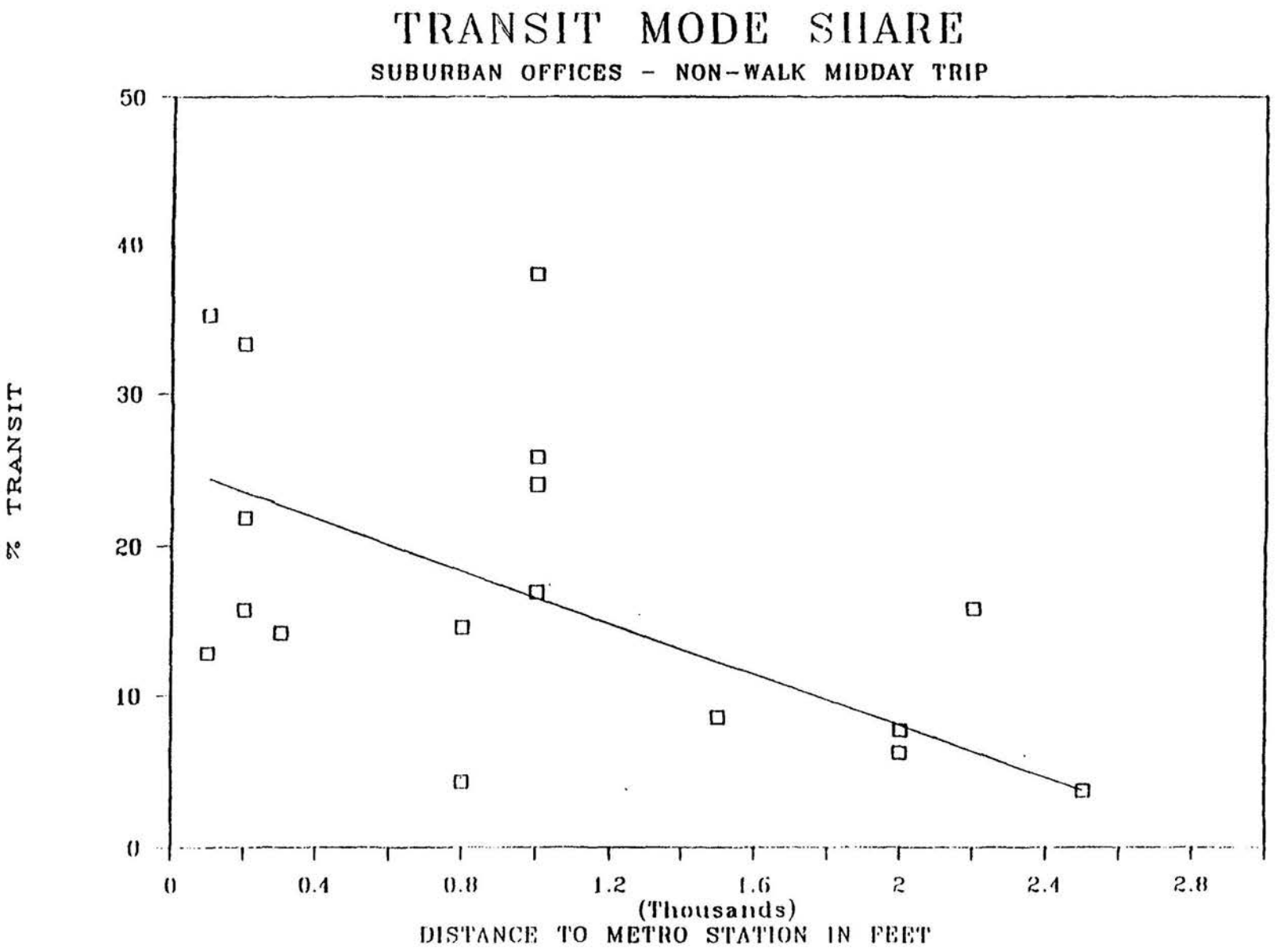


Figure 35.

Board of Zoning Adjustment
District of Columbia
CASE NO. 17304
EXHIBIT NO. 50A3

- percentage of those employed
- distance from the station portal
- average number of residents per dwelling unit
- number of parking spaces per dwelling unit
- monthly parking cost per vehicle
- number of dwelling units
- average number of vehicles per dwelling unit

Based on the expansion of the data base the equation was modified to the following:

$$T = 66.52 - 1.56\ (M)$$

(T = Transit Mode Share)
(M = distance from Metro)

The R-squared of 0.40 is slightly improved over the original equation but is still relatively poor. The database has been expanded to include 18 buildings. Sites further than half a mile from the station and those sites outside the Beltway were excluded. If these sites are included the R-squared is reduced noticeably. Due to limitations in the data collected for this study the equation for all trips from residential studies remains unchanged:

$$T = 51.5 - 0.66 * (M)$$

(T = Transit Mode Share)
(M = distance from Metro)

The R-squared for this equation is 0.34. The new equation is graphed in Figure 36.

Retail

The candidate variables for the retail analysis included:

Candidate dependent variables

- percentage of shopping trips by auto
- percentage of shopping trips by transit

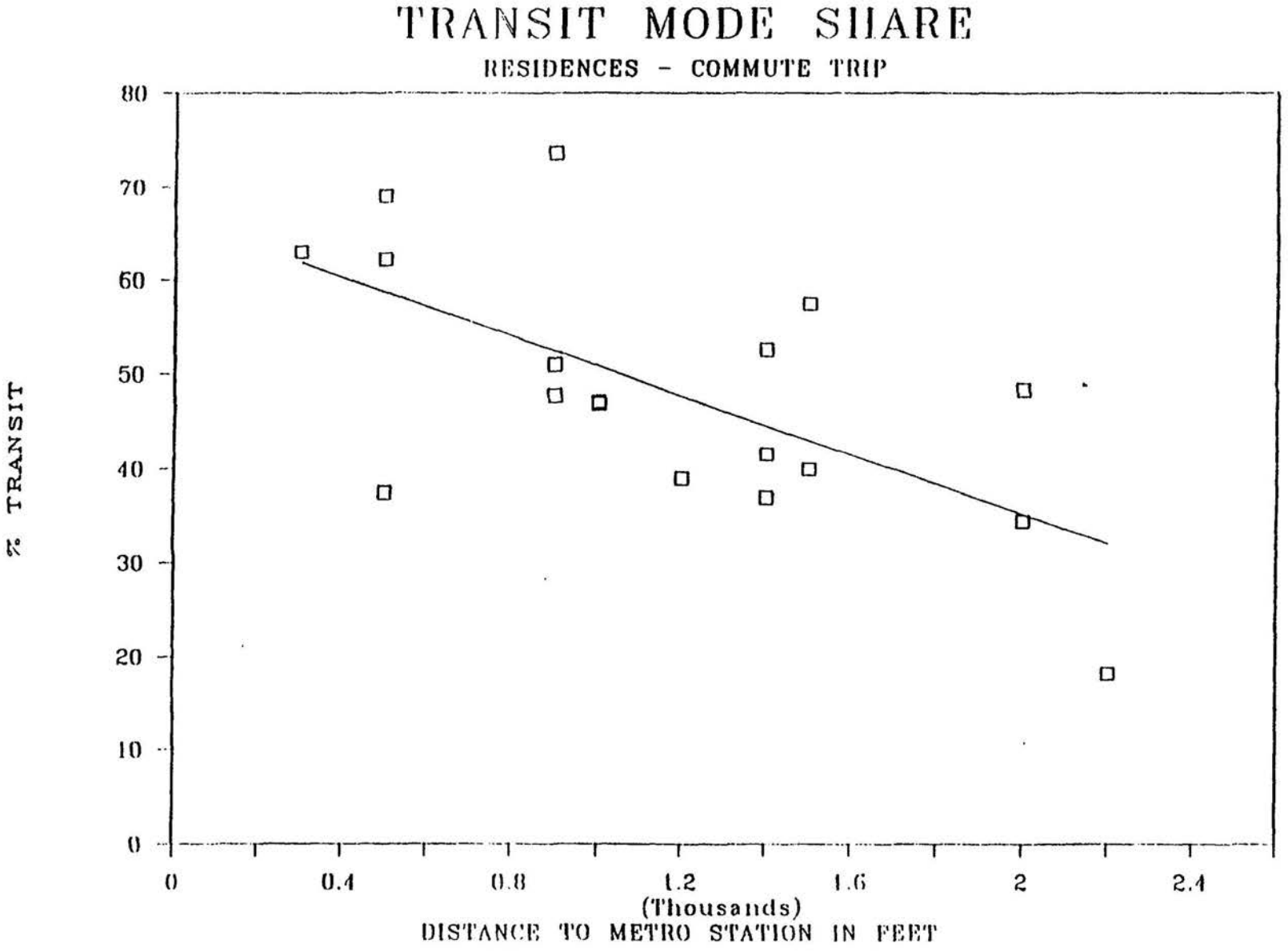

TRANSIT MODE SHARE
RESIDENCES - COMMUTE TRIP
% TRANSIT
80
70
60
50
40
30
20
10
0
0
0.4
0.8
1.2
1.6
2
2.4
(Thousands)
DISTANCE TO METRO STATION IN FEET

Figure 36.

Candidate independent variables

- development setting (downtown or suburban)
- distance from the DC core
- GSF gross square feet in 1000's
- distance from a Metrorail station
- Market draw (regional or local)[1]

With the expanded database available it was possible to include both distance to DC and distance to a Metro station in the proposed equation. The equation when based on data from this study is:

$$T = 49.18 - 0.15(M) - 2.16(D)$$

(T = Transit Mode Share)
(M = distance from Metro)
R-squared = 0.50

When an equation using the most recent data available from all studies is developed the equation is as follows:

$$T = 41.07 - 0.75(M) - 1.92(DC)$$

(T = Transit Mode Share)
(M = distance from Metro)
R-squared = 0.64

This equation includes 28 sites covering the full range of distances. The R-squared values are lower than for the first study but represent a much bigger database and should therefore be considered more valid. Caution should be exercised when using these equations as one of the findings of this study is that transit mode share to retail sites has increased from the time of the first WMATA study. This emphasizes the fact that these equations must be reviewed over time as the system and the areas it serves develop. These equations are graphed in Figures 37 and 38 respectively.

[1] Market draw refers to the target market of the establishment. An example of a retail site with local draw would be a shopping center with tenants such as a bank, a 7-11 store, dry cleaners, etc. A retail site with regional draw would be a larger shopping center with major anchor tenants. An example would be Ballston Common.

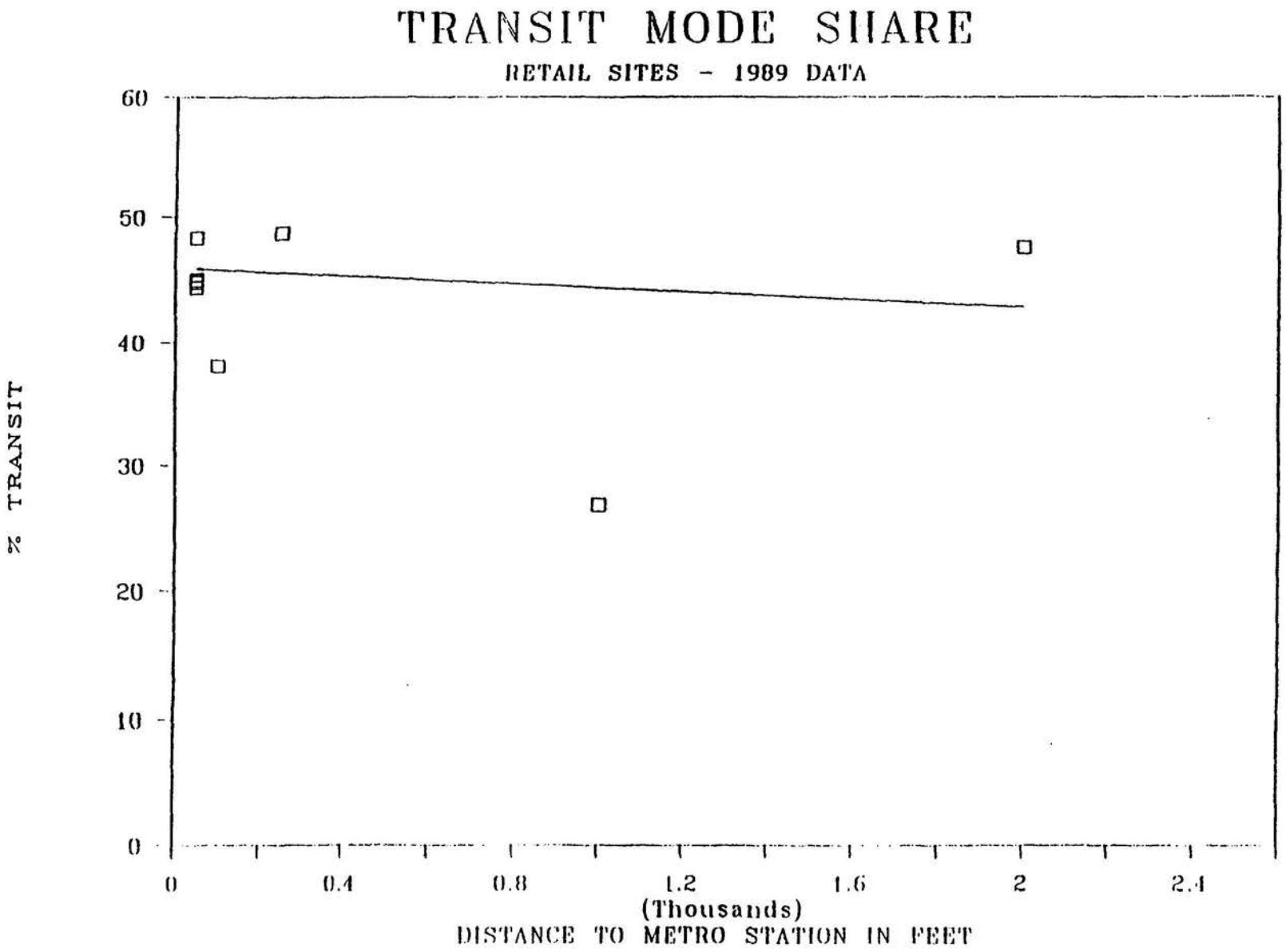

TRANSIT MODE SHARE
RETAIL SITES - 1989 DATA
% TRANSIT
60
50
40
30
20
10
0
0
0.4
0.8
1.2
1.6
2
2.4
(Thousands)
DISTANCE TO METRO STATION IN FEET

Figure 37.

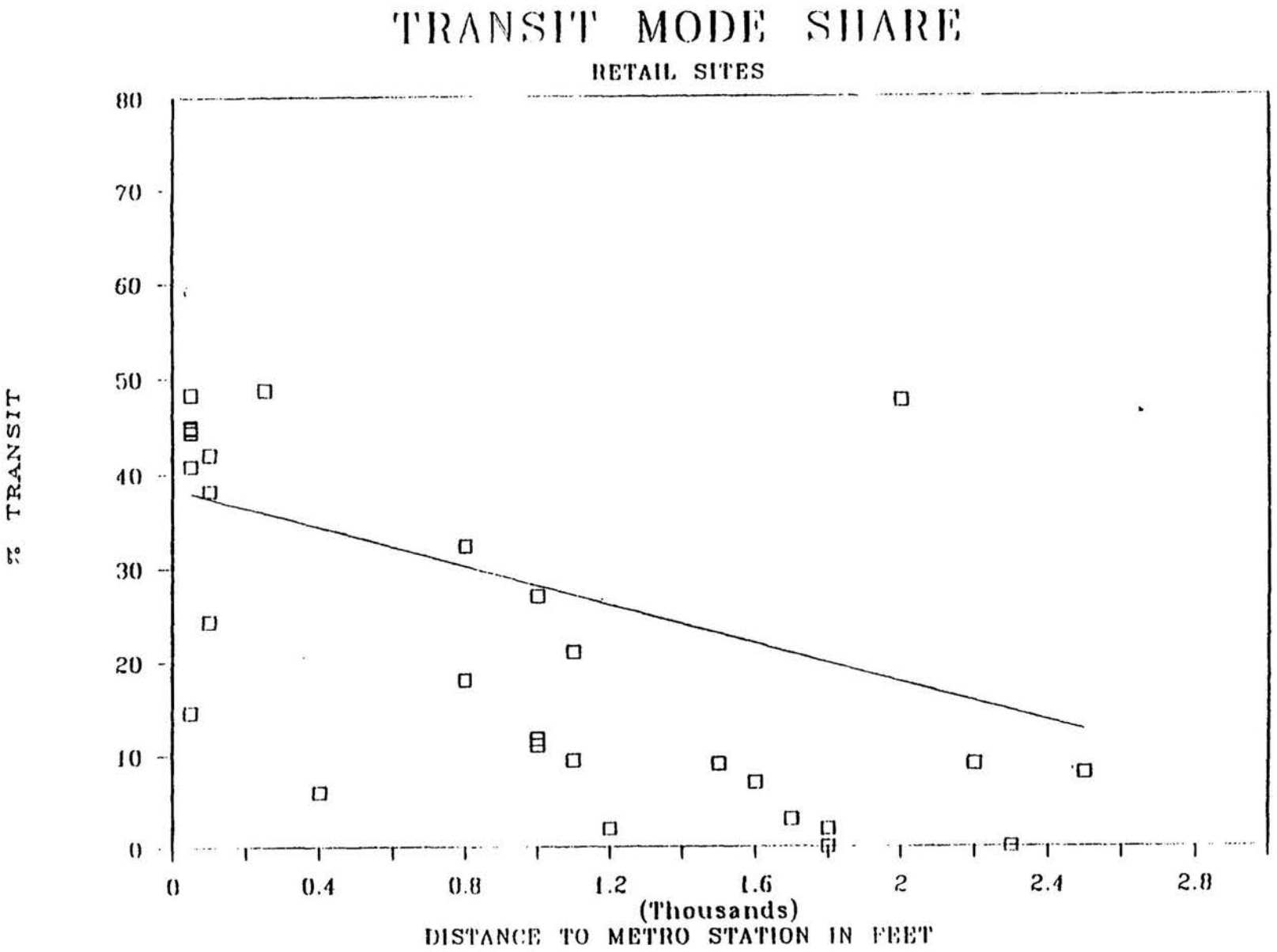

TRANSIT MODE SHARE
RETAIL SITES
% TRANSIT
80
70
60
50
40
30
20
10
0
0
0.4
0.8
1.2
1.6
2
2.4
2.8
(Thousands)
DISTANCE TO METRO STATION IN FEET

Figure 38.

