

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
2 Zoning Commission

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9 Limited Scope Public Hearing

10 Case No. 13-14 [Vision McMillan Partners, LLC and the
11 District of Columbia - First-stage and Consolidated
12 PUD and Related Map Amendment at 2501 First Street,
13 N.W. (Square 3128, Lot 800).]

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17 5:02 p.m. to 10:20 p.m.

18 Wednesday, April 19, 2017

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21
22 Jerrily R. Kress Memorial Hearing Room
23 441 4th Street, N.W., Suite 220 South
24 Washington, D.C. 20001

25
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1 Board Members:

2 ANTHONY HOOD, Chairman

3 ROBERT MILLER, Vice Chair

4 PETER MAY, Commissioner

5 MICHAEL TURNBULL, Commissioner

6

7 Office of the Attorney General:

8 ALAN BERGSTEIN

9

10 Office of Zoning:

11 SHARON SCHELLIN, Secretary

12

13 Office of Planning:

14 MAXINE BROWN-ROBERTS

15 JENNIFER STEINGASSER

16 JOEL LAWSON

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P R O C E E D I N G S

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2 CHAIRPERSON HOOD: Good evening, ladies and
3 gentlemen. This is a continuation of the limited
4 scope public hearing of the Zoning Commission for the
5 District of Columbia for April the 19th, 2017, to
6 consider the issues remanded by the District of
7 Columbia Court of Appeals pertaining to Zoning
8 Commission Case No. 13-14, Vision McMillan Partners,
9 LLC and the District of Columbia.

10 My name is Anthony Hood, we're located in the
11 Jerrily R. Kress Memorial Hearing Room. Joining me
12 this evening are Vice Chairman Robert Miller,
13 Commissioners Peter May and Commissioner Mike
14 Turnbull. We're also joined by the Office of Zoning
15 Staff, Ms. Sharon Schellin, as well as the Office of
16 Attorney General, Mr. Bergstein, Office of Planning
17 staff, Ms. Brown-Roberts, soon to be expected to be
18 joined by Ms. Steingasser and Mr. Lawson. Okay.

19 This proceeding is being recorded by a court
20 reporter and is also webcast live. Accordingly, we
21 must ask you to refrain from any disruptive noises or
22 actions in the hearing room, including the display of
23 any signs or objects.

24 Notice of today's hearing was published in
25 the D.C. Register, and copies of that announcement

1 are available to my left on the wall near the door.
2 The hearing will be conducted in accordance with
3 provisions of 11-DCRM, Chapter 9 as follows: tonight
4 we'll have preliminary matters, the applicant's
5 presentation, followed by Friends of McMillan Park's
6 presentation, and then we'll have the applicant's
7 rebuttal, and cross on rebuttal as always, and then
8 closing.

9 The applicant of Friends of McMillan -- the
10 applicant and Friends of McMillan will have 60
11 minutes each to give their presentation. Written
12 testimony and exhibits should be given to staff
13 before taking a seat at the table.

14 The decision of the Commission in this case
15 must be based exclusively on the public record. To
16 avoid any appearance to the contrary the Commission
17 requests that persons present not engage the members
18 of the Commission in conversation or at any time,
19 during any recess or at any time.

20 The staff will be available throughout the
21 hearing to discuss procedural questions. Please turn
22 off all electronic devices at this time so not to
23 disrupt these proceedings. Even if you've taken the
24 oath before, we ask you just do it again.

25 Would all individuals wishing to testify

1 please rise to take the oath? Ms. Schellin, would
2 you please administer the oath?

3 MS. SCHELLIN: Yes. Please raise your right
4 hand.

5 [Oath administered to the participants.]

6 MS. SCHELLIN: Thank you.

7 CHAIRPERSON HOOD: I don't know whether I'm
8 just in the hot seat, but if the gentleman that laid
9 -- care to remove your jackets you can, because I'm
10 going to sure remove mine, because for some reason
11 I'm hot.

12 Ms. Schellin, do we have any preliminary
13 matters?

14 MS. SCHELLIN: I do not.

15 CHAIRPERSON HOOD: Okay. So, Ms. Schellin,
16 can you kind of give us an outline of where we are?
17 You probably can recap it better than I can.

18 MS. SCHELLIN: Yes. Actually, the -- what
19 you put in the -- or read in the opening statement is
20 correct. We have the applicant's presentation
21 followed by the Friends of McMillan Park, their
22 presentation, because the ANC did present during the
23 time that testimony was taken from the public. So,
24 once the Friends of McMillan Park give their
25 presentation, we'll come back to the applicant for

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1 rebuttal testimony, if they have any. And, after of
2 course cross-examination is done, questions and cross
3 are done on rebuttal, the applicant has an
4 opportunity to give a closing, and that would close
5 out the limited scope hearing.

6 CHAIRPERSON HOOD: Okay. Let me just ask,
7 start -- is anyone from the ANC here, and is the ANC
8 prepared to make any presentation this evening?

9 [No audible response.]

10 CHAIRPERSON HOOD: Okay, if not, is the ANC
11 going to make a presentation this evening?

12 [No audible response.]

13 CHAIRPERSON HOOD: Okay. So, I need to know.
14 Okay, Mr. Glasgow, you may begin.

15 MR. GLASGOW: Thank you, Mr. Chairman. Good
16 evening, members of the Commission. For the record,
17 my name is Norman M. Glasgow Jr., the law firm of
18 Holland and Knight. I'm here in this matter on
19 behalf of Vision McMillan Partners, LLC and the
20 Deputy Mayor for Planning and Economic Development.
21 Matthew Lane, seated to my immediate left is of the
22 Public Interest Division of the Office of the
23 Attorney General and is also present as counsel to
24 the Office of the Deputy Mayor for Planning and
25 Economic Development.

1 Here with me at the witness table are Mr.
2 Brian Kenner, the Deputy Mayor for Planning and
3 Economic Development. He will be addressing Issues 1
4 and 4. Matt Bell of Perkins Eastman is to my right,
5 land planners for the project, Issue 3. Adam Weers
6 of Trammell Crow, who will be speaking on behalf of
7 Vision McMillan Partners. Mr. Weers, Issues 1 and 3.
8 Len Bogorad of RCLCO, Issue 4. And Shane Dettman of
9 Holland and Knight, land planner, Issues 1 through 5.

10 Both Mr. Bell and Mr. Dettman have been
11 previously accepted as expert witnesses by the
12 Commission. Mr. Bogorad is proffered as an expert in
13 physical and economic impact analysis and real estate
14 market and financial analysis.

15 In addition, we have several other experts
16 and personnel who are in the audience this evening,
17 who should there be questions with respect to their
18 particular areas of expertise will be available to
19 answer any questions from the Commission.

20 I want to confirm for the record that the
21 prior first-stage and consolidated PUD is part of the
22 record in this remand proceeding. We will be
23 referring to documents from that from time to time
24 during the course of our presentation, along with our
25 March 13th filing.

1 Furthermore, since no party submitted a
2 written statement by close of business on March 13th,
3 asserting any deficiencies in the issues noticed by
4 the Commission in its remand order or offering
5 revised language for the existing or any proposed
6 additional issues, then all parties have deemed to
7 have agreed that the scope of this hearing fully
8 encompasses the issues on remand and there will be no
9 other issues.

10 Turning again to the applicant's response to
11 the identified issues, we went through those in a
12 very detailed fashion in our March 13th document, and
13 the witnesses will be able to address those matters
14 also.

15 Lastly, the applicant will distinguish high-
16 density development from higher heights. In this
17 case, while a small portion of the site,
18 approximately 10 percent is proposed to have a height
19 of 115 feet, the project as a whole is only 2.36 FAR,
20 which is clearly not high density.

21 If there are no preliminary questions, I'd
22 like to introduce the first witness to proceed with
23 his testimony. Mr. Brian Kenner, please identify
24 yourself for the record and proceed with your
25 testimony.

1 MR. KENNER: Good evening, Commissioners. My
2 name is Brian T. Kenner and I am the Deputy Mayor for
3 Planning and Economic Development.

4 On behalf of the Bowser Administration, I'm
5 privileged to be here today to voice our continued
6 and unwavering support for the McMillan Development
7 project. Thank you for conducting these hearings to
8 address the decision from the D.C. Court of Appeals.

9 My testimony tonight will focus on Issues 1
10 and 4. Issue 1, I ask whether the other policies
11 cited in the order could be advanced if the site were
12 limited to medium and moderate density use. My
13 testimony will focus on recent legislative approvals
14 that have been advanced by implementing the
15 previously approved master plan.

16 Following the Zoning Commission's Fall 2014
17 hearings related to this PUD, hearings were conducted
18 before the D.C. Council to approve the surplus and
19 disposition of McMillan. The basis for the D.C.
20 Council's approval of the McMillan project included
21 many factors that were summarized in a report from
22 the Committee on Economic Development. And, I'm just
23 reading from that, recommended the approval of the
24 disposition resolutions because they represent a
25 thorough and balanced development that is a

1 culmination of years of planning, community
2 engagement, and execution by the D.C. Government
3 Vision McMillan Partners and many affected ANCs,
4 community groups and stakeholders.

5 While no development will make every person
6 involved happy, the proposed McMillan development
7 provides economic development, cultural, commercial,
8 and recreational opportunities to an area that has
9 seen this site vacant and fenced off for decades.

10 The development would produce thousands of
11 jobs and millions of dollars in revenue. Hundreds of
12 housing units, 20 percent of which would be
13 affordable, would be created along with acres of new
14 park and open spaces. This development would work to
15 reactivate an area that has lain dormant for many
16 years, creating a new community and destination for
17 the city.

18 The D.C. Council has also passed legislation
19 funding the project, extending the executive's
20 disposition authority, and closing streets within the
21 project. So, as to Issue 1A, the Commission's
22 weighing of the competing policies that will be
23 advanced by the existing master plan, these recent
24 approvals by the D.C. Council now provide the
25 Commission with a legislative intent to develop

1 McMillan as provided for in the previously approved
2 master plan, inclusive of the health care facilities
3 on Parcel 1. This demonstrates that the Council
4 believes the McMillan Development is in the best
5 interest of the District, and that the competing
6 policies should be weighed in favor of approving the
7 plan with the existing height on Parcel 1.

8 Within Issue 1B the Commission also asked
9 which policies would be given greater weight and why.
10 We submit that in addition to the analysis and our
11 prehearing response, the guiding principles and the
12 framework element should also be given substantial
13 weight because its intent is to provide the
14 foundation for the rest of the Comprehensive Plan.

15 McMillan will be one of the most
16 transformative developments in the District. As
17 such, the guiding principles related to managing
18 growth and change are appropriate for consideration.
19 McMillan meets all of these guiding principles and
20 I'd like to focus on a few of them now.

21 The first guiding principle provides that
22 change in the District of Columbia is both inevitable
23 and desirable. The key is to manage change in ways
24 that protect the positive aspects of life in the city
25 and reduce negative, such as poverty, crime, and

1 homelessness. McMillan will accomplish this guiding
2 principle by transforming historically significant
3 vacant industrial sand filtration site into a vibrant
4 and inclusive destination that will provide, among
5 other benefits, jobs from construction activity and
6 permanent uses related to the health care facilities,
7 retail, grocer, and other uses, positive fiscal and
8 economic impacts, affordable and senior housing, open
9 space, parks, and green space, historic preservation
10 and cultural amenities, and neighborhood serving
11 retail.

12 The fourth guiding principle provides that
13 the District needs both residential and
14 nonresidential growth to survive. Nonresidential
15 growth benefits residents by creating jobs and
16 opportunities for less affluent households to
17 increase their income.

18 McMillan includes a thoughtful mixture of
19 residential uses in the form of for-sale rental
20 housing, market and affordable housing, varying sizes
21 of units for singles and families, as well as senior
22 housing. We'll also include many nonresidential
23 uses, including a community center, park, grocer,
24 retail, healthcare facilities, and historic
25 preservation. There will be substantial

1 opportunities for construction and permanent jobs,
2 and opportunities for less affluent households to
3 increase their income through these newly created
4 jobs, particularly in the healthcare sector.

5 The fifth guiding principle provides that
6 much of the growth that is forecast for the next 20
7 years is expected to occur on large sites that are
8 currently isolated from the rest of the city. Rather
9 than letting these sites develop as gated or self-
10 contained communities, they should have been part of
11 the city's urban fabric through the continuation of
12 street patterns, open space corridors, and compatible
13 development patterns where they meet existing
14 neighborhoods. Since the District is landlocked, its
15 large sites must be viewed as extraordinarily
16 valuable assets. None at all should be used right
17 away. Some should be banked for the future.

18 The McMillan master plan was designed to
19 relate to the community it will become part of and
20 this planning continues to the present. The fence
21 will come down and the new north/south and east/west
22 streets will be established to ensure McMillan
23 becomes part of the city's urban fabric. Our focus
24 on McMillan's inclusivity has been a central focus as
25 we continue to work with the community.

1 For example, after the last iteration on the
2 Commission hearings in 2014, the public expressed a
3 concern that the community center within McMillan
4 would be self-contained and primarily serves the new
5 McMillan residents.

6 As the Commission heard during their March
7 23rd hearing, the Department of Parks and Recs will
8 now operate the community center in response to this
9 public feedback, which furthers this guiding
10 principle of inclusivity.

11 Matthew Bell, from Perkins Eastman D.C., will
12 also speak to McMillan's inclusivity during his
13 testimony.

14 Finally, this guiding principle provides that
15 certain large sites not be used right away, and
16 banked for the future. McMillan has been dormant
17 during the 30-year history of the District's
18 ownership. Now is the time to develop this site.

19 So, as it relates to Issue 1B, the
20 development approved by the D.C. Council in the
21 attainment of these specific guiding principles will
22 not be fully achieved at the height of the healthcare
23 building on Parcel 1 is reduced. We are focused on
24 the benefits and opportunities that McMillan will
25 achieve. Reducing the height of the healthcare

1 building will directly reduce the number of
2 construction and permanent jobs created, the tax
3 revenue received by the District, and opportunities
4 for new and expanding D.C. healthcare focused
5 business to locate within the McMillan project.

6 Reducing the height of the healthcare
7 facility will also reduce the economic driver of the
8 development that supports the demand for programs and
9 services, including the in-line retail end grocer.

10 Issue 4B asks whether the PUD will have
11 positive -- will have potential adverse impacts, and
12 if so, how should the Commission judge, balance, and
13 reconcile the amenities and benefits, development
14 incentives requested in the potential adverse
15 impacts. DMPED is a planning and economic
16 development agency that is charged with executing the
17 mayor's economic development -- excuse me, strategy,
18 which includes making significant progress on
19 converting underutilized land and improvements to
20 productive uses and public benefits, including
21 McMillan.

22 Our prehearing response, as well as the
23 testimony the Commission will hear this evening,
24 support the Commission's ability to determine that
25 the impacts of the PUD will be favorable, capable of

1 being mitigated, or acceptable given the quality and
2 scope of public benefits. As the Commission
3 considers Issue 4, it is important to consider that
4 this PUD process is normally the first of many
5 processes in the development life cycle. The level
6 and degree of multiagency review -- regulatory review
7 that will take place as many of the permit
8 applications for the PUD are submitted, will ensure
9 that this development addresses adverse impacts
10 through compliance with District and federal laws, is
11 therefore appropriate for the Zoning Commission to
12 consider certain potential adverse impacts, and also
13 allow agencies to review permit applications for
14 adverse impacts as development progresses.

15 We are in a unique posture today related to
16 McMillan. After the Zoning Commission approved the
17 McMillan PUD in 2014, the environmental impact
18 screening form was submitted and thereafter approved.
19 We're able to provide the Zoning Commission with this
20 exhaustive multi-agency EISF review now, because this
21 case has been remanded from the D.C. Court of
22 Appeals.

23 EISF would ordinarily not be available prior
24 to the Zoning Commission review because based upon
25 the Zoning Commission's approved master plan. So, it

1 is a benefit to now have this level of analysis
2 available for the Zoning Commission's consideration.

3 A few examples of agency reviews that will
4 naturally occur with the ongoing permitting
5 application processes to ensure compliance with
6 District and federal laws include D.C. Water reviews
7 for discharge permit applications before any
8 discharge to the sanitary or combined sewer system is
9 allowed, fire and EMS department will review
10 compliance with the fire code related to emergency
11 vehicle access within the PUD. The Department of
12 Consumer and Regulatory Affairs will review building
13 permit applications related to the D.C. Building
14 Code, including the Green Building Code. The
15 Department of Energy and Environment will review
16 erosion and settlement control permit applications,
17 and the District Department of Transportation will
18 review public space permit applications for work in
19 the public right of way.

20 So, as the Commission deliberates related to
21 this issue, we would request that the only
22 practicable approach to address certain potentially
23 adverse impacts is through the established regulatory
24 and administrative processes. It is important that
25 the Commission consider that permit applicants exist

1 so agencies can review perspective work to avoid
2 actual adverse effects. These are some of the same
3 potential adverse impacts that the Zoning Commission
4 is being asked to currently consider. If there are
5 questions related to the ongoing permitting
6 processes, Ryan Brannan from Bowman Consulting D.C.
7 is here tonight and available to answer any
8 questions.

9 This does not relieve the applicant's
10 responsibility to respond to certain potential
11 adverse impacts that have been raised. Response to
12 adverse impact arguments are within our prehearing
13 response. In particular the report from RCLCO
14 directly replies to the potential adverse impacts,
15 including those related to destabilization of land
16 values and displacement of neighboring residents.

17 Mr. Bogorad, the author of this report, is
18 here tonight to answer questions related to his
19 report. His report concludes that McMillan would
20 general exceptional fiscal economic and employment
21 benefits. It also provides that McMillan will not
22 set gentrification in motion, nor significantly add
23 to gentrification, but instead will mitigate many of
24 the negative impacts of gentrification.

25 The new housing within McMillan is one of the

1 best ways to mitigate increasing prices in rents, the
2 new jobs and training within McMillan will be a
3 potential source of income for neighborhood residents
4 that will help afford to stay in their existing
5 homes, and McMillan will not cause displacement of
6 existing businesses, but will in fact be helpful to
7 existing businesses.

8 In conclusion, thank you for the opportunity
9 to testify before the Commission as part of this
10 limited scope hearing. Our team would be pleased to
11 answer any questions the Commission may have.

12 CHAIRPERSON HOOD: Okay. Let me -- thank
13 you, Mr. Deputy Mayor. Let me ask, do we have a copy
14 of your testimony?

15 MR. GLASGOW: We can submit it for the
16 record.

17 CHAIRPERSON HOOD: Okay. Can we submit it
18 tonight? I think that's important. Yes.

19 MR. GLASGOW: Yes, we have copies tonight.

20 CHAIRPERSON HOOD: Can we get a copy. If we
21 can make a copy, I think it's important.

22 MR. GLASGOW: Okay.

23 CHAIRPERSON HOOD: All right. Thank you.

24 MR. GLASGOW: I'd next like to call Mr. Bell.

25 MR. BELL: Good evening. I'm Matthew Bell,

1 Principal with Perkins Eastman D.C., and we're the
2 lead designers for the McMillan master plan. The
3 plan proposed here consists of about a million square
4 feet of healthcare uses, 514 residential multifamily
5 units of which 85 are senior units, 146 for-sale row
6 houses, little under 100,000 square feet of retail
7 uses, and 12 acres of parks and open space. The
8 master plan was developed between 2006 and 2014, with
9 the participation and input of citizen groups, ANCs,
10 civic associations, D.C. agencies, Zoning Commission,
11 and Historic Preservation Review Board. In the end,
12 the plan reflects direct public input, adjustments
13 made because the preservation and sight line issues,
14 and a conceptual direction that embraces the
15 character of 25-acre McMillan landmark.

16 For this presentation I'll demonstrate that
17 the plan for the program we are proposing, with all
18 the benefits and constraints, is the only feasible
19 way to retain a substantial part of the property's
20 open space, and make the site usable for recreation
21 purposes at McMillan.

22 I will review the design options of the plan
23 we developed over time, but we begin with the
24 challenge we've faced from the HPRB to articulate the
25 essential characteristics of the landmark. And in

1 doing so, show how those defining characteristics are
2 embraced in the development of the plan. It should
3 be pointed out, the preservation at the McMillan site
4 is a significant aspect of the comprehensive plan in
5 the mid-city element.

6 Signature characteristics are, tripartite
7 organization, two long east/west courts with above
8 ground features, the plinth most emphatic when viewed
9 from the neighborhood, views across the site from 1st
10 Street to North Capitol Street, and the perimeter
11 Olmstead Walk.

12 So, the challenge from HPRB was to develop a
13 master plan approach that embraced the features you
14 have just heard outlined, and to align three aspects,
15 the Comprehensive Plan, the development program, and
16 the characteristics of the landmark. Our plan does
17 that. The tripartite organization is the basis of
18 the plan. The above grade north and south service
19 courts are maintained and incorporated into the new
20 plan. The plinth that establishes the exterior
21 character landmark to the community is maintained.
22 The Olmstead Walk is reestablished. Views from
23 across the landmark are maintained in the park and
24 the service courts. Underground cells are
25 incorporated into the public experience of the site

1 at Cell 14, all of it, and partial at Cell 28.

2 Storm water management features are
3 incorporated throughout. Three parks/open space are
4 incorporated, healing gardens -- the healing gardens
5 above Cell 14, and the 6.2 acre park, eight acres at
6 the south service court, is included to the south of
7 the south service court.

8 A new street network provides mobility
9 internally and connects to the community in several
10 new locations and enhances connection in existing
11 locations. Program is located according to
12 adjacency, with healthcare to the north, residential
13 to the center, and park to the south, closer to the
14 existing residential areas. This multifamily
15 rowhouses and then the park.

16 The community center is located as part of
17 the park. Retail is located where there's an
18 intersection of commercial and residential program,
19 and closest to existing development at the VA and the
20 Washington Hospital Center at the north service
21 court, and in some of the regulator houses and sand
22 bins in the south service court.

23 The plan has evolved over the course of time
24 with many options considered, and each iteration the
25 result of more citizen and regulatory review and

1 input. The current plan addresses and incorporates
2 elements of the city comprehensive plan, which are
3 parks, recreation, and open space, medium density
4 residential, and moderate density commercial.

5 The 2006 plan shown here covered much of the
6 site, had no healthcare facilities, and did not
7 include much preservation. No south service court,
8 only partial of the north service court, no plinth,
9 no Olmstead Walk, and minimal open space.

10 The 2008 plan included both north and south
11 service courts, but still had no clarity of the
12 tripartite organization, no plinth, no Olmstead
13 Walk, and very little underground cell preservation,
14 no community facilities, and no healthcare.

15 2009 included all the north service court,
16 partial south service court, had a little more of the
17 tripartite organization, but still had no Olmstead
18 Walk, no plinth, and very little underground cell
19 preservation, very little above grade preservation,
20 no community facilities, and no healthcare.

21 2011 plan included a larger park stretching
22 across the site from north capital to 1st Street,
23 with views established. Cell 14 is included and
24 preserved. Cell 20 in this case adapted into the
25 park, healthcare uses are introduced, and north and

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1 south service courts are retained. Community
2 facility is located in the park. Problem was, the
3 park was too small. The community wanted a bigger
4 park. The Olmstead Walk and the plinth were not
5 continuously evident. They were only partial
6 fragments. And the tripartite organization was not
7 evident.

8 2012 plan, the Olmstead Walk emerges more on
9 one side but it still lacked the tripartite
10 organization, the north/south view connections, and
11 the complete plinth.

12 2014, a big step forward was taken.
13 Tripartite organization very evident. It was
14 included healthcare uses, a complete Olmstead Walk,
15 all of the plinth, north and south service courts, a
16 bigger park, underground cells preserved or in part
17 in Cells 28 and 14, east/west views across the
18 service courts, north/south views supported by the
19 street system, retail up to about 100,000 square
20 feet, community uses in the park expanded, and this
21 was received positively by the Historic Preservation
22 Review Board.

23 The updating of the plan, the recent updating
24 included a children's playground in the park,
25 revisions to storm water locations, some plaza

1 details in the park that were changed, some detailed
2 changes in the north service court, more park space
3 with the setback in the northwest corner for the
4 healthcare buildings. But essentially the same
5 concept as supported by the HPRB.

6 Now, here are the options in the evolutionary
7 plan. We now have a plan that reflects the Comp
8 Plan, residential, retail, commercial, park uses, et
9 cetera. It got better each time through community
10 and regulatory input, and all options that preceded
11 that plan, I'm going to be showing you all options
12 that preceded that plan that we bring to you today.

13 The plan changed in specific ways. In 2008
14 to 2014, open space went from six acres to 12 acres.
15 2008 to 2014, preservation went from 18 to 24 above
16 grade structures, including the plinth, the Olmstead
17 Walk, underground cells, 14 and a partial at Cell 28.
18 From 2008 to 2014, land use changed, originally
19 starting with office, hotel, and residential, going
20 to healthcare, residential, retail and a larger
21 community center in 2014 -- '13, the land use was
22 refined and more aligned with the Comp Plan that Mr.
23 Dettman will talk about.

24 In terms of footprint, in 2008 we were
25 building on 19 of the 25 acres of the landmark. In

1 2011 and 2013, we were building on 16 acres of the
2 landmark. 2014, the plan today, we're building on 13
3 acres of the 25-acre landmark.

4 Let's talk about healthcare coverage. The
5 parcel is about a little over 1 million square feet
6 total. Healthcare coverage of the west building is
7 about 48,547 square feet. Of the east building in
8 Parcel 1, just shy of 60,000 square feet. That
9 totals 10 percent of the total site area for that
10 footprint. And the rest of this shows the park
11 footprint there, the 8.2 acres referring to the south
12 service court and the park to the south, and the rest
13 of the numbers for the housing footprint, 10 percent
14 for the healthcare buildings north of the south, or
15 north service court.

16 Let's talk about distance of healthcare from
17 residential fabric. So, the question has been
18 raised, what is the distance and impact of the
19 stronghold townhouses facing North Capitol? That's
20 260 feet away. To give you an idea how big 260 feet
21 is, it's almost the entire length of a football
22 field, is the distance between those building's
23 facades.

24 Now, let's turn to the issue of moderate
25 commercial as it concerns healthcare buildings in the

1 plan at 110 feet tall. At moderate commercial a
2 limit of 90 feet, two floors of the proposed
3 healthcare buildings on Parcel 1, we would have to
4 relocated 190,000 square feet of healthcare uses. If
5 we put it on cell 14, we would have an eight-story
6 building, 115 feet tall, closer to the existing
7 residence. We would have less preservation of Cell
8 14, and less open space.

9 If we put it south of the north service
10 court, we might have a building of six stories 85
11 feet tall. It disrupts the housing program which is
12 relocated into the park. Or, if you don't have that
13 relocated you lose affordable housing and you'd have
14 less park space.

15 If it's relocated south of the south service
16 court, it's six-stories at 85 feet tall, there's much
17 less park space, and it compromises the tripartite
18 reading of the landmark.

19 MR. WEERS: Good evening. My name is Adam
20 Weers and I'm a Principal with Trammell Crow Company,
21 and I am pleased to represent Vision McMillan
22 Partners tonight and share some thoughts with you
23 regarding Remand Issue 1A and Issue 3.

24 As described in detail in our previous
25 testimony the development program at McMillan

1 includes a mix of uses, the heart of which centers
2 around a residential program with a wide range of
3 housing types, affordable and market rate, rental and
4 for-sale, single and multifamily. Indeed, a full 20
5 percent of the total units at McMillan will be
6 affordable, the crown jewel of which is an 85-unit
7 senior affordable building. McMillan's retail
8 program, a key neighborhood priority from the
9 beginning, will help create a sense of place. And
10 with the addition of a grocer anchor to the team, the
11 District's newest Harris Teeter will serve as the
12 anchor to our overall retail program.

13 All of these uses are inextricably tied
14 together. To affect one part of the program is to
15 affect all parts. The density provided by the
16 healthcare component, particularly the increased
17 daytime population from the professionals working in
18 these new facilities, provides the additional boost
19 the retail program needs to attract a grocer.

20 As will be covered in more detail and
21 testimony by Mr. Dettman, the McMillan program
22 significant advances or addresses more than 100
23 separate Comp Plan policies spread throughout the 13
24 different elements of the plan, including the new
25 neighbors, housing affordability, and neighborhood-

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1 based senior housing aspects of the housing element,
2 and the core industries, grocery stores,
3 institutional growth, and linking residents to jobs
4 aspects of the economic development element.

5 In response to Remand Issue 1A, if the 115-
6 foot tall healthcare facilities were limited to
7 medium to moderate height, there is no way the
8 project would be able to advance so many of these
9 policies in such a strong fashion. Indeed, if we
10 take a step back and consider the totality of the
11 benefits that this development program generates, it
12 includes numerous components that are long-term and
13 far-reaching, thereby ensuring that the economic
14 development potential of the site is fully realized
15 as outlined in the use of large sites element of the
16 comp plan.

17 The 30-year net fiscal impact in particular
18 is of a magnitude rarely seen from any development.
19 McMillan will provide nearly \$1.2 billion of new tax
20 revenue, 67 percent of which is generated by the
21 engine of the development program, the healthcare
22 component.

23 Similarly, the vast majority of the thousands
24 of new construction and permanent jobs at McMillian
25 are generated by these new healthcare facilities. On

1 this point of jobs I would point out that one of the
2 most exciting components of the community benefits
3 agreement that VMP developed with ANC 5E, is the \$1
4 million in scholarships and grants we are investing
5 in the workforce development strategy we have dubbed
6 opportunity McMillan.

7 Through this innovative new plan, we are
8 directly meeting the linking residents to jobs and
9 developer proffers for schools, elements of the Comp
10 Plan. More to the point, we have partnered with the
11 community foundation to invest this \$1 million and
12 help us ensure that District residents get access to
13 the education and job training necessary to plug into
14 the jobs we are creating.

15 I would be remiss if I did not point out that
16 this CBA, which includes a combined \$5 million in
17 neighborhood benefits and proffers was agreed to by
18 the ANC and the development team in 2014, but has
19 been forced to sit idle for nearly three years. If
20 the development program at McMillan is reduced, all
21 of the hard work and negotiations that went into
22 developing such a significant benefits package would
23 be completely undone, and none of these benefits
24 realized.

25 Turning back to the development program, the

1 healthcare component is a sorely needed addition to
2 the District's aging healthcare infrastructure. The
3 District's healthcare facilities are, on average, the
4 second oldest in the nation, much of which is owed to
5 the infrequency with which new healthcare facilities
6 are built in our city. Indeed, the District has not
7 seen a major new healthcare development completed for
8 15 years when G.W. Hospital delivered in 2002.

9 While our buildings are built slowly, the
10 District's population is rising rapidly, with some
11 100,000 people moving in over the same 15-year
12 period. This place is even more demand on the
13 existing healthcare facilities throughout the city.
14 These two factors, lack of new supply and a rapidly
15 growing population, have led the District to be
16 ranked last in terms of healthcare facilities per
17 capita among all major metropolitan areas in the
18 nation.

19 Locating McMillan directly adjacent to the
20 Washington Hospital Center campus perfectly positions
21 us to help address these systemic issues, as well as
22 directly meet the core industries and institutional
23 growth elements of the Comp Plan. Healthcare real
24 estate in the District places high value on adjacency
25 to existing hospitals and the circles on this map

1 represent concentrations of healthcare building
2 throughout the city. The large yellow star is the
3 three and a half million square feet of hospitals
4 next to McMillan. This adjacency offers a unique
5 opportunity for these systems to modernize
6 significant portions of their operations by expanding
7 across the street and then repurposing the newly
8 freed up space on their existing campus.

9 I would note here that the involvement of
10 these systems in McMillan is not in lieu of expansion
11 to other locations throughout the District. Indeed,
12 their involvement in McMillan can help facilitate
13 those other efforts. By modernizing their main
14 campus a system can create tremendous value by
15 streamlining operations. A major modernization of
16 its core operations can help a system increase
17 revenues, decrease costs, and often provides
18 fundraising and philanthropic opportunities, all of
19 which feed the bottom line and help fuel their other
20 operations often disbursed throughout the city.

21 I would also point out, that while this
22 adjacency makes McMillan attractive to healthcare
23 users, this does not translate to general office
24 uses. To put it more clearly, outside of healthcare
25 there is no discernible large-scale, commercial

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1 demand for this site. The District's general office
2 market is in a trough and appears poised to remain so
3 for the foreseeable future. But even in a strong
4 office market, McMillan does not currently have the
5 attributes a general office development site needs to
6 be successful.

7 In designing the Parcel 1 buildings, our team
8 embraced forward thinking smart growth principles,
9 thereby abandoning the historic formula for big
10 healthcare, which was to place massive sprawling
11 complexes on very large land parcels, a phenomenon
12 seen locally at United Medical Center and Providence
13 Hospital. Modern healthcare design incorporates
14 smart growth principles like taller buildings,
15 vertical integration, smaller footprints, underground
16 parking, and mixed use environments with rich amenity
17 bases and open green public spaces. These features
18 help enhance the patient experience and attract the
19 best and brightest human capital.

20 By pursuing these principles, Parcel 1 is
21 squeezing nearly 800,000 square feet of density into
22 less than four acres. In addition, the building
23 configuration was directly influenced by the sight
24 context and by community input. We pushed our
25 building back from North Capitol as a response to the

1 stronghold neighborhood, creating a 206-foot buffer.
2 This buffer allowed an acre of new park space, and
3 the preservation of Cell 14. We pushed our building
4 away from the north service court to more
5 appropriately relate the buildings to the historic
6 assets preserved within this key element of the plan.
7 The creation of the healing gardens came directly
8 from a community request to shrink the building
9 footprint in order to make room for additional green
10 space. This move also added to our preservation
11 program and enhanced our ability to reenvision the
12 Olmstead Walk's most prominent section.

13 And lastly, the Parcel 1 buildings were
14 shortened by 15 feet and moved again to maintain the
15 historic view corridors of the adjacent armed forces
16 retirement home site.

17 With each of these steps, the healthcare
18 component was significantly reduced in order to
19 retain substantial portions of the site as open
20 space, and make it useable for recreational purposes.
21 In response to Remand Issue 3, the only feasible way
22 to accomplish this is to allow the development
23 program to recapture some of its lost density by
24 rising higher than medium to moderate height would
25 normally allow.

1 Through all of these moves, the healthcare
2 facilities were forced to absorb material changes
3 without upsetting our long-running conversations with
4 the users who will serve as our anchor tenants. We
5 have now reached the floor and are at a point where
6 any further material reductions jeopardize the
7 continued existence of the healthcare component.

8 As discussed in my testimony on May 8th,
9 2014, TCC is the largest healthcare developer in the
10 country with more than \$4 billion of healthcare
11 development completed or in process. Our experience
12 guided our vision for the commercial program which
13 centers on a campus that will house a range of
14 healthcare and life science users, including
15 everything from small physician groups to mid-sized
16 organizations, to large anchor tenants, and a
17 critical mass sufficient to fit all of these
18 components.

19 The anchor tenants in particular are a
20 crucial part of the project's viability in these
21 early stages. It is a typical development dynamic
22 for anchor tenants to be the first to commit to a
23 project and act as a catalyst for the project to
24 start.

25 As you might imagine, this creates

1 significant leverage for these potential users and
2 means that they are very influential and can drive a
3 hard economic bargain. Another typical development
4 dynamic is for anchor tenants to receive terms that
5 are below market in exchange for this early
6 involvement. That factor is directly at play in our
7 current negotiations, which create very real
8 challenges given the cost of some of our buildings
9 design features, like underground parking.

