 analysis of the comp plan Mr. Dettman, and the
2 benefits of the project, whenever you mention
3 mitigation conditions, do you log that as a
4 benefit of the project?

5 MR. DETTMAN: Not in every instance,
6 no. There may be features of the project that
7 have been proffered as contributing to the
8 project's special merit by the others on this
9 team at the last proceeding. There may be some
10 that may serve as mitigation features, but that
11 in and of itself I don't believe automatically
12 excludes that feature as a special merit feature
13 under this proceeding.

14 MR. OTTEN: Well, let's take an
15 example. On page five, you claim that the
16 project will generate "a large number of new
17 vehicle trips, but the environmental impacts will
18 be mitigated, such as the air quality, carbon
19 dioxide." How is that possible?

20 MR. DETTMAN: There's just --

21 MS. BROWN: If I could just object.
22 I think he already answered the question

1 generally, so getting a specific example I'm not
2 sure that we're going to get any more information
3 than the same one.

4 MR. BYRNE: But let's have this
5 example and let's see. So go ahead, sir.

6 MR. DETTMAN: Repeat your question.

7 MR. OTTEN: Okay. So on page five, if
8 I'm not mistaken it says that you claim the
9 project will generate "a large number of new
10 vehicle trips," but claim that "the environmental
11 impacts will be mitigated, such as the air
12 quality carbon dioxide." How do you figure that
13 to be?

14 MR. DETTMAN: When are you reading
15 from?

16 MR. OTTEN: So basically the last
17 paragraph, "With respect to environmental."

18 MR. DETTMAN: Okay, I see. There are
19 whole host of ways where you can mitigate impacts
20 to air quality and what-not, and as you know, the
21 District Department of Transportation did a full
22 blown analysis on this project and found that the

1 transportation impacts of the project are
2 mitigated through it TDM plan and loading
3 management plan.

4 The Department of Energy and the
5 Environment testified extensively at the zoning
6 remand proceeding about how the project this
7 going to mitigate impacts on air quality
8 specifically through adherence to the modeling
9 that it in adherence to the air quality standards
10 that they applied.

11 In addition, I think in several areas
12 of the Comprehensive Plan analysis I prepared,
13 and it's well known that the more that you can
14 increase tree canopy on a site throughout the
15 City, tree canopy has scientifically been shown
16 to have improvements on air quality.

17 This site currently has very few
18 trees, very few healthy trees on the site, and as
19 part of the project there's going to be over 700
20 new trees transplanted on the site. That in and
21 of itself will contribute to improvements in air
22 quality, or help mitigate the impacts on air

1 quality.

2 MR. OTTEN: You mentioned that one of
3 those mitigation techniques is traffic
4 management, and I think you're referring to the
5 lights, the new installation of stop signs and
6 lights.

7 MR. BYRNE: You know, I probably don't
8 want to hear more about the transportation plan.
9 I think that's a Zoning Commission issue by and
10 large, and I think -- I don't think it's a
11 fruitful line for you.

12 MR. OTTEN: Well, can I ask did the
13 Zoning Commission get into that?

14 MR. BYRNE: No, you can't. What the
15 Zoning Commission did, the Zoning Commission did.
16 That's their job. They haven't ruled yet so --
17 but they look at traffic impact. I was asked by
18 the Court of Appeals to stay away from things
19 like that.

20 MR. OTTEN: How do you determine the
21 special benefits then, based on their ruling?

22 MR. BYRNE: I'm not a witness here so

1 go ahead.

2 MR. OTTEN: Okay. I'm not sure if I
3 asked you this yet, but the new volume of vehicle
4 trips. Did I ask you that?

5 MR. DETTMAN: (No audible response)

6 MR. OTTEN: Okay.

7 (Pause.)

8 MR. OTTEN: Would it be fair to say
9 that the bike and pedestrian safety is directly
10 connected to the number of vehicle trips or the
11 generated vehicle trips to this site?

12 MR. BYRNE: Really Mr. Otten, this
13 doesn't have anything to do with the case in
14 front of me. I don't -- the issue of managing
15 bicycle safety and traffic is really not part of
16 the Historic Preservation proceeding.

17 MR. OTTEN: I hear you. I guess what
18 I'm confused by, this was presented to you as why
19 this project elevates to one of special merit.

20 MR. BYRNE: No. Well, I think he said
21 why the project is consistent with the
22 Comprehensive Plan, and you know, you can make an

1 argument, a legal argument that it has nothing to
2 do with it, that's fine. But sort of asking him
3 these kind of questions really isn't getting you
4 anywhere.

5 MR. OTTEN: I'm just going off the
6 testimony he's presented to you. One of the
7 special benefits that we've heard, you've
8 testified to, is the affordable housing component
9 of the project, right?

10 MR. DETTMAN: (No audible response)

11 MR. OTTEN: On page nine of your
12 report, Mr. Dettman, you say that 20 percent of
13 the gross floor area is dedicated as affordable
14 units for the life of the project. Do you see
15 that?

16 MR. DETTMAN: I see that.

17 MR. OTTEN: Okay. But isn't it true
18 it's not 20 percent of the gross floor area;
19 it's 20 percent of the units are affordable?

20 MR. DETTMAN: I believe that's the
21 requirement under the LDA. Mr. Thakkar maybe can
22 speak more intelligently about what the actual

1 requirement in the LDA is. But I do believe it's
2 20 percent of the units.

3 MR. OTTEN: Twenty percent of the
4 units?

5 MR. BYRNE: Mr. Thakkar.

6 MR. THAKKAR: Yes. Just to be clear,
7 the LDA does not state 20 percent of the units.
8 We have agreed upon the number of units in the
9 LDA, and we have to provide a minimum number and
10 this project I believe exceeds that minimum
11 number.

12 MR. OTTEN: Is that number based on
13 gross floor area or is it a metric of units and
14 not gross floor area?

15 MR. THAKKAR: I don't think anyone
16 testified to this, but it is based on the number
17 of units.

18 MR. OTTEN: Thank you. Transportation
19 aspects of this project, not the impacts but the
20 benefits of it is being touted as something
21 special here, as I see on page seven and six.
22 For example, Mr. Dettman you say that "Its many

1 improvements to access to public transportation."
2 Can you describe that? What do you mean by
3 access to public transportation and what are the
4 improvements?

5 MR. DETTMAN: Sure, sure, and it sort
6 of gets back to your questioning about mitigation
7 versus special merit benefits. Perhaps to answer
8 your question, let me give you an example about
9 the shuttle, because the shuttle was discussed a
10 little bit at the last proceeding as well.

11 While the shuttle may be a
12 transportation mitigation feature or an aspect of
13 transportation mitigation, in the Zoning
14 proceeding, as I mentioned at the last hearing,
15 it also has special merit benefits as well. This
16 is going to be a shuttle that's going to be
17 available to the public, not only just to people
18 who are residing on site but also in the
19 surrounding neighborhood.

20 The shuttle exists for purposes of
21 providing increased and improvements to access to
22 transportation to the Brookland Metro Station.

1 Seniors who are looking to get to areas that are,
2 you know, their doctor's appointments, their
3 shopping, you know, to satisfy their shopping
4 needs. It's going to be available to seniors
5 that are in the affordable senior housing
6 dwelling units.

7 They can jump on the shuttle. They
8 can take care of their needs. They can increase
9 access to transportation.

10 MR. OTTEN: Okay, I appreciate that
11 answer. Has there been an attempt to quantify or
12 project how many persons from the general public,
13 not necessarily going -- not either coming or
14 going from the McMillan site will be using the
15 shuttle? So the general public as you say.

16 MR. DETTMAN: I know that it will be
17 available to the general public. The number of
18 trips that are accommodated, I guess that's up to
19 how many people from the general public want to
20 use the shuttle. I'm not aware of any study.

21 MR. BYRNE: So not aware of a study.

22 MR. OTTEN: Okay, and you say that the

1 project on page seven, the last sentence there.
2 You say the project will provide opportunities in
3 close proximity to several Metro bus routes. Are
4 you aware about -- are you aware that they're
5 actually considering cutting Metro bus routes
6 around this park?

7 MR. DETTMAN: I'm not aware of that.

8 MR. OTTEN: Okay. I guess to Mr.
9 Dettman and Mr. Thakkar, are you familiar with
10 the Comprehensive Plan policies that speak to
11 building an inclusive city with 30 percent as
12 kind of the benchmark for affordable housing?

13 MR. DETTMAN: I am aware of the vision
14 framework that the District has out there, which
15 serves as the basis of the 2006 Comprehensive
16 Plan. I believe it's called Planning for an
17 Inclusive City. That calls for the 30 percent of
18 all new affordable housing -- new, 30 percent of
19 all new housing being devoted to affordable
20 housing. Not on a project by project basis.
21 Just a general statement that 30 percent of all
22 new housing should be devoted as affordable

1 housing.

2 MR. OTTEN: So is it an impact that
3 it's below that and not above that number? Why
4 is it a benefit that it's only 20 percent?

5 MR. BYRNE: I think he just testified
6 that that was an aspiration for all the housing
7 to be constructed and not project by project.

8 MR. OTTEN: The sales price of the
9 affordable multi-family units, do you know what
10 that will be for the project?

11 MS. BROWN: I don't believe anybody
12 testified to sale prices.

13 MR. BYRNE: Right, right. But that's
14 established based upon AMI, where the AMI is at
15 the time they come on the market.

16 MR. OTTEN: And are you aware of any
17 analysis done by the fact that the -- I guess
18 that's Mr. Bogorad. You did the study on the
19 affordability, gentrification displacement.

20 MS. BROWN: Objection. He did not
21 testify to displacement or gentrification.

22 MR. OTTEN: No? What did you testify

1 to?

2 MR. BYRNE: No, I don't --

3 MS. BROWN: It's on the record for you
4 to decide what he testified to.

5 MR. BYRNE: I don't think you get to
6 ask him what he testified to.

7 MR. OTTEN: Well, it's not on the
8 record because I never got it. Just a print
9 copy.

10 MR. BYRNE: So Mr. Otten, can you
11 estimate how much longer you need?

12 MR. OTTEN: I have to ask Mr. Silman
13 (phonetic) questions and Mr. Weers and --

14 MR. BYRNE: Okay. So --

15 MR. OTTEN: I don't know. Maybe
16 another hour.

17 MR. BYRNE: Another hour. So why
18 don't we take a break here for five minutes and
19 let people stretch, and if they have to go to the
20 restroom, do so.

21 (Whereupon, the above-entitled matter
22 went off the record at 10:48 a.m. and resumed at

1 10:54 a.m.)

2 MR. BYRNE: Okay folks, we're
3 beginning. Quiet in the back please.

4 MR. OTTEN: Okay. Chris Otten for the
5 record, coming back from the break for D.C. for
6 Reasonable Development. Mr. Dettman, on page ten
7 you mention 9.3 acres of new parks and open space
8 as part of this plan. It's true that when you
9 say that, you're not talking about contiguous
10 open space, right? It's broken up.

11 MR. DETTMAN: That's correct. There
12 are other areas of the component analysis that,
13 especially in the policy that talks about
14 substantial portion of contiguous space,
15 continuous open space. I think that policy is in
16 the mid-city element, where I specify that it's
17 the six acre park on the south that's the large,
18 contiguous open space.

19 But collectively, it's, you know, well
20 above that in terms of the amount of the site
21 that will be devoted to parks, recreation and
22 open space.

1 MR. OTTEN: And basically I'm just
2 working through your report here. I just want to
3 clarify, page 12 you say the project will include
4 three and four-bedroom unit types. But I don't
5 see four bedrooms in the matrix.

6 MR. DETTMAN: That's a typo. I
7 believe all the townhomes will be three bedroom.
8 Sometimes there's an option.

9 MR. THAKKAR: Mr. Dettman likely
10 included that because townhomes can include a
11 fourth bedroom, but we haven't gotten to the
12 stage of planning where we could confirm. There
13 are a minimum of three bedrooms is the right way
14 to say it.

15 MR. OTTEN: Okay. So there could be
16 larger family units possibly?

17 MR. THAKKAR: There could be.

18 MR. OTTEN: When does that get
19 committed to?

20 MR. THAKKAR: Well, there's no -- how
21 should I say this? There's no commitment
22 process. It's the discretion of the development

1 team. So once we get through this entitlement
2 process, which correctly stated that we're going
3 through now again, after that prior to getting
4 your building permits, you have to confirm the
5 exact layouts of every unit in the project.

6 MR. OTTEN: To that discretion, if I
7 could ask, what determines the need -- what
8 shapes that discretion? Is there a need analysis
9 done of the numbers of families requiring four
10 bedroom units?

11 MR. THAKKAR: So just to be clear,
12 this isn't a project where -- you might be
13 referring to certain projects where there are
14 units that are demolished and then we have to
15 come back and replace those units. This is new
16 affordable housing, and so we must meet our
17 commitments outlined in the LDA as I spoke to
18 prior to with regard to the number of units
19 provided in the different categories, whether it
20 be senior housing or multi-family housing or
21 townhouses, and that's what we're doing.

22 MR. OTTEN: Is the LDA on the record

1 by chance? I don't recall seeing it. That's
2 what I'm asking.

3 MS. BROWN: Just for the record, we
4 have links to the final Council approval on page
5 30 of our prehearing submission.

6 MR. OTTEN: Okay. Mr. Dettman, this
7 kind of goes back to the question about renter
8 and owner. You say the project will include both
9 renter occupied and owner occupied. I just --
10 you don't know the ratio at this point?

11 MR. DETTMAN: I don't know the ratio.
12 I'm also not the best person to answer that
13 question.

14 MR. OTTEN: Okay, and I think you
15 mentioned it, right?

16 MR. THAKKAR: Again to be clear, the
17 townhouses are ownership.

18 MR. OTTEN: The townhouses are
19 ownership?

20 MR. THAKKAR: Right. So the 146 total
21 townhouses are ownership and the senior housing
22 and multi-family housing is planned as rental

1 housing.

2 MR. OTTEN: Okay, thank you. The
3 senior housing on page 13, the last paragraph,
4 you say that the project will include 85 senior
5 affordable dwelling units that will be integrated
6 into the project. When you say "integrated," how
7 does that square with the fact that the senior
8 building has its own lobby and its own door as
9 part of the same building?

10 MR. DETTMAN: Well, what it says is
11 integrated into the project. Then it goes on to
12 say "such that residents of the senior affordable
13 units will be in close walking distance to key
14 health care services, recreation and retail
15 uses." So it's integrated as part of the overall
16 project, and those residents will have close
17 proximity access to all those things that listed.

18 MR. OTTEN: Do you have any idea why
19 the senior building is separated out with own
20 lobby and --

21 MR. DETTMAN: I don't.

22 MR. OTTEN: You speak to the

1 environmental elements, and on pages 14, 15, 16,
2 17, you talk about runoff and stuff. It seems
3 like the site is significantly more paved than
4 currently now. Is that a fair statement?

5 MR. DETTMAN: The percentage of
6 impervious surface on this site will go up as a
7 result of this project. It does not mean that
8 the degree of storm water runoff will go up.

9 MR. OTTEN: Okay. What about the
10 carbon ink index of the site? Are you aware of
11 anything like that, any study in the record?

12 MR. DETTMAN: I'm not aware of any
13 study, no. But what I did say in my analysis, I
14 spoke to urban heat island on effects and that
15 the benefits that this project will provide in
16 helping to mitigate urban heat island through the
17 700 new trees that we've placed on the site.

18 MR. OTTEN: Do you have a baseline
19 level of the heat island effect now?

20 MR. DETTMAN: Ms. Eig is reminding me
21 that the entire site is impervious to that.

22 MR. OTTEN: It's impervious?

1 MR. DETTMAN: It's impervious.

2 MR. OTTEN: So let me understand that
3 because -- well define impervious for me?

4 MS. EIG: The site is essentially a
5 green roof. There's the -- the filter beds have
6 concrete roofs, ceilings, and it's continuous,
7 and there is grass on top of that dirt and grass
8 on top of it. So the water does not actually get
9 into the earth beyond that.

10 MR. OTTEN: So by that logic, part of
11 the impervious surfaces of the new structures is
12 their green roofs. Isn't that the same --

13 MS. EIG: I don't know the answer to
14 that one. I'm just talking about the historic
15 condition here.

16 MR. OTTEN: Okay. Do you have anything
17 on that, Mr. Dettman?

18 MR. DETTMAN: Ask the question again?

19 MR. OTTEN: Just the comparison of --
20 we just heard from Ms. Eig that the current
21 existing is essentially a green roof on the
22 waterworks. But aren't some of the impervious

1 surfaces you're speaking of green roofs on the
2 buildings?

3 MR. DETTMAN: Probably, yeah.

4 MR. OTTEN: On page 22, you talk about
5 -- you reference the commercial displacement.

6 MR. BELL: Can I just weigh in on
7 that, just for a second on that last issue?

8 MR. OTTEN: Sure.

9 MR. BELL: The LEED Silver, there are
10 different ways to get to the LEED Silver, that
11 the buildings are going to be listed as. So that
12 might be one technique that a builder would use
13 to get to LEED Silver as the commitment is in the
14 master plan, with the green roofs.

15 MR. DETTMAN: And I would only add
16 that we not proffering the green roofs as a
17 special merit feature of the project. What we've
18 proffered is that the entire project has been
19 looked at holistically, and will be certified as
20 LEED Neighborhood Development, LEED ND Gold.
21 That is the special merit feature of this
22 project.

1 MR. BYRNE: Okay. You know, it might
2 be helpful for me, I don't think it's in the
3 record, of some explanation about what that --
4 what's provided for in LEED Neighborhood Gold.
5 Just some so it's a reference point.

6 MR. OTTEN: That would be helpful, and
7 I guess following on, has this certification been
8 received yet by I guess -- I don't know who gives
9 that certification. Is it the Green Building
10 Council?

11 MR. BELL: It has to be independently
12 certified. So no, it hasn't been certified yet.
13 It's a commitment.

14 MR. OTTEN: It's a commitment, okay.

15 MR. BELL: And you hire someone to do
16 the certification.

17 MR. OTTEN: When does that happen in
18 the process?

19 MR. BELL: It happens as -- in the
20 beginning of the project, as drawings are being
21 developed, and then periodically through
22 constructions there are measures and things like

1 that and also at the end, as the total
2 certification is measured. So what you want to
3 do is start it fairly early on, so all the
4 different things that go into planning and go in
5 construction are accounted for.

6 MR. OTTEN: But the final
7 certification doesn't occur until the project's
8 built?

9 MR. BELL: That is correct.

10 MR. OTTEN: Okay. I guess just to
11 proceed that, could you seek certification now
12 with what you have, the plans that you have? Is
13 that possible?

14 MR. BELL: No, because you have to
15 build the project.

16 MR. OTTEN: Okay.

17 MR. BELL: It's a commitment now.

18 MR. OTTEN: And if you don't meet that
19 commitment, what happens then?

20 MR. BELL: You track it along the way,
21 so that you do meet it.

22 MR. OTTEN: Okay. Mr. Dettman, on

1 page 22, you reference commercial displacement,
2 and you say that it will not result in any direct
3 displacement of existing small and local
4 businesses. Have you talked to any of the
5 existing local and small businesses in the area?

6 MR. DETTMAN: There are none on this
7 site, and I think what you just read is that it's
8 not going to result in any direct displacement of
9 existing small and local businesses, as the site
10 is currently vacant.

11 MR. OTTEN: I'm sorry. I got
12 distracted, Mr. Dettman. Can you answer that
13 again?

14 MR. DETTMAN: Sure. I said that there
15 are no existing small and local businesses on the
16 site, and as you just read, the language that's
17 in the comp plan analysis provided says the
18 project will not result in any direct
19 displacement of existing small and local
20 businesses as the site is currently vacant.

21 MR. OTTEN: Okay, and so but there
22 could be displacement of surrounding small

1 businesses in competition with let's say the
2 grocery store? Or maybe just by the sheer
3 construction of this massive project.

4 MS. BROWN: Objection.

5 MR. BYRNE: That's just an assertion.
6 He didn't testify about that.

7 MS. BROWN: And it calls for
8 speculation.

9 MR. OTTEN: Well, but the question is
10 has anybody spoken to any of the surrounding
11 small businesses to make this determination?

12 MR. BYRNE: He testified that there
13 would be no direct displacement on a site that's
14 vacant.

15 MR. OTTEN: Correct, but did --
16 there's displacement that happens other than --

17 MR. BYRNE: I understand that, and
18 that can be part of your case if you want to put
19 it on.

20 MR. OTTEN: So Mr. Dettman, I believe
21 throughout your testimony you speak about Cell 14
22 as being retained and the surface area being one

1 of the open green spaces as part of the acreage
2 of open green space, right?

3 MR. DETTMAN: That's correct, a one
4 acre park.

5 MR. OTTEN: And so that park will have
6 folks that can walk on it, picnic on it?

7 MR. DETTMAN: That's my understanding.

8 MR. OTTEN: Okay, and is it also your
9 understanding that that cell right now is being
10 repurposed right now by D.C. Water and will be
11 through 2022?

12 MR. DETTMAN: That's my understanding,
13 yes.

14 MR. OTTEN: Okay. So on page 27, you
15 talk about city gateways and you talk about how
16 the site is located along the North Capitol
17 Street corridor, finding it as an important
18 gateway in the Capitol, right? Page 27.

19 MR. DETTMAN: I see it.

20 MR. OTTEN: Are you aware that that
21 North Capitol Street as being an important
22 gateway is also an evacuation route?

1 MS. BROWN: Relevance.

2 MR. BYRNE: Relevance, yes please.

3 MR. OTTEN: It has to do with the --
4 he testified to the fact that the project will
5 generate a large volume of traffic and how that
6 may impact this evacuation route.

7 MR. BYRNE: I don't want -- that's not
8 going to help you here. That's for the Zoning, I
9 mean that's maybe for the Zoning Commission but
10 it's not for here.

11 MR. OTTEN: It's in his testimony to
12 you.

13 MR. BYRNE: No, it's not.

14 MR. OTTEN: It's what he said. Okay.
15 So on page 28, you write in the second paragraph,
16 towards the end of the second paragraph, "In
17 response to the extensive input gained throughout
18 this process, that it is involved substantially."
19 How long have you personally been involved in
20 this process?

21 MR. DETTMAN: As an employee of
22 Holland and Knight since February of 2015. As an

1 employee of NCPC I was learning the project prior
2 to that I'd say -- I don't even know. Sometime
3 in 2014.

4 MR. OTTEN: Okay. Turning to page 35
5 of your testimony, you talk about community
6 facility and long-term impacts. When you relate
7 your conclusions to the comprehensive plan
8 policies here, do you have any baseline levels of
9 the facilities now? For example of access to
10 schools or emergency response time or anything to
11 make your conclusions? How do you come to those
12 conclusions without baseline levels?

13 MR. DETTMAN: You'll have to point
14 where in this document on page 35 that you're
15 tying your question to.

16 MR. OTTEN: Okay, okay. So let's say
17 Policy CSF-111, Adequate Facilities. You
18 reference that policy, right?

19 MR. DETTMAN: I see it.

20 MR. OTTEN: And then you say that it
21 will not affect the facilities for delivery of
22 public services, and you reference some agencies

1 that have put information on the record.

2 MR. DETTMAN: Right. So the DCRA
3 environmental impact screening process is when
4 DPW and D.C. Water reviewed the project. I make
5 reference to Washington Gas, Verizon and Comcast.
6 The language of this response in terms of the
7 project's consistency with this policy relies
8 upon reports from the agencies. There's nothing
9 in here that talks about access to schools.

10 MR. OTTEN: So for those agencies, are
11 you aware if they did any baseline analysis of
12 the current existing levels of service?

13 MR. DETTMAN: No.

14 MR. OTTEN: Okay, and if you turn to
15 page 37, it's very similar. It goes into the
16 educational facilities and it talks about a
17 contribution from the applicant to the Education
18 Fund. Do you see that?

19 MR. DETTMAN: I see that.

20 MR. OTTEN: Is there any analysis of
21 about bringing on all, basically a small village
22 of new homes, how that will -- how those people

1 that will be moving there will affect or will
2 need higher levels of educational service or
3 community facility service?

4 MR. DETTMAN: Can you restate the
5 question?

6 MR. OTTEN: Has there been any
7 analysis done to show that the people moving into
8 the project that you're supporting will have
9 equal access at what exists now? Is there any
10 baseline analysis of what exists now?

11 MS. BROWN: And I'd object because --

12 MR. DETTMAN: I'm not aware of any.

13 MS. BROWN: That's not what it says.

14 MR. DETTMAN: The report talks about
15 the contribution that the applicant will make to
16 the education fund. I'm not aware of any
17 analysis based on an analysis about access or
18 capacity of, you know, public schools, and I
19 don't believe that base -- even if baseline
20 analyses existed, I'm not sure what relevance it
21 would have to the special merit inquiry or the
22 argument about consistency with the Act.

1 MR. BYRNE: Now let's not -- let's not
2 get into an argument about. I mean he's answered
3 the question. Let's move on.

4 MR. OTTEN: Okay. I think we talked
5 a little bit about storm water. You go into that
6 in 38. Do you have any baseline levels now of
7 the storm water runoff from the site right now?

8 MR. DETTMAN: I don't have them.

9 MR. OTTEN: Okay. You are -- Mr.
10 Dettman, you are familiar though with the
11 Comprehensive Plan discussing in good land use
12 planning a whole neighborhood approach, right?

13 MR. DETTMAN: Yes.

14 MR. OTTEN: And how does play into
15 your analysis vis-a-vis the special benefits of
16 this project?

17 MR. DETTMAN: I don't understand the
18 question.

19 MR. OTTEN: In your review of the
20 record and the case, in terms of that policy
21 about a whole neighborhood approach, do you
22 believe that was done in this case, in any

1 hearing, to give rise to a level of special
2 benefit?

3 MR. DETTMAN: Absolutely, 100 percent.

4 I think the policy of the Comprehensive Plan
5 you're referring to is in the housing element.
6 It's Policy H-1.4.6 and it's entitled "Whole
7 Neighborhood Approach." "Ensure that the
8 construction of housing is accompanied by
9 concurrent programs to improve neighborhood
10 services, schools, job training, childcare,
11 parks, health care facilities, police and fire
12 facilities, transportation and emergency response
13 capacity."

14 There are elements -- there are
15 substantial elements of this project, that relate
16 -- that are accompanied, that accompany the
17 housing that will improve neighborhood services
18 by job training, lots of parks, health care
19 facilities, all that stuff.

20 So I think that a whole neighborhood
21 approach, not only with respect to looking at
22 this project holistically for LEED ND, but from a

1 land planning perspective it has been looked at
2 holistically with a neighborhood in mind.

3 MR. OTTEN: Okay. Are you aware that
4 the -- and Mr. Bell, please answer this as well
5 if you're aware of this, but that the Zoning
6 Order 1314 states that "The applicant shall put
7 forth its best efforts to achieve a LEED Silver
8 rating, but the applicant shall not be required
9 to obtain the certification from the U.S. Green
10 Building Council."

11 How does -- I mean how does the zoning
12 order square with what you were just testifying
13 about getting certification?

14 MR. BELL: We will track LEED Silver
15 and demonstrate that it meets the criteria.
16 That's the commitment.

17 MR. BYRNE: Does that mean you don't
18 need certification from the Green Building
19 Council? You can just make, show the Zoning
20 Commission?

21 MR. DETTMAN: I can speak to that,
22 because what the portion of the order that Mr.

1 Otten's reading, what comes just before that is
2 the condition of the order, where the applicant
3 is required to be certified as LEED ND Gold.

4 MR. BYRNE: Okay.

5 MR. DETTMAN: So overall, the
6 applicant is required, which as Mr. Bell
7 discussed, the actual certification cannot happen
8 until after the project is built and actually
9 occupied and operating. But the condition is to
10 be certified as LEED ND Gold, and as in terms of
11 the individual buildings throughout the project,
12 it's what Mr. Otten just read.

13 MR. BYRNE: Good. Thank you.

14 MR. OTTEN: Okay, and Mr. Bell, I mean
15 yeah Mr. Bell, back to the -- just the
16 alternatives real quick. Looking at again for me
17 the master plan alternatives on page 64, isn't it
18 the case that one of these plans did not have a
19 medical complex as part of it, or was the health
20 care facilities always a part of all these plans?

21 MR. BELL: I think I testified that
22 the health care facilities came at a certain

1 point in time. They were not part of the
2 original conceptualization of the plan.

3 MR. OTTEN: And did any of the
4 alternatives have less demolition of the
5 underground vaults?

6 MR. BELL: I think I testified that
7 the final master plan that we arrived at was the
8 one that had the least amount of demolition of
9 the underground vaults. Previous plans proposed
10 more.

11 MR. OTTEN: And just looking at the
12 filters or the vaults underneath, I guess that's
13 on page 14 of the printed ones, the structural
14 analysis, that's the -- I'm sorry, page 14, which
15 is the -- it should show the bird's eye view of
16 the filter beds.

17 MR. BELL: Okay. What page?

18 MR. OTTEN: That's 15 in the printed
19 version. So it's 13 in the electronic and 14
20 printed, and the title of this "Structural
21 Analysis, Underground Vaults," right? So this
22 is the existing conditions, as it states here,

1 and if I'm not mistaken, that's Tiber Creek
2 flowing in the bottom, the southern, southeastern
3 portion of the site? Everybody's aware of that.

4 MR. BYRNE: So is this for Mr. Ruiz?

5 MR. OTTEN: Not yet, no. I was going
6 to ask Mr. Bell about the -- following it from
7 the alternatives, any alternatives that have less
8 demolition.

9 MR. BYRNE: Okay.

10 MR. OTTEN: So how come -- are you
11 aware of any rationale as to why the green
12 representing this most solid cells, why no
13 alternatives considered those to be --

14 MR. BELL: What you're doing when
15 you're doing a master plan, Mr. Otten, is you're
16 looking at a whole variety of conditions and
17 possibilities. So you don't look at any one
18 thing. Our planning revealed that any of the
19 cells, and our understanding from Silman, any of
20 the cells that would be retained would require
21 significant intervention for them to be included
22 in the master plan to stabilized them, which

1 would go for any of the cells in the complex.

2 So what you're trying to do is you're
3 trying to measure the open space plan, the
4 development plan and the preservation plan
5 together, and decide on strategy that maximizes
6 the potential of all three of those. So it was
7 not simply a condition for us of one factor
8 determining the master plan, but it was simply a
9 sophisticated sort of study of how different
10 things come together to make the plan.

11 MR. OTTEN: Okay, and so that study
12 led to the decision to give up the most
13 salvageable cells?

14 MR. BYRNE: Excuse me a second. Sir,
15 what's going on with the camera?

16 (Off-microphone comments.)

17 MR. BYRNE: We don't have to have
18 that, do we? I don't think -- I don't think that
19 the --

20 (Off-microphone comments.)

21 MR. BYRNE: It is. Oh, okay. What
22 about the camera?

1 (Off-microphone comment.)

2 MR. BYRNE: Okay, sir. What do you --
3 I'm sorry, you said you wanted to take pictures
4 of who?

5 (Off-microphone comments.)