Hotel

The candidate variables for the hotel regression analysis included:

Candidate dependent variables

- percent of trips by transit for conference attendees
- percent of transit by overnight guests

Candidate independent variables

- development setting
- distance from DC core
- distance from a Metro Station
- number of parking spaces
- number of guest rooms

Due to the wide variance in results between the two studies the results were not combined. Unlike the first study there was no apparent relationship between transit mode share and the distance to DC. No correlation was apparent for conference attendees. For hotel guests there was a correlation between transit mode share and the distance to a Metro station portal. The equation suggested for hotel guests is:

T = 34.09 - 0.77(M)	R-squared 0.87	(T = Transit Mode Share)
LN(T) = 3.20 - 0.038(M)	R^2 = 0.63	(M = distance from Metro)

This equation is graphed on Figure 39.

As with the retail sites the fact that the results differ substantially from the first study indicates that caution must be exercised when attempting to use the results and the equation developed herein. As was discussed previously transit mode share for hotels is no doubt subject to more variability from day to day than for any of the other land uses and the data from hotels to date does not allow any "average" or "typical" transit mode share to be established with any degree of confidence.

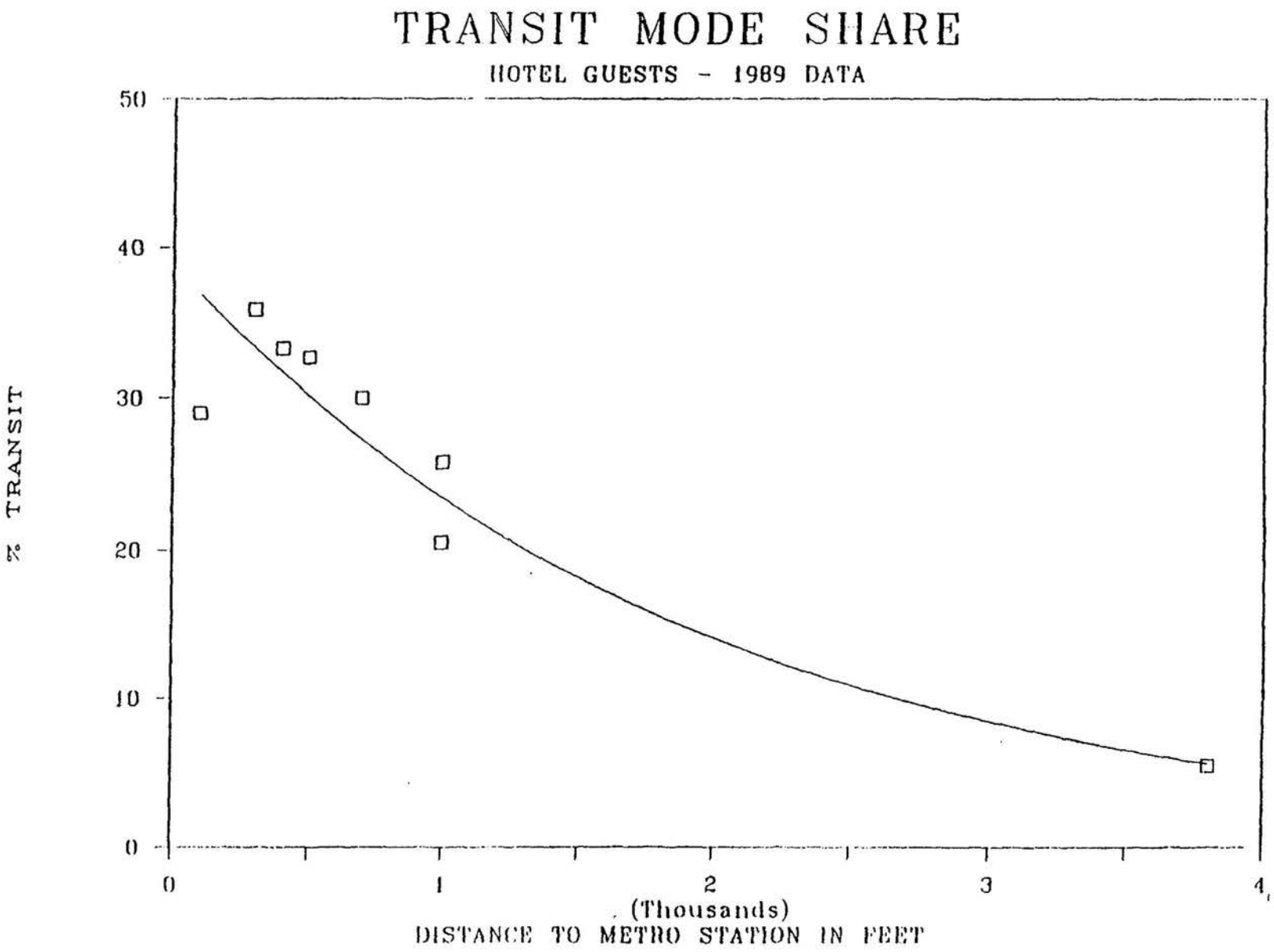

TRANSIT MODE SHARE
HOTEL GUESTS - 1989 DATA
% TRANSIT
50
40
30
20
10
0
0
1
2
3
4
(Thousands)
DISTANCE TO METRO STATION IN FEET

Figure 39

Relationships for Non-Site Factors

As discussed earlier in this report other factors also influence transit mode share. Distance to a Metrorail station or the distance from DC can only be used to predict transit mode share and ridership assuming these other factors remain constant from site to site. Of course this is not true, and despite the fact that specific information concerning many of these other factors is often not available during the planning for many developments, an effort should be made to estimate their impact. It should be noted that while individual factors may be well correlated with transit mode, they are not necessarily well correlated with the distance to a Metrorail station. Thus a combined equation will not always produce a higher R^2. However, the relationship between a number of these factors is well correlated with transit mode share and should be considered, at least in a subjective manner.

Transit mode share decreases as average household size increases. This relationship is due to a number of factors such as the fact that larger households prefer single family or lower density housing which is often located further from rail stations and transit is not considered an alternative. If the distribution of household size is known for potential "origin stations," estimates of transit mode share by distance can be modified up or down. The equation suggested by the data from the workplace surveys is:

$$T = 201.6 - 67.7 \text{ (persons/household)} \quad R^2 = 0.73$$

This is graphed on Figure 40.

Another relationship with a relatively good correlation is that of transit availability. The suggested equation is:

$$T = 35.6 + 1.23 \text{ (\% surveyed with convenient transit connections)} \quad R^2 = 0.54$$

This is graphed on Figure 41. The fact that some sites with low transit mode share were close to a Metrorail station are explained to a large extent by examining the data concerning transit availability. Respondents at these offices reported poor transit availability, since the availability is known at the site this indicates the problem is at the origin end. In summary this relationship illustrates the somewhat obvious fact that good transit connections are required at both ends. As with household size there

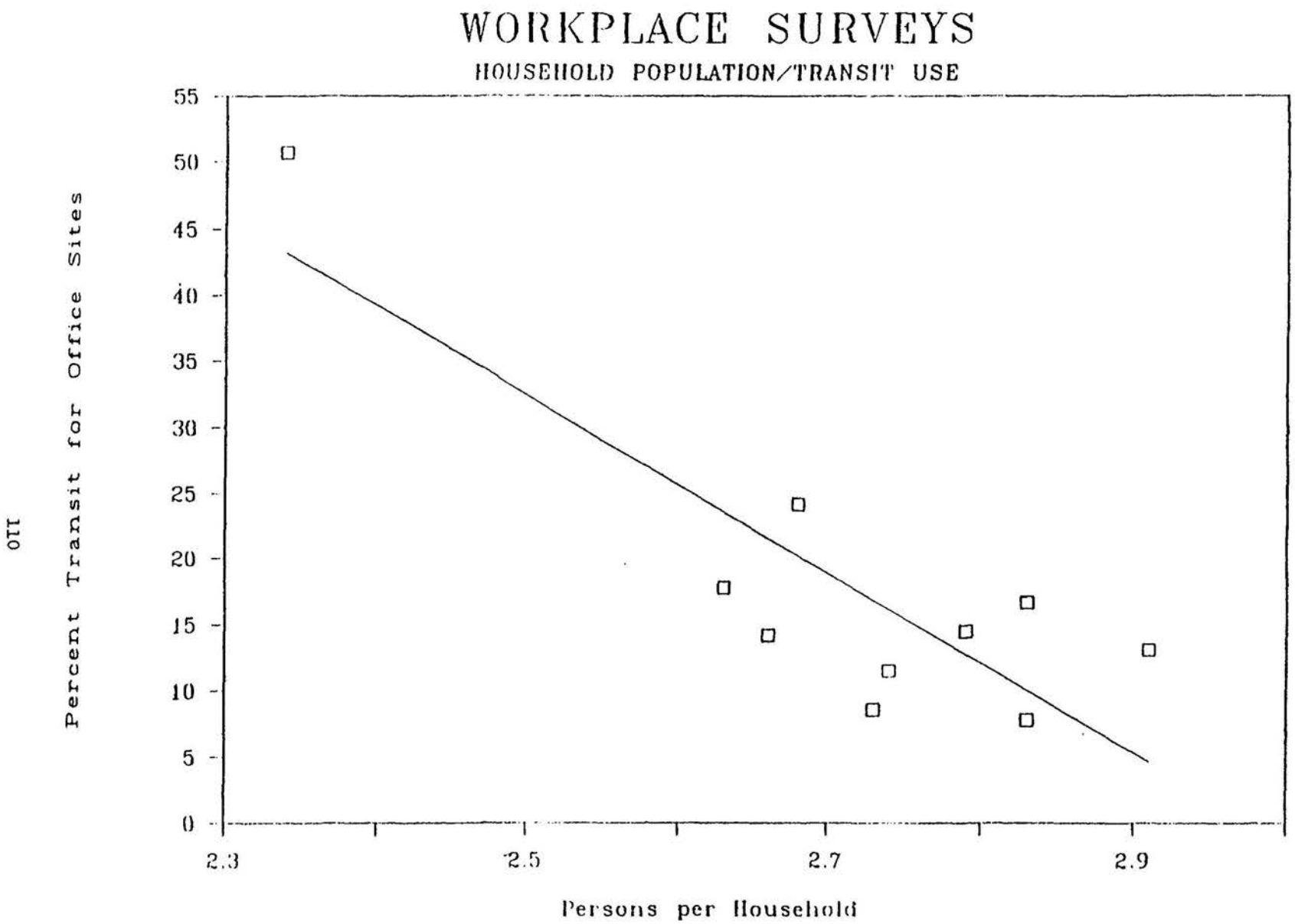

WORKPLACE SURVEYS
HOUSEHOLD POPULATION/TRANSIT USE
Percent Transit for Office Sites
55
50
45
40
35
30
25
20
15
10
5
0
2.3
2.5
2.7
2.9
Persons per Household

Figure 40

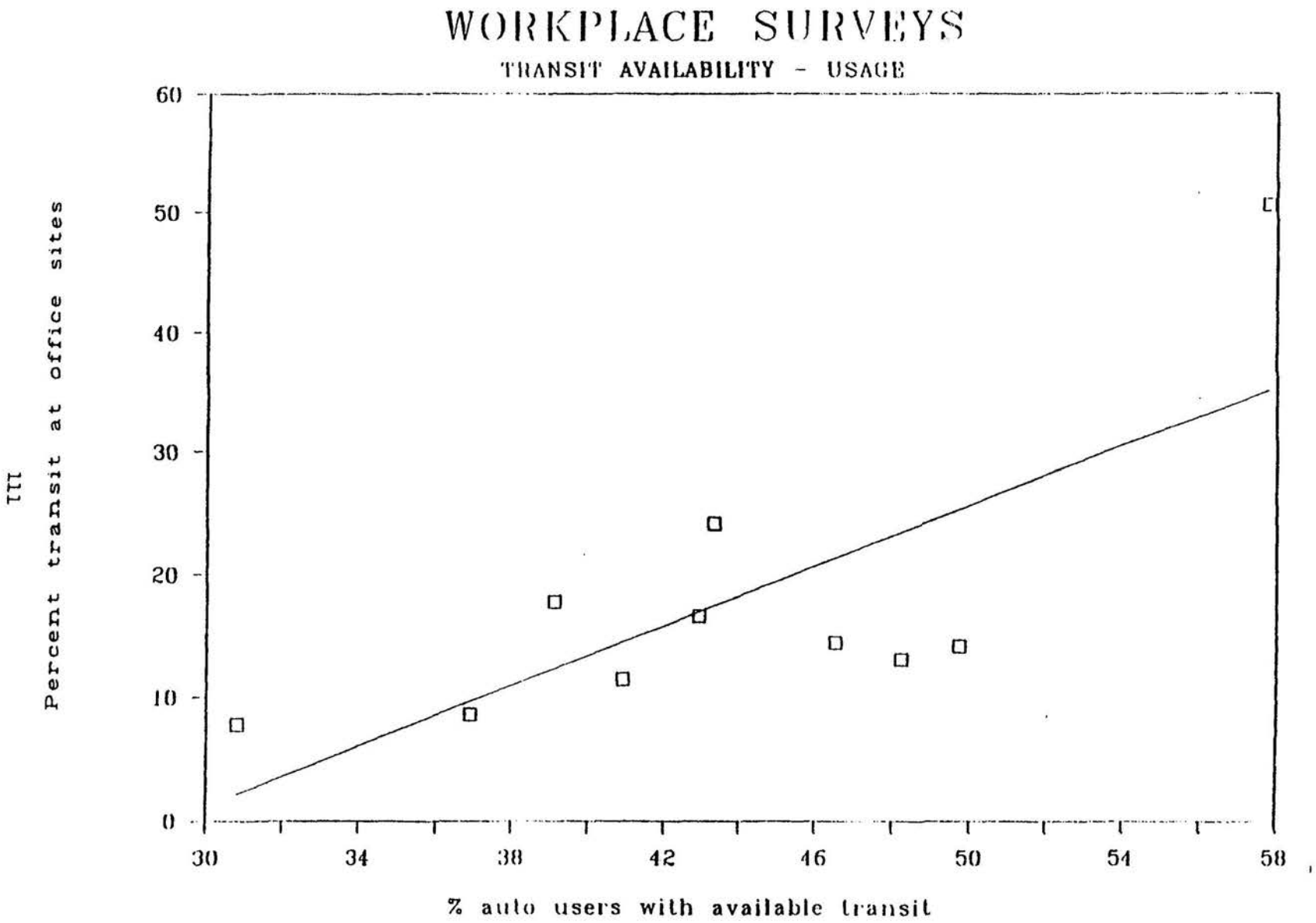

WORKPLACE SURVEYS
TRANSIT AVAILABILITY - USAGE
Percent transit at office sites
60
50
40
30
20
10
0
30
34
38
42
46
50
54
58
% auto users with available transit

Figure 41.

is often not enough information available at planning level to justify incorporating this in planning equations but is a relationship that can be used to modify results.