10 In addition, these anchors have unusually
11 large space needs that come with particular design
12 requirements, one of which I have highlighted here.
13 The floor to floor heights required by all of these
14 healthcare users are very different from a
15 conventional office user given their particular need
16 for large interstitial spaces to accommodate
17 mechanical, electrical, and plumbing components.

18 If the proposed eight-story buildings on
19 Parcel 1 had typical commercial floor to floor
20 heights, it would only rise to 90 feet. The Parcel 1
21 facilities, by contrast, have floor to floor heights
22 rising as tall as 18-feet-6-inches in some cases,
23 driving this 8-story facility up to 115 feet.

24 If the height of Parcel 1 were reduced to 90
25 feet, it would eliminate two full floors of the

1 building and slash the density of the healthcare
2 program by 190,000 square feet. This equates to a 27
3 percent reduction in density from our original
4 filing. We have been in confidential negotiations
5 with two anchor tenants from McMillan for several
6 years. These users are large sophisticated
7 institutions that require extensive lead times to
8 organize and effect this complex transaction.

9 The on again, of again dynamic of McMillan
10 impacts their ability to make these commitments and
11 has made our negotiations quite challenging. To
12 layer on such a stark cutback to the commercial
13 program now would bring these negotiations to an
14 absolute halt. Without an anchor tenant secured the
15 healthcare development cannot and will not proceed.

16 Obviously the ramifications of this are not
17 confined to the commercial program, given the
18 interconnectedness and interdependencies between all
19 components of McMillan. Without the commercial
20 program we lose our Harris Teeter. And without a
21 grocer anchor, the retail program dwindles, directly
22 contradicting the neighborhood shopping and grocery
23 store elements of the Comp Plan.

24 In losing the commercial and retail program,
25 the residential component of McMillan is severely

1 impacted, jeopardizing its ability to advance the
2 housing affordability and neighborhood-based senior
3 housing elements of the Comp Plan. Without the
4 commercial or retail density, McMillan loses
5 thousands of jobs, hundreds of millions of dollars of
6 taxes, and can no longer provide the \$5 million of
7 benefits included in the CBA. This runs completely
8 counter to the connecting residents to jobs and
9 developer proffers for schools, elements of the Comp
10 Plan.

11 Those of us who have dedicated the last 11
12 years of our lives to envision in greatness for
13 McMillan, have often referred to the solution we
14 arrived at as a Swiss watch. The intricacy and
15 craftsmanship required to fit each component of the
16 plan together just so was nothing short of
17 remarkable, when you consider the numerous
18 perspectives and stakeholders involved. All the more
19 so when you overlay the wait, three decades of hopes,
20 dreams, and expectations of an entire city for a site
21 that has lain fallow and inaccessible for far too
22 long.

23 For a single project to advance more than 100
24 separate Comp Plan policies as significantly as this
25 is astounding, and everyone involved in the years of

1 work it has taken to bring us to this point, takes
2 pride in that fact. This is the offering McMillan
3 brings in exchange for 10 percent of the site,
4 responsibly rising to 115 feet in height. Given all
5 that McMillan accomplishes, and the purview of this
6 Commission, we feel confident this plan is worthy of
7 your approval and respectfully ask you to do just
8 that.

9 MR. GLASGOW: Mr. Bogorad, would you please
10 identify yourself for the record and proceed with
11 your testimony?

12 MR. BOGORAD: Yes. Good evening. My name is
13 Leonard Bogorad. I'm a managing director of RCLCO,
14 Robert Charles Lessor and Company, a real estate
15 economics consulting firm.

16 RCLCO was retained to evaluate whether the
17 McMillan redevelopment will cause destabilization of
18 land values as reflected in higher home prices and
19 rents, and displacement of residents in the
20 surrounding neighborhoods, part of Issue 4A.

21 I compiled and examined data on home price
22 and rent changes, reviewed some of the scholarly
23 literature relating to gentrification, including some
24 studies of gentrification in the District, and took
25 account of the applicant's plans and commitments, and

1 I determined that Green Door advisors' June 2011
2 conclusions regarding jobs, tax revenues, and net
3 fiscal impact are still reasonable, and if anything,
4 conservative.

5 My expert report, which has been submitted,
6 has six key conclusions, and a few of the exhibits in
7 my report will be up on the screen as I talk. First,
8 as is true in many areas of the city, the
9 neighborhood surrounding the project are already
10 experiencing increases in property values and rents
11 that will likely continue whether or not the project
12 occurs. The project will not set price and rent
13 increases in motion. Rather, this is already
14 occurring without any impetus from the project.
15 There is no reason to conclude that the plans for
16 this project have caused this trend, or that the
17 project itself will have a significant impact on this
18 established trend of home prices and rent increases.

19 Specifically, as you can see on the exhibit
20 on the screen, home prices in Bloomingdale, LeDroit
21 Park, have been increasing even faster than in Dupont
22 Circle. Row houses sold in 2016 that had been
23 purchased in 2008 to 2010 when up in price by 9.3
24 percent annually in Bloomingdale, LeDroit Park,
25 versus 3.3 percent annually in Dupont Circle. And

1 other exhibits in the report show that home prices in
2 the neighborhoods near the project have already
3 reached high levels.

4 As you can see on this next exhibit, rents in
5 the surrounding neighborhood are also increasing
6 faster than in the city as a whole. Rents in the
7 part of Bloomingdale, closest to McMillan, increased
8 by 64 percent from the period ending in 2009 to the
9 period ending in 2015.

10 And as you can see in this exhibit, my
11 findings are consistent with studies of
12 gentrification in the District, which concluded that
13 neighborhoods surrounding the project have been
14 gentrifying since at least the period beginning in
15 about 2001. The study summarized in this slide shows
16 that Bloomingdale, LeDroit Park, and Brookland
17 gentrified between 2000 and 2013, for example.

18 Furthermore, scholarly studies do not
19 attribute gentrification to project such as the
20 McMillan redevelopment, and the study specifically
21 found no relationship between large scale
22 neighborhood investment projects and changes in
23 nearby rents. The 81-paged, 2015 Catholic University
24 study of gentrification in Bloomingdale, excerpts of
25 which were attached to Friends of McMillan's April

1 3rd letter, includes an extensive discussion of the
2 causes of Bloomingdale gentrification, but says
3 nothing about plans from McMillan being one of the
4 causes of that gentrification.

5 Second, many studies have found that new
6 housing in all price ranges, and specifically new
7 affordable housing, are some of the best ways to
8 mitigate increasing prices in rents, and these will
9 be provided by the project without the demolition or
10 conversion of existing housing.

11 A main cause of higher housing prices and
12 rents is an imbalance between demand and supply. So
13 development of new housing in all price ranges is
14 critical. For example, as you can see on this slide,
15 the increase in apartment construction in various
16 parts of the city is resulting in measurable slowing
17 of rent increases and in some neighborhoods, with a
18 lot of new construction, rents are actually going
19 down.

20 Third, the project will provide over 3,000
21 permanent jobs on site, as you've heard, particular
22 in the healthcare sector, and about 3,000
23 construction jobs. These jobs, combined with the
24 workforce development the applicant is committed to,
25 means that the project will be a potential source of

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1 income for neighborhood residents that will help them
2 afford to stay in their existing homes.

3 Fourth, the many homeowners in the
4 surrounding neighborhoods have actually benefitted
5 from the increase in home values that has been
6 occurring, and the value increases that will likely
7 continue with or without the project. The risk that
8 neighborhood homeowners will be involuntarily forced
9 to sell will be greatly mitigated by a wide range of
10 District programs, as will be discussed by Mr.
11 Dettman.

12 Fifth, the project will also provide
13 amenities that you've heard about, such as full
14 service supermarket and other neighborhood serving
15 retail, a public park, community center, and pool,
16 and additional healthcare services, all of which will
17 benefit neighborhood residents of all income levels.

18 And finally, the project will not cause
19 displacement of existing businesses, and in fact the
20 added customers will be helpful to them.

21 Overall, not only with the McMillan
22 redevelopment not add in any significant way to the
23 price in rent increases that have already been
24 occurring in the surrounding community, it will in
25 fact mitigate many of the negative impacts of these

1 increases and deliver many positive impacts. These
2 are exactly the types of benefits that are vital to
3 offsetting the negative impacts of home price and
4 rent increases that are already well underway in the
5 surrounding neighborhoods.

6 MR. GLASGOW: Thank you, Mr. Dettman, please
7 identify yourself for the record and proceed with
8 your testimony.

9 MR. DETTMAN: Shane Dettman, Director of
10 Planning Services for law firm, Holland and Knight.
11 Good evening, Mr. Chairman and members of the
12 Commission. My testimony this evening will
13 specifically walk through each of the five issues by
14 relying upon the information provided to you thus
15 far, as well as taking a more detailed look at the
16 issues that pertain to the interpretation and the
17 application of the Comprehensive Plan.

18 As to issue number 1, the applicant would be
19 unable to advance the Comp Plan policy cited in the
20 order. If development were limited to moderate and
21 medium density. In addition to considering the
22 policy cited in the order, I conducted an exhaustive
23 review of the project's overall consistency with the
24 Comp Plan, which is included in our written
25 submission. This was done for two reasons. First,

1 rather than focusing on only a few policies, the
2 proper application of the Comp Plan entails balancing
3 consistency across all elements and policies. Thus,
4 it's important to show the extensive number of
5 policies that will be advanced by the project, which
6 goes far beyond those specifically cited in the
7 order.

8 Second, it's important to identify the extent
9 to which there are competing policies when the
10 project is assessed for overall consistency with the
11 Comprehensive Plan.

12 In the end, this review identified over 100
13 Comp Plan policies that are advanced by the project.
14 And not one instance of a competing policy that, as
15 required under the PUD evaluation standards, would
16 prevent the Commission from concluding that on
17 balance the project as a whole is not inconsistent
18 with the Comp Plan, including the one Mid-city policy
19 favoring moderate to medium density that the
20 opposition party claims weighs against approval of
21 the project.

22 Regarding density, we maintain that the
23 project, as designed, is moderate to medium density
24 on the basis that when calculated as an aggregate
25 across the entire site, even after excluding private

1 rights of way, is consistent with the density
2 permitted as a matter of right in moderate density
3 commercial zones. This way of calculating density
4 for PUDs is consistent with the zoning regulations,
5 the land-use element of the Comprehensive Plan, how
6 the Commission has computed density for countless
7 PUDs, and has been upheld by the court, even in this
8 case.

9 Notwithstanding, the applicant submits that
10 the project density would still be consistent with
11 the Comp Plan, even if calculated in accordance with
12 the language of the mid-city policy that states,
13 where development takes place, it should consist of
14 moderate to medium density housing, retail, and other
15 compatible uses.

16 As you know, development will take place on
17 this site on parcels 1 through 5, thus using only the
18 land area of these parcels, and excluding private
19 rights of way results in an overall density of 4.4
20 FAR, of which 2.4 FAR will be nonresidential. These
21 densities are consistent with a moderate density C-3-
22 A PUD.

23 Thus, the question regarding development in
24 Parcel 1 is only a question of height, and whether
25 the additional height required to accommodate the

1 healthcare facility is consistent with the Comp Plan.
2 As Mr. Bell described, the master plan has gone
3 through several alternatives in response to extensive
4 input from the community, several District and
5 Federal Agencies, and as a result of the LDA process
6 and limitations on public investment.

7 As Mr. Weers discussed, several significant
8 reductions have been made to Parcel 1. Also in
9 response to the community and to agency input. In
10 the end, to provide the approximately 12 acres of new
11 parks and open space, including the large contiguous
12 park at the south end of the site, development has
13 been clustered at the north end of the site, and
14 there is a need for flexibility as to height on
15 Parcel 1.

16 As shown on the slide, this clustering of
17 development and additional height is consistent with
18 the flexibility provided in the Comprehensive Plan,
19 and PUD regulations, and is critical to the
20 applicant's ability to advance not only other
21 policies cited in the order, but also numerous other
22 Comp Plan policies as is show in our analysis.

23 The higher height on Parcel 1 is only
24 necessary to accommodate the special floor to floor
25 requirements of the healthcare facility, not to gain

1 additional density, and not to gain additional
2 stories. In fact, if Parcel 1 was proposed for
3 typical office use, the proposed eight-story building
4 could fall within the height permitted in a moderate
5 density commercial PUD, and yet would maintain the
6 same exact density as is proposed.

7 However, as Mr. Weers stated, there is
8 currently no market for a typical office at McMillan,
9 thus reprogramming Parcel 1 for typical office to
10 reduce the height is not feasible. Nor is removing
11 two floors.

12 In other words, if development on Parcel 1
13 and on every other parcel, were limited to moderate
14 and medium density and height, advancement of the
15 policies cited in the order, and many other Comp Plan
16 policies would be negatively affected. Specifically,
17 open space would be reduced, negatively affecting
18 advancement of policies, including mid-city policies
19 specific to McMillan regarding the expansion of open
20 space in underserved areas of the District.

21 Residential would be reduced, negatively
22 affecting advancement of housing policies related to
23 expanding market rate, affordable, senior, and family
24 sized housing. Healthcare would be reduced,
25 negatively affecting advancement of economic

1 development policies aimed at growing the District's
2 core industries. Retail would be reduced,
3 potentially losing the grocery store, and negatively
4 affecting advancement of other economic development
5 policies related to expanding the retail sector,
6 creating additional shopping opportunities, and
7 developing grocery stores in underserved areas.

8 And finally, impacts on historic features,
9 views, and on the surrounding neighborhood would
10 increase as a result of distributing greater density
11 and height across a greater swath of a site, thereby
12 negatively affecting advancement of land-use, urban
13 design, and historic preservation policies relating
14 to the scale of development on large sites,
15 protection of existing historic assets, and the
16 compatibility with adjacent development.

17 Regarding the wing of competing policies,
18 given the size and enormous potential of this site it
19 is no surprise that numerous Comp Plan policies apply
20 to the project, and that there may be policies that
21 promote competing interests.

22 For guidance in which competing policies
23 should be given greater weight, the Commission need
24 only look to the implementation element, which
25 addresses the manner in which policies are

1 interpreted and applied.

2 Specifically, the policy relating to the
3 interpretation of the District element states, quote,
4 recognize the overlapping nature of the Comp Plan
5 elements as they are interpreted and applied. An
6 element may be tempered by one or more other
7 elements. Since the land-use element integrates the
8 policies of all other District elements, it should be
9 given greater weight than the other elements.

10 The land-use element reflects similar
11 language as I've just stated, as do prior Comp Plan
12 statutes, and their extensive legislative history.
13 So, to the extent that the policy cited in the order
14 compete with the one mid-city policy favoring
15 moderate to medium density, which I do not believe is
16 the case, this does not automatically weigh against
17 approval of the project. Rather, it simply means
18 these policies should be balanced together with the
19 many other policies that apply to the project, with
20 greater weight given to the guidance and policies of
21 the land-use element, and the flexibility provided by
22 the Future Land-Use Map or the FLUM.

23 The flexibility to allow additional height
24 needed on Parcel 1 is permitted by the land-use
25 element and the FLUM. Much like the text of the Comp

1 Plan, the FLUM provides general guidance that is not
2 binding on the Commission. The legislative history
3 has consistently described the FLUM as being a soft-
4 edge map that is intended to provide policy guidance
5 while affording needed flexibility, and that it's
6 categories and classifications are not directly
7 comparable to zone districts.

8 As demonstrated by the excerpt shown on this
9 slide, the current guidelines for using the FLUM
10 provide similar flexibility, which the Court
11 acknowledged in its order by specifically identifying
12 the two ways in which more intensive development than
13 is otherwise reflected in the FLUM may be
14 permissible. A larger development that as a whole is
15 consistent with the FLUM may contain individual
16 buildings that are greater in height and density, and
17 the PUD process in and of itself may permit greater
18 height and density.

19 Thus, when balancing the one mid-city policy
20 with the numerous Comp Plan policies that will be
21 advanced across multiple District elements as a
22 result of the additional height needed on Parcel 1,
23 the Commission can place greater weight on the land-
24 use element and the flexibility afforded by the FLUM
25 to support a finding that the project as a whole is

1 not inconsistent with the Comprehensive Plan.

2 As to issue No. 2, based upon the clear
3 guidance provided by the Comp Plan and its
4 legislative history, the Comp Plan policies cited by
5 Friends of McMillan fail to weigh against approval of
6 the project. Where there may be an inconsistency
7 between the project and the policies cited by Friends
8 of McMillan, as previously stated, this does not
9 automatically weigh against approval, but rather
10 requires the Commission to balance those policies
11 with the many other policies advanced by the project
12 to come to a determination as to whether the project
13 as a whole is not inconsistent with the Comp Plan.

14 Thus, even if a proposal conflicts with one
15 or more individual policies, this does not in and of
16 itself, preclude the Commission from concluding that
17 the action would be consistent with the Comp Plan as
18 a whole.

19 Friends of McMillan claims that the one mid-
20 city policy, the mid-city policies that are specific
21 to McMillan, and other Comp Plan policies that
22 discourage the placement of large buildings near low
23 density residential neighborhoods, and encourage the
24 geographic dispersion of healthcare facilities,
25 weighs against approval of the project. These claims

1 misinterpret the Comp Plan, and the manner in which
 2 it is intended to be used.

3 First, as already discussed, I believe the
 4 project is consistent with the mid-city policy that
 5 recommends moderate to medium density where
 6 development take place on the site. However, should
 7 the Commission interpret this policy as applying to
 8 each individual parcel, the numerous additional
 9 policies that would be advanced by the Commission
 10 providing the flexibility for the additional height
 11 needed on Parcel 1, which is appropriate under the
 12 FLUM guidelines and PUD regulations, would far
 13 outweigh the nonmandatory language of this one mid-
 14 city policy.

15 Regarding the protection of historic assets
 16 and view sheds, the project will preserve all 24
 17 existing above-ground historic structures along the
 18 service courts, and preserve all of Cell 14 and a
 19 substantial portion of Cell 28. Views across the
 20 southern end of the site, and toward the south and
 21 southwest, will be maintained, as will key visual
 22 connections between the north and south service
 23 courts. Select landmarks along the reestablished
 24 Olmstead Walk, and from the armed forces retirement
 25 home.

1 Regarding the placement of large buildings
2 near low density residential neighborhoods, it's
3 worth noting that the neighborhood surrounding this
4 site are not low density, but rather are moderate
5 density consisting of row homes and low-rise
6 apartment buildings.

7 Nonetheless, I believe the master plan is
8 effective at integrating the site into the city
9 fabric and relating the proposed development to the
10 surrounding context while protecting adjacent
11 neighborhoods. As shown on this slide, consistent
12 with the Comp Plan, the project will reintegrate this
13 large site, this large self-contained site back into
14 the city, in part by establishing new east/west
15 connections that closely replicate the street pattern
16 proposed for the site prior to the construction of
17 the filtration plant, with slight adjustments made to
18 balance preservation of existing historic assets, and
19 to accommodate building program.

20 New north/south connections are introduced to
21 create an appropriate block pattern, maintain a
22 visual relationship between the service courts, and
23 to provide options for circulation. The proposed
24 buildings are compatible with adjacent uses and have
25 been designed and placed in a manner that avoids

1 and/or mitigates adverse impacts.

2 Impacts to the row homes to the south are
3 minimized by the location of the large contiguous
4 park and recreation center at the south end of the
5 site. To further protect adjacent neighborhoods, the
6 taller healthcare facility is located at the northern
7 end of the site, across from the more intensive
8 development of the hospital center.

9 Finally, along North Capitol Street, the
10 healthcare facility is set back approximate 260 feet
11 from the row homes to the east, buffered by Cell 14
12 and the Olmstead Walk, and the remaining buildings
13 along North Capitol step down in height are
14 compatible with the surroundings.

15 Regarding Issue 3, again the project is not
16 high density, and the design of the buildings on
17 Parcel 1 is the only feasible alternative that allows
18 retention of a substantial part of the site as open
19 space, and make the site usable for recreation
20 purposes, while at the same time balancing the many
21 interests and leveraging this site to advance other
22 Comp Plan objectives for housing, economic
23 development, and community facilities. All within
24 the constraints of the site and the surrounding
25 context.

1 In order to retain a substantial portion of
2 the site as open space, the applicant clustered
3 development at the north end of the site. In
4 addition, in response to the community's preference
5 for more open space on Parcel 1, and as a result of
6 the higher floor to ceiling heights, the healthcare
7 facility requires some additional height that is
8 above the typical moderate density range.

9 As already discussed, to require parcel 1 to
10 meet moderate density requirements as to height and
11 density, would require either reprogramming the
12 entire healthcare facility for typical office use, or
13 removal of two floors, neither of which is feasible
14 as it would jeopardize the entire project,
15 significantly affecting -- significant affect the
16 extent to which the project advances Comp Plan
17 policies, and increases impacts on the surroundings.

18 Regarding issues 4 and 5, I'll address these
19 issues together as both have to do with impacts.
20 Whether those impacts will be adverse or favorable,
21 and how the Commission should judge, balance, and
22 reconcile the impacts with project benefits and
23 development incentives.

24 As is no surprise to the Commission, any
25 large development has the potential to have impacts,

1 both beneficial and adverse, that will range in
2 intensity and duration. Thus, in addition to Comp
3 Plan consistency, the PUD evaluation standards
4 require the Commission to determine if the project
5 impacts will be favorable, capable of being
6 mitigated, or acceptable given the quality of public
7 benefits.

8 Regarding environmental impacts. Any
9 environment impacts caused by the project will be
10 favorable, or capable of being mitigated. In
11 addition to the substantial storm water improvements
12 already made as part of the D.C. Water's long-term
13 control project on this site, the project itself will
14 include a new storm water management system that will
15 meet or exceed the District's current storm water
16 regulations through several LID strategies. This
17 will significant reduce the volume of untreated
18 runoff entering the combined sewer system, thus
19 reducing load on the District's infrastructure, and
20 the potential for untreated overflow is into the
21 Anacostia Water Shed.

22 The project will also significantly add to
23 the District's tree canopy, which is known to provide
24 new habitat, improve air quality, and help reduce
25 urban heat island effects.

1 In addition, the overall design of the master
2 plan, and each individual building will minimize
3 impacts on the environment through the utilization of
4 LID and green building methods. At minimum the
5 overall development will be certified LEED ND Gold,
6 and each individual building will be certified LEED
7 Silver.

8 The project will also satisfy the District's
9 green area ratio requirements. Currently the site is
10 absent of any meaningful tree canopy and landscaping,
11 and what does exist is unhealthy. You see on the
12 slide before you, some of the major LID strategies
13 that will provide significant environmental benefits.
14 The lack of substantial adverse environmental impacts
15 and the potential for environmental benefits is
16 supported by the applicant's recent completion of the
17 District's environmental impact screening process,
18 which involve an extensive review of the potential
19 environmental impacts that took place over the course
20 of 13 months, and resulted in a determination that a
21 full EIS is not required for this project.

22 Regarding noise, the land use and
23 environmental protection elements of the Comp Plan
24 contain specific policies relating to avoiding,
25 minimizing, and mitigating noise impacts through

1 land-use compatibility, regulation of certain
2 commercial industrial uses, and reducing exposure to
3 excessive noise through the enforcement of the
4 District's existing noise control regulations which
5 are administered by DCRA.

6 Regarding land-use compatibility, the Comp
7 Plan talks about managing commercial development
8 through traffic and noise control, parking and
9 loading management, setbacks, landscaping, height
10 step downs, and other architectural and site planning
11 measures, all of which have been incorporated into
12 this project and will mitigate the impacts on noise.

13 The Comp Plan talks about ensuring that
14 zoning protects the quality of life in nearby
15 residential neighborhoods, by limiting the location
16 of high impact commercial and industrial uses, which
17 are not the types of uses proposed in this project.
18 And so, in terms of land-use compatibility none of
19 the uses proposed in this project will inherently
20 cause adverse noise related impacts, and in fact, the
21 uses proposed in this project are found throughout
22 the area immediately surrounding the site.

23 The environmental protection element contains
24 policies that address the potential impacts of noise
25 on the environment and on the general health and

1 well-being of District residents. Again, referring
2 to noise and land-use compatibility, this element
3 states, avoid locating new land uses that generate
4 excessive noise adjacent to sensitive uses such as
5 housing, hospitals, and schools. No such uses are
6 being proposed as part of this project.

7 Finally, as it relates to construction
8 related noise and post-construction noise generated
9 by residents, employees, and visitors to the site,
10 the Comp Plan encourages continued enforcement of the
11 District's existing noise regulations governing day
12 and night time levels of commercial, industrial, and
13 residential land uses, motor vehicle operations,
14 solid waste collection and hauling, and the operation
15 of construction equipment and other noise generating
16 activities.

17 As previously stated, these regulations that
18 are administered and can only be administered by DCRA
19 during and after construction of the project.

20 Regarding destabilization of land values and
21 displacement of neighboring residents, Mr. Bogorad
22 already thoroughly addressed this topic, so just to
23 summarize his findings, the project will not
24 significantly add to the increase in land values that
25 is already occurring in the area without the project,

1 and instead will help mitigate the effects of
2 destabilization by reducing the imbalance between
3 housing supply and demand. The project is not
4 expected to cause significant displacement and will
5 contribute to mitigating this issue by adding a
6 substantial amount of new market rate and affordable
7 housing.

8 The jobs created and the job training
9 provided by the project will be a potential source of
10 new and increased income that will help existing
11 residents stay in their homes.

12 Finally, there are many tools the District
13 has to help address these issues. Some fall under
14 the Commission's purview, such as IZ, allowing
15 accessory dwelling units, administering housing
16 linkage, housing trust fund contributions for non-
17 residential penthouse habitable space, and increased
18 affordable housing, and other housing and employment
19 benefits gained through the PUD process.

20 Many other programs fall outside the
21 Commission's purview that are available to District
22 residents, and can be modified by District agencies
23 as necessary to effectively address these issues.
24 Some of these programs are listed before you on this
25 slide. I mention these programs simply because it's

1 important to point out that addressing these issues
2 requires a multi-prong solution involving multiple
3 agencies and programs.

4 The PUD regulations require the Commission to
5 judge, balance, and reconcile the relative value of
6 the benefits and amenities offered, the degree of
7 development incentives requested, and any potential
8 adverse effects. Overall, the project will have
9 numerous favorable impacts on the environment,
10 housing, healthcare services, and the operation of
11 city services and facilities, and any adverse impacts
12 will be mitigated or be acceptable given the high
13 quality of the benefits and amenities provided by the
14 building program, housing, grocery store, community
15 center, parks and open space, the additional jobs
16 created, increased tax revenue, historic
17 preservation, and significant contributions made as
18 part of the \$5 million community benefits agreement.

19 Further, compared to the size and complexity
20 of this site, the degree of development incentives
21 being requested is minimal, with the only real
22 notable incentive being the flexibility needed for
23 the additional height that is needed to accommodate
24 the healthcare facility on Parcel 1. Thus, when you
25 step back, judge, balance, and reconcile all of the

1 things the Commission must consider when deciding
2 this PUD, the wide range of favorable impacts and the
3 mitigation that will be implemented to address any
4 adverse impacts, the favorable tradeoffs between the
5 substantial number of Comp Plan policies that will be
6 advanced by providing the height incentive on Parcel
7 1 to accommodate the healthcare facility, which is
8 mitigated through the effective site planning and
9 design.

10 The fact that the project as a whole is
11 overwhelmingly not inconsistent with the Comp Plan,
12 and the strength of the substantial quantity and
13 quality of public benefits and amenities offered in
14 each of the categories identified in the PUD
15 regulations, it is clear that the applicant has met
16 its burden of proof, that all applicable standards
17 under the PUD regulations have been met, and that the
18 project should be approved.

19 That concludes my presentation.

20 MR. GLASGOW: Thank you, Mr. Dettman.

21 Mr. Chairman, that concludes our direct
22 presentation.

23 CHAIRPERSON HOOD: Okay. I want to thank the
24 applicant for the presentation, and let's see if we
25 have any follow-up comments or questions.

1 Commissioner May?

2 MR. MAY: Just a few. First, for Mr. Bell,
3 and well actually many people referenced it, but the
4 plinth that you referred to as being retained, that
5 really is just the southernmost portion?

6 MR. BELL: No, it goes all the way around the
7 site. It emerges out of the site. What happens is
8 it's in the grade on the north portion --

9 MR. MAY: Uh-huh.

10 MR. BELL: -- there, because the site retains
11 it's --

12 MR. MAY: Yeah.

13 MR. BELL: -- level, and it emerges out on
14 the sides. But the setback we have in the Olmstead
15 Walk means that that experience will be complete
16 around the edges of the building.

17 MR. MAY: Okay. And that was the argument
18 before HPRB and they agreed that you're preserving
19 the Plinth?

20 MR. BELL: They agree that we're preserving
21 the plinth, yes.

22 MR. MAY: Yeah, okay. You made it -- in one
23 of your plans you showed the park section at the
24 south, and it was inclusive of the street area. Was
25 that included in the acreage that you were citing?

1 MR. BELL: We refer to the south park as six
2 acres, plus the south service court, 6.2, plus the
3 south service court is an eight-acre park, and the
4 reason why we referred to that that way is because we
5 do have park features in the south service court.

6 MR. MAY: Uh-huh.

7 MR. BELL: Even though it's largely a paved
8 area. We'll have a children's splash area and the
9 area will be closed off and used for events. So,
10 it's referred to as part of the overall park system.

11 MR. MAY: Okay. Thank you. That's helpful
12 to understand that distinction.

13 And then, you showed us a progression of
14 planned development over the years, most of which
15 we'd never seen before. Maybe we saw a little bit of
16 it early on, but the -- what were the relative
17 densities of all of those plans?

18 MR. BELL: I don't know. I couldn't tell you
19 offhand. Probably -- I mean, I can't tell you with
20 precision. Probably around, I don't know, maybe less
21 than what we proposed sometimes, and sometimes more.
22 I can't -- I don't know offhand exactly.

23 MR. MAY: Yeah. I mean, is that something
24 that you can actually provide for us, what the FAR
25 was at each of those stages?

1 MR. GLASGOW: I think we could provide that
2 for the record.

3 MR. MAY: Okay. Okay. And, Mr. Bogorad, on
4 the, one of your slides, Slide 33, I saw something
5 that was curious to me, which was that you're showing
6 the growth in median rent, 2009 to 2015. Want to
7 bring that slide? There you go.

8 Okay. So, overall, rents in D.C. going up 37
9 percent, Bloomingdale North, which I assume is what
10 butts up against the site.

11 MR. BOGORAD: Correct, yeah.

12 MR. MAY: At 64 percent growth in rent. But
13 Bloomingdale South, only 17 percent. I don't know
14 how -- I mean, south only -- I mean, Bloomingdale
15 ends at Rhode Island. Is that right?

16 MR. BOGORAD: Yes, I believe that's the
17 boundaries that are used for those sort of things
18 but --

19 MR. MAY: Yeah. So, is there a reason why
20 it's --

21 MR. BOGORAD: -- there is (simultaneous
22 speech).

23 MR. MAY: -- why it's --

24 MR. BOGORAD: There are two different census
25 tracts and --

1 MR. MAY: Right.

2 MR. BOGORAD: -- one is north and one's
3 south.

4 MR. MAY: Okay. Is there a reason why it's
5 so different?

6 MR. BOGORAD: I don't really know why it's
7 different. I know they're both, you know, both
8 significant increases, but I don't actually know.

9 MR. MAY: Yeah. And this came out of the --

10 MR. BOGORAD: This is from the census data,
11 yeah.

12 MR. MAY: Just from the census data. And in
13 the various literature that you read was there any
14 reference to that fact, that differential?

15 MR. BOGORAD: No. No.

16 MR. MAY: Any explanation? No?

17 MR. BOGORAD: I'd never even seen the data
18 before we happened to get it out of the census.
19 Certainly --

20 MR. MAY: And is this inclusive of the
21 Stronghold neighborhood as well?

22 MR. BOGORAD: No, Stronghold is on the
23 eastside of North Capitol, and --

24 MR. MAY: It's a separate --

25 MR. BOGORAD: -- we're getting into issues

1 and that's a bigger -- it's a bigger census tract
2 that includes the area and a lot of that is on the
3 other side of the cemetery so you --

4 MR. MAY: Right. So it's hard to judge.

5 MR. BOGORAD: -- end up (simultaneous speech)
6 trying to get --

7 MR. MAY: Yeah.

8 MR. BOGORAD: -- this kind of data for
9 that --

10 MR. MAY: Right.

11 MR. BOGORAD: -- geography.

12 MR. MAY: Okay. All right. Yeah, I'm
13 curious about why that -- why there is that
14 difference within Bloomingdale.

15 MR. BOGORAD: I must say, you know, it's
16 interesting. With home price increases they've
17 actually been somewhat higher as you get farther
18 south, farther away from McMillan. So, it may be a
19 fluke as to what units happen to be rented during one
20 time period or another. It's hard to know.

21 MR. MAY: Right. Okay. Thank you. That's
22 it for my questions.

23 CHAIRPERSON HOOD: Only thing I would add,
24 let's make sure we get the correct boundaries of
25 Bloomingdale, because I don't think that was correct.

1 And you can work with the community. We don't have
2 to answer it now, but I'd like to make sure that this
3 record is straight moving forward. So, I do know
4 that I don't think that information is exactly
5 correct.

6 MR. BOGORAD: Yeah. Actually, you're
7 correct. I apologize, sir. I'm just looking at,
8 it's a little hard to see what the census tracts are
9 on Exhibit 1-10 in our study, and the northern one is
10 north of Rhode Island and then there is the area
11 between Rhode Island and Florida that's also
12 considered part of Bloomingdale, and that's the south
13 areas, they're called.

14 CHAIRPERSON HOOD: Okay. Let's just make
15 sure.

16 MR. MAY: Thank you.

17 MR. BOGORAD: I can -- I'll get it for the
18 record and make sure.

19 CHAIRPERSON HOOD: Let's make sure we have it
20 correct. Okay.

21 Commissioner Turnbull.

22 MR. TURNBULL: Oh, thank you, Mr. Chair. I
23 just want to thank the applicant for its presentation
24 tonight. I thought it was very organized and I want
25 to thank you for sticking on point and going through

1 all the issues that the Court has looked at, so
2 again, thank you for your presentation.

3 I am, I guess have, for Mr. Dettman and the
4 Deputy Mayor. Mr. Dettman, you had mentioned about
5 the competing interests and what takes the lead and
6 what you think weighs most. You talked about the
7 overlapping nature of the Comp Plan and then you talk
8 about since the land-use element generates policies
9 of all the other elements, it should be given greater
10 weight than the other elements.

11 And the Deputy Mayor had mentioned that we
12 submit that in addition to the analysis of our
13 prehearing response the guiding principles and the
14 framework element should also be given substantial
15 weight. It's foundation.

16 Again, could you maybe correlate or explain
17 the --

18 MR. DETTMAN: Sure. There is a collection of
19 guiding principles that are kind of categorized in
20 four different types of sort of larger areas. One is
21 managing growth, one is about environmental impact
22 and whatnot. So, it sort of lays out these very,
23 very broad guiding principles that inform the
24 development of the policies that are contained within
25 the different elements of the Comprehensive Plan.

1 And so, the policies actually exist in order to
2 advance the guiding principles that are laid out in
3 the framework element.