6 MR. BYRNE: You may not do that,
7 sorry. Now, here's something surprising. It
8 turns out, Ms. Ferster, that this is being live-
9 streamed. We didn't request it, but Mr. Callcott
10 just found out that it's happening nonetheless.
11 So --

12 MR. OTTEN: Just for the record, I
13 believe any public hearing can be taped by
14 anybody from the public, including the press, and
15 usually they stand right over here behind the --
16 behind the recorder of the transcript.

17 MS. FERSTER: Could Mr. Callcott
18 clarify how members of the public can access this
19 webstream?

20 MR. BYRNE: Yes. That would be --
21 that makes sense.

22 (Off-microphone comment.)

1 MR. BYRNE: No, it's not. Sorry.

2 MR. CALLCOTT: It can be accessed
3 through the HPO website?

4 MR. BYRNE: The HPO website?

5 MR. CALLCOTT: Yeah,
6 www.planning.dc.gov, and if you click on -- I
7 suppose if you click on Historic Preservation
8 Review Board, which is what's normally being
9 webcast from this room, it would be there.

10 MR. BYRNE: Okay. So got that, Ms.
11 Ferster?

12 MS. FERSTER: I need to adjourn so I
13 can get this information to our expert, who can
14 monitor --

15 MR. BYRNE: That seems -- that does
16 seem fair. So let's --

17 MS. FERSTER: Let me -- can you just
18 -- I didn't get the entire website. Can you say
19 that again? www.planning --

20 MR. CALLCOTT: Dot dc dot gov.

21 MS. FERSTER: Dot dc dot gov, forward
22 slash? Something.

1 MR. CALLCOTT: No forward slash.

2 MS. FERSTER: And then go to HPRB, and
3 access the HPRB live webcast?

4 (Off-microphone comments.)

5 (Pause.)

6 MR. BYRNE: Do you need to take a
7 minute, Ms. Ferster?

8 MS. FERSTER: Yes. I need to get this
9 to Kirby, who's calling in to me because she's
10 following it, because she's going to be
11 conferenced in.

12 MR. BYRNE: Okay, okay. Wait. Just
13 wait one minute, I'm sorry.

14 MR. OTTEN: Mr. Byrne, do you mind if
15 I use the restroom?

16 MR. BYRNE: Yes.

17 MR. OTTEN: Thank you.

18 MR. BYRNE: All right. So we're
19 taking -- it looks like we're taking a short
20 break for human needs.

21 (Whereupon, the above-entitled matter
22 went off the record at 11:24 a.m. and resumed at

1 11:30 a.m.)

2 MR. BYRNE: Okay, looks like we're
3 ready to go again. Okay, let's go.

4 MR. OTTEN: I just want to have some
5 clarification of understanding about public
6 meetings and videotaping of public meetings,
7 because as a member of the public, I generally
8 tape meetings or portions of meetings when I'm
9 here, and I've never heard that that's not
10 allowed. So I'm confused by that.

11 MR. BYRNE: Well, I've never had --
12 I've never had people tape videotapes of any
13 Mayor's Agent hearing I've ever presided in, and
14 unless you show me a legal requirement that I
15 must do so, I'm not going to do it.

16 MR. OTTEN: Okay.

17 MR. BYRNE: Regulations requiring --

18 MR. OTTEN: It was sunshine laws.

19 MR. BYRNE: Well --

20 MR. OTTEN: All right.

21 MS. FERSTER: Just for the record,
22 this webcast is available not on the Historic

1 Preservation Review Board's site; it's accessible
2 on the Office of Zoning website. It is a Zoning
3 webcast.

4 MR. BYRNE: Okay, thank you.

5 (Pause.)

6 MR. OTTEN: Yeah. I just told the
7 gentleman that you're not going to allow the
8 videotaping. I don't know the person, but as a
9 courtesy I informed him of what you just said.

10 MR. BYRNE: Okay. Well, I told him
11 too so --

12 MR. OTTEN: Okay. So I think we were
13 on yeah, page 13 electronically, page 14 printed
14 of the filter beds, the underground vaults, the
15 historic underground vaults, and I guess I was
16 asking about the -- why don't any of the
17 alternatives -- why didn't you consider
18 preserving the cells that are most structurally
19 sound at this point?

20 MR. BELL: I think I just answered
21 that.

22 MR. BYRNE: Can you say again in like

1 one sentence so we can go on?

2 MR. BELL: So when you're do a master
3 plan, you're taking into consideration not just
4 one factor but many factors. In consultation
5 with our structural engineer, it was felt that
6 significant intervention would be necessary for
7 any of the cells, no matter what condition
8 they're in, to stabilize them, and we felt that
9 the ones that we chose were both in very good
10 positions to be experienced by the public and the
11 park in the north service court, and that they
12 would also require like any cell on the site
13 significant intervention to stabilize them.

14 We felt that when we looked at the
15 factors of the master plan and the location and
16 the experience, that these were the best ones to
17 use.

18 MR. OTTEN: Okay. So if I'm not
19 mistaken, the latest plan, the 2016 plan, has
20 Cell 28 partially preserved, right?

21 MR. BELL: That's correct.

22 MR. OTTEN: And isn't it fair to say

1 that when you say "significant intervention,"
2 you're talking cost and materials and labor?

3 MR. BELL: And life safety.

4 MR. OTTEN: And life safety. And so
5 wouldn't it be much -- how much more significant
6 is the intervention to save half of 28 then let's
7 say 16, which is green on the map? Is it
8 significantly more intervention?

9 MR. BELL: I think it's fair to say
10 that any saving, any cell would require very
11 significant stabilization, structural
12 stabilization. I can't quantify that for you at
13 this point in time.

14 MS. BROWN: And it may be more
15 appropriately directed to --

16 MR. BELL: Mr. Ruiz.

17 MS. BROWN: Mr. Ruiz.

18 MR. BELL: Yes.

19 MR. OTTEN: Okay. Same question.

20 MR. RUIZ: Well, as I previously
21 testified --

22 MR. BYRNE: Mr. Ruiz, I'm sorry. This

1 is the first time you've spoken.

2 MR. RUIZ: Oh, I'm sorry.

3 MR. BYRNE: So just please identify
4 yourself for the reporter.

5 MR. RUIZ: My name's Christopher Ruiz
6 with Silman.

7 MR. BYRNE: Thank you.

8 MR. RUIZ: As I testified previously,
9 regardless of the condition, any cells would
10 require significant stabilization.

11 MR. OTTEN: But is it fair to say that
12 one that you've colored orange versus one that
13 you've colored green would -- it would -- is
14 there a ratio of how much more intervention? Is
15 there --

16 MR. RUIZ: It would require the same.

17 MR. OTTEN: The same, okay. Now so
18 you testified, Mr. Ruiz, at the last hearing on
19 July 14th that this is unreinforced concrete
20 construction, right?

21 MR. RUIZ: Correct.

22 MR. OTTEN: On the vaults, and that

1 this type of construction can collapse suddenly?

2 MR. RUIZ: Correct.

3 MR. OTTEN: Are you aware of other
4 unreinforced concrete structures in the District?
5 For example, the Taft Bridge?

6 MR. RUIZ: I do not know of any such
7 structures, not to say there isn't any.

8 MR. OTTEN: Okay, and I think last
9 time on the July 14th, you said you can
10 practically save any of these cells, that there's
11 some kind of costs associated with that. Did you
12 do the cost analysis on that?

13 MR. RUIZ: No, I did not.

14 MR. OTTEN: Did you happen to see the
15 cost analysis in the OP report in 2000 or 2002?

16 MR. RUIZ: I did.

17 MR. OTTEN: Okay.

18 MR. RUIZ: You mean the CCJM report?

19 MR. OTTEN: I think that's one of
20 them. There's also the 2002 report.

21 MR. RUIZ: Well, I've only seen the
22 CCJM report.

1 MR. OTTEN: Okay, and there are dollar
2 figures associated with intervention in the
3 different types of cells?

4 MR. RUIZ: That's correct.

5 MR. OTTEN: Okay, and do you recall
6 that they cost different prices for the different
7 quality of the cell?

8 MR. RUIZ: No.

9 MR. OTTEN: You don't recall that or
10 --

11 MR. RUIZ: I don't know the exact
12 figure, no.

13 MR. OTTEN: So and you mentioned at
14 the July 14th hearing -- well let me ask you
15 this. In your analysis, did you actually go down
16 into the site?

17 MR. RUIZ: Yes.

18 MR. OTTEN: You've been down below
19 into the vaults?

20 MR. RUIZ: Yes, every single vault, or
21 cells I'd say.

22 MR. OTTEN: Okay, and the report

1 you're mentioning, the 2000 report --

2 MS. BROWN: Clarification please.

3 MR. OTTEN: Yeah, the report you just
4 referenced from 2000, the CCGM report, CCJM
5 report. Doesn't that have a map that's
6 essentially describing the same levels of
7 structural integrity as the one you put in on the
8 record?

9 MR. RUIZ: Yes.

10 MR. OTTEN: Okay. So between now --
11 between 2000 and when did you do this report?

12 MR. RUIZ: As listed on the slide,
13 2012 and 2014.

14 MR. OTTEN: Okay. So in 14 years,
15 nothing has significantly changed?

16 MR. RUIZ: I can't verify that for
17 exact, as significant. What do you mean by
18 significant?

19 MR. OTTEN: I mean I just -- in terms
20 of the map and the descriptions of these
21 structural integrity of the cells.

22 MR. RUIZ: I believe the descriptions

1 are similar.

2 MR. OTTEN: Okay, and the last time on
3 July 14th, you mentioned that at any point, the
4 green could shift to yellow, the yellow could
5 shift to orange, the orange could shift to red in
6 terms of structural integrity?

7 MR. RUIZ: Correct.

8 MR. OTTEN: And so in Cell 14, that's
9 being repurposed right now by D.C. Water, right?

10 MR. RUIZ: It's currently under D.C.
11 Water use.

12 MR. OTTEN: And you said it's
13 retaining a volume of water I think at the last
14 hearing?

15 MR. RUIZ: I didn't testify to that.

16 MR. OTTEN: Okay. When you visited
17 the site and you looked at Cell 14, what kind of
18 intervention did you see D.C. Water do to that
19 cell to prevent it from shifting from yellow to
20 orange or collapsing?

21 MR. RUIZ: D.C. Water has not provided
22 any stabilization to Cell 14. It's in its

1 current state as when it was constructed.

2 MR. OTTEN: And do you know how
3 they've repurposed it? Have they cut into it?
4 Have they brought pipes into it? How are they
5 repurposing it?

6 MR. RUIZ: It's my understanding
7 they're using it as a temporary storm water
8 retention structure.

9 MR. OTTEN: Okay. Did you actually
10 see, go into the cell?

11 MR. RUIZ: Yes.

12 MR. OTTEN: And you saw water being
13 retained there at the time?

14 MR. RUIZ: At the time I've been here,
15 I have not seen water in it, but it's my
16 understanding that water has been in there.

17 MR. OTTEN: Okay, presumably after a
18 rain event?

19 MR. RUIZ: A large rain event.

20 MR. OTTEN: And so they had to -- they
21 had to bring pipes or something into the cell to
22 capture that?

1 MR. RUIZ: Correct.

2 MR. OTTEN: Okay. So if your
3 testimony is that the yellow suddenly collapsed
4 or shifted to orange or really loses its
5 structural integrity at any time because it's a
6 reinforced concrete, why do you think D.C. Water
7 didn't reinforce it and is using it actively?

8 MR. RUIZ: Because they're using it as
9 it always was intended to be used, as a retention
10 of water. It's an industrial structure that's
11 being used as an industrial structure.

12 MR. OTTEN: But nonetheless, it is
13 reinforced concrete that can collapse suddenly?

14 MR. RUIZ: No, unreinforced concrete.

15 MR. OTTEN: I'm sorry, unreinforced
16 concrete. So they are knowingly using this
17 potentially that at any time it could collapse?

18 MR. RUIZ: Yes.

19 MR. OTTEN: And but some kind of
20 construction had to be done if water into the
21 cell? Like some cutting of the -- did you see
22 any cuts in the side of the cell or the

1 integrity?

2 MS. BROWN: Objection. I think this
3 is going far beyond what his direct testimony
4 was, and he doesn't have knowledge as to what
5 D.C. Water has done.

6 MR. BYRNE: Yeah. I think you can
7 just answer the question as to whether you saw
8 pipes cut into the cell or anything.

9 MR. RUIZ: I would say yes, I saw what
10 appeared to be a new pipe cut into the floor.

11 MR. OTTEN: Into the floor? Okay.
12 And you understand they're using that through
13 2022?

14 MR. RUIZ: That's what's been stated.

15 MR. OTTEN: Do you know when it went
16 online?

17 MR. RUIZ: Under D.C. Water use? No,
18 I do not.

19 MR. OTTEN: Okay. So if things are so
20 unsteady with the reinforced concrete as you --
21 unreinforced concrete as you testified, why would
22 preserving Cell 28 make more sense than let's say

1 Cell 17? So Cell 28 being the cell that has
2 Tiber Creek running under it and it's already
3 compromised, versus Cell 17, which is
4 structurally sound?

5 MR. RUIZ: Yeah. So what I testified
6 to was that the conditions can change and what I
7 specifically stated in relation to the green
8 cells that you're referencing is that while the
9 green cells are uncompromised today, it's a
10 sensitive structure that anything we can do can
11 compromise those to some degree later.

12 The conditions that you see in the
13 worst off cells would be created if you were to
14 remove the gates themselves.

15 MR. OTTEN: If you were to remove,
16 okay. So let me follow up on that. But Cell 28,
17 you're only saving half of it, so you're
18 basically cutting it in half. You're not just
19 cutting off the adjacent cell. You're cutting
20 it in half. Doesn't that -- won't that
21 destabilize it?

22 MR. RUIZ: Well as we said, there are

1 measures you can do to stabilize it, and that's
2 what we would be doing.

3 MR. OTTEN: But wouldn't those
4 measures be more expensive, more intervention
5 than one of the more structurally sound cells?

6 MR. RUIZ: I'm not a cost estimator,
7 so I don't know the exact cost.

8 MR. OTTEN: But intervention, in terms
9 of physical intervention?

10 MR. RUIZ: We would have to intervene
11 in both. We'd have to stabilize both.

12 MR. OTTEN: But it's a different
13 level, right?

14 MR. RUIZ: No, it's the same.

15 MR. THAKKAR: I'd like to provide some
16 clarification. So Mr. Ruiz's role is to advise
17 and share his professional opinion with regard to
18 these cells. I want to make something very clear
19 about all of these cells, and that is that when
20 you're dealing with public safety, that is why
21 you keep hearing him say that intervention for
22 various cells would all be the same, because

1 these cells, none of the cells were made to be
2 inhabited by humans.

3 So when you repurpose them to be part
4 of a site that will be inhabited by humans and be
5 used for various different functions, it has to
6 be a very significant level of intervention, just
7 to make them safe.

8 So I want to be clear that regardless
9 of the colors that Mr. Otten is looking at, the
10 cost, the methods and everything we do to
11 rehabilitate and preserve these cells would
12 largely be the same, because all of them are
13 unfit to be used now.

14 So it really doesn't make a big
15 difference with regard to Cell 28 or 14 or
16 whatever it is. You'd have to take extraordinary
17 measures to ensure that the public is safe.

18 MR. OTTEN: Mr. Thakkar, but isn't it
19 the case that some of these cells you could build
20 three story buildings? Currently, the green
21 ones?

22 MR. BYRNE: I don't think -- so I

1 don't think that Mr. Thakkar testified about
2 anything about that.

3 MR. OTTEN: He just testified that
4 every cell has to go under some kind of
5 intervention.

6 MR. BYRNE: He did.

7 MR. OTTEN: And so and some -- there
8 are levels of intervention that are going to be
9 different, based on the structural integrity of
10 the cell.

11 MR. BYRNE: Well, I think he just
12 testified that that was not the case.

13 MR. RUIZ: I did, and I'll say that
14 again.

15 MR. OTTEN: Where is the evidence to
16 that? Do you have --

17 MR. BYRNE: He just testified to it.

18 MR. OTTEN: Right. But your expert is
19 not saying that.

20 MR. BYRNE: He did say that, he did
21 say that.

22 MR. THAKKAR: My expert actually said

1 exactly that.

2 MR. RUIZ: The page you're looking at,
3 Mr. Otten, doesn't talk about different colors --

4 MR. OTTEN: I appreciate that. Then
5 why would D.C. Water not do the exact same safety
6 precautions you're describing right now? Could
7 not the cell collapse under the water projects
8 right now, with people walking by it and be
9 injured by it?

10 MR. RUIZ: That's correct. As I said,
11 it's an industrial site used for industrial use,
12 and is not meant for human occupancy. There's an
13 understanding that you're taking no risk.

14 MR. BYRNE: The public is not allowed
15 to go anywhere near --

16 MR. RUIZ: Correct. It's not publicly
17 accessible.

18 MR. OTTEN: But as I understand it,
19 isn't it true that this project will not have any
20 human habitancy in the underground cells?

21 MR. BYRNE: Which project?

22 MR. OTTEN: The project being proposed

1 right now.

2 MR. BYRNE: Right, right.

3 MR. OTTEN: So what is the -- why the
4 difference in the level of intervention between
5 D.C. Water's project as an industrial site?

6 MR. RUIZ: So as I said, it's not
7 meant for public assembly, public occupancy.
8 This project proposes allowing people to walk on
9 top of Filter 28 and as I testified, Filter 14 is
10 possible. We don't know because we have not
11 taken over Filter 14.

12 But in order to occupy the top side,
13 we need to reinforce the top side as well as
14 stabilize the structure to allow that kind of
15 use.

16 MR. OTTEN: And you testify on page 18
17 of the printed document that the overbuild is
18 structurally feasible; correct?

19 MR. RUIZ: Correct.

20 MR. OTTEN: And you're saying it
21 requires significant intervention. But you just
22 testified that that significant intervention

1 would be the same as some of the other uses or
2 no?

3 MR. RUIZ: I said that for, depending
4 on the scenario, yes there would be the same
5 intervention and I note that the overbuild in
6 that slide would require additional intervention
7 in that you need to put something through the
8 structure to support the overbuild.

9 MR. OTTEN: And then you say that when
10 you're piercing the structure, you further
11 destabilize the integrity of it?

12 MR. RUIZ: That's correct.

13 MR. OTTEN: And so by your testimony
14 that D.C. Water has pierced it with a pipe,
15 wouldn't that seem logical?

16 MR. RUIZ: Again, I don't know exactly
17 what they did, so I don't want to proffer as to
18 what could have happened or what could happen.

19 MR. OTTEN: Okay. Just looking at the
20 overbuild again, you're saying that the -- if I'm
21 not mistaken, that the historic integrity of the
22 site of those vaults are significantly reduced if

1 you want to do an overbuild, because you're
2 piercing through it and you have to build up some
3 kind of structure that would kind of clutter the
4 vaults and what-not, right?

5 MR. RUIZ: Well that's correct. What
6 I said is you already have columns base of 14
7 feet on center, and putting additional columns in
8 it would create a sea of columns and thus you
9 would ruin the historic value of the structure.

10 MR. OTTEN: But it's fair to say just
11 tearing out the vaults and throwing it in the
12 trash is also ruining the historic value of the
13 structure, is it not?

14 MR. BYRNE: That's not really a
15 question. Obviously it is, right? I mean they
16 admit that it is.

17 MR. OTTEN: Okay.

18 MR. BYRNE: So Mr. Otten, I'm going to
19 give you 15 more minutes.

20 MR. OTTEN: Okay. That's all I need.

21 MR. BYRNE: Good.

22 (Pause.)

1 MR. OTTEN: Mr. Weers, thank you for
2 being here. So just to refresh going back, you
3 are managing the medical complex or medical
4 facilities of this project?

5 MR. WEERS: My name is Adam Weers. I
6 work for Trammell Crow Company. We're the
7 developers of the health care facilities.

8 MR. OTTEN: And where in the slide of
9 the alternate plans did you get involved? What
10 year?

11 MR. WEERS: 2008.

12 MR. OTTEN: Okay, and you testified at
13 the July 14th meeting about older buildings not
14 being able to adequately serve a medical purpose.
15 Can you explain that for me again? What is it
16 about older buildings?

17 MR. WEERS: So that's not what I
18 testified. What I testified to was the age of
19 the health care infrastructure of the District,
20 and I testified to the District's health care
21 infrastructure per capita, and the fact that it
22 is lower than any other major metropolitan area

1 in the country.

2 MR. OTTEN: In terms of the equity of
3 the distribution of the medical facilities in the
4 City, have you seen the medical facilities map
5 from DMPED or anybody from the City, the
6 distribution of medical facilities around the
7 City?

8 MR. WEERS: I don't know what map
9 you're talking about.

10 MR. OTTEN: Okay. But nobody from the
11 City has ever shown you a map of the medical
12 facilities around the City?

13 MR. WEERS: I've seen many maps of the
14 medical facilities around the City.

15 MR. OTTEN: And would you say that --
16 did you look at Ward 7 at all in terms of the
17 equity in distribution of medical facilities?

18 MS. BROWN: I'm going to object. It
19 goes beyond his testimony.

20 MR. BYRNE: Sustained.

21 MR. OTTEN: Excuse me, but Mr. Weers
22 testified to the benefit of concentrating the

1 medical facilities, and there is a comprehensive
2 plan that talks about equitable distribution of
3 these facilities. So that's where my line of
4 questioning is going.

5 MR. BYRNE: Right. But I mean I
6 understand where it's a line of argument against
7 the benefits of the project. But I don't really
8 understand what you expect to get from the
9 witness.

10 MR. OTTEN: To see how Trammel Crow
11 has understood where they can -- how they can
12 both best benefit the City, in terms of placing a
13 medical site.

14 MR. WEERS: So this is what I would
15 say. I reject the notion that somehow the
16 development of health care facilities at McMillan
17 runs counter to the idea of dispersion of health
18 care facilities throughout the City, and I think
19 that two of the potential users of these health
20 care facilities, MedStar and Children's, operate
21 throughout the City.

22 So just because they're developing new

1 facilities at McMillan does not somehow preclude
2 them from developing or opening other facilities
3 throughout the facility, and in fact MedStar and
4 Children's operate in several wards throughout
5 the City.

6 MR. OTTEN: Do you -- but don't you
7 find it that Ward 5 and the residents around the
8 park already have access to robust medical
9 facilities, that this is kind of piling on?

10 MR. WEERS: I'm sorry. What's your
11 question?

12 MR. OTTEN: Are you -- did you do any
13 analysis of the access of Ward 5 residents and
14 Ward 1 residents living around the park to the
15 already robust medical facilities there?

16 MR. WEERS: No sir.

17 MR. OTTEN: And did you do any
18 citywide analysis of access to medical facilities
19 generally?

20 MR. WEERS: No sir.

21 MR. OTTEN: Has anybody from the City
22 talked with you about the climate change maps in

1 the city or any of the flooding maps in the city?

2 MR. WEERS: No sir.

3 MR. OTTEN: And as a manager of a
4 hospital, a medical facilities complex, would it
5 be a surprise to you that one of the city
6 policies would suggest not to put the medical
7 facilities in the middle of a flood plain?

8 MR. WEERS: I don't understand your
9 question. Please clarify.

10 MR. OTTEN: I guess it goes to -- so
11 the benefit of placing the medical facilities in
12 this site, were you made aware that this site is
13 in the middle of an internal flood plain in the
14 District?

15 MR. WEERS: No sir.

16 MR. OTTEN: Okay. Did anybody from
17 the City or other members of the applicant team
18 explain the volume of traffic that this project
19 will generate?

20 MS. BROWN: Objection.

21 MR. BYRNE: Sustained.

22 MR. OTTEN: It has to do with

1 emergency response time, Mr. Byrne. I don't know
2 if you considered that or not, and it could be an
3 adverse impact to that hospital. If the site is
4 generating, as Mr. Dettman testified, significant
5 volumes of traffic, wouldn't that impact
6 emergency response time or response time to the
7 facilities that Mr. Weers is --

8 MR. BYRNE: I just think it's too far
9 afield from the Mayor's Agent's inquiry.

10 MR. OTTEN: Okay. I don't know who
11 this is best for either Mr. Bogorad or you, Mr.
12 Weers, but there was a statement, I think it was
13 made either in writing or at the last hearing,
14 that there's a certain amount of space that if
15 you didn't have an extra floor of the medical
16 facilities, that it would prevent the building
17 from being built. Do I recall that right? Like
18 100 and some-odd thousand square feet?

19 MR. WEERS: What I testified to last
20 time was the potential for saving additional
21 cells on Parcel 1, the effect it would have on
22 the Parcel 1 facilities and the reduction that

1 was a lot larger than what you're suggesting,
2 that would cause the project to not go forward.

3 MR. OTTEN: So in other words, if one
4 of the extra filtered beds is saved on the
5 northern parcel, your property would not be --
6 your medical facility wouldn't be able to make
7 money or be profitable?

8 MR. WEERS: Our plan would not go
9 forward.

10 MR. OTTEN: And given how close that
11 is, I mean it seems like it's not a significant
12 amount of volume. Maybe I'm wrong.

13 MR. WEERS: It was one full tower.
14 It's about half the density.

15 MR. OTTEN: One full tower would be
16 taken away? How does that square with the math,
17 just looking at -- if you can go to page --

18 MR. WEERS: So I had a slide. It's
19 probably in the printout. So I think it's number
20 100 for you, maybe 102. Oh, I'm sorry. It's 181
21 in the electronic, so maybe 182 in yours.

22 MR. OTTEN: 182? So I see now. So

1 this is the additional cell preservation on
2 Parcel 1?

3 MR. WEERS: Yes sir.

4 MR. OTTEN: And so this is
5 contemplating the potential alternative of saving
6 an additional cell. It has to be Cell 13?

7 MR. WEERS: Yes sir.

8 MR. OTTEN: Was there any analysis
9 done of let's say a smaller portion of that
10 building, like the Cell 11, where it would take a
11 smaller portion of the building away?

12 MR. WEERS: So there's a five level
13 underground parking garage underneath that.
14 Taking or preserving Cell 11 would be just as
15 catastrophic.

16 MR. OTTEN: But I mean if you're just
17 showing the cells anyway to build a parking
18 garage, right? That's what's happening. You're
19 removing the cell and then putting a parking
20 garage in, couldn't that be done under 13 or 12?

21 MR. WEERS: You said again, the
22 parking garage goes from what you see as Cell 10

1 all the way over to the end of Cell 13. It's
2 under the entire footprint of the Parcel 1
3 facility is the garage, the whole thing.

4 MR. OTTEN: How many parking spaces is
5 that?

6 MR. WEERS: 1,800. I don't have the
7 number off the top of my head.

8 MR. OTTEN: So do you have -- did you
9 do any alternative study of reconfiguring the
10 parking lot maybe with two entrances or anything
11 like that? You just did this one alternative
12 Cell 13?

13 MR. WEERS: We did just do this one,
14 alternative Cell 13. However, the number of
15 entrances to the parking garage is not going to
16 affect this analysis. The size of the parking
17 garage and the fact that it spans the entire
18 facility. I mean it's going from 1st Street all
19 the way to the edge of Cell 14. So no.

20 MR. OTTEN: And are -- do you
21 anticipate ambulances coming to this site?

22 MR. WEERS: It's possible.

1 MR. OTTEN: Are you at all worried as
2 a medical facilities manager about the emergency
3 response time or the access of ambulances given
4 the traffic that's there now?

5 MR. WEERS: So for clarification
6 purposes, I'm not a medical facilities manager,
7 and no.

8 MR. OTTEN: Okay. What are you again?
9 I'm sorry.

10 MR. WEERS: The developer of the
11 health care facilities.

12 MR. OTTEN: Okay, as a developer. So
13 you would want -- you're seeking somebody to fill
14 that as a tenant, right?

15 MR. WEERS: Yes sir.

16 MR. OTTEN: And did you -- in your
17 discussions with potential tenants, are you
18 talking about the existing traffic load?

19 MS. BROWN: Objection. We've covered
20 whether or not traffic is an issue here and I
21 think you ruled that we're not supposed to be
22 dealing with it.

1 MR. BYRNE: I appreciate that, but I
2 will ask -- I will have him answer that question.

3 MR. WEERS: As the design process goes
4 along, absolutely.

5 MR. OTTEN: And what happens if the
6 tenant says there's too much traffic here; we
7 can't really readily operate this project?

8 MR. WEERS: I can't speculate on
9 things that haven't happened.

10 MR. OTTEN: But you've speculated here
11 in doing analysis of taking a cell away?

12 MR. WEERS: We spent a good amount of
13 time thinking about design alternatives. That's
14 different than just pulling some random what if
15 out of the sky.

16 MR. OTTEN: I see one alternative
17 here. Do you have any others?

18 MR. WEERS: No sir.

19 MR. OTTEN: Okay. Last couple of
20 questions, Mr. Weers.

21 MR. BYRNE: Two minutes.

22 MR. OTTEN: Okay. This is for Mr.

1 Bogorad from RCLC, is that it?

2 MR. BOGORAD: RCLCo.

3 MS. BROWN: And his name is Mr.

4 Bogorad.

5 MR. OTTEN: Bogorad, excuse me. Thank
6 you. You talked about in your testimony the
7 fiscal, the positive fiscal benefits from the
8 project; correct?

9 MR. BOGORAD: Yes.

10 MR. OTTEN: Did you look at any of the
11 negative impacts from the project? Like negative
12 fiscal. For example --

13 MR. BOGORAD: We looked at the costs
14 and the revenues, and the net impact was very
15 positive.

16 MR. OTTEN: So did you look at the
17 fact that basically a small village is being
18 built, how the oversaturation of schools or the
19 air quality impacts or emergency response time,
20 that could actually reduce property values in the
21 surrounding area, the economic values of the
22 area?

1 MS. BROWN: Objection. He didn't
2 testify to that.

3 MR. OTTEN: You testified to the
4 positive benefits. I'm asking if you testified
5 to the negative or looked at --

6 (Simultaneous speaking.)

7 MR. BYRNE: What negatives did you
8 look at?

9 MR. BOGORAD: We looked -- this was a
10 cost and revenues analysis. So we looked at the
11 revenues, all of the taxes that would be
12 generated by the project, and we looked at the
13 costs including school costs and other operating
14 costs.

15 As I talked, as I discussed in some
16 length in my testimony and especially in the
17 cross-examination last time, the costs are based
18 on allocation, which are probably very, you know,
19 the analysis is very loaded towards making those
20 higher than they actually are. It's a very
21 conservative approach from the perspective of the
22 net impact.

1 And so the net impact is still very
2 substantial, even after taking account very
3 generously of what those costs might be. We did
4 not look at non-economic costs or anything of the
5 sort that you just mentioned.

6 MR. OTTEN: How about like health
7 costs to people who live in the area?

8 MR. BOGORAD: That was not part of an
9 economic analysis, no.

10 MR. OTTEN: All right. That's all I
11 have, thank you.

12 MR. BYRNE: All right, thank you.
13 Well that concludes the cross-examination. Oh,
14 yes.

15 MS. FERSTER: I have one question
16 based on this new document, because there are
17 some clarification that I would like to make for
18 the record.