Finally as discussed previously autos per household is well correlated with transit mode share. The equation suggested is:

$$T = 130.1 - 56.1 \text{ (autos/household)} \qquad R^2 = 0.60$$

If a planner knows the average auto ownership for the labor market surrounding a proposed office development, transit mode share estimate based on distance can be refined. This relationship is graphed in Figure 42.

Summary of Regression Analysis

The equations presented in the above sections represent an updated version of equations developed in the first study reflecting both an increased database and to the degree possible the current development level of both the system and the station areas. As has been stated previously, however, it is important to recognize the limitations of the data, such as the limited sample sizes and ranges of independent variables and the variability of mode share for land uses such as hotels when considering an application of the equations. Well correlated relationships between independent and transit mode share often provide contradictory results for any specific site. The planner/engineer must exercise professional judgment in interpreting results for a specific site. As has been illustrated by changes between the two studies, it must be recognized that these relationships will change over time, based on the extent of the transit system and development trends in the urban area. With these cautions in mind, the suggested equations should be reasonable approximations of average transit mode shares for the next several years.

TRANSIT TRIP GENERATION RATES

Knowledge of the transit trip generation potential of various development types would significantly assist in land use planning decisions to optimize the development of land around each Metrorail station area. With this in mind cordon counts were conducted for extensive periods at most sites. The only sites excluded were those sites where through trips were impossible to keep track of or where it was difficult to cordon

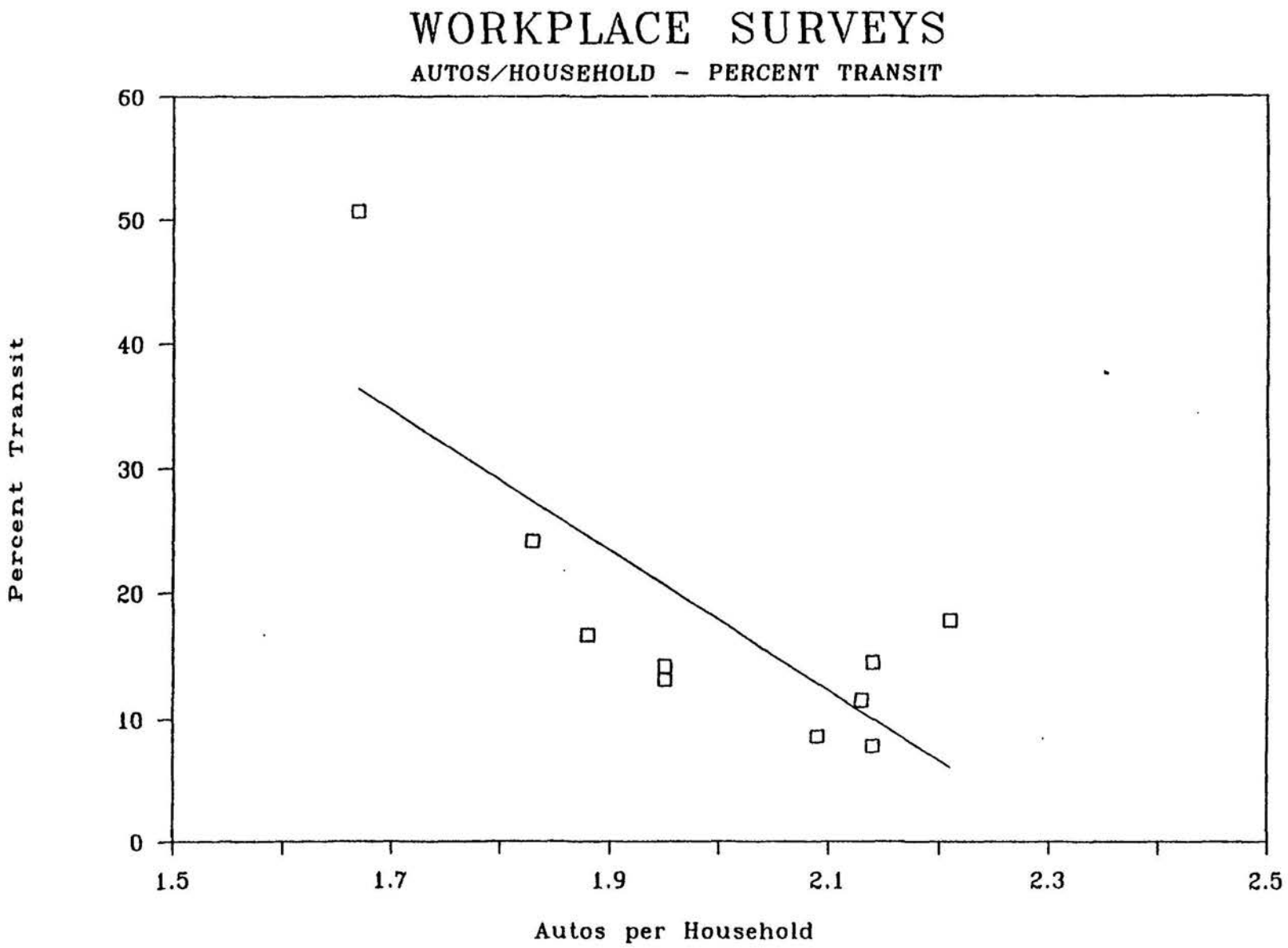

WORKPLACE SURVEYS
AUTOS/HOUSEHOLD - PERCENT TRANSIT
Percent Transit
60
50
40
30
20
10
0
1.5
1.7
1.9
2.1
2.3
2.5
Autos per Household

Figure 42.

off. The counts are expressed in terms of person trips and where possible vehicle trips. Although it must be noted that the vehicle trips represent only those trips from the site itself. At many locations, particularly offices, there is considerable off-site parking. At residential sites the counts do accurately represent the auto trip generation. Combined with the results of the surveys, transit trips can be estimated.

Tables 32 to 35 summarize the results of the cordon counts. Copies of the cordon counts are contained in the technical appendix. In general, the daily person trip generation rate is consistent with rates found in other literature. However, the peak hour trip generation rates are lower than average. This is explained by the flatness of the peak, there are 2 to 3 hours of almost equal trip generation for most sites.

A summary analysis similar to that undertaken in the first study was conducted to bring together the results in a form that could be interpreted for land use and transportation planning purposes. Table 36 presents a comparison of the transit trip generation rates for the four land use types on a consistent basis of trips per 1000 GSF of floor space. Residential and hotel rates are not normally expressed this way, and assumptions had to be made regarding the ratio of square footage to dwelling units and the number of hotel rooms. Exact figures were not available for the buildings studied. To allow comparison between the two studies the same assumptions were made this time. For residential units, 750 square feet per unit was assumed. For hotel, 750 square feet per unit was assumed. Although the actual size of guest rooms for hotels is much smaller, the factor incorporates the large conference, dining and lobby areas associated with the hotels of the type surveyed. Based on this analysis the trip generation rates derived in the first study were revised to reflect to some extent the increased transit mode share for retail and hotel sites. It was felt that the rates should be conservatively increased considering all data available. Previous values are shown in brackets where revisions were made.

As was the case in the first study, retail sites generate two to six times the number of person trips as other land uses. In all likelihood this applies only to those retail sites having a regional market draw. Convenience oriented retail or those attracting only local trips, will have a small transit trip generation rate.

In conclusion, office transit trip generation rates have remained relatively constant over the last two years, hotel and retail appear to be improving thus providing increased potential for off peak usage. All four land uses have significant potential for transit trip generation. At the risk of stating the obvious, this study reinforces past findings that transit is highly dependent on convenient walk access and, therefore,

Table 32. Office Trip Generation

Site	Count Period	Total Ped. In	Total Ped. Out	Peak Hours Hr. Beg.	Peak Hour Trips: Pedestrians In	Pedestrians Out	Vehicles In	Vehicles Out	Auto Occ.	Mode Share: Auto	Mode Share: Non-Auto	Peak Hour Trip Gen. Rate Persons
1701 Penn.	7 am-10 am	266	58	8:45	153	36	--	--	--	--	--	1.08 per 1000 sq.ft.
	3 pm-6 pm	145	240	3:15	64	63	--	--	--	--	--	.72
Ballston One	8 am-10 am	245	72	8:30	159	37	91	9	1.00	51%	49%	.81
	3 pm-6 pm	73	414	4:15	7	258	4	78	1.00	31%	69%	1.10
Silver Spring	7 - 10	265	47	7:00	136	9	18	4	1.00	13%	87%	.97
Metro Center	3 - 6	46	196	4:00	8	123	0	13	1.3	9%	91%	.87
Bell Atlantic	6 - 9	1059	106	7:30	654	55	284	12	1.16	42%	58%	2.01
	3 - 6	191	928	4:30	66	516	10	240	1.10	43%	57%	1.65
East West	7 - 10	602	94	8:15	325	37	--	--	--	--	--	2.01
Towers	3 - 6	299	599	4:45	159	414	--	--	--	--	--	3.18
Bethesda	6:30-9:00	267	91	8:00	204	54	--	--	--	--	--	.86
Metro Center	3 - 6	481	659	3:00	192	267	--	--	--	--	--	1.53
Twinbrook Office Center	1:00 - 6:00 pm	369	354	4:15	78	80	--	--	--	--	--	.95
Parklawn	6:00 - 9:00	3253	311	7:15	1637	129	250	5	1.26	--[1]	--[1]	1.71
Building	3:00 - 6:00	611	4345	4:00	902	2168	40	483	1.43	--	--	2.97
Crystal	7 - 10	1652	843	7:30	659	260	--	--	--	--	--	2.16
Square II	3 - 6	745	1243	3:45	306	469	--	--	--	--	--	1.82
Bethesda .	6:30 - 9:30	541	115	8:30	285	65	123	5	1.00	36%	64%	2.08
Office Ctr.	3:00 - 6:00	327	579	5:00	108	319	11	121	1.00	31%	69%	2.54

[1] Mode share for site only.

Table 33. Residential Trip Generation

Site	Count Period	Total Ped. In	Total Ped. Out	Peak Hours Hr. Beg.	Peak Hour Trips: Pedestrians In	Pedestrians Out	Vehicles In	Vehicles Out	Auto Occ.	Mode Share: Auto	Mode Share: Non-Auto	Peak Hour Trip Gen. Rate[1]: Persons	Peak Hour Trip Gen. Rate[1]: Vehicles
Crystal Plaza	6:00 - 10:00 AM	245	636	7:45	56	129	22	55	1.32	35%	65%	.34	.14
	2:00 - 6:00 PM	656	671	4:00	155	79	39	87	1.33	42%	58%	.44	.23
Crystal Park Condo	6:00 - 10:00	204	201	7:45	48	45	10	8	1.28	21%	79%	.52	.10
	2:00 - 6:00	228	199	4:45	59	42	11	8	1.26	19%	81%	.56	.11
Crystal Square West	6:00 - 10:00	140	383	7:15									
	2:00 - 6:00	460	382	4:45									
Georgian Towers	6:00 - 10:00	264	763	8:00	48	236	65	69	1.21	24%	76%	.33	.16
	2:00 - 6:00	664	499	4:45	210	98	48	92	1.15	34%	66%	.36	.17
Randolph Towers	6:00 - 10:00	142	414	7:45	34	148	27	42	1.26	32%	68%	.36	.14
	2:00 - 6:00	561	302	5:00	167	93	46	23	1.04	22%	78%	.51	.14
Grosvenor House	6:45 - 10:00	423	384	7:45	41	48	98	79	1.28	72%	18%	.22	.45
	2:00 - 6:00	355	347	4:00	28	29	70	54	1.21	72%	18%	.11	.31
Stoneybrook	7:00 - 10:00	50	224	7:45	2	33	19	63	1.32	79%	21%	.32	.75
	2:00 - 6:00	152	96	4:45	19	0	35	24	1.20	75%	25%	.04	.54
Bethany House	7:00 - 10:00	46	72	9:10	31	47	--	--	--	--	--	.28	--
	2:00 - 6:00	162	182	3:15	51	63	--	--	--	--	--	.41	--
Twin Towers	6:00 - 10:00	300	326	8:15	87	98	87	29	1.05	50%	50%	.59	.37
	2:00 - 6:00	284	269	4:30	75	56	16	53	1.00	31%	69%	.42	.22
Grosvenor Park I	6:00 - 10:00	55	181	7:15	7	18	13	49	1.10	27%	73%	.06	.16
	2:00 - 6:00	148	104	3:30	3	9	27	19	1.13	19%	81%	.03	.12

[1] Trip generation rates are expressed as persons or vehicles per hour per unit.

Table 34. Retail Trip Generation

Site	Count Period	Total In	Total Out	Peak Hours Hr. Beg.	Peak Hour In	Peak Hour Out	Peak Hour Trip Generation Rate[1]	Size 1000 Sq. Ft.
Ballston Common	10:00 AM - 6:00 PM	10036	9838	5:00	1817	1944	7.1	530,000
Hecht's Metro Center	10:00 - 6:00	4603	4070	12:30	936	903	3.34	270,000
Union Station	10:00 - 6:00	23817	19799	12:30	3645	3465	9.48	750,000*

[1] per 1,000 square feet.

* Total Development

Table 35. Hotel Trip Generation

Site	Count Period	Total In	Total Out	Peak Hours Hr. Beg.	Peak Hour In	Peak Hour Out	Peak Hour Trip Generation Rate (per room)	No. Rooms
Hyatt Regency	7:00 - 10:00 AM	358	467	8:00	173	245	1.10	380
Bethesda	3:00 - 6:00 PM	492	378	4:00	158	146	.80	
Holiday Inn	7:00 - 10:00	333	305	7:00	148	132	1.23	227
Silver Spring	3:00 - 6:00	393	231	5:00	237	108	1.52	
Hyatt Grand	7:00 - 10:00	620	629	8:30	412	438	.94	
	11:00 - 2:00	1266	1265	12:30	525	522	1.15	907
	3:00 - 6:00	1290	1095	4:45	603	475	1.19	
Holiday Inn	7:00 - 10:00	313	265	8:15	169	128	.94	315
Crowne Plaza	3:00 - 6:00	337	374	3:45	121	160	.89	
JW Marriott	7:00 - 10:00	2132	2094	7:45	831	877	2.21	
	11:00 - 2:00	4965	4653	12:15	2073	1790	5100	773
	3:00 - 6:00	3230	2360	6:45	1635	886	3.26	
Crystal Gateway	7:00 - 10:00	1269	1665	7:45	549	674	1.74	702
Marriott	3:00 - 6:00	1653	1112	5:00	713	482	1.7	
Hyatt Arlington	7:00 - 10:00	251	473	7:15	130	189	1.05	303
	3:00 - 6:00	384	177	5:00	165	87	.83	
Phoenix Park	7:00 - 10:00	107	164	8:45	52	84	1.55	88
Hotel	3:00 - 6:00	76	48	5:00	32	30	.70	
Hyatt Regency	7:00 - 10:00	510	619	7:45	242	369	.89	685
Crystal City	3:00 - 6:00	727	485	5:00	356	170	.77	
Omni Shoreham	7:00 - 10:00	778	774	8:45	399	457	1.11	770
	3:00 - 6:00	842	806	5:00	391	307	.91	

Table 36. Estimate of Transit Trip Generation Potential Near Metrorail Stations, by Land Use Type

Land Use	Typical Daily Person-Trip Generation Rate (per 1,000 S.F. GFA)	Typical Daily Transit Mode Share[1]	Estimated Transit Trip Generation Potential (per 1,000 S.F. GFA)
Office			
Downtown	15	35%	5.3
Close-in suburban stations	15	15	2.3
Residential[2]			
Close-in suburban stations	5	40 (35)[3]	2 (1.8)
Retail (major complex)			
Downtown	30	40 (35)	12 (10.5)
Close-in suburban stations	30	25 (15)	7.5 (4.5)
Hotel[4]			
Downtown	14	20 (15)	2.8 (2.1)
Close-in suburban stations	14	15 (10)	2.1 (1.4)

[1] Transit as a percentage of all trips, including walk trips. Transit mode shares as a percentage of non-walk trips would be substantially higher, especially for office and retail uses.

[2] Assumes 750 square feet of building floor space per dwelling unit.

[3] ( ) - values derived as part of Development Related Ridership Survey, 1987.

[4] Assumes 750 square feet of hotel floor space per guest room.

