

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission

Limited Scope Public Hearing

Case No. 13-14 [Vision McMillan Partners, LLC and the  
District of Columbia - First-Stage and Consolidated  
PUDs and Related Map Amendment at 2501 First Street,  
Northwest (Square 3128, Lot 800).]

5:15 p.m. to 7:07 p.m.  
Monday, May 1st, 2017

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

OLENDER REPORTING, INC.  
1100 Connecticut Avenue NW, #810, Washington, DC 20036  
Washington: 202-898-1108 • Baltimore: 410-752-3376  
Toll Free: 888-445-3376

1 Board Members:

2 ANTHONY HOOD, Chairman

3 ROBERT MILLER, Vice Chair

4 PETER MAY, Commissioner

5 MICHAEL TURNBULL, Commissioner

6

7

8 Office of Zoning:

9 SHARON SCHELLIN, Secretary

10

11 Office of Planning:

12 JENNIFER STEINGASSER

13 JOEL LAWSON

14 ARTHUR ROGERS

15

16

17

18

19

20

21

22

23

24

25

## P R O C E E D I N G S

1  
2 CHAIRPERSON HOOD: Good evening, ladies and  
3 gentlemen. This is the continuation of a limited  
4 scope public hearing of the Zoning Commission for the  
5 District of Columbia for May 1st, 2017, to consider  
6 this issue remand by the District of Columbia Court  
7 of Appeals pertaining to Zoning Commission Case No.  
8 13-14. This is the Vision McMillan Partners, LLC and  
9 the District of Columbia.

10 My name is Anthony Hood. We're located in  
11 the Jerrily R. Kress Memorial Hearing Room. Joining  
12 me this evening are Vice Chair Miller, Commissioners  
13 May, and Commissioner Turnbull. We're also joined by  
14 the Office of Zoning Staff, Ms. Sharon Schellin, as  
15 well as the Office of the Attorney General staff, Mr.  
16 Alan Bergstein, Office of Planning staff, Ms.  
17 Steingasser, Mr. Lawson, and Mr. Rogers.

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

23 Notice of today's hearing was published in  
24 the D.C. Register, and copies of that announcement  
25 are available to my left on the wall near the door.

1 The hearing will be conducted in accordance with  
2 provisions of 11-ZDCMR, Chapter 9 as follows,  
3 preliminary matters, FOMP's witness, Claudia  
4 Barragan, and I'm going to hold that in abeyance  
5 because I need to ask Ms. Ferster a question.  
6 Applicant's rebuttal and closing.

7 All persons who will be testifying before the  
8 Commission in this evening's hearing are asked to  
9 fill out two witness cards. These cards are located  
10 to my left on the table near the door. Upon coming  
11 forward to speak to the Commission, please give both  
12 cards to the reporter sitting to my right before  
13 taking a seat at the table.

14 When presenting information to the  
15 Commission, please turn on and speak into the  
16 microphone, first stating your name and home address.  
17 When you are finished speaking, please turn your  
18 microphone off so that your microphone is no longer  
19 picking up sound or background noise.

20 The applicant and Friends of McMillan Park  
21 will have up to 60 minutes each to give their  
22 presentations, and that's past. So, this must be my  
23 old rendition. Anyway, please turn off all  
24 electronic devices at this time so not to disrupt  
25 these proceedings.

1           Would all individuals wishing to testify  
2 please rise to take the oath? Even if you were sworn  
3 in last time, I'd ask you to do again this time if  
4 you're going to be speaking tonight. Would all  
5 individuals please rise to take the oath?

6           MS. SCHELLIN: Yes. Please raise your right  
7 hand.

8           [Oath administered to the participants.]

9           MS. SCHELLIN: Thank you.

10          CHAIRPERSON HOOD: Okay, Ms. Schellin, do we  
11 have any preliminary matters?

12          MS. SCHELLIN: We do. The Friends of  
13 McMillan Park filed a motion in limine this morning  
14 at Exhibits 942 through 924E, and then we have a  
15 response from the applicant at Exhibit 943. We'd ask  
16 the Commission to consider the motion and the  
17 response.

18          CHAIRPERSON HOOD: Okay. Thank you, Ms.  
19 Schellin. I have read the Friends of McMillan Park's  
20 motion, as well as the response, and I'm going to  
21 deny the Friends of McMillan Park's motion. Any  
22 other proceedings? Anything else?

23          MS. SCHELLIN: I have nothing else. No other  
24 preliminary matters.

25          CHAIRPERSON HOOD: Okay. Ms. Ferster, I'm

1 going to ask you to come to the table, please.

2 MS. FERSTER: Good evening. Andrea Ferster.

3 CHAIRPERSON HOOD: Good evening. Good  
4 evening, how are you?

5 MS. FERSTER: I'm good. How are you?

6 CHAIRPERSON HOOD: I'm doing great. Claudia  
7 Barragan, is she part of your --

8 MS. FERSTER: Claudia.

9 CHAIRPERSON HOOD: Claudia.

10 MS. FERSTER: Claudia.

11 CHAIRPERSON HOOD: Claudia. Okay, Claudia  
12 Barragan. Is she part of your team, the party in  
13 opposition?

14 MS. FERSTER: She is going to be a witness  
15 for Friends of McMillan Park, yes.

16 CHAIRPERSON HOOD: So, she's part of your  
17 presentation?

18 MS. FERSTER: Yes. Well, she is now since  
19 you kindly permitted us to --

20 CHAIRPERSON HOOD: No, no, no --

21 MS. FERSTER: -- request to present her.

22 CHAIRPERSON HOOD: No, I can't make her part.  
23 I'm just -- my question. I want you to answer my  
24 question. Is she part of your team that you had in  
25 opposition?

OLENDER REPORTING, INC.

1100 Connecticut Avenue NW, #810, Washington, DC 20036

Washington: 202-898-1108 • Baltimore: 410-752-3376

Toll Free: 888-445-3376

1 MS. FERSTER: She's a -- I'm not sure. She  
2 was not present last time so we wanted to submit her  
3 written testimony because she wasn't present. She  
4 was going to be our witness, yes. Part of our  
5 team --

6 CHAIRPERSON HOOD: So, she's part of your  
7 team?

8 MS. FERSTER: Yes. But she could not be  
9 present.

10 CHAIRPERSON HOOD: I just wanted to make sure  
11 she was part of your team.

12 MS. FERSTER: She is part of our team.

13 CHAIRPERSON HOOD: Okay. Ms. Barragan, you  
14 can come forward.

15 MS. FERSTER: One clarification on the  
16 motion, though. We submitted additional exhibits and  
17 you -- we did not move to have those exhibits,  
18 because I don't think we need to move exhibits until  
19 the end of our case. So, I'm assuming you didn't  
20 rule on that.

21 CHAIRPERSON HOOD: I don't think we have a --  
22 I ruled on your motion.

23 MS. FERSTER: The motion, right.

24 CHAIRPERSON HOOD: I don't think -- yeah, I  
25 think you can submit your exhibits.

1 MS. FERSTER: Okay. Good.

2 CHAIRPERSON HOOD: I don't have a problem  
3 with that. I don't know if the applicant wants to  
4 cross on it or not.

5 MR. BERGSTEIN: The applicant indicated that  
6 they didn't oppose those exhibits, but they reserve  
7 the right to submit a full version --

8 CHAIRPERSON HOOD: To respond, right.

9 MR. BERGSTEIN: Well, to submit, I believe, a  
10 fuller version of those exhibits if I have it  
11 correctly. But if Mr. Glasgow wants to clarify, he  
12 can.

13 CHAIRPERSON HOOD: Okay. So, these  
14 exhibit -- well, let me see. You can go ahead and  
15 pass them up.

16 MR. BERGSTEIN: What he said was that the  
17 applicant does not object to the proposed  
18 introduction except it reserves the right to  
19 supplement the record with a complete and final  
20 version of each document identified.

21 CHAIRPERSON HOOD: And that's what -- I have  
22 no problems with that. I'm going to accept them and  
23 if they have some additional information, which  
24 continuation of maybe an incomplete exhibit, from the  
25 way I'm understanding it, they can do that. I've



1 read both submissions. The motion as well as the  
2 response.

3 MS. FERSTER: So, Ms. Schellin is passing out  
4 Ms. Barragan's testimony, and also her CD separately.  
5 I would like to qualify Ms. Barragan as an expert in  
6 two areas, urban planning and environmental policy.  
7 And she has not been qualified as an expert before  
8 this Commission in either of those areas, so I'd like  
9 her to do a brief voir dire so she can explain her  
10 professional and academic qualifications in both of  
11 those areas.

12 MR. MAY: I'm sorry, repeat again the areas?  
13 Urban planning --

14 MS. FERSTER: Urban planning.

15 MR. MAY: -- and?

16 MS. FERSTER: And environmental policy.

17 MR. MAY: Okay.

18 MS. FERSTER: May we begin?

19 CHAIRPERSON HOOD: Let me just ask Ms.  
20 Barragan, can I ask her a question first, Ms.  
21 Ferster?

22 Ms. Barragan, what all did you submit in your  
23 submission to us? I want to make sure I have  
24 everything, because it looks like I have two or three  
25 copies of the same thing.

1 MS. BARRAGAN: What did I submit?

2 CHAIRPERSON HOOD: Yeah, what did you submit?

3 MS. BARRAGAN: Was that the question? My  
4 testimony and then attachments.

5 CHAIRPERSON HOOD: Okay. And what were the  
6 attachments?

7 MS. BARRAGAN: Multiple, like the bird's eye  
8 view, information geographic, demographic data, I  
9 speak to you know, all the plans that were  
10 established already from D.C. Office of Planning for  
11 this particular area in Ward 5. There's also like  
12 water and lead --

13 CHAIRPERSON HOOD: So, are you also going to  
14 respond -- yeah. Are you also --

15 MS. BARRAGAN: -- analysis.

16 CHAIRPERSON HOOD: So, I'm trying to  
17 understand your relationship to the D.C. Water  
18 analysis. What is that?

19 MS. BARRAGAN: Yeah, definitely. So, I am a  
20 board member of the D.C. Chapter of the Sierra Club.  
21 I do advocacy and environment justice. Specifically,  
22 I am looking at lead and water issues in the  
23 District. Currently, I am working on three different  
24 amendment -- sorry. Three different bills lobbying  
25 for those bills for the community on Lead and water

1 with D.C. Council, specifically with Mary Chase  
2 office, and the Committee of Education.

3 CHAIRPERSON HOOD: Okay. And, Ms. Ferster,  
4 you had proffered her again as a what?

5 MS. FERSTER: An expert witness in the area  
6 of -- as an urban planner and environmental policy.  
7 Two areas. And she's -- because she has not  
8 previously been qualified as an expert, I've asked  
9 her to do a brief voir dire so she can explain in a  
10 little more detail some of the academic background  
11 that she has. She has a BA in architecture, which  
12 does include some academic background in several of  
13 the areas that we're seeking to qualify her on. And  
14 then of course she's going to describe her experience  
15 in both of those areas.

16 CHAIRPERSON HOOD: Okay. Let's hold off on  
17 the Voir Dire for a moment. Her resume talks about  
18 both of those areas, I believe, right?

19 MS. FERSTER: Somewhat. Not in the kind of  
20 detail that I think she's prepared to go into,  
21 particularly in the academic area and the course work  
22 she's had.

23 CHAIRPERSON HOOD: Yeah, I see a lot on this  
24 resume. Especially when it comes to planning. I  
25 don't see a lot -- maybe I'm not, having read it, I

1 don't see a whole lot on the environmental part.  
2 Maybe I'm not looking in the right place.

3 MS. FERSTER: Uh-huh.

4 CHAIRPERSON HOOD: Let me do this.  
5 Commissioners, as you know, I can rule on it by  
6 myself, but I always take the input of my colleagues.  
7 Do we need to go through the voir dire, or is this  
8 resume enough? I think for the planning part, I  
9 think it is. But I'm not sure on the environmental  
10 policy.

11 Okay. I guess someone else was with me on  
12 that. So, let's do the voir dire on the  
13 environmental policy. First, any objections to the  
14 urban planning?

15 [No audible response.]

16 CHAIRPERSON HOOD: Okay. So, no objection.  
17 We'll qualify her as an urban planner. Let's voir  
18 dire the environmental policy.

19 MS. FERSTER: Okay. Would you describe your  
20 qualifications in the area of urban policy, both  
21 academic and professional, as well as your volunteer  
22 work in that area for that area.