19 MR. BYRNE: Okay.

20 MS. FERSTER: So for whoever prepared
21 this document, this is simply a clarification.
22 It notes that there are 655 total units of

1 housing that are being provided on the site, and
2 you give some different numbers in the slides
3 that are provided. I'm looking at on the paper
4 copy of the slides, page 75 shows 677 total units
5 and then also on page 52 of the slides, it uses a
6 number that adds up to 660 units. So can you
7 clarify how many units of housing are going to be
8 provided, because now we have three numbers,
9 three different numbers?

10 MR. RUIZ: Give us an opportunity to
11 look into that, but I would gather it is because
12 as we were going through this process, the exact
13 number of units. The townhouses are set at 146
14 units.

15 The exact number of units in the
16 second multi-family building on the west side,
17 the western of the two multi-family buildings,
18 that was going through the beauty process, and
19 the exact number of units in that project was not
20 set and maybe isn't even set. We'll talk amongst
21 us and get back to you.

22 MS. FERSTER: Okay. I would

1 appreciate, given the colloquy that went by
2 earlier, if you could provide an exact time when
3 you would get back to us?

4 MR. RUIZ: We will talk amongst
5 ourselves and provide it by the end of day today.

6 MS. FERSTER: If you could provide it
7 before our surrebuttal, that would be important.

8 MR. THAKKAR: We can try. We're not
9 sure what difference it makes in terms of the
10 case. But we will try our best.

11 MS. FERSTER: Okay, and then one more
12 follow-up question. Given that at this point the
13 housing numbers are in flux due to the fact that
14 I guess Parcel 2 is as yet been approved as a
15 final PUD, how much fluctuation do you
16 anticipate in these housing numbers?

17 MR. THAKKAR: We anticipate them to be
18 very -- the three numbers you read off are
19 within, I guess, 20 units of each other. So
20 that's probably the range. But we, I couldn't
21 give you a certain answer beyond that we are in
22 the general range of the overall number of units

1 that will be developed in the site.

2 MS. FERSTER: Okay, thank you.

3 MR. BYRNE: We could say, for purposes
4 of the proceeding, that we're talking about at
5 least 655 units?

6 MR. THAKKAR: That would be fine.

7 MR. BYRNE: You're comfortable with
8 that?

9 MR. THAKKAR: That would be fine.

10 Thank you.

11 MR. BYRNE: Okay, very good. So we
12 could talk about how to proceed. I would be
13 inclined -- so the next step would be for them to
14 put on their case. I'd be inclined to do an hour
15 of that before lunch, if that doesn't drive
16 people crazy, and then take a break for lunch and
17 carry on.

18 I've been informed that the Zoning
19 Commission is meeting in this room tonight, so we
20 need to end at around five o'clock. So that's
21 the terrain of what we're doing.

22 MS. BROWN: And just a clarification.

1 For cross-examination, will we be doing that
2 individually after each party opponent makes
3 their case or will it be done collectively at one
4 point.

5 MR. BYRNE: Good question, good
6 question. So Ms. Ferster, could we discuss that
7 question so they can plan? How many witnesses do
8 you have?

9 MS. FERSTER: It would be nine
10 witnesses, and I believe D.C. for Reasonable
11 Development has several.

12 MR. BYRNE: You have how many?

13 MS. FERSTER: Nine witnesses.

14 MR. BYRNE: So what do you think?
15 Should they, can they -- so I would guess given
16 your concern about your witnesses who are
17 volunteers and what-not not wanting to be here
18 indefinitely, that the cross-examination would
19 occur after each witness?

20 MS. FERSTER: That's fine with me.
21 Whatever they prefer.

22 MS. BROWN: I think our more general

1 question, I think we would save our questions for
2 all of their witnesses at the end, and then Mr.
3 Otten's, I guess, would be cross-examined
4 independently. I guess that was part of the
5 question. We have Friends of McMillan Park, then
6 Mr. Otten's case, then cross-examination.

7 MR. BYRNE: No. I think what we're
8 saying is examination --

9 MS. BROWN: Okay. Do it individually?

10 MR. BYRNE: --of each witness so they
11 can go, if that's agreeable. I think that's --

12 MS. FERSTER: Our witnesses need to
13 stay, so our witnesses have to stay for the
14 whole, for the whole hearing because they need to
15 hear rebuttal. Unless we're not going to do
16 rebuttal today.

17 MR. BYRNE: Well, good heavens. What
18 are we going to do today? I mean we'll see how
19 long it takes for you to do your nine witnesses,
20 and for Mr. Otten to do however many witnesses he
21 has. But so but personally, I found this
22 procedure to be awkward, and I would prefer to

1 hear cross-examination witness by witness myself,
2 unless there's some objection to doing that.

3 Okay. That's what we'll do. That's
4 what we'll do. So Ms. Ferster, if you're ready
5 you can put on your witnesses.

6 MS. FERSTER: Sure.

7 (Pause.)

8 MS. FERSTER: While we're waiting, you
9 know, we have a request for a telephone link for
10 Ann Saleem (phonetic), who's going to be
11 testifying telephonically.

12 MS. BROWN: And I object.

13 MR. BYRNE: Okay.

14 MS. FERSTER: We were told at the last
15 proceeding that she could be hooked up
16 telephonically by Mr. Callcott.

17 MR. BYRNE: If you're talking about
18 physically, it could be done, yeah.

19 MS. BROWN: I object. Witnesses are
20 supposed to be in person and it's partly to make
21 sure that it's not so we just see their words on
22 a piece of paper but we hear their demeanor.

1 While that's possible through the telephone, we
2 have to see the witness' reaction, the physical
3 demeanor and that's part of the process of having
4 a live witness.

5 The regulations only allow for
6 telephonic witnesses under unusual circumstances.
7 One of those is they have to reside in a
8 different state. Ms. Saleem is a resident of the
9 District of Columbia, so that exception would not
10 apply to her.

11 MR. BYRNE: Okay. Can you cite the
12 regulation for me?

13 MS. BROWN: It is not obviously a
14 Mayor's Agent regulation. It is from the Office
15 of Administrative Hearings, and it is Title 1,
16 Section 2821.8, and I can hand you a copy if you
17 would like.

18 MS. FERSTER: Could you actually read
19 that again?

20 MS. BROWN: I'll hand you a copy.

21 MS. FERSTER: Okay. Ann Saleem, as
22 you know, because we requested a delay.

1 MR. BYRNE: She's on vacation or
2 something.

3 MS. FERSTER: She spends the summer in
4 New Hampshire. She's due back in October.
5 That's why we requested a delay through the
6 beginning of October, because she does not spend
7 the summer in the District of Columbia, lucky
8 her.

9 MR. BYRNE: Lucky her.

10 MS. FERSTER: So I don't see that an
11 OAH regulation is pertinent here, A. But if you
12 wanted to follow it, it seems like you would have
13 discretion to allow Ms. Saleem to testify
14 earlier. We've been on record consistently as
15 wanting Ms. Saleem to testify, and make sure that
16 the telephone hookup could be available so that
17 she could testify.

18 In terms of her demeanor, well you
19 know, she's available for cross-examination, and
20 her written testimony has been in the record for
21 a long time actually. We submitted it earlier.
22 So she has some verbal testimony that she would

1 like to provide. She has been a witness here
2 before. She's been qualified as an expert. I
3 think everybody's pretty familiar with her
4 demeanor at this point.

5 MR. BYRNE: Yes.

6 MS. FERSTER: I don't think that her
7 physical presence is necessary.

8 MR. BYRNE: Okay. So I'm going to
9 allow it. I'm going to allow it under the
10 circumstances, and yeah. So we'll proceed with
11 that. I don't know whether you have to talk to
12 Mr. Callcott about anything that needs to happen,
13 and maybe set a time.

14 I recognize that there could be
15 issues. I think it's less true with an expert
16 witness than with a fact witness, and plainly the
17 question of her credibility, if you will, is
18 affected by the fact that I can't see her face,
19 and I recognize that.

20 It cuts both ways. It's undesirable,
21 but I think given -- given the amount of concern
22 that Ms. Ferster has had all along in having this

1 witness testify, we'll let her go forward.

2 And I don't see -- I don't see it
3 being -- I don't -- in this particular it doesn't
4 seem -- it seems to me to be okay, so we'll do
5 it. Okay.

6 (Pause.)

7 MS. FERSTER: -- as my expert, so I to
8 wait for Ms. Brown to come.

9 MR. BYRNE: Okay. You gave me two
10 copies of Mr. Hansen's CV, in case somebody
11 doesn't have one.

12 MS. FERSTER: Okay. I'm going to
13 start on my far right. Brett Williams. She is
14 -- her CV is actually attached to her testimony.
15 She is going to be testifying on the issue of
16 gentrification and displacement, and the impacts
17 of that on affordable housing, and she has
18 previously been qualified by the Zoning
19 Commission as an expert on gentrification and
20 displacement. So I offer her as an expert.

21 MS. BROWN: I don't have an objection
22 to Carolyn Brown for Vision McMillan Partners. I

1 don't have an objection to her qualifications as
2 an expert. I do have an objection to the scope
3 of the testimony with regard to gentrification
4 issues, because it goes beyond the scope of the
5 hearing purposes.

6 MS. FERSTER: Just to be clear, her
7 testimony goes exactly to the issue of whether
8 affordable housing in this case is a benefit of
9 special merit, or whether it is simply mitigation
10 for the impacts of displacement and
11 gentrification resulting from this project.

12 MR. BYRNE: Okay, that's fine.

13 MS. FERSTER: Okay. So I think we'll
14 deal with all our qualifications at this point.
15 So our next witness would be Stephen Hansen, and
16 his resume is here. I don't --

17 MR. BYRNE: Yes, I have them.

18 MS. FERSTER: I don't believe he has
19 been previously qualified as an expert before the
20 Mayor's Agent. But we are seeking to qualify him
21 based on his 30 years of experience in historic
22 preservation, cultural resource management,

1 etcetera, and a professional career in historic
2 preservation beginning from 1985, working for the
3 National Park Service as an expert in historic
4 preservation, as Ms. Ann Saleem is.

5 MR. BYRNE: So he's an expert in
6 historic preservation?

7 MS. FERSTER: That's correct.

8 MR. BYRNE: Okay.

9 MS. BROWN: I'm sorry, where are his
10 qualifications?

11 MS. FERSTER: His CV is in one of the
12 piles over there.

13 MS. BROWN: Thank you.

14 (Pause.)

15 MS. BROWN: I'd like clarification if
16 I could. If Mr. Hansen, you have ever worked on a
17 large scale redevelopment project in the District
18 of Columbia, where new development was also going
19 to be incorporated into the project?

20 MR. HANSEN: Yes, I have.

21 MS. BROWN: Could you -- I don't see
22 any on your resume?

1 MR. HANSEN: It would be the --
2 probably the Wright Development Project, Spring
3 Valley Shopping Center.

4 MS. BROWN: So you were on the
5 development team?

6 MR. HANSEN: Oh on the team, no. I
7 was working with the ANC in the community.

8 MS. BROWN: Have you worked on
9 anything else in the District of Columbia with
10 large-scale redevelopment incorporating historic
11 structures?

12 MR. HANSEN: For or against?

13 MS. BROWN: Either.

14 MR. HANSEN: Yes.

15 MS. BROWN: Name -- could you name
16 something other than the Spring Valley?

17 MR. HANSEN: Gosh. There's the Church
18 Street, St. Thomas Church project.

19 MS. BROWN: So two projects in the
20 District?

21 MR. HANSEN: You're going to have to
22 define "large."

1 MS. BROWN: Well, from what you've
2 listed on your resume, most of the restoration
3 projects have dealt with windows, storefronts --

4 MR. HANSEN: Oh, physical restoration.

5 MS. BROWN: Lobby restoration and
6 rehabilitation, and have you done any projects
7 that have involved the retention of whole
8 buildings incorporated into new development?

9 MR. HANSEN: No. The hands-on
10 preservation work has been more small scale. The
11 larger work has been on consulting on or against
12 development projects.

13 MS. BROWN: Okay. So I'm fine with
14 his qualifications as an expert, but I think the
15 scope of his expertise is limited. So I think it
16 just goes to the quality of the testimony he's
17 going to provide.

18 MS. FERSTER: Can we redirect on that
19 point? You did -- you said that you have some
20 experience in large-scale projects as a
21 consultant, and in the opposition. Can you
22 describe that experience?

1 MR. HANSEN: Well, that would be the
2 Wright Development and the Spring Valley Shopping
3 Center. Those were large scale.

4 MS. FERSTER: Uh-huh, okay.

5 MR. BYRNE: So I understand you
6 testified in opposition to it before the HPRB, is
7 that right?

8 MR. HANSEN: Well, I consulted with
9 the ANC and the community organizations --

10 (Simultaneous speaking.)

11 MR. HANSEN: -- of the project and its
12 compatibility with the historic buildings around
13 it.

14 MR. BYRNE: Okay.

15 MS. FERSTER: Okay. Our third expert
16 at the table here today is Brook Hill, who's a
17 lawyer with the Washington Lawyers Committee for
18 Civil Rights and Urban Affairs, and I'm going to
19 ask him, since he does not have his CV here, I'm
20 going to ask him to briefly describe his
21 expertise in the area of fair housing and
22 gentrification, which is where we want to qualify

1 him.

2 MR. BYRNE: Mr. Hill?

3 MS. HILL: Hi. So I've worked on a
4 variety of housing-related issues for the past
5 nearly 20 years, including real estate finance,
6 some policy work, community organizing and now as
7 a lawyer at the Washington Lawyers Committee for
8 Civil Rights, I am an equal justice works fellow
9 there, and my project specifically focuses on
10 working with tenant groups living in properties
11 that are timing out of subsidy, where in
12 gentrifying neighborhoods, to ensure compliance
13 with fair housing laws.

14 I've also worked with my colleagues at
15 the Lawyers Committee to challenge the District's
16 certification of its Consolidated Plan. That
17 resulted in a letter sent by HUD to the Mayor,
18 questioning why the various items that were
19 listed in the analysis of impediments in 2012
20 were not raised in the Consolidated Plan.

21 At the Lawyers Committee, we work on
22 a wide variety of fair housing issues and a part

1 of the fair housing project and have been for
2 nearly four years, one year as a lawyer and three
3 years as a non-lawyer.

4 MR. BYRNE: The proffer is expertise
5 in fair housing?

6 MS. FERSTER: Fair housing and
7 gentrification.

8 MS. BROWN: I don't have any objection
9 to the qualifications. But again, the scope of
10 it is beyond what is required for this project,
11 since the sole test is whether or not we exceed
12 the legally required inclusionary zoning amount,
13 and fair housing and gentrification don't enter
14 into the equation.

15 MR. BYRNE: Okay. Well we -- that's
16 -- I understand that that is going to be a field
17 of contention as we move forward here, and we'll
18 sort of sort it out as we go.

19 MS. FERSTER: So are you --

20 MR. BYRNE: I accept them, yes.

21 MS. FERSTER: Okay, all the experts
22 have been accepted. Great. So let's start --

1 we're going to actually start with Brook Williams
2 then Brett -- okay. So we'll start with you, and
3 then end with Stephen for this panel.

4 MR. HILL: Okay. So thank you very
5 much for the opportunity to testify today on
6 behalf of the Washington Lawyers Committee for
7 Civil Rights and Urban Affairs. The Committee
8 was founded in 1968 to address civil rights
9 violations, racial injustice and to fight poverty
10 in our community through litigation and advocacy.
11 Among the areas on which the Committee works is
12 --

13 MR. BYRNE: Sorry. I neglected
14 something. Because we have new witnesses, you
15 need to be sworn. Thank you. So we ask all the
16 witnesses to do this, so if you can just raise
17 your right hand please? We'd just ask you do you
18 promise to tell the -- oh yes, all the witnesses.

19 MS. FERSTER: I have to do that again,
20 because some of our witnesses are on the way, but
21 yes.

22 MR. BYRNE: Okay but now at least they

1 get to see who's --- okay.

2 (Witnesses sworn.)

3 MR. BYRNE: Thank you, thank you.

4 Please proceed Mr. Hill.

5 MR. HILL: All right. I'll just pick
6 up where I left off. This testimony will address
7 whether the Mayor's Agent should consider the
8 affordable housing units created by this project
9 to qualify it for special merit within the
10 meaning of D.C. Code Section 6-1102.

11 I contend that the affordable housing
12 created by this project should not be considered
13 to give it special merit because cost will
14 exclude most African-American households, and the
15 effects of the project will be to further exclude
16 African-Americans from the neighborhood.

17 Within the meaning of D.C. Code
18 Section 6-1102, special merit is defined by the
19 statute as a plan or building having significant
20 benefits to the District of Columbia or to the
21 community by virtue of exemplary architecture,
22 special features of land planning or social or

1 other benefits having a high priority for
2 community services.

3 The duty to affirmatively further fair
4 housing are created by the Fair Housing Act
5 requires that a jurisdiction review and assess
6 both public and private conditions that affect
7 fair housing choice for all protected classes.
8 Any action, omission or decision taken because of
9 a protected trait or that has the effect of
10 restricting housing choice on the basis of a
11 protected trait should be considered an
12 impediment to fair housing.

13 In its most recent analysis of
14 impediments to fair housing, income and equality
15 along racial lines, coupled with the high cost of
16 housing and the lack of any fair housing analysis
17 in the approval of projects like this, were
18 identified as impediments to fair housing.

19 D.C.'s well-documented affordable
20 housing crisis disproportionately impacts
21 African-American households because of income
22 inequality. In D.C., the white median income is

1 approximately \$116,000, while the African-
2 American income is approximately 41,000. In zip
3 code 20002, where this project is located, the
4 disparity is slightly greater.

5 Over the last 10 to 15 years, the
6 District has lost nearly half of its affordable
7 apartments, much of that loss coming from
8 gentrifying neighborhoods in the City's core and
9 has thereby become the sixth most segregated city
10 in the nation.

11 In order to comply with its duty to
12 affirmatively further fair housing, the Mayor's
13 Agent must consider how and if this project will
14 restrict housing choice on the basis of race.
15 This requires an examination of rent levels units
16 in this project will command.

17 The majority of the District's
18 African-American households will be excluded from
19 this project because of cost. Likewise, the
20 project is likely to have the effect of excluding
21 most African-American households from the
22 surrounding neighborhoods as well. 80 percent of

1 the units in this project will be market rate.
2 To afford rents at these levels, a household will
3 need to be earning at least \$80,000 a year, well
4 within the reach of most white households, but
5 far out of reach for most African-American
6 residents.

7 The affordable units included in this
8 project will not remedy this issue, because
9 African-Americans will be excluded from these
10 units for the same reason. The majority of the
11 non-senior affordable units are affordable at 80
12 percent of Area Median Income. Area Median
13 Income is approximately 109,000 for a family of
14 four.

15 Eighty percent for this family would
16 be roughly 87,000. For a household of two, 80
17 percent of AMI is about 70,000. Given that the
18 African-American household income is about
19 41,000, most African-Americans will not be able
20 to access the 80 percent of AMI units. Even at
21 50 percent of AMI, most African-American
22 households will be excluded.

1 Fifty percent of AMI is about 54,450
2 for a family of four and 43,500 for a household
3 of two. More than half of the City's African-
4 American households will be excluded from these
5 units as well.

6 Since the African-American median
7 income just over 30 percent of AMI, the only way
8 to ensure that a large percentage of the African-
9 American population has access to this
10 development is to include affordable units at 30
11 percent of AMI and below.

12 The affordable housing created by this
13 project is not a sufficient community benefit,
14 given the project's special merit status and
15 lacks the high priority social or other benefits
16 required by the statute. Too few affordable
17 housing units are created at deep enough
18 affordability levels to make this project
19 accessible to most African-American households.

20 Moreover, the project will likely
21 cause area rent levels to increase, such that
22 many African-American households will also

1 eventually be excluded from other housing in the
2 neighborhood. The addition of a significant
3 number of housing units that is affordable to
4 persons living at 30 percent of AMI or below
5 should be required to earn special merit status.

6 The District of Columbia's Court of
7 Appeals has created an opportunity reconsider the
8 special merits of this project, and to suggest
9 changes that will allow the City to fulfill its
10 duty to affirmatively further fair housing with
11 respect to this project.

12 The Mayor's Agent should not consider
13 the affordable housing created by this project to
14 be a community benefit, given the project's
15 special merit because it does not create enough
16 housing at affordability levels deep enough to
17 offset the racially exclusionary consequences of
18 the project. That's all. Thank you.

19 MR. BYRNE: All right. Ms. Ferster,
20 do you have anything more you want to ask Mr.
21 Hill?

22 MS. FERSTER: No, I don't.

1 MR. BYRNE: Okay. Ms. Brown.

2 MS. BROWN: Mr. Hill, are you aware of
3 any legal standard in the Mayor's Agent's
4 requirements that affordable housing be at 30
5 percent AMI?

6 MR. HILL: So the duty to
7 affirmatively further fair housing requires that
8 the Mayor's Agent, the Zoning Commission, the
9 Office of Planning and any other agency or actor
10 acting on behalf of the City to consider how
11 their decision will affect housing choice on the
12 City.

13 MS. BROWN: I asked are you aware of
14 a legal requirement under the statutes for the
15 Mayor's Agent and its regulations.

16 MR. HILL: So no.

17 MS. BROWN: Okay, and are you aware of
18 any standard that says that in order for a
19 project to be of special merit with respect to
20 affordable housing, it has to be at or below IZ?

21 MR. HILL: So my testimony has to do
22 with the duty to affirmatively further fair

1 housing, and regardless of a jurisdiction's local
2 statutes, if a project operates to restrict
3 access on the basis of a protected class, making
4 a decision that would move that project forward
5 would be contrary to the City's duty to
6 affirmatively further fair housing and prevent --
7 would prevent it from giving it the special merit
8 status.

9 MS. BROWN: But it's not illegal?

10 MR. HILL: Under local law, but
11 arguably under the Fair Housing Act, which
12 supersedes local law, it could be. In fact, HUD
13 has sent a letter to the Mayor indicating that
14 its certification of the Consolidated Plan was
15 lacking in this regard.

16 So the City, Mayor's Agent and Zoning
17 Commission included, is on notice that the duty
18 to affirmatively further fair housing has to be
19 weighed in making decisions like this. This is
20 simply what my testimony hopes to point out.

21 MS. BROWN: Okay, and you mentioned in
22 your testimony you said many times "most,"

1 "maybe," "many." But this project does not
2 exclude African-Americans, does it?

3 MR. HILL: Yes, it does. The median
4 African-American income --

5 MS. BROWN: Why?

6 MR. HILL: I said most.

7 MS. BROWN: That's not my question.

8 MR. HILL: The median is 50 percent
9 and above. So I said most, and yes.

10 MS. BROWN: So it would -- this
11 project does not exclude African-Americans?

12 MR. HILL: It does exclude most, and
13 once you get to 80 percent of AMI or 50-60
14 percent of AMI, you're getting very close to
15 being -- to completely excluding African-
16 Americans.

17 MS. BROWN: And are you also saying
18 it's the duty of this project to solve the City's
19 social housing ills?

20 MR. HILL: It's the duty of the City.
21 So it's the Mayor's Agent. You could go ahead
22 and build whatever you want to as of right on the

1 site, and regardless of how that as of right
2 development would affect African-Americans, I
3 mean we'd have to look at the particular facts.

4 But at first blush, it doesn't seem
5 like you would run into problems because the
6 developer does not have a duty to affirmatively
7 further fair housing. But when you ask the City
8 to make a decision that furthers your project,
9 that requires the City to look at how that
10 decision will affect housing choice, and how it
11 will further its duty to affirmatively further
12 fair housing.

13 MS. BROWN: Are you aware of precedent
14 in the Mayor's Agent cases where affordable
15 housing that exceeds what is required by law has
16 been approved as special merit?

17 MS. FERSTER: I'm going to object. He
18 hasn't testified that he is aware of any historic
19 preservation cases or he's -- he's testifying
20 primarily about federal law and the obligation
21 under federal law for District of Columbia
22 agencies to consider this issue.

1 MS. BROWN: And he did testify as to
2 what the Mayor's Agent had to consider, and I
3 wanted to test that knowledge.

4 MR. BYRNE: I'll allow the question.
5 I'll allow the question.

6 MR. HILL: Can you restate the
7 question?

8 MS. BROWN: Yes. Are you aware of any
9 other Mayor's Agent projects that have been
10 approved with affordable housing as special
11 merit, based on exceeding the requirement under
12 the local zoning and District law?

13 MS. FERSTER: That goes beyond the
14 scope of his testimony. He really is speaking to
15 disparities in terms of the effect on the
16 African-American population.

17 MS. BROWN: And the Mayor's Agent just
18 allowed my question. I restated it and now
19 you're objecting again when you were overruled.

20 MS. FERSTER: But you reframed it in
21 a different way and this is a new objection.

22 MR. BYRNE: I'll allow him to answer.

1 Answer the question please.

2 MR. HILL: No.

3 MS. BROWN: Thank you.

4 MR. BYRNE: So Mr. Hill, as I
5 understand it, most of Friends of McMillan Park
6 would like this not be -- have fewer units built
7 on it and more park preserved, and maybe entirely
8 a park.

9 MS. FERSTER: I'm going to object to
10 your question, because that mischaracterizes my
11 client's position. My client has never made that
12 argument.

13 MR. BYRNE: All right, okay, fine.
14 Fine. If we said that this should be preserved
15 as open space, and I made -- so if I made that
16 decision, would I be violating your principle
17 because I make no housing available for African-
18 Americans?

19 MR. HILL: So you would have to look
20 at how your decision affects the duty to
21 affirmatively further fair housing. I would say
22 that, you know, just at first glance, if you were

1 not going to be building any housing, you know,
2 the consideration becomes different.

3 Just like if you were going to be
4 demolishing housing where there might be existing
5 affordable housing, that the consideration could
6 be different. I think that this -- but in this
7 case, you're somewhere in the middle between, you
8 know, taking away and not touching on housing at
9 all.

10 MR. BYRNE: So it's interesting to
11 note that the African-American population in D.C.
12 has continued to increase through this time, and
13 I wonder if you thought about the effect of --

14 MR. HILL: Well actually that's not
15 correct. According to the Census Bureau, since
16 the year 2000 the African-American population has
17 decreased by over 30,000. It's true that the
18 population overall has increased.

19 MR. BYRNE: Oh I know. But the last
20 thing I saw suggested that in the last five
21 years, there had been an increase. So okay, fair
22 enough. Fair enough, so fair enough, fair

1 enough, fair enough. This letter that you
2 mentioned that HUD sent to the Mayor, when was
3 that sent?

4 MR. HILL: In November. I have copies
5 of it that I can pass out if you'd like.

6 MR. BYRNE: Yeah, and has there been
7 a response from the Mayor's office as far as you
8 know?

9 MR. HILL: Not that I'm aware of.

10 MR. BYRNE: Okay. I would like to see
11 the letter.

12 (Pause.)

13 MR. BYRNE: Okay.

14 MR. HILL: So she just passed out the
15 letter, and there's also a needs versus
16 production sort of one-pager that the D.C. Fiscal
17 Policy Institute provided me with. I didn't
18 speak about it, but the important parts of it
19 indicate that the City is overbuilding at 50 to
20 80 percent of AMI, and underbuilding at zero to
21 50, in terms of the need.

22 MR. BYRNE: In terms of the need,

1 okay. Anything else for Mr. Hill?

2 MS. BROWN: I have one more question
3 if I may.

4 MS. BROWN: Mr. Hill, have you read
5 the court decision in this case, in --

6 MR. HILL: Yes, briefly at the time.

7 MS. BROWN: Okay, and are you aware of
8 the statement by the Court that says "FMOP does
9 not appear to dispute, and we therefore take as a
10 given that the project has at least some special
11 merit because the project includes the
12 construction of affordable housing beyond what is
13 legally required."

14 MS. FERSTER: And I'm going to object
15 to this question because this Mayor's Agent has
16 reopened this entire proceeding and made clear
17 that positions that we previously had taken, that
18 we were free as the applicants are free to make
19 new arguments, and this is a new argument.

20 MR. BYRNE: Well yes, but it's still
21 relevant. It's still relevant.

22 MS. FERSTER: It isn't a legal

1 question.

2 MR. BYRNE: That is a legal question.

3 I mean it's --

4 MS. BROWN: It's a factual question.

5 I'm asking -- he said that he read it and I asked
6 him if he remembered this particular provision of
7 it.

8 MS. FERSTER: I would suggest that she
9 make this as a legal argument as opposed to a
10 question --

11 MR. BYRNE: Yeah. I don't think we
12 have to -- I don't think we have to do that,
13 because it's in -- we know it's in the -- it's in
14 the case. What it means is yet to be decided by
15 the Mayor's Agent at this point. So okay, good.
16 Next.

17 MS. FERSTER: Next will be Brett
18 Williams, who is -- who's going to testify on
19 this issue as well.

20 MS. WILLIAMS: I'm an anthropologist.
21 I've worked in DC for about 40 years, mostly on
22 issues on gentrification and displacement. I

1 want to begin with a report that Mr. Bogorad
2 wrote for the Zoning Commission, which is really
3 masterful in documenting a thorough
4 transformation of Bloomingdale, especially North
5 Bloomingdale over the last 12 years.

6 He shows median rents have gone up,
7 condo resale prices have shot up, home sale
8 prices have gone up. He does a really good job
9 of showing how much Bloomingdale, especially
10 North Bloomingdale, has changed during the last
11 12 years. He didn't look at social measures,
12 which a recent University --

13 MS. BROWN: Excuse me, I'm going to
14 object. She's referring to testimony that's not
15 in the record.

16 MS. FERSTER: This is our opposition
17 case, so she can testify on the point that she
18 wants to make and rely on whatever studies or
19 reports that she wants to.

20 MR. BYRNE: Yes. I'll allow --

21 MS. FERSTER: It's talking about --
22 saying something nice about your report.

1 MS. WILLIAMS: He didn't look at
2 social measures. A recent Catholic University
3 study found that a 62 percent increase in
4 millenials and a decrease in the black population
5 from 90 percent to 50 percent in Bloomingdale.
6 So Bloomingdale has really, really changed. Mr.
7 Bogorad also didn't look at Edgewood and
8 Stronghold, which are also adjacent
9 neighborhoods, which are changing more slowly and
10 still have multi-generational households, some
11 children and families, and a black population.

12 This gentrification hasn't ended.
13 There's no off switch. It's going to keep
14 spreading and it's going to spread into Edgewood
15 and Strongfield, just as it has -- I'm sorry,
16 Edgewood and Stronghold, as it has in
17 neighborhoods all across D.C. as developers move
18 on from neighborhoods into others that are older
19 and less developed.

20 I think we're looking at a deluge of
21 gentrification and displacement, and the housing
22 that the applicant is proposing to mitigate this

1 is -- I agree with Mr. Hill, that it's really
2 inadequate. I mean there's nothing at 30 percent
3 AMI in either the rowhouses or the multi-family
4 apartments. The rental apartments I think are
5 almost -- are all one and two bedroom. I don't
6 see how that's housing for families, and there
7 are only three -- there are only nine.