Note: Person-trip generation rates are "typical" rates, derived from a combination of sources, inlcuding data collected in this study, data from the M-NCPPC study of the Metrorail Red Line, and data from the Institute of Transportation Engineers' Trip Generation Manual. Rates for any individual site could vary widely from these typical rates.

relatively dense, compact land use arrangements are essential within most station areas. This development philosophy is good for the metropolitan region as a whole. By locating sizable developments near Metrorail stations transit ridership is increased, thus reducing the overall number of trips in the metropolitan region as a whole. While relatively dense compact development in the station areas can have a dramatic effect in terms of reducing the number of vehicle trips in the region as a whole, local traffic often increases. This can have the effect of increasing the resistance of the surrounding communities towards higher densities. To avoid or minimize this, WMATA must work with the local jurisdictions and various planning agencies to ensure that road network in the station area is adequate. Strategies must be devised to ensure that traffic resulting from station area development does not infiltrate the surrounding communities.

Land use decisions around rail stations are crucial to the continued optimization of available transportation resources. It is difficult to overstate the importance of these decisions and possible benefits of rational land use planning around the stations. For example, a 200,000 square foot office building being considered for development in the suburbs could achieve an annual reduction of some 500,000 vehicle miles of travel by locating near a Metrorail station. This study has expanded the database and refined the planning tools developed in the first study. Hopefully this will increase their usefulness in planning for growth in the areas surrounding Metrorail stations.

OBSERVATIONS AND CONCLUSIONS

There has been a large volume of data generated in this project, requiring a substantial amount of time to assimilate and interpret. WMATA and other agencies will be able to draw their own conclusions directly from the data. However, a number of conclusions and observations have been derived from the analysis of the data. A summary of these observations is presented below, beginning first with general observations, followed by conclusions relating to each of the land use types. Many of these observations were originally made as part of the first study and are worth repeating; others reflect the expanded database.

General Observations

Many factors influence the choice of mode for trips to and from any type of land use. This study confirmed that the most significant and readily used factors for planning purposes are: 1) the location of the site within the urban area, (downtown sites have the highest transit mode shares, sites within the Beltway have significant transit mode shares, and sites outside the Beltway have relatively low transit mode shares); and 2) the proximity of a building to a Metrorail station entrance. Other factors influence transit ridership such as parking, cost, travel times, connectivity of the transit system, distance from transit connections at the other end of the trip, auto ownership etc. However, the location of the site within the metropolitan area and the proximity of a building to a Metrorail station entrance are well correlated and provide an easily used planning tool.

In contrast to the first study significant transit mode shares were recorded for all land uses. This indicates that while the commute trip is typically the first to be taken by transit, other trips will be increasingly taken by transit as the system and surrounding development mature. Transit users reported almost as many linked trips as auto users indicating that the general level of development along the transit line as a whole influences the propensity to use transit.

Origin destination pairs heavily influence the propensity to take transit. Poor transit accessibility at either end of the trip results in poor transit ridership between those pairs.

Responses to attitudinal questions are similar for surveys conducted at all land use types. Metrorail in general receives very good ratings. The most significant finding from these questions is that even among these groups who live, work, or shop in these

areas that are well served by transit in a visible way, an average of 28% of respondents hold the perception that information regarding the system and schedules is not readily available. At some sites over 40% of the respondents believe that information is not readily available.

Observations on Office Development

Transit mode share for work trips to downtown office buildings is in excess of 50% for offices located near Metrorail stations.

The distribution of residence location for office employees indicates that the transit commuters to any given office building are drawn from throughout the region.

A much higher percentage of work trips occurs by transit where the trip crosses jurisdictional boundaries. (e.g. a site in Virginia from either the District or Maryland). This is probably due to both the length of the trip and the accessibility at the origin end. It is difficult for transit to compete on relatively short trips where wait times make up a significant percentage of the total. As well, connectivity of the trip is important. There is a strong propensity to take transit from either Maryland or Virginia to the District but transit mode share is much lower between Montgomery County and Fairfax County despite competitive travel times. The data from both studies indicate that there is considerable trip interchange between Montgomery County and Virginia.

Most mid-day trips by employees at office buildings near Metrorail stations are walk trips. Of the non-walk mid-day trips, a significant number of the trips to and from the District are made by transit.

The regression analysis of office sites indicates that the work trip transit mode share decreases by 0.76 percent for each 100 foot increase in distance of the site from the station portal. Although this relationship was found to be valid for the sites studied, it is expected that the actual relationship is not linear. The percentage of mid-day non walk trips captured by transit decreases by approximately 1.12% for each 100 foot increase in distance from the station.

Transit mode share for trips by visitors to office buildings was relatively low. The data indicates that between 10% and 15% of visitor trips are by transit. The difference between this study and the first study is probably explained by the fact that all but one of the buildings in this study are located outside of the downtown.

Residential Buildings

A high percentage of trips to and from multi-family residential buildings near Metrorail stations are via transit. The transit mode share for this study ranged from 30 to over 70 percent. The ten sites studied included both rental and owner occupied developments over a range of income levels. Relationships based on the type and cost of the unit could not be correlated with transit mode shares probably due to the limitations of the sample size.

Auto ownership was found to be significantly lower at all sites surveyed, as compared to the regional average and even when compared to areas with similar development located away from a Metrorail station. The implication is that convenient connections to Metrorail influence the tendency to purchase second or third cars. With fewer cars available overall trip generation will be lower, as many trips will simply not be taken.

The percentage of trips by transit decreases by approximately 0.66% for each 100 foot increase in distance of a residential site from a station portal.

Retail Uses

All of the retail sites surveyed had significant transit mode shares. Those sites repeated from the first study showed significant increases in the transit mode share. The transit mode share, particularly at the suburban sites, varies by time of day. For instance at Ballston Common Mall transit mode share drops to less than a third of its midday value in the evenings.

The percentage of trips by transit decreases by approximately 2.0% for each 100 feet of distance from a station portal.

Hotels

Like the retail areas, hotels showed a significant increase in the transit mode share when compared to the first study. Conference attendees are more likely to take transit than overnight guests but there is no correlation with distance from a Metrorail station. Hotel trip generation rates vary from day to day more so than other land uses. Data should be collected for several days at a site to establish an average trip generation rate.

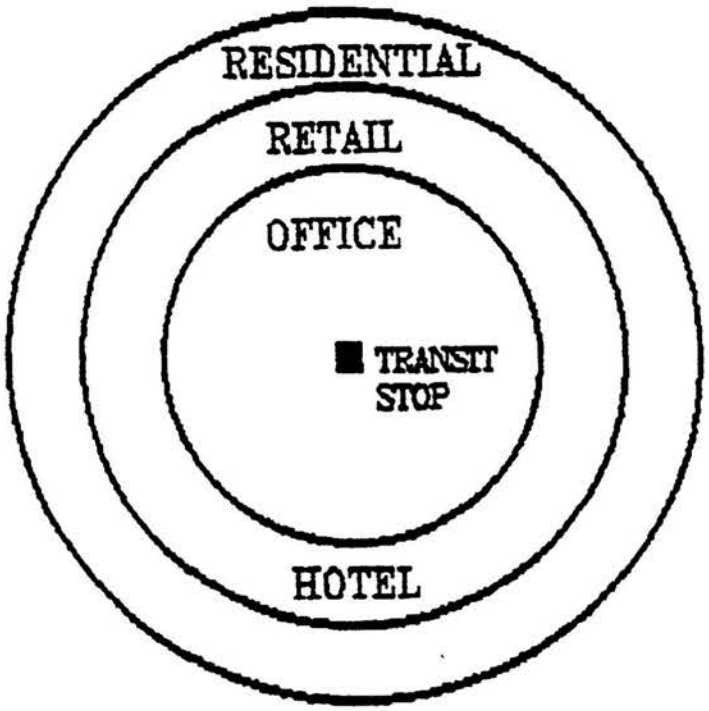
Conclusions

The results of these studies and the analysis of the growing database have a number of significant implications on land use and transportation planning in the Washington Metropolitan area. Metrorail is increasingly a major factor in transporting persons not only to and from the downtown but also to and from suburban sites. However, despite the relationships to distance from the sites, the propensity to take transit is dependent on origin destination relationships. Several land use and transportation factors are critical to making the best possible use of the transit system. These include:

- Locating the types of uses that tend to generate the most transit trips in Metrorail station areas.
- Locating these land uses in close proximity to the station portals.
- Providing high density land development around Metro stations, including suburban stations.
- Providing convenient walk and feeder bus access to the stations to expand the transit market.

Adequate road networks must be constructed in conjunction with the development of station areas. Poor road networks not only will create a negative image of station areas but will restrict the transit market to relatively tight areas surrounding the station. People will not use Metrorail if they must fight congestion to reach the station.

The suburban transit stations and the areas surrounding them are critical to gaining the maximum benefit from the Metrorail system. Figure 43 illustrates a general concept for development surrounding a typical station. Office uses with the associated convenience retail should be located closest to the station entrances since they are the most sensitive to distance from the station. The distance people are willing to walk can be increased by careful planning of the pedestrian systems. For example utilizing underground walkways or skywalks between buildings can be used to separate pedestrians from vehicle traffic. Major retail and hotel uses could occupy the next ring. Mid to high density residential developments would occupy the outer ring. The highest densities would be located closer to the station, transitioning down to single family residential as distance from the station increases. This is a generalized concept only and could be varied from station to station along a corridor.



GENERAL HIERARCHY OF PROXIMITY OF LAND USES TO A TRANSIT STATION

Figure 43.

The data suggests that linked trips increase as the system matures. - This encourages the use of the system for non work trips. To maximize this, development in the corridor must provide a variety of facilities allowing the patron to complete many of the day to day errands that have been done by car (i.e. shopping, banking etc.) This suggests that slightly different emphasis could be placed on development around different stations, for instance major destination type retail development will not be located at each station. However, it appears to be desirable to have this type of development within each corridor. Where destination retail is planned it should be as close as possible to the station. While the emphasis of each station area should be varied, mixed-use development surrounding each station is the most desirable in terms of reducing vehicle trips.

Land use planning beyond the station areas of these four rings of development is also critical. Feeder bus routes to and from the stations need to be considered during the planning for lower density developments. For instance bus only connections can be used to provide more direct bus routes through subdivisions that are planned to discourage through traffic. In short, transit operations should be considered in conjunction with all land use planning in the region.

In addition to development at the station areas, marketing must be targeted at individual station areas providing those who live, work, or shop in these areas specific information about the system and how they can use it.

The data collected by the Development-Related Ridership Surveys provides WMATA and other local agencies with information that can be used in comparing alternate development scenarios for station areas.

APPENDIX A
DETERMINING CONFIDENCE LIMITS FROM SURVEY DATA

A sample drawn from a given population is not likely to be an exact representation of the true characteristics of the population. However, it is possible to estimate the likelihood that the true value lies within a certain a range about the estimated value derived from the data. This range, or "confidence limit," can be determined assuming that the data correspond to an appropriate statistical distribution. This appendix provides the reader with a simple means of establishing confidence limits for the survey results, based on sample size and the travel characteristics being examined.

Table A has been prepared to permit the direct determination of 95 percent confidence limits for all data based on percentages. The typical way of expressing the statistical accuracy is that the percentage derived from the data is within plus or minus X percentage points with 95 percent confidence. The use of the 95th percentile is common, but other percentiles could also be used.

In Table A-1, the sample size for the value being investigated is located on the left side of the table. The percentage of respondents specifying a given answer is located in the column headings. If the percent frequency in the column heading is termed "p," it can be seen that both p and 1-p yield the same results for a given sample size. The 95 percent confidence limit is identified by the intersection of the appropriate sample size row and percent frequency columns. For example, if the percentage of trips by transit is 10 percent and the sample size upon which that estimate is based is 100, it could be said that the estimate is within 5.6 percent of the true value with 95 percent confidence. The equation used to derive Table A-1 can also be used directly, if desired.

Table A-1. Confidence Limits (±%) for 95% Significance Level

Actual Sample Size	Percent Frequency											
	1 or 99	2 or 98	3 or 97	4 or 96	5 or 95	7 or 93	10 or 90	15 or 85	20 or 80	30 or 70	40 or 60	50
10	±6.2%	8.7	10.6	12.1	13.5	15.8	17.8	22.1	24.8	28.4	30.4	31.0
25	3.9	5.5	6.7	7.7	8.5	10.0	11.2	14.0	15.7	18.0	19.2	19.6
50	2.8	3.8	4.7	5.4	6.0	7.1	7.9	9.9	11.1	12.7	13.6	13.9
75	2.3	3.2	3.9	4.4	4.9	5.8	6.5	8.1	9.1	10.4	11.1	11.3
100	1.9	2.7	3.3	3.8	4.3	5.0	5.6	7.0	7.8	9.0	9.6	9.8
150	1.6	2.2	2.7	3.1	3.5	4.1	4.6	5.7	6.4	7.3	7.8	8.0
200	1.4	1.9	2.4	2.7	3.0	3.5	4.0	4.9	5.5	6.3	6.8	6.9
300	1.1	1.6	1.9	2.2	2.5	2.9	3.2	4.0	4.5	5.2	5.5	5.7
400	1.0	1.4	1.5	1.9	2.1	2.5	2.8	3.5	3.9	4.5	4.8	4.9
500	0.9	1.2	1.5	1.7	1.9	2.2	2.5	3.1	3.5	4.0	4.3	4.4
700	0.7	1.0	1.3	1.5	1.6	1.9	2.1	2.6	3.0	3.4	3.6	3.7
900	0.6	0.9	1.1	1.3	1.4	1.7	1.9	2.3	2.6	3.0	3.2	3.3
1200	0.6	0.8	1.0	1.1	1.2	1.4	1.6	2.0	2.3	2.6	2.8	2.8
1500	0.5	0.7	0.9	1.0	1.1	1.3	1.5	1.8	2.0	2.3	2.5	2.5
2000	0.4	0.6	0.7	0.9	1.0	1.1	1.3	1.6	1.8	2.0	2.1	2.2
2500	0.4	0.5	0.7	0.8	0.9	1.0	1.1	1.4	1.6	1.8	1.9	2.0
3000	0.4	0.5	0.6	0.7	0.8	0.9	1.0	1.3	1.4	1.6	1.8	1.8

Equation:

$$\text{Confidence Limits} \quad (d) = \sqrt{\frac{(\%\text{Freq.})(1-\%\text{Freq.})(1.96^2)}{\text{Sample Size}}}$$

APPENDIX B

Relevant Data from Other Sources

Table B-1. Residential/Retail/Hotel Data from Additional Sources[1/]

Residential Development	Station Location	Distance to Station (feet)	Distance to DC Core (miles)	AM Peak Hour[2/] Percent Transit and Walk	Number o Dwelling Units
The Willoughby	Friendship Heights	1,200	5.0	53	804
Topaz House	Bethesda	2,000	6.9	50	365
Stoneybrook	Grosvenor	1,000	10.3	24	200
Parkside	Grosvenor	2,000	10.3	8	340
The Forum	White Flint	1,000	12.0	14	227
Americana	Rockville	500	16.0	34	425

Retail Development	Station Location	Distance to Station (feet)	Distace to DC Core (miles)	Mid-day[3/] Peak Hour Percent Transit	GSF (x 1,000)
Woodward & Lothrop	Friendship Heights	100	5.0	39	180
Saks Fifth Avenue	Friendship Heights	1,600	5.0	4	103

Hotel	Station Location	Distance to Station (feet)	Distance to DC Core (miles)	AM I eak Hour[4/] Percent Transit	Numbe of Rooms
Holiday Inn	Friendship Heights	1,800	5.0	9	227
Hyatt (Metro Center)	Bethesda	100	6.9	11	380

1/ Additional sources include: The Maryland-National Capital Park and Planning Commission study of the Metrorail Red Line (1986).

2/ AM Peak hour percentage includes transit plus walk.

3/ Transit percentage includes all persons to the retail developments.

4/ Transit percentage includes all persons to the hotels.

Table B-2. Office Building Data from Additional Sources[1/]

Office Building	Station Location	Distance to Station (feet)	Distance to DC Core (miles)	AM Peak Hour Percent Transit	GSF (x1,000)
National Place/ National Press Bldg.	Metro Center	100	0.0	59.3	409
1920 L Street	Farragut North	1,000	0.0	53.0	74.8
Van Ness Center	Van Ness-UDC	100	2.9	32.0	182.6
7500 Old Georgetown Road	Bethesda	100	6.9	13.3	
The Barlow Bldg.	Friendship Heights	700	5.0	23.5	240
Chevy Chase Bldg.	Friendship Heights	1,500	5.0	13.5	250
One Park North	Friendship Heights	2,000	5.0	9.0	132
Montgomery Bldg.	Bethesda	450	6.9	12.0	82.5
7315 Wisconsin	Bethesda	600	6.9	30.6	
Fairmont Bldg.	Bethesda	1,400	6.9	27.0	136
Landow Bldg.	Bethesda	2,000	6.9	9.0	225
7101 Wisconsin	Bethesda	2,000	6.9	17.8	
NRC Building	Bethesda	2,100	6.9	10.0	134

1/ Additional sources include: The Maryland-National Capital Park and Planning Commission study of the Metrorail Red Line (1986), and the National Capital Region Transportation Planning Board Trip Generation Studies of the National Place (1986) and the Van Ness Office Building (1985).