4 If you kind of look back at how the
5 Comprehensive Plan has evolved over time since the
6 1980s, when the first District elements were
7 developed, there was a series of elements that were
8 actually adopted. It did not include the land-use
9 element. There was a land-use element, but it was
10 adoption of the land-use element was held off for a
11 while. That came later.

12 And when you saw the first adopted land-use
13 element, that's when you first saw the language about
14 stating that more than any other element within the
15 Comprehensive Plan, the land-use element, actually
16 serves to integrate all of the policies of all the
17 other elements in that when you're balancing
18 competing priorities you should look to the land-use
19 element, which actually includes the future land-use
20 map and the generalized policy map. It's the land-
21 use element that you should be looking at in terms of
22 giving greater weight when you're running into
23 situations where there's competing policies.

24 MR. TURNBULL: Okay. Thank you.

25 CHAIRPERSON HOOD: Vice Chair Miller.

1 MR. MILLER: Thank you, Mr. Chairman, and I
2 too want to thank each of you for your comprehensive
3 presentation that addressed the issues that the court
4 raised and that were in our hearing notice. I think
5 it's very helpful.

6 Did we get a copy of your testimony? I think
7 yours is the only one that we didn't.

8 MR. WEERS: No, sir, but I have it. I'm
9 happy to --

10 MR. MILLER: Yeah, I think it would be
11 helpful to have. And, in your, I think it was your
12 testimony that mentioned on page 27 of the slide
13 presentation when talking about the material
14 reductions already taken from the healthcare facility
15 on Parcel 1, and I appreciate all of those reductions
16 that had been taken, I don't think you mentioned, but
17 maybe you did, maybe I just missed it. I don't think
18 you mentioned the height reduction from 130 to 115.
19 Did you mention that?

20 MR. WEERS: I did, sir. It was the fourth
21 diagram up here.

22 MR. MILLER: Okay. I see that. Okay.
23 Because that was one that this Commission kind of
24 pushed back on at one of our first hearings.

25 MR. WEERS: That's correct.

1 MR. MILLER: On this. And so, from 130 to
2 115, I don't know if -- I guess that was one floor if
3 that's -- if you have these higher floor to
4 ceiling --

5 MR. WEERS: Yes, sir.

6 MR. MILLER: And so, you were able, at that
7 time, to absorb that loss, or that reduction, but
8 maintain all of the other -- generally maintain
9 because there have been changes throughout the
10 process, obviously. But you were able to maintain
11 the, all of the other benefits that the project at
12 beginning is providing, the grocery store, the
13 community center, all that open space on the southern
14 third, the plinth, and the senior housing and the
15 other housing.

16 So, but you're saying -- but the argument
17 seems to be being made now that any further height
18 reduction would not be able to be absorbed, and that
19 it would make infeasible, all of these other
20 benefits. So, how was it that that first 15 feet
21 could come off and then nothing else is able to at
22 this juncture?

23 MR. WEERS: Sure. I would maybe add to the
24 point that you were making and say, it is not just an
25 additional reduction of height, but it is the

1 magnitude of the reduction we're talking about now.
2 So, effectively the answer to the question is, when
3 we went from 130 feet to 115 feet, we cut off one
4 floor of the west tower only. At that point, that
5 was the only building that went up 230 feet, so we
6 have two towers, west and east. The west tower was
7 the taller of the two, so that dropdown of 15 feet
8 did remove one floor, but only from one tower. The
9 overall reduction in density, I think, was about
10 40,000 square feet.

11 If you're talking about going from 115 feet
12 to 90 feet, you're now talking about two floors from
13 both towers, which is where the 190,000 square feet
14 comes from. So, it is pretty much a question of
15 magnitude.

16 MR. MILLER: You're saying that would be
17 about 100,000 square feet?

18 MR. WEERS: A hundred and ninety.

19 MR. MILLER: A hundred and ninety thousand
20 square feet.

21 MR. WEERS: Yes, sir.

22 CHAIRPERSON HOOD: Can I --

23 MR. MILLER: Yes.

24 CHAIRPERSON HOOD: -- stop. Also included in
25 that equation, if I understood it, you also talked

1 about shaving and carving, and this goes out, I
2 think, to Mr. Bell.

3 MR. WEERS: That's correct.

4 CHAIRPERSON HOOD: Mr. Bell's timeline. You
5 talk about the setbacks, reducing, and I think that's
6 how you arrived at what the Vice Chair is talking --
7 is speaking of.

8 MR. WEERS: That is correct.

9 CHAIRPERSON HOOD: As far as not being
10 viable.

11 MR. WEERS: Yes, sir.

12 CHAIRPERSON HOOD: All right. Okay.

13 [Discussion off the record.]

14 CHAIRPERSON HOOD: I was just saying, it was
15 more to it, I think, in the testimony that was
16 provided that it was more than just the floor being
17 taken off. It was the magnitude of the setbacks,
18 lightening up the density. And, since we're on that
19 question, that was worked in, and it goes back to
20 what Mr. Bell said. A lot of that was worked out
21 with the community.

22 MR. WEERS: That's correct.

23 CHAIRPERSON HOOD: Those five or six times
24 that you all made the change, right?

25 MR. WEERS: That's correct. That includes

1 the move from North Capitol that freed up Cell 14 and
2 pushed us much further away from Stronghold as well.

3 CHAIRPERSON HOOD: Okay. So, that was that.
4 We got to where we were that we sent -- that we final
5 approved. We got a lot of that to where we were
6 because of the input from the neighbors.

7 MR. WEERS: Yes, sir.

8 CHAIRPERSON HOOD: And there was a working --
9 okay. All right. I'm just trying to figure out how
10 we got here. Okay.

11 MR. MILLER: Yeah, and another -- I'll go
12 back to the healthcare facility in a second, but I
13 remember I guess it may have been before it got to
14 us, but maybe at set down it was -- there was a big -
15 - there was a substantial reduction in the number of
16 housing units because the neighbors did not want that
17 level of density and thought that traffic, you know,
18 the traffic impact, which was actually what we most
19 addressed, from my own perception, at the 25 hours of
20 public hearings which the Court didn't seem to have a
21 problem with the -- at least in their order didn't
22 seem to criticize all the mitigations that are in
23 there for all those traffic impacts.

24 But one of the reductions in this project
25 that I recall, and I can't remember what point, and

1 it may have been before it got to us. I think there
2 were 1,000 units at one point for the McMillan
3 project. And it's 600 plus. Is that -- am I
4 remembering accurately? Does anybody -- it's not
5 really relevant to --

6 MR. BELL: I believe there were more. I
7 don't know that that's the number.

8 MR. MILLER: More than 1,000?

9 MR. BELL: Yeah.

10 MR. MILLER: Yeah, it might have been double
11 than the 600 plus.

12 MR. BELL: Well, remember, there was quite a
13 bit more lot coverage earlier on, you know? I mean,
14 the park size increased a lot so, you know, one would
15 -- it would stand to reason there was substantially
16 more development.

17 MR. MILLER: Right. So, on the healthcare
18 facility, you're mentioning the infeasibility of
19 going to a magnitude of two additional floors being
20 reduced to 90 feet. You're picking the 90 feet
21 because there are references to that height in terms
22 of moderate and medium density development. Is
23 that --

24 MR. BELL: Yes, sir.

25 MR. MILLER: -- correct?

1 MR. BELL: That is correct.

2 MR. MILLER: But if you were only going to go
3 to one floor, that wouldn't be as great a magnitude,
4 but it would still affect the feasibility?

5 MR. BELL: I think so, yes. You know, part
6 of the answer to this is you know, the type of
7 development that we are pursuing, right, what I
8 testified to is, it's a campus approach. It's a mix
9 of different types of users and uses, and it's a mix
10 of large anchor tenants, mid-sized junior anchor
11 tenants, and smaller you know, like small tenants.

12 You need all of those in order to make a
13 project of this magnitude viable.

14 MR. MILLER: Okay. Thank you very much.
15 Appreciate all your testimony.

16 CHAIRPERSON HOOD: Mr. Weers, explain the --
17 I may have just forgot. Explain the scholarship fund
18 again. You mentioned about, some kind of way in your
19 testimony, you mentioned about how the educational
20 fund was going to work.

21 MR. WEERS: Yes, sir. Yes, sir. So, VMP is
22 going to invest a million dollars in a fund, and the
23 Community Foundation is going to help us with
24 distribution of that money to workforce development
25 providers and to scholarship recipients.

1 CHAIRPERSON HOOD: Okay, again, how is the
2 neighborhood beautification, how is that going to
3 work again, as part of the puzzle?

4 MR. WEERS: So, I would say similar strategy.
5 VMP is going to put money in a fund and work with the
6 various civic associations that we sort of -- we
7 assign dollars to each civic association that were in
8 the order before, and so we would work with the
9 relative civic to decide where those monies get
10 spent.

11 CHAIRPERSON HOOD: So, is it your testimony,
12 and I don't want to put words in your mouth. Is it
13 your testimony if we shave off, cut back, or reduce
14 anything else, because I know we exhausted it? And
15 again, it goes back to Mr. Bell's presentation.

16 Well, let me back up. One of the things that
17 made me a little nervous, I heard you say something
18 about having to kind of change some of the materials.

19 MR. WEERS: I'm sorry?

20 CHAIRPERSON HOOD: Did you have to change --
21 are we changing materials?

22 MR. WEERS: No, sir. Materials --

23 CHAIRPERSON HOOD: Just building materials.

24 MR. WEERS: Oh, no. No, sir.

25 CHAIRPERSON HOOD: Something I thought --

1 okay.

2 MR. WEERS: No, sir.

3 CHAIRPERSON HOOD: I misunderstood you.

4 MR. WEERS: Uhn-uh.

5 CHAIRPERSON HOOD: You said you had to do
6 some kind of change, or did you have to do it if we
7 have to scale back even more?

8 MR. WEERS: I probably, I think what you're
9 referring to is I described the change as material,
10 so any further material changes, meaning large or
11 magnitude. I'm sorry. That's my mistake.

12 CHAIRPERSON HOOD: Okay. I thought you was -
13 - that scared me. Okay. I will say, I really
14 appreciate the format in which this was presented and
15 I'm looking forward to seeing what the opposition has
16 in this format as I continue to try to address some
17 of the missed points that we possibly missed. I
18 don't know how, after 25 hours of what the Court has
19 asked us to do, but we will definitely do our job.
20 So, any other questions up here?

21 Okay. I thank you all for your testimony.
22 Let's see if we have any. Does anyone here from the
23 ANC that has any cross? I think we've already been
24 through that. I see Ms. Barnes and others. I don't
25 see any others. So, I think we're good with the ANC

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1 because normally when the community -- a lot of the
2 community folks, especially the front line leaders
3 don't show up, that means for the most part, they're
4 cool. And that's how I'm going to take it, because
5 if it was a problem the ANCs would be here, from my
6 standpoint.

7 I know others may have a problem but I just,
8 I don't want to slight the frontline elected
9 officials because I'd never do that.

10 Let's go to Friends of McMillan. Have any
11 cross? Okay, Ms. Ferster to come forward, I'm sure.

12 MS. FERSTER: Okay. Good evening, everyone.
13 Andrea Ferster for Friends of McMillan Park.

14 I have some specific questions for
15 individuals, but there was also quite a bit of
16 testimony that overlapped in terms of a variety of
17 people said the same thing. So, where I will direct
18 my testimony to individuals, I will do that to an
19 individual. But otherwise I will just indicate that
20 whoever feels that they are the most qualified to
21 answer a particular question, they should do that.
22 Is that acceptable?

23 CHAIRPERSON HOOD: I think that's good.
24 Thank you.

25 MS. FERSTER: Okay. Let me just start with

1 Mr. Kenner. Good evening.

2 MR. KENNER: Good evening.

3 MS. FERSTER: So, Holland and Knight
4 submitted a prehearing response on the remand issues,
5 and it was submitted on behalf of both Vision
6 McMillan Partners, as well as the Deputy Mayor for
7 Planning and Economic Development. I assume you're
8 familiar with that submission?

9 MR. KENNER: I think generally, but it's not
10 in front of me right now so I don't have it in front
11 of me. But generally.

12 MS. FERSTER: But did you review it, if I ask
13 you questions based on it? Are you --

14 MR. KENNER: I guess it depends on the
15 question.

16 MS. FERSTER: Okay. And, so and did you
17 review the response that Friends of McMillan filed
18 which was, I believe on April 3rd?

19 MR. LANE: I'm just going to step in here and
20 note that the Deputy Mayor specifically testified to
21 Issue Number 1 and Issue Number 4. So any questions
22 on cross should be limited to those issues.

23 MS. FERSTER: Okay. That's my question is,
24 did you review the response to the -- which cover it?

25 MR. KENNER: I'm sorry. Say the question

1 again.

2 MS. FERSTER: Did you review the response
3 that Friends of McMillan filed on April 3rd?

4 MR. KENNER: I did not. I did not.

5 MS. FERSTER: Okay. So, you did -- one of
6 the attachments to the Holland and Knight submission
7 is, I think a report called the Comprehensive Housing
8 Strategy Task Force, and it appears that the Deputy
9 Mayor for Planning and Economic Development
10 participated in the preparation of that report. Is
11 that correct?

12 MR. KENNER: I'm not sure which year.

13 MS. FERSTER: It's Exhibit I. And, it
14 doesn't say what date, but it's Exhibit I to the
15 Holland Knight report. It's called, Homes for an
16 Inclusive City, a Comprehensive Housing Strategy for
17 Washington D.C.

18 You know, I think this is just an excerpt of
19 this report, but I did look it up online and it did
20 indicate that the Deputy Mayor for Planning and
21 Economic Development was part of this.

22 MR. KENNER: Could have been. I see this is
23 January 2013, so that would have been, I'm not sure
24 if you have the date. Do you have the date for the
25 report?

1 MS. FERSTER: It does not appear to be on
2 this report. This excerpt.

3 MR. KENNER: Because I just see January 2013.
4 Is that right?

5 MS. FERSTER: If that's what is on there, the
6 writing is pretty small, so I can't read it.

7 Anyway, are you -- do you know whether your
8 office participated in this report?

9 MR. KENNER: I don't. I mean, I'd have to
10 see the year and probably know a little bit more
11 about the report to answer that question again. I've
12 been the deputy mayor since January of 2015.

13 MS. FERSTER: Okay. So, is there anybody in
14 this panel who can testify as to the date of this
15 report and whether or not the Deputy Mayor for
16 Planning and Economic Development was part of this
17 preparation of this report? This is your exhibit,
18 not mine.

19 CHAIRPERSON HOOD: Ms. Ferster, let me just
20 ask this question. You looked it up, and did you see
21 a date when you looked it up online?

22 MS. FERSTER: I'm sure I did, Mr. Chairman,
23 but I cannot for the life of me remember what it was.

24 CHAIRPERSON HOOD: So, it may predate, and I
25 know sometime things -- you know, and I'm not trying

1 to take sides, but sometimes it's hard when you have
2 another administration who did something, and then
3 you have another administration coming in. Can we
4 see the date? I think he said 2013, and you became
5 the Deputy Mayor --

6 MR. GLASGOW: Is that the right one? Mr.
7 Chairman, we're given information that it was issued
8 Saturday, April 1st, 2006. Or I'm sorry, April 5th,
9 2006. Released its final report on April 5th, 2006.

10 MS. FERSTER: Okay.

11 MR. GLASGOW: And it says that it was co-
12 chaired by the Brookings Greater Washington Research
13 Program Director, was Alice Rivlin (phonetic).

14 CHAIRPERSON HOOD: Okay.

15 MS. FERSTER: Well, how about the Mayor's
16 Strike Force on Housing, which is a more recent
17 report that was issued under Mayor Bowser. Are you
18 familiar with that?

19 MR. KENNER: I am familiar with that.

20 MS. FERSTER: And would you agree that that
21 report identifies that one of the city's highest
22 priorities is the need to increase the city stock of
23 affordable housing, particularly for households who
24 are at or below 50 percent of the area mean income?

25 MR. KENNER: It has a number of different

1 conclusions that come from it.

2 MS. FERSTER: Would that be one of them?

3 MR. KENNER: That, I believe -- I'd have to
4 look specifically if you're saying that it
5 specifically references below 50 percent of AMI.

6 MS. FERSTER: Yes, at or below. At and
7 below.

8 MR. KENNER: I would have to look at it to
9 see. I know that some of the specific
10 recommendations were around more programmatic
11 elements as opposed to specifically around an AMI
12 level.

13 MS. FERSTER: Uh-huh. Okay. Did you
14 participate in that task force, or somebody else from
15 your office?

16 MR. KENNER: I did.

17 MS. FERSTER: Okay. So, would you agree then
18 that irrespective of what this report says, would you
19 agree that one of the city's highest priorities in
20 terms of housing is the need to increase the stock of
21 affordable housing for low-income people, or people
22 at 50 percent -- at or below 50 percent of the area
23 mean income?

24 MR. KENNER: Again, I think that whether it's
25 in this report or not, I think that the city is very

1 much focused on affordable housing issues,
2 particularly for those AMI levels that are at 80
3 percent and lower, yes.

4 MS. FERSTER: How about for 50 percent and
5 lower?

6 MR. KENNER: Yes.

7 MS. FERSTER: Is not --

8 MR. KENNER: That is --

9 MS. FERSTER: Is that not --

10 MR. KENNER: That is included in 80 percent
11 or lower.

12 MS. FERSTER: Okay. But in terms of the
13 specific need for affordable housing at 50 percent,
14 isn't that an even more pressing need for low income
15 people?

16 MR. KENNER: I guess it depends on the
17 context. Again, we are defining affordable housing
18 as 80 percent of AMI, the Area Median Income, or
19 lower. Fifty percent is certainly a need within that
20 range. Thirty percent is a need within that range.
21 Sixty percent is also a need within that range.
22 We've also got additional sort of sub-categories,
23 senior housing and so forth, that's also important.

24 MS. FERSTER: Uh-huh. So, but you don't have
25 an opinion on whether there's a greater need for

1 affordable housing for low income people, then?

2 MR. LANE: Objection, this has been asked and
3 answered.

4 MS. FERSTER: Well, I think he was
5 characterizing the report and I'm asking for his
6 opinion.

7 MR. KENNER: Again, the report has a number
8 of different recommendations in it.

9 MS. FERSTER: Okay. So, you particularly
10 mentioned the healthcare facility is what you believe
11 to be the economic driver of the McMillan
12 development. And what, in terms of -- since the
13 healthcare facility was added to the project in 2009,
14 as I believe one of the witnesses here testified.
15 That's correct?

16 MR. KENNER: I'm not sure.

17 MS. FERSTER: Well, and are you aware of what
18 the housing market was in 2009 versus the office, the
19 healthcare facility development market was in 2009?
20 If you can comment on that?

21 MR. LANE: Objection on scope and relevance.

22 CHAIRPERSON HOOD: I'm going to sustain that.
23 Ms. Ferster, help me understand where you're going
24 with these questions in 2006 and '09, and '04, and
25 everything. Help me understand where we're going.

1 MS. FERSTER: I'm just interested in the
2 Deputy Mayor's opinion that the healthcare facility
3 is the economic driver of this project if in fact it
4 was added in 2009. And I guess my particular
5 question would be, and that was more of a foundation
6 question. My particular question would be, since
7 2009, have you done or asked Vision McMillan Partners
8 to do any new studies about the feasibility of
9 looking anew at the different components of the
10 McMillan project and looking at perhaps more moderate
11 and medium density housing instead of the greater
12 height for the office building project? Have you
13 particularly asked Vision McMillan Partners, or
14 anybody to really take a look at that issue?

15 MR. KENNER: Our job, I think in the Deputy
16 Mayor's Office is to put underutilized assets back
17 into productive use and to try to maximize the amount
18 of public benefits that come from projects. And
19 those public benefits from the project are not
20 limited to one public benefit, but I think a number
21 of public benefits which is one of the unique
22 characteristics of the McMillan project. You've got
23 tax revenue, affordable housing, neighborhood serving
24 retail, green space, the jobs opportunities
25 obviously. And so, within the context of the

1 regulatory approvals that the project has gone
2 through over many years, within the context of the
3 legislative approvals that also have happened over
4 many years for the project, we are seeking to
5 maximize the public benefits that come from McMillan
6 or really any other project that we do in the Deputy
7 Mayor's office.

8 And so, that is what we've been seeking to
9 do, is to maximize the public benefits, given the
10 framework items and obviously the existing resources
11 that the District has.

12 MS. FERSTER: Understood. And so, you know,
13 since the remand issue, and I believe your testimony
14 does address that issue number 1, you know, the
15 reduction of the height of the medical office
16 building, have you -- my question would be,
17 understanding that the scope of your office's
18 involvement in this project over many, many years,
19 have you nonetheless, in response to this remand,
20 asked anybody to undertake a new evaluation of, as I
21 said, whether or not increasing the density of the
22 housing on -- as part of this project, would allow
23 the height of the medical building to be reduced; to
24 be more consistent with what we would view a moderate
25 density height?

1 MR. GLASGOW: Mr. Chairman, I think that that
2 question was responded to in Mr. Weers' testimony,
3 and Mr. Bell's testimony, as to how the configuration
4 of the site was, and the far in the site, and where
5 the uses went on the site. Deputy Mayor didn't cover
6 that.

7 CHAIRPERSON HOOD: Okay. I think --

8 MS. FERSTER: I'm just, I'm just --

9 CHAIRPERSON HOOD: Hold on, let me just say
10 that I think to Ms. Ferster's credit, she did mention
11 that even though she was asking the Deputy Mayor, the
12 appropriate person could answer the question. So, if
13 somebody else actually mentioned that --

14 MS. FERSTER: Let me, if I can just clarify?
15 I do plan to ask that question of the Vision McMillan
16 team, but I would like to know of the Deputy Mayor,
17 just simply whether or not they ever asked anybody to
18 reevaluate the project in the manner that I
19 suggested, increasing the density.

20 CHAIRPERSON HOOD: Okay. Deputy Mayor, did
21 you ever ask that question?

22 MR. KENNER: Yeah, I'll answer that question.
23 So, I believe that the legislative approval for this
24 project occurred in 2014. And so no, we have not
25 gone back after legislative approval, which is how

1 the District disposes of property legally, we have
2 not gone back to reevaluate anything because we've
3 gotten our legislative approval.

4 CHAIRPERSON HOOD: Okay. So, that's his
5 answer.

6 MS. FERSTER: Thank you. Thank you, yes.

7 CHAIRPERSON HOOD: You want to ask anybody
8 else now, that question?

9 MS. FERSTER: No, I'm just going to have a
10 couple more questions --

11 CHAIRPERSON HOOD: Okay. Okay.

12 MS. FERSTER: -- for Deputy Mayor, and then
13 I'll go to other witnesses.

14 So, in terms of since you mentioned the
15 legislative approval, I'm just as sort of resolving
16 some of those issues, I guess my question is, do you
17 view the approval of the land, and that you're
18 talking about the land disposition agreements in
19 particular?

20 MR. KENNER: Correct.

21 MS. FERSTER: Okay. And do you view the
22 passage of these land disposition agreements as
23 basically mandating the particular configuration of
24 development on each of the parcels as laid out in the
25 LDA?

1 MR. KENNER: Sorry. Can you restate your
2 question? I'm a little confused by it.

3 MS. FERSTER: And does it tie your hands, in
4 other words. Do you have -- does it constrain you in
5 terms of looking at other possibilities for reducing
6 the density of the -- or the height, sorry, of the
7 medical building because the land disposition
8 agreement basically prescribes a particular set of
9 development components?

10 MR. LANE: I'm going to object in that that's
11 calling for the legal conclusion. That's the job of
12 the Commissioners here.

13 MS. FERSTER: I guess I would only respond is
14 that, that the Deputy Mayor did bring this issue up
15 himself as the rationale for why his office did not
16 ask for an evaluation of a different design,
17 basically, that would reduce the height of the office
18 building.

19 CHAIRPERSON HOOD: Okay. I'm going to uphold
20 that objection also. Next question.

21 MS. FERSTER: Okay. If the understanding
22 that this is somewhat speculative, but I'd like your
23 opinion on this.

24 If the Zoning Commission or the Court were to
25 deny the PUD application because of the inconsistency

1 of the height of the medical building with the
2 comprehensive -- some specific Comprehensive Plan
3 policies, and you had to go back to the drawing
4 board, if it could be shown that it was economic
5 viable in today's market to reduce the height of the
6 medical building --

7 MR. KENNER: That's a lot of assumptions.

8 MS. FERSTER: -- but increase --

9 MR. KENNER: That's a lot of assumptions.

10 MS. FERSTER: Yes. But increase -- this is
11 hypothetical question. But increase the amount of
12 housing on the site, including the amount of
13 affordable housing without jeopardizing the grocery
14 store or the open -- the amount of open space
15 provided, would you support such a plan and move it
16 forward?

17 CHAIRPERSON HOOD: Ms. Ferster, I hate to
18 keep interrupting your -- I mean, your cross-
19 examination, but I'm going to rule that question out
20 of order. Next question.

21 MS. FERSTER: Okay.

22 CHAIRPERSON HOOD: It's too much -- it's so
23 much speculation in that.

24 MS. FERSTER: Okay.

25 CHAIRPERSON HOOD: And you've got to

1 remember, I can get into a whole bunch of stuff that
2 then neighbors want and didn't want, and you know, so
3 let's not speculate. Let's just ask the questions to
4 the testimony.

5 MS. FERSTER: Let's see. Okay. I may have
6 another question that I'd like the Deputy Mayor to
7 answer, but I'm going to go on to the Vision McMillan
8 team.

9 MR. GLASGOW: Mr. Chairman, we would like to
10 have her complete the Deputy Mayor. We appreciate
11 that he's had his time here, and we'd like to have
12 her finish up with him. He does have other things to
13 do, if we can finish up with the Deputy Mayor and he
14 can be excused.

15 CHAIRPERSON HOOD: Ms. Ferster, could you
16 find that question? That one question?

17 MS. FERSTER: I could. I could, yes.

18 CHAIRPERSON HOOD: Thank you. So --

19 MS. FERSTER: Okay. So, I'm going to hand
20 you, because you said you had not reviewed the
21 Friends of McMillan response, I'm going to hand you
22 an exhibit that was attached to our response. And I
23 believe it was our first exhibit.

24 MR. GLASGOW: Well, now that it's come up
25 here, Mr. Chairman, that first exhibit, I'm going to

1 object to that and I'm going to have some questions
2 for the opponents as to even offer it, putting this
3 in the record. It is the letter to the Office of the
4 Mayor. It is evidently they were -- I don't know
5 whether they -- it's unclear as to who signed it.

6 It says, "Re: Corruption and bribery, ANC 5C,
7 McMillan Development --"

8 CHAIRPERSON HOOD: I ruled -- let me, before
9 you even get started, I ruled that out of order the
10 last time and it's still out of order. And that, I
11 have not changed with that. I could make all kinds
12 of accusations. People make accusations about us.
13 I'm not going to get into that.

14 MS. FERSTER: Well, I'd like to just ask my
15 question for the record and then you could rule it
16 out of order.

17 CHAIRPERSON HOOD: Okay. If you -- I think
18 it's out of -- I made that ruling previously and I'm
19 going to continue. But you can ask it.

20 MS. FERSTER: Okay. Thank you.

21 My question is that understand -- are you
22 aware -- are you aware of any investigations into
23 allegations by the -- an Advisory Neighborhood
24 Commission as to possible bribery by members of the
25 Vision McMillan team? Are you aware of those

1 allegations?

2 CHAIRPERSON HOOD: That question is out of
3 order. Next question.

4 MS. FERSTER: Okay. And my next question
5 relating to that is, do you have any knowledge,
6 either directly or indirectly, from another person or
7 anyone associated with the applicants who has
8 provided any cash, gift, or items of value to ANC
9 Commissioners?

10 CHAIRPERSON HOOD: That question also is out
11 of order. Next question.

12 MS. FERSTER: Okay. Then that concludes my
13 testimony for the Deputy Mayor. Thank you.

14 CHAIRPERSON HOOD: No more questions for the
15 Deputy Mayor. Thank you very much. We appreciate
16 your time.

17 MR. KENNER: Okay.

18 CHAIRPERSON HOOD: Okay, Ms. Ferster, you may
19 continue.

20 MS. FERSTER: Okay. I'm just going to go
21 with a couple of questions for Matthew Bell, only
22 because it's sort of fresh in my mind, and I miss you
23 in our office space. You moved. We used to be in
24 the same office.

25 MR. BELL: We don't miss the elevator though.

1 MS. FERSTER: No, we walked.

2 So, you, in particular you talked about the
3 historic -- how the design for the McMillan evolved
4 over the course of a number of years. And you
5 particularly focused on the historic preservation as
6 driving a lot of the design decisions that you made,
7 and you talked about, I think the Olmstead Walk and
8 those sorts of elements that were not preserved in
9 the original designs that were considered, but over
10 time became part of the plan.

11 And I'm curious because there's one element,
12 historic element, that you did not mention as being a
13 historic preservation element that you know, that you
14 paid particular attention to. And that is something
15 that the EHT's 2014 report mentioned as a key element
16 of the site, which is a special organization, defined
17 as the relationship of open space to the historic
18 structures on the site. Did that issue play any part
19 in your design planning?

20 MR. BELL: In consultation with a
21 preservation consultant we felt that that issue was
22 addressed by the extent of the very large park that
23 allows the silos and regulator houses to be seen with
24 the park as the backdrop for that.

25 MS. FERSTER: Okay. And so, one of the --

1 and then you mentioned the healing gardens as
2 something that evolved also over time. And I'm just
3 curious as something that was a benefit to the plan.
4 And I'm just curious. The healing garden is located
5 on the north side of the medical facility. So, it
6 abuts Michigan Avenue. And wouldn't it make more
7 sense from a historic preservation standpoint to flip
8 the healing garden and locate it on the side closest
9 to the north service court so that it could protect
10 more of that space, you know, the open space's
11 relationship to the structures and not so that the
12 historic structures on the north service court were
13 not so crowded?

14 MR. BELL: We addressed the crowding, so-
15 called crowding, by stepping the building back above
16 the first floor.

17 CHAIRPERSON HOOD: Mr. Bell, can you just
18 slide back just a little bit? Just a little bit.

19 MR. BELL: I don't actually need a
20 microphone. But --

21 We addressed it by stepping the buildings
22 back along the north service court.

23 MS. FERSTER: Okay. But in terms of --

24 MR. BELL: Of the first floor.

25 MS. FERSTER: -- you didn't consider putting

1 the healing gardens between the building and the
2 north service court?

3 MR. BELL: That was discussed informally. We
4 didn't think that was as good a solution as what we
5 had.

6 MS. FERSTER: Okay. And, let's see, you
7 mentioned the plinth. And I -- the plinth is -- and
8 forgive me because I'm very literal, but the -- as
9 one of the historic elements. But I'm looking at the
10 2014 EHT report that, you know, identifies all the
11 specific historic elements of the McMillan site. And
12 it doesn't specifically say the word plinth. Is it
13 possible that it could be --

14 MR. BELL: The berm.

15 MS. FERSTER: -- topography then? Is that
16 when --

17 MR. BELL: The berm, the plinth, those were
18 words that we were using to talk about that, yes.

19 MS. FERSTER: All right. So, and perhaps
20 it's part of the topography of the site. Is that the
21 historic element that the plinth --

22 MR. BELL: Yeah. That was something that was
23 very much a concern by HPRB.

24 MS. FERSTER: Okay.

25 MR. BELL: To retain it.

1 MS. FERSTER: Okay. And when you mention
2 that the HPRB approved the site, isn't it correct
3 that the HPRB in fact found that the project was both
4 the subdivision and the proposed demolition were
5 inconsistent with the purposes of the Historic
6 Preservation Act?

7 MR. GLASGOW: I believe that's outside of the
8 scope of this hearing.

9 MS. FERSTER: Well, he just said the HPRB
10 approved this plan, so I think he brought that up.

11 MR. GLASGOW: He did say the HPRB approved
12 the plan.

13 MR. BELL: Well, as I understand it the plan
14 was you know, accepted by the HPRB with the proviso
15 that it had to go to the Mayor's Agent.

16 MS. FERSTER: Right. So --

17 MR. BELL: Because it involved demolition.

18 MS. FERSTER: Right. So, right. But they
19 did find that it was inconsistent with the historic -
20 - inconsistent with the act.

21 MR. GLASGOW: Mr. Chairman, she's conflating
22 two different decisions. One was the decision of the
23 Historic Preservation Review Board, and the second is
24 a decision of the Mayor's Agent. The plan that he
25 showed was approved by the Historic Preservation

1 Review Board.

2 MS. FERSTER: Conditional upon Mayor's Agent
3 approval. Isn't that correct?

4 CHAIRPERSON HOOD: Ms. Ferster, I want to get
5 the Zoning Commission's order taken care of, so let's
6 work on that. Let the HPRB and the Mayor's Agent do
7 their jobs, and let us do ours. So, let's move to
8 the next question.

9 MS. FERSTER: Okay. What I would like to do,
10 just to make sure that the record is clear, is to put
11 the HPRB's actual decisions in this record. And I
12 don't have them with me now, but I would like to have
13 an opportunity to put those on the record later.

14 CHAIRPERSON HOOD: I don't see --

15 MR. GLASGOW: They are in the record from --

16 CHAIRPERSON HOOD: If it's not in there, I
17 don't see any harm in that.

18 MS. FERSTER: Okay. Thank you.

19 MR. GLASGOW: I think they are already in the
20 record from the prior -- we incorporated it early on.

21 CHAIRPERSON HOOD: That's fine. She can put
22 them in again.

23 MS. FERSTER: Okay. So, you talked about the
24 park as being on the south side of the project as
25 something that again had evolved over the course of

1 the, you know, the evolution of the planning for this
2 site. And as something that the community wanted and
3 you put there because of the community wanted that
4 park? Is that -- that's correct. Is that --

5 MR. BELL: That was one of the reasons.

6 MS. FERSTER: Okay. And isn't one of the
7 main reasons why the park was placed on the southern
8 section of the site is because WASA had essentially
9 occupied the full southern sector for their 1st
10 Street tunnel water control project?

11 MR. BELL: Ma'am, when you're doing large
12 scale master plans you're trying to balance a bunch
13 of competing interests. And we felt that that
14 interest of WASA, with the community, and with the
15 way the plan laid out in clarifying the tripartite
16 organization provided significant benefits.

17 MS. FERSTER: Okay. And okay. Okay. So, I
18 think -- and I think, and I don't know if this was
19 you who said this, so I'm just going to throw this
20 out to everybody because a lot of people said a lot
21 of things. This is a question for the whole team.
22 Whoever said it can answer, or whoever knows it can
23 answer. But somebody talked about, and I believe it
24 was a question perhaps prompted by Commissioner Hood,
25 that the community opposed one of the earlier plans

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1 that would have put 1,000 single-family homes on this
2 site.

3 And when you say the community, that's a big
4 entity. Is there a particular organized group in the
5 community that opposed that particular plan? And
6 this is for -- it may have been Mr. Weer (sic) who
7 said that, actually. Okay. Did nobody say that the
8 community opposed that? Perhaps it was the chairman
9 whose recollection was that.

10 MR. MILLER: I think it was the Vice
11 Chairman, yes.

12 MR. GLASGOW: Mr. Hakash Thakkar can answer
13 the question if we -- I'm sorry, Commissioner.

14 MR. MILLER: I was just saying, I think I
15 made the statement.

16 MS. FERSTER: Okay.

17 MR. MILLER: But I'm not subject to cross-
18 examination right now.

19 MS. FERSTER: All right. Okay. Well,
20 perhaps since you raised it and somebody agreed that
21 they thought that was the case, maybe you can clarify
22 that.