8 I'm sorry, there are only two
9 apartments at 50 percent AMI, which I think is
10 marginally affordable, none at 30 percent and 25
11 at 80 percent, which is, as Mr. Hill has
12 testified, is not really affordable. I just
13 don't see this meriting special merit.

14 The senior apartments are something a
15 little bit different. I'm really ambivalent. I
16 don't want to say that senior citizens don't
17 deserve housing, but I'm just sort of concerned
18 about a neighborhood that's losing a lot of
19 multi-generational households, those younger
20 residents will be displaced, and the seniors are
21 going to move into their own kind of special
22 section of this new development with their own

1 door.

2 What if a senior lives with an adult
3 child or a disabled adult child or a grandchild?
4 There's no room for anyone else to live with that
5 senior. I don't know. I just think it's kind of
6 dystopian in a way. Extended families provide a
7 lot of services for their members, and we're
8 going to lose a lot of extended families in this
9 part of this City, and they will be missed.

10 I feel like it's kind of stingy to
11 provide so much, such a huge bulk of the
12 affordable housing in the form of these tiny
13 apartments for seniors, as opposed to actual
14 apartments that would really house some of the
15 families that are getting displaced. So I also
16 agree that there's no special merit in this
17 proposal.

18 MS. FERSTER: I have several follow-up
19 questions. You mentioned that you found Mr.
20 Bogorad's report very illuminating in terms of
21 what it illustrated about -- or what it reported
22 about housing prices, both in the current market

1 in the surrounding neighborhoods. Can you
2 describe what those housing prices are like
3 currently?

4 MS. WILLIAMS: He describes a median
5 rent that's well -- something like \$2,300 a
6 month, much higher than in many really, really
7 wealthy parts of D.C. Home sales approaching --
8 many homes going for like a million dollars. The
9 median home sale price I think is over \$700,000.
10 It's really not an affordable neighborhood
11 anymore.

12 MS. FERSTER: And how about condo
13 prices? What does that report show as to what
14 the condo prices are, the average condo prices in
15 the Bloomingdale neighborhood?

16 MS. WILLIAMS: I don't remember
17 exactly. I remember that -- I remember they're
18 higher than in DuPont Circle, and going up really
19 fast. I think they're reselling really fast. I
20 don't remember the prices.

21 MS. FERSTER: And just to -- and how
22 about home prices?

1 MS. WILLIAMS: I believe it was
2 something like -- I'm not sure. I don't
3 remember.

4 MS. FERSTER: Okay. Well maybe we'll
5 bring -- allow you to refresh your recollection
6 for a minute with the report. But one -- then,
7 you know, I guess my last question is, you know,
8 in terms of the affordable housing being offered
9 in this site, do you see that this affordable
10 housing goes above and beyond the affordable
11 housing that's being displaced as a result of the
12 gentrification that has occurred in this
13 neighborhood in the last say ten years?

14 MS. WILLIAMS: I see -- I see. No.
15 I see nine rowhouses which are marginally
16 affordable for people who are earning less than
17 50 percent AMI. But 80 percent AMI is something
18 like \$87,000. That's not affordable. So I'm not
19 really counting this. I'm looking at the 50
20 percent ones, and that's just a few houses for
21 all these families and households that have been
22 lost. It in no way makes up for it.

1 MS. FERSTER: So in other words, this
2 is mitigation that does not adequately mitigate?

3 MS. WILLIAMS: I don't see it as
4 mitigating at all.

5 MS. FERSTER: Okay. So one moment.

6 (Pause.)

7 MS. FERSTER: I'm going to pass the
8 Bogorad report to you. I need to find it, but
9 maybe we can proceed with cross-examination while
10 I'm looking for it.

11 MS. BROWN: I don't know if she is
12 finished with her direct or not.

13 MS. FERSTER: I don't want to take up
14 too much time, so if I can just ask the question
15 after you cross-examine.

16 MR. BYRNE: And then if you have a
17 chance to cross-examine on that question, go
18 ahead.

19 MS. BROWN: Just a few very quick
20 questions. How does the City describe affordable
21 housing for the District of Columbia as it
22 applies to this project?

1 MS. WILLIAMS: I'm sorry. I don't
2 understand the question.

3 MS. BROWN: Sure. The City has -- do
4 you agree that the City has statutory and
5 regulatory requirements and definitions of
6 affordable housing?

7 MS. WILLIAMS: Am I the right person
8 to ask that question?

9 MS. BROWN: Well, you testified as to
10 whether or not it's affordable. So I'm asking
11 whether or not you're aware of what the City's
12 standards are legally?

13 MS. WILLIAMS: No. I was testifying
14 on the basis of the families that I've known and
15 worked with over the years, and how much income
16 they earn and what they can afford to buy.

17 MS. BROWN: So that's no. Okay, and
18 how many existing houses are on the McMillan
19 project site now that will be displaced?

20 MS. WILLIAMS: It's not the houses on
21 the -- the site is empty as you know. It's the
22 houses in the surrounding neighborhoods, as

1 property values rise and rents go up and people
2 get displaced.

3 MS. BROWN: So nothing on the site?

4 (Simultaneous speaking.)

5 MS. BROWN: Thank you.

6 MR. BYRNE: Is that it? So how in
7 your -- in your mind does providing more -- so
8 the gentrification you described is real and we
9 appreciate that. Bloomingdale is very stunning
10 in that way.

11 MS. WILLIAMS: I know.

12 MR. BYRNE: How is building more
13 housing displacing people? We think it's
14 providing more supply of housing, so that it
15 would mitigate the rise in the prices of housing
16 generally?

17 MS. WILLIAMS: It's not housing that
18 people who live in these neighborhoods now could
19 ever afford to move into.

20 MR. BYRNE: But if the people are
21 paying, you know, \$700,000 for a rowhouse, buy a
22 condominium instead for 500,000, that reduces

1 demand. If there's more supply, prices go down,
2 right? I mean I think that's basic marginal cost
3 economics.

4 Well there is -- so I'm just asking.
5 There's a big debate around the country on the
6 extent to which just the provision of more
7 housing is part of the response to the very
8 dramatically rising prices of housing.

9 MS. BROWN: Well, it doesn't really
10 help if the population is continuing to grow, if
11 people are continuing to move into the City.

12 MR. BYRNE: But then if you don't
13 build the housing and people continue to move in
14 the City, the prices go up even more, don't they,
15 because you have more demand for the same supply?

16 MS. WILLIAMS: But how does that help
17 people who need affordable housing?

18 MR. BYRNE: By keeping the price from
19 going up as fast, right?

20 MS. WILLIAMS: I mean it's still
21 beyond -- there's still no affordable housing.
22 The really expensive prices are going up faster

1 than they might otherwise.

2 MR. BYRNE: Right. But at this point

3 --

4 MS. WILLIAMS: There's still no
5 affordable housing.

6 MR. BYRNE: Right, and that's a big
7 problem and I appreciate that. But I don't
8 understand how this -- I'm asking for more
9 clarification on why this project contributes to
10 the problems that you're properly concerned with?

11 MS. WILLIAMS: Well, I think it's
12 already brought people into Edgewood and Strong -
13 - well especially into Stronghold and into North
14 Bloomingdale, who know about the development and
15 want to be part of it and want to be near it.
16 But I think also rents and property values will
17 rise as a result of the market rate housing in
18 the project.

19 MR. BYRNE: Because?

20 MS. WILLIAMS: Because gentrification
21 tends to spread, because people charge more for -
22 - they charge more rent in one neighborhood rises

1 the prices and the next go up too.

2 MR. BYRNE: In other words it's going
3 to -- in your mind, it's going to increase the
4 attractiveness of the neighborhood as a place to
5 live?

6 MS. WILLIAMS: Yeah right, right, yes.

7 MR. BYRNE: Thank you.

8 MS. FERSTER: Mr. Hill actually has
9 something he would like to add on that question
10 that you posed as well, if he may?

11 MR. BYRNE: Sure.

12 MR. HILL: I was just going to suggest
13 something about the supply and demand debate that
14 you're right, has been going on all over the
15 country. In a place where you have an affordable
16 housing crisis as stark as it is in D.C., it
17 simply would take too long for the housing market
18 to reach some of equilibrium that would bring
19 prices down.

20 And it's really sort of unrealistic to
21 think that prices would ever go down to the point
22 where those that are sort of in the bottom

1 quintile of what they can afford, that it would
2 ever reach those levels, at least not without
3 catastrophe for the development community.

4 MR. BYRNE: Right, right, right,
5 right. And for homeowners such as yourself.

6 MR. HILL: Sure, yeah.

7 MR. BYRNE: So but I -- but it's
8 really -- I get that, and I'm just, you know, the
9 question is based upon the testimony as to what
10 extent this project contributes to the problems
11 that you're describing. So that was where my
12 questions were coming from but -- did you find
13 the document you wanted?

14 MS. FERSTER: Yes, we did. Ms.
15 Williams, if you can just add some more detail
16 about the price increases that are illustrated in
17 Mr. Bogorad's report.

18 MS. WILLIAMS: Yes, I'm sorry. My
19 apologies for not knowing. I'm notoriously not
20 so good at numbers. But the median, average
21 median home sale price in Bloomingdale is now
22 \$818,400.

1 MR. BYRNE: For a single family home?

2 MS. WILLIAMS: Yes, and the median
3 rent is \$2,260.

4 MR. BYRNE: Okay.

5 MS. WILLIAMS: Thank you.

6 MR. BYRNE: Okay. Ms. Brown, do you
7 have anything else for Ms. Williams?

8 MS. BROWN: No more questions.

9 MR. BYRNE: Okay.

10 (Off-microphone comment.)

11 MR. BYRNE: No. Is that okay with
12 you? Pardon?

13 (Off-microphone comment.)

14 MR. BYRNE: No, not usually. Not in
15 my courtroom. But go ahead.

16 MR. OTTEN: Okay. Mr. Hill, just in
17 terms of housing, in your experience do you see
18 housing operate in a supply and demand metric
19 like retail goods, like you know, matchbox cars
20 or oranges and apples?

21 MR. HILL: Well, I would say that, you
22 know, there are some differences between housing

1 and other goods. Obviously, there's a great need
2 for people to have housing. Lots else flows from
3 housing in terms of outcomes. But I think that
4 the supply and demand argument that's made, the
5 one that we just talked about, I think that my
6 answer sort of answers your question as well.

7 In places where the income inequality
8 is as great as it is in D.C., and where the
9 affordability crisis is as stark as it is in
10 D.C., it will simply just take too long for the
11 housing market to reach equilibrium in a way that
12 will meaningfully help, you know, folks that are
13 struggling with either being extremely cost
14 burdened by housing or homeless, and it's
15 unlikely that the cost will ever go down to --
16 far enough to meet the affordability capacity of
17 those in the lowest quintile of income.

18 MR. OTTEN: It's not like an instant
19 metric. It's not an instant response. You're
20 saying it's like a --

21 MR. BYRNE: We can take judicial
22 notice of the fact that the time horizons in real

1 estate development are much longer.

2 MR. OTTEN: And Ms. Williams, just to
3 be devil's advocate here, you're saying that the
4 prices of housing and things can go up in a
5 neighborhood. If a project is deleterious to
6 public services, like infrastructure or
7 transitways and access to schools that
8 oversaturated, couldn't that have a negative
9 impact on property values? Have you seen that?

10 MS. WILLIAMS: So if the project is a
11 big failure, we'll leave it for poor people to
12 live with? Is that what you're saying.

13 MR. BYRNE: Let's move on. Let's move
14 on to the next witness. Can we do one more
15 witness?

16 (Off-microphone comment.)

17 MR. BYRNE: Well no, but we didn't
18 hear from Mr. Hansen, yeah. Mr. Hansen, please.

19 MR. HANSEN: Thank you. My name is
20 Stephen Hansen.

21 MR. BYRNE: I'm sorry, and we'll take
22 a break after everyone's done with Mr. Hansen.

1 We'll go break for lunch. Sorry sir.

2 MR. HANSEN: Okay. My name is Stephen
3 Hansen. I'm the founder and principal of
4 Preservation Matters, LLC, a DC-based historic
5 preservation consulting firm. I am here today in
6 the capacity of an expert witness in historic
7 preservation in the McMillan Park Reservoir
8 Development Project.

9 Following a December 8th, 2016 remand
10 by the Court of Appeals, the Mayor's Agent
11 invited the applicants to make a new argument,
12 whether this project has met preservation
13 benefits and is therefore consistent with the
14 purposes of the D.C. Historic Landmark and
15 Historic District Preservation Act or "the Act."

16 In addition to being designated as a
17 historic landmark in the D.C. Inventory of
18 Historic Sites, the McMillan Park Reservoir site
19 was recommended for listing in the National
20 Register in 1991. In 2013, the McMillan
21 nomination was updated and sent on to the
22 National Register when it was listed as a

1 historic district.

2 McMillan, as a National Register-
3 listed historic district, requires a two probe
4 approach to examining its historic integrity.
5 First, the meaning and interpretation of the
6 overall site and setting, and secondly, the
7 contributing resources that comprise it. The
8 historic context for McMillan is National
9 Register Criterion A, for its association with
10 development of water supply and water treatment
11 in Washington, D.C., as well as an urban
12 engineering feat and testament to the City
13 Beautiful movement, and is an integral part of
14 the 1901 McMillan Plan's Emerald Necklace.

15 The McMillan Reservoir infiltration
16 system is significant as the first water
17 treatment facility for Washington, as an
18 important element in the federal city's aqueduct
19 and water supply system. Its areas of
20 significance are architecture, engineering and
21 landscape architecture.

22 Of the built environment, the National

1 Register nomination enumerates a total of 89
2 contributing resources, and only four non-
3 contributing to the District. It also discusses
4 the design landscape as a contributing resource
5 under landscape architecture.

6 In terms of inclusion in the National
7 Register nomination, a resource is either
8 contributing or not, not any more or less so than
9 another. The physical integrity of the specific
10 resource, while it may be described, does not
11 determine its weight and importance.

12 I would like to now move on to the two
13 EHT Traceries documents that explore aspects of
14 McMillan beyond the National Register nomination,
15 and serve as the basis for the treatment of the
16 historic aspects of McMillan within the context
17 of the VMP Project.

18 These are the 2014 Traceries historic
19 preservation report for McMillan, which I'll
20 refer to as "the report," and the 2016 historic
21 preservation plan, which I will refer to as "the
22 plan." The report does a good job as a

1 historical study providing an assessment of
2 existing conditions and providing recommended
3 treatments of McMillan's built resources.

4 The report states that, "they do not
5 incorporate specific objectives of the VMP or any
6 other stakeholder concerns. This was the proper
7 approach to preservation planning." The report
8 employed a standard Secretary of Interior tool
9 for preservation planning, relative level of
10 significance or RLS.

11 The RLS approach ranks each resource
12 based on its contribution to the historic
13 significance of the landmark as a whole. The
14 report classified resources as either key,
15 supporting or minor in their contributions. As a
16 preservation planning tool, this helps in
17 establishing order in priorities and treatment.

18 But while RLS rankings remain the
19 subjective call of the report's authors, and
20 should not serve as a redefinition or refinement
21 of significance of contributing resources that
22 are included in the National Register, and never

1 as a justification for development-related
2 demolition.

3 A problem arises when preservation
4 priorities have been adapted to a preservation
5 plan to accommodate the goals of a specific
6 development project. RLS classifications and
7 resulting treatment schemes can become the basis
8 to decide what resources are considered more
9 significant than others, which ones require the
10 least amount of work and expense to preserve, and
11 which ones may also be the most aesthetically
12 pleasing to cosmetically complement the
13 development project.

14 In such an adaptation, individual
15 resources may be admitted or filtered out in the
16 preservation plan in support of developer's
17 goals. This amounts to preservation tokenism.
18 Of the site's non-built landscape resources, the
19 report listed McMillan spatial organization, site
20 plan and topography as key resources, both with
21 high degrees of physical integrity.

22 Yet neither of these key resources are

1 carried over to the plan's list of resources to
2 be considered for treatment that I believe was
3 submitted in the prehearing exhibits by the
4 applicant. This report -- so the significance of
5 the McMillan site's spatial organization and
6 plan, I quote, "The spatial organization of the
7 built resources and open space conveys their
8 operational relationships as components of the
9 sand filtration process.

10 "Secondly, the organization of the
11 built resources and open space on the site is
12 legible from the ground, and was a key aspect of
13 the public experience of McMillan Park. Thirdly,
14 the site's spatial organization distinguishes it
15 from adjacent," and then there's some text
16 missing in the report, "that was used by Olmstead
17 as the framework for the site's landscape plan."

18 Without any consideration in the final
19 plan, the special relationship between the built
20 environment and open spaces would be destroyed.
21 The topography short of the plinth would be gone.
22 Lost would be the special arrangements of

1 historic features and the prominence of the
2 towers. Seventy-five percent of the grassy open
3 spaces surrounding the historic structure would
4 be gone, and further obliterating the original
5 plan is the introduction of four new streets.

6 Any perception of the original
7 symmetry or the two rows of sand towers
8 dominating the open spaces would be gone.

9 Related to the spatial organization are the
10 internal views, so carefully addressed by
11 Olmstead that provide vistas onto the site's
12 spatial organization and open spaces.

13 The report stated that "when the
14 facility was first constructed, expansive
15 viewsheds existed within the site, from one side
16 of the filtration plant to the other. Olmstead's
17 landscape design specifically mentions these
18 viewsheds, and its intention not to cut off the
19 interesting and remarkable effect of the filtered
20 bed plain."

21 The report then goes on to state that
22 "while the internal views do not convey the

1 significance of the site's role and the history
2 of water purification," and with that I think I
3 do agree, "they were intended as a key aspect of
4 the experience of McMillan Park, and are key to
5 understanding the design of the site's build and
6 landscape resources, and were featured in
7 Olmstead's landscape plan.

8 These viewsheds rated with the same
9 supporting significance in the report as other
10 built elements that are to be preserved, never
11 made it into the final plan and will therefore
12 also be destroyed by this project.

13 As a result of such selective
14 filtering, the few resources that are to be
15 maintained are only those built resources, not
16 all of which are rated with the same high degree
17 of significance either, that stand least in the
18 way of the project's goals.

19 This includes the Olmstead Walk, the
20 sand bins, which can remain on the median strips,
21 and some of the portals that would serve merely
22 as architecture accents and dividers. My concern

1 is that with so much destruction to contributing
2 resources, and thus the overall character and
3 context of the historic district, McMillan might
4 become a candidate for delisting from the
5 National Register.

6 One of the basis that the National
7 Park Service uses for removing properties from
8 the National Register is that, and I quote "the
9 property has ceased to meet the criteria for
10 listing in the National Register, because the
11 qualities which caused it to be originally listed
12 have been lost or destroyed."

13 While the City itself can also request
14 a delisting, I think this could prove an
15 embarrassment in ensuring the priority of
16 development over preservation in a City that
17 prides itself on its preservation.

18 In terms of evaluating the historical
19 importance features and treatment of McMillan, we
20 also need to look at the Comprehensive Plan. The
21 mid-city area element of the Comprehensive Plan
22 provides the details for the preservation of the

1 McMillan and the District's plan for its future
2 development and use.

3 In the preamble on McMillan, the area
4 element states that the entire site is considered
5 historically significant. It also notes that the
6 filtration site and the adjacent McMillan
7 Reservoir were part of the Emerald Necklace of
8 Parks conceived in the 1901 McMillan Plan, and
9 that the site itself was originally designed by
10 Frederick Law Olmstead, Jr.

11 The element then outlines five basic
12 objectives for any reuse of McMillan. I will
13 touch on two of these objectives related to the
14 historic integrity and treatment of the site.
15 That is the open space and its historic
16 preservation.

17 Policy MC-261 requires that the reuse
18 plans for the McMillan site dedicate a
19 substantial, contiguous portion of the site for
20 recreation and open space. The open space should
21 provide for both active and passive recreational
22 uses, and should adhere to the high standards of

1 landscape design, accessibility and security.

2 The preservation of as much of the
3 open spaces as possible is necessary to maintain
4 McMillan as part of the Emerald Necklace, as well
5 as preserve its historic spatial organization and
6 internal viewsheds. But only one-fourth of the
7 site would be set aside for open space and
8 recreation. This project would cover 20 acres of
9 the remaining space with office building, retail
10 and residential housing, and destroy any options
11 for future public use of the site, as well as
12 destroy key historic character-defining features
13 of the historic district, that is its open spaces
14 and vistas.

15 Policy MC-262 calls for the
16 restoration of the key above ground elements of
17 the site in a manner that is compatible with the
18 original plan, and explore the adaptor for use of
19 some of the underground cells as part of the
20 historic record of the site.

21 The relatively few above-ground
22 elements that are to be retained are not proposed

1 to be restored in a manner compatible with the
2 original plan for the site. The proposal
3 eviscerates the historic context for the
4 regulator houses and sand bins. Their new
5 setting would be in the roadway medians adjacent
6 to office towers and dense residential blocks.

7 The heavily programmed treatment of
8 this area renders them as follies, and leaves no
9 hint of their original function and meaning
10 within the context of the plan for McMillan. An
11 argument has been made that this project would
12 allow or enhance for public access to the site,
13 but this is not a preservation benefit. Public
14 access is not a requirement for National
15 Register-listed sites.

16 Also, what might be gained in
17 additional access, very little would be to what
18 was a historic McMillan site itself. Much of the
19 new or restored access would be to a new
20 development set on top of what were historic
21 resources. Yes, this may equate to access to the
22 location's physical space, but not to what is the

1 historic landmark.

2 I'll leave it to others to discuss the
3 architectural merits of this project, but from a
4 historic preservation perspective, this is simply
5 another very dense, boxy and cookie-cutter
6 development of office buildings, residential and
7 retail space on a large piece of land,
8 encroaching on and into an important historic
9 resource, with a few historic relics thrown in
10 for some flavor.

11 The height, density and massive
12 development simply overwhelm the character of the
13 landmark, and does not attempt to present an
14 organic site frame that should be the requisite
15 of such a large, unique and historically
16 significant site.

17 I'd like to take the time now to
18 discuss a more recent Mayor's Agent decision than
19 the ones that were brought up in previous
20 testimony, that I believe is similar to this case
21 and is relevant.

22 In 2006, an applicant sought permits

1 to construct a condominium project on the site of
2 the former Italian Embassy on 16th Street, N.W.,
3 which included demolition and alterations to the
4 existing Embassy building. Subsequent to the
5 filing of one of the permits, the D.C. Historic
6 Preservation Review Board or HPRB granted the
7 former Italian Embassy landmark status and
8 determined that the proposed demolition was not
9 consistent with the purposes of the Act.

10 The HPRB's findings of significant
11 demolition and thus inconsistency with the Act
12 required the Mayor's Agent to consider whether
13 the project was necessary in the public interest.
14 Notwithstanding the HPRB's contrary finding, the
15 applicant asked the Mayor's Agent to approve the
16 demolition as consistent with the purposes of the
17 Act.

18 The Mayor's Agent concluded that the
19 significant removal of building fabric was not
20 consistent with the purposes of the Act. He also
21 concluded that the proposed creation of 79
22 condominiums did not constitute a community

1 benefit, although the applicant argued that the
2 City's Comprehensive Plan highlighted the need
3 for housing production.

4 In its decision, the Mayor's Agent
5 also quoted the 2001 Webster School decision,
6 where that decision stated also that office
7 buildings did not constitute special merit. The
8 applicant also contended that a glass tower to be
9 erected behind the Embassy should be considered
10 new construction, and enjoy a presumption of
11 compatibility with landmark.

12 But the Mayor's Agent found that
13 construction of the tower would require removal
14 of a considerable portion of the Embassy's
15 historic fabric, and thus should be treated as a
16 demolition project and not strictly as new
17 construction. The Mayor's Agent also held that
18 even if the project could be considered new
19 construction, the proposed glass tower would be
20 too large, too close and too much of a contrast
21 for the architectural intent of the landmark to
22 be determined compatible.

1 So how does this Mayor's Agent
2 decision on the Italian Embassy relate to that of
3 the McMillan project? One, HPRB found that the
4 extent of the demolition is not consistent with
5 the Act. Two, new housing, even as called for in
6 the Comprehensive Plan and office buildings do
7 not constitute a special merit.

8 The proposed construction is not
9 strictly new construction, as it involves
10 significant demolition. The new construction is
11 too large, too close and too much of a contrast
12 with both landmarks. So to conclude, I ask does
13 the proposed project's historic preservation
14 benefits taken as a whole outweigh its historic
15 preservation harms? No.

16 Does it retain and enhance a historic
17 landmark? No. Does it encourage the restoration
18 of the historic landmark? No. Does it encourage
19 its adaptation for current use? Only at the cost
20 of destroying more historic material and context
21 than it maintains. Lost built resources would
22 include most of the filter beds, many of which

1 have only minor or moderate levels of
2 disfiguration and could be saved.

3 Half the portals, as well as the two-
4 thirds of the site's open space surrounding the
5 service ports. Of the non-built resources, loss
6 would be most of the site's historic topography,
7 spatial organization, open spaces and viewsheds.
8 If the project's historic preservation benefits
9 taken as a whole outweigh its historic
10 preservation harms or had addressed an explicit
11 series of development goals outlined in the
12 Comprehensive Plan, an argument might be made
13 that it's necessary in the public interest.

14 But this hasn't happened. It's a
15 challenge to find any aspect of development to be
16 consistent with the Act. So when so much is
17 wrong about the proposal and its treatment for
18 McMillan, there is no equivalency in what would
19 be lost and what would be gained.

20 I therefore concur with the HPRB
21 Review Board, that the project simply cannot be
22 found to be consistent with the purposes of the

1 Act. I thank you for this opportunity to
2 testify.

3 MR. BYRNE: Thank you.

4 MS. FERSTER: I have just one follow-
5 up question. So Mr. Hansen, you talked in your
6 testimony about the 2014 EHT report and its
7 discussion about the significance of the spatial
8 organization of the site, meaning the built
9 resources and the open space and its relationship
10 to those built resources.

11 So would you say that the open space
12 of the site that is closest to the sand bins is
13 the most important open space on the site in
14 terms of its historic significance?

15 MR. HANSEN: As opposed to which is
16 further away on the same plain?

17 MS. FERSTER: As opposed to the open
18 space that is provided, you know, that abuts
19 actually Michigan Avenue, that's farther from the
20 sand bins and separated by buildings in the open
21 space that's provided on the south end of the
22 site, which again is far from the sand bins and

1 separated from -- of the site by buildings?

2 MR. HANSEN: That's would be sort of
3 a two-pronged answer I think. Just in light of
4 preserving as much of the space as possible on
5 these open spaces, I would say that space that is
6 closest to the sand bins and that is further away
7 on the same plain would be equally important.

8 If you're looking at this in the
9 context of the development project, which is
10 something I have considered a bit, I would say
11 that maintaining as much of the open space
12 contiguous to the sand bins and the two
13 concourses would be -- I'd say it's a bit more
14 important because it would still maintain some of
15 the perspective, their relationships to sand bins
16 and the other built resources to some of the open
17 space as opposed to building right up to it.

18 MS. FERSTER: Thank you.

19 MR. BYRNE: Ms. Brown.

20 MS. BROWN: Thank you. Just following
21 up on that last line of inquiry, the south
22 service court is adjacent to the open space, the

1 6.2 acre park at the south; correct?

2 MR. HANSEN: Yes.

3 MS. BROWN: So that relationship is
4 there. It's an open space to the south service
5 court, the sand bins, the sand washers, the other
6 above-ground features; correct?

7 MR. HANSEN: Pretty much, except
8 you've added a new community center as well,
9 which is kind of breaking the plain back.

10 MS. BROWN: My second question is do
11 you recognize that the Mayor's Agent is
12 controlled by the landmark designation and not
13 the National Register nomination?

14 MR. HANSEN: Yes, I do.

15 MS. BROWN: But your testimony is
16 based on the National Register?

17 MR. HANSEN: It's based partially on
18 the National Register.

19 MS. BROWN: It's almost exclusively.
20 That's all you cited, except in one sentence on
21 the first page; correct?

22 MR. HANSEN: Yes, but what else would

1 I cite as far as reference to the local landmark
2 as well?

3 MS. BROWN: Yeah.

4 MR. HANSEN: But they're the same
5 document.

6 MS. BROWN: Actually, that's your
7 opinion and we'll have testimony about that
8 later. What role does the structural integrity
9 of the structures play in your evaluation?

10 MR. HANSEN: Could you repeat the
11 question?

12 MS. BROWN: Yes. As you --

13 MS. FERSTER: That goes beyond the
14 scope of his testimony. He did not testify to
15 structural integrity.

16 MS. BROWN: He is an expert witness.

17 MS. FERSTER: He's not a structural
18 engineer.

19 MS. BROWN: He's an expert witness.
20 He's testifying about the consistency of the net
21 preservation benefits, and one of the things that
22 would think you'd need to consider in net

1 preservation harms versus benefits is the
2 condition, structural condition of the property.

3 MS. FERSTER: I disagree. He did not
4 testify to that. That's not part of his
5 testimony. That's your testimony that your
6 expert can testify to that.

7 MR. BYRNE: Well, integrity is part of
8 the -- part of the historic evaluation of the
9 property.

10 MS. FERSTER: Well, if she wanted to
11 ask about integrity.

12 MS. BROWN: Sure.

13 MR. BYRNE: Well, that's what I
14 understood.

15 MS. BROWN: Yes, structural integrity
16 of the property.

17 MS. FERSTER: And structural integrity
18 is different from historic integrity. Can you be
19 clear about that?

20 MS. BROWN: I agree, and I'm asking
21 about the structural integrity, if it plays any
22 role in the evaluation of historic properties.

1 MR. BYRNE: Okay. That question is
2 fine. Go ahead.

3 MR. HANSEN: Yes, I agree that it
4 does. But I think you need to be really
5 sensitive in light of the McMillan project, and
6 realize that from a preservation perspective,
7 preservation is work and it's expensive. So
8 structural issues can be addressed. Some can't.

9 MS. BROWN: And were you present for
10 the testimony on the structural condition of the
11 underground cells?

12 MR. HANSEN: Yes, I was.

13 MS. BROWN: And do you disagree with
14 that testimony?

15 MS. FERSTER: He is not in a position

16 --

17 MR. BYRNE: Right. I'll sustain that
18 objection.

19 MS. BROWN: My third question is are
20 viewsheds protected under the local District law?

21 MR. HANSEN: In general?

22 MS. BROWN: Yes, and specifically for

1 this site.

2 MR. HANSEN: In general no, but
3 they're taken into consideration for this site,
4 since the viewsheds have been considered
5 significantly contributing resources.

6 MS. BROWN: Under the law is what I'm
7 asking.

8 MR. HANSEN: Under the law, no.

9 MS. BROWN: Thank you. And are you an
10 expert in applying the Comprehensive Plan to
11 historic preservation projects?

12 MR. HANSEN: I am very familiar with
13 the Comprehensive Plan. I would say I'm not an
14 expert. But I know that when I'm doing
15 preservation work, I always look to the
16 Comprehensive Plan for guidance.