APPENDIX C

Survey Instruments

WASHINGTON METROPOLITAN AREA WORK PLACE SURVEY

This survey is part of a continuing effort, approved by Regional Transportation Authorities, to plan for the transportation needs of employees within the Washington Region. We would appreciate your help in this effort by filling out this questionaire. The information obtained from this survey is completely confidential and will only be documented in summary form. Please complete this questionaire and return it to the person who gave it to you as soon as you can.

THANK YOU FOR YOUR TIME AND COOPERATION.

Today's Date ___/89

RESPONDENT INFORMATION

What is the name and address of the place where you report for work?

_____
Name of Employer

_____
Street Address

2. Where do you live?

1. District of Columbia
2. Fairfax County
3. Arlington County
4. Alexandria
5. Falls Church
6. Fairfax City
7. Prince Georges County
8. Rockville
9. Bethesda
10. Silver Spring
11. Elsewhere in Montgomery County
12. Elsewhere in Virginia
13. Elsewhere in Maryland
14. Other

3. What is the intersection nearest your home? _____

Zip Code? _____

4. How many autos, pickups, vans and motorcycles are available for use by members of your household? _____

5. Your sex? (circle one)

1. Male
2. Female

6. Your age on your last birthday? (circle one)

1. 18 years or under
2. 19 to 24 years
3. 25 to 34 years
4. 35 to 44 years
5. 45 to 54 years
6. 55 to 64 years
7. 65 years or over

7. Including yourself, how many people live in your household?

Total number of people ____
Number under 16 years of age ____
How many work full time? ____
How many work part time? ____

8. What is your occupation? (circle one)

1. Professional/technical
2. Manager/administrator
3. Sales worker
4. Clerical
5. Craftsman (mechanic, etc)
6. Equipment operator
7. Laborer
8. Service worker
9. Other

9. At what time did you start work today, even if atypical. _____:_____ AM PM
At what time did you leave work yesterday even if atypical. _____:_____ AM PM
(Please fill in time and circle AM or PM)

9. What means of travel did you use to get to work today? (circle one)

1. Drove alone
2. Drove others
(how many others, excluding yourself ___)
3. Rode as a passenger
(how many total were in the vehicle ___)
4. Metrorail only
5. Metrorail and bus
6. Metrorail and auto
7. Metrorail and other combination (specify) _____
8. Bus only
9. Walked all the way
10. Taxi
11. Bicycle
12. Other (specify) _____

COMMUTE CHARACTERISTICS

10. Answer these questions if you rode transit for any portion of your trip to work today, otherwise skip to 11.

10a. Was a privately owned vehicle available for your trip to work today? (circle one) 1. Yes 2. No

10b. Do you normally ride transit? (circle one) 1. Yes 2. No

10c. How long did it take you to travel from your home to work today?

From your house to transit?	___ Min.
From last transit vehicle to your building entrance	___ Min.
Total (including time on transit)	___ Min.

10d. What is your estimated round-trip cost to and from work? Please include all transit fares and parking charges. (Fill in amount)

$ ___

10e. Does your employer: (circle one)

Subsidize your transit costs?	1. Yes 2. No
Provide a car for business purposes during the day?	1. Yes 2. No
Have a program to encourage car or vanpooling?	1. Yes 2. No
Allow flexible working hours?	1. Yes 2. No

11. Answer these questions if you drove to work today.

11a. Are there convenient transit connections available for your trip to work? (circle one) 1. Yes 2. No 3. Don't know

11b. Do you normally drive to work? (circle one) 1. Yes 2. No

11c. Did you require your car during the day TODAY? (circle one) 1. Yes 2. No

11d. How long did it take you to travel to work TODAY?
To drive from your residence to the parking lot? ___ min.
To walk from the parking lot to your building entrance? ___ min.

11e. Does your employer: (circle one)
Subsidize your automobile expenses or parking costs? 1. Yes 2. No
Have a program to encourage car or van-pooling? 1. Yes 2. No
Allow flexible working hours? 1. Yes 2. No

12. Do you agree, disagree, or have no opinion with respect to the following statements? (circle one)

People should be encouraged to use transit. 1. Agree 2. Disagree 3. No opinion

Schedule information for transit services is readily available. 1. Agree 2. Disagree 3. No opinion

Metrorail is clean and reliable. 1. Agree 2. Disagree 3. No opinion

Metrobus is clean and reliable. 1. Agree 2. Disagree 3. No opiniion

TRIP MAKING CHARACTERISTICS

We would like to find out about all the trips you made on the way to work TODAY, as well as the trips you made during the day and on the way home from work yesterday (or your last weekday at work). For each trip write in the corresponding code numbers from the lists below for Purpose of Trip and Means of Travel and Destination of Trip.

Purpose of Trip
1. Work related
2. Personal business
3. Meal or snack
4. Shopping
5. Educational
6. Recreational
7. Other (specify)

Means of Travel
1. Drove a car
2. Rode in a car
3. Metrorail and walk
4. Metrorail and drive
5. Metrorail and bus
6. Bus only
7. Walk
8. Bicycle
9. Other (specify)

Destination
1. Within half a mile
2. District of Columbia
3. Fairfax County
4. Arlington
5. Alexandria
6. Falls Church
7. Fairfax City
8. Prince Georges County
9. Bethesda
10. Silver Spring
11. Rockville
12. Elsewhere in Montgomery County
13. Elsewhere in Maryland
14. Elsewhere in Virginia
15. Other (specify)

The example indicates a work related trip (1) made from Rockville to the District of Columbia (2) by Metrorail and walking (3) with a shopping stop over in Bethesda (9).

	Example	Trip to Work	Midday Trip	Midday Trip	Trip Home
Time you left	10 30 (AM) PM	__:__ AM PM	__:__ AM PM	__:__ AM PM	__:__ AM PM
	Stop 1st 2nd 3rd	Stop 1st 2nd 3rd	Stop 1st 2nd 3rd	Stop 1st 2nd 3rd	Stop 1st 2nd 3rd
Purpose	4 1 __	____	____	____	____
Means of Travel	3 3 __	____	____	____	____
Destination	9 2 __	____	____	____	____
And then: to work	1. (1) 1.	1. 1. 1.	1. 1. 1.	1. 1. 1.	1. 1. 1.
to next stop	(2) 2 2	2 2 2	2 2 2	2 2 2	2 2 2
Arrival time	12:00				
Length of Trip	10 miles	___ miles	___ miles	___ miles	___ miles

WASHINGTON METROPOLITAN AREA TRAVEL SURVEY

This survey is part of a continuing effort, approved by the Washington Metropolitan Area Transit Authority, to plan for the transportation needs of employees within the Washington Region. We would appreciate your help in this effort by filling out this questionaire. The information obtained from this survey is completely confidential and will only be documented in summary form. Please complete this questionaire and drop it in any mailbox. No postage is required. If you have further questions about this survey, please contact Joan Jenkins, JHK & Associates, at (703) 370-2411.

THANK YOU FOR YOUR TIME AND COOPERATION.

One person may fill in the responses for all persons 16 years of age or older who are currently living in the household:

	Person 1	Person 2	Person 3
1. Date for reporting information - please use a weekday.	/ /89	/ /89	/ /89
2. Sex 1. Male 2. Female Enter one code number for each person.	____	____	____
3. Age 1. 16-25 2. 26-35 3. 36-45 4. 46-55 5. 56-65 6. over 65_Enter code number.	____	____	____
4. Does this person work outside this residence? 1. Yes, Full-time 2. Yes, Part-time 3. No Enter a code(s) number for each person.	____	____	____
5. Does this person have a current drivers License? 1. Yes 2. No Enter one code number for each person.	____	____	____

6. Including yourself, how many people live in your household?

Total number of people	____
Number under 16 years of age	____
How many work full time?	____
How many work part time?	____

7. How many autos, pickups, vans and motorcycles are available for use by members of your household? ____

TRIP MAKING CHARACTERISTICS

We would like to find out about all the trips you made to and from your building today. For each trip write in the corresponding code numbers from the lists below for Purpose of Trip and Means of Travel and Destination of Trip.

1. Work related
2. Personal business
3. Meal or snack
4. Shopping
5. Educational
6. Recreational
7. Other (specify)

1. Drove a car
2. Rode in a car
3. Metrorail and walk
4. Metrorail and drive
5. Metrorail and bus
6. Bus only
7. Walk
8. Bicycle
9. Other (specify)

1. Within half a mile
2. District of Columbia
3. Fairfax County
4. Arlington
5. Alexandria
6. Falls Church
7. Fairfax City
8. Prince Georges County
9. Bethesda
10. Silver Spring
11. Rockville
12. Elsewhere in Montgomery Co.
13. Elsewhere in Maryland
14. Elsewhere in Virginia
15. Other (specify)

The example indicates a midday trip made to the District of Columbia by Metrorail for the purpose of shopping with a stop over in Bethesda.

PERSON 1	**Example**	Trip to Work	Midday Trip	Midday Trip	Trip Home
Time you left	__:__ AM PM	__:__ AM PM	__:__ AM PM	__:__ AM PM	__:__ AM PM
	Stop 1st 2nd 3rd	Stop 1st 2nd 3rd	Stop 1st 2nd 3rd	Stop 1st 2nd 3rd	Stop 1st 2nd 3rd
Purpose	4 _ _	_ _ _	_ _ _	_ _ _	_ _ _
Means of Travel	4 _ _	_ _ _	_ _ _	_ _ _	_ _ _
Destination	11 _ _	_ _ _	_ _ _	_ _ _	_ _ _
And then: to work	1. 1. 1.	1. 1. 1.	1. 1. 1.	1. 1. 1.	1. 1. 1.
to next stop	2. 2. 2.	2. 2. 2.	2. 2. 2.	2. 2. 2.	2. 2. 2.
Arrival time					
Length of Trip	___ miles	___ miles	___ miles	___ miles	___ miles

PERSON 2	Trip to Work	Midday Trip	Midday Trip	Trip Home
Time you left	__:__ AM PM	__:__ AM PM	__:__ AM PM	__:__ AM PM
	Stop 1st 2nd 3rd	Stop 1st 2nd 3rd	Stop 1st 2nd 3rd	Stop 1st 2nd 3rd
Purpose	_____	_ _ _	_ _ _	_ _ _
Means of Travel	_____	_ _ _	_ _ _	_ _ _
Destination	_____	_ _ _	_ _ _	_ _ _
And then: to work	1. 1. 1.	1. 1. 1.	1. 1. 1.	1. 1. 1.
to next stop	2. 2. 2.	2. 2. 2.	2. 2. 2.	2. 2. 2.
Arrival time				

PERSON 3	Trip to Work	Midday Trip	Midday Trip	Trip Home
Time you left	__:__ AM PM	__:__ AM PM	__:__ AM PM	__:__ AM PM
	Stop 1st 2nd 3rd	Stop 1st 2nd 3rd	Stop 1st 2nd 3rd	Stop 1st 2nd 3rd
Purpose	_____	_ _ _	_ _ _	_ _ _
Means of Travel	_____	_ _ _	_ _ _	_ _ _
Destination	_____	_ _ _	_ _ _	_ _ _
And then: to work	1. 1. 1.	1. 1. 1.	1. 1. 1.	1. 1. 1.
to next stop	2. 2. 2.	2. 2. 2.	2. 2. 2.	2. 2. 2.
Arrival time				

8. Do you **agree**, **disagree**, or have no opinion with respect to the following statements? (circle one)

People **should** be encouraged to use transit. 1. Agree 2. Disagree 3. No opinion

Schedule information for transit services is readily **available**. 1. Agree 2. Disagree 3. No opinion

Metrorail is clean and reliable. 1. Agree 2. Disagree 3. No opinion

Metrobus is clean and reliable. 1. Agree 2. Disagree 3. No opinion

(Please seal here)

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

Business Reply Mail
First Class Permit No. 8224 Alexandria, VA

Postage Will Be Paid By Addressee

Washington Metropolitan Area Travel Survey
4660 Kenmore Ave., Suite 1200
Alexandria, VA 22304

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Visitor Survey for Office Sites

Excuse me, I am conducting a travel survey for the Washington Metropolitan Area Transit Authority. Could I ask you a few brief questions?

Site Name: _____ Location of Interview: _____ Begin Time: _____ End Time: _____

Observer: _____ Weather: _____ Date: _____

Do you agree, disagree or have no opinion with respect to the following statements?

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
Arrival Time	Do you work in this building? 1. Employee 2. Visitor 3. Eating 4. Banking 5. Courier 6. Health Club 7. Other If employee – Finished	How did you get to this building? Auto: 1. Driver 2. Passenger 3. Drop off 4. Walk 5. Metrorail 6. Bus 7. Taxi 8. Other	Auto drivers only: How many people came in your car including yourself?	Did you have a car available for your trip to the office? 1. Yes 2. No	Where was your last stop before coming here? City, building name or nearest intersection	Was this 1. An office 2. Your home 3. Friend's home 4. Store 5. Bank 6. Restaurant 7. School 8.Pickup/drop-off 9. Hotel 10. Medical 11. Health club 12. Other	How far is that from here? (miles)	Would you have driven by this office building if you did not stop? 1. Yes 2. No	What time do you expect to leave?	Where will your next stop be after leaving here? City, building name or nearest intersection	Is this 1. An office 2. Your home 3. Friend's home 4. Store 5. Bank 6. Restaurant 7. School 8.Pickup/drop-off 9. Hotel 10. Medical 11. Health club 12. Other	How will you be getting there? Auto: 1. Driver 2. Passenger 3. Dropoff 4. Walk 5. Metrorail 6. Bus 7. Taxi 8. Other	How far is that from here? (miles)	People should be encouraged to use transit. 1. Agree 2. Disagree 3. No opinion	Schedule information is readily available for public transit. 1. Agree 2. Disagree 3. No opinion	Metrorail is clean and reliable. 1. Agree 2. Disagree 3. No opinion	Metrobus is clean and reliable. 1. Agree 2. Disagree 3. No opinion

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Pedestrian Survey for Retail Sites

Excuse me, I am conducting a travel survey for the Washington Metropolitan Area Transit Authority. Could I ask you a few brief questions?

Site Name: _____ Location of Interview: _____ Begin Time: _____ End Time: _____

Observer: _____ Weather: _____ Date: _____

Do you agree, disagree or have no opinion with respect to the following statements?

(1) Arrival Time	(2) Are you: 1. Shopping 2. Eating 3. Business 4. Employee 5. Banking 6. Other	(3) What is your home zip code?	(4) How did you get to ____ Auto: 1. Driver 2. Passenger 3. Drop off 4. Walk 5. Metrorail 6. Bus 7. Taxi 8. Other	(5) Did you have a car available for your trip? 1. Yes 2. No	(6) How many people came in your group?	(7) Where was your last stop before coming here? City, name of building or nearest intersection	(8) Was this 1. An office 2. Your home 3. Friend's home 4. Store 5. Bank 6. Restaurant 7. School 8.Pickup/drop-off 9. Hotel 10. Medical 11. Health club 12. Other	(9) How far is that from here? (miles)	(10) What time do you expect to leave?	(11) Where will your next stop be after leaving here? City, building name or nearest intersection	(12) Is this 1. An office 2. Your home 3. Friend's home 4. Store 5. Bank 6. Restaurant 7. School 8.Pickup/drop-off 9. Hotel 10. Medical 11. Health club 12. Other	(13) How will you be getting there? Auto: 1. Driver 2. Passenger 3. Dropoff 4. Walk 5. Metrorail 6. Bus 7. Taxi 8. Other	(14) How far is that from here? (miles)	(15) People should be encouraged to use transit. 1. Agree 2. Disagree 3. No opinion	(16) Schedule information is readily available for public transit. 1. Agree 2. Disagree 3. No opinion	(17) Metrorail is clean and reliable. 1. Agree 2. Disagree 3. No opinion	(18) Metrobus is clean and reliable. 1. Agree 2. Disagree 3. No opinion

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Survey for Hotel Sites

Excuse me, I am conducting a travel survey for the Washington Metropolitan Area Transit Authority. Could I ask you a few brief questions?