23 MS. BARRAGAN: Sure. In 2015 I earned a  
24 Masters in Environmental and Global Environmental  
25 Policy from American University. Prior to that, from

1 2005 to 2010, I worked on the Environment Impact  
2 Assessment, NEPA process with St. Elizabeth's, both  
3 for the west campus and the east campus.

4           The environmental impact assessment included  
5 analysis of various site land historic landmark  
6 issues, specifically landscape, the forest area in  
7 St. Elizabeth's. There was also some -- once there  
8 was a finding of an eagle's nest. I did the entire  
9 analysis for the eagle's nest site. That's just  
10 within the environmental impact assessment.

11           I also took various courses while doing my  
12 masters in environmental risk assessment, and  
13 specifically for risk management. So, for resiliency  
14 issues, floodplain analysis. I also do a lot of  
15 analysis on view sheds and topographic data.

16           So, I'm an expert in GIS. I've been using it  
17 since 2000. So, that's about 17 years of using GIS  
18 data, specifically on geo analysis.

19           CHAIRPERSON HOOD: Okay. After hearing the  
20 witness explain some of the things, and looking at  
21 the later part of her resume, I would also agree to  
22 give her expert status in environmental policy. Any  
23 objections?

24           [No audible response.]

25           CHAIRPERSON HOOD: Okay. All right. So,

1 we'll do both. Thank you.

2 MS. BARRAGAN: Thank you.

3 CHAIRPERSON HOOD: All right, Ms. Ferster.

4 MS. FERSTER: Thank you.

5 CHAIRPERSON HOOD: You may --

6 MS. FERSTER: She's going to do the --

7 CHAIRPERSON HOOD: -- begin, Ms. Barragan.

8 How much time did we do everybody now?

9 MS. SCHELLIN: Well, I think that they used  
10 most of their time before, so --

11 CHAIRPERSON HOOD: How much -- did you all --  
12 Ms. Ferster, let me ask you.

13 MS. FERSTER: I think you said that we had  
14 six minutes.

15 MS. SCHELLIN: Okay.

16 CHAIRPERSON HOOD: Thank you. Six minutes.

17 MS. FERSTER: And of course she's submitted  
18 her written testimony, so she'll simply summarize  
19 that.

20 CHAIRPERSON HOOD: Okay.

21 MS. BARRAGAN: Good evening. This testimony  
22 adopts and concurs --

23 CHAIRPERSON HOOD: Hold on one second.

24 MR. GLASGOW: We were not put on notice that  
25 she was going to be offered as an expert witness, and

1 that we have done with all of our witnesses and has  
2 been done throughout the proceeding.

3 CHAIRPERSON HOOD: Okay. So, you object to  
4 her being --

5 MR. GLASGOW: I object to that because of the  
6 way that this was done at this point in time. I just  
7 want to note the objection for the record as to the  
8 process.

9 CHAIRPERSON HOOD: Okay. Thank you.  
10 Objection noted.

11 Okay, you may begin.

12 MS. BARRAGAN: All right. Thank you. Good  
13 evening. This testimony adopts and concurs with the  
14 testimony provided by witnesses of Friends of  
15 McMillan Park and D.C. For Reasonable Development.

16 As an urban planning practitioner I  
17 especially and specifically read and concur and adopt  
18 Laura Richard's testimony, provided on April 19th.

19 My name is Claudia Barragan. I am testifying  
20 on behalf of the Friends of McMillan as an immigrant  
21 and resident of Ward 5, and a professional urban  
22 planning and designing expert with over 15 years of  
23 profession experience in community planning.

24 My testimony raises issues in the notice of  
25 remand, as well as in the process of master planning

1 and zoning approval of the development proposal of  
2 the McMillan Park site and the proposed development's  
3 compliance with the D.C. Comprehensive Plan.

4           Amending the District Zone Map is a different  
5 action from approving the PUD project. The  
6 Commission does not have the power to amend the zone  
7 map as inconsistent with the Future Land-Use Map, the  
8 FLUM. It can't arbitrarily remap a parcel to high  
9 density zoning. The map's role is to serve as the  
10 District's long-term framework for a 20-year build  
11 out environment. Only the council and the mayor can  
12 legislatively change its anticipated future  
13 designations. Plus, as per the home rule, that  
14 process must allow for appropriate District resident  
15 involvement, which include providing meaningful  
16 consultation to the local planning agencies, thus  
17 remapping can happen only during the Comp Plan  
18 amendment, which is happening currently.

19           Most researchers find that gentrification and  
20 displacement pressures increase with growth and  
21 development, even in areas with already expensive  
22 housing costs. There is little to no baseline  
23 reporting from the City's planning and housing  
24 agencies, or the applicant describing the scope and  
25 scale of vulnerability and demographic impact.



1           The base on reporting should solely account  
2 for the demographic pressures of the surrounding  
3 locally scaled community, either at the area element  
4 or the ward level. A social impact assessment must  
5 be included as part of this development review. Such  
6 an assessment must include much deeper and detailed  
7 analysis delineating the impact zones and social  
8 indicators, evaluating public health, and economical  
9 burdens that the community will be forced to endure  
10 if the PUD remapping and project are approved.

11           My long established work in developing the  
12 2007 Brookland Metro Small Area Plan for the Office  
13 of Planning exemplifies that by now there is enough  
14 data at the similar neighborhood level scale to  
15 properly analyze the public health and social impacts  
16 of ongoing gentrification and displacement by high  
17 density development in Ward 5.

18           Proximity of the mixed-use buildings to the  
19 surrounding community, as far as the urban design  
20 choices on land-use placement, they were clearly made  
21 with prioritized -- without prioritizing commonality.  
22 Instead, they were made to take advantage of higher  
23 market value, view shed, vista advantages, placing  
24 tall buildings, including a two-story base grocery  
25 along the northeast section of the site will create a

1 massive -- will create massive traffic while allowing  
2 for expensive market value high-rise views down North  
3 Capitol Street.

4           The DOEE environmental assessment suggests  
5 that there are no water bodies in the area  
6 surrounding the site. Just across from the street,  
7 McMillan Park, there is a reservoir. There's also  
8 creeks and tributaries that were on the site. The  
9 water shed and the topographical water features and  
10 with natural water catchments must be protected and  
11 considered in line with the city sustainability plan.

12           For as long as this has remained a gated  
13 park, there now exists an established community and  
14 urban organisms in the McMillan Park, plants,  
15 animals, fungi, bacteria. All these ecological  
16 conditions must be also analyzed.

17           Adverse impact and urban planning in the  
18 development refers to the negative effects that go  
19 against desired conditions as proposed by the  
20 developer's plan. Urban designers have the ethical  
21 and professional capacity to ensure that any  
22 potential adverse effects are minimized. For any  
23 social, ecological urban development problem that the  
24 surrounding community is assumed to be more resilient  
25 if there is diversity. So, diversity is really

1 important for any of these adverse impacts.

2 For any social ecological urban development  
3 problem, that surrounded impacted community must be  
4 diverse. At first, impacts such as gentrification  
5 are a vital part of D.C. resiliency. So, please, I  
6 ask to adhere to the D.C. Court of Appeals order for  
7 you to consider the impacts of gentrification.

8 Language access is imperative, and immigrant  
9 communities in the District are directly affected by  
10 these large scale development projects.  
11 Specifically, the threat of displacement. Access for  
12 the broader community to participate is often  
13 limited, even for the educated (garbled speech) of  
14 speaking in public as exemplified in the proceedings  
15 in the case back in March 23rd.

16 This zoning case has gone on record for  
17 closing and disallowing public filings about a major  
18 proposed development in the city. The Commission's  
19 actions do not provide confidence for a just process  
20 which allows immigrant and tax paying residents like  
21 me, who are nonnative speakers to provide equal  
22 testimony and public filings.

23 I thank you for your time and given all the  
24 stated issues and missions, concerns, and law, it is  
25 clear that the required comprehensive review has yet

1 not been done in this case.

2 CHAIRPERSON HOOD: Ms. Barragan, let me just  
3 let you know that first was just so you can wind  
4 down. You still have a few more seconds if you --

5 MS. BARRAGAN: Sure. One of the things I  
6 wanted to continue talking about the language access  
7 amendment. Specifically, there's a law. In 2004  
8 that includes D.C. Office of Zoning, D.C. Office of  
9 Planning, DOEE, DMPED, and many other, about 20  
10 agencies in the District, that it is mandated for  
11 them to provide information to the public on major  
12 projects, or also any major issue that will happen,  
13 such as the Comprehensive Plan adjustments on the  
14 Future Land-Use Map.

15 It usually looks at three percent of the  
16 population. In Ward 5 there's about 12 percent  
17 population of immigrants. So, I would like to make  
18 sure that the D.C. Office of Zoning is including  
19 language access, the language access community in  
20 this process.

21 CHAIRPERSON HOOD: Okay. Thank you for your  
22 testimony. Let's see if we have any questions up  
23 here.

24 Okay, I don't see any. Does the applicant  
25 have any cross?

1 Mr. Glasgow, you have any cross?

2 MR. GLASGOW: No. No cross-examination.

3 CHAIRPERSON HOOD: Okay. I don't see anyone  
4 from -- well, I see somebody from ANC. Does any of  
5 the ANCs, the parties, have any cross?

6 [No audible response.]

7 CHAIRPERSON HOOD: Okay. No cross. Thank  
8 you very much. We appreciate your testimony.

9 MS. BARRAGAN: Thank you.

10 CHAIRPERSON HOOD: Okay. I think where we  
11 were starting, we were having rebuttal. If I'm not  
12 mistaken.

13 MS. FERSTER: Mr. Chairman, I have a  
14 preliminary request before the applicant commences.  
15 Since the applicant was not willing to share their  
16 rebuttal witnesses, I would ask that the applicant,  
17 in advance of launching into their rebuttal case,  
18 that they identify both the witnesses that they are  
19 presenting today, and also the issue that they are  
20 rebutting in terms of reference to Friends of  
21 McMillan Park's witnesses.

22 CHAIRPERSON HOOD: Okay. Let's let them get  
23 started with their rebuttal, because I'm not sure how  
24 they're going to present it. Excuse me. Let them  
25 get started, and then if you have a question you can

1 come up at that time, Ms. Ferster. We haven't even  
2 given him an opportunity to even start.

3 MR. GLASGOW: Good evening, Mr. Chairman. In  
4 response -- and the members of the Commission. In  
5 response to the inquiry made by Ms. Ferster, Mr.  
6 Thakkar will testify in rebuttal on Issue No. 3. Mr.  
7 Bogorad, Issue No. 4. There are representatives here  
8 from the Department of Energy and Environment, they  
9 will cover Issue No. 4. And Mr. Dettman will be  
10 covering Issue No. 1, and in part some other issues.  
11 And those will be the rebuttal witnesses.

12 With that, Mr. Thakkar, would you please  
13 identify yourself for the record and proceed with  
14 your rebuttal?

15 MR. THAKKAR: Good evening, members of the  
16 Zoning Commission. I am Aakash Thakkar of EYA, a  
17 member of Vision McMillan Partners, and will be  
18 providing rebuttal testimony in response to FOMP and  
19 other testimony about whether we have studied any  
20 alternative plans that could reduce the height of the  
21 healthcare facility on Parcel 1 by two floors, so as  
22 to achieve a typical moderate density height of 90  
23 feet. These comments relate to remand issues 1 and  
24 3.

25 MS. FERSTER: Okay. I am going to interpose

1 an objection now because even though Mr. Thakkar's  
2 testimony is responsive to the issues globally that  
3 are before this Commission, in fact Friends of  
4 McMillan Park did not present any witnesses in its  
5 opposition case on this issue. We had no witnesses.  
6 You know, we simply -- so, if Mr. Thakkar wanted to  
7 testify on this issue he should have done it in the  
8 applicant's case-in-chief.

9 CHAIRPERSON HOOD: I believe, though, Ms.  
10 Ferster, that an applicant has the right to rebuttal.  
11 And they can bring -- at the time of rebuttal they  
12 can bring other witnesses up, or whatever the case  
13 is. I'm not following you on that. So, I think  
14 they're perfectly within their right to do their  
15 rebuttal.

16 MS. FERSTER: Our position is that the  
17 rebuttal needs to be within the scope of the  
18 opposition case. That's our position.

19 CHAIRPERSON HOOD: The whole case is the  
20 rebuttal and the scope of what the court remanded  
21 back to the Commission.