17 MS. BROWN: And this is a
18 clarification question. On page four of your
19 testimony, you list provisions from the
20 Comprehensive Plan Policy MC-2.6.1, and then
21 Historic Preservation, MC-2.6.2. Is any of this
22 directly quoted or are you paraphrasing this?

1 MR. HANSEN: It's directly quoted.

2 MS. BROWN: And where are the
3 quotation marks? Where should they begin and
4 end? It's four.

5 MR. HANSEN: Page four, under Historic
6 Preservation. This is much of an argument.

7 MR. BYRNE: Sorry?

8 MR. HANSEN: I looked at quotation.
9 I removed them. So is this really an argument?

10 MR. BYRNE: Well, if you say you don't
11 know, that's the answer.

12 MR. HANSEN: I don't know, exactly.

13 MS. BROWN: Okay. I was just trying
14 to understand some of your -- whether this is
15 opinion, whether it's direct quote but you can't
16 distinguish --

17 MR. HANSEN: No, it is not opinion.
18 If there's any, the slightest word change in the
19 introductory paragraphs under each of those two
20 elements, it is pretty much verbatim and not
21 interpretation.

22 MS. BROWN: Okay. So the third

1 paragraph under -- the third paragraph under one,
2 Open Space, is that part of the Comprehensive
3 Plan?

4 MR. HANSEN: That is not. So you're
5 right. There should be --

6 MS. BROWN: And is the second
7 paragraph part of the Comprehensive Plan quote?

8 MR. HANSEN: No. So --

9 MS. BROWN: And then under two, the
10 first paragraph, is it a direct quote you believe
11 that the second paragraph is your own wording?

12 MR. HANSEN: Yes.

13 MS. BROWN: Okay. I just want to make
14 sure I got that clear for the record. Those are
15 all my questions.

16 MR. BYRNE: All right.

17 MS. FERSTER: I do have a couple of
18 redirect questions. Go ahead.

19 MR. BYRNE: So I have some questions
20 too. Mr. Hansen, so from your perspective as an
21 expert in historic preservation, what about the
22 fact that the cells all are identical to each

1 other in terms of their visual character? Does
2 that diminish the historic significance of any
3 one of them?

4 MR. HANSEN: No.

5 MS. BROWN: No. I understood -- okay.
6 From your -- from an historic preservation
7 perspective, what kind of projects should -- how
8 should McMillan be used?

9 MR. HANSEN: This is within the scope
10 of my testimony?

11 MS. FERSTER: Well, I mean this --
12 you're asking for his personal opinion, because
13 he is an expert. He's not a representative of
14 the Friends of McMillan Park.

15 MR. BYRNE: I'm asking him as an
16 historic preservation expert what your view is.
17 I'm not trying to characterize Friends of
18 McMillan Park. I just want to ask what your --
19 what your view is.

20 MR. HANSEN: My view as just a
21 professional. Should I be talking to you as a --

22 MR. BYRNE: Well, you're talking to

1 the Mayor's Agent. I mean that's all -- this is
2 all in the public space, but I am, you know.
3 It's relevant. It would be helpful to me to hear
4 from a knowledgeable as to what -- who cares
5 about, whose focus is historic preservation, what
6 you think should happen to the site.

7 MR. HANSEN: Okay. Can we say
8 should/could? Let me answer this. I believe
9 that in order to maintain as much of McMillan
10 site as possible, it would require some
11 development. I believe that development should
12 be first of all compatible with how it's called
13 for in the Comprehensive Plan.

14 But just from a development/historic
15 preservation perspective, I think that any
16 development on the site should be compatible to
17 the open spaces and built resources. To do that,
18 I think the height of the development should be
19 compatible, not insult the resources there,
20 overshadow them. I think it should be able to
21 accent the resources that are kept and can still
22 be read within a more general context.

1 One way to do that is having further
2 setback from the two causeways through the site,
3 maintaining some of the open space and not having
4 the height that follows conflict with that space.

5 MR. BYRNE: Thank you. I appreciate
6 that. All right, Ms. Ferster.

7 MS. FERSTER: A couple of redirect
8 questions. In terms of the documentation,
9 historic documentation that you relied on to
10 prepare your report, I understand that you did
11 review the historic district nomination.

12 But can you please clarify that it
13 appeared to me that you also primarily based your
14 testimony on the EHT 2014 report, of which you
15 were very complimentary in its assessment in
16 terms of integrity and the significance of
17 historic resources. So is that correct?

18 MR. HANSEN: That is correct.

19 MS. FERSTER: Okay, and in terms of
20 that report, did you note what that report said
21 in terms of the site's integrity?

22 MR. HANSEN: Overall integrity?

1 MS. FERSTER: Of the site. Not the
2 structural, but the historic integrity of the
3 site. Did it assess the overall historic
4 integrity of the site?

5 MR. HANSEN: Yes. I believe it's at
6 high integrity.

7 MS. FERSTER: High integrity, thank
8 you, and just a last question is are you are
9 familiar with any highly deteriorated historic
10 property, you know, that you are aware of
11 anywhere, that have been successfully
12 rehabilitated and adaptively reused,
13 notwithstanding their deterioration?

14 MR. HANSEN: Locally?

15 MS. FERSTER: Nationally.

16 MR. HANSEN: Maybe I'm a little bit
17 tired, so I would say I am not.

18 MS. FERSTER: Okay. As an expert, is
19 it generally possible to --

20 MR. HANSEN: Yes, it is.

21 MS. FERSTER: -- rehabilitate severely
22 deteriorated properties and adaptively reuse

1 them?

2 MR. HANSEN: Of course.

3 MS. BROWN: One follow-up based on
4 that redirect. Are you aware of any highly
5 deteriorated structures made of unreinforced
6 concrete that can be rehabilitated?

7 MR. HANSEN: Rehabilitated? I am not
8 at this point, no.

9 MS. BROWN: Thank you.

10 MR. BYRNE: All right, Mr. Otten. Go
11 ahead.

12 MR. OTTEN: Just a quick question, Mr.
13 Hansen. Isn't the Comprehensive Plan D.C. law?

14 MR. HANSEN: Yes, it is.

15 MR. OTTEN: Thank you.

16 MR. BYRNE: Okay. Let's take an hour
17 for lunch, which will bring us back here to begin
18 again at 2:30, and we'll go from there. Thank
19 you.

20 (Whereupon, the above-entitled matter
21 went off the record at 1:32 p.m. and resumed at
22 2:34 p.m.)

1 MR. BYRNE: Okay. It might be a good
2 time to start.

3 MS. FERSTER: So one of our witnesses
4 needs to be sworn in.

5 MR. BYRNE: Thank you. Just these
6 two?

7 Ms. Miller, I think you need to be
8 sworn in too. Oh but you were in the back. You
9 were sworn. It's doubly effective if you do it
10 two times. No, I'm kidding.

11 (Witness sworn.)

12 MR. BYRNE: Thank you. Okay. I guess
13 we're ready to go.

14 MS. FERSTER: Okay. Andrea Ferster
15 for Friends of McMillan Park again. My next two
16 witnesses are going to be addressing the
17 exemplary architecture and historic preservation
18 issues as well. We're going to start with
19 Rebecca Miller of the D.C. Preservation League.

20 MS. MILLER: Thank you. Good
21 afternoon. My name's Rebecca Miller. I'm the
22 executive director of the D.C. Preservation

1 League. I'm here on behalf of the organization
2 today. We are a Washington citywide advocate for
3 the preservation and protection of Washington's
4 historic and built environment. I'm here
5 testifying today in opposition to the applicant's
6 assertion that the proposal for the redevelopment
7 of McMillan sand filtration site, located at 2501
8 1st Street, N.W., is consistent with the purposes
9 of the Historic Preservation Act and that it
10 meets the test for exemplary architecture.

11 DCPL was founded in 1971 as Don't Tear
12 It Down, and its vice president, David Bonderman,
13 drafted and advocated for the passing of the
14 Historic Landmark and Historic District
15 Protection Act of 1978. I'll refer to it as the
16 Preservation Act. DCPL and Don't Tear It Down
17 has participated in dozens in Mayor's Agent
18 hearings, including cases that were reviewed for
19 exemplary architecture.

20 McMillan has also been listed by DCPL
21 as one of Washington's most endangered places,
22 originally due to City neglect of the property

1 and more recently due to the substantial
2 demolition required to build a project of such
3 scale on its designated landmark site.

4 The Preservation Act was passed to
5 prevent unauthorized demolition and destruction
6 of historic landmarks and contributing buildings
7 within historic districts. It recognizes the
8 unique architecture seen throughout the City and
9 the importance of its protection, and you cannot
10 get more unique than the McMillan site.

11 In my discussions with David Bonderman
12 about the drafting of the Act, he said that it
13 was recognized that some demolition alterations
14 and new construction would be necessary, and that
15 then-Mayor Walter Washington insisted on an
16 escape valve for projects that met certain tests.

17 One of these tests is exemplary
18 architecture. However, it is not well-defined in
19 the law and was envisioned to only be used in
20 extreme cases.

21 There have been very few cases that
22 have met the test for exemplary architecture, and

1 in reviewing the cases since 1981, beginning with
2 Rhodes Tavern, you can see how the test has
3 evolved. For instance, just maintaining a facade
4 of adjacent structures when Rhodes Tavern was
5 deemed to be demolished of the Metropolitan Bank
6 Building and the Albee Theater was considered
7 exemplary.

8 Well today the preservation community
9 would see that as a very minimal possible
10 preservation option. Mayor's Agents opined in
11 later cases that such as the application to
12 demolish the Woodward Building in 1986, that the
13 exemplary architecture is more than just
14 compatibility, but requires an extraordinary
15 design.

16 In the Arena Stage case, the applicant
17 had support from the Historic Preservation Review
18 Board, who adapted its staff report on the
19 conceptional design and the new addition, which
20 noted architectural concept is entirely fresh,
21 innovative and appropriately dramatic, and could
22 support a claim of exemplary architecture before

1 the Mayor's Agent.

2 In 2007, the developer for the C&P
3 Warehouse located at 1111 North Capitol Street
4 sought approval of special merit by virtue of
5 social and other benefits, having a high priority
6 of community services, specific features of land
7 planning and exemplary architecture.

8 Although the Historic Preservation
9 Officer, David Maloney, testified in support of
10 the application, the Mayor's Agent order notes
11 that Mr. Maloney disagreed with the applicant's
12 assertion that the architectural design of the
13 project was sufficiently exemplary to provide an
14 independent basis for a finding of special merit,
15 testifying that such a designation should be
16 limited to extraordinary, world-class projects
17 financed by large institutional applicants.

18 Mr. Maloney states in the transcript
19 "As you know, however Your Honor, we have tried
20 to reserve the designation of exemplary
21 architecture to very special circumstances, if
22 you will, to use sort of an hackneyed term, to

1 world class buildings, signature projects that
2 often are the kind of thing that can only be
3 accomplished in very unusual circumstances, often
4 by institutions that have lavish budgets where
5 the public receives something of truly unusual
6 and special public benefit."

7 Often these buildings have large
8 public spaces where the public can experience the
9 quality of the interior architecture in a very
10 direct and widespread manner. In this case, in
11 this same case, Mr. Maloney testified that the
12 C&P Warehouse project was not consistent with the
13 purposes of the Preservation Act.

14 "First, the question of why the
15 Historic Preservation Office and the Preservation
16 Review Board judged this project not entirely
17 consistent with the purpose of the Act was
18 essentially for two reasons.

19 "One is the extent of demolition of
20 the historic building, which amounts to roughly
21 50 percent of the building, and in terms of the
22 character-defining features of the building,

1 certainly many of them are to be retained,
2 including virtually all of the street facades,
3 and there are some facades that continue around
4 that are not being retained. A small amount of
5 the facades are being removed.

6 "The other reason why HPO judged the
7 project not entirely consistent with the purpose
8 of the Act does not -- does involve a new large
9 building that encroaches in part over the
10 footprint of the historic building, and although
11 there certainly are setbacks from the historic
12 facades, it will be evident that there is a new
13 building encroaching over a landmark."

14 In 2013, McMillan Park Historic
15 District and sand filtration site was -- there
16 was a new nomination that was put forward,
17 consolidated, updated. Originally, it was
18 designated in 1991 locally. In the case before
19 you, the plan proposes to demolish all but two of
20 the 20 underground sand filtration beds and
21 vaults located on the current building site, not
22 on the entire site, while maintaining much of the

1 above-ground features that include the regular
2 houses, sand bins and sand washers.

3 That's 80 percent of the underground
4 contributing resources, thus making this a far
5 cry from being consistent with the purposes of
6 the Historic Preservation Act. In addition, the
7 new development severely encroaches on the
8 landmark site. Therefore, Mr. Maloney's
9 assessment in 2007 should be relevant here as
10 well.

11 The Mayor's Agent found in his April
12 12th, 2015 order that the proposed project would
13 cause serious loss to McMillan's historic
14 resources. However, that was mitigated by the
15 project's increased public access, rehabilitation
16 and interpretation would promote preservation
17 gains to the public.

18 Based on this assertion, the Mayor's
19 Agent cannot find that the project is consistent
20 with the purpose of the Preservation Act, given
21 that the proposal will compromise all but one of
22 the seven aspects of integrity identified by the

1 National Park Service including lots of design,
2 setting, materials, workmanship, feeling and
3 association. The only one that's not compromised
4 is location, and that is just on the basis that
5 nothing is being relocated.

6 In regards to Issue No. 3, with
7 regards to whether or not there could be an
8 economically viable project that could be
9 constructed on the site, DCPL believes that there
10 could be. We had previously asked Douglas
11 Development Corporation in 2014 to prepare a
12 letter with that assertion.

13 My understanding in the last year is
14 that Douglas Development was approached to
15 rescind that letter. They were asked to do so
16 and that they declined to do so. So I believe
17 that as a developer who does the majority of the
18 preservation projects in the District of
19 Columbia, that if they say that it could be done
20 economically in a feasible way with less
21 construction, then you could believe it.

22 Also there was a question earlier that

1 counsel had posed with regards to whether or not
2 there had been a Mayor's Agent decision with
3 regards to affordable housing. It was one that
4 you actually presided over, which was the Big K
5 case in historic Anacostia, which of course is a
6 very fragile historic district. In that case,
7 you found the 100 percent affordable housing to
8 be a special merit benefit.

9 And then there was another question
10 about landmarks that have been rehabbed with
11 unreinforced concrete. There's not a lot of
12 them. Obviously, the Pantheon in Rome is
13 unreinforced concrete, also thousands and
14 thousands of years old. Reinforced concrete came
15 into creation right around the middle of the 19th
16 century, and it really hasn't been tested.

17 There's not like a National Park
18 Service. They do a lot of briefs on how to deal
19 with buildings and what-not, but there are places
20 of unreinforced masonry that have been very much
21 tested, such as in Italy and in the Czech
22 Republic and in Paris, where underground

1 catacombs have been reused as art spaces and
2 things like that.

3 So I think that there should be more
4 study with regards to whether or not the
5 unreinforced concrete can be rehabilitated,
6 because there just really hasn't been a lot of
7 it.

8 In conclusion, the D.C. Preservation
9 League urges the Mayor's Agent to deny the
10 applicant's request to find the project
11 consistent with the purpose of the Act, and to
12 deny their assertion that the project meets the
13 test for special merit for exemplary
14 architecture.

15 Granting on these grounds would put
16 preservation in great peril in the future. Thank
17 you very much.

18 MR. BYRNE: Okay. Ms. Ferster any --

19 MS. FERSTER: No.

20 MR. BYRNE: Okay. Ms. Brown.

21 MS. BROWN: Just a quick question. Do
22 you have a copy of her testimony?

1 MS. FERSTER: Sure, uh-huh.

2 MR. BYRNE: Thank you.

3 MS. BROWN: I have just a few quick
4 questions for you.

5 MS. MILLER: Yes ma'am.

6 MS. BROWN: Good afternoon.

7 MS. MILLER: Hello, good to see you.

8 MS. BROWN: How many times did you --
9 the Design Review Committee of the D.C.
10 Preservation League review this project?

11 MS. MILLER: I believe once or twice,
12 and that was early on in the project, probably
13 the late 2000's, and it was some of the buildings
14 with regards -- most of it was mass and studies.

15 MS. BROWN: And did DCPL take a formal
16 position on the design at that time?

17 MS. MILLER: I do believe we presented
18 testimony before the Historic Preservation Review
19 Board with regards to the massing.

20 MS. BROWN: And did you participate in
21 all the Historic Preservation Review Board
22 meetings?

1 MS. MILLER: We did not.

2 MS. BROWN: And did you -- you did not
3 testify at the Mayor's Agent?

4 MS. MILLER: We did not.

5 MS. BROWN: Okay. You testified about
6 the C&P Telephone building case and you quoted
7 from some of David Maloney's testimony. Did the
8 Mayor's Agent adopt his testimony, the quotes
9 that you had about extraordinary, special and not
10 hackneyed design?

11 MS. MILLER: They did not end up
12 making a decision on it. The Historic
13 Preservation Officer, David Maloney, also stated
14 that they didn't think that they needed to make
15 that kind of decision because there was already a
16 case being made for community benefit.

17 MS. BROWN: Okay, and you also stated
18 that all but two of the 20 underground cells
19 would be demolished, equating to 80 percent.
20 Isn't it true that the D.C. Water has already
21 demolished two of those, so it's not the extent
22 that you say?

1 MS. MILLER: I said it was specific to
2 this particular building site, not the entire --

3 MS. BROWN: So you're not aware about
4 the building site being --

5 MS. MILLER: Just the building? Yes,
6 I'm aware of the ones that were demolished. That
7 was a couple of years ago. I think it -- I
8 believe it went through a Mayor's Agent case.

9 MS. BROWN: So you're excluding those
10 corner cells from the development site?

11 MS. MILLER: Well, they've already
12 been demolished.

13 MS. BROWN: But so what goes on above
14 grade is not considered part of this project?

15 MS. MILLER: Well, everything that
16 goes on on this particular building site is a
17 part of this project. So you're keeping -- so
18 I'm only talking about 80 percent of the cells.

19 MS. BROWN: Okay. It seems that -- so
20 you're not -- how many cells are on the site?

21 MS. MILLER: My understanding is
22 there's 20.

1 MS. BROWN: And how many are occupied
2 by D.C. Water? How many did D.C. Water demolish?

3 MS. MILLER: Two.

4 MS. BROWN: And how many does that
5 leave that the applicant's proposals to demolish?

6 MS. MILLER: My understanding is that
7 the applicant proposed to keep two sites, two of
8 the underground cells, is that not correct?

9 MS. BROWN: So I guess the denominator
10 is really not two out of 20. It's two out of the
11 remaining 18?

12 MS. MILLER: Okay. Well, that doesn't
13 lower my percentage too much, but sure.

14 MS. BROWN: Okay. I just wanted to
15 understand if you --

16 MS. MILLER: It's still a remarkable
17 demolition, yes. More than 50 percent of the
18 cells.

19 MS. BROWN: Are you aware of the
20 structural issues with the site?

21 MS. MILLER: I've heard about them,
22 yes.

1 MS. BROWN: Have you read the report?

2 MS. MILLER: I have read the report,
3 yes.

4 MS. BROWN: The CCGM report?

5 MS. MILLER: Well, I am not a
6 structural engineer so -- and I don't pretend to
7 be. We would have to have one of our structural
8 engineers that would be on the DCPL's board to
9 make any other assertion with regards to the
10 structural.

11 MS. BROWN: Okay. So did someone on
12 the DCPL board read the CCGM report?

13 MS. MILLER: Not to my knowledge.

14 MS. BROWN: And did someone on the
15 DCPL board read the Silman report?

16 MS. MILLER: That I cannot answer at
17 this point.

18 MS. BROWN: Okay.

19 MS. MILLER: I don't know if anybody's
20 read -- I have read the reports that have been
21 publicly available.

22 MS. BROWN: And do you disagree with

1 the Silman report?

2 MS. FERSTER: She has just said that
3 she's not a structural engineer, so she's not in
4 a position to agree or disagree with their -- the
5 structural engineer's assessment.

6 MR. BYRNE: I'll let her answer the
7 question.

8 MS. MILLER: I'm not a structural
9 engineer. So I can't agree or disagree with it.
10 I do find in many cases that structural engineer
11 reports can -- there are other alternatives that
12 are presented when another structural engineer
13 looks at them.

14 MS. BROWN: So you made reference to
15 the Pantheon as an unreinforced concrete
16 structure. Are you aware of any brick that's in
17 the Pantheon?

18 MS. MILLER: No.

19 MS. BROWN: In the arches?

20 MS. MILLER: No.

21 MS. BROWN: You're not aware of that?

22 MS. MILLER: I'm not aware of it.

1 Like I said, I just -- I was just -- you asked
2 about an unreinforced concrete building, and
3 that's one that's thousands of years old that
4 they've managed to maintain. So it's not, like I
5 said --

6 MS. BROWN: So is that opinion or is
7 it fact?

8 MS. MILLER: That the Pantheon still
9 stands?

10 MS. BROWN: That the Pantheon is
11 unreinforced concrete in its totality?

12 MS. MILLER: The dome is concrete.

13 MS. BROWN: In its totality?

14 MS. FERSTER: I don't think she
15 testified in its totality. She just said it is
16 unreinforced concrete.

17 MS. BROWN: Okay. So are you aware of
18 the -- you talked about this not being consistent
19 with the purposes of the Act, this McMillan
20 project in your opinion. Is that something that
21 the DCPL board voted on as well?

22 MS. MILLER: This is something that's

1 been discussed at the DCPL board, yes.

2 MS. BROWN: It's been discussed, but
3 has DCPL taken a vote on it?

4 MS. MILLER: I don't know that we've
5 taken an official vote from the board of
6 trustees.

7 MS. BROWN: So you're speaking more in
8 your personal capacity?

9 MS. MILLER: No. This is not my
10 personal capacity. This is on behalf of the
11 organization. This has been cleared through our
12 executive committee.

13 MS. BROWN: Okay, and are you aware of
14 the discussion in the D.C. Court of Appeals case
15 regarding consistent with the purposes of the
16 Act, and the preservation, balancing the net
17 preservation benefits against the net
18 preservation losses?

19 MS. MILLER: I've read discussion of
20 it.

21 MS. BROWN: I think those are all my
22 questions.

1 MR. BYRNE: So Ms. Miller, did you --
2 did you find the statement by the Court of
3 Appeals about the treatment of historic
4 preservation matters in Mayors Agent cases to be
5 surprising? In other words, that it could not be
6 considered as part of the project's special
7 merit, but that the Mayors Agent should be
8 directed to consider it in terms of ---
9 consistent with the purposes of the Act?

10 MS. MILLER: I'm not sure that I read
11 it as in-depth as any lawyer would have. So I'm
12 also not a lawyer. We have legal counsel that
13 advises DCPL. So our lawyers may have their own
14 opinions.

15 MR. BYRNE: Okay. Oh we'll maybe have
16 a chance to ask them some -- okay.

17 MS. FERSTER: My next witness is Jim
18 Schulman, and he is -- we are asking that he be
19 qualified as an expert in architecture.

20 MS. BROWN: Just a quick question. I
21 believe he testified at the last Mayor's Agent,
22 or am I mistaken?

1 MR. BYRNE: He did, in one of the, I
2 forget, '14 or '15.

3 MS. BROWN: Were you qualified as an
4 expert at that point?

5 MR. SCHULMAN: No, I don't think I was
6 qualified as an expert, but maybe I'm wrong.

7 MS. FERSTER: Yeah. I don't recall
8 that you were qualified as an expert at that
9 point.

10 MR. SCHULMAN: So shall I proceed?

11 MR. BYRNE: Well I think we have --

12 MS. FERSTER: I think we have to deal
13 with your qualifications.

14 MR. BYRNE: Yeah, okay. I'll let Ms.
15 Brown do that. And just in what is he being
16 proffered as an expert in?

17 MS. FERSTER: He's an architect.

18 MR. BYRNE: Okay, as an architect.

19 MS. BROWN: And is it general
20 architecture? Is there a specific focus?

21 MR. SCHULMAN: No.

22 (Pause.)

1 MS. BROWN: I do just have a couple of
2 clarifying questions. Mr. Schulman, I don't see
3 your education on the resume.

4 MR. SCHULMAN: Oh. I'm surprised.
5 Yeah, Master's of Architecture at the University
6 of Minnesota.

7 MS. BROWN: Oh, there it is. I'm
8 sorry. I thought that those were courses that
9 you were teaching. Thank you.

10 MR. SCHULMAN: And I'm registered in
11 DC and Maryland.

12 MS. BROWN: And what type of buildings
13 have you designed?

14 MR. SCHULMAN: Residential, commercial
15 and institutional?

16 MS. BROWN: And have you done a mix of
17 those types of buildings?

18 MR. SCHULMAN: Yes.

19 MS. BROWN: And what kind of large
20 projects have you worked on?

21 MR. SCHULMAN: I admittedly have not
22 worked on huge projects. The biggest building I

1 think I worked on was Building No. 6 at the Navy
2 Yard, six stories, several football fields.

3 MS. BROWN: And when you say you
4 worked on it, were you the lead architect?

5 MR. SCHULMAN: Of that -- of the
6 renovations occurring there, yes.

7 MS. BROWN: Of the renovations, but
8 not the new construction?

9 MR. SCHULMAN: Yeah. It's an existing
10 building.

11 MS. BROWN: Right, right, and what
12 about new construction?

13 MR. SCHULMAN: My role here as an
14 architect is more to comment, to make critique
15 and so the two projects I'm working on now of new
16 construction are one for the Town of Cottage
17 City, a building for them and for an Italian
18 architect and sculptor by the name of Davide
19 Prete, who's building an artist studio in Mount
20 Rainier.

21 MS. BROWN: Okay, and have you had any
22 experience in adapting for use of historic sites

1 and historic buildings, new construction within a
2 historic site?

3 MR. SCHULMAN: I have worked on
4 projects in the Navy Yard, in Georgetown Historic
5 District, the Capitol Hill Historic District.

6 MS. BROWN: Has that been new
7 construction or just --

8 MR. SCHULMAN: Not from the ground up,
9 because they're dealing with historic buildings.

10 MS. BROWN: Have those been
11 residential projects?

12 MR. SCHULMAN: Residential and
13 commercial.

14 MS. BROWN: And is what, additions to
15 residential buildings?

16 MR. SCHULMAN: Yes.

17 MS. BROWN: And then additions to
18 existing commercial buildings?

19 MR. SCHULMAN: Yes.

20 MS. BROWN: And do you appear before
21 the HPRB?

22 MR. SCHULMAN: I have been before the

1 HPRB. The last time dealt with a church in
2 Georgetown that was seeking to add a handicapped
3 ramp.

4 MS. BROWN: And the Mayor's Agent
5 hearing was the last time you testified before
6 the Mayor's Agent in this case, or have you
7 testified in other cases before the Mayor's
8 Agent?

9 MR. SCHULMAN: No. This is the only
10 case I've -- before which I've testified, and
11 it's the first time I've testified as an expert
12 witness, I will be.

13 MS. BROWN: In this case?

14 MR. SCHULMAN: Yes.

15 MS. BROWN: Have you been an expert --
16 have you been qualified as an expert in other
17 cases?

18 MR. SCHULMAN: No.

19 MS. BROWN: So I think I'm fine with
20 general qualifications as to architecture, but
21 with the specifics to large multi-purpose
22 commercial sites with historic preservation, I

1 don't think there's qualifications there.

2 MS. FERSTER: We didn't offer him as
3 an expert in large historic sites. We offered
4 him as an architect. He is a licensed architect.
5 He's got the requisite professional degrees and
6 the requisite professional experience, and I
7 think he should just be qualified as an
8 architect.

9 MR. BYRNE: As an architect, right,
10 and yes. You are qualified.

11 MR. SCHULMAN: Good afternoon, Hearing
12 Officer Byrne. My name is Jim Schulman. I'm a
13 registered architect based here in Washington,
14 D.C. I recently finished serving six years on
15 the board of directors of the Building Materials
16 Reuse Association, a national non-profit
17 dedicated to promoting reuse and recycling in
18 construction. I was an invited speaker on reuse
19 and sustainable design issues at the 2017
20 American Institute of Architects Annual
21 Conference of Architecture in Orlando.

22 Among other preservation efforts, I

1 was involved with the National Park Service
2 restoration of the Harry S. Truman Home in
3 Independence, Missouri, various upgrades to
4 historic properties that I mentioned at the Navy
5 Yard, and worked on residential and institutional
6 projects in the Capitol and Georgetown Historic
7 Districts.

8 I will speak today to issues
9 identified by the D.C. Court of Appeals that
10 you're well aware of, mainly the focus is, and
11 I'm going to jump ahead, the focus is on this
12 question of exemplary architecture. So I'm going
13 to jump to the first indent on page two.

14 I maintain that, despite its
15 significant evolution. The VMP project
16 objectively falls short of being architecturally
17 exemplary. It lacks distinction and certainly
18 does not deserve the moniker of "special merit"
19 related to the following:

20 Its failure to embrace the site's
21 potential as a public attraction; the prosaic
22 nature of the individual building designs; the

1 failure to creatively incorporate more of the
2 underground cells; the domination of the surface
3 historic features by the scale of the towers
4 surrounding certainly the north service court;
5 the lack of respect the project gives to historic
6 viewsheds; and a missed opportunity to create a
7 real transit hub instead of an underground
8 parking lot.

9 Having served on the Design Oversight
10 Committee for the 11th Street Bridge Park
11 Project, I can comfortably claim that the design
12 of the proposed development at the McMillan sand
13 filtration plant fails to come close to any of
14 the creativity or innovation exhibited in any of
15 the designs of the bridge park competitors, much
16 less the finalists, as it ought to have for such
17 a large and prominent site.

18 A logical precursor to both the 11th
19 Street bridge park and the McMillan sand
20 filtration plant is the Highline in New York
21 City. This ribbon of obsolete and abandoned
22 infrastructure was long perceived as an eyesore

1 by many New Yorkers, but creative vision and
2 persistence on the part of environmental and
3 historic preservation advocates led to the
4 adaptive reuse of that elevated rail line and the
5 ultimate economic revitalization of lower
6 Manhattan after the attack on September 11th,
7 2001.

8 McMillan Park could be D.C.'s
9 highline, an international attraction if the
10 Mayor's Agent saw fit to send the District
11 government back to the drawing board, perhaps via
12 a public design competition, with stress on the
13 competitive and Preservation aspects of such a
14 process.

15 With respect to the design of the
16 individual buildings, I find that each building
17 type is similar to background meaning less than
18 distinctive architecture built elsewhere by
19 members of the VMP team. The multi-family
20 building slated for McMillan Park are not unlike
21 apartments Jair Lynch Associates built in
22 Chinatown, and I'm speaking now of the Anthology

1 Apartments that you see depicted.

2 The Trammell Crow developed medical
3 office towers bear a resemblance to the Diridon
4 Station they designed in San Jose, and the
5 townhouse blocks being developed by EYA appear
6 similar to a project they produced in Bethesda,
7 in this case Montgomery Townhouses.