23 And have you been sworn in? Okay.

24 MR. THAKKAR: I have been sworn in. My name
25 is Hakash Thakkar. I am a Senior Vice President and

1 Partner with the Firm EYA, part of Vision McMillan
2 Partners.

3 So, to answer the question, one or maybe more
4 of the plans that Mr. Bell showed in the transition
5 of plans included, I don't know if it's 1,000 or
6 exactly how many more units, but substantially more
7 residential units. What that did is cover a vastly
8 greater portion of the property.

9 MS. FERSTER: Uh-huh.

10 MR. THAKKAR: And the result was pushback
11 from the community.

12 I do want to say, because this question seems
13 to be coming up and I do have history on this, one of
14 the key reasons healthcare was included was because
15 the city and the development team were charged with
16 providing significant community benefits. There are
17 5,000 or so jobs connected to this.

18 MS. FERSTER: I'm going to -- but, you know,
19 my question did not go to that. Maybe when I ask
20 that question and you have something to offer on that
21 topic, I would be delighted to hear that. But I
22 really, I'm just really looking at the specific
23 questions of, you know, what you view as the
24 community opposition.

25 MR. THAKKAR: Yes, there was community

1 opposition to that plan.

2 MS. FERSTER: Okay. And, but it's my
3 recollection looking at that visual and from my
4 understanding, is that that plan did not offer any --
5 virtually any open space. That's correct? It was
6 characterized as providing the least amount of open
7 space?

8 MR. THAKKAR: There was less open space on
9 that plan.

10 MS. FERSTER: Okay. So, it's not that the
11 community opposed -- is opposed to housing. It's
12 just wanted more open space. If you know.

13 MR. THAKKAR: I don't know. I can say that
14 the plans that we showed were, I don't want to say
15 rejected, but there was pushback within the community
16 for open space, and I believe housing reasons as it
17 relates to traffic and other such things. I think
18 Mr. Bell testified to something similar.

19 MS. FERSTER: Uh-huh. And in terms of what
20 the community was very clear that it did not want,
21 however, was that it did not want high rise office
22 buildings or healthcare facilities. Isn't that
23 correct?

24 MR. THAKKAR: That is not correct.

25 MS. FERSTER: Okay. So, in the -- so, have

1 you reviewed the 2002 report that the Office of
2 Planning prepared that summarized what the community
3 wanted then? Perhaps you're not familiar with that
4 document?

5 MR. THAKKAR: I am. What we consider the
6 community, their elected officials, particularly the
7 ANCs that we've worked with for years upon years, and
8 so your characterization, when we got, I believe -- I
9 don't know if it was unanimous, but very significant
10 support from the ANC in which McMillan is located,
11 that would be the group of folks that were elected
12 and who have the authority to make decisions and have
13 great weight in front of this body.

14 MS. FERSTER: Okay. The community being the
15 ANC? The ANC? So, when you say community, you
16 really mean the elected officials, including the
17 ANCs?

18 MR. THAKKAR: And many, many others beyond
19 the ANCs.

20 MS. FERSTER: Okay. But isn't it a fact or
21 correct that the 2002 summary of recommendations for
22 development of McMillan --

23 MR. GLASGOW: Mr. Chairman, I'm going to
24 object to 2002 questions here. We are in 2017, with
25 a remand from the Court from within a year.

1 CHAIRPERSON HOOD: I wanted to hear the
2 question because 2002 was so long ago. I want to
3 just hear what the question was.

4 MS. FERSTER: You know, I don't think I
5 really need to belabor this report --

6 CHAIRPERSON HOOD: Okay. Thank you.

7 MS. FERSTER: -- because the 2002 report is
8 in the record and it clearly shows that the community
9 that was part of that report anyway, vehemently
10 opposed high rise office buildings. So, I'll drop
11 that question and simply rely on the record.

12 CHAIRPERSON HOOD: Okay. Next question then.
13 Thank you.

14 MS. FERSTER: So, in terms of your view of
15 what the community wanted, and this time I'm going to
16 use the word community to mean the MAG, the McMillan
17 Advisory Group, and my client, Friends of McMillan
18 Park, as well as the McMillan Park Committee, which
19 are the sort of three sort of community nonelected
20 organized groups that have been involved in McMillan
21 Park. In terms of what these groups made clear, is
22 there -- can you point to anywhere in the record of
23 these zoning proceedings where any of these groups
24 said that they do not want multifamily housing on
25 this site?

1 MR. GLASGOW: Mr. Chairman, I'm going to
2 object because that's beyond the scope of any of
3 these issues that's been laid out by the Commission.

4 CHAIRPERSON HOOD: Do we know the answer?

5 MR. THAKKAR: I don't know. I can't answer
6 it.

7 MS. FERSTER: Okay.

8 CHAIRPERSON HOOD: Next question.

9 MS. FERSTER: Okay. Okay. So these question
10 go generally out to the members of the McMillan team.
11 I have some particular questions about the healthcare
12 building. And, you talked specifically -- somebody,
13 perhaps Mr. Weer and others, talked about the fact
14 that you did not have an anchor tenant as yet for the
15 healthcare building, and I think perhaps it was Mr.
16 Weers who specifically said that the on and off
17 nature of the McMillan planning decision, probably
18 the Court of Appeals decision, or the pendency of the
19 Court of Appeals decision was preventing you from
20 getting an anchor tenant. Was that your testimony?

21 MR. THAKKAR: My testimony is that it made it
22 more challenging.

23 MS. FERSTER: Made it more challenging.
24 Okay. So, I guess this is -- I'm just curious and
25 maybe you or somebody else can answer this question,

1 in the related zoning proceeding relating to Parcel
2 4, it appears that a letter of commitment has been
3 signed by Harris Teeter for a grocery store on that
4 parcel. So, why wasn't that the, you know, sort of
5 uncertainty about approval of the McMillan
6 development, why didn't that hinder securing that key
7 tenant?

8 MR. THAKKAR: So, I would say each of these
9 decisions is individual to each of the organizations.
10 I think it's fantastic that we were able to get
11 commitment from Harris Teeter as we have continued to
12 go through this process. We are making progress with
13 the healthcare anchors, but these are very large
14 transactions; much larger than a grocery store. And
15 these organizations are going through some very
16 complicated processes to get the transaction
17 finalized.

18 MS. FERSTER: Okay. So, okay. Now, and I'm
19 going to do this very quickly because we sort of
20 overly belabored this point at the last hearing. But
21 you know, you talked about the, you know, how the
22 healthcare building is designed with these greater
23 floor to ceiling heights in order to accommodate the
24 unique needs of the healthcare facility, as opposed
25 to an office building. And, in your -- you didn't

1 mention it in your testimony, but in Exhibit B of
2 your prehearing submission it indicates that, you
3 know, it's needed to accommodate operating rooms and
4 other medical equipment.

5 MR. WEERS: Yes, ma'am.

6 MS. FERSTER: Okay. And do you know what
7 procedures, other than sort of routine primary care
8 will be provide at this healthcare facility?

9 MR. WEERS: No, ma'am. That will be
10 determined as the tenants themselves made commitments
11 to the project and then lay out the specific uses
12 that will go inside of the facilities.

13 MS. FERSTER: Okay. And is it possible that
14 there is an anchor tenant who does not want operating
15 rooms and other equipment requiring these higher
16 floor to ceiling heights?

17 MR. WEERS: So, it is certainly possible that
18 any of the tenants that will come to this facility
19 won't want operating rooms, but you know, within the
20 universe of potential healthcare users and the types
21 of uses that we're talking about, there is a lot of
22 things that require high floor to floor heights.

23 In fact, I thought we might talk about this
24 so I brought a diagram that I thought might help.
25 Just kind of summarizes within a bunch of different

1 kinds of uses, what those floor to floor heights
2 might be. So, you know, if you think about the slide
3 that I walked through that talked about the mix, you
4 know, it's outpatient facilities, it's research
5 facilities, it could be medical office. I'm sorry,
6 yes. It's up on the screen. You know, it could be a
7 lot of different things. But when you really get
8 down into what those specific uses are and what those
9 users need, whether you're in the clinical space, the
10 imaging space, oncology, or even pharmacy, you know,
11 you're talking floor to floor heights that they're
12 really high. You know, the lowest one you're seeing
13 on this, and this is just an example. You know, I
14 pulled this data from one of the sources that we used
15 when we were going through this process, the advisory
16 board did some really great reports on this in 2015,
17 but you know, the lowest floor to floor height up
18 there is 13-and-a-half feet. The highest ones go up
19 to, you know, 20 or 21 feet.

20 So, yes, it is entirely possible that any of
21 the users in here may or may not want operating
22 rooms. But, you know, if you look up on that slide,
23 I mean, just about every use in this category needs
24 these higher floor to floor heights.

25 And, you know, the primary reason for that is

1 because the kind of equipment that you're putting in
2 these uses. So, you're talking about very large
3 machines, right, that take up a lot of space, they're
4 really tall, and they need those higher floor to
5 floor heights for the MEP, the stuff that you connect
6 to those equipment, to those machines to make it
7 work.

8 CHAIRPERSON HOOD: So, can you make sure that
9 we get a copy of that for the record?

10 MR. WEERS: Yes, sir. Absolutely.

11 CHAIRPERSON HOOD: So, we're talking about
12 MRIs and --

13 MR. WEERS: Yes, sir. That's right. Cyber
14 knife, all kinds of stuff.

15 CHAIRPERSON HOOD: Possibly the citizens
16 city-wide don't have to go to Greenbelt, because
17 that's the closest one.

18 MR. WEERS: That's exactly right. And I
19 think, you know, even all of these uses again, this
20 could be in the medical office space, this could be
21 in the outpatient space, this could be in the
22 research space. I mean, you think about that slide I
23 had that had all those different kinds of uses. All
24 of those things are up there, and this is just an
25 example from each category, and they all need higher

1 floor to floor heights.

2 MS. FERSTER: Okay. So, and can you pull up
3 your slide of the equipment again?

4 MR. WEERS: Sure.

5 MS. FERSTER: And you'll have to forgive,
6 again, my ignorance as into answer in a backward way
7 to the answer to Commissioner May's question last
8 week about, you know, whether I'm old enough to have
9 those procedures. I am, in fact, old enough to have
10 those procedures, but I have been so fortunate in not
11 having to have those procedures. I'm very healthy.

12 So, I'm wondering, are these diagnostic
13 equipment? What is this?

14 MR. WEERS: Oh, yeah, this is just an example
15 of different types of equipment. I could not tell
16 you what the names of each of these pieces of
17 machinery are.

18 MS. FERSTER: Okay. So, I guess my question
19 is that you're basically, you have a spec office
20 building, so you're designing it for a whole range of
21 possible users, medical users, and you want to make
22 sure that it can accommodate whoever comes in. Isn't
23 that correct?

24 MR. GLASGOW: Mr. Chairman, I am going to
25 interpose an objection as to an assumption that she

1 made. She said, you're building a spec office
2 building. He did not say that.

3 MS. FERSTER: Okay. Are you -- I guess I
4 should ask that question then. If you don't have a
5 tenant, why is this not a spec office building?

6 MR. WEERS: So, you know, the way I would
7 answer that question is say that in the natural
8 development process, it's pretty normal to not have a
9 tenant at this point. You know, if you think about
10 where we are in the overall life cycle of McMillan,
11 we are very, very early. And so for example, when
12 we're talking about the facility on Parcel 1, this is
13 a building that would be delivering at the earliest,
14 2021. So, we're cutting a ribbon in 2021, we're
15 sitting in 2017, we're very far away from finishing
16 the building out.

17 And maybe the best way to think about this is
18 you know, that dynamic applies to a lot of other
19 projects, so you know, I don't know if you're
20 familiar with -- there's another project that I've
21 worked on in Ward 5, big large project, has anchor
22 tenants, had to go through entitlements, has some
23 similarities to McMillan. It's called the Shops at
24 Dakota Crossing. It's where the Costco is in Ft.
25 Lincoln. Are you familiar with -- it's pretty cool.

1 You should go out there. Costco is great. We're
2 actually opening a Starbucks tomorrow. You should
3 really come check it out.

4 MS. FERSTER: Wow, there you're saying and
5 I'll have to go there for the Starbucks.

6 MR. WEERS: Sorry for getting us off track.
7 My point, though, is the Shops at Dakota Crossing
8 came before the Zoning Commission in 2003. It was
9 actually so far before we started the project it
10 wasn't even named the Shops at Dakota Crossing, and
11 we didn't have any of those anchor deals done. I
12 started working on that project in 2008.

13 MS. FERSTER: Uh-huh.

14 MR. WEERS: We signed our deal with Costco in
15 2010, and started construction in 2011. So, when you
16 come to this point where we're at today, it's pretty
17 normal to not have your tenant deals all done. If
18 you can get them, that's awesome. It's just, it's
19 just early.

20 MS. FERSTER: Early. Okay. Okay. So, you -
21 - I mean, understanding of course that you are many
22 years into the development process.

23 MR. WEERS: Yes, ma'am. Yes, ma'am.

24 MS. FERSTER: Yes. Okay. So, my question
25 is, you're building this office building, this

1 healthcare facility, and you're equipping it for a
2 possible range of tenants because you don't know
3 exactly who's going to come in. But it's entirely
4 possible that many of the -- some of these tenants
5 may in fact be what are considered healthcare
6 facilities for purposes of D.C. Department of Health
7 Certificate of Need process, which would require a
8 certificate of need if they do ambulatory, surgical
9 procedures, diagnostic, dialysis, the full range of
10 sort of treatments that are -- go a little bit beyond
11 sort of in-office primary care. Is that correct?

12 MR. WEERS: Yes, ma'am. It is possible that
13 some of the tenants in this facility will go through
14 the certificate of need process, yes.

15 MS. FERSTER: Okay. And isn't it typical,
16 and doesn't the Department of Health require that you
17 secure a certificate of need before you develop a new
18 healthcare facility?

19 MR. WEERS: Yes, ma'am. And I think given
20 how early we are in this process, there is plenty of
21 time for us to go through, complete, and receive CO
22 and approval before the facility is developed. Yes.

23 MS. FERSTER: Okay. So, if I mean, you get a
24 tenant who wants to do a healthcare facility, will
25 the -- I mean, it has to occur before the building is

1 built.

2 MR. WEERS: Yes, ma'am.

3 MS. FERSTER: Isn't that correct? So what --
4 okay. So, just hypothetically you get, either you
5 don't get a tenant who requires a certificate of
6 need, or you do get tenants who require a certificate
7 of need but Department of Health turns them down,
8 would you then be able to reduce, you know, reduce
9 the height of the building to --

10 MR. GLASGOW: I'm going to object, Mr.
11 Chairman. This is highly speculative.

12 CHAIRPERSON HOOD: You know, Mr. Glasgow, I
13 don't know if you saw me look at you. I was just
14 wonder -- I just knew it was coming, so I'm going to
15 uphold that objection because that's a whole lot of
16 speculation.

17 MS. FERSTER: Well, I can break it down.

18 CHAIRPERSON HOOD: If, if, if, if. If, if,
19 if.

20 MS. FERSTER: Well, I mean, let me just say
21 before we move on that the developer is asking the
22 Commission for permission to basically have a height
23 that is really unheard of outside of the downtown
24 area. They're doing it to accommodate a use that may
25 never materialize. So, isn't it --

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1 CHAIRPERSON HOOD: Ms. Ferster. Ms.
2 Ferster --

3 MS. FERSTER: -- worth understanding that?

4 CHAIRPERSON HOOD: -- you're testifying.
5 You're testifying.

6 MR. GLASGOW: Mr. Chairman, I'm going to
7 object to that.

8 MR. WEERS: If I could --

9 CHAIRPERSON HOOD: Hold on, hold on, let me
10 still ask you to move to the next question.

11 MS. FERSTER: Okay. I would take exception
12 then, for the record.

13 CHAIRPERSON HOOD: Thank you. Next question.

14 MR. GLASGOW: And, Mr. Chairman, for the
15 record I want to make sure that it is noted in the
16 record that there is 127-foot building essentially
17 across the street.

18 MR. WEERS: Yes.

19 MS. FERSTER: Okay. I should have clarified
20 that, that height, that I meant the height. And I
21 thank you for the clarification that the height is
22 not generally found in a moderate density commercial
23 zone.

24 Okay. Okay. So, I have some questions about
25 -- okay, well somebody said, and I don't know who,

1 said that you could stay within the moderate density
2 height for this medical building if it were a regular
3 office space, but there was no market for regular
4 office space. And I'm curious, has there been a
5 market study that has been done that identifies this,
6 the fact that there's no market for regular office
7 space?

8 MR. WEERS: So, that was me. It depends on
9 what you mean by market study. If you mean a market
10 study commissioned specifically for McMillan to look
11 at general office uses, the answer is no. However,
12 office development is a big part of what we do.
13 Outside of McMillan my firm does a lot of commercial
14 development in the area, and so we look at office
15 markets a lot.

16 I thought we might talk about this as well so
17 I brought some market data. You know, this is what I
18 would call an excerpt. This is not, again,
19 commissioned specifically for McMillan. But what
20 this is, is an overview of the general office market
21 in the District of Columbia over the last nine years.

22 My general statement was that the office
23 market is in a trough. I think that's being kind.
24 It's been a tough road to develop general office in
25 the District over the past nine years. And what this

1 slide shows is both deliveries of new office product
2 and net absorption for every year going back to 2007,
3 along with a vacancy rate that applies to each of
4 those years. It is a lot of data here. The point I
5 would draw your attention to, maybe three things.

6 The first, vacancy rate has been going up
7 steadily since 2007. It's not a good thing when the
8 vacancy rate keeps going up. That's hard for us.
9 It's not good.

10 The second thing I would point out is that
11 three of the past five years, 2012, 2014, and 2016,
12 you see negative absorption in the general office
13 market. So, I think it is very fair to say that on
14 the whole, it's a tough road out there to do general
15 office in the District of Columbia right now. You
16 know, the general office market, if you're talking
17 about nonhealthcare uses, it's basically the GSA, law
18 firms, and nonprofits and associations. And what
19 overall the point of this slide is just there's not
20 enough demand out there. Especially not when you
21 consider how much supply has come online.

22 So, if you think about McMillan in a general
23 office standpoint where you're not talking about
24 healthcare users who would look at the uses across
25 the street as a very attractive thing, you have to

1 think, how could McMillan compete with these other
2 sites that are delivering brand new product in other
3 submarkets, like the east end, or Mount Vernon
4 Triangle.

5 And you know, the kinds of things that a
6 general office user wants are, Metro access, which we
7 don't have. Existing amenities. Places to eat and
8 other things for the people who work there to want to
9 go to. And, you know, critical mass, right? Am I
10 around other people? We don't have any of those
11 things.

12 So, I do think it is a fair statement to say
13 that McMillan could not compete with a general office
14 -- in a general office market.

15 MS. FERSTER: Okay.

16 MR. WEERS: There is no market.

17 MS. FERSTER: Thank you. That's helpful.
18 And I'm wondering, you seem to have a lot of useful
19 slides, so I'm wondering if you have a slide that
20 talks about the current market for multifamily
21 housing in your pack of slides.

22 MR. WEERS: I appreciate the compliment on my
23 slides. I worked hard on them. But I do not.

24 MS. FERSTER: Okay. So, I guess the question
25 is, have you done any studies since the -- and this

1 is not just for you, but for the entire team, since
2 Trammell Crow was brought in 2009, you know, isn't it
3 the case that housing, we were just recovering from a
4 recession to the housing bubble. So housing was not
5 profitable. And isn't it the case that the housing
6 market is significantly improved since 2009?

7 So the question, have you done any
8 contemporary studies about the marketability of
9 housing versus healthcare buildings on the site?

10 MR. GLASGOW: Mr. Chairman, I'm going to
11 object again. Maybe it would be helpful if she could
12 state which one of the five points --

13 MS. FERSTER: 1A.

14 MR. GLASGOW: -- and then --

15 CHAIRPERSON HOOD: Yeah. She said 1A.

16 MR. GLASGOW: 1A.

17 CHAIRPERSON HOOD: Mr. Weers, make sure we
18 get a copy of all this, those helpful --

19 MR. WEERS: Yes, sir.

20 CHAIRPERSON HOOD: -- slides.

21 MS. FERSTER: This goes particularly to the
22 question of alternatives. You know, looking at
23 alternatives.

24 MR. GLASGOW: It says, "Could other policies
25 cited in the order be advanced even if development on

1 the site were limited to medium and moderate density
2 use?"

3 MS. FERSTER: Oh, sorry about that.

4 CHAIRPERSON HOOD: So, rephrase your
5 question.

6 MS. FERSTER: Yeah, it's a different issue,
7 then.

8 CHAIRPERSON HOOD: I just said 1A because you
9 said 1A.

10 MR. WEERS: You know, while you're searching
11 for another issue to attach it to, maybe what I would
12 do is answer the question in a more general sense.
13 If you're talking about comparative uses, and this is
14 something that Mr. Thakkar was starting to bring up
15 before, which maybe you didn't want to hear it
16 before, we could talk about it now. I do think that
17 it is fair to say that if you are comparing uses,
18 large commercial use versus more residential, the
19 benefits -- many Comp Plan benefits that commercial
20 use brings, you know, they are pretty unique to it,
21 right? So, the job creation numbers are
22 significantly higher when you are building this level
23 of health care development. The tax increment that
24 the overall development generates is significantly
25 higher. And I think we could even go through, I

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1 mean, this is probably a waste of time, but we could
2 go through each of these individual Comp Plan
3 policies that are listed out in Exhibit A and tie
4 which ones are, you know, sort of related directly to
5 the commercial component.

6 You could also do that to the grocery store
7 because, as I testified, I think if you're not
8 building a large commercial component where you have
9 this additional daytime population and a lot more
10 people here, you're not going to get that Harris
11 Teeter deal. So, if you pull out the commercial, and
12 you pull out the Harris Teeter, you're pulling out a
13 significant amount of the Comp Plan benefits that we
14 have.

15 MS. FERSTER: Okay. I'm just going to --
16 because that just doesn't -- before I continue with
17 my question. That just doesn't make sense to me,
18 okay, that if you had -- that people in an office
19 building --

20 MR. GLASGOW: Mr. Chairman, is there a
21 question?

22 MS. FERSTER: Yeah, I'm asking the question.

23 CHAIRPERSON HOOD: She's asking the question
24 that Mr. Weers just I guess, in relation to what he
25 just said.

1 MS. FERSTER: Yes, you can wait until -- you
2 can object after I ask the question.

3 So, my question is, and it relates to you
4 know, the notion that the Harris Teeter, which
5 already has a letter of intent signed, is somehow
6 connected to the office building. And you'll have to
7 explain this to me because as a matter -- as an
8 expert because as a matter of common sense it makes
9 more sense to me that you would have more business
10 for a Harris Teeter from denser housing than you
11 would from the patients and employees of an office
12 building.

13 MR. WEERS: So, I will maybe at some point
14 here, I'll answer a part of your question and then
15 ask some of my colleagues who might have some
16 additional things to add, because I'm not developing
17 the grocery store.

18 But I think in general, you know, I think one
19 way to think about the answer to your question is,
20 have you ever been to the Harris Teeter in NoMa?

21 [No audible response.]

22 MR. WEERS: You should go. So, if you go to
23 the Harris Teeter in NoMa in the middle of the day,
24 it's actually packed. Like, the lines are super long
25 because they do a ton of lunch business, and the hot

1 bar and some of the things that they sell are
2 actually becoming a more, a larger part of what they
3 do because they are locating a lot of grocery stores
4 near very dense daytime populations like NoMa, where
5 there's a lot of big tall office buildings, and you
6 know, thousands of people that work every day.

7 So, on some level I think what you're talking
8 about is just a total number of humans, right?
9 There's a lot of people that will work in a million
10 square feet of office, and you know, you're just not
11 going to have as many people if you're building to
12 your point, lower density. Even if it is
13 residential.

14 MS. FERSTER: Well, I'm not talking about --
15 I'm talking about moderate density, or medium density
16 residential. And I guess, again, that doesn't make
17 sense to me because from my own personal experience,
18 people who live in housing, when they -- you know,
19 doing their shopping for their homes as opposed to
20 their lunches, spend a lot more money at a grocery
21 store than the people who are buying their lunch at a
22 grocery store. So, it's really not the number of
23 people that matters, it's the volume of business.
24 Isn't that correct?

25 MR. WEERS: No, not necessarily.

1 MR. GLASGOW: I'm going to ask Mr. Anthony
2 Startt to respond to that. He's with Jair Lynch.

3 MS. FERSTER: Okay. And are you sworn in?

4 MR. STARTT: Yes. Thank you. My name is
5 Anthony Startt. I'm an investment manager at Jair
6 Lynch Real Estate Partners, a member of Vision
7 McMillan Partners, and we are the developer of the
8 multifamily and associated retail components on
9 Parcels 2 and 4, including the grocery store.

10 So, I think one of the key data points that
11 is important to understand is that, the grocery
12 market, they're going to look at a lot of different
13 factors. It's not going to be, you know, just
14 residential density, just office density. They can
15 work in a lot of different areas. And they're really
16 looking for a total, sort of a total gross sales
17 number.

18 And again, this is not in a specific market
19 study or anything. This is really just you know, our
20 expertise as developers of mix-use projects. But a
21 typical grocery store is looking for, you know, plus
22 or minus \$20 million a year in gross sales. And I
23 think Jair actually maybe discussed this very early
24 on, years ago, in a charrette or in an ANC meeting,
25 but talked about the immediate McMillan neighborhood

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1 and the gross sales that the McMillan neighborhood
2 would drive. And there's roughly, the average
3 household in the McMillan, immediate McMillan
4 vicinity, spends about \$110 a week on groceries, and
5 that results in about \$34 million per year that the
6 submarket is spending on groceries.

7 So for a grocer to get \$20 million in gross
8 sales, they would have to capture more than 50
9 percent of the market. Now, obviously that's not a
10 perfect comparison because there's, you know, you
11 know, people may come from other neighborhoods or
12 people -- you know, you're going to capture some
13 commuter traffic and things like that. But, for
14 comparison purposes to other neighborhoods, one being
15 Petworth, which has a new Safeway that opened, I
16 believe, in 2014, they -- Petworth spends about 139 -
17 - \$139 per person, per week for groceries, and
18 generates well over \$40 million in sort of total
19 grocery expenditures per year. So, a grocer there is
20 looking at capturing less than 50 percent of that
21 market.

22 And then another example is the H Street
23 neighborhood, which has a Giant that opened 2012 or
24 '13, and a Whole Foods that opened just in the last
25 couple months. That neighborhood is spending over

1 \$60,000 a year in grocery expenditures, and also has
2 a fairly large daytime population that actually --

3 MR. GLASGOW: Sixty million.

4 MR. STARTT: Sorry, 60 million. Sixty
5 million in gross.

6 MS. FERSTER: I was wondering about that.
7 Yeah. Yeah.

8 MR. STARTT: Yeah, sorry. Excuse me. And
9 that neighborhood actually has a daytime population
10 that far exceeds the McMillan neighborhood now.

11 MS. FERSTER: Okay. I get your point. Thank
12 you. I do have a follow up question. And that is,
13 so we're talking about eliminating 190 square feet of
14 office building, so that --

15 MR. WEERS: A hundred and ninety thousand.

16 MS. FERSTER: A hundred and ninety thousand.
17 I have the same problem with the zeros. A hundred
18 and ninety thousand square feet of office space from
19 the medical building if it were reduced to 90 feet.

20 And have you done a study that shows that the
21 number of employees and visitors who would be, not
22 come to the office building, if those floors were
23 eliminated and how that would impact the viability of
24 Harris Teeter?

25 MR. THAKKAR: We have not done a study.

1 MS. FERSTER: Okay.

2 MR. WEERS: I might add to that, you know, my
3 testimony is that if you eliminate those two floors
4 and that 190,000 square feet, you are not building a
5 shorter office building. You're not building the
6 healthcare component.

7 MS. FERSTER: All right. Well, I was just
8 going toward the linkage between the grocery store
9 and the healthcare building because that was, I
10 think, a different point that somebody --

11 MR. WEERS: I understand. I apologize.
12 Maybe I didn't explain it right. That means the
13 number of employees would be zero, because you're not
14 building the healthcare component.

15 MS. FERSTER: Okay. Because -- okay. So
16 your point -- so, you made a point separately that
17 the two extra floors was essential to the economic
18 viability of the healthcare facility.

19 MR. WEERS: Yes, ma'am. Yes, ma'am.

20 MS. FERSTER: And so I'm kind of again, kind
21 of curious about that because that would be a six-
22 story healthcare facility, right?

23 MR. WEERS: Yes, ma'am.

24 MS. FERSTER: And you're saying a six-story
25 healthcare facility is not economically viable?

1 MR. WEERS: I'm saying that the plan that we
2 have laid out, which is a large scale mix of
3 healthcare uses and users, that is a campus that it
4 includes a mix of large anchor tenants, mid-sized
5 junior anchors, and small anchor -- and small
6 tenants, is not viable if you eliminate 27 percent of
7 the current density.

8 MS. FERSTER: Okay. Because -- and just,
9 I'll finish my thought and then you can correct me on
10 that. But it made -- I mean, there is a six-story
11 healthcare facility on Parcel 3, so it seemed to me,
12 not being an expert, that a six-story healthcare
13 facility is economically viable because that's what's
14 being proposed for Parcel 3.

15 MR. WEERS: It's not six stories. No, ma'am.

16 MS. FERSTER: Oh, really? What is it?

17 MR. WEERS: We haven't taken that through the
18 stage-two PUD process yet.

19 MS. FERSTER: Okay. I was just looking at
20 one of your submissions to the Zoning Commission that
21 depicts Parcel 3, and it says that that would be a
22 six-story healthcare facility.

23 MR. WEERS: It was not a part of the
24 consolidated PUD application.

25 MS. FERSTER: Let me just pull that out then.

1 MR. WEERS: Ms. Ferster, while you're looking
2 that up, I thought I'd share something with you. You
3 may not know, in fact I'd be surprised if you did,
4 that on April 19th, 1977, I was born. So, today is
5 my birthday.

6 MS. FERSTER: Happy birthday.

7 MR. WEERS: Thank you.

8 MS. FERSTER: What a wonderful way to spend
9 your birthday.

10 MR. WEERS: It is in fact a milestone
11 birthday. So, you know what that means.

12 MS. FERSTER: I won't ask you how old you are
13 because I don't think that's --

14 MR. WEERS: Well, I just said, you can add it
15 up. 1977. I am 40 today. But unfortunately that
16 means I'm going to ask you for a birthday present.
17 Do you know what I want?

18 MS. FERSTER: I guess, you don't get to ask
19 me questions but you can certainly -- so, I don't
20 have to answer, but you can ask.

21 MR. WEERS: I want to get out of here by
22 9:00.

23 [Laughter.]

24 MS. FERSTER: What time is it?

25 MR. WEERS: 7:30.

1 MS. FERSTER: I think you'll have to direct
2 that question to the Chairman. I'm not --

3 MR. WEERS: It was a joke. I'm sorry.

4 CHAIRPERSON HOOD: That's not a question to
5 me.

6 MR. WEERS: Just trying to add some levity.

7 CHAIRPERSON HOOD: Let me just ask this, Ms.
8 Ferster. Since we're talking about time and
9 birthdays, and happy birthday, it's been about an
10 hour and I was just wondering about how many more
11 questions that you think you have. Maybe another
12 hour's worth?

13 MS. FERSTER: Maybe.

14 CHAIRPERSON HOOD: More than an hour's worth?

15 MS. FERSTER: I hope not.

16 CHAIRPERSON HOOD: Okay.

17 MS. FERSTER: I mean, it's going to take me a
18 little while to find this, this document, so maybe
19 I'll --

20 MR. WEERS: Okay.

21 MS. FERSTER: -- put that in my --

22 CHAIRPERSON HOOD: Do you have somebody
23 that's with you that can look for it while you go
24 ahead and ask your questions. That way we can at
25 least get him out by 9:00 tomorrow, because it's not

1 going to be 9:00 tonight.

2 MS. FERSTER: While I'm asking other
3 questions --

4 CHAIRPERSON HOOD: Seventy-seven, you're
5 making me into an old guy.

6 MS. FERSTER: Okay. So, while he's looking
7 at that, so I'll just ask you, do you know how tall
8 or how many stories that Parcel 3 building is going
9 to be?

10 MR. WEERS: I believe it was approved as part
11 of the stage-one PUD as 110 feet.

12 MS. FERSTER: A hundred and ten feet.

13 MR. WEERS: Yes, ma'am.

14 MS. FERSTER: Okay. So, and you don't know
15 how many stories that would be, though?

16 MR. WEERS: No, ma'am. Again, we haven't
17 gone through the stage-two PUD process. We haven't
18 started a lot of the same preliminary planning that
19 we've done for Parcel 1.

20 MS. FERSTER: Okay. All right. So, let me
21 move on here.

22 So, just going to -- and maybe I'll go back
23 to the representative from Jair Lynch about the
24 grocery store for a minute here. So, you were able
25 to sign your letter of intent with Harris Teeter,

1 even though, you know, the medical healthcare
2 facility, you know, hasn't really been developed,
3 doesn't have a tenant, and there's some uncertainty
4 about its height. So, I'm curious, is that -- are
5 there any conditions in your letter of intent that
6 says, you know, will only -- you know, let us out of
7 your, you know, our agreement if the healthcare
8 facility is not eight stories?

9 MR. STARTT: Well, first I will say the
10 amount that I can discuss our letter of intent is
11 pretty limited because there is some confidentiality
12 clauses in that letter of intent. And I will say
13 that we have not executed a lease yet, and so there
14 are a number of conditions and a number of hurdles
15 that we have to cross until we can execute a lease.
16 And that's about all I can say.

17 MS. FERSTER: Okay. Oh, okay. Okay. That's
18 it. Yeah. Yeah. Thank you. I was looking at the
19 multifamily building so that was my bad.

20 So, okay. So, let me just ask you, and this,
21 I'm afraid would still involve possibly questions
22 that Mr. Weer (sic) would answer on his birthday, and
23 I apologize for that.

24 I think basically it was your testimony that
25 this is such a complicated deal in terms of the

1 intricacies and the interweaving of the different
2 components and the relationship to each other, and
3 that is the reason why if you couldn't build -- you
4 know, couldn't knock two floors off of the healthcare
5 building, that's why the healthcare building would go
6 away.

7 And, you know, that just didn't seem specific
8 enough for me, and I'm just wondering, you know,
9 since the -- the question at hand is whether or not
10 you can reduce the height of the medical building.
11 You know, have you done any studies that look at the
12 feasibility of changing other components of the
13 project that are developed at a lower density?

14 For example, the row houses? Increasing the
15 density of the row houses to make the multifamily
16 buildings so that you would have you know, an overall
17 more -- you know, more profitability at the housing
18 end that would allow, you know, the project as a
19 whole to provide the amenities that --

20 MR. GLASGOW: Mr. Chairman, I'm going to
21 object again, as this does not relate to any of the
22 issues that have been stated for this remand hearing.

23 CHAIRPERSON HOOD: Which issue, Ms. Ferster,
24 is that related to?

25 MS. FERSTER: Well, you know, and again I'm

1 just looking at, you know, what VMP has done to
2 evaluate the feasibility of knocking off two floors
3 off of the medical building. And they've said, well,
4 it will jeopardize the grocery store.