22 MS. FERSTER: I have my -- I would like my  
23 exception noted for the record.

24 CHAIRPERSON HOOD: Okay. Well, it's  
25 overruled.

1 All right, you may continue.

2 MR. THAKKAR: So, starting in 2008 and 2009,  
3 VMP developed several concepts that included a mix of  
4 housing, retail, commercial, park space, and historic  
5 preservation. Over the next five years, in hundreds  
6 of meetings we heard thousands of comments from the  
7 community, ANCs, Office of Planning, deputy mayor,  
8 city council, HPRB, and many, many others. As a  
9 result of this valuable feedback, VMP and the  
10 District prepared and evaluated dozens and dozens of  
11 master plan alternatives during that time, including  
12 the six plans reviewed by Mr. Bell at the April 19th  
13 hearing.

14 Several iterations had many more housing  
15 units and less healthcare facilities than our current  
16 plan. I will note that contrary to Ms. Ferster's  
17 assertions, we never reduced or failed to include  
18 residential housing due to a quote/unquote, slow  
19 residential market in 2007 to 2010. We always took  
20 the long view and knew that the project had to stand  
21 the test of time, not the cyclical ups and downs of  
22 the real estate market. Our goal was, and is today,  
23 to put forth a mixed-use program that is viable and  
24 addresses market demand. A plan with more  
25 residential and less healthcare is not viable and



1 does not address that market demand.

2 I also note for the record, contrary to Mr.  
3 Vining's testimony, we did not make the park larger  
4 because of D.C. Water. We did move the park location  
5 because of D.C. Water, that is true. But we  
6 increased the size of the park of our own accord,  
7 working with the District, to make it a better  
8 project and win more community support. We could  
9 have proposed development south of the southern  
10 service court, but chose not to do so.

11 The opposition asked about reduction in  
12 height at Sibley Hospital. Like Sibley, our project  
13 did reduce height and reduced buildable area to  
14 increase park size, introduce healing gardens, and  
15 preserve open space on top of cell 14.

16 In summary, like Sibley, VMP has already  
17 reduced its project significantly to address Zoning  
18 Commission, HPRB, and community requests. I also  
19 note that are our initial set of hearings on this  
20 project, Sibley Hospital was brought up at that time  
21 as we had that discussion around what the height of  
22 those buildings should be.

23 After hearing from the community, ANC, city  
24 council, OP, and HPRB, we finalized this development  
25 program in 2014 for very particular reasons,

1 including the following.

2           Jobs. As we have noted, numerous  
3 administrations and the council want this project to  
4 create jobs, and a project without the medical  
5 component and with more housing, would not deliver  
6 those needed jobs.

7           Two, retail. All parties involved in  
8 McMillan have requested a grocery store and other  
9 community serving retail, and that cannot happen at  
10 McMillan without both the evening traffic from the  
11 surrounding community and new housing at the site,  
12 and the daytime traffic from the new healthcare  
13 facility on Parcel 1. A project without the  
14 healthcare component would greatly alter our proposed  
15 retail mix and could put in jeopardy, our grocery  
16 store anchor.

17           Three, open space and preservation. All  
18 parties want, and the Comprehensive Plan and HPRB  
19 demand, open space and preservation on this site.  
20 Neither of those can happen at the same scale as we  
21 have currently proposed it, without the higher height  
22 healthcare facility, which allows for more of the  
23 site to be developed as park space while still  
24 maintaining the viability of the project.

25           Contrary to some of Ms. Ferster's questions

1 at the last hearing, replacing office with housing is  
2 not a zero-sum option. A plan would need far more  
3 housing, particularly with the 20 percent  
4 affordability requirement to make up for the loss of  
5 two floors, approximately 190 square feet of  
6 healthcare facility use. This would result in  
7 drastically less open space as seen on the plans  
8 previously discussed by Mr. Bell, which were  
9 considered infeasible or unacceptable, either  
10 individually or collectively by the community, ANC,  
11 HPRB, and/or the District.

12 Affordable housing, four. The 20 percent  
13 affordable housing for this project is heavily  
14 subsidized by other parts of this project, and  
15 without the additional height for the healthcare  
16 building on Parcel 1, the development of the proposed  
17 affordable housing would not be viable. Further, the  
18 row homes offer affordable and market rate for-sale  
19 housing which is a key goal of our plan and would be  
20 removed from our plan per Ms. Ferster's suggestions  
21 in these hearings.

22 Number five, contextual site design. The  
23 current plan intentionally increases in height from  
24 the south to north, from the large park to lower  
25 density rowhomes, to moderate density mixed use, to

1 the tallest buildings on the north end adjacent to  
2 Children's Hospital. The HPRB, Zoning Commission,  
3 and the Court explicitly allowed this step-up as we  
4 move north.

5 Finally, number six, the Comprehensive Plan.  
6 We would not be advancing the over 100 Comprehensive  
7 Plan policies that Mr. Weers and Mr. Dettman  
8 testified to, including jobs, open space,  
9 preservation, and retail, without the healthcare  
10 facility at its current size. So yes, VMP and the  
11 District did study many alternatives up through 2014.  
12 In fact, as developers and planners, that is what we  
13 do.

14 Our conclusion, after working diligently with  
15 the entire community for 11 years, is that in order  
16 to retain a substantial portion of the site as open  
17 space, and make the site usable for recreational  
18 purposes, while at the same time balancing the many  
19 other competing interests, addressing the constraints  
20 of the site and the surrounding context, and  
21 providing the significant public benefits and  
22 amenities that we have offered, we really must have  
23 the taller healthcare facility on the northern end of  
24 the site. The D.C. City Council and Deputy Mayor for  
25 Planning and Economic Development have supported our

1 conclusion.

2           As Mr. Weers has stated, if the healthcare  
3 facility dies, as FOMP proposes by suggesting a 27  
4 percent reduction in the square footage, then we lose  
5 the economic and jobs driver of the project. If this  
6 happened, the project itself could not and would not  
7 move forward. This result, in our view, would not be  
8 good news for residents in Ward 5 and across the  
9 District. Residents want and need open space and  
10 recreation for their families, want and need basic  
11 retail services in their neighborhoods, want and need  
12 the affordable housing that this project provides,  
13 and want and need jobs to support their families and  
14 put food on their tables. Economic development and  
15 amenities from the start. That is what this case has  
16 been about, and will continue to be about.

17           Thank you Zoning Commission members, for your  
18 time and your diligence regarding this matter.

19           MR. GLASGOW: The next rebuttal witness is  
20 Mr. Len Bogorad. Mr. Bogorad, I'm going to ask you a  
21 series of questions with respect to rebuttal  
22 testimony.

23           Ms. Williams testified that there's housing  
24 market distress on Channing Street, across from  
25 McMillan. As an expert in real estate market and

1 economic impact analysis, do you believe that that is  
2 correct?

3 MR. BOGORAD: No. Ms. Williams testified  
4 that "On Channing Street, quote, both Realty Track  
5 and Zillow show significant housing distress, with  
6 many houses in preforeclosure, foreclosure, or at  
7 auction," close quote.

8 But her testimony also says that millennials  
9 are moving into Channing Street. Based on analyzing  
10 D.C. housing markets and predicting factors that lead  
11 to demand for housing for over 35 years, it's highly  
12 unlikely both of these could be true. Claims of  
13 Channing Street Market distress make no sense, given  
14 that the entire Bloomingdale housing market is so  
15 strong, for reasons largely unrelated to McMillan.

16 In fact, I found that Williams' testimony is  
17 factually incorrect. The Zillow website shows no  
18 indication of any foreclosures or preforeclosures on  
19 Channing Street, and the market appears to be  
20 steadily improving but without the quote, gutting and  
21 flipping, unquote, of numerous Channing Street houses  
22 that Williams asserted.

23 And above all, the Realty Track foreclosure  
24 website, which is the best source for this data, that  
25 Williams said she used, actually shows no homes on

1 Channing Street and preforeclosure, foreclosure, or  
2 being auctioned.

3 MR. GLASGOW: Next, also Ms. Williams  
4 testified that development of McMillan will pressure  
5 landlords of large Edgewood apartment buildings to  
6 convert to more expensive housing. As a real estate  
7 market expert, do you believe that this is correct?

8 MR. BOGORAD: No. Edgewood Commons, formerly  
9 Edgewood Terrace, is the largest concentration of  
10 rental apartments in Edgewood. My understanding is  
11 that CPDC is in the midst of a five-year  
12 recapitalization of the development that will assure  
13 that it stays affordable for many years, using  
14 project-based Section 8 and tax credits. Other  
15 apartments are in Franklin Commons, a project-based  
16 Section 8 development with rents based on the  
17 resident's income.

18 I therefore don't believe there will be  
19 significant destabilization of rents in large  
20 apartment buildings in Edgewood with or without  
21 McMillan.

22 MR. GLASGOW: Okay. Ms. Williams testified  
23 that housing market changes and result in  
24 displacement are very different today than in earlier  
25 waves. As a real estate market expert, do you

1 believe that she is correct?

2 MR. BOGORAD: No, I don't. There's one piece  
3 of evidence for that in addition to my own  
4 experience, an anthology by Hirah and Prince  
5 (phonetic) that Williams contributed to has a chapter  
6 that explains that the four waves of displacement in  
7 D.C., dating back to 1920, each had similar causes,  
8 all associated with demand from what he calls a flood  
9 of young, well-educated professionals wanting to live  
10 in the city.

11 In all four waves individual homeowners,  
12 renters, developers, and investors, participated in  
13 renovating and as relevant, occupying the housing.

14 The fourth wave that Hirah and Prince  
15 identified has caused the rapid price in rent  
16 increases in the neighborhood surrounding McMillan  
17 that they've been experiencing for many years.

18 MR. GLASGOW: Ms. Williams also testified  
19 that even the plans for McMillan caused the  
20 destabilization of land values of surrounding  
21 neighborhoods. Do you agree?

22 No, I don't. Williams testified that  
23 property values are rising in Stronghold and  
24 Bloomingdale and that Stronghold assessments have  
25 nearly doubled in the last 10 years, and have gone up



1 even faster in Bloomingdale. My expert report also  
2 found that home prices, values, and rents have been  
3 increasing for many years in all the nearby  
4 neighborhoods, regardless of proximity to McMillan.

5 But my conclusion, as a real estate market  
6 expert with extensive experience understanding D.C.  
7 housing market and neighborhood changes, is that  
8 McMillan, or the plans for it, have not been and will  
9 not be a significant cause of the price and rent  
10 increases in these neighborhoods. The reasons for  
11 this include, among others, first the Bloomingdale  
12 LeDroit Park rowhouses that are relatively closer to  
13 McMillan have experienced less rapid price increases  
14 than those located farther from McMillan. This tells  
15 me that the plans for McMillan were not a significant  
16 cause of the price increases that have been occurring  
17 for many years in the neighborhood.

18 Second, a study of changes in Bloomingdale by  
19 urban planner and market analyst, Julie Levine,  
20 excerpts of which were attached to Friends of  
21 McMillan's April 3rd letter, includes an extensive  
22 discussion of the causes of market and demographic  
23 changes in Bloomingdale, but does not identify the  
24 plans for McMillan as the cause of these changes.

25 Third, my extensive experience analyzing real

1 estate markets in D.C. tells me that the longstanding  
2 destabilization of land values in surrounding  
3 neighborhoods is in large part a result of an excess  
4 of housing demand relative to supply. My conclusion  
5 is consistent with a new book by Hirah regarding  
6 Shaw/U Street, and that book makes clear that the  
7 dramatic price in rent increases are a result of  
8 economic and real estate market forces. It concludes  
9 that D.C. became a global city which created jobs  
10 downtown and that was very attractive to Millennials.

11 This, along with the improvements downtown,  
12 dramatically increased demand for relatively close  
13 in-housing, and despite Hirah's extensive analysis of  
14 the causes of the destabilized property values and  
15 displacement in Shaw/U Street, he doesn't identify  
16 in-fill development like McMillan, much less plans  
17 for developments like McMillan, as a cause of  
18 destabilized property values and displacement.

19 MR. GLASGOW: Ms. Williams testified that  
20 your conclusion that the housing market is based on  
21 supply and demand, and that therefore more housing  
22 will lower the price of housing are problematic  
23 claims. Do you agree?

24 MR. BOGORAD: No. There's no credible basis  
25 to conclude that housing is insulated from the supply

1 and demand forces that affect all aspects of our  
2 market economy. This is confirmed by my extensive  
3 experience analyzing housing demand, supply, and  
4 demographic change. As an expert in real estate  
5 market analysis and economic impact analysis with a  
6 particular focus on housing, I regularly analyze the  
7 causes of and predict value increases and rent  
8 increases, and their impact on choices that  
9 households make about housing.