8 While I do not fault the developer
9 team or their designers for a modicum of
10 repetition, and I do acknowledge that on other
11 projects these firms and the designers have
12 separately produced strong designs, the fact is
13 that the design of the current McMillan project
14 fails to rise to the level of exemplary
15 architecture, because the components of the
16 project are individually innocuous and they're
17 uncomfortably and non-integrally sandwiched
18 together to achieve a pecuniary balance, not an
19 organic urban design.

20 VMP does not appear to argue that the
21 buildings are exemplary architecture in the same
22 way as other innovative and ground-breaking

1 architectural commissions, such as the National
2 Museum of African-American History and Culture or
3 the 11th Street Bridge Park. Instead, its claim
4 appears to be that the buildings constitute
5 exemplary Architecture only in the context of the
6 overall design in the approved master plan
7 because it uses a unified color pallet across
8 varying building types, selected to complement
9 the historic elements on the site.

10 However, lead designer Matthew Bell
11 confuses an effort to achieve design
12 compatibility, which is required of all new
13 construction within a historic area with special
14 merit, which requires more than mere design
15 compatibility.

16 Any planned unit development ought to
17 exhibit harmonious relationships between its
18 various component elements, but not at the
19 expense of significant historic features at a
20 site meriting listing on the National Register of
21 Historic Buildings or a landmark building.

22 The fact that the individual buildings

1 are designed only to a LEED Silver level, the
2 minimum standard required of property developed
3 under the LDA with the District of Columbia,
4 further undermines any claim that these buildings
5 are either exemplary or of special merit. There
6 are already 247 projects in the District of
7 Columbia that have achieved a LEED Silver rating,
8 one rating above the base level of certified.

9 So Silver ratings appear to be more a
10 dime a dozen than a function of special merit.
11 Furthermore, VMP has testified there will
12 apparently not even be -- include seeking actual
13 LEED certification of the buildings.

14 To my mind, the most emblematic lack
15 of design ingenuity is embedded in the
16 developer's failure to consider the repair and
17 reconstruction of the underground sand filtration
18 chambers.

19 They were so eager to build heavy and
20 high that they did not comprehend that it is
21 possible to develop a project that would
22 incorporate those cells that have sustained only

1 minor deterioration, which VMP's structural
2 engineer indicated could be adaptively reused
3 without any overbuild, without harming the
4 historic integrity of these unique structures.

5 Fortunately, the cells that are in the
6 best condition are located near the north surface
7 court, where it is most important to preserve
8 open space, as has been testified by others.

9 Locating a portion of the retail within these
10 cells would accomplish the developer's stated
11 desire to locate the retail near the medical
12 office building while preserving more cells and
13 some of the site's key spatial organization, the
14 historic open space surrounding the service
15 courts.

16 As the prior testimony of Miriam
17 Gusevitch demonstrates, adaptively reusing the
18 underground cells as retail spaces, as has been
19 done with respect to other extraordinary below
20 grade historic spaces found all over Europe and
21 I'm familiar with ones in Italy and Turkey, they
22 could be -- that could make it a design of

1 exemplary architecture, worthy of the special
2 merit designation.

3 The insensitivity to the historic
4 surface elements of the service courts in terms
5 of how they will be overshadowed and dominated by
6 the proposed medical towers renders them
7 Disneyesque toy features of a strange landscape.
8 It is almost as if the dissonant scale
9 relationship was modeled after the disturbing
10 dream sequences of the protagonist in the
11 dystopian movie Brazil.

12 The same insensitivity applies to the
13 minor concessions the design of the project
14 accords to the historic viewsheds from the
15 Lincoln Cottage to the north. Instead of
16 reducing building heights, the developer has
17 created a narrow band of space for bits of
18 downtown D.C. to be viewed between central
19 business-scaled towers.

20 In terms of missed opportunities, if
21 DMPED and its development team really wanted to
22 create a mixed use project that was truly

1 sustainable by dint of being free of auto
2 dependency, they could have developed a real
3 transit hub with built infrastructure
4 incorporated in the limited areas where the
5 underground caverns are irreparable for true
6 transit multi-modalism, and I'll add that what
7 has been proposed, however, paves a historic
8 paradise to put up a parking lot.

9 Lastly, as a caboose in a veritable
10 train of missed opportunities, I will note the
11 disappearance in the last year's project redesign
12 of the best design element that I'd seen to date,
13 the cascading fountains and pools within the
14 south service court that were evocative of the
15 water purifying function of the sand filtration
16 plant itself.

17 I thank you again for this opportunity
18 to present my views.

19 MR. BYRNE: Thank you. Ms. Ferster.

20 MS. FERSTER: No. I have no other
21 questions.

22 MR. BYRNE: All right. Ms. Brown.

1 MS. BROWN: Mr. Schulman, on page two
2 of your testimony you claim that the project
3 fails to embrace the site's potential as a public
4 attraction. Are you aware of the extensive
5 walking museum and arts program that celebrates
6 the site?

7 MR. SCHULMAN: I actually did see
8 that, and I think that's a good idea, and but
9 it's a pale shadow of what it could be. It's
10 kind of like trying to do with a cell phone what
11 you could be doing with actual built
12 infrastructure. And I'm not sure that that would
13 attract the kind of international audience that I
14 think the site could generate if there were more
15 focus on the historic features of the site.

16 MS. BROWN: Have you done a study to
17 that effect?

18 MR. SCHULMAN: No, I have not.

19 MS. BROWN: You mention on page two
20 again about the 11th Street Bridge Park and the
21 creativity and innovation exhibited by those
22 designs. Is that a historic landmark?

1 MR. SCHULMAN: No, it is not. It will
2 be when it's built.

3 MS. BROWN: Designed by the Historic
4 Preservation Review Board?

5 MR. SCHULMAN: I think -- I'm just
6 speculating, that if and when it gets built, it
7 will be as important to Washington as the
8 Washington Monument.

9 MS. BROWN: You have this comparison
10 picture on page three of the McMillan Parcel 2
11 multi-family building and the anthology. Who
12 were the architects for both those projects?

13 MR. SCHULMAN: I don't know, to be
14 honest with you. I didn't research that and I
15 apologize for that.

16 MS. BROWN: And do you know the
17 architects of the McMillan medical tower and
18 other building that you have there?

19 MR. SCHULMAN: I presume that there
20 are some members of the existing team, but I
21 don't know that for sure.

22 MS. BROWN: On page five of your

1 testimony, the middle paragraph, you talk about
2 the extent of demolition and the idea that the
3 project does not adaptively reuse enough of the
4 cells. If there were less demolition, could the
5 project achieve the same public benefits?

6 MS. FERSTER: I think that goes
7 outside the scope of his testimony.

8 MS. BROWN: I think it's right there
9 on page five, the center paragraph, and we're
10 here dealing with the remand issues and that it's
11 a specific remand issue.

12 MS. FERSTER: Right. Which sentence
13 are you talking about, the adaptive reuse?

14 MR. SCHULMAN: The second sentence
15 maybe.

16 (Simultaneous speaking.)

17 MS. BROWN: "They were so eager to
18 build heavy and high that they did not comprehend
19 that it was possible to develop a project that
20 would incorporate those cells that have sustained
21 only minor deterioration."

22 MR. SCHULMAN: Yes, that's it.

1 MS. FERSTER: And what was your
2 question again?

3 MS. BROWN: My question is if those
4 cells are preserved, can you still get the same
5 level of public benefits?

6 MS. FERSTER: And I would say that it
7 goes beyond the scope of his testimony as it --
8 in that sentence.

9 (Simultaneous speaking.)

10 MS. BROWN: That argument is that --
11 I hear what you're saying, thank you. And my
12 argument is that because we're dealing with
13 remand issues specifically identified by the
14 Court of Appeals, that it goes -- his testimony
15 needs to be addressing that.

16 MS. FERSTER: But I would suggest that
17 in the last hearing, we had extensive objections
18 on my part sustained, based on the fact that the
19 question went to the issues involved in the
20 remand by the Court of Appeals, but went beyond
21 the four corners of their testimony.

22 And you know Mr. Schulman's testimony

1 goes to the question of exemplary architecture
2 and not, you know, whether or not there is a
3 special -- the benefits can be provided under a
4 different arrangement. So I would again say his
5 -- that question does go beyond the scope of his
6 direct testimony.

7 MR. BYRNE: I don't think it does,
8 because as I read it, he's suggesting that they
9 were so eager to build heavy and high, which
10 suggests basically a desire for more bulk that
11 they didn't -- that they were motivated by that,
12 so they didn't consider about how to incorporate
13 more cells. The question is about the public
14 benefits that would come from building at the
15 scale that they're building, as I understand the
16 question.

17 MS. FERSTER: Which is beyond the
18 scope of this testimony.

19 MR. BYRNE: Well, I'm going to let him
20 answer the question. I've given my ruling.

21 MR. SCHULMAN: Could you repeat --

22 MS. BROWN: Yes, I'll be glad to.

1 MR. SCHULMAN: Okay.

2 MS. BROWN: If there were less
3 demolition on the site, particularly with the two
4 cells that are in the best condition, relative
5 condition, would you be able -- would the project
6 be able to achieve the same level of public
7 benefits that are being offered today?

8 MR. SCHULMAN: Mr. Bell is probably in
9 a better position to answer that than I am. But
10 if by public benefits you mean sort of all the
11 things that were laid out to comply with the
12 Comprehensive Plan it's -- I would say it would
13 be a better project and more that is preserved.
14 But it needs some significant redesign, and it
15 would benefit from a new set of eyes.

16 MS. BROWN: And you're aware that the
17 D.C. Court of Appeals said that historic
18 preservation benefits are not part of the special
19 merit test?

20 MS. FERSTER: Objection. He's not
21 testifying about what the Court of Appeals did or
22 did not say.

1 MR. BYRNE: Yeah, sustained,
2 sustained.

3 MS. BROWN: Were you present in 2013-
4 2014, I think it was 2014, for the Street Sense
5 testimony from Bruce Leonard?

6 MR. SCHULMAN: I don't recall.

7 MS. BROWN: About the ability to reuse
8 the underground cells for retail purposes?

9 MR. SCHULMAN: This isn't a structural
10 engineering question.

11 MS. BROWN: No, and you suggested that
12 the underground cells could be used for retail
13 purposes, and I'm asking if you were -- I know
14 that you testified at the previous Mayor's Agent
15 demolition hearing, and I'm asking if you were
16 present for the testimony of Bruce Leonard from
17 Street Sense on that very issue?

18 MR. SCHULMAN: I probably was. I
19 don't recall all his testimony. I do admit that
20 underground property is not as auspicious for
21 retail purposes as above ground, but the examples
22 I've seen from Europe show that it can be done

1 and can be done in a very attractive way.

2 MS. BROWN: And did you -- let me see
3 how to phrase this. The structural engineering
4 report by Silman indicated that there would need
5 to be such structural intervention in the
6 underground cells, that in addition to the -- I
7 think it's every 14 feet you have a column, and
8 then you would have to interject --

9 MR. SCHULMAN: That's in an over --

10 MS. FERSTER: Let her finish her
11 question please.

12 MR. SCHULMAN: Oh sure, sorry.

13 MS. BROWN: And then you'd have to
14 interject another column in the middle of the
15 vaults in order to support that, and how does
16 that affect retail space in your professional
17 opinion?

18 MS. FERSTER: Okay. I'm not sure.
19 Are you asking him to testify about the
20 structural issues?

21 MS. BROWN: I'm asking if the premise
22 is true, that you have 14 foot grid columns in

1 the cells, and that they have to be reinforced
2 with another column dropped in there, how
3 effective is that as retail space, in your
4 professional opinion?

5 MR. SCHULMAN: I would say that you're
6 presuming an overbuild situation, and I was
7 testifying to one where there might not be an
8 overbuild.

9 MS. BROWN: So it's your testimony
10 that none of that intervention would need to
11 happen in order to use it as retail space?

12 MR. SCHULMAN: That's correct.

13 MS. BROWN: And what about HVAC,
14 lighting and other equipment that would need to
15 go into the cell? How would that be
16 accomplished?

17 MR. SCHULMAN: Well, that's a separate
18 question. From a structural point of view, and
19 I'm not a structural engineer, but I did hear the
20 expert testimony that was given by FOMP's
21 engineer before you, and I was impressed --

22 MS. BROWN: Who is FOMP?

1 MR. BYRNE: Friends of -- this is in
2 the prior, in 2014?

3 MR. SCHULMAN: Yeah, and I was
4 impressed by the fact that there are these wraps
5 that you can put around existing concrete
6 columns, that structurally tensilely tighten them
7 to a position where they -- in other words you
8 don't have to necessarily put columns in. There
9 are ways of -- there are structural techniques
10 that can be used, that are fairly innocuous and
11 not easily perceivable short of having to insert
12 columns in the 14 foot.

13 MS. BROWN: Were you equally struck by
14 the rebuttal testimony of the Silman engineers,
15 who said that that wasn't feasible?

16 MR. SCHULMAN: I must not have been.

17 MS. BROWN: Those are all my
18 questions.

19 MR. BYRNE: Okay, let me see.

20 MS. BROWN: I'm sorry. I do have one
21 more question. Were you present at the HPRB
22 meetings, where the HPRB endorsed the design for

1 the project?

2 MR. SCHULMAN: I think I was at some
3 of them, yes.

4 MS. BROWN: And you disagree with the
5 HPRB's assessment of the project?

6 MR. SCHULMAN: I feel like they made
7 a bad decision.

8 MS. BROWN: Okay. So you disagree
9 with the professionals on the HPRB on that?

10 MR. SCHULMAN: I agree with the
11 professionals who identified that this doesn't
12 meet the Interior Department's standards.

13 MS. BROWN: Are you claiming that
14 there was testimony to that effect?

15 MS. FERSTER: You know, I'm going to
16 ask you to clarify, because we have any number of
17 HPRB decisions. We have the decision finding,
18 specifically finding that neither the demolition
19 or the subdivision was consistent with the
20 purposes of the Act, and then we have the
21 decision on the master plan, which is probably
22 the one you're referring to but I don't know,

1 where it simply found that the architecture was
2 coherent and --

3 MS. BROWN: Yes, that was a very
4 simple --

5 MS. FERSTER: Complimentary language
6 or whatever. So which --

7 MS. BROWN: And I am asking about the
8 master plan, and I am also asking about whether
9 or not he heard testimony as to the Secretary of
10 Interior's standards from the Historic
11 Preservation Review Board?

12 MR. SCHULMAN: I did hear some of that
13 testimony, yes.

14 MS. BROWN: You're saying that that
15 existed?

16 MR. SCHULMAN: (No audible response)

17 MR. BYRNE: Okay.

18 MS. BROWN: Thank you.

19 MR. BYRNE: So what -- I mean at the
20 risk of bringing up the issue of gentrification,
21 which of course I'm not supposed to incorporate
22 that, what do you -- when you say "a real transit

1 hub," what are you thinking of?

2 MR. SCHULMAN: Well, in this
3 testimony, I was referring to actual underground
4 transit, and I recognize that an expansion of the
5 Metro system is probably not in the cards. But I
6 don't think just a shuttle bus alone is going to
7 solve what is going to be a huge potential
8 problem, and so I was kind of saying gee, there's
9 a way to maybe seamlessly get transit, even if it
10 is a City bus, to interact in a better way with
11 this site.

12 But my sense is that the whole
13 question of transportation infrastructure was an
14 add-on. It was sort of a, kind of we're going to
15 design this project and then we'll add some timed
16 lights or something to deal with our
17 transportation question. And so I don't think
18 that it was handled in an integrated way and an
19 exemplary project would have, in my view.

20 MR. BYRNE: Would have extended a
21 light rail system --

22 MR. SCHULMAN: It's conceivable, or as

1 I say, have the City buses actually come under
2 the site.

3 MR. BYRNE: Come under the site into
4 the parking garage?

5 MR. SCHULMAN: Just like right now
6 when you take the Metro and you want to get on a
7 bus at the Bethesda Metro Station, you don't have
8 to go above ground.

9 MR. BYRNE: Okay. Just wanted to
10 clarify.

11 MS. FERSTER: I have redirect
12 question.

13 MR. BYRNE: Okay.

14 MS. FERSTER: So you testified that
15 you disagreed basically with the HPRB's decision
16 when it approved the master plan based on its,
17 you know, assumption that if the Mayor's Agent
18 approves this as a project of special merit, then
19 the find the architecture sort of coherent and
20 some other complimentary language. You disagree
21 with that.

22 So presumably you're somewhat familiar

1 with that document? Is it anywhere in the
2 document did the HPRB find that the architecture
3 was exemplary architecture?

4 MR. SCHULMAN: Now that you mention
5 it, I do not.

6 MS. FERSTER: Okay, thank you.

7 MS. BROWN: Redirect. Recross, sorry.
8 Following up on that question, do you know one
9 way or the other whether the HPRB is allowed to
10 take into consideration special merit features of
11 the project and rule on special merit?

12 MR. SCHULMAN: I would think that
13 would be the Mayor's Agent's role.

14 MS. BROWN: Thank you.

15 MR. BYRNE: All right, Mr. Otten.

16 MR. OTTEN: Mr. Schulman, you were
17 just talking about shuttle buses and
18 transportation issues. Are you familiar with the
19 proposed bus line cuts in the District or
20 particularly around the site?

21 MR. SCHULMAN: I certainly have
22 friends who are worried about it, yes.

1 MR. OTTEN: Thank you.

2 MR. BYRNE: Okay. I guess we could --
3 are we ready to move on to additional witnesses?
4 Thank you very much.

5 MR. SCHULMAN: Thank you.

6 (Witness excused.)

7 MR. BYRNE: Okay.

8 MS. BROWN: If the witnesses have
9 copies of their testimony, if it's possible to
10 get that now. And how about Ms. Barragan? Thank
11 you.

12 (Whereupon, the above-entitled matter
13 went off the record at 3:22 p.m. and resumed at
14 3:26 p.m.)

15 (Pause.)

16 MR. BYRNE: Okay, all right. Thank
17 you for being here. If you'd just please raise
18 your right hand.

19 (Witness sworn.)

20 MR. BYRNE: Thank you. You may
21 proceed.

22 MS. FERSTER: Okay. We're going to

1 start with Claudia Barragan, and hopefully while
2 we're dealing with her qualification as an
3 expert, her presentation will be loaded on the
4 screen.

5 But we're seeking to qualify Claudia
6 Barragan as a planner based on her experience and
7 education. She was qualified by the Zoning
8 Commission in the McMillan proceeding before the
9 Zoning Commission as a planner, an expert as a
10 planner and so we ask that she be qualified by
11 you as well.

12 MS. BROWN: I don't have any
13 objections. Well, I do have one clarification
14 question. As an urban planner, how many master
15 plans have involved historic preservation large
16 sites?

17 MS. BARRAGAN: Specifically St.
18 Elizabeth's, west campus and east campus. That's
19 350 acres of historic land.

20 MS. BROWN: So my question is did you
21 start -- when did you start working on the --
22 when does the master plan, when was it initiated

1 and were you involved from the initial --

2 MS. BARRAGAN: 2003 all the way to
3 2010. I was the sole planner that worked on
4 both.

5 MS. BROWN: Thank you.

6 MR. BYRNE: Okay, yes. I'm happy to
7 --

8 MS. FERSTER: So is she qualified?

9 MR. BYRNE: She is.

10 MS. BARRAGAN: Thank you so much. I
11 appreciate this.

12 All right. So my name is Claudia
13 Barragan. I am here specifically to talk about
14 urban planning and policy, the application of
15 regulations, and also as it relates to the
16 experiences, based on my experience of what the
17 planning process is usually like in terms of
18 planners providing consulting services to
19 developers.

20 So in the case of McMillan, the
21 developing team, Vision McMillan Partners, are
22 using conventional land planning design special

1 features to receive special merit when it is not
2 warranted nor justified as a function of historic
3 preservation development.

4 The evidence presented by VMP does not
5 demonstrate that the demolition of two-thirds of
6 the historic cells, most of portals and the
7 destruction of the site's key historic features
8 are necessary in the public interest by virtue of
9 being consistent with the purpose of the
10 Preservation Act.

11 The project is not consistent with the
12 purposes of the Preservation Act because, as
13 presented in the hearings, VMP has not provided
14 sufficient evidence that their design solutions
15 for the project will enhance this landmark site
16 and adapt it for public use.

17 Merely refurbishing one cell and the
18 silos, and adding 30 plus buildings through
19 demolishing the rest of the historic site is not
20 adaptive design and certainly not adaptive reuse.
21 Therefore, it does not constitute special merit.
22 In my professional assertion, the land planning

1 process, especially during design, is filled with
2 alternative design options, one of which is
3 always minimal existing site disturbance.

4 The programming of elements is
5 designed in isolation with each section being
6 tested in the collectively layout. Thus, we
7 designers, we provide our clients with various
8 alternatives for the plan. The applicant failed
9 at showing the feasibility analysis of those
10 multiple alternative scenarios at each yearly
11 mark of the plan.

12 Per the Comprehensive Plan, public
13 input mandates that the community also has a say
14 about those alternatives and reviews them.
15 Adaptive reuse of a historic site can and must be
16 master planned and built using a phased out
17 approach. This approach was used in master
18 planning in adaptively reusing the west and east
19 campus of St. Elizabeth's, specifically the site
20 and the buildings.

21 In the case of the west campus, a
22 historically landmarked federal site, various

1 subdivisions of the plan were designed and
2 implemented using an adaptive reuse renovation
3 and rehabilitation schedule which lasted for
4 about ten years, and it's ongoing today. St.
5 Elizabeth's East exemplifies how the City
6 government owned land, through abandonment, can
7 lead to the deterioration of historic sites, its
8 buildings and ultimately demolishing them due to
9 value engineering policies.

10 Similarly, the cells and historic
11 elements of McMillan, as assessed by the
12 developers, have been allowed to deteriorate.
13 The design solution cannot be to tear down
14 something that was purposely made derelict.

15 It was certainly not allowed by the
16 federal and city regulation agencies, who
17 reviewed St. Elizabeth's west campus, as over 60
18 percent of the site and buildings were preserved,
19 as 350 acres in the case of the west campus and
20 it was 180 acres of historically landmarked site,
21 buildings, trees, sidewalks. Everything in that
22 site was historic, and it was all preserved.

1 VMP's plan cannot be considered a
2 project with special merit based on the specific
3 features of land planning. The project's
4 exemplary architecture, at times co-existing with
5 the design, land use planning features and
6 community benefits individually or collective do
7 not make this project of special merit.

8 In the case of the sustainable design
9 elements, the existing conditions in the historic
10 site are not being exemplified in the character
11 of the new development. The tripartite layout,
12 while more reminiscing of existing open space
13 site, is at the very least 75 percent impervious
14 land, built on a water filtration site.

15 Unless the developers plan to use
16 permeable paving throughout the entire site, then
17 it would actually be sustainable. Meeting these
18 standard green building requirements does not
19 warrant special merit, as prior -- as my
20 colleagues have mentioned, that in accordance
21 with the District's Green Building Act, all
22 publicly funded non-residential projects and

1 privately owned projects must meet leadership and
2 energy and environmental design, as well as
3 attempt at using LEED for new communities and for
4 neighborhood, LEED for Neighborhood Development.

5 In addition, interior constructions of
6 a mixed use space in a residential project shall
7 be designed and constructed to meet or exceed one
8 or more of the applicable LEED standards, as at
9 the certified levels. So basically what we're
10 saying is is that LEED standards, meeting them
11 does not warrant a special merit.

12 Specifically also at this particular
13 site, we have heard from developers mention that
14 bicycle parking and transit accessibility are all
15 special merit. In reality, those are part of
16 other regulatory processes that are already
17 standard within the City, specifically providing
18 bike parking, transit connections, etcetera,
19 etcetera.

20 If the project is truly aimed at
21 reaching special merit and LEED and sustainable
22 development, VMP would solely aim for platinum

1 buildings and 100 compliance with the LEED for
2 Neighborhood Development, including historic
3 preservation strategies which include a
4 reclaiming of existing site materials and
5 landscape, and none of that was actually
6 proposed.

7 One of the big important parts that I
8 wanted to talk about as far as the planned uses
9 was the new state of the art health care
10 facility. The health care facility program for
11 the site does not constitute a feature of, nor
12 use that warrants special merit as defined by the
13 preservation law.

14 During visibility and programming, we
15 urban planning professionals analyze the
16 accessibility of citywide services at both the
17 regional and localized levels. The applicant
18 failed at providing geoanalytical evidence that
19 warrants a health care facility of this site as a
20 special planning feature, a special merit for
21 preservation.

22 The justification offered for this

1 special feature is not based on a thorough
2 understanding of citywide spatial accessibility
3 of health care facilities, as stated by the
4 applicant. I'm provided three studies that
5 corroborate that while the District has an
6 elevated supply of primary provider centers
7 compared to the national average, large areas of
8 predominantly African-American residents fall far
9 below the standards for accessibility to PCPS,
10 which stands for primary care provider centers.

11 Furthermore, special accessibility of
12 health care facilities is determined as a
13 function and a measure of proximity, travel
14 impedance to the nearest provider and supply
15 level with border areas is also included. On all
16 four measurements, this location is not a high
17 priority, as evidenced by the provided geospatial
18 and analytical graphics that I will show in a
19 second.

20 Impedance to nearest provider also
21 considers that access to health care facilities
22 is not solely defined as a matter of facility

1 shortage, but mostly as medical professional
2 shortage in specific areas. Once again, medical
3 professional shortage of providers based on
4 location is mostly found in under-served
5 communities east of the river. The recent issues
6 at United Medical Center proves this as a fact.

7 It is important to note that existing
8 under-served communities of color along the
9 northern part of North Capitol and Georgia Avenue
10 in Ward 4, several miles north of the site there
11 is an actual vast need and a shortage of
12 pediatric care.

13 The applicant contends that health
14 care use is a result of the City's population
15 increase by approximately 100,000 residents. But
16 they fail to contend that lack of health care
17 access is an issue for the existing 400,000
18 District residents that are black and brown.
19 That's about 65 percent of the population, who
20 mostly live east of the Anacostia River and not
21 within 200 feet of McMillan Park.

22 The construction of planning features

1 such as high end class office residential
2 buildings which are prized mostly for the high to
3 middle income class, does not warrant special
4 merit and preservation. Developer-driven new
5 community planning has two distinct roles.

6 One is to meet an established
7 profitable investment strategy through property
8 type classification, meaning high end
9 development. The other is to meet regulatory
10 building code and development standard
11 regulations. The land planning strategies to
12 reach these goals are often implicitly used as
13 special features and community benefits, and that
14 should not be the case.

15 The applicant is essentially asking
16 for special merit because high end special
17 features equivalent to industry accepted
18 parameters of desired building and financing
19 property class type. These property classes
20 represent a subjective quality rating of social
21 class. High end development, community benefits
22 such as community center with WiFi public access

1 and active public open space, a community market,
2 outdoor café, art installations, healing gardens,
3 water features and small retail selling high end
4 products should not be granted special merit for
5 the demolition of historic and heritage culture.

6 In fact, industry insiders and
7 regulators know developers use planning features
8 including rental ownership, building high end
9 building finishes, green efficiency standards,
10 building amenities, transit accessibility as
11 market perception features that measure and
12 qualifies property and therefore social class.

13 Moreover, to investors property class
14 represents their different level of risk and
15 return. It is an investment strategy, not a
16 special feature, not worthy of special merit.
17 The property type classification also indicates
18 the competitive ability of each building to
19 attract similar type tenants, which leads to
20 segregation.

21 In conclusion, the evidence I present
22 today to the Mayor's Agent demonstrates that VMP

1 is not providing sufficient clarity on the merits
2 to approve this development as what it should be.
3 Specifically as well within the planning and
4 design adaptive reuse development that heralds
5 equality and internal benefits for the community
6 in a historically landmarked site.

7 So the first exhibit that you're
8 seeing specifically shows -- I went through a
9 quick study of three different geospatial
10 analyses of primary care facilities. This one
11 dates back to 2013, and what I'm contending here
12 is that there's been various scientific studies,
13 most of them done here in the District, which is
14 real interesting, using spatial data, GIS
15 analysis that shows that where all the red areas
16 is where there are actually more children and
17 fewer primary care facilities.

18 That spot all the way up to the north
19 part of the District, that's in Ward 4, and
20 encompasses the northern part of North Capitol
21 Street and Georgia Avenue.

22 (Pause.)

1 MS. BARRAGAN: This is another one,
2 another study back in 2009 that showed the same
3 inference. The difference here is that they're
4 actually not all of the health facilities that
5 are available. So as you can see in Ward 8 and
6 Ward 7, anywhere east of the river inclusive of
7 across the river near East Capitol Street,
8 there's only one hospital.

9 Once again, this was done in 2006,
10 this particular study, and it shows the same
11 case. In fact, the areas in blue in this map, on
12 the map on the left, shows that there's actually
13 a low percentage of a population of children, and
14 this particular map also looked at urgent care,
15 the access of non-urgent care visits and also
16 urgent care facilities.

17 So it showed that the hot areas where
18 children and their parents usually use urgent
19 care are in those hot spots, and predominantly in
20 the eastern side of the city, which is
21 predominantly African-American and brown.
22 Meanwhile, the exhibit -- on Exhibit 4, there is

1 a big circle right there.

2 That specifically shows the area of
3 McMillan, where you have three different
4 hospitals all converging in one area. You have
5 the Children's Hospital Medical Center in that
6 particular area, and that's why it's highly
7 served. So this last -- everything in all of the
8 graphs in black and white, they date back to
9 2004.

10 So I've basically shown that since
11 2004, almost going on two decades, scientists and
12 planners have been saying the same thing. We
13 don't need anymore primary care health around
14 this part of town. Where it's really needed is
15 east of the river.

16 MR. BYRNE: All right, thank you.

17 MS. FERSTER: No questions. No
18 additional questions.

19 MR. BYRNE: Okay. Ms. Brown.

20 MS. BROWN: Yeah. I have a couple.
21 I just want to make sure I have all the correct
22 exhibits. Would you mind running through the

1 slides again. There's one that had question
2 marks on it and the black and white copy does not
3 seem to be matching up to what I saw in color.

4 MS. BARRAGAN: Yes, because of the
5 fact that I had to use this different version, I
6 couldn't use the PDF. But it shows every single
7 incident in here.

8 (Simultaneous speaking.)

9 MS. BROWN: Could we go back to
10 exhibit -- yeah. Can we just -- I just want to
11 make sure that I match them up. Exhibit 1, I can
12 recognize that. Now go to Exhibit 2. Okay,
13 yeah. It matches up. I'm good, thank you, and
14 then I do have a couple of other questions.

15 In your testimony on page one, your
16 first footnote, what is that?

17 MS. BARRAGAN: Yes. So specifically
18 I wanted to make sure that LEED buildings and the
19 LEED standards available where they -- where
20 historic preservation meets LEED buildings. I
21 found that specific report on sustainability and
22 historic preservation, looking at how do you

1 combine the two of them and --

2 MS. BROWN: I'm sorry to interrupt
3 you. My question's a lot simpler. I just wanted
4 to understand the citation and what it is.