5 CHAIRPERSON HOOD: Ms. Ferster, I just asked
6 you one question.

7 MS. FERSTER: Uh-huh.

8 CHAIRPERSON HOOD: All it is, is a number.
9 Which issue?

10 MS. FERSTER: It's 3. I think that would be
11 3.

12 MR. GLASGOW: It says, is a high density
13 development proposed for the site the only feasible
14 way to retain a substantial part of the property as
15 open space and make the site usable for recreation
16 purposes. I don't see about anything to do with --

17 CHAIRPERSON HOOD: So, I would just ask that
18 you rephrase your question pertaining to Number 3.

19 MS. FERSTER: Okay. Well, if you eliminated
20 two floors off the medical office building, could you
21 still retain the open space provided on the site by
22 virtue of increasing the density of some of the
23 housing components? Or did you look at that? Did
24 you evaluate that as an alternative? Anybody?

25 MR. STARTT: I can answer that. I guess you

1 put something on the record about if row homes or
2 multifamily would be more profitable, and just want
3 to say that we didn't testify to that, what's more
4 profitable or less profitable.

5 But to answer the question, and I think Mr.
6 Bell and Mr. Weers, and others have testified to
7 this, the program we've put forth is, I would say,
8 well calibrated with the market. So, why are the row
9 homes there? Well, they're for sale housing that are
10 more geared towards a different market than
11 multifamily housing that Jair Lynch might be
12 building. The senior housing is geared to yet
13 another market. There's economic viability in each
14 of those projects, but if you let's say, did all
15 multifamily apartments for argument's sake, that
16 would take a lot longer to build out because there's
17 only so much demand for multifamily. It also
18 wouldn't meet many of the Comp Plan objectives we're
19 trying to meet with regard to for sale housing, or
20 family housing, or senior housing.

21 So, the plan we've put together is one that
22 we think meets sort of the market and the many
23 different objectives that are laid out in terms of
24 our Comp Plan analysis.

25 But I think what I'd like to go back is what

1 Mr. Weers has testified to consistently, is this
2 notion of two stories less, and add somewhere else.
3 He's testified to the fact that in his opinion there
4 is not a scenario where there's two stories less that
5 a medical component doesn't move forward. So, if
6 that's what he's testified to, these questions about
7 just reducing two stories, I don't know that they're
8 necessarily applicable because we're not suggesting
9 that we can build, or he's not suggesting that he can
10 build an office building that has a 27 -- or a
11 project that has a 27 percent density reduction.

12 MS. FERSTER: Okay. But do you know, perhaps
13 somebody else could build such a project? Do you
14 know that?

15 MR. GLASGOW: I'm going to object to that on
16 speculation.

17 MS. FERSTER: I mean, have you looked -- done
18 any market studies? Have you done any inquiries as
19 to other developers about whether or not they could,
20 understanding that Trammell Crow perhaps has decided
21 it cannot, perhaps other developers too? Have you
22 made those inquiries?

23 MR. GLASGOW: Mr. Chairman, I'm going to
24 continue to object.

25 CHAIRPERSON HOOD: You still object. I'm

1 going to sustain.

2 MS. FERSTER: Okay. And, so Mr. Glasgow did
3 not articulate the reason for his objection and you
4 did not articulate the reason for sustaining it. So,
5 I'd ask that you do that for the record.

6 CHAIRPERSON HOOD: Okay. You go first and
7 I'll go second because --

8 MR. GLASGOW: Yes, sir.

9 CHAIRPERSON HOOD: -- I don't want to go
10 first. I'm not ruling the case.

11 MR. GLASGOW: I objected because I read what
12 Issue Number 3 was, that she said it retained to --
13 pertained to, and that was -- and is the high density
14 development proposed for the site the only feasible
15 way to retain a substantial part of the property as
16 open space and make the site usable for recreational
17 purposes. She has now started talking about, well,
18 what would other developers do, and other studies on
19 that. And that doesn't have anything to do with
20 Issue Number 3. And that's the basis of my
21 objection.

22 CHAIRPERSON HOOD: Okay. And I upheld that.
23 I sustained his objection for the --

24 MS. FERSTER: Okay. So, I think perhaps we
25 can get Mr. --

1 CHAIRPERSON HOOD: Can I ask -- can I finish
2 -- you asked me a question.

3 MS. FERSTER: Oh, I thought you had sustained
4 the objection.

5 CHAIRPERSON HOOD: But you wanted me -- you
6 wanted me to respond to why I sustained the question.
7 Or is that sufficient?

8 MS. FERSTER: If it's on the basis that he
9 articulated.

10 CHAIRPERSON HOOD: Okay. Okay.

11 MS. FERSTER: But, I -- that's why I
12 shouldn't --

13 CHAIRPERSON HOOD: Well, that's okay.

14 MS. FERSTER: Yeah.

15 CHAIRPERSON HOOD: I'll wait and answer
16 another one of your questions. Next question.

17 MS. FERSTER: Well, I guess we may then get
18 Mr. Weer out the door in order to salvage what is
19 left for his birthday if in fact it's going to --
20 because I have a number of questions that relate to
21 alternative design scenarios for swapping densities
22 among the sites and their feasibility, and I was
23 going to get into that in some detail. So, I guess I
24 would offer that, ask you whether or not you would
25 rule all of those questions out of order.

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1 MR. GLASGOW: Well, we haven't heard the
2 question, so I haven't objected to them.

3 CHAIRPERSON HOOD: I can't rule them out of
4 order because I haven't heard them also. So, go
5 ahead and ask your question.

6 MS. FERSTER: Okay.

7 CHAIRPERSON HOOD: I really believe though --

8 MS. FERSTER: I'm just trying to be
9 responsive.

10 CHAIRPERSON HOOD: For the record, I really
11 believe Mr. Weers, you're not really -- I mean, I
12 understand, we work on our birthdays too. So, join
13 the club.

14 MR. WEERS: I understand. I appreciate that,
15 and I appreciate your thoughtfulness, Ms. Ferster. I
16 will be here as long as you need me to be here. I
17 promise.

18 MS. FERSTER: Okay. So --

19 MR. WEERS: I knew what I was getting into
20 when I came here tonight.

21 MS. FERSTER: I will go through all my
22 questions, so, about alternative designs then. And
23 you can object to them if you feel that they're
24 beyond the scope of Issue Number 3.

25 So, since you don't have a tenant yet for the

1 medical building, why don't you just first build the
2 healthcare facility on Parcel 3, which is a little
3 lower, and test out whether you need the additional
4 height?

5 MR. WEERS: So, as I testified, we have been
6 working for a very long time to secure our anchor
7 tenants. And actually I think we're not that far
8 away. We have been making progress, as difficult as
9 this process has been, as start and stop as it has
10 been at times, I don't think we're that far away.
11 So, I am very excited about where we are and I'm
12 hoping that we will have an anchor tenant commitment
13 in the very near future, for Parcel 1.

14 MS. FERSTER: Parcel 1.

15 MR. WEERS: Yes, ma'am.

16 MS. FERSTER: Okay. Okay. So, I'm
17 wondering, have you done a current market study
18 comparing the profitability of a moderate density
19 healthcare, or I would say a lower height healthcare
20 building that's 90 feet tall versus a medium density
21 market rate residential building instead of the
22 townhouses on Parcel 4? Parcel 5.

23 MR. WEERS: Parcel 5?

24 MS. FERSTER: I'm sorry. I get these mixed
25 up. Wherever the townhouses are. Parcel 5, yeah.

1 MR. WEERS: I think the answer to that is no,
2 and the only addendum I would add is, it is not in
3 our opinion, feasible to analyze a 90-foot medical
4 office building. There is not a 90-foot medical
5 office building option available. So, there wouldn't
6 be a need to analyze that. The value of that is
7 zero. You wouldn't develop it.

8 MS. FERSTER: Oh, because you would walk, but
9 perhaps somebody else could.

10 MR. WEERS: So again, we don't make it a
11 common practice to analyze what our competitors will
12 or won't do. We are the largest healthcare developer
13 in the country and we've done a lot of healthcare
14 development in this market and all across the
15 country. So, I do feel like we have a very solid
16 grasp on what the market is and is not in this area.

17 MS. FERSTER: Okay. So, I was looking at the
18 RCL report and the prehearing document, and it talked
19 about, you know, the average resale price for condos
20 in Bloomingdale and LeDroit Park, which is close to
21 \$500,000. So, I'm wondering, and this is not just
22 for Mr. Weer (sic), but for anybody, given today's
23 market information, wouldn't it be more profitable to
24 develop Parcel 5 with condos, which would produce
25 more units of housing than the townhouses?

1 MR. BELL: We haven't run profitability.
2 What I can share with you, and it probably will take
3 a little bit of detail, but with condominiums, just
4 because you have more units doesn't mean the project
5 may be more or less profitable. It depends on the
6 construction type of the condominium and how much it
7 costs to build the condominium. Condominiums have a
8 lot of nonsalable space because you have corridors
9 and such. So there's many, many factors that go into
10 whether or not you build townhouses or condominiums
11 or multifamily rental at various sites.

12 MS. FERSTER: Uh-huh.

13 MR. BELL: The work we've done does indicate
14 as a team, that the mix we've proposed is a viable
15 mix for the project, and you know, recall that we are
16 in a public private partnership with the District of
17 Columbia, and we've got certain economic commitments
18 to the District of Columbia, and the program that
19 we've put forward you know, contributes to the
20 overall ability for the project to move forward with
21 regard to public benefits, open space preservation,
22 and such. So, I think this is an important point for
23 the Commission. The council did approve this general
24 mix and a general economic deal, right? And it is a
25 public/private venture, and as such there are private

1 proceeds that will be used to help build public
2 projects, and this is all -- public parts of the
3 project. This is all public record in the council
4 proceedings.

5 So, when you talk about, you know, reducing
6 this and increasing that, there is a significant
7 economic component. And as the deputy mayor said, he
8 views the medical component as a major economic
9 driver, both for jobs as I think he said, both
10 because we need healthcare in this city as he said.
11 But also because it is an economic driver financially
12 to support the entirety of the project and helping
13 get the rest of the pieces of this important puzzle
14 and the important pieces of the community built.

15 MS. FERSTER: Okay. So, have you done --
16 this is for anybody. Probably not Mr. Weers, but
17 anybody else who's involved in sort of the overall
18 planning, which perhaps would be EYA. I'm not sure.
19 But have you done like a rent comparability study
20 comparing the commercial rent for the healthcare
21 facility versus the residential rents or condo
22 prices?

23 MR. BELL: We have not.

24 MS. FERSTER: And have you done a
25 comparability study comparing sort of the rate of

1 return for building condos or multifamily buildings
2 versus building rowhouses on Parcel 5? A
3 comparability study?

4 MR. GLASGOW: Mr. Chairman, I'm going to ask
5 again what issue does that relate to?

6 MS. FERSTER: Three.

7 MR. GLASGOW: Once again, three?

8 MS. FERSTER: Three.

9 MR. GLASGOW: Because it says, your question
10 was concerning what rent comparability was between
11 various residential components of the project. And
12 this issue is, is the high density development
13 proposed for the site the only feasible way to retain
14 a substantial part of the property as open space and
15 make the site usable for recreational purposes. So,
16 I'm objecting because I don't believe it relates to
17 that topic.

18 MS. FERSTER: And again, I think my point is,
19 is that it does not appear to be the case that Vision
20 McMillan Partners or the applicants have been willing
21 to look at increasing density without reduction of
22 open space, and other components of the property in
23 order to offset the loss of two floors of the medical
24 building.

25 MR. STARTT: Well, I guess I want to speak

1 to, again, a very important part of this process,
2 which was the HPRB process. And I think Mr. Bell can
3 speak to this as well. And if you look at our plan
4 it's very intentional from open space to what I'll
5 call low moderate density row homes at a certain
6 height, to sort of mid-level moderate density, to the
7 tallest buildings on the north as they are adjacent
8 to the hospitals.

9 And so, you know, we're also assuming that
10 the Commission and the -- I'll really speak to the
11 HPRB, because they gave us guidance with regard to
12 this whole notion of stepping up development. I
13 mean, recall, row homes are across the street. So,
14 the row homes are part of our proposal to be
15 contextual with the neighborhood. And HPRB responded
16 as sort of the governor of sort of the overall
17 tripartite organization, responded very favorably to
18 no density, low moderate density, high, you know,
19 higher density, and then the tallest buildings on the
20 northern edge of the site so that there's so much,
21 you know, asking the questions, have you looked at
22 this, have you looked at that, there's so much that
23 we've gone through that predated even the Zoning
24 Commission that led to the plan, you know, as it is
25 today. So, that's sort of part of my answer.

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1 But the other part of the answer is, it is
2 our view, based on Mr. Weers' testimony, that the
3 project really does fall apart if we don't have a
4 healthcare component. So, let's say we do as you
5 suggest. We lose the healthcare component. Maybe
6 you can put something else on that side of the site.
7 We don't have the job creation that the Deputy
8 Mayor's office and the mayor and the council have
9 demanded from this project in terms of a mix of job
10 creation and affordable housing, so we lose that
11 piece. Maybe you put some density somewhere else.
12 That doesn't leave us with an economically viable
13 project, or a project that delivers what we told the
14 city council that we would deliver, told the mayor
15 that we would deliver, in terms of a mixed-use
16 project that offers benefits on the housing and
17 commercial side.

18 MS. FERSTER: Okay. So, that's why the --
19 and that's the reason why you didn't look at those
20 other scenarios? That's your --

21 MR. STARTT: The reason we didn't look at
22 those other scenarios is because we think we have a
23 plan that meets that Comp Plan as proposed.

24 MS. FERSTER: So, and this is a question for
25 Mr. Weers. In around 2008, Sibley Hospital removed

1 two floors of its medical office building, you know,
2 to lessen the impacts on surrounding neighborhoods.
3 And it's built and it's functioning well. So, are
4 you familiar with this example and --

5 MR. WEERS: We did not develop that, no. I
6 know where it is.

7 MS. FERSTER: So, you can't comment on why it
8 was feasible for them to do it?

9 MR. WEERS: I couldn't. I could, you know,
10 speculate that if you have one user and that user is
11 the only person in there, it's a very different thing
12 than what we are developing. But no, it is not a
13 project that my firm was involved in. It's not
14 anything I know the details about, no.

15 MS. FERSTER: So, I have some specific
16 questions for Mr. Dettman. So, my first question is
17 that the -- you didn't provide any written testimony
18 but there is an Exhibit A attached to, you know, your
19 submission, your prehearing submission. And it
20 doesn't indicate who the author of that report is,
21 but it did address a lot of the Comprehensive Plan
22 elements. Are you the author of Exhibit A?

23 MR. DETTMAN: For the Comprehensive Plan
24 analysis contained in Exhibit A, yes, I was the lead
25 person in preparing that exhibit.

1 MS. FERSTER: Okay. And did anybody else
2 participate in the preparation of that document?

3 MR. DETTMAN: I relied upon some information
4 from the team as to the building program and the
5 characteristics of the project that would contribute
6 to advancing Comprehensive Plan policies contained in
7 that exhibit.

8 MS. FERSTER: Okay. But you were the lead.
9 And so that would comprise your written testimony in
10 addition to either supplementation that you provided
11 orally?

12 MR. DETTMAN: I think my written testimony is
13 what I read into the record this evening. Exhibit A
14 I would not consider written testimony. I would
15 consider it an exhibit containing a Comprehensive
16 Plan analysis of the project.

17 MS. FERSTER: Okay. Well, okay, then we can
18 deal with this when it comes to, you know, when you
19 move things into the record. But I would suggest
20 that if it's not your -- if you don't incorporate or
21 adopt this as part of your testimony because it
22 doesn't have an author indicated on it, it would not
23 be admissible.

24 MR. GLASGOW: I'm sorry. This document has
25 been accepted for the record. I'm sorry, what is the

1 statement or the objection to this being in the
2 record?

3 MS. FERSTER: Well, I would just want to make
4 sure that it is Mr. Dettman's testimony that he
5 prepared this as his report. It's authentication
6 issue because it doesn't have an author attached to
7 it.

8 MR. GLASGOW: Would you please identify this
9 document and that this is a work product that you
10 were principally in charge of for introduction in the
11 record in this case?

12 MR. DETTMAN: I was the principal lead on
13 preparing this analysis of Comprehensive Plan
14 consistency of the project.

15 MS. FERSTER: Okay. So, good, because I had
16 some questions that go to that report.

17 And I'm particularly focusing on page 36 of
18 that exhibit, which represents Comprehensive Plan
19 policy CSF-2.1.1., which is referenced as it's
20 regarding healthcare facilities for medically
21 underserved or high poverty neighborhoods, and you
22 indicate in that report that it's a specific
23 Comprehensive Plan policy that will be served by the
24 medical facility.

25 So, my first question about this is that I

1 believe that this is -- this particular Comprehensive
2 Plan policy was not previously mentioned in any of
3 the prior planning reports on the record, and I'm
4 wondering is this due to a change in the planned use
5 of the healthcare facility? Why suddenly this policy
6 coming up now?

7 MR. DETTMAN: I can't testify as to whether
8 or not this policy showed up in any of the other
9 Comprehensive Plan evaluations that are currently in
10 the record. What I can say is that in addressing
11 these issues, and as I've testified to tonight, in
12 addition to focusing on the policies that are
13 specifically cited in the order, I also conducted a
14 full-blown Comprehensive Plan analysis on the
15 project, looking at every single policy and every
16 single element in the District elements, because I
17 believe that is the proper way to evaluate a project
18 for consistency with the Comprehensive Plan.

19 In addition, it's my understanding that
20 Friends of McMillan specifically stated that the
21 Commission failed to address Comprehensive Plan
22 policies dealing with the distribution of healthcare
23 facilities, and that's another reason why it was
24 important to include this particular policy in this
25 particular evaluation.

1 MS. FERSTER: All right. But the policy
2 relating to distribution of healthcare facilities is
3 not this policy, 2.1.1. This policy deals with
4 developing healthcare facilities for medically
5 underserved or high-poverty neighborhoods.

6 MR. DETTMAN: You said it was policy CSF-
7 2.1.1?

8 MS. FERSTER: Right.

9 MR. DETTMAN: It says, "Emergency medical
10 facilities should be geographically distributed so
11 that all residents have safe convenient access to
12 such services."

13 MS. FERSTER: Right, and that -- but I think
14 our concern related to a different policy that didn't
15 write specifically the emergency facilities because
16 we didn't consider that to be an emergency facility.
17 And I think the policy that we referred to was the
18 CSF policy that's addressed in the Office of Planning
19 report.

20 MR. GLASGOW: And I'm going to object to the
21 characterization. It says, primary and emergency
22 care, not just emergency care.

23 MS. FERSTER: Okay. Well, I'm just going to
24 pull out the Office of Planning report.

25 CHAIRPERSON HOOD: Ms. Ferster, let me just

1 ask, did -- Mr. Dettman, did you do the Office of
2 Planning report? I'm trying to figure out, why are
3 we going now to the Office of Planning report? I
4 thought we were talking about a report that he was
5 solely responsible for.

6 MS. FERSTER: Well, this is a new policy that
7 as far as I can tell was never mentioned by VMP or
8 the Office of Planning in the prior --

9 CHAIRPERSON HOOD: And I think he -- did you
10 -- and I don't want to get into to trying to defend
11 anybody's case because that's not what my job is.
12 I'm going to do mine. But let me just ask you this,
13 Mr. Dettman.

14 You mentioned that on remand you went and you
15 evaluated the Comp Plan and you looked at some of the
16 policies. Isn't that what you said? So, I think
17 that question has been answered.

18 MS. FERSTER: Okay. So, and do you recall
19 whether or not --

20 CHAIRPERSON HOOD: Is that what you --

21 MS. FERSTER: Well, I'm just going to let the
22 record stand, then. I think that this policy wasn't
23 in the prior record.

24 So, I guess my particular question about this
25 is that is the reason why you refer to this

1 particular policy because there has been some change
2 in the planned use of the healthcare facility as now
3 providing services for underserved or high-poverty
4 neighborhoods? Is this a change from previously in
5 the use, because I could not find where in the prior
6 record the healthcare facility was positioned as
7 serving this particular policy of providing
8 facilities for medically underserved or high-poverty
9 neighborhoods.

10 MR. DETTMAN: I am not aware of any change.
11 I think in the prior proceedings what was proposed
12 for Parcel 1 is a healthcare facility as that term is
13 defined in the Comprehensive Plan, that remains
14 consistent to this day. And including this policy, I
15 was addressing the issue of distribution of
16 healthcare facilities. And the point in terms of
17 undeserved areas, I think that, and you can correct
18 me if I mischaracterize your position on this, but I
19 think my understanding is that part of the position
20 is that this is an overconcentration of healthcare
21 facilities when there are other areas of the city
22 that are known to be underserved.

23 I think that the information that is cited in
24 terms of the justification of this policy, again CSF-
25 2.1.1, refers to information that's been published

1 that shows that this area is actually one of the
2 areas that is underserved for a particular area of
3 healthcare need.

4 And so, in addition to making the point that
5 this will not be an overconcentration of healthcare
6 facilities in this area, and it will actually advance
7 other economic development policies in the
8 Comprehensive Plan, it will actually -- it
9 potentially could, once Mr. Weers advances his
10 efforts to identify the tenants for this, it could
11 actually contribute to addressing the issue of the
12 population that's underserved in this area.

13 MR. WEERS: So, if I could add to that? One
14 of the things I did testify to is that, you know,
15 some of these users who are currently existing across
16 the street in the Washington Hospital Center campus,
17 as an example, just an example, you could look at and
18 say, if they were to be a part of McMillan, say take
19 Children's Hospital. Children's Hospital is
20 currently operating all over this city. They have a
21 facility that is in operation at UMC. And so, a part
22 of the point here is that when a system upgrades its
23 core operations, it's doing that for a lot of
24 reasons. Part of it is to improve the efficacy of
25 care, and to the healthcare stuff that they do

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1 better. But its' also a cost saving thing. It's
2 also, it has economic impact. It's an engine that
3 fuels other things that they are doing throughout the
4 city.

5 MS. FERSTER: Okay. So, I guess my question
6 is more specific than that.

7 So, do you know, you know -- I'm just going
8 to take it as a given that you know, this healthcare
9 facility, you believe that this healthcare facility
10 will provide medical services to low income people.
11 So, specifically what percentage of sort of sliding
12 scale or uncompensated services will be provided by
13 the doctors in this facility, or the providers in
14 this facility?

15 MR. GLASGOW: Nobody -- that's beyond the
16 scope of anybody's testimony. Objection.

17 MS. FERSTER: Well, I just, I guess my
18 question is that it relates to policy CSF. If you
19 state in this thing that you believe that the
20 proposed healthcare facility will help address
21 designated healthcare deficiency and a shortage of
22 healthcare providers providing services to low income
23 people, I'd just like to know, how are you going to
24 do that?

25 MR. WEERS: So, I believe that the answer I

1 just gave you before is a part of how we are going to
2 do that, which is what I testified to. Many of the
3 users who will likely be involved in McMillan are
4 currently healthcare systems that operate in the
5 District of Columbia. By being involved in McMillan
6 they are doing what they do better. It has a
7 positive economic impact on them, which allows them
8 to do what they do throughout the city even better.

9 An example of that, just an example, is
10 Children's Hospital. Children's Hospital is
11 currently operating in United Medical Center. And
12 so, if they were a part of this project and they were
13 able to do what they do better and make more money
14 and have better, you know, more revenues, cut
15 expenses, maybe even do some philanthropic stuff, it
16 helps them do what they do in other parts of the
17 city.

18 MS. FERSTER: So, have you quantified this
19 and the number of low income people who will be
20 provided with uncompensated or --

21 MR. GLASGOW: Mr. Chairman, I'm going to
22 object again as to -- let me get my objection in.

23 Part of this says, "New or rehabilitated
24 healthcare facilities should be developed in
25 medically underserved and/or high poverty

1 neighborhoods, and in areas with high populations of
2 senior citizens, the physically disabled," and then
3 it goes on the rest of the -- "And others with unmet
4 healthcare needs."

5 So, it's not just what or how many people who
6 are economically disadvantaged you're serving. It
7 just says areas that are underserved. And Mr.
8 Dettman testified that this is an underserved area.

9 CHAIRPERSON HOOD: Okay. Ms. Ferster, what -
10 - I thought the question has been answered, but what
11 are you trying to get out of all this?

12 MS. FERSTER: Well, you know, this is an
13 element that Mr. Dettman believes that the healthcare
14 facility, you know, will be, you know, serve. And I
15 would just like to understand because he specifically
16 mentions that this is a low-income health provider
17 shortage area and that this project has a potential
18 to address this issue and reduce the shortage of low
19 income primary care facilities that are available.
20 So, I'm hearing Mr. Weers' --

21 CHAIRPERSON HOOD: Mr. Dettman, is that --
22 was that your -- did you testify? Is that your
23 testimony?

24 MS. FERSTER: I'm reading his report.

25 MR. DETTMAN: Those are the words that are in

1 Exhibit A. And I want to make sure I clarify
2 because, Ms. Ferster, when you referred to the
3 response that's in Exhibit A initially you said that
4 the project will address this issue. And the words
5 actually are, "has the potential." Those words are
6 written specifically to say that this is a project
7 that's going to provide a million square feet of
8 healthcare facilities as Mr. Weers mentioned, it's
9 undefined in terms of what those healthcare
10 facilities within the definition of the Comprehensive
11 Plan, what those tenants are going to be.

12 As Mr. Weers also just stated, is that this
13 project has the potential, if Children's is involved
14 in the project, it will allow them to expand upon the
15 range of services that they provide, potentially
16 including philanthropic. So again, going back to the
17 words, this project does have the potential to
18 address a known deficiency in this area.

19 MS. FERSTER: By allowing Children's to
20 provide more, not this facility to provide more.

21 MR. DETTMAN: All I'm saying is that this
22 project has the potential to address a known
23 deficiency in this area.

24 MS. FERSTER: Okay. So, last question on
25 this point is that would you -- just to make sure

1 that this known deficiency is addressed, would you
2 fashion a condition that the Zoning Commission could
3 attach to the PUD order that specifies the percentage
4 of low income people who would be served by this
5 facility?

6 MR. GLASGOW: His statement here doesn't say
7 anything about that.

8 CHAIRPERSON HOOD: Ms. Ferster, I would just
9 ask, if that's something you might want to ask the
10 Commission. I don't think that's a cross-examination
11 question.

12 MS. FERSTER: Well, I don't think I'm allowed
13 to ask the Commission questions.

14 CHAIRPERSON HOOD: No, I didn't say right --
15 well, you asked me one earlier. But what I'm saying
16 is --

17 MS. FERSTER: Other than for procedural
18 matters.

19 CHAIRPERSON HOOD: In your proceedings.
20 That's something you may want to ask this Commission.
21 So --

22 MS. FERSTER: Okay.

23 CHAIRPERSON HOOD: -- next question.

24 MS. FERSTER: All right. Let's see. I have
25 a question about your testimony about -- sorry. I'm

1 missing their page. All right. About view sheds.
2 Okay?

3 So, you did specifically mention that you
4 believe that the project was designed to preserve
5 view sheds, and you particularly mentioned the armed
6 forces retirement home. But you did not make any
7 specific mention of the view of the U.S. Capitol from
8 President Lincoln's Cottage.

9 So, my question is, isn't it correct that the
10 Capitol dome is in fact presently visible from
11 President Lincoln's Cottage?

12 MR. DETTMAN: I didn't testify to that.

13 MS. FERSTER: Okay. You didn't. That's
14 correct, you did not. You admitted that.

15 MR. DETTMAN: My testimony said that the
16 project as currently designed, does preserve key view
17 sheds, including across the site, including between
18 the north and south service courts, along to key
19 landmarks along Olmstead Walk, and including from the
20 Armed Force Retirement Home.

21 MS. FERSTER: Okay. But did you not make a
22 study of the view from the President Lincoln's
23 Cottage, because that issue has been repeatedly
24 raised by the National Trust for Historic
25 Preservation?

1 MR. DETTMAN: My understanding that in the
2 prior proceedings there was an analysis conducted by
3 VMP regarding an analysis if view sheds from the
4 Lincoln -- from the Armed Forces Retirement Home.

5 MS. FERSTER: Okay.

6 CHAIRPERSON HOOD: Ms. Ferster, help me
7 understand. Which number are we now focusing on, out
8 of the five from the court remand? What -- that
9 question, which number are we focusing --

10 MS. FERSTER: On branch planning policies
11 that are --

12 CHAIRPERSON HOOD: So, we're back up to
13 Number 1.

14 MS. FERSTER: We're talking about
15 Comprehensive Plan. And this is, you know, the
16 policy relating to --

17 CHAIRPERSON HOOD: Okay. So, Number 2. I'm
18 just trying to follow you.

19 MS. FERSTER: McMillan Policy 2.6.5 that
20 talks about preserving view sheds.

21 Okay. So, you mentioned the prior
22 proceedings where a study was done of the view sheds,
23 not by you. And isn't it correct that in November
24 2014, when -- or around the time that that study was
25 done, you were on the staff of the National Capitol

1 Planning Commission.

2 MR. DETTMAN: I was part of NCBC staff in
3 November of 2014, correct.

4 MS. FERSTER: Right. And isn't it correct
5 that on November 6th, 2014, you made a presentation
6 to the NCPC on the impact of the McMillan development
7 on sightlines to the Armed Forces Retirement Home,
8 including President Lincoln's Cottage, which you
9 addressed in your testimony?

10 MR. DETTMAN: At the November 14th, NCPC
11 Commission meeting I represented NCPC staff in
12 delving the executive director's recommendation to
13 the Commission.

14 MS. FERSTER: And that testimony, in fact,
15 represented that you did not believe that there were
16 any significant views from President Lincoln's
17 Cottage to the U.S. Capitol dome. Isn't that
18 correct?

19 MR. DETTMAN: I would have to take your word
20 for it.

21 MS. FERSTER: And that testimony, at that
22 point had you ever been --

23 MR. GLASGOW: Mr. Chairman, I'm going to
24 object --

25 MS. FERSTER: -- to the Capitol dome?

1 MR. GLASGOW: -- to the line of questioning
2 as to what does it relate to as to the issues on
3 remand.

4 MS. FERSTER: As I said, Comprehensive
5 policy, plan policy, MC-2.6.5, the testimony that
6 this was designed to preserve view sheds from the
7 Armed Forces Retirement Home. And there's a specific
8 view shed that is significantly at issue here, and I
9 believe that Mr. Dettman has personal involvement in,
10 you know, in that, or knowledge of that view shed,
11 based on his prior involvement at the NCPC.

12 So, I would like --

13 CHAIRPERSON HOOD: So, what you -- I'm trying
14 to understand this. So, you're asking him a question
15 about this case and another role that he played prior
16 to being in this role.

17 MS. FERSTER: Well, I mean, he didn't address
18 the view shed on the --

19 CHAIRPERSON HOOD: No, I'm just trying to --
20 I'm trying to follow you.

21 MS. FERSTER: [Speaking off microphone.]

22 CHAIRPERSON HOOD: I'm trying to follow you.

23 MS. FERSTER: [Speaking off microphone] so
24 I'm wondering why, if you -- why you didn't address
25 it here when you in fact addressed it in your

1 testimony before the NCPC.

2 MR. DETTMAN: In my role as part of the staff
3 at NCPC, our role in reviewing this project as
4 referred over from the Zoning Commission after taking
5 proposed action, was an evaluation of the federal
6 interest against the federal elements of the
7 Comprehensive Plan. The Armed Forces Retirement Home
8 is a federal property so that was part of the role
9 that I played as part of the staff at NCPC.

10 MS. FERSTER: Uh-huh. And at that time had
11 you ever actually been to the President Lincoln's
12 Cottage in order to view whether or not there is --
13 the Capitol dome is visible from any part of the
14 location at the President Lincoln's Cottage?

15 MR. DETTMAN: I have been to the Armed Forces
16 Retirement Home, including the Lincoln's Cottage on
17 many occasions during my time living in Washington,
18 D.C. Yes.

19 MS. FERSTER: Okay. But specifically at the
20 time that you testified -- on November 6th, 2014, had
21 you been to the President Lincoln's Cottage at that
22 time?

23 MR. DETTMAN: I was at the Armed Forces
24 Retirement Home. I don't know the exact date, but it
25 was during the time that NCPC staff was involved in

1 commenting and evaluating this project. I think even
2 starting in October of 2014, I think when staff
3 submitted its initial comments. So, I was at the
4 campus during that time.

5 And as I recall, shortly after NCPC approved
6 the project or found that there was no adverse impact
7 to federal interest, shortly after that if I recall
8 correctly, there was an effort to set up a meeting.
9 I can't recall the person from the Lincoln's Cottage,
10 but there was an effort to establish a site visit
11 with NCPC staff, and my recollection is, is that the
12 staff at the Lincoln Cottage canceled that meeting on
13 two occasions because it was foggy, or cloudy, or
14 rainy on that day.

15 MS. FERSTER: Okay. But so, but prior to
16 that you had been on the grounds of the Armed Forces
17 Retirement Home. Had you at that point looked for
18 the Capitol dome and tried to see whether or not you
19 could actually see it with your eyes when you were on
20 the grounds?

21 MR. DETTMAN: Yes, I did.

22 MS. FERSTER: And did you see the Capitol
23 dome?

24 MR. DETTMAN: We spent a considerable amount
25 of time at the view shed of the Scott statue, which

1 is nonexistent at this point in time.

2 MS. FERSTER: Right. But you didn't go to
3 the, let's say the, I guess the south lawn or inside
4 at the second floor of the Lincoln --

5 MR. DETTMAN: I did not go inside the
6 building and to every floor and every room.

7 MS. FERSTER: Okay. So, you didn't have
8 occasion during your prior visits to actually
9 specifically look at the locations that the National
10 Trust mentioned, where you could actually see the
11 President Lincoln's Cottage?

12 MR. DETTMAN: When I was part of NCPC staff,
13 that is correct. I did not go into every single
14 floor and room of the Lincoln Cottage.

15 MS. FERSTER: And have you had a chance since
16 then to actually specifically go to the grounds of
17 the President Lincoln's Cottage to specifically look
18 and see whether you could see the dome of the U.S.
19 Capitol?

20 MR. DETTMAN: I have not been the AFRH since
21 leaving NCPC specifically to evaluate view sheds.

22 MS. FERSTER: Okay. So, and I'm just
23 curious, when you presented your testimony on
24 November 6th to the NCPC relating to the views from
25 the AF -- Armed Forces Retirement Home, at that point

1 were you considering leaving the NCPC to join the
2 staff of Holland and Knight?

3 MR. DETTMAN: No.

4 MS. FERSTER: Okay. And when did you start
5 your discussions with Holland and Knight after that?

6 MR. GLASGOW: Mr. Chairman, I'm going to
7 object to this line of questioning.

8 CHAIRPERSON HOOD: I'm going to sustain the
9 objection because I don't think that's relevant.

10 MS. FERSTER: Okay. Exception, it goes to
11 credibility.

12 CHAIRPERSON HOOD: Next question.

13 MR. MAY: So, I just have a question, Ms.
14 Ferster. I mean, he answered the question that he
15 was not considering that at the time. So, what
16 difference would it make if he considered it later,
17 or when he considered it later? Obviously he
18 considered it at some point because he works for
19 them.