10           These factors, all of which are at the core  
11 of my expertise, are highly related to the likelihood  
12 of gentrification over time in a particular  
13 neighborhood. Housing prices and rents are the  
14 function of demand and supply, just like other  
15 products and services.

16           As I discussed, Hirah's book regarding Shaw/U  
17 Street illustrates that housing price and rent  
18 increases are a function of housing demand and  
19 supply. Williams' own 1988 book on Mount Pleasant  
20 also confirms my conclusion. The book makes it clear  
21 that price and rent increases in Mount Pleasant,  
22 leading up to 1979, and then again in the mid '80s,  
23 were very much driven by economic and market forces,  
24 just as the long-stranding price and rent changes in  
25 Bloomingdale, Stronghold, and LeDroit Park have been.

OLENDER REPORTING, INC.

1100 Connecticut Avenue NW, #810, Washington, DC 20036

Washington: 202-898-1108 • Baltimore: 410-752-3376

Toll Free: 888-445-3376

1           But rather than acknowledging what was  
2 obvious to everyone she interviewed according to her  
3 book, everyone she interviewed in Mount Pleasant,  
4 that return of rapid home price increases and  
5 displacement in the mid-1980s was due to increasing  
6 housing demand due to lower U.S. housing mortgage  
7 rates. Williams attributes the return of these home  
8 price increases to quote, "The problems of  
9 militaristic consumer capitalism," close quote.

10           My report explains why building new housing  
11 in all price ranges and rent ranges is one of the key  
12 steps that can be taken to mitigate housing price and  
13 rent increases, all other things being equal. This  
14 includes market rate and housing for all affordable  
15 income levels, for families and for seniors. A study  
16 by Levy, cited in my report, found that production of  
17 affordable housing was the key approach to mitigating  
18 displacement in the neighborhoods that they analyzed.

19           This doesn't mean that areas with a lot of  
20 construction have lower prices in rents because  
21 construction is often a response to strong demand.  
22 But with a given level of demand for housing in a  
23 neighborhood or a city, price and rent increases are  
24 lower than when there is more supply being added, as  
25 we're currently seeing with apartments in the

1 District.

2           One of Williams' sources for her assertion  
3 that housing prices are not determined by demand and  
4 supply, by Glazer and two others, actually finds  
5 exactly the opposite of her point. The same lead  
6 author's more recent article, which is cited in my  
7 report, states that extremely high housing prices in  
8 affluent coastal cities are due to insufficient  
9 supply.

10           MR. GLASGOW: Are the land value  
11 destabilization issues different in Stronghold, as  
12 Ms. William intimates?

13           MR. BOGORAD: Her testimony acknowledged that  
14 prices and values in Stronghold have been increasing  
15 rapidly, as I said, stating that quote, "Assessments  
16 in Stronghold have nearly doubled in the last 10  
17 years," unquote. But she seems to be attributing  
18 these increases to Chancellor's row and to other new  
19 developments.

20           Based on my expertise and experience in real  
21 estate market analysis throughout D.C., this is not  
22 accurate. Bloomingdale and Stronghold have somewhat  
23 different demographic characteristics, but home  
24 values are increasing rapidly throughout the area  
25 around McMillan, regardless of proximity to a

1 development such as Chancellor's row. Home prices  
2 have been going up in Bloomingdale, LeDroit Park by  
3 over nine percent per year since 2008, unrelated to  
4 any major new development.

5 I also looked at assessment increases for a  
6 sample of rowhouses from 2017 to 2018, and they  
7 average 7.6 percent on Franklin Street in Stronghold,  
8 9.7 percent on Bryant Street, farther from  
9 Chancellor's Row, but close to McMillan, and 10.2  
10 percent on U Street in Bloomingdale, farther from  
11 both Chancellor's Row and McMillan.

12 I therefore see no credible evidence that  
13 Chancellor's Row caused Stronghold's assessment  
14 increases, and my expert opinion is that McMillan  
15 will not have a significant impact on nearby  
16 assessments over and above the continuation of the  
17 established trend of price assessment and rent,  
18 excuse me, increases.

19 MR. GLASGOW: Did you claim that price  
20 increases and displacement in Bloomingdale,  
21 Stronghold, and LeDroit Park are over, as Ms.  
22 Williams asserts?

23 MR. BOGORAD: No, this is an ongoing process,  
24 but once it's well underway, price and rent increases  
25 continue as long as the demand driving this process

1 is strong. And that demand is not caused by McMillan  
2 or by the plans for it.

3 MR. GLASGOW: Are there any other issues you  
4 have with Ms. Williams' testimony?

5 MR. BOGORAD: Yes, briefly three. First, she  
6 testified that displacement of some neighborhood  
7 residents can change the character of these  
8 neighborhoods. But the asserted results of  
9 displacement are not relevant to the question the  
10 Court asked you as a commission to address, will  
11 McMillan cause property values to increase and  
12 displacement to occur.

13 Second, she commented on the impact of parks.  
14 The impact of a park on property values, particularly  
15 in an area like Bloomingdale, where prices have been  
16 increasing rapidly, is well-established by the  
17 studies cited in my expert report.

18 And third, Williams selectively quoted from  
19 the Comp Plan, but the plan is viewed as a whole from  
20 my perspective as a real estate market analysis  
21 expert, identifies a need for substantial new housing  
22 in the District, and views in-fill sites, such as  
23 McMillan, as some of the best opportunities to meet  
24 this need, in part because they would not require  
25 demolition of existing housing.

1           MR. GLASGOW: Okay. Next, members of the  
2 Commission, we'll have some questions for the  
3 representatives of DOEE. And this will be for the  
4 panel.

5           All right. And as you answer, please  
6 identify yourself for the court reporter.

7           First, can you explain the process that DOEE  
8 follows to determine what a proposed development  
9 project will result in environmental problems or  
10 impacts?

11           MR. WILSON: My name is Jay Wilson. I'm a  
12 green building analyst with the Urban Sustainability  
13 Administration at the Department of Energy and  
14 Environment. Yes, to answer the question, the  
15 District has among the most stringent storm water  
16 management, has a remediation, air quality, energy  
17 conservation, and green building code requirements in  
18 the country. And during the PUD application phase,  
19 the Department provides recommendations regarding the  
20 project's consistency with the Comprehensive Plan,  
21 and opportunities to incorporate environmental  
22 benefits to the project such as LEED certification,  
23 tree canopy, floodplain, et cetera.

24           Projects are reviewed for compliance with the  
25 regulations during the permit process. And a more



1 substantial detailed review by DOEE and other  
2 appropriate agencies is conducted under the D.C.  
3 Environmental Policy Act, or DCEPA, after the PUD  
4 application is approved, when the developer applies  
5 for the building permit.

6 DOEE does not perform the DCEPA review at the  
7 time of the PUD submittal, nor is required to.  
8 Typically, at the PUD stage, the project details are  
9 not yet sufficiently developed to perform that in-  
10 depth review required by DCEPA, and the environmental  
11 impact screening form, or EISF, is the nine-page  
12 application with supporting documentation as  
13 necessary that's submitted by project developers to  
14 DOEE and other agencies, and that screening form  
15 contains a series of questions that helps us  
16 determine whether the project requires additional  
17 review for any environmental criteria.

18 Under 20 DCMR, Section 7201.2, DOEE then  
19 conducts a more in-depth environmental assessment for  
20 those criteria in order to determine whether the  
21 proposed site or project will have any substantial  
22 negative impacts to the environment.

23 MR. GLASGOW: Did DOEE follow its established  
24 procedures for evaluating the EISF and the McMillan  
25 project?

1           CHAIRPERSON HOOD: Turn your mic on and  
2 identify yourself.

3           MR. BULLO: My name is Abraham Bullo. I'm  
4 the environmental (garbled speech) for the Department  
5 of the Environment. And yeah, we do follow our  
6 procedures, standard procedures for all EISF  
7 projects.

8           MR. GLASGOW: Thank you. Next was DOEE's  
9 review of the McMillan project, EISF, conducted in  
10 reliance upon standard and credible data information  
11 that is utilized for developments throughout the city  
12 to measure compliance with DCEPA?

13           MR. BULLO: The EISF for McMillan was the  
14 same as the one that's submitted for every project,  
15 and the data that we require is already contained in  
16 that nine-page form that they submit.

17           MR. GLASGOW: Thank you. Is there anything  
18 special about the McMillan project that would warrant  
19 a deviation from DOEE's typical way of assessing  
20 environmental impacts for a development during the  
21 EISF process?

22           MR. BULLO: The only difference is that the  
23 McMillan project identified contaminants, soil  
24 contaminants, so the cells would require a phase two  
25 ESA to be conducted.

1           MR. GLASGOW: Does the EISF process evaluate  
2 the public health impacts of the development, and can  
3 you elaborate about this process?

4           MR. WILSON: Yes. The EISF process evaluates  
5 the impacts of the development relative to the  
6 regulatory limits that have been set to protect  
7 health and safety of any population exposed.  
8 Specifically, one of these impacts that DOEE reviews  
9 for is compliance with the National Ambient Air  
10 Quality Standards, or NAAQS. The NAAQS are set by  
11 the U.S. Environmental Protection Agency to protect  
12 the public health, including sensitive populations  
13 with an adequate margin of safety. Therefore,  
14 compliance with the NAAQS signifies the project is  
15 protective of public health.

16           In addition, DOEE reviews for the presence of  
17 hazardous waste and toxic substances that have the  
18 potential to affect the public health. In this case,  
19 there were no hazardous waste or toxic substances  
20 identified at the site.

21           MR. GLASGOW: Did DOEE follow established  
22 procedures for assessing the impacts of the McMillan  
23 project on air quality?

24           MR. OURS: My name is Steven Ours. I am the  
25 Chief of the Air Quality Permitting Branch within

1 DOEE. And, yes, the applicant prepared an air  
2 quality analysis in accordance with the Air Quality  
3 Division guidelines. The Air Quality Division  
4 reviewed this analysis and its conclusions in order  
5 to reach the findings in the EA.

6 MR. GLASGOW: Is it true that as part of  
7 DOEE's assessment of potential impacts on air quality  
8 consideration is given to exposure of sensitive  
9 preceptors or populations to significant pollutant  
10 concentration?

11 MR. OURS: Yes. The evaluation performed  
12 focuses on determining if any ambient air  
13 concentrations in the area of the project will exceed  
14 any of the National Ambient Air Quality standards  
15 established by the U.S. Environmental Protection  
16 Agency.

17 These standards are established at levels  
18 that, and I'm quoting EPA's website, provide public  
19 health protection, including protecting the health of  
20 sensitive populations, such as asthmatics, children,  
21 and the elderly.

22 MR. GLASGOW: Is it true that the applicant's  
23 air quality analysis -- I'm sorry. Did DOEE's  
24 evaluation of the McMillan project include assessment  
25 of environmental justice?

1 MR. WILSON: Yes, it did.

2 MR. GLASGOW: And next, is it true that the  
3 applicant's air quality analysis, which was reviewed  
4 by DOEE, took into account site specific factors,  
5 including the increase in vehicular trips that are  
6 expected from the project?

7 MR. OURS: Yes. The air quality modeling  
8 performed to evaluate carbon dioxide concentrations  
9 was based on the site-specific traffic projections  
10 found in the traffic impact study. The traffic study  
11 took into account peak traffic volumes at different  
12 intersections in the vicinity of the development.

13 Part of the air quality modeling also  
14 evaluated the effects of emissions from the  
15 operations of the foreplanned parking garages, as well  
16 as street parking and private garages in parcels 5  
17 and 6.

18 Also, in determining that it was not  
19 necessary to require the applicant to perform  
20 particulate matter modeling, the Department looked at  
21 projected increases in diesel vehicle trips from the  
22 project and compared it to a threshold for requiring  
23 an evaluation found in EPA guidance. The number of  
24 diesel trips was far below the EPA threshold in this  
25 case.

1           MR. GLASGOW: Did DOEE follow established  
2 procedures for assessing the impacts in the McMillan  
3 project on environmental justice?

4           MR. WILSON: Yes. As a standard part of the  
5 ISF process, all projects are examined for  
6 disproportionate and environment impacts in certain  
7 segments of the population, in particular low-income  
8 residents, racial or ethnic minorities, or sensitive  
9 residents such as children and the elderly.

10           DOEE used the U.S. Environmental Protection  
11 Agency's EJ screening tool, and determined that the  
12 area surrounding the McMillan Park development has  
13 the same percentage of low-income people as the city  
14 as a whole.