5 MS. FERSTER: Yeah. All her citations
6 are on the -- at the end, end of her written
7 testimony, which says "exhibit work cited," and
8 then there's shorthand for the long form of --

9 (Simultaneous speaking.)

10 MS. BROWN: Perfect. Thank you for
11 that clarification. All right. So in -- on the
12 first page of your testimony, the fourth
13 paragraph under the heading "The project is not
14 consistent with the purposes of the Act," I just
15 want to make sure I understand what you've
16 written here.

17 The second sentence, you talk about
18 adaptive free use not constituting special merit,
19 and I just wanted to make sure that you are
20 familiar with the D.C. Court of Appeals decision
21 that said that we're not allowed to look at
22 historic Preservation benefits such as adaptive

1 reuse as special merit.

2 MS. FERSTER: Again, she's not
3 testified about the D.C. Court of Appeals
4 decision. That's the legal issue. If the
5 applicant wants to argue what the D.C. Court of
6 Appeals and there will be much discussion about
7 what that decision means. We can do it in our
8 proposed findings of fact and conclusions of law,
9 or we can develop other briefs if the Mayor's
10 Agent chooses to request it, but Ms. Barragan's
11 not a lawyer.

12 MR. BYRNE: I think that's right, I
13 think she understands.

14 MS. BROWN: So you mentioned St.
15 Elizabeth's project, both the federal and the
16 local portion of it. Were there exacting
17 building design guidelines for that project,
18 getting down to material of use, the color pallet
19 and that sort of thing?

20 MS. BARRAGAN: So in my testimony, I
21 stated that as urban planners within the master
22 planning product, which for St. Elizabeth it

1 lasted about four years, because it also included
2 a NEPA process and an EIA process. In terms of
3 the materials for the actual construction, this
4 is all within the planning phase, that's not
5 stated.

6 It was -- and that's the reason why
7 the whole entire master plan was phased out. For
8 example, you will find some of the Coast Guard
9 buildings that are meeting some standards and
10 some design guidelines because they are in the
11 bluffs, because of their location. Meanwhile you
12 have other buildings by DHS which are further up
13 and actually used a lot of the 51 buildings that
14 were preserved on site, and they're all -- they
15 all have specific design guidelines that meet the
16 cohesion with existing buildings, because they
17 are different.

18 Not only that, but this was an
19 historic land site. So the streetscape patterns
20 were also -- they also were standardized as far
21 as design guidelines to meet the historic culture
22 and the historic element of the landscaping.

1 MS. BROWN: So you're saying that they
2 do have design guidelines that are specific like
3 the McMillan plan?

4 MS. BARRAGAN: Farther down the road,
5 once it's constructed, yes.

6 MS. BROWN: But not now?

7 MS. BARRAGAN: At the master plan
8 level?

9 MS. BROWN: Right, like we're at the
10 master plan level for McMillan and my question is
11 in the master plan level that you did for St.
12 E's, did you get to the level of design
13 guidelines that McMillan has?

14 MS. BARRAGAN: No, because it was
15 phased out.

16 MS. BROWN: Just for my education,
17 what are -- what do you mean by "primary care
18 provider centers"? What are they?

19 MS. BARRAGAN: So in -- we have
20 MedStar night clinics, for example, that are
21 available for both parents. There's plenty of
22 them along Connecticut Avenue that you will find,

1 especially along Metro stations. You will find -
2 - definitely Johns Hopkins has a couple, MedStar
3 has a couple. Bread for the City also has some
4 of those PCPs, which are basically a way of
5 putting providers, health care providers in
6 communities and without having, because they
7 don't have an actual center.

8 MS. BROWN: And were you present for
9 Mr. Weer's testimony on how the McMillan site
10 will help allow such providers as Children's
11 Hospital or MedStar, refurbish other facilities
12 in other wards.

13 MS. BARRAGAN: So yes, and his basic
14 point was that this is not a neither/or question.
15 It's you can include some of those programming
16 strategies. But I think I just proved that since
17 2004, everyone, planners, scientists, educators,
18 academics, we have all been saying that actual
19 centers need to be located east of the river,
20 that just providing more of -- more places like
21 Bread for the City, where they have one office
22 that may open in certain hours of the day is not

1 enough. There's actual people dying right now
2 because of the issues with United Medical Center.

3 MS. BROWN: Are you a health care
4 professional?

5 MS. BARRAGAN: I am not. I am a
6 planner.

7 MS. BROWN: And do you have the same
8 level of experience that Mr. Weers does in a
9 health care facility?

10 MS. FERSTER: Well, are asking -- Mr.
11 Weers was also not qualified as a health care
12 professional, but he is a developer. Are you
13 querying her about whether she is a developer of
14 health care?

15 MS. BROWN: She has enough, the same
16 experience that Mr. Weers does developing health
17 care facilities across the country.

18 MS. FERSTER: I mean she's not
19 developer. I think she didn't testify to that.

20 MS. BARRAGAN: Yeah. I am not a
21 developer.

22 MS. BROWN: And you talk about

1 investment strategy on the second to last page of
2 your testimony, and seem to imply that if there
3 is an investment strategy or marketing features
4 of a project, that that negates any special merit
5 of the project?

6 MS. BARRAGAN: Yes. So in my line of
7 work in planning and even when I worked for
8 smaller architecture firms, one of the things
9 that I had to do was go back and specifically for
10 affordable housing units, was to take away all of
11 the marble tiling of units, take away like
12 literally delete, hit delete in drawings and also
13 delete, take away stainless steel materials, all
14 because they were deemed as affordable housing
15 units, and therefore the developer did not want
16 to put enough money or give them those high end
17 materials.

18 So what I'm saying is is that high end
19 materials are usually used as specifically for
20 high end development, and that's why you have
21 different type, different typologies. So you
22 have Class A buildings, Class B buildings, Class

1 C buildings, mostly found in office. But now we
2 have seen definitely a huge social class
3 disparity in terms of construction materials in
4 residential.

5 MS. BROWN: So it's your opinion that
6 once you -- help me understand this, that once
7 you get above a Class D building, it can no
8 longer be considered special merit?

9 MS. BARRAGAN: No. What I'm saying is
10 that saying that we will include the higher, we
11 will include a little bit more than affordable --
12 more, a higher number of affordable housing units
13 in this particular master plan, and as a result
14 we're also going to have a community center with
15 WiFi and we're going to have some healing
16 gardens, which are all high end very marketable
17 uses, is specifically saying that those are all
18 -- those high end uses also warrant special --
19 the developer is asking for special merit for
20 those, in return of giving a little bit more of
21 affordable housing.

22 MS. BROWN: Okay. You made me think

1 of one other question and it just went out of my
2 head. Let me -- give me a second. Oh, are you
3 aware that the inclusionary zoning laws
4 specifically allow lower quality finishes for
5 affordable housing units?

6 MS. BARRAGAN: Yes, and inclusionary
7 zoning is very minimal in its affordability.
8 It's mostly done because of construction.

9 MS. BROWN: Those are all my
10 questions.

11 MR. BYRNE: I wanted to ask what you
12 were saying about the Gold, Neighborhood Gold
13 LEED. Were you saying that it's required for
14 developments of like more than one building to
15 satisfy Neighborhood LEED Gold?

16 MS. BARRAGAN: Well, in any green
17 building code, the building green code
18 specifically requires that any project undertaken
19 pursuant to the land disposition and development
20 agreement has to achieve a minimum of LEED
21 Silver.

22 MR. BYRNE: Okay. Yes, I got that.

1 But then you said adherence to I guess is the
2 next paragraph, adherence to gold LEED and the
3 development compliance are standard elements of
4 development as regulated by the green building
5 code. I didn't understand that that is true. Is
6 that --

7 MS. BARRAGAN: If it would warrant
8 special merit is what I'm saying.

9 MR. BYRNE: In other words, okay. So
10 in other words, to be special merit, it would
11 have to be Neighborhood Gold LEED?

12 MS. BARRAGAN: Yes.

13 MR. BYRNE: Isn't -- I think that's
14 what they're proposing.

15 MS. FERSTER: It's Silver.

16 MR. BYRNE: No. The buildings are
17 Silver but the plan is Gold.

18 MS. BARRAGAN: Yeah. So the
19 Neighborhood Development is an add-on. You don't
20 have to do -- you don't have to do Neighborhood
21 Development in order to have the buildings. So
22 --

1 MR. BYRNE: It's not required by law.
2 That's what I was trying to get at, okay. Thank
3 you. I just was unclear about that.

4 MS. FERSTER: I have a redirect
5 question. Okay. So in terms of Neighborhood and
6 LEED ND status, is there a platinum Neighborhood
7 LEED ND status?

8 MS. BARRAGAN: Well, once you start
9 adding, for example if you start having a higher
10 percentage of reuse of materials, and also of the
11 transit systems that are going through the new
12 development, then you start building up on a
13 higher level of ND.

14 It's all based on a standard
15 checklist. So the more, the more checks you end
16 up having on that particular certification, you
17 can have like a very low checklist and still be
18 qualified, or you could have a high checklist and
19 then that really warranted to be a higher ND
20 standing.

21 MS. FERSTER: So you would have to
22 actually see the checklist, in other words --

1 MS. BARRAGAN: Exactly.

2 MS. FERSTER: --in order to really
3 evaluate how high or low they are in terms of
4 their achievement of the Neighborhood LD Gold?

5 MS. BARRAGAN: Yes, and in terms of
6 planning, I have specifically worked on several
7 projects throughout D.C. that are developer-
8 driven. Columbia Heights is one of them. I mean
9 there's tons of projects, also even in Arlington,
10 in which the architect team at the phase that
11 we're seeing from McMillan, they already had a
12 checklist down, which I was included in those --
13 in working on those projects, on matching those
14 to the checklist.

15 So that's done early, early on. So
16 you should have -- you should be able to receive
17 those checklists.

18 MS. FERSTER: And then I guess my last
19 question is that you did testify that in your
20 experience, generally adherence to Neighborhood
21 LEED ND Gold standard is a pretty standard
22 element in most designs, and are you talking

1 about projects that involve historic properties
2 or just generally?

3 MS. BARRAGAN: Generally speaking.

4 MS. FERSTER: Thank you.

5 MR. BYRNE: All right, thank you.

6 MS. FERSTER: So we're going to take
7 a little bit of time to qualify Ms. Richards as
8 an expert, and I need to explain why we do need
9 to take some time. Laura Richards, you have her
10 CV in front of you. She is a lawyer and she was
11 qualified as an expert in zoning before the
12 Zoning Commission. We offered her as an expert
13 not as a planner but as an expert in the D.C.
14 Comprehensive Plan.

15 The applicant -- before the Zoning
16 Commission. The applicant objected to her
17 qualification as an expert in D.C. Comprehensive
18 Plan because she does not have a planning degree,
19 and before I could provide any voir dire in terms
20 of Ms. Richards' expertise and knowledge and
21 professional experience on the D.C. Comprehensive
22 Plan, the Chairman of the Zoning Commission

1 sustained the opposition's objection and she was
2 not qualified as a planner.

3 I therefore would like to take the
4 time at this point to go into more detail in
5 advance of your ruling on her qualification as a
6 planner, and I would also cite to you several
7 cases for your consideration. The cases I'm
8 citing to you are Joyner v. Estate of Johnson,
9 which is 36 Atlantic 3d 851, jump cite 859, a
10 decision of the D.C. Court of Appeals, which
11 stands for the proposition that it is well-
12 settled that an expert may be qualified by virtue
13 of his experience, as opposed to his academic
14 training.

15 I'd also like to cite the case of
16 Jones v. United States, 990 A.2d 970, jump cite
17 979, D.C. Court of Appeals 2010 decision and the
18 quote from that case is "Scholarship is not a
19 prerequisite for eligibility to testify as an
20 expert witness. The relevant knowledge may be
21 derived from professional experience."

22 So Ms. Richards provided her -- you

1 with her CV that describes basically 30 years of
2 experience involving the interpretation and
3 application of the D.C. Comprehensive Plan,
4 including the fact that she was actually an
5 appointed member of the Comprehensive Plan Task
6 Force that actually developed the 2006 plan.

7 So I'd ask Ms. Richards at this point
8 to elaborate --

9 MR. BYRNE: Before you do that, before
10 you do that, just to clarify in the cases, can
11 you tell me what the expertise was at issue in
12 Joyner and Jones?

13 MS. FERSTER: No, I don't remember.

14 MR. BYRNE: Okay.

15 MS. FERSTER: It wasn't planning.
16 That's for sure.

17 MR. BYRNE: Okay, and what was the
18 first part of the Jones case?

19 MS. FERSTER: I think it had to do
20 with a police officer who didn't have forensics,
21 you know.

22 MR. BYRNE: So but the Jones case is

1 990 A.2d what?

2 MS. FERSTER: The Jones case is 990
3 A.2d 970, jump cite 979.

4 MR. BYRNE: Okay. Okay, thanks.

5 MS. FERSTER: And I don't think either
6 of those were planners. It probably had to do
7 with police officers and they testified on
8 ballistics and that sort of thing, based on their
9 experience as opposed to scholarship.

10 MR. BYRNE: Okay, all right. Proceed.

11 MS. FERSTER: So Ms. Richards, if I
12 can simply ask you to go into some detail about
13 your experience involving the interpretation and
14 application and development of the D.C.
15 Comprehensive Plan over the last 30 years?

16 MS. RICHARDS: Okay. My experience
17 with the D.C. Comprehensive Plan began I would
18 say in the mid-80's, when I worked with the
19 citizens groups and professional planners who
20 were developing the first set of ward plans, as
21 we had then. I was with groups who went to the
22 individual wards and worked with citizens and

1 said all right, this is what, you know, you're
2 being offered a chance to participate.

3 I wrote some of the proposed texts for
4 the Ward 6 plan. I lived in Ward 6 at the time.
5 It's now part of Ward 8. I think I should say
6 that a lot of our work was supervised or at least
7 encouraged by Doren McGrath (phonetic), a
8 professional planner. So there was some hands-on
9 tutorials and also I worked very closely with Ann
10 Hargrove, again a professional planner.

11 I would say that I was sitting at Ann
12 Hargrove's knee from the mid-80's until the time
13 of her recent death. So that was -- I testified
14 for ward plans, went with the citizens to talk to
15 the City Council about developing ward plans. So
16 that was that cycle. Subsequently I did sit on
17 the D.C. Board of Zoning Adjustment, which has,
18 you know, some overlap between planning and
19 zoning, not as much as with the Zoning
20 Commission.

21 I have been for I guess since about
22 the 80's a member of the Committee of 100. So I

1 was constantly having to think about planning and
2 zoning issues and write testimony. I worked with
3 on the task force, the Mayor's task force, I was
4 a mayoral appointee or a Council appointee to the
5 Comprehensive Plan Task Force.

6 I went to many, you know, many, many
7 meetings where I made comments, and then
8 subsequently to that I was on the D.C. Zoning
9 rewrite task force where we did consider the
10 zoning regulations in light of the Hopkins plan.

11 I worked on amendments to the plan
12 amendment cycle that's pending now. So I would
13 -- it's been extensive.

14 MS. FERSTER: Again, I would proffer
15 Ms. Richards not as a planner because she does
16 not have a planning degree, but based on her 30
17 years of expensive experience as a mayoral
18 appointee to the Board of Zoning Adjustment, as a
19 Council appointee to the Comprehensive Task
20 Force, and her participation in the development
21 of ward plans over the past 30 years, her review
22 of projects and her testimony in multiple venues

1 on a project's consistency with the Comprehensive
2 Plan, that she is by virtue of her 30 years of
3 experience on this issue an expert in the D.C.
4 Comprehensive Plan.

5 MR. BYRNE: Ms. Brown.

6 MS. BROWN: Yes. I do not object to
7 her qualification as an expert in zoning, but I
8 do continue to object to her qualifications as an
9 expert in planning in D.C. Based on her resume,
10 it is clear that she is an attorney, not a
11 planner and that while she may have participated
12 in some of these planning exercises over the
13 years, many of those planning commissions have
14 professional planners and then they have citizen
15 members to participate in their distinct
16 positions.

17 With regard to the Board of Zoning
18 Adjustment, they're specifically precluded from
19 evaluating Comprehensive Plan issues. Those are
20 specifically delegated to the Zoning Commission,
21 and I myself have pored over the Comprehensive
22 Plan and made legal arguments to it, but I cannot

1 consider myself an expert in the Comprehensive
2 Plan despite working with it for over 30 years
3 myself.

4 I think there is a distinction, and I
5 think that again, we would have no problem with
6 Ms. Richards being qualified in zoning, but not
7 in planning.

8 MS. FERSTER: I guess you need to
9 clarify again, because you did misstate the basis
10 for our qualifications, seeking qualification for
11 her. We are again not seeking that she be
12 qualified as an expert in planning at all. We
13 understand she's not an urban planner the way Ms.
14 Barragan is and doesn't have that professional
15 expertise.

16 But we believe that her 30 years of
17 experience in the D.C. Comprehensive Plan does
18 indeed qualify her as an expert in her ability to
19 comment on consistency with the Comprehensive
20 Plan and on its specific policies and objectives.

21 MS. BROWN: And I continue to
22 disagree, that that does not qualify someone as

1 an expert, just because you've had your hands in
2 its for 30 years. Again, I am not an expert in
3 the planning in D.C., although I would like to
4 think I am. But I know I would not qualify, and
5 Ms. Richards is an attorney.

6 MR. BYRNE: Okay. So I'm having
7 trouble wrapping my mind around what it is about
8 the nature of being qualified as an expert in
9 something of this nature, which has nothing to do
10 with sort of professional knowledge. It is a
11 question of sort of knowing the plan and reading
12 it and understanding its role in system. I just
13 don't quite get what it means to be an expert in
14 that context.

15 I mean it's like being an expert in
16 taking the Metro, because you've ridden the bus
17 for --

18 MS. FERSTER: Well, I mean two points.
19 One is let me just say that Ann Saleem, who has
20 been qualified as an expert in historic
21 preservation, was qualified on the basis of her
22 experience, not her academic credentials. She

1 doesn't have an advanced degree in historic
2 Preservation, but she has, you know, decades of
3 experience in historic preservation.

4 (Simultaneous speaking.)

5 MR. BYRNE: Right. But historic
6 preservation is a field. The Comprehensive Plan
7 is not a field; it's a document.

8 MS. FERSTER: But I will say that
9 Shane Dettman, of course, was qualified as an
10 expert planner, and he commented on the
11 consistency with the Comprehensive Plan. I would
12 stack up Laura Richards' experience on the
13 Comprehensive Plan against Shane Dettman's and
14 say that she is far more qualified than Mr.
15 Dettman to be commenting on what the
16 Comprehensive Plan --

17 MR. BYRNE: So I absolutely want to
18 hear what Ms. Richards has to say about the
19 Comprehensive Plan. I just don't know what it
20 means to qualify her as an expert on the --

21 MS. FERSTER: Well, Mr. Dettman is an
22 expert and so, you know, you understand that

1 experts are entitled to a certain amount of
2 deference I believe --

3 MR. BYRNE: Certainly I know that.

4 MS. FERSTER: --that Laura Richards is
5 also an expert, not a planner, but she's an
6 expert in the D.C. Comprehensive Plan and she
7 ought to be -- her testimony ought to be accorded
8 the deference of an expert because that is in
9 fact her experience.

10 MR. BYRNE: Okay. So why don't we do
11 that? Is it okay if we do this? I mean I have
12 -- I very much respect Ms. Richard's experience.
13 I want to hear what she has to say. I'm going to
14 give it a certain degree of deference.

15 Can we just sort of obviate the issue
16 of expertise and just sort of hear what she has
17 to say based upon the fact that she has 30 years
18 of experience and has been very active in this
19 process? I don't know what the difference is.

20 MS. FERSTER: I would suggest that
21 eventually, if you're suggesting you defer your
22 ruling on our request that she be qualified as an

1 expert witness.

2 MR. BYRNE: No. I'm saying I just
3 would defer to her, the fact that she knows a
4 great deal about the Comprehensive Plan.

5 MS. BROWN: Mr. Byrne, I think it does
6 go to her level of competency and what
7 credibility you give her testimony. I think that
8 that's where you take into account her 30 years'
9 experience. But it does not get to the level of
10 expertise.

11 MR. BYRNE: Yeah, and I think that
12 sounds right to me. I mean I don't think I want
13 to qualify her as an expert, but I very much
14 would hear what she wants to say, and I'm
15 prepared to be, you know, to take with great
16 seriousness what she has to say. So Ms.
17 Richards, forgive me, but I do want to hear what
18 you have to say.

19 MS. RICHARDS: I'm Laura Richards,
20 testifying on behalf of the Friends of McMillan
21 Park on the D.C. Comprehensive Plan. Generally,
22 I'm going to conclude that the applicant's

1 proposal does not satisfy the special merits
2 standard because key features of the plan,
3 particularly the medical facility building, do
4 not meet the threshold legal requirement of
5 overall compliance with the plan.

6 Two, most of the project features that
7 the applicant contends demonstrate special merit
8 have nothing to do with the special preferred
9 land uses set forth in the plan for the McMillan
10 site. The court's remand order set forth four
11 issues for the limited public scope hearing.
12 This testimony deals with Issue 2, what are the
13 specific architecture, land planning and/or
14 community benefits that individually or
15 collectively make this project one of special
16 merit, and we all know the definition.

17 It's having significant benefit to the
18 District of Columbia or to the community by
19 virtue of exemplary architecture, specific
20 features of land use planning or social or other
21 benefits. The court's remand order made it clear
22 that the overall consistency with the plan is not

1 determinative of special merit. The overall
2 consistency is the threshold standard, and then
3 if you can't make overall consistency, you never
4 really get to special merit, okay.

5 The court also made clear that with
6 regard to the special merit, the more an
7 applicant can tie elements of the proposed
8 project to the specific preferred land uses set
9 forth, the more likely this will lead to a
10 special merit finding.

11 All right. So that's the remand
12 guidance in light of which this project must be
13 evaluated. So let's look at the mere
14 consistency. The court has not -- has held that
15 the project has not yet established consistency,
16 overall consistency with the plan. The court did
17 not get that far. It remanded on that issue.

18 So there is no baseline finding on
19 which the Mayor's Agent can now say now let's
20 look at special features. It really puts a
21 heavier burden on you, okay, because there's got
22 to be at least a plausible consistency.

1 MR. BYRNE: So let me understand what
2 you're saying. You're saying that consistency
3 with the plan is necessary but not sufficient for
4 special merit?

5 MS. RICHARDS: That's what the court
6 said.

7 MR. BYRNE: So right, so right. So
8 that if I can't find that it's consistent with
9 the Comprehensive Plan, I can't even move to the
10 question of special merit. Is that what you're
11 saying?

12 MS. RICHARDS: No, it's because the
13 determination of overall consistency ultimately
14 rests with the Zoning Commission, not this body.
15 But if the Zoning Commission had said or the
16 Court had said okay, it's consistency, then you
17 get to special merit.

18 But there's no -- still no kind of
19 final determination of overall consistency. So
20 the real burden on you is kind of like having to
21 make that special merit finding on the particular
22 features without knowing that you have a finding

1 of consistency to rest on.

2 MR. BYRNE: Because the Zoning
3 Commission hasn't finished their work yet.

4 MS. RICHARDS: Exactly. The Zoning
5 Commission hasn't and the court didn't so --

6 MR. BYRNE: Okay, good. I'd rather
7 leave that to the Zoning Commission.

8 MS. RICHARDS: Okay, okay. All right.
9 So I will say that as has been like, you know,
10 stated many times, that the mere consistency
11 cannot be shown because the plan calls for the
12 site to be developed with, you know, moderate and
13 medium densities, medium density residential and
14 moderate density commercial, and the court has
15 found that the medical building is a high density
16 structure and a high intensity use. So like
17 right off the bat, you know, that's a problem.

18 Also, the mid-city element says that
19 any development on the McMillan site should
20 maintain viewsheds and vistas, and be situated in
21 a way that minimizes impacts on historic
22 resources at adjacent development, okay, and

1 that's in the -- that's in specifically the mid-
2 city element, which we've heard ad infinitum, and
3 it's --

4 And the -- it's not contradicted by
5 that and it's echoed on the future land use map,
6 and the future land use map and the land use
7 elements say hey, we're not giving you guidance
8 as far as we can, and then you've got to go to
9 the mid-city element to get the specifics. So
10 that's where wind up with -- the mid-city element
11 is the real driver in this case.

12 Okay. That's what the special merit
13 showing's got to be looked at, in how well the
14 features comply with the guidance provided in the
15 mid-city element, okay, which inform the land use
16 map and the citywide elements. Okay. So now we
17 -- so then we get to the medical building, which
18 is the behemoth of the project.

19 There's nothing in the plan anywhere
20 that can be construed as a specific preferred
21 land use, such that like that the medical
22 building serves. It's not a mid-city element,

1 it's not called for on the -- it's anywhere in
2 the kind of mix of bulks and uses on the map, and
3 when you go to the plan element that deals with
4 social services, there's just nothing there that
5 says we need another major medical facility.

6 In fact, as Claudia and others have
7 stated, the only specific vision in the plan
8 social services element that deals with the
9 establishment of health care facilities says
10 let's disperse them out all over the City,
11 especially in the under-served parts of the City.

12 The kinds of examples are the ones
13 that like Children's Hospital has set up
14 satellite facilities. They have put one in Ward
15 8. That consolidated several smaller ones. They
16 have them around the City. So they have taken
17 the primary pediatric care specifically to
18 medically under-served areas. They also have
19 some in areas that are not at all medically
20 under-served, but they're kind of McDonald's all
21 over the City, okay.

22 The plan said we need more of those

1 kinds of things all over the city for different
2 kinds of health care. You know, you walk around,
3 you see a Davida Dialysis. You can't get away
4 from them. They pop up like McDonald's. But
5 that kind of dispersed, easy to get to, primary
6 care facility to handle chronic diseases,
7 etcetera. That's what the plan actually calls
8 for.

9 Now Mr. Dettman in addressing the Comp
10 Plan's provisions supporting, purportedly
11 supporting a health care facility went to the
12 economic development, which element -- which does
13 I talk about the health care industry as one of
14 the District's key industries, along with
15 education, federal, etcetera.

16 However, there are no economic
17 development provisions regarding health care that
18 address constructing new facilities. That just
19 talks about this is a source of, you know,
20 revenue. We have lots of employees there, you
21 know. We spend a lot of money on health care, so
22 let's keep that segment happy. But it doesn't

1 talk about construction of new facilities.

2 There was in the prior Mayor's five
3 year economic development plan a medical health
4 proposal for the McMillan site that never made it
5 into the plan, and it never got off the ground
6 and it's not in the current Mayor's five year
7 plan.

8 There are some other health care
9 provisions in the new five-year plan, and they
10 call for establishing some new research
11 facilities in the suburbs, working with other
12 jurisdictions to establish some regional
13 activities not in the District.

14 There's nothing about a million dollar
15 medical office building in the District at the
16 site. I think that the tenuous nature of this
17 project this really shown, because it's still
18 speculative. When there's no anchor tenant,
19 either Children's nor the Hospital Center have
20 said we want to get on board with this, even
21 though other testimony has said look, if we build
22 this then those hospitals can move into our new

1 facility and upgrade their old ones.

2 But there's no working partnership.
3 It doesn't say one can't be developed. Even when
4 ground-breaking occurred to say this was going
5 forward, there was no anchor tenant, indicating
6 that any delays exacerbated by the remand were
7 not the cause of any kind of leeriness on the
8 part of a proposed nearby partner, okay.

9 So that's -- those are the key things
10 I want to say about -- the medical facility is
11 not a specific preferred use in the Comprehensive
12 Plan. Okay. So then there are -- and really
13 that's the main thing. Now there are a few
14 specific provisions in the plan regarding this
15 site that are ignored, and I think if we go to
16 the historic preservation element here, and it
17 talks about -- one second.

18 Yeah. That's one. HP-2.5(b),
19 directing the District "To protect views of and
20 from the natural topography around central
21 Washington, to accommodate reasonable demands for
22 new development on major historic campuses like

1 St. Elizabeth's, the Armed Forces and McMillan
2 Reservoir in a manner that harmonizes that
3 natural topography and preserves the important
4 vistas over the City."

5 And there's already been a concession
6 that the vista is going to be disturbed to some
7 extent, and I think we just -- and obviously, you
8 know, it's a big building. This is an instance
9 where a specific provision leading to a specific
10 preferred policy provision is just like being run
11 roughshod over.

12 You see, this is a citywide element,
13 but it's one that specifically addresses the
14 McMillan site, and it talks about the fact that
15 this particular connected open space has
16 historic, ecological, aesthetic and recreational
17 value dating from the 19th century. So both the
18 mid-city element and the historic preservation
19 element, which specifically discusses this site,
20 are in sync here.

21 This is like nowhere addressed in the
22 100 or so Comprehensive Plan elements that Mr.

1 Dettman identified as being supported by this
2 project. There is a related parks and
3 recreation, an open space policy that is -- that
4 is the counterpart of the historic preservation
5 policy, and that is PROS 3.3, okay.

6 That one talks about again, the unique
7 open space network. So we have in two citywide
8 elements specific preferred references to
9 McMillan site and its value as an open space, as
10 part of this ongoing like long-standing, you
11 know, green area and with all historic vistas.
12 And then we have that -- those sentiment echoed
13 in the mid-city element, and that is -- that is
14 the sort of specific preferred use that one would
15 look to in determining special merit.

16 The 100 or so elements, citywide
17 policies that Mr. Dettman identified did not deal
18 specifically with McMillan, and it is the -- I
19 guess one reason the Comp Plan has this
20 reputation of -- it's like the Bible. You can
21 make it say anything you want to, it's that that
22 probably read in context proceeding from the

1 citywide element to the area element when it's --
2 when the area element speaks with detail, and
3 then to the small area plans.

4 In fact, you know, it's the wholesale
5 kind of like I won't say wholesale, but it is the
6 tendency of some developers to ignore small area
7 plans that has led to some of the decisions we've
8 had. Those more detailed plans do have some
9 meaning in some way, and if the plans are read in
10 the tiered, I guess manner in which the plan is
11 written, we wouldn't have all these problems.

12 And of course common sense plus legal
13 interpretation says the specific overweighs the
14 general, okay. Now I wanted to -- okay. I
15 wanted to address a couple more. Ms. Barragan
16 has kind of talked about some other things and I
17 don't want to be duplicative.

18 But I think it's important that the
19 applicants, the applicant addresses in its
20 special merit showing the architecture. I'm not
21 addressing that; addresses some onsite benefit,
22 and then it talks about some social benefits, and

1 it identifies a number of those, and I think it's
2 important to take a look at these, two of them.

3 The site compliance with the certified
4 business enterprise rules in the District's first
5 source law. First, these are regulatory
6 requirements that cannot constitute special
7 merit. They have to do that.

8 But I think that in any application,
9 it's important to look at the plausibility of the
10 claims of special merit, and assuming that these
11 certified business enterprise rules and First
12 Source law could be considered special merit,
13 which by law they can't, is it plausible to
14 assume that they will be meaningfully carried
15 out?