20 MS. FERSTER: Well, he didn't testify today,
21 about the -- specifically declined to testify about
22 the views to the President Lincoln's cottage. And
23 the view that --

24 MR. MAY: I don't think he declined to
25 testify. He answered his questions to the best of

1 his ability --

2 MS. FERSTER: right.

3 MR. MAY: -- based on what you said; based on
4 what you asked him.

5 MS. FERSTER: It indicated it was beyond the
6 scope of his testimony. So, I you know --

7 MR. MAY: Yeah.

8 MS. FERSTER: That's the best I can. So, his
9 testimony simply does not address that view, and
10 that's fine. The record stands on that point.

11 MR. MAY: Right. I'm just trying to
12 understand why you would take exception to the notion
13 that he wouldn't answer a question that didn't seem
14 to be relevant. But that's okay. You don't need to
15 answer that further.

16 MS. FERSTER: Well, I think I --

17 MR. MAY: It's okay.

18 MS. FERSTER: -- could explain the
19 relevance --

20 MR. MAY: I don't need to hear anything more.

21 MS. FERSTER: But you asked me a question,
22 just for the record I did explain the relevance of
23 the view, and that is that McMillan policy --

24 MR. MAY: And that's not what I was asking
25 about. So, thank you.

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1 MS. FERSTER: So, okay. Let's turn to the
2 RCL report.

3 MR. DETTMAN: Yes.

4 MS. FERSTER: So, you were qualified as an
5 expert and I think I wrote down, but you can clarify
6 this, fiscal and economic impact analysis. Is that
7 correct?

8 MR. BOGORAD: And the market -- real estate
9 market and financial analysis, yes.

10 MS. FERSTER: Okay. So, you were not
11 qualified as an expert in gentrification or
12 displacement issues?

13 MR. BOGORAD: It's a -- I consider it a
14 subset of market analysis, and real estate market
15 analysis, but --

16 MS. FERSTER: Have you done any -- been
17 involved in any studies that look at the causes of
18 gentrification and the effects of new development in
19 causing displacement?

20 MR. BOGORAD: No, I've reviewed a lot of
21 them, read a lot of them. But I have not actually
22 conducted one. Never been asked to.

23 MS. FERSTER: And have you lectured or talked
24 specifically on that topic?

25 MR. BOGORAD: No.

1 MR. GLASGOW: Mr. Chairman, he was accepted
2 as an expert, correct? He was proffered as an
3 expert. I want to make sure that he was accepted by
4 the Commission.

5 CHAIRPERSON HOOD: Did we deal with that
6 earlier?

7 MS. FERSTER: He was proffered, and I don't
8 believe that --

9 MS. SCHELLIN: I think he was proffered,
10 but --

11 CHAIRPERSON HOOD: Okay. Well, let's do it
12 now. Hold on, Ms. Ferster, we need to deal with
13 this.

14 MS. FERSTER: I'm just clarifying. I'm not
15 objecting to his -- the grounds in which --

16 CHAIRPERSON HOOD: Our proceeding. We want
17 to -- let us do our proceeding. Just give me a
18 minute.

19 MS. SCHELLIN: I think he testified in the
20 original case, didn't he?

21 MR. BOGORAD: I did, yeah.

22 MS. SCHELLIN: Yeah.

23 MR. BOGORAD: I don't know about original,
24 but I did testify regarding --

25 CHAIRPERSON HOOD: Was he --

1 MR. BOGORAD: Regarding the fiscal and
2 economic impact analysis.

3 CHAIRPERSON HOOD: Was he proffered as an
4 expert in the original case?

5 MS. SCHELLIN: That's, I'm not sure. I know
6 he's testified here before.

7 MR. BOGORAD: I'm sorry, that was at the
8 Mayor's Agent.

9 MR. MAY: Mr. Glasgow, he was proffered for
10 this proceeding?

11 MR. GLASGOW: Yes, this proceeding.

12 MR. MAY: Can you point to us to the -- to
13 what exhibit his resume appears in? Or is it just
14 part of his report?

15 CHAIRPERSON HOOD: Hold on, hold on. Let me
16 say that, you mentioned it. I mean, have we done it
17 previously? Has he been proffered here previously?

18 Okay, we didn't go through our normal action.

19 MR. GLASGOW: Right. I believe that we did
20 submit his resume.

21 CHAIRPERSON HOOD: Could you point to us what
22 exhibit it is?

23 MR. GLASGOW: You've identified them as an --
24 okay. Then, we need to get the resume to the
25 Commission.

1 MS. FERSTER: And to counsel.

2 MR. GLASGOW: Okay. Right.

3 MS. FERSTER: And just to be clear, I don't
4 object to his qualification as the expert in where he
5 was proffered.

6 CHAIRPERSON HOOD: Thank you for letting us
7 know that, but we have a proceeding that we're going
8 to go through.

9 MS. FERSTER: Right. I understand that.

10 CHAIRPERSON HOOD: Thank you. And, Mr.
11 Glasgow, what is he being proffered in? Maybe that
12 was earlier and we just --

13 MR. GLASGOW: He was getting proffered as a -
14 - and I'll get back to it. He's proffered as an
15 expert in fiscal and economic impact analysis and
16 real estate market and financial analysis.

17 CHAIRPERSON HOOD: Okay.

18 MR. GLASGOW: And with respect to the issue
19 that was raised, he's stated that issues of
20 gentrification and that type of market analysis are a
21 subset in his view, of that.

22 CHAIRPERSON HOOD: Let us just deal with the
23 -- let's just deal with the resume and we'll move on.

24 MS. SCHELLIN: It wasn't submitted before.

25 CHAIRPERSON HOOD: It wasn't submitted.

1 Well, that's important, so that's why I want to deal
2 with this. He has three resumes?

3 MS. SCHELLIN: Yeah, I don't see -- it wasn't
4 submitted before, correct, as part of your prehearing
5 submission?

6 MR. DETTMAN: We included a list of
7 witnesses, some of which were identified as
8 previously identified as experts, and identified
9 three that were not, and we brought the resumes here
10 this evening.

11 MS. SCHELLIN: Okay.

12 MR. DETTMAN: The resumes were not submitted
13 previously.

14 MS. SCHELLIN: Okay. That's why not. So,
15 it's just the two that are experts, for experts,
16 right? Mr. Weers and --

17 MR. GLASGOW: Oh, that haven't been accepted
18 before? Correct.

19 MS. SCHELLIN: But you have to always submit
20 resumes in every case.

21 CHAIRPERSON HOOD: Mr. Weers is the applicant
22 so he's --

23 MS. FERSTER: Yeah, I didn't understand him
24 to be proffered as an expert.

25 CHAIRPERSON HOOD: So, yeah, let's not

1 confuse it. We're just dealing with one person.

2 Yeah, let's just deal with one.

3 MR. GLASGOW: Mr. Bell. He was previously
4 accepted.

5 CHAIRPERSON HOOD: Okay. Who was previously
6 accepted?

7 MR. GLASGOW: Mr. Bell.

8 CHAIRPERSON HOOD: Oh, yeah.

9 MS. FERSTER: I have no objection to his
10 expertise.

11 CHAIRPERSON HOOD: Well, we're not going to
12 do Mr. Weers. He's the applicant, so, just wish him
13 a happy birthday.

14 [Laughter.]

15 CHAIRPERSON HOOD: How do you pronounce your
16 last name? Bogorad?

17 MR. BOGORAD: Right.

18 CHAIRPERSON HOOD: Okay.

19 MR. BOGORAD: Correct.

20 CHAIRPERSON HOOD: Thank you.

21 MR. BOGORAD: Thank you.

22 CHAIRPERSON HOOD: Okay. So, let's just --
23 Mr. Dettman, expert in land use. Any objections?

24 [No audible response.]

25 CHAIRPERSON HOOD: Okay. He's been

1 previously accepted, so. Okay, any objections on Mr.
2 Bogorad? Any objections?

3 [No audible response.]

4 CHAIRPERSON HOOD: Okay.

5 MS. FERSTER: Before you rule, I would like
6 to articulate an objection.

7 CHAIRPERSON HOOD: I thought you said -- oh,
8 Mr. Bogorad?

9 MS. FERSTER: Yes, I would like to qualify
10 my, you know, my agreement that he's an expert. I do
11 not consider him, and based particularly on this, his
12 personal qualifications and material, that I do not
13 consider him an expert in the causes or effects of
14 gentrification and displacement, although I accept
15 his qualifications for the expertise for which he was
16 proffered, which is market development and fiscal and
17 economic.

18 MR. MAY: Right. I think we would be
19 considering his credentials for what he was
20 proffered.

21 MS. FERSTER: Okay.

22 MR. MAY: So, he was not proffered as a
23 gentrification expert, right?

24 MR. GLASGOW: No, but I think that he also
25 testified that he considered issues dealing with

1 gentrification as a subset of the --

2 MR. MAY: I understand that in the bigger
3 picture. But he's not specifically being proffered
4 as an expert in gentrification because I think, you
5 know, the resume does not support that in particular.

6 MR. GLASGOW: Right.

7 MR. MAY: Okay.

8 MR. GLASGOW: But we also submit his report
9 as --

10 MR. MAY: I understand, his report is
11 different. It's a matter of what, you know, how we
12 consider -- what we consider his expertise to be.
13 That's all.

14 CHAIRPERSON HOOD: Okay. Thank you, and we
15 will -- any objections?

16 [No audible response.]

17 CHAIRPERSON HOOD: Okay. So noted. And
18 again, gentrification is all out of the picture. We
19 will just hear his testimony.

20 Okay. Ms. Ferster, you want to -- and let me
21 ask you this, about how many more questions so we can
22 kind of --

23 MS. FERSTER: You know, I don't think I'm --
24 let me just confer with somebody, but I'm not sure I
25 have any --

1 CHAIRPERSON HOOD: Well, let me ask you this
2 before you go back. Are you almost finished?

3 MS. FERSTER: I may be almost finished.

4 CHAIRPERSON HOOD: Okay. So, we might not
5 have to come back May 1st. Right?

6 MS. FERSTER: Given that how we've clarified
7 his expertise, I'm not going to ask Mr. Bogorad any
8 questions. But, I do have a procedural matter
9 relating to his testimony. And that is that in the
10 beginning of his testimony he provides an update on
11 the fiscal benefits of the McMillan development which
12 updates a report that was done in the prior zoning
13 materials. And the zoning --

14 MR. BOGORAD: I assume you're talking about
15 my report.

16 MS. FERSTER: In your report, yeah.

17 MR. BOGORAD: Yeah.

18 MS. FERSTER: And I would move to strike that
19 update because I do not believe it's within the scope
20 of the remand.

21 CHAIRPERSON HOOD: What is that, the exhibit?

22 MR. GLASGOW: This is Exhibit --

23 MS. FERSTER: G.

24 MR. GLASGOW: G.

25 CHAIRPERSON HOOD: Is this what we got

1 tonight?

2 MR. GLASGOW: Yes, this is -- it was
3 submitted on March --

4 MS. SCHELLIN: It's 896-G.

5 CHAIRPERSON HOOD: 896. Somebody might want
6 to turn their mic off. At least you didn't say
7 anything bad about us. But we're used to it.

8 [Discussion off the record.]

9 MR. GLASGOW: Yeah, Mr. Chairman, there's
10 been updated information supplied on a number of
11 issues during the course of this proceeding.

12 MS. FERSTER: And I would say that I know
13 that many people reference the fiscal benefits of
14 this project and I just sort of disregarded it
15 because it came from perhaps references to the prior
16 testimony. I don't object to that. But I do object
17 to an expert providing an update on the fiscal
18 benefits of the project which, as an expert report,
19 is beyond the scope of the remand issue.

20 MR. MAY: Ms. Ferster, I mean, we have
21 received a lot of testimony that was not specific to
22 the remand issues from a variety of sources. Is it
23 simply -- and I don't mean tonight. I mean, in prior
24 testimony.

25 Your concern is simply because he's an expert

1 on the matter that we shouldn't keep that in the
2 record?

3 MS. FERSTER: I guess I don't recall anybody
4 objecting to testify offered by the public as
5 being --

6 MR. MAY: I'm not saying anybody objected to
7 it. I'm simply saying that there were things that
8 were outside the bounds of the questions, the
9 specific remand questions.

10 MS. FERSTER: Right. Okay. So, nobody
11 objected to those, but I am objecting to this.

12 MR. MAY: And I'm asking why.

13 MS. FERSTER: Because I consider it beyond
14 the scope of the remand issues.

15 MR. GLASGOW: And we don't agree.

16 MR. MAY: Well, I mean, regardless, though, I
17 mean isn't it -- I mean, if we were to base any
18 decision that we make on information that is outside
19 the remand issues, it wouldn't be relevant anyway,
20 right?

21 MS. FERSTER: Well, I just have --

22 MR. MAY: So, what's the harm in it being in
23 the record? Other than the fact that it's more stuff
24 that we have to read and understand.

25 MS. FERSTER: Well, I guess I would say that

1 if -- it should go both ways. I mean, a number of my
2 questions were overruled on the grounds that it goes
3 beyond the remand. I would have liked to have gotten
4 those questions in the record.

5 MR. MAY: I understand, but we don't vet
6 every piece of material that we receive to see
7 whether it's within the bounds of the remand. We
8 certainly caution and direct the parties in the case
9 to provide information that's responsive to the
10 remand issues. But if they provide something extra,
11 I mean, we should be able to figure out what those
12 are.

13 MS. FERSTER: I certainly would not presume
14 to know what you can or cannot figure out. So, I
15 would just simply say I object and move to strike
16 that, and you may rule on it.

17 CHAIRPERSON HOOD: Okay. Well, I'm going to
18 encourage my colleagues, let's not rule to deny the
19 strike, because a number of -- as she stated, a lot
20 of her questions were overruled by me, and a lot of
21 her questions were not, that were not even germane to
22 the remand. So, like she said, it goes both ways.

23 MR. GLASGOW: Mr. Hood --

24 CHAIRPERSON HOOD: So, that's my ruling.

25 MR. GLASGOW: -- if I might? I mean, it's

1 maybe out of --

2 CHAIRPERSON HOOD: Is this going to help me
3 or is this going to hurt me?

4 MR. GLASGOW: I think it will help to
5 understand why we have it in there. At least my
6 understanding of why we were asked by our client to
7 address it is that it does feed directly into what we
8 see as some of the mitigating aspects of this
9 development in terms of jobs and taxes and so on, and
10 that they are things that help to benefit especially
11 the jobs. That's part of our economic impact
12 analysis that helped to mitigate and provide income
13 to people who in part and live in the neighborhood
14 and may help them stay in the neighborhood.

15 CHAIRPERSON HOOD: Okay. Again, prior to
16 that my objection still stands unless there are any
17 objections from my colleagues. Because it goes -- it
18 went both ways.

19 No, I'm not -- I'm denying her request to
20 strike.

21 MR. MAY: Right.

22 CHAIRPERSON HOOD: And she made a statement
23 that a lot of her questions were overruled. And a
24 lot of them, because it was not part of the remand.
25 A lot of them were not overruled, and they were not

1 part of the remand. So, it goes both ways.

2 MR. MAY: Right. Okay.

3 MR. MILLER: And I'm sure a lot of Ms.
4 Ferster's presentation will have a lot of the
5 information that you might have ruled out of order.
6 So --

7 CHAIRPERSON HOOD: Yeah.

8 MR. MILLER: So, it will be there, all for us
9 to look at.

10 CHAIRPERSON HOOD: Okay.

11 MS. FERSTER: Okay, so --

12 CHAIRPERSON HOOD: All right. So, next.

13 MS. FERSTER: I have one last question.

14 CHAIRPERSON HOOD: One last. Go right ahead.

15 MS. FERSTER: And the question is addressed
16 to everybody who is testifying, and the question is,
17 does anybody here have any knowledge, either directly
18 or from another person of anybody associated with the
19 applicants that the applicant has provided any gift,
20 cash, or other items of value to ANC commissioners?

21 CHAIRPERSON HOOD: Okay. That's -- I'm going
22 to rule that out of order.

23 MS. FERSTER: Okay. And that was my last
24 question.

25 CHAIRPERSON HOOD: Okay. Thank you very

1 much. We're going to take a five minute break, and
2 Ms. Ferster, if you can get your group up and we can
3 get going, we have an hour, and then we'll go from
4 there and see how we're looking.

5 [Break.]

6 CHAIRPERSON HOOD: Let's go back on the
7 record. Ms. Ferster, you may begin.

8 Okay, Ms. Ferster, whenever you're ready, you
9 may begin.

10 MS. FERSTER: Thank you. I am -- we have
11 four witnesses today. One of my witnesses is having
12 a bite to eat, but he's going to be in in a minute.
13 I'm going to dispense with an opening statement, but
14 I do have several experts that I would like to
15 quality. So, I'll give you their resumes.

16 [Pause.]

17 MS. FERSTER: Okay. So, the first witness
18 that I would like to qualify as an expert is Laura
19 Richards. I would like to qualify her as an expert
20 in the D.C. Comprehensive Plan and its application to
21 zoning decisions. And I've circulated her background
22 statement.

23 The next --

24 CHAIRPERSON HOOD: Hold on, let's do Ms.
25 Richards first. I don't have her resume in front of

1 me, but I certainly don't have any issues with
2 qualifying Ms. Richards as an expert. I would like
3 to get it in my hand.

4 MR. MILLER: I would concur with your
5 statement, Mr. Chairman.

6 CHAIRPERSON HOOD: Any objections? Ms.
7 Richards, have you been qualified before as an
8 expert?

9 MS. RICHARDS: No, I have not.

10 CHAIRPERSON HOOD: Oh, you haven't? I didn't
11 necessarily need to see her resume, I already -- so I
12 would --

13 [Pause.]

14 CHAIRPERSON HOOD: Okay, any objections on --

15 MR. TURNBULL: Well, I have a question. Ms.
16 Richards, do you have a degree in planning at all or
17 anything?

18 MS. RICHARDS: I do not.

19 MR. TURNBULL: A degree in architecture?

20 MS. RICHARDS: I am not.

21 MS. HANOUSEK: Turn your mic on.

22 CHAIRPERSON HOOD: Turn your mic on, Ms.
23 Richards.

24 MS. RICHARDS: No, I am not an architect and
25 do not have a degree. Uh-huh.

1 MS. FERSTER: Would you like me to go through
2 a voir dire about Mrs. Richards' specific expertise
3 in comprehensive planning?

4 MR. TURNBULL: We can read it. We can read
5 it. Thank you.

6 CHAIRPERSON HOOD: And, Ms. Ferster, you are
7 proffering her as, again, as what?

8 MS. FERSTER: An expert in the D.C.
9 Comprehensive Plan and its application to zoning
10 decisions.

11 CHAIRPERSON HOOD: Any objections?

12 MR. GLASGOW: Mr. Chairman, may I make a
13 quick statement? With respect to Ms. Richards, I am
14 well aware --

15 CHAIRPERSON HOOD: We haven't ruled on it
16 yet. I'm asking --

17 MR. GLASGOW: Oh, but I want to --

18 CHAIRPERSON HOOD: -- my colleagues.

19 MR. GLASGOW: Yes, but I want to --

20 CHAIRPERSON HOOD: First. I know, I'm going
21 to come to you.

22 MR. GLASGOW: Okay.

23 CHAIRPERSON HOOD: Before we decide.

24 MR. GLASGOW: All right.

25 CHAIRPERSON HOOD: Colleagues, any questions?

1 Comments?

2 MR. MAY: Well, you know, I think a number of
3 us are very familiar with Ms. Richards' work in the
4 past and certainly that's recapped in the planning
5 and zoning experience category, but it is all as
6 essentially as an active involved citizen and
7 appointments to you know, things like the appointment
8 to the BZA and so on, as opposed to specific
9 professional expertise.

10 So, it is a bit of a quandary because again
11 we know we've had -- she's had substantial experience
12 in the area, but how much of it is based on specific
13 professional expertise. So.

14 MS. FERSTER: And I'd just like to clarify,
15 I'm not seeking --

16 MR. MAY: I'm sorry, I was not asking --

17 MS. FERSTER: -- (simultaneous speech).

18 MR. MAY: We didn't ask you for questions on
19 that. We were having a discussion ourselves.

20 CHAIRPERSON HOOD: Yes. Anyway, any other
21 comments up here?

22 MR. TURNBULL: Mr. Chair, I think we are all
23 familiar with Ms. Richards and I think she's a very
24 excellent citizen activist, but I think when someone
25 -- I'd like to see someone who's had an academic

1 background, a degree in planning or a degree that has
2 to deal with the interpretation and the training of
3 that, either on a -- in a more professional manner.
4 That's my only question that's --

5 CHAIRPERSON HOOD: Looks like we're getting
6 ready to have a problem right here. Vice Chair
7 Miller.

8 MR. MILLER: I support qualifying her as an
9 expert and, you know, I staffed the council's
10 enactment of five comprehensive plan amendment cycles
11 and had many interactions with many people, including
12 Ms. Richards, and I don't have a planning degree.
13 So, I guess I wouldn't qualify as a Comprehensive
14 Plan expert either, even though I've spent hundreds
15 of hours on that issue.

16 MR. TURNBULL: But, Mr. Vice Chair, you're an
17 attorney. An attorney with a legal expertise from
18 the city so --

19 MR. MILLER: I didn't make -- I mean, I
20 didn't mean to make this about me but --

21 MR. TURNBULL: That raises you --

22 MR. MILLER: -- what I was just --

23 MR. TURNBULL: I think that raises you up
24 even higher. I mean.

25 MR. MILLER: Okay. Anyway, I support.

1 CHAIRPERSON HOOD: Okay. I too, I too don't
2 have all the credentials but I think sometime, and I
3 know when you go look for a job and they say
4 education or experience, and I think Ms. Richards
5 brings the experience to the table. She's -- and we
6 know her work in the city and after all the time
7 she's spent, I think it's some -- I think at this
8 point she gets credence from me as far as being,
9 knowing the subject matter in front of us. So,
10 that's where I am on that. I don't know where you --
11 I'm confused where you were. Do you support it?
12 Okay.

13 MR. MILLER: No, I agree with you, Mr.
14 Chairman.

15 CHAIRPERSON HOOD: So, what do we do when
16 it's two to two?

17 MR. MAY: Can I -- we haven't taken a vote.

18 CHAIRPERSON HOOD: Okay.

19 MR. MAY: Can we please hear from the
20 applicant?

21 CHAIRPERSON HOOD: Okay. Let me hear from
22 you, Mr. --

23 MR. GLASGOW: Yes, very briefly because I've
24 known Ms. Richards for many years, and certainly with
25 respect to Board of Zoning Adjustment, had many cases

1 before her when she was a member of BZA. But that is
2 different than the Comprehensive Plan and I would say
3 that as an expert witness as to zoning and BZA
4 matters, I would say most clearly with respect to
5 Comprehensive Plan, I don't think that this comes to
6 that -- rises to that level.

7 MS. FERSTER: May I be heard before you rule?

8 CHAIRPERSON HOOD: Sure.

9 MS. FERSTER: So, I think I can cite you
10 extensive case law as you point out, Mr. Chairman,
11 about experts being qualified based on experience as
12 opposed to degrees. I would say that Ms. Richards
13 has more experience in applying and interpreting the
14 D.C. Comprehensive Plan, which goes over, I would say
15 30 years, would that be the accurate? And she -- I
16 would be prepared to walk her through some voir dire
17 so she can talk about her extensive experience in
18 interpreting the Comprehensive Plan.

19 And I think that experience is more
20 significant, I think for your purposes, than a degree
21 in planning from somebody who has no, or minimal
22 experience in our Comprehensive Plan.

23 I would also suggest that you have, in the
24 past, qualified witnesses as experts in the area who
25 do not have advanced degrees. For example, we have

1 sought and our expert in Historic Preservation, Ann
2 Saline, has qualified enumerable times as an expert
3 in historic preservation based on her experience as
4 opposed to her degrees in historic preservation
5 because her experience is extensive.

6 And before you rule, I would like to have Ms.
7 Richards describe in some detail, her experience in
8 interpreting the Comprehensive Plan over the last 30
9 years.

10 CHAIRPERSON HOOD: I don't think we need to.
11 Let me just say this, and --

12 MS. FERSTER: Oh, and she is an attorney. I
13 should also say that.

14 CHAIRPERSON HOOD: Let me just say this --

15 MS. FERSTER: In response to Mr. Turnbull.

16 CHAIRPERSON HOOD: -- I've been informed
17 again by counsel that -- and I usually like to hear
18 from my colleagues, but the final rule rests with me,
19 so everybody can blame me for this one. I'm not
20 going to concur with her being an expert in the
21 Comprehensive Plan, but I am going to concur with her
22 being an expert in zoning matters. However you want
23 to word it. Okay? So, we're going to do it in that
24 fashion.

25 So, I will consider her an expert in land-use

1 and zoning matters.

2 MS. FERSTER: Okay.

3 CHAIRPERSON HOOD: Okay?

4 MS. FERSTER: And if we back up, okay, for
5 one minute, I need to take an exception for the
6 record.

7 CHAIRPERSON HOOD: Okay.

8 MS. FERSTER: In my opinion she is an expert
9 in the Comprehensive Plan. Her testimony will deal
10 extensively with the Comprehensive Plan. And, you
11 know, I -- you know, I'm not your lawyer but I don't
12 like to see you all walk into reversible error, but
13 that is reversible error.

14 CHAIRPERSON HOOD: Okay. Okay. Well, that's
15 my ruling. Okay? Anything else?

16 All right. Let's -- and who is the next
17 person?

18 MS. FERSTER: Our next witness is Dr. Sacoby
19 Wilson. And I've passed out his resume. And he's
20 being qualified as an expert in environment health
21 sciences.

22 CHAIRPERSON HOOD: What's the name again?

23 MS. FERSTER: Dr. Sacoby Wilson, at the far
24 end, next to Mr. Glasgow.

25 [Discussion off the record.]

1 CHAIRPERSON HOOD: And what are we proffering
2 him again? I'm sorry.

3 MS. FERSTER: An expert in environment health
4 sciences. And there's a 50-page CV detailing his
5 expertise and his educational background.

6 CHAIRPERSON HOOD: Okay. I guess you're
7 classified as an environmentalist?

8 MS. FERSTER: Environment health science.

9 CHAIRPERSON HOOD: Environmental --

10 MS. FERSTER: Expert in environmental health
11 sciences.

12 CHAIRPERSON HOOD: Has he been proffered
13 before? Yeah, yeah. Can you turn your mic on?
14 You've been proffered in front of this commission
15 before.

16 MR. WILSON: Buzzard Point, the last meeting
17 for the D.C. United Soccer Stadium. Yeah, Buzzard
18 Point.

19 CHAIRPERSON HOOD: And we made you an expert
20 then?

21 MR. WILSON: I think so.

22 CHAIRPERSON HOOD: Most people don't forget
23 whether they're expert in front of us or not.

24 MR. WILSON: No, I'm an expert. I'm an
25 expert. I just don't know the process. The process.

1 CHAIRPERSON HOOD: Did we qualify you as an
2 expert? Do we have a list? Did we qualify earlier,
3 in the other case?

4 [Discussion off the record.]

5 CHAIRPERSON HOOD: I actually don't have any
6 objections. Let me hear from my colleagues. Whether
7 we did or not I think the resume speaks for itself.
8 Any objections?

9 MR. TURNBULL: I just had a question. Why is
10 Mr. Baily McConnell's resume attached at the back of
11 your resume? There's two pages for Mr. Baily
12 McConnell attached to your --

13 MS. FERSTER: It probably -- I did the
14 copying so, you know, it doesn't seem to be on --

15 MR. TURNBULL: He's got another name? Do you
16 have an alias?

17 MR. WILSON: No.

18 MS. FERSTER: Oh, yeah. This is -- I just
19 picked this up off of the copy machine accidentally.
20 This is somebody who is applying to the Rails to
21 Trails Conservancy for a position as a position. If
22 you can just delete that?

23 MR. WILSON: He said 50 pages only. I think
24 it's only 48.

25 MS. FERSTER: Yeah, it is 50 pages, but you

1 can take off the last two pages.

2 CHAIRPERSON HOOD: Well, we don't have a
3 record of them unless my colleagues have -- Mr.
4 Glasgow, environment health?

5 MR. GLASGOW: I don't have any position on
6 this one.

7 CHAIRPERSON HOOD: Okay. So, we will proffer
8 him as an expert in environmental health.

9 Okay.

10 MS. FERSTER: Accepted. He's accepted.
11 Okay.

12 So, and our last expert is Dr. Brett
13 Williams, and I'm proffering her as an expert in
14 gentrification and displacement. She has been
15 previously qualified by this Commission as an expert
16 in gentrification and displacement in the Barry Farm
17 case. She's written extensively on the subject of
18 gentrification, and her writings on this topic are
19 listed in her CV, which I've provided for you,
20 including a chapter of a book on gentrification, and
21 a variety of articles.

22 CHAIRPERSON HOOD: I don't believe that we
23 did that in the Barry Farms case, because as I've
24 known it's not in my -- I'm known as not in my
25 purview. So, I'm sure that those are my words in

1 that case. Were you proffered as an expert?

2 MS. SCHELLIN: She was proffered, but I'm not
3 sure that the Commission accepted.

4 CHAIRPERSON HOOD: I don't -- I really don't
5 believe that.

6 MS. SCHELLIN: I don't think so.

7 CHAIRPERSON HOOD: I really don't.

8 MS. SCHELLIN: She was not added to our
9 expert list anyway.

10 CHAIRPERSON HOOD: Okay. Well, I'm -- let me
11 open it up. Any objections?

12 MR. GLASGOW: Mr. Chairman, I'll reserve
13 right to object after the Commission has their
14 discussion.

15 CHAIRPERSON HOOD: Once we ruled, I mean, you
16 can object.

17 MR. GLASGOW: I understand that normally you
18 all discuss and then you ask if I have any position.

19 CHAIRPERSON HOOD: Okay. Any conversation on
20 expert in gentrification? I can tell you that I am
21 not in support of giving expert status, but I will
22 listen, we will as we do everyone else, listen to her
23 testimony. Okay.

24 MS. FERSTER: I'm sorry. Have you ruled,
25 because I'd like to address that point briefly?

1 CHAIRPERSON HOOD: No, we're still looking at
2 her resume.

3 [Pause.]

4 MR. MILLER: Mr. Chairman, I have no
5 objections to either the party in opposition's
6 gentrification expert or the applicant's
7 gentrification expert. It's a package deal.

8 [Pause.]

9 CHAIRPERSON HOOD: Let me hear from my
10 colleagues. Anyone else need some more time? Okay.
11 Mr. Glasgow?

12 MR. GLASGOW: Mr. Chairman, in looking
13 through this it's a varied resume that she has, but
14 I'm going to object to her being accepted as an
15 expert. She certainly doesn't have any more
16 qualifications than Mr. Bogorad.

17 CHAIRPERSON HOOD: Okay.

18 MS. FERSTER: If I may be heard?

19 CHAIRPERSON HOOD: Yes.

20 MS. FERSTER: I mean, I think we established
21 that Mr. Bogorad's CV did not discuss gentrification
22 at all. It did not -- he indicated that he had not
23 written any articles on the topic, and his resume
24 didn't feature that as any -- his area of expertise
25 whatsoever.

1 Dr. Williams has an extensive CV and I've
2 highlighted every time the word gentrification is
3 mentioned in chapters of books and scholarly articles
4 that she has written on the topic. And, as well as
5 articles that deal with this topic, the topic of
6 displacement and et cetera.

7 And I would like to go through a voir dire
8 with her so she can describe this in a little more
9 detail because I, quite frankly, I can't think of
10 anybody -- I'm not sure what's missing here. I mean,
11 I don't know that there -- you can actually earn a
12 degree, an advanced degree in gentrification. I
13 don't think there's a program in that. I think this
14 is -- but she has a very distinguished academic
15 record, a doctorate with a PhD in anthropology and a
16 distinguished academic record in dealing with and
17 studying this issue. So, if she doesn't qualify, I
18 don't know who does.

19 CHAIRPERSON HOOD: Show me on a resume where
20 she has --

21 MS. FERSTER: Okay. So, I highlighted
22 gentrification --

23 CHAIRPERSON HOOD: -- (simultaneous speech).

24 MS. FERSTER: -- a book chapter on --

25 CHAIRPERSON HOOD: Hold on for a second.

1 Listen for a minute. We be talking together. Where
2 did you highlight it?

3 MS. FERSTER: Okay. No, I'm on my own copy.

4 CHAIRPERSON HOOD: Oh, you -- okay.

5 MS. FERSTER: It didn't occur to me. It
6 didn't occur to me that you would question her
7 qualifications. So, on page 2 -- well, first on the
8 research report, she's done a study on Ellen Wilson
9 Dwellings, that dealt with gentrification issue, and
10 she can describe that study in greater detail if
11 you'd like. She's written a chapter, a book chapter
12 on Beyond Gentrification, Investment and Abandonment
13 of the Waterfront. She has all, still on page 2, she
14 did a chapter on a gentrification in the Encyclopedia
15 of Homelessness. Page 3.

16 CHAIRPERSON HOOD: Okay. Here's what I'm
17 going to do. Here's what I'm going to do and I guess
18 Mr. Bergstein will let me know if we're incorrect.
19 We did not rule on Mr. Bogorad earlier.

20 MS. FERSTER: I believe you did.

21 CHAIRPERSON HOOD: Did we?

22 MS. SCHELLIN: From one area.

23 MR. GLASGOW: One area.

24 MS. FERSTER: I mean, I will have to clarify
25 that.

1 CHAIRPERSON HOOD: Hold on for a second.

2 Hold on for a second. Hold on a second.

3 He also asked to be qualified as --

4 MS. SCHELLIN: He was proffered as an expert,
5 but I think what she --

6 CHAIRPERSON HOOD: Wasn't it gentrification?

7 MS. SCHELLIN: He was proffered as an expert
8 witness.

9 CHAIRPERSON HOOD: I thought, did we turn him
10 down in gentrification?

11 MS. FERSTER: And I would say, just --

12 CHAIRPERSON HOOD: Hold on for a second.

13 MS. FERSTER: -- so you understand, I would
14 need to --

15 CHAIRPERSON HOOD: Ms. Ferster.

16 MS. FERSTER: -- cross-examine him if he's
17 being offered as a --

18 CHAIRPERSON HOOD: Ms. Ferster.

19 MS. FERSTER: -- expert in gentrification.

20 CHAIRPERSON HOOD: Ms. Ferster, hold tight.

21 MS. SCHELLIN: I don't think he was proffered
22 in --

23 CHAIRPERSON HOOD: Was he proffered as an
24 expert in gentrification?

25 MR. GLASGOW: He was proffered as an expert

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1 in fiscal and economic impact analysis and real
2 estate market and financial analysis.

3 CHAIRPERSON HOOD: Oh, that's right. I
4 recall now.

5 MR. GLASGOW: Right.

6 CHAIRPERSON HOOD: That was something that
7 was tacked on later on. Okay, I recall now.

8 I think I'm going to reverse myself, since
9 everybody else is doing it. I'm going to reverse
10 myself on that. I was going to come out at first and
11 not give her expert status. But as I think Ms.
12 Ferster has made the case to give her expert status
13 in gentrification. So, any -- let me hear from my
14 colleagues first. Okay.

15 MR. GLASGOW: Mr. Chairman, the only thing
16 that I would say, one of the first things that Ms.
17 Ferster stated was, there are no advanced degrees in
18 this area, so there -- so, what's being proffered now
19 is to create an expertise in an area that's not
20 generally recognized as one.

21 CHAIRPERSON HOOD: But I think in looking at
22 her resume, I think it warrants it, when I look at
23 the resume. I think the facts speak for them self.