Site Name: _____ Location of Interview: _____ Begin Time: _____ End Time: _____

Observer: _____ Weather: _____ Date: _____

Do you agree, disagree or have no opinion with respect to the following statements?

(1) Arrival Time	(2) Are you 1. An employee 2. An overnight guest 3. Attending Mtg./Conf. 4. Both 2&3 5. Going to restaurant-lounge 6. Other	(3) Have you been outside this hotel earlier TODAY? 1. Yes 2. No - Go to Question 7	(4) What time did you get here? How many people in your group?	(5) How did you get here? 1. Own car 2. Rental car 3. Walked 4. Metrorail 5. Bus 6. Taxi/limo 7. Hotel shuttle 8. Other	If person used Metrorail or bus: (6) Did you have a car available for your trip to the hotel?	All: (7) Where were you coming from? City, building name or nearest intersection What was the purpose of your trip? 1. Work related 2. Shopping 3. Sightseeing 4. Other	(8) Will you be going outside this hotel later today? 1. Yes 2. No - Go to Question 12	(9) What time do you expect to leave? How many people will be in your group?	(10) Where will you be going? City, Building name or nearest intersection What was the purpose of your trip? 1. Work related 2. Shopping 3. Sightseeing 4. Other	(11) How will you be getting there? 1. Own car 2. Rental car 3. Walked 4. Metrorail 5. Bus 6. Taxi/limo 7. Hotel Shuttle 8. Other	(12) People should be encouraged to use transit. 1. Agree 2. Disagree 3. No opinion	(13) Schedule information is readily available for public transit. 1. Agree 2. Disagree 3. No opinion	(14) Metrorail is clean and reliable. 1. Agree 2. Disagree 3. No opinion	(15) Metrobus is clean and reliable. 1. Agree 2. Disagree 3. No opinion
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			__/__			__/__		__/__	__/__					

metro

Washington Metropolitan Area Transit Authority

600 Fifth Street, N.W., Washington, D.C. 20001
(202) 962-1234



FEB 17 1989

Dear Washington Metropolitan Area Building Owner or Manager:

The Washington Metropolitan Area Transit Authority (WMATA) has enlisted the services of JHK & Associates, a transportation engineering consulting firm, to conduct a study of travel characteristics around several Metrorail stations in the Washington region. Essential to this study is development of a data base of travel characteristics at existing offices, shopping areas, hotels and residential dwellings. This information will assist in providing better planning information for WMATA and for other local agencies. Some of you may recall that your assistance in this type of survey endeavor was also requested in 1986. The results in that year provided valuable information to transportation planners in understanding relationships among land uses, transit and distances between the two. This second round of survey work, in 1989, will provide for expanded understanding of these relationships over time.

The enclosed questionnaires request information from various persons in your building about their daily travel patterns. We are seeking your assistance in distributing the questionnaires to these persons and collecting them once they have been filled out completely. We realize that this may be a slight inconvenience to you, however, we believe that the investment of this short amount of time on your part (approximately four minutes per person) will be worth the effort in our planning for better transportation in the Washington Metropolitan Area.

A representative from JHK & Associates will return to collect the surveys in approximately three days unless you have made other arrangements. We greatly appreciate your cooperation. If you have any questions concerning the survey you may contact James Curren of JHK & Associates at (703) 370-2411.

Very truly yours,

Robert A. Pickett

Robert A. Pickett
Acting Director
Office of Planning

metro

Washington Metropolitan Area Transit Authority

600 Fifth Street, N.W., Washington, D.C. 20001
(202) 962-1234



FEB 17 1989

Dear Washington Metropolitan Area Employer:

The Washington Metropolitan Area Transit Authority (WMATA) has enlisted the services of JHK & Associates, a transportation engineering consulting firm, to conduct a study of travel characteristics around several Metrorail stations in the Washington region. Essential to this study is development of a data base of travel characteristics at existing offices, shopping areas, hotels and residential dwellings. This information will assist in providing better planning information for WMATA and for other local agencies. Some of you may recall that your assistance in this type of survey endeavor was also requested in 1986. The results in that year provided valuable information to transportation planners in understanding relationships among land uses, transit and distances between the two. This second round of survey work, in 1989, will provide for expanded understanding of these relationships over time.

The enclosed questionnaires request information from each employee in your office about their daily travel patterns. We are seeking your assistance in distributing the questionnaires to each of your employees and collecting them once they have been filled out completely. We realize that this may be a slight inconvenience to you, however, we believe that the investment of this short amount of time on your part (approximately four minutes per employee) will be worth the effort in our planning for better transportation in the Washington Metropolitan Area.

A representative from JHK & Associates will return to collect the surveys in approximately three days unless you have made other arrangements. We greatly appreciate your cooperation. If you have any questions concerning the survey you may contact James Curren of JHK & Associates at (703) 370-2411.

Very truly yours,

Robert A. Pickett

Robert A. Pickett
Acting Director
Office of Planning

Appendix D: Response Rates for Self Administered Surveys

SITE LIST

Offices	Survey/ Count Date	No. Surveys Distributed	No. Surveys Returned	No. Complete Surveys	No. Rec'd Late	Complete % Return	Overall % Return
1701 Pennsylvania Ave.	3/30/89	388	146	140		36.08	37.63
Silver Spring Metro Ctr.	3/22/89	300	122	122		40.67	40.67
Ballston One	3/23/89	827	301	301		36.40	36.40
Bell Atlantic	3/16/89	1300	477	456	2	35.08	36.85
East West Towers - North	4/26/89	95	33	33		34.74	34.74
Bethesda Metro Center	4/05/89	940	228	225		23.94	24.26
Twinbrook Office Center	3/15/89	302	158	158		52.32	52.32
Parklawn	4/13/89	3500	588	573		16.37	16.80
Crystal Square 2	4/18/89	1200	156	155		12.92	13.00
Bethesda Office Center	5/11/89	663	401	195		29.41	60.48
TOTALS		9515	2610	2358		24.78	27.43

Residential	Survey/ Count Date	No. Surveys Distributed	No. Surveys Returned	Percent Returned	No. Vacant	Other	Rec'd Late	Adjusted Percent
Crystal Square West Apts.	4/18/89	379	82	21.64	22	1		23.03
Georgian Towers	3/21/89	864	73	8.45	11	14		8.70
Twin Towers	3/22/89	315	20	6.35				6.35
Randolph Towers	3/23/89	507	61	12.03	61	3	1	13.80
Grosvenor House Apts.	3/14/89	408	36	8.82	50			10.06
Grosvenor Park I	4/04/89	399	67	16.79				16.79
Stoneybrook	3/14/89	109	18	16.51	1			16.67
Bethany House	3/28/89	276	12	4.35	5			4.43
Crystal Park Condos	4/12/89	180	34	18.89	1			18.99
Crystal Plaza Apartments	4/12/89	536	94	17.54	22	4	1	18.47
TOTALS		3973	497	12.51	173	22	2	13.16

Exhibit D: **Litigation Documents – Dorothy Douglas/Marshall Heights Community Development Organization**

SCHEUERMANN & MENIST

ATTORNEYS AT LAW

700 E Street, S.E.
Washington, D.C. 20003
Telephone: (202) 547-9180
Fax: (202) 547-2050

John E. Scheuermann
Elizabeth Menist (D.C. & VA)

Dianne M. Stewart Hamlin (MD) – Of Counsel
Natalie M. Koss – Of Counsel

Gopa Khandwala (D.C. & MD)
Rachel Kimberly Marks (D.C. & MA)

May 3, 2005

Board of Zoning Adjustments
441 4th Street, NW
Suite 210 South
Washington, DC 20001

Dorothy Y. Douglas, a former member of the Board of Directors of Marshall Heights Community Development Organization, Inc. ("Marshall Heights") has, in the past four years, filed two lawsuits against the organization. A copy of the Complaint in her first lawsuit, Douglas v. Marshall Heights Community Development Organization, Inc., Civil Action No. 01-1409 (ESH), filed in the U. S. District Court for the District of Columbia in June, 2001, is attached hereto as Exhibit 1. Judge Huvelle dismissed that case in June, 2002. A copy of the dismissal order is attached hereto as Exhibit 2.

The next day, Ms. Douglas filed her second lawsuit, Douglas v. Marshall Heights Community Development Organization, Inc., Civil Action No. 5299-02, in the Superior Court for the District of Columbia. A copy of the Complaint in that suit is attached hereto as Exhibit 3. After the close of discovery, Marshall Heights filed a Motion for Summary Judgment, a copy of which is attached hereto as Exhibit 4. Ms. Douglas opposed that motion. A copy of her Opposition is attached hereto as Exhibit 5. A copy of Marshall Heights' Reply to her opposition is attached hereto as Exhibit 6.[1] On February 3, 2003, Judge Natalia Combs-Greene entered summary judgment in favor of Marshall Heights. A copy of Judge Combs-Greene's order is attached hereto as Exhibit 7. Ms. Douglas appealed. The District of Columbia Court of Appeals affirmed Judge Combs-Greene's decision on February 16, 2005. A copy of the Court of Appeals decision is attached hereto as Exhibit 8.

Sincerely yours,

Elizabeth Menist
Counsel for Marshall Heights
Community Development Organization, Inc.

Enclosures

[1] As discussed in Ms. Douglas's Opposition and Marshall Heights's Reply, Ms. Douglas applied for employment with Marshall Heights twice. She was not hired for either position.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

orothy Douglas
v
arshall Heights
mmunity Development Organization, Inc.

8. (MHCO) Marshall Heights Community Developmant Organization refused to negotiate for housing with me.
9. alleged threats, intimidate, retaliation, interfere by Neighbors and others to stop getting this house and exercising my fair housing rights
10. Refused to make reasable available rules, policies, and services necessary for the disabled person and client related to sale of houses.

I asking for a Trial by Jury and relief to provide make housing available to me to compensate me for damages humiliation, pain and suffering.

Award actual damages, attorney's fees and costs. In addition award punitive damages a house as well as equitable relief.

Please I cannot afford an attorney I asking court to appoint one for me. Maximun amount of award in this's person. 5000.000 5 million dollars.

Thank you.

Dorothy M Douglas

I would appreciate Your grant my Request.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
JUN 27 2001
CLERK

Dorothy Y. Douglas
4401 Minnesota Ave. NE.
Washington, D.C. 20019
202-396-0421

V

Marshall Heights Community Development Organization, Inc
3939 Benning Road. NE.
Washington, D.C. 20019
202-396-1212

I, Dorothy Y. Douglas pro-se filing a Complaint of motion lawsuit with this Court of an alleged violations of housing discrimation has been violated by Marshall Height Community Development Organization, Inc.

On September 25, 1998 Marshall Height Community Development Organization, Inc. fail to keep agreement with me Dorothy Douglas on serveral ocassions including?

1. Agrees to sell home and to utilize those funds to build a home to suit and accomodate my household
2. Make housing available in six months to be process and completed.
3. Deny membership to Marshall Heights Board and senates.
4. On March 30 2000 fail to provide documenations, Updat reports related to sale of housing and to meet with this person.
5. Lost, dostory and thrown into the trash all my personal information documeentions and Client reports.
6. Provide different housing counseling services, but was deny by FNMA May 10, 2000 ; others occassions in May of May and June 2000.
7. MHCO refuse to sell me a house.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
JUN 27 2002
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

DOROTHY DOUGLAS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 01-1409 (ESH)
	)	
MARSHALL HEIGHTS COMMUNITY DEVELOPMENT ORGANIZATION, INC.,	)	
	)	
Defendant.	)	

ORDER

For the reasons stated in the accompanying Memorandum Opinion, on this 27 day of June 2002, it is hereby

ORDERED that Defendant's Motion to Dismiss [Dkt. #22-1] is GRANTED, and it is

FURTHER ORDERED that Defendant's Motion for Judgment on the Pleadings [Dkt. # 22-2] is DENIED, and it is

FURTHER ORDERED that the complaint is DISMISSED without prejudice. This is a final appealable Order. *See* Fed. R. App. P. 4(a).

Ellen S Huvelle

ELLEN SEGAL HUVELLE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
JUN 27 2002
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

DOROTHY DOUGLAS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 01-1409 (ESH)**
	)	
MARSHALL HEIGHTS COMMUNITY DEVELOPMENT ORGANIZATION, INC.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

This matter is before the Court on Defendant's Motion to Dismiss or, in the Alternative, for Judgment on the Pleadings.[1] The Court will dismiss the complaint.

Plaintiff, a District of Columbia resident and is proceeding *pro se* in this matter, brought this civil action against the Marshall Heights Community Development Organization, Inc. ("MHCDO"). MHCDO's mission is to "foster development and revitalization in Ward 7 in the District of Columbia, including among other projects, the construction of affordable low/moderate income residential housing. . .." Defendant's Statement of the Case, p. 1. Plaintiff alleges that MHCDO discriminated against her by failing to provide her with a 5-bedroom house suitable for herself and her foster children. *See* Compl., p. 1. She seeks damages totalling $500,000 and a jury trial.

The parties appeared before the Court on January 21, 2002. According to MHCDO, it did attempt to assist Plaintiff in obtaining a larger home. MHCDO's efforts were not successful,

[1] The Court advised Plaintiff of her obligation to respond to Defendant's motion. *See* April 23, 2002 Order [Dkt. #24]. Plaintiff did submit an opposition to Defendant's motion.

(2)

however, because Plaintiff did not pre-qualify for a mortgage. Without a preapproved mortgage, MHCDO was not able to secure financing for the construction of the house.[2]

Federal district courts have jurisdiction in civil actions arising under the Constitution, laws or treaties of the United States. *See* 28 U.S.C. § 1331. Having reviewed the pleadings and having heard from the parties, the Court identifies no federal question. Federal district courts also have jurisdiction of civil actions where the matter in controversy exceeds $75,000, and is between citizens of different states. *See* 28 C.F.R. §1332(a). The parties both are in the District of Columbia; no diversity jurisdiction exists. This action will be dismissed for lack of subject matter jurisdiction.

Ellen S Huvelle

ELLEN SEGAL HUVELLE
United States District Judge

DATE: 6/27/02

---

[2] The Court afforded Plaintiff an opportunity to resolve her dispute with MHCDO. The Court appointed counsel to represent Plaintiff for purposes of mediation only, and referred the parties to mediation before Magistrate Judge Robinson. The parties, however, did not settle the case.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Plaintiff

vs.

RECEIVED
Civil Clerk's Office
JUN 28 2012
Superior Court of the
District of Columbia
Washington, D.C.

Case No. _____

Defendants

COMPLAINT

1. Jurisdiction of this court is founded on D.C. Code Annotated, 1973 edition, as amended, Sec. 11-921.

Wherefore, Plaintiff demands judgment against Defendant in the sum of $_____ with interest and costs.

_____
Phone:

DISTRICT OF COLUMBIA, SS

_____, being first duly sworn on oath deposes and says that the foregoing is a just and true statement of the amount owing by defendant to the plaintiff, exclusive of all set-offs and just grounds of defense.

_____
(Plaintiff Agent)

Subscribed and sworn to before me this _____ day of _____ 20 ____.

_____
(Notary Public/Deputy Clerk)

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

DOROTHY Y. DOUGLAS, Plaintiff, v. MARSHALL HEIGHTS COMMUNITY DEVELOPMENT ORGANIZATION, INC. Defendant.	Civil Action No.: 5299-02 Judge Natalia Combs-Greene Next Event: Dispositive Motions 11/28/2002

FILED
NOV 27 9 03 PM '02
CIVIL DIVISION

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Superior Court Rules of Civil Procedure, defendant Marshall Heights Community Development Organization, Inc. ("Marshall Heights") hereby moves for summary judgment on all claims. As more fully set forth in the accompanying memorandum of points and authorities, based upon the undisputed material facts, (1) Ms. Douglas's breach of contract claim is barred by the Statute of Frauds; (2) Ms. Douglas has not alleged any cognizable claim of housing discrimination and, if the allegations in the complaint are interpreted to set forth a claim of housing discrimination, she neither set forth a *prima facie* case nor produce a scintilla of evidence that Marshall Heights' legitimate non-discriminatory reason for not selling her a house was a pretext for housing discrimination; and (3) Ms. Douglas cannot make out a *prima facie* case of retaliation. Consequently, Marshall Heights is entitled to summary judgment on all claims as a matter of law.

RULE 12-I CERTIFICATION

I hereby certify that, on November 27, 2002 and November 29, 2002, I telephoned Dorothy Douglas to attempt to secure her consent to the relief sought. No one answered the

telephone and there was no answering machine on which to leave a message.