15           Also, the review identified neither  
16 significant adverse impacts, nor the likelihood of  
17 substantial negative impacts to the environment, and  
18 therefore the project did not trigger further action  
19 regarding -- with regard to environmental justice.

20           MR. GLASGOW: Last question for this panel.  
21 In your opinion is there anything special about the  
22 McMillan project or the surrounding context, or was  
23 there anything in Dr. Wilson's testimony that would  
24 create a need to deviate from DOEE's established  
25 procedures?

1 MR. WILSON: No.

2 MR. GLASGOW: That concludes the rebuttal  
3 testimony of DOEE. We have one last rebuttal  
4 witness, and that's Mr. Shane Dettman.

5 MR. DETTMAN: Good evening, Mr. Chairman and  
6 members of the Commission. My rebuttal this evening  
7 will focus on the testimony provided by Ms. Laura  
8 Richards regarding the structure and interpretation  
9 of the Comprehensive Plan, and the relationship of  
10 the Comp Plan to the zoning regulations.

11 My testimony primarily goes to remand issue  
12 No. 1, which asks, could the other policies in the  
13 order be advanced even if development on the PUD site  
14 were limited to medium and moderate density use. And  
15 if not, which of the competing policies should be  
16 given greater weight, and why?

17 In the beginning of her testimony, Ms.  
18 Richards states that the Comp Plan's policies  
19 establishing moderate and medium densities for the  
20 McMillan site should be given governing weight, and  
21 states that her conclusion is compelled by a reading  
22 of the land-use element, the Future Land-Use Map,  
23 Section MC-2.6.5 of the Mid-City Area Element, and  
24 the Comp Plan's interpretive rules.

25 Ms. Richards concludes that when read

1 together, these provisions instruct the reader to  
2 give prevailing weight to the moderate and medium  
3 density policies. My testimony this evening will  
4 show that the conclusions drawn by Ms. Richards are  
5 based upon incorrect interpretations of the Comp  
6 Plan, and will reiterate the point I made in my prior  
7 testimony, that the project is not high-density, and  
8 in fact is consistent with the Mid-City Area Policy  
9 favoring moderate to medium density development where  
10 it takes place on the McMillan site.

11 In her testimony, Ms. Richards correctly  
12 describes the structure of the Comp Plan as  
13 consisting of city-wide elements that address topics  
14 that are city-wide in scope, and area elements that  
15 focus on issues that are unique to the particular  
16 area of the District, and which may contain specific  
17 policy focus areas; a defined area within which area  
18 -- in a specific area element that is deemed worthy  
19 of a level of policy direction and guidance above  
20 that provided by the more general policies of the  
21 city-wide, and the District elements.

22 However, while Ms. Richards is correct in the  
23 way she describes how the Comp Plan is put together,  
24 based on my 16 years of experience in planning,  
25 zoning, and land-use, which includes extensive work



1 with developing and interpreting and applying both  
2 the federal and district elements of the Comp Plan, I  
3 believe her testimony regarding how the Comprehensive  
4 Plan guides resolution of competing policies is  
5 incorrect, based upon the text of the implementation  
6 element, the framework element, including the  
7 guidelines for using the FLUM, and most importantly  
8 the legislative history supporting the Comp Plan,  
9 which clearly establishes the council's legislative  
10 intent with respect to the handling of competing  
11 policies and the relationship of the Comp Plan to  
12 agency policies and regulations.

13           In her testimony, Ms. Richards states that  
14 the land-use element identifies McMillan as one of 10  
15 large sites that the District anticipates will be  
16 locations for significant amounts of future housing  
17 and employment opportunities, and suggests that  
18 because the land-use element states that the area  
19 elements should be consulted for a profile of each of  
20 these large sites, and that the particular mix of  
21 uses on any given site should be generally indicated  
22 on the FLUM and more fully described in the area  
23 element, that the policies of the area element should  
24 prevail over those in the land-use element where  
25 there are competing policies.

1           Ms. Richards further states that the  
2 preeminence of the Mid-City Area Element over the  
3 city-wide elements is even more pronounced with  
4 respect to McMillan, because the site is included as  
5 a policy focus area within the Mid-City Area Element.

6           On both accounts, I believe this is a  
7 misreading of the Comprehensive Plan. First, the  
8 Comp Plan text describing the scope of the policies  
9 contained in the city-wide elements, district  
10 elements, and those policies applicable to policy  
11 focus areas like McMillan, merely establishes the  
12 hierarchy that exists within the Comprehensive Plan,  
13 and why there is a need for this tiering.

14           City-wide elements each address a topic that  
15 is city-wide in scope. District elements focus on  
16 issues that are unique to a particular part of the  
17 District. And a policy focus area is an area that  
18 requires a level of direction and guidance above that  
19 provided by the prior sections of an area element and  
20 in the city-wide elements.

21           It's worth noting that while the policies of  
22 the area elements are focused on a particular area of  
23 the District, including the policies pertaining to a  
24 specific policy focus area, these policies are still  
25 described in the Comprehensive Plan as being general

1 in nature and do not prescribe specific uses or  
2 design details. They are intended to provide a sense  
3 of local priority, and to recognize the different  
4 dynamics at work in each part of the city.

5           Furthermore, nowhere in the Comp Plan does it  
6 state that the policies of the area elements,  
7 including those applicable to policy focus areas, are  
8 to be given great weight in instances where there are  
9 competing policies. In fact, the Comp Plan says the  
10 exact opposite.

11           As I stated during my testimony for guidance  
12 on how to address competing policies, the Commission  
13 need only look to the implementation element which  
14 addresses the manner in which policies are  
15 interpreted and applied. Specifically, the policy  
16 relating to the interpretation of District elements  
17 states, recognize the overlapping nature of the Comp  
18 Plan elements as they are interpreted and applied.  
19 An element may be tempered by one or more other  
20 elements. And since the land-use element integrates  
21 the policies of all other District elements, it  
22 should be given greater weight than the other  
23 elements.

24           The land-use element contains similar  
25 language stating, more than any other part of the

1 Comprehensive Plan, this element lays out the  
2 policies to which the City will accommodate growth  
3 and change, because the land-use element integrates  
4 the policies and objectives of all the other District  
5 elements, it should be given greater weight than the  
6 other elements as competing policies and different  
7 elements are balanced.

8           Thus, while Ms. Richards stated in her  
9 testimony, the Comp Plan gives greater weight to the  
10 land-use element where there are conflicts or  
11 overlaps between the land-use element and other city-  
12 wide elements, as you can see from the plain language  
13 of the Comp Plan, the land-use element is afforded  
14 greater weight over all other District elements as  
15 competing policies are balanced.

16           As this relates to the specific project. As  
17 I previously testified, I do not believe the policies  
18 cited in the order compete with the one Mid-City  
19 element policy favoring moderate to medium density  
20 development at McMillan. In fact, based on the  
21 express language of that Mid-City policy which states  
22 in relevant part, "Where development takes place it  
23 should consist of moderate to medium density housing,  
24 retail, and other compatible uses," I believe the  
25 project is consistent with this policy and thus,

1 there is no need for a balancing with the land-use  
2 element.

3 To the extent that the Commission believes  
4 this policy does compete with the policies cited in  
5 the order, it simply means these policies should be  
6 balanced together with the many other policies that  
7 apply to the project, with greater weight given to  
8 the guidance and policies of the land-use element,  
9 and the flexibility provided by the FLUM, which is  
10 adopted as part of the land-use element.

11 With respect to the flexibility provided by  
12 the FLUM, and how it relates to the zoning  
13 regulations. As the Commission is well aware, the  
14 FLUM is accompanied by a set of guidelines that  
15 discuss its flexible nature. For example, these  
16 guidelines state, "The FLUM is not a zoning map.  
17 Whereas zoning maps are parcel-specific and establish  
18 detailed requirements, the FLUM does not follow  
19 parcel boundaries and its categories do not specify  
20 allowable uses or dimensional requirements."

21 The densities within any given area on the  
22 FLUM reflect all contiguous properties on a block.  
23 There may be individual buildings that are higher or  
24 lower than these ranges within each area. Similarly,  
25 the land-use categories definitions describe the

1 general character of development in each block. And  
2 the granting of density bonuses, for example, through  
3 a PUD, may result in heights that exceed the typical  
4 ranges cited.

5 The flexibility described in the FLUM  
6 guidelines is consistent with how the FLUM has  
7 historically been described in legislative historic.  
8 Specifically, the 1984 Land Use Element Amendment Act  
9 which resulted in the adoption of the first land-use  
10 element states, "The land-use element does not  
11 identify or fix every use, height, density, on every  
12 block in the District. The text and maps construct a  
13 guiding framework within which public and private  
14 land-use and zoning decisions are to be made."

15 "The committee of the whole report  
16 accompanying the 1984 land-use element further  
17 clarifies the relationship of the FLUM to the zoning  
18 regulations by stating, "The general land-use maps  
19 should not be confused with District zoning maps.  
20 The categories and classifications of the generalized  
21 land-use maps are not directly comparable to zoning  
22 districts. The generalized land-use maps identified  
23 desired objectives, but do not suggest the techniques  
24 for achieving these objectives."

25 "The Zoning Commission, which has established

1 a reputation for conducting thorough and fair  
2 proceedings has the statutory responsibility to adopt  
3 the District's zoning maps," end quote.

4           This language clearly establishes that the  
5 FLUM, and the Comp Plan for that matter, establishes  
6 the desired objectives, while the techniques used to  
7 achieve these objectives is best left to the  
8 agencies, or the Commission in this instance. The  
9 zoning regulations constitute the Commission's  
10 technique for achieving Comp Plan objectives. Per  
11 the Zoning Act and the Homerule Charter, the zoning  
12 regulations, including the PUD regulations, cannot be  
13 inconsistent with the Comp Plan. The PUD regulations  
14 have a stated goal to permit flexibility of  
15 development and other incentives, such as increased  
16 height and density, provided that the project offers  
17 a commendable number or quality of public benefits  
18 and that it protects and advances the public health,  
19 safety, welfare, and convenience.

20           The PUD regulations further provide that a  
21 PUD must be found to be not inconsistent with the  
22 Comp Plan, and in carrying out the purposes of the  
23 PUD regulations, the Commission may set standards and  
24 conditions for height involved, lesser or greater  
25 than the standards established in the PUD regulations

1 or elsewhere in the zoning regulations.

2 Thus, the need for zoning to be not  
3 inconsistent with the Comp Plan, and the flexibility  
4 afforded with respect to the interpretation of the  
5 FLUM, are also reflected in the PUD regulations.

6 What is also reflected in the PUD regulations  
7 is the flexibility provided in the FLUM guidelines  
8 concerning the distribution of density.  
9 Specifically, the PUD regulations allows for the  
10 aggregation of density by stating, the FAR of all  
11 buildings shall not exceed the aggregate of the FARs  
12 as permitted in the several zone districts included  
13 within the project area.

14 As stated in my testimony, this way of  
15 calculating density for PUDs is consistent with the  
16 zoning regulations, the land-use element, how the  
17 Commission has computed density for countless PUDs,  
18 and has been upheld by the Court, even in this case.  
19 To achieve the objectives established by McMillan, by  
20 the Comp Plan, the technique being employed by the  
21 Commission is the PUD process. As part of the PUD  
22 process, the Commission must judge, balance, and  
23 reconcile the relative value of the benefits and  
24 amenities offered, the degree of development  
25 incentives requested, and any potential adverse



1 effects.

2 This is the standard by which the Commission  
3 must decide this project, in addition to determining  
4 that the project is not inconsistent with the Comp  
5 Plan.

6 As I testified previously, the project will  
7 have tremendous numerous favorable impacts, and any  
8 adverse impacts will be mitigated or be acceptable  
9 given the high quality of the benefits and amenities  
10 provided. Further, compared to the size and  
11 complexity of this project, the degree of development  
12 incentives being requested is fairly minimal. Again,  
13 noting that this is not a high-density project, but  
14 rather falls squarely within the moderate density  
15 ranges regardless of whether you calculate the  
16 density across the entire site or only using the land  
17 area of the parcels where development takes place.

18 In fact, the only truly notable flexibility  
19 being requested is the additional height that is  
20 needed to accommodate the healthcare facility on  
21 Parcel 1, which is permitted under the FLUM  
22 guidelines and the PUD regulations.