24 MR. GLASGOW: All right, we just --

25 CHAIRPERSON HOOD: I'm just -- you know, your

1 objection is your objection but --

2 MR. GLASGOW: Right.

3 CHAIRPERSON HOOD: -- I've made my ruling,
4 so.

5 MR. GLASGOW: Yeah.

6 CHAIRPERSON HOOD: Okay. All right.
7 Anything else?

8 MS. FERSTER: No, okay. So, there are three
9 -- two, three experts are going to testify and Mr.
10 Vining is also going to testify, but he's not -- I'm
11 not seeking to qualify him as an expert witness.

12 CHAIRPERSON HOOD: Okay. Let me see. So,
13 Mr. Turnbull is not okay with it.

14 MR. TURNBULL: Yeah, no. I'm not okay with
15 that, but --

16 CHAIRPERSON HOOD: Okay. Anybody else not --

17 MR. TURNBULL: -- there's three of you that
18 are, so.

19 CHAIRPERSON HOOD: Well, actually, actually I
20 can make the ruling by myself.

21 MR. TURNBULL: Can you make the ruling?

22 CHAIRPERSON HOOD: I don't normally do that,
23 so that's it, but I've made the ruling. So, okay.

24 MR. TURNBULL: Okay. That's all right. And
25 I think the applicant has made an excellent point.

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1 CHAIRPERSON HOOD: Okay. All right. So
2 noted. All right.

3 Ms. Ferster?

4 MS. FERSTER: Yeah, we're going to start
5 with, on the testimony of Laura Richards. Okay.

6 MS. RICHARDS: Thank you. Good evening. I'm
7 Laura Richards, testifying on behalf of the Friends
8 of McMillan Park.

9 My statement addresses certain issues raised
10 in the notice of remand. I generally conclude that
11 in order to be not inconsistent with the Comp Plan,
12 the McMillan sand filtration site should be developed
13 at moderate commercial and medium density,
14 residential densities and uses.

15 Let's see. Addressing Issue 1B, the notice
16 of remand asked, could the other policies cited in
17 the order be advanced even if development on the
18 planned unit development site were limited to medium
19 and moderate density use. That's one and. If not,
20 which of the competing policies should be given
21 greater weight and why. And that's my issue.

22 Okay. And I've reached conclusion that the
23 land -- mid-city policy 2.6.5 must be given
24 controlling weight. And this conclusion is compelled
25 by a reading of the land-use element, the map, the

1 mid-city element and the plans interpretative rules.
2 And read together, these provisions instruct the
3 reader to give prevailing weight to the low and
4 moderate density policies; moderate and medium.

5 The map designates the uses and densities on
6 the site through the multicolored striping and it
7 identifies McMillan as only -- as moderate -- a
8 medium density residential, moderate density
9 commercial, and green space.

10 The land-use element addresses the McMillan
11 site only in very general terms. It identifies it as
12 it as one of 10 large sites that the District has
13 designated for fairly intensive residential and
14 economic employment opportunities.

15 McMillan is 25 acres. It is the smallest of
16 those large sites. The land-use element contains a
17 number of policies and actions regarding all 10 sites
18 that focus on broader issues that apply to all sites.
19 And then the plan directs, quote, "The area elements
20 should be consulted for a profile of each site and
21 the specific policies for its use."

22 The land use element says this more than
23 once. Since the particular matrix mix of uses on any
24 given site should be generally indicated on the
25 Future Land-Use Map, and more fully described in the

1 Comprehensive Plan area elements, and then zoning
2 should be compatible with adjacent uses.

3 Finally, there is a concluding instruction at
4 the end of land-use Section 1.2 that once more
5 advises the readers, "Policies and actions for large
6 sites are contained in the Comp Plan area elements."

7 So, the land-use element says at least three
8 times that the relevant area elements for the large
9 sites must be consulted when one wants to know what
10 uses and density the District intends for a
11 particular large site.

12 The plan contains an interpretive rule
13 providing that the land-use element should be given
14 greater weight than the other elements when
15 overlapping or competing provisions must be
16 reconciled.

17 The land-use element expressly instructs that
18 its general policies regarding the 10 large sites are
19 to be read and applied in light of the site specific
20 provisions and the area elements. The plan
21 preemptively resolves any potential or perceived
22 conflicts between the land-use element and the site-
23 specific area element. They do not compete with each
24 other and do not require balancing against each
25 other. They must be read in tandem with the more

1 specific area element fleshing out the broad general
2 land-use element.

3 As for conflicts or overlaps between the
4 land-use element and other city-wide elements, the
5 plan gives greater weight to the land-use element.
6 The relevant area element in this case is the mid-
7 city element which contains five policies regarding
8 McMillan site. The preeminence of the mid-city
9 element over the city-wide elements is even more
10 pronounced with respect to areas such as the McMillan
11 sand filtration site because that's also designated
12 as a policy focus area.

13 Area elements that are policy focused areas
14 require, quote, "A level of direction and guidance
15 above that provided by the prior section of the area
16 elements and in the city wide elements."

17 Accordingly, since the high-density zoning
18 and medical building is inconsistent with Comp Plan
19 mid-city element 2.65, it is also inconsistent with a
20 host of other land-use policies, each of which
21 emphasize the primacy of the area elements.

22 And I give some examples, which I won't go
23 into here.

24 The applicant's prehearing submission,
25 Exhibit A, especially cites numerous other provisions

1 of city wide elements, housing, environmental
2 protection, economic development that purportedly
3 support this project. The policies are necessarily
4 general in nature, being city wide, and must be
5 construed and applied in light of the specific
6 provisions that speak particularly to the McMillan
7 site and its particular features, its unique historic
8 resources and so on and so forth.

9 City wide elements were not meant to be read
10 in isolation, but as the starting point for a deeper
11 dive into the particular guidance of the area
12 elements and where available, small area plans.
13 Because the applicant discusses the city-wide
14 elements in isolation, it's bare recitation of broad
15 goals should be accorded slight weight.

16 The mid-city area elements relating to the
17 site address an order contiguous open space,
18 preservation of historic resources, mitigation of
19 reuse impact, community involvement and reuse
20 decisions, and scale and mix of new uses. It's that
21 last key element, scale and mix of new uses. 2.6.5
22 states, "Recognize the development on portions of the
23 McMillan sand filtration site may be necessary to
24 stabilize it and provide the desired open space and
25 amenities. Where development takes place it should

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1 consist of moderate to medium density housing,
2 retail, and other compatible uses."

3 And then it goes on to speak of retaining the
4 view sheds, et cetera, and the vistas.

5 And this policy is the lynchpin among which
6 decisions must turn. It speaks with greater
7 specificity and clarity that any other policy in the
8 plan as to how the city's legislative authority,
9 that's the council, envisioned the future of this
10 site. The dominant land-use element states that its
11 general policies for large sites should be channeled
12 through the specific area element policies. And the
13 mid-city element policy here precisely mirrors the
14 future land-use designation, map designation for the
15 site.

16 So in short, that policy establishes the
17 planning envelope for this site.

18 Now, the Commission determined that the very
19 high density medical building to be built on Parcel 1
20 could be kind of reconciled with this designation
21 because the overall densities, when averaged over the
22 entire PUD site, resulted in moderate to medium
23 ranges. And you also determined that the adoption of
24 a high density zone district in Parcel 1 that permits
25 greater heights than permitted in moderate density

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1 districts, is not inconsistent based on the
2 clustering rationale. I think that was misapplied
3 here.

4 The aggregation of floor area ratio across a
5 PUD site is done routinely under the PUD provisions.
6 It's anticipated. But that does not carry over into
7 moving -- approving I guess aggregating your
8 densities across the site to determine compliance
9 with the Comprehensive Plan.

10 Planning precedes zoning and it sets the
11 boundaries within which zoning regulations are
12 promulgated and zoning decisions are made. The Comp
13 Plan determines the planning envelope of the forest
14 site, of the mix of heights, density, and uses, and
15 it allows some but not unlimited flexibility. And
16 this is seen in the plan text and in the FLUM density
17 designations. They're fluid with a limited overlap
18 at the edges.

19 That limited flexibility doesn't allow for a
20 high density building when there's a plan designation
21 and specific plan language, kind of like saying, we
22 want moderate to medium densities.

23 PUD applications very frequently involve a
24 request for rezoning, usually to a higher intensity
25 zoning category than what currently exists. The PUD

1 applicant then applies the PUD bonus density to the
2 up-zoned land, gains bonus density to planning tools.
3 The newly acquired density is then distributed over
4 the PUD site. But there's a presumption that the
5 rezoning selects zones that are planned compatible.
6 The Comprehensive Plan operates to apply breaks to
7 the PUD process and other zoning processes, and
8 forestall any incongruous runaway development. And
9 it does this by designating land-use categories that
10 associates with a range of building heights and
11 densities, stated as a number of stories and a range
12 of typical zoning categories. And it's only after
13 appropriate zoning categories, those corresponding to
14 the plan use and density designations, then they
15 apply the bonus densities and you distribute the FAR
16 over that site.

17 That's been conflated here. You know,
18 they've -- they essentially applied a zoning tool to
19 a plan and determination. And this is what we've
20 gotten.

21 In using the aggregate density over an entire
22 site to determine the project's compliance, the
23 applicant applied a zoning tool. And the project
24 under consideration, the same overall density, could
25 have been achieved by let's say a handful of C-3-C

1 sized buildings, clustered or scattered. You know,
2 that's clearly outside what's contemplated in the
3 plan. Yet that and similarly incongruous outcomes
4 are what result if you apply the rule urged by the
5 applicant, which is to bypass inconvenient plan
6 designations by proceeding to aggregate buildings of
7 different sizes before determining which zone
8 categories belong there at first place. If
9 arithmetic calculations can be substituted for the
10 basic planning envelope, then large portions of the
11 plan become absolutely meaningless. The plan would
12 need only to indicate the desired overall density and
13 then let future development reach that density in any
14 manner it chooses as long as the arithmetic worked.

15 I would say there is no basis. And that is
16 -- that's the key point we're making, that you can't
17 like just pick some zones willy-nilly and, you know
18 say, okay we came up with an arithmetic aggregate
19 density that works.

20 However, on a related issue, there is no
21 basis for concluding the medical building is another
22 compatible use. So the scale the medical building
23 standing alone is insufficient to render it
24 incompatible, and by virtue of its height. And I
25 think you all very familiar with the objections that

1 have been raised to it, however.

2 But notwithstanding its commercial zoning,
3 the applicant states the building will most likely
4 provide expansion for the Washington Hospital Center.
5 That's a tertiary care teaching hospital with a Level
6 1 trauma center designated as an institutional use on
7 future land-use map. That's a use category distinct
8 from open spaced residential and commercial uses. An
9 institutional use may be another compatible use,
10 but it's not automatically so. And I would say that
11 not only is this medical building incompatible on
12 account of its size, there has been no showing as to
13 how the actual use will be compatible. And there's
14 been extensive testimony over couple of nights as to
15 the exact -- I guess the unknown factors. There's no
16 anchor tenant yet, no decision has been made.

17 This Commission is charged under the PUD
18 rules, with determining the adverse impacts of
19 particular use, and can't really make a full
20 conclusion over the adverse impacts until you know
21 what kind of facility you're getting.

22 And I think I've heard more detail tonight on
23 what is expected to be there than has been evidenced
24 up to now. The record up to now has been very
25 spotty. And what we heard tonight, is it's got more

1 details. It remains potential development. It's not
2 fixed.

3 I think the -- there was a fair amount of
4 testimony about the District's five-year economic
5 development strategy, Exhibit K, that called for a
6 medical hub. Now that medical hub proposal doesn't
7 appear in the current five-year economic development
8 plan. It's not mention anywhere. So it's not clear
9 what that's still going to happen or not.

10 But in any event, the idea of expanding the
11 Washington Hospital Center, or any other -- the
12 medical site in creating a hub, constitutes an entire
13 revisioning of the McMillan site. It's just not
14 really compatible with the vision for McMillan site
15 that's in the plan, which really subordinates the
16 commercial uses to the residential uses. What we
17 have here is a very dominant commercial or
18 institutional use.

19 The plan envisions that you'll have medium
20 residential and moderate density commercial, thereby
21 anticipating that the commercial is going to really
22 serve the residential. Here, we have a huge high
23 density, high intensity commercial use, which is in
24 effect going to maybe provide some economic leverage
25 for the maybe residents in the open space. But

1 doesn't have any particular relationship to it.

2 The medical building is going to relate to
3 the medical hub campus to the north. And that's not
4 inconsistent. That's doesn't kind of develop -- I
5 guess, implement the plan's vision for the unified
6 community.

7 So, and the written testimony goes on to
8 explain, you know, in some detail, how that doesn't
9 happen; how you don't really kind of create an urban
10 fabric here that we're between Parcel 1 and the rest
11 of the site, or the adjoining neighborhood.

12 The project concentrates rather than
13 dispersing healthcare facilities. There's much --
14 there's been a lot of discussion about the policy. I
15 1105 calling for the dispersion of medical facilities
16 throughout the District and how this works in the
17 opposite direction. And I think the very idea of
18 like calling it a hub, and then say, oh it's somehow
19 going to meanwhile disperse, is, it's illogical.
20 This is going to be a further concentration of
21 medical facilities, and that's really about as much
22 as you can say to it. And that was what it was
23 intended to do.

24 But, again, I remind you that the 2012 five-
25 year economic development plan is now out the window.

1 And in fact, the Children's Hospital is planning to
2 expand on to another one of the city's large sites.
3 And the 2017 economic development plan calls for
4 developing hubs that the District will participate
5 in, regional hubs that are not located even in the
6 District. And I have the relevant quotes from the
7 2017 plan in my testimony.

8 Finally, the project inappropriately places
9 large buildings next to a low density residential
10 neighborhood inconsistently with various
11 Comprehensive Plan provisions. The absence of a per
12 se rule against exceeding the FLUM density
13 designations does not nullify other plan policies,
14 discouraging erecting large buildings. Especially
15 large commercial buildings adjacent to lower density
16 residential neighborhoods. And these conflicts need
17 to be reconciled.

18 Key policies protect the integrity of
19 neighborhood scale. And I've identified some of
20 those. And I think that the income -- the plan
21 policies discourage placing these large buildings
22 next to smaller, near adjacent buildings, you know,
23 again, speak against this idea that's been applied
24 here of aggregating densities across an entire PUD
25 site.

1 In this case, the idea of clustering the tall
2 buildings and then dispersing them over the site
3 without taking the necessary preliminary step of
4 selecting the appropriate zones to begin with, you
5 know, just kind of plays into the very outcome that
6 the Comp Plan is trying to avoid by saying don't
7 simply just put the really big buildings next to the
8 really small buildings.

9 And this Commission has already gone through
10 a pop-up case and a pop-back case, where you're
11 trying to avoid the juxtapositions of inappropriately
12 tall with adjacent short buildings. And just as that
13 can happen in the block face of a rowhouse block, it
14 can also happen across a PUD site.

15 Now, there are PUD sites where the mixing of
16 various heights and use, it works very well. This is
17 not one of them. Why is it not one of -- this is not
18 what the plan contemplates for this site. The Comp
19 Plan is like, got to be more than a suggestion box.
20 The plan says, look, we want residential to be pretty
21 dominant here, and we want some lesser density and
22 intensity commercial uses. And you know, if you
23 simply like throw the plan out and substitute an
24 arithmetic calculation, then it becomes a meaningless
25 law.

1 So, let me see if there are any other key
2 points I wanted to make.

3 Nope. No, I think those are the main ones.
4 Yeah.

5 So, in conclusion I would say that the
6 applications, inconsistent with the Comp Plan
7 principally because the height and bulk on Parcel 1,
8 unreasonably exceed the scope of the commercial
9 presence on the McMillan site, contemplated by
10 governing policy 2.6.5. Even after taking into
11 account the flexibility allowed and interpreting and
12 applying the plan's provisions.

13 So, that's it. Thank you.

14 MS. FERSTER: And I have a follow up
15 question. So, Ms. Richards, I'm going to hand you
16 your resume because I don't believe that it
17 completely describes your particular expertise and
18 experience in the D.C. Comprehensive Plan, and I'd
19 like you, for the record, to just describe in a
20 little more detail, please.

21 You don't have to repeat things that are on
22 your resume, but you know, anything that explains
23 that expertise a little more.

24 CHAIRPERSON HOOD: Ms. Ferster, make sure
25 you're on the mic.

1 MS. RICHARDS: I will say that first, all
2 right -- actually, my first experience with city
3 planning and zoning issues or instruction I have seen
4 from Mr. Quinn, who the late 1970s took some time to
5 explain the operation of alley closings and the
6 importance of this fairly simple procedure towards
7 assembling the blocks for downtown, and thereby
8 carrying out the 1984 Comp Plan provisions for
9 creating a living downtown.

10 I subsequently, you know, worked with some
11 citizen's groups on the -- it was a 1984 plan. We
12 worked very aggressively on urging a living downtown
13 and on enacted ward plans. I did share that group.
14 We held meetings all over the city. We were
15 instructed by a professional planner in Hargrove in
16 that I worked in Historic Anacostia on the Ward 6
17 plan. We worked under the instruction of Dorin
18 McGrath (phonetic), who was at that time working to
19 kind of like develop -- preserve the historic
20 district, but also to kind of like encourage
21 residents in kind of appreciating their city,
22 learning how to look at it, learning how to advocate
23 for themselves.

24 I actually moderated a symposium on McMillan,
25 among other things, back around 1989. And then I

1 participated as a citizen, whatever. And I would say
2 that I was a member of the Comp Plan Task Force that
3 worked on the 2006 plan, and that was followed up by
4 work on the Zoning Review Task Force. So, that was,
5 I would say that those two experiences, both multi-
6 year efforts, following one on top of the other, kind
7 of gave me you know, a kind of a heightened or deepened
8 familiarity of planning and zoning and the
9 intersection between those two.

10 MS. FERSTER: Thank you.

11 MS. RICHARDS: Okay. Thank you.

12 MS. FERSTER: Okay. Our next witness is Dr.
13 Wilson.

14 MR. WILSON: Good evening. My name is Dr.
15 Sacoby Wilson. I'm with the School of Public Health,
16 Maryland Institute for Applied Environmental Health.

17 MS. FERSTER: I'm sorry. I'm going to
18 interrupt you for one moment because I have some
19 testimony to distribute as well.

20 MR. WILSON: Oh, yes.

21 CHAIRPERSON HOOD: I would just make a
22 suggestion. You have 35 minutes. While she's doing
23 that --

24 MR. WILSON: Yeah. Okay.

25 CHAIRPERSON HOOD: -- you may want to

1 continue.

2 MS. FERSTER: Okay. So, and --

3 MR. WILSON: So, I'm going to speak more
4 specifically about the public health impacts related
5 to traffic, and this new development. One, the
6 issues, I just want to bring up as by required on the
7 DOEE's review under the D.C. Environmental Policy
8 Act. It's required that health impacts or proposed
9 actions, noise impacts (garbled speech) impacts be
10 included. The current EA is not in compliance with
11 this. It has not included public health impacts.

12 So, I suggested a health impact assessment as
13 performed. So, basically, there needs to be baseline
14 data collected on local hazards, the pollution,
15 social demographics, and health status of the nearby
16 residents.

17 So, looking at a five-block radius, a 10-
18 block radius, and 25-block radius around the proposed
19 development to capture populations, particular
20 vulnerable groups that would be impacted by
21 pollution, particularly air pollution associated with
22 the development, the use of city-wide or use of D.C.
23 wide data is not relevant in this particular
24 situation. When you want to really understand and
25 project impacts, you don't use area data to do that.

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1 You need to really have site specific small area data
2 to do that.

3 So, for example, if we are in attainment for
4 particulate matter barely, we're not in attainment
5 for ozone, you wouldn't apply that area measure to a
6 local neighborhood, or for people who live close to
7 the proposed development. What you would need to do
8 is actually collect environmental data to get
9 baseline data on fault organic compounds, particulate
10 matter, PAHs. Those are combustion by-products, so
11 you want to know what are the levels at baseline and
12 project out with the increase in traffic, what will
13 be the increase in those levels. That wasn't
14 included in the EA. That wasn't included in the
15 transportation study.

16 So, when you're looking at nonattainment
17 level or city-wide data, it's irrelevant. If I'm a
18 resident, I want to know how it's going to impact my
19 health. If you have a -- even the McMillan Reservoir
20 Monitor, that's not site specific enough. You need
21 to have an intensive monitoring network to actually
22 get baseline data, particularly at intersections and
23 traffic points to really see what are the current
24 levels of pollutants. There's a die off of
25 combustion by-products from roadways. Studies have

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1 shown from around 250 feet, 500 feet, to maybe up to
2 1250 feet from a heavily trafficked roadway, or from
3 a roadway with a lot of traffic.

4 In addition, when you're looking at doing --
5 looking at the public health impacts, particularly
6 when it relates to traffic, there's going to be
7 (garbled speech) variations. So, around rush hour
8 you want to get levels of particulate matter, VOCs
9 and PAHs, again combustion by-products, around this
10 proposed site during the morning rush hour and during
11 the evening rush hour.

12 And then, because there's going to be an
13 increase in traffic, you have to take into account
14 the role of congestion, and idling, and cars that
15 stop. So, that means you're going to have higher
16 concentrations of those pollutants in those areas
17 when you have congestion.

18 CHAIRPERSON HOOD: Let me stop the clock for
19 a moment.

20 MR. WILSON: Yes, sir.

21 CHAIRPERSON HOOD: Ms. Ferster, who is
22 Claudia Barigan?

23 MS. FERSTER: Claudia Barigan is a witness
24 who could not be here today, so we've provided a
25 written testimony. Dr. Wilson and Ms. Richards have

1 both reviewed and concur with it. So, we're
2 providing it for the record.

3 CHAIRPERSON HOOD: So, what is Ms. Barigan,
4 what is she going to be -- what was she supposed to
5 be talking about?

6 MS. FERSTER: She's -- her written testimony
7 addresses issues 2 and 4.

8 CHAIRPERSON HOOD: Why did you -- why was
9 this handed in?

10 MS. FERSTER: Because it relates to Dr.
11 Wilson's testimony. And it also relates to Ms.
12 Richards' testimony.

13 MR. TURNBULL: And where is his testimony,
14 Dr. Wilson?

15 MS. FERSTER: He's giving it right now.

16 CHAIRPERSON HOOD: I thought that's what --

17 MS. FERSTER: He doesn't -- I don't believe
18 he has a special written. You don't have anything in
19 written --

20 MR. WILSON: Yeah, I have -- I don't have
21 enough copies for everybody. So, I mean, I can share
22 copies that I do have.

23 CHAIRPERSON HOOD: So, this was presented to
24 us as though this was his testimony. This is the way
25 it was passed out to -- I'm just going, I'm just for

1 the record, for my record, this was presented to this
2 Commission as though it was his testimony, and we're
3 looking trying to follow him, like we normally do.

4 MS. FERSTER: I'm sorry. Yeah.

5 CHAIRPERSON HOOD: And this is somebody
6 else's testimony, who is not even here.

7 MS. FERSTER: Yeah. Yeah, I'm sorry --

8 CHAIRPERSON HOOD: So noted.

9 MS. FERSTER: -- if that was misleading. I
10 was just giving it to you.

11 CHAIRPERSON HOOD: Okay. You may continue.

12 MS. FERSTER: Just to get it --

13 MR. WILSON: Yeah, so my testimony is only
14 verbal testimony.

15 So, where was I at. So, when you're doing,
16 getting into the issue of congestion, you want to be
17 able to basically model what will be the levels of
18 those pollutants during congested periods.

19 I think what's also important to note, when
20 you're looking at sort of combustion related --
21 combustion by-products and traffic, it's going to be
22 important to take an account how vulnerable
23 populations will be impacted by those exposures. So,
24 when you're -- and environmental health and in public
25 health, there are a particular set of vulnerable

1 populations that we need to be concerned about.

2 So, we need to be concerned about children,
3 the elderly, individuals who may have some underlying
4 health conditions like asthma, pregnant women,
5 individuals with comorbidities. And there are some
6 special other populations too.

7 Reason why we want to focus on children,
8 children as you know, have higher inhalation rates
9 per body weight than adults. They also, their immune
10 systems are still developing so it's easier for
11 contaminants. Particularly things like metals, lead,
12 which is a neurocognitive, a toxicant, and also
13 neurobehavioral toxicant, things like mercury, to
14 cross the blood/brain barrier.

15 Also, the you know, for both adults and
16 children things like particulate matter come in
17 different particle sizes. So, you have PM-10, which
18 is 10 microns. Those are things like you basically
19 sneeze out the large dust particles. You have PM-25,
20 which is really important for public health. So, I
21 think there were some previous discussions about --
22 previous testimony about the national ambient air
23 quality standards. We have standards for PM-25 and
24 PM-10. But that is really relevant for public
25 health.

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1 So, PM-2.5 can damage the alveoli, it can
2 basically cause asthma, lead to asthma attacks. It
3 will have, if you have a higher related morbidity, so
4 more hospitalizations, emergency department visits.
5 PM can also cause cancer. And for those who may be
6 already at risk, right, people who may already have
7 some kind of health condition, they'll have a higher
8 risk of premature mortality. PM can also cause
9 stroke. There's been studies that have shown that PM
10 can contribute to Alzheimer's and autism spectrum.
11 Also, there's been studies that have shown that
12 children who live near roadways are impacted, and
13 also pregnant mothers who live near roadways. You
14 see higher rates of infant mortality, low birth
15 weight, very low birth weight babies, and also birth
16 defects.

17 So, the reason why I'm focusing so much on
18 air pollution -- I mean, it's highly important when
19 you're talking about traffic. And those populations
20 will be ones that we want to be concerned about. I
21 don't think that EA really talked about those
22 vulnerable populations. And then in addition, as the
23 previous commenter mentioned, the whole issue about
24 around the hospitals, I would like to take a
25 different angle on the hospitals.

1 You currently have several hospitals in close
2 proximity of the proposed development. And so, the
3 hospital population is actually a special population
4 that we should be concerned about when it comes to
5 the children's hospital, sick children. They're
6 going to be more at risk, exposure to pollutants.
7 You have the veteran's hospital.

8 So, you have these populations to have these
9 underlying vulnerabilities and susceptibilities due
10 to their disease state. And those populations
11 weren't really mentioned in the EA.

12 So again, the law requires to look at public
13 health impacts. And when you look at public health
14 impacts, particularly around traffic and air
15 pollution, you want to focus on those populations.
16 Those sensitive subpopulations.

17 And just to follow up again, the DOE's
18 examination only pollutants for which D.C.'s
19 attainment fails to approach this analysis from a
20 public health impact perspective, even though D.C.'s
21 regulations require consideration of that. So, when
22 you're doing this type of analysis, when you're
23 looking at combustion by-products and traffic, in
24 this particular area you want to look at it -- also
25 look at sensitive human receptor sites. You want to

1 take into account the current population base;
2 residential population. So, look at where people
3 live, work, play, and pray, right? So, you want to
4 look at are there daycare centers in the area that
5 could be impacted? Are there seniors in this area
6 that could be impacted. You have Howard University
7 that's nearby. And college students could
8 potentially be impacted.

9 And thinking about other sort of groups that
10 have these underlying social and economic
11 vulnerabilities who could be impacted.

12 So, again, just really getting at when you're
13 doing a baseline assessment, and this should be
14 included in your public health impacts assessment,
15 you really want to categorize, classify, and
16 characterize those groups who will be -- those
17 subpopulations who will be impacted. And that wasn't
18 done. So that to me, is a big gap.

19 And so also, when you're trying to -- getting
20 back to the regulations about cumulative impacts, you
21 want to look at both chemical and nonchemical
22 stressors. So of course, you know, physical agents
23 are a concern when you're looking at traffic, is
24 noise. And it's just not the post-development noise.
25 It's also the construction related noise.

1 And also, there was no discussion about
2 fugitive dust emissions associated with the
3 construction on the site. And so, again, you have to
4 take in account the cumulative impacts pre -- during
5 development, and also post, as it relates to traffic.

6 One of the big issues with construction is
7 the fact that you may have vehicles that burn diesel
8 fuel. Diesel fuel is very important when it comes to
9 health impacts. Diesel particulates can cause
10 cancer. One indication of the presence of diesel
11 particulates is black carbon. Black carbon is a
12 constituent of particulate matter. So, we do have a
13 PM standard, but we do not have a standard, EPA does
14 not have a standard for black carbon.

15 So, it's really relevant for public health.
16 And again, particularly for those susceptible
17 subpopulations that I talked about before.

18 I have in my sort of written out comments, I
19 do cite a few studies that talk about, you know, the
20 issues around air pollution and living near roadways,
21 and also truck traffic and impacts of human health.
22 Hopefully I can put into the record this opportunity
23 later.

24 One last point, because I know you all have
25 been here a long time. One other point I would like

1 to make is when you're looking at the public health
2 impacts, you also have to take in account
3 disparities. And so, I think that maybe some
4 discussions about, you know, groups that could be
5 disparity impacted by traffic and some of the
6 pollution issues. So, I just, you know, want to note
7 that you know, you look at -- there's been studies
8 that I've seen that traffic and traffic related air
9 pollution differentially impacts low income
10 populations and people of color. So, it's been
11 studies. There's a PRADA (phonetic) all study that
12 was published in American (garbled speech) Health in
13 2014.

14 There's other studies that have been
15 published too on these issues of disparities. And
16 so, I think, and again, and the baseline assessment
17 to be in compliance around looking at the public
18 health and cumulative impacts, that's again an angle,
19 an element that has to be addressed that wasn't
20 addressed. And I think, because I don't want to
21 belabor these points. I mean --

22 MS. FERSTER: You will put your written
23 testimony --

24 MR. WILSON: Yeah.

25 MS. FERSTER: You do have one -- a couple

1 extra copies.

2 MR. WILSON: Yeah, I have a couple copies.

3 MS. FERSTER: So we can put that in the
4 record now. Yeah.

5 MR. WILSON: So, I'll --

6 MS. FERSTER: We'll give you more later.

7 MR. WILSON: I'll close there. But I wanted
8 just to talk to say, just to emphasize again that
9 looking at the public health impacts is required by
10 the law. It wasn't done. And it needs to be site
11 specific. There has to be baseline environment data.
12 There has to be baseline social demographic data. It
13 has to be baseline health data for those who live
14 close to the proposed development. So, doing a block
15 approach. Five blocks as high impact, potentially.
16 Ten blocks, a buffer, as medium impact. And maybe 25
17 blocks.

18 I don't know what the block range would be,
19 but it would be better than using a city-wide
20 analysis to extrapolate down to a local neighborhood.
21 And so, thank you.

22 MS. FERSTER: Thank you. Dr. Williams.

23 MS. WILLIAMS: I've provided detailed written
24 testimony so I'll just talk about some of the main
25 points here, because I know we're running out of

1 time.

2 I first started studying gentrification in
3 Mount Pleasant in the 1980s. Scholars often call
4 this the sweat equity period because it was more
5 likely to involve individual homeowners who wanted to
6 restore old houses and become part of an existing
7 human urban community.

8 But lots of gentrification in Washington
9 today is really different from this kind of
10 gentrification. Scholars call it new build
11 gentrification.

12 And new build gentrification is different in
13 it's not individuals restoring individual houses, but
14 government is often deeply involved, developers and
15 investors are deeply involved, and often a
16 neighborhood is complete rebranded as a new and
17 different kind of place. NoMa is a really good
18 example, I think, of new build gentrification. It
19 wasn't even a coherent neighborhood really, until it
20 was kind of invented and rebranded and created.

21 And with new build development displacement
22 happens really kind of a little differently than it
23 did with the old sweat equity kind. There's
24 basically three kinds of displacement. Direct
25 displacement is like when your landlord hikes your

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1 rent or defers maintenance so that you have to leave,
2 or your property taxes go up so much that you can't
3 afford to pay your property taxes.

4 And developers often claim there is no direct
5 displacement with new build gentrification, but there
6 actually is. I don't know, if you go to these
7 neighborhoods you can see it happening. There are
8 clues online like Zillow and Realty Track show lots
9 of foreclosures and auctions and preforeclosures in
10 the houses around McMillan.

11 The census tract data that the Office of
12 Planning reviewed shows that seniors are -- there are
13 almost no seniors left in Bloomingdale. Children are
14 going down and racial turnover is occurring, and so
15 it looks like families and old people are being
16 displaced already.

17 And if you just walk around the neighborhood
18 you see pop-ups, you see new luxury housing, you see
19 the whole block of Channing Street seems to me to be
20 in great distress with gutted houses and pop-ups and
21 people having to move. So, there is a lot of direct
22 displacement, but that may not be the worst kind of
23 displacement this PUD will cause.

24 The second kind of displacement scholars call
25 indirect displacement, and that's because with new

1 build gentrification you get these beach heads of
2 development that send kind of tentacles of
3 gentrification out to the nearby neighborhood. And
4 you can see this in the map that you guys showed that
5 you see like, sort of like little spots of
6 ungentrified neighborhoods. But, you know, they're
7 going to be really vulnerable, especially in Edgewood
8 where there's a lot of modest housing, a lot of very
9 modest housing, lots of modest row houses, lots of
10 renters, and they're going to be so vulnerable to the
11 gentrification, to indirect displacement that's going
12 to ooze out from this development.

13 And the final kind of displacement is called
14 exclusionary displacement. And that just means an
15 area becomes so different that if you could have
16 lived there you can't anymore, or if you do live
17 there now, you probably can't afford to. It changes
18 character entirely and that happens a lot with new
19 build gentrification.

20 I think, to me this is really sad because
21 this part of Washington is, in some ways, kind of the
22 heart of D.C. where people move after getting --
23 being displaced by urban renewal after the fall of
24 restrictive covenants. It's almost a story of civil
25 rights, these neighbors in mid-city because they're

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1 just these multigenerational households who suffered
2 under segregation, who broke free, who integrated
3 this neighborhood, and now they're going to be
4 displaced again.

5 And then the only other thing I did in my
6 testimony was I talked about -- I had some complaints
7 about the RLCCO report.

8 First of all, I think I really disagreed with
9 their characterization of gentrification. I partly
10 disagree with their methodology. I thought that as
11 Commissioner May pointed out, why is South
12 Bloomingdale so different? Why are Edgewood and
13 Stronghold so different? In some ways, North
14 Bloomingdale is just anomalous, but I don't think
15 comparing it to Dupont Circle really gets at the
16 complexities and nuances of gentrification and
17 displacement.

18 I also think that it's really hard to argue
19 that this project hasn't influenced gentrification
20 and displacement already. People have known about
21 this development for years, and some of the people
22 who testified in the last hearing argued that they
23 moved there because of the development, so I think
24 that it has to be an issue.

25 But it's not like a switch. You don't turn -

1 - it doesn't start and stop like a switch.
2 Gentrification and displacement go on for years.

3 The only actual gentrification scholar that I
4 think you cited in your report was Lance Freeman, who
5 has been roundly criticized because he does sort of a
6 moment in time analysis, and he's missed a lot of
7 what happens, because you can't just go to a
8 neighborhood at one moment in time and say, oh, this
9 is -- gentrification and displacement have occurred
10 because they go on and on and on, and they're very
11 complicated.