16 I have here for the record there's a
17 policy brief by 2010, Using Fiscal Policy and
18 Appleseed and Others, Strengthening the Link
19 Between Economic Development and Jobs, and it
20 talks about the failure of First Source. There
21 was another study done in 2015 by the George
22 Washington University and some others that used a

1 case study with the Marriott Hotel and looked at
2 First Source.

3 MR. BYRNE: Are you going to put those
4 in the record?

5 MS. RICHARDS: Yes, I will submit
6 this, and the conclusion was that workforce
7 development is to jobs as Taco Bell is to Mexican
8 food. You don't get any closer to the real
9 thing, so we should stop acting like it does.
10 Job training has to lead to a concrete job, or at
11 least a job offer. Otherwise, it's meaningless
12 and a waste of everyone's time and money.

13 So I'll put those in the record, and
14 also I will take -- ask you to take note of the
15 fact that there is still a pending lawsuit by the
16 Associated Building Contractors of D.C. against
17 the City, trying to overturn the 2011 amendments
18 to the First Source law, that tried to put a
19 little bit of teeth in it. So I guess I -- so I
20 say that in light of this, I believe that any
21 claims of benefits to be derived from CBE and
22 First Source should be accorded little weight,

1 absent any kind of stronger showing of real
2 compliance, and that's just not in the record at
3 this point.

4 There's also the -- oh, a claim that
5 the District will garner 874 million over 30
6 years from the project, principally from
7 employment generated by the health care facility,
8 and that was part of the showing. There has been
9 -- there was no breakdown as to okay, so is this
10 going to be primarily employment taxes? It says
11 employment, so presumably those are going to be
12 income taxes.

13 There is, you know, the same 2000
14 study that said let's reform First Source noted
15 that 70, let's see. Three-fifths of the 720,000
16 jobs in the District are held by non-residents.
17 Those are full time jobs, and these numbers have
18 not changed very much since then. So I looked at
19 874 million. How much of that is going to be
20 like income from employment by non-D.C.
21 residents?

22 So this, you know, maybe this project

1 is like different from everything else. But I do
2 not -- absent a further showing of where that
3 \$874 million is coming from, I do not think that
4 it can be counted as a particular community
5 benefit. A, if they're not D.C. residents, the
6 money's not coming here, and B, it's certainly
7 not, you know, resulting in the level of
8 employment for D.C. residents that this number,
9 you know, that might -- one might think.

10 Okay. So the other and the -- so in
11 line with employment, there's a million dollars
12 and it's going to be sent to the Community
13 Foundation for the National Capitol Region to
14 support workforce development initiatives, and
15 for job training and scholarships. So it's a
16 drop in the bucket, assuming that it doesn't wind
17 up in the same sort of ineffective basket that
18 these other studies have shown happens with such
19 initiatives.

20 There's 125,000 to the D.C. Education
21 Fund to be used to improve STEM training. That's
22 a teacher professional development in local high

1 schools. That's a very nice amenity. It's
2 offsite. It's tenuous. Charter schools. It's
3 not sufficiently connected to this particular
4 project to be considered a special preferred use
5 or a particular benefit.

6 \$500,000 over ten years to hire high
7 school residents and senior residents to provide
8 guided tours of the McMillan site, highlighting
9 the preserved historic resources. I think we
10 have to look at -- we break that down by minimum
11 wage jobs, job hours and then look at the number
12 of hours over ten years.

13 A, it's not a lot. It's not a major
14 benefit, and then of course other testimony has
15 said what's the demand for tourism of that site
16 there? 750,000 over ten years to the Project
17 Association, the neighbor association's operating
18 budget to create a community market outdoor café
19 and space for art installations.

20 That sounds nice, you know. That's on
21 site, you know. That's an amenity. 225,000 to
22 the Project Association to facilitate business

1 startups. That's a little tenuous. I'm not sure
2 how much weigh that should be accorded without a
3 little more detail. 500,000 for streetscaping in
4 and around the project and yes, it's related.

5 Around the project, I'm not sure how far it would
6 go but it probably, to the extent it beautifies
7 the approach, it might be considered a benefit.

8 And then \$150,000 to North Capitol
9 Main Street for storefront improvements. North
10 Capitol Main Street is several blocks down.

11 There are no like retail. So that is -- I think
12 it's nice, but it's not necessarily -- it's too
13 distant from the project to count as a community
14 benefit.

15 So those are my -- let's see. So I
16 don't think the community benefits showing has,
17 you know, much weight here, just based on facts
18 which you may consider. So to that extent, they
19 cannot really support the special merit finding
20 and I will likely not address other aspects at
21 this time because I think they've been adequately
22 covered, unless you would like for me to -- okay,

1 that's fine.

2 MS. FERSTER: I have a couple of
3 follow-up questions. So you didn't address the
4 550 more or less market rate housing units on
5 this project. Is it your opinion that the
6 provision of market rate housing is a benefit of
7 special merit under either the high priority for
8 community services branch or the specific
9 features of land planning branch of that
10 standard?

11 MS. RICHARDS: No, I don't see where
12 market rate housing gets you there. I mean they
13 were -- that's what's called for in the plan,
14 moderate density, you know, medium density
15 residential. No, it's just what they're going to
16 do with the project.

17 MS. FERSTER: Okay, and the same
18 question with regard to the retail that's being
19 offered on the site. Do you consider offering
20 retail, general retail on the site to be a --
21 which presumably will be -- well, I don't know
22 what the specifics are, but Ms. Barragan

1 suggested it was somewhat high end retail,
2 qualifies as a special merit benefit by virtue of
3 being either a specific feature of land planning
4 or a high priority for community service?

5 MS. RICHARDS: No. As I understand
6 it, these are going to be neighborhood-serving
7 retail element aspects. There is talk of
8 bringing a grocery store. Ward 5 is not the food
9 desert that it was at the beginning of this
10 process. So it now has I think about five full
11 service grocery stores. You know, another one,
12 while perhaps it's nice but it doesn't -- it's
13 not like Ward 7, which has one full service
14 grocery store, one or two, or Ward 8, I think
15 which has one or two, and the residents are not
16 as, you know, deprived or isolated from other
17 grocery stores.

18 So the grocery store was the big
19 driving retail factor, and I assume that with the
20 grocery store comes the attendant CVS and, you
21 know, perhaps the Starbucks. So those are --
22 those are fine, but one must bear in mind that

1 straight down Michigan Avenue, within walking
2 distance if you're into the Walkable City, but
3 within a five minute drive there is the new
4 Brookland development, which has a number of what
5 I call, you know, very basic upmarket
6 neighborhood-serving retail.

7 Just to put things in context, the
8 townhouses in the Brookland development sell for
9 \$800,000, and then there are some multi-family
10 units and of course they have their obligatory
11 Busboys and Poets. They have, you know, the --
12 and a Starbucks and another Starbucks inside the
13 bookstore.

14 Anyway, there's like a nice little
15 like kind of cutesy retail hub within walking
16 distance, and I assume that what's going here is
17 going to perhaps be somewhat an echo of that.
18 But it's not -- it's not as if the area is
19 starved, and then of course they're so close to
20 the arts district in 12th Street. It's not --
21 it's a gentrifying area, you know. It's whatever
22 it was when this project began, I mean that's

1 another day, it's history.

2 MS. FERSTER: Thank you, and then you
3 testified about a lot of the components of the
4 benefits package in terms of grants to North
5 Capitol Main Street and other types of grants
6 for educational non-profits who offer a
7 different variety of services.

8 So in your opinion, would any time a
9 grant be given to an entity, does that -- is that
10 really -- is a grant really necessary? I mean
11 it's demolition or destruction of an historic
12 site ever necessary to provide a grant?

13 MS. RICHARDS: Absolutely not. I
14 guess the key thing I'd say about the grants is I
15 added them all up, and they total 3.25 million
16 over ten years. So that's about 300,000 a year,
17 and if you look at a project that's talking about
18 generated, you know, millions and millions of
19 dollars in tax revenue alone, it's not -- it's
20 not a huge, huge outlay. It's not incredibly
21 generous, you know. The whole package is just
22 not significant.

1 MS. FERSTER: Okay, and you have some
2 experience with planned unit developments
3 generally, right?

4 MS. RICHARDS: Yes.

5 MS. FERSTER: Okay. So would that
6 kind of benefit package which involves giving
7 grants to this non-profit and that non-profit be
8 a standard feature of any PUD, even if it were
9 not in an historic site?

10 MS. RICHARDS: Those are standard,
11 yes.

12 MS. FERSTER: And how would this
13 benefit package compare to a non-historic PUD?
14 Would you consider it standard, less, more?

15 MS. RICHARDS: It's -- well let's see.
16 If I'm just looking at those community benefits
17 along with -- we're now not talking about the
18 community center, which is sort of an integral
19 part of the building plan, and not -- I'm not
20 going to consider that as a community benefit
21 right now. But some --

22 MS. FERSTER: I'm sorry. I'm just

1 talking about the grant.

2 MS. RICHARDS: So it's the grant?

3 MS. FERSTER: Just the grant.

4 MS. RICHARDS: No, no. That's not
5 especially, you know, generous.

6 MS. FERSTER: Okay. I think that was
7 it for me.

8 MS. RICHARDS: Okay.

9 MS. FERSTER: Thank you.

10 MR. BYRNE: Ms. Brown.

11 MS. BROWN: Following up on that last
12 line of questioning, you said that the grants are
13 not generous. In comparison to what PUD project
14 or other project are you talking about?

15 MS. RICHARDS: Well, there was one,
16 and this was years ago, a site when the community
17 in Georgetown, when the Women's Hospital over
18 there was demolished, I got a grant in millions
19 of dollars. It was either two or three million,
20 and that went to the community association.

21 MS. BROWN: And can you cite the case
22 again, the case number?

1 MS. RICHARDS: I'll provide that in my
2 written --

3 MR. BYRNE: You mean Columbia Hospital
4 for Women?

5 MS. RICHARDS: That's it. That's the
6 one, Columbia Hospital for Women.

7 MS. BROWN: And you're saying that one
8 of the contributions was over a million dollars?

9 MS. RICHARDS: Yes.

10 MS. BROWN: In a grant for what
11 purpose?

12 MS. RICHARDS: It went to the
13 neighborhood association.

14 MS. BROWN: For what purpose was the
15 money to be spent?

16 MS. RICHARDS: I don't remember. I
17 think they got it outright. But I will -- I will
18 provide a better cite to that.

19 MS. BROWN: I don't need it. Either
20 you know the answer today or you don't.

21 MS. RICHARDS: Okay. No, I don't.
22 No.

1 MS. BROWN: Okay, and is that your
2 only experience with a PUD?

3 MS. RICHARDS: No. I have been --
4 well, actually I'm involved in one, the Pentgrad
5 (phonetic) site is going up. That one hasn't
6 been determined yet, but the Skylamp site, I was
7 -- well, my husband was ANC chair when that one
8 went forward and I was a community resident. So
9 I was obviously, you know, very much, you know, I
10 was following that one very, very closely.

11 MS. BROWN: And Ms. Ferster asked you
12 the question of whether or not these community
13 benefits could go forward without the demolition,
14 and I guess my question is a little different.
15 Would these benefits happen without the project?

16 MS. RICHARDS: These benefits happen
17 without the project? Well, let me see. All
18 right. These benefits and this project are all
19 of a piece, okay. So you know, yeah. If this --
20 absent this project, I mean it's, you know, they
21 would not happen. I mean --

22 MS. BROWN: Okay, thank you.

1 MS. RICHARDS: --it's like separating
2 out the whole.

3 MS. BROWN: And where is the grocery
4 in Brookland?

5 MS. RICHARDS: The grocery? Oh, I'm
6 sorry. I didn't refer to the grocery in
7 Brookland. I was referring to the shopping
8 district that runs along Michigan Avenue.

9 MS. BROWN: Okay. So there's no
10 grocery there?

11 MS. RICHARDS: I'm not sure. I was
12 really talking about the other upscale retails
13 there.

14 MS. BROWN: Okay, and do you know what
15 retail is going into the McMillan project?

16 MS. RICHARDS: No.

17 MS. BROWN: So you don't --

18 MS. RICHARDS: Only the fact that a
19 grocery, that a grocery store has been mentioned.

20 MS. BROWN: So you don't know whether
21 it's high end, low end? You don't have any idea
22 what type of retail's going in?

1 MS. RICHARDS: No. I can only speak
2 to it being a grocery store, and I don't consider
3 -- you know, I don't know if that's going to be
4 like a Trader Joe's or a Giant. So I'm not --

5 MS. BROWN: Okay. So you don't know
6 that there's -- whether or not there's been a
7 contract signed or --

8 MS. RICHARDS: Exactly, no. I only
9 know what's been in the proffer so far.

10 MS. BROWN: Okay, and you were asked
11 and said in your testimony that the retail by
12 itself is not special merit. When you combine
13 the grocery store, the retail, the health care
14 facility, the senior housing, the market rate
15 housing, the affordable housing, the community
16 center, the 6.2 acre park and the preservation of
17 the above-grade historic structure, does that
18 together create special merit?

19 MS. RICHARDS: Well, I'd say that it
20 does in part because some of the elements of the
21 project that you just identified have been deemed
22 already to be mitigation, particularly the 6.2

1 acre park, and is mitigation that's not -- it
2 can't be double-counted. So that's, you know,
3 certainly we have to take the park out of that
4 consideration.

5 Now for the community center, I
6 believe that was considered as like recreation.
7 I don't know if -- I don't know if you're going
8 to call that just part mitigation or a special or
9 community benefit. It's certainly a benefit.
10 I'm not sure if it's -- I'm not sure that it
11 would rise to special merit. It's a benefit.

12 MS. BROWN: Did you --

13 MS. RICHARDS: But that's -- but
14 remember, every benefit that's -- and this is the
15 plan. Every benefit that's in a project doesn't
16 necessarily make it rise to special merit. It's
17 got to be tied to the specific preferred use, and
18 to get to the special merit.

19 And the special merit talks about the
20 importance of maintaining the open space and the
21 vistas. So and those -- that particular band of
22 green going from the Armed Forces down to

1 McMillan, you know, has been a recreation ground.
2 But it hasn't been tied to like a rec center, you
3 know. Now you can like swings come and go, rec
4 centers come and go.

5 But it was the kind of integrity of
6 this huge green, the view from the escarpment and
7 of course, you know, the Olmstead Walk. Those
8 were the things that were I guess the signal
9 elements of this particular site. I'm not sure
10 to say we're going to have a rec center, which is
11 certainly something a community needs to have,
12 you know, over a period of time, rises to you
13 know, is a specific preferred use that gets you
14 to special merit.

15 Again, this is a 17,000 square foot
16 rec center. So I'm not sure. Just in terms of
17 quantity of recreation space, I'm not sure where
18 it is. Just by way of comparison, Turkey Thicket
19 is about 31,000, twice that. It's not like it's
20 a major rec center. It's a neighborhood amenity
21 and that doesn't automatically get you to special
22 merit.

1 MS. BROWN: Thank you. Did you
2 participate in the community negotiations for the
3 community benefits agreement?

4 MS. RICHARDS: For this project?

5 MS. BROWN: Yes.

6 MS. RICHARDS: No.

7 MS. BROWN: So are you aware of what
8 the community and the ANC determined was high
9 priority for their community and the benefits
10 regarding the beautification of the streets,
11 contribution to the --

12 MS. FERSTER: I object to that. She's
13 already testified that she did not participate in
14 the community benefit negotiations. She's not
15 qualified to answer that.

16 MS. BROWN: My follow-up question is
17 if she didn't participate, is she aware of what
18 the community determined through the
19 participants, the community associations and the
20 ANC about what priorities they determined were a
21 high priority for their community?

22 MS. FERSTER: Continue to object.

1 MS. RICHARDS: Well, I have --

2 MS. FERSTER: I continue to object.

3 Wait, wait until the objection is ruled on
4 please.

5 MR. BYRNE: I'll allow the question.

6 MS. RICHARDS: Sorry. I have some
7 familiarity, not intimate familiarity, I have
8 some knowledge, I won't call it familiarity, from
9 having been acquainted over the years with some
10 of the neighborhood residents and having heard
11 them speak from time to time, in formal and
12 sometimes just in informal settings and sometimes
13 in giving reports, you know, as to what the
14 status of the proceedings were.

15 So I have like heard, you know, some
16 of it from neighborhood residents, but I have not
17 followed intimately.

18 MS. BROWN: So then why should the
19 Mayor's Agent substitute your judgment for a
20 community benefits agreement negotiated with the
21 community and the ANC when you don't have any
22 knowledge of it?

1 MS. FERSTER: I think that's a
2 rhetorical question and I object to it.

3 MR. BYRNE: It's a rhetorical
4 question.

5 MS. RICHARDS: Oh okay. I had an
6 answer.

7 MS. BROWN: You also -- I just want to
8 make sure I understand your critique of the First
9 Source agreements and the CBE agreements and why
10 they shouldn't be counted as special merit. You
11 indicated that there is -- and correct me if I'm
12 wrong, because I want to make sure I understood
13 what you said so I have a copy of your testimony.

14 There is a George Washington
15 University study from 2000.

16 MS. RICHARDS: 2015.

17 MS. BROWN: 2015?

18 MS. RICHARDS: Yes and --

19 MS. BROWN: I just needed a
20 clarification of the year.

21 MS. RICHARDS: Okay, yes.

22 MS. BROWN: And then you also, and

1 correct me if I'm wrong, you talked about
2 employment, the taxes generated by employment and
3 that they were out of state or out -- not
4 District residents and you said that you assumed
5 that the employment may not be District
6 residents, so we're losing that income tax.

7 But what about payroll tax and was
8 that 874 -- can you explain what you think the
9 874 million dollar --

10 MS. RICHARDS: I'm sorry. This is
11 based on like the applicant's statement, it said
12 the District will garner 874 million over 30
13 years from the project, principally from
14 employment generated by the health care facility,
15 and that was from one of the applicant's
16 documents.

17 MS. BROWN: Okay, and you were
18 assuming that meant income tax?

19 MS. RICHARDS: Well, what I was saying
20 is that there is no -- there is no explanation
21 for it. So I mean --

22 MS. BROWN: In the summary list?

1 MS. RICHARDS: In the summary list, so
2 I did not get --

3 MS. BROWN: Okay.

4 MS. RICHARDS: And so based on that,
5 if I see principally from income, then I'm
6 thinking income taxes, and so that -- so I
7 suggested that, you know, absent a better
8 explanation for the applicant, there's not a
9 sound basis for giving the applicant credit for
10 all of that going to the District.

11 MS. BROWN: Okay. So you have not
12 looked at RCLCo's report?

13 MS. RICHARDS: I've read the record.
14 Now which one, what was that?

15 MS. BROWN: That was the fiscal impact
16 study, where that number came from?

17 MS. RICHARDS: Came from? I didn't --

18 MS. FERSTER: Just to clarify, that
19 was Mr. Leonard Bogorad's testimony; correct?

20 MS. BROWN: Correct.

21 MS. RICHARDS: Okay. Since I did not
22 recall seeing a breakdown of that figure, if it

1 was in that, I did not see it.

2 MS. BROWN: Okay, thank you. Those
3 are all my questions.

4 MR. BYRNE: I want to clarify a
5 comment you made about the reading of special
6 merit in regards to the Comprehensive Plan. Did
7 you say that the -- that to be special merit,
8 that any benefit has to be tied to a specific,
9 site-specific element in the Comprehensive Plan?
10 Did I hear you correctly?

11 MS. RICHARDS: Well, in the court's
12 test, the more an applicant can tie an element to
13 the proposed project to a specific preferred land
14 use as set out in the GC Comprehensive Plan, the
15 more likely it is that the Mayor's Agent will
16 approve the project under this element of special
17 merit.

18 MR. BYRNE: Okay. That's what you --
19 okay, good. Thank you. That's helpful. Okay,
20 good. Thank you. Oh, Mr. Otten, okay.

21 MR. OTTEN: Ms. Richards, following on
22 from that, this is Chris Otten, D.C. For

1 Reasonable Development. How does the opposite
2 work? So in other words if the project's impacts
3 or aspects, characteristics contravene or
4 contradict Comprehensive Plan policies, how does
5 that, I guess, work in your calculation of
6 reducing special merit?

7 MS. RICHARDS: Well again as stated,
8 the overall consistencies, the threshold test.
9 So if a project's features contravene the
10 Comprehensive Plan and we're speaking like --
11 just as a general principle of how the plan is
12 applied, in terms of -- if there's actual
13 contravention, then the project does not apply.

14 So therefore if it's not consistent,
15 then you don't really address the special merit
16 because overall consistency is where you're
17 getting.

18 MR. OTTEN: And when you mentioned
19 mitigation in a project, is that -- that doesn't
20 count as a special benefit? You're mitigating
21 something as an impact. Is that -- would that be
22 flipped up to a benefit?

1 MS. RICHARDS: No. If there's -- the
2 Act and the HPRB and Zoning say that there
3 shouldn't be any double-count or rather courts
4 have said that in looking at these cases. If
5 something is offered in mitigation, then it
6 doesn't count as special merit.

7 MR. OTTEN: And I guess the -- Ms.
8 Brown mentioned kind of a list of the components
9 of the project, one of them being the park and
10 the recreation center. The public is paying for
11 that, if I'm not mistaken. If the public is
12 paying for the benefits in a project, is that
13 therefore a public benefit? Or is that
14 considered a special -- does that rise up to
15 special merit, if the public is paying for it?

16 MS. RICHARDS: Well, that's a novel
17 question. But no. Obviously, if the District --
18 I mean if the District is paying for something,
19 then it's a tax-based expenditure, budgeted
20 expenditure.

21 MR. OTTEN: Okay, thank you.

22 MR. BYRNE: Okay.

1 MS. FERSTER: I have one more follow-
2 up for Ms. Barragan based on Ms. Richards'
3 testimony, and the question for you Ms. Barragan
4 is you've heard Ms. Richards' testimony. You've
5 been qualified as an expert in urban planning.
6 Do you concur in her testimony?

7 MS. BARRAGAN: Yes, I do. I had one
8 comment since I -- St. Elizabeth is definitely
9 one of those projects that emulates as historic
10 preservation, a large site area. As far as the
11 community benefits, there was 1.3 million, a 1.3
12 million grant for pre-apprenticeship for St.
13 Elizabeth's back in 2010, when the project --
14 when it was actually -- when constructed started
15 already happening.

16 But if you look at DCFBI's data,
17 current data today as far as unemployment
18 specifically in Ward 8, while unemployment has
19 gone down, it has not gone down below the pre-
20 recession level.

21 So it shows that while you have, you
22 know, this grantor very well intended in terms of

1 employment, even CBEs for that particular
2 project, the end result, the social indicators of
3 actually seeing benefits for the community that
4 is targeted for that community to see benefits
5 hasn't worked.

6 That's really important, and right now
7 St. Elizabeth's, in the phase that it's in, is
8 faced -- it hasn't been fully funded, and they're
9 actually going to be moving DHS uses outside the
10 City. So if anything, it really proves that
11 these CBEs at that scale of millions of dollars
12 grants over time, it's not working.

13 MR. BYRNE: Okay. Well, maybe this is
14 a good place to make a pause, right. You have
15 more witnesses I believe?

16 MS. FERSTER: Yes, we do.

17 MR. BYRNE: How many more can I ask?
18 Three more. We have to vacate the room, so I
19 think we'll stop. So the hearing is scheduled to
20 continue next Monday, the 18th, and due to
21 governmental exigencies, we're going to start at
22 noon on that day. I don't know if the Zoning

1 Commission's meeting, we'll find out. They are?
2 Okay. Well, we'll have to go to five.

3 I hope with all my heart that that
4 will be the last session, but I don't know.

5 MS. BROWN: Mr. Byrne, do you know if
6 the Zoning Commission is meeting on the night of
7 the 18th, so that we can continue past five
8 o'clock?

9 MR. BYRNE: I just got a nod from Mr.
10 Callcott that they think it is a meeting.

11 MS. BROWN: I'm sorry?

12 MR. BYRNE: Mr. Callcott thinks that
13 they are meeting that night.

14 MS. FERSTER: And one more question.
15 Can we at this point clarify that the webcast
16 will be available also at the Monday proceeding?

17 MR. BYRNE: No.

18 MS. FERSTER: Is that it will not be
19 available?

20 MR. BYRNE: No. We can't -- I don't
21 know. I mean I'm looking at Mr. Callcott. He
22 doesn't know. I mean this was all -- this is all

1 just good inadvertence, and you know, I don't
2 know that there's a great benefit to this being -
3 - I don't think there's a great benefit to this
4 being webcast.

5 VOICE: It's actually very helpful.

6 MR. BYRNE: I appreciate you think
7 that.

8 MS. FERSTER: And I would again say
9 that considering particularly that there will be
10 members -- the next hearing will be when members
11 of the public will testify, that it is
12 particularly important that they be able to
13 follow along, so that they know approximately
14 when that point in the proceeding that members of
15 the public who wish to testify can come, because
16 otherwise, you know, they have to take time off
17 from their jobs, off from their families,
18 etcetera.

19 So if Mr. Callcott does not know yet,
20 I would ask that as soon as he finds out, that
21 he'd let the parties know so that we can tell as
22 many people as possible that this resource will

1 be available.

2 MR. BYRNE: Well, I mean the -- I will
3 consult with Mr. Callcott about the availability
4 of it, and I will -- the HPO office will send an
5 order to the Council about it.

6 MS. BROWN: Mr. Byrne, I have another
7 scheduling question.

8 MR. BYRNE: Please.

9 MS. BROWN: Given that we've taken the
10 full allotted time today and we're starting at
11 noon, I was wondering if we could have an
12 estimate, best guess from Ms. Ferster and Mr.
13 Otten about how long they think their
14 presentation will take.

15 MR. BYRNE: So we have three. She has
16 three witnesses and one panel?

17 MS. FERSTER: Yes, and that will be it
18 for us.

19 MR. BYRNE: Okay.

20 MS. BROWN: And I understood that. I
21 was just asking a time estimate.

22 MS. FERSTER: Oh, oh.

1 MR. BYRNE: That's harder.

2 MS. FERSTER: That's harder.

3 MR. BYRNE: And hour and a half maybe.

4 MS. BROWN: How long would it take for
5 the --

6 MR. BYRNE: Well, we did three hours,
7 no three hours. No, we did two and a half hours
8 for your five witnesses.

9 MS. BROWN: If Ms. Ferster could tell
10 --

11 MS. FERSTER: Six. We had six.

12 MS. BROWN: --us who the witnesses
13 are. We know that one will be Ms. Saleem, I
14 understand, and if we have the other two where I
15 can -- I can understand how much time I would
16 need to cross-examine them. I have not been
17 taking a lot of time cross-examining.

18 MR. BYRNE: No, you haven't. Do you
19 want --- are you prepared to tell ---

20 MS. BROWN: No.

21 MR. BYRNE: Mr. Otten, how many
22 witnesses?

1 MR. OTTEN: I think we'll have two,
2 and I don't think we'll be more than an hour,
3 probably 45 minutes.

4 MR. BYRNE: 45 minutes?

5 MR. OTTEN: Yeah.

6 MS. BROWN: And then if Ms. Richards
7 could provide her written testimony, either via
8 email or written to me the next day or two, that
9 would be appreciated.

10 MR. BYRNE: Okay, and with those
11 reports that you cited, please, that would be
12 helpful. Okay.

13 MR. OTTEN: Mr. Byrne, will we ever
14 get the applicants' 200 page July 14th submission
15 electronically that I can share with my experts?

16 MR. BYRNE: No, no. I don't think
17 that that's required and I think you've got what
18 you've got. You've got what I have.

19 MR. OTTEN: So I have to make copies
20 of 200 pages?

21 MR. BYRNE: Or loan it to them.

22 MR. OTTEN: I really, I guess I just

1 want to put on the record, I'm having a hard time
2 understanding. They presented it electronically
3 through a laptop and a projector. Therefore it's
4 electronic. So they're choosing not to send it,
5 and we don't understand why. Why is it? I don't
6 understand.

7 MR. BYRNE: Okay.

8 MR. OTTEN: My tax dollars are paying
9 for it, so why aren't you sending it to me?

10 MR. BYRNE: It's not going to happen,
11 so let's --

12 MR. OTTEN: It's ridiculous.

13 MR. BYRNE: That's the first time you
14 said that, sir.

15 MR. OTTEN: That's correct.

16 MS. BROWN: I have one final question.
17 We don't know how long the public witnesses will
18 take. I know that they will be limited I think
19 to three minutes.

20 MR. BYRNE: Yes, and we have quite a
21 number in writing. They don't necessarily need
22 to have them orally as well.

1 MS. BROWN: Out of an abundance of
2 caution, I hesitate to even ask, but do we need
3 another day in case it needs to carry over?

4 MR. BYRNE: Why? It would be really
5 really -- I mean I will -- I will consult with
6 the Office of Planning about that. Obviously our
7 interests are all, everybody wants to finish the
8 case, but everybody wants to have their say
9 appropriately, and I get that.

10 I don't -- I think maybe at this point
11 we can wait and see what happens and then set the
12 date if we need to on the 18th. I think it -- I
13 don't think -- I think it's going to be -- I
14 would rather do that then set a date now.

15 MS. BROWN: And I would ask for
16 consideration, obviously no decision but just for
17 your consideration, whether perhaps rebuttal,
18 surrebuttal, closing, can all be put in writing
19 as opposed to necessarily a hearing, and we could
20 have cross-documents as necessary.

21 MR. BYRNE: Okay. Yes sir. What
22 organization? Why don't you come next week and

1 then we can talk about your organization and
2 whether you can have five instead of three, okay.

3 (Off-microphone comment.)

4 MR. BYRNE: I understand ma'am, and
5 that would be my preference. But because of
6 stuff at the Office of Planning, I'm not able to
7 do that. I'm sorry.

8 PARTICIPANT: Why not the next month?

9 MR. BYRNE: Because we already have a
10 date scheduled where the parties are available to
11 come, and we have to try to get the hearing in
12 then. So it's five o'clock and I --

13 MS. FERSTER: One more item. Mr.
14 Thakkar had promised to get us some information,
15 and he approached me during the break and said I
16 have it for me. So I wanted to ask him --

17 MS. BROWN: We do have it, I'm sorry.
18 Thanks for reminding me.

19 MR. BYRNE: Okay. Are you all right?

20 MS. BROWN: For the record, in order
21 to distinguish this from the earlier version
22 submitted today, this is printed in black and

1 white, and the total unit count is 660 units. So
2 for the record, so we don't get it confused
3 later.

4 MR. BYRNE: Okay, good. So that is
5 the current plan for the number of units to which
6 --

7 MS. BROWN: Correct, so it can
8 reconcile.

9 MR. BYRNE: Okay, thank you. Okay.
10 Thank you everybody.

11 (Whereupon, the above-entitled matter
12 went off the record at 5:05 p.m.)

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This is to certify that the foregoing transcript

In the matter of: Applications of Vision McMillan
Partners, LLC, and the D.C. ODMPED

Before: DC Historic Preservation Review Board Hearing

Date: 09-11-17

Place: Washington, DC

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Court Reporter

NEAL R. GROSS

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