23 Based on the foregoing testimony, I reiterate  
24 my expert opinion that when you judge, balance, and  
25 reconcile all of the things the Commission must

1 consider when deciding this PUD, the wide range of  
2 favorable impacts and the mitigation that would be  
3 implemented to address any adverse impacts, the  
4 substantial number of Comp Plan policies that will be  
5 advanced by providing the height flexibility that's  
6 necessary on Parcel 1, and the strength of the  
7 substantial quantity and quality of public benefits  
8 and amenities offered in each of the categories  
9 identified in the PUD regulations, the project  
10 satisfies all applicable standards under the PUD  
11 regulations and is overwhelmingly not inconsistent  
12 with the Comprehensive Plan.

13 MR. GLASGOW: That concludes our rebuttal  
14 testimony.

15 CHAIRPERSON HOOD: Okay. Thank you very  
16 much. Let's see if any of the ANC are present and  
17 may have any cross. I don't see any.

18 Ms. Ferster, do you have any cross?

19 MS. FERSTER: Can we take about a 10-minute  
20 break?

21 CHAIRPERSON HOOD: Okay. We'll give you a  
22 five-minute break.

23 MS. FERSTER: Thank you.

24 [Off the record from 6:17 p.m. to 6:25 p.m.]

25 CHAIRPERSON HOOD: Okay. Let's go back on

1 the record. I'm going to -- Vice Chairman Miller has  
2 a question he wants to ask on rebuttal, and then  
3 we'll go to Ms. Ferster.

4 MR. MILLER: Thank you, Mr. Chairman. Yeah,  
5 I just had one question for Mr. Dettman and I just  
6 wanted to read one passage from the Court's decision  
7 and then ask you for your reaction and how you  
8 reconcile that with your testimony.

9 On page 15 of the decision, at the top, I  
10 don't know if you have a copy. Okay, good. Just  
11 read three sentences, first three sentences of this  
12 paragraph.

13 "Friends of McMillan Park, FOMP, also points  
14 out that the Mid-City area element states that  
15 development on the McMillan site --

16 MR. DETTMAN: Commissioner Miller.

17 MR. MILLER: Yes.

18 MR. DETTMAN: Sorry to interrupt you, but I  
19 think the version you have and the version I have  
20 don't have the same --

21 MR. MILLER: Are different.

22 MR. DETTMAN: Could you point me to --

23 MR. MILLER: Okay.

24 MR. DETTMAN: -- the main section?

25 MR. MILLER: Yeah. Hang on. So, a couple

1 pages earlier, this section has a, A., consistency  
2 with the Comprehensive Plan, is the section. And  
3 this would be --

4 MR. DETTMAN: I think I found it.

5 MR. MILLER: Okay. "FOMP also points out  
6 that the Mid-City area element states that  
7 development on the McMillan site, quote, should  
8 consist of moderate to medium density housing retail  
9 and other compatible uses," unquote.

10 We, the Court, "We agree with FOMP that the  
11 high-density use approved in the PUD is not  
12 consistent with that policy. Unlike the FLUM  
13 designation discussed above, the Mid-City area  
14 element does not appear to contemplate any high-  
15 density uses on the site."

16 So, I just wanted you to -- wanted to get  
17 your reaction to that, particularly those last two  
18 sentences.

19 Or Mr. Glasgow, whoever wants to testify.

20 MR. GLASGOW: Well, certainly I want to have  
21 Mr. Dettman go ahead and start, but -- and also, it  
22 does say that we have, going on the next sentence, we  
23 have emphasized, however, that even if a proposal  
24 conflicts with one or more individual policies  
25 associated with the Comprehensive Plan, this does not

1 in and of itself preclude the Commission from  
2 concluding that the action would be consistent with  
3 the Comprehensive Plan as a whole. So, we've got  
4 that part of it. And then also, as Mr. Dettman will  
5 discuss, we do not believe that there is high density  
6 use on this site. There's high height on the site,  
7 and then we can get back into the discussion of the  
8 FARs and would like Mr. Dettman to take that from  
9 there.

10 MR. DETTMAN: Sure. And just to pick up  
11 where Mr. Glasgow picked off, because that was going  
12 to be my first point, I think, that with respect to  
13 what's stated in the court opinion, we would -- we  
14 have consistently presented during this set of  
15 proceedings that we don't believe this is a high-  
16 density project. We believe that this is a moderate-  
17 density -- moderate to medium-density project, that  
18 falls squarely within the limits of the moderate-  
19 density zones. Whether or not you calculate the  
20 density on the overall site, or whether or not you  
21 calculate, consistent with the language of that mid-  
22 city policy, if you calculate density on that site  
23 using the land area of the parcels where development  
24 takes place.

25 The order that was vacated by the Court, that

1 stated that the calculated overall on the site, it  
2 had an FAR of 2.36. As I stated at the last hearing,  
3 calculated based on the land area of parcels one  
4 through five, it's a 4.4 FAR, 2.4 of which would be  
5 devoted to nonresidential use, and that falls  
6 squarely within the PUD regulations for a C-3-A PUD,  
7 which is a specific zone identified in the moderate  
8 density commercial category in the framework element,  
9 which allows under the PUD regulations, a 4.5 FAR and  
10 a 3.0 maximum nonresidential FAR.

11 So, we think that we're consistent with that  
12 particular policy.

13 I wanted to just go back to the court order  
14 and just go to the paragraph that comes just before  
15 the one that you read, Mr. Miller, where it says,  
16 "Friends of McMillan points out that the Future Land-  
17 Use Map designates future uses at McMillan as  
18 moderate-commercial, medium-density residential,  
19 parks, open space, recreation. We agree with the  
20 Commission, the Zoning Commission, however, that  
21 permitting some high-density development on this site  
22 does not necessarily make the PUD inconsistent with  
23 the FLUM. The FLUM explicitly contemplates two ways  
24 in which more intensive development that is otherwise  
25 reflected in the FLUM, may be permissible. A larger

OLENDER REPORTING, INC.

1100 Connecticut Avenue NW, #810, Washington, DC 20036

Washington: 202-898-1108 • Baltimore: 410-752-3376

Toll Free: 888-445-3376

1 development that as a whole is consistent with the  
2 FLUM designation may contain individual buildings  
3 with greater height or density." I testified to that  
4 this evening.

5 "And secondly, the PUD process may permit  
6 greater height and density." Which as I cited to the  
7 PUD regulations again this evening.

8 "So here, the Commission concluded that the  
9 entire site is taken into account the PUD's overall  
10 density is consistent with that permitted in  
11 moderate-density commercial zones. We do not  
12 understand Friends of McMillan to dispute that  
13 conclusion. The Commission thus reasonably  
14 determined that the PUD as a whole was not  
15 inconsistent with the Future Land-Use Map."

16 MR. MILLER: Okay. Thank you.

17 CHAIRPERSON HOOD: Okay, Ms. Ferster, you may  
18 begin.

19 MS. FERSTER: Thank you. I'm going to start  
20 with a few questions for the DOEE witnesses and  
21 whoever is the appropriate person to answer them.  
22 Just chime right in.

23 So, my first question relates to your review  
24 based on EPA's, I believe it's your regional  
25 standards for air quality. Would that be --

1           MR. OURS:  It's the National Ambient Air  
2 Quality Standards, so they're not regional standards.  
3 They are federal standards.

4           MS. FERSTER:  Yes.  And but isn't it correct  
5 that the, you know, the standards for the ambient air  
6 quality standards are based on a regional analysis,  
7 though, right?

8           MR. OURS:  The standards are set by EPA  
9 nationally, based on a health-based level.

10          MS. FERSTER:  Okay.

11          MR. OURS:  It's a health-based analysis.

12          MS. FERSTER:  For the D.C. area region.

13          MR. OURS:  No, it's a national analysis for  
14 what is a healthy level.  It's not area specific.

15          MS. FERSTER:  Right.

16          MR. OURS:  It's health level specific.

17          MS. FERSTER:  I do understand that, but I  
18 think the point you were making was that -- and I  
19 guess the point, the question I'm asking you is, that  
20 isn't it correct that these standards, that EPA does  
21 not establish site-specific air quality standards?

22          MR. OURS:  They establish health-based  
23 standards.

24          MS. FERSTER:  But not for a specific site.  
25 They don't say, in the McMillan neighborhood, you



1 know, you must meet a certain -- you may not exceed a  
2 certain level of emissions on our regulated  
3 pollutants.

4 MR. OURS: They're not --

5 MS. FERSTER: They do it for a region. Isn't  
6 that correct?

7 MR. OURS: No, they don't do it on a regional  
8 basis. They do it on a health-based level. What is  
9 a healthy concentration for people to be breathing.  
10 It's a -- for a sensitive population -- a member of a  
11 sensitive population, it's -- and it doesn't matter  
12 whether that person lives in rural Kansas or in the  
13 middle of Manhattan, it's a person is a person is a  
14 person. So, it's based on a health concentration.

15 MS. FERSTER: I think that --

16 MR. OURS: Yeah.

17 MS. FERSTER: Yes. So, I think you've  
18 answered my question. The standard is the same, you  
19 know, whether it's a person living near McMillan or a  
20 person living in Cleveland Park.

21 MR. OURS: It doesn't make any difference one  
22 way or the other.

23 MS. FERSTER: That's all right. Okay. So,  
24 can DOEE point to anywhere in your reports or  
25 analysis showing the actual numbers of traffic of

1 vehicles that will be generated by the PUD, and also  
2 the number of diesel fueled vehicles that will be  
3 generated as a result of the PUD? What were the  
4 traffic numbers that you were basing that analysis  
5 under, specifically?

6 MR. OURS: We were basing it on the traffic  
7 study that was performed. We didn't repeat those  
8 details in our analysis, but we based it on the  
9 traffic study that was submitted, and I have the date  
10 of that right here. Let's see here, it was the  
11 transportation impact study performed by Gorove  
12 Slade, dated March 17th, 2014.

13 MS. FERSTER: And that's the study that shows  
14 that the average daily traffic will increase in North  
15 Capitol by 31,000 vehicles per day, correct?

16 MR. OURS: I don't remember the exact  
17 numbers.

18 MS. FERSTER: Okay. And, did that -- do you  
19 know the breakdown between diesel fueled vehicles and  
20 non-diesel fueled vehicles? What did you -- I mean,  
21 what did you consider?

22 MR. OURS: We did an analysis. We talked to  
23 them about the -- we got some documentation on a few  
24 different items. First of all, we talked about  
25 shuttle bus service at the site. They provided an

1 estimate to us of 13 to 18 roundtrip ticket trips  
2 during peak hour service, and fewer than 100  
3 roundtrips per day. The also, the EISF form itself  
4 lists deliveries for various types of vehicles. They  
5 list six tractor trailer truck deliveries per day, 24  
6 box truck deliveries per day, and 12 van deliveries  
7 per day. We would assume that the van deliveries are  
8 mostly gasoline. We also believe that many of the  
9 shuttle bus trips will also be gas trips will also be  
10 gasoline rather than diesel.

11 But looking at all those together it's well  
12 below the EPA threshold that talks about 10,000  
13 diesel trips per day.

14 MS. FERSTER: Okay. It seems like that EISF  
15 form that you're reading from has some very useful  
16 information. Could you please read exactly what that  
17 -- you're summarizing, but it would be -- since you  
18 did not want to put that on the record, I would ask  
19 that you read that, read the exact information that  
20 was provided verbatim. Unless you would rather, and  
21 in fact we would prefer it if you would actually  
22 enter that form into the record.

23 MS. MAXWELL: I'd like to object to that,  
24 Chairman. Ms. Ferster already requested to put the  
25 EISF on the record and the Commission declined that

1 at the time.

2 MS. FERSTER: So, just read the answer then.  
3 That you summarized.

4 CHAIRPERSON HOOD: Is it okay if she just  
5 reads the answer?

6 MS. MAXWELL: Yes.

7 MR. OURS: Let's see here. Let me see if I  
8 can find it.

9 So, it is Section 3, Question 8. The  
10 question is, "Give the number of daily deliveries by  
11 truck, if any, and location of loading area, if any."

12 And then it says, "Fifty-five foot trucks,  
13 tractor trailers, six per day to be modified for 40-  
14 foot trucks." And then the second bullet point is,  
15 "Thirty-foot trucks, box trucks, 24 per day." Third  
16 bullet point is, "Vans, 12 per day." And the fourth  
17 bullet point is --

18 MS. MAXWELL: May I ask what purpose this is  
19 serving? This isn't part of the typical PUD review,  
20 and we're really getting into the details here.