12 A second objection I had to the report was
13 that discussion of the housing market and supply and
14 demand, I don't know anyone in gentrification studies
15 who thinks that housing markets are based on simple
16 supply and demand. They're too complicated. There
17 are too many emotions and politics and other factors
18 involved. Global capitalism is involved now. So,
19 global Capital flows influence supply and demand.
20 You can't reduce it to simple supply and demand.
21 It's more like a huge supply of investors competing
22 for a limited supply of land.

23 And if you look at all kinds of data in
24 different cities, when vacancy rates are high, prices
25 don't go down. When construction rates are high,

1 prices don't go down. There is no simple
2 relationship between supply and demand in the housing
3 market.

4 And then, I guess the final thing I'll
5 mention is that they argue that the PUD will mitigate
6 the loss of affordable housing, but the project only
7 offers nine row houses for sale at 50 percent area
8 median income, and only two rentals for sale -- for
9 rent. And that's not going to account for all the
10 affordable housing that's going to be lost in these
11 neighborhoods around the development.

12 And I think we've talked about the
13 Comprehensive Plan a lot but I think when it's a
14 heart of the Comprehensive Plan lies a desire for an
15 inclusive city and housing that houses families with
16 children, this is not going to happen with this
17 development. Thank you.

18 MS. FERSTER: Our last witness is Kirby
19 Vining.

20 MR. VINING: I'm Kirby Vining, treasurer and
21 a board member of the Friends of McMillan Park,
22 plaintiff in this case before the Court. I'll be
23 addressing the five points identified in the notice
24 calling this hearing on the remand of the McMillan
25 case in that capacity.

1 I am an elected officer of the McMillan
2 Advisory Group and the Stronghold Civic Association.
3 So, I'm in a position to be aware, having been
4 present at the crafting of some of the documents from
5 those two organizations that are part of the record
6 for this. But I am testifying on behalf of Friends
7 of McMillan Park. I'm just able to answer questions
8 about those documents because I was present. I
9 helped write them.

10 There was some question earlier, I'm skipping
11 to the first paragraph here, about the current
12 usefulness of the summary of recommendations within
13 the McMillan site revitalization because it's the
14 Office of Planning, 2002. And I've referenced in our
15 report here, there's the -- under ANC auspices in
16 2012, we did a door to door survey of 1,000 houses in
17 the immediate McMillan area. That's the results of
18 that are summarized in Exhibit 112. And the thing
19 that I'd like to bring to your attention is the
20 principles of the Friends of McMillan Park, which are
21 on the back of Attachment 1. It's not bad that I
22 finally got into the Washington Post, and I'll
23 briefly allude to why you haven't read anything about
24 this in the Washington Post.

25 But on the back of that is some of the

1 principles of Friends of McMillan Park that are
2 remarkably consistent with both the 2002 Office of
3 Planning summary, and the results of the 2012 door to
4 door survey. So, what I'd like is over -- this is 20
5 years. And since I've been involved in this since
6 1989, the percentages of the population in our
7 community, Stronghold and Bloomingdale, is remarkably
8 similar. The number of people, 86 percent of the
9 1,000 households said, yeah, I want significant
10 contiguous surface park space. That's almost the
11 exact word that's in Mid-City Element 2.6 for the
12 recommendation. That's where it came from.

13 So, I'm talking, pointing out that the
14 relevance of that summary for recommendations is
15 reiterated by more recent information. They can be
16 played together remarkably similar.

17 Issue No. 2 though, I'm going to skip around
18 my second page. There are other Comprehensive Plans,
19 Issue 2. Open space in McMillan.

20 As a member of the MAG we learned in I think
21 it was 2002, when -- I'm reacting directly to some
22 comments from the development team in DMPED about the
23 respecting community input here. And in 2012 we were
24 asking, why are you giving this just such a puny
25 little 2.4 acres of park in this plan, and it was

1 hidden behind some of the townhouses. And the
2 response we heard shocked us. And this is the
3 outreach coordinator for the developer said, I don't
4 think we have to give you any more because we've got
5 an exclusive rights agreement with DMPED that says
6 so. Well, could we see that exclusive rights and
7 agreements. First, we'd heard about it. We had to
8 FOIA that. Freedom of Information Act request. And
9 we saw that and sure enough we -- there were some
10 restrictions. That's why they didn't have to give us
11 any more.

12 But what's being presented as a benefit
13 offered to the community is not that at all. That
14 position didn't budge until we worked with George
15 Hawkins after the flooding in Bloomingdale, and he
16 went down to Mary Cheh Environment Committee, and the
17 recommendation of the Bloomingdale Flooding Task
18 Force, asked Mary Cheh for permission to use big
19 chunks of that site as his planned solution to the
20 flooding of Bloomingdale.

21 Mary Cheh approved that. He went out, he
22 identified what we now know as Cell 14, and the
23 entire southern sector of the site. That was Mary
24 Cheh. There's D.C. City Council approved that.

25 Now, I've got online on our web page, you can

1 see the emails about the applicant screaming about
2 how they'd have to take that into consideration and
3 design around it.

4 Now, what we've got today is not only that,
5 that's supposedly in response to the community
6 outreach. No, it's not. It's because the WASA
7 Project. And further, that's being touted as an
8 amenity? It's just, it is adjacent to the VMP
9 development. Is the land that the McMillan
10 Reservoir, is that an amenity to be included as a
11 community proffer? This is D.C. owned land. The
12 taxes -- DMPED has hired a developer, Gilbane, to
13 develop that community center with my tax dollars.
14 So, why is that a VMP amenity?

15 Skipping right down a couple pages now for
16 the sake of time there. Other policies. Issue No.
17 2, other Comprehensive Policies cited by VMP weigh
18 against the PUD. Particularly 2.6.4, community
19 involvement and reuse planning be responsive to
20 community needs and concerns of reuse planning for
21 the site.

22 There was some questioning earlier saying,
23 they went to the ANC. That's not what the Court
24 said. The Court said the community. And what I
25 would describe, and I've got some examples back here

1 in Attachment 5, I would describe the community
2 responsiveness to the community needs as something on
3 the order of an attack, gang rape perhaps, assault
4 and battery.

5 You'll see in Attachment 5 there, I've never
6 seen anything like this. City tax payer's dollars
7 hired a PR firm in Baltimore, Maryland, to discredit
8 and create a sense of mistrust of the community
9 position. That's in response to 2.6.4.

10 In the MAG, the recommendations of the
11 McMillan Advisory Group, there's several of those in
12 Attachment 7. Several letters there. This is --
13 there has not been responsiveness. Again, WASA is
14 what changed that project most drastically.

15 Issue No. 3, is high density development the
16 only feasible way to retain substantial park? If
17 you'll look back to the MAG, the McMillan Advisory
18 Group has a letter of agreement in terms of
19 commitment and it's been violated. If you look down
20 in the terms of commitment and the letter of
21 agreement, which are both part of the record, that
22 the summary of recommendations for McMillan
23 revitalization are a contingency under which the MAG
24 would support this particular development. Those
25 recommendations. There's nothing in those

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1 recommendations that includes the high-rise buildings
2 that is consistent, 2000 -- 1989 up until the
3 present. I don't know anyone in the Stronghold
4 neighborhood who says, yeah, I want a high-rise over
5 there. It's quite the opposite.

6 We don't want high-rises, both because of the
7 views, but primarily because where is that traffic
8 going to go? Which gets back to Issue No. 5 there,
9 which is just traffic. There's a lot of details
10 here. You have a lot of attachments up in here, but
11 I'd like to economize on time and give it -- see if
12 Mr. Ferster needed a couple minutes.

13 Yeah, I think I've got enough in here. The
14 attachments, you can see, there's a -- particularly
15 Attachment 5. It's just shocking to me. That's
16 Community involvement.

17 MS. FERSTER: Okay. So, I have a just a very
18 quick follow up question for Dr. Sacoby and Ms.
19 Richards. I previously passed out to you the
20 testimony of Claudia Barigan, who couldn't be here
21 tonight. And I've asked each of you to read the
22 parts of the testimony that relate, in Dr. Sacoby's
23 case, to the environmental issues, and in Ms.
24 Richard's case, the issues relating to zoning and
25 planning.

1 And I'll ask each of you, have you reviewed
2 that testimony, Ms. Richards?

3 MS. RICHARDS: I have.

4 MS. FERSTER: And do you agree with the
5 points relating to planning and zoning made in that
6 testimony?

7 MS. RICHARDS: I do.

8 MS. FERSTER: And, Dr. Sacoby, have you
9 reviewed the testimony of Claudia Barigan and
10 relating to the environmental issues?

11 MR. WILSON: Yes.

12 MS. FERSTER: And you concur in the testimony
13 that she has -- that relates to your expertise?

14 MR. WILSON: Yes.

15 MS. FERSTER: Thank you.

16 MR. GLASGOW: Mr. Chairman, I'll just -- I'm
17 not sure what the purpose of that was.

18 CHAIRPERSON HOOD: She's still -- hold on.
19 She's still in the middle of her presentation.

20 MR. GLASGOW: Okay.

21 MS. FERSTER: I'm done.

22 CHAIRPERSON HOOD: Okay. Before you say
23 anything, Mr. Glasgow, let me just ask you, do you
24 object to -- and I know you're going to go here, but
25 do you object to this submission that was given to

1 us?

2 MR. GLASGOW: Yes, because the witness is not
3 here for cross-examination.

4 CHAIRPERSON HOOD: Okay. So, that is a
5 problem.

6 Let me ask you this, Ms. Ferster. Did you
7 bring this in with you tonight?

8 MS. FERSTER: I did.

9 CHAIRPERSON HOOD: Did you bring these? You
10 brought these copies in?

11 MS. FERSTER: Well, no. Somebody -- Mr.
12 Otten brought them in. He did the copying for me.

13 CHAIRPERSON HOOD: Okay. So, this is part of
14 your case?

15 MS. FERSTER: It is part of my case.

16 CHAIRPERSON HOOD: So, how is Mr. Glasgow
17 going to cross-examine her?

18 MS. FERSTER: Well, we're just asking that he
19 can cross-examine Ms. Richards and Dr. Sacoby, since
20 they have adopted that as their testimony on anything
21 that those -- that testimony says.

22 CHAIRPERSON HOOD: But they didn't work on
23 it. This goes back to what we did earlier with Mr.
24 Dettman.

25 MS. FERSTER: Uh-huh.

1 CHAIRPERSON HOOD: So, I don't understand.
2 It was good for Mr. Dettman to say that it was his,
3 and now we're doing something different. What kind
4 of rules are you playing?

5 MS. FERSTER: Well, I mean, Mr. Dettman
6 testified that his testimony was a collaboration.
7 So, I only cross-examined Mr. Dettman.

8 CHAIRPERSON HOOD: So, now you're trying to
9 convince me at 10:00 at night, or whatever time this
10 is, that the two people now, this is their testimony
11 but their name is -- they're not the authors of this.

12 MS. FERSTER: As I said, our position is that
13 many of these documents are you know, collaborative
14 pieces, and if one person reviews it and takes
15 responsibility for it, then it's their testimony.
16 So, I'd ask that it be adopted as our witness's
17 testimony.

18 CHAIRPERSON HOOD: So, is it you all's
19 testimony that you all worked on this document? Or
20 you just read it and agree with it?

21 MS. RICHARDS: I did not work on this
22 document. I was asked to review the provisions of
23 this testimony that referred to the planning and
24 zoning issues. I found that --

25 CHAIRPERSON HOOD: All right. Let me just

1 ask you this, when did you review it?

2 MS. RICHARDS: I reviewed this yesterday.

3 CHAIRPERSON HOOD: Okay. When did you review
4 it?

5 MR. WILSON: I reviewed it yesterday. And so
6 just really the relevant pieces as it relates to the
7 public health.

8 CHAIRPERSON HOOD: I just don't understand
9 why it's good for one and not for the other. I like
10 to be balanced and be fair across the board and I
11 don't think this does this for me. Let me hear from
12 my colleagues on this, on this document that now two
13 other people now are saying they only share --

14 MR. TURNBULL: I don't think it's fair to the
15 applicant to not be able to cross-examine someone if
16 they're submitting evidence or -- I have a problem
17 with it. But it's your call, Mr. Chair.

18 CHAIRPERSON HOOD: Vice Chair, you want to
19 add something to this?

20 MR. MILLER: Well, if they had read the
21 document and they still have nine minutes left, if
22 they read it to us and said that it's -- we'd at
23 least have something. But no, I have a concern with
24 the way it's been presented. I share your concern
25 about the way it's been presented at this point.

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1 CHAIRPERSON HOOD: Commissioner May, you have
2 anything? I just have problems when first of all,
3 the way it was done to this Commission, I have a
4 problem. I believe I was trying to -- I was being
5 deceived. I have problems with that. I don't like
6 when somebody tries to deceive me.

7 We're looking for his testimony. It's passed
8 out as though it was his, and I hope the court reads
9 this because I think this Commission has been in the
10 posture of being deceived.

11 MS. FERSTER: And I'd like to clarify that
12 because --

13 CHAIRPERSON HOOD: I hope they read the
14 transcript.

15 MS. FERSTER: -- I had no intention of
16 deceiving you. I was simply trying to expedite the
17 matter of to pass out testimony that I would then ask
18 Ms. Richards --

19 CHAIRPERSON HOOD: So, how is Mr. --

20 MS. FERSTER: -- and Dr. Wilson to adopt.

21 CHAIRPERSON HOOD: How is Mr. Glasgow going
22 now to cross-examine?

23 MS. FERSTER: You know, you're free to rule
24 on it. I'm just clarifying that I had no intention
25 to deceive. I just wanted to get that in front of

1 you to expedite our case. We were running out of
2 time and that my proffer has to do with our witnesses
3 adopting this testimony. You're free to reject it if
4 you want, but I just want to clarify that it was
5 never intended to deceive. It was clearly under her
6 name, not Dr. Wilson's name.

7 And I would also like to give you a copy of
8 Dr. Wilson's testimony. He wasn't able to make 10
9 copies of it, but he can give you that one.

10 CHAIRPERSON HOOD: I believe that the
11 applicant is being prejudiced, so I don't know, do we
12 return these documents?

13 Yeah, unless someone disagrees, I think we
14 need to return these documents because the applicant
15 has no way to cross-examine this, and I understand
16 the implication of trying to say that now two other
17 authors now own this document. But I don't think
18 that's correct. And if the court wants to, they can
19 reverse it. But I think we need to return this.

20 Okay. Mr. Glasgow, do you have any cross-
21 examination?

22 MR. GLASGOW: I have a couple of questions on
23 cross-examination because I am going to suggest, Mr.
24 Chairman that with respect to how I think that we may
25 be able to do things much more succinctly is on a

1 number of the things. For example, like with respect
2 to getting on to rebuttal and other things, and
3 cross-examination, to be able to do a lot of those
4 things in writing and then take the record that we
5 have and deal with that.

6 I do have some cross-examination questions,
7 but I'm also thinking about when the cross is
8 finished and where we go.

9 CHAIRPERSON HOOD: Ms. Ferster, do you have
10 any problem with rebuttal being in writing?

11 MS. FERSTER: I do, because I would not be
12 able to cross-examine the rebuttal witnesses.

13 CHAIRPERSON HOOD: Well, you can -- the
14 rebuttal will be in writing. You can respond in
15 writing. That's what he's saying.

16 MS. FERSTER: That's different from cross-
17 examination. I can't ask them questions. So, I
18 would object to that.

19 CHAIRPERSON HOOD: Okay. We'll keep it the
20 same way we're going. All right. Mr. Glasgow.

21 MR. GLASGOW: All right. First, for Ms.
22 Richards, did you say that you believe that it is
23 inappropriate for the Zoning Commission to aggregate
24 density over an entire site when they are considering
25 a planned unit development?

1 MS. RICHARDS: It is inappropriate for them
2 to do so before selecting the appropriate zones. In
3 this case there's an unzoned land. No, I know that
4 for a PUD site, densities and heights are aggregated
5 all the time. But there's a presumption, as I said,
6 that the aggregation is occurring over properly
7 selected zones.

8 And in this case, when we went from unzoned
9 land, there were some zones selected. Two steps were
10 conflated. The land was, you know, prospectively
11 zoned, and then the densities were aggregated. It
12 would have been appropriate if the zones that were --
13 whose densities and heights were being aggregated
14 over the site were in conformance with the
15 Comprehensive Plan guidance. But they were not.

16 MR. GLASGOW: So, your testimony then is that
17 that was a high-density building at the northern end
18 of the site, or that it was high density with respect
19 to height?

20 MS. RICHARDS: It is a high-density building
21 and it is also -- it has excessive height for the
22 Comp Plan guidance. So, it is both too big. It is
23 too tall, and the intensity of use is greater. So,
24 in all three respects for the Parcel 1 building
25 exceeds what is contemplated for the McMillan site by

1 the Comprehensive Plan.

2 MR. GLASGOW: So, a 2.36 FAR for the entire
3 site is too high a density for the site?

4 MS. RICHARDS: No, that's not what I'm
5 saying. I'm saying that it's not just the overall
6 density that must be considered. It's the collection
7 of densities and the range of densities over the
8 entire site. I'm saying that for this particular
9 site, the Comprehensive Plan said we would like to
10 have a site where the density is like -- ranges from
11 medium residential down to moderate commercial. In
12 other words, we would like to have our commercial
13 densities lower than our residential densities.
14 That's part of -- that's the entire planning
15 environment as envisioned by the plan. And plus,
16 generous open space.

17 Therefore, while there is certainly
18 flexibility in applying the Comprehensive Plan
19 guidance, that flexibility must be applied pursuant
20 to the guidance of the plan. And the overall
21 density, yes, is consistent. But it is inconsistent
22 with what the planning envelope for this site that
23 the Comprehensive Plan said should be achieved.

24 MR. GLASGOW: So, your testimony then is
25 being that the Comprehensive Plan does not permit any

1 high-density development on the site?

2 MS. FERSTER: I think she's made --

3 MS. RICHARDS: My testimony --

4 MS. FERSTER: I think she's made her
5 testimony clear. She's answered it several times. I
6 believe it's asked and answered.

7 MS. RICHARDS: I'm going to -- I'm going to
8 do it again. I am aware the court said there is no
9 per se, rule, saying that you could not have a high-
10 density building. And I did not reach that as a per
11 se, conclusion. I reached that conclusion with
12 regard to that site, that parcel, this use, in
13 accordance with what's in the plan and what's in the
14 neighborhood around that the Comp Plan says, must be
15 looked at. And it is only with -- in the light of
16 all of those inputs, did I reach the conclusion that
17 that high-density building is inconsistent.

18 And there's a point in my testimony where I
19 said, you know, it's in recognizing what the Court
20 said, that if a high-density building were to go up
21 on that site, it might be you know, defensible or
22 compliant if it was for a use contemplated by the
23 plan.

24 For instance, the plan says medium density
25 residential. Now, suppose that in applying the plan

1 flexibly. Someone said, well, let's go high-density
2 residential, you know, and that would say, okay, it's
3 sort of like it's in the ballpark. And then you see
4 how is it cited. And you have to look at all the
5 other factors and what is it close to.

6 But here we have -- we are jumping for, to a
7 high-density building. We're going from moderate
8 density commercial, past medium density, all the way
9 up to a high density commercial. And we're having --
10 so, we're ratcheting up two planning designations for
11 the commercial building, medical building. And also,
12 we're kind of upending the respective dominance
13 envisioned by the plan, which said, on this site we
14 want our residential to be more dominant than our
15 commercial.

16 So, now you have a more dominant, like in
17 your face, commercial use than you do for
18 residential. And that's not the kind of balance
19 struck by the plan.

20 MR. GLASGOW: Now, you testified that you
21 thought that the buildings on -- the medical
22 buildings on the northern end of the site would, I
23 guess you said that they were larger buildings
24 against smaller buildings. Are you testifying that a
25 building that's separated by 260 feet is against a

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1 smaller building?

2 MS. RICHARDS: You're referring to the two-
3 story row houses across North Capitol Street and some
4 feet away from --

5 MR. GLASGOW: Right.

6 MS. RICHARDS: And I would say that you know,
7 not invariably because again, we're supposed to be
8 applying the plan flexibly. So, let us say -- and
9 I've seen like, a couple of other PUD sites in the
10 city where there -- and prospective PUD sites, where
11 there were sort of like relative, quite high
12 apartment buildings that were separated by less space
13 to lower density townhouses.

14 Here, it's not only the height. It's the
15 FAR. And in fact, the applicant's statement goes to
16 a good deal of trouble to explain how the impact from
17 across North Capitol Street of the, I guess the
18 sidewall of the building is going to be minimized by
19 articulating, you know, the architecture and by
20 screening with foliage and also by, I believe one of
21 the historic features. And you know, I think that
22 the mere fact that so much effort is being taken to
23 screen it indicates that but, you know, it's kind of
24 like, yeah, it's out there. We've got to hide it.
25 So, it's kind of incompatible or it's out of scale or

1 it's --

2 And mostly it doesn't create these sort of --
3 in this case it works against the kind of integrated
4 neighborhood envisioned by the plan. You know, this
5 is supposed to be -- all of the large sites, but this
6 -- of the general land-use map, and in the land,
7 general land-use policies, are supposed to kind of
8 create them. Kind of contiguous neighborhoods with
9 existing neighborhoods.

10 And, you know, this one just doesn't. I
11 mean, that's just -- crossing North Capitol Street
12 from the little two-story townhouses and then kind of
13 walking across the yard to a big kind of
14 institutional commercial sidewall, it's out of scale.

15 If it were -- if one were walking up, let us
16 say, to the front --

17 MR. GLASGOW: Ms. Richards, I didn't ask
18 about the scale. I asked about the separation
19 being --

20 MS. RICHARDS: The separation --

21 MR. GLASGOW: -- looming over the small
22 buildings is what --

23 MS. RICHARDS: I don't think the separation
24 works in this case.

25 MR. GLASGOW: Okay. And that's your

1 testimony.

2 MS. RICHARDS: The way it's stated. It is.

3 MR. GLASGOW: All right. Mr. Chairman, with
4 respect to the other witnesses, I was planning on
5 having some of our rebuttal witnesses, but we don't
6 have DOEE here. And I don't know, given the
7 objection that Ms. Ferster has, we certainly want to
8 have DOEE as a rebuttal witness. So, I want to
9 understand how we want to take care of that because
10 we were ready to do it in writing but if that's not
11 possible.

12 CHAIRPERSON HOOD: Well, the next date that
13 we've already set aside is May the 1st. So, we can
14 just start rebuttal on May the 1st.

15 MR. GLASGOW: All right.

16 CHAIRPERSON HOOD: Unless Ms. --

17 MS. FERSTER: I guess I would object. I
18 mean, counsel for VMP and the applicant made it clear
19 that they wanted to finish tonight. Everybody, as we
20 do for sure. And I would say that --

21 MR. GLASGOW: Mr. Chairman, I never said
22 anything about finishing tonight one way or the
23 other.

24 CHAIRPERSON HOOD: No, no, I'll take the --
25 now, that's one thing I will take the credit for.

1 MS. FERSTER: Okay. Okay. Well, Friends of
2 McMillan Park wishes to as well. There was -- you
3 know, you made a choice not to get your rebuttal
4 witness here today. You know, Ms. Barigan, for
5 example, would have been here today had she been able
6 to. But when our case was rescheduled for this day,
7 she wasn't able to be here.

8 So, you know, the same again, the same goes
9 for rebuttal witnesses that the applicant really
10 should have known would be here when we all had
11 planned to finish today. So, I would object. I
12 would like to finish today. I think the applicant
13 should put on its rebuttal testimony today. We still
14 have time. And that there should be no future date
15 for getting DOEE to testify in rebuttal.

16 CHAIRPERSON HOOD: So, Ms. Ferster, let me
17 ask you a question. Will we finish today?

18 MS. FERSTER: We will.

19 CHAIRPERSON HOOD: If we get into it?

20 MS. FERSTER: We're done. We're done.

21 MR. MAY: No, but you're going to do cross on
22 rebuttal as well.

23 CHAIRPERSON HOOD: And your cross has been
24 two hours.

25 MR. MAY: And part of the reason why we're

1 here at this hour is because --

2 MS. FERSTER: Yeah, I could be very brief --

3 MR. MAY: -- of the length of the cross that
4 we've already had.

5 MS. FERSTER: I assure you, I assure you, my
6 cross will be brief. Particularly if it's Mr. -- the
7 RCL who is going to testify, because I have no
8 questions for him.

9 MR. GLASGOW: Well, Mr. Chairman, one, it's
10 10:00 tonight, at this point in time. We started at
11 5:00.

12 The other point is that we have -- you have
13 seen far more representatives of the District of
14 Columbia at these last couple of proceedings than you
15 probably have in any hearing that the Commission has
16 had. We have taken a number of people and gotten
17 them down here for this hearing, which we're pleased
18 to do with respect to the remand of the court.

19 But to be able to continually do that and not
20 know when they're going to get on is -- that's a
21 challenge.

22 CHAIRPERSON HOOD: I didn't follow you. You
23 lost me. When who's going to get on it?

24 MR. GLASGOW: When, for example, when you
25 have the people from DOEE, you know, would they get

1 on? When would they get on? With respect to being
2 rebuttal witness --

3 CHAIRPERSON HOOD: So, let me ask you, do you
4 think that the remand issues that we've heard -- I
5 don't think it's a back and forth. It's up to the
6 information that we've gotten, and for this
7 Commission to decide on the issues that have been
8 remanded back to -- five issues that have been
9 remanded back to us.

10 For me, I'm ready for us to deliberate. I
11 just need you to do the rebuttal tonight. Ms.
12 Ferster says she has a few questions on rebuttal.

13 How long would your rebuttal take?

14 MR. GLASGOW: I think that our rebuttal will
15 probably be -- okay, we are going to -- I want to
16 consult with the team.

17 CHAIRPERSON HOOD: Okay. Take three minutes
18 and consult with the team. Let's see how long your
19 rebuttal is. Ms. Ferster has assured us that we will
20 -- you only have a few questions.

21 MS. FERSTER: And again, assuming that it's
22 RCL, I don't -- if RCL is testifying I probably have
23 no questions. I don't know who their other witnesses
24 are.

25 CHAIRPERSON HOOD: Oh, so now you done

1 changed the game on me.

2 MS. FERSTER: Well, I -- probably I will have
3 very few questions. It's late.

4 CHAIRPERSON HOOD: We're going to go off the
5 record for about two minutes.

6 [Off the record from 10:06 p.m. to 10:11
7 p.m.]

8 CHAIRPERSON HOOD: Okay. Let's go back on
9 the record. Mr. Glasgow, can you let me know about
10 how much time you need and who your witnesses are?

11 MR. GLASGOW: Okay. First of all, what we're
12 -- this is sort of how we're thinking about
13 proceeding is if we -- if our closing can be in
14 writing, then we will forego rebuttal witnesses. But
15 we want to submit the closing argument in writing.

16 MS. FERSTER: If we can -- if I can respond
17 to your closing with my own closing, that's fine with
18 me as long as it's no witness testimony.

19 MR. GLASGOW: No, there will be no witness
20 testimony, but the applicant gets closing and then
21 the case is over. Closing is not something that's
22 responded --

23 CHAIRPERSON HOOD: So, what you're proposing
24 is no rebuttal.

25 MR. GLASGOW: Correct.

1 CHAIRPERSON HOOD: And, just a closing
2 statement, which won't have any rebuttal in it.

3 MR. GLASGOW: Correct.

4 MS. FERSTER: Then I think he should make his
5 closing statement right now.

6 MR. GLASGOW: No, because we have -- the
7 closing statement that we have, I want to cover a
8 number of different points. It will not be rebuttal.
9 I want to have the transcript, that we have ordered
10 the transcript on expedited basis throughout these
11 proceedings.

12 MS. FERSTER: But with all due respect,
13 that's what a proposed findings of fact and
14 conclusions of law are. I mean, if he's not going
15 to --

16 CHAIRPERSON HOOD: Here's the thing, Mr.
17 Glasgow, because I've seen that done too, I want to
18 make sure that your closing does not address DOEE and
19 those facts. I just want you to do your closing.
20 And then whatever else you have, you can do in your
21 findings of facts and conclusions of law, because
22 I'll tell you why, because then that will be
23 prejudice to the party in opposition and I don't want
24 to do that.

25 So, if we're all agreeing, and we're all on

1 the same page that we're going to just have a closing
2 and no rebuttal, if we're all agreeing to that, then
3 we can move forward.

4 MR. GLASGOW: When you say move forward, I'm
5 asking --

6 CHAIRPERSON HOOD: Then we can move forward
7 to your findings of facts and conclusions of law.
8 You just do a regular closing. We think that --
9 well, you know what you do when you close.

10 MR. GLASGOW: Right. With the closing
11 statement. So, you're saying that you want a --

12 CHAIRPERSON HOOD: I don't want anybody to
13 slide if like, like I was kind of deceived tonight by
14 the opposing party.

15 MS. FERSTER: Not intentionally.

16 CHAIRPERSON HOOD: Well, I don't want that to
17 happen in the closing, because then that causes
18 another problem and we will have to have another
19 hearing.

20 MR. GLASGOW: Right. No, I -- we don't want
21 to have that. We want to organize a closing
22 statement, and I think it will be more effective and
23 it will be more succinct if we have the team and get
24 it done and submitted in the record in a short period
25 of time.

1 CHAIRPERSON HOOD: And then the opposing
2 party and the applicant can submit their findings of
3 facts and conclusions of law.

4 MS. FERSTER: And I would object to a written
5 closing. I think Mr. Glasgow can make his closing
6 right now, various time. And I think allowing him to
7 have the transcript and you know, time to confer with
8 all his witnesses --

9 CHAIRPERSON HOOD: Well, I've already -- Ms.
10 Ferster, I've already told him what I don't want to
11 see, because I kind of know where you're going. So,
12 he already knows, I don't want to see anything from
13 DOEE or anybody else in the closing. Just the
14 closing, like he -- like they -- like applicants
15 normally close.

16 MS. FERSTER: And I think a normal closing
17 would be a verbal closing at the conclusion of the
18 hearing right now.

19 MR. GLASGOW: I submit closings in writing
20 all the time to this Commission.

21 CHAIRPERSON HOOD: Yes, we do. Vice Chair.

22 MR. MILLER: I just had a question, Mr.
23 Chairman. Is the applicant through their cross-
24 examination of the party in opposition's
25 presentation? We were in the middle of that when all

1 this stopped.

2 CHAIRPERSON HOOD: I think you were finished,
3 right?

4 MR. MILLER: Were you finished?

5 MR. GLASGOW: Yes. Yes, sir.

6 MR. MILLER: Okay. Okay.

7 MR. GLASGOW: We finished with cross.

8 MR. MILLER: I just wanted to clarify.

9 CHAIRPERSON HOOD: I thought they were
10 finished.

11 Why is it that you can't do your closing this
12 evening?

13 MR. GLASGOW: Because I want to make sure
14 that with our coordination between the private sector
15 applicants and the public-sector part, because it is
16 a unique type of situation from that respect, that I
17 want to make sure that we have the coordination on
18 the closing with respect to those.

19 CHAIRPERSON HOOD: Here's what I'm going to
20 do. We're going to come back May the 1st at 5:00.
21 I'm going to allow, if Ms. Burgagen (sic).

22 MS. FERSTER: Barigan.

23 CHAIRPERSON HOOD: Barigan comes, you have
24 six minutes left, she can present her testimony and
25 we will take it at that time. You can do rebuttal

1 verbally. You can cross on rebuttal, and then you
2 can do closing.

3 MR. TURNBULL: Well, does that change --

4 CHAIRPERSON HOOD: And then you can cross Ms.
5 Barigan if she shows up. If not, Ms. Schellin, you
6 can keep it or you can give it back to Ms. Ferster.

7 MS. SCHELLIN: I'm going to give it back to
8 her.

9 CHAIRPERSON HOOD: Right.

10 MS. SCHELLIN: She can bring it back if she
11 chose.

12 CHAIRPERSON HOOD: Okay.

13 MR. TURNBULL: Well, if he's bringing back
14 DOEE he would still be doing cross then.

15 CHAIRPERSON HOOD: Yeah, just the normal
16 process. If DOEE is coming -- everything. So,
17 here's what I'm doing. If DOEE is coming back, Ms.
18 Ferster, whoever that person was that you gave us
19 their testimony tonight who didn't show up when we
20 thought it was your testimony. I'm trying to balance
21 it all out so everybody gets something. Okay? So,
22 we all come back May the 1st at 5:00.

23 MS. FERSTER: Okay. And I would like to
24 state my objection for the record. I think that the
25 applicant knew that the environmental issues were on

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1 the table, there was detailed cross-examination, the
2 applicant should have had either its own expert or
3 made sure that DDOE (sic) had their expert here. And
4 I think it would be prejudicial to allow them
5 additional time to present DDO (sic) testimony.

6 I also object to any -- if you're going to
7 allow DDOE (sic) to testify on May 1st, I object to
8 any other rebuttal witnesses other than DDOE (sic) to
9 testify because they should --

10 CHAIRPERSON HOOD: Well, how can you -- how
11 are you dictating their rebuttal case?

12 MS. FERSTER: I'm not dictating anything.
13 I'm objecting for the record, and I think that --

14 CHAIRPERSON HOOD: What is your objection?

15 MS. FERSTER: That the rebuttal witnesses
16 should testify today. Mr. Glasgow was very clear --
17 I mean, and let me be clear about this, I would have
18 loved to have the hearing and after the applicant's
19 case last time, so that I could have had 10 days to
20 prepare for my witnesses to rebut. But the applicant
21 insisted on everybody having their case in a single
22 day.

23 This gives the applicant an additional -- in
24 addition to being funded, you know, 10 attorneys or
25 however many attorneys that they have compared to our

1 one, and paid witnesses, et cetera, in addition to
2 that, that's prejudicial to our ability to present
3 our case. So, I object for the record.

4 CHAIRPERSON HOOD: Ms. Ferster, let me just
5 say this. The reason we even went in this, whatever
6 order we did on this remand, was because of what you
7 all had suggested about exhibits being entered.
8 That's how we got started in all of this mix-up,
9 everything being turned around. Yeah, so I want you
10 to make sure we be clear.

11 So, we've been trying to balance this because
12 the party in opposition had concerns about how things
13 were submitted. That was from day 1. That was from
14 day 1.

15 And I'm not -- here's what I'm not going to
16 do. I'm not going to go back and forth. But I also
17 can put stuff on the record as well as you can. So,
18 we can make sure that the record is clear. So,
19 whatever go --

20 MS. FERSTER: And I would just say that the
21 record is clear that we have never asked for a mixed-
22 up order of procedure. We asked for the entire
23 hearing to be deferred. We never asked that people
24 can shift around their testimony by day.

25 CHAIRPERSON HOOD: Well, anyway, the record

1 speaks for itself. Again, we will come back, unless
2 my colleagues say something different. Let me, in
3 that fashion, unless you all see something different,
4 that's the fashion we'll move forward in. We'll take
5 Ms. Barigan's, if she comes, her testimony. We'll
6 take that. If not, we'll leave it and give it back.
7 You'll come back with your rebuttal. You will have
8 your cross, like you wanted to cross. And then we
9 will have closing, a verbal closing. Okay?

10 MR. GLASGOW: Thank you.

11 CHAIRPERSON HOOD: All right. So, on May the
12 1st --

13 MS. FERSTER: And I object on the record.

14 CHAIRPERSON HOOD: Okay. Thank you.

15 So, on May the 1st we will come back here and
16 we'll be back here at 5:00. And with that, this
17 hearing is -- we'll resume on May the 1st.

18 [Whereupon, the hearing adjourned at 10:20
19 p.m.]

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