Respectfully submitted,

SCHEUERMANN & TERHUNE

By: _____

John E. Scheuermann (#185470)
Elizabeth Menist (#475052)
700 E Street, S.E.
Washington, D.C. 20003
(202) 547-9180
(202) 547-2050 (fax)

Counsel for the Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Defendant's Motion for Summary Judgment, with supporting memorandum of points and authorities, statement of undisputed material facts, affidavits and exhibits, and proposed order was this 23rd day of November, 2002, sent by certified mail, return receipt requested to Dorothy Y. Douglas, 4401 Minnesota Avenue, N.E., Washington, D.C. 20019, plaintiff *pro se*.

_____
Elizabeth Menist

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

DOROTHY Y. DOUGLAS, Plaintiff, v. MARSHALL HEIGHTS COMMUNITY DEVELOPMENT ORGANIZATION, INC. Defendant.	Civil Action No.: 5299-02 Judge Natalia Combs-Greene Next Event: Dispositive Motions 11/28/2002

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This is a case about a woman who believes that, because she is disabled and had custody of foster children, she was entitled to have a community organization give her a brand-new five bedroom house in exchange for her two bedroom house. In her handwritten complaint, plaintiff Dorothy Douglas, a disgruntled former board member of defendant Marshall Heights Community Development Organization, Inc. ("Marshall Heights") alleges that Marshall Heights "agree to sell my home and to utilize those funds to build a home to suite[sic] me and accommodate my household. making the house available in six months [illegible] and completed." What Ms. Douglas omits to say is that she had no written contract for this sale of real estate, and that she never obtained pre-qualification or pre-approval for a mortgage to cover the difference between the amount that could be realized from the sale of her two bedroom house and the price of the five bedroom house that she wanted Marshall Heights to build for her. Ms.

Douglas's complaint also appears to allege housing discrimination[1], although she fails to identify any statute that requires Marshall Heights to "provide" her with a five-bedroom house. Finally, Ms. Douglas is alleging retaliation for filing a lawsuit, based upon the allegedly hostile conduct of her neighbors, notwithstanding the fact that these neighbors have no known connection to Marshall Heights, and that the conduct of which she is complaining started more than a year before Ms. Douglas filed her first lawsuit against Marshall Heights.[2]

All of Ms. Douglas's claims are legally infirm. Her breach of contract claim is barred by the Statute of Frauds. Her claim of housing discrimination as stated fails because it does not allege any violation of a statute. To the extent that she could be considered to have alleged a claim under the Fair Housing Act, as amended ("FHA"), 42 U.S.C. § 3601 *et seq.*,[3] that claim also fails because, based upon the undisputed facts, Ms. Douglas can neither make out a prima facie case of housing discrimination nor produce a scintilla of evidence that Marshall Heights' legitimate, non-discriminatory reason for not building and selling her a house is a pretext for discrimination. Ms. Douglas is similarly unable to make out a prima facie case of retaliation. Consequently, Marshall Heights is entitled to summary judgment.

---

[1] The text of this allegation appears to read "MHCDO discriminated against me by failing to provide me with a 5 bedroom house suitable for me and my foster children." The complaint does not indicate what statute Ms. Douglas believes Marshall Heights has violated.

[2] Ms. Douglas filed a complaint against Marshall Heights, containing almost identical allegations to those in the complaint in this action (absent the retaliation claim), in the U.S. District Court for the District of Columbia on June 27, 2001. That lawsuit was dismissed without prejudice exactly one year later, on June 27, 2002, for lack of subject matter jurisdiction.

[3] The analysis and result is the same if the Court were to infer a discrimination claim under the District of Columbia Human Rights Act, as amended ("DCHRA"), D.C. Code § 2-1401.01 *et seq.*

Undisputed Material Facts

Marshall Heights is a not-for profit community development organization serving the residents of Ward 7 in the District of Columbia. Affidavit of Michael Crescenzo (hereafter "Crescenzo Aff."), ¶ 2. Marshall Heights endeavors to improve the quality of life for the residents of Ward 7 in a holistic manner through housing, economic development, and human services programs. Crescenzo Aff. ¶ 2. Among the programs undertaken by Marshall Heights is the renovation of existing houses and the construction of new single-family houses in Ward 7. Crescenzo Aff. ¶ 3. The purpose of this program is to give lower and middle income families desiring to live in Ward 7 the opportunity to own better quality houses than they could afford to purchase from a for-profit seller and to improve the condition of the neighborhoods in which these houses are built. Crescenzo Aff. ¶ 3.

Dorothy Douglas, a former member of the Board of Directors of Marshall Heights, claims to be a person with a disability. Deposition of Dorothy Douglas, Vol. 2 (hereafter "Douglas Dep. 2") at 15, lines 2-10; Deposition of Dorothy Douglas, Vol. 1 (hereafter "Douglas Dep. 1")140, line 22, to 141, line 2. In March, 1998, Ms. Douglas first inquired about purchasing a house from Marshall Heights. Douglas Dep. 1 at 36, lines 11 - 13. Ms. Douglas told the Marshall Heights employee to whom she initially spoke, Dwayne Bradford, that she needed a five bedroom house. Douglas Dep. 1 at 37, line 17 to 38, line 3. At that time, Ms. Douglas had two children and four foster children living with her. Douglas Dep. 1 at 134, lines 14-20.

On September 25, 1998, Ms. Douglas, met with the then-president of Marshall Heights,

Lloyd D. Smith.[4] Ms. Douglas expressed to Mr. Smith that she had been ordered by the Court to obtain appropriate housing for her foster children. Douglas Dep. 2, Ex. 13. Mr. Smith wrote a letter to the attorney representing Ms. Douglas in the court proceedings relating to her foster children, wherein he stated, in pertinent part:

> On behalf of Mrs. Douglas, our organization will be providing the assistance needed to locate and transition a larger home in order to maintain the custody of her foster children. MHCDO is proposing the sale of her current home and to utilize those funds to build a home to suit. The process will take at least six months to complete.
>
> We understand that Ms. Douglas is under a court order to locate appropriate housing, it is our hope that this will support your petition before the courts to afford Ms. Douglas the additional time needed to accomplish this mandate. Douglas Dep. 2., Ex. 13.

Many of the details of the interaction between Ms. Douglas and Marshall Heights over the next two years are disputed. They are also not, as a matter of law, material to any claims in this case. The material facts are undisputed. Ms. Douglas asserts that the house she discussed with Mr. Smith was a "Columbia" model in Banneker Ridge, a housing development of 27 single-family homes constructed by developed by Marshall Heights and constructed by CIH Homes, LLC as its Project Representative during the period 1999 to 2002. Douglas Dep. 2 at 24, line 18 to 25, line 19; Douglas Dep. 2, Ex. 12; Crescenzo Aff. ¶10. The "Columbia", a four bedroom floorplan, was offered with the option of additional finished rooms in the basement. Douglas Dep. 2, Ex. 12. The minimum sales price of a "Columbia" model, with no added options, was $159,900. Douglas Dep. 2, Ex. 12. The optional attached garage, which Ms. Douglas indicated that she wanted for use as a fifth bedroom, added an additional $4,600 to the purchase price. Douglas Dep. 2, Ex. 12.

---

[4] Mr. Smith's name is mis-transcribed as "Lewis Smith" in the second volume of Ms. Douglas's deposition transcript.

Marshall Heights does not, and has never, given a house to any individual or family, or taken a purchaser's house in even trade for a house built by Marshall Heights. Crescenzo Aff. ¶ 5. All of the single-family houses renovated or built by Marshall Heights since at least January 1, 1998, including all of the houses in the Banneker Ridge development, have been advertised and sold to members of the public for the price listed in the advertisement. Crescenzo Aff. ¶ 5. Marshall Heights only builds houses on land that it owns. The land is sold to the purchaser along with the house. Crescenzo Aff. ¶ 6.

Ms. Douglas's "current home" referred to in Mr. Smith's letter, which she still owns today, is a two bedroom, one bath house located at 4401 Minnesota Avenue, N.E. in Washington, D.C., which Ms. Douglas purchased in 1979. Douglas Dep. 1 at 12, line 19 to 13, line 8. Its assessed value in 2002 was $53,033, and Ms. Douglas currently owes approximately $5,000 on its mortgage. Douglas Dep. 2, Ex. 29; Douglas Dep. 1 at 13, lines 14-15. Consequently, Ms. Douglas would have needed a mortgage, in addition to the proceeds from the sale of her current house, in order to purchase the house she claims Mr. Smith agreed to build for her.

Since at least January 1, 1998, Marshall Heights has required all prospective purchasers to provide it with a pre-qualification or pre-approval letter from a mortgage lender prior to signing a contract to purchase a single-family house (whether an existing house or one to be built by Marshall Heights), so as to have some assurance that the purchaser will have the funds to go to settlement. Crescenzo Aff. ¶ 8. Marshall Heights has never provided first trust mortgage loans to homebuyers and has not provided any mortgage loans to homebuyers since at least 1994. Crescenzo Aff. ¶ 12. Marshall Heights has not, since at least January 1, 1998, built any single-family house for, or sold any single-family house to, any individual(s) who has not presented

Marshall Heights with a letter from a mortgage lender stating that the individual(s) is pre-qualified or pre-approved for a mortgage loan in the amount of the purchase price, less the purchaser's down payment. Crescenzo Aff. ¶ 8. Marshall Heights' loan from Bank of America, which provided Marshall Heights with all of the construction funding for the Banneker Ridge project, required that, in order for Bank of America to release funds for the construction of each house (other than two speculative and one model houses), Bank of America had to be provided with a copy of a pre-approval letter from a mortgage lender approving the purchaser for a mortgage loan in the amount of the purchase price, less the purchaser's down payment. Crescenzo Aff. ¶ 9.

In May, 2000, Ms. Douglas applied to FNMC mortgage company to be pre-qualified for a mortgage. Douglas Dep. 2 at 47, line 5 to 48, line 13; Douglas Dep. 2, Ex. 19. FNMC mortgage company has no relationship to Marshall Heights, although Marshall Heights did refer prospective purchasers to FNMC during the period 1996 to 2002. Crescenzo Aff. ¶ 13. FNMC informed Ms. Douglas that it was unable to pre-qualify her due to her credit history.[5] Douglas Dep. 2, Ex. 20, 21; Douglas Dep. 2 at 48, line 15 to 50, line 14. Ms. Douglas never presented Marshall Heights with a pre-qualification or pre-approval letter from a lender. Crescenzo Aff. ¶ 14. And Marshall Heights and Ms. Douglas never entered into a written contract for the sale of the house that Ms. Douglas discussed with Mr. Smith. Douglas Dep. 1 at 56, lines 3-6.

At some point in time prior to May 22, 2000, Ms. Douglas began to be harassed in

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[5] In August, 2000, Ms. Douglas went to Homefree-USA, an organization that apparently assists persons interested in purchasing a house in preparing to do so, for assistance. The mortgage credit evaluation prepared for Ms. Douglas on behalf of Homefree also reflected Ms. Douglas's credit problems, stating "serious delinquency and derogatory public record or collection filed." Douglas Dep. 2, Ex. 25.

various ways by an unspecified number of people, some of whom she can name and some of whom she can't, who threw things at her house, threw things in her yard, followed her, called her names, had altercations with her and her family members, and threw "stuff" on her car.[6] Douglas Dep. 1 at 100, line 10 to 102, line 10; Douglas Dep. 2 at 69, line 15 to 74, line 8. The individuals who she can name who have harassed her are: Sarah McManus, Kenneth McManus, and Michelle Frazier. Douglas Dep. 1 at 102, line 11 to 103, line 4; Douglas Dep. 1 at 108, line 20 to 109, line 4; Douglas Dep. 2 at 72, lines 5 - 22. None of these three individuals are or have been employed by Marshall Heights or on the Board of Marshall Heights. Crescenzo Aff. ¶ 15. Ms. Douglas is unable to identify any other individual who has been harassing her. Douglas Dep. 1 at 100, line 9 to 113, line 23; Douglas Dep. 2 at 66, lin 1 to 74, line 8. On May 22, 2000, Ms. Douglas wrote to Mr. Paul Wagner (who she also refers to as Paul Williams) at Fox 5 News to complain about this harassment. Douglas Dep. 2 at 69, line 15 to 70, line 4; Douglas Dep. 2 Ex. 27. In that letter, Ms. Douglas asserted that she was being harassed because she had complained about drugs in the community. Douglas Dep. 2 Ex. 27. The harassment which Ms. Douglas has continued to suffer from up to the present is the same harassment, meted out by the same people (aside from the incident involving Ms. Frazier), that began prior to her May 22, 2000 letter. Douglas Dep. 2 at 73, line 14 to 74, line 8.

On June 27, 2001, Ms. Douglas filed a complaint in the U.S. District Court for the District of Columbia against Marshall Heights, containing almost identical allegations to those in the complaint in this action (absent the retaliation claim). Attachment 1. That lawsuit was

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[6] All of the undisputed facts in this paragraph are undisputed for purposes of this motion only.

dismissed without prejudice exactly one year later, on June 27, 2002, for lack of subject matter jurisdiction. Attachment 2. This lawsuit followed the next day.

Argument

A. Introduction: Standards for Adjudicating Motions for Summary Judgment

Under Rule 56(c) of the Superior Court Rules of Civil Procedure, summary judgment is warranted when "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Hancock v. Bureau of Nat'l Affairs, 645 A.2d 588 (D.C. 1994). In order to overcome a motion for summary judgment, the opposing party must do more than reiterate the allegations contained in the pleadings. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). It is incumbent upon the party opposing summary judgment to present evidence demonstrating the existence of a genuine issue of material fact for trial. Raskauskas v. Temple Realty Co., 589 A.2d 17, 25 (D.C. 1991). The mere existence of some alleged factual dispute is not sufficient to raise a genuine issue of material fact. See Rowe v. Kidd, 731 F.Supp. 534, 536 (D.D.C. 1990). There are no triable issues of fact "unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). In ruling on a motion for summary judgment, "the judge must ask himself not whether he thinks the evidence unmistakably favors one side or the other but whether a fair-minded juror could return a verdict for the plaintiff on the evidence presented." It is the plaintiff's obligation in opposing a motion for summary judgment to adduce the type of "significant probative evidence" that not only

supports the allegations in the complaint but provides the basis "on which the jury could reasonably find for the plaintiff.." Liberty Lobby, 477 U.S. at 249, 252 (quoting First Nat'l Bank of Arizona v. Cities Service Co., 391 U.S. 253, 290 (1968). See also Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986) ("[o]ne of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses ...").

The salutary purposes of summary judgment apply to discrimination cases no less than to other types of litigation. Grigsby v. Reynolds Metals Co., 821 F. 2d 590 (11th Cir. 1987); Meiri v. Dacon, 759 F.2d 989, 998 (2d Cir.), cert. denied, 474 U.S. 829 (1985). See also Molerio v. Federal Bureau of Investigation, 749 F. 2d 815 (D.C. Cir. 1984) (affirming grant of summary judgment against plaintiff); Webb v. District of Columbia, 864 F. Supp. 175, 180 (D.D.C. 1994).

In this case, Ms. Douglas's deposition testimony, together with the affidavit of Marshall Heights' Senior Vice President in charge of housing programs and the supporting documents show that there is no genuine issue of any material fact and that, even on those cognizable claims which may not be barred by statute, Ms. Douglas cannot meet her burden of proceeding or persuasion as a matter of law. Consequently, for the reasons stated below, Marshall Heights submits that it is both proper and appropriate for this Honorable Court to enter summary judgment in its favor.

B. The Breach of Contract Claim is Barred by the Statute of Frauds

In the District of Columbia, a contract for the sale of real estate is valid and enforceable only when it is in writing and there is sufficient description of the property to be sold, the price to be paid, and the names of the parties to the transaction. Apostolides v. Colecchia, 221 A.2d 437, 438 (D.C. App. 1966); see also, D.C. Code § 28-3502 (An action may not be brought upon a

contract for sale of real estate unless the agreement is in writing and signed by the defendant.) In this case, it is undisputed that there is no signed written agreement between Ms. Douglas and Marshall Heights for the sale[7] of a house to Ms. Douglas. Consequently, Marshall Heights is entitled to judgment as a matter of law on the breach of contract claim. See id.

To the extent that Ms. Douglas is attempting to rely on the September 25, 1998 letter written by the then-president of Marshall Heights, Lloyd D. Smith, to Ms. Douglas's then-attorney, Douglas B. Terrell, wherein Mr. Smith indicates that Marshall Heights intends to work with Ms. Douglas to help her locate a larger house so that she can maintain custody of her foster children, this letter is entirely insufficient to form a contract of any kind, let alone a contract for the sale of real estate. It contains no description of the property to be purchased by Ms. Douglas and no purchase price. On this basis as well, Marshall Heights is entitled to judgment as a matter of law. See Apostolides, 221 A.2d at 438. See also Rosenkoff v. Mariani, 207 F.2d 449, 93 U.S.App.D.C. 111 (1953) ("[A]n owner incurs no liability by failing to perform a mere promise to sell land to a particular person.")