21 CHAIRPERSON HOOD: Ms. Ferster, was that --  
22 did you testify -- I mean, in your rebuttal comments,  
23 did you allude to all those details?

24 MR. OURS: I believe we did mention that we  
25 evaluated -- that we evaluated diesel trips, yes.

1 CHAIRPERSON HOOD: Okay. How much more of  
2 the answer is it?

3 MR. OURS: The last bullet point is, "See  
4 attached plan for locations."

5 CHAIRPERSON HOOD: Okay.

6 MR. OURS: For the locations of delivery  
7 things.

8 CHAIRPERSON HOOD: So, Ms. Ferster, let's go  
9 to the next question.

10 MS. FERSTER: If they evaluate and identify  
11 the number of ambulances that will be serving the  
12 site?

13 MR. OURS: Those are not listed here on this  
14 question.

15 MS. FERSTER: And, did the Gorove Slade study  
16 provide a breakdown between diesel and non-diesel  
17 fueled vehicles that would be generated?

18 MR. OURS: The way that the analysis is  
19 performed is that it uses -- it uses a --

20 MR. GLASGOW: I just want to note that the  
21 Gorove Slade report that I believe that she's talking  
22 about is in the record. So, I don't understand why  
23 she is --

24 CHAIRPERSON HOOD: Yeah, why -- Ms. Ferster,  
25 why is he responding to the Gorove Slade report?

1 MS. FERSTER: Because he testified that he  
2 relied on that report in evaluating, making a  
3 determination of what the air quality impacts of the  
4 traffic generated by this project.

5 CHAIRPERSON HOOD: Okay. Answer the  
6 question, then.

7 MR. OURS: What the Gorove Slade project does  
8 is it uses typical fleet, fleet data. And it has a  
9 breakdown across fleet. It does -- I don't believe  
10 what it did was do any specific evaluation of the  
11 local traffic specific to this. It does do it with  
12 numbers. It doesn't do it with the specific  
13 categories of breakdown.

14 CHAIRPERSON HOOD: Okay.

15 MS. FERSTER: Okay. So, are you -- you  
16 talked about the air quality, again the air quality  
17 impacts on the surrounding areas as being acceptable  
18 in terms of the ambient air quality standards and the  
19 NAAQS. And, I have a question particularly about  
20 whether or not you have looked at the Center for  
21 Disease Control's, 500 cities local health based --  
22 health data, which I have in front of me, which  
23 indicates that the area immediately surrounding  
24 McMillan has a higher asthma and poor health ratio  
25 than other neighborhoods in the city, the city-wide

1 average. Did you look at that database in evaluating  
2 the public health impacts of this project?

3 MR. OURS: I did not look at that database.

4 MS. FERSTER: And has DOEE looked at the  
5 ecology and natural environmental impacts beyond air  
6 quality?

7 MR. WILSON: Yes, as part of our EISF, and I  
8 think we testified to that last time.

9 MS. FERSTER: As part of the EISF.

10 MR. WILSON: Process.

11 MS. FERSTER: Process.

12 MR. WILSON: And we discussed that last time  
13 we were here.

14 MS. FERSTER: Okay.

15 CHAIRPERSON HOOD: The questions germane to  
16 the rebuttal, and let's not go to what we did last  
17 time or even during the regular one. Let's try to  
18 keep it focused on the rebuttal.

19 MS. FERSTER: That's it for my question for  
20 the DOEE witnesses.

21 I have a couple questions for Mr. Bogorad.  
22 Did I pronounce your name correctly?

23 MR. BOGORAD: Bogorad.

24 MS. FERSTER: Bogorad. Okay.

25 MR. BOGORAD: Very few people get it right,

1 so it's --

2 MS. FERSTER: Right. Well, and you had some  
3 rebuttal to what you call Ms. Williams, and I just  
4 want to clarify she's Dr. Williams, and that's how I  
5 would prefer that she be addressed at this point.

6 So, I have a couple questions about your  
7 rebuttal to Dr. Williams' testimony. Dr. Williams  
8 testified, you indicated you were rebutting Dr.  
9 Williams' testimony that there's housing market  
10 distress on Channing Street, across from McMillan,  
11 and you disagreed with that.

12 And isn't it correct that Dr. Williams in  
13 fact testified about the housing market distress in  
14 the neighborhoods surrounding Channing Street? Do  
15 you recall that?

16 MR. BOGORAD: Let me get out her testimony  
17 before I give you -- make sure I can give you the  
18 most accurate answer. Let's see. I have it here  
19 somewhere.

20 [Pause.]

21 MR. BOGORAD: Her testimony. Here it is.  
22 Monied millennials are moving in, quoting from her,  
23 "Monied Millennials are moving in and investors are  
24 gutting and flipping houses on Channing Street, which  
25 will reel from the disruption of construction."



1 She's talking about --

2 MS. FERSTER: The particular point was your  
3 point about that you believe that there was no -- you  
4 could not find in the Zillow and other databases, any  
5 evidence of Channing Street preforeclosure or  
6 foreclosure or auction.

7 MR. BOGORAD: I mean, anyway, I'll answer  
8 your question more generally. I don't know that  
9 that's what she said, but I did look at the overall  
10 area to see if I could find any foreclosures,  
11 preforeclosures, or anything of that sort, and on  
12 Realty Track, and I did not find anything like that.  
13 I actually talked to a broker and asked -- who was  
14 listed on the Realty Track site, and asked him  
15 whether I was missing something. He said no, the  
16 market is much too strong. There are no  
17 foreclosures.

18 MS. FERSTER: And so you checked  
19 Bloomingdale, Edgewood, and Stronghold in addition to  
20 the Channing Street?

21 MR. BOGORAD: I looked at within a mile or so  
22 of McMillan. Parts of Edgewood may be farther, I  
23 don't know. But the -- nothing that I would consider  
24 at all, in the area that would be affected by  
25 McMillan potentially.

1           MS. FERSTER: A mile and a half. And did you  
2 -- and this is currently, or did you go back any  
3 period of time?

4           MR. BOGORAD: Realty Track is only as current  
5 as a certain date. I did look at it when your letter  
6 came out a few weeks ago. I looked at it then and  
7 had the same conclusion.

8           MS. FERSTER: Uh-huh. Okay.

9           MR. BOGORAD: It just doesn't make any  
10 economic sense for there to be houses being taken at  
11 the time when the market is that strong. It just  
12 economically doesn't make any sense unless somebody  
13 makes a mistake, and that's still not a matter of  
14 distress of the market.

15          MS. FERSTER: Okay. Well, isn't it  
16 theoretically possible that in fact you could have a  
17 existing resident on one of these streets, like  
18 Channing Street in the neighborhood, and who is  
19 financially distressed, who receives an offer from an  
20 investor to purchase the property, and that they  
21 could then flip it for -- to sell to a monied  
22 Millennial. Isn't it possible that those two things  
23 can exist in a street, that you would have a  
24 distressed neighborhood resident who would sell their  
25 property --

1 MR. GLASGOW: I'm going to object to the  
2 question.

3 MS. FERSTER: -- to a monied Millennial.

4 MR. GLASGOW: I'm going to object to the  
5 question, Mr. Chairman. He testified as to  
6 specifically with respect to what he saw with respect  
7 to her testimony. It wasn't some hypothetical. It's  
8 all laid out right here.

9 MS. FERSTER: You know, he was very clear --

10 CHAIRPERSON HOOD: Okay. Ms. Ferster --

11 MS. FERSTER: -- that he said --

12 CHAIRPERSON HOOD: Ms. Ferster. Ms. Ferster,  
13 let me interrupt you. Before I rule on that, why are  
14 you asking that question?

15 MS. FERSTER: Because he said very clearly  
16 that he did not think it was possible for there to be  
17 a situation in which you would have financially  
18 distressed households and the monied Millennials --

19 MR. BOGORAD: That's not what I said, Ma'am.

20 MS. FERSTER: -- moving in, that the two were  
21 incompatible. That a strong market for housing could  
22 not allow for financially distressed homeowners.

23 MR. BOGORAD: And I did not say anything  
24 about distressed homeowners. I was talking about  
25 distressed housing market.

1           CHAIRPERSON HOOD: Well, for -- let me just  
2 say this. For Ms. Ferster, could you explain to her  
3 what you said so maybe she can ask a correct  
4 question?

5           MR. BOGORAD: Yes. Thanks, Mr. Chair. So,  
6 housing market distress is not -- obviously, there  
7 are financially distressed people in all kinds of  
8 market. That's not what we're talking about here.  
9 It's not what the Court asked about.

10           The Court's question is, did McMillan -- is  
11 McMillan causing problems, or will it cause problems.  
12 And Ms. -- or Dr. Williams was testifying, as I  
13 understood it, to the effect that even the plans for  
14 it were causing distress in the market. And she  
15 offered as evidence for this distress in the market,  
16 that supposedly there were all these foreclosures and  
17 things of that sort on Channing Street.

18           I did look more broadly. I did not see any  
19 sign of it. I do not believe that it's consistent  
20 with a strong market to have foreclosures unless, you  
21 know, again, you know, some people can make a mistake  
22 and they cannot -- you know, they could say, well  
23 okay, I'll let the bank take it and -- or maybe they  
24 took out a mortgage for \$1 million and the house is  
25 worth 700,000. But there's nothing even of that sort

1 going on because --

2 MS. FERSTER: Okay. Well, it's good that I  
3 understand because I believe you did misunderstand  
4 Dr. Williams' testimony, because she really wasn't  
5 talking -- she was not an expert in housing markets  
6 and she would never say that the housing market is  
7 distressed in North Blooming -- neighbor.

8 MR. BOGORAD: It was in --

9 MS. FERSTER: She's talking about  
10 individuals.

11 CHAIRPERSON HOOD: Okay. Okay.

12 MS. FERSTER: Who were distressed.

13 CHAIRPERSON HOOD: Let's go to the next  
14 question. We appreciate you reiterating her  
15 testimony --

16 MS. FERSTER: So --

17 CHAIRPERSON HOOD: -- but we have --

18 MS. FERSTER: No, but I appreciate his  
19 clarification --

20 CHAIRPERSON HOOD: But actually --

21 MS. FERSTER: -- that he was going to the  
22 housing market.

23 CHAIRPERSON HOOD: Ms. Ferster, we have her  
24 testimony. So --

25 MS. FERSTER: Okay.

1           CHAIRPERSON HOOD:  -- let's go on.  Next  
2 question.

3           MS. FERSTER:  So, let's see.  Okay.  I think  
4 this is going to be my last question for you.

5           Yeah, I have two questions.  I forgot about  
6 one of them.

7           Okay.  So, you testified that your theory  
8 about supply and demand that I guess because there  
9 was a -- because there was an excess of -- sorry.

10          Yeah, so you testified about that you did not  
11 -- you didn't think that the McMillan development  
12 could result in sort of a gentrification and  
13 displacement because it was a matter of supply and  
14 demand, really, that there was an excess of -- that  
15 because the housing prices in the McMillan  
16 neighborhood were increasing because there really was  
17 a lack of adequate supply of housing, and that was  
18 what was driving the increase, in a sort of general  
19 way.  And Dr. Williams had testified that she thought  
20 that the issue was a little more complicated.  And  
21 you basically said no, there is -- you know, that the  
22 housing prices are increasing because there is -- the  
23 demand exceeds the supply.  That's how I --

24          MR. BOGORAD:  Sort of please restate that.

25          MS. FERSTER:  Yeah.  I'm sorry --

1 MR. BOGORAD: I got totally confused.

2 MS. FERSTER: -- I was completely incoherent  
3 and I apologize for it, but I've -- I think, as I was  
4 hearing your testimony you were explaining why you  
5 believed that you know, that the increase in housing  
6 in the McMillan neighborhood surrounding --

7 MR. BOGORAD: The prices, uh-huh.

8 MS. FERSTER: That the prices had increased  
9 because it was a function of that there was a demand.  
10 You know, there wasn't enough supply to, you know,  
11 supply of housing so that that drove the prices up.  
12 Did I fairly cap --

13 MR. GLASGOW: Was there a question? Can  
14 there just be a question that he can answer?

15 MS. FERSTER: Well, okay. Then, so that's  
16 what I'm asking a question about. Okay.

17 MR. BOGORAD: Yeah, let me explain a little  
18 bit more carefully then. Yeah, I'm not sure.

19 CHAIRPERSON HOOD: Well, why don't we do  
20 this --

21 MR. BOGORAD: Can you point out a specific  
22 question?

23 CHAIRPERSON HOOD: Why don't we do this,  
24 restate the question.

25 MS. FERSTER: Okay. So, that's the first

1 part of the question is --

2 CHAIRPERSON HOOD: Well, restate the first  
3 part of the question.

4 MS. FERSTER: Yeah. Okay. So, that -- I  
5 guess my question is that, are you aware of the  
6 studies that the Friends of McMillan Park provided as  
7 part of their prehearing testimony that showed that  
8 in fact there was a surplus in the District of  
9 Columbia of both market rate housing and even housing  
10 at 80 percent of the area mean income? So, I'm not  
11 sure -- that's how --

12 MR. GLASGOW: Was that part of the testimony  
13 that he's rebutting? She's talking about reports or  
14 studies that were done before.