C. The Allegations in the Complaint Do Not Set Forth a Violation of any Anti-Discrimination Statute.

The discrimination allegation in Ms. Douglas's complaint states "MHCDO discriminated against me by failing to provide me with a 5 bedroom house suitable for me and my foster children." Ms. Douglas fails to allege any provision of any anti-discrimination statute that

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[7] Ms. Douglas has couched her claim as Marshall Heights' failure to "build" her a house, rather than "sell" her a house. This is a distinction without a difference. It is undisputed that every house that has ever been built by Marshall Heights has been sold, along with the land upon which it was built.

requires Marshall Heights to provide her with a five bedroom house. In her deposition, Ms. Douglas makes cryptic reference to the Fair Housing Act requiring Marshall Heights to build her a house, and/or provide her with services relating to buying a house, because she had children. Douglas Dep. 1 at 12, lines 1-18. Ms. Douglas appears to believe that "[b]ecause I need a larger house for my family, the law says under the Fair Housing Act that I'm entitled to that." Douglas Dep. 1 at 98, lines 12-14. The Fair Housing Act, as amended, contains no such provisions.[8] See 42 U.S.C. § 3601 *et seq*. Consequently, Ms. Douglas cannot prevail on such a claim and Marshall Heights is entitled to summary judgment thereon.

D. Ms. Douglas Can Not Meet Either Her Burden of Proceeding or Her Burden of Persuasion on Any Cognizable Claim of Housing Discrimination.

Even if the Court wishes to construe Ms. Douglas's discrimination allegation with the latitude often afforded to *pro se* plaintiffs and find a cognizable claim for her, based upon the undisputed facts, any such discrimination claim must fail as a matter of law. The essence of a discrimination claim, under any statute, is that the plaintiff was treated differently by the defendant than a person outside the protected class. Construing Ms. Douglas's allegation very broadly, and in concert with her deposition testimony, Ms. Douglas appears to be alleging that Marshall Heights discriminated against her by not building or selling her a five bedroom house because of her disability and/or because of her familial status (having foster children), in violation of the Fair Housing Act, as amended. Douglas Dep. 1 at 94, line 2 to 95, line 14.

Absent evidence of direct discrimination (such as a covenant against selling to persons of

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[8] The D.C. Human Rights Act, as amended, only other statute addressing housing discrimination on the basis of familial status in the District of Columbia, is likewise devoid of any such provision. See D.C. Code § 2-1401.01 *et seq*.

a particular race, or a statement by the seller that it will not sell to a person with a disability), which is not offered here, a claim of housing discrimination under the FHA[9] is to be examined under the McDonnell-Douglas burden-shifting framework. Neithamer v. Brenneman Property Services, Inc., 81 F.Supp.2d 1 (D.D.C.1999)[10]; see also Clifton Terrace Associates, Ltd. v. United Technologies Corp., 929 F.2d 714, 722, 289 U.S.App.D.C. 121, 129 (1991). Under this framework, Ms. Douglas must establish a prima facie case of discrimination by showing: (1) that she is (or is perceived to be) a member of a protected class; (2) that she offered and was qualified to purchase a house built by Marshall Heights; (3) that Marshall Heights did not build and sell her a house; and (4) that Marshall Heights sold such houses to one or more similarly-situated people outside the protected class. See Neithamer, 81 F.Supp.2d at 4. Ms. Douglas must provide sufficient evidence to show that she was "rejected under circumstances which give rise to an inference of unlawful discrimination." Texas Dep't of Community Affairs v. Burdine, 450

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[9] In the unlikely event that the Court were to construe Ms. Douglas's allegations as stating a claim under the D.C. Human Rights Act, the legal analysis applied to a claim of housing discrimination of this nature brought under the DCHRA is the same as for an FHA claim. See Neithamer v. Brenneman Property Services, Inc., 81 F.Supp.2d 1 (D.D.C.1999); see also Benefits Communication Corporation v. Klieforth, 642 A.2d 1299, 1304 n.16 (D.C. 1994) (noting that the legislative history of the Human Rights Act reveals that the Council looked to the federal civil rights acts and applicable federal court opinions interpreting those statutes).

[10] Citing Gamble v. City of Escondido, 104 F.3d 300, 305 (9th Cir.1997); Mountain Side Mobile Estates Partnership v. Secretary of Hous. and Urban Dev., 56 F.3d 1243, 1250-51 (10th Cir.1995); Cabrera v. Jakabovitz, 24 F.3d 372, 382 (2d Cir.1994), cert. denied, 513 U.S. 876, 115 S.Ct. 205, 130 L.Ed.2d 135 (1994); Casa Marie, Inc. v. Superior Court of Puerto Rico for Dist. of Arecibo, 988 F.2d 252, 270 (1st Cir.1993); Secretary, U.S. Dep't of Hous. and Urban Dev., on Behalf of Herron v. Blackwell, 908 F.2d 864, 870 (11th Cir.1990); Hamilton v. Svatik, 779 F.2d 383, 387 (7th Cir.1985); Williams v. Matthews Co., 499 F.2d 819, 827 (8th Cir.1974), cert. denied, 419 U.S. 1021, 95 S.Ct. 495, 42 L.Ed.2d 294 (1974) for the FHA and United Mine Workers of Am., Int'l Union v. Moore, 717 A.2d 332, 338 (D.C.1998) for the DCHRA.

U.S. 248, 253, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981); Hayman v. National Academy of Sciences, 23 F.3d 535, 537, 306 U.S.App.D.C. 227 (1994). The burden then shifts to Marshall Heights to present evidence of a legitimate, nondiscriminatory reason for its actions. Once such evidence is offered, the burden swings back to the plaintiff to prove that the defendant's stated reasons are pretextual. Clifton Terrace, 929 F.2d at 722, 289 U.S.App.D.C. at 129. "To overcome a motion for summary judgment, the plaintiff must at least point to some evidence establishing a reasonable inference that the defendant's proffered explanation is unworthy of credence." Id.

On summary judgment, the moving party is entitled to rely on the presumptions applicable at trial. See Molerio, 749 F. 2d at 822. Where the plaintiff fails to demonstrate a *prima facie* case, or where the plaintiff produces *no* evidence sufficient to prove that the nondiscriminatory reason proffered by the defendant is a pretext for intentional discrimination, then summary judgment is proper. Id. at 823 (summary judgment against plaintiff in Title VII case affirmed where plaintiff provided no evidence from which trier of fact could conclude that nondiscriminatory reason was pretextual); Brown v. American Honda Motor Co., 939 F. 2d 946, 950 (11th Cir. 1991) (defendant in Title VII case presented "such strong evidence of a nondiscriminatory rationale that summary judgment is warranted"). In this case, Ms. Douglas has failed *both* to prove two of the essential elements of her *prima facie* case -- namely, that she was qualified to purchase a house and that houses were sold to similarly situated non-disabled persons -- *and* to offer any credible evidence that Marshall Heights' legitimate nondiscriminatory reasons for not selling her a house were untrue.

1. Ms. Douglas Cannot Make Out a Prima Facie Case.

To establish a *prima facie* case of housing discrimination, Ms. Douglas must show: (1) that she is (or is perceived to be) a member of a protected class; (2) that she offered and was qualified to purchase a house built by Marshall Heights; (3) that Marshall Heights did not build and sell her a house; and (4) that Marshall Heights sold such houses to one or more similarly-situated people outside the protected class.[11] See Neithamer, 81 F.Supp.2d at 4. For the purposes of this motion, given that it was aware that Ms. Douglas was receiving disability retirement benefits, Marshall Heights concedes that Ms. Douglas is disabled or was perceived to be disabled. Marshall Heights also concedes that it was aware that Ms. Douglas had foster children living with her. In addition, Marshall Heights concedes that it did not build and sell Ms. Douglas a house. However, there is no evidence of record to support the other two required elements of Ms. Douglas's prima facie case.

In order to be qualified to purchase a house built by Marshall Heights, a prospective buyer had to be either pre-qualified or pre-approved by a mortgage lender for a mortgage in an amount sufficient to cover the purchase price of the property, less the purchaser's downpayment. It is undisputed that Ms. Douglas never submitted any evidence of pre-qualification or pre-approval by a mortgage lender to Marshall Heights. In fact, she admits that she was denied pre-qualification because of problems with her credit history. Consequently, it is undisputed that Ms.

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[11] The specific exposition of the elements of the prima facie case is appropriately modified to conform to the allegations in the plaintiff's complaint. See Burdine, 450 U.S. at 253 n.6.

Douglas was not qualified to purchase a house built by Marshall Heights.[12] See Mitchell v. Century 21 Rustic Realty, 2002 U.S. Dist. LEXIS 21617 (E.D.N.Y.)(FHA plaintiffs could not make out 'qualified buyer' prong of prima facie case because they failed to produce 80% mortgage financing by the time the seller required it), aff'd 2002 U.S. App. LEXIS 18428 (2nd Cir.).

Ms. Douglas is also unable to show that any similarly-situated person outside the protected class was sold a house by Marshall Heights. Each and every purchaser to whom Marshall Heights has sold a house, from at least January 1, 1998 to the present, has presented to Marshall Heights a letter from a mortgage lender evidencing pre-qualification or pre-approval for a mortgage by that lender before Marshall Heights has entered into any contract to sell a house to the purchaser. The rejection of a prospective purchaser who is turned down for pre-qualification for a mortgage by a lender unrelated to the defendant because of her poor credit history is not the "circumstance[] which give[s] rise to an inference of unlawful discrimination" required by Burdine. Ms. Douglas cannot make out a prima facie case of housing discrimination; consequently Marshall Heights is entitled to summary judgment as a matter of law.

2. Ms. Douglas Has Adduced No Evidence of Pretext.

Even if this Court were to determine that Ms. Douglas had set forth a prima facie case of housing discrimination, Marshall Heights has presented evidence of a legitimate,

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[12] To the extent that Ms. Douglas is claiming that she did not need to obtain a mortgage because the proceeds from the sale of her two bedroom house, located at 4401 Minnesota Avenue, N.E. and currently assessed for tax purposes at $53,033, with a remaining mortgage balance of $5,000, would have been sufficient to cover the $164,500 (minimum) purchase price of the house she claims Marshall Heights promised to build her, no "fair-minded juror" (the standard set forth in Liberty Lobby) could possibly return a verdict in her favor on that basis.

nondiscriminatory reason for not building or selling Ms. Douglas a house. Since at least January 1, 1998, Marshall Heights has required all of its purchasers, disabled and non-disabled, with or without children, to present a letter evidencing pre-qualification or pre-approval for a mortgage prior to signing a contract to purchase a house. In the case of its largest housing development, that requirement is also a requirement of the lender from whom Marshall Heights obtained its construction financing. Ms. Douglas did not obtain pre-qualification or pre-approval from a lender for a mortgage. She was, in fact, turned down because of problems with her credit history. Consequently, Marshall Heights did not enter into a contract to build and sell her a house.

When Marshall Heights proffers a legitimate, nondiscriminatory reason for its actions, then the presumption of discrimination raised by Ms. Douglas's *prima facie* case drops from the case and the burden of proceeding shifts back to Ms. Douglas to present evidence that Marshall Heights' stated reason is both untrue and a pretext for discrimination. See St. Mary's Honor Center v. Hicks, 509 U.S. 502, 511-512 (1993); see also, Shaw Project Area Committee v. District of Columbia Commission on Human Rights, 500 A.2d 251, 255-56 (D.C. App. 1985) (ruling for the employer where it was found that the plaintiff had failed to show that her employer's proffered nondiscriminatory reason was not worthy of credence and merely a pretext for discrimination). This Ms. Douglas cannot do. There is no record evidence of Marshall Heights selling a house to any person who had not been pre-approved or pre-qualified for a mortgage. In the absence of any evidence that the requirement is not being uniformly enforced, no fair-minded juror could find that requiring a purchaser of real estate to be pre-approved or pre-qualified for a mortgage is anything other than a perfectly credible non-discriminatory reason for not entering into a contract to sell a house. Consequently, Marshall Heights is entitled to

summary judgment for this reason as well. See generally, Liberty Lobby, 477 U.S. at 249, 252.

E. Ms. Douglas's Retaliation Allegations Do Not State a Claim Upon Which Relief Can Be Granted.

In her complaint, Ms. Douglas alleges that Marshall Heights has harassed and retaliated against her because she filed this lawsuit. Since it is not possible to retaliate against a person for filing a lawsuit which she has not yet filed, her allegation, one presumes, must actually refer to the filing of the lawsuit in the U.S. District Court which contained almost identical allegations. In order to state a cognizable claim for retaliation for filing a lawsuit, a plaintiff must have included in that lawsuit a claim under a statute that prohibits retaliation for asserting a claim under that statute. Ms. Douglas's U.S. District Court complaint is devoid of any reference to any statute that includes an anti-retaliation provision. See Att. 1. In discovery in this case, it has become apparent that Ms. Douglas intended her discrimination claim to lie under the Fair Housing Act. Assuming that she also intended to allege a violation of the Fair Housing Act (or the D.C. Human Rights Act) in the U.S. District Court[13], and assuming that Marshall Heights could have gleaned that intention from her complaint, her retaliation claim would still fail because 1) there is no evidence that any of the harassment complained of was perpetrated by Marshall Heights; and 2) the harassment began more than a year prior to the filing of Ms. Douglas's first lawsuit against Marshall Heights.

The FHA and DCHRA prohibit retaliation against any person for exercising their rights under the statute. See 42 U.S.C. § 3617; D.C. Code § 2-1402.61. In order to make out a prima facie case of retaliation under the FHA or DCHRA, a plaintiff must establish that: (1) she was

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[13] Notwithstanding the fact that the U.S. District Court held that Ms. Douglas had not stated a claim under any federal statute. See Att. 2.

engaged in protected activity, such as the filing of a lawsuit under that statute; (2) that the defendant was aware of this activity; (3) that the defendant took some type of adverse action against her; and (4) that some causal connection existed between the two. See generally Reg'l Econ. Cmty. Action Program, Inc. v. City of Middletown, 294 F.3d 35 (2nd Cir 2002); Millstein v. Henske, 722 A.2d 850 (1999). Assuming *arguendo* that this Court were to find that Ms. Douglas had engaged in protected activity and Marshall Heights knew about it, Ms. Douglas cannot satisfy the other two prongs required to state a *prima facie* case.

Assuming for purposes of this motion that the harassment Ms. Douglas is complaining of -- people throwing things at her house, throwing things in her yard, following her, calling her names, having altercations with her and her family members, and throwing "stuff" on her car -- is adverse action, there is no record evidence whatsoever to connect anyone who Ms. Douglas alleges has harassed her with Marshall Heights.[14] The three people she can name as taking part in the harassment are not Marshall Heights' employees or Board members.

In addition, there must be some causal connection between the lawsuit and the harassment for a retaliation claim to lie. In her deposition, Ms. Douglas clearly stated that the harassment of which she is complaining began prior to May 22, 2000, more than a year before

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[14] The only exception is Ms. Douglas' assertion that a woman who is a member of the Board of Directors of Marshall Heights, whose name Ms. Douglas does not know, was in the District of Columbia courthouse on a unspecified day when Ms. Douglas went to the courthouse to file a document in this case. Ms. Douglas believes that this woman followed her to the courthouse. See Douglas Dep. 1 at 100, line 22 to 101, line 21. Her speculation is hardly the significant, probative evidence required to oppose a motion for summary judgment. Even assuming, for the purposes of this motion, that Ms. Douglas's speculation were accurate, nothing in the interaction between Ms. Douglas and the unnamed woman at the courthouse could be considered an adverse action, so as to give rise to a retaliation claim. See Hughes v. Kloida, 2000 U.S. App. LEXIS 537, *4-5 (6th Cir.)(speculation insufficient), Sporn v. Ocean Colony Condo. Ass'n, 173 F. Supp. 2d 244, 252 (D.N.J. 2001)(conduct insufficient)

she filed her first lawsuit against Marshall Heights. In this universe, cause must precede effect. Marshall Heights cannot have harassed Ms. Douglas in retaliation for filing a lawsuit more than a year before that lawsuit was filed. Consequently, Ms. Douglas cannot make out a *prima facie* case of retaliation, and Marshall Heights is entitled to summary judgment on this claim as well.

Conclusion

For the reasons stated herein Marshall Heights submits that it is abundantly clear that it is entitled to judgment on the Complaint filed herein as a matter of law and respectfully requests the entry of an order directing the same forthwith.

Respectfully submitted,

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