15 MS. FERSTER: Well, I'm simply asking him a  
16 question about his testimony that it's simply a  
17 matter of supply and demand, that the housing prices  
18 go up because there's too much housing on -- there's  
19 not enough housing in the market. So.

20 CHAIRPERSON HOOD: Ms. Ferster, one sentence.  
21 What is the question?

22 MS. FERSTER: Okay. I just asked the  
23 question, but I will ask that again.

24 CHAIRPERSON HOOD: That was a dissertation.

25 MS. FERSTER: Are you aware --



1 CHAIRPERSON HOOD: Just give me the question.

2 MS. FERSTER: Are you aware of studies, in  
3 terms of your testimony that there is not enough  
4 housing to meet the demand for housing which is  
5 driving the supply of housing up, are you aware of  
6 the studies that show that there is in fact a surplus  
7 of market rate, and even 80 percent area mean income  
8 housing in the District of Columbia?

9 MR. GLASGOW: No basis or foundation for  
10 that --

11 CHAIRPERSON HOOD: I'm going to rule that  
12 question out of order because I've heard you three  
13 times now and I can't understand it. One time you  
14 mentioned something that FMOP, their study -- here  
15 where their study, then you asked it another way  
16 again. So, I'm going to rule that question out of  
17 order. There's no context to it.

18 MS. FERSTER: Okay. So, I guess my last  
19 question for you is, how can you conclude that 600  
20 plus market units of housing will not impact  
21 surrounding neighborhood stability and land values  
22 without actually going to individuals and asking  
23 questions of the people who actually live there, and  
24 evaluating those site-specific, very specific factors  
25 relating to those neighborhoods?

1           MR. BOGORAD: I think I understand your  
2 question. There are -- I can make that conclusion  
3 based on what I do all the time, which is -- and my  
4 clients pay me for all the time, which is to analyze  
5 overall trends in terms of demand and supply. What a  
6 particular homeowner might say they did something,  
7 you know, would do something because of such and such  
8 doesn't, to me, prove anything about the impact of  
9 it.

10           MS. FERSTER: So, you didn't interview any  
11 residents or even visit the neighborhood?

12           MR. BOGORAD: I visited the neighborhood, but  
13 I didn't interview any residents, no.

14           MS. FERSTER: Okay. Okay. That's it. And I  
15 just have one question for Mr. Dettman. And I'm  
16 going to your written testimony, paragraph 36. And I  
17 guess your statement at the end of that paragraph,  
18 where you said that this falls squarely within the  
19 moderate density ranges, even when you calculate it  
20 based on the land area of the parcel, whether  
21 development takes place.

22           And I would just ask you to just break that  
23 down with a little more specificity, looking at  
24 Parcel 1, and only Parcel 1. Can you indicate what  
25 is the commercial FAR for Parcel 1?

1 MR. DETTMAN: I don't have a breakdown of the  
2 density per parcel. But there's also no need to  
3 break it down per density per parcel under the PUD  
4 regulations. It's clear that for a PUD you can  
5 aggregate density across the entire site.

6 MS. FERSTER: Understood, but you did testify  
7 that you felt it was within the moderate-density  
8 range even using the land area, the parcel. So, now  
9 you're saying you didn't break it -- you're not able  
10 to break that down?

11 MR. DETTMAN: You asked me to break down for  
12 Parcel 1 and Parcel 1 only.

13 MS. FERSTER: For Parcel 1.

14 MR. DETTMAN: I have the breakdown of gross  
15 floor area and land area for collective Parcels 1  
16 through 5. I have it on my laptop. I'm happy to  
17 bring that up. I don't recall the number of my head,  
18 but just to be clear, your question was for me to  
19 break it down simply only for Parcel 1.

20 MS. FERSTER: For Parcel 1, yeah.

21 MR. DETTMAN: Gross floor area and  
22 residential gross floor area. My testimony was that  
23 we are well within the moderate density ranges when  
24 you calculate the density across the entire site from  
25 Michigan to Channing, 1st Street to North Capitol, or

1 and I'll just read it again, "Calculating the density  
2 across the entire site or only using the land area of  
3 the parcels where development takes place, the land  
4 area of where development takes place is on Parcels 1  
5 through 5." That's the collective land area.

6 MS. FERSTER: Oh, okay. So, this is not the  
7 land area for just Parcel 1, because it is in fact,  
8 if you look at the land -- you look at the density  
9 for the development in Parcel 1, it does in fact  
10 exceed moderate density levels.

11 MR. GLASGOW: Is this a question? Mr.  
12 Chairman.

13 MS. FERSTER: Isn't that correct?

14 MR. DETTMAN: I don't know the answer to that  
15 question because I don't have to calculate density  
16 for each individual parcel and prove that the density  
17 on each individual parcel in the project is within  
18 the moderate-density ranges. Per the PUD  
19 regulations, it allows you to aggregate density.

20 Under the PUD regulations you can aggregate  
21 density across the entire site. But because we're  
22 debating whether or not there is a competition or  
23 whether the policies of the future land-use map, or  
24 that one policy, the mid-city element about where  
25 development takes place, it should be limited to

OLENDER REPORTING, INC.

1100 Connecticut Avenue NW, #810, Washington, DC 20036

Washington: 202-898-1108 • Baltimore: 410-752-3376

Toll Free: 888-445-3376

1 moderate medium density. Those are the two density  
2 calculations that we're comparing.

3           Again, under the PUD regulations, nothing  
4 says you have to take out Parcel 6, right, and 7.  
5 Nothing says that you have to. But because we have  
6 that one policy I felt it was important to show that  
7 even if you take out the parcels that don't have  
8 development on them, that leaves Parcels 1 through 5,  
9 using the land area, the collective land area of  
10 Parcels 1 through 5, we are still within the moderate  
11 density residential -- moderate density ranges.

12           MS. FERSTER: Okay. Thank you. I appreciate  
13 that clarification because I did not understand that  
14 you were referring to the land area of Parcels 1  
15 through 5 collectively.

16           That's it.

17           CHAIRPERSON HOOD: Okay. Thank you very  
18 much. Mr. Glasgow, you have a closing?

19           MR. GLASGOW: Yes, sir. Very brief.

20           Mr. Chairman, in closing I would like to  
21 first state in reviewing the Commission's direction  
22 for considering the remand by the District of  
23 Columbia Court of Appeals as set forth in Issues 1  
24 through 5, none of which were contested by the  
25 opposition to this proceeding, that the applicant has

1 fully addressed all of those issues and met its  
2 burden of proof as to all issues so as to be entitled  
3 to approval of its application.

4           Concerning the burden of proof, the applicant  
5 has addressed all issues relevant to this proceeding,  
6 and I believe that the Commission has received more  
7 reports from D.C. agencies, and testimony than it has  
8 in any PUD application, certainly any that I'm aware  
9 of.

10           In addition, the Commission received an EISF  
11 which is contained within it, the input from multiple  
12 agencies for an even fuller record than would occur  
13 in a normal PUD application. And that's information  
14 from it.

15           You have also had the participation of  
16 representatives of the Office of the Attorney General  
17 on behalf of the deputy mayor and participation by  
18 counsel from District agencies. So, there's been a  
19 lot of participation by the District in this effort  
20 here.

21           There has also been an exhaustive review and  
22 discussion about land values and destabilization from  
23 expert testimony, and there is no empirical evidence  
24 tying the McMillan project directly to any such  
25 destabilization of land values and displacement.

1           In addition, concerning noise and the Zoning  
2 Commission Comprehensive Plan analysis, testimony was  
3 entered that under the Comprehensive Plan noise is  
4 dealt with through compliance with the noise  
5 regulations and compatibility of uses which include  
6 rowhouses, apartment buildings, and an office  
7 building type structure with higher, normal and  
8 higher floor to ceilings.

9           There are also, this evening, there was broad  
10 assertions made as to a lack of project review  
11 concerning land planning issues without any  
12 accompanying citations. As a result of this  
13 exhaustive record and testimony concerning all  
14 relevant issues, it is requested that the Zoning  
15 Commission approve the application so that this  
16 extremely important project to the community and the  
17 District and supported by the ANC, may move forward.

18           And as was stated by the deputy mayor and his  
19 testimony, quote, "McMillan has been dormant during  
20 its 30-year history of the District's ownership. Now  
21 is the time to develop this site," end of quote.

22           And I conclude my statement.

23           CHAIRPERSON HOOD: Okay. I'm going to thank  
24 everyone this evening for the participation as we  
25 finalize our remand. The Zoning Commission, we will

1 -- I would just encourage everyone to stay tuned to  
2 what our next steps are. We will figure out how  
3 we're going to move forward so we can answer the  
4 questions of the Court.

5           Also, the record in this remand is closed.  
6 The record is closed. We don't need anything  
7 additional. The record is closed. Okay?

8           Ms. Schellin.

9           MS. SCHELLIN: Chairman, there were three  
10 items that you guys asked for.

11           CHAIRPERSON HOOD: Well, whatever we asked  
12 for. But I mean, anything else --

13           MS. SCHELLIN: Do you want me to repeat  
14 them --

15           CHAIRPERSON HOOD: Yeah.

16           MS. SCHELLIN: -- so that we make sure?  
17 Commissioner May asked about the FAR from each of the  
18 stages, I believe it was. Commissioner Hood asked  
19 that correct boundaries for Bloomingdale be entered  
20 into the record. Commissioner Hood also asked that a  
21 list of the uses for the medical spaces be provided.  
22 And those were the three items that I had down.  
23 Other than that, I didn't have anything else except  
24 for this evening the Commission granted the applicant  
25 if they choose to submit the full copies of the



1 documents that FOMP entered today, the excerpts of,  
2 that they could do that.

3 CHAIRPERSON HOOD: Okay. So that's it.  
4 That's it. Unless we're missing something.

5 MS. FERSTER: Will there be proposed findings  
6 of fact and conclusions of law?

7 MS. SCHELLIN: No.

8 MS. FERSTER: Oh, because you indicated last  
9 hearing, I believe, that there would be.

10 MS. SCHELLIN: That they would decide whether  
11 there would be. I think he mentioned it, but they  
12 had not actually made a decision.

13 CHAIRPERSON HOOD: Did I mention that at the  
14 last hearing? I need to go back and look at the  
15 transcript --

16 MS. SCHELLIN: I don't know.

17 CHAIRPERSON HOOD: -- because I don't think I  
18 mentioned that at -- not at this. I mention it a  
19 lot, but not in this remand case. I did not mention  
20 findings of facts and conclusions of law.

21 MS. SCHELLIN: So, no, there will not be.

22 MR. GLASGOW: Mr. Chairman, the only other  
23 thing is there were some additional slides that Mr.  
24 Weers had last week, that we want to make sure were  
25 in the record.

1 CHAIRPERSON HOOD: So that they get in the  
2 record. Okay.

3 MR. GLASGOW: Yes.

4 MS. SCHELLIN: There were some --

5 CHAIRPERSON HOOD: That we asked for.

6 MS. SCHELLIN: -- that were not. Right.

7 CHAIRPERSON HOOD: Other than those things  
8 that were cited and that additional amendment,  
9 nothing else. Nothing else. Okay.

10 MR. SCHRON: There's nothing else. A  
11 decision date will be decided. My understanding is  
12 you guys will decide when your -- that it's too soon  
13 to do that. And once a decision date is decided then  
14 I will notify all of the parties by e-mail of what  
15 that date will be, what meeting that will be.

16 CHAIRPERSON HOOD: And let's make sure it's  
17 on the website and publicly noted, when we're going  
18 to decide on this.

19 Okay. Anything else?

20 MS. SCHELLIN: No, sir. I have nothing else.

21 CHAIRPERSON HOOD: I want to thank everybody  
22 for their participation tonight, and this remand is  
23 adjourned.

24 [Whereupon, the hearing adjourned at 7:07  
25 p.m.]